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THIS INDEX is based on a consolidation of contents entries appearing in the January–December issues of the FEDERAL REGISTER together with broad subject references. The entries are arranged first under the name of the agency which issued the document. Under each agency, the entries are then listed alphabetically within the categories of Rules, Proposed Rules, and Notices. Executive Orders, Proclamations, and other documents from the President are listed under Presidential Documents. The number at the end of each entry gives the pages in the FEDERAL REGISTER where the document begins. Use the table of Federal Register Pages and Dates at the back of this index to locate the issue date for each page number. This index is published monthly and is cumulated for 12 months.

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Department of the Interior, Bureau of Reclamation	Reclamation Instructions Index dated	Bureau of Reclamation, Attention: D-7923, Denver Federal Center, P.O. Box 25007, Denver, CO 80225-0007. No charge	Bureau of Reclamation; Attention: D-7920, Denver Federal Center, P.O. Box 25007, Denver, CO 80225-007 Telephone: (303) 236-6730
Department of the Interior, U.S. Geological Survey	Geological Survey Manual, Table of Contents, Checklist, and Subject Index	Paperwork Management Officer, U.S. Geological Survey, 208 National Center, Reston, VA 22092 No charge	Paperwork Management Officer; U.S. Geological Survey; 208 National Center, Reston, VA 22092 Telephone 703-648-7309 or FTS 959-7309
Department of the Interior, Minerals Management Service	Basic Minerals Management Service Manual Table of Contents and Checklist--December 30, 1987 Listed numerically by part, series, chapter, release number, date, and pages	In accordance with fee schedule in 43 CFR 2, Appendix A	Dorothy Christopher, Directives Management Officer, 12203 Sunrise Valley Drive, Reston, VA 22091 Telephone 435-6213
	Director's appeals decisions and index	In accordance with fee schedule in 43 CFR 2, Appendix A	David Schuenke, Chief, Division of Appeals, Office of Program Review, Minerals Management Service, 1951 Kidwell Drive, Vienna, VA 22180, Telephone 285-2990

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
Department of the Interior, National Park Service	NPS Guidelines and Directives Index Dated September 1988		
	Lists all current National Park Service Guidelines and Staff and Special Directives	National Park Service, Administrative Services Division, P.O. Box 37127, Washington, DC 20013-7127 Attn: Directives and Paperwork Management Branch No charge	National Park Service, Administrative Services Division, P.O. Box 37127, Washington, DC 20013-7127 Attn: Warren Dade, Directives and Paperwork Management Branch Telephone A.C. 202-523-5138
Department of the Interior, Office of Hearings and Appeals	Index-Digest -- Index of synopses for all decisions decided by OHA Boards of Appeal and published Solicitor's decisions under specific topical headings. Useful in researching legal holdings of Department of the Interior. Published quarterly, annually and on 5-year basis.	Editorial Branch, OHA, 4015 Wilson Blvd., Arlington, VA 22203. Price: $50 annually for quarterly issues and bound cumulative issue at end of calendar year. Checks made payable to Department of the Interior. Price for photocopies as prescribed in Department fee schedule for FOIA information (43 CFR Part 2, Appendix A). Checks made payable to Department of the Interior. Price on Quinquennial issue is set by Government Printing Office and available from that agency.	Editorial Branch, OHA, 4015 Wilson Blvd., Arlington, VA 22203. Telephone 703-235-3791
	Indian Citator—Index of authorities cited in decisions of the Interior Board of Indian Appeal (IBIA). Initial publication covers volumes 1-15 of IBIA decisions. Updated annually.	Editorial Branch, OHA, 4015 Wilson Blvd., Arlington, VA 22203 Price: $5.00 for Indian Citator. Checks made payable to "Department of the Interior".	Editorial Branch, OHA, 4015 Wilson Blvd., Arlington, VA 22203. Telephone (703) 235-3791
	Administrative Manual. Index related to administrative policies, procedures and standards as contained in the Administrative Manual	Editorial Branch, OHA, 4015 Wilson Blvd., Arlington, VA 22203. Price for photocopies as prescribed in Department fee schedule for FOIA information (43 CFR Part 2, Appendix A). Checks payable to Department of the Interior.	Administrative Officer, OHA, 4015 Wilson Blvd., Arlington, VA 22203. Telephone: (703) 235-3791
Department of the Interior, Office of Inspector General	Inspector General Manual Index, August 18, 1983. Numeric and subject listing of internal policies and procedures by volume, chapter, section, and sub-section	In accordance with fee schedule in 43 CFR Part 2, Appendix A - Fees Office of Inspector General	Betty Foyes, Information Officer, Department of the Interior, Office of Inspector General, 18th and C Streets, NW., Washington, DC 20240 Telephone: 343-4356
Department of the Interior, Office of Surface Mining	Functional Index (OSMRE Directives Listed by Functions) dated October 22, 1986	Office of Surface Mining, Division of Management Services, 1951 Constitution Ave., NW., Washington, DC 20240 No charge	Office of Surface Mining, Division of Management Services, 1951 Constitution Ave., NW., Washington, DC 20240 Telephone: A.C. (202) 343-2210
Department of Labor	Department of Labor Freedom of Information Act Index Overview and Guide to DOL agencies and subagencies with information on how to obtain more detailed indexes to records maintained by each subagency; includes cross-reference to agencies by statute or executive order; 28 pages	Mail $4.20 check payable to DEPARTMENT OF LABOR to: FOIA Index Request, Counsel for Administrative Law, Division of Legislation and Legal Counsel, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, NW., Room N2428, Washington, DC 20210.	Administrator, FOIA/PA, Counsel for Administrative Law, Division of Legislation and Legal Counsel, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, NW., Room N2428, Washington, DC 20210 Phone (202) 523-9277
Department of Transportation, Federal Highway Administration (FHWA)	CrossReference Index of current directives, The index is alphabetical by subject and within each subject, applicable directives are identified. The index also includes a three-part cross-reference for the FHPM, 23 U.S.C. and 23 CFR. The index is updated semi-annually (March and September)	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590. No charge	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590
	Cease and Desist and Driver Disqualification Final Orders by the Federal Highway Administrator: 1969-1984; listing of cease and desist and driver disqualification final orders of the Federal Highway Administrator; items listed are identified by case docket number, name of carrier and date notice of investigation was mailed	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590. No charge	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590
	Opinions and Final Orders of the FHWA in Regard to the Regulation of Toll Bridges: 1968-1984 listing of opinions and final orders regarding regulation of toll bridges issued by the Federal Highway Administrator, which identifies the case and the date issued	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590. No charge	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
Department of the Treasury, Department Offices	Index of Selected Records, July 1967 to June 1989. Index either contains the following information or indicates where the public may obtain information, decisions, statements of the general course and method by which functions are channeled and determined; a description of the central and field offices; rules of procedure, descriptions of forms; substantive rules and statements of general policy and interpretations adopted by the agency; and each amendment, revision, or repeal of the foregoing; final adjudications of cases; statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and administrative staff manuals and instructions to staff that affect a member of the public for the Departmental Offices, Internal Revenue Service, United States Customs Service, United States Secret Service, Bureau of Alcohol, Tobacco and Firearms, Bureau of Engraving and Printing, Financial Management Service, United States Mint, Bureau of the Public Debt, Office of the Comptroller of the Currency, United States Savings Bond Division, Federal Law Enforcement Training Center, Office of the Assistant Secretary for Tax Policy.	Library, Room 5010-MT, Department of the Treasury, Washington, DC 20220, Reproduced upon request; fees charged per page copied in accordance with fee schedule at 31 CFR 1.6. Make checks payable to Treasury of the United States	Treasury Department Library, Room 5010, Main Treasury Bldg., 15th and Pennsylvania Ave., NW., Washington, DC 20220
Architectural and Transportation Barriers Compliance Board	ATBCB Freedom of Information Index; June 1978 through November 1982: Final decisions made in adjudication of cases concerning alleged noncompliance to the Architectural Barriers Act of 1968; and a record of the final votes of each member of the Board in every Board proceeding. ATBCB annual reports; pamphlets describing the ATBCB, how to file complaints, and resource guides to literature in the area of creating an accessible environment	Freedom of Information Officer, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC 20202. Reproduced upon request. Twenty cents per page, per copy. Make checks payable to the Department of Education Public Information Office, ATBCB, Rm. 1010, 330 C St., SW. Washington, DC 20202. No charge	Freedom of Information Officer, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC Phone: 202-245-1591 Public Information Office, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC 20202 Telephone: 202-245-1591
Committee for Purchase From the Blind and Other Severely Handicapped	Index of Additions and Deletions to the Procurement List: (a) Procurement List 1989 incorporates all additions and deletions through November 15, 1988; (b) Current index November 1988-September 1989 Order from: Executive Director, Committee for Purchase From the Blind and Other Severely Handicapped, Crystal Square Building No. 5, 1755 Jefferson Davis Highway, Suite 1107, Arlington, VA 22202-3509. Price: Ten cents per page, per copy. Make checks payable to: Treasurer of the United States		Committee for Purchase From the Blind and Other Severely Handicapped, Attention: Freedom of Information Officer
Commodity Futures Trading Commission	Index of final Commission opinions, including concurring and dissenting opinions, and orders in the adjudication of cases. April 21, 1975 to date. (This index consists of separate chronological listings of final Commission opinions and orders in enforcement cases and reparations proceedings before the Commission) Index of statements of policy and interpretations adopted by the Commission and not published in the Federal Register. April 21, 1975 to date Index of Commission administrative manuals and instructions to staff that affect a member of the public. April 21, 1975 to date. (Commission instructions no longer in use are not included in this index)	Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 Price: 10 cents per page	Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 Telephone 202 254-6314

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
General Services Administration (GSA)	GSA Freedom of Information index; July 4, 1967 through June 30, 1984. Category A information which is final opinions, including concurring and dissenting opinions and orders, made in the adjudication of cases. Category B information which is those statements of policy and interpretations which have been adopted by GSA and are not published in the FEDERAL REGISTER. Category C information which is administrative staff manuals and instructions to staff that affect members of the public	GSA, Freedom of Information Officer (ATRAR), Washington, DC 20405. Price: $4.75. Make checks payable to: General Services Administration	GSA Central Office Library and the business service centers located in each regional office listed below: Central Office Library, 18th & F Sts., NW., Rm. 1033, Washington, DC 20405 Business Service Centers: National Capital Region: 7th & D Sts., SW., Washington, DC 20407 Region 1: John W. McCormack Post Office and Courthouse, Boston, Mass. 02109 Region 2: 26 Federal Plaza, New York, NY 10278 Region 3: 9th & Market Sts., Philadelphia, PA, 19107 Region 4: Richard B. Russell Bldg., 75 Spring St., Atlanta, GA 30303 Region 5: 230 So. Dearborn St., Chicago, IL, 60604 Region 6: 1500 East Bannister Rd., Kansas City, MO 64131 Region 7: 819 Taylor St., Ft. Worth, TX 76102 Region 8: Building 41, Denver Federal Center, Denver, CO 80225 Region 9: 525 Market St., San Francisco, CA 94105 Region 10: GSA Center, Auburn, WA 98002
International Boundary and Water Commission, United States and Mexico, U.S. Section	Brochure: Amistad Dam and Reservoir	Project Engineer, U.S. Section, IBWC, Route 2, Box 37, Highway 90 West, Del Rio, TX 78840. No charge	Project Engineer, U.S. Section, IBWC, Route 2, Box 37, Highway 90 West, Del Rio, TX 78840
	Brochure: Falcon Dam and Power Plant	Reservoirs Manager, U.S. Section, IBWC, P.O. Box 1, Falcon Village, TX 78545. No charge	Reservoirs Manager, U.S. Section, IBWC, P.O. Box 1, Falcon Village, TX 78545
	Water Bulletins: Containing data for 1 year covering flow of Rio Grande and related data from Elephant Butte, NM, to Gulf of Mexico, re storage in major reservoirs, diversions, suspended silt, chemical analyses, sanitary aspects of water quality, meteorologic data, and irrigated areas–for years 1931 through 1960	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: $4.50 per bulletin (data for 1 year). Payable to: International Boundary and Water Commission, U.S. Section	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Water Bulletins: Containing data for 1 year covering flow of Colorado River and other Western Boundary streams, and related data (including Tijuana, Santa Cruz, and San Pedro Rivers, and Whitewater Draw) for years 1960 through 1980	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: $5.50 per bulletin (data for 1 year). Payable to: International Boundary and Water Commission, U.S. Section	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Color print map - Lower Rio Grande Valley United States and Mexico	Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Prices: 14>x36> $4.00 per map; 10>x28> $3.00 per map. Payable to: International Boundary and Water Commission, U.S. Section	Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Annual Report: Operation of Rio Grande Dams and Reservoirs. This report provides data concerning the operation of the international dams and reservoirs constructed by the Governments of the United States and Mexico on the reach of the Rio Grande which forms the boundary between the two countries	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. No charge	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Color print map: El Paso Rio Grande Projects, Canalization and Rectification Projects	Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: $10.00 per map. Payable to International Boundary and Water Commission, U.S. Section	Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Brochure: Joint Projects of the United States and Mexico through the International Boundary and Water Commission	Section Secretary, U.S. Sec., IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: $6.00 per brochure. Payable to International Boundary and Water Commission, U.S. Section	Section Secretary, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
National Archives and Records Administration (NARA)	NARA FOIA Index lists the following materials which have been adopted by NARA since April 1, 1985, and which are not published in the Federal Register: NARA final opinions and orders, statements of policy and interpretations, and administrative staff manuals and instructions to staff that affect a member of the public	Program Policy and Evaluation Division, National Archives (NAA), Washington, DC 20408	Program Policy and Evaluation Division, Room 409, National Archives Building, 8th and Pennsylvania Ave., NW., Washington, DC. Mailing address: National Archives (NAA), Washington, DC 20408. 202/523-3214
National Science Foundation (NSF)	Reviewer panelist, alphabetical listing contains name, State, and institution of individuals who have reviewed proposals for the National Science Foundation for the previously completed fiscal year		NSF Library, Room 245, 1800 G St., NW., Washington, DC 20550
	Numerical index of the following NSF agency-wide issuances and Important Notices in effect as of January 24, 1986: (1) Office of the Director Staff Memoranda (O/D's); (2) NSF Bulletins; (3) NSF Manuals/Circulars; (4) NSF Handbooks; and (5) NSF Important Notices. O/D's are used by the NSF Director and Deputy Director to communicate information to the staff. O/D's also may be used to convey short-term policy statements or the initial statement of long-term policy. NSF Bulletins transmit approved changes to policy and convey administrative or "housekeeping" information. Significant NSF policy and procedure are located in NSF Manuals. NSF Circulars (historically used to communicate policies and procedures of a continuing nature) are being converted to Manuals and will be discontinued. Handbooks, less formal than Manuals, provide compendia of information concerning NSF programs, i.e., they do not establish NSF policy. Important Notices are the Director's primary means of communicating with organizations receiving or eligible for NSF support. Important Notices are issued over the Director's signature and convey information on NSF policies and procedures or other subjects determined to be of interest to the academic community and to other selected audiences.		
	Index of NSF regulations promulgated in the Code of Federal Regulations under Title 48, Public Contracts and Property Management; and Title 45, Public Welfare. A listing, by subject title, of current Foundation regulations with a brief description of the content of each		Office of the General Counsel, Room 501, 1800 G St., NW., Washington, DC 20550
	Publications of the National Science Foundation. An index by topical classification, as of April 1986, of current NSF publications issued and available to the public. Listing include annual reports, specific program announcements, and brochures, science resources studies pamphlets, special studies publications, and NSF periodicals. In addition to Titles, provides NSF publication numbers and copy prices. (NSF Publication 86-18)	NSF Forms and Publications Section, Room 232, 1800 G St., NW., Washington, DC 20550. One copy only (free)	For inspection or copying: NSF Library, Room 245, 1800 G St., NW., Washington, DC 20550. For additional information: Public Affairs Group, room 527, 1800 G St., NW., Washington, DC 20550
	NSF Guide to Programs, A composite listing of summary information about NSF support programs, as of October 1985. Provides general guidance and information describing the principal characteristics and basic purposes of each activity; eligibility requirements; closing dates (where applicable); and the address where more detailed information or applications may be obtained. (NSF Publication 85-40)	NSF Forms and Publications Section, Room 232, 1800 G St., NW., Washington, DC 20550. One copy gratis; or Superindendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Stock No. 038-000-00458-1. Unit price $5.00	

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
	NSF Grant Policy Manual. A compendium of basic NSF grant policies and procedures for use by the grantee community and NSF Staff. The Manual implements OMB Circular No. A-110, which is directed toward standardizing and simplifying the various accountability and reporting requirements amoung Federal granting agencies. (NSF Publication 77-47)	Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Stock No. 038-000-81001-4. Unit Price $13.00	NSF Division of Grants and Contracts. Room 1150, 1800 G St., NW., Washington, DC 20550
Office of Personnel Management	Index to Information, OPM Document No. 1. As of June 1989. A listing of publications and information systems arranged alphabetically by title. This index includes some information formerly published in the Index to Civil Service Commission Information	Internal Distribution Subunit, Room B-443, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415. Free	OPM Library or any OPM Office, including regional and area offices
Pennsylvania Avenue Development Corporation	PADC Freedom of Information Act (FOIA) Index; this index contains numeric and subject listings of PADC policy statements; public improvement policies; development guidelines; final opinions and cases interpreting PADC enabling legislation; and internal policies, guidelines and administrative procedures. Contains records originated since October 27, 1972, to date. The index is updated semi-annually (March and September).	PADC, Freedom of Information Officer, Suite 1220 North, 1331 Pennsylvania Avenue, NW, Washington, DC 20004-1703. Fees charged for research and reproduction of information are based upon the current Corporation fee schedule for information under FOI regulations (36 CFR Part 902, Subpart I).	PADC, Freedom of Information Officer, Suite 1220 North, 1331 Pennsylvania Avenue, NW, Washington, DC 20004-1703.
Pension Benefit Guaranty Corporation, Legal Department	Index to Pension Benefit Guaranty Corp. Opinion Manual; Sept. 2, 1974 to present; interpretive letters addressing the provisions of Title IV of the Employee Retirement Income Security Act (ERISA) plan termination insurance program	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Room 7104, 2020 K St., NW., Washington, DC 20006; Charge $0.10 per page; payable to Pension Benefit Guaranty Corp.; or contact Disclosure Officer for information regarding a subscription to the Opinion Manual	Disclosure Officer, Communications and Public Affairs Department, 202-254-5527 (202-254-8010 for TTY and TDD), 2020 K St., NW., Washington, DC 20006
Pension Benefit Guaranty Corporation, Corporate Administrative Planning Department	Index to Pension Benefit Guaranty Corp. Operating Policy Manual; Oct. 1, 1984, to present; contains basic policy statements used by the PBGC staff in administering Title IV of the Employee Retirement Income Security Act (ERISA) plan termination insurance program	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Room 7104, 2020 K St., NW., Washington, DC 20006. Charge $.10 per page. Payable to Pension Benefit Guaranty Corp. or contact Disclosure Officer for price of entire Operating Policy Manual	
Pension Benefit Guaranty Corporation, Insurance Operations Department	Index to Pension Benefit Guaranty Corp. OPO Operations Manual; Part 1 from Sept. 2, 1974, to Oct. 1, 1984, and additional Parts as adopted; contains basic policies and procedures used by Insurance Operations Department staff in administering Title IV of the Employee Retirement Income Security Act (ERISA) plan termination insurance program	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Room 7104, 2020 K St., NW., Washington, DC 20006. Charge $.10 per page, payable to Pension Benefit Guaranty Corp. or contact Disclosure Officer for price of entire Operations Manual	
Pension Benefit Guaranty Corporation, Participant and Employer Appeals Department	Index to Pension Benefit Guaranty Corp. Appeals Board decisions; from Feb. 28, 1980, to present; contains closed appeal case decision letters that are final decisions of the Appeals Board made pursuant to PBGC regulation, 29 CFR Part 2606, Rules for Administrative Review of Agency Decisions	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Room 7104, 2020 K St., NW., Washington, DC 20006. Charge $.10 per page, payable to Pension Benefit Guaranty Corp.	
Veterans Administration	Board of Veterans Appeals Index I-01-1, an index to appellate decisions. Annual indexes are available from July 1977 to the present. This index is published on microfiche only	Indexes from July 1977 through December 1983 may be obtained from the Chairman, Board of Veterans Appeals (01C1), 810 Vermont Avenue, NW., Washington, DC 20420. Indexes since January 1984 may be purchased for $7.00 per quarter or for the annual cumulative from: Promisel & Korn, Inc., 4720 Montgomery Lane, Suite 1009, Bethesda, Maryland 20814	Board of Veterans Appeals, Room 824, Lafayette Building, 811 Vermont Avenue, NW., Washington, DC 20420, or contact your nearest VA regional office
Veterans Administration	Veterans Administration Publication Index, I-03-1. All information is current as of Oct. 31, 1984. Classification subject and numeric listing of manuals, VA Regulations, circulars, interim issues, handbooks, bulletins, pamphlets, and guides, conveying agency policies, regulations and procedures of a continuing nature	The public may obtain a copy of the index without charge from the Veterans Administration Forms and Publications Depot, 6307 Gravel Ave., Alexandria, VA 22310, ATTN: Depot Officer (036B)	For inspection: VA Central Office, Editorial Section, Room C-4, 810 Vermont Ave., NW., Washington, DC 20420. Phone: (202) 389-3966 -OR- Administrative Officer at nearest VA facility. Check your local Telephone Directory under United States Government, Veterans Administration, or ask your Directory Assistance Operator for the number in your area.

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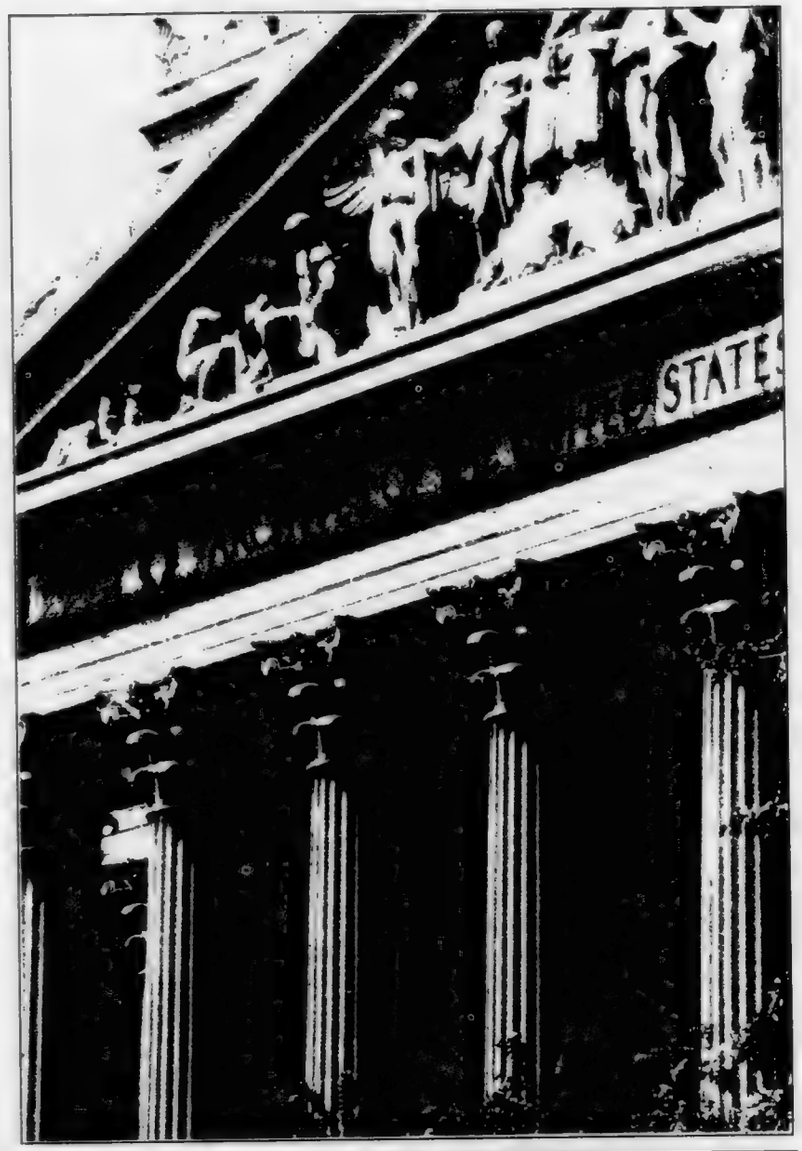

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Monday
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[TB-89-012]

Tobacco Inspection; Flue-Cured and Burley Tobacco; Importation Prohibitions; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; correction.

SUMMARY: USDA is correcting the authority line for the final rule (TB-89-001), Tobacco Inspection; Flue-Cured and Burley Tobacco; Importation Prohibitions; that appeared in the **Federal Register** of Friday, June 9, 1989 (54 FR 24661-24664). This correction will make clear that the authority for the subpart remains unchanged. In addition, in § 29.427, the maximum concentration of residue for hexachlorobenzene (HCB) is corrected to read 0.1 parts per million (ppm).

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 502, Annex Building, P.O. Box 96456, Washington, DC 20090-6456, telephone: (202) 447-2567.

SUPPLEMENTARY INFORMATION: On Page 24663 of the **Federal Register** (Document No. 89-13739) appearing in the issue of Friday, June 9, 1989, paragraph 1 under Part 29—[Amended] should read as follows:

1. The authority citation for Part 29, Subpart B, continues to read as follows:

Authority: 7 U.S.C. 511m and 511r.

§ 29.427 [Corrected]

2. Section 29.427, Pesticide residue standards, is corrected by removing "1.0" as the maximum concentration of residue for hexachlorobenzene (HCB) and inserting "0.1".

Dated: June 26, 1989.

Kenneth C. Clayton,
Acting Administrator.

[FR Doc. 89-15562 Filed 6-30-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 29

[TB-89-004]

RIN-0581-AA19

Tobacco Fees and Charges for Mandatory Inspection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Effective July 1, 1989, the Secretary of Agriculture is revising the fees and charges assessed by the Department for the mandatory inspection and certification of quota tobacco sold at designated tobacco auction markets. The fees collected would cover the Department's costs for performing this service. This final rule does not affect the fee for permissive or voluntary inspection of tobacco, or the fee for inspecting and testing imported tobacco. The present fee of $.0055 per pound is no longer sufficient to cover the increased cost of this activity.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), Room 502, Annex Bulding, P.O. Box 96456, Washington, DC 20090-6456.

SUPPLEMENTARY INFORMATION: Notice was given (54 FR 18905, Wednesday, May 3, 1989) that the Department proposed to amend the regulations governing the fees and charges for the mandatory inspection and certification of producer tobacco sold at designated auction markets throughout the tobacco producing areas. Interested parties were given an opportunity to comment on the proposed rule. No comments were received.

The Department hereby adopts the regulations appearing in the proposed rule which increases the fees and charges assessed by the Department for providing inspection and certification of quota tobacco, the establishment of standards, and other services. The new fee will cover the increased cost of operating the program, including administrative and supervisory costs. Authority for these regulations is contained in the Tobacco Inspection Act (7 U.S.C. 511-511q).

The current fee of $.0055 per pound has been in effect since July 1, 1982, as published in the **Federal Register** (47 FR 51722) on June 23, 1982.

The Department conducts a yearly review of the financial status of this program to determine whether the fee is sufficient. Receipts for the 1988-89 marketing season were approximately $7,875,000. Anticipated expenses for that period are approximately $9,252,000. For the past three seasons, the increased costs of the tobacco inspection program forced the Department to draw upon funds in that program's reserve account. The major factors causing the need for additional funds are increases in Government salaries, including a special salary rate for tobacco graders which was effective October 30, 1988, and increases in travel allowances and overall administrative costs since 1982. An analysis of data available to the Department indicates that a fee of $.0067 per pound would cover expenses and maintain a reserve that would meet any reasonable contingency. Information on program income and expenses was presented to the National Advisory Committee for Tobacco Inspection Services at its meeting on March 7, 1989, in Washington, DC. The National Advisory Committee, made up of 14 representatives from tobacco producer interested groups, was established under the Tobacco Inspection Act to advise the Secretary of Agriculture on the fees to be assessed, level of inspection service, and other related matters. The Committee adopted a motion, by a vote of eleven in favor and two opposed, to recommend to the Secretary an increase in the fee of $.0070 per pound. However, based on a recalculation of pounds under quota for the coming marketing season, a fee of $.0067 per pound was proposed.

The marketing season for tobacco does not coincide with the Federal fiscal year. Therefore, the increased rate is being made effective on July 1, 1989, so as to treat all types of tobacco on an equal basis.

This rule has been reviewed under USDA procedures established to implement Executive Order 12291 and

Departmental Regulation 1512-1 and has been determined to be a "nonmajor rule" because it does not meet any of the criteria established for major rules under the Executive Order.

Additionally, in conformance with the provisions of Pub. L. 96-354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact upon small business. Most of the firms which would be affected by this rule are small businesses.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The Administrator, Agricultural Marketing Service, has determined that this action would not have a significant economic impact on a substantial number of small entities. This final rule would not substantially affect the normal movement of the commodity in the marketplace. Compliance with this final rule would not impose substantial direct economic costs, recordkeeping, or personnel workload changes on small entities, and would not alter the market share or competitive positions of small entities relative to the large entities and would in no way affect normal competition in the marketplace. Furthermore, the Department is required by law to fix and collect fees and charges to cover the Department's cost in operating the tobacco inspection program.

In addition, good cause has been found to make this rule effective less than 30 days after publication because it is necessary that the new fee be effective at the beginning of the new marketing season which begins in mid-July.

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Tobacco.

Accordingly, the Department hereby amends the regulations under the Tobacco Inspection Act contained in 7 CFR Part 29 as follows:

PART 29—TOBACCO INSPECTION

Subpart B—Regulations

1. The authority statement for Subpart B continues to read as follows:

Authority: U.S.C. 511m and 511r.

§ 29.123 [Amended]

2. In § 29.123(a) Mandatory inspection, change $.0055 per pound to $.0067 per pound.

Dated: June 27, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89-15597 Filed 6-30-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Parts 916 and 917

[Docket No. FV-89-015]

Nectarines and Fresh Pears, Plums and Peaches Grown in California; Amendment of Container Regulations; Amendment of Size and Maturity Regulations; and Changes to the Maturity Variance Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the container requirements and size and maturity requirements for fresh nectarines, plums and peaches grown in California. The rule relaxes container requirements to allow handlers to ship individual consumer packages not in master containers, specifies labeling requirements for such packages, and defines what constitutes consumer packages. This rule also changes the coverage of size requirements by adding several new varieties of nectarines, plums and peaches to variety-specific regulations, and deletes other varieties from regulations. Varieties removed from variety-specific regulations are subject to less restrictive size requirements for non-listed varieties. Additionally, the rule changes maturity requirements for some varieties for which maturity guides are currently specified, adds maturity guides for several new varieties and deletes guides for several varieties which are no longer shipped. Finally, this final rule authorizes a minor procedural change to hasten the variance procedures for these fruits. The nectarine and peach actions were unanimously recommended by the Nectarine Administrative and the Peach Commodity Committees. All plum actions but one, a maturity guide change for fresh prunes, were recommended unanimously by the Plum Commodity Committee. The rules are designed to improve the maturity variance procedures and promote the marketing of each of the commodities.

EFFECTIVE DATE: July 3, 1989.

FOR FURTHER INFORMATION CONTACT: George Kelhart, Marketing Order Administration Branch, AMS, F&V, Room 2532, P.O. Box 96456, Washington DC 20090-6456; telephone (202) 475-3919.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937 (the Act) [7 U.S.C. 601-674] as amended, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

The rule is issued under the marketing agreements, as amended, and Marketing Orders 916 and 917, as amended, [7 CFR Parts 916 and 917], regulating the handling of nectarines, pears, peaches and plums grown in California. The agreements and orders are effective under the Act. Shipments of these fruits are regulated by container and pack under Nectarine Regulations 8 [7 CFR 916.350], Peach Regulation 8 [7 CFR 917.422], and Plum Regulation 17 [7 CFR 917.454], as amended on June 9, 1989 (54 FR 24668). Shipments of nectarines, peaches and plums are regulated by grade and size under nectarine Regulation 14 [7 CFR 916.356] as amended and published in the **Federal Register** on March 27, 1989, (54 FR 12423), and further amended on April 25, 1989 (54 FR 18095); Peach Regulation 14 [7 CFR Part 917.459] as amended and published in the **Federal Register** on March 27, 1989, (54 FR 12431); and Plum Regulation [7 CFR Part 917.460] as amended and published in the **Federal Register** on March 27, 1989 (54 FR 12427).

Notice of this action was published as a proposed rule in the **Federal Register** (54 FR 12419) on March 27, 1989. Comments were invited to be submitted by April 27, 1989. Comments were received from R. William Tracy, Deputy Director, Department of Food and Agriculture of the State of California, and from Jonathan Field, manager of the nectarine, peach and plum marketing

order committees. The comments concern the maturity variance procedures and are addressed in that section of this document. No other comments were received.

It is estimated that approximately 500 handlers are subject to regulation under the marketing orders for California nectarines, peaches and plums during the course of the current season. In addition, there are about 2,000 growers of these fruits in California. The Small Business Administration (SBA) defines agricultural service firms [13 CFR 121.2], which would include handlers, as those whose gross annual receipts are less than $3,500,000. Small agricultural producers have been defined by the SBA as those having average annual gross revenues for the last three years of less than $500,000. The majority of these handlers and growers may be classified as small entities.

Inspected shipments, in packages, of California nectarines, plums and peaches for the 1988 season totaled 17,584,100, 15,158,400 and 14,333,500, respectively, and they were primarily marketed in the fresh market.

Because these regulations do not change substantially from season to season, they have been issued on a continuing basis subject to amendment, modification, or suspension as may be recommended by the applicable committee and approved by the Secretary.

The Nectarine Administrative Committee, Peach Commodity Committee and the Plum Commodity Committee (hereinafter referred to as the nectarine committee, peach committee and plum committee, and cumulatively as the committees) recommended relaxing container requirements, amending container labeling and requirements, amending size and maturity requirements, and making minor changes in their maturity variance procedures. This final rule is based upon all three committees' recommendations, on information submitted by these committees, the comments received, and on other available information. The changes reflect crop and market conditions experienced in 1988 and expected in 1989.

Container Requirements

The committees recommended relaxing the container and pack requirements for their respective fruits (nectarines, § 916.350; peaches, § 917.442; and plums, § 917.454) to allow handlers to ship individual consumer packages which are not in master containers. The current container and pack regulations do not provide for the shipment of fruit in individual consumer packages. Some handlers indicated that such packages would better meet the needs of certain speciality markets such as restaurants and gift pack distributors who prefer smaller quantities of fruit. The committees believe that the handlers should be allowed to take advantage of these marketing opportunities and should not be restricted to shipping small packages only when enclosed in larger master containers. The relaxation would provide more marketing flexibility for each of the industries by allowing shipments of consumer containers without placing them in master containers. Thus, the committees contend that handlers would better be able to meet the needs of the marketplace.

This recommendation is adopted, and paragraph (a)(1) of the nectarine and peach container and pack regulations are changed to extend the exemptions from standard pack requirements to include individual consumer packages not in master containers. Similarly, paragraph (a)(1) of the plum container and pack regulations is changed to exempt individual consumer packages not packed in master containers from pack requirements specified in paragraphs (a)(1) (i) through (iii) of § 917.454. The exemption is extended to consumer packages not in master containers by removing the word "therein" from the terms and conditions specified in paragraph (a)(1) of each regulation.

The committees also recommended including a definition of the term "individual consumer package" as a package containing 15 pounds or less net weight of fruit. The committees indicated that a definition was necessary to differentiate consumer packages from other packages or containers currently authorized. This recommendation is adopted, and these definitions are included in paragraph (b) of § 916.350 for nectarines and § 917.442 for peaches, and paragraph (d) of § 917.454 for plums.

This rule also establishes container labeling requirements for consumer packages to be consistent with existing labeling requirements for master containers and to adequately identify the contents of the packages. Paragraphs (a)(8) of § 916.350 for nectarines and § 917.454 for plums, and paragraph (a)(9) of § 917.442 for peaches, specify that each individual consumer package of nectarines, plums and peaches, respectively, shall bear the name, address of the shipper, and the net weight of the fruit in the package. Each of these paragraphs is revised to include the name of the fruit variety in the package, if known. If the variety is not known, the words "Unknown Variety" will be printed on the side of each individual consumer package. Such varietal information is needed to help the committees' staff and inspection service verify compliance and aid marketing efforts at the point of purchase. Most size and maturity requirements for these fruits vary between varieties. Thus the name of the variety, when known, will help facilitate inspection and marketing efforts. The address of the shipper will also include the shipper's zip code, as it is included on master containers.

In addition, this rule requires that the number of pieces of fruit contained in the individual consumer packages not packed in master containers be specified on the package and that the package be marked with the size of the fruit. Size markings would be in accordance with paragraph (a)(3) of § 916.350 (nectarines), paragraph (a)(3) of § 917.442 (peaches) and paragraph (a)(4) of § 917.454 (plums). These requirements were not included in the proposed rule. However, upon further analysis of the committees' recommendations, it is our understanding that the intent of the committees in recommending container labeling requirements for consumer packages was to also require such markings.

It is common industry practice to include this type of information on all packages marketed. Handlers include this information on the packages because there are price differences for the various sizes and number of fruit included in the packages. Moreover, size descriptions of the contents of larger packages are already required under the container and pack requirements. Hence, requiring this information to be included on consumer sized packages merely reflects current industry practice. Therefore, this requirement would not place and additional burden on handlers and would be beneficial to consumers in determining the size and quantity of the fruit in the packages.

In addition, the plum committee recommended that container and pack regulations for plums in paragraphs (a)(2) and (a)(5) of § 917.454, as amended at 54 FR 24667, be revised to be consistent with the recommended container requirement changes. Paragraph (a)(2) of § 917.454 is amended by adding the words ", or individual consumer package," after the words "individual pack or container" to further clarify that individual consumer containers are affected by the

requirements in that paragraph. Additionally, paragraph (a)(5) is amended by deleting the words "in master containers" from the paragraph after the words "consumer packages." Thus, exemptions from the 28 pounds, or for the 1989/90 season 24 pounds, net weight requirement apply to individual consumer packages of plums as well as bulk bins and master containers of consumer packages.

It is the Department's view that the changes allowing handlers to ship consumer packages of 15 pounds net weight or less, that are not in master containers, will provide handlers more marketing flexibility and permit the handlers to meet the needs of the marketplace more effectively. This change is expected to be beneficial to the nectarine, peach and plum industries in developing new market outlets for their fruits, and is not expected to result in additional marketing costs.

Size Requirements

This rule alters the size requirements for nectarines, peaches and plums by adding several new varieties now produced in commercially significant quantities to variety-specific (named variety) size requirements, and by deleting from variety-specific size requirements certain varieties not longer produced in significant quantities. The variety-specific size requirements and size requirements for non-listed varieties are not changed for the 1989 season.

Variety-specific size requirements are implemented when one variety is produced in commercially significant quantities. Such quantity is considered by the three committees to be total shipments of a variety exceeding 10,000 packages during a season. In making this volume determination for plums, the packages are equivalent to 28 pounds. Thus, when individual consumer packages of plums weighing 15 pounds or less net weight are shipped, the smaller packages would be combined into 28-pound units (or packages). For instance, two 14-pound packages of plums would be counted as one 28-pound package, and four 7-pound packages of plums would be counted as one 28-pound package. For nectarines and peaches the equivalent weight would be based on 22-pound packages. Thus, for instance, two 11-pound individual consumer packages of either nectarines or peaches would be counted as one 22-pound package of the fruit.

Nectarine, peach and plum varieties that exceeded 10,000 shipped packages for the first time during the 1988 season are listed in the regulations below. These varieties are regulated under the variety-specific size requirements for each fruit.

When a variety is no longer produced in significant quantities it is removed from the variety-specific size regulation list. Shipments of nectarine, peach and plum varieties that fall below 5,000 packages during a season are removed from variety-specific size regulations for their respective fruits. The varieties listed in the regulations below are removed from their respective variety-specific size requirement lsits for the 1989 season. Individually these varieties were not produced in significant quantities during the 1988 season to warrant variety specific size coverage. However, these varieties are now subject to minimum size requirements for non-listed varieties because, in combination with other varieties of the same fruit, they are produced in significant quanities to warrant some size coverage. The size requirements established for non-listed varieties are less restrictive than those established for listed varieties. The 10,000 and 5,000 package quantities used in making these determinations have been used in prior seasons.

For nectarines, the variety-specific size requirements and non-listed size requirements are specified in paragraphs (a)(2) through (a)(8) of § 916.356. To implement the nectarine committee's unanimous recommendation for this action, paragraph (a)(5) of § 916.356 is amended to establish variety-specific size requirements for August Red, Red Lion, Sparkling June and 8OP–1135 nectarines. These varieties were produced in commercially significant quantities of more than 10,000 packages for the first time during the 1988 season.

The nectarine committee also unanimously recommended that four varieties be deleted from variety-specific size requirements because their production was less than 5,000 packages during the 1988 season. This rule removes Hi-Red, Red June, Spring Grand and Clinton-Strawberry from the variety-specific list and makes them subject to one of the non-listed variety size requirements specified in paragraphs (a)(6) through (a)(8) of § 916.356.

For peaches, the variety-specific size requirements and non-listed size requirements are specified in paragraphs (a)(2) through (a)(5) and in paragraphs (b) and (c) of § 917.459.

The peach committee unanimously recommended that variety-specific size requirements be established for eight peach varieties. This rule amends § 917.459 by making the following changes: The Flordaprince variety is added to paragraph (a)(2); Kings Red and Queencrest varieties are added to paragraph (a)(4); and Amber Crest, September Sun, Summer Lady and Windsor are added to paragraph (a)(5).

This rule also amends § 917.459 by adding new paragraph (a)(6) for the Goldcrest variety, which provides two size-requirement options. New sub-paragraph (a)(6)(i) requires that handlers not ship more than 88 Goldcrest peaches in No. 22D standard lug boxes (in accordance with standard pack requirements). Sub-paragraph (a)(6)(ii), requires that Goldcrest peaches packed in any container other than as specified in sub-paragraph (a)(6)(i), be of a size that a 16-pound sample, representative of the peaches in the package or container, contain not more than 83 Goldcrest peaches. This action is based on Goldcrest data collected over the last three shipping seasons.

The peach committee also unanimously recommended that three varieties be deleted from variety-specific size requirements because the production of these varieties was less than 5,000 packages during the 1988 season. This rule removes Early Coronet, May Lady and Press Suncrest varieties from the variety-specific list and makes them subject to the non-listed variety size requirements as specified in paragraphs (b) and (c) of § 917.459.

For plums, the variety-specific size requirements and non-listed size requirements are specified in paragraphs (b) and (c) of § 917.460. To implement the plum committee's unanimous recommendation for this action, paragraph (b) of § 917.460 is amended to establish variety-specific size requirements for Ambra, Autumn Giant, Black Ace, Black Gold, Black Torch, King James, May Rosa, Royal Diamond and Royal Garnet plum varieties. These varieties were produced in commercially significant quantities (more than 10,000 packages) for the first time during the 1988 season.

The plum committee also unanimously recommended that the Rose Ann variety be deleted from variety-specific size requirements for plums because the production of that variety was less than 5,000 packages during the 1988 season. This action amends paragraph (b) of § 917.460 by removing the Rose Ann variety from the variety-specific size requirements for plums.

The addition of several new varieties of nectarines, peaches and plums to the variety-specific (named variety) size requirements, and the removal of certain other varieties from those requirements, are not detrimental to small entities. These changes are expected to help the respective commodity industries provide the sizes of fruits that are desired in fresh markets. Such actions are beneficial in maintaining current markets and developing new ones.

Maturity Requirements

The maturity requirements established under these marketing orders are intended to provide fruits that better meet customer preferences. Over the years, consumers have indicated that they prefer fruit that is sweet and flavorful. Based upon recommendations of the three fruit committees, this rule assigns maturity guides to nectarine, peach and plum varieties for which guides currently are not specified. These guides are used in ascertaining compliance with the "well-matured" standard currently in effect. The maturity guides assigned for these fruit varieties are based on nectarine, peach and plum committee recommendations and on Federal-State Inspection Service personnel observations of varietal characteristics over several seasons. The rule also deletes guides for fruit varieties which are no longer shipped. These varieties are removed from the 1989 season and until they are again produced and shipped commercially.

With regard to nectarines, this final rule provides for (1) the addition of color chip maturity guides to Table 1 in paragraph (a) of § 916.356 for Alshir Red, Early Diamond, May Diamond, May Fire, Pacific Star, Springtop, Star Bright, Super Star and 181–119/Sierra Star varieties because these new varieties are now being produced and shipped commercially, and (2) removal of nectarine maturity guides in Table 1 for the Ambrosia, Apkarian, Richards Grand, Zee Gold and #91 varieties because these varieties are no longer being produced and shipped.

With regard to peaches, this final rule provides for the addition of color chip maturity guides to Table 1 in paragraph (a) of § 917.459 for the Golden Crest, Mary Ann, Prime Crest, Queen Crest and Summer Lady varieties because these new varieties are now being produced and shipped commercially. In addition, the Department approves, based on a peach committee recommendation, the removal of peach maturity guides in Table 1 for the Delp, Early Elberta, Fiesta, Halloween, Kim Elberta, Royal Gold and JJK–1 varieties because these varieties are no longer being produced and shipped.

With regard to plums, this final rule provides for the addition of maturity assignments for the Belmont Pride, Black Diamond, Blue Knight, Prima Black and Sweet Rosa varieties to Table 1 in paragraph (a) of § 917.460. This final rule also provides for the removal of Ashag, August Rosa, Fresno Rosa, Premier and Prima Rosa varieties from Table 1 because these varieties are no longer being produced and shipped.

Also with regard to plums, several changes in the maturity guides in Table 1 in paragraph (a) of § 917.460 were recommended by the plum committee for the 1989 season as more accurate measures of well-maturity, and these changes are contained in this final rule. The heading "Fresh Prune/Plums" is changed to "Fresh Prunes" to lessen the chances of confusion in the industry. The maturity guide for the Angeleno variety is amended by changing the surface color requirement from purple to dark red. The maturity guide for the Freedom variety is changed from "three fourths of the surface dark red with the remainder full light greenish yellow color. C Color" to "not less than 90 percent of the surface shall be dark red color or light yellow. H Color." The "spring" requirement for the Royal Diamond variety is removed and a "smooth shoulders" requirement is added. The background color requirement for the Royal Garnet and Royal Red varieties is removed so that the maturity guide for Royal Garnet is "full red color" and the maturity guide for Royal Red is "full distinct red color." Also, the maturity guidelines for fresh prune/plums is changed to require that 50 percent of surface be mottled red color, with the balance of the surface light green color. In addition, this rule requires that, for all varieties of fresh prunes, a random sampling is required to average 19 percent soluble solids. The exception to this requirement is the Moyer variety which must average 16 percent soluble solids. The requirement that French prunes have 16 percent soluble solids is also removed by this action. The committee indicated that this requirement is not necessary to foster French prune shipments which are well-matured. Soluble solid percentages are highly correlated with the percentage of sweetness of the fruit juices.

Currently, the maturity guide for the Laroda variety requires that representative samples of the fruit be "full surface dark red or dark red color at blossom end and remainder of surface full light yellow color with a surface tolerance of 5 percent for fruit not meeting the yellow surface requirement. F Color." This action changes this requirement to allow a leaf spotting tolerance of a ⅝ inch diameter yellow surface area (rather than five percent). This change to a more easily identifiable surface area will enable a more accurate evaluation of individual fruit by inspection service personnel.

The Department has determined that these actions assigning maturity guides to new varieties of nectarines, plums and peaches, the removal from maturity guides of those varieties no longer shipped, and the changes in the guides currently listed for some plum varieties, will be beneficial in improving the quality of the fruits marketed. The Department also believes these size and maturity changes will not be detrimental to small entities in the three industries. These changes are expected to help the California tree fruit industry maintain its good quality image.

Maturity Variance Procedure Changes

In recommending proposed rule changes for the 1989 season, the committees requested that an AMS representative (field officer) prepare reports of maturity subcommittee and appeal committee decisions and notify the requester of appeal committee decisions. Such action would necessitate attendance by an AMS field officer at all maturity variance meetings for the three commodities. In addition, the committees recommended that the field officer provide the shipping point inspectors with copies of appeal committee decisions. These recommendations are similar to those previously recommended by the committees, which were denied by the Department in the final rules issued for the 1988 season (cited above). Denial was based upon the Department's belief that the committees and their subcommittees are responsible for conveying decisions to their respective industries. The committee proposals were also denied because involvement by an AMS representative would constitute an extra step in an already extremely time-sensitive procedure. The proposed rule for the 1989 regulations restated the Department's position (54 FR 14083). Comments on these issues were received from Mr. Jonathan Field, manager of the nectarine, peach and plum committees, and also from Mr. R. William Tracy, Deputy Director, Department of Food and Agriculture of the State of California.

Mr. Field and Mr. Tracy contended that AMS representation throughout the maturity subcommittee process would constitute a neutral third-party in variance deliberations and ensure that the variance procedures were administered properly. The success of the variance process depends upon the careful analysis of fruit condition and maturity. In making a variance decision,

maturity guides and other maturity indicators must be properly interpreted.

The Federal or Federal-State Inspection Service inspectors already represent a neutral third party in the variance process just as they do with respect to the entire inspection process. Inspection officials are involved in the variance process from the very beginning, and attend maturity subcommittee meetings to present information on fruit condition. However, to clarify the maturity variance procedures in this regard, paragraph (a)(1)(iv) of § 916.356 for nectarines is modified to specify that the inspection official involved in the process should participate in all maturity subcommittee meetings until the deliberations are completed and the decision is made. For the same reason, paragraph (a)(1)(iv) of § 917.459 for peaches and paragraph (a)(3)(iii) of § 917.460 for plums is modified similarly.

Department oversight of marketing order programs is extensive and includes review and evaluation of all committee and subcommittee actions. Department oversight includes field officer attendance at all scheduled committee and many subcommittee meetings, frequent communication between the committees and the AMS field office personnel and review of committee operations.

Therefore, with regard to Department oversight of the committees and maturity subcommittees, it is determined that the maturity determination process is subject to appropriate oversight, as are other marketing order activities. In our view, the maturity determination process has provided, over the years, fair and equitable treatment of producers and handlers, and the variance process has worked well during this time.

Therefore, commenters' recommendations that AMS field representatives attend all variance or appeal committee meetings is hereby denied. In addition, the Department's denial of the committee's request that the AMS field officer prepare reports and disseminate variance decisions is reaffirmed.

Mr. Tracy's comment also recommended that the rule be clarified to specify the committees' authority to grant variances on an orchard by orchard basis. This matter was previously discussed at 53 FR 19223 and 53 FR 19231. There it was noted that a variance for a particular variety would not automatically apply to all growers and handlers of the variety throughout California. It is the view of the Department that the interim final rules at 53 FR 19231 (nectarines), 19223 (plums), and 19238 (peaches), and the final rules at 54 FR 12422 (nectarines), 12426 (plums), and 12430 (peaches), clearly contemplate that variances may be granted for any variety of California nectarines, peaches, and plums on an orchard by orchard basis if, for instance, changes in weather or growing conditions necessitate a more appropriate measure of well-maturity. Therefore, the comment is denied and no change is adopted herein.

The three committees also recommended, that the officer-in-charge of the local Federal-State Inspection Service Office be allowed to designate someone other than that officer to represent the inspection service during on-site examination of the fruit for which a variance has been requested. Currently the variance procedures for nectarines [§ 916.356(a) (1) (ii) and (iii)], peaches [§ 917.459(a)(1) (ii) and (iii)], and plums [§ 917.460(a)(3) (i) and (ii)] require the office-in-charge to accompany the committee fieldman to make such examinations. This final rule also provides for this change in the regulations. This change is intended to hasten decisions and thus improve the maturity variance process. This change should not result in additional costs and should be beneficial to the industries. Therefore, the regulations are amended to provide that the officer-in-charge or a designee of the officer-in-charge shall accompany the committee fieldman.

Based on the above, the Administrator of the AMS has determined that the changes above will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the committees' recommendations, the comments received, and other information, it is found that this action, as hereinafter set forth, will tend to effectuate the delcared policy of the Act.

Pursuant to 5 U.S.C. 553, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The requirements set forth below are the similar to those published as a proposed rule on March 27, 1989, which has been presented to the industry with no negative response, (2) the shipping season has already begun and the rules issued herein should be applied to the industry for as much of the season as possible, and (3) no useful purpose would be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Parts 916 and 917

Marketing agreements and orders, California, Nectarines, Peaches, Plums.

For the reasons set forth in the preamble, it is proposed that 7 CFR Parts 916 and 917 be amended as follows:

Note: [The following sections will appear in the Annual publication of the *Code of Federal Regulations*]

1. The authority citation for 7 CFR Parts 916 and 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 916—NECTARINES GROWN IN CALIFORNIA

2. In § 916.350, paragraph (a)(1) is amended by removing the word "therein," paragraph (a)(8) is revised, and paragraph (b) is amended by adding a definition at the end of that paragraph for "individual consumer packages" to read as follows:

§ 916.350 Nectarine Regulation 8.

(a) * * *

* * * * *

(8) Each individual consumer package shall bear the name and address, including the zip code, of the shipper and the net weight. When a consumer package is not in a master container, it must also bear the number of nectarines contained in the package, the name of the variety, if known, or if the variety is not known, the words "Unknown Variety," and be marked as specified in paragraph (a)(3) of this section.

(b) * * * "Individual consumer packages" means packages holding 15 pounds or less net weight of nectarines.

* * * * *

§ 916.356 [Amended]

3. Table 1 of § 916.356(a) is amended by adding in alphabetical order the following nectarine varieties to Column A and maturity guides to Column B:

Alshir Red	L, except not less than an aggregate area of 95 percent of the fruit surface shall meet the color standard established for the variety.
Early Diamond	J
May Diamond	I
May Fire	H
Pacific Star	G
Springtop	B
Star Bright	G
Super Star	G
161–119/Sierra Star.	G

4. Table 1 of § 916.356(a) is amended by removing the following nectarine varieties from Column A and their maturity guides from Column B: Ambrosia, Apkarian, Richards Grand, Zee Gold, #91.

5. Paragraph (a)(1)(iii) of § 916.356 is amended by adding the words, ", or a designee of the officer-in-charge shall," after the words "officer-in-charge."

6. Section 916.356 is amended by adding a new sentence after sentence five in paragraph (a)(1)(iv) to read as follows:

§ 916.356 Nectarine Regulation 14.

(a) * * *

(1) * * *

(iv) * * * The inspection official shall participate in the subcommittee meeting until the deliberations are completed and the decision is reached. * * *

* * * * *

7. Paragraph (a)(4) of § 916.356 is amended by removing the Red June and Spring Grand nectarine varieties.

8. Paragraph (a)(5) of § 916.356 is amended by adding in alphabetical order the nectarine varieties August Red, Red Lion, Sparkling June and 80P–1135 and by removing the nectarine varieties Clinton Strawberry and Hi Red.

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

9. In § 917.442, paragraph (a)(1) is amended by removing the word "therein," paragraph (a)(9) is revised, and paragraph (b) is amended by adding a definition at the end of that paragraph for "individual consumer packages" to read as follows:

§ 917.442 Peach Regulation 8.

(a) * * *

(9) Each individual consumer package shall bear the name and address, including the zip code, of the shipper and the net weight. When a consumer package is not in a master container, it must also bear the number of peaches contained in the package, the name of the variety, if known, or if the variety is not known, the words "Unknown Variety," and be marked as specified paragraph (a)(3) of this section.

(b) * * * "Individual consumer packages" means packages holding 15 pounds or less net weight of peaches.

10. In § 917.454, paragraph (a)(1) is amended by removing the word "therein," paragraphs (a)(2), (a)(5), and (a)(8) are revised, and paragraph (d) is amended by adding a definition at the end of that paragraph for "individual consumer packages" to read as follows:

§ 917.454 Plum Regulation 17.

(a) * * *

(2) The diameter of the smallest and largest plums in any individual pack or container, or individual consumer package, shall not vary more than one-fourth (¼) inch, except that plums which are placed in volume-fill or tight-fill type containers and have a diameter of two and one-fourth (2¼) inches or larger shall not vary more than three-eights (⅜) inch. A total of not more than five (5) percent, by count, of the plums in any package or container may fail to meet this requirement.

* * * * *

(5) Each package or container of loose-filled or tight-filled plums, other than bulk bin containers, master containers of consumer packages, and individual consumer packages in master containers shall bear on one outside end, in plain sight and in plain letters, the words "28 pounds net weight" or, for the 1989/90 marketing season, "24 pounds net weight", whichever is appropriate.

* * * * *

(8) Each individual consumer package shall bear the name and address, including the zip code, of the shipper and the net weight. When a consumer package is not in a master container, it must also bear the number of plums contained in the package, the name of the variety, if known, or if the variety is not known, the words "Unknown Variety;" and be marked as specified paragraph (a)(4) of this section.

(d) * * * "Individual consumer packages" means packages holding 15 pounds or less net weight of plums.

11. Paragraph (a)(1)(iii) of § 917.459 is amended by adding the words ", or a designee of the officer-in-charge shall," after the words "officer-in-charge."

12. Section 917.459 is amended by adding a new sentence after sentence five in paragraph (a)(1)(iv) to read as follows:

§ 917.459 Peach Regulation 14.

(a) * * *

(1) * * *

(iv) * * * The inspection official shall participate in the subcommittee meeting until the deliberations are completed and the decision is reached. * * *

* * * * *

13. The introductory text of paragraph (a)(2) of § 917.459 is amended by adding the words "or Flordaprince" after the word "Desertgold".

14. Paragraph (a)(4) of § 917.459 is amended by adding in alphabetical order, the Kings Red and Queencrest varieties of peaches and by removing the Early Coronet and May Lady varieties of peaches.

15. Paragraph (a)(5) of § 917.459 is amended by adding in alphabetical order, the Amber Crest, September Sun, Summer Lady, and Windsor varieties of peaches, by removing the word "or" before the variety "Toreador" and placing it before the variety "Windsor" and by removing the Preuss Suncrest variety.

16. New paragraph (a)(6) is added to § 917.459 before Table 1 to read as follows:

§ 917.459 Peach Regulation 14.

(a) * * *

(6) Any package or container of Goldcrest variety peaches unless:

(i) Such peaches when packed in molded forms (tray pack) in a No. 22D standard lug box are of a size that will pack, in accordance with the requirements of standard pack, not more than 88 peaches in the box; or

(ii) Such peaches in any container when packed other than as specified in paragraph (a)(6)(i) of this section are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 83 peaches.

* * * * *

17. Table 1 of § 917.459(a) is amended by adding in alphabetical order the following varieties of peaches to Column A and maturity guides to Column B:

Golden Crest	H
Mary Ann	G
Prime Crest	G
Queen Crest	G
Summer Lady	M

18. Table 1 of § 917.459(a) is amended by removing the following varieties of peaches from Column A and maturity guides from Column B:

Delp	C
Early Elberta	C
Fiesta	I
Halloween	I
JJK–1	G
Kim Alberta	C
Royal Gold	D

§ 917.460 [Amended]

19. Paragraph (a)(3)(ii) of § 917.460 is amended by adding words ", or a designee of the officer-in-charge shall," after the words "officer-in-charge."

20. Section 917.460 is amended by adding a new sentence after sentence five in paragraph (a)(3)(iii) to read as follows:

§ 917.460 Plum Regulation 19.

(a) * * *

(3) * * *

(iii) * * * The Inspection official shall participate in the subcommittee meeting

until the deliberations are completed and the decision is reached. * * *

* * * * *

21. Table I of § 917.460(a) is amended by removing the entry for Fresh Prune/Plums, adding an entry for Fresh Prunes, and revising the maturity requirements in Column B for the following varieties:

Angeleno	Full surface dark red or seventy-five percent dark red with remainder light greenish yellow. B Color.
Freedom	Not less than 90 percent of the surface shall be dark red color or light yellow. H Color.
Laroda	Full surface dark red or dark red color at blossom end and remainder of surface full light yellow color, with a leaf-spotting tolerance of ⅝ inch diameter.
Royal Diamond	Full surface red with smooth shoulders.
Royal Garnet	Full red color.
Royal Red	Full distinct red color.
Fresh Prunes	Fifty percent of surface mottled red color, balance of surface light green color. In addition, for all varieties of prunes shipped fresh, a random sample shall average 19 percent soluble solids, except for the Moyer variety, which shall average 16 percent soluble solids.

22. Table I of § 917.460(a) is amended by adding in alphabetical order the following varieties of plums to Column A and their maturity requirements to Column B:

Belmont Pride	Full dark red color.
Black Diamond	Full red color with spring.
Blue Knight	Full dark red color with spring.
Prima Black	Full dark red color with smooth shoulders.
Sweet Rosa	Seventy-five percent red color, remainder light greenish yellow color, or 50 percent light red flesh color. C color.

23. Table I of § 917.460(a) is amended by removing the following varieties of plums from Column A and their maturity requirements from Column B: Ashag, August Rosa, Fresno Rosa, Premier and Prima Rosa.

24. Table II of § 917.460(b) is amended by adding in alphabetical order the following varieties of plums to Column A and number of plums per sample to Column B:

Ambra	67
Autumn Giant	50
Black Ace	58
Black Gold	63
Black Torch	54
King James	50
May Rosa	71
Royal Diamond	56
Royal Garnet	69

25. Table II of § 917.460(b) is amended by removing the plum variety Rose Ann from Column A and the Rose Ann plums-per-sample number 60 from Column B.

Dated: June 27, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-15598 Filed 6-30-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 946

[Docket No. FV-89-030-FR]

Irish Potatoes Grown in Washington; Amendment To Eliminate Exemption for Yellow Fleshed Potatoes and Require Potatoes Exported in 50-Pound Cartons to be at Least U.S. No. 1 Grade

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule eliminates current provisions of the Washington potato handling regulation which exempt yellow fleshed potatoes from grade, size, pack, maturity and inspection requirements. It also requires potatoes exported in 50-pound cartons to be at least U.S. No. 1 grade. The objectives of these actions are to uphold the quality image of the Washington State potato industry in domestic markets and to provide a means by which foreign buyers may obtain a high quality product when purchasing Washington State potatoes.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone (202) 447-2431.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 113 and Marketing Order No. 946 (7 CFR Part 946), both as amended, regulating the handling of Irish potatoes grown in the State of Washington. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economc impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of Washington State potatoes subject to regulation under the marketing order, and approximately 490 producers in the production area. The Small Business Administration (13 CFR 121.1) has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural serviced firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Washington State potatoes may be classified as small entities.

In 1988, Washington State potato production totalled 63.25 million hundredweight (cwt.), and a record high yield of 550 cwt. per acre was attained. Approximately 87 percent of Washington potatoes produced is processed, and the remaining 13 percent is shipped to fresh market outlets. Fresh shipments of the 1988-89 Washington State potato crop to date are running slightly ahead of last season's level. As of May 31, 1989, fresh potato shipments amounted to 7,251,129 cwt. compared to 7,098,323 cwt. at the same time last year.

In 1988, total harvested potato acreage in Washington State amounted to 115,000 acres. About 88 percent of potato acreage was planted to long varieties, such as the Russet Burbank, Norgold Russet and Norkotah Russet. The remaining 12 percent was divided between round white and round red varieties, and this percentage has increased in recent years.

Since 1987, increases have been particularly significant for yellow fleshed varieties, which are generally classified as a round white type potato

due to their shape and skin color. The State of Washington Potato Committee (committee) projects that yellow fleshed potato planted acreage will exceed 1,000 acres this season.

The handling requirements for fresh Washington potatoes are specified in § 946.336 (53 FR 8143, March 17, 1988, as amended in 53 FR 21794, June 10, 1988). Current requirements for round potatoes specify that they be shipped under the following conditions. Round potatoes must grade at least U.S. No. 2 and must have a minimum diameter of 1⅞ inches (47.6 mm) except red skinned potatoes that are one inch in diameter may be shipped if they otherwise grade at least U.S. No. 1. Furthermore, the maturity requirement for round potatoes is that they shall not be more than "moderately skinned." Currently, the handling regulation exempts non-white fleshed potatoes and export shipments from these handling requirements.

This rule eliminates the current exemption for yellow fleshed potatoes and requires potatoes exported in 50-pound cartons to be at least U.S. No. 1 grade. These changes were unanimously recommended by the committee to become effective beginning with the 1989-90 season which commences July 1, 1989.

Prior to 1987, no distinction was made between white and non-white fleshed potatoes, and all were required to meet the grade, size, pack, maturity and inspection requirements of the handling regulation. Additionally, handlers were required to pay assessments on all fresh potatoes. In May 1987, an exemption from these handling requirements, published at 52 FR 15489, was provided for non-white fleshed potato varieties because very few potatoes of this type were being produced, and such potatoes were generally marketed in different outlets than white fleshed potatoes. Supplies of yellow fleshed potatoes in commercial fresh outlets are increasing, however, due to increasing production and consumer acceptance. Currently, yellow fleshed potatoes are being sold to grocery and restaurant outlets in which they compete with round, white fleshed potatoes.

Based on an approximate yield of 400 cwt. per acre and estimated planted acreage of 1,000 acres, Washington State production of yellow fleshed potatoes could be as high as 400,000 cwt. during the 1989 season. Because the production of yellow fleshed potatoes has increased, and these potatoes are now competing directly with white fleshed potatoes in commercial fresh markets, the committee unanimously recommended that yellow fleshed potatoes be required to meet the handling requirements set for round variety potatoes. These requirements are that potatoes grade at least U.S. No. 2 and be at least 1⅞ inches in diameter.

Most of the round type potatoes that are grown in Washington and shipped to fresh market outlets are red-skinned varieties. To provide handlers with the opportunity to satisfy increased consumer demand for small-sized potatoes of this type, the current handling regulation provides that round, red-skinned potatoes that are one inch in diameter may be shipped if they otherwise grade at least U.S. No. 1.

The committee recommended that a comparable reduced size requirement be provided for yellow-fleshed potatoes, even though such potatoes are white-skinned. Since these potatoes are a relatively new item available from Washington, the committee believes that shippers should be provided with maximum flexibility in marketing yellow-fleshed potatoes. Accordingly, the rule provides that yellow-fleshed potatoes that are one inch in diameter may also be shipped if they otherwise grade at least U.S. No. 1.

The committee believes that this action will help maintain the quality of image of the Washington State potato industry. Other non-white fleshed varieties, such as purple or blue fleshed, will continue to be exempt because very few of these potatoes are being produced, and such potatoes are a specialty crop and generally do not directly compete with white fleshed potatoes. In addition, blue or purple fleshed potatoes are customarily marketed in different outlets than white and yellow fleshed potatoes.

Exports of Washington potatoes have increased considerably since the early 1980's. Fresh potato exports from Washington State in 1981 amounted to abut 420,000 cwt. In 1988, fresh potato exports exceeded 590,000 cwt. A record high of about 665,000 cwt. was reached in 1986. Fresh potato exports in 1987 were about 550,000 cwt. and had an estimated value of $10,383,000. Destinations for these potatoes included Hong Kong, Sweden and Singapore. Possibly the greatest potential for export market expansion lies in the Pacific Rim countries.

Currently, export shipments of potatoes are exempt from the requirements of the handling regulation. To provide a means by which foreign buyers can continue to obtain high quality when purchasing Washington State potatoes, the committee unanimously recommended that all potatoes exported in 50-pound cartons be required to be at least U.S. No. 1 grade. This export pack requirement is similar to the domestic pack requirement which requires potatoes packed in 50-pound cartons to be at least U.S. No. 1, except that an additional tolerance for internal defects is provided for domestic shipments. These cartons are regarded as a premium pack and are the container most often used for export shipments. Shippers will continue to be able to fill specific orders for lower quality potatoes by packing them in other than 50-pound cartons, since only potatoes packed in such cartons will be required to meet this minimum quality requirement. This action should result in increased purchases and improved returns to growers.

Other exemptions currently provided are unchanged. The grade, size, maturity, and pack requirements are not applicable to shipments of potatoes for livestock feed, charity, seed, prepeeling, or other processing. Shipments to these outlets are also free from inspection requirements.

Section 8e of the Agricultural Marketing Agreement Act of 1937 requires that when certain domestically produced commodities, including Irish potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating a commodity produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the areas produces the commodity in most direct competition with the imported commodity. Imports then must meet the quality standards set for that particular area. Since yellow fleshed potatoes are generally considered to be a round white type, imported yellow fleshed potatoes are required to meet the same quality and size requirements set for round white varieties of potatoes. Because the import requirements for round white potatoes are based on those established under the marketing orders covering Colorado Area 3 potatoes (M.O. 948) and Southeastern States (M.O. 953), the changes to the handling requirements for Washington State potatoes will have no effect on the potato import regulation. Accordingly, the findings and determinations with respect to imports of Irish potatoes contained in section 980.1 of the regulations will not be changed by this action.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant

economic impact on a substantial number of small entities.

Notice of this action was given in the June 8, 1989, **Federal Register** [54 FR 24562] providing interested persons until June 19, 1989, to file written comments. No comments were received.

After consideration of all relevant matter presented including the information and recommendations submitted by the committee, and other available information, it is hereby found that the rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the shipping season is expected to begin in early July and this rule, in order to be of maximum benefit to producers, should apply to shipments at the beginning of the season.

List of Subjects in 7 CFR Part 946

Marketing agreements and orders, Potatoes, Washington.

For the reasons set forth in the preamble, 7 CFR Part 946 is hereby amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR Part 946 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

1a. A new subpart heading is added to Part 946 immediately preceding § 946.336 as follows:

Subpart—Handling Regulations

2. Section 946.336 is amended by revising the introductory text and paragraphs (a)(2)(i), (c), and (d)(7) to read as follows:

Note: This section will appear in the Code of Federal Regulations.

§ 946.336 Handling regulation.

No person shall handle any lot of potatoes unless such potatoes meet the requirements of paragraphs (a), (b), (c), and (g) of this section or unless such potatoes are handled in accordance with paragraphs (d) and (e), or (f) of this section, except that shipments of the blue or purple flesh varieties of potatoes shall be exempt from both this handling regulation and the assessment requirements specified in § 946.41.

(a)(2) * * *

(i) *Round varieties*—1⅞ inches (47.6 mm) minimum diameter, except yellow fleshed and round red varieties may be 1 inch (25.4 mm) minimum diameter, if U.S. No. 1.

* * * * *

(c) *Pack requirements*—(1) *Domestic.* Potatoes packed in 50-pound cartons shall be U.S. No. 1 grade or better, except that potatoes which fail to meet the U.S. No. 1 grade only because of internal defects may be shipped provided the lot contains not more than 10 percent damage by any internal defect or combination of internal defects but not more than 5 percent serious damage by any internal defect or combination of internal defects.

(2) Export. Potatoes packed in 50-pound cartons shall be U.S. No. 1 grade or better.

(d) * * *

(7) *Export*, except to Alaska and Hawaii and except as provided in (c)(2) of this paragraph.

* * * * *

Dated: June 29, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–15724 Filed 6–30–89; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 51, and 60

RIN 3150-AC04

NEPA Review Procedures for Geologic Repositories for High-Level Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is adopting procedures for implementation of the National Environmental Policy Act with respect to geologic repositories for high-level radioactive waste. In accordance with the Nuclear Waste Policy Act of 1982, as amended, the Commission will adopt, to the extent practicable, the final environmental impact statement prepared by the Department of Energy that accompanies a recommendation to the President for repository development. The rule recognizes that the primary responsibility for evaluating environmental impacts lies with the Department of Energy; and, consistent with this view, it sets out the standards and procedures that would be used in determining whether adoption of the Department's final environmental impact statement is practicable.

EFFECTIVE DATE: August 2, 1989.

FOR FURTHER INFORMATION CONTACT: James R. Wolf, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–1641.

SUPPLEMENTARY INFORMATION: Under applicable law, the Nuclear Regulatory Commission exercises regulatory authority with respect to the development, operation, and permanent closure of one or more geologic repositories for high-level radioactive waste and spent nuclear fuel. In connection with the exercise of this authority, the Commission is required by the National Environmental Policy Act of 1969 (NEPA), to give appropriate consideration to the environmental impacts of its actions. The scope of such consideration and the procedure to be followed by the Commission in fulfilling its NEPA responsibilities are addressed by the Nuclear Waste Policy Act of 1982, as amended (NWPA). This statute directs the Commission to adopt the environmental impact statement (EIS) prepared by the Department of Energy (the applicant for the NRC license with respect to the repository) "to the extent practicable," with the further proviso that adoption of DOE's EIS shall be deemed to satisfy the Commission's NEPA responsibilities "and no further consideration shall be required." The Commission has been engaged in rulemaking to implement this statutory framework.

The Commission accordingly undertook a careful review of the text and statutory history of the pertinent provisions of the Nuclear Waste Policy Act. The results of this review were presented in the notice of proposed rulemaking published in the **Federal Register** on May 5, 1988, 53 FR 16131. As summarized therein:

(1) The Commission will conduct a thorough review of DOE's draft EIS and will provide comments to DOE regarding the adequacy of the statement.

(2) If requested by Congress pursuant to the NWPA, the Commission will provide comments on DOE's EIS to the Congress with respect to a State or Tribal notice of disapproval of a designated site.

(3) The NRC will find it practicable to adopt DOE's EIS (or any DOE supplemental EIS) unless:

(a) The action proposed to be taken by the NRC differs in an environmentally significant way from the action described in DOE's license application, or

(b) Significant and substantial new information or new considerations render the DOE EIS inadequate.

(4) The DOE EIS will accompany the application through the Commission's review process, but will be subject to litigation in NRC's licensing proceeding only where factors 3(a) or 3(b) are present.

In accordance with NWPA, the primary responsibility for evaluating environmental impacts lies with DOE, and DOE would therefore be required to supplement the EIS, whenever necessary, to consider changes in its proposed activities or any significant new information.

The Commission received nine letters of comment in response to its notice of proposed rulemaking. The commenters were the State of Nevada (Nuclear Waste Project Office), the U.S. Department of Energy, the Council on Environmental Quality, the U.S. Environmental Protection Agency, and several private organizations (the Nevada Nuclear Waste Task Force, the Environmental Defense Fund, the Southwest Research and Information Center, the Sierra Club, and the Edison Electric Institute).

After reviewing and giving careful consideration to all the comments received, the Commission now adopts, in substantial part, the position set forth in its earlier notice. In particular, the Commission continues to emphasize its view that its role under NWPA is oriented toward health and safety issues and that, in general, nonradiological environmental issues are intended to be resolved in advance of NRC licensing decisions through the actions of the Department of Energy, subject to Congressional and judicial review in accordance with NWPA and other applicable law. The Commission anticipates that many environmental questions would have been, or at least could have been, adjudicated in connection with an environmental impact statement prepared by DOE, and such questions should not be reopened in proceedings before NRC.

State of Nevada Comments

We begin with the comments presented by the State of Nevada not only because of its important sovereign interests, but because of the fundamental nature of the issues that are raised. In Nevada's view, NRC "poses, analyzes and answers the wrong question." According to Nevada, the question is how NRC should perform its own, independent, NEPA responsibilities and not how NRC should review and approve the adequacy of DOE's EIS.

Having posed the question in terms of responsibilities under NEPA, Nevada reviews the many cases that hold that where a major federal action involves two or more federal agencies, each agency must evaluate the environmental consequences of the entire project and determine independently whether the statutory requirements have been satisfied. NRC is not relieved from the responsibility of making such an independent determination, according to the State, because it would still be able to carry out its licensing responsibilities in a manner consistent with law. NRC, which is directed by NWPA to adopt the DOE environmental impact statement "to the extent practicable," need only do so to the extent that it is otherwise within the customary practice of the agency.

The views of the State bring the question into sharp focus. If the issue were properly to be posed as Nevada urges—i.e., with an assumption that the Commission's NEPA responsibilities are not modified by NWPA—then the regulatory language suggested in its comment letter would have merit. But the Commission firmly believes that the law was intended to have all matters associated with the environmental impacts of repository development considered and decided, to the fullest extent practicable, apart from NRC licensing proceedings. As explained when the proposed rule was published, this interpretation is supported both by the specific legislative and judicial review procedures built into the statutory structure and by the accompanying legislative history. The Commission believes that the result is sensible. Concerns arising under NEPA—if not resolved through the negotiation procedures established by NWPA—would be adjudicated early, with finality, and with every reasonable argument being capable of being advanced to the oversight of Congress and the courts. From that point on, in the absence of substantial new information or other new considerations, it would be proper to inquire only whether the specific detailed proposal of the Department of Energy could be implemented in a manner consistent with the health and safety of the public. The resolution of issues in this manner for purposes of NEPA would in no event affect the framing or decision of health and safety issues, under the Atomic Energy Act, in NRC licensing proceedings.[1]

Although quite different statutory schemes are involved, we perceive a parallel with issues raised in *Quivira Mining Company* v. *NRC*, 866 F.2d 1246 (10th Cir. 1989). That case concerned regulations adopted by NRC pursuant to the Uranium Mill Tailings Radiation Control Act of 1978. It considered, among other things, the extent to which NRC, in giving the "due consideration to economic costs" required by the statute, could rely upon a cost-benefit study previously carried out by the Environmental Protection Agency to support EPA's rulemaking responsibilities. The Commission concluded that since the agencies' actions coincided in material respects, all statutory language would retain significant force and effect, and the time period allowed for the issuance of its regulations was inadequate for an independent study, Congress did not wish to require the NRC to perform a second cost-benefit analysis. The Court found the legislative history, as well as the statutory language, to be ambiguous on the question; as such, it upheld the NRC construction. Here, given the identity of the actions being considered by the two agencies (DOE and NRC), we believe it to be a fair reading of Congressional intent that NRC can adequately exercise its NEPA decisionmaking responsibility with respect to a repository by relying upon DOE's environmental impact statement. As in *Quivira Mining*, the timing requirement—under NWPA, a three-year licensing process for a unique facility, involving standards of exceptional complexity, requiring disputatious predictions of future human activity and natural processes for thousands of years—supplies practical support for our interpretation. Congress did not speak to the precise question of the standard to be used in deciding whether adoption of DOE's environmental impact statement is practicable; and if our construction is not the only one that might be proposed, it seems to us to be, at a minimum, "permissible."

Once DOE's EIS has been adopted, the statute expressly relieves the Commission from further consideration of the environmental concerns addressed in the statement. Congressional review of a State's resolution of disapproval—should such a resolution be passed—would permit (and, most likely, virtually ensure) that issues other than those to be

[1] The State took exception to the standard for completeness of information in a license application—viz. the "reasonably available" standard of 10 CFR 60.24. Although the matter is not strictly at issue in this rulemaking, the Commission regards the State's concern in this regard to be overdrawn. While information may be sufficient to meet the requirements of § 60.24, this in no way implies that such information will prove to be sufficient to meet the applicant's burden of persuasion under § 60.31.

adjudicated under the Atomic Energy Act would have been considered and weighed. Under these circumstances, it would do no violence to national environmental policy to proscribe further examination in administrative proceedings.

Council on Environmental Quality Comments

The Commission invited the Council on Environmental Quality to comment on the proposed rule. The conclusion of CEQ was similar to that of the State of Nevada. In particular, CEQ read the phrase "to the extent practicable" to mean that NRC should make an independent evaluation of the DOE environmental impact statement, adopting some or all of it as appropriate so as to avoid unnecessary duplication. From the Commission's perspective, though, the position does not fully take into account the detailed scheme for environmental review established by NWPA. Neither the related provisions of the statute (including, for example, those dealing with legislative and judicial review and establishing time frames for Commission decisionmaking) are analyzed, nor is there any examination of the legislative history which, as described in the preamble to the proposed rule, supports our point of view. We continue to believe that it is clear—at least in the debates of the House of Representatives with respect to the bill which, with amendments, was enacted into law—that the Commission role was intentionally to be directed to health and safety issues to the exclusion, absent new information or new considerations, of issues arising under NEPA.

It is worth noting, though, that CEQ recognizes that the Commission might "defer" to a court finding that the DOE environmental impact statement is adequate. This is certainly close, if not identical to, the Commission's position that a judicial finding of adequacy would preclude further litigation of the matter in NRC licensing proceedings.

Comments of Environmental Organizations

The environmental organizations' comments included a number of arguments similar to those of the State of Nevada with respect to the Commission's customary NEPA responsibilities. As already indicated, it is our view that Congress intended, under NWPA, for NRC to accept the DOE EIS in the absence of substantial new considerations or new information. We reject the suggestion made by the Sierra Club that the approach we have outlined amounts to an abdication of any Commission responsibility.

In addition, however, a number of comments of somewhat narrower scope were submitted by environmental organizations (as well as by the State of Nevada) and are addressed here.

One matter that particularly concerned the private Nevada Nuclear Waste Task Force involved the relationship between the judicial process and the Commission's administrative process. The Task Force cautioned that NRC should not rely on there having been a court ruling with regard to the adequacy of DOE's environmental impact statement in advance of the Commission's licensing decision (when a judicial finding of inadequacy, affecting much or little of the EIS, could be treated as a new consideration). In fact, such reliance is not essential. It is our expectation that, under NWPA, a petition for review of the EIS would need to have been filed roughly contemporaneously with DOE's submission of a license application to NRC, and that judgment might have been entered within the three years envisaged for Commission licensing. Whether or not this proves to be the case is not controlling, for the standard for adoption does not rest upon collateral estoppel principles. Similarly, we find it beside the point to speculate regarding the possibility that a reviewing court might delay its decision on the adequacy until it sees the NRC conclusions in the licensing proceeding. Such delay would not stand in the way of the Commission's taking final action.

Although we thus do not rest our position upon the availability of a prior judgment of a court, we reiterate our view, as described in the preamble to the proposed rule, that such a judgment, if entered, would be controlling on the question of the adequacy of the EIS; and if the EIS were found to be adequate, it would be practicable for the Commission to adopt it.

We were criticized for suggesting that members of the public might be precluded from raising issues anew on the grounds that they had been represented by State officials in prior judicial proceedings. This position was claimed to be inconsistent with NRC intervention rules which, it is correctly argued, traditionally consider the interests of the state in which a facility is located as being distinguishable from the interests of particular members of the public who may be affected by the issuance of a license. Our first response is that our case law with respect to standing for purposes of intervention does not necessarily apply in the context of collateral estoppel or issue preclusion, where the policies of repose come into play. But, in addition, we would reach the same result even if informed members of the public were not constrained by the putative prior judgment against the state; for in that event their failure to pursue their claims within the 180 days specified by section 119 of NWPA would operate as a bar.

The Commission's position that failure to challenge DOE's environmental impact statement promptly in the courts bars subsequent challenge to that EIS in NRC proceedings was also criticized. Commenters suggested, instead, that affected parties may decide for reasons of litigative strategy or otherwise to contest questions regarding the repository in NRC licensing proceedings rather than by going to court about the DOE environmental impact statement. But such a unilateral decision on their part cannot operate as a means to circumvent the clear policy of the NWPA requiring prompt adjudication of the issues raised by the EIS. When there has been a full and fair opportunity to raise the challenge, a party's failure to avail itself should in our view be regarded as an abandonment of its right to do so many years later. *See Oregon Natural Resources Council* v. *U.S. Forest Service*, 834 F.2d 842, 847 (9th Cir. 1987).

There is force to a commenter's suggestion that our proposed rules failed to take account of an EIS having been prepared in connection with a Negotiator-selected site, in which case the Commission review would be governed by section 407 of NWPA, as amended, 42 U.S.C. 10247, instead of section 114, 42 U.S.C. 10134. One difference, as pointed out by the comment, is that for a Negotiator-selected site DOE makes no formal recommendation to the President and the President makes no decision with respect to approval of the site. This difference alone would not affect the approach we take to discharging our NEPA responsibilities, in part because we would expect early judicial review to be available even in the absence of a Presidential decision. In this regard, NWPA authorizes a civil action to review any EIS prepared with respect to "any action" under the applicable subpart and, given our perspective on the intended allocation of functions between DOE and NRC, "any action" could include the Secretary of Energy's submission of an application to the Commission. We think the intent of Congress, as evidenced by the considerable parallelism of the language employed, was generally to establish the

same sort of role for the Commission with respect to any site—whether at Yucca Mountain or at a Negotiator-selected location. We recognize that it is our obligation "to consider the Yucca Mountain site as an alternate to (the Negotiator-selected site) in the preparation of" an EIS. This obligation will be discharged, though, to the extent of our adoption of the DOE environmental impact statement, provided that the alternative sites were addressed therein.

One aspect of the Negotiator-selected site provisions does have to be taken into account, however. For a Negotiator-selected site, a Commission decision to adopt the environmental impact statement must be made "in accordance with § 1506.3 of Title 40, Code of Federal Regulations,"—a limitation that we found not to apply to the EIS submitted under section 114 of NWPA. Under the cited section of the CEQ regulations, the Commission may only adopt the DOE statement if it is "adequate." While a judicial decision on the point would be controlling, we would otherwise need to make an independent judgment in accordance with established practice. The final regulations reflect this possibility. In passing, though, we observe that we find nothing anomalous in having this responsibility in the case of a Negotiator-selected site but not in the case of the Congressionally-designated site at Yucca Mountain, for in the latter case there are opportunities for State disapproval and Congressional consideration that serve to provide a forum outside the Department for the evaluation of environmental concerns.

We are not persuaded by the comment that took exception to our requirement that needed supplements to the EIS would, as a general rule, have to be prepared by DOE—and that DOE's failure to comply with this requirement might be grounds for denial of a construction authorization. It seems to us that such supplementation by DOE would ordinarily be appropriate whenever, in the light of new information or new considerations, its proposed action may give rise to significant environmental impacts that were not addressed in its original EIS.

We were urged to reconsider our position with respect to the imposition of license conditions directed at mitigation of adverse environmental impacts. We had suggested that DOE could itself be held accountable for compliance with the mitigation measures described in its EIS, so that there was no need for them to be subject to litigation in NRC proceedings. The basis for our position is that the departure from planned mitigation measures may well be a major Federal action having significant environmental impacts, which would necessitate the preparation of an environmental impact statement for a project that was otherwise determined to be without significant impact. But, in any event, we see no basis for employing our regulatory authority in this instance to police DOE's compliance with its mitigation plans; it will be subject to no more and no less oversight from interested persons than would be the case for many other developmental projects carried out, after preparation of appropriate environmental documentation, by Federal departments and agencies. To permit the mitigation measures to be litigated in NRC administrative proceedings—legitimate as this may be in other contexts—would run counter to the direction of the NWPA. It would bring in through the back door at least some of the contentions which, in our view, were to be settled in other forums.

An argument was made that amended section 114(f)(6)—which provides that "the Commission" need not consider enumerated factors in any EIS prepared with respect to a repository—indicates that Congress intended for NRC to issue its own EIS. The language in question appears to have been designed as an editorial measure, lacking substantive effect. The legislative history, cited with the proposed rule, demonstrates that no important change was being made in NRC's NEPA responsibilities, which under the 1982 statute were limited in the manner we have described. The statutory language is not surplusage, for NRC may have an obligation to prepare a supplemental EIS where there are new considerations or new information.

Department of Energy Comments

The Department of Energy, which is the prospective applicant affected by the proposed rules, agreed that NWPA counsels against wide-ranging independent examination by NRC of environmental concerns during the course of the licensing proceedings. DOE also concurred with NRC's view that a judicial determination of adequacy of an EIS precludes further litigation of that issue and that failure to raise an issue within the time set out in NWPA bars later challenge. The other DOE comments call for some clarification of the Commission's intentions, but do not prompt any fundamental change of the position that had previously been outlined.

For example, we can put to rest DOE's concern that NRC might defer its acceptance review of the license application until the entire judicial review process on the EIS had run its course. Under the amendments, both as proposed and as adopted, the acceptance review applies only to the completeness of "the application," not "the application or environmental report" as under existing 10 CFR 2.101(f)(2).

We believe we can also satisfy DOE's concern with respect to our mention, at 53 FR 16132, that there may be a need for "multiple EIS's." The point being made was not that NRC might need to prepare its own EIS when DOE had already done so, but that the licensing process may involve more than one major federal action (for example, the construction of the repository on the one hand and the emplacement of waste on the other) that could necessitate the preparation of a supplemental EIS if not an entirely new one, if the impacts of such actions are not evaluated or properly encompassed in the initial EIS.

The responsibility for supplementation was another point of contention. DOE—along with some of the other commenters—argued that it would be inappropriate for it to be obliged to supplement its completed EIS in order to satisfy any independent NEPA responsibilities of the Commission. We agree with this statement. But, as DOE itself acknowledges, it might need to supplement the EIS if it were to make a substantial change in the proposed action or if significant new circumstances or information were to become available. That is all that is required by the regulatory language (10 CFR 60.24(c)).

However, in support of its position, DOE suggested that NRC adoption under the NWPA provisions was related specifically to the EIS "submitted as part of the Department's recommendation to the President." But the language of Section 114(f) quite clearly applies to "any environmental impact statement prepared in connection with a repository proposed to be constructed" by DOE under NWPA.

DOE is correct in pointing out that a supplemental EIS would not necessarily be required in the event of a substantial change in the proposed action, where the change and the impacts thereof had previously been considered in the original statement.

The principal remaining issue raised by DOE's comments concerns the appropriate role of NRC in DOE's NEPA activities. DOE suggests that NRC should be a "cooperating agency," a role that the Council on Environmental

Quality has recognized as being appropriate in the licensor-licensee context. We are not persuaded. The present situation is unique because—unlike the customary licensor-licensee situation—the particular statute guiding our approach (i.e., NWPA) removes the balancing of environmental considerations from our independent judgment. Under these circumstances, it strikes us as particularly out of place for NRC to undertake the kind of critical evaluation that a "cooperating agency" should perform in the preparation of an EIS. The Commission, nevertheless, has jurisdiction and expertise that it can, and will, bring to DOE's attention as a commenting agency through the entire DOE NEPA process. We shall not hesitate, in particular, to raise concerns that might subsequently also require adjudication, under the standards of the Atomic Energy Act, in our licensing proceedings. Other issues, of course, can be identified in our comments as well. In other words, NRC as a commenting agency can and will play an important constructive role all the while from the scoping stage through preparation of the environmental impact statement; but as the sole responsibility for weighing the environmental impacts in support of a recommendation to the President is vested in DOE, DOE properly should be the agency with formal sponsorship of the EIS as well.

We respond, finally, to DOE's claim that the requirement for DOE to inform the Commission of the status of legal action on the repository is unnecessary, since this information is a matter of public record. As a general rule, the applicant has the burden of placing on the record those factual matters upon which NRC decisions may be predicated. Although we have not placed sole reliance upon principles of issue preclusion (collateral estoppel), it remains our position that a final judgment of a reviewing court with respect to the adequacy of the DOE final environmental impact statement would be controlling and would support our adoption of such FEIS. Accordingly, it is appropriate for DOE to report on the status thereof.

Industry Comments

Comments received from Edison Electric Institute generally supported the Commission's view that its essential responsibility under NWPA is to address radiological safety issues under the Atomic Energy Act, and that the requirements of NEPA were substantively modified as they apply to the high-level nuclear waste program.

We decline to follow EEI's suggestion that issues related to adoption of DOE's environmental impact statement be made prior to the hearing process and outside the adjudicatory arena. As we have noted before, the impact statement does not simply "accompany" an agency recommendation for action in the sense of having some independent significance in isolation from the deliberative process. Rather the impact statement is an integral part of the Commission's decision. It forms as much a vital part of the NRC's decisional record as anything else. *Public Service Company of Oklahoma* (Black Fox Station, Units 1 and 2), CLI-80-31, 12 NRC 264, 275 (1980). Even though the range of issues to be considered in the hearing may be limited, the formal function of the environmental impact statement as an element of the licensing decision remains.

However, we find merit in EEI's proposal to fix an early schedule for the NRC staff to present its position on the practicability of adoption and for other parties to file contentions with respect to the practicability of adoption. Accordingly, the final rule requires the NRC staff to present its position on adoption at the time that the notice of hearing is published in the **Federal Register**. Any contentions filed by any other party to the proceeding must be filed within thirty days after the notice of hearing is published. In the event that "substantial new considerations or new information" subsequently arises, contentions concerning the practicability of adopting DOE's EIS that are filed after the 30-day deadline established in the rule must be accompanied by a demonstration of compliance with the late filing criteria in 10 CFR 2.1014.

Changes from the Proposed Rule

Section 51.67 Environmental Information Concerning Geologic Repositories

This section is revised to provide for the submission of environmental impact statements, pursuant to Title IV of NWPA, as amended, with respect to a Negotiator-selected site. A further change reflects DOE's comment that supplement would not be required where a modification to its plans had been previously addressed by its EIS.

Section 51.109 Public Hearings in Proceedings for Issuance of Materials License with Respect to a Geologic Repository

In the final rule, paragraph (a) incorporates a schedule for the staff to present its position on the practicability of adoption of the DOE environmental impact statement, and for the filing of contentions with respect thereto. Consistent with the recently-completed LSS (Licensing Support System) rulemaking, a period of thirty days after notice of hearing is provided for the submission of contentions.

Paragraph (c) is revised so that the special criterion for adoption, as discussed herein, will apply only with respect to the geologic repository at the Yucca Mountain site. Any EIS for a Negotiator-selected site would be excluded from the application of this paragraph. A conforming change appears in paragraph (d).

Paragraph (e) is modified to emphasize that the Commission's customary policies will be observed except for adoption of an EIS prepared under Section 114. This is achieved by the insertion of the cross-reference ("in accordance with paragraph (c)") in the introductory clause. As the language has been modified, it permits the adoption of other DOE environmental impact statements with respect to a Negotiator-selected site in accordance with generally applicable law. This includes observance of the procedures outlined in 40 CFR 1506.3. This is addressed adequately in Appendix A to 10 CFR Part 51, Subpart A, and requires no further elaboration in the text of the rule.

Petition for Rulemaking

The Commission's earlier notice invited comments upon the related portions of a petition for rulemaking submitted by the States of Nevada and Minnesota, PRM-60-2A, 50 FR 51701, December 19, 1985. With the exception of the State of Nevada, none of the comments received by the Commission in response to the notice addressed the petition as such. The State of Nevada referred to the petition, recognized that some of the considerations therein have been mooted, and urged that alternative language be considered in the proposed rule, in place of that which they had recommended in the petition.

The section of the petition which provides language pertaining to the adoption of DOE's EIS (i.e., Section IV.3) is denied. However, the issues identified by the petition regarding the criteria and procedures for adoption of DOE's EIS have been considered in this proceeding. Although the language being promulgated differs from that proposed by the petitioners, the Commission is in full agreement with the petitioners' argument that adoption of DOE's EIS must not compromise the independent responsibilities of NRC to protect the public health and safety under the Atomic Energy Act of 1954. Our rulemaking approach is in fact designed to enhance our ability to address these health and safety issues as effectively and objectively as possible.

Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described in categorical exclusions 10 CFR 51.22(c)(1) and (3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval numbers 3150-0021 and 0127.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 USC 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. The only entity subject to regulation under this amended rule is the U.S. Department of Energy.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and record keeping requirements.

10 CFR Part 60

High-level waste, Nuclear power plants and reactors, Nuclear materials, Penalty, Reporting and record keeping requirements, Waste treatment and disposal.

Issuance

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the National Environmental Policy Act of 1969, as amended, the Nuclear Waste Policy Act of 1982, as amended, and 5 U.S.C. 553, the NRC adopts the following amendments to 10 CFR Part 51, and related conforming amendments to 10 CFR Parts 2 and 60.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 is revised to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97-425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99-240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. In § 2.101, paragraphs (f)(1), (2), (5), and (7) are revised and (f) (4) is removed and reserved to read as follows:

§ 2.101 Filing of application.

* * * * *

(f)(1) Each application for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter and any environmental impact statement required in connection therewith pursuant to Subpart A of Part 51 of this chapter shall be processed in accordance with the provisions of this paragraph.

(2) To allow a determination as to whether the application is complete and acceptable for docketing, it will be initially treated as a tendered document, and a copy will be available for public inspection in the Commission's Public Document Room. Twenty copies shall be filed to enable this determination to be made.

* * * * *

(4) [Reserved]

(5) If a tendered document is acceptable for docketing, the applicant will be requested to (i) submit to the Director of Nuclear Material Safety and Safeguards such additional copies of the application and environmental impact statement as the regulations in Part 60 and Subpart A of Part 51 of this chapter require, (ii) serve a copy of such application and environmental impact statement on the chief executive of the municipality in which the geologic repository operations area is to be located, or if the geologic repository operations area is not to be located within a municipality, on the chief executive of the county (or to the Tribal organization, if it is to be located within an Indian reservation), and (iii) make direct distribution of additional copies to Federal, State, Indian Tribe, and local officials in accordance with the requirements of this chapter and written instructions from the Director of Nuclear Material Safety and Safeguards. All such copies shall be completely assembled documents, identified by docket number. Subsequently distributed amendments to the application, however, may include revised pages to previous submittals and, in such cases, the recipients will be responsible for inserting the revised pages.

* * * * *

(7) Amendments to the application and supplements to the environmental impact statement shall be filed and distributed and a written statement shall be furnished to the Director of Nuclear Material Safety and Safeguards in the same manner as for the initial application and environmental impact statement.

* * * * *

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

3. The authority citation for Part 51 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

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Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853-854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95-604, Title II, 92 Stat. 3033-3041. Sections 51.20, 51.30, 51.60, 51.61, 51.80, and 51.97 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100-203, 101 Stat. 1330-223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036-3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec. 121, 96 Stat. 2228 (42 U.S.C. 10141). Secs. 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act of 1982, sec. 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

4. In § 51.20, existing paragraph (b)(13) is redesignated as paragraph (b)(14) and a new paragraph (b)(13) is added to read as follows:

§ 51.20 Criteria for and identification of licensing and regulatory actions requiring environmental impact statements.

* * * * *

(b) * * *

* * * * *

(13) Issuance of a construction authorization and license pursuant to Part 60 of this chapter.

* * * * *

5. Section 51.21 is revised to read as follows:

§ 51.21 Criteria for and identification of licensing and regulatory actions requiring environmental assessments.

All licensing and regulatory actions subject to this subpart require an environmental assessment except those identified in § 51.20(b) as requiring an environmental impact statement, those identified in § 51.22(c) as categorical exclusions, and those identified in § 51.22(d) as other actions not requiring environmental review. As provided in § 51.22(b), the Commission may, in special circumstances, prepare an environmental assessment on an action covered by a categorical exclusion.

6. Section 51.22 is amended, by revising the heading and adding a new paragraph (d), to read as follows:

§ 51.22 Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review.

* * * * *

(d) In accordance with section 121 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10141), the promulgation of technical requirements and criteria that the Commission will apply in approving or disapproving applications under Part 60 of this chapter shall not require an environmental impact statement, an environmental assessment, or any environmental review under subparagraph (E) or (F) of section 102(2) of NEPA.

7. In § 51.26, paragraph (a) is revised and a new paragraph (c) is added, to read as follows:

§ 51.26 Requirement to publish notice of intent and conduct scoping process.

(a) Whenever the appropriate NRC staff director determines that an environmental impact statement will be prepared by NRC in connection with a proposed action, a notice of intent will be prepared as provided in § 51.27, and will be published in the **Federal Register** as provided in § 51.116, and an appropriate scoping process (see §§ 51.27, 51.28, and 51.29) will be conducted.

* * * * *

(c) Upon receipt of an application and accompanying environmental impact statement under § 60.22 of this chapter (pertaining to geologic repositories for high-level radioactive waste), the appropriate NRC staff director will include in the notice of docketing required to be published by § 2.101(f)(8) of this chapter a statement of Commission intention to adopt the environmental impact statement to the extent practicable. However, if the appropriate NRC staff director determines, at the time of such publication or at any time thereafter, that NRC should prepare a supplemental environmental impact statement in connection with the Commission's action on the license application, the procedures set out in paragraph (a) of this section shall be followed.

8. A new § 51.67 is added to read as follows:

§ 51.67 Environmental information concerning geologic repositories.

(a) In lieu of an environmental report, the Department of Energy, as an applicant for a license or license amendment pursuant to Part 60 of this chapter, shall submit to the Commission any final environmental impact statement which the Department prepares in connection with any geologic repository developed under Subtitle A of Title I, or under Title IV, of the Nuclear Waste Policy Act of 1982, as amended. (See § 60.22 of this chapter as to required time and manner of submission.) The statement shall include, among the alternatives under consideration, denial of a license or construction authorization by the Commission.

(b) Under applicable provisions of law, the Department of Energy may be required to supplement its final environmental impact statement if it makes a substantial change in its proposed action that is relevant to environmental concerns or determines that there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. The Department shall submit any supplement to its final environmental impact statement to the Commission. (See § 60.22 of this chapter as to required time and manner of submission.)

(c) Whenever the Department of Energy submits a final environmental impact statement, or a final supplement to an environmental impact statement, to the Commission pursuant to this section, it shall also inform the Commission of the status of any civil action for judicial review initiated pursuant to section 119 of the Nuclear Waste Policy Act of 1982. This status report, which the Department shall update from time to time to reflect changes in status, shall:

(1) State whether the environmental impact statement has been found by the courts of the United States to be adequate or inadequate; and

(2) Identify any issues relating to the adequacy of the environmental impact statement that may remain subject to judicial review.

9. A new § 51.109 is added to read as follows:

§ 51.109 Public hearings in proceedings for issuance of materials license with respect to a geologic repository.

(a)(1) In a proceeding for the issuance of a license to receive and possess source, special nuclear, and byproduct material at a geologic repository operations area, the NRC staff shall, upon the publication of the notice of hearing in the **Federal Register**, present its position on whether it is practicable to adopt, without further supplementation, the environmental impact statement (including any supplement thereto) prepared by the Secretary of Energy. If the position of the staff is that supplementation of the environmental impact statement by NRC is required, it shall file its final supplemental environmental impact statement with the Environmental Protection Agency, furnish that statement to commenting agencies, and make it available to the public, before presenting its position, or as soon thereafter as may be practicable. In discharging its responsibilities under this paragraph, the staff shall be guided by the principles set forth in paragraphs (c) and (d) of this section.

(2) Any other party to the proceeding who contends that it is not practicable to adopt the DOE environmental impact statement, as it may have been supplemented, shall file a contention to that effect within thirty days after the publication of the notice of hearing in the **Federal Register**. Such contention must be accompanied by one or more affidavits which set forth factual and/or technical bases for the claim that, under the principles set forth in paragraphs (c) and (d) of this section, it is not practicable to adopt the DOE environmental impact statement, as it may have been supplemented. The presiding officer shall resolve disputes concerning adoption of the DOE environmental impact statement by using, to the extent possible, the criteria and procedures that are followed in ruling on motions to reopen under § 2.734 of this chapter.

(b) In any such proceeding, the presiding officer will determine those matters in controversy among the parties within the scope of NEPA and this subpart, specifically including whether, and to what extent, it is practicable to adopt the environmental impact statement prepared by the Secretary of Energy in connection with the issuance of a construction authorization and license for such repository.

(c) The presiding officer will find that it is practicable to adopt any environmental impact statement prepared by the Secretary of Energy in connection with a geologic repository proposed to be constructed under Title I of the Nuclear Waste Policy Act of 1982, as amended, unless:

(1)(i) The action proposed to be taken by the Commission differs from the action proposed in the license application submitted by the Secretary of Energy; and

(ii) The difference may significantly affect the quality of the human environment; or

(2) Significant and substantial new information or new considerations render such environmental impact statement inadequate.

(d) To the extent that the presiding officer determines it to be practicable, in accordance with paragraph (c) of this section, to adopt the environmental impact statement prepared by the Secretary of Energy, such adoption shall be deemed to satisfy all responsibilities of the Commission under NEPA and no further consideration under NEPA or this subpart shall be required.

(e) To the extent that it is not practicable, in accordance with paragraph (c) of this section, to adopt the environmental impact statement prepared by the Secretary of Energy, the presiding officer will:

(1) Determine whether the requirements of section 102(2) (A), (C), and (E) of NEPA and the regulations in this subpart have been met;

(2) Independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken;

(3) Determine, after weighing the environmental, economic, technical and other benefits against environmental and other costs, whether the construction authorization or license should be issued, denied, or appropriately conditioned to protect environmental values;

(4) Determine, in an uncontested proceeding, whether the NEPA review conducted by the NRC staff has been adequate; and

(5) Determine, in a contested proceeding, whether in accordance with the regulations in this subpart, the construction authorization or license should be issued as proposed.

(f) In making the determinations described in paragraph (e), the environmental impact statement will be deemed modified to the extent that findings and conclusions differ from those in the final statement prepared by the Secretary of Energy, as it may have been supplemented. The initial decision will be distributed to any persons not otherwise entitled to receive it who responded to the request in the notice of docketing, as described in § 51.26(c). If the Commission or the Atomic Safety and Licensing Appeal Board reaches conclusions different from those of the presiding officer with respect to such matters, the final environmental impact statement will be deemed modified to that extent and the decision will be similarly distributed.

(g) The provisions of this section shall be followed, in place of those set out in § 51.104, in any proceedings for the issuance of a license to receive and possess source, special nuclear, and byproduct material at a geologic repository operations area.

10. In § 51.118, the existing text is redesignated as paragraph (a) and a new paragraph (b) is added, to read as follows:

§ 51.118 Final environmental impact statement—Notice of availability.

* * * * *

(b) Upon adoption of a final environmental impact statement or any supplement to a final environmental impact statement prepared by the Department of Energy with respect to a geologic repository that is subject to the Nuclear Waste Policy Act of 1982, the appropriate NRC staff director shall follow the procedures set out in paragraph (a) of this section.

PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

11. The authority citation for Part 60 is revised to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95-601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97-425, 96 Stat. 2213, 2228, as amended (42 U.S.C. 10134, 10141).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 60.10, 60.71 to 60.75 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

§ 60.15 [Amended]

12. In § 60.15, paragraph (c) is removed and paragraph (d) is redesignated as paragraph (c).

13. In § 60.21, paragraph (a) is revised to read as follows:

§ 60.21 Content of application.

(a) An application shall consist of general information and a Safety Analysis Report. An environmental impact statement shall be prepared in accordance with the Nuclear Waste Policy Act of 1982, as amended, and shall accompany the application. Any Restricted Data or National Security Information shall be separated from unclassified information.

* * * * *

14. Section 60.22 is revised to read as follows:

§ 60.22 Filing and distribution of application.

(a) An application for a license to receive and possess source, special nuclear, or byproduct material at a geologic repository operations area at a site which has been characterized, and any amendments thereto, and an accompanying environmental impact statement and any supplements, shall be signed by the Secretary of Energy or the Secretary's authorized representative and shall be filed in triplicate with the Director.

(b) Each portion of such application and any amendments, and each environmental impact statement and any supplements, shall be accompanied by 30 additional copies. Another 120 copies shall be retained by DOE for distribution in accordance with written instructions from the Director or the Director's designee.

(c) DOE shall, upon notification of the appointment of an Atomic Safety and Licensing Board, update the application, eliminating all superseded information, and supplement the environmental impact statement if necessary, and serve the updated application and environmental impact statement (as it may have been supplemented) as directed by the Board. At that time DOE shall also serve one such copy of the application and environmental impact statement on the Atomic Safety and Licensing Appeal Panel. Any subsequent amendments to the application or supplements to the environmental impact statement shall be served in the same manner.

(d) At the time of filing of an application and any amendments thereto, one copy shall be made available in an appropriate location near the proposed geologic repository operations area (which shall be a public document room, if one has been established) for inspection by the public and updated as amendments to the application are made. The environmental impact statement and any supplements thereto shall be made available in the same manner. An updated copy of the application, and the environmental impact statement and supplements, shall be produced at any public hearing held by the Commission on the application, for use by any party to the proceeding.

(e) The DOE shall certify that the updated copies of the application, and the environmental impact statement as it may have been supplemented, as referred to in paragraphs (c) and (d) of this section, contain the current contents of such documents submitted in accordance with the requirements of this part.

15. In § 60.24, the section heading and paragraphs (a) and (c) are revised to read as follows:

§ 60.24 Updating of application and environmental impact statement.

(a) The application shall be as complete as possible in the light of information that is reasonably available at the time of docketing.

* * * * *

(c) The DOE shall supplement its environmental impact statement in a timely manner so as to take into account the environmental impacts of any substantial changes in its proposed actions or any significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

16. In § 60.31, the introductory paragraph is revised to read as follows:

§ 60.31 Construction authorization.

Upon review and consideration of an application and environmental impact statement submitted under this part, the Commission may authorize construction if it determines:

* * * * *

17. In § 60.51, the introductory portion of paragraph (a), and paragraph (b), are revised to read as follows:

§ 60.51 License amendment for permanent closure.

(a) DOE shall submit an application to amend the license prior to permanent closure. The submission shall consist of an update of the license application submitted under §§ 60.21 and 60.22, including:

* * * * *

(b) If necessary, so as to take into account the environmental impact of any substantial changes in the permanent closure activities proposed to be carried out or any significant new information regarding the environmental impacts of such closure, DOE shall also supplement its environmental impact statement and submit such statement, as supplemented, with the application for license amendment.

Dated at Rockville, Maryland this 28th day of June 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89-15633 Filed 6-30-89; 8:45 am]

BILLING CODE 7590-01-D

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2610 and 2622

Late Premium Payments and Employer Liability Underpayments and Overpayments; Change in Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule; correction.

SUMMARY: This document corrects the most recent amendments to Appendix A to Part 2610 and Appendix A to Part 2622, the interest rates on late premium payments and underpayments or overpayments of employer liability, respectively. Those amendments, which appeared at 54 FR 13520 (April 4, 1989), set forth the interest rates effective as of April 1, 1989. This correction removes the ending date for the effective period of those rates, which will remain in effect until changed.

EFFECTIVE DATE: June 30, 1989.

FOR FURTHER INFORMATION CONTACT: John Foster, Attorney, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone (202) 778-8850 ((202) 778-8859 for TTY and TTD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The following corrections are made in FR Doc. 89-7930 appearing in the issue of April 4, 1989 (54 FR 13520):

Appendix A to Part 2610—[Amended]

1. On page 13520, column three, under Part 2610, Appendix A, the last entry is corrected by deleting "June 30, 1989". As corrected, this entry should read "April 1, 1989 . . . 12.

Appendix A to Part 2622—[Amended]

2. On page 13521, column one at the top, the last entry is corrected by deleting "June 30, 1989. As corrected, this entry should read "April 1, 1989 . . . 12.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 89-15553 Filed 6-30-89; 8:45 am]

BILLING CODE 7708-01-M

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29 CFR Part 2644

Collection of Withdrawal Liability; Adoption of New Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Notice and Collection of Withdrawal Liability. That regulation incorporates certain interest rates published by another Federal agency. The effect of this amendment is to add to the appendix of that regulation a new interst rate to be effective from July 1, 1989, to September 30, 1989.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: John Foster, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC. 20006; telephone 202-778-8850 (202-778-8859 or TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Under section 4219(c) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("the PBGC") promulgated a final regulation on Notice and Collection of Withdrawal Liability. That regulation, codified at 29 CFR Part 2644, deals with the rate of interest to be charged by multiemployer pension plans on withdrawal liability payments that are overdue or in default, or to be credited by plans on overpayments of withdrawal liability. The regulation allows plans to set rates, subject to certain restrictions. Where a plan does not set the interest rate, § 2644.3(b) of the regulation provides that the rate to be charged or credited for any calendar quarter is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates").

Because the regulation incorporates interest rates published in Statistical Release H.15, that release is the authoritative source for the rates that are to be applied under the regulation. As a convenience to persons using the regulation, however, the PBGC collects the applicable rates and republishes them in an appendix to Part 2644. This amendment adds to this appendix the interest rate of 11 percent, which will be effective from July 1, 1989, through September 30, 1989. This rate represents a decrease of ½ percent from the rate in effect for the second quarter of 1989. See 54 FR 13169 (March 31, 1989). This rate is based on the prime rate in effect on June 15, 1989.

The Appendix to 29 CFR Part 2644 does not prescribe interest rates under the regulation; the rates prescribed in the regulation are those published in Statistical Release H.15. The appendix merely collects and republishes the rates in a convenient place. Thus, the interest rates in the appendix are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making this amendment effective immediately.

The PBGC has determined that this amendment is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 2644

Employee benefit plans, Pensions.

In consideration of the foregoing, Part 2644 of Subchapter F of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2644—NOTICE AND COLLECTION OF WITHDRAWAL LIABILITY

1. The authority citation for Part 2644 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3) and 1399(c)(6).

Appendix A [Amended]

2. Appendix A is amended by adding to the end of the table therein a new entry as follows:

From	To	Date of quotation	Rate (percent)
*	*	*	*
07/01/89	09/30/89	06/15/89	11.00

Issued at Washington, DC., on this 23rd day of June, 1989.

Kathleen P. Utgoff,

Executive Director.

[FR Doc. 89-15554 Filed 6-30-89; 8:45 am]

BILLING CODE 7708-01-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 88-5]

Copyright Office, Library of Congress Statements of Account and Filing Requirements for Satellite Carrier Statutory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulations.

SUMMARY: The "Satellite Home Viewer Act of 1988," in a new section 119 of the Copyright Act, title 17 U.S. Code, creates a statutory license for certain secondary transmissions made by satellite carriers to satellite home dish owners for private viewing. The new satellite carrier statutory license requires the filing of statements of account by those parties availing themselves of the license, as well as the payment of royalty fees. The Copyright Office, after receiving comments from interested parties regarding proposed filing requirements for the satellite carrier statutory license, now issues final regulations.

EFFECTIVE DATE: July 3, 1989.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20540. Telephone: (202) 707-8380.

SUPPLEMENTARY INFORMATION:

1. Background

The Satellite Home Viewer Act of 1988, Pub. L. 100-667, amended the Copyright Act, title 17 of the United States Code, by creating a new statutory license for certain secondary transmissions made by satellite carriers to satellite home dish owners. As of January 1, 1989, satellite carriers are permitted, pursuant to the new section 119 license, to make secondary transmissions of "superstation" and network station signals to certain satellite home dish owners for private home viewing upon payment of a statutory royalty fee and satisfaction of certain other conditions. The royalty fee provisions of section 119 will end in four years, and will be replaced by privately negotiated licenses or an arbitrated fee on or before December 31, 1992. The entire Satellite Home Viewer Act itself terminates on December 31, 1994.

On February 28, 1989, the Copyright Office published proposed regulations regarding statements of account and filing requirements for the satellite carrier statutory license (54 FR 8350). At that time the Office invited interested parties to comment on the proposed regulations. Interested parties were also welcome to comment on the terms of section 119 itself, as it took effect January 1, 1989. Comments were invited through March 30, 1989. The Copyright Office received seven comments, including three from representatives of satellite carriers, three from representatives of program suppliers/copyright owners, and one from the Public Broadcasting Service ("PBS"). One additional set of reply comments was received after the March deadline from representatives of Program Suppliers.

2. Statement of Account Filing Deadlines

The Copyright Office proposed that satellite carriers availing themselves of the statutory licensing system under section 119 must submit royalty fees and statement of account forms within one month after the closing date of the

appropriate accounting period. These accounting periods run from January 1 to June 30, and from July 1 to December 31 of each year. Therefore, filings would be due on January 30 and July 30 of each year for the preceding six month period.

Of the seven parties commenting in this proceeding, one satellite carrier, United Video, Inc. ("United Video"), objected to the proposed filing time frame, saying the 30 day requirement was too stringent. Instead, United Video suggested a filing period equal to or greater than the 60 day period which applies to cable operators under the cable television compulsory license. 17 U.S.C. 111.

Representatives of Professional Sports Leagues, however, supported the 30 day filing period, suggesting in addition that filings not made within the thirty day period be subject to a late payment fee.

Program Suppliers, representing copyright owners, and backed in general by the American Society of Composers, Authors and Publishers ("ASCAP"), expressed general support for the body of regulations proposed by the Copyright Office to implement section 119.

The Copyright Office considers the 30 day filing requirement for satellite carrier statements of account to be reasonable. Care has been taken to limit the amount of information satellite carriers are required to submit with the statement of account forms. These forms are much less complex than those that cable television operators file semiannually under section 111's cable compulsory license. The calculations used to compute the satellite carriers' royalty fees are uncomplicated. For administrative reasons, the Office prefers to establish a filing deadline for satellite carrier statements of account that differs from the deadline for cable statements of account. For these reasons, the final regulations adopt the requirement that royalty fees shall be submitted by satellite carriers along with the appropriate statement of account forms within one month after the closing date of the relevant accounting period.

The Office declines at this time to address the issue of levying penalty fees upon satellite carriers that make late filings, except that underpayments and late payments will be assessed interest charges, as discussed later.

3. Refund Request Filing Deadline

In its proposed regulations for implementing section 119, the Copyright Office described conditions under which a request for a refund of royalty fees may be considered. The Office proposed that any such request must be received in the Copyright Office before the expiration of 30 days from the last day of the applicable statement of account *filing period.*

Representatives of two satellite carriers, United Video and Southern Satellite Systems ("Southern") suggested this is too brief a time allowance. Southern reasoned that the 60 day refund period afforded to cable operators under section 111's refund request policy should be mirrored in section 119's refund request regulation. United Video made a similar argument but asked for a one year period for filing refund requests and corrections on the basis that final distribution of royalty fees to copyright owners by the Copyright Royalty Tribunal does not usually occur "for several years after the Statements of Account are filed."

The Copyright Office finds these arguments unpersuasive. The fact that distribution of royalty fees to copyright claimants may not occur for quite some time is not determinative. A satellite carrier that files its statement of account form promptly will be able to detect whether to request a refund by an immediate, timely review of its copy of the filing. In addition, as the Office stated in the proposed regulations, "[a] request for a refund is not necessary where the Licensing Division, during its examination of a Statement of Account or related document, discovers an error that has resulted in a royalty overpayment. In this case, the Licensing Division will forward the royalty refund to the satellite carrier owner named in the Statement of Account without regard to the (30 day) time limitations * * *" 54 FR 8350, 8354 (February 28, 1989).

The modest information required by the satellite carrier statement of account form and the straight-forward method of calculating the royalties should mean that refund requests are infrequent. Satellite carriers should make fewer errors compared to cable systems and the review of the statements of account should take less time. The Office would compare the satellite carrier filing requirements to those relating to the jukebox compulsory license, for which a 30 day refund period has been found reasonable.

For these reasons, the Copyright Office adopts the proposed regulation which requires requests for refunds to be received in the Office within 30 days from the last day of the applicable statement of account filing period.

4. Assessment of Interest on Late Payments, Underpayments, or Refunds

The proposed regulations contained no reference to assessment of interest on late royalty payments or underpayments. However, one commentator, the Program Suppliers, recommended that the Office address the issue, suggesting not only that interest be assessed on late payments, but also that the Office pay interest on any amounts refunded to satellite carriers properly and justifiably requesting refunds. The Copyright Office agrees that the issue of interest in relation to section 119 payments should be addressed.

The Copyright Office has decided that it should adopt an interest rule relating to section 119 royalty underpayments and late payments. Although the Copyright Act is silent on the question of interest in the context of underpayments, the Office believes its general rulemaking authority, when read in the light of the decision in *Cablevision Systems Development Corp.* v. *Motion Picture Association of America,* 836 F.2d 599, 610 (D.C. Cir.), *cert. denied,* ___ U.S. ___ (1988), provides the necessary authority for the Office to consider and adopt an interest rule for the satellite carrier statutory license. The Copyright Act, 17 U.S.C. 702, provides that "[t]he Register of Copyrights is authorized to establish regulations not inconsistent with law for the administration of the functions and duties made the responsibility of the Register under this title." It is apparent that the operation of the statutory license and the collection of royalty funds is part of the functions and duties of the Register.

The goal of the statutory license is to guarantee that copyright owners receive full compensation for use of their works within the scheme of the license, while at the same time allowing private home viewers access to retransmitted signals they receive from satellite carriers that satisfy the terms of the license. When royalty payments are not made on time in accordance with the terms of the license, the goal of full compensation is frustrated and the copyright owners suffer from the present value loss of funds. The Copyright Office therefore concludes that it is consistent with the intention of Congress to impose a rule requiring interest payments on underpaid royalties pursuant to the satellite carrier statutory license.

As for the applicable rate of interest to be assessed on underpayments or late payments, the Office chooses a rate which most closely approximates the interest earned on royalty payments made within the accounting period filing dates. As a part of its standard practice, the Copyright Office will be making deposits of recently received royalty funds with the U.S. Treasury on the first business day after the close of an accounting filing period. The interest rate paid on that deposit is readily obtainable from the U.S. Treasury within a day or so of the deposit. The Office feels that making the Treasury rate applicable to all underpayments which resulted from satellite carrier retransmission to private dish owners during that accounting period most closely equals the amount of interest the underpaid royalties would have earned had they been paid in accordance with the accounting period filing deadlines. The one drawback of adopting such an interest rate is that it is not a fixed, predetermined rate. However, the Office concludes that this drawback is mitigated by the relative speed and certainty with which the Treasury interest rate is available to the Office and the public. Therefore, the interest rate applicable under section 119 shall be the interest rate paid by the Treasury on the royalty funds invested by the Copyright Office on the first business day after the close of the filing deadline for the accounting period with respect to which the underpayment occurs. The interest will begin to accrue starting on the first day after the close of the relevant accounting period filing deadline.

While the Copyright Office will be requiring interest on late payments and on underpaid royalties, it has concluded that it will not pay interest on refunds made to satellite carriers. Payment of interest on refunds made under section 119 is administratively impracticable. The Office is not obliged by statute to include an interest charge with refund payments. Satellite carriers can avoid making overpayments by careful review of statements of account before filing the statements. The Office concludes that the copyright owners, which will bear the administrative costs of the refund procedure, should not be required to bear the costs of interest assessment procedures as well. Satellite carriers submitting royalty payments in an untimely fashion must include the proper interest charge with each payment.

Satellite carriers must perform their own interest charge calculations and may obtain the proper interest rate for the applicable accounting period(s) by contacting the Licensing Division, United States Copyright Office, 101 Independence Avenue, SE., Washington, DC 20540, Telephone (202) 707–8150. Interest calculated in accordance with these regulations shall be compounded annually. The accrual period for a particular royalty payment being submitted by a satellite carrier in which interest is due shall end on the date appearing on the certified check, cashier's check, or money order submitted, provided that the payment is received by the Copyright Office within five business days of that date. If the payment is not received within five business days, then the accrual period shall end on the date of actual receipt by the Copyright Office.

5. Name and Address of Cable Systems Acting as Distributors

Program Suppliers suggested additional reporting requirements be added to satellite carriers' statement of account forms, and cable television compulsory licensing statements of account as well. In particular, they suggest that satellite carriers be required to submit with their statement of account forms the names and addresses of cable television systems that also serve as "distributors" as defined in section 119(d)(1). The information could be used to verify that cable systems correctly excluded revenues from "private home viewing" as defined in section 119(d)(5), from the subscriber and the gross receipts calculations used for reporting and payment purposes under section 111.

The Copyright Office acknowledges that copyright owners and cable television systems may want such information made available to them in order to verify that cable systems that also function as section 119 "distributors" have reported correctly. The Office concludes that the best place for verification of the correct allocation of royalty fee payments under sections 111 and 119 would be on the cable television statement of account forms alone. With respect to the satellite carrier form, the suggested listing is rejected as a burdensome reporting requirement for satellite carrier owners. The Copyright Office will consider the best way to amend the cable television statement of account forms to facilitate proper allocation of royalty payments under sections 111 and 119.

6. Computation of Subscriber Numbers for Statement of Account Filings

This issue received the greatest attention from commentators. Initially Program Suppliers and copyright owners agreed with the system proposed by the Copyright Office, and satellite carriers did not.

The proposed regulation would have directed that royalty fees be calculated on a monthly basis such that any subscribers receiving a network station or superstation signal from a satellite carrier for *any period* of each month must be included in the monthly calculation for that signal. This approach was fully supported by the Professional Sports Leagues, and backed in a general way by Program Suppliers and ASCAP.

Netlink, Southern and United Video all objected to the proposed method of calculation. Southern called the method "unreasonable," and suggested instead calculating the royalty fee by using the average number of subscribers receiving each signal each month. United Video termed the proposed method of calculation "inconsistent with the intent of the * * * Act," and said the proposed method would result in "unnecessary, expensive and difficult recordkeeping by the carriers." United Video recommended using subscriber numbers calculated at the end of each month, since business records and subscriber information are maintained on a monthly rather than daily basis. Netlink called the proposed method of fee calculation inefficient, unfair, and "inconsistent with the intent of the Act." It proposed using the average number of subscribers per month, saying this would be easier for carriers to calculate, and would be "more representative of the actual use of the signal." In the alternative, Netlink suggested using the number of subscribers as determined on the last day of each month.

On April 25, 1989, the Copyright Office received Program Suppliers' reply comments to the original set of comments. The Program Suppliers made specific comments about calculation of the number of subscribers each month for royalty fee purposes. One method which had been suggested, that of using the average number of subscribers per month, was not appealing to Program Suppliers, who commented there was no wording in the Act itself to suggest averaging monthly subscriber numbers. They also commented that because various methodologies could be used to average subscribers, there was a distinct possibility of future disputes about royalty payments.

Program Suppliers then recommended that the Copyright Office adopt a regulation which designates a specific date each month as the date on which to take a subscriber count. The example they used was the last day of the month.

The Copyright Office notes that with the addition of the Program Suppliers latest comments, the parties that addressed the issue of the method of counting subscribers each month are in agreement, except for the Professional Sports Leagues.

The Copyright Office has carefully reviewed the comments and suggestions regarding the method of calculating royalty fee payments under the Satellite

Home Viewer Act of 1988, and has reviewed the legislative history of the Act and the language of the Act itself. The goal of section 119 is to guarantee that copyright owners receive full compensation for the use of their works while allowing access to retransmitted network station and superstation signals for private home dish subscribers. An additional goal is establishment of royalty fee rates set by voluntary negotiation as instituted by section 119(c)(2). When satellite carriers and copyright owners agree on a rate to be paid under section 119(c)(2), they may use whatever method of calculation they can agree to.

Satellite carriers and major representatives of copyright owners have basically agreed in their comments on terms by which to calculate royalty fees initially, that is, to set a specific point in time within the month from which to count the number of subscribers that month. The Office at this time sets the last day of the month as the date on which the subscriber count must be based for royalty fee calculations. However, the Office will not hesitate to revisit this question should any party come forward with specific examples of unfairness or manipulation resulting from using subscriber numbers taken by satellite carriers on the last day of each month for use in calculating semiannual royalty fee payments.

7. Status of Public Broadcasting Service Under Section 119

PBS submitted comments devoted entirely to the question of the status of PBS as a network station or a superstation under the Act. No other commentator discussed this topic. This proved to be a thorny issue, as it is difficult to reconcile the language in the text of the statute itself with language contained in part of the legislative history. More specifically, the House Energy and Commerce Committee's report contained one specific reference to PBS as a "network station." [1] On the authority of that one specific reference to PBS as a network station, the Copyright Office initially concluded that PBS should be treated as a network. 54 FR 8350, 8352.

However, PBS demonstrated in its comments that according to the definitions of "network station" and "superstation" in the Act, and according to language found throughout the House Judiciary Committee report and hearings on the Act, references to network stations meant the three commercial network stations only. PBS argued that "as a *legal* matter, it is clear that PBS stations are 'superstations' and not 'network stations' under the Act." The Copyright Office, after conducting a thorough review of the Act and its history, agrees with PBS on this point.

Having argued that PBS stations are legally superstations under the Act, PBS next commented that it nevertheless wants the same treatment for PBS stations as network stations receive under the Act. That is, PBS contends that retransmission of PBS member stations under section 119 should be confined to homes in "unserved areas," as defined in the Act. PBS also contends that the three cent royalty rate applies for retransmission of PBS stations, rather than the twelve cent rate for retransmission of superstations.

The Copyright Office concludes that there is a need to clarify the status of PBS stations under the Act, and the Office recommends that Congress should legislate at an appropriate time. Until there is Congressional clarification regarding the treatment of PBS in the Act, PBS is advised to take the following action. To be treated as the networks are treated, PBS should follow the same filing requirements that networks must follow. According to section 119(a)(2)(C), networks must place on file with the Copyright Office a document identifying the name and address of the person at the network to whom satellite carriers must send notice of retransmission. The network notice should contain the name of the network, the contact person, a full mailing address and phone number. The notice should be sent to Walter Sampson, Chief, Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557, or, if hand delivered, Licensing Division, Madison Building, Room LM-458, 101 Independence Avenue, SE., Washington, DC 20557 for placement in the public file. Thereafter, satellite carriers making secondary transmissions of PBS stations should file subscriber lists with PBS in the manner set forth in section 119(a)(2)(C).

Until Congress clarifies the status of PBS in the Act, the Copyright Office will accept filings from satellite carriers using either the three cent royalty rate or the twelve cent royalty rate as applied to secondary transmissions of PBS stations. The Office recommends to Congress that the definition of "network station" in section 119(d)(2) be changed to: "The term 'network station' means a television broadcast station that is a member station of the Public Broadcasting Service, or a television broadcast station that is owned or operated by, or affiliated with, one or more of the television networks in the United States providing nationwide transmissions, and that transmits a substantial part of that station's typical broadcast day."

Regulatory Flexibility Act Statement

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (Title 5, Chapter 5 of the U.S. Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since the Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[2]

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant impact on small businesses.

List of Subjects in 37 CFR Part 201

Satellite carrier license.

Final Regulations

In consideration of the foregoing, the Copyright Office is amending Part 201 of 37 CFR, Chapter II in the manner set forth below.

PART 201—[AMENDED]

1. The authority citation for Part 201 continues to read as follows:

Authority: Copyright Act, Pub. L. 94-553, 90 Stat. 2541 (17 U.S.C. 702), as amended by Pub. L. 100-667.

[1] "* * * the new statutory license for retransmission of network stations applies, at the present time, exclusively to those stations owned by or affiliated with the three major commercial networks (ABC, CBS, and NBC) and the stations associated with the Public Broadcasting Service." 134 Cong. Rec. 10426, 100th Cong., 2d Sess. (October 19, 1988).

[2] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e., "all actions taken by the Register of Copyrights under this title (17), except with respect to the making of copies of copyright deposits"). (17 U.S.C. 708(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

2. Section 201.11 is added to read as follows:

§ 201.11 Satellite carrier statements of account covering statutory licenses for secondary transmissions for private home viewing.

(a) *General.* This section prescribes rules pertaining to the deposit of Statements of Account and royalty fees in the Copyright Office as required by the satellite carrier license of section 119(b)(1) of Title 17 of the United States Code, as amended by Pub. L. 100-667, in order that certain secondary transmissions by satellite carriers for private home viewing be subject to statutory licensing.

(b) *Definitions.* (1) The terms "distributor," "network station," "private home viewing," "satellite carrier," "subscriber," "superstation," and "unserved household" have the meanings set forth in section 119(d) of title 17 of the United States Code, as amended by Pub. L. 100-667.

(2) The terms "primary transmission" and "secondary transmission" have the meanings set forth in section 111(f) of title 17 of the United States Code.

(c) *Accounting periods and deposit.* (1) Statements of Account shall cover semiannual accounting periods of January 1 through June 30, and July 1 through December 31, and shall be deposited in the Copyright Office, together with the total statutory royalty fee or the confirmed arbitration royalty fee for such accounting periods as prescribed by section 119(b)(1)(B) and (c)(3) of title 17, by not later than July 30, if the Statement of Account covers the January 1 through June 30 accounting period, and by not later than the immediately following January 30, if the Statement of Account covers the July 1 through December 31 accounting period.

(2) Upon receiving a Statement of Account and royalty fee, the Copyright Office will make an official record of the actual date when such statement and fee were physically received in the Copyright Office. Thereafter, the Licensing Division of the Copyright Office will examine the statement and fee for obvious errors or omissions appearing on the face of the documents, and will require that any such obvious errors or omissions be corrected before final processing of the documents is completed. If, as the result of communications between the Copyright Office and the satellite carrier, an additional fee is deposited or changes or additions are made in the Statement of Account, the date that additional deposit or information was actually received in the Office will be added to the official record of the case. However, completion by the Copyright Office of the final processing of a Statement of Account and royalty fee deposit shall establish only the fact of such completion and the date or dates of receipt shown in the official record. It shall in no case be considered a determination that the Statement of Account was, in fact, properly prepared and accurate, that the correct amount of the royalty fee had been deposited, that the statutory time limits for filing had been met, or that any other requirements to qualify for a statutory license have been satisfied.

(3) Statements of Account and royalty fees received before the end of the particular accounting period they purport to cover will not be processed by the Copyright Office. Statements of Account and royalty fees received after the filing deadlines of July 31 or January 31, respectively, will be accepted for whatever legal effect they may have, if any.

(d) *Forms.* (1) Each Statement of Account shall be furnished on an appropriate form prescribed by the Copyright Office, and shall contain the information required by that form and its accompanying instructions. Computation of the copyright royalty fee shall be in accordance with the procedures set forth in the forms. Copies of Statement of Account forms are available free upon request to the Licensing Division, United States Copyright Office, Library of Congress, Washington, DC 20557.

(2) The form prescribed by the Copyright Office is designated "Statement of Account for Secondary Transmissions by Satellite Carriers to Home Viewers."

(e) *Contents.* Each Statement of Account shall contain the following information:

(1) A clear designation of the accounting period covered by the Statement.

(2) The designation "Owner" followed by:

(i) The full legal name of the satellite carrier. If the owner is a partnership, the name of the partnership is to be followed by the name of at least one individual partner;

(ii) Any other name or names under which the owner conducts the business of the satellite carrier; and (iii) The full mailing address of the owner. Ownership, other names under which the owner conducts the business of the satellite carrier, and the owner's mailing address shall reflect facts existing on the last day of the accounting period covered by the Statement of Account.

(3) The designation "Primary Transmitters," followed by the call signs, broadcast channel numbers, station locations (city and state of license), and a notation whether that primary transmitter is a "super station" or "network station" transmitted to any or all of the subscribers of the satellite carrier during any portion of the period covered by the Statement of Account.

(4) The designation "Superstations," followed by:

(i) The call sign of each superstation signal carried for each month of the period covered by the Statement, and

(ii) The total number of subscribers to each superstation for each month of the period covered by the Statement. This number is the number of subscribers to each superstation receiving the retransmission on the last day of each month.

(5) The designation "Network Stations," followed by:

(i) The call sign of each network station carried for each month of the period covered by the Statement, and

(ii) The total number of subscribers to each network station for each month of the period covered by the Statement. This number is the number of subscribers to each network station receiving the retransmission on the last day of each month.

(6) The total number of subscribers to each superstation for the six-month period covered by the Statement multiplied by the statutory royalty rate of twelve (12) cents per subscriber (or in lieu thereof, the arbitrated rate, if applicable).

(7) The total number of subscribers to each network station for the six-month period covered by the Statement multiplied by the statutory royalty rate of three (3) cents per subscriber (or, in lieu thereof, the arbitrated rate, if applicable).

(8) The name, address, business title, and telephone number of the individual or individuals to be contacted for information or questions concerning the content of the Statement of Account.

(9) The handwritten signature of:

(i) The owner of the satellite carrier or a duly authorized agent of the owner, if the owner is not a partnership or a corporation; or

(ii) A partner, if the owner is a partnership; or

(iii) An officer of the corporation, if the owner is a corporation. The signature shall be accompanied by:

(A) The printed or typewritten name of the person signing the Statement of Account;

(B) The date of signature;

(C) If the owner of the satellite carrier is a partnership or a corporation, by the title or official position held in the

partnership or corporation by the person signing the Statement of Account;

(D) A certification of the capacity of the person signing; and

(E) The following statement:

I, the undersigned Owner or Agent of the Satellite Carrier, or Officer or Partner, if the Satellite Carrier is a Corporation or Partnership,
have examined this Statement of Account and hereby declare under penalty of law that all statements of fact contained herein are true, complete, and correct to the best of my knowledge, information, and belief, and are made in good faith.
[18 U.S.C., section 1001 (1986)]

(f) *Royalty fee payment.* The royalty fee payable for the period covered by the Statement of Account shall accompany that Statement of Account, and shall be deposited at the Copyright Office with it. Payment must be in the form of a certified check, cashier's check, or money order, payable to: Register of Copyrights.

(g) *Corrections, supplemental payments, and refunds.* (1) Upon compliance with the procedures and within the time limits set forth in paragraph (g)(3) of this section, corrections to Statements of Account will be placed on record, supplemental royalty fee payments will be received for deposit, or refunds will be issued, in the following cases:

(i) Where, with respect to the accounting period covered by a Statement of Account, any of the information given in the Statement filed in the Copyright Office is incorrect or incomplete; or

(ii) Where calculation of the royalty fee payable for a particular accounting period was incorrect, and the amount deposited in the Copyright Office for that period was either too high or too low.

(2) Corrections to Statements of Account will not be placed on record, supplemental royalty fee payments will not be received for deposit, and refunds will not be issued, where the information in the Statements of Account, the royalty fee calculations, or the payments were correct as of the date on which the accounting period ended, but changes (for example, addition or deletion of a signal) took place later.

(3) Requests that corrections to a Statement of Account be placed on record, that fee payments be accepted, or requests for the issuance of refunds, shall be made only in the cases mentioned in paragraph (g)(1) of this section. Such requests shall be addressed to the Licensing Division of the Copyright Office, and shall meet the following conditions:

(i) The request must be in writing, must clearly identify its purpose, and, in the case of a request for a refund, must be received in the Copyright Office before the expiration of 30 days from the last day of the applicable Statement of Account filing period, as provided for in paragraph (c)(1) of this section. A telegraphic or similar unsigned communication will be considered to meet this requirement if it clearly identifies the basis of the request, if it is received in the Copyright Office within the required 30-day period, and if a written request meeting all the conditions of this paragraph (g)(3) is also received in the Copyright Office within 14 days after the end of such 30-day period:

(ii) The Statement of Account to which the request pertains must be sufficiently identified in the request (by inclusion of the name of the owner of the satellite carrier and the accounting period in question) so that it can be readily located in the records of the Copyright Office;

(iii) The request must contain a clear statement of the facts on which it is based, in accordance with the following requirements:

(A) In the case of a request filed under paragraph (g)(1)(i) of this section, where the information given in the Statement of Account is incorrect or incomplete, the request must clearly identify the erroneous or incomplete information and provide the correct or additional information:

(B) In the case of a request filed under paragraph (g)(1)(ii) of this section, where the royalty fee was miscalculated and the amount deposited in the Copyright Office was either too high or too low, the request must be accompanied by an affidavit under the official seal of any officer authorized to administer oaths within the United States, or a statement in accordance with section 1746 of Title 28 of the United States Code, made and signed in accordance with paragraph (e)(14) of this section. The affidavit or statement shall describe the reasons why the royalty fee was improperly calculated and include a detailed analysis of the proper royalty calculation.

(iv)(A) All requests filed under this paragraph (g) must be accompanied by a filing fee in the amount of $15 for each Statement of Account involved. Payment of this fee may be in the form of a personal or company check, or of a certified check, cashier's check or money order, payable to: Register of Copyrights. No request will be processed until the appropriate filing fees are received.

(B) All requests that a supplemental royalty fee payment be received for deposit under this paragraph (g) must be accompanied by a remittance in the full amount of such fee. Payment of the supplemental royalty fee must be in the form of certified check, cashier's check, or money order, payable to: Register of Copyrights. No such request will be processed until an acceptable remittance in the full amount of the supplemental royalty fee has been received.

(v) All requests submitted under this paragraph (g) must be signed by the satellite carrier owner named in the Statement of Account, or the duly authorized agent of the owner, in accordance with paragraph (e)(10) of this section.

(vi) A request for a refund is not necessary where the Licensing Division, during its examination of a Statement of Account or related document, discovers an error that has resulted in a royalty overpayment. In this case, the Licensing Division will forward the royalty refund to the satellite carrier owned named in the Statement of Account without regard to the time limitations provided for in paragraph (g)(3)(i) of this section.

(4) Following final processing, all requests submitted under this paragraph (g) will be filed with the original Statement of Account in the records of the Copyright Office. Nothing contained in this paragraph shall be considered to relieve satellite carriers from their full obligations under Title 17 of the United States Code, and the filing of a correction or supplemental payment shall have only such effect as may be attributed to it by a court of competent jurisdiction.

(h) *Interest.* (1) Royalty fee payments submitted as a result of late or amended filings will include interest. Interest will begin to accrue beginning on the first day after the close of the period for filing statements of account for all underpayments or late payments of royalties for the satellite carrier statutory license for secondary transmissions for private home viewing occurring within that accounting period. The accrual period will end on the date appearing on the certified check, cashier's check, or money order submitted by a satellite carrier, provided that such payment is received by the Copyright Office within five business days of that date. If the payment is not received by the Copyright Office within five business days of its date, the accrual period will end on the date of actual receipt by the Copyright Office.

(2) The interest rate applicable to a specific accounting period will be determined by reference to the interest rate paid by the United States Treasury on the first investment of royalty fees made by the Copyright Office with the Treasury after the close of that accounting period. The interest rate paid by the Treasury for a particular accounting period may be obtained by contacting the Licensing Division of the Copyright Office.

(3) Interest is not required to be paid on any royalty underpayment from a particular accounting period if the sum of that underpayment is less than or equal to five dollars ($5.00).

Ralph Oman,
Register of Copyrights.

Approved by:
James H. Billington,
The Librarian of Congress.

[FR Doc. 89-15590 Filed 6-30-89; 8:45 am]
BILLING CODE 1410-09-M

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service hereby describes the numerous miscellaneous revisions consolidated in the Transmittal Letter for issue 31 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations, see 39 CFR 111.1.

Most of the revisions are minor, editorial, or clarifying. Substantive changes, such as an optional new claims sampling procedure for mailers who file large numbers of COD claims annually, the revised regulations on reevaluating a publication's eligibility for second-class rates when considering an application to reenter the publication with a new title, a different office of publicaiton, or a different frequency of issuance, and the revised regulations on paper stock requirements for business reply cards processed under the automated Business Reply Mail Accounting System, have previously been published in the **Federal Register.**

EFFECTIVE DATE: June 18, 1989.

FOR FURTHER INFORMATION CONTACT: Paul J. Kemp, (202) 268-2960.

SUPPLEMENTARY INFORMATION: The Domestic Mail Manual has been amended by the publication of a transmittal letter for issue 31, dated June 18, 1989. The text of all published changes is filed with the Director of the Federal Register. Subscribers to the Domestic Mail Manual receive these amendments automatically from the Government Printing Office.

The following excerpt from the Summary of Changes section of the transmittal letter for issue 31 covers the minor changes not previously described in interim or final rules published in the **Federal Register.**

Summary of Changes

In Chapter 1, *First-Class mail*, section 122.15, *Return Address*, is revised to no longer require the name of the sender unless it is specifically prescribed elsewhere in the DMM. Also, in 122.17, *Endorsements*, the word *full* is deleted from the second sentence and other text is added to sections 122.32 and 122.35 to accommodate this revision. These changes are made to permit senders to omit their names as part of their return addresses and to ease compliance with the provisions of the Federal Fair Debt Collection Practices Act that pertains to mail sent by debt collection agencies (PB 21716, 3-16-89).

Section 122.412, *City Routes and Post Office Boxholders*, is revised to include in its provisions the governments of United States territories and possessions listed in 111.2a. This revision will permit use of the simplified address by the governments of Guam, U.S. Virgin Islands, and others in 111.2a not previously included in 122.412 (PB 21723, 5-4-89).

Sections 122.422 and 153.11, Exhibit 159.14, and, in Chapter 4, sections 423.121, 423.122, 423.125, 423.421 and 472.2 are revised to clarify the use of exceptional forms of address, to specifically provide that certain second-class mail may bear an exception form of address, and to provide instructions concerning the provision of address correction service for such second-class mail.

Section 122.422 is revised to clarify when a mailer may use an exceptional form of address and the consequences of such use. Revised sections 122.422, 423.121, 423.125, and 423.421 make clear that copies of second-class publications may be distributed with an exceptional form of address if they are not counted as subscriber or requester copies. Such addressing is inconsistent with the concept that subscriber/requester copies are sent to persons who have voluntarily chosen to subscribe to (or request delivery of) the publication. Continued receipt of the publication after a customer move is a critical element in demonstrating that voluntary undertaking. For that reason, the Postal Service provides 60 days of free forwarding followed by the issuance of an address correction notice to the publisher to ensure that subscribers/requesters who move will continue to receive their second-class publications.

The address correction clarification for second-class mail is needed because mail bearing an exceptional address format may not normally carry postal endorsements for ancillary services, including mailer requests for the reason for nondelivery, yet that service is mandatory for second-class mail. The revisions to section 122.422 and Exhibit 159.14 make it clear that publishers who mail copies of second-class publications bearing an exceptional form of address will only receive information pertaining to the reason for nondelivery when those copies are undeliverable as addressed because of reasons other than a customer move.

Examples of such instances are when a building has been razed or the address in question is vacant (PB 21721, 4-20-89).

In section 137.252, *Agency Authorization Codes*, the agency code listing showing permit imprint number, business reply mail permit number and sampling (RPW) number is updated.

In part 143, *Precanceled Stamps*, section 143.177, *Return Address*, is revised to allow pieces bearing precanceled stamps to be endorsed *Mailed from ZIP Code*, followed by the ZIP Code assigned to the postmaster of the office of mailing, when the return address on the mailpieces is not within the delivery area of the post office of mailing. (PB 21719, 4-6-89).

* * * * *

Section 159, *Undeliverable Mail*, is revised to incorporate revised procedures for handling Express Mail, small quantities of dead mail, and post or postal cards. Specifically, section 159.47 is changed to: (1) provide for sending dead Express Mail service shipments by Express Mail service through the management sectional center Express Mail service office to attempt to locate the addressee before sending it to the dead mail branch; (2) allow post offices to dispose of undeliverable postcards and postal cards, that are not sealed against inspection, without forwarding them to dead letter offices; and (3) allow for the consolidation of small quantities of First-Class Mail being sent to dead letter offices through sectional center facilities (PB 21719, 4-6-89).

Mailer endorsements in Exhibits 159.151a, 159.151c, and 159.151d, regulating treatment of undeliverable Express Mail and First-Class Mail and third-class bulk business mail are revised to clarify the interpretation of allowable mailer endorsements. No substantive change has been made (PB 21721, 4-20-89).

In Chapter 2, part 226 *Express Mail Military Service*, is revised to include three-day service, Custom Designed, and Drop Shipment options (PB 21722, 4-27-89).

* * * * *

Sections 429.13 and 429.161 are revised to clarify that it is permissible for publishers of second-class publications to include printed matter relating exclusively to receipts and orders for subscriptions as part of those receipts and orders (PB 21721, 4-20-89).

Section 441.232b(2), *Clean Address Required*, is revised to recommend, rather than require, that a blank line be left between the address block and the optional endorsement line (PB 21723, 5-4-89).

In Chapter 6, *Third-Class Mail*, section 622.3 is revised. In addition to encouraging mailers of bulk third-class matter to combine their mailings whenever possible, the revision will clearly describe the restrictions that apply to such merged mailings so that both mailers and postal employees will know the appropriate requirements (PB 21719, 4-6-89).

Sections 667.131, 667.321, and 667.42 are revised to clarify that mailers must prepare sacks whenever there are either 125 pieces or 15 pounds of mail, *whichever occurs first* (PB 21719, 4-6-89).

In Chapter 7, *Fourth-Class Mail*, section 723.3 is revised to make it clear that any printed matter which would be mailable as third-class mail, whether advertising or nonadvertising, can be enclosed with bound printed matter (PB 21719, 4-6-89).

* * * * *

In section 917.527e, the word *negatives* is deleted because the Postal Service no longer provides negatives, only positives for printing the FIM pattern and barcode.

In part 940, *Money Orders*, section 941.152a(3) is revised by the addition of a sentence stating that each clerk must identify and submit the spoiled money orders as a separate group to a verifying manager or designated employee, who must then destroy the spoiled money orders (PB 21717, 3-23-89).

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. In consideration of the foregoing, the table at the end of § 111.3(e) is amended by adding at the end thereof the following:

§ 111.3 Amendments to the Domestic Mail Manual.

* * * * *

Transmittal letter for issue	Dated	Federal Register publication
*	*	*
31	June 16, 1989	54 FR . . .

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 89-15618 Filed 6-30-89; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3610-6]

Approval and Promulgation of State Implementation Plans; Colorado, Utah and Wyoming

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is today acknowledging the clarifications, from the States of Colorado, Utah and Wyoming, of the generalized language in their regulations pertaining to modeling. Colorado, Utah and Wyoming have clarified that the generalized language in their regulations means that prevention of significant deterioration (PSD) reviews will utilize the "guidelines on air quality models (revised)," (1986) EPA 450/2-78-027R, and Supplement A (1987) to the revised guidelines.

DATES: This action will become effective on September 1, 1989 unless notice is received by August 2, 1989 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the revisions are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202-2405

Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202-2405, (303) 293-1814, FTS 564-1814.

SUPPLEMENTARY INFORMATION: Section 165(e)(3)(D) of the Clean Air Act (Act) requires the Administrator to adopt regulations specifying, with reasonable particularity, models to be used to comply with the Act's PSD requirements. To carry out these requirements, the 1978 "Guidelines on Air Quality Models" was incorporated by reference into 40 CFR 51.24 (now re-numbered 51.166) and 40 CFR 52.21. On September 9, 1986 (51 FR 32176), EPA promulgated amendments to 40 CFR 51.24 (now 51.166) and 52.21 to substitute by reference the "Guidelines on Air Quality Models (Revised)," (1986) EPA 450/2-78-027R, in these regulations. EPA promulgated amendments to 40 CFR 51.166 and 52.21 to add Supplement A (1987) to the "Guidelines on Air Quality Models (Revised) (1986)" on January 6, 1988 (53 FR 392). This means that all modeling done pursuant to the PSD requirements must either comply with the 1986 version of the modeling guideline and Supplement A (1987) or be specifically approved by EPA; modeling done pursuant to the 1978 guidelines may no longer be accepted.

A review of the Colorado, Utah and Wyoming PSD regulations categorized these States as ones which regulations did not specifically preclude them from using the revised modeling guidelines, i.e., their regulations were written in a generalized manner so as not to specify any particular year or version of the modeling guidelines.

Colorado, Utah and Wyoming were asked to submit a letter of interpretation clarifying that the generalized language in their regulations now means that all PSD permit reviews will comply with the use of the above revised guideline models or models otherwise approved by EPA. Colorado, Utah and Wyoming submitted such letters of interpretation on May 22, 1987, May 26, 1987, and May 27, 1987, respectively.

Subsequent to the States submitting the above-mentioned interpretation letters, EPA promulgated Supplement A (1987) to the "Guidelines on Air Quality Models (Revised) (1986)" on January 6, 1988 (53 FR 392). Supplement A adds four models to the modeling guidelines.

Because Colorado, Utah, and Wyoming's previous letters of interpretation were specific enough to mention only the revised guidelines and were not flexible enough to permit EPA to assume that Supplement A (1987) would also be utilized in PSD permit reviews, EPA requested these States to submit another letter of interpretation clarifying the generalized language in their regulations. That is, such letters were to clarify that the generalized language means that all PSD permit reviews will comply with the 1986 revised modeling guidelines and Supplement A (1987) or other models otherwise approved for use by EPA. Colorado, Utah and Wyoming submitted such letters of interpretation on May 19, 1989, May 26, 1989, and May 18, 1989, respectively. In the Colorado letter of interpretation, the State indicated any future revisions (including appendices or supplement) will be incorporated into the Air Pollution Control Division's protocol for reviewing modeling for PSD permits. In the Utah letter of interpretation, the State indicated that it would also utilize any future supplements to the "Guidelines on Air Quality Models (Revised)" approved by EPA. In the Wyoming letter of interpretation, the State indicated that it would utilize any future revisions to the Guideline in PSD permitting reviews as revisions become effective.

Final Action

EPA is acknowledging the clarifications, from the States of Colorado, Utah and Wyoming, of the generalized language in their regulations pertaining to modeling. EPA has determined that Colorado, Utah and Wyoming will utilize the "Guidelines on Air Quality Models (Revised)," (1986) EPA 450/2-78-027R, Supplement A (1987), and any future revisions or supplements to the revised Guidelines, when reviewing PSD permits.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of the Federal Register notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another notice will begin rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective September 1, 1989.

EPA finds good cause for making the action taken in this notice immediately effective because the implementation plan revisions are already in effect under State law or regulation and EPA's approval poses no additional regulatory burden.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 1, 1989. This action may not be challenged later in proceedings to enforce its requirement [see Act section 307(b)(2)].

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control.

Date: June 15, 1989.

Jack McGraw,

Acting for the Regional Administrator.

Part 52 Chapter I, Title 40 of the *Code of Federal Regulations* is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7462.

Subpart G—(Colorado)

2. Section 52.343 is amended by adding paragraph (c) as follows:

§ 52.343 Significant deterioration of air quality.

* * * * *

(c) The State of Colorado has clarified the generalized language contained in the Colorado Air Quality Control Regulations on the use of "applicable air quality models." In a letter to Douglas M. Skie, EPA, dated May 19, 1989, Bradley J. Beckham, Director of the Air Pollution Control Division stated:

* * * All PSD permits reviewed by the Division will use the revised modeling guideline mentioned above [Guideline on Air Quality Models (Revised), EPA 450/2-78-027R including Supplement A (July 1987)] for determining if the air quality models, data bases, and other requirements are generally approved by EPA. Any future revisions (including appendices or supplement) will be incorporated into the Division's protocol for reviewing modeling for PSD permits.

Subpart TT—(Utah)

3. Section 52.2346 is amended by adding paragraph (c) as follows:

§ 52.2346 Significant deterioration of air quality.

* * * * *

(c) The State of Utah has clarified the generalized language contained in the Utah Air Conservation Regulations on the use of the "Guidelines on Air Quality Models." In a letter to Douglas M. Skie, EPA, dated May 26, 1989, F. Burnell Cordner, Director of the Bureau of Air Quality stated:

* * * The language in section 3.7 of the Utah Air Conservation Regulations on the use of "Guidelines on Air Quality Models" means that all PSD permit reviews will comply with the use of the "Guideline on Air Quality Models (Revised)", EPA 450/2-78-027R, and any future supplements approved by EPA.

Subpart ZZ—(Wyoming)

4. Section 52.2630 is amended by adding paragraph (c) as follows:

§ 52.2630 Prevention of significant deterioration of air quality.

* * * * *

(c) The State of Wyoming has clarified the generalized language contained in section 24 of the Wyoming Air Quality Standards and Regulations on the use of the "Guidelines for Air Quality Models." In a letter to Douglas M. Skie, EPA, dated May 18, 1989, Charles A. Collins, Administrator of the Air Quality Divisions stated:

* * * The Division, will, as a matter of practice, utilize the "Guideline on Air Quality Models" as revised, including Supplement A, in all PSD permit application reviews. The Division will utilize any future revisions to the Guideline in PSD permitting reviews as revisions become effective.

[FR Doc. 89-15556 Filed 6-30-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192, 193, and 195

[Docket No. PS-106, Amdt. No. 192-54, 193-6, and 195-41]

RIN 2137-AB68

Incorporation by Reference of Portions of American Petroleum Institute Standard 1104, Seventeenth Edition, 1988

AGENCY: Research and Special Programs Administration (RSPA).

ACTION: Final rule.

SUMMARY: This amendment updates to the 17th edition (1988) the existing incorporation by reference in the Federal pipeline safety standards of the American Petroleum Institute (API) Standard 1104, "Standard for Welding Pipelines and Related Facilities." The amendment makes no significant substantive change to those standards, but requires operators to use applicable provisions of the latest published edition of API Standard 1104.

EFFECTIVE DATE: This final rule becomes effective August 2, 1989.

FOR FURTHER INFORMATION CONTACT: Lloyd Ulrich, (202) 366-1640 regarding changes on safety standards, or the Dockets Unit, (202) 366-5046 for copies of this final rule or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

RSPA's safety standards for pipelines transporting gas or hazardous liquids and for LNG facilities incorporate by reference certain requirements of API Standard 1104. The gas pipeline safety standards in Part 192 incorporate by reference sections 3 and 6 of API Standard 1104 as standards for welder qualification (§§ 192.227 and 192.229) and section 6 as a weld acceptability standard (§ 192.241). In Part 193, which governs LNG facilities, certain welding procedures and welders must be qualified under API Standard 1104

(§ 193.2313), and certain weld defects and weld repair must meet API Standard 1104 criteria (§ 193.2321). With regard to the hazardous liquid pipeline safety standards in Part 195, section 3 of API Standard 1104 is referenced for welder qualification (§ 195.222), and the acceptability of welds must be determined under section 9 (§ 195.228).

The 1980 edition (15th edition) of API Standard 1104 is the latest edition referenced in Parts 192 and 195 as indicated by the listing in Appendix A to Part 192 and the listing in § 195.3. In Part 193, the 14th edition (1977) is the latest referenced, as indicated by Appendix A to Part 193. These editions have been superseded by the 17th edition (1988).

The following compares applicable provisions of the 17th edition with editions now referenced:

Section 2, concerning the qualification of welding procedures, has three revisions. The first clarifies that grinding is covered by the procedural requirement governing weld cleaning. The second clarifies that the width of tensile test specimens is not a precise dimension and may be approximately 1 inch. Finally, a clearer description is provided of acceptable bend test results.

The revisions to section 3 are minimal, and do not significantly affect the technological aspects of this welder qualification section. One revision specifically clarifies that for single qualification, a welder can make a butt weld either in the rolled or in the fixed position. Another revision to section 3 clarifies that a welder who passes a single qualification butt weld test in the fixed position with the axis inclined 45° from the horizontal plane is qualified to do butt welds in all positions.

Section 6, which provides acceptance standards for weld defects, was reorganized to eliminate possible confusion over which of the weld acceptance standards apply to each method of nondestructive testing: radiography, magnetic particle liquid penetrant, ultrasonic, and visual. A possible interpretation of the previous section 6 was that all the acceptance standards applied to all the methods of nondestructive testing, whereas methods other than radiography are incapable of detecting all the defects covered by the standards.

The only change to section 7, concerning the repair and removal of weld defects, adds a cross reference to the Appendix-Alternative Acceptance Standards for Girth Welds, which is not covered by this rulemaking, as discussed below.

On November 30, 1988, API petitioned RSPA to update to the 17th edition (1988) the references to API Standard 1104 P-36). API requested that in updating these references operators be permitted to use a fracture mechanics model set forth in an Appendix to the document as an alternative girth weld acceptance standard. The petition contains a report on the results of research API conducted to address safety concerns RSPA previously had raised about use of the model.

RSPA has reviewed API's petition, but believes that the fracture mechanics model cannot be adopted as a Federal alternative weld acceptance standard without first providing an opportunity for public comment. Thus, the Appendix to the 17th edition is the subject of a notice of proposed rulemaking scheduled for publication later this year.

The present rulemaking is intended to update to the 17th edition, except for the Appendix, the references to applicable provisions of API Standard 1104 in Parts 192, 193, and 195. Parts 192 and 195 refer to sections 3 and 6 of API Standard 1104, and these sections do not cross reference the Appendix. For these parts, the update is accomplished merely by adding "1988" in the place of "1980" in the appropriate listing in Appendix A to Part 192 and in § 195.3. In Part 193, applicable provisions of API Standard 1104 are not referenced by section number. Thus, for the Part 193 update, section II D.2. of Appendix A to Part 193 is being amended to except the Appendix to the 17th edition. As a result, where section 7 of the 17th edition of API Standard 1104 cross references the Appendix as an alternative method to dispose of weld cracks, this method is not permitted under Part 193.

Because incorporation by reference of applicable provisions of the 17th edition of API Standard 1104 would not make any significant changes to any of the substantive requirements of Parts 192, 193, and 195, RSPA has determined that notice and public procedure are unnecessary. Therefore, in accordance with 5 U.S.C. 553, the amendment is final.

The amendment will have an effect on the economy of less than $100 million a year, will result in a cost savings to consumers and industry, and will have no adverse effects. Hence, this action is not considered "major" under Executive Order 12291; nor is it "significant" under DOT procedures.

RSPA has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that it does not have sufficient federalism implications to warrant preparing a Federalism Assessment.

List of Subjects

49 CFR Part 192

Incorporation by reference, Pipeline safety, Steel pipe, Welding.

49 CFR Part 193

Incorporation by reference, LNG facilities, Pipeline safety, Welding, Tests.

49 CFR Part 195

Incorporation by reference, Pipeline safety, Steel pipe, Welding.

In consideration of the foregoing, Parts 192, 193, and 195 of Title 49 of the Code of Federal Regulations are amended as follows:

PART 192—[AMENDED]

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804; and 49 CFR 1.53.

Appendix A—[Amended]

2. In section II.A. of Appendix A, of Part 192 item (8) is amended by removing "(1980)" and adding in its place "(17th edition, 1988)."

PART 193—[AMENDED]

3. The authority citation for Part 193 is revised to read as follows:

Authority: 49 App. U.S.C. 1671 *et seq.*; and 49 CFR 1.53.

Appendix A [Amended]

4. In Section II.D. of Appendix A to Part 193, item 2 is amended by removing "(14th edition, 1977)" and adding in its place "(17th edition, 188, except the Appendix)."

PART 195—[AMENDED]

5. The authority citation for Part 195 continues to read as follows:

Authority: 49 App. U.S.C. 2002; and 49 CFR 1.53.

§ 195.3 [Amended]

6. Section 195.3(c)(1)(ii) is amended by removing "(1980)" and adding in its place "(17th edition, 1988)."

Issued in Washington, DC on June 26, 1989.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 89-15435 Filed 6-30-89; 8:45 am]

BILLING CODE 4910-60-M

Proposed Rules

Federal Register
Vol. 54, No. 126
Monday, July 3, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[TB-89-009]

Tobacco Inspection; Fees and Charges for Inspection and Grading of Imported Tobacco

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Tobacco Adjustment Act of 1983, as amended requires the Secretary of Agriculture to fix and collect fees and charges for the inspection and grading of all tobacco offered for importation into the United States, except cigar and oriental tobacco. This proposal would increase the fees charged to importers. The increased fees are necessary in order to cover the Department's costs of providing services under the Act.

DATE: Comments are due on or before August 2, 1989.

ADDRESS: Send comments to the Director, Tobacco Division, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456. Comments will be available for public inspection at this location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ernest Price, Director, Tobacco Division, AMS, USDA, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456. Telephone (202) 447-2567.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department proposes to amend the regulations governing the inspection of all imported tobacco, except cigar and oriental tobacco, to increase the fees for grading. The fee increase is necessary to cover the cost of providing the service, including administrative and supervisory costs. The authority for this proposed regulation is contained in the Tobacco Adjustment Act of 1983, as amended (7 U.S.C. 511r).

Imported tobacco is inspected for grade and quality using the same standards applied to tobacco marketed through a warehouse in the United States. Fees are assessed to cover the cost of providing this grading service. The fee for grading imported tobacco has been $.0035 per pound since 1984.

The Department proposes to increase the fee to $.0040 per pound. This fee was determined after an annual review and analysis was conducted of the financial status of the program. The major factors generating the need for additional funds are increases in salaries, travel allowances and overall administrative costs since 1984.

This proposed rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be "nonmajor" because it does not meet any of the criteria established for major rules under the Executive Order.

Additionally, in conformance with the provisions of Pub. L. 96-354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact on small business. Few, if any, of the firms which would be affected by this proposed regulation are small businesses. The Administrator, Agricultural Marketing Service, has determined that this action would have no significant economic impact upon any entity, small or large, and would not substantially affect the normal movement of the commodity in the marketplace. Compliance with this revision would not impose substantial direct economic costs, recordkeeping, or personnel workload changes on small entities, and it would not alter the market share or competitive positions of small entities relative to large entities. Furthermore, the Department is required by law to fix and collect fees and charges to cover the Department's cost in operating the tobacco inspection program.

All persons who desire to submit written data, views, or arguments for consideration in connection with this proposal may file them with the Director, Tobacco Division, AMS, USDA, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456, not later than August 2, 1989.

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Tobacco.

Accordingly, the Department proposes to amend the regulations in 7 CFR Part 29, Subpart B, as follows:

PART 29—[AMENDED]

1. The authority citation for Part 29, Subpart B, continues to read as follows:

Authority: 7 U.S.C. 511m and 511r.

Subpart B—Regulations

2. In § 29.500, paragraph (a) is revised to read as follows:

§ 29.500 Fees and Charges for Inspection and Testing of Imported Tobacco.

(a) The fee for inspection of imported tobacco is $.0040 per pound, and shall be paid by the importer. This inspection fee applies to all tobacco imported into the United States except as provided in § 29.400. Fees for services rendered shall be remitted by check or draft in accordance with a statement issued by the Director, and shall be made payable to "Agricultural Marketing Service".

* * * * *

Dated: June 27, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89-15596 Filed 6-30-89; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1762

Standard Forms of Telecommunications Contracts, Revision of REA Contract Form 515, Telephone System Construction Contract, Labor and Materials

AGENCY: Rural Electrification Administration, USDA

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend 7 CFR Part 1762. The purpose of amending 7 CFR Part 1762 is to announce a general revision of REA Contract Form 515, Telephone System

Construction Contract, Labor and Materials. The Contract Form 515 associated specifications are: REA Forms 515a, REA Specifications and Drawings for Construction of Direct Buried Plant (REA Bulletin 345–150); 515c, REA Specifications and Drawings for Conduit and Manhole Construction (REA Bulletin 345–151); 515d, REA Specifications and Drawings for Underground Cable Installation (REA Bulletin 345–152); 515f, REA Specifications and Drawings for Construction of Pole Lines and Aerial Cables (REA Bulletin 345–153); and 515g, REA Specifications and Drawings for Service Entrance and Station Protector Installation (REA Bulletin 345–154). These associated specifications are listed in 7 CFR Part 1772.

REA Contract Form 515 and its associated specifications were last revised in September 1979. Since that date, the telephone industry, construction materials, engineering designs and procedures, testing requirements, and construction methods have all changed significantly. The 515 forms need revision to incorporate these changes into the outside plant contract and specifications. The main changes to the contract proposed are the addition of new construction units for (1) buried filled fiber optic cable, (2) aerial filled fiber optic cable, (3) aerial filled cable, (4) fiber optic splicing, (5) network interface devices, (6) handholes, (7) underground fiber optic cable, and (8) insurance and bonding requirements. Proposed changes in the specifications will be covered in individual **Federal Register** Notices referenced to their respective REA bulletin listed in 7 CFR Part 1772. This action will make it possible for REA telephone borrowers to continue to provide their subscribers with the most modern and efficient telephone service.

DATE: Public comments must be received by REA no later than September 1, 1989.

ADDRESS: Submit written comments to William F. Albrecht, Director, Telecommunications Staff Division, Rural Electrification Administration, Room 2835, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500. Copies of the documents are available upon request from the above address. All written submissions made pursuant to this action will be made available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Garnett G. Adams, Chief, Outside Plant Branch, Telecommunications Staff Division, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382–8667. The Draft Impact Analysis describing the options considered in developing this proposed rule is available on request from the above mentioned individual.

SUPPLEMENTARY INFORMATION: This rule is issued in conformity with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, or productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this rule has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq. (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the final rule related Notice to 7 CFR 3015, Subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

The proposed rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1980 as amended. Existing requirements were approved by the Office of Management and Budget (OMB) under clearance number 0572–0062.

Background

REA has issued a series of 7 CFR Chapter XVII Parts which serve to implement the policies, procedures, and requirements for administering its loan and loan guarantee programs and the security instruments which provide for and secure REA financing. The purpose of the proposed revision to 7 CFR Part 1762 is to announce revisions of the Telephone System Construction Contract, Labor and Materials, REA Form 515. Revisions to 7 CFR Part 1772 will be published to revise the contract's associated specifications: REA Form 515a, covering the construction of direct buried plant; REA Form 515c, setting forth requirements for conduit and manhole construction; REA Form 515d, the specifications and drawings for underground cable installations; REA Form 515f, the specifications and drawings for construction of pole lines and aerial cable; and REA Form 515g, the specifications and drawings for service entrance and station protector installation. The 7 CFR Part 1762 also provides information as to where copies of the contract may be obtained and the price per copy, where applicable. REA Form 515 is a labor and materials contract wherein the contractor furnishes all labor and materials required for the construction of telephone outside plant facilities. REA telephone borrowers are required to use the Form 515 contract where major outside plant facilities are being constructed by the contract method. Since the current contract was issued in 1979, new construction materials, such as fiber optic cable, filled aerial cable, and network interface devices, have been introduced. These new materials require new construction and installation specifications. There are also changes that have been made in testing and grounding requirements and construction techniques. All these proposed additions and changes need to be made so that REA telephone borrowers can continue to provide their subscribers with the most up-to-date and efficient telephone service.

List of Subjects in 7 CFR Part 1762

Loan programs—communications, Telecommunications, Telephone.

In view of the above, REA is proposing to amend 7 CFR Part 1762 by issuing revised Form 515.

PART 1762—[AMENDED]

1. The authority cited for Part 1762 is revised to read as follows, and all authorities following the sections are removed.

Authority: 7 U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

2. The table in § 1762.01 would be amended by revising the entry for REA Form 515 to read as follows:

§ 1762.01 List of standard forms of telecommunications contracts.

* * * * *

515	2–89	Telephone System Construction (Labor and Material).	Contract	Telephone outside plant construction, including direct buried plant, conduit and manholes, underground cable, pole lines, aerial cable, service entrances and station protector.	Supt. of Doc., GPO, Wash., DC 20402 [3]

* * * * *

Dated: May 8, 1989.

Jack Van Mark,

Acting Administrator.

[FR Doc. 89–15595 Filed 6–30–89; 8:45 am]

BILLING CODES 3410–15–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 561, 563

[No. 89–1632]

RIN 3069–AA73

Regulatory Capital Requirements for Insured Institutions

Date: June 22, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Advance supplemental notice of proposed rulemaking.

SUMMARY: The Federal Home Loan Bank Board (the "Board") is today publishing for comment a description of proposed methodologies to be used in calculating the interest-rate-risk component of its recently proposed new regulatory capital requirements. Following receipt and consideration of public comments, the Board intends that this advance supplemental notice of proposed rulemaking will be followed by a notice of proposed rulemaking regarding amendments to the new risk-based capital regulations that will set forth the complete, detailed formulas and assumptions to be used in calculating the interest-rate-risk component of the capital requirement for each institution.

DATE: Comments must be received on or before August 2, 1989.

ADDRESS: Send comments to: Director, Information Services Division, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at Information Services, Federal Home Loan Bank Board, 801 17th Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Robert Fishman, Senior Policy Analyst, (202) 331–4592; John Robinson, Managing Director, (202) 331–4587; Office of Regulatory Activities, Federal Home Loan Bank System, 801 17th Street, NW., Washington, DC 20006; Donald Bisenius, Director, Financial Analysis Division, (202) 906–6759, Office of Policy and Economic Research; Andrew Gilbert, Attorney, (202) 906–6441; Theresa Stark, Attorney, (202) 906–7054; Deborah Dakin, Regulatory Counsel, (202) 906–6445; Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On December 23, 1988, the Board proposed to revise its regulations establishing capital requirements for thrift institutions. *See* 53 FR 51800 (Dec. 23, 1988). The proposed rule would establish risk-based capital requirements that ensure that institutions maintain the level of capital necessary for safe and sound operation. The proposal would set an institution's minimum required level of capital as the sum of three elements, with one component based on each of the following: credit risk, interest-rate risk, and collateralized borrowings.

The Board is proposing to incorporate an interest-rate-risk ("IRR") component based on a methodology that is superior to the method it has used heretofore to account for interest-rate risk in setting capital requirements. The new IRR component would replace the existing maturity-matching credit; this maturity gap technique was itself incorporated into the capital rules in 1986 as an evolutionary improvement over the original "qualifying balance deduction" that the Board had first used in 1980 to account for interest-rate risk. The proposed new IRR component relies on a methodology that would measure such risk based upon the institution's entire portfolio, rather than looking to just a specified list of assets during a particular time frame. *See* 53 FR at 51809–10.

The Board is today publishing for comment proposed methodologies to be used in calculating the interest-rate-risk exposure component of the proposed risk-based capital rule. A presentation of these possible methodologies is contained in Appendix A to this notice.

Discussion

Under proposed new § 563.13(c)(1)(ii), an institution's minimum regulatory capital requirement would incorporate a component equal to fifty percent of its interest-rate-risk exposure, as measured on the basis of the estimated potential decline in its market value of portfolio equity ("MVPE"). An institution's MVPE equals the aggregate market value of all its on- and off-balance sheet financial instruments; *i.e.*, the market value of assets, minus the market value of liabilities, plus the net market value of off-balance sheet items. The market value of a financial instrument changes as market interest rates change, and the greater the sensitivity of an instrument's market value to interest-rate changes, the greater is the interest-rate risk inherent in that instrument. Since, for most financial institutions, the value of the portfolio of financial instruments accounts for the predominant portion of the institution's total market value, a measurement of the MVPE sensitivity provides an excellent measure of the institution's exposure to interest-rate changes.[1]

In particular, proposed § 563.13(e) defines an institution's IRR exposure as the estimated decline in its MVPE that would result from an immediate and sustained 200 basis-point increase or decrease in interest rates. The proposed rule then prescribes the use of a discounted cash flow analysis in estimating the risk of decline in the institution's value; *i.e.*, the estimated decline in the MVPE will equal the present value of the change in present and future earnings that is projected to result from a sustained 200 basis-point change (up or down) in interest rates. These estimates will be based on the information reported by each institution regarding the outstanding balances, maturities, and interest rates for assets, liabilities and off-balance sheet items. For the purpose of better monitoring IRR sensitivity, section H of the Thrift Financial Report, which provides a quarterly snapshot of the institution's portfolio, was recently revised to expand and improve the quality of information tracked and reported by all institutions.[2]

[1] The Board is aware that there may be scenarios in which the interplay of the proposed interest-rate-risk calculation and the Board's policy statement in "Investment Portfolio Policy and Accounting Guidelines," Board Res. No. 89–1480, 54 FR 23457 (June 1, 1989), may cause an institution's regulatory capital requirement to increase while the value of its assets falls. We believe this is appropriate since the proposed interest-rate-risk calculation changes the capital requirement in response to the risk of future interest-rate movements and the impact on the institution. The Investment Portfolio Policy and Accounting Guidelines address the measurement of the interest-rate movements on past operations and does not reflect the potential impact of future interest-rate movements.

[2] The revised section H is effective for the quarter beginning April 1989 (*i.e.*, for the June 30, 1989 Thrift

Continued

The assumptions underlying the present value formulas that would be applied to these Section H portfolio values in calculating IRR exposure are important factors in the proposed new risk-based capital requirements. These assumptions cover such items as amortization schedules, repricing dates, discount rates, and the treatment of options (particularly prepayments on loans, call provisions for investments, period and lifetime caps on adjustable rate mortgages, and the effective lives of deposits with no specified maturity).[3] Fairly broad assumptions will also have to be made about the characteristics of reported off-balance sheet instruments and some investment securities (notably, mortgage derivatives).

In its proposal, the Board stated its intention to publish for public comment the guidelines containing instructions and possible methodologies (including necessary assumptions) to be used in calculating IRR exposure. As part of its general program of addressing interest-rate risk, the Board's staff has been devoting considerable resources to the evaluation and management of interest-rate risk, drawing upon the more sophisticated tools that are today available to the industry. A significant step in this program was the recent publication of Thrift Bulletin 13 ("TB 13") by the Board's Office of Regulatory Activities.[4]

TB 13 describes internal policies and practices that supervisory staff will expect institutions to use in order to comply with existing regulations requiring directors and officers to manage interest-rate risk. Among other things, this will require estimation of the sensitivity of MVPE to increases and decreases in interest rates ranging from 100 to 400 basis points. The Board's staff is charged with devising, and improving on an ongoing basis, the methodologies and assumptions to be used in these calculations.[5] The Board contemplates using these same assumptions (applied specifically to a hypothetical 200 basis-point interest-rate change) in calculating the IRR component of an institution's regulatory capital requirement under proposed new § 563.13(e).

The Board is today publishing for comment, as Appendix A to this notice, the alternative methodologies and major assumptions that are under consideration for the calculation of IRR exposure using the MVPE approach. As discussed above, the sensitivity of an institution's MVPE will be calculated from data reported on section H of the most recent quarterly Thrift Financial Report. Although no actual market values are contained in section H, the information on revised Section H will permit the Board to estimate the sensitivity of MVPE to interest rates. Immediately following is a summary discussion of the MVPE methodology being considered for use in the development of those estimates, with particular attention to discounted cash flow analysis and the treatment of embedded options in such valuation.

Interested persons are urged to review and comment on Appendix A which contains a detailed presentation of alternative MVPE methodologies for each of the groups of line items reported on section H. Moreover, while general comments are welcome, various specific issues are noted for public comment throughout the Appendix A discussion.

Following receipt of public comment on this advance supplemental notice of proposed rulemaking, the Board will publish a notice of proposed rulemaking containing the complete exposition of the detailed algorithms and assumptions that will be used to calculate the interest-rate-risk component of the risk-based capital requirement. Based upon the administrative record generated by the entire rulemaking, the methodology will be published in final form as an amendment to the final risk-based capital regulation, either directly or through incorporation by reference of supervisory directives setting forth the methodology. The Board intends that public notice will be given in the **Federal Register** as ongoing changes and improvements are made to the MVPE methodology.

Summary Presentation of MVPE Methodology

As proposed, new § 563.13(e) would prescribe the use of a present value cash flow analysis in estimating the sensitivity of MVPE to changes in interest rates. The market value of a financial asset can be measured as the present value of its cash flows. This cashflow analysis will be used to value the institution's assets, liabilities, and off-balance sheet instruments. The discounted present value of all expected cash inflows and outflows will be used to determine the aggregate market value of portfolio equity under specified interest-rate scenarios.

Different instruments in an institution's portfolio will generate different cash flow patterns. Before performing the discounting calculations, the model now being developed will first approximate an institution's individual cash flows based on its Section H data. Assumptions will be made about the cash flow characteristics of each line item on the report under the various interest-rate scenarios. For example, mortgages will be assumed to be amortizing loans. Thus, their principal and interest flows will be estimated on the basis of the balances, remaining maturities, interest rates, and—in the case of ARMs—repricing characteristics that are reported for that line item in Section H.

Some degree of aggregation error is inevitable given the limitations of the data collected. In particular, although the reporting form has been organized to group together instruments with similar cash flow patterns, a single reporting line might still combine instruments with differing cash flow characteristics and discount rates.[6] Significant differences in cash flow characteristics among items reported in a single line will cause some inaccuracies in the modeling results. More detailed reporting requirements would diminish potential inaccuracies in the cash flow estimations and, ultimately, in the model's aggregate MVPE estimations. Some compromise, however, is unavoidable between the goal of maximizing estimation accuracy and minimizing the concomitant reporting burdens to the industry. Adjustments and modifications to that compromise, as well as improvements in cash flow assumptions, are anticipated as experience is gained with the working model. Appendix A discusses in detail, for particular section H line items, the various approaches to this problem of data aggregation.

Moreover, limitations in the reporting detail will also affect the degree of sophistication in the type of valuation techniques that may be applied to the different section H line items. Thus, although more sophisticated techniques may be available for these items, a simple discounted cash flow valuation technique may still be used for the following line items: second mortgages, consumer loans, commercial loans, and investment securities (Part I). The choice of the appropriate discount rate is also highly significant in the development of the model since the present value of a financial instrument is quite sensitive to the discount rate. The discount rate chosen should result in a present discounted value that represents the liquidation value of the relevant asset or liability as accurately as possible. Appendix A includes a detailed discussion of various alternative methodologies for each of section H line items.

In addition to discount rates and cash flow analysis, the treatment of options in the valuation calculations is also a highly significant factor, since many financial instruments in thrift portfolios contain various embedded options, such as loan prepayments and caps on ARMs. These options held by thrift customers may reduce the value of these assets to the institution. The Board is considering three main approaches for adjusting the value of certain assets for these "embedded" options: (1) A direct pricing approach using secondary market prices, (2) a modified cash flow approach, and (3) an option-based simulation approach.

The direct pricing method is based upon a pricing curve that is obtained from observable secondary market prices. The statistically-derived pricing curve describes the relationship between market prices of mortgage-backed securities and their coupon rates. The curve is used to generate a price for reported mortgage balances based on their reported average coupon. The market value can be derived by multiplying the price by the balance of that item. Finally, the price function is shifted to reflect a parallel shift in the yield curve due to an interest rate change. For example, if rates climb 200 basis points, then a 10 percent coupon would be expected to be priced as an 8 percent coupon was prior to the rate shock.

Alternatively, the modified cash flow approach uses a discounting mechanism to arrive at the market value of financial assets with different coupons. Cash flows (including interest, principal amortization, and prepayments) are generated using reported balances, rates, remaining maturities, and a prepayment function that is estimated empirically (either by the Board or from information available from the research departments of securities firms that track this information). The discount factors are derived by generating mortgage cash flows for various coupons and then finding spreads over the zero-coupon Treasury yield curve that equate the present value of the cash flows to the observed market prices of mortgage-backed securities with those coupons. As the term structure of interest rates is subjected to parallel shocks, new cash flows are generated based on the prepayment function, and new discount rates are calculated by adding the spread over Treasury to the new yield curve. The new market value estimates are formed by discounting the new cash flows by the new discount rates.

The third approach of option-based simulation defines an interest rate process that would be used to generate hundreds or thousands of interest rate paths based on an assumed measure of interest rate volatility. Using the prepayment function, mortgage cash flows are generated along each of these paths and an average price (across all paths) is determined. An option-adjusted spread is calculated by adding a fixed spread to the zero coupon Treasury yield curve to equate the model price with the observed market price for the security being analyzed. Alternatively, an option-adjusted price can be obtained for a new interest rate scenario by shifting the interest rate process and calculating the new price using the original option-adjusted spread. Because this technique requires a great deal of computer time, the prices would be determined once each quarter for all relevant combinations of average coupon, average remaining maturity, and interest rate scenario, and these prices would then be stored in a data file. To determine the market value of a reported balance for a given interest rate change, the appropriate price would be selected from the data file—based on the interest rate scenario, the reported coupon, and the reported remaining maturity—and then multiplied by the reported balance.

As discussed in Appendix A, the option-adjusted approach is generally favored for its ability to analyze more precisely the effects of different interest-rate scenarios on the options embedded in most mortgage instruments. The Board intends that eventually its staff will implement a computer model that uses this method for the industry's most significant items of mortgages and mortgage derivative instruments, as well as certain other items. A cash flow approach, however, likely will be used for other line items where the use of this less sophisticated method is sufficiently accurate. The Board is considering use of the cash flow method for mortgage instruments during some initial period while the more sophisticated option-adjusted spread model is being refined and tested.

Request for Comment

The Board requests comments on the methodologies being considered for the measurement of interest-rate-risk exposure. Various specific issues are raised throughout this notice and Appendix A. Comments on these issues or any of the aspects regarding calculation of the IRR component should be submitted to the Board within thirty days from publication of this advanced notice of proposed rulemaking.

Appendix A—Description of the Proposed Interest Rate Risk Component of the Risk-Based Capital Requirement

Interest rate risk is the risk to income and capital resulting from changes in market rates of interest. Uncertainty with respect to future changes in interest rates translate into uncertain net interest income and market values for the financial instruments contained in thrift portfolios. The market value of a financial instrument changes as market interest rates change because the value of a given stream of cash flows declines as interest rates rise and increases as interest rates fall.

Moreover, since many assets and liabilities common to thrift portfolios contain options that may be exercised by the person on the other side of the transaction, the risks of increases and decreases in market value often are not symmetrical. To manage the risk to their net worth, thrift institutions must understand and take actions to control for possible changes in the level and volatility of interest rates.

In recognition of the importance of interest rate risk to the viability of thrift institutions, the Federal Home Loan Bank Board has announced changes—effective for June 30, 1989 financial reports—in reporting interest rate sensitive assets and liabilities using Section H of the Thrift Financial Report (see Appendix B for a copy of the revised reporting form). These data will enable the Board to improve measurement of interest rate risk. In

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Financial Report.) The Board anticipates that further improvements in the quality of information will be made as experience is gained with the calculation and monitoring of IRR exposure. For ease of reference, a copy of the new Section H is attached as Appendix B to this notice. Interested persons may contact Board staff to obtain copies of the extensive instructions to Section H.

[3] Among other things, the Board's December proposal specifically requested comments on whether assumptions should be based on regional or national data, whether adjustments should be made to reflect prior interest-rate shifts, and the extent to which institutions may or should provide their own assumptions. *See* 53 FR at 51811.

[4] Thrift Bulletin 13, "Responsibilities of the Board of Directors and Management with Regard to Interest Rate Risk," Jan. 26, 1989. Although TB 13 has already been widely disseminated, the Board is publishing it herewith, as Appendix C, in light of this bulletin's importance and relevance to today's proposal.

[5] Although TB 13 strongly encourages all institutions to develop the capability of performing these sensitivity measures for themselves, (and many eventually will be required to do so), as an initial matter the Board's staff will calculate estimates of sensitivity measurements using Section H data and will provide these estimates to thrift institutions. *See* TB 13 at pp. 4–6.

[6] A notable example is the single line called "Investment Securities—Part I" which aggregates U.S. government, municipal, and corporate securities (including preferred stock). The most problematic example, for purposes of doing the MVPE valuation, is the aggregation of data for the various instruments under the line item for "CMO and REMIC Tranches."

particular, the revised Section H will facilitate the calculation of the interest rate risk component of the proposed risk-based capital requirements. This component is based upon the risk to the market value of an institution's portfolio given an immediate 200 basis point change in interest rates. Under the Bank Board's proposed risk-based capital rule, each institution will be required to maintain incremental capital equal to 50 percent of the estimated change in the market value of portfolio equity resulting from this change in interest rates.

The market value of portfolio equity ("MVPE" or "portfolio equity") is, the aggregate market value of all of an institution's on- and off-balance sheet financial instruments (i.e., the market value of an institution's assets, minus the market value of its liabilities, plus the net market value of its off-balance sheet items). Interest rate risk is greatest for instruments that have market values very sensitive to changes in interest rates. Since the value of its portfolio of financial instruments accounts for the predominant portion of the typical financial institution's total market value, the sensitivity of portfolio equity provides a good measure of the exposure to interest rate changes on the part of insured institutions, and, ultimately, the thrift insurance fund. While the Bank Board is aware of the importance of operational equity (the present value of future net operating and fee income) and franchise value (the present value of claims to business not yet booked by the thrift), we are focusing on portfolio equity due to problems with measuring operational equity and franchise value.

The methodologies that the Board proposes to use to determine the interest rate risk component of the new regulatory capital requirement using the MVPE method are described below. The methodologies will vary somewhat for different instruments, depending both on the characteristics of the instrument and on the amount of information that will be reported for it. Descriptions for the various instruments reported on Section H are grouped to the extent that similar approaches may be used in computing their market value.

At the heart of several approaches under consideration is discounted cash flow analysis. In measuring the present value of an instrument after a 200 basis point movement in interest rates, the simplest application of a discounted cash flow analysis would be to simply add 200 basis points to the discount factors applied to each of the expected cash flows. The Board is considering two variations (described in additional detail below) on the traditional form of discounted cash flow analysis in order to account for changes in the value of "embedded options" that result from changes in interest rates:

(1) The *options-based* discounted cash flow approach is an attempt to adjust for the change in the value of options by averaging the present value of the expected cash flows over a large number of alternative interest rate paths. (Each interest rate path is generated based on an assumed level of interest rate volatility.)

(2) The *"modified"* discounted cash flow approach attempts to adjust for the change in the value of options using a less elaborate scheme. The present value calculated using this approach is equivalent to that derived by the options-based approach using an interest rate volatility assumption of zero.

Under the various approaches described below, the Board will occasionally distinguish between options that are "in-the-money" and those that are "out-of-the-money." An option is "in-the-money" when the price of the underlying instrument exceeds the option's strike price (that is, when the option can be profitably exercised). An option is "out-of-the-money" when the opposite situation occurs.

I. First Mortgages

Mortgages and mortgage-related instruments constitute the major portion of aggregate thrift industry assets (over 60% of total thrift assets). As a result, the revised Section H report will collect enhanced information for fixed-rate and adjustable-rate mortgages to facilitate more detailed analysis.

A. Fixed-rate, 1–4 Family Mortgage Loans

The revised Section H report categorizes the principal balances of fixed-rate mortgages by remaining term to repricing, with further breakouts for balances by coupon rates in 100 basis point intervals (see Appendix B). The weighted average remaining term of all coupons is also reported for each of the repricing intervals greater than 5 years. The Board is considering five different approaches for calculating the market value of these instruments: (i) an implied duration approach, (ii) a direct pricing approach using secondary market prices, (iii) a modified cash flow approach, (iv) an option-based approach, and (v) a survey of price estimates by a panel of firms dealing in mortgage securities.

(i) The first approach calculates *implied durations* for representative mortgage instruments of the appropriate coupon and remaining maturity. This is done by regressing changes in the price of a particular mortgage-backed security on changes in interest rates. The coefficient estimate resulting from that regression describes the observed price elasticity of the security and may be interpreted as the average duration that is implied by the instrument's historical price fluctuations. As this approach averages the instrument's convexity across all interest rate environments that it has experienced, it may be misleading. (Convexity refers to the rate at which duration changes in response to a change in interest rate. Duration is the present-value weighted time to maturity. It can be expressed as a percentage measure of the price responsiveness of a security to changes in interest rates.) Alternatively, the regression could be performed for all securities within a particular range of market-to-coupon spreads.

(ii) The *direct pricing* approach uses observable secondary market prices to determine prices for mortgage balances reported on Section H. The approach utilizes a pricing curve to describe the relationship between the coupon rates and market prices of mortgage-backed securities and loans. The curve is derived from actual market prices and actual coupons, using nonlinear estimation techniques. Once such a pricing curve has been created, it may be used to estimate a price, at current market interest levels, for each reported mortgage balance on the basis of the reported coupon. Multiplying the estimated price by the balance results in the estimated market value of that item under current interest rates. In order to create a similar estimate under a hypothetical interest rate change, simply move along the curve to the price corresponding to the coupon change. For example, if market rates climb 200 basis points, then a 10 percent coupon will be priced approximately like an 8 percent coupon was prior to the rate shock.

The next two approaches require the creation of a prepayment function that relates, at a minimum, the difference between the current market rate and the coupon on the mortgage instrument being modeled to the rate at which the instrument is expected to prepay. Such functions will be estimated empirically for the necessary instruments. One basis for such empirical evidence could be information supplied by the research departments of securities firms that have compiled large volumes of data on such instruments.

(iii) The *modified cash flow* approach uses a discounted present value mechanism to calculate the market value of a mortgage instrument:

(1) Cash flows (including interest, principal amortization, and prepayment assumptions) are estimated based on Section H data, under the current interest rate environment, for actual mortgage-backed securities.

(2) For each coupon, a spread over the zero-coupon Treasury yield curve is found that equates the present value of the estimated cash flows to the observed market price of the security.

(3) To form the discount rates under the hypothetical interest rate scenarios, the derived spreads are added to each of the hypothetical yield curves. The same set of discount rates is then used in performing the market valuation for all institutions.

For a particular interest rate scenario (such as a 200 basis point shock), the market values of an institution's mortgages are calculated through estimation of the cash flows (based on the prepayment function and the balances, rates, and remaining maturities reported on Section H). Those estimated cash flows are then discounted using the discount rates appropriate to the reported coupons and interest rate scenario.

(iv) The *option-based* approach to market valuation simulates a large number of possible interest rate paths, each with the same theoretical probability of actually occurring, and calculates the present value of the instrument being analyzed under each of those paths. (While each path is equally probable, the paths tend to cluster around an expected value.) The theoretical price of the instrument is then computed as its average present value across all interest rate paths.

The first requirement of the option-based approach is to define an interest rate simulation model that will be used to generate hundreds or thousands of interest rate paths based on an assumed measure of interest rate volatility. The measure of volatility may be based on historical data or derived from the current prices of options. Using the prepayment function (either generated internally by the Board or based on estimates provided by securities firms), cash flows for a mortgage-backed security are generated and discounted along each of these paths. The model's estimate of the security's price is calculated as the average present value across all paths. The option-adjusted spread over the zero-coupon Treasury yield curve that equates the model price with the actual market price may then be calculated. Alternatively, an option-adjusted price can be obtained for the security under a hypothetical interest rate shock by shifting the starting point of the interest rate process by the amount of the shock and calculating the new price using the original option-adjusted spread.

Because this technique requires a great deal of computer time, prices would be determined once a quarter for all relevant combinations of average coupon, average remaining maturity, and interest rate scenario, and stored in a data file. To determine the market value of an institution's reported mortgage balance under a given interest rate scenario, the appropriate price would be selected from the data file (based on the interest rate scenario, the reported coupon, and the reported remaining maturity) and multiplied by the reported balance.

(v) The final approach being considered for valuing fixed-rate mortgages is to periodically obtain *price estimates* for a specified series of mortgage-backed securities from a panel of dealers. The option-based pricing approach to valuing mortgage securities has been widely adopted by the investment banking industry. Individual firms utilize option-based pricing models as analytical tools in conducting their own trading activities and are continuing to expend substantial resources in further refining and developing those models. These firms routinely estimate the prices of a large number of securities under various interest rate scenarios, and a number of firms have tentatively indicated a willingness to participate on a panel that would provide the necessary price estimates each quarter.

The mean price estimate provided by the panel for each instrument would be stored in a data file. As in the option-based approach described in approach (iv) above, to determine the market value of an institution's reported mortgage balance under a given interest rate scenario, the appropriate price would be selected from the data file and multiplied by the reported balance.

The Board is currently leaning towards the adoption of options (iii) or (iv). Option (i), the *implied durations* approach, looks back in time to determine future values. The Board prefers, to the extent it can, to look forward as historical values can only serve as approximations. Option (ii), the *direct pricing* approach, assumes we can aggregate prepayment relationships across coupons without seriously compromising the analysis, which may be problematic. For example, a pool of newly-issued 10% mortgages will behave differently than a pool of older 10% mortgages. The latter will react less sharply to a dramatic decline in interest rates than the former due to the aging of the pool and the removal from the pool of those mortgages most sensitive to interest rate changes. Option (v), where the Board would obtain prices from securities firms, has operational problems, including a forced reliance on parties outside the Board's control, which could create potential conflicts of interests.

Option (iii), the *modified cash flow* approach, has a number of pitfalls, one of which is the reliance on static spreads to Treasuries as interest rates change. Due to the complexity of developing the *options pricing* approach, however, the Board may initially adopt the modified cash flow approach, but gradually move toward the option-based approach.

B. Adjustable-rate, 1–4 Family Mortgage Loans

Section H categorizes adjustable-rate mortgages (ARMs) into two classes: those employing current market indices (such as the constant maturity Treasury indices) and those using indices that lag current market rates (such as the cost of funds indices). Principal balances are classified by remaining term to repricing for each of these broad classes of ARMs (see Appendix B). For each repricing category, information is reported on the weighted average portfolio rate, the weighted average lifetime cap, the weighted average remaining term to maturity, and balances by rate adjustment frequency. Information on margins, teasers, payment adjustment frequency, periodic rate caps or floors, periodic payment caps and floors, or negative amortization is not reported.

The Board is considering three of the five approaches discussed under the fixed-rate mortgages section for estimating the market value of ARMs: (i) The modified cash flow approach, (ii) the option-based approach, and (iii) the survey approach.

(i) Under the *modified cash flow* approach, reported data on the average portfolio rate, the weighted average remaining maturity, remaining months to repricing, and subsequent adjustment frequency would be used, in conjunction with an ARM prepayment function, to estimate cash flows resulting from the reported principal balances. ARMs are assumed to prepay as a multiple of current coupon fixed-rate conventional loans. In cases where loans have "capped out," ARMs are assumed to prepay like discount fixed-rate loans.

A number of other assumptions also must be made because of the limited data detail available in Section H. It would be assumed that the 1-year

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constant maturity Treasury (CMT) index and the Eleventh District cost of funds (COFI) index are representative of the actual indices for balances reported, respectively, in the current market and lagging market index categories. The current values of these indices, as of the reporting date, is used for repricing purposes. Assumptions are also necessary for gross margins on CMT and COFI instruments. In addition, periodic interest rate caps for CMT ARMs and lifetime payment caps for COFI ARMs are assumed. All assumptions would be representative of what is typically observed in the market. Finally, because of the adjustment lag in the cost of funds index, the relationship between the Eleventh District COFI and current market rates would be determined empirically.

Prices are determined as follows:

(1) Under current interest rates, spreads over the zero-coupon Treasury yield curve are computed that equate the present value of the estimated cash flows to the observed market price of the relevant type of ARM (either 1-year CMT or COFI). Since the spread differs depending on the proximity of the current coupon to the lifetime cap, this process is necessary for lifetime caps that are "out-of-the-money" by different amounts.

(2) To form the discount rates under the hypothetical interest rate shocks, these spreads are added to each of the hypothetical yield curves.

(3) Under the hypothetical interest rate scenarios, prices are determined by discounting the cash flows.

(4) Each price is then further adjusted for the existence of the lifetime cap by deducting an explicit estimate of the market value of that "embedded option." The value of the option increases as the hypothetical mortgage rate approaches or exceeds the lifetime cap (strike rate). That value will be calculated by reference to the prices of actual interest rate caps out of the money by a comparable amount and deducted from the value of the ARM. The calculated prices are then stored in a data file and "looked up" by the model based upon the characteristics reported on an institution's Section H.

(ii) The *option-based* approach, applied to ARMs, is similar to the fixed-rate mortgage application. A large number of possible interest rate paths are simulated, each with the same theoretical probability of occurrence, and the present value of the instrument is calculated under each path. (While each path is equally probable, the paths tend to cluster around an expected value.) The theoretical price of the instrument is then computed as the average present value across all interest rate paths. As with fixed-rate mortgages, the option-based analysis requires the definition of possible interest rate paths and an assumed measure of interest rate volatility. (Volatility as used here refers to the standard deviation of changes in interest rates over a stated period of time, often one year.) It also requires an ARM prepayment function.

Cash flows for an ARM pool (or security) of known price are generated along each of these paths and the model's estimate of the pool's (or security's) price is calculated as the average present value across all paths. The option-adjusted spread over the zero-coupon Treasury yield curve that equates the model price with the actual market price may then be calculated.

Alternatively, an estimate of the option-adjusted price can be obtained for the pool (or security) under a hypothetical interest rate shock by shifting the starting point of the interest rate process and calculating the new price using the original option-adjusted spread. As proposed under the option-based approach for fixed-rate mortgages, prices would be determined once a quarter for all relevant combinations of ARM-type, interest rate scenario, average remaining maturity, and proximity to lifetime cap, and stored in a data file. Under a given interest, rate scenario, the market value of an institution's ARMs would be determined by selecting the appropriate price from the data file and multiplying the reported balance by that price.

(iii) A *survey* of dealers is the third approach under consideration for valuing ARMs. This approach is identical to that discussed in the context of fixed-rate mortgages. A panel of firms would provide the necessary estimates each quarter. The mean price estimate provided by the panel for each instrument under each hypothetical interest rate scenario would be stored in a data file. As in the option-based approach described above, to determine the market value of an institution's reported mortgage balance under a given interest rate scenario, the appropriate price is selected from the data file and multiplied by the reported balance.

As under our discussion of fixed-rate mortgages, the option of relying on outside firms has operational problems that the Board would prefer to avoid. Option (i), the modified cash flow approach, has a number of pitfalls, one of which is the reliance on static spreads to Treasuries as interest rates change. Because ARMs contain more options than fixed rate mortgages (such as annual and lifetime caps), this concern is magnified. Due to the complexity of developing the options pricing approach, however, the Board may initially adopt the modified cash flow approach, but gradually move toward the option-based approach.

C. Other Residential and All Nonresidential Mortgage Loans

The revised Section H subdivides these loans into adjustable-rate and fixed-rate categories. Within each category, balances are reported by repricing period. Information is also reported regarding the average interest rate for the balance in each repricing period. These assets represent about 15% of total thrift assets.

Conceptually, market values for these types of loans could be calculated in the same manner as the analogous 1–4 family mortgages. A major limitation, however, is that considerably less information is available on Section H for these assets, since there is much less volume in these types of loans. In addition, there does not exist a broad or deep secondary market for these assets (unlike residential mortgages), which further limits the Board's options. The Board proposes to use a discounted cash flow analysis to assess these assets. Although the use of this method may misstate the interest rate risk of these instruments, the Board believes that it will not seriously distort the interest rate risk for most institutions.

To determine the appropriate discount rate, the Board proposes to undertake a periodic survey of financial institutions involved in the limited secondary market for these assets. The survey would gather information on current market rates, which would be used to set the discount rate.

II. Mortgage Loans Servicing

To determine the market value of mortgage loans servicing (both purchased and excess), the Bank Board is proposing to rely on the same methodology adopted for First Mortgages. Given the importance of prepayment rate assumptions in determining the market value sensitivity of mortgage servicing rights, the Board will adopt either the modified cash flow approach or the option-based approach.

These two approaches require the creation of a prepayment function that relates the difference between the current market rate and the coupon on the mortgage instrument being modeled to the rate at which the instrument is expected to prepay. Such functions will be estimated empirically for the necessary instruments. One basis for

such empirical evidence could be information supplied by the research departments of several securities firms.

III. Second Mortgages and Consumer Loans

A greater share of both second mortgage and consumer loans have recently been characterized by adjustable, instead of fixed, rates. Also, more of these loans have become open-ended as lines of credit related to credit cards and home equity loans have become more readily available to consumers. Typically, the interest rates on second mortgages can be reset at least annually, and, for consumer loans, they may be reset as frequently as quarterly.

Based on the staff's understanding of these assets, the Board proposes to treat most of these as adjustable rate instruments. The bulk of second mortgages are likely to be reported in the first three repricing categories of the revised Section H (i.e., those repricing in 1 year or less). These second mortgages will be regarded as home equity loans and be treated analogous to adjustable-rate first mortgages. The Board also proposes that the loans appearing in the remaining five repricing categories be treated like single-family fixed-rate mortgages. Consumer loans will be treated as adjustable-rate loans adjusting every quarter, priced off of the prime interest rate.

Calculation of the periodic cash flows and interest income from second mortgages will utilize algorithms used for evaluating fixed-rate and adjustable-rate first mortgage loans. Prepayments, of course, are an important consideration in calculating these cash flows and a reasonable prepayment methodology will be developed. It is important to note that home equity, credit card, and other personal line-of-credit lending entail default risks that will affect their market values. The consideration of such credit risk issues, however, is dealt with in the credit risk component of the proposed rule.

An alternative approach would value second mortgages and consumer loans using a discounted cash flow analysis. While such an approach may be less accurate than the modified cash flow or options-based approaches, it does have the value of being operationally simple. The Board requests comment on the relative merit of adopting this alternative approach.

The choice of the appropriate discount rate to use for valuing these assets is more difficult because these assets do not trade in broad and deep markets like mortgage-backed securities. The Board proposes to rely on observable market rates for establishing the appropriate discount rate. The Board would periodically undertake a survey of market participants to collect information on current rates for second mortgages. The Board would use published prime interest rates for consumer loans since these loans are generally based on a spread over the prime rate.

IV. Commercial Loans

Typically, commercial loans are linked to an index (such as the prime rate) and are non-amortizing. Although commercial loans have grown more prominent on some thrift balance sheets, these assets continue to represent a very small proportion of total thrift assets. As of December 1988, they only represent approximately two percent of total assets for all thrift institutions. The Board proposes that commercial loans appearing in the first three repricing intervals on Section H be treated as non-amortizing adjustable-rate open-end credits with balloon payment of principal occurring in the fourth repricing interval. Thus, the cash flows associated with these volumes would consist of the periodic accrual of interest at the weighted average rates reported on section H as well as the final balloon payment. For the remaining five repricing intervals on section H, the Board proposes that commercial loans be treated as non-amortizing adjustable-rate open-end credits with balloon payments of principal taking place in the repricing intervals in which they are originally reported.

As an alternative to treatment as adjustable-rate open-end credit, commercial loans could be valued using a discounted cash flow analysis. The Bank Board requests comment as to whether this simpler approach to commercial loans would be sufficiently accurate.

The choice of the appropriate discount rate to use for valuing these assets is difficult due to a lack of market information. The Board proposes to rely on observable market rates for establishing the appropriate discount rate. The Board would periodically undertake a survey of market participants to collect information on current rates.

V. Investment Securities (Part 1)

Investment securities reported in Part 1 reflect the more common investment securities, such as U.S. Treasury securities, municipal bonds, corporate debt, and preferred stock. It is likely that a discounted cash flow approach will be utilized for this line item. The balances reported will be assumed to be non-amortizing, non-callable bonds. While this treatment does not characterize the interest rate sensitivity of callable securities precisely, it provides a reasonable approximation given the manner in which callable securities are reported on section H. Institutions will report callable bonds as maturing on the call date if the call option is currently in-the-money, and as maturing on the contractual maturity date if the call option is currently out-of-the-money.

The discount rate for this analysis would be drawn either from the appropriate point on the Treasury yield curve (where the maturity of the Treasury security equals the duration of the asset) or from a blend of Treasury, municipal, and corporate securities. It should be noted, however, that a "blended" rate may not differ significantly from the Treasury rate, as municipals are likely to have slightly lower interest rates than Treasuries (due to their tax status) and AAA corporate bonds slightly higher rates than Treasuries.

VI. Impact of Hedging Activities and Off-Balance Sheet Activities

The data collected on section H concerning hedging activities and off-balance sheet activities is necessarily limited, due to the wide variety of instruments. To the extent that information is not obtained, the Board will assume that the characteristics of the instruments involved fall within the normally expected range for such instruments.

The Board proposes to distinguish hedging activity from other off-balance sheet activity based upon whether the activity is related to an asset or liability on the balance sheet and whether the activity qualifies for hedging treatment under GAAP. If both conditions are met, the activity would be reported on the impact of hedging activity lines. Otherwise, the activity would be reported on the impact of off-balance sheet lines.

For most institutions, which are negatively exposed to rising interest rates, the following is a list of the most common types of financial instruments covered by the impact of *hedging activities:* long put options on Eurodollar futures, long put options on Treasury bill futures, long put options on Treasury note futures, and long put options on Treasury bond futures; long positions in interest rate caps; short positions in futures on Eurodollars, Treasury bills, Treasury notes, and Treasury bonds; and long positions in interest rate swaps (pay fixed and receive floating).

For most institutions, which are negatively exposed to rising interest rates, the following is a list of the most common financial instruments covered by the impact of *off-balance sheet activities:* optional commitments to originate, purchase, or sell assets; firm commitments to originate, purchase, or sell assets; short positions in options on futures; short positions in interest rate caps; long positions in futures; and short positions in interest rate swaps (receive a fixed rate and pay a floating rate).

For *long Treasury futures,* we will obtain information on the Section H form on the underlying futures instrument. To help clarify what is reported on the futures line, the Bank Board requires institutions to place specific futures instruments (and options on futures as mentioned below) on certain data points. In particular, futures on *Treasury bills* and *Eurodollars* will be reported in the "More Than Three Months Through Six Months" maturity/repricing column; *Treasury note* futures will be reported in the "More Than Five Years Through Ten Years" column; and *Treasury bond* futures will be reported in the "More Than Twenty Years" column. This reporting format enables the Bank Board to more clearly understand the economic characteristics of the underlying futures instruments, and it will contribute to a more accurate measurement of interest rate risk.

Once the type of futures instrument and the bond equivalent yield on the futures instrument at inception is known (from data reported on the Section H report), a market value can be estimated. The valuation of these futures instruments can be estimated by a bond value approach. The market price in the base case can be estimated using the reported bond equivalent yield. For an interest rate shock, the change in value can be derived by discounting a hypothetical security (such as an 8% coupon, twenty-year bond) by the indicated yield plus the shock. The difference would be taken as the change of value in these asset categories due to a change in rates.

For *long put options on Treasury futures,* we will obtain information on the Section H report on the underlying futures instrument. For example, an institution would report the dollar amount of an option on a Treasury bond future on a certain data point on Section H as well as the bond equivalent yield on the underlying Treasury bond futures contract at the contracted strike price. We would then make an assumption regarding the specific expiration month of the contract under analysis, use the bond equivalent yield, and infer the strike price. Once the current market value is estimated, we would subject the instrument to the interest rate shock and measure the market value sensitivity.

For *long positions in interest rate caps,* we will obtain information on the Section H report on the maturity of the cap, an adjusted notional amount of the cap, and the rate at which the cap becomes "in-the-money". We will use the weighted average rate of the cap and the maturity to "back into" the original notional amount of the cap, then subject the cap to the interest rate shock and measure the market value sensitivity.

To estimate the market value sensitivity for *options,* we are considering using the Black-Scholes option pricing model, thus deriving the underlying price in the shocked environments. This option pricing model requires an estimate of volatility, which could be the current implied market volatility for Treasury bond futures options. In the shocked environment, either the same volatility could be used or a formula for systematically changing the volatility, depending on the relative level of underlying prices, could be developed.

Swaps, both regular swaps (those that receive variable and pay fixed) and reverse swaps (those that receive fixed and pay variable), could be modeled as non-amortizing swaps where the thrift receives either the fixed or floating portion (depending on the placement in Section H). The current floating rate and the fixed rate are reported, as is the notional principal on which the swap is based, though there is some unavoidable ambiguity when multiple swaps are reported. Once the reported entries have been interpreted as a set of swaps, a valuation methodology would estimate the value of the swaps by discounting the fixed rate portion (which can be modeled as an annuity) by the floating rate on the swap plus a spread, the spread being derived from current market conditions so that newly originated swaps have a net value of zero. In shocked rate environments, the floating rate would be changed by the shocked value, while the spread could be assumed unchanged. This will result in a new discount factor to apply to the fixed rate components and hence a change in the estimated value of the swaps.

For *optional commitments to originate, purchase, or sell assets,* the institution will estimate the percentage that will actually be originated, purchased or sold and report that amount. For *firm commitments* the institution does not have to make an adjustment for any "fall-out" experience and therefore reports only the dollar amount of the commitment. In addition, the institution will report the weighted average interest rate of the optional and firm commitments. If the commitments are in the "More Than Ten Years Through Twenty Years" maturity/repricing column or the "More Than Twenty Years" maturity/repricing column, we will treat them in a manner that is economically equivalent to fixed rate mortgages. If the commitments are in the shorter maturity/repricing columns, we will treat them in a manner that is economically consistent with adjustable rate mortgages.

We propose to treat liability hedges for the most part like asset hedges, with modifications where necessary. For instance, the options line reported as liability hedges will contain both long put options and interest rate caps. The "More Than Three Months Through Six Months", "More Than Five Years Through Ten Years" and "More Than Twenty Years" maturity/repricing columns have been designated for options on futures. The other maturity/repricing columns could be assumed to contain (purchased) cap information. Caps could be valued by first estimating the notional principal amount (similar to that done with options) and then referring to a current table of market prices for caps as a function of maturity and the difference between the contractual rate and the current rate. In shocked environments, the same approach could be used where the current rate would be increased by the shock amount.

The impact of off-balance-sheet activities (liabilities) is problematic since it can contain a variety of complicated instruments of differing interest rate characteristics. We will, however, assume that all items on this line are short positions in interest rate caps. Therefore, we will treat them in a manner that is consistent with the long interest rate caps referenced above. While for most institutions these items represent a small portion of their market value, some institutions' market values may be significantly affected by these activities. Such institutions will have to be carefully supervised.

VII. Equity Securities

Equity securities represent claims of ownership ranging from shares in money market mutual funds, to shares in stock or bond funds, to outright stakes in enterprises or projects. The problem with measuring the interest rate risk of such assets is that empirical evidence about the response of equity securities to changes in interest rate risk is not conclusive. Proxies can be used in lieu of exact measurements. For example, to the extent that equities are *pro rata* shares in identifiable types of pooled debt market instruments (for example, a money market or bond mutual fund), their interest rate risk characteristics may be analyzed as being identical to the net asset values of the securities held by the fund. Common and preferred stock funds, however, may have a wide variety of investment objectives with resulting ambiguous interest rate risk characteristics.

The Board is considering several options for measuring the interest rate risk of equity securities. One would be to ignore this line item in determining an institution's interest rate risk and apply the "average" risk all other assets and liabilities impose on an institution's market value (in essence, the weighted-average duration) to the value of equity securities.

A second approach would be to make some general assumptions and apply them to equities. For example, we could look at the actual sensitivity of equity securities' values to changes in interest rates over the past five years, and assume that this historical sensitivity will continue. One method to do this would be to determine the effective duration of equities by comparing the change in value of the S&P 500 Index over the past five years to the change in interest rates over that period.

A third option would be to exclude equity securities in calculating interest rate risk. This approach assumes that duration equals 0, which is not a neutral assumption. (For example, assuming an institution could determine the correlation between an equity security and interest rate risk, if the Board ignored equity securities in determining interest rate risk, the thrift could increase its interest rate risk without increasing its capital requirement.)

At this time, the Board is undecided about which option to pursue, though the third option is unlikely to be adopted. The Board requests comments on these options.

VIII. Debt Securities Rated Below Investment Grade

Debt securities rated below investment grade (below the top 4 ratings) may include original issue below investment grade bonds, "fallen angels", or non-rated securities. Using yields from long- and intermediate-term high-yield indexes and comparable maturity Treasury securities, the spreads between below-investment grade bonds and Treasuries have averaged between 4.45 percent and 4.34 percent, respectively, over the 1985 through 1988 period. These spreads are significantly variable with a standard deviation of ±50 to 60 basis points using monthly data. The variability of the spreads, even using a diversified yield index, is indicative of factors unique to the non-investment-grade market, such as special events and issuance volume.

The yield on below investment-grade securities will rise and fall with yields on U.S. Treasury bonds, generally with spread compression as interest rates increase. While changes in interest rates are only a partial explanation of changes in below investment-grade bond yields and market value, the Board will only focus on these changes since other factors (*i.e.*, financial health of issuer, general health of the economy, etc.) are beyond the scope of the interest rate risk component of the risk-based capital rule.

Below investment-grade bonds share some of the performance characteristics of corporate bonds, and some of the attributes of corporate equities. The Board proposes to rely on a straight discounted cash flow analysis, treating them as investment securities. While the Board believes that this is the most appropriate treatment of these assets, we recognize that many of these assets have call provisions that will not be taken into account and that may alter their market values under certain interest rate scenarios.

Research has generally demonstrated that these securities have a shorter duration than Treasuries. Given their high yield, more cash flow is received at earlier dates; this, in effect, "front loads" the cash flow. This also suggests that these instruments may be less interest rate sensitive than many other types of instruments. The Board requests comments on this, research and its implications for determining an institution's interest rate risk.

If the Board were to treat these assets as investment securities, the discount rate would be drawn either from the appropriate point on the Treasury yield curve or from a blend of Treasury, municipal and corporate securities. As noted earlier, a "blended" rate may not differ significantly from the Treasury rate, as municipals are likely to have slightly lower interest rates than Treasuries (due to their tax status) and AAA corporate bonds slightly higher rates than Treasuries.

The Board is also considering relying on observable market rates for establishing the appropriate discount rate. The Board could periodically undertake a survey of market participants to collect information on current rates or use observable rates of return on below investment grade bond funds (plus some adjustment factor).

IX. Zero Coupon Securities

Like investment securities, these deep discount securities may be analyzed using a discounted cash flow analysis. This line item also contains data on Z-tranche collateralized mortgage obligations (CMOs). To aid in our analysis of the Z-tranches, the instructions to Section H direct institutions to report them in the "More Than 10 years Through 20 years" maturity/repricing column. As described in the following discussion of CMOs, the Board proposes to use a "representative" approach in valuing such securities.

X. CMO AND REMIC Tranches/ Residuals

The Board recognizes that the valuations of CMO and Real Estate Mortgage Investment Conduit (REMIC) tranches and residuals will present the greatest difficulties given the limitations in the reporting data. In particular, some aggregation error will be inevitable given the wide variety of such investments and the desire to avoid undue reporting burdens. To ameliorate this difficulty, however, the Section H instructions direct that data on CMO and REMIC tranches and residuals be segregated by type, rather than by maturity/repricing schedule. For example, rather than report all CMO and REMIC tranches with remaining maturities of 3 months or less in the first column of Section H, institutions will report all floating rate tranches, regardless of maturity/repricing, in that column. Similarly, the next columns will gather information on all super-floating rate tranches, all inverse-floating rate tranches, etc. Thus, data will be reported on similar types of instruments in each column.

The Bank Board intends to select a representative CMO or REMIC tranche or residual that would be used to approximate the interest rate sensitivity of all such tranches or residuals reported. The dollar amount reported in each column would then be assumed to have the characteristics of these representative tranches and residuals for purposes of calculating market value and the impact of changing interest rates on these market values.

Staff is currently reviewing several methods of developing representative tranches and residuals. One method would be to create a "weighted-average" of existing tranches or residuals. Another method would be to base the representative tranche or

residual on the most common type of CMO or REMIC structure found in institutions portfolios. A third method would be to use as a model the most current structure being sold as of the reporting date. A fourth model, the most conservative, would be to assume that all thrifts hold structures that are most susceptible to interest rate risk.

Another, longer-term method the Bank Board is investigating is the expansion of reporting requirements to enable us to more accurately assess the interest rate risk of CMO and REMIC tranches and residuals. For example, some have suggested that we evaluate the utility of developing an industry-wide reporting standard on mortgage derivative products. If such a standard were developed, we could request from institutions information in a set format that would more accurately detail their investments in CMO and REMIC structures.

XI. Principal-Only Strips/Interest-Only Strips

To determine the market value of principal-only and interest-only strips, the Bank Board is proposing to rely on the same methodology adopted for First Mortgages. Given the importance of prepayment assumptions in determining the market value sensitivity of these instruments, either the modified cash flow approach or the option-based approach will be adopted (see above for details on these approaches.)

These two approaches require the creation of a prepayment function that relates the difference between the current market rate and the coupon on the mortgage instrument being modeled to the rate at which the instrument is expected to prepay. Such functions will be estimated empirically for the necessary instruments. One basis for such empirical evidence could be information supplied by the research departments of several securities firms that collect such data.

XII. Deposits

A. Interest-Bearing Deposits/Non-Interest-Bearing Deposits

Interest-bearing deposits, including NOW, Super NOW and other transaction accounts, money market deposit accounts, and passbook accounts, and non-interest-bearing deposits can be considered a thrift's core deposits. An alternative definition of core deposits is all account balances of less than $80,000; accounts with balances greater than $80,000 would be assumed to be non-core deposits. The Board requests comment on such a division or similar divisions that rely on dollar thresholds for segregating core from non-core deposits.

Because of their indefinite maturity, it is customary to regard some large percentage of core deposits as more or less permanent sources of funding. On the one hand, some analysts have argued that the indefinite maturity of core deposits makes them essentially due on demand and that, therefore, their market value is identical to their book value, and, furthermore, that their book and market values are invariant as market interest rates fluctuate. Viewed from this perspective, core deposits would detract from, rather than add to, the net market value of a thrift.

At the other extreme, other analysts have suggested that the permanence of these core deposits makes them essentially perpetuities and that, therefore, their market value can be computed like the market value of a perpetual bond. Treating core deposits as such has two important implications for the net market value of a thrift. First, when the discount rate used to determine the present value of the future interest payments on the core deposits exceeds the nominal rate on the deposits, the resulting market values will be smaller than the book values and, other things being equal, tend to increase the net market value of a thrift. Second, this valuation approach will result in significantly longer durations for core deposits, implying large price/value sensitivities.

Consequently, when evaluating the effects of an instantaneous and sustained change in market interest rates, if rates on the core deposits remain stable, the discounting process will further diminish the present, or market, value of these core deposit liabilities (*i.e.*, reduce the market value of what the institution owes to someone else) and increase the net market value of a thrift. such price/value behavior for core deposits is consistent with internal transfer pricing systems used by some depository institutions, which impute a high value to retail deposit gathering in periods of high market interest rates.

Exactly how much the net market value of a thrift is enhanced by core deposits depends on how the interest costs of those deposits change when market interest rates change. In a rising rate scenario, the biggest benefit to net market value would be gained if the rates paid on the core deposits remained fixed. But, while core deposits may be more or less permanent sources of funding, it is doubtful that they are completely interest rate inelastic. When market interest rates rise far enough, unless the rate on core deposits is adjusted upward, a thrift risks either the loss of these deposits through external disintermediation or the forced repricing of these deposits through internal migration to higher yielding deposit instruments.

The central question in determining by how much a thrift has to adjust interest rates on core deposits in order to stabilize their volume in the face of rising market interest rates is to determine a "decay" or run-off rate for deposits. Decay rates will vary by type of deposit. The Board will distinguish, at the very least, between passbook accounts, escrow accounts, and transaction accounts. Decay rates will increase as interest rates increase. One crucial component that the Bank Board will need to determine are the early withdrawal functions.

One approach the Bank Board is reviewing involves determining a "beta factor"—a slope coefficient in a regression of core deposit rates on a selected market interest rate. This approach can be implemented by using monthly data on deposit rates found in Section F of the Thrift Financial Report. It should be noted, however, that the data are available on a monthly frequency only since January 1987, a period, until recently, of mostly declining or stable rates. How thrifts will adjust their rates on core deposits in a rising rate environment is difficult to predict. Different beta factors could be applied to different types of liabilities.

To determine the appropriate discount rate, the Board proposes to establish a wholesale Certificates of Deposit (CD)-based yield curve (or one based on a similar liability). This CD yield curve would be the basis for establishing the discount rate to use for fixed maturity deposits, transaction accounts (NOW, Super NOW, etc.), Money Market Deposit Accounts, and passbook accounts. For non-interest bearing accounts, the Board could also rely on the CD yield curve, since it could be viewed as the alternative rate these funds could be earning. The creation of such a yield curve will not be easy, as CD yields may not be parallel to Treasury yields and spreads may vary significantly across regions (and across various rates). As an alternative, the Board could establish an arbitrary small discount rate (1–3%).

An alternative to a CD-based yield curve would be to rely on the Treasury yield curve. Under this option, the Board would determine a weighted-average maturity (after selection of decay rates), and refer to the Treasury yield curve to select a point on the curve as the discount rate. This would produce a discount rate that can be expressed as the Treasury rate plus (or minus) a given spread. The Board invites comment on how such a spread should be calculated.

B. Borrowings

In contrast to the permanence of core deposits and fixed maturity deposits, certain liabilities, such as brokered certificates of deposit, Federal Home Loan Bank (FHLB) advances, bank borrowings, reverse repurchase agreements, commercial paper and mortgage-backed bonds, can be regarded as discretionary funding sources. To attract and retain these liabilities, thrifts must pay competitive market rates. Also, in contrast to the indefinite maturity of core deposits, these liabilities have definite contractual maturities, usually quite short-term (typically 180 days or less) except for FHLB advances, term borrowings from commercial banks, subordinated debt, and mortgage-backed bonds.

In determining the market value of these liabilities, a dichotomy between short-term and long-term sources arises. If the premise that a thrift must pay competitive market rates in order to attract these liabilities is accepted, then a thrift would be forced to match increases in market interest rates to retain them. Consequently, for short-term borrowings (such as those with a maturity of one year or less) any fluctuations in the market values of short-term liabilities should persist for only short periods of time. As soon as they mature, the rate will, presumably, be reset to the prevailing market rate, thus bringing the market value and book value of short-term borrowings back into parity. Hence, for short-term liabilities—brokered and large denomination CDs, reverse repurchase agreements, and commercial paper—book values should closely approximate market values.

For long-term liabilities, market values and book values can diverge, particularly if the liabilities are fixed-rate. In that case, the behavior of the market value of long-term, fixed-rate borrowings will mimic the behavior of the market value of core deposits. Just as in the case of core deposits, a thrift with long-term, fixed-rate borrowings will enjoy a windfall in its net market value when overall market interest rates rise. The periodic interest payments and the repayment of the principal which are contractually fixed will shrink in present value terms when rates rise, tending to enhance the thrift's net worth. The difficulty in putting this conceptually simple approach into practice is choosing the appropriate discount rates in both the base case and the shocked interest rate environment.

The Board proposes to use a discounted cash flow analysis of these items, and to rely on a FHLB advance-rate based yield curve for determining the discount rate for these liabilities. The advance-rate based yield curve would be used for FHLB advances. For "Other Borrowings", we will assume the first 3 categories on Section H are reverse repurchase agreements and we will rely on LIBOR for the discount rate. (Typically, reverse repos are priced using LIBOR.) For the data reported in the other columns on the "Other Borrowings" line, we will rely on the advance-rate yield curve for determining the appropriate discount rate. These columns include a wide variety of longer term borrowings, such as mortgage-backed bonds, that are collateralized (like FHLB advances) and the advance-rate yield curve appears to be the appropriate reference.

An alternative to an advance-rate yield curve would be for the Board to rely on the Treasury yield curve. The Board would determine a weighted-average maturity (after selection of decay rates), and refer to the Treasury yield curve to select a point on the curve as the discount rate. This would produce a discount rate that can be expressed as the Treasury rate plus (or minus) a given spread. The Board invites comment on how such a spread should be calculated.

The Board requests comments on the calculation of interest rate risk of deposits, including accounting for core deposit run-off and the discount rate on borrowings.

BILLING CODE 6720-01-M

APPENDIX B

Federal Home Loan Bank Board
Thrift Financial Report

As of _____, 19_____

INSTRUCTIONS
1. REPORT DOLLAR BALANCES IN THOUSANDS, e.g., $ 4,575,938,505 is $4,576,940
2. REPORT PERCENTAGES TO TWO (2) DECIMAL PLACES, e.g., 10.256% is 10.26%
3. SEE INSTRUCTIONS FOR FURTHER CLARIFICATION OF MATURITY CLASSIFICATION AND CALCULATION OF WEIGHTED AVERAGE CONTRACT RATE:

DISTRICT/DOCKET

NAME AND ADDRESS OF INSTITUTION *(Please Use Preprinted Label)*

Section H: Maturity and Yield/Cost Information, Part I: Assets

Remaining Time Before Asset Matures or Can Be Repriced - (Maturity/Repricing)

Assets	3 Months or Less	More Than 3 Months through 6 Months	More Than 6 Months through 1 Year	More Than 1 Year through 3 Years	More Than 3 Years through 5 Years	More Than 5 Years through 10 Years	More Than 10 Years through 20 Years	More Than 20 Years	Total Nonperforming Loans
MORTGAGE LOANS AND CONTRACTS									
First Mortgage Loans:									
Adjustable-Rate: 1-4 Dwellings Units									
Current Market Indices, (Treasury, LIBOR)	001 $	002 $	003 $	004 $	005 $	006 $	007 $	008 $	009 $
Portfolio Rate	010 %	011 %	014 %	013 %	014 %	015 %	016 %	017 %	018 $
Lifetime Cap	039 %	040 %	041 %	042 %	043 %	044 %	045 %	046 %	
Weighted Avg. Remaining Term (in Months)	047 Months	048 Months	049 Months	050 Months	051 Months	052 Months	053 Months	054 Months	
Balances by Rate Adjustment Frequency	119 $	120 $	121 $	122 $	123 $	124 $	125 $	126 $	
Lagging Market Indices, (CCFI)	127 $	128 $	129 $	130 $	131 $	132 $	133 $	134 $	135 $
Portfolio Rate	159 %	160 %	161 %	162 %	163 %	164 %	165 %	166 %	167 $
Lifetime Cap	168 %	169 %	170 %	171 %	172 %	173 %	174 %	175 %	
Weighted Avg. Remaining Term (in Months)	199 Months	200 Months	201 Months	202 Months	203 Months	204 Months	205 Months	206 Months	
Balances by Rate Adjustment Frequency	207 $	208 $	209 $	210 $	211 $	212 $	213 $	214 $	
Fixed Rate: 1-4 Dwelling Units	239 $	240 $	241 $	242 $	243 $	244 $	245 $	246 $	247 $
	248 %	249 %	250 %	251 %	252 %	253 %	254 %	255 %	256 $
Balances by Selected Coupon Rates									
Less than 8.00%						257 $	258 $	259 $	
8.00% to 8.99%						279 $	280 $	281 $	
9.00% to 9.99%						282 $	283 $	284 $	
10.00% to 10.99%						285 $	286 $	287 $	
11.00% to 11.99%						288 $	289 $	290 $	
12.00% to 13.99%						291 $	292 $	293 $	
14.00% or more						294 $	295 $	296 $	
Weighted Avg. Remaining Term (in Months)						297 Months	298 Months	299 Months	
Other Residential and All Nonresidential									
Adjustable-Rate	311 $	312 $	313 $	314 $	315 $	316 $	317 $	318 $	319 $
	320 %	321 %	322 %	323 %	324 %	325 %	326 %	327 %	328 $
Fixed-Rate	329 $	330 $	331 $	332 $	333 $	334 $	335 $	336 $	337 $
	351 %	352 %	353 %	354 %	355 %	356 %	357 %	358 %	359 $
Second Mortgage Loans	360 $	361 $	362 $	363 $	364 $	365 $	366 $	367 $	368 $
	369 %	370 %	371 %	372 %	373 %	374 %	375 %	376 %	377 $

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Federal Home Loan Bank Board
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As of _____, 19____

INSTRUCTIONS
1. REPORT DOLLAR BALANCES IN THOUSANDS, e.g., $ 4,570,539,806 is 4,570,540
2. REPORT PERCENTAGES TO TWO (2) DECIMAL PLACES, e.g., 10.256% is 10.26%
3. SEE INSTRUCTIONS FOR FURTHER CLARIFICATION OF MATURITY CLASSIFICATION AND CALCULATION OF WEIGHTED AVERAGE CONTRACT RATE:

DISTRICT/DOCKET

NAME AND ADDRESS OF INSTITUTION *(Please Use Preprinted Label)*

Section H: Maturity and Yield/Cost Information, Part I: Assets

Remaining Time Before Asset Matures or Can Be Repriced - (Maturity/Repricing)

Assets	3 Months or Less	More Than 3 Months through 6 Months	More Than 6 Months through 1 Year	More Than 1 Year through 3 Years	More Than 3 Years through 5 Years	More Than 5 Years through 10 Years	More Than 10 Years through 20 Years	More Than 20 Years	Total Nonpurforming Loans
Mortgage Loans Serviced for Others - Principal Balance of Loans Serviced									
Less than 8.00%			378 $			379 $	380 $	381 $	
8.00% to 8.99%			401 $			402 $	403 $	404 $	
9.00% to 9.99%			405 $			406 $	407 $	408 $	
10.00% to 10.99%			409 $			410 $	411 $	412 $	
11.00% to 11.99%			413 $			414 $	415 $	416 $	
12.00% to 13.99%			417 $			418 $	419 $	420 $	
14.00% or more			421 $			422 $	423 $	424 $	
Weighted Avg. Remaining Term (in Months)			425 Months			426 Months	427 Months	428 Months	
Weighted Avg. Servicing Spread (in base points)			429 bp			430 bp	431 bp	432 bp	
NONMORTGAGE LOANS									
Consumer	433 $	434 $	435 $	436 $	437 $	438 $	439 $	440 $	441 $
	442 %	443 %	444 %	445 %	446 %	447 %	448 %	449 %	450 $
Commercial	451 $	452 $	453 $	454 $	455 $	456 $	457 $	458 $	459 $
	460 %	461 %	462 %	463 %	464 %	465 %	466 %	467 %	468 $
UNAMORTIZED YIELD ADJUSTMENTS	469 $	470 $	471 $	472 $	473 $	474 $	475 $	476 $	477 $
INVESTMENT SECURITIES - PART I	478 $	479 $	480 $	481 $	482 $	483 $	484 $	485 $	486 $
	487 %	488 %	489 %	490 %	491 %	492 %	493 %	494 %	
IMPACT OF HEDGING ACTIVITY (ASSETS)									
Options	495 $	496 $	497 $	498 $	499 $	500 $	501 $	502 $	503 $
	504 %	505 %	506 %	507 %	508 %	509 %	510 %	511 %	
Futures and Firm Commitments to Sell	512 $	513 $	514 $	515 $	516 $	517 $	518 $	519 $	520 $
	539 %	540 %	541 %	542 %	543 %	544 %	545 %	546 %	
IMPACT OF OFF-BALANCE SHEET ACTIVITY (ASSETS)									
Options and Optional Commitments to Originate or Purchase	547 $	548 $	549 $	550 $	551 $	552 $	553 $	554 $	555 $
	573 %	574 %	575 %	576 %	577 %	578 %	579 %	580 %	
Futures and Firm Commitments to Originate or Purchase	581 $	582 $	583 $	584 $	585 $	586 $	587 $	588 $	589 $
	590 %	591 %	592 %	593 %	594 %	595 %	596 %	597 %	
Swaps (Received Fixed)	613 $	614 $	615 $	616 $	617 $	618 $	619 $	620 $	621 $
	622 %	623 %	624 %	625 %	626 %	627 %	628 %	629 %	

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Thrift Financial Report

As of _____, 19_____

INSTRUCTIONS
1. REPORT DOLLAR BALANCES IN THOUSANDS, e.g., $ 4,570,939,986 is 94570940
2. REPORT PERCENTAGES TO TWO (2) DECIMAL PLACES, e.g., 10.256% is 10.26%
3. SEE INSTRUCTIONS FOR FURTHER CLARIFICATION OF MATURITY CLASSIFICATION AND CALCULATION OF WEIGHTED AVERAGE CONTRACT RATE.

DISTRICT/DOCKET

NAME AND ADDRESS OF INSTITUTION *(Please Use Preprinted Label)*

Section H: Maturity and Yield/Cost Information, Part b: Assets

Remaining Time Before Asset Matures or Can Be Repriced - (Maturity/Repricing)

Assets	3 Months or Less	More Than 3 Months through 6 Months	More Than 6 Months through 1 Year	More Than 1 Year through 3 Years	More Than 3 Years through 5 Years	More Than 5 Years through 10 Years	More Than 10 Years through 20 Years	More Than 20 Years	Total
INVESTMENT SECURITIES - PART II									
Equity Securities									630 $
Debt Securities Rated Below Investment Grade	631 $ / 653 %	632 $ / 654 %	633 $ / 655 %	634 $ / 656 %	635 $ / 657 %	636 $ / 658 %	637 $ / 659 %	638 $ / 660 %	639 $
Zero Coupon Securities	661 $ / 670 %	662 $ / 671 %	663 $ / 672 %	664 $ / 673 %	665 $ / 674 %	666 $ / 675 %	667 $ / 676 %	668 $ / 677 %	669 $
CMO and REMIC Tranches	699 $ / 708 %	700 $ / 709 %	701 $ / 710 %	702 $ / 711 %	703 $ / 712 %	704 $ / 713 %	705 $ / 714 %	706 $ / 715 %	707 $
Principal Only Strips (Principal Amount of Underlying Collateral) Underlying Collateral Rates									
Less than 8.00%							716 $	717 $	
8.00% to 8.99%							718 $	719 $	
9.00% to 9.99%							720 $	721 $	
10.00% to 10.99%							739 $	740 $	
11.00% to 11.99%							741 $	742 $	
12.00% to 13.99%							743 $	744 $	
14.00% or more							745 $	746 $	
Weighted Avg. Remaining Term (in Months)							747 Months	748 Months	

Interest Only Strips, Fixed-Rate Residuals and Floating-Rate Residuals (Principal Amount of Underlying Collateral) Underlying Collateral Rates	Floating-Rate Residuals	Fixed-Rate Residuals	Interest Only	Interest Only
Less than 8.00%	749 $	750 $	751 $	752 $
8.00% to 8.99%	753 $	754 $	755 $	756 $
9.00% to 9.99%	757 $	758 $	759 $	760 $
10.00% to 10.99%	771 $	772 $	773 $	774 $
11.00% to 11.99%	775 $	776 $	777 $	778 $
12.00% to 13.99%	779 $	780 $	781 $	782 $
14.00% or more	783 $	784 $	785 $	786 $
Weighted Avg. Remaining Term (in Months)	787 Months	788 Months	789 Months	790 Months
Weighted Avg. Spread (in base points)	791 bp	792 bp		

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Federal Home Loan Bank Board
Thrift Financial Report

As of _____, 19_____

INSTRUCTIONS
1. REPORT DOLLAR BALANCES IN THOUSANDS, e.g., $ 4,570,935,896 is $4,570,940
2. REPORT PERCENTAGES TO TWO (2) DECIMAL PLACES, e.g., 10.256% is 10.26%
3. SEE INSTRUCTIONS FOR FURTHER CLARIFICATION OF MATURITY CLASSIFICATION AND CALCULATION OF WEIGHTED AVERAGE CONTRACT RATE:

DISTRICT/DOCKET

NAME AND ADDRESS OF INSTITUTION *(Please Use Preprinted Label)*

Section H: Maturity and Yield/Cost Information, Part II: Liabilities

Remaining Time Before Liabilities Matures or Can Be Repriced - (Maturity/Repricing)

Liabilities	3 Months or Less	More Than 3 Months through 6 Months	More Than 6 Months through 1 Year	More Than 1 Year through 3 Years	More Than 3 Years through 5 Years	More Than 5 Years through 10 Years	More Than 10 Years through 20 Years	More Than 20 Years	Total
DEPOSITS									
Interest Bearing Deposits									
Fixed Maturity Deposits	793 $ / 811 %	794 $ / 812 %	795 $ / 813 %	796 $ / 814 %	797 $ / 815 %	798 $ / 816 %	799 $ / 817 %	800 $ / 818 %	801 $
NOW, Super NOW and Other Transaction Accounts	819 $ / 821 %								820 $
Money Market Deposit Accounts (MMDAs)	822 $ / 824 %								823 $
Passbook Accounts	825 $ / 827 %								826 $
Non-Interest Bearing Deposits	828 $								829 $
BORROWINGS									
FHLB Advances	830 $ / 839 %	831 $ / 840 %	832 $ / 841 %	833 $ / 842 %	834 $ / 843 %	835 $ / 844 %	836 $ / 845 %	837 $ / 846 %	838 $
Other Borrowings	847 $ / 856 %	848 $ / 857 %	849 $ / 858 %	850 $ / 859 %	851 $ / 860 %	852 $ / 861 %	853 $ / 862 %	854 $ / 863 %	855 $
Redeemable Preferred Stock and Qualifying Subordinated Debentures	864 $ / 873 %	865 $ / 874 %	866 $ / 875 %	867 $ / 876 %	868 $ / 877 %	869 $ / 878 %	870 $ / 879 %	871 $ / 880 %	872 $
IMPACT OF HEDGING ACTIVITY (LIABILITIES)									
Options	881 $ / 890 %	882 $ / 891 %	883 $ / 892 %	884 $ / 893 %	885 $ / 894 %	886 $ / 895 %	887 $ / 896 %	888 $ / 897 %	889 $
Futures	898 $ / 907 %	899 $ / 908 %	900 $ / 909 %	901 $ / 910 %	902 $ / 911 %	903 $ / 912 %	904 $ / 913 %	905 $ / 914 %	906 $
Swaps (Receive Floating)	915 $ / 924 %	916 $ / 925 %	917 $ / 926 %	918 $ / 927 %	919 $ / 928 %	920 $ / 929 %	921 $ / 930 %	922 $ / 931 %	923 $
IMPACT OF OFF-BALANCE SHEET ACTIVITY (LIABILITIES)									
Sale of Caps, Optional and Firm Commitments to Acquire/Dispose Liabilities	932 $ / 941 %	933 $ / 942 %	934 $ / 943 %	935 $ / 944 %	936 $ / 945 %	937 $ / 946 %	938 $ / 947 %	939 $ / 948 %	940 $

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BILLING CODE 6720-01-C

Appendix C—Office of Regulatory Activities

Thrift Bulletin

[Handbook: Thrift Activities; Subjects: Interest Rate Risk Management; Section 420; TB 13; January 26, 1989]

Responsibilities of the Board of Directors and Management With Regard to Interest Rate Risk

Summary: Managing interest rate risk is an essential component in the safe and sound management of a thrift institution. This Bulletin provides guidance to the boards of directors and managements of insured institutions about their responsibilities in this area. It describes the internal policies, practices, and procedures that supervisory staff will expect institutions to utilize in order to comply with the existing regulations on interest rate risk.

For Further Information Contact: The FHLBank District in which you are located or the Industry Anaysis Division of the Office of Regulatory Activities, Washington, D.C., (202) 331-4511.

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Under 12 CFR 563.17-6 and 571.3, an insured institution's board of directors is responsible for ensuring the prudent management of the institution's exposure to interest rate risk. In addition, § 563.17(a) requires safe and sound management practices, of which the management of interest rate risk is an essential component. Since the adoption of the current regulations governing interest rate risk, Federal Home Loan Bank System (FHLBS) staff has refined and enhanced the System's regulatory policies and procedures with respect to the interest rate risk exposure of insured institutions. This Bulletin reflects that evolution in regulatory philosophy and presents guidance on the responsibilities of boards of directors and management regarding interest rate risk.

FHLBS staff will expect insured institutions to adopt formal interest rate risk policy statements, containing the elements described in this Bulletin, by June 30, 1989.[1] Institutions will be expected to implement those policies and any attendant changes in management procedures by December 31, 1989, or sooner where Supervisory Agents believe it to be warranted.

[1] This Bulletin applies to insured institutions and any subsidiaries which, for purposes of the Thrift Financial Report, are reported on a consolidated basis

Definition of Interest Rate Risk

Interest rate risk (IRR) is defined as the sensitivity of a depository institution's earnings and net asset value to changes in interest rates. IRR can result from (a) timing differences in the repricing of an institution's assets, liabilities, and off-balance sheet contracts; (b) the exercise of embedded options, such as loan pre-payments, interest rate caps, and deposit withdrawals; and (c) differences in the behavior of lending and funding rates, sometimes referred to as basis risk. (An example of the later source of IRR would occur if floating rate assets and liabilities, with otherwise identical repricing characteristics, were based on market indexes that were imperfectly correlated.)

The earnings of most thrift institutions are exposed to IRR because their deposit liabilities reprice faster than their mortgage-related assets. As a result, if interest rates rise, the cost of funds increases more rapidly than the yield on assets, thereby reducing net interest income. From a market value perspective, changes in market interest rates have a greater effect on the present value of long-term, fixed-rate instruments than on that of short-term instruments. If an institution's assets are of longer duration than its liabilities, the net present value of the institution's portfolio will decline when interest rates rise.

Objectives of IRR Management

The objective of IRR management is to maintain an institution's earnings and net worth within self-imposed parameters over a range of possible interest rate environments. Institutions will differ in their willingness to assume IRR, their management capability, and their ability to absorb potential losses. As with other aspects of financial management, a trade-off exists between risk and return; thus, the objective of IRR management need not be the complete elimination of an institution's exposure to changes in interest rates. The board of directors, however, has a fiduciary responsibility of ensuring that the level of IRR exposure incurred by the institution does not exceed prudent levels.

Policies and Procedures for Managing IRR at Insured Institutions

Managing IRR must be considered within the larger context of business planning (e.g., the introduction of new products, expansion, the pricing and structuring of products and services [including any associated customer options]). Although the following discussion focuses on the responsibilities of the board of directors and management that relate specifically to managing IRR, the discussion is not meant to imply that IRR management can be conducted in isolation of other business considerations. Further, although the board of directors ought properly to be concerned with the exposure of the consolidated organization and will undoubtedly want to assess the risk exposure of that entity, these guidelines pertain to the insured institution only.

Responsibilities of the Board of Directors

As noted above, § 563.17(a) requires insured institutions to have safe and sound management practices. The management of IRR is an essential aspect of managing a thrift institution. The board of directors must, therefore, ensure that the institution's policies and procedures for managing IRR are of a level of sophistication that is commensurate with the institution's activities and portfolio and that the institution's exposure is limited to a prudent level. More specifically, § 563.17-6 holds the board accountable for the IRR exposure of the institution and requires the board to establish a formal policy for the management of IRR and to review the results of management's implementation of that policy on at least a quarterly basis.

Board of Directors' Policy Statement

The board's policy statement should delegate responsibility for the management of IRR and should establish limits on the level of the institution's exposure. Specific authorizations and restrictions should be provided regarding the institution's trading activities, its use of derivatives and synthetic instruments, and its hedging strategies. To facilitate the board's oversight of management in this area, the policy should specify the contents of management's report to the board on this subject and state the frequency with which the directors will review IRR management (at least quarterly).

The FHLBS has promulgated several policy statements addressing instruments or strategies that can have a significant effect on an institution's IRR management. These policy statements include:

- Risk Conrolled Arbitrage (Memorandum SP-74, February 16, 1988; reprinted in United States League of Savings Institutions, *Federal Guide*, ¶11,762);
- Investment Consultants (Memorandum R-70, March 16, 1988);

- Mortgage Derivative Products and Mortgage Swaps (Thrift Bulletin TB 12, December 13, 1988).

Because of their connection to IRR, the requirements of these issuances should be of interest to boards of directors in framing their policies on IRR.

Exposure Limits

The most important element of the board of directors' policy statement is a set of explicit limits on the institution's exposure to IRR. Because the ability to control IRR requires a clear understanding of the amount at risk, a board policy in which the IRR limit is expressed only in terms of repricing gaps will no longer be considered sufficient; the board must be aware of the sensitivity of the institution's earnings and net asset value to interest rate changes.

To ensure that the board has a clear understanding of the possible consequences of the IRR exposure being authorized, the institution's IRR policy should define the maximum potential reduction in earnings and net worth that the board is prepared to accept as a result of possible changes in market interest rates. Management should structure the institution's balance sheet and off-balance sheet items so that projected results (under reasonable, documented assumptions) comply with the board's limits.

Specifically, the policy should establish limits on the sensitivity of the institution's net interest income[2] and market value of portfolio equity[3] to changes in interest rates. That is, the policy should specify the maximum percentage change the board of directors is prepared to accept in those two measures as a result of a parallel shift in the term structure of interest rates prevailing at the date of the analysis. These maximum changes should be specified for instantaneous and sustained changes in interest rates of ±100, ±200, ±300, and ±400 basis points and should be measured relative to the levels of net interest income and portfolio equity under an assumption of no change in interest rates.[4]

[2] The interest rate sensitivity of net interest income should be evaluated over at least the next four quarters.

[3] The market value of portfolio equity (hereafter also referred to as "portfolio equity") is defined as the net present value of an institution's existing assets, liabilities, and off-balance sheet instruments. The appendix to this bulletin discusses the composition and calculation of this measure in more detail.

[4] These particular interest rate scenarios provide a convenient basis for analyzing risk exposure; they are not meant to be interest rate forecasts. It has become standard practice in financial analysis to examine the impact of potential rate changes of these magnitudes on the value of financial instruments and/or portfolios.

EXAMPLE 1—XYZ SAVINGS & LOAN ASSOCIATION INTEREST RATE RISK EXPOSURE LIMITS

Change in interest rates (in basis points)	Maximum Permissible Change in: Net interest income (next four quarters) (percent)	Market value of portfolio equity (percent)
[1]	[2]	[3]
+400	−125	−90
+300	−75	−50
+200	−50	−25
+100	−20	−10
0	0	0
−100	−20	−10
−200	−50	−25
−300	−75	−50
−400	−125	−90

Example 1 illustrates a possible set of exposure limits that a board of directors might establish. In the example, the directors of XYZ Savings and Loan have specified that the institution's exposure be limited so that, for each interest rate change listed in column [1] of the table, the institution's net interest income would be reduced by no more than the percentage shown in column [2], and its market value of portfolio equity would be reduced by no more than the percentage in column [3]. For example, if the market value of XYZ's portfolio equity were $1,000 under current market interest rates, management would have to limit the institution's IRR exposure so that an immediate increase in interest rates of 400 basis points (column [1], line 1) would reduce portfolio equity by no more than 90 percent (column [3], line 1), to a level of $100. Similarly, if XYZ's net interest income were projected to be $400 under a constant rate environment, then management would have to limit the institution's exposure so that a 400 basis point increase in interest rates (again, column [1], line 1) would reduce net interest income by no more than 125 percent (column [2], line 1), to no worse than −$100 (i.e., $400×(−125/100)=−$100).

The maximum permissible reduction in net interest income and portfolio equity are for the board of directors to determine. The lower the board's desired level of interest rate sensitivity, the closer to zero it should set these percentages. Note, for instance, that in column [3] of the example, XYZ's board has established limits that would enable the market value of the institution's portfolio to withstand an instantaneous and sustained interest rate change of 400 basis points in either direction.[5]

The technical details of implementing such a policy—e.g., choosing a discount rate for computing changes in market value, ensuring reasonable assumptions about the behavior of customer options, and validating the overall computations—may be left to management. All assumptions should be documented and the board should, as part of its oversight function, periodically assure itself that they are reasonable.

Finally, note that the example specifies the maximum permissible percentage reductions under both positive and negative changes in interest rates. Although the net interest income and portfolio equity of most thrift institutions would increase in a declining interest rate environment, it is clearly possible for the opposite situation to exist (i.e., for an institution to be "asset sensitive"). There is, of course, no need for the board of directors to set the exposure limits symmetrically around a zero percent change in rates, as in Example 1. It should establish the exposure limits in whatever configuration best reflects the board's views on what constitutes a prudent level of exposure, based upon the institution's financial condition and its expertise in managing IRR.

Periodic review of IRR management:

Periodic reports by management to the board of directors should demonstrate compliance with the exposure limits. Reports by management should, therefore, include an analysis of how net interest income and the market value of protfolio equity would be affected by the hypothetical interest rate changes specified in the board's policy.

Example 2 illustrates the type of interest rate sensitivity analysis that

[5] As an institution's projected net interest income (under constant interest rates) or portfolio equity approach zero, the board of directors will need to be aware that its limits on IRR exposure, expressed as maximum allowable percentage changes in these two measures, will effectively become more stringent and may require adjustment.

Institutions with negative projected net interest income (under constant rates) should calculate their percentage changes by dropping the negative sign of the denominator (i.e., by using the absolute value of the demominator). For example, assume an institution's net interest income is projected to be −$100 for the next four quarters under a constant interest rate environment. If the board of directors were unwilling to see net interest income fall below −$150 under a particular interest rate scenario, it would specify the exposure limit for that scenario as −50%. That is,

$$\frac{[-\$150-(-\$100)]\times 100}{\$100}=-50\%.$$

management should prepare in order to demonstrate compliance with its board's exposure limits. In columns [3] and [5] of the example, XYZ's management is reporting that neither net interest income nor portifolio equity would be reduced by more than the percentages permitted by the board of directors, shown in columns [2] and [4], under any of the prescribed interest rate environments. Finally, the levels of net interest income and portfolio equity used as denominators in calculating columns [3] and [5] should be reported as memo items.

Clearly, measurements of the sensitivity of the institution's net interest income and portfolio equity will be necessary for management to demonstrate compliance with the board of directors' limits on exposure (as in columns [3] and [5] of Example 2). The FHLBS will calculate estimates of these sensitivity measures using data reported on Section H of the Thrift Financial Report and will provide those estimates to each insured institution.

EXAMPLE 2—CURRENT EXPOSURE OF XYZ SAVINGS & LOAN ASSOCIATION TO HYPOTHETICAL CHANGES IN INTEREST RATES

Change in interest rates (in basis points)	Percentage change in:			
	Net interest income		MV of portfolio equity	
	Board limit (percent)	Projected change (percent)	Board limit (percent)	Projected change (percent)
[1]	[2]	[3]	[4]	[5]
+400	−125	−105	−90	−65
+300	−75	−70	−50	−40
+200	−50	−30	−25	−15
+100	−20	−10	−10	−5
0	0	0	0	0
−100	−20	15	−10	10
−200	−50	35	−25	15
−300	−75	40	−50	15
−400	−125	45	−90	20

Memo: Net interest income projected under constant interest rates: $400; Market value of portfolio equity under current interest rates: $1,000.

All thrift institutions are strongly encouraged to develop the capability of performing those sensitivity measures for themselves, both to improve the quality of information being supplied to their boards of directors and to improve management's ability to manage the institution's exposure to interest rate risk. Nonetheless, because these measurement techniques are not presently in widespread use in the thrift industry, the managements of most institutions many opt to rely on the FHLBS's interest rate sensitivity estimates to demonstrate compliance with their directors' exposure limits.

Institutions with assets in excess of $500 million or investing in high risk mortgage derivative products will not be permitted to rely solely on the FHLBS's exposure estimates. Such institutions should have the management information systems necessary to perform the required interest rate sensitivity measurements. They will, therefore, be expected to be able to generate reliable net interest income and market value sensitivity measures by December 31, 1989.[6] In addition, Supervisory Agents have the discretion to require other institutions to develop such a measurement capability. Typically, this will be required of institutions with substantial volumes of options, futures, or interest rate swaps, or that otherwise have a complex asset/liability profile.

Because any system of IRR management will rely on certain assumptions, management should demonstrate to the board, and document, that the assumptions underlying its interest rate sensitivity analysis are reasonable. For example, management would need to explain how prepayments would be expected to behave under the various interest rate changes and how they would affect the sensitivity measures.[7] If more elaborate sensitivity analysis is used by the institution than is prescribed by these guidelines, the assumptions being made in that analysis should be discussed with the board and documented.

The board of directors should also consider requiring management to reconcile actual operating results and market values with those projected in the prior period's interest rate sensitivity analysis. Analyzing the sources of variance between actual and forecast will be beneficial not only in improving the institution's financial forecasting ability, but will add to the board's understanding of the major factors driving the institution's exposure to interest rates and the variability of those factors. This exercise will also highlight, for the board, any de facto changes in the institution's business plan.

Responsibilities of Management

Management is responsible for structuring the institution's balance sheet and off-balance sheet transactions in a manner consistent with the board's IRR policy. Management will accomplish this objective through three activities:

- Developing and implementing an IRR management strategy;
- Establishing and maintaining a system of limits and controls; and
- Establishing and utilizing an IRR measurement system.

IRR management strategy:

The board and management are responsible for ensuring the safety and soundness of the institution's IRR management strategy and its implementation. In deciding upon an IRR strategy, the board and management should take into account the level of expertise needed to implement the strategy and whether such expertise is currently available in the institution. A prudent IRR management strategy should be within the scope of existing management expertise. If an institution requires outside assistance to formulate and implement such a strategy, it should observe the provisions of R-Memorandum Number 70 (Investment Consultants: Guidelines on Use of Such Consultants, and Monitoring and Controlling Their Activities). That is, management must understand fully the reasons for adopting a given strategy and its possible effects on the short-term and long-term financial health of the institution. Responsibility for such decision-making cannot be ceded to the consultant.

There may be circumstances in which steps taken to manage IRR conflict with or limit an institution's ability to attain other business goals. In order to ensure that such conflicts are minimized, management's IRR strategy should be developed in conjunction with the creation of a comprehensive business plan for the institution. Further, an institution's strategy to remedy an excessive IRR exposure should not rely on speculative or problematic plans that might result in excessive credit or liquidity risk.

Limits and controls:

Management must control the institution's operating activities so that the aggregate IRR exposure may be coordinated and brought into compliance with the board's policy. The diverse investment, lending, funding, and capital market activities of the institution must be conducted within a system of reporting and controls that will permit management to monitor and manage the overall IRR exposure of the institution.

Furthermore, certain units within the typical institution have the ability to affect the institution's IRR exposure quite rapidly. Typically these are units involved in capital markets activities. Because of the significant potential impact such activities can have on the institution's exposure and the speed with which they can be consummated, management should establish exposure limits on such units and their personnel. A timely means of monitoring compliance with those exposure limits is essential. The longer the lag between the possible establishment of an undesired or unauthorized exposure and management's ability to reverse that exposure, the greater is the possibility of loss.

IRR measurement:

An essential element of managing IRR is the ability to measure interest rate exposure accurately. Management has the responsibility to use a method of measurement that accurately assesses its exposure to IRR. The state of knowledge about asset/liability management has advanced rapidly in recent years and the development of measurement techniques, such as duration and simulation models, has greatly enhanced the ability of depository institutions to measure and manage their IRR exposures.

As previously discussed, most institutions will be permitted to rely on the exposure estimates calculated by the FHLBS. These estimates will generally be less accurate than measures generated using detailed internal data and based upon an institution's own informed assumptions. Moreover, because of reporting lags, the FHLB's estimates will not be as current as an institution's internally generated exposure measurements would be. It is, therefore, strongly recommended that all thrift institutions develop the capability to calculate their own measures of exposure to interest rate risk.

The measures and procedures presented in this Bulletin are not intended to preclude institutions from engaging in other techniques of measuring and managing IRR. On the contrary, the interest rate sensitivity measures prescribed above should be considered the minimum level of information needed by the board of directors in order to oversee the management of IRR effectively.

Regulatory Concerns

There are four circumstances that would cause regulatory concern: (a) a nonexistent or incomplete IRR policy, (b) unacceptably high limits on IRR exposure, (c) noncompliance with the board of directors' IRR policy, and (d) weaknesses in management reporting systems or internal controls.

Nonexistent IRR Policy

The first cause for regulatory concern is the absence of a written IRR policy or a policy that lacks one or more of the elements discussed in the section, "Board of directors' policy statement". As noted above, existing regulation requires the board of directors to adopt a policy for the management of IRR. If such a policy is nonexistent or fails to address relevant policy issues, the institution may be in violation of § 563.17–6, and the situation will be treated in the same manner as other possible violations of regulations.

Unacceptable Limits on IRR Exposure

The board of directors has a fiduciary responsibility to operate the institution in a safe and sound manner. It should, therefore, establish and ensure compliance with prudent limits on IRR exposure. Generally, such limits should not permit an exposure that has the potential to deplete net worth to a level below the regulatory minimum or to eliminate the market value of the institution's portfolio equity under plausible changes in interest rates.[8]

If regulatory staff determines that excessive exposures are permitted by the board's IRR policy, or if the institution fails to take appropriate action to reduce such an existing exposure, the board of directors will be apprised of these findings and be given adequate opportunity to respond to the assessment of the regulatory staff. If, following consideration of the institution's response, the Principal Supervisory Agent believes that the institution's IRR exposure is inappropriate, and if the institution fails to take remedial steps, enforcement action will be taken.

Noncompliance with Board of Directors' IRR Policy

If an institution's IRR exposure is found to exceed the limits established by the board of directors, corrective measures (e.g., improved reporting systems, intensified board oversight) should be taken in order to prevent a recurrence of the situation. If the excessive exposure was the result of intentional decisions by management to exceed the board's limits, appropriate disciplinary action should be taken by the board of directors.

Weaknesses in Reporting or Internal Controls

The final source of possible concern is an institution with weaknesses in its IRR management practices and procedures (e.g., poor measurement systems, weak internal controls). While such an institution's exposure may not be excessive at present, deficiencies in IRR management allow for the possibility that excessive exposures may develop in the future. The identified weaknesses will be discussed with the institution's board and management, and an acceptable plan to correct them will be required.

[6] Supervisory Agents may extend this deadline for institutions that are making good faith efforts to develop the necessary data processing systems and technical abilities.

[7] Managements using the FHLBS estimate measures of interest rate sensitivity should conduct a similar discussion with their directors in order to apprise them of the reliability of those estimates.

[8] Some troubled institutions have limited scope to reduce their IRR exposure. Supervisory Agents, therefore, have discretion to modify the guidelines in this bulletin for institutions operating under Consent Agreements or Special Agreements. In determining whether such an institution's exposure is excessive from a regulatory perspective, Supervisory Agents should review the available alternatives for reducing the institution's exposure and the impact those alternatives would have on the institution's financial condition. The Supervisory Agent's decision should be communicated to the institution's board and documented. Such an institution should, nonetheless, otherwise comply with the guidelines in this bulletin. In particular, its board of directors will be expected to maintain exposure limits (albeit possibly high ones) and its management will be expected to measure and report the institution's current interest rate exposure.

Appendix to Thrift Bulletin 13—Calculating the Market Value of Portfolio Equity

The market value of portfolio equity ("portfolio equity") is a key component of a depository institution's economic value. As is discussed below, portfolio equity is defined as the net present value of assets, liabilities, and off-balance sheet contracts.

The interest rate sensitivity of portfolio equity is an important measure of IRR. Since portfolio equity includes the present value of the future cash flows resulting from all currently booked instruments, it provides a leading indicator of an institution's future stream of net interest income. This allows management to take a longer-term perpsective on IRR management without having to examine the effects of a particular portfolio structure on net interest income in each individual future period; the change in portfolio equity thereby provides a compact measure of those future effects.

The interest rate sensitivity of portfolio equity is also highly relevant from a regulatory perspective, since it measures the potential effect of interest rate changes on the major component of an institution's economic value. Economic value is an important consideration for all thrifts, but it is an especially important consideration with regard to marginally solvent institutions, since changes in portfolio equity have a direct bearing on the potential cost of disposing of such institutions, should they fail.

Calculating the Market Value of Portfolio Equity

The general formula for calculating the market value of portfolio equity is as follows:

Market value of portfolio equity=

Present value of cash flows from existing assets

minus the present value of cash flows from existing liabilities

plus the present value of cash inflows from existing off-balance sheet contracts

minus the present value of cash outflows from existing off-balance sheet contracts.

Computing changes in the market value of portfolio equity will clearly require an institution to make a number of assumptions. Management should ensure that all assumptions are reasonable and are documented. The following discussion provides some guidance in calculating portfolio equity and in making the necessary assumptions.

Cash flows to be included in the market value calculation:

- cash and deposits with other financial institutions;
- expected receipts (principal and interest) associated with existing loans, leases, participations, and securities (regardless of whether held for investment or trading purposes);
- expected payments of principal and interest associated with existing deposits and borrowings (including subordinated debt);
- expected payments of dividends on all preferred stock;
- expected cash inflows and outflows associated with existing futures, swaps, options, and firm and optional commitments to originate, purchase, and sell financial instruments; and
- any other well-defined, contractual cash flows resulting from existing financial contracts, such as loan servicing agreements.

Adjustments to cash flows due to customer options:

Future cash flows on the items listed above may be greatly affected by the existence of customer options, such as loan prepayments, caps, or deposit withdrawals. The institution will need to make assumptions about how customer options will be exercised under different interest rates and adjust the scheduled cash flows accordingly.

Assets to be included at book value:

It is difficult to calculate the present value of many of the assets and liabilities of thrift institutions because of uncertainty about the timing and the amount of their cash flows. To avoid unduly complicating the IRR measurement process at this early stage of implementation, it may reasonably be assumed that the present values of some items will not be affected by changes in the level of interest rates. This assumption is most easily incorporated into the analysis by assuming that the present value of such items remains at book value (net of any associated valuation allowance), regardless of the interest rate scenario. In calculating the percentage change in the market value of portfolio equity, therefore, the present value of the following assets should generally be assumed to be equal to their book value (net of any associated valuation allowance), regardless of the level of interest rates;

- fixed assets;
- repossessed assets;
- real estate held for development, investment, or resale; and
- assets of which any portion is classified as doubtful or loss.

Cash flows to be excluded from the market value calculation:

The following types of cash flows should generally be excluded from the calculation of portfolio equity:

- anticipated loan fees or service charges, other than those that may reasonably be expected in connection with existing assets or liabilities or in connection with existing commitments;
- anticipated non-interest expenses (e.g., salaries, occupancy expenses, income taxes); and
- future dividends (except preferred dividends) to be paid to or received from individuals or corporations (including service corporations or other unconsolidated affiliates).

In addition, certain other balance sheet entries that are appropriate under Regulatory Accounting Principles should be excluded from the calculation of the market value of portfolio equity. These are accounting entries intended to delay the recognition of income or expense cash flows that actually occurred in the past, such as:

- deferred loan fees, unamortized premiums, or unaccredited discounts;
- fees paid on options;
- deferred gains or losses on futures or options or deferred gains or losses on the sale of assets; and
- goodwill.

Method discounting:

A number of alternative discount rate configurations are possible, ranging from discounting all cash flows by a single "average" discount rate, to configurations in which different discounts rates are used for each cash flow. The costs and benefits of one method versus another will differ for each institution. The responsibility for choosing a particular discounting method resides with the institution. Like other assumptions necessary to the analysis, the details of the method that is chosen, and the rationale for choosing it, should be documented. Finally, to assure an unbiased analysis, the method of discounting should be applied by the institution in a consistent manner over time. Any changes, and the reasons for them, should be well documented.

By the Federal Home Loan Bank Board

John F. Ghizzoni,

Assistant Secretary

[FR Doc. 89-15555 Filed 6-30-89; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-290, RM-6607]

Radio Broadcasting Services; Magnolia, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed on behalf of Hogan Broadcasting System, seeking the allotment of FM Channel 271A to Magnolia, Arkansas, as that community's second local FM broadcast service. Coordinates used for Channel 271A at Magnolia are 33-21-53 and 93-13-36.

DATES: Comments must be filed on or before August 14, 1989, and reply comments on or before August 29, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Hogan Broadcasting System, Attn: Billy G. Hogan, Rt. 1, Box 183, Elkmont, AL 35620.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-290, adopted May 31, 1989, and released June 23, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-15631 Filed 6-30-89; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 54, No. 126
Monday, July 3, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Designation Renewal of the Eastern Iowa (IA) Agency

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Eastern Iowa Grain Inspection and Weighing Service, Inc. as an official agency responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: August 1, 1989.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Eastern Iowa's designation terminates on July 31, 1989, and requested applications for official agency designation to provide official services within specified geographic areas in the February 1, 1989, **Federal Register** (54 FR 5101). Applications were to be postmarked by March 3, 1989. Eastern Iowa was the only applicant for designation in its area and applied for designation renewal in the entire area currently assigned to that agency. The Service announced the applicant name in the April 3, 1989, **Federal Register** (54 FR 13393) and requested comments on the applicant for designation. Comments were to be postmarked by May 18, 1989. No comments were received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and in accordance with section 7(f)(1)(B), determined that Eastern Iowa is able to provide official services in the geographic area for which the Service is renewing its designation. Effective August 1, 1989, and terminating July 31, 1992, Eastern Iowa is designated to provide official inspection functions in its specified geographic area, as previously described in the February 1 **Federal Register**.

Interested persons may obtain official services by contacting the agency at the following telephone number: Eastern Iowa at (319) 322-7149.

Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: June 21, 1989.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 89-15524 Filed 6-30-89; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to the Cairo (IL) Agency

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic area currently assigned to Cairo Grain Inspection Agency, Inc.

DATE: Comments must be postmarked on or before August 17, 1989.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., RM, FGIS, USDA, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090-6454.

Telemail users may respond to [LLEBAKKEN/FGIS/USDA] telemail.

Telex users may respond as follows: To: Lewis Lebakken, TLX:7607351, ANS:FGIS UC.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic areas in the May 1, 1989, **Federal Register** (54 FR 18559). Applications were to be postmarked by May 31, 1989. There were two applications for the Cairo designation; Cairo applied for designation renewal in the entire area currently assigned to that agency, except for Hopkinsville Elevator Co., Inc., Hopkinsville, KY, and the L&N Railroad Siding on Alternate U.S. Route 41 five miles south of Hopkinsville, Kentucky, both in Christian County, Kentucky (located inside Ohio Valley Grain Inspection's area), and a neighboring official agency, Ohio Valley Grain Inspection applied for designation only for Hopkinsville Elevator Co., Inc., Hopkinsville, Kentucky, and the L&N Railroad Siding on Alternate U.S. Route 41 five miles south of Hopkinsville, Kentucky, both in Christian County, Kentucky.

This notice provides interested persons the opportunity to present their comments concerning the applicants for designation. Commenters are encouraged to submit reasons for support or objection to this designation action and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register** and the applicants will be informed of the decision in writing.

Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: June 21, 1989.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 89-15525 Filed 6-30-89; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to the Alva (OK) and Schaal (IA) Agencies

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic areas currently assigned to the specified agencies. The official agencies are Thomas Oller dba Alva Grain Inspection Department (Alva) and Lewis D. Schaal dba D.R. Schaal Agency (Schaal).

DATE: Applications must be postmarked on or before August 2, 1989.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

All applications received will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Alva, located at 129 College, Alva, OK 73717 and Schaal, located at 219 River Avenue North, Belmond, IA 50421, were designated under the Act as official agencies on January 1, 1987. Alva and Schaal were designated to provide official inspection functions.

The official agencies' designations terminate on December 31, 1989. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Alva, in the State of Oklahoma, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Alfalfa, Beckham, Caddo, Custer, Dewey, Ellis, Greer, Harper, Kiowa, Major, Roger Mills, Washita, Woods, and Woodward Counties.

The geographic area presently assigned to Schaal, in the State of Iowa, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by the northern Kossuth County line from U.S. Route 169; the northern Winnebago, Worth, and Mitchell County lines;

Bounded on the East by the eastern Mitchell County line; the eastern Floyd County line south to B60; B60 west to T64; T64 south to State Route 188; State Route 188 south to C33;

Bounded on the South by C33 west to T47; T47 north to C23; C23 west to S56; S56 south to C25; C25 west to U.S. Route 65; U.S. Route 65 south to State Route 3; State Route 3 west to S41; S41 south to C55; C55 west to Interstate 35; Interstate 35 southwest to the southern Wright County line; the southern Wright County line west to U.S. Route 69; U.S. Route 69 to C54; C54 west to State Route 17; and

Bounded on the West by State Route 17 north to the southern Kossuth County line; the Kossuth County line west to U.S. Route 169; U.S. Route 169 north to the northern Kossuth County line.

The following location, outside of the above contiguous geographic area, is part of this geographic area assignment: Gold Eagle Co-op, Eagle Grove, Wright County (located inside A.V. Tischer and Son, Inc.'s area).

Exceptions to Schaal's assigned geographic area are the following locations inside Schaal's area which have been and will continue to be serviced by the following official agencies:

1. Central Iowa Grain Inspection Service, Inc.: Farmers Co-op Elevator Company, Chapin, Franklin County; Hampton Farmers Co-op Company, Hampton, Franklin County; and Farmers Community Co-op, Inc., Rockwell, Cerro Gordo County.

2. A.V. Tischer and Son, Inc.: Cargill, Inc., Algona, Kossuth County; Big Six Elevator, Burt, Kossuth County; Gold-Eagle, Goldfield, Wright County; and Farmers Co-op Elevator, Holmes, Wright County.

Interested parties, including Alva and Schaal, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic areas, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic area is for the period beginning January 1, 1990, and ending December 31, 1992. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: June 21, 1989.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 89-15526 Filed 6-30-89; 8:45 am]

BILLING CODE 3410-EN-M

Forest Service

Draft 1990 Forest and Rangeland Renewable Resources Program

AGENCY: Forest Service, USDA.

ACTION: Notice of availability; request for public comment.

SUMMARY: The Forest and Rangeland Renewable Resources Planning Act (RPA) of 1974, as amended, directs the Secretary of Agriculture to prepare a long range recommended renewable natural resources program every 5 years. The draft of the 1990 Program, which will respond to the renewable resource situation projected in the 1989 RPA Assessment, is now available to those who wish to review and comment on it. The comments will be used in preparing the final 1990 RPA Program, which is scheduled to be delivered to Congress in March, 1990.

DATE: Comments must be received in writing by October 3, 1989.

ADDRESSES: Copies of the Draft 1990 RPA Program may be obtained by writing to Meg Rauch, Resources Program and Assessment, Room 3305, Forest Service—USDA, P.O. Box 96090, Washington DC 20090-6090 or telephoning Jo Bridges at (202) 447-2494.

Reviewers should send their comments in writing to Jo Bridges, Public Affairs Office, USDA Forest Service, P.O. Box 96090, Room 3117, Washington, DC 20090-6090.

FOR FURTHER INFORMATION CONTACT: Questions about the 1990 Draft Program may be addressed to Thomas Mills, Director, Resources Program and Assessment, (202) 382-8235.

SUPPLEMENTARY INFORMATION: The 1990 Renewable Resources Program will serve as a strategic planning document that will provide long-term direction to guide the general emphasis and composition of Forest Service activities. A major focus of the 1990 RPA Program is to evaluate and clarify the current role, and propose a future role, of the Forest Service as a provider of forest and rangeland resources. Examples of important Forest Service roles discussed in the Draft Program document are multiple use management, resource inventory and analysis, and international forestry.

The 1990 RPA Program will also address contemporary natural resource issues, such as management of old-growth forests, riparian management, and clearcutting. The Draft Program describes these contemporary issues and presents proposed Forest Service responses to the issues. In addition, the Draft Program will describe various long-term strategies which describe different emphases among resource outputs for future Forest Service programs.

As a long-term strategic planning document, the Program is not accompanied by an Environmental Impact Statement. Should the Forest Service initiate any legislative proposals resulting from the 1990 RPA Program, the Forest Service will prepare the appropriate environmental documents specific to the proposed legislation as needed. Similarly, implementation of the Program through Regional Guides and the forest land and resource management planning process will entail environmental analysis and documentation at appropriate decision points.

After consideration of the public comment received on the strategies presented in the draft, the Secretary will recommend and the President will identify a selected Forest Service Program which will be described in the Final 1990 Program and conveyed to the Congress.

George M. Leonard,

Associate Chief,

Date: June 16, 1989.

[FR Doc. 89-15571 Filed 6-30-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: 1989 Special Survey.

Form Numbers: D-1 (CJ89), D-3 (CJ89), D-39A (CJ89), D-39B (CJ89).

Agency Approval Number: None.

Type of Request: New collection-Expedited Review.

Burden: 9,200 hours.

Number of Respondents: 40,000.

AVG Hours Per Response: 14 minutes.

Needs and Uses: The 1989 Special Survey is a test survey of the revised format of responses to the race question, which will be asked of the entire U.S. population in the 990 census. The survey will be used to implement refined processing procedures for the 1990 census.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230. The application form is printed below.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 27, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

BILLING CODE 3510-07-M

D-39 (CJ89) (L1)
(6-89)

UNITED STATES DEPARTMENT OF COMMERCE
Bureau of the Census
Washington, D.C. 20233

OFFICE OF THE DIRECTOR

FROM THE DIRECTOR
BUREAU OF THE CENSUS

We are conducting this 1989 Special Survey as part of our decennial planning process. Your answers will help us to complete the procedures for the 1990 decennial census.

Your housing unit, not you personally, was randomly selected from 13.7 million addresses from across the Nation. Please complete this survey form to help make the survey successful.

Your answers to this survey are private. By law (Title 13, United States Code) we cannot release the results of the survey in a way that would enable any other person or government agency to associate your answers with you as an individual, other members of your household, or your home. Only Bureau of the Census employees who are sworn under penalty of law can see your answers. The same law that safeguards that your survey form remains private also requires that you answer the survey questions to the best of your knowledge.

Please answer all questions that apply to you and your household and mail the survey form back in the enclosed envelope by October 6 or as close to that date as possible.

Thank you for your help. We look forward to receiving your completed survey form as soon as possible.

Enclosures

BEST COPY AVAILABLE

D-39 (CJ89)(L2)
(6-89)

UNITED STATES DEPARTMENT OF COMMERCE
Bureau of the Census
Washington, D.C. 20233

OFFICE OF THE DIRECTOR

FROM THE DIRECTOR
BUREAU OF THE CENSUS

Recently, we mailed a 1989 Special Survey Form to your household. If you have already completed and mailed your survey form, we thank you. If you have not completed your survey form, please complete this survey form and return it in the enclosed envelope as soon as possible.

Title 13, United States Code, authorizes the Census Bureau to conduct this survey and requires that you answer the questions to the best of your knowledge. This same law requires that answers to the survey questions be held in strict confidence. Information about you or members of your household is private. Your answers will help us to complete procedures for the 1990 decennial census.

Thank you for your help.

Enclosures

- Please fill out this Special Survey Form and mail it back as soon as possible.

- **For Help Call —**

Chicago Regional Office	(312) 353-6251
Dallas Regional Office	(214) 767-0621
Detroit Regional Office	(313) 226-7742
Los Angeles Regional Office	(213) 209-6616
New York Regional Office	(212) 264-3860
Philadelphia Regional Office	(215) 597-4920

Your answers are confidential
By law (title 13, U.S. Code), census employees are subject to fine and/or imprisonment for any disclosure of your answers. The same law requires that you answer the questions to the best of your knowledge.

If the address shown below has the wrong apartment identification, please write the correct number or location below.

1989 SPECIAL SURVEY FORM

Thank you for taking time to complete and return this survey form. It's important to you, your community, and the Nation.

The law requires answers but guarantees privacy.

The law under which this survey is being taken (Title 13, U.S. Code), requires you to answer the survey questionnaire to the best of your knowledge. However, it is the same law that guarantees that your survey form remains confidential. Only Census Bureau employees can see your form. No one else–no other government body, no police department, no court system or welfare agency–is permitted to see this confidential information under any circumstances.

How to get started–and get help.

Start by listing on the next page the names of all the people who live in your home. Please answer all questions with a black lead pencil. You'll find detailed instructions for answering the survey form in the enclosed guide. If you need additional help, call the Census Regional Office telephone number to the left, near your address.

Please answer and return your form by October 6, 1989.

Complete your form and return it by October 6, 1989 in the preaddressed envelope provided.

Again, thank you for answering this survey form.
Remember: Return the completed form by October 6, 1989.

U.S. Department of Commerce
BUREAU OF THE CENSUS
FORM D-1(CJ89)

OMB No. XXXX-XXXX
Approval Expires XX/XX/XX

VOL 54 ISS 126 JL 3 1989 UMI

Page 1

The 1989 Special Survey must count every person at his or her "usual residence." This means the place where the person lives and sleeps most of the time.

1a. List on the numbered lines below the name of each person living here on October 6, 1989, including all persons staying here who have no other home. If EVERYONE at this address is staying here temporarily and usually lives somewhere else, follow the instructions given in question 1b below.

Include	Do NOT include
• Everyone who usually lives here such as family members, housemates and roommates, foster children, roomers, boarders, and live-in employees	• Persons who usually live somewhere else
• Persons who are temporarily away on a business trip, on vacation, or in a general hospital	• Persons who are away in an institution such as a prison, mental hospital, or a nursing home
• College students who stay here while attending college	• College students who live somewhere else while attending college
• Persons in the Armed Forces who live here	• Persons in the Armed Forces who live somewhere else
• Newborn babies still in the hospital	
• Children in boarding schools below the college level	
• Persons who stay here most of the week while working even if they have a home somewhere else	• Persons who stay somewhere else most of the week while working
• Persons with no other home who are staying here on October 6, 1989	

Print last name, first name, and middle initial for each person. Begin on line 1 with the household member (or one of the household members) in whose name this house or apartment is owned, being bought, or rented. If there is no such person, start on line 1 with any adult household member.

	LAST	FIRST	INITIAL		LAST	FIRST	INITIAL
1				7			
2				8			
3				9			
4				10			
5				11			
6				12			

1b. If EVERYONE is staying here only temporarily and usually lives somewhere else, list the name of each person on the numbered lines above, fill this circle ⟶ ○ and print their usual address below. DO NOT PRINT THE ADDRESS LISTED ON THE FRONT COVER.

House number | Street or road/Rural route and box number | Apartment number

City | State | ZIP Code

County or foreign country | Names of nearest intersecting streets or roads

NOW PLEASE OPEN THE FLAP TO PAGE 2 AND ANSWER ALL QUESTIONS FOR THE FIRST 7 PEOPLE LISTED. USE A BLACK LEAD PENCIL ONLY.

Page 2

PLEASE ALSO ANSWER HOUSING QUESTIONS ON PAGE 3 →

Please fill one column for each person listed in Question 1a on page 1.	PERSON 1	PERSON 2	PERSON 3	PERSON 4	PERSON 5	PERSON 6
Last name						
First name / Middle initial						
2. How is this person related to PERSON 1? Fill ONE circle for each person. If Other relative of person in column 1 fill circle and print exact relationship, such as mother-in-law, grandparent, son-in-law, niece, cousin, and so on.	START in this column with the household member (or one of the members) in whose name the home is owned, being bought, or rented. If there is no such person, start in this column with any adult household member.	If a RELATIVE of Person 1: Husband/wife; Natural-born or adopted son/daughter; Stepson/stepdaughter; Brother/sister; Father/mother; Grandchild; Other relative. If NOT RELATED to Person 1: Roomer, boarder, or foster child; Housemate, roommate; Unmarried partner; Other nonrelative.	If a RELATIVE of Person 1: Husband/wife; Natural-born or adopted son/daughter; Stepson/stepdaughter; Brother/sister; Father/mother; Grandchild; Other relative. If NOT RELATED to Person 1: Roomer, boarder, or foster child; Housemate, roommate; Unmarried partner; Other nonrelative.	If a RELATIVE of Person 1: Husband/wife; Natural-born or adopted son/daughter; Stepson/stepdaughter; Brother/sister; Father/mother; Grandchild; Other relative. If NOT RELATED to Person 1: Roomer, boarder, or foster child; Housemate, roommate; Unmarried partner; Other nonrelative.	If a RELATIVE of Person 1: Husband/wife; Natural-born or adopted son/daughter; Stepson/stepdaughter; Brother/sister; Father/mother; Grandchild; Other relative. If NOT RELATED to Person 1: Roomer, boarder, or foster child; Housemate, roommate; Unmarried partner; Other nonrelative.	If a RELATIVE of Person 1: Husband/wife; Natural-born or adopted son/daughter; Stepson/stepdaughter; Brother/sister; Father/mother; Grandchild; Other relative. If NOT RELATED to Person 1: Roomer, boarder, or foster child; Housemate, roommate; Unmarried partner; Other nonrelative.
3. Sex. Fill ONE circle for each person.	Male; Female	Male; Female	Male; Female	Male; Female	Male; Female	Male; Female
4. Race. Fill ONE circle for the race that the person considers himself/herself to be. If Indian (Amer.), print the name of the enrolled or principal tribe. If Other Asian or Pacific Islander (API), print one group, for example: Hmong, Fijian, Laotian, Thai, Tongan, Pakistani, Cambodian, and so on. If Other race, print race.	White; Black or Negro; Indian (Amer.) (Print the name of the enrolled or principal tribe.); Eskimo; Aleut; Asian or Pacific Islander (API): Chinese, Japanese, Filipino, Asian Indian, Hawaiian, Samoan, Korean, Guamanian, Vietnamese, Other API; Other race (Print race)	White; Black or Negro; Indian (Amer.) (Print the name of the enrolled or principal tribe.); Eskimo; Aleut; Asian or Pacific Islander (API): Chinese, Japanese, Filipino, Asian Indian, Hawaiian, Samoan, Korean, Guamanian, Vietnamese, Other API; Other race (Print race)	White; Black or Negro; Indian (Amer.) (Print the name of the enrolled or principal tribe.); Eskimo; Aleut; Asian or Pacific Islander (API): Chinese, Japanese, Filipino, Asian Indian, Hawaiian, Samoan, Korean, Guamanian, Vietnamese, Other API; Other race (Print race)	White; Black or Negro; Indian (Amer.) (Print the name of the enrolled or principal tribe.); Eskimo; Aleut; Asian or Pacific Islander (API): Chinese, Japanese, Filipino, Asian Indian, Hawaiian, Samoan, Korean, Guamanian, Vietnamese, Other API; Other race (Print race)	White; Black or Negro; Indian (Amer.) (Print the name of the enrolled or principal tribe.); Eskimo; Aleut; Asian or Pacific Islander (API): Chinese, Japanese, Filipino, Asian Indian, Hawaiian, Samoan, Korean, Guamanian, Vietnamese, Other API; Other race (Print race)	White; Black or Negro; Indian (Amer.) (Print the name of the enrolled or principal tribe.); Eskimo; Aleut; Asian or Pacific Islander (API): Chinese, Japanese, Filipino, Asian Indian, Hawaiian, Samoan, Korean, Guamanian, Vietnamese, Other API; Other race (Print race)
5. Age and year of birth. a. Print each person's age at last birthday. Fill in the matching circle below each box. b. Print each person's year of birth and fill the matching circle below each box.	a. Age; b. Year of birth	a. Age; b. Year of birth	a. Age; b. Year of birth	a. Age; b. Year of birth	a. Age; b. Year of birth	a. Age; b. Year of birth
6. Marital status. Fill ONE circle for each person.	Now married; Widowed; Divorced; Separated; Never married	Now married; Widowed; Divorced; Separated; Never married	Now married; Widowed; Divorced; Separated; Never married	Now married; Widowed; Divorced; Separated; Never married	Now married; Widowed; Divorced; Separated; Never married	Now married; Widowed; Divorced; Separated; Never married
7. Is this person of Spanish/Hispanic origin? Fill ONE circle for each person. If Yes, other Spanish/Hispanic print one group.	No (not Spanish/Hispanic); Yes, Mexican, Mexican-Am., Chicano; Yes, Puerto Rican; Yes, Cuban; Yes, other Spanish/Hispanic (Print one group, for example: Argentinian, Colombian, Dominican, Nicaraguan, Salvadoran, Spanish, and so on.)	No (not Spanish/Hispanic); Yes, Mexican, Mexican-Am., Chicano; Yes, Puerto Rican; Yes, Cuban; Yes, other Spanish/Hispanic (Print one group, for example: Argentinian, Colombian, Dominican, Nicaraguan, Salvadoran, Spanish, and so on.)	No (not Spanish/Hispanic); Yes, Mexican, Mexican-Am., Chicano; Yes, Puerto Rican; Yes, Cuban; Yes, other Spanish/Hispanic (Print one group, for example: Argentinian, Colombian, Dominican, Nicaraguan, Salvadoran, Spanish, and so on.)	No (not Spanish/Hispanic); Yes, Mexican, Mexican-Am., Chicano; Yes, Puerto Rican; Yes, Cuban; Yes, other Spanish/Hispanic (Print one group, for example: Argentinian, Colombian, Dominican, Nicaraguan, Salvadoran, Spanish, and so on.)	No (not Spanish/Hispanic); Yes, Mexican, Mexican-Am., Chicano; Yes, Puerto Rican; Yes, Cuban; Yes, other Spanish/Hispanic (Print one group, for example: Argentinian, Colombian, Dominican, Nicaraguan, Salvadoran, Spanish, and so on.)	No (not Spanish/Hispanic); Yes, Mexican, Mexican-Am., Chicano; Yes, Puerto Rican; Yes, Cuban; Yes, other Spanish/Hispanic (Print one group, for example: Argentinian, Colombian, Dominican, Nicaraguan, Salvadoran, Spanish, and so on.)
FOR CENSUS USE						

PERSON 7

Last name

First name — Middle initial

If a RELATIVE of Person 1:

- Husband/wife
- Natural-born or adopted son/daughter
- Stepson/stepdaughter
- Brother/sister
- Father/mother
- Grandchild
- Other relative

If NOT RELATED to Person 1:

- Roomer, boarder, or foster child
- Housemate, roommate
- Unmarried partner
- Other nonrelative

- Male
- Female

- White
- Black or Negro
- Indian (Amer.) (Print the name of the enrolled or principal tribe.)
- Eskimo
- Aleut

Asian or Pacific Islander (API)

- Chinese
- Filipino
- Hawaiian
- Korean
- Vietnamese
- Japanese
- Asian Indian
- Samoan
- Guamanian
- Other API

- Other race (Print race)

a. Age

b. Year of birth

- Now married
- Widowed
- Divorced
- Separated
- Never married

- No (not Spanish/Hispanic)
- Yes, Mexican, Mexican-Am., Chicano
- Yes, Puerto Rican
- Yes, Cuban
- Yes, other Spanish/Hispanic (Print one group, for example: Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard, and so on.)

NOW PLEASE ANSWER QUESTIONS H1a — H7b FOR THIS HOUSEHOLD

H1a. Did you leave anyone out of your list of persons for Question 1a on page 1 because you were not sure if the person should be listed — for example, someone temporarily away on a business trip or vacation, a newborn baby still in the hospital, or a person who stays here once in a while and has no other home?

- Yes, please print the name(s) and reason(s).
- No

b. Did you include anyone in your list of persons for Question 1a on page 1 even though you were not sure that the person should be listed — for example, a visitor who is staying here temporarily or a person who usually lives somewhere else?

- Yes, please print the name(s) and reason(s).
- No

H2. Which best describes this building? Include all apartments, flats, etc., even if vacant.

- A mobile home or trailer
- A one-family house detached from any other house
- A one-family house attached to one or more houses
- A building with 2 apartments
- A building with 3 or 4 apartments
- A building with 5 to 9 apartments
- A building with 10 to 19 apartments
- A building with 20 to 49 apartments
- A building with 50 or more apartments
- Other

H3. How many rooms do you have in this house or apartment? Do NOT count bathrooms, porches, balconies, foyers, halls, or half-rooms.

- 1 room
- 2 rooms
- 3 rooms
- 4 rooms
- 5 rooms
- 6 rooms
- 7 rooms
- 8 rooms
- 9 or more rooms

H4. Is this house or apartment —

- Owned by you or someone in this household with a mortgage or loan?
- Owned by you or someone in this household free and clear (without a mortgage)?
- Rented for cash rent?
- Occupied without payment of cash rent?

If this is a ONE-FAMILY HOUSE —

H5a. Is this house on ten or more acres?

- Yes
- No

b. Is there a business (such as a store or barber shop) or a medical office on this property?

- Yes
- No

Answer only if you or someone in this household OWNS OR IS BUYING this house or apartment —

H6. What is the value of this property; that is, how much do you think this house and lot or condominium unit would sell for if it were for sale?

- Less than $10,000
- $10,000 to $14,999
- $15,000 to $19,999
- $20,000 to $24,999
- $25,000 to $29,999
- $30,000 to $34,999
- $35,000 to $39,999
- $40,000 to $44,999
- $45,000 to $49,999
- $50,000 to $54,999
- $55,000 to $59,999
- $60,000 to $64,999
- $65,000 to $69,999
- $70,000 to $74,999
- $75,000 to $79,999
- $80,000 to $89,999
- $90,000 to $99,999
- $100,000 to $124,999
- $125,000 to $149,999
- $150,000 to $174,999
- $175,000 to $199,999
- $200,000 to $249,999
- $250,000 to $299,999
- $300,000 to $399,999
- $400,000 to $499,999
- $500,000 or more

Answer only if you PAY RENT for this house or apartment —

H7a. What is the monthly rent?

- Less than $80
- $80 to $99
- $100 to $124
- $125 to $149
- $150 to $174
- $175 to $199
- $200 to $224
- $225 to $249
- $250 to $274
- $275 to $299
- $300 to $324
- $325 to $349
- $350 to $374
- $375 to $399
- $400 to $424
- $425 to $449
- $450 to $474
- $475 to $499
- $500 to $524
- $525 to $549
- $550 to $599
- $600 to $649
- $650 to $699
- $700 to $749
- $750 to $999
- $1,000 or more

b. Does the monthly rent include any meals?

- Yes
- No

FOR CENSUS USE

A. Total persons

B. Type of unit — Occupied: First form / Cont'n — Vacant: Regular / Usual home elsewhere

C1. Vacancy status: For rent; For sale only; Rented or sold, not occupied; For seas/rec/occ; For migrant workers; Other vacant

C2. Is this unit boarded up? Yes / No

D. Months vacant: Less than 1; 1 up to 2; 2 up to 6; 6 up to 12; 12 up to 24; 24 or more

E. Complete after: LR, TC, QA, JIC 1; P/F, RE, I/T; MV, ED, EN; P0, P3, P6, JIC 2; P1, P4, IA; P2, P5, SM

F. Cov.: 1b, 1a, 7, H1

G. DO ID

Please make sure you have . . .

1. **FILLED this form completely.**
2. **ANSWERED Question 1a** on page 1.
3. **ANSWERED Questions 2 through 7** for each person you listed in Question 1a.
4. **ANSWERED Questions H1a through H7b** on page 3.

Also . . .

5. **PRINT here the name** of a household member who filled the form, the date the form was completed, and the telephone number at which a person in this household can be called.

Name

Date

Telephone number → Area code | Number

- Day
- Night

Then . . .

6. **FOLD the form the way it was sent to you.**
7. **MAIL it back by October 6, 1989,** or as close to that date as possible, in the envelope provided; no stamp is needed.

NOTE — If you have listed more than 7 persons in Question 1a, please make sure that you have filled the form for the first 7 people. Then mail back this form.

Thank you very much.

The Census Bureau estimates that, for the average household, this form will take 14 minutes to complete, including the time for reviewing the instructions and answers. Comments about this estimate should be directed to the Associate Director for Management Services, Bureau of the Census, Washington, DC 20233, Attn: XXXX-XXXX, and to the Office of Management and Budget, Paperwork Reduction Project XXXX-XXXX, Washington, DC 20503. Please DO NOT RETURN your questionnaire to either of these addresses. Use the enclosed preaddressed envelope to return your completed questionnaire.

Your Guide for the

1989 Special Survey Form

This guide gives helpful information on filling out your survey form.

On the inside — Page

How to fill out your survey form — **2**

Example — **2**

Your answers are confidential — **2**

Instructions for the survey questions — **3 – 5**

What the survey is about — **5**

U.S. DEPARTMENT OF COMMERCE
BUREAU OF THE CENSUS

D-3(CJ89)

How to Fill Out Your Survey Form

Please use a black lead pencil only. Black lead pencil is better to use than ballpoint or other pens. Most questions ask you to fill in the circle, or to print the information. See **Example** below.

Make sure you print answers for everyone in this household. If someone in the household, such as a roomer or boarder, does not want to give you all the information for the form, print at least the person's name and answer questions 2 and 3.

There may be a question you cannot answer exactly. For example, you might not know the age of an elderly person or the price for which your house would sell. Ask someone else in your household; if no one knows, give your best estimate.

Instructions for individual questions begin on page 3 of this guide. They will help you to understand the questions and answer them correctly.

If you have a question about filling out the survey form or need assistance, call your regional office. **The telephone number is listed on the cover of the questionnaire.**

Example

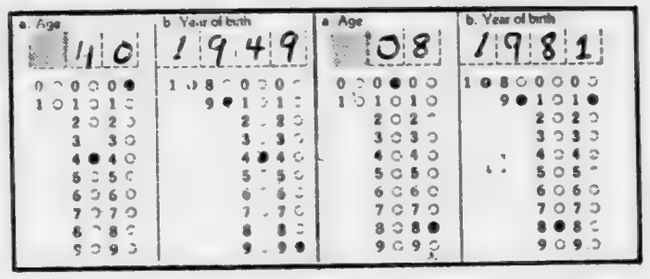

Your Answers Are Confidential

The law under which this survey is taken (Title 13, U.S. Code) also provides that your answers are confidential. No one except census workers may see your completed form and they can be fined and/or imprisoned for any disclosure of your answers.

The same law that protects the confidentiality of your answers requires that you provide the information asked in this survey to the best of your knowledge.

This survey is being taken to help plan the 1990 decennial census. Information collected from the decennial census is used for a variety of statistical purposes. Census information is used to find out where funding is most needed for schools, health centers, highways, and other services. Census results are used by members of public and private groups--including community organizations--and by businesses and industries, as well as by agencies at all levels of government.

Instructions for Questions 1a through 7

1a. List everyone who lives at this address in question 1a. If you are not sure if you should list a person, see the rules on page 1 of the survey form. If you are still not sure, answer as best you can and fill in "Yes" for question H1a or H1b, as appropriate.

If there are more than seven people in your household, **please list all the** persons in question 1a, complete the form for seven people, and mail it back in the enclosed envelope.

b. If everyone listed in question 1a usually lives at another address(es), print the address(es) in 1b.

2. Fill one circle to show how each person is related to the person in column 1.

If **Other relative** of the person in column 1, print the exact relationship such as son-in-law, daughter-in-law, grandparent, nephew, niece, mother-in-law, father-in-law, cousin, and so on.

If the **Stepson/stepdaughter** of the person in column 1 also has been legally adopted by the person in column 1, mark **Stepson/stepdaughter** but do not mark **Natural-born or adopted son/daughter**. In other words, **Stepson/stepdaughter** takes precedence over **Adopted son/daughter.**

4. Fill ONE circle for the race each person considers himself/herself to be.

If you fill the **Indian (Amer.)** circle, print the name of the tribe or tribes in which the person is enrolled. If the person is not enrolled in a tribe, print the name of the principal tribe(s).

If you fill the **Other API** circle [under **Asian or Pacific Islander (API)**], **only** print the name of the group to which the person belongs. For example, the **Other API** category includes persons who identify as Burmese, Fijian, Hmong, Indonesian, Laotian, Bangladeshi, Pakistani, Tongan, Thai, Cambodian, Sri Lankan, and so on.

If you fill the **Other race** circle, be sure to print the name of the race.

If the person considers himself/herself to be **White, Black or Negro, Eskimo or Aleut, fill one circle only. Please do not print the race in the boxes.**

The **Black or Negro** category also includes persons who identify as African-American, Afro-American, Haitian, Jamaican, West Indian, Nigerian, and so on.

All persons, regardless of citizenship status, should answer this question.

5. Print age at last birthday in the space provided (print "00" for babies less than 1 year old). Fill in the matching circle below each box. Also, print year of birth in the space provided. Then fill in the matching circle below each box. For an illustration of how to complete question 5, see the **Example** on page 2 of this guide.

6. If the person's only marriage was annulled, mark **Never married**.

7. A person is of Spanish/Hispanic origin if the person's origin (ancestry) is Mexican, Mexican-Am., Chicano, Puerto Rican, Cuban, Argentinean, Colombian, Costa Rican, Dominican, Ecuadoran, Guatemalan, Honduran, Nicaraguan, Peruvian, Salvadoran, from other Spanish-speaking countries of the Caribbean or Central or South America, or from Spain.

If you fill the **Yes, other Spanish/Hispanic** circle, print one group.

A person who is not of Spanish/Hispanic origin should answer this question by filling the **No (not Spanish/Hispanic)** circle. Note that the term **"Mexican-Am."** refers only to persons of Mexican origin or ancestry.

All persons, regardless of citizenship status, should answer this question.

Instructions for Questions H1a through H6

H1a. Refer to the list of persons you entered in question 1a on page 1. If you left anyone out of your list because you were not sure if the person(s) should be listed, answer question H1a as **Yes**. Then enter the name(s) and reason(s) why you did not list the person(s) on the lines provided. Otherwise, answer question H1a as **No**.

b. If you included anyone on your list even though you were not sure that you should list the person(s), answer question H1b as **Yes**. Then enter the name(s) and reason(s) why you listed the person(s) on the lines provided. Otherwise, answer question H1b as **No**.

H2. Fill only one circle.

Count all occupied and vacant apartments in the house or building. Do not count stores or office space.

Detached means there is open space on all sides, or the house is joined only to a shed or garage. *Attached* means that the house is joined to another house or building by at least one wall that goes from ground to roof. An example of **A one-family house attached to one or more houses** is a house in a row of houses attached to one another.

A mobile home or trailer that has had one or more rooms added or built onto it should be counted as a *one-family detached house;* a porch or shed is not considered a room.

H3. Count only whole rooms in your house, apartment, or mobile home used for living purposes, such as living rooms, dining rooms, kitchens, bedrooms, finished recreation rooms, family rooms, etc. Do not count bathrooms, kitchenettes, strip or pullman kitchens, utility rooms, foyers, halls, half-rooms, porches, balconies, unfinished attics, unfinished basements, or other unfinished space used for storage.

H4. Housing is owned if the owner or co-owner lives in it. Mark **Owned by you or someone in this household with a mortgage or loan** if the house, apartment, or mobile home is mortgaged or there is a contract to purchase. Mark **Owned by you or someone in this household free and clear (without a mortgage)** if there is no mortgage or other debt. If the house, apartment, or mobile home is owned but the land is rented, mark this question to show the status of the house, apartment, or mobile home.

Mark **Rented for cash rent** if any money rent is paid, even if the rent is paid by persons who are not members of your household, or by a federal, state, or local government agency.

Mark **Occupied without payment of cash rent** if the unit is **not** owned or being bought by the occupants and if money rent is **not** paid or contracted. The unit may be owned by friends or relatives who live elsewhere and who allow occupancy without charge. A house or apartment may be provided as part of wages or salary. Examples are: caretaker's or janitor's house or apartment; parsonages; tenant farmer or sharecropper houses for which the occupants do not pay cash rent; or military housing.

H5a. Answer H5a and H5b if you live in a one-family house or mobile home; include only land which you own or rent.

b. A business is easily recognized from the outside; for example, a grocery store or barber shop. A medical office is a doctor's or dentist's office regularly visited by patients.

H6. If this is a house, include the value of the house, the land it is on, and any other structures on the same property. If the house is owned but the land is rented, estimate the combined value of the house and the land. If this is a condominium unit, estimate the value for your house or apartment including your share of the common elements. If this is a mobile home, include the value of the mobile home and the value of the land. If you rent the land, estimate the value of the rented land and add it to the value of the mobile home.

Instructions for Questions H7a and H7b

H7a. Report the rent agreed to or contracted for, even if the rent for your house, apartment, or mobile home is unpaid or paid by someone else.

If rent is paid:	Multiply rent by:
By the day	30
By the week	4
Every other week	2

If rent is paid:	Divide rent by:
4 times a year	3
2 times a year	6
Once a year	12

b. Answer **Yes** if meals are included in the monthly rent payment, or you must contract for meals or a meal plan in order to live in this building.

What the Survey Is About — Some Questions and Answers

How long will it take to complete this survey form?

It takes about 14 minutes, although the time varies with the number of people in a household.

How was I chosen for this survey?

We chose your housing unit, not you as a person, for this survey along with about 40,000 other housing units in several large cities and rural areas across the country.

Is this survey mandatory?

The same law that protects the confidentiality of your answers requires that you provide the information asked in this survey to the best of your knowledge.

Why is the Census Bureau taking the 1989 Special Survey?

The survey is being taken to help plan the 1990 decennial census. The most important reason for taking a decennial census is to determine how many representatives each state will have in Congress.

Why do we need a census?

The U.S. Constitution requires a census every 10 years so that seats in the U.S. Congress can be distributed fairly among the states based on population. Local and State officials use census data for forming voting districts. Teachers, business people, planners at every level, and the public--possibly including you--also use census results to learn about the people and housing conditions in our country.

REMEMBER YOUR ANSWERS ARE CONFIDENTIAL

[FR Doc. 89-15550 Filed 6-30-89; 8:45 am]
BILLING CODE 3510-07-C

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Seafood Inspector License Application.

Form Number: OMB—0648-0139; Agency—NOAA 89-859.

Type of Request: Request for extension of a currently approved collection.

Burden: 20 respondents; 10 reporting hours; average hours per response—.5 hours.

Needs and Uses: Food inspectors for the Department of Agriculture or state agencies may be cross-licensed by NOAA to perform inspections of fishery products under the provisions of agreements with their agency. Applicants provide information needed to ensure applicants have the necessary qualifications.

Affected Public: Individuals.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Russell Scarato, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 27, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-15586 Filed 6-30-89; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request A Review: Not later than July 31, 1989, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in July for the following periods:

Antidumping Duty Proceeding	Period
Canada: Pig iron (A-122-020)	07/01/88-06/30/89
Canada: Certain dried heavy salted codfish (A-122-402)	07/01/88-06/30/89
German Democratic Republic: Solid urea (A-429-601)	07/01/88-06/30/89
Iran: Certain in-shell pistachios (A-507-502)	07/01/88-06/30/89
Japan: Malleable cast-iron pipe fittings (A-588-605)	07/01/88-06/30/89
Japan: High power microwave amplifiers and components thereof (A-588-005)	07/01/88-06/30/89
Japan: Fabric expanded neoprene laminate (A-588-404)	07/01/88-06/30/89
Japan: Synthetic methionine (A-588-041)	07/01/88-06/30/89
Romania: Solid urea (A-485-601)	07/01/88-06/30/89
Union of Soviet Socialist Republics: Solid urea (A-461-601)	07/01/88-06/30/89
Suspension Agreements	**Period**
Brazil: Certain forged steel crankshafts (C-351-609)	01/01/88-12/31/88
Countervailing Duty Proceeding	**Period**
European Communities: Sugar (C-408-046)	01/01/88-12/31/88
India: Industrial fasteners (C-533-066)	01/01/88-12/31/88
Uruguay: Leather wearing apparel (C-355-001)	01/01/88-12/31/88

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the Federal Register a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by July 31, 1989.

If the Department does not receive by July 31, 1989 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: June 28, 1989.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 89-15582 Filed 6-30-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-357-007]

Carbon Steel Wire Rod From Argentina; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration; Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and tentative determination not to revoke in part.

SUMMARY: In response to a revocation request by the respondent, the Department of Commerce has conducted an administrative review of the antidumping duty order on carbon steel wire rod from Argentina. The review covers one manufacturer/exporter of this merchandise to the United States, Acindar Industria Argentina de Aceros S.A., and the period November 1, 1987 through October 31, 1988. There were no known shipments of this merchandise to the United States by Acindar during the period and there are no known unliquidated entries. The Department has tentatively determined not to revoke in part the antidumping duty order with respect to Acindar.

Interested parties are invited to comment on these preliminary results and tentative determination not to revoke in part.

EFFECTIVE DATE: July 3, 1989.

FOR FURTHER INFORMATION CONTACT: Alfredo R. Montemayor or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255/2923.

SUPPLEMENTARY INFORMATION:

Background

On November 23, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 46180) an antidumping duty order on carbon steel wire rod from Argentina. On November 30, 1988, the Department received a request for revocation in part of the antidumping duty order from Acindar Industria Argentina de Aceros S.A. ("Acindar"). We published a notice of initiation of the antidumping duty administrative review on January 31, 1989 (54 FR 4871). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nonenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of carbon steel wire rod. During the review period, such merchandise was classifiable under item 607.1700 of the Tariff Schedules of the United States. This merchandise is currently classificable under HTS item 7213.20.00, 7213.31.30, 7313.49.00, 7213.39.00, 7213.41.30 or 7213.50.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of carbon steel wire rod from Argentina, Acindar, and the period November 1, 1987 through October 31, 1988. There were no known shipments of this merchandise by this firm to the United States during the period.

Preliminary Results of the Review and Tentative Determination Not to Revoke in Part

As a result of our review, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Acindar	11/1/87-10/31/88	119.11*

*No shipments during the period; margin from the antidumping duty order.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

As provided for by section 751(a)(1) of the Tariff Act, the Department shall require a cash deposit of estimated antidumping duties based on the above margin. For any future entries of this merchandise from a new exporter, not covered in this administrative review, whose first shipment occurred after October 31, 1988 and who is unrelated to the reviewed firm, a cash deposit of 119.11 percent shall be required. These deposit requirements are effective for all shipments of Argentine carbon steel wire rod entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Acindar requested partial revocation of the order, based on the fact that no carbon steel wire rod produced by Acindar had been shipped to the United States during the past four years. However, four years of no shipments is no longer a basis for revocation of an antidumping duty order. In accordance with § 353.25 of the Commerce regulations (54 FR 12760, March 28, 1989), the Department may revoke an order in part if a producer or reseller has sold the merchandise at not less than foreign market value for a period of at least three consecutive years, if the order is no longer of interest to interested parties, or if there exist other changed circumstances sufficient to warrant revocation. Since none of these conditions exist, the Department has tentatively determined not to revoke in part the antidumping duty order with respect to Acindar.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)), and §§ 353.22 and 353.25 of the Commerce regulations (54 FR 12778; March 28, 1989) (to be codified at 19 CFR 353.22 and 353.25).

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

Date: June 26, 1989.

[FR Doc. 89-15583 Filed 6-30-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-029]

Certain Castor Oil Products From Brazil; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on certain castor oil products from Brazil. We preliminarily determine that for the period January 1, 1987 through December 31, 1987 the net subsidy is 0.27 percent *ad valorem*. We consider any rate below 0.50 percent *ad valorem* to be *de minimis*. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: July 3, 1989.

FOR FURTHER INFORMATION CONTACT: Jean Carroll Kemp or Ilene Hersher, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTAL INFORMATION: On November 2, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 42025) the final results of its last administrative review of the countervailing duty order on certain castor oil products from Brazil (41 FR 8634; March 16, 1976). On March 31, 1988, Sociedade Algodeira do Nordeste Brasileiro (SANBRA), an exporter of the merchandise, requested in accordance with the Commerce Regulations an administrative review of the order. We published the initiation on April 27, 1988 (53 FR 15083). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of Brazilian hydrogenated castor oil and 12-hydroxystearic acid. During the review period, such merchandise was classifiable under items 178.2000, 490.2650, and 490.2670 of the Tariff Schedules of the United States Annotated. Such merchandise is currently classifiable under HTS items 1516.10.10, 1516.20.90, 1517.90.40, 1519.11.00, 1519.12.00, 1519.19.40, 2915.70.00, and 2916.19.30. As with the TSUSA, the HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive of the scope.

The review covers the period January 1, 1987 through December 31, 1987 and 14 programs: (1) CACEX preferential working capital financing for exports; (2) income tax exemption for export earnings; (3) the IPI export credit premium under BEFIEX; (4) export financing under CIC-OPCRE 6-2-6 (CIC-CREGE 14-11); (5) industrial enterprise loans (FST and EGF); (6) import duty and tax reductions under BEFIEX and CIEX; (7) preferential financing for trading companies under Resolution 883; (8) accelerated depreciation for Brazilian-made capital goods; (9) FINEX export financing; (10) FUNPAR; (11) PROEX; (12) PROSIM; (13) financing for the storage of merchandise destined for export (Resolution 330); and (14) "Green-Yellow" drawback.

Analysis of Programs

(1) CACEX Preferential Working Capital Financing for Exports Under this program, the Department of Foreign Commerce ("CACEX") of the Branco do Brasil provides short-term working capital financing to exporters at preferential rates. The loans have a term of one year or less. Two producers and exporters of the merchandise during the review period made interest payments on CACEX loans during the review period.

On August 21, 1984, Resolution 950 made CACEX working capital financing available through commercial banks at prevailing market rates, with interest due at maturity. It authorized the Branco do Brasil to pay the lending institution an "equilization fee," or rebate, of up to 10 percentage points over the commercial interest rate, which the lending institution passed on to the borrowers. On May 2, 1985, Resolution 1009 increased the equalization fee to 15 percentage points.

Since the interest charged on CACEX export financing under Resolutions 950 and 1009 is at prevailing market rates, this program would not be countervailable absent the equalization fee and the exemption from the IOF (a tax on financial transactions).

Therefore, the interest differential for those loans is equal to the equalization fee plus the 1.5 percent IOF. Because this program provides financing at preferential rates only to exporters, we preliminarily determine that it is countervailable.

We consider the benefit from short-term loans to occur when the borrower makes the interest payments. For CACEX loans on which interest was paid during the period of review, we multiplied the interest differential by the length of the loan and the loan principal. We allocated the result over each company's total exports. We then weight-averaged each company's benefit from this program by the company's proportion of exports to the United States. On this basis, we preliminarily determine the benefit from this program to be 0.27 percent *ad valorem* for the period January 1, 1987 through December 31, 1987.

(2) Income Tax Exemption for Export Earnings Under this program, exporters of certain castor oil products are eligible for an exemption from income tax on the portion of their profits attributable to exports. According to Brazilian tax law, the tax-exempt fraction of profit is calculated as the ratio of export revenue to total revenue. Because this program provides tax exemptions that are limited to exporters, we preliminarily determine that it is countervailable.

The two companies under review reported operational losses and claimed no tax exemption benefits on the tax returns filed during the review period. Therefore, we preliminarily determine the benefit from this program to be zero for the period January 1, 1987 through December 31, 1987.

(3) Other Programs

We also examined the following programs and preliminarily determine that producers and exporters of certain castor oil products from Brazil did not benefit from them during the review period:

(1) The IPI export credit under BEFIEX;

(2) Export financing under CIC-OPCRE 6-2-6 (CIC-CREGE 14-11);

(3) Industrial enterprise loans (FST and EGF);

(4) Import duty and tax reductions under BEFIEX and CIEX;

(5) Preferential financing for trading companies under Resolution 883;

(6) Accelerated depreciation for Brazilian-made capital goods;

(7) FINEX export financing;

(8) FUNPAR;

(9) PROEX;

(10) PROSIM;

(11) Financing for the storage of merchandise destined for export (Resolution 330); and

(12) "Green-Yellow" drawback.

Preliminary Results of Review

As a result of the review, we preliminarily determine the net subsidy to be 0.27 percent *ad valorem* for the period January 1, 1987 through December 31, 1987. We consider any rate below 0.50 percent *ad valorem* to be *de minimis*.

The Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after January 1, 1987 and on or before December 31, 1987.

The Department intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 44 days after the date of publication or the following workday. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of is analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751 (a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.22 of the Commerce Regulations published in the **Federal Register** on December 27, 1988 (53 FR 52354) (to be codified at 19 CFR 355.22).

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-15584 Filed 6-30-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-614-501]

Low-Fuming Brazing Copper Rod and Wire From New Zealand; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On May 1, 1989, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on low-fuming brazing copper rod and wire from New Zealand. We have now completed that review and determine the total bounty or grant for the period August 1, 1987 through July 31, 1988 to be 0.12 percent *ad valorem*. We consider any rate less than 0.50 percent to be *de minimis*.

EFFECTIVE DATE: July 3, 1989.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Ilene Hersher, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 18564) the preliminary results of its administrative review of the countervailing duty order on low-fuming brazing copper rod and wire from New Zealand (50 FR 31638, August 5, 1985). The Department has now completed that administrative review in accordance with section 751(a) of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of New Zealand low-fuming brazing copper rod and wire, principally of copper and zinc alloy ("brass"), of varied dimensions in terms of diameter, whether cut-to-length or coiled, whether bare or flux-coated. The chemical composition of the products under investigation is defined by Copper Development Association standards 680 and 681. During the period of review, such merchandise was classifiable under item numbers 612.6205, 612.7220 and 653.1500 of the Tariff Schedules of the United States Annotated. Such merchandise is currently classifiable under item numbers 7407.21.50, 7408.21.00, 8311.30.60 and 8311.90.00 of the Harmonized Tariff Schedule. The written description remains dispositive of the scope.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

As a result of our review, we determine the total bounty or grant to be 0.12 percent *ad valorem* for the period August 1, 1987 through July 31, 1988. The Department considers any rate less than 0.50 percent to be *de minimis*.

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all entries of this merchandise exported on or after August 1, 1987, and on or before July 31, 1988.

Further, the Department will instruct the Customs Service to waive deposits of estimated countervailing duties on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.22 of the Commerce Regulations published in the **Federal Register** on December 27, 1988 (53 FR 52354) (to be codified at 19 CFR 355.22).

Date: June 28, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-15585 Filed 6-30-89; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications; Denver, CO

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a 3-year period, subject to the availability of funds. The cost of performance for the first 12 months is estimated at $184,260 in Federal funds and a minimum of $32,516 in non-Federal contributions for the budget period January 1, 1990 to December 31, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Denver, Colorado standard metropolitan statistical area (SMSA).

The funding instrument for the MBDC will be a cooperative agreement.

Competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDC's shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to two additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

Closing Date: The closing date for applications is August 24, 1989. Applicants should mail the completed applications to the office specified in the project announcement. MBDA will accept only those applications (1) Which are received by the closing date or (2) which show acceptable evidence of mailing on or before the closing date. Acceptable evidence consists of (1) a legible U.S. Postal Service postmark or (2) a legible mail or courier service receipt dated on or before the closing date. Applications must be post marked on or before August 24, 1989.

ADDRESS: Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas, Texas 75242–0790 (214) 767–8001.

FOR FURTHER INFORMATION CONTACT: Darnecia Tyler, Dallas Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development; Catalog of Federal Domestic Assistance)

Date: June 22, 1989.

Victor Casaus,

Deputy Regional Director, Dallas Regional Office.

Section B—Project Specifications

(To be completed by the Regional Offices)

Project Identification

1. Program Number and Title: 11.801 American Indian Business Development.
2. Project Name: (Geographic Area or SMSA) Denver IBDC.
3. Project Identification Number: 08–10–90001–01.

Project Duration

1. Budget Period (Check One): First X Second_____Third_____.
2. Project Start Date: January 1, 1990.
3. Project End Date: December 31, 1990.
4. Project Duration (Months): Twelve.

Project Cost

1. Required Federal Funding Level	$184,260
Minimum Non-Federal Contribution	32,516
3. Total Project Cost	216,776

Project Minimum Performance Goal Levels

1. Combined Financial Package and Procurement Minimum Goal Level	$12,454,000
2. Hours of M&TA Minimum Goal Level	125,000
3. Number of Clients Minimum Goal Level	125

Other Project Specifications

1. Closing Date for Submission of this Application: August 24, 1989.
2. *Geographic Specification:* The Indian Business Development Center shall offer assistance in the geographic area of: Denver, Colorado Standard Metropolitan Statistical Area.
3. *Eligibility Criteria:* There are no eligibility restrictions for this project, except that applicants must have documented experience in providing business development services to American Indian businesses and individuals, and have working relationships with organizations and agencies, and tribal governments unique to American Indians. Eligible applicants may include individuals, non-profit organizations, for-profit firms, American Indian tribes, state and local governments, and educational institutions.
4. *Budget Period:* The competitive award period will be for approximately three (3) years consisting of three (3) separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three (3) budget periods. The IBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA based upon the availability of funds, the IBDC's performance and Agency priorities.

[FR Doc. 89–15347 Filed 6–30–89; 8:45 am]

BILLING CODE 3510–21–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Textile and Apparel Categories With Harmonized Tariff Schedule of the United States Annotated; Changes to the 1989 Correlation

June 28, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Changes to the 1989 correlation.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Lori Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–3400.

The Correlation: Textile and Apparel Categories with Harmonized Tariff Schedule of the United States (1989) presents the harmonized tariff numbers under each of the cotton, wool, man-made fiber, silk blend and other vegetable fiber categories used by the United States in monitoring imports of these textile products and in the administration of the bilateral agreements program. The attached list includes some Harmonized Tariff Schedule numbers that will be published in the fourth supplement of the Harmonized Tariff Schedule of the United States. This Correlation should be amended to reflect the changes indicated below:

Category	Changes to the 1989 correlation
229	Delete 5810.10.0000.
	Add 5810.10.0090—embroidery without visible ground, other than labels and badges.
	Delete 5810.92.0010.
	Add 5810.92.0050—other than labels, badges, emblems and motifs, on a ground fabric weighing less than 100 g/m² and of a width of more than 223 centimeters of man-made fiber.
	Add 5810.92.0080—other than labels, badges, emblems and motifs of man-made fiber.
	Delete 5810.92.0090.
237	Add 6103.42.2015—boys' sizes 2–7 bib and brace overalls, not insulated for cold weather protection.
331	Delete 6216.10.1520.
333	Add 6103.22.0020—men's or boy's jackets and blazers of cotton described in heading 6103.
338	Delete 6109.10.0010.
	Add 6109.10.0012—men's other cotton T-shirts.
	Add 6109.10.0014—boys' other cotton T-shirts.
	Delete 6109.10.0015.
	Add 6109.10.0018—men's tank tops and other singlets of cotton.
	Add 6109.10.0023—boy's tank tops and other singlets of cotton.
	Delete 6109.10.0025.
	Add 6109.10.0027—men's or boys' similar garments to tank tops and singlets, of cotton.
	Delete 6109.10.0030.
	Delete 6109.10.0035.
350	Delete 6108.91.0010.
	Delete 6108.91.0020.
	Add 6108.91.0015—women's bathrobes, dressing gowns and similar articles, of cotton.
	Add 6108.91.0025—girls' bathrobes, dressing gowns and similar articles, of cotton.
352	Add 6108.91.0005—women's or girls' cotton underpants.
	Add 6109.10.0007—men's or boys' singlets, all white, without pockets, trim or embroidery, of cotton.
	Add 6109.10.0009—men's or boys' other cotton underwear.
	Delete 6109.10.0020.
353	Add 6211.20.1010—men's or boys' anoraks including ski jackets, windbreakers and similar articles, of cotton.
359	Delete 6103.42.2020.
	Add 6103.42.2025—boys' bib and brace overalls, not insulated for cold weather protection.
	Add 6103.42.2005—men's or boys' bib and brace overalls, not insulated for cold weather protection.
	Add 6211.12.3003—women's cotton woven swimwear.
	Add 6211.12.3005—girl's cotton woven swimwear.
	Delete 6211.12.3020.
362	Add 9404.80.8000—articles of bedding and similar furnishings of cotton, not containing any embroidery, lace, braid, edging, trimming, piping, exceeding 6.35 mm of applique work.
363	Delete 6302.91.001.
	Add 6302.91.0015—cotton towels, of pile or tufted construction, other than dish towels.
	Add 6302.91.0035—jacquard figured towels of cotton, not of pile or tufted construction.
	Add 6307.90.9040—cotton towels of pile or tufted construction.
369	Add 6302.91.0005—cotton dish towels, of pile or tufted construction.
	Add 6302.91.0025—toilet linen and kitchen linen, other than towels, of pile or tufted construction.
	Delete 6302.91.0020.
	Delete 6302.91.0030.
	Delete 6302.91.0040.
	Add 6302.91.0045—dish towels not of pile or tufted construction, not jacquard figured.
	Add 6302.91.0050—towels not of pile or tufted construction, other than dish towels.
	Add 6302.91.0060—other toilet and kitchen linen.
414	Delete 6001.99.0000.
	Add 6001.99.0090—pile fabric of other textile material, other than containing 85% or more by weight of silk or silk waste.
433	Add 6103.21.0020—men's or boys' garments described in heading 6101 of wool or fine animal hair.
	Add 6203.23.0015—men's or boys' jackets and blazers described in heading 6203, containing 36% or more by weight of wool or fine animal hair.
438	Delete 6110.10.1050.
	Delete 6110.10.1060.
445	Add 6110.10.1030—vests, wholly of cashmere, other than sweater vests, men's or boys'.
	Add 6110.10.1050—men's or boys', similar articles other than sweaters or vests, wholly of cashmere.
446	Add 6110.10.1040—women's or girls' vests, other than sweater vests, wholly of cashmere.
	Add 6110.10.1060—women's or girls' similar articles, other than sweaters and vests, wholly of cashmere.
459	Delete 6110.10.1030.
	Delete 6110.10.1040.
606	Delete 5402.42.0000.
619	Add 5407.71.0010—woven fabrics of synthetic filament yarn, unbleached or bleached, weighing not more than 170 g/m² containing 85% or more by weight of polyester filaments.
	Add 5407.72.0010—woven fabrics of synthetic filament yarn, dyed, weighing not more than 170 g/m² containing 85% or more by weight of polyester filaments.
	Add 5407.73.2010—woven fabrics of synthetic filament yarn, of yarns of different colors weighing not more than 170 g/m² containing 85% or more by weight of polyester filaments.
	Add 5407.74.0010—woven fabrics of synthetic filament yarn, printed, weighing not more than 170 g/m² containing 85% or more by weight of polyester filaments.

Category	Changes to the 1989 correlation
620	Add 5407.71.0020—woven fabrics of synthetic filament yarn, unbleached or bleached, weighing not more than 170 g/m².
	Delete 5407.71.0030.
	Add 5407.72.0020—woven fabrics of synthetic filament yarn, dyed, weighing not more than 170 g/m².
	Delete 5407.72.0030.
	Add 5407.73.2020—woven fabrics of synthetic filament yarn, of yarns of different colors weighing not more than 170 g/m².
	Delete 5407.73.2030.
	Add 5407.74.0020—woven fabrics of synthetic filament yarn, printed, weighing not more than 170 g/m².
	Delete 5407.74.0030.
631	Delete 6116.10.4520.
	Add 6116.10.4525—gloves, mittens and mitts knitted or crocheted, impregnated coated or covered with plastics or rubber, with fourchettes, subject to man-made fiber restraints.
	Delete 6216.00.4830.
	Add 6216.00.4835—gloves, mittens and mitts, impregnated coated or covered with plastics or rubber, not containing 36% or more by weight of wool or fine animal hair, without fourchettes, of man-made fiber.
	Delete 6216.00.4840.
	Add 6216.00.4845—gloves, mittens and mitts, impregnated coated or covered with plastics or rubber, not containing 36% or more by weight of wool or fine animal hair, without fourchettes, of man-made fiber.
	Delete 6216.00.2520.
	Add 6216.00.2525—gloves, mittens and mitts, impregnated coated or covered with plastics or rubber, containing 50% or more by weight of cotton, man-made fibers or any combination, subject to man-made fiber restraints.
	Delete 6216.00.3020.
	Add 6116.00.3025—gloves, mittens and mitts, impregnated, coated or covered with plastics or rubber, with fourchettes, subject to man-made fiber restraints.
633	Add 6103.23.0037—men's or boys' jackets and blazers described in heading 6103, of synthetic fibers.
	Add 6203.23.0055—men's or boys' jackets and blazers described in heading 6203 of synthetic fibers.
	Add 6203.29.2020—men's and boys' jackets and blazers described in heading 6103 of artificial fibers.
636	Delete 6109.90.1005.
	Add 6109.90.1007—other men's T-shirts of man-made fiber.
	Add 6109.90.1009—other boys' T-shirts of man-made fiber.
	Delete 6109.90.1010.
	Add 6109.90.1013—men's tank tops and singlets of man-made fiber.
	Delete 6109.90.1015.
	Delete 6109.90.1020.
	Add 6109.90.1025—boys' tank tops and singlets of man-made fiber.
	Delete 6109.90.1040.
	Add 6109.90.1045—men's or boys' similar garments to T-shirts and tank tops, of man-made fiber.
650	Delete 6108.92.0010.
	Add 6108.92.0015—women's bathrobes, dressing gowns and similar articles, of man-made fiber.
	Delete 6108.92.0020.
	Add 6108.92.0025—girls' bathrobes, dressing gowns and similar articles, of man-made fiber.
652	Add 6108.92.0005—women's or girls' man-made fiber underpants.
	Add 6109.90.1003—men's or boy's man-made fiber underwear.
659	Delete 6203.42.2005.
	Delete 6215.10.0020.
	Add 6215.10.0025—ties, bow ties and cravats, of silk or silk waste, containing 50% or more by weight of textile materials others than silk or silk waste.
	Add 6210.10.4015—garments made up of fabrics of heading 5602, or 5603, other than non-woven disposable apparel designed for use in hospitals, clinics, laboratories or contaminated areas, overalls and coveralls.
	Delete 6210.10.4020.
	Add 6210.10.4025—garments of heading 5602, or 5603, other than non-woven disposable apparel designed for use in hospitals, clinics, laboratories or contaminated areas, other than overalls and coveralls.
	Add 6505.90.8060—hats and other headgear, other than non-woven disposable headgear, without peaks or visors.
	Delete 6505.90.8075.
669	Delete 5810.10.0010.
	Delete 5810.92.0010.
	Add 5810.92.0030—man-made fiber labels.
858	Delete 6215.10.0030.
	Add 6215.10.0090—ties, bow ties and cravats, of silk or silk waste, other than containing 70% or more by weight of silk or silk waste.
859	Add 6211.12.3025—women's or girls' swimwear other than containing 70% or more by weight of silk or silk waste.
899	Delete 6002.90.0080.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-15581 Filed 6-30-89; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Meeting of the Advisory Council on Dependents' Education

AGENCY: Department of Defense Dependents Schools (DoDDS), Office of the Secretary of Defense.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Dependents' Education (ACDE). It also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act. Although the meeting is open to the public, because of space constraints, anyone wishing to attend the meeting should contact the DoDDS ACDE coordinator.

DATES: August 4, 1989, 9 a.m. to 5 p.m.; August 5, 1989, 9 a.m. to 4:00 p.m.

ADDRESS: August 4, 1989, The Pentagon, Room 3E869, Washington, DC. August 5, 1989, Embassy Suites Hotel, Georgetown Room, 1402 South Eads Street, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Ms. Marilyn Witcher, DoDDS, 2461 Eisenhower Avenue, Alexandria, Virginia, 22331-1100, Telephone: (202) 325-0867.

SUPPLEMENTARY INFORMATION: The Advisory Council on Dependents' Education is established under title XIV, section 1411, of Public Law 95-561, Defense Dependents' Education Act of 1978, as amended by title XII, section 1204(b) (3)-(5), of Pub. L. 99-145, Department of Defense Authorization Act of 1986 (20 U.S.C., chapter 25A, section 929, Advisory Council on Dependents' Education). The Council is co-chaired by designees of the Secretary of Defense and the Secretary of Education. In addition to a representative of each of the Secretaries, 12 members are appointed jointly by the Secretaries. Members include representatives of educational institutions and agencies, professional employee organizations, unified military commands, school administrators, parents of DoDDS students, and one DoDDS student. The Director, DoDDS, serves as the Executive Secretary of the Council. The purpose of the Council is to advise the Secretary of Defense and the DoDDS Director about effective educational programs and practices that should be considered by DoDDS and to perform other tasks as may be required by the Secretary of Defense. The agenda includes information on the School Report Card (parent survey), recruitment of minority personnel, counselor/guidance services, the talented and gifted program, the teacher appraisal system, staff development, development of a homework policy, bus safety, communication throughout the system, and responses to the recommendations made by the Council during its April meeting.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 27 1989.

[FR Doc. 89-15567 Filed 6-30-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency

Membership of the DIA Performance Review Committee

AGENCY: Defense Intelligence Agency (DoD).

ACTION: Notice of membership of the DIA performance review committee (PRC).

SUMMARY: This notice announces the appointment of the PRC of the Defense Intelligence Agency. The PRC's jurisdiction includes the entire Defense Intelligence Senior Executive Service (DISES). Publication of PRC membership is required by 10 U.S.C. 1601(a)(4).

The PRC provides fair and impartial review of Defense Intelligence Senior Executive Service (DISES) performance appraisals and makes recommendations regarding performance and performance awards to the Director, Defense Intelligence Agency.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Michael T. Curriden, Human Resources Manager, Policy and Programs Division, Directorate for Human Resources, Defense Intelligence Agency (RHR-5), 3100 Clarendon Boulevard, Arlington, VA 22201-5322, (703) 284-1342.

Primary Members

Mr. Gordon F. Negus, Executive Director (Chairman)
Mr. Steven T. Schanzer, Deputy Director for Information Systems
Mr. Michael F. Munson, Deputy Director for Resources
RADM Edward D. Sheafer, Jr., Deputy Director for JCS Support
Brig Gen Walter C. Hersman, Deputy Director for Command Support and Plans

Alternate Members

Mr. Charles P. Duecy, Vice Assistant Deputy Director for Estimates
Mr. Lewis A. Prombain, Comptroller
Dr. William A. Naughton, Defense Intelligence Officer for Latin America
Mr. Charles W. Roades, Vice Deputy Director for Attaches and Operations
BG Frank Partlow, Assistant Deputy Director for Estimates

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 27, 1989.

[FR Doc. 89-15568 Filed 6-30-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. TM89-12-20-000; RP89-197-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

June 26, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on June 20, 1989, tendered for filing to its FERC Gas Tariff, Second Revised Volume No. 1 the following tariff sheets:

Proposed to be effective March 1, 1989

Substitute Twenty-fifth Revised Sheet No. 204

Proposed to be effective April 1, 1989

Second Substitute Twenty-sixth Revised Sheet No. 204

Proposed to be effective May 1, 1989

Twenty-seventh Revised Sheet No. 204
Sixth Revised Sheet No. 373
Sixth Revised Sheet No. 374

Proposed to be effective June 1, 1989

Twenty-eighth Revised Sheet No. 204
Seventh Revised Sheet No. 373

Proposed to be effective July 1, 1989

Twenty-ninth Revised Sheet No. 204

Algonquin states that it is filing the above listed tariff sheets to track rate changes filed for by Transcontinental Gas Pipeline Corporation ("Transco") and National Fuel Gas Supply Corporation ("National") in the services underlying Algonquin's Rate Schedule F-3 pursuant to Section 7 of Rate Schedule F-3 and as permitted by Commission Order No. 500.

Algonquin states that it is filing to incorporate and pass-through Transco's Commodity Producer Settlement Payment-II ("PSP-II") charge (0.08 cents per MMBtu, effective May 1, 1989) and Commodity Litigant Producer Settlement Payment ("LPSP") charge (1.0 cents per MMBtu, effective June 1, 1989) in its rates and tariff language. Additionally, Algonquin states that it is filing to reduce the Commodity Producer Settlement Payment ("PSP") charge by 0.001 cents per MMBtu, effective March 1, 1989. All as more fully set forth in Algonquin's instant filing.

Furthermore, Algonquin maintains that it is filing, under Rate Schedule F-3, to track rate changes made by its pipeline supplier, National, in National's Rate Schedule CD. The first such change, effective June 1, 1989, represents a decrease in the commodity component of 5.67 cents per MMBtu. The second rate change, effective July 1, 1989, decreases the demand component by 44.0 cents per MMBtu and increases the commodity component by 33.72 cents per MMBtu. All as more fully set forth in Algonquin's instant filing.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 3, 1989. Protest will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants, parties to the proceeding. Any person wishing to become a party must file a motion to

intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15569 Filed 6-30-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-96-006 and RP89-133-003]

Colorado Interstate Gas Co.; Compliance Filing

June 26, 1989.

TAKE NOTICE that Colorado Interstate Gas Company ("CIG"), on June 20, 1989, tendered for filing the following tariff sheet to revise its FERC Gas Tariff, Original Volume No. 1:

First Revised Sheet No. 61G11

CIG states that the above-referenced tariff sheet is being filed in compliance with the Commission's Orders issued in these dockets and that the filing constitutes an adjustment filing as defined by CIG's FERC Gas Tariff. Specifically, the filing reflects adjustments to the take-or-pay Buyout-Buydown Costs and Surcharges by which those costs are recovered, interest on unamortized costs, and the related billing options elected by CIG's customers.

CIG states that copies of the filing were served upon all of the parties to this proceeding and affected state commissions as well as all of CIG's firm sales customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 3, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15570 Filed 6-30-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3610-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 12, 1989 through June 16, 1989 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 1989 (54 FR 15006).

Draft EISs

ERP No. D-COE-L900231-WA, Rating LO, North and South Puget Sound Unconfined Open-Water Disposal for Dredged Material, Phase II, Site Designation, Section 10 and 404 Permits, Whatcom, Skagit, Challam and Pierce, Counties WA.

Summary

EPA has no objection to the project as described in the draft EIS.

ERP No. D-HUD-C85042-PR, Rating EC2, Encantada Residential Development, Mortgage Insurance, Dos Bocas Ward, Trujillo Alto, PR.

Summary

EPA has concerns with respect to soil excavation and disposal, sewage treatment capacity, the availability of adequate water supply, and the drainage system. Additionally, EPA has concerns that the project will induce traffic and that no mitigation is proposed. Accordingly, EPA has requested that additional information be provided in the final EIS to address these issues.

ERP No. D-NPS-L67025-AK, Rating E01, Yukon-Charley Rivers National Preserve, Mining Operations Management Plan, Implementation, AK.

Summary

EPA feels the draft EIS adequately addresses potentially significant environmental impacts. However, further delineation of the relative impacts and controls which distinguish the alternatives should be provided. The proposed action entails significant cumulative environmental impacts that must be avoided through appropriate controls.

Final EISs

ERP No. F-COE-K25005-CA, Ox Mountain Sanitary Landfill Expansion, Apanolio Canyon Site, 404 Permit, Apanolio Creek, San Mateo County, CA.

Summary

EPA expressed its continuing objections with the proposed filling of Apanolio Canyon, which would result in the degradation of wetlands and the loss of riparian and fishery habitat values. EPA stated that the proposed expansion of the Ox Mountain Sanitary Landfill into Apanolio Canyon does not comply with Clean Water Act 404(b)(1) Guidelines. EPA strongly recommended that the Army Corps of Engineers deny the permit application to fill Apanolio Creek Canyon. EPA also requested that the Corps prepare a supplemental EIS because coordination with the Corps indicates that the mitigation proposal in the final EIS is undergoing significant modification.

ERP No. FS-COE-L32003-WA, Grays Harbor Navigation Improvement Project, Updated Description of Impacts, Implementation, Chehalis and Hoquiam Rivers, Grays Harbor County, WA.

Summary

EPA has no objection to the project as described in this document.

Dated: June 27, 1989.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 89-15578 Filed 6-30-89; 8:45 a.m.]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Title: Port Everglades Authority Terminal Agreement.

Parties: Port Everglades Authority Sea-Land Service, Inc.

Synopsis: The Agreement extends the term of the basic lease on a month-to-month basis effective June 5, 1989, until a pending lease agreement has been fully executed and approved.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: June 27, 1989.

[FR Doc. 89-15577 Filed 6-30-89; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Revocations; Tropical Customs Brokers et al.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 2622.

Name: Tropical Customs Brokers, Inc.

Address: 7967 NW. 33rd Avenue, Miami, FL 33122.

Date Revoked: June 1, 1989.

Reason: Failed to maintain a valid surety bond.

License Number: 2602.

Name: Andrew Buchanan Rogers.

Address: 217 Forest Trails, Isle-of-Palms, SC 29451.

Date Revoked: June 7, 1989.

Reason: Failed to maintain a valid surety bond.

Robert G. Drew,

Director, Bureau of Domestic Regulation.

[FR Doc. 89-15574 Filed 6-30-89; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement 13655.892]

Grants for Supportive and Nutritional Services to Older Native Hawaiians

AGENCY: Administration on Aging (AoA), Department of Health and Human Services.

ACTION: Announcement of potential availability of funds and invitation to submit applications under the Older Americans Act, Title VI, Grants for Native Americans, Part B—Native Hawaiian Program.

SUMMARY: The Administration on Aging will accept applications for potential awards in Fiscal Year 1989 under the Older Americans Act, Title VI, Grants for Native Americans, Part B—Native Hawaiian Program. Although there are no such funds currently available, AoA expects funds to be available in Fiscal Year 1989 through reprogramming of funds by Congress. If the reprogramming action is approved, the grants will be awarded by September 30, 1989.

DATE: Application must be received on or before August 10, 1989.

ADDRESS: Applications must be sent to the Department of Health and Human Services, Office of Human Development Services, Acquisition and Assistance Management Branch, Hubert H. Humphrey Building, Room 341-F, 200 Independence Avenue, SW., Washington, DC 20201, Attention: Margaret Tolson, Grants Officer.

FOR FURTHER INFORMATION CONTACT: Dr. Frederick J. Luhmann, Acting Director, Office for American Indian, Alaskan Native, and Native Hawaiian Programs, Administration on Aging, Department of Health and Human Services, Wilbur J. Cohen Federal Building, Room 4752, 330 Independence Avenue, SW., Washington, DC 20201, (202) 245-2957.

SUPPLEMENTARY INFORMATION:

Part I—Background and Program Purpose

The Administration on Aging is responsible for administering the Older Americans Act which provides for the delivery of supportive and nutritional services to older Americans who are 60 years of age or older. The Older Americans Act Amendments of 1987 established a new Part B under Title VI of the Act for the provision of supportive and nutrition services to Native Hawaiian elders who are 60 years of age or older.

The Act provides that a public or nonprofit private organization having the capacity to provide services for Native Hawaiians is eligible for assistance under Title VI Part B if the organization will serve at least 50 Native Hawaiian individuals who have attained 60 years of age or older, and the organization demonstrates the ability to deliver supportive services and nutrition services.

For the purposes of Title VI Part B, the term "Native Hawaiian" means an individual any of whose ancestors were natives of the area which consists of the Hawaiian Islands prior to 1778.

If the funds for Fiscal Year 1989 become available, AoA expects to make awards to organizations which will provide supportive and nutritional services to older Native Hawaiians.

Nutritional services include congregate meals and home-delivered meals. Supportive services include information and referral, transportation, chore services, and other supportive services which contribute to the welfare of older Native Hawaiians, as listed in Section 321 of the Older Americans Act. Applicant organizations must provide for establishing and maintaining information and referral services to assure that older Native Hawaiians to be served by the assistance made available will have reasonably convenient access to such services. The information and referral services must be available for older Native Hawaiians living in the geographic boundaries of the Title VI Part B service area proposed by the applicant organization and approved by the Commissioner.

Organizations receiving funds to provide services to older Native Hawaiians shall assure that all activities will conducted in close coordination with the State Agency and the Area Agency on Aging.

Part II—Eligibility and Funding Information

A. Eligibility of an Organization to Receive a Grant

A public or private nonprofit organization having the capacity to provide services for Native Hawaiians is eligible to receive a grant only if the organization will serve at least 50 Native Hawaiians who have attained 60 years of age or older, and the organization demonstrates the ability to deliver supportive and nutritional services.

B. Available Funds

Funds under Title VI Part B for Fiscal Year 1989 are dependent on the availability or reprogrammed funds in Fiscal Year 1989. Reprogrammed funds for Title VI may result in as much as $1,365,000 for Title VI Part B. The amount of grants to individual organizations will depend on the amount of funds available, the number of eligible applicants, the number of older Native Hawaiians to be served by each applicant, and the geographical boundaries of the proposed service areas.

Information is given below as an example of possible funding levels based on varying numbers of Hawaiian elders over age 60.

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Population range (number of older Hawaiians age 60 or older in a specified area of the State)	Possible award amount
50 to 100	$38,411
101 to 200	46,422
201 to 300	54,844
301 to 400	63,266
401 to 500	71,688
501 +	80,110

In the event that a State agency, or a private nonprofit organization applying on behalf of the entire State with the recommendation of the State Agency on Aging, should make application under Title VI Part B, the above examples would not apply. Rather the applicant agency would use the total number of older Hawaiians in developing their budget request. AoA would review such applications on a case by case basis.

For grants made in Fiscal Year 1989, the budget period will be one year, September 30, 1989 through September 29, 1990. The project period will be for three years, September 30, 1989 through September 29, 1992, subject to availability of funds.

Part III—Application Process

A. Application Materials

Application materials are included with this announcement. Applicant organizations must complete the application forms, including the Form 424, Application for Federal Assistance; Form 424–A, Budget Information—Non-Construction Programs; and Form 424–C, Assurances—Non-Construction Programs. Applicants must also complete the narrative in the Instructions for Completing the Program Narrative Statement. These are all attached as Appendix A. Two additional assurances must also be included: the Certification Regarding Drug-Free Workplace Requirements in Appendix B, and the Certification Regarding Debarment in Appendix C.

As required by section 624(a) of the Older Americans Act, each application shall—

(1) Provide that the organization will evaluate the need for supportive and nutrition services among older Native Hawaiians to be represented by the organization;

(2) Provide for the use of such methods of administration as are necessary for the proper and efficient administration of the program to be assisted;

(3) Provide assurances that the organization will coordinate its activities with the State agency on aging;

(4) Provide that the organization will make such reports in such form and containing such information as the Commissioner may reasonably require, and comply with such requirements as the Commissioner may impose to assure the correctness of such reports;

(5) Provide for periodic evaluation of activities and projects carried out under the application;

(6) Establish objectives, consistent with the purpose of this title, toward which activities described in the application will be directed, identify obstacles to the attainment of such objectives, and indicate the manner in which the organization proposes to overcome such obstacles;

(7) Provide for establishing and maintaining information and referral services to assure that older Native Hawaiians to be served by the assistance made available under this part will have reasonably convenient access to such services;

(8) Provide a preference for Native Hawaiians 60 years of age and older for full or part-time staff positions wherever feasible;

(9) Provide that any legal or ombudsman services made available to older Native Hawaiians represented by the organization will be substantially in compliance with the provisions of title III relating to the furnishing of similar services; and

(10) Provide satisfactory assurance that the fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this part to the organization, including any funds paid by the organization to a recipient of a grant or contract.

Further information about requirements regarding applications are found in the Regulations, at 45 CFR 1328.19 (issued August 31, 1988). Copies of the law and regulations may be obtained upon request to the Office for American Indian, Alaskan Native, and Native Hawaiian Programs listed above.

B. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, P. L. 96–511, the Department is required to submit to OMB for review and approval and reporting and record keeping requirements and regulations including program announcements. This program announcement does not contain any information collection requirements beyond those approved by OMB.

C. Executive Order 12372–Notification Process

The requirements for review of applications by State Single Points of Contact under Executive Order 12372 do not apply to this program. However, applicants are required to coordinate the development of the application with the State Agency on Aging in their State.

D. Closing Date for the Submission of Applications

The closing date for the submission of applications under this announcement is August 10, 1989.

E. Funding Decisions

Awards will be made by the Commissioner on Aging. Funding decisions will be announced as soon as possible.

Dated: June 20, 1989.

Joyce T. Berry,

Acting Commissioner on Aging.

Approved: June 28, 1989.

Louis W. Sullivan,

Secretary.

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APPENDIX A

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction
2. DATE SUBMITTED — Applicant Identifier
3. DATE RECEIVED BY STATE — State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY — Federal Identifier
5. APPLICANT INFORMATION
Legal Name: — Organizational Unit:
Address (give city, county, state, and zip code): — Name and telephone number of the person to be contacted on matters involving this application (give area code)
6. EMPLOYER IDENTIFICATION NUMBER (EIN): — —
7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify): _____
8. TYPE OF APPLICATION: ☒ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award — B. Decrease Award — C. Increase Duration
D. Decrease Duration — Other (specify): _____
9. NAME OF FEDERAL AGENCY: ADMINISTRATION ON AGING DEPARTMENT OF HEALTH AND HUMAN SERVICES
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 1 3 . 6 5 5
TITLE: GRANTS FOR SUPPORTIVE AND NUTRITIONAL SERVICES TO OLDER NATIVE HAWAIIANS
11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
12. AREAS AFFECTED BY PROJECT (Cities, counties, states, etc.):
13. PROPOSED PROJECT: Start Date 9-30-89; Ending Date 9-29-92
14. CONGRESSIONAL DISTRICTS OF: a. Applicant — b. Project
15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO. ☒ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation. ☐ No
18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED
a. Typed Name of Authorized Representative — b. Title — c. Telephone number
d. Signature of Authorized Representative — e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:

23. Remarks

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

BILLING CODE 4130-01-C

SF 424B (4-88) Back

Appendix A-1—Instructions for Completing the Program Narrative Statement

To accompany Form SF 424

Title VI Part B of the Older Americans Act

Application for Grant for Supportive and Nutritional Services to Older Native Hawaiians

Applications must meet the requirements of Title VI Part B of the Older Americans Act and Title 45 Part 1328 of the Code of Federal Regulations. The narrative must include the following information in any format selected by the applicant organization.

A. OBJECTIVE AND NEED FOR ASSISTANCE

The application shall establish objectives consistent with the requirements in Section 624(a)(6) of the Act.

B. RESULTS OR BENEFITS EXPECTED

The application should describe the results or benefits expected from each service proposed.

C. APPROACH

(1) *Description and Method of Delivery of Each Service*

The application must describe each service to be provided under this grant.

(a) Nutrition

Nutrition services may be provided. If they are to be provided, there should be a description of the methods, facilities, and staff to be used in preparing, serving, and delivering meals, and the approximate number of persons to be served.

(b) Information and Referral

The applicant must provide for establishing and maintaining information and referral services to assure that older Native Hawaiians to be served by the assistance made available will have reasonably convenient access to such services. The information and referral services must be available for older Native Hawaiians living in the Title VI Part B service area and there should be a description of how they will be provided. The approximate number of individuals to be served should be stated.

(c) Other Supportive Services

The application must describe any other supportive services to be provided wholly or partly by Title VI Part B funds. The approximate number of persons to be served by each service should be stated.

If legal assistance and ombudsman services are proposed, they must substantially comply with the requirements under Title III of the Older Americans Act for such services.

(2) *Data*

The application must identify the kinds of data to be collected and maintained.

(3) *Evaluation Criteria*

The application must discuss the criteria and methods to be used to evaluate the results of the project.

D. GEOGRAPHIC LOCATION

The area to be served by Title VI Part B must have clear geographic boundaries. The application must include a narrative description of the Title VI Part B service area, and a map.

E. ADDITIONAL INFORMATION

(1) *Older Native Hawaiians in the Title VI Part B Service Area*

The application must show the number of Native Hawaiians age 60 or over whom the applicant organization expects to serve, and also the total number of such older Native Hawaiians in the Title VI Part B service area.

(2) *Title VI Program Assurances*

"Title VI Program Assurances" must be included in the application. The Title VI Program Assurances are those provisions identified in Section 624(a) of the Older Americans Act, and Section 1328.19(d) of the Title VI regulations. The applicant organization must state that it agrees to abide by all those assurance provisions for the duration of the project.

(3) *Coordination with State Agency on Aging and Area Agency on Aging*

If the applicant is other than the State Agency on Aging or the Area Agency on Aging, the applicant must describe the specific manner in which the applicant organization coordinated with the State Agency on Aging and the Area Agency on Aging in planning and developing the application; and, if funds are received, the particular way in which the applicant organization will deliver service in close coordination with the services funded by the State and Area Agency on Aging under Title III of the Older Americans Act.

APPENDIX B—U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS GRANTEES OTHER THAN INDIVIDUALS

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the January 31, 1989 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the U.S. Department of Health and Human Services determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of the grant, or governmentwide suspension or debarment.

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about:

(1) the dangers of drug abuse in the workplace;

(2) the grantee's policy of maintaining a drug-free workplace;

(3) any available drug counseling, rehabilitation, and employee assistance programs; and

(4) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) abide by the terms of the statement; and

(2) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) taking appropriate personnel action against such an employee, up to and including termination; or

(2) requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee shall insert in the space provided below, the site(s) for the performance of work done in connection with the specific grant (Street address, city, county, State, Zip Code):

_____

_____

_____

APPENDIX C—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery,

falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services' (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered actions.

[FR Doc. 89-15593 Filed 6-30-89; 8:45 am]

BILLING CODE 4130-01-M

Family Support Administration

Refugee Resettlement Program; Availability of Funding for Grants for FY 1989 Targeted Assistance for Services to Refugees [1] in Local Areas of High Need

AGENCY: Office of Refugee Resettlement (ORR), FSA, HHS.

ACTION: Final notice of availability of funding for grants for FY 1989 targeted assistance for services to refugees in local areas of high need.

SUMMARY: This notice announces the availability of funds and award procedures for FY 1989 targeted assistance project grants for services to refugees under the Refugee Resettlement Program (RRP). These grants are for service provision in localities with large refugee populations, high refugee concentrations, and high use of assistance, and where specific needs exist for supplementation of currently available resources.

A notice of proposed qualification of counties and allocation of funds was published for public comment in the **Federal Register** of January 25, 1989 (54 FR 3687).

As a result of the comments received, major changes have been made in this final notice. These changes are described in detail in the notice. In brief, (1) allocations are made on the basis of a combination of old and new formulas, rather than solely on the basis of a new formula, and (2) no county is phased out of the targeted assistance program under this notice. This approach permits a more gradual adjustment than was originally proposed. It takes into account the impact of refugee arrivals in the last few years while avoiding an abrupt termination of targeted assistance in any currently participating county.

Application Deadline: The deadline for applications from States for grants under this notice is August 14, 1989. Applications must be received on time.

An application will be considered to be received on time under either of the following two circumstances:

A. The application was sent via the U.S. Postal Service or by private commercial carrier not later than 45 days after publication of this final notice, unless it arrives too late to be considered by the reviewers. (Applicants are responsible for assuring that the U.S. Postal Service or private commercial carrier dates the application package. Applicants should be aware that not all post offices or private commercial carriers provide a dated postmark unless specifically instructed to do so.)

B. The application is hand-delivered on or before the closing date to the Office of Grants Management, FSA, 6th floor, 901 D Street, SW., Washington, DC 20447. Hand-delivered applications will be accepted during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday (excluding Federal legal holidays) up through the closing date.

Late applications will be returned to the sending agency.

To be considered complete an application package must consist of a signed original and two copies of Standard Form 424, Parts I through IV.

Grant Regulations: Grants are subject to the administrative regulations published under title 45 of the Code of Federal Regulations, Part 74, §§ 74.62, 74.173, 74.174, 74.304, 74.710, and 74.715. Grants are subject to new HHS regulations on Grants Administration in 45 CFR Part 92. These regulations were published in the **Federal Register** of March 11, 1988, and became effective October 1, 1988. Part 92 is the HHS version of OMB Circular A-102 Common Rule.

For Further Information on Application and Grant Procedures, States Should Contact: Shirley Parker, Office of Grants Management, Family Support Administration, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone (202) 252-4618.

For Further Programmatic Information, States Should Contact: Ron Munia, Office of Refugee Resettlement, Family Support Administration, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone (202) 252-4559.

SUPPLEMENTARY INFORMATION:

The following major changes have bene made in this final notice as compared with the proposal published January 25:

1. The January 25 notice proposed that participation counties be phased out if they did not meet the original criteria for TAP participation when applied to more recent arrival data and that such phased-out counties be provided with a portion of the allocation they would have received under the existing formula based on the period between their present project-period end-dates and September 30, 1989.

This final notice does not require the phaseout of any country, does not use project-period end-dates in determining allocations, and does not base any allocations on a period ending September 30, 1989.

2. The January 25 notice proposed that allocations for counties which continued to meet the original criteria for TAP participation when applied to more recent arrival data be based entirely on such more recent arrival data, on States' dependency rates, and on their present project-period end-dates prorated through March 31, 1991.

This final notice bases all county allocations on a combination of old and new formulas, does not take present project-period end-dates into consideration, and does not prorate allocations based on a future end-date.

We believe that these modifications provide a needed adjustment in targeted assistance to take into account the impact of arrivals during 1983–1988 and at the same time provide a more gradual move away from allocations based on 1980–1982 arrivals than would have been accomplished under the January 25 proposal. If funds are appropriated for targeted assistance for FY 1990, ORR would expect to propose following this same formula, updated to include 1989 arrivals.

3. The January 25 notice proposed to exclude certain types of general and remedial educational activities—such as preparation for a high school equivalency diploma or adult basic education—from being funded under the 85% of targeted assistance allocations that must be directed toward job placement since such educational activities often tend to be long term and not to be directed toward job placement within a reasonable period, thus not meeting the emphasis of refugee program legislation on early employment.

In this final notice, such activities are allowed if they are provided within the context of an individual employability plan for a refugee which is intended to result in job placement in less than one year.

I. Purpose and Scope

This notice announces the availability of funds for grants for targeted assistance for services to refugees in counties where, because of factors such as unusually large refugee populations, high refugee concentrations, and high use of public assistance, there exists and can be demonstrated a specific need for supplementation of resources for services to this population.

A total of $34,052,000 if FY 1989 funds is available for targeted assistance under the FY 1989 appropriations for the Department of Health and Human Services (Pub.L. 100-436).

The Conference Report on appropriations as follows with respect to the targeted assistance funds (H. Rept. 100-880, p. 28):

> The amount agreed to includes $10,531,000 for 12 months of additional special targeted assistance to Dade County schools and Jackson Memorial Hospital. For other targeted assistance grantees the conference agreement provides additional funding at the current rate of operations through fiscal year 1989.

Subsequent to the Conference Report, the amounts appropriated were reduced 1.2%.

Of the total funds available, the following amounts have been, or are expected to be, awarded for special targeted assistance project grants: $10,404,700 (the $10,531,000 referred to in the Conference Report minus the 1.2% reduction) for the Dade County Schools and Jackson Memorial Hospital; $400,000 for the Lowell, MA, school system which has received a recent influx of refugees and has demonstrated a specific need for supplementation of available resources for services; and $1,200,000 for Los Angeles County to address a sudden impact resulting from the arrival of several thousand Armenian refugees in FY 1988. The remaining targeted assistance funds $22,047,300, are allocated as set forth in this notice.

Except as specified in this notice, requirements regarding the use of the FY 1989 targeted assistance funds remain unchanged from those applied to FY 1988 targeted assistance funds as set forth in a notice to States of March 4, 1988.

The purpose of targeted assistance grants is to provide, through a process of local planning and implementation, direct services intended to result in the economic self-sufficiency and reduced welfare dependency of refugees through job placements.

The targeted assistance program reflects the requirements of section 412(c)(2)(B) of the Immigration and Nationality Act (INA), as amended by the Refugee Assistance Extension Act of 1986 (Pub. L. 99-605), which provides that targeted assistance grants shall be made available "(i) primarily for the purpose of facilitating refugee employment and achievement of self-sufficiency, (ii) in a manner that does not supplant other refugee program funds and that assures that not less than 95 percent of the amount of the grant award is made available to the county or other local entity."

Services funded under the targeted assistance allocations are required to focus primarily on those refugees who, either because of their considerable and protracted use of public assistance or continued difficulty in securing employment, constitute a major resettlement problem for the affected jurisdiction which cannot be addressed without additional services. In order to ensure sufficient emphasis on services to appropriate clients, each State is required to assure that, for each qualified local area, cash assistance recipients (time-eligible and time-expired recipients under any program of the State or locality) will make up a percentage of the FY 1989 targeted assistance clientele which is not less than the State's final FY 1988 dependency rate.

Funds awarded under this program are intended to help fulfill the Congressional intent that "employable refugees should be placed on jobs as soon as possible after their arrival in the United States" (section 412(a)(1)(B) of the INA). Therefore at last 85% of targeted assistance funds are required to support projects which directly enhance refugee employment potential, have specific employment objectives, and are designed to enable refugees to obtain jobs with less than one year's participation in the targeted assistance program. Innovative approaches to this objective, including strategies which address the employment potential of more than one wage earner in a household unit simultaneously are encouraged. General or remedial educational activities—such as adult basic education (ABE) or preparation for a high school equivalency or general education diploma (GED)—may be provided only within the context of an individual employability plan for a refugee which is intended to result in job placement within less than one year.

The degree of success of targeted assistance programs will be measured in terms on job placements, job retention, and reductions in cash assistance—the principal objectives of the authorizing legislation.

In order to meet extreme and unusual needs, up to 15% of a local area's allocation may be used for services which are not directed toward the achievement of a specific employment objective in less than one year but which are essential to the adjustment of refugees in the community, provided such needs are clearly demonstrated and such use is approved by the State, or by ORR in the case of State-administered local programs.

Cases in which a county plan contains proposed program activities not allowable under section VII, below, may be entertained by a State only where extreme and unusual need exists and is clearly demonstrated in the county's proposed plan. Such cases will be considered to involve a change in program scope or objectives and will therefore be subject to ORR prior approval.

A State may request a waiver in order to be able to allow a county to use more than 15% for non-employment-related services. ORR will approve such a request only in the most extreme circumstances of need.

The award of funds to States under this notice will be contingent upon the completeness of a State's application as described in section IX, below.

II. Discussion of Comments Received

One hundred twenty-five letters were received in response to the notice of proposed availability of funds for refugee targeted assistance. The comments are summarized below and are followed in each case by the Department's response.

Proposed Formula Allocation

Comment: Twenty-eight commenters expressed support for the proposed

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[1] In addition to persons admitted to the United States as refugees, eligibility for targeted assistance includes Cuban and Haitian entrants, certain Amerasians from Vietnam who are admitted to the U.S. as immigrants, and certain Amerasians from Vietnam who are U.S. citizens. (See section III of this notice on "Authorization.") The term "refugee," used in this notice for convenience, is intended to encompass such additional persons who are eligible to participate in refugee program services, including the targeted assistance program.

allocation formula; 71 opposed it. Most, but not all, of the supportive comments came from areas which would have received higher allocations as a result of the change. A few comments in support of the proposed formula were also received from commenters in States whose targeted assistance counties were proposed to be phased out.

The 71 commenters who expressed opposition to the proposed formula cited the continuing needs of refugees and entrants in their areas and the impact that a reduction of targeted assistance resources would have on the provision of services. All of these comments were received from areas proposed to be phased out or to receive a lower level of funding.

Thirteen commenters specifically supported the formula which had been used to date and which was based on refugee and Cuban/Haitian entrant arrivals during FY 1980–1982.

Response: The Department's proposal of January 25 would have updated the existing targeted assistance formula to reflect more recent trends in refugee resettlement; data on arrivals in 1983–1988 would have been substituted for the 1980–1982 arrival data which had been used for all previous targeted assistance awards. One result of applying the new data to the existing formula would have been to phase out of the targeted assistance program more than half of the currently participating counties by the end of this fiscal year.

Our review of the comments has convinced us that, while it is important to update the targeted assistance allocations in order, to reflect more recent refugee arrival patterns, it is appropriate to apply the new data in a more gradual manner than we proposed. Therefore this final notice bases the allocations on the entire period of refugee and entrant arrivals from FY 1980 through FY 1988 and does not phase out any currently participating county. This has the effect of continuing to fund services in all targeted assistance sites, yet directing a greater percentage of funds to areas which have experienced increases in refugee arrivals over the past six years.

State Allocation Authority Among Targeted Assistance Counties

Comment: Twenty comments opposed continuing to allow a State which has more than one targeted assistance county the option of determining local county allocations within the State; all of these comments came from one county. One commenter from another State suggested that individual county allocations not be specified in the final notice since doing so would weaken the ability of the State to allocate funds differently if it deemed this necessary.

Response: The authority to allow States to allocate funds among counties was granted to the States in the FY 1986 program and has been continued since. The Department believes that States, as grantees charged with overall management of the program, should have the flexibility to respond to varying degrees of need among targeted assistance communities within a particular State.

The respective county allocations which the formula yields provide an objective basis for awarding funds. However, the specific impacts and relative needs for funds among the targeted assistance communities within a State may vary for a variety of local reasons which cannot reasonably be addressed in a formula-based allocation of funds across the country.

It should be noted that if a State should propose to allocate funds among its targeted assistance counties differently from the allocations contained in this announcement, such a proposal continues to be subject to ORR approval. Given this safeguard and, in our view, the lack of any compelling arguments against retaining this provision for State flexibility, we have decided to retain the provision in this announcement.

County Administrative Costs

Comment: One commenter asked whether any change was being proposed in the amounts allowable for local administrative costs of targeted assistance.

Response: No change was proposed in the amounts allowable for local targeted assistance administrative costs, previously set forth in the notice on FY 1986 targeted assistance in the **Federal Register** of August 27, 1986 (51 FR 30552). Allowable local targeted assistance administrative cost amounts range from 10% to 15% of the local allocation amount in inverse relationship to the size of the allocation.

Project-Period End-Dates

Comment: During the comment period, six States submitted end-dates different from those listed in the announcement and requested additional funds in instances where they were proposed to be phased out. Two commenters suggested that such dates not be used as it rewarded those that spent quickly and penalized those that managed their funds more effectively. Others complained that contract periods within the county were performance based and subject to modification due to performance and thus not reliably reflected in existing project-period end-dates.

Response: The use of the project-period end-dates listed in the January 25 proposal was intended to give counties adequate funds to phase out programs by the end of the fiscal year and to provide a basis for an equitable adjustment of allocations to counties proposed for continuation.

The comments led us to conclude that the project-period end-dates, which had been established by the States themselves, did not uniformly reflect the actual dates to which current funds were expected to enable projects to continue. Therefore we decided not to use such end-dates as an allocation factor in the formula set forth in this final notice.

Program Limitations

Comment: Twelve comments were received regarding the program service limitations. Some of the commenters supported keeping the focus of the program on employment of refugees and away from long-term training. Other commenters felt that long-term training should be allowed and that the targeted assistance guidelines were inconsistent with welfare reform programs which permit longer-term training. Objections were either to the one-year limit on length of training or to limitations on specific types of training which would have excluded general English language training, adult basic education, and preparation for a high school equivalency diploma.

Response: The proposed limitations were consistent with earlier announcements but were more specific in designating particular services as unallowable.

Targeted assistance guidelines have consistently reflected the emphasis of refugee program legislation on early employment and have prescribed time-limited service strategies intended to place refugees in jobs as quickly as possible. Earlier announcements required performance measures of job placements and job retention at six months for each service component.

A need for more flexibility in service strategies was recognized beginning with the FY 1984 targeted assistance program when the Department departed from strictly employment-related services and allowed 15% of the total funds awarded to be used to meet non-employment-related critical unmet needs. Use of the 15% funding for critical unmet needs continues to be allowed in county plans, subject to State approval and, in the case of State-administered programs, to ORR approval. In the event that the State wishes to support a local area's request to allocate more than 15% of its funds for non-employment related services, the State must seek formal approval from ORR.

As a result of the comments received, the Department has reviewed the proposed wording with respect to the scope of services permissible for support within the 85% of funding which must be used for high-priority, employment-related services, and we have modified the announcement to allow certain basic educational training activities when they can be appropriately provided within the context of an individual employability plan for a refugee which is intended to result in job placement in less than one year.

We recognize that long-term education and training may be desirable for many refugees as they progress in building their lives in the United States, but we believe that such long-term activities are beyond the legislated intent, scope, and funding of the refugee program which provides transitional help aimed at job placement.

Updating of Dependency Rates

Comment: Some commenters recommended that the formula be updated by using cash assistance dependency rates as of September 30, 1988, rather than a year earlier as in the notice of January 25.

Response: As indicated in the January 25 notice, final figures were not then available for the dependency rates as of the end of FY 1988. The later figures are now available and are used in this final notice.

Basis and Effect of Proposed Allocation Formula

Comment: A few commenters considered the allocation formula flawed in that it did not contain data on secondary migrants into respective communities.

Response: Data on secondary migration at the county level are not collected and therefore are not available for use in formula allocations.

Comment: A number of commenters complained that the proposed allocation formula would penalize programs that had proved effective because the criteria for the continued participation of counties included high refugee cash assistance dependency levels and rates. Some suggested that the formula be modified by conducting, and taking into account the results of, individual community impact assessments or that rewards be provided for effective service strategies.

Response: We continue to feel that two of the best measures of impact are the number and proportion of refugees in a county who are dependent on publicly funded cash assistance. These are the criteria which, together with the number of refugee arrivals in a community and their proportion of the total population of the community, have been used throughout the targeted assistance program. In fact, targeted assistance providers are required to focus services on cash assistance recipients.

At the same time, we recognize that a formula based on the available data has limitations. However, resources are not available to conduct individual community assessments and it is questionable whether such assessments could provide an objective basis for providing gradations of limited funding among competing communities.

We believe that the revised and simplified formula established by this notice avoids some of the effects which commenters found objectionable in our January 25 proposal and at the same time recognizes impacts of refugee arrivals which have taken place since 1982.

Definition of Targeted Assistance Areas

Comment: Several commenters from two targeted assistance sites requested that the boundaries of their areas which were defined as targeted be redrawn so they could continue to qualify. Both of these areas were found to no longer qualify under the proposed formula.

Response: Since this final notice does not phase out any targeted assistance areas, we have not modified any of the boundaries.

Discretionary Awards

Comment: A few comments were received on the discretionary grant award for the Lowell, MA, school system. Most of these comments were from Los Angeles and pointed to the impact of the arrival of several thousand Armenian refugees in that county over the past year.

Response: ORR received an unsolicited grant application from Los Angeles County to help address the impact of the Armenian refugees and, as indicated in this notice, has awarded a discretionary grant of $1,200,000 for Los Angeles County.

Adequacy of Consultation

Comment: Several comments were received regarding a purported lack of consultation with the States regarding the proposed formula changes.

Response: The issuance of our proposed targeted assistance formula and allocations in January for public comment fulfilled the requirements of the Administrative Procedure Act and provided all interested public and private agencies, organizations, and individuals with the opportunity to make their views known to us. Before making those proposals, the Office of Refugee Resettlement in October 1988 held a national conference of State Refugee Coordinators, representatives of refugees mutual assistance associations (MAAs), representatives of voluntary refugee resettlement agencies, and other interested persons. At that conference, we stated the changes that would likely be proposed. During the ensuing discussion, several comments were made which emphasized the need for adequate phaseout time for those areas that would no longer qualify based on a proposed updated formula. These comments were taken into account in developing, and were reflected in, the proposal which was published in January.

III. Authorization

Targeted assistance projects are funded under the authority of section 412(c)(2) of the Immigration and Nationality Act (INA), as amended by the Refugee Assistance Extension Act of 1986 (Pub. L. 99–605), 8 U.S.C. 1522(c); section 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422), 8 U.S.C. 1522 note, insofar as it incorporates by reference with respect to Cuban and Haitian entrants the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above; section 584(c) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. 100–202), insofar as it incorporates by reference with respect to certain Amerasians from Vietnam the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above, including certain Amerasians from Vietnam who are U.S. citizens, as provided under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Pub. L. 100–461).

IV. Eligible Grantees

The following requirements, which have previously applied to TAP, continue to apply with respect to FY 1989 awards:

Eligible grantees are those agencies of State governments which are responsible for the refugee program under 45 CFR 400.5 in States containing counties which qualify for FY 1989 targeted assistance awards. The use of

targeted assistance funds for services to Cuban and Haitian entrants is limited to States which have an approved State plan under the Cuban/Haitian Entrant Program (CHEP).

The State agency will submit a single application on behalf of all county governments of the qualified counties in that State. Subsequent to the approval of the State's application by ORR, local targeted assistance plans will be developed by the county government or other designated entity and submitted to the State.

A State with more than one qualified county is permitted, but not required, to determine the allocation amount for each qualified county within the State.

Applications submitted in response to this notice are not subject to review by State and areawide clearinghouses under Executive Order 12372, "Intergovernmental Review of Federal Programs."

V. Qualification and Allocation Formula

The Director of ORR has decided to apply a new basis for the FY 1989 TAP to determine the allocation of funds.

Formula Used to Date

The Department has used a two-stage formula for qualification for, and allocation of, TAP funds since the inception of the refugee targeted assistance program in FY 1983. The first stage of the formula defines the qualification of counties for TAP through the use of four equally-weighted criteria which were selected to collectively indicate local conditions and problems which the program was intended to address.

In order to qualify for TAP funds, a county (or group of adjacent counties within the same Standard Metropolitan Statistical Area, or SMSA) was required to be above the median or above a specified cutoff point of jurisdictions for which data were reviewed in three of the four following criteria: (1) The number of refugees placed in the county during FY 1980–1982; (2) the ratio of the overall county population to the refugees in item (1), above; (3) the number of refugees in the county who were receiving cash assistance under the programs of aid to families with dependent children (AFDC) and refugee cash assistance (RCA) on October 1, 1982; and (4) the ratio of refugees in item (3) to the number of refugees in item (1). A county which placed above the cutoff point in any three of the above categories was determined to be qualified to apply for targeted assistance funds and was included in the list of qualifying localities for determination of its targeted assistance allocation.

The median for Criterion 1, above, was 2,066.5. The median for Criterion 2 was 244.5. The cutoff point for Criterion 3 was 1,000. The cutoff point for Criterion 4 was established at 50%, the approximate national average dependency rate. Counties which met three of the four criteria qualified for the program.

The second stage of the formula consisted of the number of refugees in a qualified county who had been in the U.S. 36 months or less and who were receiving AFDC or RCA on October 1, 1982. Some adjustments were made for State-to-State differences in assistance programs. These adjusted figures on the use of assistance then comprised the formula base for the allocation of funds. (A more detailed description of this formula was pubished in the **Federal Register** of June 3, 1983, 48 FR 24986.)

Targeted assistance related to the needs of Cuban and Haitian entrants was based on county populations of entrants who also arrived during FY 1980–1982. (See the **Federal Register** of July 27, 1983, 48 FR 34127.)

The results of these formulas provided the basis for the allocation of TAP funds during each fiscal year in which such funds were appropriated—FY 1983, 1984, 1985, 1986, and 1988.

Revised Formula

More than 9 years have passed since the first—and more than 6 years since the last—of the arrivals during FY 1980–1982 (October 1, 1979–September 30, 1982) on which TAP has been based to date. More than $270,000,000 in TAP funds have been provided to address the needs of those refugees and entrants.

The Director has determined that is is no longer appropriate to make TAP funds available solely on the basis of the needs of refugees and entrants who arrived during the period October 1, 1979–September 30, 1982.

Therefore the Director has decided to base part of the allocation of funds among currently participating counties on refugee and entrant placements in these counties during calendar year (CY) 1983–FY 1988 and on cash assistance dependency rates as of September 30, 1988 (ORR's latest dependency-rate data).

In determining whether additional counties would be eligible to participate in the targeted assistance program, the Director applied the same four criteria used previously, including the same cutoff points, to the updated information on refugee arrivals, concentrations, dependency rates, and receipt of cash assistance. As before, a county would have to meet three out of the four criteria in order to qualify.

The results of these determinations are as follows:

1. *Counties not currently participating in TAP:* No county not currently participating in TAP was found to meet at least three out of the four criteria.

2. *Counties currently participating in TAP:* The allocations among the counties currently participating in TAP are based on a combination of two formulas related to different periods of refugee arrivals. Of the $22,047,300 which is allocated by formula:

a. $12,566,961, or 57%, is allocated on the basis of the formula which has been used for all previous targeted assistance allocations ("old formula") and which is based on initial placements during FY 1980–1982 and other factors as described above under "Formula Used to Date."

b. $9,480,339, or 43%, is allocated on the basis of arrivals during CY 1983–FY 1988 ("new formula").

The above percentages are based on the proportion of initial placements in these counties during the two periods: 340,737, or 57%, during the old-formula period; and 253,552, or 43% during the new-formula period.

The old-formula allocation of $12,566,961 follows the same distribution among counties as in the past.

The new-formula allocation of $9,480,339 is based on the number of initial placements in each county during CY 1983–FY 1988 multiplied by the State's time-eligible** dependency rate as of September 30, 1988. The weighted index resulting from this calculation was used to determine each county's share of the new-formula funds. We believe that, in the absence of additional data, each county's proportionate share of the number of initial placements and the State's time-eligible dependency rate provide good indicators of relative need.***

VI. Allocations

Table 1 lists the participating counties, the amount of each county's allocation which is based on the old formula, the number of placements in each county during CY 1983–FY 1988, the State's dependency rate as of September 30, 1988, the amount of each county's allocation which is based on the new formula, and the county's total allocation.

Although Table 1 shows an amount for each county, the Director has decided, in the case of a State which contains more than one qualified county, to continue to permit the State to determine (in accordance with the requirements set forth in this notice) the appropriate allocation of the State's targeted assistance award among the qualified counties in the State. The Director sees this as continuing ORR's practice of providing as much authority and flexibility as possible to States in determining the relative needs of the qualified counties within a State. Thus each such State, as in the FY 1988 TAP, is responsible for determining an appropriate and equitable basis for allocating the funds among the qualified counties in the State and for including in its application for approval by ORR a description of this allocation basis, the data to be used, and the allocation proposed for each county.

Table 2 provides State totals for the county allocations set forth in Table 1.

** The term "time-eligible" means refugees in their first 24 months in the U.S., the time-period for which States could claim cash and medical assistance costs against ORR's grants to the States as of the end of FY 1988. "Time-expired" refers to refugees who have been in the U.S. more than 24 months.

*** More specific data might include the estimated county populations of refugees who arrived during CY 1983–FY 1988 and actual numbers of time-expired refugees who are receiving cash assistance. However, it is not possible to estimate county refugee populations reliably because of lack of county-level information on secondary migration. Data are not universally available on the receipt of cash assistance by time-exported refugees.

TABLE 1.—TARGETED ASSISTANCE ALLOCATIONS BY COUNTY: FY 1989

County	State	Arrivals Jan 1983–Sept. 1988 (A)	Percent Receiving Assistance (B)	Portion of FY 1989 allocation under old formula (C)	Portion of FY 1989 allocation under new formula (D)	Total FY 1989 allocation (E)
Alameda	CA	7,812	78.9	$310,036	$404,593	$714,629
Contra Costa	CA	2,033	78.9	88,646	105,292	193,938
Fresno	CA	4,846	78.9	171,202	250,980	422,182
Los Angeles	CA	50,397	78.9	1,565,641	2,610,120	5,375,761[2]
Merced	CA	1,813	78.9	208,966	93,897	302,863
Orange	CA	15,959	78.9	696,660	826,536	1,523,196
Riverside/San Bernardino	CA	2,512	78.9	88,439	130,100	218,539
Sacramento	CA	4,105	78.9	265,361	212,603	477,964
San Diego	CA	10,163	78.9	519,241	526,354	1,045,595
San Francisco	CA	9,590	78.9	402,952	496,677	899,629
San Joaquin	CA	4,618	78.9	267,765	239,172	506,937
Santa Clara	CA	13,095	78.9	518,620	678,206	1,196,826
Stanislaus	CA	1,800	78.9	48,447	93,224	141,671
Denver	CO	2,905	39.0	104,592	74,368	178,960
Broward	FL	510	29.9	173,250	10,010	183,260
Dade	FL	17,027	29.9	3,022,463	334,186	13,761,349[3]
Hillsborough	FL	1,034	29.9	54,446	20,294	74,740
Palm Beach	FL	301	29.9	71,972	5,908	77,880
Honolulu	HI	1,681	76.6	115,172	84,744	199,916
Cook/Kane	IL	12,654	23.3	541,012	193,537	734,549
Sedgwick	KS	1,854	29.2	128,921	35,536	164,457
Orleans	LA	2,293	10.5	88,072	15,804	103,876
Montgomery/Prince Georges	MD	3,179	11.1	107,144	23,163	130,307
Middlesex	MA	2,803	45.2	84,641	83,165	567,806[4]
Suffolk	MA	7,440	45.2	194,257	220,745	415,002
Hennepin	MN	3,933	69.1	136,475	178,394	314,869
Ramsey	MN	4,369	69.1	191,892	198,171	390,063
Jackson	MO	1,226	14.2	50,101	11,428	61,529
Essex	NJ	2,039	22.6	28,994	30,248	59,242
Hudson	NJ	900	22.6	194,011	13,351	207,362
Union	NJ	322	22.6	38,947	4,777	43,724
New York	NY	15,359	23.9	432,873	240,957	673,830
Multnomah	OR	4,868	50.1	294,102	160,091	454,193
Philadelphia	PA	6,293	33.6	201,314	138,796	340,110
Providence	RI	2,526	39.4	143,788	65,329	209,117
Harris	TX	9,075	21.1	235,975	125,692	361,667
Salt Lake	UT	3,674	19.9	71,736	47,992	119,728
Arlington	VA	1,510	24.4	124,314	24,185	148,499
Fairfax	VA	3,575	24.4	149,898	57,259	207,157
King/Snohomish	WA	9,348	55.1	358,095	338,103	696,198
Pierce	WA	2,111	55.1	76,528	76,352	152,880
Total		253,552	52.1	$12,566,961	$9,480,339	$34,052,000

[1] Column (E) includes discretionary awards as indicated.
[2] Includes $1,200,000 discretionary award.
[3] The allocation for Dade County, Florida, includes $10,404,700 for Jackson Memorial Hospital (Miami) and the Dade County (Miami) public schools. This is the amount specified in the Conference Report on the FY 1989 HHS appropriation (Pub. L. 100–436) less the 1.2% reduction in the final appropriation ($10,531,000 minus 1.2%). The amounts are $5,675,300 for Jackson Memorial and $4,729,400 for the Dade County schools.
[4] Includes $400,000 discretionary award for Lowell school system.

TABLE 2.—TARGETED ASSISTANCE ALLOCATIONS BY STATE: FY 1989

State	FY 1989 allocation by state[1]
California	$13,019,730
Colorado	178,960
Florida	14,097,229
Hawaii	199,916
Illinois	734,549
Kansas	164,457
Louisiana	103,876
Maryland	130,307
Massachusetts	982,808
Minnesota	704,932
Missouri	61,529
New Jersey	310,328
New York	673,830
Oregon	454,193
Pennsylvania	340,110
Rhode Island	209,117
Texas	361,667
Utah	119,728
Virginia	355,656
Washington	849,078
Total	$34,052,000

[1] State totals include discretionary awards specified in footnotes to Table 1.

VII. Allowable Activities and Client Prioritization

At least 85% of a county's FY 1989 targeted assistance funds must be used to support activities permissible under section 412(c) of the INA which have specific employment objectives and are directly related to aiding refugees in finding and retaining jobs within less than one year's participation in the targeted assistance program. Examples of these activities are: Job development; job placement; job-related and vocational English; short-term job training specifically related to opportunities in the local economy; on-the-job training; business and employer incentives (such as on-site employee orientation, vocational English training, or bilingual supervisor assistance); and business technical assistance. These funds may be used for general or remedial educational services—such as adult basic education (ABE) or preparation for a high school equivalency or general education diploma (GED)—only if such service is provided within the context of an individual employability plan for a refugee which is intended to result in job placement within less than one year.

Strategies which address the employment potential of more than one wage earner in a household unit simultaneously are encouraged.

Up to 15% of a local area's allocation may be used for other services which are permissible under section 412(c) of the INA and which are identified and demonstrated in the county plan to be essential services in addressing extreme and unusual needs of the refugee population in the targeted assistance area even though they do not have specific objectives of job placement within less than one year. Subject to State review and approval, a maximum of 15% of the allocation amount for each area may be used in funding these services.

In the event that a State might wish to grant a local area's request to allocate more than 15% of its funds for such non-employment-related services, the State is required to obtain formal prior approval by the Director of ORR. Only the most extreme needs will be considered adequate justification for a local area to use more than 15% of its TAP funds for these services. In order to justify the provision of services for extreme and unusual needs, a county plan must identify the target population, demonstrate clearly the nature and extent of the needs, and describe how the use of more than 15% of its targeted assistance funds to address such needs would contribute to the adjustment of the refugee population.

Services funded under TAP are required to focus primarily on those refugees who, either because of their considerable and protracted use of public assistance or continued difficulty in securing employment, constitute a major resettlement problem for the affected jurisdiction which cannot be addressed without additional services. In order to ensure sufficient emphasis on services to appropriate clients, each State is required to provide an assurance in its application to ORR that, for each qualified local area, cash assistance recipients (time-eligible and time-expired recipients under any program of the State or locality) will make up a percentage of the FY 1989 targeted assistance clientele which is not less than the State's final FY 1988 dependency rate as determined by ORR.

This client prioritization requirement does not apply to the 15% funds described above.

VIII. Application and Implementation Process

Under the FY 1989 targeted assistance program, as in FY 1988, States may apply for and receive grant awards on behalf of qualified counties in the State. A single allocation will be made to each State by ORR on the basis of an approved State application. The State agency will, in turn, receive, review, and determine the acceptability of individual county targeted assistance plans.

Although funding for educational services in Dade County, FL, and Lowell, MA, for medical services at Jackson Memorial Hospital, and to address special impacts in Los Angeles County is part of the appropriation amount for targeted assistance, the scope of activities for these special projects will be administratively determined. Applications for those funds are therefore not subject to provisions contained in this notice to other requirements which have been conveyed separately.

IX. Application Requirements

The State application requirements for grants for the FY 1989 targeted assistance program are as follows:

States that are currently operating under approved management plans for their FY 1988 targeted assistance program and wish to continue to do so for their FY 1989 grants may provide the following in lieu of resubmitting the full currently approved plan:

The State's application shall provide:

A. Assurance that the State's current management plan for the administration of the targeted assistance program, as approved by ORR, will continue to be in full force and effect for the FY 1989 targeted assistance program, subject to any additional assurance or revisions required by this notice which are not reflected in the current plan. Any proposed modifications to the approved plan will be described separately in the application and are subject to ORR review and approval.

B. Timetables for awarding funds to the local areas consistent with the conclusion of services under the FY 1988 program as modified by carry-forward requests or no-cost extensions of FY 1984–1988 targeted assistance funds. Service period can be for up to 18 months but must conclude by no later than March 31, 1991.

C. A line item budget and justification for State administrative costs limited to a maximum of 5% of the total award to the State.

D. Revised information and description of any proposed plan modifications. Any proposed changes must address and reference all appropriate portions of the FY 1988 application content requirements to ensure complete incorporation in the State's management plan.

E. *This paragraph applies only to States administering the program locally:* States that have administered the program locally or provide direct service to the refuge population (with the concurrence of the county) must submit a program summary to ORR for prior review and approval. The summary must include a description of the proposed services; a justification for the projected allocation for each component including relationship of funds allocated to numbers of clients served, characteristics of clients, duration of training and services, projected outcomes, and cost per placement. In addition, the program component summary should describe any ancillary services or subcomponents such as day care, transportation, or language training.

F. *This paragraph applies only to States with two or more counties receiving targeted assistance funds:* As in FY 1988, a State with two or more local areas which qualify for the program may choose to determine respective county allocations. If the State chooses to determine county allocations differently from those set forth in Table 1 of this notice, the State should provide a description of the State's proposed allocation plan. The allocation approach should be based upon existing FY 1988 funds, FY 1984–1986 funds carried forward, and indicators of refugee need for targeted assistance services. The application should contain a description of the allocation approach, data used in its determination, and the calculated allocation amount for each county. States are encouraged to revise allocation formulas to assure appropriate funding among eligible counties for the duration of the grant such that targeted assistance activities within the State conclude simultaneously. The allocation formula is subject to ORR approval. If the State chooses not to determine county allocation amounts, the State must provide the allocations which are specified in this notice.

G. Assurance that, for each qualified local area, cash assistance recipients (time-eligible or time-expired recipients under any program of the State or locality) will make up a percentage of the FY 1989 targeted assistance clientele no less than the State's final FY 1988 dependency rate, as determined by ORR, unless a waiver of this requirement is granted by ORR.

X. Review, Technical Assistance, and Award Procedure

Applications will be reviewed on a non-competitive basis to determine acceptability. Such determination will be based on the completeness of the submission, satisfactory progress by the grantee, the receipt of required program and financial reports, and ORR's determination that continued funding is in the best interest of the Government. The Department will provide technical assistance to the applicant if it is necessary in order to develop a proposal which warrants the award of funds at the proposed allocation amount and if such assistance is requested by the applying State agency. Final determination as to the acceptability of applications is at the discretion of the Director of ORR.

XI. Reporting Requirements

FY 1989 TAP grants must be tracked separately from previous TAP grants, both financially and programmatically. For the FY 1989 program, States are required to submit semiannual reports and one final report as in previous years on the services provided in each targeted area. States are required to report on the number of job placements and retentions, cash assistance recipients placed on jobs, costs per placement, and other items specified in the "Reporting Requirements for Targeted Assistance Grants for Services for Refugees in Local Areas of High Need," OMB No. 0970–0042, expiration date February 28, 1991. Semiannual reports covering activity through September 30 and March 31 of each year are due on November 30 and May 31 of each year. A final cumulative report is due 120 days after the end of the full grant period.

Dated: June 20, 1989.

Philip A. Holman,

Acting Director, Office of Refugee Resettlement.

Approved: June 22, 1989.

Catherine Bertini,

Acting Assistant Secretary for Family Support.

[FR Doc. 89–15321 Filed 6–28–89; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committee.

Meeting: The following advisory committee meeting is announced:

Peripheral and Central Nervous System

Date, time, and place. July 7, 1989, 8:30 a.m., Conference Rm. J, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; closed committee deliberations, 9:30 a.m. to conclusion; Gretchen Hascall, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of neurological disease.

Agenda—Open public meeting. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person as soon as possible.

Closed committee deliberations. The committee will hear trade secret and/or confidential commercial information relevant to an investigational new drug (IND) application. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

FDA is giving less than 15 days public notice of this Peripheral and Central Nervous System Drugs Advisory Committee meeting because it involves an expedited review of a human drug intended for use in a serious illness where there is no alternative therapy. There is no regularly scheduled meeting in the near future, and the agency decided that it was in the public interest to hold this scientific review on July 7, 1989, even if there was not sufficient time for the customary 15-day public notice.

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public meeting portion of each meeting shall be at least 1 hour unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson

determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcripts may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA Advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files complied for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would continue a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency or matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: June 28, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89-15673 Filed 6-30-89; 3:01 pm]

BILLING CODE 4160-01-M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**, Vol. 46, No. 223, pg. 56929 dated Thursday, November 19, 1981), is amended to reflect a reorganization of the Regulations Staff, Bureau of Policy Development, Office of the Associate Administrator for Program Development.

The specific amendments to Part F. are described below.

• Section FQ.20.A.3., Regulations Staff (FQA-3), is deleted in its entirety and replaced by a revised functional statement.

3. Regulations Staff (FQA-3).

Drafts all HCFA regulations and related clearance documents and HCFA rulings. Establishes and assures compliance with editorial standards for clarity and uniformity of HCFA regulations and with the requirements of the Office of the **Federal Register**. Recommends schedules for the development of regulations, tracks progress against these schedules, and develops routine and special reports on HCFA's regulatory activities. Chairs regulations development teams and negotiates the resolution of policy issues necessary to meet regulations schedules. Obtains clearances of draft regulations from initiating Bureaus. Coordinates BPD's review of regulations received for concurrence from other HCFA components and prepares BPD's response. Reviews draft regulations and completes needed studies to assure compliance with the requirements for regulatory impact analysis of Executive Order 12612, the Regulatory Flexibility Act, and small rural hospital impact. Maintains specialized word processing systems to assure efficient preparation of regulations documents. Maintains official agency regulations files. Maintains current compilation of 42 Code of Federal Regulations, Part 400-End. Develops preprinted Medicaid State plan material to reflect published regulations. Conducts training on HCFA regulations policies and processes.

Robert A. Streimer,

Acting Associate Administrator for Management.

Date: June 22, 1989.

[FR Doc. 89-15594 Filed 6-30-89; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of the Draft Environmental Assessment— Proposed Little Pecan Island National Wildlife Refuge, Cameron Parish, LA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of the Draft Environmental Assessment for the proposed Little Pecan Island National Wildlife Refuge.

SUMMARY: This Notice advises the public that the Draft Environmental Assessment for the proposed Little Pecan Island National Wildlife Refuge is available for public review, effective June 26, 1989. The U.S. Fish and Wildlife Service (Service) proposes to protect and enhance approximately 10,000 acres of coastal wetlands in Cameron Parish, Louisiana. The environmental assessment evaluates the value and significance of the resources of the area in regard to potential acquisition by the Service as an addition to the National Wildlife Refuge System and to analyze other alternative uses of the area.

DATES: The assessment is presently available to the public as of July 3, 1989. Written comments must be received no later than August 2, 1989, to be considered.

ADDRESSES: Comments and requests for copies of the assessment should be addressed to: Mr. Charles R. Danner, Chief, Project Development Branch, Office of Refuges and Wildlife, U.S. Fish and Wildlife Service, 75 Spring Street, SW., Room 1240, Atlanta, GA 30303.

SUPPLEMENTARY INFORMATION: The primary objective for which the area would be managed is the preservation of wintering habitat for migratory waterfowl to help achieve the goals established by the North American Waterfowl Management Plan. Marshes within the acquisition area are heavily used by wintering ducks such as gadwall, mottled duck, green-winged teal, blue-winged teal, mallard, shoveler, widgeon, and pintail. Secondary uses compatible with the primary objective could include public recreational opportunities such as hunting, fishing, and wildlife photography; environmental research and related educational activities may also be compatible with the refuge objectives. The project area has existing impoundments and water control structures that would allow rapid implementation of a wildlife management plan for the new refuge.

The proposed refuge is located in eastern Cameron Parish, approximately 20 miles southwest of Lake Arthur, Louisiana. Lacassine National Wildlife Refuge lies approximately 12 miles to the northwest and Rockefeller Wildlife Refuge and Game Preserve (State) is five miles south. The area is accessible only by boat or small aircraft.

Service biologists have prepared a draft environmental assessment (EA) in coordination with the State of Louisiana, other federal agencies and private groups which documents the impacts of the Service acquiring the land and establishing the refuge. Two other management alternatives and their subsequent impacts are also evaluated in the draft EA. The preferred alternative, *i.e.*, Service acquisition and management, would be a positive action in preventing the loss or deterioration of valuable wetland resources of this Nation.

June 13, 1989.

W.T. Olds, Jr.,

Acting Regional Director.

[FR Doc. 89-15638 Filed 6-30-89; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[AA-150-09-4830-11-ADVB-2410]

Call for District Advisory Council Nominations

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for nominations for district advisory councils.

SUMMARY: The purpose of this notice is to solicit public nominations to fill those positions for which terms expire this year on each of the Bureau of Land Management's 52 district advisory councils. Each council has three such positions to be filled, except the California Desert District Advisory Council and the Susanville District Advisory Council, which have five and four such positions to be filled, respectively.

Each affected council comprises 10 members, except the California Desert District Advisory Council and the Northern Alaska Advisory Council, which comprise 15 and 11 members, respectively. Under the established staggered-term arrangement, the terms of five members on the California Desert District Advisory Council, the terms of four members on the Susanville District Advisory Council, and the terms of three members on each of the remaining 50 councils will expire on December 31, 1989. Current council members may be reappointed or new members may be appointed. However, the eligibility of current council members for reappointment may be affected by governing regulations (43 CFR 1784.3(b)). Appointments made by the Secretary pursuant to this call will assure continued representation of specific categories of interest on each council. The new terms will expire December 31, 1992.

To ensure council membership that is balanced in terms of categories of interest represented and functions performed, nominees must be qualified to provide advice in specific areas identified with each council position now up for appointment. Categories for specific councils will be announced through local news releases in the appropriate States and Districts and will include the following:

Elected General Purpose Government
Environmental Protection
Recreation
Renewable Resources (livestock, forestry, agriculture)
Non-Renewable Resources (mining, oil and gas, extractive industries)
Transportation/Rights-of-Way (or occupancy issues)
Wildlife
Public-at-Large.

The purpose of the councils is to provide informed advice to the respective District Managers on the management of the public lands. Members will serve without salary, but will be reimbursed for travel and per diem expenses at current rates for Government employees.

Each council normally will meet at least twice annually. Additional meetings may be called by the District Manager or his designee in connection with special needs for advice.

Persons wishing to nominate individuals or to be nominated to serve on an advisory council should contact the appropriate District Manager of the Bureau of Land Management at the corresponding District Office address below to ascertain which categories of interest are to be represented. They should then provide the District Manager with the names, addresses,

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professions, and other biographic data of qualified nominees.

DATE: All nominations should be received by July 31, 1989.

ADDRESSES: The Districts and their mailing addresses are as follows:

Alaska

Arctic, Kobuk, and Steese-White Mountain (jointly served by the Northern Alaska Advisory Council): c/o Public Affairs Staff, Fairbanks Support Center, 1150 University Ave., Fairbanks, AK 99709-3844
Anchorage and Glennallen (jointly served by the Southern Alaska Advisory Council): c/o Public Affairs Staff, Alaska State Office, 222 W. 7th Ave., Anchorage, AK 99513-7599

Arizona

Arizona Strip: 390 N., 3050 E., St. George, UT 84770
Phoenix: 2015 W. Deer Valley Rd., Phoenix, AZ 85027
Safford: 425 E. 4th St., Safford, AZ 85546
Yuma: 3150 Winsor Ave., Yuma, AZ 85365

California

Bakersfield: 800 Truxtun Ave., Bakersfield, CA 93301-4782
California Desert: 1695 Spruce St., Riverside, CA 92507-2497
Susanville: 705 Hall St., Susanville, CA 96130-3730
Ukiah: 555 Leslie St., Ukiah, CA 95482-5599

Colorado

Canon City: Box 311, Canon City, CO 81212
Craig: 455 Emerson St., Craig, CO 81625
Grand Junction: 764 Horizon Dr., Grand Junction, CO 81506
Montrose: 2465 S. Townsend Ave., Montrose, CO 81401

Idaho

Boise: 3948 Development Ave., Boise, ID 83705
Burley: Route 3, Box 1, Burley, ID 83318
Coeur d'Alene: 1808 N. 3rd St., Coeur d'Alene, ID 83814
Idaho Falls: 940 Lincoln Rd., Idaho Falls, ID 83401
Salmon: Box 430, Salmon, ID 83467
Shoshone: Box 2B, Shoshone, ID 83352

Montana

Butte: Box 3388, Butte, MT 59702
Lewistown: 80 Airport Rd., Lewistown, MT 59457
Miles City: Box 940, Miles City, MT 59301

Nevada

Battle Mountain: Box 1420, Battle Mountain, NV 89820
Carson City: 1535 Hot Springs Rd., Carson City, NV 89701
Elko: Box 831, Elko, NV 89801
Ely: Star Route 5, Box 1, Ely, NV 89301
Las Vegas: Box 26569, Las Vegas, NV 89126
Winnemucca: 705 E. 4th St., Winnemucca, NV 89445

New Mexico

Albuquerque: 435 Montano Rd., NE., Albuquerque, NM 87107
Las Cruces: 1800 Marquess St., Las Cruces, NM 88005
Roswell: Box 1397, Roswell, NM 88201-1397

North Dakota

Dickinson: 2933 3rd Ave. W., Dickinson, ND 58601

Oregon

Burns: HC 74-12533 Highway 20 West, Burns, OR 97738
Coos Bay: 333 S. 4th St., Coos Bay, OR 97420
Eugene: Box 10226, Eugene, OR 97401
Lakeview: Box 151, Lakeview, OR 97630
Medford: 3040 Biddle Rd., Medford, OR 97504
Prineville: Box 550, Prineville, OR 97754
Roseburg: 777 N.W. Garden Valley Blvd., Roseburg, OR 97470
Salem: 1717 Fabry Rd., SE., Salem, OR 97306
Vale: Box 700, Vale, OR 97918

Utah

Cedar City: Box 724, Cedar City, UT 84720
Moab: Box 970, Moab, UT 84532
Richfield: 150 E. 900 N., Richfield, UT 84701
Salt Lake: 2370 S. 2300 W., Salt Lake City, UT 84119
Vernal: 170 S. 500 E., Vernal, UT 84078

Washington

Spokane: E. 4217 Main, Spokane, WA 99202

Wyoming

Casper: 1701 East "E" Street, Casper, WY 82601
Rawlins: Box 670, Rawlins, WY 82301
Rock Springs: Box 1869, Rock Springs, WY 82902-1869
Worland: Box 119, Worland, WY 82401.

FOR FURTHER INFORMATION CONTACT: The appropriate District Managers.

Tom Allen,
Acting Deputy Director.

June 19, 1989.

[FR Doc. 89-15217 Filed 6-30-89; 8:45 am]

BILLING CODE 4310-84-M

[Charge Code: (OR120-6310-02: GP9-253]

Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of Coos Bay District Advisory Council.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR, Part 1780 that a meeting of the Coos Bay District Advisory Council will be held on Tuesday, August 8, 1989, beginning at 9:00 a.m. The meeting will be held in the BLM Coos Bay District Office conference room.

(Note: this will be in the new Coos Bay District office facility at 1300 Airport Lane, North Bend, OR).

Agenda: The agenda for the meeting will include:

1. Election of officers.

2. Updates on certain local issues including; The New River Area of Critical Environmental Concern, Coos Bay's North Spit, the new District office facility, the Dean Creek Elk Viewing Area and the current state of BLM's Resource Management Plan.

3. A discussion of recent court and agency actions related to the Northern spotted owl, and their effects on BLM timber management and log supply.

4. Plans for the next meeting.

The meeting is open to the public and news media. Interested persons may make oral statements to the council between 10:00 a.m. and 10:30 a.m. on Tuesday, August 8, or file written statements for the council's consideration. Anyone wishing to make an oral statement must notify the District Manager by close of business on Tuesday, August 1, 1988, (Telephone 503-269-5880).

ADDRESS: Bureau of Land Management, Coos Bay District Office, 1300 Airport Lane, North Bend, OR 97459.

Minutes of the meeting will be maintained at the District Office and made available during regular business hours (7:45 a.m. to 4:30 p.m.) for public inspection or reproduction at the cost of duplication.

Date: June 23, 1989.

Albert Abee,
Umpqua Resource Area Manager.

[FR Doc. 89-15620 Filed 6-30-89; 8:45 am]

BILLING CODE 4310-33-M

[NV-930-09-4212-14; N-45234]

Realty Action; Proposed Noncompetitive Sale; Mineral County, Nevada

AGENCY: Bureau of Land Management.

ACTION: Notice of realty action on proposed sale.

SUMMARY: The following described land comprising 8.21 acres has been examined and identified as suitable for sale under sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1713) and (90 Stat. 2757; 43 U.S.C. 1719), at no less than fair market value:

Mount Diablo Meridian

T. 8 N., R. 30 E.,
Sec. 26, Lot 1.

The parcel of land will be offered by a direct sale to the Board of Mineral County Commissioners. The land has been identified for transfer to Mineral County. The proposed sale is consistent with Bureau and local government planning. The land is not needed in support of any federal program.

Patent, when issued, will contain the following reservation to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States; Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

Since the land has no known mineral value, the mineral estate can be conveyed simultaneously with the surface estate in accordance with section 209(b)(1) of Pub. L. 94-579. Acceptance of a direct sale offer will constitute an application for conveyance of the mineral interests. The Board of Mineral County Commissioners will be required to submit a $50 nonreturnable fee with the purchase price for conveyance of the mineral interests specified above.

The patent will also be subject to:

1. Those rights for highway purposes which have been granted to the State of Nevada Department of Highways, its successors or assignees, by the U.S. Department of the Navy, by Grant of Easement Nev-046896 under the authority of the Act of Congress of October 25, 1951.

2. Those rights for highway purposes which have been granted to the Nevada Department of Transportation, its successors or assignees, by Highway Easement Deed dated October 27, 1983, recorded in Book 95, Pages 19-28, Document No. 065576 of the Mineral County Recorder's Office (N-38203).

3. An easement for powerline purposes granted to Sierra Pacific Power Company by the Department of the Navy, being 20 feet in width on each side of the centerline, recorded in the records of Mineral County as File No. 18871 of Book 37, Pages 330-334 (N-11404).

Detailed information concerning the sale is available for review at the Carson City District Office.

Upon publication of this notice in the **Federal Register**, the land described above will be segregated from all forms of nondiscretionary appropriation under the public land laws, including location under the general mining laws. The segregative effect of this notice of realty action shall terminate upon issuance of patent or other document of conveyance to such land, upon publication in the **Federal Register** of a termination of the segregation or 270 days from the date of publication, whichever occurs first.

The land will be offered no earlier than 60 days after the date of this notice. For a period of 45 days after the date of this notice, interested parties may submit comments to the Bureau of Land Management, Carson City District Office, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706. Any adverse comments will be evaluated by the District Manager. The Nevada State Director, Bureau of Land Management, may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Failure to purchase the land within the time specified by the Authorized Officer shall constitute a waiver of the preference consideration. If the preference consideration is waived by Mineral County, the land will be offered for sale through competitive bidding at a later date.

James W. Elliott,
District Manager.

Date: June 23, 1989.

[FR Doc. 89-15621 Filed 6-30-89; 8:45 am]

BILLING CODE 4310-HC-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 24, 1989. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by July 18, 1989.

Carol D. Shull,
Chief of Registration, National Register.

ALABAMA

Limestone County

Houston, George S., Historic District, Roughly 2nd Ave., Jefferson St., McClellan St., Marion St., Hobbs St., Madison St., Washington St., and Houston St., Athens, 89000943

CALIFORNIA

Sonoma County

Guerneville Bridge, Rt. 116 over Russian River, Guerneville, 89000945

Ventura County

Ebell Club of Santa Paula, 125 S. Seventh St., Santa Paula, 89000949

CONNECTICUT

Fairfield County

Davenport, Hanford, House, 353 Oenoke Ridge, New Canaan, 89000948

FLORIDA

Hillsborough County

Bay Isle Commercial Building (Mediterranean Revival Style Buildings of Davis Island MPS), 238 E. Davis Blvd., Tampa, 89000971
House at 100 West Davis Boulevard (Mediterranean Revival Style Buildings of Davis Island MPS), 100 W. Davis Blvd., Tampa, 89000972
House at 116 West Davis Boulevard (Mediterranean Revival Style Buildings of Davis Island MPS), 116 W. Davis Blvd., Tampa, 89000973
House at 124 Baltic Circle (Mediterranean Revival Style Buildings of Davis Island MPS), 124 Baltic Cir., Tampa, 89000957
House at 125 Baltic Circle (Mediterranean Revival Style Buildings of Davis Island MPS), 125 Baltic Cir., Tampa, 89000958
House at 132 Baltic Circle (Mediterranean Revival Style Buildings of Davis Island MPS), 132 Baltic Cir., Tampa, 89000959
House at 161 Bosporous Avenue (Mediterranean Revival Style Buildings of Davis Island MPS), 161 Bosporous Ave., Tampa, 89000963
House at 190 Bosporous Avenue (Mediterranean Revival Style Buildings of Davis Island MPS), 190 Bosporous Ave., Tampa, 89000964
House at 200 Corsica Avenue (Mediterranean Revival Style Buildings of Davis Island MPS), 200 Corsica Ave., Tampa, 89000967
House at 202 Blanca Avenue (Mediterranean Revival Style Buildings of Davis Island MPS), 202 Blanca Ave., Tampa, 89000960
House at 220 Blanca Avenue (Mediterranean Revival Style Buildings of Davis Island MPS), 220 Blanca Ave., Tampa, 89000961
House at 301 Caspian Street (Mediterranean Revival Style Buildings of Davis Island MPS), 301 Caspian St., Tampa, 89000965

House at 36 Columbia Drive (Mediterranean Revival Style Buildings of Davis Island MPS), 36 Columbia Dr., Tampa 89000966
House at 418 Blanca Avenue (Mediterranean Revival Style Buildings of Davis Island MPS), 418 Blanca Ave., Tampa, 89000962
House at 53 Aegean Avenue (Mediterranean Revival Style Buildings of Davis Island MPS), 53 Aegean Ave., Tampa, 89000955
House at 59 Aegean Avenue (Mediterranean Revival Style Buildings of Davis Island MPS), 59 Aegean Ave., Tampa, 89000956
House at 84 Adalia Avenue (Mediterranean Revival Style Buildings of Davis Island MPS), 84 Adalia Ave., Tampa, 89000953
House at 97 Adriatic Avenue (Mediterranean Revival Style Buildings of Davis Island MPS), 97 Adriatic Ave., Tampa, 89000954
Place of Florence Apartments (Mediterranean Revival Style Buildings of Davis Island MPS), 45 E. Davis Blvd., Tampa, 89000969
Palmerin Hotel (Mediterranean Revival Style Buildings of Davis Island MPS), 115 E. Davis Blvd., Tampa, 89000970
Spanish Apartments (Mediterranean Revival Style Buildings of Davis Island MPS), 16 E. Davis Blvd., Tampa, 89000968

KENTUCKY

Oldham County

Ashwood Avenue Historic District (Pewee Valley MPS), Roughly Ash Ave. from La Grange Rd. to Elm Ave., Pewee Valley, 89000951
Central Avenue Historic District (Pewee Valley MPS), Roughly Central Ave. from Peace Ln. to Mt. Mercy Dr., Pewee Valley, 89000950
Wooldridge Avenue—La Grange Road Historic District (Pewee Valley MPS), Wooldridge Ave. and La Grange Rd., Pewee Valley, 89000952

NEW YORK

New York County

Dahlgren, Lucy Drexel, House, 15 E. 96th St., New York, 89000946

Suffolk County

Greenport Railroad Station, Third and Wiggins St., Greenport, 89000947

NORTH CAROLINA

New Hanover County

Walker, James, Nursing School Quarters, 1020 Rankin St., Wilmington, 89000944

OHIO

Noble County

SHENANDOAH Crash Sites, Near I-77 and Co. Rt. 37 and OH 78 W of Caldwell, Caldwell vicinity, 89000942

RHODE ISLAND

Providence County

Honan's Block and 112-114 Main Street (Woonsocket MRA), 110-114 Main St., Woonsocket, 89000941

Washington County

Druidsdream, 144 Gibson Ave., Narragansett, 89000940

The following property is also being considered for listing in the National Register:

SOUTH CAROLINA

Union County

Corinth Baptist Church, Union MPS, N. Herndon St., Union 89000939

[FR Doc. 89-15576 Filed 6-30-89; 8:45 am]

BILLING CODE 4310-70-M

BUREAU OF RECLAMATION

Proposed Arvin-Edison Water Storage and Exchange Program, Central Valley Project, California

AGENCY: Bureau of Reclamation.

ACTION: Notice of intent to prepare a draft environmental impact report/environmental impact statement (EIR/EIS).

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the Council of Environmental Quality Guidelines (40-CFR, Part 1500), and Section 21002 of the California Environmental Quality Act, Reclamation, Arvin-Edison Water Storage District (Arvin-Edison), and the Metropolitan Water District of Southern California (MWD) intend to prepare a joint EIR/EIS. The purposes of the project are to provide more groundwater storage and better operating efficiencies for both Arvin-Edison and MWD. Reclamation involvement stems from the necessity to modify Arvin-Edison's existing water delivery contract.

MWD would be permitted to store up to 135,000 acre-feet of water per year in the groundwater basin beneath Arvin-Edison until a maximum of 800,000 acre-feet was reached. Arvin-Edison would use this stored groundwater during dry years while their Reclamation water was diverted for MWD use. MWD would fund construction of additional spreading basins, groundwater pumping facilities, and a water conveyance system in Arvin-Edison.

Meetings have been scheduled to solicit public input, determine alternatives to the proposed project, determine the scope of the EIR/EIS, and identify significant issues related to the proposed action.

DATE: The meetings will be held on July 17, 1989, at 1:30 p.m. in West Sacramento, California; and or on July 19, 1989, at 1:30 p.m. in Arvin, California.

ADDRESSES: Hotel El Rancho Resort, Conference Center, Forest Hills Room, 1029 West Capitol, West Sacramento, CA., Arvin High School Auditorium, Campus Drive, Arvin, CA.

FOR FURTHER INFORMATION CONTACT: Mr. Chip Bruss, Environmental Specialist, Bureau of Reclamation (Code: MP-750), Mid-Pacific Region, 2800 Cottage Way, Sacramento, CA 95825. Telephone (916)-978-5130; Mr. Cliff Trotter, Arvin-Edison Water Storage District, P.O. Box 175, Arvin, CA 93203, Telephone (805) 854-5573; or Dr. Roberta Soltz, Metropolitan Water District of Southern California, 1111 Sunset Boulevard, Los Angeles, CA 90012, Telephone (213) 250-6437.

SUPPLEMENTARY INFORMATION: The proposed construction would be confined to Arvin-Edison but funded by MWD. It would include the following features:

(1) Expanded Spreading Works—Approximately 600 acres of new spreading facilities would be constructed.

(2) Additional Pipeline Distribution System—Approximately 17 miles of underground pipeline would be installed to deliver water from the existing Arvin-Edison North Canal to approximately 5,000 acres of land within the existing Arvin-Edison groundwater service area.

(3) Additional Groundwater Extraction Facilities—To facilitate Arvin-Edison groundwater pumping during dry years, approximately 10 new wells would be drilled and the services of 37 existing wells would be acquired within the lands served by the new pipeline distribution system.

These facilities would be available for MWD use to store water from the State Water Project (SWP). During relatively wet years, MWD would provide a portion of its SWP entitlement water to Arvin-Edison. This water would be stored in the groundwater basin underlying Arvin-Edison. During drought years, water would be available for use by MWD through an exchange whereby Arvin-Edison would use the previously stored groundwater, and an equal amount of Reclamation Central Valley Project surface water would be available to MWD.

Anyone interested in more information concerning the proposed exchange or who has suggestions as to significant environmental issues should contact the people listed above.

Date: June 27, 1989.

B. E. Martin,

Assistant Commissioner—Resources Management.

[FR Doc. 89-15577 Filed 6-30-89; 8:45 am]

BILLING CODE 4310-09-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Water Act

In accordance with the Department Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a proposed Consent Decree in *United States* v. *Browning-Ferris, Inc.*, was lodged with the United States District Court for the Southern District of Texas on June 13, 1989. The proposed decree provides for injunctive relief by requiring Browning-Ferris, Inc. to submit a new National Pollutant Discharge Elimination System permit limiting discharges from the company's treatment plant and surface water outfalls associated with its truck maintenance facility. The decree specifies chemical parameters to be sampled as well as the method and frequency of sampling. Further, the decree provides for a civil penalty payment of $104,800.

The Department of Justice will receive for a period of 30 days from the date of publication of this notice, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Browning-Ferris, Inc.*, D.J. Ref. No. 90-7-1-448.

The proposed Consent Decree may be examined at the office of the United States Attorney, Southern District of Texas; at the Region VI office of the United States Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202-2733; and at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, at the above address.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-15622 Filed 6-30-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Partial Consent Decree Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Department Policy, 28 CFR 50.7, notice is hereby given that on June 12, 1989, a proposed Consent Decree in *United States* v. *Homer Rasmussen, et al.*, Civil Action No. 88CV40010FL, was lodged with the United States District Court for the Eastern District of Michigan. The proposed Consent Decree partial settlement with two of the defendants in this action, Ford Motor Company and Chrysler Motors Corporation, for a portion of the claims asserted by the United States for costs incurred by the United States at the Rasmussen Dump Site in Livingston County, Michigan. The proposed Consent Decree requires the Ford Motor Company and Chrysler Motors Corporation to reimburse the United States for $530,000 in costs incurred at the Site. The Consent Decree resolves the liability of Ford and Chrysler for only $606,000 of the United States' past costs. The remainder of the action will be dismissed without prejudice against Ford and Chrysler.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Homer Rassmussen, et al.*, D.J. Ref. No. 90-11-3-281.

The proposed Consent Decree may be examined at the office of the United States Attorney, 113 Federal Building, 600 Church Street, Flint, Michigan 48504 and at the Region V Office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1647, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Donald A. Carr,

Acting Assistant Attorney General Land and Natural Resources Division.

[FR Doc. 89-15623 Filed 6-30-89; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 34-89]

Privacy Act of 1974; New System of Records

This notice is provided pursuant to the Privacy Act of 1974 (5 U.S.C. 552a). The Department of Justice, Immigration and Naturalization Service (INS), proposes to alter and establish as a separate system of records its deportation and detention docket control records last published as part of its Case Control System, JUSTICE/INS-005, on December 11, 1987 (52 FR 47256). The new system, entitled "Deportable Alien Control System (DACS), JUSTICE/INS-012," expands the categories of records covered, extends the automated data base Servicewide, and adds new routine uses. It will continue to serve as a docket control system but also will contain additional data for INS use in pursuing efforts to arrest, detain, and deport aliens where appropriate. (The next revision of the Case Control System will reflect the removal of the deportation and detention records from that system of records.)

5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment on the new routine uses; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to conclude its review of the system. Therefore, please submit any comments by August 2, 1989. The public, OMB, and the Congress are invited to submit comments to Patricia E. Neely, Staff Assistant, Facilities and Administrative Services Staff, Justice Management Division, Department of Justice, Room 529, 633 Indiana Avenue, NW., Washington, DC 20530.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report on this system to OMB and the Congress.

The system description is printed below.

Date: June 20, 1989.

Harry H. Flickinger,

Assistant Attorney General for Administration.

Justice/INS-012

SYSTEM NAME:

Deportable Alien Control System (DACS).

SYSTEM LOCATION:

Central, Regional, District, and other offices of the Immigration and Naturalization Service (INS) in the United States as detailed in JUSTICE/INS-999.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Aliens alleged to be deportable by INS.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system is a computer data base that contains biographic information about deportable aliens such as name, date and country of birth; United States and foreign addresses; file number, charge, amount of bond, hearing date, case assignment, scheduling date, section(s) of law under which deportability/excludability is alleged; data collected to support the INS position on deportability/excludability, including information on any criminal or subversive activities; date, place, and type of last entry into the United States; attorney/representative's identification number; family data, and other case-related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1103, 1251, and 1252.

PURPOSE(S):

The system provides INS with an automated data base which assists in the arrest, deportation, or detention of aliens in accordance with immigration and nationality laws. It also serves as a docket and control system by providing management with information concerning the status and/or disposition of deportable aliens.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSE OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

A. To clerks and judges of Federal courts exercising jurisdiction over the deportable aliens in determining grounds for deportation.

B. To other Federal, State, and local government law enforcement and regulatory agencies and foreign governments, including the Department of Defense and all components thereof, the Department of State, the Department of Treasury, the Central Intelligence Agency, the Selective Service System, the United States Coast Guard, the United Nations, and INTERPOL, and individuals and organizations during the course of investigation in the processing of a matter or during a proceeding within the purview of the immigration and nationality laws to elicit information required by INS to carry out its functions and statutory mandates.

C. Where there is an indication of a violation or potential violation of law (whether civil, criminal or regulatory in nature), to the appropriate agency (whether Federal, State, local or foreign), charged with the responsibility of investigating or prosecuting such violations, or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

D. Where there is an indication of a violation or potential violation of the immigration and nationality laws, or of a general statute within INS jurisdiction, or of a regulation, rule, or order issued pursuant thereto, to a court, magistrate, or administrative tribunal in the course of presenting evidence, and to opposing counsel during discovery.

E. Where there is an indication of a violation or potential violation of the law of another nation (whether civil or criminal), to the appropriate foreign government agency charged with enforcing or implementing such laws and to international organizations engaged in the collection and dissemination of intelligence concerning criminal activity.

F. To other Federal agencies for the purpose of conducting national intelligence and security investigations.

G. To an applicant, petitioner or respondent or to his or her attorney or representative as defined in 8 CFR 1.1(j) in connection with any proceeding before INS.

H. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

I. To a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

J. To the General Services Administration and the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are stored in a data base on magnetic disks.

RETRIEVABILITY:

These records are retrieved by name and/or date of birth, A-file number, or by alien's Bureau of Prisons number, when applicable.

SAFEGUARDS:

INS offices are located in buildings under security guard, and access to premises is by official identification. Access to terminals is limited to INS employees with user identification numbers. Access to records in this system is by restricted password and is further protected by secondary passwords.

RETENTION AND DISPOSAL:

Deportable alien case control and detention records are deleted at the time of case closure. A retention and disposition schedule for the case summary and detention history records is currently being negotiated and will be submitted to the Archivist of the United States for approval.

SYSTEM MANAGER AND ADDRESS:

Assistant Commissioner, Detention and Deportation, Immigration and Naturalization Service, 425 I Street, NW, Washington, DC 20536.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager identified above.

RECORDS ACCESS PROCEDURES:

Make all requests for access in writing to the Freedom of Information Act/Privacy Act (FOIA/PA) Officer at the nearest INS Office, or the INS office maintaining the desired records (if known) by using the list of Principal Offices of the Immigration and Naturalization Service Appendix, JUSTICE/INS-999, published in the **Federal Register**. Clearly mark the envelope and letter "Privacy Act Request." Provide the A-file number and/or the full name and date of birth, with a notarized signature of the individual who is the subject of the record, and a return address.

CONTESTING RECORDS PROCEDURES:

Direct all requests to contest or amend information in the record to the FOIA/PA Officer at one of the addresses identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope "Privacy Act Request." The record must be identified in the same manner as described for making a request for access.

RECORD SOURCE CATEGORIES:

Basic information is obtained from "The Immigration and Naturalization Service (INS) Alien File (A File) and Central Index System, (CIS), JUSTICE/INS-001A." Information may also come from the alien, the alien's attorney/representative, INS officials, other Federal, State, local, and foreign agencies and the courts.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 89-15624 Filed 6-30-89; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of June 1989.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-22,752; Aberdeen Sportwear, Inc., Trenton, NJ
TA-W-22,794; Texas Instrument, Inc., Midland, TX
TA-W-22,686; A.E. Hall Corp., New York, NY
TA-W-22,749; Universal Clothiers, New York, NY
TA-W-22,691; Carolace, New York, NY
TA-W-22,743; Tafco, Inc., Clearfield, PA
TA-W-22,584; Kellwood Co., Lonoke, AR
TA-W-22,725; Dougherty Brothers Co., Buena, NJ
TA-W-22,729; GIM Metal Products, Carle Place, NY
TA-W-22,733; Howmet Corp., Dover Casting Div., Dover, NJ
TA-W-22,784; Luxury Braid Co., Elizabeth, NJ
TA-W-22,776; Heinemann Electric Co., Lawrenceville, NJ
TA-W-22,753; Adobe Resources Corp., Midland, TX
TA-W-22,769; Engineered Yarns, Inc., Coventry, RI
TA-W-22,803; Bram Enterprise, Inc., Sheldon, WI
TA-W-22,804; Bram Enterprise, Inc., Hudson, WI
TA-W-22,786; Nabisco Brands, Inc., Fair Lawn, NJ
TA-W-22,765; Dialight Corp., Manasquan, NJ
TA-W-22,755; Amperex Electronic Co., Hicksville, NY
TA-W-22,832; SKF Industries, Inc., Hornell Div., Hornell, NY
TA-W-22,809; Fiber-Strong, Inc., Ladysmith, WI
TA-W-22,834; Tri-Din Filter Corp., Hawthorne, NJ
TA-W-22,772; Four Star Plastics Co., Jersey City, NJ
TA-W-22,829; Professional Steel Rule Die Corp., New York, NY
TA-W-22,766; DiFini Sportswear, Inc., Bronx, NY
TA-W-22,711; Primo Coat Co., New York, NY
TA-W-22,621; EG and G Princeton Applied Research, Princeton, NJ

In the following cases, the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-22,748; Trend Tex Associates, New York, NY

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,754; Ambex Laboratories, East Rutherford, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,818; Mastercraft Casket Co., Ladysmith, WI

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,761; Burwood Products Co., Traverse City, MI

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,738; SKF Bearing Industries Co., Glasgow, KY

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-22,728; Fleischman Distilling Co., Dayton, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,790; R.L.D. Dress Co., Cadillac, MI

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,616; Irving Simes & Sons, Inc., New York, NY

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,798; Warren Insulation Co., Inc., Hays, KS

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-22,909; Tioga Machine Shop, Inc., Tioga, ND

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-22,773; GEI-United Plastics Co., Madison Heights, MI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-22,742; Spraytex, Inc., Spokane, WA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-22,727; Factron, (A Former Div. of Schlumberger Technology Corp), Latham, NY

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,739; Seal Tech, Div. of Folsom Metal Products, Inc., Bessemer, AL

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-22,713; Republic Converting Co., New York, NY

Aggregate U.S. imports of finished fabrics did not increase in the relevant period of 1988 compared to 1987.

TA-W-22,396; Featherlite Precast Corp., El Paso, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,817; Knomark, Inc., Jamaica, NY

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,810; GNB Batteries-Gould, Lynchburg, VA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,805; C.B. Cedar Co., Coos Bay, OR

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,792; St. Mary Manufacturing Corp., North Tonawanda, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-22,865; Northern Tank Line, Miles City, MT

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-22,528; Flake, Inc., Midland, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-22,800; Abner Trucking Co., Clay City, IL

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-22, 861; The Kroger Co Stores, #223, #281, #231, #284, #286, #304, Hixson, TN

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-22, 762; Crantex Fabrics, New York, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-22, 762A; Millworth Fabrics, New York NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-22, 757; Beef America, Inc., Dension, IA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22, 801; Anchor Glass Container Corp., Salem, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22, 813; Harmon's Machine Works, Inc., Midland, TX

U.S. imports of oilfield machinery are negligible.

TA-W-22, 796; Trend International Limited, Denver, CO

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22, 763; Dana Corp., Spicer Axle Div., New Castle, IN

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22, 771; Florence Mining Co., Florence Mine #1, Indiana, PA

U.S. imports of bituminous steam coal, lignite and anthracite coal are negligible.

TA-W-22, 797; U.S. Enertek, Inc., Farmington, NM

U.S. imports of oilfield machinery are negligible.

TA-W-22, 797A; Xytec, Inc., Farmington, NM

U.S. imports of oilfield machinery are negligible.

TA-W-22, 833; Stahmann Farms, Inc., Las Cruces, NM

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22, 819; Meridian Oil, Inc., Headquartered in Houston, TX

U.S. imports of natural gas liquids and liquified refinery gases declined absolutely and relative to domestic shipments in the first quarter of 1989 compared to the same period in 1988.

TA-W-22, 820; Meridian Oil, Inc., Houston Region, Houston, TX

U.S. imports of natural gas liquids and liquified refinery gases declined absolutely and relative to domestic shipments in the first quarter of 1989 compared to the same period in 1988.

TA-W-22, 821; Meridian Oil, Inc., Midland Region, Midland, TX

U.S. imports of natural gas liquids and liquified refinery gases declined absolutely and relative to domestic shipments in the first quarter of 1989 compared to the same period in 1988.

TA-W-22, 822; Meridian Oil, Inc., Farmington Region, Farmington, TX

U.S. imports of natural gas liquids and liquified refinery gases declined absolutely and relative to domestic shipments in the first quarter of 1989 compared to the same period in 1988.

TA-W-22, 823; Meridian Oil, Inc., Billings/Denver Region, Billings, MT

U.S. imports of natural gas liquids and liquified refinery gases declined absolutely and relative to domestic shipments in the first quarter of 1989 compared to the same period in 1988.

TA-W-22, 824; Meridian Oil, Inc., Billings/Denver Region, Denver, CO

U.S. imports of natural gas liquids and liquified refinery gases declined absolutely and relative to domestic shipments in the first quarter of 1989 compared to the same period in 1988.

Affirmative Determination

TA-W-22, 780; Jaclyn, Inc., West New York, NY

A certification was issued covering all workers separated on or after 1988.

TA-W-22, 707; Peabody House, New York NY

A certification was issued covering all workers separated on or after March 1, 1988.

TA-W-22, 764; Decatur Drilling Co., Decatur, IL

A certification was issued covering all workers separated on or after March 20, 1988.

TA-W-22, 751; AT& T Network Systems Microelectronics Group, Radford, VA

A certification was issued covering all workers separated on or after March 28, 1988.

TA-W-22, 756; Axem Resources, Inc., Denver, CO

A certification was issued covering all workers separated on or after October 31, 1988.

TA-W-22, 756A; Axem Resources, Inc., Belfield, ND

A certification was issued covering all workers separated on or after October 31, 1988.

TA-W-22,756B; Axem Resources, Inc., Gillette, WY

A certification was issued covering all workers separated on or after October 31, 1988.

TA-W-22,782; Lawrence-Cannon Drilling, Inc., Abilene TX

A certification was issued covering all workers separated on or after March 28, 1988 and before March 31, 1989.

TA-W-22,566; Calderon Belts & Bags, Inc., New York, NY

A certification was issued covering all workers separated on or after February 16, 1988.

TA-W-22,726; Dynamic Closures Corp., Massena, NY

A certification was issued covering all workers separated on or after September 1, 1988.

TA-W-22,697; Fountain Hill Mills, Inc., Bethlehem, PA

A certification was issued covering all workers separated on or after March 17, 1988 and before December 14, 1988.

TA-W-22,463; T.J. and C Oilfield Service, Hobbs, NM

A certification was issued covering all workers separated on or after January 3, 1988.

TA-W-22,767; Eastern Knitting, Blenheim, NJ

A certification was issued covering all workers separated on or after March 28, 1988.

TA-W-22,638; Modine Manufacturing Co., Trenton, MO

A certification was issued covering all workers separated on or after February 28, 1988.

TA-W-22,731; Harloc Products, Inc., West Haven, CT

A certification was issued covering all workers separated on or after March 30, 1989.

TA-W-22,737; Northland, Watertown, NY

A certification was issued covering all workers separated on or after March 23, 1988.

TA-W-22,807; Circle Rubber Corp., Newark, NJ

A certification was issued covering all workers separated on or after January 1, 1989.

TA-W-22,806; Carnival Bags, Brooklyn, NY

A certification was issued covering all workers separated on or after Arpil 6, 1988 and before June 19, 1989.

TA-W-22,811; Gemini Corp., Springfield, MA

A certification was issued covering all workers separated on or after April 4, 1988.

TA-W-22,835; Wells Mfg. Corp., Fond Du Lac, WI

A certification was issued covering all workers separated on or after January 1, 1989.

TA-W-22,802; Blackstone Drilling, Inc., McPherson, KS

A certification was issued covering all workers separated on or after March 27, 1988 and before December 1, 1988.

TA-W-22,808; The Devilbiss Co., Toledo, OH

A certification was issued covering all workers engaged in employment related to the production of spray guns separated on or after April 3, 1988.

TA-W-21,789; R & H Knitting Mills, Inc., Brooklyn NY

A certification was issued covering all workers separated on or after March 25, 1988 and before May 30, 1989.

TA-W-22,825; Modern Manufacturing Braid Co., New York NY

A certification was issued covering all workers separated on or after March 28, 1988.

TA-W-22,770; Excelled Sheepskin & Leather Coat Corp., Edison, NJ

A certification was issued covering all workers separated on or after March 30, 1988.

I hereby certify that the aforementioned determinations were issued during the month of June 1989. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons to write to the above address.

Dated: June 27, 1989.

Marvin M. Fooks

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-15601 Filed 6-30-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,945]

Retamco Operating, Inc.; San Antonio, TX; Negative Determination on Reconsideration

After two filing extensions, the Department, on June 20, 1989, issued an Affirmative Determination Regarding Application for Reconsideration of the denial notice in the subject case. The original negative determination was published in the **Federal Register** on March 27, 1989 (54 FR 12498).

Investigation findings show that the workers produce crude oil and natural gas.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met during the period relevant to the petition. The "contributed importantly" test is generally demonstrated by a survey of the customers of the workers' firm. The Department's survey of Retamco's customers showed that none of the customers increased their import purchases of crude oil or natural gas while, at the same time, reducing their purchases from Retamco during the period applicable to the petition.

A company official claims that the Department's customer survey was inadequate and submitted an additional list of customers. Further, it is stated that the workers at Retamco should be certified because The Exploration Company which is owned, in part, by Retamco, has workers currently under a certification, TA-W-21,837.

On reconsideration, the Department found that most of the firms submitted on the additional list either were not customers or were customers in a period not relevant to the petition. In any event, none of these additional respondents indicated that they imported natural gas or crude oil during the relevant time period.

The fact that Retamco owns stock in The Exploration Company, also an oil and gas producer whose workers the Department certified eligible to apply for adjustment assistance under petition (TA-W-21,837) would not, in itself, provide a basis for certification. The Exploration Company is not a customer of Retamco nor does it control Retamco. The Exploration Company is a separate public corporation whose workers met all the worker group criteria for certification. None of the customers submitted by Retamco initially or on reconsideration reported increased import purchases of oil and gas while reducing their purchase from Retamco.

Conclusion

After reconsideration, I affirm the original notice of negative determination regarding eligiblity to apply for adjustment assistant to workers and former workers at Retamco Operating, Inc., San Antonio, Texas.

Signed at Washington, DC, this 26th day of June 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-15600 Filed 6-30-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,610]

The Timken Co., Plant #4, Columbus, OH; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at The Timken Company, Plant #4, Columbus, Ohio. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-22,610; The Timken Company, Plant #4, Columbus, Ohio (June 21, 1989).

Signed at Washington, DC, this 21st day of June 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-15599 Filed 6-30-89; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-89-96-C]

Island Creek Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Island Creek Coal Company, P.O. Box 11430, Lexington, Kentucky 40575-1430 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Dobbin Mine (I.D. No. 46-05480), its Laurel Run Mine (I.D. No. 4602845), and its North Branch Mine (I.D. No. 46-01309) all located in Grant County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires and trolley feeder wires, high-voltage cables and transformers not be located inby the last open crosscut and be kept at least 150 feet from pillar workings.

2. As an alternate method, petitioner proposes to power the longwall mining system with high-voltage cables inby the last open crosscut and within 150 feet of pillar workings with specific equipment and conditions as outlined in the petition.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 2, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: June 23, 1989.

[FR Doc. 89-15602 Filed 6-30-89; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

[Application No. D-7901 et al.]

Proposed Exemptions; Drs. Hodgin and Chongsiriwatana, P.A. Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5671, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Drs. Hodgin and Chongsiriwatana, P.A., Profit Sharing Plan (the Plan), Located in Albuquerque, New Mexico

(Application No. D-7901)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) and (b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed purchase (the Purchase) from Ulton G. Hodgin, M.D. (Dr. H) and his wife, Jean (collectively, the Applicants), by the individually directed acccunts (the Accounts) in the Plan of Dr. H and Krisna Chongsiriwatana, M.D. (Dr. C), trustees of the Plan and, as such, parties in interest with respect to the Plan, of one limited partnership unit (the Unit) for the greater of $71,550 or the appraised fair market value on the date of the transaction payable by $20,576 in cash and by the assumption of the Applicants' required capital contribution of $50,974; provided that the terms and conditions of the Purchase are at least as favorable to the Accounts as those obtainable in an arm's-length transaction with an unrelated party; and further provided that, at the time of acquisition, both Accounts' proportionate ownership share of the Unit shall not exceed 25% of each Account's assets.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with four participants and net assets of $319,804 as of November 30, 1988. As of that date, the Accounts held $195,510.48 on behalf of Dr. H and $105,302.86 on behalf of Dr. C.

2. The Applicants currently own the Unit of Oakland 20 (the Partnership), a New Mexico general partnership formed on March 26, 1985. The Partnership holds one sole asset, a 17.4 acre parcel of vacant land described as Lots 1-26, Block 27, Track A, Unit B of North Albuquerque Acres, Bernalillo County, New Mexico.

3. The Applicants believe that the Unit will appreciate in value and desire that the Accounts benefit from such appreciation. Accordingly, they now propose to sell the Unit to the Accounts at a price which will be either the lower of its acquisition and holding cost or its appraised fair market value. As of March 13, 1989, the Applicants have expended $53,657.50 as capital contributions to the Partnership and are required to make additional contributions of $50,974 over the next four years, totalling an aggregate cost of $104,631.50.

4. The Unit has been appraised by John Blatnik, A.S.A., of John Blatnik & Associates, Inc., a qualified appraiser in Albuquerque, New Mexico, who has represented that less than one percent of his gross annual revenue is derived from parties in interest with respect to the Plan. Mr. Blatnik determined that the Unit had a fair market value of $71,550 as of August 31, 1988. The Accounts will pay the Applicants $71,550 on the date of the Purchase, of which $20,576 will be in cash and $50,974 will be the assumption of the Applicants' capital contribution obligation to the Partnership, proportionately 65% by Dr. H's Account and 35% by Dr. C's Account in the Plan. The Accounts will pay no fees or commissions in connection with the Purchase. After consummation of the transaction, the proportionate share of each Account's ownership of the Unit will not exceed 25% of either Account's assets.

5. In summary, the Applicants represent that the transaction meets the statutory criteria of section 408(a) of the Act because: (a) The transaction involves less that 25% of each of the Accounts' assets; (b) The Purchase price will be the lower of the acquisition and holding costs to the Applicants of the Unit or the fair market value as established by a qualified independent appraisal; (c) Drs. C and H are the only Plan participants to be affected by the proposed transaction and they desire that the transaction be consummated; and (d) The Accounts will pay no fees or commissions in connection with the proposed transaction.

Notice to Interested Persons: Because Drs. C and H are the sole participants in the Plan to be affected by the proposed transaction, the Department has determined that there is no need to distribute the notice of pendency of the proposed exemption to interested persons. Comments and requests for hearing must be received within 30 days of the date of publication in the **Federal Register** of this notice of proposed exemption.

FOR FURTHER INFORMATION CONTACT: Mrs. B.S. Scott of the Department, telephone (202) 523-8194. (This is not a toll-free number).

Hunter Associates Laboratory, Inc. Profit Based Retirement Plan and Trust (the Plan), located in Reston, Virginia

[Application No. D-7906]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan to Hunter Associates Laboratory, Inc. (the Employer), the sponsor of the Plan, of (1) the Plan's rights with respect to an unsatisfied judgment (the Judgment) against the National Exchange Leasing Company (NELCO), and (2) the Plan's rights as creditor in a loan to Government Financial Services, Inc. (the GFS Loan), including any preferential payment refunds due from the Plan with respect thereto (collectively, the Claims); provided that all terms of such transactions are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a defined contribution individual-account pension plan with 150 participants and net assets of $2,250,707 as of June 30, 1988. The Employer is a closely-held Virginia corporation engaged in the operation of a commercial chemical research facility in Reston, Virginia. The trustees of the Plan (the Trustees) are Philip S. Hunter, Elizabeth Hunter, David Craun and Jane Hersey, each of whom is an employee, officer, director, or greater than ten percent shareholder of the Employer.

2. The Plan was adopted by the Employer effective July 1, 1982 and from that date until March of 1986 the Trustees engaged by contractual arrangement the services of Chesapeake Pension Consultants (Chesapeake) and Glen E. Dawson (Dawson) to act as the Plan's administrator and investment advisor. Chesapeake is a Maryland corporation of which Dawson is the president and sole shareholder. The Claims constitute two unsuccessful investments of Plan assets entered into upon Dawson's advice which the Employer proposes to remedy by purchasing from the Plan and thereby restoring to the Plan the funds invested therein. The Employer is requesting an exemption to permit such purchases as described herein.

3. On January 29, 1985, upon Dawson's advice the Trustees made a loan of $150,000 of Plan funds to NELCO, a Maryland corporation managed and controlled by George Kennedy (Kennedy), whom the Trustees represent to be a business associate of Dawson. In exchange for such loan, NELCO executed a promissory note (the Note) in favor of the Plan providing for monthly interest-only payments over two years at an interest rate of sixteen percent per annum and payable in full on January 25, 1987. With respect to the making of the loan to NELCO, the Trustees represent as follows:

(a) That Dawson knew or should have known that NELCO had little or no net worth, was highly illiquid and likely would be unable to repay the loan pursuant to the Note;

(b) That Dawson represented to the Trustees that the Note was secured fully by certain equipment leases as collateral (the Collateral);

(c) That Dawson failed to secure the Collateral or perfect a security agreement pertaining to the Note and concealed such failure from the Trustees; and

(d) That Dawson and Chesapeake received a fee from an affiliate of NELCO for the placement of the loan from the Plan to NELCO and concealed such fee from the Trustees.

In accordance with the Note NELCO commenced making monthly interest payments to the Plan on February 25, 1985 but made no further payments after August 1985. On February 13, 1987, the Trustees filed a lawsuit against NELCO and Kennedy on behalf of the Plan in the U. S. District Court for the District of Maryland seeking recovery of the full balance due under the Note. That Court entered the Judgment against NELCO and Kennedy on April 3, 1987, awarding the Plan $158,750 plus interest at the rate

of fourteen percent per annum from January 25, 1987 until paid, as well as reasonable costs and attorneys' fees. Thereafter, Kennedy filed a petition for bankruptcy in the U.S. Bankruptcy Court for the District of Maryland. The Judgment remains totally unsatisfied.

The Trustees represent that although the Plan has a lien on certain real property belonging to Kennedy, it is not likely that it will be sufficient to satisfy the Judgment. The Employer proposes to acquire the Judgment from the Plan by paying the Plan cash in the amount due under the Judgment. The amount proposed by the Employer to be paid to the Plan for the Judgment is $168,750, representing the Judgment's principal amount of $158,750 plus $10,000 of the interest which the Judgment awards on the principal amount from January 25, 1987 until paid. The Employer represents that if any amounts are recovered pursuant to the Judgment in excess of $168,750, such additional amounts will be applied to litigation expenses and the balance paid to the Plan.

4. In June of 1984, upon Dawson's advice the Trustees invested Plan funds in the GFS Loan, a loan in the principal amount of $100,000 to Government Financial Services, Inc. (GFS), a Maryland corporation in which Dawson was an initial investor. The GFS Loan was to be repaid over five years with interest at sixteen percent per annum. GFS commenced payment to the Plan in accordance with the GFS Loan on August 18, 1984. However, GFS made no further payments after September 1987, leaving an outstanding GFS Loan balance of $44,164.09.

Thereafter, in December of 1987, GFS filed a petition for bankruptcy in the U.S. Bankruptcy Court for the District of Maryland. The Trustees have caused to be filed with the bankruptcy court on behalf of the Plan a proof of claim against the bankrupt estate of GFS for the outstanding GFS Loan balance of $44,164.09. Subsequently, the Trustees represent that they were advised by counsel to the trustee of the bankrupt estate that the final two payments made by GFS to the Plan, in the total amount of $14,716.36, may constitute preferential transfers under section 547 of the U.S. Bankruptcy Code and, therefore, are possibly voidable by the bankruptcy trustee and subject to refund by the Plan.[1] The Employer proposes to acquire the Plan's claim against GFS arising from the GFS Loan by paying the Plan cash in the amount of its proof of claim filed in the bankruptcy court, $44,164.09, plus any amounts returned by the Plan to the bankruptcy trustee as preferential transfers.

The Employer represents that in the event, which the Employer represents to be unlikely, that any monies are recovered from Dawson or Chesapeake pursuant to the Claims in excess of the amounts paid by the Employer to the Plan for the Claims, such additional amounts will be applied to litigation expenses and the balance paid to the Plan.

5. Violations of various provisions of Title I of the Act and breaches of fiduciary duties thereunder by Dawson and Chesapeake were alleged by the Department in a lawsuit filed by the Department (the Lawsuit) against Dawson and Chesapeake (the Defendants) in the U.S. District court for the District of Maryland (Civil Action No. JFM–86–2536). The Lawsuit was filed on behalf of 46 pension plans (the Plaintiff Plans), including the Plans, for which the Defendants had acted as fiduciaries. By the terms of a Consent Order and Final Judgment (the Order) entered November 7, 1988, as resolution of the Lawsuit, the Defendants were ordered to pay a total of $70,000 to the Plaintiff Plans. Of that amount, the Plan received $2,089.04 as its pro rata share. The Department agreed to the terms of the Order on the basis of affidavits submitted by Dawson and Chesapeake disclosing their financial conditions and the Order includes the Defendants' agreement to pay to the Plaintiff Plans on a pro rata basis an amount equal to the value of any assets or income not disclosed in such affidavits upon a showing that such affidavits contained material misrepresentations. The Employer represents that the amount awarded to and received by the Plan under the Order does not reduce the amounts which the Employer will pay the Plan for the Claims.

6. The Trustees represent that it is in the best interests of the participants and beneficiaries of the Plan for the Employer to make the Plan whole for the losses resulting from Dawson's investment advice. After payment of the Claims by the Employer, if the requested exemption is granted, the Trustees will directly reimburse each participant account in the Plan in the amount of loss charged to each account as a result of the unsatisfied Claims. The Trustees represent that the Employer's proposal ensures that the Claims will be transferred at no less than the fair market value, due to the fixed nature of the Claims and the financial condition of the obligors under the Claims.

7. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The Plan will recover losses which do not appear likely to be recovered in the absence of the proposed transaction; (2) The proposed transaction will prevent the Plan from sustaining additional losses from further nonpayment of the monies due under the Claims; and (3) The proposed transaction will transfer the Claims at no less than their market value.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Wells Fargo Bank, N.A. Located in San Francisco, California

[Application No. D–7933]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale for cash by the Crocker Real Estate Loan Fund (CRELF), a collective investment fund of qualified employee benefit plan assets, of certain first mortgage notes (the Notes) to Wells Fargo & Company (Wells Fargo), the fiduciary and therefore a party in interest with respect to CRELF, or to a subsidiary of Wells Fargo, provided that the price paid be no less than the fair market value of the Notes as of the date of sale as determined by an independent and qualified appraiser.

Summary of Facts and Representations

1. Wells Fargo Bank, N.A., is the principal subsidiary of Wells Fargo. On May 30, 1986, Wells Fargo acquired Crocker National Corporation and its subsidiary corporations, including its principal subsidiary, Crocker National Bank. Wells Fargo Bank was merged into Crocker National Bank on that date. As a result of the acquisition and merger, Wells Fargo Bank became the trustee of the Crocker Investment Funds for Employee Benefit Trusts, a Crocker National Bank-sponsored collective investment fund that offers several investment funds, including CRELF, which consists primarily of mortgage investments in income-producing properties.

2. Prior to the merger of Crocker National Bank and Wells Fargo Bank on May 30, 1986, Crocker National Bank decided to liquidate CRELF. The investments were frozen and an orderly disposition of assets was begun. After the merger, Wells Fargo Bank continued the ongoing management and liquidation of CRELF.

3. The Notes, consisting of a note secured by a first mortgage on a restaurant building in San Marcos, Texas, and a note secured by a first mortgage on a shopping center in Springfield, Illinois, are the only remaining assets in CRELF. A package of CRELF loans was sold to Drexel Burnham Lambert, Inc. (DBL) on May 15, 1986, on the condition that the buyer could reject individual mortgage subsequently found to be below standard. A second package of CRELF loans was sold to DBL on January 1, 1987 on the same terms. Both Notes were subsequently rejected by DBL and returned to Wells Fargo Bank.

4. The inability to complete the liquidation of CRELF has created hardships for some of the participating plans. During the process of liquidation some participating plans have terminated, and portions of the assets of the terminated plans have continued to be held in CRELF. Other participating plans have requested liquidation of assets invested in CRELF for various reasons, such as changes in investment strategies, and CRELF has not been able to comply with such requests.

5. Wells Fargo Bank desires to complete the liquidation of CRELF as soon as practicable. Consistent with its fiduciary obligations under ERISA, Wells Fargo Bank desires to sell the Notes for a price which will maximize the return to CRELF. However, there is no assurance that the Notes can be disposed of for fair market value by sale to a third party purchaser or prepayment by the borrower. It is therefore proposed that Wells Fargo purchase the Notes for the current fair market value in cash as determined by an independent appraiser.

6. The Notes continue to be marketed, and Wells Fargo Bank has offered to discount the notes to the borrowers. The borrower for the Springfield, Illinois property did not respond to the offer. If a third party purchaser makes a firm offer to purchase that note at or above the purchase price proposed by Wells Fargo, Wells Fargo Bank will so dispose of the asset rather than by sale to Wells Fargo.

The borrower for the San Marcos, Texas property accepted the offer to repurchase the note. If the borrower is able to tender payment, Wells Fargo Bank will sell the note to him rather than to Wells Fargo. If the borrower is unable to repurchase the note and no other purchaser comes forward, it is proposed that the note be sold to Wells Fargo.

7. The applicant appointed The Karsten Companies (Karsten) to serve as the independent fiduciary with regard to the proposed sale. Founded in 1969, Karsten concentrates on providing real estate sales and development advisory assistance to major corporations, financial institutions, and public institutions, and has regularly assumed major responsibilities with respect to the management and investment of retirement plan assets. Karsten is not affiliated with Wells Fargo in any way.

On November 15, 1988, Karsten determined the fair market value of the loan on the Illinois property to be $1,310,462, and the fair market value of the loan on the Texas property to be $183,340, for a total of $1,493,822 for the two Notes.

8. Karsten identified four alternative strategies for dealing with the notes: (a) Discount the Notes to the borrower in order to induce prepayment in an amount equal to or more than Karsten's estimate of net realizable value; (b) sell the Notes to Wells Fargo for an all cash price equal to or greater than Karsten's estimate of net realizable value; (c) sell the Notes to an unrelated third party for an all cash price equal to or greater than Karsten's estimate of net realizable value; or (d) hold the Notes for long term investment yield. Karsten recommended alternative (a) as the optimal strategy since it would produce the highest recovery if it could be successfully negotiated. If alternative (a) could not be negotiated, Karsten recommended alternative (b) as the most advantageous strategy and therefore in the best interests of CRELF participants. In accordance with Karsten's recommendation, Wells Fargo has requested an exemption to purchase the Notes.

9. In summary, the applicant represents that the proposed transaction will meet the statutory criteria of section 408(a) of the Act because: (a) the Notes will be sold for their fair market value as of the date of sale as determined by an independent and qualified appraiser; (b) the participating plans will not be liable for any fees, commissions, or taxes in connection with the proposed transaction; (c) the proposed transaction is a one-time sale for cash, which can be easily verified; (d) the proposed transaction will permit Wells Fargo Bank to complete the liquidation of CRELF, thus permitting participating employee benefit plans which are terminating to wind up their affairs; and (e) Karsten, acting as independent fiduciary with respect to the sale, has determined that the transaction is protective of the rights and in the best interest of the participating plans and their participants.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Drs. Elliott, Halseth and Walker, P.C. Money Purchase Pension Plan (the Pension Plan) and Drs. Elliott, Halseth and Walker, P.C. Profit Sharing Plan for William L. Halseth, M.D. (the PS Plan; collectively, the Plans), located in Denver, Colorado

[Application Nos. D–7961 and D–7962]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed purchase from the Plans of two promissory notes by William L. Halseth, M.D. (Dr. Halseth), a party in interest with respect to the Plans, provided that all terms of such transaction are at least as favorable to the Plans as those which the Plans could obtain in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plans are defined contribution plans sponsored by Drs. Elliott, Halseth and Walker, P.C. (the Employer), a closely-held Colorado professional corporation engaged in the practice of medicine in Denver, Colorado. The Pension Plan is an individual account plan with six participants and total assets of $4,253,408 as of October 31, 1988. The Pension Plan provides for individual participant direction of the investments of the participant accounts. As of October 31, 1988 Dr. Halseth's account (the Account) in the Pension Plan had total assets of $1,149,823.59. The trustees of the Pension Plan are Dr.

[1] The Employer represents that as of February 27, 1989 there had been no attempt by the bankruptcy trustee to have such monies returned to the bankrupt's estate as a preferential transfer and that the Employer did not expect such an attempt to be made.

Halseth, Donald P. Elliott, M.D. and E. Lance Walker, M.D. each of whom is an employee, officer and director of the Employer, an owner of one third of the outstanding stock of the Employer and a participant in the Pension Plan. Dr. Halseth is the only participant and trustee of the PS Plan, which had total assets of $105,917.63 as of October 31, 1988.

At Dr. Halseth's direction in 1987, the Account and the PS Plan each invested in promissory notes (the Notes) with the Imperial Mortgage Company (Imperial) of Englewood, Colorado. Dr. Halseth represents that the Notes have proven to be unfavorable investments and is requesting an exemption to permit him to purchase them from the Plans under the circumstances described herein.

2. Dr. Halseth represents that he made the investments in the Notes on behalf of the Account and the PS Plan in good faith pursuant to an offering circular (the Offering) issued by Imperial, a Colorado corporation engaged in the provision of short-term loan and other credit services in connection with the real estate brokerage services of Crown Realty Company (Crown), the parent corporation of Imperial. Dr. Halseth represents that he and the Plans are independent of and unrelated to Imperial, except as investors in the Notes. The Offering provided that the promissory notes issued thereunder by Imperial were to be unsecured obligations of Imperial which were not to be obligations of or guaranteed by Crown.

The Notes constitute the Plans' investments of a total of $284,000 in promissory notes issued pursuant to the Offering as follows: Dr. Halseth directed the investment by the Account in a promissory note executed by Imperial in the principal amount of $200,000 on January 21, 1987. On March 10, 1987, Dr. Halseth directed the investment by the PS Plan in a promissory note executed by Imperial in the principal amount of $84,000. The Plans paid cash to Imperial in exchange for the Notes. Each of the Notes provided for interest at the rate of ten percent per annum payable in full with principal six months from date of execution.

3. Dr. Halseth represents that Imperial defaulted on the Notes upon their maturities and that Imperial remains in default of its obligations under both Notes. To collect the amounts due the Account and the PS Plan under the Notes, the Trustees filed a civil lawsuit on behalf of the PS Plan and the Account in the state district court for the County of Arapahoe in Colorado (Civil Action No. 87CV1953, Division No. 3). That court entered a judgment order (the Judgment) against Imperial on April 12, 1988 in favor of the Plans for the amounts due under the Notes. The Employer represents that court costs, attorneys' fees and other expenses of obtaining the Judgment were borne by the Employer. Dr. Halseth represents that Imperial has paid the Plans no amount pursuant to the Judgment, that the Judgment remains unsatisfied and that the obligations under the Notes remain outstanding.

On May 16, 1988 Imperial filed in Federal district court in Denver, Colorado a petition in bankruptcy under Chapter 7 of the U.S. Code. Dr. Halseth represents that the sole asset of Imperial at the time of the bankruptcy petition was a promissory note executed in favor of Imperial by Van Schaak and Company (Van Shaak), a Colorado corporation. However, on January 6, 1989, prior to any payment of the Judgment by the bankruptcy trust, Van Shaak filed for bankruptcy under Chapter 11 of the U.S. Code. Accordingly, Dr. Halseth maintains that there are no assets of Imperial with which to pay the claims of Imperial's creditors, including the Plans. In order to enable the Account and the PS Plan to recoup their investments in the Notes, Dr. Halseth proposes to purchase the Notes for cash in the amount of the Notes' face values, consisting of the principal amount paid for each Note and the interest on such principal at the rate of ten percent per annum for six months as provided by each Note.

4. Dr. Halseth represents that because of the bankruptcies of Imperial and Van Shaak and the apparent lack of any assets from which the bankruptcy trustees might provide for payment of the Notes, the market values of the Notes are less than the Notes' original purchase prices. Dr. Halseth represents that the Trustees have determined that under prevailing circumstances the Notes cannot be negotiated or otherwise disposed of and that Dr. Halseth constitutes the only willing buyer of the Notes. Dr. Halseth maintains that his proposed purchase of the Notes at their face values constitutes the only means available to the Plans to recover the investments in the Notes and the interest provided for in the Notes. Dr. Halseth emphasizes that the Notes were purchased at his direction exclusively for his segregated account in the Pension Plan and for his sole benefit as the sole participant in the PS Plan and that, accordingly, Dr. Halseth is the sole participant in the Plans to be affected by the Notes and their proposed purchase by Dr. Halseth. Dr. Halseth represents that the Plans will pay no fees or commissions in connection with the proposed transaction and that the terms of the sale which he proposes are more favorable to the Plans than the Plans could obtain in an arm's-length transaction with an unrelated party.

5. In summary, the applicant represents that the criteria of section 408(a) of the Act are satisfied in the proposed transaction for the following reasons: (1) The Plans will receive cash for the Notes in the amount of their face values, which is no less than their fair market values; (2) The proposed transaction will enable the Plans to recoup their investments in the Notes, which have produced no income for the Plans and which have market values below the amount of the Plans' initial investments in the Notes; (3) The Plans will pay no fees, commissions or other expenses in connection with the proposed sale of the Notes; and (4) Dr. Halseth, who desires that the proposed transaction be consummated, is the only participant in the Plans to be affected by the proposed transaction.

Notice To Interested Persons: Because Dr. Halseth is the sole participant in the PS Plan and the only participant in the Pension Plan to be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of publication of this notice of proposed exemption.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Hawaii Carpenters Annuity Fund (the Annuity Fund) and Hawaii Carpenters Financial Security Fund (the FS Fund) Located in Honolulu, Hawaii

[Application Nos. D-8048 and D-8049]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(b)(2) of the Act shall not apply to the proposed transfer of assets from the Annuity Fund to the FS Fund, provided each of the assets will be valued at its fair market value at the time of the transfer.[3]

[3] The applicants have represented that the two funds are not parties in interest with respect to one another within the meaning of section 3(14) of the Act. Accordingly, no relief is being provided herein from the restrictions of section 406(a) of the Act.

Summary of Facts and Representations

1. The Annuity Fund and the FS Fund are substantially identical defined contribution plans formed pursuant to collective bargaining agreements entered into between the United Brotherhood of Carpenters and Joiners of America, Local 745, AFL-CIO, the General Contractors Labor Association, and the Building Industry Labor Association (collectively, the Bargaining Parties). The Annuity Fund, which was formed in 1978, has approximately 4,435 participants. The FS Fund has approximately 3,390 participants. The participants and beneficiaries of the Annuity Fund and the FS Fund are substantially the same persons, but are not identical due to normal turnover.

2. The Annuity Fund and the FS Fund are each governed by a board of trustees consisting of five trustees appointed by contributing employers and five trustees appointed by the union. Six of the ten individuals appointed as trustees of each fund have also been appointed as trustees of the other fund.

3. As a part of collective bargaining negotiations, the Bargaining Parties entered into a letter agreement dated November 30, 1987. Among other things, the letter agreement called for: 1) The formation of the FS Fund (which was accomplished March 1, 1988); and 2) the termination of the Annuity Fund by no later than March 1, 1990. These transactions are being undertaken in order to implement a supplemental benefit to be provided by the Hawaii Carpenters Pension Fund (a defined benefit plan formed pursuant to collective bargaining agreements entered into between the Bargaining Parties). The amount of the supplemental benefit will depend in part on the participant's account balance in the FS Fund (other than any portions thereof derived from rollover contributions, including rollover contributions from the Annuity Fund).

4. Upon the termination of the Annuity Fund, it is anticipated that a large number of the Annuity Fund participants will elect to rollover their Annuity Fund account balances into the FS Fund. In general, these rollovers will be accomplished through direct plan-to-plan transfers of assets from the Annuity Fund to the FS Fund. The assets to be transferred will consist of cash, publicly traded securities, and/or other assets held by the Annuity Fund as of the date of its termination. For each participant who elects to rollover his account, the value of the assets transferred to the FS Fund will be equal to the value of his account in the Annuity Fund.

5. It is anticipated that the transfer of assets from the Annuity Fund to the FS Fund will be made upon or shortly after the termination of the Annuity Fund. For purposes of the transfer, each of the assets will be deemed to have a value equal to the fair market value thereof determined upon the termination of the Annuity Fund (i.e., cash will be valued at its face value, publicly traded securities will be valued based on trading prices on applicable security exchanges, and other assets will be appraised).

6. The trustees of the two funds have requested the proposed exemption to accommodate the participants of both funds. The applicants represent that the proposed exemption to permit the direct transfer of assets from the Annuity Fund to the FS Fund will facilitate the goal of participants in the Annuity Fund who desire to rollover their account balances to the FS Fund.

7. In summary, the applicants represent that the proposed transaction meets the criteria of section 408(a) of the Act because: 1) The transaction involves a one-time transfer of assets; 2) the assets to be transferred will be valued at their fair market value at the time of the transfer; and 3) the transaction will facilitate the desired rollover of assets by the participants in the Annuity Fund upon its termination to their accounts in the FS Fund.

For further information contact: Gary Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Electrical Workers Local Union No. 103, I.B.E.W., Health and Welfare (the Welfare Fund), Deferred Income Fund (the Deferred Income Fund), Pension Fund (the Pension Fund), and Holiday, Vacation and Supplementary Unemployment Benefits Fund (the Vacation and SUB Fund; collectively, the Funds), Located in Boston, Massachusetts

[Application Nos. D-7893 thru D-7896]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(b)(2) of the Act shall not apply to the proposed leasing of certain office space, and the provision of incidental services and goods relating to such office space, to the Funds by the Local 103, I.B.E.W., Building Corporation (the Building Corporation), a corporation which is wholly-owned by the Local Union No. 103 of the International Brotherhood of Electrical Workers, AFL-CIO (the Union), a party in interest with respect to the Funds, provided that the terms of the transactions are at least as favorable to the Funds as the terms which the Funds could obtain in arm's-length transactions with an unrelated party.

Effective Date: If the proposed exemption is granted, the exemption will be effective July 14, 1988.

Summary of Facts and Representations

1. The Funds are multiemployer trusts created pursuant to section 302(c) of the Labor Management Relations Act of 1947, as amended, which provide health, pension, vacation, holiday, unemployment and related benefits. As of November 21, 1988, the Welfare Fund had 2775 participants, the Deferred Income Fund had 3342 participants, the Pension Fund had 3385 participants, and the Vacation and SUB Fund had 2775 participants. The Funds were created by various collective bargaining agreements with the Union which require contributions to the Funds by participating employers.

2. Each of the Funds is administered by six trustees (the Trustees), three of whom are appointed by the Union (the Union Trustees) and three of whom are appointed by an employers' association known as the Electrical Contractors Association of Greater Boston, Inc., Boston Chapter, National Electrical Contractors Association (the Association). The Union Trustees are William Walker, president of the Union, Russell Sheehan, business manager of the Union, and John O'Donnell, treasurer of the Union. The Union Trustees are also the directors of the Building Corporation. The Trustees appointed by the Association are David MacKay, John Penney and Alfred Rotman (the Employer Trustees). The Employer Trustees are not affiliated with either the Union or the Building Corporation.

3. The Welfare Fund currently leases office space at 10 High Street, Boston, Massachusetts, from KNH Realty Trust, an unrelated party, and charges the other Funds their proportionate shares of the expenses for their use of such space.

The Union has its business offices and other facilities in a building (the Building) located at 256 Freeport Street, Dorchester, Massachusetts. The Building is owned by the Building Corporation. The first floor of the Building is occupied by the Union and includes Union offices and a Union member meeting hall. Union members are also participants in the Funds.

4. The Trustees have been negotiating a proposal by the Union to lease the second floor of the Building to the Funds. The Trustees intend to enter into a lease agreement (the Lease) with the Building Corporation for such space. The applicant states that the Lease would constitute the payment by a plan for office space to a party in interest, within the meaning of section 408(b)(2) of the Act. The applicant states further that the Lease would otherwise meet the requirements of 29 CFR 2550.408b–2, relating to section 408(b)(2), and be statutorily exempt from the prohibitions of section 406(a) of the Act, but for the participation by the Union Trustees in the decision to have the Funds engage in the proposed transaction.[3] The Lease and the Declaration of Trust for the Funds state that the Trustees cannot enter into the Lease without the discussion, consideration and vote of the Union Trustees, all of whom are officers of the Union. However, if the Union Trustees exercise their fiduciary authority to effectuate the Lease, the transaction may constitute a violation of section 406(b)(2) of the Act.

The Trustees are requesting an exemption, effective July 14, 1988 (for reasons discussed below), to permit the Funds to lease office space in the Building, in accordance with the terms of the Lease, and to allow the provision of incidental services and goods relating to the Lease by the Building Corporation or the Union.

5. The Lease has an initial term of five years with three extension terms, each one for an additional five year period. During the initial term, the annual rent will be fixed at $15 per square foot. During the first extension term, the annual rent will be fixed at $18 per square foot, which represents a compound growth rate of 3.7 percent. During the third and fourth extension terms, the annual rent will be set at 95% of the prevailing fair market rent for such office space, as established by an independent appraiser, for the first month of that extended term. All rents for each of the terms will be paid by the Funds in equal monthly installments.

In addition, the Lease requires the Funds to pay a proportional part of any increase in the real estate tax liability in excess of the tax imposed on the Building as reassessed after completion of the improvements made to the space which the Funds will lease. The Building Corporation will pay all utilities under the Lease. However, the Funds will be responsible for telephone expenses.

The Funds may individually or jointly terminate the Lease upon sixty days notice to the Building Corporation, or a shorter time which would be considered reasonable under the circumstances, without penalty. The Lease states that no rent, fees, assessments or penalties may be charged to the Funds on account of such early termination. Finally, the Lease has a strict tenant security clause which insures the confidentiality of the Funds' records.

6. The Trustees have employed the services of the Boston Valuation Group, Inc. (the Group), an independent, qualified real estate appraisal and consulting firm in Weymouth, Massachusetts, to represent the Funds with respect to the Lease. On July 14, 1988, the Trustees signed an agreement with the Group (the Agreement) under which the Group agreed to serve as a fiduciary of the Funds within the meaning of section 3(21) of the Act. The Group represents that it is an experienced and knowledgeable fiduciary under the Act, which is wholly independent of and unrelated to the Building Corporation, the Union, and the Trustees.

Under the Agreement, the Group agreed to perform the following services: (i) To aid in the negotiation by the Funds with the Union regarding the terms of the Lease, (ii) to render an independent evaluation and opinion of such terms and determine whether the Lease would be in the best interests of the Funds, (iii) to appraise the fair market rental value of the Funds' proposed office space in the Building, and (iv) to monitor the terms and conditions of the Lease over the duration of the Lease and provide the Trustees with annual reports as to whether any changes in market conditions or other circumstances has occurred which would render the Lease no longer in the best interests of the Funds.

7. The applicant states that the Group actively participated in the negotiation of the terms of the Lease on behalf of the Funds by attending various conferences with the Union, along with the Funds' Administrator, James L. McCoy, during July and August 1988. During such conferences, the parties discussed various matters concerning the Funds' office needs in connection with the proposed space in the Building. The Group was supplied with information on these matters, including copies of the Funds' current leases and the architect's plans for the second floor of the Building.

The Union and the Group reached an agreement concerning the terms of the Lease in November 1988, and such terms were agreed to by the Trustees.

8. The proposed office space in the Building was appraised on November 21, 1988 by Edward Wadsworth, M.A.I. (Mr. Wadsworth), an independent, qualified real estate appraiser in Weymouth, Massachusetts. Mr. Wadsworth is also president of the Group. Mr. Wadsworth states that the fair market rental value of the Funds' proposed space, taking into consideration the proposed improvements to such space, would be at least $15.00 per square foot. Mr. Wadsworth's appraisal is based on an analysis of similar properties in the greater Boston area.

In addition, Mr. Wadsworth updated his appraisal of the proposed space on April 12, 1989. Mr. Wadsworth states that based on current lease rates for similar space, the fair market rental value of the Funds' proposed space would be approximately $16.00 per square foot, as of April 1, 1989.

9. By letter dated November 28, 1988, Mr. Wadsworth analyzed the terms of the Lease as a representative of the Group under the Agreement. Mr. Wadsworth represents that the proposed transactions would be in the best interests of the participants and beneficiaries of the Funds. Mr. Wadsworth states that the proposed rental rate is a more advantageous rate than the Funds' current rental and at least as favorable a rate to the Funds as other comparable rentals in the greater Boston area. In addition, Mr. Wadsworth states that the other terms of the Lease are standard in the industry, as favorable as the Funds' current rental, and at least as favorable as leases for comparable rentals in the area.

Mr. Wadsworth states further that the Lease provides some specific provisions designed to be beneficial to the Funds, such as an early termination clause without penalty and a strict tenant security clause to ensure the confidentiality of the Funds' records. Mr. Wadsworth notes that the location of the proposed office space will be advantageous for the Funds since the Building is located close to major highways. The Funds' participants, most of whom are Union members, are familiar with the location and can be expected to be transacting business at the Building on a regular basis. The proposed office space will centralize into one area most of the services provided to the participants and beneficiaries of the Funds. Mr. Wadsworth also notes that the proposed office space will have sufficient free parking adjacent to the Building for participants and beneficiaries transacting business with the Funds, which is a distinct advantage over the Funds' current rental and over comparable rentals in the Boston area.

10. The Group represents that it will monitor the Lease on behalf of the Funds throughout its duration and will decide whether the Funds should renew the Lease for each of the five-year extension periods. The Group will also monitor the provision of incidental services and goods to the Funds by the Union and the Building Corporation to ensure that such transactions are necessary for the Fund's operations and are at least as favorable to the Funds as arm's length transactions between unrelated parties.

11. In summary, the applicant represents that the statutory criteria of section 408(a) of the Act are satisfied with respect to the Lease because: (a) The Group, acting as independent fiduciary on behalf of the Funds, has participated in the negotiations of the terms of Lease and has determined that the proposed transactions will be in the best interests of the participants and beneficiaries of the Funds; (b) the proposed office space for the Funds has been appraised by an independent, qualified appraiser, who has determined that the proposed rental rate for such space will be at least as favorable a rate as comparable facilities in the area; and (c) the interests of the Funds under the Lease will be represented by the Group, an experienced independent fiduciary, who will monitor the terms and conditions of the Lease throughout its duration and will provide periodic reports to the Trustees, at least annually, regarding any changes in market conditions or other circumstances which may effect the best interests of the Funds.

For further information contact: Mr. E.F. Williams of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 28th day of June 1989.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89–15608 Filed 6–30–89; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 89–57; Exemption Application No. D–7598 et al.]

Grant of Individual Exemptions; Separate Mortgage and Real Estate Account of New England and Mutual Life Insurance Co., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Separate mortgage and real estate account (the separate account) of New England Mutual Life Insurance Company, located in Boston, MA

[Prohibited Transaction Exemption 89–57; Exemption Application No. D–7598].

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of

[3] The Department expresses no opinion as to whether the Lease constitutes the payment by a plan for office space to a party in interest within the meaning of section 408(b)(2) of the Act or whether the Lease is statutorily exempt from the prohibitions of section 406(a) of the Act by virtue of section 408(b)(2) of the Act.

certain mortgage and real estate investments by the Separate Account to the general account of New England Mutual Life Insurance Company, a party in interest with respect to the plans participating in the Separate Account, provided that the terms of sale are not less favorable to the Separate Account than those terms obtainable in an arm's-length transaction with an unrelated party at the time the transaction is executed.

EFFECTIVE DATE: This exemption will be effective for a twelve-month period from the date of grant.

For a more complete statement of facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 26, 1989 at 54 FR 18044.

FOR FURTHER INFORMATION CONTACT: B.S. Scott of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

South Shore Renal Physicians, P.C. Restated Employees Pension Plan (the Plan), Located in Port Washington, New York

[Prohibited Transaction Exemption 89-58; Exemption Application No. D-7612].

Exemption

The restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by the reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to a loan of money from the Plan to 256 Broadway Realty Co., a party in interest with respect to the Plan, provided that the terms of the loan are at least as favorable as the Plan could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 4, 1989, at 54 FR 13581.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

Empire Acceptance Company, Inc., Profit Sharing Plan (the Plan), Located in Greensboro, North Carolina

[Prohibited Transaction Exemption 89-59; Exemption Application No. D-7683].

Exemption

The restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply for a period of five years to the sale of certain mortgage notes to the Plan by Empire Acceptance Company, Inc. (the Employer) and to the guarantee by the Employer to repurchase any mortgage notes which are in default and to the repurchase by the Employer of such mortgage notes, provided that the terms of the transactions are at least as favorable as those the Plan could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 20, 1989, at 54 FR 16019.

FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a Prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 28th day of June, 1989.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89-15605 Filed 6-30-89; 8:45 am]

BILLING CODE 4510-29-M

LIBRARY OF CONGRESS

National Film Preservation Board; Public Meeting; July 19, 1989, Los Angeles

AGENCY: Library of Congress, National Film Preservation Board.

ACTION: Notice of public meeting.

This notice is issued pursuant to Pub. L. 100-446, The National Film Preservation Act of 1988, 2 U.S.C. 178, by Dr. James H. Billington, the Librarian of Congress, to inform the public that the next meeting of the National Film Preservation Board will be held in Los Angeles, on the campus of the University of California at Los Angeles (UCLA) on July 19, 1989 at 1 p.m. in Melnitz Hall, Room 1409 (located near the intersection of Sunset Boulevard and Hilgard Avenue).

FOR FURTHER INFORMATION CONTACT: Eric Schwartz, Counsel, The National Film Preservation Board, Library of Congress, Washington, DC 20540. Telephone: (202) 707-6350.

Dated: June 27, 1989.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 89-15572 Filed 6-30-89; 8:45 am]

BILLING CODE 1410-01-M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Cancelled Meeting

ACTION: Cancellation of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770) notice is hereby given of cancellation of a public meeting of the National Commission for Employment Policy at the Aristocrat Hotel, Dallas, Texas, 75201. The notice of meeting, scheduled for Tuesday, July 11, 1989, was published in the **Federal Register** on Friday June 23, 1989, at 54 FR 26454.

FOR FURTHER INFORMATION, CONTACT: Barbara C. McQuown, Director, National Commission for Employment Policy, 1522 K Street, NW., Suite 300, Washington, DC 20005, telephone (202) 724-1545.

Signed at Washington, DC, this 27th day of June, 1989.

Barbara C. McQuown,

Director, National Commission for Employment Policy.

[FR Doc. 89-15603 Filed 6-30-89; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Choreographers Study Cooperative Agreement; Request for Proposals

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement for a study of choreographers working in New York City and three other metropolitan areas in nonprofit dance areas such as ballet, modern, and ethnic dance, with regard to their characteristics and working conditions. The work will include conducting Advisory Committee meetings and reporting on their deliberations, preparing a work plan for building a universe list of choreographers in each city, drafting survey instruments, mailing of questionnaires and follow-up, tabulation and analysis of the survey results, and preparation of a final narrative report analyzing the results of the group meetings and surveys in each city and offering a substantive overview of the condition and needs of choreographers. Those interested in receiving the Solicitation package should reference Program Solicitation PS 89-10 in their request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 89-10 will be available approximately July 21, 1989 with proposals due on August 21, 1989.

ADDRESSES: Requests for the Solicitation should be addressed to National Endowment for the Arts, Contracts Division, Room 217, 1100 Pennsylvania Ave., NW. Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: William I. Hummel or Anna Mott, Contracts Division, National Endowment for the Arts, 1100 Pennsylvania Ave., NW. Washington, DC 20506 (202/682-5482).

William I. Hummel,

Director, Contracts and Procurement Division, National Endowment for the Arts.

[FR Doc. 89-15625 Filed 6-30-89; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-440]

The Cleveland Electric Illuminating Co., et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-58, issued to The Cleveland Electric Iluminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company, (the licensees), for operation of the Perry Nuclear Power Plant, Unit No. 1, located in Lake County, Ohio.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise Attachment 1 of the Facility Operating License to incorporate by reference the licensees' February 10, 1989 "First refuel HED Revisions Report," reflecting revised commitments for resolution of human engineering deficiencies (HEDs) identified during their detailed control room design review.

The proposed action is in accordance with the licensees' application for amendment dated February 10, 1989.

The Need for the Proposed Action

The proposed change to Attachment 1 of the license is required in order to document the result of the licensees' recent reassessment of the remaining HEDs which were scheduled for completion prior to the end of the first refueling outage and to document the licensees' revised commitments as a result of this reassessment.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the license and concludes that the HEDs for which the licensees are revising their commitments are non-safety significant and the revisions are generally minor in nature or reflect the licensees' reassessment that the deficiencies no longer need correction and are considered closed. The staff has evaluated each of the licensees' revised commitments and has found them acceptable. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

The Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on March 21, 1989 (54 FR 11598). No request for hearing or petition for leave to intervene was filed following this notice.

With regard to potential nonradiological impacts, the proposed change to the license involves revisions to commitments for resolution of HEDs resulting from the detailed control room design review. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no signifiant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to operation of the Perry Nuclear Power Plant, Unit Nos. 1 and 2, dated August 1982.

Agencies and Persons Consulted

The NRC staff reviewed the licensees' request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated February 10, 1989 which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Rockville, Maryland, this 26th day of June 1989.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III-3, Division of Reactor Projects—III, Iv, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-15608 Filed 6-30-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-482]

Wolf Creek Nuclear Operating Corp.; Wolf Creek Generating Station—Issuance of Director's Decision Under 10 CFR 2.206 (DD-89-4)

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has denied a Petition under 10 CFR 2.206 filed by the Kansas Chapter of the Sierra Club (hereinafter referred to as the Petitioners). The Petitioners asked the U.S. Nuclear Regulatory Commission (NRC) to accomplish the following:

1. Suspend the operating license for Wolf Creek Generating Station, Burlington, Kansas.

2. Before reinstating the operating license:

a. The NRC should reopen its Office of Investigations Case No. 4-86-004 to provide sound technical reasons for its conclusion that this nuclear power plant is safe enough to operate in spite of all of its investigative conclusions regarding quality assurance problems.

b. The NRC should review all of its information in quality assurance at Wolf Creek developed subsequent to the issuance of Case No. 4-86-004 and covering operations at Wolf Creek through 1989 to provide sound technical reasons for its conclusion that this nuclear power plant is safe enough to operate.

c. All corrective actions determined by NRC to be necessary to achieve a level of operating safety that complies with Federal regulations should be incorporated as conditions of the operating license, and if these conditions are not met, the operating license should be revoked.

d. The following persons, whose activities were detailed in Mr. Griffin's report of Case No. 4-86-004 because of their alleged failures to safeguard the integrity of Wolf Creek quality assurance programs and their alleged lack of competence to identify and resolve real safety concerns, be barred from any and all involvement or participation in activities at Wolf Creek Generating Station whether as a salaried employee, a contract employee, a consultant, a volunteer, a manager or in any other position:

(i) William Rudolph,
(ii) Glenn Koester,
(iii) Robert L. Scott,
(iv) Charles Snyder,
(v) Any other individual who the NRC determines has prevented Wolf Creek Generating Station from complying with Federal quality assurance regulations in a culpable manner.

The Petitioners' request has been denied for the reasons fully described in the Director's Decision (DD-89-4) under 10 CFR 2.206, issued on this date, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and the Local Public Document Rooms for the Wolf Creek Generating Station located at Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801, and Washburn University School of Law Library, Topeka, Kansas.

A copy of the Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As provided in this regulation, the Decision will constitute the final action of the Commission twenty-five (25) days after issuance, unless the Commission, on its own motion, institutes review of the decision within that period.

Dated at Rockville, Maryland, this 26th day of June 1989.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 89-15607 Filed 6-30-89; 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 05/05-0168

Mesirow Capital Partners SBIC, Ltd.; License Surrender

Notice is hereby given that Mesirow Capital Partners SBIC, Ltd., 135 So. La Salle St., Chicago, IL 60603 has surrendered its license to operate as a small business investment company under Section 301(c) of the Small Business Investment Act of 1958, as amended (the Act). Mesirow Capital Partners SBIC, Inc. was licensed by the Small Business Administration on July 7, 1982.

Under the authority vested bv the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on June 6, 1989, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: June 23, 1989.

[FR Doc. 89-15614 Filed 6-30-89; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Phoenix, will hold a public meeting at 9:30 a.m. on Tuesday, June 27, 1989, at the SBA Phoenix District Office, First Floor Conference Room, 2005 North Central Avenue, Phoenix, Arizona to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call James P. Guyer, District Director, U.S. Small Business Administration, 2005 North Central Avenue, 5th Floor, Phoenix, Arizona 85004, phone (602) 261-3737.

Jean M. Nowak,

Director, Office of Advisory Councils.

June 26, 1989.

[FR Doc. 89-15613 Filed 6-30-89; 8:45 am]

BILLING CODE 8025-01-M

Region VIII Advisory Council; Public Meeting

The U.S. Small Business Administration Region VIII Advisory Council, located in the geographical area of Denver, will hold a public meeting at 9:00 a.m. on Thursday, June 29, 1989, at the SBA Regional Office, 999 18th Street, Suite 701, Denver, Colorado to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Gilbert M. Cisneros, Regional Administrator, U.S. Small Business Administration, Region VIII, 999 18th Street, Suite 701, Denver, Colorado 80202.

Jean M. Nowak,

Director, Office of Advisory Councils.

June 26, 1989.

[FR Doc. 89-15615 Filed 6-30-89; 8:45 am]

BILLING CODE 8025-01-M

Region III Advisory Council; Public Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Baltimore, will hold a public meeting from 3:00 p.m. to 5:00 p.m. on Thursday, July 27, 1989, at the Maryland Small Business Development Center, 123 West 24th Street, Baltimore, Maryland to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Charles J. Gaston, District Director, U.S. Small Business Administration, 10 North Calvert Street, 3rd Floor, Baltimore, Maryland 21202, phone (301) 962-2054.

Jean M. Nowak,

Director, Office of Advisory Councils.

June 26, 1989.

[FR Doc. 89-15609 Filed 6-30-89; 8:45 am]

BILLING CODE 8025-01-M

Region V Advisory Council; Public Meeting

The U.S. Small Business Administration Region V Advisory Council, located in the geographical area of Minneapolis/St. Paul, will hold a public meeting on Thursday, August 4, 1989 at 1:00 p.m. at the U.S. Small Business Administration District Office, 610-C Butler Square, 100 North Sixth Street, Minneapolis, Minnesota, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration or others present.

For further information, write or call Edward A. Daum, District Director, U.S. Small Business Administration, 610-C Butler Square, 100 North Sixth Street, Minneapolis, Minnesota 55403, phone (612) 370-2306.

Jean M. Nowak,

Director, Office of Advisory Councils.

June 26, 1989.

[FR Doc. 89-15610 Filed 6-30-89; 8:45 am]

BILLING CODE 8025-01-M

Region VII Advisory Council; Public Meeting

The U.S. Small Business Administration Region VII Advisory Council, located in the geographical area of Omaha, will hold a public meeting beginning at 9:00 a.m. on Thursday, July 27, 1989, at the SBA office, 11145 Mill Valley Road, Omaha, Nebraska, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Robert W. Horner, District Director, U.S. Small Business Administration, 11145 Mill Valley Road, Omaha, Nebraska 68154, phone (402) 221-3620.

Jean M. Nowak,

Director, Office of Advisory Councils.

June 26, 1989.

[FR Doc. 89-15611 Filed 6-30-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

[Public Notice 1114]

Certain Nonimmigrant Visas; Validity

Notice is hereby given that consular officers are authorized to issue, in their discretion, nonimmigrant visas under section 101(a)(15)(B) of the Immigration and Nationality Act (temporary visitors for business or pleasure) valid for an indefinite period of time to otherwise eligible nationals of the countries listed below, which offer reciprocal or more liberal treatment to nationals of the United States who are in a similar class.

This order, which adds Costa Rica and France to the list (effective July 1, 1989), amends the country name of St. Christopher-Nevis to read St. Kitts and Nevis, and incorporates recent amendments, will be amended from time to time to include other countries which accord similar privileges to U.S. nationals.

Anguilla
Antigua and Barbuda
Aruba
Austria
Bahamas (B-2 only)
Barbados
Belgium
Belize
Bermuda
Bolivia
Botswana
Canada
Cayman Islands
Chile
Costa Rica
Cyprus
Denmark
Dominica
Fiji
Finland
France
Germany, Federal Republic of
Gibraltar
Greece
Grenada
Guatemala
Hong Kong
Iceland
Ireland
Israel
Italy
Jamaica
Lesotho
Liechtenstein
Luxembourg
Malawi
Malaysia
Maldives
Malta
Mauritius
Mexico
Monaco
Morocco
Netherlands
Netherlands Antilles
New Zealand
Norway
Panama
Paraguay
Peru
Philippines
Portugal
St. Kitts and Nevis
St. Lucia
St. Pierre and Miquelon
St. Vincent and the Grenadines
San Marino
Seychelles
Singapore
Spain
Swaziland
Sweden
Switzerland
Thailand
Tonga
Trinidad and Tobago
Tunisia
Turkey
Tuvalu
United Kingdom
Uruguay
Venezuela
Virgin Islands, British

Public Notice 913 of August 22, 1984, issued at 49 FR 33392, and amendments thereto are hereby superseded.

Date: June 27, 1989.

Joan M. Clark,

Assistant Secretary for Consular Affairs.

[FR Doc. 89-15564 Filed 6-30-89; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 89-6-52]

Fitness Determination of Champlain Enterprises, Inc. d/b/a Commutair

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination—order to show cause.

SUMMARY: The Department of Transportation is proposing to find that Champlain Enterprises, Inc. d/b/a Commutair is fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, Room 6401, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than July 5, 1989.

FOR FURTHER INFORMATION CONTACT: Barbara P. Dunnigan, Air Carrier Fitness Division, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 366-2342.

BEST COPY AVAILABLE

Dated: June 28, 1989

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-15646 Filed 6-28-89; 4:12 pm]

BILLING CODE 4910-62-M

Formulation of a National Transportation Policy: Outreach for Issues, Positions, Problems and Recommended Solutions

AGENCY: Office of the Secretary, DOT.

ACTION: Request for comments.

SUMMARY: The Department of Transportation is requesting comments from interested parties on transportation issues, positions, and recommended solutions. The Department seeks to broaden its knowledge and garner consensus for a national policy. The information will be used as input to the Secretary of Transportation's National Transportation Policy Statement.

DATE: Comments must be received on or before September 1, 1989, in order to be fully considered in the development of the national transportation policy.

Comments should be sent to the Departmental staff persons(s) heading one or more of the transportation market "cluster" groups listed below:

Urban/Suburban Transportation

Mr. John Cline, Associate Administrator for Budget and Policy, Urban Mass Transportation Administration, Room 9310, 400 Seventh Street SW., Washington, DC 20590 Ph: (202) 366-4050.

Rural Transportation

Mr. H. Joseph Rhodes, Director, Office of Policy Development, Federal Highway Administration, Room 3317, 400 Seventh Street SW., Washington, DC 20590 Ph: (202) 366-0587.

Intercity Freight Transportation

Mr. Bill Watt, Associate Administrator for Policy, Federal Railroad Administration, Room 8300, 400 Seventh Street SW., Washington, DC 20590 Ph: (202) 366-0173.

Intercity Passenger Transportation

Mr. Dale McDaniel, Acting Associate Administrator for Policy, Planning, and International Aviation, Federal Aviation Administration, Room 934A, 800 Independence Avenue SW., Washington, DC 20591 Ph: (202) 267-9105.

International Transportation

Mr. Arnold Levine, Director, International Transportation and Trade, Office of the Secretary, Room 10300, 400 Seventh Street SW, Washington, DC 20590 Ph: (202) 366-4368.

Innovation and Human Factors in Transportation

Mr. Mark Dowis, Executive Assistant to the Administrator, Research and Special Programs Administration, Room 8410, 400 Seventh Street SW, Washington, DC 20590 Ph: (202) 366-4461.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick V. Murphy, Deputy Assistant Secretary, Policy and International Affairs, Room 10228, 400 Seventh Street SW, Washington, DC 20590 (202) 366-4551.

For Further Information on the Overall Policy Development Process: Dr. Anthony R. Kane, National Transportation Policy Team Director, Room 5102A, 400 Seventh Street SW, Washington, DC 20590, (202) 366-6231.

SUPPLEMENTARY INFORMATION: A top priority of the Department of Transportation during the remainder of 1989 will be to develop a comprehensive national transportation policy and accompanying implementation strategies which reflect the role of transportation in a changing national and international environment. Early next year, the Secretary of Transportation will issue a National Transportation Policy Statement that will set forth the policy guidelines and strategies for meeting the Nation's transportation needs over the next decade and into the 21st Century. As such, it will provide the framework through which decisions on transportation infrastructure, services, and related needs can be systematically assessed and implemented.

In order to stimulate a discussion of issues, problems and solutions from a multimodal perspective, development of the National Transportation Policy will be organized largely by transportation market areas, with senior Departmental staff conducting analyses based on information and opinions from a variety of sources. The transportation market "clusters" to be examined will include:

- Urban/suburban transportation systems and services: People and goods moving within metropolitan areas.
- Rural transportation systems and services: People and goods moving within and between less populated areas.
- Intercity freight: domestic transportation systems and services: Goods moving long distance within the United States.
- Intercity passenger: domestic transportation systems and services: People moving long distance within the United States.
- International transportation systems and services: People and goods moving from or to the United States.
- Innovation and human factors in transportation: New technologies and the interplay of users and providers with transportation systems.

Concurrent with these market segment analyses, a series of seminars will be held to examine cross-cutting issues having broad implications for the development of a national transportation policy. Preliminary plans call for seminars addressing special needs of the transportation disadvantaged, transportation and energy, national security transportation needs, environmental considerations in achieving national transportation goals, and transportation's role in economic growth.

A critical component of this overall policy development process will be to solicit information and opinions from transportation users, the transportation industry, interest groups (including government agencies), transportation employees, and the Congress. Views on major issues, problems, and possible solutions related to the transportation market "clusters" listed above are being solicited by this notice. To facilitate this exchange, many of the Cluster Groups will hold meetings and public hearings throughout the nation during July and August at places and times to be announced.

A context document that examines the current transportation system and its external environment, and further describes the national transportation policy development process and key issues to be addressed will be available to the public in July.

Paramount among the concerns to be addressed in formulating a comprehensive national transportation policy are:

- *Infrastructure.* Our transportation infrastructure, parts of which have been in service for over a century, is wearing out.
- *International Trade.* If America is to be competitive in the growing global marketplace, the U.S. transportation system must move goods and people with high performance and low cost.
- *Growth in Demand.* As economic activity grows, the demand for transportation services increases. Even moderate rates of travel growth over the next 2 decades will result in a significant increase (50 to 100 percent) from today.
- *Equity and Access.* Certain segments of our society—the elderly, the handicapped, the poor, and rural residents and businesses—cannot participate fully in our national transportation systems, and the cost of providing that service can be very high. As the Nation's population ages over the next few decades, the challenge of providing access for all will grow.
- *The Environment.* Transportation has been a major contributor to the Nation's environmental problems, with increasingly serious implications for the future.
- *Safety.* Despite improvements in transportation safety in recent years, there continue to be too many accidents and fatalities.
- *Petroleum Dependence.* The Nation—and our transportation system in particular—remains vulnerable to possible disruptions in oil supply due to increasing dependence on foreign oil.
- *National Security.* Assuring the civil transportation sector's ability to meet national security defense needs is a challenge, particularly for the declining maritime industry. We must also assess methods to protect civil transportation resources used in international trade against terrorism and other threats.

In summary, there are a number of key questions regarding the Nation's transportation system that must be considered in formulating a national transportation policy. These include:

1. What factors have the greatest effect on the performance and efficiency of the transportation systems serving a market?
2. Have the full costs of our current transportation systems been identified? If not, what are the "hidden" costs and who pays them? Do these "hidden" costs distort market choices?
3. How do changes in transportation user costs create or diminish economic development opportunities? To what extent do such costs influence business location/relocation decisions?
4. What role does transportation have in providing employment opportunities for disadvantaged persons?
5. Should the relationship between transportation and economic development be addressed at a regional, state, or multi-state level, rather than in the context of local economic development objectives?
6. Within a market, what transportation services are considered essential to maintaining the vital social and economic needs of society?
7. How can market mechanisms influencing the supply and demand of transportation services address the question of basic mobility and accessibility requirements?
8. How should additional safety and security requirements be balanced with respect to their public benefits and economic consequences?
9. Are transportation safety and security levels adequate and are standards for safety and security responsive to service changes and threats within particular markets?
10. What actions should be taken to address the civil transportation sector's capability to meet national security requirements, both in support of defense deployments and maintaining the civil economy?
11. What aspects of transportation systems, land use patterns, and public transportation policies have the greatest effect in creating or mitigating adverse environmental consequences?
12. How should environmental impacts or "costs" be calculated, and how should such costs be considered in transportation investment decisions?
13. What mechanisms are most appropriate in allocating environmentally related costs?
14. Is the design and operation of the transportation system responsive to market demands?
15. Are transportation management techniques more effective in improving service levels and quality than major capital investments?
16. Do the incremental costs of adding new service exceed the point at which the user is willing or able to pay for the costs of the improvements?
17. What investment strategies are most appropriate in developing the competitive strength of competing transportation systems?
18. Should improvements to the public infrastructure be limited to projects demonstrating the greatest user demand and the greatest efficiency?
19. In reviewing investment options, what factors should be examined in considering whether an institution has the financial capabil .y to maintain and operate all aspects of its transportation network as well as its non transportation financial obligations?
20. Do the overlapping roles and responsibilities of Federal, state, and local agencies lead to conflicting regulatory requirements and investment decisions?
21. Who bears the responsibility for assuring that transportation decision-makers consider the investment priorities and interrelationships among transportation systems and markets?

Comment by all parties on these and other transportation issues is welcome.

Issued this 28th day of June, 1989, in Washington, DC.

Patrick V. Murphy,

Deputy Assistant Secretary, Office of Policy and International Affairs.

[FR Doc. 89-15592 Filed 6-30-89; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: June 23, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, P.L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0887

Form Number: 8281

Type of Review: Revision

Title: Information Return for Publicly Offered Original Issue Discount Instruments (OID)

Description: Form 8281 is filed by the issuer of a publicly offered debt instrument having OID. The information is used to update Publication 1212, List of Original Issue Discount Instruments

Respondents: Businesses or other for-profit

Estimated Number of Respondents: 500

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping, 5 hours, 1 minute

Learning about the law or the form, 18 minutes

Preparing, copying, assembling, and sending the form to IRS, 23 minutes

Frequency of Response: On occasion

Estimated total Recordkeeping/Reporting Burden: 2,855 hours

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive

Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89-15587 Filed 6-30-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: June 28, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, P.L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0010
Form Number: W-4
Type of Review: Extension
Title: Employee's Withholding Allowance Certificate
Description: Employees must file this form to tell employers (1) the number of withholding allowances claimed, (2) dollar amount they want withholding increased each pay period, and (3) if they are entitled to claim exemption from withholding. Employers use this information to figure the correct tax to withhold from the employee's wages
Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 53,405,000
Estimated Burden Hours Per Response:
Recordkeeping, 46 minutes
Learning about the law or the form, 10 minutes
Preparing the form, 70 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 112,150,500 hours
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89-15588 Filed 6-30-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: June 27, 1989.

The Department of Treasury has submitted the following public information collecion requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, P.L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0675
Form Number: 1040EZ
Type of Review: Revision
Title: Income Tax Return for Single Filers with No Dependents
Description: This form is used by certain single individuals to report their income subject to income tax and to compute their correct tax liability. The data is also used to verify that the items reported on the form are correct and are also for general statistics use
Respondents: Individuals or households
Estimated Number of Respondents/ Recordkeepers: 19,067,000
Estimated Burden Hours Per Response:
Recordkeeping, 5 minutes
Learning about the law or the form, 18 minutes
Preparing the form, 30 minutes
Copying, assembling, and sending the form to IRS, 27 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 21,550,896 hours
OMB Number: 1545-1008
Form Number: 8582
Type of Review: Revision
Title: Passive Activity Loss Limitations
Description: Under section 469, losses from passive activities, to the extent that they exceed income from passive activities, cannot be deducted against nonpassive income. Form 8582 is used to figure the passive activity loss allowed and the loss to be reported on the tax return. Worksheet 1 and 2 in the instructions are used to figure the amount to be entered on line 1 and 2 of Form 8582, and worksheets 3 through 6 are used to allocate the loss allowed back to individual activities
Respondents: Individuals or households, Farms, Businesses or other for-profit
Estimated Number of Respondents/ Recordkeepers: 14,900,000
Estimated Burden Hours Per Response:
Recordkeeping, 40 minutes
Learning about the law or the form, 1 hour, 11 minutes
Preparing the form, 1 hour, 24 minutes
Copying, assembling, and sending the form to IRS, 20 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 55,428,000 hours
OMB Number: 1545-1091
Form Number: 8810
Type of Review: Revision
Title: Corporate Passive Activity Loss and Credit Limitations
Description: Under Section 469, losses and credits from passive activities, to the extent they exceed passive income (or in the case of credits, the tax attributable to net passive income), are not allowed. Form 8810 is used by personal service corporations and closely held corporations to figure the passive activity loss and credits allowed and the amount of loss and credit to be reported to their tax return
Respondents: Business or other for-profit
Estimated Number of Respondents/ Recordkeepers: 100,000
Estimated Burden Hours Per Response:
Recordkeeping, 41 hours, 22 minutes
Learning about the law or the form, 4 hours, 40 minutes
Preparing and sending the form to IRS, 5 hours, 33 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 6,079,000 hours
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Rom 5571, 1111 Constitution Avenue NW, Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Department Reports, Management Officer.

[FR Doc. 89-15589 Filed 6-30-89; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF VETERANS AFFAIRS

Wage Committee; Meeting

The Department of Veterans Affairs (VA) in accordance with Pub. L. 92-463, gives notice that meetings of the VA Wage Committee will be held on: Thursday, July 27, 1989, at 2:00 p.m., Thursday, August 10, 1989, at 2:00 p.m., Thursday, August 24, 1989, at 2:00 p.m., Thursday, September 7, 1989, at 2:00 p.m., Thursday, September 21, 1989, at 2:00 p.m.

The meetings will be held in Room 300, Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Department of Veterans Affairs and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be hald in confidence. Closure of the meetings is in accordance with subsection 10(d) of Pub. L. 92-463, as amended by Pub. L. 94-409, and as cited in 5 U.S.C. 552b(c)(2) and (4).

However, members of the public are invited to submit material in writing to the Chairperson for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairperson, VA Wage Committee, Room 1175, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: June 26, 1989.

By Direction of the Secretary.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 89-15573 Filed 6-30-89; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 126
Monday, July 3, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

STATE JUSTICE INSTITUTE

TIME AND DATE:

9:00 a.m. to 5:00 p.m., July 13, 1989
9:00 a.m. to 5:00 p.m., July 14, 1989

PLACE: State Justice Institute, 120 South Fairfax Street, Alexandria, Virginia 22314.

STATUS: The meeting will be open to the public, except for a brief period on the afternoon of July 13 to discuss personnel matters.

MATTERS TO BE CONSIDERED:

Portions Open to the Public:

Consideration of applications submitted for Institute funding; discussion of FY 1990 Proposed Guideline.

Portions Closed to the Public:

Discussion of internal personnel matters.

CONTACT PERSON FOR MORE INFORMATION: David I. Tevelin, Executive Director, State Justice Institute, 120 South Fairfax Street, Alexandria, Virginia 22314, (703) 684-6100.

David I. Tevelin,
Executive Director.

[FR Doc. 89-15678 Filed 6-29-89; 1:51 pm]

BILLING CODE 6820-SC-M

Corrections

Federal Register
Vol. 54, No. 126
Monday, July 3, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket 89-094]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit To Field Test Genetically Engineered Tomato Plants

Correction

In notice document 89-13885 beginning on page 24924 in the issue of Monday, June 12, 1989, make the following corrections:

1. On page 24924, in the first column, in the **SUMMARY**, in the 11th line, "HDl" should read "HD1".

2. On the same page, in the second column, under **SUPPLEMENTARY INFORMATION**, in the second paragraph, in the seventh line, "HDl" should read "HD1".

3. On the same page, in the third column, in designated paragraph 1, in the second line, "HDl" should read "HD1".

4. On the same page, in the same column, in the same paragraph, in the 10th line, "pollution" should read "pollination".

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-89-1917; FR-2606]

Unutilized and Underutilized Federal Buildings and Real Property Determined by HUD To Be Suitable for Use for Facilities to Assist the Homeless

Correction

In notice document 89-14830 beginning on page 26421 in the issue of Friday, June 23, 1989, make the following correction:

On page 26421, in the third column, in the second line, "HUD" should read "HHS".

BILLING CODE 1505-01-D

federal register

Monday
July 3, 1989

Part II

Department of Education

Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals With Severe Handicaps; Notices

DEPARTMENT OF EDUCATION

Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals With Severe Handicaps

AGENCY: Department of Education.

ACTION: Notice of final funding priorities for fiscal years 1989 and 1990.

SUMMARY: The Secretary of Education announces final funding priorities for fiscal years 1989 and 1990 for service activities to be supported under the Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps of the Rehabilitation Services Administration (RSA).

EFFECTIVE DATE: These final priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these final priorities, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: D. Ray Fuller, Jr., Division of Resource Development, Office of Developmental Programs, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 3314), Washington, DC 20202-2649. (Telephone: (202) 732-1494—voice; (202) 732-1349—TDD).

SUPPLEMENTARY INFORMATION: Grants under the Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps are authorized by Title III, section 311(a)(1) of the Rehabilitation Act of 1973, as amended. The purpose of this program is to expand and otherwise improve rehabilitation services to individuals with the most severe handicaps.

Under the Program of Special Projects and Demonstrations, awards are made to State and other public and nonprofit agencies and organizations.

On February 16, 1989, the Secretary published a notice of proposed priorities for this program in the **Federal Register** (54 FR 7156). Two changes have been made since publication of the proposed priorities. Under Priority 1—Rehabilitation Technology Services, additional examples have been included to clarify the model to assess the satisfaction of consumers with assistive devices. Under Priority 2—Innovative Strategies to Promote Vocational and Independent Living Outcomes, language has been inserted to include job coaches and community-based instruction as additional examples of mechanisms that can be used by projects to assist individuals with disabilities in their use of social networks.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, 13 parties submitted comments on the proposed priorities. An analysis of the comments and of the changes in the priorities since publication of the notice of proposed priorities follows.

Priority 1—Rehabilitation Technology Services

Comment: One commenter suggested that additional examples be provided to clarify the proposed model to assess the satisfaction of consumers with assistive devices. The commenter recommended that the priority specify that access to information, availability of needed services, timeliness of provision of services, and training in the use of devices are areas of consumer satisfaction that can be evaluated.

Discussion: The Secretary agrees that additional examples would help to clarify this rehabilitation technology services model.

Changes: The priority has been revised to provide additional examples of topic areas that may be investigated in assessing the satisfaction of consumers with assistive devices.

Comment: One commenter encouraged the addition of a second priority in the area of assistive technology services that would focus on increasing personnel who understand and can provide supported employment and assistive technology services.

Discussion: The Secretary agrees that there is a need to increase personnel who understand and can provide supported employment and assistive technology services. However, training projects cannot be funded under the Program of Special Projects and Demonstrations, which is designed to provide rehabilitation services to individuals with the most severe disabilities. A more appropriate funding source would be the Rehabilitation Training Program, which supports projects to increase the supply of qualified personnel to deliver rehabilitation services.

Changes: None.

Comment: One commenter suggested that proposed models four through seven would be more appropriately addressed by Rehabilitation Engineering Centers (RECs) funded by the National Institute on Disability and Rehabilitation Research (NIDRR) because the models focus on the devices themselves rather than the actual use of assistive devices in the delivery of rehabilitation services. The commenter also stated that some of these proposed models are already being funded by a number of RECs through NIDRR funding.

Discussion: While it is true that some NIDRR supported RECs are conducting technology research in certain of these areas, the proposed models to be funded under the Program of Special Projects and Demonstrations do not duplicate these efforts. Rather, they are intended to complement and build on any relevant REC research findings by applying those research findings to develop models to deliver rehabilitation services. The priority specifically requires that applicants, in developing their proposals, take into consideration relevant REC research activities in order to promote the implementation of research findings through the development of service models.

Changes: None.

Comment: One commenter recommended the addition of another priority model for a local community-based system of rehabilitation technology service delivery as an integral part of a supported employment program for individuals who face multiple barriers to employment.

Discussion: The Secretary believes that individuals who are eligible for supported employment services qualify as an underserved population and that the type of model recommended by the commenter could be supported under the second model described in the notice for this priority. The Secretary does not, therefore, agree that the priority needs to be modified to fund this type of project. The Secretary also believes that the recommended model could be funded under the Program of Special Projects and Demonstrations for Providing Supported Employment Services to Individuals with Severe Disabilities—Community-Based Projects. A fiscal year 1989 notice inviting applications for new awards under this program was published in the **Federal Register** on March 24, 1989. The closing date for the submittal of applications in response to that announcement was May 22, 1989.

Changes: None.

Comment: One commenter recommended the addition of a model to increase the availability of quality assurance indicators, such as certification of personnel, accreditation of facilities or other measures that may be appropriate to the provision of rehabilitation technology services. The commenter further expressed concern that a major impediment to the systematic growth of rehabilitation technology services is the lack of quality assurance indicators.

Discussion: The Secretary agrees that a model designed to increase the availability of quality assurance indicators for the provision of rehabilitation technology services has merit. However, projects supported under the Program of Special Projects and Demonstrations must provide improved or expanded vocational rehabilitation services to individuals with severe disabilities. Because the recommended model appears to be directed more toward the development and dissemination of quality controls to evaluate the effectiveness of rehabilitation technology services rather than service delivery, support of this type of model could not be done under the Program of Special Projects and Demonstrations. While the primary focus of a technology model under the Program of Special Projects and Demonstrations must be service delivery, the applicant may build into the scope of the project quality control indicators that are secondary in focus and directly related to the project.

Changes: None.

Comment: One commenter recommended that reference to volunteer and peer networks be removed from proposed model three in the priority because a Federal initiative fostering unpaid and nonprofessional services runs the real risk of impeding the development of statewide programs to provide technology services.

Discussion: The described priority does not require the use of volunteer and peer networks but rather lists them as examples of mechanisms that may be used to provide long-term technology assistance. The Secretary does not agree that the use of volunteer and peer networks will impede the development of statewide technology programs.

Changes: None.

Priority 2—Innovative Strategies to Promote Vocational and Independent Living Outcomes

Comment: One commenter recommended that special consideration be given to projects that would serve persons with mental impairments, particularly those with severe impairments. Another commenter suggested adding language that specifically includes individuals with autism, severe learning disabilities, serious emotional disturbances, traumatic brain injury, and severe and profound handicaps. Another commenter suggested the specific inclusion of people with Acquired Immune Deficiency Syndrome (AIDS).

Discussion: The Secretary does not believe it is necessary to identify specifically in the priority particular disability populations that may be served by projects funded under the priority. The priority clearly applies to "individuals with severe handicaps," as defined in applicable program regulations in 34 CFR 369.4(b). Therefore, applicants may propose a demonstration project to serve any disability population covered by this definition.

Changes: None.

Comment: One commenter recommended the addition of job coaches and community-based instruction to the illustrative list of mechanisms in the priority that may be used to assist individuals with severe disabilities to use typical social networks.

Discussion: The Secretary agrees that job coaches and community-based instruction are valuable aids that projects may use to assist individuals with disabilities to achieve vocational and other goals.

Changes: The priority has been revised to include job coaches and community-based instruction as examples of mechanisms that can be used to assist individuals with disabilities in the achievement of their vocational and independent living goals.

Comment: One commenter suggested that the Program of Special Projects and Demonstrations fund Independent Living Centers to achieve the involvement of individuals with disabilities in the planning and implementation of the project.

Discussion: Under the statutory authority for the Program of Special Projects and Demonstrations, States or other public or nonprofit agencies and organizations are eligible to apply for grant assistance. The statutory authority for this program does not permit the limitation of funding to Centers for Independent Living only. In addition, the Secretary believes that eligible applicants should be given the flexibility to identify the particular manner in which they would involve individuals with disabilities in the planning and implementation of the project. The Department considers the involvement of individuals with disabilities in the planning and implementation of the project to be of critical importance. The selection criteria to be used in this competition have been amended, therefore, to permit reviewers to direct special attention to assessing the project's plan of operation in terms of its involvement of individuals with disabilities in the planning and implementation of the project.

Changes: None.

Comment: One commenter was concerned about the need to train independent living center board and executive staff members in organizational management skills that are necessary to initiate and develop programs to promote vocational rehabilitation and independent living outcomes on a long-term basis.

Discussion: The statutory authority for the Program of Special Projects and Demonstrations does not authorize the award of grants for the training of personnel. The Rehabilitation Services Administration does, however, administer the Rehabilitation Training Program. Under this program, grants may be awarded to increase the supply of qualified personnel available for employment in public and private agencies and institutions involved in the vocational and independent living rehabilitation of individuals with disabilities, especially those with the most severe disabilities. A fiscal year 1989 notice inviting applications for new awards under the Rehabilitation Long-Term Training Program of the Rehabilitation Training Program was published on February 6, 1989. That notice identified Independent Living as one of the areas in which funds would be available for the training of personnel.

Changes: None.

Other Comments

Comment: One commenter proposed the addition of a third priority focusing on potential funding for Client Assistance Programs (CAPs).

Discussion: In addition to funding for the two described priorities, funds will also be available under the Program of Special Projects and Demonstrations for the support of projects under a "Non-Priority" category. This will permit the Department the flexibility to support projects that are not responsive to the two described priorities, including client assistance programs that are eligible entities under the Program of Special Projects and Demonstrations and that are not subject to the independence requirement in 34 CFR 370.2(c).

Changes: None.

Comment: One commenter recommended that language be added to assure that training would occur in "natural environments" to guarantee that networking would be functional for individuals served.

Discussion: Projects funded under the described priority must propose projects that include a plan of operation to

improve and expand services to individuals with disabilities. A project that focuses on networking must demonstrate the achievement of vocational and independent living outcomes as a result of those activities.

Change: None.

Final Priorities

In accordance with the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105(c)(3), the Secretary will set aside funds and give an absolute preference to applications that respond to the final funding priorities under the program described in this notice for fiscal years 1989 and 1990; that is, the Secretary will select for funding only those applications proposing projects that meet one of these priorities.

The publication of these priorities does not bind the United States Department of Education to fund projects in these service areas, unless otherwise specified by statute. Funding of particular projects depends on the availability of funds and the quality of the applications received.

Priority 1—Rehabilitation Technology Services

There is increasing awareness that the application of innovative rehabilitation technology and rehabilitation engineering advances can be used to help individuals with disabilities meet and eliminate the barriers they face in employment. The purpose of this priority is to solicit applications that will demonstrate models to facilitate the use and delivery of rehabilitation technology and rehabilitation engineering services to individuals with disabilities to enhance their employability. Projects proposed under this priority must take into consideration activities conducted by the Rehabilitation Engineering Centers (RECs) supported by the National Institute on Disability and Rehabilitation Research (NIDRR), if appropriate. It is intended that projects will be complementary to, rather than duplicative of, research activities being conducted by the RECs. The project must demonstrate a model approach to developing and implementing one of the following: (1) A local community-based model system of rehabilitation technology information exchange to improve the delivery of rehabilitation services; (2) a local community-based model system of rehabilitation technology service delivery for rural or underserved populations; (3) a local community-based model to provide long-term technology assistance, such as the use of volunteer and peer networks to assist in the repair and maintenance of devices, updating and improvement of devices, or redesign of technological devices to meet new or emerging needs of individuals with disabilities; (4) a model to increase the availability of reliable and durable assistive technology devices that address unique, low-market demand, or complex technology-related needs of individuals with disabilities; (5) a model to assist in the transfer of technology that is not specifically designed for individuals with disabilities to uses appropriate for these individuals, such as automotive equipment and adaptive devices, use of small appliances, and use of luxury items; (6) a model to assess the satisfaction of consumers of assistive devices in areas such as access to information, availability of needed services, timeliness of provision of services, repairs, training in the care of the devices, and ways to use consumer feedback to improve the rehabilitation process; or (7) a model to coordinate available financial resources, especially local resources, to create financing systems for the delivery of rehabilitation technology services.

Each application must respond to only one of the described priority areas. A separate competition will be conducted for each priority area.

Priority 2—Innovative Strategies to Promote Vocational and Independent Living Outcomes

The use of innovative strategies to promote vocational and independent living outcomes could significantly improve the ability of individuals with disabilities to eliminate barriers they face in the community and increase their control over decisions concerning their daily living choices, including vocational options, and facilitate their integration into the community.

The proposed demonstration project must be designed to promote vocational and independent living outcomes for individuals with severe disabilities. The project must use mechanisms such as peer counseling, job clubs, consumer networks, job coaches, and community-based instruction to assist individuals with severe disabilities to use typical social networks (for example, friends, family, neighbors, co-workers, professional associations, and community organizations), i.e., social networks that are used routinely by individuals without disabilities to achieve vocational and other goals.

For this competition only, the Secretary will review applications under this priority in accordance with the selection criteria in §§ 369.31 and 373.30, with the following exceptions and amendments. The criteria in § 373.30(f) (service comprehensiveness) and § 373.30(g) (relevance to the State-Federal rehabilitation service program) will not apply to this competition. The criterion in § 369.31(a) (plan of operation) will apply, but with a new paragraph (a)(2)(vi) reading as follows: "A plan for the involvement of individuals with disabilities in the planning and implementation of the project." The points assigned to this criterion will be increased to 25 points. The criterion in § 369.31(d) (evaluation plan) will apply, but with a new paragraph (d)(1)(3) reading as follows: "The Secretary looks for information that shows that the applicant will generate data that demonstrates the impact of the project on the vocational and independent living outcomes of the individuals served.", and the points assigned to this criterion will be increased to 15 points. Also, the points assigned to the criterion (innovativeness of approach) will be increased to 20 points.

(Approved by the Office of Management and Budget under control number 1820-0018)

Authority: 29 U.S.C. 777a(a)(1).

Dated: June 12, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.128A, Rehabilitation Services Administration)

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[CFDA No. 84.128A]

Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals With Severe Handicaps; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1989

Purpose of Program: This program provides support to State and other public and nonprofit agencies and organizations to expand or otherwise improve rehabilitation services for individuals with severe handicaps.

Deadline for Transmittal of Applications: August 7, 1989.

Applications Available: July 3, 1989.

Estimated Total Available Funds: $2,500,000.

Awards are to be made in two priority categories and one nonpriority category. Specific information regarding estimated funds and awards appears in the chart in this notice.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 80, 81, and 85; and (b) The regulations for this program in 34 CFR Parts 369 and 373.

The priorities in the notice of final priorities for this program, as published in this issue of the **Federal Register** also apply.

For Applications or Information Contact: Mary Ford, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3332 (Switzer Building), Washington, DC 20202-2650. Telephone: (202) 732-1351.

Program Authority: 29 U.S.C. 777a(a)(1).

Dated: June 27, 1989.

Patricia McGill Smith,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

Category	Estimated available funds	Estimated size of awards	Estimated No. of awards
Priority 1— Rehabilitation technology services	$900,000	$150,000	6
Priority 2— Innovative strategies to promote vocational and independent living outcomes	700,000	100,000	7
Non-priority	900,000	100,000	9

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federal register

Monday
July 3, 1989

Part III

Environmental Protection Agency

Endangered Species Protection Program; Notice of Proposed Program

ENVIRONMENTAL PROTECTION AGENCY

[OPP—36168; FRL 3611-11]

Endangered Species Protection Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed program.

SUMMARY: This Notice summarizes EPA's revised proposed Endangered Species Protection Program (Program). The Program includes a new approach to biological consultation and a revised implementation plan, including a voluntary Interim Program. This Notice also provides background information regarding EPA's development of the Program since 1987.

DATE: Comments in response to this Notice must be received on or before October 2, 1989.

ADDRESSES: Written comments identified by the document control number OPP-36168 should be submitted in triplicate to: Public Docket and Freedom of Information Section, Field Operations Division (H7506-C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: By mail:

Larry Turner, Ecological Effects Branch, Environmental Fate and Effects Division (H7507-C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 815, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-1007).

SUPPLEMENTARY INFORMATION: This Notice is organized into several units. Unit I is the introduction, which provides information on legal authority, the consultation process, and the initial development of the Endangered Species Protection Program, as well as a summary of the **Federal Register** (FR) Notice published on March 9, 1988. That FR Notice described EPA's proposed Program and solicited public comments on a number of issues related to the Endangered Species Protection Program. Unit II provides a summary of the development of the Program since January 1988 and includes the role of EPA, the states, and other agencies, particularly the U.S. Department of Agriculture (USDA) and U.S. Fish and Wildlife Service (FWS) of the Department of the Interior. Unit II also provides a summary of the role of the Interagency Task Groups that have been formed to assist EPA in developing the Endangered Species Protection Program, as well as a summary of their primary tasks. The revised proposed Program is summarized in Unit III, including the new approach to biological consultation and a revised implementation plan. Exemptions from the Program and information regarding public health emergencies and enforcement of the Program are provided in this Unit as well. Unit IV contains an analysis of public comments, and Unit V provides a summary of the voluntary Interim Program, which includes pilot programs and education and outreach efforts. Unit VI provides additional technical background information, and Unit VII discusses information related to the public record and solicitation of public comments. Finally, Unit VIII provides the references cited throughout the Notice. Each Unit, as appropriate, includes information regarding the role of the public in various aspects of the proposed Program.

I. Background

A. Legal Authority

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 135 *et seq.*) governs the regulation of pesticides in the United States. Under FIFRA, a pesticide product may be sold or distributed in the United States only if it is registered or exempted from registration by EPA. Before a product can be registered unconditionally, it must be shown that the pesticide can be used without "unreasonable adverse effect on the environment" (FIFRA section 3(c)(5)), that is, without causing "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide" (FIFRA section 2(bb)), when used in accordance with label directions.

Congress passed the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA), to provide protection for animal and plant species that are threatened or endangered of becoming extinct and to conserve the ecosystems upon which they depend. (Such threatened or endangered species are referred to as listed species in this document.) The ESA institutes certain prohibitions against the "taking" of listed species of plants and animals.

Section 7 of the ESA (15 U.S.C. 1536) requires all Federal agencies to ensure that any action authorized, funded or carried out by the agency will not be likely to jeopardize the continued existence of a listed species or to result in the destruction or adverse modification of the critical habitat of a listed species. This duty extends to licensing activities, such as the registration of pesticides by EPA. In other words, EPA in registering pesticides must ensure that its actions do not harm listed species.

The FWS is the Federal agency responsible for administering the ESA for most species. However, the National Marine Fisheries Service (NMFS) of the Department of Commerce also administers the ESA and is responsible for protecting listed marine species. USDA's Animal, Plant and Health Inspection Service has some enforcement responsibility for the import/export of terrestrial plants under ESA and under the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

In 1988, both FIFRA and ESA were amended. The amendments to FIFRA do not contain any explicit references to EPA's Endangered Species Protection Program. However, the ESA amendments (Pub. L. 100-478; 102 U.S.C. 2306) directly address EPA and its activities affecting pesticides. The ESA amendments require that EPA work jointly with USDA and the U.S. Department of the Interior to identify appropriate alternatives for implementing a labeling program to protect listed species from pesticides, while allowing agricultural food and fiber commodity production to continue. The ESA amendments require EPA to investigate the best available methods to develop maps, alternatives to mapping, and to identify alternatives to prohibitions on pesticide use. The ESA Amendments also require EPA to inform and educate fully those engaged in agricultural production of the elements of any proposed pesticide labeling program and to provide an opportunity to comment on the elements of such a program.

B. ESA Consultation Process

Briefly, the consultation process under ESA begins when a Federal agency makes a determination that its authorized or funded action, in EPA's case registration and reregistration of pesticides, may affect a listed species or its critical habitat ("may affect" determination) and requests a Biological Opinion from FWS. To comply with EPA's responsibilities under section 7 of ESA, EPA conducts an assessment of the potential effects of pesticides on listed species. If EPA determines that a

particular pesticide use "may affect" a listed species, EPA initiates a formal consultation under section 7 of ESA. Generally, these consultations have been with FWS because most pesticide uses do not affect listed species under NMFS jurisdiction, such as whales, seals, and other marine animals.

In response to an agency's "may affect" determination, FWS develops a Biological Opinion on that action. A Biological Opinion regarding a pesticide indicates whether the use of the pesticide in question is likely to jeopardize the continued existence of a listed species or destroy or adversely impact a listed species' critical habitat. The Biological Opinion may contain reasonable and prudent alternatives and measures. Reasonable and prudent alternatives are actions which (1) the consulting agency is capable of implementing under its authority and jurisdiction, (2) are economically and technologically feasible, and (3) could avoid the likelihood of jeopardy to listed species or avoid the destruction or adverse modification of critical habitat.

In addition, the FWS may include reasonable and prudent measures if an incidental take statement is provided in the Biological Opinion. (Incidental take is the inadvertent killing, harming, or removal of federally listed species that results from carrying out an otherwise lawful activity, such as the use of a pesticide in accordance with label directions.) If incidental take is specified, reasonable and prudent measures will be provided to reduce the likelihood of incidental take. Incidental take and the associated reasonable and prudent measures may be specified for species regardless of whether or not FWS has declared jeopardy for the species.

If the Federal agency cannot comply with the Biological Opinion, it may apply for an exemption under ESA to be considered by the Endangered Species Committee which is composed of the Secretaries of Agriculture, Army, and the Interior; Administrators of EPA and the National Oceanic and Atmospheric Administration; the Chairman of the Council of Economic Advisors; and representatives from each affected state who are appointed by the President of the United States, as appropriate. Regulations governing section 7 consultation procedures are described in 50 CFR Part 402. Unit VI.A. provides a summary of the procedures for complying with section 7 consultation requirements.

C. Initial Development of the Endangered Species Protection Program

The EPA began developing the Endangered Species Protection Program in 1982 because the approach that EPA had been using to comply with the ESA had been criticized as inadequate. The EPA's consultations were conducted only on individual registration actions that were submitted to EPA, which resulted in a case-by-case approach. This approach was slow and generally did not consider older and often more toxic pesticides. Since newer pesticides were being reviewed routinely as part of the registration process, newer pesticides were more likely to be referred to FWS than older pesticides. This resulted in inadequate protection for listed species. Also, the case-by-case approach resulted in market inequity among registrants of different pesticides for the same uses.

Consequently, EPA in cooperation with FWS developed the "cluster" approach to requesting consultations, in which all pesticides registered for the same use pattern were addressed at the same time. Each pesticide in a cluster was evaluated independently for its toxicity and expected exposure to listed species. The individual evaluations were grouped together and referred to FWS for consultation as a cluster. The purpose of this approach was to accelerate the review of a larger number of pesticides that could affect listed species, to treat new and old pesticides consistently, and to eliminate market inequities by reviewing pesticides with similar uses as one group.

After EPA received Biological Opinions for certain pesticides included in the initial cluster consultations, EPA intended to implement the reasonable and prudent alternatives identified by FWS for these pesticides by using pesticide product labeling and county-specific Pesticide Use Bulletins for Protection of Endangered Species (Bulletins). The Bulletins would contain habitat maps and would describe pesticide use limitations within the habitat of listed species. However, EPA encountered difficulties in acquiring accurate maps and map information and also received many comments from other Federal agencies, states, and users regarding the overall approach. Criticism about the lack of public involvement also was raised. The EPA concluded that more time was required to develop the Endangered Species Protection Program and that public comment on the proposed Program was needed. The EPA issued a FR Notice on March 9, 1988, (53 FR 7716) which described EPA's proposed Program and requested comment. The EPA also held public meetings across the country to obtain additional comments.

D. Summary of the March 9, 1988, FR Notice

On March 9, 1988, EPA issued a FR Notice (53 FR 7716) requesting public comment on the Endangered Species Protection Program described in that Notice, as well as on alternative approaches that would protect listed species from jeopardy resulting from the use of pesticides. The proposed Endangered Species Protection Program described in the March 9, 1988, FR Notice, which is superseded by the revised proposed Endangered Species Protection Program set forth in this Notice, is discussed in the Units I.D.1. through 6.

1. *Cluster approach.* The EPA originally proposed an Endangered Species Protection Program based on the cluster approach to consultations, as opposed to the case-by-case approach that had been previously used. The EPA proposed to evaluate all pesticides registered for a particular use and to refer at one time to FWS for a Biological Opinion, those for which a "may affect" determination was made.

The EPA had completed reviews and received Biological Opinions for clusters encompassing pesticides used on selected crops (corn, soybeans, cotton, sorghum, oats, barley, wheat and rye); in forests; as mosquito larvicides; and on rangeland or pasture land. Under this approach, additional use patterns would have been evaluated until all pesticide/listed species combinations were addressed.

2. *Exemptions.* The proposed Program would have exempted home and garden uses and certain forestry uses. The FR Notice also indicated that under ESA, pests identified by the Department of the Interior to present an overriding risk to man would not be eligible for listing under the ESA.

3. *Labeling/bulletins.* The EPA's proposed Program relied on the labeling of affected pesticides to instruct users that they must comply with the limitations on use, as identified in the Bulletins. In May 1987, EPA issued Pesticide Registration (PR) Notices 87-4 and 87-5, which indicated that in order to remain in compliance with FIFRA, all registrants of pesticide products identified in the clusters as causing jeopardy to listed species must modify their product labeling to provide pesticide users with the information necessary to protect listed species.

Specifically, labels would list the counties in which use limitations

applied and would refer users to the Bulletins for the county in which the product was to be used, or labels would provide the user with a FWS telephone number to obtain further information. The Bulletins also would contain a map of the county identifying the area in which there were pesticide use limitations to protect listed species.

4. *State-initiated plans.* In October 1987, EPA invited states to develop alternative plans to protect listed species. These plans could include changes in pesticide application rates, timing, methods, or any other measures that would protect listed species and would be subject to the approval of both EPA and FWS. These state-initiated plans would provide EPA with recommendations to achieve compliance with the ESA in the state and would reduce the potential adverse impact on the user community within that state.

5. *Program deferral.* When PR Notices 87-4 and 87-5 were issued, EPA intended that the labeling approach would take effect in the 1988 growing season. However, it became clear that implementation of the Endangered Species Protection Program would be far more complex and time-consuming than originally anticipated. Public response to the draft maps and to the proposed Program in general indicated a number of significant concerns, such as map inaccuracies, the need for more public review and comment on the Program, the necessity for additional education and training programs, and others. Also, the development of state-initiated plans would require coordination and cooperation among several groups, which would take time. Therefore, EPA announced on January 7, 1988, that it was deferring implementation of the Endangered Species Protection Program for the 1988 growing season. For registrants, EPA issued PR Notice 88-1 on January 26, 1988, which rescinded PR Notices 87-4 and 87-5.

Deferral of the Program was in keeping with Congressional action. In passing the 1988 Continuing Appropriations Bill, Congress blocked expenditures prior to September 15, 1988, of EPA funds to implement or to enforce the Endangered Species Protection Program.

6. *Request for public comment.* In the FR Notice (53 FR 7718) EPA invited public comment on any aspect of the Program and invited participation in public meetings to be held across the country. The FR Notice identified several major areas on which comments were of particular interest. These areas included identifying alternatives to use prohibitions to preclude jeopardy to listed species; evaluating the appropriateness of an approach based on clusters, maps, and product labels; assuring consistency between pesticide-specific and use-cluster Biological Opinions that declared jeopardy; maintaining consistency with other Federal programs involved with pesticide use; providing assistance to non-traditional user groups; and providing guidelines or minimum requirements for state-initiated plans recommending alternative measures.

II. Development of the Program Since January 1988

A. The Role of EPA

Since deferral of the Endangered Species Protection Program, the Office of Pesticide Programs (OPP) within EPA has continued work to identify listed species that may be harmed by pesticide use and to develop the Program. As part of this effort, EPA has reviewed the public comments and considered them in revising the Program. To ensure that the maps describing the habitat of listed species are accurate and reflect currently occupied habitat, EPA has been working closely with other Federal agencies and the states in revising the maps. To assist in developing the Program, EPA has formed Interagency Task Groups with USDA and FWS. The EPA also has continued to consult with FWS on pesticide registrations and reregistration actions. To date, EPA has submitted over 65 pesticide/use specific (case-by-case) consultation requests, along with consultation requests on groups of pesticides registered for use on corn, cotton, soybeans, sorghum, wheat, oats, barley, rye, forests, rangeland, noncropland, and as aquatic herbicides and mosquito larvicides.

The EPA's Regional Offices serve as lead liaisons to states developing state-initiated plans and have been working very closely with these and other states, as well as the Indian Tribes.

In addition, Regional Offices will be working with the Commonwealths of Puerto Rico and the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Federated States of Micronesia, and the Republics of the Marshall Islands and of Palau. These areas were not originally included in the Program because the cluster consultations did not reveal any listed species that were jeopardized from the use of pesticides in these areas. However, recent Biological Opinions have included listed species in some of these areas. The EPA will therefore develop the appropriate maps and Bulletins and will invite development of plans to protect listed species.

Other Regional Office activities include holding public meetings and being involved in coordination of map reviews and outreach efforts. Regional Offices also have been involved by providing input and reviewing various aspects of the Program. In addition, the Regional Offices have been identifying the states which will participate in pilot programs described in Unit V of this document and will be involved with the evaluation of these pilot programs.

The EPA is preparing to do an economic impact analysis with the assistance of USDA and FWS. In developing this analysis, EPA is gathering pesticide usage and crop location data, as well as information on the location of the habitats of listed species, to develop several case studies. Since the proposed Program is intended to protect listed species and still be responsive to the needs of pesticide users, EPA is trying to develop a program that will not place unnecessary burden on pesticide users. (Refer to Unit II.D.3. for additional information.)

In addition, EPA will also quantify the cost to society by estimating the impacts to pesticide registrants and pesticide users regarding implementation of a generic versus county-specific labeling approach and also will qualitatively examine the effectiveness of these approaches. (Refer to Units III.B.1. and VII.B.1. for additional information.)

The EPA will continue to work to protect listed species while at the same time completing the case study analyses and the analysis of the generic versus county-specific labeling approaches. These analyses will be considered in developing the final Endangered Species Protection Program.

B. The Role of the States

State involvement also has been an important aspect of the Program because each state has its own unique situation and concerns regarding listed species. The extent to which each state is involved is a decision made by that state. Some states are developing state-initiated plans and are investigating the development of alternative practices that would provide protection for listed species, while still allowing the use of certain pesticides. Still others are developing education and training programs specific to the needs of protecting listed species in their state. Additionally, state-initiated plans may suggest additional local factors that EPA can consider in making "may affect" determinations. Through the use of such factors, EPA may be able to further narrow the scope of pesticide use limitations for agricultural, commercial, and home and garden pesticides while continuing to protect listed species. The guiding principle for all state efforts will be to eliminate impacts on listed species so that EPA pesticide registration activities do not harm the species.

Many states have proposed or are proposing revisions to the maps of listed species habitats by more accurately describing the currently-occupied habitat of the affected species. The EPA will rely as much as possible on the revised maps submitted by the states, although the final maps ultimately will be subject to the approval of FWS. The EPA and FWS also are working on refining the maps for all states. In all cases, states will be provided the opportunity to review the maps before they become final.

C. Interagency Cooperation

On November 5, 1987, an informational briefing was held before the U.S. House of Representatives' Committee on Agriculture. During this briefing, the three Federal agencies most directly involved in issues related to listed species and pesticide use agreed to form a senior level policy committee for oversight and to ensure consistency among the Federal agencies in designing and implementing an effective program that considers the various needs of species, agricultural users of pesticides, public health, and environmental safety.

The USDA, FWS, and EPA instituted this committee which is composed of Assistant Secretaries and Deputy Assistant Secretaries of the USDA, the Director of FWS, the EPA Assistant Administrator for Pesticides and Toxic Substances, and the EPA Deputy Director of OPP.

This interagency committee has met periodically since 1987 to discuss policy concerns and to give senior management direction and concurrence as the Endangered Species Protection Program was designed and developed. This policy committee will continue to meet as needed and will continue to ensure broad consistency and support for the Program throughout the Federal agencies that are most closely associated with the issue.

D. Interagency Task Groups

Three Interagency Task Groups were formed to assist EPA in developing the Endangered Species Protection Program. These groups involve EPA, FWS, and USDA. Each agency participates to varying degrees, depending on the task. Although EPA has the overall lead in developing and implementing the Endangered Species Protection Program, other Interagency Task Group members may have the lead on developing certain types of information or may perform assistance and review functions. The primary tasks for these groups are to provide assistance and support in the technical aspects, outreach and education efforts, and analyses of impacts and alternatives of the Endangered Species Protection Program.

1. *Technical Task Group.* The Interagency Technical Task Group was established to provide assistance and support in the planning and implementation of the technical aspects of the Endangered Species Protection Program. Current and planned efforts of the group include improving interagency involvement during the consultation process, facilitating information exchange, providing technical recommendations, suggesting areas for new research, ensuring adequate review of Bulletin information for various species, and working to improve the processes involved in map review. The Technical Task Group also is assisting in establishing criteria for setting priorities for species potentially affected by pesticides to help focus efforts of the Program.

Other important tasks of this group include collection and review of data needed to ascertain and to quantify the differences in risk associated with different areas of the country, application methodologies, techniques, and alternatives. The Technical Task Group is reviewing educational materials for technical/biological accuracy and will assist in collecting the data necessary to improve modeling efforts as data needs are identified.

The Technical Task Group may be called upon to review or to ensure adequate review of potential use limitations, risk reduction measures, incidental take statements, and reasonable and prudent actions.

2. *Outreach and Education Task Group.* The EPA has established an Interagency Outreach and Education Task Group to help address issues of education and outreach. This group performs three primary functions including (i) identifying educational needs and the mechanisms to address those needs, (ii) developing specific materials for the public, and (iii) reviewing educational materials and outreach processes.

a. *Identification of educational needs and the mechanisms to address those needs.* Key areas in which a need for educational materials have been identified include:

(i) The requirements of the ESA regarding pesticide registration.

(ii) The EPA's process to determine whether a pesticide use "may affect" a listed species.

(iii) Specific information regarding the Endangered Species Protection Program, its potential implications for pesticide use limitations, and identification of opportunities for public participation in Program development and implementation.

(iv) The availability of alternative pesticides, methods of use, and non-pesticidal pest control methods.

The Outreach and Education Task Group also has considered mechanisms which might be utilized to disseminate information or ensure its availability to the public. The FWS and EPA Regional Offices have existing outreach and education mechanisms and may be called upon to assist in these efforts. In addition, the Soil Conservation Service (SCS) and the Cooperative Extension Service have field personnel in nearly every county in the country. The EPA will explore further the possibility of using these networks to establish distribution points for information. Pesticide manufacturers, distributors, pesticide dealers, trade associations, and possibly direct mail to some areas have been identified as other possible means to distribute information.

b. *Development of specific materials for the public.* Two specific pieces of information already are being developed by the Outreach and Education Task Group to support the Endangered Species Protection Program. First, a brochure is being developed which will describe the applicable provisions of ESA, its relationship to FIFRA, and the process through which EPA and FWS work to determine whether a pesticide use will harm a listed species. The FWS has taken the lead responsibility for drafting this brochure; EPA will contribute information regarding its responsibilities under FIFRA and ESA. The resulting document will address these topics and other questions identified by pesticide users regarding the Program.

Second, this Task Group is developing species fact sheets. Each sheet will describe a particular species, its habitat needs, viability, number of populations, and other factors. The EPA anticipates that efforts to protect listed species from harm will be enhanced by a better understanding of the species requiring protection.

c. *Review of educational materials and outreach processes.* The Outreach and Education Task Group will review educational and outreach materials for content and form to ensure the widest possible acceptance of the information and to aid in the understanding of EPA's Program. For example, information in the form of printed and audio-visual

materials on the Endangered Species Protection Program in general are planned. There are also plans to distribute information on alternatives which will not impact listed species when that information is available.

3. *Impacts and Alternatives Task Group.* The Impacts and Alternatives Task Group will investigate the economic costs to various segments of the population affected by the Endangered Species Protection Program. The goal of this analysis is to develop a program that considers economic impacts, but still provides protection to listed species.

The analysis of program impacts will be based on several case studies, which will be used to estimate a range of economic effects. These case studies are based on the results of the existing Biological Opinions and the pesticide use limitations that were to have gone into effect in 1988 and will be conducted for field crop, fruit and vegetable crop, forestry, and public health uses.

The use sites and their locations proposed for the case studies will be chosen because they represent a significant overlap of listed species and pesticide use areas, are likely to have the least number of alternatives available, and have a high concentration of minor use crops. As a result, these sites and/or geographical areas are expected to represent locations where the magnitude of economic impacts are likely to be greater than other areas. As a result, the EPA believes that this approach will overstate economic impacts by providing a range of conservative estimates.

The complexity of the Endangered Species Protection Program and the breadth of its coverage make a conventional approach to the analysis of impacts and alternatives difficult and costly. Data on pesticide usage, information on alternative cropping systems and other relevant facts vary greatly in availability and quality. Species-specific details for cropping practices, pesticide use practices, pest problems, availability and suitability of alternative pesticide(s), and other factors often are not available or are not available in a form suitable for economic analysis. As a result, a variety of approaches to the analysis will be used in addition to the case studies such as qualitative estimates, general overviews, and rigorous economic analyses where data permit.

To the extent that data are available, the Impacts and Alternatives Task Group will also investigate possible alternatives tc use limitations, such as the timing of application and other pest control practices that may be employed within the habitats of listed species.

III. The EPA's Revised Endangered Species Protection Program

The EPA developed the new Endangered Species Protection Program to fulfill two primary objectives. The first objective is to achieve the best protection for listed species. The second objective is to be responsive to the needs of agricultural production in this country by developing a program that can be readily implemented without unnecessary burden on pesticide users. The EPA hopes to accomplish both objectives through the new Program and a new approach to biological consultation.

Conceptually, the new approach to biological consultation is a species-based approach. The EPA believes that the goal of protecting listed species from pesticides can best be achieved by focusing on the listed species themselves, rather than on clusters of pesticide use sites, as had previously been proposed. It should be noted that the majority of comments on EPA's previously proposed Program favored a species-based approach, and many variations were suggested. The EPA has developed a species-based approach that is responsive to its legal obligations under ESA and that meets both its objectives. (See Unit IV of this document for a discussion of other approaches that were considered.)

The EPA believes that its second objective, reducing the burden on pesticide users, can be met through the use of a threshold application rate approach and consideration of different exposures resulting from various application methods in determining whether a pesticide "may affect" listed species, as well as through refined maps. The EPA will determine the threshold (lowest) application rate on the product label that "may affect" listed species. This approach will be used to evaluate all uses of a pesticide. Consultation with the FWS will be limited only to the specific application rates that "may affect" a listed species. Thus, application rates below the threshold application rate will not be part of the consultation request.

Achieving the objectives that EPA has set out will depend on the active participation of an informed public and the rigorous application of sound scientific methods throughout the consultation process. Sound science is needed in reviewing pesticides and their potential impacts, determining the location of listed species, and devising workable use limitations and alternatives. The EPA is firmly committed to developing a program that is grounded in good science. The EPA also intends to build its Program through an open and participatory process that encourages the involvement of the states, counties, agricultural community, environmental groups, and the many individuals and organizations concerned about this issue.

Unit III.A. summarizes the new species-based approach and is followed by an explanation of how the approach will be phased-in for species covered by existing Biological Opinions, as well as other listed species. Unit III.B. describes the implementation of the new approach through labeling and Bulletins.

A. New Approach to Biological Consultation

1. *Conceptual approach.* Under the new approach, EPA will begin its efforts with the most vulnerable of the listed species, which are those with the greatest need of protection. The species will be ranked based on their status, vulnerability to pesticides, and other pertinent factors. With the assistance of FWS, EPA will then identify the counties in which each of the ranked species is currently located. The next step will be to determine the agricultural crops and other pesticide use sites that are in the county.

Then EPA will identify the pesticides registered for use on these sites. For each pesticide so identified, EPA will evaluate all uses to determine those that "may affect" listed species and will then request a consultation from FWS for those pesticide uses which result in a "may affect" determination. Although pesticides will be selected for evaluation on the basis of vulnerable species, EPA requests a consultation as a result of pesticide registration for specific uses. Therefore, FWS may include all species that could be impacted by pesticides referred to FWS.

Subsequent consultations will focus on the next group of vulnerable species and associated pesticides until all species and pesticides have been considered. After this point, consultation will occur on a case-by-case basis depending on receipt of new information, registration applications, or listing of new species.

a. *"May affect" determinations.* Under the original cluster approach, EPA based its "may affect" determination for a particular use of a pesticide on the highest registered application rate for that use. If EPA concluded that the highest application rate resulted in a "may affect" determination, EPA requested a consultation from FWS for that use. If the FWS found jeopardy, all products containing that pesticide for that use were subject to the use limitations to prevent jeopardy.

Under the new approach, EPA will use the highest application rate on the label only as a screening mechanism. If the screening step indicates a "may affect" situation, the pesticide will be evaluated further to determine the threshold or lowest application rate that "may affect" listed species. (See Unit VI.B. of this document for a detailed discussion of the "may affect" determination process, and Unit VI.C. for information on the procedure used to calculate the threshold application rate.) Consultation with FWS will be limited only to the specific application rates and uses that "may affect" listed species.

In developing "may affect" determinations, EPA will take into account, to the extent data are available, other aspects of exposure such as application methods, timing, and species biology. These factors, coupled with the use of more precise models than were available in the past, will serve to provide FWS with better information on which to base Biological Opinions.

In conducting its evaluation, EPA will use available validated toxicity data and information on potential exposure. Where appropriate and available, EPA will include data that are site-specific to a species' location. If EPA finds a need to reevaluate a "may affect" determination, EPA will use any other available new data and new scientific methodology, such as refined models.

Once the threshold application rate for a pesticide is established, EPA will determine if any known measures could alter the "may affect" determination or reduce exposure. This information will be given to FWS when EPA requests consultation or reinitiates consultation on existing Opinions. If the threshold application rate is lower than any registered application rates, EPA will conclude that all of the registered application rates will result in a "may affect" determination.

Most commonly, pesticide threats to listed species will be from acute toxicity from direct exposure. However, "may affect" determinations may be made on the basis of secondary toxicity; cumulative, reproductive, or chronic effects; or effects on habitat or food supply. Where EPA has sufficient information, evaluations of these kinds of effects will also be based on a threshold application rate. (See Unit VI for additional information.)

b. *Public notification.* The EPA intends to provide public notification 30 days prior to initiating consultation with FWS. The EPA will identify the pesticides, use sites, and species evaluated and will summarize the "may affect" determinations. The supporting material for EPA's "may affect" determination will be available for review at OPP.

The amount of information that EPA must review and validate in making a "may affect" determination can be very extensive. At the same time, EPA needs to formally consult with FWS in a timely manner to fulfill its obligations under ESA. The EPA is committed to using the best scientific data available in making a "may affect" determination. Submission of such information to EPA early in the process will enhance EPA's ability to validate the data and use the information effectively.

In addition, if a pesticide registrant wishes to amend a registration in such a way that the pesticide would no longer affect listed species, EPA will review its preliminary "may affect" determination in light of the requested amendment. For example, a pesticide registrant may wish to eliminate a high exposure use pattern or modify the application rate to lower the potential exposure to listed species. A change in application methodology, timing of application, or type of formulation may, in some cases, reduce exposure sufficiently to preclude effects to listed species.

The EPA encourages identification of additional reasonable and prudent actions that will protect the listed species while minimizing the limitations on pesticide use. Data, information on suggested reasonable and prudent actions, and requests for amendment will be considered prior to consultation or in a later reinitiation of consultation, depending on the timeliness of the submission.

c. *Consultation.* At the conclusion of the 30-day notification period, EPA will request consultation with FWS. As part of the consultation package, EPA may propose to FWS any known measures to reduce exposure that may represent reasonable and prudent alternatives to preclude jeopardy if jeopardy is found, or otherwise reduce impacts to the species.

During the consultation process, EPA, FWS, and USDA will be working to exchange information on exposure. They will attempt to identify relationships between species and pesticide use sites, as well as modifications of use which could be used as reasonable and prudent actions. Before FWS issues its Biological Opinion, EPA may request a draft Opinion for review. During this review, EPA will focus on the proposed reasonable and prudent actions specified by FWS. If warranted, EPA will forward alternative suggestions to FWS for their consideration in developing their final Biological Opinion.

d. *Biological Opinion.* The final result of the consultation process is a Biological Opinion developed by FWS. It is important to note that not all pesticides that EPA refers to FWS through a "may affect" determination will necessarily be found by FWS to cause jeopardy to a species or result in reasonable and prudent measures to reduce incidental take. The jeopardy declaration or incidental take provision can be based on an assessment of whether a species will actually be exposed to the pesticide in question.

After EPA receives the final Biological Opinion, EPA will publish a notice of availability in the **Federal Register** and provide an opportunity for comment. Any new information resulting from these public comments may be used to reinitiate consultation, if warranted.

When the Biological Opinion is issued, FWS will provide currently-occupied habitat maps, habitat descriptions, or the information necessary for EPA to develop these. For those species that the FWS determines are subject to threats from collection, FWS will suggest reasonable and prudent actions that do not rely on mapping. The EPA will arrange for the states to review the maps and any habitat descriptions.

Upon completion of this process, EPA will make this information available to the public for their use prior to enforceable limitations being imposed. This will allow the public an opportunity to comment on the information and provide an additional opportunity for submitting suggestions for reasonable and prudent actions. Based on comments at any stage of the review process, EPA will work with FWS to resolve any problems or reinitiate consultation where appropriate.

2. *Phased process.* To carry out the new approach, EPA will proceed in several phases. First, in the "catch-up" phase EPA will reinitiate consultation to update existing Biological Opinions to incorporate newly listed species, all uses, and additional information now available on the pesticides involved. This reinitiation is a result of a request from FWS because of the need to update the Biological Opinions, to incorporate species listed since the Opinions were issued, and to provide incidental take statements.

The second phase involves additional consultations on all remaining registered pesticides. The third phase is characterized as a "maintenance"

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phase, whereby EPA maintains ongoing compliance with the ESA.

a. *Existing Biological Opinions.* Using the new approach, EPA will reevaluate the "may affect" determinations and review all of the existing Biological Opinions generated from the 1982 to 1984 "cluster" consultations. Biological Opinions that resulted from registration and reregistration processes will also be included. First, EPA will identify species for which jeopardy was declared and incidental take identified, as well as the pesticides which prompted the findings. The EPA will focus initially on the most vulnerable species in identifying the pesticides that will be evaluated first. Most importantly, identified pesticides will be evaluated to include all use sites, not just those in the previously defined clusters.

Before the new approach was developed, EPA reinitiated consultation in September 1988 on a portion of the existing Biological Opinions that were generated from the 1982 to 1984 cluster consultations. This reinitiation resulted from a request from FWS. It was intended to clarify the status of certain pesticides and/or species, allow EPA to refine its "may affect" determinations, and allow FWS to review its approach to evaluating data for Biological Opinions. The EPA intends to reinitiate consultation on the remaining portions of the existing Biological Opinions. This consultation will use the new approach and include any species/pesticide combinations from the September 1988 reinitiation, as necessary.

b. *Additional consultations.* Once EPA has completed reinitiation of consultation on all of the existing Biological Opinions, EPA will begin evaluating pesticides not included in the existing Biological Opinions. Using a ranked list of vulnerable species, EPA will identify pesticide use sites that could expose the listed species to pesticides (i.e., pesticide use sites within the county in which the species is found). The EPA will evaluate the toxicity data and determine whether any uses of the selected pesticides "may affect" listed species. The EPA will then request consultation with FWS.

c. *Maintenance.* Once all registered pesticides have been evaluated using the new approach, EPA's obligations to consult under ESA will be fulfilled through an ongoing process of evaluation and referral. Registration actions for new pesticides or new uses of existing pesticides will be evaluated as they are received. Any new pesticides or new uses that exceed the "may affect" criteria will be referred to FWS for a Biological Opinion prior to granting the registration request. If new, valid information becomes available on existing pesticide registrations, EPA will re-evaluate its "may affect" determinations and reinitiate consultation when appropriate. The EPA anticipates that reinitiations on the basis of new information will occur on an annual or biannual basis. Periodically, EPA will reinitiate consultation on pesticides already included in the Program to obtain Biological Opinions for newly listed species.

3. *Conclusions.* The EPA believes that the new approach embodied in the revised proposed Endangered Species Protection Program will allow EPA to fulfill its obligations to protect listed species under ESA without unduly burdening the agricultural community and other pesticide users. The new approach avoids creating situations where some uses of a pesticide are limited while other uses, within the same geographic location, are not. By considering all uses of a pesticide at one time, the new approach will better protect listed species in the Program from nearly all threats of a pesticide, thus operating in a more integrated and equitable manner.

The new approach also allows for reasonably rapid implementation of actions specified in the existing Biological Opinions that EPA has received from FWS. This will facilitate EPA's efforts to fulfill its obligations under the ESA.

Finally, since threshold application rates will be used in the new approach, it may be possible to identify certain lower application rates and certain application methods that will not result in "may affect" determinations or that may not result in FWS specifying actions to protect listed species. The EPA will be using the best available information and science to assess the risks resulting from particular application rates and methods.

B. Implementation

The EPA will implement the new Endangered Species Protection Program through pesticide labeling, which will refer users to county-specific Bulletins. Several important changes are being proposed in the labeling/bulletin approach described in the March 9, 1988, FR Notice (53 FR 7716). These changes will make the new Program equally effective, but easier to implement and less burdensome to pesticide manufacturers and users. These changes include the use of a generic label statement on affected products (rather than listing all affected counties on the labeling), refining habitat maps, and identifying reasonable and prudent actions to mitigate jeopardy and anticipated incidental take.

1. *Labeling/bulletin approach.* When modifications in pesticide use are necessary to protect a listed species, the product registrant will be instructed that in order to remain in compliance with FIFRA, the product label must be modified to inform the user that the product can only be used in compliance with a county Bulletin. The labeling of affected products will not list the counties in which limitations on pesticide use apply, as had previously been proposed, nor will labeling require the user to obtain a Bulletin. Instead, the labels on affected products will require that users in all counties comply with use limitations in the Bulletin for the county in which they intend to use the pesticide. As in EPA's previously proposed Program, the Bulletins will contain a county map showing the geographic area associated with each species of concern, depending on the sensitivity of the species to other factors such as collection. The Bulletins will identify the pesticides that may harm these species and describe the use limitations necessary to protect them.

For those counties in which no limitations apply, the county Bulletin will indicate that use of the pesticide according to label directions is appropriate. These Bulletins will also provide general information regarding the protection of listed species. (Refer to Unit IV.7.a. for additional discussion.)

All Bulletins will contain an address to which a pesticide user or other interested party may direct comments, as well as suggestions for improving the information contained in the Bulletins, pertinent technical information, and suggestions for less stringent but equally protective reasonable and prudent alternatives to the use limitations. Technically valid information received by EPA may be used to reinitiate consultation with FWS.

The Bulletins will also indicate the responsibilities under the ESA of Federal agencies that handle pesticides. Federal agencies that have completed a formal consultation under section 7 of the ESA for a specific project, where that project involves use of an identified pesticide in an area on the map where use limitations exist, are required to adhere to the procedures and limitations provided by the FWS in their specific consultation. Federal agencies that have not completed a formal section 7 consultation must conform to the limitations in the Bulletin.

The EPA will make every effort to ensure that the Bulletins will be available in advance of the time that pesticide labels are modified to refer users to the Bulletins. The Bulletins will be updated no more frequently than once per year, if needed, to add or delete limitations or to incorporate new information received from pesticide users and other interested parties.

The EPA will use many available avenues to ensure wide distribution of and easy access to the county Bulletins. Distribution mechanisms currently exist through training and certification programs within the states, through the Cooperative Extension Service, and EPA Regional Offices. The EPA will focus on these existing mechanisms for distribution of the Bulletins. However, EPA also intends to explore other avenues such as pesticide dealers and distributors, SCS field offices, and FWS regional and field offices.

The EPA intends to rely heavily on the cooperative efforts of pesticide users to protect listed species from harmful pesticides. However, it should be noted that the labeling/bulletin approach provides for the same degree of enforcement under the protective measures of FIFRA as would apply to any use information applicable to a registered product. This allows EPA to fulfill its obligations under ESA to ensure that pesticide registration will not harm listed species.

2. *Implementation timing.* The EPA anticipates that implementation of enforceable measures to protect listed species from pesticides will begin in January 1991 with the issuance of PR Notices to registrants of affected pesticide products. During 1989 and 1990, EPA will encourage voluntary measures to protect listed species. When EPA receives the results of its consultation with FWS, maps and county-specific Bulletins will be developed. Once Bulletins are developed and reviewed, EPA will issue to registrants a PR Notice that they must amend their labels. The PR Notice will indicate a specific time for products released from the manufacturer to bear the revised labeling.

These registrants include the producers of all pesticide products which resulted in Biological Opinions declaring jeopardy to a listed species or indicating the possibility of incidental take. The PR Notices will indicate that in order to remain in compliance with FIFRA, pesticide registrants must modify the labeling of products affected by the Endangered Species Protection Program. All affected products released for shipment after a specified date will be required to carry a label statement directing the user of the product to use the product only in accordance with the use limitations in the Bulletin.

A PR Notice will be issued annually, if needed, to notify pesticide registrants of additional products affected by the Program or products that have been removed from the Program. Because the label statement will be generic and counties will not be listed, registrants will not need to change their product labels whenever use limitations are extended to new counties or rescinded in currently identified counties. Label changes will be necessary only if the reasonable and prudent actions specified in a Biological Opinion are rescinded for all uses of a product. The EPA will review the county Bulletins as necessary but update them not more than once annually. In addition, EPA will rely heavily on the Federal agencies and the states for information regarding new areas of occupied habitat.

3. *State-initiated plans.* In response to state concerns, in 1987 EPA offered each affected state the opportunity to develop a state-initiated plan for protecting listed species. Such a plan would recommend measures which EPA could use to protect listed species in that state. When state-initiated plans are submitted to EPA for review and approval, EPA will consult with FWS to determine that the provisions of the plan will constitute reasonable and prudent actions to protect listed species within that state. If approved, EPA would adopt the state-initiated plan and require through the Bulletin that users comply with the requirements of the plan. State-initiated plans can be developed for all or a portion of the species affected in that state. States may submit a state-initiated plan to EPA at any time. However, once federally initiated requirements are implemented within a state, those requirements will be effective in the state until the state-initiated plan is approved and implemented.

C. Exemption

All indoor uses of pesticide products are exempt from the requirements of the Endangered Species Protection Program.

D. Public Health Emergencies

Under section 18 of FIFRA (40 CFR Part 166), a State or Federal public health agency may request that EPA grant an emergency exemption for a public health emergency or utilize the crisis provision (40 CFR 166.50), if a State or Federal agency can demonstrate that:

(1) An emergency, non-routine condition exists that requires the use of a pesticide.

(2) Effective registered pesticides or alternative practices are not available or economically or environmentally feasible.

(3) The situation will present significant risks to human health.

Public health emergencies, verified by State or Federal public health authorities, include (i) situations in which a pest outbreak poses a significant risk to human health or in which the elements for disease outbreak (i.e., virus activity, large population of disease vectors either present or pending, or others) are demonstrated to be in place and prompt action is required to avert an actual disease outbreak, and (ii) situations in which an actual disease outbreak is in progress and immediate action is essential to arrest the outbreak. In the latter case, a crisis exemption under section 18 may be appropriate, which allows a Federal or State agency to authorize the emergency use of a pesticide if its use is critical and enough time is not available for EPA to receive and complete a review of the specific public health exemption request. In either case, EPA will expedite the process through emergency consultation with FWS. Prior involvement with FWS will ensure rapid processing of the application.

As indicated, public health emergencies must be verified by State or Federal public health authorities. Where state verification capability is inadequate, section 18 applications should detail verification procedures including involvement of the Centers for Disease control (CDC). The EPA is working with the CDC and the American Mosquito Control Association to establish verification criteria and to develop a model for use by States. Public health agencies should recognize that prior to any emergency, local managers should be aware of any listed species within their jurisdiction and of the limitations imposed on pesticides which threaten those species. Requests for a public health or a crisis emergency exemption under section 18 for use of designated pesticides in the habitat of listed species should be an action of "last resort" after alternative pesticides and actions have been investigated and determined to be inadequate.

A State or Federal agency must follow the requirements under 40 CFR Part 166 when requesting a public health emergency exemption or utilizing the crisis provision. For an emergency exemption, the request must include a record of contacts with and recommendations made by the FWS office having jurisdiction in the area of concern regarding the use of alternative methods of vector control. If the crisis exemption is utilized, EPA must be

notified within 48 hours and a report submitted in accordance with 40 CFR 166.50. If a crisis exemption is to be utilized for longer than 15 days, a public health exemption must be submitted.

Generally, in accordance with the ESA, EPA does not authorize use of a pesticide under section 18 if that pesticide will jeopardize a listed species. However, during emergency circumstances, a public health exemption under section 18 may, if no practical alternative control measures are available, be sought for the use of a pesticide that was found to jeopardize listed species in the habitat of the species.

E. Enforcement

Enforcement of the use limitations that will be imposed for pesticides included in this Program to protect listed species will be carried out under two provisions of FIFRA, misbranding (FIFRA section 12(a)(1)(E)) and misuse (FIFRA section 12(a)(2)(G)). Products whose use requires limitations to protect listed species and which do not carry the necessary information on the product labeling, will be identified through routine inspections of manufacturing facilities and pesticide distributors and dealers or through information received regarding suspected misbranding. Products found to be misbranded (i.e., do not carry the required label language to protect listed species) may be subject to cancellation. In the field, pesticide misuse will be identified similarly through routine inspection and information provided regarding alleged misuse of a pesticide product. In addition, FWS could take enforcement action under the ESA against unlawful taking if a person harms a species through pesticide use or any other means, unless FWS has provided for incidental take and pesticide use is in accordance with label directions, and any required reasonable and prudent actions.

Enforcement will be carried out by the states through the existing enforcement cooperative agreements with EPA. In states that do not have primary enforcement responsibility under FIFRA, EPA will enforce the labeling and use provisions necessary to mitigate jeopardy to or reduce incidental take of listed species. As stated earlier, EPA intends to have an enforceable Program beginning in 1991. Successful education and training efforts will serve to increase understanding of, and therefore, compliance with the pesticide use limitations to protect listed species.

IV. Discussion of Public Comments on Previous Proposal

The EPA received over 600 public comments on its previously proposed Endangered Species Protection Program. These comments were made in response to the FR Notice (53 FR 7716) and the public meetings held in the spring of 1988. These comments were given great weight by EPA in developing the new Program and are summarized in the following units, which are organized by topic. EPA's response follows each topic summary.

1. *Burden of proof.* Several comments questioned who should be responsible for demonstrating that a pesticide may harm a listed species, since data are not always available to show a direct cause-and-effect relationship between a pesticide and the decline of a species. Some comments indicated that EPA should assume that a pesticide will harm a species and that the burden of proof should be placed upon the registrants or users to demonstrate that harm will not occur.

In contrast, other comments indicated that the burden of proof should be on EPA or FWS to demonstrate that the use of a particular pesticide causes a threat to a listed species before any use limitations on the pesticide are imposed. These comments asserted that EPA should assume that pesticide use will not harm a species, unless a direct cause-and-effect can be demonstrated.

Other comments indicated that the major threat to listed species is from land development and not from pesticide use. As a result, it was suggested that pesticide use not be limited at all.

Response: The EPA has sufficient information to justify taking the steps proposed in this FR Notice. Every use limitation that could be implemented under this Program would be based on both EPA's "may affect" determination and the issuance of reasonable and prudent actions by FWS. Such findings will be based on the best scientific data available.

The ESA is designed to provide protection to listed species to prevent them from becoming extinct and to their habitat to prevent adverse alteration. The EPA's responsibilities under the ESA dictate that it cannot wait to regulate a pesticide until conclusive proof of direct harm to a listed species has been compiled, submitted, and analyzed. Section 7 of the ESA is designed to prevent such harm before it occurs.

To determine potential risks to listed species, EPA conducts a risk assessment to arrive at a "may affect" determination. (Refer to Unit VI.B. of this document for additional information regarding how EPA goes about making a "may affect" determination.) Initially, EPA utilizes toxicity data from tests on surrogate species identified in the FIFRA guidelines (40 CFR Part 158). These data currently represent a wide range of animal species and are extrapolated to a variety of species that may be impacted, including those that are federally listed.

The EPA also evaluates exposure. In many cases, field data are not available to assess impacts directly, and assessments must be made based on other information, such as on product use patterns, predictions of the fate of the product in the environment, and species biology. When available, EPA uses actual validated fate data, monitoring data, and mortality reports.

Although habitat loss, including loss resulting from land development, may be the primary reason a species is federally listed, other factors also may place stress on the species and exacerbate the threats to its continued existence. For example, evidence is not available to suggest that federally listed species, in general, are more or less sensitive to toxicological characteristics of a pesticide than are non-listed species. However, listed species may not be able to respond quickly to population fluctuations caused by mortality or depression of reproductive functions because of their biology and status. Localized negative impacts on food supplies could be significant in terms of the survival and reproduction of listed species. Since the population of a listed species is generally already significantly reduced, the population is likely to be more susceptible to additional environmental stresses, in addition to habitat loss, than are non-listed species.

2. *Exemptions.* Several comments requested exemptions to the Endangered Species Protection Program's use limitations and provided comment on the exemptions identified in the FR Notice (53 FR 7717).

a. *Public health programs.* Several comments indicated that public health programs should be exempt and take precedence over the protection of listed species, even if this results in harm to the species.

One comment recommended that an annual review of vector control programs be performed and their potential effect on listed species identified. General control methods and pesticides could then be approved in advance of any public health emergency.

Response: The EPA recognizes the importance of the use of pesticides in public health emergencies where expeditious control of disease vectors such as mosquitoes and fleas is required. The EPA has been working with the CDC, American Mosquito Control Association, and others knowledgeable about vector control procedures. The EPA proposes in Unit III of this document that current FIFRA section 18 exemption procedures be the method to accommodate public health emergencies. Guidelines are under development to assist state and local public health agencies in making expedited use of this process.

Section 18 of FIFRA provides for exemption of Federal and state agencies for use of pesticides under emergency conditions. There are four types of emergency exemptions which may be authorized. The first is a specific exemption for an emergency condition to avert a significant economic loss or a significant risk to listed species, beneficial organisms, or the environment. The second is a quarantine exemption, which is an emergency condition involving the introduction or spread of a new pest to the United States. The third is a public health exemption for a situation involving a pest that will cause a significant risk to human health. For each of these three, an application for approval must be submitted to EPA in accordance with the regulations at 40 CFR Part 166. The fourth is a crisis exemption, which allows a Federal or state agency to authorize the emergency use of a pesticide for any of the previous reasons, if use is critical and there is insufficient time for EPA to receive or complete review on a specific quarantine, or public health exemption. Regulations pertinent to section 18 of FIFRA are detailed in 40 CFR Part 166.

b. *Areas less than one-half acre, private landowners, golf courses, real estate developments.* Other comments requested exemptions for areas of less than one-half acre, private landowners, golf courses, and real estate developments.

Response: The EPA's policy is to protect listed species in their currently occupied habitat. Providing exemptions for areas less than one-half acre, private landowners, golf courses, or real estate developments might expose some species to pesticides which could adversely impact listed species or their habitats. Thus, EPA could not grant such exemptions and still be in compliance with the ESA.

c. *Forestry.* Some comments indicated that the forestry exemption identified in the previous FR Notice (53 FR 7177) should not be allowed. This exemption included direct individual plant sprays and/or individual plant injection, seed beds and seed orchards (incorrectly identified in the previous FR Notice as seedbed orchards), nursery plantings, ornamental trees, and ornamental shrubs.

Other comments indicated that forest uses should be exempt, and if not, less stringent use limitations should be applied to pesticide use in forests, since pesticides are only applied on a limited basis and are applied at lower application rates in forests, as opposed to agricultural sites.

Response: The forest uses previously proposed to be exempt no longer would be exempt under the revised proposed Program. The EPA is concerned about the potential exposure to listed species from these forestry uses. Unless EPA can be assured that a particular application method or use site will result in no exposure to listed species, then EPA must decline a nationwide exemption. For example, EPA seriously considered exempting woody plant injections. However, woody plant injections could be made to colony trees of red-cockaded woodpeckers, thus destroying their habitat. EPA also previously proposed to exempt seed beds and seed orchards (53 FR 7717). Upon reconsideration, EPA recognizes that listed species could be exposed from such uses due to drift or run-off of a pesticide from such areas or as a result of the species being present during application.

EPA acknowledges that there may be only a few situations in which these forestry uses could expose listed species. Using the threshold approach, EPA may find that lower application rates may be a reasonable and prudent action that could preclude harm to a listed species. In other cases, a lack of exposure at specific forestry sites may be more appropriately handled through the county Bulletins rather than through a nationwide exemption.

The EPA is working with the USDA Forest Service through the Interagency Task Groups and is also working with other interested parties to analyze and evaluate the full range of application methodologies used in the forestry industry. If further information indicates that other methodologies will eliminate the threat to listed species, EPA will reconsider its position and take steps necessary to exempt such methodologies.

d. *Reintroduced populations.* Comments recommended that reintroduced populations of species should not be covered by the Program. A reintroduced population consists of a listed species that is being reintroduced into its former habitat in the hope that it will reestablish itself.

The question also was raised regarding when a reintroduced population would be considered to have stabilized enough to have its current habitat subject to the Program.

Response: The FWS is the agency responsible for developing species' recovery plans. Reintroducing species into its former habitat is often part of a recovery plan and can be undertaken through formal regulatory procedures (50 CFR 17.80) or less formal procedures. The FWS procedures, policies, and regulations for reintroduced species include Federal, state, and public involvement.

The EPA is obligated to protect species habitats based on the results of ESA section 7 Biological Opinions and information supplied from FWS concerning occupied habitats, which may or may not include reintroduced populations. Inclusion of these reintroduced populations for protection under the Program will be determined on a case-by-case basis, based on a Biological Opinion, the advice of FWS, and the involved state and Federal agencies in accordance with existing procedures for public involvement.

e. *Federal agencies.* Some comments indicated that Federal agencies should be exempt from the Program. Others indicated that Federal agencies should not be exempt and should be required to follow the ESA and any of EPA's identified use limitations.

Response. Federal agencies are required to adhere to the procedures and limitations provided by section 7 of ESA. As discussed in Unit III of this document, those Federal agencies that have completed a formal consultation under section 7 of ESA for a specific project involving the use of an affected pesticide where it might harm a listed species are required to adhere to the procedures and limitations provided by FWS through their specific consultation. If a Federal agency has not completed a consultation, the agency must conform to the requirements of ESA and comply with the instructions on product labels and in the appropriate Bulletins.

f. *Home and garden use.* Some comments indicated that the exemption for home and garden use, which was identified in the FR Notice (53 FR 7717), should not be allowed. Risks to listed species are not dependent on who applies the product.

Response: The EPA agrees that the factor triggering inclusion of a product in the Program must be the risk it poses to

listed species and not the person who will apply the product.

In EPA's previously proposed Program, three factors supported the household products exemption. First, EPA believed that the majority of household pesticide products with use limitations would not have actually resulted in harm to listed species. Household products often result in lower estimated environmental concentrations (EEC's) than products used in commercial settings due to a smaller area being treated and in some cases a lower percentage active ingredient in the product. Also, EPA was using the highest registered application rate of a product to determine whether the product "may affect" listed species.

Second, EPA believed that few listed species are likely to be closely associated with residential areas because of habitat modifications which are likely to result during residential development.

Finally, EPA believed that providing Bulletins to household users of pesticides would be difficult given the lack of routine contact of this user group with the Cooperative Extension Service, the major proposed route of Bulletin dissemination, and given the diversity of retailers who offer household pesticides for sale.

Upon reconsideration, EPA believes that it must eliminate the formerly proposed household product exemption to fulfill its obligations under section 7 of ESA because listed species could be exposed to pesticide exposure from household products. However, EPA proposes to exempt indoor pesticide uses where exposure to listed species does not occur.

The EPA anticipates that the limitations on the use of outdoor homeowner pesticide products will be minimal and that the number of users affected will be small. Under the revised proposed Program, EPA will consider application rates and methodologies and formulation types in its determination of whether a pesticide "may affect" listed species. Therefore, limitations would be necessary only on uses of a product which specifically have been determined to result in jeopardy to listed species or where FWS has provided specific measures to reduce incidental take. Under the previously proposed Program, the high incidence of cases where limitations would be imposed on household products that would not affect listed species would be eliminated using EPA's revised proposed "may affect" procedures.

Also, significantly more precise maps of listed species habitat and EPA's proposed use of habitat descriptions to supplement these maps would contribute to decreasing the incidence of overly broad limitations on use.

The EPA believes that the population of household pesticide users affected by the new proposed Program will be small because 5 to 10 percent of total pesticide usage in the United States is in the home and garden sector. Of that amount, the indoor pesticide market accounts for approximately 70 to 80 percent. Of those remaining household products that are used outdoors, it is predicted that a limited number will require limitations to protect listed species.

The volume of household pesticides used is small because the amount of pesticides individual members of a household purchase is generally small. However, this could still result in a potentially large number of individuals being affected.

The EPA will consider the concentration of the active ingredient in pesticide products, application rates and methods, and areas to be treated when determining the EEC that may result from use of pesticide products. The EPA will also consider the nature of the products. For example, canned ant baits and small volume pressurized aerosols such as certain insect sprays would probably result in low EEC's and thus not result in a "may affect" determination.

In all cases, EPA will determine that the product "may affect" listed species only if this EEC meets the "may affect" criteria (see Unit VI of this document) and will refer to the FWS for consultation, only those that "may affect" listed species. Further, the FWS considers the probable use locations in relation to listed species habitat, and use limitations will not be imposed unless there may be use of the pesticide near a listed species.

Given EPA's refined procedures and more explicit identification of listed species habitats, limitations on the use of a product would be required only in instances where there may be an actual threat to listed species. For these reasons, EPA believes that limitations on the use of household pesticide products to protect listed species will be minimal. However, EPA will continue to explore additional factors to further narrow the scope of use limitations while continuing to protect listed species. Additionally, states may suggest innovative approaches to reduce the burden on pesticide users, while protecting listed species, through their state-initiated plans.

Even though EPA believes it should withdraw the previously proposed household products exemption, it still believes the process of ensuring easy access to Bulletins for users of these products may be difficult. The EPA is concerned that difficulty in obtaining Bulletins will result in decreased compliance with measures intended to protect listed species. Given EPA's proposed use of generic labeling as discussed in the response to comment number 7, the issue of Bulletin availability becomes more critical. Therefore, while EPA believes it must abandon a household products exemption, it recognizes that the proposed implementation approach using a generic label statement and Bulletins may not be an effective communication tool for this subset of products. The EPA intends to explore alternative communication channels during its Interim Program in 1989 and 1990 and will determine how we may pilot different implementation approaches for household products during that same time. In addition, EPA encourages specific comments on this Notice to suggest potential alternative implementation mechanisms for household products.

3. *Economic impacts.* Many comments expressed concern about the potentially disruptive economic effects of the Endangered Species Protection Program. Some comments indicated that EPA should prepare an Environmental Impact Statement and an economic impact analysis on the Program. In contrast, others indicated that ESA did not allow for economic impact considerations.

Response: The EPA agrees that limitations on pesticide use may impose some burden on pesticide users, particularly where few or no alternative pesticides or management practices are available.

EPA is pursuing means to assess the economic impacts of the Program and is committed to reducing those impacts on the user community as much as can be achieved through continued work with FWS, USDA, user groups, and the states. The USDA, EPA, and FWS have formed the Interagency Impacts and Alternatives Task Group to assist in this effort. However, economic impacts must be considered in the context of the objective of providing protection to listed species. The EPA will continue to develop measures that both protect listed species and minimize disruption to the user community, to the maximum extent feasible.

4. *User compensation.* Comments recommended that EPA should compensate users for any losses resulting from pesticide use limitations. Comments suggested that one such source could be through the Conservation Reserve Program.

Comments also asserted that placing limitations on pesticide use to protect listed species could be a "taking" without due process or just compensation, thereby entitling the pesticide user to claim direct financial compensation from the government.

Response: The EPA is responsible for ensuring that registered pesticides will not result in unreasonable adverse effects to the environment when used according to labeling instructions. In order to permit pesticide products to remain registered while carrying out this mandate of FIFRA, EPA must, in many cases, impose limitations on the use of a product. These limitations often include specific limitations on use. Examples include specific sites or crops that may or may not be treated with the product; limitations on planting crops for which the product is not registered, in soils having been treated with the product (rotational crop limitations); and requirements that certain products not be used when pollinating insects are actively visiting the site. The EPA believes that measures necessary to ensure that pesticide use will not harm listed species are conditions of the pesticide registration similar to those other limitations necessary for the product to remain in compliance with FIFRA. The EPA has not and does not intend to pursue compensation for pesticide users whenever a condition of the registration, necessary for a product to remain in compliance with FIFRA, limits the manner in which the product can be used.

Regarding whether imposing use limitations to protect listed species might constitute a "taking," EPA believes that the use of pesticides is not a property right. Therefore, establishing use limitations does not constitute a "taking."

5. *Local appeals.* Comments indicated a need for a process which would provide for individual requests for site-specific modifications of pesticide use limitations in those cases when the user impact would be large.

Response: The EPA believes that its revised Program is responsive to local needs in the following ways:

First, EPA is inviting public comment on all aspects of the Program, including habitat maps and whether listed species could be adequately protected by alternatives other than a pesticide use prohibition.

Second, if a state develops an approved state-initiated plan, local users and other members of the public may have an opportunity to provide information to their state lead agency regarding local conditions. Such information may be relevant to some modification of the national plan or to develop specific alternative limitations to protect a species. The state lead agency in turn may incorporate the local suggestions into the state-initiated plan. The state-initiated plan would have to be approved by EPA with FWS concurrence.

Third, local users may provide EPA with information to refine or modify a "may affect" determination. If review indicates that a "may affect" determination no longer applies, EPA can reinitiate consultation with the FWS to withdraw a finding of jeopardy. Local users may also provide suggestions on additional reasonable and prudent alternatives following the issuance of a Biological Opinion.

6. *Principal Program alternatives.* The EPA received many comments on alternatives to the Program described in the FR Notice (53 FR 7716).

a. *Approach to biological consultations.* The public comments raised very serious concerns about the proposed cluster approach for initiating consultations with the FWS and indicated a strong preference for a species-based approach, followed by a preference for an approach based on individual pesticides.

The cluster approach involved evaluating a group (cluster) of pesticides registered for the same use site, such as use in forests. The EPA would refer those pesticides in a particular cluster that exceeded the "may affect" criteria to FWS for consultation in accordance with section 7 of ESA. The clusters that would be evaluated first are those with the use patterns where the most pesticides are applied. Additional cluster consultations would continue until all pesticide use patterns that may expose listed species were covered.

The majority of the comments recommended that this approach be abandoned. Others indicated that EPA had not described the approach adequately for users to understand it.

The principal objection to the cluster approach is that a particular pesticide may be used within the same geographic location on a site not yet evaluated, such as melons, while the use of the same pesticide may not be allowed for an evaluated site, such as corn. This inequity is often referred to as the corn/melon inequity. Thus, a listed species has no protection against uses of products that have not been evaluated and would give the growers of some crops an advantage over growers of other crops.

The majority of the comments favored an approach based on species. Several versions of a species approach were suggested, all of which involved identifying pesticide uses associated with the habitats of listed species. Most commonly, the species would be protected in order of priority based on the perceived pesticide threat, status, recovery potential of the species, and other criteria. The location and habitat of priority species would be identified. Then pesticides registered for use patterns associated with the habitats occupied by those species would be determined. Consultation for priority species would be requested on all pesticides registered for those use patterns and which exceed the "may affect" criteria for priority species. Additional consultations would continue until all species are covered. Each year, the group of pesticides potentially affecting the highest priority species would be reviewed and limitations established as needed to protect the species. However, other comments raised concerns that this approach would not allow EPA to implement the existing Biological Opinions that declared jeopardy in a timely manner.

In the approach based on individual pesticides, choice of pesticides to be evaluated first would be based on their toxicity, class of chemical, sufficiency of the data base, and other criteria. Then all uses of these pesticides would be evaluated to determine if a use exceeds the "may affect" criteria. Those that exceed the "may affect" criteria would be further evaluated to determine which species may be exposed. Consultation would be requested for all uses of pesticides which exceed the "may affect" criteria. Additional pesticide consultations would continue until all pesticides requiring consultation are covered.

Most of the comments addressing this topic opposed an approach based on individual pesticides because it would be too slow to be effective and would not protect the species.

Response: Originally, EPA favored the cluster approach because EPA believed that this approach provided protection to listed species in the shortest period of time and allowed EPA to address the most significant use patterns first. At the time, EPA believed that this was the only approach of the three that would allow EPA to implement a Program which addresses all the existing Biological Opinions in a timely manner, thus fulfilling EPA's legal obligation under the ESA.

The EPA agrees, however, that this approach addresses only one use site or a limited number of use sites of a pesticide at a time, which allows the

potential exposure of a listed species to pesticide uses not included in the cluster.

In contrast to the cluster approach, a species-based approach will give priority to those species in most need of protection. This approach was the one favored by most of the comments and is therefore likely to gain user acceptance, which is necessary to the success of any program designed to protect listed species.

The individual pesticide approach does not address the listed species that may be potentially exposed to harmful pesticides that are not scheduled for review. If this approach were implemented, progress toward protecting listed species would be slow. However, this approach completely addresses all registered use sites and the associated species and could encourage the development of pesticide-specific measures to reduce the risk to listed species. Yet, this method may not allow for appropriate recommendations on pesticide alternatives because the alternative pesticide may not have been reviewed and could be equally as hazardous to the species.

Initially, EPA rejected a species approach for two major reasons. Most importantly, reinitiation of consultation on pesticides affecting only some species would result in a program that would not allow for the timely implementation of many existing reasonable and prudent actions. The EPA's legal obligations require that the Biological Opinions declaring jeopardy or specifying measures to reduce incidental take be addressed and the reasonable and prudent actions be implemented as soon as feasible. Also, EPA believed that insufficient information was available on which pesticide uses are specifically associated with the habitats of listed species.

However, after further evaluation, EPA believes that a type of species approach is the most appropriate for biological consultation and is proposing such an approach. To deal with existing Biological Opinions in a timely fashion, EPA proposes to reinitiate consultation on pesticides that could impact affected species. After this initial phase, EPA would consult on pesticides potentially affecting additional priority species. In addition, although the uses specifically associated with the habitat of the species may not be known, EPA will be identifying uses in the vicinity of the species (counties).

b. *Alternatives to prohibition of use.* Many comments indicated that use prohibitions should be considered only if no other alternative was available, which would allow some continued use of a pesticide while still protecting the species. In addition, any limitations on use should only be applied if efficacious alternatives also are provided at the same time. Alternatives could include changing application methods; reducing maximum application rates; changing application timing (hourly, daily, or seasonally); and changing product formulations. Various comments indicated that these alternatives should be developed by EPA, the Cooperative Extension Service, State wildlife agencies, local pesticide users, and/or registrants through site-specific planning efforts.

In contrast, other comments indicated that only use prohibitions are adequate to protect listed species because the loss of some members of the species may lead to extinction. The comments supporting only use prohibitions indicated a concern for a lack of practical means to enforce alternatives to use prohibitions. Comments also recommended severe penalties for gross negligence.

Response: The EPA proposes to seek alternatives to prohibitions of use whenever feasible. The EPA must evaluate the effectiveness of these alternatives to protect listed species and consider questions regarding their implementation, enforcement, efficacy, and legality. The specific ways in which EPA is investigating these alternatives are described in Units III and VI in this document.

Specifically, this proposal includes calculating threshold application rates when making "may affect" determinations, thus placing emphasis on reduced application rates in lieu of complete prohibitions of use where feasible to minimize use impacts while providing adequate protection to listed species.

The EPA intends that the public participation procedures in the Program will provide the opportunity for all interested parties to contribute to the development of these alternatives.

For example, opportunities for submitting suggestions for reasonable and prudent alternatives and measures include the public notification 30 days prior to initiating consultation with FWS, and after a Biological Opinion is issued. EPA plans to make the information contained in the Biological Opinions available to the public for comment before imposing enforceable limitations.

In addition, EPA strongly supports state-initiated plan development and encourages public comments at various stages in the process, including obtaining information related to alternatives to use prohibition. Support for state-initiated plan development will encourage the development of alternatives at the local and/or state level. The EPA intends that state-initiated plans be developed with the active participation of state wildlife and agricultural agencies, local pesticide user groups, and other state and local groups interested in the success of the Program.

The EPA also intends to work with registrants to encourage them to develop means to avoid "may affect" determinations by investigating reducing application rates, substituting application methods which reduce exposure, and others. Finally, EPA will make a special effort to work with USDA to increase the range of alternatives that may be available to users. This effort includes work done through the Interagency Task Groups.

7. *Labeling/map/bulletin implementation.* The EPA received many comments on its plans to implement the Endangered Species Protection Program through a labeling/map/bulletin approach.

a. *Labeling/bulletin approach.* Some comments indicated that labels of affected products should carry a generic statement rather than list each county in which pesticide use limitations apply. Others indicated that a generic statement regarding protection of listed species should be included on all pesticide products, whether or not they have been determined to cause jeopardy. Still others recommended alternatives to the labeling/bulletin approach in general. These alternatives are discussed in response to comment 8.

Response: Advances in science and technology and the relatively new identification of local and regional environmental concerns on which EPA is focusing attention demonstrate the need to approach some issues from a geographic perspective. The EPA has been exploring different methods of accommodating geographical or regional differences for several of its more recent initiatives and believes that the proposed labeling/bulletin approach is an innovative and effective method of conveying county-specific information to pesticide users. Within the labeling/bulletin approach, EPA currently favors a generic label statement approach, but believes the cooperation of the pesticide industry is essential to implementing such an approach.

As explained in Unit III of this Notice, the revisions and refinements in EPA's revised proposed Program are expected to reduce limitations on pesticide use from those resulting from EPA's

previously proposed Program. However, EPA does not yet possess definitive information regarding the degree to which limitations may be reduced. The number of counties in which limitations will initially apply and in how many counties use of a given product may be limited, will not be available until EPA completes its consultation with the FWS. Therefore, EPA considered information derived from its previous efforts to implement an Endangered Species Protection Program, for purposes of comparing an approach using labeling consisting of county lists with a generic label statement approach.

Under the previously proposed Program, labeling of affected products would contain a list of counties in which use limitations applied. In addition, the labeling would contain a generic statement requiring pesticide users in a listed county to obtain and comply with limitations described in the appropriate Bulletin.

Based on the Program EPA previously began to implement, users of affected pesticides in a total of 910 counties (approximately 30 percent of counties in the country) would have been required to obtain Bulletins. Of those required to obtain Bulletins, a portion would have found that no limitations on use applied at their specific application site. If the county list is deleted, leaving only the generic label statement, pesticide users of affected products would be required to obtain a Bulletin even if no limitations applied throughout the county. Based on the previous Program, limitations would not apply in approximately 70 percent of the counties.

The EPA agrees with comments that indicate the effectiveness of the Program may decline if pesticide users are inconvenienced to a great degree in attempting to comply with requirements of the Program. The EPA therefore, must weigh the consumer response that may result from adopting the generic label statement approach, against the overall Program benefits of such an approach.

The EPA believes that measures to protect listed species may be effective more readily if the generic label approach is adopted. Under such an approach, once a product is labeled, protective measures for new species in new counties can be implemented through changes in the Bulletin without waiting for further label revisions to appear on products in the marketplace. The time necessary to incorporate new counties on labeling that contains a list of counties (generally 12 months), and the time estimated for products in the marketplace to be used (generally 24 months), could result in different containers of the same product having different county lists on the labeling at the same time. The EPA believes that a certain degree of the confusion which may result in such cases would be eliminated through the use of the generic label statement approach.

In addition, the administrative difficulties to EPA and the States to modify Bulletins, issue changes to registrants to add or delete counties from labeling and to monitor and enforce the requirements to change the lists may become extreme as additional listed species are considered for inclusion in a Program involving county lists on pesticide labeling.

The EPA currently favors the generic labeling/bulletin approach because of the flexibility it provides in administering the Program and in adding or deleting counties from the Program based on changes in species habitat and status. The EPA proposes to take the following actions to mitigate some of the disadvantages of this approach. First, the generic statement would not require a pesticide user to obtain a Bulletin, but instead would require the user to comply with the limitations in the Bulletin. This modification would permit pesticide users to determine whether they need to have the information, without going out of their way to locate the Bulletin itself. For instance, a user could place a phone call to his/her pesticide retailer, the Cooperative Extension Service, or the EPA to determine whether limitations applied within the county.

Second, EPA will work with representatives of the pesticide industry during the 1989 and 1990 Interim Program period to determine an effective method of distributing Bulletins and information about which counties are affected and which are not. Unless an information distribution system is developed that minimizes the potential burden on the pesticide users in the many counties in which limitations do not apply, EPA will seriously consider listing counties on the labeling of affected products. The EPA welcomes comment on its proposal and welcomes information on potential distribution methods for Bulletins and other information.

b. *Maps.* Many comments indicated that the maps of the habitats currently occupied by listed species, intended for use in Bulletins, need to be more accurate. This would make the Program more credible to pesticide users. For example, the maps should not extend currently occupied habitats to the "nearest recognizable boundary," but only describe the area actually occupied. It was also suggested that maps should be supplemented or replaced by a description of habitats and pictures of the species and/or their habitats.

Other comments indicated that FWS should prepare the maps and descriptions of habitats and use standard buffer zones across the country, unless locally specific circumstances justify a variation. One comment requested that EPA and FWS develop a national computer-based Geographic Information System (GIS) to locate the listed species and relevant pesticide uses.

In contrast, other comments were concerned that mapping could harm some listed species by making their locations known to collectors or vandals.

Response: The EPA agrees that the maps need to be more accurate. The EPA is working closely with FWS, USDA, and the states to obtain more accurate information on the location of listed species and to ensure that the maps reflect currently occupied habitat. In all cases, each map will be reviewed by FWS, other appropriate Federal agencies, states, and other interested parties prior to use of the map in an enforceable Program.

Habitat locations will not be extended to the nearest recognizable boundaries unless no other enforceable alternative is available to identify the area in such a way that a pesticide user can determine use limitations.

The EPA will use habitat descriptions when they are available and appropriate. The EPA is working with FWS, USDA, and the states to ensure that these descriptions are understandable to the user. These descriptions will be used in lieu of or as a supplement to the habitat maps. Pictures or illustrations also may be used when available and appropriate, to more specifically identify the areas in which use limitations apply.

The FWS is utilizing standard buffer zones, when such zones are necessary. However, if circumstances dictate that a different buffer zone is necessary for protecting a species, FWS will modify their standard buffer zone to accommodate the specific circumstances.

The EPA is working in conjunction with the U.S. Geological Survey to identify specific mapping needs for EPA. These needs include a computer-based data system for geographic information. However, it is not anticipated that the additional needed data will be developed before 1990. The FWS has a computer-based information system on federally listed species which has the

capability of including and interfacing with GIS. However, availability of the system to other Federal or state agencies, as well as the long term development and support by the FWS of this system is not certain. The EPA may have to develop this information independently if funding permits.

Finally, EPA also is concerned about disclosing information on listed species which might make them vulnerable to collectors and vandals. Mapping certain species may contribute to their destruction. For species that FWS determines are vulnerable to threats from collection, FWS will suggest reasonable and prudent actions that do not rely on mapping. The EPA welcomes suggestions for alternatives for identifying areas where pesticide use limitations are necessary.

8. *Alternatives to the labeling/bulletin/map implementation approach:* The EPA received a variety of suggested alternatives related to the implementation approach described in the FR Notice (53 FR 7717).

a. *Voluntary program.* Some comments indicated that the Endangered Species Protection Program should be a voluntary program since labeling will not be effective.

Response: While EPA acknowledges the degree to which it must rely on the willing efforts of pesticide users to protect listed species from harm, EPA does not believe that its obligations under the ESA would be fulfilled through a program that relies solely on voluntary participation. The EPA has considered the various approaches and will implement a program with an enforcement component.

b. *Restricted use.* Comments recommended that pesticide products posing jeopardy to listed species should be classified as restricted use which would ensure training and certification of users of the products.

Response: The EPA does not believe that restricted use classification is an appropriate or effective means to protect listed species from harm resulting from pesticide use.

Under FIFRA section 3(d)(1)(C), EPA may classify a pesticide as restricted use if unreasonable adverse effects to the environment may result even when the product is used according to directions, cautions and warnings, or in accordance with a widespread and commonly recognized practice. The EPA has developed regulations that indicate the levels of toxicity and hazard above which the unreasonable adverse effects criteria may be met. Unless a product meets these existing regulatory and statutory criteria and guidance for classification as restricted use, EPA will not so classify a product.

Further, in cases where classification of a product as restricted use is appropriate, that classification alone would not be an effective means to protect listed species. Specific use limitations, about which Certified Applicators could be trained, would still be necessary.

However, EPA recognizes the value of training to enhance understanding of and compliance with use limitations to protect listed species. Therefore, EPA's Certification and Training Branch in OPP is working to include listed species protection among the topics about which Certified Applicators receive training.

c. *Delegation of authority to states.* Some comments indicated that states should prescribe the conditions of pesticide use. Therefore, product labels should simply refer users to the state lead agencies for further instructions.

Response: Section 7 of the ESA specifically provides that Federal agencies must ensure that the actions they authorize will not jeopardize listed species. Therefore, EPA must implement a Federal program which ensures protection for listed species. The EPA also believes, however, that states may better determine methods to afford protection to listed species within the state. Therefore, EPA has provided each state the opportunity to develop a state-initiated plan for protection of listed species and to propose that plan to EPA for adoption within the state.

d. *Preserves and easements.* Comments suggested that preserves be established on public lands to protect listed species, and pesticide use be limited only if preserves cannot be established. Other comments suggested that EPA should purchase environmental easements to protect listed species.

Response: The intent of the ESA is to conserve the species and the habitats on which they depend. Therefore, FWS policy is not to introduce species into non-historic range. Under the land acquisition provisions of ESA, priority is given to habitats already occupied by the species, since other habitats may not have the biological attributes necessary for the species to survive and recover.

Although environmental easements may provide protection, EPA's responsibilities under FIFRA and the ESA are for protection of listed species from pesticides, not from all threats. The EPA considers that the Endangered Species Protection Program proposed in this Notice is sufficient to fulfill its responsibilities under section 7 of the ESA for pesticide registration.

e. *Management plans and landowner contracts.* Some comments recommended that individual management plans and contracts with landowners should be developed.

Response: The EPA believes that this approach has merit in some cases, but would not be viable on a national basis. Some states are exploring this method of protecting listed species. If proposed to EPA as part of a state-initiated plan, EPA in consultation with the FWS will determine whether in that particular state, the management plan or landowner contract will serve as reasonable and prudent actions to protect the listed species. When a favorable determination is made, EPA would implement the plan within the state.

f. *Permit system.* Several comments suggested using a county permit system such as the one used in California.

Response: California is unique in its system of county agriculture commissioners and in requiring permits prior to pesticide use. While issuing permits in the State of California may work effectively, other states may not have the mechanisms or resources to introduce such measures. Since the Endangered Species Protection Program is a national program, EPA must ensure that its applicability is far reaching. However, if other states propose such a permitting system under a state-initiated plan, EPA in consultation with FWS will consider whether the system would be a reasonable and prudent action to protect listed species in that state.

9. *Enforcement.* Some comments recommended that FWS should conduct all enforcement actions related to the harming of listed species, while product misuse should remain with EPA. Other comments indicated that EPA should establish a strong compliance program to support the product labeling.

Still other comments indicated that applicators should be required to show records of having obtained information on the proper use of the specific pesticides subject to limitations to protect listed species. Comments also recommended that EPA should conduct a pilot program with several states to test the Program's effectiveness with users, prior to full national implementation.

Response: The EPA will not attempt to enforce against the taking of a listed species. However, FWS could take enforcement action against unlawful taking under ESA, whether harm to the species was a result of pesticide use or any other activity.

As with all labeling and use provisions, EPA will enforce the pesticide use limitations for listed species that result from Biological Opinions and the labeling requirements to ensure that a product registration remains in compliance with FIFRA. Enforcement will be carried out by the states through existing enforcement cooperative agreements with EPA. Where such agreements do not exist, EPA will enforce these provisions.

With regard to requiring applicators to show records pertaining to information on proper use, section 11 of FIFRA prohibits EPA from issuing regulations which require the private applicator to maintain any records or file any reports or other documents.

The EPA plans to initiate three types of pilot programs, which are described in Unit V of this document. These pilots include special project pilots, state-initiated plan pilots, and Federal program pilots.

10. *Education and training.* Some comments recommended that registrants, the Cooperative Extension Service, state/Federal wildlife agencies, the FWS, and others be involved in education and training efforts. For example, FWS should provide education on ESA, including an explanation of the process through which species become listed.

Comments also recommended that the Program should provide users with 1 year of education before initiating enforceable labeling for each pesticide affected by use limitations. Other comments indicated that EPA or FWS should establish a national toll free telephone number for pesticide users to obtain species and use limitation information. This service also could be provided by electronic bulletin board.

Response: The EPA agrees that a wide variety of people should be involved in education and training efforts. For example, FWS and USDA are already involved in the Interagency Outreach and Education Task Group, which is charged with developing education and training materials for the public. This Task Group also will seek to provide opportunities for other groups to participate. In addition, EPA is working through its Certification and Training Branch to ensure that, in the future, certified applicator training will include information related to listed species protection.

While EPA agrees that training and education efforts are important for pesticide users, EPA does not see the need to provide 1 year of education before initiating enforceable labeling for each pesticide affected by use limitations. However, EPA is planning in the Interim Program for education and training in the 1989 and 1990 growing season so that users should be comfortable with the manner in which the Program operates, well before enforceable labeling is in the marketplace. The EPA believes that its training and education efforts on a national basis should provide users with the information necessary to understand the Program.

The Outreach and Education and Technical Task Groups are considering a national toll free telephone number and other electronic media to assist users, but have not made a final decision at this time.

11. *Funding.* Many comments indicated that state and local efforts should be funded by the Federal government. Such efforts could include verifying the extent of species habitats and developing alternatives to any national limitations on use.

Response: The EPA must move forward with a program to protect listed species to fulfill its obligations under ESA. The EPA is making every effort to provide the states with an opportunity to participate. However, compliance with ESA does not depend upon the availability of funding for state and local participation in the Program. Listed species must be protected in any case. Recently, EPA has been able to fund several special projects on a limited basis under a grant program administered through the FIFRA Office of Compliance Monitoring. Of the 12 special projects funded for FY'89, 5 are related to protecting listed species. Unit V provides more detail regarding these projects. In the President's 1990 budget, submitted to Congress, EPA requested $7 million for the states to use in developing programs to protect listed species, farm worker safety, and groundwater protection in the pesticides area.

12. *Guidelines for state-initiated plans.* The majority of the comments favored EPA issuing guidelines for developing state-initiated plans, but felt that they should be advisory rather than requirements. The guidelines should list state responsibilities in such areas as mapping, research, enforcement, and technical assistance. Others felt that such guidelines would hinder creativity.

Response: The EPA chose not to issue guidelines because EPA did not want to stifle creative and innovative approaches by states in addressing unique circumstances.

However, guidelines for state-initiated plans to protect listed species were developed by the Association of American Pest Control Officials, Inc. and sent to the states. These guidelines, although brief, outline procedural steps for preparing and submitting a state-initiated plan. The guidelines recommend that a plan contain several items. First, they should contain a list of sites, species, and pesticides for which the state has developed alternative protective measures that are different from those proposed by EPA. Second, they should include a brief description of the reason for each listing and the adverse impact of complete prohibition in the range of the listed species. Third, alternative protective measures should be recommended for each listed species, and fourth, an assessment of the impact of the recommended alternatives to protect listed species should be provided. Fifth, the state-initiated plan should identify the resources committed to implementing the approved alternative program. Finally, procedures for periodic review and update of the plan should be included.

The EPA intends to work with the states which are or may be developing state-initiated plans on a case-by-case basis to determine if additional guidance is needed.

13. *State-initiated plans.* Some comments objected to state-initiated plans because such plans would promote inconsistency in pesticide use limitations.

Others indicated that EPA's national limitations should be imposed until state-initiated plans are approved rather than deferring EPA's limitations during the state planning process.

Response: Once national limitations are imposed, they will continue until state-initiated plans are approved. State-initiated plans will identify means to protect species specific to the state and habitat. The EPA recognizes there may be a number of methods suitable to protect listed species. While specific limitations may vary from state to state, consistent implementation through Bulletins will help to mitigate potential confusion.

14. *Consistency with Federal/state programs.* Many comments reflected a concern that potential conflicts with other agencies and programs need to be resolved before the Endangered Species Protection Program is implemented. Specific areas identified included agricultural research and demonstration projects; bird control; boll weevil and gypsy moth control; conservation reserves; crop insurance; the Migratory Bird Treaty Act; mosquito abatement; noxious weed, rights-of-way, and rodent control; soil conservation; and surface mine reclamation.

Other comments recommended that EPA survey other Federal agencies using pesticides to ensure that they do not jeopardize listed species.

Response: The EPA does not plan to survey other Federal agencies which use pesticides. The EPA does not anticipate that many conflicts will arise because Federal agencies, including EPA, are required to adhere to the procedures and limitations provided by section 7 of ESA. As a result, an agency which has completed a formal section 7 consultation is required to follow the procedures and limitations provided by FWS in that consultation. If an agency has not completed a consultation, the agency must still conform to the requirements of ESA and comply with the instructions on product labeling and in Bulletins.

15. *Inert ingredients.* Comments recommended that EPA include inert ingredients in the "may affect" screening procedures.

Response: The EPA has identified pesticide inert ingredients that are of toxicological concern, and as a result, has requested ecological effects data on these inert ingredients. Depending on the results of these studies, EPA will request consultation as appropriate.

16. *Special Local Need Registrations and Emergency Exemptions.* Some comments indicated that EPA should only approve a Special Local Need Registration (section 24(c)) or Emergency Exemption (section 18), if no adverse impact on listed species occurs.

Response: The EPA does consider the effect of Special Local Need Registrations and Emergency Exemptions on listed species. In general, these actions must avoid exposure to listed species; if the action "may affect" listed species, EPA consults with FWS.

17. *Public participation.* Many comments concerned EPA's process for determining that a pesticide "may affect" a listed species. Comments recommended that the public should be involved in EPA's "may affect" determinations and FWS's Biological Opinions, including draft Biological Opinions. Comments also recommended that EPA's "may affect" determinations and FWS's Biological Opinions should be reviewed through a peer review process similar to that used by EPA's FIFRA Scientific Advisory Panel.

Comments indicated that states should be given the opportunity to review maps, alternative control measures, and other major decisions in the Program. Registrants, environmental groups, university staff, and USDA should also be included in the development and review of alternative measures.

Comments also recommended that hearings should be held in the local areas affected by the Program prior to its implementation, and that all affected landowners should be notified of the Program's limitations in writing. Comments suggested that EPA should create a national advisory task force to assist in developing the Program. The FWS similarly should establish advisory panels on species mapping. The FWS needs to prepare public information materials on how to list and delist a particular species.

Response: In general, EPA agrees with the need for public participation in the Endangered Species Protection Program and has identified areas throughout this document where public participation may be helpful. Specifically, Units III and V of this document describe in more detail some of the areas in which EPA is encouraging public participation.

For example, EPA intends to provide public notification of its "may affect" determinations 30 days prior to reinitiating or initiating consultation with FWS and encourages suggestions regarding reasonable and prudent actions. Also, EPA will provide opportunity for public participation on the maps and information related to the Bulletins. Through the Interagency Task Groups, EPA is trying to ensure that the appropriate people will be contacted. As soon as maps of listed species habitats are developed, all affected states will have an opportunity for additional review. Once FWS provides a Biological Opinion with information on potential use limitations, species potentially jeopardized, and reasonable and prudent actions, additional opportunity for comment will be available.

The EPA plans to include an address in the Bulletins, whether issued during the Interim Program or after the Program is final, where comments can be submitted. All comments will be considered.

The EPA does not agree that it would be appropriate to establish a peer review process for each of its "may affect" determinations. The EPA follows procedures in its "Standard Evaluation Procedure for Ecological Risk Assessment" (Ref. 1) in developing "may affect" determinations. This document has undergone peer review, including a review by the FIFRA Scientific Advisory Panel. In light of these previous peer reviews concerning criteria and processes for determining whether a pesticide use "may affect" listed species, EPA believes that additional or separate peer reviews for each individual determination are not necessary and not an appropriate use of resources, and would unduly delay implementation of the Program.

The EPA intends to have an aggressive outreach program. While EPA cannot agree to hold local hearings in each area affected by the Program prior to its implementation or to notify individually all affected landowners, the information which is critical to the success of the Program will be distributed through several important avenues as discussed elsewhere in this document. These avenues may include the EPA Regional Offices, states, information networks of USDA, and pesticide dealers and distributors.

The EPA has debated the desirability of establishing a National Task Force to assist in development of the Endangered Species Protection Program. The EPA believes that most issues appropriate for the attention of such a task force have been resolved through public comments and participation in development of the revised proposed Program by other Federal and state agencies, public interest groups, pesticide users, the regulated community and the general public. While specific details of implementation, such as distribution mechanisms for Bulletins, have not been fully resolved, EPA believes the most effective approach to these issues will be to work individually with various interests to gain their support and cooperation and to obtain their input regarding how EPA may accomplish its objectives in this area. Therefore, EPA will not establish a National Task Force for the Endangered Species Protection Program at this time.

18. *Monitoring studies.* Comments recommended that EPA should monitor or require monitoring on the ecological impacts of pesticides to verify whether they threaten listed species under actual use conditions. Expanded research on estimating actual exposure should be conducted.

Response: The EPA can require monitoring studies in specific situations. Procedures and guidelines for monitoring studies are under development for those situations in which a monitoring requirement is warranted. In addition, EPA may obtain actual exposure and ecological impact data from aquatic and terrestrial field studies for more toxic pesticides. However, such studies must be conducted where listed species that may be affected do not occur. Such monitoring or field studies would provide information for non-listed species that may be useful for assessing effects on listed species. However, it normally would be contrary to EPA to conduct such studies where listed species could be affected.

19. *Pesticide half-lives.* Comments indicated that EPA's EEC model should consider the half-lives of pesticide residues in the environment in calculating the potential exposure to listed species.

Response: In EPA's exposure assessments, current label information is used to estimate EEC's. Where actual field data, including information on half-lives, on EEC's are available and applicable to listed species, these data are used. However, actual residue data are not usually available. The EPA is continually working to refine its models for estimating concentrations.

Since valid environmental fate data often are not available, registrants are being required to fill data gaps as part of EPA's reregistration process. The EPA will make use of the best available information to assess impacts on listed species. As new data become available, they will be incorporated into assessments.

20. *Data needs.* Comments indicated the need for expanded research in such areas as verifying habitats, evaluating probable pesticide impacts, and identifying current pesticide use patterns. Comments recommended that EPA should require monitoring and reporting of pesticide use to verify compliance with the Program.

Response: The EPA recognizes the need for more data on species habitats and locations and thus has requested assistance from USDA, FWS, states, and others to obtain such information. Similarly, through the interagency efforts, EPA is working to obtain pesticide use information that is applicable to listed species locations.

21. *New test procedures.* Comments indicated that EPA should have more toxicity research and develop new test procedures for representative species of wildlife to improve the EPA's "may affect" determinations.

Response: The EPA routinely requires ecological toxicity data on a variety of species to support pesticide registration. (See Unit VI.B. of this document.) Because it is not feasible to test all species that may be affected by pesticides, EPA uses toxicity data on surrogate species to represent species that are not tested directly, including listed species. The EPA acknowledges the need for an expanded toxicity data base for some pesticides and has proposed test methods and requirements for additional species (53 FR 20012). In addition, EPA has funded research to develop test methods for other species, such as freshwater mollusks, that may be used as more appropriate surrogates for certain listed species. Finally, EPA laboratories have initiated research on environmental fate and exposure data that will be used to refine EEC calculations.

Such additional information would be useful to help EPA make more sophisticated risk analyses and decisions. In addition to research conducted or funded by EPA, data needs have been transmitted to the National Agricultural Chemicals Association. Until such additional information becomes available, EPA uses the risk assessment techniques explained in Unit VI to fulfill its obligations to use the best available information in consultations with the FWS.

V. Interim Program

Until such time as enforceable measures of EPA's Endangered Species Protection Program are in place, EPA is planning to initiate an Interim Program. This is a voluntary program designed to accomplish three goals:

(1) Protect listed species from pesticides that have resulted in Biological Opinions identifying reasonable and prudent actions.

(2) Refine specific program direction.

(3) Prepare for full implementation.

These goals will be reached through involvement in and evaluation of a series of pilot programs, educational efforts, and requests for further public, state, and regional input.

A. Pilot Programs

The EPA intends to be involved in three related, but separate pilot efforts during this Interim Program which include: (1) special project pilots, (2) state-initiated plan pilots, and (3) Federal Program pilots. In all cases, EPA will seek information from involved parties in an effort to evaluate various approaches to protection of listed species. In addition, several pilots may yield information that is generic in its usefulness in developing measures to protect listed species in other locations.

1. Special project pilots. The EPA has funded several special projects for 1989 to 1990 under the Enforcement Cooperative Agreement Program administered through the EPA's Office of Compliance Monitoring. States submitted proposals for special projects to EPA. The EPA reviewed and rated these proposals and determined which would be funded. Five of the 12 special projects funded in FY '89 relate in some way to listed species protection. The EPA will work through its Regional Offices and with the involved states to evaluate the success of the special projects in those states that are exploring alternative methods to protect listed species. In addition, EPA will evaluate any information resulting from the special projects to determine utility to the Endangered Species Protection Program.

a. *California Department of Food and Agriculture.* The California Department of Food and Agriculture (CDFA) intends to develop a model program for gathering local data on approximately 45 listed species and their habitats. Information will be collected on local pesticide use, terrain, and climate; measures will be developed which CDFA believes will mitigate pesticide exposure. Part of the final CDFA project will be refined maps of listed species habitats. From analyses of habitats, adjacent pesticide use sites, and other factors that influence exposure of the species to pesticides, specific recommendations will be formulated to protect listed species in California. Since CDFA's efforts will address approximately 45 species, specific information may result which will be useful in other geographic areas where these species are found. In addition, procedures for habitat analysis, mapping, and information gathering will be reviewed to determine their applicability to other states or counties. If these procedures are determined to be of value in developing reasonable and prudent actions that are less limiting than those developed at the Federal level, but still protective of the listed species, EPA will share this information with other states and consider it in developing the Federal Program. The CDFA project also includes an effort to conduct a small field survey to determine the adequacy of pesticide labeling precautions to protect listed species. The information derived from this work will be directly useful to EPA in evaluating its own labeling approach.

b. *Minnesota Department of Agriculture.* Two of the seven federally listed species that are found in Minnesota (the Minnesota trout lily and the prairie bush-clover), have been identified as being jeopardized by certain pesticide use. Both species are found in rather isolated areas of certain rural counties, mostly on privately owned land with resident owners. Given this situation, Minnesota is proposing to develop and enter into "protection agreements" with landowners at each site. The agreements will be site-specific management plans to protect the species, requiring landowners to implement various provisions such as posting signs, monitoring the listed species population at least once a year, and reporting problems to FWS. A key element of this approach is the one-on-one personal contact of the state with the landowners, and the resulting opportunities for offering education and support, and for monitoring good management practices.

The EPA does not believe such an approach will work in many cases where species are very numerous or transient. However, EPA does not have the necessary experience to determine to what extent such an approach could serve as reasonable and prudent actions for protecting listed species. Through information obtained under the Minnesota grant, we hope to be able to better define the types of situations that may lend themselves to such an approach. Whether the state was able to contact owners of all land on which the two listed species occur, how many of those owners were willing to cooperate, whether the landowners agreeing to such an approach would have been affected by Federal limitations on pesticide use to protect listed species, and resources required to carry out such an approach are all parameters that would allow EPA to better define the utility of "protection agreements" within the context of its Endangered Species Protection Program.

c. *Puerto Rico Department of Agriculture.* Puerto Rico's project is intended to obtain pesticide usage and crop data in the area surrounding the site on which the species exists, to develop an experimental design for sampling, to collect and analyze samples, and to draw conclusions and recommendations regarding use of pesticides in the area. One species will be chosen for this project in the near future. An outline of the project and methodology will be produced for potential use by other states.

d. *Inter Tribal Council of Arizona.* The Inter Tribal Council of Arizona will form a working group on which individual tribes will have representation. The working group will identify listed species on each Arizona reservation and develop a model Endangered Species Tribal Plan. This plan will include maps of species habitat, enforcement matrices, and model ordinances to protect listed species. In addition, the working group will provide technical assistance in developing tribe-specific plans.

The EPA will review the recommendations of the Inter Tribal-Council of Arizona in terms of the potential applicability of those recommendations to other areas and will assist in obtaining FWS review of the recommendations to determine whether they can be considered reasonable and prudent actions for protection of listed species.

e. *Florida Department of Agriculture and Consumer Services.* The Florida Department of Agriculture and Consumer Services will develop advanced pesticide management techniques through use of a computerized Geographic Information System (GIS). The GIS allows many distinct data bases to be superimposed and displayed graphically. It also offers decisionmakers an opportunity to view and evaluate multiple geographic parameters (soil type, land use, etc.) concurrently on a regional or site-specific basis. Among other things the GIS will be used for identification and graphic display of geographic zones where groundwater protection and listed species protection zones overlap agricultural and other land-use data that are categorized based on crop site and pesticide use patterns, to target enforcement and monitoring efforts.

The EPA hopes to obtain information from Florida's efforts in this area, regarding the feasibility of developing GIS approaches at the Federal level to support the Endangered Species Protection Program. Through the experience of Florida, EPA can begin to assess the technical difficulties that may be encountered, the resource implications and the overall utility of such a system.

2. *State-initiated plans.* The EPA provided the states with an opportunity to initiate plans for protection of listed species within the states. These plans, if acceptable in terms of implementation and protection of listed species, will be adopted by EPA as Federal requirements within that state. For states that submit timely plans, EPA will work with them to pilot the approach within the state on a voluntary basis. By so doing, EPA, FWS, and the state can evaluate the plan to determine its effectiveness in protecting listed species, how well its provisions are understood by pesticide users, and whether implementation of the plan will fulfill the goals of the Endangered Species Protection Program.

The EPA is working through its Regional offices to determine which states are prepared to pilot all or parts of the plan they initiated. As states are identified, EPA will work closely with them to implement as a pilot and to evaluate their recommended measures to protect listed species.

3. *Federal Program pilots.* In addition to piloting state-initiated plans, EPA will pilot its overall approach to protect listed species where we have consulted with FWS and identified those pesticides for which use limitations are necessary. The Federal Program will be piloted only in states that indicate a willingness to participate. Pilot efforts of the Federal Program within the states will be voluntary on the part of the state governments and on the part of pesticide users, unless the state wishes to implement an enforceable program. In order to conduct these pilot programs, EPA will have to work very closely with each state participating to determine the most appropriate methods within each state for providing information to pesticide users, encouraging use of the information, and evaluating the Program. The EPA will encourage extensive state involvement since increased state participation and involvement may result in pilots that are more effective and revealing in terms of the effectiveness of the Endangered Species Protection Program.

B. Education and Outreach Efforts

The EPA will develop pilot-specific educational information to support the Interim Program. In addition, the Interagency Outreach and Education Task Group is also developing and reviewing information related to the Endangered Species Protection Program.

For each state participating in a pilot program, EPA will work with the state to develop informational materials to explain the specific Program to the public and to encourage participation and further input from those actually involved in the Program.

C. Public Participation

The EPA supports continued public involvement in and comment on the Endangered Species Protection Program. The EPA is initiating several efforts specifically to obtain further input during the Interim Program.

The EPA believes that species maps and information regarding potential reasonable and prudent actions are valuable as an educational tool for the public in addition to being the favored method for describing pesticide use limitations. As soon as FWS provides maps of listed species habitats, EPA will ensure that all affected states have an opportunity to review the maps. Further, when FWS identifies information on potential limitations of pesticide use, species potentially jeopardized and reasonable and prudent actions, this information will be distributed for public consideration. The purpose of this distribution is to inform affected parties of potential limitations, to obtain comments on the accuracy of the information, and to encourage voluntary use of the information to assess more realistically the impact the proposed limitations may have on the user. In addition, EPA will solicit geographically-specific, reasonable and prudent actions for consideration.

VI. Additional Technical Background Information

A. Consultation Procedures

Regulations governing ESA's section 7 consultation procedures pursuant to section 7 of ESA are codified in 50 CFR Part 402. A discussion of these regulations in reference to EPA's registration and reregistration activities follows.

1. A "conference" is designed to identify potential problems between an agency action, such as pesticide registration, and a species proposed to be listed (i.e., before it is listed) under ESA. There is also a more formal conference procedure (50 CFR 402.10 (d) and (e)), which follows the same basic procedures as a formal consultation, except that again the species is not yet listed. The EPA hopes to make use of formal conferences in the future, where appropriate, to provide more timely protection to listed species.

2. An "early consultation" attempts to identify potential conflicts between listed species and their critical habitats, and proposed actions prior to applying for the Federal pesticide registration. This type of consultation is conducted between the Federal agency, EPA, and FWS, but involves the registrant or applicant throughout the process. Pesticide registration has not used early consultation because the amount and quality of data needed from the registrant would be equivalent to that needed for registration, and the process would provide no benefit. Aspects of this consultation procedure (i.e., early involvement of the applicant) can be useful in expediting public health emergency exemption consultations.

3. A "biological assessment" evaluates the potential effects of Federal action(s) on listed species, species that are proposed to be listed, and their critical habitats. The goal is to determine which species or habitats are likely to be adversely affected and to determine if consultation is necessary. Biological assessments are only required for major construction activities. An agency may request from FWS a list of species that may be in the area of concern. This process is only required within the biological assessment process but can be requested for any action. The FWS is to provide such a list to the agency within 30 days.

4. An "informal consultation" is an optional process between a Federal agency and FWS and is designed to assist the Federal agency in determining if formal consultation and/or a conference are required.

5. A "formal consultation" is the process in which a Federal agency first determines if an agency action such as pesticide registration "may affect" a listed species or its critical habitat. If "no effect" is determined, the process concludes. If there is a "may affect" determination, then the agency initiates formal consultation with FWS which describes (i) the action, (ii) the specific area(s) affected, (iii) any species or critical habitats that may be affected, (iv) how the action will impact the species or habitats, (v) any cumulative effects, and (vi) any other relevant information. The FWS then concludes the formal consultation within 90 days, unless extended by mutual agreement.

Within 45 days after the conclusion of the formal consultation, FWS issues a written finding called a Biological Opinion to the Federal agency. During this 45-day time period, the Federal agency may request a draft of the Opinion primarily to analyze the reasonable and prudent alternatives. This cannot extend the 45-day period by more than 10 days unless an extension is mutually agreed upon.

The Biological Opinion should include a summary of the information on which the consultation is based, and a discussion of the effects of the action on the listed species or critical habitats, including a FWS determination on whether the action is likely to jeopardize the continued existence of a species or result in the destruction or adverse modification of critical habitat. Incidental take of species for which there is a "may affect" but is not likely to be jeopardized, will be identified. If possible, FWS will identify reasonable and prudent alternatives to the action, such as modification of the use of the pesticide, that the agency or registrant can take to avoid jeopardy. In addition, the Biological Opinion will identify (i) the amount or extent, if any, of acceptable incidental take of the species, (ii) reasonable and prudent measures to the action that will minimize the impact, (iii) terms and conditions to implement the reasonable and prudent measures, and (iv) procedures to handle or dispose of species taken. The FWS can also provide conservation recommendations that the agency may or may not consider.

Issuance of the Biological Opinion terminates the formal consultation process. If the Federal agency cannot comply with a Biological Opinion, it may apply for an exemption under section 7 of ESA.

6. A "reinitiation of consultation" is required if (i) incidental take is exceeded, (ii) new information is obtained which may affect the assessment(s) of species or critical habitats in a manner not previously considered, (iii) the action is subsequently modified and causes an effect to the species or habitat not previously considered, and (iv) new species or critical habitats have been designated that may be affected by the action.

B. The EPA'S "May Affect" Determinations

Ecological risk from pesticide use is a function of toxicity and environmental exposure (Ref. 1). This Unit summarizes risk assessment procedures used by EPA and indicates how these standard procedures are adapted for determining whether a pesticide "may affect" listed species. The EPA evaluates data and risks in a tiered fashion. The first risk evaluation is based upon laboratory toxicity and environmental fate data. If the initial evaluation indicates a significant concern, then EPA requests registrants to supply additional laboratory and/or field data in order to refine the risk assessment.

1. *Toxicity evaluations.* Data used in assessing toxicity include acute and chronic test data. For acute toxicity, EPA evaluates LC50 and LD50 tests, which are submitted in response to EPA data requirements (40 CFR Part 158). The LC50 is the statistically derived estimate of the concentration (median lethal concentration) that would cause mortality to 50 percent of the test population. In contrast, the LD50 is the statistically derived estimate of the single dose (median lethal dose) that would cause mortality to 50 percent of the test population. Both tests are conducted with surrogate species that are used to evaluate the potential risk to other species.

To assess acute toxicity of pesticides to birds, EPA guidelines require one LD50 study for an upland game bird (preferably bobwhite quail) or waterfowl (preferably mallard duck) and one LC50 study for each species. To assess toxicity to aquatic species (fish and invertebrates), EPA requires LC50 studies on a warm water species (preferably bluegill sunfish), a cold water species (preferably rainbow trout), and an invertebrate (preferably *Daphnia magna*). Toxicity to non-target mammals is initially assessed by considering LD50 data for laboratory rats, which EPA requires to evaluate pesticide hazards to humans. Typically, EPA requires data on honeybees to address the risks to beneficial insects.

The acute toxicity data described above are basic requirements that are generally available for all pesticides with outdoor uses. For some kinds of

pesticide uses, or where these basic data warrant additional data, EPA may require higher tier testing. Higher tier acute data may include toxicity to estuarine fish, invertebrates, and oyster embryo larvae; and oyster shell deposition studies. Chronic toxicity data are all higher tier and may include data on avian reproductive effects, fish early-life stage toxicity, chronic toxicity to mammals and to freshwater fishes, estuarine fishes, and invertebrates. Rarely are data from field studies, aquatic pond studies, or secondary toxicity studies available, although such data recently have been required for some pesticides. The EPA validates all data using its Standard Evaluation Procedures (Refs 2 through 24).

2. *Environmental exposure.* Data used for the exposure assessment of a pesticide include (1) its physical/chemical properties; (2) environmental fate data, including data on persistence; (3) label information such as application sites, rates, methods, and timing; (4) bioconcentration; and (5) factors related to the species themselves, such as their biology, ecology, and distribution. Occasionally, field residue data applicable to non-target species are available.

The exposure assessment has two components. The first component is the determination of the EEC's that may result from use of the pesticide according to label directions. The second is a determination of whether non-target species are expected to be exposed to the EEC.

The EPA uses various models to determine EEC's to evaluate the risk to aquatic species. Whenever possible, actual field study or residue data also are reviewed. The models used include (a) a water model, (b) a simple drift model, (c) a simple runoff model, and (d) a computer runoff and exposure simulation model. Computer based models include the Simulator for Water Resources in Rural Basins (SWRRB) and Exposure Analysis Modeling System (EXAMS). The EPA is working on conversion of existing SWRRB scenarios to use in another computer model, the Pesticide Root Zone Model (PRZM), and other models to make more accurate predictions of drift and runoff loading to adjacent terrain and water bodies, and drift from ground level applications.

To determine EEC's for listed terrestrial species, EPA estimates residues on food items consumed by the species. Estimated residues, primarily on plants and insects, are based mainly on studies by Hoerger and Kenaga (Ref. 25), and Kenaga (Ref. 26). These studies utilize actual pesticide residue values for several types of vegetable material, such as long and short range grasses; leaves and leafy crops; forage crops; pods containing seeds; and fruit (cherries, peaches, grapes, citrus). Residues are given on the basis of a pesticide application rate of 1 lb/A and then adjusted for the label rate. The estimates represent maximum expected residues for day zero (immediately after application), accompanied by upper and lower confidence limits. When possible, actual validated residue data also are considered.

In estimating the environmental concentrations, EPA also considers the formulation of the product, such as liquid, granular, or fumigant formulations. The available validated pesticide and environmental fate data are used in the computer based models to provide more accurate assessments from multiple applications, as identified on the label. Specific scenarios have been developed for runoff from specific crop sites, as well as environmental concentrations in a pond-stream environment. Data, such as water chemistry data, are often insufficient to accurately run the more sophisticated computer based models. The EPA is attempting to develop additional scenarios to address additional use sites, different application methods (aerial, ground, etc.), cropping practices (no-till, strip crop, rotation, etc.), application techniques (band, in-furrow, side-dressing, etc.), and integrated pest management practices so that alternatives can be identified that will protect listed species.

3. *Risk assessment.* In assessing the risk to non-target species in general, EPA compares the toxicity information with the EEC and then determines the likelihood that non-target organisms will actually be exposed. Comparisons of LC50 or LD50 values with EEC's indicate whether additional data may be required or that a particular pesticide may warrant restricted use classification if actual exposure may occur. When evaluating impacts to federally listed species, EPA does not rely solely on the LC50 or LD50 end points since some listed species may not be able to withstand even the loss of a few individuals in the population, much less 50 percent. Therefore, more stringent criteria have been developed to provide greater protection for populations of listed species, whose numbers in many instances are dangerously low. Thus, criteria were developed to determine the environmental concentrations at which a pesticide "may affect" a listed species. These criteria were developed for mammals, birds, and aquatic organisms as follows:

mammals—EEC equal to or greater than 1/5th the lowest mammalian acute oral LD10 or LC10, or 1/10th the lowest LD50 or LC50;

birds—EEC equal to or greater than 1/5th the lowest avian acute oral LD10 or subacute dietary LC10 or 1/10th the lowest LD50 or LC50; and

aquatic organisms—EEC equal to or greater than 1/10th the lowest aquatic LC10, or 1/20th the lowest aquatic LC50.

When the above criteria are exceeded for any relevant taxa, the magnitude of the potential impact is determined by calculating a hazard ratio, which is the ratio of the EEC (based on a specific application rate) over the toxicity criteria. Any hazard ratio of one or greater confirms that a "may affect" situation exists, since the predicted residues in the environment are equal to or exceed the amount of the pesticide that could be hazardous to the species. Higher hazard ratios indicate a greater magnitude of concern.

For most currently registered pesticides, ecological impacts from acute toxicity are more likely than those from chronic toxicity. However, EPA also considers information related to subchronic and chronic risks, reproductive effects, and bioaccumulation factors. The laboratory test data (e.g., chronic feeding, life cycle, oncogenicity, or reproductive studies) on no-effect-levels or no-observable-effect levels (NOEL) and/or effect levels are compared with estimated or actual field residues. When these residues are in excess of the NOEL for appropriate surrogates of listed species, EPA considers that a "may affect" situation exists.

Secondary hazards are associated with acute and chronic toxicity relating to bioaccumulation of a pesticide in the food chain and body residues of target or non-target organisms consumed by organisms higher in the food chain. Again, estimated or actual residues in food items are correlated with diet of the non-target organisms and compared with the acute and chronic toxicity values.

In evaluating the risk from pesticide use, EPA also considers other information. For example, toxicity to non-target insects, such as honey bees, is important because pollination can be critical to certain listed plants. Any reports of pesticide incidents involving non-target species, even if they are not listed species, also are considered.

Finally, effects on listed species' habitats and food supply are also considered. For example, the Everglade snail kite feeds specifically on the apple snail. Therefore, any disruption of the apple snail's habitat from pesticides or pesticide toxicity to the apple snail itself may adversely affect the Everglade snail kite. Also, herbicide disruptions of animal and plant community balance also could adversely impact the habitat or micro-habitat of listed species. For example, herbicides are unlikely to be directly toxic to the valley elderberry longhorn beetle, but they may destroy the elderberry trees in which the beetle lives. On occasion, pesticide use may be beneficial to some species' habitats by reversing adverse plant competition trends that have been exacerbated by other human activities, such as exotic introductions and wildfire control.

When all the data are evaluated and "may affect" determinations made, EPA assembles all of the relevant information and/or references, along with any reasonable and prudent alternatives that are known, and sends it to FWS requesting consultation. The species and pesticides included in this request are only those where a "may affect" determination was made.

Following receipt of the request for consultation, FWS prepares the Biological Opinion and determines if the use is likely to pose jeopardy to the continued existence of a species, if the use will result in the destruction or adverse modification of critical habitat of a species or if incidental take is anticipated and provisions are necessary to minimize these impacts. A "may affect" determination by EPA may not result in a jeopardy determination by FWS or result in any anticipated incidental take.

C. Threshold Application Rate Estimates

Some pesticides (e.g., certain ones that have been subject to Special Review) have been evaluated enough that the application rates that would result in a "may affect" determination are already known. For other pesticides, EPA will first screen them to determine if the highest application rate would result in a "may affect" determination. Pesticides that do not exceed the "may affect" criteria are dropped from further analysis. For pesticides that do exceed the criteria at the highest application rate, EPA then will determine the EEC that would result from an application rate of 1 pound active ingredient per acre (lb ai/A) for various combinations of application methods and formulation types (and environments, where appropriate) of a pesticide. Typically, EPA then will compare the resulting EEC's to toxicity to obtain a hazard ratio.

A hazard ratio of "1" or greater indicates that the EEC has met or exceeded our "may affect" criteria. If using 1 lb ai/A application rate results in a hazard ratio of less than one (indicating the "may affect" criteria has not been met at that rate), the ratio allows EPA to calculate the highest application rate that would still not result in a "may affect" determination, which may be compared with product label rates.

This is accomplished by multiplying the 1 lb ai/A application rate by the reciprocal of the hazard ratio. For example, if the hazard ratio is ⅕ based on a 1 lb ai/A application rate, the application rate which would result in a "may affect" determination would be 1 lb ai/A × 5/1 or 5 lb ai/A. The same procedure applies even if the hazard ratio is greater than 1. However, the application rate derived in the latter case might not be a rate specified on the label in which case all label use rates would result in a "may affect" to listed species.

VII. Public Record and Solicitation of Comments

A. Public Record

The EPA is providing a 90-day period to comment on the Notice. Comments must be received on or before October 2, 1989. All comments and information should be submitted in triplicate to the address given in this Notice under "ADDRESS." The comments and information should bear the identifying notation "OPP-36166". Information for which a claim of CBI has been asserted will not, however, be placed in the docket.

The EPA has established a public record (public docket #36154) for the Endangered Species Protection Program. The public record includes:

1. This Notice.
2. The March 9, 1988, Notice (53 FR 7716).
3. Documents and copies of written comments submitted to EPA in response to the March 9, 1988, Notice.
4. Transcripts of the public meetings held in the spring of 1988.
5. Other materials related to the Endangered Species Protection Program.

B. Solicitation of Comments

The EPA invites comments on any aspect of the proposed Program. The EPA specifically welcomes comments on two issues. First, EPA solicits comments on the generic labeling approach, as opposed to one in which the labels identify the names of the counties affected (county-specific labeling). Second, EPA encourages comments on means to effectively implement use limitations for outdoor uses by homeowners. A discussion of these two issues is contained in the Units that follow.

1. *Generic labeling versus county-specific labeling.* In the March 9, 1988, **Federal Register** Notice (53 FR 7717), EPA proposed county-specific labeling, which meant that affected products would be labeled with a precaution regarding listed species and a list of counties in which Bulletins would have to be obtained. All counties included in the Program as a result of Biological Opinions were to have been listed on the label, and only those individuals using pesticides in those counties would be required to obtain a Bulletin and follow the use limitations specified in the Bulletin. Bulletins would contain county maps and/or habitat descriptions showing the currently occupied habitat of the listed species and would describe the use limitations necessary to preclude jeopardy to or reduce incidental take of the species.

In this Notice, EPA is proposing a generic labeling approach. (Refer to Unit III.B.) Labeling of an affected pesticide would instruct users of the product to comply with the use limitations that may be contained in a Bulletin for the county where the pesticide is to be used. Although a list of counties would not appear on the label, Bulletins would be specific to a county. For counties with no use limitations, Bulletins would provide general information about protecting listed species.

There is one significant difference in design between the two approaches described here. The difference is that in the county-specific approach, users of pesticides would know from the label if a Bulletin would apply to their county. In the currently proposed generic labeling approach, it would not be apparent from the label if a Bulletins applies to their county, but if it does, the user must follow it. Thus, the second approach will make it potentially more difficult for users to know whether their particular area is affected since the counties will not be listed on the label.

Under either approach, there would be no difference in the area actually subject to use limitations. Only persons using affected pesticides in the currently occupied habitat of a species for which a Biological Opinion specified protective measures would be required to follow the use limitations in the Bulletin to ensure that their actions will not pose a threat to listed species.

The EPA recognizes that there are certain trade-offs as a result of this difference. County-specific labeling

would be more convenient to users, since it would be readily apparent where special instructions applied, and it would avoid the potential inconvenience of users having to determine whether use limitations applied in their county. Generic labeling would be more convenient to registrants because labels would have to be changed infrequently. Generic labeling would provide EPA with some administrative advantages, but would require more efforts to develop additional Bulletins and inform users of the existence or lack of use limitations in a county. County-specific labeling would likely delay protective measures for added species during the time necessary to relabel products.

In the proposed Program described in this document, EPA intends to re-evaluate pesticides with existing Biological Opinions declaring jeopardy and to reinitiate consultation with FWS where warranted. As a result, EPA does not yet have specific information on which pesticides and species will be included in the forthcoming enforceable Program. However, based on the Program that EPA intended to implement in 1988, a total of 910 counties (approximately 30 percent of the counties in the United States) would have been affected. Under the initial proposal, all users of affected pesticides in these 920 counties would have been required to obtain a Bulletin or in the case of mosquito larvicides and forestry products, place a telephone call to the FWS; no actions would be required for pesticide users in 70 percent of the counties. With generic labeling, pesticide users in these unaffected counties would be required to know if there are use limitations and to follow any that are applicable.

The EPA believes that the advantages of generic labeling exceed the advantages of county-specific labeling for several reasons. Once labels carry the revised language, they would have to be changed only when all use limitations are deleted for a pesticide product. Because of the time needed for regiatrants to produce new labels for affected products and the time necessary for products with old labels to clear the marketplace, relabeling a product to provide effective protection takes approximately 2 years. Under generic labeling, addition or deletion of a species from the Program as a result of new or revised Biological Opinions would be reflected through revision of Bulletins and could be made more rapidly than through requiring label changes. Similarly, no label changes would be required to accommodate state-initiated plans, changes in reasonable and prudent actions or revised assessments of particular use sites. The use of Bulletins in unaffected counties also may sensitize pesticide users to the need to protect listed species, thus promoting the use of the Bulletins when and if use limitations become necessary.

During the first few years of the Program, many changes in affected species and affected pesticides are likely as EPA and FWS evaluate and assess currently-registered pesticides. Because of the cost savings associated with generic labeling, industry may be cooperative in assisting with public outreach activities to inform pesticide users where use limitations do and do not apply. If generic labeling is adopted, EPA will explore various means, including the possibility of a toll free telephone number, for the convenience of pesticide users to assist them in determining whether their pesticide use site is in an affected county.

The major disadvantage of generic labeling is that users of affected products in all counties would have to become aware of whether any use limitations to protect listed species existed in their county. Because the Bulletins containing the use limitations may change as often as annually, pesticide users would have to determine if there are any changes each year. The EPA is concerned that users in initially unaffected counties may become apathetic to future limitations in those counties and cease checking to determine whether they are subject to use limitations if they have checked for several years and found none. User opposition to the Program may result, which could lead to decreased user compliance. With county-specific labeling, the existence of use limitations in a particular county would be clear as a result of listing the counties on the label.

To provide further analysis of generic versus county-specific labeling, EPA will estimate the impacts to pesticide registrants and pesticide users under both implementation scenarios by quantifying the costs imposed on society. Under generic labeling, pesticide users would have to take the time to determine if use limitations apply in the county in which they plan to use the pesticide. This factor will be analyzed in terms of the cost of additional time. In contrast, county-specific labeling would impose additional label modification costs on pesticide registrants, but may cost the user less time. The EPA plans to weigh the increased opportunity cost of time for generic labeling against the increased label modification costs of county-specific labeling. The ability of both approaches to disseminate information to the user community and thus reduce the risk to listed species will also be considered in the analysis.

The EPA is especially interested in receiving feedback from users on these two approaches, since user understanding and acceptance will be critical to the success of the Program. EPA thus solicits specific comments on generic labeling versus county-specific labeling.

2. *Methods for implementing use limitations for homeowners.* The ESA mandates the protection of listed species in their habitats, which can include urban, suburban, and rural areas. Home and garden products may be used in all of these areas and may expose listed species. The EPA believes that to fulfill its obligations under ESA, it is not appropriate to differentiate among agricultural users and household users when either may expose a listed species through pesticide use. The EPA thus believes that it is essential to include products labeled for home and garden use that "may affect" listed species. The EPA is proposing that home and garden products used outdoors not be exempted from the Program. (Refer to Unit IV.2.f.).

The EPA recognizes that there are differences in the nature of some of the pesticide products used by homeowners. In its review to determine whether a pesticide "may affect" listed species, EPA will consider that areas treated by homeowners are typically smaller in size and thus less likely to result in widespread environmental concentrations that may be detrimental to listed species, especially where transport away from the site of application is necessary to expose the species. The EPA will also consider the application rates and methods, and the concentration of the active ingredient in the product when estimating EEC's. Only if the EEC exceeds the "may affect" criteria (refer to Unit VI) will EPA refer the pesticide to the FWS for a Biological Opinion. In the Biological Opinion, the FWS will consider the proximity of use of the product to listed species habitat.

While EPA believes the factors it considers in determining whether a pesticide "may affect" listed species, and the FWS procedures for developing Biological Opinions will result in minimal limitations on home and garden products, EPA will continue to seek measures to further limit the burden on this population of pesticide users. The

EPA specifically requests comments on other factors it may consider to reduce this burden while continuing to protect listed species.

The EPA also recognizes that implementation of the Program for homeowners may require very different methods. Users of home and garden products are rarely certified applicators and, therefore, would not have undergone certification training, which is a major means of educating and informing agricultural users of pesticides.

The EPA solicits specific comments on means to reach and inform users of home and garden products about any use limitations to which they may be subject. At present, EPA expects to use the labeling/bulletin approach for home and garden products, but is open to alternative approaches. With any approach, EPA continues to seek suggestions on means of communicating effectively with users of home and garden products.

VIII. References

With the exception of the studies by Hoerger and Kenaga (Ref. 25) and Kenaga (Ref. 26), which are published in the scientific literature, all references are available from the National Technical Information Service (NTIS). Orders may be placed to NTIS by telephone at (703) 487-4650 or by mail to the following address: National Technical Information Service, ATTN: Order Desk, 5285 Port Royal Road, Springfield, Virginia 22161.

The references used in this document are as follows:

(1) U.S. Environmental Protection Agency. 1986. Hazard Evaluation Division Standard Evaluation Procedure for Ecological Risk Assessment. EPA 540-9-86-167. NTIS No. PB86-247657.

(2) U.S. Environmental Protection Agency. 1985. Hazard Evaluation Division. Standard Evaluation Procedure Wild Mammal Toxicity Test. EPA-540/9-85-004. NTIS No. PB86-129251.

(3) U.S. Environmental Protection Agency. 1985. Hazard Evaluation Division. Standard Evaluation Procedure Avian Dietary LC50 Test. EPA-540/9-85-008. NTIS No. PB86-129293.

(4) U.S. Environmental Protection Agency. 1985. Hazard Evaluation Division Standard Evaluation Procedure Avian Single-Dose Oral LD50 Test. EPA-540/9-85-007. NTIS No. PB86-129285.

(5) U.S. Environmental Protection Agency. 1986. Hazard Evaluation Division Standard Evaluation Procedure Pesticide Spray Drift Evaluation: Droplet Size Spectrum Test and Drift Field Evaluation Test. EPA-540/9-86-131. NTIS No. PB87-102216.

(6) U.S. Environmental Protection Agency. 1985. Hazard Evaluation Division Standard Evaluation Procedure Honey Bee—Acute Contact LD50. EPA-540/9-85-002. NTIS No. PB86-154580.

(7) U.S. Environmental Protection Agency. 1985. Hazard Evaluation Division Standard Evaluation Procedure Honey Bee—Toxicity of Residues on Foliage. EPA-540/9-85-003. NTIS No. PB86-129244.

(8) U.S. Environmental Protection Agency. 1985. Hazard Evaluation Division Standard Evaluation Procedure Acute Toxicity Test for Freshwater Fish. EPA-540/9-85-006. NTIS No. PB86-129277.

(9) U.S. Environmental Protection Agency. 1985. Hazard Evaluation Division Standard Evaluation Procedure Acute Toxicity Test for Freshwater Invertebrates. EPA-540/9-85-005. NTIS No. PB86-129269.

(10) U.S. Environmental Protection Agency. 1985. Hazard Evaluation Division Standard Evaluation Procedure Acute Toxicity Test for Estuarine and Marine Organisms (Mollusc 48-Hour Embryo Larvae Study. EPA-540/9-85-012. NTIS No. PB86-129335.

(11) U.S. Environmental Protection Agency. 1985. Hazard Evaluation Division Standard Evaluation Procedure Acute Toxicity Test for Estuarine and Marine Organisms (Estuarine Fish 96-Hour Acute Toxicity Test). EPA-540/9-85-009. NTIS No. PB86-129301.

(12) U.S. Environmental Protection Agency. 1985. Hazard Evaluation Division Standard Evaluation Procedure Acute Toxicity Test for Estuarine and Marine Organisms (Shrimp 96-Hour Acute Toxicity Test). EPA-540/9-85-010. NTIS No. PB86-129319.

(13) U.S. Environmental Protection Agency. 1985. Hazard Evaluation Division Standard Evaluation Procedure Acute Toxicity Test for Estuarine and Marine Organisms (Mollusc 96-Hour Flow-Through Shell Deposition Study). EPA-540/9-85-011. NTIS No. PB86-129327.

(14) U.S. Environmental Protection Agency. 1986. Hazard Evaluation Division Standard Evaluation Procedure *Daphnia magna* Life-cycle (21-Day Renewal) Chronic Toxicity Test. EPA-540/9-86-141. NTIS No. PB87-209730.

(15) U.S. Environmental Protection Agency. 1986. Hazard Evaluation Division Standard Evaluation Procedure Fish Life-Cycle Toxicity Tests. EPA-540/9-86-137. NTIS No. PB87-209169.

(16) U.S. Environmental Protection Agency. 1986. Hazard Evaluation Division Standard Evaluation Procedure Fish Early Life-Stage. EPA-540/9-86-136. NTIS No. PB87-209722.

(17) U.S. Environmental Protection Agency. 1986. Hazard Evaluation Division Standard Evaluation Procedure Avian Reproduction Test. EPA-540/9-86-139. NTIS No. PB87-209177.

(18) U.S. Environmental Protection Agency. 1986. Hazard Evaluation Division Standard Evaluation Procedure Field Testing for Pollinators. EPA-540/9-86-140. NTIS No. PB87-209714.

(19) U.S. Environmental Protection Agency. 1986. Hazard Evaluation Division Standard Evaluation Procedure Non-Target Plants: Target Area Testing. EPA-540/9-86-130. NTIS No. PB87-101689.

(20) U.S. Environmental Protection Agency. 1986. Hazard Evaluation Division Standard Evaluation Procedure Non-Target Plants: Seed Germination/Seedling Emergence—Tiers 1 and 2. EPA-540/9-86-132. NTIS No. PB87-102240.

(21) U.S. Environmental Protection Agency. 1986. Hazard Evaluation Division Standard Evaluation Procedure Non-Target Plants: Terrestrial Field Testing—Tier 3. EPA-540/9-86-135. NTIS No. PB87-101697.

(22) U.S. Environmental Protection Agency. 1986. Hazard Evaluation Division Standard Evaluation Procedure Non-Target Plants: Vegetative Vigor—Tiers 1 and 2. EPA-540/9-86-133. NTIS No. PB87-102224.

(23) U.S. Environmental Protection Agency. 1986. Hazard Evaluation Division Standard Evaluation Procedure Non-Target Plants: Growth and Reproduction of Aquatic Plants—Tiers 1 and 2 Test. EPA-540/9-86-134. NTIS No. PB87-102232.

(24) U.S. Environmental Protection Agency. 1986. Hazard Evaluation Division Standard Evaluation Procedure Non-Target Plants: Aquatic Field Testing—Tier 3. EPA-540/9-86-136. NTIS No. PB187-101705.

(25) Hoerger, F.D., and E.E. Kenaga. 1972. Pesticide Residues on Plants Correlation of Representative Data as a

Basis for Estimation of Their Magnitude in the Environment. Environmental Quality. Academic Press, New York I:9–28.

(26) Kenaga, E.E. 1973. Factors to be Considered in the Evaluation of the Toxicity of Pesticides to Birds in Their Environment. Environmental Quality and Safety. Academic Press, New York II:166–181.

Dated: June 21, 1989.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 89–15579 Filed 6–30–89; 8:45 am]

BILLING CODE 6560–50–M

federal register

Monday
July 3, 1989

Part IV

Department of Education

Invitation for Applications for Fiscal Year 1990 New Awards; International Education Programs; Notice

BEST COPY AVAILABLE

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.016, 84.017, and 84.153]

Invitation for Applications for Fiscal Year 1990 New Awards; International Education Programs

AGENCY: Department of Education.

ACTION: Combined notice inviting applications for Fiscal Year 1990 new awards under the following International Education Programs: Undergraduate International Studies and Foreign Language, International Research and Studies, and Business and International Education.

Purpose

Applications are invited for new awards for Fiscal Year 1990 under Title VI of the Higher Education Act of 1965, as amended (the HEA, for the following programs: the Undergraduate International Studies and Foreign Language Program (34 CFR Part 658); the International Research and Studies Program (34 CFR Part 660); and the Business and International Education Program (34 CFR Part 661).

The Undergraduate International Studies and Foreign Language Program provides grants to institutions of higher education, combinations of those institutions, and public and private nonprofit agencies and organizations, including professional and scholarly associations, to strengthen and improve undergraduate instruction in international studies and foreign languages in the United States.

The International Research and Studies Program provides grants to public and private agencies, organizations, institutions, and individuals to conduct research and studies to improve and strengthen instruction in modern foreign languages, area studies, and related fields.

The Business and International Education Program provides grants to institutions of higher education to enhance international business education programs and to expand the capacity of the business community to engage in international economic activities.

Deadlines for Transmittal of Applications

For the International Research and Studies Program—October 30, 1989;

For the Undergraduate International Studies and Foreign Language Program—November 6, 1989;

For the Business and International Education Program—November 8, 1989.

Applications Available

August 31, 1989.

Eligible Applicants

For the Undergraduate International Studies and Foreign Language Program, eligible applicants are institutions of higher education, combinations of institutions of higher education, and public and private nonprofit agencies and organizations, including professional and scholarly associations.

For the International Research and Studies Program, eligible applicants are public and private agencies, organizations, institutions, and individuals.

For the Business and International Education Program, eligible applicants are institutions of higher education.

Priorities

The Secretary gives a competitive preference to applications for the International Research and Studies Program for Fiscal Year 1990 that propose to provide: Research on more effective methods of providing competency-based instruction and evaluating proficiency in the languages of the Middle East, South Asia, Southeast Asia, Eastern Europe and the U.S.S.R., Inner Asia, East Asia, and languages indigenous to Africa and Latin America. This priority is consistent with the list of priorities established in the regulations governing this program (34 CFR 660.34). This priority will be implemented in accordance with the provisions of the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105(c)(2)(ii).

There are no priorities for the Undergraduate International Studies and Foreign Language Program and for the Business and International Education Program for Fiscal Year 1990.

INTERNATIONAL EDUCATION PROGRAMS

Title and CFDA number	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Undergraduate International and Foreign Language Program (CFDA No. 84.016).	$1,200,000	$30,000 to $75,000	$48,000	25	24 to 36
International Research and Studies Program (CFDA No. 84.017)	1,094,274	23,000 to 156,000	66,000	18	12 to 36
Business and International Education Program (CFDA No. 84.153)	755,000	40,000 to 100,000	75,000	10	24

Applicable Regulations

(a) Undergraduate International Studies and Foreign Language Program, 34 CFR Parts 655 and 658; (b) International Research and Studies Program, 34 CFR Parts 655 and 660; (c) Business and International Education Program, 34 CFR Parts 665 and 661; and (d) Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 85.

For Applications or Information Contact

Ralph Hines or Christine Corey (Undergraduate International Studies and Foreign Language Program), Telephone (202) 732-3283 or (202) 732-3293, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3052, ROB-3, Washington, DC 20202-5332;

Jose L. Martinez (International Research and Studies Program), Telephone (202) 732-3297, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3053, ROB-3, Washington, DC 20202-5331;

Susanna C. Easton (Business and International Education Program), Telephone (202) 732-3302, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3053, ROB-3, Washington, DC 20202-5332;

Program Authority

Undergraduate International Studies and Foreign Language Program.

(20 U.S.C. 1124)

International Research and Studies Program (20 U.S.C. 1125).

Business and International Education Program (20 U.S.C. 1130-1130b).

Dated: June 27, 1989.

James B. Williams,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 89-15604 Filed 6-30-89; 8:45 am]

BILLING CODE 4000-01-M

federal register

Monday
July 3, 1989

Part V

Agency For International Development

Housing Guaranty Program; Government of Jordan; Notice of Investment Opportunity

AGENCY FOR INTERNATIONAL DEVELOPMENT

Housing Guaranty Program; Government of Jordan; Notice of Investment Opportunity

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan to the Government of Jordan as part of A.I.D.'s development assistance program. The proceeds will be used to finance shelter projects for low-income families in Jordan. At this time, the Government of Jordan has authorized A.I.D. to request proposals from eligible lenders for a loan under this program of Twenty Million U.S. Dollars ($20,000,000). The name and address of the representatives of the Borrower to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

Government of Jordan

Loan No: 278–HG–001/003—$20,000,000
Attention: Mr. Mansour Haddadin
Director of Finance, Ministry of Finance
P.O. Box 85, Amman, Jordan
Telex No.: 23634 FINANCE JO
Telefax No.: 962/6/643121
Tel. Nos.: 962/6/636321

Interested lenders should telex their bids to the Borrower's representative by 5:30 p.m. (EST) July 17, 1989. Bids should be open for a period of 48 hours from the bid closing date. Copies of all bids should be simultaneously sent to the following: John R. Power Agency for International Development GC/PRE, Room 3328 N. S., Washington, D.C. 20523, Telex No.: 202/647–4958 (preferred communication), Telex No.: 892703 AID WSA), Telephone: 202/647–6505.

Trent Harrington
111–61–5573 Zaharan Street
Jebel Amman, USAID/Amman
Amman, Jordan
Telex No.: 24350 USAID JORDAN
Telefax No.: 962/6/604858
Tel. No.: 962/6/604171

Mr. David Olinger, Assistant Director, Near East RHUDO/Tunis, USAID/Tunis
28 Rue Suffex, Notre Dame
c/o American Embassy, Tunis, Tunisia
Telex No.: USAID TN 14182
Telefax No.: 216/1–782464 (preferred communication)
Tel. No.: 216/1–784300

For your information the Borrower is currently considering the following terms:

1. *Amount:* U.S. $20 million.
2. *Term:* Up to 30 years.
3. *Grace Period:* 10 years on principal, 3 years on interest.
4. *Interest Rate:* Fixed.
5. *Drawdown:* Proceeds from borrowing to be disbursed at closing. The entire $20 million will be disbursed in a single disbursement to the Borrower at the time of the loan closing. No escrow account is required.
6. *Closing Date:* Estimated 60 days from date of selection of investor.
7. *Fees:* Borrower agrees to pay all closing costs. Lenders are requested to include all legal fees in their placement fee.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loan would be guaranteed by A.I.D. The A.I.D. guaranty would be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in Section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loan must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rate may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of lenders and other aspects of the A.I.D. Housing Guaranty Program can be obtained from: Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, Room 401, SA–2, Washington, DC 20523–0214 Telephone: 202/663–2530.

Michael G. Kitay,

Assistant General Counsel, Bureau for Private Enterprise, Agency for International Development.

Date: June 30, 1989.

[FR Doc. 89–15628 Filed 6–30–89; 10:43 am]
BILLING CODE 6116–01–M

Reader Aids

Federal Register
Vol. 54, No. 126
Monday, July 3, 1989

INFORMATION AND ASSISTANCE

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FEDERAL REGISTER PAGES AND DATES, JULY

27855-28016.....3

LIST OF PUBLIC LAWS

Last List June 26, 1989

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 881/Pub. L. 101-42

Coquille Restoration Act. (June 28, 1989; 103 Stat. 91; 4 pages) Price: $1.00

H.J. Res. 111/Pub. L. 101-43

Designating June 23, 1989, as "United States Coast Guard Auxiliary Day". (June 28, 1989; 103 Stat. 95; 1 page) Price: $1.00

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $620.00 domestic, $155.00 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at **(202) 783-3238** from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$10.00	Jan. 1, 1988
3 (1988 Compilation and Parts 100 and 101)	21.00	[1] Jan. 1, 1989
4	14.00	Jan. 1, 1988
5 Parts:		
1-699	14.00	Jan. 1, 1988
700-1199	15.00	Jan. 1, 1988
1200-End, 6 (6 Reserved)	11.00	Jan. 1, 1988
7 Parts:		
0-26	15.00	Jan. 1, 1988
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46-51	16.00	Jan. 1, 1988
52	23.00	[3] Jan. 1, 1988
53-209	18.00	Jan. 1, 1988
210-299	22.00	Jan. 1, 1988
300-399	11.00	Jan. 1, 1988
400-699	17.00	Jan. 1, 1988
700-899	22.00	Jan. 1, 1988
900-999	26.00	Jan. 1, 1988
1000-1059	15.00	Jan. 1, 1988
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1120-1199	11.00	Jan. 1, 1988
1200-1499	17.00	Jan. 1, 1988
1500-1899	9.50	Jan. 1, 1988
1900-1939	11.00	Jan. 1, 1988
1940-1949	21.00	Jan. 1, 1988
1950-1999	18.00	Jan. 1, 1988
2000-End	6.50	Jan. 1, 1988
8	11.00	Jan. 1, 1988
9 Parts:		
1-199	19.00	Jan. 1, 1988
200-End	17.00	Jan. 1, 1988
10 Parts:		
0-50	18.00	Jan. 1, 1988
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400-499	13.00	Jan. 1, 1988
500-End	24.00	Jan. 1, 1988
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12 Parts:		
1-199	11.00	Jan. 1, 1988
200-219	10.00	Jan. 1, 1988
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600-End	12.00	Jan. 1, 1988
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14 Parts:		
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200-1199	20.00	Jan. 1, 1988
1200-End	12.00	Jan. 1, 1988
15 Parts:		
0-299	10.00	Jan. 1, 1988
300-399	20.00	Jan. 1, 1988
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16 Parts:		
0-149	12.00	Jan. 1, 1989
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19 Parts:		
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200-End	5.50	Apr. 1, 1988
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§§ 1.61-1.169	23.00	Apr. 1, 1988
§§ 1.170-1.300	17.00	Apr. 1, 1988
§§ 1.301-1.400	14.00	Apr. 1, 1988
§§ 1.401-1.500	24.00	Apr. 1, 1988
§§ 1.501-1.640	15.00	Apr. 1, 1988
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§§ 1.851-1.1000	28.00	Apr. 1, 1988
§§ 1.1001-1.1400	16.00	Apr. 1, 1988
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30-39	14.00	Apr. 1, 1988
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300-499	15.00	Apr. 1, 1988
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600-End	6.00	Apr. 1, 1988
27 Parts:		
1-199	23.00	Apr. 1, 1988
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Title	Price	Revision Date
29 Parts:		
0-99	17.00	July 1, 1988
100-499	6.50	July 1, 1988
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400-End	26.00	July 1, 1988
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36 Parts:		
1-199	12.00	July 1, 1988
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38 Parts:		
0-17	21.00	July 1, 1988
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40 Parts:		
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7	6.00	[7] July 1, 1984
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9	13.00	[7] July 1, 1984
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan.1, 1988 to Dec.31, 1988. The CFR volume issued January 1, 1988, should be retained.

[3] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1988. The CFR volume issued January 1, 1987, should be retained.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[7] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

CFR ISSUANCES 1989
January–April 1989 Editions and Projected July, 1989 Editions

This list sets out the CFR issuances for the January–April 1989 editions and projects the publication plans for the **July, 1989** quarter. A projected schedule that will include the **October, 1989** quarter will appear in the first **Federal Register** issue of October.

For pricing information on available 1988–1989 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. Individual announcements of the actual release of volumes will continue to be printed in the **Federal Register** and will provide the price and ordering information. The weekly CFR checklist or the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR volumes actually printed.

Normally, CFR volumes are revised according to the following schedule:

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All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

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29 CFR
1910 (2 documents) 28054, 28154

33 CFR
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40 CFR
82 28062

42 CFR
57 28065

47 CFR
Proposed Rules:
73 28077

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Federal Register
Vol. 54, No. 127
Wednesday, July 5, 1989

Presidential Documents

Title 3—

The President

Presidential Determination No. 89-16 of June 22, 1989

Sale of Stingers to Bahrain

Memorandum for the Secretary of State

By virtue of the authority vested in me by section 614(a)(2) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2364(a)(2), I hereby determine that it is vital to the national security interests of the United States to sell Stinger missiles and associated equipment to the Government of Bahrain, and I hereby authorize such sale, notwithstanding the requirements of section 566 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100-461).

You are directed to report this determination to Congress immediately and to publish it in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, June 22, 1989.

[FR Doc. 89-15925
Filed 6-30-89; 4:28 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 54, No. 127
Wednesday, July 5, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

[No. LS-88-101]

Beef Promotion and Research

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; correction.

SUMMARY: AMS is correcting one figure on the table listing assessments for Beef and Beef products which appeared in the April 20, 1989, **Federal Register** (54 FR 15918). The ninth figure on the third column of the second table is revised to read 1.697542.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs and Procurement Branch (202) 447-2650.

SUPPLEMENTARY INFORMATION: The following correction is made in FR Doc. 89-9502, the Beef Promotion and Research final rule to change Tariff Schedule of the United States numbers to Harmonized Tariff Schedule numbers (7 CFR Part 1260) published in the April 20, 1989, Federal Register (54 FR 15918):

§ 1260.172 [Amended]

1. In § 1260.172, the ninth figure on the third column of the second table of the third column of page 15918, change from "0.697542" to "1.697542."

Done at Washington, DC, on June 29, 1989.

Kenneth C. Clayton,
Acting Administrator.

[FR Doc. 89-15725 Filed 7-3-89; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Parts 1941 and 1943

Removal of Form FmHA 492-19, "Characteristics of Approved Applicants"

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulation to remove references to Form FmHA 492-19 which has been deemed unnecessary. The intended effect of this section is to update the Agency regulations and CFR.

EFFECTIVE DATE: July 5, 1989.

FOR FURTHER INFORMATION CONTACT: Keith Miller, Systems Accountant, Accounting Policy and Procedures Section I, USDA, Farmers Home Administration, 1520 Market Street, St. Louis, Missouri 63103, telephone FTS 262-6024 or commercial 314-539-6024.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Secretary's Memorandum 1512-1 which implements Executive Order 12291 and has been determined to be exempt from those requirements because it involves only internal Agency management. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contract, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. However, this action is not published for proposed rulemaking since it involves internal Agency management and publication for comment is unnecessary.

Environmental Impact Statement

This document has been reviewed according to 7 CFR Part 1940, Subpart G "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Intergovernmental Consultation

For the reasons set forth in the final rule related to Notice 7 CFR Part 3015, Subpart V (48 FR 29115, June 1983), and FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs, and Activities" (December 23, 1983), this activity is related to the following programs that are subject to intergovernmental consultations, with State and local officials:

10.416—Soil and Water Loans (SW Loans)

In turn, the following programs to which this activity is also related, are not subject to Executive Order 12372:

10.406—Farm Operating Loans
10.407—Farm Ownership Loans

List of Subjects in 7 CFR Parts 1941 and 1943

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth, Credit, Recreation, Water resources.

Therefore, Chapter XVIII, Title 7, code of Federal Regulations is amended as follows:

1. The authority citations for the parts 1941 and 1943 continue to read as follows:

PART 1941—[AMENDED]

Authority: 7 U.S.C. 1989, 7 CFR 2.23, 7 CFR 2.70.

PART 1943—[AMENDED]

Authority: 7 U.S.C. 1989, 7 CFR 2.23, 7 CFR 3.70.

CHAPTER XVIII—[AMENDED]

2. 7 CFR Chapter XVIII is amended by removing the reference "Form FmHA 492-19, Characteristics of Approved Applicants," in the following places:

(a) Part 1941, Subpart A, Exhibit A
(b) Part 1943, Subpart A, 1943.32(a)
(c) Part 1943, Subpart B, 1943.82(a)

Dated: June 6, 1989.

Neal Sox Johnson,
Acting Administrator, Farmers Home Administration.

[FR Doc. 89-15730 Filed 7-3-89; 8:45 am]

BILLING CODE 3410-07-M

7 CFR Part 1951

Loan and Grant Programs; Servicing and Collections

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its Community Facilities loan and grant servicing regulations. This action is being taken to clarify the regulation. The intended effect is to provide more comprehensive and straightforward guidance to FmHA staff and recipients of assistance relating to the servicing of the affected loans and grants.

EFFECTIVE DATE: July 5, 1989.

FOR FURTHER INFORMATION CONTACT: T.W. Davis, Loan Specialist, Water and Waste Disposal Division, Farmers Home Administration, USDA, South Agriculture Building, Room 6334, Washington, DC 20250, telephone: (202) 382-9586 or Bonnie Justice, Loan Specialist, Community Facilities Division, Farmers Home Administration, USDA, South Agriculture Building, Room 6314, Washington, DC 20250, telephone: (202) 382-1490.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers; individual industries; Federal, State, or Local government agencies; or geographic regions.

Furthermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This action is not expected to substantially affect budget outlay, to affect more than one agency or to be controversial. The net result is expected to provide better service to rural communities.

These programs/activities are listed in the Catalog of Federal Domestic Assistance under Nos. 10.418, Water and Waste Disposal Systems for Rural Communities, and 10.423, Community Facilities Loans, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and Local officials. (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983, and 7 CFR Part 1940, Subpart J, "Intergovernmental Review of Farmers Home Administration Programs and Activities").

This document has been reviewed in accordance with 7 CFR part 1940, Subpart C, "Environmental Programs." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

BACKGROUND: This action, which amends Subpart O of part 1951, was published as a proposed rule for public comment on December 19, 1988 (53 FR 50972), giving interested parties until January 18, 1989, to submit comments. No comments were received. Therefore, the Agency adopts the proposed rule as final without changes.

List of Subjects in 7 CFR Part 1951

Account servicing, Grant programs-Housing and community development; Loan programs-Housing and community development; Reporting requirements; Rural areas; Rent subsidies; Subsidies.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations, is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart O—Servicing Cases Where Unauthorized Loan(s) or Other Financial Assistance Was Received—Community and Insured Business Programs

2. Section 1951.711 is amended by revising paragraph (b)(3) to read as follows:

§ 1951.711 Servicing options in lieu of liquidation or legal action to collect.

* * * * *

(b) * * *

(3) *Unauthorized subsidy benefits received.* When the recipient was eligible for the loan but should have been charged a higher interest rate than that in the debt instrument, which resulted in the receipt of unauthorized subsidy benefits, the case will be handled as outlined in this paragraph. The recipient will be given the option to submit a written request that the interest rate be adjusted to the lower of the rate for which they were eligible that was in effect at the date of loan approval or loan closing. (See Exhibit C of this subpart for interest rates (available in any FmHA office)). FmHA servicing officials will make a concerted effort to collect all unauthorized subsidy benefits from the recipient and will contact the Office of General Counsel in each case for advice in accomplishing corrective actions.

* * * * *

Dated: June 1, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89-15729 Filed 7-3-89; 8:45 am]

BILLING CODE 3410-07-M

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7 CFR Part 1951

Servicing and Collections

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) is revising its Single Family Housing servicing and collections regulation to change the number and title of Form FmHA 451-37 "Additional Partial Payment Agreement," to Form FmHA 1951-37, "Additional Payment Agreement." Changes are also being made in the regulation to correspond with the change of the number and title of this form. The intended effect of this action is to update, revise, and streamline the processing of the additional payment agreement consistent with program and borrower needs.

EFFECTIVE DATE: July 5, 1989.

FOR FURTHER INFORMATION CONTACT: Jean F. Leavitt, Loan Specialist, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, South Agriculture Building, Room 5309, Washington, DC 20250, telephone (202) 382-1452.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only internal agency management. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 533 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves only corrections, clarifications or matters involving management, making publication for comment unnecessary and impractical.

Programs Affected

The programs are listed in the Catalog of Federal Domestic Assistance (CFDA) under:

10.410 Low Income Housing Loans
10.411 Rural Housing Site Loans
10.417 Very Low-Income Housing Repair Loans and Grants

Intergovernmental Consultation:

CFDA number 10.411 is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. CFDA numbers 10.410 and 10.417 are excluded from Executive Order 12372.

Environmental Impact Statement:

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-90, an Environmental Impact Statement is not required.

List of Subjects in 7 CFR Part 1951

Account servicing, Low and moderate income housing loans.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

Part 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 continues to read as follows:

Authority: 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart G—Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts

2. In § 1951.308, paragraphs (a)(2)(ii) and (a)(2)(v) are revised to read as follows:

§ 1951.308 Payment coupons and changes in payment plan.

(a) * * *

(2) * * *

(ii) Form FmHA 1951-37, "Additional Payment Agreement," is processed.

* * * * *

(v) An account rescheduled by use of Form FmHA 1951-37 becomes current.

* * * * *

3. In § 1951.312, the introductory text of paragraph (d), (d)(2), and the introductory text of paragraph (e) are revised to read as follows:

§ 1951.312 Servicing.

* * * * *

(d) *Rescheduled payment agreement.* Delinquent borrowers are expected to bring their accounts current as soon as possible, based on their ability to repay as determined by a completed Form FmHA 1944-3, "Budget and/or Financial Statement." Borrowers who are able will pay all or a substantial portion of the delinquent amount in a single payment. Those unable will pay a larger than scheduled regular payment until the account is current. The remaining delinquent balance should usually be paid within 2 years but in no case will the repayment period exceed the remaining term of the loan. The borrower's circumstances will be reviewed annually to determine if the remaining delinquent balance can be paid in full or if the additional payment amount should be modified.

* * * * *

(2) Borrowers who need more than 4 months to repay a delinquency will execute Form FmHA 1951-37 (applicable to borrowers with a monthly payment plan) which will be recorded on the tickler system. The amount of the additional payment must be at least $10 per month for each borrower. The County Supervisor may enter into only one agreement with a borrower in any 1-year period. Prior authorization from the District Director is required for any additional agreements during this 1-year period.

(e) *Systematic method to service accounts of delinquent borrowers.* The following method is to be followed in servicing each delinquent housing account. If letters are sent in lieu of personal contact then Guide Letters 1951-G-1, 2, 3, 4, 5, 6, and 9 will be used unless letters with different wording are incorporated into a State supplement which has received prior approval of the National Office. Although a sufficient number of servicing letters are needed to document that borrowers have been notified of benefits which may be available to them, the County Supervior must be aware that personal contact, either by telephone or in person, is more effective. Borrowers who have declared bankruptcy under the Federal Bankruptcy Code will be serviced as provided in § 1965.117 of Subpart C of Part 1965 of this chapter.

* * * * *

§ 1951.313 [Amended]

4. In § 1951.313, paragraph (a)(2) is amended by removing the word "Partial" from the phrase "Additional Partial Payment Agreement," and paragraphs (g)(1), (g)(2) and (h) are amended by changing the reference "Form FmHA 451-37" to read "Form FmHA 1951-37."

§ 1951.314 [Amended]

5. In § 1951.314, paragraph (a)(5) is amended by changing the reference "Form FmHA 451-37" to read "Form FmHA 1951-37."

Dated: April 18, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89-15727 Filed 7-3-89; 8:45 am]

BILLING CODE 3410-07-M

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7 CFR Part 1980

Business and Industry Loan Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its requirements for the Business and Industry (B&I) Loan Program regarding refinancing, variable interest rates, and National Office review of dockets. This action is needed to clarify the regulations and keep them responsive to commercial banking practices. This action is intended to broaden the conditions under which a loan may include refinancing, reduce limitations on variable interest rates, and clarify what kind of changes in a loan proposal necessitates additional review by the National Office.

DATE: July 5, 1989.

FOR FURTHER INFORMATION CONTACT: Beverly Craver, Business and Industry Loan Specialist, Farmers Home Administration, USDA, Room 6327, 14th and Independence Avenue SW., Washington, DC 20250, Telephone (202) 475-3805.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291 and has been determined to be non-major. The annual effect on the economy is less than $100 million and there will be no significant increase in costs or prices for consumers, individual industries, organizations, governmental agencies or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Intergovernmental Review

This program is listed in the Catalog of Federal Domestic Assistance under

number 10.422, Business and Industrial Loans. It is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials in accordance with FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" available in any FmHA Office) and 7 CFR 3015, Subpart V.

Environmental Impact Statement

The action has been reviewed in accordance with FmHA Instruction 1940-G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Background

The current regulations prohibit loans for refinancing unless the refinancing is necessary to prevent the loss of existing jobs. Frequently, loans that would be sound and would benefit the community are proposed where existing jobs are not in jeopardy and refinancing of existing debts is needed to obtain adequate lien priority or for other valid reasons. This action provides for refinancing when needed to create new jobs.

The current regulations regarding variable interest rates are unclear as to whether the rate must be adjustable at regular intervals. It is becoming common banking practice to set the interest rate for a longer time during the early part of the loan term with agreement that later the rate will vary more frequently. A typical example might be an initial rate set for 5 years and adjusted quarterly thereafter. This action clarifies the regulations to allow for adjustment at irregular intervals.

Review and concurrence of B&I loan proposals by the National Office is often required before the guarantee may be approved by the State Director. Conditions are often placed on the concurrence. While attempting to meet the conditions in a way acceptable to them, applicants sometimes propose further changes in the project. This action clarifies that resubmission to the National Office for additional review is required if there is a major change in the scope of the project.

Comments

This action was published as a proposed rule for public comment on February 10, 1989, in Volume 54, No. 27, of the Federal Register, beginning on page 6417.

One response was received. The commenter objected to the job test requirement for refinancing. FmHA believes the requirement for job verification is necessary to evaluate the impact on, and benefit to the community. Therefore, no change has been made in the proposed rule.

List of Subjects in 7 CFR Part 1980

Loan programs—Business and Industry, Rural Development Assistance and Rural Areas.

Accordingly, FmHA amends Chapter XVIII, Title 7, Code of Federal Regulations, to read as follows:

PART 1980—GENERAL

1. The authority citation for Part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Business and Industrial Loan Program

2. Section 1980.411 is amended by revising the introductory text of paragraph (a)(11) to read as follows:

§ 1980.411 Loan purposes.

* * * * *

(a) * * *

(11) *Debt refinancing.* Lenders and FmHA must provide as part of their loan analysis the reasons for refinancing and the file must be documented accordingly. Refinancing debts may be allowed in connection with viable projects when it is determined by the lender and FmHA that it is necessary to create new or save existing jobs. FmHA will consider any lender's exposure as it relates to this item and may adjust the guarantee percentage accordingly. Refinancing in accordance with this paragraph may be insured or guaranteed only when:

* * * * *

3. Section 1980.423 is amended by revising paragraph (a)(1) to read as follows:

§ 1980.423 Interest rates.

(a) * * *

(1) A variable interest rate must be a rate that is tied to a base rate published periodically in a recognized national or regional financial publication specifically agreed to by the lender and borrower. The variable interest rate may be adjusted at different intervals during the term of the loan but the adjustments may not be more often than quarterly. The intervals between interest rate adjustments will be specified in the Loan Agreement. The lender must incorporate within the variable rate promissory note at loan closing, the provision for adjustment of payment installments coincident with an interest rate adjustment. This will assure that the outstanding principal balance is properly amortized within the prescribed loan maturity to eliminate the possibility of a balloon payment at the end of the loan.

* * * * *

4. Section 1980.453 is amended by revising ADMINISTRATIVE paragraph A to read as follows:

§ 1980.453 Review of requirements.

* * * * *

Administrative

A. The State Director will negotiate with the lender and proposed borrower any changes made to the initially issued or proposed Form FmHA 449-14. A copy of Form FmHA 449-14 and any amendments thereto will be included when the loan file is submitted to the National Office for review. When the National Office recommends modifications or additions to Form FmHA 449-14, the State Director will further negotiate these recommendations with the lender and proposed borrower. If, as a result of these further negotiations, the lender, proposed borrower or State Director presents alternate conditions which would result in a major change or changes in the scope of the proposed project, the State Director will submit these conditions by memorandum to the National Office for consideration with a copy of the revised Form FmHA 449-14 and any amendments thereto.

* * * * *

Date May 22, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89-15728 Filed 7-3-89; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-22-AD; Amdt. 39-6257]

Airworthiness Directives; Aerospatiale Model ATR42-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42-300 series airplanes, which requires modification of the fuselage emergency exit frame at shoot bolt and upper stop locations. This amendment is prompted by a fatigue and damage tolerance analysis of the fuselage emergency exit frame, which revealed the need to increase the thickness of the fitting base at the upper stop and shoot bolt locations. This condition, if not corrected, could lead to failure of the emergency exit frame and subsequent rapid decompression.

EFFECTIVE DATE: August 7, 1989.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCracken, Standardization Branch, ANM-113; telephone (206) 431-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations, to include a new airworthiness directive applicable to Aerospatiale Model ATR42-300 series airplanes, which requires modification of the fuselage emergency exit frame at shoot bolt and upper stop locations, was published in the Federal Register on April 19, 1989 (54 FR 15766).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the proposal.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 33 airplanes of U.S. registry will be affected by this AD, that it will take approximately 40 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $52,800.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR Part 39) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Aerospatiale: Applies to Model ATR42-300 series airplanes, Serial Numbers 003 through 052, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent failure of the emergency exit frame, accomplish the following:

A. Prior to the accumulation of 12,000 landings or within 60 days after the effective date of this AD, whichever occurs later, accomplish modification of the fuselage emergency exit frame in accordance with Aerospatiale Service Bulletin ATR42-53-0024, Revision 2, dated May 16, 1988.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective August 7, 1989.

Issued in Seattle, Washington, on June 22, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 89-15685 Filed 7-3-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-149-AD; Amdt. 39-6256]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which requires inspection and replacement, if necessary, of roller fittings used on flight attendant seats. This amendment is prompted by reports of fatigue cracks discovered in one of the affected seats during an accident investigation. Fatigue cracks in the seat pan roller can result in seat failure in emergency landing conditions and injury to the occupant, and could potentially render the adjacent exit unusable.

EFFECTIVE DATE: August 7, 1989.

ADDRESSES: The applicable service information may be obtained from Trans Aero Industries, Inc., 502 North Oak Street, Inglewood, California 90302-2942, and from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Transport Airplane Directorate, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the

Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Gardlin, Airframe Branch, ANM-120S; telephone (206) 431-1932. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires inspection and replacement, if necessary, of roller fittings on certain flight attendant seats used on Boeing Model 737 airplanes, was published in the **Federal Register** on November 17, 1988 (53 FR 46463). The period for public comment closed January 10, 1989.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

The manufacturer of the airplane requested that the AD include a provision to allow continued airplane operation in the event a defective fitting is discovered by placarding the affected seat for "No Occupancy." The FAA does not agree totally with this suggestion. Based on information available to the FAA, the inspection intervals required by the AD are sufficient to schedule repairs, if necessary. In addition, the Master Minimum Equipment List for the Model 737 already addresses inoperative flight attendant seats. The FAA does agree that continued airplane operation should be allowed in the event a defective fitting is discovered, and has revised the wording of paragraph B. to reflect that replacement of the roller fitting must be accomplished prior to further use of the seat, rather than prior to further flight.

The Air Transport Association (ATA) of America responded on behalf of its members. Several ATA members conducted a fleet-wide inspection, which collectively totaled more than 200 airplanes, without finding any further problems with the roller fitting. On this basis, ATA requests that the NPRM be withdrawn since the incident prompting the AD appears to be isolated. The FAA does not agree. Due to the relatively small percentage of the total fleet which has been inspected, absence of a fatigue problem in the fleet cannot be positively established.

The ATA also requested that, if an AD were promulgated, the inspection be limited to one-time only and not repetitive as proposed. The FAA does not agree. Since the purpose of the required inspection is to detect a fatigue problem, it is necessary to continue to inspect the affected part at an interval sufficient to discover the fatigue before a failure occurs. However, the reporting requirement of paragraph C. of the AD will enable the FAA to later reevaluate the requirements of this AD based on the data received.

One commenter questioned whether the report of findings would be required after each repetitive inspection, or only after the initial inspection. Paragraph C. has been modified to specify that reporting is required only after the initial inspection, since this data will establish the baseline configuration of the fleet.

Due to the time elapsed since closure of the comment period, paragraph A. of the AD has been changed to recognize inspections conducted in the previous 12 months instead of 6 months as proposed.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously noted. These changes will neither increase the burden on any operator nor increase the scope of the AD.

There are approximately 1,600 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 600 airplanes of U.S registry will be affected by this AD, that it will take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $24,000.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation Safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations (14 CFR Part 39) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, equipped with flight attendant seats, Trans Aero part number (P/N) 90835, certified in any category. Compliance required as indicated, unless previously accomplished.

To prevent possible failure to flight attendant seats, accomplish the following:

A. Within the next 12 months after the effective date of this amendment, unless previously accomplished within 12 months prior to the effective date of this amendment, inspect seat pan roller fittings, P/N 990662-3 and -4, for evidence of fatigue and/or deformation, in accordance with Trans Aero Service Bulletin No. 113, dated May 11, 1988. Repeat the inspection at intervals not to exceed 18 months.

B. If evidence of fatigue or deformation is found, prior to further use of the seat, replace the seat pan roller fitting with an airworthy part. Inspect the new fitting, in accordance with paragraph A., above, at intervals not to exceed 18 months.

C. Within 10 days after completion of the initial inspection required by paragraph A., above, submit a report of findings, positive or negative, to the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will concur or make comments and then send it to the Manager, Seattle Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Trans Aero Industries, Inc., 502 North Oak Street, Inglewood, California 98302-2942, or to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Transport Airplane Directorate, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective August 7, 1989.

Issued in Seattle, Washington, on June 22, 1989.

Darrell M. Pederson,
Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-15687 Filed 7-3-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-46-AD; Amdt. 39-6254]

Airworthiness Directives; Boeing Model 737-100, -200, and -200C Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Boeing Model 737-100, -200, and -200C series airplanes, which currently requires repetitive ultrasonic inspections of the aft engine mount cone bolt, verification of the cone bolt torque, and mandatory installation of aft engine mount secondary supports and cone bolt failure indicators. This action reduces the compliance time for the installation of the aft engine mount secondary supports and cone bolt failure indicator. This amendment is prompted by a recent incident of an aft engine mount cone bolt failure which caused separation of an engine from the airplane. This action is necessary to prevent separation of an engine as a result of an aft cone bolt failure.

EFFECTIVE DATE: Effective August 7, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Transport Airplane Directorate, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Fox, Airframe Branch, ANM-120S; telephone (206) 431-1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by superseding telegraphic AD T89-05-53-R1, to require a reduction of the compliance time from 4,000 landings to 3,000 landings for the mandatory installation of the aft engine mount secondary supports and cone bolt failure indicator, repetitive ultrasonic inspections of the aft engine mount cone bolt, and installation torque verifications was published in the **Federal Register** on April 28, 1989 (54 FR 18301). Comments on the Notice were due by May 22, 1989.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter indicated that the reduced compliance time to install the new aft secondary support would result in unscheduled down time and requested an extension of seven months after the effective date of the AD. The FAA does not concur. As was explained in the preamble to the Notice, this AD action was prompted by a second incident in which the engine separated from an airplane during flight. In determining that it was appropriate to reduce the compliance time for installation of the modifications, the FAA developed the proposed compliance time, based not only on ensuring an acceptable level of safety, but on the current forecast of parts availability as well. In that the FAA has received no information to indicate that parts would not be available for installation in a timely manner, the FAA finds no justification for extending the compliance time as requested.

The same commenter also requested that a note be added to paragraph C.3. of the AD to indicate that AD sign-off is not necessary if the operator has incorporated a procedure into their FAA-approved maintenance program that requires a check of the bolt indicator every three days. The commenter stated that maintenance and flight crew preflight inspections are adequate to ensure that a routine check of the failure indicator would be accomplished every three days. The FAA does not concur. During the formulation of the proposed rule, the FAA gave careful consideration to the acceptability of maintenance and flight crews to perform this inspection. It was concluded that only an FAA-certificated mechanic with appropriate Required Inspection Item authorization is qualified to perform the inspection and appropriately record the action. Accordingly, the final rule remains as proposed.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 1,144 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 432 airplanes of U.S. registry will be affected by this AD, that it will take approximately 18 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. For airplanes equipped with the original secondary support cable assembly, the required additional modification parts will be furnished by the manufacturer at no charge to operators. For those airplanes not equipped with an existing secondary support assembly, required parts are estimated to be $4,500 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be from $720 to $5,220 per airplane, or from $311,040 to $2,255,040 for the U.S. fleet.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact,

positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations (14 CFR Part 39) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding telegraphic AD T89-05-53-R1, issued January 27, 1989, which superseded AD 88-01-07-R1, Amdt 39-6044 (53 FR 39250; October 6, 1988), with the following new airworthiness directive:

Boeing: Applies to Model 737-100, -200, and -200C series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent separation of an engine from the airplane as a result of the failure of an aft cone bolt accomplish the following:

A. Within the next 150 landings after January 27, 1989 (issuance date of Telegraphic AD T89-02-53-R1), unless previously accomplished within the last 150 landings and thereafter at intervals not to exceed 300 landings, inspect for cracks in the aft engine mount cone bolt, in accordance with Boeing Alert Service Bulletin 737-71A1212, dated December 22, 1987, using ultrasonic inspection techniques. Replace cracked cone bolts, prior to further flight, with bolts that have been inspected in accordance with the Boeing alert service bulletin, using magnetic particle inspection techniques. Replaced cone bolts must be ultrasonically inspected for internal cracking in accordance with the provisions of this paragraph at intervals not to exceed 300 landings.

Note: Special care should be taken to ensure proper seating of the cone bolt and washers prior to torquing to ensure that torque applied is maintained.

B. At the next ultrasonic inspection, as required by paragraph A., above, unless previously accomplished after cone bolt installation, accomplish a torque check to verify that the cone bolt is torqued to the proper torque limit specified in the appropriate Boeing maintenance manual. This check is to be accomplished without loosening the bolt.

1. If the cone bolt torque is below one-half the specified torque, remove the cone bolt and replace it with a serviceable bolt.

2. If the cone bolt torque is equal to or above one-half the specified torque, but below the specified torque to the specified level and re-check the torque within the next 300 landings. If, at that time, the torque is below 90 percent of the specified torque, replace the cone bolt with a serviceable bolt.

3. If the cone bolt is within 10 percent of the specified torque, no further torque checks are required.

After every cone bolt installation, accomplish the torque check procedure required by this paragraph, between 150 landings and 300 landings following installation.

C. Within 3,000 landings after November 17, 1988 (effective date of AD 88-01-07-R1, Amendment 39-6044), or within 5 months after the effective date of this AD, whichever occurs first, accomplish the following:

1. Install an aft engine mount secondary support (2 per airplane), in accordance with Boeing Service Bulletin 737-71-1069, Revision 1, dated May 19, 1988.

2. Install an aft engine mount cone bolt failure indicator, externally, on each engine nacelle, in accordance with Boeing Service Bulletin 737-71-0169, Revision 1, dated May 19, 1988.

3. Following the accomplishment of paragraph C.2, above, inspect the aft mount cone bolt indicator at intervals thereafter not to exceed 3 calendar days (72 hours) on in-service airplanes. Improper alignment indicates a broken aft cone bolt. Broken cone bolts must be replaced with airworthy parts prior to further flight.

Accomplishment of the requirements of this paragraph constitutes terminating action for the requirements of paragraphs A. and B., above.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

Note: Any alternate means of compliance previously approved for paragraph B. of AD 88-01-07-R1, Amendment 39-6044, constitutes alternate means of compliance with paragraph C. of this AD.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment supersedes telegraphic AD T89-02-53, Revision 1, issued January 27, 1989, which superseded Amendment 39-6044, AD 88-01-07-R1.

This amendment becomes effective August 7, 1989.

Issued in Seattle, Washington, on June 22, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 89-15686 Filed 7-3-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-110-AD; Amdt. 39-6258]

Airworthiness Directives; Empresa Brasileira de Aeronautica, S.A. (EMBRAER) Model EMB-120 and EMB-120RT Series Airplanes, Equipped With Garrett Auxiliary Power Unit (APU) Models GTCP36-150(A) or GTCP36-150(AA)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Embraer Model EMB-120 and EMB-120RT series airplanes, which requires an inspection of certain APU electrical power units (ECU) for water contamination, and replacement if necessary. This amendment is prompted by a report of severe uncontrolled APU overspeed which resulted in failure of the APU casing and subsequent destructive vibration. This condition, if not corrected, could result in in-flight failure of the APU, inability to control the airplane due to large unbalanced forces, and the potential for damage to critical airplane systems from APU debris.

EFFECTIVE DATE: July 18, 1989.

ADDRESSES: The applicable service information may be obtained from EMBRAER, 276 SW. 34th Street, Fort Lauderdale, Florida 33315. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. Gil Carter, Propulsion Branch, ACE-140A, Atlanta Aircraft Certification Office, FAA, Central Region, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; telephone (404) 991-3810.

SUPPLEMENTARY INFORMATION: There has been a recent report of an uncontrolled Auxiliary Power Unit (APU) overspeed on an EMBRAER Model EMB-120 series airplane, which resulted in destructive vibration and separation of the APU casing. Further investigation revealed that the APU electrical control unit (ECU) was contaminated with soapy water. This water/soap contamination disabled the overspeed protection. The ECU is installed near a vent screen, and it has been determined that water enters through this screen during pressure washing of the airplane. This condition, if not corrected, could result in in-flight failure of the APU, inability to control the airplane due to large unbalanced forces, and the potential for damage to critical airplane systems from APU debris.

This airplane model is manufactured in Brazil and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires inspection of the APU ECU for water contamination, and replacement, if necessary; and requires installation of a cover over the APU vent screen prior to pressure washing.

This is considered interim action. The manufacturer is currently developing alternate designs to ensure that water does not enter the APU ECU during aircraft pressure washing. When a modification is developed and available, the FAA may consider further rulemaking action to address this subject.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted therein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations (14 CFR Part 39) as follows:

PART 39—AMENDED

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Empresa Brasileira De Aeronautica, S.A. (Embraer): Applies to Embraer Model EMB-120 and EMB-120RT series airplanes, equipped with Garrett auxiliary power units (APU) models GTCP36-150(A) or GTCP36-150(AA), certificated in any category. Compliance is required within 25 hours time in service, or prior to the next APU start, whichever occurs later, after the effective date of this AD, unless previously accomplished.

To prevent an uncontrolled APU overspeed, accomplish the following:

A. Inspect the APU electrical control unit (ECU), Part No. 2118052-1/2118596-2, for water contamination, as follows:

1. Gain access to and remove the APU ECU from the airplane.

2. Install plastic covers on J1 and J2 connectors on the ECU.

3. In a suitable workshop area, cut the two tamper proof seals along the box/lid split line.

4. Remove the 14 screws that secure the ECU lid to the box.

5. Remove the ECU lid.

6. Use special attention to ensure that no foreign objects or material are allowed to enter the ECU, and that nothing inside the ECU is either touched or removed.

7. Using a bright light, inspect inside the ECU for moisture or water.

8. Turn the ECU slowly upside down and determine if water can be drained from the ECU.

9. If water is seen inside the ECU or if water can be drained out of the ECU, remove the ECU from service and replace it with a serviceable unit.

10. If the inside of the ECU is dry, carefully realign the ECU lid and packing with the ECU box, and reinstall the 14 screws using an alternating fashion around the circumference until there is metal to metal contact between the ECU lid and the ECU box around the entire circumference.

11. Have a Quality Assurance person re-seal the ECU using new tamper-proof seals.

12. Reinstall the ECU.

B. Prior to pressurized cleaning, install a suitable cover over the vent screen, to prevent exposing the APU ECU area to water contamination. Remove this temporary cover following completion of the pressurized cleaning procedure.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Atlanta Aircraft Certification Office, FAA, Central Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Atlanta Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to EMBRAER, 276 SW. 34th Street, Fort Lauderdale, Florida 33315. These documents may be examined at the FAA Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

This amendment becomes effective July 18, 1989.

Issued in Seattle, Washington, on June 23, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 89-15688 Filed 7-3-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-70-AD; Amdt. 39-6253]

Airworthiness Directives; McDonnell Douglas Model DC-9-10, -20, -30, -40, -50, and C-9 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas DC-9 series airplanes, which requires removal and replacement of certain improperly heat-treated engine mount cone bolts. This amendment is prompted by a report of a shipment of improperly heat-treated forward and aft engine mount cone bolts which have degraded fatigue strength. Engine mount cone bolts provide primary attachment between the engine frame and the engine mount. Failure to identify and correct improperly heat-treated engine mount cone bolts could result in premature fatigue failure of the bolts and subsequent failure of the engine mount attachment.

EFFECTIVE DATE: July 17, 1989.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publication and Training, C1-750 (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Salas, Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5324.

SUPPLEMENTARY INFORMATION: On December 16, 1988, Barry Controls reported to certain McDonnell Douglas Model DC-9 series airplane customers that a specific quantity of engine mount cone bolts, part numbers R18210-2 and R18211-2, had been improperly heat treated, and requested retrieval of these parts. Sample mechanical tests indicate that although the subject bolts do meet minimum strength requirements, their fatigue life has been degraded. Engine mount cone bolts provide the primary attachment between the engine frame and the engine mount. Failure to identify and correct these improperly heat-treated engine mount cone bolts could result in premature fatigue failure of the bolts and subsequent failure of the engine mount attachment.

Based on tests conducted on the bolts, the FAA has concluded that, in a conservative analysis, these bolts have a minimum fatigue life of approximately 2,000 flight hours and must, therefore, be replaced prior to or upon the accumulation of that amount of flight hours, in order to maintain an acceptable level of safety.

It is estimated that 433 of these non-conforming cone bolts were shipped as replacement parts between October 13 and December 7, 1988. Affected operators were notified of shipment of these discrepant bolts on December 20, 1988. The subject bolts can be identified by serial number.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin 71-46, dated April 24, 1989, which describes procedures for inspection and replacement of the defective bolts.

Since this situation is likely to exist or develop on other airplanes of this same type design, this AD requires inspection for the defective bolts and replacement of those bolts with properly heat-treated bolts, in accordance with the service bulletin previously described.

In determining an appropriate compliance time for replacement of the bolts, the FAA has taken into account the 2,000 flight hour fatigue life limit applicable for these bolts, and the fact that the bolts were shipped to operators and may have been installed on planes as early as October 1988. Replacement of the defective bolts is, therefore, required within 2,000 flight hours since installation of the bolt, or within 15 days after discovery [intended to provide sufficient time for obtaining and installing the necessary parts and to preclude interruption of service, for those operators who may have installed the bolt(s) more than 2,000 flight hours previously], whichever occurs later.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket. A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC-9-10, -20, -30, -40, -50, and C-9 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent premature fatigue failure of engine mount cone bolts, accomplish the following:

A. Within 90 days after the effective date of this AD, determine if forward engine mount cone bolts, Barry Controls part number R18210-2, serial numbers 15B8021 through 15B8329, 15B8332 through 15B8382, 15B8396 through 15B8399; or aft engine mount cone bolt, Barry Controls part number R18211-2, serial numbers 15B5242 through 15B5320; are installed.

Note: This determination may be accomplished by conducting either a thorough review of receiving inventory and/or maintenance records, or a visual inspection of each installed cone bolt.

B. If any of the cone bolts identified in paragraph A., above, are installed, or if a determination of the installation of discrepant bolts cannot be made, remove the cone bolt(s) and replace it with a properly heat-treated cone bolt within 2,000 flight hours after installation or 15 days after discovery, whichever occurs later, in accordance with McDonnell Douglas Service Bulletin 71-46, dated April 24, 1989.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publication and Training, C1-750 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This Amendment becomes effective July 17, 1989.

Issued in Seattle, Washington, on June 22, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-15689 Filed 7-3-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-ASW-63]

Revision of Transition Area; Morrilton, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This corrective action makes an editorial change to the legal description of the Morrilton, AR, Transition Area. This action is necessary because the original final rule document incorrectly described the Morrilton, AR, Transition Area as "excluding that portion that overlies the Little Rock, AR, Transition Area." The correct description should be "excluding that portion that overlies the Conway, AR, Transition Area." The intended effect of this action is only to make an editorial change to the Morrilton, AR, Transition Area. The physical description of the transition area will not be altered.

EFFECTIVE DATE: 0901 U.T.C. July 27, 1989.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedure Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

The **Federal Register** Document was published on March 1, 1989, 54 FR 8554 revising the existing Morrilton, AR, Transition Area to include a 10-mile radius area of the Morrilton Municipal Airport. The development of a new standard instrument approach procedure to Runway 27 at the Morrilton Municipal Airport made this revision necessary. However, the legal description of the Morrilton, AR, Transition Area incorrectly described the area as "excluding that portion that overlies the Little Rock, AR, Transition Area." The correct description should be "excluding that portion that overlies the Conway, AR, Transition Area."

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Agency, Transition Areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 96-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Morrilton, AR [Amended]

By deleting the words "excluding that portion that overlies the Little Rock, AR, Transition Area" and adding the words "excluding that portion that overlies the Conway, AR, Transition Area."

Issued in Fort Worth, TX, on June 20, 1989.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 89-15691 Filed 7-3-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 25944; Amdt. No. 1403]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigible airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

BEST COPY AVAILABLE

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents, is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard Instrument, Incorporation by reference.

Issued in Washington, DC, on June 23, 1989.

Robert L. Goodrich,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective September 21, 1989

Greenville, MS—Greenville Muni, LOC BC RWY 36R, Amdt. 8
Greenville, MS—Greenville Muni, NDB RWY 36L, Amdt. 5
Greenville, MS—Greenville Muni, NDB RWY 36R, Amdt. 8
Greenville, MS—Greenville Muni, ILS RWY 18L, Amdt. 9
Ft. Leonard Wood, MO—Forney AAF, VOR RWY 14, Amdt. 4, CANCELLED
Ft. Leonard Wood, MO—Forney AAF, VOR RWY 32, Amdt. 4, CANCELLED
Ft. Leonard Wood, MO—Forney AAF, LOC RWY 14, Amdt. 5, CANCELLED
Ft. Leonard Wood, MO—Forney AAF, NDB RWY 32, Amdt. 4, CANCELLED
Ft. Leonard Wood, MO—Forney AAF, RADAR-1, Amdt. 2, CANCELLED
Goldsboro, NC—Goldsboro-Wayne Muni, LOC RWY 23, Orig.
Goldsboro, NC—Goldsboro-Wayne Muni, NDB RWY 22, Amdt. 2, CANCELLED
Goldsboro, NC—Goldsboro-Wayne Muni, NDB RWY 23, Orig.

. . . Effective August 24, 1989

San Luis Obispo, CA—San Luis Obispo County, VOR or TACAN-A, Amdt. 6
Lacon, IL—Marshall County, VOR-A, Amdt. 3, CANCELLED
Lacon, IL—Marshall County, VOR RWY 13, Orig.
Glasgow, KY—Glasgow Muni, VOR/DME RWY 7, Amdt. 2
Glasgow, KY—Glasgow Muni, SDF RWY 7, Amdt. 5

Glasgow, KY—Glasgow Muni, NDB RWY 7, Amdt. 6
Greenville, KY—Muhlenberg County, VOR/DME-A, Amdt. 3
Madisonville, KY—Madisonville Muni, VOR RWY 23, Amdt. 10
Madisonville, KY—Madisonville Muni, RNAV RWY 23, Amdt. 1
Caribou, ME—Caribou Muni, VOR-A, Amdt. 9
Traverse City, MI—Cherry Capital, VOR or TACAN-A, Amdt. 19
Traverse City, MI—Cherry Capital, NDB RWY 28, Amdt. 9
Traverse City, MI—Cherry Capital, ILS RWY 28, Amdt. 11
Holland, MI—Park Township, VOR-C, Amdt. 6, CANCELLED
Minneapolis, MN—Flying Cloud, VOR RWY 9R, Amdt. 6
Minneapolis, MN—Flying Cloud, VOR RWY 36, Amdt. 11
Minneapolis, MN—Flying Cloud, LOC RWY 9R, Amdt. 1, CANCELLED
Minneapolis, MN—Flying Cloud, ILS RWY 9R, Orig.
Red Wing, MN—Red Wing Muni, NDB RWY 9, Amdt. 2
North Kingstown, RI—Quonset State, VOR-A, Amdt. 2
North Kingstown, RI—Quonset State, VOR RWY 34, Amdt. 4
North Kingstown, RI—Quonset State, ILS RWY 16, Amdt. 3
Salt Lake City, UT—Salt Lake City Muni 2, RADAR-2, Amdt. 1

. . . Effective July 27, 1989

Cumberland, MD—Cumberland Muni, LOC-A, Amdt. 2
Cumberland, MD—Cumberland Muni, LOC/DME RWY 23, Amdt. 4
Cumberland, MD—Cumberland Muni, NDB-A, Amdt. 7
Hancock, MI—Houghton County Memorial, VOR RWY 13, Amdt. 13
Hancock, MI—Houghton County Memorial, VOR/DME RWY 13, Amdt. 1
Hancock, MI—Houghton County Memorial, VOR RWY 25, Amdt. 15
Hancock, MI—Houghton County Memorial, VOR/DME RWY 25, Amdt. 1
Hancock, MI—Houghton County Memorial, VOR RWY 31, Amdt. 12
Hancock, MI—Houghton County Memorial, VOR/DME RWY 31, Amdt. 1
Hancock, MI—Houghton County Memorial, LOC/DME BC RWY 13, Amdt. 9
Hancock, MI—Houghton County Memorial, NDB RWY 31, Amdt. 9
Hancock, MI—Houghton County Memorial, ILS RWY 31, Amdt. 10
Raleigh/Durham, NC—Raleigh/Durham, ILS RWY 5L, Amdt. 1
Leesburg, VA—Leesburg Muni/Godfrey Field, RNAV RWY 17, Amdt. 9
Martinsburg, WV—Eastern WV Regional/Shephard Field, LOC/DME BC RWY 8, Amdt. 4

. . . Effective June 21, 1989

Macomb, IL—Macomb Muni, LOC RWY 27, Amdt. 1
Macomb, IL—Macomb Muni, NDB RWY 27, Amdt. 1

. . . Effective June 20, 1989

Manhattan, KS—Manhattan Muni, ILS RWY 3, Amdt. 5

. . . Effective June 12, 1989

Boonville, MO—Jesse Viertel Memorial, NDB RWY 18, Amdt. 7

[FR Doc. 89-15690 Filed 7-3-89; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084-AA26

Energy Costs and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The National Appliance Energy Conservation Admendments of 1988 [1] ("NAECA 88"), enacted on June 28, 1988, adds fluorescent ballasts to the list of appliances in the Energy Policy and Conservation Act ("EPCA"), as amended by the National Appliance Energy Conservation Act of 1987 ("NAECA 87"),[2] for which the Department of Energy ("DOE") must establish minimum efficiency standards and testing procedures. In addition, NAECA 88 requires the Federal Trade Commission ("the Commission") to promulgate ballast labeling requirements.

On January 12, 1989,[3] the Commission published a Notice of Proposed Rulemaking (NPR) to add fluorescent lamp ballasts to the list of products covered by the Commission's Appliance Labeling Rule ("the Rule").[4] Today, the Commission announces final amendments to the Rule and discusses its reasons for adopting them.

EFFECTIVE DATE: June 23, 1989.

FOR FURTHER INFORMATION CONTACT: Neil J. Blickman (202-326-3038) or James G. Mills (202-326-3035), Attorneys, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

The Notice of Proposed Rulemaking

The January 12 Notice solicited comments on the substantive proposed amendments to the Commission's Appliance Labeling Rule, which expand the coverage of the Rule to include fluorescent lamp ballasts. Specifically, the Commission sought comment on whether manufacturers of the newly covered products should be required to submit energy usage data to the Commission pursuant to § 305.8 of the Rule, whether the Commission's proposed disclosure approach for such products pursuant to § 305.11 of the Rule is appropriate and whether, pursuant to § 305.13 of the Rule, the Commission should require disclosures in connection with the use of point-of-sale promotional materials by manufacturers of the new covered products.

Under section 336(a) of EPCA,[5] the Commission must prescribe amendments to its Appliance Labeling Rule in accordance with the notice-and-comment requirements of section 553 of the Administrative Procedure Act,[6] except that interested persons must be afforded an opportunity for a hearing.

Written comments were received through February 13, 1989. The following groups and individual commented on the Commission's proposal: (1) The California Energy Commission ("CEC"), (2) The New York State Energy Office ("NY"), (3) The National Electrical Manufacturers Association ("NEMA"), (4) The Advance Transformer Co. ("Advance"), (5) The Coalition for Alternatives in Nutrition and Healthcare, Inc. and (6) Mr. Mark Uebel.

Although afforded the opportunity, no one notified the Presiding Officer to request a public hearing on the proposed amendments. Interested persons also were afforded 20 days, until March 6, 1989, to file rebuttal submissions. No comments were received during the rebuttal period.

NAECA 88 Labeling Requirements

NAECA 88 directs the Commission to amend the Appliance Labeling Rule to require disclosure that ballasts meet the minimum efficiency standards set by NAECA 88.[7] The legislation specifically requires that the disclosure be in the form of a capital letter "E" printed within a circle on the ballast and on the packaging of the ballast or the lamp containing the ballast.[8]

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[1] Pub. L. 100-357, 102 Stat. 671.
[2] 42 U.S.C. 6291 *et seq.*
[3] 54 FR 1182.
[4] 16 CFR Part 305.
[5] 42 U.S.C. 6306.
[6] 5 U.S.C. 553.
[7] The standards will apply only to the four most commonly used fluorescent lamp ballasts, which make up approximately 85% of the ballast market. The standards will take effect in phases, with manufacturers of ballasts having to comply with respect to ballasts manufactured after January 1, 1990, sold by manufacturers after April 1, 1990 or incorporated into lamps by April 1, 1991.
[8] The relevant portion of the legislation states: (B) The Commission shall prescribe labeling rules

Continued

Further, NAECA 88 specifically amends section 324 of EPCA so that the Rule the Commission must promulgate for labeling lamp ballasts will differ from the appliance labeling requirements presently required by the Rule in two major respects. First, amended section 324 removes the Commission's authority to require, for lamp ballasts, disclosure of the estimated annual operating costs of the products or another measure of energy consumption, like energy efficiency ratings. Second, amended section 324 removes the Commission's authority to require, for lamp ballasts, disclosure of the range of estimated annual operating costs or energy efficiency ratings for the products.

Analysis of Comments and Statement of Reasons for Final Rule

Although NAECA 88 adds fluorescent lamp ballasts to the list of covered products under EPCA, as previously mentioned, its substantive requirements are more limited than those for the other products covered by the Rule. To prevent the new status of fluorescent lamp ballasts as a "covered product" from triggering other requirements of the existing Rule, the Commission has made a number of minor amendments to adjust the final Rule. These amendments reconcile the Rule's existing labeling requirements with the simplified approach mandated by Congress for fluorescent lamp ballasts.[9] No comments were received relating to these amendments.

A discussion of the proposed substantive amendments and the comments on those amendments follows below.

Section 305.8 Submission of Data

Section 326 of EPCA, which is unchanged by the NAECA 88 amendments, requires manufacturers of covered products to submit to the Commission energy usage data and starting serial numbers pertaining to their products. These statutory requirements are repeated in § 305.8 of the Rule along with requirements for additional product information and data needed to establish and maintain the ranges of comparability in connection with product labeling requirements.

In the NPR, the proposed amendments excluded manufacturers of fluorescent lamp ballasts from the Rule's data reporting requirements. At that time, the Commission believed that compliance with portions of the reporting requirements would not be possible because manufacturers did not use serial numbers on lamp ballasts. Further, other information required by § 305.8 was deemed inapplicable to lamp ballasts or unnecessary for ballasts because it is used to prepare ranges of comparability for covered products. Labels for fluorescent lamp ballasts will not disclose ranges since the statutory labeling requirement for these products excludes the disclosure of ranges.

In response to a question on this section of the Rule in the NPR, the California Energy Commission, New York State Energy Office and Advance Transformer Co. submitted comments. The comments urged the Commission to require manufacturers of covered ballast products to submit the energy usage data required to be submitted to the Commission by other covered product manufacturers pursuant to § 305.8 of the Rule.[10] NY, for example, pointed out that without such energy usage data, the Commission will have no effective means for determining which ballasts must comply with the NAECA 88 efficiency standards and the Rule's labeling requirements.[11] NY also urged the Commission to require ballast manufacturers to submit information concerning the energy efficiency rating of covered ballasts pursuant to § 305.8. With respect to ballasts, that rating is referred to generally as the ballast efficacy factor ("BEF").[12]

The comments also stated that although ballasts do not have serial numbers, it is standard practice for all ballast manufacturers to date code their products in order to administer warranty programs. The comments contended that information concerning the date of manufacture of covered ballast products would assist the Commission in determining whether manufacturers have complied with the Rule's labeling requirements, and, therefore, should be reported under § 305.8 of the Rule.[13]

In light of the comments stating that date codes would be an effective alternative to serial numbers for compliance with the reporting requirements, the Commission has revised § 305.8. As revised, it now requires ballast manufacturers to submit the date codes for their products. It also requires manufacturers to submit the BEF's and certain related information for their products so the Commission can determine whether a ballast is entitled to use the "E" logo, and whether it meets the minimum efficiency standards. The Commission has the power to restrain any person from distributing in commerce a covered ballast that does not comply with the NAECA 88 minimum efficiency standards.[14] Lamp ballast manufacturers will not be required, however, to submit certain data required by § 305.8 that is needed for preparing comparability ranges (ranges will not be published for lamp ballasts) or other information that is inapplicable to this product category.

Finally, NY's comment also suggested that requiring § 305.8 disclosure is necessary for another reason. NY contended that section 327(a)(1)(B) of EPCA, which is not amended by NAECA 88, may preempt state regulations that require the reporting of information concerning the energy use or efficiency of covered products other than information required to be reported pursuant to § 305.8 of the Commission's Appliance Labeling Rule.[16] NY argued that if § 305.8 of the Commission's Rule does not require the submission of energy usage and efficiency data, it is questionable whether the states and utilities could continue to require the reporting of such information for state certification, directory publication and rebate programs.[16]

The Commission believes that the most logical and reasonable reading of section 327(a)(1)(B) of EPCA is that it does not preempt the states from requiring ballast manufacturers to report energy usage and efficiency information. This section of EPCA applies to the preemption of state testing and labeling requirements. Consequently, when this section states that it preempts state disclosure regulations that differ from the Rule's disclosure requirements, it is referring to testing and disclosures on a covered product label, not to information-reporting requirements. Section 305.8 of the Rule will now contain certain reporting requirements for ballast manufacturers and, therefore, this issue is largely moot.

Section 305.11(d) Labeling for Covered Products

The NPR added a new subsection—§ 305.11(d)—to the section on labeling to describe how the encircled capital "E" logo must be disclosed on ballasts and packaging. The proposed subsection incorporated the NAECA 88 statutory criterion of a "conspicuous" disclosure along with several options as to how and where the disclosure must be made.

One product labeling option was to disclose the logo on the existing ballast label. The other options proposed were using a separate label or indelibly stamping the ballast itself. If a separate label is used or if the product is stamped, the proposed regulation required that the disclosure be made on the surface of the ballast that is normally labeled. In all cases, the proposed regulation required the logo to be disclosed in color-contrasting ink.

The proposed requirements for disclosing the logo on packaging for individual ballasts and luminaires paralleled the disclosure requirements for ballasts themselves. The proposed regulation required that the disclosure be made on the surface on which printing normally appears, and be in the form of a separate label or an addition to an existing label or printing, or be indelibly stamped on the package itself. The NPR further proposed that if the package contained printing on more than one surface, then the label must appear on the surface that contains the product's specifications. Because the majority of fluorescent lamp ballasts and luminaires are packaged by the pallet load, usually wrapped in plastic sheeting, or "shrink wrap," the proposed regulations specifically addressed this packaging method. To ensure that the logo is disclosed conspicuously under these circumstances, the proposed regulation required that the logo appear "conspicuously" on the packaging, the shrink wrap and the documentation that usually accompanies the load. Again, the options for the method of disclosure were a separate label, printing or stamping with indelible ink.

Size of the Required Disclosure

With respect to the size and design of the encircled "E" logo, three comments urged the Commission to specify the size of the logo. The comments suggested that the size be consistent with the sizes of other logos that already appear on ballast labels, for example, Underwriters Laboratory (UL), Certified Ballast Manufacturers (CBM) and Engineering Testing Laboratories (ETL).[17]

Since the required disclosure is a simple one, containing no comparative numerical information, extremely specific regulatory requirements, tailored to the various lamp ballast label sizes, are unnecessary. The Commission believes that a performance standard, in terms of size, is sufficient for this category. The final Rule, therefore, requires the disclosure to be "conspicuous," but does not contain mandatory type size requirements. (The Rule does, however, require that the disclosure be made in color-contrasting ink).

The Commission has decided, however, to incorporate the commentors' suggestions as "safe harbors." The final Rule states that, for purposes of this section, the Commission will deem the encircled "E" to be "conspicuous" if it is as large as either the manufacturer's name or another logo, such as the "UL", "CMB" or "ETL" logos, whichever is larger, that appears on the fluorescent lamp ballast, the packaging for such ballast or the packaging for the luminaire into which the covered ballast is incorporated, whichever is applicable for purposes of labeling. Thus, the regulation offers certainty, as well as flexibility, as to what would constitute compliance.

Color-Contrasting Ink Requirement

The proposed regulation required that disclosure of the encircled "E" be in "color-contrasting" ink, *i.e.*, in a color that contrasts with the background onto which it is placed. The comments requested clarification in the final Rule that manufacturers are not being required to add a third color of ink to their labels.[18] The color-contrasting provision does not necessarily require a third color. The purpose of this requirement is for the "E" to stand out against its background. For example, it would not be acceptable to have the background in one shade of blue, and the "E" in a similar shade, because it would probably not be sufficiently conspicuous. The "E" could be in blue or black, for example, or another color against a white background banded by the same color as the "E."

Shrink Wrap Labeling Requirement

The proposed regulation recognized that ballasts and luminaires are often packaged by the pallet load and wrapped in plastic "shrink wrap." The comments recommended that the Commission not require labeling on "shrink wrap" if it is clear plastic and the encircled "E" on ballast and luminaire boxes is legible underneath the wrap.[19] The Commission agrees that additional labeling is unnecessary in this case. Therefore, the final Rule does not require the labeling of clear plastic wrap if the encircled "E" appears conspicuously underneath it.

Section 305.13 Promotional Material Displayed or Distributed at Point of Sale

The NAECA 88 amendments do not affect the Commission's authority, pursuant to section 324(c)(4) of EPCA, to require certain disclosures in connection with the use of point-of-sale promotional materials. The disclosures, however, are statutorily limited to any of the information required to be disclosed on the product's label. Since the Commission originally believed that fluorescent lamp ballasts and luminaires containing them are rarely sold through the use of promotional materials, the proposed regulations excluded manufacturers of these products from the requirements of § 305.13 of the Rule.

The California Energy Commission comment stated, however, that manufacturers of fluorescent lamp ballasts produce, and frequently use, point-of-sale promotional materials to

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under this section applicable to the covered products specified in paragraph (13) of section 322(a) and to which standards are applicable under section 325. Such rules shall provide that the labeling of any fluorescent lamp ballast manufactured on or after January 1, 1990, will indicate conspicuously, in a manner prescribed by the Commission under subsection (b) by July 1, 1989, a capital 'E' printed within a circle on the ballast and on the packaging of the ballast or of the luminaire into which the ballast has been incorporated. Section 2(d)(1), 102 Stat. 672.

[9] The amendments are to the following sections of the Appliance Labeling Rule:

Section 305.1(a) Scope of the Regulations in this Part.

Section 305.2(n), (o), (p) and (q) Definitions.

Section 305.3(j) Description of Covered Products to Which This Part Applies.

Section 305.4(e)(2) Prohibited Acts.

Section 305.5 and (i) Determinations of Estimated Annual Energy Cost and Energy Efficiency Rating.

Section 305.7(j) Determinations of Capacity.

Section 305.10(a) Ranges of Estimated Annual Energy Costs and Energy Efficiency Ratings.

Section 305.16 Required Testing by Designated Laboratory.

Section 305.18 (i) and (j) When the Rule Takes Effect.

The amendments have been revised in two respects since publication of the proposed regulation. After consulting with the Department of Energy, the Commission has added a definition of "ballast efficacy factor" and a description of the method used for determining the capacity of fluorescent lamp ballasts to §§ 305.2 and 305.7 respectively of the final Rule. The text of the minor changes to these sections appears in section C of this notice.

[10] Advance, D-18, p. 2; CEC, E-8, p. 2; NY, E-7, pp. 2-5.

[11] NY, E-7, p. 3.

[12] NY, E-7, p. 4.

[13] Advance, D-18, p. 2; CEC, E-8, p. 2; NY, E-7, p. 3.

[14] 42 U.S.C. 6304.

[15] NY, E-7, p. 4.

[16] Under New York and California state laws, ballast manufacturers are required to file energy usage and efficiency information, including ballast efficacy factors, for publication in state directories of fluorescent lamp ballast and luminaire manufacturers. These directories apparently are used extensively by building professionals who purchase ballasts and by state utilities that offer rebates for the purchase and installation of high efficiency ballasts.

[17] Advance, D-18, p. 2; NEMA, D-19, p. 2; CEC, E-5, p. 3.

[18] Advance, D-18, p. 1; NEMA, D-19, p. 1.

[19] *Id.*

influence consumer purchasing decisions.[20] According to CEC, such materials are widely delivered to and disseminated by wholesale distributors at industry trade shows. Consequently, the Commission is not amending § 305.13 of the Rule to exclude ballast manufacturers from its requirements. Rather, pursuant to section 324(c)(4) of EPCA, the Commission is adding a new paragraph to § 305.13 of the Rule to require that the encircled "E" logo be disclosed in each description of a covered ballast in any printed matter displayed or distributed at the point-of-sale of such product.

Section 305.14 Catalogs

Section 326(a) of EPCA, which is unaffected by NAECA 88, requires that if a manufacturer of a covered product advertises the product in a catalog, the catalog must display all the information required on the label, unless otherwise required by the Commission. The proposed Rule required, therefore, that ballast manufacturers display the encircled "E" logo in connection with the product description for each covered ballast they include in their catalogs. That logo is all the information required on a ballast label pursuant to section 324 of EPCA, as amended by NAECA 88.

NY and CEC commented that, in addition to the encircled "E", the Commission should require disclosure of ballast efficacy factors in catalogs. They contended that there still will be a wide range of energy efficiencies among the ballasts that satisfy the minimum efficiency standards set by NAECA 88. Requiring the disclosure of ballast efficacy factors in catalogs would allow buyers to choose a level of ballast efficiency desired, beyond the minimum.

Regardless of the merits of the proposal, it would be inconsistent with the authority granted the Commission under section 326(a) of EPCA for the Commission to require the disclosure of BEFs in catalogs. The most logical and reasonable interpretation of section 326(a) of EPCA is that the Commission has the authority to require that catalogs describing covered products display all or less than all the information required on the appliance labels for such products. In other words, section 326(a) allows the Commission to limit, not expand, by rule what would otherwise statutorily be required to be disclosed in catalogs. The Commission is not requiring, therefore, the disclosure of ballast efficacy factors in catalogs, and the language in the January 12 Notice is adopted for this section of the final Rule.[21]

Section A—Regulatory Flexibility Act

The Notice announcing the proposed amendments did not contain a regulatory analysis under the Regulatory Flexibility Act (5 U.S.C. 603–604). This analysis was not required because the Commission believed that the amendments, if promulgated, would not have a significant economic impact on a substantial number of small entities. The Commission reached this conclusion because the proposed amendments will impose few additional costs on small entities and will have a minimal effect on all business entities within the affected industry regardless of their size.

The NPR, however, discussed the applicability of the Regulatory Flexibility Act to the proposed amendments and requested any information that would bear on whether the proposed amendments would have a significant economic impact on a substantial number of small entities. None of the comments addressed this issue.

The statutory and regulatory requirements for products, packaging, point-of-sale materials and catalogs to disclose an encircled "E" logo will result in few costs to the industry. Further, the Commission estimates that compliance with the data reporting requirements announced today will take no more than two hours per year for each of the approximately 20 ballast manufacturers. In view of the minimal cost effect of the amendments, the Commission certifies that, under the provisions of section 5 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Rule amendments as promulgated will not have a significant economic impact on a substantial number of small entities.

Section B—Paperwork Reduction Act

The disclosure amendments being announced today are not subject to the Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501–3518. The "public disclosure of information originally supplied by the Federal government to the recipient for th[at] purpose," is not the "collection of information" as defined by the rule implementing the PRA, 5 CFR 1320.7(c)(2) (1988). The disclosure required for fluorescent lamp ballasts (the encircled letter "E") is specified in the Rule and, therefore, the industry does not have to collect any information in order to develop the disclosure.

The amendments to the reporting requirements in § 305.8 of the Rule, however, do involve the "collection of information." Compliance with these reporting requirements will take each of the approximately 20 affected fluorescent lamp ballast manufacturers an estimated two hours per year, resulting in a total of less than 50 hours of paperwork burden. These requirements have been incorporated into the existing clearance for the Commission's Appliance Labeling Rule (OMB Control No. 3084–0069).

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Section C—Amendments

For the reasons set forth in the preamble, the Commission amends Title 16, Part 305 of the Code of Federal Regulations as follows:

PART 305—RULES FOR USING ENERGY COSTS AND CONSUMPTION INFORMATION USED IN LABELING AND ADVERTISING FOR CONSUMER APPLIANCES

1. The authority citation for Part 305 continues to read as follows:

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95–619) (1978), the National Appliance Energy Conservation Act, (Pub. L. 100–12) (1987), and the National Appliance Energy Conservation Amendments of 1988, (Pub. L. 100–357) (1988), 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 533.

2. Section 305.1(a) is revised to read as follows:

§ 305.1 Scope of the regulations in this part.

* * * * *

(a) Labeling the products with information indicating their estimated annual energy costs or energy efficiency ratings, and related information or their compliance with applicable standards under section 325 of the Energy Policy and Conservation Act, 42 U.S.C. 6295.

* * * * *

3. Section 305.2 (n) and (o) are revised, and § 305.2 is amended by the addition of a new paragraph (p) and a new paragraph (q) to read as follows:

§ 305.2 Definitions.

* * * * *

[20] CEC, E–5, pp. 3–4.

[21] The Commission believes, however, that manufacturers who produce ballasts with efficiencies beyond the minimums established by NAECA 88 will have an incentive to provide that information to purchasers voluntarily.

(n) "Consumer appliance product" means any "consumer product," as identified in section 322 of the Act (42 U.S.C. 6292).

(o) "Covered Product" means any consumer appliance product defined in § 305.3 of the rule.

(p) "Luminaire" means a complete lighting unit consisting of a fluorescent lamp or lamps, together with parts designed to distribute the light, to position and protect such lamps, and to connect such lamps to the power supply through the ballast.

(q) "Ballast efficacy factor" means the relative light output divided by the power input of a fluorescent lamp ballast, as measured under test conditions specified in American National Standards Institute standard C82.2–1984, or as may be prescribed by the Secretary of Energy.

4. Section 305.3 is amended by the addition of a new paragraph (j) to read as follows:

§ 305.3 Description of covered products to which this part applies

* * * * *

(j) "Fluorescent lamp ballast" means a device that is used to start and operate fluorescent lamps by providing a starting voltage and current and limiting the current during normal operation, and that is designed to operate at nominal input voltages of 120 or 277 volts with a frequency of 60 Hertz and is for use in connection with F40T12, F96T12 or F96T12HO lamps.

(5) Section 305.4(e)(2) is revised to read as follows:

§ 305.4 Prohibited acts.

* * * * *

(e) * * *

(2) Any covered product, except central air conditioners, pulse combustion and condensing furnaces, and fluorescent lamp ballasts, if the manufacture of the product was completed prior to May 19, 1990. Any central air conditioner, pulse combustion furnace or condensing furnace if its manufacture was completed prior to June 7, 1988. Any fluorescent lamp ballast if its manufacture was completed prior to January 1, 1990.

* * * * *

6. Section 305.5 is amended by revising the introductory text and by adding a new paragraph (i), to read as follows:

§ 305.5 Determinations of estimated annual energy cost and energy efficiency rating.

Procedures for determining the estimated annual energy costs, the energy efficiency ratings and the power and efficacy factors of covered products are those found in 10 CFR Part 430, Subpart B, in the following sections:

* * * * *

(i) Fluorescent lamp ballasts—§ 430.22(q).

7. Section 305.7 is amended by the addition of a new paragraph (j), to read as follows:

§ 305.7 Determinations of capacity

* * * * *

(j) *Fluorescent lamp ballasts.* The capacity shall be the ballast input voltage, determined according to 1.2 of Appendix Q to 10 CFR Part 430, Subpart B.

8. Section 305.8(a) is amended by revising the first sentence and adding two new sentences at the end to read as follows:

§ 305.8 Submission of data

(a) Each manufacturer of a covered product, except manufacturers of fluorescent lamp ballasts, shall submit to the Commission, not later than January 21, 1980 (for manufacturers of central air conditioners and pulse combustion and condensing furnaces, the submission date shall be February 8, 1988), a report listing the estimated annual energy cost (for refrigerators and refrigerator-freezers, freezers, dishwashers, water heaters, and clothes washers) or the energy efficiency rating (for room air conditioners, central air conditioners and furnaces) for each basic model in current production, determined according to § 305.5 and statistically verified according to § 305.6. * * * Each manufacturer of a covered fluorescent lamp ballast shall submit to the Commission, not later than March 1, 1990 (and annually thereafter on or before that date), a report for each basic model of fluorescent lamp ballast in current production. The report shall contain the following information:

(1) Name and address of manufacturer;

(2) All trade names under which the fluroescent lamp ballast is marketed;

(3) Model number;

(4) Starting serial number, date code or other means of identifying the date of manufacture (date of manufacture information must be included with only the first submission for each basic model);

(5) Nominal input voltage and frequency;

(6) Ballast efficacy factor; and,

(7) Type (F40T12, F96T12 or F96T12HO) and number of lamp or lamps with which the fluorescent lamp ballast is designed to be used.

* * * * *

9. The first sentence of § 305.10(a) is revised to read as follows:

§ 305.10 Ranges of estimated annual energy costs and energy efficiency ratings.

(a) The range of estimated annual energy costs or range of energy efficiency ratings for each covered product (except flouorescent lamp ballasts) shall be taken from the appropriate appendix to this rule in effect at the time the labels are affixed to the products.* * *

* * * * *

10. Section 305.11 is amended by the addition of a new paragraph (d) to read as follows:

§ 305.11 Labeling for covered products.

* * * * *

(d) *Fluorescent Lamp Ballasts and Luminaires*—(1) *Contents.* Fluorescent lamp ballasts that are "covered products," as defined in § 305.2(o), and to which standards are applicable under section 325 of the Act, shall be marked conspicuously, in color-contrasting ink, with a capital letter "E" printed within a circle. Packaging for such fluorescent lamp ballasts, as well as packaging for luminaires into which they are incorporated, shall also be marked conspicuously with a capital letter "E" printed within a circle. For purposes of this section, the encircled capital letter "E" will be deemed "conspicuous," in terms of size, if it is as large as either the manufacturer's name or another logo, such as the "UL," "CBM" or "ETL" logos, whichever is larger, that appears on the fluorescent lamp ballast, the packaging for such ballast or the packaging for the luminaire into which the covered ballast is incorporated, whichever is applicable for purpose of labeling.

(2) *Product Labeling.* The encircled capital letter "E" on fluorescent lamp ballasts must appear conspicuously, in color-contrasting ink, (*i.e.*, in a color that contrasts with the background on which the encircled capital letter "E" is placed) on the surface that is normally labeled. It may be printed on the label that normally appears on the fluorescent lamp ballast, printed on a separate label, or stamped indelibly on the surface of the fluorescent lamp ballast.

(3) *Package Labeling.* For purposes of labeling under this section, packaging for such fluorescent lamp ballasts and the luminaires into which they are incorporated consists of the plastic sheeting, or "shrink-wrap," covering pallet loads of fluorescent lamp ballasts or luminaires as well as any containers in which such fluorescent lamp ballasts or the luminaires into which they are

incorporated are marketed individually or in small numbers. The encircled capital letter "E" on packages containing fluorescent lamp ballasts or the luminaires into which they are incorporated must appear conspicuously, in color-contrasting ink, on the surface of the package on which printing or a label normally appears. If the package contains printing on more than one surface, the label must appear on the surface on which the product inside the package is described. The encircled capital letter "E" may be printed on the surface of the package, printed on a label containing other information, printed on a separate label, or indelibly stamped on the surface of the package. In the case of pallet loads containing fluorescent lamp ballasts or the luminaires into which they are incorporated, the encircled capital letter "E" must appear conspicuously, in color-contrasting ink, on the plastic sheeting, unless clear plastic sheeting is used and the encircled capital letter "E" is eligible underneath this packaging. The encircled capital letter "E" must also appear conspicuously on any documentation that would normally accompany such a pallet load. The encircled capital letter "E" may appear on a label affixed to the sheeting or may be indelibly stamped on the sheeting. It may be printed on the documentation, printed on a separate label that is affixed to the documentation or indelibly stamped on the documentation.

11. Section 305.13 is amended by revising the introductory text of paragraph (a), and by adding a new paragraph (c), to read as follows:

§ 305.13 Promotional material displayed or distributed at point of sale.

(a) Any manufacturer, distributor, retailer, or private labeler who prepares printed material for display or distribution at point of sale concerning a covered product (except fluorescent lamp ballasts) shall clearly and conspicuously include in such printed material the following required disclosure:

* * * * *

(c) Any manufacturer, distributor, retailer, or private labeler who prepares printed material for display or distribution at point of sale concerning fluorescent lamp ballasts that are "covered products," as defined in § 305.2(o), and to which standards are applicable under section 325 of the Act, shall disclose conspicuously in such printed material, in each description of such fluorescent lamp ballasts, an encircled capital letter "E".

12. Section 305.14 is amended by revising the introductory text of paragraph (a), and by adding a new paragraph (c), to read as follows:

§ 305.14 Catalogs.

(a) Any manufacturer, distributor, retailer, or private labeler who advertises a covered product (except fluorescent lamp ballasts) in a catalog, from which it may be purchased by cash, charge account or credit terms, shall include in such catalog, on each page that lists a covered product, the following information required to be disclosed on the label:

* * * * *

(c) Any manufacturer, distributor, retailer, or private labeler who advertises fluorescent lamp ballasts that are "covered products," as defined in § 305.2(o), and to which standards are applicable under section 325 of the Act, in a catalog, from which they may be purchased by cash, charge account or credit terms, shall disclose conspicuously in such catalog, in each description of such fluorescent lamp ballasts, a capital letter "E" printed within a circle.

13. The first sentence of § 305.16 is revised to read as follows:

§ 305.16 Required testing and designated laboratory.

Upon notification by the Commission or its designated representative, a manufacturer of a covered product shall supply, at the manufacturer's expense, no more than two of each model of each product to a laboratory, which will be identified by the Commission or its designated representative in the notice, for the purpose of ascertaining whether the estimated annual energy cost or energy efficiency rating disclosed on the label or fact sheet, or as required by § 305.14, or the representation made by the encircled capital letter "E" label that the product is in compliance with applicable standards in section 325 of the Act, is accurate. * * *

* * * * *

14. Section 305.18 is amended by adding a new sentence at the end of paragraphs (a) and (b); by revising paragraphs (e) and (f); by redesignating paragraph (i) as (j); and by adding a new paragraph (i), to read as follows: (Paragraph (j) is republished for the convenience of the reader.)

§ 305.18 When the rules take effect.

(a) * * * For manufacturers of fluorescent lamp ballasts, the date for submitting starting serial numbers, date codes or other means of identifying the date of manufacture shall be March 1, 1990.

(b) * * * For manufacturers of fluorescent lamp ballasts, the date for submitting such data shall be March 1, 1990.

* * * * *

(e) The requirement that specified information about covered products be disclosed in catalogs takes effect for all catalogs printed and distributed on or after May 19, 1980. This requirement does not apply to catalogs if the catalog issue was distributed before May 19, 1980. The requirement that specified information about central air conditioners and pulse combustion and condensing furnaces be disclosed in catalogs takes effect for all catalogs printed and distributed on or after June 7, 1988. The requirement that specified information about fluorescent lamp ballasts be disclosed in catalogs takes effect for all catalogs printed and distributed on or after January 1, 1990.

Required revisions to the specified information must be made in all new editions and new catalogs printed and distributed after the date of the revision.

(f) The requirement that all printed material displayed or distributed at the point of sale disclose information specified in § 305.13 takes effect on May 19, 1980, except as provided for in § 305.18 (h) and (i).

* * * * *

(i) Unless otherwise provided in § 305.18, all requirements pertaining to fluorescent lamp ballasts take effect for all new covered products on which manufacture is completed on or after January 1, 1990. All requirements pertaining to luminaires into which covered fluorescent lamp ballasts have been incorporated take effect on January 1, 1990.

(j) All other requirements of this rule except those in § 305.4(d) take effect on May 19, 1980.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89-15682 Filed 7-3-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States; Adverse Effect Wage Rate Methodology

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration of the Department of Labor (DOL) is adopting an interim rule as a final rule setting forth a methodology for computing adverse effect wage rates (AEWRs) for the temporary alien agricultural labor certification (H-2A) program. AEWRs are the minimum wage rates which must be offered and paid to U.S. and alien workers by employers seeking certification of temporary or seasonal agricultural labor or services of nonimmigrant alien workers (H-2A visaholders) in the United States. Because of the uncertainty of the outcome of ongoing litigation involving the existing methodology which was initially adopted on June 1, 1987, DOL, after notice and consideration of comments, is adopting an interim rule as a final rule setting forth that same methodology based upon an expanded record.

EFFECTIVE DATE: August 4, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Bruening, Chief, Division of Foreign Labor Certifications, United States Employment Service, Employment and Training Administration, United States Department of Labor, Room N-4456, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: 202-535-0163 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On October 28, 1988, the Department of Labor (DOL) published a proposed rule in the **Federal Register** to adopt an expanded explanation for 20 CFR 655.107. 52 FR 43722. After consideration of public comments and the entire administrative record, and for the reasons that follow, DOL is promulgating the final rule described below.

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I. Introduction.

A. The H-2A Program

Whether to grant or deny an employer's petition to import a nonimmigrant alien to the United States for the purpose of temporary employment is solely the decision of the Attorney General and his designee, the Commissioner of the Immigration and Naturalization Service (INS). The Immigration and Nationality Act (INA) (8 U.S.C. 1101 *et seq.*), as amended by the Immigratioin Reform and Control Act of 1986 (IRCA), Pub. L. 99-603, 100 Stat. 3359, provides that the Attorney General may not approve such a petition from an employer for employment of nonimmigrant alien workers (H-2A visaholders or workers) for temporary or seasonal services or labor in agriculture unless the petitioner has applied to the Secretary of Labor (Secretary) for a labor certification showing that:

(1) There are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and

(2) The employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

The amendments to the INA made by IRCA codified DOL's role in the temporary alien agricultural labor certification process. Prior to June 1, 1987, many of DOL's responsibilities specified in IRCA were carried out under the requirement in the INA at 8 U.S.C. 1184(c) that the Attorney General consult with appropriate agencies of the Government concerning the importation of nonimmigrant workers, and under INS regulations governing the reliance placed by INS on the advice of DOL relative to U.S. worker availability and adverse effect. See 8 CFR 214.2(h)(3)(i) (1986); 20 CFR Part 665, Subpart C (1986).

The H-2A-related amendments to the INA made by IRCA apply to petitions and applications filed under INA sections 214(c) and 216 on or after the effective date of June 1, 1987. IRCA section 301(d), 8 U.S.C. 1186 note; see U.S.C. 1184(c) and 1186. Section 301(e) of IRCA requires that "[n]otwithstanding any other provision of law, final regulations to implement * * * [sections 101(a)(15)(ii)(a) and 216 of the Immigration and Nationality Act] shall first be issued, on an interim or other basis, not later than the effective date." 8 U.S.C. 1186 note.

On May 5, 1987, DOL published in the **Federal Register** at 52 FR 16770 a proposed rule to implement DOL's responsibilities under the H-2A temporary alien agricultural labor certification program, as set out at sections 101(a)(15)(H)(ii)(a), 214(c), and 216 of the INA, as amended by IRCA (8 U.S.C. 1101(a)(15)(ii)(a), 1184(c), and 1186). Under that program, job opportunities are certified for H-2A workers to perform agricultural labor or services of a temporary or seasonal nature in the United States. Written comments on the May 5, 1987, proposed rule were invited through May 19, 1987.

On June 1, 1987, DOL published an interim final rule in the **Federal Register**, effective on that date. 52 FR 20496. The interim final rule discussed many of the comments received in response to the May 5, 1987, proposed rule, changing some language not relevant to this document. The comment period also was reopened through July 31, 1987. The amendments in DOL's June 1, 1987, interim final rule contained changes to the labor certification process as mandated by IRCA and revised procedures as deemed necessary by DOL to carry out its statutory responsibilities.

B. The AFL–CIO Litigation and Further Rulemaking

Upon publication of the June 1, 1987, interim final rule, the AFL–CIO sued the Secretary of Labor to, among other things, invalidate the interim final 20 CFR 655.107(a), which established the methodology for computing AEWRs.

On December 22, 1987, the United States Court of Appeals for the District of Columbia Circuit reversed a lower court decision that had invalidated the interim final 20 CFR 655.107(a). *American Federation of Labor and Congress of Industrial Organizations* v. *Brock*, 835 F. 2d 912 (D.C. Cir. 1987), *rev'g*, 668 F. Supp. 31 (D.D.C. 1987). Also vacated was that portion of the lower court decision that had stayed implementation of the June 1, 1987, interim final AWER methodology in 20 CFR 655.107(a). 835 F. 2d at 913 n. 2.

However, the D.C. Circuit held that the interim final rule did not contain information sufficient for the court to "discern the reasonableness of the action without further explanation" and remanded the matter "to the Department for a more adequate explanation of its actions * * *." 835 F. 2d at 913 n. 2, 919, and 920. The D.C. Circuit, therefore, remanded the rulemaking for DOL to provide a more reasoned explanation for why it chose in the June 1, 1987, methodology to discontinue what the Court of Appeals viewed as the prior practice of providing for an enhancement to correct for the past employment of legal and undocumented aliens.

Upon remand, the U.S. District Court for the District of Columbia ordered DOL's "reasoned explanation" to be issued on or before April 30, 1988, unless otherwise ordered. *AFL–CIO* v. *Brock*, Civil Action No. 87–1683 (Order, D.D.C. March 25, 1988). DOL submitted the expanded explanation to the District Court in April 1988.

Additionally, DOL published the expanded explanation in the **Federal Register** as a new Notice of Proposed Rulemaking (NPRM). 52 FR 43722 (October 28, 1988). Interested parties were invited to submit written comments on the NPRM through November 28, 1988. *Id.*

On December 20, 1988, the U.S. District Court for the District of Columbia filed an opinion and order, finding that the April 1988 submission to it from DOL was invalid, since it was, among other things, an improper "post-hoc rationalization." *AFL–CIO* v. *McLaughlin*, Civil Action No. 87–1683 (D.D.C. Opinion and Order, filed December 20, 1988). The court held that the June 1, 1987, interim final methodology could not be justified by the document filed with the court in April 1988, and enjoined the June 1, 1987, 20 CFR 655.107. The court did not rule on the October 28, 1988, NPRM.[1]

The December 20, 1988, order of the U.S. District Court regarding the June 1, 1987, AEWR methodology and the April 1988 submission has been stayed indefinitely by the U.S. Court of Appeals for the District of Columbia Circuit. *AFL–CIO* v. *McLaughlin*, Case No. 89–5001 (D.C. Cir. January 13, 1989) (Order granting stay pendng appeal).

DOL has engaged in an extensive analysis of the opinions and orders in the *AFL–CIO* litigation; has reviewed and considered the pre- and post-June 1, 1987, rulemaking record, the documents discussed in the October 28, 1988, NPRM, the comments received in response to the October 28, 1988, NPRM, and other data; and has consulted with other affected agencies of the Federal Government. As a result of this review, consideration, and consultation, and on the basis of its own analysis, DOL herein adopts prospectively an AEWR methodology for the reasons set foth below. A discussion of the June 1, 1987, AEWR methodology, and of the public comments on AEWRs, received since the May 5, 1987, NPRM, and in response to that NPRM, the June 1, 1987, interim final rule, and the October 28, 1988, NPRM, is set forth below.

DOL continues to consider the comments received on other portions of the June 1, 1987, interim final rule and the May 5, 1987, proposed rule. DOL's comprehensive final rule for the H–2A Program will be published at a future date.

II. The June 1, 1987, Methodology

IRCA is expected to expand significantly the lawful importation program. DOL, therefore decided to establish H–2A program adverse effect wage rates (AEWRs) not merely for the 14 "traditional user States", but instead to set them for every State (except Alaska). In order to ensure that the wages of similarly employed U.S. workers are not adversely affected, DOL continued in the June 1, 1987, interim final H–2A regulation its past policy and practice of requiring covered agricultural employers to offer and pay their U.S. and H–2A workers no less than the applicable AEWR, as determined by the Director, U.S. Employment Service (USES). Further, the interim final H–2A regulations, as had the predecessor H–2 temporary alien agricultural labor certification regulations, provided that employers applying for temporary alien agricultural labor certification must agree to comply with all employment-related laws. If the employment is covered by a wage standard applicable under any federal or State minimum wage law, the employer must comply with that law. See *e.g.*, 29 U.S.C. 206(a); and 20 CFR 653.501(d)(4) and (e)(1) (1986). If the prevailing wage for the occupation in the labor market of intended employment is higher, the employer must offer and pay that wage.

Thus, a worker in employment under the H–2A program must be paid at the highest of the applicable wage rates, whether that rate is the AEWR, the prevailing wage, or the federal or State statutory minimum wage. See *Limoneira Co.* v. *Wirtz*, 327 F. 2d 499 (9th Cir. 1964), *aff'g*, 225 F. Supp. 961 (S.D. Cal. 1963); see also *Elton Orchards, Inc.* v. *Brennan*, 508 F. 2d 1154, 1156 (1st Cir. 1974); and *Flecha* v. *Quiros*, 567 F. 2d 1154, 1156 (1st Cir. 1977). These decisions acknowledge DOL's discretion in the area of AEWRs and form a basis for construing DOL's H–2A regulations.

Although continuing its basic past policy of requiring the payment of the AEWR, prevailing wage, or statutory minimum wage, whichever is highest, DOL, in the June 1, 1987, interim final rule, revised the procedures for calculating and establishing AEWRs for H–2A work. DOL changed the method of calculating AEWRS, by basing AEWRs on the level of actual average hourly agricultural wages for each State, as surveyed by the U.S. Department of Agriculture (USDA). This new methodology sets AEWRs in each year for the H–2A program at a level equal to the previous year's annual regional average hourly wage rates for field and livestock workers (combined), as computed by USDA quarterly wage surveys. (This is the same data series by which AEWRs under the previous H–2 agricultural worker program were indexed. USDA publishes the data for the 48 contiguous States and Hawaii by nineteen agricultural regions, which consist of one or more States.)

The new methodology ties AEWRs directly to the average wage, as opposed to the old methodology which resulted in AEWRs substantially higher than agricultural earnings in many States, and lower for some States. The new methodology is based directly on a current average agricultural wage that is not apparently depressed by the presence of foreign workers, rather than being based on a 1950 agricultural wage that had been adjusted upward by various methods over the years, as discussed below.

[1] In a separate opinion, the District Court on the same date remanded to DOL the H–2A program's "piece-rate regulation", 20 CFR 655.102(b)(9)(ii). *AFL–CIO* v. *McLaughlin*, Civil Action No. 87–1683 (Opinion and Order, filed December 20, 1988). That order has been stayed indefinitely by the U.S. Court of Appeals for the District of Columbia Circuit. *AFL–CIO* v. *McLaughlin*, Case No. 89–5001 (D.C. Cir. February 6, 1989) (Order granting motion to enlarge stay pending appeal).

III. Historical Protections Against Adverse Effect on Wages

A. History of AEWRs

1. Background

In order to adequately assess the court's concern that the June 1, 1987, AEWR methodology represents a substantial departure from past practice, it is necessary to review DOL's longstanding practice in setting AEWRs.

From the beginning of the Federal Government's involvement in the lawful importation of foreign agricultural workers, dating at least as far back as 1942, the Government has sought to protect similarly employed U.S. workers from the adverse effect such employment would have on their wages. At first, these programs were established under both international agreements and federal statutes, and more recently by federal statutes alone.

For a number of decades, DOL has computed and published AEWRs for the temporary employment of nonimmigrant alien workers for agricultural employment under various admission programs. See H.N. Dellon, "Foreign Agricultural Workers and the Prevention of Adverse Effect", 17 *Labor Law Journal* 739 (1966). Mr. Dellon's article notes that, as far back as 1953, employers seeking to import foreign nationals to work in various crop activities (in that case, under the Bracero Program) were required to pay not less than a wage established by DOL. Eventually, AEWRs began to be set periodically on a Statewide basis. See *Dona Ana County Farm & Livestock Bureau, Inc.* v. *Goldberg*, 200 F. Supp. 210 (D.D.C. 1961).

As time passed, establishment of AEWRs became more formalized, and AEWRs were computed and set for the H–2 agricultural worker program as well, after public notice and comment. See, *e.g.*, 29 FR 19101, 19102 (December 30, 1964); 32 FR 4569, 4571 (March 28, 1967); and 35 FR 12394, 12395 (August 4, 1970).

2. World War II Programs

The 1942 Agreement With Mexico Respecting the Temporary Migration of Mexican Workers, stemming from the wartime shortage of domestic farm labor, facilitated the importation of Mexican workers in the beginnings of the "Bracero program". 56 Stat. 1759, EAS 278 (July 23 and August 4, 1942). The 1942 Agreement required that the Mexican workers be paid the same wage rates as those paid to U.S. farmworkers, but in no event could hourly rate workers be paid less than $.30 per hour. See Wayne D. Rasmussen, *A History of the Emergency Farm Labor Supply Program, 1943–47*, U.S. Department of Agriculture, Bureau of Agricultural Economics, Monograph No. 13 (September 1951) (Rasmussen) at 203. The $.30 per hour wage was equivalent to the federal Fair Labor Standards Act (FLSA) minimum wage then applicable to nonagricultural employment. In 1943, the $.30 per hour minimum in the 1942 Agreement was extended to piece-rate workers. 57 Stat. 1152, EAS 351 (April 26, 1943). In 1946, the wage was raised to $.37 per hour or $33.60 per week (the latter for bi-weekly-paid workers). See Rasmussen at 211.

Congress specifically authorized the Bracero program, and programs to import farmworkers from other Western Hemisphere areas, by statute by enacting Pub. L. 45 in 1943. Act of April 29, 1943, c. 82, 57 Stat. 70. Pub. L. 45 and the agreements with the foreign governments provided the basic structure for the operation of the Mexican and other foreign farm labor programs through 1947.

Other international agreements, although less formal, were entered into with the Bahamas, Barbados, Jamaica, Canada, and Newfoundland (then separate from Canada):

(a) By a March 16, 1943, agreement establishing the Bahamian program, workers were guaranteed the higher of the local prevailing wage or $.30 per hour (equivalent to the FLSA minimum wage). See Rasmussen at 225. This was raised to $15.00 weekly or $30.00 bi-weekly in 1946. See Rasmussen at 240.

(b) By an April 2, 1943, agreement establishing the Jamaican program, workers were guaranteed the higher of the local prevailing wage of $.30 per hour (equivalent to the FLSA minimum wage). See Rasmussen at 250–51. This was raised to $15.00 weekly or $30.00 bi-weekly in 1946. See Rasmussen at 253.

(c) By a May 24, 1944, agreement establishing the Barbadian program, workers were guaranteed the higher of the local prevailing wage or $.30 per hour (equivalent to the FLSA minimum wage). See Rasmussen at 273–274. This was raised to $15.00 weekly or $30.00 bi-weekly in 1946. See Rasmussen at 275.

(d) Thirteen cents and $.15 per barrel minimum piece-rates were set for Canadian farmworkers in the Maine potato harvest. Rasmussen at 276.

(e) By a March 23 and 24, 1944, agreement establishing the Newfoundland program, dairy workers were guaranteed the higher of the local prevailing wage or $65.00 per month. See Rasmussen at 282.

3. Post-war Program

The World War II programs ended at the close of 1947. However, temporary foreign agricultural workers continued to enter the United States, particularly from Mexico, pursuant to section 3 of the Immigration Act of 1917, and post-war extensions and revisions of the 1942 international agreement. 61 Stat. 3738, TIAS 1710 (March 25 and April 2, 1947); 62 Stat. 3887, TIAS 1868 (February 21, 1948); and 2 U.S.T. 1048, TIAS 2260 (August 1, 1949). The agreement was informally extended in 1950. The work contract under the post-1947 agreements differed in the area of wages, however. There was no guaranteed hourly wage (in 1945 this was $.37 per hour) and no guaranteed minimum piece-rate earnings.

4. Bracero Program

Concern was raised, however, that importation of these workers had caused wages in their areas of employment to lag. President's Commission on Migratory Labor, *Migratory Labor in American Agriculture* (1951) at 58–59. After negotiations with Mexico, a new agreement was negotiated, authorized by Pub. L. 78, c. 223, 65 Stat. 119 (July 12, 1951), 7 U.S.C. 1461–1468 (1951) (now deleted). Mexican workers could not be admitted unless the Secretary of Labor determined, among other things, that "the employment of the workers will not adversely affect the wages and working conditions of domestic agricultural workers similarly employed * * *." A new international agreement was signed, effective August 11, 1951. Migrant Labor Agreement of 1951, 2 U.S.T. 1940, TIAS 2331, 162 UNTS 103 (August 11, 1951). Workers were to be paid the prevailing wage rates. As amended and updated in the 1950's and early 1960's, the 1951 statute and international agreement authorized the Bracero program in that period.

The 1961 extension of the 1951 agreement added the requirement that the wages stated in the contract shall be no less than an adverse effect wage rate determined by the Secretary of Labor. 10 U.S.T. 1830, TIAS 4815; 12 U.S.T. 3130, TIAS 4913. In 1962, these ranged from $.60 per hour in Arkansas to $1.00 per hour in 17 other States. The ceiling was set to correspond (rounded to the nearest $.05) to the USDA's national

survey of average agricultural earnings, which was found to be $.99 in 1961. By comparison, the FLSA minimum (not yet extended to agriculture) was $1.15 per hour. States with average earnings above the national average were held to the $1.00 rate; and one State at the national average was rounded down to $.95. In six other States with average earnings below the national average, the AEWR was set generally by taking the State average hourly farm wage rate, as reported in the 1959 Census of Agriculture and adjusting it to 1961 in accordance with the trend in farm wage rates for that State as measured by USDA's series of average hourly farm wage rates with the obtained figures rounded down to the next $.05. These AEWRs applied only to the Bracero program. The 1962 AEWRs for 24 Bracero-user States continued to be used in 1963 and in 1964, the final year of the Bracero program.

5. H-2 program

In 1952, Congress passed the Immigration and Nationality Act, 8 U.S.C. 1101 *et seq.*, which, as amended and updated, controls the importation of other foreign agricultural workers (and, since 1962, Mexican workers as well). This was known as the H-2 program (now replaced under IRCA by the H-2A Program). The use of legally admitted non-Mexican workers was, until the late 1970's, mainly in Atlantic seaboard States (with the exception of sheepherders in the western States).

Only prevailing wages were required to be offered under the H-2 program until 1963. In that year, near the close of the Bracero program, the H-2 program established a series of AEWRs for 11 East Coast H-2 user States. A maximum AEWR ($1.00 per hour) was retained, but the bases for the rates were derived from the 1959 Census of Agriculture average hourly earnings for each State adjusted by the 1959-61 trend in wages as determined by USDA. The 1963 AEWRs continued to be used in 1964.

A new formula was applied to set AEWRs for 28 States using foreign agricultural workers in 1965. See 20 CFR 602.10 (1965), 29 FR 19101 (December 30, 1964). The formula used the 1950 Census of Agricultural average hourly farm wage (AHFW) rate for each State, adjusted by the 1950-63 trend in gross average hourly earnings of production workers in manufacturing or the 1950 Census of Agriculture national AHFW rate similarly adjusted, whichever was higher, rounded down to the nearest $.05. A minimum AEWR of $1.15 per hour and a maximum of $1.40 per hour was applied. The AEWR was set above the computed level in five New England States (all except Connecticut), to $1.25 for Maine and to $1.30 for the other four States. The maximum caused AEWRs in five States (California, Kansas, Minnesota, South Dakota, and Utah) to be lowerd below the computed level, to $1.40.

In 1967, AEWRs were increased by $.20 per hour, based on 1963-66 changes in the USDA survey of farm wages and other factors.

Beginning in 1968, these AEWRs were computed by adjusting the previous year's Statewide AEWR by the same percentage as the percentage change in the Statewide annual average wage rates for field and livestock workers, as surveyed by the USDA, and were set through rulemaking amending the H-2 agricultural workers regulations. See 41 FR 25018 (June 22, 1976); and 43 FR 10306, 10310 (March 10, 1978); see also 20 CFR 602.10b(a)(1) (1977).

The regulations for the H-2 agricultural worker program were consolidated and substantially revised in 1978, after an extended comment period and six public hearings (May and June 1977). 20 CFR Part 655, Subpart C, 43 FR 10306 (March 10, 1978). As part of that rulemaking, DOL's methodology for computing AEWRs, as well as alternative methodologies for computing AEWRs, were discussed and considered. 43 FR at 10310-10311. The methodology was set out in the regulations for the H-2 agricultural worker program. 20 CFR 655. 207, 43 FR at 10317.

DOL continued to study the AEWR after the 1977-78 rulemaking. An Advance Notice of Proposed Rulemaking was published in 1979, and six additional public hearings were held. 44 FR 59890 (October 16, 1979). Various alternative methodologies were presented for public comment; the public responded to the alternatives and additional methodologies were suggested as part of the rulemaking record. A proposed rule (with a four-month comment period) was published in 1980, and a final rule was published in 1981. 46 FR 4568 (January 16, 1981); 45 FR 29854 (May 6, 1980); and 45 FR 15914 (March 11, 1980). The final rule would have established a single, nationwide, AEWR at the level of the previous year's national annual average hourly wage for piece-rate-paid hired agricultural workers, as computed by USDA surveys. However, as part of a general review of agency regulations, and to consider fully the impact of the new methodology, it was withdrawn prior to its effective date. 46 FR 32437 (June 23, 1981); and 46 FR 16119 (March 27, 1981).

In 1981, USDA substantially reduced its number of surveys and ceased compiling annual average field and livestock worker wage rates, as well as the survey data which would have been used in the rule withdrawn in 1981. Various interim methodologies were utilized until USDA reestablished its surveys and DOL reestablished the 1968-1981 methodology. The interim methodologies did not change the basic way in which AEWRs were computed, by adjusting the previous year's rate by the annual change in farm worker wages as reflected in a wage survey. These were accompanied by further rulemaking, and opportunity for and consideration of public comments. See, *e.g.*, 51 FR 20516, (June 5, 1986), 51 FR 15915 (April 29, 1986); 51 FR 12872 (April 16, 1986); 50 FR 47636 (November 19, 1985); 49 FR 31784 (August 8, 1984); 49 FR 30208 (July 27, 1984); 48 FR 40168 (September 2, 1983); 48 FR 33684 (July 22, 1983); 48 FR 232 (January 4, 1983); 47 FR 52198 (November 19, 1982); and 47 FR 37980 (August 27, 1982).

B. Summary

This review of the history of the setting of AEWRs over the past 40 years leads to two conclusions: first, that the old methodology was *not* designed to enhance Statewide average hourly earnings from the USDA survey; and, second, that the fact that the AEWR averaged 20% above the average hourly earnings from the USDA survey in the fourteen "traditional user States" is an unintended result of the application of the various methodologies used in the 1960's to create the AEWR base; it cannot in any way be viewed as a measurement of the quantum of adverse effect.

In all its long history of dealing with AEWRs, DOL has employed a number of methodologies for setting AEWRs during the different periods of time. None of these methodologies ever has purported to add an enhancement to the USDA rates. To the contrary, DOL's efforts to set Statewide AEWRs have always been in response to instances where it was thought that wage depression existed in specific crops or activities. (DOL consistently has set statewide AEWRs. Because of the absence of data from which to measure wage depression at the local level and because of the vast number of different crops, activities and areas in which such local AEWRs) would have to be set, it was and is administratively infeasible to set AEWRs for specific crops or activities.) The fact that the pre-June 1 1987, AEWRs were higher than the USDA average in most (but not all)

States is the result of other methodologies that were distinctly different from that of adding an explicit enhancement to a Statewide USDA earnings rate. These previous methodologies included setting AEWRs at or below the USDA average (early 1960's); assuming that agricultural wage rates should have increased by the same percentage as manufacturing wage rates (1965); setting an absolute floor and an absolute ceiling as well, both regardless of the comparison with manufacturing wages (1985); and assuming that the rates in all states should have increased by the same *absolute* amount (20 cents) as the increase in the national USDA rate (1987). These different methodologies do not appear to have measured wage depression accurately. For example, in 1965, DOL used increase in manufacturing wages as a proxy for increases in agricultural wages, which were believed to be depressed. The application of this methodology led to AEWRs which were higher than Statewide agricultural earnings in some states and lower in others. In order to address these erratic results, DOL imposed a minimum and maximum AEWR.

If it had been DOL policy to enhance the USDA Statewide or regional rates, some degree of uniformity or consistency of relationship between the old AEWRs and the USDA rates, or at least some recognizable pattern relating to estimated presence of illegal aliens, should have been apparent. However, such was clearly not the case. In fact, under the older methodology there would have been four States (Delaware, Oregon, Florida (except sugar cane) and Washington) in 1987 with AEWRs below the applicable USDA average wage rates. These include at least three States with known heavy concentrations of illegals—Washington, Oregon and Florida. This fact very clearly contradicts any assumption that DOL has had a longstanding policy of enhancing USDA average wage rates. At the other extreme, there would have been six States with AEWRs 70 percent or more above the USDA rate. None of these States—Nevada, Alabama, Utah, Minnesota, Mississippi, and South Carolina—is noted for high concentrations of illegal aliens.

Moreover, none of the DOL methodologies ever attempted to measure, with any degree of accuracy, the actual amount by which prevailing wages had been depressed (i.e., adversely affected) by the employment of alien workers. They were simply rough efforts to compensate for what DOL believed was wage depression or stagnation caused by the importation of large numbers of workers under the Bracero program. Thus, the historical fact that the application of the various methodologies resulted in AEWRs which, in most cases, were higher than average agricultural wages is merely fortuitous. It does not reflect any determination that the enhancements themselves were the correct measure of the compensation necessary to eliminate the past adverse effects caused by the Bracero workers.

IV. Explanation for Retaining the Methodology in the Interim Final Rule.

Following the D.C. Circuit's decision in *American Federation of Labor and Congress of Industrial Organizations* v. *Brock*, DOL has extensively reexamined the issues involved in establishing AEWRs for the H-2A program. As explained in the preamble to the June 1, 1987, interim final rule, application of the previous methodology (applied in only 14 States) to a nationwide (49 State) H-2A program would produce inexplicable and unjustifiable results. 52 FR 20404. As a result of the anomalies created by broad application of the old AEWR methodology, DOL determined that a new methodology for setting AEWRs is needed, one that is capable of rational application across the country. DOL promulgated the June 1, 1987, methodology, believing that it satisfied this requirement.

DOL has chosen to use the USDA survey of farm and livestock workers because it presents the best available data on hourly wages in the agricultural sector. The USDA conducts a scientific quarterly survey of the wages of farm and livestock workers. The survey includes small farms not covered in other surveys. The scope and frequency of the survey means that all crops and activities now covered by the H-2A program will be included in the survey data and that peak work periods also will be covered.

Because DOL anticipates that enforcement of IRCA will give rise to a significant expansion of the H-2A program to new States, crops and activities, DOL has decided to set AEWRs for all States, except Alaska, for which USDA data are unavailable. The promulgation of nationwide AEWRs will give new entrants to the H-2A program the opportunity to know in advance the wages they will be required to offer if they choose to apply for H-2A workers and will avoid the delays, uncertainties and litigation that have occurred in the past when new States were sought to be added to the H-2A program.

In light of the D.C. Circuit's decision in *American Federation of Labor and Congress of Industrial Organizations* v. *Brock*, DOL has reviewed its past practices in setting AEWRs, as described in Section IV above, and has reviewed the available literature on the effects of legal and illegal immigration to determine whether, and to what extent, wage depression caused by lawful and illegal alien workers exists in the agricultural labor market. Included in this review were several studies published quite recently. For the reasons outlined below, this analysis has reconfirmed DOL's belief that the June 1, 1987, methodology is valid and appropriate for ensuring that the importation of H-2A workers will not adversely affect the wages of similarly employed domestic workers.

A. Recent Studies Suggest that the Extent of Past Adverse Effect, If Any, From the Employment of Illegal Aliens, Has Been Small and Confined to Local Labor Markets and Not Reflected to Any Significant Degree in the USDA Data Series From Which the AEWR Is Derived

While DOL has believed that there is a tendency for illegal alien workers to adversely affect wage rates, it cannot disregard recent studies and analyses which conclude that such effect probably has been minor and localized. Many of these studies were conducted during the past few years, during the time IRCA was being debated, prior to enactment, and also since enactment. They have been conducted by some of the most prestigious research and evaluation organizations, applying the most rigorous state-of-the-art methodological standards. They include studies and analyses performed by the Council of Economic Advisers, the General Accounting Office, the National Commission for Employment Policy, the National Bureau of Economic Research, the Urban Institute, and other prominent individual researchers.

The 1986 *Economic Report of the President*, prepared by the Council of Economic Advisors, summarizes an extensive review of recent research and economic thinking on wage and employment effects of immigration. The Council's conclusion as to wage effect is mixed:

> *Some* studies of the effects of immigration on wage levels have revealed evidence of adverse wage effects. For example, one study concluded that real wages were 8 to 10 percent lower on average *in cities near the Mexican border*. Several studies found a reduction in the wages of unskilled workers in areas with high concentrations of unskilled immigrant workers.
>
> *Other studies*, however, have shown that greater concentrations of aliens in labor

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markets are associated with *higher earnings* of native-born workers. Increased wages have been found both for broad groups of workers and also for native-born minority groups with whom immigrants might compete directly for jobs.

[Emphasis added; *Id.* at 223.]

The General Accounting Office (GAO), responding to a Congressional request, surveyed the existing literature on the effects of illegal aliens on the wages and working conditions of legal workers. *Illegal Aliens: Influence of Illegal Workers on Wages and Working Conditions of Legal Workers* (GAO/PEMD-88-13BR) (March 1988). Initially, 230 studies were reviewed; these were pared down to 26 which met GAO's standards for relevance and analytical rigor. With respect to the question, "Do illegal alien workers depress wages and worsen working conditions for native and legal workers?", GAO came to the following qualified and uncertain conclusion:

With regard to the first question, our answer is a qualified "yes." Our major finding, based primarily on results from nine case studies, is that illegal aliens do, in some cases, exert downward pressure on wages and working conditions with low-wage, low-skilled jobs *in certain labor markets*. The four case studies that supported this finding examined illegal alien workers in competition for the same jobs with legal or native workers. Competing native or legal *agricultural workers*, food processing workers, and janitors *in specific labor markets* suffered depressed wages or worsened working conditions as employers in these sectors began to hire a higher percentage of illegal workers.

In three *other sectors and labor markets*, the effects of illegal workers on legal or native workers' wages and working conditions overall *could not be determined*. The five case studies on these sectors or markets provided evidence that the increased supply of workers for *some* job categories, in *some* business and industry sectors such as the garment industry, depressed wages for some native or legal workers but, at the same time, by stimulating business, also expanded employment opportunities and wages for *other* legal and native workers in complementary, usually skilled occupations. None of these studies, however, permitted an assessment of net effects. This suggests that the effects of illegal workers on the wages and working conditions of native or legal workers are not *automatically* in the direction of depressing those conditions, and that those effects depend on a number of factors, of which the illegal status of the workers is one.

[Emphasis added, except *"automatically,"* which is in original; *Id.* at 1-2.]

It should be noted that the only wage depression shown in agricultural employment cited in the GAO report appeared in two limited, localized, studies of San Diego County, California, pole tomatoes and Ventura County, California, citrus. GAO itself noted that these studies were probably atypical.

The case studies also may poorly represent workplaces that employ international migrants. For example, most of the case studies that found wage depression overall were on unionized settings. Substantial evidence indicates that unionization tends to lead to higher wages. In these cases, a part of the effect that illegal aliens may have had on wages was to counteract the effect that the unions had had on wages.

[*Id.* at 64 n 1.]

Thus, the wage-depressing effects noted in the studies may have had as much to do with anti-union activities as any other motive and might have occurred even if the non-union workers had been legal workers.

Further, GAO pointed out that other economic forces also may come into play in determining whether the removal of illegal workers will necessarily raise wages:

[O]ne cannot assume that the absence of illegal aliens would, in all cases, cause an increase in wages and job opportunities for native workers. In some cases, the higher wages necessary to bring workers into a given labor market would possibly raise the employer's costs to a level that prevents the employer from competing effectively with foreign producers.

[*Id.* at 64.]

It also must be noted that DOL submitted critical comments on the draft GAO Report. *Id.* at 57-62. These comments were directed at the adequacy of the GAO analysis with respect to adverse impacts of employing illegal workers in specific occupations and activities in local labor markets. These comments did not take issue with the GAO finding that the effects of employing illegal workers are difficult to detect at levels of analysis beyond specific activities in local labor markets.

The National Commission for Employment Policy also reviewed the available literature in 1986 and came to a similar qualified conclusion (*Illegal Immigrants and Refugees—Their Economic Adaptation and Impact on Local U.S. Labor Markets: A Review of the Literature* (October 1986)):

The evidence regarding the labor market impact of undocumented entrants is *mixed and somewhat inconclusive*. Undocumented workers do displace some native-born U.S. workers and do lower wages and working conditions in *some* occupations and *geographical areas*. The opportunities for U.S. workers sometimes are reduced where undocumented workers dominate segments of the labor market. On the other hand, undocumented workers in some instances create and perpetuate jobs for themselves as well as for some U.S. workers. Furthermore, they help to preserve some U.S. firms that, without such a supply of foreign labor, might move their operations overseas. *The evidence is not conclusive regarding the overall or aggregate effects on the labor market.* Rather the evidence suggests that the labor market effects of undocumented workers may best be viewed as *a series of local and regional effects which vary widely.*

[Emphasis added; *Id.* at vii.]

The National Bureau of Economic Research (NBER) has just completed a two-year research project on the internationalization of the U.S. labor market, including the impact of immigration on wages and employment. Its findings question whether immigrants have had any adverse effect on the wages of U.S. workers (*NBER Summary Report: Immigration, Trade, and the Labor Market* (January 20, 1988)):

Increased immigration has *some modest adverse impacts* on the employment and wages of workers who are the closest substitutes for immigrants, *the immigrants themselves* and earlier immigrants, *but little, if any, impact on young black and Hispanic Americans who are likely to be the next closest substitutes* (Topel and Lalonde). Employment and wages of less educated black and white natives have not worsened noticeably in cities in which immigrant shares of the population rose in the 1970's, while on the positive side, there is some evidence that less skilled natives have moved out of low-wage service and manufacturing industries and that these industries have grown more rapidly or declined more slowly in cities with more immigrants (Altonji and Card). The broad implication is that *immigrants have been absorbed into the American labor market with little adverse impact on natives.*

[Emphasis added; *Id.* at 7.]

An Urban Institute study of the impact of the large population of Mexicans immigrating, both legally and illegally, into Southern California found the following with respect to effect on wages (*The Fourth Wave: California's Newest Immigrants* (1985)):

The presence of Mexicans and, in all likelihood, of other immigrant groups, reduced the average wages in manufacturing and some services, both in Los Angeles and elsewhere in California. This reduction in average wages primarily reflects the increasing share of Hispanics in the work force, since wages for this group are lower than for non-Hispanics in similar occupations. We also conclude that the presence of immigrants has *somewhat depressed the wages of non-Hispanics* working as laborers, but the impact on the *wages paid to non-Hispanics* in semi-skilled occupations *appears to be negligible.* The principal reasons why immigrants received lower wages are that they are less likely to be unionized and they have less experience and education than other workers.

[Emphasis added; *Id.* at 123.]

Specifically with respect to agriculture, Dr. Phillip L. Martin, Professor of Agricultural Economics, University of California at Davis, in a study conducted for DOL, raises serious doubts as to whether illegal aliens have adversely affected agricultural wage rates (*IRCA and the U.S. Farm Labor Market* (February 1988)):

If illegal alien workers are replaced by U.S. citizens, legal immigrants, and legal non-immigrants, there will be *offsetting effects on farm wages*. Generally, the illegal aliens and the legal non-immigrants are "solo men" (in the U.S. without families); such workers *tend to earn more per hour at prevailing piece-rates than more diverse U.S. workers*. Some illegal aliens are "isolated and powerless;" to the extent that such illegal aliens are replaced by other workers, there should be upward pressure on farm wages.

[Emphasis added; *Id.* at 1.]

Dr. Martin states in the same report, "*The evidence of these possible wage-depressing effects of illegals is sparse.* [Emphasis added.]" *Id.* at 8. As indicated above, one of the main reasons for Dr. Martin's doubt about adverse effect is the fact that aliens often have higher productivity than U.S. workers, so that when paid by the piece their average hourly earnings exceed those of U.S. workers, thus possibly even raising the average wage rate. As he states, "Illegal alien farmworkers tend to be young men; such solo men tend to be the most productive farmworkers in the sense that *they have higher-than-average hourly earnings at prevailing piece-rates.* [Emphasis added.]" *Id.* at 14.

Even if there may have been adverse effects on agricultural wages from the employment of illegal aliens, they apparently have been so concentrated in specific crops, activities, and areas that such effects do not appear to be reflected to any significant degree in the USDA data series, which includes all agricultural activities, usually in multi-State regions. Dr. Martin states as his first major conclusion in his 1988 study cited above:

The removal of illegal alien workers should raise farm wages. However, illegal alien workers are not uniformly distributed throughout agriculture; instead, they are concentrated in particular tasks, commodities, areas, and on certain farms. Thus the wage *increases traceable to the removal of illegal alien workers may not be apparent in regularly-published wage data* such as *Farm Labor*.

[Emphasis added; *Id.* at 1.]

Clearly, if the removal of illegal aliens may not significantly affect the USDA wage data, their presence also may not affect this series to any significant extent.

(Note: The USDA periodical *Farm Labor* is the publication containing the USDA data series on which AEWRs are based.)

This view is strongly supported by the 1988 GAO report cited above:

Our experience in the prior synthesis on illegal workers (GAO/PEMD-86-9BR) suggested the general lesson that *wage depression is harder and harder to detect at levels of analysis beyond or above a highly localized and occupation-specific labor market.* For example, we found evidence of displacement of legal citrus pickers by illegal ones in Ventura County, California, but those effects probably would not be evident in data on agricultural workers in central California generally and even less so at higher levels of aggregation such as unskilled workers in the state. Thus, case studies that concentrate on specific industries or sectors in labor markets in specific communities may be better able to detect wage depression than aggregate data.

[Emphasis added; *Id.* at 10.]

Evidence suggesting that the USDA wage rates have not been affected significantly by the presumably lower wages paid to illegals is provided by State average wage data from that USDA data series itself. An examination of average agricultural earnings in the six States most likely to have the highest concentrations of undocumented workers, as measured by the highest concentration of seasonal crop workers, and as shown in the USDA data published in *Farm Labor*, does not reveal a consistent pattern of depression in the USDA earnings data over time. Over the 1974-87 period (the longest period with consistent USDA survey data), average agricultural earnings in North Carolina, Oregon, Texas and Washington increased by more than the national average. Only California and Florida had increases that were below the national average. However, the absolute level of wage rates in both California and Florida is well above the national average.

B. The AEWR Methodology in the Interim Final Rule Is Justified By the Available Evidence

From DOL's review of the available information on the agricultural labor market, DOL views the data and literature as inconclusive on the issue of adverse effect or wage depression from the presence of illegal alien workers on the USDA data series. This inconclusiveness is due, in part, to statistical difficulties in measuring wage depression, but also reflects the fact that data on illegal workers are nearly impossible to obtain for purposes of measuring any possible wage depression caused by such workers. DOL is aware of no study that has quantified or measured any wage depression at any aggregate level such as the State or the region. To the extent that there is some anecdotal evidence of wage depression from these sources, the evidence also suggests that the adverse effects are highly localized and concentrated in specific areas and crop activities. The evidence further suggests that because of the nature of the illegal alien workforce, and because of the concentration of that workforce in particular localities and crops, such adverse effects as may exist are not reflected, to any substantial extent, if at all, in USDA average wage data.

Thus, DOL concludes that setting the AEWR at the level of average agricultural wages, as determined by the USDA survey, is the correct approach. To the extent that wage depression does exist on a concentrated local basis, the average agricultural wage does not appear to be significantly affected by this wage depression. Further, none of the studies reviewed by DOL here quantified or measured any wage depression that might exist in the USDA data series. This series is, therefore, the appropriate source of rates to use to set the AEWR. Based on all of the information available, there is no justification for adding any enhancement to the USDA average agricultural wage. Such an explicit enhancement could only be justified if alien agricultural employment has depressed average agricultural earnings, and if the extent of the depression can be measured at the aggregate level.

Even though the evidence is not conclusive on the existence of past adverse effect, DOL still believes that its statutory responsibility to U.S. workers will be discharged best by the adoption of an AEWR set at the USDA average agricultural wage in order to protect against the possibility that the anticipated expansion of the H-2A program will itself create wage depression or stagnation.

As pointed out in the preamble to the June 1, 1987, interim final rule, the old methodology had resulted in anomalies among the State rates which could not be explained in any rational manner relating to presence of illegal aliens and past adverse effect. See 52 FR at 20504. In light of: (1) The recent studies cited earlier which indicate that it is highly questionable as to whether and how much adverse effect has occurred from the use of illegal aliens; (2) the likelihood that any adverse effect which might have occurred may not be reflected in the USDA data series; and (3) the apparent anomalies in that old

AEWR methodology, it is clear that adding to that USDA average any enhancement factor comparable to that resulting from the old methodology—such as the observed 20 percent average in the 14 States for which old AEWRs were published—would be inappropriate. Even if one were to assume (despite the absence of evidence) that there has been some adverse effect on the USDA rates in States with larger concentrations of illegal aliens, applying an enhancement factor across-the-board to all States clearly would be inequitable and inappropriate.

V. Other Considerations in Developing an AEWR Methodology.

DOL must assume that IRCA will achieve its stated purpose of removing illegal aliens from the labor force. See 8 U.S.C. 1324a. (One might note that AEWRs, if set too high, might be a disincentive to the use of H–2A and U.S. workers, and could undermine efforts to eradicate the employment of illegal aliens.) Agricultural employers who have employed illegal alien workers in the past then must fill their labor needs with U.S. workers (including special agricultural workers authorized under IRCA) or with H–2A workers. All of these will be covered by various wage and working condition protections, and the total number may well fall short of the pre-IRCA agricultural labor force. These changed conditions could tend to create upward pressures on agricultural wage rates.

Within this context, the AEWR requirement in the H–2A program could contribute to upward wage pressures. Non-H–2A employers will be forced to compete for workers with H–2A employers at the wage rates required in the H–2A program. Using the USDA average as the AEWR will probably have some "ratcheting" effect on wages, as the previous year's average becomes the current year's minimum. This will be particularly true if the number of covered workers (H–2A workers and their U.S. co-workers) at the wage rates required in the H–2A program expands significantly. As a result, requiring an enhancement to the USDA average rate as the AEWR could increase labor costs of employers of H–2A workers and weaken their ability to compete with foreign imports. Lower domestic production could reduce the demand for labor, adversely affecting both wages and job opportunities for U.S. workers whom IRCA was designed to protect.

These effects would also be inconsistent with the purpose of the labor certification process, as recognized by the courts, that the temporary foreign worker regulations are "to promote a manageable scheme * * * that is fair to both sides." *Flecha* v. *Quiros*, 567 F.2d 1154, 1156 (1st Cir. 1977). As part of the labor certification process, the setting of AEWRs must balance the needs and interests of U.S. workers and U.S. employers. See *Flecha* v. *Quiros*, 567 F.2d at 1155–1156; *Rogers* v. *Larsen*, 563 F.2d 617, 626 (3d Cir. 1977); and *Elton Orchards, Inc.* v. *Brennan*, 508 F.2d 493 (1st Cir. 1974).

The IRCA amendments to the INA do not change the role and effect of the statutory policy to protect the wages of similarly employed U.S. agricultural workers from the adverse effect which may result from the employment of alien workers. Under the H–2A program, as under the H–2 program before it,

> [t]he common purposes [of the program] * * * are to assure [employers] an adequate labor force on the one hand and to protect the jobs of citizens on the other. Any statutory scheme with these two purposes must inevitably strike a balance between the two goals. Clearly, citizen-workers would best be protected and assured high wages if no aliens were allowed to enter. Conversely, elimination of all restrictions upon entry would most effectively provide employers with an ample labor force.

Rogers v. *Larsen*, 563 F.2d 617, 626 (3d Cir. 1977); *Flecha* v. *Quiros*, 567 F.2d at 1154. As stated by the U.S. Court of Appeals for the First Circuit, the purpose of the INA and temporary foreign worker regulations are "to provide a manageable scheme * * * that is fair to both sides." *Flecha* v. *Quiros*, 657 F.2d at 1156.

> We start with a given, that it has always been a Congressional policy to prefer domestic workers in all fields. However, it is also necessary to consider would-be employers, although in case of conflict, wide leeway favoring domestic workers is given the U.S. Secretary [of Labor]. *Elton Orchards, Inc.* v. *Brennan*, 1 Cir., 1974, 508 F.2d 493 * * *.

Id., 567 F.2d at 1155. Thus, the methodology for computing an AEWR must recognize the need to balance the goals of supplying an adequate labor force to employers and protecting the jobs of U.S. workers.

"[R]ather than an area of pure statutory interpretation as to which there is in theory only a single answer", *Building & Construction Trades Department, AFL–CIO* v. *Donovan*, 712 F.2d 611, 619 (D.C. Cir. 1983), *cert. denied*, 464 U.S. 1069 (1984), DOL has "broad discretion" to set AEWRs in accordance with "any of a number of reasonable formulas * * *." *Accord, Florida Sugar Cane League, Inc.* v. *Usery*, 531 F.2d 299, 303–304 (5th Cir. 1976). See *American Federation of Labor and Congress of Industrial Organizations* v. *Brock*, 835 F.2 912, 915 n. 5 (D.C. Cir. 1987); *Florida Fruit & Vegetable Association, Inc.* v. *Donovan*, 583 F. Supp. 268 (S.D. Fla. 1984), *aff'd sub nom. Florida Fruit & Vegetable Association, Inc.* v. *Brock*, 771 F.2d 1455 (11th Cir. 1985), *cert. denied*, 106 S. Ct. 1524 (1986); *Shoreham Cooperative Apple Producers' Association, Inc.* v. *Donovan*, 764 F.2d 135 (2d Cir. 1985); *Virginia Agricultural Growers' Association, Inc.* v. *Donovan*, 774 F.2d 90 (4th Cir. 1985); *accord, Rowland* v. *Marshall*, 650 F.2d 28 (4th Cir. 1981) (*per curiam*); *Williams* v. *Usery*, 531 F.2d 305, 306 (5th Cir.), *cert. denied*, 429 U.S. 1000 (1976); *Flecha* v. *Quiros*, 567 F.2d 1154 (1st Cir. 1977); *Limoneira Co.* v. *Wirtz*, 225 F. Supp. 961 (S.D. Cal 1963), *aff'd*, 327 F.2d 499 (9th Cir. 1964); and *Dona Ana County Farm & Livestock Bureau, Inc.* v. *Goldberg*, 200 F. Supp. 210 (D.D.C. 1961); see also *Production Farm Management* v. *Brock*, 767 F.2d 1368 (9th Cir. 1985). DOL believes that the June 1, 1987, methodology is the appropriate method by which to set AEWRs in light of its obligations to balance the needs of U.S. workers and U.S. employers and in light of its great discretion to develop any reasonable formula to set AEWRs.

VI. Summary and Analysis of Comments Received in Response to October 28, 1988, Notice of Proposed Rulemaking

In the October 28, 1988, proposed rule, DOL requested, through November 28, 1988, comments on the AEWR methodology. 52 FR at 43722. Specifically, any additional studies or evidence as to known and measured wage depression reflected in the USDA data series caused by the presence in the agricultural work force of illegal aliens were sought to enable DOL to further examine the conclusions drawn from the materials reviewed. While most of the studies cited in this document are publicly available, the study by Dr. Martin is not available generally. As stated in the October 28, 1988, NPRM, DOL supplied copies of the Martin study to the parties in the *AFL–CIO* v. *Brock* litigation and offered to supply, upon request, copies to any other interested person.

In making a determination on the content of this final rule, DOL fully and carefully considered comments received in response to the October 28, 1988, NPRM, and in response to several other related rulemaking actions. These other actions include a proposed rule to add Montana to the list of States for which special AEWRs were required under the old H–2 program (50 FR 50311 (December 10, 1985); see also 51 FR 7084 (February 28, 1986)); a similar proposed rule to add Idaho and Oregon to the list of such AEWR States (51 FR 11942 (April 8, 1986); see also 51 FR 28599 (August 8, 1986)); the proposed rule for the new H–2A program (52 FR 16770 (May 5, 1987)); and the interim final rule on the new H–2A program, with request for comments (52 FR 20496 (June 1, 1987)).

A total of 168 comments were received by DOL on the two proposed rules to add the States of Montana, Idaho, and Oregon to the list of specially-computed AEWR States. These included a total of 140 comments from employers and their representatives; 15 comments from worker representatives, including legal aid attorneys; the USDA; two Governors; three U.S. Congressmen; an agricultural labor economist; three State agencies; and two State legislators.

A total of 555 comments were received by DOL on the proposed and interim final H–2A regulations. Employers and their representatives submitted a total of 423 comments, while worker representatives, including legal aid attorneys, submitted a total of 40 comments. Congressional representatives submitted a total of 52 comments; 16 comments were submitted by State Farm Bureau Representatives; 16 comments were received from various State agencies; one comment was received from a Governor; one comment was received from an organization advocating immigration reform; five comments were received from ETA Regional Administrators; and one comment was from a private citizen. In addition to the comments submitted by a national organization representing agricultural employers, representatives of the fruit, vegetable, sugar cane, cattle, sheep and goat, dairy, poultry, swine and logging industries submitted comments.

A total of 29 comments were received by DOL on the proposed AEWR methdology rule published October 28, 1988. Comments were received from 16 employer representatives, six legal assistance groups representing workers, three trade associations/lobbyists, two research institutes, and two State agencies.

All of these comments have been considered together with respect to the AEWR methodology issue, the subject of this rulemaking. They can be divided and discussed in terms of those which generally support the position of farmworker advocates and those which generally support the position of agricultural employers.

Comments from farmworker advocates generally reflect opposition to DOL's proposed rule. In brief, farmworker advocates contend that DOL's proposed rule represents a dramatic change from its policy and practice of the past 30 years of "enhanced" AEWRs, without adequate explanation or justification; that there is clear evidence of past adverse effect from the use of foreign workers, which requires an "enhancement" to the AEWRs proposed by DOL; that the USDA survey itself has been tainted by the past use of foreign workers and is otherwise inappropriate to serve as the AEWR base. They advocate instead an AEWR methodology which would yield rates higher than those proposed by DOL.

Options recommended by those opposing the proposed rule include returning to the old H–2 methodology (see 20 CFR 655.207 (1986)); adding an enhancement factor to the USDA average hourly rate (either in all States or only where adverse effect can be demonstrated); setting the AEWR at the average hourly earnings of piece-rate workers; setting or adjusting the AEWR in relation to earnings in manufacturing or non-farm work as a whole; establishing separate AEWRs for piece-rate work and seasonal work. These points are fully laid out and analyzed in the attached "Analysis of Farmworker Comments."

Comments from those representing agricultural employer interests argue strongly for an AEWR methodology requiring only the prevailing wage rate for each specific crop-activity-area, with some adjustments if certain levels of penetration by foreign workers have been exceeded. Employers argue that requiring the average hourly rate as a minimum standard will have an upward-ratcheting, inflationary effect on agricultural wage rates, including a spill-over effect on non-H–2A employers.

Should DOL not adopt their preferred approach, they would then be supportive of DOL's proposed methodology as a next-best alternative approach. The comments supporting the employers' views are fully explained and analyzed in the attached "Analysis of Employer Comments."

After carefully weighing the comments of both farmworker and employer representatives, DOL concludes that its proposed rule setting the AEWR at the average hourly earnings for each State as determined by the USDA quarterly survey strikes an appropriate balance by fully carrying out DOL's obligations under IRCA to prevent adverse effect on the wages of U.S. workers while at the same time taking cognizance of the legitimate concerns of agricultural employers.

VII. Conclusion

The AEWR is the minimum wage rate that agricultural employers seeking nonimmigrant alien workers must offer to and pay their U.S. and alien workers, if prevailing wages and any federal or State minimum wage rates are below the AEWR. The AEWR is a wage floor, and the existence of an AEWR does not prevent the worker from seeking a higher wage or the employer from paying a higher wage.

The purpose of an AEWR, as described by the U.S. Court of Appeals for the Fifth Circuit, is "to neutralize an 'adverse effect' resultant from the influx of temporary foreign workers." It is a "method of avoiding wage deflation." *Williams* v. *Usery*, 531 F. 2d 305, 306 (5th Cir. 1976), *cer. denied*, 429 U.S. 1000; see *Florida Sugar Cane League, Inc.* v. *Usery*, 531 F. 2d 299 (5th Cir. 1976); see also *Production Farm Management* v. *Brock*, 767 F. 2d 1368 (9th Cir. 1985); *Limoneira Co.* v. *Wirtz*, 225 F. Supp. 961 (S.D. Cal. 1963), *aff'd*, 327 F. 2d 499 (9th Cir. 1964); *Dona Ana County Farm and Livestock Bureau* v. *Goldberg*, 200 F. Supp. 210 (D.D.C. 1961); and 20 CFR 655.0) (1986). The AEWR thus ensures that the wages of similarly employed U.S. workers will not be adversely affected by the lawful importation of temporary, nonimmigrant alien workers. For the reasons outlined above, DOL believes that the June 1, 1987, methodology satisfies DOL's duties under IRCA to ensure that the importation of H–2A workers does not adversely affect the wages of similarly employed domestic workers.

Regulatory Impact

This document affects only those employers using nonimmigrant aliens workers (H–2A visaholders) in temporary agricultural jobs in the United States. It does not have the financial or other impact to make it a major rule and, therefore, the preparation of a regulatory impact analysis is not necessary. See Executive Order No. 12291, 3 CFR 1981 Comp., p. 127, 5 U.S.C. 601 note.

When the October 28, 1988, proposed rule was published, the Department of Labor notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that the rule does not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This document contains no paperwork requirements which mandate clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Catalog of Federal Domestic Assistance Number

This program is listed in the *Catalog of Federal Domestic Assistance* as Number 17.202 "Certification of Foreign Workers for Agricultural and Logging Employment."

List of Subjects in 20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Employment, Forest and forest products, Guam, Labor, Migrant labor, Wages.

Final Rule

Accordingly, Part 655 of Chapter V of Title 20, Code of Federal Regulations, is amended as follows:

PART 655—LABOR CERTIFICATION PROCESS FOR THE TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

1. In 20 CFR Part 655, the authority citation is revised to read as follows:

Authority 8 U.S.C. 1101(a)(15)(H) and 1184(c), and 29 U.S.C. 49 *et seq.*; §§ 655.00, 655.00, and 655.00 also issued under 8 U.S.C. 1186 and 8 CFR 214.2(h)(4)(i); Subpart A and Subpart C also issued under 8 CFR 214.2(h)(4)(i); Subpart B also issued under 8 U.S.C. 1186.

2. Section 655.107(a) is republished without change to read as follows:

§ 655.107 Adverse effect wage rates (AEWRs).

(a) *Computation and publication of AEWRs.* Except as otherwise provided in this section, the AEWRs for all agricultural employment (except for those occupations deemed inappropriate under the special circumstances provisions of § 655.93 of this part) for which temporary alien agricultural labor certification is being sought shall be equal to the annual weighted average hourly wage rate for field and livestock workers (combined) for the region as published annually by the U.S. Department of Agriculture (USDA) based on the USDA quarterly wage survey. The Director shall publish, at least once in each calendar year, on a date or dates to be determined by the Director, AEWRs for each State (for which USDA publishes regional data), calculated pursuant to this paragraph (a) as a notice or notices in the **Federal Register**.

* * * * *

Signed at Washington, DC, this 28th day of June 1989.

Elizabeth Dole,

Secretary of Labor.

Attachment 1—Summary and Analysis of Employer Comments

Points raised by employers in support of their position include the following:

1. There is no empirical evidence of past adverse effect on agricultural wage rates from the use of foreign workers. This is true of the studies cited by DOL in the NPRM and also generally of the research literature on this subject. In addition, specific information presented in connection with the Montana, Idaho, and Oregon NPRMs, as well as other information relating to Florida, shows no adverse effect from the use of illegals. Furthermore, there is evidence that the H-2 program has raised overall agricultural wage rates in Florida, New York and New England. Finally, it is inappropriate to look at agricultural-nonagricultural wage differentials as an indication of past adverse effect, for a variety of reasons. DOL tends to agree with the overall thrust of this point, although not necessarily in all the particulars. DOL believes past adverse effect has not been significant enough to cause generalized wage rate depression, but recognizes the possibility of adverse effect in specific crops, activities and areas.

2. A theoretical or conceptual model of agricultural labor markets supports the inability of empirical findings to find generalized adverse effect. Such a model must take into account international competition in agriculture, which has increased dramatically in the 1980's. Using this model, it is shown that wage levels are determined primarily by international equilibrium market conditions, not the supply of labor, as the demand for labor is very elastic. The conclusion from this model is that foreign workers have not had an adverse effect on wage rates. However, even if one assumes a closed-system, non-international model, demand for labor is still relatively elastic, so that past wage depression would be small. DOL agrees that the demand for agricultural labor is very elastic, particularly in crops which are highly competitive internationally, and that this elasticity would tend to minimize, but not necessarily eliminate, any past adverse effect. Adverse effect could still have occurred in specific crops, activities and areas.

3. The USDA survey wage rates have not been depressed from the use of foreign workers. Again, lack of empirical and theoretical evidence of adverse effect is cited. Also, the broad geographic scope of the USDA survey would tend to average out any localized wage depression. DOL agrees with this point.

4. Use of the USDA survey, and the average wage rates produced by that survey, is appropriate (as a second-best alternative to their preferred approach) from a technical point of view, and also will not cause wage stagnation. First, use of the USDA average wage eliminates serious anomalies in the old H-2 methodology. Second, the USDA survey is methodologically sound, providing the best and most comprehensive information on agricultural wage rates. Third, the survey sample adequately covers the kinds of activities for which H-2A applications are likely under IRCA. Fourth, rather than causing wage stagnation, the use of last year's average rate as this year's minimum will cause wage inflation because of a ratcheting-upward effect. This ratcheting effect will occur also because of the need to maintain wage differentials, particularly for piece-rate work. Furthermore, the effect on the movement of wages would be no different than if the old H-2 methodology were retained, since that methodology used the year-to-year changes in the USDA rates to index the AEWRs. DOL agrees that the USDA survey is entirely appropriate from a technical point of view, and agrees with the reasons cited. DOL also agrees that use of the USDA survey average rate will not cause wage depression; if anything, requiring the previous year's average as this year's minimum may tend to have a ratcheting-upward effect on wage rates.

5. Unreasonably high AEWRs could endanger the total U.S. domestic agribusiness, because the international competitive position of U.S. agriculture is quite fragile. Agricultural employers may reduce production, mechanize more, to quit production altogether, all of which would eliminate jobs for U.S. workers. The clear Congressional intent was to make the H-2A program usable, not to make U.S. producers noncompetitive. This is reflected in the many special provisions in IRCA for agriculture. Unreasonably high AEWRs would also encourage continued use of illegals, which would undermine the intent of IRCA. While these considerations are not dispositive, DOL believes they are valid considerations, which tend to support DOL's AEWR methodology. However, they were not the primary or controlling reasons for adopting that methodology.

6. IRCA only requires that the AEWR prevent future adverse effect from the use of foreign workers, not compensate for past effect. The USDA average will certainly accomplish this. In addition, wages can be expected to rise in the post-IRCA period of possible labor shortages. DOL acknowledges there may be some tendency for wage rates to rise, but probably not to any significant extent, because of the same factors which precluded past foreign workers from having a significant depressive effect on wages. Regarding IRCA's applicability to future or past adverse effect, the Court of Appeals has ruled it applies to both.

As stated above, employer representatives strongly prefer an AEWR methodology based on prevailing rates in specific crops, activities, and areas. DOL cannot accept this approach for several reasons. While DOL believes past adverse effect has not been significant enough to cause generalized wage rate depression, it does acknowledge the possibility of adverse effect in specific crops, activities and areas. Such adverse effect would not be addressed by requiring only the prevailing wage rate as the AEWR. Part of the employer's preferred approach is that where such pockets of adverse effect exist, suitable adjustments could be made on a case-by-case basis. While this is conceptually valid, DOL deems the administrative difficulties in making such determinations of adverse effect and quantifying the adjustments to be made as insurmountable. DOL believes that by requiring the average wage as the AEWR, such pockets of past adverse effect will be suitably addressed.

ATTACHMENT 2.—ANALYSIS OF FARMWORKER COMMENTS

Farmworker Advocate Comments	DOL Analysis
A. *DOL Has Dramatically Changed Policy and Practice of Past 30 Years of "Enhanced AEWRs" and Has Done So Without Adequate Explanation/Justification*	
1. Past policy and practice has clearly been to enhance average or prevailing rates; DOL misrepresented past DOL policy in NPRM. Early AEWRs (particularly 1965 adjustments whose effects were carried forward under indexing) were conscious enhancements. Also, rulemaking adding States for which special AEWRs were established under the H-2 program specifically compensated for adverse effect on prevailing rates.	1. DOL has never established a policy of adding an enhancement to the USDA rates. The 1965 adjustments were made on the rationale that agricultural rates should change by the same proportions as manufacturing rates in each State. These adjustments resulted in rates higher (by different proportions) than the USDA rate in most States, but not all. In addition, in 1965 a minimum rate was applied, presumably related to the FLSA minimum rate, which did not apply to agriculture at the time. While these adjustments apparently reflected some DOL dissatisfaction with the USDA average *at the time*, they were not a direct enhancement of the USDA rates per se. As stated in the NPRM, "the fact that the AEWR averaged 20% above the average hourly earnings from the USDA survey in the four seen 'traditional user States' is an unintended result of the application of the various methodologies used in the 1960's to create the AEWR base; it cannot in any way be viewed as a measurement of the quantum of adverse effect." Regarding rulemaking to add AEWR States under H-2, the focus was on *prevailing* rates (which apply to specific crop-activity-areas), as opposed to Statewide *average* rates, as determined by the USDA survey.
2. Past AEWR concept has been the rate which would have existed were it not for illegals.	2. This has never been the AEWR concept or policy. The AEWR is intended as a *floor*, or *minimum*; it was never designed to protect wages above this floor or minimum. This approach has always been deemed sufficient to prevent the adverse effect specified in the old H-2 regulations, and now in IRCA. The Appeals Court has interpreted such adverse effect to include both past and prospective adverse effect. There is no way of determining empirically what rates would have existed in the absence of illegals. Theoretically, a rate necessary to attract the *same number* of U.S. workers as there were illegals would be dramatically higher, given the apparent inelasticity of supply of U.S. agricultural labor. This concept has been specifically rejected by the Courts. However, the more likely result, recognizing the great elasticity of demand for labor, particularly in the highly internationally competitive agricultural markets of the 1980's, is that wage rates would have been about the same, with far less production and employment.
3. The H-2A AEWR methodology represents a dramatic change in AEWR policy by dropping an enhancement factor. Evidence of dramatic change is that AEWRs are significantly lower in almost all States compared with the old H-2 methodology, which had been upheld by the Court.	3. There has been *no* change in the basic AEWR concept and principles, as described in Item 2 above, only in the methodology employed to observe and implement this concept and these principles. This change was made in light of the following: (a) a thorough re-examination of the origins and history of the old H-2 methodology revealed basic flaws which did not impact seriously on the 14 traditional States, but which clearly would produce inappropriate AEWRs for the many possible new States under IRCA; (b) more sophisticated and methodologically superior recent research contradicts assumptions about adverse effect based on more crudely constructed studies of 25-30 years ago; (c) agricultural markets have become dramatically more international since the 1960's when previous AEWR methodology was established, providing a theoretical framework of analysis which supports recent empirical findings of little or no adverse effect; (d) the passage of IRCA, reflecting clear Congressional intent for a workable, usable H-2A program, not one which would put U.S. agriculture out of business (Congress' interest in a viable U.S. agricultural industry is reflected in all the special agricultural provisions in IRCA); IRCA also promises to remove illegals from agriculture (so that whatever adverse impact they might have had in the past will be removed) and to bring about a significant expansion in the H-2A program. These changes have led DOL to adopt a methodology setting the AEWR equal to the USDA average in each State. In briefest form, the rationale for adopting this approach is: (1) Best available studies fail to provide evidence of any adverse effect (much less any quantification of such effect) at State/regional/national levels; this lack of empirical evidence of adverse effect is supported by theoretical analysis; (2) any localized adverse effects are probably not large enough to show up in USDA series; (3) thus, DOL has no basis and no right to impose an arbitrary enhancement factor; (4) to the extent there are localized pockets that wage rates are below the State/regional average, requiring the average as a minimum will "cure" this adverse effect; DOL has *not* adopted the employers preferred approach of basically using only crop-activity-area prevailing wage rates.

ATTACHMENT 2.—ANALYSIS OF FARMWORKER COMMENTS—Continued

Farmworker Advocate Comments	DOL Analysis
	The old methodology was based on information and analyses which are now shown to be weak. This methodology was upheld by the Courts as within DOL discretion. DOL's new methodology, based on better information and analysis, and recognizing recent developments in agricultural markets, should not be precluded because of past faulty practice, but is likewise within DOL discretion.
B *There Has Been Clear Past Adverse Effect on Agricultural Wage Rates*	
1. DOL has misrepresented the studies it cited; they actually confirm adverse effect.	1 DOL has carefully reviewed the studies again, and concludes they were not misrepresented.
a. *Economic Report of the President* was misrepresented; shows "devastating" impact on workers in direct competition with aliens.	a This is a gross misrepresentation by farmworker advocates. While the report makes a distinction between those workers competing directly and indirectly with aliens (and says adverse impact is more likely among those directly competing), the overwhelming thrust of the report is that adverse effects, if any, are negligible—and even possibly positive—for *both* direct and indirect workers. DOL quoted directly from report in NPRM: "Increased wages have been found both for broad groups of workers and also for native-born minority groups with whom immigrants might compete directly for jobs."
b. National Commission on Employment Policy report misrepresented; says job displacement was greatest among direct-competition workers.	b. Statement quoted by farmworker advocates relates to job displacement, not wage rates. Also, the statement goes on to say that the numbers involved are unknown, and *may* be significant, indicating the effect, if any, is not large. Regarding wages rates, the report cities several studies which found minimal wage depression.
c. DOL ignored case studies dealing with agriculture in GAO report, which found significant wage depression.	c. DOL did not ignore those case studies. They were acknowledged in the NPRM, and are not inconsistent with DOL's view that there have possible been localized adverse effects, but the overall *impact* is unclear, and likely not enough to have affected the USDA series in any significant way. The overwhelming thrust of the GAO report is one of great uncertainty as to whether and how much adverse effect has occurred. With respect to the questions of whether illegal alien workers depress wages and are associated with declining business environments, GAO states: "For both questions, we found again that useful evidence was scarce. Many of the studies would not or did not adequately differentiate between illegal alien and legal immigrant workers. Studies that did permit (with varying degrees of accuracy) differentiation by legal status were generally limited in ways which constrain generalizability. Accordingly, our answer to both questions are again caveated." And to repeat the last sentence quoted in the NPRM from the GAO report: "This suggests that the effects of illegal workers on the wages and working conditions of native or legal workers are not *automatically* in the direction of depressing these conditions, and that those effects depend on a number of factors, of which the illegal status of the workers is one."
d. DOL misinterpreted GAO statement about aggregation—difficulty in measuring should not be interpreted as meaning no adverse effect.	d. DOL believes GAO's statement that "wage depression is harder and harder to detect at levels of analysis beyond or above a highly localized and occupation-specific labor market" was probably intended to have both meanings—any adverse effect would be more difficult to measure at higher levels of aggregation, but also if the effect were large, it would probably be able to be detected. DOL believes the latter meaning is strongly indicated in GAO's uncertainty as to *whether* adverse effect has occurred, as well as how much.
e. The National Bureau of Economic Research and Urban Institute studies should be dismissed because they do not include agriculture.	e. While agricultural sectors were not included in those studies, the concepts and principles being analyzed may be applied to agriculture. The NBER study clearly says there have been only *modest* impacts on those competing directly with illegal aliens (immigrants and earlier immigrants) and *little, if any,* impact on blacks and Hispanics, the next closest substitutes. The Urban Institute study concludes the wages of non-Hispanic laborers were only *somewhat* depressed in local case studies, with *negligible* impacts on non-Hispanic semi-skilled workers.
2. DOL has misrepresented Dr. Martin's special study for DOL; it and other Martin studies say there has been adverse effect.	2. DOL reviewed the proposed AEWR rationale with Martin prior to its submission to the Court in April 1988, and again prior to preparation of this final rule. Martin stated that his study was not misrepresented, and that DOL's approach seemed reasonable.
a. Study design dictated by DOL was flawed; required certain assumptions which may not be true; was theoretical speculation, rather than empirical study.	a. This misses the point of the study, and its implications for the issue at hand. Martin was asked to theorize, based on his established expertise, what effects the removal of illegals might have on agricultural wages. His overall conclusion was that wage rates would tend to rise, but not enough to show up in the USDA average wage rates. Whether or not illegals actually cease to exist in agriculture as a result of IRCA, Dr. Martin's analysis and conclusions are still valid; namely, that illegals have had no discernible effect on USDA wage rates. This must be so since their removal would have no discernible effect.
b. Statement on Page 10 says (indirectly) that illegals have depressed farm wages.	b. DOL does not rule out the possibility—indeed it acknowledges in the NPRM—that wages could be depressed from the use of illegals in certain crops, activities, and areas, and Martin appears to concur. But this one statement does not invalidate the overwhelming thrust of his paper that any increase in wages from the removal of illegals would probably not be large enough to show up in the USDA series.
c. Piece rates may have been adversely affected by illegals, even if average hourly earnings under these piece rates have been high. Martin concurred with this subsequent to his report.	c. Martin's study says that illegals may tend to *increase* average hourly earnings (on which the AEWR is based), because of the higher productivity of solo men working at piece rates, over what it might have been if only U.S. workers were involved. This has not been disputed by farmworker advocates. Even if piece rates would have been higher without illegals (which DOL does not concede), it does not mean less productive U.S. workers would have had higher hourly earnings than the illegals had.

ATTACHMENT 2.—ANALYSIS OF FARMWORKER COMMENTS—Continued

Farmworker Advocate Comments	DOL Analysis
d. Other Martin studies conclude illegals cause wage depression.	d. Again, possible wage depression in certain crop-activity-areas is not disputed by DOL, nor by Martin. The issue is whether in the aggregate there is wage depression, whether it is significant, and whether it is reflected in the USDA survey. One Martin study cited by farmworker advocates, while generally concluding some wage depression, also states: "Average hourly and annual earnings have decreased, but these decreases cannot be observed in wage statistics." This is entirely consistent with DOL's position, and with Martin's conclusions in his special study for DOL.
3. Past DOL studies over the last 30 years show adverse effect. These include a 1959 Consultants Report; 123 wage surveys done in 1960; studies done in the 1960's of Texas and California border areas; analyses supporting rulemaking in 1979 and 1986 adding States for which separate AEWRs were to be calculated; and justification for a 1980–81 AEWR rulemaking subsequently withdrawn.	3. DOL has reviewed these studies, to the extent they are still available, and finds they invariably related to specific crop-activity-areas; they were simple comparisons, not meeting today's methodological standards for economic research (they were not included by GAO among the studies meeting its methodological standards for inclusion in its review of the literature); and most of them were done 20 or more years ago, since which time significant changes in agricultural markets have occurred. These rulemakings cited apprehensions of illegals in agriculture and wages at or near the FLSA minimum wage as a basis for determining the existence of past adverse effect and the need for establishing Statewide AEWRs. Comments received in the 1986 Idaho-Mont-Oregon rulemaking have given DOL pause in this regard; information presented raises doubts about penetration of illegals and effect on wages. Nevertheless, DOL continues to assume the need for an AEWR under its H–2A methodology, in that it *has* set AEWRs for *all* States. DOL's withdrawal of this rule in 1981 very shortly after promulgation indicates it did not support the underlying analysis.
4. Other studies by non-DOL researchers show adverse effect; even show adverse effect from H–2 program.	4. DOL has reviewed the studies cited by farmworker advocates. Almost all of these were not included in the GAO review of studies which met GAO's methodological standards. Almost all of these dealt with specific crop-activity-area situations, rather than Statewide or industry-wide analyses. In any event, these studies generally do not assert clear-cut adverse effects. Two studies which do deal with Statewide or industry-wide impacts were carefully reviewed by DOL. (Both were not reviewed in the GAO report.) DOL found the Medoff-Abraham study of the impact of the H–2 program to be methodologically seriously flawed. Contrary to their overall conclusion that the use of H–2 workers depressed average agricultural wages, the average wages in the two States with the highest penetration of H–2 workers (Florida and West Virginia) increased faster than the average wages in non-H–2 States. In addition, still other studies of H–2 program effects in Florida show a positive impact on State wage rates. The Morgan-Gardner study of the impact of the 1950's and 60's bracero program is a very thoughtful and careful study; however, its assumptions and implications for today have been questioned by other prominent agricultural labor economists, as well as DOL analysts, with respect to the elasticity of the demand for labor and the effects of more recent changes in agricultural markets.
5. Agricultural wage rates have not kept pace with manufacturing wage rates between 1974 and 1987 in many States with high estimated numbers of illegals; DOL's citing high agricultural wage rates in these States not meaningful in themselves.	5. There is little conceptual or theoretical basis for believing that agricultural and manufacturing wage rates should move in lock step. The variables that determine wage rates in each are distinctly different. For example, year-to-year changes in agricultural wages (but not in non-agricultural wages) will be influenced by weather patterns throughout the world, which will affect the demand for U.S. agricultural products and the demand for agricultural workers in the U.S. (DOL considered, and then withdrew, this approach in 1980–81 rulemaking. DOL also applied this approach partially to AEWRs in 1985, which became the basis for subsequent indexing; this is one reason DOL finds the old H–2 methodology unsuitable under IRCA.) In addition, the special circumstances surrounding agriculture were recognized by the Congress in establishing a special legalization program and special programs for utilizing foreign workers in agriculture. Nevertheless, further analysis of agricultural-manufacturing wage relationships shows that in all of the high-illegal States the agricultural-manufacturing wage rate ratio is approximately as high or higher than in the U.S. as a whole. Even using the percent change in these rates between 1974 and 1987, shows that generally States with AWERs under the old H-2 methodology (which farmworker advocates recommend retaining) fare worse then States with no AEWRs. Regarding absolute agricultural wage rates, it is difficult to explain why the State with the undisputed greatest penetration of illegals (California) should also have the highest agricultural wage rates within the contiguous 48 States, if illegals cause the adverse effect claimed by farmworker advocates. Other high-illegal States (such as Washington and Oregon) have the next highest wage rates.
6. Even if studies were considered to be inconclusive as to adverse effect, DOL should give benefit of the doubt to U.S. workers.	6. DOL takes the opposite view, which it believes is more reasonable; namely, lacking any solid evidence of past adverse effect, and lacking the means for determining adverse effect, DOL has no right to impose some arbitrary enhancement to the USDA average. In addition to the empirical studies which have been unable to demonstrate generalized adverse effect, DOL must give weight to a theoretical analysis which recognizes that in a global agricultural market, a condition which has accelerated rapidly in the 1980's, wage levels are determined primarily by international equilibrium market conditions, which means a highly elastic demand for labor, rather than by labor supply. Furthermore, DOL has an obligation to be evenhanded, recognizing the legitimate interests and concerns of both employers and workers.

ATTACHMENT 2.—ANALYSIS OF FARMWORKER COMMENTS—Continued

Farmworker Advocate Comments	DOL Analysis
C. *The USDA Survey Has Been Tainted/Depressed from Past Use of Illegals*	
1. If one accepts (as DOL does) the possibility of adverse effect in local areas where illegals have predominated, then the high numbers and widespread penetration of illegals in agricultural activities generally *must* have affected the USDA series. Cites unofficial DOL March 13, 1987 estimates; large number of SAW applications (1.2 million); DOL comments on GAO report; Texas sheep and goat survey. Farmworker advocates estimates 12–50% penetration.	1. Both the total number of farmworkers, and especially the number of illegals, are highly uncertain. Estimates of the number of illegals in the past range from 200,000 to over 1 million. The proportion of illegals has been surveyed by Martin at 20 percent in California, the State with acknowledged highest penetration. Estimate for specific crop activities in California was as high as 54 percent. Other estimates run higher in some specific crop-activity-areas. But these are all *only estimates*; nobody knows with any certainty. With respect to SAW applications, INS believes there is a very high incidence of unsupported applications. Even if the penetration is high, it is not clear that aliens have had an adverse effect on wages; could even be positive, due to higher hourly earnings than U.S. workers at piece rates. Furthermore, with highly elastic labor demand conditions, the wage rate is not influenced greatly by the supply of labor. Finally, it is possible that in some specific crop-activity-areas there has been adverse effect, but not enough to significantly effect the USDA average. The DOL comments on the GAO report refer to studies done in specific activities and areas, not to general average wage levels in an occupation or industry. The Texas sheep and goat survey relates likewise to a specific activity and area; it also indicates nothing about what the rate would have been absent the high penetration of illegals; the same rate may have prevailed, with fewer producers and workers.
2. DOL has misrepresented Martins' view on this matter; clarifying Martin-Tuddenham conversations and correspondence confirm this.	2. While Martin has indicated, subsequent to his special study for DOL, that it cannot be said with certainty that the USDA survey is untainted, he has not changed his statement in the report that the removal of illegals would probably not have an effect on the USDA survey data—which means their presence also has not had an effect. This is the major conclusion of his study. Again, Martin reviewed the DOL use of his study and found he was not misrepresented.
D. *USDA SURVEY is Too Flawed and Otherwise Inappropriate to Serve as AEWR Base, Apart from Adverse Effect Considerations*	
1. Wage rates generated by USDA survey are erratic, showing large changes from year-to-year in some regions/States. Cites Martin statement that this is why wage increases from removal of illegals would not show up in USDA surveys. Also, cites GAO criticism of USDA survey.	1. In citing Martin statement in special DOL study, farmworker advocates apparently are accepting Martin's overall conclusion that wage changes won't show up in USDA series, but they misrepresent his explanation of why this is so. Martin says: "It is entirely possible that illegal aliens are simply too small a factor in the generally multi-State labor markets surveyed by *Farm Labor* to isolate the effects of their removal. Alternatively, *Farm Labor* may be an unreliable guide to changes in farm labor, especially over short time periods." *Both* of these are possible explanations of Martin's overall conclusion—but his conclusion still stands. In fact, the USDA survey is the best, most scientific measure of farm wage rates; it is given high marks by GAO, even though some aspects are criticized. The GAO report in essence affirms the USDA survey as a statistically designed and defensible probability survey for collecting regional and U.S. level wage rate data. It is noteworthy that in attacking the reliability and validity of the USDA survey, farmworker advocates are attacking the very basis for their preferred AEWR methodologies; namely, the old H–2 methodology which used the USDA survey to index year-to-year changes, and adding an enhancement factor to the USDA base rate.
2. USDA Survey understates wage rates for occupations in which H–2A workers tend to be employed, as determined by GAO report. Martin concurs. a. Survey does not include higher paid agricultural service workers, which include employees of farm labor contractors; such workers comprise about 15–20% of agriculture workers nationally and a higher proportion in some states, such as California. b. Survey undercounts seasonal and temporary workers which tend to be paid higher wages. Ratio of seasonal to year-round is 1:2 in USDA survey; 4:1 in Census of Agriculture.	2. DOL disagrees, based on anticipated expansion of H–2A program to a much wider variety of agricultural occupations (see official DOL comments on GAO report). Also based on further analysis of offsetting factors, as follows. a. It is true that agricultural service workers' wages are not included in the USDA wage rates. However, GAO points out that wage differences between agricultural service workers and other farm workers are small, and agricultural service workers may include high-wage, high-skilled "non-agricultural" workers (i.e., not field and livestock workers). In addition, the field and livestock worker wage categories include higher skilled workers such as farm machine operators and livestock herdsmen. Also, Martin-Mines found wages of contract workers *lower* than others in California. It may be noted that since illegals tend to be heavily represented in labor contract work, the omission of such work from the USDA survey lessens the influence of illegals on that survey. (It also suggests illegals may not depress the overall averages.) b. The differences in the ratios are not necessarily inconsistent. The USDA counts workers on farms during a 1-week period each quarter so farm-to-farm migration of seasonal workers is minimal. The Census of Agriculture counts workers on farms during the year so a seasonal worker that worked on six different farms would be reported six times. The affect of any possible undercounting of seasonal workers tends to be offset by the fact that GAO says piece rate hours are probably understated. If true, this means the hourly earnings for piece-rate paid workers are probably overstated—which gives an upward bias to the overall USDA rate. If the USDA survey does undercount seasonal workers, this undercuts advocates' assertion that illegals tend to depress wages, since they tend to be concentrated in seasonal/temporary work. In addition, if such work is underrepresented here, then illegals have less influence on the USDA rate
3 Use of *last* year's average as required rate for *this* year inappropriate; one-year lag in the data.	3. DOL has no suitable basis for adjusting for this lag. In fact, the direction of change is not always upward
4. USDA average should be enhanced to take account of Social Security and FUTA taxes which employers of aliens are not required to pay; estimated at 9–10 percent of wages.	4. The AEWR relates to wages paid to workers, not to total labor costs incurred by employers. Legislation specifically exempts employers from making these payments for alien workers. Employers also make the point that they incur other costs in the H-2A program which non-H–2A employers are not required to bear

ATTACHMENT 2.—ANALYSIS OF FARMWORKER COMMENTS—Continued

Farmworker Advocate Comments	DOL Analysis
5. Requiring only the average will have depressing and stagnating effect on wage rates.	5. DOL believes quite the contrary. If anything, requiring the previous year's *average* as this year's *minimum* may tend to have a ratcheting-upward effect on wage rates. This is particularly true where piece rates are used as incentive payments permitting higher-productivity workers to earn well above the average; in other words, for incentives to be maintained, piece rates (and earnings) would have to be raised. Also, non-H–2A employers would be pressured to raise rates to compete for workers. And if an enhancement were added, the ratcheting effect would be very inflationary It should be noted that even the staunchest FLSA minimum wage advocates would recognize as inflationary setting the FLSA minimum equivalent to the average non-agricultural earnings. The highest the post-war FLSA minimum has been set as a proportion of average non-agricultural earnings is 56 percent in 1956.
E. *Other DOL Arguments Are Inappropriate*	
1. "Anomalies in old methodolgy"—no justification for current approach of non-enhancement; cf. Appeals Court—could as easily say anomalies show need for more enhancement, not less.	1. By themselves, the flaws in the methodology which DOL has documented do not provide a justification *for* any specific methodology, but they are important considerations in that they indicate a clear need to change from the old methodology. They also demonstrate the lack of ability to measure adverse effect.
2. "Elimination of illegals will raise wages"—doesn't address past adverse effect, as required by the Court of Appeals.	2. While this point does not address past adverse effect, it is nevertheless an important consideration to assure that the AEWR methodology does not build in a further inflationary accelerator, such as an enhancement factor.
3. "International competition considerations"—not within scope of legitimate consideration.	3. DOL believes international competition must be part of basic theoretical model for analyzing adverse effect, because that is factually the way agricultural markets are, particularly in the 1980's. Clearly DOL must be mindful of the potential consequences of its actions, to the extent it has administrative discretion within statutory limitations.
F. *Recommended AEWR Approaches*	
1. Return to old H–2 methodology for all States	1. Clearly fatally flawed—bears no relationship to any reasonable conception or measurement of past adverse effect for most States. Disregards most recent empirical and theoretical analyses. Base rates related primarily to manufacturing wage rate changes 1950–65 (a conceptual approach which DOL has since rejected in 1981) and an attempt to set minimum rates in agriculture in the absence of FLSA coverage at the time (1965).
2. Add enhancement to USDA rate in all States to compensate for: (a) past adverse effect, (b) social security and FUTA taxes, (c) one-year lag, and (d) underrepresentation of H–2A type work.	2. Such enhancement is inappropriate, for the reasons discussed above for each of these points. Would also be inflationary, adversely affect competitive position of U.S. agriculture, and thereby adversely affect U.S. workers, both those "similarly employed" and complementary workers.
3. Add enhancement to USDA rate in States where adverse effect can be demonstrated, as did under H–2.	3. While this approach has merit conceptually, there is currently no supportable basis for determining State-by-State adverse effect. In this connection, it bears repeating that the States with the highest estimated penetration of illegals (particularly California) also tend to have the highest agricultural wage rates.
4. Use USDA piece rate average hourly earnings as AEWR (higher than combined average), since most H–2A workers paid by piece.	4. Under IRCA, expect almost all kinds of farm work with a wide variety in methods of payment may have H–2A applications. In addition, DOL does not believe the average hourly earnings under incentive methods of payment are appropriate for an hourly rate standard.
5. Adjust USDA rate for agricultural-manufacturing wage differential.	5. Inappropriateness of this approach discussed above. DOL rejected this approach in 1981.
6. Set AEWR at or above non-farm rate	6. No suitable conceptual or theoretical support for this approach.
7. Establish separate hourly AEWR for piece rate work	7. AEWR meant to be floor or minimum for all agricultural work. DOL has never tried to protect earnings above this floor.
8. Establish separate hourly AEWR for seasonal work	8. See response to item 7. Also, "seasonal" would vary by crop and activity. Not administratively feasible.
9. AEWR should include value of perquisites	9. Not administratively feasible to cost these out and factor into hourly AEWR. In addition, AEWR has always related to cash wages; perquisites such as housing, transportation, tools, etc. dealt with elsewhere in the regulations.

[FR Doc. 89–15634 Filed 7–3–89; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 556 and 558

Animal Drugs, Feeds, and Related Products; Halofuginone

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Hoechst-Roussel Agri-Vet Co. The NADA provides for the safe and effective use of a Type A medicated article containing halofuginone hydrobromide in making Type C medicated turkey feeds for the prevention of coccidiosis. The regulations are also amended to establish a tolerance and safe concentrations for drug residues in edible turkey tissue.

EFFECTIVE DATE: July 5, 1989.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Agri-Vet Co., Route 202–206 North, Somerville, NJ 08876, has filed NADA 140–824 providing for the use of a Type A medicated article containing 2.72 grams of halofuginone hydrobromide per pound to make Type C medicated feeds containing 1.36 to 2.72 grams of halofuginone hydrobromide per ton for growing turkeys. The Type C medicated feeds are for the prevention of coccidiosis

caused by *Eimeria adenoeides, E. meleagrimitis,* and *E. gallopavonis.*

The application is approved and 21 CFR 558.265 is amended by revising paragraph (c) to reflect the approval. The basis for approval is discussed in the freedom of information summary. Section 556.308 (21 CFR 556.308) is also amended to establish a tolerance for the marker residue and safe concentrations for total residues of halofuginone hydrobromide in edible turkey tissue. The regulation is also being revised for clarity to specify that the marker residue is parent halofuginone hydrobromide.

Halofuginone hydrobromide is a new animal drug used in a Type A medicated article to make a Type C medicated feed. It is a Category II, Type A medicated article which, as provided in 21 CFR 558.4, requires an approved form FDA 1900 for making a Type C feed, in accordance with the approved NADA.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 556

Animal drugs, Foods.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 556 and 558 are amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for 21 CFR 556 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 556.308 is revised to read as follows:

§ 556.308 Halofuginone hydrobromide.

The marker residue selected to monitor for total residues of halofuginone hydrobromide in broilers and turkeys is parent halofuginone hydrobromide and the target tissue selected is liver. A tolerance is established in broilers and turkeys of 0.1 part per million for parent halofuginone hydrobromide in liver. A marker residue concentration of 0.1 part per million in liver corresponds to a concentration for total residues of halofuginone hydrobromide of 0.3 part per million in liver. The safe concentrations for total residues of halofuginone hydrobromide in the uncooked edible tissues of broilers and turkeys are 0.1 part per million in muscle, 0.3 part per million in liver, and 0.2 part per million in skin with adhering fat. As used in this section, "tolerance" refers to a concentration of a marker residue in the target tissue selected to monitor for total residues of the drug in the target animal, and "safe concentrations" refers to the concentrations of total residues considered safe in edible tissues.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

4. Section 558.265 is amended by revising paragraph (c) to read as follows:

§ 558.265 Halofuginone hydrobromide.

* * * * *

(c) *Conditions of use.* (1) It is used in feed for broiler chickens as follows:

(i) *Amount.* 2.72 grams per ton.

(A) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima.*

(B) *Limitations.* Feed continuously as sole ration; withdraw 4 days before slaughter; do not feed to layers; avoid contact with skin, eyes, or clothing; keep out of lakes, ponds, or streams.

(ii) *Amount per ton.* Halofuginone 2.72 grams (0.0003 percent) plus bambermycins 1 to 2 grams.

(A) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima;* for increased rate of weight gain and improved feed efficiency.

(B) *Limitations.* Feed continuously as sole ration; withdraw 5 days before slaughter; do not feed to layers.

(iii) *Amount per ton.* Halofuginone 2.72 grams (0.0003 percent) plus virginiamycin 5 grams.

(A) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima;* for increased rate of weight gain and improved feed efficiency.

(B) *Limitations.* Feed continuously as sole ration; withdraw 6 days before slaughter; do not feed to layers.

(iv) *Amount per ton.* Halofuginone 2.72 grams (0.0003 percent) plus virginiamycin 5 to 15 grams.

(A) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mevati, and E. maxima;* for increased rate of weight gain.

(B) *Limitations.* Feed continuously as sole ration; withdraw 6 days before slaughter; do not feed to layers.

(v) *Amount per ton.* Halofuginone hydrobromide 2.72 grams (0.0003 percent) plus bacitracin methylene disalicylate 10 to 50 grams and roxarsone 22.7 to 45.4 grams.

(A) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima;* for increased rate of weight gain; and for improved feed efficiency.

(B) *Limitations.* Feed continuously as sole ration; withdraw 5 days before slaughter; use as sole source of organic arsenic; do not feed to layers; avoid contact with skin, eyes, or clothing; keep out of lakes, ponds, or streams.

(vi) *Amount per ton.* Halofuginone 2.72 grams (0.0003 percent) plus bacitracin methylene disalicylate 10 to 50 grams.

(A) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mevati, E. maxima* and for improved feed efficiency.

(B) *Limitations.* Feed continuously as sole ration; withdraw 5 days before slaughter; do not feed to layers; avoid contact with skin, eyes, or clothing; keep out of lakes, ponds, or streams.

(vii) *Amount per ton.* Halofuginone 2.72 grams (0.0003 percent) plus lincomycin 2 to 4 grams.

(A) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima* and for improved feed efficiency.

(B) *Limitations.* Feed continuously as sole ration; withdraw 4 days before slaughter; do not feed to layers; avoid contact with skin, eyes, or clothing; keep out of lakes, ponds, or streams.

(2) It is used in feed for turkeys as follows:

(i) *Amount per ton.* 1.36 to 2.72 grams.

(A) *Indications for use.* For the prevention of coccidiosis in growing turkeys caused by *Eimeria adenoeides, E. meleagrimitis,* and *E. gallopavonis.*

(B) *Limitations.* Feed continuously as sole ration; withdraw 7 days before slaughter; do not feed to layers or water fowl; avoid contact with skin, eyes, or clothing; keep out of lakes, ponds, or streams.

(ii) [Reserved]

Dated: June 27, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-15674 Filed 7-3-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 203

[Docket No. R-89-836; FR-837]

RIN 2502-AB03

Mutual Mortgage Insurance and Rehabilitation Loans, Condition of Property—Adjustment for Damage or Neglect

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: On August 8, 1986, HUD published a final rule setting out the circumstances under which it will accept a conveyance or mortgage assignment relating to a fire or otherwise damaged property, and stating the procedures that govern whether HUD will make a deduction from the insurance benefits for which the mortgagee has made a claim to offset the costs of repairs. This final rule corrects a technical error found in the earlier rule.

EFFECTIVE DATE: September 11, 1989.

FOR FURTHER INFORMATION CONTACT: Robert E. Falkenstein, Director, Single Family Servicing Division, Office of Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-6672. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a final rule published on August 8, 1986 (51 FR 28548), 24 CFR 203.379 was extensively revised. That section (Adjustment for damages or neglect) sets out conditions under which HUD, as insurer of the mortgage, will accept the conveyance of a property or the assignment of the mortgage on the property, when the property has been damaged by fire or otherwise. Paragraph (b)(3) of § 203.379, as published in the final rule, read as follows:

(3) Within 30 days of any cancellation or non-renewal of hazard insurance, the mortgagee notified HUD, and has made diligent efforts (within that 30 day period, and at least annually thereafter) to secure other coverage or coverage under a FAIR Plan, in an amount described in paragraph (b)(1) of this section, or if coverage to such an extent was unavailable at a reasonable rate, the greatest extent of coverage that was available at a reasonable rate; and

The Preamble to the 1986 rule correctly states an intention to eliminate, from the text of paragraph (b)(3), the requirement of notification to HUD within 30 days of any cancellation or non-renewal of hazard insurance. Through inadvertance this text was not actually removed. This rule makes the necessary correction. It is technical in nature and reflects the language found in earlier § 203.379(b)(3) of the interim rule on this subject (45 FR 56800, 56801) upon which the public has had opportunity to comment.

Procedural Requirements

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The information collection requirements contained in the August 8, 1986 final rule (51 FR 28548) have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3054(h)), and assigned OMB control number 2502-0349.

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b) the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule merely makes a technical correction in already established HUD procedures.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 24, 1989 (54 FR 16708) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.117.

List of Subjects in 24 CFR Part 203

Home improvement, Loan programs—housing and community development, Mortgage insurance, Solar energy.

Accordingly, the Department amends 24 CFR Part 203 as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for Part 203 continues to read as follows:

Authority: Secs. 203 and 211, National Housing Act (12 U.S.C. 1709 and 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). In addition, Subpart C also issued under sec. 230, National Housing Act (12 U.S.C. 1715u).

2. Paragraph (b)(3) of § 203.379 is revised to read as follows:

§ 203.379 Adjustment for damage or neglect.

* * * * *

(b) * * *

(3) The mortgagee made diligent though unsuccessful efforts within 30 days of any cancellation or non-renewal of hazard insurance, and at least annually thereafter, to secure other coverage or coverage under a FAIR Plan, in an amount described in paragraph (b)(1) of this section, or if coverage to such an extent was unavailable at a reasonable rate, the greatest extent of coverage that was available at a reasonable rate; and

* * * * *

Dated: June 6, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 89-15701 Filed 7-3-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Air Contaminants; Corrections

AGENCY: Occupational Safety and Health Administration; Labor.

ACTION: Final rule; corrections.

SUMMARY: This notice makes corrections to the preamble and final rule on Air Contaminants issued by OSHA which appeared in the **Federal Register** on January 19, 1989 at 54 FR 2331.

EFFECTIVE DATE: July 5, 1989.

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SUPPLEMENTARY INFORMATION: This document contains corrections to the preamble to the final rule on Air Contaminants which was published in the **Federal Register** on Thursday, January 19, 1989 (54 FR 2331-2983) and to 29 CFR 1910.1000.

As published the rule contains typographical errors, incorrect citations and certain ambiguities which may prove to be misleading and are in need of clarification. This document corrects these errors and makes clearer certain areas in both the regulatory text and the preamble.

The attempt is made to correct all errors in the standards. However, generally this document does not correct typographical or grammatical errors in the preamble unless a correction is needed to clarify meaning. The following paragraphs explain several of the corrections.

For the following 8 substances, Table Z-1-A, Final Rule Limits stated, "In process of 6(b) rulemaking." This statement is accurate, and represents OSHA current actions and intentions. However that is not a regulatory term. OSHA wishes to clarify that the Transitional Limits noted in Table Z-1-A would be continued as the Final Rule Limits in the unanticipated event that rulemakings for the substances are delayed beyond Dec. 31, 1992. Therefore the quoted phrase is replaced by the current exposure limit. The change does not indicate any intention not to complete these rulemaking on schedule. The eight substances are: Butadiene, Cadmium fume, Cadmium dust, 2 Ethoxyethanol, 2 Ethoxyethyl acetate, Ethylene dibromide, Methyl cellosolve, Methyl cellosolve acetate and Methylene chloride.

For three substances, Beryllium Ethylene dibromide and Methylene chloride, OSHA did not change the PEL in this rulemaking. In attempting to transpose the existing exposure limits in Table Z-2 to the Final Rule Limits columns in Table Z-1-A, it inadvertently changed the limits by a small percent because the column headings are organized differently. As OSHA did not intend in this rulemaking to make any changes to the limits it is correcting the Final Rule Limits column's to cross reference Table Z-2.

For 7 substances OSHA inadvertently indicated in Table Z-1-A that there was a respirable dust limit. There was none in the past, OSHA did not propose a respirable dust limit and OSHA did not conclude that one should be included. Accordingly the respirable dust entries are deleted for:

Boron Oxide
Ferbam
Magnesium oxide fume
Malathion
Methoxychlor
Molybdenum (insoluble compounds)
Titanium dioxide.

As point out in the corrected regulatory text, OSHA is referencing CAS numbers for regulated substances for the convenience of the public. The name of the substance is the basis for regulation and enforcement, not the CAS number. There are a number of corrections to CAS number which OSHA is making to Table Z-1-A which will appear in the CFR. OSHA is not formally making those changes to preamble material since those mateials will not be reprinted as corrected.

It should be noted that when an exposure limit covers more than one metal compound which is to be measured as the metal, the CAS number of the metal is given. It of course would generally not be practicable to list all the CAS numbers of the many metal compounds covered. However, the exposure limit covers all of the specified metal compounds though their CAS number is not given.

In the preamble, the chemical symbol for Chlorine which is Cl is frequently printed as C1. OSHA is not correcting these typographical errors because the meaning is obvious.

Accordingly, the final rule document published Thursday, January 19, 1989 at 54 FR 2332-2983 is corrected as follows:

Preamble

1. On page 2332, column one, fourth full paragraph, line 4, "$150 per" is corrected to read "approximately $170 per".

2. On page 2332, third column, line 3, "N-2634" is corrected to read "N-2625".

3. On page 2334, second column, the seventh full paragraph is corrected to read: "(2) Adoption of more protective PELs for 212 substances. For one of the 212 OSHA raised the TWA but added a STEL."

4. On page 2335, column one, line one, the words "resulting in" is corrected to read; "such as".

5. On page 2335, column one, the second full paragraph is corrected to read as follows: "Table Z-1-A is designed to include all substances covered by Subpart Z whether or not the PEL has been changed and whether or not it was opened for consideration in this rulemaking.".

6. On page 2335, second column, third full paragraph, sixth line, "$150 per" is corrected to read "approximately $170 per".

6a. On page 2337, the index table, the entry for "Beryllium and Compounds", the entry in the "Primary Basis for Limits" column is corrected to read "Respiratory Effects".

7. On page 2361, column one, the first sentence of the first full paragraph, is corrected to read: "The issuance of this final standard is authorized by section 6 of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. 655.".

8. On page 2362, second column, the first sentence of the second full paragraph is corrected to read: "All of the revised or new PELs in this rulemaking involve material impairment of health.".

9. On page 2362, second column, third full paragraph, line 10, is revised to read: "revised PELs. Third, this".

10. On page 2364, column one, third full paragraph, line 13, the word "regulating" is corrected to read "regulated".

11. On page 2364, column one, third full paragraph, line 22, is corrected to read "not propose regulating as carcinogens,".

12. On page 2364, column two, line 5 is corrected to read "available studies of potential carcinogens for two purposes (Ex.".

12a. On page 2364, second column, first full paragraph, lines 14 and 15 are corrected to read: "assessments were presented in the proposal preamble (53 FR 21109-209 and".

13. On page 2364, second column, third full paragraph, the first sentence is corrected to read: "For carcinogens, as well as for other substances, OSHA's decisions in this Rulemaking are based on the entire evidence in the public record, and that the final PEL substantially reduces significant risk and is feasible.".

14. On page 2364, second column, fourth full paragraph, lines 6-9 are corrected to read: "substances not to perform more detailed analyses for substances being regulated at this time. The regulation of these substances and of other substances as carcinogens, may be considered in future".

15. On page 2365, column one, fifth full paragraph, line 12, the word "showed" is removed.

16. On page 2365, second column, fourth full paragraph, line 11, the word "exposures" is corrected to read "exposure".

17. On page 2366, second column, lines 57 and 58 are corrected to read as follows: "for a specific substance because in a specific operation it could not be".

18. On page 2366, third column, second full paragraph, line 8, the word "PEP" is corrected to read "PEL".

19. On page 2366, third column, third full paragraph, lines 15 and 16 are corrected to read "OSHA concludes that it has met its burden to demonstrate the technical".

20. On page 2366, third column, line 62, "ual" is corrected to read "annual".

21. On page 2367, column one, first full paragraph, line 8, is corrected to read "will be shifted to consumers. *National Cottonseed Products Asso.* v. *Brock*, 825 F. 2d 482, 488 (D.C. Cir. 1987). In the few".

22. On page 2367, third column, line 1, the word "date" is corrected to read "data".

23. On page 2369, second column, fifth full paragraph, line 5, is corrected to read "limits for more than 160 substances".

24. On page 2369, second column, fifth full paragraph, line 8, is corrected to read "limits or skin designations for more than 210".

25. On page 2370, third column, third full paragraph, line 9, is corrected to read "few minor or foreign studies referenced by".

26. On page 2371, third column, line 7, add the following after the word "hearings.": "(Statement of Administrative Law Judge, Tr. pp. 12-15 to 12-17, Aug. 12, 1989).".

27. On page 2373, third column, first full paragraph, line 1, is corrected to read: "Third, OSHA has increased the".

28. On page 2374, second column, line 3, the word "was" is removed.

29. On page 2375, column one, third full paragraph, line 10, is corrected to read: "become lost to the project. Consequently,".

30. On page 2375, third column, lines 21 and 22, are corrected to read: "would be required to publish a new Proposal for any substances not".

31. On page 2381, third column, lines 3, 4 and 5, are corrected to read: "analytical methods. One substance, cyanamide was erroneously listed as having no method.".

32. On page 2384, first column, fifth full paragraph, lines 4 and 5 are corrected to read: "more than 70,000 individual measurements. The IMIS contains".

33. On page 2384, third column, fifth full paragraph, the following sentence is added at the end of the paragraph as follows: "OSHA utilized the 1987-88 TLV's as a starting point for this rulemaking.".

34. On page 2387, first column, lines 2 and 3 are corrected to read as follows: "corrections have been incorporated into the Appendix, Sampling and Analytical Methods, of this final rule. In".

35. On page 2388, first column, fourth full paragraph, lines a and 10 are corrected to read: "rulemaking, methods were found for two of the substances listed".

36. On page 2390, first column, line 65, is corrected to read "to date, only approximately 40 WEELs have been".

37. On page 2392, second column, first full paragraph, line 12, is corrected to read: "in the final rule using engineering controls generally. These exceptions are".

38. On page 2392, third column, line 13, is corrected to read: "the preamble, Section VIII B, for further details.".

39. On page 2393, third column, first full paragraph, line one, is corrected to read: "NIOSH thus concurred with OSHA's view noted in the preamble to the proposal that".

40. On page 2393, third column, second full paragraph, line 6 is corrected to read: material health impairment. (See the further discussion at p. 2365 and pp. 2602-04.) However,".

41. No entry.

42. On page 2402, third column, second full paragraph, line 19, is corrected to read: "the PEL. In addition OSHA has fully considered levels recommended by commenters and levels supported by evidence. For all substances addressed in".

43. On page 2416, first column, lines 46 and 47 are corrected to read as follows: "issue. Dr. James Melius of the New York State Department of Health supported both environmental and biological monitoring but agreed with the PEL proposed by OSHA."

44. On page 2416, first column, line 65 is corrected to read: "for biological monitoring of mercury as well as supporting the OSHA proposed airborne level (Ex.". well as supporting the OSHA proposed airborne level (Ex.".

45. On page 2426, first column, second full paragraph, second line, "mg/kg" is corrected to read "ml/kg".

46. On page 2427, third column, second full paragraph, line 11, the word "chloride" is corrected to read "chloroform".

47. On page 2430, third column, second full paragraph, line 2, is corrected to read: "be used to definitely demonstrate styrene's".

48. On page 2448, first column, second full paragraph, line 17, is corrected to read as follows: "exposures to approximately 1800 ppm. Physical".

49. On page 2450, second column, first full paragraph, line 5, is corrected to read: "1118, 8-25, 8-29, 8-62, 8-68, 8-123, Tr. VIII 121-136,".

50. On page 2464, first column, third full paragraph, line 16, "LD_{50}" is corrected to read "LC50".

51. On page 2468, third column, line 38, "18-hour" is corrected to read "8-hour".

52. On page 2475, first column, second full paragraph, "PPL" is corrected to read "PEL".

53. On page 2483, second column, first full paragraph, line 3, "o-cholorostyrene" is corrected to read "o-chlorostyrene".

54. On page 2483, third column, first full paragraph, line 14, "100" is corrected to read "1000".

55. On page 2483, third column, first full paragraph, line 16, "p. 831," is corrected to read "p.997,".

56. On page 2498, the line 1215 Iron oxide (dust and fume), the proposed PEL entry "10 mg/m³ TWA" is corrected to read "5 mg/m³ TWA" and the final Rule PEL entry "5 mg/m³ TWA" is corrected to read "10 mg/m³ TWA".

57. On page 2498, a new entry is added after the entry "1277 Mineral wood fiber". Under column "H.S. Number/Chemical Name" insert "1283 Nickel (soluble compounds"; under column "CAS No." insert "7440-02-0", under column "Former PEL" insert "1 mg/m³ TWA," under column "proposed PEL" insert "0.1 mg/m³ TWA", and under column "Final Rule PEL" insert "0.1 mg/m³ TWA".

58. On page 2505, a new entry is added after the entry "1300 Oxygen difluoride" as follows:

U.S. Number/ chemical name	CAS No.	Former PEL	Final rule PEL*	Dose-response data		
				Dose/duration associated with observed effects	Species	Comments
1283 Nickel (soluble compounds).	7440-02-0	1 mg/m³ TWA	0.1 mg/m³ TWA	1 mg/m³ 6 months	Rats	Signs of inter stitial fibrotic lesions and increased lung weight.
				0.1 mg/m³2 weeks	Rats	Pulomenary irritation and damage in form of marked mucus secretion, hyporplasia and accumulation of alveolar macrophages.

59. On page 2506, third column, line 18, the word "chloride" is corrected to read "chlorine".

60. On page 2509, third column, lines 4, 5 and 6 are corrected to read: "367f, p.9). In response to this comment, OSHA intended to identify the "respirable fraction" in the final rule Z-1-A table since OSHA's intent was only to simplify the units and not make any substantive changes (see last paragraph of discussion on coal dust). The suggested change by Mr. Hecker (respirable quartz fraction) would result in up to an order of magnitude increase in the PEL for a highly toxic substance.".

61. "On page 2516, third column, second full paragraph, line 17, the word "insoluble" is corrected to read: "soluble".

62. On page 2526, column one, third full paragraph, line 10, is corrected to read: "the contrary in the record. See the further discussion in the Feasibility section.".

63. On page 2528, third column, first full paragraph, line 1, "1980" is corrected to read "1985".

64. On page 2528, third column, first full paragraph, lines 8, 9, 10 and 11 are corrected to read: "by the nuisance dust standard. It held that the standard only covered inorganic dusts. (12 OSHC 1785). The Agency did not regulate this substance after this decision. Consequently,".

65. On page 2532, second column, first full paragraph, lines 11 and 12 are corrected to read: "was appropriate for wood dust. Four unions (Carpenters, Paperworkers, Furniture Workers and Woodworkers) (Tr. p. 12-294)".

66. On page 2538, third column, second full paragraph, lines 3, 4, 5 and 6 are corrected to read as follows: "nitroglycerin (NG) were ceilings of 0.2 ppm, which were equivalent to 1 mg/m³, and 2 mg/m³, respectively, both with skin notations. The proposed PELs for these substances were 20 minute STELs of 0.1 mg/m³, (0.02 and 0.01 ppm, respectively) and".

67. On page 2567, second column, first full paragraph, line 19, the word "should" is corrected to read "shall".

68. On page 2567, third column, first full paragraph, lines 18 and 19, are corrected to read "OSH Review Commission decision *Secretary of Labor* v. *Caterpillar Tractor* (8 OSHRC 1043 (1979)).".

69. On page 2575, first column, fourth full paragraph, line 2, "mg/m³" is corrected to read "5 mg/m³".

70. On page 2588, second column, line 17, is corrected to read "specific health effects other than the effects caused by physical irritation. OSHA is listing".

71. On page 2588, second column, lines 24 and 25, are corrected to read "to cause additional health effects, some of which are serious and potentially life-threatening health effects in addition to the physical irritation effects, be set at 10".

72. On page 2589, third column, line 23, "Al" is corrected to read "A1".

73. On page 2591, second column, second full paragraph, lines 3 and 4, are corrected to read "TWA, as total particulate for".

74. On page 2593, second column, fourth full paragraph, lines 3, 4 and 5 are corrected to read as follows mg/m³ 8-hour TWA. The Agency concludes that".

75. On page 2595, second column, first full paragraph, lines 2, 3, 4 and 5 are corrected to read as follows "PEL of 10 mg/m³ TWA (total particulate). OSHA concludes that these".

76. On page 2595, third column, third full paragraph, lines 3, 4 and 5 are corrected to read as follows "particulate) with a skin notation. The Agency finds".

77. On page 2596, first column, second full paragraph, lines 8, 9 and 10 are corrected to read as follows "establishes this limit. NIOSH (Ex. 6-47, Table N4) concurs".

78. On page 2596, second column, second full paragraph, lines 4, 5 and 6 are corrected to read as follows "particulates) to reduce the significant health risks to".

79. On page 2596, second column, third full paragraph, lines 9, 10 and 11 are corrected to read as follows "substances. The proposed PEL was 10 mg/m³ TWA (total particulate)".

80. On page 2600, third column, third full paragraph, lines 7, 8, 9 and 10 are corrected to read as follows "The Agency proposed a PEL of 10 mg/m³ (total particulate) for titanium dioxide, and this limit is established".

81. On page 2601, first column, second full paragraph, lines 1, 2, 3, 4 and 5 are corrected to read as follows "OSHA is establishing 8-hour TWA of 10 mg/m³ (total particulate) for titanium dioxide in the final rule. OSHA concludes that the final rule's limit will".

82. On page 2604, first column, second full paragraph, line 8, is corrected to read as follows "Section III and Section V of this preamble). For".

83. On page 2623, first column, second full paragraph, lines 1 and 2, are corrected to read as follows "OSHA formerly had no individual limit for calcium hydroxide consequently the nuisance dust limit applied, the ACGIH has a".

84. On page 2623, second column, line 15, "½ calcium hydroxide ¾" is corrected to read "(calcium hydroxide)".

85. On page 2623, second column, line 18, is corrected to read "mg/m³, half that of the proposed inert particulate".

86. On page 2624, first column, line 8, is corrected to read "concentrations somewhat above 9 to 10 mg/m³.".

87. On page 2626, second column, second full paragraph, line 28, is corrected to read "Table N6B) interprets the evidence for".

88. On page 2640, second column, line 60, "½ Kodak's ¾" is corrected to read "(Kodak's)".

89. On page 2651, second column, the first full sentence, "The former 8 hour TWA of 5000 ppm is retained" is removed.

90. On page 2662, Table C-14-1, the entry for subtilisins is corrected by correcting the CAS No. to read "9014-01-1," and correcting the entry in the Final Rule PEL column to read "0.06 μg/m³ STEL (60 min.).***".

90a. On page 2662, Table C-14-1, a footnote is added to read,
"* Compliance with the subtilisins PEL is assessed by sampling with a high volume sampler (600-800 liter per minute) for at least 60 minutes.".

90b. On page 2667, first column, line 20, "½ i ¾" is corrected to read "(i)".

91. On page 2667, second column, second full paragraph, lines 27 and 28, are corrected to read as follows "* * * TLV * * * recommendation (of a ceiling of 0.06 μg/m³)" (McMurrain".

92. On page 2667, second column, last paragraph, lines 1-4 are corrected to read "OSHA is establishing a STEL (based on high volume sampling for at least 60 minutes) of 0.06 ug/m³ for the subtilisins (the ACGIH recommended method); the evidence described above indicates that a STEL of 0.06 μg/m³ for the".

92a. On page 2668, third column, first full paragraph, line 11, is corrected to read "substances. OSHA is revising the"; line 13, the word "retain" is corrected to "retaining"; and line 15, "add" is corrected to read "adding".

93. On page 2669, Table C-1501 the entry "Beryllium and compounds" is corrected to read "Beryllium and compounds***" and a footnote is added at the bottom of that page to read "** The standard for beryllium is based on respiratory effects. OSHA in this rulemaking had made no determination on carcinogenicity.".

93a. On page 2673, second column, second full paragraph, line 2, "annual" is corrected to read "animal"; line 10, "13-5 to 13-53" is corrected to read "13-52 to 13-53"

94. On page 2673, second column, move the second full paragraph and insert it to follow line 10 from the top of the second column.

95. On page 2679, first column, line 23, is corrected to read "CAS No. 7440-41-7; Chemical Formula: Be".

96. On page 2679, second column, the Beryllium discussion is corrected by adding a new paragraph at the end of the discussion to read: "There is a dispute between beryllium manufacturers and OSHA on the method for sampling beryllium. OSHA did not propose any change in the standard and did not consider the beryllium sampling issue in this rulemaking. OSHA did not intend the Appendix, which is non-mandatory, to imply that a particular sampling or analytical method for beryllium is permitted or required for enforcement purposes, or to endorse or reject arguments that an unlisted method must be used.".

96a. On page 2681, first column, first full paragraph, line 8, "13.9" is corrected to read "17.9".

97. On page 2695, second column, first full paragraph, lines 15, 16 and 17 are corrected to read as follows: "quantitative risk assessments for the chemicals discussed in this section when sufficient data was available; when less detailed dose-".

98. On page 2699, third column, second line from the bottom the word, "no" is corrected to read "not".

99. On page 2700, second column, lines 1 and 2 are corrected to read "that excess risk went down when exposures to nickel dust were reduced though nickel carbonyl continued to be present in the".

100. On page 2700, second column, first full paragraph, line 22 is corrected to read "stringent test before raising a limit. Negative epidemiology studies of sufficient power might be a basis for raising the limit. Here the studies are conflicting and they do not clearly demonstrate that the nickel carbonyl may not have contributed to the excess risk or clearly negate the animal study. Therefore they do not meet the test. In".

101. On page 2718, third column, second full paragraph, lines 17, 18, 19, 20 and 21 are corrected to read as follows: "to reduce a significant risk of material health impairment.".

102. On page 2723, first column, first full paragraph, line 3, is corrected to read as follows "rulemaking. OSHA concludes that following these guidelines is necessary to reduce a significant risk of material health impairment which could be caused by skin contact. However, the skin".

103. On page 2724, the following sentence is added at the bottom of the first column: "The list was published on March 28, 1989 at 56 FR 12793.".

104. On page 2724, third column, the first paragraph after the heading introduction, the number "230" is corrected to "212", the number "165" is corrected to "164" and the number "30" is corrected to "52".

105. On page 2737, the table entitled "Number of Firms with Chemicals Using Specific Exposure Standards" the following title should be inserted at the top of the chart: "Table C-2".

106. On page 2744, second column, line 27, is corrected to read "Business Patterns estimated 38, 478 employees.".

107. On page 2756, second column, second full paragraph, line 17, "showed" is corrected to read "should have".

108. On page 2776, first column, first full paragraph, line 24, "benefits" is corrected to read "benefit".

109. On page 2785, first column, line 16, "499,716" is corrected to read "496,832".

110. On page 2788, second column, third full paragraph, line 15, "20 percent" is corrected to read "26 percent".

111. On page 2789, first column, first full paragraph, line one, "no" is corrected to read "not".

112. On page 2789, second column, first full paragraph, line 3, "proposed" is corrected to read "final rule".

113. On page 2790, first column, first full paragraph, line 6, "proposed" is corrected to read "final rule".

114. On page 2790, first column, second full paragraph, line 3, "proposed" is corrected to read "final rule"; and line 24, "V-4" is corrected to read "F-4".

115. On page 2790, first column, fourth full paragraph, line 4, "proposed" is corrected to read "final rule".

116. On page 2792, first column, third full paragraph, lines 12, 13, 14, 15, 16, 17 and 18, are corrected to read "respirators. In addition, a".

117. On page 2793, third column, third full paragraph, line 2, is corrected to read "operations resulting in exposures to".

118. On page 2797, first column, first full paragraph, line 28, "proposed" is corrected to read "final rule".

119. On page 2801, second column, second full paragraph, line 12, is corrected to read "while the tub/shower and".

120. On page 2802, first column, second full paragraph, line 8, is corrected to read "exposures occur without careful consideration of the additive or synergistic effects of the specific substances involved. According to OSHA's".

121. On page 2802, second column, line 51, is corrected to read "the PEL limit for".

122. On page 2802, third column, second full paragraph, line 10, "proposed" is corrected to read "final rule".

123. On page 2804, first column, first full paragraph, line 14 is corrected to read "oxide." See the discussions on pages 2526 and 2652 for the specific operations and chemicals where respirators may be used unless OSHA can demonstrate engineering controls are feasible."

124. On page 2806, first column, second full paragraph, lines 8 and 9 are

corrected to read "may not be available. These operations are listed on page 2526. OSHA will accept the use of respirators for these operations in conjunction".

125. On page 2808, third column, first full paragraph, line 16, "proposed" is corrected to read "final rule".

126. On page 2814 and 2815, Table F-3 is corrected as follows:

TABLE F-3.—INDUSTRIES AND PROCESSES WHERE SKIN PROTECTION HAS BEEN ADDED

SIC No.	Chemical name	Process name
25	N-Butyl Alcohol	Coating.
26	Methyl Alcohol	Chemical recovery.
27	Cyclonexanone	Plate cleaning.
	Furfuryl Alcohol	Plate cleaning.
	Methyl Alcohol	Plate cleaning.
28	N-Butyl Alcohol	Blending, Packaging.
	Carbon Disulfide	Fiber manufacture.
	Chlorpyrifos	Blending, Packaging.
	Diazinon	Blending, Packaging.
	Disulfoton	Blending, Packaging.
	Hexafluoroacetone	Reacting.
	Isophorone Disocyanate.	Reacting.
	Methyl Alcohol	Blending, Packaging.
	Methyl Parathion	Blending, Packaging.
30	N-Butyl Alcohol	Finishing, Trimming, Painting.
	Carbon Disulfide	Compounding, Mixing and Blending.
31	Methyl Alcohol	Finishing/ Degreasing.
	Triorthocresyl Phosphate.	Finishing/ Degreasing.

TABLE F-3.—INDUSTRIES AND PROCESSES WHERE SKIN PROTECTION HAS BEEN ADDED—Continued

SIC No.	Chemical name	Process name
32	Methyl Alcohol	Batch preparation.
	Tin	Float process.
34	N-Butyl Alcohol	Coating/Painting.
35	N-Butyl Alcohol	Coating/Painting.
36	N-Butyl Alcohol	Coating/Painting.
	Mercury	Soldering/Brazing.
	Methyl Alcohol	Cleaning.
38	Mercury	Handling of measurement liquids.
		Preparation of special tubes.
		Assembling.
	Methyl Alcohol	Blending/Packaging.
39	N-Butyl Alcohol	Painting, Coating.
45	N-Butyl Alcohol	Cleaning/Spraying.
	Methyl Alcohol	Cleaning/Spraying.
55	N-Butyl Alcohol	Painting/Coating.
72	Mercury	Embalming.
	Methyl Alcohol	Embalming.
73	Chlorpyrifos	Exterminating.
	Diazinon	Exterminating.
	Dioxathion	Exterminating.
	Phenothiazine	Exterminating
75	N-Butyl Alcohol	Painting/Coating.
80	N-Butyl Alcohol	Disinfectant and solvent use.
	Mercury	Preparation of amalgams
	Sodium Azide	Laboratory analysis.

127. On page 2840, first column, insert as line one, the following: "Examples of these are: ".

128. On page 2840, insert the following after the second full paragraph:

Maintenance Activities in all SIC codes. In certain cases it may be more difficult to control exposures of plant maintenance personnel by engineering controls. These maintenance employees may work in areas not normally covered by engineering controls or in situations where engineering controls must be shutdown. Respiratory protection is therefore sometimes the appropriate control technology.

Painting and Coating Activities in all SIC codes. Although production spray painting operations are performed in exhausted paint booths, the painting of many larger non-production items, such as construction equipment and heavy machinery, requires that the operator enter the booth. The booth is then primarily a control to prevent migration of the paint spray into other areas of the plant. In these circumstances it is usually necessary to provide respiratory protection to the workers painting.

129. On page 2841, first column, the first line "Examples of these are" following two paragraphs are removed.

130. On page 2862, first column, line 1, is corrected to read "about $26.7 million in annual compliance costs.".

131. After page 2870, an omitted part of Table G-4 covering SIC 30 is inserted to read as follows:

DESCRIPTIVE INFORMATION ON PROCESSES AND RELATED COSTS

[SIC 30-Rubber and Miscellaneous Plastic Products]

Process	Frequency of process	Total work stations	Costed work stations	Unit cost	Total cost for process
Abrasive blasting	17	17	0	$7,200	$0
Assembly	35	653	32	1,140	36,352
Blending Mixing/Formulating	4537	10538	188	3,070	577,615
Bonding	6	6	0	3,070	0
Calendar/Winding	1375	4398	144	180	25,905
Casting	21	489	0	3,890	0
Cleaning	19	243	0	710	0
Coating/Spraying/Finishing/Layup	1730	15531	11224	3,070	34,457,310
Confined Space Exposure to Exhaust Fume	107	269	0	80	0
Crushing/Grinding/Calcining	1360	2005	54	4,740	254,597
Cutting/Sawing/Planning	52	382	0	180	0
Degreasing	2331	2334	2220	710	1,575,895
Digester	48	48	0	14,000	0
Electroplate/Electrical Discharge Machine	16	16	0	710	0
Extrusion	794	4322	176	1,140	200,590
Foam Processing	746	14587	10	1,140	10,970
Glueing/Hot Pressing	3394	21705	2331	3,070	7,155,104
Injection Molding	245	1204	973	1,140	1,109,058
Loading/Offloading/Receiving/Handling	1137	2689	193	1,120	215,850
Machining/Grinding/Welding/Brazing	33	387	112	1,140	127,987
Metal Plating	105	105	16	710	11,185
Metal Working (Rolling, Milling, Shaping	17	17	0	1,140	0
Other	57	1016	0	3,070	0
Packaging/bagging	249	719	13	1,120	14,286
Printing	3	6	0	1,380	0
Reaction/Fermentation	5	5	0	1,120	0
Reblending/Remixing	38	304	61	3,070	185,786

DESCRIPTIVE INFORMATION ON PROCESSES AND RELATED COSTS—Continued

[SIC 30-Rubber and Miscellaneous Plastic Products]

Process	Frequency of process	Total work stations	Costed work stations	Unit cost	Total cost for process
Screen Printing	16	158	0	1,380	0
Separation	6	26	0	1,120	0
Stamping/Shaping/Molding/Pressing	4064	51203	22195	2,900	64,366,057
Vulcanization/Curing	461	9388	92	3,070	281,245
Water Treatment	178	188	0	14,000	0
Subtotal	23205	144957	40031		110,605,792
Maintenance	15094	632	107	520	466,138
Total	38299	145589	40138		111,091,930

132. On page 2890, second column, second full paragraph, line 13, "Fourteen" is corrected to read "Thirteen".

133. On page 2891, second column, line 48, "errors" is corrected to read "error".

134. On page 2901, second column, first full paragraph, line 6, "H-4" is corrected to read "C-4".

135. On page 2916, third column, first full paragraph, line 18, is corrected to read "contradict it. Of course the final rule limits are to be achieved by any reasonable combination of controls from Sept. 1, 1989 to Dec. 31, 1992 or Dec. 31, 1993 as explained elsewhere.".

136. On page 2918, first column, first full paragraph, line 6, is corrected to read: "substance. The CAS number is for information purposes only. Enforcement is based on the substance name. For an entry covering more than one metal compound measured as a metal, the CAS number for the metal is given. This seemed more convenient than stating "varies with compound." However, the limit covers all the compounds specified by the name. This formatting will facilitate".

137. On page 2919, third column, sixth full paragraph, line 10, is corrected to read: "of a severe reaction through".

Regulatory Text

The following correction is made to the authority citation for 29 CFR Part 1910:

138. On page 2920, second column, third full paragraph of the authority citation, lines 3 and 4 are corrected to read "Table Z-3 also issued under 5 U.S.C. 553. Section 1900.1000, the transitional limits columns of Table Z-1-A, Table Z-2 and Table Z-3".

§ 1910.1000 [Corrected]

The following corrections are made to 29 CFR 1910.1000:

139. On page 2921, third column, paragraph (d)(2)(ii), the illustrative table heading "8 hour TWA PEL (ppm) 8" is corrected to read "8 hour TWA PEL (ppm)".

140. On page 2921, third column, paragraph (f)(3)(i), the following sentence is added at the end of the paragraph "The permissible exposure limits specified in Tables Z-2 and Z-3 for substances mentioned in the Final Rule Limits column of Table Z-1-A only by cross reference to Table Z-2 or Z-3 shall remain in effect indefinitely and continue to be achieved by the methods of compliance specified in paragraph (e) of this section.

141. On pages 2923 through 2958, each page of Table Z-1-A, the second column heading "CAS No." is corrected to read "CAS No. [f]".

142. On page 2924, Table Z-1-A, the entry for Anisidine, insert an "X" in the Transitional Limits Skin Designation" column and insert an "X" in the Final Rule Limits Skin Designation" column.

143. On page 2924, Table Z-1-A, column 1, the entry "ANTU (Alpha naphthylthiourea)" is corrected to read "ANTU (alpha Naphthylthiourea)".

144. On page 2924, Table Z-1-A, the CAS No. entry for the substance Arsenic, inorganic compounds", is corrected to read "7440-38-2"; and the note "See 1910.1018(a) for application excluded" is removed.

145. On page 2925, Table Z-1-A, the entry "Asbestos; see 1910.1001" in the first column, is corrected to read "Asbestos; see 1910.1001 and 1910.1101".

146. On page 2925, Table Z-1-A, all the numbers in the Final Rule Limits columns for the substance "Beryllium and beryllium compounds" are removed and a note is added in the Final Rule Limits columns as follows: "See Table Z-2".

147. On page 2926, Table Z-1-A, under the substance Boron oxide, the entry "Respirable fraction" and all entries in each column with respect to respirable fraction are removed.

148. On page 2926, Table Z-1-A, the substance Butadiene is corrected by removing the note "In process of 6(b) rulemaking" and inserting "1000" in the Final Rule Limits, TWA, ppm column and inserting "2200" in the Final Rule Limits, TWA, mg/m³ column.

148a. On page 2927, Table Z-1-A, for the substance Cadmium fume the note "In process of 6(b) rulemaking" is removed. Under the Final Rule Limits the number "0.1" is inserted in the TWA, mg/m³ column and the number "0.3" is inserted in the CEILING, mg/m³ column.

149. On page 2927, for the substance Cadmium dust, the note "In process of 6(b) rulemaking" is removed. Under the Final Rule Limits the number "0.2" is inserted in the TWA, mg/m³ column and the number "0.6" is inserted in the CEILING, mg/m³ column.

150. On page 2928, Table Z-1-A, for the substance carbon dioxide the entry in the column Transitional Limits, ppm of "5000" is corrected to read "5000[e]".

151. On page 2929, Table Z-1-A, for the substance o-Chlorostyrene the entry in the Final Rule Limits, STEL, mg/m³ column of "430" is corrected to read "428".

152. On page 2930, Table Z-1-A, for the substance Chromic acid under the Final Rule Limits, the entry in the Ceiling, ppm column of "0.1" is removed and the entry "0.1" is added to the Ceiling mg/m³ column.

153. On page 2930, Table Z-1-A, the CAS No. for the substance Chromium (II) compounds is corrected to read "7440-47-3".

154. On page 2930, Table Z-1-A, the CAS No. for the substance Chromium (III) compounds is corrected to read "7440-47-3".

155. On page 2930, Table Z-1-A, the CAS No. for the substance Chrysene is removed.

156. On page 2930, Table Z-1-A, the entry "Coal dust (less than 5% $SiOG5_2$), respirable quartz fraction" is corrected to read "Coal dust (less than 5% SiO_2), Respirable fraction".

157. On page 2930, Table Z-1-A, the CAS No. for the substance Coal tar pitch volatiles is corrected to read "65996-93-2".

158.-159. On page 2931, Table Z-1-A, for the substance Cotton Dust (raw) the number "1" is removed from the Transitional Limits, PEL, ppm column

and the Final Rule Limits, TWA, ppm column. The number "1" is inserted in the Transitional Limits, PEL, mg/m³ column and the Final Rule Limits, TWA, mg/m³ column.

160. On page 2931, Table Z-1-A, the CAS No. for the substance Cresol is corrected to remove "95-48-7", "108-39-4", and "106-44-5".

161. On page 2931, Table Z-1-A, the CAS No. for the substance Cyanides is corrected to read "varies with compound".

162. On page 2935, Table Z-1-A, the CAS Numbers for the substance Dinitrobenzene, are corrected to read "(alpha-) 528-29-0", "(meta-) 99-65-0", and "(para-) 100-25-4".

163. On page 2935, Table Z-1-A, the CAS No. for the substance Dinitrotoluene, is corrected to read "25321-14-6".

164. On page 2935, Table Z-1-A, for the substance Dipropylene glycol, insert an "X" in Final Rule Limits Skin Designation column.

165. On page 2936, Table Z-1-A, the entry in the column marked CAS No., for the substance Divinyl benzene, is corrected to read "1321-74-0".

166. On page 2936, Table Z-1-A, for the substance 2-Ethoxyethanol, the note "In process of 6(b) rulemaking" is removed and under Final Rule Limits, the number "200" is inserted in the TWA, ppm column, the number "740" is inserted in the TWA, mg/m³ column and insert an "X" in the Skin Designation column.

167. On page 2936, Table Z-1-A, for the substance 2-Ethoxyethyl acetate, the note "In process of 6(b) rulemaking" is removed. Under Final Rule Limits, the number "100 is inserted in the TWA, ppm column, the number "540" is inserted in the mg/m³ column and insert an "X" in the Skin Designation column.

168. On page 2937, Table Z-1-A, the column marked CAS No., for the substance Ethyl amyl Ketone, is corrected to read "541-85-5".

169. On page 2937, Table Z-1-A, Under the heading Final Rule Limits, the note "In process of 6(b) rulemaking" for the substance Ethylene dibromide, is corrected to read "See Table Z-2".

170. On page 2938, Table Z-1-A, the note "See 1910.1047(a)(2) for Operations excluded" for the substance Ethylene oxide, is removed.

171. On page 2938, Table Z-1-A, under the substance Ferbam, the entry "respirable fraction" and all entries, in each column, with respect to respirable fraction are removed.

172. On page 2938, Table Z-1-A, for the substance Fluorides, under the Transitional Limits the note "See Table Z-2" is removed and the number "2.5 is inserted in the Transitional Limits, PEL, mg/m³, column.

173. On page 2938, Table Z-1-A, for the substance Fluorides the number "2.5" in the Final Rule Limits, TWA, ppm column is removed and the number "2.5" is inserted in the Final Rule Limits, TWA, mg/m³ column.

174. On page 2938, Table Z-1-A, the note for the substance Formaldehyde, is corrected to read "See Table Z-2 for operations or sectors excluded from 1910.1048 or for which limit(s) is (are) stayed.".

175. On page 2939, Table Z-1-1A, under the column CAS No. for the substance Gypsum, the entry is corrected to read 13397-24-5".

176. On page 2941, Table Z-1-A, the note "For independent . . . remand" for the substance Lead, inorganic, is removed.

177. On page 2942, Table Z-1-A, under the column CAS No., for the substance Limestone, the entry is corrected to read "1317-65-3".

178. On page 2942, Table Z-1-A, under the substance column, for the substance Magnesium oxide fume, the entry "total dust" is corrected to read "total particulate" and the second entry, "Respirable fraction", and all entries, in each column, with respect to respirable fraction are removed.

179. On page 2942, Table Z-1-A, for the substance Malathion, the entry "Respirable fraction" and all entries, in each column, with respect to respirable fraction are removed.

180. On page 2943, Table -1-A, for the substance Methoxychlor, the entry "Respirable fraction" and all entries, in each column, with respect to respirable fraction are removed.

181. On page 2943, Table Z-1-A, for the substance Methyl alcohol, the number "310" In the Final Rule Limit, STEL, mg/m³ column is corrected to read "325".

182. On page 2944, Table Z-1-A, for the substance Methyl cellosolve, the note "In process of 6(b) rulemaking" is removed; the number "25" is inserted in the Final Rule Limits, TWA ppm column; the number "80" is inserted in the Final Rule Limits, TWA, mg/m³column and insert an "X" in the Final Rule Limits, Skin Designation column.

183. On page 2944, Table Z-1-A, for the substance Methyl cellosolve acetate the note "In process of 6(b) rulemaking is removed; the number "25" is inserted in the Final Rule Limits, TWA, ppm column; the number "120" is inserted in the Final Rule Limits, TWA, mg/m³ column and insert "X" in the Final Rule Limits, Skin Designation column.

184. On page 2944, Table Z-1-A, the Final Rule Limits, STEL mg/m³ column, for the substance Methyl chloride, the entry "205" is corrected to read "210".

185. On page 2944, Table Z-1-A, for the substance 4,4'-Methylene bis insert "X" in the Final Rule Limits, Skin Designation column.

186. On page 2944, Table Z-1-A, under the heading Final Rule Limit, for the substance Methylene chloride, the note "In process of 6(b) rulemaking" is corrected to read "See Table Z-2".

187. On page 2945, Table Z-1-A, for the substance Molybdenum, the entry "Respirable fraction" and all entries, in each column, with respect to respirable fraction are removed.

188. On page 2946, Table Z-1-A, in the Transitional Limits, PEL, mg/m³ column, for the substance Nitroglycerin, the entry "(C)1" is corrected to read "(C)2".

189. On page 2947, Table Z-1-A, "(C) for the substance 2-Nitropropane, the CAS No. is corrected to read "79-46-9".

190. On page 2947, Table Z-1-A, for the substance N-Nitrosodimethylamine, the CAS No. is corrected to read "62-79-9".

191. On page 2947, Table Z-1-A, for the substance Paraquat, the following additional CAS Nos. are added; "1910-42-5" and "2074-50-2".

192. On page 2949, Table Z-1-A, for the substance Plaster of Paris, the CAS No. is corrected to read "26499-65-0".

193. On page 2951, Table Z-1-A, for the substance Silicia, amorphous, diatomaceous earth, the CAS No. is corrected to read "61790-53-2".

194. On page 2952, Table Z-1-A, under the substance Silicates, Talc (containing no asbestos)," the entry "asbestos), respirable dust" is corrected to read "respirable dust".

195. On page 2952, Table Z-1-A, the entry "Silver, metal dust and fume (as Ag)" is corrected to read "Silver, metal and soluble compounds (as Ag)".

196. On page 2953, Table Z-1-A the entry for subtilisins is corrected by correcting the CAS No. to "9014-01-1", removing "0.00006" from the Final Rule Limits, CEILING, mg/m³ column and adding to the Final Rule Limits, STEL, mg/m³ column the entry "0.00006 (60 min.)[e]".

197. On page 2954, Table Z-1-A, the entry "letrasodium pyrophosphate" is corrected to read "Tetrasodium pyrophosphate".

198. On page 2954, Table Z-1-A, the entry "letryl (2,4,6-Trinitrophenyl-methyl-nitramine)" is corrected to read "Tetryl (2,4,6-Trinitrophenyl-methyl-nitramine)" and "0.1" in the Final Rule Limits, TWA, mg/m³ column is corrected to read "1.5".

199. On page 2954, Table Z-1-A, for the substance, "Thallium" the entry is corrected to read "Thallium, soluble compounds (as Tl)".

200. On page 2955, Table Z-1-A, for the substance Tin oxide, the CAS No. is corrected to read "21651-19-4".

201. On page 2955, Table Z-1-A, in the column substance, for the substance Titanium dioxide, the entry "Respirable fraction" and all entries in each column for respirable fraction are removed.

202. On page 2958, Table Z-1-A, the second asterisk footnote, is corrected to read "Unless otherwise noted, employers in General Industry (i.e., those covered by 29 *CFR* 1910) may use any combination of controls to achieve these limits until December 31, 1992 as set forth in 29 CFR 1910.1000(f).".

203. On page 2958, Table Z-1-A, footnote d, third line, the word "subsequents," is corrected to read "subsegments,".

204. On page 2958, Table Z-1-A, new footnotes e, f and g are added to read as follows:

e Exposures under 10,000 ppm to be cited de minimus.

f The CAS number is for information only. Enforcement is based on the substance name. For an entry covering more than one metal compound measured as the metal, the CAS number for the metal is given—not CAS numbers for the individual compounds.

g Compliance with the subtilisins PEL is assessed by sampling with a high volume sampler (600-800 liters per minute) for at least 60 minutes.

205. On page 2959, Table Z-3, the heading is corrected to read "Table Z-3-Mineral Dusts".

206. On page 2959, Table Z-3, all asterisks and the corresponding Footnote are removed.

207. On page 2959, Table Z-3, the note at the end of the table is corrected to read "Note—Conversion Factors—mppcf × 35.3 = million particles per cubic meter = particles per c.c.".

Appendix—[Corrected]

The following corrections are made to the Non-Mandatory Appendix which will not appear in the CFR:

208. On page 2960, XI Appendix, the heading is corrected to read "XI. Non-Mandatory Appendix—Sampling and Analytical Methods".

209. On page 2960, first column, Appendix XI, lines 2 and 3 are corrected to read "for the substances listed in this appendix are not mandatory. They are listed to inform the public of methods and indicate that methods are available (or not available in 7 cases). They are categorized into three".

210. On page 2960, third column, lines 21 and 22 are corrected to read "SAMPLING AND ANALYTICAL METHODS-NON-MANDATORY".

211. On page 2971, for the substance Nickel Soluble Compounds, the entry in the DET LIMIT column is corrected to read "4μg/m³".

212. On page 2971, the entry "1294 Nuisance Particulates" is corrected to read, "1294 Particulates not otherwise regulated".

213. On page 2971, a new entry is placed in the ANALYTE column after Total Dust, after the substance "1294—Particulates not otherwise regulated" as follows: "Respirable Dust". A new entry is placed in the Other Method column for Respirable Dust as follows: "IH Tech. Man. C.2".

214. On page 2974, the substance "Percipitated Silica" is corrected to read "Precipitated Silica".

215. On page 2981, the entry "1294 Nuisance Particulates" is corrected to read "1294 Particulates not otherwise regulated".

216. On page 2981, a new entry is placed in the ANALYTE column after the entry "Total Dust" after "1294 Particulates not otherwise regulated" as follows: "Respirable dust". A new entry is made in the Other Method column, for Respirable Dust as follows "DHHS Pub. 77173".

217. On page 2982, under Silica-Amorphous, "Percipitated Silica" is corrected to read "Precipitated Silica".

Note: For an additional correction to the document referenced in this correction, see the corrections section of this issue.

Signed at Washington, DC, this 28th day of June 1989.

Alan C. McMillan,

Acting Assistant Secretary.

[FR Doc. 89-15637 Filed 7-3-89; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 167

[CGD 89-019]

RIN 2115-AD22

Traffic Separation Scheme; Galveston Bay Approach

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule adjusts the Galveston Bay Approach Traffic Separation Scheme (TSS) by centering the separation zone within the existing TSS boundaries to accommodate a revised U.S. Army Corps of Engineers (COE) deep water channel dredging project. This change results in a more conventional TSS with a separation zone centered between two parallel traffic lanes of equal width.

EFFECTIVE DATE: September 30, 1989.

FOR FURTHER INFORMATION CONTACT: Margie G. Hegy, (202) 267-0415.

SUPPLEMENTARY INFORMATION:

Regulatory Information Number

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Drafting Information

The principle persons involved in drafting this rulemaking are: Margie G. Hegy, Project Manager, Coast Guard Headquarters and Christena G. Green, Project Attorney, Office of Chief Counsel, Coast Guard Headquarters.

Background

The Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1223, authorizes the Secretary of the Department in which the Coast Guard is operating to establish traffic separation schemes (TSS) and shipping safety fairways, where necessary, to provide safe access routes for vessels proceeding to or from United States ports.

A TSS is an internationally recognized routing measure that minimizes the risk of collision by separating vessels into opposing streams of traffic through the establishment of traffic lanes. To be internationally recognized, a TSS must be approved by the International Maritime Organization (IMO). IMO approves TSSs only if the proposed routing system complies with IMO principles and guidelines on ships routing. Vessel use of a TSS is voluntary; however, vessels operating in or near an IMO approved TSS are subject to Rule 10 of the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS).

The 1978 amendments to the PWSA required the Coast Guard to undertake a port access route study to determine the need for traffic separation schemes or shipping safety fairways to increase vessel traffic safety in offshore areas subject to the jurisdiction of the U.S. The Coast Guard initiated this study by publishing a Notice of Proposed Study on April 16, 1979 (44 FR 22543).

BEST COPY AVAILABLE

For the purposes of the port access route study, the U.S. coastline was divided into 32 geographically defined areas. Study area 21 included the Galveston area and was assigned to the Eighth Coast Guard District for study.

The study (Study Results published in October 1981, at 46 FR 49980), recommended that, because of severe traffic congestion and recent vessel casualties, two precautionary areas and a TSS be established to overlay the existing Galveston Entrance Safety Fairway. The Galveston Bay Approach Traffic Separation Scheme and Precautionary Areas were proposed in June 1982 at 47 FR 26197. The TSS, consisting of inshore and offshore precautionary areas; inbound (northwesterly heading) and outbound (southeasterly heading) traffic lanes; and a separation zone, was adopted by IMO in June 1983 and became effective on January 1, 1984 (48 FR 36453, August 18, 1983). When this TSS was originally designed, the Coast Guard, considering developer plans to dredge a 600-foot wide, 55-foot deep channel through the fairway, located the 1000-foot separation zone over the proposed centerline of the deep draft channel. The proposed channel was not centered in the TSS, but was angled from slightly right of center at the shoreward end to almost a mile left of center at the seaward end. The existing separation zone, therefore, is off-center, and the inbound traffic lane is slightly wider than the outbound traffic lane.

The COE notified the Coast Guard on March 31, 1987, that the deep water channel would be dredged along the centerline of the TSS, rather than along the off-centered course originally planned.

A notice of proposed rulemaking (NPRM) to shift the separation zone to overlay the centerline of the proposed channel was published in the **Federal Register** on April 13, 1989 (54 FR 14827). Interested parties were given until May 30, 1989, to submit comments. Only two comments were received.

The West Gulf maritime Association, comprised of ship owners, agents and stevedores representing domestic and foreign flag principals, strongly supports this rulemaking. They stated that this adjustment will be a welcome step towards safer navigation as outbound vessels will no longer have to maneauver a sharp "S" turn in the precautionary area surrounding the "GA buoy" and the fairway intersection.

The National Ocean Service (NOS), Office of Charting and Geodetic Services advised that the coordinates published in the NPRM did not accurately place the separation zone in the center of the existing TSS boundaries. NOS provided coordinates to accurately center the separation zone and the Coast Guard is using these adjusted coordinates in this final rule.

This final rule adjusts the Galveston Bay Approach Traffic Separation Scheme by centering the separation zone to overlay the centerline of the proposed deep draft channel.

The Coast Guard has notified IMO of the adjustment and the September 30, 1989, effective date.

Aids to Navigation

The center of the TSS separation zone is marked with traffic lane lighted buoys which will be relocated, to coincide with the effective date of this rule, as indicated below:

LIGHTED BUOY "A" (LLNR 22635) from present position 29°10′04″ N., 94°27′24″ W. to approximate position 29°10′23″ N., 94°27′06″ W.

LIGHTED BUOY "C" (LLNR 22640) form present position 29°11′24″ N., 94°29′02″ W. to approximate position 29°11′41″ N., 94°28′47″ W.

LIGHTED BUOY "E" (LLNR 22645) from present position 29°12′46″ N., 94°30′40″ W., to approximate position 29°12′55″ N., 94°30′30″ W.

LIGHTED BUOY "G" (LLNR 22650) from present position 29°14′06″ N., 94°32′18″ W., approximate position 29°14′13″ N., 94°32′12″ W.

LIGHTED BUOY "I" (LLNR 22655) from present position 29°15′29″ N., 94°33′56″ W., to approximate position 29°15′30″ N., 94°33′54″ W.

LIGHTED BUOY "K" (LLNR 22660) from present position 29°16′50″ N., 94°35′30″ W., to approximate position 29°16′46″ N., 94°35′35″ W.

The LIGHTED WHISTLE "GA" BUOY will be relocated within the precautionary area from its present position 29°09′06″ N., 94°26′12″ W., to approximate position 29°09′28″ N., 94°25′53″ W.

Regulatory Evaluation

These regulatory changes are considered to be nonmajor under Executive Order 12291 and non-significant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that further evaluation is unnecessary. The Coast Guard certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

In accordance with section 2.B.2.c. of Commandant Instruction (COMDTINST) M16475.1B, this action has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation.

Federalism

This rulemaking has ben analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 167

Navigation (water), Vessels, traffic separation schemes

In consideration of the foregoing, 33 CFR Part 167 is amended as follows:

PART 167—Offshore Traffic Separation Schemes

1. The authority citation for Part 167 continues to read as follows:

Authority: 33 U.S.C. 1223; 49 CFR 1.46.

2. Section 167.350 is amended by revising paragraph (b) to read as follows:

§ 167.350 Galveston Bay approach traffic separation scheme and precautionary areas.

* * * * *

(b) A traffic separation zone bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
(6) 29°17.13′ N.	94°35.86′ W.
(7) 29°09.55′ N.	94°25.95′ W.
(8) 29°09.41′ N.	94°25.95′ W.
(9) 29°17.00′ N.	94°36.00′ W.

* * * * *

Dated: June 9, 1989.

A.B. Smith,

Captain, U.S. Coast Guard, Acting Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 89-15648 Filed 7-3-89; 8:45 am]

BILLING CODE 4910-14

ENVIRONMENTAL PROTECTION AGENCY

[FRC-3611-2]

40 CFR Part 82

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical amendment to the final rule.

SUMMARY: Today's action makes several technical revisions to EPA's Stratospheric Ozone Protection Rule first published on August 12, 1988 (53 FR 30566).

This action deletes a duplicative reporting requirement § 82.9(d)(2)(vi)) associated with trades of production allowances between Protocol Parties whose 1986 production of controlled substances was less than 25 kilotonnes.

This action also clarifies one recordkeeping and one reporting provision of the final rule.

In addition, this notice clarifies two issues related to the implementation of the final rule. First, the Agency will allow interim quarterly reports based on fiscal quarters under certain circumstances. Second, this notice clarifies EPA's intent that a company expend consumption allowances equal to the total volume of an import of controlled substances as recorded on the U.S. Customs Entry Summary Form, including any residual heel remaining in the tank and returned overseas.

Finally, The Agency today publishes Appendix B ("Parties to the Montreal Protocol") and D ("Twenty-Five Kilotonne Parties") to the final rule that had been reserved when the final rule was published last August.

DATES: The deletion of § 82.9(d)(2)(vi) will be effective September 5, 1989 unless notice is received within 30 days of publication of this amendment that some parties wish to submit adverse or critical comments. All other revisions are effective July 5, 1989.

ADDRESSES: Comments and other information relevant to this rulemaking are maintained in Docket A-88-27 at the Air Docket, Room M-1500, Waterside Mall, 401 M Street SW., Washington, DC 20460. The docket may be inspected between 8:30 a.m. and 12:00 p.m. and between 1:30 p.m. and 3:30 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: David Lee, Analyst, Regulatory and Analysis Branch, Global Change Division, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation, ANR-445, 401 M Street SW., Washington, DC 20460, (202) 475-7497.

SUPPLEMENTARY INFORMATION: On August 12, 1988, EPA issued its final rule (53 FR 30566) implementing the Montreal Protocol, an international treaty designed to limit the worldwide production and consumption of chlorofluorocarbons (CFCs) and halons.

The rule requires CFC producers to reduce their production of CFC-11, -12, -113, -114, -115 ("controlled substances") by as much as 50 percent of 1986 levels over the next 10 years. The schedule of the phased reductions in CFC production is presented in the final rule (§ 82.7). In addition to these production limits, the rule requires reduction in CFC consumption, defined as production plus imports minus exports, according to the same schedule (§ 82.7).

The rule also limits the production and consumption of Halon 1301, 1211, and 2402, another set of ozone-depleting chemicals. Under the rule, production and consumption of these halons will be frozen at 1986 levels beginning in approximately 1992 (§ 82.8).

The Agency's final rule implements these limits by allotting production and consumption allowances to producers and importers (§§ 82.5 and 82.6). Producers must obtain both consumption and production allowances to manufacture controlled substances while importers need only consumption allowances to import. Under the final rule seven producers received production allowances and seventeen producers and importers received consumption allowances for these chemicals based on the 1986 production and trade data they submitted to the Agency (§§ 82.5 and 82.6).

To monitor the industry's compliance with these production and consumption limits, EPA requires that producers and importers maintain records of their production and import activities and report quarterly their production and import levels (§§ 82.13). EPA may also conduct compliance reviews and inspections. In addition, EPA requires exporters to report their export shipments for which they may receive additional consumption allowances (§§ 82.10, 82.11 and 82.13).

Deletion of Section 82.9(d)(2)(vi)

Since § 82.9 was published in August 1988, EPA has become aware that one of that section's reporting requirements overlaps another requirement in that section. Specifically, § 82.9(d)(1) requires that a person seeking a transfer of allowances to or from a Twenty-five kilotonne Party obtain, from that Party's principal diplomatic representative in its United States embassy, "a document clearly stating that the nation agrees to reduce or increase, as applicable, its allowable calculated level of production by the amount being transferred to or from the recipient for the control period(s) to which the transfer applies and that after the transfer the nation's total allowable production of controlled substances will not exceed 25 kilotonnes." In addition, § 82.9(d)(2)(vi) requires that persons seeking to transfer their allowance *to* Twenty-five kilotonne Parties include in their transfer request to EPA, the Twenty-five kilotonne Party's total allowable calculated level of production following the proposed transaction. The Agency requested this information to ensure that the country did not violate its production limit set by the Montreal Protocol.

The Agency now believes that the document it receives from the diplomatic representative will serve the Agency's objective of assuring that transfers to Twenty-five kilotonne Parties do not result in those Parties exceeding 25 kilotonnes of annual production. The submitted document will establish that the Twenty-five kilotonne Party is aware of the transfer and has agreed that its total allowable production will not exceed 25 kilotonnes as a result of the transfer. Further, the Agency believes that the requirement for the transferring entity to report the Twenty-five kilotonne Party's total allowable calculated level of production will not appreciably further this objective. A report from the person transferring allowances of the Twenty-five kilotonne Party would contain only second-hand information most likely gained from the Party itself. Gaining the information, moreover, might well prove difficult and time-consuming, and delay transfers of allowances. Accordingly, EPA is deleting the requirement that a person transferring allowances report the Twenty-five kilotonne Party's total allowable production.

EPA considers the deletion of § 82.9(d)(2)(vi) to be noncontroversial. Therefore, the deletion will become effective September 5, 1989, unless EPA receives notice by (30 days from publication) that parties wish to submit critical comments. Should this occur, EPA will publish (1) a notice withdrawing this action, and (2) a notice of proposed rulemaking with an appropriate public comment period.

Quarterly Reporting

Since publication of the final rule, EPA has received inquiries regarding the definition of a quarterly reporting period, and whether a fiscal quarter as opposed to a control period quarter may be used. As noted in the preamble to the final rule (53 FR 30591) the Montreal Protocol does not allow EPA the flexibility to shift control periods, and therefore would not allow compliance to be determined based on a company's fiscal period to the extent it is different from the specified control periods. However, if the first and last quarterly reports are adjusted to coincide with the beginning and end of the control period, the interim quartely reports may be

based on a fiscal quarter, provided EPA determines that a person's fiscal quarters follow the calendar quarters closely enough so as not to complicate record review.

Quantity Imported

Several companies have requested a clarification of the term "quantity of controlled substance imported". They have asked whether they should report total import volume, as recorded by U.S. Customs on the Entry Summary Form, Form 7501, or the net import volume, which is the quantity of controlled substance extracted from the shipment containers and actually consumed within the United States; the net import volume does not include any residual heel remaining in the "empty" container returned to the foreign exporter. Importing companies have requested that only net imports count toward their consumption limits since the heels are re-exported and thus not consumed domestically.

The Agency has determined that importers must report the total import volume as recorded on the Entry Summary Form to the U.S. Customs Service. In developing the 1986 baseline for imports and in allocating consumption allowances to importers, the Agency used information on the volume of imports that had been submitted by importers in compliance with the rule promulgated in 53 FR 47486. All importing companies reported their total imports as recorded on their Entry Summary Forms or business invoices. Heels were included in these volumes and, therefore, were added to the importers consumption allowances for the initial or baseline allocation of allowances. The Agency believes that since heels were included in the development of the baseline allowances, the heels of all imports occurring during the control periods must also be included in the reported import volume on quarterly reports to EPA.

Technical Amendments to Recordkeeping and Reporting Requirements

Since the publication of the final rule, the Agency has learned that a particular recordkeeping and reporting requirement, as written, may entail more effort to complete than originally intended, and may require some companies to maintain records of information and report data that could prove confusing to the Agency in monitoring compliance with the final rule.

Section 82.13 (f)(2)(iv) requires producers to maintain records of the quantity of raw materials and feedstock chemicals used at each plant for the production of controlled substances. Today's **Federal Register** notice promulgates a technical amendment that requires producers to maintain these records on a facility basis rather than on a plant basis. During the development of its compliance program, the Agency intended to collect information for each facility and analyzed the burden to the industry and its utility to EPA on that basis. EPA is concerned that industry may feel compelled to maintain records for these feedstocks even if such chemcials are consumed in the production of non-controlled substances. This was not the intention of this requirement. Furthermore, the Agency understands that records are already maintained on a facility-by-facility basis, and that this recordkeeping requirement (recordkeeping on a facility basis) should not increase the administrative burden for companies. Since the final rule requires other records on a facility by facility basis, this amendment would make this recordkeeping consistent with the other requirements, and should lessen the administrative burden to companies.

In addition, § 82.13(f)(3)(iii) currently requires producers to report shipments of each controlled substance from each plant in that quarter. The Agency has recently learned that some plants serve as packaging centers for other plants Controlled substances, manufactured at one plant, may be shipped to another plant for packaging and sale. Under the present reporting requirement, shipments from the second plant would not provide a realistic check on production since reported shipments would include quantities of controlled substances produced at another plant. Such recordkeeping would result in double-counting the quantity shipped and packaged. The technical amendment published today clarifies the requirement that producers need only to report shipments of each controlled substance that is produced solely at each plant to avoid possible double-counting and to provide a more meaningful check on production. This amendment should not increase industry burden since producing companies are currently required under 82.13(f)(2)(v) to maintain records of shipments of controlled substances produced at each plant.

Appendices

When the Agency published its final rule last August, it reserved three appendices to the final rule. At that time, the Agency specified what would be the basis for completing the Appendices, but did not have the necessary information to complete the appendices. In today's notice, the Agency publishes Appendix B and D of the final rule.

Appendix B lists the countries that are Party to the Protocol. The United Nations Environmental Programme (UNEP) is responsible for collecting the information contained in the appendices for use by the Parties for implementation of the Protocol. The Agency has obtained from UNEP the names of Parties listed in Appendix B. This Appendix shall be undated regularly as more countries become Party to the Protocol. According to Article 16 of the Montreal Protocol, any State shall become a Party ninety (90) days after the date of deposit of its instrument of accession. The Agency shall update Appendix B regularly through notices in the **Federal Register**.

Appendix D lists the Twenty-five Kilotonne countries. The Protocol defines a Twenty-Five Kilotonne nation as a Party which produced less than 25 kilotonnes of Group I controlled substances during the baseline year of 1986. The United Nations Environment Programme has announced an initial list of twenty-five kiltonne parties based on reports submitted to UNEP by parties. As more Parties report their production to UNEP, the list of Twenty-five kilotonne nations will likely expand as UNEP updates its list.

Paperwork Reduction Act

The information collection requirements contained in this amendment as well as all reporting and recordkeeping requirements contained in the final rule published on August 12, 1988 (53 FR 3056) have been approved by the Office of Management and Budget (OMB) under the provisions of the *Paperwork Reduction Act* 44 U.S.C. section 3501 *et seq.*, and have been assigned OMB control number 2060-0170.

The reporting burden associated with the preparation and submittal of information required under § 82.9(d) is estimated to be approximately one hour.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC. 20460; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (2060-0170), Washington, DC. 20530, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 82

Stratospheric ozone.

Date: June 26, 1989.

Don Clay,

Acting Assistant Administrator.

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for Part 82 continues to read as follows:

Authority: 42 U.S.C. 7457(b).

2. Section 82.9 is amended by removing paragraph (d)(2)(vi) and revising paragraphs (d)(2)(iv) and (d)(2)(v) to read as follows:

§ 82.9 Availability of production allowances in addition to baseline production allowances.

* * * * *

(d) * * *

(2) * * *

(iv) The amount of allowable calculated level of production being transferred; and

(v) The control period(s) to which the transfer applies.

3. Section 82.13 is amended by revising paragraphs (f)(2)(iv) and (f)(3)(iii) and adding an OMB control number to read as follows:

§ 82.13 Recordkeeping and reporting requirements.

* * * * *

(f) * * *

(2) * * *

(iv) Dated records of the quantity of the following raw materials and feedstock chemicals used at each facility for the production of controlled substance: carbon tetrachloride, perchloroethylene, chloroform, hydrofluoric acid, chlorine, bromine, CFC-113, HCFC-22, and CFC-23.

* * * * *

(3) * * *

(iii) From each plant, the total shipments of each controlled substance produced at that plant in the quarter.

* * * * *

(Information collection requirements contained in paragraph (f)(2)(iv) approved by the Office of Management and Budget under control number 2060-0170)

4. Part 82 is amended by adding Appendix B to read as follows:

Appendix B to Part 82—Parties To The Montreal Protocol

Effective July 1

Belgium	German Dem. Rep.	Ireland
Canada	Germany, Fed. Rep.	Italy
Denmark	Ghana	Japan
Egypt	Greece	Kenya
Finland	Liechtenstein	Luxembourg
France	Malta	Mexico
Netherlands	New Zealand	Nigeria
Norway	Panama	Portugal
Singapore	Spain	Sweden
Switzerland	Uganda	USSR
United Kingdom	United States	Venezuela

Effective July 19: Hungary
Effective August 1: Austria
Effective August 14: Maldives
Effective August 17: Australia
Effective August 30: Jordan

5. Part 82 is amended by adding Appendix D to read as follows:

Appendix D to Part 82—Twenty-Five Kilotonne Parties

Canada, Mexico, Australia (Effective August 17).

[FR Doc. 89-15635 Filed 7-3-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

RIN 0905-AC 77

Grants for Centers for Excellence

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: This rule establishes regulations for Grants for Centers for Excellence, authorized by section 788A of the Public Health Service Act (the Act), as added by the Excellence in Minority Health Education and Care Act. Section 788A of the Act was amended and redesignated as section 782 by the Health Professions Reauthorization Act of 1988.

DATE: These regulations are effective July 5, 1989, except § 57.2109, which will be effective upon OMB approval. A document announcing the effective date of § 57.2109 will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Clay E. Simpson, Jr., Ph.D., Director, Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A-09, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: (301) 443-2100.

SUPPLEMENTARY INFORMATION: On December 9, 1988, the Assistant Secretary for Health, with the approval of the Secretary of Health and Human Services, published in the **Federal Register** (53 FR 49690), a Notice of Proposed Rulemaking (NPRM) to amend Part 57 of Title 42 of the Code of Federal Regulations by removing Subpart V, entitled "Grants for Training in Emergency Medical Services", and adding a new Subpart V to implement section 788A of the Act, as established by Pub. L. 100-97, the Excellence in Minority Health Education and Care Act, enacted on August 18, 1987. The Health Professions Reauthorization Act of 1988, Title VI of Pub. L. 100-607, enacted on November 4, 1988, redesignated section 788A as section 782. Section 782 authorizes the Secretary to make grants to health professions schools to assist such schools in supporting programs of excellence in health professions education for minority individuals. A grant under this section shall be used by a health professions school to:

(1) Develop a plan to achieve institutional improvements, including financial independence, to enable such school to support programs of excellence in health professions education for minority individuals;

(2) Improve the capacity of such school to recruit and retain faculty;

(3) Provide improved access to the library and information resources of such school;

(4) Establish, strengthen, or expand programs to enhance the academic performance of students in such school;

(5) Establish, strengthen, or expand programs to increase the number and quality of applicants for admission to such school; and

(6) Develop curricula and carry out faculty training programs in order to enable such school to become, for the Nation's health care providers, a resource with respect to the health problems of minority communities, such as higher infant mortality rates and higher incidences of acquired immunodeficiency syndrome.

Section 782 authorizes support only for a health professions school which: (1) Is a school as described in section 701(4) of the Act, and (2) has received support under section 788B of the Act (Advanced Financial Distress Assistance) for Fiscal Year 1987.

The NPRM proposed to establish project requirements and criteria for application evaluation. The notice proposed that projects which supported a minimum of three of the six statutory purposes listed above, one of which must be purpose (1), would be eligible for funding. The plan, as provided in purpose (1), would provide a means of assessing a grantee's progress in achieving its targeted improvements and financial independence. The notice also proposed that this plan be submitted by the grantee within 6 months of the date of the grant award with the intent that

this would provide a timeframe that would coincide with the submission of a continuation award application and the accompanying progress report. The remaining five purposes included areas of need that might not exist for every potential grantee. Therefore, it was proposed that an applicant include in its application at least two of these purposes which would be appropriate for its institutional needs.

With respect to purpose (5), it was proposed that this activity not be offered to students before they entered the freshman year of high school. The Department believed that this would maximize the program's available resources and enable the program to reach students at the point in their education when course selection and career decisions begin to impact preparation leading to health careers. Further, it would encourage relationships between the health professions schools and high schools.

The public comment period on the proposed regulations closed on February 7, 1989. The Department received no comments. Therefore, the proposed regulations set out in the December 9, 1988, NPRM are adopted as proposed.

These regulations also include additional technical changes and clarifying language to the proposed regulations. These revisions are necessary in order to incorporate amendments made by the Health Professions Reauthorization Act of 1988, Titel VI of Pub. L. 100-607, which redesignated section 788A as section 782, and to incorporate current departmental grants policy language. Since these revisions are of a technical nature, the Secretary has determined pursuant to 5 U.S.C. 533 and departmental policy that it is unnecessary and impractical to follow proposed rulemaking procedures. These revisions are summarized below:

1. Revise the authority citation in include the section number redesignation and the United States Code citation change, in accordance with Pub. L. 100-607.

2. Revise § 57.2101, entitled *"To what projects do these regulations apply?"*, to identify the section of the Public Health Service Act in which awards to health professions schools are made and the United States Code citation by inserting after the word "schools" the phrase "under section 782 of the Public Health Service Act (42 U.S.C. 295g-2)", in accordance with Pub. L. 100-607.

3. Revise § 57.2105, entitled *"How will applications be evaluated?"*, to amend paragraph (a)(3) by removing the word "implementation" before the word "plan" to clarify that the word "plan" refers to institutional improvements rather than the implementation of grant activities.

4. Revise § 57.2108, entitled *"What additional Department regulations apply to grantees?"*, by changing the footnote number in 45 CFR Part 83 from "1" to "2".

5. Revise § 57.2110, entitled *"Additional conditions."*, by substituting the words "on any" in lieu of "in the" after the phrase "The Secretary may impose additional conditions", and by removing "the" and inserting "any" before the phrase "before or at the time of" to reflect current departmental grants policy language.

Regulatory Flexibility Act and Executive Order 12291

These regulations govern financial assistance programs in which participation is voluntary. The rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291. For these reasons, the Secretary has determined that this rule is not a major rule under Executive Order 12291 and a regulatory impact analysis is not required. Further, because the rule does not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 is not required.

Paperwork Reduction Act of 1980

This final rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Grants for Centers for Excellence.

Description: The audit requirement for 42 CFR 57.2109 is needed to account for expenditures of grant funds by health professions schools.

Description of Respondents: Nonprofit institutions.

Estimated Annual Reporting and Recordkeeping Burden:

Section No.	Annual No. of respondents	Annual frequency	Average burden per response	Annual burden hours
57.2109	4	1	4 hours	16 hours.

We have submitted an information request to OMB for approval of these requirements. We received no public comments on the estimated public reporting burden, and it remains the same as in the proposed rule. These requirements, however, will not be effective until the Department obtains OMB approval, at which time a notice will be published in the **Federal Register** to notify the public of such action.

List of Subjects in 42 CFR Part 57

Dental health, Education of the disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Grant programs-education, Grant programs-health, Health facilities, Health professions, Loan programs-health, Medical and dental schools, Student aid.

Accordingly, 42 CFR Part 57, Subpart V is revised as set forth below:

Dated: April 24, 1989.

James O. Mason,

Assistant Secretary for Health.

Approved: June 16, 1989.

Louis W. Sullivan,

Secretary.

(Catalog of Federal Domestic Assistance, No. 13.157, Grants for Centers for Excellence)

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS, AND STUDENT LOANS

1. 42 CFR Part 57 is amended by revising Subpart V, consisting of §§ 57.2101 through 57.2110, entitled "Grants for Centers for Excellence" to read as follows:

Supart V—Grants for Centers for Excellence

Sec.
57.2101 To what projects do these regulations apply?
57.2102 Definitions.
57.2103 Who is eligible to apply for a grant?
57.2104 Project requirements.
57.2105 How will applications be evaluated?
57.2106 How long does grant support last?
57.2107 For what purposes may grant funds be spent?
57.2108 What additional Department regulations apply to grantees?
57.2109 What other audit and inspection requirements apply to grantees?
57.2110 Additional conditions.

Subpart V—Grants for Centers for Excellence

Authority: Sec. 788A of the Public Health Service Act, as established by Pub. L. 100-97, 101 Stat. 713-714 (42 U.S.C. 295g-8a), and redesignated as section 782 and as amended by Pub. L. 100-607, 102 Stat. 3136 (42 U.S.C. 295g-2).

§ 57.2101 To what projects do these regulations apply?

These regulations apply to grants awarded to public or nonprofit private health professions schools under section 782 of the Public Health Service Act (42 U.S.C. 295g-2) to assist such schools in supporting programs of excellence in health professions education for minority individuals.

§ 57.2102 Definitions.

"Act" means the Public Health Service Act, as amended.

"Health professions school" means any accredited school of medicine, dentistry, osteopathy, pharmacy, optometry, podiatry, veterinary medicine, public health, and chiropractic or graduate program in health administration as defined in section 701(4) of the Act and as accredited in section 701(5) of the Act.

"Minority" means an individual whose race/ethnicity is classified as American Indian or Alaskan Native, Asian or Pacific Islander, Black, or Hispanic.

"Nonprofit" means an entity owned and operated by one or more corporations or associations, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual.

"Secretary" means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

"State" means, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.

§ 57.2103 Who is eligible to apply for a grant?

A health professions school described in section 701(4) which has received support under section 788B (Advanced Financial Distress Assistance) of the Act for Fiscal Year 1987, may apply for a grant under this subpart. Each eligible applicant desiring a grant under this subpart shall submit an application in the form and at the time the Secretary may prescribe.[1]

§ 57.2104 Project requirements.

(a) The Secretary will award grants to meet the cost of carrying out three or more of the following six purposes, one of which must be the purpose provided in paragraph (a)(1) of this section:

(1) Develop a plan to achieve institutional improvements, including financial independence, to enable such school to support programs of excellence in health professions education for minority individuals. This plan must be submitted within 6 months of the date of grant award;

(2) Improve the capacity of such school to recruit and retain faculty;

(3) Provide improved access to the library and information resources of such school;

(4) Establish, strengthen, or expand programs to enhance the academic performance of students in such school;

(5) Establish, strengthen, or expand programs to increase the number and quality of applicants for admission to such school. Activities designed to increase the number and quality of applicants to these schools may not be offered to students prior to the ninth grade; and

(6) Develop curricula and carry out faculty training programs in order to enable such school to become, for the Nation's health care providers, a resource with respect to the health problems of minority communities, such as higher infant mortality rates and higher incidences of acquired immunodeficiency syndrome.

(b) Each project must evaluate its program based on the evaluation plan provided in the grant application.

§ 57.2105 How will applications be evaluated?

(a) After consulting with the National Advisory Council on Health Professions Education, established in section 702 of the Act, the Secretary will decide which applications to approve by considering, among other factors:

(1) The degree to which the applicant can arrange to continue the proposed project beyond the federally funded project period;

(2) The degree to which the proposed project meets three or more of the purposes as described in § 57.2104;

(3) The relationship of the objectives of the proposed project to the goals of the plan that will be developed pursuant to § 57.2104(a)(1);

(4) The administration and managerial ability of the applicant to carry out the project in a cost effective manner;

(5) The adequacy of the staff and faculty to carry out the program;

(6) The soundness of the budget for assuring effective utilization of grant funds, and the proportion of total program funds which come from non-federal sources and the degree to which they are projected to increase over the grant period;

(7) The number of individuals who can be expected to benefit from the project; and

(8) The overall impact the project will have on strengthening the school's capacity to train minority health professionals and increase the supply of minority health professionals available to serve minority populations in underserved areas.

(b) In determining the funding of applications approved under paragraph (a) of this section, the Secretary will consider any special factors relating to national needs as the Secretary may from time to time announce in the **Federal Register.**

§ 57.2106 How long does grant support last?

(a) The notice of grant award specifies the length of time the Secretary intends to support the project without requiring the project to recompete for funds. This period, called the project period, will not exceed 3 years.

[1] Applications and instructions (Form PHS 6025-1, OMB #0915-0060) may be obtained from the Grants Management Officer, Bureau of Health Professions, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

(b) Generally, the grant will initially be funded for 1 year, and subsequent continuation awards will also be for 1 year at a time. Decisions regarding the continuation awards and the funding levels of these awards will be made after consideration of such factors as the grantee's progress, including the degree that the projected portion of non-federal funds supporting the project has been met, and management practices, the existence of legislative authority, and the availability of funds. In all cases, continuation awards require a determination by the Secretary that continued funding is in the best interest of the Federal Government.

(c) Neither the approval of any application nor the award of any grant shall commit or obligate the United States in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of an approved application. For continuation support, grantees must make separate application at such times and in such a form as the Secretary may prescribe.

§ 57.2107 For what purposes may grant funds be spent?

(a) A grantee shall only spend funds it receives under this subpart according to the approved application and budget, the authorizing legislation, terms and conditions of the grant award, applicable cost principles specified in Subpart Q of 45 CFR Part 74, and these regulations.

(b) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward to the next budget period, for use as prescribed by the Secretary, provided a continuation award is made. If at any time during a budget period it becomes apparent to the Secretary that the amount of Federal funds awarded and available to the grantee for that period, including any unobligated balance carried foward from prior periods, exceeds the grantee's needs for the period, the Secretary may adjust the amounts awarded by withdrawing the excess. A budget period is an interval of time (usually 12 months) into which the project period is divided for funding and reporting purposes.

(c) The grantee may spend grant funds to pay individual participants in the program a per diem when the grantee determines that—

(1) The training program requires the individual to establish a temporary new residence;

(2) The program is offered at a time when the individual would not be at the training site in a regular course of education or employed as a faculty member at that institution; and

(3) No other Federal financial assistance program is authorized to provide this support.

(d) The grantee may spend grant funds to provide one round trip per participant between the place of residence and the training site, provided that conditions in paragraphs (c)(1) and (2) of this section are met.

(e) The grantee may not spend grant funds for stipends, licensing exams, loan or scholarship support, support of research faculty or projects and related activities, establishment of research centers, establishment of planning offices, support of commercial ventures, entertainment, dependency allowances, new construction of facilities, acquisition of land, fund raising, or for sectarian instruction or any religious purpose.

§ 57.2108 What additional Department regulations apply to grantees?

Several other regulations apply to grants under this subpart. These include, but are not limited to:

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure
45 CFR Part 16—Procedures of the Departmental Grant Appeals Board
45 CFR Part 46—Protection of human subjects
45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures
45 CFR Part 76—Governmentwide Debarment and Suspension (non-procurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title
45 CFR Part 83—Regulation for the administration and enforcement of sections 799A and 845 of the Public Health Service Act [2]
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

§ 57.2109 What other audit and inspection requirements apply to grantees?

Each grantee must, in addition to the requirements of 45 CFR Part 74, meet the requirements of section 705 of the Act, concerning audit and inspection.

§ 57.2110 Additional conditions.

The Secretary may impose additional conditions on any grant award before or at the time of any award if he or she determines that these conditions are necessary to assure or protect the advancement of the approved activity, the interest of the public health, or the conservation of grant funds.

[FR Doc. 89-15698 Filed 7-3-89; 8:45 am]

BILLING CODE 4160-15-M

[2] Section 799A of the Public Health Service Act was redesignated as section 704 by Pub. L. 94-484; section 845 of the Public Health Service Act was redesignated as section 855 by Pub. L. 94-63.

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 705, 706, 715 and 752

[AIDAR Docket No. 89-4]

Alternative Source Selection Procedures

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The AID Acquisition Regulation (AIDAR) is being amended to reflect a formal determination made by the Deputy Administrator that AID's Title XII source selection procedures in AIDAR 715.613-70 and 715.613-71 are necessary so as not to impair or affect AID's authority to administer Part I, Chapter 2, Title XII of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2220 a.-e.).

EFFECTIVE DATE: July 5, 1989.

FOR FURTHER INFORMATION CONTACT: M/SER/PPE, Mr. James M. Kelly, Room 1600I, SA-14, Agency for International Development, Washington, DC 20523. Telephone (703) 875-1534.

SUPPLEMENTARY INFORMATION: The Title XII source selection procedures now in AIDAR 715.613-70 and 715.613-71 were developed to enable AID to properly administer Title XII of the Foreign Assistance Act. These procedures, in their present form, were coordinated with the public and with the Office of Federal Procurement Policy (OFPP).

In a recent review of AID administration of Title XII (FOREIGN AID—Issues Concerning U.S. University Participation; GAO/NSIAD-89-38; B-203211, 4/11/89), the General Accounting Office (GAO) concluded that the AIDAR Title XII source selection procedures were not consistent with the Competition in Contracting Act. AID took exception to this conclusion; however, in correspondence with AID, the GAO concluded that AID had the authority to continue using its Title XII source selection procedures if the AID Administrator made a formal determination that their use was necessary in order not to impair foreign assistance objectives. After full consideration of the GAO conclusions; the basis for the Title XII source selection procedures; the continuing need for the contributions of Title XII institutions; our understanding of Congressional intent regarding utilization of Title XII institutions; and in accordance with 40 U.S.C. 474(2), the Deputy Administrator of AID signed a determination on 5/24/89 that the special source selection procedures in AIDAR 715.613-70 and 715.613-71 are necessary so as not to impair or affect AID's authority to administer Title XII of the Foreign Assistance Act.

This finding is being reflected and referenced in Parts 705, 706 and 715 of the AIDAR. We are also taking this opportunity to make an editorial correction of an unrelated erroneous cross-reference in AIDAR 752.7031.

The changes being made by this Notice are not considered significant rules subject to FAR 1.301 or Subpart 1.5. This Notice is exempted from the requirements of Executive Order 12291 by OMB Circular 85-7. This Notice will not have an impact on a substantial number of small entities, nor does it establish any information collection as contemplated by the Regulatory Flexibility Act and Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 705, 706, 715, and 752

Government procurement.

For the reasons set out in the Preamble, Chapter 7 of Title 48 of the Code of Federal Regulations is amended as follows:

1. The authority citations in Parts 705, 706, 715, and 752 are unchanged and continue to read as follows:

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979 (44 FR 56673, 3 CFR 1979 Comp., p. 435.)

PART 705—PUBLICIZING CONTRACT ACTIONS

Subpart 705.2—Synopsis of Proposed Contract Actions

2. Section 705.202 is amended by revising paragraph (b)(1) as follows:

705.202 Exceptions.

* * * * *

(b) * * *

(1) Contract actions described in AIDAR 706.302-70(b)(1)-(3).

* * * * *

PART 706—COMPETITION REQUIREMENTS

Subpart 706.3—Other Than Full and Open Competition

3. Section 706.302-70 is amended by adding a new paragraph (b)(4) as follows:

706.302-70 Impairment of foreign aid programs.

* * * * *

(b) * * *

(4) Awards under AIDAR 715.613-70 (Title XII selection procedure—general) or 715.613-71 (Title XII selection procedure—collaborative assistance).

PART 715—CONTRACTING BY NEGOTIATION

Subpart 715.6—Source Selection

4. Subsection 715.613-70, (Title XII selection procedure—general), is amended by redesignating the existing paragraphs (a) through (c) as paragraphs (b) through (d), and adding a new paragraph (a) as follows:

715.613-70 [Amended]

(a) *General.* The Deputy Administrator has determined, as provided in AIDAR 706.302-70(b)(3)(ii) that use of this Title XII source selection procedure is necessary so as not to impair or affect AID's ability to administer Title XII of the Foreign Assistance Act. This determination is reflected in AIDAR 706.302-70(b)(4). This constitutes authority for other than full and open competition when selecting Title XII institutions to perform Title XII projects.

* * * * *

5. Subsection 715.613-71, Title XII selection procedure—collaborative assistance, is amended by redesignating the existing paragraphs (a) through (d) as paragraphs (b) through (e), and adding a new paragraph (a) as follows:

715.613-71 [Amended]

(a) *General.* The Deputy Administrator has determined, as provided in AIDAR 706.302-70(b)(3)(ii) that use of this Title XII source selection procedure is necessary so as not to impair or affect AID's ability to administer Title XII of the Foreign Assistance Act. This determination is reflected in AIDAR 706.302-70(b)(4). This constitutes authority for other than full and open competition when selecting Title XII institutions to perform Title XII projects.

* * * * *

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 752.70—Texts of AID Contract Clauses

752.7031 [Amended]

6. Section 752.7031, "Leave and Holidays", paragraph (c), "*Alternate 72*", paragraph (b)(2) of the contract clause "Leave and Holidays (DEC 1988)" is amended by correcting the reference to "paragraph (a)(3) of this section" to read "paragraph (b)(3) of this section".

Date: June 15, 1989.

John F. Owens,

Procurement Executive.

[FR Doc. 89-15619 Filed 7-3-89; 8:45 am]

BILLING CODE 6116-01-M

Proposed Rules

Federal Register
Vol. 54, No. 127
Wednesday, July 5, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 75

[Docket No. 87-033]

Equine Infectious Anemia

AGENCY: Animal and Plant Health Inspection Service, USDA

ACTION: Withdrawal of proposed rule and proposed rule.

SUMMARY: In response to comments received on a proposed rule concerning equine infectious anemia (EIA), we are withdrawing the proposal and publishing a revised proposal. We are proposing to amend the regulations on interstate movement of horses and other equines that test positive for EIA. To reduce costs for owners of EIA reactors, we are proposing to permit them to send those reactors to an approved stockyard for sale for immediate slaughter. We are also proposing that approved stockyards must hold EIA reactors in quarantine pens at least 200 yards from other equines. The easing of restrictions would make it more practical for owners to prevent the spread of disease by sending reactors to slaughter, while the quarantine pen requirement would prevent the spread of EIA in stockyards.

DATE: Consideration will be given only to comments received on or before September 5, 1989.

ADDRESSES: To help ensure that your written comments are considered, send an original and two copies to Helene R. Wright, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 87-033. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Ave SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. C.A. Gipson, Swine, Poultry, and Miscellaneous Diseases Staff, VS, APHIS, USDA, Room 769, Federal Building 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7679.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR Part 75 (referred to below as the regulations) contain provisions for the interstate movement of horses, asses, ponies, mules, and zebras that test positive for communicable diseases including equine infectious anemia (EIA). The purpose of these provisions is to prevent the spread of communicable diseases, including EIA.

On December 29, 1986, we published in the **Federal Register** (51 FR 46867-46869, Docket Number 85-023) a document proposing to allow interstate shipment of EIA reactors to an approved stockyard for sale for immediate slaughter. For a full discussion of the problems of interstate movement of EIA reactors, refer to that proposal. The proposal was intended to reduce interstate shipping expenses of EIA reactor horses by allowing greater flexibility to shippers of EIA reactors and, thereby, encourage the slaughter of EIA-affected animals.

Our proposal invited the submission of written comments, due on or before February 27, 1987. We received four comments, three from state departments of agriculture and one from private industry. One raised an issue unrelated to the proposal. Two supported the proposal, with modifications. One objected to the proposal as written, but suggested an acceptable alternative to the objectionable provision. Since this commenter's alternative represents a substantial change to our proposal, we are withdrawing Docket Number 85-023 and are reproposing the amendment, including changes made in response to some of these comments.

One commenter supporting the proposal suggested that we require EIA reactors to move directly from an approved stockyard to slaughter. That provision was included in § 75.4(b)(4) of the previous proposal and appears in the same section in this proposal as well.

A second commenter urged that we modify the stringent requirements for cleaning and disinfecting proposed for quarantine pens used to hold EIA reactors. He wrote: "We agree that the stockyard operator should follow good husbandry practices. However, because EIA is reported only to be spread through the medium of blood, it would appear to not have the same rigid requirements to clean and disinfect as for a disease such as brucellosis." We agree, and have removed requirements for cleaning and disinfecting from the new proposal.

The commenter who opposed the proposal also raised the issue of cleaning and disinfecting. He argued that cleaning and disinfecting is irrelevant for fly control, the major concern with a vector-borne disease such as EIA. More satisfactory, he suggested, would be a provision requiring that EIA reactors be held in quarantine pens at least 200 yards from other equines. We have examined disease reports from 17 states that require a 200-yard minimum isolation of quarantine pens and have found that their experiences support this view. The types of files that constitute the major concern for EIA transmission in stockyards rarely travel more than a few yards from the horses they are associated with, and an isolation distance of 200 yards would make it extremely unlikely that EIA could be transmitted to other horses during the 30 days EIA reactors would be allowed to stay at the stockyard. We are therefore adding to the compliance agreement in § 75.4(c)(3) a requirement for islated quarantine pens for EIA reactors that stay more than 24 hours in approved stockyards. EIA reactors moving through an approved stockyard the same day as their arrival (i.e., within 24 hours of their arrival) are excluded from this requirement, because the few hours they spend in proximity to other horses at the stockyard is similar to the time EIA reactors from quarantine pens spend in proximity to other horses during movement through the stockyard and sale activities, and does not represent a significant increase in disease risk.

Executive Order 12291 and Regulatory Flexibility Act.

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule". Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries,

federal, state, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We anticipate that fewer than 500 EIA reactor horses and other equines would be moved interstate each year under the amended provisions of Part 75. This number is insignificant compared with the total number of horses and other equines moved interstate each year. Most movements of EIA reactors and other equines are done by small entities, moving one or a few horses at a time. Those small entities moving EIA reactors in accordance with this rule would experience a slight financial benefit due to increased opportunities for and decreased costs associated with the sale for slaughter of their EIA reactors.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection provisions in this document. These provisions have been assigned OMB control number 0579-0051.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.) List of Subjects in 9 CFR Part 75.

Animal diseases, Contagious equine metritis, Dourine, Equine, Equine infectious anemia, Horses, Quarantine, Transportation.

PART 75—COMMUNICABLE DISEASES IN HORSES, ASSES, PONIES, MULES AND ZEBRAS

Accordingly, 9 CFR Part 75 would be amended as follows:

1. The authority citation for Part 75 would continue to read as follows:

Authority: 21 US..C. 111-113, 115, 117, 120, 121, 123-126, 134-134h; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 75.4, the heading would be revised to read as follows:

§ 75.4 Interstate movement of equine infectious anemia reactors and approval of laboratories, diagnostic facilities, research facilities, and stockyards.

3. In § 75.4, paragraph (a) would be amended to add, in alphabetical order, the following definitions:

* * * * *

Approved stockyard. A stockyard, livestock market, or other premises, under state or federal veterinary supervision where horses or other equines are assembled for sale purposes, and which has been approved by the Administrator under this Part.

* * * * *

Operator. The individual responsible for the day-to-day operations of the specifically approved stockyard.

* * * * *

4. In § 75.4, paragraph (b) would be amended to change "(b)(1), (b)(2), or (b)(3)" in the first sentence to read "(b)(1), (b)(2), (b)(3), or (b)(4)", to change the period at the end of paragraph (b)(3) to read "; and"; and to add a new paragraph (b)(4) to read as follows:

* * * * *

(b) * * *

(4) The reactor is moved interstate through no more than one approved stockyard for sale for immediate slaughter, and is moved within 30 days of its arrival at the approved stockyard directly to slaughter at a federally inspected slaughtering establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or to a state-inspected slaughtering establishment that has inspection by a state representative at the time of slaughter.

* * * * *

5. In § 75.4, the heading to paragraph (c) would be revised to read "*Approval of Laboratories, Diagnostic or Research Facilities, and Stockyards.*" and a new paragraph (c)(3) would be added to read as follows:

* * * * *

(c) * * *

(3) The Administrator will approve stockyards to handle reactors moved interstate under paragraph (b)(4) of this section when the operator of the stockyard executes the following agreement:

Agreement for Specifically Approved Stockyard for Handling Known Equine Infectious Anemia Reactor Horses and Other Equines Pursuant to Title 9 of the Code of Federal Regulations

[Name of Stockyard] _____
[Address of Stockyard] _____

I, (name of operator), operator of (name of stockyard), hereby agree to maintain and operate this stockyard at (premises location) in accordance with each of the provisions set forth herein.

Cooperation

(1) An accredited veterinarian, state representative, or APHIS representative shall be on the stockyard premises on sale days to perform duties in accordance with state and federal regulations.

(2) The state animal health official and the veterinarian in charge shall be furnished with a current schedule of sale days which apply to the stockyard and any revision to the schedule of sale days prior to implementation of such revision.

(3) State representatives and APHIS representatives shall be granted, during normal business hours, access to stockyard premises and facilities to determine compliance with the requirements of Title 9, Code of Federal Regulations and the Standards of this agreement.

Handing of Horses and Other Equines

(4) Horses and other equines shall be received, handled, and released by the stockyard only in accordance with Title 9 of the Code of Federal Regulations.

(5) Any horses and other equines classified as equine infections anemia reactors and accepted by the stockyard for sale shall be: (a) Placed in quarantined pens at least 200 yards from all other equines, unless moving out of the stockyard within 24 hours of arrival; and (b) consigned from the stockyard only to a slaughtering establishment in accordance with Title 9, Code of Federal Regulations, Part 75.

Facilities

(6) Quarantined pens for the confinement of horses and other equines classified as equine infections anemia reactors shall be clearly placarded "Quarantined," "Equine Infections Anemia," or "Swamp Fever."

Fly Control Program

(7) The stockyard shall have in effect a fly control program utilizing at least one of the following: baits, fly strips, electric bug killers ("Fly Zappers," "Fly Snappers," or similar equipment), application of a pesticide effective against flies, applied according to the schedule and dosage recommended by the manufacturer for fly control.

Records

(8) Any document relating to animals which are or have been in the stockyard shall be maintained by the stockyard for a period of 1 year from the date the animal arrives at the stockyard.

(9) State representatives and APHIS representatives shall be granted, during all hours and stockyard business office is open, access to all documents required to be maintained pursuant to paragraph (8) of this agreement, and authority to reproduce such documents upon request.

I, _____ hereby acknowledge receipt of a copy of Title 9, Code of Federal Regulations, Part 75, and hereby acknowledge that I have been informed and understand that failure to abide by the provisions of this agreement constitutes a

basis for the withdrawal of approval from this stockyard.

Request Approval
Operator of the Stockyard _____

Recommended Approval
State Animal Health Official _____
Date _____

Recommended Approval
Veterinarian in Charge _____
Date _____

Approval Granted
Administrator, Animal and Plant Health Inspection Service _____
Date _____

6. In § 75.4, the heading to paragraph (d) would be revised to read "*Denial and withdrawal of approval of laboratories, diagnostic or research facilities, and stockyards.*"

7. In § 75.4, the introductory text to paragraph (d) would be amended to insert "or of any stockyard to handle reactors under this Part," after "or of any diagnostic or research facility to receive reactors moved interestate," and to insert "or stockyard" after "the laboratory of diagnostic or research facility".

8. In § 75.4, the introductory sentence of paragraph (d) would be further amended to change the period to a comma and to add "or, in the case of a stockyard, upon a determination that the stockyard is not maintained and operated in accordance with the standards specified in paragraph (c)(3) of this section."

9. In § 75.4, paragraph (d)(1) would be amended to add "or stockyard" after "laboratory of facility".

10. In § 75.4 paragraph (d)(2) would be amended to add "or stockyard" after "laboratory or facility" wherever it appears in the paragraph.

11. In § 75.4, a new paragraph (d)(5) would be added to read as follows:

* * * * *

(d) * * *

(5) Approval for a stockyard to handle reactors under this Part will be automatically withdrawn by the Administrator when the operator of the approved stockyard notifies the Administrator, in writing, that the stockyard no longer handles reactors moved interstate under this Part.

Done in Washington, DC, this 28th day of June 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-15726 Filed 7-3-89; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

[Docket No. 89-6]

Rules, Policies, and Procedures for Corporate Activities; Receivership and Conservatorship

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency ("OCC") is proposing to amend 12 CFR 5.49—Receivership and Conservatorship. This proposed rulemaking changes the OCC's current regulation at 12 CFR 5.49 to articulate, for the first time in a regulation, the standards of insolvency the OCC may use in determining whether to appoint a receiver for a national bank. Specifically, this proposed rulemaking describes the net worth and liquidity standards, which are the two standards usually used by the OCC in determining insolvency. In addition, this proposed rulemaking explains a change in the OCC's method of applying the net worth standard that conforms the OCC's application of the net worth standard more closely to generally accepted accounting principles ("GAAP").

DATE: Comments must be received by September 5, 1989.

ADDRESS: Comments should be directed to: Communications Division, 5th Floor, 490 L'Enfant Plaza East, SW., Washington, DC 20219, Attention: Docket No. 89-6. Comments will be available for public inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: Ferne Fishman Rubin, Attorney, Legal Advisory Services Division, (202) 447-1880, or Kennard L. Page, National Bank Examiner, Special Supervision Division, (202) 447-1719.

SUPPLEMENTARY INFORMATION:

Background

Under 12 U.S.C. 191, the Comptroller, when satisfied that a national bank is insolvent, may appoint a receiver who will wind up the bank's affairs. The pertinent part of the statute reads as follows: "whenever the comptroller shall become satisfied of the insolvency of a national banking association, he may, after due examination of its affairs, * * * appoint a receiver, who shall proceed to close up such association."

The Comptroller has a great deal of discretion in reaching a determination of insolvency under 12 U.S.C. 191. *Adams* v. *Nagle*, 303 U.S. 532 (1938); *Liberty National Bank of South Carolina* v. *McIntosh*, 16 F.2d 906 (4th Cir. 1927). Case law indicates that the OCC's declaration of insolvency generally is not subject to judicial review. *In re Conservatorship of Wellsville National Bank*, 407 F. 2d 233 (3d Cir.), *cert. denied*, 396 U.S. 832, *reh. denied*, 396 U.S. 949 (1969); *Munro* v. *Post*, 23 F. Supp. 308 (E.D.N.Y. 1938), *aff'd*, 102 F.2d 686 (2d Cir. 1939); *Wannamaker* v. *Edisto National Bank*, 62 F.2d 696 (4th Cir. 1933). Some courts have recognized a very narrow exception to this general rule, in cases in which it is alleged that the OCC's determination of insolvency was fraudulent, clearly arbitrary or made in bad faith. *United States Savings Bank* v. Morgenthau, 85 F. 2d 811 (D.C. Cir. 1936), *cert. denied*, 299 U.S. 605, *reh. denied*, 301 U.S. 666 (1937).

The Regulation

This notice of proposed rulemaking would amend the receivership provisions of 12 CFR 5.49, which is based in part upon 12 U.S.C. 191. Section 5.49 deals with both receivership under 12 U.S.C. 191 and the appointment of a conservator pursuant to 12 U.S.C. 201-212, the Bank Conservation Act. The receivership provisions of § 5.49 currently set forth the OCC's authority to appoint a receiver, and provide for the appointment of the Federal Deposit Insurance Corporation ("FDIC") as receiver in cases in which the OCC is required to make such appointment. *See* 12 U.S.C. 1821(c). Section 5.49 also establishes certain procedures for the payment of claims in cases in which the OCC does not appoint the FDIC as receiver. In its current form section 5.49 does not set forth any standards for determining the insolvency of a national bank.

The Insolvency Standards

This notice of proposed rulemaking describes the standards by which the OCC usually determines whether a national bank is insolvent. These standards are known as the net worth and liquidity standards. Under the net worth standard, a national bank may be declared insolvent when its liabilities exceed its assets. *Commercial National Bank in Shreveport* v. *Connolly*, 176 F.2d 1004 (5th Cir. 1949). Under the liquidity standard, a bank may be declared insolvent when it is unable to meet its obligations as they mature. *Smith* v. *Witherow*, 102 F.2d 638 (3d Cir. 1939); *In re Franklin National Bank*, 381 F. Supp. 1390 (E.D.N.Y. 1974).

In the past, the OCC has used each of these standards in declaring banks insolvent, based upon a case-by-case analysis. *See Wellsville* and *Franklin National Bank, supra* (use of either standard appropriate under 12 U.S.C. 191). Sometimes, a bank can be insolvent under both the net worth and the liquidity standards. *See Golden Pacific Bancorp* v. *Clarke*, No. 85-2384 (D.D.C. 1986), *aff'd*, 837 F.2d 809 (D.C. Cir. 1988), *petition for cert. filed*, No 88-89 (June 30, 1988).

The OCC is not limited to these two standards, and may employ other standards to determine insolvency. However, this notice of proposed rulemaking addresses only the net worth and liquidity insolvency standards.

The Proposed Amendment

The proposed amendment sets forth the net worth and liquidity standards, which are two of the standards the OCC may use in determining insolvency. In addition, this proposed rulemaking explains a change in the OCC's method of applying the net worth standard. Currently, the OCC declares a bank insolvent under the net worth standard when its primary capital is depleted. For this purpose, the OCC has used the definition of primary capital found at 12 CFR 3.2(c). Essentially, the OCC has considered a bank's primary capital to be a functional substitute for its net worth. Whenever losses were sufficient to eliminate primary capital, a bank's total assets clearly no longer exceeded its total liabilities. This approach was not required by law, but was used as an internal guideline.

Under this proposed rule, the OCC will determine a bank to be insolvent when its equity capital (as opposed to primary capital) is exhausted—where equity capital is the difference between assets and liabilities. For the purpose of determining solvency, the bank's equity capital will include:

(1) *Common stockholders' equity.* Common stockholders' equity means common stock, common stock surplus, undivided profits, capital reserves, adjustments for the cumulative effect of foreign currency translation and net of unrealized losses on non-current marketable equity securities.

(2) *Preferred stock and related surplus.* The OCC has limited the definition of equity capital for the purpose of determining the solvency of a national bank to include only those items that are available to absorb losses. This measure of equity omits items that possess characteristics of both debt and equity. For example, neither long-term subordinated debt nor mandatory convertible debt instruments are counted as equity. The OCC is specifically asking for comment on this definition of equity.

In accounting terms, the major difference between the OCC's use of primary capital as the standard for measuring a bank's net worth, and its proposed use of equity capital for the same purpose, is the exclusion of the bank's allowance for loan and lease losses ("ALLL"), also known as the loan loss reserve. Both GAAP and regulatory accounting require that the ALLL be maintained at a level adequate to absorb anticipated losses. The ALLL is replenished through a provision charged against current operations. Also, the ALLL is not reported as equity capital; rather, it is reported as a valuation reserve against the total loans outstanding. Therefore, for the purpose of determining the solvency of a national bank, the ALLL will not be considered part of the bank's equity capital.

The proposed standard for measuring net worth does not alter the OCC's requirement that all national banks maintain an adequate allowance for loan and lease losses. Banks should be aware that a failure to maintain an adequate allowance for loan and lease losses is an unsafe or unsound banking practice which may lead to the issuance of an order to cease and desist under 12 U.S.C. 1818(b). Such failure also may constitute a violation of 12 U.S.C. 161, which could result in the imposition of civil money penalties under 12 U.S.C. 93(b).

Notwithstanding the changes set forth in this proposed rulemaking, the basic framework of the net worth standard, *i.e.*, liabilities which exceed assets, is unchanged from that used by the OCC in the past. That framework has been upheld repeatedly by the courts.

Reasons for the Proposed Rulemaking

The OCC is engaging in this rulemaking for two reasons:

First, 12 U.S.C. 191 is not specific as to what constitutes "insolvency", and the Comptroller has great latitude regarding this determination. Therefore, the OCC believes that it should state clearly, in the form of a regulation, the specific measurements that it usually considers in making a determination of insolvency.

Second, the OCC believes that the public should be notified and have an opportunity to comment on the OCC's intention to change its past method of measuring a bank's net worth for the purpose of determining insolvency.

The OCC's proposal to change its method of measuring a bank's net worth for the purpose of determining solvency is based upon the following considerations:

First, the OCC's experience indicates that the public interest will be better served by closing a bank when the institution's equity capital has been depleted. Events over the last several years have demonstrated that once a bank's equity capital is exhausted, that bank has virtually no chance of recovery without government or outside intervention. Moreover, it has also been the OCC's experience that permitting an institution to continue operations when its owners no longer have any financial interests at stake encourages imprudent operations, including occasional abuse of high cost funding sources, and results in increased losses to third parties. Such continued operations affect the industry as a whole, placing healthy competitors at a disadvantage.

Second, banks with no equity capital may experience a loss in customer confidence and a decline in market discipline. The OCC believes that by using equity capital in applying the net worth standard, the frequency of such events will be reduced.

Third, this approach to the net worth standard is needed to make the OCC's practices conform more directly with GAAP.

Finally, the OCC believes that the proposed amendment will facilitate the sale of insolvent institutions and result in savings to the FDIC insurance fund.

It should be noted that, in proposing the amendment set forth below, the OCC does not intend to limit its discretion in bank closing matters. The proposed amendment merely advises the public of two of the standards upon which the OCC's determination of insolvency may be based. The OCC retains discretion to use other standards to satisfy itself of the insolvency of a national bank.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), it is certified that this amendment will not have substantial economic impact on a significant number of small entities.

Executive Order 12291

The OCC has determined that this amendment is not a "major rule" and therefore does not require a Regulatory Impact Analysis.

List of Subjects in 12 CFR Part 5

National banks, banking, receivership, insolvency.

Authority and Issuance

For the reasons set forth in the preamble, Part 5 of Chapter I of Title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 5—[AMENDED]

1. The authority citation for Part 5 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.;* 12 U.S.C. 93(a).

2. In § 5.49, paragraphs (c) (1) and (2) are redesignated as paragraphs (c) (2) and (3), and a new paragraph (c)(1) is added to read as follows:

§ 5.49 Receivership conservatorship.

* * * * *

(c) * * *

(1) *Standards for determining insolvency.* Among the standards used by the Office in determining whether a national bank is insolvent under 12 U.S.C. 191 are the following:

(i) *Net worth standard.* The Office may deem a national bank insolvent when its liabilities exceed its assets. A bank's liabilities shall exceed its assets when its equity capital is eliminated by losses. For the purpose of reaching a determination of insolvency, the bank's equity capital shall consist of:

(A) Common stockholders equity. Common stockholders' equity means common stock, common stock surplus, undivided profits, capital reserves, adjustments for the cumulative effect of foreign currency translation and net of unrealized losses on non-current marketable equity securities.

(B) Preferred stock and related surplus.

(ii) *Liquidity standard.* The Office may deem a national bank insolvent when it is unable to meet its obligations as they mature.

* * * * *

Date: June 28, 1989.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 89-15669 Filed 7-3-89; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-89-8]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 4, 1989.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. 25923, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on June 23, 1989.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions For Rulemaking

Docket No.: 25923

Petitioner: Air Transport Association (ATA)

Regulation Affected: 14 CFR Part 121, Subpart R

Description of Petition: To revise the flight time limitations for flag air carriers considering the following evolutionary changes in turbo-jet aircraft: (1) Long range capability approaching 8,000 nautical miles; (2) automated cockpit systems simplifying and improving navigation and systems management and simplifying communications requirements; (3) improved cockpit environments which include noise reduction and scientifically designed cockpits; and (4) a reduction in necessary cockpit crew positions as a result of the advanced cockpits, i.e., navigator and flight engineer.

Petitioners' Reason for the Rule: To provide clarity and understanding to flag air carrier flight time limitations as they apply to flight operations in airplanes designed for either two or three crewmembers.

[FR Doc. 89-15692 Filed 7-3-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-ANM-5]

Proposed Alteration of VOR Federal Airway V-160; Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter VOR Federal Airway V-160 from Blue Mesa, CO, to Denver, CO. This airway would be used by aircraft landing at satellite airports in the Denver terminal area. Extending V-160 would benefit air traffic control as well as pilots by providing a better navigational aid.

DATE: Comments must be received on or before August 14, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM-500, Docket No. 89-ANM-5, Federal Aviation Administration, 17900 Pacific Highway South, C-68966, Seattle, WA 98168.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Betty Harrison, Airspace Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ANM-5." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter VOR Federal Airway V-160 from Blue Mesa, CO, to Denver, CO. Presently, this airway is used by aircraft landing at satellite airports in the Denver terminal area. This action would decrease controller workload and benefit pilots wishing to land at satellite airports in the Denver terminal area. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-160 [Amended]

By removing the words "From Denver, CO," and substituting the words "From INT Blue Mesa, CO, 064°T(050°M) and Denver, CO, 212°T(200°M) radials; Denver;"

Issued in Washington, DC, on June 22, 1989.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 89-15693 Filed 7-3-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI-80-86]

RIN 1545-AJ42

Arbitrage Restrictions on Qualified Student Loan Bonds

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to arbitrage restrictions on qualified student loan bonds. Changes to the applicable law were made by the Tax Reform Act of 1984 and the Tax Reform Act of 1986. The proposed regulations provide guidance on how to compute the yield on student loans.

DATES: The amendments to the regulations are proposed to be effective generally for bonds (other than refunding bonds) issued after January 5, 1990. Written comments and requests for a public hearing must be delivered or mailed by September 5, 1989.

ADDRESS: Send comments and requests for a public hearing to: Internal Revenue Service, Attention: CC:CORP:T:R (FI-80-86), Room 4429, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: George F. Delduke, (202) 566-4545 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Submission to Small Business Administration

Pursuant to section 7805(f) of the Code, the rules proposed in this document will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1 to provide rules relating to arbitrage restrictions on qualified student loan bonds.

Section 103(a) of the Internal Revenue Code provides gnerally that gross income does not include interest on any State or local bond. Section 103(a) does not apply to any private activity bond that is not a qualified bond or to any arbitrage bond.

Section 141(e) provides that the term "qualified bond" includes a qualified student bond that is issued as part of an issue that meets the volume cap requirements of section 146 and certain

other requirements. Section 144(b) defines the term "qualified student loan bond" to mean a bond issued to make or finance certain federally guaranteed student loans under a program of general application to which the Higher Education Act of 1965 applies (guaranteed student loans) or to make or finance student loans under a program of general application that has been approved by a State (state supplemental student loans).

Section 148(a)(1) provides generally that a bond issued as part of an issue is an arbitrage bond if any portion of the proceeds of the issue is reasonably expected (at the time of issuance of the bond) to be used directly or indirectly to acquire higher yielding investments. Additionally, a bond is treated as an arbitrage bond if the issuer intentionally uses any portion of the proceeds of the issue in such manner. Section 148(b) provides that the term "higher yielding investments" means investments (other than certain tax-exempt bonds) that produce a yield over the term of the issue that is materially higher than the yield on the issue.

Section 1.103-13(b)(5)(i)(A) provides generally that the yield produced by investments acquired to carry out the governmental purpose of an issue (purpose investments) is materially higher than the yield on the issue if the yield on the purpose investments is more than one-eighth of one percentage point higher than the yield on the issue. In determining the yield on the purpose investments, administrative costs relating to the bonds and to the purpose investments that are paid by obligator are not taken into account. See, section 1.103-13(c)(5).

Section 1.103-13(b)(5)(viii) provides that the yield produced by purpose investments that are acquired program obligations is materially higher than the yield on the issue if the yield on the acquired program obligations is more than one and one-half percentage points higher than the yield on the issue. Section 1.103-13(h) defines the term "acquired program obligations" to mean obligations, such as student loans, that carry out the purpose of a governmental loan program that meets certain requirements. A larger spread is provided in the case of these loans because the costs incurred in administering this type of loan program are greater than the costs incurred in making other types of loans. Section 1.103-13(b)(5)(ix) provides that the permissible spread may exceed one and one-half percentage points if necessary to pay expenses (including losses resulting from bad debts) that are incurred as a direct result of administering the loan program. In determining the yield on the acquired program obligations, administrative costs relating to the bonds that are paid by the obligor are not taken into account.

Section 148(g) provides that, except to the extent otherwise provided in regulations, special allowance payments made by the Secretary of Education pursuant to section 438 of the Higher Education Act of 1965 are not be taken into account, for purpose of section 148(a)(1), in determining yields on student loan notes. The maximum interest rate payable by student borrowers on guaranteed student loans in established by the Federal Government at a below market interest rate. The Federal Government induces commerical lenders to originate these loans by agreeing to pay quarterly interest subsidies in the form of special allowance payments. The special allowance payments increase the interest rate on the federally guaranteed student loans to 3.25 percentage points above the 91-day Treasury bill rate. The Education Amendments of 1989 generally reduced by one-half the special allowance payable on loans acquired with proceeds of tax-exempt bonds.

Section 625 of the Tax Reform Act of 1984 (98 Stat. 924) provides that the Treasury Department shall prescribe regulations that specify the circumstances under which a qualified student loan bond shall be treated as an arbitrage bond, and that these regulations may require special allowance payments to be taken into account in determining yields on student loan notes. Section 5052 of the Technical and Miscellaneous Revenue Act of 1988 (102 Stat. 3677) provides that the Treasury Department must submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report explaining why such regulations have not been issued if the regulations are not issued before July 1, 1989.

Explanation of Provisions

The proposed regulations provide that special allowance payments are to be taken into account in determining the yield on guaranteed student loans. The proposed regulations also increase the permitted arbitage spread on these loans (and on state supplemental student loans) from one and one-half percentage point to two percentage points.

The proceeds of qualified student loan bonds generally are not used to originate guaranteed student loans, but are used to purchase these loans from commercial lenders that originated them. The bonds are issued for the purpose of alleviating perceived capital shortages in the secondary market for guaranteed student loans. The exclusion of special allowance payments from the arbitrage calculation, however, has enabled student loan issuers to earn excessive arbitrage profits and has resulted in the issuance of substantially more tax-exempt bonds that are necessary to alleviate capital shortages that may exist in the secondary market for these loans. See, Congressional Budget Office, *The Tax-Exempt Financing of Student Loans* (Aug. 1986). See also, *Guaranteed Student Loan Tax-Exempt Financing, Hearing Before the Subcomm. on Oversight of the Comm. on Ways and Means*, 96th Cong., 2d Sess. (1980). In accordance with the Congressional mandate, therefore, the proposed regulations provide that special allowance payments are to be taken into account in determining the yield on guaranteed student loans.

The costs of administering student loan programs are higher than the costs of administering most other loan programs because of the higher costs involved in servicing a large number of small loans. To reflect these higher costs, the proposed regulations increase the permitted arbitrage spread on student loans from one and one-half percentage points to two percentage points. The proposed regulations also provide that issuers may reduce the yield on federally guaranteed student loans by rebating excess student loan payment to the United States if necessary to comply with the two percentage point arbitrage profit limitation.

Regulatory Impact Analysis

These proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably a signed original and seven copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be scheduled and held upon written request by any person who submitted comments on the proposed rules. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

These proposed regulations were drafted in the Office of Tax Legislative Counsel, Department of the Treasury. However, personnel from other offices of the Treasury Department and the Internal Revenue Service participated in their development.

List of Subjects in 26 CFR 1.61-1.281-4

Income Taxes, Taxable income, Deductions, Exemptions.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 1.148-10 also issued under 26 U.S.C. 148 (g) and (i) and 98 Stat. 924.

Par. 2. The following new section 1.148-10 is added in the appropriate place:

§ 1.148-10 Purpose investments.

(a) *General rule.* [Reserved]

(b) *Special rules for student loans*—(1) *Program loans*—(i) *Materially higher.* The yield on student loans that are acquired program obligations (within the meaning of § 1.103-13(h)) and are allocated to the proceeds of an issue is not materially higher than the yield on the issue if the yield on the student loans does not exceed the yield on the issue by more than two percentage points. In lieu of the amount described in the preceding sentence, the issuer may substitute such larger amount as is necessary to pay expenses (including losses resulting from bad debts) reasonably expected to be incurred as a direct result of administering the student loan program to the extent that such amounts are not payable with funds appropriated from other sources.

(ii) *Administrative costs.* For purposes of determining the yield on student loans under paragraph (b)(1)(i) of this section, the costs of issuing, carrying, and repaying the issue that are paid by the obligors shall not be taken into account. The preceding sentence shall apply whether or not the payments are made from proceeds of the issue and whether or not the payments are treated as reimbursements of administrative costs, provided that the present value of such payments does not exceed the present value of the administrative costs paid by the issuer. This paragraph (b)(1)(ii) shall not apply to any amount taken into account in computing the yield on the issue.

(2) *SAP payments*—(i) *In general.* Payments made by the Secretary of Education pursuant to section 438 of the Higher Education Act of 1965 shall be taken into account in determining the yield on student loans.

(ii) *Rebate of excess yield to the United States.* The Commissioner shall adopt procedures under which issuers of qualified student loan bonds described in section 144(b)(1)(A) may rebate to the United States any amounts necessary to reduce the yield on the student loans to a yield that is not materially higher than the yield on the issue. Amounts paid to the United States in accordance with such procedures shall not be taken into account in determining the yield on the student loans.

(3) *Effective date.* This paragraph (b) shall apply to any bond issued after January 5, 1990, except—

(i) A bond issued exclusively to refund a bond issued before such date if—

(A) The amount of the refunding bond does not exceed 101 percent of the amount of the refunded bond; and

(B) The maturity date of the refunding bond is not later than the date that is 17 years after the date on which the refunded bond was issued (or, in the case of a series of refundings, the date on which the original bond was issued); and

(ii) A qualified student loan bond described in section 144(b)(1)(A) needed to fulfill binding written commitments to acquire or finance student loans originated before such date and after June 30, 1984, but only if the amount of such commitments is consistent with practices of the issuer that were in effect on March 15, 1984, with respect to establishing secondary markets for student loans described in section 144(b)(1)(A).

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

[FR Doc. 89-15754 Filed 6-26-89; 2:13 pm]

BILLING CODE 4830-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-133 Through 89-281, Inclusive]

Radio Broadcasting Services; Various Locations; C3 Upgrades

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the *Notice of Proposed Rule Making* released in the above-referenced proceeding on June 16, 1989 (DA 89-628) (54 FR 26220, June 22, 1989), by revising the following entries: (1) MM Docket No. 89-184 (No. 52), is corrected with respect to the call letters, coordinates, licensee and address, to read as follows: KINQ, 64-51-49 and 147-45-06, The Great Alaska Elec. Radio Co., Inc., 4600 Dale Road, Fairbanks, AK 99701; (2) MM Docket No. 89-263 (No. 131), is corrected with respect to the call letters, licensee and address, to read as follows: KBZE, Optima Communications, Inc., 1608 Corcoran Street NW., Washington, DC 20009-3004.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-15630 Filed 7-3-89; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 54, No. 127
Wednesday, July 5, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Proposed Determinations With Regard to the 1990 Feed Grains Program Provisions

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed determinations.

SUMMARY: The Secretary of Agriculture proposes to make the following determinations with respect to the 1990 crop of feed grains: (a) The established "target" price for grain sorghums, oats, and, if designated by the Secretary, barley; (b) the percentage reduction under an acreage reduction program (ARP); (c) whether an optional paid land diversion (PLD) should be established and, if so, the percentage of diversion under the program; (d) whether a marketing loan program should be implemented; (e) if a marketing loan program is implemented, whether the inventory reduction program (IRP) should also be implemented; (f) whether barley should be determined eligible for payment purposes; (g) whether malting barley should be exempt from an ARP; (h) whether corn silage should be eligible for loans and purchases; (i) whether to use combined or separate feed grain crop acreage bases; (j) premiums and discounts for grades, classes and other qualities; and (k) other related provisions.

These determinations are made pursuant to the Agricultural Act of 1949, as amended (the "1949 Act"), and the Commodity Credit Corporation (CCC) Charter Act, as amended.

EFFECTIVE DATE: Comments must be received on or before September 1, 1989, in order to be assured of consideration.

ADDRESS: Bruce R. Weber, Director, Commodity Analysis Division, USDA–ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Philip W. Sronce, Agricultural Economist, Commodity Analysis Division, USDA–ASCS, Room 3748, South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447–4418.

The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed determination and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated as "major."

It has been determined that these program provisions will result in an annual effect on the economy of $100 million or more.

The titles and numbers of the federal assistance programs, as found in the catalogue of Federal Domestic Assistance, to which this notice applies are:

Titles	Numbers
Commodity Loans and Purchases	10.051
Feed Grains Production Stabilization	10.055

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

It has been determined by environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

On April 5, 1989 (FR Vol. 54, No. 64) a notice of proposed determinations was published which set forth provisions common to the 1990 feed grains, wheat, upland cotton, ELS cotton, and rice price support and production adjustment programs.

Accordingly, the following program determinations are proposed to be made by the Secretary with respect to the 1990 crop of feed grains program.

(a) *Established "Target" Price for Grain Sorghums, Oats, and, if Designated by the Secretary, Barley.* Section 105C(c)(1)(A) of the 1949 Act provides that the Secretary shall make available to producers payments for the 1990 crop of corn, grain sorghums, oats, and, if designated by the Secretary, barley, in an amount computed by multiplying (1) the payment rate by (2) the individual farm program acreage by (3) the farm program payment yield.

Section 105C(c)(1)(C)(i) of the 1949 Act provides that the payment rate for the 1990 crop of corn shall be the amount by which the established "target" price for the crop exceeds the higher of (1) the national weighted average market price received by producers during the first five months of the marketing year for such crop and (2) the basic loan level for such crop. Section 105C(c)(1)(E) provides that the established "target" price for the 1990 crop of corn shall not be less than $2.75 per bushel.

In accordance with section 105C(c)(1)(D), notwithstanding the provisions of sections 105C(c)(1) (A)–(C), if the Secretary exercises the discretionary authority to adjust the loan and purchase level the Secretary shall increase the established price payments in such amount as the Secretary determines necessary to provide the same total return to producers as if such adjustment had not been made. This second payment rate level will be determined based on the difference between the basic loan level and the higher of (1) the weighted national average market price of corn received by producers during the 1990–91 marketing year (September 1990–August 1991) and (2) the adjusted loan level. The maximum payment rate for corn would be $0.39 ($1.96–$1.57) per bushel. Payments that are made based upon this payment rate would not be subject to the $50,000 payment limitation but would be subject to the overall $250,000 payment limitation.

Section 105C(c)(1)(F) provides that the payment rate for grain sorghums, oats, and, if designated by the Secretary, barley, shall be such rate as the Secretary determines fair and reasonable in relation to the rate at which payments are made available to corn.

The Secretary proposes to: (1) Set forth the target price for corn at the minimum statutory level of $2.75 per bushel; and (2) maintain the same relationships to corn as provided under the 1989 program to determine the target prices for grain sorghums, oats and barley. The target prices per bushel would be as follows: $2.75 for corn; $2.61 for grain sorghums; $1.45 for oats; and $2.36 for barley.

Comments are requested on the proposed determinations by the Secretary for the grain sorghums, oats and barley established "target price" levels for purposes of making 1990 crop deficiency payments in accordance with section 105C(c)(1)(C) of the 1949 Act.

(b) *Acreage Reduction Program (ARP).* Section 105C(f) of the 1949 Act provides, with respect to the 1990 crop of feed grains, that if the Secretary estimates, not later than September 30, 1989, that the quantity of corn on hand in the United States on the first day of the marketing year (September 1, 1990) for such crop (not including any quantity of corn of such crop) will be more than 2 billion bushels, the Secretary shall provide for an ARP under which the acreage planted to feed grains for harvest on a farm would be limited to the feed grains crop acreage base (CAB) for the farm for the crop reduced by not less than 12.5 percent nor more than 20 percent.

If the quantity is estimated to be 2 billion bushels or less, the Secretary may provide for an ARP under which the acreage planted to feed grains for harvest on a farm would be limited to the feed grain CAB for the farm for the crop reduced by not more 12.5 percent.

In the case of the 1990 crop of oats, unless the Secretary determines that the supply of oats will be excessive, the Secretary is required to establish an ARP for oats not to exceed 5 percent.

If a feed grain ARP is announced, such limitation shall be achieved by applying a uniform percentage reduction to the feed grain CAB for the crop for each feed grains-producing farm. Producers who knowingly produce feed grains in excess of the permitted feed grain acreage for the farm shall be ineligible for loans, purchases, and payments with respect to feed grains produced on that farm. An acreage on the farm shall be devoted to acreage conservation reserve (ACR) determined by dividing: (1) The product obtained by multiplying the number of acres required to be withdrawn from the production of feed grains times the number of acres planted to such commodity by (2) the number of acres authorized to be planted to such commodity under the ARP announced by the Secretary.

The quantity of corn on hand on September 1, 1990, is currently estimated to be more than 2 billion bushels. Accordingly, the Secretary would be required to implement an ARP of not less than 12.5 percent nor more than 20 percent.

Comments are requested as to the percentage level, if any, at which an ARP should be implemented for the 1990 crop of feed grains.

(c) *Paid Land Diversion PLD.* Section 105C(f)(5) of the 1949 Act provides that the Secretary may make land diversion payments to producers of feed grains, whether or not an ARP or set-aside program for feed grains is in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage of feed grains to desirable goals. Such land diversion payments shall be made to producers who, to the extent prescribed by the Secretary, devote to approved ACR an acreage of cropland on the farm in accordance with land diversion contracts entered into by the Secretary with such producers.

The amounts payable to producers under land diversion contracts may be determined through the submission of bids for such contracts by producers in such manner as the Secretary may prescribe or through such other means as the Secretary determines appropriate. In determining the acceptability of contract offers, the Secretary shall take into consideration the extent of the diversion to be undertaken by the producers and the productivity of the acreage diverted. The Secretary shall limit the total acreage to be diverted under agreements in any county or local community so as not to adversely affect the economy of the county or local community.

Any additional acreage reduction under a PLD would be at a producer's option.

Comments are requested with respect to the need for an optional PLD and, if implemented, the provisions of such program.

(d) *Marketing Loans and Loan Deficiency Payments.* Section 105C(a)(4) of the 1949 Act provides that the Secretary may permit a producer to repay a loan for feed grains at a level that is the lesser of: (1) The announced loan level or (2) the higher of: (i) 70 percent of the basic loan level or (ii) the prevailing world market price for feed grains, as determined by the Secretary.

If the Secretary permits a producer to repay a loan as described above, the Secretary shall prescribe by regulation: (1) A formula to define the prevailing world market price for feed grains and (2) a mechanism by which the Secretary shall announce periodically the prevailing world market price for feed grains.

Section 105C(b) provides that the Secretary may, for the 1990 crop of feed grains, make payments available to producers who, although eligible to obtain a loan or purchase agreement, agree to forgo obtaining such loan or agreement in return for such payments. The payment shall be computed by multiplying: (1) The loan payment rate by (2) the quantity of feed grains the producer is eligible to place under loan.

For purposes section 105C(b), the quantity of feed grains eligible to be placed under loan may not exceed the product obtained by multiplying: (1) The individual farm program acreage for the crop by (2) the farm program payment yield established for the farm. The loan payment rate shall be the amount by which the announced loan level exceeds the level at which a loan may be repaid.

The Secretary does not intend to implement a marketing loan and other related provisions for the 1990 crop of feed grains since other program provisions make feed grains competitive in domestic and international markets. Accordingly, comments are requested with respect to the Secretary's intentions or whether the Secretary should implement marketing loans and "loan deficiency" payments for the 1990 crop of feed grains and the formula and methodology for determining the prevailing world market price to be used if marketing loans are implemented.

e. *IRP.* Section 105C(g) of the 1949 Act provides that the Secretary may, for the 1990 crop of corn, grain sorghums, oats, and, if designated by the Secretary, barley, make payments available to producers who: (1) Agree to forgo obtaining a loan or purchase agreement; (2) agree to forgo receiving deficiency payments; and (3) do not plant feed grains for harvest in excess of the CAB reduced by one-half of any acreage required to be diverted from production under the announced ARP. Such payments shall be made in the form of feed grains, subject to the availability of such feed grains, which are owned by CCC. Payments under this program shall be determined in the same manner as established with respect to the marketing loan program.

Accordingly, the implementation of this program is considered to be dependent on whether a marketing loan program is also instituted. Comments are requested on whether an IRP should

be implemented for the 1990 crop of feed grains if marketing loans are also implemented.

f. *Inclusion of Barley as an Eligible Commodity for Payments.* Section 105C(c)(1)(A) of the 1949 Act gives the Secretary discretionary authority to include barley as a commodity which is eligible for deficiency payments under the feed grain program. Section 105C(g) of the 1949 Act gives the Secretary discretionary authority to include barley as a commodity which is eligible for IRP payments, if an IRP is implemented. In the past, barley has been included as an eligible commodity for the purpose of deficiency payments with the exception of the 1967, 1968, and 1971 programs. If barley was not included in the 1990 program, barley producers would not be eligible to receive deficiency payments under the feed grain program for their crops but would be eligible for price support loans and purchases and the farmer-owned reserve program. Accordingly, the Secretary proposes to make barley eligible for deficiency payments and, if an IRP is implemented, proposes to make barley eligible for IRP payments.

Comments are requested on the inclusion of barley as a commodity for which deficiency payments and IRP payments will be made under the 1990 Feed Grain Program.

g. *Exemption of Malting Barley from an ARP.* Under section 105C(f)(2)(c) of the 1949 Act, the Secretary may provide that no producer of malting barley shall be required as a condition of eligibility for feed grain loans, purchases, and payments to comply with any ARP if such producer has previously produced a malting variety barley, plants barley only of an acceptable malting variety for harvest, and meets other conditions as the Secretary may prescribe. Malting barley varieties have not been exempt from ARP requirements in the past. The Secretary proposes not to exempt malting barley from an ARP with respect to the 1990 Feed Grain Program.

Comments are requested with respect to exempting malting barley from an ARP.

h. *Inclusion of Corn Silage Grain Equivalent in Loans and Purchases Program.* Section 403 of the Food Security Act of 1985 provides that the Secretary may make available loans and purchases to producers on a farm who: (1) For silage, cut corn (including mutilated corn) that the producers have produced in a crop year or purchase or exchange corn (including mutilated corn) that has been produced in such crop year by another producer and (2) participate in an acreage reduction or set-aside program established for such crop year.

Such loans and purchases may be made on the quantity of corn of the same crop, other than the corn cut for silage, which is acquired by the producer and which is equal to the number of acres cut for silage multiplied by the lower of the farm program yield or the actual yield on a field, as determined by the Secretary, that is similar to the field from which silage was obtained. Corn which is to be substituted for corn cut for silage could either be purchased in the market or be produced by the producer on a non-complying farm.

In 1986, 8.3 million acres of corn was cut for silage, with over 60 percent of silage production occurring in ten States: Wisconsin, New York, Pennsylvania, Minnesota, Iowa, California, Nebraska, Michigan, Virginia, and Ohio. These States also represent major areas of livestock production, especially dairy production.

Comments are requested whether loans and purchases should be available for corn silage grain equivalent in accordance with the 1990 Feed Grain Program.

i. *Method of Establishing the Feed Grain Crop Acreage Base.* Under consideration is whether to use combined or separate crop acreage bases for purposes of implementing the annual ARP and PLD programs. Since the 1982 program, crop acreage bases were established for each feed grain. However, for puposes of implementing the ARP and PLD programs, combined bases were used: one for corn and sorghum and one for barley and oats. Recognizing that supply and demand conditions vary among feed grains, ARP requirements for oats may differ from the other feed grains, thus, further complicating the administration of the program when using combined bases.

Comments are requested with respect to whether combined or separate crop acreage bases should be used for purposes of implementing the annual ARP and PLD programs.

j. *Premiums and Discounts for Grades, Classes, and Other Qualities.* Comments are requested on the method to determine and level of premiums and discounts based on: (a) Grade standards (b) foreign material and dockage; (c) damaged kernels; and (d) moisture content. Comments and supporting information are also requested on 1) whether to establish and the level of premiums and discounts on other factors such as oil, protein, and starch content and seed shatterability, and 2) any other method which ASCS should consider to further encourage the production and marketing of clean, high quality grain.

k. *Other Related Provisions.* A number of other determinations must be made in order to carry out the feed grain loan and purchase programs such as: (1) Commodity eligibility, and (2) such other provisions as may be necessary to carry out the programs. Consideration will be given to any data, views and recommendations that may be related to these issues.

Authority: 7 U.S.C. 1444e, 1444s-1, 1445b-4, 1445b-5, and 1445e, 15 U.S.C. 714b and 714c.

Signed at Washington, DC on June 28, 1989.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89-15647 Filed 7-3-89; 8:45 am]

BILLING CODE 3410-05-M

Cooperative State Research Service

National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board

Date: August 3-5, 1989

Time:

1:00 p.m.-5:00 p.m., August 3, 1989
8:00 p.m.-5:00 a.m., August 4, 1989
8:00 p.m.-5:00 a.m., August 5, 1989

Place: Inn of the Mountain Gods, Mescalero, New Mexico

Type of Meeting: Open to the public. Persons may participate in the meeting and site visits as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: The Board will review research and extension programs in watershed management and recreation on public lands.

Contact Person for Agenda and More Information: Marshall Tarkington, Executive Secretary, National Agricultural Research and Extension Users Advisory Board; Room 432-A, Administration Building, U.S. Department of Agriculture, Washington, DC 20250-2200; telephone (202) 447-3684.

Done in Washington, DC, this 21st day of June 1989.

John Patrick Jordan,

Administrator.

[FR Doc. 89-15752 Filed 7-3-89; 8:45 am]

BILLING CODE 3410-23-M

Forest Service

Southern California Edison 66 kilovolt Goleta to Gaviota Electric Transmission Line; Intention To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will jointly prepare an environmental impact statement (EIS), as required by the National Environmental Quality Act (NEPA), and an Environmental Impact Report (EIR), as required by the California Environmental Quality Act, with the County of Santa Barbara, California. The proposed project is a 66 kilovolt electric transmission line in and adjacent to the Santa Barbara Ranger District, Los Padres National Forest. The proposal would result in the construction of 19.3 miles of electrical transmission line and other facilities needed to construct and support the line. Approximately three miles of the proposed powerline would be located on National Forest system lands.

The agency invites comments and suggestions on the scope of analysis to be included in the draft environmental impact statement. In addition the agency gives notice of the full environmental analysis and decision making process that is beginning on the proposal so that interested and affected people know how they may participate and contribute to the final decision.

DATE: Comments on the scope of the analysis must be received by July 31, 1989.

ADDRESS: Submit written comments and suggestions concerning the scope of the analysis to Joan Brandoff-Kerr, USFS, Santa Barbara Ranger District, Star Route, Santa Barbara, CA 93105.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action should be directed to Patrick Pontes, District Ranger, USFS, Santa Barbara Ranger District, Star Route, Santa Barbara, CA 93105, phone (805) 967-3481.

SUPPLEMENTARY INFORMATION: The project has been proposed by the Southern California Edison Company. The purpose of the project is to provide energy for oil processing facilities located along the coast of Santa Barbara County.

Alternatives being considered are: (1) Utilization of existing powerline right-of-way in the area, either above or underground, (2) bringing in power from the northwest rather than from the southeast, (3) on-site generation of power, (4) development of alternate energy sources, such as solar or wind, and (5) no action.

Preliminary issues which have been identified are visual resources, biological resources, fire hazards, cultural resources, recreation, the need for an additional electrical power in the area, retention of unauthorized roads on National Forest land, growth inducing impacts of the powerline, and soils and hydrological resources.

Southern California Edison will be required to obtain a permit to construct the powerline on National Forest land. An easement will be required to maintain the improvements after construction. The County of Santa Barbara requires a Conditional Use Permit and a Coastal Development Permit.

The responsible official for the Forest Service and NEPA process is Arthur J. Carroll, Forest Supervisor of the Los Padres National Forest.

The decision to be made by the Forest Supervisor is the location, tower design, and width of the easement for a permanent transmission line across National Forest land. Associated facilities, particularly permanent and temporary road access, and mitigations for impacts will also be considered.

The estimated date for completion of the DEIS is Jan. 15, 1990. The estimated date for completion of the final EIS is April 15, 1990.

The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service and Santa Barbara County at a time when these comments can be meaningfully considered and responded to in the final environmental impact statement (FEIS).

Date: June 23, 1989.

Arthur J. Carroll,

Forest Supervisor.

[FR Doc. 89-15652 Filed 7-3-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: 1989 Annual Survey of Manufacturers
Form Number: MA-1000 (L), (B), (S)
Agency Approval Number: 0607-0449
Type of Request: Revision of a currently approved form
Burden: 205,900 hours
Number of Respondents: 61,000
Average Hours Per Response: 2 hours and 33 minutes
Needs and Uses: Federal agencies use the Annual Survey's input and output data as benchmarks for their statistical programs. Private industry makes extensive use of the annual figures on product class shipments at the U.S. level in its market analysis, product planning, and investment planning.
Affected Public: Businesses or other for-profit institutions
Frequency: Annually
Respondent's Obligation: Mandatory
OMB Desk Officer: Don Arbuckle, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

BEST COPY AVAILABLE

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 28, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-15650 Filed 07-03-89; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Douglas J. Aller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1223H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 89-00011." A summary of the application follows.

Summary of the Application

Applicant: Northwest Gourmet Foods, Inc. ("NGF"), 2120 Riverside Road, Yakima, Washington 98901. Contact: Peter M.R. Fretwell, President, Telephone: 509/457-4323.

When exporting non-food related Products and/or Services, NGF may register other business names with the Secretary of State of the State of Washington. The protection of the Certificate of Review would extend to NGF when NGF is conducting business under other registered business names.

Application No.: 89-00011

Date Deemed Submitted: June 22, 1989

Members (in addition to the applicant):

Peter M.R. Fretwell, sole shareholder

Export Trade—1. *Products and Services.* Products and Services to be exported include all products and services.

2. *Export Trade Facilitation Services (as they relate to the export of Products and Services).* Consulting, financing, export licensing, shipping, transportation, taking title to goods, providing information on exporting mechanics to potential exporters, matching buyers with sellers, placing marine, casualty, and war and political risk insurance, coordinating the shipment of products, processing documentation, and providing market research.

Export Markets. The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation. NGF, when conducting business under the name Northwest Gourmet Foods, Inc., or other registered business names, seeks certification for the following activities:

1. To enter into exclusive and non-exclusive agreements with individual suppliers to act as the supplier's export agent or distributor, whereby NGF may establish export prices, quantities, territories, and customer restrictions for Products and/or Services for the Export Markets. "Exclusive" means that NGF will not represent any competitors without the supplier's authorization, and the supplier will not otherwise sell directly or indirectly into Export Markets in which NGF serves the supplier.

2. To enter into exclusive and/or non-exclusive agreements with persons for Export Markets. "Exclusive" means that NGF may agree to deal in Products and/or Services only through that person, and that person may agree not to represent or buy those Products and/or Services from anyone other than NGF.

3. To enter into exclusive and/or non-exclusive agreements with individual foreign buyers for the Export Markets to act as their purchasing agent. "Exclusive" means that NGF may agree to deal in Products and/or Services only through that individual foreign buyer, and that individual foreign buyer may agree not to represent or buy those Products and/or Services from anyone other than NGF.

4. NGF may respond to sales opportunities in Export Markets by:

a. Contacting individual suppliers of the Products and/or Services involved in the sales opportunity;

b. Inviting the suppliers to provide independent price quotes for the Products and/or Services (to which NGF may add its own markup);

c. Entering into an agreement with individual suppliers for which NGF submits a response to the sales opportunity;

d. Taking title to Products from suppliers and shipping them to the buyer at NGF's quoted export price.

Dated: June 27, 1989.

Douglas J. Aller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 89-15636 Filed 7-3-89; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Visa Waiver Inquiries

June 28, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Martin J. Walsh, International Commodity Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-3400.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to advise the public that, effective immediately, a new telephone number is in use for handling inquiries regarding visa waivers. The number is (202) 377-3588. Calls regarding visa waivers will not be taken on any other number.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-15663 Filed 7-3-89; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an information collection requirement concerning Certification of Commercial Pricing.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson, Office of Federal Acquisition and Regulatory Policy, (202) 523-3781.

SUPPLEMENTARY INFORMATION: a. *Purpose:* This clearance covers the reporting requirements as required by Pub. L. 98-577 and 99-591 on Certificates of Commercial Pricing. The clauses at FAR 52.215-32 and 52.215-35 require that offerors/contractors certify to the best of their knowledge and belief that prices offered for certain spare or repair parts that the contractor offers for sale to the public are no higher than the lowest commercial sales price at which such parts were sold during the most recent regular monthly quarterly, or other period for which sales data are reasonably available; provided, that in no event shall this period be less than 30 days in duration. All items for which prices offered are higher than the lowest commercial sales price discussed above must be identified and a written justification for the difference supplied. This information is required by Pub. L. 98-577 and 99-591 and is a new requirement for Part 15. This final rule applies to acquisitions involving major systems for civilian agencies and for all Parts and components under DoD, NASA, and Coast Guard acquisitions.

The commercial pricing information is used by contracting officers to ensure that the Government does not pay prices for commercial spare and repair parts that exceed the lowest commercial sales prices at which such times are sold by the contractor to the general public unless the price differences are justified. Without the information, the Government may pay prices for such supplies that are higher than prices paid by other customers.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, 3,030; responses per respondent, 1; total annual responses, 30,300; hours per response, 12 and total response burden hours, 363,600.

c. *Annual recordkeeping burden:* The annual recordkeeping burden is estimated as follows: Recordkeepers, 3,030; hours per recordkeeper, 160; and total recordkeeping burden hours, 484,800.

d. *Additional data:* An approval request for this information collection was submitted to OMB on June 25, 1985, on November 8, 1985, April 18, 1986, and November 14, 1988. None of the submissions was approved.

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0XXX, Certification of Commercial Pricing.

Dated: June 26, 1989.

Margaret A. Willis,

FAR Secretariat.

June 26, 1989.

[FR Doc. 89-15074 Filed 7-3-89; 8:45 am]

BILLING CODE 6820-JC-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Policy Board Advisory Committee; Meeting

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session on 27-28 July 1989 in the Pentagon, Washington, DC.

The mission of the Defense Policy Board is to provide the Secretary of Defense, Deputy Secretary of Defense and the Under Secretary of Defense for Policy with independent, informed advice and opinion concerning major matters of defense policy. At this meeting the Board will hold classified discussions on national security matters.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this Defense Policy Board meeting concerns matters listed in 5 U.S.C. 552b (c)(1)(1982), and that accordingly this meeting will be closed to the public.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

June 28, 1989.

[FR Doc. 89-15731 Filed 7-3-89; 8:45 am]

BILLING CODE 3810-01-M

Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, August 1, 1989; Tuesday, August 8, 1989; Tuesday, August 15, 1989; Tuesday, August 22, 1989; and Tuesday, August 29, 1989 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, D.C.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force and Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related soley to the internal personnel rules and practices of an agency," (5 U.S.C. 552b(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and priviledged or confidential" (5 U.S.C. 552b(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b(c)(2)), and the detailed wage data considered from officials of private establishments with a

guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the Chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

June 28, 1989.

[FR Doc. 89-15732 Filed 7-3-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Availability of the Final Supplemental Environmental Impact Statement for the Johnston Atoll Chemical Agent Disposal System

AGENCY: Department of the Army, Department of Defense.

ACTION: Notice of availability.

SUMMARY: This announces the Notice of Availability of the Final Supplemental Environmental Impact Statement (FSEIS) covering the disposal of process wastes generated from the operation of the Johnston Atoll Chemical Agent Disposal System (JACADS). The FSEIS selects a preferred alternative for each waste category. The "no action" alternative for all wastes (except recyclable metal) is indefinite on-island storage.

SUPPLEMENTARY INFORMATION: In 1983, the Army issued an EIS for the JACADS project. The 1983 Final EIS identified the process (incineration) and location on Johnston Island for the JACADS facility. JACADS will destroy chemical munitions containing agents VX, GB and HD beginning in 1990. The ultimate disposition of JACADS process wastes was not determined in 1983 pending further study.

The FSEIS addresses alternatives for final disposition of the JACADS process wastes. This FSEIS identifies the following alternatives for the three categories of JACADS process waste. The alternatives are listed in order of Army preference.

Disposal Alternatives in Order of Preference

Liquid Process Waste

Preferred alternative: Ocean disposal of liquid process waste.

Second alternative: Dry the brine, drum and ship to U.S. landfill.

Third alternative: Dry the brine, drum and store on Johnston Island ("no action" alternative).

Solid Waste with Value

Preferred alternative: Sale of scrap metal.

Second alternative: Ship to U.S. landfill.

Third alternative: Ocean disposal of scrap metal.

Solid Waste with No Value

Preferred alternative: Shipment of nonsaleable waste to U.S. landfill.

Second alternative: Store nonsaleable waste on Johnston Island ("no action" alternative).

Third alternative: On-island use of encapsulated waste on Johnston Island.

Fourth alternative: Ocean disposal of encapsulated waste.

On November 18, 1988, the President signed the Ocean Dumping Ban Act of 1988 which amended the Marine Protection, Research, and Sanctuaries Act. This Act currently prohibits the Army from disposing of any process waste including liquid brine waste—the preferred alternative for the liquid waste—in the ocean. Ocean dumping alternatives will not be selected in the Record of Decision unless an exception is granted. The Army does not intend to ask Congress for an exception to the Act.

The alternatives for disposing of all of the wastes have been rank ordered. For liquid process wastes, the second alternative (landfill the dried brine salts in the United States) will be used unless other considerations—cost, logistics impact or political factors—make it not viable. This tiered approach in selecting disposal alternatives is described in section 1.2 of the FSEIS and is summarized in the above matrix. No significant adverse environmental impacts are expected from any of the alternatives. The public will have an opportunity to comment on the tiered selection of alternatives during the comment period for this FSEIS.

Copies of the FSEIS for JACADS are available from the Office of the Program Manager for Chemical Demilitarization, ATTN: SAIL-PMT-A (Mr. Richard Rife), Building E4585, Edgewood Area, Aberdeen Proving Ground, Maryland 21010-5401; or the Commander, U.S. Army Engineer Division, Pacific Ocean, ATTN: CEPOD-ED-PV, Fort Shafter, Hawaii 96858-5440. Comments on the FSEIS will be considered by the Army in their Record of Decision and should be provided in writing to Mr. Rife at the first address given above. The FSEIS will have a 30-day comment period from the date the NOA appears in the **Federal Register.**

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I&L).

[FR Doc. 89-15675 Filed 7-3-89; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: 24-25 July 1989

Time: 0800-1600 hours, daily

Place: Washington, DC

Agenda: The Army Science Board Ad Hoc Subgroup on Total Quality Management will meet in executive session to review and discuss proprietary material from previously visited commercial industries. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at, (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-15703 Filed 7-3-89; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Office of Fossil Energy

Office of Planning and Environment; International Coal Technology Export Directory

AGENCY: Office of Fossil Energy, DOE.

SUMMARY: To support the development of coal and coal technology export markets, the Office of Fossil Energy of the Department of Energy is responding to the industry's request for a comprehensive directory entitled "The Directory of U.S. Coal and Technology Export Resources". This reference document will be targeted towards potential purchasers of U.S. coal and coal technology export resources and will be made available overseas through the Department of State and Department of Commerce as well as through the National Technical Information Services (NTIS) in the United States. Industry parties interested in inclusion in this directory that have an existing product or service for export should contact Sue Ellen Walbridge in writing at the address below for a complete set of detailed instructions (including a data template, sample page, and directory outline showing available categories) and schedule requirements.

DATE: Please respond on or before July 17, 1989, to ensure adequate time for inclusion in the directory.

ADDRESS: Address correspondence to the Department of Energy, Office of Fossil Energy, 1000 Independence Avenue, SW., Washington, DC 20585, to the attention of Sue Ellen Walbridge, FE-4, Room 4G-067.

FOR FURTHER INFORMATION CONTACT: Sue Ellen Walbridge, Project Manager, FE-4, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7735.

J. Allen Wampler,

Assistant Secretary Fossil Energy.

[FR Doc. 89-15733 Filed 7-3-89; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 89-17-NG]

Cascade Natural Gas Corp.

Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued an order granting Cascade Natural Gas Corporation (Cascade) blanket authorization to import natural gas from Canada. The order issued in FE Docket No. 89-17-NG authorizes Cascade to import up to 56 Bcf of Canadian natural gas over a two-year period beginning on the date of first delivery.

A copy of the order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday except on Federal holidays.

Issued in Washington, DC, June 14, 1989.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 89-15735 Filed 7-3-89; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 89-34-NG]

CMEX Energy, Inc.

Application for Blanket Authorization To Import and Export Natural Gas and Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application for blanket authorization to import and export natural gas and liquefied natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on June 8, 1989, of an application filed by CMEX Energy, Inc. (CMEX), for blanket authorization to import and to export up to a total of 76 Bcf of natural gas and/or liquefied natural gas (LNG) over a two-year period beginning on the date of first delivery of imported or exported natural gas or LNG. CMEX intends to utilize existing pipeline and LNG facilities for the processing and transportation of the volumes to be imported or exported and to submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0209-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than August 4, 1989.

FOR FURTHER INFORMATION CONTACT:

Lot Cooke, Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-070, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6116.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION:

CMEX, a Texas corporation, is a marketer of natural gas. Under the blanket authority sought, CMEX contemplates purchasing natural gas and LNG from a variety of foreign suppliers and reselling those supplies to various purchasers, including local distribution companies, pipelines, and commercial and industrial end-users. Under the export authority sought, CMEX proposes to secure natural gas from a variety of domestic suppliers and resell the gas to customers outside the United States. CMEX would import and export natural gas and LNG both for its own account as well as for the accounts of others.

Currently, CMEX is negotiating arrangements to export natural gas to Canada and Mexico, but is requesting the flexibility to enter into agreements for the importation and exportation of natural gas and LNG with Canada and Mexico as well as other similarly situated countries. The specific terms of each import and export arrangement would be negotiated on an individual basis at market responsive prices.

In support of its application, CMEX asserts that the proposed imports will make competitively priced gas available to U.S. markets while the short-term nature of the transactions will minimize the potential for undue long-term dependence on foreign sources of energy. With regard to the proposed exports, CMEX states that the volumes would be incremental to current U.S. needs and that the sale of the gas would result in a reduction of the current excess domestic natural gas supply, generate income and tax revenues, and reduce the U.S. trade deficit.

CMEX requests expedited treatment of its application so it will have the authority to commence anticipated exports of domestic natural gas to Mexico on August 1, 1989. A decision on CMEX's request for expedited treatment will not be made until all responses to this notice have been received and evaluated.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, the domestic need for the gas to be exported is considered, and any other issue determined to be appropriate in a particular case. Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines for the requested import authority, and on the domestic need for gas the applicant proposes to export. As noted above, the applicant asserts that import and export arrangements transacted under the

requested authority will be competitive, and that there is no current need for domestic gas that would be exported under the proposed short-term arrangements. Parties opposing the arrangement bear the burden of overcoming these assertions.

All parties should be aware that the approval of this application may permit the import or export of natural gas or LNG at any international border point where existing transmission or processing facilities are located.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., e.d.t. August 4, 1989.

A decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of CMEX's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 26, 1989.

J. Allen Wampler,

Assistant Secretary.

[FR Doc. 89-15736 Filed 7-3-89; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 89-35-NG]

Potomac Energy Corp.

Application for Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on June 9, 1989, of an application filed by Potomac Energy Corporation (Potomac Energy) for blanket authorization to import up to 125 MMcf of Canadian natural gas per day and a maximum of 75 Bcf for a term of two years beginning on the date of first deliver. Potomac Energy intends to utilize existing pipeline facilities for transportation of the volumes to be imported, and proposes to submit quarterly reports giving the details of individual transactions.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Orders Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than August 4, 1989.

FOR FURTHER INFORMATION CONTACT:

Robin R. Howell, (or Larine A. Moore) Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION:

Potomac Energy, a Delaware corporation with its principal place of business in Washington, DC, intends to import this gas either for its own account, or as broker or agent on behalf of others. The gas would be purchased from a variety of Canadian suppliers and sold on a short-term or spot basis to a wide range of markets in the United States, including pipelines, local distribution companies and commercial and industrial end-users. The specific terms of each import transaction, including price and volumes, would be negotiated on an individual basis and will reflect prevailing market conditions.

Potomac Energy requests that an authorization be granted on an expedited basis. A decision on Potomac Energy's request will not be made until all responses to this notice have been received and evaluated.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining

whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement will be competitive and thus in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if this blanket import application is granted, the authorization may permit the import of the gas at any international border point where existing transmission facilities are located. In addition, a total amount of authorized volumes may be desigatned for the term rather than a daily limit, in order to provide the applicant with maximum flexibility of operation.

Nepa Compliance

The DOE has determined that compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable and written comments. Any person wishing to become a party to the proceeding and to have the written comment considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., e.d.t., August 4, 1989.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Potomac Energy's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 26, 1989.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 89-15737 Filed 7-3-89; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 89-26-NG]

Texas Eastern Transmission Corp., Northeast Energy Associates North Jersey Energy Associates; Joint Application To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Joint Application for a Long-Term and a Blanket Authorization to Import Natural Gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on April 18, 1989, of a joint application filed by Texas Eastern Transmission Corporation (Texas Eastern), Northeast Energy Associates, A Limited Partnership (Northeast), and North Jersey Energy Associates, A Limited Partnership (North Jersey), for authorization to import from ProGas Limited (ProGas) up to 101,000 Mcf per day of Canadian natural gas over a period of 15 years beginning on the date that initial deliveries commence. Part of this gas, up to 29,000 Mcf per day, would be used for Texas Eastern's system supply requirements. The remaining volumes would be used to fuel two new dual-cycle 300 megawatt (NW) cogeneration facilities to be owned by Northeast in Bellingham, Massachusetts, and by North Jersey in Sayreville, New Jersey. In addition, since the long-term supplies to be purchased from ProGas will make up only about 60 percent of the requirements of the cogeneration facilities, Northeast and North Jersey request separate blanket authority to import up to 50,000 Mcf of Canadian gas per day from ProGas and/or other suppliers under individually negotiated, short-term arrangements. The requested blanket authority would be for two years beginning on the date of first delivery. The imports from ProGas and some, if not all, of the blanket imports that may be purchased from other suppliers would enter the U.S. at Niagara Falls, New York, and would be transported through existing and proposed pipeline facilities.

Concurrently with this application, Texas Eastern submitted a notice of withdrawal of its previous applications filed in 1982 and 1985 in ERA Docket Nos. 82-05-NG and 85-19-NG which sought authorization to import up to a total of 101,000 Mcf per day of Canadian natural gas from ProGas through October 31, 2002.

The application is filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to

intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed no later than August 4, 1989.

FOR FURTHER INFORMATION:

Tom Dukes, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9590.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION:

Texas Eastern, a Delaware Corporation with its principal office in Houston, Texas, is an interstate pipeline. Northeast is a Massachusetts limited partnership, and North Jersey is a New Jersey limited partnership. Each limited partnership acts through Intercontinental Energy Corporation (IEC), a Massachusetts corporation with its principal office in Hingham, Massachusetts.

Construction of the two cogeneration facilities is expected to begin by July 1989. Both will be operated as "qualifying facilities" under Section 201 of the Public Utility Regulatory Policies Act of 1978. (See *Northeast*, 46 FERC Para. 62,022, January 10, 1989, and *North Jersey*, 46 FERC Para. 62,023, January 10, 1989). In addition, each has filed a certification of compliance with the coal capability requirement for proposed new electric powerplants pursuant to the Powerplant and Industrial Fuel Use Act of 1978, as amended (52 FR 29719, August 11, 1987). The electric power to be produced by the cogeneration facilities is under contract to several utilities. The plants also will provide steam for two manufacturing facilities.

Texas Eastern filed with the application a gas sales agreement entered into with ProGas dated September 3, 1988, as amended by an agreement dated September 30, 1988. Under this agreement ProGas will supply to Texas Eastern 101,000 Mcf per day, less the quantities that Northeast and North Jersey have agreed to purchase from ProGas. Northeast and North Jersey filed gas purchase agreements entered into with ProGas on May 12, 1988. Each agreement provides for the purchase of a maximum daily quantity of 35,957 Mcf gas per day for a term of 15 years after the date firm transportation service to the cogeneration facilities commences.

After deduction of the Northeast and North Jersey contract quantities, Texas Eastern's contract quantity would be approximately 29,000 Mcf of gas per day. During the winter season from November 15 through March 31, Texas Eastern will also, upon specified notice, purchase any gas not taken by Northeast and North Jersey under their contracts. Also, in the event that Texas Eastern's transportation service begins prior to the start-up of the cogeneration plants, Texas Eastern will purchase up to the full 101,000 Mcf per day from ProGas, as pipeline operating conditions permit, until the plants can begin receiving the gas.

The long-term supplies to be purchased from ProGas will make up about 60 percent of the fuel requirements of the Bellingham and Sayreville cogeneration facilities. An additional 20 percent of those requirements will be met through purchases of domestic supplies, Canadian supplies in the spot market, or under other contractual arrangements. The final 20 percent of supply will come from the system supply of Public Service Electric and Gas Company (PSE&G).

The application also seeks authorization for Texas Eastern to import authorized gas that, if not needed for system supply, would be released to Texas Eastern's and/or ProGas' U.S. marketing affiliates for sale on the spot market pursuant to a special marketing agreement executed between Texas Eastern and ProGas on November 3, 1986. Gas sold under the special marketing agreement over the term of the import arrangement would consist of gas imported by Texas Eastern to meet system supply contract demand that is not taken by firm customers for any reason and is thereby made available for sale at freely negotiated, competitive prices by Texas Eastern's and/or ProGas' marketers.

Under the Texas Eastern/ProGas sales agreement, Texas Eastern would purchase gas from ProGas at a price structured as a two-part demand and commodity charge. ProGas' monthly demand charges to Texas Eastern would consist of the demand charges of TransCanada PipeLines Limited (TransCanada), Nova, An Alberta Corporation (NOVA), and ProGas. The commodity charge for the gas at the international border would be an amount equal to the commodity charge per MMBtu in Texas Eastern's daily contract quantity rate schedule CD-1 on file and in effect at the Federal Energy Regulatory Commission (FERC) for system supply customers in rate zone D, less an amount equal to the transportation charges for moving the gas from the Niagara Falls delivery point to Texas Eastern's pipeline system. In a May 2, 1989, letter, Texas Eastern indicated that the commodity charge for zone D on April 1, 1989, was $2.4283.

In addition, ProGas' monthly demand charge will be subject to adjustment for changes in the demand charges of NOVA, TransCanada, and in ProGas' fixed costs. The commodity charge is subject to adjustment for each change in Texas Eastern's commodity charge for firm sales in rate zone D and for changes in the charges for transporting the gas from Niagara Falls to Texas Eastern's system. The price of the imported gas may be renegotiated annually, or upon 15 days notice, when changes in market-responsive prices occur in Texas Eastern's gas purchase contracts for system supply, when ProGas makes a new PGA filing at the FERC, or when other changes in market or regulatory conditions occur that warrant price redetermination. If either Texas Eastern or ProGas is unable to agree upon such pricing terms, either party has the right to refer the matter to arbitration.

Under the Texas Eastern/ProGas sales agreement, Texas Eastern is required to purchase a minimum annual quantity of gas. The minimum annual quantity is based on the daily contract quantity of 101,000 Mcf of gas, less the quantities that Northeast and North Jersey purchase, reduced as necessary to maintain the same ratio of takes to total contract volumes available during the contract year as exists between Texas Eastern's U.S. takes and total contract volumes available under contracts with U.S. suppliers having a primary term of more than three years. Credit is given in meeting Texas Eastern's minimum annual contract quantity requirement for gas sold under the special marketing agreement at the rate of one cubic foot for each cubic foot sold. Credit is also given against the demand charges which Texas Eastern must pay to ProGas with respect to Texas Eastern's daily contract quantity of gas based on the purchase prices paid to Texas Eastern by Texas Eastern's and/or ProGas' U.S. marketers for special marketing gas.

The Northeast/ProGas and North Jersey/ProGas sales agreements are identical except for the price adjustment provisions. Under both contracts, the price Northeast and North Jersey would pay consists of a demand and commodity charge. The monthly demand component woud recover the costs of transportation in Canada on the pipeline systems of NOVA and TransCanada, and ProGas' fixed costs. The commodity charge would be computed under a formula starting with a base price for January 1, 1990, of $1.9365 per MMBtu. The commodity charge under the Northeast/ProGas contract would be adjusted each January 1 by a factor equal to the weighted percentage change during the preceding year in the rate per kilowatt-hour at which electrical output of the Bellingham facility is sold under certain power purchase agreements between Northeast and five electric utilities. Under the North Jersey/ProGas contract, the base price would be adjusted annually by a factor equal to the percentage change during the preceding year in the cost of natural gas purchased by electric utilities in New Jersey reported to the FERC and announced by the DOE in a publication entitled "Cost and Quality of Fuel for Electric Utility Plants."

The minimum monthly bill under the Northeast and North Jersey contracts would be the monthly demand charge. There is no minimum commodity charge. The price of the imported gas may be renegotiated annually. During the first ten contract years, no change in the terms will be effective unless mutually agreed upon. Beginning in the eleventh year, if renegotiation does not produce an acceptable redetermination of price within 60 days, either party has the right to refer the matter to arbitration.

Northeast and North Jersey are each required to take a mimimum quantity of gas annually that is equal to 75 percent of the maximum quantity of gas which ProGas is obligated to deliver to them each day, times 365. If the minimum volumes are not taken in any year, Northeast and North Jersey must purchase from ProGas in the next year the minimum annual quantity plus the preceding year's deficiency volume. The contracts provide that if they fail to take the required quantity, ProGas may begin in the next contract year to bill Northeast and North Jersey for interest at the Canadian prime rate plus two percent on the average commodity value of the deficiency volumes, until the deficiency volumes are made up. The contract also provides that if minimum volumes are not taken, ProGas may seek a reduction in the daily contract quantity.

According to the terms of their contracts, Northeast and North Jersey may enter into a special marketing agreement with ProGas whereby surplus volumes would be released back to ProGas to be re-marketed. Any volumes sold by ProGas would be credited toward Northeast's and North Jersey's minimum annual purchase volumes. In addition, surplus gas may be offered to Texas Eastern.

The Northeast and North Jersey contracts require as a condition precedent that ProGas periodically demonstrate sufficient reserves and deliverability to meet its existing and anticipated gas sales obligations.

The volumes supplied under the agreements with ProGas would enter the U.S. at Niagara Falls through an interconnection between TransCanada's pipeline and a new border facility near and parallel to the existing facilities of Tennessee Gas Pipeline Company (Tennessee). The gas would be transported from Niagara Falls to Marilla, New York, by means of this new 49-mile pipeline loop of Tennessee's Niagara Spur Line which will be jointly owned by Tennessee, National Fuel Gas Supply (National Fuel) and PennEast Gas Services Company (PennEast). From Marilla, the gas then would be transported by PennEast over existing facilities of CNG Transmission Company's System (CNG) to Ellisburg, Pennsylvania. There the gas would enter a new 40-mile line to Leidy, Pennsylvania, that will be jointly owned by National Fuel and PennEast. At Leidy, volumes intended for Texas Eastern will enter its pipeline system. Gas for Northeast will be delivered into Transcontinental Gas Pipe Line Company's (Transco) Leidy pipeline for delivery to Algonquin Gas Transmission Company (Algonquin) at Centerville, New Jersey, and Algonquin will redeliver the gas to the Bellingham cogeneration facility. Gas for North Jersey will be delivered by Transco to PSE&G, which will redeliver the volumes to the Sayreville facility.

In support of their long-term application, Texas Eastern, Northeast and North Jersey state that the proposed import is in the public interest because the provisions of the long-term contracts are sufficiently flexible to ensure the price of the gas will be comparable to competing energy supplies, including natural gas, over the term of the agreements. In addition, they assert that these supplies are needed and the gas source is secure. With respect to Northeast and North Jersey's two-year blanket import request, they do not anticipate the importation of Canadian spot gas if more competitive supplies of short-term domestic gas are available.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Other matters that may be considered in making a public interest determination include need for gas, security of the long-term supply and any relevant issues that are unique to cogeneration facilities. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the natural gas, and security of supply as set forth in the policy guidelines. The applicants assert that their import arrangements are in the public interest. Parties opposing the arrangements bear the burden of overcoming this assertion.

All parties should be aware that if this requested application for long-term and blanket import authority is granted, the authorization would be conditioned to require that Texas Eastern, Northeast and North Jersey each file quarterly reports to facilitate monitoring of the operation of the DOE's natural gas import program. In addition, a total amount of authorized volumes may be designated for the proposed blanket import term rather than a daily limit, to provide the applicants with maximum flexibility of operation. Furthermore, if approved, the sale of gas on the spot market under Texas Eastern's special marketing agreement with ProGas may be limited to a term of two years from the date of the first such sale.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. The FERC in Docket Nos. CP88-171-000 (Tennessee), CP88-183-000 (PennEast and CNG), CP88-195-000 (PennEast, CNG and Texas Eastern), and CP89-7-000 (Transco) is currently performing an environmental review of the impacts of constructing and operating the new transmission facilities through which the proposed ProGas volumes would be transported before making its decision on the related certificate applications. The DOE will participate in the environmental review process at the appropriate level. No final decisions will be issued in this proceeding until the DOE has met its NEPA responsibilities regarding the Texas Eastern, Northeast, and North Jersey joint application.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for

any decision on the application must, however, file a motion to intervene or notice of the intervention, as applicable. The filing of a protest with respect to this joint application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m., E.D.T., August 4, 1989.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of the Texas Eastern, Northeast and North Jersey joint application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 27, 1989.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 89-15736 Filed 7-3-89; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. FE C&E 89-13; Certification Notice—39]

First Energy Associates; Filing Certification of Compliance; Coal Capability of New Electric Powerplant

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311(a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as to base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of a proposed new electric base load powerplant has filed a self certification in accordance with section 201(d).

Further information is provided in the section below.

SUPPLEMENTARY INFORMATION: The following company has filed a self certification:

Name	Date received	Type of facility	Megawatt capacity	Location
First Energy Associates, Needham, MA	06-06-89	Combined Cycle Cogen.	65.4	Orange, CT.

Amendments to the FUA on May 21, 1987, (Pub. L. 100-42) altered the general prohibitions to include only new electric base load powerplants and to provide for the self certification procedure.

Issued in Washington, DC on June 27, 1989.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 89-15739 Filed 7-3-89; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. FE C&E 89-12; Certification Notice-38]

Puget Sound Power & Light; Filing Certification of Compliance; Coal Capability of New Electric Powerplant

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 et seq.), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311(a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as to base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. Three owners and operators of proposed new electric base load powerplants have filed self certifications in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION:

The following company has filed self certifications:

Name	Date received	Type of facility	Megawatt capacity	Location
Puget Sound Power and Light, Bellevue, WA	May 24, 1989	Simple cycle cogen.	162	Whitehorn, Whatcom County, WA.[1]
Do.	do	do	162	Frederickson, port of Tacoma, Pierce County, WA.[1]
Do.	do	do	207.52	Fredonia, Skagit County, Industrial Park, Burlington, WA.[1]

[1] Puget Sound Power & Light Company filed for and received exemptions for Whitehorn, two units (45 FR 65277), Frederickson, two units (45 FR 27520) and Fredonia, two units (47 FR 26734) as peakload powerplants. This Certification is to enable Puget to operate the same units as base load powerplants.

Amendments to the FUA on May 21, 1987 (Pub. L. 100-42), altered the general prohibitions to include only new electric base load powerplants and to provide for the self certification procedure.

Issued in Washington, DC, on June 27, 1989.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 89-15740 Filed 7-3-89; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. PP-91]

Application by Puget Sound Power & Light Company for a Presidential Permit

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application by Puget Sound Power & Light Company for a presidential permit to construct, connect, operate and maintain electric transmission facilities at the international border between the United States and Canada.

SUMMARY: Puget Sound Power & Light Company (Puget Power) has applied to the Office of Fuels Programs (OFP), Fossil Energy, for a Presidential permit to construct, connect, operate and maintain electric transmission facilities at the international border between the United States and Canada. This application is contained in the OFP Docket No. PP-91. Puget Power is proposing to construct two 230-kilovolt (kV), overhead transmission lines which would cross the U.S.-Canadian international border near Lynden, Washington, and extend approximately 23 miles through the State of Washington. One line would terminate at Puget Power's existing Bellingham substation; the second line would continue two miles south of the Bellingham substation and interconnect with existing Puget Power transmission lines.

FOR FURTHER INFORMATION CONTACT:

Ellen Russell, Office of Fuels Programs (FE-52), Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9624.

Lise Courtney M. Howe, Office of General Counsel (GC-41), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2900.

SUPPLEMENTARY INFORMATION: On May 31, 1989, Puget Power applied to the Office of Fuels Programs, Fossil Energy, pursuant to Executive Order 10485, as amended by Executive Order 12038, for a Presidential permit to construct, connect, operate and maintain electric transmission facilities at the international border between the U.S. and Canada. Puget Power's proposed project is scheduled to be placed in service on December 31, 1992, and would consist of the construction of two 23-mile, 230-kV, overhead electric transmission lines which would cross the U.S.-Canadian border near Lynden, Washington. One line would terminate at the existing Bellingham, Washington, substation, the second line would interconnect with existing Puget Power transmission lines two miles south of the Bellingham substation. The proposed facilities would interconnect at the U.S.-Canadian border with similar facilities to be constructed by the British Columbia Hydro and Power Authority (B.C. Hydro).

In order to construct the proposed facilities, Puget Power must acquire approximately 16 miles of 160-foot wide right-of-way to accommodate a double row of wooden "H-frame" support structures. The additional seven miles will be supported by single wood poles utilizing both existing public and private rights-of-way and rights-of-way yet to be purchased.

According to the applicant, the proposed interconnection is intended to relieve local transmission deficiencies and provide a reliable electric system under both normal and peak loading conditions during all seasons. Puget Power also asserts that the proposed intertie would provide a new path for power transactions between B.C. Hydro and Puget Power, thus reducing the need for and the impact of new generation resources.

Any person desiring to be heard or to protest this application for a Presidential permit should file a petition to intervene or protest with the Office of Fuels Programs, Office of Fossil Energy, Room 3H-087, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with the DOE on or before August 4, 1989. An additional copy of such petitions to intervene or protests also should be filed with:

W.J. Finnegan, Vice President, Engineering, Puget Sound Power & Light Company, P.O. Box 97034, OBC-15, Bellevue, Washington 98009-9734.

Perkins Coie, One Bellevue Center, Suite 1800, 411 108th Avenue NE., Bellevue, Washington 98004. Attention: William S. Weaver, Markham A. Quehrn.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the

petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

Before a Presidential permit may be issued, the environmental impacts of the proposed DOE action (i.e., granting the Presidential permit, with any conditions and limitations, or denying the permit) must be evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA). The NEPA compliance process is a cooperative, non-adversarial process involving members of the public, state governments and the Federal government. The process affords all persons interested in or potentially affected by the environmental consequences of a proposed action an opportunity to present their views, which will be considered in the preparation of the environmental documentation for the proposed action. Intervening and becoming a party to this proceeding will not create any special status for the petitioner with regard to the NEPA process. Notice of upcoming NEPA activities and information on how the public can participate in those activities will be published in the **Federal Register**, local newspapers and public libraries and/or reading rooms in the vicinity of the proposed transmission line.

Copies of this application will be made available, upon request, for public inspection and copying at the Department of Energy's Freedom of Information Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on June 29, 1989.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 89-15739 Filed 7-3-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Health and Environmental Research Advisory Committee; Notice of Open Meeting

Under the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Health and Environmental Research Advisory Committee (HERAC)

Date and Time:

July 24, 1989—9:00 a.m.-5:00 p.m.
July 25, 1989—9:00 a.m.-12:00 Noon

Place: Chancellor's Conference Room (S-118), University of California, 3rd and Parnassus Avenue, San Francisco, California 94143

Contact: George D. Duda, Office of Health and Environmental Research (ER-72), Office of Energy Research, Department of Energy, Washington, DC 20545 Telephone: 301/353-3651

Purpose of the Committee: To provide advice on a continuing basis to the Secretary of the Department of Energy (DOE), through the Director of Energy Research, on the many complex scientific and technical issues that arise in the development and implementation of the Health and Environmental Reseach (HER) program.

Tentative Agenda: Briefings and discussions of:

July 24, 1989

- Review of HER Research Planning Document
- Public comment (10 minute rule)

July 25, 1989

- Report from HERAC Subcommittee on Nuclear Medicine
- Report from HERAC Subcommittee on Global Change
- New Business Discussion
- Public comment (10 minute rule)

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact George D. Duda at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on June 29, 1989.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 89-15741 Filed 7-3-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP89-1676-000, et al.]

Panhandle Eastern Pipe Line Co., et al; Natural Gas Certificate Filings

June 27, 1989.

Take notice that the following filings have been made with the Commission:

1. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1676-000]

Take notice that on June 22, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1676-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Entrade Corporation (Entrade), a marketer, under the blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated May 9, 1989, under its Rate Schedule PT, it proposes to transport up to 300,000 dekatherms (dt) per day equivalent of natural gas for Entrade. Panhandle states that it would transport the gas from various receipt points on its system and deliver such gas, less fuel used and unaccounted for line loss, to Haven Pool in Reno County, Kansas.

Panhandle advises that service under § 284.223(a) commenced May 11, 1989, as reported in Docket No. ST89-3700. Panhandle further advises that it would transport 100,000 dt on an average day and 36,500,000 dt annually.

Comment date: August 11, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Texas Gas Transmission Corporation

[Docket No. CP89-1665-000]

Take notice that on June 20, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1665-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Union Pacific Resources Company (Union Pacific), under its blanket authorization issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas would perform the proposed interruptible transportation service for Union Pacific, pursuant to a gas transportation agreement dated November 2, 1988. The term of the transportation agreement is from the date of execution by Union Pacific and shall continue in effect month-to-month thereafter, unless terminated upon 30 days written notice by either party. Texas Gas proposes to transport on a peak day up to 36,600 MMBtu; on an average day up to 36,600 MMBtu; and on an annual basis 13,359,000 MMBtu for Union Pacific. Texas Gas proposes to receive the subject gas from exiting points of receipt in the High Island Area, offshore Texas, for transportation and redelivery for Union Pacific's account at an existing point of delivery also in the High Island Area, offshore Texas. The proposed rate to be charged is contained in Texas Gas' currently effective T rate schedule. It is stated that the ultimate recipient of the gas is Memphis Light, Gas and Water. It is further stated that the proposed transportation is being rendered through the use of Texas Gas' existing facilities.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. Texas Gas commenced such self-implementing service on May 10, 1989, as reported in Docket No. ST89-3597-000.

Comment date. August 11, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Tennessee Gas Pipeline Company

[Docket No. CP89-1653-000]

Take notice that on June 19, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-1653-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Ball-Incon Glass Packaging Corp. (Ball-Incon), an end user of natural gas, under Tennessee's blanket certificate issued in Docket No. CP87-115-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee requests authorization to transport, on an interruptible basis, up to a maximum of 2,400 dekatherms of natural gas per day for Ball-Incon from a receipt point located in High Island Block 22, Offshore Texas, to delivery points located in Pennsylvania. Tennessee anticipates transporting an annual volume of 876,000 dekatherms.

Tennessee states that the transportation of natural gas for Ball-Incon commenced May 1, 1989, as reported in Docket No. ST89-3668-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Tennessee in Docket No. CP87-115-000.

Comment date: August 11, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Stingray Pipeline Company

[Docket No. CP89-1656-000]

Take notice that on June 19, 1989, Stingray Pipeline Company (Stingray), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1656-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service on behalf of Elf Aquitaine Operating, Inc. (EAO), a shipper and producer of natural gas, under the blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89-70-000, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Stingray states that it would receive the gas for EAO at various existing points of receipt in offshore Louisiana, and would redeliver the gas at existing delivery points located in Cameron Parish, Louisiana and offshore Texas.

Stingray further states that the maximum daily, average daily and annual quantities that it would transport for EAO would be 40,000 dt equivalent of natural gas, 30,000 dt equivalent of natural gas and 10,950,000 dt equivalent of natural gas, respectively.

Stingray indicates that in a filing made with the Commission in Docket No. ST89-3683, it reported that transportation service for EAO commenced on May 1, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: August 11, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Stingray Pipeline Company

[Docket No. CP89-1657-000]

Take notice that on June 19, 1989, Stingray Pipeline Company (Stingray), P.O. Box 1642, Houston, Texas 77251-1641, filed in Docket No. CP89-1396-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Sun Operating Limited Partnership (Sun), a shipper, under the blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89-70-000, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Stingray states that pursuant to a Transportation Agreement dated May 1, 1989 between Stingray and Sun (Transportation Agreement), it proposes to transport up to 12,500 dt per day on a firm basis on behalf of Sun. The Transportation Agreement provides for Stingray to receive gas from Sun, Anadarko, and Diamond Shamrock sources located offshore Louisiana and existing optional interruptible points of receipt. Stingray will then transport and redeliver subject gas, less fuel used and unaccounted for line loss, to Holly Beach and OXY-NGL plant located in Cameron Parish, Louisiana and Stingray-HIOS Exchange (EHI-A330) located offshore Texas.

Stingray advises that service under § 284.223(a) commenced May 1, 1989, as reported in Docket No. ST89-3682. Stingray further states that it would transport on an average day 12,500 dt and 4,562,500 dt annually.

Comment date: August 11, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Texas Gas Transmission Corporation

[Docket No. CP89-1666-000]

Take notice that on June 20, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1666-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Enron Gas Marketing, Inc. (Enron Marketing) under its blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas states that it would receive the gas for Enron Marketing at existing points of receipt in offshore Louisiana, offshore Texas, Louisiana, Texas, Arkansas, Indiana, Kentucky,

Tennessee, Illinois and Ohio, and would redeliver the gas for Enron Marketing at existing interconnections located in Mississippi.

Texas Gas further states that the maximum daily, average daily and annual quantities that it would transport for Enron Marketing would be 250,000 MMBtu equivalent of natural gas, 50,000 MMBtu equivalent of natural gas and 18,250,000 MMBtu equivalent of natural gas, respectively.

Texas Gas indicates that in a filing made with the Commission in Docket No. ST89-3549, it reported that transportation service for Enron Marketing commenced on May 5, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: August 11, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Texas Gas Transmission Corporation

[Docket No. CP89-1667-000]

Take notice that on June 20, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1667-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Xebec Gas Company (Xebec), under Texas Gas' blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Pursuant to a gas transportation agreement dated January 4, 1989, Texas Gas requests authorization to transport up to 20,000 MMBtu of natural gas per day for Xebec under its IT Rate Schedule. Texas Gas states that the agreement provides for it to receive the gas at various existing points of receipt along its system and deliver the gas to various existing points of delivery located in Ohio and Kentucky. Xebec estimates that the average day and annual transportation quantities would be 300 MMBtu and 110,000 MMBtu, respectively. Texas Gas advises that the service commenced April 29, 1989, as reported in Docket No. ST89-360-000, under § 284.223(a) of the Commission's Regulations.

Comment date: August 11, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Tennessee Gas Pipeline Company

[Docket No. CP89-1671-000]

Take notice that on June 21, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-1671-000 a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP87-115-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport natural gas on an interruptible basis for Natural Gas Clearinghouse, Inc. (NGC), a marketer. Tennessee explains that service commenced May 1, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-3667. Tennessee further explains that the peak day quantity would be 100,000 dekatherms, the average daily quantity would be 100,000 dekatherms, and that the annual quantity would be 36,500,000 dekatherms. Tennessee explains that it would receive natural gas for the account of NGC at a point of receipt located Offshore Louisiana. Tennessee states that the point of delivery is the State of Illinois.

Comment date: August 11, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1670-000]

Take notice that on June 21, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in docket No. CP89-1670-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Citizens Gas Supply Corporation (Citizens), a shipper and marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport up to 200,000 dekatherms (dkt) of natural gas equivalent per day on an interruptible basis on behalf of Citizens pursuant to a transportation agreement dated March 31, 1989, between Panhandle and Citizens. Panhandle would receive the gas at various existing points of receipt on its system in Texas, Oklahoma, Kansas and Colorado and deliver equivalent volumes, less fuel used and unaccounted for line loss, to Haven Pool in Reno County, Kansas.

Panhandle states that the estimated daily and annual quantities would be 100,000 dkt and 36,500,000 dkt, respectively. Service under § 284.223(a) commenced on May 2, 1989, as reported in Docket No. ST89-3649-000.

Comment date: August 11, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1637-000]

Take notice that on June 15, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1637-000 a request, as supplemented on June 21, 1989, pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 284.223) for authority to provide firm transportation service for Archer Daniels Midland Company (ADM), a end-user of natural gas, under Panhandle's blanket transportation certificate authority issued November 20, 1987, in Docket No. CP86-585-000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated May 1, 1989, it proposes to transport on a firm basis up to 10,000 dt equivalent of natural gas per peak day for ADM from specified receipt points located in Moore County, Texas, and Beckham County, Oklahoma and deliver the gas for the account of ADM in Tazewell County, Illinois. Panhandle also states that ADM may nominate quantities of gas from interruptible points of receipt on Panhandle's system as long as the sum of the volumes nominated from such interruptible points together with the sum of the quantities nominated from firm points of receipt shall not exceed the contract quantity of the transportation agreement for service under Rate Schedule PT. Panhandle anticipates transportating for Reed on a peak and average day 10,000 dt equivalent of natural gas and approximately 3,650,000 dt equivalent of natural gas on an annual basis.

Panhandle states that on May 1, 1989, it commenced the transportation of gas for ADM under the 120-day automatic authorization of § 284.223(a) of the Commission's Regulations. Panhandle notified the Commission of the transportation service in Docket No. ST89-3785-000.

Comment date: August 11, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Texas Gas Transmission Corporation

[Docket No. CP89-1663-000]

Take notice that on June 20, 1989, Texas Gas Transmission Corporation (TGT), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1663-000 a request pursuant to §§ 157.205 and 284.223 (18 C.F.R. 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act for authority to provide interruptible transportation service for Reed Minerals, a Division of Harsco Corporation (Reed), under Texas Gas' blanket transportation certificate issued by the Commission on September 15, 1988, in Docket No. CP88-686-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

TGT will receive the gas principally from various sources in the offshore areas of Texas and Louisiana and the states of Louisiana, Arkansas, Illinois and Kentucky for delivery for the account of Reed at various points in the state of Kentucky.

TGT proposes to transport on an interruptible basis up to 1,000 MMBtu of gas on a peak day, approximately 500 MMBtu of gas on an average day and an estimated 180,000 MMBtu of gas annually. TGT states the transportation service commenced under the 120-day automatic authorization of § 284.223(a) of the Commission's Regulations on May 9, 1989, pursuant to a transportation agreement dated March 9, 1989. TGT notified the Commission of the commencement of the transportation service in Docket No. ST89-3598-000.

Comment date: August 11, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Northwest Pipeline Corporation

[Docket No. CP89-1672-000]

Take notice that on June 21, 1989, Northwest Pipeline Corporation (Northwest), P.O. Box 8900, Salt Lake City, Utah 84108-0899, filed in Docket No. CP89-1672-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service for Bonneville Fuels Corporation (Bonneville), a producer, under Northwest's blanket certificate issued in Docket No. CP86-578-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest states that pursuant to an agreement dated November 7, 1988, as amended on November 7, 1988, and March 15, 1989, it proposes to transport up to 500 million Btu of natural gas per day for Bonneville on an interruptible basis. Northwest indicates that it would receive the gas at specified point on its system located in Garfield County, Colorado and Grand County, Utah, and redeliver the gas at the Rifle Yard delivery point with Questar Pipeline Company located in Garfield County, Colorado and to the Grand Valley delivery point in Grand County, Utah.

Northwest also states that no construction of facilities would be required to provide this service. Northwest further states that the maximum day, average day, annual volume would be 500 million Btu, 100 million Btu, and 36,500 million Btu, respectively. Nothwest indicates that it would charge the rates and abide by the terms and conditions set forth in its Rate Schedule TI-1.

Northwest indicates that it would provide the service on a month to month basis until terminated on thirty day's written notice to the other party. Northwest advises that service under ¶ 284.223(a) of the Commission's Regulations commenced on April 29, 1989, as reported in Docket No. ST89-3820-000.

Comment date: August 11, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Texas Gas Transmission Corporation

[Docket No. CP89-1664-000]

Take notice that on June 20, 1989, Texas Gas Transmission Corporation (Texas Gas) , 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1664-000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Phibro Distributors Corporation (Phibro Distributors), under Texas Gas' blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport, on an interruptible basis, up to 56,000 MMBtu per day for Phibro Distributors. Texas Gas states that construction of facilities would not be required to provide the proposed service.

Texas Gas further states that the maximum day, average day, and annual transportation volumes would be approximately 56,000 MMBtu, 10,000 MMBtu and 3,650,000 MMBtu respectively.

Texas Gas advises that service under § 284.223(a) commenced May 11, 1989, as reported in Docket No. ST89-3596.

Comment date: August 11, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15643 Filed 7-3-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-26-001]

Natural Gas Pipeline Co. of America; Filing

June 28, 1989.

Take notice that on June 23, 1989, Natural Gas Pipeline Company of America (Natural) filed Twenty-second Revised Sheet No. 5B and Twenty-third Revised Sheet No. 5C to its FERC Gas Tariff, Third Revised Volume No. 1, to be effective June 1, 1989.

Natural states that this filing is in response to a Commission letter order of May 31, 1989. Natural states that these tariff sheets reflect the corrected pagination and the correct posting of the "estimated average cost of gas in last scheduled PGA" on Sheet No. 5C.

Natural states that it inadvertently included $153,000 of fixed cost charges paid to Cimarron in the original filing and requests the Commission to allow Natural to recoup the costs as filed and pass back any overcollections resulting from the inclusion of this charge in its

rates through the normal operation of its deferred account.

Natural states that a copy of this filing is being mailed to its jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). A11 such protests should be filed on or before July 6, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15639 Filed 7-3-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-136-007]

Texas Eastern Transmission Corp.; Petition to Amend

June 27, 1989.

Take notice that on June 26, 1989, Texas Eastern Transmission Corporation, P.O. Box 2521, Houston, Texas 77252, (Texas Eastern) filed in Docket No. CP88-136-007 a petition to amend the order issuing a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act (NGA) in Docket No. CP88-136-000, authorizing the implementation of a transportation assignment program for Texas Eastern's FT-1 Shippers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Texas Eastern's petition would authorize Texas Eastern to implement a transportation assignment program for Texas Eastern's existing and future FT-1 Shippers pursuant to the provisions of a new proposed Section 16 of Rate Schedule FT-1. Texas Eastern proposes to allow FT-1 Shippers to assign their firm transportation service pursuant to Rate Schedule FT-l to third parties (Assignees), provided such shippers submit a notice in writing (Transportation Assignment Notice) to Texas Eastern indicating their desire to engage in the assignment of transportation service pursuant to a new proposed Section 16.

It is further stated that under Texas Eastern's transportation assignment proposal, FT-1 Shippers would have the right to assign on any day all or a portion of their rights to tender gas for transportation under shipper's FT-1 service agreement to Assignees subject to the following conditions:

(1) FT-1 Shippers agree that they will comply with the terms and conditions of Texas Eastern's transportation assignment certificate of public convenience and necessity as issued by the Commission as a result of this petition;

(2) Regardless of the extent to which gas tendered for transportation pursuant to an FT-1 Shipper's service agreement is owned by Assignees, the FT-1 Shippers agree to be responsible to Texas Eastern for compliance with all terms and conditions of the FT-1 service agreement, for balancing receipts and deliveries of gas, and for all costs and paying all rates, charges, penalties and fees for transportation service rendered pursuant to Shippers' FT-1 service agreement;

(3) FT-1 Shippers warrant that they or their Assignees will have good title to all the gas delivered to Texas Eastern hereunder free and clear of all liens, encumbrances, and claims whatsoever. FT-1 Shippers agree to indemnify and hold harmless Texas Eastern against any loss or cost incurred by Texas Eastern on account of such liens, encumbrances and claims whatsoever; and

(4) FT-1 Shippers agree to notify Texas Eastern, when scheduling transportation service pursuant to Section 27 of Texas Eastern's General Terms and Conditions, of the quantity of gas to be transported on any day which is owned by the FT-1 Shippers and the quantity of gas which is owned by the Assignees. FT-1 Shippers shall not be obligated to notify Texas Eastern of the actual identity of the Assignees.

Texas Eastern states that Assignees of FT-1 transportation rights of Algonquin Gas Transmission Company, Carnegie Natural Gas Company, Columbia Gas Transmission Corporation, CNG Transmission Corporation, Equitrans, Inc., National Fuel Gas Supply Corporation and Texas Gas Transmission Corporation (Pipeline FT-1 Shippers) would be authorized to reassign the FT-1 transportation rights to other third parties, which third parties may not reassign the FT-1 transportation rights. It is stated that Assignees of transportation rights from FT-1 Shippers other than Pipeline FT-1 Shippers would not be authorized or permitted to reassign the FT-1 transportation to other third parties. The stated maximum rate that could be charged for any assigned FT-1 transportation service could not exceed the as-billed rates charged by Texas Eastern for such transportation.

Texas Eastern states that upon approval of this petition and the revised tariff sheets which Texas Eastern will subsequently file, the submittal of the Transportation Assignment Notice would constitute the sole authorization required by a FT-1 Shipper who is not a "natural gas company" otherwise subject to the jurisdiction of the Commission. Texas Eastern states that FT-1 Shippers who are currently "natural gas companies" subject to the jurisdiction of the Commission would be required to obtain, in addition to the certificate authorization requested herein, (1) a blanket transportation certificate pursuant to Subpart G of Part 284 of the Commission's Regulations, and (2) Commission approval of the tariff provisions pursuant to which the companies would assign their FT-1 transportation service.

Texas Eastern proposes to file with the Commission a report for the twelve month contract year ending October 31 of the prior year based upon the information provided to Texas Eastern by the FT-l Shipper setting forth:

(a) The name and address of the FT-1 Shippers who participated in the transportation assignment program during said contract year;

(b) The corporate affiliation between Texas Eastern and the FT-1 Shipper participating in the transportation assignment program during said contract year; and

(c) A statement for each FT-1 Shipper of the monthly quantities of gas scheduled for third parties other than the FT-1 Shipper during said contract year.

Texas Eastern stated that the petition is filed as a direct result of the Commission's statements in its April 21, 1989 order in *Texas Eastern Transmission Corporation*, Docket Nos. RP85-177-057 and CP88-136-002. Texas Eastern states that its transportation assignment program is a non-discriminatory proposal which would provide FT-1 Shippers greater flexibility and grant downstream pipelines and local distribution companies the ability to share the benefits of the FT-1 agreements with their customers. Further, increased availability of firm transportation should result in increased competition, which would benefit FT-1 Shippers and all indirect customers of Texas Eastern. Texas Eastern states that its assignment proposal is consistent with the Commission's authorization of assignment rights for Mojave Pipeline Company, _____ F.E.R.C. (CCH) _____ (May 8, 1989) and Wyoming-California Pipeline Company, 45 F.E.R.C. (CCH) ¶61,234 (November 14, 1988).

Texas Eastern states that its transportation assignment program would provide the Commission with data that could be useful in evaluating transportation assignment.

Texas Eastern further requests that the Commission expeditiously consider and grant this petition to permit Texas Eastern and its FT-1 Shippers to enjoy the benefits of the program during this summer transportation season. Promptly following Commission approval of this petition on terms and conditions acceptable to Texas Eastern, Texas Eastern will file the tariff sheets necessary to implement this application. Such tariff sheets will have a requested effective date of the first day following Texas Eastern's acceptance of any certificate issued to Texas Eastern as a result of this petition.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before July 12, 1989, file With the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15642 Filed 7-3-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-92-018]

United Gas Pipe Line Co.; Filing

June 28, 1989.

Take notice that on June 21, 1989, United Gas Pipe Line Company (United) filed certain revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, to be effective July 20, 1989.

United states that on June 13, 1989, it filed certain tariff sheets with the Commission reflecting rates and charges equal to the Base Tariff Rates originally moved into effect by United in this proceeding on September 30, 1988, as accepted by the Commission on December 8, 1988.

United states that it is revising its Motion Rate filing so that the rates and charges applicable to services performed by United on and after July 20, 1989, will better reflect the Commission's most recent decisions. United states that recent Commission decisions indicating that the MFV methodology of cost classification, allocation and rate design may be obsolete, and questioning the continued appropriateness of MFV and two-part demand charges, justify revising the June 13 filing to incorporate one-part demand charges based on customer contract levels. United states that for the period June 20 through July 19, 1989, it will continue to charge and collect the Interim Settlement Rates. United requests that the Commission waive any and all otherwise applicable rules and regulations to permit this filing to become effected as requested.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests filed on or before July 6, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15640 Filed 7-3-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. FA87-63-001]

Virginia Electric and Power Co.; Filing

June 28, 1989.

Take notice that on November 3, 1988, Virginia Electric and Power Company (VEPCO) tendered for filing its compliance refund report in compliance with the Commission's orders issued on April 20, 1988 and July 22, 1988 in the above-referenced proceeding.

The report consists of a calculation of the interim storage components of the fuel factor, plus interest, for the period April 24, 1984, through the date of refund.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 7, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15641 Filed 7-3-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed During the Week of May 19 Through May 26, 1989

During the week of May 19 through May 26, 1989, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

June 27, 1989.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

(Week of May 19 through May 26, 1989)

Date	Name and location of applicant	Case No.	Type of submission
May 25, 1989	Davis Wright & Jones, Seattle, WA	KFA-0290	Appeal of an information request denial. If Granted: The May 11, 1989 Freedom of Information request denial issued by the Idaho Operations Office would be rescinded, and Davis Wright & Jones would receive access to certain DOE information.
Do.	Diamond Gas & Fuel Co., Denver, CO	RR272-35	Request for modification/rescission. If Granted: The May 4, 1989 decision and order (Case No. RF272-23537) issued to Diamond Gas & Fuel Company would be modified regarding the firm's application submitted in the crude oil refund proceeding.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/Name of refund application	Case No.
May 19, 1989 thru May 26, 1989.	Crude oil refund; applications received	RF272-75489 thru RF272-75498.
Do.	Atlantic Richfield refund; applications received	RF304-9299 thru RF304-9313.
Do.	Exxon refund; applications received	RF307-9958 thru RF307-9961.
Do.	Shell refund; applications received	RF315-5914 thru RF315-5981.

Name of Firm	Case No.	Received
E.R. Warren Co., Inc.	RF264-18	Sept. 12, 1986.
Wantagh Crown Service Station	RF313-154	May 23, 1989.
Payless Oil	RF311-9	Do.
Northwest Service Station	RF309-1352	Do.
Bob Truck Stop	RF300-10820	May 24, 1989.
Space Petroleum and Chemical Co.	RF313-155	Do.
Acree Oil Co.	RF313-156	May 25, 1989.
John L. Thielbahr	RF313-157	Do.
Schmid's Black Gold Service	RF309-1353	Do.
Kennedy Oil Co., Inc.	RF313-158	May 26, 1989.
Bellemeade Spur	RF309-1354	Do.
Spahr's Spur Service	RF309-1355	Do.
Ray's Spur	RF309-1356	Do.
Avondale Spur Service	RF309-1357	Do.

[FR Doc. 89-15762 Filed 7-3-89; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders for Week of June 5 through June 9, 1989

During the week of June 5 through June 9, 1989 the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals

June 27, 1989.

Osan Petroleum Company, Inc., 6/6/89, KEE-0169

Osan Petroleum Company, Inc. filed an Application for Exception from the requirement that it file Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the application, the DOE found that the firm's reporting burden was not significantly different from that of other firms participating in the EIA-782B survey, and that the firm failed to meet the standards for exception relief established in prior reporting requirements cases. Accordingly, exception relief was denied.

Refund Applications

Atlantic Richfield Company/Inter Harvest, Inc., et al., 6/9/89, RF304-1834, et al.

The DOE issued a Decision and Order concerning eight Applications for Refund filed by Inter Harvest, Inc. in the Atlantic Richfield Company (ARCO) special refund proceeding. As an end user of ARCO products, the firm is presumed to have been injured by ARCO's alleged overcharges. After examining the applications and supporting documentation, the DOE determined that Inter Harvest should receive refunds totaling $8,757, representing $5,189 in principal and $1,568 in interest.

Atlantic Richfield Company/Lea's Butane Service, et al., 6/5/89, RF304-3068, et al.

The DOE issued a Decision and Order concerning sixty Applications for Refund in the Atlantic Richfield Company special refund proceeding. All of the applicants were either end-users or reseller/retailers that applied for small claims or mid-level presumption refunds. In addition, each applicant documented the volume of its purchases from ARCO and, therefore, was presumed to have been injured and entitled to a refund. The DOE concluded that the applicants should receive refunds totalling $62,907, representing $48,486 in principal and $14,486 in accrued interest.

City of Bridgeport et al., 6/7/89, RF272-106452, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 17 claimants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant demonstrated the volume of its claim either by consulting actual records or by using a reasonable estimate of its purchases. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. The sum of the refunds granted in this Decision is $232,564.

Crown Central Petroleum Corporation/Lucky Petroleum Company, et al. 6/8/89, RF313-88, et al.

The DOE issued a Decision and Order considering applications filed by eight purchasers of Crown refined petroleum products in the Crown Central Petrolum Corporation special refund proceeding. Each applicant was found to be eligible for a refund based on the volume of products it purchased from Crown. The refund applications were granted using a presumption of injury procedure set forth in *Crown Central Petroleum Corp.*, 18 DOE ¶ 85,326 (1988). The total amount of refunds approved in this Decision was $64,136, representing $54,724 in principal and $9,412 in accrued interest.

Exxon Corporaton/Allegheny Solvents & Chemical Co. et al. 6/8/89, RF307-5900, et al.

The Department of Energy issued a Decision and Order in the Exxon Corporation special refund proceeding concerning 15 Applications for Refund filed by wholesale distributors of Exxon petroleum products that were all wholly-owned subsidiaires of CHEMCENTRAL Corporation. Because the applicants were affiliated, the DOE considered their applications together and arrived at a combined allocable share of $8,827. Since the applicants elected to receive a presumption of injury refund, they were entitled to receive a total refund of either 40% of the allocable share or $5,000, whichever was greater. In the present case, $5,000 was greater. However, since another CHEMCENTRAL affiliate had already received a refund of $191, only $4,809 in principal was granted to the applicants in this case. Accordingly, refunds totalling $5,684 ($4,809 principal and $875 interest) were granted to these applicants on a volumetrically pro rated basis.

Exxon Corporaton/Dwight Chandler et al. 6/6/89, RF307-141, et al.

The DOE issued a Decision and Order concerning 51 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whole allocable share is less than $5,000 or en end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $35,942 ($29,942 principal plus $5,681 interest).

Exxon Corporation/Fehring's Exxon Service Station, et al., 6/5/89, RF307-223 et al.

The DOE issued a Decision and Order concerning 13 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $10,498 ($8,824 principal plus $1,674 interest.)

Exxon Corporation/Leonard H. Arridson et al., 6/8/89, RF300-5920 et al.

The DOE issued a Decision and Order concerning 45 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased products directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sume of the refunds granted in this Decision is $34,374 ($28,891 principal plus $5,488 interest).

Georgia Kraft Company, Kimberly-Clark Corporation, 6/7/89, RF272-187, RF272-193, RF272-187, RF272-193

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Georgia Kraft Company (Georgia Kraft) and Kimberly-Clark Corporation (Kimberly-Clark), two pulp, paper and lumber manufacturers. In reaching its determination, the DOE rejected the objections to the applicants' claims submitted by a group of States and denied the States' Motions for Discovery. The DOE held that industry-wide data in general is insufficient to rebut the presumption that end-users outside of the petroleum industry were injured by crude oil overcharges. The DOE also determined that the State's showing of sustained growth and profitability of a particular industry or firm does not rebut the end-user presumption. The total refund granted to Georgia Kraft was $111,668, while the refund granted to Kimberly-Clark was $207,612.

Gulf Oil Corporation/City Coal Co. of New London, Inc., et al., 6/9/89, RF300-5009 et al.

The DOE issued a Decision and Order concerning four Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $34,665.

Gulf Oil Corporation/Cooper Butane Company, 6/5/89, RF300-8119

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Cooper Butane Company. Cooper entered into an Agreement with Mallory's LP Products Inc. (Mallory's) whereby Mallory's picked up, paid for, and delivered Cooper's monthly allocation of LP-Gas from Warren Petroleum Company. Since Cooper fully reimbursed Mallory's based on Warren's prices, the OHA determined that Cooper, not Mallory's, was injured by Warren's overcharges. Cooper's application was approved under the small claims presumption of injury. The total refund granted in this Decision is $5,230.

Gulf Oil Corporation/Efrain Sanatana, et al., 6/9/89, RF300-8200, et al.

The DOE issued a Decision and Order concerning 24 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $56,967.

Gulf Oil Corporation/G.C. Chambers, et al., 6/7/89, RF300-3210, et al.

The DOE issued a Decision and Order concerning 13 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the

refunds granted in this Decision is $85,753.

Gulf Oil Corporation/Globe Union Corp., et al., 6/8/89, RF300-767, et al.

The DOE issued a Decision and Order concerning 12 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $61,267.

Gulf Oil Corporation/Gordon C. Varn, Inc., 6/8/89, RF300-5224

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Gordon C. Varn, Inc., a consignee and reseller of Gulf refined products. The applicant elected to base its refund on the appropriate presumptions of injury. The total refund granted in this Decision is $4,877.

Gulf Oil Corporation/Nelson Oil Company, Inc., 6/9/89, RF300-10825

The DOE issued a Decision concerning four Applications for Refund in the Gulf Oil Corporation special refund proceeding. *Gulf Oil Corporation/Nelson Oil Company, Inc., et al.*, 18 DOE ¶ 86,095 (1989). In that Decision, Nelson Oil Company, Inc. (Case No. RF300-4988) was granted a refund of $5,541. However, the firm should have received a refund of $6,563. In order to provide Nelson Oil Company, Inc. with its proper refund amount, the OHA approved a supplemental refund of $1,022.

Gulf Oil Corporation/Ran Enterprises, Inc., 6/7/89, RF300-6255, RF300-6256, RF300-6257

The DOE issued a Decision and Order concerning three Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by Ran Enterprises, Inc. (Ran), a retailer of Gulf refined products. Each Application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $1,384.

Gulf Oil Corporation/Step-n-Fetchum, Inc., 6/7/89, RF300-5372

The DOE issued a Decision and Order concerning an application for Refund submitted by an indirect purchaser in the Gulf Oil Corporation special refund proceeding. Because the direct purchaser in this case was awarded a refund based upon a presumption of injury, the indirect purchaser's Application was approved under the same procedure as Applications filed by direct purchasers. The total refund granted in this Decision is $1,219.

Gulf Oil Corporation/Thad J. Smith, Inc., 6/8/89, RF300-5484

The DOE issued a Decision and Order concerning an Application for refund submitted by Thad J. Smith, Inc. in the Gulf Oil Corporation special refund proceeding. Smith was both a reseller and consignee of Gulf refined products during the consent order period. Smith's Application was approved utilizing a presumption of injury. The total refund granted in this Decision is $6,563.

Gulf Oil Coporation/Zatopek Oil Company, 6/8/89, RF300-5099

The DOE issued a Decision and Order concerning an Application for Refund submitted by an indirect purchaser in the Gulf Oil Corporation special refund proceeding. Because the direct purchaser in this case has been awarded a refund based upon a presumption of injury, the indirect purchaser's Application was approved under the same procedure as applications filed by direct purchasers. The total refund granted in this Decision and Order is $1,261.

Jones Land & Cattle, Inc. et al., 6/7/89, RF272-27901, et al.

The DOE issued a Decision and Order approving 46 Applications for Refund submitted in the Subpart V crude oil refund proceeding. Each applicant was an end-user of the refined products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in the Decision was $50,199.

Shell Oil Company/Bill's Shell et al., 6/7/89, RF315-2200, et al.

The DOE issued a Decision and Order granting 146 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the Applicants purchased products directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $132,525 ($114,425 principal plus $18,100 interest).

Shell Oil Company/Felton Shell Service et al., 6/8/89, RF315-4007, et al.

The DOE issued a Decision and Order granting 149 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the Applicants purchased products directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $106,736 ($92,157 principal plus $14,581 interest).

Shell Oil Company/H. Bullukian Sons, Inc. et al., 6/7/89, RF315-2400, et al.

The DOE issued a Decision and Order granting 100 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the Applicants purchased products directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $90,666 ($78,278 principal plus $12,388 interest).

Shell Oil Company/Hasty Service Inc. et al., 6/9/89, RF315-800, et al.

The DOE issued a Decision and Order granting 90 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the Applicants purchased products directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $73,091 ($63,109 principal plus $9,982 interest).

Shell Oil Company/Ken's Steel, Inc. et al., 6/7/89, RF315-604, et al.

The DOE issued a Decision and Order granting 149 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the Applicants purchased products directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $130,058 ($112,295 principal plus $17,763 interest).

Shell Oil Company/Lloyds Shell et al., 6/8/89, RF315-3000, et al.

The DOE issued a Decision and Order granting 149 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the Applicants purchased products directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $85,372 ($73,711 principal plus $11,661 interest).

Total Petroleum/Kent Oil & Trading Co., 6/9/89, RF310-318

The DOE issued a Decision and Order concerning an Application for Refund filed by Kent Oil & Trading Company in the Total Petroleum special refund proceeding. The DOE found that as a spot purchaser of Total motor gasoline and middle distillate, Kent was not eligible to receive a refund from the Total escrow fund because it failed to rebut the presumption that it was not injured by Total's pricing practices during the consent order period. Kent's Application for Refund was therefore denied.

Upland Farmers Union Coop., Inc., 6/9/89, RF272-12539

The Department of Energy issued a Decision and Order granting an Application for Refund filed in the crude oil refund proceeding by Upland Farmers Union Coop., Inc., an agricultural cooperative. In accordance with DOE precedent, Upland was treated as an end-user with respect to those petroleum purchases that it resold to its members. Since 98 percent of Upland's petroleum product purchases during the crude oil price control period, or 6,409,200 gallons, was resold to its members, Upland was granted a refund on that purchase volume. The cooperative's refund, computed on the basis of a volumetric refund amount of $0.0008 per gallon, was $5,127.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	No. of applicants	Total refund
Adeline Apts. *et al*	RF272-55560	6/9/89	156	$19,397
Alvin E. Graski *et al*	RF272-53402	6/9/89	95	9,352
Canton Municipal Utilities *et al*	RF272-57001	6/8/89	121	17,943
Elmwood Farm *et al*	RF272-56800	6/9/89	133	19,854
Fabtronics Manufacturing *et al*	RF272-51800	6/6/89	169	17,616
H. Frank Hughes *et al*	RF272-53200	6/7/89	158	15,599
Hadley-White Management Co. *et al*	RF272-53607	6/8/89	165	18,118
Harold Stahl *et al*	RF272-59002	6/9/89	120	16,433
Kenneth Newbrough *et al*	RF272-57600	6/9/89	153	15,375
Margaret Prater *et al*	RF272-57200	6/9/89	158	19,632
Pierce Realty Co. *et al*	RF272-56600	6/7/89	139	117,533
Wilbert Linemeier *et al*	RF272-58000	6/9/89	116	15,554
Wilfred Hageman *et al*	RF272-54401	6/8/89	155	19,169
Willard W. Stucky *et al*	RF272-54200	6/9/89	125	17,012

Dismissals

The following submissions were dismissed:

Name	Case No.
Arco Truck Terminal	RF304-8400
Carpenter's Arco	RF304-8276
Correia's Atlantic	RF304-8820
Ed's Arco	RF304-8052
Fairview Arco	RF304-8394
Fritz Blaske	RF272-73093
George's Arco	RF304-9196
Gil & Ron's Arco	RF304-8265
Hull's Exxon	RF307-1076
Interstate Exxon	RF307-853
Marsh's Apco	RF310-26
Prothro Gulf	RF307-841
Sam's Arco	RF304-8260
Shady Lawn Truck Stop	RF304-9209
Simbron's Arco	RF304-8801
State of Nevada	RF300-10377
Szep's Arco/Joseph Szep	RF304-8277
Tompkin's Garage	RF300-9635
Watt & Marconi Arco	RF304-8261
William Albert Hewgley	KFA-0292

[FR Doc. 89-15743 Filed 7-3-89; 8:45 am]

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Issuance of Decisions and Orders for Week of May 15 Through May 19, 1989

During the week of May 15 through May 19, 1989, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

June 27, 1989.

Appeal

International Brotherhood of Electrical Workers, Local Union #125, 5/19/89, KFA-0279

The International Brotherhood of Electrical Workers, Local Union 125 (IBEW) filed an Appeal from a partial denial by the Bonneville Power Authority (Bonneville) of the Department of Energy of a Request for Information which the firm submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that Bonneville's search for documents responsive to the IBEW's request was adequate and that no such documents exist that are in the possesion of the DOE. Accordingly, the IBEW's Appeal was denied.

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Refund Applications

Atlantic Richfield Co./Bud's Rural Gas Co., Fairless Hills Atlantic, 5/16/89, RF304-8881, RF304-8882

The DOE issued a Supplemental Order concerning Applications for Refund filed on behalf of Bud's Rural Gas Company and Fairless Hills Atlantic. The firms each had inadvertently been granted duplicative refunds and the DOE, therefore, rescinded the latter refunds.

Commonwealth Oil & Refining Company, 5/15/89, RF171-37

The DOE issued a Supplemental Order directing payment of a claim of Commonwealth Oil & Refining Company (Corco) for moneys owed it from the Crude Oil Entitlements Program. The claim was approved in a decision of the Federal Energy Regulatory Commission which reversed in part an Office of Hearings and Appeals decision denying Corco's Application for Exception. Consequently, the DOE awarded $3,247,000 to Corco in additional entitlements exception relief.

City of Dover Electric Department, 5/15/89, RF272-2620

The DOE issued a Decision and Order granting an Application for Refund filed by the City of Dover Electric Department in the Subpart V crude oil refund proceedings. Dover used refined petroleum products in its municipal operations and in the McKee Electric Generating Plant (McKee) during the period August 19, 1973 through January 27, 1981. In addition to establishing its chase volumes, McKee submitted a certification that it would notify the appropriate regulatory bodies of any refund it receives and pass through the entirety of the refund to its customers. Dover therefore was eligible to receive its full volumetric share of available crude oil monies as an end-user and as an electric utility. The total refund granted in this Decision is $173,670.

Crown Central Petroleum Corporation/Jones Oil, Inc., et al., 5/18/89, RF313-1, et al.

The DOE issued a Decision and Order considering applications filed by six purchasers of Crown refined petroleum products in the Crown Central Petroleum Corporation special refund proceeding. Each applicant was found to be eligible for a refund based on the volume of products it purchased from Crown. The refund applications were granted using a presumption of injury procedure set forth in *Crown Central Petroleum Corp.*, 18 DOE ¶ 85,326 (1988). The total amount of refunds approved in this Decision was $56,461, representing $48,399 in principal plus $8,062 in accrued interest.

Crown Central Petroleum Corporation/Uniondale Crown, et al., 5/19/89, RF313-146, et al.

The DOE issued a Decision and Order considering applications filed by five purchasers of Crown refined petroleum products in the Crown Central Petroleum Corporation special refund proceeding. Each applicant was found to be eligible for a refund based on the volume of products it purchased from Crown. The refund applications were granted using a presumption of injury procedure set forth in *Crown Central Petroleum Corp.*, 18 DOE ¶ 85,326 (1988). The total amount of refunds approved in this Decision was $35,226, representing $30,185 in principal plus $5,041 in accrued interest.

Exxon Corporation/Beachview Esso Service et al., 5/17/89, RF307-31, et al.

The DOE issued a Decision and Order concerning seven Applications for Refund filed in the Exxon Corporation special proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $9,317 ($7,884 principal plus $1,433 interest).

Exxon Corporation/Brownfiel Exxon et al., 5/18/89, RF307-5812, et al.

The DOE issued a Decision and Order considering 39 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $31,710 ($26,835 principal plus $4,875 interest).

Exxon Corporation/James Bray et al., 5/16/89, RF307-6634, et al.

The Office of Hearings and Appeals of the Department of Energy issued a Decision and Order granting 48 Applications for Refund from consent order funds obtained from Exxon Corporation. Each applicant was a reseller that sought a refund of less than $5,000 or an end-user, and was therefore presumed to have suffered injury as a result of Exxon's alleged overcharges. The sum of the refunds granted is $59,222.

Exxon Corporation/King & Lee Exxon Service et al., 5/18/89, RF307-1385, et al.

The DOE issued a Decision and Order concerning eight Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $15,709 ($13,293 principal plus $2,416 interest).

Exxon Corporation/Presley Hatley et al., 5/18/89, RF307-160, et al.

The DOE issued a Decision and Order concerning 12 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $11,753 ($9,945 principal plus $1,808 interest).

Gary Vogt & Sons, et al., 5/15/89, RF307-65909, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to six claimants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. As an end-user, each applicant was entitled to receive a refund of its full volumetric share. The refunds granted in this Decision total $3,361.

Gulf Oil Corporation/D & E Gulf Service, 5/17/89, RF309-5371

The DOE issued a Decision and Order concerning an Application for Refund submitted by D & E Gulf Service, an indirect purchaser in the Gulf Oil Corporation special refund proceeding. Because the direct purchaser in this case has elected to receive a refund based upon a presumption of injury, D & E Gulf Service's refund application was approved using a presumption of injury under the same procedure as that used to evaluate claims by direct purchasers. The total refund granted in this Decision is $2,313.

Gulf Oil Corporation/Knieriemen Oil of Dutchess, Inc., 5/17/89, RF300-5188

The DOE issued a Decision and Order concerning an Application for Refund submitted by Knierieman Oil of Dutchess, Inc., an indirect purchaser in the Gulf Oil Corporation special refund proceeding. Because the direct purchaser in this case has not applied for a refund in this proceeding, Knieriemen Oil of Dutchess, Inc.'s refund application was approved using a presumption of injury under the same procedure as that used to evaluate claims by direct purchasers. The total refund granted in this Decision is $2,380.

Gulf Oil Corporation/L.N. Payne, Jr. & Sr., 5/18/89, RF300-5486

The DOE issues a Decision an Order concerning an Application for Refund submitted by L.N. Payne, Jr. & Sr. in the Gulf Oil Corporation special refund proceeding. The application was approved using a presumption of injury. The refund granted in this Decision is $6,563.

Gulf Oil Corporation Ray's West Side Gulf, 5/19/89 RF300-5208

The DOE issued a Decision and Order concerning an Application for Refund submitted by Ray's West Side Gulf, an indirect purchaser in the Gulf Oil Corporation special refund proceeding. Because the direct purchaser in this case has indicated in its refund application that it does not intend to prove injury, Ray's West Side Gulf's refund application was approved using a presumption of injury under the same procedure as that used to evaluate claims by direct purchasers. The total refund granted in this Decision if $1,158.

Gulf Oil Corporation/Thomas P. Reidy, Inc., 5/19/89, RF40-3710, RF300-8833

The DOE issued a Decision and Order concerning the monies deposited in a DOE escrow account for Thomas P. Reidy (Reidy) from the initial Gulf Oil Corporation Subpart V special refund proceeding (Gulf I). The DOE determined that as a means to implement the terms of the consent order entered into between Reidy and the Economic Regulatory Administration, the monies in the Reidy escrow account would be transferred to another DOE account for eventual distribution in a Subpart V special refund proceeding. The DOE also determined that under the consent order, Reidy had waived its right to participate in any special refund proceedings. It therefore dismissed Reidy's application in the second Gulf Oil Corporation special refund proceeding (Gulf II).

Gulf Oil Corporation/Byron Elevator Inc., 5/17/89, RF300-3736

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation refund proceeding by Byron Elevator, Inc., a reseller of Gulf products. The application was approved using the 40% presumption of injury. The refund granted in this Decision is $20,900.

Gulf Oil Corporation/C.H. Lander, 5/16/89, RF300-3879, RF300-3880, RF300-3881, RF300-3882, RF300-3883, RF300-3884, RF300-3885, RF300-3886

The DOE issued a Decision and Order concerning eight Application for Refund submitted in the Gulf Oil Corporation refund proceeding. The applications were by eight affiliated gas stations and were thus considered as one claim. The applicants were approved for one refund using the 40% presumption of injury. The refund in this Decision is $7,754.

Gulf Oil Corporation/City of Huron, 5/18/89, RF300-2267

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by the City of Huron. The City of Huron was unable to show that it purchased Gulf products during the consent order period. Since the DOE had no reason to believe the City of Huron was injured by Gulf's alleged overcharges, its application was denied.

Gulf Oil Corporation/Dressell's Service Station, et al., 5/16/89, RF300-8104, et al.

The DOE issued a Decision and Order concerning 21 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $32,767.

Gulf Oil Corporation/Jenco Oil & Gas Inc., et al., 5/19/89, RF300-6498, et al.

The DOE issued a Decision and Order concerning six Applications for Refund submitted by applicants in the Gulf Oil Corporation refund proceeding. Each applicant claimed gallons purchased as a retailer and gallons purchased as a consignee. The DOE considered three of the applicants, who were affiliated, as one entity in determining their eligibility for a refund. The DOE held that the applicants, all of whom were seeking a refund greater than $5,000, were unable to simultaneously elect both the small claims presumption of injury and the 10 percent presumption of injury for consignees. The applicants' respective refunds were approved by utilizing either the $5,000 small claims presumption, or the sum of the 40 percent mid-range presumption (for gallons purchased as a retailer) and the 10 percent consignee presumption, depending on which formula produced the largest refund. The sum of the refunds granted in this Decision is $26,176.

Gulf Oil Corporation/Fowlkes Grocery, et al., 5/18/89, RF300-7762, et al.

The DOE issued a Decision and Order concerning nine Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each applicant was an indirect purchaser of Gulf products. Because the direct purchasers of these products have either (i) not applied for refunds in this proceeding, (ii) been granted refunds in this proceeding under presumptions of injury, or (iii) indicated in their refund applications that they do not intend to prove injury in this proceeding, the DOE granted the nine applicants refunds using the presumptions of injury under the same procedure as that used to evaluate claims by direct purchasers. The sum of the refunds granted in this Decision is $11,118.

Gulf Oil Corp./Herbert Bean Gulf Service #2, Herbert Bean Gulf Service #1, 5/18/89, RF300-7438, RF300-7480

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Because the applicants were affiliated, the DOE considered both applications together. Both applications were approved based on a single presumption of injury. The sum of the refunds granted in this Decision is $6,563.

Gulf Oil Corp./K.D. Timmons, 5/16/89, RF300-7443, RF300-7444, RF300-7445, RF300-7446

The DOE issued a Decision and Order concerning four Applications for Refund submitted by resellers in the Gulf Oil Corporation special refund proceeding. Because the applicants were affiliated, the DOE considered the four applications together. All of the four applications were approved based on a single presumption of injury. The sum of the refunds granted in this Decision is $6,563.

Gulf Oil Corporation/Milford Jeep, Inc., et al., 5/15/89, RF300-623, et al.

The DOE issued a Decision and Order concerning 26 Applications for Refund submitted in the Gulf Oil Corporation refund proceeding. Each application was filed by a reseller and was approved

using the small claims presumption of injury. The sum of the refunds granted in this Decision is $177,201.

Gulf Oil Corp./Moore Oil Corporation, Sheffield Oil Co., Inc., 5/18/89, RF300-7577, RF300-7578

The DOE issued a Decision and Order concerning two Applications for Refund submitted by resellers in the Gulf Oil Corporation refund proceeding. Because the applicants were affiliated, the DOE considered both applications together. Both applications were approved based on a single presumption of injury. The sum of the refunds granted in this Decision is $6,563.

Gulf Oil Corporation/UCO, Inc. (Landsea Oil Company) UCO Oil Company, 5/19/89, FR300-9307, RF300-10792

The DOE granted a refund of $3,959 to UCO Oil Company in *Gulf Oil Corp./Dale Bower* 16 DOE ¶ 85,171 (1988) (RF300-5055). Subsequently, the DOE determined that, because of ownership changes, Landsea Oil Company is the proper recipient of the refund and rescinded the refund granted to UCO Oil Company. The total refund granted to Landsea is $4,105 and the amount that UCO Oil Company must remit to the DOE is $4,074 ($3,959 in principal plus $115 in interest).

Kentucky Department of Education, 5/19/89 RF272-17487

The DOE issued a Decision and Order concerning an Application for Refund filed by the Kentucky Department of Education (KDE), an end-user of motor gasoline, in the Subpart V crude oil refund proceeding. KDE submitted information indicating the volume of motor gasoline that it purchased during the period of price controls. The refund approved in this Decision is $101,714.

Manhattan East Suite Hotels et al., 5/17/89, FR272-11699, et al.

The Doe issued a Decision and Order approving six Applications for Refund submitted in the Subpart V crude oil refund proceeding. Each applicant was an end-user of the refined products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in the Decision was $25,080.

Marathon Petroleum Co./Johnson Cheker Service, 5/16/89, RF250-2747

The DOE issued a Decision and Order considered an Application for Refund filed by Johnson Cheker Service from the consent order fund remitted by Marathon Petroleum Company. The DOE found that Johnson was eligible for a refund based on purchases of product from Cheker Oil Company, since Cheker was a division of a Marathon wholly-owned subsidiary. Using the small claims presumption of injury methodology, the DOE granted Johnson a refund of $3,137 in principal and $724 in interest.

Murphy Oil Corporation/Whitelaw Cooperative Exchange, 5/17/89, RF309-244

The DOE issued a Decision and Order granting the application of Whitelaw Cooperative Exchange in the Shell Oil Company special refund proceeding. Whitelaw's application was filed by Reedsville Cooperative Association, another cooperative which purchased the assets of Whitelaw in March of 1986 and requested that Whitelaw's refund be paid to it. The DOE determined that although Reedsville had no formal right to Whitelaw's refund, granting the refund to Reedsville would be the most efficient method of channeling the refund to Whitelaw's former members, most of whom are now members of Reedsville. Accordingly, as Reedsville certified that it would pass through the refund, the sum of $126 ($108 in principal plus $18 in interest) was granted to it.

Shell Oil Company Harold Wicks et al., 5/17/89, RF315-1018 et, al.

The DOE issued a Decision and Order concerning Applications for Refund filed by 50 claimants in the Shell Oil Company special refund proceeding. Each applicant documented its purchases of regulated petroleum products from Shell and was found to be eligible for a refund from the Shell consent order fund according to the procedures established in Shell Oil Co., 18 DOE ¶ 85,492 (1989). The refunds approved in the Decision totaled $34,182 ($29,516 in principal plus $4,666 in interest).

Whirlpool Corporation, 5/18/89, RD272-15977, RF272-15977

The DOE issued a Decision and Order granting an Application for Refund filed by the Whirlpool Corporation in the DOE crude oil special refund proceeding and rejecting a Motion for Discovery and Objections of a group of 30 State governments and two territories (the States). The States sought to rebut the presumption that end users were injured by the crude oil overcharges that occurred during the regulatory period. The DOE rejected the States' contention that Whirlpool's ability to raise prices during the regulatory period showed that the firm was able to pass along the costs of the overcharges to its customers. In addition, the DOE ruled that discovery was inappropriate, and that the States had failed to show that any additional information was required of the applicant. The DOE found that Whirlpool was an end user of petroleum products that had substantiated its purchases, and granted the firm's refund claim.

Total Petroleum/Yuska Oil Company, 5/15/89, RF310-340

The DOE issued a Supplemental Decision and Order rescinding a refund granted to Yuska Oil Company in *Total Petroleum/Dilries Oil Co.*, 18 DOE ¶ 85,972 (1989). The refund was rescinded because Yuska had previously received a refund from the Total Petroleum escrow fund account based upon the identical purchase volumes. *See Total Petroleum/Stan Hayes Enterpirses, Inc.*, 18 DOE ¶ 85,583 (1989).

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	No. of applicants	Total refund
Eldon Willis *et al.*	RF272-50801	5/18/89	166	$22,799
Iverson Construction Inc. *et al.*	RF272-25161	5/18/89	8	$20,850
John Halling *et al.*	RF272-51000	5/19/89	183	$17,645

DISMISSALS

Name	Case No.
Ames Department Stores, Inc.	RF272-86124
B&J Construction Company	RF307-2917
B.L. Hartnett Exxon	RF307-54
Bob's Exxon	RF307-298
Boylin's Spur Service	RF309-743
Central Steel & Wire Co	RF272-45254
Charles & Anna Lord	RF300-8271
Charlie's Arco Service	RF304-6404
City of Winters	RF272-75402
Clarendon Public Schools	RF272-75359
Clinton Exxon	RF307-3682
Jonheon Exxon	RF307-3683
Corning Glass Works	RF300-10333
Danny Fox Exxon	RF307-270
Davie Co. Comm. School District	RF272-74743
E. Filter Oil Company	RF307-2919
	RF307-3677
Eugene D'Andrea	RF300-8716
Fippin Brothers Well Drilling	RF307-2918
Flood's Exxon	RF300-8945
Flourtown Gulf	RF300-9274
Fox's Gulf Service	RF300-10797
Getty Service Station of Roslindale *et al.* (See Attached List).	
Goliad Independent School District	RF272-75403
Harlem and Montrose Arco	RF304-8230
Hwy 67 and 167 Exxon	RF307-2920
Jerry Wulck Shop	RF307-3684
Jim Hronis & Sons	RF272-57050
Jim's Spur Service	RF309-744
Kerry's Stand./K. Jorgenson *et al.* (See Attached List).	RF
Liddy's Arco Service	RF304-6183

DISMISSALS—Continued

Name	Case No.
Logan Oil Company, Inc	RF307-896
Marty's Spur Service	RF309-877
Michael Kicklighter Trucking	RF272-72437
Monks Construction	RF272-74754
Monzek Arco	RF304-3707
Nelson Oil *et al.* (See Attached List).	RF315-01322
Ortega Exxon	RF307-2925
Pacific Northern Oil	RF307-94803
Park Forrest Exxon	RF307-2934
Village Exxon	RF307-2936
Pigion Creek Grocery	RF307-2941
PM Service	RF307-2924
Prince Georges County	RF300-8270
Quarry B. Dock	RF307-3685
R.K. Black Gulf Station	RF300-8247
Robbinsdale Spur	RF309-1057
S.D. Hansell	RF300-6280
Safety Kleen Corporation	RF272-72436
Shady Grove Station	RF307-2933
Snap-On-Corp.	RF272-53876
South Side Exxon	RF307-2928
Southtown Spur	RF309-876
Starr Transit Company, Inc.	RF272-84382
Storm Lake Community School District.	RF272-72332
T&J Gulf	RF300-10715
The General Store	RF307-2938
Turner Fuel Oil	RF272-72438
Valley Drive Gulf	RF300-9390
Washington Comm. School District	RF272-63234
Western Dubuque School District	RF272-70820
Yellville Exxon	RF307-2942

DISMISSALS—Continued

Name	Case No.
Young Oil Company	RF272-72448

Applicant	Case No.
Getty Service Station of Roslindale	RF265-2781
Boozer's Getty	RF265-2782
Skelly Service Station	RF265-2783
Butler's Getty	RF265-2784
Crystal Skelly Service	RF265-2785
Thermes Brothers Skelly	RF265-2786
Joe's Getty Oil Service Station	RF265-2787
Falvey's Getty Service & Tire Co	RF265-2788
Joe's Getty	RF265-2789
Locke's Getty	RF265-2790
Mac's Getty	RF265-2791
Roger's Getty	RF265-2792
Roger's Getty of Norristown	RF265-2793
DiPalo's Getty	RF265-2794
Bazyk Getty Service Center	RF265-2795
Crouse Fuel Service	RF265-2796
Deacon Skelly	RF265-2797
Pleasant View Truck Stop	RF265-2798
Jim Hunt's Getty	RF265-2799
Bob McMillan's Getty	RF265-2800
Duane D. Kuss	RF265-2801
Minnetonka Skelly Service	RF265-2802
Larry's Skelly Service Station	RF265-2803
Lundeten's Skelly Service	RF265-2804
Midway Skelly Service	RF265-2805
Earl's Skelly	RF265-2806

APPENDIX A—May 18, 1989.

Case No.	Firm	Location			
RF304-02936	Kerry's Stand./K. Jorgenson	P.O. Box 0341	Watertown	SD	57201
RF304-02937	A&A Service Center	1314 Orange Rd	Culpeper	VA	22701
RF304-03472	Jimmy Arco Service Station	1531 Greenville Blvd	Greenville	NC	27834
RF304-03478	Keith's Arco	P.O. Box 43	Casco	WI	54205
RF304-03482	Circle Arco Service Center	9605 Lee High	Fairfax	VA	22031
RF304-03483	Bills Arco	27 Myrtle Avenue	Havertown	PA	19083
RF304-03485	Samuel S. Santee	2nd & Centre St	Coplay	PA	18037
RF304-03488	B&B Arco	1268 Riverdale Road	Westfield	MA	01085
RF304-03489	Mike Arco	3 East Avenue	Tallmadge	OH	44278
RF304-03490	Bills Arco	Evesham & Whitehorse Rd	Voorhees TWP	NJ	08043
RF304-03495	Kerry Standard	P.O. Box 341	Watertown	SD	57201
RF304-03496	Whitehall Arco	Colby Road	Whitehall	MI	49461
RF304-03499	Six Lakes Service	9241 Cooley Lake Road	Union Lake	MI	48085
RF304-03501	Verns Service Center	10524 S. Lavergne	Oak Lawn	IL	60453
RF304-03504	Franks Arco Station	159 Main St	Middletown	CT	06457
RF304-03511	Walter Polkay	125 New Park Avenue	Hartford	CT	06106
RF304-03513	Bowens Atlantic	2555 Monroe Avenue	Rochester	NY	14618
RF304-03515	Hartmans Arco	600 Hazeldel Avenue	New Castle	DE	19720
RF304-03516	Winsted Arco	710 Main Street	Winsted	CT	06098
RF304-03517	Bob's Arco Service	351 Winchester St	Keene	NH	03431
RF304-03519	S&H Arco Service Station	2905 Noble Road	Cleveland	OH	44121
RF304-03520	Bobs Arco	E Main & Green St	Palmyra	PA	17078
RF304-03523	Browns Arco	501 East Market Street	Georgetown	DE	19947
RF304-03527	Aspen Hill Arco	7161 Aspen Hill Road	Rockville	MD	20853
RF304-03530	Bowling & Son Service Station	2629 Comes Avenue	Memphis	TN	38114
RF304-03533	Bobs Service	2009 Boulevard Avenue	Scranton	PA	18508
RF304-03536	Gene's Arco Service	714 S. Fisk Street	Green Bay	WI	54304
RF304-03539	Nick Salvadore Service Station	8845 Ft. Smallwood Road	Pasadena	MD	21122
RF304-03540	Wrights Arco	800 W. Millers Road	Lansing	MI	48911
RF304-03543	Vincent Grocery	P.O. Box 36	Stappers	VA	23679
RF304-03545	Richards Alamo Service	2739 Craig Drive	Des Plaines	IL	60018
RF304-03547	Murphys Arco	1201 Belmont Avenue	Philadelphia	PA	19104
RF304-03563	Newtown-Lyman Arco	467 Newton St	South Hadley	MA	01075
RF304-03554	Snively's Arco	701 E. Baltimore Avenue	Lansdowne	PA	19050
RF304-03556	George Wherley's Arco	145 E. Myrtle St	Littlestown	PA	17340
RF304-03559	J and J Arco	1674 W Princeton Avenue	Brick	NJ	08724
RF304-03560	Larrys	Hwy 212 South Broadway	Watertown	SD	57201
RF304-03562	Hallow Distributor Co., Inc	Drawer H	Greenville	NC	27835
RF304-03564	Willow Distributor	2501 Cockrell Lane	Dallas	TX	75215

APPENDIX A—May 18, 1989.—Continued

Case No.	Firm	Location			
RF304-03565	Russell Oil Company	820 Young Street	Richmond	VA	23222
RF304-03566	Tri-City Associates	1438 W Wythe Street	Petersburg	VA	23803
RF304-03567	Furnace Brand Carwash	8945 Smallwood Road	Pasadena	MD	21123
RF304-03570	Cornwall Fuel Company	5036 25 NE	Seattle	WA	98105
RF304-03571	Santopietro Tire	158-8 Jersey Street	Waterbury	CT	06706
RF304-03637	Glass City Oil	1133 N. Summit St	Toledo	OH	43604
RF304-03638	Longs Quaker State Service	243 Main St	Greenville	PA	16125
RF304-03644	Rich's Service Station	Main & Shoemaker St	Swoyersville	PA	18704
RF304-03645	Mike's Service Station	2nd North & Oak St	Chebanse	IL	60922
RF304-03648	Holt Arco Service	295 E. Holt	Pomona	CA	91767
RF304-03649	Williams Arco Mini Mart #1	2500 Laurel St	Napa	CA	94558
RF304-03650	Landess Arco	1575 Landess Ave	Milpitas	CA	95035
RF304-03651	Granite Bay Arco	8555 Auburn Folsom Rd	Roseville	CA	95678
RF304-03652	R&D Arco	3921 Watt Ave	Sacramento	CA	95821
RF304-03653	Sun Lee Arco Service Station	10625 N. De Anza Blvd	Cupertino	CA	95014
RF304-03660	Kanes Arco	P.O. Box 492	Palmyra	PA	17078
RF304-03661	Vern Null Arco	2795 Carlisle Pike	New Oxford	PA	17350
RF304-03663	H.C. Arco	3237 Scranton Rd	Cleveland	OH	44109
RF304-03664	David O. Hendricks Arco	202 Main St	Emmaus	PA	18049
RF304-03665	Groes Arco	12500 Highland Drive	Edinboro	PA	16412
RF304-03666	Cave Arco	Rt. 663 Swamp Pike	Gilbertsville	PA	19525
RF304-03668	F.W. Oil, Co	839 Harding	Janesville	WI	53547
RF304-03673	Allen's Arco Mini Market	1605 W. Carson	Bakersfield	CA	93304
RF304-03674	Trans Arco	4948 Camden Ave	San Jose	CA	95124
RF304-03675	Park Boulevard Arco Mini Mart	3310 Park Blvd	Oakland	CA	94610
RF304-03677	Arco Mini Market	101 Lincoln Rd. West	Vallejo	CA	94590
RF304-03678	Erbe Service Station	Rt. 209	Coaldale	PA	18218
RF304-03680	Orris Service Station	903 Freeport Rd	Creighton	PA	15030
RF304-03681	Knorr's, Inc	341 E. Main St	Carnegie	PA	15220
RF304-03683	Knorr's, Inc	1630 Cochran Rd	Pittsburgh	PA	15220
RF304-03684	Robinson Petroleum Co	110 Jefferson Ave	Washington	PA	15301
RF304-03686	Swedes Arco	35111 N. Milwaikee Ave	Inglesite	IL	60041
RF304-03692	Roseville Arco Mini Market	1632 Douglas Blvd	Roseville	CA	95661
RF304-03694	Palm Desert Arco	73993 Hwy 111	Palm Desert	CA	92260
RF304-03695	Holmes Arco Service	3005 Grass Valley Hwy	Auburn	CA	95603
RF304-03696	Arco Marine Fuel Dock	33105 Buccaneer Crt	San Juan Capistrano	CA	92675
RF304-03697	Eddie's Service Station	2710 Sloat Blvd	San Francisco	CA	94116
RF304-03699	Hoskin Hogan Arco Mini	9922 South Figueroa	Los Angeles	CA	90003
RF304-03700	Naz Arco Station	15604 South Pioneer	Norwalk	CA	90650
RF304-03701	Maurice Shoemakers Arco Serv	840 Huntington Dr	Pasadena	CA	91108
RF304-03704	Yim's Arco	1965 Palo Verde	Long Beach	CA	90815
RF304-03705	Searer' Service Station	P.O. Box 221	Millerstown	PA	17062
RF304-03712	Ron's Service Station	2421 9th Ave	North Riverside	IL	60546
RF304-03717	Higgins Arco	3230 East State St	Sharon	PA	16146
RF304-03721	Irwin Arco	8000 Roosevelt Blvd	Philadelphia	PA	19152
RF304-03722	Olson's Arco	201 St. Louis St	Dwight	IL	60420
RF304-03723	Rocchias Arco	5215 Sheridan Dr	Williamsville	NY	14068
RF304-03727	Turner's Arco	Box 93	Barlow	OH	45712
RF304-03728	Al Gibbs Arco	701 Conshohocken St. Rd	Narberth	PA	19072
RF304-03729	K&R Automotive, Inc	237 Washington St	Attleboro	MA	02703
RF304-03730	Gary Coloeimo Arco	104 Clairton Blvd	Bethel Park	PA	15102
RF304-03733	Dons Arco	733 W. Prairie St	Pontiac	IL	61764
RF304-03737	Lou's Arco	Parisi Sunoco Mn. & Delilah	Pleasantville	NJ	08232
RF304-03738	Esteves Arco	2401 Fox & Allegheny Ave	Philadelphia	PA	19132
RF304-03740	Mack-Beniteau Serv. Inc	11145 Mack Ave	Detroit	MI	48214
RF304-03745	Uptown Service Station	4900 N. Broadway	Chicago	IL	60640
RF304-03750	Arco Station	26th Belmont St	Bellaire	OH	43906
RF304-03752	Ray's Arco	6131 W. Roosevelt Rd	Cicero	IL	60650
RF304-03756	Di Maiolo's Arco Service	1236 Salt Springs Rd	Youngstown	OH	44509
RF304-03757	Schafer Automotive Service	25 Lincoln St	Lowell	MA	01852
RF304-03759	Jim's Car Care Center	201 St. Louis St	Dwight	IL	60420
RF304-03760	Bullocks Tire Shop	P.O. Box 5	Lincoln	AL	35096
RF304-03763	Wendon Enterprises, Inc	1350 Old Freeport Rd #1A	Pittsburgh	PA	15238
RF304-03766	Kobik Orris Fuel Co	903 Freeport Rd	Creighton	PA	15030
RF304-03770	National Petroleum Corp	4900 N. Broadway	Chicago	IL	60640
RF304-03771	Weston Oil Co	Box 433	Valentine	NE	69201
RF304-03772	Blonstein Fuel Co	P.O. Box 87	Rockville	CT	06066
RF304-03773	Morris Oil Co	Box 14	Wooster	OH	44891
RF304-03774	Charles Aron Oil Co., Inc	Box A	Russell Springs	KY	42642
RF304-03776	Buckingham Arco	P.O. Box 413, Rt. 263	Buckingham	PA	18912
RF304-03811	Highland's Arco	P.O. Box 426	Clearlake	CA	95422
RF304-03812	San Gabriel Arco	9121 San Delmer	San Gabriel	CA	91776
RF304-03813	First & Lamona Arco	1334 N. First St	Fresno	CA	93705
RF304-03814	Bill Louie's Arco	800 Franklin St	Oakland	CA	94607
RF304-03815	O'Brien's Arco Service	2500 Laurel St	Napa	CA	94558
RF304-03816	Arco Mini Mart	890 Center St	Lewiston	NY	14092
RF304-03817	Mohmade	15101 Freedom Ave	San Leandro	CA	94578
RF304-03818	Monterey Jim's Arco	2859 Monterey Rd	San Jose	CA	95111
RF304-03819	Williams Arco Mini Mart	E. Military St	Benicia	CA	94510
RF304-03820	Williams Arco Mini Mart	640 Broadway St	Vallejo	CA	94590

APPENDIX A—May 18, 1989.—Continued

Case No.	Firm	Location			
RF304-03821	Freeway Arco	2740 98 Ave	Oakland	CA	94605
RF304-03823	Cooper Construction	2801 E. Spring St	Long Beach	CA	90806
RF304-03824	Fennville Feed Supply	P.O. Box 424	Fennville	MI	49408
RF304-03826	Ghannams Arco Service	9624 Flair Dr	El Monte	CA	91731
RF304-03827	Remington Arco	1040 Sunnyvale Saratoga	Sunnyvale	CA	94087
RF304-03829	OS Arco Service Station	1024 W. Alondra	Compton	CA	90220
RF304-03831	Shelby Petroleum Corp	P.O. Box 88	Lafollette	TN	37766
RF304-03833	Wendy Arco	2750 Camino Dos Rios	Malibu	CA	90265
RF304-03834	P M Service	3720 Lone Tree	Antioch	CA	94509
RF304-03835	Fremont Arco	35900 Fremont Blvd	Fremont	CA	94539
RF304-03836	Wong's Arco	2032 E. 12th	Oakland	CA	94606
RF304-03837	Garrison Arco	3100 G. St	Merced	CA	95340
RF304-03838	Midtown Arco	2995 Middlefield Rd	Palo Alto	CA	94306
RF304-03839	Mikes Service Station	2nd North & Oak St	Chebanse	IL	60922
RF304-03840	Chuck Hauber's Arco Station	4421 Brownsville Rd	Trevose	PA	19047
RF304-03847	A&L Garage & Decelle & Sons	98 Lake St	Nashua	NH	03060
RF304-03849	S-K Auto Service	6529 Oxford Ave	Philadelphia	PA	19111
RF304-03852	Palm & Shield's Arco	3133 N. Palm	Fresno	CA	93704
RF304-03854	Arco #1	1480 P St	Fresno	CA	93721
RF304-03855	Abby Arco	30621 Hwy 99	Goshen	CA	93227
RF304-03856	Parkwoods Arco	1612 Hammer Lane	Stockton	CA	95209
RF304-03857	Mesa Arco Service	3201 Harbor	Costa Mesa	CA	92626
RF304-03858	Sergie's Auto Service	337 Mill St	Belmont	MA	02178
RF304-03872	Cuenin Arco	960 N. Leavitt Rd	Amherst	OH	44001
RF304-03947	Shaya's	228 East Street Rd	Warminster	PA	18974
RF304-03948	Fogers Valley Arco	3709 Burgoon Road	Altoone	PA	16602
RF304-03950	Patiala Arco Service Station	2550 Mission Bell Drive	Richmond	CA	94806
RF304-03955	Schultz Service Center	1001 Elm Road	Warren	OH	44483
RF304-03959	Mits Arco	6100 S. Atlantic Street	Maywood	CA	90270
RF304-03960	Shelby Petroleum Corp	P.O. Box 88	Lafollette	TN	37766
RF304-03961	Dr. Pepper of Dallas	2304 Century Center Blvd	Irvin	TX	75062
RF304-04119	Ollies Arco	3442 North East 82nd	Portland	OR	97220
RF304-04120	Higgins Arco	1796 Williamette	Eugene	OR	97401
RF304-04122	Dougs Arco	6820 North Fessenden	Portland	OR	97203
RF304-04123	Doug Outland	P.O. Box 03436	Portland	OR	97203
RF304-04125	P and F Arco	3213 Mission Avenue	Oceanside	CA	92054
RF304-04126	Kokos Arco	9300 Jurpa Road	Riverside	CA	92509
RF304-04127	Dunn Service Station	1611 South Main	Columbia	TN	38401
RF304-04128	Woodburn Arco	2720 Newburn Highway	Woodburn	OR	97071
RF304-04129	Westview Arco	100 Amcy Road	Woodburn	OR	97071
RF304-04133	Rockaway Arco	1840 North Highway 101	Rockaway	OR	97136
RF304-04134	Ernie Houcks Arco	785 South East Seventh	Grants Pass	OR	97526
RF304-04137	Gateway Arco Station	1130 North 185th Street	Seattle	WA	98133
RF304-04140	Walt's Arco	6402 Broadway	Everett	WA	98203
RF304-04142	Seaside Arco	231 South Holiday Drive	Seaside	OR	97138
RF304-04143	Gabas Arco	59 W El Camino	Mountain View	CA	94040
RF304-04144	Airport Arco	20450 Hesperian Blvd	Hayward	CA	94541
RF304-04145	Cooks Arco	2050 Manchester	Los Angeles	CA	90047
RF304-04146	Chopras Arco	1401 Grand Avenue	San Leandro	CA	94577
RF304-04147	Tallerico Arco	56 South Weed Blvd	Weed	CA	96034
RF304-04150	Cedar Rapids Arco	18015 S.E. Maple Valley	Renton	WA	98055
RF304-04151	Kalls Arco	9834 Martin Luther King	Seattle	WA	98118
RF304-04152	Marcola Arco	92178 Main Street	Marcola	OR	97454
RF304-04339	Arco Mpg of Garden Grove	9001 Garden Grove Blvd	Garden Grove	CA	92644
RF304-04340	Sabin's East Side Arco	R.R. #2, P.O. Box 400	Prineville	OR	97754
RF304-04342	Larrys Arco	500 S.W. Chakelov Drive	Vancouver	WA	98684
RF304-04346	Dons Arco Service	495 Telegraph Cyn Road	Chula Vista	CA	92010
RF304-04347	Grand Mound Arco	19705 Old Highway 99 SW	Rochester	WA	98579
RF304-04348	Tonys Arco	800 East Valley Blvd	San Gabriel	CA	91766
RF304-04349	Rufinos Arco	98 South Park Victoria Dr	Milpitas	CA	95035
RF304-04350	Arco Gas Station	16101 Figoroa Street	Gardena	CA	90248
RF304-04351	Chungs Arco Gas Station	13821 Aurora North	Seattle	WA	98133
RF304-04353	Khatri AM-PM	1700 Midofield	Redwood City	CA	94063
RF304-04354	Hupht Arco	15201 Washington Avenue	San Leandro	CA	94578
RF304-04355	Arco	2990 Pacific Avenue	Long Beach	CA	90806
RF304-06386	Georges Arco	1365 Manchester Blvd	Buena Park	CA	90621
RF304-06389	Fausals Arco	7200 Atlantic Blvd	Bell	CA	90201
RF304-06392	Prudhomme AM-PM	1901 W. Peoria Avenue	Phoenix	AZ	85029
RF304-06393	Chauhans Arco	20450 Hesperain Blvd	Hayward	CA	94541
RF304-06394	Georges AM & PM Mini Mart	15750 Elettingwell	Whittier	CA	90604
RF304-06400	Bruces Arco Service	1220 W. Tennyson Rd	Hayward	CA	94544
RF304-06401	Severis Arco Station	105 No. Main Street	Fort Bragg	CA	95437
RF304-06403	Sakos Arco Service	50 South Baldwin Avenue	Sierra Madre	CA	91204
RF304-06405	Shakes Arco	3000 Shattuck Avenue	Berkeley	CA	94705
Total—193					

APPENDIX B—May 18, 1989.

Case No.	Firm	Location			
RF315-01322	Nelson Oil or Federal Refunds, Inc	2400 E. Artesia	Long Beach	CA	90805
RF315-01323	Ron's Shell or Federal Refunds, Inc	2199 Lombard St	San Francisco	CA	94123
RF315-01325	Downtown Shell or Federal Refunds, Inc	Stephens St	Roseburg	OR	97470
RF315-01326	Duden's Shell or Federal Refunds, Inc	1317 Fulton St	San Francisco	CA	94117
RF315-01328	Wagter Shell Service or Federal Refunds, Inc	618 Front St	Lynden	WA	98264
RF315-01329	Gladstone Shell or Federal Refunds, Inc	Arlington St	Gladstone	OR	97027
RF315-01330	Mouser's Clackamas Shell or Federal Refunds, Inc.	290 Amanda Ct	Oregon City	OR	97045
RF315-01331	MacArthur Drive Shell or Federal Refunds, Inc	1401 MacArthur Dr	Alexandria	LA	71301
RF315-01332	Brundage Shell or Federal Refunds, Inc	101 S. Union St	Bakersfield	CA	93307
RF315-01335	George & John Inc. or Federal Refunds, Inc	1300 E. Commercial Pl	Oakland Park	FL	33334
RF315-01336	Rio Vista Shell or Federal Refunds, Inc	817 S. Federal Hwy	Fort Lauderdale	FL	33316
RF315-01338	Detch's Shell Service or Federal Refunds, Inc	3800 66th St. N	St. Petersburg	FL	33709
RF315-01339	Corolla's Shell Service or Federal Refunds, Inc.	7301 9th St. N	St. Petersburg	FL	33710
RF315-01340	Bill's Shell Service or Federal Refunds, Inc	3801 49th St. N	St. Petersburg	FL	33713
RF315-01341	John & George Inc. or Federal Refunds, Inc	4195 183rd Street	North Miami Beach	FL	33160
RF315-01342	Memphis Light, Gas & Water or Federal Refunds, Inc.	Box 430	Memphis	TN	38101
RF315-02168	Smith's Shell Service or Federal Refunds, Inc	4599 66th St. N	St. Petersburg	FL	33709
RF315-02169	Smith's Shell Mart or Federal Refunds, Inc	16451 Gulf Blvd	Redington Beach	FL	.....
RF315-02170	Bryn Mawr Shell or Federal Refunds, Inc	328 S. Cedar Lake Road	Minneapolis	MN	55406
RF315-02171	Southdale Shell or Federal Refunds, Inc	7920 France	Bloomington	MN	55435
RF315-02172	Freeway Shell or Federal Refunds, Inc	35 E. Larpentuer	Maplewood	MN	55109
RF315-02173	Inter-Town Shell Service or Federal Refunds, Inc.	1221 Washington Ave	Minneapolis	MN	55415
RF315-02174	Heights Shell or Federal Refunds, Inc	3701 Central	Colombia Heights	MN	55421
RF315-02175	Southtown Shell or Federal Refunds, Inc	7745 Penn Ave. S	Richfield	MN	55423
RF315-02176	Golden Valley Shell Service or Federal Refunds, Inc.	3922 Olson Highway	Golden Valley	MN	55422
RF315-02177	Lakeland Shell or Federal Refunds, Inc	6300 Lakeland Ave	Brooklyn Park	MN	55428
RF315-02178	Kalland's France Ave. Shell or Federal Refunds, Inc.	5053 France Ave. S	Minneapolis	MN	55410
RF315-02179	Voyageur Shell Service or Federal Refunds, Inc.	6601 Penn Ave. S	Richfield	MN	55423
RF315-02180	Broadway Auto Elec. & Shell or Federal Refunds, Inc.	1217 Broadway	Minneapolis	MN	55411
RF315-02181	Bob's Shell Service or Federal Refunds, Inc	5556 Lyndale Ave. S	Minneapolis	MN	55419
RF315-02182	Lagen Shell Service or Federal Refunds, Inc	1928 Portland Ave. S	Minneapolis	MN	55404
RF315-02183	Broadway Shell or Federal Refunds, Inc	7100 W. Broadway	Brooklyn Park	MN	55428
RF315-02184	Brooklyn Center Shell or Federal Refunds, Inc	6245 Brooklyn Blvd	Brooklyn Center	MN	55421
RF315-02185	Edina Shell Service, Inc. or Federal Refunds, Inc.	4101 W. 50 St	Edina	MN	55424
RF315-02186	Tom Smith's Shell Service or Federal Refunds, Inc.	4861 Central Ave	St. Petersburg	FL	33713
RF315-02187	Gunn's Shell Service, Inc. or Federal Refunds, Inc.	63 Wolcott Hill Road	Wetherfield	CT	06109
RF315-03051	Cypress Shell/Wm. Court or Federal Refunds, Inc.	6201 Powerline Rd	Fort Lauderdale	FL	33309
RF315-03052	Jerry's Shell/J. Hintz or Federal Refunds, Inc	700 N. Federal Hwy	Hallandale	FL	33009
RF315-03053	Ron Kon Koma Shell/R Ad or Federal Refunds, Inc.	1901 N.W. 40th Ave	Lauderhill	FL	33317
RF315-03054	Cochrane Bros./Natt Smith or Federal Refunds, Inc.	670 Main St	Dunedin	FL	33528
RF315-03055	Smith Shell/Natt Smith or Federal Refunds, Inc.	803 S. Missouri Ave	Largo	FL	34640
RF315-03056	West Bay Shell/Natt Smith or Federal Refunds, Inc.	1001 W. Bay Dr	Largo	FL	34640
RF315-03057	Midland Shell/J. Muelle or Federal Refunds, Inc.	2550 Winnetka	Golden Valley	MN	55426
RF315-03058	Indian Rocks Shell/Geis or Federal Refunds, Inc.	2313 N. Gulf Blvd	Indian Rocks B	FL	34635
RF315-03059	Porter's Shell/C.A. Por or Federal Refunds, Inc.	2313 N. Gulf Blvd	Indian Rocks B	FL	33535
RF315-04232	Dreyer's Shell/J.S. Han or Federal Refunds, Inc.	680 Main St	Dunedin	FL	33528
RF315-04233	Coachmen Shell/R. Matth or Federal Refunds, Inc.	2498 Gulf to Bay Blvd	Clearwater	FL	33515
RF315-04234	Scott's Shell/P. Sadowe or Federal Refunds, Inc.	840 S.W. 24th St	Plantation	FL	33315
RF315-04235	Pine Island Shell/Sadow or Federal Refunds, Inc.	1800 N. Pine Island R	Plantation	FL	33322
RF315-04237	Tarpon Garden Shell/Coc or Federal Refunds, Inc.	1001 Tarpon Ave	Tarpon Springs	FL	34689
RF315-04238	Dunedin Shell/D. Cochra or Federal Refunds, Inc.	680 Main St	Dunedin	FL	33528
RF315-04239	Carl's Bayshore Shell/L or Federal Refunds, Inc.	319 Bayshore Blvd	San Francisco	CA	94125
RF315-04998	Sunset Shell or Federal Refunds, Inc	3000 Johnson Street	Hollywood	FL	33021
Total—53					

[FR Doc. 89-15742 Filed 7-3-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ECAO-RTP-0242; FRL-3611-4]

National Acid Precipitation Assessment Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: This notice announces an expert, peer-review workshop to be held by the Environmental Criteria and Assessment Office (ECAO) of EPA's Office of Health and Environmental Assessment to facilitate preparation of a draft report, "Direct Health Effects of Air Pollutants Associated with Acidic Precursor Emissions," a product of the National Acid Precipitation Assessment Program (NAPAP). The workshop site is the Washington Duke Inn, 3001 Cameron Blvd., Durham, North Carolina.

DATES: The workshop will be held July 12–14, 1989, from 9:00 a.m. to 5:00 p.m. Members of the public are invited to attend.

FOR FURTHER INFORMATION CONTACT: David E. Weil, Ph.D., U.S. Environmental Protection Agency, Environmental Criteria and Assessment Office, MD-52, Research Triangle Park, North Carolina 27711, (919) 541-4163 or (FTS) 629-4163.

SUPPLEMENTARY INFORMATION: The Acid Precipitation Act of 1980 (Title VII of the Energy Security Act, Pub. L. 96-294) established an Interagency Task Force to develop and implement a comprehensive National Acid Precipitation Assessment Program (NAPAP). The Task Force is chaired jointly by the Environmental Protection Agency, National Oceanic and Atmospheric Administration, Departments of Agriculture, Energy, and Interior, and the Council on Environmental Quality.

NAPAP's goal is to develop and refine an objective, comprehensive body of scientific, technological, and economic information on the causes and effects of acidic deposition and to assess the effectiveness of various measures that might be adopted to mitigate the adverse effects. NAPAP prepares this information for use by the Congress and the President. The draft report being peer-reviewed at the workshop is one of over 25 state-of-the-science reports which are part of the process of information development for the executive and legislative branches. The report addresses the state-of-the-science of the health effects of sulfur dioxide, acidic aerosols, ozone, nitrogen dioxide, and other related photochemical oxidants. It includes discussion of ambient exposures, health effects, and risk estimates.

Date: June 21, 1989.

Erich Bretthauer,

Acting Assistant Administrator for Research and Development.

[FR Doc. 89-15744 Filed 7-03-89; 8:45 am]

BILLING CODE 6560-50-M

[PF-519; FRL 3609-9]

E.I. DuPont de Nemours & Co.; Withdrawal of Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the withdrawal without prejudice of pesticide petition (PP) 6F3375 by the E.I. Du Pont de Nemours & Co. for Cinch 7EC Herbicide, Technical Cinch Herbicide.

ADDRESS: By mail, submit written comments, identified by the document control number [PF-519], to: Public Docket and Freedom of Information Section, Field Operations Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Office of Pesticide Programs, Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Rm. 245, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-557-1800.

SUPPLEMENTARY INFORMATION: EPA gives notice that it has received a request from E.I. Du Pont de Nemours & Co., Inc., Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880-0038, a request to withdraw without prejudice the application for Cinch 7EC Herbicide, Technical Cinch Herbicide, and the corresponding petition for PP No. 6F3375, which was published in the **Federal Register** of March 26, 1986 (51 FR 10442), proposing to establish a tolerance for the herbicide of 0.1 part per million (ppm) in or on cottonseed, peanuts, and soybeans.

Authority: 7 U.S.C. 136a.

Dated: June 16, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89-15414 Filed 7-3-89; 8:45 am]

BILLING CODE 6560-50-M

[PF-521; FRL-3611-8]

Merck, Sharp & Dohme Research Laboratories; Amendment of Pesticide Petition and Food Additive Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the amendment of pesticide petition (PP) 8F3592 and food additive petition (FAP) 8H5550 for the insecticide abamectin and its delta, 8,9-isomer by Merck, Sharp & Dohme Research Laboratories.

ADDRESSES: By mail, submit written comments to:

Public Docket and Freedom of Information Section, Field Operations Division (H-7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

George LaRocca, Product Manager (PM) 15, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 204, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-557-2400.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 3, 1988 (53 FR 3075), EPA issued notice of filing of PP 8F3592 and FAP 8H5550 by Merck, Sharp & Dohme Research Laboratories, Hillsborough Rd., Three Bridges, NJ 08887, for the insecticide abamectin and its delta, 8,9-isomer. PP 8F3592 proposed amending 40 CFR Part 180 by establishing a regulation to permit residues of the insecticide in or on citrus whole fruit at 0.005 part per million (ppm), cattle meat and meat byproducts at 0.005 ppm, and milk at 0.001 ppm. The proposed analytical method for determining residues was high-pressure liquid chromatography. FAP 8H5550 proposed amending 21 CFR Part 193 (recodified as 40 CFR Part 185 in the Federal Register of June 29, 1988 (53 FR 24667)), by establishing a regulation to permit the residues of the insecticide in or on dried citrus pulp at 0.03 ppm and citrus oil at 0.10 ppm.

Merck, Sharp & Dohme Research Laboratories has submitted to EPA revisions to the petitions. PP 8F3592 has been revised to propose the following tolerances: Citrus, whole fruit and cattle meat and meat byproducts at 0.02 part per million and milk at 0.005 ppm. FAP 8H5550 has been revised to propose the following tolerances: Dried citrus pulp and citrus oil at 0.10 ppm.

Authority: 21 U.S.C. 346a.

Dated: June 28, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89-15873 Filed 7-3-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-833-DR]

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-833-DR), dated June 16, 1989, and related determinations.

DATE: June 28, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: The notice of a major disaster for the State of Louisiana, dated June 16, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 16, 1989:

The parishes of Beauregard and Tangipoa for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-15709 Filed 7-3-89; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-829-DR]

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-829-DR), dated May 20, 1989, and related determinations.

DATED: June 28, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: The notice of a major disaster for the State of Louisiana, dated May 20, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 20, 1989:

The parishes of St. James and St. Martin for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-15710 Filed 7-3-89; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-831-DR]

Ohio; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA-831-DR), dated June 10, 1989, and related determinations.

DATED: June 26, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: The notice of a major disaster for the State of Ohio, dated June 10, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 10, 1989:

Coshocton, Franklin, and Licking Counties for Individual Assistance.

Notice is also hereby given that the incident period for this disaster is closed effective June 26, 1989.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-15711 Filed 7-3-89; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-828-DR]

Texas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-828-DR), dated May 19, 1989, and related determinations.

DATED: June 24, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: The notice of a major disaster for the State of Texas, dated May 19, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in this declaration of May 19, 1989:

The counties of Baylor, Bosque, Brown, Ector, Hall, Hutchinson, Howard, Leon, Lubbock, Ochiltree, Pecos, Potter, Randall, San Augustine, Sherman, Tyler, and Walker for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-15712 Filed 7-3-89; 8:45 am]

BILLING CODE 6718-02-M

Disaster Assistance Program

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: FEMA invites proposals to improve operational and fiscal relationships among Federal, State, and local disaster officials. Such proposals should include but are not limited to provisions which: (1) Decrease the amount of time for processing requests for major disaster and emergency declarations and providing Federal assistance for major disasters and emergencies; (2) provide for more effective utilization of State and local resources in major disaster and emergency relief efforts; and (3) improve the timeliness of reimbursement of State and local governments after the submission of necessary documentation.

DATE: Interested persons are invited to submit comments by September 1, 1989.

ADDRESS: Written comments should be addressed to: Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, Room 840, 500 C Street SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Deborah Hart, Office of Disaster Assistance Programs, FEMA, Room 705, 500 C Street SW., Washington, DC 20472, Telephone: (202) 646-3612.

SUPPLEMENTARY INFORMATION: On November 23, 1988, Pub. L. 100-707, the President signed the Disaster Relief and Emergency Assistance Amendments of 1988. Under these amendments, the Disaster Relief Act of 1974 (Pub. L. 93-288, as amended) was renamed the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Act). Section 110 of Pub. L. 100-707 requires that within 1 year the President make recommendations to the Congress on proposals to improve the operational and fiscal relationships that exist between Federal, State and local disaster officials. It was intended that all possible avenues to improve these relationships be explored by the President. The functions vested in the President in section 110 were delegated to FEMA by section 4 of Executive Order 12673 of March 23, 1989.

As defined in Pub. L. 93-288, as amended, "Federal Agency" means any department, independent establishment, Government corporation, or other agency of the executive branch of the Federal Government. It does not include the American National Red Cross.

As noted in interim regulations for the Act, FEMA has taken steps to improve relationships between Federal, State, and local officials. These steps are intended to give the States more responsibility in disaster response and recovery actions. The revised guidelines are being published in phases. FEMA published interim rules covering Public Assistance, Individual Assistance, the Coastal Barrier Resources Act, Community Disaster Loans, Fire Suppression, and Hazard Mitigation Planning on March 21, 1989 (54 FR 11610). A second notice, covering the Great Lakes States Planning Assistance Grants, was published in the Federal Register on April 21, 1989 (54 FR 16108). A third notice covering the declaration process and emergency assistance was published on May 22, 1989 (54 FR 22162). Another notice covering proposed rules for the new hazard mitigation grant program was published on this same day (54 FR 22173). One other notice covering proposed hazard mitigation planning rules will be published later this summer.

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-15713 Filed 7-3-89; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200261.

Title: Port of Oakland Terminal Agreement.

Parties:

Port of Oakland (Port)

Star Shipping A/S (Star).

Synopsis: The Agreement provides that Star shall have the non-exclusive use of certain premises at the Port's Seventh Street Public Container Terminal for berthing, loading and discharging vessels. Star will use these premises as the regularly scheduled Northern California port of call for its vessel operations. The Agreement also provides Star and the Port with certain rights if Star's operations are transferred to other of the Port's public terminals. Star will pay to the Port 90 percent of the dockage and wharfage tariff charges with an annual wharfage cap of 35,000 revenue tons per acre wharfage cap for container cargo, and separate wharfage discounts of 35 percent of tariff wharfage for breakbulk cargo and 20 percent of tariff for metal, iron and steel products. Star's dockage charges shall be subject to a limitation of payment to 70 percent of the number of vessel calls per year.

By Order of the Federal Maritime Commission.

Dated: June 28, 1989.

Joseph C. Polking,

Secretary,

[FR Doc. 89-15649 Filed 7-03-89; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

H. Conrad & Associates, Inc., 404 N. 13th St., Suite 104, Tampa, Florida 33602. Officers: Henry S. Conrad, Jr., President, Barry F. Brouillet, Vice President, Anita P. Conrad, Secretary/Treasurer.

Trust Forwarding International Incorporated, 7363 N.W. 54th Street, Miami, FL 33166. Officers: Reina Haber, President/ Jae Haber, Vice President.

Darco International, 6610 Tributary Street, Baltimore, MD 21224. Officer: David A. Sole Proprietor.

America's Expresso, Inc., 11410 SW. 32 St., Miami, FL 33166. Officers: Alberto Hernandez, President/Stockholder, Tamara Hernandez, Secretary/ Stockholder.

EXIM Factors, Ltd., 432 S. Rock Blvd., Sparks, NV 89431. Officers: Verlene Joyce Bonham, President/Director, John S. Munro, Secretary/Director, Dale McGhie, Treasurer/Director, Northern International Bank, Parent Corporation/ Stockholder.

Air Van Lines, Inc., 1280—116th Ave., NE Bellevue, WA 98004. Officers: A. N. Thompson, Jr., Chairman, Remo S. Galvagno, President, W. Thomas White, Vice Pres./Secr./Stockh., Bethco Consolidated, Inc. Parent Corporation.

Ace Pool Car, Inc. dba A.P.C. International, Inc., 7220 Santa Fe Drive, Hodgkins, IL 60525. Officers: H. Cole Overman, President, Paul J. Walk, Secr./Treas./Director, Philip R. Carvatta, Exec. Vice President, Larry E. Rose, Exec. Vice President.

Karen Nowell, 4113 C Riverside Drive, Coral Springs, FL 33065. Officer: Karen L. Nowell, Sole Proprietor.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: June 29, 1989.

[FR Doc. 89-15664 Filed 7-3-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Cho Hung Bank, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 17, 1989.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Cho Hung Bank*, Seoul, Korea; to become a bank holding company by acquiring 100 percent of the voting shares of Cho Hung Bank of New York, New York, a *de novo* bank.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Bank of Waunakee Employee Stock Ownership Plan*, Waunakee, Wisconsin; to become a bank holding company by acquiring 37.03 percent of the voting shares of Waunakee Bank Shares, Inc., Waunakee, Wisconsin, and thereby indirectly acquire Bank of Waunakee, Waunakee, Wisconsin.

2. *First Chicago Corporation*, Chicago, Illinois; to acquire through its subsidiary, First Chicago Acquisition III Corp., Chicago, Illinois, 100 percent of the voting shares of Ravenswood Financial Corporation, Chicago, Illinois, and thereby indirectly acquire Bank of Ravenswood, Chicago, Illinois.

3. *First Chicago Acquisition III Corp.*, Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Ravenswood Financial Corporation, Chicago, Illinois, and thereby indirectly acquire Bank of Ravenswood, Chicago, Illinois.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Central of Kansas, Inc.*, Junction City, Kansas; and Central of Kansas V, Inc., Junction City, Kansas; to acquire 100 percent of the voting shares of Durham State Bank, Durham, Kansas.

2. *Farmers Bancshares of Oberlin, Inc.*, Oberlin, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of The Farmers National Bank of Oberlin, Oberlin, Kansas.

D. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Mineral Wells Bancshares, Inc.*, Mineral Wells, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of First State Bank of Mineral Wells, Mineral Wells, Texas.

Board of Governors of the Federal Reserve System, June 28, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-15655 Filed 07-03-89; 8:45 am]

BILLING CODE 6210-01-M

George R. Farish; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and section 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 17, 1989.

A. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *George R. Farish*, Houston, Texas; to acquire 20.63 percent of the voting shares of TB&T Bancshares, Inc., Brownsville, Texas, and thereby indirectly acquire Texas Bank and Trust of Brownsville, Brownsville, Texas.

Board of Governors of the Federal Reserve System, June 28, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-15656 Filed 7-3-89; 8:45 am]

BILLING CODE 6210-01-M

Greene County Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than July 26, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Greene County Bancshares, Inc.*, Greeneville, Tennessee; to acquire 100 percent of the voting shares of American Fidelity Bank, Alcoa, Tennessee.

Board of Governors of the Federal Reserve System, June 28, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-15657 Filed 7-3-89; 8:45 am]

BILLING CODE 6210-01-M

Barbara Hecht Havenick, et al; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act. (12 U.S.C. 1817(j)) and section 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 20, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Barbara Hecht Havenick* and Fred Havenick, both of Coral Gables, Florida; to acquire up to 20.6 percent of the voting shares of Metro Bank of Dade County, Coral Gables, Florida.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Ronald R. Hadwiger*, Cherokee, Oklahoma; to acquire an additional 1.46 percent of the voting shares of Farmers Exchange Bancorporation, Inc., Cherokee, Oklahoma, for a total of 12.12 percent, and thereby indirectly acquire Farmers Exchange Bank, Cherokee, Oklahoma.

C. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice president) 400 South Akard Street, Dallas, Texas 75222:

1. *Pat S. Bolin*, Dallas, Texas, to acquire 20.8 percent; D. Phil Bolin, Wichita Falls, Texas, to acquire 10.3 percent; Warren T. Ayres, Wichita Falls, Texas, to acquire 5.2 percent; and Dan H. Bolin, Wichita Falls, Texas, to acquire 5.2 percent of the voting shares of Fidelity Resources Company, Dallas, Texas, and thereby indirectly acquire Fidelity National Bank, Dallas, Texas.

Board of Governors of the Federal Reserve System, June 28, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-15658 Filed 7-3-89; 8:45 am]

BILLING CODE 6210-01-M

Mid State Banks, Inc.; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 26, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Mid State Banks, Inc.*, Cordele, Georgia; to engage *de novo* in data processing activities, such as marketing and furnishing to its three wholly-owned subsidiary banks and to third party banks, computer software and services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 28, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-15659 Filed 7-3-89; 8:45 am]

BILLING CODE 6210-01-M

Ventura County National Bancorp; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Co.

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR § 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 21, 1989.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Ventura County National Bancorp*, Oxnard, California; to acquire 100 percent of the voting shares of Frontier Group Incorporated, La Palma, California, and thereby indirectly acquire Frontier Bank, N.A., La Palma, California.

In connection with this application, Applicant has also applied to acquire Frontier Services, La Palma, California, and thereby engage in providing investment consulting services to other financial institutions pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 28, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-15660 Filed 7-3-89; 8:45 am]

BILLING CODE 6210-01-M

Wellman Investment Co., et al.; Application To Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 21, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Wellman Investment Company*, Wellman, Iowa; to engage *de novo* through its subsidiary, Wellman Investment Company, Wellman, Iowa, in any insurance agency activity in Wellman, Iowa, where the bank holding company or subsidiary bank has a lending office and has a population not exceeding 5,000 pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 28, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-15661 Filed 7-3-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the Assistant Secretary for Personnel Administration; General Reorganization; Statement of Organization, Functions, and Delegations of Authority

Part A (Office of the Secretary) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (DHHS) is amended to reflect a realignment of functions in the Office of the Assistant Secretary for Personnel Administration. These changes eliminate two Divisions within the Office of Human Resource Programs and redistribute existing functions to the Immediate Office of the Director, Office of Human Resource Programs, the remaining two Divisions, and a staff office.

Specifically, Chapter AH, Office of the Assistant Secretary for Personnel Administration, as last published at 50 FR 20850, May 20, 1985, is revised as follows:

1. In Chapter AH, Section AH.20 Functions, paragraph D "The Office of Human Resource Programs", delete entire paragraph and insert new paragraph D to read as follows:

D. *Office of Human Resource Programs.* Provides leadership and coordination in the development, interpretation, and assessment of Departmental human resource programs and policies. Plans and develops programs and provides technical advice to Operating Divisions and Regional Offices. Directs the ASPER Internal Control Program for both headquarters and field locations, and provides resource management services for the Office of Human Resource Programs. Coordinates the development and issuance of all personnel program issuances. Serves as the focal point of liaison with OPM, EEOC, GAO, MSPB, and the Department of Labor.

2. In Chapter AH, Section AH.20 Functions, paragraph D.1 "Division of Program Coordination", is deleted.

3. In Chapter AH, Section AH.20 Functions, paragraph D.2 "Division of Pay and Performance Programs", is retitled "Division of Compensation and Performance Management", and renumbered as paragraph D.1. The new paragraph D.1 reads as follows:

1. *Division of Compensation and Performance Management.* Formulates and oversees the implementation of Department-wide programs, policies, regulations, and procedures pertaining to salary and wage administration, employee benefits, position management, classification, incentive awards, performance management, including pay for performance, employee conduct and discipline, and nonbargaining unit employee grievances. Serves as the central HHS reference point for guidance and interpretation for these functional areas. Maintains Liaison with the Office of Personnel Management and other departments and agencies with respect to these areas. Conducts job analyses of job occupations or families of positions in order to develop and publish model performance standards, model rating schedules, and classification guides.

4. In Chapter AH, Section AH.20 Functions, paragraph D.3 "Division of Employment Program", is retitled "Division of Employment and Program Coordination", and renumbered as paragraph D.2. The new paragraph D.2 reads as follows:

2. *Division of Employment and Program Coordination.* Formulates and oversees the implementation of Department-wide programs, policies, regulations, and procedures pertaining to recruitment, staffing and examining, special employment programs, the Privacy and Information Acts as they pertain to human resource records, and organizational development. Provides direction for the development and issuance of human resource regulations and instructions throughout the Department. Manages the system for communicating program information and provides technical advice and assistance on human resource program legislative or regulatory matters. Coordinates the development and approval of all Department issuances in the Personnel Manual System. Directs and coordinates efforts to expand applicant pools and otherwise to increase appropriately the selection, training, and placement of employees from specified target groups. Develops policies designed to prepare managers to create work environments free of prohibited discrimination. Directs or facilitates special programs (professional development seminars, exhibits, commemorations, etc.) which enhance management and employee knowledge of a pluralistic work force. Carries out work force adjustment and forecasting studies and employment policy analysis. Maintains liaison with the Office of Personnel Management and other departments and agencies with respect to these matters.

5. In Chapter AH, Section AH.20 Functions, paragraph D.4 "Division of Program Assessment" is retitled, "Program Assessment Staff" and renumbered as paragraph D.3. The new paragraph D.3 reads as follows:

3. *Program Assessment Staff.* Responsible for both onsite and department overall monitoring of human resource programs. Conducts personnel management and administrative reviews and studies to determine the quality of human resource programs and to assess compliance with OPM and department requirements. Serves as the focal point for guidance in program and compliance review activities.

Date: June 20, 1989.

Elizabeth M. James,

Assistant Secretary for Management and Budget (Acting).

[FR Doc. 89-15644 Filed 7-3-89; 8:45 am]

BILLING CODE 4110-60-M

Centers for Disease Control

Cooperative Agreements for State-Based Diabetic Control Program; Amendment to Notice of Availability of Funds for Fiscal Year 1987

A notice announcing the availability of funds for Fiscal Year 1987 for cooperative agreements for State-Based Diabetes Program was published in the Federal Register on Wednesday, February 4, 1987 (52 FR 3489). The notice is amended as follows:

On page 3489, third column, the "Authority" paragraph is revised as follows: "This cooperative agreement is authorized by section 301(a) [42 U.S.C. 241(a)] and section 317(k)(3) [42 U.S.C. 247(b)] of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance is 13.988."

Dated: June 27, 1989.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 89-15667 Filed 7-3-89; 8:45 am]

BILLING CODE 4160-18-M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Department of Health and Human Services (HHS) previously published a list of information collection packages it submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (Pub. L. 96-511). The Health Care Financing Administration (HCFA), a component of HHS, now publishes its own notices as the information collection requirements are submitted to OMB. The HCFA has submitted the following requirements to OMB since the last HCFA list was published.

1. *Type of Request:* New; *Title of Information Collection:* Evaluation of Medicare Alzheimer's Disease Demonstration; *Form Number:* HCFA-F-12; *Frequency:* Semi-annually; *Respondents:* Individuals or households; *Estimated Number of Responses:* 29,610; *Average Hours per Response:* .43; *Total Estimated Burden Hours:* 12,993.

2. *Type of Request:* Reinstatement; *Title of Information Collection:* Request for Medical Review Information for Skilled Nursing Facilities; *Form Number:* HCFA-9031; *Frequency:* On occasion; *Respondents:* Businesses/other for profit; *Estimated Number of Responses:* 244,250; *Average Hours per Response:* .5; *Total Estimated Burden Hours:* 122,125.

3. *Type of Request:* Extension; *Title of Information Collection:* Hospital Request for Certification in the Medicare/Medicaid Program; *Form Number:* HCFA-1514; *Frequency:* On occasion; *Respondents:* State/local governments; *Estimated Number of Responses:* 1,984; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 496.

4. *Type of Request:* Revision; *Title of Information Collection:* Medicare Renal Dialysis Facility Cost Report; *Form Number:* HCFA-265; *Frequency:* Annually; *Respondents:* Businesses/other for profit and small businesses/organizations; *Estimated Number of Responses:* 1,097; *Average Hours per*

Response: 196; *Total Estimated Burden Hours:* 215,012.

5. *Type of Request:* Extension; *Title of Information Collection:* Request for Claim Number Verification; *Form Number:* HCFA-1600; *Frequency:* On occasion; *Respondents:* Businesses/other for profit and small businesses/organizations; *Estimated Number of Responses:* 70,800; *Average Hours per Response:* 5 minutes; *Total Estimated Burden Hours:* 5,900.

6. *Type of Request:* Extension; *Title of Information Collection:* Health Insurance Common Claims Form (Medicare and Medicaid); *Form Number:* HCFA-1500; *Frequency:* On occasion; *Respondents:* Individuals/households, small businesses/organizations, State/local governments, and businesses/other for profit. Burden information does not apply since this form is considered a standard form by OMB. HCFA is requesting extension of approval for the Form HCFA-1500 and the associated manual instructions for use in the Medicare and Medicaid programs.

The use of the form will include the HCFA Common Procedure Coding System (HCPCS). HCPCS is used to determine reimbursable costs for physicians and non-institutional claims in the Medicaid program.

Additional Information or Comments: Call the Reports Clearance Officer on 301-966-2088 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Herron, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: June 28, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89-15696 Filed 7-3-89; 8:45 am]

BILLING CODE 4120-03-M

[HSQ-164-GNC]

Medicare Program; Peer Review Organization; General Criteria and Standards for Evaluating Performance of Contract Obligations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General notice.

SUMMARY: This notice provides the general criteria and standards that will be used to evaluate the effective and efficient performance of Peer Review Organizations (PROs) for contracts entered into on or after October 1, 1988. Section 1153(h) of the Social Security Act as added section 4091(b)(1) of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) requires that we publish these criteria and allow opportunity for public comment.

DATE: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on September 5, 1989.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ-164-GNC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code HSQ-164-GNC. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Michael Rappaport, (301) 966-6893.

SUPPLEMENTARY INFORMATION:

I. Background

A. Program Description

The Peer Review Improvement Act of 1982 (Title I, Subtitle C of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. 97-248) amended Part B of Title XI of the Social Security Act by establishing the Utilization and Quality Control Peer Review Organization (PRO) program. The PRO program was established by Congress in order to redirect, simplify and enhance the cost-effectiveness and efficiency of the medical peer review process. Sections 1153(b) and 1153(c) define the types of organizations eligible to become PROs and establish certain limitations and priorities regarding PRO contracting. In 42 CFR Part 462, Subpart C of our regulations, we describe the types of organizations eligible to become PROs. In § 462.101 we require they (a) be either a physician-sponsored organization as described in § 462.102 or a physician access organization as described in § 462.103; and (b) demonstrate their ability to perform the review requirements set forth in § 462.104.

Section 1154 of the Act requires that PROs review those services furnished by physicians, other health care professionals, providers, and suppliers as specified in their contract with the Secretary. The Secretary enters into contracts with the PROs to review certain health care services or proposed services paid for by the Federal Government to determine whether those services are reasonable, medically necessary, furnished in the appropriate setting, and of a quality which meets professionally recognized standards of care.

In June 1984, HCFA began awarding contracts to PROs. We currently maintain 54 PRO contracts with organizations that provide medical review activities for each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, and American Samoa/Guam. Each of the existing PRO contracts is a negotiated agreement and includes evaluation provisions discussing the procedures used in assessing the performance of contract obligations. All of the contracts specify the objectives to be achieved during the contract period as well a the structure scope and process of Medicare review to be performed by each PRO.

The Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Pub. L. 100-203, includes provisions that impose new requirements on the Secretary with respect to contracts with PROs. Section 4091(b) of OBRA '87 amends Section 1153 of the Act by adding a new subsection (h)(2) that requires the Secretary to publish in the **Federal Register** and provide opportunity for public comment, the general criteria and standards that will be used to evaluate the efficient and effective performance of contract obligations by PROs. These criteria are used in a variety of formal contractor performance appraisal methods routinely used to monitor PRO performance and capability and ultimately are used to determine whether or not a contract should be renewed on a non-competitive basis. (With respect to HMO review, the Secretary maintains the right to determine when competitive procurement of HMO external quality review is in the best interests of the Government, as provided for in Pub. L. 99-272 and Pub. L. 99-509. For example, the competitive procurement process may provide an incentive for development of new review systems).

B. Measuring PRO Performance

PRO contractors performance monitoring provisions are included in each contract as part of the negotiated agreement. Criteria and standards for evaluating performance common to all contracts have been developed based on the scope of work for the contracts. Additional criteria appropriate to work peculiar to a certain contract also may be included as part of the negotiated contract agreement. On September 12, 1988 (53 FR 35234) we published the third scope of work requirements which apply to contracts executed on or before October 1, 1988.

We employ evaluation criteria in three different ways to monitor and assess contractor performance. First, the HCFA regional offices, responsible for the daily ovesight of PRO operations, use the criteria as a basis for monitoring PRO performance, for identifying deficiencies in performance, and for developing corrective action plans to eliminate the deficiencies. Second, the criteria are used as a basis for the PRO Monitoring Protocol and Tracking System (PROMPTS), a periodic contractor performance appraisal currently being conducted twice for each PRO in the two-year contract cycle. (In the future, PROMPTS will be conducted three times during the 3-year contract cycle.) Existing contracts that have been extended for more than 6 months will receive additonal PROMPTS reviews as appropriate. Finally, these criteria are used by HCFA to determine a PRO's final performance rating. On the basis of the performance assessment findings, HCFA determines whether a PRO contract should be renewed non-competitively or awarded through competitive bidding. As discussed above, performance will be one factor in determining if it is in the best interest of the Government to competitively procure contracts for HMO external quality review.

C. Public Comments on New Incentives for Superior Performance

A major challenge of the PRO program is how to maintain accountability for the efficient use of limited Federal resources and control for compliance with contractual standards without constraining program effectiveness, adaptation to unique or changing circumstances, and innovation in review system and methodologies. We are requesting comments from interested parties on methods and mechanisms to identify, measure, and provide appropriate incentives for superior performance by PROs. We request comments particularly concerning:

- Ways to recognize, measure and encourage cost effective PRO innovation and adaptation to unique and changing review environments;
- Introduction of HCFA approved cost effective and innovative review methods and technologies as an additional criterion for evaluating PRO performance;
- Specific ways to strengthen the linkage of existing information systems and the coordination between certifying and monitoring entities;
- Specific ways to reduce redundant oversight and make more effective use of scarce resources on the local, State, and Federal levels; and
- Appropriate acknowledgments of and incentives for increased PRO effectivess. For example, we are interested in comments covering:

—Increased contract flexibility;
—Pilot project funding;
—Greater flexibility in selecting review methodologies;
—Greater flexibility in targeting review resources; and
—Opportunities to train other PRO staff.

Our objective is that interested parties send us their comments and ideas for consideration and use in the Department's ongoing effort to improve the effectiveness and efficiency of the PRO program. We will review all such comments but will not respond to them either individually or in any other PRO program notice.

II. General Criteria and Standards

Although section 1153(h)(2) of the Social Security Act requires that we publish the general criteria and standards and provide opportunity for public comment, this requirement does not encompass the possible inclusion of additional specific evaluation criteria and standards negotiated and inserted in selected contracts. At this time we are soliciting comments only on the general criteria and standards and not on any other aspect of our contractor performance review processes or methodologies.

The evaluation criteria and performance standards to assess the effectiveness and efficiency of PROs are based on our experience in evaluating PRO contract proposals and PRO contractor performance, as well as our experience in evaluating other contractors. We believe that these criteria would provide an unbiased and effective mechanism for performance assessment.

Two discrete criteria sets are presented. The first criteria set contains elements common to all PRO contracts and applies to all PROs. The second criteria set is a supplement for use in evaluating the contract performance of those PROs whose contracts include the review of services furnished to Medicare beneficiaries by risk-based prepaid health plans.

Evaluation Criteria Set I

We measure a PRO's performance generally using elements identical to those used in the evaluation of contract proposals. There are, however, a number of significant differences. Physician sponsorship for example, which is used in the contract proposal evaluation process, is not a factor in the contract performance evaluation process, nor is an organization's "in-State" status (which is pertinent only to the contract procurement process not to the evaluation of existing signed contracts) or experience or personnel. On the other hand, the PRO's cost-benefit ratio is not specifically scored during the contract evaluation process, but we consider it as a performance measure. Also, we intend to examine the extent of each PRO's cooperation with SuperPRO as well as the results of SuperPRO review activities.The SuperPRO is a single, independent medical review organization under contract to the Secretary to perform a rereview of a sample of the review determinations of all PROs. The SuperPRO findings are used by HCFA in the administration of the PRO program to identify potential problem areas in PRO's performance and to help monitor the effectiveness of certain corrective action plans implemented by PROs.

We propose to evaluate the following areas in assessing the fulfillment of contractual obligations by the PROs.

- Site and Timing of PRO Review

We will evaluate the PRO's performance in complying with the negotiated percentage of reviews to be completed onsite as specified under the terms of the contract, as well as the special percentage requirements for onsite review in rural hospitals. We will also evaluate performance with respect to the time period required for completion of review after the receipt of data from a fiscal intermediary or other data sources used to identify cases for review.

- Required Review Activities

We will evaluate the PRO review activities for completeness, accuracy, sampling and calculation of error rates for each of the required review activities specified in the contract.

• Quality Review Activities

We will evaluate the PRO's quality review activities to determine if the PRO meets all elements of HCFA approved quality review and quality intervention plans and uses HCFA generic screens, as specified in the contract.

• Other Review Activities

We will evaluate the PRO's review activities in PPS case reviews, speciality hospitals, readmissions and intervening care review, ambulatory surgery review, intensified review, and preadmission/preprocedure review for timeliness, completeness, accuracy, as well as for the use of facility specific samples, and proper calculation of error rates.

• Objectives

We will evaluate the PRO's performance in developing objectives in response to identified utilization and quality programs as well as the timeliness of the submission of proposed objectives to the HCFA regional office for approval.

• Other Requirements

We will evaluate the PRO for compliance with data reporting requirements and record retention requirements as specified in the contract. We will assess the contractor's data elements against a minimum data set defined by HCFA. We expect the contractor to meet the data profiling requirements specified in its contract and to produce hard copy profile products after reasonable notice.

We will evaluate the contractor's performance in using explicit written review criteria, processing reconsideration requests and appeals, and handling fraud and abuse issues and sanction activities. We also will evaluate the contractor's performance in administering an effective community outreach program, including educating providers about PRO review activities.

• Management Plan

We will evaluate the PRO's performance with respect to the requirements of its management plan, including an internal quality assurance mechanism, as specified in the contract.

• Additional Considerations

We expect the PRO to continue to meet the organizational eligibility requirements as a PRO. In addition, the evaluation process may take into consideration the contractor's cost benefit ratio, and will consider the PRO's cooperation with SuperPRO and the results of SuperPRO review activities.

Evaluation Criteria Set II

We will use the following supplemental evaluation criteria to evaluate the efficient and effective performance of additional contract obligations by those PROs who are responsible for the review of the quality of health care services provided to Medicare beneficiaries by HMO/CMPs under risk contracts.

We propose to evaluate the following areas in assessing the fulfillment of contractual obligations by the PROs in reviewing services furnished by risk-basis HMO/CMPs.

• Initial Analysis

We will evaluate whether the PRO is capable of performing an analysis to determine the appropriate level of review for any HMO/CMP in the review area, whether any HMO/CMP request for initial analysis was performed appropriately, whether criteria used were consistent with accepted standards for HMO internal QA programs and were applied efficiently and effectively and whether any complaints were resolved correctly and expeditiously.

• Review Activities

We will evaluate the efficiency of review activities for completeness, timing and accuracy of the review, calculation of thresholds and proper selection of cases for review. We also will evaluate the PRO's performance in conducting subsample review, limited, basic and intensified review, review of specific medical conditions, ambulatory review, random inpatient hospital review, hospital readmission and transfer cases, and review of non-trauma deaths.

• Sampling

We will evaluate the PRO's sampling to determine whether it meets the minimum/maximum sampling limits.

• Profiles

We will evaluate the PRO to determine whether the PRO is profiling data to identify patterns of problems concerning quality of care in the manner and frequency specified in the contract.

• Quality Review

We will evaluate the accuracy of decisions regarding the presence or absence of quality problems and the severity of these problems. We will further evaluate the PRO's quality review activites in the use of explicit review criteria, generic quality screens, proper assignment of severity levels and notification procedures.

• Quality Intervention

We expect the PRO to meet the requirements of its approved plan for requiring, evaluating, and monitoring corrective action plans from the HMO/CMP and for other interventions as appropriate.

• Involvement of HMO Physicians

We will evaluate whether the level of involvement of HMO physicians in review activities has been appropriate, including how extensively they have been involved in decisions of the organization regarding findings of quality problems in HMO/CMPs.

• Special Review Requirements

We will evaluate the PRO's performance with respect to the special review requirements specified in its contract.

—Community Outreach and External Relationships

We will evaluate the PRO's ability to work effectively with HMO/CMPs to improve the effectiveness and efficiency of the review process, include HMO representatives in the development of explicit review criteria, handle beneficiary complaints and correspondence, and safeguard confidentiality.

—Management

We will evaluate the PRO's performance in complying with site and timing of review requirements, maintaining an effective internal quality control mechanism, and in meeting data collection, aggregation and reporting requirements. We will also evaluate the PRO's performance in its notice and re-review procedures, management of abuse, sanction, and civil monetary penalties activities, as well as the PRO's initiatives in recommending enhancements to the review methodology (i.e., ways to reduce the cost and burden of external review while assuring or increasing the overall effectiveness of the program.)

III. Regulatory Impact Statement

This notice merely complies with the publication and solicitation of public comment requirement imposed on the Secretary by section 1153(h)(2) of the Act. This notice is not a proposed rule or final rule issued after a proposal, and does not alter any regulations. Therefore, we have determined and the Secretary certifies that no analyses are required under Executive Order 12291, the Regulatory Flexibility Act (5 U.S.C. 601 through 612), or section 1162(b) of the Act.

IV. Reporting/Recordkeeping Requirements

This notice does not impose information collection requirements.

V. Response to Comments

Publication of the evaluation criteria provides an opportunity for advance notice to all affected and interested parties and affords them the opportunity to express their views. We expect that this process will result in evaluation criteria that provide a comprehensive and equitable evaluation system. Because of the large number of items of correspondence we normally receive as a result of a notice, we are not able to acknowledge or respond to public comments individually. If the evaluation criteria are revised as a result of this process, we will publish a subsequent notice explaining the changes and respond to public comments in that notice.

(Sec. 1153 of the Social Security Act (42 USC 1320c–2) Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance; and No. 13.774, Medicare-Supplementary Medical Insurance)

Dated: June 26, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89–15697 Filed 7–3–89; 8:45 am]

BILLING CODE 4120–01–M

Privacy Act of 1974; System of Records

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of proposed new routine use for an existing system of records.

SUMMARY: The Health Care Financing Administration (HCFA) is proposing to revise the system notice for its Medicare Physician Identification and Eligibility System (MPIES) HHS/HCFA/BPO No. 09–70–0525, to add a new routine use. We invite comments on this new routine use.

EFFECTIVE DATE: The proposed new routine use shall take effect without further notice August 4, 1989, unless comments received on or before that date would warrant changes.

ADDRESS: Please address comments to: Richard A. Demeo, HCFA Privacy Act Officer, Office of Budget and Administration, Health Care Financing Administration, G–M–1 East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207. We will make comments received available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Phillip Brown, Division of Operational Initiatives, Office of Program Administration, Bureau of Program Operations, Health Care Financing Administration, Room 367, Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone (301) 966–7158.

SUPPLEMENTARY INFORMATION: The notice for the Medicare Physician Identification and Eligibility System (MPIES), HHS/HCFA/BPO No. 09–70–0525, was most recently published at 53 FR 50584, December 16, 1988. This system contains records of all physicians, as defined by section 1861(r) of Title XVIII of the Social Security Act, who provide services for which payment is made under Medicare. The records contain a unique physician identification number (UPIN) for each physician, and information concerning a physician's birth, residence, medical education, and eligibility information for Medicare payment. The information contained in the records is obtained from data currently available in the carriers' systems. The purpose of this system of records is to maintain unique identification of each physician requesting or receiving Medicare payment.

We are proposing to add a routine use which was inadvertently left out of this system of records. This proposed routine use is HCFA's research routine use, which has been included in all of HCFA's basic data system notices. It will modify the system notice to permit HCFA to release data to research contractors and to contractors of other Federal agencies for research and evaluation projects that are determined by HCFA to be important and for which there is reasonable probability that the project will accomplish its objectives. Such projects may address the demographics of the physician community serving Medicare beneficiaries. Strict protection of the data by the requestor is required.

This routine use is similar in nature to the standard routine use that permits disclosure to a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in a system or for developing, modifying and/or manipulating ADP software.

To comply with the technical requirements of the Privacy Act, we are proposing to establish the routine use below adding to previously published uses (1), (2), (3), (4), (5), (6), (7) and (8).

(9) To an individual or organization for research or evaluation, if HCFA:

a. Determines that the proposed use does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the purpose for which the proposed use is to be made:

(i) Cannot be reasonably accomplished unless the record is provided in a form that identifies individuals,

(ii) Is of sufficient importance to warrant the effect on/or risk to the privacy of the individual which such limited additional exposure of the record might bring, and

(iii) There is a reasonable probability that the objective of the use would be accomplished;

c. Requires the recipient of the information to:

(i) Establish appropriate administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(ii) Remove or destroy the information that enables the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient receives written authorization from HCFA that it is justified based on research objectives for retaining such information, and

(iii) Make no further use of the record except:

(a) For use in another research project, under emergency circumstance affecting the health or safety of any individual, following written authorization of HCFA,

(b) For disclosure to an identified person approved by HCFA for the purpose of auditing the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(c) When further approved by HCFA;

d. Secures a written statement by the recipient of the information attesting to the recipient's understanding of, and willingness to abide by, these provisions.

This new routine use is compatible with the purposes for which the information is collected. Addition of this new routine use can be accomplished with no reduction in physicians' privacy because HCFA will impose requirements on recipients who must agree in writing to protect the data from unauthorized access and being disclosed in a form that permits identification of individuals.

This action does not rquire a report of altered system under 5 U.S.C. 552a(o).

The complete system notice is reprinted below for the convenience of the reader.

Date: June 28, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

09-70-0525

SYSTEM NAME:

Medicare Physician Identification and Eligibility System (MPIES) HHS/HCFA/BPO.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Health Care Financing Administration (HCFA) (Paper Media), 6325 Security Boulevard, Baltimore, Maryland 21207. (Contact system manager for location of Magnetic Media computerized records.) Medicare Carriers (See Appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All physicians, as defined by section 1861(r) of Title XVIII of the Social Security Act who request and/or receive Medicare reimbursement for their medical services.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains a unique physician identification number (UPIN) for each physician and information concerning a physician's birth, residence, medical education, and eligibility information for Medicare reimbursement.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9202(g) of Pub. L. 89-272; 1832(a)(2) (B)(i) and (F); 1833(a)(1)(C) and (G); 1842(a)(1), (b)(3)(B)(ii), (b)(3)(D), (b)(7)(C), (b)(7)(D), (h)(1), (h)(4), (b)(5), and (j); 1861(q), (r), (s)(1) and (aa)(1)(A); and 1862 of Title XVIII of the Social Security Act.

PURPOSE(S)

To maintain unique identification of each physician requesting and/or receiving Medicare reimbursement.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Disclosures may be made to:

(1) A contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications system containing or supporting records in the system.

(2) A congressional office from the record of an individual physician in response to an inquiry from the congressional office at the request of that individual physician.

(3) The Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment.

(4) Professional Review Organizations in connection with their review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Social Security Act.

(5) To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when

(a) The Department of Health and Human Services (HHS), or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her official capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components.

Is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the government party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(6) The Department of Justice for investigation and prosecuting violations of the Social Security Act to which criminal penalities attach, or other criminal statutes as they pertain to the Social Security Act programs, for representing the Secretary, and for investigating issues of fraud by agency officers or employees, or violation of civil rights.

(7) State Licensing Boards for review of unethical practices or nonprofessional conduct.

(8) To the American Medical Association (AMA), for the purpose of attempting to identify medical doctors when the Registry is unable to establish identity after matching carrier-submitted data to the data extract provided by the AMA. The AMA would attempt to establish medical doctor identity by matching the Registry's MPIES data to data in the AMA Physician Masterfile.

The AMA agrees:

a. To use the Registry's MPIES data solely for an attempted match as described above;

b. To make no copies of the MPIES data it receives from the Registry, except for one back-up copy;

c. To return the MPIES data to the Registry upon completion of its matching operation, and erase back-up copies of the MPIES data;

d. To establish appropriate administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the records; and,

e. To sign a written statement attesting to its understanding of and willingness to abide by these provisions.

(9) To an individual or organization for research or evaluation, if HCFA:

a. Determines that the proposed use does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the purpose for which the proposed use is to be made:

(i) Cannot be reasonably accomplished unless the record is provided in a form that identifies individuals,

(ii) Is of sufficient importance to warrant the effect on/or risk to the privacy of the individual which such limited additional exposure of the record might bring, and

(iii) There is a reasonable probability that the objective of the use would be accomplished;

c. Requires the recipient of the information to:

(i) Establish appropriate administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(ii) Remove or destroy the information that enables the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient receives written authorization from HCFA that it is justified based on research objectives for retaining such information, and

(iii) Make no further use of the record except:

(a) For use in another research project, under emergency circumstance affecting the health or safety of any individual, following written authorization of HCFA,

(b) For disclosure to an indentified person approved by HCFA for the purpose of auditing the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(c) When further approved by HCFA;

d. Secures a written statement by the recipient of the information attesting to the recipient's understanding of, and willingness to abide by, these provisions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and magnetic media.

RETRIEVABILITY:

Records are retrieved alphabetically by the physicians' name or by their UPIN.

SAFEGUARDS:

a. Authorized Users: Only agency employees and contractor personnel whose duties require the use of information in the system. In addition, such agency employees and contractor personnel are advised that the information is confidential and of criminal sanctions for unauthorized disclosure of information.

b. Physical Safeguards: Records are stored in locked files or secured areas. Computer terminals are in secured areas.

c. Procedural Safeguards: Employees who maintain records in the system are instructed to grant regular access only to authorized users. Data stored in computers are accessed through the use of passwords known only to authorized personnel.

Contractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act. Privacy Act language is included in contracts related to this system.

d. Implementation Guidelines: Safeguards implemented in accordance with all guidelines required by the Department of Health and Human Services. Safeguards for automated records have been established in accordance with HHS *ADP Systems Manual*, Part 6, "ADP Systems Security."

RETENTION AND DISPOSAL:

Records are retained indefinitely, except in the instance of a physician's death, in which case HCFA would retain such records for a 10 year period following the physician's death.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Bureau of Program Operations, Health Care Financing Administration, Room 300 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURES:

Inquiries and requests for system records should be addressed to the system manager at the address above. The requestor must specify the physician's name, date of birth, and medical school.

RECORD ACCESS PROCEDURES:

Same as notification procedure. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Departmental Regulations (45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

Contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the reason for contesting it; e.g., why it is inaccurate, irrelevant, incomplete or not current. (These procedures are in accordance with Departmental Regulations (45 CFR 5b.7).)

RECORDS SOURCE CATEGORIES:

HCFA obtains the identifying information in this system from carriers. Information in these records concerning physicians' eligibility for Medicare reimbursement is obtained either directly or through Medicare Regional Offices, contractors, and PROs; from the Department of Justice; State or local judicial systems; medical licensing and certification agencies or organizations; and medical societies and associations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A—Medicare Carriers

Medicare Coordinator, Blue Cross and Blue Shield of Alabama, 450 Riverchase Parkway East, Birmingham, Alabama 35298
Vice President for Medicare and Medical Services, Arkansas Blue Cross and Blue Shield, Inc., 601 Gaines Street, Little Rock, Arkansas 72203
Medicare Coordinator, California Physicians Service, (d/b/a Blue Shield of California), P.O. Box 7013, No. 2 Northpoint, San Francisco, California 94120
Medicare Coordinator, Transamerica Occidental Life Insurance Company, P.O. Box 54905 Terminal Annex, Los Angeles, California 90054
Assistant Vice President, Rocky Mountain Hospital and Medical Service, (d/b/a Blue Cross and Blue Shield of Colorado), 700 Broadway, Denver, Colorado 80273
Medicare Administrator, Travelers Ins. Co., One Tower Square, Hartford, Connecticut 06183
Medicare Administrator, Aetna Life & Casualty, 151 Farmington Avenue, Hartford, Connecticut 06156
Medicare Coordinator, Blue Cross and Blue Shield of Florida, Inc., P.O. Box 1798, Jacksonville, Florida 32231
Health Care Service Corporation, 233 North Michigan Avenue, Chicago, Illinois 60601
Associated Insurance Companies, Inc. (d/b/a Blue Cross and Blue Shield of Indiana), 8320 Craig Street, Suite 100, Indianapolis, Indiana 46250-0453
Assistant Executive Director, Blue Shield of Iowa, Ruan Building, 636 Grand Avenue Station 28, Des Moines, Iowa 50309
Medicare Assistant, Blue Cross and Blue Shield of Kansas, Inc., P.O. Box 239, Topeka, Kansas 66601
Blue Cross and Blue Shield of Kentucky, Inc., 100 East Vine Street, 6th Floor, Lexington, Kentucky 40517
Medicare Coordinator, Blue Cross and Blue Shield of Maryland, Inc., 700 E. Joppa Road, Baltimore, Maryland 21204
Medicare Coordinator Part B, Blue Shield of Massachusetts, Inc., 100 Summer Street, Boston, Massachusetts 02110
Assistant Vice President, Government Affairs Department, Blue Cross and Blue Shield of Michigan, 600 Lafayette East, Detroit, Michigan 48226
Blue Cross and Blue Shield of Minnesota, P.O. Box 64357, 3535 Blue Cross Road, St. Paul, Minnesota 55164
Vice President Government Programs, Blue Cross and Blue Shield of Kansas City, P.O. Box 169, Kansas City, Missouri 64141
Director, Medicare Administration Genral American Life Insurance Co., P.O. Box 505, St. Louis, Missouri 63166
Blue Cross and Blue Shield of Montana, Inc., P.O. Box 4309, 404 Fuller Avenue, Helena, Montana 59601
Medicare Coordinator, Prudential Insurance Co. of America, Tri-City Office Drawer 471, Millville, New Jersey 08332
Director of Medicare Part B, Blue Shield of Western New York, Inc., 298 Main Street, Buffalo, New York 14202
Medicare Coordinator, Group Health Insurance, Inc., 330 West 42nd Street, New York, New York 10036
Medicare Coordinator, Empire Blue Cross and Blue Shield, 622 Third Avenue, New York, New York 10017
Medicare Coordinator, EQUICOR, Inc., 1285 Avenue of the Americas, New York, New York 10019
Medicare Coordinator, Blue Cross and Blue Shield of North Dakota, 4510 13th Avenue, S.W., Fargo, North Dakota 58121
Medicare System and Processing Division, Nationwide Mutual Insurance Company, P.O. Box 16788, Columbus, Ohio 43216
Medicare Coordinator, Pennsylvania Blue Shield, P.O. Box 65, Camp Hill, Pennsylvania 17011
Chief, Internal Operations, Seguros de Servico de Salud de Puerto Rico, Inc., G.P.O. Box 3628, San Juan, Puerto Rico 00936-3628
Medicare Coordinator, Blue Cross and Blue Shield of Rhode Island, 444 Westminster Mall, Providence, Rhode Island 02901
Medicare Coordinator Blue Cross and Blue Shield of South Carolina, Fontaine Business Center, 300 Arbor Lake Drive, Suite 1300, Columbia, South Carolina 29223

BEST COPY AVAILABLE

Blue Cross and Blue Shield of Texas, Inc., 901 South Central Expressway, P.O. Box 833815, Richardson, Texas 75083-3615
Manager, Part B, Blue Cross and Blue Shield of Utah, P.O. Box 30270, 2455 Parley's Way, Salt Lake City, Utah 84130
Assistant Administrator, Washington Physicians Service, 4th and Battery Building, 2401 4th Avenue, 6th Floor, Seattle, Washington 98121
Director, Medicare Claims Department, Wisconsin Physicians' Service Insurance, Corp., 1717 West Broadway, Monona, Wisconsin 53713.

[FR Doc. 89-15663 Filed 7-3-89; 8:45 am]
BILLING CODE 4120-03-M

Health Resources and Services Administration

Program Announcement and Proposed Funding Priorities for Grants for Faculty Development in General Internal Medicine and General Pediatrics

The Health Resources and Services Administration announces that applications for Fiscal Year 1990 Grants for Faculty Development in General Internal Medicine and General Pediatrics are being accepted under the authority of section 784 of the Public Health Service Act, and invites comments on the proposed funding priorities stated in this announcement.

The Administration's budget request for Fiscal Year 1990 does not include funding for this program. Applicants should be advised that this program announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Section 784 of the Public Health Service Act authorizes Federal assistance to schools of medicine and osteopathic medicine, public or private nonprofit hospitals or other public or private nonprofit entities for planning, developing and operating programs for the training of physicians who plan to teach in general internal medicine or general pediatrics training programs. These grants are intended to promote the development of faculty skills in physicians who are currently teaching or who plan teaching careers in general internal medicine or general pediatrics training programs. These grants also provide financial assistance in meeting the cost of supporting physicians who are trainees in such programs.

In addition, section 784 authorizes the award of grants to support general internal medicine or general pediatrics residency training programs. A separate grant program exists for this purpose.

To receive support, applicants must meet the requirements of final regulations as specified in 42 CFR Part 57, Subpart FF.

Review Criteria

The review of applications will take into consideration the following criteria:

(1) The degree to which the applicant demonstrates a commitment to general internal medicine or general pediatrics.

(2) The degree to which the proposed project adequately provides for the project requirements.

(3) The administrative and management capability of the applicant to carry out the proposed project in a cost-effective manner.

(4) The qualifications of the proposed staff and faculty.

(5) The potential of the project to continue on a self-sustaining basis.

In addition, the following mechanisms may be applied in determining the funding of approved applications:

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

2. Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.

3. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applicants address special areas of concern.

Proposed Funding Priorities for Fiscal Year 1990

In determining the order of funding of approved applications, it is proposed to give a funding priority to the following:

1. Projects which satisfactorily demonstrate enrollment of underrepresented minorities in proportion to or greater than their percentage in the general population or can document an increase in the number of underrepresented minorities (i.e., Black, Hispanic and American Indian/Alaskan Native minority trainees). These population groups continue to be underrepresented in the medical profession and have insufficient access to primary medical care. Studies show that minority physicians provide a greater proportion of health care for medically underserved populations than other United States physicians. Therefore, increased representation will help promote equal access to health care. Accordingly, this funding priority is designed to promote faculty development initiatives that will encourage and support increased numbers of primary care underrepresented minority physicians.

2. Applications proposing to develop faculty competence for teaching ambulatory and inpatient case management of those with HIV infection including AIDS patients. Health professionals are increasingly required to provide a wide range of services to HIV infected persons. However, widespread organized curricula offerings for these trainees are not in place. The proposed priority is designed to encourage new offerings.

3. Applications designed to develop faculty competence for teaching quality assurance/risk management activities, monitoring and evaluation of health care services and utilization of peer-developed guidelines and standards. Assuring quality in the health care system is increasingly becoming the responsibility of health care providers. The proposed funding priority is designed to encourage increased emphasis on the principles and methods of health care quality assurance/risk management in the continuum of the health professions educational process.

Interested persons are invited to comment on the proposed funding priorities. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1990 award cycle, this comment period has been reduced to 30 days. All comments received on or before August 4, 1989, will be considered before the final funding priorities are established. No funds will be allocated or final selections made until a final notice is published stating whether the final funding priorities will be applied.

Written comments should be addressed to: Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C-25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Special Consideration

Special consideration will be given to applicants demonstrating a commitment to general internal medicine or general pediatrics. Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D-28), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C-22, Rockville, Maryland 20857, Telephone: (301) 443-6960.

Application materials should be mailed to the Grants Management Officer at the above address.

Questions regarding programmatic information should be directed to: Chief, Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 4C-18, Rockville, Maryland 20857, Telephone: (301) 443-1467.

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

Pub. L. 100-607, section 633(a), requires that for grants issued under sections 780, 784, 785 and 786 for Fiscal Year 1990 or subsequent fiscal years, the Secretary of Health and Human Services shall, not less than twice each fiscal year, issue solicitations for applications for such grants if amounts appropriated for such grants and remaining unobligated at the end of the first solicitation period, are sufficient with respect to issuing a second solicitation. Should a second cycle be necessary, the application date will be approximately six months from the first deadline.

The application deadline date is September 22, 1989. Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline date and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline will be returned to the applicant.

This program is listed at 13.900 in the *Catalog of Federal Domestic Assistance*. Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372 Intergovernmental Review of Federal Programs, (as implemented through 45 CFR Part 100).

Dated: June 12, 1989.
John H. Kelso,
Acting Administrator.
[FR Doc. 89-15671 Filed 7-3-89; 8:45 am]
BILLING CODE 4160-15-M

Program Announcement and Proposed Special Consideration and Proposed Funding Priority for Nursing Special Project Grants Continuing Education Offering, Pediatric Emergency Care

The Health Resources and Services Administration announces that applications will be accepted for grants for Nursing Continuing Education Offerings centered on pediatric emergency care authorized by section 820(a), Title VIII of the Public Health Service Act. Comments are invited on the proposed special consideration and proposed funding priority set forth below.

Purpose I under Section 820(a) provides that the Secretary of Health and Human Services make grants to public and nonprofit schools of nursing and other nonprofit private entities to improve the quality and availability of nurse training through projects which provide continuing education to practicing professional nurses. On May 24, 1989 (54 FR 22493), a Federal Register announcement was published covering another Fiscal Year 1990 competitive grant cycle for Nursing Special Project Grants.

Applications will be available to eligible entities for projects which will enhance the knowledge, skills and attitudes of professional nurses working in emergency care settings. This announcement is limited to particular projects focused only on pediatric emergency care.

The Administration's budget request for Fiscal Year 1990 does not include funding for this program. Applicants should be advised that this program announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Background

The Division of Nursing invites applications for continuing education projects which focus on care of pediatric emergencies which account for 10-20 percent of the total visits made to emergency rooms. The target group of participants will be professional nurses who work in emergency rooms or emergency care settings. For the past five years the Health Resources and Services Administration has supported projects focused on pediatric emergency medical services. To date, twelve such projects are in place across the nation. While these projects permit support of staff education, the need for such education is much greater that these projects can support. Additionally the bulk of pediatric emergencies are treated in community based hospital emergency rooms.

Nurses employed in emergency rooms come from a variety of education and experience backgrounds. Their knowledge and skills in caring for pediatric clients varies considerably. To meet this need, it is proposed that eligible applicants be encouraged to undertake projects designed to provide continuing education offerings for practicing nurses employed in emergency rooms and emergency care settings. It is expected that the proposed project will involve nurses employed in a state or regional area and that the course will include both didactic and clinical experience.

To receive support, applicants must meet the requirements of 42 CFR Part 57, Subpart T.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The national or special local need which the particular project proposes to serve;

2. The potential effectiveness of the proposed project in carrying out such purposes;

3. The administrative and managerial capability of the applicant to carry out the proposed project;

4. The adequacy of the facilities and resources available to the applicant to carry out the proposed project;

5. The qualifications of the project director and proposed staff;

6. The reasonableness of the proposed budget in relation to the proposed project; and

7. The potential of the project to continue on a self-sustaining basis after the period of grant support.

In addition, the following mechanisms may be applied in determining the funding of approved applications.

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

2. Funding priorities—favorable adjustments of review scores when applications meet specified objective criteria.

3. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applicants address special areas of concern.

Proposed Special Consideration For Fiscal Year 1990

Section 820(a)(1)

It is proposed to give special consideration to projects which provide expansion of current curriculum or development and implementation of new curriculum concerning the prevention of HIV infection and the care of HIV infection related diseases.

Nursing personnel are increasingly required to provide a wide range of services to HIV infected persons. This special consideration is designed to encourage new curricula for continuing education offerings for practicing nurses.

Proposed Funding Priority for Fiscal Year 1990

It is proposed to give a funding priority to applications for continuing education programs in the area of Quality Assurance/Risk Management for nurses. Assuring quality in the health care system is increasingly becoming the responsibility of the health care providers. This proposed priority is designed to encourage increased emphasis on the principles and methods of health care quality assurance and risk management.

Interested persons are invited to comment on the proposed special consideration and proposed funding priority. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1990 award cycle, the comment period has been reduced to 30 days. All comments received on or before August 4, 1989, will be considered before a final special consideration and funding priority is established. No funds will be allocated or final selections made until a final notice is published indicating whether the final special consideration and funding priority will be applied.

Written comments should be addressed to: Director, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 5C-26, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Nursing, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

The application deadline date for this initiative for Fiscal Year 1990 funding is October 1, 1989. Applications shall be considered as meeting the deadline date if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline date, and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline will be returned to the applicant.

Requests for application materials and questions regarding grants policy should be directed to Grants Management Officer (D-10), Bureau of Health Professions, Health Resources & Services Administration, Parklawn Building, Room 8C-22, 5600 Fishers Lane, Rockville, Maryland, 20857, Telephone: (301) 443-6915.

Application materials should be mailed to the Grants Management Officer at the above address. Questions regarding programmatic information should be directed to: Division of Nursing, Bureau of Health Professions, Nursing Education Practice Resources Branch, Health Resources and Services Administration, Parklawn Building, Room 5C-14, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-6193.

The standard application form and general instructions, PHS 6025-1, HRSA Competing Training Grant Application and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

This program is listed at 13.359 in the *Catalog of Federal Domestic Assistance* and is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: June 8, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-15672 Filed 7-3-89; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Part H Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 39409-24, August 31, 1982, as amended at 4854538, December 5, 1983), is amended to reflect the abolishment of the Office of Engineering Services and a transfer of the Office of Engineering Services functions to the Office of the Associate Director for Health Facilities, Bureau of Maternal and Child Health and Resources Development, Health Resources and Services Administration.

Under HB10, *Organization and Functions*, make the following amendments within the Bureau of Maternal and Child Health and Resources Development (HBR):

1. Delete the *Office of Engineering Services (HBR14)* in its entirety.

2. In the statement for the *Office of the Associate Director for Health Facilities (HBRE)*, delete the "and" before item number (10); change the period at the end of item number (10) to a semicolon and add the following after item number (10): and, (11) "administers the Facilities Engineering and Construction Assistance Program."

This transfer is effective upon date of signature.

Wilford J. Forbush,

Director, Office of Management.

Date: June 26, 1989.

[FR Doc. 89-15699 Filed 7-3-89; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management; Alaska

[AK-967-4230-15; AA-9106-F]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(h)(3) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(3), will be issued to Natives of Kodiak, Incorporated for approximately 670.03 acres. The lands involved are in the vicinity of Kodiak, Alaska.

A notice of the decision will be published once a week, for four (4) consecutivce weeks, in the Kodiak Daily Mirror. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599, ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal Government or regional corporation, shall have until August 4, 1989 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Patricia A. Baker,

Acting Chief, Branch of KCS Adjudication.

[FR Doc. 89-15666 Filed 7-3-89; 8:45 am]

BILLING CODE 4310-JA-M

California Desert District; Desert Tortoise Research Natural Area and Area of Critical Environmental Concern; Implementation of Updated Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Implementation of Desert Tortoise Research Natural Area and Area of Critical Environmental Concern (ACEC) management plan.

SUMMARY: The Desert Tortoise Research Natural Area and ACEC was established to protect habitat with the highest known densities of desert tortoises. Habitat for native plant and animal species will be protected, conserved, and enhanced. An additional goal is to promote contemplative recreational and educational activities while allowing appropriate research and study. The authorities for the management plan are 43 CFR 8200.0-1, 8223.0-1, 8223.0-5, 8223.0-6, 8223.1, 8340, 8341, 8342, 8343, 8351, 8364, and 8365, the Federal Land Policy and Management Act of 1976, the National Environmental Policy Act of 1969, the Sikes Act of 1974, and 43 CFR Public Land Order 5694. The area affected by this management plan is the Desert Tortoise Research Natural Area and ACEC. This area contains approximately 17,740 acres of BLM managed public lands in Kern County. The ACEC Mangaement Plan was developed following the guidelines established for the area in the California Desert Conservation Area Plan. The ACEC Management Plan included public involvement. This plan is an update of the original plan, which was completed in 1977.

EFFECTIVE DATE: July 5, 1989.

ADDRESS: Send inquiries to Area Manager, Ridgecrest Resource Area, 112 East Dolphin Street, Ridgecrest, California 93555. The Desert Tortoise Research Natural Area and ACEC Management Plan and public comments will be available at the above address from 7:30 a.m. to 4:00 p.m. on regular working days. For further information contact Robert Parker at the above address or (619) 375-7125.

Plan Actions: The purpose of the closures and restrictions is to eliminate the impacts from grazing, mining, and vehicle use within the exclosure and reduce the impacts to tortoises from collectors, vandalism, raven predation, vehicle use outside the exclosure, and released captive tortoises. BLM will install and maintain signs, increase law enforcement, improve visitor services, reduce vehicle use on adjacent public lands, limit firearm use, and attempt to control ravens.

BLM will eliminate unauthorized sheep grazing and vehicle access within the Natural Area boundaries. BLM will acquire private lands within the Natural Area boundaries. The Natural Area will be closed to all firearm use except for limited hunting of upland game in the Rand Mountains. Hunting will be allowed in a portion of the Natural Area and will be managed by the California Department of Fish and Game.

A map showing the most current land status, areas where hunting is allowed and exisitng fences, is available for review at the Ridgecrest Resource Area Office.

Any person who violates or fails to comply with these regulations as governed by 43 CFR Parts 8340, 8351, 8364, and 8365 may be subject to prosecution pursuant to appropriate laws and regulations. Such punishment may be a fine of not more than $1,000 or imprisonment for not longer than 12 months or both.

FOR FURTHER INFORMATION, CONTACT: Gerald E. Hillier, District Manager, Bureau of Land Management, 1695 Spruce Street, Riverside, California 92507, (714) 351-6386).

Date: June 23, 1989.

H.W. Riecken,

Acting District Manager.

[FR Doc. 89-15705 Filed 7-3-89; 8:45 am]

BILLING CODE 4310-40-M

[CO-010-09-4332-02]

Craig, CO, Advisory Council Meeting

Time and Date: August 9, 1989, at 10 a.m.

Place: BLM-Craig District Office, 455 Emerson Street, Craig, Colorado.

Status: Open to public; interested persons may make oral statements at 10:30 a.m. Summary minutes of the meeting will be maintained in the Craig District Office.

Matters to be Considered

1. Discussion of draft wilderness environmental impact statement
2. Recreation
3. Noxious weeds
4. Update on riparian workshop.

Contact Person for More Information: Mary Pressley, Craig District Office, 455 Emerson Street, Craig, Colorado 81625-1129, Phone: (303) 824-8261.

Dated: June 23, 1989.

Jerry L. Kidd,

Associate District Manager.

[FR Doc. 89-15706 Filed 7-3-89; 8:45 am]

BILLING CODE 4310-JB-M

Rawlins District Grazing Advisory Board; Meeting

[WY-030-09-4329-12]

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Meeting of the Rawlins District Grazing Advisory Board.

SUMMARY: Notice is hereby given of a meeting of the Rawlins District Grazing Advisory Board. The meeting will be held in accordance with the Taylor Grazing Act of 1934, the Federal Land Policy and Management Act of 1976, the Public Rangelands Improvement Act of 1978, and the Executive Order 12548 of February 14, 1986.

DATE: July 11, 1989.

ADDRESS: Muddy Gap Shop, Wyoming Highway Department, Muddy Gap, Wyoming.

FOR FURTHER INFORMATION CONTACT: John Spehar, District Range Conservationist, or Grant Petersen, Public Affairs Specialist, Rawlins District, Bureau of Land Management, P.O. Box 670, Rawlins, WY 82301, (307) 324-7171.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Opportunity for the public to present information or make comment.

2. Discussion of the Bureau Recreation Brochure.

3. Depart for tour of the Whiskey Peak Allotment, Lander Resource Area.

4. During lunch—update of 1988 range improvement program and wild horse gathers for 1988.

5. Review and discuss a Bureau water development project—A&M Reservoir.

Date: June 9, 1989.

Richard Bestin,

District Manager.

[FR Doc. 89-15068 Filed 7-3-89; 8:45 am]

BILLING CODE 4310-32-M

[AZ-050-09-4212-14]

Arizona; La Paz County, Realty Action, Land Disposal.

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action, La Paz County, Arizona.

SUMMARY: The following Federal lands have been identified as suitable for disposal by sale, at fair market value, or under the Recreation and Public Purposes Act of June 14, 1926 (43 U.S.C. 869 *et seq.*), or by exchange under sections 203 or 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713, 1716):

Gila and Salt River Meridian, Arizona

Township 4 North, Range 19 West, available Federal lands in sections 15, 17, 20, 21, 22, 23, 26, 27, 28, and 29

For a map of the proposed disposal area, contact the Yuma Resource Area Office at the address and telephone number listed below.

FOR FURTHER INFORMATION CONTACT: Mary E. Barger, Acting Area Manager, Bureau of Land Management, Yuma Resource Area, 3150 Winsor Avenue, Yuma, Arizona 85365, 602-726-6300.

SUPPLEMENTARY INFORMATION: An appraisal will be completed prior to disposal to determine the fair market value of the land.

Publication of this Notice will segregate the subject land from appropriations under the public land laws, including the mining laws, but not mineral leasing laws. This segregation will terminate upon issuance of a patent, or 270 days from the date of publication of this Notice in the **Federal Register**, or upon publication of a Notice of Termination.

Herman L. Kast,

District Manager.

Date: June 28, 1989.

[FR Doc. 89-15707 Filed 7-3-89; 8:45 am]

BILLING CODE 4310-32-M

Minerals Management Service

Delegation of Royalty Management Authority to State of Louisiana

June 22, 1989.

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of public hearing and request for comments.

SUMMARY: The Minerals Management Service (MMS) of the Department of the Interior hereby gives notice of a public hearing on a petition from the State of Louisiana for delegation of authority for royalty management activities. The petition was submitted pursuant to section 205 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1735 and 30 CFR Part 229. Written comments from interested persons also will be accepted.

DATES: The public hearing will be held beginning at 1 p.m. on August 17, 1989. Written comments will be accepted by MMS on the petition through August 31, 1989.

ADDRESSES: The hearing will be held at the State Lands and Natural Resources Buiding, 625 North 4th Street, 4th floor (Docket Room), Baton Rouge, Louisiana.

Written comments should be sent to the Minerals Management Service, Royalty Management Program, Office of State and Tribal Support Program, Mr. Todd R. McCutcheon, P.O. Box 25165, MS-658, Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Mr. Todd R. McCutcheon, Chief, Office of State and Tribal Support Program, Minerals Management Service, P.O. Box 25165, MS-658, Denver, Colorado 80225, (303) 231-3340, (FTS) 326-3340.

SUPPLEMENTARY INFORMATION: Section 205 of the FOGRMA, authorizes the Secretary of the Interior to delegate to States certain audit, inspection, and investigation authority for oil and gas production on Federal and Indian leases. The MMS issued regulations implementing section 205 of the FOGRMA at 30 CFR 229 which defines the scope of authority which may be delegated to States and the standards for such delegation. Section 229.102 of the regulations requires that a public hearing(s) be held on a petition for delegation from a State to determine whether:

- The State has an acceptable plan for carrying out delegated responsibilities and if it is likely that the State will provide adequate resources to achieve the requirements of the FOGRMA.
- The State has the ability to put in place a process within 60 days of the grant of delegation which will assure the Secretary that the functions to be delegated to the State can be effectively carried out;
- The State has demonstrated that it will effectively and faithfully administer the rules and regulations of the Secretary in accordance with the requirements at 30 U.S.C. 1735;
- The State's plan to carry out the delegated authority will be in accordance with the MMS standards; and
- The State's plan to coordinate out the delegated authority with MMS and the Office of the Inspector General audit efforts to eliminate added burden on any lessee or group of lessees operating Federal or Indian Oil and gas leases within the State.

The purpose of the subject hearing is to provide a public forum to discuss the State of Louisiana's written request for delegation of audit activities for oil and gas royalties with respect to Federal and Indian lands within the State. The State's written request for delegation will be available for public inspection at the hearing. Topics for discussion at the hearing include:

- The State's resources to be devoted to the delegated audit activity.
- The ability of the State to effectively and faithfully administer the rules and regulations of the Secretary of the Interior under the FOGRMA.
- Whether or not the delegation of authority will create an unreasonable burden on any lessee, with respect to the Federal and Indian lands within the State.

The presiding officer at the hearing will establish the procedures for conduct of the hearing. Any interested person may submit written comments on the petition which will be accepted by MMS through August 31, 1989, at the address identified above.

Date: June 27, 1989.

Kenneth M. Moyers,

Acting Associate Director for Royalty Management.

[FR Doc. 89-15677 Filed 7-3-89; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Concession Contract Negotiations; Teton Trail Rides

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession permit with Teton Trail Rides, Inc., authorizing it to continue to provide guided horseback, trail ride, facilities and services for the public at Grand Teton National Park, Wyoming for a period of five (5) years, from January 1, 1989, through December 31, 1993.

EFFECTIVE DATE: August 4, 1989.

ADDRESS: Interested parties should contact the Regional Director, Rocky Mountain Region, P.O. Box 25287, Denver, Colorado 80225, for information as to the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing authorization which expired by limitation of time on December 31, 1988, and has continued to provide satisfactory services since then at the request of the Secretary, and therefore, pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the thirtieth (30th) day following publication of this notice to be considered and evaluated.

Harold P. Danz,

Acting Regional Director, Rocky Mountain Region.

Date: June 19, 1989.

[FR Doc. 89-15676 Filed 7-3-89; 8:45 am]

BILLING CODE 4310-70-M

Subsistence Resource Commission; Meeting

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Denali National Park and the Chairperson of Denali National Park Subsistence Resource Commission announce a forthcoming meeting of the Denali National Park Subsistence Resource Commission.

The following agenda items will be discussed:

(1) Election of chairperson and introduction of new members
(2) Introduction of guests
(3) Review of minutes from last meeting
(4) Report on chairman's meeting in Fairbanks (November 1988)
(5) Update on recent court rulings on subsistence and possible effects on Denali National Park subsistence hunting
(6) Subsistence Hunting Plan
  a. Review of past recommendations
  b. Workshop on subsistence hunting roster plan
  c. Commission recommendations
(7) Old and new business.

DATE: The meeting will begin at 1:00 p.m. on July 14, 1989, and conclude on the afternoon of July 15, 1989.

ADDRESS: The meeting will be held at: Denali National Park and Preserve, Headquarters Recreation Hall, Mile 237 Parks Highway.

FOR FURTHER INFORMATION CONTACT: Russell Berry, Superintendent, Denali National Park and Preserve, Box 9, Denali National Park, Alaska 99755.

SUPPLEMENTARY INFORMATION: The Denali National Park Subsistence Resource Commission is authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96-487, and operates in accordance with the provisions of the Federal Advisory Committees Act.

Boyd Evison,

Regional Director.

[FR Doc. 89-15662 Filed 7-3-89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[I.C.C. Order No. P-100]

Passenger Train Operation; Denver and Rio Grande Western Railroad

The National Railroad Passenger Corporation (AMTRAK) has established through passenger train service between San Francisco, California and Chicago, Illinois, Train Nos. 5 and 6, the California Zephyr. These train operations require the use of tracks and other facilities of the Union Pacific (UP) and Denver and Rio Grande Western (DRGW) Railroads. A portion of the UP tracks near Winnemucca, Nevada are temporarily out of service because of a derailment and trains are being diverted. As a result of the diversion, eastbound trains into Salt Lake City today are expected to be substantially behind schedule. In order to minimize the emergency situation and avoid unnecessary delays for passengers waiting to board trains, Amtrak proposes to operate a second section of the Zephyr over the DRGW from Salt Lake City which will depart on time.

It is the opinion of the Commission that such an operation is necessary in the interest of the public and the commerce of the people; that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

(a) Pursuant to authority vested in me by order of the Commission decided January 13, 1986, and of the authority vested in the Commission by section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c)), Denver and Rio Grande Western Railroad (DGRW) is directed to operate trains of the National Railroad Passenger Corporation (AMTRAK) in separate sections over the DRGW from Salt Lake City, Utah to Denver, Colorado.

(b) In executing the provisions of this order, the common carriers involved shall proceed even though no agreements or arrangements now exist between them with reference to the compensation terms and conditions applicable to said transportation. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(d) *Effective date.* This order shall become effective at 10:00 a.m. (MDT), June 13, 1989.

(e) *Expiration date.* The provisions of this order shall expire at 10:00 a.m. (MDT), June 14, 1989, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon Denver and Rio Grande Western Railroad and upon the National Railroad Passenger Corporation (AMTRAK), and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, DC, June 13, 1989.
Heber P. Hardy, Agent.
Noreta R. McGee,
Secretary.
[FR Doc. 89-15680 Filed 7-3-89; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 31481]

South Carolina Central Railroad Co., Inc.; Purchase of CSX Transportation, Inc., Line Between Dawson and Albany, Georgia

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision accepting application for consideration.

SUMMARY: The Commission is accepting for consideration the application, filed May 31, 1989, by South Carolina Central Railroad Company, Inc. (SCRF), to purchase from CSX Transportation, Inc. (CSXT), 25.2 miles of rail line in Georgia between Dawson (milepost SLB-63.6) and Albany (milepost AP-699.1) in Dougherty, Lee, and Terrell Counties. Pursuant to 49 CFR Part 1180, the Commission finds this a minor transaction.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than August 4, 1989. Comments from the Secretary of Transportation and Attorney General of the United States must be filed by August 21, 1989. Applicants' reply is due by September 8, 1989.

ADDRESSES: An original and 10 copies of all documents must be sent to:

Office of the Secretary, Case Control Branch, Att'n: Finance Docket No. 31481, Interstate Commerce Commission, Washington, DC 20423.

One copy of all documents filed must be sent to:

Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Room 5101, 400 Seventh Street SW., Washington, DC 20590.

Attorney General of the United States, Washington, DC 20530.

In addition, one copy of all documents filed must be sent to each of applicants' representatives:

R. Lyle Key, Jr., CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

Kelvin J. Dowd, Slover & Loftus, 1224 Seventeenth Street NW., Washington, DC 20036.

Also, after the Commission issues a service list, send one copy to every party of record.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. (TDD for hearing impaired: (202) 275-1721)

SUPPLEMENTAL INFORMATION: By application filed May 31, 1989, SCRF and CSXT (applicants) seek approval under 49 U.S.C. 11343, *et seq.*, for SCRF to acquire 25.2 miles of CSXT rail line in Georgia between Dawson (milepost SLB-63.6) and Albany (milepost AP-699.1) in Dougherty, Lee, and Terrell Counties. Applicants contend that this is a minor transaction under 49 CFR 1180.2(c), and they submitted a conforming application in accordance with the railroad consolidation procedures in 49 CFR Part 1180.

SCRF is a Class III common carrier controlled by a non-carrier, Railtex, Inc. [Railtex also controls four other carriers, Mid-Michigan Railway, the San Diego and Imperial Valley Railway, the North Carolina and Virginia Railway and the Austin and Northwestern Railroad. Applicants state that the instant transaction will have no effect on these carriers.] CSXT is a Class I common carrier and a unit of CSX Corporation.

SCRF now operates two lines of railroad totalling 55.2 miles. One line extends between Florence and Bishopville, SC and the other extends between Cheraw and Society Hill, SC. In addition, the Commission has approved SCRF's acquisition of 258.82 miles of line in Alabama and Georgia from CSXT. *See* Finance Docket No. 31360, *South Carolina Central Railroad Company, Inc.—Purchase and Lease—CSX Transportation, Inc., Lines in Georgia and Alabama* (not printed), served May 4, 1989. SCRF also plans to acquire from Norfolk Southern Corporation a 79-mile line of railroad between White Oak and Smithville, GA, which connects with the line SCRF proposes to acquire in this proceeding. *See* Finance Docket No. 31392, *South Carolina Central Railroad Co., Inc.—Lease Exemption—Central of Georgia Railroad Company* (not printed), served May 15, 1989.

In 1987, CSXT transported approximately 1,208 originating and terminating carloads on the line. In 1988, CSXT handled approximately 930 carloads. There is no overhead traffic.

Applicants assert that the transaction will result in operating economies and improved service, and that this will enhance their financial viability. Specifically, the proposal will enable SCRF to enter a new market and spread its administrative, insurance, and operating costs over a larger base. Allegedly this will result in operating efficiencies that will allow SCRF to offer better service at more competitive rates. CSXT, on the other hand, will no longer be required to maintain what is for it a marginally profitable operation. Applicants assert that the transaction will improve service because, as a small, local carrier, SCFR will be better able to accommodate shipper needs.

Because SCRF will merely replace CSXT, applicants contend that the transaction will not result in a monopoly or reduce competition. Rather, they submit that the transaction will enhance competition by allowing SCRF to compete more effectively with other modes of transportation. They assert that there is a significant potential to divert traffic from motor carriers serving the area.

SCFR intends to operate the lines with its own employees and does not expect to hire additional employees. As a result, applicants state that CSXT's work force will not be affected by the transaction. No positions with SCFR or with CSXT would be eliminated.

Applicants state that this transaction will not cause the dismissal, displacement or reassignment of any CSXT employees. Applicants also state that this transaction will not involve any coordination of work between CSXT and SCRF employees, that CSXT's collective bargaining agreements will not be transferred to or assumed by SCRF, that CSXT employees will not be required to accept employment with SCRF, that CSXT's unions will not represent any SCRF employees. Consequently, no employee protection agreements will be required pursuant to the conditions in *New York Dock Ry.—Control—Brooklyn East. Dist.*, 360 I.C.C. 60 (1979).

Under § 1180.4(b)(2) of our consolidation regulations, we must determine initially whether a transaction is major, significant, or minor. The proposed transaction involves a Class I and a Class III railroad. It involves only 25.2 miles of rail line, and a modest amount of traffic and therefore has no regional or national significance and will neither result in a major market extension nor reduce the present level of competition. Accordingly, we find the proposal a minor transaction under § 1180.2(c). Because the application complies with our regulations governing minor transactions, we are accepting it for consideration.

Applicants should be aware that under 49 U.S.C. 11347, the imposition of labor protective conditions is mandatory. We have determined that the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979) are appropriate for this class of transaction and will be imposed should the application be granted. Under those conditions an approved transaction cannot be consummated unless an implementing agreement between the carrier and labor interests is already in place. *See* Finance Docket No. 30965, *Delaware and Hudson Railway Company—Lease and Trackage Rights Exemption—Springfield Terminal Railway Company* (not printed), served February 19, 1988, slip op. at 4, n. 4.

The application and exhibits are available for inspection in the Public Docket Room at the Offices of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained upon request from applicants' representatives named above.

Any interested persons, including government entities, may participate in this proceeding by submitting written comments. Comments must be filed no later than August 4, 1989. The United States Secretary of Transportation and the Attorney General of the United States must file their comments no later than August 21, 1989. Applicants' reply is due September 8, 1989. An original and 10 copies of all pleadings must be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20423.

Written comments must be served concurrently by first-class mail on the Secretary of Transportation, the Attorney General and applicants' representatives. Written comments must also be served on all parties of record within 10 days of service of the service list by the Commission. We plan to issue the service list by August 21, 1989. Any person who files timely written comments shall be considered a party of record if the person's comments so request. In this event, no petition for leave to intervene need be filed. Consistent with 49 CFR 1180.4(d)(iii), written comments must contain:

(a) The docket number and title of the proceeding;

(b) The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

(c) The commenting party's position, *i.e.*, whether it supports or opposes the proposed transaction;

(d) A statement of whether the commenting party intends to participate formally in the proceeding or merely comment upon the proposal;

(e) If desired, a request for an oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can only be resolved at a hearing; and

(f) A list of all information sought to be discovered from applicant carriers.

Because we have determined that the proposal in this processing constitutes a minor transaction, no responsive applications will be permitted. The time limits for processing a minor transaction are set forth at 49 U.S.C. 11345(d).

Discovery may begin immediately. We admonish the parties to resolve all discovery matters expeditiously and amicably.

This action will not significantly affect either the quality of the human environment or energy conservation.

It is ordered:

1. This proposal is found to be a minor transaction under 49 CFR 1180.2(c).

2. The application in Finance Docket No. 31481 is accepted for consideration.

3. The parties shall comply with all provisions as stated above.

4. This decision is effective on the date of service.

Decided: June 27, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners André, Lamboley, and Phillips.

Noreta R. McGee,
Secretary.
[FR Doc. 89-15679 Filed 07-03-89; 8:45 am]
BILLING CODE 7035-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 89-44]

National Environmental Policy Act; Notice of Availability of Final Environmental Impact Statement and Record of Decision

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of final environmental impact statement and record of decision.

SUMMARY: Notice is hereby given of the public availability of the final Administration decision making associated with completing the preparation and operation of the Galileo spacecraft, including its planned launch in October 1989.

Comments on the draft EIS were previously solicited from State and local agencies and members of the public through a notice in the **Federal Register** of January 6, 1989 (54 FR 478).

Copies of the draft and final Statement have been furnished to the Council on Environmental Quality; the Environmental Protection Agency; the Departments of Air Force, Commerce, Defense, Energy, Health and Human Services, and Transportation; the National Academy of Sciences; the Nuclear Regulatory Commission; the Office of Management and Budget; to appropriate State and local agencies; and to numerous private organizations.

The Record of Decision (ROD) will be made available to the public on or about July 3, 1989.

Copies of the final statement and the ROD may be examined at any of the following locations:

(a) NASA Headquarters Information Center, National Aeronautics and Space Administration, Washington, DC 20546.

(b) NASA Information Center, Ames Research Center, Moffett Field, CA 94035.

(c) NASA Information Center, Dryden Flight Research Facility, P.O. Box 273, Edwards, CA 93523.

(d) NASA Information Center, Goddard Space Flight Center, Greenbelt, MD 20771.

(e) NASA Information Center, Johnson Space Center, Houston, TX 77058.

(f) NASA Information Center, Kennedy Space Center, FL 32899.

(g) NASA Information Center, Langley Research Center, Hampton, VA 23665.

(h) NASA Information Center, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135.

(i) NASA Information Center, Marshall Space Flight Center, Huntsville, AL 35812.

(j) NASA Information Center, Stennis Space Center, Bay St. Louis, MS 39520.

(k) NASA Information Center, (Jet Propulsion Laboratory), NASA Resident Office, 4800 Oak Grove Drive, Pasadena, CA 91109.

(l) NASA Information Center, Wallops Flight Facility, Wallops Island, VA 23337.

C. Howard Robins, Jr.,
Associate Administrator for Management.
May 26, 1989.
[FR Doc. 89-15832 Filed 6-30-89; 1:21 pm]
BILLING CODE 7510-01-M

[Notice 89-45]

NASA Advisory Council (NAC), Exploration Task Force; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Exploration Task Force.

DATE: June 21, 1989, 8:30 a.m. to 4:30 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 7002, Federal Building 6, 400 Maryland Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Douglas A. O'Handley, Code Z, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-8932.

SUPPLEMENTARY INFORMATION: In June 1987, the NASA Administrator established the Office of Exploration to coordinate agencywide, long-range program planning for human exploration of the solar system. In order to help formulate and guide the strategy development for this program planning, the NASA Advisory Council (NAC), Exploration Task Force is established.

This will be the first meeting of the NASA Advisory Council (NAC), Exploration Task Force. The goals of the Task Force will be to: (1) Provide NASA with programmatic guidance as a plan is developed for human exploration of the solar system; (2) assess programmatic readiness for human exploration of the solar system; and (3) recommend a programmatic approach to exploration initiative development.

Type of Meeting: Open.

Agenda

June 21, 1989

8:30 a.m.—Introduction by Exploration Task Force Executive Secretary.
8:35 a.m.—Remarks by NASA Administrator.
9:00 a.m.—Confabulation.
10:45 a.m.—Overview of Office of Exploration.
1:00 p.m.—NASA Advisory Council Review.
1:30 p.m.—National Commission on Space.
2:00 p.m.—Big Projects/Osaka, Japan.
2:30 p.m.—Industry Day.
3:00 p.m.—Perspective Implications.
3:30 p.m.—Task Force Discussions.
4:30 p.m.—Adjourn.

May 31, 1989.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89-15833 Filed 6-30-89; 1:21 pm]

BILLING CODE 7510-01-M

[Notice 89-48]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Solar System Exploration Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Solar System Exploration Subcommittee.

DATES: Monday, June 26, 1989, 9 a.m. to 5 p.m., Tuesday, June 27, 1989, 9 a.m. to 5 p.m., Wednesday, June 28, 1989, 9 a.m. to 5 p.m., Thursday, June 29, 1989, 8:30 a.m. to Noon.

ADDRESSES: New England Center, Durham, New Hampshire 03824.

FOR FURTHER INFORMATION CONTRACT: Dr. Geoffrey A. Briggs, Code EL, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1588).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long-range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Solar System Exploration Subcommittee provides advice to the Solar System Exploration Division concerning long-range planning in solar system exploration. The Subcommittee will meet to discuss and develop program status and evaluation criteria, scenario evaluations for Mars Centerpiece Program, and presentation and assessment of the Small Missions Program. The Subcommittee is chaired by Dr. Laurence Soderblom and is composed of 21 members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 people including members of the Subcommittee). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Type of meeting: Open.

Agenda

Monday, June 26

9 a.m.—Introduction and Review of Workshop Objectives and Agenda.
10 a.m.—Discussion of Program Status and Introduction of Evaluation Criteria.
1 p.m.—Development of Additional Evaluation Criteria.
2 p.m.—Presentation of Issues and Study Results.
5 p.m.—Adjourn.

Tuesday, June 27

9 a.m.—Evaluation Criteria Review and Mission Set Evaluations for Balanced Program.
10:30 a.m.—Scenario Evaluations for Mars Centerpiece Program.
1 p.m.—Criteria Discussion and Evaluation.
5 p.m.—Adjourn.

Wednesday, June 28

9 a.m.—Continuation of Criteria Discussion and Evaluation.
10:30 a.m.—Continuation of Mars Centerpiece Scenario Examinations.
1 p.m.—Presentation and Assessment of Small Missions Programs and Preparation of Balanced Mars Centerpiece Program Recommendations.
5 p.m.—Adjourn.

Thursday, June 29

8:30 a.m.—Team Reports on Criteria and Small Missions Program, Balanced Program, and Mars Centerpiece Program.
12 p.m.—Adjourn.

June 6, 1989.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89-15834 Filed 6-30-89; 1:21 pm]

BILLING CODE 7510-01-M

[Notice 89-46]

NASA Advisory Council (NAC), Space Station Science and Applications Advisory Subcommittee (SSSAAS); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Station Science and Applications Advisory Subcommittee.

DATES: June 26, 1989, 8:30 a.m. to 5:15 p.m., June 27, 1989, 8:30 a.m. to 10:30 p.m., June 28, 1989, 8:30 a.m. to 10:30 p.m., June 29, 1989, 8:30 a.m. to 5:30 p.m., and June 30, 1989, 10 a.m. to 3:30 p.m.

ADDRESSES: As listed.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. Rhome, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1425).

SUPPLEMENTARY INFORMATION: The Space Station Science and Applications Advisory Committee (SSAAC) and consults with and advises the NASA Office of Space Science and Applications (OSSA) on the new capabilities to be made available by the Space Station program and how these may be most effectively utilized. It also advises the NASA Office of Space Station (OSS) on how the Space Station program may most effectively support potential science and application users. The Subcommittee will meet to discuss the OSSA Strategic Plan, OSSA 1989 Program Updates, Space Science Research and Experiment Physical Accommodations, Scientist-Experiment Interaction, Science Operations Concepts, and hold Science Discipline sessions in the following areas: Observing Sciences, Life Sciences, Materials and Fluid Sciences. The gorup is chaired by Dr. Robert J. Bayuzick and is composed of 20 members. The meeting will be open to the public up to the seating capacity of the (approximately 75 perople including the members of the Subcommittee). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key paticipants.

Type of Meeting: Open

Agenda

Monday, June 26, National Academy of Sciences, Woods Hole Study Center, Woods Hole, MA 02540.
8:30 a.m.—General Workshop Orientation and OSSA 1989 Program Updates.
5:15 p.m.—Adjourn.

Tuesday, June 27, National Academy of Sciences, Woods Hole Study Center, Woods Hole, MA 02540.
8:30 a.m.—Space Science Research and Experiment Physical Accommodations.
1:30 p.m.—Splinter Group Organization Sessions: Observing Sciences, Life Sciences, Material and Fluid Sciences.
2:30 p.m.—Break.
7 p.m.—Reconvene Splinter Group Sessions at Quality Inn—Falmouth, 291 Jones Road, Falmouth, MA 02540.
10:30 p.m.—Adjourn.

Wednesday, June 28, National Academy of Sciences, Woods Hole Study Center, Woods Hole, MA 02540.
8:30 a.m.—Scientist-Experiment Interaction.
1 p.m.—Break.
7 p.m.—Reconvene Splinter Group Sessions at Quality Inn-Falmouth, 291 Jones Road, Falmouth, MA 02540.
10:30 p.m.—Adjourn.

Thursday, June 29, National Academy of Sciences, Woods Hole Study Center, Woods Hole, MA 02540.
8:30 a.m.—Science Operations Concepts.
1:30 p.m.—Splinter Group Sessions: Observing Sciences, Life Sciences, Material and Fluid Sciences.
5:30 p.m.—Adjourn.

Friday, June 30, Quality Inn—Falmouth, 291 Jones Road, Falmouth, MA 02540.
10 a.m.—Review of Splinter Group Meeting Objectives.
10:15 a.m.—Life Sciences Report.
10:45 a.m.—Material and Fluid Sciences Report.
11:15 a.m.—Observing Sciences Report.
1 p.m.—Workshop Discussion, Conclusions and Recommendations: Joint Plenary Session with the NASA Advisory Council Space Station Advisory Committee (SSAC).
3:30 p.m.—Adjourn.

June 1, 1989.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89-15835 Filed 6-30-89; 1:21 pm]

BILLING CODE 7510-01-M

[Notice 89-47]

NASA Advisory Council (NAC), Space Station Advisory Committee (SSAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Station Advisory Committee.

DATES: June 29, 1989, 8:30 a.m. to 5 p.m., and June 30, 1989, 8:00 a.m. to 9:15 p.m.

ADDRESSES: The Nautilus Inn, Woods Hole Road, Woods Hole, MA 02543-0147.

FOR FURTHER INFORMATION CONTACT: Dr. W.P. Raney, Code S, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-4165.

SUPPLEMENTARY INFORMATION: The Space Station Advisory Committee (SSAC) is a standing committee of the NASA Advisory Council, which advises senior management on all Agency activities. The SSAC is an interdisciplinary group charged to advise Agency management on the development, operation, and utilization of the Space Station. The committee is chaired by Mr. Laurence J. Adams and is composed of 17 members including individuals who also serve on other NASA advisory committees.

This meeting will be open to the public up to the seating capacity of the room (which is approximately 30 persons including team members and other participants).

Type of Meeting: Open

Agenda

June 29, 1989

8:30 a.m.—Administrative Items.
9 a.m.—Program Update.
Management, Status and Plans.
NASA.
Space Station Program.
Budget, Congressional Action.
10 a.m.—Program Office Report.
Technical Audit.
Preparation for Preliminary Design Review (RDR).
Staffing Status.
11 a.m.—Discussion.
1 p.m.—Assembly Phase Plans.
Backup Hardware.
2 p.m.—Panel Report on User Involvement and Long-Term Operations.
3:30 p.m.—Discussion.
4 p.m.—Information System Architecture and Status.
5 p.m.—Adjourn.

June 30, 1989

8 a.m.—Committee Work Plans.
9:15 a.m.—Adjourn.

June 1, 1989.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89-15836 Filed 6-30-89; 1:21 pm]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Division of Microelectronic Information Processing Systems Advisory Committee; Meeting

The National Science Foundation announces the following meeting:

Name: Division of Microelectronic Information, Processing Systems Advisory Committee.

Date and Time: July 17, 1989—8:30 a.m.-5:00 p.m. July 18, 1989—8:30 a.m.-4:00 p.m.

Place: Hartley Conference Center, Stanford University, Stanford, California 94305, Mitchell Building, Rooms 130 and 131.

Type of Meeting: Open.

Contact Person: Dr. John Lehman, Deputy Division Director, National Science Foundation—Room 414, 202/357-7853—Washington, DC 20550.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To discuss the content of the Division's program goals and objectives and to advise on areas and priorities, new initiatives and other topics of interest to the Division.

Agenda: Overview of the Division since the last meeting. Continuation of strategic planning for initiatives.

Reason for Late Notice: Difficulty in arranging a suitable meeting date with members and staff.

M. Rebecca Winkler,

Committee Management Officer.

June 29, 1989.

[FR Doc. 89-15700 Filed 7-3-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-261]

Carolina Power Light Co., H.B. Robinson Steam Electric Plant, Unit No. 2; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of Appendix J to 10 CFR Part 50 to Carolina Power & Light Company (the licensee) for the H.B. Robinson Steam Electric Plant, Unit No. 2, located in Darlington County, South Carolina.

Environmental Assessment

Identification of Proposed Action

The exemption would grant relief from 10 CFR Part 50, Appendix J, section III. A.1.(a) and A.5.(b). Specifically, the exemption from 10 CFR Part 50, Appendix J., section III.A.1.(a), would allow for a method to successfully complete the containment integrated leakage rate test (CILRT) when it is determined that excessive local leakage exists. Under the exemption from 10 CFR Part 50, Appendix J. section III.A.5.(b), the acceptance criteria of "as found" leakage rate(s) for a component(s) isolated during a CILRT would be the maximum allowable leakage rate, L_a, or the corresponding L_t (which is the maximum allowable leakage rate at the containment reduced test pressure during Type A tests), while the acceptance criteria for "as left" leakage following the CILRT would remain 0.75 L_a (or 0.75 L_t).

The licensee's request for exemption and the bases therefor are contained in letters dated June 30, 1983, as supplemented September 14, 1987.

The Need for the Proposed Action

The proposed exemption is from requirements of 10 CFR Part 50, Appendix J. section III.A.1.(a) and section III.A.5.(b). The proposed exemption would allow the CILRT to continue even though local leakage of isolated components is observed. The proposed exemption does not relax the requirement that the "as found" local leakage be added to the Type A test results to determine whether the CILRT has been successful. The NRC staff has reveiwed the request and determined that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule, which is to determine both the "as found" containment leakage condition and also the final ("as left") condition. To deny the exemption request would result in reduced operational flexibility.

Environmental Impacts of Proposed Action

The proposed exemption would permit the completion of leakage tests under certain conditions and the use of certain "as found" acceptance criteria for leakage prior to the completion of tests. The exemption will not affect containment integrity and does not affect the risk of facility accidents. Thus, post-accident radiological releases will not be greater than previously determined, nor does the proposed exemption otherwise affect radiological plant effluents, or result in any significant occupational exposure. Likewise, the exemption does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Because it has been concluded that there is no measurable impact associated with the proposed exemption, any alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative to the exemption would be to deny the requested exemption. Such action would not reduce environmental impacts of the H.B. Robinson Steam Electric Plant, Unit No. 5 operations and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to the Operation of the H.B. Robinson Nuclear Steam Electric Plant Unit 2," dated April 19, 1975.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based on the forgoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further information with respect to this action, see the application for exemption previously listed, which is available for public inspection at the Commision's Public Document Room, 2120 L Street NW., Washington, DC and at the Hartsville Memorial Library, Hartsville, South Carolina 29536.

Dated at Rockville, Maryland this 31st day of May, 1989.

For the Nuclear Regulatory Commission.

Ronnie Lo,

Acting Director, Project Directorate II-I, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 89-15664 Filed 7-3-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26964; File No. SR-Amex-89-12]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc. Relating to Associate Membership

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 9, 1989, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and, III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing to amend its Constitution to expand Associate Membership privileges to include access to the PER/AMOS system as well as to delete some outdated and unnecessary provisions.

The text of the proposed rule change is available at the Ofice of the Secretary, Amex and at the Commission.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

One category of membership on the Exchange is Associate Membership. This type of membership, which dates back to the early days of the Exchange, enables the Associate Member and his or her firm to send orders for execution directly to a Regular Member broker on the trading floor via telephone line. An Associate Member may not transact business on the floor itself, or exercise privileges enjoyed by other classes of members. Aside from telephone access to the Floor, an Associate Member's only privilege is that its own name may be given up as the clearing firm. The 169 current Associate Members have paid a one-time fee equal to 5% of the most recent price of a Regular Membership, and annual dues of $750.

Since December 1967, when the Board approved modifications to the Exchange's telephone access policy to permit non-members to establish direct telephone access to members' booths on the Floor,[2] Associate Members have had no significant membership advantage over non-members. This has led to the possibility that some Associate Members might discontinue their membership over time, reducing the number of broker-dealers with membership ties to the Exchange. In addition, several Associate Member firms have requested direct access to the Exchange's PER/AMOS electronics order routing system over the past year. It is believed that if PER/AMOS were made accessible to Associate Members, this category of membership would continue to be viewed as an attractive alternative to Regular Membership, and that the Exchange would thus retain an important segment of the member firm community.

For these reasons, it is proposed that Associate Membership privileges be expanded to provide access to PER/AMOS. The enhanced Associate Membership would be similar to the New York Stock Exchange's electronic access membership, which was created in 1978. Existing Associate Members could obtain PER/AMOS privileges on payment of an annual fee, or maintain their current status. All new Associate Members would pay the one-time initiation fee, as well as an annual fee if they wished to access PER/AMOS. As now, Associate Memberships could not be sold or leased. The Board would have authority to extend Associate Member access to other electronic systems which may become available in the future.

It is proposed that the one-time initiation fee for Associate Membership remain at 5% of the most recent price of a Regular Membership, and that an annual fee be set yearly at 10% of the average price at which Regular Memberships have been sold for the prior twelve months.

The proposed amendments to the Exchange Constitution also eliminate certain outdated provisions relating to Associate Members. The requirement that an Associate Member be actively engaged as a broker/dealer has been deleted since, as with other types of membership, this is a requirement imposed by the Act; the requirement that Associate Membership be cancelled on election to Regular Membership has been deleted as an unnecessary administrative burden on member firms; and the posting requirement has been deleted, to be replaced by a provision in a proposed new Admission of Members section of the Exchange's Rules, which is being submitted separately to the SEC for consideration.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b) 5 in particular in that it will broaden access to the Exchange's market and help perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange has determined that no burden on competition will be imposed by its extension of Associate Membership privileges to includes access to the PER/AMOS system. On the contrary, the Exchange proposal will enhance competition among members within its market.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Soliciation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to

[1] The proposed Constitutional Amendments were approved by the Exchange's Board of Governors on May 11, 1989. In its filing the Exchange stated that the Constitutional Amendments will be submitted to the Amex membership for approval at a special meeting to be held on July 10, 1989. The Exchange stated that the results of the membership vote will be submitted to the Commission by amendment to the filing.

[2] See File No. SR-Amex-87-33. Notice of the proposed rule change was given in Securities Exchange Act Release No. 25287, 53 FR 2555, January 28, 1988. Amendment No. 1 to SR-Amex-87-33 was received by the Commission on November 16, 1988. Notice of Amendment No. 1 was given in Securities Exchange Act Release No. 26604, 54 FR 10509, January 7, 1989.

the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change beween the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-89-12 and should be submitted by July 26, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: June 23, 1989.

[FR Doc. 89-15715 Filed 7-3-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26967; File No. SR-CBOE-89-11]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Aggregation of Position and Exercise Limits for Broad-Based Stock Index Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 12, 1989, the Chicago Board Options Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(Additions are italicized; deletions are bracketed)

Rule 24.4. Position Limits

(a) In determining compliance with Rule 4.11, option contracts on [a] *broad based* market indexes shall be subject to a contract limitation fixed by the Board, which shall not be larger than [25,000] *100,000 aggregate* contracts on the same side of the market *for all listed broad based market index options cleared by the Options Clearing Corporation,* with no more than [15,000] *60,000* of such contracts in [the series of] *one* such market index. [with the nearest expiration date]

(b) through (c) No change.

* * * Interpretation and Policies:

No change.

Rule 24.5. Exercise Limits

In determining compliance with Rule 4.12, exercise limits for index option contracts shall be equivalent to the position limits prescribed for index option contracts. [with the nearest expiration date in Rule 24.4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The Exchange, in filing this request for a consolidated broad based index option position limit is not seeking an increase in index position limits. The filing for an aggregate 100,000 limit with a maximum of 60,000 in any one broad based index option is actually a reduction to the limits currently available to investors if they traded the eight indexes now listed. The AMEX lists two broad based indexes. The position limits in one case are 15,000 contracts in the near month and 25,000 contracts overall. The other has a 10,000/17,000 contract limit. The CBOE also lists two, the OEX and SPX with each having a limit of 15,000 contracts in the near month and 25,000 contracts overall. The NYSE lists one with an overall $300 million limit or approximately 17,000 contracts. The PHLX lists two indexes, one is 15,000/25,000 while the other is 10,000 contracts. Finally, the PSE lists one with a position limit of 15,000 contracts whether in the near month or overall. If all these were aggregated as the Exchange proposes, the limits would be 112,000 contracts in the near month and 159,000 contracts overall. Therefore, the Exchange's request for a 100,000 aggregate limit and 60,000 maximum for one broad based index does not provide for expanded position limits.

The proposed change to the rule also eliminates the telescoping of position limits based on the near month expiration. Customers and firms have complained about the process which forces them to roll positions unnecessarily when they become near term options. This places an undue burden on trading and effectively limits institutions to maintaining positions at the lower level for the indexes traded.

Exercise limits will coincide with those of the position limits. Only 100,000 aggregated broad based exercises will be allowed within a five day period. Additionally only 60,000 may be from the same index class.

The Exchange believes that the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder, in particular, the proposed rule change is consistent with section 6(b)(5) of the Act, which provides among other things, that the rules of the Exchange are designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market.

(B) Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 26, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: June 23, 1989.

[FR Doc. 89-15716 Filed 7-3-89; 8:45 am]

BILLING CODE 8010-01-M

[34-26980; File No. DTC-89-11]

Self-Regulatory Organizations; The Depository Trust Company; Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Procedures for the Rush Withdrawal Transfer Service

June 23, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 5, 1989, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change being filed by DTC consists of the fee and Participant procedures for the new Rush Withdrawal Transfer ("RWT") service being offered in connection with the currently pending proposed rule change SR-DTC-89-1 concerning DTC's planned elimination of most urgent withdrawals ("CODs") of corporate issues settling in next-day funds that are not "full" FAST issues.

The fee for processing each RWT request will be $22.50, plus a pass-through of any rush transfer fees the transfer agent charges DTC.[1]

The Participant Operating Procedures and Participant Terminal System (PTS) Procedures for RWT are available for review at DTC.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In January 1989 DTC filed SR-DTC-89-1 (SEC Release No. 34-26730, 54 FR 16438-F (April 24, 1989)) describing DTC's planned elimination of most urgent withdrawals ("CODs") of corporate issues settling in next-day funds that are not "full" FAST issues and DTC's institution of a new rush transfer service for those issues.[2] On May 4, 1989, DTC filed as Amendment No. 1 to File No. SR-DTC-89-1 a draft of detailed Participant procedures for RWT.

The purpose of RWT, as stated there, was to provide rush withdrawals to Participants in certain rare situations where DTC's Withdrawal-by-Transfer (WT) service would not suffice.

The purpose of this proposed rule change is to establish the final form of the Participant procedures and fee for RWT. The final form of the Participant procedures for RWT contains no substantive changes from the draft form previously filed with the Commission.

The fee for RWT is intended to recover DTC's processing costs for the service and any fees that DTC is required to pay transfer agents for rush processing.

This proposed rule change will be implemented upon Commission approval of File No. SR-DTC-89-1.

The proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder because it provides for the equitable allocation of reasonable fees and other charges among DTC's Participants and assists in reducing unnecessary costs in the safeguarding and other processing of securities as described in File No. SR-DTC-89-1.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received other than comments filed in January 1989 with File No. SR-DTC-89-1.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

[1] If DTC fills the RWT request with a certificate(s) registered in the name of DTC's nominee Cede & Co. from its vault inventory, the fee will be $10.25, the usual corporate COD fee.

[2] Under DTC's Fast Automated Securities Transfer (FAST) program, DTC leaves securities with transfer agents in the form of balance certificates registered in the depository's nominee name, Cede & Co. The balance certificates are adjusted daily for DTC deposit and withdrawal activity. A "full" FAST issue is one where the transfer agent provides CODs as well as Withdrawal-by-Transfer (WTs).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All submissions should refer to the file number SR-DTC-89-11 and should be submitted by July 26, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-15714 Filed 7-3-89; 8:45 am]

BILLING CODE 8010-01-M

[34-26970; File No. MSTC-89-02]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Midwest Securities Trust Company Relating to Deposits of the Registered Form of Interchangeable Municipal Bonds

June 23, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 11, 1989, the Midwest Securities Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached as Exhibit A is an Administrative Bulletin of Midwest Securities Trust Company ("MSTC") regarding Deposits of the Registered Form of Interchangeable Municipal Bonds.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change.

The text of these statements may be examined at the places specified in Items IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change clarified MSTC policies regarding the acceptance for deposit the fully-registered form of interchangeable municipal bonds (bonds issuable in either bearer or registered form). MSTC will reflect deposits of interchangeable bonds in MSTC's Bearer System and such deposits will lose their registered identities. Interchangeable CUSIPs will be eligible only in the Bearer System.

MSTC will advise Participants if and when an item is determined to be interchangeable and movable to Bearer System. However, Participants will be provided with prior notification before an item is actually moved. This will allow Participants an opportunity to withdraw municipal bonds by transfer prior to the move to the Bearer System.

The proposed rule change also clarifies the processing of deposits and withdrawals of interchangeable municipal bonds. In the case of deposits, deposits of registered form of interchangeable should be submitted with a Bearer System Deposit Ticket.

The proposed rule change promotes the prompt and accurate clearance and settlement of securities and is consistent with the requirements of the Securities Exchange Act of 1934, in that it clarifies MSTC's procedures for the safekeeping and book-entry processing of interchangeable municipal bonds.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MSTC does not believe that any burden will be placed on interstate competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were solicited from Participants. One Participant expressed a preference for receiving the withdrawal of interchangeable securities in bearer form. The Participant was advised that MSTC will first process withdrawals in bearer form, but bearer form cannot be guaranteed and is based on MSTC's available inventory.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities & Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisons of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number (SR-MSTC-89-2) noted above and should be submitted by July 26, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

EXHIBIT A

MST System—Administrative Bulletin

February 7, 1989

To: All Participants

Attention: Managing Partner Officer, Cashier, Operations Manager

Subject: Deposits of the Registered Form of Interchangeable Municipal Bonds

Effective March 1, 1989, MSTC will accept for deposit the fully registered form of interchangeable municipal bonds. These deposits will be accepted principally for safekeeping and book-entry services.

Deposits will be reflected in the Bearer System and will lose their registered identities.

Interchangeable CUSIPS will be eligible only in the Bearer System. If and when an item is determined to be interchangeable, MSTC will move the registered position, if any, to the Bearer System. Before an item is moved to the Bearer system, individual participants will be contacted or an MST System Administrative Bulletin will be issued informing participants that the registered position will be moved. This will allow participants an opportunity to withdraw by transfer prior to the move to the Bearer System.

Deposits

Deposit of the registered form of an interchangeable municipal bond should be submitted with a Bearer Deposit Ticket, and the word "INTERCHANGEABLE" written in the comment field on the lower left-hand side of the ticket (see exhibit). Deposits without this wording will be returned as bad deliveries.

Deposits received with a Registered Deposit Ticket will be rejected as ineligible. Registered and bearer issues cannot be intermingled on a single deposit ticket. Also, deposits of certificates that are registered to principal only will *not* be accepted.

When a significant number of interchangeable deposits are to made, participants should make prior arrangements with Michael Collins, Operations Project Manager, at (313) 063-2241.

Interchangeable deposits in registered form will be accepted only at MCC/MSTC's Chicago and New York offices. Other depository satellite (DS) locations will not process these deposits.

Withdrawals

Participants requesting withdrawals may receive registered form, but withdrawals will *first* be processed in bearer form regardless of the form in which the deposit was originally made. Registered form *cannot* be automatically requested for these issues and bearer form cannot be guaranteed.

The letters **IBR**, located under the Security Descriptioon field on the MST System Security Description Inquiry Screen (SMDES), will identify interchangeable status. This **IBR** indicator will denote that MSTC holds part of the inventory of the issues in registered form, or the Depository Trust Company (DTC) has indicated that it consider the issue interchangeable and that part or all of the inventory of the issue held at DTC is in registered form. Participants should monitor these changes and act accordingly to meet the needs and desires of their customers.

Any questions concerning this issue should be directed to Michael Collins, Operations Project Manager, at (312) 063-2241.

Gerald R. Brox

Senior Vice President MCC/MSTC

[FR Doc. 89-15717 Filed 7-3-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26971; File No. SR-NYSE-89-07]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc., Relating to Specialists and Competitive Option Traders Maintenance of Minimum Quote Spreads

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C 78s(b)(1), notice is hereby given that on June 2, 1989, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The New York Stock Exchange, Inc. ("Exchange") proposes to amend Rules 750 ad 758 to clarify the rules pertaining to specialists and competitive option traders maintenance of the minimum quote spreads.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) *Purpose*, To update Rule 758 so that it is more reflective of current market conditions. In addition, by modifying Rule 750, the option specialist is also made responsible for the maintenance of minimum option quote spreads.

The current version of Rule 756 requires a differential of ½ of a point for option contracts when the last sale was between $.50 and $10. This proposal would narrow the differential to ¼ of a point if the last sale was less than $1, ⅜ of a point for option contracts where the last sale was between $1 and $5. It retains the ½ point differential for option contracts where the last sale was between $5 and $10. The Exchange believes that requiring these narrower differentials between the bid and offer will enhance the quality of the Exchange's options market.

Rule 750 is being modified to state that an option specialist's quotation made for his own account should be such that the differentials between the bid and offer shall be no greater than the differentials specialized for competitive options traders in paragraph (b)(i)(C)(1) of Rule 758.

(b) *Statutory Basis.* The basis under the Securities Exchange Act of 1934, as amended ("Act"), for this proposed rule change is the requirement under section 6(b)(5) that an exchange have rules that promote just and equitable principles of trade, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the FEDERAL REGISTER or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the

Submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 26, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: June 23, 1989.

[FR Doc. 89-15718 Filed 7-3-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26965; File No. SR-NYSE-89-14]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc. Relating to Minimum Halt Period for Equipment Changeover Trading Halts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 13, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change revises the Exchange's policy on the minimum time period for the duration of a trading halt for trading halts involving an "Equipment Changeover" condition. Specifically, the minimum halt period would be reduced from fifteen to five minutes.

The proposed rule change also provides that if, during an Equipment Changeover trading halt in a stock, a significant order imbalance develops or a regulatory condition occurs (i.e., news pending or news dissemination) then the nature of the halt condition would be changed accordingly, and notice of such change would be disseminated. The minimum halt period prior to the resumption of trading in this case would be fifteen minutes following the first indication after the new halt condition is disseminated.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) *Purpose.* The purpose of an Equipment Changeover trading halt is to enable trading in a particular stock to be halted when trading is temporarily inhibited due to a systems, equipment or communications facility problem or for other technical reasons.

This type of halt is different from other established halt conditions (i.e., news pending, news dissemination and order imbalance) in that the purpose of such other halts is to give the investing public and market professionals a reasonable chance to reflect on, evaluate and react to news of a corporate event or a significant imbalance of supply and demand in a stock.

Present Exchange policy does not take into consideration the difference in rationale between an Equipment Changeover and other halt conditions in that regardless of the nature of the halt condition, a price indication must be disseminated before trading can be resumed, and trading may not be resumed for at least fifteen minutes from the time of the first indication. In many cases, a systems, equipment or other technical problem may be corrected in a much shorter period of time, and it may be possible to resume trading at a price which is a reasonable variation from the last sale in the stock prior to the halt.

Therefore, the proposed rule change would reduce the minimum halt period from fifteen to five mintues for an Equipment Changeover condition. Of course, if the systems, equipment or technical problem took longer to resolve, then the halt would continue until corrective action is completed.

In all other respects, existing policies relating to non-regulatory halts would apply to an Equipment Changeover halt, including the fact that

- An equipment Changeover halt requires the approval of a Floor Governor or two Floor Officials;
- An indication should be published immediately after the halt is declared;
- If multiple indications are appropriate, then trading may not be resumed until
  - —Ten minutes after the last indication if such indication and the immediately preceding indication do not overlap; or
  - —Five minutes after the last indication if such indication and the immediately preceding indication do overlap; and,
- If the halt remains in effect at the close of the trading day, a Floor Official may authorize the dissemination of an indication prior to the opening of business on the Exchange the next day (i.e., prior to 9:30 a.m.) and the Floor Official may dispense with the waiting period if no unusual situation exists prior to the opening of the affected stock.

The proposed rule change recognizes the possibility that during an Equipment Changeover halt, a significant order imbalance may develop or a "news pending" of "news dissemination" regulatory condition may occur. In such a case, the proposed rule change would require the nature of the halt condition to be changed accordingly, and that notice of such change be disseminated. Thereafter, the standard policies relating to order imbalance or regulatory halts would apply. The minimum halt period prior to the resumption of trading in this case would be fifteen minutes following the first indication after the new halt condition is disseminated. This would provide market participants the normal time period to evaluate and react to news of a corporate event or a significant order imbalance.

Finally, the proposed rule change defines a "significant order imbalance" as one which result in a price change of the lesser of 10% or three points (five points if the last sale was $100 or more) unless the price change is less than one point. This is the same standard that applies to mandatory indications on openings, under existing Exchange policies.

(b) *Statutory Basis.* The basis under the Act for the proposed rule change is section 6(b)(5), which provides in pertinent part that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The proposed rule change was reviewed with, and approved by, the following Exchange committees:

—The Special Executive Committee for Trading Research and Electronics;
—The Market Performance Committee; and
—The Quality of Markets Committee.

The Participants of the Consolidated Tape Association were informed of the proposed rule change at a meeting of the Association held on May 9, 1989. No objections to the proposal were raised at this meeting.

The Exchange has not otherwise solicited comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approved the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-89-14 and should be submitted by July 26, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 23, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-15722 Filed 7-3-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26969; File No. SR-NYSE-89-13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc. Relating to New Rule 106 and New Form 106

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 8, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would adopt new Exchange Rule 106, which requires (i) quarterly contacts by specialist units, at least one of which is an in-person meeting, with a senior official, of the rank of Corporate Secretary or higher, of each of the specialist unit's listed companies, and (ii) semi-annual contacts by specialist units, off the Exchange floor, with the 15 largest NYSE member organizations, any other member organizations that are significant customers of the specialist unit, as well as any other member organization that requests such contact. The proposed rule change also would adopt proposed Form 106.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The purpose of the proposed rule change is to enhance the specialist's comunication function by requiring that the specialist maintain frequent and personal contact with the listed companies and member firm customers that he serves.

On February 7, 1989, the Commission approved the Exchange's revised specialist job description which emphasizes key expectations regarding specialist performance that are consistent with the competitive demands of an evolving market place.[1] Two revisions that were adopted in the specialist job description are the requirements to extend an annual invitation to meet with the representatives of issuers of the specialist's specialty stocks and to meet regularly with appropriate representatives of the specialist's member firm customers. At present, however, there is no formal rule requiring that specialists maintain regular contacts with their member firm customers or their listed companies' officials. Proposed Rule 106 will require that a representative of each specialist unit contact quarterly one or more senior officials, of the rank of Corporate Secretary or higher, of the issuers of each of their specialty stocks. One of the quarterly contacts would have to be an in-person meeting with a corporate official of the rank of Corporate Secretary or higher. These quarterly contacts are expected to help to foster an understanding of the specialist function, the operations of the Exchange market, and the markets that are maintained in the listed companies' stocks. Specialist units will also be required to contact semi-annually, off

[1] *See* Securities Exchange Act Release No. 26523, February 7, 1989, 54 FR 6631.

the Floor, representatives of each of the 15 largest NYSE member organizations, and representatives of any other NYSE member organization that is a significant customer of the specialist, and representatives of any other member organization which requests such contact. The purpose of these semi-annual contacts between specialist units and the Exchange's member organizations is to discuss the service, operational and competitive requirements of the member firms.

Proposed Rule 106 will require that specialist units report to the Exchange, on a semi-annual basis, contacts made with their listed companies and member firm customers pursuant to the rule. Specialist units would report this information on the proposed new Form 106.

(b) Statutory Basis

By promoting a better undestanding of the needs of listed companies and member organizations and fostering communications among the specialist, and listed company, and the NYSE member firm, the proposed rule change meets the requirements called for in Section 6(b)(5) of the Act in that it promotes the protection of investors and the public interest, helps prevent fraudulent and manipulative acts and practices, promotes just and equitable principles of trade and fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others.

The Exchange has not solicited, and does not intend to solicit, written comments regarding this proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approved the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-89-13 and should be submitted by July 26, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: June 23, 1989.

[FR Doc. 89-15723 Filed 7-3-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26961; File No. SR-PSE-89-15]

Self-Regulatory Organizations; Proposed Rule Change by Pacific Stock Exchange, Inc. Relating to the Trading Privileges of Holders of Special Memberships

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 6, 1989, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend Rule IX, section 13, to make clear the trading privileges of holders of Special Memberships. (Brackets indicate language to be deleted, italics indicates new language.)

Rule IX, Section 13

Special Memberships

Sec. 13. (*a*) Privileges. Holders of Special Memberships issued by the Exchange shall be entitled to:

(1) Admission to the options trading floor; and

(2) Register as a Market Maker or Floor Broker in options on [the PSE Technology Index, FNCI and] such [other new] products as the Board may determine to include.

(*b*) No change.

(*c*) No change.

Commentary

.01 While present on the Options Trading Floor, a holder of a Special Membership who is registered as a Market Maker may bid, offer, purchase, write, and enter orders for his market maker account in option series currently open for trading on the Financial News Composite Index (FNC).

.02 While present on the Options Trading Floor, a holder of a Special Membership who is registered as a Floor Broker may accept and execute orders in option series currently open for trading on the Financial News Composite Index (FNC).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to more specifically describe the limitations on trading privileges accorded to holders of special memberships. The new language is intended to make clear that a market maker holding a special membership, while present on the options trading floor, may not place orders in option classes other than that for which the market maker is registered. If a market maker holding a special membership wishes to place an order in an option class other than that for which he is registered, he must do so from off the floor. The market maker must identify the order as a customer order and any position established that was entered from off the floor will be placed in the market maker's investment account and subject to applicable customer margin. These specific procedures are designed to preclude any unfair competitive advantage over public orders.

Floor brokers holding special memberships are limited to accepting and excuting orders on option contracts with respect only to FNC and such other new products as the Board of Governors may determine to include.

Reference to the PSE Technology Index has been deleted from paragraph (a) of section 13 as the product is no longer traded.

The Exchange believes that the proposed rule change is specifically in keeping with section 6(b)(5) of the Act, in that it is designed to protect investors and the public interest and promote just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC, 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-89-15 and should be submitted by July 26, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: June 23, 1989.

[FR Doc. 89-15719 Filed 7-3-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26963; File No. SR-Phlx-89-13]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Definition of "Agency Order" in Connection With PACE

On April 3, 1989, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to define agency order as that term is used in connection with the Philadelphia Stock Exchange Automated Communication and Execution System ("PACE") as set forth in Exchange Rule 229.

The proposed rule change was noticed in Securities Exchange Act Release No. 26712 (April 11, 1989), 54 FR 15862 (April 19, 1989). No comments were received on the proposed rule change.

Phlx Rule 229 sets forth the conditions under which orders will be accepted and executed under PACE. Rule 229, supplementary material .02 provides that only agency orders may be executed under PACE. This provision, however, does not currently define the term agency order as used in this context.

The Exchange states that the purpose of the proposed rule change is to clarify the original intent of Rule 229 to limit the availability of PACE to public customer orders.

In its filing, the Phlx noted that agency orders can be defined broadly to include not only public customer orders, but also orders entered for the account of broker-dealers or their affiliates. Accordingly, in order to make clear that only public customer orders may be executed under PACE, the Exchange proposes to define agency order, for purposes of Rule 229, as * * * "any order entered on behalf of a public customer, and [which] does not include any order entered for the account of a broker-dealer, the account of an associated person of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest." [3]

In proposing this definition, the Phlx stated that it was cognizant of the fact that PACE order entry firms may not know whether a certain order is entered for a public customer or for the account of a broker-dealer or its affiliate. In this regard, the Phlx would require only that order entry firms make a good faith effort to ensure that only public customer agency orders are routed to PACE.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) [4] and Section 11A(a)(1)(C)(iv).[5] By clarifying that the availability of PACE is limited to public customer orders, the proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to ensure that the PACE system operates in the manner it was designed for: As a means of improving order entry and

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1988).

[3] Compare Chicago Board Options Exchange Rule 7.4 ("No member shall place, or permit to be placed, an order with a Board Broker or Order Book official for an account in which such member, any other member or any non-member broker/dealer has an interest)."

[4] 15 U.S.C. 78f(b)(5) (1982).

[5] 15 U.S.C. 78k-1(a)(1)(C)(iv) (1982).

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execution of small customer orders. The system was not intended to accommodate professional orders. Similarly, the proposal is consistent with Section 11A(a)(1)(C)(iv) of the Act in that it promotes "the practicability of brokers executing *investors'* orders in the best market." (Emphasis added).

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Dated: June 23, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-15720 Filed 7-3-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26966; File No. PHLX 89-32]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Execution of Stop and Stop-Limit Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 30, 1989, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange"), pursuant to Rule 19b-4, hereby proposes to adopt Option Floor Procedure Advice A-5 Execution of Stop and Stop Limit Orders: The text of the proposed rule change appears below.

Options Floor Procedure Advice

A-5 Execution of Stop and Stop-Limit Orders

Stop and stop-limit orders are contingency orders to buy or sell when the market for a particular option reaches a specified price.

Stop and stop-limit orders to buy become eligible for execution when the option trades at or above the stop price or when the bid price of the option is at or above the stop price. Stop and stop-limit orders to sell become eligible for execution when the option trades at or below the stop price or when the offer price for the option is at or below the stop price.

A stop or stop-limit order which will be made eligible by an opening sale or quote should be executed as the opening trade or included with the opening trade (whichever is the case).

Stop and stop-limit orders elected by a quotation must be given floor official approval prior to execution or, if circumstances make it impractical for prior approval, promptly following the execution. The facts surrounding each instance where retroactive approval is requested must be documented in writing, signed by the specialist and floor official, and submitted to the Surveillance Department on the day of the trade.

A-5 Schedule Fine Not Applicable.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

This proposed rule change is in response to the Commission's concerns respecting a previous filing submitted in 1987 respecting the same subject matter. *See* SR-PHLX-87-10 filed on April 16, 1987. In response to the Commission's concerns, the PHLX proposes to amend the Floor Procedure Advice to provide: (i) Stop and stop-limit orders elected by an opening quote or sale should be executed as part of the opening trade during the opening rotation; and (ii) stop and stop-limit orders elected by a quote change ordinarily can only be affected with the prior approval of a floor official; however, in extraordinary circumstances, they can be executed before receiving floor official approval, so long as such approval is received promptly thereafter with written documentation signed by the specialist and floor official and submitted to the Surveillance Department on the day of the trade. After carfeful study and consideration the proposed rule change was recommended by the Exchange's Options and Foreign Currency Options Committees to the Board of Governors which approved the proposed rule change at its regular meeting held May 17, 1989. The purpose of the proposed rule change is to modify the procedures for execution of stop and stop-limits orders in options trading on the Exchange. The proposed rule change is consistent with section 6(b)(5) of the Exchange Act which provides in pertinent part that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organizations Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competiton.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approved such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing witll also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 26, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: June 23, 1989.

[FR Doc. 89-15721 Filed 7-3-89; 8:45 am]

BILLING CODE 8010-01-M

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[6] 15 U.S.C. 78s(b)(2) (1982).

[7] 17 CFR 200.30-3(a)(2) (1988).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2354; Amdt. 4]

Louisiana (and Contiguous Counties in the States of Texas, Arkansas and Mississippi); Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with the Notice of Amendment to the President's declaration, dated June 22, 1989, to include the parishes of Bienville and Claiborne, in the State of Louisiana, as a result of damages from severe storms and flooding which occurred May 4 through May 27, 1989.

In addition, applications for economic injury from small businesses located in the contiguous parish of Webster, in the State of Louisiana, and Columbia County, in the State of Arkansas, may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on July 16, 1989, and for econonic injury until the close of business on February 20, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: June 23, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-15670 Filed 7-3-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended June 23, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 46352

Date Filed: June 20, 1989

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 18, 1989

Description: Application of Air Aruba pursuant to section 402 of the Act and Subpart Q of the Procedural Regulations applies for a foreign air carrier permit authorizing it to engage in the foreign air transportation of persons, property and mail between points in the United States and Aruba.

Docket No. 46329

Date Filed: June 22, 1989

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 20, 1989

Description: Amendment No. 1 to the Application of United Air Lines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Rules of Practice requests a certificate of public convenience to provide service between Chicago, Illinois, and on the one hand, Warsaw, Poland, and Budapest, Hungary, on the other hand.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89-15751 Filed 7-3-89; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

Announcement of Public Forums on Rural America Transportation Issues; Development of a National Transportation Policy

AGENCY: Office of the Secretary, DOT.

ACTION: Public forums announcement.

SUMMARY: This notice announces a series of six public forums on rural transportation issues to be held in various locations around the country. These meetings are a key component of the information gathering process leading to development of a national transportation policy

All interested parties, whether representing an organization or themselves, are invited to participate in these public forums. Oral statements will be limited to 10 minutes per individual; written statements or comments will also be accepted. Notification of your intent to participate should be received by the Chairman of the Rural America Transportation Cluster Group not later than 5 working days before the date of the hearing you will attend.

DATES: Public forums on rural transportation issues are scheduled from 8:30 a.m. to 5:00 p.m. on the following dates:

- July 25, 1989—Moscow, Idaho.
- July 27, 1989—Gallup, New Mexico.
- August 1, 1989—Montpelier, Vermont.
- August 3, 1989—London, Kentucky.
- August 8, 1989—Sioux Falls, South Dakota.
- August 11, 1989—Jackson, Mississippi.

ADDRESSES: The public forums will be held in the following locations:

- Borah Theater, Student Union Building, University of Idaho, Moscow, Idaho.
- Holiday Inn, W. 66th Avenue, Gallup, New Mexico.
- Federal Building/U.S. Post Office, 87 State Street, 3rd Floor Courtroom, Montpelier, Vermont.
- Wilderness Road Information Center, 140 W. Daniel Boone Parkway, Intersection of Interstate Route 75 and KY Route 80, London, Kentucky.
- Holiday Inn—Center City, 100 W. 8th Street, Sioux Falls, South Dakota.
- Mississippi Education and Research Center, ETV Auditorium, 3825 Ridgewood Road, Jackson, Mississippi.

FOR FURTHER INFORMATION CONTACT: Those seeking further information or wishing to participate in a public forum should contact:

Mr. H. Joseph Rhodes, Chairman, Rural Transportation Cluster Group, Room 3317, HPP-1, 400 Seventh Street SW., Washington, DC 20590, (202) 366-0587.

SUPPLEMENTARY INFORMATION: A top priority of the Department of Transportation during the remainder of 1989 will be to develop a comprehensive national transportation policy and

accompanying implementation strategies which reflect the role of transportation in a changing national and international environment. Early next year, the Secretary of Transportation will issue a National Transportation Policy Statement that will set forth the policy guidelines and strategies for meeting the Nation's transportation needs over the next decade and into the 21st Century.

In order to stimulate a discussion of issues, problems and solutions from a multimodal perspective, development of the National Transportation Policy will be organized largely by transportation market areas, with senior Departmental staff conducting analyses based on information and opinions from a variety of sources. The transportation market "clusters" to be examined will include:

- Urban/suburban transportation systems and services,
- Rural America transportation systems and services,
- Intercity freight: domestic transportation systems and services,
- Intercity passenger: domestic transportation systems and services,
- International transportation systems and services, and
- Innovation and human factors in transportation.

Concurrent with these market segment analyses, a series of seminars will be held to examine cross-cutting issues having broad implications for the development of a national transportation policy. Preliminary plans call for seminars addressing special needs of the transportation disadvantaged, transportation and energy, national security transportation needs, environmental considerations in achieving national transportation goals, and transportation's role in economic growth.

A key component of this policy development process will be to reach out to transportation users, the transportation industry, interest groups (including government agencies), transportation employees, and the Congress for their views on issues, problems, and recommended solutions. In addition to public forums, this outreach effort will involve solicitation of written comments from the public (see **Federal Register** Notice published July 3, 1989), meetings with key transportation and other organizations, site visits, and other events to obtain the views of concerned parties and individuals and to build a consensus for a national policy.

Rural America has evolved in such a way that transportation is now asked to fulfill a different role than has traditionally been the case. For most of American history, rural families and communities were largely self-sufficient. Transportation played a supporting, but not central role. Though agricultural products had to be shipped to market, those markets were relatively localized prior to the advent of refrigeration. Grain and livestock markets were widespread, but the railroads served the movement of these bulk products well.

Today, neither the families or communities are self-contained. The rural economy has become more diversified in terms of its products and needs. The U.S. Department of Agriculture's Economic Research Service has found that only about one-fourth of the Nation's nonmetropolitan counties are currently classified as farming-dependent. Further, off-farm income now accounts for between 40 and 55 percent of the average net income of farm households.

These and other changes are not short-term, but are permanent structural changes that are creating new demands for transportation services in rural areas. Local mobility is needed as families become more dependent on goods and services provided by the community at large. Economic development of rural areas relies on the ability to ship and receive products and raw materials. Rural communities need access to the national transportation system for the range of services which are a prerequisite to viability in modern America.

Growing evidence suggests that many rural transportation components presently are inadequate to serve the needs of rural America and the Nation. Rural America is more dependent than the rest of the Nation on the automobile for local transport. Yet, rural areas have as high, and in some cases larger concentrations of elderly, poor, and handicapped citizens who are unable to use auto transport.

Health care delivery is a particularly important aspect of the local transportation problem in rural areas. The distances involved, together with a decline in the level and availability of services, place a substantial burden on transportation for both emergency and nonemergency health services.

There also exists, at least, the perception that the freight transport market does not function well in bringing service to rural area. This perceived market failure is largely a function of the changes created by the sudden Federal deregulation of rail and trucking service in the early 1980's. An adjustment to these changes will likely continue to occur as more privately operated short line railroads are created, truck service adjusts to unserved demand, and highway resources are refocused on facilities with more traffic. Nevertheless, rural areas may not have the level of freight service available to urban areas.

There are clearly rural areas which are disadvantaged in terms of access to the national passenger transportation system. Intercity bus and rail passenger service have declined substantially, and scheduled air service to many communities remains only through cross-subsidies financially supported by the Federal Government There do not appear to be major changes on the horizon that would alter these conditions, though the private sector is one possibility for providing service where there is a need.

Safe transportation cuts across all modes of travel; however, there are certain safety issues that are specific to the rural environment. For example, travel speeds are often higher on rural roads. Therefore, when crashes do occur, they tend to be more severe. Further, rural population demographics differ somewhat from the general population. Safety belt usage is lower, and the drunk driving involvement rate is higher than for the general population. Special awareness programs may be needed to reach rural citizens on these isuses.

In summary, there are a number of issues related to rural transportation that must be considered in formulating a national transportation policy. These include questions such as:

- How well is the rural transportation system serving transportation needs? What is a reasonable and appropriate level of rural transportation service?
- What level of rural transportation service is a public sector responsibility, and how are Federal, State, and local interests to be balanced? What transportation services can the private sector reasonably be expected to provide?
- How should costs of rural transportation services be assigned between users and nonusers?
- Is it appropriate to devote more public resources to developing equipment, facilities, and institutional arrangements specifcially targeted to improving the efficiency of low density service?
- Are there unique safety problems that should be dealt with in providing rural transportation servce?
- How can rural transportation services be better coordinated, thereby improving the efficiency of all? Are there examples of where coordination has already been effective?
- What innovations have been successfully implemented to provide transportation service that might otherwise not be available?

Comments on these and any other issues pertaining to rural transportation are welcome at these public forums.

Issued this 29th day of June, 1989, in Washington, DC.

H. Joseph Rhodes,

Chairman, Rural Transportation Cluster Group.

[FR Doc. 89-15750 Filed 7-3-89; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review, Fort Smith Municipal Airport, Fort Smith, AR

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Fort Smith Airport Commission for Fort Smith Municipal Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Fort Smith Municipal Airport under Part 150 in conjunction with the noise exposure maps and that this program will be approved or disapproved on or before December 17, 1989.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and the start of its review of the associated noise compatibility program is June 20, 1989. The public comment period ends August 19, 1989.

FOR FURTHER INFORMATION CONTACT: Donald C. Harris, Department of Transportation, Federal Aviation Administration, Fort Worth, Texas, 76193-0612, (817) 624-5609. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Fort Smith Municipal Airport are in compliance with applicable requirements of Part 150, effective June 20, 1989. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before December 17, 1989.This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Fort Smith Airport Commission submitted to the FAA on September 8, 1987, noise exposure maps, descriptions and other documentation which were produced during development of the Fort Smith Municipal Airport FAR Part 150 Noise Exposure and Land Use Compatibility Plan between July 17, 1984, and December 5, 1986. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Fort Smith Airport Commission. The specific maps under consideration are the Existing Noise Exposure Map, depicted in Figure 8, page 35, and the Future Noise Exposure Map—1991, depicted in Figure 9, page 38.

The FAA has determined that these maps for Fort Smith Municipal Airport are in compliance with applicable requirements. This determination is effective on June 20, 1989. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedure's contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information, or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Fort Smith Municipal Airport, also effective on June 20, 1989. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before December 17, 1989.

The FAA s detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW. Room 617, Washington, DC 20591.

Federal Aviation Administration, Airports Division, ASW-600, 4400 Blue Mound Road, Fort Worth, Texas 76193-0600.

Fort Smith Airport Commission, Fort Smith Municipal Airport, 5900 Phoenix, Fort Smith, Arkansas 72903.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Fort Worth, Texas, June 20, 1989.

Wm. Jack Sasser,

Manager, Airports Division.

[FR Doc. 89-15604 Filed 7-3-89; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Orlando International Airport, Orlando, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the City of Orlando, Florida, for the Orlando International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for the Orlando International Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before December 13, 1989.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is June 16, 1989. The public comment period ends August 15, 1989.

FOR FURTHER INFORMATION CONTACT: Pablo G. Auffant, Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, Florida 32827-5096, (407) 648-6583. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the Orlando International Airport are in compliance with applicable requirements of Part 150, effective June 16, 1989. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before December 13, 1989. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The City of Orlando, Florida, submitted to the FAA on June 5, 1989, noise exposure maps, descriptions and other documentation which were produced during an FAR Part 150 study (ANCLUC update) between June 11, 1984 and June 29, 1988. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the City of Orlando, Florida. The specific maps under consideration are Existing Noise Exposure Map (1987) and Future Five-Year Map (1992) in the submission.

The FAA has determined that these maps for the Orlando International Airport are in compliance with applicable requirements. This determination is effective on June 16, 1989. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for the Orlando International Airport, also effective on June 16, 1989. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before December 13, 1989.

The FAA's detailed evaluation will be conducted under the provisions of 14

CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, D.C. 20591.

Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, Florida 32827-5096.

John Wyckoff, Executive Director, Greater Orlando Aviation Authority, One Airport Boulevard, Orlando, Florida 32827-4399.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT:**

Issued in Orlando, Florida, June 16, 1989.

James E. Sheppard,

Manager, Orlando Airports District Office.

[FR Doc. 89-15695 Filed 7-3-89; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; City of Fresno, Fresno County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Fresno County, California.

FOR FURTHER INFORMATION CONTACT: Mr. John R. Schultz, District Engineer, Federal Highway Administration, P. O. Box 1915, Sacramento, California, 95812-1915, Telephone (916) 551-1307.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation, (Caltrans) will prepare an environmental impact statement (EIS) on a proposal to construct a new 3.1-mile highway from Brawley Avenue to 0.4 mile east of State Route (SR) 99 (post miles 53.6 to R56.7 of SR 180) in and immediately west of the City of Fresno.

Existing average daily traffic (ADT) along this western portion of SR 180 is 6,070 vehicles. SR 180 is a principal arterial that carries traffic between the west side of the San Joaquin Valley, Fresno, and the Sequoia National Forest and Park. The route serves agricultural traffic and is of growing importance for commute travel between neighboring communities and the Fresno urbanized area. It also serves as a major east-west corridor for travel through Fresno.

The proposed project is needed to provide route continuity between the SR 180 freeway east of SR 99 and the existing highway west of Brawley Avenue. It would also relieve congestion on the local streets within the proposed alignment area. In addition, accident rates on the western portion of SR 180 are above the statewide average. Alternatives being studied include:

1. *Freeway/Expressway on New Alignment.* This alternative provides a four-lane freeway with 94-foot median, on an adopted freeway alignment, from Valentine Avenue to 0.4 mile east of SR 99, and a two- to four-lane expressway transition from Brawley Avenue to Valentine Avenue. Possible interchange variations include:

- At-grade intersection at Marks Avenue and a modified diamond interchange at the proposed Hughes/West Avenue diagonal.
- A diamond interchange at Hughes Avenue and overcrossings at Marks and West Avenues.
- A partial cloverleaf interchange at Marks Avenue and a diamond interchange at the proposed Hughes/West Avenue diagonal.

This alternative connects with the SR 180 freeway continuing eastward from SR 99.

2. *Route Continuity Using Existing Route 180.* This alternative would improve existing SR 180 as a conventional highway from Brawley Avenue to approximately West Avenue, then continue northeastward on a new alignment as a freeway connecting SR 180 to SR 99.

3. *Improve Existing Route 180.* This alternative would improve existing SR 180 from Brawley Avenue to SR 99 in downtown Fresno as a conventional highway.

4. *Transportation Systems Management (TSM).* This alternative consists of minor modifications and restriping of existing roads, improved transit, and increased use of high-occupancy vehicles.

5. *Mass Transit.* This alternative would rely primarily on expanded transit service.

6. *No Build.* This alternative would provide no improvements.

A scoping meeting will be held on Wednesday, July 26, 1989, at 9:00 a.m. in the Caltrans training room, 4491 West Shaw Avenue Fresno, California. Agency representatives will be given an opportunity to ask questions about the project and provide input to the environmental scoping process. The public participation process will include additional open houses and at least one public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. If you have any information regarding historic resources, endangered species, or other sensitive issues that could be affected by this project, please notify this office. Also, please indicate if you would be interested in being notified at completion of historic resource studies.

Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: June 23, 1989.

John R. Schultz,

District Engineer Sacramento, California.

[FR Doc. 89-15708 Filed 7-3-89; 8:45 am]

BILLING CODE 4910-22-M

Maritime Administration

[Docket S-852]

Farrell Lines Inc.

Application To Remove Restrictions on Subsidized Sailings From TR 13-Atlantic Ports to Ports in Egypt and (2) for 36 Privilege Calls on TR 13-Gulf

Farrell Lines Incorporated (Farrell) presently operates a subsidized service between Atlantic coast ports in the United States and ports in the Mediterranean Sea (Trade Route (TR) 10 and TR 13-Atlantic). Farrell, however, is restricted to 26 subsidized calls per year from ports on TR 13-Atlantic to ports in Egypt. In 1988, Farrell operated 26 subsidized sailings on TR 13-Atlantic ports to Egypt. Farrell, by letter of June 26, 1989, applied for additional service

from U.S. ports on TR 13-Atlantic to Mediterranean ports in Egypt in the form of removal of this restriction on Farrell's subsidized service. This would authorize Farrell to offer subsidized service on this segment of its route on all of its sailings.

Farrell also requested the privilege of calling up to 36 sailings of its TR 10 subsidized vessels at TR 13-Gulf ports. Farrell proposes to operate privilege calls on TR 13-Gulf at a frequency required by the trade, up to 36 sailings per year. In 1988, Farrell made 34 subsidized voyages on TR 13-Atlantic and, because of time lost for repairs required on its subsidized vessels, operated five unsubsidized voyages with chartered ships.

Farrell currently operates four containerships on TR 10/13-Atlantic. Farrell hopes to obtain one or two additional vessels (either full container or combination breakbulk/containerships) to replace two 25 year old vessels that had to be retired in 1988. According to Farrell, the additional TR 13-Gulf privilege calls could be provided with Farrell's present fleet or with its present fleet and one or two additional vessels.

Farrell avers that this application probably involves disputed issues of material fact that cannot be resolved on the basis of available information subject to official notice. Farrell therefore requests that the issues in this proceeding be set for hearing and consolidated with Dockets S-807 and S-822. It is anticipated that a prehearing conference in consolidated Dockets S-807/S-822 will be held as early as July 19, 1989. S-807 involves Lykes Bros. Steamship Co., Inc.'s (Lykes) application for its TR 13 vessels to make an additional 24 privilege sailings (a total of 48) on TR 10. In S-822 Waterman Steamship Corporation seeks to extend its TR 13 privilege calls to TR 10. Thus, Farrell maintains that its present application is the reciprocal of the applications in S-807 and S-822. Farrell notes that the basic Maritime Administration (MARAD) data package for TR 10 will have to be prepared for S-807 and the basic MARAD data package for S-822 will have to be prepared for TR 10-Egypt. It should not involve substantial additional time, according to Farrell, to prepare the MARAD data needed for a hearing on the present Farrell application.

Farrell emphasizes that the issues involved in the present Farrell application are not substantially different than the issues in Dockets S-807 and S-822. Those two dockets are not realistically subject to a claim of urgency since they have been pending since May 1, 1987 (S-807), and February 24, 1988 (S-822). Farrell notes that any claim Lykes could make as to urgency is, moreover, mitigated by the fact that Lykes already has a privilege of 24 sailings on TR 10.

For the above reasons, Farrell requests that this application be consolidated for hearing with S-807/S-822 and that petitions to intervene be entertained at the prehearing conference in S-807/S-822.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5:00 P.M. on July 17, 1989. The Maritime Subsidy Board will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies)).

By Order of the Maritime Subsidy Board.

Dated: June 30, 1989.

Joel C. Richard,

Assistant Secretary.

[FR Doc. 89-15872 Filed 6-30-89; 1:11 pm]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Income Taxes; 1990 Electronic Filing Program; Forms 1040, 1040A, and 1040EZ Returns

AGENCY: Internal Revenue Service, Treasury.

ACTION: Electronic filing program.

SUMMARY: In 1990, the Internal Revenue Service plans to continue the program to allow the filing of Form 1040, U.S. Individual Income Tax returns electronically. Electronic filing will now be available nationwide, including Hawaii and Alaska. Electronic filing is also available to U.S. citizens living abroad having an APO or FPO address. Electronic returns are not accepted from addresses in any of the U.S. Territories (Guam, Puerto Rico, Virgin Islands) or any foreign countries, unless the individuals have APO or FPO addresses.

Accepted electronic filers will be permitted to electronically file 1989 Federal individual income tax returns to the Andover, MA, Cincinnati, OH and Ogden, UT Service Centers. Most commonly used forms and schedules will be accepted.

Taxpayers can elect to have their refunds directly deposited in their bank, savings and loan, or credit union account.

DATES: *Application Dates:* Application Forms 8633, Electronic Filer Application to File Individual Income Tax Returns Electronically, should be filed with the appropriate Service Center by October 1, 1989. Applications must be filed with each Service Center to which electronic returns will be filed. Electronic filers who were accepted to participate in the 1989 Electronic Filing Systems (EFS) program for tax year 1988 are not required to submit a new application. However, if information provided on that previous application has changed, those participants must notify the Service by telephone or letter, of the corrected information. Electronic filers who were accepted to participate in the 1989 EFS program must notify the Service if changes have been made to the following:

a. The organization ownership structure; or
b. The electronic filing function(s) performed; or
c. The address, telephone number or contact representatives; or
d. The branch office addresses, local contacts and telephone numbers.

Applications to participate and subsequent electronically filed returns from the following states should be filed with the Andover Service Center. Mail applications to the: Internal Revenue Service, Andover Service Center, P.O. Box 311, Andover, MA 01810, Attn: EFU PATS, Stop 981.

Connecticut
Delaware
Maine
Maryland (including Washington, DC)
Massachusetts
New Hampshire
New Jersey
New York (including APO/FPO addresses)
Pennsylvania
Rhode Island
Vermont
Virginia

Applications to participate and subsequent electronically filed returns from the following states should be filed with the Cincinnati Service Center. Mail applications to the: Internal Revenue Service, Cincinnati Service Center, P.O. Box 267, Covington, KY 41019, Attn: EFU PATS, Stop 21.

Alabama
Arkansas
Florida (including APO/FPO addresses)
Georgia
Indiana
Kentucky
Louisiana
Michigan
Mississippi
North Carolina
Ohio
South Carolina
Tennessee
West Virginia.

Applications to participate and subsequent electronically filed returns from the following states should be filed with the Ogden Service Center. Mail applications to the: Internal Revenue Service, Ogden Service Center, P.O. Box 9941, Ogden, UT 84409, Attn: EFU PATS, Stop 1056.

Alaska
Arizona
California (including APO/FPO addresses)
Colorado
Hawaii
Idaho
Illinois
Iowa
Kansas
Minnesota
Missouri
Montana
Nebraska
Nevada
New Mexico
North Dakota
Oklahoma
Oregon
South Dakota
Texas
Utah
Washington (including APO/FPO addresses)
Wisconsin
Wyoming

Interested parties should contact the nearest District Office Electronic Filing Coordinator for information after June 22, 1989. Inquiries can be made by telephone or mail. The nationwide telephone number is 1-800-424-1040 (ask for the District Office Electronic Filing Coordinator). Correspondence should be sent to your local Internal Revenue Service district office.

SUPPLEMENTARY INFORMATION: In 1990, Forms 1040, 1040A, and 1040EZ can be filed electronically. Forms 1040 can include Schedules A, B, C, D, E, F, R, SE and Forms W-2, W-2G, W-2P, 2106, 2119, 2441, 3903, 4136, 4137, 4255, 4562, 4684, 4797, 4835, 5329, 6198, 6251, 6252, 8283, 8582, 8606, and 8808.

The principal advantages to participants of electronic filing are that: (1) Most taxpayers will receive their refunds within three weeks of the date the return is acknowledged as received by the IRS; (2) most errors are detected up front, the filer is advised and can correct and resubmit the return, eliminating delays; (3) the return preparers will be able to serve their clients more efficiently; and (4) taxpayers participating in Direct Deposit will obtain their refunds quickly and more conveniently.

Applicants must comply with all requirements of the Revenue Procedures.

Leonard Holt,

Chief, Operations & Marketing Branch.

[FR Doc. 89-15753 Filed 7-3-89; 8:45 am]

BILLING CODE 4830-01-M

Privacy Act of 1974; Computer Matching Programs

AGENCY: Internal Revenue Service; Treasury Department.

ACTION: Notice.

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988, Pub. L. 100-503, October 18, 1988, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given of the conduct of Internal Revenue Service's computer matching programs. In accordance with various provisions of section 6103 of the Internal Revenue Code of 1986, the computer matching programs provide Federal, State, and local agencies with tax information from IRS records to assist them in administering the programs and activities described hereafter. The matching programs substantially prevent or reduce fraud and abuse in certain government programs, and facilitate the settlement of government claims while protecting the privacy interest of the subjects of the match.

EFFECTIVE DATE: August 4, 1989.

ADDRESS: Inquiries may be mailed to Director, Office of Disclosure, Internal Revenue Service, P.O. Box 388, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: John Fuhrman, Chief, FOI/Privacy Section, Internal Revenue Service, (202) 566-3359.

SUPPLEMENTARY INFORMATION: The nature, purposes, and authorities for IRS computer matching programs are as follows:

Matches Conducted Pursuant to IRC 6103(l)(3)

Upon written request, the Service may disclose to the head of a Federal agency, which makes, guarantees, or insures certain Federal loans, whether an applicant for such a loan has a tax delinquent account.

The disclosure of a Tax Delinquent Account Status Indicator under IRC 6103(l)(3) is made only for the purpose of, and to the extent necessary in, determining the creditworthiness of the applicant for the loan in question. The information provided is extracted monthly from the Internal Revenue Service Individual Master File (IMF) located at the Internal Revenue Service, Martinsburg Computing Center (MCC), in Martinsburg, West Virginia. The IMF contains tax accounts of individuals.

Matches Conducted Pursuant to IRC 6103(l)(7)

The Service is required, upon written request, to disclose current information from returns with respect to unearned income to any Federal, State, or local agency administering certain federally approved programs to provide:

(a) Aid to Families with Dependent Children;
(b) Medical assistance;
(c) Supplemental Security Income benefits;
(d) Social security benefits;
(e) Unemployment compensation;
(f) Food Stamps; or
(g) State administered supplementary payments.

Information is disclosed by the Service only for the purpose of, and to the extent necessary in, determining eligibility for, or the correct amount of, benefits under the aforementioned programs.

The return information is extracted on a monthly basis from the Internal Revenue Service Information Return Master File (IRMF) for the latest processing year. This file contains information returns filed by payers of income such as interest and dividends reported on Forms 1099-INT and 1099-DIV.

Matches Conducted Pursuant to IRC 6103(m)(2)

The Service may, upon written request, disclose the mailing address of a taxpayer for use by officers, employees, or agents of a Federal agency for purposes of locating such taxpayer to collect or compromise a Federal claim against the taxpayer in accordance with sections 3711, 3717, and 3718 of Title 31 of the United States Code. This section also provides for the redisclosure of a taxpayer's mailing address to a consumer reporting agency, but only to allow for the preparation of a commercial credit report on the

taxpayer for use by the requesting Federal agency in accordance with the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982.

The information provided is extracted monthly from the Internal Revenue Service Individual Master File (IMF) located at MCC. The IMF contains tax accounts of individuals.

Matches Conducted Pursuant to IRC 6103(m)(4)

Upon written request from the Secretary of Education, the Service may disclose the mailing address of any taxpayer who has defaulted on certain loans extended under the Higher Education Act or Migration and Refugee Assistance Act for purposes of locating such taxpayer to collect the loan. This section further provides for the redisclosure by the Secretary of Education of a taxpayer's mailing address to any lender, or any State or nonprofit guarantee agency, participating under the Higher Education Act, or any educational institution with which the Secretary of Education has an agreement under that Act.

Redisclosure is made by the Secretary of Education for use only by officers, employees, or agents of such lender, guarantee agency, or institution whose duties relate to the collection of student loans for purposes of locating individuals who have defaulted on student loans made under such loan programs for purposes of collecting such loans.

The information provided is extracted monthly from the Internal Revenue Service Individual Master File (IMF) located at MCC.

Matches Conducted Under IRC 6103(m)(5)

Upon written request from the Secretary of Health and Human Services (HHS), the Service may disclose the mailing address of any taxpayer who has defaulted on certain loans extended under the Public Health Service Act for purposes of locating such taxpayer to collect the loan. This section also provides for the redisclosure by the Secretary of HHS of a taxpayer's mailing address to any school with which the Secretary has an agreement under the Public Health Service Act, or any eligible lender participating under such Act.

Redisclosure is made by the Secretary of HHS for use only by officers, employees, or agents of such school or eligible lender whose duties relate to to the collection of student loans for purposes of locating individuals who have defaulted on student loans made under the Public Health Service Act for the purposes of collecting such loans.

Approval of the IRS computer matching programs was granted by the Treasury Data Integrity Board on June 7, 1989.

June 19, 1989.

Michael J. Murphy,

Acting Commission of Internal Revenue.

Approved: June 29, 1989.

David M. Nummy,

Acting Commissioner of Internal Revenue. (Management).

[FR Doc. 89-15826 Filed 7-3-89; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 127
Wednesday, July 5, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: June 27, 1989, 54 FR 27093.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: June 28, 1989, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers have been added to Items CAG-1, CAG-46 for the agenda of June 28, 1989:

Item No., Docket No., and Company

CAG-1—RP89-101-000, ANR Pipeline Company
CAG-46—RP89-160-000, Trunkline Gas Company

Lois D. Cashell,

Secretary.

[FR Doc. 89-15904 Filed 6-30-89; 8:45 am]

BILLING CODE 6717-03-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:12 a.m. on Tuesday, June 27, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) a recommendation concerning an administrative enforcement proceeding; (2) matters relating to the possible failure of certain insured banks; (3) matters relating to assistance agreements pursuant to section 13(c) of the Federal Deposit Insurance Act; and (4) matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street NW., Washington, DC.

Dated: June 29, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-15855 Filed 6-30-89; 2:20 pm]

BILLING CODE 6714-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

June 29, 1989.

Change in Previously Announced Items

TIME AND DATE: Previously scheduled for 2:00 p.m., Wednesday, June 28, 1989. Now scheduled for 10:00 a.m., Thursday, June 29, 1989.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)]

MATTERS TO BE CONSIDERED: The following items will be considered by the Commission:

1. *Mid-Continent Resources, Inc.*, Docket No. WEST 87-88. (Issues include initial consideration of pending procedural motions.)
2. *Birchfield Mining Co.*, Docket No. WEVA 87-272. (Issues include initial consideration of pending procedural motions.)

It was determined by a unanimous vote of Commissioners that these items be considered in closed session and that no earlier announcement of the changes was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629/(202) 566-2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 89-15837 Filed 6-30-89 2:18 pm]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 10:30 a.m., Friday, July 7, 1989, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 30, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-15619 Filed 6-30-89; 10:01 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS.

TIME AND DATE: 10:00 a.m., Friday July 7, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED: .

Summary Agenda

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Publication for comment of a proposed amendment to Regulation B (Equal Credit Opportunity) to implement the Equal Credit Opportunity Act regarding applications for business credit.
2. Consideration of the limitation in the Federal Reserve Act on the cost for construction of Federal Reserve Bank branch buildings.

Discussion Agenda

3. Consideration of whether the operating rules and procedures of the Government Securities Clearing Corporation's net

settlement service are consistent with the Board's risk reduction policy.

4. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copes may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: June 30, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-15820 Filed 6-30-89; 10:01 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, July 10, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: June 30, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-15905 Filed 6-30-89; 3:27 pm]

BILLING CODE 6210-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Previously Held Emergency Meeting

TIME AND DATE: 11:35 a.m., Thursday, June 29, 1989.

PLACE: Chairman's Office, 6th Floor, 1776 G Street NW., Washington, DC 20456.

STATUS: Closed.

MATTER CONSIDERED:

1. Administrative Action under section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

The Board voted unanimously that Agency business required that a meeting be held with less than the usual seven days advance notice.

The Board voted unanimously to close the meeting under the exemptions listed above. The General Counsel certified that the meeting could be closed under those exemptions.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 89-15901 Filed 6-30-89; 2:24 pm]

BILLING CODE 7535-01-M

NATIONAL LABOR RELATIONS BOARD

Meeting

TIME AND DATE: Thursday, June 29, 1989, 2:00 p.m.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW., Washington, DC. 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. 552b(c)(2) (internal personnel rules and practices).

MATTERS TO BE CONSIDERED: Personnel matters.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, DC. 20570, Telephone: (202) 254-9430.

Dated: Washington, DC, June 29, 1989.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 89-15903 Filed 7-3-89; 3:19 pm]

BILLING CODE 7545-01-M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, July 12, 1989

PLACE: Board Hearing Room 8th Floor, 1425 K. Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of June, 1989.

2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523-5920.

Date of Notice: June 23, 1989.

Charles R. Barnes,

Executive Director, National Mediation Board.

[FR Doc. 89-15838 Filed 6-30-89; 2:19 pm]

BILLING CODE 7550-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 3, 10, 17, and 24, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of July 3

Thursday, July 6

10:00 a.m.
Briefing on Agency Human Factors Initiatives (Public meeting)

11:30 a.m.
Affirmative/Discussion and Vote (Public meeting) (if needed)

Week of July 10—Tentative

Monday, July 10

2:00 p.m.
Briefing on Status of Emergency Response Data System (Public meeting)

Tuesday, July 11

10:00 a.m.
Briefing on Staff Comments on DOE Site Characterization Plan for Yucca Mountain (Public meeting)

2:00 p.m.
Briefing on Policy Statement on Rules for Exemption from Regulatory Control (Public meeting)

Friday, July 14

11:30 a.m.
Affirmative/Discussion and Vote (Public meeting) (if needed)

Week of July 17—Tentative

Wednesday, July 19

2:30 p.m.
Briefing on Status of Browns Ferry-2 (Public meeting)

4:00 p.m.
Affirmative/Discussion and Vote (Public meeting) (if needed)

Week of July 24—Tentative

Wednesday, July 26

10:00 a.m.
Briefing on Integration of Policy Statements for Severe Accidents, Advanced Reactors, Safety Goals, and Standardization (Public meeting)

2:00 p.m.
Briefing on Proposed 1989 Waste Confidence Decision (Public meeting)

3:30 p.m.
Affirmative/Discussion and Vote (Public meeting) (if needed)

ADDITIONAL INFORMATION: By a vote of 5-0 on June 29, the Commission determined pursuant to 5 U.S.C. 552b(e) and Sec. 9.107(a) of the Commission's rules that Commission business required that "Affirmation of Policy Statement on Education for Senior Operators and Shift Supervisors at Nuclear Power Plant" (PUBLIC MEETING) scheduled for June 29, be held on less than one week's notice to the public.

Note: Affirmative sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERITY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 492-0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

William M. Hill, Jr.,

Office of the Secretary.

June 29, 1989.

[FR Doc. 89-15902 Filed 6-30-89; 2:30 pm]

BILLING CODE 7590-01-M

POSTAL SERVICE

Board of Governors

Amendment to Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 27460, June 29, 1989.

PREVIOUSLY ANNOUNCED DATE OF MEETING: July 10, 1989.

CHANGE: Addition of the following item to the closed meeting agenda:

Monday Session

July 10—1:00 p.m. (Closed)

1. Consideration of the Postal Rate Commission Recommended Decision in Docket No. MC88-2, Mail Classification Schedule, 1988, Second-Class Eligibility. (Mr. Heselton)

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, (202) 268-4800.

David F. Harris,

Secretary.

[FR Doc. 89-15867 Filed 6-30-89; 2:22 pm]

BILLING CODE 7710-12-M

POSTAL SERVICE BOARD OF GOVERNORS

Vote to Close Meeting

By telephone vote on June 28, 1989, a majority of the members contacted and voting, the Board of Governors voted to close to public observation its meeting scheduled for July 10, 1989, at the U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC. The meeting will involve consideration of Postal Rate Commission Recommended Decision in Docket No. MC88-2, Mail Classification Schedule, 1988, Second-Class Eligibility.

The meeting is expected to be attended by the following persons: Governors Alvarado, del Junco, Griesemer, Hall, Mackie, Nevin, Pace, Ryan and Setrakian; Postmaster General Frank; Deputy Postmaster General Coughlin; Secretary for the Board Harris; and General Counsel Cox.

The Board determined that, pursuant to section 552b(c)(10) of Title 5, United States Code, and § 7.3(j) of Title 39, Code of Federal Regulations, the discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)], because it is likely to specifically concern the participation of the Postal Service in a civil action or proceeding involving a determination on the record after opportunity for a hearing. The Board further determined that the public interest does not require that the Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and § 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation, pursuant to section 552b(c)(10) of Title 5, United States Code, and § 7.3(j) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268-4800.

David F. Harris,

Secretary.

[FR Doc. 89-15868 Filed 6-30-89; 2:22 pm]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNEMENT: 54 FR 26464 June 23, 1989.

STATUS: Closed meetings.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Wednesday, June 21, 1989.

CHANGES IN THE MEETING: Deletions.

The following items will not be considered at a closed meeting on Friday, June 30, 1989, at 10:00 a.m.

Dismissal of injunctive actions.
Discussion of investigation.

The following items will not be considered at a closed meeting on Friday, June 30, 1989, at 2:00 p.m.

Administrative proceedings of an enforcement nature.

Commissioner Fleischman, as duty officer, determined that Commission business required the above changes.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Anthony Ain at (202) 272-2400.

June 29, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-15875 Filed 6-30-89; 2:23 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 54, No. 127
Wednesday, July 5, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-806]

Final Determination of Sales at Less Than Fair Value; Generic Cephalexin Capsules From Canada

Correction

In notice document 89-14956 beginning on page 26820 in the issue of Monday, June 26, 1989, make the following correction:

On page 26822, in the second column, in the first complete paragraph, in the ninth line, after "agencies" insert "in the home market with sales to purchasers of small quantities".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

[FE Docket No. 89-29-NG]

Grand Valley Gas Company; Application to Import Natural Gas From Canada

Correction

In notice document 89-15064 beginning on page 26829 in the issue of Monday, June 26, 1989, the docket number and subject heading should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP89-1560-000, et al.]

ANR Pipeline Company, et al; Natural Gas Certificate Filings

Correction

In notice document 89-15172 beginning on page 27053 in the issue of Tuesday, June 27, 1989, make the following correction:

On page 27056, in the second column, under **13.Texas Transmission Corporation** the docket number should read "[Docket No. CP89-1601-000]".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Salinomycin, Chlortetracycline, and Roxarsone

Correction

In rule document 89-13831 appearing on page 24901 in the issue of Monday, June 12, 1989, make the following correction:

§ 558.550 [Corrected]

On Page 24901, in the third column, in § 558.550(b)(1)(xv)(*b*), in the second line, insert a comma after *Eimeria tenella*.

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Air Contaminants

Correction

In rule document 89-941 beginning on page 2332 in the issue of Thursday, January 19, 1989, make the following correction:

On page 3983, at the end of the document, insert the following:

[FR Doc. 89-941 Filed 1-13-89; 10:00 am]

Note: For an Occupational Safety and Health Administration correction to the document referenced in this correction, see the Rules section of this issue.

BILLING CODE 1505-01-D

federal register

Wednesday
July 5, 1989

Part II

National Aeronautics and Space Administration

48 CFR Ch. 18

Acquisition Regulation; Republication of Chapter; Final Rule

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Ch. 18

[NASA FAR Supplement Directive 89-0]

Acquisition Regulation; Republication of Chapter

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes editorial and stylistic improvements of a nonsubstantive nature in the NASA FAR Supplement (NFS). The entire rule is republished as the 1989 edition of the NFS, a replacement for the 1984 edition.

EFFECTIVE DATE: June 30, 1989.

FOR FURTHER INFORMATION CONTACT: W. A. Greene, Chief, Regulations Development Branch, Office of Procurement, Procurement Policy Division, NASA Headquarters, Washington, DC 20546, Telephone: (202) 453-8923.

SUPPLEMENTARY INFORMATION:

Background

During the past two years, the NFS has been extensively edited, revised, clarified, corrected and brought into conformance with the FAR drafting conventions. The entire effort is now finished; however, each phase of the effort was published in the **Federal Register** upon completion. To ensure that the NASA published version of the NFS and Code of Federal Regulations version comport, the entire NFS is hereby republished in the **Federal Register** as the 1989 edition.

No substantive modifications have been made in the existing codified body of regulations. The only changes are editorial in nature, such as correction of typographical errors, repagination and resolution of minor discrepancies attendant to any large publishing effort.

The new loose-leaf 1989 Edition of the NASA FAR Supplement, including subsequent amendments, is available to the public and NASA contractors on a subscription basis from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402. It is not available directly from NASA.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The regulation herein is in the exempted category, as there are no changes in aspects of the regulation to which the exemption is inapplicable. Since there are no substantive changes, NASA certifies that this regulation, like the previous (1984 Edition) version, will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The regulation makes no changes in burdens on the public nor does it make any regulatory changes in those parts subject to the Paperwork Reduction Act which bear current OMB approval numbers 2700-0003, 2700-0004, 2700-0017, 2700-0051, 2700-0052, 2700-0054, 2700-0055, and 2700-0056.

List of Subjects in 48 CFR Ch. 18

Government procurement.

S. J. Evans,

Assistant Administrator for Procurement.

Title 48 of the Code of Federal Regulations is amended by revising Chapter 18 to read as set forth below:

CHAPTER 18—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

SUBCHAPTER A—GENERAL

Part

1801 Federal Acquisition Regulations System
1802 Definitions of Words and Terms
1803 Improper Business Practices and Personal Conflicts of Interest
1804 Administrative Matters

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

1805 Publicizing Contract Actions
1806 Competition Requirements
1807 Acquisition Planning
1808 Required Sources of Supplies and Services
1809 Contractor Qualifications
1810 Specifications, Standards, and Other Purchase Descriptions
1812 Contract Delivery or Performance

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

1813 Small Purchase and Other Simplified Purchase Procedures
1814 Sealed Bidding
1815 Contracting by Negotiation
1816 Types of Contracts
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SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

1819 Small Business and Small Disadvantaged Business Concerns
1822 Application of Labor Laws to Government Acquisitions
1823 Environment, Conservation, Occupational Safety, and Drug-Free Workplace
1824 Protection of Privacy and Freedom of Information
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1827 Patents, Data, and Copyrights
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1853 Forms

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Authority: 42 U.S.C. 2473(c)(1).

1801.000 Scope of part.

This part sets forth basic policies and general information about the National Aeronautics and Space Administration (NASA) Federal Acquisition Regulation (FAR) Supplement including purpose, authority, applicability, issuance, arrangement, numbering, dissemination, implementation, supplementation, maintenance, administration, and deviation.

Subpart 1801.1—Purpose, Authority, Issuance

1801.101 Purpose.

The NASA FAR Supplement establishes agencywide uniform policies and procedures that implement and supplement the FAR.

1801.102 Authority.

Under the following authorities, the Administrator has delegated to the Assistant Administrator for Procurement authority to prepare, issue, and maintain the NASA FAR Supplement:

(a) The National Aeronautics and Space Act of 1958, as amended (Pub. L. 85-568; 42 U.S.C. 2451 et seq.).

(b) 10 U.S.C. 137.

(c) Other statutory authority.

(d) FAR Subpart 1.3.

1801.103 Applicability.

The NASA FAR Supplement applies to all acquisitions as defined in FAR Part 2 except those expressly excluded by the FAR or this regulation.

1801.104 Issuance.

1801.104-1 Publication and code arrangement.

(a) The NASA FAR Supplement is published in—

(1) The daily issue of the **Federal Register**;

(2) Cumulated form in the Code of Federal Regulations (CFR); and

(3) A separate loose-leaf edition adaptable for either interleaving with the FAR or filing separately.

(b) The NASA FAR Supplement is issued as Chapter 18 of Title 48, CFR, and it parallels the FAR in format, arrangement, and numbering system. Thus, a formal citation to this paragraph would appear as 48 CFR 1801.104-1(b).

1801.104-2 Arrangement of regulations.

(a) *General.* The NASA FAR Supplement conforms to the arrangement and numbering system prescribed by FAR 1.104. The numbering illustrations at FAR 1.104-2(b) apply to the NASA FAR Supplement; users are reminded that in the loose-leaf edition of the supplement, NASA's assigned CFR chapter number 18 appears to the left of the part number, separated by a hyphen (e.g., 1815.402-1). However, in 48 CFR Chapter 18 the hyphen does not appear; therefore the first four digits preceding the point refer to the CFR part number.

(b) *Numbering.* (1) All NASA FAR Supplement coverage that supplements, as opposed to implementing, the FAR uses part, subpart, section, and subsection numbers 70 through 89 (see 1801.303-70):

(i) Part 1870 is the first part number NASA can use for adding coverage that supplements the FAR; i.e., there is no appropriate subject heading within the 53 parts of the FAR under which the coverage could be located.

(ii) Subpart 1815.70 is the first subpart number NASA can use to supplement FAR Part 15.

(iii) Section 1815.470 is the first section number NASA can use to supplement FAR Subpart 15.4.

(iv) Subsection 1815.402-70 is the first subsection number NASA can use to supplement FAR section 15.402.

(v) Subsection 1815.402-170 is the first subsection number NASA can use to supplement FAR subsection 15.402-1.

(2) All NASA FAR Supplement coverage other than that identified with a 70 or higher number, as described in subparagraph (b)(1) of this section, implements the FAR and bears the identical number and title of the FAR segment being implemented down to the subsection level; e.g., 1815.402-1 implements FAR 15.402-1. Below the subsection level, NASA FAR Supplement alphanumerics do not correlate with FAR alphanumerics.

(c) *References and citations.* (1) Unless otherwise stated, cross references are to parts or subdivisions of this regulation.

(2) This regulation may be referred to as the National Aeronautics and Space Administration Federal Acquisition Regulation Supplement, the NASA FAR Supplement, or, for the purpose of brevity, the NFS.

(3) A NFS "version" is the basic NFS with all NFSD change pages filed up to and including the NFSD number that corresponds to the "version" number. For example, for the 1989 edition of the NFS, Version 89.3 consists of pages from NFSDs 89-0 (basic NFS), with change pages filed from NFSDs 89-1, 89-2, and 89-3.

(4) Citations are assumed to mean the "current NFS"; however, if reference to other than the current document is intended, use of the identifying version number appearing on the cover is advisable.

(d) *Provisions and clauses.* See FAR Subpart 52.1 and Subpart 1852.1 of this regulation for information regarding the numbering and dating of provisions and clauses.

1801.104-3 Copies.

Copies of the NASA FAR Supplement in **Federal Register**, loose-leaf, and CFR form may be purchased from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402.

1801.104-370 Dissemination of this regulation, revisions, and Procurement Notices.

(a) The NASA FAR Supplement, NASA FAR Supplement Directives (NFSDs), and Procurement Notices (PNs) (see 1801.270-2) are distributed directly to NASA Headquarters and to installation distribution points. The number of copies distributed is determined by the requirements furnished by each Headquarters office and NASA field installation to the Office of Procurement, NASA Headquarters (Code HP). Material that revises this regulation is published in the **Federal Register** as required by statute.

(b) Heads of field installations shall ensure that copies of the NASA FAR Supplement, NFSDs, and PNs are promptly distributed to all interested activities and individuals within their installation. Code HP is responsible for distribution within Headquarters and for monitoring bulk distribution to installations.

(c) Subscriptions to the NASA FAR Supplement, including NFSDs, may be purchased by private concerns and individuals from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

1801.105 OMB approval under the Paperwork Reduction Act.

(a) NASA FAR Supplement requirements. The following OMB control numbers apply:

NASA FAR Supplement Segment	OMB Control Number
1812	2700-0056
1823	2700-0051
1827	2700-0052
1832	2700-0055
1843	2700-0054
NF 533	2700-0003
NF 667	2700-0004
NF 1018	2700-0017

(b) Solicitations and contracts. Various requirements in a solicitation or contract, generally in the statement of work, are not tied to specific paragraphs cleared in paragraph (a) of this section, yet require information collection or recordkeeping. OMB control number 2700-0042 applies to these requirements. This OMB control number shall be displayed in the upper right hand corner of the cover page of each solicitation/contract. Overprinting is authorized by 1853.104.

Subpart 1801.2—Administration

1801.270 Amendment of Regulation.

This Regulation is amended as needed to set forth policies and procedures intended to reduce contract preparation time, simplify and standardize contract forms, otherwise improve the contracting process, and reflect changes in statutes, Executive orders, the FAR, and other mandatory policies. Acquisition personnel are encouraged to submit suggestions, based on operating experience, for improving and simplifying this Regulation and the procedures set forth in it. Such suggestions should be submitted through the procurement officer to the Office of Procurement, NASA Headquarters (Code HP).

1801.270-1 Revisions.

This Regulation is amended by issuing NFSDs containing loose-leaf replacement pages revising various segments of it (also see 1801.270-2). Each replacement page bears the NFSD number and page number at the top. A vertical bar at the side of a line indicates that a change has been made within that line.

1801.270-2 Procurement notices.

(a) This regulation is amended by issuing Procurement Notices (PNs) when—

(1) It is necessary or advisable to promulgate as rapidly as possible selected material revising this regulation, in a general or narrative manner, in advance of a specific page-replacement-type revision to this regulation; or

(2) The policy and/or procedure is expected to be effective for less than a year.

(b) Unless otherwise indicated, each PN item remains in effect until the effective date of the subsequent NFSD incorporating the item or until specifically cancelled.

(c) Material unsuitable for insertion in this regulation shall be promulgated by means other than PNs.

1801.270-3 Effective date.

(a) NFSD or PN statements to the effect that the material is effective upon receipt or on a specified date or that Directive or Notice changes are to be used upon receipt mean that any new or revised clauses or forms included in the Directive or Notice shall be included in solicitations issued thereafter, unless a different meaning is expressed in the Directive or Notice.

(b) Compliance with a revision to this regulation shall be in accordance with the NFSD or PN containing the revision. Procurements initiated after receipt of new or revised clauses should, to the maximum practicable extent, include such clauses.

(c) Unless otherwise stated, solicitations that have been issued and bilateral agreements for which negotiations have been completed before the receipt of new or revised contract clauses need not be amended to include the new or revised clauses if including them would unduly delay the procurement action.

1801.270-4 Numbering.

NFSDs and PNs are numbered consecutively, prefixed by the last two digits of the calendar year of issuance of the current edition of the NASA FAR Supplement.

1801.271 NASA procedures for FAR changes.

(a) NASA is represented on the Defense Acquisition Regulatory Council (DARC) by a policy member from the Procurement Policy Division (Code HP) and a legal member from the Office of General Counsel (Code GK). NASA staff members are also assigned to standing and ad hoc DARC committees in their areas of expertise. The DARC policies and procedures for initiating and reviewing FAR changes shall be followed by the assigned individuals.

(b) Any NASA element or individual may suggest a FAR revision. Such suggestions should be in writing and contain, at a minimum:

(1) A concise description of the problem the suggested revision is designed to cure or ameliorate,

(2) The revision in the form of a marked-up copy of the current FAR language or the text of any additional FAR language,

(3) The consequences of making no change and the benefits to be expected from a change, and

(4) Any other information necessary for understanding the situation.

All suggested FAR revisions shall be sent to the Director, Procurement Policy Division (Code HP).

Subpart 1801.3—Agency Acquisition Regulations

1801.301 Policy.

The following shall be included in the NASA FAR Supplement:

(a) All agency-wide policies and procedures that govern the contracting process or that control contracting relationships, and

(b) All procurement policies, regulations, procedures, and forms requiring publication for public comment in accordance with Pub. L. 98-557. This statute requires that any procurement policy, regulation, procedure, or form (including amendments thereto) relating to the expenditure of appropriated funds that have a significant effect beyond the internal operating procedures of the agency or a significant cost or administrative impact on contractors or offerors must be published for public comment at least 30 days before they may take effect.

(1) The statute does not delineate those policies and procedures that will have a significant effect beyond the internal operating procedures of the agency or have a significant cost or administrative impact. Examples of policies or procedures that fall in either of these categories are given in paragraphs (b)(1) (i) through (iv) of this section. This list is not all inclusive and does not prohibit the agency from publicizing a policy or procedure that does not fall within one of the categories mandated by the statute.

(i) A contract clause requiring contractors to take precautions to avoid injury to Florida manatees, which have been designated as an endangered species, has a significant cost impact for contractors who must obtain protective devices for boat propellers and take other safety actions.

(ii) A contract clause requiring contractors to follow the Government's holiday schedule, thereby disallowing premium pay for work on contractor-designated holidays, will have an effect outside the internal operating procedures of the agency.

(iii) A contract clause requiring contractors to segregate costs by appropriations will affect the contractor's internal accounting system and have a significant impact.

(iv) Requiring contractor compliance with NASA's Space Transportation System Personnel Reliability Program will have an effect outside the internal operating procedures of the agency.

(2) In contrast, the following would not have to be publicized for public comment:

(i) Security procedures for identifying and badging contractor personnel to obtain general access at a NASA installation.

(ii) A one-time requirement in a construction contract for the contractor to develop a placement plan and for inspection prior to any concrete being placed. (This is part of the specification or statement of work.)

(iii) A policy that requires the NASA installation to maintain copies of unsuccessful offers.

1801.302-70 Field installation regulatory implementation.

(a) Heads of NASA field installations may prescribe policies and procedures that do not have a significant effect beyond the internal operating procedures of their installations. All other policies and procedures, described in 1801.301, must be forwarded to NASA Headquarters for approval in accordance with NASA's procedures for initiating changes to the NASA FAR Supplement.

(b) The Procurement Officer at each installation shall establish procedures, including screening and written rationale for each installation procurement policy, regulation, procedure, and form, to demonstrate compliance with 1801.302-70(a). The Procurement Officer shall provide a copy of each of these issuances, along with the associated rationale, to the Assistant Administrator for Procurement (Attn. Code HP).

1801.303 Publication and codification.

1801.303-70 Assignment of numbers.

(a) Part, subpart, section, and subsection numbers 1 through 69 are reserved for FAR use.

(b) Part, subpart, section, and subsection numbers 70 through 89 are reserved for NASA FAR Supplement use.

Subpart 1801.4—Deviations From the FAR

1801.400 Scope of subpart.

This subpart prescribes the policies and procedures for authorizing deviations from the NASA FAR Supplement and for the internal processing of FAR deviation requests under FAR Subpart 1.4.

1801.401 Definition.

"Deviation" means "deviation" as defined at FAR 1.401, except that, for NASA, the words "or NASA FAR Supplement" are added wherever "FAR" appears in the definition.

1801.402 Policy.

Unless precluded by law, Executive Order, or regulation, deviations from the FAR and NASA FAR Supplement may be granted only as specified in this Subpart 1801.4. See FAR Part 53 and Part 1853 of this regulation regarding exceptions to forms prescribed in them.

1801.403 Individual deviations.

Individual deviations affect only one contracting action and, unless FAR 1.405(e) is applicable, may be authorized only by the Assistant Administrator for Procurement or a designee. (See 1801.471 regarding requests for deviations.)

1801.404 Class deviations.

Class deviations affect more than one contracting action. When it is known that a class deviation will be required on a permanent basis, the contracting office should propose an appropriate FAR or NASA FAR Supplement revision to cover the matter. Only the Assistant Administrator for Procurement or a designee may approve class deviations. (See 1801.471 regarding requests for deviations.)

1801.405 Deviations pertaining to treaties and executive agreements.

Deviations from the FAR or NASA FAR Supplement pertaining to treaties or executive agreements shall be processed under the procedures in FAR 1.405, except that deviations not authorized by FAR 1.405 (b) or (c) shall be requested under 1801.471.

1801.470 Modification to existing contracts adding new procurement.

When an existing contract is modified to add new procurement, approval of the deviations previously granted for the existing contract must be obtained for the modification as though the modification were a new contract. "New procurement," for the purpose of this section, means any action that is competed or that must be authorized under FAR 6.302. An information copy of each request for deviation shall be furnished to the cognizant Associate Administrator.

1801.471 Procedure for requesting deviations.

(a) Requests for authority to deviate from the provisions of the FAR or of this regulation shall be:

(1) Submitted to the Office of Procurement, NASA Headquarters (Code HP);

(2) Signed by the procurement officer or, in that person's absence, by the acting procurement officer; and

(3) Submitted as far in advance as the exigencies of the situation will permit.

(b) Each request for a deviation shall contain, as a minimum—

(1) Identification of the FAR or NASA FAR Supplement requirement from which a deviation is sought;

(2) A full description of the deviation and the circumstances in which it will be used;

(3) A description of its intended effect;

(4) A statement as to whether the deviation has been requested previously and, if so, the circumstances of the previous request;

(5) The name of the contractor and identification of the contract affected, including the dollar value;

(6) Detailed reasons supporting the request, including any pertinent background information that will contribute to a fuller understanding of the deviation sought; and

(7) A copy of counsel's concurrence or comments.

Subpart 1801.6—Contracting Authority and Responsibilities

1801.601 General.

At NASA, the authority to contract for authorized supplies and services is delegated to the Assistant Administrator for Procurement by NMI 5101.8, Delegation of Authority—To Take Actions in Procurement and Related Matters (Assistant Administrator for Procurement), and the authority to act in certain circumstances is redelegated to various NASA officials by NMI 5101.24, Delegation of Authority—To Take Actions in Procurement, Grants, Cooperative Agreements, and Related Matters (Various Officials).

1801.602-3 Ratification of unauthorized commitments.

(a) *Policy.* (1) Unauthorized commitments are strongly discouraged and can indicate serious employee misconduct. Individuals making unauthorized commitments may be subject to disciplinary action, and the issue may be referred to the Office of Inspector General.

(2) Section 1802.101 defines the head of the contracting activity in NASA. See FAR 1.602-3(b)(2).

(b) *Limitations.* (1) The authority in FAR 1.602-3 may be exercised only when—

(i) The Government employee who made the unauthorized commitment, or his/her supervisor, if appropriate, initiates a procurement request in accordance with 1804.7301(a) (the procurement request and/or accompanying documentation shall identify the individual who made the unauthorized commitment, explain why normal acquisition procedures were not followed, explain why the firm was selected, list other sources considered, describe the work, and estimate or state the agreed price); and

(ii) The contracting officer obtains a certification that funds are available and were available at the time the unauthorized commitment was made, in accordance with FAR 1.602-3(c)(6).

(2) The ratifying official shall provide a copy of each ratification along with information specified in FAR 1.602-3

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and this paragraph (b) to the Assistant Administrator for Procurement (Attn: Code HP).

1801.603 Selection, appointment, and termination of appointment.

1801.603-2 Selection.

(a) *Policy.* The objective of issuing contracting officer Certificates of Appointment, SF 1402, is to ensure that only officials fully qualified to obligate the Government for the expenditure of public funds for the procurement of supplies and services are appointed contracting officers when an organizational need occurs. Normally, only GS-1105 and GS/GM-1102 personnel may be appointed contracting officers.

(b) *Appointment levels.* There are three levels of appointment authority, as follows; the appropriate appointment level shall be specified on the SF 1402 upon issuance:

(1) Basic level: Applies to personnel in the GS-1102 or GS-1105 series with signature authority for small purchases, orders placed under Federal Supply Schedule contracts, mandatory sources, or blanket purchase agreements.

(2) Intermediate level: Applies to those in the GS/GM-1102 series delegated authority to execute contracts and contract modifications for up to $500,000.

(3) Senior level: Applies to those in the GS/GM-1102 series delegated authority to execute contracts and contract modifications exceeding $500,000.

(c) *Organizational need determination.* NASA contracting officers shall be appointed only when a valid organizational need can be demonstrated. Factors to be considered in assessing the need for a contracting officer include volume of actions, complexity of work, and organizational structure.

(d) *Selection procedure.* (1) Once the organizational need is determined, the supervisor will nominate a contracting officer candidate. At the supervisor's request, the candidate shall prepare a qualification statement (or SF 171) containing the information listed in (d)(1) (i) through (viii) of this section:

(i) Name.

(ii) Title, series, and grade.

(iii) Office.

(iv) Relevant experience, beginning with current position to a total of four relevant positions, including for each position—

(A) Employer;

(B) Dates employed;

(C) Title of position;

(D) Kind of business/organization; and

(E) Description of work.

(v) Other relevant special qualifications, certifications, or skills.

(vi) Relevant honors, awards, or fellowships received.

(vii) Education, including—

(A) Highest level completed;

(B) High school name, dates attended, and diploma received; and

(C) College or university name, dates attended, degree(s) received; chief undergraduate college subjects; number of credits (show whether semester or quarter hours) completed; and major field of study at highest level of college work.

(viii) Procurement-related training, including—

(A) Name of course;

(B) Name of school; and

(C) Dates attended.

(2) The supervisor will review the qualification statement to determine the candidate's ability to perform the functions required to meet the organizational need. The supervisor will then complete a Request for Appointment of a Contracting Officer, using the format shown below, justifying the validity of the organizational need and verifying the candidate's qualifications. This document will be signed by the candidate's supervisor and submitted through appropriate organizational channels to the appointing authority (see NMI 5101.24). If the appointing authority requires additional information, the application will be returned with a request for further explanation or supporting data.

Format

Request for Appointment of a Contracting Officer

The following findings and determinations are made, pursuant to applicable laws and regulations:

(Insert appropriate information)

1. There is a clear and convincing need to appoint a contracting officer with the ability to perform at the _____ (basic, intermediate, or senior) contracting officer warrant level, for the following reasons:

(Insert appropriate reasons)

2. The contracting officer candidate is—

_____

(Name, Title, Series, and Grade)

3. The contracting officer candidate will occupy the organizational level described below:

_____

(Office/Division/Branch and Location)

4. The candidate's qualifications statement is enclosed. It was found that (insert the appropriate statement)

—The candidate's experience and training meet the established qualification standards.

—This candidate does not meet the minimum qualifications in _____ experience and/or training as indicated in the justification; *therefore*, an interim appointment for the period of _____ is requested. These experience and/or training needs will be identified in the candidate's individual development plan and must be completed by _____.

5. The candidate's current conflict-of-interest disclosure statement is on file in the appropriate personnel office or is attached.

6. In addition to the FAR, the NASA FAR Supplement, laws, Executive Orders, NASA Management Instructions, and other applicable regulations, the following warrant limitations are imposed:

a. Dollar Threshold: _____

b. Other Limitations: _____

Supervisor: _____

(Signature of Supervisor of the Candidate)

_____

(Date) (Typed Name)

_____

(Contracting Office) (Title)

Approved: _____

(Appointing Authority) (Date)

(3) If the appointing authority approves the Request for Appointment of a Contracting Officer, the appointing authority shall issue a Standard Form (SF) 1402, Certificate of Appointment, in accordance with 1801.603-3. A copy of the SF 1402, the Request for Appointment of a Contracting Officer, and the qualification statement shall be maintained for each contracting officer in a central location in the installation's contracting office while the SF 1402 is effective and for three years after its termination or after the individual has left the contracting office's employ. A copy of each SF 1402 issued shall be provided to NASA Headquarters, Office of Procurement (Code HM). Each installation shall maintain an up-to-date listing, by name and position, of all the installation's contracting officers and the limitations imposed on them in their warrants. A copy of this listing shall be provided annually to NASA Headquarters, Office of Procurement (Code HM).

(e) *Qualifications.* (1) The following are the experience, education, and training requirements needed to qualify for each of the three contracting officer appointment authority levels. Appointing authorities may establish additional qualifications, as appropriate. For example, additional qualifications may be established for those authorized to sign incentive and award-fee actions.

(i) *Experience.* (A) Basic level: One year of current experience in Government or commercial procurement, including six months experience in small purchasing.

(B) Intermediate level: Two years of current, progressively complex and responsible procurement or staff experience in Government or commercial procurement.

(C) Senior level: Four years of current, progressively complex and responsible procurement or staff experience in Government or commercial procurement.

(ii) *Education (preferred, not mandatory).* (A) Basic level: A high school diploma or equivalent.

(B) Intermediate and senior levels: A bachelor's degree from an accredited college or university that included or was supplemented by at least 24 semester hours in a field of study directly related to procurement, such as business administration, contract law, accounting, Government management, industrial purchasing, or material management.

(iii) *Training.* Except as provided in paragraph (f) of this section, acceptable formal training courses covering the subject matter listed below must be satisfactorily completed before a candidate may be nominated for a contracting officer appointment. Approved equivalency tests may be used as substitutes for these formal training requirements.

(A) Basic level: 40 hours of formal training covering the application of fundamental principles, policies, procedures, and practices in procurement.

(B) Intermediate level: 80 hours of formal training covering functional knowledge of procurement law, policies, procedures, and methods, including, as a minimum, Government contract law, procurement by negotiation, procurement by sealed bidding, contract administration, and cost and price analysis.

(C) Senior level: 120 hours of formal training, including analysis of procurement methods and techniques to enable an individual to manage contractual relationships effectively. The general topics described in (e)(1)(iii) (A) and (B) of this section also apply to the senior level.

(2) A two-year associate's degree in a procurement-related field, such as business administration or accounting, may be substituted for six months of procurement experience. A four-year undergraduate program degree in a procurement-related field from an accredited college or university may be substituted for procurement experience at the rate of 12 semester credit hours for three months of procurement experience. One year of concentrated experience in an advanced procurement subject area beyond the two-year minimum for the intermediate-level qualifications and the four-year minimum for senior-level qualifications may be substituted for 24 classroom hours of formal training in procurement, up to a maximum of 96 classroom hours.

(f) *Interim appointments.* Personnel shall not ordinarily be appointed contracting officers if they do not meet the applicable qualifications prescribed in this subsection. If it is necessary to appoint a contracting officer who does not fully meet the qualifications, an interim appointment may be granted. The appointing authority shall require as a condition of the interim appointment that all training or experience requirements will be met within a specified reasonable period of time. Failure to successfully complete the training requirements within this time frame will result in termination of the appointment or issuance of another interim warrant, whichever is considered necessary by the appointing authority. The appointing authority must fully document these actions.

(g) *Condition of appointment.* As a condition of continuing appointment, all contracting officers shall be required to complete a procurement-related Government, commercial, or academic course/seminar satisfactorily at least once every five years. This training will preferably be in an area closely related to that in which the contracting officer is assigned.

(h) *Changes to contracting officer appointments.* Changes, either increasing or decreasing the warrant limitations of a contracting officer, shall be made solely at the discretion of the appointing authority. When an appointing authority determines to make such changes, a new SF 1402 shall be issued, and the existing warrant shall be officially terminated.

1801.603-3 Appointment.

(a) The SF 1402 shall be construed as authorization of designated personnel to exercise contracting officer authority in accordance with the FAR, the NASA FAR Supplement, and the NASA Procurement regulation. The limitations section of the SF 1402 shall, immediately after the word "following," state: "the limitations contained in the NASA FAR Supplement and the NASA Procurement Regulation."

(b) If the appointing official chooses to restrict a contracting officer from exercising authority under the NASA Procurement Regulation, the limitations section of the SF 1402 shall, immediately after the word "following," state: "the limitations contained in the NASA FAR Supplement."

1801.603-4 Termination.

The appointing authority may terminate the appointment of a contracting officer at any time. Contracting officers whose appointments are terminated shall be given by the appointing authority a written notice stating the reasons for and the effective date of the termination.

1801.670 Delegation of procurement responsibilities.

(a) *Delegations to non-GS/GM-1102 or 1105 personnel.* (1) Contracting officer duties are typically performed by GS/GM-1102 or 1105 personnel within the procuring organization. In certain limited situations, it may be appropriate to designate non-GS/GM-1102 or 1105 personnel as contracting officers. The authority to obligate appropriated funds for the procurement of supplies and services may be delegated to non-GS/GM-1102 or 1105 personnel; provided all of the conditions in (a)(1) (i) through (iv) of this section are met:

(i) A contracting officer warrant must be issued to the non-GS/GM-1102 or 1105 individual. The warrant must include a specific dollar limitation set as low as possible. This limitation shall not exceed the small purchase threshold in effect at the time of the delegation. Specific dollar limitations well below the small purchase threshold should normally be sufficient and are encouraged. The warrant may include further limitations, such as the types of supplies or services that may be acquired.

(ii) Only the procurement officer at each installation is authorized to issue or terminate contracting officer warrants to non-GS/GM-1102 or 1105 personnel. This authority is nondelegable.

(iii) Contracting officer warrants for non-GS/GM-1102 or 1105 personnel may be issued only for small purchase procedures (FAR Part 13 and NFS Part 1813). These procedures include executing purchase orders and modifications to purchase orders. Authority to issue or sign contracts, unilateral or bilateral contract modifications of any amount, or orders above the small purchase threshold on Federal Supply Schedules is not delegable to non-GS/GM-1102 or 1105 personnel.

(iv) The selection, appointment, and termination procedures in 1801.603 shall be followed. In particular, the education, training, and experience requirements for a basic-level contracting officer (see 1801.603-2(e)) must be met before a warrant is issued. The experience requirement at 1801.603-2(e)(1)(i)(A) may be obtained either within a

procurement office or in an office that otherwise does procurement work. For example, a training specialist may acquire the experience requirement by preparing in the installation's personnel office purchase orders for training that will be signed by a warranted contracting officer.

(2) The responsibility for monitoring the procurements made by non-GS/GM-1102 or 1105 contracting officers remains with the procurement officer who issues their warrants. The procurement officer is responsible for ensuring that a system is in place that provides for general oversight of the continued need for each specific warrant and periodic review of the quality of the procurement actions taken. These reviews shall be made no less frequently than semiannually.

(3) Examples of contracting officer designations that may be appropriate for non-GS/GM-1102 or 1105 personnel are the authorization to the installation's training officer to sign purchase orders for off-the-shelf training courses under a certain dollar amount, or to the installation's librarian to place orders up to $X for magazine subscriptions.

(4) The requirements for imprest funds are established by the NASA Financial Management Manual; use of imprest funds does not require contracting officer warrants or authority.

(5) The term "ordering officer" is not authorized for use in delegating procurement functions to non-GS/GM-1102 or 1105 personnel.

(b) *Delegations to contracting officer's technical representatives (COTRs).* A COTR delegation may be made only by the contracting officer cognizant of that contract at the time the delegation is made. If the cognizant contracting officer is absent, the delegation letter may be signed by a warranted contracting officer at any level above the cognizant contracting officer. An individual COTR may have only the duties specifically identified in a written delegation to him or her by name (i.e., COTR duties may not be delegated to a position) and has no authority to exceed them. COTRs should be informed that they may be personally liable for unauthorized commitments. Contracting officer authority to sign or authorize contractual instruments shall not be delegated through a COTR designation or by any means other than a contracting officer warrant. However, delegations may be made to construction contract COTRs to sign emergency change orders with an estimated value not to exceed $2,500 on-site at construction sites.

Subpart 1801.7—Determinations and Findings

1801.703 Class determinations and findings.

The effective period specified in each class determination and findings (D&F) shall not ordinarily exceed one year. When a longer period is considered appropriate and necessary, the D&F shall say why.

1801.704 Content.

Content and format requirements in addition to those at FAR 1.704 are specified in the associated subject text. While the contracting officer is responsible for preparing D&Fs, requirements and technical personnel are responsible for the accuracy and adequacy of the supporting factual information, which shall be furnished to the contracting officer in writing.

1801.707 Signatory authority.

Signatory authority for D&Fs is specified in the FAR or NASA FAR Supplement text for the associated subject matter. The Administrator may make any of the D&Fs that may be made by the Assistant Administrator for Procurement or by a contracting officer.

PART 1802—DEFINITIONS OF WORDS AND TERMS

Sec.
1802.000 Scope of part.

Subpart 1802.1—Definitions

1802.101 Definitions.

Authority: 42 U.S.C. 2473(c)(1).

1802.000 Scope of part.

Commonly used words and terms are defined in FAR Subpart 2.1. This Part 1802 gives NASA-specific meanings of some of these words and terms and defines other words and terms commonly used in the NASA acquisition process.

Subpart 1802.1—Definitions

1802.101 Definitions.

The following words and terms are used throughout this regulation as defined in this subpart unless—

(a) The context in which they are used clearly requires a different meaning; or

(b) A different definition is prescribed for a particular part or portion of a part.

"Administrator" means the Administrator or Deputy Administrator of NASA.

"Assistant Administrator for Procurement" means the Assistant Administrator for Procurement, Office of Procurement, NASA Headquarters (Code H).

"Contracting activity" in NASA includes each "installation" as defined in this section 1802.101.

"Contracting office" means the same thing as the previously used term "procurement office."

"Field installation" means Ames Research Center, Goddard Space Flight Center, John F. Kennedy Space Center, Langley Research Center, Lewis Research Center, Johnson Space Center, George C. Marshall Space Flight Center, John C. Stennis Space Center, or any other field installation established by NASA in the future.

"Head of the agency" or "agency head" means the Administrator or Deputy Administrator of NASA.

"Head of the contracting activity" means, for field installations, the Director or other head and, for NASA Headquarters, the Assistant Administrator for Procurement.

"Installation" means NASA Headquarters or any field installation and is synonymous with "contracting activity."

"Procurement" means the same thing as "acquisition," as defined in FAR 2.101.

"Procurement officer" means the chief of the contracting office, as defined in FAR 2.101.

PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1803.1—Safeguards

Sec.
1803.101 Standards of conduct.
1803.101-1 General.
1803.101-2 Solicitation and acceptance of gratuities by Government personnel.

Subpart 1803.2—Contractor Gratuities to Government Personnel

1803.203 Reporting suspected violations of the Gratuities clause.

Subpart 1803.3—Reports of Suspected Antitrust Violations

1803.303 Reporting suspected antitrust violations.

Subpart 1803.5—Other Improper Business Practices

1803.502 Subcontractor kickbacks.

Subpart 1803.6—Contracts With Government Employees or Organizations Owned or Controlled By Them

1803.602 Exceptions.

Subpart 1803.7—Voiding and Rescinding Contracts

1803.704 Policy.
1803.705 Procedures.

Subpart 1803.70—Contracts Between NASA and Its Former Employees

1803.7001 Policy.
1803.7002 Solicitation provision.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1803.1—Safeguards

1803.101 Standards of conduct.

1803.101-1 General.

(a) Federal statutes prohibit certain acts by Government personnel and special Government employees as defined in 18 U.S.C. 202 in relation to Government procurement. Among these statutes are:

(1) 18 U.S.C. 201, relating to bribes in order to secure a Government contract;

(2) 18 U.S.C. 203, relating to compensation for services rendered in connection with any proceeding or claim in which the United States has an interest;

(3) 18 U.S.C. 205, relating to acting as an agent or attorney for prosecuting any claim against the United States;

(4) 18 U.S.C. 208, relating to transacting business as an officer or agent of the United States with firms of which the officer or agent, or a spouse, minor child, or partner, is an official or in which the officer or agent has a pecuniary interest; and

(5) 18 U.S.C. 209, relating to compensation from non-Government sources in connection with Government services.

(b) The statutory prohibitions and their application to NASA personnel are discussed in NHB 1900.1, Standards of Conduct for NASA Employees, and NHB 1900.2, Standards of Conduct for NASA Special Government Employees. All NASA personnel involved in procurement actions shall become familiar with these statutory prohibitions. Any questions concerning them shall be referred to legal counsel. In addition to criminal penalties, the statutes provide that transactions entered into in violation of these prohibitions are voidable (18 U.S.C. 218). (See Subpart 1803.70 for policy on contracting with former NASA employees.)

1803.101-2 Solicitation and acceptance of gratuities by Government personnel.

Any suspected violations shall be reported promptly to the installation's Office of Inspector General. (See Standards of Conduct for NASA Employees, NHB 1900.1.)

Subpart 1803.2—Contractor Gratuities to Government Personnel

1803.203 Reporting suspected violations of the Gratuities clause.

Any suspected violations of the clause at FAR 52.203-3, Gratuities, shall be reported to the installation's Office of Inspector General.

Subpart 1803.3—Reports of Suspected Antitrust Violations

1803.303 Reporting suspected antitrust violations.

(a) When offers are received that, in the opinion of the contracting officer, indicate possible antitrust violations, the contracting officer shall report the circumstances to the General Counsel, NASA Headquarters, through the Office of Procurement (Code HP). Reports should not be submitted automatically but only when there is reason to believe the offers may not have been arrived at independently. These reports shall be submitted with conformed copies of bids or proposals, contract documents, and other supporting data, and shall set forth—

(1) The noncompetitive pattern or situation under consideration;

(2) Purchase experience in the same product or service for a reasonable period (one or more years) preceding receipt of the offers under consideration, including unit and total contract prices and abstracts of bids;

(3) Community of financial interest among bidders, insofar as it is known;

(4) The extent, if any, to which specification requirements or patents restrict competition;

(5) Any information available about the pricing system employed in offers believed to reflect noncompetitive practices; and

(6) Any other pertinent information.

(b) Evidence of practices that, in the opinion of the General Counsel, NASA Headquarters, may violate the antitrust laws shall be forwarded to the Attorney General of the United States (see FAR 3.303).

(c) The contracting officer shall submit the identical bid report required by FAR 3.303(d) to NASA Headquarters, Office of Procurement (Code HP). The report shall include the reasons for suspecting collusion. Code HP shall forward a copy to the NASA Office of the Inspector General.

Subpart 1803.5—Other Improper Business Practices

1803.502 Subcontractor kickbacks.

Suspected violations of the Anti-Kickback Act shall be reported in accordance with 1809.470.

Subpart 1803.6—Contracts With Government Employees or Organizations Owned or Controlled By Them

1803.602 Exceptions.

The Administrator has delegated to the Assistant Administrator for Procurement (Code H) authority to authorize an exception to the policy in FAR 3.601 (see NMI 5101.8, Delegation of Authority—To Take Actions in Procurement and Related Matters (Assistant Administrator for Procurement)).

Subpart 1803.7—Voiding and Rescinding Contracts

1803.704 Policy.

The Assistant Administrator for Procurement has been delegated authority to void or rescind contracts when there is a final conviction for violation of 18 U.S.C. 201-224 (Bribery, Graft and Conflicts of Interest) relating to them.

1803.705 Procedures.

(a) The official to whom reports shall be sent pursuant to FAR 3.705(a) is the Assistant Administrator for Procurement; they shall be sent by the procurement officer.

(b) The Assistant Administrator for Procurement is responsible for the actions, notices, and decisions required by FAR 3.705 (c), (d), (e).

Subpart 1803.70—Contracts Between NASA and Its Former Employees

1803.7001 Policy.

(a) It is NASA policy that contracts not normally be placed on a noncompetitive basis with any individual employed by NASA during the past two years or with any firm in which such an individual is a partner, principal officer, or majority shareholder or that is otherwise controlled or predominantly staffed by such individuals, unless it is determined to be in the best interest of the Government to do so (see 1808.303-270).

(b) Where it has been determined that it is appropriate to contract on a non-competitive basis with an individual or firm described in paragraph (a) of this section, the approval authority for the justification for less than full and open competition shall be as specified in 1806.304-70.

(c) If individuals or firms described in paragraph (a) of this section are involved in a competitive procurement, precautions must be taken to ensure that they are not accorded preferential treatment. If one of them is the

successful offeror, the contract file shall include a separate document fully explaining the safeguards used to ensure fair treatment of all offerors under the procurement, unless sealed bidding is used.

(d) Nothing in this subpart shall be construed as relieving former employees from obligations prescribed by law, such as 18 U.S.C. 207 (Disqualification of Former Officers and Employees).

(e) The policy in paragraph (a) of this section shall also be followed when reviewing subcontracts for the purpose of granting consent under NASA prime contracts (see FAR 44.202–2(a)(7)).

1803.7002 Solicitation provision.

The contracting officer shall insert the provision at 1852.203–70, Contracts Between NASA and Former NASA Employees, in all solicitations other than invitations for bids.

PART 1804—ADMINISTRATIVE MATTERS

Subpart 1804.1—Contract Execution

Sec.
1804.101 Contracting officer's signature.
1804.103 Contract clause.
1804.170 Contract effective date.

Subpart 1804.2—Contract Distribution

1804.202 Agency distribution requirements.

Subpart 1804.4—Safeguarding Classified Information Within Industry

1804.402 General.
1804.404–70 Contract clause.

Subpart 1804.6—Contract Reporting

1804.601 Record requirements.
1804.670 General.
1804.671 Individual Procurement Action Report (NASA Forms 507 and 507A).
1804.671–1 Applicability and coverage.
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1804.7301 General.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1804.1—Contract Execution

1804.101 Contracting officer's signature.

The contracting officer shall sign negotiated contracts after the contractor unless the particular contract form or circumstances of the acquisition require otherwise.

1804.170 Contract effective date.

(a) "Contract effective date" means the date agreed upon by the parties for beginning the period of performance under the contract. It shall be on or after the date on which the contract becomes legally binding. Generally, a contract becomes legally binding when the offeror receives the document, signed by both parties, unless, by its terms, it does not become binding until some subsequent condition is met (e.g., approval by higher authority (FAR 52.204–1) or availability of funds (FAR 52.232–18)). The effective date should allow adequate time for the offeror or its agent to receive the written acceptance, with any doubt being resolved by setting the effective date after the contract becomes legally binding. In no case shall the effective date precede the date on which the contracting officer or designated higher approval authority signs the document.

(b) Costs incurred before the contract effective date are unallowable unless they qualify as precontract costs (see FAR 31.205–32) and the clause prescribed at 1832.705–270(b) is used.

Subpart 1804.2—Contract Distribution

1804.202 Agency distribution requirements.

(a) In addition to the requirements in FAR 4.201, the contracting officer shall distribute one copy of each R&D contract, including the Statement of Work, to the NASA Scientific and Technical Information Facility, Attention: Document Processing Section, P.O. Box 8757, Baltimore/Washington International Airport, MD 21240.

(b) The Office of Procurement, NASA Headquarters (Code HS) will retain one executed copy of each contract and modification requiring approval of the Assistant Administrator for Procurement. Upon approval or disapproval of the proposed contract or modification, the Assistant Administrator for Procurement will forward the original and two executed copies of the contract or modification, together with the contract file, to the procurement officer or other official, as considered appropriate.

Subpart 1804.4—Safeguarding Classified Information Within Industry

1804.402 General.

NASA industrial security policies and procedures are prescribed in NASA Management Instruction 1650.1, "Industrial Security Policies and Procedures." (See also 1842.202–72).

1804.404–70 Contract clause.

The Contracting Officer shall insert the clause at 1852.204–75, Security Classification Requirements, in solicitations and contracts if work to be performed will require security clearances. Insert the security clearance level applicable to the particular procurement. Include in the solicitation and contract a properly executed DD Form 254, Contract Security Classification, in accordance with NMI 1650.1. For contracts, delete the last sentence. This clause may be modified to add instructions for obtaining security clearances and access to security areas that are applicable to the particular procurement and installation.

Subpart 1804.6—Contract Reporting

1804.601 Record requirements.

The Headquarters Procurement Management Division (Code HM) is responsible for developing the computer file specified in FAR 4.601, through the installation procurement officer's or delegatee's monthly submission of Individual Procurement Action Reports (NASA Form 507), and for subsequent transmittal of the required data to the Federal Procurement Data System (FPDS).

1804.670 General.

The following sections prescribe uniform reports required to be prepared in contracting and contract administration offices to provide management necessary information to help formulate, change, or measure the effectiveness of procurement policy.

1804.671 Individual Procurement Action Report (NASA Forms 507 and 507A).

The Individual Procurement Action Report and Supplement (NASA Forms 507 and 507A) provide essential procurement records and statistics through a single uniform reporting program as a basis for required recurring and special reports to the President, Congress, Department of Commerce, Office of Federal Procurement Policy, Federal Procurement Data Center, Federal Emergency Management Agency, General Accounting Office, Small Business Administration, and other Federal agencies. The preparation and utilization of NASA Forms 507 and 507A (see 1853.303–507 and –507A) are an integral part of the agencywide Financial and Contractual Status (FACS) system.

1804.671–1 Applicability and coverage.

(a) The following procurement actions are individually reportable and require the completion of NASA Forms 507 and 507A:

(1) *Initial basic procurements.* (i) All contracts, regardless of dollar obligation amount.

(ii) All grants, cooperative agreements, and Space Act agreements.

(iii) Intragovernmental procurements and purchase orders when the initial obligation is more than $25,000.

(iv) All contracts and purchase orders for consulting services. (Purchase orders of $25,000 or less and not for consulting services are not reportable.)

(2) *Modifications.* Modifications that:

(i) Obligate or deobligate funds, regardless of dollar amount,

(ii) Change the estimated cost and/or fee by more than $25,000,

(iii) Extend the completion date, or

(iv) Add or change procurement statistics previously reported are reportable.

(b) NASA Form 507A (items 28 through 49) data is not required in the FACS system for the following types of procurement actions:

(1) Grant awards (procurement placement codes ST and WT).

(2) Cooperative agreements and Space Act agreements (PPC's SW, SX, WW, and WX).

(3) Intragovernmental awards (PPC 98).

(4) Orders under Federal Supply Schedule contracts (mandatory and optional).

(5) Small purchases (PPC's BC, DC, KC, NC, RC, SC, TC, WC, XC, YC, CC, EC, HC, IC, LC, MC, OC, PC, VC, and ZC).

1804.671–2 Contractual records.

As used in this Subpart 1804.6, "contractual records" embraces records for all reportable procurements, including contracts, grants, cooperative agreements, Space Act agreements, and intragovernmental awards. The NASA Forms 507 and 507A are the source of data for contractual records, with the exception of obligations, which are obtained from the financial records.

1804.671–3 Submission due date.

The FACS report shall have information as of the last day of the month and shall arrive in NASA Headquarters not later than the close of business on the eighth work day following each month being reported. The installation procurement officer should establish an agreement with the installation financial officer on a cut-off date for processing contractual documents to ensure that the FACS procurement submission and the FACS financial submission for the month include the same contracts.

1804.671–4 Preparing Individual Procurement Action Reports (NASA Forms 507 and 507A).

Individual Procurement Action Reports shall be prepared and submitted to Headquarters for each procurement action required to be reported (see 1804.671–1). Detailed item instructions for preparing NASA Forms 507 and 507A are set forth in paragraphs (a) through (vv) of this section and correspond to the item numbers shown on the forms. Position numbers after each item indicate the maximum number of characters that may be used in reporting the data element.

(a) *Item 1—Type of record (1 position).* Enter N to indicate a new initial basic procurement or modification that is individually reportable. Enter C to indicate a correction to an error on a previously reported basic procurement or modification.

(b) *Item 2—Contract/grant number (11 positions, including blanks).* (1) Enter the specific contract, grant, cooperative agreement, Space Act agreement, or purchase order number for which the data are reported. The first five digits represent the prefix field, while the last six digits are used to number each contractual instrument serially. If a serial number does not fill out the entire field, leave those digit positions blank instead of using zeros. For utility contract and purchase order numbers, enter an alpha letter in the last position of the serial number, indicating the fiscal year the service was provided.

(2) The method of numbering—

(i) Contracts and purchase orders is set forth in Subpart 1804.71 (e.g., NAS9–14000, NAS10–9080, NASW–2080);

(ii) Space Act agreements is set forth in Subpart 1804.71 (e.g., NCA1–12500);

(iii) Grants is set forth in the NASA Grant and Cooperative Agreement Handbook, NHB 5800.1, paragraph 306.1 (e.g., NAGW–1, NAG2–306);

(iv) Cooperative agreements is set forth in the NASA Grant and Cooperative Agreement Handbook, NHB 5800.1, paragraph 306.2 (e.g., NCC 2–1); and

(v) Utility contracts and purchase orders is as follows:

Last digit alpha letter	Fiscal years ending in	Last digit alpha letter	Fiscal years ending in
Q	1	V	6
R	2	W	7
S	3	X	8

Last digit alpha letter	Fiscal years ending in	Last digit alpha letter	Fiscal years ending in
T	4	Y	9
U	5	Z	0

(c) *Item 3—Modification number (5 positions).* Enter the serial number assigned to the modification action.

(d) *Item 4—Accounting installation number (2 positions).* Enter a numeric code identifying the installation currently responsible for maintaining the fiscal records. The following is a list of installations and their assigned codes:

Code	Installation
10	NASA Headquarters.
21	Ames Research Center.
22	Lewis Research Center.
23	Langley Research Center.
51	Goddard Space Flight Center.
55	Jet Propulsion Laboratory.
62	George C. Marshall Space Flight Center.
64	John C. Stennis Space Center.
72	Lyndon B. Johnson Space Center.
76	John F. Kennedy Space Center.

(e) *Item 5—Procuring installation number (2 positions).* Enter a numeric code identifying the installation responsible for the procurement. The following is a list of installations and their assigned codes:

Code	Installation
04	NASA Headquarters.
05	Space Station Procurement Office.
21	Ames Research Center.
22	Lewis Research Center.
23	Langley Research Center.
24	Dryden Flight Research Facility.
51	Goddard Space Flight Center.
53	Wallops Flight Facility.
54	NASA Resident Procurement Office-JPL.
62	George C. Marshall Space Flight Center.
64	John C. Stennis Space Center.
72	Lyndon B. Johnson Space Center.
76	John F. Kennedy Space Center.

(f) *Item 6—Contractor identification code (CIC) number (7 positions).* This code is obtained from the publication, "NASA Contractor Identification Codes," issued quarterly by the Headquarters Procurement Management Division (Code HM). It identifies the procurement in terms of the contractor's name, division (if any), address, and the place of performance. A unique code is assigned for each different combination of these items. For combinations not listed in the coding publication, NASA Form 507 preparers should call the Office of Procurement, NASA Headquarters (Code HM), where a code will immediately be assigned and the exact abbreviations, where appropriate, will be specified. The new code will be listed in the next issue of the coding publication.

(g) *Item 7—Contractor name (29 positions, including spaces).* Enter the name of the contractor. (For editing purposes, the first five characters of the contractor's name must be identical to those shown in "NASA Contractor Identification Codes.") For intragovernmental actions, enter the agency name (e.g., US Army, US Navy, US Commerce) and also see the Item 8 instructions immediately below. If the activity is under a single-manager agency, enter the name of the agency.

(h) *Item 8—Contractor division (20 positions).* Enter the name of the contractor's division if one is named in the contractual instrument. (For editing purposes, the first five characters of the division name must be identical to those shown in "NASA Contractor Identification Codes.") For intragovernmental actions, enter the name of the cognizant procuring activity (e.g., Electronic Systems Division).

(i) *Item 9—Contractor address—city and State.* Enter city and State of contractor's address as stated in the contractual instrument.

(j) *Items 10 and 11—Place of performance (city—24 positions; State—2 positions; zip code—5 positions).* Enter the location (city and State) of the principal plant or place of business where the items will be produced or supplied from stock or where the service will be performed. (For editing purposes, the first three characters of the city name must be identical to those shown in "NASA Contractor Identification Codes.") For construction contracts, enter the site of construction. If more than one location is involved, enter the principal place of performance. For intragovernmental actions where the place of performance is unknown, enter the address of the cognizant Government agency. Enter the zip code in Item 11.

(k) *Item 12—Contract award/modification date (6 positions)*—(1) *Contract date.* Enter the year, month, and day (two numerics each) of the contract's effective date (see 1804.170) shown on the face of the contract. With respect to letter contractual instruments, enter the date of commitment to the contractor. This date will be shown as the date of the contract when it is definitized.

(2) *Modification date.* Enter the year, month, and day (two numerics each) shown in Block 3 of SF 30 on the face of the modification being reported.

(l) *Item 13—Completion date (6 positions).* Enter the year, month, and day (two numerics each), either specified or estimated, when all work on the contract and any modification is scheduled for completion. This date may or may not change as modifications to the contract are issued.

(m) *Item 14—Procurement placement code (2 positions).* Enter the alpha procurement placement code (PPC) identifying the type of solicitation process used and the extent of competition obtained on the procurement. (See 1804.671-7 for PPC matrix.) The FACS system must be able to provide information on "noncompetitive procurements using competitive procedures," as required by Pub. L. 98-369; this is accomplished by selecting procurements coded 1 in Item 32 (Number of offers received) and coded 2, 3, or 4 in Item 18 (Extent of competition). These procurements must have one of the following competitive PPC's: AX, AE, AF, BX, BE, BF, FX, FE, FF, GF, KX, KE, QX, RS, RE, UX, TX, TE, XX, XE, or XD.

(n) *Item 15—Kind of action (2 positions).* Enter the numeric code from the following lists that identifies in general terms the kind of procurement and the action taken to initiate it:

NEW CONTRACTS/GRANTS/ORDERS

Code	Kind of action
01	New letter contract.
03	New basic contract. New procurements, when the first binding document contains all the agreement's terms and conditions.
05	Intragovernmental. Orders issued to other Federal agencies.
06	Grant.
21	Cooperative agreement or Space Act agreement.
23	Order under Mandatory GSA-FSS. See FAR 8.404.
24	Order under optional (non-mandatory) GSA-FSS. See FAR 8.404-2.
25	Order under indefinite-delivery contract (IDC) (other than reporting center's).
26	Order under BOA (other than reporting center's).

MODIFICATIONS TO EXISTING CONTRACTS

Code	Kind of action
07	New-work modification. Modifications that add a new procurement to existing contracts. New procurement, for the purpose of this report, means a modification action that usually requires the preparation of a Justification for Other than Full and Open Competition (see FAR 6.303).
08	Supplemental agreement. Bilateral, definitized modifications except those covered by code 10 below.
09	Change order. Change orders issued pursuant to the changes clause of the contract.
10	Supplemental agreement definitizing change order.

MODIFICATIONS TO EXISTING CONTRACTS—Continued

Code	Kind of action
11	Administrative/incremental funding. This code should be used for administrative changes (such as novation agreements) as well as for incremental funding modifications.
12	Termination for default.
13	Termination for convenience.
14	Definitizing letter contract.
15	Exercising priced option.
16	Order under reporting center's indefinite delivery contract (IDC).
17	Order under reporting center's BOA.

(o) *Item 16—Contractor type (2 positions).* Enter the appropriate code from the following:

BUSINESS

Code	Contractor
01	Section 8(a)-disadvantaged. Awards placed through the Small Business Administration with a minority business firm owned and controlled by socially and economically disadvantaged individuals, in accordance with Section 8(a) of the Small Business Act.
03	Disadvantaged direct. Awards placed directly with a minority business firm owned and controlled by socially and economically disadvantaged individuals.
04	Not disadvantaged. Other large or small businesses that are not considered disadvantaged.

NONPROFIT ORGANIZATION

Code	Contractor
05	Educational. An educational institution that is *not* State, Federal, or local-government-owned.
06	Hospital. A hospital that is *not* State, Federal, or local-government-owned.
08	Other nonprofit. A nonprofit institution or organization that is a corporation, foundation, trust, or institution not organized for profit, and no part of its net earnings is applied to the profit of any private shareholder or individual.

STATE/LOCAL GOVERNMENT

Code	Contractor
09	Educational. A State, Federal, or local-government-owned educational institution. (Privately owned educational institutions shall be coded 05.)
10	Hospital. A State, Federal, or local-government-owned hospital. (Privately owned hospitals shall be coded 06.)
12	Other State/local government. Includes State, Federal, or local-government-owned research organizations.

(p) *Item 17—Award Outside U.S.* Enter "L" for an award to a source outside the U.S. Enter "M" for an award to a source inside the U.S., if the principal place of performance will be outside the U.S. When this item is coded "L" or "M," the PPC code entered in item 14 of the NASA Form 507 must be from the "work outside U.S." category of the PPC matrix.

(q) *Item 18—Extent of competition (1 position).* Enter the appropriate code from the following list (except for non-new-work (within-scope) modifications):

Code	Extent of competition
2	Sealed Bid. Award results from acceptance of a bid in response to a formal invitation for bids or from sealed bidding following an evaluation of technical proposals (two-step sealed bidding). (See FAR Part 14.)
3	Competed action—SEB. Competitive offers are solicited from more than one responsible offeror capable of satisfying the Government's requirements wholly or partially; award is based on price, design, or technical competition; and Source Evaluation Board (SEB) procedures are used to evaluate the proposals (see FAR 15.506-2). This code shall also be used if Architect-Engineer Selection Board procedures are used (see FAR 36.603-2).
4	Other competed action. Competitive offers are solicited from more than one responsible offeror capable of satisfying the Government's requirements wholly or partially; award is based on price, design, or technical competition; and Source Evaluation Board procedures are not used to evaluate the proposals.
5	Noncompetitive follow-on to competed action. The procurement is for the continued development or production of a major system or highly specialized equipment, including major components thereof, that is considered available only from the original source, and it is likely that award to any other source would result in (1) substantial duplication of cost to the Government that is not expected to be recovered through competition, or (2) unacceptable delays in fulfilling NASA's requirements (see FAR 6.302-1(b)(2)).
6	Other not competed. Only one offer is solicited and only one offer is received capable of satisfying the Government's requirements wholly or partially; the work involved is not a follow-on procurement reportable under code 5 above. Include awards resulting from unsolicited proposals in this category.

(r) *Item 19—Total estimated cost or fixed price (11 positions).* Enter the total estimated cost or fixed price for all awards. For all cost-reimbursement contracts, enter the total estimated cost, exclusive of fee, as stated in the contract (see FAR Subpart 16.3). For all fixed-price contracts, enter the total fixed price stated in the contract, including the negotiated profit. For time-and-materials and labor-hour contracts, enter the total estimated contract price including profit. On modifications, enter the total cumulative, definitized estimated cost or price and not merely the increase or decrease effected by the respective modification. (The initially reported estimated cost will be overlaid by modification data in the Headquarters FACS system.) Round all entries to the nearest whole dollar. Do not report amounts for priced options which have not been exercised in this field.

(s) *Item 20—Total fee (11 positions).* This item pertains to cost-reimbursement contracts only. Enter the definitized negotiated fee when applicable or available. For incentive contracts, enter the target fee. For award-fee contracts, enter the base fee plus the maximum available award fee. On modifications, enter the total cumulative, definitized fee and not merely the increase or decrease effected by the respective modification. (The initially reported fee will be overlaid by modification data in the Headquarters FACS system.) Round entries to the nearest whole dollar.

(t) *Item 21—Total contract value including options.* Enter the definitized contract value (including maximum potential fee or profit) plus the value of any options (including maximum potential fee or profit) available in the contract. Round entries to the nearest whole dollar.

(u) *Item 22—Type of service or product (4 positions).* Enter the code indicating the principal type of effort or end item obtained under the contract. If more than one classification applies to the procurement, enter the one accounting for the largest dollar volume of procurement. Codes have been established to identify research and development (R&D) procurements, service contracts, and supply and equipment contracts. These codes may be found in the FPDS Product and Service Codes manual located in the procurement administrative office at each NASA installation. Information on the most frequently used R&D codes is presented below.

(1) R&D procurement—R&D codes are used for—

(i) All contracts for R&D work, and

(ii) Most, but not all, contracts with educational institutions.

(2) Space R&D (first 3 digits)—If the procurement involves space R&D, use one of the following for the first three digits of the four-position code:

R&D code[1]	Type of R&D procurement
AR1	Aeronautics & Space Technology.
AR2	Space Science and Applications.
AR3	Space Flight.
AR4	Space Operations.
AR6	Space Station.
AR7	Commercial programs.

R&D code[1]	Type of R&D procurement
AR9	Other space.

[1] See subparagraph (u)(3) of this section.

(3) Space R&D (fourth digit)—If the procurement involves space R&D, use one of the following for the fourth digit of the four position code. The terms in this list are explained in the following subdivisions:

Code	Meaning
1	Basic research.
2	Applied research and exploratory development.
3	Advanced development.
4	Engineering development.
5	Operational systems development.
6	Management and support.

(i) Basic research—includes all scientific effort and experimentation directed toward increasing knowledge and understanding in those fields of the physical, engineering, environmental, social, and life sciences related to long-term national needs. It provides fundamental knowledge ultimately required for the solution of social, economic, political, physical, or military problems. It forms a part of the base for subsequent applied research and exploratory and advanced development in the various disciplines, and new or improved functional capabilities.

(ii) Applied research and exploratory development—includes all effort directed toward the solution of specific problems, short of major development projects. This type of effort may vary from fairly fundamental applied research to quite cophisticated breadboard hardware, study, programming, and planning efforts. It thus includes investigations and minor development effort. The dominant characteristic of this category of effort is that it be pointed toward specific problem areas with a view toward developing and evaluating the feasibility and practicability of proposed solutions and determining their parameters.

(iii) Advanced development—includes all effort directed toward projects which have moved into the development of hardware for test. The prime result of this type of effort is proof of design concept and/or prototype.

(iv) Engineering development—includes those projects in full-scale engineering development for government use but which have not yet received approval for production or had production funds included in the budget submission for the current or subsequent fiscal year. This area is characterized by major line-item projects.

(v) Operational systems development—includes those projects still in full-scale engineering development but which have received approval for production, or production funds have been included in the budget submission for the current or subsequent fiscal year.

(vi) Management and support—includes all effort directed toward support of installations or operations required for general research and development. Included would be construction of a general nature unrelated to specific programs, maintenance support of laboratories, operation and maintenance of test ranges, and maintenance and support of test aircraft, equipment, or ships. Costs of laboratory personnel, either in-house or contractor, would be assigned to appropriate projects or program areas above.

(v) *Item 23—Contract physically complete (1 position).* Enter "y" (yes) if the contract is physically complete, i.e., after all articles and services called for under the contract, including such related items as reports, spare parts, and exhibits, have been delivered to and accepted by the Government (see FAR 4.804–4). Otherwise, this field should be left blank.

(w) *Item 24—Modification obligations (11 positions).* Enter the modification dollar increase or decrease of the contract. Round the entry to the nearest dollar.

(x) *Item 25—Labor surplus area award (1 position).* "Y" or "N" to indicate whether the award is to a concern in a labor surplus area (see FAR Subpart 20.1).

(y) *Item 26—FSS/Indefinite-delivery/BOA contract No. (15 positions).* Enter the Federal Supply Schedule (FSS), indefinite-delivery, or basic ordering agreement (BOA) contract number under which a delivery order has been placed if Item 15 (Kind of Action) is coded 23, 24, 25, or 26.

(z) *Item 27—Description of contract/modification (narrative).* (1) In the "Description of Contract/Modification" block, enter a brief description of the end item or services being procured. For modifications, enter a brief description of the purpose.

(2) In the "Prepared By" block, type the name or provide the signature of the contracting officer or representative responsible for the data being reported.

(3) In the "Date" block, enter the date the report was prepared.

(4) In the "Supplement Attached" block, check "yes" or "no" to indicate whether the Individual Procurement Action Report Supplement (NASA Form 507A) is being completed and submitted with the NASA Form 507.

(aa) *Item 28—CICA applicability (1 position).* (1) Pre-CICA: Code 1 Enter if the contract action is a new contract resulting from a solicitation issued before April 1, 1985, irrespective of the award date. All within-scope modifications to such contracts and new-work modifications resulting from solicitations issued before April 1, 1985, are to be reported by this code.

(2) Post-CICA: Code 2 Enter if the contract action is a new contract resulting from a solicitation issued on or after April 1, 1985. All modifications to such contracts are to be reported by this code.

(bb) *Item 29—Proposed procurement synopsized (1 position).* Enter "Y" if the procurement was synopsized prior to award in the Department of Commerce's Commerce Business Daily. Enter "N" if the procurement was not synopsized, except enter "U" if the procurement was not synopsized because of urgency.

(cc) *Item 30—Contract type (2 positions).* (1) Enter the code that identifies the type of contract from the following list:

Code	Contract Type
01	Fixed-Price, Firm (FAR 16.202 and 16.207). (Include Firm Fixed-Price, level-of-effort term contracts in this category.)
02	Fixed-Price, Redetermination (FAR 16.205).
03	Fixed-Price with Economic Price Adjustment (FAR 16.203).
04	Fixed-Price Incentive (FAR 16.204).
05	Cost (No Fee) (FAR 16.302).
06	Cost-Sharing (FAR 16.303). (The estimated cost reported shall include only the Government's share.)
07	Cost-Plus-Fixed-Fee (FAR 16.306).
08	Cost-Plus-Incentive-Fee (FAR 16.304).
09	Time-and-Materials (FAR 16.601).
10	Labor-Hour (FAR 16.602).
12	Cost-Plus-Award-Fee (FAR 16.305).

(2) Combination contract types shall be reported as follows:

(i) Where the contract has one type of incentive arrangement applying to cost performance and another to technical and/or schedule performance, report the contract type assigned to the cost-incentive feature; e.g., a contract providing a cost-plus-incentive-fee arrangement on cost and an award fee arrangement on technical and/or schedule performance will be reported as "Code 08—Cost-Plus-Incentive-Fee."

(ii) Where one or more items of work are priced exclusively under one of the arrangements coded above, with one or more additional items priced exclusively under another such arrangement, report the contract type in accordance with the

code assigned to the arrangement under which the predominate dollar amount will be spent.

(dd) *Item 31—No. of offerors solicited (3 positions).* Enter the number of firms to which solicitations were provided.

(ee) *Item 32—Number of offers received (3 positions).* Enter the actual number of offers received in response to the solicitation.

(ff) *Item 33—Solicitation procedures (1 position).* This item pertains to the requirements of FAR Subparts 6.1 (Full and Open Competition), 6.2 (Full and Open Competition After Exclusion of Sources), and 6.3 (Other Than Full and Open Competition), with the exception of the statutory authorities for other than full and open competition (Subpart 6.3), which are reported in Item 34. Codes "A" through "L" designate the competition alternatives described in FAR Part 6. Delivery-order contract actions under indefinite-delivery contracts shall be reported the same as the initial contract when the following criterion, in FAR 6.001(e), is met: They are orders placed under indefinite-delivery contracts that were entered into pursuant to FAR Part 6, and either the contract was awarded under Subpart 6.1 or 6.2 and all responsible sources were realistically permitted to compete for the requirements contained in the order, or the contract was awarded under Subpart 6.3 and the required justification and approval adequately covers the requirements contained in the order.

(1) Code A—Full and open competition sealed bid is entered when the sealed bidding (see FAR 6.401(a)) method of contracting was used.

(2) Code B—Full and open competition—competitive proposal is entered when the FAR Part 15, Contracting by Negotiation, procedures were used for a competitive solicitation.

(3) Code C—Full and open competition—combination is entered when any combination of competitive procedures (e.g., two-step sealed bidding) was used (see FAR 6.102(c)).

(4) Code D—Architect-engineer is entered if the action resulted from selection of sources for architect-engineer (A&E) contracts in accordance with Pub. L. 92–582 and procedures in FAR Subpart 36.6 (see FAR 6.102(d)(1)). The selection of a potential A&E contractor is made by an A&E Evaluation Board conducted in accordance with 41 U.S.C. 541 et seq. This selection process is considered a competitive procedure and shall be reported as a competitive award. When award is an A&E contract and was a result of a small business set-aside or labor surplus area set-aside, use code K in lieu of this code.

(5) Code E—NASA Research Announcement/Announcement of Opportunity is entered if the action resulted from competitive selection of basic research proposals as a result of:

(i) A broad agency announcement (NASA Research Announcement or Announcement of Opportunity) that is general in nature identifying areas of research interest, including criteria for selecting proposals, and soliciting the participation of all offerors capable of satisfying the Government's needs and

(ii) A peer or scientific review (see FAR 6.102(d)(2)).

(6) Code F—Multiple-award schedule is entered if the action is an order issued against a multiple-award schedule using the procedures in FAR 8.405–1 (see FAR 6.102(d)(3)). This code shall be used for multiple-award schedule contracts (mandatory or optional). This code may be used for ADP procurements, unless the solicitation utilized make-or-model specifications. Use of the multiple-award schedule program is considered to be a competitive procedure because competitive procedures were used by GSA to make the basic multiple-award schedule contract awards under 41 U.S.C. 259(b)(3)(A). For reporting purposes, an order issued against a multiple-award schedule shall be reported as a competitive award.

(7) Code G—Alternate source—reduced cost is entered if the action was taken pursuant to FAR 6.202(a)(1), which states that agencies may exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for the supplies or services being acquired if the agency head determines that to do so would increase or maintain competition and likely result in reduced overall costs for the acquisition, or for any anticipated acquisition of such supplies or services.

(8) Code H—Alternate source—mobilization is entered if the action was taken pursuant to FAR 6.202(a)(2), which states that agencies may exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for the supplies or services being acquired if the agency head determines that to do so would be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the supplies or services in case of a national emergency or industrial mobilization.

(9) Code J—Alternate source—engineering/R&D capability is entered if the action was taken pursuant to FAR 6.202(a)(3), which states that agencies may exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for the supplies or services being acquired if the agency head determines that to do so would be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.

(10) Code K—Set-asides is entered if the action resulted from use of procedures for set-asides pursuant to FAR 6.203. This includes small business set-asides, labor surplus area set-asides, or combinations thereof. This code also includes contract actions under the Small Business Innovation Research (SBIR) Program established under Pub. L. 97–219. Do not use this code for 8(a) awards (see Code "L" paragraph (ff)(11) of this section).

(11) Code L—Other than full and open competition is entered if the action resulted from use of other than full and open competition pursuant to 10 U.S.C. 2304(c). The conditions or exceptions permitting contracting without providing for full and open competition are prescribed in FAR 6.302. Enter this code if the award is made under the authority of Section 8(a) of the Small Business Act (see FAR Subpart 19.8). This code shall also be used for all ADP procurements where the solicitation utilized make-and-model specifications.

(gg) *Item 34—Authority for other than full and open competition.* When Item 33 is coded "L," then this item must be completed. Enter the applicable code from the categories listed below. This item identifies the solicitation process and not the extent of competition obtained.

(1) Code A—Unique source is entered when the contract action is under 10 U.S.C. 2304(c)(1) and the agency's minimum needs can only be satisfied by unique supplies or services available from only one source or only one supplier with unique capabilities (see FAR 6.302–1(b)(1)).

(2) Code B—Follow-on contract is entered when the contract action is under 10 U.S.C. 2304(c)(1) and it is likely that the award of follow-on contracts must be to the original source because award to any other source would result in:

(i) Substantial duplication of cost to the Government that is not expected to be recovered through competition or

(ii) Unacceptable delays in fulfilling the agency's requirements (see FAR 6.302–1(a)(2)(ii)).

(3) Code C—Unsolicited research proposal is entered when the contract action is under 10 U.S.C. 2304(c)(1) as the result of acceptance of an unsolicited research proposal that demonstrates a unique and innovative concept, the substance of which:

(i) Is not otherwise available to the Government and

(ii) Does not resemble the substance of a pending competitive acquisition (see FAR 6.302-1(a)(2)(i)).

(4) Code D—Patent/data rights is entered when the contract action is under 10 U.S.C. 2304(c)(1) because the existence of limited rights in data, patent rights, copyrights, or secret processes; the control of basic raw material; or similar circumstances make the supplies and services available from only one source (see FAR 6.302-1(b)(2)).

(5) Code E—Utilities is entered when:

(i) The contract action is under 10 U.S.C. 2304(c)(1) when acquiring electric power or energy, gas (natural or manufactured), water, or other utility services and circumstances dictate that only one supplier can furnish the service or

(ii) The contemplated contract is for construction of a part of a utility system and the utility company itself is the only source available to work on the system (see FAR 6.302-1(b)(3)).

(6) Code F—Standardization is entered when the contract action is under 10 U.S.C. 2304(c)(1) because the agency head has determined under the agency's standardization program that only specified makes and models of technical equipment and parts will satisfy the agency's needs for additional units or replacement items and only one source is available (see FAR 6.302-1(b)(4)).

(7) Code G—Only one source—other is entered when the contract action is under 10 U.S.C. 2304(c)(1) to a single source and codes "A" through "F" above do not apply (see FAR 6.302-1(b)).

(8) Code H—Urgency is entered when the contract action is under 10 U.S.C. 2304(c)(2) because:

(i) An unusual and compelling urgency precludes full and open competition and

(ii) Delay in award of a contract would result in serious injury, financial or other, to the Government (see FAR 6.302-2(b)).

(9) Code J—Mobilization is entered when the contract action is under 10 U.S.C. 2304(c)(3) to a particular source or sources in order to maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency or to achieve industrial mobilization (see FAR 6.302-3(b)(1)).

(10) Code K—Essential R&D capabilities is entered when the contract action is under 10 U.S.C. 2304(c)(3) to a particular source or sources in order to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center (see FAR 6.302-3(b)(2)).

(11) Code L—International agreement is entered when the contract action is under 10 U.S.C. 2304(c)(4) because full and open competition is precluded by:

(i) The terms of an international agreement or treaty between the United States and a foreign government or international organization or

(ii) The written directions of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services (see FAR 6.302-4).

(12) Code M—Authorized by statute is entered when the contract action is under 10 U.S.C. 2304(c)(5) because a statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source (see FAR 6.302-5(a)(2)(i)). This code should be used for 8(a) awards.

(13) Code N—Authorized resale is entered when the contract action is under 10 U.S.C. 2304(c)(5) for a brand-name commercial item for resale through commissaries or other similar facilities (see FAR 6.302-5(a)(2)(ii)).

(14) Code P—National security is entered when the contract action is under 10 U.S.C. 2304(c)(6) because disclosure of the Government's needs would compromise the national security (see FAR 6.302-6).

(15) Code Q—Public interest is entered when the contract action is under 10 U.S.C. 2304(c)(7) because the agency head has determined that full and open competition is not in the public interest in the particular acquisition concerned (see FAR 6.302-7).

(hh) Item 35—Labor statutes (1 position). Enter the appropriate code, in accordance with the provisions of the contract, from the following list:

Code	Statutory requirements
N	Not subject to statutory requirements listed below.
1	Subject to Walsh-Healey Act, manufacturer (FAR 22.606-1).
2	Subject to Walsh-Healey Act, regular dealer (FAR 22.606-2).
3	Subject to Service Contract Act (FAR Subpart 22.10).
4	Subject to Davis-Bacon Act (FAR 22.403-1).

(ii) Item 36—Standard Industrial Classification (SIC) Code (4 positions). Enter the code identifying the industry category within which the principal (determined by the predominance of dollars awarded) product produced or distributed or services rendered would best fit. Industry categories are published in the Standard Industrial Classification Manual maintained and issued by the Office of Management and Budget (OMB). A listing of the SIC codes, without the detailed lists of products and services falling within each category, can be found at FAR 19.102(g).

(jj) *Item 37—Contract administration delegated (1 position).* Enter "Y" (yes) or "N" (no) to indicate whether any contract administration functions have been delegated to another Government agency (see FAR Subpart 42.2).

(kk) *Item 38—Preference program.* Report the code that represents the preference program used in making the award. Report Code H if no preference program applies or the preference program is not otherwise listed.

(1) Code A—Directed to sheltered workshops. Report this code for an award to a workshop for the blind or a workshop for the other severely handicapped pursuant to FAR 8.7.

(2) Code B—8(a) Program. Report this code for actions with the Small Business Administration pursuant to FAR 19.8.

(3) Code C—Combined labor surplus/small business set-aside. Report this code for a combined labor surplus area and small business set-aside award made to a small business concern pursuant to FAR 19.5.

(4) Code D—Small business set-aside. Report this code for a small business set-aside (including Small Business Innovation Research (SBIR)) award made pursuant to FAR 19.5.

(5) Code E—Labor surplus area set-aside. Report this code for a labor surplus area set-aside award made pursuant to FAR 20.2.

(6) Code F—Tie-bid preference. Report this code for all tie-bid preference awards (see FAR 19.202-3) made pursuant to FAR 19.5.

(7) Code H—No preference program. Report this code if the award is not made pursuant to a preference program, or if the preference program is not listed above.

(ll) *Item 39—Advisory/Assistance services contract (1 position).* Enter "Y" (yes) or "N" (no) to indicate whether the contract is for advisory and assistance services (formerly known as consulting services).

(mm) *Item 40—Support services type contract (1 position).* Enter "Y" (yes) or "N" (no) to indicate whether the contract is for support services.

Compare the following explanations with the procurement in question in determining how to code this item:

(1) *In-house contract support.* (i) Provides a service to the installation;

(ii) Is performed on or near the installation;

(iii) Is continuous in nature;

(iv) Is not provided by the prime product development contractor when the work is for the purpose of fulfilling the prime contract;

(v) Is characterized as that support necessary because of the on- or near-site population and activated facilities (housekeeping maintenance and operation function) and the effort necessary to support the research, development, or test efforts the installation performs in-house; and

(vi) Excludes—

(A) Construction, alteration, and repair;

(B) Purchase and incidental services;

(C) Prime product development contracts;

(D) Operations support contracts; and

(E) Tenants.

(2) *Operations support contracts.* This is work performed on- or near-site because of the location of major operations facilities. (This is the effort associated with carrying out mission operations; it is done on-site because that is where the supported facility is—a launch pad, mission control center, or tracking station.) Tracking operations support contractors are subdivided as on-site (at or near GSFC or JPL) or off-site.

(i) Operations support contractors are restricted to major national operations facilities and the following foreign and domestic tracking network stations:

(A) JPL-Mission Control Center (DSN)

(B) Goldstone

(C) Mesa Antenna Range

(D) JSC-Mission Control Center (MSF)

(E) GSFC-Mission Control Center (STDN)

(F) World-Wide Network Tracking Stations

(G) OTDA-Operations Funded Support

(H) KSC-Launch Complex 39 and related support facilities.

(ii) Operations support includes support funded by STS operations at MSFC, KSC, and JSC.

(3) *Purchased and/or incidental services.* (i) Purchased services are those obtained by—

(A) Delivery orders against Federal Supply Schedules;

(B) Purchase orders;

(C) Blanket purchase agreements; or

(D) Basic ordering agreements not exceeding $25,000 per order.

(ii) Incidental services are—

(A) Described in terms of the labor required to perform the services;

(B) Procured from vendors that provide similar services to the local community;

(C) Those for which the vendor provides all or a substantial amount of the capital investment required to perform the work under the contract; and

(D) Rendered under small contracts generally not exceeding four-to-five staff-years per year.

(nn) *Item 41—Cost Accounting Standards clause (1 position).* Enter "Y" (yes) or "N" (no) to indicate whether the contract contains the Cost Accounting Standards clause (see FAR 30.201-4).

(oo) *Item 42—New technology or patent rights clause (1 position).* Enter "Y" (yes) or "N" (no) to indicate whether a new technology or patent rights clause is included in the contract. (See 1827.373). A "Y" entry for contracts with small businesses, nonprofit organizations, and educational institutions will indicate a patent rights clause. A "Y" entry for contracts with large businesses will indicate a new technology clause.

(pp) *Item 43—Subcontracting program plan (1 position).* Enter "Y" (yes) or "N" (no) to indicate whether the contract contains a subcontract plan requiring the contractor to furnish the information prescribed on Standard Forms 294 and 295 (see 1804.674 and FAR 19.702). Enter "W" (waiver) when there are no subcontracting opportunities, for contracts performed entirely outside the United States, and for GSA Federal Supply Schedule contracts containing plans. Use Code "Y" for corporate plans with individual contract goals.

(qq) *Item 44—SBIR award (1 position).* Enter Code "N" (no) if the contract action is not in support of the Small Business Innovation Research (SBIR) Program (Pub. L. 97-219). Enter Code "1" if the contract action is related to a Phase I contract in support of the program. Enter Code "2" if the contract action is related to a Phase II contract in support of the program.

(rr) *Item 45—Woman-owned small business (1 position).* Enter "Y" (yes) or "N" (no) to indicate whether the business concern is a woman-owned small business (see FAR 19.9).

(ss) *Item 46—Contract for foreign government or international organization.* Enter "Y" (yes) if a foreign government or international organization is bearing any part of the cost of the action. Otherwise, enter "N" (no).

(tt) *Item 47—Management reporting requirements (MRR): correlated cost and performance data reporting (1 position).* Enter one of the following codes (see NHB 9501.2):

Code	Reporting required
N	None required.
2	NASA Form 533M only.
3	NASA Forms 533M and 533Q.
4	NASA Forms 533M and 533P.
5	NASA Forms 533P and 533Q.
6	NASA Forms 533M, 533P, and 533Q.

(uu) *Item 48—Management reporting requirements (MRR): property and space hardware reporting (1 position).* Enter one of the following codes (see FAR 45.505-11):

Code	Reporting required
N	None required.
2	NASA Form 1018, without space hardware.
3	NASA Form 1018, with space hardware.

(vv) *Item 49—Trade data (3 blocks)*—(1) *First block—number of bidders offering foreign item (1 position).* Enter one numeric code (0-9) to indicate the number of firms that offered foreign end products. An entry is required regardless of whether the Buy American Act is invoked or not. If none, enter "0". If 9 or more, enter "9".

(2) *Second block—Percent difference (2 positions).* If the evaluation factor under the Buy American Act is used and results in award to a firm offering a domestic product, enter the percentage difference between the award price and that of the low firm offering a foreign end product, computed before application of the Buy American Act differential, i.e., the difference divided by the price of the low firm offering a foreign end product. Enter the percentage as a whole number. If the evaluation factor under the Buy American Act is not used, enter "00."

(3) *Third block—Country of manufacturer (2 positions).* If the product is manufactured, mined, or grown in the United States (the 50 states and the District of Columbia) or the service is performed by a U.S. contractor, enter "US". If the product is manufactured, mined, or grown in a foreign country, enter the code from FIPS PUB 10-3 of that country/area. In the case of a service, if the service is performed by a foreign contractor, enter the code from FIPS PUB 10-3 of that country/area. This publication may be obtained from the Headquarters Office of Procurement, Procurement Management Division (Code HM).

1804.671-5 Special coding for certain procurements.

(a) *New intragovernmental basic procurement.* The following items must be completed on NASA Form 507 (all other items must be blank):

Item No.	Title
1	Type of Record (N).
2	Contract/Purchase Order Number.
4	Accounting Installation Number.
5	Procuring Installation Number.
6	CIC Number.
7	Contractor Name.
8	Contractor Division (when applicable).
9	Contractor Address.
10	Place of Performance—City.
11	Place of Performance—State and Zip Code.
12	Contract Award Date.
13	Completion Date.
14	Procurement Placement Code (98).
15	Kind of Action (05).
19	Total Est. Cost or Fixed Price.
22	Type of Service or Product.
23	Contract Physically Complete (when applicable).
27	Description of Contract.

(b) *New grants, cooperative agreements, and Space Act Agreements.* The following items must be completed on NASA Form 507 (all other items must be blank):

Item No.	Title
1	Type of Record (N).
2	Grant/Cooperative Agreement/Space Act Agreement Number.
4	Accounting Installation Number.
5	Procuring Installation Number.
6	CIC Number.
7	Contractor Name.
8	Contractor Division (when applicable).
9	Contractor Address.
10	Place of Performance—City.
11	Place of Performance—State and Zip Code.
12	Contract Award Date.
13	Completion Date.
14	Procurement Placement Code (ST, WT, SX, WX, SW, or ww).
15	Kind of Action (06 or 21).
16	Contractor Type (05–12).
18	Extent of Competition (6).
19	Total Est. Cost or Fixed Price.
22	Type of Service or Product.
23	Contract Physically Complete (when applicable).
25	Labor Surplus Area Award.
27	Description of Grant, Cooperative Agreement, or Space Act Agreement.

(c) *New basic orders under mandatory and optional (nonmandatory) GSA Federal Supply Schedule contracts.* The following items must be completed :

Item no.	Title
1	Type of Record (N).
2	Contract/Purchase Order Number.
4	Accounting Installation Number.
5	Procuring Installation Number
6	CIC Number.
7	Contractor Name.
8	Contractor Division (when applicable).
9	Contractor Address.
10	Place of Performance—City.
11	Place of Performance—State and Zip Code.
12	Contract Award Date.
13	Completion Date.
14	Procurement Placement Code (AY, BY, FY, KY). (ADP special make or model use DL, DO, ML, or NO).
15	Kind of Action (23 or 24).
16	Contractor Type (03 or 04).
18	Extent of Competition (2 or 4) (ADP special make or model use 6).
19	Total Est. Cost or Fixed Price.
22	Type of Service or Product.
23	Contract Physically Complete (when applicable).
24	Modification Obligations (when applicable).
25	Labor Surplus Area Award.
26	FSS Contract No.

(d) *Reportable modifications.* Only the following items need be completed on NASA form 507:

Item No.	Title
1	Type of Record (n).
2	Contract/Grant Number.
3	Modification Number.
4	Accounting Installation Number.
5	Procuring Installation Number.
12	Modification Date.
13	Completion Date (when applicable).
14	Procurement Placement Code (required if Item 15 is coded 07).
15	Kind of Action (07–15).
18	Extent of Competition (required when item 15 is coded 07).
19	Total Est. Cost or Fixed Price (when applicable).
20	Total Fee (when applicable).
21	Total Contract Value Incl. Options (when applicable).
23	Contract Physically Complete (when applicable).
24	Modification Obligations (when applicable).
27	Description of Modification.
28	CICA Applicability (required if Item 15 is coded 07).
29	Proposed Procurement Synopsized (when applicable).
30	Contract Type (when applicable).
31	No. of Offerors Solicited (when applicable).
32	No. of Offers Received (when applicable).
33	Solicitation Procedures (when applicable).
34	Authority for Other Than Full and Open Competition (when applicable).
37	Contract Administration Delegated (when applicable).
41	Cost Accounting Standards Clauses (when applicable).
43	Subcontracting Program Plan (when applicable).
47	MRR: Cost and Performance Reporting (when applicable).
48	MRR: Property and Space Hardware Reporting (when applicable).

(e) *Corrections.* Only the following items, plus items to be corrected, need to be completed on NASA Form 507:

Item No.	Title
1	Type of Record (C).
2	Contract/Grant Number.
3	Modification Number (when applicable).
4	Accounting Installation Number.

If an item needs to be corrected to a blank, enter asterisks to fill the item field.

1804.671-6 Special procurement placement codes (PPC's) for certain procurements.

(a) The accounting copies for all procurements of $25,000 or less from "Disadvantaged Business Firms-Direct" shall be coded with the second letter "M" in the PPC; e.g., BM or KM.

(b) The accounting copies for all procurements of $25,000 or less from "Women-Owned Business Firms" shall be coded with the second letter "W" in the PPC; e.g., BW or KW.

(c) All procurement awards over $25,000 and the accounting copies for procurement actions of $25,000 or less (no NASA Form 507 is required) placed through the Small Business Administration with a disadvantaged business firm under Section 8(a) of the Small Business Act shall be coded with PPC "PS."

(d) All procurement awards funded through the Small Business Innovation Research (SBIR) Program shall be coded with PPC "HS."

(e) The accounting copies for all procurements of $1,000 or less shall be coded with PPC's, CC, EC, HC, IC, LC, MC, OC, PC, VC, or ZC.

1804.671-7 Procurement placement codes (PPC's).

Table 1804-1 is the PPC matrix containing alpha codes required for coding all procurements. The codes apply to Item 14 on NASA Form 507 and are used to identify post-CICA procurements, the type of solicitation process used, and the extent of competition for the procurement.

1804.672 Report on NASA Subcontracts clause.

(a) NASA Form 667, Report on NASA Subcontracts, is used to obtain information relating to the geographic distribution of subcontracts awarded under certain NASA contracts.

(b) The clause at 1852.204-70, Report on NASA Subcontracts, shall be inserted in all NASA contracts of $500,000 or more or when a modification

increases the amount of a contract to $500,000 or more. In the latter instance, the clause will be inserted at the time of the modification but will not be retroactive so as to require the reporting of subcontracts awarded previously.

1804.674 Subcontracting report.

Standard Forms 294, Subcontracting Report for Individual Contracts, and 295, Summary Subcontract Report, are used to obtain data to provide a basis for evaluating the effectiveness and extent of subcontracting programs involving small and small disadvantaged business concerns pursuant to the Small Business Act of 1958, as amended by Pub. L. 95-507. (See FAR 19.708(b).)

1804.675 NASA contractor financial management reporting.

When financial management reporting on the NASA Form 533 series of reports is required (see NMI 9501.1, "NASA Contractor Financial Management Reporting System"), this requirement shall be detailed in the procurement request, and the reporting shall be required by inclusion of the appropriate clause or clauses prescribed in 1804.675-1.

1804.675-1 Contractor financial management reporting.

(a) The clause at 1852.204-71, NASA Contractor Financial Management Reporting, shall be used when any of the NASA Form 533 series of reports are required from the contractor.

(b) The clause at 1852.204-72, NASA Contractor Financial Management Reporting (Performance Analysis Report), shall be used in conjunction with the clause at 1852.204-71 when the optional Monthly Performance Analysis Report is also required from the contractor.

1804.676 Committee on Academic Science and Engineering (C.A.S.E.) Report.

NASA Form 1356, C.A.S.E. Report on College and University Projects, shall be prepared for awards to nonprofit institutions of higher education or to nonprofit institutions that are operationally affiliated or integrated with an educational institution. Information on this form is used to produce reports required by the National Science Foundation and to respond to inquiries. Submission is required regardless of instrument type (contract, grant, or cooperative agreement) and type of proposal (solicited or unsolicited). Instructions appear on the form itself and constitute the detailed guidance for preparation and submission. The form, which is either included with the acquisition package or initiated by the contracting office, shall be completed, reviewed, and promptly forwarded upon award to the Educational Affairs Division, University Programs Office, NASA Headquarters (Code XEU).

BILLING CODE 7510-01-M

POST-CICA PROCUREMENT PLACEMENT CODE MATRIX

TYPE OF PROCUREMENT REPORTING $ LEVELS: IPAR REQUIRED (NF-507) $1 AND OVER: ALL CONTRACTS, GRANTS, AGREEMENTS AND CONSULTANT SERVICE PURCHASE ORDERS. $25K & OVER: AWARDS TO OTHER GOVERNMENT AGENCIES AND DELIVERY ORDERS FOR ORDERING SUPPLIES AND SERVICES. MODIFICATIONS TO CONTRACTS.	SOLICITATION PROCESS																
		COMPETITION AFTER EXCLUSION OF SOURCES		OTHER THAN FULL AND OPEN COMPETITION 10 U.S.C. 2304(c)													
EXTENT OF COMPETITION	FULL AND OPEN COMPETITION	ALTERNATIVE SOURCE	SET-ASIDES	(1) ONLY ONE RESP. SOURCE	(2) URGENCY	(3) MOBILIZATION OR R&D	(4) INTERNATIONAL AGREEMENT	(5) AUTHORIZED BY STATUTE	(6) NATIONAL SECURITY	(7) PUBLIC INTEREST	GRANTS	SPACE ACT AGREEMENTS	COOPERATIVE AGREEMENTS	INTRAGOVERNMENTAL	SMALL PURCHASES LESS THAN $1000	SMALL PURCHASES MORE THAN $1000	MISCELLANEOUS
LARGE BUSINESS																	
Sealed Bid—Non FSS	AX	AE	AF	AL	AO	AP	AQ	AU	AV	AZ							
Sealed Bid—FSS	AY																
Neg. Competitive—Non FSS	BX	BE	BF	BL	BO	BP	BQ	BU	BV	BZ					CC	BC	
Neg. Competitive—FSS	BY																
Neg. Noncompetitive				DL	DO	DP	DQ	DU	DV	DZ					EC	DC	
SMALL BUSINESS																	
Sealed Bid—Non FSS	FX	FE	FF	FL	FO	FP	FQ	FU	FV	FZ							
Sealed Bid—FSS	FY																
Set-Asides—Negotiated			GF														
SBIR			HS														
Neg. Competitive—Non FSS	KX	KE		KL	KO	KP	KQ	KU	KV	KZ					HC	KC	
Neg. Competitive—FSS	KY																
Neg. Noncompetitive				NL	NO	NP	NQ	NU	NV	NZ					IC	NC	
SBA 8(a)								PS									
UNIVERSITIES																	
Sealed Bid	QX			QL	QO	QP	QQ	QU	QV	QZ							
Neg. Competitive	RS	RE		RL	RO	RP	RQ	RU	RV	RZ					LC	RC	
Neg. Noncompetitive				SL	SO	SP	SQ	SU	SV	SZ	ST	SW	SX		MC	SC	
OTHER NON-PROFIT																	
Sealed Bid	UX			UL	UO	UP	UQ	UU	UV	UZ							
Neg. Competitive	TX	TE		TL	TO	TP	TQ	TU	TV	TZ					OC	TC	
Neg. Noncompetitive				WL	WO	WP	WQ	WU	WV	WZ	WT	WW	WX		PC	WC	
WORK OUTSIDE U.S.																	
Sealed Bid	ZX	ZE	ZD	ZL	ZO	ZP	ZQ	ZU	ZV	ZZ							
Neg. Competitive	XX	XE	XD	XL	XO	XP	XQ	XU	XV	XZ					VC	XC	
Neg. Noncompetitive				YL	YO	YP	YQ	YU	YV	YZ					ZC	YC	
INTRAGOVERNMENTAL														98			
MISCELLANEOUS	(Reserved for Accounting Transactions—Do Not Cite on Proc. Documents)																99

All small purchase order awards less than $1,000 (No NF-507 required) shall cite one of the codes listed under "Small Purchases Less Than $1,000" on copy submitted to Accounting.

All small purchase order awards more than $1,000 but under $25,000 (No NF-507 required) shall cite one of the codes listed under "Small Purchases More Than $1,000" on copy submitted to Accounting.

All small purchase order awards under $25,000 (No NF-507 required) to "Disadvantaged Business Firms—Direct" shall cite PPC with second letter "M" on copy submitted to Accounting.

All small purchase order awards under $25,000 (No NF-507 required) to "Women-owned Firms" shall cite PPC with a second letter "W" on copy submitted to Accounting.

Subpart 1804.8—Contract Files

1804.802 Contract files.

The cognizant NASA contracting office shall maintain the contract administration file unless contract administration functions have been delegated under FAR Subpart 42.1.

1804.802-70 Handling of classified material.

When the bulk of the material concerning a contract is unclassified, classified material relating to that contract shall be maintained in a separate file folder and container, and the unclassified folder shall be marked or cross-referenced to indicate the location of the classified material. The front and back of each folder containing classified material shall be marked with the highest classification assigned to any document in the folder.

1804.802-71 Filing of documents.

(a) Documents relating to a specific contract or described in FAR 4.803(a), (b), or (c) should normally be placed in chronological order in an "OFFICIAL FILE" folder or folders. Each folder shall be marked or labeled with the contract number and, when more than one folder is required for the same contract, with information as to the file segment. However, documents regarding quality assurance and property may be maintained in separate files to facilitate possible early disposal. Other identifying data, such as the contractor's name, should be added only when needed to facilitate filing and locating.

(1) When a single folder is used, basic procurement documents and all modifications ordinarily should be filed on the left side and all other material on the right. As volume warrants, a contract file may be subdivided further, either within the folder or by using additional folders, as appropriate (e.g., by pre-contract documents, basic contract, contract modifications, termination documents, quality assurance and progress and production surveillance, property administration and plant clearance, termination documents, and general correspondence).

(2) When it is impractical to file certain documents in the official contract folder because of their bulk or use, they may be maintained separately in other suitable containers but shall be handled as "OFFICIAL FILES" and cross-referenced in the contract file.

(3) Documents relating to more than one contract may be filed in one contract file and cross-referenced in the others; otherwise enough copies must be reproduced to provide for filing one in each related contract file. Other pertinent documents of a more general nature may be filed separately in the contractor "general" file and cross-referenced in the contract file.

(b) Documents described in FAR 4.801(c)(3) and relating generally to the contractor rather than to a specific contract shall be placed in a folder labeled with the contractor's name. When necessary, additional folders may be used and the material subdivided by subject (e.g., general, production, termination, property control, and performance).

1804.802-72 Arrangement of files.

(a) Contract file folders normally should be arranged numerically by contract serial number. When special circumstances warrant, contract folders may be arranged alphabetically by contractor's name.

(b) Contractor "general" file folders shall be arranged alphabetically by name of the contractor.

1804.803 Contents of contract files.

1804.803-71 Checklist.

NASA Form 1098, Checklist for Contract Award File Content, shall be used as the "top page" in contract files. The form is intended as a reminder of the required or most important documents in the file. It also provides a uniform tab-numbering system. Only the most frequently occurring documents are listed. Therefore, space is provided for writing in additional documents applicable to specific contracts or resulting from local guidelines. The user is cautioned that completion of the NASA Form 1098, in and of itself, does not establish that all contract actions have been taken and/or properly documented.

1804.804 Closeout of contract files.

1804.804-2 Closeout of the contracting office files if another office administers the contract.

(a) Upon receiving the NASA Form 1611, Contract Completion Statement, from the contract administration office and complying with FAR 4.804-2(b), the contracting officer shall complete Item 10 of the NASA Form 1611.

(b) The date in Item 9d of NASA Form 1611 shall be used as the closeout date for file purposes, except that the date in Item 10e shall be used when completion of any pending significant contracting office action extends more than 3 months beyond the date shown in Item 9d.

1804.804-5 Detailed procedures for closing out contract files.

(a) When the contracting office retains contract administration (excluding small purchases), it shall use, as necessary, NASA Form 1612, Contract Closeout Checklist, and DD Form 1593, Contract Administration Completion Record, to ensure that the applicable actions at FAR 4.804-5(a) are completed.

(b) Upon completion of the forms specified in paragraph (a) of this section, the contracting officer shall use NASA Form 1611, Contract Completion Statement, for all contracts exceeding $25,000. This will satisfy the requirements of FAR 4.804-5(b). For contracts $25,000 and under, the contracting officer shall file a signed statement that all contract actions are complete.

1804.805 Disposal of contract files.

See NHB 1441.1, NASA Records Disposition Handbook.

1804.805-70 Review, separation, and retirement of contract files.

(a) *Review of contract case and cross reference locator files.* Upon determination of contract completion under the procedures outlined in 1804.804, each office shall review all files pertaining to the individual contract, as follows:

(1) Duplicate or working contract case file. Remove any original or official file copies of documents and place them in the appropriate official file; destroy immediately any remaining material or segregate and mark it for early disposal.

(2) Official contract case file. Remove the folders for completed contracts from the active file series, mark each folder or folder tab with "Completed (Date)", and place the folder in a completed (inactive) contract file series. Separate series should be established for contracts of $25,000 or less and for contracts of more than $25,000, to facilitate later disposal.

(3) Cross reference/locator files. Remove any contract cross-reference data forms relating to the completed contract, mark each folder with "Completed (Date)", and place each folder in a completed (inactive) cross-reference/locator file series for later disposal.

(b) *Review of contractor "general" files.* Each office shall review contractor "general" files at least once annually and remove documents that—

(1) Are obsolete or superseded documents relating generally to the contractor (e.g., documents no longer pertinent to any aspect of a contractor's current or future capability,

performance, or programs, and documents relating to a contractor that is no longer a possible source of supplies, services, or technical assistance) and dispose of the documents as authorized in 1804.805; or

(2) Pertain only to completed contracts. Place those files that are not routine in nature in inactive files for later disposal, and immediately dispose of routine documents as authorized in NHB 1441.1, NASA Records Disposition Handbook.

Subpart 1804.70—Transfer of Contracting Office Responsibility

1804.7000 Scope of subpart.

This subpart contains policies and procedures applicable to the transfer of contracts between NASA installations.

1804.7001 Definition.

"Transfer of a contract," as used in this subpart, means that process whereby a contract and all future responsibility for a contract held by one installation are transferred or reassigned in writing to another installation.

1804.7002 Restrictions.

Requests for permission to transfer a contract to another NASA installation, when considered advisable by the installation director, shall be addressed to the appropriate official in charge of a Headquarters program office or the designated program director, after concurrence from the recipient installation director. Contracts shall not be transferred by an installation until permission to transfer has been obtained. The concurrence of the Associate Deputy Administrator—Institution (Code AD-I) is also required for a transfer where an installation's roles and missions may be affected.

1804.7003 Preparatory actions.

The procurement officer of the installation transferring the contract shall contact the procurement officer of the installation scheduled to receive the contract. This contact shall be for the purpose of establishing a working agreement and a time-phased schedule of transfer actions.

1804.7004 Coordinating actions by the contracting officer of the installation transferring the contract.

The contracting officer shall coordinate with the following elements within the transferring installation before transferring a contract:

(a) Financial Management Office, to determine the contract financial records to be transferred and the method, timing, and dollar amount of such transfers.

(b) Technical (Engineering and Project) Office, to determine the status of any outstanding engineering changes.

(c) Reliability and Quality Assurance Office, to determine status and method of transferring the reliability and quality assurance functions.

(d) Industrial Property and Facilities Office, to determine the method of transferring the Government property records.

(e) Transportation Office, to determine the status of bills of lading furnished the contractor.

(f) Security Office, to determine whether any classified material is outstanding and whether special precautions are necessary during the transfer process.

(g) Other organizational elements, to determine the status of any other actions such as new technology, materials reports, PERT, and safety.

1804.7005 Inventory of current requests for contract administration assistance.

The contracting officer transferring the contract shall prepare an inventory of all outstanding requests for contract administration assistance issued to other Government agencies (e.g., Military Departments, Defense Contract Administration Services Regions, Department of Energy, and Federal Aviation Administration). This inventory shall include the name and address of the agency office, functions requested to be performed, estimated cost of the services, and estimated reimbursement due the administration agency for the services to be performed on the incomplete portion of each requested function. Copies of this inventory shall be provided to the contracting officer to whom the contract is to be transferred.

1804.7006 Transfer review.

The contracting officer to whom the contract is to be transferred shall be given an opportunity to review the contract, letters of request, actions in process, and other related files and to request corrective action, if necessary, before the official transfer of the contract.

1804.7007 Notification to the contractor.

After coordination with the installation organizational elements as required in 1804.7004 and with the receiving contracting officer, the transferring contracting officer shall notify the contractor in writing of the impending transfer.

1804.7008 Notification to other agencies.

As early as practicable after coordination between procurement offices, the contracting officer transferring the contract shall notify all agencies performing or requested to perform administrative services for the impending transfer.

1804.7009 Administrative actions.

Before transferring the contract, the contracting officer shall make a complete inventory of the contents of the contract file to be transferred. The contracting officer shall identify each contract administration action in process as a separate listing in the inventory and shall indicate its status.

1804.7010 Transfer.

Upon completion of the preparatory actions described in 1804.7003 through 1804.7009, both contracting officers shall agree upon acceptable dates for the transfer of the contract responsibility and the contract files. The contracting officer of the installation transferring the contract shall issue letters as indicated below and provide copies to the contracting officer receiving the contract:

(a) *Contractor.* Notification of the transfer date, termination of appointment of the contracting officer's representatives, and the name, mailing address, and telephone number of the contracting officer at the installation receiving the contract.

(b) *Contracting officer's representatives.* Termination, effective on the date of transfer, of each contracting officer's representative appointment.

(c) *Agencies performing contract administration functions.* Notification of the effective date of the transfer of the contract, along with the mailing address and telephone number of the contracting officer at the installation receiving the contract. (Existing requests for contract administration functions shall not be terminated.)

(d) *Installation organizational elements.* Notification of the effective date of transfer and other pertinent information.

(e) *Receiving installation.* Transfer of contract responsibility and transmission of the contract file, including an inventory of its contents, and a summary of any contractual problems that should be brought to the attention of the contracting officer receiving the contract. This letter shall contain a provision for acceptance of the responsibility for the contract and its related files by the contracting officer and a notification of the acceptance to the contracting officer of the installation transferring the contract.

1804.7011 Final action by the contracting officer transferring the contract.

The contracting officer at the installation transferring the contract shall retain for permanent file a copy of—

(a) The approvals and concurrences required by 1804.7002;

(b) The inventory receipt signed by the contracting officer receiving the contract;

(c) The contract itself; and

(d) Any additional documents necessary to present a complete summary of the transfer action.

1804.7012 Action by the contracting officer receiving the contract.

The contracting officer receiving the transferred contract shall —

(a) Acknowledge receipt of the contract and its related files;

(b) Inform all offices affected within the installation of the receipt of the contract;

(c) Appoint new contracting officer's representatives, as necessary;

(d) Issue a contract modification to provide for the administrative changes resulting from the transfer action (e.g., identifying offices responsible for performing contract administration and making payment and the office to which vouchers, reports, and data are to be submitted);

(e) Provide copies of the contract documents to the installation offices that have a functional responsibility for the contract; and

(f) If appropriate, supplement the letter of request to the Government agency providing contract administration services to reflect the changes resulting from the transfer action. The supplement may terminate or amend an existing contract administration support arrangement or may request support in additional areas.

Subpart 1804.71—Uniform Acquisition Instrument Identification

1804.7100 Scope of subpart.

This subpart contains the administrative requirements and procedures for uniform numbering of NASA contracts (including letter contracts), purchase orders (including requests to other Government agencies), basic ordering agreements, other documents evidencing in whole or in part an agreement between the parties involving the payment of appropriated funds or collection of funds for credit to the Treasury of the United States, and modifications or supplements to these instruments. It further provides for a uniform identification system for numbering solicitations.

1804.7101 Policy.

(a) Contractual documents coming within the scope of this subpart shall be numbered with approved prefixes and serial numbers for identification, audit, and filing purposes. If a prefix identification symbol is required for an installation or office not listed in this subpart, a request for the assignment of a prefix identification shall be submitted to the Office of Procurement, NASA Headquarters (Code HM). Alphanumeric characters, other than those prescribed in this subpart, shall not be used as part of the numbering system. If other identification is required, it shall be placed on the document in such a location as to clearly separate it from the identification number prescribed in this subpart.

(b) The identification number shall be retained unchanged for the life of the particular instrument and shall consist of not more than 11 alphanumeric characters positioned as prescribed in this subpart.

1804.7102 Invitations for bids, requests for proposals, NASA Research Announcements, contracts, agreements, and modifications.

1804.7102-1 Identification of solicitations.

Solicitations shall be numbered in accordance with the individual field installation's system for identifying them, except that in all cases the identifying number shall begin with the installation's numerical identification prefix (see 1804.7102-4).

1804.7102-2 Contracts and agreements requiring numbering.

The following contracts and agreements shall be numbered in accordance with the uniform numbering system prescribed in 1804.7102-3, 1804.7102-4, 1804.7102-5, and 1804.7102-7:

(a) Contracts, including letter contracts, for procurement or sale of supplies or services involving or likely to involve the payment or receipt of more than $25,000.

(b) Indefinite-delivery contracts involving more than one payment and estimated to involve payment or receipt of more than $25,000 during the fiscal year.

(c) Utilities contracts.

(d) Leases of real property and renewals of these leases.

(e) Easements.

(f) Basic ordering agreements.

(g) Other written agreements involving payment or receipt of funds not covered by 1804.7103.

1804.7102-3 Assignment and control of numbers.

(a) The numbering of contracts, agreements, and modifications shall be centrally controlled by each contracting office at NASA Headquarters, field installations, or offices for which a prefix identification symbol has been assigned.

(b) A complete identifying number shall consist of the following and shall be assigned to NASA contracts and agreements designated in 1804.7102-2:

(1) One of the prefix identification symbols contained in 1804.7102-4, followed by a hyphen.

(2) A serial number (assigned in accordance with 1804.7102-5) for the particular transaction.

1804.7102-4 Assigned contract or agreement prefixes.

(a) Approved prefixes for NASA contract or agreement numbers are as follows:

Installation	Prefix
Ames Research Center	NAS2
Goddard Space Flight Center	NAS5
Headquarters	NASW
Lyndon B. Johnson Space Center	NAS9
John F. Kennedy Space Center	NAS10
Langley Research Center	NAS1
Lewis Research Center	NAS3
George C. Marshall Space Flight Center	NAS8
NASA Resident Office–JPL	NAS7
John C. Stennis Space Center	NAS13
Space Station Procurement Office	NAS14

(b) The identification numbering system for all contracts totally funded under reimbursable arrangements with the Department of Energy shall conform to 1804.7102-3, except that a DEN prefix shall be used instead of the NAS prefix; e.g., DENW would be the Headquarters prefix, and DEN8 would be the Marshall designation.

(c) All Space Act agreements awarded under the authority of section 203(c)(5) or 203(c)(6) of the Space Act shall also be identified as specified in 1804.7102-3, except that an NCA prefix shall be used instead of the NAS prefix.

1804.7102-5 Serial numbers.

(a) Contracts and agreements identified in 1804.7102-2 shall be numbered serially by the organizational unit authorized to assign such numbers, commencing with the number "1" and continuing in succession without regard to fiscal year or type of contract; e.g., NAS5-300, NAS5-301.

(b) If the contract is a facilities contract, the letter "F," in parentheses, shall be used at the end of the serial number for identification purposes; e.g., NAS5-301(F).

(c) When the series of numbers under a symbol exceeds five digits (over 99,999), a new series shall be used, beginning the series with number "1" and followed by the capital letter "A." Should additional series become necessary, they will be distinguished by the capital letters "B," "C," and so forth, as may be required, except that the letters "I" and "O" shall not be used.

1804.7102-6 Modifications of contracts or agreements.

Modifications of definitive contracts or agreements shall (a) bear the same identification as the contract or agreement being modified and (b) be numbered consecutively for each contract or agreement, beginning with Modification Number 1, regardless of whether the modification is accomplished by unilateral or bilateral action. Except for termination notices, modifications shall be effected by the use of Standard Form 30, Amendment of Solicitation/Modification of Contract.

1804.7102-7 Letter contracts.

(a) *Superseding definitive contract.* The same number assigned to the letter contract according to 1804.7102-4 and 1804.7102-5 shall also be assigned to the superseding definitive contract. No other contract number may be assigned to the superseding definitive contract.

(b) *Modifications.* (1) Additions or changes to letter contracts shall be accomplished by modification to the letter contract. Modifications shall (i) bear the same identification as the letter contract being modified and (ii) be numbered consecutively for each letter contract, beginning with Modification Number 1, regardless of whether the modification is accomplished by unilateral or bilateral action.

(2) After the letter contract is definitized, contract modifications shall be numbered beginning with the next sequential number following that of the last modification to the letter contract.

1804.7103 Purchase orders and requests.

1804.7103-1 General.

Purchase orders (including blanket purchase agreements) and requests to other Government agencies to furnish supplies or services shall be assigned a complete identifying number consisting of—

(a) One of the letter prefixes set forth in 1804.7103-2, followed by a hyphen; and

(b) A serial number, assigned in accordance with 1804.7103-3.

1804.7103-2 Assigned purchase order or request prefixes.

Approved letter prefixes for NASA purchase orders (including blanket purchase agreements) or requests to other Government agencies are as follows:

Installation	Prefix
Ames Research Center	A
George C. Marshall Space Flight Center	H
Goddard Space Flight Center	S
Headquarters	W
John F. Kennedy Space Center	CC
Langley Research Center	L
Lewis Research Center	C
Lyndon B. Johnson Space Center	T
NASA Resident Office—JPL	WO
John C. Stennis Space Center	NS
Space Station Procurement Office	D

1804.7103-3 Serial numbers.

The same series of consecutive numbers will be used for numbering both purchase orders (including blanket purchase agreements) and requests to other Government agencies. The series shall commence with the number "1" and continue in succession without regard to the fiscal year. The number follows the letter symbol, separated by a hyphen; e.g., Order Number L-350 or Order Number W-1000. When the series of numbers under a symbol exceeds 5 digits (over 99,999), a new series shall be used, beginning the series with number "1" and followed by the capital letter "A." Should additional series become necessary, they will be distinguished by the capital letters "B," "C," and so forth, as may be required, except that the letters "I" and "O" shall not be used.

Subpart 1804.72—Review and Approval of Contractural Instruments

1804.7200 Scope of subpart.

This subpart sets forth administrative requirements for:

(a) Furnishing to NASA Headquarters advance contract information regarding proposed procurements expected to exceed the small purchase limitation and

(b) Contracts and supplemental agreements requiring approval from NASA Headquarters before award.

It also lists information to be furnished by contracting officers in submitting contracts and supplemental agreements for Headquarters approval. These requirements are in addition to other approval and review requirements.

1804.7201 Advance information.

(a) A copy of each unclassified presolicitation notice, solicitation, or changes thereto, including specifications but not drawings, shall be forwarded to the Office of Small & Disadvantaged Business Utilization, NASA Headquarters (Code K), at the time of issuance. If the proposed procurement is classified, only a copy of the solicitation notice is required.

(b) The contents of the presolicitation notice are prescribed at FAR 5.207. Each copy of the solicitation shall be accompanied by a statement of the estimated cost of the proposed procurement and a complete list of firms or persons solicited. This information is for internal NASA use only.

1804.7202 Contract Review by the contracting officer.

All contractual documents, regardless of dollar value, require a complete review by the contracting officer.

1804.7203 Contract review by Headquarters.

(a) *Purpose.* The primary purpose of NASA Headquarters review and approval of contractual actions is to provide an independent review and analysis to determine whether the procurements—

(1) Have been competently negotiated;

(2) Are based on adequate information;

(3) Are in conformance with law, established policies and procedures, and sound business practice; and

(4) Will result in contracts that adequately protect the Government's interest.

(b) *Information to be furnished.* Requests for approval of contracts and supplemental agreements submitted to Headquarters for approval by the Assistant Administrator for Procurement, in accordance with Subpart 1807.71, Master Buy Plan Procedures, and 1816.603, Letter contracts, shall include the information required by this section and shall be forwarded in sufficient time to allow a minimum of 15 days for review. The official contract file shall be submitted with the request for approval and shall include a completed NASA Form 1098, Checklist for Contract Award File Content. Where Headquarters legal counsel review is required, a duplicate copy of the file should, if practical, be forwarded in order to expedite review. A list of contracts requiring such legal review will be published periodically.

(c) *Negotiated contracts and supplemental agreements.* Each request for approval of a negotiated contract or supplemental agreement shall be accompanied by:

(1) Eight copies of the contract, four of which have been executed by the contractor and contracting officer, and

(2) The official contract file containing the appropriate documentation as set forth in FAR 4.803(a).

However, for the items specified in FAR 4.803(a)(10), (11), and (12), the contracting officer shall provide documentation pertaining only to the successful offeror; and, for the items specified in FAR 4.803(a)(26), the contracting officer is not to provide supporting documentation for previously issued contract modifications except as required below. When the contract being forwarded is a supplemental agreement to an existing contract, the contract file shall include an index of all previous modifications, which will serve as a guide or quick reference; e.g., S.A. No. 2—Added the clause at 1852.223-70, Safety and Health.

(d) *Conditional approval of contracts and supplemental agreements.* (1) Contracts and supplemental agreements submitted to Headquarters for the approval of the Assistant Administrator for Procurement may be approved conditionally, subject to requiring the cognizant contracting office to take certain corrective actions within a specified period of time. These corrective actions include:

(i) Revising, deleting, or adding contract clauses and

(ii) Developing additional supporting data for inclusion in the contract file, prior to or concurrent with the distribution of the approved contract or by an early supplemental agreement.

(2) The procurement officer shall ensure that these corrective actions are accomplished in accordance with the conditional approval. In addition, the procurement officer shall provide the Assistant Administrator for Procurement (Code HS):

(i) A copy of the corrected contract pages, supplemental agreement, or additional supporting data meeting the conditions of approval; and

(ii) A memorandum referencing the Headquarters conditional approval and indicating the status of the corrective actions.

(3) On receiving and reviewing the corrective actions, the Headquarters Office of Procurement (Code HS) will notify the cognizant procurement officer of the disposition of the conditional approval. This notice shall be made a part of the official contract file and the Headquarters file of record.

(e) *Approval.* The approval required under this section shall be made by signature of the Assistant Administrator for Procurement on the contract/supplemental agreement.

Subpart 1804.73—Procurement Requests

1804.7301 General.

(a) Procurement requests shall be prepared and submitted to the contracting office in accordance with installation instructions.

(b) Except in unusual circumstances, the contracting office shall not issue solicitations until an approved procurement request, containing a certification that funds are available, has been received. However, the contracting office may take all necessary actions up to the point of contract obligation before receipt of the approved procurement request certifying that funds are available when—

(1) Such action is necessary to meet critical program schedules;

(2) It has been established that program authority has been issued and funds to cover the procurement will be available prior to the date set for contract award or contract modification; and

(3) The procurement officer authorizes such action in writing before solicitation issuance.

(c) The procurement request shall be assigned within the contracting office to a negotiator who will be responsible to the contracting officer for conducting the business aspects of the transaction. The negotiator shall review the request to ensure that it complies with the FAR, this regulation, and applicable installation instructions and that the information in the request is sufficient to prepare the solicitation. Uncertain requirements or inconsistencies in the procurement request will be discussed with the initiator of the request and resolved prior to initiating procurement action.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 1805—PUBLICIZING CONTRACT ACTIONS

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1805.101 Methods of disseminating information.

Subpart 1805.2—Synopses of Proposed Contracts

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1805.201-70 Headquarters notification.
1805.202 Exceptions.
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1805.207 Preparation and transmittal of synopses.

Subpart 1805.3—Synopses of Contract Awards

1805.302 Preparation and transmittal of synopses of awards.
1805.302-70 Headquarters notification.
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Subpart 1805.4—Release of Information

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1805.402 General public.
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Subpart 1805.5—Paid Advertisements

1805.502 Authority.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1805.1—Dissemination of Information

1805.101 Methods of disseminating information.

For NASA policy regarding paid advertisements, see FAR 5.502 and 1805.502.

Subpart 1805.2—Synopses of Proposed Contracts

1805.201 General.

1805.201-70 Headquarters notification.

A copy of each synopsis of a proposed contract action sent to the Commerce Business Daily (CBD) shall be furnished to the Director of Small and Disadvantaged Business Utilization, NASA Headquarters (Code K).

1805.202 Exceptions

(a) Under FAR 15.507(b)(4), the contracting officer must comply with the preaward synopsis requirement at FAR 5.201 for all unsolicited proposals that will result in contracts, unless evaluation on a case-by-case basis determines that one of the exceptions contained in FAR 5.202 (e.g., 5.202(a)(8)) applies. The synopsis contemplated for such unsolicited proposals is the notice of proposed contract action synopsis addressed by FAR 5.201, not the research and development (R&D) sources-sought advance notice addressed by FAR 5.205(a).

(b) When award in response to an unsolicited proposal is intended to be accomplished by other than full and open competition (FAR 6.302-1(a)(2)(i)), this synopsis shall include reference to Numbered Note 22 unless no synopsis is required pursuant to FAR 5.202(a)(6), because a synopsis cannot be drafted without improperly disclosing the originality of thought or innovativeness of the proposed research, or without disclosing proprietary information associated with the proposal.

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(c) With careful drafting, it should usually be possible to develop a synopsis that generically describes the NASA requirement fulfilled by the unsolicited proposal without disclosing the originality of thought, innovativeness, or proprietary information contained in the proposal. Generally, the contracting officer, in developing the synopsis, will find it possible to address the general or research area addressed in the unsolicited proposal. In a few instances, however, the mere statement in a notice of contract action synopsis that a particular problem and solution exist would improperly disclose a proposer's unique originality of thought or innovativeness; in those cases, the exception in FAR 5.202(a)(8) applies, and no CBD synopsis need be submitted. Thus, the requirement is to publish CBD notice of contract action synopses whenever it is possible to synopsize without improperly disclosing originality of thought, innovativeness of proposed research, or proprietary information associated with the unsolicited proposal.

(d) The phrase "proprietary information" as used at FAR 5.202(a)(8) means information (data) that constitutes a trade secret and/or information that is commercial or financial and confidential or privileged.

1805.205 Special situations.

Potential sources responding to R&D advance notices shall be added to the appropriate solicitation mailing list for the subsequent solicitation and, if they do not appear on the solicitation mailing lists established in accordance with FAR 14.205-1, shall be requested to submit Standard Form 129, Solicitation Mailing List Application. Responding sources on established lists may be requested to submit amended applications in order to reflect their current capabilities.

1805.207 Preparation and transmittal of synopses.

(a) Each notice publicizing the procurement of architect-engineer services shall be headed "R. Architect-Engineer Services." In addition to meeting the requirements of FAR 5.207(c), the project description shall—

(1) State the relative importance the Government attaches to the significant evaluation criteria and the date by which responses to the notice must be received, including submission of Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project, if required;

(2) Describe any specialized qualifications, security classifications, and limitations on eligibility for consideration;

(3) Describe qualifications or performance data required from architect-engineer firms; and

(4) If the procurement is to be set aside for small business, state this fact, indicating the specific size standard to be used and requiring that eligible responding firms submit a small business representation. In addition, contracting officers shall also add at the end of the synopsis—

See Note 62. Provisions of Note 62 apply to this notice, except that in the second paragraph of the note: (a) "National Aeronautics and Space Administration" is substituted for "Department of Defense" wherever the reference appears, and (b) the fourth additional consideration listed is changed to read: "(4) past experience, if any, of the firm with respect to performance on contracts with NASA, other Government agencies, and private industry."

(b) In synopsizing contracting actions involving options, the contracting officer shall either:

(1) Include the options in the description required by FAR 5.207(c)(2)(vi) or

(2) Publish a separate synopsis of the option as a new procurement before exercising it (see FAR 17.207(c)(4)).

(c) FAR 5.207(b)(4) requires that agencies identify each synopsis by a Federal Information Processing Standards (FIPS) number. The numbers assigned to NASA installations by FIPS-95 are—

Ames Research Center	8020
Goddard Space Flight Center	8026
Headquarters	8001
Johnson Space Center	8032
Kennedy Space Center	8035
Langley Research Center	8038
Lewis Research Center	8041
Marshall Space Flight Center	8044
NASA Resident Office-JPL	8029
Stennis Space Center	8047

Subpart 1805.3—Synopses of Contract Awards

1805.302 Preparation and transmittal of synopses of awards.

1805.302-70 Headquarters notification.

The contracting officer shall mail one copy of the synopsis of contract award prepared in accordance with FAR 5.302 to the Office of Small and Disadvantaged Business Utilization, NASA Headquarters (Code K) and send one copy to the installation's Public Affairs Office.

1805.303 Announcement of contract awards.

Congressional notification shall be in accordance with 1805.403-70.

1805.303-70 Furnishing additional procurement information to the public.

(a) *Policy.* (1) In addition to publicizing procurements and contract awards in the CBD, NASA furnishes the public, upon request, through the public affairs office of the NASA installation receiving the request, information on specific current NASA procurements, including—

(i) The names of firms invited to submit offers;

(ii) The names of firms that attended any pre-bid or pre-proposal conference;

(iii) After the date established for receipt of offers, the names of firms that submitted them (but see 1815.413); and

(iv) Contract award information required to be publicized in the CBD under the provisions of FAR 5.303 and this subsection 1805.303-70.

(2) Exceptions will be permitted only when the Assistant Administrator for Procurement or the Director of the field installation concerned determines that disclosure in accordance with subparagraph (a)(1) of this section would be prejudicial to the interests of NASA.

(b) *Procedures.* Contracts requiring approval by the Assistant Administrator for Procurement under Subpart 1804.72 will not be distributed, nor will any information be given to any source outside of NASA as to whether or not they have been approved, until 24 hours after the Director of Public Affairs and the Assistant Administrator for Legislative Affairs, NASA Headquarters, have been advised that the contract has been consummated.

(c) *Unsuccessful offerors.* For guidance on releasing information to unsuccessful offerors, see FAR 14.408 and FAR Subpart 15.10.

1805.303-71 Public Affairs Office notification.

(a) *Letter contracts.* (1) The procedures for issuing and approving letter contracts are contained in FAR 16.603 and 1616.603. Before transmitting a letter contract to a contractor for signature, the procurement officer shall furnish to the installation's Public Affairs Office the following information:

(i) Whether the letter contract initiates a new contract or is for additional work or services under an existing contract.

(ii) The dollar amount authorized for the letter contract and the estimated total cost of the contract or supplemental agreement.

(iii) Name and address of the contractor.

(iv) Location where the work is to be performed.

(v) A brief description of the work, including identification of the program and project.

(vi) For the purpose of responding to queries only, a list of any unsuccessful offerors and their addresses.

(2) Upon receiving the information described in subparagraph (a)(1) of this section, the installation's Public Affairs Office shall transmit the information immediately, in the form of a news release, by priority TWX or more expeditious means (if appropriate), to the Chief, News and Information Branch (Code LM), and the Assistant Administrator, Congressional Relations Office (Code XC), NASA Headquarters. The information shall not be otherwise released by the installation's Public Affairs Office, nor shall the letter contract be released before 2:30 p.m. Washington, DC time of the next working day, unless clearance has been received earlier from the Chief, News and Information Branch (Code LM). If circumstances indicate a need for earlier action, exception must be obtained from the Assistant Administrator for Procurement.

(b) *Definitive contracts and supplemental agreements.* (1) This subparagraph (b)(1) does not pertain to supplemental agreements covering overruns or incremental funding actions or to contracts or supplemental agreements that require approval of the Assistant Administrator for Procurement pursuant to 1804.7203. It does pertain to contracts, supplemental agreements, and the execution of options that are in an amount of $10,000,000 or over for the Stennis Space Center, Headquarters Contracts and Grants Division, Space Station Procurement Office, and the NASA Resident Office—JPL and $25,000,000 or over for the Ames Research Center, Goddard Space Flight Center, Johnson Space Center, Kennedy Space Center, Langley Research Center, Lewis Research Center, and Marshall Space Flight Center. It also pertains to any procurement action that, in the judgment of the contracting officer, has Headquarters public information implications (e.g., the transfer of personnel from one State to another). Such contracts and supplemental agreements shall not be distributed nor shall any source outside NASA be informed that the contractual instrument has been signed by both parties until the procedures in subdivisions (b)(1) (i) and (ii) of this section are carried out:

(i) The procurement officer shall furnish to the installation's Public Affairs Office the following information:

(A) Whether the contract or supplemental agreement initiates a new contract or is for additional work or services under an existing contract.

(B) Type of contract.

(C) The dollar amount authorized for the instant action and the estimated total cost of the contract if this is different.

(D) Name and address of the contractor.

(E) Location where the work is to be performed.

(F) A brief description of the work, including identification of the program and project.

(G) For the purpose of responding to queries only, a list of any unsuccessful offerors and their addresses.

(ii) Upon receiving the information listed in subdivision (b)(1)(i) of this section, the installation's Public Affairs Office shall immediately prepare a news release in the form of a priority TWX containing as a minimum the information in subdivision (b)(1)(i) of this section, and transmit it to the Chief, News and Information Branch (Code LM), and the Assistant Administrator, Congressional Relations Office (Code XC), NASA Headquarters. The information shall not be otherwise released by the installation's Public Affairs Office, nor shall the contract instrument be released before 2:30 p.m. Washington, DC time of the next working day, unless clearance has been received earlier from the Chief, News and Information Branch (Code LM). If circumstances indicate a need for earlier action, exception must be obtained from the Assistant Administrator for Procurement.

(2) When forwarded for the approval of the Assistant Administrator for Procurement, if required by 1804.7203, contracts and supplemental agreements shall be accompanied by a draft news release prepared by the installation's Public Affairs Office and furnished to the contracting office for inclusion in the submission file. The news release shall contain as a minimum the information required by subdivision (b)(1)(i) of this section. At the time the Assistant Administrator for Procurement approves the contract or supplemental agreement, the news release shall be forwarded immediately to the Chief, News and Information Branch (Code LM), and to the Assistant Administrator, Congressional Relations Office (Code XC).

Subpart 1805.4—Release of Information

1805.401 General.

Release of information to the Small Business Administration shall be in accordance with FAR 19.402(b).

1805.402 General public.

Requests from the general public for specific information shall be processed in accordance with 1805.303-70.

1805.403 Requests from Members of Congress.

1805.403-70 Headquarters approval and release.

The proposed reply, with full documentation, shall be promptly prepared and forwarded by the most expeditious means to the Assistant Administrator, Congressional Relations Office (Code XC), NASA Headquarters, for approval and release. (See 1805.303-70.)

Subpart 1805.5—Paid Advertisements

1805.502 Authority.

Use of paid advertisements for procurement purposes is not authorized in NASA.

PART 1806—COMPETITION REQUIREMENTS

Subpart 1806.2—Full and Open Competition After Exclusion of Sources

1806.202 Establishing or maintaining alternative sources.
1806.202-70 Determination and findings.

Subpart 1806.3—Other Than Full and Open Competition

1806.301 Policy.
1806.302 Circumstances permitting other than full and open competition.
1806.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.
1806.302-170 Technical equipment requiring standardization and interchangeability of parts.
1806.302-2 Unusual and compelling urgency.
1806.302-270 Support services contracts.
1806.302-7 Public interest.
1806.302-770 Determination and findings.
1806.303 Justifications.
1806.303-1 Requirements.
1806.303-170 Sole-source purchases by contractors.
1806.303-2 Content.
1806.303-270 NASA employees or former NASA employees.
1806.303-271 Use of unusual and compelling urgency authority.
1806.304 Approval of the justification.
1806.304-70 Contracts with NASA employees or former NASA employees.
1806.305 Availability of the justification.

Subpart 1806.5—Competition Advocates

1806.570 NASA competition advocacy program.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1806.2—Full and Open Competition After Exclusion of Sources

1806.202 Establishing or maintaining alternative sources.

(a) The authority of FAR 6.202 is to be used to exclude one source only. If, for example, FAR 6.202(a)(3) appears to be applicable, but all for-profit concerns as well as the current source will be excluded, then FAR 6.302–3 shall be used instead.

(b) The authority to sign the D&F required by FAR 6.202(b)(1) is hereby delegated to the approval levels specified in FAR 6.304 and 1806.304.

1806.202–70 Determination and findings.

(a) *Procedure.* (1) Each determination and findings (D&F) shall be dated at the time of signature.

(2) Each request for approval of a D&F over $10,000,000 under 10 U.S.C. 2304(b)(1) (FAR 6.202) shall consist of—

(i) A memorandum from the procurement officer to the Assistant Administrator for Procurement (Code HS) recommending D&F approval; and

(ii) An original and three copies of the D&F in the format required by paragraph (b) of this section.

(3) The Assistant Administrator for Procurement (Code HS) shall return the signed D&F, if approved, to the contracting office, retaining the copies in Headquarters files.

(b) *Content.* When the authority of FAR 6.202(a) is proposed for use, it must be shown clearly that the necessity for excluding a particular source arises from genuine considerations pertinent to the authority of FAR 6.202(a). The supporting data and the D&F must name the source to be excluded and shall include the following information as applicable and any other relevant information:

(1) The specific purpose to be served in excluding the source; i.e., to increase or maintain competition, the interest of national defense in having a facility available in case of a national emergency or industrial mobilization, or the interest of national defense in establishing or maintaining an essential engineering, research, or development capability.

(2) The acquisition history of the supplies or services, including sources, prices, quantities, and dates of award.

(3) The circumstances making it necessary to exclude a particular source from the contract action:

(i) Reasons for lack of sources; e.g., the technical complexity and criticality of the item.

(ii) Current annual requirement and prospective needs for the supplies and services.

(iii) Projected future requirements.

(4) Whether the existing source must be totally excluded action or whether a partial exclusion is sufficient.

(5) The potential effect of exclusion on the excluded source in terms of any loss of capability to furnish the supplies or services in subsequent contract actions.

(6) When the authority of FAR 6.202(a)(1) is cited, the basis for—

(i) Assumptions regarding future competition; and

(ii) The determination that exclusion of a particular source will likely result in reduced overall costs for anticipated future acquisitions, including (as a minimum) discussion of start-up costs, costs associated with facilities, duplicative administration costs (such as for additional inspection or testing), economic order quantities, and life-cycle-cost considerations.

(7) When an additional source or additional sources must be established to provide production capacity to meet current and mobilization requirements—

(i) The current annual and the mobilization requirements for the item, citing the source of, or the basis for, the planning data;

(ii) A comparison of current production capacity with current and mobilization requirements; and

(iii) The hazards of relying on the present source and the time required for new sources to acquire the necessary facilities and skills and achieve the production capacity necessary to meet requirements.

(c) *Formats.* A sample format for D&Fs citing the authority of FAR 6.202(a) follows:

National Aeronautics and Space Administration, Washington, DC 20546

Determination and Findings

Authority to Exclude a Source

On the basis of following findings and determination, which I make under the authority of 10 U.S.C. 2304(b)(1) as implemented by FAR 6.202, the proposed contract action described below may be awarded using full and open competition after exclusion of (1).

Findings

1. It is proposed that the following requirement be acquired using full and open competition after exclusion of the source identified above.

2. The source identified above can be expected to receive an award for this requirement unless excluded.

3. It is necessary to establish or maintain an alternative source or sources.

4. The exclusion of this source will increase or maintain competition and is likely to result in reduction of (2) in overall costs for any anticipated acquisition of the supplies or services being acquired. This estimate is based on (3).

(See Note 4 for the use of Alternates I and II below.)

Alternate I: The exclusion of this source will serve the national defense interest by having an alternative supplier available for furnishing the supplies or services being acquired, in case of a national emergency or industrial mobilization, because (5).

Alternate II: The exclusion of this source will serve the national defense interest by establishing or maintaining an essential engineering, research, or development capability of an educational or other nonprofit institution or a federally funded research and development center, because (5).

Determination

The exclusion of the source identified above will increase or maintain competition and is likely to result in reduced overall costs for any anticipated acquisition of the supplies or services being acquired.

(See Note 4 for the use of Alternates I and II below.)

Alternate I: It is in the interest of the national defense to exclude the source identified above in order to have an alternative supplier available for furnishing the supplies or services being acquired, in case of a national emergency or industrial mobilization.

Alternate II: It is in the interest of national defense to exclude the source identified above in order to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.

Date_____

Notes:

1. Name of source to be excluded.

2. Description of estimated reduction in overall costs.

3. Description of how estimate was derived.

4. In paragraph 4 and in the Determination, the basic wording is appropriate when FAR 6.202(a)(1) applies; Alternate I is appropriate when FAR 6.202(a)(2) applies; and Alternate II is appropriate when FAR 6.202(a)(3) applies.

5. Description of circumstances necessitating the exclusion of the identified source.

Subpart 1806.3—Other Than Full and Open Competition

1806.301 Policy.

For NASA, the appropriate statutory authorities relative to FAR 6.302 are in Title 10 of the United States Code.

1806.302 Circumstances permitting other than full and open competition.

1806.302–1 Only one responsible source and no other supplies or services will satisfy agency requirements.

1806.302–170 Technical equipment requiring standardization and interchangeability of parts.

(a) The contracting officer shall review actions taken under the authority of FAR 6.302–1(b)(4) at least once every two years to determine whether use of this authority should be continued, revised, or cancelled.

(b) This authority may be used when:

(1) Only one or a limited quantity of a particular item is to be purchased and

(2) Compatibility with existing equipment and interchangeability of parts are essential.

Use of this authority in such a case does not mean that subsequent purchases of similar equipment will necessarily require the use of less than full and open competition for purposes of standardization. The contracting officer must examine the facts involved in each case to determine whether compatibility with other equipment and interchangeability of parts are essential objectives.

1806.302–2 Unusual and compelling urgency.

1806.302–270 Support services contracts.

It may become necessary to extend the performance period of an existing support services contract to avoid a lapse in services pending completion of a full and open competition for the succeeding period. Under these circumstances, the authority at FAR 6.302–1 is not appropriate, because of the pending competition and because it does not cover follow-on contracts for services. However, if the contemplated action otherwise conforms to the requirements at FAR 6.302–2 and the additional documentation at 1806.303–271 is included in the justification for other than full and open competition, then the existing contract may be extended under this authority.

1806.302–7 Public interest.

1806.302–770 Determination and findings.

(a) *Procedure.* The contracting officer shall prepare the D&F required by FAR 6.302–7(c)(1), using the format provided in paragraph (b) of this section. The original and three copies of the D&F shall be submitted to the Assistant Administrator for Procurement (Code HS) for concurrence and coordination up to the Administrator for signature.

(b) *Format.* The following format shall be used for the D&F:

National Aeronautics and Space Administration, Washington, DC 20546

Determination and Findings

Authority To Use Less Than Full and Open Competition

On the basis of the following findings and determination, which I make under the authority of 10 U.S.C. 2304(c)(7) as implemented by FAR 6.302–7, it is in the public interest to provide for less than full and open competition in the contract action described below.

Findings

1. The (1) proposes to enter into a contract for the acquisition of (2).

2. Use of the authority cited above is necessary in the public interest for the following reasons: (3).

Determination

For the reasons described above, it is necessary in the public interest to use procedures other than competitive procedures in the proposed acquisition.

Date_____

Notes:

(1) Name of contracting activity.

(2) Brief description of supplies or services.

(3) Explain the need for use of the authority.

(c) *Notice to Congress.* The notice to Congress required by 10 U.S.C. 2304(c)(7)(B) and FAR 6.302–7(c)(2) shall be made by NASA Headquarters, Congressional Relations Office (Code XC). Code HS shall request the notice to be made immediately upon approval of a D&F under paragraph (a) of this section and shall advise the contracting activity of the date upon which the notification period ends.

1806.303 Justifications.

1806.303–1 Requirements.

(a) Justifications for using less than full and open competition may be prepared by the technical office initiating the contract action when it is recommending the use of the justification authority, or by the contracting officer if the technical office does not make such a recommendation.

(b) The contracting officer shall send a copy of each approved justification or D&F that cites the authority of FAR 6.302–3(a)(2)(i) or FAR 6.302–7 to NASA Headquarters, International Relations Division (Code XI), unless one of the exceptions at FAR 25.403 applies to the procurement. The transmittal shall indicate that the justification is being furnished under FAR 6.303–1(d).

(c) Before using the authority of FAR 6.303–1(e), the contracting officer shall informally discuss the reasons for the proposed use of less than full and open competition under FAR 6.302–2 with the justification approving authority, except that if that authority is NASA Headquarters (Code H), the discussion shall be between the procurement officer and the Assistant Administrator for Procurement.

(d) Each approved justification shall be retained in the contract file.

1806.303–170 Sole-source purchases by contractors.

The requirements of FAR Part 6 and NFS Part 1806 apply if NASA directs a prime contractor (by specifications, drawings, parts lists, or otherwise) to purchase items on a sole-source basis. Accordingly, procurement officers shall take necessary actions to ensure that such sole-source acquisitions are properly justified. Where "brand name or equal" purchase descriptions list the salient physical, functional, or other characteristics of the item being procured and are properly used under 1810.004–71, the justification requirements of FAR Part 6 and NFS Part 1806 do not apply.

1806.303–2 Content.

1806.303–270 NASA employees or former NASA employees.

If any contract with a NASA employee or an individual employed by NASA within the past two years is proposed on the basis of other than full and open competition, the justification shall state that the proposed contractor is a NASA or former NASA employee and shall explain why it is in the best interest of the Government to take this action (see FAR Subpart 3.6 and NFS 1803.602, 1803.7001(a), and 1806.304–70).

1806.303–271 Use of unusual and compelling urgency authority.

If the authority at FAR 6.302–2 is used for extending the performance period of an existing support services contract under the circumstances described at 1806.302–270, the justification shall contain, in addition to the information required by FAR 6.303–2—

(a) Documentation that the procurement process for the successor contract was started early enough to allow for adequately planning and conducting a full and open competition, together with a description of the circumstances that prevented award in a timely manner; and

(b) Documentation of the reasons why no other source could practicably compete for the interim requirement.

1806.304 Approval of the justification.

(a) All justifications for contract actions over $100,000 shall be submitted to the procurement officer for concurrence before being forwarded for approval. Justifications over $1,000,000 shall also be submitted to the installation's Deputy Director for

concurrence, and those over $10,000,000 shall be further submitted for the concurrence of the installation's Director, before being forwarded for approval. The contracting officer shall use NASA Form 1452, Signature Page (Installation), for actions requiring Headquarters approval.

(b) The authority of FAR 6.304(a)(3) may not be delegated to other than the installation's Deputy Director.

(c) For proposed contract actions over $10,000,000, the original justification and three copies shall be forwarded to the Assistant Administrator for Procurement (Code HS). After approval by the Assistant Administrator for Procurement, the signed original will be returned to the procurement officer. The copies will be retained in Headquarters files.

(d) Regardless of dollar value, class justifications shall be concurred in and approved as if they were individual justifications over $10,000,000.

1806.304-70 Contracts with NASA employees or former NASA employees.

For procurements between the small purchase ceiling and $100,000 involving an individual currently employed or employed by NASA during the past two years or a firm in which such an individual employee is a partner, principal officer, or majority shareholder, or that is otherwise controlled or predominantly staffed by such individuals (see Subpart 1803.70), the justification shall be submitted for the approval of the installation's Deputy Director. This is in addition to any approval required by FAR 6.304(a)(1).

1806.305 Availability of the justification.

(a) Requests for inspection of justifications should be submitted in writing and should identify the particular procurement involved. Requestors making oral requests should be encouraged to submit them in writing but are not required to do so.

(b) The contracting officer should consult counsel regarding disclosure exemptions and deletion and protection of proprietary data. Requests should be processed promptly.

Subpart 1806.5—Competition Advocates

1806.570 NASA competition advocacy program.

NASA's implementation of FAR Subpart 6.5 is in NMI 1210.2, NASA Competition Advocacy Program.

PART 1807—ACQUISITION PLANNING

Subpart 1807.1—Acquisition Plans

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Authority: 42 U.S.C. 2473(c)(1).

Subpart 1807.1—Acquisition Plans

1807.101 Definitions.

"Procurement plan" means a detailed outline of the method by which the contracting officer expects to accomplish the procurement. It is an administrative tool designed to enable the contracting officer to plan effectively for accomplishing an assigned procurement by analyzing the requirement and determining the procurement method.

1807.102 Policy.

(a) In R&D procurements over $100,000, when only three or fewer sources are known, the contracting officer shall have the requirements office query the Defense Technical Information Center (DTIC) IR&D Database to identify additional sources conducting IR&D in the area of the procurement, in addition to using other market survey techniques. If needed, specific information on access to and use of the DTIC IR&D Database by a particular NASA installation may be obtained from that installation's designated IR&D focal point.

(b) As authorized in FAR 7.102, NASA uses its procurement planning system in lieu of the criteria in FAR Subpart 7.1. However, all procurement plans shall comply with FAR 7.104(c), 7.105(b)(2), and, when appropriate, 7.106. Regardless of the method employed, every acquisition shall be adequately planned to allow enough time to complete the competitive procurement process and award a contract by the required date.

1807.103 Agency-head responsibilities.

(a) *Requirement for preparation of procurement plans.* (1) Except as otherwise authorized by subparagraph (a)(2) of this section, the contracting officer shall prepare a procurement plan, with the advice and assistance of the cognizant technical division, for each negotiated procurement estimated to exceed the dollar amount set forth below for the installation concerned. The plan shall be prepared before soliciting proposals.

(i) $250,000 for—

(A) Stennis Space Center.

(B) Headquarters Contracts and Grants Division.

(C) Space Station Procurement Office.

(D) NASA Resident Office—JPL.

(ii) $500,000 for—

(A) Ames Research Center.

(B) Goddard Space Flight Center.

(C) Johnson Space Center.

(D) Kennedy Space Center.

(E) Langley Research Center.

(F) Lewis Research Center.

(G) Marshall Space Flight Center.

(2) Procurement plans are not required for procurements—

(i) Of architect-engineering services;

(ii) Based on unsolicited proposals;

(iii) Of basic research from nonprofit organizations;

(iv) Of utility services where the services are available from only one source;

(v) Made from or through other Government agencies;

(vi) Of industrial facilities required in support of related procurement contracts; or

(vii) Resulting from broad agency announcements listed in 1835.016.

(b) *Approval of procurement plans.* (1) Whenever the estimated cost of the procurement, including options, and later phases contemplated for the same program or project meets the thresholds below, procurement plans shall, as a minimum, be reviewed and approved as follows:

(i) For procurements in excess of the applicable dollar amount in subparagraph (a)(1) of this section, but less than the dollar amount below for the installation concerned, the procurement plan shall be submitted for the approval of the Procurement Officer or designee after review and written concurrence by the head of the cognizant technical division or laboratory (for the purpose of this requirement, the term "or designee" means the individual authorized by the Procurement Officer to sign the procurement plan; this authorization shall be in writing and may not be delegated to more than one individual).

(A) $5,000,000 for—

(1) Stennis Space Center.

(2) Headquarters Contracts and Grants Division.

(3) Space Station Procurement Office.

(4) NASA Resident Office—JPL.

(B) $10,000,000 for—

(1) Ames Research Center.

(2) Goddard Space Flight Center.

(3) Johnson Space Center.

(4) Kennedy Space Center.

(5) Langley Research Center.

(6) Lewis Research Center.

(7) Marshall Space Flight Center.

(ii) For procurements within the range of the dollar amounts below for the installation concerned, the procurement plan shall be submitted for the approval of the installation's Head, Deputy Head, or Associate Director (as used here, "Associate Director" means a full Associate Director, not an Associate Director for) after reviews and written concurrences by the Director or Assistant Director of the cognizant technical directorate, the cognizant Program/Project Manager, or the cognizant staff official, as applicable, who reports directly to the Head of the Installation, and by the Procurement Officer.

(A) Over $5,000,000 but less than $10,000,000 for—

(1) Stennis Space Center.

(2) Headquarters Contracts and Grants Division.

(3) Space Station Procurement Office.

(4) NASA Resident Office—JPL.

(B) Over $10,000,000 but less than $25,000,000 for—

(1) Ames Research Center.

(2) Goddard Space Flight Center.

(3) Johnson Space Center.

(4) Kennedy Space Center.

(5) Langley Research Center.

(6) Lewis Research Center.

(7) Marshall Space Flight Center.

(iii) For procurements selected for Headquarters review and approval in accordance with the Master Buy Plan Procedure, the procurement plan shall be submitted for the signature of the Head of the Installation after reviews and written concurrences by the Director or Assistant Director of the cognizant technical directorate, the cognizant Program/Project Manager, or the cognizant staff official, as applicable, who reports directly to the Head of the Installation, and by the Procurement Officer. The procurement plan shall be submitted in original and ten copies to the Assistant Administrator for Procurement (Code HS) for approval.

(iv) The position title shall be shown for each individual signing the procurement plan as required by subdivisions (b)(1)(i) through (iii) of this section.

(2) Approval of a procurement plan does not constitute approval of any deviations, special conditions, or special clauses that may be required; they must be submitted for review and approval under FAR Subpart 1.4 and/or 1801.4.

1807.170 Procurement plan contents.

1807.170-1 Procurement plans requiring approval by NASA Headquarters.

(a) Procurement plans shall describe the procurement, including options, and later phases contemplated for the same program or project, for example Phase C/D. Approval of the procurement plan does not constitute approval of later phases. In order to consider changes that may occur from an initial procurement, later phases exceeding the thresholds in 1807.103, require approval of a separate plan.

(b) Each procurement plan prepared for approval by NASA Headquarters shall be prepared on NASA Forms 1451 and 1452. Form 1451, Request for Procurement Plan Approval, shall be completed as follows:

(1) *Item 1. A descriptive short title.* In this item, include only a descriptive short title of the procurement. A detailed description of the proposed procurement shall be included in subsequent pages as required. The information to be provided consists of—

(i) A clear and concise description, including intended use, of the item or service to be procured;

(ii) The number of units, delivery schedule, and/or period of performance (note: if a schedule of major events will enhance the plan, it should also be included);

(iii) An identification of any option provision, including the periods covered and estimated costs;

(iv) An identification of any later phases if the procurement is to be a phased procurement including the estimated cost thereof; and

(v) A statement as to whether the contractor will be required to comply with detailed specifications, meet performance requirements, perform a mission, or furnish a level of effort.

(2) *Item 2. Name of installation.* Give the name of the installation responsible for the procurement.

(3) *Item 3. Plan prepared by.* Give the name of the individual who prepared the plan.

(4) *Item 4. Date.* Enter the date the plan is prepared.

(5) *Item 5. Responsible technical office.* Identify the office (by title) that will be responsible for technical monitoring of the contract. Include a technical point of contact and telephone number.

(6) *Item 6. Total estimated cost of this procurement.* Provide one figure for the total estimated cost of the proposed procurement, including options. When options are involved, show the cost for each separately on subsequent pages as a breakout from total cost.

(7) *Item 7. Proposed funding by fiscal year and unique project number (UPN).* Identify the funding amounts by appropriation, fiscal year, and UPN for the procurement covered by the plan. When funding is obtained from multiple projects, provide a complete identification of each fund source. Include the following statement: "Obligations may not exceed those authorized in the Headquarters-approved Annual Operating Plan."

(8) *Item 8. Full and open competition.* Check appropriate box to indicate whether full and open competition is provided for or whether other than full and open competition is contemplated.

(9) *Item 9. Type of contract.* State the type of contract recommended for the procurement. On subsequent pages, discuss the contract type and the rationale for its selection. If an incentive contract is proposed, discuss the type or types of incentive considered most suitable for the accomplishment of the procurement objectives.

(10) *Item 10. Contractor-owned and Government-furnished property.* (i) If the proposed contract, exclusive of options, will be for a shorter period than the useful life, for the program, of any required contractor-owned or leased facilities (as defined in FAR 45.301) and the facilities are unlikely to be needed by the contractor for any purpose other than the program effort being contracted for, then the procurement plan shall discuss the feasibility of the Government acquiring the right to use the facilities for longer than the proposed contract period as well as the proposed procurement strategy for

accomplishing this use. The following shall be considered:

(A) If program uncertainties for continuing beyond the contract period of performance are sufficient, it may be in the Government's best interest to acquire use of the facilities during only that time. This strategy may make the facilities more costly to the Government for the contract period than if a contractual arrangement for longer use were made. However, it should reduce the program risks associated with longer Government facilities obligations; and

(B) If it is in the Government's best interests to acquire the right to use the facilities for longer than the proposed contract period in order to take advantage of economies in long-term facilities investment, then the proposed contractor's obligations, the Government's obligations (e.g., contract terms and profit) that will encourage long-term investment, the contract cost strategy for facilities, and funding limitations shall be addressed. There are many alternative long-term investment approaches available for the contracting officer to consider. Some examples of representative strategies include requiring the contractor to—

(1) Enter into a long-term lease of the facilities from a lessor, subject to the lease being canceled if the prime contractor does not continue to perform the requirement throughout the useful life of the facilities (e.g., the contractor is not selected in a subsequent recompetition of the requirement). Using this strategy, the contracting officer should encourage the contractor to seek an option to transfer the lease to a successor contractor;

(2) Purchase the facilities, with depreciation and cost-of-money accelerated for the contract period of performance, at the conclusion of which the Government has a unilateral option to purchase the facilities at the depreciated value (at or near $0) based on the contractor's depreciation schedule. The facilities could then be provided to the successor contractor as Government property (see FAR 30.409–50(e)(5) and 30.409–60(d)); and

(3) Purchase the facilities, with depreciation and cost-of-money over the useful life (determined without regard to program or contract duration; see FAR 30.409–40(b)(1)) of the facilities. At the completion of the contract period of performance, either the Government would purchase the facilities at their depreciated value, or the successor contractor would be required to purchase the facilities, also at their depreciated value, and continue the prior contractor's depreciation approach.

(ii) Indicate, by checking the appropriate box, whether the procurement will require providing any existing, new, or modified Government property. When other Government property is to be provided, identify the items and dollar amounts involved. The dollar amounts provided in Item 10 shall not be included in those specified under Items 6 and 7 unless the property or facilities are part of the procurement. If dollar amounts in Item 10 are included under Items 6 and 7, they should be so annotated under this item on the following pages.

(11) *Item 11. Procurement action schedule.* Indicate the date the procurement plan was submitted to Headquarters for review and approval. For all other entries, provide only the number of calendar days required to complete the action (beginning at the time the previous action was scheduled to be completed) in order to meet the program schedule.

(c) Additional pages. (1) *General.* Additional pages to the plan should include any information required from the Form 1451 items. Include any comments required by paragraph (a) of this section not covered elsewhere and any other information needed to amplify or clarify any item. In addition—

(i) Identify any deviations from the FAR or NFS (A separate request for deviation must be submitted. See 1807.103(b)(2).);

(ii) Identify any special conditions or clauses required;

(iii) Identify all separate approvals required in support of the proposed procurement;

(iv) Include a copy of any comments by legal counsel for the contracting office (or a statement that counsel has no objection to the plan), and describe actions taken in response to them (counsel's concurrence will satisfy this item); and

(v) Discuss consideration given to participation by small business, including minority business enterprises.

(2) *Competition.* Describe how competition will be sought and promoted. If appropriate, discuss how it will be sustained through the course of the acquisition. If full and open competition is not contemplated, cite the authority in FAR 6.202 or 6.302; identify the source(s); and discuss why it cannot be obtained. When effective subcontract competition is both feasible and desirable, describe how such subcontract competition will be sought, promoted, and sustained throughout the course of the competition. Identify any known barriers to increasing subcontract competition and address how to overcome them.

(3) *Relationship to other procurements, relevant data, and studies.* Discuss the relationship of this procurement to any active contracts, including their status of completion. Identify the extent to which their product may affect this procurement. Indicate whether performance under them should be permitted to continue during the competitive phase of this action. Discuss all relevant data and studies, whether obtained under contract or through in-house efforts, and state whether they will be made available to all offerors participating in the competition. If data or studies are available, but it is not planned to make them available to prospective offerors, state why.

1807.170–2 Procurement plans requiring approval at the installation level.

Procurement plans prepared for installation-level approval shall be prepared in accordance with 1807.170–1 or in the format prescribed by the installation.

1807.170–3 Assistance in providing for reliability assurance in procurement plans.

When system hardware costing over $1,000,000 is involved, reliability personnel at the field installation shall assist in procurement-plan preparation with respect to arrangements for reliability monitoring. In the absence of reliability personnel, the field installation shall seek the advice and assistance of the Director, Reliability, Maintainability, and Quality Assurance, NASA Headquarters, Code QR, or a designee in the preparation of procurement plans.

Subpart 1807.2—Planning for the Purchase of Supplies in Economic Quantities

1807.204 Responsibilities of contracting officers.

(a) The contracting officer shall transmit in writing to the cognizant inventory management/requirements office either the actual offeror responses or a summary of their salient points. This does not preclude preliminary oral consultations. The transmittal should be made within five working days after the closing date for receipt of offers; however, in negotiated acquisitions, if a response indicates a significant price variation, it should be transmitted immediately.

(b) All transmittals shall request the recipient to specify promptly whether the acquisition should be amended, cancelled, or concluded as is. Although award or negotiation need not be delayed pending a reply unless a

potential for significant savings is apparent, such delay is encouraged when feasible in negotiated acquisitions in order to accommodate the intent and purpose of review of the data by the inventory management/requirements office. In sealed-bid acquisitions, the policy in FAR 14.404–1(a) applies.

Subpart 1807.3—Contractor Versus Government Performance

1807.303 Determining availability of private commercial sources.

NASA procedures for periodic inventories and reviews of commercial and industrial activities are contained in NMI 7410.3, Delegation of Authority for Acquisition of Commercial or Industrial Products or Services for NASA's Use.

1807.307 Appeals.

NASA appeals procedures are contained in NMI 7410.3.

Subpart 1807.70—Solicitation Provision

1807.7001 Estimate of work.

The contracting officer may insert a provision substantially as stated at 1852.207–70, Estimate of Work, in solicitations if:

(a) Mission suitability is considered more important than cost,

(b) There is no other method to define the amount of work contemplated, and

(c) Use of the provision is approved at least one level above the contracting officer.

Insert the total estimated value of the procurement.

Subpart 1807.71—Master Buy Plan Procedure

1807.7100 Scope of subpart.

This subpart prescribes the Master Buy Plan Procedure, contains requirements for furnishing advance information to NASA Headquarters on proposed procurements that meet the criteria in this subpart, and prescribes procedures for selecting those procurement documents that are to be subject to NASA Headquarters review and approval and those that are to be processed at the installation level. This subpart also prescribes the approval requirements for those documents that are to be processed at the installation level.

1807.7101 Policy.

The Master Buy Plan Procedure is designed to enable management to focus its attention on a representative selection of high-dollar-value and otherwise sensitive procurement actions without compromise of Headquarters visibility of or control over essential management functions.

1807.7102 Applicability.

(a) The Master Buy Plan Procedure applies to each negotiated procurement where dollar value, including the aggregate amount of follow-on procurements (see 1807.103(b)(2)), is expected to equal or exceed that in paragraph (b) of this section, for the installation making the award. In order to conduct the reviews required by FAR 8.307–1(b) for separate contracts, this procedure applies also to procurement of utility services when an areawide contract is not used and either—

(1) The annual cost of the services to be procured is estimated by the using installation, at the time of the initiation of the service or annual renewal of the expenditure, to exceed $150,000; or

(2) Except for communication services, a proposed connection charge, termination liability, or any other facilities charge to be paid (whether or not refundable) is estimated to exceed $75,000.

(b) The following are monetary limitations under the Master Buy Plan procedures:

(1) $10,000,000

(i) John C. Stennis Space Center

(ii) Headquarters Contracts and Grants Division

(iii) Space Station Procurement Office

(iv) NASA Resident Office—JPL

For the purpose of the initial Master Buy Plan submission only, any of the above installations not having any procurements at or above the $10 million limitation shall submit the three largest procurements over $5 million.

(2) $25,000,000

(i) Ames Research Center

(ii) Goddard Space Flight Center

(iii) Johnson Space Center

(iv) Kennedy Space Center

(v) Langley Research Center

(vi) Lewis Research Center

(vii) Marshall Space Flight Center

(c) The monetary limitations in paragraph (b) of this section apply also to the following:

(1) Any supplemental agreement (except one providing only for the addition or deletion of funds for incremental funding purposes) that contains either new work, a debit change order, or a credit change order (or any combination/consolidation thereof), if either the new work or an individual change order or the aggregate of two or more actions equals or exceeds the dollar value in paragraph (b) of this section for the installation making the award.

(2) Any supplemental agreement that contains one or more elements (new work and/or individual change orders) of a sensitive nature that, in the judgment of the installation or Headquarters, warrants Headquarters consideration under the Master Buy Plan Procedure, even though the monetary amount under consideration might not equal or exceed the installation's limitation in paragraph (b) of this section.

(d) The Master Buy Plan Procedure does not apply to termination settlement agreements (see FAR Part 49).

1807.7103 Submission, selection, and notification procedures.

1807.7103–1 Submission of Master Buy Plan.

(a) Prior to July 15th of every year, each installation shall submit to the Assistant Administrator for Procurement (Code HS) a Master Buy Plan (original and eight copies) for the next fiscal year, listing in it every known procurement that

(1) Meets the criteria in 1807.7102,

(2) Is expected to be initiated in that fiscal year, and

(3) Has not been included in a previous Master Buy Plan or amendment to a Master Buy Plan.

The plan shall include any phased procurement whose overall value exceeds the dollar threshold in 1807.7102, even if the value of the initial phase (normally Phase B) is under the threshold.

(b) Plans shall be prepared in accordance with 1807.7107 and shall identify the individual procurement documents involved for every procurement listed. Procurement documents that may require Headquarters approval will be held in abeyance until receipt of the notification required by 1807.7103–3. This is not to preclude the planning for or initiation of such documents up to that point where Headquarters approval may be required.

(c) The fiscal year Master Buy Plan shall list those procurements selected for Headquarters review and approval from prior Master Buy Plans and amendments to Master Buy Plans that have not been completed. These procurements should be listed by the appropriate fiscal year Master Buy Plan; include the individual item numbers and current status of the individual procurement documents previously selected for Headquarters review and approval.

1807.7103-2 Submission of amendments to the Master Buy Plan.

(a) Procurements identified by installations after submission of their Master Buy Plan and meeting one of the criteria in 1807.7102 shall be submitted to Headquarters in accordance with 1807.7107. Such amendments shall be submitted sufficiently in advance of contract award date to allow Headquarters to select those procurement documents that will be subject to Headquarters review and approval without creating an unacceptable delay in contract placement.

(b) When timely submittal is not possible, the installation shall provide with the amendment a narrative explaining the circumstances leading to the late submittal. Master Buy Plan submissions should not be accomplished after the fact. A Master Buy Plan submission for a contract change order expected to meet the criteria in 1807.7102 shall be submitted to Headquarters immediately upon issuance of the change order.

1807.7103-3 Selection and notification procedures.

(a) The Assistant Administrator for Procurement or a designee shall select procurement documents from the Master Buy Plan and amendments to Master Buy Plans to receive Headquarters review and approval and shall designate source selection officials.

(b) When, subsequent to document selection or delegation, a procurement is changed (for example, increase or decrease in dollar amount, change in requirement), cancelled, superseded, deferred, or becomes no longer subject to the Master Buy Plan procedures in accordance with the criteria in 1807.7102, the installation shall immediately notify the Assistant Administrator for Procurement (Code HS), giving the reasons. The Assistant Administrator for Procurement or a designee shall notify the installation's procurement office in writing of any further action that may be required.

1807.7104 Procurement documents selected for Headquarters review and approval.

(a) *General.* The cognizant installation shall ensure that procurement documents selected for Headquarters review and approval under this procedure are submitted in accordance with this subpart.

(b) *Request for Proposals (RFP) review and approval.* Should the RFP be selected for Headquarters review and approval, the installation procurement office shall submit ten copies of the RFP to the Assistant Administrator for Procurement (Code HS), along with the source evaluation board evaluation methodology, including the rationale for selecting the associated evaluation criteria, the expected significant discriminators that should result, and the proposed method to be used in developing the source evaluation board probable cost comparison. Any other significant cost or other factors that are expected to have a bearing on the evaluation should be discussed.

1807.7105 Acquisition strategy meeting (ASM).

(a) As a result of the Master Buy Plan review, a decision to have an ASM at Headquarters may be made. The ASM is a meeting in which all parties from Headquarters and the installation with an interest in the procurement come together to discuss all of its aspects and to resolve any major issues before processing the formal documentation.

(b) The objective of an ASM is to provide sufficient business and programmatic planning as early as is feasible in the acquisition of a product or service. An ASM is conducted as an early planning session to develop an agreed-upon systematic approach to achieve an economical, efficient, and effective acquisition. Recommendations resulting from the ASM are advisory in nature. The ASM shall be scheduled by the Code HS procurement analyst responsible for the procurement. Attendance will be coordinated between the Code HS analyst and the installation's procurement office. It is expected that the following offices will participate:

(1) *Headquarters.* Cognizant program office; procurement; comptroller; safety, reliability, maintainability, and quality assurance; and legal;

(2) *Installation.* Project office, procurement, and other offices as determined by the installation.

(c) The meeting shall normally be chaired by the Director, Program Operations Division (Code HS) or the designee of the Assistant Administrator for Procurement (Code H).

(d) A summary of any decisions, actions, and conclusions as a result of the meeting shall be prepared by the Code HS analyst and be distributed to all participants for information and/or action.

1807.7106 Procurement documents not selected for Headquarters review and approval.

(a) Procurement documents not selected for Headquarters review and approval shall be processed at the installation level. For such procurements, the following documents, to the extent applicable, shall be approved by the head of the installation: procurement plans and prenegotiation positions. If the procurement is subject to the Source Evaluation Board Handbook, the head of the installation shall sign the source evaluation board appointment letter and shall normally be the source selection official.

(b) If the procurement is between $10,000,000 and $25,000,000 and the installation's Master Buy Plan limitation is $10,000,000, the head of the installation shall ordinarily be the source selection official, but may delegate this authority to cognizant management officials. The head of the installation may delegate the authority to approve procurement plans and to sign source evaluation board appointment letters to the installation's deputy or associate director. The head of the installation may redelegate the authority to approve prenegotiation

positions to the level of the Procurement Officer.

(c) Requests for proposals shall be approved as directed by the Procurement Officer, commensurate with the sensitivity or significance of the procurement. Contracts (including supplemental agreements) not selected for Headquarters review and approval under the Master Buy Plan Procedure shall be subject to approval by the Procurement Officer. The signing of those documents by the Procurement Officer, as the contracting officer, constitutes such approval. The approvals required above may not be redelegated.

(d) Procurement documents authorized to be processed at the installation level will be subject to after-the-fact reviews by Headquarters personnel during normal procurement surveys or as the situation may otherwise indicate or through special reviews. Procurement delegations to the field installations may subsequently be rescinded if a Headquarters review is deemed appropriate.

1807.7107 Format of Master Buy Plan.

In accordance with the requirements of 1807.7103-1 and 1807.7103-2, Master Buy Plans and amendments to Master Buy Plans shall be prepared in accordance with the format illustrated in Table 1807-1.

Line Item No.: _____
FY _____
Page No.: _____
Installation: _____
Date: _____

(1) Cognizant Headquarters Office	(2) Descriptive Title of Procurement	(3) Estimated Dollar Value	(4) ASM	(5) JOFOC	(6) Proc Plan	(7) RFP	(8) SEB	(9) Pre-Neg	(10) Contract Review	(11) Current Status	(12) Remarks

Instructions

General

1. Prepare on 8½" x 11" paper.
2. List only *one* procurement on each page and number each page. Sequentially number each procurement action with a two digit "Line Item Number" beginning with "01" for each annual submission and subsequent amendments.
3. For the initial submission only, list procurements and their current status from prior fiscal year(s) Master Buy Plans and amendments to MBPs that have not been completed.
4. Do not reproduce these instructions on the submission.

Supplementary instructions by heading number

(1) Include letter code and Headquarters contact, if known.
(2) Include an "N" to indicate new procurement or "FO" to indicate follow-on procurement.
(3) A range of dollar values may be used, if the exact value is unavailable. Express the range as $10M to $25M, $25M to $50M, and so forth in $25M increments. Include all phases of the procurement.
(4) Installation recommendation ("Y" or "N") that an Acquisition Strategy Meeting be held. (The final decision will be made by Headquarters upon review of the MBP submission).
(5)-(10) Use "X" to indicate applicable documents.
(11) Status should include scheduled date for next event. (Complete horizontally.)
(12) Include data considered pertinent and indicate expected date for placement of contract. If less than full and open competition is involved, indicate the authority being used, identify the firm(s) to which the procurement is being limited, and indicate the current status of the justification document. Include the name and FTS number of the cognizant installation procurement person. (Complete horizontally.)

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Sec.
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1808.1100 Scope of subpart.

Authority: 42 U.S.C. 2473 (c)(1).

1808.002 Use of other Government supply sources.

1808.002-70 Procurement of materials from the surplus, strategic, and critical materials stockpile.

(a) The General Services Administration (GSA) is responsible for disposing of strategic and critical materials in excess of national stockpile requirements. These materials, primarily metals, ores, chemicals, and similar raw material items, are listed and described in a GSA bulletin disseminated periodically to procurement officers.

(b) Before initiating procurements of materials listed as being available from GSA, the contracting office should screen the list to determine whether the requirement can be met through transfer of material from GSA. Due consideration should be given to the quantity, quality, and location of the material and to the timeliness of its availability. Detailed information on excess material is available from GSA, Office of Stockpile Management, Room 5028, 18th and F Streets, NW., Washington, DC 20405.

1808.002-71 Acquisition of helium.

(a) NASA is required by Pub. L. 86-777 (50 U.S.C. 167a et seq.) to obtain its major requirements for helium from the Department of the Interior.

(b) Each contracting office shall obtain its requirements for gaseous helium from the Department of the Interior (Bureau of Mines) or another Government support activity supplying Bureau of Mines helium.

(c) Requirements for (1) liquid helium or (2) gaseous helium of a quality not supplied by the Bureau of Mines may be procured from commercial sources, provided such sources are qualified by the Bureau of Mines and included in the Bureau of Mines publication, "List by Shipping Points of Private Distributors Eligible to Sell Helium to Federal Agencies." Copies of this publication may be obtained from Bureau of Mines, Helium Operation, P.O. Box H4372, Herring Plaza, Amarillo, TX 79101.

(d) The contracting officer shall provide a copy of each contract or purchase order for the supply of helium from commercial sources to the Bureau of Mines, at the address in paragraph (c) of this section.

(e) The clause at 1852.208-83, Acquisition of Helium, specifies requirements for contractors consistent with this subsection.

1808.002-72 Acquisition of radioisotopes.

(a) DOE Form 5400.3, U.S. Department of Energy Isotope Order Blank, and NRC Form 313, U.S. Nuclear Regulatory Commission Application for Material License, shall be used to acquire radioisotopes, as stated on the back of DOE Form 5400.3. No other type of order blank, purchase order, or contract may be used in lieu of these forms.

(b) NRC Form 313 shall be filed with the Chief, Radioisotopes Licensing Branch, Division of Fuel Cycle and Material Safety, United States Nuclear Regulatory Commission, Washington, DC 20555. If the application meets all regulatory requirements and applicable standards, the Radioisotopes Licensing Branch, Nuclear Regulatory Commission, will issue a license to the applicant. After receipt of the license, a completed DOE Form 5400.3 (in duplicate, if the contracting office wants an accepted copy of the form back from the supplier), the license, and a Government bill of lading shall be sent to the appropriate DOE laboratory. If a bill of lading is not furnished, shipment shall be made collect on a commercial bill of lading, to be converted at destination.

(c) The "Terms and Conditions" on DOE Form 5400.3 shall control all requisitions for radioisotopes purchased by NASA from Department of Energy Laboratories.

(d) NRC Form 313 and DOE Form 5400.3 shall be requisitioned directly from United States Nuclear Regulatory Commission, Attn: Radioisotopes Licensing Branch, Division of Fuel Cycle and Material Safety, Washington, DC 20555.

1808.002-73 Acquisition of liquid hydrogen.

(a) To ensure that adequate supplies of liquid hydrogen are readily available to meet current and future program requirements, NASA has established contractual arrangements with various supply sources. These contracts shall be used to the maximum extent practicable in supplying both in-house and contractor requirements for liquid hydrogen.

(b) Requests for liquid hydrogen shall be submitted to the John F. Kennedy Space Center, National Aeronautics and Space Administration, Kennedy Space Center, FL 32899, Attn: Director of Center Operations.

1808.002-74 Acquisition of propellants.

(a) *General.* The Department of the Air Force has assigned the operational authority and responsibility for acquiring and distributing missile propellants and related items to the San Antonio Air Logistics Center (SA-ALC), Kelly Air Force Base, Texas. Propellants (i.e., oxidizers and fuels), pressurants, and related materials are financed under a single Air Force appropriation designated the Missile Procurement Fund (MPF). Supplies are obtained by SA-ALC from Government-owned, contractor-operated plants and by consolidated acquisitions from industry. NASA and its contractors (when

materials are Government-furnished) may acquire from SA-ALC the items listed in paragraph (j) of this section (except for liquid hydrogen; see 1808.002-73) on a reimbursable basis. The Air Force MPF shall be utilized as a supply source for propellants whenever there are economic or other advantages to the Government. Field installations and offices obtaining supplies from the MPF shall comply with the reporting requirements of paragraph (f) of this section.

(b) *Requests for acquisition.* To obtain the materials listed in paragraph (j) of this section from the Air Force MPF, NASA contracting offices will execute a NASA-Defense Purchase Request (NASA Form 523) (see 1853.303-523) and forward it to Headquarters, SA-ALC, Kelly Air Force Base, TX 78241, Attention: SFS. The following additional information should be provided on the form:

(1) Contract number (when material is required for use by a NASA contractor).

(2) Delivery address.

(3) Mode of transportation (rail, trailer, barge, etc). When the procurement request covers requirements for materials not previously forecasted or covers significant changes to previously reported requirements, SA-ALC should be notified immediately of such requirements.

(c) *Delivery requests.* (1) A delivery request is a call on the Air Force, made against a NASA-Defense Purchase Request (NASA Form 523), specifying the time and place of delivery. On the basis of the estimated requirements, the Air Force will notify NASA field installations and contractors of the name and address of the Air Force office or producing contractor's plant to which requests for delivery of materials shall be made. Delivery requests may be placed by any means of communication that time justifies; however, all verbal requests for delivery must be confirmed in writing within 24 hours. The delivery request, whether oral or written, must cite the NASA-Defense Purchase Request number under which the material is being ordered and contain the following information:

(i) Nomenclature and National Stock Number.

(ii) Quantity.

(iii) Program, project, and task.

(iv) Contract number (when material is required for use by a NASA contractor).

(v) Delivery address.

(vi) Dates of delivery.

(vii) Mode of transportation.

(viii) Location of weighing stations and scales (if weighing of the products before delivery is required).

(2) Each delivery request shall be numbered as follows to simplify identification and control: the last two digits of the calendar year; a dash; and a consecutive number beginning with 1 to run throughout the year (e.g., 89-5, for the fifth request made in 1989). Changes to a request are identified by adding an alphabetical designator beginning with (A) to the number. This system is not intended to replace or to interfere with existing NASA purchase order numbering or internal budget or accounting numbering procedures.

(d) *Receiving procedures*—(1) *Receiving documents.* Receipt of materials shall be evidenced on the receiving document received with the shipment by the signature of an individual authorized by NASA to receive materials from the Air Force. Every effort should be made to ensure that the NASA-Defense Purchase Request number is recorded on the receiving document before signing.

(2) *Weighing facilities.* Local weighing facilities (NASA-owned, contractor-owned, commercial, or State-operated) may be used to determine quantities of product received. If a discrepancy exists between the quantities shown on receiving documents and the quantities actually received—

(i) A certified weighing ticket evidencing actual (weight at destination shall be obtained; and)

(ii) A copy of the receiving document (AF Form 857 or DD Form 250) and the original weighing ticket shall be forwarded to Headquarters, SA-ALC, Kelly Air Force Base, TX 78241, Attention: ACFOM, identifying the discrepancy.

(3) *Distribution of receipts.* Copies of all receiving documents except the AF Form 857 shall be transmitted to the Headquarters, SA-ALC, Kelly Air Force Base, TX 78241, Attention: SACAOM. Receiving documents may be accumulated and submitted on the 10th, 20th, and last day of each month.

(e) *Billing.* The costs of materials obtained through the MPF are reimbursable. After delivery, a Standard Form 1080 (Voucher for Transfers Between Appropriations and/or Funds (Disbursement)), supported by documentary evidence of delivery, will be submitted by Headquarters, SA-ALC to the NASA installation designated in the NASA Form 523.

(f) *Reporting requirements.* (1) Field installations shall submit periodic estimates of requirements for materials listed in paragraph (j) of this section for all programs under their cognizance, including in-house contractor requirements. Headquarters Program Offices shall submit periodic estimates of requirements for any existing or potential programs that may not be known to or under the cognizance of a field installation. Reports shall be submitted in duplicate on AF Form 858, Forecast of Propellant Requirements.

(2) The reports shall be forwarded so as to reach Headquarters, SA-ALC, Kelly AFB, TX 78241, Attn: SFS, no later than June 1 and December 1. Supplemental reports advising of additions to or significant changes in previous reports may be submitted at any time. The reports, covering all materials listed in paragraph (j) of this section, due in June and December, shall begin with requirements as of the following July 1 and January 1, respectively, and shall cover a 3-year period. Requirements shall be shown by month for the first 6 months, and by quarters for the remaining 2½-year period.

(3) Estimated requirements and other pertinent data required from contractors shall be obtained on Air Force Form 858.

(g) *Report content.* Reports shall be made using a separate report form for each material and shall provide, for each item of material, the—

(1) Contract number;

(2) Program and/or project;

(3) Specific task within the project;

(4) End use when not associated with the named program or project;

(5) Contractor's name;

(6) Specific location of use (shipping destination); and

(7) Planned source of supply.

(h) *Basis for developing materials requirements.* In computing requirements, consideration shall be given to such elements as lead time, waste factors, transfer, and storage losses so that phased requirements reflect the total gross quantities required to be delivered to the use or storage site. Since the requirements estimates are being used by other Government agencies acting as supply sources to contract for materials, estimates must be as accurate as possible.

(i) *NASA coordination.* The Kennedy Space Center shall coordinate the review of all data and establish NASA policy and procedures. The data shall be used as the basis for NASA requirements reports to various Government agencies for planning and supply support.

(j) *Table of reportable materials.*

Ammonia, Technical (Anhydrous) (Low Oil Content) 99.97 percent purity, Spec 0-A-445

Argon Gas, 6000 PSI, AFPID 6830-5

Propellant, Ammonia, Liquid, Anhydrous 99.5 percent purity, Spec MIL-P-27406
Propellant, Chlorine Trifluoride, Spec MIL-P-81399
Propellant, Deuterium, Gaseous, AFPID 9135-20
Propellant, Fluorine, Gaseous, Spec MIL-P-27405
Propellant, Fluorine, Liquid, Spec MIL-P-27405
Helium, Technical Grade A, Spec BB-H-1168
Propellant, Isopropyl Alcohol, AFPID 9135-18
Propellant, Hydrazine, Standard Grade, Spec MIL-P-26536
Propellant, Hydrazine, Monopropellant Grade, Spec MIL-P-26536
Propellant, Hydrazine/Unsymmetrical Dimethylhydrazine, Spec MIL-P-27402
Propellant, Hydrogen, Gaseous, Type I, Spec MIL-P-27201
Propellant, Hydrogen, Liquid, Type II, Spec MIL-P-27201
Propellant, Hydrogen Peroxide, Spec MIL-P-16005
Propellant, Hydrogen Peroxide, Electrolytic Process, Spec MIL-P16005
Propellant, Jet Fuel, Grade RJ-1, Spec MIL-F-25558
Propellant, JPX, 50% UDMH-50% JP-4, Spec MIL-P-26694
Propellant, JPX, 17% UDMH-83% JP-4, Spec MIL-P-26694
Propellant, Kerosene, Grade RP-1, Spec MIL-P-25576
Propellant, Monomethyl Hydrazine, Spec MIL-P-27404
Propellant, Neon, Liquid, AFPID 9135-16
Propellant, Nitric Acid, Type IIIB, Spec MIL-P-7254
Propellant, Nitric Acid, Type III LS, Spec MIL-P-7254
Propellant, Nitric Acid, Type IV (High Density Acid), Spec MILP-7254
Propellant, Nitrogen Tetroxide (NTO) (MON-1) (MON-3), Spec MIL-P-26539
Propellant, Nitrogen Tetroxide (NTO), MIL-P-26539
Propellant, Nitrogen Tetroxide (MON-1), Spec MIL-P-26539
Propellant, Nitrogen Tetroxide (MON-3), Spec MIL-P-26539
Propellant, Oxygen, Grade B, Spec MIL-P-25508
Propellant, Oxygen, Grade A, Spec MIL-P-25508
Propellant, Oxygen, Grade F, Spec MIL-P-25508
Propellant Pressurizing Agent, Helium, Spec MIL-P-27407, 99.995 pct min assay
Propellant Pressurizing Agent, Nitrogen, Type II, Liquid Grade C, Spec MIL-P-27401
Propellant Pressurizing Agent, Nitrogen, Type I, Gaseous Grade A, Spec MIL-P-27401
Propellant Pressurizing Agent, Nitrogen, Type I, Grade B, Spec MIL-P-27401
Propellant Pressurizing Agent, Nitrogen, Type II, Grade A, Spec MIL-P-27401
Propellant Pressurizing Agent, Nitrogen, Type II, Grade B, Spec MIL-P-27401
Propellant, Unsymmetrical Dimethylhydrazine, Spec MIL-P-25604
Propellant, Nitrogen Trifluoride Spec MIL-P-87896
Propellant Pressurizing Agent, Argon, Liquid, AFPID 9135-19

1808.002-75 Acquisition of mercury.

(a) NASA is prohibited from purchasing mercury in quantities of 76 pounds or more from commercial sources without prior clearance from GSA.

(b) Mercury, minimum 99.9 percent pure (not triple distilled), in 76-pound flasks, is available for transfer from GSA stocks at fair market value.

(1) Requests for mercury by NASA installations for their use or for use by their cost-reimbursement type contractors shall be made to the Project Manager, Mineral and Ores, Property Management and Disposal Services, GSA, Washington, DC 20405. The Project Manager will furnish the current fair market value to NASA. The unit of issue is a 76-pound flask.

(2) Requests for clearance to purchase quantities of 76 pounds or more from sources other than GSA shall be submitted to the office in subparagraph (b)(1) of this section and must be accompanied by a statement of reasons why the available excess mercury is unsuitable for use by the requesting field installation.

1808.002-76 Contract clause.

The contracting officer shall insert the clause at 1852.208-83 in all solicitations and contracts requiring the procurement of helium.

Subpart 1808.1—Excess Personal Property

1808.103 Information on available excess personal property.

In addition to the sources identified in FAR 8.103, information on availability of NASA excess property is maintained by the Installation Property Disposal Officer and the NASA Equipment Management System (NEMS) Coordinator.

Subpart 1808.3—Acquisition of Utility Services

1808.301 Definitions.

"Multiple-service locations," as used in this subpart, means the various locations or delivery points in a contractor's service area to which services are provided under a single contract.

"Utility suppliers," as used in this subpart, may be quasi-public service corporations, private concerns, municipalities, associations, or cooperatives. They generally operate in a franchised territory without competition, so they may frequently be in a sole-source position. Under common law, public utilities must render service at reasonable rates and without discrimination. Their operations, management, rates, and profits are usually regulated by Federal, State, or local regulatory bodies, but absence of a regulatory body does not necessarily mean a complete lack of control. Administrative remedies pursuant to enabling statutes may be pursued or complaints may be taken to a court of competent jurisdiction.

1808.303 General.

(a) Requirements for utility services shall be determined by technically qualified personnel who will assist the contracting officer as required. Before soliciting technical assistance outside the agency (see FAR 8.303(b)), technical personnel shall contact the Facilities Division (Code NX), NASA Headquarters.

(b) Appropriated funds may not be used to purchase electricity in a manner inconsistent with state law governing the provision of electric utility service, including state utility commission rulings and electric utility franchises or service territories established pursuant to state statute, state regulation, or state-approved territorial agreements (Pub. L. 100-202, Sec. 8093, 101 Stat. 1329-79). Before acquiring electric utility service, the contracting officer shall determine whether the manner of acquisition, in particular, competitive acquisition under FAR 8.304-5(d), would be inconsistent with state law. Section 8093 of Pub. L. 100-202 is not intended to affect transfers of electricity to agencies from Federal power marketing agencies or the Tennessee Valley Authority, such as NASA's power allocation from the Western Area Power Marketing Administration. Such transfers do not constitute "purchases" for purposes of section 8093.

1808.304 Acquiring utility services.

1808.304-2 GSA areawide contracts.

(a) GSA publishes a checklist of utility services available under its areawide public utility contracts. The checklist specifies contract numbers, expiration dates, companies, and areas served. Copies of the checklist may be obtained from GSA, Public Utility Services Division, Washington, DC 20405 (FTS 566-0901).

(b) In determining whether a GSA areawide public utility contract is adequate to meet requirements, procurement offices should consider:

(1) The areawide contract rates and volume of service required,

(2) Any unusual characteristics of the service required,

(3) Any special equipment or facility requirements,

(4) Any special technical contract provisions required, and

(5) Any other special circumstances.

(c) If a procurement officer finds that a separately negotiated contract would be more advantageous to the Government than the GSA areawide public utility contract, the procurement officer shall submit a request to the Assistant Administrator for Procurement, NASA Headquarters (Code HS), for a waiver of the requirement to use the GSA areawide public utility contract. The request shall explain the merit of a separately negotiated contract.

1808.304-4 Consolidated purchase, joint use, or cross-service.

(a) The Department of Defense (DOD) enters into areawide fuel oil and other energy-service contracts. DOD areawide contracts provide that the contractor shall, upon receipt of an order in the form prescribed by the contract, furnish the service involved without further negotiations as to rates and charges, in accordance with the established and filed rate schedules applicable to the service.

(b) When procuring utility services from another Government agency by cross-servicing, the procurement office shall use a memorandum of understanding specifying the services to be provided and the conditions under which they will be supplied. A Utility Service Narrative shall be submitted in accordance with 1808.307-70.

1808.304-5 Agency acquisition.

1808.304-570 Renewal of contracts.

(a) A contract may be renewed or extended by option, provided that the contract is not in effect for more than a total of 5 successive years.

(b) Contracting officers shall consider selecting an expiration date for the contract sufficiently after the end of the fiscal year to ensure that appropriations will be available when the option is exercised.

1808.304-571 Headquarters requirement for copies of contracts.

The contracting officer shall forward, promptly after execution, one copy of each contract, service authorization form, memorandum of understanding, and modification to the Assistant Administrator for Procurement, NASA Headquarters (Code HS) and to the Facilities Division, NASA Headquarters (Code NX).

1808.304-572 Contents of a negotiated utility service contract.

(a) All negotiated utility service contracts estimated to exceed $2,500 annually shall be written in accordance with the directions in subparagraphs (a)(1) through (5) of this section:

(1) SF 26. Use Standard Form 26 (see FAR 53.215-1(b)).

(2) Appendix A. (i) Include the rate schedule, which shall consist of—

(A) The published rate schedule of the contractor approved or established by a Federal, State, or other regulatory body; or

(B) The rate schedule negotiated between the contractor and the Government.

(ii) The rate schedule shall bear the legend "Appendix A, attached to and made a part of Contract No. _____," and be entitled "Rate Schedule." Each page shall indicate its number and the total number of pages comprising Appendix A, as, for example, "page 1 of 3." In addition to stating the rate applicable to the contract, Appendix A shall include any applicable rules or regulations (whether established by the regulatory body, the contractor, or negotiation between the contractor and the Government) pertaining to the Rate Schedule. Appendix A may provide for payment to the contractor of a nonrecurring, nonrefundable fee not exceeding $1,000 for the costs of connecting the contractor's facilities to, and disconnecting them from, the Government's facilities, if the contract period is less than 6 months. In all instances where a connection charge, other than the fee described above, is involved, the "Connection Charge" clause (1852.208-77) and Appendix C (see subparagraph (a)(4) of this section) shall be included in the contract.

(3) Appendix B. Include the service specifications applicable to the contract, which shall consist of a specially drafted attachment to the contract bearing the legend "Appendix B, attached to and made a part of Contract No. _____," and the title of the appropriate service specifications. Each page shall indicate its number and the total number of pages comprising Appendix B, as, for example, "page 1 of 3." Such appendix shall contain as a minimum—

(i) The premises to be served;

(ii) An estimate of the service requirements;

(iii) The point of delivery to the Government;

(iv) A description of the service;

(v) A statement of how the service is to be measured for purposes of billing; and

(vi) A statement of the capacity and flow of the service.

(4) Appendix C. Include the connection charge schedule required whenever the contract includes the connection charge clause at 1852.208-77 or the termination charge clause at 1852.208-78. It shall bear the legend "Appendix C, attached to and made a part of Contract No. _____," and be entitled "Connection Charge Schedule." Each page shall indicate its number and the total number of pages comprising Appendix C, as, for example, "page 1 of 3." The appendix shall contain as a minimum—

(i) A detailed description of the new facilities to be furnished by the contractor; and

(ii) The agreed salvage value of these facilities.

(5) Include any contract clauses required by FAR 8.309 or 1808.309.

(b) Any negotiated utility service contract estimated not to exceed $2,500 annually shall consist of—

(1) Standard Form 26 (FAR 53.215-1(b));

(2) An Appendix A (see subparagraph (a)(2) of this section); and

(3) Any contract clauses required by FAR 8.309 or section 1808.309 of this Regulation.

1808.305 Rate increases.

(a) When the contractor notifies the contracting officer as provided in the Public Regulation and Change of Rates clause at 1852.208-71, or whenever the contractor requests that rate changes be negotiated, as provided in the Change in Rates clause at 1852.208-76, the contracting officer shall notify the Assistant Administrator for Procurement, NASA Headquarters (Code HS) and the Facilities Division, NASA Headquarters (Code NX). The notification shall include sufficient information to permit a determination of the monetary effect of the proposed changes, a recommendation under subparagraph (a) (1) or (2) of this section, and the basisfor the recommendation.

(1) When notice is received that the contractor has filed an application for rate changes before the local regulatory body, the contracting officer shall recommend whether or not the Government should intervene at the hearing on the application. If it is recommended that the Government intervene, the recommendation shall be accompanied by a statement containing the basis for intervention and the extent to which the installation can support intervention by presenting testimony, preparing exhibits, and furnishing legal counsel.

(2) When notice is received that the contractor requests that rate changes be negotiated, the contracting officer shall

recommend the position to be taken by the Government regarding the rate changes and state the extent to which installation personnel are available to support this position.

(b) The Assistant Administrator for Procurement, NASA Headquarters, with the technical assistance of the Facilities Division, NASA Headquarters, shall furnish the contracting officer a recommendation concerning the proposed rate changes and the extent to which NASA Headquarters will participate in the intervention before the local regulatory body or in negotiations with the contractor. Before recommending any action, the Assistant Administrator for Procurement, NASA Headquarters shall, as necessary, coordinate with other staff offices or divisions, or other Government agencies. The contracting officer shall await the instructions of the Assistant Administrator for Procurement, NASA Headquarters, for at least 30 calendar days before submitting the matter to GSA (see FAR 8.305(b)) or taking other action concerning the proposed rate changes.

1808.307 Precontract acquisition reviews.

1808.307-70 Utility service narrative.

(a) When required by FAR 8.307-1(b), and before initiating negotiations, the contracting officer shall submit a Utility Service Narrative for proposed procurements for new utilities services, renegotiations or extensions of existing utility services, or existing contracts that require a negotiation for change of rate schedules, to the Assistant Administrator for Procurement (Code HS), NASA Headquarters. The Utility Service Narrative shall include—

(1) A brief technical description of the service required or being furnished;

(2) Justification of the reasonableness of the proposed rate;

(3) An outline of the field installation's proposed negotiation tactics, basis for position, and any alternative position;

(4) An estimate of the annual cost of service; and

(5) Other related items, as applicable, such as connection charges, termination liability, facilities charges, requirement for Government capital costs, or any unusual factors affecting the procurement.

(b) The Assistant Administrator for Procurement (Code HS), with the coordination of the Facilities Engineering Division (Code NX), will review the information submitted under paragraph (a) of this section. If NASA Headquarters desires to participate in the negotiations, the Assistant Administrator for Procurement (Code HS), NASA Headquarters, shall inform the contracting officer within 30 days after receipt of the Utility Service Narrative.

1808.307-71 Contracts requiring Headquarters approval.

Contracts and supplemental agreements for utility services shall be submitted to the Assistant Administrator for Procurement, NASA Headquarters (Code HS), for approval as required by 1804.7205 and 1807.71.

1808.309 Contract clauses.

As prescribed below, the contracting officer shall insert the following clauses in solicitations and negotiated contracts for utility services. These clauses supplement those prescribed elsewhere in the FAR or this Regulation:

(a) Insert the clause at 1852.208-70, Rates.

(b) Insert the clause at 1852.208-71, Public Regulation and Change of Rates, except that the clause at 1852.208-76, Change in Rates, shall be used if—

(1) The rates applicable to the service furnished under the contract are negotiated between the contractor and the Government without the approval of any Federal, State, or local regulatory agency;

(2) The service to be furnished under the contract is otherwise not subject to regulation by any Federal, State, or local regulatory agency; or

(3) The contractor also acts as the local public regulatory agency and its decisions are not subject to review by a higher regulatory agency.

(c) Insert the clause at 1852.208-72, Change in Class of Service, in solicitations and negotiated contracts estimated to exceed $2,500.

(d) Insert the clause at 1852.208-73, Contractor's Facilities, in solicitations and negotiated contracts estimated to exceed $2,500. Insert the clause at 1852.208-80, Contractor's Facilities (Short Form), when the estimated annual cost is $2,500 or less.

(e) Insert the clause at 1852.208-74, Technical Provisions, in solicitations and negotiated contracts estimated to exceed $2,500.

(f) Insert the clause at 1852.208-75, Renewal of Contract, whenever it is desirable that the utility service be provided under the same terms and conditions for more than 1 year (see 1808.304-570).

(g) Insert the clause at 1852.208-77, Connection Charge, when (1) a connection charge is to be paid by the Government and (2) the conditions permitting the incorporation of a nonrecurring, nonrefundable fee in Appendix A, the rate schedule applicable to the contract, do not exist. Also attach Appendix C (see 1808.304-572(a)(4)).

(h) Insert the clause at 1852.208-78, Termination Charge, when payment is to be made to the contractor upon termination of service in lieu of a connection charge upon completion of the facilities. Use of this clause is subject to Master Buy Plan approval requirements (see 1807.71). Also attach Appendix C.

(i) Insert the clause at 1852.208-79, Multiple Service Locations, when it is desired to provide for one or more possible alternative service locations.

Subpart 1808.4—Ordering From Federal Supply Schedules

1808.404 Using schedules.

1808.404-3 Requests for waivers.

(a) The head of the NASA office initiating the procurement request or a designated representative shall furnish the NASA contracting office a signed statement identifying the supplies or services to be purchased and explaining why similar items listed in the applicable schedule will not meet the requirement.

(b) If a waiver is not granted, the case shall be referred to the Assistant Administrator for Procurement for a final decision as to whether the non-schedule item will be purchased. The Assistant Administrator for Procurement shall promptly notify the Commissioner, Federal Supply Service, GSA, and the contracting office of the decision.

1808.405 Ordering office responsibilities.

1808.405-1 Ordering from multiple-award schedules.

(a) If NASA can buy from a schedule contractor for substantially less than the schedule price, the procurement shall be accomplished at the better price. A copy of the order shall be forwarded to GSA in accordance with FAR 8.405-1(d).

(b) The following factors shall be considered when deciding to buy a higher-priced item:

(1) Does its longer useful life justify the higher price?

(2) Do warranties justify the higher price?

(3) Does the availability or cost of maintenance justify the difference in price?

1808.405-2 Order placement.

Delivery orders shall be issued on Optional Form 347 or an installation-prescribed form as specified in FAR 8.405-2.

Subpart 1808.6—Acquisition From Federal Prison Industries, Inc.

1808.605 Clearances.

(a) NASA purchase orders or contracts written pursuant to a general or blanket clearance need not be supported by a copy of the clearance, but the clearance number must be cited on the purchase order or contract as well as on the initial voucher.

(b) If a formal clearance has been requested, the contracting officer may not consummate the purchase before the formal clearance is issued. A copy of the clearance certificate must be attached to the initial voucher.

(c) When disputes under FAR 8.605(c) occur, the contracting officer shall refer the matter to the Assistant Administrator for Procurement (Code HP) for review and any further action. Such referrals shall include a complete statement of the attempts made to resolve the matter.

Subpart 1808.7—Acquisition From the Blind and Other Severely Handicapped

1808.705 Procedures.

1808.705-1 General.

(a) When supplies require overseas packaging or packing or are required in carload lots, as described in the Consolidated Freight Classification for the commodity concerned, procurement shall follow the procedure in FAR 8.705-3(b).

(b) The Federal Standard Requisitioning and Issue Procedure (Federal Property Management Regulation, Subpart 101-26.2) shall be used to obtain workshop-produced supplies from GSA supply distribution facilities.

Subpart 1808.8—Acquisition of Printing and Related Supplies

1808.802 Policy.

Approval of printing supplies or services in contracts shall be in accordance with NMI 1490.1, NASA Printing Management Program.

1808.870 Contract clause.

The contracting officer shall insert the clause at 1852.208-81, Printing and Duplicating, in solicitations and contracts where there is any requirement for significant printing and/or reproduction. Printing in excess of that described in paragraph (c) of the clause constitutes significant printing and/or reproduction.

Subpart 1808.11—Leasing of Motor Vehicles

1808.1100 Scope of subpart.

NASA procedures for leasing motor vehicles from GSA or commercial sources are contained in NMI 6720.1, NASA Motor Vehicle Management.

PART 1809—CONTRACTOR QUALIFICATIONS

Subpart 1809.1—Responsible Prospective Contractors

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Subpart 1809.6—Contractor Team Arrangements

1809.670 Contract clause.

Authority: 42 U.S.C. 2473 (c)(1).

Subpart 1809.1—Responsible Prospective Contractors

1809.102 Applicability.

1809.102-70 Procurements from Canadian sources of supply.

(a) Awards to Canadian sources of supply are subject to FAR Subpart 9.1. A Canadian firm proposed by the Canadian Commercial Corporation (CCC) as its subcontractor generally shall be accepted as responsible by the contracting officer under the provisions of FAR 9.104-4(a). When the firm proposed by CCC is so accepted, preaward survey forms need not be completed.

(b) The contracting officer, when the CCC proposal is not consistent with other available information, shall request from CCC and any other appropriate sources additional information or plant surveys needed in order to make the determination of responsibility required by FAR 9.103(b). The additional data may be requested on the preaward survey forms or on any other forms. Upon request, CCC shall be furnished the reasons for the rejection of its proposed firm.

1809.106 Preaward surveys.

1809.106-1 Conditions for preaward surveys.

In addition to the circumstances enumerated in FAR 9.106-1(a), preaward surveys normally are not required when—

(a) The contract is for study or research only;

(b) The data necessary for a responsibility determination are available from other sources;

(c) The pending contract will be a definitive contract superseding a letter contract;

(d) An order is placed under an existing contract; or

(e) The source has been recommended by a NASA Source Evaluation Board.

1809.106-70 NASA Preaward surveys.

(a) *Preaward survey procedures.* Preaward surveys shall be conducted in compliance with FAR Subpart 9.1 and this subsection 1809.106-70.

(b) *General.* Paragraphs (c) through (k) of this section establish detailed procedures for conducting preaward surveys, including preaward surveys conducted by NASA, those conducted by another agency for NASA, and those jointly conducted.

(c) *Definitions.*

"Monitor," as used in this subsection, means the person designated to administer the preaward survey in

accordance with subparagraph (f)(2) of this section.

"Preaward survey review board" means a board established to review and approve or disapprove preaward survey reports.

"Team coordinator," as used in this subsection, means the person designated by the monitor to coordinate the on-site survey, arrange for plant visits, and conduct team conferences as necessary before, during, and after the plant visit.

(d) *Procedure for requesting preaward survey.* (1) A preaward survey shall be requested on Standard Form 1403, Preaward Survey of Prospective Contractor (General). The requestor shall indicate in section III of the SF 1403 the scope of the survey desired. Factors requiring emphasis not enumerated in section III should be listed under block 20.G. of that section. The "Walsh-Healey Public Contracts Act" block of section I is for information purposes only. If information is needed for a determination on the offeror's eligibility under the Walsh-Healey Act, it must be specifically requested in block 20.G. of section III. A survey may be requested by telegraphic communication containing the data required by Sections I, II, and III of SF 1403. A survey may be requested by telephone but shall be immediately confirmed on SF 1403. Unless previously furnished, a copy of the solicitation and such drawings and specifications as the contracting office deems necessary shall be supplied with the preaward survey request.

(2) Any information indicating previous unsatisfactory contract performance shall be furnished the survey activity with the preaward survey request, unless it is known that the survey activity already has this information.

(3) The request for preaward survey shall be forwarded in an original and three copies to the responsible survey activity. If the survey activity is a DOD agency, the request is to be sent to the appropriate office shown in the DOD Directory of Contract Administration Services Components, DOD 4105.59-H, Attn: Preaward Survey Monitor. The date on which the completed survey report is desired should be indicated; DOD normally allows seven working days in which to conduct a full survey and submit the report to the requesting agency.

(e) *Scope of survey.* (1) A complete survey encompasses:

(i) Investigation, to the extent applicable to the proposed contract, of the factors listed in section III of SF 1403, together with other requirements of special inquiry as requested by the contracting officer, and

(ii) Submission of appropriate findings.

(2) A partial survey encompasses:

(i) Investigation of those factors referenced in subparagraph (e)(1) of this section that are specifically requested by the contracting officer and any other factors considered advisable by the activity conducting the survey, and

(ii) Submission of appropriate findings.

(3) The activity conducting the survey may execute and transmit to the contracting officer a short-form preaward survey report when sufficient current favorable information is available to recommend award without a formal survey. The SF 1403 will be used as the survey report in accordance with procedures outlined in subparagraph (f)(1)(iv) of this section. If the contracting officer needs additional information on contractor capability, the activity conducting the survey may be so advised, and a detailed survey report shall be provided.

(f) *Contracting office procedure*—(1) *General.* (i) Preaward surveys shall normally be conducted within seven working days after receipt of the request and in the detail requested by the contracting officer. In unusual situations, reports of surveys may be requested in a shorter time if the situation so warrants. Qualified specialists responsible for the factors referenced in subparagraph (e)(1) of this section shall participate as required.

(ii) Representatives of the contracting office and other activities shall participate in preaward surveys when requested by the contracting officer or as desired by the contracting office.

(iii) If the preaward survey cannot be accomplished within the time allowed, the contracting officer shall be so notified. If the date is not extended, the preaward survey monitor shall supply a definite recommendation by the date required, based on the material at hand or developed by that time. The basis for the recommendation and the factors for which no data or only partial data could be obtained shall be indicated.

(iv) When the activity conducting the survey possesses sufficient current favorable information about an offeror to recommend award without performing a formal survey, a short-form preaward report consisting solely of SF 1403 may be executed and forwarded to the contracting officer unless the contracting officer has requested additional information (see paragraph (e) of this section). Sections III and IV of the SF 1403 shall be completed and the following statement shall be stamped in block 23, the "Remarks" portion of section III: SHORT-FORM PREAWARD REPORT. Pursuant to 1809.106-70(e)(3), complete award is recommended.

(2) *Designation of preaward survey monitor.* An individual within each procurement office performing preaward surveys shall be designated as the preaward survey monitor. The monitor shall administer the preaward survey from the receipt of the request through the issuance of the final report to ensure appropriate coverage and maximum efficiency. The monitor shall take the actions listed in subdivisions (f)(2) (i) through (xiii) of this section:

(i) Receive all incoming preaward survey requests.

(ii) Ascertain whether the prospective contractor is included on the List of Parties Excluded from Federal Procurement or Nonprocurement Programs for any reason, including those attributable to equal employment opportunity practices. (If the prospective contractor is listed, the contracting officer shall be promptly advised and the preaward survey shall not be completed, unless specifically requested by the contracting officer.)

(iii) Compare the survey request with the requirements of the solicitation.

(iv) Determine the need for an on-site survey after reviewing the type and quantity of items or services involved, previous experience with the firm, the technical and schedule requirements, and the extent of other information currently available. If an on-site survey has been requested and sufficient information is already available in the contracting or other offices (e.g., DOD contract administration office), the monitor shall ask the contracting officer whether an on-site survey must nevertheless be conducted, and for the specific elements to be covered.

(v) Determine and advise the organizational segments of the installation (e.g., engineering, production, reliability and quality assurance, and contract administration) that will furnish team members.

(vi) Provide team members—

(A) The date on which the information is required from each organizational segment;

(B) Identification of the portion of the survey for which each organizational segment is responsible;

(C) Information on whether an on-site survey of the prospective contractor's facility is contemplated (this is subject to later modification on the basis of information supplied by team members);

(D) Any special terms and conditions noted in the solicitation; and

(E) Any other information or guidance the particular request may require.

(vii) After discussion with appropriate organizational segments, designate the team coordinator.

(viii) Arrange for required audit and other external assistance. For example, when award depends upon the contractor's having an adequate cost accounting system for proper postaward administration of the contract, the cognizant audit agency shall be responsible for the system review, evaluation, and conclusive recommendation (SF 1408 is provided for this purpose).

(ix) Coordinate any participation where the preaward survey is being performed for another NASA installation.

(x) Receive reports of the individual team members and review them for completeness and adequate substantiation.

(xi) Resolve questions regarding technical details with responsible specialists.

(xii) Report those applicable procedures of the prospective contractor that have been reviewed by Government personnel (e.g., procurement system, estimating system, accounting system, control of Government property, and quality program).

(xiii) Assemble all necessary survey data into a report, including a recommendation as to award, and submit it to the chairperson of the preaward survey review board.

(3) *Designation and responsibilities of team coordinator and members.* (i) When an on-site survey by a team is necessary, members should include specialists qualified to evaluate all appropriate phases of the firm's capabilities. The team coordinator shall arrange for the team's visit to the site, direct the team's efforts, and conduct team conferences for the purposes listed in subdivisions (f)(3)(i) (A) through (C) of this section:

(A) Arriving at uniform interpretations before holding discussions with the prospective contractor's management.

(B) Briefing team members on their interviews and discussions with officials of the firm before making the on-site survey. Members shall not refer to or comment on the possibility that award will or will not be made to the prospective contractor. This does not preclude discussion with a prospective contractor of questionable areas that in the opinion of the team member require clarification. Information obtained during the survey will be treated in strict confidence and divulged only to those Government representatives having a need to know.

(C) Arranging for discussions among members during and after the on-site survey to ensure that evaluations by individual specialists are integrated, coordinated, and complete.

(ii) When an on-site survey is required for only one aspect of the prospective contractor's capability, a qualified specialist shall be designated to conduct the on-site portion of the survey. One specialist may be designated to investigate more than one aspect when it is within the specialist's capability.

(4) *Preaward survey review board.* (i) A preaward survey review board shall be formally established to review and approve survey reports before they are transmitted to the contracting officer.

(ii) The board shall be composed of senior specialists representing each of the major functions normally associated with preaward surveys, one of whom shall be designated chairperson. Flexibility of membership shall be provided by designating alternates and by establishing the criteria or conditions governing the need for occasional special technical representation. Membership on the board shall be in addition to the members' regular duties.

(g) *Steps for survey performance.* The three steps in performing a preaward survey are the—

(1) Preliminary analysis;

(2) Development and evaluation of information; and

(3) Preparation and review of the preaward survey report.

(h) *Preliminary analysis.* The request (SF 1403, sections I, II, and III) shall be reviewed to establish basic administrative information and the factors to be investigated. The solicitation shall then be reviewed to ascertain those general and special requirements having a significant bearing on determining contractor responsibility. Examples are the nature of the product or services, applicable specifications, delivery schedule, documentation requirements, property control requirements, and financing aspects.

(i) *Development of information.*—(1) *Review of available data.* Information already available in the contracting office pertaining to the prospective contractor and its past performance shall be reviewed. Prior preaward survey reports and contractor performance records shall be examined and considered in support of preaward survey recommendations. If the prospective contractor has current or contemplated Government contracts, the files should be checked for information regarding similarity of product, current status of contracts, quality control experience, and financial status.

(2) *Development of additional data.* (i) When appropriate, the contracting office shall supplement the data on hand with any additional information required from other Government sources and from commercial sources, such as banks, business associates, and credit rating and reporting agencies.

(ii) An on-site survey shall be performed when sufficient information is not developed as a result of actions taken under subparagraph (i)(1) and subdivision (i)(1)(i) of this section.

(iii) A narrative covering each factor investigated shall be referenced in section III of SF 1403 and appended to the form. This narrative shall include detailed discussion supporting findings of both satisfactory and unsatisfactory conditions and shall include reasons for all stated conclusions.

(iv) When a prospective contractor proposes to acquire additional resources essential to performance of the proposed contract, the activity conducting the survey shall as a minimum obtain and evaluate—

(A) An itemized list of the required resources;

(B) A planned method of acquisition; and

(C) A schedule for acquisition of resources.

(v) Failure to meet commitments on previous contracts shall be documented in the current preaward survey report and considered in the final recommendation.

(j) *On-site surveys*—(1) *Interview, investigation, and review.* (i) General. An on-site survey consists of an interview with representatives of the prospective contractor and, normally, an investigation of its resources and procedures.

(ii) Interview with management. Management officials of the appropriate level authorized to represent the prospective contractor should be interviewed. The prospective contractor's background shall be reviewed and as much history recorded as is necessary to reflect the soundness and reputation of the firm's operation.

(A) The organizational structure of the facility is the basis for management's control and must be reviewed. Assignment of definite tasks and responsibilities should be checked.

(B) Lack of understanding or misinterpretation of the solicitation often results in delinquent contracts and leads to default actions. Therefore the solicitation shall be discussed with the prospective contractor to ensure understanding of its requirements, including its technical aspects, such as drawings, specifications, prototype,

technical data, testing, packaging, and the Government's right to use technical data in accordance with the terms of the solicitation. Any misinterpretations of the requirements of the solicitation that could adversely affect performance, or refusal by the prospective contractor to furnish required data, should be brought to the immediate attention of the monitor by the team coordinator. The monitor shall, in turn, promptly advise the contracting officer.

(iii) Investigation of resources and review of procedures. The resources the prospective contractor intends to utilize shall be inspected, analyzed, and compared with overall plans for performing. Procedures relating to performance of the proposed contract shall be reviewed for adequacy.

(iv) Specific factors to be considered. In the course of developing information, those factors described in subparagraphs (j) (2), (3), and (4) of this section, and all others needed to provide the report and recommendations in the detail and to the extent required by the contracting officer, shall be considered.

(2) *Production*—(i) *General.* The production portion of the on-site survey consists of an evaluation of the prospective contractor's ability to manufacture the products or accomplish the tasks in accordance with the specifications and delivery schedule of the proposed contract. To achieve the objectives of this portion of the on-site survey, the production plan shall be reviewed, production resources ascertained, and the plan related to these resources.

(ii) *Obtaining the production plan.* The prospective contractor's production plan for meeting the delivery schedule shall be ascertained. The principal milestones within the production plan shall be established, along with target dates for achievement. These target dates must support the delivery schedule. The controls to be utilized in order to gear and hold the manufacturing effort to the target dates for the principal milestones shall be analyzed for suitability.

(iii) *Ascertaining production resources.* The information necessary to prepare SF 1404 and SF 1405 shall be obtained by discussion with appropriate management personnel of the prospective contractor. This information shall be verified, when necessary, by physical inspection of the manufacturing plant and evaluated in terms of suitability to manufacture the required items.

(iv) *Relating production plans to production resources.* When necessary, representatives of the prospective contractor shall be requested to advise how in-house and subcontractor production resources described in sections II, III, IV, and VI of SF 1405 will be allocated and utilized in order to achieve the target dates for the principal milestones. Pertinent to this discussion is an analysis of other projects and contracts that will compete for utilization of those resources during the period specified by the prospective contractor's production plan. The information developed as a result of equating the production plan and production resources of the prospective contractor should enable the contracting office to determine whether or not—

(A) The resources the prospective contractor is planning to use are suitable for the job;

(B) The prospective contractor will be capable of properly controlling, maintaining, protecting, and using Government property;

(C) The planning and scheduling of effort will result in timely accomplishment of the principal milestones; and

(D) Achievement of the principal milestones will result in timely delivery.

(3) *Quality assurance.* (i) The standing of the quality assurance organization in the prospective contractor's overall organization must be evaluated. An inspection or quality control function that reports to some other organizational segment (such as production) instead of to top management may be undesirable. The experience of the company's inspection or quality control personnel with the same or similar items shall be evaluated.

(ii) To evaluate the prospective contractor's ability to comply with quality control or inspection requirements, team members shall review—

(A) Methods currently utilized to control product quality, as reflected by a documented or verifiable inspection system or quality program plan;

(B) Personnel on hand and available (report both trained and untrained);

(C) Inspection and test equipment on hand and available;

(D) Quality, identification, and storage of materials;

(E) Physical arrangement of plant;

(F) Tool and gauge control; and

(G) Test and inspection records.

(4) *Financial*— (i) *General.* The normal procedure for determining a prospective contractor's financial capability is initial presurvey planning, followed by verification of financial data as required. The extent of the review and analysis of financial matters shall be governed by the nature of the proposed contract. In certain instances, a sound decision may be possible after a relatively simple review of a company's financial position and production commitments. Under other circumstances, a more comprehensive review and analysis will be required.

(ii) *Procedure.* Actions to be taken in determining the prospective contractor's financial capability (SF 1407) include the following:

(A) The latest balance sheet and profit and loss statement shall be reviewed. Items indicative of the soundness of the prospective contractor's financial structure include rates and ratios, working capital as represented by current assets over current liabilities, and financial trends such as net worth, sales, and profit.

(B) The method of financing the contract shall be evaluated. If sources of outside financing other than the Government are indicated, their availability should be verified.

(C) When financial aid from the Government is to be obtained, the necessity for it should be verified. Review shall be made concerning the applicability of such financing as progress payments or guaranteed loans.

(k) *Evaluating data and preparing the report*— (1) *Findings and recommendations of team members.* When the required information has been gathered, each participant shall (i) analyze it and evaluate the prospective contractor's capability to perform with respect to the functions or elements investigated and (ii) provide his or her findings and recommendations to the monitor on one or more of the appropriate forms (see FAR 9.106–4(a)) or on an attachment or attachments. If a negative reply is recorded, or where doubt exists, an explanation must substantiate the entry. If a detailed analysis is needed or additional significant information is pertinent, the form should be supplemented by a narrative report.

(2) *Monitor's evaluation and recommendation.* On the basis of all the information received, the monitor shall thoroughly review and evaluate the findings and recommendations and forward the report to the chairperson of the review board with (i) a summary of the monitor's findings and (ii) a recommendation concerning award, which shall be supported by a statement of justification and shall, if the prospective contractor is a small business concern, be coordinated with the cognizant small business specialist.

(3) *Review board action.* Upon receiving each preaward report, the chairperson of the review board shall determine the extent of review board action. The requirements of subparagraph (f)(4) of this section may be satisfied at the chairperson's discretion by—

(i) Action by the chairperson alone;

(ii) Informal contact by the chairperson with one or more of the board members; or

(iii) Formal action by the entire board.

(4) *Final actions.* Following the action by the review board, the monitor shall forward the report directly to the contracting officer. When advance reports are made by telegraphic communication or telephone, they shall be confirmed in writing without delay. The monitor shall follow up on any requirements for the submission of supplemental reports.

Subpart 1809.2—Qualification Requirements

1809.200 Scope of subpart.

This subpart prescribes policies and procedures that, like those of FAR Subpart 9.2, are to be followed in the use of qualified products lists for procurement of microcircuits as authorized by NMI 5320.5, Basic Policy for Electronic Parts, and NMI 5320.6, Implementation of NASA Standard Parts Program.

1809.202 Policy.

(a) Authority regarding agency head actions under FAR 9.202(a) is delegated to the cognizant technical activity, with approval by the installation's competition advocate.

(b) The approval authority of FAR 9.202(e) is delegated to the installation's competition advocate. Requests shall be prepared by the cognizant requirements office and submitted via the procurement officer.

1809.203 QPL's, QML's, and QBL's.

1809.203–70 General.

(a) The Director, Reliability, Maintainability and Quality Assurance Division (Code QR), is responsible for justifying, determining, and approving NASA's need for inclusion and continued use of qualification requirements in specifications under the NASA Microelectronics Reliability Program.

(b) Prior to the procurement of Class "A" microcircuits, as defined in NHB 5300.4(3F), the determination required by paragraph 3F103–2 of that handbook shall be made in writing by an authorized NASA field installation official.

(c) Copies of NHB 5300.4(3F) may be purchased by the public from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

1809.203–71 Waiver of qualification requirements.

When procuring a product under a specification that includes qualification requirements either for the end item or for components of the end item, the NASA installation conducting the procurement can waive the qualification requirements. Directing a waiver of the end item qualification requirement constitutes adequate authorization for waiver of product qualification requirements. When a waiver has been granted, the solicitation shall specifically indicate that the qualification requirement is inapplicable. Such information shall also be included in any synopsis of the procurement (see FAR Subpart 5.2).

1809.206 Acquisitions subject to qualification requirements.

1809.206–1 General.

(a) The emergency determination authority specified at FAR 9.206–1(b) is delegated to the installation's competition advocate. Requests for determination shall be prepared by the cognizant requirements office and submitted through the procurement officer.

(b) Requests not to enforce a qualification requirement in a non-emergency situation shall be prepared by the cognizant requirements office and approved by the Headquarters Office of Safety, Reliability, Maintainability and Quality Assurance, (Code Q).

(c) Under FAR 9.206–1(c), if an offeror seeks to demonstrate its capability, both the product and the producer must meet the established standards.

1809.206–70 Small businesses.

If a small business otherwise eligible for award has been placed in a special status on a Qualified Products List (see NHB 5300.4(3F)) established as a part of the NASA Microelectronics Reliability Program and the contracting officer determines that the small business does not appear to have the capacity to perform, the certificate of competency procedures in FAR Subpart 19.6 are applicable.

1809.206–71 Contract clause.

When qualified products (end items or components of end items) are being procured, the contracting officer shall insert the clause at 1852.209–70, Product Removal from Qualified Products List, in the solicitation and in the resulting contract.

Subpart 1809.4—Debarment, Suspension, and Ineligibility

1809.402 Policy.

For purposes of FAR Subpart 9.4 and this subpart, the Assistant Administrator for Procurement is the "debarring official," the "suspending official," and the agency head's "designee."

1809.404 Consolidated List of Debarred, Suspended, and Ineligible Contractors.

(a) The Office of Procurement (Code HP) is responsible for taking the actions enumerated under FAR 9.404(c).

(b) In compliance with FAR 9.404(c)(5), contracting officers shall consult the Consolidated List to ensure that they do not solicit offers from, award contracts to, or consent to subcontracts with listed contractors, except as provided in FAR 9.405.

1809.405 Effect of listing.

If it is believed that a new contract or subcontract with a debarred or suspended contractor must be awarded, the procurement officer shall prepare a request for a determination as set out in 1809.405–1(b) and forward it to the Assistant Administrator for Procurement (Code HP) for approval.

1809.405–1 Continuation of current contracts.

(a) The contracting officer may terminate a contract under FAR 9.405–1(a) if it is in the best interest of the Government to do so, unless directed otherwise by the Assistant Administrator for Procurement.

(b) If it is believed that an existing contract or subcontract with a debarred or suspended contractor must be renewed or otherwise extended, the procurement officer shall prepare a request for a determination with all necessary support documentation and forward it to the Assistant Administrator for Procurement (Code HP) for approval. Some examples of circumstances that may constitute a compelling reason under FAR 9.405(a) or 9.405–1(b) for award, renewal, or extension include the following:

(1) The property or services to be acquired are available only from the listed contractor.

(2) The urgency of the requirement dictates that NASA deal with the contractor.

(3) Other reasons related to the national defense or program requirements that necessitate continued business dealings with the listed contractor.

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1809.405-2 Restrictions on subcontracting.

When a subcontract subject to contracting officer consent must be awarded to a listed contractor, the procurement officer shall prepare a request for a determination with all support documentation and forward it to the Assistant Administrator for Procurement (Code HP) for approval. Some examples of circumstances that may constitute compelling reasons are in 1809.405-1(b) above.

1809.406 Debarment.

1809.406-3 Procedures.

The report required by FAR 9.406-3(a) shall be forwarded by the procurement officer to the Assistant Administrator for Procurement (Code HP) in accordance with 1809.470.

1809.407 Suspension.

1809.407-3 Procedures.

The report required by FAR 9.407-3(a) shall be forwarded by the procurement officer to the Assistant Administrator for Procurement (Code HP) in accordance with 1809.470.

1809.470 Reporting of suspected evasive actions and causes for debarment or suspension.

1809.470-1 Situations requiring reports.

A report incorporating the information required by 1809.470-2 below shall be forwarded by the procurement officer to the Assistant Administrator for Procurement (Code HP) when a contractor—

(a) Has committed, or is suspected of having committed, any of the acts described in FAR 9.406-2 and 9.407-2; or

(b) Is suspected of attempting to evade the prohibitions of a debarment or suspension imposed under the FAR or this Regulation by changes of address, multiple addresses, formation of new companies, or other devices.

1809.470-2 Contents of reports.

Each report shall be coordinated with local counsel and shall include substantially the following information, if available:

(a) Name and address of the contractor.

(b) Names of the principal officers, partners, owners, or managers.

(c) All known affiliates, subsidiaries, or parent firms, and the nature of the affiliation.

(d) A description of the contract or contracts concerned, including the contract number and office identifying numbers or symbols, the amount of each contract, the amounts paid the contractor and still due, and the percentage of work completed and to be completed.

(e) The status of vouchers.

(f) Whether the contract has been assigned pursuant to the Assignment of Claims Act, and, if so, the name and address of the assignee and a copy of the assignment.

(g) Whether any other contracts are outstanding with the contractor or any affiliates, and, if so, their amount, whether they are assigned pursuant to the Assignment of Claims Act, and the amounts paid or due on them.

(h) A complete summary of all pertinent evidence. If a request for debarment or suspension is based on an indictment or a conviction, provide the evidence upon which the indictment or conviction is based.

(i) A recommendation as to the continuation of any current contracts.

(j) An estimate of any damages, sustained by the Government as a result of the contractor's action, including an explanation of the method used in making the estimate.

(k) The comments and recommendations of the contracting officer and local counsel as to:

(1) Whether the contractor should be suspended or debarred,

(2) Whether any limitations should be applied to such action, and

(3) The period of any debarment.

(l) As an enclosure, a copy of the contract(s) or pertinent excerpts, appropriate exhibits, testimony or statements of witnesses, copies of assignments, and other relevant documentation.

1809.470-3 Addresses and copies of reports.

Reports, including enclosures, shall be submitted in duplicate to the Assistant Administrator for Procurement (Code HP), with an additional copy to the Office of General Counsel, NASA Headquarters (Code G).

Subpart 1809.5—Organizational Conflicts of Interest

1809.500 Scope of subpart.

The Assistant Administrator for Procurement has authorized the procurement officer to take those actions reserved in FAR Subpart 9.5 for the head of the contracting activity. However, see 1809.503 regarding waivers.

1809.503 Waiver.

The Administrator has designated the Assistant Administrator for Procurement as the approval authority for waivers under FAR 9.503. The procurement officer shall forward requests for waivers under FAR 9.503 to the Assistant Administrator for Procurement (Code HS) for action.

1809.507 Procedures.

(a) The draft solicitation provision and proposed contract clause required by FAR 9.507(a) shall be approved by the procurement officer when the installation has final authority for source selection and by the Assistant Administrator for Procurement (Code HS) when NASA Headquarters has that authority.

(b) The Assistant Administrator for Procurement (Code HS) shall make any final decision required by FAR 9.507(c)(4).

1809.508 Solicitation provision and contract clause.

1809.508-2 Contract clause.

The contracting officer may insert a clause substantially the same as the clause at 1852.209-71, Limitation of Future Contracting, in solicitations and contracts, in compliance with FAR 9.508.

Subpart 1809.6—Contractor Team Arrangements

1809.670 Contract clause.

The contracting officer shall insert the clause at 1852.209-72, Composition of the Contractor, in all construction invitations for bids and resulting contracts. The clause may be used in other solicitations and contracts to clarify a contractor team arrangement where the prime contractor consists of more than one legal entity, such as a joint venture.

PART 1810—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.
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1810.011-70 NASA solicitation provisions and contract clauses.

Authority: 42 U.S.C. 2473(c)(1).

1810.001 Definitions.

"Brand-name product" means a commercial product described by brand name and make or model number or other appropriate nomenclature by which it is offered for sale to the public by the particular manufacturer, producer, or distributor.

1810.002 Policy.

1810.002-70 NASA policy.

Whenever a specification is deemed inadequate, the contracting officer shall initiate immediate action to recommend that the activity responsible for the specification amend or revise it in order to obviate the necessity for repeated departures from the specification.

1810.004 Selecting specifications or descriptions for use.

(a) As required by FAR 10.004(e), contracts will include appropriate preservation, packaging, packing, and marking requirements. The services of packaging technicians shall be used to—

(1) Develop preservation, packaging, packing, and marking requirements for individual procurements; and

(2) Assist in evaluating the reasonableness of contractors' packaging, packing, and marking cost estimates or charges.

(b) Unrealistic preservation, packaging, packing, and marking requirements should be reported and changes recommended to the activity originating the requirement and to the contracting officer.

1810.004-70 Additional requirements.

(a) Drawings and data furnished with solicitations shall be clear and legible (see also FAR 10.008).

(b) Many specifications cover several grades or types and provide for several options in methods of inspection. When such specifications are used, the solicitation shall state specifically the grade, type, or method of inspection on which offers are to be based.

1810.004-71 Brand-name-or-equal purchase description.

(a) Purchase descriptions containing references to one or more brand-name products followed by the words "or equal" may be used only when authorized by FAR 10.004(b)(3) and in accordance with this Part 1810 (see 1810.008-70, 1810.011, and 1852.210-70).

(b) The words "or equal" should not be added if it is determined under paragraph (a) of this section that only a particular product meets the essential requirements of the Government (e.g., when the required supplies can be obtained only from one source (see FAR 6.302-1)).

(c) To the extent feasible, all known acceptable brand-name products should be referenced. If a "brand-name-or-equal" purchase description is used, prospective contractors must be given the opportunity to offer products other than those specifically referenced by brand name if those products will meet the needs of the Government in essentially the same manner as those referenced.

(d) "Brand-name-or-equal" purchase descriptions should set forth the salient physical, functional, or other characteristics of the referenced products essential to the needs of the Government. For example, when interchangeability of parts is required, that requirement should be specified. Purchase descriptions should contain the following characteristics, in addition to those at FAR 10.004(b)(1), to the extent available, and include such other information as is necessary to describe the item required:

(1) Complete common generic identification of the item required.

(2) Applicable model, make, or catalog number for each brand-name product referenced, and identity of the commercial catalog in which it appears.

(3) Name of manufacturer, producer, or distributor of each brand-name product referenced (and address if company is not well known).

(e) When it is needed to describe adequately the item required, a commercial catalog description, or pertinent extracts, may be used if the description is identified in the solicitation as being that of the particular named manufacturer, producer, or distributor. The contracting officer shall ensure that a copy of any catalog referenced (except parts catalogs) is available on request for review by offerors at the contracting office.

(f) When a solicitation contains a "brand-name-or-equal" purchase description, offerors offering brand-name products referenced in that description shall not be required to furnish samples of the referenced brand-name products; however, solicitations may require the submission of samples in the case of offerors proposing "or equal" products.

(g) Proposals offering products differing from brand-name products referenced in a "brand-name-or-equal" purchase description shall be considered for award if the contracting officer determines under the provision at 1852.210-70 that the offered products meet the salient characteristics required by the solicitation. Offers shall not be rejected simply because of minor differences in design, construction, or features that do not affect the suitability of the products for their intended use.

(h) Except as provided in subdivision (i)(1) of this section, when a "brand-name-or-equal" purchase description is included in a solicitation, the following shall be inserted after each item so described in the solicitation for completion by the offeror:

Offering:
Manufacturer's Name_____
Brand_____ No._____

(i) (1) Where components of an end item are described in the solicitation by a "brand-name-or-equal" purchase description and the contracting officer determines that applying of the provision at 1852.210-70 to them would be impracticable, the requirements of paragraph (h) of this section shall not apply with respect to them. In such cases, if the provision is included in the solicitation for other reasons, a statement substantially as follows also shall be included:

The provision entitled Brand Name or Equal does not apply to the following components:
(List the components to which the provision does not apply.)

(2) In the alternative, if the contracting officer determines that the provision at 1852.210-70 should apply only to certain components, the requirements of paragraph (h) of this section shall apply to them, and a statement substantially as follows shall be included:

The provision entitled Brand Name or Equal applies to the following components:
(List the components to which the provision applies.)

(j) The policies and procedures prescribed in paragraphs (a) through (i) of this section apply to both sealed-bid and negotiated procurements. If use of the provision is not practicable (as may be the case, for example, in exigency purchases), suppliers shall be informed that proposals offering products different from the products referenced by brand name will be considered if the contracting officer determines that they are equal in all significant and material respects to the products referenced.

1810.007 Deviations.

If an exception or deviation from a Federal or military specification is required—

(a) The contracting officer shall, before issuing the solicitation, submit a fully documented and justified request for the deviation to the procurement officer; and

(b) The procurement officer shall comply with FAR 10.007(a).

1810.008 Identification and availability of specifications.

Each solicitation shall be accompanied by the applicable specifications, standards, plans,

drawings, and other pertinent documents, or shall state where they can be obtained or examined.

1810.008-70 Brand-name-or-equal awards.

Award documents shall identify or incorporate by reference an identification of the specific products the contractor is to furnish. This identification shall include any brand name and make or model number, descriptive material, and any modifications of brand-name products specified in the solicitation. Included in this requirement are those instances in which:

(a) The description of the end item contains "brand-name-or-equal" purchase descriptions of components or of accessories related to the end item and

(b) The solicitation includes the provision at 1852.210-70 as applicable to such components or accessories (see 1810.004-70(i)).

1810.011 Solicitation provisions and contract clauses.

1810.011-70 NASA solicitation provisions and contract clauses.

(a) When a "brand-name-or-equal" purchase description is used, the contracting officer shall insert in the solicitation the provision at 1852.210-70, Brand Name or Equal.

(b) The contracting officer shall insert the provision at 1852.210-71, Descriptive Literature for Used Material, in solicitations containing FAR provision 52.210-6, Listing of Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property. Insert the information needed to make a determination that the items to be furnished can reasonably be expected to conform to the requirements of the solicitation.

(c) The contracting officer may insert a clause substantially as stated in 1852.210-72, Supplies and/or Services to be Furnished, in all solicitations and contracts to indicate the items to be delivered. Insert the item number, description of the supplies (see FAR 2.101 for definition) and/or services to be furnished, quantities to be furnished, unit and unit price (if applicable), and total dollar amount. The column headings may be modified for what is being acquired and for the type of contract.

(d) The contracting officer shall insert a clause substantially as stated at 1852.210-75, Packaging and Marking, in solicitations and contracts where the packaging and marking requirements of NASA Handbook 6000.1 and/or MIL-STD-2073 are appropriate. Insert the applicable information for the particular procurement. Substitute Alternate I for paragraphs (a), (b), (c), and (d) of the basic clause if commercial packing and marking practices are to be used. Add Alternate II if space flight item(s) are to be delivered.

PART 1812—CONTRACT DELIVERY OR PERFORMANCE

Subpart 1812.1—Delivery or Performance Schedules

Sec.
1812.104 Contract clauses.
1812.104-70 Additional clauses.

Subpart 1812.2—Liquidated Damages

1812.202 Policy.

Subpart 1812.3—Priorities and Allocations

1812.302 General.
1812.303 Procedures.
1812.303-70 NASA procedures.

Subpart 1812.5—Suspension of Work, Stop-Work Orders, and Government Delay of Work

1812.505 Contract clauses.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1812.1—Delivery or Performance Schedules

1812.104 Contract clauses.

1812.104-70 Additional clauses.

(a) The contracting officer may use the clause at 1852.212-70, Notice of Delay, if it is desirable to provide for contractor notice of anticipated delays in performance.

(b) See 1827.406(b) regarding reports of work.

(c) The contracting officer shall insert the clause at 1852.212-72, Partial Shipments, in solicitations and contracts when a quantity specified for a line item to be delivered is more than one unit, or when the Schedule contains more than one line item to be delivered, and partial shipments by the contractor will not adequately meet the Government's overall needs.

(d) The contracting officer may insert a clause substantially as stated at 1852.212-73, Delivery Schedule, in solicitations and contracts if the Government requires delivery of items on specific dates during the contract. Insert the item description, quantity of items to be furnished, delivery dates, and shipping addresses applicable to the particular procurement.

(e) The contracting officer may insert a clause substantially as stated at 1852.212-74, Period of Performance, in term contracts to specify the time during which contract performance will take place. Insert the period of performance dates applicable to the particular procurement.

Subpart 1812.2—Liquidated Damages

1812.202 Policy.

The contracting officer shall forward recommendations concerning remission of liquidated damages via the head of the contracting activity to the Assistant Administrator for Procurement for submission to the Administrator.

Subpart 1812.3—Priorities and Allocations

1812.302 General.

(a) The Department of Defense is the "Delegate Agency" for NASA. The Headquarters Procurement Policy Division, Code HP, shall coordinate with DOD, as necessary, to ensure that any DOD-imposed requirements are met.

(b) Additional regulatory guidance is available in "DPAS, Defense Priorities and Allocations System," Department of Commerce, International Trade Administration, Office of Industrial Resource Administration, Washington, DC 20250, October 1984, 66 pages. (Copies available from Department of Commerce.) This DOC booklet contains the pertinent parts of 15 CFR Part 350 and is the recommended guidance on the DPAS to contractors and suppliers receiving rated orders.

1812.303 Procedures.

1812.303-70 NASA procedures.

(a) The use of priority ratings on NASA contracts and purchase orders is mandatory except as noted in paragraph (d) of this section. Priority ratings are assigned on individual contracts and purchase orders by the contracting officer.

(b) Except where no rating is issued as provided in paragraph (d) of this section, all NASA orders shall be assigned a DO rating, unless NASA has obtained a DX rating from the Delegate Agency. Currently, NASA has no programs with a DX rating.

(c) The program identification numbers (DPAS, 15 CFR Part 350, SCH L.) to be used by NASA are as follows:

A1 Aircraft
A2 Missiles
A3 Ships
A5 Weapons
A6 Ammunition
A7 Electronic and Communications Equipment
B1 Military Building Supplies
B6 Production Equipment (For Contractor's Account)
B9 Production Equipment (Government-Owned)
C2 Construction
C3 Maintenance, Repair, and Operating Supplies for Facilities
C9 Miscellaneous/Other

(d) Priority ratings will not be issued for the following:

(1) Items ordered or requisitioned from the GSA Federal Supply Service.

(2) Items for plant improvement, expansion, or construction, unless they will be physically incorporated into a construction project covered by a rated order, or unless NASA has obtained specific priority rating authority.

(3) Production or construction equipment or items to be used for the manufacture of production equipment, unless NASA has obtained specific priority rating authority.

(4) Items falling under the jurisdiction of agencies other than NASA's Delegate Agency. These are: petroleum, gas, solid fuel, electric power, and all other forms of energy; food; civil transportation and the movement of persons and property by all modes; minerals; water; housing facilities; health facilities; radioisotopes, stable isotopes, source material and special nuclear material produced in Government-owned plants or facilities operated by or for the Department of Energy; communication services; copper raw materials; crushed stone; gravel; sand; scrap; slag; central steam heat; and waste paper.

(e) The Headquarters Procurement Policy Division (Code HP) is responsible for coordinating DPAS matters with the Delegate Agency and the Department of Commerce, as necessary. Installation requests arising under FAR 12.303(g) regarding assignment of ratings, special priorities assistance, controlled materials, or related DPAS topics shall be directed to Code HP.

Subpart 1812.5—Suspension of Work, Stop-Work Orders, and Government Delay of Work

1812.505 Contract clauses.

The Stop-Work Order clause at FAR 52.212-13 is not authorized for use in research contracts with educational or other nonprofit institutions.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1813—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 1813.1—General

Sec.
1813.104 Procedures.

Subpart 1813.2—Blanket Purchase Agreements

1813.203 Establishment of blanket purchase agreements.
1813.203-1 General.
1813.204 Purchases under blanket purchase agreements.
1813.205 Review procedures.

Subpart 1813.3—Fast Payment Procedure

1813.302 Conditions for use.
1813.303 Preparation and execution of orders.

Subpart 1813.4—Imprest Fund

1813.403 Agency responsibilities.
1813.403-70 Establishment of imprest funds.
1813.404 Conditions for use.
1813.405 Procedures.

Subpart 1813.5—Purchase Orders

1813.502 Unpriced purchase orders.
1813.505 Purchase order and related forms.
1813.505-2 Agency order forms in lieu of Optional Forms 347 and 348.
1813.505-3 Standard Form 44, Purchase Order-Invoice-Voucher.

Subpart 1813.70—Procurement Request Overlay Method

1813.7001 General.
1813.7002 Limitations on use.
1813.7003 Procedures.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1813.1—General

1813.104 Procedures.

(a) Small purchase procedures are exempt from the requirements of the Competition in Contracting Act of 1984 (see FAR 6.001).

(b) When bulk funding is deemed appropriate, see Financial Management Manual 9030-5e and 9040-4b.

(c) For sole-source procurements over $1,000 involving (1) an individual employed by NASA during the past 2 years or (2) a firm in which such an individual is a partner, principal officer, or majority shareholder, or that is otherwise controlled or predominantly staffed by such individuals (see Subpart 1803.70), the notation required by FAR 13.106(c)(2) shall be submitted for approval at a level above the contracting officer.

Subpart 1813.2—Blanket Purchase Agreements

1813.203 Establishment of blanket purchase agreements.

1813.203-1 General.

Blanket purchase agreements (BPA's) may be prepared and issued on any installation-prescribed purchase order form.

1813.204 Purchases under blanket purchase agreements.

Non-GS/GM-1102 or 1105 personnel shall not be authorized to place orders under a BPA in amounts greater than $1,000 for an individual order. A contracting officer warrant is not required to place an order under a BPA; however, individuals authorized to order must be specified in writing, by the contracting officer. Authority to place orders should be revoked immediately upon evidence of abuse.

1813.205 Review procedures.

The procurement officer shall ensure that all BPA files are reviewed at least annually to ascertain that appropriate procedures are being followed and that prices obtained are fair and reasonable.

Subpart 1813.3—Fast Payment Procedure

1813.302 Conditions for use.

Pursuant to FAR 13.302, the dollar limitation for NASA is hereby established as the small purchase ceiling for defense agencies.

1813.303 Preparation and execution of orders.

Orders incorporating the fast payment procedure may be issued on Optional Form 347, Order for Supplies or Services, or on any other installation-prescribed purchase order form.

Subpart 1813.4—Imprest Fund

1813.403 Agency responsibilities.

1813.403-70 Establishment of imprest funds.

(a) *Authority.* Upon approval of the Chief, Disbursing Office of the Treasury Department, the Director of Financial Management, NASA Headquarters, may authorize the establishment of imprest funds and any required subsequent increases to them. The number of imprest funds at an installation should generally be restricted to the minimum number necessary to ensure efficiency in small purchase transactions. Financial Management Manual 9650, Imprest Fund Procedures, should be used in conjunction with this subpart.

(b) *Amount of imprest funds.* The amount of each fund shall be established on the basis of the estimated monthly payments to be made from it and the need for replenishment without undue administrative burden. Financial management officers of each NASA installation will designate one or more employee(s) in their office to make unannounced cash verifications of imprest fund balances at least quarterly. Each cash verification will be documented, and working papers retained for review by the Office of the Inspector General and personnel of the Financial Management Division, NASA Headquarters. In conjunction with the cash verification, the level of funds held in an imprest fund shall be evaluated on a semiannual basis (see FAR 13.403). The disclosure of any unauthorized use of or irregular accounting for an imprest fund during the quarterly cash

verification, or the annual audit or at any other time, will be reported to the Director, Financial Management Division, NASA Headquarters.

(c) *Imprest fund cashiers.* (1) Imprest fund cashiers shall be appointed in accordance with Financial Management Manual 9650 and are authorized to make cash payments for materials and nonpersonal services, maintain custody of funds, and file periodic vouchers to account for and replenish the imprest fund. Financial management or fiscal officers and others having access to accounting records or responsibility for originating, approving, processing, or receiving requirements are not eligible for appointment as imprest fund cashiers. In no event shall an imprest fund cashier have access to or control of more than one imprest fund.

(2) An alternate imprest fund cashier may be appointed (i) if the volume of work requires an alternate to the principal cashier or (ii) to provide service during the principal cashier's absence. Appointment requirements for principal cashiers shall apply to alternate cashiers. In planned short-term absences of the principal cashier, cash may be advanced by the principal to the alternate in an amount not to exceed the alternate's limit of the fund. Upon resuming duties, the principal cashier shall return the cash receipt to the alternate after obtaining paid receipts, subvouchers, and residual cash. In the absence of the principal cashier for more than 15 working days or for a period of time that will require submission of a reimbursable voucher before the principal's return, transfer of funds from the principal to the alternate cashier shall be accomplished as prescribed by Financial Management Manual 9650.

1813.404 Conditions for use.

(a) Imprest Funds may be used to make local cash payments of $300 or less for transactions involving—

(1) Small purchases and nonpersonal services which are readily available for delivery and do not require technical specifications or technical inspection and where direct cash payment will be advantageous to the government;

(2) Travel advances and vouchered reimbursements for travel expenses (not to exceed $500 for any one transaction);

(4) Postage stamps, parcel post, c.o.d. postal charges, and local drayage;

(5) Reimbursement for the cost of official local transportation and telephone or telegraphic services; or

(6) Prepaid transportation charges indicating f.o.b. shipping point which do not exceed $100.

(b) Imprest funds shall not be used for—

(1) Articles or services, particularly repetitive items, which are available from store stock inventories;

(2) Purchases of articles or services in quantities or amounts covered by mandatory sources of supply;

(3) Articles or services which are restricted by statutory or regulatory laws, i.e., newspapers and similar items;

(4) Paying salaries or wages;

(5) Advances, other than those authorized in 1813.405(b);

(6) Cashing checks or other negotiable instruments;

(7) For money orders or personal services unless authorized by the Director, Financial Management Division, NASA Headquarters; or

(8) Paying for international shipments or household goods shipments.

1813.405 Procedures.

(a) *Receipt of material.* (1) All material purchased through the imprest fund shall be delivered to a designated receiving activity. The receiver shall examine the material to ascertain that the quantities and items described in the procurement request and the supplier's sales document are present and in satisfactory condition. If the material is acceptable, the receiver shall stamp the sales document "Received and Accepted," date and sign the document, and pass it to the imprest fund cashier for payment. In the absence of a supplier's sales document, a receipted Standard Form 1165, Receipt for Cash—Subvoucher, shall be used to record the receipt of purchases made from the imprest fund and shall be processed in the same manner.

(2) When it is not practicable to obtain delivery of material at destination on a c.o.d. basis, advance arrangements may be made for the material to be picked up. The imprest fund cashier may then advance cash to an authorized individual to pick up and pay for the material. Necessary certifications of receipt and acceptance of material shall be obtained on one of the documents as indicated in subparagraph (a)(1) of this section. Receipt for cash payment (see paragraph (c) of this section) shall be made on the same document, which will serve as the imprest fund receipt.

(3) When prior arrangements for picking up material are not practicable, the imprest fund cashier may advance cash to an authorized individual to make a proposed purchase.

(b) *Advance of funds.* Individuals receiving a cash advance from the imprest fund cashier shall be required to sign the "Interim Receipt for Cash" portion of Standard Form 1165. After purchase has been made, the individual will return any unused cash to the imprest fund cashier with the necessary certifications of receipt, acceptance, and cash payment, at which time the imprest fund cashier shall void the interim receipt for cash. Cash advanced should generally be accounted for daily, but may be advanced for a period not to exceed five consecutive work days.

(c) *Certification of cash payment.* (1) The original receipt document (or a copy tendered as the original) presented to the imprest fund cashier for payment shall be stamped with a certification containing—

(i) A statement that cash payment was received in full;

(ii) The amount paid;

(iii) The date of payment; and

(iv) The signature and title of the supplier or agent receiving the payment.

(2) Alterations or corrections to documents tendered for payment shall be initialled by the person making the change. Changes in the amount paid shall be initialled by the individual receiving payment.

(d) *Responsibilities of imprest fund cashier.* Pending receipt of material, the imprest fund cashier shall keep a file of procurement requests covering imprest fund purchases. Before payment or acceptance of the document tendered for settlement of an advance, the cashier shall verify the necessary certification of receipt and the supplier's billed price or the price paid. If the supplier's receipt for cash payment is not obtained for a purchase of $15.00 or less, the person making the purchase shall complete and sign the cash receipt document indicating receipt of funds from the imprest fund.

(e) *Payments.* (1) C.o.d. Upon presentation of an authorized document with the necessary certification of receipt for supplies or services, the imprest fund cashier or other authorized individual shall pay the supplier or agent and obtain the certification of cash payment as required by paragraph (c) of this section.

(2) Receipt from common carrier or post office. When c.o.d. shipments are received or picked up from a common carrier or post office, the certification of cash payment may be accomplished on a list of the packages provided by the post office or common carrier. Such receipt shall be supported by copies of the applicable sales document, if available.

(3) Periodic payments. When use of a blanket purchase agreement is not suitable and it is administratively convenient and agreeable to the supplier, periodic payments from the imprest fund may be made for supplies delivered on a repetitive basis, provided that the accumulated amount of the deliveries for the specified period does not exceed the dollar limitation imposed on the imprest fund method by 1813.404.

(4) Failure to ship c.o.d. When material is ordered c.o.d., but is shipped by the supplier subject to payment by check, Standard Form 1034, Public Voucher for Purchases and Services Other than Personal, may be used to make payment. Under these circumstances, the receiver shall prepare the necessary certification of receipt and shall forward the receipted document through the imprest fund cashier for:

(i) Attachment of the supporting documents authorizing the shipment and

(ii) Submission to the disbursing officer for payment.

(f) *Reimbursement of imprest funds.* (1) The imprest fund shall be reimbursed in accordance with Financial Management Manual 9650.

(2) When a supplier refunds cash before submission of the Standard Form 1129, Reimbursement Voucher, covering the payment, the imprest fund cashier shall accept the refund, return it to the imprest fund, and enter the amount on the original of the supplier's receipt. When refund is made after submission of the applicable Standard Form 1129, the imprest fund cashier shall enter the amount on the retained copy of the reimbursement voucher and promptly:

(i) Submit the refund directly to the disbursing officer or

(ii) Deposit it directly on Standard Form 209, Certificate of Deposit.

(g) *Accounting.* Recordkeeping shall be based on simplified memorandum records to permit frequent reconciliation of funds and should show:

(1) The amount of cash received,

(2) The amount paid out, and

(3) The balance on hand at the close of each day.

It is permissible to group numerous small payments by numbering payment documents and affixing to them an adding-machine tape showing the total applying to each grouping of payment documents.

(h) *Audits.* The Financial Management Officer of each NASA installation having an Imprest Fund will perform an annual audit of the advances and disbursements made from the fund. Documentation covering the annual audit is retained for review by the Office of Inspector General and personnel of the Financial Management Division, NASA Headquarters. The Office of Inspector General, NASA Headquarters, will conduct an audit of each Imprest Fund not less than once every 3 years. More frequent audits may be made where, on the basis of past findings, the audits have disclosed procedural deficiencies.

Subpart 1813.5—Purchase Orders

1813.502 Unpriced purchase orders.

(a) NASA contracting officers shall ensure that suppliers receiving unpriced purchase orders are carefully selected.

(b) Orders shall not contain an estimated target unit price.

(c) Suitable local records and controls of outstanding unpriced purchase orders shall be maintained to ensure regular follow-up with suppliers until the order is priced. These records should include any information available to support the fairness and reasonableness of the proposed monetary limitation.

1813.505 Purchase order and related forms.

1813.505-2 Agency order forms in lieu of Optional Forms 347 and 348.

Optional Forms 347 and 348 or Installation-prescribed forms may be used.

1813.505-3 Standard Form 44, Purchase Order-Invoice-Voucher.

The $2,500 ceiling for use of the Standard Form 44 at FAR 13.505-3 is raised to $10,000 for purchases of aviation fuel and oil only.

Subpart 1813.70—Procurement Request Overlay Method

1813.7001 General.

This method is an acceptable adjunct to other simplified purchase procedures and may be used in placing oral orders when use of a BPA is too cumbersome or no BPA exists. Each transaction is recorded on a small form that attaches to, becomes a part of, and overlays a portion of the procurement request. Suppliers' delivery tickets are used as additional supporting documentation. Use of this method eliminates the administrative requirements for preparing and mailing individual purchase orders. This method may be used when suppliers:

(a) Are willing to accept oral orders and

(b) Can be reasonably relied upon to fill them in accordance with the terms of the oral transaction.

1813.7002 Limitations on use.

This method shall not be used if—

(a) The requirements of more than one procurement request are to be combined in a transaction;

(b) More than one delivery will be required (unless the requirements of a single procurement request are to be divided among several suppliers and only one delivery per supplier is required);

(c) An installation-prescribed form or Optional Form 347 has been utilized;

(d) It is necessary or desirable to incorporate specifications or other terms and conditions in a written purchase order;

(e) GSA Federal Supply Schedules are to be used;

(f) Purchases are to be made from or through other Government agencies; or

(g) The amount of the purchase is over $2,500 (unless the purchase is made under a BPA).

1813.7003 Procedures.

(a) After competitive selection of the source (see FAR 13.106), the order may be placed by telephone. Particular care shall be taken to ensure that the supplier agrees to accept the order without written confirmation and that the order number, item descriptions, quantities, prices, and other terms and conditions are clearly understood. If the amount of the purchase does not exceed $300, the supplier should be encouraged to deliver c.o.d. (see FAR 13.404).

(b) The supplier shall be given all pertinent and specific instructions at the time of placing the order, including the installation's methods of handling charge purchases to be billed within a period of one month or less.

(c) Upon placing the order, the contracting officer shall (1) ensure that a preprinted overlay form is affixed to the procurement request and, if necessary, after the overlay is filled in (2) adjust the estimated unit and total cost figures of the procurement request to reflect the actual purchase price. This shall be done by lining through the original procurement request figures so that they remain legible. Any other changes in the original information of the procurement request to make it conform to the facts of the purchase shall be made in like manner. The preprinted overlay form shall contain at least the following information:

Order No. _____
Supplier (Name) _____
(Address, City) _____
(State, Zip) _____
Discount Terms _____
Delivery Date _____
Buyer _____

F.o.b. Destination
Procurement
Placement
Code _____
Action: procurement request line items ( ), ( ), (etc.) complete*

Total procurement request action: partial,* complete*
Payment: cash,* charge*

(Contracting Officer Signature)
Date Signed
(*Circle as appropriate)

(d) The contracting officer shall sign and date the completed overlay form on the procurement request.

(e) The procurement request with overlay shall be reproduced and distributed internally in accordance with the installation's local instructions to provide copies to the offices or activities responsible for receiving and accepting the merchandise, making cash payment, or processing charge purchases.

(f) In accordance with local instructions, copies of the supplier's delivery ticket received with the merchandise shall be distributed to establish receipt and acceptance of merchandise and serve as a basis for cash payment or obligation of funds and subsequent payment of charge purchases.

PART 1814—SEALED BIDDING

Subpart 1814.2—Solicitation of Bids

Sec.
1814.201 Preparation of invitations for bids.
1814.201-2 Part I—The Schedule.
1814.201-5 Part IV—Representations and instructions.
1814.201-6 Solicitation provisions.
1814.201-670 NASA solicitation provisions.

Subpart 1814.3—Submission of Bids

1814.302 Bid submission.

Subpart 1814.4—Opening of Bids and Award of Contract

1814.404 Rejection of bids.
1814.404-1 Cancellation of invitations after opening.
1814.404-170 Delegation of authority.
1814.406 Mistakes in bids.
1814.406-3 Other mistakes disclosed before award.
1814.406-4 Mistakes after award.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1814.2—Solicitation of Bids

1814.201 Preparation of invitations for bids.

1814.201-2 Part I—The schedule.

The contracting officer shall include in the Schedule the data specified—

(a) In FAR 14.201-2;

(b) Elsewhere in the FAR; and

(c) Elsewhere in this regulation.

1814.201-5 Part IV—Representations and instructions.

Section M—Evaluation factors for award.

(a) If award is to be made in the aggregate (all-or-none basis), the contracting officer shall so state.

(b) If award is to be made by specified groups of items, the contracting officer shall so state.

(c) If bidders are required to have special technical qualifications because of the complexity of the equipment being purchased or for some other reason, the contracting officer shall state those qualifications.

1814.201-6 Solicitation provisions.

1814.201-670 NASA solicitation provisions.

(a) The contracting officer shall insert the provision at 1852.214-70, Caution to Offerors Furnishing Descriptive Literature, in invitations for bids. See FAR 52.214-21, Descriptive Literature.

(b) The contracting officer shall insert the provision at 1852.214-71, Grouping for Aggregate Award, in invitations for bid, except for construction, and in competitive requests for proposals when conditions of inspection, installation, performance, or location are impracticable under multiple awards for certain items or groupings of certain items. See 1814.201-5 (a) and (b) and FAR 52.214-10 and 52.215-16. Insert the item numbers and/or descriptions applicable for the particular procurement.

(c) The contracting officer shall insert the provision at 1852.214-72, Full Quantities, in invitations for bid, except for construction, and competitive requests for proposals when it is in the Government's best interest not to make award for less than the full quantities solicited. See FAR 52.214-10 and 52.215-16.

(d) For conducting pre-bid conferences, see 1815.407-70(f).

Subpart 1814.3—Submission of Bids

1814.302 Bid submission.

In accordance with FAR 14.302(b), NASA has elected not to consider telegraphic bids communicated by telephone. When telegraphic bids are authorized, the telegram must be delivered in writing.

Subpart 1814.4—Opening of Bids and Award of Contract

1814.404 Rejection of bids.

1814.404-1 Cancellation of invitations after opening.

1814.404-170 Delegation of authority.

(a) The authority to make the determination at FAR 14.404-1(c) to cancel the invitation and reject all bids is delegated to the contracting officer, except as provided in subparagraph (b)(2) of this section.

(b) A determination under FAR 14.404-1(c) (6) or (7) that includes an authorization to complete the acquisition through negotiation (see FAR 14.404-1(e)(1)) shall be approved by—

(1) The contracting officer, if the solicitation is to be cancelled because no responsive bid has been received from a responsible bidder; or

(2) The procurement officer, if the solicitation is to be cancelled because:

(i) All otherwise acceptable bids received are at unreasonable prices,

(ii) Only one bid is received and the contracting officer cannot determine the reasonableness of the bid price, or

(iii) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith.

The procurement officer shall obtain the advice of the Chief Counsel before making this determination.

1814.406 Mistakes in bids.

1814.406-3 Other mistakes disclosed before award.

(a) Under the authority delegated by the Administrator in NMI 5101.8, Delegation of Authority To Take Actions in Procurement and Related Matters (Assistant Administrator for Procurement), the Assistant Administrator for Procurement is authorized to permit the correction of bids under FAR 14.406-3 (a) and (b) and the award of a contract under 14.406-3(d) (see FAR 14.406-3(e)). The Assistant Administrator for Procurement has authorized procurement officers to permit withdrawal of bids when the conditions in FAR 14.406-3(c) are met. When the procurement officer permits withdrawal of a bid, a copy of the determination shall be forwarded to the Office of Procurement, Code HP, within ten days after the determination is made.

(b) When a contractor requests correction of a bid under FAR 14.406-3(a) and it is determined that a mistake has been made but correction is denied and, as an alternative, the contractor requests award under its bid as submitted, the contracting officer shall refer the file to the Assistant Administrator for Procurement for determination.

(c) Any doubtful case under FAR 14.406-3 should be forwarded to the Assistant Administrator for Procurement.

1814.406-4 Mistakes after award.

(a) Any determination authorized by FAR 14.406-4 (b) and (c) shall be made by the contracting officer after obtaining concurrence from the installation's Office of Chief Counsel in accordance with FAR 14.406-4(d).

(b) A copy of any determination made under FAR 14.406-4(b) and

(c) Shall be forwarded to the Office of Procurement, Code HP.

PART 1815—CONTRACTING BY NEGOTIATION

Subpart 1815.1—General Requirements for Negotiation

Sec.
1815.102 General.
1815.170 Factors in negotiation.

Subpart 1815.4—Solicitation and Receipt of Proposals and Quotations

1815.405 Solicitations for information or planning purposes.
1815.405-1 General.
1815.405-70 Application.
1815.405-71 Procedure.
1815.405-72 Special considerations.
1815.406 Preparing requests for proposals (RFP's) and requests for quotations (RFQ's).
1815.406-2 Part I—The Schedule.
1815.406-4 Part III—List of documents, exhibits, and other attachments.
1815.406-5 Part IV—Representations and instructions.
1815.406-70 Instructions for technical proposal and business management proposal submission.
1815.407 Solicitation provisions.
1815.407-70 NASA solicitation provisions.
1815.412 Late proposals and modifications.
1815.413 Disclosure and use of information before award.
1815.413-2 Alternate II.

Subpart 1815.5—Unsolicited Proposals

1815.502 Policy.
1815.503 General.
1815.504 Advance guidance.
1815.504-70 Unsolicited proposal brochure.
1815.505 Content of unsolicited proposals.
1815.505-70 Unsolicited renewal proposals.
1815.506 Agency procedures.
1815.507 Contracting methods.
1815.508 Prohibitions.
1815.508-70 NASA prohibitions.
1815.509 Limited use of data.
1815.509-70 Limited use of proposals.
1815.570 Foreign proposals.

Subpart 1815.6—Source Selection

1815.608 Proposal evaluation.
1815.608-70 Technical evaluation.
1815.608-71 Automatic data processing equipment.
1815.610 Written or oral discussion.
1815.613 Alternative source selection procedures.
1815.613-70 General.
1815.613-71 Evaluation and negotiation of procurements conducted in accordance with source evaluation board (SEB) procedures.
1815.613-72 NASA solicitation provision.

Subpart 1815.7—Make-or-Buy Programs

1815.704 Items and work included.
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Authority: 42 U.S.C. 2473(c)(1).

Subpart 1815.1—General Requirements for Negotiation

1815.102 General.

Procurement personnel, as well as others concerned, shall ensure that contract negotiations are completed expeditiously. All details of the negotiation must be completed before the contract is awarded, including, to the extent applicable—

(a) Arrangements regarding Government-furnished property, including the contractor's responsibility for controlling, maintaining, and accounting for it;

(b) Determination that the prospective contractor is responsible, including completion of preaward surveys when required;

(c) Arrangements with other Government agencies for using facilities under their control;

(d) Verification that any required security clearance has been obtained; and

(e) Establishment of the requirement for the contractor to furnish data, both for technical evaluation and for competitive reprocurement when follow-on procurement is probable, if the appropriate technical office has requested such data.

1815.170 Factors in negotiation.

During negotiations, contracting officers and their negotiators shall give due attention to the following factors listed in (a) through (h) of this section and any other appropriate factors:

(a) Comparison of—

(1) The business reputations, capabilities, and responsibilities of the offerors;

(2) Prices quoted by each with other prices for the same or similar supplies or services, with due regard to production costs, including extra-pay shift, multishift, and overtime costs, and any other factors relating to price, such as profits, transportation costs, and cash discounts.

(b) Consideration of—

(1) The quality of the supplies or services offered or the quantity of the same or similar supplies or services previously furnished, with particular regard to the satisfaction of technical requirements;

(2) Delivery requirements;

(3) Cost sharing, if required (see 1816.303);

(4) The size of the business concern;

(5) Whether the offeror requires expansion or conversion of plant facilities;

(6) Whether the offeror is in a labor surplus area;

(7) Whether the offeror will have an adequate supply of qualified labor;

(8) The extent of subcontracting;

(9) The offeror's existing and potential workload;

(10) The possibility of broadening the industrial base by developing additional suppliers;

(11) Whether the offeror requires Government-furnished property, machine tools, or facilities, or Government-operated test facilities; and

(12) The rules for avoiding of organizational conflicts of interest (see FAR Subpart 9.5).

(c) Discriminating use of price and cost analyses.

(d) Investigation of price aspects of any important subcontract.

(e) Individual bargaining, by mail or by conference.

(f) Effective utilization of the most desirable type of contract.

(g) Advantages or disadvantages to the Government that might result from making multiple awards (see FAR 15.605(f)).

(h) Royalties the Government will be required to pay under patent license agreements.

Subpart 1815.4—Solicitation and Receipt of Proposals and Quotations

1815.405 Solicitations for information or planning purposes.

1815.405-1 General.

(a) Solicitations for information or planning purposes are particularly useful when a procurement can be properly negotiated only after potential offerors have had an opportunity to become familiar with a large quantity of data, or when it would be desirable to have industry participation in formulating and reviewing complex specifications or requirements. Solicitations for information or planning purposes can have desirable benefits. They can promote competition and help ensure the reasonableness and feasibility of the requirement. Potential sources can be apprised of NASA requirements in a particular field and invited to submit data for consideration early in the acquisition process without undue expenditure of time, effort, and money.

(b) Solicitations for information or planning purposes may not be used as a means for prequalifying offerors. While, under some circumstances, their use may lengthen the acquisition cycle, it may shorten the time required for submitting proposals when a large quantity of data must be analyzed by industry before proposals can be submitted.

1815.405-70 Application.

(a) Solicitations for information or planning purposes should be utilized when appropriate; e.g., in major systems acquisitions or other complex projects for which feasibility or technology studies are being conducted (either in-house or by contract) that may have relevance to later competitions. The results of such studies may be made available to industry as soon as they are known or periodically.

(b) Requirements for automatic data processing equipment or support services to perform specified operations or achieve certain results may be suitable for advance review and comment by the private sector when diverse approaches to accomplishing mission objectives may be feasible. The material made available in advance may vary from a comprehensive draft of a proposed requirement to a partial draft; e.g., statement of work and/or specifications or reports.

1815.405-71 Procedure.

(a) In making advance information available to industry, sufficient time should be allowed to permit potential sources an opportunity, commensurate with the task, to prepare and submit a response to the solicitation for information or planning purposes. Invitations for bids and requests for proposals may not be used for these purposes. Solicitations for information or planning purposes may be issued only with the procurement officer's prior approval (see FAR 15.405-1).

(b) The provision at FAR 52.215-3 does not prohibit the allowance, under FAR 31.205-18, of the cost of preparing a response to the solicitation. Solicitations for information or planning purposes shall at least:

(1) Request an expression of interest in the contemplated requirement and

(2) Designate a time and place for submitting responses.

Each solicitation shall define, as explicitly as possible, the information the Government desires and indicate whether it is contemplated that the solicitation will be followed by a conference. After approval by the procurement officer, the solicitation shall be forwarded to potential sources and synopsized according to in FAR Subpart 5.2.

(c) Each source responding to the solicitation shall be advised of the details of any pending conference. The conference, when provided for, shall be conducted by procurement personnel and should be attended by technical, legal, and other personnel as appropriate. Care must be taken not to prejudice any future competition. All sources shall be furnished identical information in connection with the proposed requirement. Care shall be taken to safeguard any information received in confidence.

1815.405-72 Special considerations.

The procedure in 1815.405-71 does not constitute procurement in the usual sense, where the Government is fully aware of its requirements and has incorporated them in a formal solicitation or firms are invited to make known their interest in a procurement by responding to a presolicitation notice. Under the solicitation for information or planning purposes procedure, interested firms may suggest changes in a proposed specification or statement of work; propose alternatives in concept, method, design, system integration, and the like that might result in lower costs without sacrificing performance; or recommend changes in other requirements regarding the product or service involved. Care should be exercised in this connection to avoid potential conflict of interest situations. (See FAR Subpart 9.5.)

1815.406 Preparing requests for proposals (RFP's) and requests for quotations (RFQ's).

(a) Requests for proposals (RFP's), including amendments to them, shall be prepared by the contracting office, with assistance from technical or other offices as required, and be issued by the contracting officer or an authorized representative. The RFP has a twofold purpose:

(1) To convey to prospective offerors the information they need to prepare a proposal properly, and

(2) To solicit the information that procurement and technical personnel need to appraise proposals.

(b) RFP's shall specify a date for their submission. Any extension of time granted to one prospective offeror shall be granted uniformly to all. Any RFP shall be issued simultaneously to all prospective offers; no prospective offeror shall be given an advantage. When advisable, particularly in the case of research and development, proposals shall be requested in two parts:

(1) An unpriced technical proposal, and

(2) A cost proposal cross-referenced to the technical proposal (see 1815.406-70).

1815.406-2 Part I—The Schedule.

Section C, Description/specifications/work statement. (a) In source evaluation board procurements, when detailed program or project support plans will be required as part of the offeror's proposal, but will not be important discriminators in the evaluation process and cover only technical or management support to the primary product or service being offered, describe the requirements for those plans in separate appendices to the statement of work (see 1815.406-70(a)(7)).

(b) In solicitations for cost-reimbursement support services contracts requiring price quotations, include available data regarding the quantity and quality of supplies and services required, set forth in terms of work hours of identifiable categories of labor, including experience and related qualifications, and in terms of quantities of supplies, all exclusive of costs (see 1815.406-70(b)(8)).

1815.406-4 Part III—List of documents, exhibits, and other attachments.

Section J, List of attachments. List here all of the documents, exhibits, and other attachments making up the solicitation package; give form number, name, date, and number of pages for each document; give type and identifier (for example, "Exhibit A"), name, and number of pages for each exhibit, appendix, or other attachment (for example: work frequency schedules, work breakdown structures, work statements, specifications, special requirements, or other documents too lengthy to be conveniently written into the solicitation proper).

1815.406-5 Part IV—Representations and instructions.

(a) *Section K, Representations, certifications, and other statements of offerors or quoters.* See 1845.104(b).

(b) *Section L, Instructions, conditions, and notices to offerors or quoters.*

(1) State if the selected contractor will require access to classified information (see NMI 1650.1, Industrial Security Policies and Procedures).

(2) Indicate the method and format of price quotation desired (fixed-price or cost-reimbursement, if known at the time), including a reference to the necessity for cost or price breakdown.

(3) Describe the information required to support proposed prices; e.g., subcontract structure, purchasing system, royalty, and cost or price information (see FAR Subparts 15.7 and 15.8, and FAR Part 44).

(4) Include instructions for disposing of drawings and specifications supplied with the solicitation.

(5) Include a statement of information required to facilitate evaluation of technical and financial capabilities and a statement covering special technical capabilities any contractors must possess.

(6) Include an instruction reflecting desirability of a separation between the offeror's business management proposal and technical proposal. For evaluation purposes, separate proposals, if time permits, should be received; therefore the format should be flexible enough to permit separate requirements (see 1815.406-70).

(7) State that the solicitation does not commit the Government to pay any cost incurred in submitting the offer or in making necessary studies or designs for its preparation, nor to contract for services or supplies.

(8) Include a statement that "Proposals must set forth full, accurate, and complete information as required by the solicitation (including attachments). The penalty for making false statements in proposals is prescribed in 18 U.S.C. 1001."

1815.406-70 Instructions for technical proposal and business management proposal submission.

When it is contemplated that the contract will exceed $1,000,000 (or, if appropriate, lesser amounts), the solicitation should require submission of the information in paragraphs (a) and (b) of this section, if applicable, in addition to any other information specified elsewhere in this section 1815.406.

(a) *Technical proposal.* Proposals should include the following:

(1) The method by which the offeror proposes to solve the technical problems of the project, other than information to be furnished elsewhere as a part of program or project support plan summaries (see paragraph (a)(7) of this section).

(2) Any specific exceptions to proposed technical requirements.

(3) A statement of background experience in fields relating to the procurement.

(4) Names and résumés of experience of key technical personnel who will be employed on the project and the extent to which each will participate, together with an organization chart of the segment of the offeror's organization that will be directly assigned to the project, listing names and job categories.

(5) Description and location of the company-owned research, test, and production equipment and facilities available for use on the project, accompanied by a separate list of any additional facilities or equipment required in the performance of the work, and a separate list of existing Government facilities available to the contractor and required for use on the project.

(6) Hourly time estimates (without pricing information) by labor class for each phase or segment of the project, the extent to which these estimates are based on the use of employees presently on the offeror's payrolls who will be available for the work as required, and an indication of the number and types of personnel necessary to be hired and arrangements made to obtain them.

(7) For procurements described in 1815.406-2(a)—

(i) As part of the original proposal, estimates of the cost and work force to perform major tasks under each requirement separately identified, and a summary of the major task elements to perform each requirement; and

(ii) A statement by each offeror that it is understood that, if selected for negotiations, the offeror will ultimately be required to furnish a detailed program or project support plan that will be negotiated into the contract prior to award.

(b) *Business management proposal.* Proposals should include the following:

(1) The organization proposed for carrying out the project, including organization charts showing the interrelationship of business, technical, and subcontract management and an indication of all levels of operation and management, from lower levels through intermediate management to top-level management.

(2) A summary of the experience of all key personnel who will conduct the managerial affairs of the project.

(3) Contractual procedures proposed for the project to effect administrative and engineering changes, describing any differences from existing procedures.

(4) The extent to which the offeror has invested corporate funds in research and development work in the project area or directly related areas and plans for future expenditures for such work; and the extent, if any, to which the offeror is willing to participate in the cost of the project.

(5) A statement as to—

(i) The capacity at which company-owned research, test, and production equipment and facilities required to perform the work are currently working;

(ii) The extent to which they could handle the additional workload imposed by this project;

(iii) The cost of any additional facilities or equipment required to perform the work, with information as to whether they will be contractor-furnished or Government-furnished; and

(iv) The value of existing Government facilities available to the offeror and required for use on the project, showing the Government agencies and facilities contracts involved.

(6) A statement of past performance and experience, including—

(i) A list of Government contracts in excess of $1,000,000 received in the past three years or currently in negotiation involving mainly research and development work, showing each contract number, the Government agency placing the contract, the type of contract, and a brief description of the work;

(ii) For each cost-reimbursement contract listed pursuant to subdivision (b)(6)(i) of this section, a list of amounts of cost overruns or underruns, reasons for them, and percentage of fixed fee;

(iii) For each contract listed pursuant to subdivision (b)(6)(i) of this section, a record of contract completion as against completion date anticipated at the time of entering into the contract, with explanations for completion delays; and

(iv) An identification and explanation of any terminations for default or convenience.

(7) A balance sheet for the offeror's last fiscal year, accompanied by a profit and loss statement.

(8) A detailed cost or price proposal, furnished as a separate, detachable element of the business management proposal and based on the effort described or estimated in the solicitation. This cost or price proposal is a requirement for the proposal to be responsive. If the offeror believes the work can be accomplished more efficiently with organizational plans, staffing, management, or equipment differing from those indicated in the solicitation, it may also submit an alternative proposal supported by a detailed cost or price proposal (see 1815.406–2, section C, (b)); this alternative proposal must be in addition to, not in lieu of, the basic proposal.

1815.407 Solicitation provisions.

(a) The provision at FAR 52.215–10, Late Submissions, Modifications, and Withdrawals of Proposals, prescribed in FAR 15.407(c), shall not be used in solicitations for the Small Business Innovation Research (SBIR) program or for broad agency announcements listed in 1835.016. See instead 1815.407–70(b).

(b) The provision at FAR 52.215–12, Restriction on Disclosure and Use of Data, prescribed in FAR 15.407(c), shall not be used in NASA solicitations. See instead 1815.407–70(a).

1815.407–70 NASA solicitation provisions.

(a) The contracting officer shall insert in RFP's and RFQ's (but not in solicitations for information or planning purposes) the provision at 1852.215–72, Restriction on Use and Disclosure of Proposal/Quotation Information (Data). (See also 1815.509–70(a)).

(b) In accordance with 1815.412, the contracting officer shall use the provision at 1852.215–73, Late Submissions, Modifications, and Withdrawals of Proposals (AO and SBIR Programs), in lieu of the provision at FAR 52.215–10 in Announcements of Opportunity issued pursuant to Subpart 1870.1 and in Small Business Innovation Research (SBIR) solicitations. This provision allows the project office to accept late proposals or proposal modifications and late best and final offers if, in the selection official's judgment, to do so is in the Government's best interest.

(c) The contracting officer may insert a provision substantially as stated at 1852.215–74, Alternate Proposals, in competitive requests for proposals if receipt of alternate proposals would benefit the Government. See FAR 52.215–13(d).

(d) In accordance with 1815.406–5(b)(7), the contracting officer shall insert the provision at 1852.215–75, Expenses Related to Offeror Submissions, in all requests for proposals.

(e) In accordance with 1815.406–5(b)(8), the contracting officer shall insert the provision at 1852.215–76, False Statements, in all requests for proposals to advise offerors of the penalty for making false statements in proposals.

(f) The contracting officer shall insert the provision at 1852.215–77, Preproposal/Pre-bid Conference, in competitive requests for proposals and invitations for bids where the Government intends to conduct a preproposal or pre-bid conference. Insert the appropriate specific information relating to the conference. Supplemental information, such as an agenda summary and whether a tour is included, may be identified in "Other Information."

(g) The contracting officer shall insert the provision at 1852.215–80, Disposal of Unsuccessful Proposals, in competitive requests for proposals.

(h) For grouping items in the solicitation in contemplation of an aggregate award, see 1814.201–670(b).

(i) For requiring full quantities to be proposed, see 1814.201–670(c).

1815.412 Late proposals and modifications.

This section applies to broad agency announcements listed in 1835.016 and SBIR Phase I and Phase II solicitations only. See FAR 15.412 for policy regarding late proposals/modifications under other solicitations.

(a) Proposals, or modifications to them, received from qualified firms after the latest date specified for receipt may be considered if a significant reduction in cost to the Government is probable or if there are significant technical advantages, as compared with proposals previously received. In such cases, the project office shall investigate the circumstances surrounding the submission of the late proposal or modification, evaluate its content, and submit written recommendations and findings to the selection official or a designee as to whether there is an advantage to the Government in considering the proposal.

(b) The selection official or a designee shall determine whether to consider the proposal.

(c) Offerors may withdraw proposals any time before award, provided the conditions in paragraph (b) of the provision at 1852.215–73, Late Submissions, Modifications, and Withdrawals of Proposals (AO and SBIR Programs), are satisfied.

1815.413 Disclosure and use of information before award.

(a) The alternate procedures at FAR 15.413–2 shall be used for NASA procurements in lieu of those prescribed at FAR 15.413–1. The policies and procedures of FAR 15.413 and NFS 1815.413–2 shall apply both before and after award. The notice at FAR 15.413–2(e) shall be placed on the cover sheet of all proposals, whether solicited or unsolicited. (See 1805.303–70(a)(1)(iii) regarding release of the names of firms submitting offers.)

(b) During evaluation proceedings, whether or not a source evaluation board is used, NASA personnel participating in any way in the evaluation may not reveal any information concerning the evaluation to anyone not also participating, and then only to the extent that the information is required in connection with the evaluation. When non-NASA personnel participate, they shall be instructed to observe these restrictions. (Information shall be provided to unsuccessful offerors in accordance with FAR 15.1003 and 1815.1003. See also 1815.413–2.)

1815.413–2 Alternate II.

(a) *General.* The references in FAR 15.413–2 to the provision at FAR 52.215–12 shall be considered to be references to the provision at 1852.215–72.

(b) *Policy.* It is NASA policy to have proposals evaluated by the most competent technical and management sources available. When it is necessary to disclose a proposal outside the Government to meet NASA's evaluation needs—

(1) Personnel participating in evaluation proceedings shall be instructed to observe the restrictions in FAR 15.413 and 1815.413.

(2) The requirements in paragraphs (c) and (d) of this section shall be met.

(3) JPL and other non-government participants in evaluation proceedings shall be appointed as special government employees, except for evaluation proceedings resulting from

Broad Agency Announcements (1835.016) and unsolicited proposals.

(c) *Approval.* Under FAR 15.413–2(f)(1), only the Assistant Administrator for Procurement, NASA Headquarters, or a designee, with the concurrence of General Counsel or designee, is authorized to make a decision to disclose a proposal outside the Government or JPL, except that:

(1) Proposals submitted in response to Announcements of Opportunity may be disclosed in accordance with 1870.103, App. I, and NMI 1156.4 and any amendments to them and

(2) Unsolicited proposals and proposals in response to a NASA Research Announcement may be disclosed with the concurrence of the NASA official one level higher than the NASA program official responsible for overall conduct of the evaluation.

(d) *Agreement with evaluator.* When, in accordance with paragraph (c) of this section, it is determined to disclose a proposal outside the Government or JPL, the following agreement, or a similar arrangement appropriate for the treatment of the proposal, shall be obtained in writing from the evaluator prior to disclosure. Also, the releasing official shall review the proposal to ensure that the notice at FAR 15.413–2(e) (see 1815.413(a)) is affixed before it is disclosed to the evaluator.

Conditions for Evaluation of Proposals (December 1988)

(1) Whenever NASA furnishes a proposal for evaluation, the recipient agrees to use the information in the proposal for NASA evaluation purposes only.

(2) This requirement does not apply to information obtained from another source without restriction.

(3) The NASA notice on the cover sheet, and any notice that may have been placed on the proposal by its originator, shall be applied to any reproduction or abstract. Upon completion of the evaluation, the recipient shall return all copies of the proposal and abstracts, if any, to the NASA office that initially furnished the proposal for evaluation.

(4) Unless authorized by the NASA initiating office, the recipient may not contact the originator of the proposal concerning any aspect of its contents.

(End of agreement)

(e) *Rights in proposal data.* NASA may obtain rights in technical data (but not commercial and financial information) contained in a solicited or unsolicited proposal upon which a contract award is based, by specific agreement with the prospective contractor in accordance with the procedures of FAR 27.407 and the clause at FAR 52.227–23, Rights to Proposal Data (Technical).

Subpart 1815.5—Unsolicited Proposals

1815.502 Policy.

NASA will foster and encourage the submission of unsolicited proposals relevant to agency mission requirements by expeditious and equitable handling of all unsolicited proposals.

1815.503 General.

(a) *Submission to other agencies or JPL.* NASA will not accept for formal evaluation unsolicited proposals initially submitted to another agency or to the Jet Propulsion Laboratory (JPL) without the offeror's express consent. Proposals submitted to NASA shall not be transferred to JPL for procurement without the offeror's written permission.

(b) *Transferring proposals.* When a reviewing official determines that an unsolicited proposal is not related to NASA's mission or may be of interest to agencies in addition to NASA, the proposal control officer may identify for the offeror other agencies whose missions may bear a relationship to the subject matter of the unsolicited proposal. NASA shall not respond to an unsolicited proposal by transferring it to another agency for action without the offeror's written consent.

(c) *Relationship to award.* All unsolicited proposals may be prepared in a similar fashion, since NASA does not have separate "contract proposal" and "grant proposal" categories. An unsolicited proposal may result in the award of a contract, a grant, a cooperative agreement, or other agreement. If a grant or cooperative agreement is used, the NASA Grant and Cooperative Agreement Handbook (NHB 5800.1) applies.

1815.504 Advance guidance.

1815.504–70 Unsolicited proposal brochure.

The Office of Procurement (Code HP) is responsible for preparing for public use a brochure titled "Guidance for the Preparation and Submission of Unsolicited Proposals," which shall be provided without charge by procurement and other NASA officials in response to requests for proposal submission information. The brochure, issued pursuant to FAR 15.504, constitutes NASA's single, official, general-purpose guidance document for public use in submitting unsolicited proposals. A deviation is required for use of any modified or summarized version of the brochure or for alternate means of general dissemination of unsolicited proposal information. The Headquarters Office of Small and Disadvantaged Business Utilization (Code K) is responsible for internal distribution of the brochure. Installations and individuals should request bulk supplies from that office.

1815.505 Content of unsolicited proposals.

1815.505–70 Unsolicited renewal proposals.

Renewal proposals, (i.e., those for the extension or augmentation of current contracts) are subject to the same FAR and NFS regulations, including the requirements of the Competition in Contracting Act, as are proposals for new contracts. Unsolicited renewal proposals within the scope of an open NASA Research Announcement (NRA) shall be evaluated in the same manner as unsolicited proposals described in 1815.506(b).

1815.506 Agency procedures.

(a) *NASA unsolicited-proposal coordinating offices.* (1) NASA Headquarters and each NASA field installation shall designate an organizational entity as its unsolicited-proposal coordinating office for receiving and coordinating the handling and evaluation of unsolicited proposals in accordance with the policies and procedures of FAR Subpart 15.5, this Subpart 1815.5, and NHB 5800.1.

(2) Each installation shall establish procedures for handling proposals initially received by other offices within the installation. Misdirected proposals shall be forwarded by the coordinating office to the proper installation. Field installation coordinating offices are also responsible for providing guidance to potential offerors regarding the appropriate NASA officials to contact for general mission-related inquiries or other preproposal discussions.

(3) At Headquarters, responding to general inquiries from academic researchers is the responsibility of the Headquarters coordinating office, while handling inquiries from all other offerors is the responsibility of the Contracts and Grants Division (Code HW).

(b) *Relationship to open NRAs.* An unsolicited proposal for a new effort, identified by an evaluating office as being within the scope of an open NRA, shall be evaluated as a response to that NRA under 1835.016–70(e), provided that the evaluating office can either:

(1) State that the proposal is not at a competitive disadvantage or

(2) Give the offeror an opportunity to amend the unsolicited proposal to ensure compliance with the applicable NRA proposal preparation instructions.

If these conditions cannot be met, the proposal must be evaluated separately.

(c) *Reconsideration.* An appropriately revised submission that is responsive to comments contained in an initial determination of inadequacy under FAR 15.506-1 shall be reconsidered by NASA officials.

(d) *Information requirements.* Coordinating offices shall keep records of unsolicited proposals received and shall provide prompt status information to requestors. These records shall include, at a minimum, the number of unsolicited proposals received, funded, and rejected during the fiscal year; the identity of the offerors; and the office to which each was referred. The numbers shall be broken out by source (large business, small business, university, or nonprofit institution).

1815.507 Contracting methods.

A justification for other than full and open competition (JOFOC) is required in accordance with FAR 6.302 and 6.303. See 1805.202 for guidance in complying with the preaward synopsis requirement at FAR 15.507(b)(4).

1815.508 Prohibitions.

FAR 15.508(b) shall not apply to NASA; see instead 1815.508-70.

1815.508-70 NASA prohibitions.

Information (data) in unsolicited proposals furnished to the Government is to be used for evaluation purposes only. Disclosure outside the Government for evaluation is permitted only to the extent authorized by, and in accordance with procedures in, FAR 15.413-2 and 1815.413.

1815.509 Limited use of data.

FAR 15.509 shall not apply to NASA. See instead 1815.509-70.

1815.509-70 Limited use of proposals.

(a) The provision at 1852.215-72, Restriction on Use and Disclosure of Proposal/Quotation Information (Data), is applicable to unsolicited proposals.

(b) If an unsolicited proposal is received with a more restrictive legend than made applicable by paragraph (a) of this section, the procedures of FAR 15.413-2(c) apply.

(c) Upon receipt in the coordinating office, the Government notice in FAR 15.413-2(e) shall be placed on the cover sheet of all unsolicited proposals.

(d) Unsolicited proposals shall be evaluated outside the Government only to the extent authorized by, and in accordance with the procedures prescribed in, FAR 15.413-2(f) and 1815.413.

(e) If a request is made under the Freedom of Information Act for any information contained in an unsolicited proposal, the procedures of FAR 15.413-2(g) apply.

1815.570 Foreign proposals.

Unsolicited proposals from foreign sources are subject to NMI 1362.1, Initiation and Development of International Participation and Cooperation in Aeronautical and Space Programs.

Subpart 1815.6—Source Selection

1815.608 Proposal evaluation.

The authority in FAR 15.608(b) to determine in writing that rejection of all proposals received in response to a solicitation is in the public interest is delegated to the contracting officer.

1815.608-70 Technical evaluation.

(a) Technical evaluation should include consideration of—

(1) The offeror's understanding of the scope of the work as shown by the scientific and technical approach proposed;

(2) The availability and competence of experienced engineering, scientific, or other technical personnel;

(3) The availability of necessary research, test, and production facilities;

(4) Experience or pertinent novel ideas in the specific branch of science or technology involved;

(5) The offeror's willingness to devote its resources to the proposed work with appropriate diligence; and

(6) The offeror's proposed method of achieving the reliability required.

(b) In making this evaluation, technical personnel may be given access to portions of the business proposals upon request. After evaluation and preparation of written findings by the technical personnel, proposals shall be returned to the negotiator. The contracting officer shall review the documentation supporting the written findings of the technical personnel to determine that such documentation is adequate and complete.

1815.608-71 Automatic data processing equipment.

In evaluating proposals containing a significant amount of cost for automatic data processing equipment (ADPE), the contracting officer should obtain from the offeror a feasibility study and a lease-versus-purchase study covering the acquisition of such equipment or service. The contracting officer shall obtain the recommendations of the price analyst and appropriate ADPE technical personnel as to the adequacy of the studies and the offeror's determinations resulting from the studies. Particular attention should be given to proposals containing a high dollar amount for renting ADPE or complete systems to be used solely for performing the contract. Current Office of Management and Budget criteria (NHB 2410.1, Information Processing Resources Management) should be used, when applicable, as a guide in evaluating the offeror's studies. Contractors should be encouraged to—

(a) Use ADPE machine time available within a reasonable geographic distance;

(b) Use telecommunications links to remote Government-owned or—leased ADPE systems; and

(c) Purchase ADPE in preference to leasing the equipment when financial advantage is the sole or overriding factor.

1815.610 Written or oral discussion.

FAR 15.610(c)(2) shall not be applied in negotiation of NASA procurements. It is contrary to NASA procedures that limit discussions with offerors (see FAR 15.613 and 1815.613).

1815.613 Alternative source selection procedures.

1815.613-70 General.

Pursuant to FAR 15.613, the source selection procedures in 1815.613 that limit discussions with offerors and that otherwise differs from procedures described in FAR 15.610, apply to all procurements negotiated by NASA. Other than these differences, FAR Subpart 15.6 shall apply. The evaluation of proposals received may be accomplished in a number of ways. Evaluation of proposals received in response to an Announcement of Opportunity shall be accomplished in accordance with 1870.103, App. I. Proposals received in response to an open NASA Research Announcement will be evaluated in accordance with 1835.016-70(e). Unsolicited proposals identified by an evaluating office as being within the scope of an open NASA Research Announcement shall be evaluated under 1835.016-70(d). Small Business Innovation Research (SBIR) proposals will be evaluated in accordance with the SBIR program solicitations issued under the authority of section 9 of the Small Business Act (15 U.S.C. 638). The applicability of and rules for the conduct of source selection in accordance with formal source evaluation board (SEB) procedures are covered in 1815.613-71. The policies prescribed in 1815.613-71 shall also be applied to other negotiated procurements.

1815.613-71 Evaluation and negotiation of procurements conducted in accordance with source evaluation board (SEB) procedures.

(a) *Applicability.* (1) Unless an exception applies, these SEB procedures shall be followed in all competitive negotiated procurements of $25,000,000 or more, including those in which the initial contract is less than $25,000,000 but it is likely that the source selected will receive contracts for follow-on or later phases of the same project that, when added to the initial contract, will result in a combined total of $25,000,000 or more. (Examples are options and later phases as in A-109 procurements.) Exceptions to this requirement include architect-engineer procurements and procurements of ADP subject to the Brooks Act (40 U.S.C. 759), as implemented by the Federal Information Resources Management Regulation (FIRMR) (41 CFR Part 201). However, the use of SEB procedures is optional for procurements of ADP subject to the Brooks Act.

(2) Detailed procedures regarding designation and operation of SEBs are in 1870.303, App. I, commonly known as the Source Evaluation Board Handbook.

(3) Evaluation of system design concepts submitted in response to requests for alternative system design concept proposals in support of a major system acquisition subject to NMI 7100.14 should include, in addition to consideration of proposed system function and performance capabilities to meet mission needs and program objectives, an analysis of resources required and of benefits to be derived by trade-offs, when feasible, among technical performance, acquisition costs, ownership costs, time to develop and procure, and the relevant accomplishment record of competitors.

(4) The formal SEB procedures (1870.303, App. I) may be used in other competitively negotiated procurements, if the source selection official determines it desirable to do so.

(b) *Evaluation and selection procedures*—(1) *Responsibility of source selection official.* In the final analysis, NASA's judgment on the totality of the evaluation will be that of the source selection official, including assessment of the procedures followed by the SEB, the validity of its substantive evaluations, the relative significance of the several areas of evaluation and their weightings in the light of all the information produced by the source evaluation and selection process.

(2) *Evaluation factors, subfactors, and elements and weights.* Establishing evaluation factors, subfactors, and elements and their weights requires the exercise of judgment on a case-by-case basis. They should be tailored to the requirements of each procurement. Technical excellence, price or estimated cost, and contractor management capability are important factors in selection. Their relative importance depends on the nature of the products or services procured. Any factor may tip the balance when competition is very close. Evaluation factors, subfactors, and elements shall be described in each RFP sufficient to inform evaluators and prospective offerors of the significant matters to be addressed in proposals. The evaluation factors (Mission Suitability, Relevant Experience and Past Performance, Cost, and Other Considerations) shall be described, and a statement of their relative importance included. In addition, the weights assigned to the Mission Suitability subfactors and elements shall be included in the RFP.

(3) *Initial identification of proposals not considered acceptable.* (i) After review of committee ratings and other information known to the committees or the SEB and before ranking of proposals by the SEB, the SEB may discontinue the evaluation of any proposal that is unacceptable because—

(A) It does not represent a reasonable initial effort to address itself to the essential requirements of the RFP or clearly demonstrates that the offeror does not understand the requirements of the RFP;

(B) In research or development procurement, a substantial design drawback inheres in the proposal, and sufficient correction or improvement to consider the proposal acceptable would require virtually an entirely new technical proposal; or

(C) It contains major technical or business deficiencies or omissions or out-of-line costs which discussions with the offeror could not reasonably be expected to cure.

(ii) Simple technical nonresponsiveness in the sense in which the term is used in sealed bidding is not alone sufficient to constitute unacceptability if the proposal is otherwise competitive, and written and/or oral discussions or negotiations after selection reasonably offer the likelihood of resolution. When there is doubt as to whether a proposal should be rejected initially as unacceptable, that doubt shall be resolved by including it for further consideration.

(iii) Documentation must be prepared by the SEB as to why the deficiencies of any proposal are believed to be of sufficient significance to warrant discontinuing evaluation of the proposal at this point in the process.

(4) *Determination of competitive range.* (i) After initial identification of proposals not considered acceptable, the SEB shall tentatively rank the remaining proposals in accordance with the established scoring system. The SEB should not give scores for cost as such. After this ranking is completed, the proposals shall be reviewed to determine which are within the competitive range; namely, those having a reasonable chance of being selected for final award. In making this determination, the SEB, together with the contracting officer, shall evaluate the potential for improving the competitive position of the proposals by written or oral discussions conducted in accordance with subparagraph (b)(5) of this section.

(ii) The competitive range consists of the best proposals, considering mission suitability, cost or price, relevant experience and past performance, and other considerations. When there is doubt as to whether a proposal is within the competitive range, that doubt shall be resolved by including it.

(iii) The initial number of offerors whose proposals are considered as being within the competitive range may be narrowed as a result of the written or oral discussions. However, a proposal initially included in the competitive range should not be rejected without giving the offeror an opportunity to submit a revised proposal to serve as the basis for establishing the new competitive range, unless the discussions relating to an ambiguity or omission make it clear that the proposal should not have been included in the competitive range initially.

(5) *Conduct of written or oral discussions*—(i) *General.* Careful judgment must be exercised in determining the extent of discussions. In some cases, good business practice may warrant having more than one round of discussions with the offerors whose proposals are considered in the competitive range. The time available, the expense and administrative limitations, and the size and significance of the procurement should all be considered in deciding on the type, duration, and depth of the discussions.

(ii) Cost-reimbursement contracts and all contracts for research and development.

(A) The contracting officer, in concert with or on behalf of the SEB, will conduct written and/or oral discussions of the effort to be accomplished and the cost or price of the effort with all offerors determined to be within the competitive range. The discussions are

intended to assist the SEB or other evaluators:

(1) In understanding fully each offeror's proposal and its strengths and weaknesses based upon the individual efforts of each offeror,

(2) In assuring that the meanings and the points of emphasis of RFP provisions have been adequately conveyed to the offerors so that all are competing equally on the basis intended by the Government,

(3) In evaluating the personnel proposed by each firm, and

(4) In presenting a report to the Source Selection Official that makes the discriminations among proposals clear and visible.

In this process, prior to contractor selection, the Government's interests are not served by its assuming the role of an information exchange or clearinghouse.

(B) In cost-reimbursement type contracts and all research and development contracts, the contracting officer shall point out instances in which the meaning of some aspect of a proposal is not clear and instances in which some aspects of the proposal failed to include substantiation for a proposed approach, solution, or cost estimate.

(C) However, where the meaning of a proposal is clear and the Board has sufficient information to assess its validity and the proposal contains a weakness that is inherent in an offeror's management, engineering, or scientific judgment or which is the result of its own lack of competence or inventiveness in preparing its proposal, the contracting officer shall not point out the weaknesses. Discussions are useful in ascertaining the presence or absence of strengths and weaknesses. The possibility that such discussions may lead an offeror to discover that it has a weakness is not a reason for failing to inquire into a matter where the meaning is not clear or where insufficient information is available, since understanding of the meaning and validity of the proposed approaches, solutions, and cost estimates is essential to a sound selection. Offerors should not be informed of the relative strengths or weaknesses of their proposals in relation to those of other offerors. To do so would be contrary to other regulations which prohibit the use of auction techniques (see FAR 15.610(d)(3)). In the course of discussions, Government participants should be careful not to transmit information which could give leads to one offeror as to how its proposal may be improved or which could reveal a competitor's ideas.

(D) The foregoing guidelines are not all-inclusive. Careful judgment must be exercised in the light of all the circumstances of each procurement to promote the most advantageous selection from the standpoint of the Government while, at the same time, maintaining the fairness of the competitive process.

(E) The contracting officer shall give each offeror a reasonable opportunity (with a common cut-off date for all) to support and clarify its proposal in a best and final offer which shall be submitted at the conclusion of discussions. An offeror may, on its own initiative, revise its proposal and make corrections or improvements until the established cut-off date.

(iii) Fixed-price contracts other than for research and development.

(A) In fixed-price type contracts other than for research and development, the specifications ordinarily describe the Government's requirements with more particularity than is possible in cost reimbursement or research and development contracting so that less emphasis is placed on an offeror's introduction of scientific, engineering, and management innovations. The contracting officer will conduct discussions in accordance with the provisions of subdivision (b)(5)(ii) of this section, except for the difference in subdivision (b)(5)(iii)(B) of this section.

(B) The contracting officer, in written or oral discussions, shall point out instances in which some aspect of a proposal contains a weakness in relation to the Government's requirements. But, as provided in subdivision (b)(5)(ii) of this section, the contracting officer shall neither point out the relative strengths or weaknesses of a proposal in relation to those of other offerors nor transmit information which could give leads to one offeror as to how its proposal may be improved or which could reveal a competitor's ideas. The contracting officer shall point out price elements that do not appear to be justified and shall encourage offerors to put forward their most favorable price proposals, but shall not discuss, disclose, or compare price elements of any other offeror.

(6) *Conduct of negotiations prior to selection.* If, after conclusion of written or oral discussions, the SEB considers that the evaluation findings thus far completed are not sufficiently comprehensive for the Source Selection Official to make a decision, it may be prudent and necessary to conduct further discussions or final negotiations with those offerors remaining in the competitive range prior to presentation of the findings to the Source Selection Official. This course of action must be considered as an exception to the SEB process and therefore may be accomplished only with the approval of the Assistant Administrator for Procurement.

(7) *Notice and debriefing.* When a proposal is no longer to be considered for contract award, the offeror shall be promptly notified, in writing, together with a general, reasonably brief explanation of the major reasons. If an offeror requests, in writing, a debriefing as a result of this notice, it will be accorded a formal debriefing in accordance with Subpart 1815.10. The debriefing should be provided at the earliest feasible time, which normally shall be after announcement of the selection decision and before award of the contract. However, when the exigency of the situation will not permit delaying the award in order to debrief unsuccessful offerors, debriefings may be conducted after award.

(8) *Report to source selection official.* The SEB report shall summarize the primary points of discussion and show the effects of the discussions on the evaluation of proposals. The report shall set forth the strengths and weaknesses of each proposal, with an estimate of the potential for correction of the principal weaknesses identified. The report should also state the SEB's estimate of the approximate impact on cost or price that will result from the elimination of correctable weaknesses during negotiations after selection.

1815.613-72 NASA solicitation provision.

The provision at 1852.215-70, Increases in Estimated Costs, shall be included in all RFP's to be evaluated pursuant to SEB procedures, if award of a cost-reimbursement contract (with or without incentive arrangements) is contemplated. The purpose of this provision is to advise offerors selected for final negotiation that they may not unilaterally increase their estimated costs except for the reasons cited in the provision. Government negotiators are cautioned that when the second exception in the provision applies, there may be instances in which such increases in costs do not warrant additional fee.

Subpart 1815.7—Make-or-Buy Programs

1815.704 Items and work included.

Make-or-buy programs should not include items or work efforts estimated to cost less than $500,000.

1815.706 Evaluation, negotiation, and agreement.

The make-or-buy program review by the installation's small and disadvantaged business utilization specialist and the SBA representative (see FAR 15.706(b)) should be concurrent with the contracting officer's review. When urgent circumstances preclude this or if the small and disadvantaged business specialist or SBA representative fails to respond on a timely basis, the contracting officer shall include an explanatory statement in the contract file and transmit copies to the specialist and the representative.

1815.708 Contract clause.

1815.708-70 NASA contract clause.

(a) The contracting officer shall insert the provision at 1852.215-78, Make-or-Buy Program Requirements, in solicitations requiring make-or-buy programs as provided in FAR 15.703. This provision shall be used in conjunction with the clause at FAR 52.215-21, Changes or Additions to Make-or-Buy Program. The contracting officer may add an additional paragraph(s) identifying any other information required in order to evaluate the program.

(b) The contracting officer shall insert the clause at 1852.215-79, Price Adjustment for "Make-or-Buy" Changes, in contracts that include FAR 52.215-21 with its Alternate I or II. Insert in the appropriate columns the items that will be subject to a reduction in the contract value.

Subpart 1815.8—Price Negotiation

1815.804 Cost or pricing data.

1815.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

(a) When an exemption is granted under FAR 15.804-3(e)(2) for repetitive submissions of catalog items, Government approval of the exemption claim shall state the effective period, usually not more than one year, and require the contractor to furnish any later information that might raise a question as to the exemption's continuation.

(b) When exempting submission under FAR 15.804-3(e)(3), the contracting officer may, by a solicitation provision or otherwise, either dispense with the requirement for an SF 1412 or limit the data required to be submitted on the form. For example, if the item being procured is similar to a commercial item, only an explanation of a price differential may be needed. If the fact of substantial sales to the general public is well known, the actual sales prices, but not the quantity of sales, may be required.

(c) The authority in FAR 15.804-3(i) to waive the requirement for cost or pricing data is delegated to the Assistant Administrator for Procurement, without power of redelegation. Set forth below is a format for the determination and findings to be made by the Assistant Administrator for Procurement to waive the requirement for submission and certification of cost or pricing data as required by 10 U.S.C. 2306(f). Requests for waivers shall be addressed to NASA Headquarters, Contract Pricing and Finance Office, Code HC.

National Aeronautics and Space Administration

Washington, DC 20546

Determination and Findings

Authority to Waive Submission of Cost or Pricing Data and Certificate

On the basis of the following findings and determination, the requirement for submitting the cost or pricing data and the certificate described below may be waived pursuant to the authority of 10 U.S.C. 2306(f), as implemented by NASA FAR Supplement 1815.804-3(c).

Findings

1. The (1) proposes to enter into a contract with (2) for the procurement of (3).

2. Pursuant to FAR 15.804-2, the proposed contractor is required to submit cost or pricing data as defined in FAR 15.801, together with the certificate in FAR 15.804-4. However, waiver of submission of the cost or pricing data described below is justified for the reasons indicated: (4)

Determination

The requirement for submission of cost or pricing data described in the above findings for the proposed procurement is hereby waived.

Date

Notes:

(1) Name of installation.

(2) Name of proposed contractor.

(3) Brief description of supplies or services.

(4) Identification of the cost or pricing data requirements to be waived. The waiver may be partial, i.e., limited to particular cost or pricing data. Also describe the circumstances and conditions that make the proposed procurement an exceptional case, and state the reasons justifying the proposed waiver.

1815.805-4 Technical analysis.

1815.805-470 Responsibilities of NASA requirements personnel.

NASA requirements personnel are responsible for conducting a technical evaluation of proposals to determine whether the supplies or services offered will meet specifications. In addition, when a cognizant contract administration office is not requested to perform a technical analysis of proposals in accordance with FAR 15.805-5, the analysis will be the responsibility of NASA requirements personnel.

1815.805-5 Field pricing support.

(a) A field pricing report shall be obtained in accordance with FAR 15.805-5(a)(1), except that for cost-reimbursement contracts, the requirement for obtaining a field pricing report is $1,000,000.

(b) Whenever available data are adequate for a reasonableness determination, the contracting officer shall document the contract file to reflect the basis of the determination. Information of the type described in subparagraphs (b) (1) through (6) of this section, which is often available to the contracting officer from the cognizant contract administration office or internal NASA sources, should be useful in determining the extent of any field pricing support needed (no single category of information is necessarily sufficient by itself; for example, information as to rates for labor and overhead would normally need to be accompanied by data concerning the base elements—labor hours, material costs, and so forth—to which the rates apply):

(1) In-house engineering determination of the level of effort required in connection with research and development or study contracts.

(2) Audited cost information from contract awards in process, or recently negotiated contracts.

(3) Adequately reviewed data on proposed subcontract items that constitute a major portion of the prime contract price proposal.

(4) Prices of standard commercial items that constitute a major portion of the prime contract price proposal.

(5) Special forward pricing formulas or rates, such as for support items or forecast overhead rates, prescribed in an existing advance agreement.

(6) Current labor rates, overhead rates, loading factors, and per diem rates, and lot data based upon actual costs and labor hours.

(c) When the contracting officer determines that information adequate to establish price reasonableness without field pricing support is available within NASA, but that a review by the auditor is still needed, the contracting officer should address the request directly to the cognizant audit office. The cognizant ACO shall be provided an information copy of this request.

(d) When input from the ACO or auditor involves merely a verification of information, contracting officers are

encouraged to obtain this verification by direct telephone contact with the cognizant office and shall record it in the contract file.

(e) When the threshold at 1815.805-5(a)(1) is met and the cost proposal is for a product of a follow-on nature, notwithstanding any other provision of this subsection 1815.805-5, a complete report shall be requested from the cognizant contract administration office. The field pricing report will include, but not be limited to, actuals incurred under the previous contract, learning experience, technical and production analysis, and subcontract proposal analysis.

1815.806 Subcontract pricing considerations.

The contracting officer shall notify the appropriate contract administration activities when review and evaluation of subcontractor's proposals:

(a) Will require extensive field pricing assistance in connection with a major acquisition or

(b) Require special or expedited action by field pricing personnel that is being or has been delayed.

1815.807 Prenegotiation objectives.

Before conducting negotiations requiring installation or Headquarters review, contracting officers or their representatives shall prepare a prenegotiation position memorandum setting forth the technical, business, contractual, pricing, and other aspects to be negotiated. Matters for negotiation may arise from proposal evaluations, contractor requests, unique installation requirements, or other Government agencies' requirements, among other things.

1815.807-70 Content of the prenegotiation position memorandum.

The prenegotiation position memorandum (PPM) should fully explain the contractor and Government positions on any open issues and identify and justify the elements that are acceptable as proposed. Since the PPM will ultimately become the basis for negotiation, it should be structured to provide an audit trail to the contract negotiation memorandum (see FAR 15.808 and 1815.808). Generally, the PPM should address the following subjects; in the order presented:

(a) *Introduction.* Include a brief description of the procurement and a brief history indicating the extent of competition and its results. Identify the contractor and place of performance (if not evident from the description of the procurement). In addition, the negotiation schedule should be addressed and the Government negotiating team members identified by name and position.

(b) *Special features and requirements.* In this area, discuss any special features (and related cost impact) of the procurement, including such items as—

(1) Letter-contract or precontract cost requirements;

(2) Government property to be furnished;

(3) Contract option requirements;

(4) Contractor/Government investment in facilities and equipment (and any modernization to be provided by the contractor/Government);

(5) Plant reconversion or plant clearance (see 1845.106-71); and

(6) Any deviations, special clauses, or unusual conditions anticipated.

(c) *Cost and profit/fee analysis.* (1) Include a parallel tabulation, by element of cost and profit/fee, of the contractor's proposal, the Government's negotiation objective, and the Government's maximum position. For each element of cost, compare the contractor and Government estimates and explain how each was developed, including the estimating assumptions and projection techniques employed. Explain how historical costs, including costs incurred under a letter contract (if applicable), were used in developing the negotiation objective.

(2) Significant differences between the field pricing report (including any audit reports) and the negotiation objectives and/or contractor's proposal should be highlighted and explained, as should technical evaluation results that caused the Government's cost negotiation objectives to differ significantly from the contractor's proposed cost (such as differences in staffing). There should be an identification and a brief discussion of each major subcontract involved, citing the type of subcontract and stating the degree of analysis performed on the subcontract cost estimate. In addition, the rationale for the Government's profit/fee objectives and a completed copy of the NASA Form 634, Structured Approach—Profit/Fee Objective, if appropriate, should be included.

(3) Include particulars of the disposition of audit recommendations here. Resolution shall be considered accomplished when negotiation approval is granted. If, for some reason, the particulars cannot be included in the PPM, the disposition of the audit recommendations must be documented in the price negotiation memorandum (see FAR 15.808) or in other relevant file memoranda.

(d) *Type of contract contemplated.* Explain the type of contract contemplated and the reasons for its suitability. For an incentive contract, including award-fee contracts, describe the planned structuring arrangement in terms of profit/fee patterns, share lines, ceilings, and so forth.

(e) *Negotiation approval sought.* Indicate the specific approvals sought; e.g., dollar parameters, special clauses/conditions not constituting deviations, type of contract, fee objectives, and so forth.

1815.807-71 Installation reviews.

Each contracting activity shall establish a formal system for the prenegotiation review of any proposal over $250,000 ($100,000 at Stennis Space Center, Jet Propulsion Laboratory, Space Station Procurement Office, and Headquarters Contracts and Grants Division). The scope of coverage, exact procedures to be followed, levels of management review, and contract file documentation requirements should be directly related to the dollar value and complexity of the procurement and shall be determined by each installation. The primary purpose of these reviews is to ensure that the negotiator, or negotiating team, is thoroughly prepared to enter into negotiations with a well-conceived, realistic, and fair plan.

1815.807-72 Headquarters reviews.

Approval of the prenegotiation position by the Assistant Administrator for Procurement is required before negotiations on any procurement action selected for Headquarters review are entered into. Generally, at the time a procurement is processed as a Master Buy Plan (MBP) action under Subpart 1807.71, a decision will have been made as to whether the prenegotiation position will be subject to Headquarters review and approval. However, prenegotiation positions on MBP procurement actions when the prenegotiation position was not initially selected for Headquarters review and approval, and non-MBP procurement action prenegotiation positions, may be selected for Headquarters review and approval at any point in the acquisition cycle prior to actual negotiations.

(a) *Scheduling of presentation.* When a prenegotiation presentation is required by Headquarters or requested by the installation concerned, scheduling of the presentation will be arranged by the Office of Procurement, Program Operations Division (Code HS), in consultation with appropriate Headquarters program officials. The installation shall notify Code HS sufficiently in advance of the desired presentation to permit scheduling and preparation by Headquarters staff.

(b) *Advance information.* Not less than ten working days in advance of the scheduled prenegotiation presentation, the installation shall provide Code HS with the following:

(1) Five copies of the PPM.

(2) Five copies of any briefing charts and/or viewgraphs to be used in the presentation. Briefing charts and/or viewgraphs shall summarize key points/factors identified in the PPM and should be grouped in the same manner as presented in the PPM.

(3) One copy each of the contractor's proposal, the Government technical evaluation, and all pricing reports (including any audit reports).

(c) *Waiver.* The Assistant Administrator for Procurement may waive the presentation requirement if, on the basis of Headquarters review of the advance information provided under subparagraph (b)(2) of this section, it is clear that installation personnel are thoroughly prepared to enter into negotiations.

(d) *Safeguarding prenegotiation material.* Prenegotiation data are very sensitive and should be handled accordingly. Close coordination with Code HS personnel should be maintained to ensure that prenegotiation material is not compromised during transit. Distribution of prenegotiation data shall be made on a need-to-know basis.

1815.808 Price negotiation memorandum.

(a) The NASA contract negotiation memorandum serves as a detailed summary of:

(1) The technical, business, contractual, pricing, and other aspects of the contract negotiated, and

(2) The methodology and rationale used in arriving at the final negotiated agreement.

(b) Normally, the contract negotiation memorandum is a "stand-alone" document. However, when a PPM has been prepared under 1815.807, the subsequent contract negotiation memorandum need explain only:

(1) The differences between the prenegotiation position and the final negotiated settlement, and

(2) The areas identified in FAR 15.808(a).

1815.870 Subcontract price redetermination.

1815.870-1 General.

(a) When subcontracts have been placed on a price-redetermination or fixed-price-incentive basis and the prime contract is to be repriced, it may be appropriate to negotiate a firm prime contract price, even though the contractor has not yet established final subcontract prices. The contracting officer may do this when convinced that the amount included for subcontracting is reasonable; e.g., when realistic cost or pricing data on subcontract efforts are available.

(b) However, even though the available cost data are highly indefinite and there is a distinct chance that one or more of the subcontracts eventually may be redetermined at prices lower than those predicted in redetermining the prime contract price, other circumstances may require prompt negotiation of the final contract price. In such a case, the contract modification evidencing the revised contract price should provide for adjustment of the total amount paid or to be paid under the contract on account of subsequent redetermination of the specified subcontracts. This may be done by including in the contract modification the clause prescribed at 1815.870-2.

1815.870-2 NASA contract clause.

The contracting officer shall insert the clause at 1852.215-71, Adjustment for Subcontract Price Redetermination, in contract modifications that reflect a repricing of the prime contract when the prime contractor has not established final prices for one or more subcontracts under the contract that are on a price-redetermination or fixed-price incentive basis.

1815.871 Procedures for identifying contractor's unallowable costs.

(a) The establishment, maintenance, and consistent use of procedures for identifying and segregating unallowable costs, which will assure compliance with CAS 405 and FAR 31.201-6, will benefit both the Government and contractors. Such procedures may vary between plants or divisions of a contractor because of size, mix of business, or complexity of organization. Some of the advantages of sound procedures are that—

(1) A greater degree of confidence can be placed on the accuracy and reliability of contractors' proposals, billings, and claims;

(2) They expedite the negotiation process; and

(3) They may reduce the scope of reviews performed by audit and other technical and procurement personnel.

(b) The responsible Federal contract audit organization shall review the contractor's procedures and practices in conjunction with other contract audit activities. Deficiencies shall be reported to the cognizant administrative contracting officer and, as appropriate, to contracting officers having substantial business with the contractor. Among the matters to be considered in determining the adequacy of a contractor's procedures are its policy, practices, and techniques for—

(1) Assignment of responsibilities within the organization for reviewing and approving claims against the Government;

(2) Identification of unallowable costs (expressly unallowable, mutually agreed to be unallowable, or specifically designated as unallowable by written decision of the contracting officer) together with the individual employees incurring such costs;

(3) Identification and computation of directly associated costs;

(4) Assurance that unallowable and directly associated costs are not included in estimated costs proposed or in incurred amounts claimed by the contractor;

(5) Coordination and communication between the elements of the contractor's organization that prepare proposals and claims and those responsible for identifying unallowable and directly associated costs; and

(6) Assuring the adequacy of the documentation maintained by the contractor identifying the unallowable costs together with directly associated costs.

1815.872 Tracking and resolution of expenditure and system audit findings.

(a) This section implements OMB Circular No. A-50. Expenditure and system audit recommendations shall be resolved by formal review and approval procedures analogous to those at 1815.807-71 and 1815.807-72.

(b) On expenditure or system audits where a major disagreement exists between the contracting officer and the auditor that, in the opinion of the procurement officer, has a significant impact on the action involved, the planned resolution will be coordinated with NASA Headquarters, Code HC, before final action.

(c) (1) The contract audit follow-up system will track all audit recommendations arising out of expenditure and system audits when NASA has cognizant determination authority. Included will be audits involving actions such as contract incurred costs, indirect cost settlements, termination settlements, defective pricing, final pricing or contract close-out, estimating systems surveys, accounting system and internal control reviews, CAS noncompliance reports, and operations audits.

(2) The objective of the tracking system is to ensure that audit recommendations will be resolved as expeditiously as possible, but at a maximum, within six months of the date of the audit report. All audit recommendations involving questioned costs in the categories specified in subparagraph (c)(1) of this section shall be tracked. (Audit recommendations involving the placement of contracts shall not be included in the tracking system.)

(d) Identification and tracking of expenditure and system audits under NASA cognizance shall be accomplished in cooperation with DCAA by means of the Contract Audit Follow-up Summary Sheet. The original form shall be attached to the original audit report and sent to the contracting officer having negotiation or resolution responsibility. The second, and only other copy, shall be sent to the NASA Headquarters focal point (Code HC). The summary sheet will identify the total costs questioned or considered avoidable and whether the audit recommendations, in the opinion of the auditor, are significant. The form also identifies the responsible contracting officer and provides a space to be completed by the contracting officer, upon resolution of the matter, with a statement describing how the audit recommendation was resolved, including, when appropriate, dollar values.

(e) Documentation in support of the contractor's procedures shall be made available to authorized Government personnel.

Subpart 1815.9—Profit

1815.902 Policy.

As authorized by FAR 15.902, NASA has established a structured approach for determining profit or fee objectives. This approach, described in 1815.970, is based on the profit-analysis factors appearing in FAR 15.905 and shall be used to determine profit or fee objectives for conducting negotiations in those acquisitions that require cost analysis, except in the case of:

(a) Architect-engineer contracts;

(b) Management contracts for operation and/or maintenance of Government facilities;

(c) Construction contracts;

(d) Contracts primarily requiring delivery of material supplied by subcontractors;

(e) Termination settlements;

(f) Cost-plus-award-fee contracts (however, contracting officers may find it advantageous to perform a structured profit analysis as an aid in arriving at an appropriate fee arrangement); and

(g) Contracts having unusual pricing situations when the structured approach is determined unsuitable and the exemption is:

(1) Justified in writing, and

(2) Authorized by the procurement officer.

1815.903 Contracting officer responsibilities.

1815.903-70 Contracting officer authority for negotiating architect-engineer fees.

It is NASA policy that if a contract involving architect-engineer services covers any services other than the production and delivery of designs, plans, drawings, and specifications, the part of the contract price for these other services is not subject to the 6 percent fee limitation set forth in FAR 15.903(d)(1).

1815.904 Solicitation provision and contract clause.

Before contract award, the contracting officer shall ascertain whether the prospective contractor has claimed facilities capital cost of money as an allowable cost pursuant to the clause at FAR 52.215-30, Facilities Capital Cost of Money. If the offeror has not claimed the cost, the clause shall be deleted when the contract is executed. If it has claimed the cost, the clause at FAR 52.215-31, Waiver of Facilities Capital Cost of Money, shall be deleted. Including only one of these clauses in the contract will make it clear to the paying office whether or not the cost is allowable.

1815.970 NASA structured approach for profit or fee objective.

(a) The factors in 1815.970-1 through 1815.970-3 shall be considered in all cases in which profit is to be specifically negotiated. The weight ranges listed after each factor on NASA Form 634, Structured Approach Profit/Fee Objective, shall be used whenever the structured approach is used.

(b) The contracting officer shall first measure Contractor Effort by assigning a profit percentage, within the designated weight ranges, to each element of contract cost recognized by the contracting officer. The amount calculated for the cost of money for facilities capital is not to be included in the computation of profit as part of the cost base.

(c) The suggested categories under Contractor Effort are for reference purposes only. Often individual proposals will be in a different format; but since these categories are broad and basic, they provide sufficient guidance to evaluate all other items of cost.

(d) After computing a total dollar profit for Contractor Effort, the contracting officer shall calculate the specific profit dollars assigned for cost risk, investment, performance, socioeconomic programs, inventive developmental contributions, and additional factors. This is accomplished by multiplying the total government cost objective, exclusive of any cost of money for facilities capital, by the specific weight assigned to the elements within the Other Factors category. NASA Form 634 should be used, as appropriate, to facilitate calculation of this profit objective (calculating Inventive and Developmental Contributions and Unusual Pricing Agreements and combining them under Special Situations).

(e) In making a judgment of the value of each factor, the contracting officer should be governed by the definition, description, and purpose of the factors and the considerations for evaluating them as set forth in 1815.970-1, 1815.970-2, and 1815.970-3.

(f) The structured approach was designed for arriving at profit or fee objectives for commercial organizations (FAR Subpart 31.2). However, if appropriate adjustments are made, the structured approach can be used as a basis for arriving at fee objectives for nonprofit organizations (FAR Subpart 31.7), excluding educational institutions (FAR Subpart 31.3). It is NASA policy not to pay profit or fee on contracts with educational institutions. Therefore, the structured approach, as modified in subparagraph (f)(2) of this section, shall be used for nonprofit organizations. The modifications should not be applied as deductions against historical fee levels, but rather to the fee objective for commercial organizations as calculated under the structured approach.

(1) For purposes of this paragraph (f), nonprofit organizations are defined as those business entities that are:

(i) Organized and operated exclusively for charitable, scientific, or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual, and

(ii) Are exempt from Federal income taxation under section 501 of the Internal Revenue Code.

(2) For contracts with nonprofit organizations under which fees are involved, an adjustment of up to 3 percent shall be subtracted from the total profit/fee objective. In developing this adjustment, it will be necessary to consider—

(i) Tax position benefits;

(ii) Granting of financing through letters of credit;

(iii) Facility requirements of the nonprofit organization; and

(iv) Other pertinent factors that may work to either the advantage or disadvantage of the contractor in its position as a nonprofit organization.

1815.970-1 Common factors.

(a) *Contractor effort.* This factor is a measure of how much the contractor is expected to contribute to the overall effort necessary to meet the contract performance requirements efficiently. This factor, which is apart from the contractor's responsibility for contract performance, takes into account what resources are necessary and what the contractor must do to accomplish a conversion of ideas and materials into the final product called for in the contract. This is a recognition that within a given performance output, or within a given sales dollar figure, necessary efforts on the part of individual contractors can vary widely in both value and quantity, and that the profit objective should reflect the extent and nature of the contractor's contribution to total performance. A major consideration, particularly in experimental, developmental, or research work, is the difficulty or complexity of the work to be performed, and the unusual demands of the contract, such as whether the project involves a new approach unrelated to existing equipment or only refinements of existing equipment. Evaluation of this factor requires analyzing the cost content of the proposed contract as follows:

(1) *Material acquisition (subcontracted items, purchased parts, and other material).* (i) Analysis of these cost items shall include an evaluation of the managerial and technical effort necessary to obtain the required purchased parts, subcontracted items, and other materials, including special tooling. This evaluation shall include consideration of the number of orders and suppliers, and whether established sources are available or new sources must be developed. The contracting officer shall also determine whether the contractor will, for example, obtain the material and tooling by routine orders from readily available supplies (particularly those of substantial value in relation to the total contract cost), or by detailed subcontracts for which the prime contractor will be required to develop complex specifications involving creative design or close tolerance manufacturing requirements.

(ii) Consideration should be given to the managerial and technical efforts necessary for the prime contractor to administer subcontracts and select subcontractors, including efforts to break out subcontracts from sole sources through the introduction of competition. These determinations should be made for purchases of raw materials or basic commodities; purchases of processed material, including all types of components of standard or near-standard characteristics; and purchases of pieces, assemblies, subassemblies, special tooling, and other products special to the end item. In the application of the criterion, it should be recognized that the contractor's purchasing program might make a substantial contribution to the performance of the contract. This might be applicable in the management of subcontracting programs involving many sources, new complex components and instrumentation, incomplete specifications, and close surveillance by the prime contractor's representative.

(iii) Recognized costs proposed as direct material costs, such as scrap charges, shall be treated as material for profit evaluation. If intracompany transfers are accepted at price in accordance with FAR 31.205-26(e), they shall be evaluated as material. Other intracompany transfers shall be evaluated by individual components of cost, i.e., material, labor, and overhead.

(2) *Direct labor (engineering, service, manufacturing, and other labor).* (i) Analysis of the various items of the cost content of the contract should include evaluation of the comparative quality and level of the engineering talents, service contract labor, manufacturing skills, and experience to be employed. In evaluating engineering labor for the purpose of assigning profit dollars, consideration should be given to the amount of notable scientific talent or unusual or scarce engineering talent needed, in contrast to journeyman engineering effort or supporting personnel. The diversity, or lack of diversity, of scientific and engineering specialties required for contract performance, and the corresponding need for engineering supervision and coordination, should be evaluated. Such circumstances as whether the caliber or class of engineer involved is that of an "idea-man"—or whether the contractor is required by the contract to assign to the work, because of its nature, unusually skilled talent—should be considered as part of the evaluation.

(ii) Service contract labor should be evaluated in a like manner by assigning higher weights to engineering or professional skills and lower weights to semiprofessional or other skills required for contract performance.

(iii) Similarly, the variety of manufacturing and other categories of labor skills required and the contractor's manpower resources for meeting these requirements should be considered. For purposes of evaluation, categories of labor (i.e., quality control, receiving and inspecting, etc.) not falling within the definition for engineering, service, or manufacturing labor may be categorized appropriately. However, the same evaluation considerations as outlined above will be applied.

(3) *Overhead and general management (G&A).* (i) Analysis of these overhead items of cost includes the evaluation of the makeup of these expenses and how much they contribute to contract performance. To the extent practicable, the analysis should include a determination of the amount of labor within these overhead pools and how this labor would be treated if it were considered direct labor under the contract. The allocable labor elements should be given the same profit consideration they would receive if they were treated as direct labor. The other elements of these overhead pools should be evaluated to determine whether they are routine expenses such as utilities and maintenance, and hence given lesser profit consideration, or are significant contributing elements. The composite of the individual determinations in relation to the elements of the overhead pools will be the profit consideration given the pools as a whole.

(ii) It is not necessary that the contractor's accounting system break down overhead expenses within the classification of engineering overhead, manufacturing overhead, other overhead pools, and general and administrative expenses (G&A), unless dictated otherwise by Cost Accounting Standards (CAS). The contractor whose accounting system reflects only one overhead rate on all direct labor need not change its system (if CAS-exempt) to correspond with the above classifications. The contracting officer, in an evaluation of such a contractor's overhead rate, could break out the applicable sections of the composite rate, which could be classified as engineering overhead, manufacturing overhead, other overhead pools, and G&A expenses, and follow the appropriate evaluation technique.

(iii) Management problems surface in various degrees, and the management expertise exercised to solve them should be considered as an element of profit.

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For example, a new program for an item on the cutting edge of the state of the art will cause more problems and require more managerial time and abilities of a higher order than will a follow-on contract. If new contracts create more problems and require a higher profit weight, follow-ons should be adjusted downward, since many of the problems should have been solved. In any event, an evaluation of the underlying managerial effort involved should be made on a case-by-case basis.

(iv) It may not be necessary for the contracting officer to make a separate profit evaluation of overhead expenses in connection with each procurement action for substantially the same product with the same contractor. If an analysis of the profit weight to be assigned to the overhead pool has been made, that weight assigned may be used for future procurements with the same contractor until there is a change in the cost composition of the overhead pool or the contract circumstances, or the factors discussed in subdivision (a)(3)(iii) of this section are involved.

(4) *Other costs.* Include all other direct costs associated with contractor performance under this item (e.g., travel and relocation, direct support, and consultants). Analysis of these items of cost should include

(i) The significance of the costs to contract performance,

(ii) Their nature, and

(iii) How much they contribute to contract performance.

(b) *Contract cost risk.* The degree of risk assumed by the contractor should influence the amount of profit or fee a contractor is entitled to anticipate. For example, if a portion of the risk has been shifted to the Government through cost-reimbursement or price-redetermination provisions, unusual contingency provisions, or other risk-reducing measures, the amount of profit or fee should be less than for arrangements under which the contractor assumes all the risk. In developing the prenegotiation profit objective, the contracting officer will need to consider the type of contract anticipated to be negotiated and the contractor risk associated with it when selecting the position in the weight range for profit appropriate for the risk to be borne by the contractor. This factor is one of the most important in arriving at prenegotiation profit objectives.

(1) Evaluation of this risk requires a determination of:

(i) The degree of cost responsibility the contractor assumes,

(ii) The reliability of the cost estimates in relation to the task assumed, and

(iii) The complexity of the task assumed by the contractor.

This factor is specifically limited to the risk of contract costs. Thus, risks on the part of the contractor such as reputation, losing a commercial market, or losing potential profits in other fields, or any risk on the part of the contracting office such as the risk of not acquiring an effective space vehicle, are not within the scope of this factor.

(2) The first and basic determination of the degree of cost responsibility assumed by the contractor is related to the sharing of total risk of contract cost by the Government and the contractor through the selection of contract type. The extremes are a cost-plus-fixed-fee contract requiring the contractor to use its best efforts to perform a task and a firm fixed-price contract for a complex item. A cost-plus-fixed-fee contract reflects a minimum assumption of cost responsibility, while a firm-fixed-price contract reflects a complete assumption of cost responsibility. When the proper contract type has been selected, the regard for risk by contract type would usually fall within the 0-to-3-percent range for cost-reimbursement contracts and 3 to 7 percent for fixed-price contracts.

(3) The second determination is that of the reliability of the cost estimates. Sound price negotiation requires well-defined contract objectives and reliable cost estimates. Prior experience assists the contractor in preparing reliable cost estimates on new procurements for similar equipment. An excessive cost estimate reduces the possibility that the cost of performance will exceed the contract price, thereby reducing the contractor's assumption of contract cost risk.

(4) The third determination is that of the difficulty of the contractor's task. The contractor's task can be difficult or easy, regardless of contract type.

(i) Within the ranges set forth in subparagraph (b)(2) of this section, a cost-plus-fixed-fee contract normally would not justify a reward for risk in excess of 0 percent, unless the contract contains cost risk features such as ceilings on overheads, etc. In such cases, up to 0.5 percent may be justified. Cost-plus-incentive-fee contracts fill the remaining portion of the range, with weightings directly related to such factors as confidence in target cost, share ratio of fees, etc.

(ii) The range for fixed-price contracts is wide enough to accommodate the various types of fixed-price arrangements. These include fixed-price incentive, firm-fixed-price with economic price adjustment, fixed-price with prospective or retroactive price redetermination, and firm-fixed-price contracts. Weighting should be indicative of the price risk assumed and the end item required, with only firm-fixed-price contracts with requirements for prototypes or hardware reaching the top end of the range.

(iii) The contractor's subcontracting program may have a significant impact on the contractor's acceptance of risk under a contract form. It could cause risk to increase or decrease in terms of both cost and performance. This consideration should be a part of the contracting officer's overall evaluation in selecting a factor to apply for cost risk. It may be determined, for instance, that the prime contractor has effectively transferred real cost risk to a subcontractor, and the contract cost risk evaluation may, as a result, be below the range that would otherwise apply for the contract type proposed. The contract cost risk evaluation should not be lowered, however, merely on the basis that a substantial portion of the contract costs represents subcontracts without any substantial transfer of the contractor's risk.

(iv) In making a contract cost risk evaluation in a procurement action that involves definitization of a letter contract, unpriced change orders, or unpriced orders under BOAs, consideration should be given to the effect on total contract cost risk as a result of having partial performance before definitization. Under some circumstances it may be reasoned that the total amount of cost risk has been effectively reduced. Under other circumstances it may be apparent that the contractor's cost risk is substantially unchanged. To be equitable, determination of a profit weight for application to the total of all recognized costs, both incurred and yet to be expended, must be made with consideration of all attendant circumstances and should not just be based on the portion of costs incurred, or percentage of work completed, before definitization.

(v) Time-and-materials and labor-hour contracts shall be considered cost-plus-fixed-fee contracts for the purpose of establishing profit weights, unless otherwise exempt under 1815.902, in evaluating the contractor's assumption of contract cost risk.

(c) *Investment.* NASA encourages its contractors to perform their contracts with a minimum of financial, facilities, or other assistance from the Government. As such, it is the purpose of this factor to encourage the contractor to acquire and use its own resources to the maximum extent possible. Evaluation of this factor should include an analysis of the following:

(1) *Facilities.* (i) To evaluate how this factor contributes to the profit objective requires knowledge of the level of facilities utilization needed for contract performance, the source and financing of the required facilities, and the overall cost effectiveness of the facilities offered. Contractors furnishing their own facilities that significantly contribute to lower total contract costs should be provided additional profit. On the other hand, contractors that rely on the Government to provide or finance needed facilities should receive a corresponding reduction in profit. Cases between the above examples should be evaluated on their merits, with either a positive or negative adjustment, as appropriate, in the profit objective. However, where a highly facilitized contractor is to perform a contract that does not benefit from this facilitization, or when a contractor's use of its facilities has a minimum cost impact on the contract, profit need not be adjusted.

(2) *Payments.* In analyzing this factor, consideration should be given to the frequency of payments by the Government to the contractor. The key to this weighting is to give proper consideration to the impact the contract will have on the contractor's cash flow. Generally, negative consideration should be given for payments more frequent than monthly, with maximum reduction being given as the contractor's working capital approaches zero. Positive consideration should be given for payments less frequent than monthly, with additional consideration being given for a capital turnover rate on the contract that is less than the contractor's or the industry's normal capital turnover rate.

(d) *Contractor's performance.* The contractor's past and present performance should be evaluated in such areas as product quality, meeting performance schedules, efficiency in cost control (including the need for and reasonableness of costs incurred), accuracy and reliability of previous cost estimates, degree of cooperation by the contractor (both business and technical), timely processing of changes and compliance with other contractual provisions, and subcontract program management. If a contractor has consistently achieved excellent results in these areas in comparison with other contractors in similar circumstances, such performance merits a proportionately greater opportunity for profit or fee. Conversely, a poor record in this regard should be reflected in determining what constitutes a fair and reasonable profit or fee.

(e) *Federal socioeconomic programs.* This factor, which may apply to special circumstances or particular acquisitions, relates to the extent of the contractor's successful participation in Government-sponsored programs such as small business, small disadvantaged business, and labor surplus area programs and energy conservation efforts. Contractor policies and procedures which energetically supporting Government socioeconomic programs and achieving success should be given positive consideration. Conversely, failure or unwillingness on the part of the contractor to support Government socioeconomic programs should be viewed as evidence of poor performance for the purpose of establishing this part of the profit objective.

(f) *Inventive and developmental contributions.* (1) The extent and nature of contractor-initiated and -financed independent development should be considered in developing the profit objective. The importance of the development in furthering space and aeronautical purposes, the demonstrable initiative in determining the need for and application of the development, the extent of the contractor's cost risk, and whether the development cost was recovered directly or indirectly from Government sources should be weighed.

(2) This factor need not be limited to situations that increase profit/fee levels. A negative consideration may be appropriate when the contractor is expected to obtain spin-off benefits as a direct result of the contract (e.g., products with commercial application).

1815.970-2 Additional factors—unusual pricing agreements.

Occasionally, unusual contract pricing arrangements are made with the contractor under which it agrees to participate in the sharing of contract cost or agrees to accept a lower profit or fee for changes or modifications within a prescribed dollar value. In such circumstances, the contractor should receive favorable consideration in developing the profit objective.

1815.970-3 Facilities capital cost of money.

When facilities capital cost of money (cost of capital committed to facilities) is included as an item of cost in the contractor's proposal, a reduction in the profit objective shall be made in an amount equal to the amount of facilities capital cost of money allowed in accordance with FAR 31.205-10(a) (see FAR 15.904 and 52.215-30 for related contract clause).

1815.971 Payment of profit or fee under letter contracts.

It is NASA policy to pay profit or fee on definitized contracts only.

Subpart 1815.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

1815.1003 Debriefing of unsuccessful offerors.

1815.1003-1 Scope of subpart.

This subpart sets forth NASA policy and procedures for debriefing unsuccessful offerors in all competitive negotiated procurements. (See also, paragraph 504 of 1870.103, App. I, for debriefing procedures applicable to Announcements of Opportunity.)

1815.1003-2 Policy.

(a) NASA shall debrief an unsuccessful competitor in accordance with FAR 15.1003. It is essential that debriefings be conducted in a scrupulously fair, objective, and impartial manner, and that the information given the proposer be absolutely factual and consistent with—

(1) The findings of the Source Evaluation Board (SEB) and the basis on which the Selection Official made the decision; or

(2) The findings of the technical and contracting officers and the basis on which the contracting officer made the decision if SEB procedures were not employed.

(b) Unless authorized by the Assistant Administrator for Procurement, the Source Selection Statement for alternative system design concepts under the Major System Acquisitions process is not to be released to competing offerors or the general public until the release of the Source Selection Statements for full-scale development.

1815.1003-3 Designated Officials.

Debriefings are to be conducted by senior NASA officials. When the selection has been made by the Administrator, the Administrator will designate an official familiar with the rationale for the selection to conduct the debriefings, with participation by cognizant field installation personnel, if deemed necessary. When the selection has been made by the Field Installation Director or a Headquarters Staff or Program Office head, the Center Director or Official-in-Charge of the Headquarters office shall designate an official and necessary supporting staff to

perform the debriefing. When SEB procedures were not applied, the installation Procurement Officer, or designee, shall perform the debriefing.

1815.1003-4 Procedures.

(a) The recipient of a written or oral debriefing request shall immediately refer the request to the installation procurement officer.

(b) The procurement officer, upon receipt of a debriefing request, shall inform the designated official and other concerned officials at the installation and, in the case of procurement actions where an Associate Administrator or the Administrator was the Selection Official, the cognizant NASA Headquarters personnel.

(c) If an unsuccessful offeror in a negotiated procurement submits, prior to the award of the contract, a written request for a debriefing, such a debriefing will be provided at the earliest feasible time. This normally shall be after announcement of the selection decision and prior to award of the contract. ("Selection decision" means the final selection of the one successful contractor, or the contractors where more than one contract is to be awarded]. If the selection decision involves more than one contractor pursuant to the Major System Acquisition process, the debriefing will be limited in such a manner that it does not prematurely disclose innovative concepts, designs, and approaches of the successful contractor(s) that would result in a transfusion of ideas which also could inhibit contractors during the early phase from offering their best and most promising ideas for meeting the mission need. However, when the exigency of the situation will not permit delaying the award in order to debrief unsuccessful offerors, such debriefings may be conducted after award.

(d) A summary of the results of each debriefing, signed by the conducting NASA official, shall be placed in the contract file.

PART 1816—TYPES OF CONTRACTS

Subpart 1816.2—Fixed-Price Contracts

Sec.

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1816.203 Fixed-price contracts with economic price adjustment.
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Subpart 1816.3—Cost-Reimbursement Contracts

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Subpart 1816.4—Incentive Contracts

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Subpart 1816.5—Indefinite-Delivery Contracts

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Subpart 1816.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1816.603 Letter contracts.
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1816.603-70 Information to include in a letter contract.
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Subpart 1816.7—Agreements

1816.703 Basic ordering agreements.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1816.2—Fixed-Price Contracts

1816.202 Firm-fixed-price contracts.

1816.202-70 NASA contract clause.

The contracting officer shall insert the clause at 1852.216-78, Firm Fixed Price, in firm-fixed-price solicitations and contracts. Insert the appropriate amount in the resulting contract.

1816.203 Fixed-price contracts with economic price adjustment.

1816.203-4 Contract clauses.

(a) The contracting officer shall coordinate with the installation's Financial Management Officer before exceeding the ten-percent limit in paragraph (c)(1) of the clauses at FAR 52.216-2, 52.216-3, and 52.216-4.

(b) The contracting officer may modify the clause at FAR 52.216-4 for use in sealed-bid procurements.

(c) This paragraph (c) applies to adjustments based on cost indexes of labor or material.

(1) All price adjustment clauses using cost indexes require advance approval by the Assistant Administrator for Procurement. Requests for approval shall be submitted to the Office of Procurement, NASA Headquarters (Code HC).

(2) The factors in subdivisions (c)(2)(i) through (xiii) following should be considered in preparing any price adjustment clause in situations meeting the criteria of FAR 16.203-4(d):

(i) The clause should not be overly complex.

(ii) The clause normally should not provide either a ceiling or a floor for adjustment unless adjustment is based on an index below the four-digit level of the Bureau of Labor Statistics Producer Price Index or the Wage and Income Series by Standard Industrial Classification (Labor).

(iii) The clause normally should cover all potential economic fluctuations within the original contract period of performance.

(iv)(A) The clause must positively and accurately identify the index(es) upon which adjustments will be based and must provide an alternative in the event publication of the designated index is discontinued. The alternative might include the substitution of another index, if the time remaining would justify it and an appropriate index is reasonably available, or some other method for repricing the remaining portion of the work.

(B) There should normally be no need to make an adjustment if computation of the identified index is altered; however, provision may be made to adjust the economic fluctuation computations if the method of computing the index is so substantially altered as to negate the original intent of the parties. When an index to be used is subject to revision (e.g., the Bureau of Labor Statistics Producer Price Indexes), the price adjustment clause shall further specify that any adjustment shall be based upon the applicable revised index.

(v) An index should be structured to encompass a large sample of relevant items, yet bear a logical relationship to the type of contract costs measured. The basis of the index should not be so large and diverse that it is significantly affected by fluctuations not relevant to contract performance. But it must be broad enough to ensure that the effect created by any single company, including the anticipated contractors, is minimal.

(vi) Not more than two indexes normally should be used; i.e., one for labor (direct and indirect) and one for material (direct and indirect).

(vii) The clause must establish and properly identify a base period comparable to the contract periods for which adjustments are to be made, as a reference point for applying an index.

(viii) The clause should provide for adjustment from the beginning of the contract or for such period that the rate of expenditure is commensurate with the administrative cost and effort of adjusting, but it should not provide for adjustment beyond the original contract performance period.

(ix) The expenditure profile for both labor and material should be based on a predetermined rate of expenditure (expressed as the percentage of material or labor use as related to total contract price) in lieu of actual cost incurred. If the clause is to be used in a competitive procurement, the labor and material allocations, with regard to both mix and percentage rate of expenditure, shall be determined by the contracting officer in a manner approximating, as nearly as possible, the average-expenditure profile of all companies likely to make offers. If the clause is to be used in a noncompetitive procurement, the labor and material allocations determined by the contracting officer may be subject to negotiation and agreement.

(x)(A) The clause should state the percentage of the contract price subject to adjustment. Normally, adjustments are not applied to the profit portion of the contract.

(B) Additionally, the labor and material portions of the contract must be examined to exclude areas not requiring adjustment. It may not be necessary, for example, to include all subcontracting, because some of the subcontracting could be for short periods during the early life of the contract. It may be possible to exclude certain areas of overhead from escalation protection; e.g., depreciation charges, prepaid insurance costs, rental costs, leases, certain taxes, and utility charges. Consideration also should be given to including economic-fluctuation protection covering that portion of labor for the period for which a definitive union agreement exists without additional factoring for such things as cost-of-living increases.

(C) Care should be taken to allocate to labor and material only those costs likely to be affected by fluctuations in the economy. That portion of the contract determined to be proper for economic-fluctuation protection shall then be allocated to specific periods (e.g., quarterly, semiannually) on the basis of the most probable expenditure or commitment (expenditure profile).

(xi) The clause should provide for definite times or positive events for price adjustments. Adjustments should be of a frequency affording the contractor appropriate economic relief without creating a burdensome administrative effort. The adjustment period should normally range from a minimum of quarterly to a maximum of annually.

(xii) When the contract contains cost incentives, any sums paid to the contractor because of economic price adjustments shall be subtracted from the total of the contractor's allowable cost for the purpose of establishing the total costs to which the cost incentives apply. If the incentive arrangement is cited in percentage ranges rather than dollar ranges above and below target costs, the economic price adjustment clause should be structured to maintain the original contract incentive range in dollars.

(xiii) The economic price adjustment clause should provide that once the labor and material allocations have been established, they remain fixed through the life of the contract and are not modified unless the contract is partially terminated. The clause should state that pricing actions pursuant to the Changes clause or other provisions of the contract will be priced as though there were no provision for economic price adjustment.

(d) Consistent with the factors in paragraph (c)(2) of this section, and to allocate risk properly, the contracting officer may provide for certain economic price adjustment arrangements between the prime contractor and subcontractors. In such circumstances, a requirement to incorporate price adjustment clauses in specified subcontracts should be included in the prime contract's price adjustment clause.

(e) When economic price adjustment clauses are included in contracts that do not require submission of cost or pricing data (see FAR 15.804-2 and 15.804-3), the contracting officer shall obtain adequate information to establish the baseline from which adjustments will be made. In addition, the contracting officer may require verification of this information to the extent necessary to permit reliance upon it as a reasonable baseline.

(f) The contracting officer shall insert the provision at 1852.216-72, Evaluation of Offers Subject to Economic Price Adjustment, in all solicitations and contracts that contain an economic price adjustment clause.

1816.207 Firm-fixed-price, level-of-effort term contracts.

1816.207-70 NASA contract clause.

(a) The contracting officer shall insert a clause substantially as stated at 1852.216-79, Level-of-Effort (Fixed-Price), in fixed-price term solicitations and contracts. Insert the minimum direct labor hours, the labor categories and associated direct labor hours, and a formula or dollar amount as the rate(s) at which the fixed price may be reduced if the minimum direct labor hours have not been provided. If it is in the Government's interest, the labor category information may be simplified (e.g., "engineering" or "drafting") for smaller, less complex procurements.

(b) For task ordering procedures for firm-fixed-price, level-of-effort term contracts, see 1816.307-70(d) and (e).

Subpart 1816.3 Cost-Reimbursement Contracts

1816.301 General.

1816.301-3 Limitations.

(a) The determination and findings required by FAR 16.301-3 may be signed by the contracting officer for individual purchases and contracts. The format below shall be used as shown.

National Aeronautics and Space Administration

Determination and Findings

Authority to Use a (a) Contract

Upon the basis of the following findings and determination, which I make under the authority of 10 U.S.C. 2306(c), the contract described below may be entered into on a (a) basis.

Findings

1. The (b) proposes to enter into a (a) contract for the acquisition of (c). The cost of this work is estimated at $_____

2. The work to be performed is (d).

Determination

1. (This contract type is likely to be less costly than any other type.) (It is impractical to obtain supplies or services of the kind or quality required without the use of this contract type.) (e)

2. The estimated cost of the proposed contract is $ (f) .

Date:_____

Notes: The contracting officer shall insert, where shown, the following information:

(a) Type of contract contemplated.

(b) Installation name.

(c) Brief description of supplies or services.

(d) Description of the nature of the proposed work and related specific facts that show why the contemplated contract type is the best alternative for this particular acquisition.

(e) The appropriate alternative or, when both apply, insert both connected by "and."

(f) Required only for cost-plus-fixed-fee contracts.

1816.303 Cost-sharing contracts.

The following guidelines apply to research contracts resulting from unsolicited proposals, and to supplements to such contracts that require additional funding.

(a) *When cost sharing is applicable.* (1) Except as provided in paragraph (b) of this section, cost sharing by non-Federal organizations is mandatory in any contract for basic or applied research resulting from an unsolicited proposal.

(2) Cost sharing by non-Federal organizations in any contract may be

accepted when offered by a performing organization.

(b) *When cost sharing is not applicable.* (1) Cost sharing is not applicable to contracts for basic or applied research resulting from an unsolicited proposal when:

(i) The offeror certifies in writing to the contracting officer that it has no commercial, production, educational, or service activities on which to use the results of the research, and no means of recovering any cost sharing on such projects, and

(ii) The contracting officer determines that cost sharing does not apply.

In these situations, when there is no measurable potential gain to the performing organization, there is no mutuality of interest, and it would not be equitable for the Government to require cost sharing.

(2) (i) The activities of educational institutions under NASA sponsorship normally are of benefit only to NASA and would not justify cost sharing; i.e., NASA's normal policy of reimbursing universities fully for research performed on its behalf would apply. However, to establish on a case-by-case basis that there is no clear potential for significant future benefit or measurable gain, and that cost sharing does not apply, the contracting officer shall document the file with a determination substantively the same as that required by paragraph (b)(1) of this section. The determination shall identify the information on which it is based. If the determination cannot reasonably be made from the available information, the contracting officer shall request the offeror to certify as in paragraph (b)(1) of this section. Blanket procedures shall not be established for obtaining certifications from offerors for all cases on a routine basis.

(ii) Cost sharing by educational institutions may nevertheless be accepted when voluntarily offered, if the institution is aware of NASA's policy that the amount of cost sharing is not a factor in determining whether to support a given proposal.

(c) *Amount of cost sharing*—(1) *Educational institutions and affiliated not-for-profit institutions.* (i) Cost sharing, if used for educational institutions and affiliated not-for-profit institutions, normally varies from one percent to as much as five percent of the project's cost.

(ii) NASA does not request inclusion of cost-sharing information in proposals from educational institutions. If cost sharing is determined applicable, a cost-sharing offer will be requested during negotiations.

(2) *Other performing organizations.* (i) Cost sharing for organizations other than those in paragraph (c)(1) of this section may be any percentage of the research cost. Mutuality of interest in the results of the work being performed is of primary significance in assessing the appropriateness of any particular level of cost sharing.

(ii) Factors that should be considered in determining mutuality of interest include—

(A) The potential of the contractor to recover its contribution from non-Federal sources;

(B) The extent to which the particular area of research requires special stimulus in the national interest; and

(C) The extent to which a research effort or result is likely to enhance the contractor's capability, expertise, or competitive position.

(d) *Implementation*—(1) *Payment of fee or profit.* No fee or profit may be paid to a cost-sharing contractor, and only an agreed portion of allowable costs shall be reimbursed.

(2) *Method of cost sharing.* Cost sharing shall be accomplished by a contribution of part or all of one or more elements of the allowable cost of the work being performed. It normally shall be expressed as a stated minimum percentage of the total allowable costs of the project. Costs so contributed may not be charged to the Government under any other grant or contract (including allocation to other grants or contracts as part of an independent research and development program).

(3) *Documentation.* Contract files shall contain appropriate documentation of the reasons for cost sharing and support for the amount of cost sharing agreed upon. For educational institutions, the reasons for any cost sharing exceeding:

(i) Five percent or

(ii) The amount originally offered shall be documented.

1816.307 Contract clauses.

(a) In solicitations and contracts containing the clause at FAR 52.216–8, Fixed Fee, or FAR 52.216–10, Incentive Fee, the Schedule shall include appropriate terms, if any, for provisional billing against fee.

(b) In subdivision (h)(2)(ii)(B) of the Allowable Cost and Payment clause at FAR 52.216–7, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; provided, that a corresponding increase is made in the period for retention of records required in paragraph (d) of the clause at FAR 52.215–1, Examination of Records by Comptroller General.

(c) In subdivision (g)(2)(ii) of the Allowable Cost and Payment—Facilities clause at FAR 52.216–13, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; provided, that a corresponding increase is made in the period for retention of records required in paragraph (d) of the clause at FAR 52.215–1, Examination of Records by Comptroller General.

1816.307-70 NASA contract clauses.

(a) The contracting officer shall insert the clause at 1852.216–73, Estimated Cost and Cost Sharing, in each contract in which costs are shared by the contractor pursuant to 1816.303.

(b) The contracting officer may insert the clause at 1852.216–74, Estimated Cost and Fixed Fee, in cost-plus-fixed-fee contracts. Modifications to the clause are authorized.

(c) The contracting officer may insert the clause at 1852.216–75, Payment of Fixed Fee, in cost-plus-fixed-fee contracts. Modifications to the clause are authorized.

(d) The contracting officer may insert a clause substantially as stated at 1852.216–80, Task Ordering Procedure, for level-of-effort term solicitations and contracts where:

(1) The Government desires to control and direct the contractual effort through the issuance of task orders and

(2) The statement of work is conducive to issuance of task orders by the Government.

This clause is applicable to both fixed-price and cost type term contracts. The contracting officer may modify, where appropriate, the contractor's task plan submission period.

(e) The contracting officer shall use the clause at 1852.216–80 with its Alternate I, which deletes the requirement for contractor task plans, if:

(1) Direction in the task order is sufficiently defined,

(2) Submission of a contractor task plan would serve no useful purpose in clarifying the work to be performed,

(3) The task order authorizes commencement of work on a particular date, and

(4) The contractor acknowledges in writing that it will proceed with work in accordance with the task order.

(f) The contracting officer shall insert the clause at 1852.216–81, Estimated Cost, in cost no-fee contracts that are not cost sharing or facilities contracts. Insert the total estimated cost (value) of the contract.

(g) The contracting officer shall insert a clause substantially as stated at

1852.216–82, Level-of-Effort (Cost), in cost-plus-fixed-fee term solicitations and contracts. Insert the minimum and maximum percentages of direct labor hours, the labor categories and associated direct labor hours, and total direct labor hours. If it is in the Government's interest, the labor category information may be simplified (e.g., "engineering" or "drafting") for smaller, less complex procurements.

(h) The contracting officer may insert a clause substantially as stated at 1852.232–87, Submission of Vouchers for Payment, in cost-reimbursement solicitations and contracts. Insert the contract number and mailing addresses for submission of vouchers.

1816.370 Forms.

Contractors shall use NASA Form 778, Contractor's Release; NASA Form 779, Assignee's Release; NASA Form 780, Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts; and NASA Form 781, Assignee's Assignment of Refunds, Rebates, Credits, and Other Amounts, to fulfill the assignment and release requirements of the clauses prescribed at FAR 16.307 (a) and (g) (i.e., the clause at FAR 52.216–7, Allowable Cost and Payment, and FAR 52.216–13, Allowable Cost and Payment—Facilities).

Subpart 1816.4—Incentive Contracts

1816.403 Fixed-price incentive contracts.

The determination and findings required by FAR 16.403(c) may be signed by the contracting officer for individual purchases and contracts.

1816.404 Cost-reimbursement incentive contracts.

1816.404-2 Cost-plus-award-fee contracts.

To assure compliance with FAR 16.404–2(b)(2), all contract performance areas subject to evaluation on a judgmental basis, including performance areas such as cost and technical management, quality, timeliness, and productivity, shall be consolidated in a single award fee criteria and rating plan. The objective is a balanced evaluation of the contractor's overall performance, resulting in a single award fee determination consistent with NASA's management concerns and priorities in the particular situation.

1816.405 Contract clauses.

1816.405-70 NASA contract clauses.

(a) As authorized by FAR 16.405(e), the contracting officer shall insert the clause at 1852.216-76, Award Fee, in solicitations and contracts when a cost-plus-award-fee contract is contemplated.

(b) The contracting officer may insert a clause substantially as stated at 1852.216–83, Fixed Price Incentive, in fixed price incentive solicitations and contracts utilizing firm or successive targets. See FAR 52.216–16 and 52.216–17. Insert the appropriate amounts. For items to be subject to incentive price revision, identify the target cost, target profit, target price, and ceiling price for each item.

(c) The contracting officer shall insert the clause at 1852.216–84, Estimated Cost and Incentive Fee, in cost-plus-incentive-fee solicitations and contracts. Insert the appropriate target cost and fee amounts.

(d) The contracting officer may insert a clause substantially as stated at 1852.216–85, Estimated Cost and Award Fee, in cost-plus-award-fee solicitations and contracts. Insert the applicable cost and fee information for the particular procurement. If there is no base fee, delete the statements regarding base fee or specify $"0" (zero) base fee.

Subpart 1816.5—Indefinite-Delivery Contracts

1816.506 Ordering.

If the contracting office retains all contract administration functions, orders may be placed by written telecommunication.

Subpart 1816.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1816.603 Letter contracts.

1816.603-4 Contract clause.

1816.603-470 NASA contract clause.

The contracting officer may insert a clause substantially as stated at 1852.216–86, Settlement of Letter Contract, in contracts definitizing letter contracts. Insert the appropriate letter contract number, date, and modification numbers.

1816.603-70 Information to include in a letter contract.

Although there is no set format for a letter contract, certain items must be addressed either in the letter portion of the letter contract or in an attachment to it. The following listing of items, not intended to be all-inclusive, applies to letter contracts:

(a) Contracting officer's signature.

(b) Provision for written acceptance by the contractor.

(c) Statement of work.

(d) Provision for delivery or performance schedule and place(s) of inspection and acceptance.

(e) Maximum dollar amount of Government liability and a statement that expenditure or obligation in excess of that amount shall be at the contractor's own risk.

(f) The target date for negotiation and execution of a definitive contract and a statement of the type of contract contemplated.

(g) A statement that no profit or fee shall be paid under the letter contract except as provided in the Termination clause (see 1815.971).

1816.603-71 Authority to approve the issuance of a letter contract.

(a) Letter contracts having an estimated definitive contract amount below the dollar thresholds specified in 1807.7102.

(1) Authority to approve the issuance of such letter contracts is delegated to the procurement officers. The request for approval shall include the following:

(i) Proposed contractor's name and address.

(ii) Location where contract is to be performed.

(iii) Contract number, including modification number, if applicable.

(iv) Brief description of the work or services to be performed.

(v) Performance period or delivery schedule.

(vi) Amount of letter contract.

(vii) Performance period of letter contract.

(viii) Estimated total amount of definitive contract.

(ix) Type of definitive contract to be executed; e.g., fixed-price, cost-plus-award-fee.

(x) A statement that the definitive contract will contain all required clauses or that deviations have been approved.

(xi) A statement as to the necessity and advantage to the Government of the proposed letter contract.

(2) The procurement officer shall provide a copy of the approval to issue a letter contract, along with the documentation required in paragraph (a)(1) of this section, to the Assistant Administrator for Procurement (Code HS) within 10 days of approval.

(3) The procurement officer shall notify the Assistant Administrator for Procurement (Code HS) of the date of definition and contract amount.

(b) Letter contracts having an estimated definitive contract amount equal to or exceeding the dollar thresholds specified in 1807.7102.

(1) Requests for authority to issue such letter contracts shall be signed by the procurement officer and submitted to the Assistant Administrator for

Procurement (Code HS). They shall include the information cited in subparagraph (a)(1) above.

(2) Any modification made, prior to definitization, to a letter contract approved by the Assistant Administrator for Procurement must be approved by the Assistant Administrator for Procurement. When a letter contract was approved by the procurement officer, any modification made to it before definitization that increases the estimated definitized contract amount to or above the dollar thresholds specified in 1807.7102 must have the prior approval of the Assistant Administrator for Procurement.

(3) Promptly upon receipt of a request to issue a letter contract, the Assistant Administrator for Procurement shall obtain the concurrence or comments of cognizant officials in charge of Headquarters offices and then advise the procurement officer of the disposition of the request.

Subpart 1816.7—Agreements

1816.703 Basic ordering agreements.

Orders under a basic ordering agreement may be issued on Optional Forms 347 and 348 or on an installation-prescribed form.

PART 1817—SPECIAL CONTRACTING METHODS

Subpart 1817.1—Multiyear Contracting

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Subpart 1817.71—Exchange or Sale of Personal Property

1817.7101 Policy.

Authority: 42 U.S.C. 2473 (c)(1).

Subpart 1817.1—Multiyear Contracting

1817.102 Policy.

Multiyear contracting is generally not appropriate for use by NASA, because of the nature of NASA's appropriations and agency mission. Therefore, contracting officers may not issue a multiyear solicitation without first obtaining written approval from the Assistant Administrator for Procurement, NASA Headquarters, Code HS.

1817.103 Procedures.

1817.103-1 General.

Under 10 U.S.C. 2306(g), multiyear contracting with funds that would otherwise be available for obligation only within the fiscal year for which appropriated is permitted for periods of not more than five years for certain types of services. For these services, in addition to the approval required by 1817.102 above, 10 U.S.C. 2306(g) and 2310 require a written determination and findings:

(a) By the Administrator for contracts exceeding three years, and

(b) By the contracting officer for individual contracts not exceeding three years.

Subpart 1817.2—Options

1817.200 Scope of subpart.

The exceptions at FAR 17.200 do not apply to NASA contracts; therefore, the policy and procedures at FAR Subpart 17.2 apply to all contracts.

1817.203 Solicitations.

The "authorized person" mentioned in FAR 17.203(g)(2) is hereby designated as being the Procurement Officer.

1817.204 Contracts.

(a) The 5-year limitation (basic plus option periods) set forth in FAR 17.204(e) shall apply to all NASA contracts regardless of type. Deviations from this policy will not be granted unless:

(1) The extended years can be reasonably priced, and

(2) A persuasive case (other than resources problems) can be made for exceeding five years.

Example: Some specific program event will occur at or near the end of the total contract period and a competition and potential change of contractor would be unacceptably disruptive or inefficient, or some other programmatic considerations dictate a longer period.

(b) In addition to establishing either a fixed or maximum fee or a formula for determining the fixed or maximum fee, options under cost type contracts shall contain an estimated cost for the option period(s).

1817.206 Evaluation.

For the purpose of FAR 17.206(b), the procurement officer at each center shall be the approval authority for determinations by the contracting officer not to evaluate offers for any option quantities or periods.

1817.207 Exercise of options.

(a) Unless a determination has been approved under FAR 17.206(b), the selection statement for each procurement involving an option shall include the source selection official's consideration of the option as part of the initial competition.

(b) Use of the provision (or formula) specified in FAR 17.207(f)(2) requires advance approval by the Assistant Administrator for Procurement (Code HC).

(c) For the purposes of FAR 17.207:

(1) In subdivision (f)(3)(i), the term "fixed fee" applies only to cost-plus-fixed-fee (CPFF) contracts and the term "maximum fee" applies to cost-plus-award-fee (CPAF) and cost-plus-incentive-fee (CPIF) contracts.

(2) When using a formula pursuant to subdivision (c)(3)(ii), the formula shall be expressed in the contract in a way that precludes the contractor from increasing costs for the purpose of earning additional fee. Use of a formula requires advance approval of the Assistant Administrator for Procurement. (Code HC).

1817.208 Solicitation provisions and contract clauses.

For the purpose of FAR 17.208(c)(3), cost reimbursement types of contracts are approved for agency use.

Subpart 1817.4—Leader Company Contracting

1817.401 General.

It is NASA policy not to use the leader company contracting technique.

Subpart 1817.5—Interagency Acquisitions Under the Economy Act

1817.504 Ordering procedures.

(a) It is NASA's policy not to place Government agencies in direct competition with commercial sources. Before offers are solicited from commercial sources, the field installation's Director or a designee (see NMI 5101.24, Delegation of Authority to Take Actions in Procurement, Grants, Cooperative Agreements, and Related Matters) must determine whether to obtain the supplies or services from other Government agencies. Invitations for bids and requests for proposals shall not be sent to Government agencies. Current market prices, recent procurement prices, or prices obtained by informational submissions as provided in FAR 15.405 may be used to ascertain whether procurement can be effected more economically from commercial sources.

(b) An order for services shall not be placed with an agency when they can be performed as conveniently or more economically by private contractors.

(c) Delivery orders shall be placed on Optional Form 347 and 348 or an installation-prescribed form. However, when energy services are procured under DOD areawide utility contracts, the method of ordering prescribed in the appropriate DOD areawide contract will be used. The form may be modified to satisfy NASA fiscal and administrative requirements and to contain such additional contract provisions as may be contemplated or permitted by the DOD areawide contract, except that it shall not be modified for use as a public voucher in lieu of Standard Form 1034.

Subpart 1817.70—Procurement With Military Departments

1817.7000 Scope of subpart.

This subpart contains policies and procedures, developed jointly by NASA and DOD, for procurement of supplies or services by NASA from or through the Military Departments.

1817.7001 Authorization and policy.

(a) NASA is authorized by the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.) to:

(1) Use the procurement services, personnel, equipment, and facilities of the Military Departments, with their consent and with or without reimbursement, and, on a similar basis, to

(2) Cooperate with the Military Departments in the use of procurement services, equipment, and facilities.

(b) The Military Departments have agreed to cooperate fully with NASA in making their procurement services, equipment, personnel, and facilities available on the basis of mutual agreement.

(c) The Military Departments have agreed not to claim reimbursement for administrative costs incident to procurements for NASA, except as may be otherwise agreed before the services are performed.

(d) When procuring supplies or services for NASA or performing field service functions in support of NASA contracts, the Military Departments have agreed to use their own methods, except when otherwise required by the terms of the agreement involved.

(e) The Military Departments normally will use their own funds when procuring supplies or services or performing services for NASA, and will not cite NASA funds on any Defense obligation or payment document.

1817.7002 NASA-Defense Purchase Request and acceptance.

(a) The NASA-Defense Purchase Request (NASA Form 523) shall be used by NASA contracting offices for requesting procurement of supplies or services from all activities of the Military Departments. Individual NASA-Defense Purchase Requests shall be prepared in accordance with the instructions on the reverse of NASA Form 523 and shall be numbered in accordance with Subpart 1804.71. The form shall not be used for requesting—

(1) Block transfers of excess property between NASA and the Military Departments;

(2) Performance by the Military Departments of field service functions related to NASA contracts; or

(3) Items that the Military Departments normally purchase and stock for military use or in-house services, except when a DOD activity is willing to accept the form for these purposes. Supplies and services of this nature may be requisitioned using appropriate DOD forms when they are provided by and are acceptable to or preferred by the Military Department supplying activity or as otherwise mutually agreed upon by the parties.

(b) To obtain materials from the Air Force Missile Procurement Fund, the contracting officer shall follow the procedures of 1808.002-74.

1817.7002-1 Acceptance by Military Department.

(a) Except as provided in paragraph (c) of this section, the Military Department concerned will, within 30 days after receipt of a NASA-Defense Purchase Request, forward to the initiator of the request an Acceptance of MIPR, DD Form 448-2, in quadruplicate. Each DD Form 448-2 will show the action being taken or to be taken to fill the requirement and the name and complete address of the DOD contracting activity.

(b) To the extent feasible, all documents (including acceptances, contracts, correspondence, shipping documents, work or project orders, and Standard Form 1080 (Voucher for Transfer between Appropriations and/or Funds) billings) will reference the NASA-Defense Purchase Request number and the item number.

(c) Acceptance by the Military Department is not required for NASA-Defense Purchase Requests covering deliveries of common-use standard-stock items that the supplying agency has on hand or on order for prompt delivery at published prices.

1817.7002-2 Changes in estimated total prices.

When a Military Department determines that the estimated total price (Block 9, NASA Form 523) of the items to be acquired for NASA is not sufficient to cover the required reimbursement or is in excess of the amount required, a request for an amendment will be forwarded to the NASA originating office. The request will indicate a specific dollar amount, rather than a percentage, and will include justification for any upward adjustment requested. Upon approval of the request, the NASA contracting office concerned shall forward to the DOD contracting activity an amendment to the NASA Defense Purchase Request.

1817.7002-3 Payments.

Except when agreements provide that reimbursement is not required, payments to the Military Departments for supplies and services furnished to or acquired for NASA shall be effected upon receipt of Standard Form 1080 billings by the NASA office designated in Block 11 of the NASA-Defense Purchase Request. Billings will be supported in the same manner as billings between Military Departments.

1817.7002-4 Contract clause.

The contracting officer shall insert the clause at 1852.217-70, Property Administration and Reporting, in any NASA-Defense Purchase Request when property will be involved.

Subpart 1817.71—Exchange or Sale of Personal Property

1817.7101 Policy.

(a) Section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384, as amended (40 U.S.C. 481(c)), authorizes the exchange or sale of Government personal property and the application of the exchange allowance or proceeds from sale to the acquisition of similar property for replacement purposes.

(b) NASA installations and contractors are authorized to conduct exchange/sale transactions as long as the requirements and restrictions of NHB 4300.1 and the Federal Property Management Regulations, Subchapter H, paragraphs 101–46, are followed. In conducting such exchanges/sales, NASA contractors must obtain the contracting officer's prior written approval and must report the transactions to the cognizant NASA Installation Property Disposal Officer (PDO).

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 1819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

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Authority: 42 U.S.C. 2473(c)(1).

1819.001 Definitions.

"Small Business Specialist" means the person who—

(1) Is appointed by the Head of each NASA installation having procurement responsibilities; and

(2) Is the central point of contact for all small business and labor surplus area matters. See 1819.201 (b) and (c) for a detailed description of this position. This person is synonymous with the Small and Disadvantaged Business Utilization Specialist (see FAR 19.201(d)).

Subpart 1819.1—Size Standards

1819.170 Contract clause.

The contracting officer shall insert the provision at 1852.219–72, Standard Industrial Classification (SIC) Code and Small Business Size Standard, in all solicitations. Insert the applicable SIC code and small business size information (either the number of employees, or the dollar value in average annual receipts for the last three (3) fiscal years for the particular procurement).

Subpart 1819.2—Policies

1819.201 General policy.

(a) *NASA Headquarters.* The Director of Small and Disadvantaged Business Utilization (Code K) is responsible for:

(1) The general supervision and coordination of the NASA Small Business Program;

(2) Developing the policy and procedures for implementing the NASA Small Business Program, Minority Business Program, Women Owned Business Program, and Labor Surplus Area Program;

(3) Advising the Administrator and other NASA officials on these matters; and

(4) Representing NASA before other Government agencies and industry on matters related to the programs listed in paragraph (a)(2) of this section.

(b) *Installations.* The Head of each installation having procurement responsibilities shall designate a qualified individual in the contracting office as a Small Business Specialist to provide a central point of contact to which small business concerns may direct inquiries concerning small business matters and participation in the NASA procurement program. The Small Business Specialist shall also perform other functions specifically set forth in this section 1819.201 or that the Procurement Officer may prescribe for implementing the Small Business Program, including responsibility for the Labor Surplus Area Program described in FAR Part 20. When the Head of an installation considers that the volume of procurement or the functions relating to procurement at the installation do not warrant a full-time Small Business Specialist, these duties may be assigned to procurement personnel on a part-time basis.

(c) *Small Business Specialists.* Small Business Specialists appointed under paragraph (b) of this section shall perform the following duties, as the Procurement Officer determines appropriate to the installation:

(1) Maintain a program designed to locate capable small business sources for current and future procurements.

(2) Coordinate inquiries and requests for advice from small business concerns on procurement matters.

(3) Before issuance of solicitations or contract modifications for additional supplies or services, determine that small business concerns will receive adequate consideration, including initiation of set-asides (see FAR Subpart 19.5).

(4) If small business concerns cannot be given an opportunity to compete because adequate specifications or drawings are not available, initiate action (unless there are sufficient and valid reasons to the contrary), in writing, with appropriate technical and contracting personnel to ensure that necessary specifications or drawings for current or future procurements will be available.

(5) Review procurement programs for possible breakout of items suitable for procurement from small business concerns.

(6) Advise small business concerns regarding financial assistance available under laws and regulations, assist such concerns in applying for it, and ensure that small business concerns' requests for financial assistance are not treated as a handicap in securing the award of contracts.

(7) Participate in responsibility determinations (see FAR 9.103) whenever small business concerns are involved.

(8) Participate in the evaluation of prime contractors' small business subcontracting programs (see FAR 19.705–4).

(9) Review and make appropriate recommendations to the contracting officer on any proposal to furnish Government-owned facilities to a contractor if such action may hurt the Small Business Program.

(10) Ensure that participation of small business concerns is accurately reported.

(11) Notify the Procurement Officer of possible contracting opportunities in labor surplus areas.

(12) Make available to SBA copies of solicitations when requested.

(13) Act as liaison between contracting officers and SBA field offices and representatives in connection with set-asides, certificates of competency, and any other matters in which the Small Business Program may be involved. Procurements in which certificates of competency are requested shall be reported in writing to the Director, Small and Disadvantaged Business Utilization, NASA Headquarters, (Code K). The report should describe the requirement, list the offerors, and give the contract prices specified in the offers as submitted and the reason for the proposed rejection of an otherwise acceptable small business offer. Pertinent dates, such as the required date for the completion of the procurement and the date of the request for the certificate of competency, should also be furnished.

(14) In cooperation with contracting officers and technical personnel, seek and develop information on the technical competence of small business concerns for research and development contracts. Regularly bring to the attention of contracting officers and technical personnel descriptive data, brochures, and other information regarding small business concerns that are apparently competent to perform research and development work in fields in which NASA is interested.

(15) When a small business concern's offer has been rejected for nonresponsiveness or nonresponsibility, aid, counsel, and assist that concern, upon its request, in understanding requirements for responsiveness and responsibility so that the concern can qualify for future awards.

1819.202 Specific policies.

1819.202–4 Solicitation.

The contracting officer shall include in the solicitation mailing list the names of firms submitted by SBA, unless there is a valid reason for not so doing.

Subpart 1819.3—Determination of Status as a Small Business Concern

1819.302 Protesting a small business representation.

The contracting officer shall not make awards of small business set-aside procurements before:

(a) 5 working days after bid opening for sealed-bid acquisitions or

(b) The deadline for submitting a protest that was included in the notification to apparently unsuccessful offerors. (See FAR 19.302(h)(1).)

Subpart 1819.4—Cooperation With the Small Business Administration

1819.401 General.

Contracting officers shall consult and cooperate with SBA to carry out the purposes of the Small Business Act.

Subpart 1819.5—Set-Asides for Small Business

1819.501 General.

(a) The Small Business Specialist:

(1) May make a set-aside recommendation with respect to any individual or class set-aside except those on which an SBA representative has made a recommendation;

(2) Is responsible for reviewing those procurements not set aside; and

(3) Is responsible for taking action in accordance with FAR 19.506(b).

1819.502 Setting aside acquisitions.

1819.502–3 Partial set-asides.

(a) (1) Contracting officers shall require offers obtained from firms eligible for the set-aside portion of the requirement under the clause at FAR 52.219–7, Notice of Partial Small Business Set-Aside, to be in writing and to include agreement:

(i) On the price for the available set-aside quantity,

(ii) On the delivery schedule,

(iii) That all other terms and conditions of the solicitation apply to the set-aside award, and

(iv) To include the clauses at FAR 52.215–1, Examination of Records by the Comptroller General, and FAR 52.215–2, Audit—Negotiation.

(2) When the non-set-aside portion has been awarded to a small business concern entitled to receive the set-aside portion, the set-aside portion may be added to the basic contract by supplemental agreement. The supplemental agreement shall:

(i) Refer to the contractor's offer on the set-aside quantity,

(ii) State the price and delivery schedule applicable to the set-aside quantity, and

(iii) Include the clauses at FAR 15.215–1 and 15.215–2.

The contracting officer shall attach to the supplemental agreement copies of all pertinent documents, including the signed offer. The contracting officer shall also sign the supplemental agreement, but the contractor need not, since the contractor's signature on the attached offer is sufficient.

(3) When the non-set-aside portion has been awarded to a firm other than the concern entitled to receive the set-aside portion, the contracting officer shall award the set-aside portion using Standard Form 26. The offers obtained and the award form used shall reference and include the same data required by subparagraphs (a) (1) and (2) of this section. Also, the award shall reference in Block 18 of SF 26 the applicable solicitation and the contractor's written offer. The contracting officer shall attach copies of the solicitation and offer and shall sign the SF 26, but the contractor need not, since the contractor's signature on the attached offer is sufficient.

(b) The contracting officer shall separately report awards of the non-set-aside portions of small business set-aside procurements (see Subpart 1804.6).

1819.503 Setting aside a class of acquisitions.

The contracting officer shall retain a copy of each class set-aside determination.

1819.505 Rejecting set-aside recommendations.

(a) The Small Business Specialist may make a set-aside recommendation (see 1819.501(b)) with respect to any individual or class set-aside except those on which an SBA representative has made a recommendation.

(b) If the Small Business Specialist recommends that an individual procurement or a class of procurements, or a portion thereof, be set aside, the contracting officer shall promptly either concur in or disapprove the recommendation, stating in writing the reasons for disapproval.

(c) If the contracting officer disapproves the Small Business Specialist's recommendation, the contracting officer shall promptly refer the case to the SBA representative (if one is assigned and available) for review. The Small Business Specialist shall take no further appeal action. If an SBA representative is not assigned or available, resolution of disagreements on set-asides between the Small Business Specialist and the contracting officer shall be accomplished in

accordance with the procedures in paragraph (f) of this section.

(d) All cases involving the non-initiation of a set-aside, whether resulting from (i) a joint decision of the Small Business Specialist and the contracting officer or (ii) a determination by the contracting officer alone, require referral to the SBA representative (if one is assigned and available) for review. The SBA representative must either concur with the decision or determination or appeal the case under FAR 19.505.

(e) When an SBA representative is not assigned or available and the contracting officer disagrees with the Small Business Specialist's recommendation on a small business set-aside for an individual procurement or a class of procurements, or a portion thereof, and so notifies the Small Business specialist in writing, or if the Small Business Specialist disagrees with the contracting officer regarding withdrawal or modification of a set-aside determination, the Small Business Specialist may appeal in writing to the Procurement Officer (see 1819.201(b)) for a decision, which shall be final. The contracting officer shall place a memorandum of the Procurement Officer's decision in the contract file. If the decision approves the contracting officer's action, the Small Business Specialist shall forward complete documentation of the case to the Director of Small and Disadvantaged Business Utilization, NASA Headquarters, Code K.

(f) The contracting officer shall prepare, sign, and retain in the contract file a memorandum of any withdrawal or modification or of nonconcurrence in a recommended set-aside action.

Subpart 1819.6—Certificates of Competency and Determinations of Eligibility

1819.601 General.

On proposed awards exceeding the small purchase limitation, the contracting officer shall request a preaward survey (see FAR 9.106) before determining that a responsive small business firm is not responsible.

1819.602 Procedures.

1819.602-1 Referral.

The contracting officer shall forward a copy of the communication referring the matter to SBA through the Procurement Officer to the Director, Small and Disadvantaged Business Utilization, NASA Headquarters, (Code K).

1819.602-3 Resolving differences between the agency and the Small Business Administration.

(a) When there is a disagreement between the contracting officer and SBA, the contracting officer shall forward to the Assistant Administrator for Procurement (Code H) through channels, on an expedited basis, a complete case file with a request that the case be considered for appeal to SBA Headquarters. The contracting officer shall include the data already furnished to SBA, SBA's rationale for proposing to issue a certificate of competency, and the contracting officer's comments. The contracting officer shall suspend procurement action until informed by the Assistant Administrator for Procurement of the final decision in the case.

(b) If the Assistant Administrator for Procurement concludes that the referral to SBA should be withdrawn and a contract awarded without benefit of a certificate of competency, the Assistant Administrator for Procurement shall inform the contracting officer and provide written instructions on how to proceed with the procurement.

(c) If the Assistant Administrator for Procurement agrees with the contracting officer's recommended appeal action, the contracting officer shall request SBA's Central Office to review the SBA Regional office's proposal to issue a certificate of competency.

1819.602-70 Reports on certificates of competency.

Small Business Specialists shall inform the Director of Small and Disadvantaged Business Utilization, NASA Headquarters (Code K), quarterly in writing, of all certificate of competency cases initiated during the quarter and of the final disposition made on cases during the quarter, including the number and dollar value of certificates of competency issued during the period. The Small Business Specialist shall include the company name, item being procured, solicitation number, dollar value of the procurement, and date the case was submitted to SBA. In addition, the Small Business Specialist shall provide advice and data for all cases where:

(a) The small business concern elects not to file an application for a certificate of competency,

(b) SBA declines to issue a certificate of competency, or

(c) The contracting activity reverses the pre-award survey activity's negative finding on responsibility, withdraws the referral to SBA, and makes the award.

Subpart 1819.7—Subcontracting with Small Business and Small Disadvantaged Business Concerns

1819.707 The Small Business Administration's role in carrying out the program.

Under the provisions of FAR 19.707(a)(2) and (3), 5 days are allotted for SBA review of solicitations and contracts subject to the subcontracting program. In the absence of SBA request for the documents, the contracting officer may elect not to seek review.

1819.708 Solicitation provisions and contract clauses.

1819.708-70 NASA solicitation provision.

The contracting officer shall insert the provision at 1852.219-73, Small Business and Small Disadvantaged Business Subcontracting Plan, in solicitations containing the clause at FAR 52.219-9. Insert in the last sentence the number of calendar days after request that the offeror must submit a complete plan. When offerors are to include subcontracting plans in their initial offer as contemplated by FAR 19.705-2(d), or if a noncompetitive solicitation will be issued, the contracting officer may use the provision with its Alternate I.

Subpart 1819.8—Contracting With the Small Business Administration (The 8(a) Program)

1819.801 General.

SBA will contract only with small business firms that have submitted a written business plan specifically outlining a reasonable approach to the attainment of the policy objectives of the 8(a) program. This business plan, if approved by SBA, is the basis for NASA's considering participation in an 8(a) program for the firm. In executing this policy, SBA will furnish to the Director, Small and Disadvantaged Business Utilization, NASA Headquarters (Code K), or to the Procurement Officer of the pertinent NASA installation, its request for a commitment to support the approved plan. SBA requests addressed to NASA Headquarters will be coordinated with appropriate installations.

1819.803 Selecting acquisitions for the 8(a) program.

(a) SBA makes two separate requests to NASA regarding an 8(a) firm's participation (see FAR 19.803(b) and (c)). The first, based on the firm's 8(a) business plan (see 1819.801), seeks NASA's general commitment to contract with that firm. If NASA commits itself to support the plan, SBA then makes

specific requests to NASA for individual 8(a) awards.

(b) The SBA request for a commitment indicates the extent to which procurement assistance is needed and identifies the requirements sought from NASA. Through liaison with appropriate contracting offices, either before or after SBA's approval of a firm's business plan, SBA representatives will identify the supplies or services that SBA may require in connection with that firm's business plan. Small Business Specialists at NASA installations shall cooperate and assist the SBA representatives in developing identifying information for the requirements being sought from the contracting office. The Small Business Specialist shall, when practicable and feasible, arrange for any additional assistance that may be required from procurement, technical, and supply management officials. Current and future requirements of a firm's business plan, if identified in meaningful terms, enable NASA to relate the items to present and future procurement requirements.

(c) SBA is responsible for providing the contracting officer written certification of SBA's competency to perform the contract.

1819.804 Agency evaluation of the Small Business Administration's request for a commitment.

(a) In addition to considering specific requests for commitments to support business plans submitted by SBA under FAR 19.803(b), the Small Business Specialist:

(1) Shall review and evaluate on a continuing basis all procurement requirements to determine their suitability for referral to SBA for 8(a) consideration and

(2) Make a recommendation to the contracting officer concerning award to SBA.

If the contracting officer disagrees with the recommendation, FAR 19.505 applies.

(b) (1) After SBA-requested commitments have been evaluated or a specific procurement has been designated as suitable for 8(a) contracting, the cognizant contracting officer shall notify SBA and the Director of Small and Disadvantaged Business Utilization, NASA Headquarters (Code K), including in the notification the extent to which an 8(a) contract may be placed with SBA and the time frame within which the prime and subcontract actions must be completed to satisfy NASA's requirements. This notification is a firm commitment by NASA to negotiate with SBA, provided there is no material change in requirements, availability of funds, or other pertinent factors.

(2) Within 10 working days after notification, SBA shall contact the installation and initiate contract negotiations. If negotiations with the installation contracting office have not been initiated by SBA within that time, the Procurement Officer shall notify the Director of Small and Disadvantaged Business Utilization of intent to proceed with the procurement without further regard to 8(a) procedures, unless SBA requests additional time and it can be granted, considering the urgency of the requirement.

1819.808 Preaward considerations.

(a) The NASA contracting officer generally shall not request a preaward survey (see FAR 9.106) of SBA's subcontractor. SBA or the NASA contracting officer may, however, request a cognizant contract administration office to assist in a review of a specific element pertaining to the SBA subcontractor's responsibility.

(b) After agreement with SBA on satisfactory terms and conditions, including an estimated current fair market price, and receipt of SBA's reimbursable order for any business development expense (if appropriate), the contracting officer shall proceed to award a contract to SBA.

(c) SBA is required to initiate individual requests to NASA for each follow-on-year proposed 8(a) contract in support of the SBA-requested commitment. This process will permit NASA to verify, before actual negotiation of follow-on 8(a) awards, the availability of requirements, funding, and other pertinent factors.

1819.809 Preparing the contracts.

1819.809-1 General.

The contracting officer shall accomplish internal NASA distribution of both the prime contract and the subcontract and provide SBA a duplicate original copy of the executed prime contract and any additional authenticated, conformed, or reproduced copies SBA requests. The SBA will provide the contracting officer two duplicate original copies of the executed subcontract and any additional authenticated, conformed, or reproduced copies the contracting officer requests for internal NASA distribution.

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 1822.1—Basic Labor Policies

Sec.
1822.101 Labor relations.
1822.101-1 General.
1822.101-3 Reporting labor disputes.
1822.101-4 Removal of items from contractors' facilities affected by work stoppages.
1822.101-70 Inspection of material during labor disputes.
1822.101-71 Admission of labor representatives to contract sites.
1822.102 Federal and State labor requirements.
1822.102-70 Suspension or relaxation of State labor standards.
1822.103 Overtime.
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Subpart 1822.3—Contract Work Hours and Safety Standards Act

1822.302 Liquidated damages and overtime pay.

Subpart 1822.4—Labor Standards for Contracts Involving Construction

1822.403-4 Department of Labor regulations.
1822.404-3 Procedures for requesting wage determinations.
1822.406-2 Wages, fringe benefits, and overtime.
1822.406-8 Investigations.
1822.406-9 Withholding from or suspension of contract payments.
1822.406-11 Contract terminations.
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Subpart 1822.6—Walsh-Healey Public Contracts Act

1822.604 Exemptions.
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1822.804-2 Construction.
1822.805 Procedures.
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1822.807 Exemptions.
1822.870 Reports and other required information.

Subpart 1822.10—Service Contract Act of 1965

Subpart 1822.11—Professional Employee Compensation

1822.1103 Policy, procedures, and solicitation provisions.

Subpart 1822.13—Special Disabled and Vietnam Era Veterans

1822.1306 Complaint procedures.

Subpart 1822.70—Nondiscrimination—Government Lease

1822.7001 Policy.
1822.7002 NASA contract clauses.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1822.1—Basic Labor Policies

1822.101 Labor relations.

1822.101-1 General.

(a) NASA contracting officers, in taking any of the actions prescribed or authorized in FAR Part 22 or this Part 1822, shall consult with and get advice from the labor relations advisor or other NASA official assigned the labor relations function at the installation concerned.

(b) NASA officials shall not take any action regarding labor matters involving major policy determinations having a substantial impact on the activities of NASA or other Government agencies without the prior approval of the Director, Industrial Relations Office (Code NR). A full report concerning any labor relations problem, particularly where a labor dispute significantly threatens to affect important NASA procurements, shall be furnished to Code NR in accordance with 1822.101-3.

(c) When a strike that may have an adverse effect on NASA programs is imminent or in progress at a prime contractor's or subcontractor's plant, contracting officers shall—

(1) Advise both the prime contractor and the head of the union local in writing of the expected impact of the strike on NASA programs and, if appropriate, of the actions NASA is considering to protect the Government's interest and prevent delay in the accomplishment of NASA's mission. If the strike is in a subcontractor's plant, the subcontractor may be approached only through the prime contractor;

(2) Explore the possibility of locating other sources for the supplies or services to have been provided by the strike-threatened plant; and

(3) Consider taking the actions set forth at FAR 22.101-4.

1822.101-3 Reporting labor disputes.

Reports of actual or incipient labor-management disputes affecting NASA procurements, operations, or services shall be submitted as specified by the Director, Industrial Relations Office. These reports shall be made as early as possible and shall include immediately available information. Supplemental reports shall be made, as appropriate, to provide full information and cover new developments. Reports shall be sent by the most expeditious means required by the seriousness of the situation. When an immediate critical effect on NASA procurements is probable, the initial report shall be made by telephone and followed by an electronically transmitted written message or a confirming letter. Reports shall describe, but need not be limited to—

(a) The nature of the actual or incipient dispute, including whether a strike, lockout, slow-down, shut-down, or picketing is involved and the degree of emergency presented;

(b) The character, quantity, and importance of the supplies, operations, or services involved, including scheduled performance and delivery dates and the relation of the production involved to the total procurement program;

(c) The identity and location of the parties to the dispute and their representatives, including the approximate number of employees involved;

(d) The need for and availability of alternative facilities to furnish the items involved within the time required;

(e) Any critical items that should be removed from the plant or work site or should continue to be processed there with the consent of the parties to the dispute; and

(f) Recommended action to be taken by NASA.

1822.101-4 Removal of items from contractors' facilities affected by work stoppages.

When the contracting officer determines that it would be in the Government's best interest to remove items or to arrange for shipment of urgently required items as provided in FAR 22.101-4(a)(2), the contracting officer shall first request approval from Code NR and then take such action as is approved.

1822.101-70 Inspection of material during labor disputes.

Despite the existence of a labor dispute, inspection functions at contract plants or sites shall be performed as normally required during contract performance, unless the inspector's safety may be endangered.

1822.101-71 Admission of labor representatives to contract sites.

NASA activities may not prevent the access of labor union representatives to contract sites for the conduct of union business if their activities are compatible with safety and security regulations and performance of the contract work involved.

1822.102 Federal and State labor requirements.

1822.102-70 Suspension or relaxation of State labor standards.

(a) NASA officials shall not initiate applications to State agencies or officials for the suspension or relaxation of State labor standards.

(b) When suspension or relaxation of State labor standards does not conflict with Federal labor laws, contracting officers may support applications of contractors or subcontractors if—

(1) The required products or services are in short supply and failure to meet production schedules for critically needed end items will result unless the standards are suspended or relaxed;

(2) No alternative sources of supply for such products or services are available within the required delivery schedule;

(3) Remedial action (such as recruitment, training, and more effective utilization of labor) is not practicable; and

(4) The granting of the application will not result in impairment of working conditions to the extent that productivity at the facility will be adversely affected.

(c) NASA letters of support will be addressed to the appropriate State agency and will indicate—

(1) The facilities and services affected; and

(2) The extent of suspension or relaxation of the particular State labor standard required to complete the specific work in conformity with the delivery schedule.

1822.103 Overtime.

1822.103-4 Approvals.

The Procurement Officer or designees are authorized to approve overtime premiums at Government expense. If two or more contracting offices have current contracts at a single facility and approval of overtime by one will affect the performance or cost of contracts of another, the approving official shall obtain the concurrence of other appropriate approving officials and seek agreement as to the contracts under which premiums will be approved. If the approving officials do not agree within a reasonable time, a decision shall be obtained through the center's normal management channels. Ordinarily, in the absence of evidence to the contrary, a contracting office may rely on the contractor's statement that approval will not affect performance or payments under any contract of another contracting office. Designations to approve overtime shall be in writing and shall not be delegated under the first level of supervision below the Procurement Officer, except that delegation may be made to the head of a procurement function at geographically remote branch facilities (e.g., Wallops Flight Facility or Dryden Flight Research Facility) without power of redelegation.

Subpart 1822.3—Contract Work Hours and Safety Standards Act

1822.302 Liquidated damages and overtime pay.

Disposal of funds withheld or collected for liquidated damages shall be in accordance with direction of the Director, Industrial Relations Office (Code NR), who is the agency head's designee relative to liquidated damages under the Contract Work Hours and Safety Standards Act.

Subpart 1822.4—Labor Standards for Contracts Involving Construction

1822.403-4 Department of Labor regulations.

For industrial relations actions requiring communication with the Department of Labor, National Headquarters, Washington, DC (including the Administrator, Wage and Hour Division), contracting officers shall provide the appropriate information and supporting documentation to the Industrial Relations Office (Code NR), which shall make all contacts with the Department of Labor on these matters.

1822.404-3 Procedures for requesting wage determinations.

Contracting officers shall submit requests for project wage determinations to Code NR at least 55 days (70 days if possible) before issuing the solicitation.

1822.406-2 Wages, fringe benefits, and overtime.

In implementing FAR 22.406-2(b)(2), the contracting officer shall provide information to the Director, Industrial Relations Office (Code NR), who shall submit the question of cash equivalents to the Department of Labor for final determination.

1822.406-8 Investigations.

The contracting officer is responsible for conducting investigations, as provided by FAR 22.406-8(a), of labor violations relative to contracts under his/her cognizance. The agency head's designee for receiving and processing contracting officer reports of violations is the Director, Industrial Relations Office (Code NR), who, with the concurrence of the Associate General Counsel for Contracts, shall forward reports of violations to the Attorney General in accordance with FAR 22.406-8(d)(2)(iv).

1822.406-9 Withholding from or suspension of contract payments.

Disposal of funds withheld or collected for liquidated damages under the Davis-Bacon Act shall be in accordance with direction of the Director, Industrial Relations Office (Code NR).

1822.406-11 Contract terminations.

Contracting officers shall forward reports of contract or subcontract terminations for violation of labor standards clauses to the Director, Industrial Relations Office (Code NR), who shall submit the reports in accordance with FAR 22.406-11.

1822.406-13 Semiannual enforcement reports.

Procurement Officers shall submit semiannual enforcement data within 20 days after the end of the reporting period specified in FAR 22.406-13 to the Office of Procurement (Attn: Code HP) for consolidation and submission to the Department of Labor. Negative statements are required. The Procurement Policy Division (Code HP) is the point of contact regarding data to be included in the submissions.

Subpart 1822.6—Walsh-Healy Public Contracts Act

1822.604 Exemptions.

1822.604-2 Regulatory exemptions.

Applications for exemptions from one or more of the Act's stipulations under FAR 22.604-2(c)(1) shall be submitted in writing through the contracting officer, with pertinent data and recommendations to the Director, Industrial Relations Office (Code NR).

1822.608-4 Award pending final determination.

The Procurement Officer shall approve, with the concurrence of the Director, Industrial Relations Office (Code NR), certifications for immediate award in accordance with FAR 22.608-4(b). The contracting officer shall give written notice of the decision to award through Code NR to the DOL.

Subpart 1822.8—Equal Employment Opportunity

1822.804 Affirmative action programs.

1822.804-2 Construction.

In compliance with FAR 22.804-2(b), the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) listing of covered geographical areas, "Goals for Minority Participation in the Construction Industry," will be made available by the Headquarters Procurement Policy Division (Code HP).

1822.805 Procedures.

1822.805-70 Pre-award clearances for contracts between the small purchase limitation and $1,000,000.

In determining the prospective contractor's eligibility for award of a contract in an estimated or actual amount between the small purchase limitation and $1,000,000, if the contracting officer learns or has reason to believe (see, for instance, the solicitation provision at FAR 52.222-21) that the prospective contractor is in violation of the Equal Opportunity clause, or has not developed an acceptable affirmative action program at each of its establishments, award may be made only after ascertaining that the prospective contractor is no longer in noncompliance and is, therefore, eligible for award. The contracting officer shall request any clearance from the OFCCP at least 30 days before the proposed award date. Award may also be made, notwithstanding the prospective contractor's failure to have developed an acceptable affirmative action program, if the contracting officer determines that the contract is for less than $50,000 or that the company has fewer than 50 employees and, in either case, has not previously been required to develop an affirmative action program.

1822.807 Exemptions.

To request an exemption under FAR 22.807(a)(1), the contracting officer shall prepare a detailed justification for the required determination and shall submit the justification through the Assistant Administrator for Procurement (via Code HP) to the Administrator.

1822.870 Reports and other required information.

(a) Title 41, § 60-1.2 of the Code of Federal Regulations prescribes the annual filing of required forms by prime contractors and subcontractors.

(b) If the offeror fails to complete the representation at FAR 52.222-22, it should state, prior to award of the contract, whether it has participated in any previous contract or subcontract subject to the Equal Opportunity clause; and, if so, whether it has filed with the Joint Reporting Committee, the Director, OFCCP, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements.

(c) In any case in which the offeror or a proposed subcontractor has participated in a previous contract or subcontract subject to Executive Order 10925, 11114, or 11246 but has not filed a report due under the filing requirements, the contract or subcontract shall not be

awarded unless the offeror or the proposed subcontractor submits a report covering the delinquent period or such other period as may be specified by the Director, OFCCP, and notifies the contracting officer of the submission.

(d) An offeror or a proposed subcontractor shall be required to submit information, including copies of affirmative action programs, that the Director, OFCCP, requests before the award of the contract or subcontract. When a determination has been made to award the contract or subcontract to a specific contractor or subcontractor, it shall be required, before or after the award, or both, to furnish the information, including copies of affirmative action programs, as the Director, OFCCP, requests.

(e) Failure to file timely, complete, and accurate reports as required constitutes noncompliance with the prime contractor's or subcontractor's obligations under the Equal Opportunity clause and may be the basis for:

(1) The imposition by the Director, OFCCP, of any sanctions authorized by these regulations or

(2) Cancellation or termination of the subcontract by a prime contractor or subcontractor.

Any such failure shall be reported in writing to the Director, OFCCP, by the contracting officer as soon as practicable after it occurs.

(f) Reports filed and information furnished in accordance with FAR Subpart 22.8 shall be used only for the administration of Executive Order 11246, for the administration of the Civil Rights Act of 1964, or in furtherance of the purpose of the Executive Order and Act and, to the extent consistent with this purpose, shall be held in confidence as privileged information in accordance with 32 CFR 286.6(b)(4) when requested by the offeror, contractor, or subcontractor.

Subpart 1822.10—Service Contract Act of 1965

Note: See FAR Subpart 22.10 for regulations concerning the Service Contract Act of 1965.

Subpart 1822.11—Professional Employee Compensation

1822.1103 Policy, procedures, and solicitation provisions.

(a) The instructions in paragraph (a) of the provision at FAR 52.222-46, Evaluation of Compensation for Professional Employees, shall be augmented in Section M of the solicitation with an explanation of how the Government will evaluate the offeror's plan. The Government's assessment of the plan shall be a weighted and scored evaluation criterion under a Mission Suitability Factor in order to ensure that the plan reflects a sound management approach and understanding of the contract requirements. This criterion shall be accorded sufficient weight and relative order of importance to be effective under the particular circumstances involved. When (1) a significant number of professional employees are involved, the performance period is long, and the cost is relatively large, or (2) there is continuity of the same or similar services at the same location, the weight and relative importance of the criterion shall be in the "most important" or "very important" category, as considered appropriate. The lesser weighting should be employed only after careful consideration of the possible impact on labor stability.

(b) The cost realism of professional compensation proposed (see paragraph (c) of the provision at FAR 52.222-46) shall be identified as an evaluation factor in Section M of the solicitation.

Subpart 1822.13—Special Disabled and Vietnam Era Veterans

1822.1306 Complaint procedures.

The Assistant Administrator for Equal Opportunity Programs (Code U) is the NASA official designated to act on complaints received about administration of the Vietnam Era Veterans Readjustment Assistance Act of 1972.

Subpart 1822.70—Nondiscrimination—Government Lease

1822.7001 Policy.

It is NASA policy to include a Facilities Nondiscrimination clause in leases when NASA is the lessee. The policy has been adopted because Federal employees belonging to minority groups and other members of minority groups doing business with the Government in some parts of the country have been denied the use of public facilities located in buildings where the Government leases office space.

1822.7002 NASA contract clauses.

(a) The contracting officer shall include the clause at 1852.222-70, Facilities Nondiscrimination Notice, in all solicitations involving leases and in any resulting leases.

(b) The contracting officer shall include the clause at 1852.222-71, Facilities Nondiscrimination, in all solicitations involving leases and in any resulting leases under which the annual rental, combined with that of any other NASA leases of space in the same building, exceeds $10,000.

PART 1823—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Subpart 1823.1—Pollution Control and Clean Air and Water

Sec.
1823.106 Delaying award.
1823.107 Compliance responsibilities.

Subpart 1823.3—Hazardous Material Identification and Material Safety Data

1823.302 General.
1823.303 Contract clause.
1823.303-70 NASA clause.
1823.370 Acquisition of potentially hazardous items from or through another Government agency.

Subpart 1823.70—Safety and Health

1823.7000 Scope of subpart.
1823.7001 Policy.
1823.7002 Responsibility.
1823.7003 Hazardous operations.
1823.7004 Contract clause.

Subpart 1823.71—Frequency Authorization

1823.7101 Contract clause.
1823.7102 Procedures.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1823.1—Pollution Control and Clean Air and Water

1823.106 Delaying award.

All notifications initiated by the contracting officer under FAR 23.106 shall be submitted to EPA through the Procurement Officer and the Assistant Administrator for Procurement, NASA Headquarters (Code HS).

1823.107 Compliance responsibilities.

Notifications under FAR 23.107 shall be submitted through the same channels as under 1823.106.

Subpart 1823.3—Hazardous Material Identification and Material Safety Data

1823.302 General.

As authorized under FAR 23.302(c)(3), NASA has designated electrosensitive initiating devices (squibs) a "potentially hazardous" item requiring safety controls.

1823.303 Contract clause.

1823.303-70 NASA clause.

The contracting officer shall insert the clause at 1852.223-72, Potentially Hazardous Items, in solicitations and contracts involving potentially hazardous items or components. Insert the potentially hazardous items or components.

1823.370 Acquisition of potentially hazardous items from or through another Government agency.

When acquiring supplies or services from or through another Government agency (e.g., see FAR Part 8 and FAR Subpart 17.5), NASA shall request that agency to furnish NASA the data required by FAR Subpart 23.3 and the clause at FAR 52.223-3.

Subpart 1823.70—Safety and Health

1823.7000 Scope of subpart.

This subpart sets forth NASA's safety and health policy, assignment of responsibilities, and requirements relating to its contractors.

1823.7001 Policy.

Contractors and subcontractors shall perform in a safety-and-health-conscious environment that, within the limits of controllable hazards, will—

(a) Protect the life, health, and physical well-being of NASA and contractor employees during their work on NASA programs;

(b) Ensure proper protection of the public from hazards incident to operations of NASA contractors and subcontractors;

(c) Avoid accidental work interruptions that could delay NASA programs;

(d) Prevent contamination of, damage to, and loss of property, supplies, and equipment;

(e) Provide data from which risks and loss factors in space technology related to NASA programs can be accumulated and evaluated; and

(f) Comply with applicable regulations, standards, and guides.

1823.7002 Responsibility.

(a) *Originators of procurement requests.* In accordance with installation safety and health screening criteria, originators of procurement requests shall ensure that requests involving safety or health considerations are processed through the appropriate installation safety officials and occupational health officials or other designated responsible officials for:

(1) Determining whether hazards are involved in the procurement,

(2) Formulating or selecting specific safety and health provisions applicable to the procurement in accordance with FAR Subpart 23.3 and applicable NASA instructions, and

(3) Determining to what extent a contractor safety and health plan will be required.

(b) *Installation safety officials, occupational health officials, or other designated responsible officials.* The appropriate installation safety and health officials, within their respective areas of responsibility, shall advise and assist the contracting officer in—

(1) Evaluating prospective contractors' safety and health programs;

(2) Determining to what extent safety and health provisions, if any, should be included in the proposed procurement;

(3) Assigning the specific safety and environmental health provisions to be included in the contract Schedule;

(4) Determining, in coordination with the cognizant program or project manager, the need for and adequacy of contractors' safety and health plans;

(5) Assigning the specific occupational medicine provisions to be included in the contract Schedule;

(6) Determining the extent and form of accident or incident reports required of contractors in compliance with the Federal Reports Act of 1942 and NASA reporting requirements;

(7) Requesting inspections of NASA contractors by representatives of the Occupational Safety and Health Administration (OSHA) when appropriate; and

(8) Reviewing contractor hazardous operations procedures and certification requirements.

(c) *Headquarters occupational health official.* At installations where medical and environmental health officers or other designated responsible officials are not available to assist with the formulation of occupational medicine and environmental health provisions of a contract, the Director, NASA Occupational Health Office, NASA Headquarters (Code NPG), shall assume this responsibility.

(d) *Contracting officer.* (1) The contracting officer shall obtain advice, assistance, recommendations, and applicable requirements from the appropriate safety and health officials before issuing any solicitation for—

(i) Construction, modification, or demolition of facilities on Government installations;

(ii) Manufacture of aerospace systems, including such items as power units, energy systems, boosters, engines, liquid and solid fuels, oxidizers, and propellants;

(iii) Transportation of fuels, oxidizers, hazardous chemicals, or other hazardous or regulated materials;

(iv) Research, development, or test of engines, related components and propellants involving hazardous operations or the use of hazardous or regulated materials;

(v) Services on Government installations involving hazardous operations or the use of hazardous or regulated materials;

(vi) Operations involving the use of or exposure to potential health hazards (e.g., asbestos, polychlorinated biphenyls (PCB's)), confined space entries, use of hazardous materials, or potential contamination of property or pollution of air, water, vegetation, or soil;

(vii) Activities that may (by either direct or secondary effect) adversely affect the work environment by the use of ionizing radiation, microwaves, noise, lasers, ultraviolet, or infrared sources; or

(viii) Operations necessitating exposures in neutral buoyancy or hyperbaric chambers and operations related to them.

(2) Before issuing a stop-work order under subparagraph (d)(2) of the Safety and Health clause at 1852.223-70, the contracting officer shall effect coordination with the appropriate safety and health officials and with the cognizant program or project manager.

1823.7003 Hazardous operations.

Hazardous operations are those involving the use of, or handling of, hazardous materials or other materials, phenomena, or elements at abnormal environmental or physical parameters that could result in injury, illness, or property damage if special precautions are not followed (e.g., high-pressure gas operations in excess of 150 pounds per square inch gauge, low-pressure high-volume gas operations, voltages above 550 volts, storage or handling of propellants or explosives, use of "heavy lift" material handling equipment, high- or low-temperature environments, environments with less than 19.5 percent or more than 25 percent oxygen by volume at normal atmospheric pressure, reduced gravity, radiation, or excessive noise).

1823.7004 Contract clause.

(a) Specific system safety requirements to be included in the contract for the purpose of procuring system safety engineering services shall be defined in the contract Schedule in accordance with applicable NASA instructions.

(b) Any unique facility safety or health requirements that are in addition to the general requirements of the clause at 1852.223-70, Safety and Health, shall be prescribed as required by 1823.7002(b)(3).

(c) Except as provided in paragraph (d) of this section, the clause at 1852.223-70 shall be included in—

(1) All negotiated contracts of $1,000,000 or more, unless the contracting officer makes a written determination in accordance with

1823.7002(b)(2) that, under the circumstances of the procurement, the clause is not necessary;

(2) All construction, repair, or alteration contracts in excess of $25,000;

(3) All contracts having, within their total requirement, construction, repair, or alteration tasks in excess of $25,000; and

(4) Any procurement regardless of dollar amount when (i) any deliverable contract end item is of a hazardous nature, or (ii) during the life of the contract it can reasonably be expected that hazards will be generated within the operational environment and the contracting officer determines that they warrant inclusion of the clause.

(d) The clause prescribed in paragraph (c) of this section may be excluded from any contract subject to the Walsh-Healey Public Contracts Act (see FAR Subpart 22.6) or the Service Contract Act of 1965 (see FAR Subpart 22.10) in which the application of the act and its implementing regulations constitute adequate safety and health protection. However, the clause should not be excluded without approval of the appropriate safety and health official.

(e) The contracting officer shall insert the provision at 1852.223-73, Safety and Health Plan, in solicitations containing the clause at 1852.223-70, when a Safety and Health Plan is to be submitted with the offeror's proposal. This clause may be modified to identify specific information that is to be included in the plan. The contracting officer shall include the plan, as approved by the contracting officer, in any resulting contract. See 1852.223-70.

(f) When the installation safety/health officials recommend that a Safety and Health Plan be submitted by the apparently successful offeror after notification of selection but before contract award, the clause at 1852.223-73 shall be used with its Alternate I.

Subpart 1823.71—Frequency Authorization

1823.7101 Contract clause.

The contracting officer shall insert the clause at 1852.223-71, Frequency Authorization, in solicitations and contracts calling for developing, producing, constructing, testing, or operating a device for which a radio frequency authorization is required.

1823.7102 Procedures.

The contracting officer shall obtain the necessary frequency authorization and other procedural details from the installation's spectrum manager.

PART 1824—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 1824.1—Protection of Individual Privacy

1824.102 General.

Subpart 1824.2—Freedom of Information Act

1824.202 Policy.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1824.1—Protection of Individual Privacy

1824.102 General.

For NASA rules and regulations implementing the Privacy Act, see NMI 1382.17 (14 CFR Part 1212).

Subpart 1824.2—Freedom of Information Act

1824.202 Policy.

(a) NASA implementation of the Freedom of Information Act is found in NMI 1382.2 (14 CFR Part 1206).

(b) When receiving any Freedom of Information Act request from the public, the contracting officer shall immediately refer the request to the Freedom of Information Act Officer, NASA Information Center, or other responsible point of contact as set forth in installation procedures.

PART 1825—FOREIGN ACQUISITION

Subpart 1825.1—Buy American Act—Supplies

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1825.101 Definitions.
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Subpart 1825.70—Foreign Contracts

1825.7000 Scope of subpart.
1825.7001 Definition.
1825.7002 Policy.
1825.7003 Assignment of responsibility for contract negotiation.
1825.7004 Procedure.
1825.7005 Assignment of contract administration.
1825.7006 Contracts with foreign nationals.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1825.1—Buy American Act—Supplies

1825.101 Definitions.

"Canadian end product" means (a) an unmanufactured end product mined or produced in Canada or (b) an end product manufactured in Canada, if the cost of its components mined, produced, or manufactured in Canada or the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product.

1825.102 Policy.

(a) *Administrator determinations under FAR 25.102(a)(3), domestic preference inconsistent with the public interest.* (1) Within NASA, these determinations are made by the Assistant Administrator for Procurement.

(2) For blanket determinations regarding Canadian end products, see 1825.103.

(b) *Contracting officer determinations under FAR 25.102(a)(4), domestic nonavailability of end products.* (1) NASA has determined that the items listed in FAR 25.108(d)(1) are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. In addition, subject to the approval requirements of FAR 25.102(b), NASA contracting officers may make additional determinations of nonavailability both before entering into contracts and in the course of contract administration; provided, however, that in the latter case the Government

receives adequate consideration. A copy of each nonavailability determination shall be included in the contract file.

(2) The following is the format for nonavailability determinations made by contracting officers:

Determination of Nonavailability

Pursuant to the authority contained in the Buy American Act (41 U.S.C. 10) and authority delegated to me by 48 CFR 1825.102(b), I hereby make the following findings:

a. (Insert a description of the item or items to be procured, including unit, quantity, and estimated cost inclusive of duty and transportation costs to destination.)

b. (Enter the name and address of the proposed contractor or supplier and the country of origin of the items.)

c. (Include a brief statement of the necessity for the procurement.)

d. (Include a statement of facts establishing the nonavailability of similar items of domestic origin. If there is no known domestic item that can be used as a reasonable substitute, make a statement to this effect.)

On the basis of these findings, I determine that the item(s) described in paragraph a above is/are not mined, produced, or manufactured (or the articles, materials, or supplies from which the item(s) is/are manufactured are not mined, produced, or manufactured) in the United States in sufficient and reasonably available quantities of a satisfactory quality.

Accordingly, the Buy American Act requirement that procurement be made from domestic sources and that the item(s) be of domestic origin is not applicable to this procurement, since the procurement is within the Buy American Act's nonavailability exception.

Authority is granted to procure the above-described item(s) of foreign origin (country or origin) at an estimated total cost of $_____, including duty and transportation costs to destination.

(Date)_____

Contracting Officer:_____

(3) Contracting officer determinations made under this paragraph 1825.102(b) shall be approved by the head of the contracting activity if the contract is estimated to exceed $1,000,000.

1825.103 Agreements with certain foreign governments.

(a) Canadian end products and Canadian components. The Assistant Administrator for Procurement has determined that when application of the procedure in paragraph (c)(1) of this section results in the acquisition of Canadian end products, it would be inconsistent with the public interest to acquire domestic end products (see FAR 25.102(a)(3)).

(b) The Assistant Administrator for Procurement has also determined that it would be inconsistent with the public interest to apply restrictions of the Buy American Act to components mined, produced, or manufactured in Canada (see paragraph (c)(2) of this section).

(c) Accordingly, contracting officers shall—

(1) Evaluate all offers for Canadian end products on a parity with offers for domestic end products, except that applicable duty (whether or not a duty-free entry certificate may be issued) shall be included in evaluating offers for Canadian end products; and

(2) Treat all components mined, produced, or manufactured in Canada as though they were mined, produced, or manufactured in the United States, except that, in evaluating offers for such components, applicable duty (whether or not a duty-free entry certificate may be issued) shall be included.

1825.105 Evaluating offers.

(a) *Examples.* The following examples illustrate how to evaluate offers of foreign (non-Canadian) end items, using the provisions of FAR 25.105.

(1) *Example 1:* Price differential of 6 percent or less between low foreign (non-Canadian) and low domestic offer from a large business not in a labor surplus area. See Table 1825-1. Since the low domestic offer is not unreasonable (that is, the low domestic offer is less than the low foreign offer plus 6 percent), award shall be made to the low domestic offeror.

(2) *Example 2:* Price differential of 6 percent between low foreign (non-Canadian) and low domestic offer from an offeror that is not a small business and/or labor surplus area concern. See Table 1825-2.

(3) *Example 3:* Solicitation permits multiple awards, and FAR 25.105(c) permits application of the evaluation procedure in 25.105(a) on a group or item-by-item basis. Each domestic offeror is a small business or labor surplus area concern, requiring that the lowest acceptable foreign offer be increased by 12 percent. When an award exceeding $250,000 would be made to a domestic concern if the 12-percent factor were applied, but not if the 6-percent factor were applied, FAR 25.105(c) requires that the award be submitted to the agency head for decision as to whether award to the domestic concern would involve unreasonable cost. In NASA, the Administrator has delegated this authority to the Assistant Administrator for Procurement. See Table 1825-3.

(i) For items 1 and 3, award would be made to the low acceptable domestic offeror, but would not be submitted to the Assistant Administrator for Procurement because—

(A) The low acceptable domestic offeror is a small business and/or labor surplus area concern;

(B) The differential does not exceed 12 percent on an item-by-item basis; and

(C) The total low acceptable domestic offer does not exceed $250,000.

(ii) For items 2 and 4, award would be made to the low acceptable foreign offeror, but would not be submitted to the Assistant Administrator for Procurement because—

(A) The low acceptable domestic offeror is a small business or labor surplus area concern;

(B) The differential exceeds 12 percent on an item-by-item basis; and

(C) The low acceptable domestic offer does not exceed $250,000.

(4) *Example 4:* Solicitation permits multiple awards, and FAR 25.105(b) permits application of the evaluation procedure in 25.105(a) on a group or item-by-item basis. Each domestic offeror is a small business or labor surplus area concern, requiring that the lowest acceptable foreign offer be increased by 12 percent. When an award exceeding $250,000 would be made to a domestic concern if the 12-percent factor were applied, but not if the 6-percent factor were applied, FAR 25.105(c) required that the award be submitted to the agency head for decision as to whether award to the domestic concern would involve unreasonable cost. In NASA, the Administrator has delegated this authority to the Assistant Administrator for Procurement. See Table 1825-4. (Note that both offers include transportation to destination and the foreign offer includes duty.)

(i) For the grouping of items 1, 2, 3, and 4, the proposed total would be submitted to the Assistant Administrator for Procurement for decision pursuant to FAR 25.105(c), which requires the agency head to decide whether award to a domestic concern would involve unreasonable cost when—

(A) The low acceptable domestic offeror on each line item is a small business or labor surplus area concern and the low acceptable foreign offer for each line item must be increased for evaluation purposes by 12 percent (see FAR 25.105(a)(2));

(B) On an item-by-item basis, the low acceptable domestic price exceeds the low acceptable foreign price plus 6 percent, but is less than the foreign price plus 12 percent; or

(C) The grouping of the four line items for purposes of a single award exceeds $250,000.

(ii) Table 1825-5 illustrates the pertinent figures in applying FAR 25.105(c). Columns 3 and 4 illustrate how award on each item would go to the domestic offeror if the 12-percent factor were added to the foreign offer. Addition of the 12-percent factor makes the foreign offer unreasonable. However, addition of only the 6-percent factor to the foreign offer makes the domestic offer unreasonable in each case because, even with the addition of the 6 percent, the foreign offer is still lower than the domestic one. Stated otherwise, because the low acceptable domestic offeror is a small business or labor surplus area firm, the price of the low acceptable foreign offeror must be raised by 12 percent for evaluation purposes. Accordingly, each evaluated price of items 1, 2, 3, and 4 exceeds the domestic price for that item. However, in each case, if only the 6-percent factor is added instead of the 12-percent factor, the individual awards would go to the foreign offeror instead of the domestic offeror, thus requiring the procurement to be submitted to the Assistant Administrator for Procurement for a final decision as to whether award to the domestic concern would involve unreasonable cost.

(b) *Tie bids.* If the evaluation procedure (that is, application of differentials) set forth at FAR 25.105 results in a tie between the foreign offer and the domestic offer, award shall be made to the domestic offeror.

TABLE 1825-1

	Low bids	
	Domestic	Foreign
Cost to destination	$20,000	$19,000
Import duty		600
Total	$20,000	$19,600
Six percent differential		1,176
Total	$20,000	$20,776

TABLE 1825-2

	Low bids	
	Domestic	Foreign
Cost to destination	$20,000	$17,000
Import duty		500
Total	$20,000	$17,500
Six percent differential		1,050

TABLE 1825-2—Continued

	Low bids	
	Domestic	Foreign
Total	$20,000	$18,550

TABLE 1825-3

Item	Low Bids			Actual percent difference between bids
	Foreign	Domestic		
		A	B	
1	$50,000	$55,500		11
2	50,000		$56,500	13
3	75,000	81,750		9
4	12,000		16,250	30

TABLE 1825-4

Item	Low bids		Actual percent difference between bids
	Foreign	Domestic	
1	$100,000	$111,000	11
2	200,000	220,000	10
3	50,000	55,000	10
4	25,000	27,000	8

TABLE 1825-5

Item	1	2	3	4	5
	Foreign bid	Foreign bid plus 6%	Domestic bid	Foreign bid plus 12%	Actual percentage difference of domestic bid over foreign bid
1	$100,000	$106,000	$111,000	$112,000	11
2	200,000	212,000	220,000	224,000	10
3	50,000	53,000	55,000	56,000	10
4	25,000	26,500	27,000	28,000	8
	$375,000		$413,000		

Subpart 1825.2—Buy American Act—Construction Materials

1825.202 Policy.

(a) *Exception for unreasonable cost of domestic construction materials.* The Assistant Administrator for Procurement has determined that when the application of the procedure set forth in 1825.203 results in the acquisition of foreign construction materials, the use of domestic construction materials would unreasonably increase the cost.

(b) *Exception for impracticability of using domestic construction materials.* The Assistant Administrator for Procurement has determined that, when there is a justification as required by FAR 25.203(b), the use of domestic construction material would be impracticable.

(c) *Exception for nonavailability of domestic construction materials.* (1) NASA has determined that construction materials listed in FAR 25.108(d)(1) are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(2) In addition, subject to the approval of the head of the contracting activity where required (see FAR 25.202(b)), NASA contracting officers may make additional determinations of nonavailability under FAR 25.202(a)(3) both before entering into contracts and in the course of contract administration; provided, however, that in the latter case the Government receives adequate consideration. A copy of each nonavailability determination shall be included in the contract file. The format for these nonavailability determinations is at 1825.102(b).

1825.203 Evaluating offers.

When an offer involving the use of additional foreign construction materials (other than those listed as exceptions in the solicitation; see 1825.202(c) and 1852.225-71) would be the low acceptable offer but for the Buy American Act, award shall be made on

it, provided that all the following conditions are satisfied:

(a) The offer specifically designates the foreign construction materials proposed for use.

(b) As to each such foreign construction material, the data accompanying the offer show that the cost of any available acceptable domestic construction material delivered at the construction site would exceed by more than 6 percent the cost (including duty) of the designated foreign construction material delivered at the construction site.

(c) As to each such foreign construction material, the contracting officer is satisfied that the showing of a cost differential of more than 6 percent as required by paragraph (b) of this section is correct as of the date of opening of the bids or receipt of proposals.

(d) The offer is low after adding to it, for evaluation purposes, a factor of 6 percent of the cost (including duty) of all offered foreign construction materials (delivered at the construction site) that qualify under the conditions stated in paragraphs (a), (b), and (c), of this section.

1825.205 Solicitation provision and contract clause.

1825.205-70 NASA contract clause.

The clause at 1852.225-71, Nondomestic Construction Materials, shall be included in all contracts for construction. Any articles of materials and supplies that have been the subject of additional determinations under 1825.202(c)(2) shall be listed in the clause.

Subpart 1825.3—Balance of Payments Program

1825.304 Excess and near-excess foreign currencies.

The NASA Comptroller shall make the determination of the feasibility of using excess or near-excess currency required by FAR 25.304(c). The Director of Financial Management (Code BF) maintains a current list of excess and near-excess currency-countries and arranges for its publication in the NASA Travel Regulations.

Subpart 1825.4—Purchases Under the Trade Agreements Act of 1979

1825.402 Policy.

The threshold for procurements subject to the Trade Agreements Act of 1979 is $156,000.

1825.402-70 Centralization of foreign acquisition.

The requirement of Subpart 1825.70 that the responsibility for foreign contract acquisition be centralized at NASA Headquarters does not apply to acquisitions subject to the Trade Agreements Act of 1979. However, each contracting office (including JPL) shall coordinate with Headquarters, International Relations Division (Code XI), before awarding a contract for a designated-country end product.

1825.403 Exceptions.

1825.403-70 Coordination of arms purchases.

With respect to the exceptions in FAR 25.403(d), if a contracting officer considers an individual acquisition to be a purchase "indispensable for national security or for national defense purposes" and appropriate for exclusion from the provisions of FAR 25.4 and of this Subpart 1825.4, the contracting officer shall submit a request with supporting rationale to Headquarters, Office of External Relations (Code X), for coordination with the Office of the U.S. Trade Representative.

1825.405 Procedures.

Solicitations shall require that applicable duty charges be included in the offered price, whether or not duty-free certificates are obtained. Duty charges shall be included in the price evaluation.

1825.407 Solicitation provision and contract clause.

1825.407-70 NASA solicitation provision.

In accordance with FAR 25.405(d), the contracting officer shall insert the provision at 1852.225-72, Offer in English Language and U.S. Dollars, in solicitations subject to the Trade Agreements Act of 1979.

Subpart 1825.6—Customs and Duties

1825.604 Exempted supplies.

The contracting officer shall, when purchasing items listed in Schedule 8 of the Tariff Schedules of the United States, take note of the following:

(a) Item 832 of Schedule 8 provides that "emergency war materials purchased abroad" may be imported duty-free upon certification by the Military Departments to the Commissioner of Customs. Accordingly, when a Military Department makes a purchase on behalf of NASA, or when NASA makes a purchase for a Military Department, the contracting officer shall use this duty-free exemption authority to the maximum extent practicable.

(b) Item 864.30 of Schedule 8 provides for the duty-free exemption of "articles intended solely for testing, experimental, or review purposes including plans, specifications, drawings, photographs, and similar articles for use in connection with experimental study," subject to the limitations in Headnote 1 under Item 862.20 of Schedule 8.

(c) Certain supplies (not including equipment) for vessels or aircraft operated by the United States are exempt from duty under 19 U.S.C. 1309.

(d) Under the Educational, Scientific, and Cultural Materials Importation Act of 1966, NASA has been determined eligible to request duty-free entry for instruments or apparatus under Items 851.60 and 851.65 of Schedule 8. Pursuant to this authority, the contracting officer may apply for duty-free entry of such instruments or apparatus or related repair components if no instrument or apparatus of equivalent scientific value for the purpose for which the instrument or apparatus is intended is manufactured in the United States.

(e) Item 837.00 of Schedule 8 and the Subpart A headnote of Part 3, Schedule 8, provide for duty-free entry of articles launched into or returned from space by NASA, including spare parts or necessary and uniquely associated support equipment. The contracting officer shall consult 14 CFR 1214.15 (NMI 8610.18, Space Transportation System; Duty-Free Entry of Space Articles) for procedures for obtaining the required Headquarters certificates for the duty-free entry of these articles.

1825.605 Contract clause.

1825.605-70 NASA contract clause.

The contracting officer shall insert the clause at 1852.225-73, Duty-Free Entry Supplies, in solicitations and contracts where the possibility exists of receiving duty-free supplies. Insert the supplies that are to be accorded duty-free entry in accordance with FAR 25.604 and 1825.604.

1825.670 Legal representation.

The Office of the General Counsel (Code G), NASA Headquarters, shall represent NASA before the Court of Appeals for the Federal Circuit, in matters regarding customs and duties.

Subpart 1825.7—Restrictions on Certain Foreign Purchases

1825.703 Exceptions.

When it is proposed to procure supplies originating from sources restricted by FAR 25.702 for public use

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outside the United States, or when a contractor proposes to use such supplies in performing a contract for construction outside the United States, the contracting officer shall make a written finding justifying the procurement. The finding shall set forth the unusual situation, such as an emergency or the nonavailability of acceptable substitute supplies of domestic origin or from sources other than the restricted sources. The contracting officer shall make the finding a part of the contract file. If the proposed procurement is not carried out by small purchase procedures, the contracting officer shall forward the finding in triplicate to the Assistant Administrator for Procurement (Code HS), for approval.

Subpart 1825.9—Omission of the Examination of Records Clause

1825.903 Conditions for omission.

When the contracting officer omits the clause at 52.215–1 under the conditions at FAR 25.903(a)(2), the contracting officer shall prepare a written report in triplicate to be furnished to the Congress. The head of the installation concerned shall sign the report and forward it to the Assistant Administrator for Procurement (Code HC), who shall submit it to the Administrator for the Administrator's signature and forwarding to Congress.

1825.904 Determination and findings.

1825.904–70 Request for determination and findings.

The contracting officer shall ordinarily initiate the request to the Administrator for determination and findings for exclusion of the clause at 52.215–1. The request shall consist of:

(a) A letter submitted to the Administrator through normal procurement channels and

(b) A proposed determination and findings prepared for the Administrator's signature according to the format in FAR 25.904.

Subpart 1825.70—Foreign Contracts

1825.7000 Scope of subpart.

This subpart prescribes policy and procedures for negotiating foreign contracts.

1825.7001 Definition.

"Foreign contract acquisition," as used in this subpart, means the acquisition by negotiation of supplies or services, including construction work and research and development when the work is to be performed outside the United States, its possessions, and Puerto Rico by a foreign government or instrumentality thereof or by a foreign private contractor. The term does not include—

(a) Negotiation of government-to-government agreements;

(b) Negotiation of contracts with domestic concerns involving work to be performed outside the United States, its possessions, and Puerto Rico;

(c) Contracts with the Canadian Commercial Corporation; or

(d) Acquisition of books and periodicals from foreign sources of supply.

1825.7002 Policy.

Foreign contracts are a specialized area that often requires involved negotiation with instrumentalities of foreign governments. Some of the requirements for contract clauses imposed by U.S. laws conflict with statutory prohibitions imposed by foreign countries. The resolution of these issues generally involves close coordination between the International Relations Division (Code XI) and the Office of General Counsel, NASA Headquarters, and the Department of State. Accordingly, the responsibility for placing foreign contracts has been centralized at NASA Headquarters (but see 1825.402–70).

1825.7003 Assignment of responsibility for contract negotiation.

The Headquarters Contracts and Grants Division (Code HW), in conjunction with the International Relations Division (Code XI) and the Office of General Counsel, is responsible for negotiating and executing contracts with foreign governments and private foreign organizations. This assignment of responsibility is specifically limited to foreign contract acquisition, as defined at 1825.7001.

1825.7004 Procedure.

A Headquarters or field installation technical office requiring a foreign contract acquisition shall submit a properly approved procurement request through channels to the Headquarters Contracts and Grants Division (Code HW) for action. Contract forms and clauses for foreign contracts will be as prescribed on a case-by-case basis by the Assistant Administrator for Procurement.

1825.7005 Assignment of contract administration.

(a) *General.* Assignment of contract administration responsibility shall be made by agreement between the initiating office and the Headquarters Contracts and Grants Division. Since principal responsibility for monitoring contract progress and performance generally rests with a field installation, the Headquarters Contracts and Grants Division normally will designate the cognizant procurement officer as its authorized representative for contract administration.

(b) *Contracts performed in Canada.* (1) When, in accordance with FAR Part 42, contract administration and related support service functions of the Defense Contract Administration Services are desired for a contract to be performed in Canada (whether placed with Canadian Commercial Corporation or directly with a Canadian firm), a letter or delegation shall be issued to—

Defense Supply Agency, DCASMA, Ottawa, 6th Floor, Canadian Building, 219 Laurier Avenue, West Ottawa, Ontario, Canada (K1A035).

(2) So that DCASMA, Ottawa, can utilize the capabilities of Canadian Government agencies in performing contract administration services functions, each letter of delegation shall provide that DCASMA, Ottawa, is delegated authority to act as the contracting officer's representative, with power of further delegation for the performance of the requested services.

1825.7006 Contracts with foreign nationals.

(a) Proposals by NASA staff members involving program or contract possibilities with foreign nationals shall be coordinated with the International Relations Division (Code XI), NASA Headquarters, before any contracts are made with foreign nationals.

(b) Informal discussions between NASA staff members and foreign nationals could give rise to expectations concerning program or contract possibilities that are not supported by program requirements. Such situations must be avoided to preclude possible embarrassment to the United States as well as to NASA.

(c) Requests or offers by foreign nationals to NASA staff members on program or contract matters shall be reported promptly to the International Relations Division (Code XI).

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1827—PATENTS, DATA, AND COPYRIGHTS

Subpart 1827.3—Patent Rights Under Government Contracts

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Authority: 42 U.S.C. 2473(c)(1).

Subpart 1827.3—Patent Rights Under Government Contracts

1827.303 Contract clauses.

In accordance with FAR 27.303, see 1827.373 for directions for using the clauses at FAR 52.227–11 and 52.227–13.

1827.370 Scope of subpart.

As authorized by FAR 27.300, in accordance with statutory requirements, this subpart sets forth NASA policy, procedures, and contract clauses with respect to inventions, discoveries, improvements, and innovations made in the performance of any work under any contract awarded by or for NASA. Except where the FAR is specifically cited, this subpart supersedes FAR Subpart 27.3 in its entirety.

1827.371 Definitions.

"Administrator," as used in this subpart, means the Administrator of NASA or a duly authorized representative.

"Contract," as used in this subpart, means any actual or proposed contract, agreement, understanding, or other arrangement, and includes any assignment, substitution of parties, or subcontract executed or entered into thereunder.

"Made," as used in this subpart, means conceived or first actually reduced to practice; provided, that in the case of a variety of plant, the date of determination (as defined in Section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

"Nonprofit organization," as used in this subpart, means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any nonprofit scientific or educational organization qualified under a State nonprofit-organization statute.

"Practical application," as used in this subpart, means manufacturing, in the case of a composition or product; practice, in the case of a process or method; or operation, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law and Government regulations, available to the public on reasonable terms.

"Reportable item," as used in this subpart, means any invention, discovery, improvement, or innovation of the contractor, whether or not patentable or otherwise protectible under Title 35 of the United States Code, conceived or first actually reduced to practice in the performance of any work under any NASA contract or in the performance of any work that is reimbursable under any clause in any NASA contract providing for reimbursement of costs incurred before the effective date of the contract.

"Small business firm," as used in this subpart, means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the size standard contained in 13 CFR 121.3–8 for small business contractors and in 13 CFR 121.3–12 for small business subcontractors shall be used. (See FAR Part 19.).

"Subject invention," as used in this subpart, means any reportable item that is or may be patentable or otherwise protectible under Title 35 of the United States Code, or any novel variety of plant that is or may be protectible under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

1827.372 Policy.

(a) *Introduction.* (1) NASA policy with respect to any invention, discovery, improvement, or innovation made in the performance of any work under any NASA contract or subcontract with other than a small business firm or a nonprofit organization and the allocation of related property rights are based upon Section 305 of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457) (the Act); and, to the extent consistent with this statute, the Presidential Memorandum on Government Patent Policy to the Heads of Executive Departments and Agencies, dated February 18, 1983, and section 1(b)(4) of Executive Order 12591.

(2) NASA policy with respect to any invention made in the performance of experimental, developmental, or research work with a small business firm or a nonprofit organization is based on 35 U.S.C. Chapter 18, as amended. The objectives of NASA policy with respect to any NASA contract subject to Section 305 of the Act are to obtain the prompt reporting of inventions, discoveries, improvements, and innovations made in the performance of any work thereunder (whether or not patentable) in order to protect the Government's interest in them and to provide their widest practicable and appropriate dissemination, early utilization, expeditious development, and continued availability for the benefit of the scientific, industrial, and commercial communities and the general public.

(3) In addition, the objectives of NASA policy with respect to inventions made in the performance of work under all NASA contracts are to use the patent system to promote the utilization of inventions arising from federally supported research or development; to encourage maximum participation of industry in federally funded research and development efforts; to ensure that these inventions are used in a manner to promote full and open competition and free enterprise; to promote the commercialization and public availability of the inventions made in the United States by United States industry and labor; to ensure that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions; and to minimize the cost of administering policies in this area.

(b) *Contractor right to title.* (1) With respect to any NASA contract with other than a small business firm or a nonprofit organization (contracts subject to section 305 of the Act; see paragraph (d) of this section, it is the policy of NASA to waive the rights (to acquire title) of the United States (with the reservation of a Government license set forth in paragraph (c) of this section and the march-in rights of paragraph (f) of this section in and to any invention

made in the performance of work under the contract if the Administrator determines that the interests of the United States will be served by this action. This policy, as well as the procedures and instructions for such waiver of rights, is stated in the NASA Patent Waiver Regulations, 14 CFR Part 1245, Subpart 1. These regulations adopt the Presidential Memorandum on Government Patent Policy of February 18, 1983, as a guide in acting on a contractor's request for such waiver of rights (i.e., request for title). Waiver may be requested in advance of contract award for any or all of the inventions that may be made under the contract, or for individually identified inventions reported under the contract. When waiver of rights is granted, the contractor's right to title, the rights reserved by the Government, and other conditions and obligations of the waiver shall be included in an Instrument of Waiver executed by NASA and the party receiving the waiver.

(2) With respect to any contract with a small business firm or a nonprofit organization, the contractor's right to receive title is as stated in FAR 27.302(b).

(3) It is also a policy of NASA to consider for a monetary award, when referred to the NASA Inventions and Contributions Board, any invention made in the performance of a NASA contract and reported to NASA in accordance with this subpart, and for which an application for patent has been filed.

(c) *Government license.* (1) For each invention made in the performance of work under any NASA contract with other than a small business firm or a nonprofit organization and for which waiver of rights has been granted in accordance with 14 CFR Part 1245, Subpart 1, the Administrator shall reserve an irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign government in accordance with any treaty or agreement with the United States.

(2) For any invention made in the performance of work under any contract not subject to the Government license of subparagraph (c)(1) of this section, FAR 27.302(c) shall apply.

(d) *Government right to receive title.* (1) Under section 305(a) of the Act (42 U.S.C. 2457(a)), any invention made in the performance of work under a NASA contract becomes the exclusive property of the United States when certain determinations stated in the Act relating to the employment status of the person making the inventions are made, unless the Administrator waives all or any part of the rights. NASA has adopted the Presidential Memorandum on Government Patent Policy of February 18, 1983, as a guide in acting on a contractor's request for waiver (see paragraph (b) of this section).

(2) Thus, NASA acquires title to any subject invention under any NASA contract with other than a small business firm or a nonprofit organization (i.e., those contracts subject to section 305(a) of the Act) unless waiver has been granted and made applicable to that invention. Such contracts are required to contain the clause at 1852.227-70, New Technology. Paragraph (b) of that clause sets forth the circumstances under which NASA acquires title to a subject invention under section 305(a). When waiver is granted, the contractor's right to title will be included in an Instrument of Waiver executed by NASA and the party receiving the waiver.

(3) With respect to any contract with a small business firm or a nonprofit organization, FAR 27.302(d) shall apply.

(e) *Utilization reports.* FAR 27.302(e) shall apply, except that for any NASA contract with other than a small business firm or a nonprofit organization, the requirements for utilization reports shall be as set forth in the NASA Patent Waiver Regulations, 14 CFR Part 1245, Subpart 1, and any Instrument of Waiver executed under those regulations.

(f) *March-in rights.* FAR 27.302(f) shall apply, except that for any NASA contract with other than a small business firm or a nonprofit organization, the march-in rights shall be as set forth in the NASA Patent Waiver Regulations, 14 CFR Part 1245, Subpart 1, and any Instrument of Waiver executed under those regulations.

(g) *Preference for United States industry.* FAR 27.302(g) shall apply, except that with respect to any NASA contract with other than a small business firm or a nonprofit organization, any waiver of the requirements of FAR 27.302(g) shall be in accordance with the NASA Patent Waiver Regulations, 14 CFR Part 1245, Subpart 1.

(h) *Minimum rights to contractor.* (1) With respect to any NASA contract with other than a small business firm or a nonprofit organization, for each reported subject invention to which the Government acquires title, the contractor is normally granted (in accordance with 14 CFR Part 1245, Subpart 1) a revocable, nonexclusive, royalty-free license in each patent application filed in any country and in any resulting patent. The license extends to any of the contractor's domestic subsidiaries and affiliates within the corporate structure of which the contractor is a part, and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license and right are transferable only with the approval of the Administrator, except when transferred to the successor of that part of the contractor's business to which the invention pertains.

(2) The contractor's domestic license granted in accordance with subparagraph (h)(1) of this section may be revoked or modified by the Administrator to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 14 CFR Part 1245, Subpart 2, Licensing of NASA Inventions. This license will not be revoked in any field of use or geographical area in which the contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Administrator to the extent that the contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that country. The procedures for revocation or modification of any license, domestic or foreign, shall be in accordance with 14 CFR 1245.211.

(3) With respect to any contract with a small business firm or a nonprofit organization, FAR 27.302(h) shall apply.

(i) *Confidentiality of inventions.* FAR 27.302(i) shall apply.

1827.373 Contract clauses and solicitation provisions.

(a) *Patent rights—retention by the contractor (short form).* (1) The contracting officer shall insert the clause at FAR 52.227-11, Patent Rights—Retention by the Contractor (Short Form), in any contract (and solicitation therefor) with a small business firm or a nonprofit organization for the performance of experimental, developmental, or research work unless a determination is made to use another clause in accordance with one of the exceptions set forth in paragraph (c) of this section. The clause shall be modified as specified in (a)(4) of this section. Also, see paragraph (f) of this section and 1827.374-4.

(2) If the acquisition of patent rights for the benefit of a foreign government is required under a treaty or executive agreement, or if the Administrator determines at the time of contracting that it would be in the national interest to acquire the right to sublicense foreign governments or international organizations pursuant to any existing or to-be-entered-into treaty or agreement, the contracting officer shall use the clause with its Alternate I.

(3) To qualify for the clause at FAR 52.227-11, a prospective contractor may be required to certify that it is either a small business firm or a nonprofit organization. If there is reason to question the status of the prospective contractor, the contracting officer may file a protest in accordance with 13 CFR 121.3-5 if small business firm status is questioned or requires the prospective contractor to furnish evidence of its status as a nonprofit organization.

(4) When the clause at FAR 52.227-11 is included in a solicitation or contract, include the following subparagraphs in paragraph (f):

(5) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as the Contracting Officer may specify) from the date of the contract, listing subject inventions made during that period and certifying that all have been disclosed or that there are none.

(ii) A final report, within 3 months after completion of the contracted work, listing all subject inventions or certifying that there were none, and listing all subcontracts at any tier that contain a patent rights clause or certifying that there were none.

(6) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause, by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon the Contracting Officer's request, the Contractor shall furnish a copy of that subcontract, and no more frequently than annually, a listing of the subcontracts that have been awarded.

(7) The Contractor shall provide, upon request, the filing date, serial number, and title; a copy of the patent application (including an English language version if filed in a language other than English); and the patent number and issue date for any subject invention for which the Contractor has retained title.

(8) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(b) *New technology.* As authorized in FAR 27.303(c)(2), the contracting officer shall insert the clause at 1852.227-70, New Technology, in any NASA contract (and solicitation therefor) with other than a small business firm or a nonprofit organization, if the contract is to be performed in the United States, its possessions, or Puerto Rico and has as a purpose the performance of experimental, developmental, research, design, or engineering work (see also 1827.374-3 and 1827.374-4). Contracts for any of the following purposes may be considered to involve the performance of work of the type described above (these examples are illustrative and not limiting):

(1) Conduct of basic or applied research.

(2) Development, design, or manufacture for the first time of any machine, article of manufacture, or composition of matter to satisfy NASA's specifications or special requirements.

(3) Development of any process or technique for attaining a NASA objective not readily attainable through the practice of a previously developed process or technique.

(4) Testing of, evaluation of, or experimentation with a machine, process, concept, or technique to determine whether it is suitable or could be made suitable for a NASA objective.

(5) Construction work or architect-engineer services having as a purpose the performance of experimental, developmental, or research work or test and evaluation studies involving such work.

(6) The operation of facilities or the coordination and direction of the work of others, if these activities involve performing work of any of the types described in subparagraphs (b) (1) through (5) of this section.

(c) Other patent rights clauses. The contracting officer shall use a patent rights clause other than as specified in paragraph (a) or (b) of this section, under the circumstances set forth in subparagraphs (c) (1) through (3) of this section.

(1) When work is to be performed outside the United States, its possessions, and Puerto Rico by contractors that are not domestic firms, the clause at 1852.227-85, Invention Reporting and Rights—Foreign, shall be used unless the contracting officer determines, with concurrence of the installation's Patent Counsel, that the objectives of the contract would be better served by use of the clause at FAR 52.227-13, Patent Rights—Acquisition by the Government. For the purposes of this subparagraph (1), the contracting officer may presume that a contractor is not a domestic firm unless it is known that the firm is not foreign owned, controlled, or influenced. (See FAR 27.304-4(a) regarding subcontracts with U.S. firms.)

(2) When a contract is placed for another Government agency, that agency may request use of a specific patent rights clause (see FAR 27.304-2). If the agency for which the contract is to be placed does not request a specific clause, the contracting officer, upon consultation with the installation's Patent Counsel, may use the clause of paragraph (a) or (b) of this section, as applicable.

(3) When the contract is with a small business firm or a nonprofit organization for the performance of experimental, developmental, or research work, a determination may be made not to use the clause prescribed in paragraph (a) of this section by using the criteria and procedures in FAR 27.303(d). In such case, the installation's Patent Counsel is to be consulted for the appropriate clause to use.

(d) *Requests for waiver of rights to inventions.* The procedures for requesting waiver of rights to any inventions made in the performance of work under any NASA contract with other than a small business firm or a nonprofit organization are set forth in the NASA Patent Waiver Regulations, 14 CFR Part 1245, Subpart 1. In order to advise prospective contractors of those procedures, the contracting officer shall insert the provision at 1852.227-71, Requests for Waiver of Rights to Inventions, in all solicitations that include the clause at 1852.227-70, New Technology.

(e) *Designation of New Technology Representative and Patent Representative.* The contracting officer shall insert the clause at 1852.227-72, Designation of New Technology Representative and Patent Representative, in all solicitations and contracts containing either of the clauses prescribed in paragraph (a) or (b) of this section. It may also be inserted, upon consultation with the installation's Patent Counsel, in solicitations and contracts using another patent rights clause in accordance with paragraph (c) of this section.

(f) *Patent rights clause for subcontracts.* The contracting officer shall insert the clause at 1852.227-73, Patent Rights Clause for Subcontracts, in all solicitations and contracts that include the clause at FAR 52.227-11, Patent Rights—Retention by the Contractor (Short Form).

(g) *Solicitation provision.* The contracting officer shall insert the provision at 1852.227–84, Patent Rights Clauses, in solicitations for experimental, developmental, or research work to be performed in the United States, its possessions, or Puerto Rico when the eventual awardee may be a small business or a nonprofit organization but the matter is uncertain at the time of solicitation (e.g., the procurement is not a set-aside and is not sole source to a large business).

1827.374 Procedures.

1827.374–1 General.

(a) *Greater rights determinations.* In any NASA contract with other than a small business firm or a nonprofit organization and with respect to which advance waiver of rights has not been granted (see 1827.372(b)), the contractor (or an employee-inventor of the contractor after consultation with the contractor) may request waiver of title to an individual identified subject invention pursuant to the NASA Patent Waiver Regulations, 14 CFR Part 1245, Subpart 1. In any contract with a small business firm or a nonprofit organization, FAR 27.304–1(a) shall apply.

(b) *Retention of rights by inventor.* The NASA Patent Waiver Regulations, 14 CFR Part 1245, Subpart 1, shall apply for any invention made in the performance of work under any NASA contract with other than a small business firm or a nonprofit organization. For inventions made under a contract with a small business firm or a nonprofit organization, FAR 27.304–1(b) shall apply.

(c) *Government assignment to contractor of rights in Government employees' inventions.* FAR 27.304–1(c) shall apply.

(d) *Additional requirements.* See 1827.373(a).

(e) *Revocation or modification of contractor's minimum rights.* Revocation or modification of the contractor's license rights (see 1827.372(h)(2)) shall be in accordance with the procedures of 14 CFR Part 1245, Subpart 1, for subject inventions made and reported under any NASA contract with other than a small business firm or a nonprofit organization, and in accordance with FAR 27.304–1(e) for subject inventions made and reported under any contract with a small business firm or a nonprofit organization. The contractor's right to appeal a NASA determination to revoke or modify any such license shall be in accordance with 14 CFR Part 1245, Subpart 2, Licensing of NASA Inventions.

(f) *Exercise of march-in rights.* (1) With respect to inventions made in the performance of work under any NASA contract with other than a small business firm or a nonprofit organization, the procedures for the exercise of march-in rights shall be as set forth in the NASA Patent Waiver Regulations, 14 CFR Part 1245, Subpart 1.

(2) With respect to inventions made under any contract with a small business firm or a nonprofit organization, FAR 27.304–1(g) shall apply.

(g) *Licenses and assignments under contracts with nonprofit organizations.* FAR 27.304–1(h) shall apply. NASA's approving official for any assignment requested under FAR 27.304–1(h) is the Associate General Counsel (Intellectual Property). Contractors' requests should be made to the Patent Representative designated in accordance with 1827.373(e) and forwarded, with recommendation, to the Associate General Counsel (Intellectual Property) for decision.

1827.374–2 Contracts placed by or for other Government agencies.

FAR 27.304–2 shall apply.

1827.374–3 Contracts for construction work or architect-engineer services.

(a) If a NASA contract for construction work or architect-engineer services with other than a small business firm or a nonprofit organization has as a purpose the performance of experimental, developmental, or research work, or test and evaluation studies involving such work, and the contract calls for or can be expected to involve the design of a Government facility or of novel structures, machines, products, materials, processes, or equipment (including construction equipment), the contract shall include the clause prescribed at 1827.373(b) except as provided in FAR 27.304–3(b).

(b) For all other contracts for construction work or architect-engineer services, FAR 27.304–3 shall apply.

1827.374–4 Subcontracts.

(a) The policies and procedures in this subpart apply to all contracts at any tier. Hence, unless the contracting officer otherwise authorizes or directs, contractors awarding subcontracts and subcontractors awarding lower-tier subcontracts shall select and include one of the following clauses, suitably modified to identify the parties, in the indicated subcontracts:

(1) The clause at 1852.227–70, New Technology, in any subcontract with other than a small business firm or a nonprofit organization if a purpose of the subcontract is the performance of experimental, developmental, research, design, or engineering work of any of the types described in 1827.373(L)(1) through (6).

(2) The clause at FAR 52.227–11, Patent Rights—Retention by the Contractor (Short Form), modified in accordance with 1827.373(a), in any subcontract with a small business firm or a nonprofit organization if a purpose of the subcontract is the performance of experimental, developmental, or research work.

(b) Whenever a prime contractor or a subcontractor considers it inappropriate to include one of the clauses discussed in paragraph (a) above in a particular subcontract, or a subcontractor refuses to accept the clause, the matter shall be resolved by the contracting officer in consultation with the installation's Patent Counsel.

(c) Contractors and subcontractors may not use their ability to award subcontracts as economic leverage to acquire rights for themselves in inventions resulting from such subcontracts.

1827.374–5 Appeals.

FAR 27.304–5 shall apply unless otherwise provided in the NASA Patent Waiver Regulations, 14 CFR Part 1245, Subpart 1.

1827.375 Administration of the patent rights and new technology clauses.

1827.375–1 New technology and patent rights follow-up.

(a) It is important that the Government and the contractor know, protect, and exercise their rights in inventions, discoveries, improvements, and innovations made in the performance of work under NASA contracts in order to ensure their expeditious availability to the public; foster commercial use; enable the Government, contractor, and public to avoid unnecessary payment of royalties; and defend themselves against claims and suits for infringement. To attain these ends, contracts having the clause at 1852.227–70, New Technology, the clause at FAR 52.227–11, Patent Rights—Retention by the Contractor (Short Form), or any other patent rights clause (hereinafter all collectively referred to as "the clause" unless otherwise indicated), should be so administered that—

(1) Reportable items and subject inventions are identified, disclosed, and reported as required by the clause, and requests for waiver of title or election of title, when appropriate, are timely made;

(2) The rights of the Government in reportable items and subject inventions are established;

(3) Where patent protection is appropriate, patent applications are timely filed and prosecuted;

(4) The rights of the Government in filed patent applications are documented by formal instruments such as licenses or assignments; and

(5) Expeditious commercial utilization of reportable items and subject inventions is achieved.

(b)(1) For each contract containing the clause, the contracting officer shall designate representatives (hereinafter referred to as the "New Technology Representative" and the "Patent Representative"; see 1827.373(e)) to administer the clause, protect the Government's rights, and take other actions in relation thereto. The New Technology Representative shall be the Technology Utilization Officer or the staff member (by titled position) having cognizance of technology utilization matters for the NASA installation concerned. The Patent Representative shall be the Patent Counsel (by titled position) having cognizance of patent matters for the NASA installation concerned. Designation of these representatives in the contract is made by use of the clause at 1852.227–72, Designation of New Technology Representative and Patent Representative.

(2) The contracting officer shall—

(i) Furnish the New Technology Representative a copy of each contract (and modifications thereto) containing the clause, and copies of the final technical report, interim technical progress reports, and other pertinent material provided under the contract, unless the New Technology Representative indicates otherwise;

(ii) Notify the New Technology Representative as to which NASA installation organizational element has technical cognizance of the contract; and

(iii) Furnish the Patent Representative a copy of each contract (and modifications thereto) containing the clause, and copies of the final technical report, interim progress reports, and other pertinent material provided under the contract, unless the Patent Representative indicates otherwise.

(3) The New Technology Representative and the Patent Representative shall:

(i) Maintain complete files of correspondence and other actions involving their respective administration of the clause; and

(ii) Furnish copies of documents appropriate for inclusion in the general contract files to the contracting officer.

(4) If a subject invention is made under funding agreements of more than one agency, at the request of the contractor or on their own initiative, the agencies shall designate one agency as responsible for administering the rights of the Government in the invention.

1827.375–2 Follow-up by contractor.

(a) *Contractor procedures.* (1) Each NASA contractor other than a small business firm or a nonprofit organization shall establish and maintain active and effective procedures to ensure that reportable items are promptly identified, reported, and disclosed in order to meet the requirements of the clause. These procedures must include the maintenance of:

(i) Laboratory notebooks or equivalent records and any other records reasonably necessary to document the conception and/or first actual reduction to practice of reportable items; and

(ii) Records showing that the procedures for identifying and disclosing reportable items are followed.

Upon request, the contractor shall furnish the contracting officer or a designated representative, for evaluation and a determination as to their effectiveness, a description of the procedures.

(2) In order to ensure adequate understanding of and commitment to the reporting requirements of the New Technology clause, prospective contractors under any NASA contract with an estimated cost of $2,500,000 or more (or a lesser dollar amount where considered appropriate) that contains the clause may be required to submit for approval a detailed plan for new technology reporting (see 1835.003–71).

(b) *Contractor reports.* (1) During the period of performance of each contract or subcontract, the contractor or subcontractor is required to submit to the New Technology Representative (or any other representative designated by the contracting officer) all disclosures of reportable items and subject inventions, interim reports, subcontract identification, and other information in the manner required by the clause, and upon the completion of the work under the contract or subcontract, the final report if required by the clause.

(2) Reporting of reportable items as required by the New Technology clause promptly and before the completion of contract work, and prompt submission of the final report upon completion of contract work, will aid new technology clearance. Timely submission of annual interim reports, where contracts cover a period of more than one year, will also facilitate clause administration and expedite final clearance.

1827.375–3 Follow-up by Government.

(a) The New Technology Representative shall review, as necessary, the technical progress of work performed under the contract to ascertain whether the contractor and its subcontractors are complying with the clause's reporting requirements. This effort should be directed primarily toward contracts and subcontracts that, by the nature of the work to be performed or the dollar amounts involved, are likely to produce reportable items or subject inventions of significant quantity or quality, or toward contracts and subcontracts under which there is reason to believe that the contractors may not be complying with their contractual obligations. Other contracts and subcontracts should be spot-checked when feasible. These follow-up activities may include—

(1) Reviewing the contractor's technical reports;

(2) Requesting the Patent Representative to check sources for patents issued to the contractor in fields related to the contractor's Government contracts;

(3) Interviewing contractor personnel regarding work under the contract, observing the work on-site, and inspecting laboratory notebooks and other contractor records related to work under the contract, to the extent authorized by the clause;

(4) Interviewing agency technical personnel concerning novel developments in contracts under their cognizance; and

(5) Ensuring that the contractor is timely in reporting reportable items, disclosing subject inventions, and submitting interim reports, subcontract identification, and final reports as required by the clause.

(b) The New Technology Representative shall forward to the Patent Representative copies of all contractors' and subcontractors' written reports of reportable items and disclosures of subject inventions, and a copy of the written statement, if any, submitted with the report of the reportable item. The New Technology Representative shall consult with the Patent Representative whenever a question arises as to whether a given reportable item is to be considered a subject invention and whether it was made in the performance of work under the contract. All correspondence relating to:

(1) Inventions and waivers under the New Technology clause and

(2) Election of title under the Patent Rights—Retention by the Contractor (Short Form) clause

shall also be promptly forwarded to the Patent Representative.

(c) The Patent Representative shall review each reportable item to ascertain whether it is to be considered a subject invention, obtain any determinations required by paragraph (b) of the New Technology clause, and notify the contractor. As to any subject invention, the Patent Representative shall:

(1) Ensure that the contractor has provided sufficient information to protect the Government's rights and interests in it and to permit the preparation, filing, and prosecution of patent applications,

(2) Make determinations of inventorship, and

(3) Ensure the preparation of instruments establishing the Government's rights.

The Patent Representative shall also, as necessary, conduct selected reviews of the nature set forth in paragraph (a) of this section to ensure that subject inventions are identified, adequately documented, and timely reported or disclosed.

(d) Upon receipt of any final report required by the clause, and upon determination that the contract work is complete, the New Technology Representative shall determine whether the contractor has complied with the clause's reporting requirements. If so, the New Technology Representative shall certify compliance, obtain the Patent Representative's concurrence, and forward the certification to the contracting officer. Such determinations generally will require consultation with cognizant technical personnel.

(e) Either the New Technology Representative or the Patent Representative, in consultation with the other, may prepare opinions, make determinations, and otherwise advise the contracting officer with respect to any withholding of payment under paragraph (g) of the New Technology clause. Either the New Technology Representative or the Patent Representative may represent the contracting officer for the purpose of examining the contractor's books, records, and other documents in accordance with paragraph (f) of the New Technology clause and take corrective action as appropriate. However, no action may be taken by either the New Technology Representative or the Patent Representative that would:

(1) Constitute a final decision under the Disputes clause,

(2) Involve any change or increase in the work required to be performed under the contract that is inconsistent with any right of appeal provided in FAR 27.304–5 or 14 CFR 1245.1, or

(3) Otherwise be outside the scope of obligations imposed upon the contractor by the contract.

(f) If it is determined that a contractor or subcontractor does not clearly understand the rights and obligations of the parties under a patent rights clause, or that its procedures for complying with the clause are deficient, a post-award orientation should ordinarily be conducted to explain these rights and obligations (see FAR Subpart 42.5). When a contractor fails to establish, maintain, or follow effective procedures for identifying, disclosing, and, when appropriate, filing patent applications on inventions (if such procedures are required by the patent rights clause), or after appropriate notice fails to correct any deficiency, the contracting officer or a representative may require the contractor to make available for examination books, records, and documents relating to the contractor's inventions in the same field of technology as the contract effort to enable a determination of whether there are such inventions and may invoke the withholding of payments provision (if any) of the clause. The withholding of payments provision (if any) of the patent rights clause or of any other contract clause may also be invoked if the contractor fails to disclose a subject invention. Significant or repeated failures by a contractor to comply with the patent rights obligation in its contracts shall be documented and made a part of the general file (see FAR 4.801(c)(3)).

(g) The contracting officer shall not approve release of final payment under the contract and, if applicable, any reserve set aside under the withholding provisions of the clause for deficiencies and delinquent reporting not corrected as of the time of the submission of the final report by the contractor until receipt of the New Technology Representative's certification of compliance, and the Patent Representative's concurrence, as specified in paragraph (d) of this section.

1827.375–4 Conveyance of invention rights acquired by the Government.

(a) When the Government acquires the entire right to, title to, and interest in an invention under the clause at 1852.227–70, New Technology, a determination of title is to be made in accordance with section 305(a) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457(a)), and reflected in appropriate instruments executed by NASA and forwarded to the contractor.

(b) When the Government acquires the entire right to, title to, and interest in an invention other than pursuant to paragraph (a) of this section, FAR 27.305–4 shall apply.

1827.375–5 Publication and release of invention disclosures.

FAR 27.305–5 shall apply.

1827.376–6 Licensing of background rights to third parties.

FAR 27.306 shall apply.

Subpart 1827.4—Rights in Data and Copyrights

1827.404 Basic rights in data clause.

(a) *Alternate definition of limited-rights data.* When the clause at FAR 52.227–14, Rights in Data—General, is used with Alternate I, but without Alternate II or Alternate III, all data qualifying as limited-rights data as defined in Alternate I may be withheld from delivery, and any study or report delivered under the contract will contain only unlimited rights data that may be disseminated by NASA. If delivery of withholdable data is required, Alternate II or Alternate III, as applicable, may be used, but any data subject to these alternates will be delivered under the applicable limited-rights or restricted-rights notices and therefore may not be disclosed outside NASA except to the extent permitted by these notices (see FAR 27.404 (d) and (e)).

(b) *Protection of limited-rights data specified for delivery.* The contracting officer shall consult with the installation's Patent or Intellectual Property Counsel regarding any questions concerning the delivery of limited-rights data and/or the use of Alternate II that may arise:

(1) From an offeror's response to the provision at FAR 52.227–15, Representation of Limited-Rights Data and Restricted Computer Software, or

(2) During negotiations.

(c) *Protection of restricted computer software specified for delivery.* The contracting officer shall consult with the installation's Patent or Intellectual Property Counsel regarding any questions concerning the delivery of restricted computer software and/or the use of Alternate III that may arise:

(1) From an offeror's response to the provision at FAR 52.227–15, Representation of Limited-Rights Data and Restricted Computer Software, or

(2) During negotiations.

(d) *Copyrighted data.* (1) The contracting officer shall consult with the installation's Patent or Intellectual Property Counsel before granting in accordance with FAR 27.404(f)(1)(ii) permission for a contractor to establish claim to copyright subsisting in data, other than computer software, first produced under the contract. For copyright of computer software first produced under the contract, see paragraph (e) of this section.

(2) Obtaining a copyright license of a different scope than set forth in subparagraph (c)(1) or (c)(2) of the clause at 52.227–14, Rights in Data—General, for any contract or class of contracts in accordance with either FAR 27.404(f)(1)(iv) or FAR 27.404(f)(2)(i), is permitted only with approval of the Procurement Officer and concurrence of the installation's Patent or Intellectual Property Counsel.

(e) *Release, publication, and use of data.* (1) The NASA subparagraph (d)(3) (see 1827.409(e)) is to be added to paragraph (d) of the clause at FAR 52.227–14, Rights in Data—General, whenever that clause is used in any contract other than one for basic or applied research with a university or college. The subparagraph provides that the contractor may not establish claim to copyright, publish, or release to others computer software first produced in the performance of a contract without the contracting officer's prior written permission. This is in accordance with NASA policy and procedures for the distribution of computer software developed by NASA and its contractors, as set forth in NASA Management Instruction 2210.2, NASA Scientific and Technical Information Handbook.

(2) The contracting officer may, in consultation with the installation's Patent or Intellectual Property Counsel, grant the contractor permission to copyright, publish, or release to others computer software first produced in the performance of a contract if—

(i) The contractor has identified an existing commercial computer software product line or proposes a new one and states a positive intention of incorporating any computer software first produced under the contract into that line, either directly itself or through a licensee;

(ii) The contractor has made, or will be required to make, significant contributions to the development of the computer software by co-funding or by cost-sharing, or by contributing resources (including but not limited to agreement to provide continuing maintenance and update of the software at no cost for Governmental use); or

(iii) The concurrence of a cognizant official named in NASA Management Instruction 2210.2 or the Director, Technology Utilization Division, NASA Headquarters, has been obtained.

(3) The contractor's request for permission in accordance with subparagraph (e)(1) of this section may be made either before contract award or during contract performance. Any permission granted in accordance with subdivision (e)(2)(i) or (e)(2)(ii) of this section shall be by express contract provision (or amendment) overriding subparagraph (d)(3) rather than by deleting subparagraph (d)(3) from the clause. Any permission granted in accordance with subdivision (2)(iii) of this section may be either by deleting subparagraph (d)(3) or by special contract provision, as appropriate. Any contract provision relating to any permission granted in accordance with subdivision (2)(i) or (2)(ii) of this section may contain appropriate assurances that the computer software will be incorporated into an existing or proposed new commercial computer software product line within a reasonable time and/or that the agreed contributions to the Government are fulfilled, with contingencies enabling the Government itself to obtain the right to distribute the software for commercial use, including the right to obtain assignment of copyright where applicable, in order to prevent the computer software from being suppressed or abandoned by the contractor. Also, when any permission to copyright is granted, any copyright license retained by the Government shall be of the same scope as set forth in subparagraph (c)(1) of the clause (see also FAR 27.404(f)(1)) and without any obligation of confidentiality on the part of the Government, unless in accordance with subdivision (e)(2)(ii) of this section the contributions of the Contractor may be considered "substantial" for the purposes of FAR 27.408 (i.e., approximately 50 percent), in which case rights consistent with FAR 27.408 may be negotiated for the computer software in question.

(f) *Unauthorized marking of data.* The contracting officer shall consult with the installation's Patent or Intellectual Property Counsel before taking any action regarding unauthorized markings of data under paragraph (e) of the clause at FAR 52.227–14, Rights in Data—General.

(g) *Omitted or incorrect notices.* The contracting officer shall consult with the installation's Patent or Intellectual Property Counsel before agreeing to add or correct, or adding or correcting, any markings on data under paragraph (f) of the clause at FAR 52.227–14, Rights in Data—General.

1827.405 Other data rights provisions.

(a) *Acquisition of existing computer software.* (1) When the clause at FAR 52.227–19, Commercial Computer Software—Restricted Rights, is used, NASA paragraph (e) (see 1827.409(f)) may be added to receive updates, correction notices, consultation information, and other similar information on any computer software delivered under the purchase order or contract by authorizing the NASA contracting officer or the NASA contract technical representative/user to sign any vendor-supplied agreements, registration forms, or cards and return them directly to the vendor. This procedure is to facilitate receiving applicable information and is not intended to alter any NASA rights or obligations set forth in the clause or elsewhere in the contract. The price, schedule, and other terms, if any, are to be specified in the purchase order or contract.

(2) When the clause at 52.227–19, Commercial Computer Software—Restricted Rights, is used, NASA paragraph (f) (see 1827.409(g)) may be added to incorporate applicable portions of the contractor's standard commercial license or lease agreement into the purchase order/contract to the extent consistent with the clause, Federal laws, standard industry practices, and the FAR.

(3) Instead of the clause at FAR 52.227–19, Commercial Computer Software—Restricted Rights (either with or without additional paragraphs (e) and/or (f)), the contracting officer may use the NASA clause at 1852.227–86, Commercial Computer Software—Licensing. This clause is particularly useful when there are multiple computers on which the computer software may be used, but simultaneous use is prohibited or restricted in the vendor/contractor standard commercial software license to be incorporated in and made part of the purchase order/contract. It also automatically adopts terms in the vendor/contractor standard commercial license that may be less restrictive than those set forth in the clause at FAR 52.227–19 without having to customize that clause or modify the purchase order/contract. In addition, it enables the vendor/contractor's standard marking to be used without requiring additional markings on the software.

(b) *Contracts awarded under the Small Business Innovative Research (SBIR) Program.* If, during the

performance of an SBIR contract (Phase I or Phase II), the need arises for NASA to obtain delivery of restricted computer software as defined in the clause at FAR 52.227-20, Rights in Data—SBIR Program, and the contractor agrees to such delivery, the restricted computer software may be acquired with restricted rights by modification of the contract or under an agreement incorporated in and made part of the contract, using the restricted rights set forth in FAR 27.404(e) and the related restrictions as a guide.

1827.406 Acquisition of data.

(a) *General.* When specifying data delivery requirements in accordance with FAR 27.406(a), requirements for delivering technical data relating to standard commercial items, components, or processes should be kept to the absolute minimum consistent with the purpose for which they are being procured. Normally, a vendor's manuals for installation, operation, or maintenance and repair and/or form, fit, and function data are adequate for most needs.

(b) *Reports of work.* (1) In addition to any other data delivery requirements that may be set forth in the contract in accordance with FAR 27.406, NASA contractors normally should be required to furnish reports of work performed under research and development contracts (fixed-price and cost reimbursement) and also may be required to furnish them in cost-reimbursement supply contracts if they are considered desirable for monitoring contract performance. This purpose shall be achieved by including the following general requirements, modified as needed to meet the particular requirements of the contract, in the section of the contract specifying data delivery requirements:

(i) *Monthly progress reports.* The contractor shall submit separate monthly progress reports of all work accomplished during each month of contract performance. Reports shall be in narrative form, brief, and informal. They shall include a quantitative description of overall progress, an indication of any current problems that may impede performance, proposed corrective action, and a discussion of the work to be performed during the next monthly reporting period. (Normally, this requirement should not be used in contracts with nonprofit organizations.)

(ii) *Quarterly progress reports.* The contractor shall submit separate quarterly reports of all work accomplished during each three-month period of contract performance. In addition to factual data, these reports shall include a separate analysis section interpreting the results obtained, recommending further action, and relating occurrences to the ultimate objectives of the contract work. Sufficient diagrams, sketches, curves, photographs, and drawings shall be included to convey the intended meaning.

(iii) *Final report.* The contractor shall submit a final report that documents and summarizes the results of the entire contract work, including recommendations and conclusions based on the experience and results obtained. The final report shall include tables, graphs, diagrams, curves, sketches, photographs, and drawings in sufficient detail to explain comprehensively the results achieved under the contract.

(iv) *Report Documentation Page.* The contractor shall include a completed Report Documentation Page (NASA Form 1626) as the final page of each report submitted in accordance with subdivisions (b)(1) (i) through (iii) of this section.

(v) Submission. The required numbers of copies of the reports specified in subdivisions (b)(1) (i) through (iii) of this section shall be submitted to the technical monitor of the contract in the absence of other instructions from the requesting activity. In addition, a reproducible copy and a printed, or reproduced, copy of the reports shall be sent to the NASA Scientific and Technical Information Facility, Attn: Accessioning Department, P.O. Box 8757, Baltimore/Washington International Airport, MD 21240.

(2) The contracting officer shall consider the desirability of providing reports on the completion of significant units or phases of work, in addition to periodic reports and reports on the completion of the entire contract. The data delivery requirements section of the contract shall also list other data to be delivered under the contract and provide, as necessary, specific instructions regarding delivery, submission dates, report numbering, numbers of copies to be submitted, distribution lists, and any other information to ensure appropriate distribution of the required reports of work.

1827.408 Cosponsored research and development activities.

The contracting officer shall consult with the installation's Patent or Intellectual Property Counsel before limiting the acquisition of or acquiring less than unlimited rights to any data developed under contracts involving cosponsored research and development activities in accordance with FAR 27.408.

1827.409 Solicitation provisions and contract clauses.

(a) Alternate I is to be used with the FAR clause at 52.227-14, Rights in Data—General, only with approval of the Procurement Officer and concurrence of the installation's Patent or Intellectual Property Counsel. An example of its use is where the principal purpose of the contract (such as a contract for basic or applied research) does not involve the development, use, or delivery of items, components, or processes that are intended to be acquired for use by or for the Government (either under the contract in question or under any anticipated follow-on contracts relating to the same subject matter). Other examples include socioeconomic studies or reports, educational material, health and safety information, management analyses, and related matters the preparation of which may involve confidential business information qualifying as limited-rights data as defined by Alternate I.

(b) The specific purposes for the release of limited-rights data outside the Government set forth in subdivisions (d)(1) (i) through (v) of FAR 27.404 are to be added to the Limited-Rights Notice of subparagraph (g)(2) of Alternate II of the clause at FAR 52.227-14, Rights in Data—General. However, the contracting officer may, upon consultation with the installation's Patent or Intellectual Property Counsel, make deletions from the specific purposes listed. If all are deleted, the word "None" must be inserted in the notice. Additions to those specific purposes listed may be made only with the approval of the installation Procurement Officer and concurrence of the installation's Patent or Intellectual Property Counsel.

(c) The contracting officer shall consult with the installation's Patent or Intellectual Property Counsel regarding the acquisition of restricted computer software with greater or lesser rights than those set forth in Alternate III of the clause at FAR at 52.227-14, Rights in Data—General, in accordance with FAR 27.404(e)(2). Where it is impractical to actually modify the notice of Alternate III, this may be done by express reference in a separate clause in the contract or by a collateral agreement that addresses the change in the restricted rights.

(d) Use of Alternate IV with the clause at FAR 52.227-14, Rights in Data—General, in any contract other than a contract for basic or applied research to be performed solely by a college or university on campus (but not for the management or operation of Government facilities) is permitted only with approval of the Procurement Officer and concurrence of the installation's Patent or Intellectual Property Counsel.

(e) In accordance with 1827.404(e)(1), the contracting officer shall add the following subparagraph (d)(3) to paragraph (d) of the clause at FAR 52.227-14, Rights in Data—General, except in solicitations and contracts for basic or applied research with universities or colleges:

(d)(3) The Contractor agrees not to establish claim to copyright or publish or release to others any computer software first produced in the performance of this contract without the Contracting Officer's prior written permission.

(f) In accordance with 1827.405(a)(1), the contracting officer shall add the following paragraph (e) to the clause at FAR 52.227-19, Commercial Computer Software—Restricted Rights, when it is contemplated that updates, correction notices, consultation information, and other similar items of information relating to commercial computer software delivered under a purchase order or contract are available and their receipt can be facilitated by signing a vendor supplied agreement, registration forms, or cards and returning them directly to the vendor:

(e) For the purposes of receiving updates, correction notices, consultation information, or other similar information regarding any computer software delivered under this contract/purchase order, the NASA Contracting Officer or the NASA Contract Technical Representative/User may sign any vendor-supplied agreements, registration forms, or cards and return them directly to the vendor; however, such signing shall not alter any of the rights or obligations of either NASA or the vendor set forth in this clause or elsewhere in this contract/purchase order.

(g) In accordance with 1827.405(a)(2), the contracting officer shall add the following paragraph (f) to the clause at FAR 52.227-19, Commercial Computer Software—Restricted Rights, when portions of a contractor's standard commercial license or lease agreement consistent with the clause, Federal laws, standard industry practices, and the FAR are to be incorporated into the purchase order or contract:

(f) Subject to paragraphs (a) through (e) above, those applicable portions of the Contractor's standard commercial license or lease agreement pertaining to any computer software delivered under this purchase order/contract that are consistent with Federal laws, standard industry practices, and the Federal Acquisition Regulation (FAR) shall be incorporated into and made part of this purchase order/contract.

(h) In accordance with 1827.405(a)(3), the contracting officer shall use the clause at 1852.227-86, Commercial Computer Software—Licensing, in lieu of the clause at FAR 52.227-19, Commercial Computer Software—Restricted Rights, when it is considered appropriate for the acquisition of existing computer software in accordance with FAR 27.405(b)(2).

PART 1828—BONDS AND INSURANCE

Sec.
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Authority: 42 U.S.C. 2473(c)(1).

1828.001 Definitions.

"Protected Space Operations" means all launch vehicle activities, Space Station activities, and payload activities on Earth, in outer space, or in transit between Earth and outer space related to Space Station. It includes, but is not limited to research, design, development, test, manufacture, assembly, integration, operation, or use of launch or transfer vehicles (for example, the Orbital Maneuvering Vehicle), the Space Station, or a payload, as well as related support equipment and facilities and services; and all activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services. The term "Protected Space Operations" also includes all activities related to evolution of the Space Station as provided for in the Space Station Intergovernmental Agreement signed on September 29, 1988. Protected Space Operations excludes activities on Earth which are conducted on return from the Space Station to develop further a payload's product or process for use other than for Space Station related activities.

"STS Operations" means all Space Transportation System (STS) activity, all payload activity, and all tangible personal property (including ground support, test, training, and simulation equipment) related to STS or payload activity. The term also includes research, design, development, test, manufacture, assembly, integration, transportation, or use of any materials related to the above noted activities or property, and performance of any services related to the above factors.

Subpart 1828.1—Bonds

1828.101 Bid guarantees.

1828.101-70 NASA solicitation provision.

In accordance with FAR 28.101, the contracting officer shall insert the provision at 1852.228-73, Bid Bond, in construction solicitations where offers are expected to exceed $25,000, and a performance bond or a performance and payment bond is required. The contracting officer may increase the amount of the bid bond to protect the Government from loss, as long as the amount does not exceed $3 million. This provision may be used in other than construction procurements if the requirements of FAR 28.103 have been complied with.

1828.102 Performance and payment bonds for construction contracts.

1828.102-1 General.

NASA contractors that, in the course of contract performance, will acquire by subcontract construction work determined by NASA to be subject to the Miller Act, but that are not required under FAR 28.102 to furnish Miller Act bonds, shall be required to obtain performance and payment bonds from their subcontractors (see 1828.106-1). The contracting officer shall establish the penal amount in accordance with FAR 28.102-2.

1828.102-70 Solicitation provision.

In accordance with FAR 28.102, except as provided therein, the contracting officer shall insert a provision substantially as stated at 1852.228-74, Payment and Performance

Bonds, in construction solicitations where offers are expected to exceed $25,000. The penal amount of the performance bond may be decreased in accordance with FAR 28.102-2(a). The contracting officer may change the word "may" in the first sentence of subparagraphs (a)(2) and (b)(2) to "shall" if the procurement contemplates options or additive items (see 1836.303-70).

1828.105 Administration.

1828.106-1 Bonds and bond related forms.

When performance or payment bonds are required from subcontractors under NASA construction contracts (see 1828.102-1), the bonds shall be provided on SF 25, Performance Bond, and SF 25A, Payment Bond. These forms shall be modified to name the NASA prime contractor as well as the United States of America as obligees.

1828.106-6 Furnishing information.

(a) The contracting officer is designated, in accordance with FAR 28.106-6(c), to furnish a certified copy of the payment bond and the contract for which it was given upon receipt of an appropriate affidavit from the requestor.

(b) The contracting officer shall obtain the concurrence of the Office of Chief Counsel before releasing any documents.

Subpart 1828.3—Insurance

1828.305 Overseas workers' compensation and war-hazard insurance.

(a) *Waiver of Defense Base Act.* Applications for waivers under FAR 28.305(d) shall be submitted to the Administrator through the Assistant Administrator for Procurement. The application shall include–

(1) The contractor's name;

(2) The contractor's business mailing address;

(3) The contract number;

(4) The date of award;

(5) The geographic location where the contract will be performed;

(6) The name of the insurance company providing the Defense Base Act coverage;

(7) The nationality of the employees to whom the waiver is to apply; and

(8) The reason for the waiver.

(b) *When the Defense Base Act is waived.* (1) The decision under FAR 28.305(e) as to whether (i) the costs of the liability or (ii) the reasonable costs of insurance against it shall be allowed as a cost under the contract may be made by the Assistant Administrator for Procurement or by a designee.

(2) The Schedule of each contract containing the clause at 1852.228-77, Reimbursement for War-Hazard Losses, shall contain an estimated cost for war-hazard losses, derived in accordance with paragraph (b)(2)(i) of this section, and a statement similar to that set forth in paragraph (b)(2)(ii) of this section:

(i) The estimated cost for war-hazard losses shall be based on estimates arrived at in the light of experience, taking into account the number of the contractor's employees subject to protection for war-hazard risks, the level of benefits applicable to them, their location, and the nature of the risks to which they are exposed. The amount allotted to the contract shall initially be kept as small as reasonably feasible. As reports are received indicating any need to increase the allotment to the contract, they shall be evaluated and the allotment increased as necessary. When negotiating for the inclusion in the contract of provisions applicable to war-hazard risks, the contracting officer may include provisions concerning the types of foreign nationals employed by the contractor and the level of benefits applicable to them, and other pertinent provisions relating to the manner in which the program will function to the benefit of all concerned. Advance agreements under FAR 31.109 may also be advantageous with respect to the levels of proof considered acceptable to justify the contractor's commencing payments and being reimbursed for them before the contractor is able to settle its obligation.

(ii) "The portion of this contract providing for the contractor to afford protection to its employees and subcontractors to their employees against war-hazard risks (see the clauses at 52.228-4 of the Federal Acquisition Regulation (FAR) and 1852.228-77 of the NASA FAR Supplement) is on a cost-reimbursement, no-fee basis, notwithstanding the basis of the remainder of the contract."

1828.307 Insurance under cost-reimbursement contracts.

1828.307-2 Liability.

(a) In accordance with FAR 28.307-2(b)(2), the special circumstances requiring property damage liability insurance are those where (otherwise, prior approval for purchase of property damage liability insurance must be obtained from the Assistant Administrator for Procurement)—

(1) A commingling of operations permits property damage coverage at a nominal cost to NASA under insurance carried by the contractor in the course of its commercial operations; or

(2) The contractor is engaged in the handling of high explosives or in extra hazardous research and development activities undertaken in populated areas.

(b) The Government normally will assume the risk of a contractor's uninsured third-party liability to the extent provided for by the clause at FAR 52.228-7, Insurance—Liability to Third Persons.

1828.307-70 Insurance of industrial facilities.

When industrial facilities are provided by the Government under a facilities contract or a lease, the contract or lease shall require that during the period of construction, installation, alteration, repair, or use, and at any other time as directed by the installation concerned, the contractor or lessee shall insure or otherwise provide approved security for liabilities to third persons (including employees of the contractor or lessee) in the manner and to the same extent as required in FAR 28.307-2.

1828.309 Contract clauses for workers' compensation insurance.

The contracting officer shall insert the clause at 1852.228-77, Reimbursement for War-Hazard Losses, in all solicitations and contracts containing the clause at FAR 52.228-4, if the Assistant Administrator for Procurement determines that the contractor shall not purchase insurance against the assumed liability to the waived employees and their beneficiaries (see 1828.305(b)).

1828.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

1828.311-2 Contract clause.

1828.311-270 NASA contract clause.

The contracting officer shall insert the clause at 1852.228-71, Aircraft Flight Risks, in all cost-reimbursement contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor, except when the aircraft are covered by a separate bailment.

1828.370 Fixed-price contract clauses.

(a) The contracting officer shall insert the clause at 1852.228-70, Aircraft Ground and Flight Risk, in all negotiated fixed-price contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor, except as provided in paragraph (b) of this section, unless the aircraft are covered by a separate bailment. See the clause preface for directions for modifying the clause to accommodate various circumstances.

(b) The Government need not assume the risk of damage to, or loss or destruction of, aircraft as provided by the clause at 1852.228-70 if the best estimate of premium costs that would be included in the contract price for insurance coverage for such damage, loss, or destruction at any plant or facility is less than $500. If it is determined not to assume this risk, the clause at 1852.228-70 shall not be made a part of the contract, and the cost of necessary insurance to be obtained by the contractor to cover this risk shall be considered in establishing the contract price. In such cases, however, if performance of the contract is expected to involve the flight of Government-furnished aircraft, the substance of the clause at 1852.228-71, Aircraft Flight Risks, suitably adapted for use in a fixed-price contract, shall be used.

(c) When the clause at 1852.228-70 is used, the term "Contractor's premises" shall be expressly defined in the contract Schedule and shall be limited to places where aircraft may be located during and for the performance of the contract. Contractor's premises may include, but are not limited to, those owned or leased by the contractor or those for which the contractor has a permit, license, or other right of use either exclusively or jointly with others, including Government airfields.

1828.371 Clause for interparty waiver of liability during STS operations.

The contracting officer shall insert the clause at 1852.228-72, Interparty Waiver of Liability During STS Operations, in all NASA prime contracts, new-work modifications or extensions to existing contracts, and solicitations of $100,000 or more when the work is to be performed in support of STS operations (see 1828.001). In addition, the contracting officer shall insert the clause in all contracts involving STS operations containing one of the indemnifications under Pub. L. 85-804 clauses prescribed at 1850.403-3. At the contracting officer's discretion, this clause may be used in contracts, new-work modifications or extensions to existing contracts, and solicitations under $100,000 involving STS operations in appropriate circumstances, such as when the value of contractor property on a Government installation used in the performance of the contract is significant.

1828.372 Clause for minimum insurance coverage.

In accordance with FAR 28.306(b) and 28.307, the contracting officer may insert a clause substantially as stated at 1852.228-75, Minimum Insurance Coverage, in fixed-price solicitations and contracts requiring performance on a government installation and in cost-reimbursement contracts. The contracting officer may modify the clause to require additional coverage, such as vessel liability, and higher limits if appropriate for a particular procurement.

1828.373 Clause for cross-waiver of liability for Space Station activities.

(a) The contracting officer shall insert the clause at 1852.228-76, Cross-Waiver of Liability for Space Station Activities, in all NASA prime contracts, new-work modifications or extensions to existing contracts, and solicitations of $100,000 or more when the work is to be performed in support of Protected Space Operations (see 1828.001). The contracting officer shall modify all other such existing contracts of $100,000 or more as soon as practicable to include the clause.

(b) The contracting officer may insert the clause at 1852.228-76 in contracts, new-work modifications or extensions to existing contracts and solicitations under $100,000 when the work is performed in support of Protected Space Operations. The use of the clause would be appropriate in contracts under $100,000, particularly when it is likely that such a contractor or subcontractor will have its valuable property exposed to risk of damage caused by other Space Station participants involved in Protected Space Operations.

PART 1829—TAXES

Subpart 1829.1—General

Sec.
1829.101 Resolving tax problems.

Subpart 1829.2—Federal Excise Taxes

1829.203 Other Federal tax exemptions.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1829.1—General

1829.101 Resolving tax problems.

(a) The Office of General Counsel (Code G) shall (1) represent NASA in all negotiations under FAR Part 29 and (2) keep the Assistant Administrator for Procurement fully informed on their status.

(b) Communications with the Department of Justice for representation or intervention in proceedings concerning taxes shall be made only by the General Counsel.

(c) Matters involving foreign taxes requiring the assistance of other executive departments shall be forwarded to the General Counsel for appropriate action.

(d) Tax problems that cannot be solved readily by reference to FAR Part 29 shall be forwarded to the General Counsel through the installation's Office of Chief Counsel. The forwarding of tax problems to the General Counsel is particularly important when—

(1) The amount of tax actually or potentially involved is substantial;

(2) The legal incidence of a tax appears to be upon the United States or its property, a specific exemption pertinent to the transaction appears to exist, or a State or local tax appears to have a direct effect upon a transaction in interstate commerce;

(3) Judicial or administrative action against a contractor is threatened;

(4) The imposition or potential imposition of a tax is the result of an amendment of a tax law or a change of position by the tax authorities; or

(5) The possibility exists of obtaining refunds of taxes previously paid.

(e) Regarding tax problems, the initiating office or intervening offices shall forward the following material to the General Counsel:

(1) A comprehensive statement of pertinent facts, including documents and correspondence.

(2) A copy of the contract.

(3) A thorough review of the legal issues involved and recommended action.

(4) If appropriate, a statement of the problem's effects on procurement policies and procedures, with recommendations.

(f) Copies of tax-related correspondence shall be sent to the Assistant Administrator for Procurement.

Subpart 1829.2—Federal Excise Taxes

1829.203 Other Federal tax exemptions.

(a) The Assistant Administrator for Procurement has obtained a permit from the Bureau of Alcohol, Tobacco, and Firearms (Treasury Department) enabling NASA and its contractors to purchase spirits (e.g., specially denatured spirits) tax-free for nonbeverage Government use. Installations can obtain copies of the permit from the Procurement Policy Division (Code HP) at NASA Headquarters.

(b) When purchasing spirits for use by NASA personnel, the contracting officer shall attach a copy of the permit to the contract. Upon receipt of the spirits, the

permit shall be returned to the contracting officer unless future orders are anticipated.

(c) When a NASA contractor requires spirits to perform a NASA contract, the contracting officer shall furnish the contractor a copy of the permit to provide its vendor. Upon receipt of the spirits, the contractor shall return the permit to the contracting officer unless future orders are anticipated. In any event, the permit shall be returned upon completion of the contract.

(d) To comply with 26 U.S.C. 5271(g), the procurement officer shall post a copy of the permit for inspection.

PART 1830—COST ACCOUNTING STANDARDS

Subpart 1830.1—General

Sec.
1830.101 Cost Accounting Standards.

Subpart 1830.2—CAS Program Requirements

1830.201-5 Waiver.

Subpart 1830.70—Facilities Capital Employed for Facilities in Use or for Facilities Under Construction

1830.7000 General.
1830.7001 Facilities capital employed for facilities in use.
1830.7001-1 Policy.
1830.7001-2 Definitions, measurement, and allocation.
1830.7001-3 Estimating business unit facilities capital and cost of money.
1830.7001-4 Contract facilities capital estimates.
1830.7001-5 Pre-award facilities capital applications.
1830.7001-6 Post-award facilities capital applications.
1830.7001-7 Administrative procedures.
1830.7002 Facilities capital employed for facilities under construction.
1830.7002-1 Policy.
1830.7002-2 Definitions.
1830.7002-3 Measurement.
1830.7002-4 Composition and allocation of costs.
1830.7002-5 Limitations.
1830.7002-6 Pre-award capital employed application.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1830.1—General

1830.101 Cost Accounting Standards.

(a) To ensure uniform administration of CAS requirements, NASA has determined to consider all of its contracts as "national defense" contracts for CAS purposes, whether or not they meet the definition of "national defense" in FAR 2.101.

Subpart 1830.2—CAS Program Requirements

1830.201-5 Waiver.

After the contracting officer has made the determination required by FAR 30.201-5(a), the procurement officer shall forward all requests for waiver of CAS requirements to the Assistant Administrator for Procurement (Code HC) for approval.

Subpart 1830.70—Facilities Capital Employed for Facilities in Use or for Facilities Under Construction

1830.7000 General.

Pending issuance of FAR coverage, the NASA Procurement Regulation (NPR) (48 CFR 1803.1300) shall continue to govern facilities capital employed for facilities. This subpart is substantively identical to the NPR. It is reproduced here with current textual citations and updated cross-references for the user's convenience.

1830.7001 Facilities capital employed for facilities in use.

1830.7001-1 Policy.

It is the policy of the Government to recognize facilities capital employed as an element in establishing the price of certain negotiated defense contracts when such contracts are priced on the basis of cost analysis. The inclusion of this recognition is intended to reward contractor investments, motivate increased productivity and reduced costs through the use of modern manufacturing technology, and to generate other efficiencies in the performance of defense contracts. The recognition of contractor investments in the development of the profit objective will result in a profit objective based on a combination of effort, risk, and investment factors.

1830.7001-2 Definitions, measurement, and allocation.

Cost Accounting Standard (CAS) No. 414, "Cost of Money as an Element of the Cost of Facilities Capital," establishes criteria for the measurement and allocation of the cost of capital committed to facilities as an element of contract cost for historical cost determination purposes. Important features of the CAS are its definitions, techniques for application, and a prescribed Form CASB-CMF with instructions. This Section adopts the techniques of CAS 414 as the approved method of measurement and allocation of facilities cost of money to overhead pools at the business unit level and adds only such supplementary procedures as are necessary to extend those techniques to contract forward pricing and administration matters. Therefore, these procedures are intended to be completely compatible with, and an extension of, the definitions, criteria, and techniques of CAS 414. Contractors who computerize their financial data are encouraged to meet the requirements of both CAS 414 and this subpart from the same data bank and programs.

1830.7001-3 Estimating business unit facilities capital and cost of money.

The method of estimating the business unit facilities capital and cost of money utilizes the techniques of CAS 414. Cost of money factors (CMF) by overhead pools at the business unit are developed using Form CASB-CMF. Three elements are required to develop cost of money overhead allocation base date, and the interest rate promulgated by the Secretary of the Treasury pursuant to Pub. L. 92-41. These elements are discussed below.

(a) *Business unit facilities capital data.* (1) The net book value (acquisition cost less accumulated depreciation) is used for each cost accounting period. The net book value used is the total of:

(i) The net book value of facilities recorded on the accounting records of the business unit,

(ii) The capitalized value of leases (see FAR 31.205-2 and FAR 31.205-36), and

(iii) The net book value of facilities at the corporate or group level that support depreciation charges allocated to the business unit under the provisions of CAS 403.

(2) Projections of facilities capital will be supported by budget plans and/or similar type documentation and the estimated depreciation will be the same as used in projected overhead rates. Projections will accommodate changes in the level of facilities net book value, e.g., facilities additions, deletions of facilities by sale, abandonment or other disposal, idle facilities (see FAR 31.205-17).

(b) *Overhead allocation bases.* The base data used to compute the CMF must be the same as that used to compute the proposed overhead rates. CMFs should be submitted and evaluated as part of the proposal.

(c) *Interest rate.* For purpose of projection, the most recent interest rate promulgated by the Secretary of the Treasury will be used as the cost of money rate in Column 1 of Form CASB-CMF and the same rate must be used on the DD Form 1861 to determine contract facilities capital employed. Where actual costs are used in definitization actions, the actual treasury rate(s) applicable to the period(s) of the incurred costs will be recognized by development of a composite rate.

(d) *Determination of final cost of money.* CMFs estimated following the above procedures are used to develop the facilities investment base used in forward pricing. Actual CMFs are required when it is necessary to determine final allowable costs for cost settlement and/or repricing following CAS 414 and FAR 31.205-10.

1830.7001-4 Contract facilities capital estimates.

(a) After the appropriate Forms CASB-CMF have been analyzed and CMFs have been developed, the contracting officer is in a position to estimate the facilities capital cost of money and capital employed for a contract proposal. DD Form 1861 "Contract Facilities Capital and Cost of Money" has been provided for this purpose and, when properly completed, becomes a connecting link between the Forms CASB-CMF and any applicable agency structured approach to determination of profit or fee objectives. An evaluated contract cost breakdown reduced to the contracting officer's pre-negotiation cost objective must be available. The procedure is similar to applying overhead rates to appropriate overhead allocation bases to determine contract overhead costs.

(b) DD Form 1861 provides for listing overhead pools and direct-charging service centers (if used) in the same structure they appear on the contractor's cost proposal and Forms CASB-CMF. The structure and allocation base units-of-measure must be compatible on all three displays. The base for each overhead pool must be broken down by year to match each separate Form CASB-CMF. Appropriate contract overhead allocation base data are extracted by year from the evaluated cost breakdown or pre-negotiation cost objective, and are listed against each separate Form CASB-CMF. Each allocation base is multiplied by its corresponding cost of money factor, to get the Facilities Capital Cost of Money estimated to be incurred each year. The sum of these products represents the estimated Contract Facilities Capital Cost of Money for the Year's effort. Total contract facilities cost of money is the sum of the yearly amounts.

(c) Since the Facilities Capital Cost of Money Factors reflect the applicable cost of money rate in Column 1 of Form CASB-CMF, the Contract Facilities Capital Employed can be determined by dividing the contract Cost of Money by the same rate. DD Form 1861 is designed to record and compute all the above in the most direct way possible, and the end result is the Contract Facilities Capital Cost of Money and Capital Employed which is carried forward to the applicable agency structured approach to determination of profit or fee objectives.

1830.7001-5 Pre-award facilities capital applications.

Facilities Capital Cost of Money as determined above is applied in establishing cost and price objectives as follows:

(a) *Cost of money*—(1) *Cost objective.* This special, imputed cost of money shall be used, together with normal, booked costs, in establishing a cost objective or the target cost when structuring an incentive type contract. Target costs thus established at the outset, shall not be adjusted as actual cost of money rates become available for the periods during which contract performance takes place.

(2) *Profit objective.* Cost of Money shall not be included as part of the cost base when measuring the contractor's effort in connection with establishing a pre-negotiation profit objective. The cost base for this purpose shall be restricted to normal, booked costs.

(b) *Facilities capital employed.* The profit objective as it relates to the risk associated with facilities capital employed shall be assessed and weighted in accordance with agency profit guidelines.

1830.7001-6 Post-award facilities capital applications.

(a) *Interim billings based on costs incurred.* Contract Facilities Capital Cost of Money may be included in cost reimbursement and progress payment invoices. The amount that qualifies as cost incurred for purposes of the Allowable Cost and Payment or Progress Payment clause of the contract is the result of multiplying the incurred portions of the overhead pool allocation bases by the latest available Cost of Money Factors. Like applied overhead at forecasted overhead rates, such computations are interim estimates subject to adjustment. As each year's data are finalized by computation of the actual Cost of Money Factors under CAS 414 and FAR 31.205-10, the new factors should be used to calculate contract facilities cost of money for the next accounting period.

(b) *Final settlement.* Contract Facilities Capital Cost of Money for final cost determination or repricing is based on each year's final Cost of Money Factors determined under CAS 414 and supported by separate Form CASB-CMF. Contract cost must be separately computed in a manner similar to yearly final overhead rates. Also like overhead costs, the final settlement will include an adjustment from interim to final contract cost of money. However, estimated or target cost will not be adjusted.

1830.7001-7 Administrative procedures.

(a) Contractor submission of Form CASB-CMF will normally be initiated under the same circumstances as Forward Pricing Rate Agreements (FPRAs) (see FAR 15.809), and evaluated as complementary documents and procedures. Separate Forms are required for each procedures. Separate Forms are required for each prospective cost accounting period during which Government contract performance is anticipated. If the contractor does not annually negotiate FPRAs, submissions may nevertheless be made annually or with individual contract pricing proposals, as agreed to by the contractor and the cognizant contract administration office. The cognizant contract administration office shall, with the assistance of the cognizant auditor, evaluate the cost of money factors, and retain approved factors with other negotiated forward pricing data and rates.

(b) The contracting officer will complete a DD Form 1861, Contract Facilities Capital and Cost of Money, after evaluating the contractor's cost proposal and determining the pre-negotiation cost objective, but before determining the pre-negotiation profit objective. The contracting officer may request the cognizant contract administration office to complete the DD Form 1861 in connection with normal field pricing support under FAR 15.805-5, and include it in field pricing support report with appropriate evaluation comments and recommendations.

(c) A final Form CASB-CMF must be submitted by the contractor under CAS 414 as soon after the end of each cost accounting period as possible, for the purpose of final cost determinations and/or repricing. The submission should accompany the contractor's proposal for actual overhead costs and rates, and be evaluated as complementary documents and procedures.

1830.7002 Facilities capital employed for facilities under construction.

1830.7002-1 Policy.

It is Government policy to recognize a contractor's investment in capital facilities while these are being constructed, fabricated, or developed for the contractor's own use. This recognition is made through the

allowance of an imputed cost of money amount which is

(a) Calculated in accordance with 1830.7002-3,

(b) Capitalized along with the other costs of the asset for which the investment is made, and

(c) Allocated to contracts following 1830.7002-4.

1830.7002-2 Definitions.

The following definitions have been taken or developed from Cost Accounting Standard (CAS) 417, Cost of Money as an Element of the Cost of Capital Assets Under Construction.

(a) *Intangible capital asset.* An asset that has no physical substance, has more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the benefit it yields.

(b) *Tangible capital asset.* An asset that has physical substance, more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the service it yields.

(c) *Cost of money rate.* The cost of money rate is either the interest rate determined by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat 97), or the time-weighted average of such rates for each cost accounting period during which the asset is being constructed, fabricated, or developed. The time-weighted average interest rate is calculated by multiplying the various rates in effect during the months of construction by the number of months each rate was in effect. The sum of the products is divided by the total number of months in which the rates were experienced.

(d) *Representative investment.* The representative investment is the calculate amount considered invested by the contractor in the project to construct, fabricate, or develop the asset during the cost accounting period. In calculating the representative investment, consideration must be given to the rate or expenditure pattern of the investment, i.e., if most of the investment was at the end of the cost accounting period, the representative investment calculation must reflect this fact.

(1) If the contractor experiences an irregular or uneven expenditure pattern in the construction, fabrication, or development of a capital asset, i.e., a majority of the construction costs were incurred toward the beginning, middle, or end of the cost accounting period, the contractor must either:

(i) Determine a representative investment amount for the cost accounting period by calculating the average of the month-end balances for that cost accounting period; or

(ii) Treat month-end balances as individual representative investment amounts.

(2) If the construction, fabrication, or development costs were incurred in a fairly uniform expenditure pattern throughout the construction period, the contractor may:

(i) Determine a representative investment amount for the cost accounting period by averaging the beginning and ending balances of the construction, fabrication, or development cost account for the cost accounting period, or

(ii) Treat month-end balances as individual representative investment amounts.

1830.7002-3 Measurement.

(a) The imputed cost of money for an asset under construction, fabrication, or development is calculated by applying a cost of money rate (see 1830.7002-2(c)), to the representative investment amount (see 1830.7002-2(d)).

(1) When a representative investment amount is determined for a cost accounting period following 1830.7002-2(d)(1)(i) or 1830.7002-2(d)(2)(i), the cost of money rate used shall be the time-weighted average rate.

(2) When a monthly representative investment amount (see 1830.7002-2(d)(1)(ii) or 1830.7002-2(d)(ii)) is used, the cost of money rate shall be the rate in effect each month.

Note: Under this method, the cost of money calculating is made monthly and the total for the cost accounting period is the sum of the monthly calculations.)

(b) The method chosen by a contractor for determining the representative investment amount may be different for each capital asset being constructed, fabricated, or developed as long as the method fits the expenditure pattern of the construction costs incurred.

(c) The imputed cost of money will be capitalized only once in any cost accounting period; either at the end of the period or at the end of the construction period, whichever comes first.

(d) When the construction of an asset takes more than one cost accounting period, the cost of money capitalized for the first cost accounting period will be included in determining the representative investment amount for any future cost accounting periods.

1830.7002-4 Composition and allocation of costs.

(a) The cost of money for a tangible capital asset determined following 1830.7002-2 and 1830.7002-3 shall be capitalized along with the other construction, fabrication, or development cost of that asset for purposes of depreciation under FAR 31.205-11.

(b) The cost of money for an intangible capital asset determined following 1830.7002-2 and 1830.7002-3 shall be capitalized along with other construction, fabrication, or development costs of that asset and amortized over appropriate cost accounting periods.

(c) Where CAS 414 of money is allocated to construction, fabrication, or development effort following 1830.7001, it will be recognized and considered an element of total construction costs and be included in all calculations of the assets representative investment amount.

1830.7002-5 Limitations.

If substantially all activities necessary to get an asset ready for its intended use are discontinued, cost of money shall not be capitalized for the period of discontinuance, except when such discontinuance arises out of causes beyond the control and without the fault or negligence of the contractor.

1830.7002-6 Pre-award capital employed application.

An offset to the profit objectives is not required for CAS 417 cost of money.

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1831.1—Applicability

Sec.
1831.101 Objectives.

Subpart 1831.2—Contracts With Commercial Organizations

1831.205 Selected costs.
1831.205-32 Pre-contract costs.

Authority: 42 U.S.C. 2473 (c)(1).

Subpart 1831.1—Applicability

1831.101 Objectives.

Requests for individual deviations from FAR cost principles under FAR 31.101 shall be forwarded for the approval of the Assistant Administrator for Procurement through the Director, Contract Pricing and Finance Division (Code HC).

Subpart 1831.2—Contracts With Commercial Organizations

1831.205 Selected costs.

1831.205-32 Pre-contract costs.

See 1832.705 for NASA policy on pre-contract costs.

PART 1832—CONTRACT FINANCING

Subpart 1832.1—General

Sec.
1832.111 Contract clauses.
1832.111-70 NASA contract clause.
1832.170 Voluntary refunds.

Subpart 1832.4—Advance Payments

1832.402 General.
1832.406 Letters of credit.
1832.406-70 Federal Cash Transaction Report.
1832.407 Interest.
1832.410 Findings, determination, and authorization.
1832.410-70 Instructions for determinations and findings.
1832.412 Contract clause.

Subpart 1832.5—Progress Payments Based on Costs

1832.501 General.
1832.501-2 Unusual progress payments.
1832.502 Pre-award matters.
1832.502-2 Contract finance office clearance.
1832.502-4 Contract clauses.
1832.502-470 NASA contract clause.
1832.503 Post-award matters.
1832.503-3 Initiation of progress payments and review of accounting system.
1832.504 Subcontracts.

Subpart 1832.7—Contract Funding

1832.702 Policy.
1832.702-70 NASA policy.
1832.704 Limitation of cost or funds.
1832.705 Contract clauses.
1832.705-2 Clauses for limitation of cost or funds.
1832.705-270 Additional clauses for limitation of cost or funds.

Subpart 1832.9—Prompt Payment

1832.906 Contract clause.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1832.1—General

1832.111 Contract clauses.

1832.111-70 NASA contract clause.

The contracting officer shall insert the clause at 1852.232-79, Payment for On-Site Preparatory Costs, in solicitations and contracts for construction on a fixed-price basis when progress payments are contemplated and pro rata payment of on-site preparatory costs to the contractor is appropriate.

1832.170 Voluntary refunds.

(a) *General.* A voluntary refund is a payment or credit, not required by any contractual or other legal obligation, made to the Government by a contractor or subcontractor either as a payment or as an adjustment under one or more contracts or subcontracts. It may be unsolicited or may be made in response to a Government request. If it is desired to solicit a refund from a subcontractor, the prime contractor should be encouraged to facilitate the making of such refund. In deciding whether or not to solicit a refund or accept an unsolicited refund, the contracting officer shall ask legal counsel to review the contract or contracts and all relevant data to determine whether the Government's rights would be jeopardized or impaired by the contracting officer's proposed action.

(b) *Solicited refunds.* Voluntary refunds may be requested during or after contract performance. They shall be requested only when it is considered that the Government has been overcharged under a contract or inadequately compensated for the use of Government-owned property or in the disposition of contractor inventory, and retention by the contractor or subcontractor of the amount in question would be contrary to good conscience and equity. Generally, retention by the contractor or subcontractor shall not be considered contrary to good conscience and equity, and thus a refund shall not be requested, unless the overcharge or inadequate compensation was due, at least in part, to the fault of the contractor or subcontractor. The decision to solicit a refund shall be made by the Deputy Administrator or a designee after coordination with the Assistant Administrator for Procurement.

(c) *Disposition of voluntary refunds.* (1) If a voluntary refund is offered before final payment, it is preferable that the contract price be appropriately modified to reflect the refund. In such a case, the amount of the refund shall be credited to the applicable appropriation cited in the contract.

(2) When the refund is made by check rather than by adjusting the contract price, the check shall be made payable to the National Aeronautics and Space Administration and shall be forwarded immediately to the Financial Management Office of the appropriate installation. When forwarded, the check shall be accompanied by a letter identifying it as a voluntary refund, giving the number of the contract or contracts involved and, if possible, the account number of the appropriation to which the refund should be credited.

Subpart 1832.4—Advance Payments

1832.402 General.

Determinations and findings in support of advance payments for nonprofit organizations or educational institutions as authorized by the Armed Services Procurement Act of 1947, as amended (10 U.S.C. 2307(c) and 2310(b)), shall be prepared in accordance with 1832.410. The lowest level of authority at which these determinations and findings shall be made is:

(a) The Assistant Administrator for Procurement, for advance payments—

(1) Greater than $25,000,000 for a single action or in the aggregate for a single contract (these payments are also subject to the appropriate 60-day notification to Congress in accordance with 10 U.S.C. 2307(d));

(2) In any amount to a foreign entity; or

(3) In any amount when the organization will receive a fee for the effort involved.

(b) The procurement officer, for advance payments of $25,000,000 or less (other than to a foreign entity or an organization that will receive a fee), provided the action has been coordinated with the installation's Financial Management Officer.

(c) The contracting officer, for increases in the advance payment amount initially authorized by the procurement officer under paragraph (b) of this section, through any modification, supplemental agreement, or extension to an existing contract, provided (1) the contracting officer has coordinated the action with the installation's Financial Management Officer and (2) the increase is not greater than the procurement officer's initial amount and, when aggregated with the procurement officer's initial amount and all previous increases, is not greater than $25,000,000.

1832.406 Letters of credit.

For the purposes of FAR 32.406(b)(1), each installation is considered a contracting agency.

1832.406-70 Federal Cash Transactions Report.

The report required by paragraph (m) of the clause at FAR 52.232-12, Advance Payments, shall be submitted on Standard Form 272, Federal Cash Transactions Report, and, if appropriate, Standard Form 272-A, Federal Cash Transactions Report Continuation.

1832.407 Interest.

Advance payments without interest are hereby authorized, pursuant to FAR 32.407(d)(1).

1832.410 Findings, determination, and authorization.

1832.410-70 Instructions for determinations and findings.

(a) Requests for Headquarters approval of advance payment provisions in accordance with 1832.402 shall be prepared in final form (original and one official file copy) and forwarded to the Assistant Administrator for Procurement, (Code HC). They should include:

(1) The name of the cognizant NASA Headquarters program or staff office;

(2) A copy of the justification for other than full and open competition, if any;

(3) If a fee is contemplated, the estimated cost, the amount and percent of fee, the total cost and fee, and the factors considered in determining the fee (see Subpart 1815.9); and

(4) The name and phone number of the contracting officer or negotiator.

(b) Modifications to adapt to special facts and circumstances are permitted, provided they do not conflict with the statutory requirements of 10 U.S.C. 2307 or other authority cited.

(c) 10 U.S.C. 2307 is normally the statutory authority cited for authorizing advance payments. When appropriate, advance payments may also be authorized under 42 U.S.C. 2473(c)(5) or under Pub. L. 85-804 as implemented by Executive Order 10789 (see FAR Part 50).

(d) Generally, the format in FAR 32.410 should be used, tailored as follows:

(1) In the second sentence of format subparagraph (a)(4), delete the reference to a special bank account.

(2) Use format subparagraph (a)(6), not (a)(7) or (a)(8).

(3) At the end of format paragraph (b), use "is in the public interest."

1832.412 Contract clause.

The contracting officer, in consultation with the General Counsel, may require special security provisions if appropriate in particular cases. For example, the clause at 1852.232-75, Security for Advance Payments, may be included in solicitations and contracts with nonprofit organizations or educational institutions that include the clause at FAR 52.232-12, Advance Payments.

Subpart 1832.5—Progress Payments Based on Costs

1832.501 General.

1832.501-2 Unusual progress payments.

Requests for unusual progress payments must have the specific approval of the Assistant Administrator for Procurement, with the concurrence of the Director, Financial Management Division (Code BF).

1832.502 Pre-award matters.

1832.502-2 Contract finance office clearance.

The approving authority for the actions specified in FAR 32.502-2 is the Assistant Administrator for Procurement. Any such approvals should be coordinated with the Director, Financial Management Division.

1832.502-4 Contract clauses.

1832.502-470 NASA contract clause.

The contracting officer may insert a clause substantially as stated at 1852.232-82, Submission of Requests for Progress Payments, in fixed-price solicitations and contracts that provide for progress payments. The recipient of the requests may be changed if this function is delegated. The number of copies of the request may be changed if necessary to meet a substantial need.

1832.503 Post-award matters.

1832.503-3 Initiation of progress payments and review of accounting system.

In connection with the situations mentioned in FAR 32.503-3(b), the Financial Management Officer shall be notified.

1832.504 Subcontracts.

The Government approval mentioned in FAR 32.504(c) shall be as specified in 1832.502-2.

Subpart 1832.7—Contract Funding

1832.702 Policy.

1832.702-70 NASA policy.

(a) Cost-reimbursement contracts may be incrementally funded only if all the following conditions are met (except that, for cost-reimbursement R&D contracts under which no supplies are deliverable, only the condition in subparagraph (a)(3) of this section applies):

(1) The total value of the contract (including options as defined in FAR Subpart 17.2) is $1,000,000 or more.

(2) The period of performance under the contract is in excess of twelve months or overlaps the succeeding fiscal year.

(3) Funds are not available to fund the total contract value fully at the time of entering into the contract.

(b) Fixed-price contracts, other than those for research and development, shall not be incrementally funded.

(c)(1) Fixed-price contracts for research and development may be incrementally funded only if—

(i) The total fixed price of the contract (including options as defined in FAR Subpart 17.2) is $1,000,000 or more;

(ii) The period of performance under the contract is in excess of twelve months or overlaps the succeeding fiscal year;

(iii) Funds are not available to fund the total fixed price of the contract at the time of entering into the contract; and

(iv) Initial funding of the contract is not less than 50 percent of the total fixed price.

(2) Notwithstanding the grant of authority to fund contracts incrementally under the circumstances in subparagraph (c)(1) of this section, fixed-price contracts shall be fully funded whenever possible, and incremental funding of such contracts shall be kept to an absolute minimum.

1832.704 Limitation of cost or funds.

(a) When a contract contains the clause at 1852.232-77, Limitation of Funds (Fixed-Price Contract), the procedures in FAR 32.704 are applicable.

(b)(1) It is not necessary, although it is not prohibited, to have separate financial/accounting data for cost and fee. The breakdown is required only in the clause at 1852.232-81.

(2) The amount obligated for fee should always be at least sufficient to pay fee anticipated to be earned by the contractor for the work to which the amount allotted for the estimated cost applies.

1832.705 Contract clauses.

1832.705-2 Clauses for limitation of cost or funds.

As authorized by FAR 52.232-22, the contracting officer shall substitute "Contract Funding clause" for "Schedule," wherever that word appears in the clause at FAR 52.232-22.

1832.705-270 Additional clauses for limitation of cost or funds.

(a) The contracting officer shall insert the clause at 1852.232-77, Limitation of Funds (Fixed-Price Contract), in fixed-price incrementally funded contracts for research and development and in solicitations for these contracts.

(b) The contracting officer shall insert the clause at 1852.232-80, Date of Incurrence of Costs, in cost-reimbursement contracts for which specific coverage of pre-contract costs is authorized under FAR 31.205-32.

(c) The contracting officer shall insert a clause substantially as stated at 1852.232-81, Contract Funding, in solicitations and contracts containing the clause at FAR 52.232-22, Limitation of Funds. Insert the amounts of funds available for payment, the items covered, and the applicable period of performance. The contracting officer may add additional funding information (such as a summary of old amounts, amount(s) added in contract modifications, and new totals) as appropriate for the particular procurement.

Subpart 1832.9—Prompt Payment

1832.908 Contract clause.

When the clause at FAR 52.232-25 is used, it shall be used with its Alternate II as authorized by FAR 32.908(c), modified by deleting the words "and contract number" from subparagraph (c)(4). The following paragraph shall be inserted in Alternate II as (c)(2)(iv) in lieu of the FAR paragraph at that location:

(iv) The Contractor shall submit a TFS Form 3881 to the installation awarding this contract. If a TFS Form 3881 previously submitted to the installation awarding this contract is still valid, resubmittal is not necessary, unless requested by NASA.

PART 1833—PROTESTS, DISPUTES, AND APPEALS

Subpart 1833.1—Protests

1833.103 Protests to the agency.
1833.104 Protests to GAO.
1833.105 Protests to GSBCA.

Subpart 1833.2—Disputes and Appeals

1833.209 Suspected fraudulent claims.
1833.211 Contracting officer's decision.
1833.211-70 Contracts awarded before March 1, 1979.
1833.214 Contract clause.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1833.1—Protests

1833.103 Protests to the agency.

(a) Immediately upon learning that a protest has been filed, the contracting officer shall notify the Headquarters Procurement Policy Division (Code HP). If the protest is filed directly with an installation, any determination under FAR 33.103(a) to award the contract before the protest is resolved will be made by the contracting officer. If the protest is filed with NASA Headquarters, any such determination will be made by the Assistant Administrator for Procurement.

(b) When a protest is filed directly with an installation or with NASA Headquarters, the contracting officer shall provide any notice under FAR 33.103(b)(1) to offerors whose offers might become eligible for award.

(c) For protests filed with NASA Headquarters, the contracting officer shall forward to the Procurement Policy Division (Code HP) within 10 work days a report essentially the same as that required by FAR 33.104(a)(3).

1833.104 Protests to GAO.

(a) *General.* (1) NASA personnel shall take no action to respond to or resolve any protest filed with GAO other than in accordance with this Regulation.

(2) Upon receiving any communication from a protester or the GAO regarding a protest, the cognizant procurement officer shall immediately contact Code HP for guidance. Conversely, upon Headquarters receipt of notice from GAO of the filing of a protest, Code HP shall immediately notify the cognizant procurement officer. This is usually done via telephone and constitutes the official notice to the installation that a protest has been filed. Within three work days of being notified, the contracting officer shall forward to Headquarters (Code HP) a copy of the procurement file including all documents referred to in FAR 33.104(a)(3)(i) through (v) and any others requested by Code HP. The contracting officer's statement (FAR 33.104(a)(3)(vi)) shall be forwarded no later than ten work days after the contracting officer has been notified. The Contracting Officer's Statement shall receive the concurrence of the installation Chief Counsel. If more time is needed, requests for extension may be made by telephone to Headquarters, Code HP. When the GAO elects to use its express option procedure, the contracting officer's statement shall be forwarded to Code HP within six work days after the contracting officer has been notified. If that is not possible, a report to Code HP shall be made by telephone.

(3) The notices required by FAR 33.104(a)(4) shall be made by the contracting officer.

(4) The report required by FAR 33.104(a)(5) shall be filed by Headquarters (Code HP).

(5) Headquarters (Code HP) shall furnish copies of the report as required by FAR 33.104(a)(6) and, in consultation with the Office of General Counsel, decide which documents are relevant.

(6) Headquarters (Code HP) shall provide the information required by FAR 33.104(a)(7) to the GAO.

(b) *Protests before award.* (1) The contracting officer shall provide Headquarters (Code HP) with information and recommendations relevant to a determination under FAR 33.104(b)(1) to award a contract prior to resolution of a protest. Any such determination shall be made by the Assistant Administrator for Procurement, who for purposes of this requirement is the "head of the contracting activity." The notification to GAO required by FAR 33.104(b)(2) will be made by Code HP.

(2) The contracting officer shall make the notifications and requests required by FAR 33.104(b)(3).

(c) *Protests after award.* (1) Any request for a determination under FAR 33.104(c)(2) to authorize performance notwithstanding a protest shall be submitted to Headquarters (Code HP). Any such determination shall be made by the Assistant Administrator for Procurement who, for purposes of this requirement, is the "head of the contracting activity." The notification to GAO required by FAR 33.104(c)(3) shall be made by Code HP.

(2) Under FAR 33.104(c)(4), the contracting officer shall consult with Headquarters (Code HP) before terminating a protested contract. If FAR 33.104(c)(5) applies, the contracting officer shall consult with Code HP before taking any action.

(d) *Document requests.* If the protester in its protest statement or later in the process requests documents under FAR 33.104(a)(2), the contracting officer shall forward them to Code HP with the documents required by FAR 33.104(a)(3), within three work days of receipt of the request. Concurrently, the contracting officer shall within 1 work day provide copies of the protest statement, the document request if separate from the protest statement, and the requested documents to the installation Chief Counsel who will prepare a proposed response on the release of the documents. This proposed response will be provided to the contracting officer with copies to Headquarters (Code HP) and the Associate General Counsel for Contracts (Code GK) suitable for incorporation into the Administrative Report.

(e) *Conferences.* Representatives from Code HP and Code GK, and those installation representatives designated by Code HP or requested by the GAO will attend conferences held in accordance with FAR 33.104(e).

1833.105 Protests to GSBCA.

(a) The installation's Office of Chief Counsel shall, in consultation with the Associate General Counsel for Contracts, (Code GK) and the Assistant Administrator for Procurement, represent the agency in protests filed with the GSBCA. The cognizant Chief Counsel is responsible for taking or otherwise ensuring the taking of all

actions required by FAR 33.105 and the GSBCA Rules of Procedure.

(b) Upon receiving notice from a non-NASA source of a protest filed with the GSBCA, the receiving office shall immediately notify the cognizant Chief Counsel, who shall further notify the Assistant Administrator for Procurement (Code H), the Associate General Counsel for Contracts (Code GK), and the procurement officer.

(c) The contracting officer is responsible for preparing the protest file required by FAR 33.105(b) and otherwise assisting counsel.

(d) The determination and findings required by FAR 33.105(d)(2) shall be:

(1) Prepared and executed by the director or assistant director of the cognizant technical directorate, the cognizant program/project manager, or cognizant staff official reporting directly to the head of the installation and

(2) Forwarded to the Assistant Administrator for Procurement (Code H) for concurrence.

Subpart 1833.2—Disputes and Appeals

1833.209 Suspected fraudulent claims.

The contracting officer shall report suspected fraudulent claims to the Office of Inspector General (Code W) and the Office of General Counsel (Code G).

1833.211 Contracting officer's decision.

Contracting officers shall alter the paragraph at FAR 33.211(a)(4)(v) to (a) include the address of the NASA Board of Contract Appeals, Code NC, Room 5065, 400 Maryland Avenue, SW., Washington, DC 20546 and (b) reference the Board's small claims procedure for claims of $10,000 or less and the accelerated procedure for claims of $50,000 or less.

1833.211-70 Contracts awarded before March 1, 1979.

Under contracts awarded before the effective date of the Contract Disputes Act of 1978 (March 1, 1979), the contractor may elect to proceed either under the Act or under the Disputes clause in the contract. Therefore, when final decision letters regarding disputes under contracts awarded before that date are prepared, the following paragraph shall be inserted in lieu of the paragraph in FAR 33.211(a)(4)(v):

This is the final decision of the contracting officer. Since your contract was awarded before the effective date of the Contract Disputes Act of 1978 (March 1, 1979), you may appeal this decision by following the procedures of either—

(a) The Disputes clause at Federal Acquisition Regulation 52.233-1; or

(b) The Disputes clause (dated September 1962) in your contract.

If you decide to appeal under Procedure (a), the current Disputes clause, you must (1) mail or otherwise furnish written notice to the NASA Board of Contract Appeals, Code NC, Room 5065, 400 Maryland Avenue, SW., Washington, DC 20546 within 90 days after receiving this decision and (2) furnish a copy of the notice to the contracting officer from whose decision the appeal is taken. The notice shall indicate that an appeal is intended and should reference this decision and identify the contract by number. For appeals under this clause you may elect to proceed under the NASA Board of Contract Appeals' small claims procedure (for claims of $10,000 or less) or its accelerated procedure (for claims of $50,000 or less). In lieu of appealing to the NASA Board of Contract Appeals, you may bring an action directly in the U.S. Claims Court within 12 months after receiving this decision.

If you decide to appeal under Procedure (b), the Disputes clause of your contract you must mail or otherwise furnish to the contracting officer, within 36 days after receipt of this decision, a written appeal or notice addressed to the Administrator of NASA or the Board of Contract Appeals, indicating that an appeal is intended, referencing this decision, and identifying the contract by number. For appeals filed under this clause, you may elect to proceed under the NASA Board of Contract Appeals' optional accelerated procedure (for claims of $25,000 or less). The NASA Board of Contract Appeals is the authorized representative of the Administrator for hearing and determining disputes.

For additional information, see the procedures of the NASA Board of Contract Appeals, which appear in Part 14, Code of Federal Regulations, Section 1241. The Board will mail you a copy of its procedures if you file an appeal from this decision in timely fashion.

1833.214 Contract clause.

The contracting officer shall use Alternate I the clause at FAR 52.233-1, Disputes, whenever continued performance is vital to national security, the public health and welfare, important agency programs, or other essential supplies or services whose timely reprocurement from other sources would be impracticable.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 1834—MAJOR SYSTEM ACQUISITION

Sec.
1834.002 Policy.
1834.005-1 Competition.

Authority: 42 U.S.C. 2473(c)(1).

1834.002 Policy.

NASA's implementation of OMB Circular No. A-109 and FAR Part 34 is contained in NMI 7100.14, Major System Acquisitions.

1834.005-1 Competition.

(a) In procurements subject to the provisions of OMB Circular No. A-109, Major Systems Acquisitions, and NASA Management Instruction 7100.14, or other similar phased-type procurements, it is NASA policy to ensure competition in the selection of contractors for award. Phase B usually covers the exploration of design concepts while Phase C/D deals with developing and fabricating equipment in accordance with designs that have proven acceptable. In such procurements, where Phase B is subject to full and open competition and all offerors are made aware that a continuous process of "down-selection" will be used, then the subsequent C/D solicitation and award are considered to be a continuum of the initial competition (Phase B) and the entire process is considered full and open competition. To this end, Phase B should be synopsized in accordance with FAR 5.201 and solicit all known potential sources to explore design concepts. In addition to the other information required by FAR 5.207, the synopsis should state that the subsequent solicitation for Phase C/D will build on the design concepts selected in Phase B and that NASA intends to solicit offers on that procurement only from those firms which were successful in Phase B. The Phase B RFP should also include this statement.

(b) Solicitations must be issued for Phase C/D and a source selection accomplished, unless an appropriate Justification for Other Than Full and Open Competition has been approved; "technical" down-selection from Phase B to Phase C/D without the issuance of a Phase C/D solicitation is not appropriate. Solicitations for Phase C/D should be limited to those firms which successfully completed Phase B or to those which can otherwise demonstrate that they meet the design requirements of Phase B. Procurements for Phase C/D must be properly synopsized, and state that it is the second phase of a phased procurement and that the Phase C/D solicitation is being issued to the offerors who successfully completed the Phase B design requirements, and identify the firms which are being solicited for Phase C/D. The synopsis must also state that any other potential offeror for Phase C/D must meet the Phase B requirement. If a prospective offeror, other than a successful contractor in Phase B, responds to the synopsis, the contracting officer shall allow the offeror to compete, but caution the interested firm that any product offered must satisfy the requirement for an equivalent mature design concept acceptable to NASA delineated in Phase B.

(c) Phased procurements which meet the conditions in paragraphs (a) and (b) of this section are considered to be full and open competition. If only one contractor successfully completed Phase B and, after soliciting offers from more than one source, no other potential offeror responded to the solicitation for Phase C/D, the award shall be reported as a "noncompetitive procurement using competitive procedures" (see 1804.671-4(m)).

(d) When the conditions in paragraphs (a) and (b) of this section can not be met or where NASA chooses to develop an independent design after Phase B products have been evaluated, the procurement should proceed on the basis of full and open competition unless circumstances justify using one of the exceptions set forth in FAR 6.302 or one of the exclusions under FAR Subpart 6.2. In any event, the synopsis requirements of FAR 5.201 apply. (For this purpose, an "independent design" can be:

(1) A synthesis of the Phase B products;

(2) A totally new design developed by NASA; or

(3) A combination thereof.)

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.
1835.003 Policy.
1835.003-70 Scientific and Technical Information Service.
1835.003-71 Plan for New Technology Reporting.
1835.014 Government property and title.
1835.015 Contracts for research with educational institutions and nonprofit organizations.
1835.016 Broad agency announcements.
1835.016-70 NASA Research Announcements.
1835.070 NASA contract clauses and solicitation provision.
1835.071 Space Transportation System Personnel Reliability Program.

Authority: 42 U.S.C. 2473(c)(1).

1835.003 Policy.

(a) See NHB 5800.1, NASA Grant and Cooperative Agreement Handbook, for policy regarding the use of grants and cooperative agreements.

(b) See 1816.303 for NASA policy regarding cost sharing.

(c) See NMI 5109.13, Recoupment Policy for the Use of NASA Technology, for NASA policy regarding recoupment.

1835.003-70 Scientific and technical information service.

NASA encourages contractors to use scientific and technical information in the possession of the agency in direct support of all NASA contracts involving research and development work (42 U.S.C. 2473). This information includes past and current reports on research, development, test, and evaluation. Certain information (e.g., Scientific and Technical Aerospace Reports (STAR)) announcing current publications covering aeronautics, space, and supporting disciplines is available to contractors free of charge; contractors may be charged for other types of information (e.g., automatic distribution of reports on a specific subject) or services (e.g., searches of the NASA data base or on-line access to the NASA data base through NASA/RECON). To be provided scientific and technical information in a timely manner, the contractor must furnish NASA the information specified in the clause at 1852.235-70, Scientific and Technical Information Service.

1835.003-71 Plan for New Technology Reporting.

(a) NASA's policy is to obtain prompt reporting of any invention, discovery, improvement, or innovation (i.e., items of new technology, whether or not patentable) made in the performance of NASA contracts to provide for its widest practical and appropriate dissemination. The clause at 1852.227-70, New Technology, is included in certain NASA contracts (see 1827.373(b)) to ensure the prompt reporting of such inventions, discoveries, improvements, and innovations.

(b) When the contracting officer wants to ensure that offerors adequately understand the new technology reporting requirements in solicitations that include the clause at 1852.227-70, New Technology, the contracting officer may include the provision at 1852.235-72, Plan for New Technology Reporting. The provision requires offerors to provide:

(1) Estimates of cost and manpower requirements to perform new technology reporting and

(2) If selected for negotiation, a detailed plan for such reporting.

1835.014 Government property and title.

For items having an acquisition cost of more than $5,000, the determination at FAR 35.014(b)(2)(iii) that vesting title in the contractor would not further the objectives of NASA's research program must be approved at a level higher than the contracting officer.

1835.015 Contracts for research with educational institutions and nonprofit organizations.

(a) In addition to the requirements of FAR 35.015(a)(1)(iv), the institution must obtain the contracting officer's approval when it plans to continue the research work during a continuous period in excess of three months without the participation of an approved principal investigator or project leader.

(b) For NASA policy regarding advance payments under contracts with educational institutions, see Subpart 1832.4.

1835.016 Broad agency announcements.

(a) The following forms of broad agency announcements are authorized for use:

(1) Announcements of Opportunity, described in Subpart 1870.1, NASA Acquisition of Investigations System.

(2) NASA Research Announcements, described in 1835.016-70.

(3) Other forms of announcements approved by the Assistant Administrator for Procurement.

(b) Broad agency announcements may not preclude the participation of any offeror capable of satisfying the Government's needs unless a justification for other than full and open competition is approved under FAR 6.304 (see FAR 6.102(d)(2) and 35.001).

(c) Other program announcements, notices, and letters not authorized by paragraph (a) of this section shall not be used to solicit proposals that may result in contracts.

1835.016-70 NASA Research Announcements.

(a) *Scope.* This subsection 1835.016-70 prescribes regulations and procedures for the use of a NASA Research Announcement (NRA), a form of broad agency announcement (see FAR 6.102(d)(2)). An NRA is used to announce NASA's research interests and, after peer or scientific review using factors in the NRA, select proposals for funding. Unlike an RFP containing a statement of work or specification to which offerors are to respond, an NRA provides for the submission of competitive project ideas, conceived by the offerors, in one or more program areas of interest to NASA. The NRA is intended to be used for those research procurements for which it would be impossible to draft an adequate RFP in sufficient detail without restraining the technical response and thus hindering the competition of ideas, rather than expanding competition. Consequently, an NRA shall not be used in place of an RFP when the procurement requirement

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is narrowly defined and it is necessary to use a detailed description or specification.

(b) *Issuance.* (1) Each NRA shall be assigned a unique number in accordance with 184.7102-1.

(2) NRAs may remain open for proposal submission for a maximum of one year. They may not be amended or modified once issued, but may be reissued by assigning a new number and resynopsizing. (See also paragraph (g) of this section.) NRAs should remain open for at least 90 days.

(3) Before issuance, each field-generated NRA shall be concurred in by the procurement officer and approved by the installation's director or a designee, who shall serve as or designate a selecting official. Before issuance, each Headquarters-generated NRA shall be concurred in by General Counsel (Code GK) and the Director, Headquarters Grants and Contracts Division (Code HW) and approved by the cognizant Program Associate Administrator or a designee, who shall serve as or designate a selecting official. If a Headquarters-generated NRA may result in awards by a NASA field installation, the concurrence of that installation's procurement officer may be sought in place of or in addition to Code HW's concurrence.

(4) The contracting officer shall assure that the NRA is synopsized in the Commerce Business Daily (CBD). The CBD synopsis required by FAR 35.016(c) satisfies the synopsis requirement at FAR 5.201; the synopsis contemplated by FAR 5.205 is not required. The synopsis shall be brief and provide the address for obtaining a copy of the detailed NRA. The technical part of the synopsis is intended to describe an identifiable area of interest and should not exceed 50 words.

(5) The NRA shall be prepared, printed, and distributed by or under the direction of the selecting official. Distribution shall not begin until the concurrence of the procurement officer has been obtained and the contracting officer has confirmed that the synopsis requirements have been met. The NRA shall be distributed to each coordinating office responsible for receipt of unsolicited proposals and to the Office of Procurement (Code HS).

(6) In addition to the concurrences and approvals in subparagraph (b)(3) of this section, each installation shall submit its first two NRAs to the Assistant Administrator for Procurement (Code HS) for concurrence before issuance.

(c) *Content.* The NRA shall consist of the following items in the order shown. This entire package shall be provided in response to requests.

(1) *Cover.* The cover shall display:

(i) "OMB Approval Number 2700-0042" in the upper right corner.

(ii) Title (centered, in uppercase).

(iii) "NASA Research Announcement Soliciting Research Proposals for the Period Ending _____" (centered, on three lines, two inches below the title; insert closing date).

(iv) NRA number (centered, two inches below closing date).

(v) Official address for office issuing NRA (centered, at bottom of cover).

(2) *Summary and Supplemental Information.* (i) The Summary and Supplemental Information shall not exceed two pages and shall include:

(A) Title (centered, in uppercase).

(B) Introductory paragraphs describing the purpose of the NRA and the period for receipt of proposals. When proposals received during this period may be grouped for evaluation at separate times, the introductory paragraphs shall indicate when evaluations are planned and shall include the following remark:

A proposal that is scientifically and programmatically meritorious, but that cannot be accepted during its initial review under an NRA because of funding uncertainties, may be included in subsequent reviews unless the offeror requests otherwise.

(C) NRA number.

(D) Address for submitting proposals, including "ATTN: NRA _____." (Insert NRA number.)

(E) Copies required.

(F) Selecting official's title.

(G) Name, address, and telephone number for additional technical information.

(H) Name and telephone number of contracting office point of contact for administrative and contractual information.

(I) Additional instructions supplementing the Instructions for Responding to NASA Research Announcements for Solicited Research Proposals (see Subpart 1870.2). Such information shall be kept to the minimum necessary for a particular NRA and shall cite specific "Instructions" paragraphs supplemented.

(J) When awards will be chargeable to funds of the new fiscal year and the NRA is to be issued before funds are available, the NRA shall contain a statement as follows:

Funds are not presently available for awards under this NRA. The Government's obligation to make awards is contingent upon the availability of appropriated funds from which payment for award purposes can be made and the receipt of proposals that the Government determines are acceptable for award under this NRA.

(ii) The Summary and Supplemental Information may include estimates of the amount of funds that will be available and the number of anticipated awards. A breakdown of the estimates by research area may also be shown.

(iii) The Summary and Supplemental Information may indicate that proposals submitted under an earlier NRA and held for subsequent reviews will be considered and need not be resubmitted. To so indicate, the earlier NRA shall be identified by number in the following statement:

Proposals for which no selection decision was made under NRA _____ and held for subsequent reviews will be considered under this NRA and need not be resubmitted. (Insert NRA number).

(3) *Technical Description.* The first page shall contain the NRA number and title at the top. A brief description not exceeding two pages is preferable, but it should be detailed enough to enable ready comprehension of the research areas of interest to NASA. Specifications containing detailed statements of work more suited to RFPs should be avoided. Any program management information included must be limited to matters that are essential for proposal preparation.

(4) *Instructions for Responding to NASA Research Announcements for Solicited Research Proposals.* The NRA shall contain instructions in accordance with 1870.203.

(d) *Unsolicited proposals.* (1) Unsolicited proposals for new efforts that are within the scope of an open NRA shall be evaluated in accordance with 1815.506(b).

(2) Unsolicited proposals for renewal of ongoing efforts that are within the scope of an open NRA shall be evaluated in accordance with 1815.505-70.

(3) A broad agency announcement shall not be considered to be an "acquisition requirement" as the term is used in FAR 15.507(a)(2).

(e) *Receipt of proposals, evaluation, and selection.* (1) Proposals shall be protected as provided in 1815.508-70 and 1815.509-70.

(2) Evaluation, selection, and award may occur during or after the period established for receipt of proposals. Late proposals and modifications shall be treated in accordance with 1815.412 (a) and (b).

(3) When more than one time is established in the NRA for evaluating proposals, proposals received prior to the time established will be considered as part of the initial group to be evaluated. Subsequent groups of proposals to be evaluated shall be formed from those proposals received after the time established for the earlier evaluation groups and prior to the time established for a subsequent group, along with those proposals, if any, held over under subparagraph (e)(8) of this section.

(4) The selection decision shall be made following peer or scientific review of a proposal. Peer or scientific review shall involve (i) evaluation, outside NASA, by a discipline specialist in the area of the proposal, (ii) evaluation by an in-house specialist, or (iii) both. Evaluation by specialists outside NASA shall be conducted subject to the conditions in FAR 15.413-2(f) and NFS 1815.413 and 1815.413-2. In particular, the selecting official shall ensure compliance with FAR 15.413-2(f)(5) regarding the designation of outside evaluators and avoidance of conflicts of interest. After receipt of a proposal and before selection, scientific or engineering personnel shall communicate with an offeror, regarding the proposal, only for the purpose of clarification, as defined in FAR 15.601, or in order to understand the meaning of some aspect of the proposal that is not clear, or in order to obtain confirmation or substantiation of a proposed approach, solution, or cost estimate.

(5) Competitive range determinations shall not be made, and best and final offers shall not be requested.

(6) All or part of a proposal may be selected unless the offeror requests otherwise. In addition, changes to a selected proposal may be sought as long as (i) the ideas or other aspects of the proposal on which selection is based are contained in the proposal as originally submitted, and are not introduced by the changes; and (ii) the changes sought would not involve a material alteration to the requirements stated in the NRA. Changes that would affect a proposal's selection shall not be sought. When changes are desired, they may be described to the contracting officer under subdivision (e)(10)(ii) of this section, or the selecting official may request revisions from the offeror. The changes shall not transfer information from one offeror's proposal to another offeror (see FAR 15.610(d)(2)). When collaboration between offerors would improve proposed research programs, collaboration may be suggested to the offerors.

(7) The basis for selection of a proposal shall be documented in a selection statement applying the evaluation factors in the NRA. The selection statement represents the conclusions of the selecting official and must be self-contained. It shall not incorporate by reference the evaluations of the reviewers.

(8) A proposal that is scientifically and programmatically meritorious, but that is not selected during its initial review under an NRA, may be included in subsequent reviews unless the offeror requests otherwise. If the proposal is not to be held over for subsequent reviews, the offeror shall be notified that the proposal was not selected for award.

(9) The selecting official shall notify each offeror whose proposal was not selected for award and explain generally why the proposal was not selected. If requested, the selecting official shall arrange a debriefing under 1815.1003, with the participation of a contracting officer.

(10) The selecting official shall forward to the contracting officer—

(i) The results of the technical evaluation, including the total number of proposals received under the NRA by the time of selection, the selection statement, and the proposal(s) selected for funding;

(ii) A description of any changes desired in any offeror's statement of work, including the reasons for the changes and any effect on level of funding;

(iii) If a contract will be used to fund the proposal, a description of deliverables, including technical reports, and delivery dates, consistent with the requirements of the NRA;

(iv) A procurement request;

(v) Comments on the offeror's cost proposal (either the selecting official's comments, which may be based on the reviewers' comments, or copies of the reviewers' comments with any different conclusions of the selecting official); these comments shall address the need for and reasonableness of travel, computer time, materials, equipment, subcontracted items, publication costs, labor hours, labor mix, and other costs; and

(vi) A copy of the selected proposal as originally submitted, any revisions, and any related correspondence from the successful offeror.

(11) The selecting official may provide to the contracting officer copies of the reviewers' evaluations. Reviewers' names and institutions may be omitted in order to protect their identity.

(12) The selecting official may notify each offeror whose proposal was selected for negotiation leading to award.

(i) The notification shall state that—

(A) The proposal has been selected for negotiation leading to award;

(B) The offeror's business office will be contacted by a contracting officer, who is the only official authorized to obligate the Government; and

(C) Any expenses incurred by the offeror in anticipation of receiving an award will be at the offeror's risk.

(ii) The notification may identify which award instrument (contract, grant, cooperative agreement, or other agreement) has been recommended.

(f) *Award.* If a contract is selected as the award instrument (see FAR 35.003(a) and 1835.003(a)), the contracting officer shall—

(1) Advise the offeror that the Government contemplates entering into negotiations; the type of contract contemplated; and the estimated award date, level of effort, and delivery schedule;

(2) Send the offeror a model contract, if necessary, including modifications contemplated in the offeror's statement of work, and request agreement or identification of any exceptions (the contract statement of work may summarize the proposed research, state that the research shall be conducted in accordance with certain technical sections of the proposal (which shall be identified by incorporating them into the contract by reference), and identify any changes to the proposed research);

(3) Request the offeror to complete and return certifications and representations and Standard Form 33, Solicitation, Offer, and Award, or other appropriate forms;

(4) Conduct negotiations in accordance with FAR Subparts 15.8 and 15.9, as applicable;

(5) Award a contract with reasonable promptness to the successful offeror by transmitting written notice of the award to that offeror; and

(6) Comply with FAR Subparts 4.6 and 5.3 on contract reporting and synopses of contract awards, to the extent required by those subparts.

(g) *Cancellation of an NRA.* When program changes, the absence of program funding, or any other reasons require cancellation of an NRA, the contracting officer shall publish a notice in the Commerce Business Daily. The office issuing the NRA may provide additional notification by using the mailing list for the NRA.

1835.070 NASA contract clauses and solicitation provision.

(a) The contracting officer shall insert the clause at 1852.235-70, Scientific and Technical Information Service, in all research and development contracts and in cost-reimbursement supply contracts

involving research and development work.

(b) The contracting officer shall insert the clause at 1852.235-71, Key Personnel and Facilities, in contracts when source selection has been substantially predicated upon the possession by a given offeror of special capabilities, as represented by either key personnel or facilities.

(c) The contracting officer shall insert the provision at 1852.235-72, Plan for New Technology Reporting, in any solicitation for contract estimated to cost $2,500,000 or more if the contract is also to contain the clause at 1852.227-70, New Technology, unless, in consultation with the installation's New Technology Officer, the contracting officer determines that the provision is not appropriate. The contracting officer may insert the provision in solicitations for any such contract of a lesser dollar amount if deemed appropriate after consultation with the installation's New Technology Officer.

1835.071 Space Transportation System Personnel Reliability Program.

The Space Transportation System is a national resource providing a capability to support a wide range of scientific, applications, commercial, defense, and international uses. Criteria and procedures for assuring the highest standards of reliability in personnel assigned to mission-critical positions in connection with the Space Transportation System are set forth in NMI 8610.13, Space Transportation System Reliability Program (see 1846.270(a)).

PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 1836.2—Special Aspects of Contracting for Construction

Sec.
1836.203 Government estimate of construction costs.
1836.205 Statutory cost limitations.
1836.209 Construction contracts with architect-engineer firms.

Subpart 1836.3—Special Aspects of Sealed Bidding in Construction Contracts

1836.303 Invitations for bids.
1836.303-70 Additive and deductive items.
1836.370 Solicitation provisions.

Subpart 1836.5—Contract Clauses

1836.570 NASA contract clause and solicitation provision.
1836.570-1 Hurricane plan.
1836.570-2 Magnitude of requirement.

Subpart 1836.6—Architect-Engineer Services

1836.600 Scope of subpart.
1836.600-70 Interorganizational acquisition of architect-engineer services.
1836.602 Selection of firms for architect-engineer contracts.
1836.602-1 Selection criteria.
1836.602-2 Evaluation boards.
1836.602-3 Evaluation board functions.
1836.602-4 Selection authority.
1836.602-5 Short selection processes for contracts not to exceed $10,000.
1836.602-70 Selection of architect-engineers for master planning.
1836.602-71 Conflict of interest.
1836.603 Collecting data on and appraising firms' qualifications.

Subpart 1836.7—Standard Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements

1836.702 Forms for use in contracting for architect-engineer services.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1836.2—Special Aspects of Contracting for Construction

1836.203 Government estimate of construction costs.

(a) The initiator of the Government estimate shall designate the estimate "For Official Use Only" unless the information in the estimate requires a security classification, in which event it shall be handled in accordance with applicable security regulations.

(b) If the acquisition is by sealed bidding, the contracting officer shall file a sealed copy of the detailed Government estimate with the bids until bid opening. After the bids are read and recorded, the contracting officer shall remove the "For Official Use Only" designation, read the estimate, and record it in the same detail as the bids.

(c) If the acquisition is by negotiation, the contracting officer may disclose cost breakdown figures in the Government estimate during negotiations, but only to the extent necessary for arriving at a fair and reasonable price. However, the contracting officer shall not disclose the overall amount of the Government estimate prior to award. At the time of award, the "For Official Use Only" designation shall be removed. After award, the contracting officer may reveal the Government estimate, upon request, to offerors.

1836.205 Statutory cost limitations.

"Statutory cost limitations" refers to cost limitations that may be included in an agency's annual appropriation act.

1836.209 Construction contracts with architect-engineer firms.

(a) Except as provided in paragraph (c) of this section, contracting officers shall not—

(1) Solicit offers for the construction of a facility from any firm, its subsidiaries, or affiliates furnishing architect-engineer services for that facility; or

(2) Consider unsolicited offers from that firm, its subsidiaries, or affiliates.

(b) An architect-engineer firm selected for negotiation of an architect-engineer services contract under the procedures in 1836.602 shall be advised of the policy in paragraph (a) of this section before initiation of negotiations, if that firm possesses construction capabilities either within its own organization or through subsidiaries or affiliates. The firm shall have the option of either—

(1) Declining to enter into contract negotiations, in order to be eligible to compete for the related construction contract; or

(2) Entering into contract negotiations with the clear understanding that, if such negotiations are successful, the firm, its subsidiaries, and affiliates will be ineligible to compete for the related construction contract.

(c)(1) The policy in FAR 36.209 does not apply when—

(i) The Assistant Administrator for Procurement, upon recommendation from Code HS, specifically authorizes, before the initiation of negotiations, use of a cost-plus-fixed-fee contract for both the design and construction of a facility; or

(ii) A contract:

(A) Is awarded on the basis of performance specifications for the construction of a facility, and

(B) Requires the contractor to furnish construction drawings, specifications, or site adaptation drawings of the facility.

(2) The contracting officer shall prepare requests for authorization pursuant to subdivision (b)(1)(i) of this section in sufficient detail to establish the need for procuring both design and construction under one contract. In neither of the excepted cases in subparagraph (b)(1) of this section shall the firm that prepared the drawings and specifications be engaged to supervise and inspect, on behalf of the Government, the construction of the facility involved.

Subpart 1836.3—Special Aspects of Sealed Bidding in Construction Contracts

1836.303 Invitations for bids.

1836.303-70 Additive and deductive items.

(a) When it appears that funds available for a project may be insufficient for all the desired features of construction, the contracting officer may provide in the invitation for bids for (1) a first or base bid item covering the work generally as specified and (2) one or more additive or deductive bid items progressively adding or omitting specified features of the work in a stated order of priority. In such case, the low bidder and the items to be awarded shall be determined as described in the provision at 1852.236-71, Additive or Deductive Items.

(b) The contracting officer, before the opening of bids, shall determine and record in the contract file the amount of funds available for the project. This amount shall be controlling for determining the low bidder, but may be increased for determining the items to be awarded, provided that award on the combination of items does not exceed the amount offered by any other conforming responsible bidder for the same combination of items.

1836.370 Solicitation provisions.

(a) The contracting officer shall insert the provision at 1852.236-71, Additive or Deductive Items, in invitations for bids for construction when it is desired to add or deduct bid items to meet available funding.

(b) The contracting officer shall insert the provision at 1852.236-72, Bids with Unit Prices, in invitations for bids for construction when the invitation contemplates unit prices of items.

Subpart 1836.5—Contract Clauses

1836.570 NASA contract clause and solicitation provision.

1836.570-1 Hurricane plan.

The contracting officer shall insert the clause at 1852.236-73, Hurricane Plan, in solicitations and contracts for construction at sites that experience hurricanes.

1836.570-2 Magnitude of requirement.

The contracting officer shall insert the provision at 1852.236-74, Magnitude of Requirement, in solicitations for construction. Insert the appropriate estimated dollar range in accordance with FAR 36.204.

Subpart 1836.6—Architect-Engineer Services

1836.600 Scope of subpart.

1836.600-70 Interorganizational acquisition of architect-engineer services.

Procedures for acquiring architect-engineer services through the construction organization of the Corps of Engineers, Department of the Army, are set forth in NASA-Corps of Engineers Agreement for Performance of Construction Services, which can be obtained from the Headquarters Office of Procurement (Code HS).

1836.602 Selection of firms for architect-engineer contracts.

1836.602-1 Selection criteria.

(a) As permitted by FAR 36.602-1(a)(6), in evaluating architect-engineer firms, the architect-engineer selection board shall apply any criteria set forth in the public notice regarding a particular requirement and the volume of work previously awarded to the firm by NASA, with the object of effecting an equitable distribution of contracts among qualified architect-engineer firms, including minority-owned firms and firms that have not had prior NASA contracts.

(b) It should be noted that the evaluation criteria in paragraph (a) of this section and FAR 36.602-1(a) are not listed in order of importance. The relative weight to be assigned to them may vary with the particular requirements of the individual procurement.

(c) NASA will consider the immediate past 10 years as the period for evaluation under FAR 36.602-1(a) (2) and (4).

1836.602-2 Evaluation boards.

In compliance with FAR 36.602-2, the head of each installation shall establish an architect-engineer selection board to be composed of at least three members. Appointment of members who are not Government employees is not authorized.

1836.602-3 Evaluation board functions.

The report required by FAR 36.602-3(d) should, as a minimum, discuss each criterion for each offeror and explain why one firm is rated higher than the others.

1836.602-4 Selection authority.

The head of each installation is designated as the selection authority for that installation for the purposes of FAR 36.602-4.

1836.602-5 Short selection processes for contracts not to exceed $10,000.

(a) Use of the procedures at FAR 36.602-5 is permitted when authorized by the head of the installation.

(b) The head of the installation is designated as the selection authority for that installation for the purposes of FAR 36.602-5(b)(2).

1836.602-70 Selection of architect-engineers for master planning.

(a) *Definition of master plan.* A master plan is an integrated series of documents presenting in graphic, narrative, and tabular form the present composition of the installation and the plan for its orderly and comprehensive development to perform its various missions in the most efficient and economical manner.

(b) *Selection.* (1) When it is proposed that an architect-engineer be selected to develop a master plan in connection with the establishment of a new NASA activity or installation, the report prepared by the architect-engineer selection board in accordance with FAR 36.602-3(d) shall be forwarded by the head of the installation, with that individual's concurrence in the selection, to the cognizant Institutional Associate Administrator, NASA Headquarters, for the concurrences of the Associate Deputy Administrator—Institution and the Deputy Administrator and the approval of the Administrator.

(2) The cognizant Institutional Associate Administrator shall refer the report for review to the Assistant Administrator for Procurement (Code HS), the Office of Management Facilities (Code NX), and other offices as appropriate under the circumstances. After receiving comments and recommendations from the reviewing offices, the cognizant Institutional Associate Administrator shall revise, modify, or concur in the report, as appropriate, and forward it through the Associate Deputy Administrator—Institution to the Deputy Administrator and the Administrator.

1836.602-71 Conflict of interest.

(a)(1) The chairperson and members of an architect-engineer selection board shall have on permanent file with the appointing official a written certification that their respective participation will not create a conflict of interest within the provisions of the current Standards of Conduct for NASA Employees (NHB 1900.1) regarding conflict of interest. Any other participants in an evaluation or selection for a given architect-engineer requirement shall file or have on file a similar certification.

(2) Personnel unwilling or unable to furnish such a certification may not participate in the evaluation or selection process. The chairperson, members, or other participants with certifications on file shall inform the chairperson or the appointing official, as appropriate and in writing, if participation in a particular selection or evaluation would present a real or apparent conflict of interest. If the situation warrants, the person(s) shall be disqualified from participating.

(b) The chairperson, members, or other participants shall promptly report any activity that would give rise to a real or apparent conflict of interest, including any indications of extraneous

influences being brought to bear on the selection or evaluation process.

1836.603 Collecting data on and appraising firms' qualifications.

The architect-engineer selection boards (see 1836.602-2) are designated as NASA's evaluation boards for the purposes of FAR 36.603.

Subpart 1836.7—Standard Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements

1836.702 Forms for use in contracting for architect-engineer services.

(a) Architect-Engineer Contract (Standard Form 252). Instructions for completing this form are as follows:

(1) Block 5—Project Title and Location. Include a short description of the construction project and the estimated cost of constructing the facilities for the project. If the space provided is insufficient, include a more detailed description in the contract's specification/work statement and identify the location of the more detailed description in Block 10.

(2) Block 6—Contract for (General description of services to be provided). Include a brief description of the services and state that they are fully set out in the specification/work statement. Clearly specify the date by which design services must be completed. If supervision and inspection services during construction are to be procured, also clearly specify the date by which they must be completed and add a statement that the Government may extend the period for their performance as provided in the Changes clause of the contract.

(3) Block 7—Contract Amount. If the contract is for both design and supervision and inspection services, set out the amounts for each effort separately.

(b) Statement of architect-engineer services accompanying the SF 252. The services to be furnished by an architect-engineer should be carefully defined during negotiation of the contract and a statement of them inserted in the contract's specification/work statement. The statement should clearly and concisely set forth the nature and extent of the services and include any special services, such as the nature and extent of subsurface exploration prior to designing foundations. A similar statement of supervision and inspection services should be inserted in the specification/work statement if supervision and inspection services are to be acquired.

PART 1837—SERVICE CONTRACTING

Sec.
1837.000 Scope of part.

Subpart 1837.1—Service Contracts—General

1837.101 Definitions.
1837.104 Personal services contracts.
1837.105 Competition in service contracting.
1837.110 Solicitation provisions and contract clauses.
1837.110-70 NASA contract clause.
1837.170 Pension portability.

Subpart 1837.2—Consulting Services

1837.200 Scope of subpart.
1837.203 Types of consulting services.
1837.204 Policy.
1837.204-70 NASA policy.
1837.204-71 Public inspection.
1837.205 Management controls.
1837.205-70 Requests for approval.
1837.205-71 Negotiation of contracts.
1837.205-72 Contract award and approval.
1837.205-73 Copies of reports and recommendations.

Authority: 42 U.S.C. 2473 (c)(1).

1837.000 Scope of part.

For purposes of this part, construction is not considered a service.

Subpart 1837.1—Service Contracts—General

1837.101 Definitions.

"Pension portability" means the recognition and continuation in a successor service contract of the predecessor service contract's pension rights and benefits for contractor employees.

1837.104 Personal services contracts.

(a) Under section 203(c)(9) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(9)), NASA is authorized "to obtain services as authorized by section 3109 of Title 5, United States Code, but at rates for individuals not to exceed the per diem rate equivalent to the rate for GS-18." 5 U.S.C. 3109, in turn, provides authority to procure by contract "the temporary (not in excess of one year) or intermittent services of experts or consultants or organizations thereof, including stenographic reporting services."

(b) It is NASA policy to obtain the personal services of experts and consultants by appointment rather than by contract. The policies, responsibilities, and procedures pertaining to the appointment of experts and consultants are in the NASA Supplement to the Federal Personnel Manual.

1837.105 Competition in service contracting.

(a) See 1837.104 above regarding negotiation for personal and professional services.

(b) Frequently NASA must contract for services that require immediate performance after minimum prior notice to proceed. Typical of these requirements are contracts for engineering services; maintenance, repair, or overhaul of specialized equipment; and printing or reproduction and data processing services to be furnished on a "call basis" when time is of the essence to meet priority requirements.

(c) The NASA policy of obtaining competition to the maximum practicable extent applies to these types of services. Geographic limitations imposed on prospective contractors are likely to appear arbitrary to the business community and therefore are proper only when demonstrably justifiable. Even when a geographic limitation is justifiable, no firm desiring to compete for the procurement may be denied the opportunity to do so merely because it is located outside the geographic area. Such firms shall be permitted to submit offers, provided they can substantiate their capability to establish a facility in a location that complies with any required geographical limitation.

(d) A preferred method of obtaining services or supplies required on a prompt response basis is by clearly describing in the solicitation the maximum time that may elapse between placement of the order or call and the delivery date. Such time limitations, when required by the nature of the procurement, will normally meet NASA's needs for prompt delivery without introducing unnecessarily restrictive criteria limiting the competitive field of prospective contractors.

(e) The procurement officer or a designee shall review and approve, prior to distribution, solicitations that contemplate either a geographical-area or time-of-performance limitation.

1837.110 Solicitation provisions and contract clauses.

The contracting officer shall obtain the Assistant Administrator for Procurement's (Code HP) approval before using in a solicitation, contract, or negotiated contract modification for additional work any installation-developed clause involving pension portability.

1837.110-70 NASA contract clause.

The contracting officer shall insert the clause at 1852.237-70, Emergency Evacuation Procedures, in solicitations and contracts for on-site support services where emergency evacuations of the NASA installation may occur, e.g., snow, hurricanes, tornados, earthquakes, or other emergencies.

1837.170 Pension portability.

It is NASA's policy not to require pension portability in service contracts. However, if it is in the Government's best interest, NASA may consider the inclusion of pension portability requirements in a service contract under the following conditions:

(a) Only defined contribution plans shall be permitted in portability provisions;

(b) At a minimum, vesting shall be 100 percent at contract completion or termination; and

(c) There must be a clear description of the plan, including coverage regarding service, pay, and benefits, as appropriate, from prior contractors.

Subpart 1837.2—Consulting Services

1837.200 Scope of subpart.

This subpart implements and supplements FAR Subpart 37.2 and NMI 5104.5, Policy and Guidelines for the Use of Consulting Services Obtained by Contract, and, in particular, establishes procedures to be followed in contracting for consulting services.

1837.203 Types of consulting services.

Consulting services do not include services obtained under OMB Circular A-76, Performance of Commercial Activities, or services that only provide data in support of NASA administrative and program management. If the primary purpose of a task is to conduct research and development (such as data analysis, studies related to basic and applied research, technology development, concept and demonstration development, full-scale development and testing, and evaluation), the effort provided under the task is not considered consulting services. In addition, contractor reviews of technical activities, such as hardware and hardware-oriented activities, and evaluation of proposals are excluded. See Attachment A to NMI 5104.5 for examples of services to which this subpart does not apply.

1837.204 Policy.

1837.204-70 NASA policy.

In addition to the prohibitions regarding consulting services listed at FAR 37.204(c)—

(a) Consulting services shall normally be obtained only on an intermittent or temporary basis; repeated or extended arrangements are not to be entered into except under extraordinary circumstances;

(b) Consulting services of individual experts and consultants shall normally be obtained by appointment rather than by contract (see NMI 3304.1, Employment of Experts and Consultants);

(c) Grants and cooperative agreements shall not be used as legal instruments for consulting service arrangements;

(d) Consulting service tasks assigned to the Jet Propulsion Laboratory and modifications to the contract between the California Institute of Technology and NASA for the operation of the JPL facility must be reviewed and approved by the Associate Administrator for Management (Code N); and

(e) Persons or organizations employed as NASA consultants must be free from conflict of interest as delineated in FAR Subpart 9.5, Organizational Conflicts of Interest, and NFS Subpart 1809.5. Caution must also be exercised when considering former Government employees for consulting service arrangements, in order to avoid potential post-employment statutory prohibitions (18 U.S.C. 207).

1837.204-71 Public inspection.

(a) NASA's annual Appropriations Act states: "Except as otherwise provided under existing law or under an Executive Order issued pursuant to an existing law, the obligation or expenditure of any appropriation under this Act for contracts for any consulting service shall be limited to contracts which are:

(1) A matter of public record and available for public inspection, and

(2) Thereafter included in a publicly available list of all contracts entered into within twenty four months prior to the date on which the list is made available to the public and of all contracts on which performance has not been completed by such date.

The list required by the preceding sentence shall be updated quarterly and shall include a narrative description of the work to be performed under each such contract."

(b) In accordance with paragraph (a) of this section, on a quarterly basis the Office of Procurement (Code HM) prepares a list for public inspection and distributes it to NASA Information Centers pursuant to NMI 1382.2 (14 CFR Part 1206), Availability of Agency Records to Members of the Public. Copies are also distributed to NASA installation contracting offices to ensure an awareness of contracts that have been highlighted for public inspection.

(c) Public inspection of consulting service contracts and purchase orders at NASA field installations in accordance with the Appropriations Act shall be limited to basic contract documents and modifications. Requests for copies of contracts or other data will be handled in accordance with NMI 1382.2 and OFPP Policy Letter No. 78-3, Request for Disclosure of Contractor-Supplied Information Obtained in the Course of a Procurement (March 30, 1978).

1837.205 Management controls.

1837.205-70 Requests for approval.

(a) When a NASA field installation or headquarters office considers consulting services necessary and desirable, in accordance with the policy in FAR 37.204 and NFS 1837.204-70, the requiring activity is responsible for preparing the required documentation (see FAR 37.205) and securing the prior approval of the Associate Administrator for Management (Code N).

(b) Before processing any procurement action for consulting services, the contracting officer shall:

(1) Provide advice, as necessary, to the requiring activity on preparing the documentation required by NMI 5104.5 and

(2) Ensure that this required documentation, including the necessary concurrences/approvals, is included in the official contract file.

If there is a question as to whether a requirement is for consulting services, regardless of dollar value, and the requirement has not been submitted to the Associate Administrator for Management (Code N) for approval, the contracting officer shall determine whether it is for consulting services. If it is, the contracting officer shall return the procurement request to the originating office for action in accordance with NMI 5104.5. In all such cases, the contracting officer's determination is final.

1837.205-71 Negotiation of contracts.

(a) (1) Contracting officers shall include in all solicitations for consulting services a requirement that each offeror furnish the following information with the proposal, regardless of the type of contract anticipated:

(i) The names and qualifications of principal members of the contractor organization who will be responsible for the project.

(ii) The title of each official and the number of employees who will participate.

(iii) The estimated number of hours that each official and employee will contribute to the proposed project.

(iv) The standard billing rate per hour for each official and employee.

(2) The contract shall establish requirements to ensure that the successful offeror's proposal will be adhered to, as negotiated and agreed to, in each of the areas listed in subparagraph (a)(1) of this section.

(b) In addition, the solicitation and the resulting contract shall require that—

(1) The contractor warrants that the rates quoted are not in excess of those charged nongovernmental clients for the same services performed by the same individuals;

(2) The Government has the right to the working papers used by the participating officials and employees of the firm or organization in connection with the project;

(3) Publication or distribution of the study, data, or related material is prohibited, except to the extent authorized by the contracting officer; and

(4) The contractor agrees that any reports regarding organizational matters (as required by the contract) shall include, when feasible and in addition to the recommendations, alternative methods to be considered and the pros and cons of each alternative.

1837.205-72 Contract award and approval.

Unless otherwise required by Subpart 184.72, or by direction of the Associate Administrator for Management (Code N), awards may be made without further referral to Headquarters after they have been approved in accordance with 1837.205-70(a).

1837.205-73 Copies of reports and recommendations.

Upon completion of the services required and before contract closeout, the requiring activity shall forward one copy of the final report or recommendations made by the contractor along with a written evaluation of contractor performance to the Director, General Management Division (Code NP). These reports will show the following information on the cover:

(a) Name and business address of the contractor.

(b) Contract number.

(c) Contract dollar amount.

(d) Whether the contract was competitively or noncompetitively awarded.

(e) Name, office identification, and location of the Government official sponsoring the consulting services.

PART 1839—ACQUISITION OF INFORMATION RESOURCES

Subpart 1839.70—NASA Procedures

Sec.
1839.7000 Scope of subpart.
1839.7001 Policy.
1839.7002 Applicability.
1839.7003 Requests from installations.
1839.7003-1 Responsibility.
1839.7003-2 Request format.
1839.7003-3 Submission.
1839.7004 ADP acquisition plans.
1839.7005 Coordination.
1839.7006 DPA transmittal.
1839.7007 Numbering provisions and clauses.

Authority: 42 U.S.C. 2473(c)(1)

Subpart 1839.70—NASA Procedures

1839.7000 Scope of subpart.

This subpart prescribes the internal NASA procedures to be used by installations in obtaining General Services Administration (GSA) authorization to contract for automatic data processing equipment (ADPE), telecommunications, and related resources.

1839.7001 Policy.

The Assistant Administrator for Procurement has responsibility for submitting agency procurement requests (APR's) to the GSA to obtain delegations of procurement authority (DPAs) for ADPE. Telecommunications services shall be obtained in accordance with NMI 2520.1, Communications System Management.

1839.7002 Applicability.

This subpart is applicable to all ADPE actions for which the Federal Information Resources Management Regulation (FIRMR) requires issuance of specific DPAs.

1839.7003 Requests from installations.

1839.7003-1 Responsibility.

The installation's procurement officer is responsible for—

(a) Determining or verifying that a DPA is necessary;

(b) Ensuring that internally required approvals are sufficient to allow initiation of the acquisition;

(c) Ensuring that required documentation is uniquely identifiable, complete, adequate, severable, and readily available in files controlled by the contracting office;

(d) Timely submission to the Headquarters Office of Procurement (Code HP) information to be used as the basis of an APR;

(e) Conducting the acquisition in compliance with the DPA; and

(f) Initiating a request for a revised DPA if events invalidate the existing DPA or require additional or modified authorization from GSA.

1839.7003-2 Request format.

Headquarters will prepare an APR, consistent with the FIRMR, from information supplied by the installation. Installations shall use the format set forth below, subject to the following conditions:

(a) The exact numbering style and headings shall be used (except for parenthetical material) unless otherwise noted.

(b) Parenthetical material, except paragraph numbering, is instructional and should be omitted from the submitted document.

(c) The material should be prepared to allow verbatim incorporation into the APR that NASA will submit to GSA. Note that internal material of interest only to Headquarters, as may be required by the parenthetical notes, will be deleted.

FORMAT

Request for DPA

Date:

1. *Installation information:*

(i) (Installation name)

(ii) Procurement contact: (name/title/telephone no.)

(iii) Technical contact: (name/title/telephone no.)

2. *Project title and description:*

(i) Project title: (Use brief, informative name. Actual project title preferred, if suitable. Provide a brief description of the nature and scope of the program the acquisition will support. The description may be as technical as necessary, but ensure that a nontechnical, non-ADPE reader can, in general, understand the request.)

(ii) Existing components: (Provide a brief but specific description of the major system components, including ADPE configuration, or services currently supporting the program. Limitations dictating the present action may be mentioned).

(iii) To-be-acquired: (Provide a brief but specific description of the major system components or services to be acquired during the system life of the requirement. The reason for the buy should be made clear, if not already covered above. Describe resources required for system expansion, e.g., anticipated augmentations, upgrades, and other system modifications during the system life if such requirements will be included in the solicitation as evaluated options. (Note that the DPA provided by GSA will be limited to acquisition of the resources described in this section.))

3. *Acquisition strategy:*

(i) (Indicate whether or not the proposed procurement approach is to satisfy a requirement using a specific make and model; whether compatibility-limited requirements will be used on either a mandatory or nonmandatory basis; and the type of contract expected to be used.)

(ii) Solicitation will be issued: _____ Qtr FY _____.

Contract will be signed: _____Qtr FY _____.

(iii) This request does not involve a pilot or prototype. (If preceding statement is not true, replace it with a description of the strategy for follow-on implementation.)

(iv) (Indicate the contemplated type of competition, i.e., full and open, full and open after exclusion of sources, or other than full and open. If the last, cite the appropriate circumstance at FAR 6.302.)

4. *Estimated contract life and cost:*

Type of request	Estimated contract cost	Estimated contract life
ADPE System	Contr. $XXX Option $XXX	Firm (yrs/mos). Option (yrs/mos).

The estimated system life is _____ years. (Use applicable parts of above sample. "Type of Request" typically includes ADPE System Replacement or Augmentation, Proprietary Software, Equipment Maintenance, Other ADP Services. Include all options. Note that contract cost is specified, not overall system life cost. Detailed cost breakout may be attached for clarification. The delegation will be limited to the quantities and periods indicated.)

5. *Regulatory compliance:*

(i) All of the applicable regulations have been reviewed and complied with. No waivers are contemplated. (Alternatively, list those deviations from the FIRMR for which approval is sought, and provide an explanation for each in accordance with FIRMR Subpart 201-1.4 (41 CFR Subpart 201-1.4). Any deviations from the FAR or NASA FAR Supplement shall be handled in accordance with FAR Subpart 1.4. They shall not be listed here.)

(ii) The following documentation has been prepared and conforms with NFS 1839.7003-1(c): (Enter date of most recent update or N/A as appropriate.) Identify only those documents noted below. Do not send copies of documents to Code HP unless requested.

(A) (Requirements analysis, as per FIRMR 201-30.007 (41 CFR 201-30.007)).

(B) (Analysis of alternatives, as per FIRMR 201-30.009).

(C) (Performance evaluation for the currently installed ADP system, as per FIRMR 201-30.007(d)(9) and 201-34.002 (41 CFR 201-30.007(d)(9) and 201-34.002)).

(D) (Findings to support the use of compatibility-limited requirements, as per FIRMR 201-30.009-3 (41 CFR 201-30.009-3)).

(E) (Software conversion study, as per FIRMR 201-30.012-1 (41 CFR 201-30.012-1)).

(F) (Certified data to support a contemplated requirement available from only one responsible source, as per FIRMR 201-11.002(b) (41 CFR 201-11.002(b)).

(G) (Justification to support a contemplated requirement using a specific make and model, as per FIRMR 201-11.002-1 (41 CFR 201-11.002-1)).

(H) (Description of those planned actions necessary to foster competition for subsequent acquisitions, as per FIRMR 201-30.012 (41 CFR 201-30.012)).

6. *Remarks:*

(Provide any additional necessary information concerning any of the above special conditions associated with this acquisition; e.g., required building construction or modification by GSA. Indicate any special problems or conditions regarding funding or ADP acquisition plan approvals. Indicate the urgency of the acquisition.)

7. *References:*

(Provide previous Code HP control numbers and GSA case numbers specifically related to the requested action. Reference any significant meetings or other events involving NASA or GSA that may have a major bearing on the action.)

8. *Submitted by:*

(Typed name and signature of procurement officer)

1839.7003-3 Submission.

Forward two copies of requests for DPAs to the Assistant Administrator for Procurement (Attn: Code HP). Allow a minimum of nine weeks for processing. (See also NFS 1839.7004). Direct electronic transmission of requests for DPAs to the Code HP telecommunication facility requires prior approval by Code HP.

1839.7004 ADP acquisition plans.

(a) When NHB 2410.1, Information Processing Resources Management, requires that an ADP acquisition plan be approved by Headquarters, the procurement officer shall determine from the initiating activity whether the plan has been approved by Headquarters or is under review by the Headquarters Automated Information Systems Division (Code NT).

(b) When NHB 2410.1 provides for approval of an ADP acquisition plan at the local level, a copy of the approved plan shall be enclosed with the request for a DPA unless it has previously been sent to Code NT.

(c) The existence of a copy of the acquisition plan in the contract file does not in and of itself meet the documentation criteria set forth in NFS 1839.7003-1(c).

1839.7005 Coordination.

(a) Requests for DPAs are subject to general review, comparison with acquisition plans, and discussion between Codes HP and NT before submission of an APR to GSA.

(b) Communications with GSA regarding APRs shall be through the Headquarters Procurement Policy Division (Code HP), unless that office directs otherwise. Installations may respond to contacts initiated by GSA, but should inform Code HP of the contact and its nature.

(c) NASA will not normally make presentations to GSA regarding APRs unless requested by GSA. Any exceptions are subject to coordination by Codes HP and NT.

1839.7006 DPA transmittal.

Specific DPAs are made to the Assistant Administrator for Procurement or designee (Code HP), and are in turn redelegated to the appropriate procurement officer by transmitting the signed DPA with a delegation letter containing additional instructions and guidance. Questions regarding the DPA shall be referred to Code HP.

1839.7007 Numbering provisions and clauses.

When adherence to the FIRMR results in the use of provisions or clauses not prescribed in the FAR or NFS, use the FIRMR number and FIRMR provision or clause title.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 1842—CONTRACT ADMINISTRATION

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Authority: 42 U.S.C. 2473(c)(1).

Subpart 1842.1—Interagency Contract Administration and Audit Services

1842.101 Policy.

It is NASA policy to optimize the use of contract administration, audit, and related support functions of the Department of Defense (DOD) and other Government agencies. NASA agreements with Government agencies regarding the delegation and performance of contract administration and related field support functions are the responsibility of the Defense and Intergovernmental Relations Division (Code XD). However, questions may be directed to the Procurement Policy Division (Code HP). NASA retains technical direction of all its contracts regardless of the agency responsible for contract administration.

1842.102 Procedures.

DOD contract administration and audit offices will accomplish the delegated functions in accordance with DOD regulations and procedures, except that the following take precedence over DOD regulations and procedures:

(a) NASA letters of delegation, including any special instructions attached to them.

(b) Applicable requirements of NASA Quality Publication NHB 5300.4(2B), Quality Assurance Provisions for Government Agencies.

(c) Any written agency agreements between NASA and DOD.

1842.102-70 Management of subcontracts.

Because prime contractors are responsible for managing subcontracts, contract administration functions shall be performed by the Government for subcontracts only if necessary to meet specific NASA requirements. Delegations for contract administration at subcontractors' plants normally shall be made by or through the contract administration offices responsible for the prime contractors. When a direct delegation is made for performance of contract administration functions at a subcontractor's plant (such as for quality assurance), the contracting officer shall:

(1) Coordinate in advance with the contract administration office responsible for the prime contractor and

(2) Provide copies of the delegation to that office.

1842.170 Assignment of NASA personnel at contractor plants.

(a) NASA personnel normally shall not be assigned at or near a contractor's facility to perform any contract administration functions listed in FAR 42.302(a). Before such an assignment is made, a written request shall be forwarded to the cognizant program director for approval and the concurrence of the Assistant Administrator for Procurement. The following supporting information shall be forwarded with the request to make the assignment:

(1) A statement of the special circumstances that necessitate the assignment.

(2) The contract administration services to be performed.

(3) A summary of any discussions held with the cognizant contract administration organization.

(4) A staffing plan covering three years or such shorter period as may be appropriate. The provisions of this paragraph (a) do not apply to NASA audit personnel assigned to the field installations, to NASA technical personnel covered by 1842.101 and paragraph (b) of this section, unless they are performing any contract administration functions listed in FAR 42.302(a), or to personnel assigned to contractors' plants on NASA or other Federal installations.

(b) NASA may assign technical personnel (such as quality assurance, reliability, or engineering representatives) to contractors' plants or laboratories to provide direct liaison with NASA and technical assistance and guidance to the contractor and DOD. The duties and responsibilities of these technical representatives shall be clearly defined and shall not conflict with, duplicate, or overlap with functions delegated to DOD personnel. NASA shall advise appropriate DOD and contractor organizations of the duties and responsibilities of NASA technical personnel. When NASA technical personnel are performing any of the contract administration functions listed in FAR 42.302(a), paragraph (c) of this section applies.

(c) When a NASA resident office and a DOD contract administration office are performing contract administration functions for NASA contracts at the same contractor's facility, the two offices shall execute a written agreement clearly establishing the relationship between the two organizations and the contractor. The agreement should eliminate duplication in the performance of contract administration functions and minimize procedural misunderstandings between the two organizations. Such agreements shall be consistent with existing delegations to the contract administration offices concerned and shall specify the relationship of NASA nonprocurement resident personnel to their DOD and contractor counterparts if such personnel are, or intend to be, involved in any aspect of contract administration.

1842.171 Contractor performance at a NASA installation.

When a NASA contract requires contractor performance at another NASA installation or NASA-controlled launch site, a delegation shall be made to the contracting office of the NASA installation at which performance will occur. Delegations normally will include the functions listed in FAR 42.302(a), less any functions retained under 1842.202. In addition, delegations shall include the contracting officer security functions (when required in the performance of the contract at the installation or site) and the administration of any NASA support provided to the contractor.

1842.172 Contract administration by DOD personnel at a NASA installation.

If DOD personnel will perform contract administration functions at a NASA installation for more than 30 workdays (either continuous or intermittent), the NASA contracting officer shall obtain prior approval from the head of the installation where the DOD personnel will be located. The concurrence of the Assistant Administrator for Procurement shall also be obtained, through Headquarters Code HP. Such approvals will normally be governed by the following conditions:

(a) The delegation of any functional area (e.g., production, property administration, or quality assurance) shall include all administrative responsibilities for that functional area listed in FAR 42.302(a) that the DOD contract administration office is capable of performing.

(b) The contract administration office shall direct the delegated functions.

1842.173 Reimbursement for contract administration services.

The basis for reimbursement to DOD for contract administration and related support services is the NASA-DOD Agreement for Contract Administration and Contract Audit Services. Budgeting, funding, and payment for these services shall be accomplished in accordance with NMI 7410.1, Budgeting, Funding and Payment for Contract Administration and Related Field Services Performed by Others. The NASA installation issuing the delegation has responsibility for budgeting, funding, and payment of bills of lading for transportation performed as a result of a traffic management delegation.

1842.174 Reporting requirements.

(a) NASA installations shall assess their delegations to DOD semiannually to determine changes in delegation patterns that could:

(1) Result in significant increases or decreases in future DOD manpower requirements or

(2) Have other important impacts on DOD contract administration activities. Events such as major program cutbacks or expansions, changes in locations of major programs, and sizeable new procurements should be considered in the assessment.

(b) When an event will affect DOD's administration of contracts for NASA significantly, a summary of the assessment shall be submitted to the Assistant Administrator for Procurement (Code HP). The summary shall include at least—

(1) A description of the change in work requirements or delegation pattern;

(2) The estimated duration of the impact; and

(3) A prediction of the impact on DOD in terms of changes in manpower requirements or other costs.

(c) NASA installations shall discuss with appropriate DOD contract administration offices the predicted impact on DOD. The results of these discussions, such as DOD agreement or disagreement with the predicted impact, shall be included in the report.

1842.175 Functional management responsibility.

NASA contracting officers retain functional management responsibility for their contracts. Utilization of the contract administration services of another Government agency or NASA installation does not relieve the NASA contracting officer of responsibility for proper and effective management of the contract. Therefore, the NASA contracting officer must ensure that the contract administration office understands the respective duties and responsibilities of each office in connection with each NASA contract. NASA contracting officers shall keep themselves fully informed on contractor performance and progress by establishing and maintaining effective communications with contract administration offices.

Subpart 1842.2—Assignment of Contract Administration

1842.202 Assignment of contract administration.

(a) *Withholding normal functions*—(1) *Mandatory (must be retained).* The functions listed below are the responsibility of the NASA contracting officer and may not be delegated to DOD or to another Government agency:

(i) Execution of supplemental agreements involving new procurements, spare parts, or terminations (FAR 42.302(a) (22) and (23)). However, see subdivisions (a)(2)(i) and (ii) of this section regarding negotiation.

(ii) Issuance of decisions under the Disputes clause (FAR 42.302(a)(10)).

(iii) Countersigning NASA Form 456, Notice of Contract Costs Suspended and/or Disapproved (FAR 42.302(a)(8)).

(iv) Approval of the completion voucher (FAR 42.302(a)(7)).

(v) Contract payment (FAR 42.302(a)(13)).

(2) *Optional (may be retained).* The functions listed below may be delegated to DOD or to another Government agency:

(i) Negotiation of settlement agreements involving partial or complete contract terminations for convenience upon request of the NASA contracting officer on NASA Form 1432, Letter of Contract Administration Delegation—Termination, and forwarding for the signature of the NASA contracting officer (FAR 42.302(a)(23)).

(ii) Negotiation of supplemental agreements for spare parts and other items selected through provisioning procedures and forwarding for the signature of the NASA contracting officer (FAR 42.302(a)(22)).

(iii) Issuance of work requests under maintenance, overhaul, and modification contracts that do not constitute an obligation of funds not available under the contract (FAR 42.302(a)(21)).

(iv) Consent to placement of subcontracts (FAR 42.302(a)(51)).

(v) Performance of transportation and packaging functions (FAR 42.302(a) (35), (36), and (37)).

(vi) Performance of reliability and quality assurance functions, including reliability and quality assurance engineering functions (FAR 42.302(a) (38), (40), and (41)).

(vii) Performance of systems support engineering functions (as differentiated from production and reliability, and quality assurance engineering) (FAR 42.302(a)(41)).

(b) *Withholding additional functions.* When the performance of a contract administration function other than one authorized for retention under this section 1842.202 is necessary and the function is retained for administration or modified by the NASA contracting officer, the NASA contracting officer shall:

(1) Justify, in writing, the retention or modification of that function,

(2) Obtain written approval of the justification from the procurement officer or a designee, and

(3) Include the approved justification in the contract file.

The NASA contracting officer shall then advise the contract administration office of the retention or modification of the function by means of written special instructions on NASA Form 1430A, Letter of Contract Administration Delegation, Special Instructions, accompanying the letter of delegation. For any function listed in FAR 42.302(a) that is not necessary to the administration of the contract, no notice of its retention need be issued. This paragraph (b) does not apply to contracts and situations described in 1842.203(a), 1842.171, and 1842.172.

(c) *Withholding other than normal functions.* (1) Mandatory (must be retained). The functions listed below are the responsibility of the NASA contracting officer and may not be delegated to DOD or to another Government agency:

(i) Execution of change orders.

(ii) Termination for default or for convenience of the Government.

(2) *Optional (may be retained).* The functions listed below may be delegated to DOD or to another Government agency:

(i) Negotiation of supplemental agreements resulting from change orders and forwarding for the signature of the NASA contracting officer. Before completion of negotiations, any delivery

schedule change must be approved by the NASA contracting officer (FAR 42.302(b) (1)and (3)).

(ii) Negotiation of prices and execution of priced exhibits for unpriced orders issued by the NASA contracting officer under basic ordering agreements (FAR 42.302(b)(2)).

1842.202-70 Delegations to contract administration offices.

(a) *General.* The following procedures apply to delegations to contract administration offices (for delegations to audit and security offices, see 1842.202-71 and 1842.202-72, respectively):

(1) NASA contracting officers shall review contract performance requirements as early as possible in the acquisition cycle to determine the nature and extent of expected contract administration functions. This review shall be coordinated with appropriate installation activities, including program managers, to ensure that all essential requirements are incorporated in the delegation. A similar review shall be made before amending letters of delegation under subparagraph (a)(6) of this section.

(2) A planning conference shall be held with representatives of the contract administration office when—

(i) A contract is expected to exceed $5,000,000;

(ii) Contract performance is required at or near another NASA installation or NASA-controlled launch site;

(iii) The delegation will impose an abnormal demand on the resources of the contract administration office receiving the delegation;

(iv) Complex contract management problems are expected; or

(v) The NASA contracting officer considers it advisable.

(3) Contracting offices shall prepare, within 15 days after contract award, NASA Form 1430, Letter of Contract Administration Delegation, General, for the delegation, redelegating, and amending of contract administration functions. NASA Form 1430A, Letter of Contract Administration Delegation, Special Instructions, shall be used to supplement NASA Form 1430 to—

(i) Delegate any optional functions listed in 1842.202 (a)(2) or (c)(2);

(ii) Modify previously delegated functions;

(iii) Retain the administration of functions other than those listed in FAR 42.302(a); or

(iv) Provide additional or peculiar information concerning the contract that may assist the contract administration office to perform the delegated contract administration responsibilities more effectively (but see subparagraph (a)(4) of this section).

(4) Letters of delegation and special instructions shall not include any clauses or other requirements that are or should be contained in the contract and shall not—

(i) Cite administrative procedures or repeat the functions covered in FAR 42.302(a) or other information covered in DOD issuances;

(ii) Place restrictions on administrative contracting officers; or

(iii) Include references to NASA issuances, unless specific written NASA/DOD agreements exist that include references to these issuances, or unless the NASA issuances are a requirement of the contract. When it is appropriate to cite DOD issuances in a letter of delegation, the NASA contracting officer shall ensure that they are applicable to the contract administration office concerned (e.g., that Air Force issuances are not cited in delegations to Navy or DCAS contract administration offices).

(5) Delegations and amendments to them should be accompanied by documentation and supporting information that will ensure a complete understanding of the contract administration services to be performed. Contract administration offices shall be kept fully informed of any actions that may affect the performance of the delegated functions. Copies of all significant documents should be furnished to the contract administration office throughout the period of performance. Significant documents include, but are not limited to—

(i) All contractual documents such as the contract and any specifications and drawings, change orders, supplemental agreements or contractor proposals referenced in the contract;

(ii) Negotiation memoranda covering negotiations of contracts or contract changes in excess of $100,000;

(iii) Copies of any delegation and amendments it sent to other contract administration offices that have a bearing on the contract, including those issued pursuant to 1842.102-70; and

(iv) Any other correspondence affecting contract performance under the contract.

(6)(i) The contracting officer shall issue amendments to letters of delegation when amendments to the contract are of a nature that will change the scope of functions previously delegated, when additional functions are required to be delegated, or when previously delegated functions are to be terminated in whole or part. However, when a contract administration office has retired the original letter of delegation with the records of a physically completed but administratively open contract, a new letter of delegation shall be issued to support any additional reimbursable services required under the delegation.

(ii) In order to minimize the need for a duplicate delegation at a later date on a contract that is nearing closeout, the NASA contracting officer shall advise the contract administration office to hold the contract in open status when conditions exist or are expected that would justify extension of the contract period of performance. Appropriate NASA forms listed in Part 1853 shall be used in the amendment process. The forms shall be clearly annotated as amendments to the original delegation.

(7) NASA Form 1431, Letter of Acceptance of Contract Administration Delegation, shall be forwarded with each NASA Form 1430 or amendment. The NASA contracting officer shall use the returned form as evidence that the delegation has been received and accepted by the contract administration office and as a reference for points of contact for each of the functional areas delegated.

(8) Delegations shall be sent to DOD contract administration offices in accordance with the instructions in the DOD Directory of Contract Administration Services Components (DOD 4105.59H).

(9) The contracting officer shall distribute copies of the contract and letters of delegation for contract administration (including amendments as follows):

(i) To DCAS and all other Government contract administration offices except DOD military contract administration offices, when two or more functional areas are delegated: Five copies of the contract and NASA Form 1430 and three NASA Forms 1431.

(ii) To DOD military component offices when two or more functional areas are delegated: Three copies of the contract and three NASA Forms 1430 and 1431.

(iii) To any contract administration office when a single functional area is delegated: Two copies of the contract and two NASA Forms 1430 and 1431.

(iv) To the contractor: One NASA Form 1430.

(b) *Reliability and quality assurance.* When special instructions for reliability or quality assurance are necessary, they shall be (1) clearly identified by the NASA installation personnel responsible for the reliability and quality assurance function and (2) furnished to the contracting officer on NASA Form 1430A for inclusion in the letter of delegation. The procedures for arranging, preparing, and finalizing such delegations and the requirements for NASA direction and management of these functions are contained in installation procedures. The latest edition of NHB 5300.4(2B), Quality Assurance Provisions for Delegated Government Agencies, describes the requirements for performing quality assurance functions under NASA contracts.

(c) *Transportation and packaging.* Transportation and packaging functions may be delegated at the option of the NASA installation personnel responsible for the transportation and packaging function. When such delegations are contemplated on a particular contract, special instructions shall be furnished to the NASA contracting officer on NASA Form 1430A. The form shall also:

(1) Specify the limit of the value of Government bills of lading that may be issued without further consent of the NASA contracting officer and

(2) Provide appropriate funding information.

(d) *Property administration and plant clearance.* Property administration and plant clearance are ordinarily delegated by NASA to DOD pursuant to FAR 42.302. When these functions are delegated, special instructions prepared and distributed by the Headquarters Supply and Equipment Management Branch, Code NIE, should be issued to the contract administration office. Property administration and plant clearance are typically retained, however, and performed by NASA when the contract work is to be performed at a NASA installation. When retained, the functions should be performed in accordance with Subpart 1845.72.

(e) *Services not requiring letters of delegation.* (1) When it is desired that a contract administration or audit office perform services that precede the award of a contract, such as cost, price, or technical evaluations (but exclusive of pre-award surveys), NASA Form 1434, Letter of Request for Pricing-Audit-Technical Evaluation Services, shall be used. Pre-award surveys shall be requested on SF 1403, Pre-award Survey of Prospective Contractor (General). Oral requests made to contract administration offices to expedite these services are authorized, but shall be confirmed in writing immediately through the use of NASA Form 1434 or SF 1403, as appropriate.

(2) Pre-award and post-award services, such as verification of labor and overhead rates, and furnishing of similar information readily available within contract administration and audit offices and not normally subject to reimbursement by NASA, may be obtained either orally without written confirmation or through the use of NASA Form 1434, as appropriate.

1842.202-71 Delegations to audit offices.

The following procedures apply when delegations are made to audit offices:

(a) NASA installations shall utilize the services of other Government audit organizations for performance of contract cost audit and other audit functions, except when audits will be performed by NASA auditors. The Defense Contract Audit Agency (DCAA) has been designated as the DOD agency responsible for the performance of audit functions for NASA contracts, except those awarded to educational institutions for which other agencies have audit cognizance under OMB Circular No. 68, those with Canadian contractors (see paragraph (d) of this section), and those for which NASA will perform audits. To ensure that audit services are performed expeditiously, audit delegations shall be sent to the appropriate audit office immediately after execution of all cost-reimbursement, labor-hour, and time-and-materials contracts and all fixed-price contracts containing cost-reimbursement or price adjustment clauses. Audit functions include but are not limited to contract cost and price audits, estimating systems surveys, reviews of accounting systems (see also 1815.871(b)), and approval of vouchers for provisional payment.

(b)(1) Delegations shall be sent to cognizant audit offices as listed in the Defense Contract Audit Agency Directory (Headquarters and Field Offices) or in other Government agency directories.

(2) Audit responsibilities for the Department of Health and Human Services (HHS) do not include reviewing and processing vouchers. Consequently, where audit responsibility has been delegated to HHS under OMB Circular No. A-88, contracts shall not designate HHS as the billing office for invoice submission. Instead, contracts should direct invoices to the office administering the contract or as otherwise arranged (see SF 26, Block 10, and SF 33, Block 23).

(c)(1) NASA Form 1433, Letter of Audit Delegation, shall be used to delegate the audit function and to amend previous delegations. Distribute copies of the contract and NASA Form 1433 as follows:

(i) Audit office: One copy of the contract and three NASA Forms 1433.

(ii) Contractor: One NASA Form 1433.

(iii) Cognizant NASA fiscal or financial management office: One NASA Form 1433.

(2) When HHS is designated as the audit office, item 12 on NASA Form 1433 shall be marked "Not applicable."

(d)(1) For contracts with the Canadian Commercial Corporation (CCC), audits are automatically arranged by the Department of Defense Production (Canada) (DDP) in accordance with agreements between NASA and DDP. Audit reports are furnished to DDP. Upon advice from DDP, CCC will certify the invoice and forward it with Standard Form 1034, Public Voucher, to the contracting officer for further processing and transmittal to the fiscal or financial management officer.

(2) For contracts placed directly with Canadian firms, audits are requested by the contracting officer from the Audit Services Branch, Comptroller of the Treasury, Department of Finance, Ottawa, Ontario, Canada. Invoices are approved by the auditor on a provisional basis pending completion of the contract and final audit. These invoices, accompanied by SF 1034, are forwarded to the contracting officer for further processing and transmittal to the fiscal or financial management officer. Periodic advisory audit reports are furnished directly to the contracting officer.

(3) Audits performed by the Audit Services Branch are normally conducted under DDP regulations.

1842.202-72 Delegations to security offices.

NASA's policies and procedures on security are set forth in NMI 1650.1, Industrial Security Policies and Procedures. Contracting officers shall delegate responsibility for administering the Industrial Security Program (which has been designated as an administrative contracting officer (ACO) responsibility in Appendix C, Industrial Security Regulation, DOD 5220.22R, see also FAR 42.302(a)(20)) to DOD unless the contractor will perform the classified contract on a NASA installation or the classified work has been "carved-out." (A "carve-out" is defined in Section 1, paragraph 3, item f.1., of the DOD Industrial Security Manual for Safeguarding Classified Information, September 1987, DOD 5220.22M, as a classified contract issued in connection with an approved Special Access Program in which the Defense Investigative Service has been relieved of inspection responsibility in whole or

in part.) The basis for DOD's performance of administrative contracting officer responsibility for the Industrial Security Program on NASA contracts is a NASA-DOD Agreement. The contracting officer shall specifically identify security functions delegated to DOD or to another NASA installation (see 1842.171) on NASA Form 1430A.

1842.203 Retention of contract administration.

The assignment of contract administration is optional for the contracts and situations listed below:

(a) Research and development study contracts not involving deliverable hardware or Government property in the hands of contractors.

(b) All contracts with delivery schedules of 90 days or less.

(c) Purchase orders having no Government source inspection requirements.

(d) Work performed at the installation awarding the contract.

(e) Contract work performed in the vicinity of the installation awarding the contract for which DOD contract administration services are not reasonably available.

1842.270 Contracting officer's technical representative (COTR) delegations.

(a) A contracting officer may designate an appropriate Government employee to act as the contracting officer's authorized representative in administering a particular contract. If necessary, the contracting officer may designate an alternate COTR to act during short absences of the COTR; the policies and procedures for COTRs shall apply also to alternate COTRs. Technical organizations are responsible for ensuring that the individual they recommend to the contracting officer possesses qualifications and experience commensurate with the authorities to be delegated and the nature of the contract. The contracting officer shall ensure that the duties and responsibilities delegated do not exceed the limitations at 1801.670(b).

(b) COTRs shall be designated by name and position title (see the 1801.670(b) prohibition against delegating COTR duties solely to a position rather than to a named individual). Each COTR designation shall be in writing and shall clearly define the scope and limitations of the COTR's authority. NASA Form 1634, Contracting Officer Technical Representative (COTR) Delegation, shall be used to designate COTRs. The COTR delegation shall be signed by an appropriate contracting officer (see 1801.670(b)) and shall state that the duties delegated are not redelegable and that the COTR may be personally liable for unauthorized direction. (However, this does not prohibit the COTR from having assistants for the purpose of monitoring contractor progress and gathering information.) When an individual is to act for a contracting officer on more than one contract, separate delegations shall be issued for each contract. A separate NASA Form 1634 may be modified as necessary to designate an alternate COTR; alternates may act only during official absences of the COTR such as leave, TDY, or other special assignments. The delegated duties of the alternate may not exceed those of the COTR.

(c) A COTR delegation remains in effect throughout the life of the contract unless cancelled in writing by an appropriate contracting officer. The contracting officer may modify the scope and limitations of a COTR assignment only by cancelling the delegation and issuing a new delegation.

(d) A COTR may not be authorized to initiate procurement actions by use of purchase orders or to place calls or delivery orders under indefinite-delivery contracts or basic ordering agreements. A COTR may not be authorized to award, agree to, or sign any contract or modification or in any way obligate the payment of money by the Government. The COTR is not authorized to issue technical direction unless the clause at 1852.242-70, Technical Direction, prescribed in 1842.7001, is included in the contract and the authorization is specifically listed in paragraph 3(m) of the COTR delegation letter (NASA Form 1634). However, delegations may be made to construction contract COTRs to sign emergency change orders with an estimated value not to exceed $2,500, onsite at construction sites, if sufficient funds have been certified to cover the emergency change.

(e) The contracting officer shall send the original and one copy of the COTR delegation letter to the COTR, who shall be required to acknowledge receipt by signing the original and returning it to the contracting officer. The original of the COTR delegation letter shall be filed and retained in the applicable contract file. Copies of the COTR delegation letter shall be distributed to the contractor and to each cognizant contract administration office. Acknowledgement and distribution for terminations of COTR delegations and COTR delegations that revise duties shall follow the same rules.

Subpart 1842.3—Contract Administration Office Functions

1842.302 Contract administration functions.

The cognizant CAO shall perform the additional contract administration functions listed below:

(a) Determine billing rates and final indirect cost rates.

(b) Issue cure and show cause letters after approval of the NASA contracting officer.

(c) Monitor the contractor's system for control of overtime.

(d) Assure that overtime compensation is in accordance with the terms of the contract, or in the absence of contractual coverage, that any excepted overtime charged is reasonable and properly allocable.

(e) Negotiate changes to interim billing prices when authorized by the NASA contracting officer.

1842.302-70 Modified functions.

In connection with the functions listed at FAR 42.302(a)(11)(ii) and (iii), the following exception applies: for those contractors with whom advance agreements of the type discussed in FAR 31.205-18 are negotiated, the Government contracting officer responsible for the agreements shall have full authority for determinations related to CAS 420.

Subpart 1842.7—Indirect Cost Rates

1842.705 Final indirect cost rates.

1842.705-70 NASA Policy.

(a) Since many NASA contractors are under DOD's final overhead rate determination procedure, NASA's policy is to participate jointly with DOD for those companies where NASA has a major financial interest. The NASA participant shall be a representative from that installation having the predominance of NASA work.

(b) When NASA has been assigned the final overhead rate determination authority, settlement of overhead costs shall be conducted by that installation having the predominance of NASA work.

Subpart 1842.8—Disallowance of Costs

1842.803 Disallowing costs after incurrence.

(a) Under the authority of FAR 42.803, NASA has designated the contract auditor as the contracting officer's representative for (1) promptly examining reimbursement vouchers received directly from contractors, (2) promptly transmitting vouchers approved for provisional payment to the cognizant fiscal or financial management officer, and (3), regarding costs claimed, but not considered allowable, preparing and sending to the cognizant contracting officer NASA Form 456, Notice of Contract Costs Suspended and/or Disapproved. Normally, the NASA Form 456 is initiated by the auditor; however, the contracting officer also may initiate it or direct its initiation. In accordance with any instructions received from the contracting officer, the contract auditor shall promptly examine and approve (but see paragraph (b) of this section) separate fee vouchers and fee portions of vouchers for provisional payment under the contract. After examination, the auditor shall forward completion vouchers to the contracting officer for approval and transmittal to the cognizant fiscal or financial management officer.

(b) When audit functions are delegated, special instructions may be issued to the contract auditor to—

(1) Require submission of separate vouchers for reimbursable costs and for payment of earned fee; and/or

(2) Reserve to the contracting officer approval of separate fee vouchers and all vouchers submitted by contractors performing at a NASA installation.

(c) Unless otherwise notified, the contractor shall be required to submit public vouchers to the auditor as follows:

(1) One original SF 1034, SF 1035, or equivalent contractor's attachment shall be submitted.

(2) Seven copies of SF 1034A, SF 1035A, or equivalent contractor's attachment shall be submitted.

(3) The contractor shall mark SF 1034A copies 1, 2, 3, 4, and such other copies as may be directed by the contracting officer by inserting in the memorandum block names and addresses as follows:

(i) Copy 1, NASA contracting officer.

(ii) Copy 2, Defense Contract Audit Agency auditor.

(iii) Copy 3, Contractor.

(iv) Copy 4, Contract administration office.

(v) Copy 5, Project management office (when required by the NASA contracting officer).

(4) The auditor shall retain an unpaid copy of the voucher.

(5) When a voucher contains one or more individual direct freight charges of $100 or more, an additional copy of SF 1034A and SF 1035A shall be submitted and marked for return to the contractor after payment. This copy shall be transmitted quarterly by the contractor with the freight bills to the General Services Administration. When a voucher is identified as the "Completion Voucher," an additional copy shall be submitted for transmittal to the NASA contracting officer.

(d) Following a prompt and careful review of the facts and circumstances leading the auditor to initiate the NASA Form 456, and after coordination with other NASA and DOD contracting officers administering contracts with the same contractor under which a NASA Form 456, or a DCAA Form 1 in the case of a DOD contract, has been issued for the same items of cost, the contracting officer shall take one of the following actions:

(1) Countersign the NASA Form 456 disapproving the costs.

(2) Countersign the NASA Form 456 suspending the costs.

(3) Issue a new NASA Form 456 suspending the costs rather than disapproving them pending resolution of the issues.

(4) Have the contractor issue a new voucher removing the costs in question from its claim and return the NASA Form 456 to the auditor unsigned.

(5) Return the unsigned NASA Form 456 to the auditor with a detailed explanation of why the suspension or disapproval is not being countersigned, and process the contractor's claim for payment.

(e) The contracting officer, when in agreement with the NASA Form 456 initiated by the auditor, shall assign a notice number and shall countersign the form. An original and three copies (which includes two acknowledgement copies, one each for return to the contracting officer and the auditor) of the form shall be sent to the contractor by certified mail, return receipt requested; one copy shall be attached to the SF 1034 and each copy of the SF 1034A (see paragraph (c) of this section) on which the deduction is made, and one copy shall be sent to the auditor.

(f) The total amount suspended or disapproved, as shown on the NASA Form 456, shall be inserted in the Differences block of the SF 1034 and SF 1034A, citing the applicable NASA Form 456.

(g)(1) If the amount of the deduction is more than the amount of the public voucher, the installment method of deduction shall be applied to this and subsequent public vouchers until the amount is fully liquidated. The deductions on any voucher may not exceed the voucher amount, to avoid processing of a voucher in a credit amount. Public voucher(s) with zero amounts must be forwarded to the fiscal or financial management office for appropriate action.

(2) If deductions are in excess of contractor claims, recovery may be made through a direct refund from the contractor, in the form of a check payable to NASA, or by a set-off deduction from the voucher(s) submitted by the contractor under any other contract, unless those contracts contain a "no set-off" provision. If a set-off is effected, the voucher(s) from which the deduction is made should be annotated to identify the contract and appropriation affected and the applicable NASA Form 456.

(h) When necessary, the contracting officer should consult with the auditor or the financial management officer concerning preparation, examination, and payment of vouchers. Functions to be performed by auditors and financial management and fiscal office personnel during the examination of vouchers are in FMM 9630.

Subpart 1842.10—Negotiating Advance Agreements for Independent Research and Development/Bid and Proposal Costs

1842.1004 Location of negotiators in a central office.

Within NASA, the central office responsible for advance agreements is the Contract Pricing and Finance Office (Code HC), Office of Procurement, NASA Headquarters.

1842.1008 Administrative appeals.

The NASA administrative appeals hearing group consists of the Assistant Administrator for Procurement, who shall be chairman, the Deputy Associate Administrator for Aeronautics and Space Technology, and the Deputy General Counsel.

Subpart 1842.12—Novation and Change-of-Name Agreements

1842.1200 Scope of subpart.

This subpart implements and supplements FAR Subpart 42.12 and prescribes policies and procedures for processing novation or change-of-name agreements initiated by either a NASA installation or by DOD on behalf of NASA.

1842.1202 Responsibility for executing agreements.

When none of the affected contracts has been assigned to an administrative contracting officer (see FAR 42.1202(a)(2)), the contracting officer shall require the contractor to provide the documentation enumerated in FAR 42.1204(c)(or, as appropriate, FAR

42.1205(a)) to the NASA installation with which it has the largest amount of unliquidated obligations. This installation shall be the "designated installation" for processing and executing novation agreements and change-of-name agreements with the contractor.

1842.1203 Processing agreements.

(a) The installation shall immediately notify the Assistant Administrator for Procurement (Code HM) of the request to execute a novation (successor-in-interest) or change-of-name agreement. The notification shall include:

(1) The names of the firms involved,

(2) The name of the installation that will execute the agreement, and

(3) The type of agreement.

(b) When the Standard Form 30 required by FAR 42.1203(f)(1) is prepared, a supplemental agreement number need not be obtained for contracts other than the one under which the supplemental agreement is written. For distribution purposes, the Standard Form 30 shall also include the names and addresses of the installations with contracts subject to the agreement.

(c) After execution of the supplemental agreement, the designated installation shall—

(1) Forward one authenticated copy to Code HM; and

(2) Advise each of the affected installations by letter of the consummation of the supplemental agreement, requesting that an administrative change be issued for each affected contract and enclosing a copy of the supplemental agreement.

(d) For each affected contract, the contracting officer shall prepare an administrative change acknowledging the successor-in-interest or the change in name. The administrative change shall receive the same distribution as the affected contract. It shall indicate the nature of the transaction and the result attained and shall cite the number of the contract with which the original relevant documents and supplemental agreement are filed.

1842.1203-70 DOD processing of novation and change-of-name agreements on behalf of NASA.

(a) Appendix E of the NASA/DOD Agreement for Contract Administration and Contract Audit Services covers the accomplishment of novation and change-of-name agreements by DOD on behalf of NASA.

(b) Code HS shall notify installations when DOD is processing a proposed novation agreement on behalf of NASA. Within 20 days after receiving it, the installation shall submit comments to Code HS for transmittal to DOD. With the concurrence of Code HS, an installation may execute a separate agreement with the contractor. In that event, Code HS shall notify DOD accordingly, and the installation shall process a separate agreement in accordance with FAR 42.1203.

(c) Code HM shall maintain copies of agreements executed by DOD on behalf of NASA.

Subpart 1842.14—Traffic and Transportation Management

1842.1405 Discrepancies incident to shipment of supplies.

In addition to following the applicable regulations and procedures referenced at FAR 42.1405(a), NASA personnel shall report discrepancies and adjust claims for loss of and damage to Government property in transit as prescribed in NHB 6200.1, NASA Transportation and General Traffic Management.

Subpart 1842.70—NASA Contract Clauses

1842.7001 Technical direction.

The contracting officer shall insert the clause at 1852.242-70, Technical Direction, in cost-reimbursement solicitations and contracts if (1) technical direction as defined in the clause (which includes the Government's approving approaches and solutions of the contractor and shifting emphasis among work areas or tasks) is appropriate to accomplish the contract requirements effectively, (2) the statement of work is conducive to technical direction by the Government, and (3) technical direction is to be in writing. Identify this duty in subparagraph 3(m), "Other duties as follows" of NASA Form 1634 (see 1842.270). This clause addresses COTR responsibilities that are in addition to those discussed in subparagraphs 3(a)-(1) of the COTR delegation and is not intended to be followed in fulfilling those other responsibilities. The clause is not authorized for use with institutions of higher education and other non-profit organizations.

1842.7002 Travel outside of the United States.

(a) The contracting officer shall insert the clause at 1852.242-71, Travel Outside of the United States, in cost-reimbursement solicitations and contracts where a contractor may travel outside of the United States and it is appropriate to require Government approval of the travel.

(b) Add Alternate I to the clause at 1852.242-71 if the contractor is an institution of higher education or other nonprofit organization.

1842.7003 Observance of legal holidays.

(a) The contracting officer shall insert the clause at 1852.242-72, Observance of Legal Holidays, in contracts when notification to the contractor of Government holidays would be useful in administering the contract.

(b) The clause shall be used with its Alternate I in cost-reimbursement contracts when work will be performed at a NASA installation and it is desired that contractor employees observe the same holidays as Government employees. This alternate may be appropriately modified for fixed-price contracts.

PART 1843—CONTRACT MODIFICATIONS

Subpart 1843.2—Change Orders

Sec.
1843.205 Contract clauses.
1843.205-70 NASA contract clause.
1843.270 Originating engineering change proposals.

Subpart 1843.3—Forms

1843.301 Use of forms.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1843.2—Change Orders

1843.205 Contract clauses.

As permitted by the clause preface, when the clause at FAR 52.243-1, 52.243-2, or 52.243-3 (Changes—Fixed-Price, Changes—Cost-Reimbursement, or Changes—Time-and-Materials or Labor-Hours) is used, the 30-day period within which the contractor must assert its right to an adjustment may be varied not to exceed 60 days.

1843.205-70 NASA contract clause.

(a) The contracting officer may use the clause at 1852.243-70, Engineering Change Proposals, in contracts to require the contractor to submit engineering change impact evaluation information, including the maximum equitable adjustment resulting from the change. The term "price" in paragraph (b) of the clause may be changed to suit the specific type of contract. A local format may be substituted for the second reference in clause paragraph (a) to DOD-STD-480A. The basic clause is suitable for fixed-price contracts.

(b) If it is desirable to preclude a large number of small-dollar, contractor-initiated engineering changes and to reduce the administrative cost of reviewing them, the contracting officer shall use the clause with its Alternate I.

(c) If the contract is a cost-reimbursement contract, the contracting officer shall use the clause with its Alternate II.

1843.270 Originating engineering change proposals.

Either party to the contract may originate engineering changes. The originator must provide detailed information supporting and documenting the proposed change so that the Government can evaluate the technical, cost, and schedule effects of implementing the change and can price the change in advance, when possible.

Subpart 1843.3—Forms

1843.301 Use of forms.

(a) FAR 43.301(a)(1) requires the use of Standard Form 30, Amendment of Solicitation/Modification of Contract, for administrative changes such as changes in accounting and appropriation data. Contract modifications should include only fund citations (i.e., accounting and appropriations data) applicable to the particular modification. The cumulative inception-to-date listing of funding citations for previous modifications is discouraged unless there is a contractual need requiring such a listing. Modifications should include, as a minimum, the prior total funding, the change taking place, and a new total value.

(b) When an internal administrative change of funding citations relative to a contract is required, the official determining the need for the change shall request it, obtain applicable installation approvals, and then forward documentation to the financial management officer and the contracting officer to facilitate it. An administrative modification of the contract is not required unless it affects the billing or reporting requirements placed upon the contractor.

(c) These procedures do not reduce the contracting officer's responsibility for ensuring that obligations are made only on the basis of appropriated funds.

PART 1844—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 1844.1—General

Sec.
1844.102 Policy.
1844.102-70 Special contracting officer consent requirements for critical subcontracts.
1844.102-71 Headquarters review of critical subcontracts.
1844.102-72 New sources of scientific and technical competence.
1844.170 NASA contract clause.

Subpart 1844.3—Contractors' Purchasing Systems Reviews

1844.302 Requirements.
1844.302-70 Contractors' purchasing systems reviews conducted by the Department of Defense.
1844.302-71 NASA-conducted contractors' purchasing systems reviews.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1844.1—General

1844.102 Policy.

1844.102-70 Special contracting officer consent requirements for critical subcontracts.

If the contracting officer (in conjunction with the technical representative, when appropriate) determines that a proposed subcontract may be critical because of special considerations in the source selection or in the incentive arrangements, or for other reasons, a requirement shall be included in the Schedule of the prime contract (if not already provided for in the standard subcontracts clause) for the contracting officer to be notified of and consent to the critical subcontract before its award by the contractor.

1844.102-71 Headquarters review of critical subcontracts.

(a) If a requirement is established by the Headquarters source selection official or the Assistant Administrator for Procurement for a Headquarters review of a critical subcontract prior to its award, the contracting officer shall—

(1) Require consent as specified in 1844.102-70; and

(2) Before consenting to the subcontract, submit to the Assistant Administrator for Procurement (Code HS) for review—

(i) The subcontract;

(ii) Contractor documentation in support of the subcontract (including that required by the notification provisions of the subcontracts clause); and

(iii) The contracting officer's review and evaluation (in accordance with FAR 44.202), with appropriate recommendations.

(b) Consent shall not be granted by the contracting officer until notification (with limitations and objections, if any) is received from the Assistant Administrator for Procurement.

1844.102-72 New sources of scientific and technical competence.

As a Government agency whose mission involves substantial Federal expenditures and use of national resources, NASA has a strong interest in helping accomplish collateral national economic goals within the framework of applicable statutory and administrative authority in a way that will not impair program effectiveness. Utilization in the space program and the accompanying development of the potential of all geographical regions will effectively contribute to achieving national goals. To advance the further development of competence and capacity of sources, NASA encourages the placing of subcontracts over wider geographic areas. To carry out these objectives, the clause at 1852.244-70, Geographic Participation in the Aerospace Program, shall be used as prescribed at 1844.170.

1844.170 NASA contract clause.

The contracting officer shall insert the clause at 1852.244-70, Geographic Participation in the Aerospace Program, in all research and development solicitations anticipated to exceed $500,000 and in resulting contracts of $500,000 or over to be performed within the United States.

Subpart 1844.3—Contractors' Purchasing Systems Reviews

1844.302 Requirements.

1844.302-70 Contractors' purchasing systems reviews conducted by the Department of Defense.

(a) Under FAR 42.202 and 42.302(a)(50), assignment of contract administration automatically confers authority to conduct a contractor purchasing system review (CPSR) and approve or disapprove a contractor's purchasing system. In accordance with FAR 44.307, when assigning contract administration to a DOD contract administration office, the contracting officer shall include in the letter of delegation of contract administration functions a requirement for the contract administration office to send one copy of each CPSR summary report to the cognizant NASA contracting officer.

(b) NASA installations desiring to provide full-time participants for any DOD CPSR shall forward a request for such participation to the Assistant Administrator for Procurement (Code HM) for approval. Incidental assistance by NASA personnel to DOD personnel who are performing CPSRs for NASA does not require Headquarters approval.

(c) Contracting officers shall advise the cognizant DOD contract administration office of weaknesses in a contractor's purchasing system that have come to light during the review of subcontracts or from other sources.

(d) Contracting officers are responsible for reviewing DOD summary reports (which include present system status, comments, conclusions, recommendations, and significant

changes effected since the review) and notifications to contractors. When there is a determination that is at variance with the summary report or actions taken by DOD, the contracting officer shall forward a request for approval of alternative actions, with justification, to Code HM. Similarly, a contracting officer desiring the withdrawal of a DOD approval of a contractor's purchasing system on the basis of a determination that there has been a deterioration of the system, or to otherwise protect the Government's interests shall forward a request for such withdrawal to Code HM with appropriate justification.

1844.302-71 NASA-conducted contractor's purchasing systems reviews.

If a NASA activity is the cognizant contract administration office, that office may use DAR Supplement No. 1, Contractor Purchasing System Review (CPSR) Program, as incorporated in the DOD FAR Supplement, as a guide.

PART 1845—GOVERNMENT PROPERTY

Subpart 1845.1—General

Sec.
1845.102 Policy.
1845.102-70 Procedures.
1845.104 Review and correction of contractors' property control systems.
1845.104-70 Contract property administration by the Government.
1845.106 Government property clauses.
1845.106-70 NASA contract clauses.
1845.106-71 Plant reconversion and plant clearance.

Subpart 1845.3—Providing Government Property to Contractors

1845.301 Definitions.
1845.302 Providing facilities.
1845.302-1 Policy.
1845.302-2 Facilities contracts.
1845.302-3 Other contracts.
1845.302-70 Securing approval of facilities projects.
1845.302-71 Acquisition of ADPE.
1845.302-72 Long-term facilities use.

Subpart 1845.4—Contractor Use and Rental of Government Property

1845.402 Authorizing use of Government production and research property.
1845.403 Rental—Use and Charges clause.
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1845.406 Use of Government production and research property on independent research and development programs.
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1845.505-2 Records of pricing information.
1845.505-670 Reporting centrally reportable equipment (CRE).
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Subpart 1845.6—Reporting, Redistribution, and Disposal of Contractor Inventory

1845.604 Restrictions on purchase or retention of contractor inventory.
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1845.613 Property disposal determinations.
1845.615 Accounting for contractor inventory.

Subpart 1845.70—NASA Equipment Management System

1845.7001 Policy.
1845.7002 Application.
1845.7003 General.
1845.7004 Interface with NEMS coordinators and technical project office.
1845.7005 Retention of NEMS equipment.

Subpart 1845.71—Forms Preparation

1845.7101 Instructions for preparing NASA Form 1018.
1845.7101-1 Property classification accounts.
1845.7101-2 Transfers of property.
1845.7101-3 Submission of reports.
1845.7101-4 Report coverage.
1845.7101-5 Exclusions.
1845.7101-6 Space hardware reporting requirements.
1845.7101-7 Completed space hardware.
1845.7101-8 Completed spare parts and components for space hardware.
1845.7101-9 Space hardware work in process.
1845.7101-10 Contractor's privileged financial and business information.
1845.7102 Instructions for preparing DD Form 1342.
1845.7103 Instructions for preparing DD Form 1419.

Subpart 1845.72—Contract Property Management

1845.7201 Definitions.
1845.7202 General.
1845.7203 Delegations of property administration and plant clearance.
1845.7204 Retention of property administration and plant clearance.
1845.7205 Functional oversight of property administration and plant clearance.
1845.7206 Responsibilities of property administrators and plant clearance officers.
1845.7206-1 Property administrators.
1845.7206-2 Plant clearance officers.
1845.7207 Initiation of property administration.
1845.7207-1 Control of assignments.
1845.7207-2 Analysis of contract and establishment of contract property control data files.
1845.7208 Initial evaluation and approval of contractor's property control system.
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1845.7208-7 Letter of approval.
1845.7209 Property administration during contractor performance.
1845.7209-1 Property administration plan.
1845.7209-2 System surveys: surveillance.
1845.7209-3 System surveys: scheduling and planning.
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1845.7209-5 Performing the system survey.
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1845.7209-7 Correction of unsatisfactory conditions.
1845.7209-8 Survey case file.
1845.7209-9 Additional administrative responsibilities.
1845.7209-10 Declaration of excess property.
1845.7210 Closure of contracts.
1845.7210-1 Completion or termination.
1845.7210-2 Final review and closing of contracts.
1845.7211 Special subjects.
1845.7211-1 Government property at alternate locations of the prime contractor and subcontractor plants.
1845.7211-2 Loss, damage, or destruction of Government property.
1845.7211-3 Loss, damage, or destruction of Government property while in contractor's possession or control.
1845.7211-4 Financial reports.
1845.7212 Contractor utilization of Government property.
1845.7212-1 Utilization surveys.
1845.7212-2 Records of surveys.
1845.7212-3 Scope of survey.
1845.7213 Statistical sampling.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1845.1—General

1845.102 Policy.

(a) One reason for the policy in FAR 45.102 that contractors shall ordinarily furnish all property is that providing Government property (whether Government-furnished or contractor-acquired) increases the Government's administrative burden and requires recordkeeping and personnel. Providing property may dilute the contractor's overall responsibility and weaken

guarantees, end-item delivery requirements, and other contract terms. Furnishing property places NASA between the source of the property and the contractor. When NASA assumes responsibility for scheduling delivery of the property, NASA may be responsible for delays.

(b) Nevertheless, sometimes providing Government property to contractors may be essential to contract performance or otherwise advantageous to NASA. For example, furnishing standardized production property and raw materials may be necessary for uniformity of products. Furnishing Government property can reduce the production cycle by eliminating the lead time necessary for the contractor to acquire or fabricate production property. NASA may be able to broaden its competitive base by offering property to firms unable to acquire their own, or by offering production property or critical material not generally available throughout the industry. NASA may lower contract costs by offering existing Government property or new Government property obtainable at prices lower than those available to the contractor. NASA may also provide Government property to educational or other nonprofit institutions to facilitate scientific research.

1845.102-70 Procedures.

The contracting officer shall, as applicable, include in each solicitation a—

(a) List of any Government property (showing location and condition), including Government-owned tooling, that will be furnished for the performance of the contract and any related special provisions;

(b) Requirement that information be furnished regarding:

(1) Any Government-owned facilities or items of industrial equipment or special tooling requested to be used in performing the contract,

(2) Their acquisition cost,

(3) Identification of the Government contract under which the property is accountable,

(4) Rental provisions, and

(5) Other relevant matters;

(c) Requirement that additional facilities that the offeror requests to be provided by the Government be described and identified by category, such as "Land," "Buildings," and "Equipment" (see Subpart 1845.71); and

(d) Requirement that additional special test equipment that the offeror requests to be provided by the Government be described and its intended use, estimated cost, and proposed location be shown.

1845.104 Review and correction of contractors' property control systems.

(a) When review of the contractor's property control system is not delegated to DOD, the NASA contracting officer or property administrator shall conduct the review as required in Subpart 1845.72.

(b) In each solicitation under which use of Government property is contemplated, the contracting officer shall require the offeror to—

(1) Furnish the date of the last Government review of its property control and accounting system and describe actions taken to correct any deficiencies found;

(2) State that the offeror has reviewed, understands, and can comply with all property management and accounting procedures in the solicitation, FAR Subpart 45.5, and Subparts 1845.5, 1845.70, and 1845.71 of this Regulation; and

(3) State whether the costs associated with subparagraph (b)(2) of this section are included in its cost proposal.

1845.104-70 Contract property administration by the Government.

DOD will conduct contract property administration in accordance with their regulations and procedures and NASA special delegation instructions. When property administration is not delegated to DOD, NASA shall conduct contract property administration in accordance with Subpart 1845.72.

1845.106 Government property clauses.

In addition to the applicable Government property clauses prescribed in FAR 45.106, the contracting officer shall insert the following clause(s) and provision as appropriate.

1845.106-70 NASA contract clauses and solicitation provision.

(a) The contracting officer shall insert the clause at 1852.245-70, Acquisition of Centrally Reportable Equipment, in all solicitations and contracts that include a Government property clause. See 1845.7103 and the clause at 1852.245-70 for instructions on preparing DD Form 1419.

(b)(1) The contracting officer shall insert the clause at 1852.245-71, Installation-Provided Government Property, in solicitations and contracts when Government property is to be provided to on-site contractors, and the Government will retain accountability for the property. The contracting officer shall identify in the Contract Schedule the nature and extent of such property and the installation supply and equipment management officer will make such property available to the contractor on a no-charge-for-use basis. The contracting officer shall also list in the contract the applicable installation property management directives.

(2) Contracting officers may also use the clause if Government property is provided to off-site local support service contractors. In this case, the concurrence of the installation supply and equipment management officer must be obtained and indicated in the procurement request.

(3) To avoid diluting contractor responsibilities when they include separate procurement authority and responsibility, contracting officers may preclude such contractors from utilizing the installation's central receiving facility for receiving contractor-acquired property. To accomplish this, the contracting officer shall use the clause with its Alternate I. The contracting officer shall review the acquisitions reported by the contractor for their appropriateness, and the supply and equipment management officer shall ensure that records are established.

(4) Contracting officers shall clearly identify in a separate schedule any property provided under a Government property clause but not also subject to the clause at 1852.245-71. The contracting officer shall address any specific maintenance considerations (for example, requiring use of a central calibration facility) elsewhere in the contract.

(c) The contracting officer shall insert the clause at 1852.245-72, Liability for Government Property Furnished for Repair and Services, in fixed-price solicitations and contracts (except for experimental, developmental, or research work with educational or nonprofit institutions, where no profit is contemplated) for repair, modification, rehabilitation, or other servicing of Government property, if such property is to be furnished to a contractor for that purpose. If (1) a substantial quantity of parts or material will be furnished, (2) a significant amount of scrap will result from the work to be performed, or (3) other Government property will be furnished to or acquired by the contractor, the contract will also contain the appropriate Government property clause (see FAR 45.106) and the contract Schedule shall provide that such property shall be governed by the terms of that clause. When minor repairs are obtained under small purchase procedures, the procedures of this paragraph (c) shall not apply. Contracting officers shall not require additional insurance under the clause at 1852.245-72 unless the circumstances clearly indicate advantages to the Government.

(d) The contracting officer shall insert the clause at 1852.245-73, Financial Reporting of Government-Owned/Contractor-Held Property, in all contracts unless (1) it is virtually certain that Government property will not be furnished to or acquired by the contractor (e.g., as in most study contracts and certain contracts for services), (2) the only property to be provided is for the purpose of repair or servicing (see 1852.245-72), or (3) all property to be provided is subject to the clause at 1852.245-71, Installation-Provided Government Property (see paragraph (b) above). Reporting shall be on an annual basis except when an on-site contractor performs property acquisition and management for the Government. In these cases, the Government may require more frequent reporting, and the contracting officer shall use the clause with its Alternate I (monthly reporting) or Alternate II (quarterly reporting) as appropriate. The contracting officer shall insert in the clause the address and office code of a single organization within the cognizant NASA installation designated as the focal point for control and distribution of NASA Form 1018.

(e) The contracting officer shall insert the clause at 1852.245-74, Contractor Accountable On-Site Government Property, in solicitations and contracts when accountability rests with an on-site contractor. The contracting officer shall obtain approval to use the clause at 1852.245-74 in lieu of the clause at 1852.245-71 from Director, Supply and Equipment Management Division (Code NIE), NASA Headquarters. The request for approval shall be written and shall include a determination of costs that will be:

(i) Avoided (e.g., additional costs to the installation's property management systems and staffing) and

(ii) Incurred (e.g., reimbursable costs of the contractor to implement, staff, and operate separate property management systems on-site, and resources needed for performance of, or reimbursement for, property administration) under contractor accountability.

(f) The contracting officer shall insert the clause at 1852.245-75, Title to Equipment, in solicitations and contracts where the clause at FAR 52.245-2 (Alternate II) or 52.245-5 (Alternate I) is used. Insert a dollar value not less than $5,000, based on the particular procurement, and identify the property for which vesting of title with the Government is appropriate.

(g) The contracting officer shall insert the clause at 1852.245-76, List of Government-Furnished Property, in solicitations and contracts if the contractor is to be accountable under the contract for Government property. Insert the name of the Government installation, contractor's plant, or other site(s) where the Government property will be used. Insert a description of the item(s), quantity, acquisition cost, and date the property will be furnished to the contractor.

(h) The contracting officer shall insert the clause at 1852.245-77, List of Installation-Provided Property and Services, in solicitations and contracts that authorize contractor use of on-site Government property and services, such as office space, the cafeteria, or first-aid. Insert the attachment number identifying the equipment to be made available to the contractor. Insert the name of the installation service facilities, such as a library, computer facility, or health center, that the contractor will be authorized to use. The property and services may be specified, modified, and updated to meet the needs of the particular procurement.

(i) The contracting officer shall insert the clause at 1852.245-78, Space Hardware Reporting, in solicitations and contracts where space hardware reporting is contemplated. Insert the space hardware to be reported.

(j) The contracting officer shall insert the provision at 1852.245-79, Use of Government-Owned Property, in all solicitations when Government property may be used by the contractor.

(k) The contracting officer shall insert the clause at 1852.245-80, Use of Government Production and Research Property on a No-Charge Basis, in solicitations and contracts when Government production and research property (facilities, special test equipment, or special tooling) accountable under another contract(s) is authorized for use. Insert the contract number(s) under which the Government property is accountable.

1845.106-71 Plant reconversion and plant clearance.

The contracting officer must obtain the prior approval of the Assistant Administrator for Procurement (Code H) for any solicitation provision or contract clause that would defer negotiation of costs for plant reconversion or plant clearance until after award.

Subpart 1845.3—Providing Government Property to Contractors

1845.301 Definitions.

"Provide," as used in this subpart in such phrases as "Government property provided to the contractor" and "Government-provided property," means either to furnish, as in "Government-furnished property," or to permit to be acquired, as in "contractor-acquired property." See FAR 45.101 for definitions of "contractor-acquired property" and "Government-furnished property."

"Space property," (see 1845.501).

1845.302 Providing facilities.

1845.302-1 Policy.

(a) The Directors of NASA field installations have been designated (see NASA Management Instruction (NMI) 5101.24, Delegation of Authority—To Take Actions in Procurement, Grants, Cooperative Agreements, and Related Matters (Various Officials)) to make determinations required by FAR 45.302-1(a)(4) on providing Government facilities.

(b) When any of the conditions listed in FAR 45.302-1(d) is met, the requirements of FAR 45.302-1(a)(4) do not apply.

1845.302-2 Facilities contracts.

Unless termination would be detrimental to the Government's interests, contracting officers shall terminate facilities contracts when the Government production and research property is no longer required for the performance of Government contracts or subcontracts. Contracting officers shall not grant the contractor the unilateral right to extend the time during which it is entitled to use the property provided under the facilities contract.

1845.302-3 Other contracts.

In addition to the conditions listed in FAR 45.302-3, the contracting officer may also provide facilities to a contractor under a contract other than a facilities contract if the contract is for less than 6 months or provides fewer than 6 items of plant equipment and no other facilities.

1845.302-70 Securing approval of facilities projects.

(a) Pursuant to NMI 7330.1, the contracting officer must approve facilities projects involving leasing, construction, expansion, modification, rehabilitation, repair, or replacement of real property.

(b) The contracting officer's written authorization is required before any change is made in the scope or estimated cost of any facilities project.

1845.302-71 Acquisition of ADPE.

Any contractor proposed acquisition of automatic data processing equipment as defined in the FIRMR shall be—

(a) Submitted on DD Form 1419, or equivalent format, through the contracting officer to the installation's ADPE staff, for screening availability; and

(b) Approved in accordance with the provisions of NASA Handbook 2410.1, "Information Processing Resources Management."

1845.302-72 Long-term facilities use.

For procurements in which:

(a) The proposed contract, exclusive of options, will be for a shorter period than the useful life, for the program, of any required contractor-owned or leased facilities, and

(b) The facilities are unlikely to be needed by the contractor for any purpose other than the program effort being contracted for, see 1807.170-1(i).

Subpart 1845.4—Contractor Use and Rental of Government Property

1845.402 Authorizing use of Government production and research property.

(a) A NASA contracting officer desiring to authorize use of Government production and research property under the cognizance of another contracting officer shall obtain that contracting officer's concurrence. If concurrence is denied, the contracting officer shall raise the matter to a level above that of the cognizant contracting officer.

(b) NASA contracting officers having cognizance over NASA production and research property may authorize its use on contracts of other agencies if such use will not interfere with NASA's primary purpose for the property and will not extend beyond the expected expiration or completion date of the NASA contract.

1845.403 Rental—Use and charges clause.

The Directors of NASA field installations have been designated (see NMI 5101.24, Delegation of Authority—To Take Actions in Procurement, Grants, Cooperative Agreements, and Related Matters (Various Officials)) to make the determinations required by FAR 45.403(a) on modified rental rates.

1845.405 Contracts with foreign governments or international organizations.

(a) It is NASA's policy to recover a fair share of the cost of Government production and research property if such property is used in performing services or manufacturing articles for foreign countries or for international organizations.

(b) The prior written approval of the Assistant Administrator for Procurement (Code H) is required for the use of Government production and research property on work for foreign countries or for international organizations. Before requesting approval, the contracting officer shall obtain the concurrence of the Director, Supply and Equipment Management Division (Code NIE), the General Counsel (Code G), and the Director, International Relations Division (Code XI).

(c) Contracting officers shall forward requests for approval to the Assistant Administrator for Procurement (Code H), along with a summary of the circumstances involved, including at least—

(1) The name of the requesting contractor;

(2) The number of the contract under which the equipment is controlled;

(3) A description of the equipment;

(4) The name of the foreign contractor and the relationship of the foreign contractor to its government or to any international organization;

(5) A description of the articles to be manufactured or services to be performed;

(6) A statement that the intended use will not interfere with the current or foreseeable requirements of the United States or require use of the equipment beyond the expected expiration or completion date of the NASA contract;

(7) A statement that the foreign government's placement of the contract directly with the contractor and the use of Government production and research property is consistent with the best interests of the United States;

(8) A statement that such use is legally authorized; and

(9) Any evidence of endorsement by another agency of the U.S. Government based on national security or foreign policy of the United States.

(d) Use, if approved, shall be subject to rent in accordance with FAR 45.403.

1845.406 Use of Government production and research property on independent research and development programs.

Contractors generally will not be authorized to use Government property for independent research and development on a rent-free basis except in unusual circumstances when it has been determined by the contracting officer that—

(a) Such use is clearly in the best interests of the Government (for example, the project can reasonably be expected to be of value in specific Government programs); and

(b) The policy in FAR 45.201 is adhered to in that no competitive advantage will accrue to the contractor through such use.

1845.407 Non-Government use of plant equipment.

Consistent with the guidelines in FAR 45.407, the following procedures apply to the non-Government use of plant equipment:

(a) Before authorizing non-Government use exceeding 25 percent, the contracting officer shall obtain the approval of the Assistant Administrator for Procurement (Code H). In addition, non-Government use of machine tools and secondary metal-forming and -cutting machines (Federal Supply Classes 3405, 3408, 3410, 3411-3419, and 3441-3449) exceeding 25 percent requires the concurrence of the Director, Supply and Equipment Management Division (Code NIE). Requests for the approval of the Assistant Administrator for Procurement (Code H) shall be submitted at least 6 weeks in advance of the projected use and shall include—

(1) The number of active plant equipment items involved and their total acquisition cost; and

(2) An itemized listing of active equipment having an acquisition cost of $25,000 or more, showing for each item the nomenclature, year of manufacture, and acquisition cost.

(b) The percentage of Government and non-Government use shall be computed on the basis of time available for use. For this purpose, the contractor's normal work schedule, as represented by scheduled production shift hours, shall be used. All active plant equipment having a unit acquisition cost of less than $25,000 located at any single plant may be averaged over a quarterly period. Equipment having a unit acquisition cost of $25,000 or more shall be considered on an item-by-item basis.

(c) Approval for non-Government use shall be for a period not exceeding 1 year. Approval for non-Government use in excess of 25 percent shall not be for less than 3 months.

Subpart 1845.5—Management of Government Property in the Possession of Contractors

1845.501 Definitions.

"Centrally reportable equipment (CRE)" means plant equipment, special test equipment (including components), special tooling, and non-flight space property (including ground support equipment):

(a) Generally commercially available and used as a separate item or component of a system,

(b) Having an acquisition cost of $1,000 or more, and

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(c) Identifiable by a manufacturer and model number.

"Space property" means personal property peculiar to NASA aeronautical and space programs and not otherwise included in the categories of property in FAR 45.501. It includes such items as aircraft, space vehicles, engines, similar components, and related support equipment. The term "space property" is synonymous with the term "agency-peculiar property" as defined in FAR 45.301.

1845.502 Contractor responsibility.

1845.502-1 Receipts for Government property.

Receipts for Government property shall comply with the instructions for preparing NASA Form 1018, Report of Government-Owned/Contractor-Held Property (see 1845.7101).

1845.502-70 Government-furnished property.

All initial Government-furnished property must be described in the contract Schedule or specifications, regardless of property category. Any additional Government-furnished property must be described in a bilateral modification to the contract, with the property categorized and priced. Furthermore, to obtain Government-furnished facilities, the contractor must submit the written statement prescribed by FAR 45.302-1(a)(4). In the event a formal facilities application is also required by the contracting officer, its justification statement on financing will satisfy this requirement.

1845.502-71 Contractor-acquired property.

All contractor-acquired property must be authorized by the contract and is subject to a determination by the contracting officer that it is allocable to the contract and reasonably necessary. The acquisition (and fabrication) of Government property is further subject to the following conditions, depending on category of property:

(a) *Facilities.* (1) Prior contracting officer approval, if the facilities are not already described in a contract Schedule as contractor-acquired.

(2) Submission of DD Form 1419, DOD Industrial Plant Requisition, or equivalent format, and return of Certificate of Nonavailability if the facilities qualify as centrally reportable equipment (CRE).

(3) Submission of the written statement prescribed by FAR 45.302-1(a)(4).

(b) *Special test equipment.* (1) Contracting officer approval 30 days in advance if the equipment is not identified in the invitation for bids (in sealed bidding) or contract (in negotiated procurements).

(2) Submission of DD Form 1419, or equivalent format, and return of Certificate of Nonavailability if the equipment (or any component) qualifies as CRE.

(c) *Special tooling.* (1) If the contract contains a Subcontracts clause, advance notification to the contracting officer and contracting officer consent if required by that clause.

(2) If the contract is a fixed-price contract, submission of the list to the contracting officer within 60 days after delivery of the first production end items (or later as prescribed by the contracting officer), unless the tooling is already identified in the solicitation.

(3) Submission of DD Form 1419 or equivalent format and return of Certificate of Nonavailability if the tooling (or any component) qualifies as CRE.

(d) *Material.* If the contract contains a Subcontracts clause, advance notification to the contracting officer and contracting officer consent if required by that clause.

(e) *Space Property.* (1) If the contract contains a Subcontracts clause, advance notification to the contracting officer and contracting officer consent if required by that clause.

(2) Submission of DD Form 1419, or equivalent format, and return of Certificate of Nonavailability if the property (or any component) qualifies as CRE.

1845.505 Records and reports of Government property.

1845.505-2 Records of pricing information.

If DD Form 250's are used by a NASA installation as invoices or DD 250's or other shipping/delivery documents are used for property receiving purposes, unit prices must be shown for each item of Government property included on the forms.

1845.505-14 Reports of Government property.

(a) *Property accounts.* The contractor's property control system shall be such as to provide the dollar amount of Government property for which the contractor is accountable in the following classifications, in accordance with the instructions in Subpart 1845.71:

(1) Land and rights in land.
(2) Buildings.
(3) Other structures and facilities.
(4) Leasehold improvements.
(5) Plant equipment.
(6) Special tooling.
(7) Special test equipment.
(8) Material.
(9) Space hardware.

(b) *Facilities, special tooling, and special test equipment.* The contractor's property control system shall identify the items in paragraphs (a) (1) through (7) of this section as contractor-acquired or Government-furnished.

(c) *Material and space hardware.* The contractor's property control system shall provide the dollar value of items in paragraphs (a) (8) and (9) of this section for which the contractor is accountable. Reporting of material, however, is required only when the balance on hand at the end of the reporting period is $75,000 or more. Reporting of space hardware is required only by direction of the contracting officer.

(d) *Submission of reports.* When required by the contract (see 1845.106-70(d)), the contractor shall submit a Report of Government-Owned/Contractor-Held Property, NASA Form 1018, in accordance with the instructions in Subpart 1845.7101 and the contract clause at 1852.245-73.

1845.505-670 Reporting centrally reportable equipment (CRE).

(a) NASA-furnished or contractor-acquired CRE as defined in 1845.501 shall be reported to the NASA Equipment Management System (NEMS). The contractor shall initially report all unreported items in its possession and subsequently shall report items to NEMS:

(1) At the time of receipt and acceptance of accountability,

(2) When major changes occur in the data initially submitted to NASA, and

(3) When the equipment is no longer required for or actively being used in pursuit of NASA programs or projects.

Reporting shall be accomplished by completing section I of DD Form 1342, DOD Property Record (see 1845.7102), or by other means acceptable to the contracting officer, provided DD Form 1342-equivalent data elements are furnished. The data furnished when the equipment is reported pursuant to paragraph (a)(3) of this section shall include the equipment's current condition code. Reportable data shall be forwarded through the contracting officer of the cognizant NASA installation within 15 working days after the event that created the need for their preparation and shall be marked "FOR NEMS".

(b) The forms prepared for components shall be clearly marked "COMPONENT".

(c) Each year, the industrial property officer shall provide the contractor a list of NEMS data bank records as of June 30th for that contractor. The contractor shall verify the list or provide the necessary corrections.

1845.508 Physical inventories.

NASA contractors shall reconcile inventories described in FAR 45.508 with the official property records and submit reports to the property administrator within 30 days after inventory completion. The contractor shall investigate all losses of property and discoveries of unrecorded property to determine the:

(a) Causes of the discrepancy and

(b) Actions needed to prevent its recurrence.

Subpart 1845.6—Reporting, Redistribution, and Disposal of Contractor Inventory

1845.604 Restrictions on purchase or retention of contractor inventory.

(a) No contractor may sell contractor inventory to persons known by it to be NASA or DOD personnel who have been engaged in administering or terminating NASA contracts.

(b)(1) The contractor's or subcontractor's authority to approve sale, purchase, or retention at less than cost by a subcontractor, and the subcontractor's authority to sell, purchase, or retain at less than cost contractor inventory with the approval of the contractor or next higher-tier subcontractor does not include authority to approve—

(i) A sale by a subcontractor to contractor or the next higher-tier subcontractor or to an affiliate of the contractor or of either subcontractor; or

(ii) A sale, purchase, or retention at less than cost by a subcontractor affiliated with the contractor or next higher-tier subcontractor.

(2) Each excluded sale, purchase, or retention requires the written approval of the plant clearance officer.

1845.606 Inventory schedules.

1845.606-1 Submission.

See 1845.505-6 for special instructions on intra-agency screening of centrally reportable equipment (CRE).

1845.607 Scrap.

1845.607-70 Contractor's approved scrap procedure.

(a) When a contractor has an approved scrap procedure, certain property may be routinely disposed of in accordance with that procedure and not processed under this subpart.

(b) A plant clearance case shall not be established for property disposed of through the contractor's approved scrap procedure.

(c) The plant clearance officer shall review the contractor's scrap and salvage procedure, particularly regarding sales, before its approval by the property administrator. The plant clearance officer shall ensure that the procedure contains adequate requirements for inspecting and examining items to be disposed as scrap. When the contractor's procedure does not require physical segregation of Government-owned scrap from contractor-owned scrap and separate disposal, care shall be exercised to assure that a contract change that generates a large quantity of property does not result in an inequitable return to the Government. In such a case, the property administrator shall make a determination as to whether separate disposition of Government scrap would be appropriate.

(d) Scrap, other than that disposed of through the contractor's approved scrap procedure, shall be reported on appropriate inventory schedules for disposition in accordance with the provisions of FAR Part 45 and this NASA FAR Supplement.

(e) Silver, gold, platinum, palladium, rhodium, iridium, osmium, and ruthenium; scrap bearing such metals; and items containing recoverable quantities of them shall be reported to the Defense Reutilization and Marketing Service, DRMS-R, Federal Center, Battle Creek, MI 49017-3092, for instructions regarding disposition.

1845.608 Screening of contractor inventory.

1845.608-1 General.

NEMS Coordinators are the focal points at NASA installations for intra-agency screening of centrally reportable equipment (see 1845.505-670). Property Disposal Officers (PDO's) are the focal points at NASA installations for intra-agency screening of all other contractor inventory. NEMS Coordinators/PDO's shall acknowledge receipt of inventory schedules within 30 days and simultaneously provide the plant clearance officer a NASA screening completion/release date. Screening shall be accomplished in accordance with NASA Handbooks 4200.1 and 4300.1.

1845.608-6 Waiver of screening requirements.

The Director, Supply and Equipment Management Division (Code NIE), has been designated to authorize exceptions to screening requirements.

1845.610 Sale of surplus contractor inventory.

1845.610-2 Exemptions from sale by GSA.

Letters seeking exemptions from GSA-conducted sales shall be directed to the Director, Supply and Equipment Management Division (Code NIE).

1845.610-3 Proceeds of sale.

When payments are due the contractor under the contract, and unless the contract provides otherwise, the Government Property clause requires that the proceeds of any sale, purchase, or retention be:

(a) Credited to the Government as part of the settlement agreement,

(b) Otherwise credited to the price or cost of the work covered by the contract, or

(c) Applied in the manner directed by the contracting officer.

The plant clearance officer shall maintain an open suspense record until he or she has verified that credit has been applied, unless another Government representative has specifically assumed this responsibility.

1845.610-4 Contractor inventory in foreign countries.

Foreign disposals shall be accomplished in accordance with NASA Handbook 4300.1.

1845.613 Property disposal determinations.

Determinations to abandon or destroy NASA contractor inventory shall be referred to the installation PDO for subsequent review by the Property Disposal Review Board under NASA Handbook 4300.1.

1845.615 Accounting for contractor inventory.

In addition to the distribution requirements for Standard Form 1424, Inventory Disposal Report, a copy of the form shall be provided to the NASA installation Industrial Property Officer or PDO.

Subpart 1845.70—NASA Equipment Management System

1845.7001 Policy.

In accordance with the policies in FAR Part 8, new equipment shall not be designed, developed, or procured unless it is determined that the requirement cannot be satisfied with items already available. Accordingly, before acquisition by an installation or the issuance of an authorization to a contractor to acquire new centrally reportable equipment (see 1845.501), the NASA Equipment Management System

(NEMS) shall be screened and a certificate of non-availability issued by the cognizant installation NEMS Reutilization Coordinator, attesting to the non-availability of existing Government-owned equipment to satisfy the requirement.

1845.7002 Application.

The NEMS requirements apply to all NASA acquisitions under which equipment reportable to NEMS is acquired either by NASA or by a NASA contractor for use in the performance of NASA work.

1845.7003 General.

NEMS is an agencywide accountability and control system that includes basic information for reutilization of equipment valued at $500 or more held by NASA installations or $1,000 or more held by NASA contractors. General-purpose or standard items of commercial manufacture are registered in NEMS.

1845.7004 Interface with NEMS coordinators and technical project office.

NASA contracting officers with contracts subject to NEMS shall maintain close interface with the installation NEMS Reutilization Coordinator and the technical project office in:

(a) The conduct of contractor reporting to the NEMS,

(b) The screening of NEMS records before authorizing contractors to acquire equipment,

(c) The reporting and processing of equipment no longer required for NASA programs or projects, and

(d) All other matters pertaining to compliance with the property provisions of NASA contracts.

1845.7005 Retention of NEMS equipment.

The contracting officer may authorize retention of NEMS equipment, provided the contractor requests approval in writing concurrently with reporting to NEMS under the provisions of 1845.505–670 and provided the equipment is being:

(a) Held for approved future NASA programs and projects identified to a specific requirement; or

(b) Used on other Government work as approved by the contracting officer.

Approval for the use of equipment on other Government work shall not exceed 6 months beyond its use on NASA work unless loan of the equipment under an interagency agreement has been arranged or action has been initiated for transfer of the equipment to the using agency and appropriate time is allowed for completing the transfer.

Subpart 1845.71—Forms Preparation

1845.7101 Instructions for preparing NASA Form 1018.

This section provides guidance in the preparation of NASA Form 1018 (see Subpart 1853.3), which is required of all contractors that have been furnished, or have acquired, Government-owned property under the terms of their contract. The classifications of property, the related costs to be reported, and the reporting requirements are set forth below:

1845.7101-1 Property classification accounts.

The following property classifications and related costs apply only to financial reporting under NASA Form 1018:

(a) *Land.* This classification includes costs of land, capital improvements to land (except buildings and other structures and facilities), and costs incidental to acquiring and preparing land for use, such as appraisal fees, clearing costs, drainage, grading, landscaping, plats and surveys, removal and relocation of the property of others as part of a purchase contract, removal or destruction of structures or facilities purchased but not used, and legal fees and expenses.

(b) *Buildings.* This classification includes costs of buildings, improvements to buildings, and fixed equipment normally required for the functional use of the building that becomes permanently attached to and made a part of it and cannot be removed without cutting into the walls, ceilings, or floors. Fixed equipment includes plumbing, heating and lighting equipment, elevators, central air-conditioning systems, and built-in safes and vaults. It also includes the cost of all equipment of any type built into, affixed to, or installed in real property if the installation cost, including special foundations or unique utilities or services, or the facility restoration cost after removal, is substantial.

(c) *Other structures and facilities.* This classification includes costs of acquisitions and improvements of other structures and facilities such as airfield pavements; harbor and port facilities; power production facilities and distribution systems; reclamation and irrigation facilities; flood control and navigation aids; storage, industrial, service, and research and development facilities other than buildings; utility systems (heating, sewage, water, and electrical) when they serve several buildings or structures; communication systems; traffic aids; roads and bridges; railroads; monuments and memorials; and nonstructural improvements such as sidewalks, parking areas, and fences. It also includes the cost of all equipment of any type built-in, affixed, or installed where the installation cost, including special foundations or unique utilities or services, or the facility restoration cost after removal, is substantial.

(d) *Leasehold improvements.* This classification includes NASA funded costs of long-term capital improvements (more than 3 years) to leases, rights, interests, and privileges relating to land such as easements, rights-of-way, permits, use agreements, and water, air, and mineral rights. It also includes NASA funded costs of improvements (costing $5,000 or more and determined to be a capital asset) made to land, buildings, and other structures and facilities occupied by a NASA contractor but leased either indirectly through contract or directly by NASA rather than owned by NASA. However, the cost of NASA-owned buildings and other structures and facilities (and improvements to them that meet the criteria for capitalization) occupied by a NASA contractor and located on land not owned by NASA shall be included in the appropriate account(s) described in paragraphs (a), (b), and (c) of this section. A single improvement shall not be accomplished in increments of less than $5,000 in order to avoid adjustment to the fixed asset accounts.

(e) *Plant equipment.* This classification includes costs of personal property of a capital nature for use in manufacturing supplies, performing services, or for any administrative or general plan purpose, which—

(1) Has a unit cost of $5,000 or more;

(2) Has a useful life of 2 years or more; and

(3) Will not be consumed in an experiment.

It includes equipment, machine tools, furniture, vehicles, accessory or auxiliary items, and test equipment (but not special test equipment, special tooling, or space hardware as defined in paragraphs (f), (g), and (i) of this section.)

(f) *Special tooling.* This classification includes the cost of jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, all components of these items, and replacement of these items, that are of such a specialized nature that, without substantial modification or alteration, their use is limited to the development or production of particular supplies or parts thereof or to the performance of particular services. It does not include the cost of material, special test equipment, facilities (except foundations and similar improvements necessary for installing special tooling), general or special machine tools, or similar capital items.

(g) *Special test equipment.* This classification includes costs of either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract; items or assemblies of equipment, including standard or general purpose items or components, that are interconnected and interdependent so as to become a new functional entity for special testing purposes. It does not include costs of material, special tooling, facilities (except foundations and similar improvements necessary for installing special test equipment), and plant equipment items used for general plant testing purposes.

(h) *Material.* This classification includes costs of property that may be:

(1) Incorporated into or attached to an end item to be delivered under a contract or (2) Consumed or expended in performing a contract.

It includes, but is not limited to, raw and processed material, parts, components, assemblies, and small tools and supplies that may be consumed in normal use in performing a contract. This classification does not include material that is part of space hardware work in process reported on NASA Form 1018, Schedule II, when required by the terms of the agreement, or material that has been issued from inventory and charged to a contract item. It is intended to include all Government-owned material that normally would be considered as materials inventory for balance-sheet purposes.

(i) *Space hardware.* This classification applies only to those items of space property and components specifically identified in the Annual List of Selected Items of Space Hardware (see 1845.7101–6). It includes the cost of personal property unique to NASA aeronautical and space programs and not otherwise included in the classifications of property set forth in paragraphs (a) through (h) of this section. Space hardware is divided as follows for financial reporting purposes:

(1) Completed space hardware, systems, and subsystems (includes the cost, actual or estimated, of such items as aircraft, engines, space vehicles, satellites, spacecraft, and rockets, including components provided for prototypes, mock-ups, or fit checks, or for such other reasons as may be specified in the contract).

(2) Spare parts and components (includes the cost, actual or estimated, of deliverable spare parts and components employed as spare parts to be used for the purpose of emergency replacement, repair, or modification after the fabrication of space hardware). These types of property are commonly referred to as "logistics spares" or "test support spares" and do not include components utilized by the contractor that are not deliverable as spares and that are included as work in process.

(3) Space hardware work in process (includes the actual or estimated fabrication costs as of the date of the report of undelivered space hardware and associated systems, subsystems, spare parts, and components provided or acquired and charged to work in process pending incorporation into an end item). Such items are included in what is sometimes called production inventory and include programmed extra units to cover replacement during the fabrication process (production spares). Also included are progress payments to firm-fixed-price subcontractors for undelivered items.

1845.7101-2 Transfers of property.

So that NASA may properly control and account for contractor-held Government property (both Government-furnished and contractor-acquired), all transfers to another contract, contractor, NASA installation, or other Government agency shall be adequately documented. Such transfers shall be accomplished only through the NASA installation responsible for the contract from which the property is being transferred.

(a) *Transfers by contractors*—(1) *Approval and notification.* The contractor must obtain the contracting officer's or designee's approval for transfers of property before shipment. Shipping documents shall specify the appropriate property classification, such as plant equipment, special test equipment, special tooling, or space hardware. Shipping contractors shall notify the cognizant property administrator of transfers of property by furnishing a copy of the shipping document. Shipping and receiving contractors shall promptly notify their respective NASA financial management offices when accountability for Government property reportable on NASA Form 1018 is transferred to, or received from, other contracts, contractors, NASA installations, or Government agencies. Copies of shipping/receiving documents will suffice in most instances.

(2) *Documentation.* The shipping contractor shall prepare an acceptable form of documentation such as DD Form 250, Material Inspection and Receiving Report; DD Form 1149, Requisition and Invoice/Shipping Document; or similar forms to cover movement of Government property to other Government agencies. Established procedures for the use of such forms shall be strictly followed. Each shipping document must contain contract numbers, shipping references, property classifications in which the items are recorded, unit prices, and any other appropriate identifying or descriptive data. Unit prices shall be obtained from records maintained pursuant to the provisions of FAR Part 45 and Part 1845 of this regulation.

(3) *Reporting.* In addition to the required shipping documentation, all transfers of reportable property occurring during the reporting period shall be reflected in column (b), Government-Furnished Additions, of NASA Form 1018 by the receiving contractor and in column (e), Disposals, of NASA Form 1018 by the shipping contractor.

(4) *Reclassification.* Reclassifications between property accounts shall be accomplished by the contractor holding the property at the time reclassification takes place. If property is transferred to another contract or contractor, the receiving contractor shall record it in the same property classification and amount appearing on the shipping document. (For example, when a contractor receives an item, by transfer from another contractor or NASA installation, that is identified on the shipping document as plant equipment but that the recipient intends to incorporate into special test equipment, the recipient shall first enter the item in the plant equipment account and subsequently reclassify it as special test equipment.) The reclassification of plant equipment, special tooling, special test equipment, or space hardware requires prior notification to the property administrator and approval of the contracting officer.

(5) *Incomplete documentation.* If contractors receive transfer documents having insufficient detail to properly record the transfer (e.g., omission of property classification, unit prices, etc.), they shall request the omitted data directly from the shipping contractor or through the property administrator as provided in FAR 45.505–2. Contractors may append a Government-furnished property list to the NASA Form 1018 report when unable to obtain the required data, provided that the list includes—

(i) A description of the property;

(ii) Quantity;
(iii) The shipping document reference;
(iv) The shipper's identity;
(v) The dates shipped or received;
(vi) The dates price data were requested and from whom (shipper or property administrator); and
(vii) The NASA Form 1018 line item (type/account) to be adjusted.

(b) *Other transfers*—(1) *Intracontractor transfers.* Any transfer of Government property between contracts of a single contractor, whether administered by the same NASA installation or by different NASA installations, requires the same approval, notification, and documentation set forth in paragraph (a) of this section.

(2) Transfer to Government agencies other than NASA. Transfers of Government property to other Government agencies can be accomplished only through the NASA contracting officer and require the same approval, notification, and documentation set forth in paragraph (a) of this section.

(3) Recovered space hardware. Space hardware recovered after flight and transferred to a contractor for analysis, repair, refurbishment, or other purposes shall not be reported on subsequent NASA Forms 1018 as space hardware unless accountability has been transferred and the contractor is specifically directed to report the item.

1845.7101-3 Submission of reports.

(a) When the contract includes the Financial Reporting of Government-Owned/Contractor-Held Property clause, the contractor shall prepare a Report of Government-Owned/Contractor-Held Property, NASA Form 1018, in accordance with these instructions and those on the NASA Form 1018.

(b) The contractor shall submit four copies of NASA Form 1018 for the period ending June 30 in accordance with the clause not later than July 31 of each year, when reporting is required annually. When more frequent reporting is required, the due date shall be not later than the last day of the month following the period being reported. The reporting requirement shall not be less frequent than annually; in all cases a report shall be required as of June 30.

(c) Negative reports shall be submitted when appropriate.

(d) The contractor shall submit a final report within 30 days after disposition of all property subject to reporting.

1845.7101-4 Report coverage.

(a) The NASA Form 1018 shall include the cost of all Government-owned property, except as noted in 1845.7101-5, in the possession of the contractor and first-tier subcontractors under each prime contract, using the prime contractor's records to the extent practicable when the subcontractor reporting is delayed.

(b) Government-owned material held in storage by the contractor and subcontractor shall be reported only when the balance on hand at the end of the reporting period is $75,000 or more for each government prime contract, including the amounts under subcontracts.

(c) Space hardware shall be reported only if reporting is specifically requested in writing by the contracting officer, and reporting shall be limited to those items identified on the Annual List of Selected Items of Space Hardware (see section 6).

1845.7101-5 Exclusions.

The following items shall not be reported on NASA Form 1018:

(a) Plant equipment having a unit cost of less than $5,000.

(b) Industrial facilities under construction or material held for use in construction of industrial facilities.

(c) Scrap or salvage.

(d) Items ordinarily reportable but furnished to the contractor for repair and return to NASA (except as required in 1845.7101-2(b)(3)).

(e) Work in process except as required in Schedule II, Space Hardware Reportable Items, of NASA Form 1018.

(f) Materials issued for consumption.

(g) Materials held in storage, if the cost at the close of the reporting period is less than $75,000.

(h) NASA shipping containers.

(i) Space hardware under firm-fixed-price contracts and subcontracts, unless progress payments are specified (see 1845.7101-1(i)(3)).

(j) Space property, except those items specifically identified as space hardware and required to be reported in accordance with 1845.7101-6 below.

(k) Installation property made available pursuant to the clause at 1852.245-71.

1845.7101-6 Space hardware reporting requirements.

(a) The contracting officer may require reporting on space hardware for cost reimbursement and incentive contracts and first-tier subcontracts if the estimated cost and fee of the contract exceeds $500,000 and any one or a combination of the individual reporting categories (i.e., completed space hardware, components and spare parts, and work in process) exceeds $75,000.

(b) The contracting officer shall specify the items of space hardware for reporting before June 1 of each year on the basis of the Annual List of Selected Items of Space Hardware, issued by the Director of Financial Management, NASA Headquarters (Code BF).

(c) Reporting shall become effective with the next report period beginning July 1, or as otherwise stipulated in the contract, and shall continue until all specified items of space hardware are delivered, the contract is terminated, or the item is removed from the List.

(d) The reports shall contain—

(1) The reportable items on hand, consisting of the cost and quantity of completed space hardware and the cost of related independent completed systems and subsystems;

(2) The total amount for completed spare parts and components relating to paragraph (d)(1) of this section; and

(3) The total amount for work in process of fabrication relating to the preceding items.

(e) Costs reported on Schedule II shall not be considered in reimbursing the contractor for work performed or for termination proceedings. Costs shall be computed in accordance with accepted accounting principles, be reasonably accurate, and be the product of any one, or a combination, of the following:

(1) Abstracts of cost data from the contractor's property or financial records.

(2) Computations based on engineering and financial data.

(3) Estimates based on NASA Form 533 reports.

(4) Formula procedures (e.g., using a 50-percent factor for work-in-process items, on the basis of updated Standard Form (SF) 1411 estimates or the contractor's approved estimating and pricing system).

(5) Other approved methods.

(f) If the same item is being fabricated for more than one project, contractors shall report by contract item the completed space hardware, related independent systems and subsystems, spare parts, and work in process.

(g) When a contract provides for two or more different and completed space property items, some of which are not included in the List, contractors shall report the actual cost of those items, if possible, or use a reasonable basis permitted by the contractor's records or a basis provided in paragraph (e) of this section.

(h) Contractors shall report the cost of items of space hardware, systems, and subsystems using their records that are part of the prescribed property or financial control system as provided in 1845.7101-3; however, fee, tooling, and other nonrecurring costs shall be excluded. Fabrication costs shall be based on the contractor's approved estimating and pricing or property control system and should include—

(1) Direct labor;

(2) Direct materials and purchased parts (costs of purchased items shall be consistent with the contractor's approved pricing methods);

(3) Other direct costs (e.g., computer costs, travel, and transportation);

(4) Overhead (a percentage factor or rate applied to the direct costs or other applicable base); and

(5) Costs of Government-furnished property applied (data available from the shipping document—e.g., DD Form 250, 1149, or similar form—or estimated if necessary).

1845.7101-7 Completed space hardware.

(a) Completed space hardware includes configurations of spacecraft, satellites, rockets, etc. (including integrated systems and subsystems) and completed, but not yet integrated, systems and subsystems held by the prime contractor and first-tier subcontractors.

(b) Items of space hardware covered in paragraph (a) of this section that are completed and deliverable shall not be broken down into systems and subsystems for the purpose of reporting.

(c) The contractor shall redetermine the cost of items returned for modification or rehabilitation to include the appropriate amount of original costs plus any improvements. Costs to modify single shelf items to perform specific tests shall not be included. Contractors shall discontinue reporting space hardware that has been launched, delivered to another contractor or to the Government, or disposed of as authorized by the contracting officer.

1845.7101-8 Completed spare parts and components for space hardware.

(a) In reporting completed spare parts and component items for space hardware, contractors shall include as a single amount for each contract item (as provided in 1845.7101-6(d)) the aggregate cost of those spares and components (see 1845.7101-1(i)(2)) related to the selected list of completed items.

(b) Standard items available from commercial or other sources and held on an inventory basis until requisitioned for use are excluded here but shall be included in "Material" on NASA Form 1018. Contractors shall not include spares or components reported in Schedule II, Space Hardware Reportable Items, of NASA Form 1018 in "Material" on page 1, NASA Form 1018.

1845.7101-9 Space hardware work in process.

(a) Space hardware work in process consists of the total costs by contract item as provided in 1845.7101-6(d). The contractor shall compute the costs—as of the date of the report of those unfinished space hardware units pertaining to the selected list of completed items to be reported—as provided in 1845.7101-6(e). This computation shall include the costs of associated systems, subsystems, and spare parts and components furnished or acquired and charged to work in process pending incorporation into a finished item. These types of items comprise what is sometimes called production inventory and include programmed extra units to cover replacement during the fabrication process (production spares). Also included are end items on which the prime contractor or a subcontractor has begun work.

(b) Unless accountability has been transferred to the contractor, the contractor normally shall not include space hardware spare parts and components returned for repair or modification in the in-process inventory (or spare parts and components inventory). Units or lots that are incomplete for any reason, such as obsolescence or faulty fabrication, or by direction of the contracting officer, shall not be reported in NASA Form 1018, Schedule II.

(c) Historical costs on NASA Form 533, Contractor Financial Management Reports, may be used (see 1845.7101-6(e)) if they apply to the selected items to be reported and are consistent with the costing of completed items. When costs are taken from the NASA Form 533, the cost of Government-furnished property shall be added (where applicable) or listed as provided in 1845.7101-2(a)(5). The costs shall then be adjusted for completed items and spare parts, etc., inventoried elsewhere or shipped to and accepted by a third party.

1845.7101-10 Contractor's privileged financial and business information.

If a transfer of property between contractors will involve disclosing costs of a proprietary nature, the contractor shall furnish unit prices only on those copies of the shipping documents that are sent to the shipping and receiving NASA installations. Transfer of the property to the receiving contractor shall be on a no-cost basis.

1845.7102 Instructions for preparing DD Form 1342.

The instructions in this section shall be used in the preparation of DD Form 1342, DOD Property Record, to report newly acquired equipment, items not previously reported, major changes in the data initially submitted, or equipment no longer required for or actively being used in the pursuit of NASA programs or projects. Use of DD Form 1342 is not mandatory if the same information is provided in an alternative format. Only one initial report is required. In-use items shall be reported initially to the NASA Equipment Management System (NEMS) through the contracting officer (see 1845.505-670) by use of this form by checking "Active" and "Initial" in Block 1. Identify idle items being initially reported by checking "Idle" and "Initial" in Block 1.

Block 1. Check appropriate boxes to indicate "Active" or "Idle" report and that the report is an "Initial" or "Changed" report.

Block 2. Enter the Julian date of preparation of the form. The first character is the last digit of the current calendar year, and the next three characters are the Julian date of the year.

Block 3. Enter the Identification Number/Government Tag Number as recorded on the identification plate affixed to the equipment.

Section I—Inventory Record

Block 4. Not applicable.

Block 5. Enter the first four digits of the National Stock Number, if known.

Block 6. Indicate in dollars (omit any symbols, decimal points, commas, etc.) the acquisition cost used for property accounting purposes. This acquisition cost is the price of the basic item plus any accessories and auxiliary equipment procured and delivered with it. If the initial acquisition cost data are not available, use an estimated acquisition cost (based on known costs at the time of manufacture of the same or similar equipment), price lists for the period involved, or the best available price from other sources in NASA or DOD that will achieve conformity of prices for like items of equipment.

Block 7. Not applicable.

Block 8. Enter the last two digits of the year the item was manufactured. If the actual year of manufacture cannot be determined, estimate the date and place an "E" immediately preceding the entry.

Blocks 9 through 13. Not applicable.

Block 14. Enter the name of the manufacturer of the equipment being reported. Do not use a distributor's or vendor's name. Enter "Unknown" when the manufacturer is not known.

Block 15. This is a five-digit numerical code identifying the manufacturer, obtained from Cataloging Handbook H4-1.

Block 16.

a. Enter the manufacturer's model, style, or catalog number for the equipment being reported. Always use the model number, if available. Style number is next in preference.

When the manufacturer does not assign a model, style, or catalog number, enter "None".

b. When unable to locate a model number, refer to the manufacturer's brochure or purchase order. If the model number is obtained from other than the equipment, indicate the source in "Remarks," Block 54.

Block 17. Enter the serial number taken from the equipment. If a serial number is not assigned to the item, enter "None".

Blocks 18 through 21. Not applicable.

Block 22. Enter Certificate of Nonavailability number from Block 41, DD Form 1419 or other screening document.

Block 23. Not applicable.

Block 24. Not applicable.

Block 25. Enter the complete contract number under which the contractor is accountable for the item. This normally will be a facility contract number. Otherwise, enter the procurement contract number.

Block 26. Enter the complete description of the item.

Block 27. Not applicable.

Block 28. Enter the NASA installation or company name, street address, city, state, and zip code of the physical location of the equipment. If the physical location is a subcontractor's plant, enter the name of the prime contractor above the subcontractor's name. Do not use the office address if different from the plant address. If no street address exists, enter "No street address".

Blocks 28a and 29. Not applicable.

Section II—Inspection Record

Not applicable, except for Block 52, which should be completed when reporting (in accordance with 1845.505–670) that an item is no longer required for or actively being used in pursuit of NASA programs or projects.

Section III—Remarks. Not applicable

Section IV—Disposition Record. Not applicable

Section V—Validation Record. Not applicable

1845.7103 Instructions for preparing DD Form 1419.

(a) The contractor shall enter the essential information covering Sections I and II before submission of DD Form 1419, DOD Industrial Plant Equipment Requisition, to the NEMS Coordinator. The NEMS Coordinator shall review each submission for completeness and authenticity. Incomplete or invalid requests shall be returned for correction. The original and two copies of the approved DD Form 1419, or equivalent format, may be forwarded to Defense Industrial Plant Equipment Center (DIPEC) for screening of inventories. Upon completion of the screening process, DIPEC will annotate the results of the screening in section IV or V. Certification of nonavailability when cited in section V is evidence that screening has been accomplished by NASA/DIPEC. DIPEC will return the original and one copy of the request to the NEMS Coordinator of the cognizant NASA installation indicated in section III.

(b) When a suitable item is allocated in section IV, inspection of the equipment is recommended. Notification of acceptance or rejection of the item offered must reach NASA/DIPEC within 30 days after allocation. A copy of the DD Form 1419, or equivalent format, will serve as the clearance document to inspect the equipment at the storage site. Note acceptance or rejection of the item, without inspection or after inspection in section VI. If the item is acceptable, execute section VII. Cite the NASA appropriation symbol where applicable in section VII. In either instance, acceptance or rejection, the NEMS Coordinator shall return the original of the DD Form 1419, or equivalent format, to DIPEC when items have been offered by DIPEC.

(c) The NEMS Coordinator shall assign a requisition number to each DD Form 1419, or equivalent format request. If DIPEC will be screened, the NEMS Coordinator shall code each number assigned for automatic data processing by DIPEC. The NEMS Coordinator shall also identify the requiring installation and provide a serial number and date of submission for subsequent reference. The NEMS Coordinator shall begin the requisition number with the appropriate installation FEDSTRIP/MILSTRIP Activity Address Code.

(d) Next will be a four-digit entry comprised of the last digit of the current calendar year and the Julian date of the year. For instance, February 4, 1969, would be written as 9035. The last entry will be a four-digit number from 0001 to 9999 to sequentially number requisition forms prepared on the same date. For example, the ninth requisition prepared on February 1, 1969, would be 9032–0009, preceded by the FEDSTRIP/MILSTRIP Activity Address Code. When submitting subsequent DD Forms 1419, or equivalent format, related to the item requested, the NEMS Coordinator shall use the same requisition number and add the alpha code to the end of the requisition number to indicate a second or third action on the basic request. Alpha "A" would indicate a second request, "B" a third, etc. In this manner, all actions, correspondence, etc., relative to a given request can be identified at all levels of processing by the use of the requisition number.

(e) Detailed directions for completing the DD Form 1419 follow. When DIPEC listed equipment is not being requested, the contractor may elect to provide the required data in an equivalent format, which complies with these directions.

Section I

Item Description. To ensure adequate screening, the item description must be complete. For single-purpose equipment or general-purpose equipment with special features, requests must contain detailed descriptive data as to size and capacities, setting forth special operating features or particular operations required to be performed by the item.

Block 1. Not applicable.

Block 2. Enter the manufacturer's name and Federal Supply Code for manufacturer (Cataloging Handbook H4–1) of the item requested.

Block 2a. Enter the manufacturer's model, style, or catalog number assigned to the equipment being requisitioned. Always use the model number, if available. The style number is the next preference. Enter "None" in this block if the model, style or catalog number is not known.

Block 3. Enter the four-digit Federal Supply Class (FSC).

Block 4. Not applicable.

Block 5. Self-explanatory.

Block 6. Place an "X" in the applicable block to indicate whether you desire to physically inspect the item before acceptance.

Block 7. Self-explanatory.

Block 8. Enter the complete description of the item. Continue the description in Block 51 if additional space is needed.

Section II

Block 9. Enter the contractor's name, street address, city, state, and zip code from which the requisition is being initiated. The address should be the one to which inquiries of a technical nature will be referred. Specify the name and telephone number of an individual who will respond to inquiries concerning the request.

Blocks 10 and 10a. Enter the contract number or document number and the date of the document authorizing acquisition of the items shown in Section I. This normally will be a facility contract number. Otherwise it should be a purchase order or procurement request number.

Block 11. Not applicable.

Block 12. Disregard the "Military" block. Show the NASA contract number and program for which the item is to be used.

Block 13. Enter the specific function to be performed by the equipment. When applicable, enter the tolerances, capacities, specifications, etc., that the equipment must satisfy.

Block 14. Determine the date the item must be installed to meet production requirements. From this date deduct the estimated number of days required for installation. Enter the adjusted date in this block.

Block 15. Enter the date by which NASA must issue a Certificate of Nonavailability. Determine the date by subtracting the procurement lead time and 30 days administrative lead time from the date shown in Block 14.

Block 16. Enter the Defense Priority and Allocations System (DPAS) rating assigned to the contract or anticipated purchase order, if applicable.

Block 17. Place an "X" in the appropriate box. If for replacement, identify the item being replaced and the reason for replacement.

Block 18. Place an "X" in the appropriate box. Show the appropriation symbol if the answer is "yes."

Block 19. Not applicable.

Blocks 20 and 21. In addition to the official's title and signature, type the signing official's name, office symbol or name, and telephone number plus extension. The company representative who prepares and submits the requirement to the cognizant NASA certifying office should sign.

Block 22. Self-explanatory.

Block 23. The contracting officer of the NASA installation having jurisdiction over the contract shall certify the need for the item. However, the NEMS Coordinator may certify the need for NASA in-house requirements.

Block 23a. Not applicable.

Block 23b. Enter the name and address of the installation certifying the requirement.

Block 23c. This block is for signature of the property administrator or contracting officer at plant level.

Block 23d. Self-explanatory.

Block 23e. This block is for the signature of NASA installation official certifying the requirement.

Block 23f. Self-explanatory.

Section III

This section is for the NEMS Coordinator's certification of the requirement to DIPEC, when applicable.

Blocks 24 through 27. Self-explanatory.

Section IV

To be completed by DIPEC (a copy is used for admittance to storage site for inspection of property).

Section V

DIPEC or the NEMS Coordinator shall complete this section if equipment is unavailable.

Section VI

Blocks 42 through 45. The requesting official signing section II, Block 20, shall complete Section VI and shall list reasons for non-acceptance in Section VIII, Remarks, or on a separate document attached to the DD Form 1419.

Section VII

Block 46. Enter the complete name, street address, city, state, and zip code of the contractor or installation to which the item is to be shipped. Indicate railhead and truck delivery points when other than the address named.

Blocks 47 and 48. Self-explanatory.

Blocks 49a and b. Ensure that NASA appropriation symbols are included with the work order number.

Block 49c. Enter the NASA appropriation symbol chargeable for any special work ordered (e.g., rebuild, repair, or accessory replacement).

Block 49d. Enter the NASA installation and office symbol for the organization that will make payment for transportation and packing, crating, and handling.

Block 50. Self-explanatory.

Section VIII

Block 51. This block can be used to expand or explain entries made in Blocks 1 through 50. When requisitioning equipment from excess listings, identify the issuing office, list number, date, control number, and item number assigned to the equipment.

Subpart 1845.72—Contract Property Management

1845.7201 Definitions.

"Category," as used in this subpart, means a major segment of a contractor's property control system (e.g., acquisition, receiving, records, storage and movement, consumption, utilization, maintenance, physical inventories, subcontractor control, or disposition).

"Characteristic," as used in this subpart, means a segment of a functional area subject to analysis or review. Characteristics are classified as Class I, subject to statistical sampling, and Class II, subject to judgment or observation techniques.

"Lot," as used in this subpart, means an aggregation of documents, records, articles, or actions selected for review because of common characteristics. For evaluation of the lot, all characteristics for which a lot is tested must be common to all units within the lot.

"Property control system," as used in this subpart, identifies a contractor's internal management program encompassing the protection of, preservation of, accounting for, and control of property from its acquisition through disposition.

"Supporting responsibility," as used in this subpart, relates to the assignment of a subcontract, or a portion of a prime contract being performed at a secondary location of the prime contractor, to a property administrator other than the individual assigned to the prime location.

1845.7202 General.

This subpart describes major elements of the NASA Contract Property Management Program. It provides guidance to NASA installation personnel responsible for NASA contract property (NASA personal property in the possession of contractors). It applies to all NASA installation personnel charged with this responsibility, including industrial property officers and specialists, property administrators, and plant clearance officers. It also provides detailed procedures for property administration. The NASA Contract Property Management Program includes the following three major elements:

(a) Performance of property administration and plant clearance by DOD under delegations from NASA, pursuant to 1842.101.

(b) Performance of property administration and plant clearance by NASA under certain situations, pursuant to 1842.203.

(c) Maintenance of property administration and plant clearance functional oversight, regardless of delegations, pursuant to 1842.175.

1845.7203 Delegations of property administration and plant clearance.

When delegated to DOD, property administration and plant clearance are performed in accordance with DOD's regulations and procedures, as amended by the NASA Letter of Contract Administration Delegation, Special Instructions on Property Administration and Plant Clearance. These Special Instructions are developed by NASA Headquarters, Supply and Equipment Management Division, Code NIE, and are available from that office upon request. The contracting officer shall issue the Special Instructions with delegations whenever Government property will be involved. Additional or more tailored property instructions are not proscribed but must be coordinated with Code NIE before issuance.

1845.7204 Retention of property administration and plant clearance.

NASA may occasionally retain the property administration and plant clearance function, such as for contract work performed at the installation awarding the contract and not subject to the clause at 1852.245–71, Installation-Provided Government Property. In these cases, property administration shall be performed in accordance with Subparts 1845.2 through 1845.7, and plant clearance shall be performed in accordance with FAR Subpart 45.6 and Subpart 1845.6. Under the clause at 1852.245–71, property administration and plant clearance are neither delegated nor retained; they are simply not required because the property is treated as installation rather than contract property.

1845.7205 Functional oversight of property administration and plant clearance.

NASA contracting officers retain functional management responsibility for their contracts. Utilization of the contract administration services of another Government agency in no way relieves NASA contracting officers of their ultimate responsibility for the proper and effective management of contracts. The functional management responsibility for contract property is outlined below. Beyond individual

contracting officers, each NASA installation has designated an industrial property officer to manage and coordinate property matters among the various contracting officers, technical officials, contractor officials, and delegated property administrators and plant clearance officers. Generally, that individual is responsible for the entire contract property management function outlined below; the installation is responsible for the entire function regardless of how it is organized and distributed. The responsibilities are as follows:

(a) Provide a focal point for all management of contract property, including Government property (Government-furnished and contractor-acquired) provided to universities as well as to industry.

(b) Provide guidance to contracting and other personnel on the NASA property provisions.

(c) To the extent feasible, review property provisions of procurement plans, solicitations, contracts, and modifications for potential problems. Propose changes as necessary.

(d) To the extent feasible, participate in pre-award surveys/post-award orientations when significant amounts of Government property will be involved.

(e) Ensure that vesting-of-title determinations are made and documented pursuant to FAR 35.014(b).

(f) Maintain effective communications with delegated property administrators and plant clearance officers to keep fully informed about contractor performance and progress on any property control problems.

(1) Obtain and review property control system survey summaries for all contracts for which property administration has been delegated. Advise Headquarters Code NIE of any severe or continuing problems.

(2) Provide property administrators copies of all pertinent contract property documentation.

(g) Work with the NASA Equipment Management System (NEMS) Coordinator and contracting officers to ensure contractor reporting to and screening of NEMS.

(1) Monitor contractors' performance in submitting DD Form 1419's or equivalent request format before acquiring centrally reportable equipment (CRE) and in submitting DD Form 1342's or equivalent report format after receiving CRE.

(2) Ensure that an annual NEMS verification is performed in accordance with 1845.505-670(c) and NHB 4200.1, paragraph 4.406b.

(h) Review and analyze NASA Form 1018's, Reports of Government-Owned/Contractor-Held Property.

(1) Ensure an annual comparison of 1018's with NEMS in accordance with NHB 4200.1, paragraph 4.406c, to detect possible over/under reporting to NEMS and possible failure to screen NEMS.

(2) Check new disparities disclosed under subparagraph (1) above with the appropriate property administrator and document the results.

(i) Negotiate, or ensure the negotiation of, facilities contracts when required by FAR 45.302 and 1845.302. Advise Headquarters Code NIE annually of new and completed facilities contracts.

(j) Review property administrators' approvals of relief of responsibility for lost, damaged, and destroyed property and question any excessive or repetitive approvals.

(k) When appropriate, make recommendations to source and performance evaluation boards regarding property management and award fee criteria and evaluations regarding property management.

(l) Monitor plant clearance status to preclude delays in contract closeout.

(m) Maintain contract property files for all transactions and correspondence associated with each contract. Upon receipt of Standard Form 1424, Inventory Disposal Report, and DD Form 1593, Contract Administration Completion Record, or equivalents, merge all property records for the contract and forward for inclusion with the official completed file.

(n) Perform on-site property administration and plant clearance when they are not delegated to DOD and the property is not subject to the clause at 1852.245-71. (The remainder of this subpart provides detailed guidance on such property administration).

1845.7206 Responsibilities of property administrators and plant clearance officers.

1845.7206-1 Property administrators.

(a) When property administration is not delegated to DOD, the property administrator shall evaluate the contractor's management and control of Government property and ascertain whether the contractor is effectively complying with the contract provisions. The property administrator's responsibilities include—

(1) Developing and applying a system survey program for each contractor under the property administrator's cognizance;

(2) Evaluating the contractor's property control system and approving or recommending disapproval;

(3) Advising the contracting officer of any (i) contractor noncompliance with approved procedures and (ii) other significant problems the property administrator cannot resolve, and recommending appropriate action, which may include disapproval of the contractor's property control system;

(4) Resolving property administration matters as necessary with the contractor's management, personnel from Government procurement and logistics activities, and representatives of the NASA Office of the Inspector General, of the Defense Contract Audit Agency (DCAA), and of other Government agencies; and

(5) Recognizing the functions of other Government personnel having cognizance of Government property and obtaining their assistance when required. (These functions include, but are not limited to, contract audit, quality assurance, engineering, pricing, and other technical areas. Assistance and advice on matters involving analyses of the contractor's books and accounting records and on any other audit matters deemed appropriate shall be obtained from the cognizant auditor.)

(b) The participation of property administrators (or other Government industrial property personnel) in pre-award surveys/post-award orientations is required whenever significant amounts of Government property will be involved, in order to reveal and resolve property management problems early in the procurement cycle.

1845.7206-2 Plant clearance officers.

When plant clearance is not delegated to DOD, NASA plant clearance officers shall be responsible for—

(a) Providing the contractor with instructions and advice regarding the proper preparation of inventory schedules;

(b) Accepting or rejecting inventory schedules and DD Form 1342;

(c) Conducting or arranging for inventory verification;

(d) Initiating prescribed screening and effecting resulting actions;

(e) Final plant clearance of contractor inventory;

(f) Pre-inventory scrap determinations, as appropriate;

(g) Evaluating the adequacy of the contractor's procedures for property disposal;

(h) Determining the method of disposal;

(i) Surveillance of any contractor-conducted sales;

(j) Accounting for all contractor inventory reported by the contractor;

(k) Advising and assisting, as appropriate, the contractor, the supply and equipment management officer, other Federal agencies, and higher headquarters in all actions relating to the proper and timely disposal of contractor inventory;

(l) Approving the method of sale, evaluating bids, and approving sale prices for any contractor-conducted sales;

(m) Recommending the reasonableness of selling expenses related to any contractor-conducted sales;

(n) Securing antitrust clearance, as required; and

(o) Advising the contracting officer on all property disposal matters.

1845.7207 Initiation of property administration.

1845.7207-1 Control of assignments.

(a) The procurement officer or a designee shall establish and maintain a Contract Assignment Control Register for each contractor, showing the—

(1) Contractor's name and address;

(2) Contract number;

(3) Type of contract;

(4) Date of assignment of the property administrator and his or her name; and

(5) Date of completion or termination of the contract, or transfer of the property administrator.

(b) Property reported received at a contractor's plant without contractual coverage shall be recorded in a suspense file, pending investigation and resolution by the property administrator.

1845.7207-2 Analysis of contract and establishment of contract property control data files.

(a) The property administrator shall analyze each contract providing for Government property to estimate the property administration effort to be applied. The analysis shall be sufficient to establish the management controls necessary for ensuring compliance with contract requirements and development of a suitable system survey program.

(b) The property administrator shall establish Property Summary Data Record containing—

(1) The contractor's name and address, and the contract number;

(2) The type of contract, modifications (including change orders), and special or nonstandard clauses pertaining to Government property;

(3) The date of final review and date of execution and transmittal of the DD Form 1593 or equivalent;

(4) Supporting property administration assignments; and

(5) Name(s) of the property administrator(s) and date(s) of tenure.

(c)(1) The property administrator shall establish a Contract Property Control Data File, which shall include as a minimum—

(i) The Property Summary Data Record;

(ii) A copy of the contract or provisions pertinent to property administration, and comparable data regarding any subcontracts involving Government property;

(iii) The record of initial review, evaluation, and approval of the contractor's property control system; and, if applicable, the record of withdrawal of approval and basis for it, reinstatement of approval, and deviations granted;

(iv) A record of visits and property system surveys performed, including appropriate work papers, deficiencies disclosed, and corrective actions taken;

(v) Contractor's receipts for Government property, when required;

(vi) The record of final review and execution of the property administrator's statement of closure of the contract property account;

(vii) Other pertinent correspondence and documents, including, as applicable, inventory adjustments, investigations, recommendations, and determinations;

(viii) Records concerning supporting property administration delegations; assist actions involving special reviews; and other applicable reviews at subcontractor's plants;

(ix) Records of inspection and audits performed by other activities; and

(x) Reports relating to Government property prepared by the contractor pursuant to the contract.

(2) When more than one contract is involved at one contractor location, records relating to more than one contract shall be transferred to a contractor's General File, and the Property Summary Data Record shall be so annotated.

1845.7208 Initial evaluation and approval of contractor's property control system.

1845.7208-1 General.

Normally, the initial contact by the contract administration office with a contractor is through a post-award orientation. When a conference is held for this purpose, the property administrator shall ensure suitable discussion of property administration requirements and responsibilities. When a conference is not held, the property administrator, upon assignment of a contract, shall forward a letter to the contractor—

(a) Inviting attention to the contractor's responsibilities regarding Government property under the contract, including any specialized controls, and the extent of the contractor's liability for loss, damage, or destruction of Government property during any period in which the contractor's property control system does not have the written approval of the property administrator;

(b) Requesting the name of the contractor's representatives to contact for review and discussion of the proposed property control system; and

(c) Requesting that policies, instructions, and procedures necessary for fully implementing the property control system be available for evaluation.

1845.7208-2 Review of procedures.

(a) Following assignment of an initial contract, the property administrator shall review the contractor's proposed property control system procedures to determine—

(1) Inadequate or questionable areas in the proposed procedures for compliance with NASA contract requirements;

(2) Essential controls not provided by the proposed procedures;

(3) Areas in the proposed procedures requiring physical observation or verification; and

(4) Subcontractors, or secondary locations of prime contract performance, and the need for physical observation or verification of property controls at those locations.

(b) It is normal industry practice to provide for property control by means of written procedures that communicate company standards, techniques, and instructions to operational personnel for uniform application. However, a contractor with few employees may not need written procedures for effective management of Government property. In such cases, the property administrator shall evaluate the adequacy of the contractor's system on the basis of the contractor's explanation of its controls and observation of their application, and shall prepare a brief description of the procedures for inclusion in the Contract Property Control Data File. In the latter instance, the contractor's signature shall be obtained signifying concurrence with the property administrator's written description.

(c) The contractor's plant shall be visited to determine that the contractor's operation of the system provides adequate controls for the Government property to be furnished or acquired.

(d) The means of obtaining the information necessary for approving the contractor's property control system is a matter for the property administrator's

judgment. Test examinations and verification in specific categories may be necessary to ensure the reliability of the final evaluation and permit conclusions as to the acceptability of controls for all categories and the system as a whole.

(e) The property administrator shall examine the contractor's procedures to determine whether they meet the contractual requirements for property control. The property administrator shall test and analyze the contractor's system, noting or commenting on the acceptability of the procedures in preparing the record of system evaluation (see 1845.7208–4).

(f) If the contractor's property control system has previously been approved and a new contract requires the expansion of existing or the establishment of additional controls, the property administrator should normally limit the review to the new requirements. If the system is adequate, the property administrator shall record this fact on the Property Summary Data Record for the contract. Notification to the contractor is not required. However, if the property administrator determines that the contractor's property control system does not adequately meet the new contract requirements, the property administrator shall annotate the Property Summary Data Record for the contract involved appropriately and notify the contractor in writing of the required changes.

(g) In reviewing the contractor's property control system, the property administrator shall consider the provisions of 1845.505–14 and ensure that the contractor's system provides for maintaining financial data and furnishing required reports within the time limits specified.

1845.7208–3 Exit interview with the contractor.

Upon completing the review, the property administrator shall hold an exit interview with the contractor to discuss any category in which the controls or procedures were found inadequate and shall advise where corrective action is required before an approval of the system can be granted. When the contractor is willing to correct a deficiency or questionable practice immediately, the documentation supporting the property administrator's findings and conclusions shall include a statement to this effect. The contracting officer responsible for the predominant value of NASA property at the facility shall attend the exit interview with the contractor if major deficiencies exist in the property control system, past deficiencies remain uncorrected, or the value of the personal property involved exceeds $1,000,000.

1845.7208–4 Record of system evaluation.

Upon completing the evaluation of the contractor's system, the property administrator shall prepare a written summary of findings to support approval of the system or any requirement for corrective action before approval. A report of visit or other documentation may be utilized if the participating contractor and Government personnel are listed, actions taken are adequately described, and the property administrator's determination is clearly stated.

1845.7208–5 Notification of deficiencies.

If deficiencies have been found, the property administrator shall prepare a letter to the contractor for signature by the contracting officer, listing them and noting any agreement by the contractor to correct them. The contractor shall respond within 30 days, providing the precise action to be taken and the time required to correct each deficiency.

1845.7208–6 Resolution of differences.

If the contractor's response is unsatisfactory, the contracting officer, along with the property administrator, shall meet with the contractor in an effort to arrive at a mutually satisfactory corrective program. The contractor shall be requested to confirm in writing any new commitments arising from this meeting. If the contractor fails to correct deficiencies in its property control system within a reasonable period, the contracting officer shall refer the matter by memorandum to appropriate levels of management within the NASA installation and Headquarters staff offices, depending on the criticality of the problem involved. The memorandum shall include—

(a) A specific, concise, and documented statement of the problem;

(b) A statement of the contractor's position; and

(c) The recommended action.

1845.7208–7 Letter of approval.

(a) Approval of a contractor's property control system shall be conditioned upon a joint determination, by the property administrator and the contracting officer that no deficiencies exist in the property control system or that only minor deficiencies exist and the contractor has agreed to correct them.

(b) If the contractor's property control system is acceptable, the property administrator shall advise the contractor in writing. However, if the approval was preceded by correspondence between the contracting officer and the contractor (1845.7208–5 and 1845.7208–6), the property administrator shall reference it in the approval and advise the contractor that the corrective action taken or planned is acceptable. A copy of the letter of approval shall be sent to the contracting officer.

(c) If the contract involves Government property at subcontractor plants or prime contractor secondary locations, or both, and the controls for it are determined adequate, the approval shall be expanded to include the procedures governing Government property at those locations.

1845.7209 Property administration during contractor performance.

1845.7209–1 Property administration plan.

(a) The property administrator shall develop a property administration plan for each contractor's plant, covering the property control system utilized on Government contracts. The plan shall provide for surveys and shall be augmented to cover responsibilities imposed by new contracts, changing conditions, or marginal performance. If approval of the contractor's system is unduly delayed at inception of the contract by the contractor's failure to provide an acceptable system, or is withdrawn because of unsatisfactory conditions disclosed after approval, the property administration plan shall be expanded as necessary to reasonably ensure that loss, damage, or destruction of Government property is disclosed in a timely manner. Special attention shall be given to reasonably ensuring that any loss, damage, or destruction occurring during a period when a contractor's system is not approved is identified before approval or reapproval.

(b) The property administrator must exercise judgment in developing the plan and in determining which categories (see Table 1845–1) of the contractor's property control system warrant examination. Dollar amounts and volume of activity, types of property, complexity of the contractor's system, risk to the Government, and previous experience regarding the adequacy of the contractor's controls are factors determining the extent and scope of the system survey plan.

Table 1845–1—Categories, Functional Areas, Characteristics

(This is not an exclusive list and may be modified as necessary.)

Category 1

Acquisition. The process of acquiring Government property either through requisition or transfer from Government sources or through purchase, including purchases from the contractor's stores.

a. Functional Area: Government-furnished property.

Class	Characteristic
I	(1) Item is contractually authorized.
I	(2) Requesting document is properly prepared and processed.
I	(3) Quantity requested is reasonable but not available in existing stocks at the plant site for use on the requiring contract.
I	(4) Requests are controlled until items are received or requirement cancelled. Status file is maintained.
I	(5) Requests are submitted in a timely manner to minimize use of emergency priorities.

b. Functional Area: Contractor-acquired property.

Class	Characteristic
I	(1) Item is contractually authorized.
I	(2) Quantity ordered is reasonable but not available in existing stocks at the plant site for use on the requiring contract.
I	(3) Purchase order distribution, cancellation, and change are properly controlled.
I	(4) Item description, contract number, and price, are reflected in purchase order.
I	(5) Consent or approval by the contracting officer is obtained as required.

Category 2

Receiving. The process of Government property initially entering into a contractor's custody.

Functional Area: Receiving process.

Class	Characteristic
I	(1) Receiving report adequately describes item and shows count and condition. If quantity, condition, or description differs from that shown on inbound shipping document, proper adjustment document is prepared and property administrator is notified.
I	(2) Receiving report is promptly and properly prepared and controlled, and distribution includes copy to property accounting organization.
I	(3) Item received is properly classified (e.g., special tooling).
I	(4) Item is properly identified and marked during the receiving process.
II	(5) Returnable and reusable containers are properly controlled and accounted for.
II	(6) Misdirected shipments are adequately controlled pending receipt of disposition instructions.

Category 3

Records. The official accounting and subsidiary records maintained by a contractor to show status and to control all Government property furnished to or acquired by it.

a. Functional Area: Inventory control (real and personal property).

Class	Characteristic
I	(1) Accounting record conforms to FAR and NASA FAR Supplement requirements and is accurate.
I	(2) Documentation in support of accounting entries is sufficient.
I	(3) Accounting entries are made without undue delay.
I	(4) Stock levels and reorder points are reflected on record, are reasonably sound, and are consistent with the contract.
I	(5) Accounting records are closed by means of proper accounting entry, adequately supported by documentation.
I	(6) Locator system is adequate and accurate.

b. Functional Area: Fabrication records.

Class	Characteristic
I	(1) Records of items fabricated conform to FAR requirements and are accurate.
I	(2) Documentation in support of accounting entries is sufficient.

c. Functional Area: Receipt and issue file.

Class	Characteristic
I	Records of items conform to FAR and NASA FAR Supplement requirements and are accurate.

d. Functional Area: Custodial records.

Class	Characteristic
I	(1) Custodial record is adequate and accurate.
I	(2) Records are properly closed.

e. Functional Area: Scrap and salvage records.

Class	Characteristic
I	(1) Scrap and salvage records are adequate and accurate.
I	(2) Items reclaimed during salvage operations are properly classified.
I	(3) Documentation in support of record is adequate.
I	(4) Records are properly closed.

f. Functional Area: Multicontract cost and material control system.

Class	Characteristic
I	(1) Records conform to FAR requirements and are accurate.
I	(2) Documentation in support of record is adequate.
I	(3) Accounting entries are made promptly.
I	(4) Records are properly closed.

Category 4

Storage and movement. The process of storing and moving all types of Government property includes movement from one point to another for any purpose and protection during movement and storage.

a. Functional Area: Warehousing.

Class	Characteristic
II	(1) Housekeeping is adequate.
II	(2) Government property is segregated from contractor property.
II	(3) Adequate protection of Government property, including hazardous material, precious metals, sensitive items, etc., is provided.
II	(4) Measures for corrosion prevention, age control, etc., are adequate.

b. Functional Area: Internal and external movements.

Class	Characteristic
II	(1) Item is moved under proper authority, supported by issue slip, shipping ticket, location change order, etc.
II	(2) Adequate protection is provided during movement, such as packing, covering, skidding, proper handling equipment and techniques, and safety precautions.
II	(3) Loss or damage occurring during movement is reported to the property administrator.

Category 5

Consumption. The process of incorporating Government-owned property into an end item or otherwise consuming it in performance of a contract.

a. Functional Area: Reasonableness of consumption.

Class	Characteristic
I	(1) Quantities consumed are reasonable when compared to bill of material, material requirement lists, established scrap rates, etc.
II	(2) Serially numbered or selectively matched items are incorporated in appropriate end item.

b. Functional Area: Conservation.

Class	Characteristic
II	(1) Excesses are promptly returned to stores and recorded.
II	(2) Where appropriate, maximum use is made of repair and salvage procedures in lieu of using new items.
II	(3) Where appropriate, a first-in, first-out (FIFO) system is employed with respect to "dated" items.
I	(4) Records are properly closed.

Category 6

Utilization. The process of utilizing plant equipment, special tooling, special test equipment, material, and space property for the purpose for which furnished or acquired.

a. Functional Area: Plant equipment, special tooling, special test equipment.

Class	Characteristic
I	(1) Item is used for purpose authorized by contract (not diverted to other use).
I	(2) Degree of utilization justifies retention.

b. Functional Area: Material and space property.

Class	Characteristic
I	(1) Item is used for purpose authorized (not diverted to other use).
I	(2) Degree of utilization justifies retention of stock on hand.

Category 7

Maintenance. The process of providing the amount of care necessary to obtain a high quality of production and the most useful life of Government property.

a. Functional Area: Preventive and corrective maintenance.

Class	Characteristic
I	(1) Item is scheduled for periodic maintenance (including technical order compliance).
I	(2) Maintenance is performed according to schedule.
I	(3) Records of normal maintenance and corrective actions are adequate and accurate.

b. Functional Area: Capital-type rehabilitation (includes real property).

Class	Characteristic
I	(1) Inspection is scheduled to determine need for major repair, replacement, or other rehabilitation.
II	(2) Inspection is performed as scheduled and results are reported.
II	(3) Rehabilitation is accomplished when authorized.
II	(4) Records of major repair, replacement, or other rehabilitation, including cost, are adequate and accurate.

Category 8

Physical inventories. The process of physically inventorying Government property and comparing it to records of the property (includes locating and counting, tagging or marking, describing, recording, and reporting results to the property administrator).

a. Functional Area: Performance.

Class	Characteristic
II	(1) Periodic physical inventories are performed.
II	(2) Physical inventories are performed upon termination or completion of contract unless waived by property administrator.
I	(3) Inventoried property is appropriately tagged or marked.
I	(4) Inventory count is accurate.
II	(5) Inventory procedures provide that personnel who perform inventory are not those who maintain the property records or have custody of the property, unless the contractor's operation is so small as to make this impracticable.
II	(6) Results of inventories are reported to property administrator within 30 days.

b. Functional Area: Reconciliation and adjustment.

Class	Characteristic
II	(1) Each instance of loss and discovery of unrecorded property is investigated.
II	(2) Causes are determined for above discrepancies.
II	(3) Actions necessary to prevent recurrence are determined and taken for above discrepancies.
II	(4) Adjustments to records (other than for property losses) are made within 30 days.
II	(5) Adjustments to records for property losses are made within 30 days of contracting officer's or property administrator's notification of relief of responsibility or other determination.

Category 9

Subcontract control. The process of prime contractor control over subcontractors with respect to Government property.

a. Functional Area: Prime contractor controls.

Class	Characteristic
I	(1) Subcontract reflects adequate instructions with respect to subcontractor responsibilities.
I	(2) Records of Government property in possession of subcontractors conform to FAR and NASA FAR Supplement requirements.
I	(3) Adequate documentation supports accounting entries.
II	(4) Prime contractor's surveillance over Government property in possession of subcontractors is adequate.

b. Functional Area: Subcontractor control. If the prime contractor has designated the subcontractor's records and controls as the official contract records and controls of Government property in the subcontractor's possession, or if adequacy of controls cannot be determined by review of the prime contractor's control, the subcontractor's property control system shall be evaluated in the same manner as that of a prime contractor, in accordance with procedures and criteria set forth in this Subpart 1845.72.

Category 10

Disposition. The process of requesting disposition instructions and effecting disposal of Government property.

a. Functional Area: Disclosure of excess.

Class	Characteristic
I	(1) Excess items are screened for use on other contracts before declaration as excess.
I	(2) Items determined excess are promptly reported.
I	(3) Declaration as excess is complete and accurate.
I	(4) Item was allocable to contract from which declared excess.

b. Functional Area: Disposal.

Class	Characteristic
I	(1) There is proper authority for disposition.
I	(2) Item was disposed of within a reasonable time after authority was received.
I	(3) Identification tag is removed from item prior to disposal, when appropriate.
I	(4) Documentation of disposition is complete and reflects authority, disposal action, and date of disposal and is posted to record.
I	(5) When appropriate, proceeds have been credited to the Government.

(End of Table 1845–1)

1845.7209–2 System surveys: surveillance.

The property administrator shall conduct a complete system survey annually to obtain thorough knowledge of the contractor's efficiency and system of property control. Completion of a system survey involving complex property control systems may require detailed tests and evaluations over an extended period of time. If deficiencies in physical control or records are disclosed, the property administrator must (a) ensure that the contractor takes corrective action and (b) evaluate its effectiveness. In such instances, test and evaluation of any one category shall be completed as expeditiously as possible, and the working papers and analysis shall be retained for consideration and incorporation into the summary and survey case file.

1845.7209–3 System surveys: scheduling and planning.

(a) At the beginning of each calendar year, the property administrator shall prepare a schedule showing the names of the contractors and the dates on which each system survey is to be initiated and completed.

(b) Before initiating any system survey, the property administrator shall establish a survey plan providing, as a minimum—

(1) Identification and listing of the categories, functional areas, and characteristics to be evaluated (see Table 1845–1);

(2) Evaluation of approved property control procedures applicable to the categories to be examined, and noting of any portions of them that should be reviewed with operating personnel for possible updating (if a functional area of the property control system is not covered by procedures, no attempt should be made to survey that area at that time, but that area should be recorded as unsatisfactory and action taken to correct the condition); and

(3) Directions for preparing work papers necessary to document the file.

1845.7209–4 Testing the system.

In conducting tests of the contractor's property control system, the following factors should be considered to assure adequate coverage of requirements peculiar to particular classes of property and functional areas:

(a) *Materials.* Materials should be considered as bulk quantities, as contrasted to individual items. Examinations should be directed to—

(1) Tracing inbound transportation units from:

(i) Bills of lading or other transportation documents to receiving reports, in order to verify the receiving reports and to ensure that proper action is taken on shortages, damages, and other discrepancies, and

(ii) Stock records to assure that the receipts were accurately posted;

(2) Abstracting nomenclature and balance data from stock records and making physical counts to determine accuracy of the stock records;

(3) Tracing posting of credits to (i) stock records (by date, reference number, and quantity) and (ii) issue documents, in order to assure accuracy of the postings and validity of the documents (signature by authorized individual and indication of reasons for issue or point of delivery, or both, to indicate proper contract use); and

(4) Determining, to the extent practicable at the point of receipt and use, whether undue quantities are issued, charged to cost, and held on the plant floor rather than being held under better security in stores.

(b) *Custodial items.* Issues shall be traced from stores records to tool cribs, office stock rooms, uniform rooms, and the like, to determine whether they are taken into account as part of a sound control system. It should be determined that issues to contractor personnel are covered by tool chits, uniform slips, or other mechanisms to ensure return, or ability to locate items to be returned, ensuring that new items are not issued without return of worn-out items or that suitable explanation is provided.

(c) *End items.* General techniques for surveying materials are applicable to end items placed in storage pending shipment. Examination shall include tracing from Government acceptance records of the contractor's claims for reimbursement to physical quantities on hand and quantities on validated shipping documents.

(d) *Plant equipment costing less than $5,000.* If summary stock records are used for this class of property, examination using the "bulk quantities" approach in paragraph (a) of this section is applicable but shall also cover—

(1) Identification if required pursuant to FAR 45.505–5 (any identification numbers shall be physically verified); and

(2) Location as prescribed in FAR 45.505(g), creating need for physical verification of presence or absence of the property in the location shown by the location record.

(e) *Plant equipment costing $5,000 or more.* Testing on an item-by-item basis is usually required to achieve desired results. Determinations demanding special attention include whether—

(1) Government screening and approval requirements are observed;

(2) Classification of property is accurate, both at time of requisition or purchase and at time of receipt, through the use of Cataloging Handbooks H2–1, H2–2, and H2–3;

(3) An item is actually applied to the requirement for which acquired, and, if deviation is made, that any necessary notice and Government approval have been obtained;

(4) Receiving documentation is complete and accurate, indicating assignment of identification number, treatment of accessory and auxiliary equipment as required, and the DD Form 1342 (DoD Property Record), or equivalent format, is prepared and processed when required by 1845.505–670;

(5) From physical inspection of the property, the equipment records are accurate, including location and classification as to use (examination shall be conducted from property to records and from records to property); and

(6) Disposition is initiated as required if equipment is no longer required at the plant (examination shall include the adequacy of the procedure for preparing and submitting DD Form 1342 (Property Record), or equivalent format, where specified, propriety of authority for shipment, and proper accounting for accessory and auxiliary equipment).

(f) *Special test equipment.* The examination of special test equipment shall be essentially the same as for plant equipment costing $5,000 or more, except for recognizing the greater complexity of assemblies classified as single items and the possible need for assistance and advice of engineering personnel. Examinations shall include tracing of individual components into the assembly to assure a clear trail, particularly with respect to general purpose test equipment components, and propriety of disposition of components upon disassembly.

(g) *Special tooling.* Testing for plant equipment, as in paragraphs (d) and (e) of this section, may be used as a guide to establish the method and sampling for special tooling. When option as to title to special tooling is involved under terms of the contract (see the clause at FAR 52.245–17, Special Tooling), examination need only be sufficient to comply with the request of the contracting officer.

(h) *Real property.* After initial turnover of real property to a contractor, tests and examinations normally shall be directed to work orders of the contractor and documentation from Government sources as to additions and other capital improvements or disposals or capital decreases.

(i) *Scrap and salvage.* Tests relating to scrap and salvage may be similar to those for materials as outlined in paragraph (a) of this section. However, special attention should be given to—

(1) Tracing from credit entries on materials records (showing turn-in to scrap) to corresponding debits to scrap records;

(2) Determining from analysis of consumption of materials over a given period that the quantities indicated as being scrapped or spoiled are matched with comparable receipts in the scrap and salvage accounts; and

(3) Determining that, when conversions of units of property to pounds of scrap or from estimated to scale weights or to other units of measure are made, the formula for the conversion is shown on the document affected or is readily available in the approved contractor procedure.

(j) *Analyzing consumption of materials.* It shall be determined by both physical examination and analysis of records that quantities consumed are for proper purposes and in reasonable amounts. In analyzing consumption of component parts or other production materials, unit allowance (equalling amount required per end-item plus

normal spoilage) for each line item of materials may be available in the contract, bill of materials, blueprints, or shop drawings of items fabricated, or in cost computations supporting the end-item price. If such unit allowance information is not available, technical personnel may be consulted as to whether quantities consumed are within accepted industry standards.

(k) *Testing of physical inventories.* The property administrator has the option of conducting tests of the contractor's physical inventories either during the performance of the inventory or subsequent to its completion. In either event, tests shall evidence physical counts of selected items without knowledge of record balances, verification of the entries on count slips, comparisons with records, preparation of documents necessary to any adjustments required, approval of adjustments, and the referral of lists of adjustments to the property administrator pursuant to FAR 45.508-2.

(l) *Examination of maintenance program.* The property administrator shall trace the actions scheduled to determine whether they have been performed and that the actions stated by the contractor's procedures have been included. Also, records of the maintenance or repair shop or the contractor's purchase orders shall be examined as to causes of breakdowns of equipment to determine whether they were the result of inadequate preventive or routine maintenance.

1845.7209-5 Performing the system survey.

In performing the system survey, the property administrator shall follow the procedures in paragraphs (a) through (e) of this section.

(a)(1) The lot size shall be estimated. Insofar as possible, lots selected shall consist of all the following current operations of the contractor:

(i) Those transactions (excepting disposition transactions) that have occurred during the last 90 days preceding the date of sampling and the documents recording those actions. (If no transactions have taken place during the last 90 days, samples will be taken from transactions going back to the last system survey.)

(ii) Articles in the possession or control of the contractor at that time.

(iii) Dispositions occurring since the last survey was made.

(2) The lot should encompass the maximum number of units possible within a functional area. For example, transactions pertaining to special tooling, special test equipment, and plant equipment may be combined into a single lot and sampled for their common characteristics. Characteristics not common to units sampled shall be extracted for evaluation as a part of a separate lot.

(b) Sample sizes and statistical sampling techniques shall be in accordance with 1845.7213.

(c) After the examinations are performed and the findings recorded, the findings shall be analyzed and the conclusions and recommendations recorded. Decisions as to satisfactory or unsatisfactory conditions shall be made for each lot at the functional area level.

(d) If any category is found unsatisfactory during a survey, the property administrator shall determine the effects upon the complete system. All other applicable categories shall be surveyed to identify other defects and the extent of defectiveness in the overall system.

(e) The property administrator shall discuss problems disclosed during the survey with the contractor's personnel as they are noted, or during the exit interviews, and shall strive to resolve differences informally. Resolved problem areas shall be reported in the record of system evaluation, with the notation that they have been corrected.

1845.7209-6 System survey summary.

(a) The property administrator shall prepare a formal record at the conclusion of each system survey in the format set forth below:

(1) *Introduction:* Contractor's name and address, period of survey, and types of property involved.

(2) *Method used:* Explain method of performing the survey.

(3) *Conclusions:* State conclusions reached (if unsatisfactory categories, functional areas, or characteristics are found, identify the defects found).

(4) *Action required:* State any actions necessary to correct unsatisfactory conditions.

(b) The property administrator shall forward a summary of the system survey to the contractor, advising of any unsatisfactory conditions and requesting the contractor to correct them within the time limitations agreed to during the exit interview. The property administrator shall also advise the contractor in this letter that failure to correct the unsatisfactory conditions may result in disapproval of its property control system. A copy of the summary shall also be retained in a survey case file, and whenever unsatisfactory conditions have been disclosed, a copy of the summary shall be provided to the administrative contracting officer. When conditions dictate (e.g., indication of significant noncompliance with contract requirements or other continued failures jeopardizing the interest of the Government), the purchasing office and the pre-award survey monitor shall also be advised in writing.

1845.7209-7 Correction of unsatisfactory conditions.

If unsatisfactory conditions are disclosed, the property administrator shall ensure that corrective action is taken. If the contractor fails to take corrective action or to respond to the letter forwarded as prescribed in 1845.7209-6 above, the property administrator shall proceed in accordance with 1845.7208-6 and FAR 45.104(c).

1845.7209-8 Survey case file.

The property administrator shall establish a case file for each system survey, containing the survey plan, work papers, and summary. The case file shall be maintained in the Contract Property Control Data File or the general file which the property administrator maintains for matters pertaining to that contractor.

1845.7209-9 Additional administrative responsibilities.

The initial review, evaluation, and subsequent visits should give the property administrator a reasonable indication of future workload with each contractor. Loss, damage, destruction, or excessive consumption of Government property demand the property administrator's significant and prompt attention, particularly when the contractor's system is not approved.

1845.7209-10 Declaration of excess property.

A problem often disclosed by systems surveys is the failure of a contractor to report Government property not needed in performance of the contract (excess). The property administrator shall fully document and report any such finding to the administrative contracting officer. After a report of excess received from a contractor has been referred to the plant clearance officer for screening and ultimate disposition, the property administrator shall ensure prompt disposition. For centrally reportable plant equipment, the property administrator shall—

(a) Assure the preparation and submission of individual reports (DD Form 1342 or equivalent) required of the contractor;

(b) Verify to permit certifications required by the forms; and

(c) Transmit the report to the NASA Industrial Property Officer.

1845.7210 Closure of contracts.

1845.7210-1 Completion or termination.

Upon completion or termination of a contract, the property administrator shall—

(a) Monitor the actions of the contractor in returning excess Government property not referred to the plant clearance officer; and

(b) Advise the cognizant plant clearance officer as to the existence at a contractor's plant of residual property requiring disposal.

1845.7210-2 Final review and closing of contracts.

(a) When informed that disposition of Government property under a contract has been completed, the property administrator shall perform a final review and sign a determination that—

(1) Disposition of Government property has been properly accomplished and documented;

(2) Adjustment documents, including any request of the contractor for relief from responsibility, have been processed to completion;

(3) Proceeds from disposals or other property transactions, including adjustments, have been properly credited to the contract or paid to the Government as directed by the contracting officer;

(4) All questions as to title to property fabricated or acquired under the contract have been resolved and appropriately documented; and

(5) The contract property control record file is complete and ready for retirement.

(b) When final review pursuant to paragraph (a) of this section reveals that such action is proper, the property administrator shall accomplish and sign a DD Form 1593, Contract Administration Completion Record, or equivalent.

(c) The executed DD Form 1593 shall be forwarded to the contracting officer, the Property Summary Data Record shall be so annotated, and the contracting officer shall include it in the contract file.

1845.7211 Special subjects.

1845.7211-1 Government property at alternate locations of the prime contractor and subcontractor plants.

(a) Government property provided to a prime contractor may be located at other plants of the prime contractor or at subcontractor locations. The prime contractor is accountable and responsible to the Government for this property.

(b) A Government property administrator cognizant of the location of the property shall normally be designated to (1) perform required surveys of the property control system and (2) exercise surveillance over the property as a supporting responsibility.

(c) If the property administrator determines that supporting property administration is required, he or she shall write the cognizant contract administration office asking that a property administrator be assigned. The request for supporting property administration shall include—

(1) The name and address of the prime contractor;

(2) The prime contract number;

(3) The name and address of the alternate location of the prime contractor, or of the subcontractor where the property will be located;

(4) A listing of the property being furnished, or, if property is being acquired locally, a statement to this effect; and

(5) A copy of the subcontract or other document under which the property will be furnished or acquired.

(d) Concurrent with the action cited in paragraph (c) of this section, the property administrator shall ascertain whether the prime contractor will perform the necessary reviews and surveillance with the contractor's own personnel, or elect to rely upon the system approval and continuing surveillance by a supporting property administrator of the property control system at the alternate location or subcontractor plant. If the prime contractor advises that it will accept the findings of a supporting property administrator, a statement in writing to that effect shall be obtained. If the prime contractor does not so elect, it shall be required to perform the requisite reviews and surveillance and document its actions and findings.

(e) If a single item or limited quantities of property will be located at an alternate location or subcontractor plant, the property administrator may determine that supporting property administration is unnecessary, provided—

(1) The prime contractor's records adequately reflect the location and use of the property;

(2) The nature of the property is such that the possibility of its use for unauthorized purposes is unlikely; and

(3) The nature of the property is such that a program of preventive maintenance is not required.

(f) When supporting property administration will not be requested, the services of a property administrator in the contract administration office cognizant of the site where the property is located may be requested on an occasional basis for special reviews or such other support as may be necessary. Repeated requests for assistance indicate a requirement for requesting supporting property administration.

1845.7211-2 Loss, damage, or destruction of Government property.

(a) Normally, contract provisions provide for assumption of risk of loss, damage, or destruction of Government property as described below:

(1) Sealed-bid and certain negotiated fixed-price contracts provide that the contractor assumes the risk for all Government property provided under the contract (see the clause at FAR 52.245-2, Government Property (Fixed-Price Contracts)).

(2) Other negotiated fixed-price contracts provide that the contractor assumes the risk for all Government property provided under the contract, with the exceptions set forth in the clause at FAR 52.245-2, Alternate I and Alternate II.

(3) Cost-reimbursement contracts (see the clause at FAR 52.245-5, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts)) provide that the Government assumes the risk for all Government property provided under the contract when there is no willful misconduct or lack of good faith of any of the contractor's managerial personnel as defined in the contract.

(4) There are certain events for which the Government does not assume the risk of loss, damage, or destruction of Government property, such as risks the contract expressly requires the contractor to insure against. Therefore, before reaching a conclusion or making a determination, the contracting officer shall obtain property administrator review of the contract clause and shall obtain advice from appropriate legal counsel on questions of legal meaning or intent.

(5) "Willful misconduct" may involve any intentional or deliberate act or failure to act causing, or resulting in, loss, damage, or destruction of Government property.

(6) "Lack of good faith" may involve gross neglect or disregard of the terms of the contract or of appropriate directions of the contracting officer or the contracting officer's authorized representatives. Examples of lack of good faith may be demonstrated by the failure of the contractor's managerial personnel to establish and maintain proper training and supervision of employees and proper application of controls in compliance with instructions

issued by authorized Government personnel.

(b) If part of the contractor's system is found to be unsatisfactory, the property administrator shall increase surveillance of that part to prevent, to the extent possible, any loss, damage, or destruction of Government property. The property administrator shall give special attention to reasonably ensuring that any loss, damage, or destruction occurring during a period when a contractor's system is not approved is identified before approval or reinstatement of approval.

1845.7211-3 Loss, damage, or destruction of Government property while in contractor's possession or control.

(a) The property administrator shall require the contractor to report any loss, damage, or destruction of Government property in its possession or control (including property in the possession or control of subcontractors) as soon as it becomes known.

(b) When physical inventories, consumption analyses, or other actions disclose:

(1) Consumption of Government property considered unreasonable by the property administrator or

(2) Loss, damage, or destruction of Government property not reported by the contractor,

the property administrator shall prepare a statement of the items and amount involved. This statement shall be furnished to the contractor for investigation and submission of a written report to the property administrator relative to the incidents reported.

(c) The contractor's reports referenced in paragraphs (a) and (b) of this section shall contain factual data as to the circumstances surrounding the loss, damage, destruction, or excessive consumption, including—

(1) The contractor's name and the contract number;

(2) A description of items lost, damaged, destroyed, or unreasonably consumed;

(3) The cost of property lost, damaged, destroyed, or unreasonably consumed and cost of repairs in instances of damage (in event actual cost is not known, use reasonable estimate);

(4) The date, time (if pertinent), and cause or origin of the loss, damage, destruction, or consumption;

(5) Known interests in any commingled property of which the Government property lost, damaged, destroyed, or unreasonably consumed is (or was) a part;

(6) Insurance, if any, covering the Government property or any part or interest in any commingled property;

(7) Actions taken by the contractor to prevent further loss, damage, destruction, or unreasonable consumption and to prevent repetition of similar incidents; and

(8) Other facts or circumstances relevant to determining liability and responsibility for repair or replacement.

(d) The property administrator shall investigate the incident to the degree required to reach a valid and supportable conclusion as to:

(1) The contractor's liability for the loss, damage, destruction, or unreasonable consumption under the terms of the contract, and

(2) The course of action required to conclude the adjustment action.

When required, the assistance of the quality assurance representative, industrial specialist, insurance officer, legal counsel, or other technician will be secured. When the contractor acknowledges liability, the property administrator shall forward a copy of the credit memorandum or other adjusting document to the administrative contracting officer and auditor, if appropriate, to assure proper credit. If analysis of contract provisions and circumstances establishes that the loss, damage, destruction, or consumption constitutes a risk assumed by the Government, the property administrator shall so advise the contractor in writing, thereby relieving the contractor of responsibility for the property. A copy of the documentation and notification to the contractor shall be retained in the Contract Property Control Data File for the contract.

(e)(1) If the property administrator concludes that the contractor is liable for the loss, damage, destruction, or unreasonable consumption of Government property, he or she shall forward the complete file with conclusions and recommendations to the contracting officer for review and determination. The file shall contain—

(i) A statement of facts as supported by investigation;

(ii) Recommendations as to the contractor's liability and its amount;

(iii) Recommendations as to action to be taken with regard to third party liability, if appropriate;

(iv) Requirements for disposition, repair, or replacement of damaged property; and

(v) Other pertinent comments.

(2) A copy of the contracting officer's determination shall be furnished to the contractor and the property administrator, and a copy shall be retained in the contracting officer's files. The property administrator's copy shall be filed in the Contract Property Control Data File for the contract when all pertinent actions, such as compensation to the Government or repair or replacement of the property, have been completed.

1845.7211-4 Financial reports.

The property administrator is responsible for obtaining financial reports as prescribed in 1845.505-14 for all contracts assigned to him or her. Reports shall be accumulated, reviewed and distributed as required. Contractors are required to submit separate reports on each contract that contains the property reporting clause (see 1852.245-73) except as noted in 1845.7101-4(c).

1845.7212 Contractor utilization of Government property.

1845.7212-1 Utilization surveys.

(a) The property administrator is responsible for ensuring that the contractor has effective procedures for evaluating Government property utilization. However, when necessary, the contract administration office shall provide specialists qualified to perform the technical portion of utilization surveys to assist the property administrator in determining the adequacy of these procedures.

(b) Upon assignment of an initial contract under which Government-owned plant equipment in particular will be provided to a contractor, the property administrator shall ensure that the contractor has established effective procedures and techniques for controlling its utilization. The property administrator, with the assistance of technical specialists, if necessary, shall evaluate these procedures. A record of the evaluation shall be prepared and become a part of the property administration file. If the procedures are determined inadequate, the record shall identify the deficiencies and the corrective actions necessary. If the deficiencies are not corrected by the contractor, the property administrator shall promptly refer the matter to the contracting officer.

(c) The property administrator shall perform annual surveys of the contractor's procedures related to utilization of Government-owned plant equipment. At contractor facilities having a substantial quantity of plant equipment, the surveys should normally be conducted on a continual basis, reviewing equipment utilization records and physically observing a group of preselected items during each portion of the survey. Surveys shall be conducted

to the degree determined necessary, considering the findings of prior surveys and the contractor's performance history in identifying and declaring equipment excess to authorized requirements. The contractor shall be required to justify, by specific Government programs, the retention of all Government-owned plant equipment. The property administrator shall make maximum use of contractor's machine loading data, order boards, production planning records, machine time records, and other production control methods.

(d) The property administrator shall conduct a special survey when a significant change occurs in the contractor's production schedules, such as a termination, completion of a contract, or a major adjustment in a program. Special surveys may be limited to a given department, activity, or division of a contractor's operation.

(e) In the absence of adequate justification for retention, the contractor shall identify and report Government-owned plant equipment in accordance with FAR 45.502(g) and FAR 45.509-2(b)(4). Items that are part of approved inactive package plants or standby lines are exempted from utilization surveys. The contracting officer shall ascertain periodically whether existing authorizations for standby or lay-away requirements are current.

1845.7212-2 Records of surveys.

The property administrator shall prepare a record incorporating written findings, conclusions, and recommendations at the conclusion of each survey. If appropriate, the property administrator's record may be limited to a statement expressing concurrence with the reports of other specialists. The property administrator shall retain one copy of each record in the property administration file.

1845.7212-3 Scope of survey.

The property administrator shall consider and use as appropriate the following in preparing for, conducting, and recording the results of the plant equipment utilization surveys:

(a) Identification of contracts under which plant equipment was furnished or acquired.

(b) Number and dollar value of plant equipment items in contractor's possession.

(c) Adequacy of equipment use records.

(d) Identification of contracts for which use of plant equipment is authorized.

(e) Other authorized use (Government or commercial) of the plant equipment, whether required approvals have been obtained, and whether rental payment is required.

(f) Planned machine loadings, including performance of a physical review of selected plant equipment items.

(g) Whether contractor-owned equipment of like function is loaded before loading Government-owned plant equipment.

(h) Items reported by quality assurance representatives or other personnel to be in a questionable use and utilization status.

(i) Items of plant equipment that may be made available for other use by combining the work of two or more machines on a single machine with low utilization rate. In such case the survey record should indicate the date the DD Form 1342, DOD Property Record or equivalent format, was forwarded to the NASA contracting officer.

1845.7213 Statistical sampling.

(a) *General.* Statistical sampling supports, but does not replace, the property administrator's judgment. It is used to evaluate and determine the performance level for each functional area and category within each property control system. The lot to be examined for defects should encompass the maximum possible number of line items of property, records and documents. All items in the lot must have common characteristics and the same control elements of the property control system must apply or more than one lot will be necessary. Items selected for sampling may be used to examine characteristics of more than one category (i.e., items selected under records may be used to examine characteristics of acquisition, stock control, storage and movement, maintenance, physical inventory, utilization, and consumption).

(b) *Use of statistical sampling plans.* The Government's risk shall not exceed 10% excepting any slight variations due to changes in lot sizes. Table 1845-2 contains sampling plans for use in achieving a confidence level of 90%, i.e., there is 90% confidence of rejecting lots having 10% or more defectives. The sample sizes to be examined may be determined from either Table 1845-2A or B.

(c) *Random number table.* (1) Use of a table of random numbers is a common technique for drawing a sample. (A table is available from the NASA Headquarters Supply and Equipment Management Division (Code NIE).) However randomization techniques may be applied provided they are defined beforehand in the property administration survey plan and exhibit clear protection against bias. In any event, the number of items in the lot must not be overestimated to avoid selection of random numbers greater than the lot. For example, if the lot is 9,000, only numbers lower than 9,001 shall be selected. Using a random table to draw a random sample requires the following four steps:

(i) First step. A pattern must be established between the numbers in the table and items in the lot to be sampled. It is possible to use the whole random number or any portion thereof. For instance, the number 18,967 may appear in the table. If the lot size is more than 99 but less than 1,000, a three digit number is required and either the first three digits (189) or the last three (967) may be used. If the lot size is more than 999 but less than 10,000, a four digit number is required and either the first four digits (1,896) or the last four (8,967) may be used. Once this pattern has been established, it must be consistently used throughout the sample selection process.

(ii) Second step. A procedure for selecting the numbers from the table must be selected. Any systematic path for going through the table, if the path is clear and does not cross over or reuse any number previously used, is acceptable. It is possible to proceed across rows, down columns, diagonally, clockwise, counterclockwise, or in some combinations of these methods; however, it is usually desirable to choose a simple pattern and go down columns or across rows.

(iii) Third step. The starting point in the table shall be selected at random. The most used method is to open the table of random numbers to any page and to use the number indicated by an arbitrarily placed pencil point.

(iv) Fourth step. Beginning at the starting point and proceeding through the table as planned in the second step, record the numbers found in succession in the table, using all or part of the number as planned in the first step. Duplicate numbers shall be skipped. The selection process shall be continued until the required sample size is drawn.

(2) Numbers taken from the random table shall be arranged and recorded in numerical order. If the units of the lot to be examined are already consecutively numbered, the units having the numbers corresponding to those taken from the random table become the sample units. Otherwise, the sample units shall be found by counting to the numbers taken from the random table.

TABLE 1845-2A—Single Sampling Plan

Lot size	Sample size	Limits	
		Satisfactory	Unsatisfactory
1-17	All	0	1
18-50	17	0	1
51-90	31	1	2

TABLE 1845-2A—Single Sampling Plan—Continued

Lot size	Sample size	Limits	
		Satisfactory	Unsatisfactory
91-150	44	2	3

TABLE 1845-2A—Single Sampling Plan—Continued

Lot size	Sample size	Limits	
		Satisfactory	Unsatisfactory
Over 150	65	3	4

TABLE 1845-2B

Double Sampling Plan

Lot range	Sample size 1	Accept if defects in Sample 1 are	Reject if defects in Sample 1 are	Continue with Sample 2 if defects in Sample 1 are	Sample size 2	Accept if sum of defects in Samples 1 and 2 equals or is less than	Reject if sum of defects in Samples 1 and 2 equals or exceeds
1-18	All	0	1				
19-50	19	0	1				
51-90	21	0	2	1	21	1	2
91-150	25	0	3	1 or 2	25	2	3
151-400	32	0	4	1, 2, or 3	32	3	4
401-10,000	34	0	4	1, 2, or 3	34	3	4
10,001-35,000	40	0	5	1, 2, 3, or 4	40	4	5
35,001-100,000	46	0	6	1, 2, 3, 4, or 5	46	5	6
100,000+	52	0	7	1, 2, 3, 4, 5, or 6	52	6	7

PART 1846—QUALITY ASSURANCE

Subpart 1846.2—Contract Quality Requirements

Sec.
1846.270 Contract clauses for space flight-related operations.

Subpart 1846.4—Government Contract Quality Assurance

1846.470 Contract clause.

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Subpart 1846.7—Warranties

1846.703 Criteria for use of warranties.
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1846.704 Authority for use of warranties.
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1846.709-70 Limitation.
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Authority: 42 U.S.C. 2473(c)(1).

Subpart 1846.2—Contract Quality Requirements

1846.270 Contract clauses for space flight-related operations.

(a) The contracting officer shall insert the clause at 1852.246-70, Space Transportation System (STS) Personnel Reliability Program, in solicitations and contracts involving critical positions in accordance with NASA Management Instruction 8610.13. The clause, however, shall not be used in procurements for flight crew members or payload specialists when these individuals are covered by other NASA Management Instructions that have screening requirements equivalent to those in NMI 8610.13 (for example, NMI 7100.16, Payload Specialists for NASA-Related Projects).

(b) The contracting officer shall insert the clause at 1852.246-73, Manned Space Flight Item, in solicitations and contracts for manned space flight hardware and flight-related equipment where it has been determined by the technical requirements initiator that the highest available quality standards are necessary to ensure astronaut safety.

Subpart 1846.4—Government Contract Quality Assurance

1846.470 Contract clause.

The contracting officer may insert a clause substantially as stated at 1852.246-71, Government Contract Quality Assurance Functions, in solicitations and contracts. Insert the items involving quality assurance, the applicable functions (e.g., preliminary inspection, final inspection, acceptance), and the place(s) of performance appropriate for the particular procurement. See FAR 46.401.

Subpart 1846.6—Material Inspection and Receiving Reports

1846.670 Introduction.

1846.670-1 General.

(a) This Subpart 1846.6 contains procedures and instructions for using, preparing, and distributing the Material Inspection and Receiving Report (MIRR) (DD Form 250 series) and suppliers' commercial shipping/packing lists used to evidence Government procurement quality assurance (PQA).

(b) MIRRs are used by receiving, status control, technical, contracting, inventory control, requisitioning, and paying activities to document PQA, acceptance of supplies and services, and shipments. MIRR's are not required to be used for—

(1) Shipments by subcontractors when direct shipment is not made to the Government;

(2) Shipment of contractor inventory (see FAR 45.601); or

(3) Movement of Government property unless for original acquisition.

(c) To preclude delays in shipments or payments and avoid multiple corrections, contractors are encouraged to consult the cognizant Government representative regarding implementation of this subpart.

1846.670-2 Applicability.

(a) This subpart applies to all deliveries of supplies or services procured by or for NASA except—

(1) Procurements effected under FAR Part 13;

(2) Negotiated subsistence procurements;

(3) Subcontracts under which direct shipment is not made to the Government; or

(4) Contracts for which the end item is a technical or scientific report.

(b) When NASA provides PQA and/or acceptance services for non-NASA activities, the MIRR shall be prepared in accordance with the instructions of this subpart unless the contract specifies otherwise.

1846.670-3 Use.

The DD Form 250 is a multipurpose report used for—

(a) PQA—to provide evidence of PQA at origin or destination;

(b) Acceptance—to provide evidence of acceptance at origin or destination;

(c) Packing list;

(d) Receiving;

(e) Shipping;

(f) Contractor invoice;

(g) Contractor invoice support; and

(h) Contractor internal use.

1846.670-4 Application.

(a) The DD Form 250 shall be used for delivery of contract line, contract subline, exhibit line, or exhibit subline items.

(b) If the "shipped to," "marked for," "shipped from," "PQA," and "acceptance" data are the same for more than one shipment made on the same day under the same contract, one MIRR shall be prepared to cover all such shipments, except that, if the volume of the shipments precludes the use of a single car, truck, or other vehicle, either a copy of the single MIRR or a separate MIRR shall be provided for each vehicle.

(c) The DD Form 250 may be, but is not required to be, used for imprest fund purchases, purchase orders, delivery orders placed against Federal Supply Schedule contracts, delivery orders placed against indefinite-delivery contracts, or delivery orders placed against blanket purchase agreements, or whenever the purchasing, requisitioning, or ordering document adequately provides for inspection and/or acceptance.

1846.670-5 Forms.

(a) Contractors may obtain from the contracting office upon request, and at no cost, MIRR forms required for use in connection with Government contracts.

(b) Contractors may print forms, provided:

(1) Their format and dimensions (DD Forms 250 and 250c 8½ in. × 11 in.) are identical to the MIRR forms printed by the Government and

(2) The forms are cast to provide for 78 characters per printed image horizontally and 62 lines vertically border-to-border for the DD Form 250 and 61 lines vertically border-to-border for the DD Form 250c.

1846.671 Procurement quality assurance on shipments between contractors.

(a) The supplier's commercial shipping document/packing list shall indicate performance of required PQA actions at subcontract level. The following entries shall be made on the supplier's commercial shipping document/packing list:

Required PQA of listed items has been performed.

Date: (Signature of Authorized Government Representative) (Typed Name and Office)

(b) Distribution for Government purposes shall be one copy—

(1) With shipment;

(2) For the Government representative at consignee (via mail); and

(3) For the Government representative at consignor.

1846.672 Preparing DD Forms 250 and 250c.

1846.672-1 Preparation instructions.

DD Form 250, Material Inspection and Receiving Report (MIRR), and DD Form 250c, Material Inspection and Receiving Report—Continuation Sheet, shall be prepared as follows:

(a) *General.* (1) The date, when required, shall utilize seven spaces consisting of the last two digits of the year, three-alpha month abbreviation, and two digits for the day (e.g., 67AUG07, 87SEP24).

(2) The address, when required, shall consist of the name, street address/P.O. box, city, State, and ZIP code.

(3) When the DD Form 250c is used, the data entered in the blocks at the top of the form shall be identical to the comparable entries in Blocks 1, 2, 3, and 6 of the DD Form 250.

(4) Overflow data of the DD Form 250 shall be entered in Block 16 or in the body of the DD Form 250c with appropriate block cross reference. Additional DD Form 250c sheets solely for continuation of Block 23 data shall not be numbered or distributed as part of the MIRR.

(b) *Classified information.* Classified information shall not be included in or appear on the MIRR, nor shall the MIRR be classified.

(c) *Block 1*—PROC. INSTRUMENT IDEN. (CONTRACT).

(1) Enter the contract number as contained in the contractual document, including any applicable call/order number.

(2) Enter the name of the contracting office immediately below the contract number. This requirement may be satisfied by inclusion of the approved prefix used in the contract number to identify the contracting office.

(d) *Block 2*—SHIPMENT NO.

(1) The shipment number is composed of a three-alpha-character prefix and a four-character numeric or alpha-numeric serial number.

(i) The prefix shall be controlled and assigned by the prime contractor and shall consist of three alpha characters for each "shipped from" address (Block 11).

(ii) The first shipment under a prime contract from each "shipped from" address shall be numbered 0001; all subsequent shipments under that prime contract shall be consecutively numbered.

(A) Alpha-numerics shall be used when more than 9,999 numbers are required. Alpha-numerics shall be serially assigned, with the alpha in the first position, followed by the three-position numeric serial number. The alpha-numeric sequence shall be (the letters I and O shall not be used) A001 through A999 (10,001 through 10,999); B001 through B999 (11,001 through 11,999); to Z999.

(B) When this series is completely used, numbering shall revert to 0001.

(2) The shipment number of the initial shipment shall be reassigned when a "replacement shipment" is involved (see paragraph (r)(2)(iv) of this section).

(3) The prime contractor shall control deliveries and on the last shipment of the contract shall suffix the shipment number with a "Z" in addition to that required for line items (see Block 17). If the contract final shipment is from other than the prime contractor's plant, the prime contractor may elect:

(i) To direct the subcontractor to suffix the "Z" or, on receipt of the subcontractor final shipment information,

(ii) To correct the DD Form 250 covering the last shipment from the prime contractor's plant by adding a "Z" to that shipment number.

(e) *Block 3*—DATE SHIPPED. Enter the date the shipment is released to the carrier or the date of completion of services. If the shipment will be released after the date of PQA and/or

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acceptance, enter the estimated date of release. When the date is estimated, enter an "E" after it. Distribution of the MIRR shall not be delayed for entry of the actual shipping date. Reissuance of the MIRR is not required to show the actual shipping date.

(f) *Block 4*—B/L TCN. When applicable, enter—

(1) The commercial or Government bill of lading number after "B/L"; and

(2) The Transportation Control Number after "TCN."

(g) *Block 5*—DISCOUNT TERMS. The discount, in terms of percentages and corresponding days allowed, shall be entered as described below:

(1) The contractor may, at its option, enter the discount terms on all copies of the MIRR.

(2) When the MIRR is used as an invoice, see 1846.672-4.

(h) *Block 6*—INVOICE. Enter the invoice number and date as described below:

(1) The contractor may, at its option, enter the invoice number and date on all copies of the MIRR.

(2) When the MIRR is used as an invoice, see 1846.672-4.

(i) *Block 7*—PAGE/OF. Consecutively number the pages comprising the MIRR. On each page, enter the total number of pages of the MIRR.

(j) *Block 8*—ACCEPTANCE POINT. Enter an "S" for origin or "D" for destination as specified in the contract as the point of acceptance. Enter an alphabetic "O" for other if the point of acceptance is not specified in the contract.

(k) *Block 9*—PRIME CONTRACTOR. Enter the address.

(l) *Block 10*—ADMINISTERED BY. Enter the address of the contracting office cited in the contract.

(m) *Block 11*—SHIPPED FROM/CODE/FOB.

(1) Enter the code and address of the "shipped from" location. If identical to Block 9, enter "See Block 9."

(2) For performance of services line items that do not require delivery of items upon completion of services, enter the code and address of the location at which the services were performed. If the DD Form 250 covers performance at multiple locations or if identical to Block 9, enter "See Block 9."

(3) Enter on the same line and to the right of "FOB" an "S" for origin or "D" for destination as specified in the contract. Enter an alphabetic "O" if the FOB point cited in the contract is other than origin or destination.

(n) *Block 12*—PAYMENT WILL BE MADE BY. Enter the address of the payment office cited in the contract.

(o) *Block 13*—SHIPPED TO. Enter the address of the consignee as contained in the contract or shipping instructions.

(p) *Block 14*—MARKED FOR. Enter the "mark for" address and/or other designation as contained in the contract or shipping instructions.

(q) *Block 15*—ITEM NO. Enter the contract line, contract subline, exhibit line, or exhibit subline item identification as set forth in the contract. If four or fewer digits are used, position them to the left of the vertical dashed line. Where a six-digit identification is used, enter the last two digits to the right of the vertical dashed line.

(r) *Block 16*—STOCK/PART NO./DESCRIPTION.

(1) Enter, as applicable, for each line item, using single spacing between each line item, the following:

(i) The Federal Stock Number (FSN) or noncatalog number and, if applicable, prefix or suffix. When a number is not provided or it is necessary to supplement the number, include other identification, e.g., manufacturer's name or Federal Supply Code, as published in Cataloging Handbook H4-1, and part numbers. Additional part numbers may be shown in parentheses. Also enter the descriptive noun of the item nomenclature and, if provided, the Government-assigned management/material control code. In the case of equal-kind supply items, the first entry shall be the description without regard to kind; e.g., "Resistor" or "Vacuum Tube". Below this description, enter the contract line item number in Block 15 and stock/part number followed by the size or type in Block 16.

(ii) On the next printing line, if required by the contract for control purposes, enter the make, model, serial number, lot, batch, hazard indicator, and/or similar description.

(iii) On the next printing line, enter the FEDSTRIP requisition number(s) when provided in the contract or shipping instructions.

(2) In addition to the entries required above, enter on the next line the following as appropriate (when applicable to all line item numbers identified in the MIRR, enter such data only once, after the last line item entry. Entries may be extended through Block 20):

(i) Enter in capital letters any special handling instructions/limits for material environmental control; e.g., temperature, humidity, aging, freezing, and shock.

(ii) When an FSN is required by, but not cited in, a contract and has not been furnished by the Government, shipment may be made without it at the direction of the contracting officer. Enter the authority for the shipment.

(iii) When Government-furnished property (GFP) is included with or incorporated into the line item, enter "GFP".

(iv) When the shipment consists of replacements for supplies previously furnished, enter in capital letters "REPLACEMENT SHIPMENT" (see subparagraph (s)(3) of this section for replacement indicators.)

(v) For items shipped with missing components, enter and complete the following: "Item(s) shipped short of the following component(s): FSN or comparable identification _____, Quantity _____, Estimated Value _____, Authority _____."

(vi) When shipment is made of components that were short on a prior shipment, enter and complete the following: "These components were listed as shortages on Shipment Number _____, date shipped _____."

(vii) When shipments involve drums, cylinders, reels, containers, skids, etc., designated as returnable under contract provisions, enter and complete the following: "Return to _____, Quantity _____, Item _____, Ownership (Government/contractor)."

(viii) Enter shipping container number(s), the type, and the total number of the shipping container(s) included in the shipment.

(ix) The MIRR shall be used to record and report the waivers and deviations from contract specifications, including the source and authority for the waiver or deviation (e.g., the contracting office authorizing the waiver or deviation and the identification of the authorizing document).

(x) For shipments involving discount terms, enter "DISCOUNT EXPEDITE" in at least one-inch outline-type letters.

(xi) When test/evaluation results are a condition of acceptance and are not available before shipment, the following note shall be entered if the shipment is approved by the contracting officer: "Note: Acceptance and payment are contingent upon receipt of approved test/evaluation results." The contracting officer shall advise (A) the consignee of the results (approval/disapproval) and (B) the contractor to withhold invoicing pending attachment to its invoice of the approved test/evaluation results.

(xii) The copy of the DD Form 250 required to support payment for destination acceptance (top copy of the four with shipment) or Alternative Release Procedure (ARP) origin acceptance (additional copy furnished to the Quality Assurance Representative (QAR)) shall be identified by entering "PAYMENT COPY" approximately one-half-inch outline-type letters with "FORWARD TO BLOCK 12 ADDRESS" in approximately one-quarter-inch letters immediately below. Do not obliterate any other entries.

(xiii) A double line shall be drawn completely across the form following the last entry.

(s) *Block 17*—QUANTITY SHIP/REC'D.

(1) Enter the quantity shipped, using the unit of measure indicated in the contract for payment. When a second unit of measure is used for purposes other than payment, enter the appropriate quantity directly below in parentheses.

(2) Enter a "Z" below the first digit of the quantity when—

(i) The total quantity of the line item is delivered, including variations within contract terms; and

(ii) All shortages on items previously shipped short are delivered.

(3) If a replacement shipment is involved, enter below the first digit of the quantity the letter "A" to designate first replacement, "B" for second replacement, and so forth. The final shipment indicator "Z" shall not be used when a final line item shipment is replaced.

(t) *Block 18*—UNIT. Enter the abbreviation of the unit of measure indicated in the contract for payment. When a second unit of measure is indicated in the contract for purposes other than payment or is used for shipping purposes, enter the abbreviation of the second unit of measure directly below in parentheses. Authorized abbreviations are listed in MIL-STD-129, Marketing and Storage.

(u) *Block 19*—UNIT PRICE. Enter the unit price on all NASA copies whenever the MIRR is used for voucher or receiving purposes.

(v) *Block 20*—AMOUNT. Enter the extended amount when the unit price is entered in Block 19.

(w) *Block 21*—PROCUREMENT QUALITY ASSURANCE. The words "conform to contract" contained in the printed statements in Blocks A and B relate to contract obligations pertaining to quality and to the quantity of the items on the report. The statements shall not be modified. Notes taking exception shall be entered in Block 16 or on attached supporting documents with appropriate block cross reference.

(1) "A. ORIGIN."

(i) The authorized Government representative shall—

(A) Place an "X" when applicable in the appropriate PQA and/or acceptance box(es) to evidence origin PQA and/or acceptance (when the contract requires PQA at destination in addition to origin PQA, an asterisk shall be entered at the end of the statement and an explanatory note in Block 16);

(B) Enter the date of signature;

(C) Sign; and

(D) Enter the typed, stamped, or printed name of the signer and office code.

(2) "B. DESTINATION."

(i) When acceptance at origin is indicated in Block 21A, no entries shall be made in Block 21B.

(ii) When PQA and acceptance or acceptance is at destination, the authorized Government representative shall—

(A) Place an "X" in the appropriate box(es);

(B) Enter the date of signature;

(C) Sign; and

(D) Enter typed, stamped, or printed name and title.

(x) *Block 22*—RECEIVER'S USE. This block shall be used by the receiving activity (Government or contractor) to denote receipt, quantity, and condition. The receiving activity shall enter in this block the date the supplies arrived; when off-loading or in-checking occurs subsequent to the day of arrival of the carrier at the installation, the date of the carrier's arrival is the date received for purposes of this block.

(y) Block 23—CONTRACTOR USE ONLY. This block is provided and reserved for contractor use.

1846.672-2 Consolidated shipments.

When individual shipments are held at the contractor's plant for authorized transportation consolidation to a single destination on a single bill of lading, the applicable DD Forms 250 may be prepared at the time of PQA or acceptance prior to the time of actual shipment (see Block 3).

1846.672-3 Correction instructions.

When, because of errors or omissions, it is necessary to correct the MIRR after distribution has been made, it shall be revised by correcting the original master and distributing the corrected form. The corrections shall be made as follows:

(a) Circle the error and place the corrected information in the same block. If space is limited, enter the corrected information in Block 16, referencing the error page and block.

(b) The words "CORRECTIONS HAVE BEEN VERIFIED" shall be entered on page 1. The authorized Government representative shall date and sign immediately below the statement.

(c) MIRR's shall not be corrected for Block 19 and 20 entries.

(d) Pages of the MIRR requiring correction shall be clearly marked "CORRECTED COPY", avoiding obliteration of any other entries. Even though corrections are made on continuation sheets only, page 1 shall also be marked "CORRECTED COPY".

(e) Page 1 and only those continuation pages marked "CORRECTED COPY" shall be distributed to the initial distribution. A complete MIRR with corrections shall be distributed to new addressee(s) created by error corrections.

1846.672-4 Invoice instructions.

Contractors are encouraged to use copies of the MIRR as an invoice in lieu of a commercial form, but are not required to do so. When the MIRR is used as an invoice, four copies shall be prepared and forwarded to the payment office as follows:

(a) Complete Blocks 5, 6, 19, and 20.

(b) Mark, in letters approximately one inch high, the first copy "ORIGINAL INVOICE" and the remaining three copies "INVOICE COPY".

(c) Forward the four copies to the payment office (Block 12 address).

1846.672-5 Packing-list instructions.

Copies of the MIRR may be used as a packing list. If so, the packing list copies shall be in addition to the copies of the MIRR required for distribution (see 1846.673) and shall be marked "PACKING LIST".

1846.672-6 Receiving instructions.

When the MIRR is used for receiving purposes, procedures shall be as prescribed by local directives. If PQA and acceptance or acceptance of supplies is required upon arrival at destination, see Block 21B for instructions.

1846.673 Distribution of DD Forms 250 and 250c.

(a) DD Forms 250 and 250c shall be distributed in accordance with the procedures prescribed by the installation.

(b) The contractor is responsible for distributing DD Forms 250 and 250c in accordance with the provisions of the contract or instructions of the contracting officer.

1846.674 Contract clause.

The contracting officer shall insert the clause at 1852.246-72, Material Inspection and Receiving Report, in solicitations and contracts, except those using small purchase procedures or where the only deliverable items are technical or scientific reports. Insert the number of copies to be prepared. Paragraph (a) may be changed to specify advance copies or separate distribution of the DD Form 250.

Subpart 1846.7—Warranties

1846.703 Criteria for use of warranties.

1846.703-70 Additional criteria.

In deciding whether to use a warranty clause, at least the following factors shall be considered in addition to those at FAR 46.703:

(a) Cost of correction or replacement, either by the contractor or by another source, in the absence of a warranty.

(b) Operation of the warranty as a deterrent against the furnishing of defective or nonconforming supplies.

(c) Whether the contractor's present quality program is reliable enough to provide adequate protection without a warranty, or, if not, whether a warranty would cause the contractor to institute an effective and reliable quality program.

(d) Reliance on "brand-name" integrity.

(e) Whether a warranty is regularly given for a commercial component of a more complex end item.

1846.704 Authority for use of warranties.

(a) A warranty clause shall be used when it is found to be in the best interests of the Government, after an analysis of the factors listed in 1846.703-70 and FAR 46.703.

(b) Except for the warranty clause for commercial items covered in FAR 46.709 and FAR 46.710(a)(2), and warranties contained in Federal, military, or construction specifications, the decision to use a warranty clause or to include a warranty provision in a specification other than a Federal, military, or construction specification shall be made only upon the written authorization of the procurement officer or a designee. This decision may be made either for individual procurements or for classes of procurements.

(c) Warranties required by applicable architect-engineer specifications shall be included in construction contracts.

1846.709 Warranties of commercial items.

1846.709-70 Limitation.

In procurements involving a commercial item of supply or service or construction, the contracting officer may include in the solicitation and contract a warranty clause that is standard or customary in the trade, or that is substantially similar to and not in excess of a standard or customary trade warranty, but only if the contracting officer, after reviewing the factors listed in 1846.703-70 and FAR 46.703, decides that inclusion of such a clause is in the Government's best interest.

1846.770 Administration.

When the contracting officer is notified of a defect in warranted items, the contracting officer should ascertain whether the warranty is currently in effect and ensure that the contractor is given proper and timely notice of the defect.

PART 1847—TRANSPORTATION

Subpart 1847.2—Contracts for Transportation or for Transportation-Related Services

Sec.
1847.200 Scope of subpart.
1847.200-70 Charter of aircraft.

Subpart 1847.3—Transportation in Supply Contracts

1847.304 Determination of delivery terms.
1847.304-3 Shipments from CONUS for overseas delivery.
1847.304-370 NASA export privilege.
1847.305 Solicitation provisions, contract clauses, and transportation factors.
1847.305-10 Packing, marking, and consignment instructions.
1847.305-13 Transit arrangements.
1847.305-70 NASA contract clauses.

Subpart 1847.5—Ocean Transportation by U.S.-Flag Vessels

1847.506 Procedures.
1847.506-70 Compliance with the Cargo Preference Act.
1847.507 Contract clauses.

Subpart 1847.70— Protection of the Florida Manatee

1847.7001 Contract clause.

Authority: 42 U.S.C. 2473 (c)(1).

Subpart 1847.2—Contracts for Transportation or for Transportation-Related Services

1847.200 Scope of subpart.

1847.200-70 Charter of aircraft.

When procuring aircraft by charter, contracting officers shall comply with NMI 7910.1, NASA Aircraft Management.

Subpart 1847.3—Transportation in Supply Contracts

1847.304 Determination of delivery terms.

1847.304-3 Shipments from CONUS for overseas delivery.

1847.304-370 NASA export privilege.

NASA has certain export licensing privileges for moving commodities to foreign destinations. Advice should be obtained from the transportation officer in order to make full use of these privileges.

1847.305 Solicitation provisions, contract clauses, and transportation factors.

1847.305-10 Packing, marking, and consignment instructions.

In contracts providing for delivery f.o.b. origin and shipment under Government bills of lading, consignment instructions may be limited to the mail address of the consignee (receiving activity), provided the contract instructions state: "Shipment other than mail shall be consigned as indicated on the Government bill of lading furnished to the contractor." Various receiving activities may have different consignment points for the various transportation media or for particular carriers within a medium, depending on the weight, shape, size, or nature of the shipment involved.

1847.305-13 Transit arrangements.

(a) When the provision at FAR 52.247-56 is used, the solicitation shall state that offers will be evaluated on the basis of the lowest overall cost to the Government, including transportation costs to NASA from point of origin to final destination, taking into account any applicable transit privileges.

(b) If the nature of the procurement is such that carload or truckload shipments might be made by the contractor from one point (such as a subcontractor's plant) to another for processing or fabrication and delivery to the Government, solicitations shall require the contractor to furnish information that will enable the Government to benefit from any transit privilege that might apply in shipment to final destination.

1847.305-70 NASA contract clauses.

(a) The contracting officer shall insert the clause at 1852.247-70, Returnable Containers, in contracts involving the purchase of gas or other supplies in contractor-furnished returnable, reusable containers, if the contractor retains title to the containers.

(b) The contracting officer may insert a clause substantially as stated at 1852.247-72, Advance Notice of Shipment, in solicitations and contracts when the f.o.b point is destination and special Government assistance is required in the delivery or receipt of the items. Insert the number of work days prior to shipment that advance notice is required, the items to be shipped, and the individual(s) to receive notification.

(c) The contracting officer may insert a clause substantially as stated at 1852.247-73, Shipment by Government Bills of Lading, in f.o.b. origin solicitations and contracts. Insert the name, title, mailing address, and telephone number of the designated transportation officer or other official delegated responsibility for GBLs.

Subpart 1847.5—Ocean Transportation by U.S.-Flag Vessels

1847.506 Procedures.

1847.506-70 Compliance with the Cargo Preference Act.

(a) The transportation officer in each field installation shall establish and maintain a register to reflect adherence to the Cargo Preference Act. The register shall contain data related to shipments made by the installation and by NASA contractors. Where no transportation officer is available, it shall be maintained by the contracting office. The register shall contain pertinent details of ocean shipments, including, but not limited to, the ports of origin and destination of shipments, commodity descriptions, and gross weight, freight revenue, name of vessel, operator of vessel, and date of loading. The register shall be maintained current and organized so that adherence to the Cargo Preference Act can be ascertained at all times. Insofar as is practicable, compliance with the 50-percent minimum requirements of the Cargo Preference Act shall be maintained on a quarter-year basis; any deficiencies in maintaining compliance shall be corrected by the end of the calendar year.

(b) On the basis of the registers maintained under paragraph (a) of this section, quarterly reports reflecting ocean shipments shall be submitted to the Division of National Cargo, Office of Market Development, Maritime Administration, Department of Transportation, Washington, DC, 20590 (see FAR 47.506(d)). Negative reports are required when applicable. Reports shall be made by the transportation officers and contracting officers responsible for maintaining the registers.

1847.507 Contract clauses.

The clause at FAR 52.247-64 shall be used as prescribed in FAR 47.507. When it is used, it shall be used with the appropriate alternate.

Subpart 1847.70—Protection of the Florida Manatee

1847.7001 Contract clause.

The contracting officer shall insert the clause at 1852.247-71, Protection of the Florida Manatee, in solicitations and contracts when deliveries or vessel operations, dockside work, or disassembly functions under the contract will involve use of waterways inhabited by manatees (endangered marine mammals). The clause shall be included also in applicable subcontracts (including vendor deliveries).

PART 1848—VALUE ENGINEERING

Subpart 1848.1—Policies and Procedures

Sec.
1848.102 Policies.
1848.103 Processing value engineering change proposals.
1848.104 Sharing arrangements.
1848-104-2 Sharing collateral savings.

Subpart 1848.2—Contract Clauses

1848.201 Clauses for supply or service contracts.
1848.201-70 NASA conditions.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1848.1—Policies and Procedures

1848.102 Policies.

(a) The exemptions permitted under FAR 48.102(a) are granted on a case-by-case basis, or for specific classes of contracts, by the Assistant Administrator for Procurement.

(b) Profit or fee shall be excluded when calculating instant or future contract savings, except that in calculating instant or future contract savings on firm-fixed-price contracts when the parties have not set out a specific figure for profit, the contracting officer shall use the total contract price as the basis for calculating the savings.

(c) The FAR requires agencies to establish procedures for funding and payment of the contractor's share of collateral savings and future contract savings. Therefore, the contracting officer shall notify the responsible technical official of the potential for awarding the contractor future or collateral savings if the submitted value engineering change proposal (VECP) is accepted. (See 1848.103.) Upon acceptance, the contracting officer shall obtain the concurrence of the program office and amend the instant contract to reflect payment of future or collateral savings.

1848.103 Processing value engineering change proposals.

Upon receipt of a VECP, the contracting officer shall promptly forward it to the technical officer responsible for the contract, indicating—

(a) The date the VECP was received;

(b) The date by which the contractor must be informed of the Government's acceptance or rejection of the VECP unless additional time is required for evaluation;

(c) The date by which the contracting officer must know of the technical officer's decision in order to timely accept or reject the VECP;

(d) The need for information required to inform the contractor if the VECP is to be rejected or if additional time is needed for evaluating the VECP;

(e) The potential for awarding concurrent, future, or collateral savings to the contractor if the VECP is accepted;

(f) That if the VECP is accepted, precise information will be needed with regard to the type of savings, Government costs, etc., that can be expected from its acceptance;

(g) The need for a procurement request setting forth the specification changes to be used in any contract modification accepting the VECP in whole or in part; and

(h) The need for additional funds if acceptance of the VECP results in negative instant contract savings.

1848.104 Sharing arrangements.

1848.104-2 Sharing collateral savings.

The contracting officer may make the determination that the cost of calculating and tracking collateral savings will exceed the benefits to be derived.

Subpart 1848.2—Contract Clauses

1848.201 Clauses for supply or service contracts.

1848.201-70 NASA conditions.

(a) *General.* The Assistant Administrator for Procurement may exempt a contract or a class of contracts from the requirements of FAR Part 48.

(b) *Value engineering incentive.* Unless the chief of the contracting activity authorizes its inclusion, the contracting officer shall not include the VE incentive clause in solicitations and contracts that fall under the exemptions at FAR 48.201(a) (1) through (5). With respect to the sixth exception (FAR 48.201(a)(6)), the procurement officer may not authorize inclusion of a VE clause in a contract or class of contracts exempted by the Assistant Administrator for Procurement.

(c) *Value engineering program requirement.* NASA contracting officers shall insert the VE program requirement clause (the clause at FAR 52.248-1 used with its Alternate I or II) in (1) initial production contracts for major systems and (2) major systems R&D contracts for full-scale development, unless the contracting officer determines that its use is inappropriate and documents the file to reflect that determination. The VE program requirement clause (FAR 52.248-1, Value Engineering, used with

its Alternate I or II) is appropriate for an R&D major systems contract only if the contract specifications contain detailed requirements that, in the contracting officer's judgment, lend themselves to VE.

(d) *Research and development.* The contracting officer may not insert either the VE incentive clause (FAR 52.248-1, Value Engineering) or the VE program requirement clause (FAR 52.248-1, Value Engineering, used with its Alternate I or II) in an R&D contract where the statement of work is essentially an incorporation by reference of the prospective contractor's proposal. If any other part of the statement of work in such a contract reflects a Government specification that might profit from or be improved by application of VE techniques, the contracting officer shall consider inserting the VE incentive clause (FAR 52.248-1, Value Engineering) or VE program requirement clause (FAR 52.248-1, Value Engineering, used with its Alternate I or II), to refer to that part.

PART 1849—TERMINATION OF CONTRACTS

Subpart 1849.1—General Principles

Sec.
1849.101 Authorities and responsibilities.
1849.101-70 Appointment/delegation.
1849.101-71 Termination authority.
1849.102 Notice of termination.
1849.102-70 Prior clearance of significant contract terminations.
1849.105 Duties of termination contracting officer after issuance of notice of termination.
1849.105-70 Termination docket checklist.
1849.110 Negotiation memorandum.
1849.111 Review of proposed settlements.
1849.111-70 Settlement Review Boards.
1849.111-71 Required review and approval.
1849.111-72 Scope of review.
1849.111-73 Action by the Board.
1849.111-74 Subcontracts.

Subpart 1849.5—Contract Termination Clauses

1849.505 Other termination clauses.
1849.505-70 NASA contract clause.

Subpart 1849.6—Contract Termination Forms and Formats

1849.603 Formats for termination for convenience settlement agreements.
1849.603-70 Termination Contracting Officer's Settlement Memorandum.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1849.1—General Principles

1849.101 Authorities and responsibilities.

1849.101-70 Appointment/delegation.

(a) Heads of installations shall appoint a termination contracting officer (TCO) (see FAR 2.101) to perform specific duties relating to contract termination as one of that individual's primary functions. Such duties should include—

(1) Receiving and reviewing NASA Forms 1412, Termination Authority;

(2) Reviewing the contract and related documents before issuing the notice of termination, to ensure protection of the Government's rights under the contract;

(3) Issuing notices of termination, reinstatement, and recession to contractors;

(4) Assigning termination docket control numbers;

(5) Developing, maintaining, and managing basic controls relating to contract termination and settlement actions; and

(6) Carrying out the duties, functions, and responsibilities described in FAR Part 49 and this Part 1849.

(b) Contracting offices shall utilize the services of the Department of Defense and other Government agencies whenever possible to administer and negotiate settlement of terminated contracts. Delegation of the termination function shall be made in accordance with FAR Subpart 42.2 and Subpart 1842.2 of this Regulation.

1849.101-71 Termination authority.

NASA Form 1412, Termination Authority, is prescribed for use by NASA installations when initiating action to terminate a contract for convenience or default. The project manager or the activity initiating the procurement request should initiate the action by completing NASA Form 1412 and submitting it to the contracting officer.

1849.102 Notice of termination.

1849.102-70 Prior clearance of significant contract terminations.

(a) Before any notice or information concerning a proposed contract termination involving a reduction in employment of 100 or more contractor employees is released to a contractor, prior NASA Headquarters clearance of the information release is required; release of information to Congress or the public is the responsibility of NASA Headquarters through its liaison point designated in paragraph (b) of this section. In a labor surplus area, a reduction of fewer than 100 may be significant and, if so, should be similarly cleared.

(b) The contracting officer shall submit the following information to the Office of External Relations, NASA Headquarters (Code X):

(1) Contract number.

(2) Date of award.

(3) Type of contract.

(4) Name of company.

(5) Nature of contract or end item.

(6) Reasons for the termination.

(7) Contract price of items terminated

(8) Total number of contractor employees involved, including the Government's estimate of the number that may be discharged.

(9) Anticipated impact on the company and the community.

(10) Name of the community affected.

(11) Area labor category.

(12) Whether contractor is large or small business.

(13) Any known impact on disadvantaged employment programs.

(14) Total number of subcontractors involved and the impact in this area, if known.

(15) Unclassified draft of suggested press release.

(c) After the decision has been made to terminate a contract, the contracting officer shall immediately request clearance to release the information. Pending receipt of the clearance, "For Official Use Only" handling shall be used unless classified information is involved. The contracting officer shall furnish copies of the request to the Office of External Relations (Code X), and the cognizant program office.

(d) The Office of External Relations (Code X) shall act promptly on the request (not days after receipt) to avoid the accrual of termination costs.

1849.105 Duties of termination contracting officer after issuance of notice of termination.

1849.105-70 Termination docket checklist.

The termination contracting officer shall complete NASA Form 1413, Termination Docket Checklist, to ensure adequacy of records under FAR 49.105.

1849.110 Negotiation memorandum.

Formats for negotiation memoranda for settlements requiring Settlement Review Board action appear in 1849.603-70.

1849.111 Review of proposed settlements.

1849.111-70 Settlement Review Boards.

Procurement officers at each NASA installation shall establish a Settlement Review Board (the Board) to review proposed settlements or determinations as required by 1849.111-71(a). Each Board should be composed of at least three qualified employees of the installation with broad business and contracting experience. Each Board should include a lawyer, an engineer or industrial specialist, and, in appropriate cases, an accountant. Three members of the Board shall constitute a quorum; the Board may act by a majority of the members present. No person may serve as a member of a Board in reviewing a settlement in which that member has participated.

1849.111-71 Required review and approval.

(a) *When required.* Before executing a settlement agreement, issuing a determination of the amount due under the termination clause of a contract, or approving or ratifying a subcontract settlement, the TCO shall submit it for review and approval by the Board if—

(1) It involves $50,000 or more (see FAR 49.002(d));

(2) It is limited to adjustment of the fee of a cost-reimbursement contract or subcontract and:

(i) In the case of a complete termination, the fee, as adjusted, is $50,000 or more, or

(ii) In the case of a partial termination, the fee, as adjusted, with respect to the terminated portion of the contract or subcontract is $50,000 or more;

(3) The procurement officer concerned determines that a review is desirable; or

(4) The TCO desires review by the Board.

(b) *Submission of information.* The TCO shall submit to the Board the Termination Settlement Supplemental Agreement and supporting documentation. The documentation should include copies of:

(1) The contractor's or subcontractor's settlement proposal,

(2) The audit report,

(3) Termination inventory schedules,

(4) Consolidated SF 1424, Inventory Disposal Report,

(5) The TCO's negotiation memorandum explaining the settlement (see FAR 49.110), and

(6) The opinion of any other Board that previously reviewed the settlement.

The Board will prescribe the number of copies and may require the submission of additional information.

1849.111-72 Scope of review.

The function of the Board is to judge the reasonableness of the proposed settlement agreement or determination. The Board may vary the scope and intensity of its review as circumstances warrant. While it is not intended that the Board examine in detail every element of the proposed settlement agreement or determination, the Board may review some elements to assure its overall reasonableness.

1849.111-73 Action by the board.

The Board shall submit to the TCO a written opinion approving or disapproving the proposed settlement agreement or determination. Failure of the Board to submit a written opinion within 30 days after submission to the Board of all the information required under 1849.111-71(b) shall operate as an approval.

1849.111-74 Subcontracts.

A TCO may authorize the contract administration office cognizant of an upper-tier subcontractor to grant approval or ratification, including necessary Board approvals, of proposed subcontractor settlements described in FAR 49.108-3(c), that are first reviewed and referred by the prime contractor to the TCO. This procedure may be used only for specified contracts and is not applicable to settlements between the contractor and its immediate subcontractors.

Subpart 1849.5—Contract Termination Clauses

1849.505 Other termination clauses.

1849.505-70 NASA contract clause.

The contracting officer shall insert the clause at 1852.249-72, Termination (Utilities), in all solicitations and contracts for utilities services.

Subpart 1849.6—Contract Termination Forms and Formats

1849.603 Formats for termination for convenience settlement agreements.

Termination contracting officers (TCOs) must use the format shown in 1849.603-70 for the settlement memorandum (see FAR 49.110). Contractors and subcontractors are encouraged to use this format appropriately modified to cover subcontract settlements submitted for review and approval.

1849.603-70 Termination contracting officer's settlement memorandum.

(a) *General information.* The TCO shall include the following information regarding the contractor, contract, and termination notice:

(1) *Identification.* TCOs shall identify the purpose and content of the memorandum.

(i) The TCO shall give the name and address of the contractor and discuss any pertinent affiliation between prime contractors and subcontractors relative to the overall settlement.

(ii) The TCO shall list the names and titles of contractor and Government personnel who participated in the negotiation.

(2) *Description of terminated contract.* The TCO shall state the—

(i) Date of contract;

(ii) Contract number;

(iii) Type of contract;

(iv) General description of contract items;

(v) Total contract price; and

(vi) Applicable contract termination provisions and clause.

(3) *Termination notice.* The TCO shall reference the termination notice and state—

(i) The effective date of termination;

(ii) The scope and nature of termination (complete or partial);

(iii) The items terminated;

(iv) The unit prices;

(v) The total price of items terminated for fixed-price contracts or the estimated cost and fee applicable to items terminated for cost-reimbursement type contracts;

(vi) Whether the termination notice was amended and, if so, why;

(vii) Whether the contractor stopped work on the termination effective date (if it did not, furnish details) and whether subcontracts were terminated promptly;

(viii) Any redirection of common items and return of goods to the contractor's suppliers; and

(ix) The extent of contract performance and timely deliveries by the contractor.

(b) *Contractor's settlement proposal.* The TCO shall summarize the contractor's settlement proposal. The summary shall include the following:

(1) *Date and amount.* The TCO shall identify the date and location where the claim was filed and its gross amount (if interim settlement proposals were filed, information shall be furnished for each claim).

(2) *Basis of claim.* The TCO shall identify the basis of the claim, e.g., inventory, total cost, or other basis. The TCO shall explain any approvals granted in connection with submission on other than an inventory basis.

(3) *Examination of proposal.* The TCO shall identify the types of reviews made and by whom (audit, engineering, legal, or other).

(c) *Tabular summary of contractor's claim.* The TCO shall summarize the proposed settlement in tabular form. The summary shall include the cost elements/items, the amounts claimed, the Government recommended position (including auditor and technical personnel recommendations), and the negotiated settlement amounts. This summary shall include, if appropriate, the previous reimbursed and unreimbursed costs applicable to the prime contractor and subcontractor, previous profit/fees paid and unpaid; settlement cost less disposal credit or other credits, and a recapitulation of

previous settlements. The TCO shall expand the format to include field recommendations that will be considered.

(d) *Settlement summary.* The TCO shall address the settlements reached on the items in subparagraphs (d) (1) through (14) of this section:

(1) *Contractor's cost.* (i) If the settlement was negotiated on the basis of individual items, the TCO shall specify the factors and the consideration given with respect to each item.

(ii) If the auditor's final report was not available for consideration, the TCO shall state the circumstances.

(iii) The TCO shall elucidate the tabular summaries with comment.

(iv) In the case of a lump sum settlement, the TCO shall discuss the basis for each element of cost and profit/fee.

(v) The TCO shall explain any unusual items of cost.

(vi) The TCO shall discuss any important adjustments made to costs claimed or any significant amounts in relation to the total claim.

(vii) If a partial termination is involved, the TCO shall state whether the contractor has requested an equitable adjustment in the price of the continued portion of the contract.

(viii) The TCO shall discuss any unadjusted contractual changes included in the settlement.

(ix) The TCO shall discuss whether or not a loss would have been incurred and explain any adjustment made for the loss.

(x) The TCO shall furnish other information explaining the recommended settlement to the Settlement Review Board or any other reviewing authority.

(2) *Profit/Fee.* (i) The TCO shall explain the basis and factors considered in arriving at an equitable profit under a fixed-price contract.

(ii) The TCO shall explain the adjustments to the fixed fee, identify the basis used (such as percentage of completion), and describe the factors considered in arriving at an equitable fee under a cost-reimbursement type contract. The TCO shall include any tabular summaries or breakdowns deemed helpful to an understanding of the process.

(3) *Settlement expenses.* The TCO shall discuss and summarize those expenses not included in the audit.

(4) *Subcontractor settlements.* The TCO shall identify the number and dollar amount of any settlements approved by the TCO and concluded by the contractor under delegation of authority.

(5) *Partial payments.* The TCO shall furnish the total amount of any partial payments.

(6) *Progress or advance payments.* The TCO shall furnish the total of unliquidated progress or advance payments.

(7) *Claims of the Government against the contractor included in settlement agreement reservations.* The TCO shall list any outstanding claims the Government has against the contractor regarding the terminated contract.

(8) *Assignments.* The TCO shall list any assignments, identifying the name and address of each assignee.

(9) *Disposal credits.* The TCO shall furnish information as to any applicable disposal credits and quantify them.

(10) *Plant clearance.* The TCO shall state whether all plant clearance actions have been completed and all inventory sold, retained, or otherwise properly disposed of in accordance with applicable plant clearance regulations. The TCO shall discuss any unusual matters pertaining to plant clearance. The TCO shall attach a consolidated closing plant clearance report, if applicable.

(11) *Government property.* The TCO shall state whether all Government property has been accounted for.

(12) *Special tooling.* The TCO shall discuss the disposition of any special tooling, if applicable.

(13) *Summary of settlement.* The TCO shall summarize the complete or partial settlement in tabular form. The summary shall include, at a minimum, the amount claimed and allowed for contractor and/or subcontractor changes, disposal, prior payment credits, and contract price.

(14) *Exclusions.* The TCO shall describe any proposed reservation of rights to the Government or to the contractor.

(e) *Recommendation.* The TCO shall state:

(1) The amount of the gross settlement recommended and

(2) That it is fair and reasonable to the Government and the contractor.

(f) *Signature.* The TCO shall sign and date the memorandum.

PART 1850—EXTRAORDINARY CONTRACTUAL ACTIONS

Subpart 1850.2—Delegation of and Limitations on Exercise of Authority

Sec.

1850.202 Contract adjustment boards.

Subpart 1850.3—Contract Adjustments

1850.305 Processing cases.
1850.305–70 Submission of request to the Contract Adjustment Board.
1850.306 Disposition.
1850.306–70 Implementation of the Contract Adjustment Board's decision.

Subpart 1850.4—Residual Powers

1850.402 General.
1850.403 Special procedures for unusually hazardous or nuclear risks.
1850.403–1 Indemnification requests.
1850.403–2 Action on indemnification requests.
1850.403–3 Contract clause.
1850.403–370 NASA contract clauses.
1850.403–70 Reporting and records requirements.
1850.470 Lead NASA installation.

Authority: 42 U.S.C. 2473 (c)(1).

Subpart 1850.2—Delegation of and Limitations on Exercise of Authority

1850.202 Contract adjustment boards.

NMI 1152.5, Contract Adjustment Board, establishes the Contract Adjustment Board as the approving authority to consider and dispose of requests from NASA contractors for extraordinary contractual actions.

Subpart 1850.3—Contract Adjustments

1850.305 Processing cases.

1850.305–70 Submission of request to the Contract Adjustment Board.

(a) After investigating the facts and issues relevant to the contractor's request, the contracting officer shall forward the request to the Chairman, Contract Adjustment Board (CAB), NASA Headquarters (Code GG), including in the forwarding letter—

(1) The nature of the case;

(2) The disposition recommended for the request; and,

(3) If contractual action is recommended, the contracting officer's opinion that the action will facilitate the national defense.

(b) The forwarding letter shall enclose the contractor's request, all supporting material submitted by the contractor, and any material the contracting officer has obtained while investigating the facts and issues relevant to the request. The forwarding letter and all enclosures shall be submitted in duplicate. Any classified information in the material forwarded shall be so identified. The CAB, acting through its Counsel, may further investigate the facts and issues involved to obtain from the contractor, the contracting officer, or others any additional facts and evidence, necessary to make a determination on the contractor's entitlement to the relief requested or to other equitable relief.

1850.306 Disposition.

1850.306–70 Implementation of the Contract Adjustment Board's decision.

(a) Copies of the CAB's decision shall be transmitted to the contracting officer, who shall take such action as is authorized by the decision. If the CAB's decision is to reject the contractor's request for relief, the contracting officer shall advise the contractor of that decision.

(b) Except as provided in paragraph (c) of this section, immediately upon execution of a contract or contract modification or amendment implementing the CAB decision, the contracting officer shall forward two copies of the contractual document to the CAB Chairman, marked for the attention of the Counsel, for retention with the CAB's permanent files.

(c) Contracts or contract modifications or amendments for which NASA Headquarters approval is otherwise required under the FAR or this Regulation shall be forwarded for that approval. After approval has been received, the contracting officer shall comply with paragraph (b) of this section.

Subpart 1850.4—Residual Powers

1850.402 General.

All proposals for the exercise of indemnification authority shall be forwarded to the Assistant Administrator for Procurement (Code HS), who shall review and forward contractors' requests for indemnification through channels to the Administrator for approval. If the Administrator approves the use of indemnification authority, the Administrator shall sign a Memorandum of Approval.

1850.403 Special procedures for unusually hazardous or nuclear risks.

1850.403–1 Indemnification requests.

In addition to the information required by FAR 50.403–1(a), the contractor's request for indemnification shall include a copy of the relevant third-party comprehensive liability policies and products liability policies or the equivalent.

1850.403–2 Action on indemnification requests.

In accordance with FAR 50.403–2, the contracting officer shall forward contractors' requests for indemnification for which the contracting officer recommends approval to the Assistant Administrator for Procurement (Code HS) for final processing to the Administrator.

1850.403–3 Contract clause.

1850.403–370 NASA contract clauses.

(a) In lieu of the clause or the clause with its Alternate I prescribed at FAR 50.403–3, the following clauses shall be used:

(1) To indemnify the contractor against unusually hazardous or nuclear risks in fixed-price contracts when approved in accordance with FAR Subpart 50.4 and this Subpart 1850.4, the contracting officer shall insert the clause at 1852.250–70, Indemnification Under Public Law 85–804—Fixed-Price Contracts.

(2) To indemnify the contractor against unusually hazardous or nuclear risks in cost-reimbursement contracts when approved in accordance with FAR Subpart 50.4 and this Subpart 1850.4, the contracting officer shall insert the clause at 1852.250–71, Indemnification Under Pub. L. 85–804—Cost-Reimbursement Contracts.

(b) The contracting officer shall insert the clause at 1852.250–72, Space Activity—Unusually Hazardous Risks, in all contracts containing either of the clauses prescribed in paragraph (a) of this section, unless the Administrator approves a different definition of unusually hazardous risks to be used in a particular contract.

1850.403–70 Reporting and records requirements.

(a) Concurrent with including indemnification provisions in any NASA prime contract pursuant to the authority of an indemnification Memorandum of Approval by the Administrator, the contracting officer shall submit a report directly to the Contract Adjustment Board that—

(1) References and provides two copies of the Administrator's Memorandum of Approval;

(2) Provides two copies of any clause deviations from the clauses prescribed at 1850.403–370;

(3) Provides the contract number and date of award;

(4) If applicable, provides the contract modification number and date; and

(5) Complies with the reporting requirements of Pub. L. 85–804, 50 U.S.C. 1434, and Executive Order 10789, which currently states—

With respect to actions which involve actual or potential cost to the United States in excess of $50,000 the report shall * * *

(1) name the contractor;

(2) state the actual cost or estimated potential cost involved;

(3) describe the property or service involved; and

(4) state further the circumstances justifying the action taken.

(b) The Contract Adjustment Board shall maintain two copies of each Memorandum of Approval required by FAR 50.403–2(b) and, for a period deemed appropriate by the Board, one copy of each report submitted by contracting officers.

1850.470 Lead NASA installation.

(a) Contractors applying for indemnification shall be responsible for initially determining which NASA installation has the most significant amount of the contractor's procurement contracts, measured by either dollars or numbers, related to NASA space activities rather than to total NASA business. The indemnification request should be submitted to the procurement officer for that installation, who will then designate a cognizant contracting officer. This determination should be done at the contractor's highest level necessary to prevent duplicate requests from associate divisions, subsidiaries, or central offices of the contractor. NASA reserves the right to reassign a lead installation for purposes of processing indemnification requests made under this Regulation.

(b) Relying on the contractor's submission, the receiving contracting officer shall process the request using the procedures in FAR Subpart 50.4 and this Subpart 1850.4. The receiving installation will become the lead installation and will remain so indefinitely. Lead installation designation may change to another installation if the losing and gaining procurement officers agree to the change. For example, a new award may so substantially alter the focus of a contractor's procurement contracts related to space activities toward a different installation that a change may be appropriate. Should a change occur in the lead installation, all records related to indemnification of that contractor shall be transferred to the gaining installation.

PART 1851—USE OF GOVERNMENT SOURCES BY CONTRACTORS

Subpart 1851.1—Contractor Use of Government Supply Sources

Sec.

1851.101 Policy.
1851.102 Authorization to use Government supply sources.
1851.102–70 Contractor acquisition of filing cabinets.
1851.103 Ordering from Government supply sources.
1851.104 Furnishing assistance to contractors.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1851.1—Contractor Use of Government Supply Sources

1851.101 Policy.

(a) NASA installations shall establish internal control over contractor use of GSA and other Federal supply sources.

(b) Use of official Government mailing privileges by NASA contractors is covered in NMI 1450.11, NASA Mail Management Program.

1851.102 Authorization to use Government supply sources.

(a) In addition to considering the requirements of FAR 51.102(a), the contracting officer shall consider the potential for abuse by contractors authorized access to Government supply sources.

(b) The contracting officer shall forward letters of authorization to the installation's Supply and Equipment Management Officer, Attention: Activity Address Code Coordinator, who will forward them to the Supply and Equipment Management Division, NASA Headquarters (Code NIE), for verification and transmittal to GSA. Letters of authorization forwarded to Headquarters must be accompanied by the supporting determination and findings, which will not be forwarded to GSA.

(c) Substantially the following format shall be used for letters authorizing contractor use of Government supply sources:

Subject: Authorization to Lease, Rent, or Purchase from General Services Administration (GSA) Supply Sources

(Contractor's name)

_____

(Address) _____

(1) You are hereby authorized to act for the Government in the following matters:

(i) The acquisition of supplies and/or services under Contract No. _____ available for purchase by Government agencies either directly from GSA stock or under Federal Supply Schedules, including GSA nonmandatory ADTS/ADP schedule contracts and GSA ADP requirements contracts, subject to the limitations set forth in this authorization.

(ii) The leasing or rental of equipment for use on Contract No. _____ available for lease or rental by Government agencies under Federal Supply Schedules, including GSA nonmandatory ADTS/ADP schedule contracts and GSA ADP requirements contracts, subject to the limitations set forth in this authorization.

(iii) The issuance of tax exemption certificates in lieu of the payment of State or other taxes for which the Government is not liable on supplies or services purchased under this authorization.

(2) (i) Purchase orders under GSA schedules and contracts shall be placed in accordance with the terms and conditions of the GSA schedule or contract and this authorization. A copy of this authorization shall be attached to the order (unless a copy was previously furnished to the GSA contractor) and shall contain the following statement:

This order is placed on behalf of the National Aeronautics and Space Administration in furtherance of United States Government Contract No. _____, pursuant to written authorization dated _____, a copy of which (is attached) (you have on file). In the event of any inconsistency between the terms and conditions of this order and those of the applicable GSA schedule/contract, the latter will govern.

(ii) Orders for items in the GSA Supply Catalog shall be placed in accordance with the Catalog and this authorization and shall include the address to which billings are to be sent. Bills are not issued by GSA until after shipment has been made and should therefore be paid promptly. Any necessary adjustments will be made by GSA subsequent to payment. All orders shall contain the following statement:

This order is placed on behalf of the National Aeronautics and Space Administration in furtherance of United States Government Contract No. _____, pursuant to written authorization dated _____, a copy of which (is attached) (you have on file).

(3) (Insert any other provisions and restrictions.)

(4) The authority hereby granted is not transferable or assignable.

_____

(Contracting Officer)

(d) When requisitioning from the Department of Veterans Affairs, the contractor should use FEDSTRIP or MILSTRIP, as appropriate, Optional Form 347, or an installation-prescribed form.

1851.102-70 Contractor acquisition of filing cabinets.

(a) Before ordering filing cabinets whose title will vest in the Government, NASA contractors shall—

(1) Transfer inactive records to contractor storage areas;

(2) Dispose of unnecessary records in accordance with corporate procedures;

(3) Use less expensive shelf filing methods;

(4) Take other actions to reduce the need for filing cabinets; and

(5) Furnish a statement to the cognizant contracting officer that, although the steps outlined in paragraphs (a)(1) through (4) of this section have been taken, sufficient additional filing capacity has not been produced.

(b) The contractor shall then submit its request to the contracting officer, who shall:

(1) Confer with the Records Management Officer, the Property and Supply Officer, and the project officer and, if appropriate,

(2) Certify on all letter requests that the prerequisite actions have been taken by the contractor and that they have not produced the required filing space.

(c) If the need for filing cabinets is approved by the contracting officer, excess items of the type requested shall be furnished, if available, through appropriate property accountability channels.

(d) Approved requests that cannot be filled from excess shall be returned to the contractor with an authorization to obtain file cabinets, preferably through GSA.

1851.103 Ordering from Government supply sources.

(a) All orders for GSA stock shall contain the statement in subparagraph (c)(2)(ii) of the authorization format set forth in 1851.102.

(b) Contracting officers shall use NMI 4050.2, Assignment and Maintenance of FEDSTRIP and MILSTRIP Activity Address Codes, to obtain FEDSTRIP/MILSTRIP activity codes.

1851.104 Furnishing assistance to contractors.

When necessary, NASA personnel shall assist the contractor in preparing and submitting the initial FEDSTRIP or MILSTRIP requisitions, the Optional Form 347, or installation-prescribed forms.

SUBCHAPTER H—CLAUSES AND FORMS

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.000 Scope of part.

Subpart 1852.1—Instructions for Using Provisions and Clauses

1852.101 Using FAR Part 52.
1852.103 Identification of provisions and clauses.
1852.103-70 Identification of modified provisions and clauses.
1852.104 Procedures for modifying and completing provisions and clauses.
1852.107 Provisions and clauses prescribed in Subpart 52.1.
1852.107-70 NASA contract clause.

Subpart 1852.2—Texts of Provisions and Clauses

1852.203-70 Contracts Between NASA and Former NASA Employees.
1852.204-70 Report on NASA Subcontracts.
1852.204-71 NASA Contractor Financial Management Reporting.
1852.204-72 NASA Contractor Financial Management Reporting (Performance Analysis Report).

1852.204-75 Security Classification Requirements.
1852.207-70 Estimate of Work.
1852.208-70 Rates.
1852.208-71 Public Regulation and Change of Rates.
1852.208-72 Change in Class of Service.
1852.208-73 Contractor's Facilities.
1852.208-74 Technical Provisions.
1852.208-75 Renewal of Contract.
1852.208-76 Change in Rates.
1852.208-77 Connection Charge.
1852.208-78 Termination Charge.
1852.208-79 Multiple Service Locations.
1852.208-80 Contractor's Facilities (Short Form).
1852.208-81 Printing and Duplicating.
1852.208-83 Acquisition of Helium.
1852.209-70 Product Removal from Qualified Products List.
1852.209-71 Limitation of Future Contracting.
1852.209-72 Composition of the Contractor.
1852.210-70 Brand Name or Equal.
1852.210-71 Descriptive Literature for Used Material.
1852.210-72 Supplies and/or Services to be Furnished.
1852.210-75 Packaging and Marking.
1852.212-70 Notice of Delay.
1852.212-72 Partial Shipments.
1852.212-73 Delivery Schedule.
1852.212-74 Period of Performance.
1852.214-70 Caution to Offerors Furnishing Descriptive Literature.
1852.214-71 Grouping for Aggregate Award.
1852.214-72 Full Quantities.
1852.215-70 Increases in Estimated Costs.
1852.215-71 Adjustment for Subcontract Price Redetermination.
1852.215-72 Restriction on Use and Disclosure of Proposal/Quotation Information (Data).
1852.215-73 Late Submissions, Modifications, and Withdrawals of Proposals (AO and SBIR Programs).
1852.215-74 Alternate Proposals.
1852.215-75 Expenses Related to Offeror Submissions.
1852.215-76 False Statements.
1852.215-77 Preproposal/Pre-bid Conference.
1852.215-78 Make or Buy Program Requirements.
1852.215-79 Price Adjustment for "Make-or-Buy" Changes.
1852.215-80 Disposal of Unsuccessful Proposals.
1852.216-72 Evaluation of Offers Subject to Economic Price Adjustment.
1852.216-73 Estimated Cost and Cost Sharing.
1852.216-74 Estimated Cost and Fixed Fee.
1852.216-75 Payment of Fixed Fee.
1852.216-76 Award Fee.
1852.216-78 Firm Fixed Price.
1852.216-79 Level-of-Effort (Fixed-Price).
1852.216-80 Task Ordering Procedure.
1852.216-81 Estimated Cost.
1852.216-82 Level-of-Effort (Cost).
1852.216-83 Fixed Price Incentive.
1852.216-84 Estimated Cost and Incentive Fee.
1852.216-85 Estimated Cost and Award Fee.
1852.216-86 Settlement of Letter Contract.
1852.216-87 Submission of Vouchers for Payment.
1852.217-70 Property Administration and Reporting.
1852.219-72 SIC Code and Small Business Size Standard.
1852.219-73 Small Business and Small Disadvantaged Business Subcontracting Plan.
1852.222-70 Facilities Nondiscrimination Notice.
1852.222-71 Facilities Nondiscrimination.
1852.223-70 Safety and Health.
1852.223-71 Frequency Authorization.
1852.223-72 Potentially Hazardous Items.
1852.223-73 Safety and Health Plan.
1852.225-71 Nondomestic Construction Materials.
1852.225-72 Offer in English Language and U.S. Dollars.
1852.225-73 Duty-Free Entry Supplies.
1852.227-70 New Technology.
1852.227-71 Requests for Waiver of Rights to Inventions.
1852.227-72 Designation of New Technology Representative and Patent Representative.
1852.227-73 Patent Rights Clause for Subcontracts.
1852.227-84 Patent Rights Clauses.
1852.227-85 Invention Reporting and Rights—Foreign.
1852.227-86 Commercial Computer Software—Licensing.
1852.228-70 Aircraft Ground and Flight Risk.
1852.228-71 Aircraft Flight Risks.
1852.228-72 Interparty Waiver of Liability During STS Operations.
1852.228-73 Bid Bond.
1852.228-74 Payment and Performance Bonds.
1852.228-75 Minimum Insurance Coverage.
1852.228-76 Cross-waiver of Liability for Space Station Activities.
1852.228-77 Reimbursement for War-Hazard Losses.
1852.232-75 Security for Advance Payments.
1852.232-77 Limitation of Funds (Fixed-Price Contract).
1852.232-79 Payment for On-Site Preparatory Costs.
1852.232-80 Date of Incurrence of Costs.
1852.232-81 Contract Funding.
1852.232-82 Submission of Requests for Progress Payments.
1852.235-70 Scientific and Technical Information Service.
1852.235-71 Key Personnel and Facilities.
1852.235-72 Plan for New Technology Reporting.
1852.236-71 Additive or Deductive Items.
1852.236-72 Bids with Unit Prices.
1852.236-73 Hurricane Plan.
1852.236-74 Magnitude of Requirement.
1852.237-70 Emergency Evacuation Procedures.
1852.242-70 Technical Direction.
1852.242-71 Travel Outside of the United States.
1852.242-72 Observance of Legal Holidays.
1852.243-70 Engineering Change Proposals.
1852.244-70 Geographic Participation in the Aerospace Program.
1852.245-70 Acquisition of Centrally Reportable Equipment.
1852.245-71 Installation-Provided Government Property.
1852.245-72 Liability for Government Property Furnished for Repair or Other Services.
1852.245-73 Financial Reporting of Government-Owned/Contractor-Held Property.
1852.245-74 Contractor Accountable On-Site Government Property.
1852.245-75 Title to Equipment.
1852.245-76 List of Government-Furnished Property.
1852.245-77 List of Installation-Provided Property and Services.
1852.245-78 Space Hardware Reporting.
1852.245-79 Use of Government-Owned Property.
1852.245-80 Use of Government Production and Research Property on a No-Charge Basis.
1852.246-70 Space Transportation System (STS) Personnel Reliability Program.
1852.246-71 Government Contract Quality Assurance.
1852.246-72 Material Inspection and Receiving Report.
1852.246-73 Manned Space Flight Item.
1852.247-70 Returnable Containers.
1852.247-71 Protection of the Florida Manatee.
1852.247-72 Advance Notice of Shipment.
1852.247-73 Shipment by Government Bills of Lading.
1852.249-72 Termination (Utilities).
1852.250-70 Indemnification Under Public Law 85-804—Fixed-Price Contracts.
1852.250-71 Indemnification Under Public Law 85-804— Cost-Reimbursement Contracts.
1852.250-72 Space Activity—Unusually Hazardous Risks.
1852.252-70 Compliance with NASA FAR Supplement.

Authority: 42 U.S.C. 2473 (c)(1).

1852.000 Scope of part.

This part, in conjunction with FAR Part 52:

(a) Gives instructions for using provisions and clauses prescribed by this regulation and lower level provisions and clauses; and

(b) Sets forth the provisions and clauses prescribed in this regulation.

Subpart 1852.1—Instructions for Using Provisions and Clauses

1852.101 Using FAR Part 52.

NASA contracting offices prescribing or developing clauses under the authority of FAR 52.101(b)(2)(i)(B) or (C) shall ensure that the requirements of FAR Subpart 1.4 and Subpart 1801.4 are met.

1852.103 Identification of provisions and clauses.

(a) Provisions and clauses prescribed by a NASA field installation to satisfy

the needs of that particular installation shall be identified as stated in subparagraphs (a) (1) and (2) of this section. Articles, formats, and similar language shall be treated as provisions and clauses for purposes of this section 1852.103.

(1) A provision or clause shall be numbered using a prefix, a base, and a suffix. The prefix shall be an alphabetical abbreviation of the installation name (e.g., ARC, GSFC, HR, HW, JSC, KSC, LARC, LERC, MSFC, or SSC). The base shall be a numeric value beginning with "52.2," with the next two digits corresponding to the number of the FAR or NASA FAR Supplement subject part to which the provision or clause relates. The suffix shall be a hyphen and sequential number assigned within each part. NASA installations shall use suffix numbers from –00 to –199. For example, the first Johnson Space Center (JSC) provision or clause relating to Part 36 of the FAR or NASA FAR Supplement shall be JSC 52.236–90, the second JSC 52.236–91, and so forth. Provisions and clauses shall be dated in accordance with FAR 52.101(f).

(2) Contracting officers shall identify provisions and clauses as in the following examples:

(i) L2 BID ENVELOPES (GSFC 52.214–90) (AUGUST 1987) This example is applicable when identifying the title of provisions and clauses in solicitations and contracts using the uniform contract format (UCF). The first number ("L2") designates the UCF section and the sequential clause within that section. "GSFC 52.214–90" specifies the clause number.

(ii) GSFC 52.214–90—Bid Envelopes (AUGUST 1987) This example is applicable in all instances in which the provision or clause citation is not associated with the UCF number.

(b) Contracting officers shall not number provisions and clauses developed for individual procurements only. For example, "F.3 Delivery Procedures for Special Hardware" cites the third clause in Section F of a contract using the UCF, but has no clause number or date identified with it, indicating that the clause was developed for the particular contract it appears in.

1852.103–70 Identification of modified provisions and clauses.

When a FAR clause or provision is included in a solicitation or contract and the NFS prescribes a modification, the title line shall identify the modification as shown below. This format shall be used both for incorporation by reference and when using full text.

52.232–22 Limitation of Funds (APR 1984)—as modified by NASA FAR Supplement 1832.705–270(d)

1852.104 Procedures for modifying and completing provisions and clauses.

NASA FAR Supplement provisions and clauses shall not be modified (see FAR 52.101(a)) unless their modification is authorized by this regulation. When it is authorized, contracting officers must comply with the procedures in FAR 52.104.

1852.107 Provisions and clauses prescribed in Subpart 52.1.

1852.107–70 NASA contract clause.

The contracting officer shall insert the clause at 1852.252–70, Compliance with NASA FAR Supplement, in all contracts, including letter contracts.

Subpart 1852.2—Texts of Provisions and Clauses

1852.203–70 Contracts between NASA and former NASA employees.

As prescribed in 1803.7002, insert the following provision in all solicitations except IFB's:

Contracts Between NASA and Former NASA Employees (December 1988)

The offeror represents that he or she ( ) is, or ( ) is not, an individual who was employed by NASA during the past two years, or a firm in which such an individual is a partner, principal officer, or majority shareholder or that is otherwise controlled or predominantly staffed by such individuals.

(End of provision)

1852.204–70 Report on NASA subcontracts.

As prescribed in 1804.672, insert the following clause in all NASA contracts of $500,000 or more or when a modification increases the amount of a contract to $500,000 or more:

Report on NASA Subcontracts (December 1988)

(a) The Contractor shall submit information on NASA Form 667 to the National Aeronautics and Space Administration (Code HM), Washington, DC 20546, substantially as follows with respect to each subcontract or subcontract modification exceeding $10,000 as soon as possible after its execution:

(1) The name and address of the prime contractor and the NASA prime contract number.

(2) The name and address of the subcontractor.

(3) Whether the subcontractor is a large or small business concern and/or a minority business concern.

(4) Whether the type of effort being performed involves research and development.

(5) A brief description of the subcontract work.

(6) The amount of the subcontract.

(7) The principal location where the subcontract work is to be performed, if known.

(b) The Contractor and its subcontractors shall submit negative reports annually, if applicable, on each prime contract and first-tier subcontract subject to this reporting requirement. These negative reports shall be submitted not later than October 31 for the 12-month period ending September 30th of each year. The negative reporting shall be continued until the contract or subcontract has been physically completed and the National Aeronautics and Space Administration (Code HM), Washington, DC 20546, so notified by the Contractor or subcontractor.

(c) "Subcontract," as used in this clause, means procurement in excess of $10,000 by the Contractor or first-tier subcontractor of articles, materials, or services for performing this contract, except purchases, regardless of amount, of stock items, materials, or services that cannot be specifically identified with this contract.

(d) "Research and development," as used in this clause, means basic and applied research, and design and development of prototypes and processes, to (1) Pursue a planned search for new knowledge, with or without reference to a specific application, (2) apply existing knowledge in the creation of new products or processes, or (3) apply existing knowledge in the improvement or modification of present products and processes. It excludes subcontracts for the purchase of standard commercial items and services.

(e) The Contractor shall—

(1) Insert the provisions of paragraphs (a), (b), (c), and (d) of this clause in each subcontract over $50,000;

(2) Instruct its subcontractors to submit their reports directly to the National Aeronautics and Space Administration (Code HM), Washington, DC 20546; and

(3) Provide its subcontractors with the number of the NASA prime contract.

(End of clause)

1852.204–71 NASA contractor financial management reporting.

As prescribed in 1804.675–1(a), insert the following clause in contracts that require submission of any of the NASA Form 533 series of reports (excluding Form 533P).

NASA Contractor Financial Management Reporting (December 1988)

(a) The Contractor shall submit Financial Management Reports on NASA Form 533 in accordance with the instructions in Procedures for Contractor Reporting of Correlated Cost and Performance Data (NHB 9501.2) and on the reverse side of the forms, as supplemented in the Schedule of this contract. The detailed reporting categories to be used, which shall be correlated with technical and schedule reporting, shall be set forth in the contract Schedule. Contractor implementation of reporting requirements under this clause shall include NASA approval of the definitions of the content of each reporting category and give due regard

to the Contractor's established financial management information system.

(b) Lower level detail used by the Contractor for its own management purposes to validate information reported to NASA shall be compatible with NASA requirements.

(c) Reports shall be submitted in the number of copies, at the time, and in the manner set forth in the contract Schedule or as designated in writing by the Contracting Officer. Upon completion and acceptance by NASA of all contract Schedule line items, the Contracting Officer may direct the Contractor to submit Form 533 reports on a quarterly basis only.

(d) The Contractor shall insert the substance of this clause in all first-tier cost-reimbursement subcontracts specifically identified in writing by the Contracting Officer and shall include their cost in its cost reports.

(e) If during the performance of this contract NASA requires a change in the information or reporting requirements specified in the Schedule, or as provided for in paragraph (a) or (c) of this clause the Contracting Officer shall effect that change in accordance with the Changes clause of this contract.

(End of clause)

1852.204–72 NASA contractor financial management reporting (performance analysis report).

As prescribed in 1804.675–1(b), insert the following clause in contracts that require submission of NASA Form 533P in addition to the Form 533 series submission prescribed at 1804.675–1(a).

NASA Contractor Financial Management Reporting (Performance Analysis Report) (December 1988)

Monthly reporting of contract performance shall be accomplished on the NASA Monthly Contractor Financial Management Performance Analysis Report (NASA Form 533P) in accordance with the instructions in Procedures for Contractor Reporting of Correlated Cost and Performance Data (NHB 9501.2) and on the reverse side of the form, as supplemented in the Schedule of this contract.

(End of clause)

1852.204–75 Security classification requirements.

As prescribed in 1804.404–70, insert the following clause:

Security Classification Requirements (December 1988)

Performance under this contract will involve access to and/or generation of classified information, work in a security area, or both, up to the level of _____ [insert the applicable security clearance level]. See Federal Acquisition Regulation clause 52.204–2 in this contract and DD Form 254, Contract Security Classification Specification, Attachment _____ [Insert the attachment number of the DD Form 254]. The offeror selected for award of this procurement shall be required to execute a DOD Security Agreement (DD Form 441), which binds the contractor to observe the provisions of the DOD Industrial Security Manual.

(End of clause)

1852.207–70 Estimate of work.

As prescribed in 1807.7001, insert the following provision:

Estimate of Work (October 1988)

It is estimated that approximately $ [insert estimated value of procurement] will be available to perform this work. This estimate is provided as a guide only to the approximate effort required.

(End of provision)

1852.208–70 Rates.

As prescribed in 1808.309, insert the following clause:

Rates (December 1988)

(a) The Contractor shall be paid at the rates set out in Appendix A, provided that the Government shall be liable for any minimum monthly charge specified in this contract commencing with the billing period in which service is initially furnished and continuing until the contract is terminated, except that this charge shall be equitably prorated for the billing periods in which commencement and termination of this contract become effective.

(b) The Contractor hereby certifies that the rates for the service furnished under this contract do not exceed the lowest rates available to any prospective customer under like conditions, and agrees that during the life of this contract the Government shall continue to be billed at the lowest rates applicable for similar conditions of service.

(End of clause)

1852.208–71 Public regulation and change of rates.

As prescribed in 1808.309, insert the following clause:

Public Regulation and Change of Rates (December 1988)

(a) Rates under this contract shall be subject to regulation in the manner and to the extent prescribed by law by any Federal, State, or local regulatory agency having jurisdiction. The Contractor agrees to give the Contracting Officer written notice of the filing of an application for rate changes concurrently with the filing of the application. Such notice shall fully describe the proposed changes.

(b) If during the term of this contract the public regulatory agency having jurisdiction approves rates higher or lower than those stipulated in this contract, for like conditions of service, the Contractor agrees to continue to furnish service as stipulated in the contract and the Government agrees to pay the changed rates from the date they are made effective.

(c) If the regulatory agency promulgates any regulation concerning matters other than rates that affects this contract, the Contractor shall immediately notify the Contracting Officer. The Government shall not be bound to accept any new regulation inconsistent with Federal laws or regulations.

(d) If the Contractor, during the term of this contract, makes effective any new or amended rate schedule for the class of service furnished the Government at the service location that contains lower rates or conditions more favorable to the Government, the Contractor shall (1) forward to the Contracting Officer a copy of the schedule within 15 days after its effective date and, upon receipt of written request from the Government, (2) substitute the new or amended schedule for the one then in effect under this contract for that service location, commencing with the billing period in which the request is received.

(End of clause)

1852.208–72 Change in class of service.

As prescribed in 1808.309, insert the following clause:

Change in Class of Service (December 1988)

(a) In the event of a permanent change in the class of service furnished the Government at the service location, service shall be furnished to that service location at the lowest available rate schedule of the Contractor applicable to the class of service furnished following that permanent change, subject to the Rates clause of this contract.

(b) If the Contractor's rate schedule on file with the regulatory agency and applicable to services provided by the Contractor does not contain a schedule applicable to the class of service furnished the Government, no clause in this contract shall preclude the parties from negotiating a rate schedule applicable to the class of service furnished.

(End of clause)

1852.208–73 Contractor's facilities.

As prescribed in 1808.309, insert the following clause:

Contractor's Facilities (December 1988)

(a) The Contractor, at its expense, shall furnish, install, operate, and maintain all facilities required to furnish service under this contract to, and measure that service as of, the point of delivery specified in the Service Specifications. Title to these facilities shall be and remain in the Contractor, and the Contractor shall be responsible for all loss of or damage to them.

(b) The Government hereby grants to the Contractor, free of any rental or similar charge, but subject to any limitations specified in this contract, a revocable permit or license to enter the service location for any proper purpose under this contract, including use of the site or sites agreed upon by the parties for the installation, operation, and maintenance of the facilities of the Contractor required to be located upon Government premises. These facilities shall be and remain the property of the Contractor and shall, at all times during the life of this contract and any renewals, be operated and maintained by the Contractor at its expense. All taxes and other charges in connection with these facilities, together with all liability arising out of their construction, operation, or

maintenance, shall be borne by the Contractor.

(c) Authorized representatives of the Contractor shall be allowed access to the Contractor's facilities at suitable times to perform the Contractor's obligations regarding the facilities. The facilities shall be removed and Government premises restored to their original condition by the Contractor at its expense within a reasonable time after the Government revokes the permit or license granted by this clause and in any event within a reasonable time after termination of this contract, provided that if the contract is terminated for default, the facilities may be retained in place at the Government's option until comparable service is obtained elsewhere.

(d) Proper Government authority may limit or restrict the right of access granted by this clause in any manner considered by that authority to be necessary for the national security.

(End of clause)

1852.208-74 Technical provisions.

As prescribed in 1808.309, insert the following clause. Minor changes may be made in it when insisted upon by the contractor to conform with established procedures or those in the contractor's published rates filed with a regulatory agency. The following types of changes, when made for this purpose, are not considered within the intent of 1808.307-71 relating to contracts requiring NASA Headquarters approval.

(a) *Measurement of service.* (1) The words "billed conjunctively" in the second sentence of clause subparagraph (a)(1) refer to the combination of similar quantities measured by two or more meters into a single quantity for the purpose of billing, as if the bill were prepared for a single meter. This sentence may be deleted, or the word "separately" may be inserted in lieu of the word "conjunctively," to conform to the contractor's regulated practice and/or when the schedule under which bills are computed is such that billing separately will be more economical than billing conjunctively.

(2) In clause subparagraph (a)(2), the periodic intervals prescribed between meter readings may be changed to conform to the contractor's regulated practice.

(b) *Meter test.* (1) The first sentence of clause paragraph (b), requiring testing at intervals not exceeding one year, may be changed to provide for meter tests in accordance with the contractor's regulated practice.

(2) In the third sentence of clause paragraph (b), the percentage error (shown as 2 percent) may be changed to comply with the Contractor's regulated practice.

(c) *Continuity of service and consumption.* (1) In clause subparagraph (d)(1), the adjustment provision may be deleted or changed, if necessary, to conform with the provisions of the contractor's field rate schedules. This subparagraph may be ended after the word "facilities" and before the word "provided." For the period, "10 hours" may be changed.

(2) Clause subparagraph (d)(2) may be deleted or changed, if the contractor's filed rates contain a provision requiring a continuation of demand or similar charges on a ready-to-serve basis during a period that the Government is unable to operate the service location for any cause beyond its control.

Technical Provisions (December 1988)

(a) *Measurement of service.* (1) All service furnished by the Contractor shall be measured by suitable metering equipment of standard manufacture, to be furnished, installed, maintained, calibrated, and read by the Contractor at its expense. When two or more meters are installed at the service location, their readings shall be billed conjunctively. If any meter fails to register or registers incorrectly the service furnished through it, the parties shall agree upon the length of period during which it failed to register or registered incorrectly and the quantity of service delivered through it during that period, and, upon agreement, an appropriate adjustment shall be made in the Government's bills. For the purpose of the preceding sentence, any meter that registers not more than 2 percent slow or fast shall be deemed correct.

(2) The Contractor shall read meters on the same day of each month; if, however, that day falls on a Saturday, Sunday, or legal holiday, or if the Contractor is prevented from reading the meters on that day, the Contractor shall read the meters on the next succeeding business day on which it is able to do so, provided that (i) all bills based on meter reading intervals of less than 27 days or more than 33 days shall be prorated accordingly and (ii) there shall be no more than 12 billings in any one year.

(b) *Meter test.* The Contractor, at its expense, shall periodically inspect and test the meters installed by it at intervals not exceeding 1 year. At the written request of the Contracting Officer, the Contractor shall make additional tests of any or all of these meters in the presence of Government representatives. The cost of these additional tests shall be borne by the Government if the percentage of errors is found to be not more than 2 percent slow or fast. No meter may be placed or allowed to remain in service that has an error in registration exceeding 2 percent under normal operating conditions.

(c) *Change in volume or character.* Reasonable notice shall, so far as possible, be given by the Contracting Officer to the Contractor regarding any material changes proposed in the volume or characteristics of the utility service required at each location.

(d) *Continuity of service and consumption.* (1) The Contractor shall use reasonable diligence to provide a regular and uninterrupted supply of service at the service location, but shall not be liable for damages or breach of contract or otherwise to the Government for failure, suspension, diminution, or other variations of service occasioned by or in consequence of any cause beyond the Contractor's control, including but not limited to acts of God or of the public enemy, fires, floods, earthquakes, other catastrophes, strikes, or failure or breakdown of transmission or other facilities; provided that when any such failure, suspension, diminution, or variation aggregates more than 10 hours during any billing period, an equitable adjustment shall be made in the monthly rates specified in this contract (including the minimum monthly charge).

(2) If the Government cannot operate the service location in whole or in part for any cause beyond its control, including but not limited to acts of God or of the public enemy, fires, floods, earthquakes, other catastrophes, or strikes, an equitable adjustment shall be made in the monthly rates specified in this contract (including the minimum monthly charge) if the period during which the Government is unable to operate that service location in whole or in part exceeds 15 days during any billing period.

(End of clause)

1852.208-75 Renewal of contract.

As prescribed in 1808.309, insert the following clause:

Renewal of Contract (December 1988)

This contract is renewable on an annual basis at the option of the Government, by the Contracting Officer giving written notice of renewal to the Contractor at least _____ days before expiration. If the Government exercises this option for renewal, the contract as renewed shall be deemed to include this option provision. However, the total duration of this contract, including the exercise of any options under this clause, shall not exceed _____ years.

(End of clause)

1852.208-76 Change in rates.

As prescribed in 1808.309, insert the following clause:

Change in Rates (December 1988)

(a) If at any time during the term of this contract either of the parties considers it appropriate to change all or part of the rates applicable to the service furnished under this contract, the parties agree to promptly negotiate new rates upon receipt by one party of a written request from the other (1) specifying the rates to which a change is considered appropriate, (2) setting forth the proposed change, and (3) stating in detail the reasons for the proposed change. Any rate change agreed to by the parties as the result of such negotiations shall be made a part of this contract by the issuance of a supplemental agreement and shall become effective as of the date of the request for a change in rates, unless otherwise agreed.

(b) The Contractor agrees that a duly authorized representative of NASA shall have access to and the right to examine any pertinent books, documents, papers, or records of the Contractor relating to costs that form the basis for the rates.

(End of clause)

1852.208-77 Connection charge.

As prescribed in 1808.309, insert the following clause:

Connection Charge (December 1988)

(a) *Charge.* The Government, for the furnishing and installation by the Contractor at the Contractor's expense of the New Facilities described in Appendix C, attached to this contract and made a part of it, shall pay the Contractor, as a connection charge, after receipt of satisfactory evidence of completion of the facilities, $_____, representing the sum of $_____ less the agreed salvage value in the amount of $_____, as shown in Appendix C; provided that, as a condition for final payment, the Contractor executes a release acceptable to the Contracting Officer of claims against the Government arising from that furnishing and installation.

(b) *Ownership, operation, and maintenance of new facilities to be provided.* The facilities to be supplied by the Contractor under this clause, notwithstanding the Government's payment of a connection charge, shall be and remain the property of the Contractor and shall, at all times during the life of this contract and any renewals, be operated and maintained by the Contractor at its expense. All taxes and other charges in connection with these facilities, together with all liability arising out of their construction, operation, or maintenance, shall be borne by the Contractor.

(c) *Credits.* (1) The Contractor agrees to allow the Government on each monthly bill for service furnished under this contract to the service location, a credit of ____ percent of the amount of each bill as rendered, until the accumulation of credits equals the amount of the connection charge, provided that the Contractor may at any time allow a credit up to 100 percent of the amount of each bill.

(2) If the Contractor, before any termination of this contract but after completion of the facilities provided for in this clause, serves any customer other than the Government (regardless of whether the Government is being served simultaneously, intermittently, or at all) by means of those facilities, the corresponding benefit to the Contractor is hereby recognized. It is therefore agreed that upon initiation of such service, the Contractor shall promptly pay in full to the Government the uncredited balance of the connection charge, or accelerate the credits provided for under subparagraph (c)(1) of this clause to 100 percent of each monthly bill, until there is fully credited a sum equitably representing the same proportion of the uncredited balance of the connection charge as of the date of initiation of such service (as agreed upon by the parties) as the portion of the facilities utilized in serving the other customer bears to the complete facilities described in Appendix C.

(d) *Termination before completion of facilities.* The Government reserves the right to terminate this contract at any time before completion of the facilities with respect to which the Government is to pay a connection charge. If the Government exercises this right, the Contractor shall be paid fair compensation, exclusive of profit, with respect to those facilities.

(e) *Termination after completion of facilities*— (1) *Termination by the Government.* If the Government terminates this contract after completion of the facilities for which the Government is to pay a connection charge, but before the crediting in full by the Contractor of any connection charge in accordance with the terms of this contract, the possible continued usefulness of those facilities is hereby recognized. Upon such termination, the Contractor shall have the following options:

(i) To retain in place for 12 months or more after the notice of termination by the Government such facilities on condition that (A) if, during that period, the Contractor serves any other customer by means of the facilities, the Contractor shall, in lieu of allowing credits, pay the Government during the period installments in like amount, manner, and extent as the credits provided for under paragraph (c) of this clause before the termination, and (B) immediately after the period, the Contractor shall promptly pay in full to the Government the uncredited balance of the connection charge.

(ii) To remove such facilities at the Contractor's own expense within 12 months after the effective date of the termination by the Government; provided, that if the Contractor elects to remove them, the Government shall have the option of purchasing them at the agreed salvage value set forth in Appendix C; and provided further, that the Contractor shall, at the direction of the Government, leave in place such facilities located on Government property that the Contractor elects to remove and that the Government elects to purchase at the agreed salvage value.

(2) *Termination by the contractor.* If the Contractor terminates service under, or otherwise defaults in performance of, this contract before the crediting in full, in accordance with the terms of this contract, of any connection charge paid by the Government, the Contractor shall pay to the Government an amount equal to the uncredited balance of the connection charge as of the date of termination.

(End of clause)

1852.208-78 Termination Charge.

As prescribed in 1808.309, insert the following clause and attach Appendix C to the contract when a payment is to be made to the contractor upon termination of service in lieu of a connection charge upon completion of the facilities. The length of time, not in excess of 60 months, as negotiated with the contractor shall be entered in the first blank. In the second blank, enter the amount of the maximum termination charge as negotiated with the contractor, but not in excess of the cost of facilities furnished and installed by the contractor less the agreed salvage value, as shown in Appendix C. Enter in the third blank the figure obtained by dividing the figure in the second blank by the figure in the first blank. The use of this clause does not affect the term of the contract; however, its use is subject to Headquarters approval in accordance with 1808.307-71.

Termination Charge (December 1988)

For the furnishing and installation by the Contractor at its expense of the New Facilities described in Appendix C, attached to this contract and made a part of it, the Government shall, in the event of termination of this contract by the Government before _____ months from the date on which service commences, pay the Contractor as a termination charge _____ less _____ multiplied by the number of months service has been received after the date of termination.

(End of clause)

1852.208-79 Multiple service locations.

As prescribed in 1808.309, insert the following clause:

Multiple Service Locations (December 1988)

(a) The Contracting Officer may at any time, by written order, designate any service location within the Contractor's service area at which service shall be furnished or discontinued under the order, and the contract shall be modified in writing accordingly by adding to or deleting from the Service Specifications the name and location of the appropriate service location and specifying (1) a different rate if applicable, (2) the appropriate point of delivery, (3) different service specifications if applicable, and (4) any other appropriate terms and conditions.

(b) The minimum monthly charge specified in this contract shall be equitably prorated from the billing period in which commencement or discontinuance of service at any service location designated under the Service Specifications becomes effective.

(End of clause)

1852.208-80 Contractor's facilities (short form).

As prescribed in 1808.309, insert the following clause:

Contractor's Facilities (Short Form) (December 1988)

The Contractor, at its expense, shall furnish, install, operate, maintain, retain title to, and be responsible for all loss of or damage to the facilities required to furnish the service provided for under this contract. The Contractor shall be allowed access to its facilities on Government premises at suitable times and shall, at the Contractor's expense, remove the facilities and restore the premises to their original condition within a reasonable time after this contract's termination.

(End of clause)

1852.208-81 Printing and duplicating.

As prescribed in 1808.870, insert the following clause:

Printing and Duplicating (December 1988)

(a) The Contractor shall reproduce any documentation required by this contract in accordance with the provisions of the Government Printing and Binding Regulations published by the Joint Committee on Printing, Congress of the United States.

(b) The term "printing", as used in this clause, is defined in the Government Printing and Binding Regulations and includes the processes of composition, platemaking, presswork, binding, and the end items produced by such processes and equipment.

(c) The Contractor is authorized to duplicate by offset platemaking units not requiring the use of negatives; copy-processing machines not requiring the use of negatives or metal plates; or offset lithograph presses with single unit, sheet fed, maximum sheet size 11x17 inches and plate image no longer than 10¾x14¼ inches. However, the Contractor shall not exceed 5,000 production units of any page nor 25,000 production units in the aggregate for multiple page duplication. A "production unit" is one sheet, size 8½x11 inches (215x280 mm), one side only, and one color.

(d) If the Contractor has reason to believe that any reproduction required under this contract violates the regulations referred to in paragraph (a) of this clause, the Contractor shall provide the Contracting Officer with immediate notice in writing and request approval prior to accomplishment of the reproduction.

(End of clause)

1852.208-83 Acquisition of helium.

As prescribed in 1808.002-76, insert the following clause:

Acquisition of Helium (December 1988)

(a) In accordance with Parts 1 and 2, Subchapter A, Chapter 1, Title 30, Code of Federal Regulations, helium furnished under this contract (purchase order) shall be Department of the Interior, Bureau of Mines, helium or shall be replaced by the supplier with an equivalent volume of helium purchased from the Bureau of Mines.

(b) The Contractor may procure (1) liquid helium or (2) gaseous helium of a quality not supplied by the Bureau of Mines from commercial sources if these sources are qualified by the Bureau of Mines and included in the Bureau of Mines publication, "List by Shipping Points of Private Distributors Eligible to Sell Helium to Federal Agencies." Copies of this publication may be obtained from the Bureau of Mines, Helium Operation, P.O. Box H4372, Herring Plaza, Amarillo, Texas 79101.

(c) The Contractor shall provide a copy of each contract (purchase order) for helium from commercial sources to the Contracting Officer and Bureau of Mines at the address in paragraph (b) of this clause.

(End of clause)

1852.209-70 Product removal from qualified products list.

As prescribed in 1809.206-71, insert the following clause:

Product Removal From Qualified Products List (December 1988)

If, during the performance of this contract, the product being furnished is removed from the Qualified Products List for any reason, the Government may terminate the contract for Default pursuant to the default clause of the contract.

(End of clause)

1852.209-71 Limitation of future contracting.

As prescribed in 1809.508-2, the contracting officer may insert a clause substantially as follows in solicitations and contracts, in compliance with FAR 9.508:

Limitation of Future Contracting (December 1988)

(a) The Contracting Officer has determined that this acquisition may give rise to a potential organizational conflict of interest. Accordingly, the attention of prospective offerors is invited to FAR Subpart 9.5—Organizational Conflicts of Interest.

(b) The nature of this conflict is [describe the conflict].

(c) The restrictions upon future contracting are as follows:

(1) If the Contractor, under the terms of this contract, or through the performance of tasks pursuant to this contract, is required to develop specifications or statements of work that are to be incorporated into a solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime or first-tier subcontractor under an ensuing NASA contract. This restriction shall remain in effect for a reasonable time, as agreed to by the Contracting Officer and the Contractor, sufficient to avoid unfair competitive advantage or potential bias (this time shall in no case be less than the duration of the initial production contract). NASA shall not unilaterally require the Contractor to prepare such specifications or statements of work under this contract.

(2) To the extent that the work under this contract requires access to proprietary, business confidential, or financial data of other companies, and as long as these data remain proprietary or confidential, the Contractor shall protect these data from unauthorized use and disclosure and agrees not to use them to compete with those other companies.

(End of clause)

1852.209-72 Composition of the contractor.

As prescribed in 1809.670, insert the following clause:

Composition of the Contractor (December 1988)

If the Contractor is comprised of more than one legal entity, each entity shall be jointly and severally liable under this contract.

(End of clause)

1852.210-70 Brand name or equal.

As prescribed in 1810.011, insert the following provision:

Brand Name or Equal (December 1988)

(a) As used in this provision, "brand name" means identification of products by make and model. The term "bid" means "offer" if this is a negotiated acquisition.

(b) If items called for by this solicitation are identified in the Schedule by a "brand name or equal" description, that identification is intended to be descriptive, not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering "equal" products, including products of the brand name manufacturer other than the one described by brand name, will be considered for award if the products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics requirements referenced in the solicitation.

(c) Unless the offeror clearly indicates in the bid that it is offering an "equal" product, the bid shall be considered as offering a brand-name product referenced in the solicitation.

(d)(1) If the offeror proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the solicitation, or that product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the offeror or identified in its bid, as well as on other information reasonably available to the contracting activity.

(2) Caution to Offerors: The contracting office is not responsible for locating or securing any information not identified in the bid and reasonably available to the contracting office. Accordingly, to ensure that sufficient information is available, the offeror must furnish as a part of its bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting office to (i) determine whether the product offered meets the salient characteristics requirements of the solicitation and (ii) establish exactly what the offeror proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the contracting office.

(3) If the offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, it shall (i) include in the bid a clear description of the proposed modifications and (ii) clearly mark any descriptive material to show them.

(4) If this is a sealed-bid acquisition, modifications proposed after bid opening to make a product conform to a brand name product referenced in the solicitation will not be considered.

(End of provision)

1852.210-71 Descriptive literature for used material.

As prescribed by 1810.011-70(b), insert the following provision:

Descriptive Literature for Used Material (December 1988)

(a) Offerors' attention is directed to the provision in this solicitation entitled "Listing of Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property." If an offeror intends to furnish any items falling within any of the classes of property addressed by that provision, the following information must be submitted as an attachment to the offer:

[Insert the information needed to determine that items can reasonably be expected to conform to the solicitation requirements.]

(b) Offerors are specifically advised that if this procurement is being conducted in accordance with procedures for sealed bidding (see FAR Part 14), a failure to provide the information identified in paragraph (a) above will render the offeror nonresponsive.

(End of provision)

1852.210-72 Supplies and/or services to be furnished

As prescribed in 1810.011-70(c), insert the following clause:

Supplies and/or Services to be Furnished (December 1988)

The contractor shall provide all resources (except as may be expressly stated in this contract as furnished by the Government) necessary to furnish the items below in accordance with the Description/Specifications/Work Statement in Section C.

Item No.	Description	Quantity	Unit	Unit price	Total amt.

[Insert the item number, brief description, quantity, unit, unit price, and total dollar amount.]

(End of clause)

1852.210-75 Packaging and marking.

As prescribed in 1810.011-70(d), insert the following clause:

Packaging and Marking (December 1988)

(a) The Contractor shall pack and mark all hardware deliverable under this contract in accordance with the provisions of NASA Handbook (NHB) 6000.1, Requirements for Packaging, Handling, and Transportation, and/or MIL-STD-2073, as applicable, except as noted below:

[Insert exceptions to packing and marking requirements or "None"]

(b) The Contractor shall pack potentially hazardous items in accordance with paragraph 204 of NHB 6000.1.

(c) The Contractor shall develop packaging, handling, and transportation records, if required, from engineering and packaging data. The Contracting Officer's technical representative is the approving official of the records and special packaging data under paragraph 302 of NHB 6000.1.

(d) The Contractor's packaging specifications or procedures may be utilized if they are (i) not in conflict with cited NASA specifications and (ii) approved in writing by the Contracting Officer. In any conflict between NASA and the Contractor specifications or procedures, the NASA documents cited in this clause shall take precedence.

(e) The Contractor shall place identical requirements on all subcontracts.

(End of clause)

Packaging and Marking (Alternate I)

(a) The contractor shall preserve, pack, and mark for shipment all items deliverable under this contract in accordance with good commercial practices and adequate to ensure both acceptance by common carrier and safe transportation at the most economical rate(s).

(b) The contractor's markings on shipping containers shall be clearly legible from a distance of 36 inches. The contractor may mark by stencil, rubber stamp, or lacquer over a coated gummed label.

Packaging and Marking (Alternate II)

(f) The following items to be furnished under this contract are for space flight use:

[Insert items for space flight use.]

(g) All markings for space flight items shall be blue in color. All shipping containers, shipping documents, and purchasing documents for these items shall be marked "ITEMS FOR SPACE FLIGHT USE."

(h) The Contractor shall prominently display a NASA Critical Space Item Label on the exterior of all Class I, Class II, and Class III interim packages and exterior shipping containers to alert all shipping and handling personnel to the criticality of the item in accordance with paragraph 303 of NHB 6000.1.

(End of clause)

1852.212-70 Notice of delay.

As prescribed at 1812.104-70(a), insert the following clause:

Notice of Delay (December 1988)

If, because of technical difficulties, the Contractor becomes unable to complete the contract work at the time specified, notwithstanding the exercise of good faith and diligent efforts in performing the work called for under this contract, the Contractor shall give the Contracting Officer written notice of the anticipated delay and the reasons for it. The notice and reasons shall be delivered promptly after the condition creating the anticipated delay becomes known to the Contractor but in no event less than 45 days before the completion date specified in this contract, unless otherwise permitted by the Contracting Officer. When notice is given, the Contracting Officer may extend the time specified in the Schedule for such period as is deemed advisable.

(End of clause)

1852.212-72 Partial shipments.

Insert the following clause as prescribed in 1812.104-70(c).

Partial Shipments (December 1988)

Partial shipments will not be accepted unless authorized elsewhere in this contract or by the Contracting Officer's representative at the time of delivery. The Government reserves the right to return partial shipments to the Contractor, transportation charges collect.

(End of clause)

1852.212-73 Delivery schedule.

As prescribed in 1812.104-70(d), insert the following clause:

Delivery Schedule (December 1988)

The contractor shall deliver the items required to be furnished by this contract as follows:

Item No.	Description	Quantity	Delivery date	Shipping address

[Insert the applicable item numbers, descriptions, quantities of items, delivery dates, and shipping addresses.]

(End of clause)

1852.212-74 Period of Performance.

As prescribed in 1812.104-70(e), insert the following clause:

Period of Performance (December 1988)

The period of performance of this contract shall be [Insert period of performance dates].

(End of clause)

1852.214-70 Caution to offerors furnishing descriptive literature.

As prescribed in 1814.201-670(a), insert the following provision:

Caution to Offerors Furnishing Descriptive Literature (December 1988)

Bidders are cautioned against furnishing as a part of their bids descriptive literature that includes language reserving to the bidder the right to deviate from the requirements of the invitation for bids. Statements that "Data are subject to change without notice," "Prices subject to change without notice," or words having a similar effect are examples of such reservation. The Government will reject as nonresponsive any bid that incorporates literature containing such language or any bid that must be evaluated by using literature containing such language. Bidders should clearly label any submissions of descriptive literature not intended to form a part of a bid as such in order to preclude any need for the Government to interpret the bidder's intent in submitting descriptive literature. [See FAR 14.202-5.]

(End of provision)

1852.214-71 Grouping for aggregate award.

As prescribed in 1814.201-670(b), insert the following provision:

Grouping for Aggregate Award (March 1989)

(a) The Government will evaluate offers and make award on a basis of the aggregate offers for items [Insert the item numbers and/or descriptions].

(b) If this is an invitation for bids, the Government will reject as nonresponsive a bid that is not made on all of the items specified in paragraph (a) of this section.

(End of provision)

1852.214-72 Full quantities.

As prescribed in 1814.201-670(c), insert the following provision:

Full Quantities (December 1988)

The Government will not consider an offer for quantities of items less than those specified. If this is an invitation for bids, the Government will reject as nonresponsive a bid that is not made on full quantities.

(End of provision)

1852.215-70 Increases in estimated costs.

As prescribed in 1815.613-72, insert the following provision:

Increases in Estimated Costs (December 1988)

Once the apparent successful offeror has been selected, that offeror may not unilaterally increase the estimated costs submitted with its proposal except for—

(a) Increases resulting from updating or correcting the certified cost or pricing data submitted with the proposal;

(b) Costs resulting from the Government's directed correction of identified weaknesses in the proposal that must be corrected as a condition of contracting; or

(c) Minor changes in the requirements of the solicitation. In such cases, the Government will consider only those increases arising from requirements actually affected by the changes (irrespective of whether the changes result in an increase or decrease in the requirements or are initiated by the Government or the offeror) and then only to the extent the increases are identified and justified.

(End of provision)

1852.215-71 Adjustment for subcontract price redetermination.

As prescribed in 1815.870-2, insert the following clause:

Adjustment for Subcontract Price Redetermination (December 1988)

Promptly upon the establishment of firm prices for each of the subcontracts listed below, the Contractor shall submit, in such form and detail as the Contracting Officer may reasonably require, a statement of costs incurred in the performance of that subcontract and the firm price established for it. Thereupon, notwithstanding any other provisions of this contract as amended by this modification, the Contractor and the Contracting Officer shall negotiate an equitable adjustment in the total amount paid or to be paid under the contract to reflect the subcontract price revision. The equitable adjustment shall be evidenced by a modification to this contract.

[list subcontracts]

(End of clause)

1852.215-72 Restriction on use and disclosure of proposal/quotation information (Data).

As prescribed in 1815.407-70(a), insert the following provision:

Restriction on Use and Disclosure of Proposal/Quotation Information (Data) (December 1984)

It is NASA policy to use information contained in proposals and quotations for evaluation purposes only. While this policy does not require that the proposal or quotation bear a restrictive notice, offerors or quoters should, in order to maximize protection of trade secrets or other information that is commercial or financial and confidential or privileged, place the following notice on the title page of the proposal or quotation and specify the information subject to the notice by inserting appropriate identification, such as page numbers, in the notice. In any event, information (data) contained in proposals and quotations will be protected to the extent permitted by law, but NASA assumes no liability for use and disclosure of information not made subject to the notice.

Restriction on Use and Disclosure of Proposal and Quotation Information (Data)

The information (data) contained in _____ [Insert page numbers or other identification] of this proposal or quotation constitutes a trade secret and/or information that is commercial or financial and confidential or privileged. It is furnished to the Government in confidence with the understanding that it will not, without permission of the offeror, be used or disclosed for other than evaluation purposes; *provided*, however, that in the event a contract is awarded on the basis of this proposal or quotation the Government shall have the right to use and disclose this information (data) to the extent provided in the contract. This restriction does not limit the Government's right to use or disclose this information (data) if obtained from another source without restriction.

(End of provision)

1852.215-73 Late submissions, modifications, and withdrawals of proposals. (AO and SBIR programs).

As prescribed in 1815.407-70(b), use the following provision in lieu of the provision at FAR 52.215-10 in Announcement of Opportunity and SBIR solicitations:

Late Submissions, Modifications, and Withdrawals of Proposals (AO and SBIR Programs) (December 1988)

(a) The Government reserves the right to consider proposals or modifications, including any revision of an otherwise successful proposal, received after the date indicated for receipt of proposals if it would be in the Government's best interest to do so.

(b) Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. Proposals may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

(End of provision)

1852.215-74 Alternate proposals.

As prescribed in 1815.407-70(c), insert the following provision:

Alternate Proposals (December 1988)

(a) The offeror may submit an alternate proposal to accomplish any aspect of the effort or product contemplated by the solicitation in a manner that might create a beneficial improvement to the Government. The Government will consider an alternate proposal if it is accompanied by a basic proposal prepared in accordance with instructions contained in and responsive to this solicitation. The alternate proposal must be complete by itself and comply with the proposal instructions of this solicitation. The alternate proposal will be evaluated in accordance with the evaluation factors of this solicitation.

(b) In the event the Government receives an alternate proposal that, if accepted, would result in a contract with terms varying in one or more material respects from those contained in this solicitation (i.e., change in scope), and the Government concludes that implementation of the approach contained in the alternate proposal would be in its best interests, the Government may modify its solicitation in a manner appropriate to incorporate the change in scope but not reveal the substance of the alternate proposal, and thereafter give all offerors (and others if the facts warrant) an opportunity to respond to the modified solicitation.

(End of provision)

1852.215-75 Expenses related to offeror submissions.

As prescribed in 1815.407-70(d), insert the following provision:

Expenses Related to Offeror Submissions (December 1988)

This solicitation neither commits the Government to pay any cost incurred in the submission of the offer or in making necessary studies or designs for preparing the offer, nor to contract for services or supplies. Any costs incurred in anticipation of a contract shall be at the offeror's own risk.

(End of provision)

1852.215-76 False statements.

As prescribed in 1815.407-70(e), insert the following provision:

False Statements (December 1988)

Proposals must set forth full, accurate, and complete information as required by the solicitation (including attachments). The penalty for making false statements in proposals is prescribed in 18 U.S.C. 1001.

(End of provision)

1852.215-77 Preproposal/pre-bid Conference.

As prescribed in 1815.407-70(f), insert the following provision:

Preproposal/Pre-Bid Conference (December 1988)

(a) A preproposal/pre-bid conference will be held as indicated below:

Date:
Time:
Location:
Other information, as applicable:

[Insert the applicable conference information.]

(b) Attendance at the preproposal/pre-bid conference is recommended; however, attendance is neither required nor a prerequisite for proposal/bid submission and will not be considered in the evaluation.

(End of provision)

1852.215-78 Make or buy program requirements.

As prescribed in 1815.708-70(a), insert the following provision:

Make or Buy Program Requirements (December 1988)

The offeror shall submit a Make-or-Buy Program in accordance with the requirements of Federal Acquisition Regulation (FAR) 15.705. The offeror shall include the following supporting documentation with its proposal:

(a) A description of each major item or work effort (see FAR 15.704).

(b) Categorization of each major item or work effort as "must make," "must buy," or "can either make or buy."

(c) For each item or work effort categorized as "can either make or buy," a proposal either to "make" or "buy."

(d) Reasons for (i) categorizing items and work effort as "must make" or "must buy" and (ii) proposing to "make" or "buy" those categorized as "can either make or buy." The reasons must include the consideration given to the applicable evaluation factors described in the solicitation and be in sufficient detail to permit the Contracting Officer to evaluate the categorization and proposal.

(e) Designation of the offeror's plant or division proposed to make each item or perform each work effort and a statement as to whether the existing or proposed new facility is in or near a labor surplus area.

(f) Identification of proposed subcontractors, if known, and their location and size status.

(g) Any recommendations to defer make-or-buy decisions when categorization of some items or work efforts is impracticable at the time of submission.

(End of provision)

1852.215-79 Price adjustment for "make-or-buy" changes.

As prescribed in 1815.708-70, insert the following clause:

Price Adjustment for "Make-or-Buy" Changes (December 1988)

The following make-or-buy items are subject to the provisions of paragraph (d) of the clause at FAR 52.215-21, Change or Additions to Make-or-Buy Program, of this contract:

Item description	Make-or-buy Determination

(End of clause)

1852.215-80 Disposal of unsuccessful proposals.

As prescribed in 1815.407-70(g), insert the following provision:

Disposal of Unsuccessful Proposals (December 1988)

After contract award, one or more copies of each unsuccessful proposal will be retained in the Government's official contract file, and all other copies will be destroyed.

(End of provision)

1852.216-72 Evaluation of offers subject to economic price adjustment.

As prescribed in 1816.203-4(f), insert the following provision:

Evaluation of Offers Subject to Economic Price Adjustment (December 1988)

Notwithstanding the requirements of the _____[1] clause, offers shall be evaluated on the basis of quoted prices without an amount for economic price adjustment being added. Offers that provide for a ceiling lower than that stipulated, if a ceiling is stipulated in the clause, shall also be evaluated on this basis, but any resultant award will be made at the lower ceiling. Offers that provide for adjustment that may exceed the maximum adjustment stipulated, if a maximum is stipulated in the clause, or that limit or delete the downward adjustment, if a downward adjustment is stipulated in the clause, shall be rejected as nonresponsive.

(End of provision)

1852.216-73 Estimated cost and cost sharing.

As prescribed in 1816.307-70(a), insert the following clause.

Estimated Cost and Cost Sharing (December 1988)

(a) It is estimated that the total cost of performing the work under this contract will be $_____ [insert total estimated cost].

(b) For performing of the work under this contract, the Contractor shall be reimbursed for not more than _____ percent of the costs of performance determined to be allowable under the Allowable Cost and Payment clause. The remaining _____ percent or more of the costs of performance so determined shall constitute the Contractor's share, for which it will not be reimbursed by the Government.

(c) For purposes of the Limitation of Cost clause, the total estimated cost to the Government is hereby established as $_____ *[insert estimated Government share]*; this amount is the maximum cost for which the Government is obligated.

(d) The Contractor shall maintain records of all contract costs claimed by the Contractor as constituting part of its share. Those records shall be subject to audit by the Government. Costs contributed by the Contractor shall not be charged to the Government under any other grant or contract (including allocation to other grants or contracts as part of an independent research and development program).

(End of clause)

[1] Insert the title of the clause providing for economic price adjustment.

1852.216-74 Estimated cost and fixed fee.

As prescribed in 1816.307-70(b) insert the following clause:

Estimated Cost and Fixed Fee (December 1988)

The estimated cost of this contract is _____ exclusive of the fixed fee of _____. The total of estimated cost and fixed fee is _____.

(End of clause)

1852.216-75 Payment of fixed fee.

As prescribed in 1816.307-70(c), insert the following clause:

Payment of Fixed Fee (December 1988)

The fixed fee shall be paid in monthly installments based upon the percentage of completion of work as determined by the Contracting Officer.

(End of clause)

1852.216-76 Award fee.

As prescribed in 1816.405, insert the following clause:

Award Fee (December 1988)

(a) The Government shall pay the Contractor for performing this contract such base fee, if any, and such additional fee as may be awarded, as provided in the Schedule.

(b) Payment of the base fee and award fee shall be made as specified in the Schedule; provided, that after payment of 85 percent of the base fee and potential award fee, the Contracting Officer may withhold further payment of the base fee and award fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the total base fee and potential award fee or $100,000, whichever is less.

(c) Award fee determinations made by the Government under this contract are not subject to the Disputes clause.

(End of clause)

1852.216-78 Firm fixed price.

As prescribed in 1816.202-70, insert the following clause:

Firm Fixed Price (December 1988)

The total firm fixed price of this contract is $_____ [Insert the appropriate amount].

(End of clause)

1852.216-79 Level-of-effort (fixed-price).

As prescribed in 1816.207-70(a), insert the following clause:

Level-of-Effort (Fixed-Price) (December 1988)

(a) In accomplishing the work required under this contract, the Contractor shall provide _____ direct labor hours as a minimum. These hours shall be expended as follows:

Labor category	Minimum direct labor hours

[Insert the labor categories and associated direct labor hours.]

(b) "Direct labor hours" are those productive hours expended by Contractor personnel performing work under this contract that are charged as direct labor under the Contractor's established accounting policy and procedures. The term does not include sick leave, vacation, or any type of administrative leave but does include direct labor hours provided under level-of-effort subcontracts.

(c) If, at the end of the contract term, the Contractor has not provided the minimum direct labor hours specified above, the total fixed price of this contract shall be reduced as follows: [Insert either a formula based upon the number of hours expended in the separate labor categories or the product of the hours of unexpended labor multiplied by one specified rate.]

(d) The Contractor may, at its own option, furnish more than the stated direct labor hours; however, the Contractor shall not be entitled to any increase in the fixed price of the contract for exceeding the stated direct labor hours.

(e) Within thirty (30) days after the end of the performance period and before submission of an invoice for final payment, the Contractor shall submit to the Contracting Officer a statement certifying the actual total number of direct labor hours expended under this contract. The Contractor further agrees to make available to the Contracting Officer such records as the Contracting Officer may reasonably require to determine that the minimum number of labor hours specified in this clause were expended in the performance of the work.

(End of clause)

1852.216-80 Task ordering procedure.

As prescribed in 1816.307-70(d), insert the following clause:

Task Ordering Procedure (December 1988)

Performance under this contract is subject to the following ordering procedure.

(a) Within the direct labor hours specified in the Level-of-Effort clause of this contract, the Contractor shall incur costs under this contract in the performance of task orders and task order modifications issued in accordance with this ordering procedure. No other costs are authorized without the express written consent of the Contracting Officer.

(b) From time to time during the term of this contract, the Contracting Officer will issue task orders in writing to the Contractor, providing specific information on work to be performed within the scope of the contract. Each task order will indicate the objectives or results desired.

(c) Task orders will contain, as a minimum, the following information:

(1) Signature of the Contracting Officer.

(2) Contract number, order number, and date.

(3) Description of work.

(4) Maximum number of contract labor hours and other resources authorized.

(5) Documentation requirements.

(6) Delivery/performance schedule.

(7) Quality assurance standards, as appropriate.

(8) Travel authorized.

(9) Any other necessary information.

(d) The Contracting Officer may modify task orders in the same manner as they are issued.

(e) The Contractor shall submit within ten calendar days after receipt of each task order a one-time Contractor task plan. The task plan is the Contractor's overall approach for completing the task order and shall include the following:

(1) Discussion of the technical approach for performing the work.

(2) Estimated date of commencement of work, and any changes proposed to the schedule of performance.

(3) Direct labor hours, both straight time and overtime (if authorized), on a monthly basis by applicable labor category, and the total direct labor hours, including those in paragraph (e)(5) of this clause, estimated to complete the task.

(4) The travel and material estimates.

(5) An estimate for subcontractors and consultants, including the direct labor hours, if applicable.

(6) Estimated computer use time required, if applicable.

(7) Other pertinent information, such as indirect costs and inter-divisional transfers.

(8) The total estimated cost and fee, where appropriate, for completion of the task order.

(f) The Contracting Officer shall approve in writing the Contractor's task plan and any plan revisions either (1) as being in accordance with the task order or (2) with identified variations constituting a modification to the task order. All approvals shall be prior to commencement of work.

(g) In the event that there is a conflict between the requirements of the task order and the Contractor's task plan, the task order shall prevail.

(End of clause)

Alternate I (December 1988)

As prescribed in 1816.307-70(e), delete paragraphs (e), (f), and (g) from the basic clause.

1852.216-81 Estimated cost.

As prescribed in 1816.307-70(f), insert the following clause:

Estimated Cost (December 1988)

The total estimated cost for complete performance of this contract is $_____ [Insert total estimated cost of the contract]. See FAR clause 52.216-11, Cost Contract—No Fee, of this contract.

(End of clause)

1852.216-82 Level-of-effort (cost).

As prescribed in 1816.307-70(g), insert the following clause:

Level-of-Effort (Cost) (December 1988)

(a) During the term of the contract, the Contractor is obligated to provide not less than ____% [Insert minimum percentage of direct labor hours] nor more than ____% [Insert maximum percentage of direct labor hours] of the following direct labor hours:

Labor category	Direct labor hours

[Insert applicable labor categories, direct labor hours in each labor category, and total direct labor hours.]

(b) "Direct labor hours" are those productive hours expended by Contractor personnel performing work under this contract that are charged as direct labor under the Contractor's established accounting policy and procedures. The term does not include sick leave, vacation leave, or any type of administrative leave but does include direct labor hours provided under level-of-effort subcontracts.

(c) Once the maximum number of direct labor hours is reached or the contract term has ended, the Contractor's requirements under the contract are fulfilled, even though the specified work may not have been completed. The Contractor is not authorized to exceed the maximum of the direct labor hours specified in paragraph (a) of this clause unless a bilateral contract modification is executed. Any estimated cost and fee(s) adjustments for any additional direct labor hours shall be based solely upon the quantity of additional hours being added to the maximum number of direct labor hours specified in this clause.

(d) The fee(s), if any, are based upon the furnishing of the specified minimum level-of-effort. If the Contractor provides less than the specified minimum level-of-effort prior to expiration of the contract term, and the Government has not invoked its rights under the Termination clause of this contract to adjust the contract for such reduced effort, the Contracting Officer will unilaterally make an equitable downward adjustment to the contract fee. The downward adjustment in fee will be based upon the difference between the minimum direct labor hours specified under this clause and the amount of direct labor hours provided by the Contractor. At the Contracting Officer's discretion, the adjustment may take into consideration efficiencies in the Contractor's performance, including productivity improvements, if any, which contributed to the lesser number of direct labor hours being provided.

(End of clause)

1852.216-83 Fixed price incentive.

As prescribed in 1816.405(b), insert the following clause:

Fixed Price Incentive (December 1988)

The target cost of this contract is $_____. The target profit of this contract is $_____. The target price (target cost plus target profit) of this contract is $_____.

(End of clause)

1852.216-84 Estimated cost and incentive fee.

As prescribed in 1816.405-70(c), insert the following clause:

Estimated Cost and Incentive Fee (December 1988)

The target cost of this contract is $_____. The target fee of this contract is $_____. The total target cost and target fee as contemplated by the Incentive Fee clause of this contract is $_____ [Insert appropriate target cost and fee amounts].

(End of clause)

1852.216-85 Estimated cost and award fee.

As prescribed in 1816.405-70(d), insert the following clause:

Estimated Cost and Award Fee (December 1988)

The estimated cost of this contract is $_____. The base fee is $_____, and the maximum available award fee is $_____. Total cost, base fee, and maximum award fee is $_____. [Insert appropriate cost and fee amounts.]

(End of clause)

1852.216-86 Settlement of letter contract.

As prescribed in 1816.603-470, insert the following clause:

Settlement of Letter Contract (December 1988)

(a) This contract constitutes the definitive contract contemplated by issuance of letter contract_____, dated_____, and supersedes the letter contract and its modification no.(s)____. [Insert letter contract number, date, and modification numbers.]

(b) The costs and fees, or prices, established in this definitive contract represent full and complete settlement of letter contract_____and modification no.(s)____.

(c) If this definitive contract contains terms that may be construed to be inconsistent with the letter contract, the parties agree that this definitive contract states the complete agreement and intent of the parties, and any rights and duties created by the letter contract that are inconsistent with this definitive contract are hereby waived, cancelled, and released.

(End of clause)

1852.216-87 Submission of vouchers for payment.

As prescribed in 1816.307-70(h), insert the following clause:

Submission of Vouchers for Payment (December 1988)

(a) Public vouchers for payment of costs shall include a reference to this contract [Insert the contract number] and be forwarded to:

[Insert the mailing address for submission of cost vouchers.]

This is the designated billing office for cost vouchers for purposes of the Prompt Payment clause of this contract.

(b) The Contractor shall prepare vouchers as follows: (1) One original Standard Form (SF) 1034, SF 1035, or equivalent Contractor's attachment.

(2) Seven copies of SF 1034A, SF 1035A, or equivalent Contractor's attachment.

(3) The Contractor shall mark SF 1034A copies 1, 2, 3, 4, and such other copies as may be directed by the Contracting Officer by insertion in the memorandum block the names and addresses as follows:

(i) Copy 1 NASA Contracting Officer;

(ii) Copy 2 Auditor;

(iii) Copy 3 Contractor;

(iv) Copy 4 Contract administration office; and

(v) Copy 5 Project management office.

(c) Public vouchers for payment of fee shall be prepared similarly and be forwarded to:

[Insert the mailing address for submission of fee vouchers.]

This is the designated billing office for fee vouchers for purposes of the Prompt Payment clause of this contract.

(d) In the event that amounts are withheld from payment in accordance with provisions of this contract, a separate voucher for the amount withheld will be required before payment for that amount may be made.

(End of clause)

1852.217-70 Property administration and reporting.

As prescribed in 1817.7002-4 insert the following clause:

Property Administration and Reporting (December 1988)

All property acquired for, and reimbursed by, NASA or transferred by NASA for use under this NASA-Defense Purchase Request shall be controlled and accounted for in accordance with the Military Department's normal procedures. All excess items, however, costing $500 or more and in condition Code 7 or better (CSA Condition Codes) shall be reported to the NASA originating office for possible reutilization before disposition.

(End of clause)

1852.219-72 SIC code and small business size standard.

As prescribed in 1819.170, insert the following provision:

SIC Code and Small Business Size Standard (December 1988)

(a) The standard industrial classification (SIC) code(s) for this procurement is (are) _____ [Insert SIC code].

(b) The small business size standard is _____[Insert the number of employees, or dollar value in average annual receipts for the last three (3) fiscal years].

(End of provision)

1852.219-73 Small business and small disadvantaged business subcontracting plan.

As prescribed in 1819.708-70, insert the following provision:

Small Business and Small Disadvantaged Business Subcontracting Plan (December 1988)

(a) This provision is not applicable to small business concerns.

(b) The contract expected to result from this solicitation will contain FAR clause 52.219-9, "Small Business and Small Disadvantaged Business Subcontracting Plan." The apparently successful offeror must submit the complete plan within _____ [Insert number of days] calendar days after request by the Contracting Officer.

(End of provision)

Alternate I (December 1988)

As prescribed in 1819.708-70, delete the last sentence of paragraph (b) of the basic clause and substitute the following:

Each offeror must submit the complete plan with its initial proposal.

1852.222-70 Facilities nondiscrimination notice.

As prescribed in 1822.7002(a), insert the following clause:

Facilities Nondiscrimination Notice (April 1988)

If the annual rental under this lease, combined with the annual rental under all other NASA leases of space in the building in which the space covered by this lease is located, exceeds $10,000, the lessor agrees to comply with the requirements of the Facilities Nondiscrimination clause of this contract.

(End of clause)

1852.222-71 Facilities nondiscrimination.

As prescribed in 1822.7002(b), insert the following clause:

Facilities Nondiscrimination (December 1988)

(a) As used in this clause, "facility" means store, shop, restaurant, cafeteria, rest room, or any other public facility in the building in which the space covered by this lease is located.

(b) The lessor shall not discriminate against anyone because of race, color, religion, or national origin in furnishing, or by refusing to furnish, the use of any facility, including any services, privileges, accommodations, and activities provided by that facility. Nothing in this clause requires the furnishing to the general public of the use of any facility customarily furnished by the lessor solely to tenants and their employees, customers, patients, clients, guests, and invitees.

(c) Any noncompliance by the lessor with this clause shall constitute a material breach of this lease. In the event of noncompliance, the Government may take appropriate action

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to enforce compliance, may terminate this lease, or may pursue any other remedies provided by law. In the event of termination, the lessor is liable for all excess costs of the Government in acquiring substitute space, including the cost of moving to that space. Substitute space shall be obtained in as close proximity to the lessor's building as is feasible, and moving costs shall be limited to the actual expenses incurred.

(d) Whenever an agreement is to be entered into or a concession is to be permitted to operate, the lessor shall include or require the inclusion of paragraphs (a), (b), and (c) of this clause in every such agreement or concession arrangement under which any person other than the lessor operates or has the right to operate any facility. Nothing in this clause, however, requires the lessor to include or require the inclusion of those paragraphs in any previously existing agreement or concession arrangement, or in one under which a party other than the lessor has the unilateral right to renew or extend the agreement or arrangement, until the expiration of the existing agreement or arrangement and the unilateral right to renew or extend.

(e) The lessor shall take, as expeditiously as possible, any lawful actions NASA may direct to enforce the intent of this clause, including termination of the agreement or concession and institution of court action.

(End of clause)

1852.223-70 Safety and health.

As prescribed in 1823.7004, insert the following clause:

Safety and Health (December 1988)

(a) The Contractor shall take all reasonable safety and health measures in performing under this contract and shall, to the extent set forth in the contract Schedule, submit a safety plan and a health plan for the Contracting Officer's approval. The Contractor shall comply with all Federal, State, and local laws applicable to safety and health in effect on the date of this contract and with the safety and health standards, specifications, reporting requirements, and provisions set forth in the contract Schedule.

(b) The Contractor shall take or cause to be taken any other safety and health measures the Contracting Officer may reasonably direct. To the extent that the Contractor may be entitled to an equitable adjustment for those measures under the terms and conditions of this contract, the equitable adjustment shall be determined pursuant to the procedures of the changes clause of this contract; provided, that no adjustment shall be made under this Safety and Health clause for any change for which an equitable adjustment is expressly provided under any other provision of the contract.

(c) The Contractor shall immediately notify and promptly report to the Contracting Officer or a designee any accident, incident, or exposure resulting in fatality, lost-time occupational injury, occupational disease, contamination of property beyond any stated acceptable limits set forth in the contract Schedule, or property loss of $25,000 or more arising out of work performed under this contract. The Contractor is not required to include in any report an expression of opinion as to the fault or negligence of any employee. Service contractors (excluding construction contracts) shall provide quarterly reports specifying lost-time frequency rate, number of lost-time injuries, exposure, and accident/incident dollar losses as specified in the contract Schedule. The Contractor shall investigate all work-related incidents or accidents to the extent necessary to determine their causes and furnish the Contracting Officer a report, in such form as the Contracting Officer may require, of the investigative findings and proposed or completed corrective actions.

(d) (1) The Contracting Officer may notify the Contractor in writing of any noncompliance with this clause and specify corrective actions to be taken. The Contractor shall promptly take and report any necessary corrective action.

(2) If the Contractor fails or refuses to institute prompt corrective action in accordance with subparagraph (d)(1) of this clause, the Contracting Officer may invoke the stop-work order clause in this contract or any other remedy available to the Government in the event of such failure or refusal.

(e) The Contractor (or subcontractor or supplier) shall insert the substance of this clause, including this paragraph (e) and any applicable Schedule provisions, with appropriate changes of designations of the parties, in subcontracts of every tier that (1) amount to $1,000,000 or more (unless the Contracting Officer makes a written determination that this is not required), (2) require construction, repair, or alteration in excess of $25,000, or (3) regardless of dollar amount, involve the use of hazardous materials or operations.

(f) Authorized Government representatives of the Contracting Officer shall have access to and the right to examine the sites or areas where work under this contract is being performed in order to determine the adequacy of the Contractor's safety and health measures under this clause.

(g) As a part of the Contractor's safety plan (and health plan, when applicable) and to the extent required by the Schedule, the Contractor shall furnish a list of all hazardous operations to be performed, including operations indicated in paragraphs (a) and (b) of this clause, and a list of other major or key operations required or planned in the performance of the contract, even though not deemed hazardous by the Contractor. NASA and the Contractor shall jointly decide which operations are to be considered hazardous, with NASA as the final authority. Before hazardous operations commence, the Contractor shall submit for NASA concurrence either or both of the following, as required by the contract Schedule or by the Contracting Officer:

(1) Written hazardous operating procedures for all hazardous operations.

(2) A certification program for personnel involved in hazardous operations.

(End of clause)

1852.223-71 Frequency authorization.

As prescribed in 1823.7101, insert the following clause:

Frequency Authorization (December 1988)

(a) Authorization of radio frequencies required in support of this contract shall be obtained by the Contractor or subcontractor in need thereof.

(b) For any experimental, developmental, or operational equipment for which the appropriate frequency allocation has not been made, the Contractor or subcontractor shall provide the technical operating characteristics of the proposed electromagnetic radiating device to the Contracting Officer during the initial planning, experimental, or developmental phase of contractual performance. Procedures furnished by the Contracting Officer shall be followed in obtaining radio frequency authorization.

(c) This clause, including this paragraph (c), shall be included in all subcontracts that call for developing, producing, testing, or operating a device for which a radio frequency authorization is required.

(End of clause)

1852.223-72 Potentially hazardous items.

As prescribed in 1823.303-70, insert the following clause:

Potentially Hazardous Items (December 1988)

(a) The Contractor shall furnish complete design information and drawings showing all details of construction, including materials, for the following items or components:

[Insert the potentially hazardous items or components.]

These items or components are designated as potentially hazardous to employees and subcontractors who are to perform any work in connection with installing them in combination with other equipment, or in testing them either alone or in combination with other items or components, or in handling them. The contractor shall inform such employees or subcontractors of the potentially hazardous nature of these items or components before requesting or directing the performance of work.

(b) This requirement for delivery of data supersedes any terms of this contract permitting withholding of data.

(c) The Contractor shall include this clause, including this paragraph (c), in each subcontract at any tier under this contract that calls for the manufacture or handling of the items or components designated according to paragraph (a) of this clause as potentially hazardous.

(End of clause)

1852.223-73 Safety and health plan.

As prescribed in 1823.7004(e), insert the following provision:

Safety and Health Plan (December 1988)

The offeror shall submit a detailed safety and health plan, as part of the offeror's proposal, showing how the Contractor intends to protect the life, health, and well being of NASA and contractor employees as well as property and equipment. This plan, as approved by the Contracting Officer, will be included in any resulting contract.

(End of provision)

Alternate I (December 1988)

As prescribed by 1823.7004(f), delete the first sentence of the basic clause and substitute the following:

The apparently successful offeror shall submit a detailed safety and health plan after notification of selection but before contract award, showing how the contractor intends to protect the life, health, and well being of NASA and contractor employees as well as property and equipment.

1852.225-71 Nondomestic construction materials.

As prescribed in 1825.205-70, insert the following clause:

Nondomestic Construction Materials (December 1988)

The requirements of the Buy American Act—Construction Materials clause do not apply to the following construction materials or components: [List articles of materials and supplies.]

(End of clause)

1852.225-72 Offer in English language and U.S. dollars.

As prescribed in 1825.407, insert the following provision:

Offer in English Language and U.S. Dollars (December 1988)

Offers submitted in response to this solicitation shall be in the English language and in U.S. dollars.

(End of provision)

1852.225-73 Duty-free entry supplies.

As prescribed in 1825.605-70, insert the following clause:

Duty-Free Entry Supplies (December 1988)

In accordance with the Duty-Free Entry clause of this contract, the following supplies will be given duty-free entry:

[Insert the supplies that are to be accorded duty-free entry.]

(End of clause)

1852.227-70 New technology.

As prescribed in 1827.373(b), insert the following clause:

New Technology (April 1988)

(a) *Definitions.*

"Administrator," as used in this clause, means the Administrator of the National Aeronautics and Space Administration (NASA) or duly authorized representative.

"Contract," as used in this clause, means any actual or proposed contract, agreement, understanding, or other arrangement, and includes any assignment, substitution of parties, or subcontract executed or entered into thereunder.

"Made," as used in this clause, means conception or first actual reduction to practice; *provided,* that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

"Nonprofit organization," as used in this clause, means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

"Practical application," as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

"Reportable item," as used in this clause, means any invention, discovery, improvement, or innovation of the Contractor, whether or not the same is or may be patentable or otherwise protectible under Title 35 of the United States Code, conceived or first actually reduced to practice in the performance of any work under this contract or in the performance of any work that is reimbursable under any clause in this contract providing for reimbursement of costs incurred prior to the effective date of this contract.

"Small business firm," as used in this clause, means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the size standard contained in 13 CFR 121.3-8 for small business contractors and in 13 CFR 121.3-12 for small business subcontractors will be used.)

"Subject invention," as used in this clause, means any reportable item which is or may be patentable or otherwise protectible under Title 35 of the United States Code, or any novel variety of plant that is or may be protectible under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

(b) *Allocation of principal rights*—(1) *Presumption of title.* (i) Any reportable item that the Administrator considers to be a subject invention shall be presumed to have been made in the manner specified in paragraph (1) or (2) of section 305(a) of the National Aeronautics and Space Act of 1958 (43 U.S.C. 2457(a)) (hereinafter called "the Act"), and the above presumption shall be conclusive unless at the time of reporting the reportable item the Contractor submits to the Contracting Officer a written statement, containing supporting details, demonstrating that the reportable item was not made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act.

(ii) Regardless of whether title to a given subject invention would otherwise be subject to an advance waiver or is the subject of a petition for waiver, the Contractor may nevertheless file the statement described in subdivision (b)(1)(i) of this clause. The Administrator will review the information furnished by the Contractor in any such statement and any other available information relating to the circumstances surrounding the making of the subject invention and will notify the Contractor whether the Administrator has determined that the subject invention was made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act.

(2) *Property rights in subject inventions.* Each subject invention for which the presumption of subdivision (b)(1)(i) of this clause is conclusive or for which there has been a determination that it was made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act shall be the exclusive property of the United States as represented by NASA unless the Administrator waives all or any part of the rights of the United States, as provided in subparagraph (b)(3) of this clause.

(3) *Waiver of rights.* (i) Section 305(f) of the Act provides for the promulgation of regulations by which the Administrator may waive the rights of the United States with respect to any invention or class of inventions made or that may be made under conditions specified in paragraph (1) or (2) of section 305(a) of the Act. The promulgated NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1, have adopted the Presidential Memorandum on Government Patent Policy of February 18, 1983, as a guide in acting on petitions (requests) for such waiver of rights.

(ii) As provided in 14 CFR Part 1245, Subpart 1, Contractors may petition, either prior to execution of the contract or within 30 days after execution of the contract, for advance waiver of rights to any or all of the inventions that may be made under a contract. If such a petition is not submitted, or if after submission it is denied, the Contractor (or an employee inventor of the Contractor) may petition for waiver of rights to an identified subject invention within eight months of first disclosure of invention in accordance with subparagraph (e)(2) of this clause, or within such longer period as may be authorized in accordance with 14 CFR 1245.105.

(c) *Minimum rights reserved by the Government.* (1) With respect to each subject invention for which a waiver of rights is applicable in accordance with 14 CFR 1245, Subpart 1, the Government reserves—

(i) An irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign government in accordance with any treaty or agreement with the United States; and

(ii) Such other rights as stated in 14 CFR 1245.107.

(2) Nothing contained in this paragraph (c) shall be considered to grant to the Government any rights with respect to any invention other than a subject invention.

(d) *Minimum rights to the Contractor.* (1) The Contractor is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government acquires title, unless the Contractor fails to disclose the subject invention within the

times specified in subparagraph (e)(2) of this clause. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Administrator except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the Administrator to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 14 CFR 1245, Subpart 2, Licensing of NASA Inventions. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Administrator to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the Contractor will be provided a written notice of the Administrator's intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by the Administrator for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with 14 CFR 1245.211, any decision concerning the revocation or modification of its license.

(e) *Invention identification, disclosures, and reports.* (1) The Contractor shall establish and maintain active and effective procedures to assure that reportable items are promptly identified and disclosed to Contractor personnel responsible for the administration of this New Technology clause within six months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of the reportable items, and records that show that the procedures for identifying and disclosing reportable items are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Contractor will disclose each reportable item to the Contracting Officer within two months after the inventor discloses it in writing to Contractor personnel responsible for the administration of this New Technology clause or, if earlier, within six months after the Contractor becomes aware that a reportable item has been made, but in any event for subject inventions before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the reportable item was made and the inventor(s) or innovator(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the reportable item. The disclosure shall also identify any publication, on sale, or public use of any subject invention and whether a manuscript describing such invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the agency of the acceptance of any manuscript describing a subject invention for publication or of any on sale or public use planned by the Contractor for such invention.

(3) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing reportable items during that period, and certifying that all reportable items have been disclosed (or that there are no such inventions) and that the procedures required by subparagraph (e)(1) of this clause have been followed.

(ii) A final report, within 3 months after completion of the contracted work, listing all reportable items or certifying that there were no such reportable items, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(4) The Contractor agrees, upon written request of the Contracting Officer, to furnish additional technical and other information available to the Contractor as is necessary for the preparation of a patent application on a subject invention and for the prosecution of the patent application, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.

(5) The Contractor agrees, subject to paragraph 27.302(i), of the Federal Acquisition Regulation (FAR), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) Examination of records relating to inventions. (1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintained the procedures required by subparagraph (e)(1) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Contractor invention that the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) *Withholding of payment (this paragraph does not apply to subcontracts).* (1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding $50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to—

(i) Establish, maintain, and follow effective procedures for identifying and disclosing reportable items pursuant to subparagraph (e)(1) of this clause;

(ii) Disclose any reportable items pursuant to subparagraph (e)(2) of this clause;

(iii) Deliver acceptable interim reports pursuant to subdivision (e)(3)(i) of this clause; or

(iv) Provide the information regarding subcontracts pursuant to subparagraph (h)(4) of this clause.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of reportable items required by subparagraph (e)(2) of this clause, and an acceptable final report pursuant to subdivision (e)(3)(ii) of this clause.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

(h) *Subcontracts.* (1) Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall—

(i) Include this clause (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with other than a small business firm or nonprofit organization for the performance of experimental, developmental, or research work; and

(ii) Include the clause at FAR 52.227-11 (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor—

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.

(3) In the case of subcontracts at any tier, the agency, subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and NASA with respect to those matters covered by this clause.

(4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(5) The subcontractor will retain all rights provided for the Contractor in the clause of subdivision (h)(1)(i) or (ii) of this clause, whichever is included in the subcontract, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(i) Preference for United States industry. Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Administrator upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(End of clause)

1852.227-71 Requests for waiver of rights to inventions.

As prescribed in 1827.373(d), insert the following provision in all solicitations that include the clause at 1852.227-70, New Technology:

Requests for Waiver of Rights to Inventions (April 1984)

(a) In accordance with the NASA Patent Waiver Regulations, 14 CFR Part 1245, Subpart 1, waiver of rights to any or all inventions made or that may be made under a NASA contract or subcontract with other than a small business firm or a domestic nonprofit organization may be requested at different time periods. Advance waiver of rights to any or all inventions that may be made under a contract or subcontract may be requested prior to the execution of the contract or subcontract, or within 30 days after execution by the selected contractor. In addition, waiver of rights to an identified invention made and reported under a contract or subcontract may be requested, even though a request for an advance waiver was not made or, if made, was not granted.

(b) Each request for waiver of rights shall be by petition to the Administrator and shall include an identification of the petitioner; place of business and address; if petitioner is represented by counsel, the name, address and telephone number of the counsel; the signature of the petitioner or authorized representative; and the date of signature. No specific forms need be used, but the request should contain a positive statement that waiver of rights is being requested under the NASA Patent Waiver Regulations; a clear indication of whether the request is for an advance waiver or for a waiver of rights for an individual identified invention; whether foreign rights are also requested and, if so, the countries, and a citation of the specific section or sections of the regulations under which such rights are requested; and the name, address, and telephone number of the party with whom to communicate when the request is acted upon. Requests for advance waiver of rights should, preferably, be included with the proposal, but in any event in advance of negotiations.

(c) Petitions for advance waiver, prior to contract execution, must be submitted to the Contracting Officer. All other petitions will be submitted to the Patent Representative designated in the contract.

(d) Petitions submitted with proposals selected for negotiation of a contract will be forwarded by the Contracting Officer to the installation Patent Counsel for processing and then to the Inventions and Contributions Board. The Board will consider these petitions and where the Board makes the findings to support the waiver, the Board will recommend to the Administrator that waiver be granted, and will notify the petitioner and the Contracting Officer of the Administrator's determination. The Contracting Officer will be informed by the Board whenever there is insufficient time or information or other reasons to permit a decision to be made without unduly delaying the execution of the contract. In the latter event, the petitioner will be so notified by the Contracting Officer. All other petitions will be processed by installation Patent Counsel and forwarded to the Board. The Board shall notify the petitioner of its action and if waiver is granted, the conditions, reservations, and obligations thereof will be included in the Instrument of Waiver. Whenever the Board notifies a petitioner of a recommendation adverse to, or different from, the waiver requested, the petitioner may request reconsideration under procedures set forth in the Regulations.

(End of provision)

1852.227-72 Designation of new technology representative and patent representative.

As prescribed in 1827.373(e), insert the following clause:

Designation of New Technology Representative and Patent Representative (April 1984)

(a) For purposes of administration of the clause of this contract entitled "New Technology" or "Patent Rights—Retention by the Contractor (Short Form)," whichever is included, the following named representatives are hereby designated by the Contracting Officer to administer such clause:

Title	Office code	Address (including zip code)
	New Technology Representative Patent Representative	

(b) Reports of reportable items, and disclosure of subject inventions, interim reports, final reports, utilization reports, and other reports required by the clause, as well as any correspondence with respect to such matters, should be directed to the New Technology Representative unless transmitted in response to correspondence or request from the Patent Representative. Inquiries or requests regarding disposition of rights, election of rights, or related matters should be directed to the Patent Representative. This clause shall be included in any subcontract hereunder requiring a "New Technology" clause or "Patent Rights—Retention by the Contractor (Short Form)" clause, unless otherwise authorized or directed by the Contracting Officer. The respective responsibilities and authorities of the above-named representatives are set forth in 1827.375-3 of the NASA FAR Supplement.

(End of clause)

1852.227-73 Patent rights clause for subcontracts.

As prescribed in 1827.373(f), insert the following clause in all solicitations and contracts that include the clause at FAR 52.227-11, Patent Rights—Retention by the Contractor (Short Form):

Patent Rights Clause for Subcontracts (April 1984)

The Contractor shall include the clause in the NASA FAR Supplement at 1852.227-70, New Technology, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, research, design, or engineering work to be performed by other than a small business firm or a nonprofit organization.

(End of clause)

1852.227-84 Patent rights clauses.

The contracting officer shall insert the following provision as prescribed in 1827.373(g):

Patent Rights Clauses (April 1986)

This solicitation contains the patent rights clauses of FAR 52.227-11 (as modified by the NFS), NFS 1852.227-70, and NFS 1852.227-73. If the contract resulting from this solicitation is awarded to a small business or nonprofit organization, the clause at NFS 1852.227-70 shall not apply. If the award is to other than a small business or nonprofit organization, the clauses at FAR 52.227-11 and NFS 1852.227-73 shall not apply.

(End of Provision)

1852.227-85 Invention reporting and rights—foreign.

As prescribed in 1827.373(c)(1), insert the following clause:

Invention Reporting and Rights—Foreign (April 1986)

(a) As used in this clause, the term "invention" means any invention, discovery or improvement, and "made" means the conception or first actual demonstration that the invention is useful and operable.

(b) The Contractor shall report promptly to the Contracting Officer each invention made in the performance of work under this contract. The report of each such invention shall:

(1) Identify the inventor(s) by full name; and

(2) Include such full and complete technical information concerning the invention as is necessary to enable an understanding of the nature and operation thereof.

(c) The Contractor hereby grants to the Government of the United States of America as represented by the Administrator of the National Aeronautics and Space Administration the full right, title and interest in and to each such invention throughout the world, except for the State in which this contract is to be performed. As to such State, Contractor hereby grants to the Government of the United States of America as represented by the Administrator of the National Aeronautics and Space Administration only an irrevocable, nontransferable, nonexclusive, royalty-free license to practice each such invention by or on behalf of the United States of America or any foreign government pursuant to any treaty or agreement with the United States of America, provided that Contractor within a reasonable time files a patent application in that State for each such invention. Where Contractor does not elect to file such patent application for any such invention in that State, full right, title and interest in and to such invention in that State shall reside in the Government of the United States of America as represented by the Administrator of the National Aeronautics and Space Administration.

(d) The Contractor agrees to execute or to secure the execution of such legal instruments as may be necessary to confirm and to protect the rights granted by paragraph (c) of this clause, including papers incident to the filing and prosecution of patent applications.

(e) Upon completion of the contract work, and prior to final payment, Contractor shall submit to the Contracting Officer a final report listing all inventions reportable under this contract or certifying that no such inventions have been made.

(f) In each subcontract, the Contractor awards under this contract where the performance of research, experimental design, engineering, or developmental work is contemplated, the Contractor shall include this clause and the name and address of the Contracting Officer.

(End of Clause)

1852.227-86 Commercial computer software—licensing.

As prescribed in 1827.400(h), insert the following clause:

Commercial Computer Software—Licensing (December 1987)

(a) Any delivered commercial computer software (including documentation thereof) developed at private expense and claimed as proprietary shall be subject to the restricted rights in paragraph (d) of this clause. Where the vendor/contractor proposes its standard commercial software license, those applicable portions thereof consistent with Federal laws, standard industry practices, the Federal Acquisition Regulations (FAR) and the NASA FAR Supplement, including the restricted rights in paragraph (d) of this clause, are incorporated into and made a part of this purchase order/contract.

(b) Although the vendor/contractor may not propose its standard commercial software license until after this purchase order/contract has been issued, or at or after the time the computer software is delivered, such license shall nevertheless be deemed incorporated into and made a part of this purchase order/contract under the same terms and conditions as in paragraph (a) of this clause. For purposes of receiving updates, correction notices, consultation, and similar activities on the computer software, the NASA Contracting Officer or the NASA Contractor Technical Representative/User may sign any agreement, license, or registration form or card and return it directly to the vendor/contractor; however, such signing shall not alter any of the terms and conditions of this clause.

(c) The vendor's/contractor's acceptance is expressly limited to the terms and conditions of this purchase order/contract. If the specified computer software is shipped or delivered to NASA, it shall be understood that the vendor/contractor has unconditionally accepted the terms and conditions set forth in this clause, and that such terms and conditions (including the incorporated license) constitute the entire agreement between the parties concerning rights in the computer software.

(d) The following restricted rights shall apply:

(1) The commercial computer software may not be used, reproduced, or disclosed by the Government except as provided below or otherwise expressly stated in the purchase order/contract.

(2) The commercial computer software may be—

(i) Used, or copied for use, in or with any computer owned or leased by, or on behalf of, the Government; provided, the software is not used, nor copied for use, in or with more than one computer simultaneously, unless otherwise permitted by the license incorporated under paragraphs (a) or (b) of this clause;

(ii) Reproduced for safekeeping (archives) or backup purposes;

(iii) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software shall be subject to the same restricted rights; and

(iv) Disclosed and reproduced for use by Government contractors or their subcontractors in accordance with the restricted rights in subdivisions (d)(2) (i), (ii), and (iii) of this clause; provided they have the Government's permission to use the computer software and have also agreed to protect the computer software from unauthorized use and disclosure.

(3) If the incorporated vendor's/contractor's software license contains provisions or rights that are less restrictive than the restricted rights in subparagraph (d)(2) of this clause, then the less restrictive provisions or rights shall prevail.

(4) If the computer software is published, copyrighted computer software, it is licensed to the Government, without disclosure prohibitions, with the rights in subparagraphs (d) (2) and (3) of this clause.

(5) The computer software may be marked with any appropriate proprietary notice that is consistent with the rights in subparagraphs (d) (2), (3), and (4) of this clause.

1852.228-70 Aircraft ground and flight risk.

As prescribed in 1828.370, insert the following clause. The purpose of this clause is to have the Government assume risks that generally entail unusually high insurance premiums and are not covered by the contractor's contents, work-in-process, and similar insurance. Since the definitions in the clause may not cover every situation that should be covered to achieve this purpose, the clause may be modified as follows: If the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships, or other nonconventional types of aircraft, the definition of "aircraft" should be modified to specify that the aircraft has reached a point of manufacture comparable to that specified in the standard definition, which is written for conventional winged aircraft. The definition of "in the open" may be modified to include "hush houses," test hangers, comparable structures, and other designated areas. In addition, clause subparagraph (d)(3) may be modified to provide for Government assumption of risk of transportation by conveyance on streets or highways if the contracting officer determines that this transportation is limited to the vicinity of the contractor's premises and is merely incident to work being performed under the contract.

Aircraft Ground and Flight Risk (December 1988)

(a) Notwithstanding any other provisions of this contract, except as may be specifically provided in the Schedule as an exception to this clause, the Government, subject to the definitions and limitations of this clause, assumes the risk of damage to, or loss or destruction of, aircraft in the open, during operation, and in flight and agrees that the Contractor shall not be liable to the Government for any such damage, loss, or destruction.

(b) For the purposes of this clause, the following definitions apply:

(1) Unless otherwise specifically provided in the Schedule, "aircraft" includes—

(i) Aircraft (including both complete aircraft and aircraft in the course of being manufactured, disassembled, or reassembled; *provided* that an engine or a portion of a wing or a wing is attached to the fuselage) to be furnished to the Government under this contract (whether before or after acceptance Government acceptance); and

(ii) Aircraft (regardless of whether in a state of disassembly or reassembly) furnished by the Government to the Contractor under this contract, including all property installed in, in the process of installation in, or temporarily removed from them, unless the aircraft and property are covered by a separate bailment agreement.

(2) "In the open" means located wholly outside of buildings on the Contractor's premises, or at such other places as may be described in the Schedule as being in the open for the purposes of this clause, except that aircraft furnished by the Government are considered to be in the open at all times while in Contractor's possession, care, custody, or control.

(3) "Flight" includes any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) With respect to land-based aircraft, flight commences with the taxi roll from a flight line on the Contractor's premises and continues until the aircraft has completed the taxi roll in returning to a flight line on the Contractor's premises.

(ii) With respect to seaplanes, flight commences with the launching from a ramp on the Contractor's premises and continues until the aircraft has completed its landing run upon return and is beached at a ramp on the Contractor's premises.

(iii) With respect to helicopters, flight commences upon engagement of the rotors for the purpose of take-off from the Contractor's premises and continues until the aircraft has returned to the ground on the Contractor's premises and the rotors are disengaged.

(iv) With respect to vertical take-off aircraft, flight commences upon disengagement from any launching platform or device on the Contractor's premises and continues until the aircraft has been re-engaged to any launching platform or device on the Contractor's premises; *provided, however,* that aircraft off the Contractor's premises shall be deemed to be in flight when on the ground or water only during periods of reasonable duration following emergency landing, other landings made in the performance of this contract, or landings approved by the Contracting Officer in writing.

(4) "Contractor's premises" means those premises designated as such in the Schedule or in writing by the Contracting Officer, and any other place to which aircraft are moved for the purpose of safeguarding the aircraft.

(5) "Operation" means operations and tests, other than on any production line, of aircraft, not in flight, whether or not the aircraft is in the open or in motion during them and includes operations and tests of equipment, accessories, and power plants only when installed in aircraft.

(6) "Flight crew members" means the pilot, copilot, and, unless otherwise specifically provided in the Schedule, the flight engineer and navigator when required or assigned to their respective crew positions to conduct any flight on behalf of the Contractor.

(7) "Contractor's managerial personnel" means the Contractor's directors, officers, and any managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of the Contractor's business or of the Contractor's operations at any one plant or separate location at which this contract is performed or a separate and complete major industrial operation in connection with the performance of this contract.

(c)(1) The Government's assumption of risk under this clause, as to aircraft in the open, shall continue in effect unless terminated pursuant to subparagraph (c)(3) of this clause. If the Contracting Officer finds that an aircraft is in the open under unreasonable conditions, the Contracting Officer shall notify the Contractor in writing of the conditions found to be unreasonable and require the Contractor to correct them within a reasonable time.

(2) Upon receipt of this notice, the Contractor shall act promptly to correct these conditions, regardless of whether it agrees that they are in fact unreasonable. To the extent that the Contracting Officer may later determine that they were not in fact unreasonable, an equitable adjustment shall be made in the contract price to compensate the Contractor for any additional costs incurred in correcting them, and the contract shall be modified in writing accordingly.

(3)(i) If the Contracting Officer finds that the Contractor has failed to act promptly to correct unreasonable conditions or has failed to correct them within a reasonable time, the Contracting Officer may by written notice terminate the Government's assumption of risk under this clause for any aircraft which is in the open under those conditions. This termination shall be effective at 12:01 a.m. on the 15th day following the day of receipt by the Contractor of the notice.

(ii) If the Contracting Officer later determines that the Contractor acted promptly to correct the conditions or that the time taken by the Contractor was not in fact unreasonable, an equitable adjustment shall, notwithstanding paragraph (g) of this clause, be made to compensate the Contractor for any additional costs incurred as a result of the termination, and the contract shall be modified in writing accordingly.

(4) If the Government's assumption of risk under this clause is terminated in accordance with subparagraph (3) of this clause, the risk of loss with respect to Government-furnished property shall be determined in accordance with the Government property clause of this contract, if any, until the Government's assumption of risk is reinstated in accordance with subparagraph (5) of this clause.

(5)(i) When unreasonable conditions have been corrected, the Contractor shall promptly notify the Government. The Government may or may not elect to reassume the risks and relieve the Contractor of liabilities as provided in this clause, and the Contracting Officer shall notify the Contractor of the Government's election.

(ii) If, after correction of the conditions, the Government elects to reassume the risks and relieve the Contractor of liabilities, the Contractor shall be entitled to an equitable adjustment for any costs of insurance extending from the end of the third working day after the Contractor notifies the Government of the correction until the Government notifies the Contractor of that election.

(iii) If the Government elects not to reassume the risks and the conditions have in fact been corrected, the Contractor shall be entitled to an equitable adjustment for any costs of insurance extending after the third working day referred to in subdivision (c)(5)(ii) of this clause.

(d) The Government's assumption of risk shall not extend to damage to or loss or destruction of aircraft—

(1) Resulting from failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel, to maintain and administer a program for protecting and preserving aircraft in the open and during operation, in accordance with sound industrial practice;

(2) Sustained during flight if the flight crew members conducting the flight have not been approved in writing by the Contracting Officer;

(3) While in the course of transportation by rail or by conveyance on public streets, highways, or waterways, except for Government-furnished property;

(4) To the extent that the damage, loss, or destruction is in fact covered by insurance;

(5) Consisting of wear and tear, deterioration (including rust and corrosion), freezing, or mechanical, structural, or electrical breakdown or failure, unless this damage is the result of other loss, damage, or destruction covered by this clause (except that, in the case of Government-furnished property, if the damage consists of reasonable wear and tear or deterioration or

results from inherent vice in such property, this exclusion shall not apply); or

(6) Sustained while the aircraft is being worked upon and directly resulting from the work, including but not limited to any repairing, adjusting, servicing, or maintenance operation, unless the damage, loss, or destruction is of a type that would be covered by insurance that would customarily have been maintained by the Contractor at the time of the damage, loss, or destruction, but for the Government's assumption of risk under this clause.

(e)(1) With the exception of damage to or loss or destruction of aircraft in flight, the Government's assumption of risk under this clause shall not extend to the first $1,000 of loss or damage resulting from each event separately occurring. The Contractor assumes the risk of and shall be responsible for the first $1,000 of loss of or damage to aircraft in the open or during operation resulting from each event separately occurring, except for reasonable wear and tear and except to the extent the loss or damage is caused by negligence of Government personnel.

(2) If the Government elects to require that the aircraft be replaced or restored by the Contractor to the condition in which it was immediately prior to the damage, the equitable adjustment in the price authorized by paragraph (i) of this clause shall not include the dollar amount of the risk assumed by the Contractor under this paragraph (e). If the Government does not elect repair or replacement, the Contractor agrees to credit the contract price or pay the Government $1,000 (or the amount of the loss if smaller) as directed by the Contracting Officer.

(f) No subcontractor may be relieved from liability for damage to or loss or destruction of aircraft while in its possession or control, except to the extent that the subcontract, with the Contracting Officer's prior written approval, provides for relief of the subcontractor from that liability. In the absence of such approval, the subcontract shall require the return of the aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract. If a subcontractor has not been relieved from liability and any damage, loss, or destruction occurs, the Contractor shall enforce the liability of the subcontractor for that damage to or loss or destruction of the aircraft for the benefit of the Government.

(g) The Contractor warrants that the contract price does not and will not include, except as this clause may otherwise authorize, any charge or contingency reserve for insurance (including self-insurance funds or reserves) covering any damage to or loss or destruction of aircraft while in the open, during operation, or in flight, the risk of which has been assumed by the Government under this clause, whether or not such assumption may be terminated as to aircraft in the open.

(h)(1) In the event of damage to, or loss or destruction of, aircraft in the open, during operation, or in flight, the Contractor shall take all reasonable steps to protect the aircraft from further damage, separate damaged and undamaged aircraft, and put all aircraft in the best possible order. Further, except in cases covered by paragraph (e) of this clause, the Contractor should furnish to the Contracting Officer a statement of—

(i) The damaged, lost, or destroyed aircraft;

(ii) The time and origin of the damage, loss, or destruction;

(iii) All known interests in commingled property of which aircraft are a part; and

(iv) Any insurance covering any part of the interest in the commingled property.

(2) Except in cases covered by paragraph (e) of this clause, an equitable adjustment shall be made in the amount due under this contract for expenditures made by the Contractor in performing its obligations under this paragraph (h), and this contract shall be modified in writing accordingly.

(i)(1) If, before delivery and acceptance by the Government, any aircraft is damaged, lost, or destroyed and the Government has under this clause assumed the risk of that damage, loss, or destruction, the Government shall either (i) require that the aircraft be replaced or restored by the Contractor to the condition in which it was immediately prior to the damage or (ii) terminate this contract with respect to that aircraft.

(2) If the Government requires that the aircraft be replaced or restored, an equitable adjustment shall be made in the amount due under this contract and in the time required for its performance, and the contract shall be modified in writing accordingly.

(3) If, in the alternative, this contract is terminated under this paragraph (i) with respect to the aircraft, and under this clause the Government has assumed the risk of the damage, loss, or destruction, the Contractor shall be paid the contract price for the aircraft (or, if applicable, any work to be performed on the aircraft) less any amounts the Contracting Officer determines: (i) That it would have cost the Contractor to complete the aircraft (or any work to be performed on it), together with any anticipated profit on the uncompleted work and (ii) to be the value, if any, of the damaged aircraft or any remaining portion of it retained by the Contractor. The Contracting Officer shall have the right to prescribe the manner of disposition of the damaged, lost, or destroyed aircraft or any remaining parts of it, and, if the Contractor incurs additional costs as a result of such disposition, a further equitable adjustment shall be made in the amount due to the Contractor.

(j)(1) If the Contractor is at any time reimbursed or compensated by any third person for any damage, loss, or destruction of any aircraft, the risk of which has been assumed by the Government under this clause and for which the Contractor has been compensated by the Government, it shall equitably reimburse the Government.

(2) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such damage, loss, or destruction and, upon the request of the Contracting Officer, shall at the Government's expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment or subrogation in favor of the Government) in obtaining recovery.

(End of clause)

1852.228-71 Aircraft flight risks.

(a) As prescribed in 1828.311-270, insert the following clause:

Aircraft Flight Risks (December 1988)

(a) Notwithstanding any other provision of this contract (particularly paragraph (g) of the Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause and paragraph (c) of the Insurance—Liability to Third Persons clause), the Contractor shall not: (1) Be relieved of liability for damage to, or loss or destruction of, aircraft sustained during flight or (2) be reimbursed for liabilities to third persons for loss of or damage to property or for death or bodily injury caused by aircraft during flight, unless the flight crew members have previously been approved in writing by the Contracting Officer.

(b) For the purposes of this clause—

(1) Unless otherwise specifically provided in the Schedule, "aircraft" includes any aircraft, whether furnished by the Contractor under this contract (either before or after Government acceptance) or furnished by the Government to the Contractor under this contract, including all Government property placed or installed or attached to the aircraft, unless the aircraft and property are covered by a separate bailment agreement.

(2) "Flight" includes any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) With respect to land-based aircraft, flight commences with the taxi roll from a flight line and continues until the aircraft has completed the taxi roll to a flight line.

(ii) With respect to seaplanes, flight commences with the launching from a ramp and continues until the aircraft has completed its landing run and is beached at a ramp.

(iii) With respect to helicopters, flight commences upon engagement of the rotors for the purpose of take-off and continues until the aircraft has returned to the ground and rotors are disengaged.

(iv) With respect to vertical take-off aircraft, flight commences upon disengagement from any launching platform or device and continues until the aircraft has been re-engaged to any launching platform or device.

(3) "Flight crew members" means the pilot, copilot, and, unless otherwise specifically provided in the Schedule, the flight engineer and navigator when required or assigned to their respective crew positions to conduct any flight on behalf of the Contractor.

(c) (1) If any aircraft is damaged, lost, or destroyed during flight and the amount of the damage, loss, or destruction exceeds $100,000 or 20 percent of the estimated cost, exclusive of any fee, of this contract, whichever is less, and if the Contractor is not liable for the damage, loss, or destruction under the Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause of this contract or under paragraph (a) of this clause, an equitable adjustment for any resulting repair, restoration, or replacement required under this contract shall be made: (i) In the estimated cost, the delivery schedule, or both and (ii) in the amount of any fee to be paid to the Contractor, and the contract shall be modified in writing accordingly.

(2) In determining the amount of adjustment in the fee that is equitable, any fault of the Contractor, its employees, or any subcontractor that materially contributed to the damage, loss, or destruction shall be taken into consideration.

(End of clause)

1852.228-72 Interparty waiver of liability during STS operations.

As prescribed in 1828.371, insert the following clause:

Interparty Waiver of Liability During STS Operations (December 1988)

(a) The Contractor undertakes the obligations of, agrees to be bound by, and shall receive the protection and benefits of a NASA contractor under the no-fault, no-subrogation interparty waiver of liability provision with users for Space Shuttle services, to the extent provided for and reprinted in paragraph (d) of this clause.

(b) This interparty waiver of liability shall not apply to damage caused by: (1) NASA to the Contractor's employees or property or (2) the contractor to NASA's employees or property.

(c) This clause, including this paragraph (c), shall be included in all subcontracts under this contract under which work is to be performed in support of STS operations.

(d) The applicable definitions and the no-fault, no-subrogation interparty waiver of liability provision contained in NASA agreements with users for Space Shuttle services provide in relevant part as follows:

1. General.

a. (Paragraph a. of the Shuttle Launch Agreement has been intentionally omitted since it is not relevant.)

b. For purpose of this (Shuttle Launch) Agreement, the following definitions shall be applicable:

(1) "Liability" shall include payments made pursuant to United States' treaty, any judgment by a court of competent jurisdiction, administrative and litigation costs, and, after consultation with the User, settlement payments.

(2) "Damage" shall mean bodily injury to or death of any person, damage to, or loss of any property, and loss of revenue or profits or other direct, indirect, or consequential damages arising therefrom.

2. (Paragraph 2 of the Shuttle Launch Agreement has been intentionally omitted since it is not relevant.)

3. Damage to Persons or Property Involved in STS Operations.

a. For purposes of this Paragraph 3., the following definitions shall be applicable:

(1) "STS Operations" shall mean:

(a) All Space Transportation System activity;

(b) All Payload activity;

(c) All tangible personal property (including ground support, test, training and simulation equipment) related to paragraph(d) 3.a.(1) (a) and (b) of this clause;

(d) Research, design, development, test, manufacture, assembly, integration, transportation, or use of any materials related to paragraph (d)3.a.(1) (a), (b) or (c) of this clause.

(e) Performance of any services related to paragraph (d)3.a.(1) (a) through (d) of this clause.

(2) "Protected STS Operations" shall mean a period of time during which STS Operations are being performed as follows:

(a) Beginning with the signature of an Agreement or Arrangement with NASA for Space Transportation System services and (i) when any employee, Payload or property arrives at a United States Government Installation, or (ii) during transportation of such to the installation by a United States Government conveyance, or (iii) at ingress of such into an Orbiter, for the purpose of fulfilling such Agreement or Arrangement, whichever occurs first.

(b) Ending with regard to any employee when the employee departs: (i) A United States Government Installation, or (ii) the Orbiter if it lands at other than such Installation, or (iii) a United States Government conveyance which transports the employee from such Installation or Orbiter, whichever occurs last.

(c) Ending with regard to a Payload or property, not Jettisoned or Deployed, under the same conditions as set forth in subparagraph (d)3.a.(2)(b) of this clause.

(d) Ending with whichever occurs last with regard to a Deployed or Jettisoned payload or property (i) after such impacts the Earth; or (ii) if retrieved by the Orbiter, under the same conditions set forth in subparagraph (d)3.a.(2)(b) of this clause.

b. NASA and the User (the parties) will respectively utilize their property and employees in STS Operations in close proximity to one another and to others. Furthermore, the parties recognize that all participants in STS Operations are engaged in the common goal of meaningful exploration, exploitation and uses of outer space. In furtherance of this goal, the parties hereto agree to a no-fault, no-subrogation, interparty waiver of liability pursuant to which each party agrees not to bring a claim against or sue the other party or other users and agrees to absorb the financial and any other consequences for Damage it incurs to its own property and employees as a result of participation in STS Operations during Protected STS Operations, irrespective of whether such Damage is caused by NASA, the User, or other users participating in STS Operations, and regardless of whether such Damage arises through negligence or otherwise. Thus, the parties, by absorbing the consequences of damage to their property and employees without recourse against each other or other users participating in STS Operations during Protected STS Operations, jointly contribute to the common goal of meaningful exploration of outer space.

c. The parties agree that this common goal will also be advanced through extension of the interparty waiver of liability to other participants in STS operations. Accordingly, the parties agree to extend the waiver as set forth in subparagraph (d)3.b. of this clause to contractors and subcontractors at every tier of the parties and other users, as third party beneficiaries, whether or not such contractors or subcontractors causing damage bring property or employees to a United States Government Installation or retain title to or other interest in property provided by them to be used, or otherwise involved, in STS Operations. Specifically, the parties intend to protect these contractors and subcontractors from claims, including "products liability" claims, which might otherwise be pursued by the parties, or the contractors or subcontractors of the parties, or other users or the contractors or subcontractors of other users. Moreover, it is the intent of the parties that each will take all necessary and reasonable steps in accordance with subparagraph (d)3.e. below to foreclose claims for Damage by any participant in STS Operations during Protected STS Operations, under the same conditions and to the same extent as set forth in subparagraph (d)3.b. of this clause, except for claims between the User and its contractors or subcontractors and claims between the United States Government and its contractors and subcontractors.

d. The parties intend that the interparty waiver of liability set forth in subparagraphs (d)3. b. and c. of this clause be broadly construed to achieve the intended objectives.

e. NASA will require all Space Transportation system users entering into Launch and Associated Services Agreements with NASA after December 1, 1982, to agree to the interparty waiver of liability as set forth in subparagraphs 3.b. and 3.c. above. The User, and each other user, will require the following to agree to the waiver of liability set forth in subparagraph (d)3.c. of this clause: (i) All persons and entities to whom it assigns all or part of its right to Launch and Associated Services; (ii) any person or entity to whom it has sold or leased or otherwise agreed to provide all or any portion of its Payload or Payload services prior to the completion of NASA's launch services for a particular Payload; (iii) all its prime contractors; and (iv) all its subcontractors who will have persons or property involved in STS Operations during Protected STS Operations. NASA will require all the following to agree to the waiver of liability set forth in subparagraph (d)3.c. of this clause: (i) All its prime contractors; and (ii) all its subcontractors who will have persons or property involved in STS operations during Protected STS Operations. Furthermore, NASA has required all STS users entering into Launch and Associated Services Agreements prior to December 1, 1982, to agree to a more limited waiver of liability, a copy of which is available from NASA upon request. Failure of any party to obtain a waiver agreement required above shall not affect such party's right to the protections otherwise provided by this paragraph (d)3.

(End of clause)

1852.228-73 Bid Bond.

As prescribed in 1828.101-70, insert the following provision:

Bid Bond (October 1988)

(a) Each bidder shall submit with its bid a bid bond (Standard Form 24) with good and sufficient surety or sureties acceptable to the Government, or other security as provided in Federal Acquisition Regulation clause 52.228-1, in the amount of twenty percent (20%) of the bid price, or $3 million, whichever is the lower amount.

(b) Bid bonds shall be dated the same date as the bid or earlier.

(End of provision)

1852.228-74 Payment and performance bonds.

As prescribed in 1828.102-70, insert the following provision:

Payment and Performance Bonds (December 1988)

Unless the resulting contract is for $25,000 or less, the successful bidder will be required to furnish payment and performance bonds to the Contracting Officer as follows:

(a) *Performance Bonds:* (Standard Form 25)

(1) The penal amount of performance bonds shall be 100 percent of the original contract price.

(2) The Government may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The Government may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) *Payment Bonds:* (Standard Form 25-A)

(1) The penal amount of payment bonds shall equal—

(i) 50 percent of the contract price if the contract price is not more than $1 million;

(ii) 40 percent of the contract price if the contract price is more than $1 million but not more than $5 million; or

(iii) $2.5 million if the contract price is more than $5 million.

(2) If the original contract price is $5 million or less, the Government may require additional protection if the contract price is increased. The penal amount of the total protection as revised shall meet the requirement of subparagraph (a)(1) of this clause.

(3) The government may secure additional protection by directing the Contractor to increase the penal sum of the existing bond or to obtain an additional bond.

(c) The Contractor shall furnish all bonds, including any necessary reinsurance agreements, to the Contracting Officer before starting work. Performance and payment bonds shall be dated the same date as the contract award date; or, in the case of any additional bond protection required, the same date as the contract modification date.

(d) Surety companies acceptable to the Government are identified by the Department of Treasury and listed in the **Federal Register**.

(End of provision)

1852.228-75 Minimum insurance coverage.

As prescribed in 1828.372, insert the following clause:

Minimum Insurance Coverage (October 1988)

The Contractor shall obtain and maintain insurance coverage as follows for the performance of this contract:

(a) Worker's compensation and employer's liability insurance as required by applicable Federal and state workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with the Contractor's commercial operations that it would not be practical. The employer's liability coverage shall be at least $100,000, except in States with exclusive or monopolistic funds that do not permit workers' compensation to be written by private carriers.

(b) Comprehensive general (bodily injury) liability insurance of at least $500,000 per occurrence.

(c) Motor vehicle liability insurance written on the comprehensive form of policy which provides for bodily injury and property damage liability covering the operation of all motor vehicles used in connection with performing the contract. Policies covering motor vehicles operated in the United States shall provide coverage of at least $200,000 per person and $500,000 per occurrence for bodily injury liability and $20,000 per occurrence for property damage. The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.

(d) Comprehensive general and motor vehicle liability policies shall contain a provision worded as follows:

"The insurance company waives any right of subrogation against the United States of America which may arise by reason of any payment under the policy."

(e) When aircraft are used in connection with performing the contract, aircraft public and passenger liability insurance of at least $200,000 per person and $500,000 per occurrence for bodily injury, other than passenger liability, and $200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least $200,000 multiplied by the number of seats or passengers, whichever is greater.

(End of clause)

1852.228-76 Cross-waiver of liability for Space Station activities.

As prescribed in 1828.373, insert the following clause:

Cross-Waiver of Liability for Space Station Activities (February 1989)

(a) The objective of this clause is to establish a cross-waiver of liability in the interest of encouraging participation in the exploration, exploitation, and use of outer space through the Space Station. This cross-waiver of liability should be broadly construed to achieve this objective.

(b) For purposes of this clause:

(1) The term "the Contractor" means the person or entity who is a party to this contract, other than the United States Government and NASA.

(2) The term "damage" means:

(i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of, any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect or consequential damage.

(3) The term "launch vehicle" means an object (or any part thereof) intended for launch, launched from Earth, or returning to Earth which carries payloads or persons, or both.

(4) The term "Partner State" means the Governments of Belgium, Canada, Denmark, France, Italy, the Federal Republic of Germany, Japan, Netherlands, Norway, Spain, and the United Kingdom of Great Britain and Northern Ireland. It includes a Cooperating Agency of a Partner State and the National Space Development Agency of Japan. (The currently designated Cooperating Agencies are the Ministry of State for Science and Technology of Canada, the European Space Agency and the Science and Technology Agency of Japan.)

(5) The term "payload" means all property to be flown or used on or in a launch vehicle or the Space Station.

(6) The term "Protected Space Operations" means all launch vehicle activities, Space Station activities, and payload activities on Earth, in outer space, or in transit between Earth and outer space related to Space Station. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of launch or transfer vehicles (for example, the Orbital Maneuvering Vehicle), the Space Station, or a payload, as well as related support equipment and facilities and services; and

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

"Protected Space Operations" also includes all activities related to evolution of the Space Station as provided for in the Space Station Intergovernmental Agreement signed on September 29, 1988. "Protected Space Operations" excludes activities on Earth which are conducted on return from the Space Station to develop further a payload's product or process for use other than for Space Station related activities.

(7) The term "related entity" means:

(i) A contractor or subcontractor of a Partner State, of the United States Government or of the Contractor, at any tier;

(ii) A user or customer of a Partner State or of the United States Government, at any tier; or

(iii) A contractor or subcontractor of a user or customer of a Partner State or of the United States Government, at any tier.

The terms "contractors" and "subcontractors" include suppliers of any kind.

(8) The term "Space Station" means all the elements listed in the Annex to the Space Station Intergovernmental Agreement signed on September 29, 1988, including any capability added to Space Station through evolution as provided in that Agreement.

(c) The United States Government shall require (1) each Partner State; (2) each related entity of a Partner State; and (3) except as provided for in paragraph (h)(1) of this clause, each related entity of the United States Government; to agree, by contract or otherwise, to waive all claims, based on damage arising out of Protected Space Operations, against: (i) The Contractor; (ii) the Contractor's contractors or subcontractors at any tier; and (iii) the employees of the Contractor or the employees of the Contractor's contractors or subcontractors at any tier.

(d) In consideration for the cross-waiver set forth in paragraph (c) of this clause, the Contractor agrees to a cross-waiver of liability pursuant to which it waives all claims, based on damage arising out of Protected Space Operations, against (1) each Partner State; (2) each related entity of a Partner State; (3) except as provided for in paragraph (h)(1) of this clause, each related entity of the United States Government; and (4) except as provided for in paragraph (h)(1) of this clause, the employees of any of the entities identified in paragraphs (d)(1) through (3) of this clause.

(e) In addition, the Contractor agrees to extend the cross-waiver of liability as set forth in paragraph (d) of this clause to its own related entities by requiring them, by contract or otherwise, to agree to waive all claims, based on damage arising out of Protected Space Operations, against the entities or persons identified in paragraphs (d)(1) through (d)(4) of this clause, except as provided for in paragraph (h)(1) of this clause.

(f) This cross-waiver in paragraphs (c), (d), and (e) of this clause shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver in paragraphs (c), (d), and (e) of this clause applies to any claims for damage, whatever the legal basis for such claims, including but not limited to delict and tort (including negligence of every degree and kind) and contract.

(g) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects where the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(h) Notwithstanding the other provisions of this clause, this cross-waiver of liability shall not be applicable to:

(1) Claims between (i) the United States Government and the Contractor or between the United States Government and the Contractor's contractors or subcontractors at any tier; (ii) between the Contractor and its related entities; or (iii) between the Contractor's related entities;

(2) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(3) Claims for damage caused by willful misconduct; and

(4) Intellectual property claims.

(i) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(j) This clause, including this paragraph (j), shall be included in all subcontracts hereunder, appropriately modified to reflect the relationship of the parties, where the work is to be performed in support of Protected Space Operations.

(End of clause)

1852.228-77 Reimbursement for war-hazard losses.

As prescribed in 1828.309, insert the following clause:

Reimbursement For War-Hazard Losses (December 1988)

(a) The Contractor's costs for assuming liability for employee protection against war-hazard risks pursuant to paragraph (b) of the Worker's Compensation and War-Hazard Insurance Overseas clause shall be an allowable cost under this contract, subject to the following:

(1) The Contractor shall submit proof-of-loss files to support payment or denial of each claim.

(2) As soon as practicable, but no later than one year after the expiration or termination of this contract, unless the Contracting Officer extends the time, the Contractor shall convert each claim which has not been finally settled into a suitable arrangement under which the claim can be extinguished by the Contractor with a lump-sum payment. Subject to approval by the Contracting Officer, the Contractor shall then obtain necessary release documents and settle the claim by lump-sum arrangement, taking into account any payments previously made.

(3) As to any potential claim that is known to, or reasonably should be within the knowledge of, the Contractor at the time of final settlement under this contract, the Contractor shall, at that time, present to the Government a full report and evaluation, indicating as to each potential claim that a reasonable investigation of the circumstances has been made and giving the results of the investigation, an evaluation of the merits, and an estimate of the amount involved should the potential claim mature into a valid obligation.

(4) The cost of insurance against a liability reimbursable under this clause shall not be an allowable cost or otherwise recoverable under this contract.

(b) The Government may require the Contractor to assign to the Government in the manner, at the times, and to the extent directed by the Contracting Officer all right, title, and interest of the Contractor to any refund, rebate, or recapture arising out of any claim settlement. The Government may handle such assigned entitlements in any manner it deems appropriate and may recover any benefits related to claim settlements.

(c) The Contractor shall, as soon as practicable after an occurrence that appears to give rise to a claim under this portion of the contract, (1) perform any investigations that may be appropriate and (2) promptly notify the Contracting Officer in writing of any additional amount estimated to be necessary to be obligated on account of that claim. In addition, the Contractor shall give the Government or its representatives immediate written notice of any suit or action filed whose cost or expense may be reimbursable to the Contractor under this clause. The Contractor shall render full assistance to the Government in connection with any third-party suit or claim relating to this clause or its subject matter that the Government elects to prosecute or defend in its own behalf.

(End of clause)

1852.232-75 Security for advance payments.

As prescribed in 1832.412, insert the following clause:

Security for Advance Payments (March 1989)

During the period of time that advance payments may be made under this contract and so long as they remain unliquidated, the Contractor shall not mortgage, pledge, or otherwise encumber, or permit to be encumbered, any of the Contractor's assets now owned or hereafter acquired, or permit any preexisting mortgages, liens, or other encumbrances to remain on or attach to any assets of the Contractor that are allocated to the performance of this contract and with respect to which the Government has a lien under this contract, without the Contracting Officer's prior written consent.

(End of clause)

1852.232-77 Limitation of funds (fixed-price contract).

As prescribed in 1832.705-270(a), insert the following clause. Contracting officers are authorized, in appropriate cases, to revise clause paragraphs (a), (b), and (g) to specify the work required under the contract, in lieu of using contract item numbers. The 60-day period may be varied from 30 to 90 days, and the 75 percent from 75 to 85 percent:

Limitation of Funds (Fixed-Price Contract) (March 1989)

(a) Of the total price of items ____ through ____, the sum of $____ is presently available for payment and allotted to this contract. It is anticipated that from time to time additional funds will be allocated to the contract in accordance with the following schedule, until the total price of said items is allotted:

Schedule for Allotment of Funds

Date Amounts

(b) The Contractor agrees to perform or have performed work on the items specified in paragraph (a) of this clause up to the point at which, if this contract is terminated pursuant to the Termination for Convenience of the Government clause of this contract, the total amount payable by the Government

(including amounts payable for subcontracts and settlement costs) pursuant to paragraphs (f) and (g) of that clause would, in the exercise of reasonable judgment by the Contractor, approximate the total amount at the time allotted to the contract. The Contractor is not obligated to continue performance of the work beyond that point. The Government is not obligated in any event to pay or reimburse the Contractor more than the amount from time to time allotted to the contract, anything to the contrary in the Termination for Convenience of the Government clause notwithstanding.

(c) (1) It is contemplated that funds presently allotted to this contract will cover the work to be performed until ____.

(2) If funds allotted are considered by the Contractor to be inadequate to cover the work to be performed until that date, or an agreed date substituted for it, the Contractor shall notify the Contracting Officer in writing when within the next 60 days the work will reach a point at which, if the contract is terminated pursuant to the Termination for Convenience of the Government clause of this contract, the total amount payable by the Government (including amounts payable for subcontracts and settlement costs) pursuant to paragraphs (f) and (g) of that clause will approximate 75 percent of the total amount then allotted to the contract.

(3) (i) The notice shall state the estimated date when the point referred to in subparagraph (c)(2) of this clause will be reached and the estimated amount of additional funds required to continue performance to the date specified in subparagraph (c)(1) of this clause, or an agreed date substituted for it.

(ii) The Contractor shall, 60 days in advance of the date specified in subparagraph (c)(1) of this clause, or an agreed date substituted for it, advise the Contracting Officer in writing as to the estimated amount of additional funds required for the timely performance of the contract for a further period as may be specified in the contract or otherwise agreed to by the parties.

(4) If, after the notification referred to in subdivision (c)(3)(ii) of this clause, additional funds are not allotted by the date specified in subparagraph (c)(1) of this clause, or an agreed date substituted for it, the Contracting Officer shall, upon the Contractor's written request, terminate this contract on that date or on the date set forth in the request, whichever is later, pursuant to the Termination for Convenience of the Government clause.

(d) When additional funds are allotted from time to time for continued performance of the work under this contract, the parties shall agree on the applicable period of contract performance to be covered by these funds. The provisions of paragraphs (b) and (c) of this clause shall apply to these additional allotted funds and the substituted date pertaining to them, and the contract shall be modified accordingly.

(e) If, solely by reason of the Government's failure to allot additional funds in amounts sufficient for the timely performance of this contract, the Contractor incurs additional costs or is delayed in the performance of the work under this contract, and if additional funds are allotted, an equitable adjustment shall be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the items to be delivered, or in the time of delivery, or both.

(f) The Government may at any time before termination, and, with the consent of the Contractor, after notice of termination, allot additional funds for this contract.

(g) The provisions of this clause with respect to termination shall in no way be deemed to limit the rights of the Government under the default clause of this contract. The provisions of this Limitation of Funds clause are limited to the work on and allotment of funds for the items set forth in paragraph (a). This clause shall become inoperative upon the allotment of funds for the total price of said work except for rights and obligations then existing under this clause.

(h) Nothing in this clause shall affect the right of the Government to terminate this contract pursuant to the Termination for Convenience of the Government clause of this contract.

(End of clause)

1852.232-79 Payment for on-site preparatory costs

As prescribed in 1832.111-70, insert the following clause:

Payment for On-Site Preparatory Costs (September 1987)

Costs associated with on-site preparatory work (start-up or set-up costs) will be prorated over all work activities of a Critical Path Method (CPM) network or Progress Chart against which progress payments will be sought. Separate payment for on-site preparatory costs will not be made by the Government.

(End of clause)

1852.232-80 Date of incurrence of costs.

As prescribed in 1832.705-270(b), insert the following clause:

Date of Incurrence of Costs (March 1989)

The Contractor shall be entitled to reimbursement for costs incurred on or after _____ in an amount not to exceed $ _____ that, if incurred after this contract had been entered into, would have been reimbursable under this contract.

(End of clause)

1852.232-81 Contract funding.

As prescribed in 1832.705-270(c), insert the following clause:

Contract Funding (March 1989)

(a) For purposes of payment of cost, exclusive of fee, in accordance with the Limitation of Funds clause, the total amount allotted by the Government to this contract is $ _____ This allotment is for _____ and covers the following period of performance: _____.

(b) An additional amount of $ _____ is obligated under this contract for payment of fee.

(End of clause)

1852.232-82 Submission of requests for progress payments.

As prescribed in 1832.502-470, insert the following clause:

Submission of Requests for Progress Payments (March 1989)

The Contractor shall request progress payments in accordance with the Progress Payments clause by submitting to the Contracting Officer an original and two copies of Standard Form (SF) 1443, Contractor's Request for Progress Payment, and the contractor's invoice (if applicable). The Contracting Officer's office is the designated billing office for progress payments for purposes of the Prompt Payment clause.

(End of clause)

1852.235-70 Scientific and technical information service.

As prescribed in 1835.070(a), insert the following clause:

Scientific and Technical Information Service (March 1989)

(a) The Contractor should make the fullest practicable use of the services provided by the NASA Scientific and Technical Information Facility (STIF) during the conduct of research under this contract. The Contractor, if not already registered with STIF, is encouraged to register by executing express registration forms that will (1) be provided by STIF and (2) inform the Contractor of the products and services available in support of work under the contract.

(b) NASA reserves the right, if any scientific and technical information requested is unavailable, to so notify the Contractor. NASA's failure to furnish any information requested shall not entitle the Contractor to an equitable adjustment.

(End of clause)

1852.235-71 Key personnel and facilities.

As prescribed in 1835.070(b), insert the following clause:

Key Personnel and Facilities (March 1989)

(a) The personnel and/or facilities listed below (or specified in the contract Schedule) are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel or facilities, the Contractor shall (1) notify the Contracting Officer reasonably in advance and (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract.

(b) The Contractor shall make no diversion without the Contracting Officer's written consent; *provided*, that the Contracting Officer may ratify in writing the proposed change, and that ratification shall constitute the Contracting Officer's consent required by this clause.

(c) The list of personnel and/or facilities (shown below or as specified in the contract Schedule) may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel and/or facilities.

[List here the personnel and/or facilities considered essential, unless they are specified in the contract Schedule.]

(End of clause)

1852.235-72 Plan for new technology reporting.

As prescribed in 1835.070(c), insert the following provision:

Plan for New Technology Reporting (March 1989)

The Offeror shall, in the proposal in response to this solicitation, provide estimates of the cost and manpower requirements to perform the new technology reporting required by the clause at 1852.227-70, New Technology, which is to be included in any resulting contract. In addition, if selected for negotiation, the Offeror will be required to submit for approval before contract execution a detailed plan setting forth the manner in which the Offeror will meet the new technology reporting requirements of the New Technology clause. This plan shall, at a minimum—

(a) Identify the specific areas of technical effort that are considered likely to generate new technology;

(b) Describe the means by which project supervisory and technical personnel will be advised of the responsibilities, details, and benefits of new technology reporting;

(c) Describe the procedures to be established, maintained, and followed for reviewing the effort to be undertaken for the purposes of identification and reporting (disclosure) of new technology within the time periods and in the manner prescribed by the New Technology clause;

(d) Describe the procedure for timely submission of the interim and final new technology reports required by the New Technology clause;

(e) Describe the procedures for (1) selecting either NASA's New Technology clause or another patent rights clause for inclusion in subcontracts having as a purpose the conduct of experimental, developmental, research, design, or engineering work, and (2) providing prompt notification of either the award of such subcontracts or a subcontractor's refusal to accept the clause; and

(f) Identify the individual(s) assigned substantial and specific responsibilities for ensuring compliance with the requirements of the New Technology clause, as well as their qualifications and organizational placement to discharge these responsibilities.

(End of provision)

1852.236-71 Additive or deductive items.

As prescribed in 1836.370(a), insert the following provision:

Additive or Deductive Items (March 1989)

(a) The low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus or minus (in order of priority listed in the Schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the Government to be available before bids are opened. If addition of another bid item in the listed order of priority would make the award exceed those funds for all bidders, it shall be skipped and the next subsequent additive bid item in a lower amount shall be added for each bid if award on it can be made within the funds.

(b) An example for one bid is an amount available of $100,000, a bidder's base bid of $85,000, and four successive additives of $10,000, $8,000, $6,000, and $4,000. In this example, the aggregate amount of the bid for purposes of award would be $99,000 for the base bid plus the first and fourth additives, the second and third additives being skipped because either of them would cause the aggregate bid to exceed $100,000.

(c) All bids shall be evaluated on the basis of the same additive or deductive bid items. The listed order of priority must be followed only for determining the low bidder. After determination of the low bidder, award in the best interests of the Government may be made to that bidder on its base bid and any combination of its additive or deductive bid items for which funds are determined to be available at the time of the award, provided that award of the combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items.

(End of provision)

1852.236-72 Bids with unit prices.

As prescribed in 1836.370(b), insert the following provision:

Bids With Unit Prices (March 1989)

(a) All extensions of the unit prices bid will be subject to verification by the Government. If there is variation between the unit price and any extended amounts, the unit price will be considered to be the bid.

(b) If a modification to a bid based on unit prices that provides for a lump-sum adjustment to the total estimated cost is submitted, the application of the lump sum adjustment to each unit price in the bid must be stated. If it is not stated, the lump-sum adjustment shall be applied on a pro rata basis to every unit price in the bid.

(End of provision)

1852.236-73 Hurricane plan.

As prescribed in 1836.570-1, insert the following clause:

Hurricane Plan (December 1988)

In the event of a hurricane warning, the Contractor shall—

(a) Inspect the area and place all materials possible in a protected location;

(b) Tie down, or identify and store, all outside equipment and materials;

(c) Clear all surrounding areas and roofs of buildings, or tie down loose material, equipment, debris, and any other objects that could otherwise be blown away or blown against existing buildings; and

(d) Ensure that temporary erosion controls are adequate.

(End of clause)

1852.236-74 Magnitude of requirement.

As prescribed in 1836.570-2, insert the following provision:

Magnitude of Requirement (December 1988)

The Government estimated price range of this project is between $_____ and $_____. [Insert the estimated dollar range.]

(End of provision)

1852.237-70 Emergency evacuation procedures.

As prescribed at 1837.110, insert the following clause:

Emergency Evacuation Procedures (December 1988)

The contractor shall assure that its personnel at Government facilities are familiar with the functions of the Government's emergency evacuation procedures. If requested by the Contracting Officer, the Contractor shall designate an individual or individuals as contact points to provide for efficient and rapid evacuation of the facility if and when required.

(End of clause)

1852.242-70 Technical direction.

As prescribed in 1842.7001, insert the following clause:

Technical Directory (March 1989)

(a) Performance of the work under this contract is subject to the written technical direction of the Contracting Officer Technical Representative (COTR), who shall be specifically appointed by the Contracting Officer in writing in accordance with NASA FAR Supplement 1842.270. "Technical direction" means a directive to the Contractor that approves approaches, solutions, designs, or refinements; fills in details or otherwise completes the general description of work or documentation items; shifts emphasis among work areas or tasks; or furnishes similar instruction to the Contractor. Technical direction includes requiring studies and pursuit of certain lines of inquiry regarding matters within the general tasks and requirements in Section C of this contract.

(b) The COTR does not have the authority to, and shall not, issue any instruction purporting to be technical direction that—

(1) Constitutes an assignment of additional work outside the statement of work;

(2) Constitutes a change as defined in the changes clause;

(3) In any manner causes an increase or decrease in the total estimated contract cost, the fixed fee (if any), or the time required for contract performance;

(4) Changes any of the expressed terms, conditions, or specifications of the contract; or

(5) Interferes with the contractor's rights to perform the terms and conditions of the contract.

(c) All technical direction shall be issued in writing by the COTR.

(d) The Contractor shall proceed promptly with the performance of technical direction duly issued by the COTR in the manner

prescribed by this clause and within the COTR's authority. If, in the Contractor's opinion, any instruction or direction by the COTR falls within any of the categories defined in paragraph (b) of this clause, the Contractor shall not proceed but shall notify the Contracting Officer in writing within 5 working days after receiving it and shall request the Contracting Officer to take action as described in this clause. Upon receiving this notification, the Contracting Officer shall either issue an appropriate contract modification within a reasonable time or advise the Contractor in writing within 30 days that the instruction or direction is—

(1) Rescinded in its entirety; or

(2) Within the scope of the contract and does not constitute a change under the changes clause of the contract, and that the Contractor should proceed promptly with its performance.

(e) A failure of the contractor and contracting officer to agree that the instruction or direction is both within the scope of the contract and does not constitute a change under the changes clause, or a failure to agree upon the contract action to be taken with respect to the instruction or direction, shall be subject to the Disputes clause of this contract.

(f) Any action(s) taken by the contractor in response to any direction given by any person other than the Contracting Officer or the COTR shall be at the Contractor's risk.

(End of clause)

1852.242-71 Travel outside of the United States.

As prescribed in 1842.7002(a), insert the following clause:

Travel Outside of the United States (December 1988)

(a) The Contracting Officer must authorize in advance and in writing travel to locations outside of the United States by Contractor employees that is to be charged as a cost to this contract. This approval may be granted when the travel is necessary to the efforts required under the contract and it is otherwise in the best interest of NASA.

(b) The Contractor shall submit requests to the Contracting Officer at least 30 days in advance of the start of the travel.

(c) The Contractor shall submit a travel report at the conclusion of the travel. The Contracting Officer's approval of the travel will specify the required contents and distribution of the travel report.

(End of clause)

Alternate I

Travel Outside of the United States (December 1988)

As prescribed in 1842.7002(b), add Alternate I to the basic clause.

(d) The costs of foreign travel may be approved as a charge to the contract for presentation of papers at meetings, conferences, or symposiums; participation in meetings, conferences, or symposiums as session chairpersons, discussion leaders, special invitees, or official staff members of the sponsoring group; "on-site" field work; and in exceptionally meritorious cases, visits to scientific or technical organizations and attendance at international conferences and technical seminars when the travel is related to efforts under the contract.

(e) The costs of foreign travel ordinarily will not be approved as a charge to the contract for the sole purpose of visiting or attending meetings, unless fully warranted by clear and recognizable direct benefits to the efforts under the contract; meetings of national (as distinguished from international) bodies, unless the travel is constructively associated with other approved goals; or meetings that are predominantly American in either attendance or presented papers.

(End of clause)

1852.242-72 Observance of legal holidays.

As prescribed in 1842.7003(a), insert the following clause:

Observance of Legal Holidays (December 1988)

(a) The on-site Government personnel observe the following holidays:

New Year's Day
Labor Day
Martin Luther King's Birthday
Columbus Day
Washington's Birthday
Veterans Day
Memorial Day
Thanksgiving Day
Independence Day
Christmas Day

Any other day designated by Federal statute, Executive Order, or the President's proclamation.

(b) When any holiday falls on a Saturday, the preceding Friday is observed. When any holiday falls on a Sunday, the following Monday is observed. Observance of such days by Government personnel shall not by itself be cause for an additional period of performance or entitlement of compensation except as set forth within the contract.

(End of clause)

Alternate I (December 1988)

As prescribed in 1842.7003(b), add the following paragraphs (c), (d), and (e) as Alternate I to the clause.

(c) Personnel assigned to this contract shall limit their observance of holidays to those set forth above. If the Contractor's personnel work during a holiday other than those above, no form of holiday or other premium compensation shall be reimbursed as either a direct or indirect cost. However, this does not preclude reimbursement for authorized overtime work that would have been overtime regardless of the status of the day as a holiday.

(d) When the NASA installation grants administrative leave to its Government employees, Contractor personnel working on-site should also be dismissed. However, the contractor shall: (1) Continue to provide sufficient personnel to perform round-the-clock requirements of critical tasks already in operation or scheduled and (2) be guided by the instructions issued by the Contracting Officer or an authorized representative.

(e) Whenever administrative leave is granted to Contractor personnel pursuant to paragraph (d) above as a result of inclement weather, potentially hazardous conditions, or other special circumstances, it shall be without loss to the Contractor. The cost of salaries and wages to the Contractor for the period of any such excused absence shall be a reimbursable item of cost under this contract for employees in accordance with the Contractor's established accounting policy.

1852.243-70 Engineering Change Proposals.

As prescribed in 1843.205-70, insert the following clause with any appropriate alternates:

Engineering Change Proposals (March 1989)

(a) The Contracting Officer may, at any time, request in writing that the Contractor prepare and submit an engineering change proposal (ECP), as that term is defined in DOD-STD-480A. Upon receiving this request, the Contractor shall submit to the Contracting Officer the information specified by, and in the format required by, paragraph 4.6 of DOD-STD-480A.

(b) The ECP shall include a "not-to-exceed" price and delivery adjustment, or a "not-less-than" price and delivery adjustment, acceptable to the Contractor if the Government subsequently orders the proposed change. If the change is ordered, the equitable adjustment to the contract shall not be greater than the "not-to-exceed" or less than the "not-less-than" amount. This paragraph (b) does not preclude revision or correction of an ECP in accordance with paragraphs 4.10 and 4.11 of DOD-STD-480A. Concurrent with the submission of any ECP under this contract, the Contractor shall, in accordance with FAR 15.804-6, submit to the Contracting Officer a completed Standard Form 1411, Contract Pricing Proposal Cover Sheet. At the time of agreement upon the price of the ECP, the Contractor shall, in accordance with 15.804-2 and 15.804-4, submit to the Contracting Officer a signed Certificate of Current Cost or Pricing Data.

(End of clause)

Alternate I (March 1989)

As prescribed in 1843.205-70(b), add the following paragraph (c) to the basic clause.

(c) If the price adjustment proposed for any Contractor-originated ECP (excluding any Government-requested ECP or value engineering change proposal) is _____[Insert percent of contract price or dollar value.] or less, the change shall be made at no adjustment to the contract price.

Alternate II (March 1989)

As prescribed in 1843.205-70(b) substitute the following sentence for the second sentence in paragraph (b) of the basic clause.

Change orders issued in accordance with the changes clause of this contract shall not be considered an authorization to the Contractor to exceed the estimated cost in the contract Schedule, in the absence of a statement in the change order or other contract modification increasing the estimated cost.

1852.244-70 Geographic participation in the aerospace program.

As prescribed in 1844.170, insert the following clause:

Geographic Participation in the Aerospace Program (April 1985)

(a) It is the policy of the National Aeronautics and Space Administration to advance a broad participation by all geographic regions in filling the scientific, technical, research and development, and other needs of the aerospace program.

(b) The Contractor agrees to use its best efforts to solicit subcontract sources on the broadest feasible geographic basis consistent with efficient contract performance and without impairment of program effectiveness or increase in program cost.

(c) The Contractor further agrees to insert this clause in all subcontracts of $100,000 and over.

(End of clause)

1852.245-70 Acquisition of centrally reportable equipment.

As prescribed in 1845.106-70(a), insert the following clause:

Acquisition of Centrally Reportable Equipment (March 1989)

(a) "Centrally reportable equipment," as used in this clause, means plant equipment, special test equipment (including components), special tooling, and non-flight space property (including ground support equipment) (1) generally commercially available and used either as a separate item or as a component of a system, (2) having an acquisition cost of $1,000 or more (unless a lower threshold is specified elsewhere in this contract), and (3) is identifiable by a manufacturer and model number.

(b) (1) Before acquiring (including acquiring by fabricating) any item of centrally reportable equipment under this contract (unless for incorporation into flight-qualified or flight-monitoring deliverable end items), the Contractor shall provide to the Contracting Officer, at the earliest possible date, a description of the item sufficiently detailed to enable screening of existing Government inventories.

(2) For this purpose, the Contractor shall (i) prepare a separate DD Form 1419, DOD Industrial Plant Equipment Requisition, for each item of centrally reportable equipment to be acquired and (ii) forward it through the Contracting Officer to the NASA Equipment Management System (NEMS) Coordinator at the cognizant NASA installation at least 30 days in advance of the date the Contractor intends to acquire or begin fabricating the item. If a certificate of non-availability is not received within that period, the Contractor may proceed to acquire the item, subject to any other applicable provisions of this contract. Instructions for preparing the DD Form 1419 are contained in NASA FAR Supplement 1845.7103. The same data may be provided in an alternate format when requesting other than Defense Industrial Plant Equipment Center (DIPEC) controlled items.

(3) Upon receiving the item described on the DD Form 1419 (regardless of whether it is Contractor-acquired or Government-furnished), the Contractor shall prepare and submit a DD Form 1342 or equivalent data, in accordance with NASA FAR Supplement 1845.505-670.

(End of clause)

1852.245-71 Installation-provided government property.

As prescribed in 1845.106-70(b), insert the following clause:

Installation-Provided Government Property (March 1989)

(a) In performance of work under this contract, certain Government property identified in the contract shall be made available to the Contractor on a no-charge-for-use basis by the installation's Supply and Equipment Management Officer. That property shall be utilized in the performance of this contract at the installation that provided the property or at such other installations or locations as may be specified elsewhere in this contract. Under this clause, the Government retains accountability for as well as title to the property, and the Contractor assumes user responsibilities prescribed in the installation property management directives listed elsewhere in this contract.

(b) (1) The official accountable recordkeeping and financial control and reporting of the property subject to this clause shall be retained by the Government and accomplished by the installation's Supply and Equipment Management and Financial Management Officers. However, the Government will provide the Contractor a record of all items of such property, including copies of all transaction documents used to describe changes to this record. The Contractor shall maintain this record and transaction documentation in such a condition that, at any stage of completion of work under this contract, the status of the property, including location, utilization, consumption rate, and identification, can be readily ascertained.

(2) The Contractor shall also adhere to all other procedures (and be subject to sanctions related to those procedures) prescribed by the installation's director that have been established for the management of installation property. The records and documentation shall be made available, upon request, to the installation's Supply and Equipment Management Officer and any other formally designated representatives of the Contracting Officer.

(c) If the Government fails to provide the Government property specified in this contract and that failure adversely affects the Contractor's ability to perform the contract, the Contracting Officer shall, upon timely written request from the Contractor, (1) make a determination of the effect on the Contractor and (2) equitably adjust the contract in accordance with the procedure provided in the FAR 52.243 changes clause of this contract. Equitable adjustments made pursuant to this paragraph (c), however, shall not include adjustments in fee, unless the property to be provided was described in specific quantities of specific items.

(d) Government property made available under this clause shall in every respect be subject to the provisions of the FAR 52.245 Government property clause of this contract, except as provided in paragraphs (a), (b), and (c) of this clause and as may otherwise be provided in this contract with respect to (1) the Contractor's responsibilities for repair and maintenance of Government property, or (2) the Contractor's liability for any loss of or damage to such property that is attributable to the Contractor's failure to maintain and administer a program for maintenance and repair in accordance with sound industrial practice.

(End of clause)

Alternate I (March 1989)

As prescribed in 1845.106-70(b)(3), insert the following as subparagraph (b)(3) of the basic clause:

(3) The contractor shall not utilize the installation's central receiving facility for receipt of Contractor-acquired property. However, the Contractor shall provide listings suitable for establishing accountable records of all such property received, on a quarterly basis, to the Contracting Officer and the Supply and Equipment Management Officer.

1852.245-72 Liability for government property furnished for repair or other services.

As prescribed in 1845.106-70(c), insert the following clause:

Liability for Government Property Furnished for Repair or Other Services (March 1989)

(a) This clause shall govern with respect to any Government property furnished to the Contractor for repair or other services that is to be returned to the Government. Such property, hereinafter referred to as "Government property furnished for servicing," shall not be subject to any clause of this contract entitled Government-Furnished Property or Government Property.

(b) The official accountable recordkeeping and financial control and reporting of the property subject to this clause shall be retained by the Government. The Contractor shall maintain adequate records and procedures to ensure that the Government property furnished for servicing can be readily accounted for and identified at all times while in its custody or possession or in the custody or possession of any subcontractor.

(c) The Contractor shall be liable for any loss or destruction of or damage to the Government property furnished for servicing: (1) Caused by the Contractor's failure to exercise such care and diligence as a reasonable prudent owner of similar property would exercise under similar circumstances, or (2) sustained while the property is being worked upon and directly resulting from that work, including, but not limited to, any repairing, adjusting, inspecting, servicing, or maintenance operation. The Contractor shall not be liable for loss or destruction of or damage to Government property furnished for servicing resulting from any other cause except to the extent that the loss, destruction, or damage is covered by insurance (including self-insurance funds or reserves).

(d) In addition to any insurance (including self-insurance funds or reserves) carried by the Contractor and in effect on the date of this contract affording protection in whole or in part against loss or destruction of or damage to such Government property furnished for servicing, the amount and coverage of which the Contractor agrees to maintain, the Contractor further agrees to obtain any additional insurance covering such loss, destruction, or damage that the Contracting Officer may from time to time require. The requirements for this additional insurance shall be effected under the procedures established by the FAR 52.243 changes clause of this contract.

(e) The Contractor shall hold the Government harmless and shall indemnify the Government against all claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the Government property furnished for servicing or arising from the presence of that property on the Contractor's premises or property.

(End of clause)

1852.245-73 Financial reporting of government-owned/contractor-held property.

As prescribed in 1845.106-70(d), insert the following clause (note that when the clause is used with its Alternate I or Alternate II, the word "annually" in paragraph (a) must be replaced by "monthly" or "quarterly," as appropriate):

Financial Reporting of Government-Owned/Contractor-Held Property (March 1989)

(a) The Contractor shall prepare and submit annually a NASA Form 1018, Report of Government-Owned/Contractor-Held Property, in accordance with 1845.505-14 and the instructions on the form and in section 1845.7101 of the NASA FAR Supplement, except that the reporting of space hardware shall be required only as directed in clause 1852.245-78, Space Hardware Reporting, of this contract, if applicable.

(b) If administration of this contract has been delegated to the Department of Defense, the original and three copies of NASA Form 1018 shall be submitted through the DOD Property Administrator to the NASA office identified below. If the contract is administered by NASA, the forms shall be submitted directly to the following NASA office:_____[Insert the address and office code of the organization within the cognizant NASA installation responsible for control and distribution of the NF 1018.]

(c) The annual reporting period shall be from July 1 of each year to June 30 of the following year. The report shall be submitted by July 31.

(d) The Contractor agrees to insert this reporting requirement in all first-tier subcontracts, except that the requirement shall provide for the submission of the subcontractors' reports to the Contractor, not to the Government. The Contractor shall require the subcontractors' reports to be submitted in sufficient time to meet the reporting date in paragraph (c) of this clause.

(e) The Contractor's report shall consist of a consolidation of the subcontractors' reports and the Contractor's own report.

(End of clause)

Alternate I (March 1989)

As prescribed in 1845.106-70(d), insert the following paragraph (c) for paragraph (c) of the basic clause and modify paragraph (a) accordingly:

(c) The monthly report is due no later than the last day of the month following the month being reported.

Alternate II (March 1989)

As prescribed in 1845.106-70(d), insert the following paragraph (c) for paragraph (c) of the basic clause and modify paragraph (a) accordingly:

(c) The quarterly report is due no later than the last day of the month following the quarter being reported.

1852.245-74 Contractor Accountable On-Site Government Property.

As prescribed in 1845.106-70(e), insert the following clause:

Contractor Accountable On-Site Government Property (March 1989)

(a) In performance of work under this contract, certain Government property identified in the contract shall be provided to the Contractor on a no-charge-for-use basis by the installation's Supply and Equipment Management Officer. That property shall be utilized in the performance of this contract at the installation that provided the property or at such other installations or locations as may be specified elsewhere in this contract. The Contractor assumes accountability and user responsibilities for the property.

(b) Government property provided shall in every respect be subject to the provisions of the FAR 52.245 Government property clause of this contract. In addition, the contractor is responsible for managing this property in accordance with the guidelines provided by the installation's Supply and Equipment Management Officer or any other formally designated representatives of the Contracting Officer. The guidelines include but are not limited to requiring the Contractor to—

(1) Use economic order quantity (EOQ) methods for routine stock replenishment;

(2) Utilize the Federal Cataloging System;

(3) Comply with shelf-life requirements;

(4) Provide for accountability and control (using the NASA Equipment Management System (NEMS)) of all equipment costing $1000 and over, plus that equipment designated as "sensitive";

(5) Provide for physical inventory of all controlled equipment at least every 3 years;

(6) Provide for sample inventories of materials plus complete inventories every 5 years;

(7) Conduct walk-through utilization inspections;

(8) Screen NEMS before acquiring any equipment costing $1000 or over, plus equipment designated by the installation as sensitive and costing $500 and over;

(9) Support the Equipment Acquisition Document (EAD) process; and

(10) Use Government sources as the first source of supply.

(c) Data requirements relating to the guidelines in paragraph (b) above are specified under section F, Deliveries or performance.

(End of clause)

1852.245-75 Title to equipment.

As prescribed in 1845.106-70(f), insert the following clause:

Title to Equipment (March 1989)

(a) In accordance with the FAR 52.245 Government property clause of this contract, title to equipment and other tangible personal property acquired by the Contractor with funds provided for conducting research under this contract and having an acquisition cost less than $_____ [Insert a dollar value not less than $5,000] shall vest in the Contractor upon acquisition, provided that the Contractor has complied with the requirements of the FAR 52.245 Government property clause.

(b) Upon completion or termination of this contract, the Contractor shall submit to the Contracting Officer a list of all equipment with an acquisition cost of $_____ [Insert the dollar value specified in paragraph (a)] or more acquired under the contract during the contract period. The list shall include a description, manufacturer and model number, date acquired, cost, and condition information, and shall be submitted within 30 calendar days after completion or termination of the contract, in accordance with Federal Acquisition Regulation subsection 45.606-5.

(c) Title to the property specified in paragraph (b) of this clause vests in the Contractor, but the Government retains the right to direct transfer of title to property specified in paragraph (b) of this clause to the Government or to a third party within 180 calendar days after completion or termination of the contract. Such transfer shall not be the basis for any claim by the Contractor.

(d) Title to all Government-furnished property remains vested with the Government (see the FAR 52.245 Government property clause).

(e) Title to the contractor-acquired property listed below shall vest with the Government.

[List any contractor-acquired property for which vesting of title with the Government is appropriate or insert "None"].

(End of clause)

1852.245-76 List of Government-furnished property.

As prescribed in 1845.106-70(g), insert the following clause:

List of Government-furnished Property (October 1988)

For performance of work under this contract, the Government will make available Government property identified below or in Attachment _____[Insert attachment number or "not applicable"] of this contract on a no-charge-for-use basis. The Contractor shall use this property in the performance of this contract at _____[Insert applicable site(s) where property will be used] and at other location(s) as may be approved by the Contracting Officer. Under the FAR 52.245 Government property clause of this contract, the Contractor is accountable for the identified property.

Item	Quantity	Acquisition cost	Date to be furnished to the contractor

[Insert a description of the item(s), quantity, acquisition cost, and date the property will be furnished to the Contractor]

(End of clause)

1852.245-77 List of installation-provided property and services.

As prescribed in 1845.106-70(h), insert the following clause:

List of Installation-Provided Property and Services (March 1989)

In accordance with the Installation-provided Government Property clause of this contract, the Contractor is authorized use of the types of property and services listed below, to the extent they are available, while on-site at the NASA installation.

(a) Office space, work area space, and utilities. The Contractor shall use Government telephones for official purposes only. Pay telephone stations are available for the convenience and use of employees in making unofficial calls, both local and long distance.

(b) General- and special-purpose equipment, including office furniture.

(1) Equipment to be made available to the Contractor for use in performance of this contract on-site and at such other locations as approved by the Contracting Officer is listed in Attachment _____[Insert attachment number or "not applicable" if no equipment is provided]. The Government retains accountability for this property under the Installation-Provided Government Property clause, regardless of its authorized location.

(2) If the Contractor acquires property as a direct cost under this contract, this property also shall become accountable to the Government upon its entry into the NASA Equipment Management System (NEMS) in accordance with the property reporting requirements of this contract.

(3) The Contractor shall not bring on-site for use under this contract any property owned or leased by the Contractor, or other property that the Contractor is accountable for under any other Government contract, without the Contracting Officer's prior written approval.

(c) Supplies from stores stock.

(d) Publications and blank forms stocked by the installation.

(e) Safety and fire protection for Contractor personnel and facilities.

(f) Installation service facilities: _____ [Insert the name of the facilities or "None"].

(g) Medical treatment of a first-aid nature for Contractor personnel injuries or illnesses sustained during on-site duty.

(h) Cafeteria privileges for Contractor employees during normal operating hours.

(i) Building maintenance for facilities occupied by Contractor personnel.

(j) Moving and hauling for office moves, movement of large equipment, and delivery of supplies. Moving services shall be provided on-site, as approved by the Contracting Officer.

(k) The responsibilities of the Contractor as contemplated by paragraph (a) of the Installation-Provided Government Property clause are defined in the following property management directives and installation supplements to these Directives:

(1) NHB 4200.1, NASA Equipment Management Manual.

(2) NHB 4200.2, NASA Equipment Management System (NEMS) User's Guide for Property Custodians.

(3) NHB 4300.1, NASA Personal Property Disposal Manual.

(4) NHB 4100.1, NASA Materials Inventory Management Manual.

(End of clause)

1852.245-78 Space hardware reporting.

As prescribed in 1845.106-70(i), insert the following clause:

Space Hardware Reporting (March 1989)

In accordance with the Financial Reporting of Government-Owned/Contractor-Held Property clause of this contract, the reporting of certain specified items of space hardware is required on a NASA Form 1018, Report of Government-Owned/Contractor-Held Property. The reporting of space hardware is in addition to the requirements of other property reporting on the form. At present, the items of space hardware to be reported are the following: _____ [Insert the space hardware to be reported for the particular contract]. The Contracting Officer shall update this list prior to June 1 of each year to be applicable beginning with the next reporting period.

(End of clause)

1852.245-79 Use of Government-owned property.

As prescribed in 1845.106-70(j), insert the following provision:

Use of Government-Owned Property (March 1989)

(a) The offeror ( ) does, ( ) does not intend to use in performance of any contract awarded as a result of this solicitation existing Government-owned facilities (real property or plant equipment), special test equipment, or special tooling (including any property offered by this solicitation). The offeror shall identify any offered property not intended to be used. If the offeror does intend to use any of the above items, the offeror must furnish the following information required by Federal Acquisition Regulation (FAR) 45.205(b), NASA FAR Supplement (NFS) 1845.102-70, and NFS 1845.104(b):

(1) Identification and quantity of each item. Include the item's acquisition cost if it is not property offered by this solicitation.

(2) For property not offered by this solicitation, identification of the Government contract under which the property is accountable and written permission for its use from the cognizant Contracting Officer.

(3) Amount of rent, calculated in accordance with FAR 45.403 and the clause at FAR 52.245-9, Use and Charges, unless the property has been offered on a rent-free basis by this solicitation.

(4) The dates during which the property will be available for use, and if it is to be used in more than one contract, the amounts of respective uses in sufficient detail to support proration of the rent. This information is not required for property offered by this solicitation.

(b) The offeror ( ) does, ( ) does not request additional Government-provided property for use in performing any contract awarded as a result of this solicitation. If the offeror requests additional Government-provided property, the offeror must furnish—

(1) Identification of the property, quantity, and estimated acquisition cost of each item; and

(2) The offeror's written statement as prescribed by FAR 45.302-1(a)(4).

(c) If the offeror intends to use any Government property (paragraph (a) or (b) of this clause), the offer must also furnish the following:

(1) The date of the last Government review of the offeror's property control and accounting system, actions taken to correct any deficiencies found, and the name and telephone number of the cognizant property administrator.

(2) A statement that the offeror has reviewed, understands, and can comply with all property management and accounting procedures in the solicitation, FAR Subpart 45.5, and NFS Subparts 1845.5, 1845.70, and 1845.71.

(3) A statement indicating whether or not the costs associated with subparagraph (c)(2) of this clause, including plant clearance and/or plant reconversion costs, are included in its cost proposal.

(End of provision)

1852.245-80 Use of Government production and research property on a no-charge basis.

As prescribed in 1845.106-70(k), insert the following clause:

Use of Government Production and Research Property on a No-Charge Basis (March 1989)

In performing this contract, the Contractor is authorized to use on a no-charge, noninterference basis the Government-owned production and research property provided to the Contractor under the contract(s) specified below and identified in the cognizant Contracting Officer's letter approving use of the property. Use is authorized on the basis that it will not interfere with performance of the Government contract(s) under which the property was originally furnished. Use shall be in accordance with the terms and conditions of these contracts and the

cognizant Contracting Officer's approval letter.

Contract No(s): [Insert the contract number(s) under which the Government property is accountable].

(End of clause)

1852.246-70 Space Transportation System (STS) Personnel Reliability Program.

As prescribed in 1846.270(a), insert the following clause:

Space Transportation System (STS) Personnel Reliability Program (March 1989)

(a) In implementation of the STS Personnel Reliability Program, described in NASA Management instruction (NMI) 8610.13, the Government shall identify personnel positions that are mission critical. Some of the positions as identified may now or in the future be held by employees of the Contractor. Upon notification by the Contracting Officer that a mission-critical position is being or will be filled by one or more of the Contractor's employees, the Contractor shall (1) provide the affected employees with a clear understanding of the investigative and medical requirements and, (2), to the extent permitted by applicable law, assist the Government by furnishing personal data and medical records.

(b) The standard that will be used in certifying individuals for a mission-critical position is that they must be determined to be competent and reliable in the performance of their assigned duties in accordance with the screening requirements of the NMI. If the Government determines that a Contractor employee occupying or nominated to occupy a mission-critical position will not be certified for such duty, the Contracting Officer shall (1) furnish to the employee the specific reasons for its action; (2) advise the employee that he/she may avail himself/herself of the review procedures that are a part of the certification system; and (3) furnish him/her a copy of those procedures upon request.

(c) If a Contractor employee who has been nominated for (but has not yet filled) a mission-critical position is not certified, the Contractor agrees to defer the appointment to the position until the employee has had an opportunity to pursue the referenced procedures. If the employee is an incumbent to the position, the Contractor agrees, upon the request of the Government, to remove him/her from the position temporarily pending an appeal of the action under the review procedures. If any employee not certified elects not to take action under the procedures, or, if having taken action, is not successful in obtaining a reversal of the determination, the Contractor agrees not to appoint the employee to the position, or if already appointed, to promptly remove the employee.

(End of clause)

1852.246-71 Government contract quality assurance functions.

As prescribed in 1846.470, insert the following clause:

Government Contract Quality Assurance Functions (October 1988)

In accordance with the inspection clause of this contract, the Government intends to perform the following functions at the locations indicated:

Item	Quality assurance Function	Location

[Insert the items involving quality assurance, the quality assurance functions, and where the functions will be performed]

(End of clause)

1852.246-72 Material inspection and receiving report.

As prescribed in 1846.674, insert the following clause:

Material Inspection and Receiving Report (October 1988)

(a) At the time of each delivery under this contract, the Contractor shall furnish to the Government a Material Inspection and Receiving Report (DD Form 250 series) prepared in ____ [Insert number of copies, including original] copies, an original and ____ copies [Insert number of copies].

(b) The Contractor shall prepare the DD Form 250 in accordance with NASA FAR Supplement 1846.672-1. The Contractor shall enclose the copies of the DD Form 250 in the package or seal them in a waterproof envelope, which shall be securely attached to the exterior of the package in the most protected location.

(c) When more than one package is involved in a shipment, the Contractor shall list on the DD Form 250, as additional information, the quantity of packages and the package numbers. The Contractor shall forward the DD Form 250 with the lowest numbered package of the shipment and print the words "CONTAINS DD FORM 250" on the package.

(End of clause)

1852.246-73 Manned space flight item.

As prescribed in 1846.270(b), insert the following clause:

Manned Space Flight Item (October 1988)

The Contractor shall include the following statement in all subcontracts and purchase orders placed by it in support of this contract, without exception as to amount or subcontractual level:

For use in manned space flight; materials, manufacturing, and workmanship of highest quality standards are essential to astronaut safety.

If you are able to supply the desired item with a higher qualilty than that of the items specified or proposed, you are requested to bring this fact to the immediate attention of the purchaser.

(End of clause)

1852.247-70 Returnable containers.

As prescribed in 1847.305-70(a), insert the following clause:

Returnable Containers (March 1989)

(a) Containers shall remain the Contractor's property but shall be loaned without charge to the Government for a period of 30 days after their delivery to the f.o.b. point specified in the contract. Beginning with the first day after this loan period expires, to and including the day the containers are delivered to the Contractor (if the original delivery was f.o.b. origin) or are delivered or made available for delivery to the Contractor's designated carrier (if the original delivery was f.o.b. destination), the Government shall pay the Contractor a rental of $_____ [Insert dollar amount for container rental.] per container per day, regardless of type or capacity.

(b) This rental charge will be computed separately for containers of each type, size, and capacity, and for each delivery point named in the contract. A credit of 30 container days will accrue to the Government for each container, regardless of type or capacity, delivered by the Contractor. A debit of 1 container day will accrue to the Government for each container for each day after delivery to the f.o.b. point specified in the contract. At the end of the contract, if the debit total exceeds the credit total, rental shall be charged for the difference. If the credit total equals or exceeds the debit total, no rental shall be charged. No rental shall accrue to the Contractor in excess of the replacement value per container specified in paragraph (c) of this clause.

(c) For each container lost or damaged beyond repair while in the Government's possession, the Government shall pay the Contractor the replacement value as follows, less the allocable rental paid for that container:

[Insert the container types, sizes, capacities, and associated replacement values.]

(d) Containers lost or damaged beyond repair and paid for by the Government shall become Government property, subject to the following: If any lost container is located within _____ [Insert number of calendar days.] calendar days after payment by the Government, it may be returned to the Contractor by the Government, and the Contractor shall pay the Government the replacement value, less rental computed in accordance with paragraph (a) of this clause, beginning at the expiration of the loan period specified in paragraph (a) above, and continuing to the date on which the cylinder was delivered to the Contractor.

(End of clause)

1852.247-71 Protection of the Florida Manatee.

As prescribed in 1847.7001, insert the following clause:

Protection of the Florida Manatee (March 1989)

(a) Pursuant to the Endangered Species Act of 1973 (Pub. L. 93-205), as amended, and the Marine Mammals Protection Act of 1972 (Pub. L. 92-522), the Florida Manatee (Trichechus Manatus) has been designated an endangered species, and the Banana and Indian Rivers within and adjacent to NASA's Kennedy Space Center (KSC) have been designated as a critical habitat of the Florida Manatee.

(b) Contractor personnel involved in vessel operations, dockside work, and selected disassembly functions shall be provided training relative to (1) habits and characteristics of the Florida Manatee, (2) provisions of the applicable laws, (3) personal liability of workers under the laws, and (4) operational restrictions imposed by KSC.

(c) All vessel operations shall be conducted within the posted speed restrictions, and vessels shall be operated at minimum controllable speeds in all KSC waters. Shallow-water operations are prohibited.

(d) Training will be conducted by personnel of the U.S. Fish and Wildlife Service (USFWS). The contractor agrees to cooperate with the USFWS by allowing access at reasonable times and places (including shipboard) to USFWS personnel, and by making available such contractor personnel as are required to have the training. Arrangements for training will be made as follows:

(1) For personnel involved in tug, barge, or marine operations, through the Lockheed Space Operations Contractor, Transportation Coordination Center, Kennedy Space Center, Florida, telephone (407) 867-5330.

(2) For all other personnel, through the Systems Training and Employee Development Branch, Code PM-TNG, telephone (407) 867-2737.

(e) The contractor shall incorporate the provisions of this clause in applicable subcontracts (including vendor deliveries).

(End of clause)

1852.247-72 Advance Notice of Shipment.

As prescribed in 1847.305-70(b), insert the following clause:

Advance Notice of Shipment (October 1988)

_____[Insert number of work days] work days prior to shipping item(s)_____[Insert items to be shipped], the Contractor shall furnish the anticipated shipment date, bill of lading number (if applicable), and carrier identity to _____[Insert individual(s) to receive notification] and to the Contracting Officer.

(End of clause)

1852.247-73 Shipment by Government bills of lading.

As prescribed in 1847.305-70(c), insert the following clause:

Shipment by Government Bills of Lading (March 1989)

(a) The Contractor shall ship items deliverable under this contract, if the transportation cost per shipment exceeds $100, by Government bills of lading (GBLs). At least 15 days before shipment, the Contractor shall request in writing GBLs from:_____[Insert name, title, and mailing address of designated transportation officer or other official delegated responsibility for GBLs]. If time is limited, requests may be by telephone:_____[Insert appropriate telephone number]. Requests for GBLs shall include the following information.

(1) Item identification/description.

(2) Origin and destination.

(3) Individual and total weights.

(4) Dimensions and total cubic footage.

(5) Total number of pieces.

(6) Total dollar value.

(7) Other pertinent data.

(b) The Contractor shall prepay transportation charges of $100 or less per shipment. The Government shall reimburse the contractor for these charges if they are added to the invoice as a separate line item supported by the paid freight receipts. If paid receipts in support of the invoice are not obtainable, a certificate as described below must be completed, signed by an authorized company representative, and attached to the invoice.

I certify that the shipments identified below have been made, transportation charges have been paid by (company name), and paid freight or comparable receipts are not obtainable.

Contract or Order Number: _____

Destination: _____

(End of clause)

1852.249-72 Termination (utilities).

As prescribed in 1849.505-70, insert the following clause. The period of 30 days may be varied not to exceed 90 days.

Termination (Utilities) (March 1989)

The Government, at its option, may terminate this contract by giving written notice not less than 30 days in advance of the termination's effective date.

(End of clause)

1852.250-70 Indemnification under Public Law 85-804—NASA Contracts.

As prescribed at 1850.403-370(a)(1), insert the following clause:

Indemnification Under Public Law 85-804—NASA Contracts (March 1989)

(a) "Principal officials," as used in this clause, means any of the Contractor's managers, superintendents, or other equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor's business, or

(2) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or

(3) A separate and complete major industrial operation in connection with the performance of this contract.).

(b) Pursuant to Pub. L. 85-804 (50 U.S.C. 1431-1435) and Executive Order 10789, as amended, and notwithstanding any other provisions of this contract, but subject to the following paragraphs of this clause, the Government shall hold harmless and indemnify the Contractor against—

(1) Claims (including reasonable expenses of litigation or settlement) by third persons (including employees of the Contractor) for death; personal injury; or loss of, damage to, or loss of use of property;

(2) Loss of or damage to property of the Contractor, and loss of its use, but excluding loss of profit; and

(3) Loss of, damage to, or loss of use of Government property but excluding loss of profit.

(c) This indemnification applies only to the extent that the claim, loss, or damage (1) Arises out of or results from a risk defined in this contract to be unusually hazardous and (2) is not compensated by insurance or otherwise. Any such claim, loss, or damage within deductible amounts of the Contractor's insurance shall not be covered under this clause.

(d)(1) The Government shall not be liable for—

(i) Claims by the United States (other than those arising through subrogation) against the Contractor;

(ii) Losses affecting the property of the Contractor; when the claim, loss, or damage was caused by the willful misconduct or lack of good faith on the part of any of the Contractor's directors, officers, or principal officials; or

(iii) Loss of, damage to, or loss of use of property of the Contractor unless the total amount for such loss, damage, and loss of use, excluding loss of profit, is in excess of the Contractor's insurance or $500,000,000. Specifically, the Government shall only be liable for such loss, damage, and loss of use in excess of the Contractor's insurance or $500,000,000, whichever is the larger amount.

(2) The Contractor shall not be indemnified under this clause for liability assumed under any contract or agreement unless that assumption of liability has been specifically authorized by the Administrator and approved by the Contracting Officer. When the Government has assumed liability for subcontracts, the term "Contractor" in this paragraph (d) shall include subcontractors.

(e) No payment shall be made by the Government under this clause unless its amount shall first have been certified to be just and reasonable by the Administrator or the Administrator's representative designated for this purpose. The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract. The Government may discharge its liability under this paragraph (e) by making payments to the Contractor or directly to parties to whom the Contractor may be liable.

(f)(1) With the Contracting Officer's prior written approval, the Contractor may include in any subcontract under this contract the same provisions as those in this clause, whereby the Contractor shall indemnify the subcontractor against any risk defined in this contract as unusually hazardous. Such a subcontract shall provide the same rights and duties, and the same provisions for notice, furnishing of evidence or proof, and the like, between the Contractor and the subcontractor as are established by this clause. The Contracting Officer may also approve similar indemnification of subcontractors at any tier upon the same terms and conditions.

(2) Subcontracts providing for indemnification within the purview of this clause shall provide for the prompt notification to the Contracting Officer of any claim or action against, or of any loss by, the

subcontractor covered by this clause and shall entitle the Government, at its election, to control or assist in the settlement or defense of any such claim or action. The Government shall indemnify the Contractor with respect to its obligations to subcontractors under subcontract provisions thus approved by the Contracting Officer.

(3) The Government may discharge its obligations under this paragraph (f) by making payments directly to subcontractors or to parties to whom the subcontractor may be liable.

(g) If insurance coverage or other financial protection approved by the Administrator is reduced, the Government's liability under this clause shall not be increased by reason of such reduction.

(h) The Contractor shall: (1) Promptly notify the Contracting Officer of any claim or action against, or of any loss by, the Contractor or any subcontractor that reasonably may be expected to involve indemnification under this clause, (2) furnish evidence or proof of any claim, loss, or damage covered by this clause in the manner and form required by the Government, and (3) immediately furnish to the Government copies of all pertinent papers received by the Contractor. The Government may direct, control, or assist in the settlement or defense of any such claim or action. The Contractor shall comply with the Government's directions and execute any authorizations required in regard to that settlement or defense.

(End of clause)

Alternate I (March 1989)

If the contract is a cost-reimbursement contract, substitute the following paragraphs (h) and (i) for paragraph (h) of the basic clause:

(h) In addition to the Contractor's responsibilities under the Insurance—Liability to Third Persons clause of this contract, which are hereby made applicable to claims under this clause, the Contractor shall: (1) Promptly notify the Contracting Officer of any claim or action against, or of any loss by, the Contractor or any subcontractor that reasonably may be expected to involve indemnification under this clause, (2) furnish evidence or proof of any claim, loss, or damage covered by this clause in the manner and form required by the Government, and (3) to the extent required by the Government, permit and authorize the Government to direct, control or assist in the settlement or defense of any such claim or action. The cost of insurance (including self-insurance) covering a risk defined in this contract as unusually hazardous shall not be reimbursed either as a direct or indirect cost except to the extent that such insurance has been required or approved under the Insurance—Liability to Third Persons clause.

(i) The limitation of cost and Limitation of Government's Obligation clauses of this contract do not apply to the Government's obligations under this clause. These obligations shall be excepted from the release required under the allowable cost and payment clause of this contract.

1852.250-71 Indemnification under Public Law 85-804—cost-reimbursement contracts.

Insert the following clause as prescribed in 1850.403-370(a)(2):

Indemnification Under Public Law 85-804—Cost-Reimbursement Contract (October 1988)

(a) Pursuant to Pub. L. 85-804 (50 U.S.C. 1431-1435) and Executive Order 10789, as amended, and notwithstanding any other provision of this contract, but subject to the following paragraphs of this clause, the Government shall hold harmless and indemnify the Contractor against:

(1) Claims (including reasonable expenses of litigation or settlement) by third persons (including employees of the Contractor) for death, personal injury, or loss of, damage to, or loss of use of property;

(2) Loss of or damage to property of the Contractor, and loss of use of such property but excluding loss of profit; and

(3) Loss of, damage to, or loss of use of property of the Government but excluding loss of profit; to the extent that such a claim, loss or damage (A) arises out of or results from a risk defined in this contract to be unusually hazardous in nature and (B) is not compensated by insurance or otherwise. Any such claim, loss or damage within deductible amounts of Contractor's insurance shall not be covered under this clause.

(b) (1) The Government shall not be liable for:

(i) Claims by the United States (other than those arising through subrogation) against the Contractor;

(ii) Losses affecting the property of such Contractor; when the claim, loss or damage was caused by the willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or principal officials. (For purposes of this clause, the term "principal officials" means any of the Contractor's managers, superintendents, or other equivalent representatives who have supervision or direction of:

(A) All or substantially all of the Contractor's business, or

(B) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or

(C) A separate and complete major industrial operation in connection with the performance of this contract or

(iii) Loss of, damage to, or loss of use of property of the Contractor unless the total amount for such loss, damage and loss of use, excluding loss of profit, is in excess of the Contractor's insurance or $500,000.000. Specifically, the Government shall only be liable for such loss, damage and loss of use in excess of the Contractor's insurance or $500,000.000, whichever is the larger amount.

(2) The Contractor shall not be indemnified under this clause for liability assumed under any contract or agreement unless such assumption of liability has been specifically authorized by the Administrator and approved by the Contracting Officer. When the Government has assumed liability for subcontracts, the term "Contractor" in this paragraph (b) shall include subcontractors.

(c) No payment shall be made by the Government under this clause unless the amount thereof shall first have been certified to be just and reasonable by the Administrator or his representative designated for such purpose. The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract. The Government may discharge its liability under this paragraph by making payments to the Contractor or directly to parties to whom the Contractor may be liable.

(d) With the prior written approval of the Contracting Officer, the Contractor may include in any subcontract under this contract, the same provisions as those in this clause, whereby the Contractor shall indemnify the subcontractor against any risk defined in this contract to be unusually hazardous. Such a subcontract shall provide the same rights and duties, and the same provisions for notice, furnishing of evidence or proof, and the like, between the Contractor and the subcontractor as are established by this clause. The Contracting Officer may also approve similar indemnification of subcontractors at any tier upon the same terms and conditions. Subcontracts providing for indemnification within the purview of this clause shall provide for the prompt notification to the Contracting Officer of any claim or action against, or of any loss by, the subcontractor which is covered by this clause, and shall entitle the Government at its election, to control or assist in the settlement or defense of any such claim or action. The Government shall indemnify the Contractor with respect to his obligations to subcontractors under subcontract provisions thus approved by the Contracting Officer. The Government may discharge its obligations under this paragraph by making payments directly to subcontractors or to parties to whom the subcontractor may be liable.

(e) If insurance coverage or other financial protection program approved by the Administrator is reduced, the liability of the Government under this clause shall not be increased by reason of such reduction.

(f) In addition to the Contractor's responsibilities under the "Insurance—Liability to Third Persons" clause of this contract, which are hereby made applicable to claims under this clause, the Contractor shall (i) Promptly notify the Contracting Officer of any claim or action against, or of any loss by, the Contractor or any subcontractor which reasonably may be expected to involve indemnification under this clause, (ii) furnish evidence or proof of any claim, loss or damage covered by this clause in the manner and form required by the Government, and (iii) to the extent required by the Government, permit and authorize the Government to direct, control or assist in the settlement or defense of any such claim or action. The cost of insurance (including self-insurance), covering a risk defined in this contract as unusually hazardous shall not be reimbursed either as a direct or indirect cost except to the extent that such insurance has been required or approved under the "Insurance—Liability to Third Persons" clause hereof.

(g) "Limitation of Cost" and "Limitation of Government's Obligation" clauses of this contract do not apply to the Government's obligations under this clause. Such obligations shall be excepted from the release required under the "Allowable Cost" clause of this contract.

(End of clause)

1852.250-72 Space activity—unusually hazardous risks.

As prescribed in 1850.403-3(b), insert the following clause:

Space Activity—Unusually Hazardous Risks (March 1989)

The risks for which indemnification is authorized as "unusually hazardous" under the Indemnification Under Pub. L. 85-804—NASA Contracts clause of this contract are solely those resulting from or arising out of the use or performance of the following products or services in NASA's space activities (for this purpose, their use or performance begins only when they are provided to the U.S. Government at a U.S. Government installation for one or more Shuttle launches and are actually used or performed in NASA's space activities):

(a) Provision of Space Transportation System (STS) and cargo flight elements or components.

(b) Provision of STS and cargo ground support equipment or components.

(c) Provision of STS and cargo ground control facilities and services for their operation.

(d) Repair, modification, overhaul, and other support and services relating to the STS, its cargo, and other elements used in NASA's space activities.

(End of clause)

1852.252-70 Compliance with NASA FAR supplement.

As prescribed in 1852.107-70, insert the following clause:

Compliance With NASA FAR Supplement (March 1989)

Any statements in this contract requiring compliance with specific provisions of the Federal Acquisition Regulation (e.g., Subpart 45.5) shall be construed to require compliance also with any corresponding implementing or supplementing provisions in the NASA FAR Supplement in effect on the date of this contract.

(End of clause)

PART 1853—FORMS

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1853.249 Termination of contracts (NASA Forms 1412, 1413).

Authority: 42 U.S.C. 2473 (c)(1).

Subpart 1853.1—General

1853.100 Scope of subpart.

This subpart contains requirements and information generally applicable to the forms prescribed in this Regulation.

1853.101 Requirements for use of forms.

The requirements for use of the forms prescribed or referenced in this part are contained in Parts 1801 through 1851, where the subject matter applicable to each form is addressed. The specific location of each form's prescription is identified in Subpart 1853.2.

1853.102 Current editions.

The form prescriptions in Subpart 1853.2 and the illustrations in Subpart 1853.3 contain current editions, unless otherwise noted. Contracting officers shall use the current editions unless otherwise authorized under this regulation.

1853.103 Exceptions.

Alteration of any NASA or NASA-adopted form prescribed by this regulation is prohibited unless prior approval has been obtained from the NASA Forms Officer (Code NTD-1) (through the Installation Forms Manager), who will coordinate the request with the Office of Procurement, Code H. Use for the same purpose of any form other than one prescribed by this regulation requires prior approval of the cognizant Code H Division. Requests for exceptions to standard or optional forms, as prescribed in FAR 53.103, shall be forwarded through the Installation Forms Manager and the NASA Forms Officer to the Procurement Policy Division, Code HP, which will take the appropriate actions in FAR 53.103.

1853.104 Overprinting.

NASA and other forms may be overprinted with names, addresses, and other uniform entries that are consistent with the purpose of the form and that do not alter the form in any other way. Exception approval for overprinting is not needed.

1853.105 Computer preparation.

NASA and NASA-adopted forms prescribed by this regulation may be adapted for computer preparation by following the exception procedures in 1853.103. (See FAR 53.105 regarding standard and optional forms.) Such forms should correspond exactly with all other specifications pertaining to them, including overall size, wording, and arrangement.

1853.106 Special construction and printing.

Contracting offices may request exceptions to NASA and NASA-adopted and standard and optional forms for special construction and printing by following the procedures of 1853.103.

1853.107 Obtaining forms.

(a) NASA installations and offices may obtain forms prescribed in the FAR or in this Regulation from Goddard Space Flight Center, Code 853.9. Orders should be placed on a NASA Form 2, Request for Blank Forms, Publications and Issuances, in accordance with NHB 1420.2, and the forms obtained from GSFC as required by installation or office.

(b) Contracting officers, at the time of contract award, shall ensure that contractors are notified of or are otherwise aware of:

(1) The procedures for obtaining NASA forms; and

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(2) The source within the installation of forms required for performance under the contract.

1853.108 Recommendations concerning forms.

Coordination with the FAR Secretariat, as specified in FAR 53.108, is the responsibility of the Procurement Policy Division, Code HP.

Subpart 1853.2—Prescription of Forms

1853.200 Scope of subpart.

This subpart summarizes the prescriptions of NASA forms and other forms adopted by NASA for use in acquisition. The subpart is arranged by subject matter, in the same order as, and keyed to, the parts of this regulation in which the form usage requirements are addressed. (See FAR 53.200 for an example.)

1853.204 Administrative matters.

1853.204-70 General (NASA Forms 507, 507A, 533M, 533P, 533Q, 667, 1098, 1356, 1611, and 1612 and DD Form 1593).

(a) NASA Form 507, Individual Procurement Action Report. NASA Form 507, prescribed at 1804.671-4, shall be used to provide acquisition records and statistics.

(b) NASA Form 507A, Individual Procurement Action Report Supplement. NASA Form 507A, prescribed at 1804.671-4, shall be used to provide additional data on procurement actions resulting from solicitations issued after March 30, 1985.

(c) NASA Form 533M, Monthly Contractor Financial Management Report. NASA Form prescribed at 1804.675, shall be used when financial management reporting is required.

(d) NASA Form 533P, Monthly Contractor Financial Management Performance Analysis Report. NASA Form 533P, prescribed at 1804.675, shall be used when monthly performance analysis reports are required.

(e) NASA Form 533Q, Quarterly Contractor Financial Management Report. NASA Form 533Q, prescribed at 1804.675, shall be used when quarterly cost projection reports are required.

(f) NASA Form 667, Report on NASA Subcontracts. NASA Form 667, prescribed at 1804.672, shall be used by contractors to submit information to NASA on each subcontract or subcontract modification over $10,000.

(g) NASA Form 1098, Checklist for Contract Award File Content. NASA Form 1098, prescribed at 1804.803-71, shall be used as a guide in compiling contract files and shall accompany contracts and supplemental agreements submitted to Headquarters for approval.

(h) NASA Form 1356, C.A.S.E. Report on College and University Projects. NASA Form 1356, prescribed at 1804.7202, shall be used to report information applicable to colleges and universities.

(i) NASA Form 1611, Contract Completion Statement. NASA Form 1611, prescribed at 1804.804-2, shall be used for closeout of contract files by an office other than the one administering contract.

(j) NASA Form 1612, Contract Closeout Checklist. NASA Form 1612, prescribed at 1804.804-5, shall be used for contract closeout when the NASA contracting office retains contract administration.

(k) DOD Form 1593, Contract Administration Completion Record. DD Form 1593, prescribed at 1804.804-5, shall be used for closeout when the NASA contracting office retains contract administration.

1853.207 Acquisition planning (NASA Forms 1451, 1452).

(a) NASA Form 1451, Request for Procurement Plan Approval. NASA Form 1451, prescribed at 1807.170-1(a), shall be used in preparing procurement plans requiring approval by Headquarters.

(b) NASA Form 1452, Signature Page (Installation). NASA Form 1452, prescribed at 1806.304(a) and 1807.170-1(a), shall be used in obtaining installation-level signatures required by 1806.304 and 1807.103.

1853.208 Required sources of supplies and services.

1853.208-70 Other Government sources (Standard Form 1080, Air Force Form 858, Department of Energy Form 5400.3, Nuclear Regulatory Commission Form 313).

(a) *Standard Form 1080, Voucher for Transfers Between Appropriations and/or Funds (Disbursement).* Standard Form 1080, prescribed at 1808.002-74(e), shall be used to reimburse the Air Force for shipments of propellants.

(b) *Air Force Form 858, Forecast of Requirements (Missile Propellants and Pressurants).* AF 858, prescribed at 1808.002-74(f), shall be used to report periodic estimated requirements for missile propellants and related items to the Department of the Air Force.

(c) *Department of Energy Form 5400.3, Isotope Order Blank.* DOE Form 5400.3, prescribed at 1808.002-72(a), shall be used for the procurement of radioisotopes.

(d) *Nuclear Regulatory Commission Form 313, Application for Material License.* NRC Form 313, prescribed at 1808.002-72(a), shall be used to apply for a NRC license for the procurement of radioisotopes.

1853.215 Contracting by negotiation.

1853.215-2 Price negotiation (NASA Form 634).

NASA Form 634, Structured Approach—Profit/Fee Objective. NASA Form 634, prescribed at 1815.905, shall be used for determining the profit or fee objective by the structured approach.

1853.216 Types of contracts.

1853.216-70 Assignees under cost-reimbursement contracts (NASA Forms 778, 779, 780, 781).

(a) *NASA Form 778, Contractor's Release.* NASA Form 778, prescribed at 1816.370, shall be used for obtaining a release from the contractor.

(b) *NASA Form 779, Assignee's Release.* NASA Form 779, prescribed at 1816.370, shall be used for obtaining a release from each assignee.

(c) *NASA Form 780, Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts.* NASA Form 780, prescribed at 1816.370, shall be used in obtaining any refunds, rebates, credits, or other amounts from the contractor.

(d) *NASA Form 781, Assignee's Assignment of Refunds, Rebates, Credits, and Other Amounts.* NASA Form 781, prescribed at 1816.370, shall be used in obtaining any refunds, rebates, credits, or other amounts due from each assignee.

1853.217 Special contracting methods (NASA Form 523).

NASA Form 523, NASA-Defense Purchase Request. NASA Form 523, prescribed at 1817.70, shall be used for requesting procurement of supplies or services from all activities of the Military Departments.

1853.227 Patents, data, and copyrights (NASA Form 1626).

NASA Form 1626, Report Documentation Page. NASA Form 1626, prescribed at 1827.474(b)(2)(i)(D), shall be submitted with contractors' reports.

1853.232 Contract financing (Standard Form 272, 272A).

(a) Standard Form 272, Federal Cash Transactions Report, prescribed at 1832.406-70, will be submitted by nonprofit organizations that receive advance funding.

(b) Standard Form 272-A, Federal Cash Transactions Report Continuation, prescribed at 1832.406-70, is used in conjunction with Standard Form 272 when reporting more than one contract.

1853.242 Contract administration.

1853.242-70 Delegation (NASA Forms 1430, 1430A, 1431, 1432, 1433).

(a) *NASA Form 1430, Letter of Contract Administration Delegation, General.* NASA Form 1430, prescribed at 1842.202-70(a)(4), shall be used to delegate and redelegate contract administration functions and to amend existing contract administration delegations.

(b) *NASA Form 1430A, Letter of Contract Administration Delegation, Special Instructions.* NASA Form 1430A, prescribed at 1842.202-70(a)(4), shall be used to supplement NASA Form 1430 when special instructions are necessary.

(c) *NASA Form 1431, Letter of Acceptance of Contract Administration Delegation.* NASA Form 1431, prescribed at 1842.202-70(a)(8), shall be used in conjunction with NASA Form 1430 to record receipt and acceptance of delegation by other agencies.

(d) *NASA Form 1432, Letter of Contract Administration Delegation, Termination.* NASA Form 1432, prescribed at 1842.202(a)(2)(i), shall be used to delegate and redelegate termination functions and to amend existing termination delegations.

(e) *NASA Form 1433, Letter of Audit Delegation.* NASA Form 1433, prescribed at 1842.202-71(c), shall be used to delegate and redelegate audit functions and to amend existing audit delegations.

(f) *NASA Form 1634, Contracting Officer Technical Representative (COTR) Delegation.* NASA Form 1634, prescribed at 1842.270(b), shall be used to designate a COTR for a particular contract.

1853.242-71 Administrative service request (NASA Form 1434).

NASA Form 1434, Letter of Request for Pricing-Audit-Technical Evaluation Services. NASA Form 1434, prescribed at 1842.202-70(f), shall be used to request contract administration and audit services incident to preaward of a contract but exclusive of preaward surveys.

1853.242-72 Notifications (NASA Form 456).

NASA Form 456, Notice of Contract Costs Suspended and/or Disapproved. NASA Form 456, prescribed at 1842.803, will be used by the auditor and contracting officer to notify the contractor of any suspended and/or disallowed contract costs.

1853.245 Property (NASA Form 1018, Department of Defense Form 1342, and Department of Defense Form 1419).

(a) *NASA Form 1018, Report of Government-owned/Contractor-Held Property.* NASA Form 1018, prescribed at 1845.505-14(d), shall be used by contractors for reporting Government-owned property.

(b) *Department of Defense Form 1342, DOD Property Record.* DD Form 1342, prescribed at 1845.505-670, shall be used by contractors for reporting NASA-furnished or contractor-acquired centrally reportable equipment.

(c) *Department of Defense Form 1419, DOD Industrial Plant Equipment Requisition.* DD Form 1419, prescribed by the clause at 1852.245-70, shall be used by contractors to list requirements for centrally reportable items for screening of existing Government inventories.

1853.246 Quality Assurance (Department of Defense Form 250, Department of Defense Form 250c).

(a) *Department of Defense Form 250, Material Inspection and Receiving Report.* DD Form 250, prescribed at 1846.670, shall be used to document procurement quality assurance, acceptance of supplies and services, and shipments.

(b) *Department of Defense Form 250c, Material Inspection and Receiving Report-Continuation Sheet.* DD Form 250c, prescribed at 1846.670, shall be used to continue documentation of information from DD Form 250.

1853.249 Termination of contracts (NASA Forms 1412, 1413).

(a) *NASA Form 1412, Termination Authority.* NASA Form 1412, prescribed at 1849.101-71, shall be used for initiating action to terminate a contract for either default or convenience of the Government.

(b) *NASA Form 1413, Termination Docket Checklist.* NASA Form 1413, prescribed at 1849.101-71, shall be used to ensure adequacy of termination records.

SUBCHAPTER I—AGENCY SUPPLEMENTARY REGULATIONS

PART 1870—NASA SUPPLEMENTARY REGULATIONS

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1870.102 System content.
1870.103 NASA acquisition of investigations.

Subpart 1870.2—NASA Research Announcement System
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1870.203 Instructions for responding to NRAs.

Subpart 1870.3—NASA Source Evaluation
1870.301 Purpose.
1870.302 Regulations.
1870.303 Source Evaluation Board procedures.

Authority: 42 U.S.C. 2473(c)(1).

1870.000 Scope of part.

This part contains NASA-unique regulations which—

(a) Constitute a system of regulations such that presentation in a unified format is essential;

(b) Relate to numerous FAR subparts;

(c) Have, as a whole, no clearly identifiable FAR counterpart; and

(d) May include non-regulatory material necessary to complete coverage of the instant subject.

Subpart 1870.1—NASA Acquisition of Investigations System

1870.101 Purpose.

Experience has shown that the best space research results when active space research investigators personally participate in the selection of investigations. The investigation acquisition system provides the mechanism for encouraging the participation of investigators and selecting the investigations which contribute most effectively to the advancement of NASA's scientific and technological objectives. It is a system separate and distinct from the ordinary acquisition process but requiring the same vigorous management and discipline to assure compliance with statutory requirements and elementary considerations of equitable treatment. "NASA Acquisition of Investigations" is the formal name under which this system is incorporated into the NASA FAR Supplement.

1870.102 System content.

(a) The regulations governing the NASA Acquisition of Investigations system shall set forth the entire system in a single document, covering the interrelated roles individuals with procurement and programmatic responsibilities both within NASA and the private sector. Therefore, the regulation will provide general and specific guidance to all NASA personnel engaged in the solicitation, evaluation and selection of investigations. It will emphasize the responsibilities of line management and, as appropriate, the selected investigators in the acquisition

of equipment necessary for the investigation. It will provide for uniform procedures and equitable treatment in the evaluation and selection of investigators and acquisition of investigative equipment consistent with the FAR and NFS.

(b The system regulation shall contain policy and procedures applicable to the solicitation of investigations with "Announcements of Opportunity," a form of broad agency announcement authorized at FAR 6.102(d)(2)(i).

1870.103 NASA acquisition of investigations.

(a) The NASA Acquisition of Investigations System is prescribed by Appendix I to this section 1870.103.

(b) NASA may reprint this Appendix I as a separate Handbook for sale and/or distribution provided the following two conditions are met:

(1) With the exception of availability and distribution information, any subsequent modification in the text shall be preceded by a change to the NASA FAR Supplement 1870.103.

(2) The following information shall be included as a part of the prefatory material in the NASA Handbook:

Important Notice

This Handbook is a separately bound, verbatim version of NASA FAR Supplement (NFS) (48 CFR 1870.103) section 1870.103, Appendix I. Reference to other parts of the Federal Acquisition Regulation (FAR) and the NFS will be required for complete coverage of all procurement aspects. NASA reserves the right to make changes to NFS 1870.103, Appendix I without issuing a new edition of this Handbook. Any such changes will be published in the **Federal Register**; however, it is anticipated that such changes will be rare, unless mandated by statute or unusual circumstances. In the event of apparent conflict between this Handbook and the NFS, the NFS shall govern.

Appendix I to 1870.103—Guidelines for Acquisition of Investigations

Preface

From its beginning, NASA has provided opportunities for qualified people in NASA, other Government agencies, colleges and universities, private industry, and foreign countries to participate in developing and carrying out its responsibilities in aeronautical and space activities. NASA has treated itself as a part of the scientific and technical community and has encouraged this community to bring to bear its expertise in developing investigatory objectives, selecting the investigations to carry out, participating in the resulting missions, analyzing the data obtained, and publishing the results.

Success of our program in aeronautics and space, in a large measure, can be attributed to the ability of NASA to harness the ideas, knowledge, and technical abilities of the investigators within and outside of NASA. Success has also been dependent on the effective development of equipment required for investigations. In the area of space applications, program success also depends upon the support of actual and potential users of space related systems, and upon how well NASA understands their operations and programmatic requirements.

The acquisition of investigations process covered by this Handbook allows the continuation of our successful cooperative endeavors with the scientific, technological, and applications user communities in the Space Transportation System, Spacelab, and Space Station era, and, at the same time, provides standards requiring greater attention to the planning and management of investigations. Also, this Handbook emphasizes the responsibilities of line management and, as appropriate, the selected investigators in the acquisition of equipment necessary for the investigation. This Handbook should assure uniform procedures and equitable treatment in the evaluation and selection of investigators and the acquisition of investigative equipment.

This Handbook provides general and specific guidance to all NASA personnel engaged in the solicitation, evaluation, and selection of investigations.

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Chapter 1—The Investigation Acquisition System

100 General

Experience has shown that the best space research results when active space research investigators personally participate in the selection of investigations. The investigation acquisition system provides the mechanism for encouraging the participation of investigators and selecting the investigations which contribute most effectively to the advancement of NASA's scientific and technological objectives. It is a system separate and distinct from the ordinary acquisition process but requiring the same vigorous management and discipline to assure compliance with statutory requirements and elementary considerations of equitable treatment.

101 Key Features of the System

1. Utilization of the system commences with a Program Associate Administrator's determination that the investigation acquisition process is appropriate and applicable for a program under consideration. There follows a broadly disseminated Announcement of Opportunity (AO) to the interested community. This solicitation does not generally specify the investigations to be proposed but rather solicits investigative ideas which contribute to broad objectives. The proposals received are distinctive and innovative. In order to determine which of the dissimilar proposals should be selected, a formal competitive evaluation process is utilized. The evaluation for merit is normally made by experts in the specific fields represented by the proposals and care taken to avoid conflicts of interest. These peer evaluators may be from NASA, other Government agencies, universities, or the commercial sector. Along with or subsequent to the evaluation for merit, the other factors of the proposals, such as engineering, cost, and integration aspects, are reviewed by specialists in those areas. The evaluation conclusions as well as considerations of budget and other factors are used to formulate a complement of recommended investigations. A steering committee serving as staff to the Program Associate Administrator reviews the proposed payload or program of investigation, the iterative process, and the selection recommendations. The steering committee serves as a forum where different interests, such as flight program, discipline management, and administration, can be weighed and reconciled.

The Program Associate Administrator selects the investigations and the investigators who shall participate in the program. Once selected, an investigator is assigned appropriate key responsibilities relating to the investigation through a contract with the institution. In the case of foreign investigators, these responsibilities will usually be outlined in an agreement between NASA and the sponsoring governmental agency in the investigator's country.

2. The Announcement of Opportunity process provides a disciplined approach to investigation acquisition. The following major steps must be followed in each case where the determination is made to utilize the investigation acquisition system:

a. Announcement of Opportunity shall be signed by the appropriate Program Associate Administrator and shall be widely distributed to the scientific, technological, and applications user communities, as appropriate.

b. An evaluation team shall be formed including recognized peers of the investigators to review the proposals.

c. A project office will be assigned to assess the engineering, cost, integration, and management aspects of the proposals.

d. A program office will be responsible to formulate a complement of investigations consistent with the objectives stated in the Announcement of Opportunity, cost, and schedule constraints.

e. A steering committee appointed by the appropriate Program Associate Administrator shall review the proposed investigations for relevance and merit, will assure compliance with the system as described in this Handbook, and make selection recommendations.

f. Selections shall be made by the appropriate Program Associate Administrator.

3. Payloads will be formulated consisting of investigations selected through the Announcement of Opportunity process and/or other authorized methods.

4. When the need is determined by the Program Associate Administrator, payload specialists will be selected in accordance with NMI 7100.16, "Payload Specialists for NASA-Related Payloads."

102 Management Responsibilities

1. Program Associate Administrators are responsible for overseeing the process and for making key decisions essential to the process including:

a. Determination to use the investigation acquisition system.

b. Appointment of the steering committee members.

c. Designation of a centralized staff to assure uniformity in the issuance of the Announcement of Opportunity and conformity with the required procedures in the evaluation and selection.

d. Reuse, to the maximum extent practicable, of space hardware and support equipment.

e. Determination to use advisory subcommittees, contractor, or full-time Government employees only in the evaluation process.

f. Issuance of the Announcement of Opportunity.

g. Selection of investigations and investigators, determination of need of a definition phase, determination of the role of the investigator with regard to providing essential investigation hardware and services, and determination of the need for payload specialists.

h. Assure due consideration is given to minorities in the establishment of peer groups, distribution of the Announcement of Opportunity, and in the selection of investigations.

i. Provide a timely, flexible framework for cooperative foreign participation in Space Shuttle, Spacelab, and Space Station missions.

2. Exercise of these responsibilities will require the professional assistance of experts in several functional, programmatic, and technical disciplines. The Program Associate Administrator should call upon such experts at appropriate times throughout the process. The remaining chapters of this Handbook will discuss the exercise of the foregoing responsibilities in greater detail.

Chapter 2—Applicability of the Process

200 General

The system used for acquisition of investigations is separate and distinct from the agency procedures for procurement of known requirements of hardware and services. A decision to use this special acquisition process will be based on a considered determination, in accordance with the general guidance in this chapter, that it is the most suitable to meet program needs. The decision-making official will consider the criteria for use of the system. The project plan or other program or project documentation should discuss the proposed mode of investigations selection.

201 Criteria for Determining Applicability

1. The decision to utilize the investigations acquisition process as an alternative to the normal planning and acquisition process of the agency can only be made after consideration of the special conditions which are requisite to its use. All of the following conditions should exist before deciding that the system is appropriate and applicable:

a. NASA has a general objective which can be furthered through unique, novel, experimental approaches. To develop such novel approaches, NASA wishes to draw upon the broadest reservoir of ideas that can be made available.

b. Choices must be made among competing dissimilar ideas in expanding knowledge of phenomena in the atmosphere and space.

c. Individual participation of an investigator is essential to exploitation of the opportunity.

2. The investigations acquisition process shall not be used when any of the following characteristics are present:

a. The requiring office can define a requirement sufficiently to allow for normal procurement. This includes requirements that can be stated as design or performance specifications, including requirements for the use of known technology and hardware, and requirements for continuation of existing tasks.

b. The program is extremely complex, requiring specialized integration, coordination, or other special handling, or extending over a lengthy period wherein individual participation is not essential.

c. It is not possible or considered essential to the program to follow the critical steps of the special investigations acquisition process.

202 Programs and Activities Where Use May Be Considered

1. *General.* The investigation acquisition process is most suitable for investigations aimed at exploration requiring several unique sensors or instruments, but it has been used successfully and advantageously in several types of opportunity. Each program is unique and the opportunities for participation in investigative effort will necessarily vary from program to program. Similarly, program implementation plans may provide opportunities for participation but may not meet the conditions necessary for use of the special investigations acquisition process. In those latter cases, the normal procurement procedures will be followed to meet the program needs. Because of the differences in programs, only general standards can be given to guide the decision of whether or not to use the alternate acquisition process. There follows a discussion of several types of programs, the opportunities they offer, and comment on the suitability of the special process.

2. *Exploration and Space Research Flights*—a. *Examples.* Space Transportation System (STS) flights with attached payloads, generally Spacelab payloads; and free-flying spacecraft, such as Explorers, Pioneers, Space Telescope, Landsats, and Long Duration Exposure Facilities.

b. *Types of Opportunity.* (1) A common and sought after opportunity is to participate as a Principal Investigator responsible for conceiving and conducting a space investigation. This may involve a major piece of instrumentation. In the case of a "facility" or "multiuser" payload, each Principal Investigator's responsibilities would ordinarily involve a relatively minor portion of the total instrument.

(2) There may also be an opportunity to serve on a Principal Investigator's team as a team member or as a Co-Investigator.

(3) A type of opportunity that generally involves the use of data from another investigator's instrument is that of guest investigator or guest observer. Guest investigators usually participate after the primary objectives have been satisfied for the investigations involved.

(4) A team may be formed from selected investigators to assist in defining planned mission objectives and/or to determine, in a general manner, the most meaningful instruments to accomplish the mission objectives.

c. *Selection and Acquisition Procedures.* The investigation acquisition process may be applicable to all of these types of opportunities. The supposition common in these opportunities is that the best ideas and approaches are likely to result from the broadest possible involvement of the scientific, technological or applications user communities. Most free-flying spacecraft represent single flight opportunities in contrast to Spacelab payload acquisition which may have a number of discipline objectives since the flight opportunities are frequent and recurring.

3. *Minor Missions*—a. *Examples.* Research aircraft, sounding rockets, balloons, and minor missions are generally of short duration, small in size, often single purpose, and subject to repetition. Many investigations are follow-on to past-flight investigations.

b. *Types of Opportunity.* (1) Principal Investigators responsible for investigation.

(2) Data use or analysis.

c. *Selection and Acquisition Process.* Opportunities for participation on minor missions are generally suitable for normal procurement procedures. The use of a general announcement announcing the general nature and schedule of flights may be appropriate when considered necessary to broaden participation by requesting investigator-initiated research proposals. Procurement procedures as contained in NASA FAR Supplement shall be used for follow-on repeat flights. Although NASA seeks unique, innovative ideas for these missions, the prospect of reflight and the latitude in determining number and schedule of flights argue against the need for the use of the investigations acquisition process to force dissimilar proposals into an annual or periodic competitive structure. On the other hand, there are some minor missions addressed to specific limited opportunities; for example, a solar eclipse. When such limitations indicate that the special competitive structure is needed, it should be authorized.

4. *Operational and Operational Prototype Spacecraft*—a. *Examples.* GOES, TIROS.

b. *Selection and Acquisition Process.* The user agency can be expected to specify performance parameters. Payload definition will be the responsibility of the user agency and NASA. Specifications sufficient for normal procedures can be produced. Use of data from the mission is the responsibility of the user agency. Thus, the special process is not required.

5. *Reimbursable Missions*—a. *Examples.* INTELSAT, SATCOM, WESTAR, MARISAT.

b. *Selection and Acquisition Process.* Payload determination and delivery are the responsibility of the user organization. NASA's role is essentially to provide launch services. No special process is required.

6. *Supporting Research and Technology (SR&T)*—a. *Examples.* Studies, minor developments, instrument conceptualization, ground-based observations, laboratory and theoretical supporting research, and data reduction and analysis which is unconstrained by a specific opportunity.

b. *Selection and Acquisition Process.* Programs in these areas tend to go forward on a continuing basis, rather than exploiting unique opportunities. Normal procurement procedures should be utilized to satisfy these requirements. A general announcement of area of interest could be made when greater participation is deemed advisable. Proposals can be solicited or unsolicited and can be entertained within the context of the normal procurement procedure.

203 Specific Approval Required

The Program Associate Administrator responsible for the program is also responsible for determining whether or not to use the special investigations acquisition process. Normally on major projects, or when a project plan is required, use of the investigation acquisition system will be justified and recommended in the project planning documentation and will be coordinated with staff offices and discussed in the planning presentation to the Deputy Administrator or designee.

Chapter 3—The Announcement of Opportunity

300 General

The essence of the competitive solicitation is through use of an Announcement of Opportunity. The Announcement is characterized by its generality since NASA has not pre-determined a specific and finite objective but only the general objective of the investigations. Notwithstanding its general nature, it is essential that the Announcement of Opportunity contains sufficient data in order to obtain meaningful proposals. To a considerable extent, the detail and depth of the Announcement will depend on the investigative objective. In all cases, judgment is of paramount importance, since the purpose is to get adequate information to assess the relevance, merit, cost, and management without overburdening the proposer.

301 Need for Preparatory Effort

1. When the use of the Announcement process is contemplated, there is need to consult with appropriate Headquarters offices and the Project Installation responsible for the project prior to release of the Announcement. These consultations will require early involvement of the Project Installation and appropriate Headquarters offices in the investigation acquisition process.

2. In addition, the need to meet legal requirements in the acquisition processes will require early external Program Office involvement to:

a. Synopsize the Announcement in the Commerce Business Daily prior to the time of release.

b. Determine if there is instrumentation or support equipment available which may be appropriate to the Announcement with all necessary background data considered essential for use by a proposer.

c. Determine mailing lists, including the mailing list maintained by the International Affairs Division, Office of External Relations, for broad dissemination of the Announcement to the appropriate recipients.

d. Assure mandatory provisions are contained in the Announcement.

3. Other methods of dissemination of the Announcement may also be used, such as the use of press releases, etc. When possible, the Announcement should be widely publicized through publications of appropriate professional societies; however, NASA policy does not allow payment for the placement of advertisements.

302 Responsibilities

1. The Program Office originator is responsible for the content of the Announcement and that coordination with concerned Headquarters offices and field installations has been accomplished. All personnel involved in the evaluation of investigative proposals are responsible for familiarizing themselves and complying with this Handbook and other applicable regulations. To this end, they are expected to seek the advice and guidance of appropriate Headquarters program and staff offices, and Project Installation management.

2. The Program Office is also responsible for coordinating the Announcement of Opportunity with the International Affairs, Educational Affairs, Management Support Divisions, Office of External Relations, Office of General Counsel, and Office of Procurement prior to issuance. Attention is directed to NMI 1362.1, "Initiation and Development of International Participation and Cooperation in Aeronautical and Space Programs."

3. Concurrence of the Office of Procurement is required before issuance of an Announcement of Opportunity.

303 Proposal Opportunity Period

1. The Announcement of Opportunity is considered the primary method of soliciting investigations. As such, it is necessary that the process accommodate the continuous opportunities afforded by the Shuttle/Spacelab flights. Thus, the following methods may be utilized, individually or in combination, to enable an Announcement and resultant proposals to be open for an extended period of time and/or to cover a series or range of flight possibilities or disciplines:

a. The Announcement may be issued establishing a number of proposal submission dates. Normally, no more than three proposal submission dates should be established. The submittal dates may be spread over the number of months most compatible with the possible flight opportunities and the availability of resources necessary to evaluate and fund the proposals.

b. The Announcement may be issued establishing a single proposal submission date. However, the Announcement could provide that NASA may amend the Announcement to provide for subsequent dates for submission of proposals, if additional investigations are desired within the Announcement objectives. In this case, the initiative to reopen is a management determination. If sufficient investigations are selected to satisfy the Announcement objectives or the flight possibilities as a result of the first submission, subsequent opportunities for proposal submission by potential investigators would not be available.

c. The Announcement may be issued to provide for an initial submission date with the Announcement to remain open for submission of additional proposals up to a final cutoff date. This final date should be related to the availability of resources necessary to evaluate the continuous flow of proposals, the time remaining prior to the flight opportunity(s) contemplated by the Announcement, and payload funding and availability.

2. Generally, a core or primary payload of investigations would be selected from the initial submission of proposals under the above methods of open-ended Announcements. These selections could be final or tentative recognizing the need for further definition. Proposals received by subsequent submission dates would be considered in the scope of the original Announcement but would be subject to the opportunities and resources remaining available or the progress being made by prior selected investigations.

3. Any investigation proposal, whether received on the initial submission or subsequent submission, requires notification to the investigator and the investigator's institution of the proposal disposition. Some of the proposals will be rejected completely and the investigators immediately notified. The remaining unselected proposals may, if agreeable with the proposers, be held for later consideration and funding and the investigator so notified. However, if an investigator's proposal is considered at a later date by NASA, the investigator must be given an opportunity to validate the proposal with the investigator's institution and for updating the cost and other data contained in the original submission prior to a final selection. In summary, NASA may retain proposals, receiving Category I, II, or III classifications (see paragraph 403), for possible later sponsorship until no longer feasible to consider the proposal. When this final stage is reached, the investigator must be promptly notified.

4. If the intent is to hold proposals for possible later consideration, as discussed in subparagraph 3, the Announcement should specifically indicate this intent and the procedure to be used. Proposing investigators not desiring their proposals be held for later consideration should be given the opportunity to so indicate in their original submissions.

304 Guidelines for Announcement of Opportunity

1. The preparation of the Announcement of Opportunity should be a multifunctional effort. It involves program and project management and usually involves other offices of NASA.

2. The Announcement should be tailored to the particular needs of the contemplated investigations and be complete in itself. Each Announcement will be identified as (Program Office) originated and numbered consecutively each calendar year, e.g., OSSA-1-86, OSSA-2-86; OAST-1-86; OSTDS-1-86; etc. The required format and detailed instructions regarding the contents of the Announcement are contained in Appendix A. They are summarized as follows:

a. *Description of the Opportunity.* The basic purpose or aims of the opportunity.

b. *Announcement Objectives.* A succinct statement of the specific scientific, applications, and/or technological objectives.

c. *Background.* An explanation of the context of the opportunity in relation to broader objectives, other disciplines, and prior studies and investigations.

d. *Proposal Opportunity Period.* The period in which the Announcement opportunity will remain open for receipt of proposals.

e. *Requirements and Constraints.* Technical, programmatic, cost, and schedule requirements or limitations.

f. *Proposal Submission Information.* Information relating to the proposal submission procedure.

g. *Proposal Evaluation, Selection, and Implementation.* The notification to the proposers of the evaluation criteria and the manner of proposal evaluation.

h. *Schedule.* Scheduled dates for activities related in the Announcement.

i. *Appendices.* The General Instructions and Provisions and any other appendices that are pertinent to the Announcement.

3. The General Instructions and Provisions (Appendix B) are necessary to accommodate the unique aspects of the Announcement of Opportunity process. The instructions and provisions inform potential investigators and their institutions of certain prerogatives of the selection official and of procedural requirements dictated by law and regulation. Therefore, they must be appended to each Announcement of Opportunity.

4. At the time of issuance, copies of the Announcement must be furnished to the Office of Procurement and to the Office of General Counsel.

5. Proposers should be informed of significant departures from scheduled dates for activities related in the Announcement.

305 Announcement of Opportunity Soliciting Foreign Participation

Proposals for participation by individuals outside the U.S. should be submitted in the same format (excluding cost plans) as U.S. proposals; they should be typewritten and be in English; the proposals should be reviewed and endorsed by the appropriate foreign governmental agency. If letters of "Notice of Intent" are required, the Announcement should indicate that they be sent to NASA's International Affairs Division, Office of External Relations. Should a foreign proposal be selected, NASA will arrange with the sponsoring foreign agency for the proposed participation on a no-exchange-of-funds basis, in which NASA and the sponsoring agency will each bear the cost of discharging its respective responsibilities. Note that additional guide-lines applicable to foreign proposers are contained in the Management Plan Section of Appendix C (see section II) and must be included in any Guidelines for Proposal Preparation or otherwise furnished to foreign proposers.

306 Guidelines for Proposal Preparation

While not all of the guidelines outlined in Appendix C will be applicable in response to every Announcement, the investigator should be informed of the relevant information required to allow for an evaluation of the investigator's proposal. The proposal may be submitted on a form to be supplied by the Program Office. However, the proposal should be submitted in at least two sections: (1) Investigation and Technical Section; and (2) Management and Cost Section as described in Appendix C.

Chapter 4—Evaluation of Proposals

400 General

The evaluation process assures consideration of the several aspects of each proposal and constitutes a series of progressive sorting of the proposals. A review resulting in a categorization is performed by using one of the methods or combination of the methods outlined in paragraph 402. The purpose of this initial review is to determine the scientific and/or technological merit of the proposals in the context of the Announcement objectives.

Those proposals which are considered to have the greatest scientific or technological merit are then reviewed in detail for the engineering, management, and cost aspects, usually by the Project Office at the installation responsible for the project. Final reviews are performed by the Program Office and the Steering Committee and are aimed at developing a group of investigations which represent an integrated payload or a well-balanced program of investigation which has the best possibility for meeting the announced scientific, applications, and/or technological objectives, and within programmatic constraints. The importance of considering the interrelationship of the several aspects of the proposals to be reviewed in the process and the need for carefully planning their treatment should not be overlooked. An evaluation plan has been found helpful to the evaluators, program management officials, and the selection official. The evaluation plan should be developed before issuance of the Announcement of Opportunity. It should cover the recommended staffing for any subcommittee or contractor support, review guidelines as well as the procedural flow and schedule of the evaluation. While not mandatory, such a plan should be considered for each Announcement. A fuller discussion of the evaluation and selection process is included in the following paragraphs.

401 Criteria for Evaluation

1. The fundamental aim of the investigations acquisition process is the acquisition of those unique ideas and capabilities which best fulfill an Announcement's stated scientific, applications, and/or technological objectives. In furtherance of this goal, each Announcement must indicate those criteria which the evaluators will apply when assessing the merit of a proposal. The relative importance of each criterion must also be stated in the Announcement. The provision of this information will allow

prospective investigators to make informed judgments in their attempt to formulate proposals that best meet the stated objectives.

2. Following is a list of general evaluation criteria which would be appropriate for inclusion in most Announcements:

a. The scientific, applications, and/or technological merit of the investigation.

b. The relevance of the proposed investigation to the Announcement's stated scientific, applications, and/or technological objectives.

c. The competence and experience of the investigator and any investigative team, as an indication of the investigator's ability to carry the investigation to a successful conclusion.

d. Adequacy of whatever apparatus may be proposed with particular regard to its ability to supply the data needed for the investigation.

e. The reputation and interest of the investigator's institution, as measured by the willingness of the institution to provide the support necessary to ensure that the investigation can be completed satisfactorily.

In addition to or in lieu of the criteria listed herein, additional criteria may be utilized. In all cases, the evaluation criteria must be germane to the accomplishment of the stated objectives.

3. Cost and management aspects will be considered in all selections.

4. Once the evaluation criteria and their relative importance are disseminated through issuance of the Announcement, it is essential that they be applied in a uniform manner. If it becomes apparent, before the date set for receipt of proposals, that the criteria or their relative importance should be changed, the Announcement will be amended, and all known recipients will be informed of the change and given an adequate opportunity to consider it in submission of their proposals. Evaluation criteria and/or their relative importance will not be changed after the date set for receipt of proposals.

402 Methods of Evaluation

1. Alternative methods are available to initiate the evaluation of proposals received in response to an Announcement of Opportunity. These are referred to hereinafter as the Advisory Subcommittee Evaluation Process, the Contractor Evaluation Process, and the Government Evaluation Process. In all processes, a subcommittee of the appropriate Program Office Steering Committee will be formed for the purpose of categorizing the proposals. The various approaches, described in detail in paragraph 403, are summarized as follows:

a. Advisory Subcommittee Evaluation Process—An advisory subcommittee of the appropriate Program Office Steering Committee may be established to evaluate the scientific, applications, or technological merit of the proposals and to categorize them. This method envisions the use of non-Government peers or a combination of non-Government and Government peers. The impact of using one of the open-ended Announcement methods should be considered in establishing the subcommittee.

b. Contractor Evaluation Process—In some instances, it may be necessary for NASA to utilize a contractor to assist in evaluation of proposals. The contractor would not provide advice or recommendations to the agency nor categorize the proposals but would assist by submitting a summary of each proposal along with a listing of its major strengths and weaknesses to the Program Office. The Program Office, using full-time Government employees appointed as a subcommittee of the Program Office Steering Committee, will, upon consideration of the contractor's report, categorize the proposals. This method may also be used to aid an advisory subcommittee established as indicated in subparagraph a. in which event the categorization function will be performed by the advisory subcommittee.

c. Government Evaluation Process—In certain circumstances, such as those situations where the establishment of an advisory subcommittee is not feasible, it may be appropriate to appoint or assign full-time Government employee(s) as a subcommittee of the Program Office Steering Committee to perform the evaluation and categorization of proposals.

2. Following categorization under one of the methods outlined in subparagraphs a. through c., those proposals still in consideration will be processed to the selection official as prescribed hereafter.

403 Advisory Subcommittee Evaluation Process

1. Evaluation of scientific and/or technological merit of proposed investigations is the responsibility of an advisory subcommittee of the Steering Committee. It is of prime importance that the appointment of members to the subcommittee be weighed carefully as these individuals may exercise significant influence on the selection of investigations and hence achievement of program goals and objectives.

2. The subcommittee constitutes a peer group qualified to judge the scientific and technological aspects of all investigation proposals submitted in a specific program. For a given application of the process, one or more subcommittees may be established depending on the breadth of the technical or scientific disciplines inherent in the Announcement's objectives. Each subcommittee represents a discipline or grouping of closely related disciplines. To maximize the quality of the subcommittee evaluation and categorization, the following conditions of selection and appointment should be considered.

a. The subcommittee normally should be established on an ad hoc basis for the particular objectives referenced in the Announcement.

b. Qualifications and broad acknowledgment of the professional abilities of the subcommittee members are of primary importance. Institutional affiliations, per se, are not sufficient qualifications.

c. The executive secretary of the subcommittee must be a full-time NASA employee.

d. Subcommittee members should normally be appointed as early as possible and prior to receipt of proposals.

e. In selecting members, care must be taken to avoid conflicts of interest. These include financial interests, institutional affiliations, professional biases and associations, as well as familiar relationships. Conflicts could further occur as a result of imbalance between Government and non-Government appointees, a member evaluating a proposal from the person's parent organization, or membership from institutions representing a singular school of thought in discipline areas involving competitive theories in approach to an investigation.

f. The subcommittee should convene as a group in closed sessions for proposal evaluation to protect the proposer's proprietary ideas and to allow frank discussion of the proposer's qualifications and the merit of the proposer's ideas. Lead review responsibility for each proposal may be assigned to members most qualified in the involved discipline. It is important that each proposal be considered by the entire subcommittee. It is only through this action that dissimilar ideas are forced into open competition.

3. It may not be possible to select a subcommittee fully satisfying all of the conditions described in subparagraph 2. For example, the most qualified specialists in a particularly narrow discipline may themselves, or some other part of their parent organization, be submitting proposals. It is not the purpose of these guidelines to establish provisions for making tradeoffs, where necessary, among the above criteria (see subparagraph 2). This is properly the responsibility of the nominating and appointing officials. This latitude permits flexibility in making decisions in accord with circumstances of each application. In so doing, however, it is emphasized that recognized expertise in evaluating dissimilar proposals is essential to the continued workability of the investigation acquisition process.

4. Candidate subcommittee members should be nominated by the office having responsibility for the evaluation. Nominations should be approved in accordance with NMI 1150.2, "Establishment, Operation, and Duration of NASA Advisory Committees." The notification of appointment should specify the duration of assignment on the subcommittee, provisions concerning conflicts of interest, and arrangements regarding honoraria, per diem, and travel when actually employed.

5. It is important that members of the subcommittee be formally instructed as to their responsibilities with respect to the investigation acquisition process, even where several or all of the members have served previously. This briefing of subcommittee members should include:

a. Instruction of subcommittee members on agency policies and procedures pertinent to acquisition of investigations.

b. Review of the program goals, announcement objectives, and evaluation criteria, including relative importance, which provide the basis for evaluation.

c. Instruction on the use of preliminary proposal evaluation data furnished by the Installation Project Office. The subcommittee should examine these data to gain a better understanding of the proposed investigations, any associated problems, and to consider cost in relation to the value of the investigations' objectives.

d. Definition of responsibility of the subcommittee for evaluation and categorization with respect to scientific and/or technical merit in accordance with the evaluation criteria.

e. Instruction for documentation of deliberations and categorizations of the subcommittee.

f. Inform the chairperson of the subcommittee and all members that they should familiarize themselves with the provisions of the current "Standards of Conduct for NASA Employees", NHB 1900.1, or "Standards of Conduct for NASA Special Government Employees", NHB 1900.2, as appropriate, regarding conflicts of interest. Members should inform the appointing authority if their participation presents a real or apparent conflict of interest situation. In addition, all participants should inform the selection official in the event they are subjected to pressure or improper contacts.

g. Inform members that prior to the selection and announcement of the successful investigators and investigations, subcommittee members and NASA personnel shall not reveal any information concerning the evaluation to anyone who is not also participating in the same evaluation proceedings, and then only to the extent that such information is required in connection with such proceedings. Also, inform members that subsequent to selection of an investigation and announcement of negotiations with the investigator's institution, information concerning the proceedings of the subcommittee and data developed by the subcommittee will be made available to others within NASA only when the requester demonstrates a need to know for a NASA purpose. Such information will be made available to persons outside NASA, including other Government agencies, only when such disclosure is concurred in by the Office of General Counsel. In this connection, reference is made to 18 U.S.C. 1905 which provides criminal sanctions if any officer or employee (including special employees) of the United States discloses or divulges certain kinds of business confidential and trade secret information unless authorized by law.

6. The product of an advisory subcommittee is the classification of proposals into four categories. The categories are:

a. *Category I.* Well conceived and scientifically and technically sound investigations pertinent to the goals of the program and the Announcement's objectives and offered by a competent investigator from an institution capable of supplying the necessary support to ensure that any essential flight hardware or other support can be delivered on time and that data can be properly reduced, analyzed, interpreted, and published in a reasonable time. Investigations in Category I are recommended for acceptance and normally will be displaced only by other Category I investigations.

b. *Category II.* Well conceived and scientifically or technically sound investigations which are recommended for acceptance, but at a lower priority than Category I.

c. *Category III.* Scientifically or technically sound investigations which require further development. Category III investigations may be funded for development and may be reconsidered at a later time for the same or other opportunities.

d. *Category IV.* Proposed investigations which are recommended for rejection for the particular opportunity under consideration, whatever the reason.

7. A record of the deliberations of the subcommittee should be prepared by the assigned executive secretary and should be signed by the Chairperson. The minutes should contain the categorizations with basic rationale for such ratings and the significant strengths and weaknesses of the proposals evaluated.

404 Contractor Evaluation Process

1. The use of the contractor method for obtaining support for evaluation purposes of proposals received in response to an Announcement of Opportunity requires the specific approval of the Program Associate Administrator. Prior to the use of this method, discussion should be held with the Office of Procurement.

2. It is NASA policy to avoid situations in the procurement process where, by virtue of the work or services performed for NASA, or as a result of data acquired from NASA or from other entities, a particular company:

a. Is given an unfair competitive advantage over other companies with respect to future NASA business;

b. Is placed in a position to affect Government actions under circumstances in which there is potential that the company's judgment may be biased; or

c. Otherwise finds that a conflict exists between the performance of work or services for the Government in an impartial manner and the company's own self-interest.

3. To reduce the possibility of an organizational conflict of interest problem arising, the following minimum restrictions will apply and be incorporated into the contract:

a. No employee of the contractor will be permitted to propose in response to the Announcement of Opportunity;

b. The "Limitation on Future Contracting" clause contained in NASA FAR Supplement 1852.209–71 and the conditions set forth in NASA FAR Supplement 1815.413–2 Alternate II (c) and (d) will be included in all such contracts; and

c. Unless authorized by the NASA contracting officer, the contractor shall not contact the originator of any proposal concerning its contents.

4. The scope of work for the selected contractor will provide for an identification of strengths and weaknesses and a summary of the proposals. The contractor will not make selections nor recommend investigations.

5. The steps to be taken in establishing evaluation panels and the responsibilities of NASA and the contractor in relation to the panels will be as follows:

a. The contractor will be required to establish and provide support to panels of experts for review of proposals to evaluate their scientific and technical merit;

b. These panels will be composed of scientists and specialists qualified to evaluate the proposals;

c. The agency may provide to the contractor lists of scientist(s) and specialist(s) in the various disciplines it believes are qualified to serve on the panels;

d. The contractor will report each panel's membership to NASA for approval; and

e. The contractor must make all the necessary arrangements with the panel members.

6. The evaluation support by the contractor's panels of experts will be accomplished as follows:

a. The panels will review the scientific and technical merit of the proposals in accordance with the evaluation criteria contained in the Announcement and will record their strengths and weaknesses.

b. The contractor will make records of each panel's deliberations which will form the basis for a report summarizing the results of the evaluations. Upon request, the contractor shall provide all such records to NASA;

c. The chairperson of each panel should certify that the evaluation report correctly represents the findings of the review panel; and

d. A final report will be submitted as provided in the contract.

7. A subcommittee of the Program Office Steering Committee will be established on an ad hoc basis. Utilizing furnished data, the subcommittee will classify the proposals into the four categories enumerated in paragraph 403, "Advisory Subcommittee Evaluation Process." A record of the deliberations of the subcommittee should be prepared by an assigned executive secretary and signed by the chairperson. The minutes should contain the categorizations with the basic rationale for such ratings and the significant strengths and weaknesses of the proposals evaluated.

405 Government Evaluation Process

1. The Program Associate Administrator may, in accordance with NMI 1150.2, appoint one or more full-time Government employees as subcommittee members of the Program Office Steering Committee to evaluate and categorize the proposals.

2. Each subcommittee member should be qualified and competent to evaluate the proposals in accordance with the Announcement evaluation criteria. It is important that a subcommittee's evaluation be uninfluenced by others either within or outside of NASA.

3. The subcommittee members will not contact the proposers for additional information.

4. The subcommittee members will classify the proposals in accordance with the four categories indicated in paragraph 403. Each categorization will be supported by an appropriate rationale including a narrative of each proposal's strengths and weaknesses.

406 Engineering, Integration, and Management Evaluation

1. The subcommittee responsible for categorization of each proposal in terms of its scientific, applications, or technical merit

should receive information on probable cost, technical status, developmental risk, integration and safety problems, and management arrangements in time for their deliberations.

2. This information should be provided, where appropriate, at the discretion of the Headquarters Program Office by the Project Office at the cognizant installation. This information can be in fairly gross, general terms and should reflect what insights the Project Office can provide without requesting additional details from the proposers. This limited Project Office review will not normally give the subcommittees information of significant precision. The purpose is to give the subcommittee sufficient information so it can review the proposals in conjunction with available cost, integration, and management considerations to gain an impression of each investigator's understanding of the problems of the experiment and to permit gross trade-offs of cost versus value of the investigation objective.

3. Following categorization, the Project Office shall evaluate proposals still in contention, in depth, including a thorough review of each proposal's engineering, integration, management, and cost aspects. This review should be accomplished by qualified engineering, cost, and business analysts at the project center. The review must be a regular part of the evaluation and selection process.

4. In assessing proposed costs, the evaluation must consider:

a. The investigation objective.

b. Comparable, similar or related investigations.

c. Whether NASA or the investigator should procure the necessary supporting instrumentation or services and the relative cost of each mode.

d. Total overall or probable costs to the Government including integration and data reduction and analysis. In the case of investigations proposed by Government investigators, this includes all associated direct and indirect cost. With respect to cooperative investigations, integration, and other applicable costs should be considered.

5. The Project Office, as part of the in-depth evaluation of proposals that require instrumentation or support equipment, will survey all potential sources for Government-owned instrumentation or support equipment that may be made available, with or without modifications, to the potential investigator. Such items contributed by foreign cooperating groups which are still available under cooperative project agreements will also be considered for use under the terms and conditions specified in the agreements. As part of the evaluation report to the Program Office, the availability or nonavailability of instrumentation or support equipment will be indicated.

6. Proposals which require instrumentation should be evaluated by project personnel. This evaluation should cover the interfaces and the assessment of development risks. This evaluation should furnish the selection official with sufficient data to contribute to the instrument determinations. Important among these are:

a. Whether the instrument requires further definition;

b. Whether studies and designs are necessary to provide a reasonably accurate appreciation of the cost;

c. Whether the investigation can be carried out without incurring undue cost, schedule, or risk of failure penalties; and

d. Whether integration of the instrument is feasible.

7. In reviewing an investigator's management plan, the Project Office should evaluate the investigator's approach for efficiently managing the work, the recognition of essential management functions, and the effective overall integration of these functions. Evaluation of the proposals under final consideration should include, but not be limited to: workload—present and future related to capacity and capability; past experience; management approach and organization; e.g.:

a. With respect to workload and its relationship to capacity and capability, it is important to ascertain the extent to which the investigator is capable of providing facilities and personnel skills necessary to perform the required effort on a timely basis. This review should reveal the need for additional facilities or people, and provide some indication of the Government support the investigator will require.

b. A review should be made of the investigator, the investigator's institution, and any supporting contractor's performance on prior investigations. This should assist in arriving at an assessment of the investigator and the institution's ability to perform the effort within the proposed cost and time constraints.

c. The proposed investigator's management arrangements should be reviewed, including make or buy choices, support of any co-investigator, and preselected subcontractors or other instrument fabricators to determine whether such arrangements are justified. The review should determine if the proposed management arrangements enhance the investigator's ability to devote more time to the proposed experiment objectives and still effectively employ the technical and administrative support required for a successful investigation. In making these evaluations, the Project Office should draw on the installation's engineering, business, legal, and other staff resources, as necessary, as well as its scientific resources. If further information is needed from the proposers, it should be obtained through the proper contacts.

407 Program Office Evaluation

1. A Program Office responsible for the project or program at Headquarters will receive the evaluation of the several aspects of the proposals, and weigh the evaluative data to determine an optimum payload or program of investigation. This determination will involve recommendations concerning individual investigations; but, more importantly, should result in a payload or program which is judged to optimize total mission return within schedule, engineering, and budgetary constraints. The recommendations so made should facilitate sound selection decisions by the Program Associate Administrator. Three sets of recommendations result from the Program Office evaluation:

a. Optimum payload or program of investigations, or options for alternative payloads or programs.

b. Recommendation for final or tentative selection based on a determination of the degree of uncertainty associated with individual investigations. A tentative selection may be considered step one of a two-step selection technique.

c. Upon consideration of the guidelines contained in paragraph 501–1c, recommending responsibility for instrument development.

2. The cognizant Installation Project Office evaluation is principally concerned with ensuring that the proposed investigation can be managed, developed, integrated, and executed with an appropriate probability of technical success within the estimated probable cost. The Headquarters program Director, drawing upon these inputs, should be mainly concerned with determining a payload or program from the point of view of programmatic goals and budgetary constraints. Discipline and cost trade-offs are considered at this level. The Headquarters Program Office should focus on the potential contribution to program objectives that can be achieved under alternative feasible payload integration options.

3. It may be to NASA's advantage to consider certain investigations for tentative selection pending resolution of uncertainties in their development. Such tentative selections should be reconsidered after a period of time for final selection in a payload or program of investigations. This two-step selection process should be considered when:

a. The potential return from the investigation is sufficient, relative to that of the other investigations under consideration, and that its further development appears to be warranted before final selection.

b. The investigation potential is of such high priority to the program that the investigation should be developed for flight if at all possible.

c. The investigative area is critical to the program and competitive approaches need to be developed further to allow selection of the optimum course.

4. Based on evaluation of the above considerations associated with the investigations requiring further development of hardware, the following information should be provided to the Steering Committee and the Program Associate Administrator responsible for selection:

a. The expected gain in potential return associated with the eventual incorporation of tentatively recommended investigations in the payload(s) or program.

b. The expected costs required to develop instrumentation to the point of "demonstrated capability."

c. The risk involved in terms of added cost, probability of successfully developing the required instrument capability, and the possibility of schedule impact.

d. Identification of opportunities, if any, for inclusion of such investigations in later missions.

5. In those cases where investigations are tentatively selected, an explicit statement should be made of the process to be followed in determining the final payload or program of investigations and the proposers so informed. The two-phase selection approach provides the opportunity for additional assurance of development potential and probable cost prior to a full and final commitment to the investigation.

6. As instruments used in investigations become increasingly complex and costly, the need for greater control of their development by the responsible Headquarters Program Office also grows. Accordingly, as an integral part of the evaluation process, a deliberate decision should be made regarding the role of the Principal Investigator with respect to the provision of the major hardware associated with that person's investigation. The guidelines for the hardware acquisition determination are discussed in paragraph 501–1c.

7. The range of options for responsibility for the instrumentation consists of:

a. Assignment of full responsibility to the Principal Investigator. The responsibility includes all in-house or contracted activity to fabricate, test, calibrate and provide the instrumentation for integration.

b. Retention of developmental responsibility by the Government with participation by the Principal Investigator in key events defined for the program. In all cases the right of the Principal Investigator to counsel and recommend is paramount. Such involvement of the Principal Investigator may include:

(1) Provision of instrument specifications.

(2) Approval of instrument specifications.

(3) Independent monitorship of the development and advice to the Government on optimization of the instrumentation for conduct of the investigation.

(4) Participation in design reviews and all other appropriate reviews.

(5) Review and concurrence in changes resulting from design reviews.

(6) Participation in configuration control board actions.

(7) Advice in definition of test program.

(8) Review and approval of test program and changes thereto.

(9) Participation in conduct of the test program.

(10) Participation in calibration of instrument.

(11) Participation in final inspection and acceptance of the instrument.

(12) Participation in subsequent test and evaluation processes incident to integration and flight preparation.

(13) Participation in the development and support of the operations plan.

(14) Analysis and interpretation of data.

8. Normally, the Principal Investigator should as a minimum:

a. Approve the instrument specification.

b. Consult and advise the project manager in development and fabrication.

c. Participate in final calibration of the instrument.

d. Develop and support the operations plan.

e. Analyze and interpret the data.

9. The cognizant Project Installation is responsible for implementing the program or project and should make recommendations concerning the appropriate role for the Principal Investigators. The responsible Program Associate Administrator will determine the role, acting upon the advice of the responsible Headquarters Program Office and the Steering Committee. The Principal Investigator's desires will be respected in the negotiation of the person's role allowing an avenue of appeal to the Program Associate Administrator and, of course, the right to withdraw from participation.

10. The Program Office responsible for the program should make a presentation to the Steering Committee with supporting documentation on the several decisions to be made by the responsible Program Associate Administrator.

408 Steering Committee Review

1. The most important role of the Steering Committee is to provide a substantive review of a potential payload or program of investigations and to recommend a selection to the Program Associate Administrator. The Steering Committee applies the collective experience and insight of representatives from the program and discipline communities and offers a forum for discussing the logic of the selection from those points of view. In addition to this mission-specific evaluation function, the Steering Committee provides central guidance to subcommittee chairpersons and serves as a clearinghouse for problems and complaints regarding the evaluation and selection process. The Steering Committee is responsible for assuring adherence to required procedures. Lastly, it is the forum where discipline objectives are weighed against program objectives and constraints.

2. The Steering Committee represents the means for exercising three responsibilities in the process of selecting investigations to:

a. Review compliance with procedures governing application of the investigation acquisition process.

b. Ensure that adequate and appropriate documentation has been made of the several steps in the evaluation process.

c. Review the results of the evaluation by the subcommittee, Project, and Program Offices and prepare an assessment or endorsement of a recommended payload or program of investigations to the Program Associate Administrator.

3. The purpose in exercising the first of these responsibilities is to ensure equity and consistency in the application of the process. In this sense, the Steering Committee is intended to provide the necessary checks, balances, reviews, and coordination established through procedures and controls inherent in conventional acquisition practices.

4. The second and third responsibilities of the Steering Committee are technical in nature. They require that the Steering Committee review the evaluations by subcommittee, the Project Office, and the Program Office in terms of their completeness and appropriateness for forwarding to the Program Associate Administrator. Most important in this review are:

a. Degree to which results of evaluations and recommendations follow logically from the criteria contained in the Announcement.

b. Consistency with objectives and policies generally beyond the scope of affected Project/Program Offices.

c. Sufficiency of reasons stated for tentative recommendations of those investigations requiring further instrument research and development.

d. Sufficiency of reasons stated for determining responsibilities for instrument development.

e. Sufficiency of consideration of reusable space flight hardware and support equipment for the recommended investigations.

f. Sufficiency of reasons given for classifying proposed investigations in their respective categories.

g. Fair treatment of all proposals.

5. The Steering Committee makes recommendations to the selection official on the payload or program of investigations and notes caveats or provisions important for consideration of the selection official.

409 Principles to Apply

1. Paragraph 406 contains a description of the evaluation function appropriate for a major payload or very significant program of investigation. The levels of review, evaluation, and refinement described should be applied in those selections where warranted but could be varied for less significant selection situations. It is essential to consider the principles of the several evaluative steps, but it may not be essential to maintain strict adherence to the sequence and structure of the evaluation system described. The selection official is responsible for determining the evaluation process most appropriate for the selection situation using this Chapter as a guide.

2. Significant deviations from the provisions of this Handbook must be fully documented and be approved by the Program Associate Administrator after concurrence by the Office of General Counsel and Office of Procurement.

Chapter 5—The Selection Process

500 General

The Program Associate Administrator is responsible for the final decision on those investigations to be selected for contract negotiation. This decision culminates the several types of evaluations and processes that can be summarized as follows:

Evaluation stage	Principal emphasis	Results
Contractor (when authorized)	Summary evaluation (strengths and weaknesses)	Report to Subcommittee.
Subcommittee	Science and technological relevance, value, and feasibility.	Categorization of individual proposals.

Evaluation stage	Principal emphasis	Results
Project Office	Engineering/cost/integration/management assessment.	Reports to Subcommittee and Program Office.
Program Office	Consistency with Announcement and program Objectives, and cost and schedule constraints.	Recommendations to Steering Committee of payload or program of investigations.
Steering Committee	Logic of proposed selections compliance with proper procedures.	Recommendations to Program Associate and Administrator.

501 Decisions To Be Made

1. The selection decisions by the Program Associate Administrator constitute management judgments balancing individual and aggregate scientific or technological merit, the contribution of the recommended investigations to the Announcement's objectives, and their consonance with budget constraints. In so doing, the selection official may develop such additional data to make the following decisions:

a. Determination of the adequacy of scientific/technical analysis supporting the recommended selections. This supporting rationale should involve considerations including:

(1) Assurance that the expected return contributes substantially to program objectives and is likely to be realized.

(2) Assurance that the evaluation criteria were applied consistently to all proposed investigations, thus ensuring that selection and rejection decisions are proper and fair.

(3) Assurance that the set of recommended investigations constitutes the optimum program or payload considering potential value and constraints.

(4) Assurance that only one investigator is assigned as the Principal Investigator to each investigation and that the Principal Investigator will assume the associated responsibilities and be the single point of contact and leader of any other investigators selected for the same investigation.

b. Determination as to whether available returned space hardware or support equipment, with or without modification, would be adequate to meet or support investigation objectives.

c. Determination as to whether the proposed instrument fabricator qualifies and should be accepted as a sole source or whether the requirement should be subjected to competitive solicitation. The following guidelines apply:

(1) The hardware requirement should be subjected to competitive solicitation in those instances where it is clear that the capability is not sufficiently unique to justify sole source procurement.

(2) The hardware requirement should be purchased from the fabricator proposed by the investigator, which may be the investigator's own institution, (a) when the fabricator's proposal contains technical data that are not available from another source, and it is not feasible or practicable to define the fabrication requirement in such a way as to avoid the necessity of using the technical data contained in the proposal; (b) when the fabricator offers unique capabilities that are not available from another source; (c) when the selection official determines as part of the selection that the hardware of the particular fabricator contributes so significantly to the value of the investigator's proposal as to be an integral part of it.

(3) If a producer other than the one proposed by the investigator offers unique capabilities to produce the hardware requirement, NASA may buy the hardware from the qualified fabricator.

(4) If a NASA employee submits a proposal as a principal investigator, any concomitant requirement for hardware necessary to perform the investigation must, in accordance with CICA, either be completed by the installation procurement office or, should it be determined that the hardware is so unique as to constitute a sole source, a justification must be written, synopsized, and approved in accordance with the requirements of FAR and the NFS.

d. Determination of the desirability for tentative selection of investigations. This determination involves considerations including:

(1) Assessment of the state of development of the investigative hardware, the cost and schedule for development in relation to the gain in potential benefits at the time of final selection.

(2) Assurance that there is adequate definition of investigation hardware to allow parallel design of other project hardware.

(3) Assurance that appropriate management procedures are contained in the project plan for reevaluation and final selection (or rejection) on an appropriate time scale.

e. Determination of the acceptability of the proposer's management plan, including the proposed hardware development plan, and the necessity, if any, of negotiating modifications to that plan.

2. In the process of making the above determinations described in subparagraph 1, the Program Associate Administrator may request additional information or evaluations. In most instances, this information can be provided by the Program Office responsible for the mission, project, or program. However, where it is determined appropriate, the Program Associate Administrator may reconvene the subcommittee or poll the members individually or provide for additional analysis or require additional data from evaluators or proposers as considered necessary to facilitate the Program Associate Administrator's decision.

502 The Selection Statement

Upon completion of deliberations, the responsible Program Associate Administrator shall issue a selection statement. Ordinarily this statement will, upon request, be releasable to the public. As a minimum, the selection statement should include:

1. The general and specific evaluation criteria and relative importance used for the selection.

2. The categorizations provided by the subcommittee and the basic rationale for accepting or not accepting each Category I proposal and a succinct statement concerning the nonacceptance of all other proposals.

3. A concise description of each investigation accepted including an indication as to whether the selection is a partial acceptance of a proposal and/or a joinder with other investigators.

4. The role of the Principal Investigator with regard to hardware essential to the investigation and whether the Principal Investigator will be responsible for hardware acquisition and the basis therefor.

5. An indication of the plan and acquisition using the regular procurement processes, if the Principal Investigator is not to acquire the hardware.

6. A statement indicating whether the selection is final or tentative, recognizing the need for better definition of the investigation and its cost.

7. A statement indicating any use of Government-owned available space flight hardware and/or support equipment.

503 Notification of Proposers

1. It is essential that investigators whose proposals are determined to have no reasonable chance for selection be apprised of that fact as soon as practicable. To this end, the responsible Program Office will, upon such determination, promptly notify investigators of that fact together with an exposition of the major reason(s) why the proposals were so considered. The notification letter should also inform such investigators that they may obtain a detailed oral debriefing provided they request it in writing. The letter should point out that such a debriefing would be available only after completion of the selection process and would otherwise be conducted in accordance with NASA regulations (NASA FAR Supplement). (See paragraph 504.)

2. As a result of the selection decisions made by the Program Associate Administrator, letters of notification will be sent to those Principal Investigators selected to participate. This notification letter should not commit the agency to more than negotiations for the selected investigation leading to a contract, but it should clearly indicate the decision made and contain:

a. A concise description of the Principal Investigator's investigation as selected, specifically noting substantive changes, if any, from the investigation originally proposed by the Principal Investigator.

b. The nature of the selection, i.e., whether it should be considered final or tentative

requiring additional hardware or cost definition.

c. A description of the anticipated role of the Principal Investigator including the responsibility for the provision of instruments for flight experiments.

d. Identification of the principal technical and management points to be treated in subsequent negotiations.

e. Any rights to be granted on use of data, publishing of data, and duration of use of the data.

f. Where applicable, indication that a foreign selectee's participation in the program will be arranged between the International Affairs Division, Office of External Relations, and the foreign government agency which endorsed the proposal.

3. In conjunction with the notification of successful foreign proposers, the Program Office shall forward a letter to the responsible International Affairs Division, Office of External Relations, addressing the following:

a. The overall scientific technological objective of the planned effort.

b. The period of time during which the effort is planned.

c. The respective responsibilities of NASA and of the sponsoring (endorsing) governmental agency; these may include:

(1) Provision and subsequent disposition of hardware and software.

(2) Responsibilities for reporting, reduction and dissemination of data.

(3) Responsibilities for transportation of hardware.

d. Any additional information pertinent to the successful conduct of the experiment.

4. Using the information provided in subparagraph 3, the International Affairs Division, Office of External Relations will prepare and negotiate an agreement with the sponsoring foreign agency.

5. Notices shall also be sent to those proposers not previously notified pursuant to the preceding paragraphs, and, as applicable, a copy to the sponsoring foreign government agency. It is important that these remaining proposers be informed at the same time as those selected. Other agency notifications and press release procedures will apply, as appropriate.

504 Debriefing

It is the policy of the National Aeronautics and Space Administration to debrief, if requested, unsuccessful proposers of investigations in accordance with NFS 1815.1003. The following considerations are offered in arranging and conducting debriefings:

1. Debriefing should be carried out by an official designated by the responsible Program Associate Administrator. Any other personnel receiving requests for information concerning the rejection of a proposal should refer to the designated official.

2. Debriefing of unsuccessful offerors should be made at the earliest possible time; debriefing will generally be scheduled subsequent to selection but prior to award of contracts to the successful proposers.

3. Material discussed in debriefing should be factual and wholly consonant with the documented findings of several stages of the evaluation process and the selection statement.

4. The debriefing official should advise of weak or deficient areas in the proposal, indicate whether those weaknesses were factors in the selection, and advise of the major considerations in selecting the competing successful proposer where appropriate.

5. The debriefing official should not discuss other unsuccessful proposals, ranking, votes of members, or attempt to make a point-by-point comparison with successful proposals.

6. A memorandum of record of the debriefing should be provided the Chairperson of the Steering Committee.

Chapter 6—Payload Formulation

600 Payload Formulation

1. Payload elements for Space Transportation System (STS) missions can come from many sources. These include those selected through Announcements of Opportunity, those generated by in-house research and funded through the Research and Technology Operations and Plans (RTOP) procedures, unsolicited (domestic and foreign) proposals and those derived from agreements between NASA and external entities. Missions may have payload elements originating from any or all of these sources. However, it is anticipated that the primary source of NASA payload elements will be the Announcement process. Generally, proposals for payload elements submitted outside the Announcement process will not be selected if they would have been responsive to a stated Announcement objective.

2. Payload elements for STS flights fall into two major categories. "NASA or NASA-related" payload elements are those which are developed by a NASA Program Office or by another party with which NASA has a shared interest. "Non-NASA" payload elements are those which require only STS operation services from NASA and hence interface with NASA through the Office of Space Flight.

3. In general, a Program Office will be designated to be responsible for formulating the "NASA or NASA-related" portion of an STS payload. The Office of Space Flight will be responsible for formulating the "non-NASA" portion of an STS payload. Flights may, of course, consist wholly of payload elements of either type defined in subparagraphs 1 and 2. Resource allocation for mixed missions will be determined jointly by the designated Program Office and the Office of Space Flight.

Chapter 7—Procurement and Other Considerations

700 Early Involvement Essential

1. The distinctive feature of the Announcement of Opportunity process is that it is both a program planning system and a procurement system in one single procedure. The choice of what aeronautical and space phenomena to investigate is program planning. Procurement is involved with the purchase of property and services to carry out the selected investigations.

2. Because of both the programmatic and multi-functional aspects of the Announcement of Opportunity process, early involvement of external program office elements is essential. Success of the process requires that it proceed in a manner that meets program goals and is clearly in line with statutory requirements and sound procurement policy.

3. The planning preparation and selection schedule for the investigation should commence early enough to meet the present statutory and regulatory requirements. Chief of these are the requirements for soliciting maximum feasible competition and for conducting discussions with offerors within the competitive range by the Project Office and/or any other evaluation group or office authorized by the selection official.

701 Negotiation, Discussions, and Contract Award

Indicated below are some of the major procurement procedures that need to be accomplished or performed to assure uniformity and sufficiency in the acquisition of investigations. These areas are not exclusive and not intended to substitute for adequate coordination and good judgment before issuance of the Announcement, during evaluation of proposals, and prior to contract award.

1. As negotiated procurements must be made by soliciting proposals from the maximum number of qualified sources consistent with the requirement, the Announcement of Opportunity must also be synopsized in the Commerce Business Daily. Responses to the synopsis must be added to the Announcement mailing list. Every effort should be made to publish opportunities far enough in advance to encourage a broad response. (In no case less than 45 days before the date set for receipt of proposals).

2. Significant items for consideration after receipt of proposals:

a. *Late Proposals.* The NASA policy on late proposals contained in the NASA FAR Supplement (NFS 1615.412) is applicable to proposals received in response to an Announcement of Opportunity. Potential investigators should be informed of this policy. In the Announcement of Opportunity context, the selection official or designee will determine whether a late proposal will be considered.

b. *Competitive Considerations.* (1) The acquisition of investigations involves the solicitation of unique, novel, and unspecified ideas to meet NASA's aeronautical and space responsibilities. The proposals submitted in response to these solicitations are not necessarily fully comparable. Rather these are discrete, novel scientific and technical investigative ideas associated with a limited opportunity. Although not necessarily fully comparable, all proposals within the scope of a specified opportunity must nevertheless be evaluated in accordance with the criteria stated in the Announcement.

(2) Cost must be considered in the evaluation if costs are involved in the investigation. Accordingly, general cost information should be given to the subcommittee by the Installation Project Office for use in determining the categories

into which the subcommittee places proposals.

(3) Further information should be obtained, as necessary, by the Installation Project Office and/or any other evaluation group or office authorized by the selection official and from the investigators whose proposals are still being considered. This would be similar to the regular procurement procedure for conducting written and oral discussions. A major consideration during discussions is to avoid unfairness and unequal treatment. Obviously, good judgment is required by all concerned in the extent and content of the discussions. There should be no reluctance in obtaining the advice and guidance of management and staff offices during the discussion phase. A summary should be prepared of the primary points covered in the written and oral discussions and show the effect of the discussions on the evaluation of proposals. This summary should also contain general information about the questions submitted to the investigators, the amount of time spent in oral discussion, and revisions in proposals, if any, resulting from the discussions.

(4) During the conduct of discussions, all proposers still being considered shall be offered an equitable opportunity to submit such cost, technical, or other revisions in their proposals as may result from the discussions. All proposers shall be informed that any revisions to their proposals must be submitted by a common cut-off date in order to be considered. The record should take note of compliance of the investigators with that cut-off date.

3. Significant items for consideration before award:

a. Issuance of a Request for Proposal (RFP)—A formal RFP should not be issued to obtain additional information on proposals accepted under the Announcement of Opportunity process. Additional technical, cost, or other data received should be considered as a supplement to the original proposal.

b. Selection of Investigator/Contractor—The selection decision of the Program Associate Administrator approves the selected investigators and their institutions as the only satisfactory sources for the investigations. The selection of the investigator does not constitute the selection of that person's proposed supporting hardware fabricator unless the selection official specifically incorporates the fabricator in the selection decision.

702 Application of the Federal Acquisition Regulation (FAR) and the NASA FAR Supplement (NFS)

The Announcement of Opportunity process supplants normal procurement procedures only to the extent necessary to meet the distinctive features of the process that it is both a program planning system and a procurement system in a single procedure. This process is not intended to conflict with any established statutory requirements. The FAR, the NFS, and related procurement directives should be referred to for guidance and clarification in those instances where specific instructions are not contained in this Handbook.

703 Other Administrative and Functional Requirements

After selection, all other applicable administrative and functional requirements will be complied with or incorporated in any resultant contract. These may include requirements contained in such publications as NHB 5300.4(1B), "Quality Program Provisions for Aeronautical and Space System Contractors," and NHB 9501.2, "Procedures for Contractor Reporting of Correlated Cost and Performance Data."

Appendix A to Appendix I of 1870.103—Format of Announcement of Opportunity (AO)

OMB Approval Number 2700-0042

National Aeronautics and Space Administration, Washington, DC 20546

Announcement of Opportunity

AO No. — ———

(Issuance Date)

(DESCRIPTIVE HEADING)

I. Description of the Opportunity

This section should set forth the basic purpose of the Announcement and describe the opportunity in terms of NASA's desire to obtain proposals which will meet the stated scientific, applications and/or technological objectives. These objectives may be directed to the generation of proposals for investigations and/or they may pertain to the acquisition of dissimilar ideas leading to selection of investigators, guest observers, guest investigators, or theorists; and/or any other approved area as identified in NHB 8030.6. In those instances wherein proposals for investigations are sought, this section should describe the requirement, if any, for selected investigators to serve on advisory or working groups. In those instances where the project or program has not yet been approved, an appropriate qualifying statement should be included to clearly indicate that this Announcement of Opportunity does not constitute an obligation on the part of the Government to carry the proposed effort to completion.

II. Announcement Objectives

This section will give a succinct statement of the specific scientific, applications, and/or technological objective(s) for the opportunity(s) for which proposals are sought.

III. Background

This section should provide an explanation of the context of the opportunity, i.e., information which will help the reader to understand the relevance of the opportunity in relation to broader objectives. For example, if the opportunity is related to a specific mission, this section should so indicate and provide information regarding the mission objectives. If, on the other hand, the opportunity is not related to a specific mission (for example, where the opportunity is discipline-oriented), this section should reflect that fact and provide information which will give the reader insight into the circumstances which have given rise to the opportunity and its relevance to the general scheme of things. Information on prior studies and their availability should, if relevant to an understanding of the opportunity, be disclosed here.

IV. Proposal Opportunity Period

This section should inform the reader of the proposal opportunity period(s). The following methods may be utilized individually or in conjunction for establishing the proposal opportunity period(s):

1. The Announcement may be issued establishing a single date by which proposals may be received. However, the Announcement could provide that the agency may amend the AO to provide for subsequent dates for submission of proposals, if additional investigations are desired. In this case, the initiative to reopen is an agency management determination and if sufficient investigations were selected for the Announcement objectives or flight possibilities, subsequent opportunities for proposal submission by potential investigators would not be available.

2. The Announcement may be issued to provide for an initial submission date with the AO to remain open for submission of additional proposals up to a final cutoff date. This final date should be related to the availability of resources necessary to evaluate the continuous flow of proposals and the time remaining prior to the flight opportunities contemplated by the Announcement.

3. The Announcement may be issued establishing a number of dates by which proposals may be received. Normally no more than three proposal submission dates should be established. The submittal dates may be spread over the number of months most compatible with the possible flight opportunities and the availability of resources necessary to evaluate and fund the proposal. If desired, this section should further inform the reader that if a proposal receives a Category I, II, or III rating but is not selected for immediate support, the proposal may, if desired by the proposer, be held by NASA for later consideration within the ground rules set forth in paragraphs 1 and 2. The section should inform the reader that if the person wishes the proposal to be so treated, it should be indicated in the proposal. This section should further indicate that offerors whose proposals are to be considered at a later time will be given the opportunity to revalidate their proposals with their institution and update cost data.

V. Requirements and Constraints

1. This section will include technical, programmatic, cost, and schedule requirements or constraints, as applicable, and will specify performance limits such as lifetime, flight environment, safety, reliability, and quality assurance provisions for flight-worthiness. It will specify the requirements and constraints related to the flight crew and the ground support. It will also include requirements for data analysis, estimated schedule of data shipment to user or observer, need for preliminary or raw data analysis and interim reports. It will specify planned period (time) for data analysis to be used for budgeting. It will provide any

additional information necessary for a meaningful proposal.

2. When NASA determines that instrumentation, ground support equipment, or NASA supporting effort will be required or may be expected to be required by the contemplated investigations, the Announcement should indicate to the potential investigators that they must submit specific information regarding this requirement to allow an in-depth evaluation of the technical aspects, cost, management, and other factors by the Installation Project Office.

VI. Proposal Submission Information

1. Preproposal Activities—In this section, the Announcement will indicate requirements and activities such as the following:

a. Submittal of "Notice of Intent" to propose (if desired), date for submission, and any additional required data to be submitted. Indicate whether there are information packages which will only be sent to those who submit "Notice of Intent."

b. Attendance at the preproposal conference (if held). Information should be provided as to time, place, whether attendance will be restricted in number from each institution, and whether prior notice of intention to attend is required. If desired, a request may be included that questions be submitted in writing several days before the conference in order to prepare replies.

c. The name and address of the scientific or technical contact for questions or inquiries.

d. Any other preproposal data considered necessary.

2. Format of Proposals—This section should provide the investigator with the information necessary to enable an effective evaluation of the proposal. The information is as follows:

a. Proposal—The Announcement should indicate how the proposal should be submitted to facilitate evaluation. The proposal should be submitted in at least two sections; (1) Investigation and Technical Section; and (2) Management and Cost Section.

b. Certification—The proposal must be signed by an institutional official authorized to certify institutional support, sponsorship of the investigation, management, and financial aspects of the proposal.

c. Quantity—The number of copies of the proposal should be specified. One copy should be clear black and white, and on white paper of quality suitable for reproduction.

d. Submittal Address—proposals from domestic sources should be mailed to arrive not later than the time indicated for receipt of proposals to:

National Aeronautics and Space Administration Office of (Program), Code_____ AO No. _____, Washington, DC 20546.

e. Format—To aid in proposal evaluation, and to facilitate comparative analysis, a uniform proposal format will be required for each Announcement. The number of pages, page size, and restriction on photo reduction, etc., may be included therein. The format contained in Appendix C can be used as a guide. Proposers may be requested to respond to all of the items contained therein or the Announcement may indicate that only selected items need be addressed. Using the Appendix format as a guide, specific guidelines may be prepared for the Announcement or an appropriate form developed. The major consideration is that all proposals be received in a similar format.

3. Additional Information—This section may be used to request or furnish data considered necessary to obtain clear and concise proposals that should not require further discussions with the proposer by the evaluators. Any other pertinent data could also be included in this section, such as significant milestones.

4. Foreign Proposals—The detailed procedures for submission of proposals from outside the U.S. are contained in Appendix B, "General Instructions and Provisions." This section will describe any additional requirements, for example, if information copies of proposals are required to be furnished by the proposer to other organizations, such as European Space Agency (ESA), at the same time the proposal is sent to NASA, this should be indicated here.

5. Cost Proposals (U.S. Investigators Only)—This section defines any special requirements regarding cost proposals of domestic investigators. Reference then should be made to the cost proposal certifications indicated in Appendix B, "General Instructions and Provisions."

VII. Proposal Evaluation, Selection, and Implementation.

1. *Evaluation and Selection Procedure.* a. This section should notify the proposers of the evaluation process, i.e., advisory subcommittee, government evaluation and/or contractor assistance.

b. For example, a statement similar to the following should be included: "Proposals received in response to this Announcement of Opportunity will be reviewed by a subcommittee appointed by the (appropriate Program Associate Administrator). The purpose of the review is to determine the scientific/technical merit of the proposals in the context of this Announcement of Opportunity and so categorize the proposals. Those proposals which are considered to have the greatest scientific/technical merit are further reviewed for engineering, integration, management, and cost aspects by the Project Office at the installation responsible for the project. On the basis of these reviews, and the reviews of the responsible Program Office and the Steering Committee, the (appropriate Program Associate Administrator) will appoint/select the investigators/investigations."

2. *Evaluation Criteria.* a. This section should indicate that the selection of proposals which best meet the specific scientific, applications, and/or technological objectives, as stated in the Announcement, is the fundamental aim of the solicitation. This section should then list the criteria to be used in the evaluation of proposals and indicate their relative importance. See paragraph 401, NHB 8030.6, for a listing of criteria generally appropriate.

b. Following a listing of the criteria and an indication of their relative importance, this section will also inform the proposers that cost and management factors, e.g., proposed small business participation in instrumentation fabrication or investigation support, will be separately considered.

VIII. Schedule.

This section should include the following, as applicable:

1. Preproposal conference date.
2. Notice of intent submittal date.
3. Proposal submittal date(s).
4. Target date for announcement of selections.

IX. Appendices.

1. General Instructions and Provisions (must be attached to each Announcement).
2. Other Pertinent Data, e.g., Spacelab Accommodations Data.

/s/ Associate Administrator for (Program)

Appendix B to Appendix I of 1870.103—General Instructions and Provisions

I. Instrumentation and/or Ground Equipment

By submitting a proposal, the investigator and institution agree that NASA has the option to accept all or part of the offeror's plan to provide the instrumentation or ground support equipment required for the investigation or NASA may furnish or obtain such instrumentation or equipment from any other source as determined by the selecting official. In addition, NASA reserves the right to require use, by the selected investigator, of Government instrumentation or property that subsequently becomes available, with or without modification, that will meet the investigative objectives.

II. Tentative Selections, Phased Development, Partial Selections, and Participation with Others

By submitting a proposal, the investigator and the organization agree that NASA has the option to make a tentative selection pending a successful feasibility or definition effort. NASA has the option to contract in phases for a proposed experiment, and to discontinue the investigative effort at the completion of any phase. The investigator should also understand that NASA may desire to select only a portion of the proposed investigation and/or that NASA may desire the individual's participation with other investigators in a joint investigation, in which case the investigator will be given the opportunity to accept or decline such partial acceptance or participation with other investigators prior to a NASA selection. Where participation with other investigators as a team is agreed to, one of the team members will normally be designated as its team leader or contact point.

III. Selection Without Discussion

The Government reserves the right to reject any or all proposals received in response to this Announcement when such action shall be considered in the best interest of the Government. Notice is also given of the possibility that any selection may be made without discussion (other than discussions conducted for the purpose of minor clarification). It is therefore emphasized that

all proposals should be submitted initially on the most favorable terms that the offeror can submit.

IV. Foreign Proposals

See Appendix C, section II, paragraph 3.

V. Treatment of Proposal Data

It is NASA policy to use information contained in proposals and quotations for evaluation purposes only. While this policy does not require that the proposal or quotation bear a restrictive notice, offerors or quoters should, in order to maximize protection of trade secrets or other information that is commercial or financial and confidential or privileged, place the following notice on the title page of the proposal or quotation and specify the information, subject to the notice by inserting appropriate identification, such as page numbers, in the notice. In any event, information (data) contained in proposals and quotations will be protected to the extent permitted by law, but NASA assumes no liability for use and disclosure of information not made subject to the notice.

Restriction on Use and Disclosure of Proposal and Quotation Information (Data)

The information (data) contained in [insert page numbers or other identification] of this proposal or quotation constitutes a trade secret and/or information that is commercial or financial and confidential or privileged. It is furnished to the Government in confidence with the understanding that it will not, without permission of the offeror, be used or disclosed for other than evaluation purposes; provided, however, that in the event a contract is awarded on the basis of this proposal or quotation the Government shall have the right to use and disclose this information (data) to the extent provided in the contract. This restriction does not limit the Government's right to use or disclose this information (data) if obtained from another source without restriction.

VI. Status of Cost Proposals (U.S. Proposals Only)

The investigator's institution agrees that the cost proposal submitted in response to the Announcement is for proposal evaluation and selection purposes, and that following selection and during negotiations leading to a definitive contract, the institution will be required to resubmit or execute a Standard Form (SF) Form 1411 "Contract Pricing Proposal Cover Sheet" and all certifications and representations required by law and regulation.

VII. Late Proposals

The Government reserves the right to consider proposals or modifications thereof received after the date indicated for such purpose, should such action be in the interest of the Government.

VIII. Source of Space Transportation System Investigations

Investigators are advised that candidate investigations for Space Transportation System (STS) missions can come from many sources. These sources include those selected through the Announcement of Opportunity, those generated by NASA in-house research and development, and those derived from contracts and other agreements between NASA and external entities.

IX. Disclosure of Proposals Outside Government

NASA may find it necessary to obtain proposal evaluation assistance outside the Government. Where NASA determines it is necessary to disclose a proposal outside the Government for evaluation purposes, arrangements will be made with the evaluator for appropriate handling of the proposal information. Therefore, by submitting a proposal the investigator and institution agree that NASA may have the proposal evaluated outside the Government. If the investigator or institution desire to preclude NASA from using an outside evaluation, the investigator or institution should so indicate on the cover. However, notice is given that if NASA is precluded from using outside evaluation, it may be unable to consider the proposal.

X. Equal Opportunity (U.S. Proposals Only)

By submitting a proposal, the investigator and institution agree to accept the following clause in any resulting contract:

Equal Opportunity

During the performance of this contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

2. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (a) employment, (b) upgrading, (c) demotion, (d) transfer, (e) recruitment or recruitment advertising, (f) layoff or termination, (g) rates of pay or other forms of compensation, and (h) selection for training, including apprenticeship.

3. The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

4. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

5. The Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding the notice to be provided by the Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

6. The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

7. The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.

8. The Contractor shall permit access to its books, records, and accounts by the contracting agency or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders.

9. If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, the contract may be cancelled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

10. The Contractor shall include the terms and conditions of subparagraph 1 through 9 of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

11. The Contractor shall take such action with respect to any subcontract or purchase order as the contracting agency may direct as means of enforcing these terms and conditions, including sanctions for non-compliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

XI. Patent Rights

1. For any contract resulting from this solicitation awarded to other than a small business firm or nonprofit organization, the clause at NFS 1852.227-70, "New Technology," shall apply. Such contractors may, in advance of contract, request waiver of rights as set forth in the provision at NFS 1852.227-71, "Requests for Waiver of Rights to Inventions."

2. For any contract resulting from this solicitation awarded to a small business firm or nonprofit organization, the clause at FAR 52.227-11, "Patent Rights—Retention by the Contractor (Short Form)" (as modified by NFS 1852.227-11), and the clause at NFS 1852.227-73, "Patent Rights Clause for Subcontracts," shall apply.

Appendix C to Appendix I of 1870.103—Guidelines for Proposal Preparation

The following guidelines apply to the preparation of proposals by potential investigators in response to an Announcement of Opportunity. The material presented is merely a guide for the prospective proposer and not intended to be all encompassing or directly applicable to the various types of proposals which can be submitted. The proposer should, however, provide information relative to those items applicable or as otherwise required by the Announcement of Opportunity.

I. Cover Letter

A letter or cover page should be forwarded with the proposal. It should be signed by the investigator and an official by title of the investigator's organization who is authorized to commit the organization that is responsible for the proposal and its contents.

II. Table of Contents

The proposal should contain a table of contents.

III. Identifying Information

The proposal should contain a short descriptive title for the investigation, the names of all investigators, the name of the organization or institution and the full name, address, and telephone number of the Principal Investigator.

Section I—Investigation and Technical Plan

1. *Investigation and Technical Plan.* The investigation and technical plan generally will contain the following:

a. *Summary.* A simple, concise statement about the investigation, its conduct, and the anticipated results.

b. *Objective and Significant Aspects.* A brief definition of the objectives, their value, and their relationships to past, current, and future effort. The history and basis for the proposal and a demonstration of the need for such an investigation. A statement of present development in the discipline field.

c. *Investigation Approach.* (1) Fully describe the concept of the investigation.

(2) Detail the method and procedures for carrying out the investigation.

2. *Instrumentation.* This section should describe all information necessary to plan for experiment development, integration, ground operations, and flight operations. This section must be complete in itself without need to request additional data. Failure to furnish complete data may preclude evaluation of the proposal.

a. *Instrument Description.* This section should fully describe the instrumentation and indicate items which are proposed to be developed as well as any existing instrumentation. Performance characteristics should be related to the experiment objectives as stated in the proposal.

b. *Instrument Integration.* This section should describe all parameters of the instrument pertinent to the accommodation of the instrument in the spacecraft, Spacelab, Shuttle Orbiter, Space Station, etc. These include, but are not limited to volumetric envelope; weight; power requirements; thermal requirements; telemetry requirement; sensitivity to or generation of contamination (e.g., EMI gaseous effluents); data processing requirements.

c. *Ground Operations.* This section should identify requirements for pre-launch or post-launch ground operations support.

d. *Flight Operations.* This section should identify any requirements for flight operations support including mission planning. Operational constraints, viewing requirements, and pointing requirements should also be identified. Details of communications needs, tracking needs, and special techniques, such as extravehicular activity or restrictions in the use of control thrusters at stated times should be delineated. Special communications facilities that are needed must be described. Any special orbital requirements, such as time of month, of day, phase of moon, and lighting conditions are to be given in detail. Describe real-time ground support requirements and indicate any special equipment or skills required of ground personnel.

3. *Data reduction and analysis.* A discussion of the data reduction and analysis plan including the method and format. A section of the plan should include a schedule for the submission of reduced data to the receiving point. In the case of Space Science programs, the National Space Science Data Center, Greenbelt, MD, will be the repository for such data and the Department of Interior, Sioux Falls, SD, for earth observations data.

4. *Orbiter crew and/or payload specialist training requirement.* A description of the tasks required of each crew member (Commander, Pilot, Mission Specialist) or payload specialist should be provided, including the task duration and equipment involved. Indicate special training necessary to provide the crew members or payload specialist(s) with the capability for performing the aforementioned tasks.

Section II—Management Plan and Cost Plan

A. *Management plan.* The management plan should summarize the management approach and the facilities and equipment required. Additional guidelines applicable to non-U.S. proposers are contained herein:

1. *Management.* a. The management plan sets forth the investigator's approach for managing the work, the recognition of essential management functions, and the overall integration of these functions.

b. The management plan gives insight into the organization proposed for the work, including the internal operations and lines of authority with delegations, together with internal interfaces and relationships with the NASA major subcontractors and associated investigators. Likewise, the management plan usually reflects various schedules necessary for the logical and timely pursuit of the work accompanied by a description of the investigator's work plan and the responsibilities of the co-investigators.

c. The plan should describe the proposed method of instrument acquisition. Specifically, it should include the following, as applicable.

(1) Rationale for the investigator to obtain the instrument through or by the investigator's institution.

(2) Method and basis for the selection of the proposed instrument fabricator.

(3) Unique or proprietary capabilities of the instrument fabricator that are not available from any other source.

(4) Contributions or characteristics of the proposed fabricator's instrument that make it an inseparable part of the investigation.

(5) Availability of supporting personnel in the institution to successfully administer the instrument contract and technically monitor the fabrication.

(6) Status of development of the instrument. What additional development is needed. Areas that need further design or in which unknowns are present.

(7) Method by which the investigator proposes to:

(a) Prepare instrument specifications.

(b) Review development progress.

(c) Review design and fabrication changes.

(d) Participate in testing program.

(e) Participate in final checkout and calibration.

(f) Provide for integration of instrument.

(g) Support the flight operations.

(h) Coordinate with co-investigators, other related investigations, and the payload integrator.

(i) Assure safety, reliability, and quality.

(j) Provide required support for Payload Specialist(s), if applicable.

(8) Planned participation by small and/or minority business in any subcontracting for instrument fabrication or investigative support functions.

2. *Facilities and equipment.* All major facilities, laboratory equipment, and ground-support equipment (GSE) (including those of the investigator's proposed contractors and those of NASA and other U.S. Government agencies) essential to the experiment in terms of its system and subsystems are to be indicated, distinguishing insofar as possible between those already in existence and those that will be developed in order to execute the investigation. The outline of new facilities and equipment should also indicate the lead time involved and the planned schedule for construction, modification, and/or acquisition of the facilities.

3. *Additional guidelines applicable to non-U.S. proposers only.* The following guidelines are established for foreign responses to NASA's Announcement of Opportunity. Unless otherwise indicated in a specific announcement, these guidelines indicate the appropriate measures to be taken by foreign proposers, prospective foreign sponsoring agencies, and NASA leading to the selection of a proposal and execution of appropriate arrangements. They include the following:

a. Where a "Notice of Intent" to propose is requested, prospective foreign proposers should write directly to the NASA official designated in the Announcement of Opportunity and send a copy of this letter to the International Relations Division, Office of External Relations, Code XID, NASA, Washington, DC 20546, U.S.A.

b. Unless otherwise indicated in the Announcement of Opportunity, proposals will be submitted in accordance with this Appendix excluding cost plans. Proposals should be typewritten and written in English.

c. Persons planning to submit a proposal should arrange with an appropriate foreign governmental agency for a review and endorsement of the proposed activity. Such endorsement by a foreign organization indicates:

(1) The proposal merits careful consideration by NASA.

(2) If the proposal is selected, sufficient funds will be available to undertake the activity envisioned.

d. Proposals along with the requested number of copies and letters of endorsement from the foreign governmental agency must be forwarded to NASA in time to arrive before the deadline established for each Announcement of Opportunity. These documents should be sent to:

National Aeronautics and Space Administration, International Relations Division, Code XID, Office of External Relations, Washington, DC 20546, U.S.A.

e. All proposals must be received before the established closing date; those received after the closing date will be treated in accordance with NASA's provisions for late proposals. Sponsoring foreign government agencies may, in exceptional situations, forward a proposal directly to the above address if review and endorsement is not possible before the announced closing date. In such cases, NASA should be advised when a decision on endorsement can be expected.

f. Shortly after the deadline for each Announcement of Opportunity, NASA's International Relations Division will advise the appropriate sponsoring agency which proposals have been received and when the selection process should be completed. A copy of this acknowledgement will be provided to each proposer.

g. Successful and unsuccessful proposers will be contacted directly by the NASA Program Office coordinating the Announcement of Opportunity. Copies of these letters will be sent to the sponsoring Government agency.

h. NASA's International Relations Division will then begin making the necessary arrangements to provide for the selectee's participation in the appropriate NASA program. Depending on the nature and extent of the proposed cooperation, these arrangements may entail:

(1) A letter of notification by NASA.

(2) An exchange of letters between NASA and the sponsoring foreign governmental agency.

(3) An agreement or Memorandum of Understanding between NASA and the sponsoring foreign governmental agency.

B. *Cost Plan (U.S. Investigations Only).* The cost plan should summarize the total investigation cost by major categories of cost as well as by function.

1. The categories of cost should include the following:

a. *Direct Labor.* List by labor category, with labor hours and rates for each. Provide actual salaries of all personnel and the percentage of time each individual will devote to the effort.

b. *Overhead.* Include indirect costs, which because of its incurrence for common or joint objectives, is not readily subject to treatment as a direct cost. Usually this is in the form of a percentage of the direct labor costs.

c. *Materials.* This should give the total cost of the bill of materials including estimated cost of each major item. Include lead time of critical items.

d. *Subcontracts.* List those over $25,000, specify the vendor and the basis for estimated costs. Include any baseline or supporting studies.

e. *Special Equipment.* include a list of special equipment with lead and/or development time.

f. *Travel.* List estimated number of trips, destinations, duration, purpose, number of travelers, and anticipated dates.

g. *Other Costs.* Costs not covered elsewhere.

h. *General and Administrative Expense.* This includes the expenses of the institution's general and executive offices and other miscellaneous expenses related to the overall business.

i. *Fee (if applicable).*

2. Separate schedules, in the above format, should be attached to show total cost allocable to the following:

a. Principal Investigator and other Investigators' costs.

b. Instrument costs.

c. Integration costs.

d. Data reduction and analysis including the amount and cost of computer time.

3. If the effort is sufficiently known and defined, a funding obligation plan should provide the proposed funding requirements of the investigations by quarter and/or annum keyed to the work schedule.

Appendix D to Appendix I of 1870.103 Glossary of Terms and Abbreviations Associated With Investigations

Advisory Committee Subcommittee. Any committee, board, commission, council, conference, panel, task force; or other similar group, or any subcommittee or other subgroup thereof, that is not wholly composed of full-time Federal Government employees, and that is established or utilized by NASA in the interest of obtaining advice or recommendations.

Announcement of Opportunity (AO). A document used to announce opportunities to participate in NASA programs. Announcements are published in accordance with this Handbook.

AO Process. A term used to describe the program planning and procurement procedure used to acquire investigative effort, initiated by an AO.

Categorization. The process whereby proposed investigations are classified into four categories: synopsized here as Category I—recommended for immediate acceptance; Category II—recommended for acceptance but at a lower priority than Category I proposals; *Category III.* sound investigations requiring further development; *Category IV.* rejected.

Co-Investigator (Co-I). Associate of a Principal Investigator, responsible to the Principal Investigator for discrete portions or tasks of the investigation. A NASA employee can participate as a Co-I on an investigation proposed by a private organization.

Data Users. Participants in NASA programs, selected to perform investigations utilizing data from NASA payloads or facilities.

Experiments. Activities or effort aimed at the generation of data. NASA-sponsored experiments generally concern generation of data obtained through measurement of aeronautical and space phenomena or use of space to observe earth phenomena.

Federal Acquisition Regulation (FAR). The regulations governing the conduct of procurement.

Flight. That portion of the mission encompassing the period from launch to landing or launch to termination of the active life of spacecraft. The term shuttle "flight" means a single shuttle round trip—its launch, orbital activity, and return; one flight might deliver more than one payload. More than one flight might be required to accomplish one mission.

Flight Investigation. Investigation conducted utilizing aeronautical or space instrumentation.

Flight Opportunity. A flight mission designed to accommodate one or more experiments or investigations.

Guest Investigators. Investigators selected to conduct observations and obtain data within the capability of a NASA mission, which are additional to the mission's primary objectives. Sometimes referred to as Guest Observers.

Investigation. Used interchangeably with "Experiments."

Investigation Team. A group of investigators collaborating on a single investigation.

Investigator. A participant in an investigation. May refer to the Principal Investigator, Co-Investigator, or member of an investigation team.

Mission. The performance of a coherent set of investigations or operations in space to achieve program goals. (Example: Measure detailed structure of Sun's chromosphere; survey mineral resources of North America.)

NASA FAR Supplement (NFS). Procurement regulations promulgated by NASA in addition to the FAR.

NHB. NASA Handbook.

NMI. NASA Management Instruction.

Notice of Intent. A notice or letter submitted by a potential investigator indicating the intent to submit a proposal in response to an AO.

Payload. A specific complement of instruments, space equipment, and support hardware carried to space to accomplish a mission or discrete activity in space.

Peer Group. A gathering of experts in related disciplinary areas convened as a subcommittee of the Program Office Steering Committee to review proposals for flight investigations.

Peer Review. The process of proposal review utilizing a group of peers in accordance with the categorization criteria as outlined in this Handbook.

Principal Investigator (PI). A person who conceives an investigation and is responsible for carrying it out and reporting its results. A NASA employee can participate as a PI only on a government-proposed investigation.

Program. An activity involving human resources, materials, funding, and scheduling necessary to achieve desired goals.

Project. Within a program, an undertaking with a scheduled beginning and ending, which normally involves the design, construction, and operation of one or more aeronautical or space vehicles and necessary ground support in order to accomplish a scientific or technical objective.

Project Office. An office generally established at a NASA field installation to manage a project.

Selection Official. The NASA official designated to determine the source for award of a contract or grant.

Space Facility. An instrument or series of instruments in space provided by NASA to satisfy a general objective or need.

Steering Committee. A standing NASA sponsored committee providing advice to the Program Associate Administrators and providing procedural review over the investigation selection process. Composed wholly of full-time Federal Government employees.

Study Office. An office established at a NASA field installation to manage a potential undertaking which has not yet developed into project status.

Subcommittee. An arm of the Program Office Steering Committee consisting of experts in relevant disciplines to review and categorize proposals for investigations submitted in response to an AO.

Supporting Research and Technology (SR&T). The programs devoted to the conduct of research and development necessary to support and sustain NASA programs.

Team. A group of investigators responsible for carrying out and reporting the results of an investigation or group of investigations.

Team Leader. The person appointed to manage and be the point of contact for the team and who is responsible for assigning respective roles and privileges to the team members and reporting the results of the investigation.

Team Member. A person appointed to a team who is an associate of the other members of the team and is responsible to the team leader for assigned tasks or portions of the investigation.

Subpart 1870.2—NASA Research Announcement System

1870.201 Purpose.

It is NASA policy to encourage submission of research proposals relevant to agency requirements. The NASA Research Announcement (NRA) System is one means of implementing the policy by permitting the solicitation and competitive selection of research projects in accordance with statute while at the same time preserving the traditional concepts and understandings associated with NASA sponsorship of research.

1870.202 System content.

(a) The regulations governing the NRA System (see 1835.016–70) set forth the requirements for preparing, issuing, and processing NRAs.

(b) The system contains specific instructions for proposers. These instructions shall be included in the NRA, a form of broad agency announcement authorized at 1835.016.

1870.203 Instructions for responding to NRAs.

(a) The "Instructions for Responding to NASA Research Announcements for Solicited Research Proposals" document (prescribed in 1835.016–70(c)(4)) is set forth as Appendix I to this section 1870.203.

(b) This Appendix may be reproduced locally as part of the NRA provided the following conditions are met:

(1) For each NRA the issuing office shall verify that the most recent version of Appendix I, as contained in the NFS, is used.

(2) The current text shall be reproduced verbatim; however, the issuing office may remove the NFS page headers and add the NRA number in order to identify the NRA to which the Appendix is attached. Any other change shall be treated as a deviation in accordance with 1801.400.

Appendix I to 1870.203—Instructions for Responding to NASA Research Announcements for Solicited Research Proposals

Instructions for Responding to NASA Research Announcements for Solicited Research Proposals (August 1988)

1. Foreword

a. NASA depends upon industry, educational institutions and other nonprofit organizations for most of its research efforts. While a number of mechanisms have been developed over the years to inform the research community of those areas in which NASA has special research interests, these instructions apply only to "NASA Research Announcements," a form of "broad agency announcement" described in 6.102(d)(2) and 35.016 of the Federal Acquisition Regulation (FAR). The "NASA Research Announcement (NRA)" permits competitive selection of research projects in accordance with statute while at the same time preserving the traditional concepts and understandings associated with NASA sponsorship of research.

b. These instructions are Appendix I to 1870.203 of the NASA Federal Acquisition Regulation Supplement.

2. Policy

a. NASA fosters and encourages the submission of research proposals relevant to agency mission requirements by solicitations, "NASA Research Announcements," which describe research areas of interest to NASA. Proposals received in response to an NRA will be used only for evaluation purposes.

b. NASA does not allow a proposal, the contents of which are not available without restriction from another source, or any unique ideas submitted in response to an NRA to be used as the basis of a solicitation or in negotiation with other organizations, nor is a pre-award synopsis published for individual proposals.

c. A solicited proposal that results in a NASA award becomes part of the record of that transaction and may be available to the public on specific request; however, information or material that NASA and the awardee mutually agree to be of a privileged nature will be held in confidence to the extent permitted by law, including the Freedom of Information Act.

3. Purpose

These instructions are intended to supplement documents identified as "NASA Research Announcements." The NRAs contain programmatic information and certain "NRA-specific" requirements which apply only to proposals prepared in response to that particular announcement. These instructions contain the general proposal preparation information which applies to responses to all NRAs.

4. Relationship to Award

a. A contract, grant, cooperative agreement, or other agreement may be used to accomplish an effort funded on the basis of a proposal submitted in response to an NRA. NASA does not have separate "grant proposal" and "contract proposal" categories, so all proposals may be prepared in a similar fashion. NASA will determine the appropriate instrument.

b. Grants are generally used to fund basic research in educational and nonprofit institutions, while research in other private sector organizations is accomplished under contract. Additional information peculiar to the contractual process (certifications, cost and pricing data, facilities information, etc.) will be requested, as necessary, as the procurement progresses. Contracts resulting from NRAs are subject to the Federal Acquisition Regulation and the NASA FAR Supplement (NHB 5100.4). Any resultant grants or cooperative agreements will be awarded and administered in accordance with the NASA Grant and Cooperative Agreement Handbook (NHB 5800.1).

5. Conformance to Guidance

a. NASA does not have any mandatory forms or formats for preparation of responses to NRAs; however, it is requested that proposals conform to the procedural and submission guidelines covered in these instructions. In particular, NASA may accept proposals without discussion; hence, proposals should initially be as complete as possible and be submitted on the proposers' most favorable terms.

b. In order to be considered responsive to the solicitation, a submission must, at a minimum, present a specific project within the areas delineated by the NRA; contain sufficient technical and cost information to permit a meaningful evaluation; be signed by an official authorized to legally bind the submitting organization; not merely offer to perform standard services or to just provide computer facilities or services; and not significantly duplicate a more specific current or pending NASA solicitation. NASA reserves the right to reject any or all proposals received in response to an NRA when such action is considered in the best interest of the Government.

6. NRA-Specific Items

a. Several proposal submission items will appear in the NRA itself. These include: the unique NRA identifier; when to submit proposals; where to send proposals; number of copies required; and sources for more information.

b. Items included in these instructions may be supplemented by the NRA, as circumstances warrant. Examples are: technical points for special emphasis; additional evaluation factors; and proposal length.

7. Proposal Contents

a. The following general information is needed in all proposals in order to permit consideration in an objective manner. NRAs will generally specify topics for which additional information or greater detail is desirable. Each proposal copy shall contain all submitted material, including a copy of the transmittal letter if it contains substantive information.

b. Transmittal Letter or Prefatory Material

(1) The legal name and address of the organization and specific division or campus identification if part of a larger organization;

(2) A brief, scientifically valid project title intelligible to a scientifically literate reader and suitable for use in the public press;

(3) Type of organization: e.g., profit, nonprofit, educational, small business, minority, women-owned, etc.;

(4) Name and telephone number of the principal investigator and business personnel who may be contacted during evaluation or negotiation;

(5) Identification of any other organizations that are currently evaluating a proposal for the same efforts;

(6) Identification of the specific NRA, by number and title, to which the proposal is responding;

(7) Dollar amount requested of NASA, desired starting date, and duration of project;

(8) Date of submission; and

(9) Signature of a responsible official or authorized representative of the organization, or any other person authorized to legally bind the organization (unless the signature appears on the proposal itself).

c. Restriction on Use and Disclosure of Proposal Information

It is NASA policy to use information contained in proposals for evaluation purposes only. While this policy does not require that the proposal bear a restrictive notice, offerors or quoters should, in order to maximize protection of trade secrets or other information that is commercial or financial and confidential or privileged, place the following notice on the title page of the proposal and specify the information subject to the notice by inserting appropriate identification, such as page numbers, in the notice. In any event, information (data) contained in proposals will be protected to the extent permitted by law, but NASA assumes no liability for use and disclosure of information not made subject to the notice.

Notice

Restriction on Use and Disclosure of Proposal Information. The information (data) contained in [*insert page numbers or other identification*] of this proposal constitutes a trade secret and/or information that is commercial or financial and confidential or privileged. It is furnished to the Government in confidence with the understanding that it will not, without permission of the offeror, be used or disclosed other than for evaluation purposes; provided, however, that in the event a contract (or other agreement) is awarded on the basis of this proposal the Government shall have the right to use and disclose this information (data) to the extent provided in the contract (or other agreement). This restriction does not limit the Government's right to use or disclose this information (data) if obtained from another source without restriction.

d. Abstract

Include a concise (200–300 word if not otherwise specified in the NRA) abstract describing the objective of the proposed effort and the method of approach.

e. Project Description

(1) The main body of the proposal shall be a detailed statement of the work to be undertaken and should include objectives and expected significance; relation to the present state of knowledge in the field; and relation to previous work done on the project and to related work in progress elsewhere.

The statement should outline the general plan of work, including the broad design of experiments to be undertaken and an adequate description of experimental methods and procedures. The project description should be prepared in a manner that addresses the evaluation factors in these instructions and any additional specific factors in the NRA. Any substantial collaboration with individuals not referred to in the budget or use of consultants should be described. Note, however, that subcontracting significant portions of a research project is discouraged.

(2) When it is expected that the effort will require more than one year for completion, the proposal should cover the complete project to the extent that it can be reasonably anticipated. Principal emphasis should, of course, be on the first year of work, and the description should distinguish clearly between the first year's work and work planned for subsequent years.

f. Management Approach

For large or complex efforts involving interactions among numerous individuals or other organizations, plans for distribution of responsibilities and any necessary arrangements for ensuring a coordinated effort should be described. Aspects of any required intensive working relations with NASA field centers that are not logical inclusions elsewhere in the proposal should be described in this section.

g. Personnel

The principal investigator is responsible for direct supervision of the work and participates in the conduct of the research regardless of whether or not compensation is received under the award. A short biographical sketch of the principal investigator, a list of principal publications and any exceptional qualifications should be included. Omit social security number and other personal items which do not merit consideration in evaluation of the proposal. Give similar biographical information on other senior professional personnel who will be directly associated with the project. Give the names and titles of any other scientists and technical personnel associated substantially with the project in an advisory capacity. Universities should list the approximate number of students or other assistants, together with information as to their level of academic attainment. Any special industry-university cooperative arrangements should be described.

h. Facilities and Equipment

(1) Describe available facilities and major items of equipment especially adapted or suited to the proposed project, and any additional major equipment that will be required. Identify any Government-owned facilities, industrial plant equipment, or special tooling that are proposed for use on the project.

(2) Before requesting a major item of capital equipment, the proposer should determine if sharing or loan of equipment already within the organization is a feasible alternative to purchase. Where such arrangements cannot be made, the proposal should so state. The need for items that typically can be used for both research and non-research purposes should be explained.

i. Proposed Costs

(1) Proposals should contain cost and technical parts in one volume: do not use separate "confidential" salary pages. As applicable, include separate cost estimates for salaries and wages; fringe benefits; equipment; expendable materials and supplies; services; domestic and foreign travel; ADP expenses; publication or page charges; consultants; subcontracts; other miscellaneous identifiable direct costs; and indirect costs. List salaries and wages in appropriate organizational categories (e.g., principal investigator, other scientific and engineering professionals, graduate students, research assistants, and technicians and other non-professional personnel). Estimate all manpower data in terms of man-months or fractions of full-time.

(2) Explanatory notes should accompany the cost proposal to provide identification and estimated cost of major capital equipment items to be acquired; purpose and estimated number and lengths of trips planned; basis for indirect cost computation (including date of most recent negotiation and cognizant agency); and clarification of other items in the cost proposal that are not self-evident. List estimated expenses as yearly requirements by major work phases. (Standard Form 1411 may be used).

(3) Allowable costs are governed by FAR Part 31 and the NASA FAR Supplement Part 1631 (and OMB Circulars A–21 for educational institutions and A–122 for nonprofit organizations).

j. Security

Proposals should not contain security classified material. However, if the proposed research requires access to or may generate security classified information, the submitter will be required to comply with applicable Government security regulations.

k. Current Support

For other current projects being conducted by the principal investigator, provide title of project, sponsoring agency, and ending date.

l. Special Matters

(1) Include any required statements of environmental impact of the research, human subject or animal care provisions, conflict of interest, or on such other topics as may be required by the nature of the effort and current statutes, executive orders, or other current Government-wide guidelines.

(2) Proposers should include a brief description of the organization, its facilities, and previous work experience in the field of the proposal. Identify the cognizant Government audit agency, inspection agency, and administrative contracting officer, when applicable.

8. Renewal Proposals

a. Renewal proposals for existing awards will be considered in the same manner as proposals for new endeavors. It is not necessary that a renewal proposal repeat all of the information that was in the original proposal upon which the current support was based. The renewal proposal should refer to its predecessor, update the parts that are no longer current, and indicate what elements of the research are expected to be covered during the period for which extended support is desired. A description of any significant findings since the most recent progress report should be included. The renewal proposal should treat, in reasonable detail, the plans for the next period, contain a cost estimate, and otherwise adhere to these instructions.

b. NASA reserves the right to renew an effort either through amendment of an existing contract or by a new award.

9. Length

Unless otherwise specified in the NRA, every effort should be made to keep proposals as brief as possible, concentrating on substantive material essential for a complete understanding of the project. Experience shows that few proposals need exceed 15–20 pages. Any necessary detailed information, such as reprints, should be included as attachments rather than in the main body of the proposal. A complete set of attachments is necessary for each copy of the proposal. As proposals are not returned, avoid use of "one-of-a-kind" attachments: their availability may be mentioned in the proposal.

10. Joint Proposals

a. Some projects involve joint efforts among individuals in different organizations or mutual efforts of more than one organization. Where multiple organizations are involved, the proposal may be submitted by only one of them. In this event, it should clearly describe the role to be played by the other organizations and indicate the legal and managerial arrangements contemplated. In other instances, simultaneous submission of related proposals from each organization might be appropriate, in which case parallel awards would be made.

b. Where a project of a cooperative nature with NASA is contemplated, the proposal should describe the contributions expected from any participating NASA investigator and agency facilities or equipment which may be required. However, the proposal must be confined only to that which the proposing organization can commit itself. "Joint" proposals which purport to specify the internal arrangements NASA will actually make are not acceptable as a means of establishing an agency commitment.

11. Late Proposals

A proposal or modification thereto received after the date or dates specified in an NRA may still be considered if the selecting official deems it to offer NASA a significant technical advantage or cost reduction.

12. Withdrawal

Proposals may be withdrawn by the proposer at any time. Offerors are requested to notify NASA if the proposal is funded by another organization or of other changed circumstances which dictate termination of evaluation.

13. Evaluation Factors

a. Unless otherwise specified in the NRA, the principal elements (of approximately equal weight) considered in evaluating a proposal are its relevance to NASA's objectives, intrinsic merit, and cost.

b. Evaluation of a proposal's relevance to NASA's objectives includes the consideration of the potential contribution of the effort to NASA's mission.

c. Evaluation of its intrinsic merit includes the consideration of the following factors, none of which is more important than any other:

(1) Overall scientific or technical merit of the proposal or unique and innovative methods, approaches, or concepts demonstrated by the proposal.

(2) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.

(3) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are critical in achieving the proposal objectives.

(4) Overall standing among similar proposals available for evaluation and/or evaluation against the known state-of-the-art.

d. Evaluation of the cost of a proposed effort includes the consideration of the realism and reasonableness of the proposed cost and the relationship of the proposed cost to available funds.

14. Evaluation Techniques

Selection decisions will be made following peer and/or scientific review of the proposals. Several evaluation techniques are regularly used within NASA. In all cases, however, proposals are subject to scientific review by discipline specialists in the area of the proposal. Some proposals are reviewed entirely in-house where NASA has particular competence; others are evaluated by a combination of in-house people and selected external reviewers, while yet others are subject to the full external peer review technique (with due regard for conflict-of-interest and protection of proposal information), such as by mail or through assembled panels. Regardless of the technique, the final decisions are always made by a designated NASA selecting official. A proposal which is scientifically and programmatically meritorious, but which is not selected for award during its initial review under the NRA may be included in subsequent reviews unless the proposer requests otherwise.

15. Selection for Award

a. When a proposal is not selected for award, and the proposer has indicated that the proposal is not to be held over for subsequent reviews, the proposer will be notified that the proposal was not selected for award. NASA will notify the proposer and explain generally why the proposal was not selected. Proposers desiring additional information may contact the selecting official who will arrange a debriefing.

b. When a proposal is selected for award, negotiation and award will be handled by the procurement office in the funding installation. The proposal is used as the basis for negotiation with the submitter. Formal RFPs are not used to obtain additional information on a proposal selected under the NRA process. However, the contracting officer may request certain business data and may forward a model contract and other information which will be of use during the contract negotiation.

16. Cancellation of NRA

NASA reserves the right to make no awards under this NRA and, in the absence of program funding or for any other reason, to cancel this NRA by having a notice published in the "Commerce Business Daily." NASA assumes no liability for cancelling the NRA or for anyone's failure to receive actual notice of cancellation. Cancellation may be followed by issuance and synopsis of a revised NRA, since amendment of an NRA is normally not permitted.

Subpart 1870.3—NASA Source Evaluation

1870.301 Purpose.

The acquisition of goods and services is among the most important activities that NASA performs and demands the agency's best management efforts. Therefore, the source evaluation and selection procedures must emphasize the application of sound judgment to the problems of source evaluation and assure that Source Evaluation Boards (SEB) conduct their activities impartially and efficiently in ways which will effectively accomplish the source evaluation task.

1870.302 Regulations.

The basic regulations governing source selection using the SEB process appear at 1815.613–71. Detailed operating instructions and procedures for the evaluation and negotiation of procurements by Source Evaluation Boards appear at 1870.303. These instructions provide general and specific

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policies and procedures for SEB's evaluating offerors' proposals and related capabilities. They are designed for use by procurement personnel and by the wide range of individuals who participate in the SEB process. The instructions will also be of help to the public in understanding NASA's source selection policies and procedures.

1870.303 Source Evaluation Board Procedures.

(a) SEB procedures are prescribed by Appendix I to this section 1870.303.

(b) NASA may reprint Appendix I as a separate document, which may be referred to as the NASA Source Evaluation Board Handbook, for sale and/or distribution provided the following conditions are met:

(1) The issuance date ("cover date") of the Handbook shall be the date of the NASA FAR Supplement version from which the text is extracted.

(2) With the exception of availability, distribution and other special prefatory notices, any subsequent modification in the text shall be preceded by a change to the NASA FAR Supplement 1870.303, Appendix I.

(3) The following notice shall be included in the prefatory material of the Handbook:

Important Notice

This Handbook is a separately bound, verbatim version of NASA FAR Supplement (NFS) (48 CFR 1870.303) Section 1870.303, Appendix I. Reference to other parts of the Federal Acquisition Regulation (FAR) and the NFS will be required for complete coverage of all procurement aspects. NASA reserves the right to make changes to NFS 1870.303, Appendix I, without issuing a new edition of this Handbook. Any such changes will be published in the **Federal Register**; however, it is anticipated that such changes will be rare, unless mandated by statute or unusual circumstances. In the event of apparent conflict between this Handbook and the NFS, the NFS shall govern.

Appendix I to 1870.303—NASA Source Evaluation Board Procedures (Handbook)

NASA Source Evaluation Board Handbook

Preface

The acquisition of goods and services is among the most important activities that NASA performs and demands our best management efforts. The acquisition system we use must be such that individuals performing within it are challenged to high standards of performance because they know that their efforts contribute to and form part of the Government's decision-making process.

The source evaluation and selection process covered by this handbook exemplifies our efforts to emphasize the application of sound judgment to the problems of source evaluation. In addition, the handbook emphasizes the responsibility which line and staff management retains to assure that Source Evaluation Boards (SEB's) conduct their activities impartially and efficiently in ways which will effectively accomplish the source evaluation task.

The process provides for an equitable and comprehensive evaluation of offerors' proposals to assist the Source Selection Official (SSO) in selecting the source(s) whose proposal(s) presents the highest probability of quality performance to best meet NASA's requirements at a realistic cost/price. This handbook provides guidance and general and specific policies and procedures for SEB's evaluating offerors' proposals and related capabilities in negotiated procurements. Its intention is to encourage the exercise of sound judgment in the many important aspects of the process. SEB's are expected to apply common sense in determining appropriate variations and adaptations necessary in individual situations, provided that these do not constitute a departure from basic concepts and intent. Substantive deviations may be authorized only by the Assistant Administrator for Procurement.

While this handbook is intended primarily for NASA use, it is also available to the public so that NASA's source selection policies and procedures can be understood by all participants in the process.

The provisions of this handbook are applicable to all elements of NASA and are to be implemented on any Request for Proposal (RFP) subject to evaluation by an SEB and issued on or after October 1, 1988. The source selection policies and procedures set forth in this handbook are to be implemented in accordance with the Federal Acquisition Regulation (FAR) Subpart 15.6 and NASA/FAR Supplement (NFS) 1815.613. However, the procedures in this handbook may be used in any other competitively negotiated procurement where the SSO determines it desirable to do so.

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Chapter 1—Key Participants in the Source Evaluation Board Process

100 Introduction

This Chapter describes the role of key participants in the Source Evaluation Board (SEB) process, including cognizant line and staff management, the Source Evaluation Board and the Source Selection Official.

101 Cognizant Management Responsibilities

1. The SEB process described in this handbook shall be used for major procurements as defined by NFS 1815.613–71(a). The process is used to accomplish and document the source evaluation and selection function.

2. Upon request of the cognizant Installation Procurement Officer, as a part of the Master Buy Plan procedure, the Assistant Administrator for Procurement or an appropriate designee may consider streamlining these source selection procedures for a particular procurement. This decision, granting a deviation to the formal SEB process, will be communicated to the cognizant Procurement Officer as a part of the written response to the installation regarding the Master Buy Plan submission. Requests for use of streamlined procedures may also be submitted independent of the Master Buy Plan procedure.

3. When the SEB process is determined to be applicable in accordance with the NFS, the specific SEB procedures detailed in this handbook are employed to—

a. Prepare a solicitation that accurately conveys to offerors the technical, schedule, cost, and other contractual requirements of the procurement;

b. Ensure equitable and comprehensive evaluation of the competitors' proposals;

c. Ensure fairness and freedom from outside influence throughout the process;

d. Ensure selection of the source(s) whose performance can be expected to be most advantageous to the Government with respect to the Mission Suitability, Cost, Relevant Experience and Past Performance, and Other Considerations factors considered; and

e. Protect the business confidential and proprietary information contained in proposals submitted to the Government for evaluation.

4. Appropriate cognizant line and staff management shall—

a. Establish each SEB with fully qualified Government personnel possessing broad experience and the professional skills and knowledge required for proper evaluation and assessment of offerors' proposals;

b. Ensure all personnel assigned to the SEB are unencumbered by other assignments which compete with SEB activities and, further, ensure that personnel assigned to the SEB are officially appointed to the activity for the duration of the SEB;

c. Ensure the SEB is provided all current NASA policies and procedures relevant to SEB operation;

d. Ensure acquisition strategy and planning objectives are achieved as reflected in the acquisition's requirements;

e. Ensure the SEB works in harmony with the needs and objectives of the requiring activity;

f. Concur in the substance and weight of evaluation factors, subfactors, and elements;

g. Ensure the RFP is complete, clear, and consistent with agency objectives and with the needs of the activity requiring the procurement, that the procedures for evaluation and selection are clearly set forth, and that the offeror is not burdened with unnecessary requests for data not pertinent to source selection;

h. Ensure appropriate actions are taken, consistent with the FAR and NFS, to obtain full and open competition in the selection process, or to obtain appropriate approvals for exceptions;

i. Establish an SEB advisory group or individual at the field installation to ensure proper source selection procedures are employed; and

j. Ensure an environment exists in which evaluation and selection activities can be effectively conducted.

5. For purposes of this handbook, in cases where the SSO is at the Headquarters level, "cognizant line and staff management," as addressed in subparagraph 4, includes—

a. The NASA Acquisition Executive for systems designated as major acquisitions under NMI 7100.14, "Major System Acquisitions";

b. Officials-in-Charge of the cognizant Headquarters Program and Headquarters Offices or their Deputies. (See NMI 1101.2, "NASA Organization and Definition of Terms.");

c. The cognizant Field Installation Director and Deputy/Associate Director;

d. The Field Installation Project Manager;

e. The Assistant Administrator for Procurement;

f. The General Counsel and/or Associate General Counsel (Contracts);

g. The Associate Administrator for Safety, Reliability, Maintainability, and Quality Assurance (SRM&QA);

h. The Field Installation Principal Official-in-Charge of Administration, when such a position exists;

i. The Field Installation Chief Counsel; and

j. The Field Installation Procurement Officer.

6. When the Administrator or an Official-in-Charge of a Headquarters Office is the SSO, selected cognizant line and staff management, including the General Counsel or designee and the Assistant Administrator for Procurement, will advise the SSO in executive session, at the conclusion of the presentation of the SEB report, regarding their views concerning the SEB's findings. Management personnel are encouraged to seek the advice of the General Counsel, the Assistant Administrator for Procurement, and any other responsible Headquarters official regarding any SEB-level procurement problem where their participation would be helpful in the conduct of the SEB process.

102 Source Selection Official

1. The SSO is the senior agency official responsible on a particular procurement for proper and efficient conduct of the source selection process and for making the final source selection decision. It is the SSO's responsibility to decide which of the proposals submitted in response to the solicitation would prove most advantageous to the Government, all RFP evaluation factors considered. The decision must reflect the SSO's determination of relative quality and suitability of what is proposed by each offeror in light of the Government's stated requirements and the confidence level associated with the offeror's ability to accomplish what is proposed. This includes an assessment of the probable cost of each proposal in the competitive range. Trade-off judgments may be required among the evaluation factors (Mission Suitability, Cost, Relevant Experience and Past Performance, and Other Considerations). For procurements designated as Headquarters selections, the SSO will be identified as a part of the Master Buy Plan process. For field installation selections, the Field Installation Director will serve as the SSO.

2. The SSO will—

a. Approve the substance and weight of evaluation factors, subfactors, and elements prior to release of the RFP, or delegate this responsibility to appropriate management personnel;

b. Appoint the SEB Chairperson and members, both voting and nonvoting, except when the Administrator will serve as the SSO, in which case the Official-in-Charge of the cognizant Headquarters Program Office will appoint the SEB Chairperson and members;

c. Provide the SEB with appropriate guidance and special instructions to conduct the evaluation and selection procedures; and

d. Make the final selection decision. Selection for final negotiations will be based on an integrated assessment of each offeror's proposal, taking into consideration the SEB's report and advice from senior officials.

103 Source Evaluation Board

1. The solicitation, receipt, and evaluation of proposals will be implemented by the SEB in accordance with the procedures outlined in this handbook. It is paramount that the SEB's evaluation not be influenced by persons outside the SEB process, whether or not such persons are NASA employees. The SEB is established with special status and shall be staffed with competent people fully qualified to identify the strengths, weaknesses, and risks associated with proposals submitted in response to the Government solicitation. The SEB assists the SSO in decision making by providing expert analyses of the offerors' proposals in relation to the evaluation factors, subfactors, and elements contained in the solicitation.

2. In particular, the SEB shall—

a. Conduct an in-depth review and evaluation of each proposal against the solicitation requirements and the approved evaluation factors, subfactors, and elements;

b. Provide an integrated assessment of each offeror's probable performance relative to the evaluation factors, subfactors, and elements contained in the solicitation related to Mission Suitability;

c. Perform cost analysis by reviewing and analyzing each offeror's proposed costs by individual cost element to determine the validity and reasonableness of the proposed costs. Perform price analysis by comparing each offeror's proposed price (when it is feasible to do so) against the independent Government cost estimate and/or prior experience and knowledge regarding similar efforts to assist in determination of a fair and reasonable price. Develop a probable cost for each proposal within the competitive range;

d. Evaluate the relevant experience and past performance of each offeror, including the relevant experience and past performance of proposed subcontractors intended to perform a major role in accomplishment of procurement objectives or to participate in a substantive manner;

e. Evaluate proposals under the Other Considerations factor included in the RFP and present the analysis of that factor as reflected in each offeror's proposal;

f. Ensure proper SEB procedures are implemented, including those necessary to prevent disclosure of source selection data;

g. Prepare and present the SEB report which accurately and clearly reflects the findings of the SEB.

Note.—The SEB is not to make recommendations for selection to the SSO. The SEB reports its findings, avoiding trade-off judgments among either the individual offerors or among the Mission Suitability, Cost, Relevant Experience and Past Performance, and Other Considerations evaluation factors.

Chapter 2—Membership, Organization, and Responsibilities

200 General

This Chapter sets forth NASA policy on membership, organization, and responsibilities of SEB's.

201 Membership

1. Composition

a. SEB's shall be comprised of qualified management, technical, scientific, contracting, and business experts including, where appropriate, SRM&QA representatives. Each SEB shall have a legal advisor.

b. While in general the SEB Chairperson, SEB members, and committee members are drawn from the cognizant installation, personnel from other NASA installations or other Government agencies may be used when their services are required in a particular area of expertise and would significantly contribute to the evaluation of proposals.

c. It is NASA policy to have proposals evaluated by the most competent technical and management sources available in NASA and the Jet Propulsion Laboratory (JPL). All personnel participating in evaluation proceedings shall be instructed to observe the restrictions in the FAR and NFS regarding personal conflicts of interest and the disclosure of information concerning the evaluation. Non-NASA personnel shall not serve as voting members of a NASA SEB.

d. In evaluating a proposal, the SEB may find that it is necessary to disclose the proposal (in whole or in part) outside the Government to meet its evaluation needs. When it is clearly necessary to disclose the proposal (in whole or in part) outside the Government, arrangements shall be made in accordance with NFS 1615.413–2.

e. It is desirable that voting members of the SEB include people who will have key assignments on the project to which the procurement is directed. However, it is important that this should be tempered to ensure objectivity and to avoid an improper balance. It may even be appropriate to designate a management official from outside the project as SEB Chairperson.

f. SEB membership normally need not exceed seven voting members, including the Chairperson. If additional support is needed, the use of committees and panels is authorized. The number of such supporting personnel shall be kept as small as the nature of the subject matter permits. Wherever feasible, an assignment to SEB membership as a voting member shall be on a full-time basis. Where this is not feasible, SEB membership and duties are to take precedence over other duties.

g. The number of nonvoting ex officio (advisory) members shall be kept as small as the nature of the procurement allows. Ex officio members should be selected for the experience and expertise they can provide to the SEB. Since their advisory role may require access to highly sensitive SEB material and findings, ex officio membership for persons other than those identified in paragraph 3b should be carefully considered.

2. Designation

a. Designation of the SEB Chairperson and members, both voting and nonvoting, shall be by the SSO except when the Administrator will serve as the SSO, in which case the designation shall be by the Official-in-Charge of the cognizant Headquarters Program Office. The designation letter will be addressed to the cognizant Field Installation Director when the SSO is at the Headquarters level or to the SEB Chairperson when the SSO is the Field Installation Director. The letter shall be prepared in accordance with the sample letter in Appendix A and forwarded for signature to the SSO or the cognizant Official-in-Charge of the Headquarters Program Office early in the procurement cycle, but not later than coordination and approval of the procurement plan. Prior to signature, concurrence by the Headquarters Office of Procurement (Code HS) is required when the SSO is at the Headquarters level or by the cognizant Field Installation Procurement Officer when the SSO is the Field Installation Director.

b. When the Administrator or the Official-in-Charge of the cognizant Headquarters Program Office is the SSO, résumés of voting members shall be provided along with the proposed designation letter. These résumés shall include functional title, grade level and related SEB experience.

3. Voting and nonvoting Members

a. The following people shall be on all SEB's and designated as voting members:

(1) Chairperson.

(2) A senior, key technical representative for the project.

(3) An experienced procurement representative.

(4) A senior SRM&QA representative, as appropriate.

(5) Committee chairpersons (except where this imposes an undue workload).

All voting members of the SEB shall have equal status as rating officials.

b. The following people shall be on all SEB's as nonvoting ex officio members:

(1) Assistant Administrator for Procurement and designee from the Program Operations Division (Code HS) when either an Official-in-Charge of a Headquarters Program Office or the Administrator is the SSO.

(2) General Counsel and/or the Associate General Counsel (Contracts) when either an Official-in-Charge of a Headquarters Program Office or the Administrator is the SSO.

(3) Associate Administrator for Safety, Reliability, Maintainability, and Quality Assurance or designee when either an Official-in-Charge of a Headquarters Program Office or the Administrator is the SSO.

(4) Director of the cognizant Field Installation or designee when either an Official-in-Charge of a Headquarters Program Office or the Administrator is the SSO.

(5) Cognizant Program Director or designee when an Official-in-Charge of a Headquarters Program Office is the SSO.

(6) Official-in-Charge of the cognizant Headquarters Program Office or a designee when the Administrator is the SSO.

(7) Chairpersons of SEB committees when they are non-voting members.

(8) The Procurement Officer of the installation, unless designated a voting member.

(9) The contracting officer responsible for the procurement, unless designated a voting member.

(10) The Chief Counsel and/or designee of the installation.

(11) The SEB recorder.

c. The Assistant Administrator for Procurement, the Code HS Director and cognizant procurement analyst, and the Associate General Counsel (Contracts) have access to all SEB activity by virtue of their positions in the agency.

d. The Associate General Counsel (Contracts) will assign legal advisors to Headquarters SEB's. The installation Chief Counsels will assign legal advisors to SEB's at their installations. The assigned advisor will provide legal advice and counsel on all matters pertaining to the procurement. Upon appointment of the SEB, the Associate General Counsel (Contracts) or designee, or Chief Counsel or designee, as appropriate, will brief SEB personnel on required standards of conduct.

e. Nonvoting ex officio members may state their views and contribute to the discussions in SEB deliberations, but they may not participate in the actual rating process. However, the SEB recorder should be present during rating sessions. The Chairperson is responsible for determining appropriate attendance at SEB meetings and is encouraged to seek the advice and counsel of nonvoting ex officio members whenever necessary without convening a special meeting.

202 Organization

The organization of an SEB is tailored to the requirements of the particular procurement. This can range from the simplest situation, where the SEB conducts the evaluation and fact-finding without the use of committees or panels, to a highly complex situation involving a major acquisition where two or more committees are formed and these, in turn, are assisted by special panels in particular areas. Appropriate organization somewhere between these two extremes is generally expected but in all cases the number of committees or panels should be kept to a minimum consistent with the requirements of the procurement.

203 Responsibilities

1. The SEB is the central group in the source evaluation process. Its function is to carry out the activities set forth in this handbook, culminating in final evaluation of all proposals and its report to the SSO. The SEB's evaluation is based on all available information, including proposals, committee and panel reports, written and/or oral discussions, personal knowledge of the members in the area of experience and past performance, and other appropriate reference checks. Subject to reviews by the SSO and cognizant management personnel as may be required, the SEB establishes evaluation factors, subfactors, elements and their relative importance; generates qualification standards (where applicable); and reviews and approves the RFP prior to issuance. The SEB reviews offeror satisfaction of applicable qualification standards, if any, and makes an identification of unacceptable proposals. It provides an initial evaluation of acceptable proposals sufficient for determination of the competitive range and participates in written and/or oral discussions held with all offerors in the competitive range. The SEB shall not delegate its evaluation responsibility in whole or in part. Findings of committees or panels must be reviewed by the SEB, with its own collective judgment being applied in arriving at the SEB evaluation findings reported to the SSO.

2. The SEB Chairperson is the principal operating executive of the SEB. This carries with it a responsibility broader in scope and including more requirements for coordination across more different specialized disciplines and through more diverse management channels than is expected in most management situations. The Chairperson is expected to manage the team efficiently without compromising the validity of the findings provided to the SSO as the basis for a sound selection decision.

3. The SEB Recorder functions as the principal administrative assistant to the SEB Chairperson. The duties and responsibilities of the position are as follows:

a. Attends all SEB meetings and serves as principal assistant to the SEB Chairperson.

b. Obtains secure work areas for conduct of SEB activity and develops and implements procedures for controlling access and safeguarding SEB proceedings and documentation.

c. Obtains materials, supplies, and equipment needed by the SEB.

d. Arranges for preparation, reproduction, control, and distribution of material relating to the activity of the SEB and its committees.

e. Prepares and distributes the agenda for SEB meetings.

f. Obtains and distributes current applicable procedures, policies, and instructions to the SEB and committee members and others involved.

g. Records the substantive issues discussed.

h. Follows up on action items assigned to SEB members to ensure no delays in the SEB schedule will occur.

i. Obtains the SEB Chairperson's approval of SEB minutes. Provides copies to all voting SEB members and/or nonvoting members, as directed by the SEB Chairperson. Retains the original copy of the minutes and incorporates them into an official record book.

j. Assists in preparation and assembly of the SEB's report of findings and presentation charts and arranges for reproduction and distribution.

k. Destroys all duplicate material in excess of the SEB's need or retains material, as defined by the contracting officer, the SEB, and/or the SSO.

l. After formal selection announcement, accumulates, packages, and forwards documentation pertinent to the SEB's work to the cognizant contracting officer for retention throughout the life of the contract.

m. At the conclusion of all SEB activity, surveys the area where SEB activity occurred and arranges for the return of equipment and materials, as appropriate.

4. An SEB Committee functions as a fact-finding arm of the SEB, usually in a broad grouping of related disciplines (e.g., technical or management). It is comprised of people well-versed and experienced in each of the major disciplines under its aegis. For example, a "Management Committee" could include experts in such areas as organization, pricing, personnel, labor, contracting, and facilities operation. The committee examines in detail each proposal, or portion thereof, assigned by the SEB. It evaluates such proposals or excerpts in accordance with the approved evaluation factors, subfactors, and elements and submits a written report to the SEB summarizing its evaluation. The committee will also respond to requirements assigned by the SEB, including further justification or reconsideration of its findings.

5. Committee chairpersons shall, with respect to their committees, exercise the same responsibility for administrative and procedural matters as does the SEB Chairperson for the SEB.

6. An SEB panel functions as a fact-finding arm of the committee in a specialized area of the committee's responsibilities. Panels are established when a particular area requires deeper analysis than can be provided by individual members of the committee.

7. a. All personnel involved in SEB activities are responsible for complying with the requirements of this handbook and other applicable regulations. Accordingly, they are advised to seek counsel and guidance from appropriate personnel, such as; the SEB Chairperson, the SEB procurement voting member, the contracting officer and/or the SEB legal advisor as well as any cognizant installation SEB advisory group with respect to any questions concerning compliance with these requirements. The Chairperson shall require each SEB, committee, and panel member to be familiar with the provisions of NHB 1900.1, "Standards of Conduct for NASA Employees," regarding conflict of interest and to inform the Chairperson in writing if, in the opinion of the member, their participation presents a real or apparent conflict of interest. In addition, the SEB Chairperson shall ensure that each SEB, committee, and panel member has filed a completed NASA Form 1270, "Confidential Statement of Employment and Financial Interests." Code HS procurement analysts will comply with the necessary disclosure requirements and will sign the necessary certificates on an annual basis to cover all SEB activities that the analyst may participate in throughout the year. Completed NASA Form 1270's from Code HS personnel will be generated and reviewed at the Headquarters level and will remain on file in the Office of General Counsel.

b. Prior to selection and announcement of an offeror for final negotiations, NASA personnel shall not reveal any information concerning the evaluation to anyone not participating in the same evaluation proceedings and then only to the extent such information is required by such proceedings and approved by the SSO or designee.

c. Subsequent to selection and announcement of an offeror for final negotiations, information concerning SEB proceedings and data will be made available to others within NASA only when the requester demonstrates a need to know for a NASA purpose. Information will be made available to persons outside NASA, including other Government agencies, only when such disclosure is concurred in by the Office of General Counsel. Title 18, U.S. Code, Section 1905, prohibits any officer or employee of the United States from disclosing or divulging certain kinds of business confidential and trade secret information unless authorized by law. Possible penalties upon conviction include imprisonment of up to 1 year, a fine of not more than $1,000, and removal from the Federal Service.

Chapter 3—Evaluation Factors, Subfactors and Elements

300 General

1. This Chapter describes the factors, subfactors, and elements used in evaluation of proposals and discusses the manner in which the SEB will develop, describe, and structure such factors, subfactors, and elements.

2. The SEB's responsibility is to provide analysis of proposals to aid the SSO in selecting the offeror(s) who best meets the Government's requirements at a reasonable cost.

3. In making a selection, the SSO normally considers four evaluation factors: a. Mission Suitability (which reflects how well the offerors can be expected to perform the work from a technical and management perspective); b. Cost (which reflects what it will probably cost the Government to do business with the offerors); c. Relevant Experience and Past Performance (which reflects the amount and quality of previous work accomplished by the offerors comparable to the work to be performed under the procurement being evaluated); and d. Other Considerations (which are those considerations, stated in the RFP, other than Mission Suitability, Cost, and Relevant Experience and Past Performance that can affect contract performance).

4. Performing the proposed work properly (Mission Suitability) is always important, and so is the probable cost of performing that work. Probable cost is not necessarily the offeror's estimate of costs; rather, it is the SEB's assessment of what the proposed work is likely to cost. Depending on circumstances, relevant experience and past performance or other considerations may or may not be of prime importance.

5. The SEB evaluates proposals with respect to the four evaluation factors, as follows:

a. *Mission Suitability.* This factor indicates, for each offeror, the merit or excellence of the work to be performed or product to be delivered. It includes, as appropriate, both technical and management subfactors. Because this factor can be highly technical and must be integrated in order to convey an overall evaluation of relative merit, Mission Suitability and its supporting subfactors shall be numerically weighted and scored. Elements may or may not be numerically weighted and scored.

b. *Cost.* This factor evaluates what each offeror's proposal will probably cost the Government should it be selected for negotiations leading to award. Proposed costs are analyzed to determine the probable "cost of doing business" based upon the offeror's proposed approach. Further, this analysis identifies and assesses the impact of features that cause a proposal to cost more or

less than other proposals. (See paragraph 302 for detailed coverage.) Cost is not numerically weighted or scored.

c. *Relevant Experience and Past Performance.* This factor indicates the relevant quantitative and qualitative aspects of each offeror's record of performing services or delivering products similar in size, content, and complexity to the requirements of the instant procurement. The Relevant Experience and Past Performance factor provides an opportunity to evaluate the quality of goods and services provided by the offeror(s) to the agency and other Government organizations. The agency has acquired a substantial amount of firsthand experience and past performance data over a variety of program and contract efforts. Evaluation of this factor also utilizes relevant experience and past performance data from programs acquired by other Governmental organizations, covering both prime and subcontractor performance. The Relevant Experience and Past Performance factor is not numerically weighted or scored.

d. *Other Considerations.* This factor includes those considerations other than Mission Suitability, Cost, and Relevant Experience and Past Performance. They include, but are not limited to, such items as: financial condition, labor relations considerations, small and small disadvantaged business considerations, and geographic distribution of subcontracts. Other Considerations is not numerically weighted or scored.

6. Mission Suitability is the only factor which is numerically weighted (normally 1000 points) and scored. Further, each Mission Suitability subfactor is numerically weighted and scored. The sum of the subfactor weights will total the weight of the Mission Suitability factor. A subfactor may, at the discretion of the SEB, be divided into discrete elements which, in total, comprise the subfactor evaluation area. If deemed conducive to the evaluation process, the SEB may weigh and score individual elements of a subfactor. The sum of the weights of the individual elements will equal the weight of the subfactor.

7. The general format for inclusion of the factors, subfactors, and elements in the RFP are:

a. Factor (numerically scored)—Mission Suitability Grouping/Category (not numerically scored)—i.e., Technical or Management (optional)
(1) Subfactor (numerically scored)
(2) Subfactor (numerically scored)
(3) Subfactor (numerically scored)
Element (optional). May or may not be numerically scored.

b. Factor (not numerically scored)—Cost

c. Factor (not numerically scored)—Relevant Experience and Past Performance

d. Factor (not numerically scored)—Other Considerations

301 Mission Suitability

1. Evaluation Subfactors

a. Evaluation subfactors are the weighted areas within the Mission Suitability factor that further identify, for proposal preparation and evaluation purposes, the content of the factor. Examples of Mission Suitability subfactors found by experience to be relevant to many procurements are: Understanding of the Requirement; Management Plan; Key Personnel; Corporate or Company Resources; and Excellence of Proposed Design for hardware procurements. However, citation of these specific subfactors is not intended to be restrictive or all inclusive. The nature and thrust of the requirements and objectives of the procurement may logically call for the use of some subfactors titled and described in a somewhat different manner than those described below:

(1) *Understanding of the Requirement.* An offeror's proposal reflects how well the offeror comprehends the work and the data requirements. The offeror's proposal should be examined and analyzed to evaluate the offeror's understanding of the requirements set forth in the RFP. Understanding of the requirement can be evaluated as a separate subfactor or can be evaluated as an element to be considered as a part of the evaluation of each subfactor. Although costs are analyzed separately from Mission Suitability, they may be significant in indicating an offeror's understanding of the resources, human and material, required for performance of the contract. Accordingly, technical personnel assigned to committees or panels, in evaluation of the Mission Suitability factor pursuant to the weighted subfactors and elements, may be given access to the cost proposals or portions of the cost proposals to help determine the offeror's understanding of the requirements of the RFP. Such cost information may also help them to assess the validity of the offeror's approach to performing the work in accordance with the requirements. Cost realism, or the lack thereof, should enter into the SEB's assessment of the measure of understanding possessed by each offeror. Normally this would entail a consideration of cost realism in the evaluation of all subfactors and elements wherein understanding is an essential concept. Similarly, an offeror's justification or rationale for proposed costs can give insight into how well the work to be performed is understood.

(2) *Management Plan.* (a) The offeror's management plan sets forth the offeror's approach for efficiently managing the work as demonstrated by the proposed organization, the recognition of essential management functions, and the effective overall integration of these functions.

(b) The management plan describes the project organization proposed for the work, including internal operations and lines of authority, together with external interfaces and relationships with the Government, major subcontractors, and associate contractors. When properly prepared, the authority of the project manager, the project manager's relationship to the next echelon of management, and the project manager's command of company resources can be ascertained from the management plan. Likewise, the management plan provides schedules necessary for the logical and timely pursuit of the work, accompanied by a description of the offeror's work plan.

(3) *Excellence of Proposed Design.* In hardware acquisition, design of the product is generally a major aspect of competition. In order to arrive at an informed judgment, the SSO may require the SEB's evaluation of the merits of competing designs in relationship to the stated requirement. In evaluating the proposed designs, the SEB should consider the resources required to perform the work inherent in the differing designs. Evaluation of design may extend to whatever subsystem level is deemed appropriate by the SEB and may include producibility, reliability, maintainability, and, as applicable, warranties.

(4) *Key Personnel.* (a) Thorough evaluation of proposed key personnel is usually one of the most vital aspects of SEB activity.

(b) Experience demonstrates that the qualifications and performance of a few people—the top half-dozen or so directly involved managers—are extremely important to successful accomplishment of a contract. For evaluation purposes, the SEB may designate a separate subfactor entitled "Key Personnel." The SEB may define the number and identity of the key personnel for each offeror in the solicitation or may, subject to such limitations as the SEB deems appropriate to assure a reasonable basis for comparison, permit each offeror to define its own key personnel consistent with its proposed organization.

(c) Written résumés should be the baseline from which the evaluation of key personnel begins. Personal reference checks with people knowledgeable of an individual's training, experience, and performance constitute part of this baseline; these should be made at levels commensurate with the role of the individual in the program or project involved. However, the written and/or oral discussions, if conducted, will include all offerors in the competitive range and may be used to establish the relative merits of personnel proposed by each competing firm.

(d) The presentation to the SSO must clearly and concisely set forth the results of the evaluation and discussion, including the strengths and weaknesses of each offeror's key personnel.

(5) *Corporate or Company Resources.* The SEB should assess the resources proposed by each offeror in the general areas of human resources and facilities. For example, are the proper skill mixes and numbers of people to do the work being offered? Does the offeror propose facilities and, where required, special test equipment suitable and adequate to assure timely performance of the work? If the offeror does not possess adequate resources internally, is there a demonstration of the ability to acquire them through subcontracts or otherwise?

b. Elements that further define the content of each subfactor may be used. If individually numerically scored, these elements must be revealed in the RFP and must be assigned a specific weighting in the SEB's evaluation plan as a portion of the total points allotted. If they are not numerically scored, identification in the RFP is not required.

c. Establishment of evaluation subfactors, elements, and their weights requires judgment on a case-by-case basis. The subfactors and elements established and included in the RFP will then be utilized to determine each offeror's rating in Mission Suitability, including its understanding of the requirements, approach to the work, and the competence of personnel to be directly involved.

d. By carefully considering the requirement(s) to be satisfied through the products or services being procured, the SEB should be able to identify, analyze, and score discrete subfactors and, where appropriate, elements that determine how well the proposed product or service can be expected to meet the demands of the specific requirement(s). If individual subfactors, elements, and their weights are prudently established, the integrated scores of the subfactors and elements will give a representative picture of the merit of each offeror's Mission Suitability.

e. (1) In structuring evaluation subfactors and elements, emphasis should be placed on identification of significant discriminators. Proliferation of subfactors and elements results in a leveling or averaging out of scores over all proposals. Too many subfactors and elements are detrimental to effective evaluation of proposals. Further, clearly defining each evaluation subfactor and element helps to avoid overlap and redundancy. Avoiding such overlap assures an offeror is not scored in two or more areas for the same work.

(2) The following example conveys one approach to describing a subfactor, utilizing elements, in an RFP. Within the "management plan" subfactor the following elements may be determined by the SEB as most suitable to assess how well each offeror's overall management proposal would contribute to the probability of performing the contract in an excellent manner: (a) Management approach and organization; (b) staffing plan; and (c) management systems.

f. For each subfactor and element, there should be detailed instructions provided in the RFP's Section L, "Instructions, Conditions, and Notices to Offerors or Quoters," specifying what supporting information should be included in the proposals and the specific format to be used. This increases the probability that SEB evaluators will be provided necessary data in the format easiest to understand and evaluate relative to the subfactors and elements assigned for evaluation and assessment. Thought given to carefully structuring these instructions will generally result in proposals that address what the Government is most interested in relative to the work to be performed. For example, if the evaluation will utilize SEB committees or SEB panels, instructions for proposal preparation in the RFP's Section L that direct offerors to group together information required by such committees or panels will facilitate and accelerate the evaluation process.

g. Where the procurement involves acquisition of a major system under NMI 7100.14, "Major System Acquisitions," and the evaluation is to identify the most promising system design concept(s) to be selected for further exploration, the evaluation should also address the benefits to be derived by tradeoffs, where feasible, among technical performance, acquisition cost, ownership cost, and time to develop and procure.

2. Weighting of Factors, Subfactors, and Elements

a. Numerical weights shall be used for evaluating the Mission Suitability factor for competing offerors.

b. (1) Once the Mission Suitability subfactors are established, the SEB will determine the weight assigned to each. Likewise, if elements are established, the SEB will determine the weight, if any, assigned to each. The proposed subfactors, elements, and weights will be presented to the SSO or designee for approval. The weight assigned to each subfactor and, if numerically scored, each element must reflect its relative importance within the overall Mission Suitability factor. In conjunction, an evaluation plan covering not only Mission Suitability evaluation, but all evaluation factors (Mission Suitability, Cost, Relevant Experience and Past Performance, and Other Considerations), will be established by the SEB (see Chapter 4). Mission Suitability evaluation subfactors, elements, and their weights shall be established and approved in advance of RFP issuance. The four factors and their supporting subfactors and, if numerically scored, elements shall be described in the RFP's Section M, "Evaluation Factors for Award," and the weights associated with the individual Mission Suitability subfactors and elements shall be revealed in section M as well. However, care should be taken to avoid the impression of a mathematical evaluation devoid of judgment. The weights are intended to be used by the SSO as a guideline.

(2) If all evaluation factors are considered by the SEB to be of approximately equal importance, a statement to that effect shall be included in the RFP. However, if there is a difference in the level of importance among the factors, then a statement shall be included in the RFP to advise the offerors of the relative importance of the factors. In this regard, one example of a statement that might be appropriate, depending on the nature of the requirements, type of contract, and objectives of the acquisition, is as follows:

"Of the four evaluation factors identified above, Mission Suitability and Cost are most important, and, as related to each other, are approximately equal in importance. The Relevant Experience and Past Performance factor is of somewhat less importance than either Mission Suitability or Cost, and the Other Considerations factor is of considerably less importance than Relevant Experience and Past Performance.

The subfactors to be used in evaluating Mission Suitability and their corresponding weights are listed below in descending order of importance:

Understanding of the Requirement
(40 percent)
Excellence of Proposed Design
(30 percent)
Management Plan
(15 percent)
Key Personnel
(10 percent)
Corporate or Company Resources
(5 percent)

The numerical weights assigned to the five subfactors identified above are indicative of the relative importance of those evaluation areas. The weights will be utilized only as a guide."

302 Cost

1. Before issuing a solicitation, the contracting officer and technical personnel shall (when it is feasible to do so) develop a Government cost estimate for the planned acquisition. Estimates can range from simple budgetary estimates to complex estimates based on inspection of the product itself and review of such items as drawings, specifications, and prior data. The SEB is tasked with the responsibility to ensure that the Government cost estimate properly reflects the effort to which the RFP applies.

2. In the Cost factor evaluation, the SEB shall analyze the proposed costs or prices of all offerors. The SEB may use any and all tools available in performing these analyses including information in the Armed Services Pricing Manual (ASPM). However, the required depth of the analysis is subject to the criteria in FAR 15.804. The SEB shall advise the SSO concerning—

a. The costs or prices as proposed by all offerors, including those not within the competitive range;

b. The comparison of costs proposed by all offerors, with the independent Government cost estimate, when feasible;

c. The realism of costs proposed by all offerors determined to be within the competitive range. Cost realism is a review of the proposal to determine if the overall costs proposed are realistic for the work to be performed, if the costs reflect an offeror's understanding of the requirements, and if the costs are consistent with the various elements of the technical proposal. This type of analysis will be used in the Cost area and Mission Suitability or other technical areas;

d. The probable cost to the Government of, at a minimum, each proposal within the competitive range. If it appears to the SEB that any offeror's approach(es) or plan(s) for accomplishing the proposed work will require modification in order to be acceptable to the Government, the SEB shall identify and assess the modification required, determine the probable cost of such modification, and include that probable cost assessment in its report to the SSO;

e. The differences in business methods, operating procedures, and practices as they impact cost; and

f. Its level of confidence in the probable cost assessments as they pertain to each fully evaluated proposal.

3. The probable cost should reflect the SEB's best estimate of the cost of any contract which might result from that offeror's proposal, including any recommended additions or reductions in personnel, equipment, or materials. To the extent that the recommended additions or reductions reflect a lack of understanding of the requirements of the RFP, that lack of understanding should be reflected in the scoring of the Mission Suitability factor, subfactors, and elements.

4. A well-defined statement of work reflecting clear, concise work breakdown structures is of great value in obtaining well-

structured proposals and in allowing the SEB to understand and assess proposed costs.

5. All cost categories and amounts present in an offeror's cost proposal (including options) are to be analyzed by the SEB and reported to the SSO. In the event SEB members have different opinions as to the cost analyses and assessments of probable costs, these differing opinions should be reported to the SSO to aid in forming an opinion regarding the confidence to be attributed to the analyses and assessments.

303 Relevant Experience and Past Performance

1. This factor has been established to give relevant experience and past performance proper emphasis in the evaluation and selection process. Assessments to be made regarding relevant experience and past performance, particularly past performance, may be extremely difficult. In more straightforward cases, this assessment may be based upon well-documented and highly reliable evidence portraying favorable or unfavorable experience and past performance. More often, these assessments will be made from data presenting a less-than-optimum degree of well-documented evidence of a company's experience and past performance. The problem for the SEB will be establishing an acceptable degree of confidence that the data sources are providing an impartial, fair, and accurate representation of relevant experience and past performance. The SEB must be extremely careful in making the judgments and conclusions required under this factor but must not hesitate to assess relevant experience and past performance, positively or negatively, when the information received would reasonably support such an assessment.

2. This factor addresses evaluation of overall relevant experience and past performance for the company, not the experience and past performance of individuals involved with contract performance; the latter are to be evaluated under key personnel within the Mission Suitability factor.

3. Relevant experience reflects the accomplishment of work by an offeror that is comparable to or related to the work or effort required under the instant procurement. Programs or projects of comparable magnitude that include technical, cost, schedule, and management constraints similar to those expected to be encountered in the instant procurement are clearly relevant.

4. Past performance is especially important; how well the offeror performed on similar work may be a significant indicator of performance on the job at hand. Many organizations exhibit characteristics that persist over time—for example, the ability to move projects out of the research environment and to translate research findings into practical, results-oriented hardware; difficulty in transitioning conceptual efforts into soundly engineered "hardcopy" plans which can be produced economically; resiliency in the face of trouble; resourcefulness; management determination that the organization live up to its commitments; and skill in development of key people. It is essential to develop such an indicator independent of the offeror's proposal. It is the responsibility of the SEB to collect and document information on the past performance of, at a minimum, all offerors within the competitive range. The SEB should personally contact program or project managers within NASA or other Government agencies in a position to have responsibly observed performance of the offerors as either a prime or major subcontractor and obtain their views concerning the quality of the work the offeror did (or is doing) on comparable jobs. In the event a substantially unfavorable response is received which, in the opinion of the SEB will be of special significance to the SSO, the offeror in question will be provided an opportunity during written and/or oral discussions (see Chapter 4) to clarify that response.

5. The SEB is responsible for collecting and developing relevant experience and past performance information, identifying the source, and presenting it to the SSO. While the clearly relevant experience or past performance is of prime importance, other experience or past performance determined by the SEB to be significant or to be indicative of company experience or past performance should be noted and brought to the attention of the SSO. All pertinent information, including project manager assessments and offeror responses, will be:

(a) Made part of the SEB's records,
(b) Contained in the SEB report, and
(c) Presented to the SSO.

6. The Relevant Experience and Past Performance factor is not numerically scored but is assigned an adjectival rating by the SEB.

7. This factor may be a significant consideration in the selection process. Therefore, the basis of the evaluation must be thoroughly identified and well documented. While objectivity is desirable, reasonable judgments often have to be made in the evaluation process. Subjectivity is not improper; an SEB should not hesitate to make reasonable subjective evaluations of relevant experience and past performance based upon as much factual data and experiential information as can be reasonably accumulated.

304 Other Considerations

1. This factor includes all considerations other than Mission Suitability, Cost, and Relevant Experience and Past Performance that the SSO will consider in making a final selection. Only Other Considerations specifically identified in the RFP shall be considered by the SSO in making a decision.

2. Following is a listing of Other Considerations that may be appropriate to include in an RFP. Not all of the subfactors listed are necessarily applicable to all procurements; nor is the listing intended to be all inclusive or restrictive:

a. Financial condition and capability.

b. Corporate priority on the work being proposed, or importance of the business to corporate management.

c. Labor-management relations.

d. Extent of proposed small and small disadvantaged business, and women-owned small business enterprise participation in subcontracting arrangements.

e. Geographic distribution of the work to be performed.

f. Acceptance of contract terms and conditions set forth in the RFP.

g. Any other subfactors pertinent to the particular procurement and identified under the Other Considerations factor within the RFP.

3. Other Considerations shall be defined specifically in the RFP, evaluated by the SEB, and reported to the SSO. Certain subfactors under the Other Considerations factor, such as financial condition and capability, may undergo change up to the moment of source selection.

4. Information regarding some of the Other Considerations is generally available to an SEB in the form of preaward surveys, NASA inspection reports, facility capability reports, purchasing system surveys, audit reports, and equal employment opportunity surveys. The SEB should make every reasonable effort to identify and use timely existing reports before initiating original inquiries. While written reports such as those mentioned in this paragraph may be significant, they should not be exclusively relied upon by the SEB. In addition, personal inquiries should be directed to Government managers likely to be knowledgeable about the offeror's record in these areas.

305 Continuing Evaluative Responsibility of SEB

Even after the SEB has made its formal report to the SSO, the SEB shall have continuing responsibility to report to the SSO, until its discharge, any circumstances that would change the SEB's evaluation findings relative to any evaluation factor (Mission Suitability, Cost, Relevant Experience and Past Performance, and Other Considerations) for any offeror. It is not intended that, after its report, the SEB actively pursue continuing evaluation. What is expected is that matters related to any of the evaluation factors which come to the attention of the SEB, and which might be expected to be pertinent to the selection decision, will be communicated to the SSO.

Chapter 4—SEB Operating Procedures for Solicitation and Evaluation

400 General

This Chapter describes procedural steps in preparing the SEB for its work and outlines SEB activities for solicitation and evaluation of proposals.

401 Initial SEB Activities

1. Official SEB activities commence upon receipt by the Chairperson of the letter establishing the SEB and designating its members which should be no later than approval of the procurement plan. However, prior to official establishment of the SEB, the proposed SEB Chairperson and members may hold meetings to accomplish such tasks as SEB member orientation to proposed operational procedures, security measures that will be utilized, and preliminary review of the proposed RFP.

2. Once the SEB is established, the SEB Chairperson shall ensure that—

a. A management and staffing plan is prepared, indicating necessary personnel and other resource requirements, including a time schedule for SEB actions and events leading to presentation of findings to the SSO;

b. Each SEB voting member is furnished appropriate information regarding the nature of the procurement in addition to a copy of their designation letter, approved procurement plan, and the projected time schedule;

c. Each SEB participant, voting and nonvoting, is cautioned concerning restrictions on disclosure of information during the SEB process, avoidance of conflicts of interest, and conformity with the NASA Standards of Conduct. Each SEB participant, voting and nonvoting, shall file a NASA Form 1270, "Confidential Statement of Employment and Financial Interests," in accordance with NHB 1900.1, "Standards of Conduct for NASA Employees." In addition, each SEB participant shall sign an appropriate nondisclosure statement (a sample nondisclosure statement is included in Appendix B). These documents shall be reviewed by the Associate General Counsel for General Law or designee for Headquarters employees or by the cognizant Field Installation Chief Counsel or designee for field installation employees.

d. Letters are issued to all personnel involved in the SEB's activities advising them of pertinent restrictions and prohibitions, including a caution not to discuss any aspect of the procurement with anyone not having a need-to-know. The right to information on a need-to-know basis does not extend to the normal chain of supervision of any member of the SEB or to any individual having technical responsibility for the effort being evaluated except as specifically approved by the SEB Chairperson on a case-by-case basis. Those individuals will also be notified by the SEB Chairperson, in writing, of the privileged character of proposal information;

e. The list of sources to be solicited is developed and approved by the SEB with the assistance of the cognizant procurement and program or project offices;

f. Whenever it is expected to be beneficial, a draft RFP or Statement of Work is issued to prospective offerors for comment;

g. Prior to RFP issuance, the substance and the weight of evaluation factors, subfactors, and elements, as well as the substance of any applicable qualification standards, are presented to the SSO or designee for approval;

h. The RFP is reviewed and approved by the SEB prior to issuance;

i. During the competitive phase of the procurement, every effort must be made to assure fair and equitable treatment of all offerors (both prospective and actual). Upon release of the formal RFP, the Chairperson shall impose a communication blackout, in writing, by directing all personnel associated with the procurement to refrain from communicating with prospective offerors, formally or informally, regarding any aspects of the procurement. All inquiries regarding the procurement shall be referred to the contracting officer; and

j. Prior to receipt of proposals, the evaluation plan is reviewed and approved by the SEB and cognizant management personnel. The evaluation plan, once approved, must be impartially applied by the SEB to each proposal.

402 Evaluation Plan

1. The SEB evaluation plan consists of general and specific evaluation guidelines (and qualification standards, where applicable) established to assess each offeror's proposal relative to the evaluation factors, subfactors, and elements set forth in the RFP. The evaluation guidelines are designed to focus the evaluators' assessment. They are not weighted and are not listed in the RFP. However, the substance of the guidelines may be included in a narrative description of the subfactors and elements. In addition, the plan includes the system used in conducting the evaluation and scoring each offeror's proposal.

2. The SEB determines what evaluation factors, subfactors, and elements to assign to the various committees and panels. While it is necessary to give committees and panels all information required to conduct an evaluation of their assigned area, it is not appropriate to disclose to them the specific scoring system used by the SEB in scoring proposals.

3. The detailed SEB evaluation plan to be used by the SEB, committees, and panels should be approved before the RFP is issued but, in any case, shall be approved before proposals are evaluated.

403 Qualification Standards

1. It is NASA policy to offer the opportunity to compete for its procurements as broadly as is consistent with the nature of each particular procurement. However, in view of the distinctive characteristics of NASA programs, those potential offerors that do not possess the minimum qualifications and resources necessary to perform the proposed work of a given procurement should not be encouraged to incur proposal and other expenses involved in competitive submissions.

2. To accomplish this objective without limiting meaningful competition requires early and intense effort on the part of the SEB, working in conjunction with the program and procurement staff most familiar with the procurement requirements.

3. When the nature of the procurement requires, qualification standards may be established in accordance with FAR 9.104–2. These will consist of special experience, capability, or specialized facilities critical to program performance aspects of the procurement.

4. In establishing qualification standards, care must be exercised to restrict them to those essential to the successful completion of the contract work. Qualification standards may be employed only where it is possible for the SEB to establish standards which are justified by the nature of the particular procurement. These standards must be applied equally to all potential sources.

5. When developed by the SEB and approved by the SSO or designee, qualification standards shall be clearly set forth in the RFP and included in the Commerce Business Daily synopsis.

6. Approved qualification standards will be used by the SEB to screen proposed source list(s) so that only firms possessing those unique specialized facilities, capability, or experience deemed critical to program performance aspects of the procurement will be solicited. Notwithstanding the considerations that lead to the elimination of sources from solicitation, any firm may submit a proposal. These same qualification standards will be used to consider all sources who may submit a proposal. This assures that the presolicitation consideration of prospective contractor qualification standards does not act to restrict competition, but only to discourage costly proposal submissions from potential offerors to whom award would not appear likely and that all offerors shall have an equal opportunity to compete. If an offeror fails to meet the stated qualification standards, the proposal shall be rejected, not considered further in the evaluation, and the offeror informed of the basis of rejection.

404 Request for Proposals (RFP's)—Review and Approval

1. Effectiveness of the evaluation is dependent, in large measure, on how well the work to be performed and the basic ground rules under which the competition will be conducted are described in the RFP. Accordingly, the RFP shall be reviewed by the SEB and approved by appropriate levels of management prior to issuance to ensure its acceptability.

2. In reviewing the RFP, the SEB and appropriate management shall ensure that the following matters pertinent to source evaluation and selection are fully covered in the solicitation:

a. Any qualification standards shall be identified and described.

b. Evaluation factors shall be described, including a general narrative explanation of their relative importance.

c. The Mission Suitability factor shall be described. Evaluation subfactors shall be identified and described, including their numerical weights. If deemed conducive to the evaluation process, elements of a subfactor shall be identified and described, including their numerical weights.

d. The Cost factor shall be described.

(1) When uncertainties involved in contract requirements necessitate the use of a cost-type contract, offerors may be motivated to perform within the proposed cost estimate through the inclusion of appropriate cost incentive arrangements.

(2) Negotiated indirect cost rate ceilings shall be used only in accordance with FAR 42.707.

e. The Relevant Experience and Past Performance factor shall be described. The identification data and contact or customer references required by NPS 1815.406-70(b)(6) for the conduct of this evaluation shall be stated. Offerors should be cautioned that omissions or an inaccurate or inadequate response to this evaluation category could have a negative effect on overall evaluation. Offerors should also be advised that, in

addition to information they provide, the SEB will consider all information available to NASA regarding the offeror's relevant experience and past performance.

f. The Other Considerations factor shall be described.

g. The method of evaluation shall be explained clearly, but concisely, so that prospective offerors understand the SEB's use and treatment of the factors, subfactors, and elements.

h. When cost proposals are permitted to be submitted after technical proposals, a notice shall be included in the RFP stating the required date for each submission.

i. When applicable, a notice that a preproposal conference is to be held shall be included, stating its purpose, time, place, and scope.

j. The Statement of Work shall describe as clearly and concisely as possible the product or service to be procured. It shall be structured to identify the important areas of emphasis. There must be no inconsistencies between it and the evaluation factors, subfactors, and elements to be used by the SEB and the SSO. Nonessential or unduly restrictive requirements shall be eliminated.

k. Requirements for reports and data essential to contract evaluation and performance shall be clearly described, including a cross reference to the Statement of Work and a schedule for submission.

l. When the procurement involves a major system under NMI 7100.14, the SEB will ensure that the RFP is prepared in terms of mission need so each offeror can respond with an alternative system design concept proposal to satisfy the mission need and can propose a technical approach, design features, and alternatives to schedule, cost, and capability goals consistent with that concept. In order to remove inhibitions to innovative solutions and to improve the approach to achieving program objectives, consideration should be given to conducting orientation briefings for prospective offerors and, where appropriate, solicit comments on a draft of the solicitation.

m. Any limitations on pages and the number of copies of offerors' initial proposals shall be included. When imposing a firm page limitation, the solicitation must clearly state that the evaluators will read only up to the maximum number of pages specified. Pages in excess of the maximum are to be removed from the proposal and not evaluated, but retained as a part of the official contract file. Guidance on the number of pages preferred in offerors' proposals may be used in lieu of a firm page limitation.

3. The SSO may request a detailed review of the RFP beyond that of the SEB and cognizant management personnel or may, more specifically, request a detailed review of the Statement of Work, qualification standards, evaluation factors, subfactors, elements, or other areas pertinent to proposal preparation, evaluation, and source selection. Specific reviewing officials or offices may be designated for this purpose.

4. The RFP shall comply with all current regulations and directives applicable to NASA solicitations; particular emphasis is placed on the requirements of FAR 15.406 and NFS 1815.406.

5. When detailed program or project support plans will be required as part of the offeror's proposal but are not considered important discriminators in the evaluation process, the requirements for these plans shall be described in separate appendices to the Statement of Work in accordance with NFS 1815.406-70(a)(7).

6. When, either before or after receipt of proposals, the Government modifies its requirements, the contracting officer is required to issue a written amendment to the RFP in accordance with FAR 15.606.

405 Preproposal Conference

1. A preproposal conference to brief prospective offerors may be conducted after a solicitation has been issued but before proposals are received, in accordance with FAR 15.409. The contracting officer, in conjunction with the SEB, shall make a determination, prior to issuance of the RFP, as to whether a preproposal conference is required. Generally, these conferences benefit both the Government and prospective offerors in complex acquisitions where it is necessary to explain or clarify complicated specifications and requirements.

2. The conference shall be scheduled to permit prospective offerors sufficient time after the issuance of the RFP to become familiar with the RFP requirements yet not too late to allow meaningful use of the information obtained at the conference.

3. The conference should include a presentation of the significant aspects of the procurement followed by a question and answer session. A record of all information provided at the conference, together with a copy of all questions and answers, shall be provided to all prospective offerors by formal written amendment to the solicitation. If it becomes apparent at the conference that the RFP needs revision, the revised requirements must be included in a written amendment.

406 Initial Evaluation

1. Upon receipt of proposals, the contracting officer shall mark each proposal with the date and time of receipt and forward all proposals to the SEB Chairperson or the SEB Recorder for control and safeguarding throughout the evaluation process.

2. Late proposals or modifications shall be handled in accordance with FAR 15.412.

3. Procedure for Evaluation of a Single Proposal—

a. If only one proposal is received in response to the solicitation, the contracting officer shall examine the situation to ascertain the reasons for the single response. The contracting officer shall include a written notation in the contract file describing the circumstances surrounding the receipt of a single proposal as well as a determination whether or not the solicitation was or was not flawed or unduly restrictive, prior to releasing the proposal to the SEB for evaluation.

b. The SEB shall complete a limited preliminary evaluation to determine that the single proposal submitted satisfies stated qualification standards, if any, and is otherwise an acceptable proposal (see subparagraph 406.5). Upon completion of this limited preliminary evaluation, a letter shall be forwarded to the SSO presenting a summary of the evaluation results.

c. The SSO shall as a result of reviewing the SEB summary, and the contracting officer's examination of the facts and determination, notify the SEB Chairperson that either—

(1) The SEB is instructed to proceed with preestablished SEB procedures, including complete initial evaluation, oral and written discussions, request and receipt of a Best and Final Offer (BAFO), and final evaluation, culminating in a formal presentation to the SSO for approval to enter into negotiations;

(2) The contracting officer is instructed to immediately enter into negotiations resulting in a complete contract document, signed by the offeror, to be signed by the contracting officer upon approval by the SSO. Upon completion of the negotiations, the SEB shall present the results to the SSO for approval; or

(3) The SEB Chairperson is granted full delegation of authority to disband the SEB and to instruct the contracting officer to conduct negotiations for contract award without further SSO involvement.

(4) The contracting officer is instructed to reject the single proposal received and to cancel the solicitation.

d. These procedures are likewise applicable when the number of proposals equals the number of awards contemplated or when only one acceptable proposal is received as defined by subparagraph 406.5 of this handbook.

4. Committee Evaluations—

a. The initial phase of evaluation generally will involve established committees. As promptly as possible, committees are to be convened. The SEB Chairperson shall transmit to the committees proposals or portions of proposals to be evaluated, instructions regarding the expected function of each committee, and all data considered necessary or helpful. The committee chairperson is responsible for instructing the members as to committee functions, responsibilities, and procedures.

b. While oral reports may be given to the SEB, the committee function requires the submission of a written report which should include—

(1) Copies of individual worksheets and supporting comments to the lowest level evaluated;

(2) An evaluation sheet summarized for the committee as a whole; and

(3) A statement for each proposal describing any strengths or weaknesses which significantly affected the evaluation and stating any reservations or concerns, together with supporting rationale, which the committee or any of its members want to bring to the attention of the SEB.

c. It is imperative that the SEB provide clear traceability throughout the evaluation process. This traceability must exist at all levels of the SEB process. All reports submitted by committees or panels will be retained as part of the SEB records but need not necessarily be included as part of the SEB report to the SSO. A committee report should be included with necessary to the SSO's understanding of the SEB's action.

d. Each voting SEB member shall thoroughly review each proposal. Committee reports and findings shall be reviewed by the SEB. The SEB is to consider the committee evaluation, take into account any reservations or concerns stated by the SEB members and the committee, and rate or score the proposals for each evaluation factor, subfactor, and element according to its own collective judgment. SEB minutes shall reflect this evaluation process which shall be consistent with the approved evaluation plan.

5. Identification of Unacceptable Proposals—

a. The SEB may discontinue the evaluation of any proposal which is unacceptable because—

(1) It does not represent a reasonable initial effort to address itself to the essential requirements of the RFP or clearly demonstrates that the offeror does not understand the requirements of the RFP;

(2) In research and development procurement, a substantial design drawback is evident in the proposal, and sufficient correction or improvement to consider the proposal acceptable would require virtually an entirely new technical proposal; or

(3) It contains major technical or business deficiencies or omissions or out-of-line costs which discussions with the offeror could not reasonably be expected to cure.

b. Simple technical nonresponsiveness in the sense in which the term is used in sealed bidding is not alone sufficient to constitute unacceptability if the proposal is otherwise competitive and written and/or oral discussions, or negotiations after selection, reasonably offer the likelihood of resolution. When there is doubt as to whether a proposal should be rejected initially as unacceptable, that doubt shall be resolved by including it for further consideration.

c. The SEB must document its judgment that the deficiencies of any proposal are sufficiently significant to warrant discontinuing evaluation of the proposal at this point in the process.

6. SEB Findings—

a. Preparing the results of the initial evaluation in a narrative SEB report is an important aspect of the evaluation process. The SEB should be aware that the SEB report and presentation provide the principal tools available to the SSO to perform a comparative analysis in making a source selection decision. Guidelines for the report and presentation are set forth in Chapter 5 and Appendix C. For each proposal, the SEB should indicate in the narrative whether the proposal meets or fails to meet any of the requirements of the RFP; all strengths and weaknesses of the proposal and whether they are correctable; the proposed and probable cost (normally required only for those offeror(s) in the competitive range or those offeror(s) eliminated from competitive range on the basis of cost); the technical, schedule, and cost risk associated with the proposal; and the adjectival rating of the Relevant Experience and Past Performance and Other Considerations evaluation factors. Strengths and weaknesses must be further defined in the SEB report as major or minor to provide a valuable summary of discriminators among proposals in addition to supporting the adjectival ratings assigned to each Mission Suitability subfactor and element by the SEB, and for the Mission Suitability factor as a whole. In addition to the narrative report of evaluation findings, the SEB will apply the Mission Suitability scoring system detailed in the evaluation plan to rate each proposal in relation to the Mission Suitability evaluation subfactors and elements.

b. In structuring an applicable rating system, the following adjective ratings, definitions, and percentile ranges shall be used for the evaluation of Mission Suitability subfactors, and, if individually weighted and scored, elements. (The total proposal should also be classified with an appropriate adjectival rating for Mission Suitability.)

	Percentile range
Excellent—A comprehensive and thorough proposal of exceptional merit with one or more major strengths. No weaknesses or only minor correctable weaknesses exist	91–100
Very Good—A proposal which demonstrates overall competence. One or more major strengths have been found, and strengths out balance any weaknesses that exist. Any major weaknesses are correctable	71–90
Good—A proposal which shows a reasonably sound response. There may be strengths or weaknesses, or both. As a whole, weaknesses, not offset by strengths, do not significantly detract from the offeror's response. Major weaknesses are probably correctable	51–70
Fair—A proposal that has one or more weaknesses. Weaknesses have been found that outbalance any strengths that exist. Major weaknesses can probably be improved, minimized, or corrected	31–50
Poor—A proposal that has one or more major weaknesses which are expected to be difficult to correct, or are not correctable	0–30

c. Normally, proposals are to be rated using adjectival ratings on two occasions as follows:

(1) Upon completion of the initial evaluation of proposals, and

(2) Upon completion of the final evaluation of the BAFO's.

Both ratings will be maintained by the SEB, included in the SEB report, and presented to the SSO. There shall be clear traceability of any scoring changes between initial and best and final proposals.

7. Determination of Competitive Range—

a. Subsequent to the initial identification of proposals considered unacceptable, the SEB will compile initial evaluation findings, of all remaining acceptable proposals, sufficient for determination of the competitive range in accordance with FAR 15.609 and NFS 1815.613-71(b)(4). The competitive range shall be determined by the SEB together with the contracting officer on the basis of Mission Suitability, Cost, Relevant Experience and Past Performance, and Other Considerations stated in the solicitation and shall include all proposals that have a reasonable chance of being selected for award. Competitive range determinations are final unless the SSO determines otherwise.

b. The objective of a competitive range determination is not to eliminate proposals but to facilitate competition by conducting written and/or oral discussions with only those offerors who have a reasonable chance of being selected for award. Where there is doubt as to whether a proposal is or is not within the competitive range, the proposal should be included within the competitive range. The determination of competitive range is a complex determination based on informed judgment. All competitive range decisions shall be completely and adequately documented in the contract file in accordance with NFS 1815.613–71(b)(4).

8. Notification of Unsuccessful Offerors. The contracting officer shall notify each unsuccessful offeror in accordance with FAR 15.1001(b) at the earliest practicable time, in writing, that its proposal is no longer to be considered for contract award.

407 Final Evaluation

1. Evaluation of Plant and Facilities

a. Inspections at the plants of competing offerors could provide valuable insight into the SEB's evaluation of proposals. For instance, in procurements where significant experimental, research, developmental, testing, fabrication, or other work is to be performed (the quality of which may be affected by a contractor's plant or facilities), a complete evaluation may require an on-site visit by the SEB. For other procurements, e.g., support services contracts, plant inspections may serve no useful purpose.

b. When plant inspections are conducted, the visiting team shall include SEB members and any qualified experts required by the SEB. At least one SEB member shall be the same on all team visits to provide continuity and a basis for comparison. Visits are to be conducted, generally, after the SEB's initial evaluation has been completed and for a specific, clearly understood purpose. Visits shall be conducted only with the approval of the SEB Chairperson, who will ensure that all visits are made on an impartial basis. All personnel must remember that only the contracting officer can commit NASA and that they must avoid any contact with an offeror that is not essential or which could raise questions of impropriety. A visit to all offerors within the competitive range is advisable if plant inspections are being conducted.

c. Some potential benefits of plant visits are—

(1) Reviewing with resident Government personnel relevant experience and past performance;

(2) Reviewing the degree of capability and interest of the offeror to undertake the project in light of other work planned or in process; and

(3) Examining such matters as—

(a) Plant capacities;

(b) Management and technical capability of personnel;

(c) Availability of existing facilities, both Government-owned and contractor-owned;

(d) Adequacy of accounting practices and cost controls;

(e) Adequacy of estimating systems; and

(f) Ability to forecast and meet program schedules.

2. Written and/or Oral Discussions

a. Except as provided in FAR 15.610(a), the contracting officer shall conduct written and/or oral discussions with all responsible offerors in the competitive range. If, however, a decision is made in accordance with FAR 15.610(a)(3) to award without conducting written and/or oral discussions upon the completion of the initial evaluation, the SEB Chairperson shall forward a letter to the SSO for approval presenting a summary of the evaluation results. Upon SSO approval, the contracting officer shall undertake to complete all actions necessary to award the contract, without discussions or negotiations, to the offeror submitting the lowest overall cost proposal.

b. Written and/or oral discussions shall be conducted in accordance with FAR 15.610 (with the exception of FAR 15.610(c)(2)) and NFS 1815.613–71(b)(5). Preparation for written and/or oral discussions should include, but not be limited to, the establishment of the following:

(1) The time(s) and place(s) for conducting discussions. This requires establishment of the order of discussions with offerors. When feasible, the order should be established alphabetically or by lot. When discussions are to be at offeror's plants or offices it may be that geographic dispersion will be the deciding factor. The objective is impartiality.

(2) Topics for discussion. This will include preparation and issuance of written questions common to all offerors, as well as those that are peculiar to individual offerors, allowing adequate time for development of responses by offerors.

(3) The Government team that will conduct the discussions. The contracting officer, in concert with the SEB Chairperson, will designate appropriate procurement, pricing, and technical personnel for the Government team in addition to identifying the individuals specified in the offeror's proposal requested to be present for the discussions.

c. The contracting officer, in concert with or on behalf of the SEB, will conduct written and/or oral discussions of the effort to be accomplished and the cost or price of the effort with all offerors determined to be within the competitive range. The discussions are intended to assist the SEB—

(1) In understanding fully each offeror's proposal and its strengths and weaknesses based upon the individual efforts of each offeror;

(2) In assuring that the intent and the points of emphasis of RFP provisions have been adequately conveyed to the offerors so that all offerors are competing equally on the basis intended by the Government;

(3) In evaluating the personnel proposed by each offeror; and

(4) In presenting a report to the SSO that makes the discriminators identified among proposals clear and visible.

d. In cost-reimbursement type contracts and all research and development contracts, the contracting officer shall point out instances where the meaning of some aspect of a proposal is not clear and instances in which some aspects of the proposal failed to include substantiation for a proposed approach, solution, or cost estimate. However, where the meaning of a proposal is clear and the SEB has sufficient information to assess its validity and the proposal contains a weakness that is inherent in an offeror's management, engineering, or scientific judgment or which is the result of its own lack of competence or inventiveness in preparing its proposal, the contracting officer shall not point out the weaknesses. The possibility that such discussions may lead an offeror to discover that it has a weakness is not a reason for failing to inquire into a matter where the meaning is not clear or where insufficient information is available, since understanding of the meaning and validity of the proposed approaches, solutions, and cost estimates is essential to a sound selection. Offerors should not be informed of the relative strengths or weaknesses of their proposals in relation to those of other offerors. To do so would be contrary to regulations which prohibit the use of auction techniques (see FAR 15.610(d)(3)). In the course of discussions, Government participants should be careful not to transmit information which could give leads to one offeror as to how its proposal may be improved or which could reveal a competitor's ideas.

e. In fixed-price type contracts other than for research and development, the specifications ordinarily describe the Government's requirements with more particularity than is possible in cost reimbursement or research and development contracting, so that less emphasis is placed on an offeror's introduction of scientific, engineering, and management innovations. The contracting officer, in written and/or oral discussions, shall point out instances in which some aspect of a proposal contains a weakness in relation to the Government's requirements. However, the contracting officer shall neither point out the relative strengths or weaknesses of a proposal in relation to those of other offerors nor transmit information which could give leads to one offeror as to how its proposal may be improved or which could reveal a competitor's ideas. The contracting officer shall point out price elements that do not appear to be justified and shall encourage offerors to put forward their most favorable price proposals, but shall not discuss, disclose, or compare price elements of any other offeror.

f. Although unusual, if the SEB and the contracting officer, after conducting written and/or oral discussions, determine that a proposal no longer has a reasonable chance of being selected for contract award, the proposal can be eliminated from the competitive range in accordance with FAR 15.609(b). The contracting officer shall notify the unsuccessful offeror in writing that its proposal is no longer eligible for award.

g. If, after conclusion of written and/or oral discussions, the SEB considers that the evaluation findings thus far completed are not sufficiently comprehensive for the SSO to make a decision, it may be prudent and necessary to conduct further discussions or final negotiations with those offerors remaining in the competitive range prior to presentation of the findings to the SSO. This course of action must be considered as an exception to the SEB process and therefore may be accomplished only with the approval of the Assistant Administrator for Procurement.

3. Best and Final Offers (BAFO's)

a. The contracting officer will issue to all offerors still within the competitive range a request for Best and Final Offers (BAFO's) in accordance with FAR 15.611. Oral requests for BAFO's shall be confirmed in writing.

b. A common cutoff date and time that allows each offeror a reasonable opportunity to support and clarify its proposal through submission of a written BAFO shall be established. An offeror may, on its own initiative, revise its proposal and make corrections or improvements until the established cutoff date.

c. Offerors should be cautioned to provide supporting documentation for any changes to their prior offers. Any revision received after the established common cutoff date must be considered late in accordance with FAR 15.412.

d. The cutoff date must be such as to permit adequate time for all offerors to submit revised proposals; particular care must be taken to ensure that there is no compression of time for the offeror with whom discussions were last held, i.e., if 2 weeks is adequate time for submission, then the time allowed should be 2 weeks from the date of last discussions.

4. Evaluation Findings

a. After consideration of all committee reports, information received from offerors through plant visits, written and/or oral discussions, and BAFO's, the SEB shall conduct a final evaluation of proposals.

b. The final evaluation must build on the SEB's earlier recorded findings. The purpose of the final evaluation is to determine the effects, if any, of discussions and BAFO's on the SEB's earlier Mission Suitability scores and adjectival ratings as well as on the initial evaluation of Cost, Relevant Experience and Past Performance, and Other Considerations. Therefore, a clear and logical audit trail shall be maintained for the rationale for changes in ratings and scores, including a detailed account of the SEB decisions leading to the final ratings and scores.

c. The final evaluation must represent the collective judgment of the SEB regarding its assessment of the offerors for each factor evaluated including its assessment of the Mission Suitability subfactors, elements, if any, and its associated ratings, scores, and findings. The adjectival ratings and numerical scores shall reflect the strengths, weaknesses, and discriminators the SEB finds in the proposals. In this way, the reasons for differences in adjectival ratings, numerical scores, and findings can readily be explained to and understood by the SSO.

d. All significant SEB evaluation findings shall be fully documented and incorporated into a written report which will serve as the basis for the selection decision by the SSO.

Chapter 5—Source Evaluation Board Report and Presentation

500 General

This Chapter describes the requirements for the written report and oral presentation to the SSO.

501 Responsibilities and Procedures

1. The SEB shall prepare a written report of its findings, signed by the Chairperson and all voting members of the SEB. It shall present its written report and make an accompanying oral presentation to the SSO. Guidelines for the written report and the oral presentation are set forth in Appendix C.

2. SEB Preliminary Presentation (Dry Run)

a. When the Administrator is the SSO, a preliminary presentation should be made to the Field Installation Director and to the Official-in-Charge of the cognizant Headquarters Program Office. When the Official-in-Charge of the cognizant Headquarters Program Office is the SSO, a preliminary presentation should be made to the Field Installation Director and the cognizant Headquarters Deputy Program/Staff Associate Administrator or the official responsible for the specific project. The dry run presentation is the same presentation prepared for the SSO. Attendance at the dry run shall be restricted to those personnel who are involved in the selection process or who have a valid need-to-know. For Headquarters dry runs, an attendance list will be issued by the SEB coordinator in the Office of Procurement (Code HS). Admittance to the dry run will be restricted to those individuals whose names appear on the attendance list. However changes proposed 24 hours before the presentation will be considered. Persons not on the list will not be admitted without the prior authorization of the SEB coordinator. For field installation dry runs, the attendance list will be prepared by a designee of the Procurement Officer.

b. The following personnel or designees should attend the Headquarters dry run presentation:

(1) Cognizant program/staff officials.

(2) Official-in-Charge of the cognizant Headquarters Program Office in those cases when the Administrator serves as the SSO.

(3) NASA Comptroller.

(4) Assistant Administrator for Procurement and/or Deputy Assistant Administrator for Procurement.

(5) General Counsel and/or Associate General Counsel (Contracts).

(6) Associate Administrator for Safety, Reliability, Maintainability, and Quality Assurance, when SRM&QA matters are involved.

(7) Field Installation Director.

(8) Field Installation Chief Counsel.

(9) Selected voting and nonvoting ex officio SEB members (no designees).

(10) Field Installation Procurement Officer.

(11) Headquarters procurement personnel responsible for support to the Headquarters cognizant Program/Staff Office.

(12) Other personnel as approved by the Official-in-Charge of the cognizant Headquarters Program Office and the Office of Procurement (Code HS).

c. The SEB Chairperson or designee is responsible for arranging and coordinating the SEB dry run with the SEB coordinator. The SEB dry run should take place far enough in advance of the presentation to the SSO to allow for changes or revisions to the presentation material, if necessary. The material used during the dry run presentation is considered to be "SEB Sensitive" and should be treated accordingly. Consequently, the SEB Chairperson is responsible for providing a projectionist, who has been SEB cleared, to present the material for both presentations.

d. The dry run presentation, as well as the presentation to the SSO, will ordinarily be made by the SEB Chairperson; however, if another official has been designated to make the final presentation to the SSO, that person shall also make the dry run presentation. The SEB presentation material shall be delivered to the SEB coordinator for control and distribution no later than 7 working days before the scheduled dry run presentation date. The SEB presentation material includes 10 copies of the SEB report and charts.

3. SEB Formal Presentation

a. The SEB shall present its evaluation findings to the SSO as the basis for a sound selection decision. This formal presentation should be attended by the same personnel or designees in attendance at the dry run, with the exception of the inclusion of the SSO at the formal presentation. Continuity of attendees assures a more efficient formal presentation in addition to limiting access to SEB sensitive data.

b. The cognizant procurement analyst in the Procurement Operations Division (Code HS) will function as the SEB coordinator and will perform coordination functions for the formal presentation when the Administrator or the Official-in-Charge of the cognizant Headquarters Program Office serves as the SSO. These functions include arranging the time and place of the presentation; assuring, with the concurrence of the appropriate personnel in the Office of the Administrator, proper attendance; and distributing SEB reports and graphic material.

4. The designated individuals to whom the SEB presentation(s) (dry run and final) are made will be responsible for ensuring that—

a. The requirements of this handbook and all applicable agency policies have been complied with in the solicitation and evaluation processes;

b. The written report and presentation accurately convey SEB activities and findings;

c. The oral presentation is arranged and conducted in a professional manner; it is complete and informative; and it can be concisely presented within the time allocated by the SSO; and

d. No changes (1) to established evaluation factors, subfactors, elements, weights, or scoring systems or (2) in the substance of the SEB's findings shall be made. They may, however, direct the SEB to reconvene to rectify procedural omissions, irregularities or inconsistencies, substantiate its findings, or revise the organization of the written report and/or the method of presentation.

5. All copies of the SEB reports and presentation material contain sensitive business information in addition to "SEB Sensitive" data and shall be adequately safeguarded throughout the source selection process. Physical safeguarding of sensitive data includes, but is not limited to—

a. Controlling the number of copies of proposals and SEB reports;

b. Restricting access to SEB work areas;

c. Securing SEB material under locked conditions or in vaults;

d. Minimizing SEB presentations other than the dry run and formal presentations; and

e. Limiting attendees at SEB presentations.

Chapter 6—Source Selection

600 General

This Chapter provides guidelines relating to the source selection decision, notice and debriefing for unsuccessful offerors, source selection statement, and multiple selection decisions.

601 Source Selection Decision

1. The SSO shall use the evaluation factors, subfactors, and elements set forth in the solicitation to make the source selection decision. The SSO shall consider the SEB findings and the advice provided by cognizant line and staff management at the conclusion of the SEB presentation in determining which of the proposals submitted in response to the solicitation would prove most advantageous to the Government, all factors considered.

2. In accordance with NASA policy and FAR 15.613, upon source selection by the SSO, the contracting officer will proceed with negotiations leading to award of contract(s).

602 Notice and Debriefing for Unsuccessful Offerors

1. a. When a proposal is no longer to be considered for contract award, the offeror will be promptly notified by the contracting officer, in writing, together, with a general, brief explanation of the major reasons in accordance with FAR 15.1001 and NFS 1815.613–71(b)(7). There are, generally, five points in the SEB process when it may be determined that a proposal is no longer to be considered for contract award:

(1) After determination that stated qualification standards, if any, have not been satisfactorily met.

(2) After identification of an unacceptable proposal in accordance with subparagraph 406.5 of this handbook.

(3) After determination of the competitive range resulting from the initial evaluation of proposals.

(4) After written and/or oral discussions resulting in a determination that a proposal does not stand a reasonable chance of being selected for award.

(5) After the selection decision by the Source Selection Official.

b. In the first four instances, the notice shall state that a revision of the proposal will not be considered. Post-selection notices shall be issued in accordance with FAR 15.1001(c) and 15.1002.

2. If any offeror requests a debriefing in writing, the offeror shall be formally debriefed and furnished the basis for the selection decision after the final source selection decision by the SSO. This debriefing should normally take place prior to contract award and be conducted in accordance with NMI 5103.1, "Debriefing of Unsuccessful Companies in Competitive Negotiated Procurements." If the situation will not permit delaying the award in order to debrief unsuccessful offerors, the debriefing may be conducted after award.

603 Source Selection Statement

1. When the final source selection decision has been made by the SSO, a Source Selection Statement shall be prepared for the SSO's signature in a manner releasable to the competing offerors and the general public, if requested. When the Administrator or an Official-in-Charge of a Headquarters Program Office is the SSO, the Statement will be prepared by the Office of General Counsel. Source Selection Statements prepared at the field installation should be drafted by the Field Installation Chief Counsel or designee.

2. Source Selection Statements must describe the procurement; the SEB evaluation procedures; the substance of the Mission Suitability evaluation; evaluation of the Cost factor, Relevant Experience and Past Performance factor, and Other Considerations factor involved in reaching the selection decision. There should be coverage of unacceptable proposals, the competitive range determination, late proposals, or any other pertinent considerations applicable to the specific decision. It must be stressed that nothing can substitute for the use of good judgment. The Source Selection Statement must be self-sufficient and must reveal sound rationale for the selection clearly and succinctly, without revealing the scores involved, the proposed prices, or any other confidential business information.

3. Source Selection Statements shall be signed as soon as practicable after the final selection is made. The SSO may desire to have one or more key officials who participated in the selection decision concur on the Source Selection Statement prior to final signature.

4. As indicated in subparagraph 1, Source Selection Statements generally may be released to competing offerors and the general public; however, it is anticipated that the Statement will not always be available in final form or signed by the Source Selection Official at the time of debriefing of unsuccessful offerors. A draft of the decision portion of the Statement that has been reviewed by the SSO or a concurring official should be available to the designated Debriefing Official for guidance at the debriefing. In order to avoid any misunderstanding, the Source Selection Statement rationale contained in the draft Statement should have the approval of the SSO or a concurring official prior to any debriefing(s). This will enable NASA to demonstrate, for the record, that the SSO's selection rationale was not modified substantially (editorial changes can be made) as a result of the debriefings. If requested by an offeror a copy of the final Source Selection Statement will be furnished to the offeror when it is signed by the SSO, subject to the provisions of subparagraph 5.

5. a. Under some situations, multiple selections are made for the purpose of permitting a design or other competition to continue until a final selection is made for a single contractor to undertake full-scale development. Stating the strengths and weaknesses in the Source Selection Statement in these cases may result in the premature disclosure of innovative concepts, designs, and approaches. Release of these Selection Statements to competing offerors or the general public prior to final selection of concept(s) or contractor(s) for full-scale development could compromise the integrity of the competition by making possible a transfusion of ideas which could also inhibit offerors during the early phase from offering their best and most promising ideas for meeting the mission need.

b. Accordingly, unless prior approval is obtained through the Headquarters Procurement Operations Division (Code HS) with the concurrence of the Office of General Counsel, Source Selection Statements for the selection of alternative system design concepts subject to NMI 7100.14, "Major System Acquisitions," are not to be released to competing offerors or the general public, if requested, prior to the release of the Source Selection Statement for full-scale development.

c. A similar problem may occur in other procurements where competition continues but is not covered under NMI 7100.14, "Major System Acquisitions." When possible, care should be taken to set forth the strengths and weaknesses and other information in a manner that will avoid this problem. However, if this is not feasible, the Statement should not be released except in accordance with the procedures of the Freedom of Information Act, 5 U.S.C. 552.

604 Multiple Selection Decisions

1. While SEB procedures contemplate that the SSO will be in a position to select a single source for final contract negotiations subsequent to the SEB presentation, a variety of considerations may lead the SSO to direct that contract negotiations be conducted with two or more offerors. Such negotiations are to result in complete contract documents signed by the offerors which may be accepted by the agency upon final selection of the successful offeror by the SSO.

2. The SEB shall consult with the SSO, the contracting officer, and the negotiating team regarding negotiation positions, objectives, and information to be obtained during negotiations to assist the SEB in making its final evaluation and report after the negotiations. The objectives of negotiations are essentially the same as those where a single offeror has been selected for final contract negotiation and award; each offeror's correctable weaknesses should be pointed out and corrected during negotiations, using whatever technical and other information is known and which the Government has the right to use. Similarly, negotiations should be conducted to result in a fair and reasonable cost or price. Particular attention shall be given to any instructions which the SSO may have given when he/she directed the multiple contract negotiations.

3. The final contract negotiation process differs from the written and oral discussions previously held with offerors in the competitive range. Discussions have the specific function of obtaining information for evaluation and selection purposes, while the final contract negotiations have the additional function of presenting that information in contractually binding form. For this reason, it is essential that each offeror be brought to the most favorable terms that the negotiation process can produce, including technical and scientific approaches, management arrangements, and estimated costs (or fixed prices where applicable). The prohibition against auction techniques in FAR 15.610(d)(3) is equally applicable to these negotiations.

4. Upon completion of the negotiations and agreement on contract terms, the SEB shall conduct a final evaluation, focusing on a comparative analysis of the contracts negotiated, their relative strengths and remaining weaknesses, their estimated costs and fee(s)/prices and probable costs, and any other factors that might influence the selection. The evaluation must build on the SEB's earlier report and presentation to the SSO which resulted in the decision to have multiple contract negotiations conducted. The evaluation is to determine the effects, if any, of the contract negotiations on the SEB's earlier final Mission Suitability scores as well as on evaluation of Cost, Relevant Experience and Past Performance, and Other Considerations; however, an arithmetic rescoring is not to be accomplished. A summary of the results of the evaluation shall be prepared for presentation to the SSO including any changes in the SEB's assessment of each proposal. The revisions may be expressed in a narrative analysis including an appropriate adjectival rating.

5. a. Upon completing its evaluation of the results of contract negotiations, the SEB shall report its findings to the SSO. This is to be accomplished by oral presentation and supplemental written report. When the Administrator is serving as the SSO, this should be preceded by preliminary presentations to the Field Installation Director and to the Official-in-Charge of the cognizant Headquarters Program Office.

b. The report and presentation shall include the following:

(1) A summary review of the previous report and presentation.

(2) A brief discussion of significant weaknesses and strengths of the companies involved, as reported and presented in the previous report and presentation, with emphasis on key dis-criminators, if any.

(3) A discussion of how any instructions given by the Source Selection Official were carried out.

(4) The results of the negotiation, and the impact, if any, on the SEB's findings and conclusions in the previous report, including Mission Suitability, Cost, Relevant Experience and Past Performance, and Other Considerations, as appropriate.

(5) Discussions of any matters or areas of substance that arose during the negotiations and that were not present in the proposals or the earlier oral and/or written discussions or BAFO's.

6. The contracting officer should be present and should participate, as appropriate, in the presentation to the SSO. The contracting officer or designee will bring to the presentation copies of the contracts signed by the offerors.

Appendix A to Appendix I of 1870.303—Sample Letter of Designation

TO:
FROM:
SUBJECT: Source Evaluation Board (SEB) for _____

Pursuant to Chapter 2 of the NASA Source Evaluation Board Handbook (NHB 5103.6), I hereby designate the following individuals to serve as members of the SEB for the purpose of evaluating proposals received in response to the solicitation for _____:

Chairperson:

Name of individual, functional title, and organizational assignment.

Other Voting Members:

Names of individuals, functional titles, and organizational assignments.

SEB Recorder:

Name, functional title, and organizational assignment.

Nonvoting Ex Officio Members:

Name, functional title, and organizational assignment.

The SEB will conduct its business in strict accordance with the provisions of the SEB handbook. The SEB Chairperson is responsible for determining that each SEB member (both voting and nonvoting) is fully conversant with the instructions contained in the handbook. SEB duties will take precedence over other regular duties of the SEB members.

Attention of the SEB Chairperson and each SEB member is particularly directed to Chapter 2 of the SEB handbook which describes the roles of key participants in the SEB process, including cognizant line and staff management, the SEB, and the Source Selection Official (SSO). The importance of the SEB function to agency programs necessitates continual management involvement throughout the evaluation and selection process.

It is emphasized that the SEB report and presentation are the principal tools available to the SSO to perform a comparative analysis for making the final source selection decision and must be presented in sufficient depth to permit the intelligent weighing of alternatives. All proposals will be evaluated and reported in accordance with the SEB handbook. The SEB's written findings will give no consideration to elements which are extraneous to the objectives of this procurement.

Attention of the SEB Chairperson and the SEB is further directed to FAR 15.612(e) and Chapter 2 of the SEB handbook which prohibit the disclosure of information to anyone who is not also participating in the same evaluation proceedings. After receipt of proposals, all information contained in the proposals submitted for evaluation will be protected and will be made available only to the members (voting and nonvoting) of the SEB and to properly designated committees and panels on a need-to-know basis. The right to information on a need-to-know basis does not extend to the normal chain of supervision of any member of the SEB or to any individual having technical responsibility for the effort being evaluated except as specifically approved by the SEB Chairperson on a case-by-case basis. Individuals so designated by the SEB Chairperson will be notified, in writing, of the privileged character of proposal information.

Signature of Designating Date Official

Date

Appendix B to Appendix I of 1870.303 Individual Certificate for Source Evaluation Board Participants

1. I, the undersigned, a participant in the Source Evaluation Board (SEB) proceedings for the competition of the _____ contract, certify that I will not discuss or reveal any information concerning these SEB proceedings to anyone who is not also participating in the same SEB proceedings, and then only to the extent that such information is required in connection with such proceedings on a need-to-know basis.

2. I further agree that at any time I discover that I have an interest in, or connection with, a company submitting a proposal for evaluation by the Board or advisory committee on which I serve, I shall promptly report, in writing, the fact of my interest or connection, and the nature of it, to the person who has appointed me to the Board or advisory committee, through the SEB Chairperson. I recognize that a reportable interest or connection includes the following:

a. Ownership of a company's securities by myself or my spouse.

b. A close family relationship to an official of a company submitting a proposal or participating as a subcontractor.

c. Any other interest in or connection with a company which might tend to subject NASA to criticism on the basis that such interest or connection would impair my objectivity in participating on the Board or advisory committee of which I am a member.

3. I further certify that I have read and understand NHB 1900.1, "Standards of Conduct for NASA Employees."

4. In addition, I fully realize that any breach by me of my obligation to safeguard and not disclose to unauthorized persons any information made available to me concerning the evaluation may result in appropriate disciplinary action, provided for by law or regulation, being taken against me by duly constituted authority.

Signature Date

Date

Appendix C to Appendix I of 1870.303—Guidelines for the SEB Report and Presentation to the Source Selection Official

I. Introduction

A. In preparing the SEB report and presentation, emphasis should be placed on substance. This Appendix C provides guidance on content and format of the SEB report and the oral presentation to the SSO. This guidance is designed to be appropriate for most procurements. If a specific procurement has peculiarities which cause the proposed format to be impractical, the SEB Chairperson may alter it in any manner that does not detract from the substance.

B. The findings of the SEB are presented in two parts, the written SEB report and an oral presentation. This Appendix sets forth the minimum requirements. The detail and use of additional schedules or other information are, of course, governed by the nature and scope of the subject being presented.

C. The SEB shall approve the written report and the graphic material to be used for the accompanying oral presentation. Viewgraph presentations are appropriate where the nature of the presentation permits. Copies of visual aids to be utilized for the oral presentation should be separately bound in a folder identified as "Briefing Charts" to accompany the written report.

D. A "Glossary of Terms" should be included in the SEB Report when appropriate to define acronyms or abbreviations.

E. Copies of the SEB report and related briefing charts shall be serially numbered and controlled by the Recorder and may be distributed or disclosed only to persons having responsibilities relating to the specific source evaluation proceeding involved, except as may otherwise be approved by the Administrator or designee.

II. Written SEB Report

A. Description of the Requirement

1. *Procurement Description.* Provide a narrative description of the technical requirement being procured together with its scientific objectives. Explain any follow-on effort which has been planned or for which program approval will be requested. Describe the relationship with other efforts in process or planned. Explain any particular technical complexities which had an important effect on the solicitation or the evaluation of proposals. Include a table of contents in the report.

2. *Funding.* State the funding applicable to the effort including:

a. The Government estimate for the procurement, if feasible.

b. The estimated amount to be obligated under the basic contract.

c. The estimated amount to be obligated under each priced option.

d. The estimated cost of any follow-on effort to be procured under separate contract, e.g., subsequent phases.

3. *Procurement Approach.* a. State the date that the applicable procurement plan was approved.

b. Discuss any special procurement considerations which applied to the

procurement being evaluated, e.g., the use of phased procurements.

c. Explain how the use of the type of contract approved in the procurement plan will advance NASA objectives; give reasons and rationale for the selection of contract type, including the applicability or inapplicability of the various incentive concepts (award fee, cost, performance, schedule, and multiple).

B. SEB Roster and Chronology of Events

1. *SEB Roster.* Include the SEB designation letter and any changes to it. As a supplement, provide the names, functional titles, and organizational assignments of the chairpersons of any committees and panels used by the SEB.

2. *Chronology.* Provide a chronology of major events connected with the source evaluation, such as:

a. The date(s) the source list and the Statement of Work were received for consideration by the SEB.

b. The dates the evaluation factors, subfactors, elements, and their definitions for incorporation into the solicitation, the relative weights of factors and the qualification standards, if applicable, were approved.

c. The date(s) the SEB with the assistance of the cognizant procurement and program or project offices approved the source list and the RFP.

d. The date the RFP was issued.

e. The date and place of any preproposal conference.

f. The date(s) of any RFP amendment(s).

g. The due date for receipt of proposals.

h. The date(s) and disposition of any late proposal(s) received.

i. The date the SEB was convened for proposal evaluation.

j. The date of the competitive range determination.

k. The dates and places of discussions with each offeror in the competitive range.

l. The date the request for BAFO's was issued.

m. The common cutoff date for conclusion of discussions and receipt of BAFO's.

n. The date the SEB completed its findings.

o. The date of the presentation to the SSO.

3. *Sources.* Provide a composite list, in alphabetical order, of all sources solicited and sources submitting proposals by company name and address. The list should be footnoted to explain any code used. Include a list of team members and subcontractors for those companies that submitted proposals.

C. Evaluation and SEB Findings

1. *Factors, Subfactors, Elements, and Weights*—a. *Qualification Standards.* State any specific qualification standards included in the RFP, and explain why each was necessary.

b. *Evaluation Factors, Subfactors, and Elements.* State the evaluation factors used in the evaluation and their relative order of importance. State the Mission Suitability subfactors and elements, if any, their definitions, and the weights assigned to each. Explain the rationale for the proportionate weights assigned to each subfactor and element, if any, set forth relevant excerpts from the RFP which describe the evaluation factors, subfactors, and elements, if any, and their relative importance.

2. *Evaluation Process*—a. Discuss assignments made to committees and panels. Identify the factors, subfactors, and/or elements assigned for review and the rationale for assignment. Include any individual committee report necessary to understand the SEB results.

b. Discuss the adjective rating and numerical scoring methods and techniques used by the SEB.

c. Discuss the procedure used for the determination of the competitive range.

d. Describe the steps taken in verifying the offeror's relevant experience, past performance, and current capabilities, e.g., plant visits, customer checks, and audit reports.

e. Provide a summary of written questions common to all offerors and specific written questions addressed to particular offerors.

f. State the common cutoff date for conclusion of discussions and receipt of BAFO's.

g. Include an exposition of the SEB proceedings that is sufficient to verify proper procedures were followed and sufficient to bring out any procedural irregularities that might exist. Procedural problem areas, if any, are to be covered specifically.

h. Include copies of all letters addressed to or from the SEB regarding the SEB proceedings.

3. *Initial Evaluation Findings*—a. *Summary Schedules.* Provide the following schedules:

(1) A single schedule listing all proposals in descending order of scores received for Mission Suitability stating the assigned score for each subfactor and weighted element. Each proposal should also be classified with the appropriate adjectival rating which indicates the SEB's composite appraisal of the Mission Suitability evaluation. In addition, the appropriate summary or adjectival rating for Cost, Relevant Experience and Past Performance, and Other Considerations should be included as a part of this schedule.

(2) Provide summary charts of what the SEB considers to be the significant discriminators.

b. *Statement of Findings.* (1) Discuss briefly each proposal determined to be unacceptable and the rationale for the decision.

(2) Discuss each acceptable proposal in descending order of Mission Suitability scores. Include each offeror's estimated cost or price providing a breakdown by element (labor, material, subcontracts, overhead, G&A, and fee); provide the SEB's analysis and evaluation of the adequacy (for all offerors, including those not within the competitive range), realism (for all offerors determined to be within the competitive range), and most probable cost (for at a minimum, each proposal within the competitive range) of each respective cost proposal. Discuss the SEB's evaluation of Relevant Experience and Past Performance and Other Considerations. Include a discussion of the following considerations:

(a) Evaluation of the proposal as related to each factor, subfactor and element and to the approved evaluation plan in sufficient detail to permit examination of the findings of each evaluation phase and to trace discriminators to the final results. Where changes in rating or scoring have occurred during the process, a logical visible thread of the rationale for such changes in rating or scoring should be provided.

(b) Provide a discussion of the major and minor strengths and weaknesses of the proposal with an estimate of the potential for correction of weaknesses identified. Clearly list the strengths and weaknesses and identify them as major or minor, in addition to the narrative, to provide clear traceability throughout the evaluation process.

(c) Provide an analysis of key personnel.

(d) Discuss significant changes in the proposal, including the elimination of any correctable weaknesses, that would have to be negotiated after selection with a discussion of the negotiation cost objectives associated with those changes.

(e) Discuss the evaluation of the Cost factor, including the effects of the proposed cost on the technical and management effort.

(f) Provide a best estimate of the probable cost of performance, if selected, together with an indication of the confidence in the SEB's estimate.

(g) Provide any information or analysis that would be helpful to the SSO in determining the impact of cost in making a selection decision.

(h) Provide information to reflect the offeror's financial capability to perform the contract effort. A listing of possible information includes:

(i) Complete name and location of the organizational element proposing the effort.

(ii) Complete name and location of the parent corporation, if any.

(iii) Place or places of performance of the proposed effort.

(iv) Recent history of sales (of the particular division or entity involved), by customer, including industry and Government customers.

(v) Sales projections, by customer, for the period involved in the procurement.

(vi) Recent history of earnings of the division or entity involved in the procurement, if available.

(i) Present a brief analysis of the fee arrangement including any incentive arrangements proposed, e.g., how the rewards would be earned or lost, the benefit to NASA, and any changes to be sought in negotiations (target minimum or maximum fee levels, sharing formula, or ceiling) which will improve the coverage of the incentive toward the attainment of the NASA objectives. Indicate whether, and for what reason, any offeror took exception to or suggested an alternative to the arrangement contemplated in the RFP. Provide an analysis of the importance the SEB attaches to such an exception or alternative.

(j) Provide detailed information on Relevant Experience and Past Performance. Provide information on the offeror's response to the RFP requirements for data in this category, the evaluation of the data by the SEB, the sources or references contacted, etc.; summarize conclusions and highlight significant accomplishments or failures.

Provide the rationale for the adjectival rating of the SEB.

(k) Discuss the evaluation of Other Considerations and the rationale for the adjectival assessment of each subfactor under this factor.

4. *Competitive Range Determination.* Discuss the competitive range determination and the rationale for the decision, summarizing the evaluation findings that provided the basis for the decision.

5. *Written and/or Oral Discussions.* a. Summarize the content of the written and/or oral discussions, the personnel included in the proposal who were invited to participate, and the list of attendees, including both Government and offeror personnel.

b. Discuss the time allotted for receipt of BAFO's and each proposal revision received.

6. *Final Evaluation Findings.* Summarize the BAFO revisions and provide a discussion of the evaluation of the revised proposals and any resultant changes in rating or scoring. Provide the rationale for any changes. Clearly identify from the previous list of major and minor strengths and weaknesses any revisions, additions, and/or deletions to provide clear traceability throughout the evaluation process.

7. *Oral Presentation.* a. The SEB Chairperson is normally responsible for conducting the presentation to the SSO. It is the Chairperson's function to convey concisely and accurately the results of the SEB deliberations to permit an informed and objective selection of the best source for the particular procurement.

b. As a general rule, the SEB Chairperson's prepared oral presentation should not exceed an hour to be followed by a question and answer period. Copies of the viewgraphs to supplement the SEB report forwarded to the SSO are to be available to those attending the oral presentation. Relevant backup material is to also be available at the presentation.

c. The main thrust of the oral presentation is to focus upon issues and problems identified by the SEB's findings and to highlight the reasonable alternative choices available to the SSO. This presentation must include an explanation of any applicable qualification standards; evaluation factors, subfactors, and elements; the major strengths and weaknesses of the offerors; the Government estimate, if applicable; the offerors' proposed cost/price; the probable cost; the proposed fee arrangements; the results of written and/or oral discussions; the BAFO's; the final evaluation findings; and the final adjectival ratings and scores. These aspects of the report are central to its meaning, and must be reviewed in the oral presentation despite the redundancy to the written report.

d. The presentation shall clearly indicate any discriminators. This requires the presentation of scores in enough detail to provide an adequate basis for the SSO to assess the validity of the judgments made by the SEB. This detail shall extend at least to all levels of subfactors and numerically scored elements.

e. A suggested progression of charts follows. Brevity and understandability are key. Charts should highlight the significant aspects of the comprehensive written report. They should prompt discussion. Sample charts are not included in this handbook since these tend to lead toward unnecessary or even inappropriate standardization. As appropriate, the Assistant Administrator for Procurement will, from time to time, disseminate sample charts illustrative of approaches or techniques of exceptional merit and usefulness.

(1) *Identification of the Procurement.* This chart should identify the installation, the nature of the services or hardware to be procured, some quantitative measure including the Government estimate for the procurement, and the kind of contractual arrangement planned. Detailed objectives of the procurement should be avoided.

(2) *Background.* This item is useful to identify any earlier phases of a phased procurement or, as in the case of continuing support services, to identify the incumbent and any consolidations or proposed changes from the existing structure.

(3) *Evaluation Factors, Subfactors, and Elements.* An explanation of any qualification standards and the evaluation factors, subfactors, and, if utilized, elements, along with assigned weights, is an important part of any presentation of SEB findings. The relative order of importance of the evaluation factors and, within Mission Suitability, the numerical weights of the subfactors and, if utilized, numerically scored elements should also be presented. The adjectival scoring system utilized as an aid in evaluation of Mission Suitability should be presented.

(4) *Sources.* This chart will indicate the number of potential offerors solicited, the number of potential offerors expressing interest, e.g., attendance at a preproposal conference, and the identification of offerors submitting proposals in response to the solicitation. Small businesses, small disadvantaged businesses, and women-owned businesses can be identified here. In addition, a chart must be included for each offeror indicating the Chief Executive Officer, the location of the offeror, some representative products, and similar information for each major subcontractor proposed.

(5) *Summary of Findings.* The summary chart shall, as simply as possible, list the initial Mission Suitability ratings and scores, the final Mission Suitability ratings and scores, the offerors' proposed costs/prices, and the SEB's assessment of the probable costs. In addition, any clear discriminator, problem, or issue which could have an effect upon the selection should be introduced at this time. The determination of competitive range must be addressed here.

(6) *Strengths and Weaknesses of Offerors.* These charts can be among the most valuable presented, and its preparation could initially assist the SEB Chairperson in distilling the essence of the SEB's findings. Certain guidelines should be followed in the preparation of these charts:

(a) Only the major strengths and weaknesses of individual offerors should be selected for presentation. The significance of strengths and weaknesses is lost when exhibited in long lists without distinction as to importance.

(b) The strengths and weaknesses should be directly related to the evaluation factors, subfactors, and elements.

(c) Strengths and weaknesses should be as clear as charting techniques and limitations will permit. Care should be taken to avoid an analysis of strengths and weaknesses based totally on numerical scores. This practice limits the SEB and the SSO in their evaluation and selection. For example, not all major weaknesses could be considered of equal value—some are correctable during negotiations and some are not.

(d) It is important to indicate the significance of major weaknesses. Can they be corrected during negotiations? If so, at what cost?

(e) The results and impact, if any, of written and/or oral discussions and BAFO's on ratings and scores must be clearly indicated.

(f) Key personnel charts must be included in the presentation, providing a list of the key personnel for each offeror together with, as appropriate, their educational background, general background, and any pertinent details applicable to this procurement.

(7) *Final Mission Suitability Ratings and Scores.* This chart is to summarize, as simply as the material will permit, the evaluation subfactors and elements, the maximum points achievable, and the scores of the offerors in the competitive range.

(8) *Final Cost Evaluation.* This chart summarizes probable costs associated with each offeror including proposed fee arrangements. The data should be as accurate as possible; therefore, SEB adjustments to achieve comparability should be shown. Further, the presentation of this chart should include the measure of confidence the SEB has in the costs of the individual offerors, noting the reasons for low or high confidence.

(9) *Relevant Experience and Past Performance.* This chart should reflect the summary conclusions. This information is to be supported and amplified by specific case data with particular emphasis on exemplary or inferior performance and its potential bearing on the instant procurement.

(10) *Other Considerations.* This chart lists and discusses the Other Considerations addressed in the RFP, providing an appropriate adjectival rating for each of the Other Considerations subfactors.

(11) *Special Interest.* This chart should include only information of special interest to the SSO that has not been discussed elsewhere, e.g., procedural errors or other matters that could have an effect on the selection decision.

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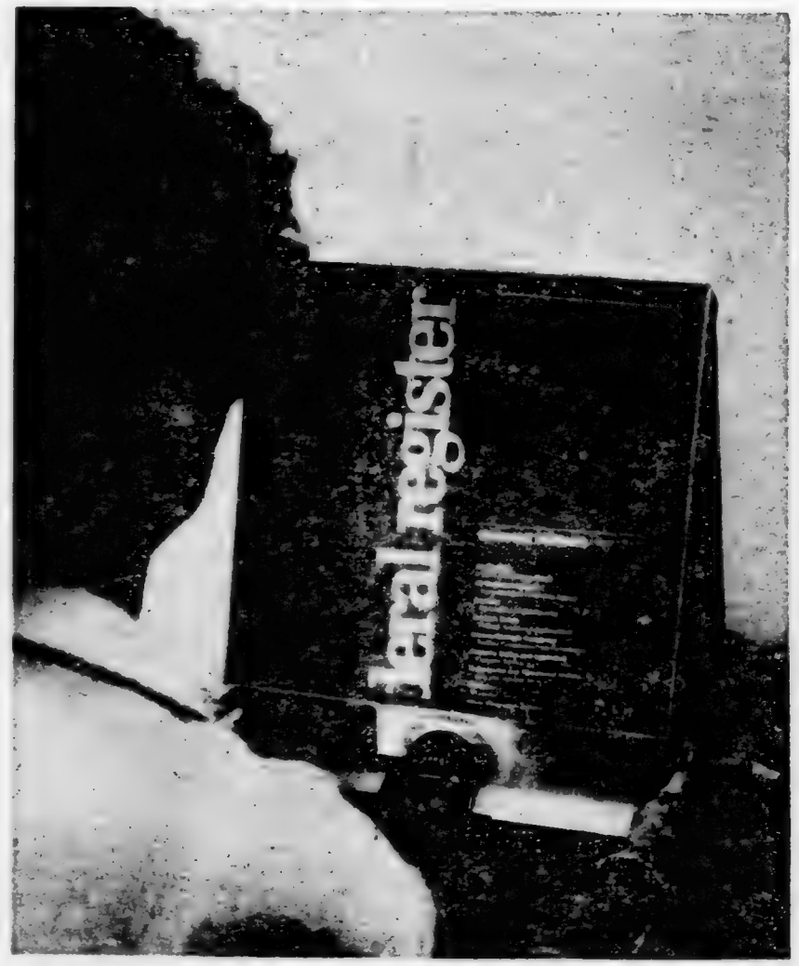

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Presidential Documents

Title 3—

The President

Proclamation 5995 of June 30, 1989

National Literacy Day, 1989

By the President of the United States of America

A Proclamation

Henry Peter Brougham once observed, "Education makes people easy to lead, but difficult to drive; easy to govern, but impossible to enslave." Literacy, as the foundation of education, is essential to a truly free people.

The ability to read and comprehend the written word and to express our own ideas effectively is vital to understanding and participating in democratic government. Every American should be able to read the Constitution and other great works that have shaped our life as a Nation; each of us should also be able to convey informed opinions about issues and events that affect our families and communities.

Literacy means more than the ability to read and write, however; it is the tool that enables us to learn from the past and prepare for the future; it is the vital characteristic of a work force that has the skills our jobs require and the ability to compete in a rapidly advancing global economy; it is also the rich legacy of families that pass on the love of learning from generation to generation. Literacy is not simply a basic skill, but a key that opens the door to the realm of ideas and enables one to participate more fully in the world around us.

Tragically, however, millions of Americans suffer from illiteracy. These individuals do not have the basic skills they need to function effectively in school, in the workplace, and in other daily activities. The impact of illiteracy is evident in our prisons and juvenile facilities, in unemployment and welfare lines, as well as among school dropouts and students at risk because their families cannot support their efforts to learn. We also witness the effects of illiteracy on businesses that have difficulty finding skilled and productive workers.

America is confronting the need for greater literacy. Innovative programs have been launched not only by Federal, State, and local government, but also by hundreds of businesses and corporations, the media, religious groups, and community organizations. Hundreds of thousands of professional educators and concerned volunteers are joining together nationwide to help their neighbors learn to read.

To recognize these ongoing efforts and to encourage even greater commitment to the fight against illiteracy, the Congress, by Senate Joint Resolution 96, has designated July 2, 1989, as "National Literacy Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim July 2, 1989, as National Literacy Day. I call upon the people of the United States, government officials, educators, and volunteers to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of June, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.

George Bush

[FR Doc. 89-16014
Filed 7-5-89; 1:11 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE
Federal Crop Insurance Corporation
7 CFR Part 400

[Amdt. No. 2; Doc. No. 6923S]

General Administrative Regulations—Standards for Approval; Standard Reinsurance Agreement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Administrative Regulations—Standards for Approval; Standard Reinsurance Agreement to change the requirements for participation in the Standard Reinsurance Agreement contained in 7 CFR 400.152 from the conjunctive to the disjunctive. The intent of this rule is to correct continuity of criteria in this subsection.

EFFECTIVE DATE: June 30, 1989.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as July 1, 1991.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Monday, May 11, 1987, FCIC published a Final Rule in the **Federal Register** at 52 FR 17540, issuing a new Subpart L in Chapter IV of Title 7 of the Code of Federal Regulations (CFR) containing the Standards for Approval; Reinsurance Agreement (7 CFR Part 400, Subpart L), effective for the 1988 contract year, beginning July 1, 1988.

7 CFR 400.152, titled "Qualifying with less than eight IRIS ratios in the usual range" (appearing at 52 FR 17545), subsections (b) and (c) are stated in the conjunctive. The IRIS ratios were developed by the National Association of Insurance Commissioners (NAIC). Their primary use is to assist State Insurance Departments to oversee the financial condition of insurers. FCIC uses them to evaluate the financial strength of applicants for reinsurance.

An insurer with less than eight of the IRIS ratios in the usual range may qualify for a reinsurance agreement if any *one* of the criteria itemized in 7 CFR 400.152 is met. The word "and" at the end of § 400.152(b) has the effect of combining subsections (b) and (c). Subsections (b) and (c) are separate criteria. For this reason, FCIC herewith changes the word "and" at the end of 7 CFR 400.152(b) to the word "or."

On Monday, August 22, 1988, FCIC published a notice of proposed rulemaking in the **Federal Register** at 53 FR 31874 proposing this change. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, FCIC herewith adopts the rule published at 53 FR 31874 as a final rule.

List of Subjects in 7 CFR Part 400

General Administrative Regulations; Standards for Approval; Reinsurance Agreement.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Administrative Regulations; Standards for Approval; Reinsurance Agreement (7 CFR Part 400, Subpart L), as follows:

PART 400—[AMENDED]

Subpart L

1. The authority citation for 7 CFR Part 400, Subpart L, continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

§ 400.152 [Amended]

2. 7 CFR 400.152(b) is amended by removing the word "and" at the end thereof and inserting the word "or.".

Done in Washington, DC, on June 19, 1989.

John Marshall,
Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-15811 Filed 7-5-89; 8:45 am]
BILLING CODE 3410-08-M

Farmers Home Administration

7 CFR Part 1951

Unauthorized Section 504 Grant

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding the servicing action on unauthorized section 504 grants when FmHA will continue with the recipient. This action is being taken

because of the undue hardship it is causing elderly borrowers to repay the unauthorized assistance under the current regulations. The intended effect of this action is to determine the servicing action based on the individual borrower's financial condition.

EFFECTIVE DATE: August 7, 1989.

FOR FURTHER INFORMATION CONTACT: Jean F. Leavitt, Loan Specialist, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, South Agriculture Building, Room 5309, Washington, DC 20250, telephone: (202) 382-1452.

SUPPLEMENTARY INFORMATION: This final rulemaking has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been classified as "nonmajor." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or in the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The SFH program is listed in the Catalog of Federal Domestic Assistance under:

Sec.
10.410 Low Income Housing Loans
10.411 Rural Housing Site Loans
10.417 Very Low-Income Housing Repair Loans and Grants

Intergovernmental Consultation

Catalog Number 10.411 is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. Catalog numbers 10.410 and 10.417 are excluded from Executive Order 12372.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Programs." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-90, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities.

Discussion of Comments

December 1, 1987, Proposed Rule: The proposed rule published in the **Federal Register** (52 FR 45638) on December 1, 1987, provided for a 60-day comment period. No comments were received on these sections. However, further changes have been made in the regulation to clarify when a mortgage must be obtained to secure the unauthorized grant funds.

List of Subjects in 7 CFR Part 1951

Account servicing, Rent subsidies and subsidies.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 continues to read as follows:

Authority: 42 U.S.C. 1480, 7 CFR 2.23, 7 CFR 2.70.

Subpart M—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Single Family Housing

2. Section 1951.612(a)(5) is revised to read as follows:

§ 1951.612 Servicing options in lieu of liquidation or legal action to collect.

* * * * *

(a) * * *

(5) *Section 504 grant.* Form FmHA 1944-3, "Budget and/or Financial Statement," will be completed to determine the recipient's ability to repay all of the unauthorized assistance with the same interest rate and term of a section 504 loan.

(i) If the recipient has financial ability to repay all of the unauthorized assistance, Form FmHA 1940-16 "Promissory Note," will be executed, and if the grant was $2,500 or more, the best mortgage obtainable will be taken to secure the repayment of the unauthorized assistance. The collections, recordkeeping and reporting will be in accordance with § 1951.612(b) of this subpart.

(ii) If the recipient does not have the repayment ability for the unauthorized assistance, a repayment agreement will be executed (see Exhibit G of this subpart, available in any FmHA office), and if the grant was $2,500 or more, the best mortgage obtainable will be taken to secure the repayment of the unauthorized assistance. However, no action will be taken to collect the unauthorized assistance until nonoccupancy by the recipient or transfer of title.

* * * * *

Dated: April 18, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89-15871 Filed 7-5-89; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 141, and 178

[T.D. 89-65]

Customs Regulations Amendments Regarding the Importation of Ethyl Alcohol for Nonbeverage Purposes

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (BATF) has requested that Customs change certain procedures in its regulations concerning the withdrawal of ethyl alcohol from Customs custody and its transfer to the BATF bonded premises of a distilled spirits plant for nonbeverage purposes. These changes conform that portion of the Customs Regulations concerning such transfer procedures to existing BATF transfer procedures. The changes will generally delete obsolete procedures regarding the transfer of nonbeverage ethyl alcohol and references to obsolete forms from the Customs Regulations and will incorporate, in the Customs Regulations, references to the BATF Regulations which contain the details regarding the BATF transfer procedures. The changes will also conform the declaration filed in connection with the entry of ethyl alcohol for other than beverage purposes to the relative statutory requirements.

EFFECTIVE DATE: August 7, 1989.

FOR FURTHER INFORMATION CONTACT:

Operational Matters: Phyllis Henry, Office of Trade Operations, 202-566-7877. Jon Holl, Office of Inspection and Control, 202-566-8151.

Audit Matters: Matthew Krimski, Regulatory Audit Division, 202-566-2812.

Legal Matters: William Rosoff, Entry Rulings Branch, 202-566-5856.

SUPPLEMENTARY INFORMATION:

Background

The procedures for the withdrawal of certain imported ethyl alcohol from Customs custody and its transfer to the BATF bonded premises of a distilled spirits plant, for nonbeverage purposes, without the payment of internal revenue tax pursuant to section 5232, I.R. Code of 1954 (26 U.S.C. 5232) are contained in § 10.99, Customs Regulations (19 CFR 10.99). These regulations contain detailed procedural instructions for the tax-free transfer of imported ethyl alcohol of 185 degrees or more of proof, classifiable for duty purposes under item 427.88, Tariff Schedules of the U.S. (19 U.S.C. 1202). The procedures contained therein are no longer current and the forms described are, in many cases, obsolete and unavailable. Difficulty has arisen because Customs officers, relying on the above regulatory authority, have been requiring these obsolete and unavailable forms. In addition thereto, the Internal Revenue Code has been revised since the distilled spirits transfer procedures were originally promulgated. The BATF authority for such transfer procedures is now contained in section 5232, I.R. Code of 1986 (26 U.S.C. 5232). Appropriate changes to the BATF Regulations were published as T.D. ARF-198 in the **Federal Register** of March 1, 1985 (50 FR 8456).

In considering this matter, Customs noted that the major substantive responsibility of imported nonbeverage alcohol as it enters the commerce of the U.S. lies with the BATF. Customs also noted the difficulty of keeping the procedures, which are essentially for BATF purposes, current in the Customs Regulations. We, therefore, concluded that it would be more appropriate for these procedural matters to be in the BATF Regulations (27 CFR Parts 250, 251) as suggested by that Bureau. Interested parties would be better informed as to current procedures.

On November 10, 1988, Customs published a notice in the **Federal Register** (53 FR 45485) proposing that the obsolete procedures regarding the transfer of ethyl alcohol for nonbeverage purposes from Customs custody to BATF custody be deleted from §§ 10.99 and 141.102, Customs Regulations (19 CFR 10.99 and 141.102), and references to the appropriate parts and subparts of the BATF Regulations, which now contain those procedures, be inserted in the Customs Regulations in lieu thereof.

Section 10.99(a), Customs Regulations (19 CFR 10.99(a)), is also being amended to clarify that the importer's declaration to Customs supporting the tax-free transfer of imported ethyl alcohol must note whether the alcohol is to be used for fuel purposes, as well as stating that the alcohol is to be used for nonbeverage purposes. This change is being made pursuant to the Tax Reform Act of 1986 (section 423, Pub. L. 99-514).

The amendments to § 141.102(b), Customs Regulations (19 CFR 141.102(b)), also clarify the fact that the transfer of the nonbeverage ethyl alcohol to a distilled spirits plant from Customs custody is tax free but not duty free.

Since the publication of the aforementioned notice on November 10, 1988, the Harmonized Tariff Schedules of the United States (HTSUS) (19 U.S.C. 1202), which was adopted by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418) enacted on August 23, 1988, and implemented by interim regulations published as T.D. 89-1 in the **Federal Register** of December 21, 1988 (53 FR 51244), became effective on January 1, 1989. The provisions previously contained in General Headnote 11 and item number 427.88, Trariff Schedules of the United States (TSUS), referenced in the existing regulations, are now found in General Note 8 and subheading 2207.10.60, respectively, of the Harmonized Tariff Schedules of the United States (HTSUS). Appropriate technical changes to the Customs Regulations have been herein incorporated.

Comments

One favorable comment was received from the Bureau of Alcohol, Tobacco and Firearms. After further review of the proposal, we have concluded that the procedural changes regarding the transfer of ethyl alcohol for nonbeverage purposes from Customs custody to the BATF bonded premises of a distilled spirits plant should be adopted as proposed.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1515-0160. The estimated annual burden associated with the collection of information in this final rule is 5 minutes per respondent or recordkeeper.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to Director, Information Services Division, U.S. Customs Service, 1301 Constitution Ave. NW., Washington, DC 20229, or to the Office of Management and Budget, Paperwork Reduction Project (1515-0160), Washington, DC 20503.

Drafting Information

The principal author of this document was Arnold L. Sarasky, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 10

Art, Customs duties and inspection, Exports, Fisheries, Imports, Oil imports, Packaging and containers, Petroleum, Tobacco and Wildlife.

19 CFR Part 141

Customs duties and inspection, Explosives, Imports and Lawyers.

19 CFR Part 178

Reporting and recordkeeping requirements, Paperwork requirements, Collection of information.

Amendments to the Regulations

Parts 10, 141 and 178, Customs Regulations (19 CFR Parts 10, 141 and 178), are amended as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The authority citation for Part 10 would continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States (HTSUS)) and 1624.

* * * * *

2. Section 10.99 is revised to read as follows:

§ 10.99 Importation of ethyl alcohol for nonbeverage purposes.

(a) If claim is made by an importer other than the United States or a

governmental agency thereof for the classification of ethyl alcohol of an alcoholic strength by volume of 80 percent volume or higher under subheading 2207.10.60, Harmonized Tariff Schedules of the United States, the importer or his agent shall file in connection with the entry a declaration that the alcohol is to be used for nonbeverage purposes only and whether the alcohol is to be used for fuel purposes. Customs shall release the alcohol for transfer, under internal revenue bond, to a distilled spirits plant upon deposit of estimated duty, if any, and without the payment of the internal revenue tax upon receipt of a transfer record for bulk spirits. In addition, a package gauge record must be submitted to Customs if the alcohol is in packages, as specified in subpart I of Part 251, Bureau of Alcohol, Tobacco and Firearms (BATF) Regulations (27 CFR Part 251, Subpart I). The transfer shall be accomplished in accordance with subpart L of Part 251, Bureau of Alcohol, Tobacco and Firearms Regulations (27 CFR Part 251, Subpart L).

(b) An appropriate BATF permit shall be filed with Customs in connection with the withdrawal of ethyl alcohol from Customs custody by the United States or any governmental agency thereof for its own use for nonbeverage purposes. Such permit shall be filed before release under the entry without the deposit of estimated duties, if any, and internal revenue tax, or before release in accordance with the provisions of § 141.102(d) of this chapter. (See subpart M of Part 251, Bureau of Alcohol, Tobacco and Firearms Regulations (27 CFR Part 251, Subpart M)).

(c) The procedures for the withdrawal free of tax on the entry of ethyl alcohol for nonbeverage purposes from the Virgin Islands are found in subpart O of Part 250, Bureau of Alcohol, Tobacco and Firearms Regulations (27 CFR Part 250, Subpart O).

PART 141—ENTRY OF MERCHANDISE

1. The authority citation for Part 141 would continue to read in part as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624. * * * Subpart G also issued under 19 U.S.C. 1505.

* * * * *

2. Section 141.102(b) is revised to read as follows:

§ 141.102 When deposit of estimated duties, estimated taxes, or both not required.

* * * * *

(b) *Bulk distilled spirits transferred to the bonded premises of a distilled spirits plant.* An importer may transfer distilled spirits in bulk to the bonded premises of a distilled spirits plant, without the payment of tax, under the provisions of section 5232(a), Internal Revenue Code of 1986 (26 U.S.C. 5232(a)), and the regulations of the Bureau of Alcohol, Tobacco and Firearms (27 CFR Part 251).

* * * * *

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by inserting the following in the appropriate numerical sequence according to the section number under the columns indicated.

§ 178.2 Listing of OMB control numbers.

19 CFR section	Description	OMB control no.
*	* * *	*
10.99	Importation of ethyl alcohol for nonbeverage purposes...	1515-0160
*	* * *	*

William von Raab,
Commissioner of Customs.
June 8, 1989.
[FR Doc. 89-15839 Filed 7-5-89; 8:45 am]
BILLING CODE 4820-02-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Placement of 1-[1-(2-thienyl)cyclohexyl]pyrrolidine into Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This final rule is issued by the Administrator of the Drug Enforcement Administration (DEA) to place 1-[1-(2-thienyl)cyclohexyl]pyrrolidine into Schedule I of the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*). This action is based on findings made by the DEA Administrator, after review and evaluation of the relevant data by both DEA and the Assistant Secretary for Health, that 1-[1-(2-thienyl)cyclohexyl]pyrrolidine meets the statutory criteria for inclusion in Schedule I of the CSA. As a result of this final rule, the regulatory controls and criminal sanctions of Schedule I are applicable to the manufacture, distribution, importation, exportation and possession of 1-[1-(2-thienyl)cyclohexyl]pyrrolidine.

EFFECTIVE DATE: July 6, 1989.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION: On March 20, 1989 in a notice of proposed rulemaking published in the **Federal Register** (54 FR 11387), after a review of relevant data, the DEA Administrator proposed to place 1-[1-(2-thienyl)cyclohexyl]pyrrolidine into Schedule I of the CSA pursuant to 21 U.S.C. 811(a). By letter dated February 1, 1989 the DEA Administrator received the scientific and medical evaluation and scheduling recommendation for 1-[1-(2-thienyl)cyclohexyl]pyrrolidine from the Assistant Secretary for Health, delegate of the Secretary of the Department of Health and Human Services. He recommended that 1-[1-(2-thienyl)cyclohexyl]pyrrolidine be placed into Schedule I of the CSA.

The proposed rule provided the opportunity for interested parties to submit comments, objections or requests for a hearing regarding the proposed scheduling of 1-[1-(2-thienyl)cyclohexyl]pyrrolidine. No comments, objections or requests for a hearing were received by DEA.

1-[1-(2-thienyl)cyclohexyl]pyrrolidine, also known as TCPy, is an analog of 1-[1-(2-thienyl)cyclohexyl]piperidine and 1-[1-phenylcyclohexyl) piperidine (PCP), which are in Schedules I and II of the CSA, respectively. TCPy produces pharmacological effects similar to those produced by PCP. The main difference between the two drugs is in the potency for producing various effects; for some effects TCPy is more potent than PCP, while for other effects PCP is more potent than TCPy. As is the case with PCP, TCPy is self-administered by rats and baboons, thus suggesting that TCPy has positive reinforcing effects in these laboratory animals. Many drugs self-administered by laboratory animals are abused by humans.

TCPy has been identified in drug evidence submissions to forensic laboratories. It is produced in clandestine laboratories and sold in the illicit drug market as PCP.

Based upon the investigation and review conducted by DEA and upon the scientific and medical evaluation and on the recommendation of the Assistant Secretary for Health, received in accordance with 21 U.S.C. 811(b), the DEA Administrator, pursuant to the provisions of 21 U.S.C. 811 (a) and (b), finds that:

(1) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine has a high potential for abuse;

(2) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine has no currently accepted medical use in treatment in the United States; and

(3) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine lacks accepted safety for use under medical supervision.

These findings are consistent with the placement of 1-[1-(2-thienyl)cyclohexyl]pyrrolidine into Schedule I of the CSA.

All regulations applicable to Schedule I substances are effective as of July 6, 1989, with respect to 1-[1-(2-thienyl)cyclohexyl]pyrrolidine. Individuals registered with DEA in accordance with Parts 1301 and 1311 of Title 21 of the Code of Federal Regulations and who currently possess 1-[1-(2-thienyl)cyclohexyl]pyrrolidine may continue to do so pending submission of an amended registration application no later than August 7, 1989. The current applicable regulations are as follows:

1. *Registration.* Any person who manufactures, distributes, delivers, imports or exports 1-[1-(2-thienyl)cyclohexyl]pyrrolidine or who engages in research or conducts instructional activities with respect to this substance, or who proposes to engage in such activities, must be registered to conduct such activities in accordance with Parts 1301 and 1311 of Title 21 of the Code of Federal Regulations.

2. *Security.* 1-[1-(2-thienyl)cyclohexyl]pyrrolidine must be manufactured, distributed and stored in accordance with §§ 1301.71–1301.76 of Title 21 of the Code of Federal Regulations.

3. *Labeling and packaging.* All labels and labeling for commercial containers of 1-[1-(2-thienyl)cyclohexyl]pyrrolidine must comply with the requirements of §§ 1302.03–1302.05, 1302.07 and 1302.08 of Title 21 of the Code of Federal Regulations.

4. *Quotas.* All persons required to obtain quotas for 1-[1-(2-thienyl)cyclohexyl]pyrrolidine shall submit applications pursuant to §§ 1303.12 and 1303.22 of Title 21 of the Code of Federal Regulations.

5. *Inventory.* Every registrant required to keep records and who possesses any quantity of 1-[1-(2-thienyl)cyclohexyl]pyrrolidine shall take an inventory pursuant to §§ 1304.11–1304.19 of Title 21 of the Code of Federal Regulations of all stocks of these substances on hand.

6. *Records.* All registrants required to keep records pursuant to §§ 1304.21–1304.27 of Title 21 of the Code of Federal Regulations shall maintain such records on 1-[1-(2-thienyl)cyclohexyl]pyrrolidine.

7. *Reports.* All registrants required to submit reports pursuant to §§ 1304.34–1304.37 of Title 21 of the Code of Federal Regulations shall do so regarding 1-[1-(2-thienyl)cyclohexyl]pyrrolidine.

8. *Order Forms.* All registrants involved in the distribution of 1-[1-(2-thienyl)cyclohexyl]pyrrolidine must comply with the order form requirements of §§ 1305.01–1305.16 of Title 21 of the Code of Federal Regulations.

9. *Importation and Exportation.* All importation and exportation of 1-[1-(2-thienyl)cyclohexyl]pyrrolidine shall be in compliance with Part 1312 of Title 21 of the Code of Federal Regulations.

10. *Criminal Liability.* Any activity with respect to 1-[1-(2-thienyl)cyclohexyl]pyrrolidine not authorized by, or in violation of, the CSA or the Controlled Substances Import and Export Act shall be unlawful.

Pursuant to Title 5, United States Code, section 605(b), the Administrator certifies that the scheduling of 1-[1-(2-thienyl)cyclohexyl]pyrrolidine, as ordered herein, will not have a significant impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96-354). This action involves the control of a substance that has no legitimate medical use or manufacturer in the United States.

In accordance with the provisions of section 201(a) of the CSA (21 U.S.C. 811(a)), this scheduling action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, have been exempted from the consultation requirements of Executive Order 12291 (46 FR 13193). This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of DEA by Department of Justice Regulations (28 CFR 0.100), the Administrator hereby orders that 21 CFR 1308 be amended as follows:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. Section 1308.11(d) is amended by adding a new paragraph (d)(28) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(d) * * *

(28) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine.....7473
Some other names: TCPy

* * * * *

Date: June 20, 1989.

John C. Lawn,
Administrator, Drug Enforcement Administration.
[FR Doc. 89-15764 Filed 7-5-89; 8:45 am]
BILLING CODE 4410-09-M

DEPARTMENT OF STATE

Office of the Comptroller

22 CFR Part 34

[Public Notice 1110]

RIN 1400-AA25

Collection of Debts by the Government Under the Debt Collection Acts; Correction

AGENCY: Department of State (STATE).

ACTION: Final rule, correction.

SUMMARY: The Department of State is issuing this document to correct the final rule which added 22 CFR Part 34 establishing rules for the collection of debts owed to the State Department and the United States. The final regulation

was published in the **Federal Register** on April 3, 1989 (54 FR 13364).

EFFECTIVE DATE: July 6, 1989.

FOR FURTHER INFORMATION CONTACT: Ramon A. Evon, United States Department of State, Room 4709, Annex 15, Washington, DC 20520, phone (703) 875-6880.

SUPPLEMENTARY INFORMATION: On April 3, 1989, STATE issued the 22 CFR Part 34, for the collection of debts by the Government under the Debt Collection Acts. The necessity for certain technical corrections in the public notification have come to light. This document corrects the regulation.

PART 34 [CORRECTED]

In FR Doc. 89-7736, published in the **Federal Register** of Monday, April 3, 1989, on page 13364 the following corrections are made:

1. On page 13364, in the "Summary", the citation "Pub.L. 97-365, Stat. 1749" is corrected to read "Pub.L. 97-365, 96 Stat. 1749".

2. On page 13367, in § 34.18, paragraph (d) is correctly added to read as follows:

§ 34.18 Notice requirements before offset.

* * * * *

(d) The requirement to assess and collect interest, penalties, and administrative costs, or waiver are in accordance with § 34.4, unless excused in accordance with § 34.4(a)(6);

* * * * *

3. On page 13368, in § 34.20, paragraph (c)(6) is correctly added to read as follows:

§ 34.20 Hearings.

* * * * *

(c) * * *

(6) Failure to appear. In the absence of good cause shown (e.g. excused illness), an employee who fails to appear at a hearing shall be deemed, for the purpose of this subpart, to admit the existence and amount of the debt as described in the notice of intent. The hearing official shall schedule a new hearing date upon the request of the creditor agency representative when good cause is shown. Both parties shall be given reasonable notice of the time and place of the new hearing.

May 18, 1989.

Elizabeth A. Gibbons,

Associate Comptroller, Financial Management.

[FR Doc. 89-15870 Filed 7-5-89; 8:45 am]

BILLING CODE 4710-37-M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Amendments to the Bank Secrecy Act Regulations Regarding the International Transportation and Receipt of Monetary Instruments

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule.

SUMMARY: The Anti-Drug Abuse Act of 1986, Pub. L. 99-570, Title I, Subtitle H, section 1358, authorized the Secretary of the Treasury to prescribe regulations defining "at one time" for the purposes of the international transportation and receipt of monetary instruments. This Final Rule adds such a definition to the Bank Secrecy Act regulations, 31 CFR Part 103, in order to define "at one time."

In a related matter, Treasury is amending § 103.11(k), the definition of "monetary instruments," to include all forms of traveler's checks. This amendment clarifies the status of traveler's checks and conforms the definition more closely to the statute.

DATE: This Final Rule is effective August 7, 1989.

ADDRESS: Amy G. Rudnick, Director, Office of Financial Enforcement, Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue, NW., Washington, DC. 20220.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Scott, Attorney Advisor, Office of the Assistant General Counsel (Enforcement), (202) 566-9947.

SUPPLEMENTARY INFORMATION: The Bank Secrecy Act, Pub. L. 91-508 (codified at 12 U.S.C. 1730d, 1829b, 12 U.S.C. 1951 et seq., and 31 U.S.C. 5311-5326), authorizes the Secretary of the Treasury to require reports on the international transportation and receipt of monetary instruments. 31 U.S.C. 5316. Pursuant to this authority, Treasury issued regulations requiring that a form be filed reporting the international transportation and receipt of monetary instruments that exceed $10,000. (Customs Form 4790, the "CMIR"). See 31 CFR 103.11(k) and 103.23.

Section 5316 requires that reports be filed by a person, or agent or bailee of a person, when he knowingly transports, is about to transport, or has transported, more than $10,000 in monetary instruments "at one time" into or out of the United States. The statute also requires that the same report be filed upon receipt of more than $10,000 in monetary instruments from outside the United States "at one time."

In the Anti-Drug Abuse Act of 1986, 31 U.S.C. 5316 was amended. One amendment was the addition of a new subsection (d). That subsection reads as follows:

> The Secretary of the Treasury may prescribe regulations under this section defining the term "at one time" for purposes of subsection (a). Such regulations may permit the cumulation of closely related events in order that such events may collectively be considered to occur at one time for purposes of subsection (a).

The House Report on this provision noted:

> This provision closes a loophole regarding reports of transporting cash out of the country. 31 U.S.C. 5316, relating to the reports on exporting and importing monetary instruments, requires reports when one transports more than $10,000 "at one time." The U.S. Court of Appeals for the First Circuit overturned a conviction in *United States* v. *Anzalone*, 766 F.2d 676 (1st Cir. 1985) holding that structuring currency transactions to avoid the reporting requirements was not a conspiracy to defraud the United States (18 U.S.C. 1001). This amendment permits the Secretary to prescribe regulations to define the term "at one time" to permit the cumulation of closely related events in order that they may collectively be considered to occur at one time for purposes of the reporting requirements.

H. Rep. 99-855, Part I, 99th Cong., 2d Sess. 19.

As a result of this statutory authorization, on November 14, 1988, Treasury published in the **Federal Register** (53 FR 45774), a proposed definition of "at one time" for inclusion in the Bank Secrecy Act regulations. Under the proposed definition, a person who transports, mails, ships or receives; is about to transport, mail or ship; or causes the transportation, mailing, shipment or receipt of monetary instruments, is deemed to do so "at one time" if:

(1) For the purpose of evading the reporting requirements under § 103.23;

(2) That person either alone, or in conjunction with, or on behalf of others;

(3) Transports, mails, ships or receives; is about to transport, mail or ship; or causes the transportation, mailing, shipment or receipt of;

(4) Monetary instruments;

(5) In any amount;

(6) On one or more days;

(7) Into or out of the United States.

Treasury issued the proposed regulation to make clear that structuring schemes involving the international transportation and receipt of monetary instruments are illegal to the same extent that structuring schemes to evade the domestic currency transaction reporting requirements of 31 CFR 103.22 are illegal. See 31 U.S.C. 5324; 31 CFR 103.53.

A second amendment also was proposed on November 14, 1988, with respect to the international transportation and receipt of traveler's checks. Under 31 CFR 103.11 (k) (ii) and (iii), traveler's checks are presently reportable under 31 CFR 103.23 only if: (1) They are negotiable instruments that are either in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery; or (2) they are incomplete instruments signed but with the payee's name omitted. The Bank Secrecy Act definition of "monetary instruments" at 31 U.S.C. 5311 (a)(3), however, is very broad and permits Treasury to include all forms of traveler's checks within the definition of "monetary instruments."

Treasury proposed to clarify the definition of "monetary instruments" as it pertains to traveler's checks, and conform the definition more closely to the statute, by including all forms of traveler's checks in the definition of "monetary instruments."

There is a high degree of law enforcement value in reporting all forms of traveler's checks. Traveler's checks are intended to substitute for currency and to operate as currency. Their potential for abuse by drug traffickers and other money launderers therefore is great. For this reason, Treasury proposed to amend the definition of "monetary instruments" and subject all forms of traveler's checks to the reporting requirements of 31 CFR 103.23. The exception from reporting transportation of these instruments by an issuer of traveler's checks or its agent prior to their delivery to selling agents for eventual sale to the public was to be retained. 31 CFR 103.23(c)(7).

Comments

General

Twelve comments were received. There was confusion on the part of some commenters on the effect of these two proposals on a bank's responsibility to file CMIR's and the relationship of these proposals to the domestic currency transaction reporting requirement of §103.22. Moreover, some commenters wanted to know whether these proposals, if adopted, would have any impact on BSA Administrative Ruling 88-2, which states that a bank does not have to file CMIR's on behalf of its customers, only on its own international transportation and receipt of monetary instruments.

Currently, there are very few instances in which banks have to file a CMIR, because of several exceptions for banks to the general CMIR filing requirement. See 31 CFR 103.23(c). The amendments made by this Final Rule do not change this situation. There also is no connection between the changes made in this Final Rule and the domestic currency transaction reporting requirements of 31 CFR 103.22 that are imposed on financial institutions. In particular, the domestic transaction reporting requirements applicable to financial institutions still are limited only to transactions in currency, i.e., where there is a physical transfer of currency. Thus, this amendment does not require financial institutions to report domestic transactions involving traveler's checks where no currency in amounts totaling more than $10,000 is transferred. Moreover, there is no conflict between this amendment and Bank Secrecy Act Administrative Ruling 88-2, issued June 22, 1988. That administrative ruling (published at 53 FR 40064, October 13, 1988) holds that a bank need not file a Form 4790 when a customer comes in with money he or she is transporting or has received from outside the United States. This Final Rule does not change this holding in any way. Banks and other financial institutions file CMIR's on their own transportation or receipt of monetary instruments, not that of their customers.

At one time definition

Most comments received centered on the proposed definition of "at one time." There was concern that the definition, as originally proposed, attempted to combine aspects of both aggregation and a prohibition against structuring, thus confusing potential filers in knowing when to file (per day or over a certain number of multiple days) and giving the appearance that the definition was relevant only when someone was evading the reporting requirement.

After evaluation of the comments and further study of the proposal and its aims, Treasury has clarified the definition. As amended, the definition of "at one time" will read as follows:

> For purposes of § 103.23 of this part, a person who transports, mails, ships or receives; is about to or attempts to transport, mail or ship; or causes the transportation, mailing, shipment or receipt of monetary instruments, is deemed to do so "at one time" if:
>
> (1) That person either alone, in conjunction with or on behalf of others;
>
> (2) Transports, mails, ships or receives in any manner; is about to transport, mail or ship in any manner; or causes the transportation, mailing, shipment or receipt in any manner of;
>
> (3) Monetary instruments;
>
> (4) Into the United States or out of the United States;
>
> (5) Totaling more than $10,000;
>
> (6)(i) On one calendar day or (ii) if for the purpose of evading the reporting requirements of § 103.23 on one or more days.

This change will make clear that the general reporting requirement is by calendar day and not over multiple days and that any transportations, mailings, shipments, or receipts on one or more days to evade the general calendar day reporting requirement also will be deemed to have happened "at one time."

This definition also makes it clear that filers are required to aggregate all inbound and outbound transportations, mailings, shipments or receipts of monetary instruments that occur during the course of the same calendar day. In addition, all outbound monetary instruments should be aggregated with all other outbound monetary instruments and all inbound monetary instruments should be aggregated with inbound monetary instruments; there should be no offsetting of inbound monetary instruments against outbound monetary instruments or aggregating of inbound monetary instruments with oubound monetary instruments. Thus, if the total of all monetary instruments transported, shipped or mailed outside the United States or the total of all monetary instruments transported, shipped or mailed into the United States and received during the course of the same calendar day exceeds $10,000, then a CMIR needs to be filed. For example, a person living on the United States border with Canada transports $6,000 across the border to Canada at 10:00 a.m., and at 2 p.m. the same day transports another $7,000 across the border to Canada. Because the person has transported monetary instruments totaling in excess of $10,000 out of the United States on the same day, i.e., $13,000, he must file a CMIR.

Finally, one commenter noted that § 103.23 needed to reference the term "at one time" in lieu of "on any one occasion." Treasury notes that the comment is correct and this Final Rule amends § 103.23(a) to change the term "on any one occasion" to "at one time."

Inclusion of all traveler's checks in the definition of monetary instruments

Some commenters requested an exception for traveler's checks in the reconciliation process after they have been negotiated. This exception would be similar to the exception in § 103.23(c)(7) for traveler's checks issuers or agents with respect to the transportation of traveler's checks prior

to their delivery to selling agents for eventual sale to the public.

The reason for the request arises out of the practicalities of the reconciliation and payment process. Once a traveler's check has been negotiated and starts its way through the bank collection process for payment and reconciliation purposes, it can be used no longer; it is considered a "dead" instrument. The check comes back into the United States on its way back to the issuer with restrictive endorsements on the back. Nothing further can be done with these instruments and they cannot be used again for any purpose. Under the current regulations, these instruments are excluded from the definition of "monetary instrument" and the CMIR reporting requirement.

After careful consideration, Treasury agrees with the commenters. Thus, Treasury has added a new exception to § 103.23(c) for persons with respect to traveler's checks that are restrictively endorsed and are in the collection and reconciliation process after the traveler's check has been negotiated. Except for that change, the amendment is being adopted as proposed.

Conclusion

In light of the comments received in response to the Notice, Treasury is adopting the amendments as proposed, with the changes noted above.

Excecutive Order 12291

This Final Rule is not a major rule for purposes of Executive Order 12291. It is not anticipated to have an annual effect on the economy of $100 million or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. A Regulatory Impact Analysis therefore is not required.

Regulatory Flexibility Act

It is hereby certified under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., that this Final Rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collections of information in this final regulation have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act, 44 U.S.C. 3504(h), under control 1505-0063.

The estimated average burden associated with the collection of information contained in this Final Rule is .1667 hours (10 minutes) per respondent, depending on individual circumstances. Comments concerning the accuracy of this burden should be directed to the Office of Financial Enforcement at the address noted above and the Office of Management and Budget, Paperwork Reduction Project (1505-0063), Washington, DC 20503.

Drafting Information

The principal author of this document is the Office of the Assistant General Counsel (Enforcement). However, personnel from other offices participated in its development.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Investigations, Law enforcement, Reporting and recordkeeping requirements, Taxes.

Amendment

For the reasons set forth in the preamble, 31 CFR Part 103 is amended as set forth below:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 continues to read as follows:

Authority: Pub. L. 91-508, Title I, 84 Stat. 1114 (12 U.S.C. 1730d, 1829b, and 1951-1959); and the Currency and Foreign Transactions Reporting Act, Pub. L. 91-508, Title II, 84 Stat. 1118 as amended (31 U.S.C. 5311-5326).

2. Section 103.11 is amended by redesignating paragraphs (a) through (s) as (b) through (t) accordingly, and adding a new paragraph (a) to read as follows:

§ 103.11 Meaning of terms.

(a) *At one time.* For purposes of § 103.23 of this part, a person who transports, mails, ships or receives; is about to or attempts to transport, mail or ship; or causes the transportation, mailing, shipment or receipt of monetary instruments, is deemed to do so "at one time" if:

(1) That person either alone, in conjunction with or on behalf of others;

(2) Transports, mails, ships or receives in any manner; is about to transport, mail or ship in any manner; or causes the transportation, mailing, shipment or receipt in any manner of;

(3) Monetary instruments;

(4) Into the United States or out of the United States;

(5) Totaling more than $10,000;

(6)(i) On one calendar day or (ii) if for the purpose of evading the reporting requirements of section 103.23, on one or more days.

* * * * *

3. Section 103.11 is further amended by redesignating paragraphs (l)(1)(ii) through (l)(1)(iv) as (l)(1)(iii) through (l)(1)(v); by removing the words "traveler's checks" from newly redesignated paragraphs (l)(1)(iii) and (l)(1)(iv); and by adding a new paragraph (l)(1)(ii) to read as follows:

§ 103.11 Meaning of terms.

* * * * *

(l) *Monetary instruments.* (1) * * *

(ii) Traveler's checks in any form;

* * * * *

4. Section 103.23, is amended by replacing the words "on any one occasion" wherever they appear with the words "at one time" in paragraphs (a) and (b); by redesignating paragraph (c)(8) as (c)(9); and by adding a new paragraph (c)(8), and a reference to the OMB Control Number, all to read as follows:

§ 103.23 Reports of transportation of currency or monetary instruments.

* * * * *

(c) * * *

(8) By a person with respect to a restrictively endorsed traveler's check that is in the collection and reconciliation process after the traveler's check has been negotiated,

* * * * *

(Approved by the Office of Management and Budget under control number 1505-0063)

Dated: June 12, 1989.

Salvatore R. Martoche,

Assistant Secretary, (Enforcement).

[FR Doc. 89-15617 Filed 7-5-89; 8:45 am]

BILLING CODE 4810-25-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPTS 62035H; FRL 3611-6]

Polychlorinated Biphenyls in Electrical Transformers; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA issued a final rule on polychlorinated biphenyls in electrical transformers published in the **Federal Register** issue of July 19, 1988 (53 FR 27322). In the introductory text of § 761.30(a)(1)(iv), EPA inadvertently referenced paragraph "(a)(1)(v)", instead of correctly referencing paragraph "(a)(1)(iv)(B)". This document corrects that error.

DATE: This correction is effective July 6, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460 (202-554-1404), TDD: 202-554-0551).

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous materials, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: June 29, 1989.

Charles L. Elkins,

Director, Office of Toxic Substances.

Therefore, 40 CFR Part 761 is amended as follows:

PART 761 [AMENDED]

1. The authority citation for Part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, and 2614. Subpart G also issued under 15 U.S.C. 2614 and 2616.

§ 761.30 [Amended]

2. In § 761.30, the introductory text of paragraph (a)(1)(iv), by revising the reference "(a)(1)(v)" to read "(a)(1)(iv)(B)".

[FR Doc. 89-15891 Filed 7-5-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF DEFENSE

48 CFR Part 204

[Defense Acquisition Circular (DAC) 88-9]

Department of Defense Federal Acquisition Regulation Supplement; Contract Reporting

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: Defense Acquisition Circular (DAC) 88-9 amends the DoD FAR Supplement (DFARS) with respect to Fiscal Year 1990 Changes to the DoD Reporting System.

EFFECTIVE DATE: October 1, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, Defense Acquisition Regulatory Council, ODASD(P)/DARS, OASD(P&L), c/o OUSD(A) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062, telephone (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

The DoD FAR Supplement is codified in Chapter 2 Title 48 of the Code of Federal Regulations.

The October 1, 1987, revision of the CFR is the most recent edition of that title. It reflects amendments to the 1986 edition of the DoD FAR Supplement made by Defense Acquisition Circulars 86-1 through 86-5. Amendments made by DACs 86-6 through 86-16 were published in the **Federal Register** at 53 FR 38171, September 29, 1988, and will be included in the October 1, 1988 revision of the CFR.

B. Public Comments

DAC 88-9, Item I

Public comments are not solicited because the revisions pertain to internal DoD operating procedures and the Regulatory Flexibility Act does not apply.

C. Regulatory Flexibility Act

DAC 88-9, Item I

This final rule does not constitute a significant revision within the meaning of Pub. L. 98-577, and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected DFARS Subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately. Please cite DAR Case 89-610D in correspondence.

D. Paperwork Reduction Act

This rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Part 204

Government procurement.

Owen Green,

Acting Executive Secretary, Defense Acquisition Regulatory Council.

[Defense Acquisition Circular No. 88-9]

July 1, 1989.

This Defense Acquisition Circular is effective 1 October 1989.

Defense Acquisition Circular (DAC) 88-9 amends the DoD Federal Acquisition Regulation Supplement (DFARS) 1988 edition and prescribes procedures to be followed. The following is a summary of the amendments and procedures.

Item I—Fiscal Year 1990 Changes to the DoD Reporting System (Final Rule)

DFARS Part 204 reporting instructions for the DD 350, Individual Contracting Action Report, and the DD 1057, Monthly Contracting Summary of Actions $25,000 or Less, are being revised to comply with recent statutory requirements. Changes are effective for reporting beginning 1 October 1989.

Note: This coverage is not to be used before October 1, 1989.

Major changes in the FY 1990 DD 350 reporting instructions are:

(a) Instructions for Items C3 and C8 are revised to address competitive 8(a) awards. Section 303(b) of the Business Opportunity Development Reform Act of 1988 (Pub. L. 100-656) requires that acquisitions offered for award pursuant to Section 8(a) of the Small Business Act be awarded on the basis of competition restricted to eligible participants under certain conditions. FAR Part 19 and DFARS Part 219 changes to implement this statute will be published in the near future. These actions will be reported as "Full and Open Competition After Exclusion of Sources".

(b) Items E2 through E4 are relocated to Part D for FY 1990 as Items D9 through D11. These items were added in an interim rule published in the **Federal Register** on January 27, 1989 (54 FR 4246) and corrected on February 3, 1989 (54 FR 5484). The interim rule was finalized in DAC 88-8 and is effective for FY 1989 reporting. The changes in this DAC will be effective for reporting beginning in FY 1990.

(c) Item C8 is revised and new Items E2 and E3 are added to report information concerning awards to private or public handicapped organizations under small business set-asides. Section 133 of the Small Business Administration Reauthorization and Amendment Act of 1988 (Pub. L. 100-590) authorizes participation by public or private organizations for the handicapped in small business set-asides for Fiscal Years 1989 through 1993. FAR Part 19 changes to implement the statute will be published in the near future.

Expanded guidance is also provided regarding when a DD 350 must be submitted for actions of $25,000 or less under the Small Business Competitiveness Demonstration Program. The additional guidance provides, in part, that a DD 350 need no longer be submitted on actions of $500 or less.

All other changes are editorial or for clarification. Comparable changes are made to the DD Form 1057 reporting

instructions. Conforming changes to the DD Forms 350 and 1057 are in process. Revised forms will be distributed through normal channels.

Adoption of Amendments

Therefore, the DoD FAR Supplement is amended as set forth below:

1. The authority for 48 CFR Part 204 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 204—ADMINISTRATIVE MATTERS

2. Section 204.671-5 is amended by changing the title in paragraph (b) to read *"Part B of DD Form 350"* in lieu of *"Part B, DD Form 350."*; by substituting in paragraph (b) in paragraph (i) under the undesignated paragraph entitled *"Item B5A, Contractor Establishment Code."* the word "for" in lieu of the word "by"; by revising in paragraph (b) the undesignated paragraph entitled *"Item B13, Kind of Contracting Action"*; by revising in paragraph (c) the undesignated paragraph entitled *"Item C3, Extent Competed"*; by revising in paragraph (c) paragraph (ii) under the undesignated paragraph entitled *"Code A—Competed Action"*; by removing the note in parentheses following paragraph (iii) in paragraph (c) under the undesignated paragraph entitled *"Code A—Competed Action"*; by revising in paragraph (c) the undesignated paragraph entitled *"Code B—Not Available for Competition"*; by changing in paragraph (c) the reference in paragraph (i) under the undesignated paragraph entitled *"Item C8, Solicitation Procedures"* to read "FAR 6.001(b)" in lieu of "FAR 6.001-(b)"; by revising in paragraph (c) paragraphs (iv) and (v) and adding paragraph (vi) under the undesignated paragraph entitled *"Item C8, Solicitation Procedures"*; by revising in paragraph (c) under the undesignated paragraph entitled *"Item C8, Solicitation Procedures"* the title and text of the undesignated paragraph entitled *"Code K—Set Aside"*; by revising in paragraph (c) under the undesignated paragraph entitled *"Item C8, Solicitation Procedures"* the undesignated paragraph entitled *"Code N—Other Than Full and Open Competition"*; by revising in paragraph (c) the title and text of the undesignated paragraph entitled *"Item C11, Certificate of Current Cost or Pricing Data"*; by revising in paragraph (c) the title and text of the undesignated paragraph entitled *"Item C13C, Place of Manufacture of Foreign Product"*; by changing the second sentence of paragraph (d)(4) to read: "Complete Items D2, D3, D4C, D5, D9, D10, and D11 in accordance with the instructions for that item."; by changing in paragraph (d) the first sentence of the undesignated paragraph entitled *"Item D2, Reason Not Awarded to SDB"* to read: "If Item B13 is coded 7, enter Code Z in Item D2."; by changing in paragraph (d) the second sentence of the undesignated paragraph entitled *"Item D3, Reason Not Awarded to Small Business Concern"* to read: "If Item B13 is coded 7, enter Code Z in Item D3."; by adding in paragraph (d) before the period at the end of the undesignated paragraph entitled *"Code B—Total Small Business Set-Aside"* under the undesignated paragraph entitled *"Item D4A—Type of Small Business Set-Aside"* the words "or the action resulted from the Small Business Innovation Research Program"; by adding in paragraph (d) before the period at the end of the undesignated paragraph entitled *"Code A—None"* under the undesignated paragraph entitled *"Item D4B—Type of Small Disadvantaged Business Set-Aside/SDB Preference"* the words "or award was not to an SDB"; by adding in paragraph (d) in the undesignated paragraph entitled *"Code D—SDB Evaluation Preference"* under the undesignated paragraph entitled *"Item D4B—Type of Small Disadvantaged Business Set-Aside/SDB Preference"* between the word "received" and the word "an" the words "an award as a result of"; by substituting in paragraph (d) in the undesignated paragraph entitled *"Code E—SDB Preferential Consideration—Partial Small Business Set-Aside"* under the undesignated paragraph entitled *"Item D4B—Type of Small Disadvantages Business Set-Aside/SDB Preference"* the words "resulted in an award" in lieu of the words "was given"; by adding in paragraph (d) undesignated paragraphs D9 through D11; by changing the title of paragraph (e) to read "Part E of DD Form 350" in lieu of "Part E, DD Form 350"; in paragraph (e) following undesignated paragraph "Code N" under undesignated paragraph entitled *"Item E1, Contracted Advisory & Assistance Services"* undesignated paragraphs Items E2 and E3 are revised; the undesignated paragraph entitled *"Item E4, Emerging Small Business"* is removed; the undesignated paragraph immediately before paragraph (f) is changed to read: "Items E4 through E8: Reserved." in lieu of "Items E5 through E8: Reserved"; the title of paragraph (f) is changed to read "Part F of DD Form 350" in lieu of "Part F, DD Form 350"; to read as follows:

204.671-5 Instructions for Completion of DD Form 350.

* * * * *

(b) *Part B of DD Form 350.*

* * * * *

Item B13, Kind of Contracting Action.

* * * * *

(iii) Actions with workshops for the blind or other severely handicapped including orders with workshops from the procurement list shall be reported as described in Code 3.

(iv) Actions placed with Federal Prison Industries (UNICOR) shall be reported as code 8.

* * * * *

Code 8—Action With Another Federal Agency. Enter this code for all contracting actions, including modifications, placed directly with another Federal Agency or Government Corporation, e.g., Government Printing Office, Federal Prison Industries (UNICOR), Tennessee Valley Authority, or the Departments of Treasury, Agriculture or Energy, where the Federal Agency or Government Corporation is acting as the contractor. Use code 7 for orders placed with a contractor who is performing on a contract written by another Federal Agency or Government Corporation.

* * * * *

(c) *Part C of DD Form 350.*

* * * * *

Item C3, Extent Competed.

(i) Section 8(a) awards competed pursuant to FAR Subpart 6.2 shall be reported in Code A, Competed.

(ii) Exclude the following from Code A:

(A) Purchases of brand name commercial products for authorized resale;

(B) Awards for utilities or utility systems when circumstances dictate that only one supplier can furnish the service (FAR 6.302-1(b)(3));

(C) Any acquisition authorized or required by statute to be awarded to a specific source or through another agency pursuant to FAR 6.302-5(b).

(iii) Enter the appropriate code shown below.

* * * * *

Code A—Competed Action.

* * * * *

(ii) Full and open competition procedures after exclusion of sources were used in order to establish/maintain alternative sources, to set-aside a procurement for small business or labor surplus area concerns, or to compete Section 8(a) awards (FAR 6.2);

* * * * *

Code B—Not Available for Competition. Enter Code B when any of the following conditions apply to the award:

(i) Awards for utilities or utility systems when circumstances dictate that only one supplier can furnish the service (FAR 6.302-1(b)(3));

(ii) Brand name commercial products for authorized resale;

(iii) Procurements authorized or required by statute to be awarded to a specific source pursuant to FAR 6.302-5(b) (2) or (4). Included are the qualified nonprofit agencies for the blind or other severely handicapped, or 8(a) programs (see FAR 19.8);

(iv) International Agreements;

(v) Other contract actions where the Deputy Assistant Secretary of Defense, Procurement (DASD(P)) has determined that there is no opportunity for competition.

Note.—FMS awards and actions with another Federal Agency or Government Corporation are not entered in Item C3. These actions are treated as not available for competition in published competition reports although these actions are not reported in Item C3.

* * * * *

Item C8, Solicitation Procedures.

* * * * *

(iv) Enter Code K for all set-asides, including a Small Disadvantaged Business Set-Aside (see 206.203-70), Small Business Innovation Research (SBIR) actions (see FAR 6.203), a total set-aside for Historically Black Colleges and Universities (HBCUs) or Minority Institutions (MIs) (see 206.270), or a portion of a Broad Agency Announcement (BAA) which was set-aside for HBCUs or MIs.

(v) Report competitive 8(a) awards using Code K. Report 8(a) awards which were not competed by using Code N.

(vi) Enter the code below which accurately describes the action.

* * * * *

Code K—Set-Aside/Reservation.

(i) Enter if the action resulted from use of procedures for set-asides pursuant to 206.203-70, 206.270 or FAR 6.203.

(ii) Report as Code K those section 8(a) awards competed pursuant to FAR Subpart 6.2.

(iii) Report as Code K those actions with a blind or other severely handicapped organization which was made pursuant to the set-aside provisions in FAR Subpart 6.2.

* * * * *

Code N—Other Than Full and Open Competition. Enter if the action resulted from use of other than full and open competition pursuant to FAR 6.3. Specifically included are those awards authorized or required by statute where, pursuant to FAR 6.302-5(b) (2) or (4), acquisition was made from a specified source, i.e., qualified nonprofit agencies for the blind or other severely handicapped (NIB/NISH or other workshops); or the Small Business Administration (SBA) pursuant to Section 8(a) of the Small Business Act.

* * * * *

Item C11, Certified Cost or Pricing Data. * * *

Code Y—Certified cost or pricing data were obtained (see FAR 15.804-2).

Code N—Certified cost or pricing data were not obtained. Data were not required (see FAR 15.804-2), or an exemption was granted (see FAR 15.804-3 (a)-(g)).

Code W—Certified cost or pricing data were not obtained. The requirement was waived (see FAR 15.804-3(i) and DFARS 215.804-3(a) (S-70) and (i)).

* * * * *

Item C13C, Place of Manufacture/Service. This block is used to gather data on foreign end products and on services provided by foreign concerns.

(i) If Item B13 is coded 6 or 7, leave Item C13C blank.

(ii) If the product is determined to be a domestic end product (see 225.101), leave this item blank.

(iii) If the product is determined to be a foreign end product or is a service provided by a foreign concern, enter one of the codes listed below:

Code A—U.S. Enter this code for:

(i) End products manufactured in the U.S. but still determined to be foreign (50 percent or more of the cost of its *components* represents components which were not mined, produced or manufactured inside the U.S. or inside qualifying countries); or,

(ii) Services performed in the U.S. by a foreign concern.

Code B—Foreign. Enter this code for end products or services procured from either qualifying countries or non-qualifying countries as follows:

(i) Foreign *end products* manufactured, mined or grown outside the U.S.; or,

(ii) Services performed by a foreign concern outside the U.S.

* * * * *

Item D9, Small Business Competitiveness Demonstration Program Test. The Small Business Competitiveness Demonstration Program is set forth in FAR 19.10. Supplies and services subject to the program are set forth in FAR 19.1005 and 219.1005(b). (For Army, see also AFARS Part 19.10.)

(i) If Item B13 is coded 1 through 4, or A, code this item in accordance with the instructions below.

(ii) If Item B13 is coded 5 or B through G, code this item with the same code used to report the original contract governing this action. If the original contract governing this action was awarded before the program began, enter Code N.

(iii) If Item B13 is coded 7, use Code N.

(iv) Enter the appropriate code below.

Code Y—Enter this code for any action to a U.S. business concern awarded for either the four Designated Industry Groups or the ten Targeted Industry Categories under the Small Business Competitiveness Demonstration Program.

Code N—Otherwise, enter this code.

Item D10, Small Business Size. Complete only when Item D9 is coded Y and the contract action is awarded to a small business. Enter the code of the size range that includes the size of the business as represented by the contractor.

Number of employees	Annual gross revenues
Code:	
A 50 or fewer	Code M $1 Million or less
B 51-100	N Over $1M-Thru $2M
C 101-250	P Over $2M-$3.5M
D 251-500	R Over $3.5M-$5M
E 501-750	S Over $5M-$10M
F 751-1000	T Over $10M-$17M
G Over 1000	U Over $17 Million

Item D11, Emerging Small Business. Complete this item only if Item D9 is coded Y and the contracting action is for one of the four designated industry groups. Otherwise leave blank.

Code Y—Enter this code if the contractor represents it as an emerging small business concern.

Code N—Otherwise, enter this code.

(e) *Part E of DD Form 350.*

Item E1, Contracted Advisory & Assistance Services. Enter the appropriate code below:

Code Y—Enter if the action includes any Contracted Advisory and Assistance Service (CAAS) as defined in FAR 37.2.

Code N—Enter if Code Y does not apply.

Item E2, Set-Aside Value. If this contracting action is to a public or private organization for the blind or other severely handicapped as a result of a total or partial small business set-aside (FAR 19.5) or a labor surplus area set-aside (FAR 20.2), enter the contract amount, i.e., contract face value, of the set-aside portion of this award in whole dollars. Otherwise, leave blank.

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Item E3, Next Low Offer. If Item E2 is required to be completed, also enter, in whole dollars, the cumulative value of the next low offer(s) of small business firms on those items which had been displaced by the organization for the blind or other severely handicapped. Otherwise, leave blank.

* * * * *

3. Section 204.672-5 is amended by revising paragraphs (b) and (c) to read as follows:

204.672-5 Instructions for Completion of the DD Form 1057.

* * * * *

(b) *Section B, Contracting Actions.*

(i) The entries for Lines B1 through B7E include new awards and modifications.

(ii) For Lines B3 through B6, enter the total number of actions and total dollar value of actions and also complete each subcategory shown.

(iii) Actions placed with another Federal Agency or Government Corporation, including actions with Federal Prison Industries pursuant to FAR 8.6 shall be reported in Lines B2 and B2B.

(iv) Actions with workshops for the blind or other severely handicapped including orders with workshops from the procurement list shall be reported in Line B6 and Subline B6E.

Line B1—Tariff or Regulated Acquisitions, Total. Enter on Line B1 the number and dollar value of actions reportable as tariff or regulated industry actions (sole source and service rates are fixed or adjusted by a Federal, State or other public regulatory body).

Line B2—Contract for Foreign Government or International Organization or with a Federal Agency or Government Corporation. Enter the total number of actions and total dollar value of actions where the foreign government or international organization bears any part of the cost of the action. Report any actions placed directly with a foreign government on this line, e.g., base maintenance performed with the foreign government acting as the contractor. Report any actions placed directly with another Federal Agency or Government Corporation on this line. Also enter the total number of actions and total dollar value of actions corresponding to the following subtotals:

Line B2A—Actions with a Foreign Government or International Organization.

Line B2B—Actions with Another Federal Agency or Government Corporation.

* * * * *

Line B6—Educational, Nonprofit and Other Entities. Enter the total number of actions and total dollar value of actions which were placed with entities not listed in Lines B1 through B5 above. Use this line to report actions with educational institutions, organizations for the blind and other severely handicapped, not-for-profit and nonprofit institutions, and actions where the place of performance was in the "United States and Outlying Areas" as defined in 204.672-4. Also enter the total number of actions and total dollar value of actions corresponding to the following subtotals:

* * * * *

(c) *Section C, Extent Competed.* * * *

(1) *Line C1—Competed.* Except when the conditions in Line C2 below apply, use when any of the following conditions apply:

* * * * *

(v) Statutory authorities for other than full and open competition were used (FAR 6.3) and more than one offer was received (Note: Acquisitions pursuant to FAR 6.302-5, Authorized or required by statute, are excluded from Line C1 and addressed in the instructions for Line C2 below);

(vi) Contract action resulted from a contract awarded competitively prior to CICA (including two-step formal advertising);

(vii) Delivery orders/modifications under a Federal Supply Schedule; or

(viii) Section 8(a) awards competed pursuant to FAR Subpart 6.2.

(2) *Line C2—Not Available For Competition.* Use when any of the following conditions apply to the award: (Note: Awards to regulated monopolies, FMS awards/International Agreements, and actions with another Federal Agency or Government Corporation are not entered in Line C2. These actions are treated as not available for competition in published competition reports but are not reported in Line C2.)

(i) Brand name commercial products for authorized resale;

(ii) Any acquisition authorized or required by statute to be awarded to a specific source or through another agency pursuant to FAR 6.302-5(b) (2) or (4). This includes qualified nonprofit agencies for the blind or other severely handicapped, and 8(a) programs not reportable on Line C1 above;

* * * * *

(3) *Line C3—Not Competed.* Complete when Lines C1 or C2 do not apply.

* * * * *

4. Section 204.675.2 is amended by revising paragraph (a) to read as follows:

204.675-2 Procedures.

(a) During the term of the Program, each contracting action obligating or deobligating $25,000 or less for services within any of the four designated industry groups shall be reported on an Individual Contract Action Report (DD Form 350) except as indicated in 204.671-3(d), and except that a DD Form 350 need not be prepared for actions of $500 or less. In addition, do not complete the report for actions of $25,000 or less when the action is a result of a Foreign Military Sale (Item B9=Y) or the kind of contracting action would be coded as an order/modification under Federal Schedule or as an action with another Federal Agency (Item B14=6 or 8).

* * * * *

5. Section 204.675-3 is amended by adding introductory text proceding paragraph (a) to read as follows:

204.675-3 Instructions for Completion of the DD Form 350.

Do not complete the report for actions of $25,000 or less when the action is a result of a Foreign Military Sale (Item B9=Y) or when the kind of contracting action would be coded as an order/modification under Federal Schedule or as an action with another Federal Agency (Item B13=6 or 8).

* * * * *

[FR Doc. 89-15669 Filed 7-5-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 81132-9033]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the portion of the total allowable catch (TAC) of sablefish allocated to hook-and-line gear in the Central Regulatory Area of the Gulf of Alaska has been reached. The Secretary of Commerce (Secretary) is prohibiting further retention of sablefish by longline vessels fishing in this district from 12:00 noon, Alaska Daylight Time (a.d.t.), on June 29, 1989, through December 31, 1989.

DATES: Effective from 12:00 noon, a.d.t., on June 29, until midnight, Alaska Standard Time, December 31, 1989.

Comments may be submitted until July 17, 1989.

ADDRESSES: Comments should be addressed to Steven Pennoyer, Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker, Fishery Management Biologist, 907-586-7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. Regulations implementing the FMP are at 50 CFR Part 672. Section 672.20(a) of the regulations establishes an optimum yield (OY) range of 116,000-800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. The TAC(s) for target species and species groups are specified annually within the OY range and apportioned among the regulatory areas and districts.

Section 672.24(b)(2) of current regulations restricts the hook-and-line catch of sablefish in the Central Regulatory Area to 80 percent of the TAC. The 1989 TAC specified for sablefish in the Central Regulatory Area is 11,700 mt; the portion of the TAC allocated to hook-and-line gear in this area is 9,360 mt. Under § 672.24(b)(3)(ii), if the share of the sablefish TAC assigned to any type of gear for any area or district is reached, further catches of sablefish must be treated as prohibited species by persons using that type of gear for the remainder of the year.

The directed hook-and-line fishery for sablefish began April 1, 1989. The Central Regulatory area was initially closed to directed fishing for sablefish on May 27 (54 FR 23662, June 2, 1989); retention of bycatch amounts of sablefish was permitted.

The Regional Director reports that vessels using hook-and-line gear have landed 9,403 mt of sablefish through June 10 in the Central Regulatory Area. Therefore, pursuant to § 672.24(b)(3)(ii), the Secretary is prohibiting further retention of sablefish caught with hook-and-line gear in the Central Regulatory Area effective 12:00 noon, ADT, June 29, 1989. Any sablefish caught with hook-and-line gear after that date must be treated as prohibited species and discarded at sea.

The Secretary has already forbidden retention of sablefish by vessels using trawl gear effective June 6, 1989 (54 FR 24712, June 9, 1989). Overharvesting of sablefish will result unless this notice takes effect promptly. Therefore, NOAA finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed.

Public comments on the necessity for this action are invited for a period of 15 days after filing with the Office of the Federal Register. Public comments on this notice of closure may be submitted to the Regional Director at the address above until July 17, 1989. If written comments are received which oppose or protest this action, the Secretary will reconsider the necessity of this action, and, as soon as practicable after that reconsideration, will publish in the **Federal Register** a notice either of continued effectiveness of the adjustment, responding to comments received, or modifying or rescinding the adjustment.

Classification

This action is taken under §§ 672.22 and 672.24, and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801, et seq.

Dated: June 29, 1989.

David S. Crestin,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-15797 Filed 6-30-89; 8:51 am]

BILLING CODE 3510-22-M

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50 CFR Part 674

[Docket No. 90652-9152]

High Seas Salmon Fishery off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: The Secretary of Commerce announces the commercial salmon fishing periods in the exclusive economic zone off Southeast Alaska for 1989. The Secretary notes that the Pacific Salmon Commission has established a base harvest limit of 263,000 chinook salmon for all commercial and recreational fisheries in Southeast Alaska in 1989. This action by the Secretary is necessary to establish the opening of the commercial troll fishery for 1989 and is intended to fulfill United States international commitments under the Pacific Salmon Treaty.

EFFECTIVE DATE: June 30, 1989.

FOR FURTHER INFORMATION CONTACT: Aven M. Andersen (Fishery Management Biologist, Alaska Region, NMFS), 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

The Pacific Salmon Treaty (Treaty) was signed in 1985 by the United States and Canada. The Treaty governs Pacific Salmon stocks which originate in U.S. and Canadian waters and which are subject to interception by the other party and affect the management or biology of stocks of the other party. The Treaty governs most of the salmon stocks covered by the Fishery Management Plan for the Salmon Fisheries in the EEZ off the coast of Alaska (FMP); the North Pacific Fishery Management Council (Council) must ensure that the FMP is consistent with the Treaty. The Treaty also requires Canada and the United States to establish and enforce regulations to implement provisions of the Treaty, particularly regarding transboundary river resources, specific fisheries for chinook and coho, and a general obligation to prevent increased interceptions.

Section 7(a) of Pub. L. 99-5, the Pacific Salmon Treaty Act of 1985, 16 U.S.C. 3631 *et seq.*, requires the Secretary of Commerce (Secretary) to issue conforming amendatory regulations applicable to the U.S. exclusive economic zone (EEZ) to carry out U.S. international obligations under the Treaty. This final rule amends the regulations at 50 CFR Part 674 to adopt fishing seasons and catch limitations for 1989 that, in conjunction with similar measures adopted by the State of Alaska (State) for its waters, will ensure that the high-seas salmon fishery is conducted in a manner that fulfills our international obligations under the Treaty.

Quotas for Chinook Salmon

Under the treaty, which established it, the Pacific Salmon Commission (Commission) set the 1989 chinook salmon quotas at its meeting in February 1989. For all salmon fisheries in Southeast Alaska, the Commission set the harvest quota at 263,000 chinook salmon from the base stocks; this number equals last year's harvest quota for the base stocks. The base stocks are those wild and hatchery stocks that were being harvested in this fishery when the Treaty was signed.

In addition, the Commission authorized Alaska to augment the harvest quota for base stocks with a supplemental harvest of chinook salmon

produced by Alaska hatcheries that are in excess of those included in the base stocks. The exact amount of this supplemental harvest will be calculated in season using procedures approved by the Commission. The current preseason estimate of the supplemental harvest is 42,200 chinook; consequently, the total allowable harvest is predicted to be about 305,200 chinook.

Chinook Harvest Guidelines for the Troll Fishery

Because the chinook harvest occurs principally within the State waters, the Council defers to the Alaska Board of Fisheries (Board) on allocation decisions. The Board met in Juneau during March 1989. Although it acted on numerous proposals for the salmon fisheries, it retained the existing harvest guidelines for chinook among the various groups of fishermen in Southeast Alaska. Therefore, of the 263,000 chinook harvest quota for base stocks, the harvest guidelines are as follows: Sport—22,000; net (seine, drift gillnet, set gillnet, and trap)—20,000; troll—221,000. The Board did not allocate the estimated supplemental harvest of 42,200 chinook, but each fishery will be allowed to catch as many of those supplemental chinook as it can until the Commission's harvest quota for base stocks is reached. The exact number of the supplemental chinook salmon that each fishery harvests will be determined as the season progresses from the recovery of coded-wire tags from the Alaska hatchery fish, and these tagged fish will be excluded from the calculation used in determining when the harvest quota for base stocks is reached.

As indicated above, the Board established the 1988–1989 harvest guideline for the chinook troll fishery at 221,000 fish. The winter fishery in State waters (October 1, 1988–April 14, 1989) harvested about 35,000 chinook. About 18 percent of this harvest (some 6,300 fish) were Alaskan hatchery chinook. The remainder of the fish harvested in the winter fishery (about 28,700) were from the harvest quota for base stocks and have to be subtracted from the troll harvest guidelines of 221,000, leaving, in round numbers, about 192,000 chinook of the base stocks for the remainder of the 1989 troll fishery.

According to the Alaska Department of Fish and Game, the experimental June troll fishery in State waters is expected to harvest 25,000 chinook. It is estimated that between 10,000 and 20,000 of the fish from this harvest will be Alaska hatchery chinook. The remaining 5,000 to 15,000 chinook are expected to be harvested from the base stocks and have to be subtracted from the troll harvest guideline. Therefore, between 177,000 and 187,000 chinook of the base stocks are expected to remain for the summer troll fishery (i.e., harvest guideline of 221,000 less winter fishery catch of 28,700 less estimated June experimental fishery catch of 5,000 to 15,000 leaves between 177,000 and 187,000 fish in round numbers). The remaining number of chinook left for the summer fishery applies to all commercial salmon trolling in the marine waters of Southeast Alaska and the EEZ; there is no separate allocation for the troll fishery in the EEZ.

The Summer Troll Fishing Season

The Board set July 1 as the opening date of the summer commercial troll fishing season for chinook and other species of salmon. The fishing period for chinook salmon will be closed when the chinook quota has been harvested. The summer commercial troll fishing season for species of salmon other than chinook closes at midnight September 20.

The Board intended that the chinook troll fishery be managed so that there is a single summer troll fishing period for chinook salmon. Fishing periods are scheduled to avoid, as much as practicable, nonretainable incidental catches of chinook during fisheries for other species. Chinook that are caught and released suffer a mortality of about 20 to 25 percent. That is, about one out of every four chinook caught by trollers and released will die from wounds or being handled. Managers attempt to reduce the chances of chinook being caught when they cannot be retained. Thus, after the troll share of the chinook quota has been harvested, chinook retention in the troll fishery will be prohibited while fishing for the other salmon species (coho, sockeye, pink, and chum). Also, in the past 6 years, the Secretary and the State have prohibited trolling in several outer coastal areas in State waters and a small area in the EEZ where chinook are known to concentrate. These closures may be necessary again.

Depending on the size of the coho run and the speed at which the coho move from the offshore waters into the inside waters and spawning grounds, the Secretary and the State may close the troll fishery to the harvest of all salmon species for about 10 days between mid-July and mid-August in order to protect coho.

Fishing Periods

Unless modified later, the fishing periods (Alaska Daylight Time) for the commercial troll fishery in the EEZ off Southeast Alaska are as follows:

Chinook salmon: From 0001 hours on July 1, 1989, until the chinook harvest guideline is reached (probably about July 20).

All salmon species except chinook: From 0001 hours on 1 July 1989 until 2400 hours on September 20, 1989.

After the fishing season begins, the Secretary may issue notices to modify these fishing periods on the basis of contingencies which include the following:

(1) The troll fishery for all species of salmon may be closed for about 10 days between mid-July and mid-August unless an evaluation of Southeast Alaska coho salmon shows their abundance to be well above average and that they are making good progress in their inshore migrations. This possible closure is designed (a) to stabilize or reduce the proportion of coho harvested in the offshore and coastal fisheries, (b) to allow adequate harvests by the fisheries in the marine and fresh waters inshore of the surfline of Southeast Alaska as described in 5 Alaska Administrative Code 33.312(b), and (c) to allow adequate numbers of coho to escape the fisheries and reach the spawning grounds.

(2) The fishery for chinook salmon may be reopened for a short time after it has been closed if (a) harvest statistics reveal that the fishery was closed before the chinook base quota, established by the Treaty, was reached, (b) estimated chinook remaining for the fishery and predicted harvest rates will allow the fishery to be reopened for more than 12 hours without exceeding the harvest quota for base stocks, and (c) the reopening of the chinook fishery in the EEZ is compatible with a reopening of the fishery in Alaskan waters.

(3) If management actions need to be taken to reduce the hooking mortality of chinook salmon caught incidentally during the fishery for other salmon species, or to restrict the harvest of chinook to an incidental harvest, several outer coastal areas in State waters and a small area of the EEZ known to have high concentrations of chinook may be closed as they have been in recent past years.

Other Matters

A provision of the Pacific Salmon Treaty (Annex IV, Chapter 3) requires each nation to submit the plans it has developed for managing its salmon fisheries to the other nation before the start of the fishing season. The United States and Canada will have exchanged all their fishing plans before the start of the salmon fishing season.

Copies of this notice have been provided to the North Pacific Fishery Management Council, the U.S. Fish and Wildlife Service, and the U.S. Coast Guard for review and consultation as required by section 7(a) of the Pacific Salmon Treaty Act.

Classification

Under section 7(a) of the Pacific Salmon Treaty Act, this acton is exempt from sections 4 through 8 of the Administrative Procedure Act (5 U.S.C. 553 to 557), the Regulatory Flexibility Act, and the National Environmental Policy Act. It is exempt from Executive Order 12291 because it involves a foreign affairs function. It contains no requirement for collecting information for purposes of the Paperwork Reduction Act.

The Director of the NMFS Alaska Region has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act. This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment.

List of Subjects in 50 CFR Part 674

Administrative practice and procedure, Fisheries, Fishing, and international organizations.

Dated: June 30, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth above, 50 CFR Part 674 is amended as follows:

PART 674—HIGH SEAS SALMON FISHERY OFF ALASKA

1. The authority citation for Part 674 continues to read as follows:

Authority: 16 U.S.C. 3631 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 674.21, paragraph (a)(2) is revised to read as follows:

§ 674.21 Time and area limitations.

(a) * * *

(2) *East area.* Fishing periods in 1989 (Alaska Daylight Time) are as follows:

(i) Chinook salmon—0001 hours on July 1 until the commercial troll fleet reaches its harvest guideline of 221,000 chinook from the base stocks.

(ii) Salmon species other than chinook—0001 hours July 1 to 2400 hours on September 20.

* * * * *

[FR Doc. 89-15897 Filed 6-30-89; 2:28 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 128
Thursday, July 6, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 900

Enforcement of Nondiscrimination on the Basis of Handicap in Federally Assisted Programs

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation would amend the regulation issued by OPM for enforcement of section 504 of the Rehabilitation Act of 1973, as amended, in federally assisted programs or activities to include a cross-reference to the Uniform Federal Accessibility Standards (UFAS). Because some facilities subject to new construction or alteration requirements under section 504 are also subject to the Architectural Barriers Act, governmentwide reference to UFAS will diminish the possibility that recipients of Federal financial assistance would face conflicting enforcement standards. In addition, reference to UFAS by all Federal funding agencies will reduce potential conflicts when a building is subject to the section 504 regulations of more than one Federal agency.

DATE: To be assured of consideration, comments must be in writing and must be received by September 5, 1989.

ADDRESSES: Comments should be sent to: Sharrell S. Keeling, EEO Division, OPEEO, U.S. Office of Personnel Management, 1900 E Street, NW., Room 5459, Washington, DC 20415.

Comments received will be available for public inspection at EEO Division, OPEEO, U.S. Office of Personnel Management, 1900 E Street, NW., Room 5459, Washington, DC from 8:30 a.m. to 4:30 p.m., Monday through Friday except legal holidays. Copies of this notice are available on tape for persons with impaired vision. They may be obtained at the above address.

FOR FURTHER INFORMATION CONTACT: Sharrell S. Keeling at 202-632-6272 (voice/TDD).

SUPPLEMENTARY INFORMATION:

Background

Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), provides in part that

> No otherwise qualified individual with handicaps in the United States * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance * * *.

The agency's current section 504 regulation for federally assisted programs, issued in 1980, requires that new construction be designed and built to be accessible and that alterations of facilities be made in an accessible manner. It states that OPM "will adopt the Architectural and Transportation Barriers Compliance Board's (ATBCB) 'Minimum Guidelines and Requirements for Accessible Design' when they are issued in final form." The rule suggests that in the interim, new construction or alteration be in conformance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped" published by the American National Standards Institute (ANSI A117.1-1961 (R1971)). As detailed below, the ATBCB issued its guidelines in 1982. The proposed revision set forth in this document will reference UFAS, which is consistent with the ATBCB's guidelines.

On August 7, 1984, UFAS was issued by the four agencies establishing standards under the Architectural Barriers Act [49 FR 31528 (see discussion *infra*)]. The Department of Justice (DOJ), as the agency responsible under Executive Order 12250 for coordinating the enforcement of section 504, has recommended that agencies amend their section 504 regulations for federally assisted programs or activities to establish that, with respect to new construction and alterations, compliance with UFAS shall be deemed to be compliance with section 504. Because some facilities subject to new construction or alteration requirements under section 504 are also subject to the Architectural Barriers Act, governmentwide reference to UFAS will diminish the possibility that recipients of Federal financial assistance would face conflicting enforcement standards. In addition, reference to UFAS by all Federal funding agencies will reduce potential conflicts when a building is subject to the section 504 regulations of more than one Federal agency.

Background of Accessibility Standards

The Architectural Barriers Act of 1968, 42 U.S.C. 4151-4157, requires certain Federal and federally funded buildings to be designed, constructed, and altered in accordance with accessibility standards. It also designates four agencies (the General Services Administration, the Departments of Defense and Housing and Urban Development, and the U.S. Postal Service) to prescribe the accessibility standards. Section 502 of the Rehabilitation Act of 1973 established the ATBCB. In 1978 the Rehabilitation Act was amended to require the ATBCB, *inter alia*, to issue minimum guidelines and requirements for the standards to be issued by the four standard-setting agencies. The minimum guidelines were published on August 4, 1982 (47 FR 33862), and are codified at 36 CFR Part 1190.[1]

On August 7, 1984, the four standard-setting agencies issued UFAS as an effort to minimize the differences among the four agencies' Barriers Act standards, and among those standards and accessibility standards used by the private sector. The General Services Administration (GSA) and Department of Housing and Urban Development (HUD) have incorporated UFAS into their Barriers Act regulations (*see* 41 CFR Subpart 101-19.6 (GSA) and 24 CFR Part 40 (HUD)). In order to ensure uniformity, UFAS was designed to be consistent with the scoping and technical provisions of the ATBCB's minimum guidelines and requirements, as well as with the technical provisions of ANSI A117.1-1980, published by the American National Standards Institute. (The 1980 ANSI standard contains fee scoping provisions.) ANSI is a private, national organization that publishes recommended standards on a wide variety of subjects. ANSI's original accessibility standard, ANSI A117.1, "Specifications for Making Buildings and Facilities Accessible to, and Usable by, Physically Handicapped People," was published in 1961 and reaffirmed in 1971. The current edition, issued in 1986, is ANSI A117.1-1986. The 1961, 1980, and 1986 ANSI standards are frequently used in private practice and by State and local governments.

[1] The ATBCB Office of Technical Services is available to provide technical assistance to recipients upon request relating to the elimination of architectural barriers. Its address is: U.S. ATBCB, Office of Technical Services, 1111 18th Street, NW., Suite 500, Washington, DC 20036. The telephone number is (202) 653-7834 [voice/TDD]. this is not a toll fee number.

This proposed amendment would amend the current regulation implementing section 504 in programs or activities receiving Federal financial assitance from OPM to refer to UFAS.

The agency has determined that it will not require the use of UFAS, or any other standard, as the sole means by which recipients can achieve compliance with the requirement that new construction and alterations be accessible. To do so would unnecessarily restrict recipients' ability to design for particular circumstances. In addition, it might create conflicts with State or local accessibility requirements that may also apply to recipients' buildings and that are intended to achieve ready access and use. It is expected that in some instances recipients will be able to satisfy the section 504 new construction and alteration requirements by following applicable State or local codes, and vice versa.

Effect of Amendment

The agency's current section 504 rule requires that new facilities be designed and constructed to be readily accessible to and usable by persons with handicaps and that alterations be accessible to the maximum extent feasible. The amendment would not affect the current requirement but would merely provide that compliance with UFAS with respect to buildings (as opposed to "facilities," a broader term that encompasses buildings as well as other types of property) shall be deemed compliance with these requirements with respect to those buildings. Thus, for example, an alteration is accessible "to the maximum extent feasible" if it is done in accordance with UFAS. It should be noted that UFAS contains special requirements for alterations where meeting the general standards would be impracticable or infeasible (*see e.g.*, UFAS sections 4.1.6(1)(b), 4.1.6(3), 4.1.6(4), and 4.1.7).

The amendment also includes language providing that departures from particular UFAS technical and scoping requirements are permitted so long as the alternative methods used will provide substantially equivalent or greater access to and utilization of the building. Allowing these departures from UFAS will provide recipients with necessary flexibility to design for special circumstances and will facilitate the application of new technologies that are not specified in UFAS. As explained under "Background of Accessibility Standards," the agency anticipates that compliance with some provisions of applicable State and local accessibility requirements will provide "substantially equivalent" access. In some circumstances, recipients may choose to use methods specified in model building codes or other State or local codes that are not necessarily applicable to their buildings but that achieve substantially equivalent access.

The amendment requires that the alternative methods provide "substantially" equivalent or greater access, in order to clarify that the alternative access need not be precisely equivalent to that afforded by UFAS. Application of the "substantially equivalent access" language will depend on the nature, location, and intended use of a particular building. Generally, alternative methods will satisfy the requirement if in material respects the access is substantially equivalent to that which would be provided by UFAS in such respects as safety, convenience, and independence of movement. For example, it would be permissible to depart from the technical requirement of UFAS section 4.10.9 that the inside dimensions of an elevator car be at least 68 inches or 80 inches (depending on the location of the door) on the door opening side, by 54 inches, if the clear floor area and the configuration of the car permits wheelchair users to enter the car, make a 360-degree turn, maneuver within reach of controls, and exit from the car. This departure is permissible because it results in access that is safe, convenient, and independent, and therefore substantially equivalent to that provided by UFAS.

With respect to UFAS scoping requirements, it would be permissible in some circumstances to depart from the UFAS new construction requirement of one accessible principal entrance at each grade floor level of a building (see UFAS section 4.1.2(8)), if safe, convenient, and independent access is provided to each level of the new facility by a wheelchair user from an accessible principal entrance. This departure would not be permissible if it required an individual with handicaps to travel an extremely long distance to reach the spaces served by the inaccessible entrances or otherwise provided access that was substantially less convenient than that which would be provided by UFAS.

It would not be permissible for a recipient to depart from UFAS' requirement that, in new construction of a long-term care facility, at least 50% of all patient bedrooms be accessible (see UFAS section 4.1.4(9)(b)), by using large accessible wards that make it possible for 50% of all beds in the facility to be accessible to individuals with handicaps. The result is that the population of individuals with handicaps in the facility will be concentrated in large wards, while able-bodied persons will be concentrated in smaller, more private rooms. Because convenience for persons with handicaps is therefore compromised to such a great extent, the degree of accessibility provided to persons with handicaps is not substantially equivalent to that intended to be afforded by UFAS.

It should be noted that the amendment does not require that existing buildings leased by recipients meet the standards for new construction and alterations. Rather, it continues the current Federal practice under section 504 of treating newly leased buildings as subject to the program accessibility standard for existing facilities.

Buildings under design on the effective date of this amendment will be governed by the amendment if the date that bids were invited falls later the effective date. This interpretation is consistent with GSA's Architectural Barriers Act regulation incorporating UFAS, at 41 CFR Subpart 101-19.6.

The proposed revision includes language modifying the effect of UFAS section 4.1.6(1)(g), which provides an exception to UFAS section 4.1.6, *Accessible buildings: Alterations*. Section 4.1.6(1)(g) of UFAS states that "mechanical rooms and other spaces which normally are not frequented by the public or employees of the building or facility or which by nature of their use are not required by the Architectural Barriers Act to be accessible are excepted from the requirements of 4.1.6." Particularly after the development of specific UFAS provisions for housing alterations and additions, UFAS section 4.1.6(1)(g) could be read to exempt alterations to privately owned residential housing, which is not covered by the Architectural Barriers Act unless leased by the Federal Government for subsidized housing programs. This exception, however, is not appropriate under section 504, which protects beneficiaries of housing provided as part of a federally assisted program. Consequently, the proposed amendment provides that, for purposes

of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only spaces that, because of their intended use, will not require accessibility to the public or beneficiaries, or residents or employees with handicaps.

The proposed revison also provides that whether or not the recipient opts to follow UFAS in satisfaction of the ready access requirement, the recipient is not required to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member. This provision does not relieve recipients of their obligation under the current regulation to ensure program accessibility.

This document has been reviewed by DOJ. It is an adaptation of a prototype prepared by DOJ under Executive Order 12250 of November 2, 1980. The ATBCB has been consulted in the development of this document in accordance with 28 CFR 41.7.

This proposed rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small business entities.

List of Subjects in 5 CFR Part 900

Administrative practice and procedure, Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Government employees, Grant programs, Handicapped, Intergovernmental relations, Investigations, Loan programs.

For the reasons stated in the preamble, OPM proposes to amend 5 CFR Part 900 as follows:

PART 900—[AMENDED]

1. The authority citation for Subpart G of Part 900 is revised to read as follows:

Authority: 29 U.S.C. 794.

2. Section 900.705 is amended by revising paragraph (f) to read as follows:

§ 900.705 Program accessibility.

* * * * *

(f)(1) Effective as of *(the effective date of this amendment)*, design, construction, or alternation of buildings in conformance with sections 3 through 8 of the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR Subpart 101–19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

Constance Horner,
Director.

[FR Doc. 89–15702 Filed 7–5–89; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 22; Doc. No. 6927S]

General Crop Insurance Regulations; High-Risk Land Exclusion Option

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1990 and succeeding crop years, by adding a new section, 7 CFR 401.131, to be known as the High-Risk Land Exclusion Option. The intended effect of this rule is to provide the regulations containing the provisions of a High-Risk Land Exclusion Option on several endorsements to the general crop insurance policy.

DATE: Written comments on this proposed rule must be received not later than August 7, 1989.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as May 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC proposes to add to the General Crop Insurance Regulations (7 CFR Part 401), a new Section to be known as 7 CFR 401.131, the High-Risk Land Exclusion Option, effective for the 1990 and succeeding crop years, to provide the provisions for allowing an insured to exclude from crop insurance coverage all high-risk land.

In adding the new High-Risk Land Exclusion Option, FCIC is responding to the recommendations contained in the Interim Report of the Commission for the Improvement of the Federal Crop Insurance Program (Commission).

The Commission is composed of 10 individuals representing various constituencies of the insurance industry, and 10 others representing agricultural producers interests. The Commission's mission is to study participation in the crop insurance program, program operations and ways to improve crop insurance.

The Commission's Interim report contained, among other recommendations, one which provides for the exclusion of high-risk land, e.g., river bottoms, flood plains, etc., from insurance coverage. The recommendation addresses FCIC's current position of providing uniformly available crop insurance coverage on high-risk land, thereby increasing the rates to the insureti.

The basic crop insurance policy provides insurance coverage on all land planted to a crop by an insured. If the crop is planted on insurable high-risk land, the insured will be required to report, and pay premium on, such acreage. The premium rate for such crop land reflects the risk which exists. Insurance coverage on all cropland is uniformly available to all insureds with an accepted application.

Providing coverage and rates on high-risk land requires all insureds to insure, at a high cost, land which was previously uninsurable. In the Commission's opinion, requiring insurance on high-risk land makes the producer's over-all farming costs higher by raising the cost of crop insurance.

FCIC agrees with the Commission's recommendation and proposes to issue the High-Risk Land Exclusion Option to address both the concerns of the Commission and those of FCIC with respect to providing uniformly available coverage.

It is proposed that for those insureds who do not wish to insure their high-risk land, the basic insurance policy may be amended by submitting the High-Risk Land Exclusion Option separately for each policy and crop involved, providing FCIC and the insured greater flexibility in reaching their insurance objectives.

Initially, the High-Risk Land Exclusion Option will be available on crops in those states and counties where the actuarial study on high-risk land classification has been completed. It is the intent of FCIC to expand to additional crops and counties as the actuarial classifications are completed. Beginning with the 1990 crop year, the High-Risk Land Exclusion Option will be available on the following crops:

Barley (7 CFR 401.104)
Corn (7 CFR 401.111) [1]
Cotton (7 CFR 401.119) [1]
Cotton ELS (7 CFR 401.121)
Dry Beans (7 CFR Part 433) [2]
Grain Sorghum (7 CFR 401.113) [1]
Oats (7 CFR 401.105)
Popcorn (7 CFR Part 447)
Rye (7 CFR 401.106)
Safflowers (7 CFR 401.123) [3]
Soybeans (7 CFR 401.117)
Sunflowers (7 CFR 401.124)
Wheat (7 CFR 401.101)

Note: [1] Not available on these crops in Hidalgo County, Texas.
[2] Not available on Dry Beans in Idaho, Oregon, Utah, and Washington.
[3] Not available on Safflowers in Idaho and Utah.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register**. Interested parties may submit written comments, data, and opinions on this rule to Peter F. Cole, Secretary, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

All written comments received pursuant to this proposed rule will be available for public inspection and copying at the above address during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

Crop insurance; High-risk land exclusion option.

Proposed rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1990 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR Part 401 is amended to add a new Section to be known as 7 CFR 401.131, High-Risk Land Exclusion Option, effective for the 1990 and Succeeding Crop Years, to read as follows:

§ 401.131 High-risk land exclusion option

The provisions of the High-Risk Land Exclusion Option for the 1990 and subsequent crop years are as follows: Federal Crop Insurance Corporation High-Risk Land Exclusion Option. This is a continuous Option. Refer to item 5 of this Option.

Insured's Name _____
Address _____
Crop _____
County _____
Contract No. _____
Crop Year _____
Identification No: SSN_____
TAX_____

Upon our approval of this Option, we agree to amend your Federal Crop Insurance Policy to exclude from crop insurance coverage all high-risk land for the identified crop and county in which you have a share, subject to the following terms and conditions:

1. The Option must be submitted to us on or before the final date for accepting applications for the initial crop year in which you wish to exclude high-risk land.

2. In the event of a loss on any insured unit, you must provide separate production records showing planted acreage and harvested production for any acreage which is excluded from crop insurance coverage under this Option.

3. By signing this Option, you are declining crop insurance coverage under the general crop insurance policy and the crop endorsement on your high-risk land.

4. As used in this Option, "high-risk" land is any land which is not classified in an "R" classification shown on the actuarial table.

5. This Option may be cancelled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date provided by the policy, preceding such crop year.

6. You must report, on the acreage report for each crop year, the acreage of the crop planted on high-risk land.

All other provisions of the policy not in conflict with this Option are applicable.

_____
Insured's Signature

_____
Date

_____
Corporation Representative's Signature and Code Number

_____
Date

Done in Washington, DC, on June 19, 1989.

John Marshall,
Manager, Federal Crop Insurance Corporation.

[FR Doc. 89–15812 Filed 7–5–89; 8:45 am]

BILLING CODE 3410–08–M

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7 CFR Part 449

[Amdt. No. 2; Doc. No. 6938S]

Fresh Market Sweet Corn Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby withdraws the notice of proposed rulemaking proposing to amend the Fresh Market Sweet Corn Crop Insurance Regulations (7 CFR Part 449), effective for the 1989 crop year only, to extend the date for filing contract changes specified in the policy for insuring fresh market sweet corn. The intended effect of this rule was to: (1) Allow additional time for FCIC to complete studies of this program prior to issuing the provisions of crop insurance protection on fresh market sweet corn as an endorsement to the general crop insurance policy which contains the standard terms and conditions common to most crops: and, (2) adapt the provisions to the needs of approved additional counties.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

On Wednesday, April 6, 1988, FCIC published a notice of proposed rulemaking in the **Federal Register** at 53 FR 11299, to extend the date for filing contract changes specified in the policy for insuring fresh market sweet corn. The intended effect of this rule was to allow additional time for FCIC to complete studies of this program prior to issuing the provisions of crop insurance protection of fresh market sweet corn as an endorsement to the general crop insurance policy which contains the standard terms and conditions common to most crops.

The studies were not completed in time to be available before the proposed extended filing date. Therefore, FCIC hereby withdraws the notice of proposed rulemaking published at 53 FR 11299.

Done in Washington, DC, on June 19, 1989.

John Marshall,

Manager Federal Crop Insurance Corporation.

[FR Doc. 89-15613 Filed 7-5-89; 8:45 am]

BILLING CODE 3410-08-M

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 25

[Docket No. 70671-7171]

RIN 0690-AA14

Program Fraud Civil Remedies

AGENCY: Office of the Secretary, Department of Commerce.

ACTION: Proposed rule.

SUMMARY: This proposed rule, if promulgated, would implement the Program Fraud Civil Remedies Act of 1986, which authorizes the Department of Commerce (and certain other Federal agencies) to impose through administrative adjudication civil penalties and assessments against persons making false claims or statement to it.

DATE: To assure consideration, comments must be received on or before August 7, 1989.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, Department of Commerce, Room 5890, 14th and Constitution Avenue NW., Washington, DC 20230 or delivered to that office between 9:00 a.m. and 5:30 p.m. Comments received may also be inspected in Room 6628 between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Wayne Weaver, Acting Counsel to the Inspector General, 14th and Constitution Avenue NW., Washington, DC 20230, (202) 377-5992.

SUPPLEMENTARY INFORMATION:

I. Background

These proposed regulations would implement the Program Fraud Civil Remedies Act (the Act), which was enacted on October 21, 1986 as sections 6103-6104 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509, 100 Stat. 1874), and codified at 31 U.S.C. 3801-3812. The Act establishes an administrative remedy against anyone who makes a false claim or written statement to any of certain Federal agencies, including the Department of Commerce (the Department). In brief, any person who submits a claim or written statement to an affected agency knowing or with reason to know that it is false, fictitious, or fraudulent, is liable for a penalty of up to $5,000 per claim or statement and, in addition, with respect to claims, for an assessment of up to double the amount falsely claimed.

The Act requires each affected Federal agency to promulgate rules and regulations necessary to implement the provisions of the Act. 31 U.S.C. 3809. The Senate Governmental Affairs Committee stated in its report on the Act that it "expects that the regulations would be substantially uniform throughout government." S. Rep. No. 99-212, 99th Cong., 1st Sess. 12 (1985). In keeping with that expression, in November, 1986 the President's Council on Integrity and Efficiency (PCIE) requested the Department of Health and Human Services (HHS) to form a task force to develop model regulations for implementation of the Act by all affected Federal agencies. HHS was asked to lead the task force because it has since 1983 been administering a statute similar to the Act, the Civil Monetary Penalty Law, 42 U.S.C. 1320a-7a. (The Civil Monetary Penalty Law authorizes the Secretary of HHS to impose penalties and assessments against those who submit false claims to the Medicare, Medicaid, or the Maternal and Child Health Block Grant Programs.) The task force completed a model set of regulations on March 6, 1987, and the PCIE recommended that all affected Federal agencies adopt them.

The Department here proposes to adopt the final model regulations recommended by the PCIE, incorporating, where appropriate, definitions and procedures specific to the Department's organization.

II. General Description of the Statutory Scheme

The Act provides for administrative adjudication of cases where a person makes a claim or written statement to the Department that the person knows, or has reason to know, is false, fictitious, or fraudulent. Liability attaches under the Act for any false, fictitious, or fraudulent claim for property, services, or money and for any written statement that is false, fictitious, or fraudulent with respect to any claim, contract, bid, proposal for contract, grant, loan or benefit.

If a person making such a claim or statement to the Department does so with actual knowledge or deliberate ignorance of its falsity, or acts with reckless disregard for the truth or falsity of the claim or statement, he or she can be held liable for a penalty of up to $5,000 per claim or statement. In addition, with respect to claims, the person may be subject to an assessment of up to double the amount falsely claimed.

Role of Major Actors in Bringing Cases

The Act prescribes roles for four major actors within the Department in bringing cases under the Act: the investigating official, the reviewing official, the presiding official, and the authority head.

The *investigating official* is vested with the authority to investigate all allegations of liability under the Act, including the power to subpoena documents and other information. If the investigating official concludes that an action under the Act is warranted, he or she submits a report of the investigation to the reviewing official.

The *reviewing official* must be someone with the Department independent of the investigating official. The reviewing official reviews the investigative report to determine whether there is adequate evidence to believe that the person named in the report is liable under the Act. If so, the reviewing official sends to the Department of Justice a written notice of intent to issue a complaint. The Act then gives the Attorney General, or a designated Assistant Attorney General, 90 days to approve or disapprove the issuance of a complaint.

If the appropriate Justice Department official approves a case, the reviewing official may serve a complaint on the respondent. The respondent may request a hearing by filing an answer within 30 days of receiving the complaint. If the respondent does so, the reviewing official sends the complaint and answer to a presiding officer.

The *presiding official* serves a notice of hearing upon the respondent, supervises discovery, rules on motions, conducts the hearing, and issues an initial decision. The initial decision will contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed. Any respondent who is determined to be liable for a civil penalty or assessment in an initial decision, may appeal that decision to the authority head.

The *authority head* may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment. Should the authority head determine that the respondent is liable for a penalty or assessment, the respondent may obtain judicial review of such determination in an appropriate United States District Court.

These proposed regulations name as the investigating official the Inspector General of the Department, or a designee within the Office of Inspector General (OIG) compensated at or above the basic rate of pay for grade GS-16 under the General Schedule. The General Counsel or a designee within the Office of General Counsel, also compensated at or above that rate, will act as the reviewing official. Administrative Law Judges (ALJs) will be presiding officials, and the Secretary of the Department, or designee, will function as the authority head.

III. Discussion of Major Issues

1. Definitions

Most of the proposed definitions set forth in 15 CFR 25.2 come directly from the Act.

2. Basic for Civil Penalties and Assessments

For the most part, proposed language contained in 15 CFR 25.3 comes directly from the Act or the legislative history. However, the proposed regulation provides that liability for assessments is joint and several among all respondents; whereas, each respondent may be held liable separately for a penalty of up to $5,000 per claim or statement.

3. Investigation

The proposed regulations at 15 CFR 25.3 provide that the investigating official must submit a report to the reviewing official only where he or she concludes that action under the Act may be warranted. This section also would prescribe basic procedures for the investigating official to follow in issuing investigatory subpoenas under the Act for documents or other information. In addition, this section would make it clear that the Act does not prevent the investigating official from exercising the subpoena powers that he or she may have under other authorities or from pursuing other remedies.

4. Review by Reviewing Official

Section 3809 of Title 31 requires the reviewing official to determine that there is a reasonable prospect of collecting the amount of penalties and assessments for which a person may be liable. The proposed regulations at 15 CFR 25.5 would not interpret this to require the reviewing official to determine that a respondent could pay the statutory maximum, but rather that the respondent could pay an "appropriate amount."

5. Prerequisites for Issuing a Complaint

Most of the proposed language contained in 15 CFR 25.6 is derived directly from the Act. Under 31 U.S.C. 3803(c)(1), the remedies provided in the Act do not apply with respect to any claim if the amount of money (or value of property or services) falsely demanded or requested in such claim or in a group of related claims submitted at the same time exceeds $150,000. This section interprets the term "related group of claims submitted at the same time" narrowly to prevent attempts to evade liability under the Act.

The proposed regulation also would make it clear that the reviewing official may join in a single complaint claims that are unrelated or that were not submitted at the same time, even if the total amount of money (or value of property or services) falsely claimed exceeds $150,000.

6. Issuance of Complaints

The proposed regulations would specify what must be included in a complaint (15 CFR 25.7) and an answer by which a respondent requests a hearing (15 CFR 25.9). 15 CFR 25.8 would specify the means by which service of the complaint is made.

7. Default Upon Failure To File an Answer

Regulations at 15 CFR 25.10 would require the ALJ (after another notice to the respondent) to impose penalties and assessments at the statutory maximum whenever the facts alleged in the complaint establish liability under the Act and the respondent fails to file a timely answer. An initial decision of the ALJ would become the final decision of the Department and would not be subject to further challenge unless the respondent could demonstrate that extraordinary circumstances prevented the filing of a timely answer.

8. Hearings

The provisions at 15 CFR 25.14 through 25.16 are designed to ensure the fairness of a hearing by (a) providing for the separation of functions among those within the agency investigating, litigating, and deciding these cases, (b) prohibiting ex parte contacts with the ALJ on any matters in issue, and (c) providing a mechanism for the disqualification of either a reviewing official or an ALJ.

9. Rights of Parties; Authorities of the ALJ

The provisions at 15 CFR 25.17 and 25.18 would list the rights of the parties and the authorities of the ALJ not specifically provided in other sections of the regulations.

10. Prehearing Conferences

The ALJ may order a prehearing conference at his or her discretion, but must order at least one on the request of either party. Prehearing conferences may be held over the telephone at the ALJ's discretion. (15 CFR 25.19).

11. Disclosure of Documents

The Act requires the disclosure of certain types of materials to the respondent. 31 U.S.C. 3803(e) (1) and (2). Generally speaking, these materials consist of any relevant and material documents and other materials that relate to the allegations in the complaint and upon which the findings and conclusions of the investigating official under 15 CFR 25.4(b) are based, unless such materials are subject to a privilege under Federal law. In addition, the

respondent may also obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint. (15 CFR 25.20).

12. Discovery

Congress has provided for limited discovery in these proceedings. The Act provides only for such discovery as the ALJ determines is "necessary for the expeditious, fair, and reasonable consideration of the issues * * *" 31 U.S.C. 3803(g)(3)(B)(ii). In addition, the Senate Governmental Affairs Committee stated:

> In the ordinary case, the committee anticipates that the timely exchange of proposed exhibits, witness lists and witness statements will constitute sufficient discovery. It is clearly the committee's hope that this alternative administrative mechanism will not become entangled in the unchecked "discovery wars" that render many court cases excessively costly and time-consuming.
>
> S. Rep. No. 99-212, *supra*, at 15.

In order to ensure that discovery is reasonably controlled, the proposed regulation (15 CFR 25.21) provides that all discovery must be approved by the ALJ, unless the parties agree otherwise. The burden of proof with respect to a discovery request is on the proponent of that request.

13. Exchange of Witness Lists, Statements, and Exhibits

Proposed regulations at 15 CFR 25.22 would provide for the exchange of certain documents before the hearing, including witness lists, copies of prior statements of witnesses, and copies of hearing exhibits. The ALJ would be able to exclude witnesses and documents in instances where a party did not receive such documents before the hearing. In addition, any documents so exchanged would be deemed authentic for purposes of admissibility at the hearing unless a party objected before the hearing.

14. Subpeonas

15 CFR 25.23 would prescribe procedures for the ALJ to issue, and for parties and prospective witnesses to contest, subpoenas to appear at the hearing, as authorized by 31 U.S.C. 3804(b). 15 CFR 25.24 would permit parties and prospective witnesses to seek protective orders to restrict discovery or to limit the disclosure of information at the hearing.

15. Sanctions

The proposed regulations at 15 CFR 25.29 Would expressly recognize an ALJ's authority to sanction parties and their representatives for failing to comply with regulations or orders of the ALJ. These sanction provisions are modeled on those of the Merit Systems Protection Board at 5 CFR 1201.43.

16. The Hearing and Burden of Proof

15 CFR 25.30 would require that the Department has the burden of proof on the issues of liability and the existence of any factors that might aggravate or increase the amount of penalties and assessments that may be imposed. Conversely, the respondent has the burden of proof on any affirmative defenses and any factors that might mitigate or reduce the amount of penalties and assessments.

17. Determining the Amount of Penalties and Assessments

The Act authorizes the imposition of penalties ranging up to $5,000 for each false claim or statement, and in addition, with respect to claims, an assessment ranging up to twice the amount falsely claimed. However, the Act is silent on how the appropriate amount of penalties or assessments should be determined. The proposed regulation at 15 CFR 25.31 would provide guidance to the ALJ and the Secretary in exercising this discretion. The proposed regulation notes that because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others, a significant penalty and double damages ordinarily should be imposed. It then lists factors that should be considered, but notes that the list is not exhaustive. The ALJ and Secretary remain free to consider other factors that may aggravate or mitigate the amount of penalties and assessments as such factors are presented in particular cases.

18. Witnesses

Under 15 CFR 25.33, the ALJ would allow testimony to be admitted in the form of a written statement or deposition so long as the opposing parties have a sufficient opportunity to subpoena the person whose statement is being offered.

Cross-examination may, at the discretion of the ALJ, exceed the scope of direct examination. The provisions in paragraphs (c) and (e) are derived from Rule 611 of the Federal Rules of Evidence.

19. Evidence

Paragraphs (a) through (d) of 15 CFR 25.34 were included to comply with the recommendations of the Administrative Conference of the United States in Recommendation 86-2, 1 CFR 305.86-2, 51 FR 25,641 (July 16, 1986). The Federal Rules of Evidence are not, with some exceptions, generally binding on the ALJ. However, the ALJ may apply the Federal Rules of Evidence to exclude unreliable evidence.

20. Post-Hearing Briefs

It is within the ALJ's discretion to order post-hearing briefs, although parties are entitled to file one if they desire. (15 CFR 25.36).

21. Initial Decision

The proposed regulation at 15 CFR 25.37 would provide that within 90 days of the filing of final post-hearing briefs, the ALJ shall serve on the parties an initial decision making specific findings of fact and conclusions of law on whether the claims or statements alleged in the complaint violate the Act and the appropriate amount of penalties and assessments considering any aggravating or mitigating factors in the case. The initial decision would become final within 30 days unless stayed by the filing of an appeal or a motion for reconsideration.

22. Reconsideration of Initial Decision

15 CFR 25.38 would permit any party to file with the ALJ a motion to the ALJ for reconsideration of the initial decision, allowing the primary decision-maker an opportunity to correct any errors in the initial decision.

23. Appeal to Authority Head

The proposed regulations at 15 CFR 25.39 would prescribe procedures for a respondent who has been found liable for penalties and assessments in an initial decision to appeal that decision to the authority head, as guaranteed by 31 U.S.C. 3803(i)(2). The rule would provide that there is no appeal of an ALJ's interlocutory orders.

24. Miscellaneous

The proposed regulations 15 CFR 25.40 through 25.46 would largely reiterate statutory provisions, except § 25.41, which would provide that there will be no administrative stay of the authority head's final decision.

25. Limitations

The Act provides that the ALJ must serve a notice of hearing within six years of the date the claim or statement is made. The proposed regulation (15 CFR 25.47) would provide that service of a notice of intent to issue an initial decision in the event of default would be deemed to meet this statutory requirement.

IV. Rulemaking Requirements

Executive Order 12291

Executive Order 12291 requires the Department to prepare and publish an initial regulatory impact analysis for any proposed major rule. A major rule is defined as any regulation that is likely to: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We have determined that these proposed regulations do not meet the criteria for a major rule as defined by section 1(b) of Executive Order 12291. In general, the proposed rule would establish procedures governing the scope and conduct of administrative adjudications to impose civil penalties and assessments upon persons who submit false claims or statements to the Department. As such, this proposed rule would have no direct effect on the economy or on Federal or State expenditures. Consequently, we have concluded that an initial regulatory impact analysis is not required.

Regulatory Flexibility Analysis

Consistent with the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 5 U.S.C. 604(a)), we prepare and publish an initial regulatory flexibility analysis for proposed regulations unless the General Counsel certifies that the regulation would not have a significant economic impact on a substantial number of small business entities. The analysis is intended to explain what effect the regulatory action by the agency would have on small businesses and other small entities and to develop lower cost or burden alternatives. As indicated above, these proposed regulations would not have a significant economic impact. While some of the penalties and assessments the Department could impose as a result of these regulations might have an impact on small entities, we do not anticipate that a substantial number of these small entities would be significantly affected by this rule-making. Therefore, the General Counsel certifies to the Chief Counsel for Advocacy, Small Business Administration, that this proposed regulation would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980 (Pub. L. 96-511), all Departments are required to submit to the Office of Management and Budget for review and approval any reporting or recordkeeping requirements contained in both proposed and final rules. It has been determined that this proposed rule-making does not contain specific information collection requirements and would not increase the Federal paperwork burden on the public and private sector.

Response to Comments

Because of the large number of comments we receive on proposed regulations, we cannot acknowledge or respond to these comments individually. However, in preparing the final rule, we shall consider all comments and shall respond to significant points in the preamble to that document.

List of Subjects in 15 CFR Part 25

Administrative practice and procedure, Fraud, Investigations, Organizations and functions (Government agencies) and Penalties.

For the reasons stated in the preamble, it is proposed that Title 15 of the Code of Federal Regulations, Subtitle A, be amended by adding a new Part 25, to read as follows:

PART 25—PROGRAM FRAUD CIVIL REMEDIES

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Authority: Secs. 6101-6104, Pub. L. 99-509, 100 Stat. 1874 (31 U.S.C. 3801-3812).

§ 25.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. 99-509, secs. 6106-6104, 100 Stat. 1874 (October 21, 1986), to be codified at 31 U.S.C. 3801-3812. 31 U.S.C. 3809 of the statute requires each authority head to promulgate regulations necessary to implement the provisions of the statute.

(b) *Proposed.* This part: (1) Establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and (2) specifies the hearings and appeal rights of persons subject to allegations of liability for such penalties and assessments.

§ 25.2 Definitions.

ALJ means an Administrative Law Judge in the authority appointed pursuant to 5 U.S.C. 3105 or detailed to the authority pursuant to 5 U.S.C. 3344.

Authority means the Department of Commerce.

Authority head means the Secretary of the Department of Commerce, or designee.

Benefit means, except as the context otherwise requires, anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

Claim means any request, demand, or submission—

(a) Made to the authority for property, services, or money (including money

representing grants, loans, insurance, or benefits);

(b) Made to a recipient of property, services, or money from the authority or to a party to a contract with the authority—

(1) For property or services if the United States—

(i) Provided such property or services;

(ii) Provided any portion of the funds for the purchase of such property or services; or

(iii) Will reimburse such recipient or party for the purchase of such property or services; or

(2) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(i) Provided any portion of the money requested or demanded; or

(ii) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(c) Made to the authority which has the effect of decreasing an obligation to pay or account for property, services, or money.

Complaint means the administrative complaint served by the reviewing official on the respondent under § 25.7.

Department means the Department of Commerce.

Government means the United States Government.

Individual means a natural person.

Initial decision means the written decision of the ALJ required by §§ 25.10 or 25.37, and includes a revised initial decision issued following a remand or a motion for reconsideration.

Investigating official means the Inspector General of the Department of Commerce or an officer or employee of the Office of the Inspector General designated by the Inspector General and serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule.

Knows or has reason to know, means that a person, with respect to a claim or statement

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(b) Acts in deliberative ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

Makes, wherever it appears, shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, *making* or *made*, shall likewise include the corresponding forms of such terms.

Person means any individual, partnership, corporation, association, or private organization and includes the plural of that term.

Representative means any attorney who is a member in good standing of the bar of any State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico.

Respondent means any person alleged in a complaint under § 25.7 to be liable for a civil penalty or assessment under § 25.3.

Reviewing official means the General Counsel of the Department or his or her designee who is serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule.

Statement means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(a) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(b) With respect to (including relating to eligibility for—

(1) A contract with, or a bid or proposal for a contract with; or

(2) A grant, loan, or benefit from, the authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract for such grant, loan, or benefit.

§ 25.3 Basis for civil penalties and assessments.

(a) *Claims*. (1) Except as provided in paragraph (c) of this section, any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes, or is supported by, any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes, or is supported by, any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed,

shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to the authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority, recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) *Statements*. (1) Except as provided in paragraph (c) of this section, any person who makes a written statement that—

(i) The person shows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(ii) Contains, or is accompanied by, an express certification or affirmation of the truthfulness and accuracy of the contents of the statement,

shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to the authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority.

(c) No proof of specific intent to defraud is required to establish liability under this section.

(d) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held liable for a civil penalty.

(e) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

§ 25.4 Investigation.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official, or the person designated to receive the documents, a certification that—

(i) The documents sought have been produced;

(ii) Such documents are not available and the reasons therefore; or

(iii) Such documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to defer or postpone a report or referral to avoid interference with a criminal investigation or prosecution.

(d) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

§ 25.5 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 25.4(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 25.3, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 25.7.

(b) Such notice shall include—

(1) At statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money, or the value of property, services, or other benefits, requested or demanded in violation of § 25.3 of this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments. Such a statement may be based upon information then known or an absence of any information indicating that the person may be unable to pay such an amount.

§ 25.6 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 25.7 only if—

(1) The Department of Justice approved the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1), and

(2) In the case of allegations of liability under § 25.3(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money, or the value of property or services, demanded or requested in violation of § 25.3(a) does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (*e.g.*, grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person claims that are unrelated or were not submitted simultaneously, regardless of the amount of money, or the value of property or services, demanded or requested.

§ 25.7 Complaint.

(a) On or after the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the respondent, as provided in § 25.8.

(b) The complaint shall state—

(1) The allegations of liability against the respondent, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the respondent may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the respondent's right to request a hearing by filing an answer and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the respondent with a copy of these regulations.

§ 25.8 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by—

(1) Affidavit of the individual making service;

(2) An acknowledged United States Postal Service return receipt card; or

(3) Written acknowledgement of the respondent or his or her representative.

§ 25.9 Answer.

(a) The respondent may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. An answer shall be deemed to be a request for hearing.

(b) In the answer, the respondent—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the respondent intends to rely;

(3) May state any reasons why the respondent contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the respondent to act as respondent's representative, if any.

§ 25.10 Default upon failure to file an answer.

(a) If the respondent does not file an answer within the time prescribed in § 25.9(a), the reviewing official may refer the complaint to the ALJ along with the proof of service, as provided in § 25.8(b).

(b) Upon the referral of the complaint, the ALJ shall promptly serve on the respondent in the manner prescribed in § 25.8, a notice that an initial decision will be issued under this section.

(c) The ALJ shall assume the facts alleged in the complaint to be true and, if such facts establish liability under § 25.3, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the respondent waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the respondent files motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the respondent from filing an answer, the initial decision shall be stayed pending the ALJ's decision on the motion.

(f) If, on such motion, the respondent can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ shall withdraw the initial decision in paragraph (c) of this section, if such a decision has been issued, and shall grant the respondent an opportunity to answer the complaint.

(g) A decision of the ALJ denying a respondent's motion under paragraph (e) of this section is not subject to reconsideration under § 25.38.

(h) The respondent may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal with the authority head within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(i) If the respondent files a timely notice of appeal with the authority head, the ALJ shall forward the record of the proceeding to the authority head.

(j) The authority head shall decide expeditiously whether extraordinary circumstances excuse the respondent's failure to file a timely answer based solely on the record before the ALJ.

(k) If the authority head decides that extraordinary circumstances excused the respondent's failure to file a timely answer, the authority head shall remand the case to the ALJ with instructions to grant the respondent an opportunity to answer.

(l) If the authority head decides that the respondent's failure to file a timely answer is not excused, the authority head shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

§ 25.11 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

§ 25.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the respondent in the manner prescribed by § 25.8. At the same time, the ALJ shall send a copy of such notice to the representative for the Government.

(b) Such notice shall include—

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Government and of the respondent, if any; and

(6) Such other matters as the ALJ deems appropriate.

§ 25.13 Parties to the hearing.

(a) The parties to the hearing shall be the respondent and the authority.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

§ 25.14 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the authority who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case—

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the authority head, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ shall not be responsible to, or subject to the supervision or direction of, the investigating official or the reviewing official.

(c) The reviewing official shall, after consulting with the Inspector General, designate the representative for the Government, who shall be an attorney with either the Office of General Counsel, or the Office of the Inspector General. The reviewing official's decision is final.

§ 25.15 Ex parte contacts.

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 2516 Disqualification of reviewing official or ALJ.

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the ALJ shall proceed no further in the case until he or she resolves the matter of disqualification in accordance with paragraph (f) of this section.

(f)(1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the authority head may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

§ 25.17 Rights of parties.

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

§ 25.18 Authority of the ALJ.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to find Federal statutes or regulations invalid.

§ 25.19 Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 25.20 Disclosure of documents.

(a) Upon written request to the reviewing official, the respondent may review any relevant and material documents, transcripts, records, and other materials that related to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 25.4(b) are based, unless such documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the respondent may obtain copies of such documents.

(b) Upon written request to the reviewing official, the respondent also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 25.5 is not discoverable under any circumstances.

(d) The respondents may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed with the ALJ following the filing of an answer pursuant to § 25.9.

§ 25.21 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 25.22 and 25.23, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) *Motions for discovery.*

(1) A party seeking discovery may file a motion with the ALJ. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within two days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 25.34.

(3) The ALJ may grant a motion for discovery only if he or she finds that the discovery sought—

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 25.24.

(e) *Depositions.*

(1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 258.

(3) The deponent may file with the ALJ a motion to quash the subpoena or a motion for a protective order within ten days of service.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

§ 25.22 Exchange of witness lists, statements, and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 25.33(b). At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

§ 25.23 Subpoenas for attendance at hearing.

(a) A party wishing to produce the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 25.8. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

§ 25.24 Protective order.

(a) A party of a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

§ 25.25 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the Department of Commerce, a check for witness fees and mileage need not accompany the subpoena.

§ 25.26 Form, filing and service of papers.

(a) *Form.* (1) Documents filed with the ALJ shall include an original and one copy.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (*e.g.*, motion to quash subpoena).

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of, the party of the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than the complaint or notice of hearing shall be made by delivering or mailing a copy to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§ 25.27 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation.

(c) Where a document has been served or issued by mail, an additional five days will be added to the time permitted for any response.

§ 25.28 Motions.

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 25.29 Sanctions

(a) The ALJ may sanction a person, including any party or representative, for—

(1) Failing to comply with an order, rule, or procedure governing the proceedisng;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

§ 25.30 The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the respondent is liable for a civil penalty or assessment under § 25.3 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The authority shall prove respondent's liability and any aggravating factors by a preponderance of the evidence.

(c) The respondent shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence

(d) The hearing shall be open to the public unless otherwise ordered by the ALJ for good cause shown.

§ 25.31 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the authority head, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted ordinarily double assessment, in lieu of damages, and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALj and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct (*i.e.*, the false, fictitious, or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the respondent's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such program;

(8) Whether the respondent has engaged in a pattern of the same or similar misconduct;

(9) Whether the respondent attempted to conceal the misconduct;

(10) The degree to which the respondent has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the respondent, the extent to which the respondent's practices fostered or attempted to preclude such misconduct;

(12) Whether the respondent cooperated in or obstructed an investigation of the misconduct;

(13) Whether the respondent assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the respondent's sophistication with respect to it, including the extent of the respondent's prior participation in the program or in similar transactions;

(15) Whether the respondent has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State directly or indirectly; and

(16) The need to deter the respondent and others from engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the ALJ or the authority head from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

§ 25.32 Location of hearing.

(a) The hearing may be held—

(1) In any judicial district of the United States in which the respondent resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the respondent and the ALJ.

(b) Each party shall have the opportunity to present arguments with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

§ 25.33 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statements must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 25.22(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

(1) Make the interrogation and presentation effective for the ascertainment of the truth,

(2) Avoid needless consumption of time, and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 2534 Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, *e.g.*, to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 25.24.

§ 25.35 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the authority head.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 25.24.

§ 25.36 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 25.37 Initial decision.

(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 25.3.

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 25.31.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of posthearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all respondents with a statement describing the right of any respondent determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the authority head. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the authority head, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued by the ALJ.

§ 25.38 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the authority head in accordance with § 25.39.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the authority head in accordance with § 25.39.

§ 25.39 Appeal to authority head.

(a) Any respondent who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the authority head by filing a notice of appeal with the authority head in accordance with this section.

(b)(1) No notice of appeal may be filed until the time period for filing a motion for reconsideration under § 25.38 has expired.

(2) If a motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) If no motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ issues the initial decision.

(4) The authority head may extend the initial 30 day period for an additional 30 days if the respondent files with the authority head a request for an extension within the initial 30 day period and shows good cause.

(c) If the respondent files a timely notice of appeal with the authority head, the ALJ shall forward the record of the proceeding to the authority head.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Government may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the authority head.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the authority head shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the authority head that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the authority head shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment determined by the ALJ in any initial decision.

(k) The authority head shall promptly serve each party to the appeal with a copy of the decision of the authority head and a statement describing the right of any person determined to be liable for a penalty or assessment to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a respondent has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the respondent with a copy of the authority head's decision, a determination that a respondent is liable under § 25.3 is final and is not subject to judicial review.

§ 25.40 Stays ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the authority head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the authority head shall stay the process and it shall be resumed only upon receipt of the written authorization of the Attorney General.

§ 25.41 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

§ 25.42 Judicial review.

Section 3805 of Title 31, United States Code, authorized judicial review by an appropriate United States District Court of a final decision of the authority head imposing penalities or assessments under this part and specifies the procedures for such review.

§ 25.43 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of Title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

§ 25.44 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 25.42 or § 25.43, or any amount agreed upon in a compromise or settlement under § 25.46, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund or an overpayment of Federal taxes, then or later owing by the United States to the respondent.

§ 25.45 Deposit in Treasury of United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

§ 25.46 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision. If the designated representative of the Government is not with the Office of General Counsel, the representative shall forward all settlement offers to the reviewing official and cannot negotiate a compromise or settlement with the respondent except as directed by the reviewing official.

(c) The authority head has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 25.42 or during the pendency of any action to collect penalties and assessments under § 25.43.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 25.42 or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate The reviewing official may recommend settlement terms to the authority head, or the Attorney Geneal, as appropriate.

(f) Any compromise or settlement must be in writing.

§ 25.47 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served

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in the manner specified in § 25.8 within 6 years after the date on which such claim or statement is made.

(b) If the respondent fails to file a timely answer, service of a notice under § 25.10(b) shall be deemed a notice of hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

Wendell L. Willkie, II,

General Counsel, Department of Commerce.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 88P-0142]

RIN 0905-AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Proposed Amendment to Monograph for OTC Antitussive Drug Products

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the over-the-counter (OTC) monograph for antitussive drug products by adding a new section that will exempt antitussive drug products containing methol in a lozenge or a compressed tablet dosage form from that part of the accidental overdose warning required by § 330.1(g) (21 CFR 330.1(g)) that states, "In case of accidental overdose, seek professional assistance or contact a poison control center immediately." The exemption from the warning above is being provided because OTC antitussive drug products containing methol in a lozenge or a compressed tablet dosage form have been determined to have a low potential for acute toxicity resulting from accidental ingestion. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments by September 5, 1989. Written comments on the agency's economic impact determination by November 3, 1989.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: Under 21 CFR 330.1(g), the following general warning statements are required on all orally administered OTC drug products: "Keep this and all drugs out of the reach of children. In case of accidental overdose, seek professional assistance or contact a poison control center immediately." Section 330.1(g) also states that FDA will grant an exemption from these general warnings where appropriate upon petition.

In the **Federal Register** of August 12, 1987 (52 FR 30042), FDA issued a final monograph for OTC antitussive drug products (21 CFR Part 341) that established conditions under which these products are generally recognized as safe and effective and not misbranded. The monograph provides for menthol to be used in a lozenge or compressed tablet dosage form at a dose of 5 to 10 milligrams (mg).

Since the publication of the antitussive final monograph, two companies have petitioned for an exemption from the general warning statements in § 330.1(g) having to appear on the labeling of OTC antitussive drug products containing methol in cough drops. One company (Ref. 1) requested that its OTC drug product containing 3 mg menthol per cough drop that is to be marketed in pouches containing 21 cough drops and in sticks containing 10 cough drops be exempted from the general warning statements in §330.1(g). Another company (Ref. 2) made a similar request for its OTC antitussive drug products containing 6.1 to 10 mg menthol per drop marketed with 30 drops per package. In support of these requests, the companies asserted that the cough drop products do not present a risk of toxicity or poisoning to children or adults as a result of acute overdose and thus the warnings are not needed.

The agency believes that there is a low potential for acute toxicity from the accidental ingestion of lozenges containing menthol in the quantities mentioned above. In 2 studies evaluated by the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products (September 9, 1976; 41 FR 38312 at 38350), 40 healthy subjects who were each asked to dissolve 2 candy-base lozenges, each lozenge containing 1.36 mg of menthol together with other volatile oils, every 20 minutes for 2 hours exhibited no adverse effects with the exception of 1 report of nausea and vomiting. This was attributed to a dislike for the wild cherry flavor of the lozenge (Refs. 3 and 4). In a group of 70 healthy subjects, 50 adults and 20 children ages 8 to 12, half of the subjects dissolved a menthol-eucalyptus lozenge containing 9.62 mg menthol and 5.55 mg eucalyptus oil every 4 to 8 hours on 2 successive days. The other half of the subjects dissolved the cough drop base without the aromatics. In the intensive dosage schedule, a slightly large number of subjects demonstrated mild irritation of the oral mucosa on days one and two, but there were no differences between the two groups in the severity of irritation or residual findings after day two. No systemic complaints were reported (Ref. 5). A similar study using a lozenge formulation containing menthol 8.14 mg and eucalyptus oil 4.625 mg versus a lozenge base without volatile substances produced comparable results (Ref. 6). The Panel stated that the fatal oral dose of menthol itself in man is about 2 grams (41 FR 38349).

Based on the studies discussed above (Refs. 3 through 6) and the Panel's evaluation, the agency agrees with the petitioners that accidental ingestion of menthol lozenges or compressed tablets marketed in the monograph dosage (5 to 10 mg) is highly unlikely to present any degree of acute oral toxicity. Because of this low potential for acute toxicity, the agency believes that antitussive drug products containing menthol in a lozenge or compressed tablet dosage form should be exempted from the accidental overdose warning in the second part of § 330.1(g). Products containing this ingredient must continue to bear the first part of the general warning, which states, "Keep this and all drugs out of the reach of children." The agency believes that this part of the warning is necessary to reinforce and ensure that all drugs, regardless of potential toxicity, are treated by consumers as drugs and kept out of the reach of all children.

Based on the above, the agency has granted an exemption for the cough drop products described above from having to bear the warning in the second part of 21 CFR 330.1(g), i.e., "In case of accidental overdose, seek professional assistance or contact a poison control center immediately." Copies of the petitions and FDA's response (Refs. 1, 2, 7, and 8) are on file in the Dockets Management Branch (address above).

The agency believes that it will receive additional petitions similar to the two discussed above requesting an exemption from the general overdose warnings for OTC antitussive drug products that contain menthol in a lozenge or compressed tablet dosage form. The agency also believes that it would be unnecessarily burdensome to require separate petitions from each manufacturer for exemption from this warning for every OTC antitussive drug product containing menthol in a lozenge or a compressed tablet that is marketed in accordance with the monograph dosage. Therefore, the agency is proposing to add new § 341.74(f) to provide such an exemption for all comparable products.

The agency proposes that this proposed rulemaking be effective upon publication of the final rule. However, manufacturers of OTC antitussive drug products may adopt the labeling changes proposed in this document as of the date of publication of this proposal, subject to the possibility that FDA may change its position as a result of comments filed in response to this proposal.

References

(1) Comment No. CP, Docket No. 88P-0142, Dockets Management Branch.

(2) Comment No. CP00002, Docket No. 88P-0142, Dockets Management Branch.

(3) Mendoza, J. A., "Clinical Safety Tests on Vicks Cough Drops," draft of unpublished data, OTC Volume 040298, Docket No. 76N-0052, Dockets Management Branch.

(4) Seltzer, S., "Clinical Safety Test on Vicks Cough Drops," draft of unpublished data, OTC Volume 040298, Docket No. 76N-0052, Dockets Management Branch.

(5) Glassman, S., and E.W. Packman, "Menthol-Eucalyptus Cough Drops: Safety: Intensive Use, CRD 71-25," draft of unpublished data, OTC Volume 040298, Docket No. 76N-0052, Dockets Management Branch.

(6) Glassman, S., and E.W. Packman, "Cherry Victors, Safety: Intensive Use, CRD 71-23," draft of unpublished data, OTC Volume 040298, Docket No. 76N-0052, Dockets Management Branch.

(7) Letter from J.M. Taylor, FDA, to D.B. Deck, Joel, Inc., coded PAV2PDN2, Docket No. 88P-0142, Dockets Management Branch.

(8) Letter from J.M. Taylor, FDA, to P.S. Reichertz, Counsel for Ricola, Inc., coded PAV1PDN1, Docket No. 88P-0142, Dockets Management Branch.

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC antitussive drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96-354). That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC antitussive drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC antitussive drug products. Comments regarding the impact of this rulemaking on OTC antitussive drug products should be accompanied by appropriate documentation.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before September 5, 1989, submit written comments to the Dockets Management Branch (address above). Written comments on the agency's economic impact determination may be submitted on or before November 3, 1989. Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 341

Antitussive drug products, Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended in Part 341 as follows:

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR Part 341 continues to read as follows:

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041-1042 as amended, 1050-1053 as amended, 1055-1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

2. In § 341.74 new paragraph (f) is added to read as follows:

§ 341.74 Labeling of antitussive drug products.

* * * * *

(f) *Exemption from the general accidental overdose warning.* The labeling for antitussive drug products containing the active ingredient identified in § 341.14(b)(2) marketed in accordance with § 341.74(d)(2)(iii) is exempt from the requirement in § 330.1(g) of this chapter that the labeling bear the general warning statement "In case of accidental overdose, seek professional assistance or contact a poison control center immediately." The labeling must continue to bear the first part of the general warning in § 330.1(g) of this chapter, which states, "Keep this and all drugs out of the reach of children."

Dated: June 23, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-15850 Filed 7-5-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 715

Availability of Petition To Initiate Rulemaking; Surface Coal Mining and Reclamation Operations; General Performance Standards for Postmining Use of Land Under Initial Program Regulations

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of availability of a petition to initiate rulemaking and request for comment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the United States Department of the Interior (DOI) seeks comments concerning the rule change suggested in

a petition, submitted pursuant to the Surface Mining Control and Reclamation Act (SMCRA), to amend OSMRE's regulations governing postmining land use on sites permitted under the Initial Regulatory Program.

The petitioner suggests that OSMRE amend its rules by deleting the initial regulatory program postmining land use requirements at 30 CFR 715.13(d) and replacing them with the permanent regulatory program postmining land use requirements at 30 CFR 816.133(c). OSMRE is requesting comments on the merits of the petition and the rule changes suggested in the petition. Such comments will assist the Director of OSMRE in making the decision whether to grant or deny the petition.

DATE: OSMRE will accept written comments on the petition until 5 p.m. Eastern time on August 7, 1989.

ADDRESSES: Mail comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131A, 1951 Constitution Avenue NW., Washington, DC 20240; or hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L St. NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen M. Sheffield, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202-343-5950 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written Comments

Written comments on the suggested change should be specific, should be confined to issues pertinent to the proposed revision, and should explain the reason for the comment. Where practicable, commenters should submit three copies of their comments. Comments received after the close of the comment period (see **DATE**) or delivered to an address other than those listed (see **ADDRESSES**) may not necessarily be considered or included in the Administrative Record on the petition.

Availability of Copies

Additional copies of the petition and copies of 30 CFR Part 715 are available for inspection and may be obtained at the location listed under **ADDRESSES**.

Public Hearing

OSMRE will not hold a public hearing on the proposed revision, but OSMRE personnel will be available to meet with the public during business hours, 9 a.m. to 5 p.m., during the comment period. In order to arrange such a meeting, call or write to the person identified under **FOR FURTHER INFORMATION CONTACT.**

II. Background and Substance of Petition

OSMRE received a letter on June 20, 1989, from Mr. J. Nathan Noland, President of the Indiana Coal Council, Inc., 701 Harrison Bldg., W. Market St., Indianapolis, Indiana, as a petition for rulemaking to revise 30 CFR 715.13(d). Mr. Noland suggested that the postmining land use requirements of 30 CFR 715.13(d) applicable to operations permitted under the initial regulatory program be replaced with the postmining land use requirements for operations permitted under the permanent regualtory program at 30 CFR 816.133.(c).

SMCRA was signed into law on August 3, 1977. Section 502 of the Act authorized the establishment of an Initial Regulatory Program under which surface coal mining operations would be regulated pending the establishment of a more comprehensive Permanent Program. The regulations implementing the Initial Program were published in final on December 13, 1977 (42 FR 62639). Final Permanent Program regulations, which differ from their Initial Program counterparts in some significant respects, were promulgated on March 13, 1979 (44 FR 14901), and subsequently revised in part in 1983 and later. Although the Permanent Program rules have been in effect for some time, the Initial Program rules continue to apply to operators who are acting pursuant to permits received under the Initial Program.

Under section 201(g) of SMCRA, any person may petition the Director of OSMRE to initiate a proceeding for the issuance, amendment, or repeal of any of the regulations implementing SMCRA. Under the applicable regulations for rulemaking petitions, 30 CFR 700.12, this notice seeks public comment on the merits of the petition and on the rule changes suggested in the petition.

At the close of the comment period, a decision will be made whether to grant or deny the petition. Under 30 CFR 700.12, the Director shall issue a written decision either granting or denying the petition within 90 days of the date of its receipt. Soon thereafter, notice of that decision will be published in the **Federal Register**. If the petition is granted, rulemaking proceedings will be initiated in which public comment will again be sought before any final rulemaking notice appears. If the petition is denied, no further rulemaking action will occur pursuant to the petition.

III. Procedural Matters

Publication of this notice of the receipt of the petition for rulemaking is a preliminary step in the rulemaking process. If a decision is made to grant the petition, a formal rulemaking process will be initiated. Thus, no regulatory flexibility analysis is needed at this stage, nor is a regulatory impact analysis necessary under Executive Order 12291.

Publication of this notice does not constitute a major Federal action having a significant effect on the human environment for which an environmental impact statement under the National Environmental Policy Act, 44 U.S.C. 4322(a)(C), is needed.

List of Subjects in 30 CFR Part 715

Environmental protection, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: June 29, 1989.

Robert H. Gentile,

Director.

Appendix

The text of the petition dated June 15, 1989 (received June 20, 1989), from Mr. J. Nathan Noland, is as follows:

This is a petition to the Director of the Office of Surface Mining ("OSM") pursuant to 30 U.S.C. section 1211(g) and 30 CFR 700.12 to initiate rulemaking to amend a regulation promulgated under the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87, 30 U.S.C. section 1201 et seq. ("SMCRA").

Petitioner—The Petitioner is the Indiana Coal Council, Inc. The Indiana Coal Council is a trade association representing approximately ninety percent of Indiana's coal production. The association was formed to foster, promote, and defend the interests of Indiana's coal producers, coal reserve holders, and other business entities related to the coal industry. All of our members would presently or prospectively affected in the operation of their existing and planned mining operations by the regulations adopted under SMCRA.

Proposed Amendment—Petitioner proposes that 30 CFR 715.13 be amended by deleting existing subsection (d) and replacing it with the language contained in 30 CFR 816.133(c).

Justification and Proposed amendment—Existing 30 CFR 715.13, the interim rule governing postmining land uses, was adopted in 1977, 42 FR 62680 (December 13, 1977) and has not been significantly revised since that date. Subsection (d) of the rule contains a detailed list of criteria for approval of postmining land uses different than the premining land use.

The permanent program regulations governing alternate postmining land use approval is 30 CFR 816.133. This rule was originally adopted in 1979 containing a subsection (c) similar to 30 CFR 715.13(d). 44 FR 14901 (March 13, 1979). In 1982, OSM proposed to amend 30 CFR 816.133(d), explaining as follows:

In originally establishing the criteria for approval of alternative postmining land uses in existing § 816.133(c) in 1979, OSM incorporated the detailed requirements of sections 515(c) and 515(e) of the Act that are mandated only for mountain-top removal and for AOC variances. OSM stated at that time "that a composite of these concepts is a reasonable approach to setting forth the regulatory requirements for approval of proposed postmining land uses" (44 FR at 15243).

* * * * *

"While OSM believed in 1979 that the composite approach offers sufficient flexibility to operators and regulatory authorities, based on its experience OSM no longer believes that such detailed requirements are practicable. Proposed § 816.133(c) would impose the standards of" section 515(b)(2) of the Act as the general criteria for allowing higher or better uses as alternative postmining land uses. The inflexible, overly detailed and burdensome requirements of existing § 816.133(c) would be eliminated."

47 FR 16152, 16154 (April 14, 1982).

In 1983, OSM adoped the proposal as a final rule with minor changes. In finalizing the rule, OSM reiterated its position that the detailed criteria of the former rule were inappropriate, rejecting comments that some or all of the provisions of former 30 CFR 816.133 be retained. 48 FR 39898-39899 (September 1, 1983).

In revising the permanent program postmining land use regulation in 1982-1983, OSM did not make or propose any change to 30 CFR 715.13, the corresponding interim program rule. Neither the preamble to the proposed or final rule amending the permanent program regulation discusses the interim rule or gives any indication why corresponding changes were not made to the interim rule. The result is that the interim rule continues to include detailed requirements for approval of alternate postmining land uses which OSM has found to be inappropriate.

In any event, OSM's reasoning in the 1983 permanent program rulemaking, that it is inappropriate to impose upon all mining operations the mountain-top removal and steep slope provisions for alternative post mining land use, 30 U.S.C. 1265 (c) and (e), applies equally to the interim program. Instead, the requirements found in section 515(b)(2) apply as indicated in section 502(c) of SMCRA. Moreover, the change requested also finds support in the decision in *MWF* v. *Hodel*, 839 F.2d 694 (D.C. Cir. 1988), where the court of appeals held in several contexts that specific provisions could not be expanded for general application. For instance, the court held that section 515(e) steep slope provisions could not be applied to non-steep slopes. Similarly, the court reversed the district court's interpretation that section 515(f) required design standards for all coal mine waste in view of its limited applicability to waste piles used for dams or embankments. The appeals court also refused to imply any authority to impose additional requirements upon mine operators where another provision specifically addressed the issue. For example, highwalls submerged below the waterline of permanent impoundments are permissible under the specific provisions of section 515(b)(8), and highwall elimination would not be implied under the general grading provision of section 515(b)(3). Nor can water replacement be imposed upon underground coals mines through the permit application provisions of section 508(a) when section 717(b) specifically requires replacement by only surface mines.

In sum, section 502(c) specifically references the provisions of section 515 (c) and (e) requirements in the alternative postmining land use provision for the interim program was erroneous and must be corrected to conform the rules to the express language of SMCRA.

Public Hearing.—The Petitioner does not request a public hearing, but reserves the right to submit comment at any public hearing which may be held. A draft of the proposed amendment is attached.

If you require any further information, please contact the undersigned.

Very truly yours,
Indiana Coal Council, Inc.
J. Nathan Noland.

[FR Doc. 89-15853 Filed 7-5-89; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 19

RIN 2900-AD14

Appeals Regulations and Rules of Practice; Request for Change in Representation, Request for Personal Hearing, or Submission of Additional Evidence Following Certification of an Appeal to the Board of Veterans Appeals

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulatory amendments.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend and enlarge upon the existing procedures concerning the consideration of additional evidence, hearing requests, and requests for changes in representation received by the Board of Veterans Appeals (BVA) following the certification and transfer of an appeal to the BVA. The existing regulations provide, in part, that the appellant and/or representative may submit additional pertinent evidence following certification and transfer of the appeal to the Board. However, they do not provide a time period during which any additional pertinent evidence, or request for personal hearing or change of representation, should be submitted.

DATES: Comments must be received by August 7, 1989. Comments will be available for public inspection until August 15, 1989. It is proposed to make these regulations effective 30 days after final publication in the **Federal Register**.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for inspection only in the Veterans Service Unit, room 132, at the above address only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until August 15, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Jan Donsbach, Special Legal Assistant to the Chairman, Board of Veterans Appeals, (202) 233-2978.

SUPPLEMENTARY INFORMATION: Proposed amendments to 38 CFR 19.174 would add a cutoff date after an appeal is transferred to the Board of Veterans Appeals following which an appellant and/or representative may not submit additional evidence, a request for a change in representative or a request for a personal hearing. Under the revised procedures, the appellant and/or representative would have 60 days from the date of notice that the appeal has been transferred to the BVA in which to act. Provision would be made for accepting evidence and requests at a later date when good cause is shown. Related revisions would be made to 38 CFR 3.103(c), 3.156(a), and 3.160(e) to insure that effective dates for subsequent awards, if any, are preserved when evidence is submitted too late for the Board to consider in an appeal.

Under existing procedures, an appellant may continue to submit additional evidence and may submit requests for a personal hearing or for a change in his or her representative throughout the appellate process. As a result, the appellate record can be in a constant state of change while Members of the Board of Veterans Appeals are deliberating on the appeal. Confusion can sometimes result as to the exact nature of the record reviewed by the Board. Particularly with the advent of judicial review (see Pub. L. 100-687), it is essential that a point be reached at which the appellate record is fixed. In addition, considerable delay can result when it is necessary to remove an appellate record from the hands of those who are engaged in an orderly appellate review in order to respond to various

tardy requests and submissions. The proposed changes would assist in orderly and prompt appeal processing and would help to clarify the nature and extent of evidence considered by the Board in reaching a decision in any given appeal.

The Secretary hereby certifies that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), this rule is therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. It will have no significant direct impact on small entities (i.e., small businesses, small private and nonprofit organizations, and small governmental jurisdictions) inasmuch as it concerns the Rules of Practice governing the appeals of individual claimants before the Board.

VA has also determined that this rule is nonmajor in accordance with Executive Order 12291. It will not have an adverse economic impact on or increase costs to consumers, individual industries, Federal, State, and local government agencies, or geographic regions.

There is no Catalog of Federal Domestic Assistance program number involved.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans.

38 CFR Part 19

Administrative practice and procedure, Claims, Veterans.

Approved: June 12, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR Part 3, Adjudication, and Part 19, Board of Veterans Appeals, are proposed to be amended as follows:

PART 3—[AMENDED]

1. In § 3.103, the first sentence of paragraph (c) is revised and an authority citation is added to read as follows:

§ 3.103 Due process-procedural and appellate rights with regard to disability and death benefits and related relief.

* * * * *

(c) *Hearings.* Upon request, a claimant is entitled to a hearing at any time on any issue involved in a claim within the purview of this part, subject to the limitations described in § 19.174 of this chapter with respect to hearings in claims which have been certified to the Board of Veterans Appeals for appellate review. * * *

(Authority: 38 U.S.C. 210(c))

* * * * *

2. In § 3.156, paragraph (a) is revised and an authority citation is added to read as follows:

§ 3.156 New and material evidence.

(a) New and material evidence received prior to the expiration of the appeal period, or prior to the appellate decision if a timely appeal has been filed (including evidence received prior to an appellate decision and referred to the agency of original jurisdiction by the Board of Veterans Appeals without consideration in that decision in accordance with the provisions of § 19.174(c)(1)) of this chapter, will be considered as having been filed in connection with the claim which was pending at the beginning of the appeal period.

(Authority: 38 U.S.C. 210(c))

* * * * *

3. In § 3.160, paragraph (e) is revised and an authority citation is added to read as follows:

§ 3.160 Status of claims.

* * * * *

(e) *Reopened claim.* Any application for a benefit received after final disallowance of an earlier claim, or any application based on additional evidence or a request for a personal hearing submitted more than 60 days following notification to the appellant of the certification of an appeal and transfer of applicable records to the Board of Veterans Appeals which was not considered by the Board in its decision and was referred to the agency of original jurisdiction for consideration as provided in § 19.174(c)(1) of this chapter.

(Authority: 38 U.S.C. 210(c))

* * * * *

PART 19—[AMENDED]

Section 19.174 is revised to read as follows:

§ 19.174 Rule 74; Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans Appeals.

(a) *Notification of certification of appeal and transfer of appellate record.* When an appeal is certified to the Board of Veterans Appeals for appellate review and the appellate record is transferred to the Board, the claimant and his or her representative, if any, will be notified in writing.

(b) *Request for a change in representation, request for a personal hearing, or submission of additional evidence within 60 days following notification of certification and transfer of records.* An appellant and his or her representative, if any, will be granted a period of 60 days following the mailing of notice to them an appeal has been certified to the Board for appellate review and that the appellate record has been transferred to the Board during which they may submit a request for a personal hearing, additional evidence, or a request for a change in representation. Any such request or additional evidence should be submitted directly to the Board and not to the agency of original jurisdiction. The date of the letter of notification will be presumed to be the date of mailing for purposes of determining whether the request was timely made or the evidence timely submitted. Any evidence which is submitted at a hearing on appeal which was requested not more than 60 days after certification and transfer of the appellate record to the Board will be considered to have been received during such period, even though the hearing may be held following the expiration of the period. Any pertinent evidence submitted by the appellant or representative is subject to the requirements of paragraph (d) of this section and, if a simultaneously contested claim is involved, the requirements of paragraph (e) of this section.

(c) *Request for a change in representation, request for a personal hearing, or submission of additional evidence more than 60 days following notification of certification and transfer of records.* Following the expiration of the 60-day period described in paragraph (b) of this section, the Board of Veterans Appeals will not accept a request for a change in representation, a request for a personal hearing, or additional evidence except when the appellant demonstrates on motion that there was good cause for the delay. Examples of good cause include, but are not limited to, illness of the appellant or the representative which precluded action during the 60-day period and the discovery of evidence that was not available prior to the expiration of the 60-day period. Such motions must be in writing and must include the name of the veteran; the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor or guardian); the applicable Department of Veterans Affairs file number; and an explanation of why the request for a change in representation, the request for a personal hearing, or the submission of additional evidence could not be accomplished in a timely manner. Such motions should be filed at the following address: Office of the Chairman, Special Legal Assistant (OIC), Board of Veterans Appeals, 810 Vermont Avenue, NW, Washington, DC 2040. The ruling on the motion will be by the Chairman. Depending upon the ruling on the motion, action will be taken as follows:

(1) *Good cause not shown.* If good cause is not shown, the request for a change in representation, the request for a personal hearing, or the additional evidence submitted will be referred to the agency of original jurisdiction upon completion of the Board's action on the pending appeal without action by the Board concerning the request or additional evidence. Any personal hearing granted as a result of a request so referred or any additional evidence so referred may be treated by that agency as the basis for a reopened claim if appropriate. If the Board denied a benefit sought in the pending appeal and any evidence so referred which was received prior to the date of the Board's decision, or testimony presented at a hearing resulting from a request for a hearing so referred, together with the evidence already of record, is subsequently found to be the basis of an allowance of that benefit, the effective date of the award will be the same as if the benefit had been granted by the Board as a result of the appeal which was pending at the time that the hearing request or additional evidence was received.

(2) *Good cause shown.* If good cause is shown, the request for a change in representation or for a personal hearing will be honored. Any pertinent evidence submitted by the appellant or representative will be accepted, subject to the requirements of paragraph (d) of this section and, if a simultaneously contested claim is involved, the requirements of paragraph (e) of this section.

(d) *Consideration of additional evidence by agency of original jurisdiction.* Any pertinent evidence submitted by the appellant or representative which is accepted by the Board under the provisions of this section, as well as any referred to the Board by the originating agency under Rule 73(b) (§ 19.173(b) of this part), must be referred to the agency of original jurisdiction for review and preparation of a Supplemental Statement of the Case unless this procedural right is waived by the appellant or unless the Board determines that the benefit, or benefits, to which the evidence relates may be allowed on appeal without such referral. Such waiver must be in writting or, if a hearing on appeal is conducted, formally entered on the record orally at the time of the hearing.

(e) *Simultaneously contested claims.* In simultaneously contested claims, if pertinent evidence is submitted by any claimant and is accepted by the Board under the provisions of this section, the substance of such evidence will be mailed to each of the other claimants who will then have 60 days from the date of mailing of notice of the new evidence within which to comment upon it and/or submit additional evidence in rebuttal. The date of the letter of notification of the new evidence will be presumed to be the date of mailing for purposes of determining whether such comment or evidence in rebuttal was timely submitted. No further period will be provided for response to such comment or rebuttal evidence.

(Authority: 38 U.S.C. 4004, 4005, 4005A)

Cross-References: For further information concerning hearings, see § 3.103 and Rules 57 through 71 (§§ 19.157–19.171). *New and Material Evidence.* See § 3.156(a) *Reopened Claim.* See § 3.160(e). *Computation of Time Limit.* See Rule 31 (§ 19.131). *Legal Holidays.* See Rule 32 (§ 19.132).

[FR Doc. 89–15816 Filed 7–5–89; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3568-2]

Standards of Performance for New Stationary Sources; Industrial-Commercial-Institutional Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed revision of rule.

SUMMARY: On December 16, 1987, standards of performance were promulgated (i.e., Subpart Db under 40 CFR Part 60) limiting emissions of sulfur dioxide (SO_2) and particulate matter (PM) from oil-fired industrial-commercial-institutional steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) (52 FR 47826). Today's proposal would amend the SO_2 and PM emission limits included in these standards for oil-fired steam generating units by (1) increasing the SO_2 emission limit for very low sulfur oils exempt from the SO_2 percent reduction requirement from 130 ng/J (0.3 lb SO_2/million Btu) to 215 ng/J (0.5 lb SO_2/million Btu), and (2) deleting the PM emission limit of 43 ng/J (0.10 lb PM/million Btu) for units which fire very low sulfur oils. This action is being taken to correct the present regulations.

DATES: *Comments.* Comments on the proposed changes must be received by August 21, 1989 (Contact Ms. Ann Eleanor at FTS 629–5578).

Public hearing. If anyone requests to speak at a public hearing by July 13, 1989 (Contact Ms. Ann Eleanor at FTS 629–5578), a public hearing will be held on July 20, 1989, beginning at 10:00 a.m. Persons interested in attending the hearing should call Ms. Ann Eleanor at (919) 541–5578 to verify that a hearing will be held. Assistance will be available for persons with hearing impairments.

Request to speak at hearing. Persons wishing to present oral testimony must request to speak at the public hearing by July 13, 1989. (Contact Ms. Ann Eleanor at FTS 629–5578.)

ADDRESSES: *Comments.* Comments on the proposed changes should be submitted (in duplicate, if possible) to: Air Docket, (LE–131), Room M–1500, 1st Floor, Waterside Mall, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Attention: Docket Number A–83–27.

Public hearing. If anyone requests a public hearing, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Ann Eleanor, Standards Development Branch (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, telephone number (919) 541–5578.

Docket. Docket Number A–83–27, containing supporting information used in developing the proposed revision, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the EPA's Air Docket, Room M–1500, 1st Floor, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Copland [(919) 541–5265] or Mr. Fred Porter [(919) 541–5251], Standard Development Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711.

SUPPLEMENTARY INFORMATION:

Background

New source performance standards (NSPS) limiting emissions of SO_2 from industrial-commercial-institutional steam generating units with a heat input capacity greater than 29 MW (100 million Btu/hr) firing coal or oil and emissions of PM from units firing oil were proposed on June 19, 1986 (51 FR 22384). Standards limiting emissions of SO_2 and PM from this source category were promulgated on December 16, 1987 (52 FR 47826).

Several petitions for reconsideration of these NSPS were filed with EPA in February, March, and May of 1988. These petitions were denied on January 13, 1989 (54 FR 1610).

Among other things, this NSPS requires a 90 percent reduction in SO_2 emissions from industrial-commercial-institutional steam generating units firing oil. Steam generating units firing very low sulfur oil, however, are exempt from this percent reduction requirement. As discussed in the notice promulgating the NSPS (52 FR 47826), the Agency considers the impacts associated with an NSPS requiring a percent reduction in SO_2 emissions unreasonable for steam generating units firing very low sulfur oil.

In addition to limiting SO_2 emissions from oil-fired steam generating units, the NSPS also limits PM emissions from oil-fired units.

Rationale—Oil SO_2 Amendment

The sulfur content of fuel oil varies widely, from as low as 0.3 weight percent for some distillate and residual fuel oils to as much as 3.0 weight percent or more for some residual fuel oils. The maximum sulfur content of distillate fuel oil, however, is limited to 0.5 weight percent through fuel oil specifications adopted by the American Society for Testing and Materials (ASTM). Thus, the sulfur content of distillate fuel oil serves as a useful benchmark for distinguishing very low sulfur fuel oils from higher sulfur fuel oils.

The national average sulfur content of distillate fuel oil is about 0.3 weight percent, which is equivalent to about 0.3 lb SO_2 per million Btu. Consequently, an SO_2 emission rate of 130 ng/J (0.3 lb SO_2/million Btu) was used to distinguish very low sulfur fuel oil, such as distillate fuel oil, from higher sulfur fuel oil in the analyses supporting proposal and promulgation of the standards limiting SO_2 emissions from oil-fired industrial-commercial-institutional steam generating units with a heat input capacity greater than 29 MW (100 million Btu/hr) [e.g., 51 FR 22384, 52 FR 47826, "Summary of Regulatory Analysis for New Source Performance Standards: Industrial-Commercial-Institutional Steam Generating Units of Greater than 100 Million Btu/hr Heat Input") EPA-480/3-86-005)].

As mentioned above, steam generating units firing very low sulfur fuel oil are exempt from the SO_2 percent reduction requirement included in these standards limiting SO_2 emissions from industrial-commercial-institutional steam generating units. This exemption is based on the conclusion that the impacts of standards requiring a percent reduction in SO_2 emissions are unreasonable for steam generating units firing very low sulfur fuel oil. Administratively, this exemption was included in the regulation by providing an exemption from the SO_2 percent reduction requirement for fuel oil with an SO_2 emission rate of less than 130 ng/J (0.3 lb. SO_2/million Btu) based, as discussed above, on the sulfur content of distillate fuel oil.

A recent review of Department of Energy data, however, indicates that the sulfur content of distillate fuel oil is highly variable. Although the national average sulfur content of distillate fuel oil is about 0.3 weight percent, depending on factors such as the season of the year, geographic location, the crude oil from which the distillate fuel oil is refined, and the extent to which desulfurization or blending is used to produce distillate fuel oil at a refinery, the sulfur content of distillate fuel oil can range from as low as 0.1 weight percent to as high as 0.4 weight percent and, on occasion, as high as 0.5 weight percent.

As mentioned above, the maximum sulfur content of distillate fuel oil is limited by ASTM fuel oil specifications and, in producing a distillate fuel oil product for sale, refineries meet, or exceed these specifications. The use and acceptance of these ASTM fuel oil specifications is so widespread that the actual specifications of a shipment of distillate fuel oil are frequently not reported. As a result, when fuel oil terminals and local fuel oil distributors take delivery of a shipment of distillate fuel oil, they generally do not know the actual sulfur content of the distillate fuel oil they receive; they only know that it meets, or exceeds, ASTM specifications.

The amount of distillate fuel oil that a new industrial-commercial-institutional steam generating unit might fire is so small that the owner or operator of the unit is limited to purchasing whatever distillate fuel oil is available from a fuel oil terminal or local fuel oil distributor. The owner or operator of the steam generating unit is unable to specify the sulfur content of the distillate fuel oil he would like to purchase, much as a motorist is unable to specify the octane of the gasoline he would like to purchase from his local service station.

Also, since the fuel oil terminal or local fuel oil distributor generally does not know the actual sulfur content of the distillate fuel oil that is received, the owner or operator is unable to determine the sulfur content of the distillate fuel oil prior to purchase. Consequently, the wide variation in the sulfur content of distillate fuel oil is beyond the control of the owner or operator of an industrial-commercial-institutional steam generating unit.

In light of this wide variability in the sulfur content of distillate fuel oil, the present exemption from the percent reduction requirement included n the standards for industrial-commercial-institutional steam generating units firing fuel oil with an SO_2 emission rate of 130 ng/J (0.3 lb SO_2/million Btu) or less fails to provide the exemption for very low sulfur fuel oil which is necessary to ensure that the impacts of the standard are considered reasonable. This situation can be corrected by increasing the SO_2 emission rate in the exemption so that it reflects the maximum sulfur content of distillate fuel oil. For this reason, today's notice proposes to increase the SO_2 emission rate in the exemption from the percent reduction requirement for steam generating units firing very low sulfur fuel oil from 130 ng/J (0.3 lb SO_2/million Btu) to 215 ng/J (0.5 lb SO_2/million Btu).

Rationale—Oil PM Amendment

The standards limiting PM emissions from oil-fired industrial-commercial-institutional steam generating units under Subpart Db limit PM emissions to 43 ng/J (0.10 lb PM/million Btu). Firing very low sulfur fuel oils which are capable of meeting an SO_2 emission limit of 130 ng/J (0.3 lb SO_2 million Btu) or, for that matter an SO_2 emission limit of 215 ng/J (0.5 lb SO_2 million Btu), result in PM emissions of 43 ng/J (0.10 lb PM/million Btu) or less.

Thus, for those oil-fired steam generating units which fire very low sulfur fuel oils, the imposition of a PM emission limit of 43 ng/J (0.10 lb PM/million Btu) achieves no additional PM emission reductions beyond that achieved by the SO_2 standards. On the other hand, the PM emission limit imposes additional costs due to the emission source testing requirements associated with the emission limit. As a result, the PM emission limit for oil-fired steam generating units firing very low sulfur oils achieves no additional benefits, but imposes additional costs. For this reason, today's notice proposes to delete the PM emission limit from the PM standards for those oil-fired steam generating units which fire very low sulfur oils.

Although combustion of very low sulfur oil results in very low PM emissions, it is possible through incomplete combustion for PM emissions to increase considerably. Incomplete combustion can result from poor maintenance or improper operation. In both cases, incomplete combustion can easily be identified by the increased opacity of emissions. Thus, the opacity limit in the PM standards for oil-fired steam generating units does achieve additional benefits in terms of PM emissions and no amendments are proposed to the opacity limits under the PM standards for those oil-fired steam generating units which fire very low sulfur oils.

Miscellaneous

Under Executive Order 12291, a rulemaking action must be examined to determine if it is a "major rule" and, therefore, subject to certain requirements of the Order. Today's rulemaking action would result in none of the adverse economic effects set forth in section 1 of the Order as grounds for finding a regulation to be a "major rule." This rulemaking action would not increase the burden on the industrial-commercial-institutional steam generating unit source category. It would not result in any increase in costs or prices, and would not disrupt market competition. This revision, therefore, would not be a "major rule" under Executive Order 12291.

Under section 317 of the Clean Air Act, an economic impact assessment must be prepared for revisions that are determined to be substantial. These revisions are not substantial; as a result, an economic impact assessment has not been prepared.

Pursuant to 5 U.S.C. 605(b), the Administrator certifies that these revision would not have a significant impact on a substantial number of small entities. The revisions would not increase the burden on this source category, and it has already been determined that, in the absence of these revisions, the standards would not affect a substantial number of small entities (52 FR 47841, December 16, 1987).

Paperwork Reduction Act

Changes to the information collection requirements as proposed in today's notice have not been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The information collection requirements previously approved by OMB for promulgation of the Industrial-Commercial-Institutional Steam Generating Unit NSPS (40 CFR Part 60 Subpart Db) in December 1987 were conservatively high estimates which represent "worst case" impacts. The small change in information collection caused by the elimination of a one-time-only initial PM performance test for oil-fired units firing very low sulfur oil does not change the "worst case" information collection requirements. Considering the other information collection activities required by the SO_2 and PM standards for oil-fired units (including an initial SO_2 performance test, continuous monitoring for SO_2 and opacity, quarterly SO_2 continuous compliance reports with quality assurance requirements, and quarterly excess emission reports for opacity), the initial PM performance test is insignificant. Therefore, the burden of information collection remains unchanged.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Date: June 26, 1989.

William K Reilly,

Administrator.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for Part 60 continues to read as follows:

Authority: 42 U.S.C. 7411, 7414, and 7601(a).

2. Section 60.416 is amended by revising the following definition:

§ 60.41b Definitions.

* * * * *

"Very low sulfur oil" means an oil that, when combusted without post-combustion SO_2 control, has an SO_2 emission rate equal to or less than 215 ng/J (0.5 lb SO_2/million Btu).

3. Section 60.42b is amended by revising the introductory text of paragraph (d) and paragraph (f) to read as follows:

§ 60.42b Standard for sulfur dioxide.

* * * * *

(d) On and after the date on which the performance test is completed or required to be completed under 60.8 of this part, whichever comes first, no owner or operator of an affected facility listed in paragraphs (d) (1), (2), (3), or (4) of this section shall cause to be discharged into the atmosphere any gases that contain sulfur dioxide in excess of 520 ng/J (1.2 lb/million Btu) heat input if the affected facility combusts coal, or 215 ng/J (0.5 lb/million Btu) heat input if the affected facility combusts oil. Percent reduction requirements are not applicable to affected facilities under this paragraph:

* * * * *

(f) Compliance with the emission limits under this section are determined on a 24-hour average basis for affected facilities which (1) have a Federally enforceable permit limiting the annual capacity factor for oil to 10 percent or less, (2) combust only very low sulfur oil, and (3) do not combust any other fuel.

4. Section 60.43b is amended by revising paragraphs (b) and (f) as follows:

§ 60.43b Standard for particulate matter.

* * * * *

(b) On and after the date on which the performance test is completed or required to be completed under 60.8 of this part, whichever date comes first, no owner or operator of an affected facility that combusts oil (or mixtures of oil with other fuels) and uses a conventional or emerging technology to reduce SO_2 emissions shall cause to be discharged into the atomsphere from that affected facility any gases that contain particulate matter in excess of 43 ng/J (0.10 1b/million Btu) heat input.

* * * * *

(f) On and after the date on which the initial performance test is completed or is required to be completed under 60.8 of this part, whichever date comes first, no onwer or operator of an affected facility that combusts coal, oil, wood, or mixtures of these fuels with any other fuels shall cause to be discharged into the atmosphere any gases that exhibit greater than 20 percent opacity (6-minute average), except for one 6-minute period per hour of not more than 27 percent opactity.

5. Section 60.45b is amended by revising the introdutory text of paragraph (d) as follows:

§ 60.45b Compliance and performance test methods and procedures for sulfur dioxide.

* * * * *

(d) The owner or operator of an affected facility that combusts only very low sulfur oil, has an annual capacity factor for oil of 10 percent (0.10) or less, and is subject to a Federally enforceable requirement limiting operation of the affected facility to an anuual capacity factor for oil of 10 percent (0.10) or less shall:

* * * * *

[FR Doc. 89-15748 Filed 7-5-89; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 54, No. 128
Thursday, July 6, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Service of Bankruptcy Petition on Federal Agencies

AGENCY: Administrative Office of the United States Courts.

ACTION: Notice of solicitation of requests from Federal governmental agencies to receive service of bankruptcy petitions.

SUMMARY: This notice is to inform all interested Federal government agencies that wish to receive copies of bankruptcy petitions that they should contact the Administrative Office of the U.S. Courts and inform the agency of their needs to ensure that debtors will file sufficient copies of petitions with the bankruptcy clerk. Former Bankruptcy Rule 1002(b), which provided for the distribution of copies of bankruptcy petitions to certain agencies of the United States, has been deleted. Under that rule, the Securities Investor Protection Corporation, Commodity Futures Trading Commission, District Director of Internal Revenue, Securities and Exchange Commission, Interstate Commerce Commission, Secretary of Transportation, and the Secretaries of certain states were routinely provided with copies of bankruptcy petitions under certain circumstances. Some of these agencies no longer wish to receive copies of the petition, while other agencies that were not included in Bankruptcy Rule 1002(b) have requested copies of petitions in certain types of cases. The Director of the Administrative Office of the U.S. Courts is charged with the responsibility for determining on an ongoing basis which agencies of the Federal government will be provided with copies of debtor petitions.

EFFECTIVE DATE: Agencies interested in receiving copies of petitions should inform the Administrative Office by September 29, 1989.

ADDRESS: Requests to receive copies of bankruptcy petitions should be directed to the following address: Chief, Bankruptcy Division, Administrative Office of the United States Courts, Washington, DC 20544.

FOR FURTHER INFORMATION CONTACT: John Howard of the Administrative Office of the U.S. Courts at the address above or telephone 202/633-6233.

SUPPLEMENTARY INFORMATION: The request to the Administrative Office to receive copies of petitions should be in writing. The request should (1) contain an explanation as to the reasons why a copy of the petition is needed, (2) identify the specific office(s) that is designated to receive a copy of the petition, and (3) specify whether a copy of the petition is needed under each chapter of the Bankruptcy Code or only under a particular chapter.

L. Ralph Mecham,
Director.

June 30, 1989.

[FR Doc. 89-15852 Filed 7-5-89; 8:45 am]

BILLING CODE 2210-01-M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Milk Price Support Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of milk price support level and Commodity Credit Corporation milk support purchase prices.

SUMMARY: This notice affirms the determination of the Secretary of Agriculture that the support price for milk containing 3.67 percent milkfat shall be $10.60 per hundredweight (cwt.) for the period July 1 through December 31, 1989. The prices at which butter, cheese and nonfat dry milk will be purchased by the Commodity Credit Corporation ("CCC") in order to support the price of milk at that level are also set forth in this notice.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Indulis Kancitis, Dairy Division, ASCS-USDA, 5747 South Building, P.O. Box 2415, Washington, DC 20013 (202)-447-3385.

The Final Regulatory Impact Analysis regarding this Notice of Determination is available from Charles N. Shaw, Dairy/Sweeteners Group, ASCS-USDA, P.O. Box 2415, Washington, DC 20013 (202)-447-7601

SUPPLEMENTARY INFORMATION: This Notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "major" since the provisions of this notice will have an effect on the economy exceeding $100 million.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loans and Purchases; Number—10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to this notice.

It has been determined by an environmental evaluation that the determination set forth in this notice is not expected to have any significant impact on the quality of the human environment. In addition, this action will not adversely affect environmental factors such as water quality or air quality. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is required.

This program/activity is not subject to the provisions of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

In accordance with Section 201(d) of the Agricultural Act of 1949 ("1949 Act"), as amended by Section 101 of the Food Security Act of 1985 (Pub. L. No. 99-198) ("1985 Act"), the Secretary of Agriculture, through CCC, for the period January 1, 1986 through December 31, 1990, supports the price of milk by purchases of milk and milk products; specifically, by the purchase of butter, nonfat dry milk and cheese. Section 102 of the 1985 Act provides that the notice and rulemaking provisions of 5 U.S.C. 553 shall not apply with respect to the implementation by the Secretary of Section 201(d), including determinations

made regarding the level of price support for milk.

The Secretary had previously announced (54 FR 1197) that the support price for milk containing 3.67 percent milkfat would be continued at $10.60 per cwt. for the period January 1, 1989 through March 31, 1989. Section 102 of the Disaster Assistance Act of 1988 (Pub. L. No. 100-387) provided that the rate of price support for milk in effect under section 201(d) of the 1949 Act immediately before April 1, 1989, be increased by 50 cents throughout the period beginning on April 1, 1989 and ending on June 30, 1989. Accordingly, a notice stating that the milk price support level had been increased to $11.10 per cwt. for that period was published on March 31, 1989 (54 FR 13206).

With the expiration of this increase, the support price for milk containing 3.67 milkfat is decreased by 50 cents per cwt. to $10.60 per cwt. as of July 1, 1989. As of January 1, 1990, the price support level may be adjusted, depending on estimates of the milk surplus for calendar year 1990, pursuant to authority in section 201(d) of the 1949 Act.

It has been further determined that purchases by the CCC of butter, cheese, and nonfat dry milk at the prices set forth in this notice will support the price of milk at $10.60 per cwt.

Recent legislation (Pub. L. No. 101-7), to provide for more balance in the stocks of dairy products purchased by the CCC, provides that in implementing the 50 cents per cwt. decrease in the rate of price support for milk scheduled to occur on July 1, 1989, not more than 25 percent of such price support decrease shall be reflected in the purchase price for nonfat dry milk and that at least 75 percent of such price suport decrease shall be reflected in the purchase price for butter. That legislation provides further that the Secretary of Agriculture may allocate such decrease in the rate of price support between the purchase price for nonfat dry milk and butter in such other manner as the Secretary determines will result in the lowest level of expenditures by CCC.

A shift in the world supply of nonfat dry milk (NDM) has resulted in a sharp increase in NDM prices to levels well above U.S. support purchase prices. The world market conditions are not expected to change and NDM market prices are expected to average more than 90 cents per pound this fall and early winter. Because of changes in the NDM market, processors have been able to pay more than the support price for milk to be used in the processing of butter and nonfat dry milk.

To adjust for current market conditions, with respect to CCC purchases of butter and NDM, 100 percent of the 50-cent per hundredweight price support decrease for milk will be reflected in support purchase price for butter. The prices set forth below reflect these adjustments.

The purchase prices set out in this notice are subject to additional terms and conditions as CCC may announce.

Determinations

Accordingly:

(1) The level of price support for the period July 1 through December 31, 1989, shall be $10.60 per cwt. for milk containing 3.67 percent milkfat.

(2) The purchase of butter, cheese and nonfat dry milk produced on or after July 1, 1989, at the prices set forth below will support the price of milk at a rate eqivalent to $10.60 per cwt. for milk containing 3.67 percent milkfat. Therefore, effective July 1, 1989, until further notice, CCC purchase prices for butter, cheese and nonfat dry milk shall be as follows:

	Dollars per pound—	
	Products produced before July 1, 1989 and graded and offered by July 14, 1989	Products produced on or after July 1, 1989 or not graded and offered by July 14, 1989
Butter, 64- and 68-lb. blocks:		
(U.S. Grade A or higher)	1.3200	1.2050
Nonfat dry milk (spray), 50-lb. bags, (U.S. Extra Grade, but not more than 3.5 percent moisture):		
Nonfortified	0.7900	0.7900
Fortified (Vitamins A and D)	0.8000	0.8000
Cheddar cheese, standard moisture basis:[1]		
40- and 60-pound blocks, U.S. Grade A or higher (No vat shall contain more than 38.5 percent moisture)	1.2025	1.1550
500 lb. in fiber barrels, U.S. Extra Grade (No vat shall contain more than 36.5 percent moisture)	1.1625	1.1150

[1] The cheese price will be adjusted for moisture content as shown in the Moisture Adjustment Cheese Price Chart (Form ASCS-150).

(3) Further terms and conditions for CCC price-support purchases of butter, cheese, and nonfat dry milk will be set forth in CCC purchase announcements for such purchases.

Authority: 7 U.S.C. 1446; 15 U.S.C. 714 b and c; 7 U.S.C. 1446 note.

Signed at Washington, DC on June 29, 1989.

Keith D. Bjerke,
Executive Vice President Commodity Credit Corp.

[FR Doc. 89-15767 Filed 7-5-89; 8:45 am]

BILLING CODE 3410-05-M

Food and Nutrition Service

National Advisory Council on Maternal, Infant, and Fetal Nutrition; Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Council meeting:

Name: National Advisory Council on Maternal, Infant, and Fetal Nutrition.

Date and Time: August 15-17, 1989, 9:00 a.m.

Place: Radisson Mark Plaza, 5000 Seminary Road, Alexandria, Virginia 22311.

Purpose of Meeting: The Council will continue its study of the Special Supplemental Food Program for Women, Infants and Children (WIC) and the Commodity Supplemental Food Program (CSFP).

Agenda: The agenda items will include a wide range of matters concerning these two Programs.

Meetings of the Council are open to the public. Members of the public may participate, as time permits. Members of the public may file written statements with the Council before or after the meeting.

Persons wishing additional information about this meeting should contact Tama Eliff, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302. Telephone: (703) 756-3730.

Date: May 30, 1989.

G. Scott Dunn,
Acting Administrator.

[FR Doc. 89-15829 Filed 7-5-89; 8:45 am]

BILLING CODE 3410-30-M

Forest Service

Nursery Management Activities, Including the Control of Unwanted Vegetation, Diseases, Insects, and Other Animals in the Coeur d'Alene Nursery, Idaho Panhandle National Forests, Kootenai County, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) for Nursery Pest Management Activities at the Coeur d'Alene Nursery, Coeur d'Alene, Idaho. The activities include the control of unwanted vegetation, disease, insects, and other animals. The nursery management activities that require controls include the cover crop, see pre-treatment, nursery seedbed preparation, sowing, seedling growth from germination to lifting, and seedling storage. The container nursery management activities that require controls include seed pre-treatment, greenhouse rearing of stock in a soil-free media, and shelterhouse growth and production. Seed orchard management activities require controls for the production of healthy cones with viable seeds.

The control methods under consideration include biological, chemical, manual, and mechanical techniquies. The agency invites written comments and suggestions on the scope of the analysis. The agency also gives notice of the full environmental analysis and decision process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by August 21, 1989.

ADDRESS: Submit written comments and suggestions concerning the scope of the analysis to Joseph Myers, USDA Forest Service, Coeur d'Alene Nursery, 3600 Nursery Road, Coeur d'Alene, ID 83814.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and EIS should be directed to Joseph Myers, Coeur d'Alene Nursery Manager, USDA Forest Service, Idaho Panhandle National Forests, 3600 Nursery Road, Coeur d'Alene, ID 83814. Telephone (208) 765-7375.

SUPPLEMENTARY INFORMATION: In preparing the EIS, the Forest Service will identify and consider a range of alternative managment strategies for this project. One of those is "no action." Other alternatives will consider a range of methods for the control of unwanted vegetation diseases, insects and other animals in the Coeur d'Alene Nursery. The methods under consideration include biological, chemical, manual, and mechanical techniques. The activities that require controls include the cover crop, seed pre-treatment, nursey seedbed preparation, sowing, seedling growth from germinaiton to lifting, seedling storage, and seed orchard management.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations interested in or affected by the proposed project. The input will be used in preparation of the draft EIS. The scoping process includes:

1. Defining the scope of the analysis and nature of the decision to be made.
2. Identifying the issues and determining the significant issues for consideration and analysis within the EIS.
3. Defining the proper makeup of the interdisciplinary team.
4. Determining the effective use of time and money in conducting the analysis.
5. Identifying potential environmental, technical, and social impacts of the EIS and alternatves.
6. Determining potential cooperating agencies.
7. Identifying groups or individuals interested or affected by the decision.

William E. Morden, Forest Supervisor, Idaho Panhandle National Forests, Coeur d'Alene, Idaho, is the responsible official.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by April 1990. At that time, EPA will publish in the **Federal Register** a Notice of Availability of the draft EIS.

The comment period on the draft EIS will be 45 days from the date the EPA's Notice of Availability appears in the **Federal Register**. It is very important that those interested in the managment project participate at that time. Comments on the draft EIS should be as specific as possible. They may address the adequacy of the statement, or the merit of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3)

In addition, Federal Court decisions have established that reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and will alert an agency to the reviewer's position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. *Wisconsin Heritages, Inc.*, v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed by September 1990. In the final EIS, the Forest Service is required to respond to the Comments and responses received (40 CFR 1503.4). The responsible official will consider the comments, responses, and environmental consequences discussed in the draft EIS, and applicable laws, regulations, and policies in making a decision regarding this project. The responsible official will document the decision and the reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR Part 217.

William E. Morden,

Forest Supervisor.

Date: June 26, 1989.

[FR Doc. 89-15840 Filed 7-5-89; 8:45 am]

BILLING CODE 3410-11-M

Seven Peaks Resort (formerly Heritage Mountain Recreational Development); Utah County, Utah

AGENCY: Uinta National Forest, USDA.

ACTION: Notice of availability of the draft environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service, has prepared a Draft Environmental Impact Statement (DEIS) for a proposed year-round recreation development in the Provo Peak Basin Area within the Uinta National Forest. A Notice of Intent to prepare the EIS was published in the **Federal Register** on Thursday, October 20, 1988.

The DEIS is for development of 4,500 acres of National Forest System land immediately east of the city of Provo, Utah. The general proposal area includes portions of "Y" Mountain, Maple Mountain, Upper Slide Canyon, First and Second Fork Canyons, Lion Head, Lion Tail, Provo Peak, Burnt Hollow, and Rock Canyon. Entry into the proposed resort and vehicular parking will be on privately-owned land in the Utah Valley floor at 1000 East Center Street in Provo, Utah.

The proposed development includes a funicular rail system to access the mountain, a ski development, mountain villages, and the related service and utility facilities that support such developments and uses. This proposal is in keeping with direction established in the Uinta National Forest Land and Resource Management Plan.

The comment period on the DEIS is 45 days from the date of publication of this Notice of Availability by the Environmental Protection Agency in the **Federal Register**. It is very important that those interested in the management of the proposed recreation development area participate at this time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed. (See the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition Federal Court decisions have established that reviewers of Draft Environmental Impact Statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' positions and contentions; *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement; *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

ADDRESSES: Don T. Nebeker, Forest Supervisor of the Uinta National Forest is the responsible official. Written comments and suggestions concerning the Draft Environmental Statement should be sent to him at the Uinta National Forest, P.O. Box 1428, 88 West 100 North, Provo, Utah 84602, by August 23, 1989.

FOR FURTHER INFORMATION CONTACT: Copies of the Draft Environmental Impact Statement are available at offices of the Uinta National Forest, and for review at area public libraries (40 CFR 1506.6(b)). Questions about the proposed action and Draft Environmental Impact Statement should be directed to Larry B. Call, Forest Planner, Uinta National Forest, phone (801) 377-5780.

The Final Environmental Impact Statement is scheduled to be completed by October of 1989.

SUPPLEMENTARY INFORMATION: The Uinta National Forest Land and Resource Management Plan was approved in 1984. Standards and Guidelines of the Plan direct the continued management of areas to the highest density possible to meet Forest objectives, and to supply the Uinta's portion of recreation opportunities consistent with the coordinated State-wide program.

Date: June 30, 1989.

Don T. Nebeker,

Forest Supervisor, Uinta National Forest.

[FR Doc. 89-15944 Filed 7-5-89; 8:45 am]

BILLING CODE 3410-11-M

East Fork Blacks Fork Integrated Resource Analysis, Wasatch-Cache National Forest, Summit County Utah.

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an environmental impact statement addressing, site specifically, oil and gas leasing, proposed timber sales and silvicultural treatments, proposed wildlife habitat improvement projects, off-highway vehicle management, and grazing administration in the East Fork Black's Fork drainage of the Evanston Ranger District, Wasatch-Cache National Forest, Summit County, Utah. The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur in the analysis so that interested and affected parties are aware how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by August 4, 1989.

ADDRESS: Submit written comments and suggestions concerning the scope of the analysis to Clyde Thompson, District Ranger, Evanston Ranger District, P.O. Box 1880, Evanston, WY 82930.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed activities and environmental impact statement to Bernard Asay, Minerals Forester, Evanston Ranger District, phone (307) 789-3194.

SUPPLEMENTARY INFORMATION: Management direction for the East Fork Black's Fork drainage is included in the Wasatch-Cache National Forest Land and Resource Management Plan. Preliminary scoping, data collection, and analysis for development of this environmental study have been in progress for approximately one year.

The scoping process has included public meetings, on-the-ground reviews, news releases, personal telephone conversations, interviews, and letters. The environmental analysis progressed to the point of identifying alternatives when it was determined that the effects of alternative implementation on the quality of the human environment were highly controversial. At that point, Wasatch-Cache Forest Supervisor Dale Bosworth determined that the intensity of the controversy was significant enough to require preparation of an environmental impact statement.

Federal, State, local agencies, organizations, and individuals have participated in the scoping process. Additional scoping will be conducted so that any additional agencies, organizations, or individuals may participate. This process will include:

1. Identification of potential issues.
2. Identification of issues to be anlayzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

At this point the following issues have been identified: the impact of oil and gas development on recreation and wildlife; the impacts to watershed from construction activities, timber sales and off-highway vehicle use, and the impacts of livestock grazing in reparian areas and those caused by a sheep driveway.

A range of alternatives for managing the drainage that implement the direction provided in the Forest Plan will be developed and evaluated. All alternatives must protect the statutory rights of existing oil and gas leases and privately owned mineral rights. Alternatives developed for oil and gas leasing, proposed timber sales and silvicultural treatments, grazing administration, off-highway vehicle management, and proposed wildlife habitat improvement projects will include evaluation of different locations, timing and intensity of these activities. The analysis of alternatives will also include an evaluation of connected actions that are related to the proposed projects, such as construction of road access for oil and gas development, as well as the direct, indirect and cumulative effects of all proposed activities.

Dale Bosworth, Forest Supervisor, Wasatch-Cache National Forest, 8230 Federal Building, 125 So. State, Salt Lake City, Utah, 84138 is the responsible official. The Forest Service is the lead agency.

The analysis is expected to take 6 months. The draft environmental impact statement should be available for public review by December, 1989. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register**. The Final Environmental Impact Statement is scheduled to be completed by May, 1990.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmetal impact statement. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

Dale N. Bosworth,

Forest Supervisor.

[FR Doc. 89-15859 Filed 7-5-89; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Burney Branch Watershed, Mississippi

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (7 CFR Part 650); U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Burney Branch Watershed, Lafayette County, Mississippi.

FOR FURTHER INFORMATION CONTACT: L. Pete Heard, State Conservationist, Soil Conservation Service, Suite 1321, A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, telephone (601) 965-5205.

SUPPLEMENTARY INFORMATION: An environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, L. Pete Heard, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project. The project concerns a plan for flood protection in the predominantly urban portion of the watershed. The planned works of improvement includes approximately 7,100 feet of concrete-lined urban channel, 1,700 feet of streambank stabilization, 15 minor grade control structures and land treatment measures.

Planned measures will be installed by the Soil Conservation Service as a component of a Demonstration Erosion Control Project.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

Basic data developed during the environmental assessment are on file and may be reviewed by contacting L. Pete Heard.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

L. Pete Heard,

State Conservationist, SCS, Jackson, Mississippi.

Date: June 14, 1989.

[FR Doc. 89-15831 Filed 7-5-89; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration

Title: GOES Weather Facsimile Transmission System (WEFAX)

Form Number: Agency—None; OMB—None

Type of Request: Request for approval of an unapproved collection currently is use

Burden: 200 respondents; 50 reporting hours; Average hours per response—.25

Needs and Uses: Users of certain NOAA satellite-derived products are asked to provide information on their product use and reception equipment. The information is used to evaluate NOAA's products and transmission systems.

Affected Public: Individuals, state or local governments, farms, businesses or other for-profit organizations, non-profit institutions, small businesses or organizations

Frequency: Annually

Respondent's Obligation: Voluntary

OMB Desk Officer: Russell Scarato

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 28, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-15768 Filed 7-5-89; 8:45 am]

BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Docket 10-89]

Foreign-Trade Zone 32—Dade County, FL, Area; Miami Port of Entry; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Greater Miami Foreign-Trade Zone, Inc., grantee of FTZ 32, requesting authority to expand its zone in Dade County, Florida, within the Miami Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 26, 1989.

FTZ 32, which consists of an 800,000 sq. ft. storage/distribution center, located on a 73-acre parcel at NW. 12th Street and 97th Avenue, Dade County, 4 miles west of the Miami International Airport, was approved by the Board in 1977 (Board Order 123, 42 FR 46568, 9/16/77).

The grantee is requesting authority to expand the zone project to include a 205-acre parcel within the Beacon Centre development, north of NW. 12th Street and east of NW. 8th Avenue, Dade County, Florida, one mile west of the airport. Warehouse/distribution facilities will be constructed, with 400,000 sq. ft. planned at the outset. The new site would be operated by the Miami Free Zone Corporation, which operates the existing zone. It is being requested because the current zone is fully occupied and new users have expressed interest in using zone procedures in the Miami area.

No manufacturing requests are being made at this time. Such approvals would be requested from the Board on a case-by-case basis. In making this request, the grantee has requested that the Board accept is relinquishment of authority with regard to the Homestead site approved in 1982 (Board Order 184, 47 FR 10612, 2/8/82).

In accordance with the Board's regulations, an examiners committee has been appointed to investigate and application and report to the Board. The committee consists of Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Howard Cooperman, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southeast Region, 909 SE. First Avenue, Miami, FL 33131; and, Colonel Robert L. Herndon, District Engineer, U.S. Army Engineer District Jacksonville, P.O. Box 4970, Jacksonville, FL 32232.

Comments concerning the proposed zone expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before August 18, 1989.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, Federal Building, Suite 244, SW First Avenue, Miami, FL 33130

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2835, 14th & Pennsylvania Ave., NW., Washington, DC. 20230

Dated: June 28, 1989.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-15771 Filed 7-5-89; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 435]

Temporary Extension of Authority for Subzones 22C, 22D, and 22E, Chicago, IL

Pursuant to its authority under the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, on March 23, 1987, the Board conditionally approved an application submitted by the Illinois International Port District (IIPD), grantee of FTZ 22, for foreign-trade subzone status (SZ's 22 C, D, and E) at the food products manufacturing plants of Power Packaging, Inc. (PPI), in Carol Stream (SZ 22C), West Chicago (SZ 22D), and St. Charles (SZ 22E), Illinois (Board Order 347, 52 FR 10246);

Whereas, approval was subject to a 2-year time restriction (from activation: 6/29/87), and a condition that limits the use of zone procedures to the manufacture of products that are subject to sugar-containing product quotas;

Whereas, the 2-year period expires on June 29, 1989;

Whereas, IIPD has made application to the Board (FTZ Docket 4-89, filed April 6, 1989, 54 FR 15480, 4/18/89) for a 2-year extension of authority;

Whereas, the review being conducted by the Board will not be completed by June 29, 1989, because it will include an overall study of sugar operations in zones; and,

Whereas, the FTZ Staff has conducted a preliminary review and finds that a temporary extension of authority would be in the public interest pending completion of the overall study;

Now, therefore, the Board hereby orders:

That the authority for Subzones 22C, 22D, and 22E is extended to June 29, 1990, subject to all of the other conditions in Board Order 347.

June 29, 1989.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

[FR Doc. 89-15890 Filed 7-5-89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

City College of New York; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 89-070. *Applicant:* City College of New York, New York, NY 10031. *Instrument:* Fourier Transform Raman Spectrometer System, Model DA3. *Manufacturer:* Bomen, Inc., Canada. *Intended Use:* See notice at 54 FR 11990, March 23, 1989.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, was being manufactured in the United States at the time the instrument was ordered (October 28, 1988). *Reasons:* The foreign instrument is capable of visible and near IR-Raman and provides an unapodized resolution of 0.026 cm^{-1}. The capability is pertinent to the applicant's intended purpose and we know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use being manufactured at the time the foreign instrument was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-15773 Filed 7-5-89; 8:45 am]

BILLING CODE 3510-DS-M

Columbia University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and

Constitution Avenue, NW., Washington, DC.

Docket Number: 87-191. *Applicant:* Columbia University in the City of New York, New York, NY 10027. *Instrument:* Surface Analysis System. *Manufacturer:* Kratos Analytical, United Kingdom. *Intended Use:* See notice at 52 FR 27041, July 17, 1987.

Comments: No comments have been received with respect to this application. *Decision:* Approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, was being manufactured in the United States at the time the foreign instrument was ordered (December 24, 1986). *Reasons:* The foreign instrument provides a monochromatic x-ray excitation source, a crystal cleaver, and can accommodate in situ metal deposition and laser processing of surfaces. The National Institute of Standards and Technology advises in its memorandum dated March 14, 1989 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purposes and (2) it knows of no instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use which was being manufactured in the United States at the time the foreign instrument was ordered.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which was being manufactured in the United States at the time the foreign instrument was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-15774 Filed 7-5-89; 8:45 am]

BILLING CODE 3510-DS-M

National Institutes of Health et al.; Consolidated Decisions on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14h and Constitution Avenue, NW., Washington, DC.

Docket Number: 89-026. *Applicant:* National Institutes of Health, Bethesda, MD 20892. *Instrument:* Electron Microscope, Model EM902PC. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* See notice at 54 FR 4674, January 31, 1989. *Instrument Ordered:* September 12, 1988.

Docket Number: 89-030. *Applicant:* University of North Carolina, School of Dentistry, Chapel Hill, NC 27599-7455. *Instrument:* Electron Microscope, Model CM12S.

Manufacturer: N.V. Philips, The Netherlands. *Intended Use:* See notice at 54 FR 4874, January 31, 1989. *Instrument Ordered:* October 25, 1988.

Docket Number: 89-034. *Applicant:* Veterans Administration, Lakeside Medical Center, Chicago, IL 60611. *Instrument:* Electron Microscope, Model H-600.

Manufacturer: Nissei Sangyo America, Inc. Japan. *Intended Use:* See notice at 54 FR 4876, January 31, 1989. *Instrument Ordered:* September 28, 1987.

Docket Number: 89-046. *Applicant:* Oregon Health Sciences University, Portland, OR 97201. *Instrument:* Electron Microscope, Model JEM-100CX.

Manufacturer: JEOL Ltd., Japan. *Intended Use:* See notice at 54 FR 7461, February 21, 1989. *Instrument Ordered:* September 22, 1988.

Docket Number: 89-048. *Applicant:* University of Texas M.D. Anderson Cancer Center, Houston, TX 77030. *Instrument:* Electron Microscope, Model JEM-1200EX/SEG/DP/DP.

Manufacturer: JEOL, Ltd., Japan. *Intended Use:* See notice at 54 FR 7461, February 21, 1989. *Instrument Ordered:* August 31, 1988.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Stautory Import Programs Staff.

[FR Doc. 89-15775 Filed 7-5-89; 8:45 am]

BILLING CODE 3510-DS-M

Pennsylvania State University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 89-054. *Applicant:* Pennsylvania State University, University Park, PA 16802. *Instrument:* Mass Spectrometer. *Manufacturer:* VG Isogas Ltd., United Kingdom. *Intended Use:* See notice at 54 FR 9076, March 3, 1989.

Comments: None received. *Decision:* Approved. No domestic manufacturer was both "able and willing" to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the instrument was intended to be used, and have it available to the applicant without unreasonable delay in accordance with § 301.5(d)(2) of the regulations, at the time the foreign instrument was ordered (November 30, 1988). *Reasons:* The foreign instrument provides high precision automated analysis (0.006°/∞ for CO_2 and N_2 using 75 bar µl and 100 bar µl, respectively, inlet, <0.1°/∞ for H_2 using 150 bar µl inlet, <0.008°/∞ for SO_2 and SF_6 using 100 bar µl inlet). The capability is pertinent to the applicant's intended purposes. We know of no dometic manufacturer both able and willing to provide an instrument with the required features at the time the foreign instrument was ordered.

As to the domestic availability of instruments, § 301.5(dj)(2) of the regulations provides that, in determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, "the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be taken into account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case." This paragraph also provides that, if "a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument."

The regulations require that domestic manufacturers be both "able and willing" to produce an instrument for the purposes of comparison with the foreign instrument. Where an applicant, as in this case, received a no bid response to a formal request for quotation sent to the only known domestic manufacturer of comparable instruments it is apparent that the domestic manufacturer was either not able or not willing to produce an instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument was intended to be used at the time the foreign instrument was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-15776 Filed 7-5-89; 8:45 am]

BILLING CODE 3510-DS-M

Texas A&M University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 89-025. *Applicant:* Texas A&M University, College Station, TX 77843. *Instrument:* Spectrophotometer. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* See notice at 54 FR 4874, January 31, 1989.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This is a compatible accessory for an instrument previously imported for the use of the applicant. The instrument and accessory were made by the same manufacturer. The National Institutes of Health advises in its memorandum dated March 16, 1989 that the accessory is pertinent to the intended uses and that it knows of no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-15777 Filed 7-5-89; 8:45 am]

BILLING CODE 3510-DS-M

Withdrawal of Application for Duty-Free Entry of Scientific Instruments

Texas A&M University has withdrawn Docket Number 89-045 an application for duty-free entry of a scanning electron microscope. We have discontinued processing in accordance with § 301.5(g) of 15 CFR Part 301.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-15781 Filed 7-5-89; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with paragraphs 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88-208R. *Applicant:* USDA-ARS, Richard B. Russell Agricultural Research Center, 950 College Station Road, P.O. 5677, Athens, GA 30613. *Instrument:* NMR Spectrometer, Model MSL-300 (System E). *Manufacturer:* Bruker Analytische Messtechnik, West Germany. Original notice of this resubmitted application was published in the **Federal Register** of June 17, 1988.

Docket Number: 88-212R. *Applicant:* USDA-ARS, Metabolism and Radiation Research Laboratory, State University Station, Fargo, ND 58105. *Instrument:* NMR Spectrometer, Model MSL-300 (System F). *Manufacturer:* Bruker Analytische Messtechnik, West Germany. Original notice of this resubmitted application was published in the **Federal Register** of June 17, 1988.

Docket Number: 88-260R. *Applicant:* Centers for Disease Control, Center for Infectious Diseases, 1600 Clifton Road, N.E., Atlanta, GA 30333. *Instrument:* High Dose Rate Research Irradiator, Model Gammacell 220. *Manufacturer:* Atomic Energy of Canada Ltd., Canada. Original notice of this resubmitted application was published in the **Federal Register** of September 23, 1988.

Docket Number: 88-277R. *Applicant:* Children's Medical Center, 5300 E. Skelley Drive, P.O. Box 35648, Tulsa, OK 74135. *Instrument:* Rapid Karyotyping System, Cytoscan RK1. *Manufacturer:* Image Recognition Systems, United Kingdom. Original notice of this resubmitted application was published in the **Federal Register** of October 7, 1988.

Docket Number: 89-156. *Instrument:* Electrometer-Patch Clamp Amplifier, Model EPC-7.

Docket Number: 89-157. *Instrument:* Microelectrode Forging System, Model CPZ-101.

Docket Number: 89-158. *Instrument:* Micromanipulator.

Docket Number: 89-159. *Instrument:* Microelectrode Puller, Model L/M 3P-A.

Applicant: University of Virginia, Health Sciences Center, Department of Biomedical Engineering, Box 377, Charlottesville, VA 22908. *Manufactured:* List Electronic, West Germany. *Intended Use:* These instruments will be used for studies of cultured bovine chromaffin cells of adrenal medulla, rat anterior pituitary cells, and human small-cell carcinoma cells. Three different types of experiments will be performed: (1) Patch-clamp recording of the whole-cell and single-channel activities of the membrane ion channels in the cells that had been exposed to LES or normal control IgG antibodies (2) Continuous membrane capacitance measurement of exocytotic secretion in these IgG-treated cells; and (3) Biophysical and pharmacological characterization of voltage-dependent and receptor-operated ion channels. The instruments will also be used for teaching biomedical engineering graduate students in the courses: BIOM 891 Bioelectric Systems and BIOM 892 Membrane Biophysics.

Applications Received by Commissioner of Customs: May 18, 1989.

Docket Number: 89-160. *Applicant:* Harvard University, Department of Earth and Planetary Sciences, Hoffman Laboratory/20 Oxford Street, Cambridge, MA 02138. *Instrument:* Mass Spectrometer, Model THQ. *Manufacturer:* Finnigan-MAT, West Germany. *Intended Use:* The instrument will be used for trace element and isotopic (Pb, B, and Os) measurements in the earth sciences and its subfields. Geochemists will study elemental and isotopic variations of natural and experimental materials, and determine how their isotopic properties respond to a variety of geologic phenomena. The phenomena range widely in scale, from the nature and timing of processes involved in the evolution of the earth and the solar system, to small-scale processes involved in elemental diffusion in minerals and rocks. These studies will lend much insight into

processes by which natural materials such as minerals, rocks, silicate magmas, and aqueous solutions formed and evolved throughout the history of the Earth. In addition, the instrument will be used in several geochemistry courses to teach the theory, practice, and application of trace element and isotope geochemistry to a variety of geological problems in the lithosphere, hydrosphere and atmosphere. *Application Received by Commissioner of Customs:* May 18, 1989.

Docket Number: 89-161. *Applicant:* University of California, San Diego, 8655 Production Ave., San Diego, CA 92121. *Instrument:* Stable Isotope Mass Spectrometer, Model Delta S. *Manufacturer:* Finnigan Corporation, West Germany. *Intended Use:* The instrument will be used for studies of rocks, minerals, fluids, gases, and marine plants and animals. The solids, fluids, and biological materials will be collected in the field during oceanic courses, and some will be synthesized in the laboratory. These materials will then be prepared in existing special laboratories, in which the hydrogen, carbon, nitrogen and oxygen compounds are converted to the proper gases (such as CO_2) for the subsequent analysis. *Application Received by Commissioner of Customs:* May 18, 1989.

Docket Number: 89-162. *Applicant:* University of Pennsylvania, School of Medicine, Department of Biochemistry and Biophysics, Philadelphia, PA 19104. *Instrument:* Preparative Quench Multi-Mixing Instrument, Model QFM-5. *Manufacturer:* Bio-Logic, France. *Intended Use:* The instrument will be used for the investigations of the protein folding mechanism for globular proteins including cytochrome c, ubiquitin, and thioredoxin. The main objective of the investigations is to gain insight into the mechanisms of protein folding, an unsolved fundamental problem in molecular biology, by using novel applications of rapid mixing techniques in conjunction with NMR to obtain a detailed structural and kinetic characterization of the folding process for selected proteins. *Application Received by Commissioner of Customs:* May 19, 1989.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-15782 Filed 7-5-89; 8:45 am]

BILLING CODE 3510-DS-M

University of New Mexico et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88-131R. Applicant: University of New Mexico, Albuquerque, NM 87131. Instrument: Copper Vapor Laser. Manufacturer: Oxford Laser, United Kingdom. Intended Use: See Notice at 53 FR 15099, April 27, 1988. Reasons for This Decision: The foreign article provides an average power of 40W, pulse energy of 10 mJ and a beam divergence of 0.6 mrad.

Docket Number: 89-074. Applicant: Michigan State University, East Lansing, MI 48824. Instrument: Dilution Refrigerator, Model 200 TLM. Manufacturer: Oxford Instruments, United Kingdom. Intended Use: See notice at 54 FR 11992, March 23, 1989. Reasons for This Decision: The foreign instrument provides top-loading, continuous-flow ^3He-^4H dilution refrigeration with a cooling power at 0.1K of 200 microwatts.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-15779 Filed 7-5-89; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Decision: Denied. Applicants have failed to establish that domestic instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for each of the listed dockets.

Docket Number: 88-251. *Applicant:* University of Virginia Medical Center, Charlottesville, VA 22908. *Instrument:* Stopped Flow Apparatus. *Manufacturer:* Hi-Tech Scientific, Ltd., United Kingdom. *Date of Denial Without Prejudice to Resubmission:* February 27, 1989.

Docket Number: 88-261. *Applicant:* Board College, Annandale-on-Hudson, NY 12504. *Instrument:* Rapid Kinetics Accessory, Model SFA-11. *Manufacturer:* Hi-Tech Scientific, Ltd., United Kingdom. *Date of Denial Without Prejudice to Resubmission:* February 27, 1989.

Docket Number: 88-267. *Applicant:* Xavier University, Cincinnati, OH 45207. *Instrument:* Rapid Kinetics Accessory, Model SFA-11. *Manufacturer:* Hi-Tech Scientific, Ltd., United Kingdom. *Date of Denial Without Prejudice to Resubmission:* February 27, 1989.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-15772 Field 7-5-89; 8:45 am]

BILLING CODE 3510-DS-M

University of Wisconsin; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitutional Avenue, NW., Washington, DC.

Docket Number: 89-159R2. *Applicant:* University of Wisconsin, Madison, WI 53706. *Instrument:* NMR Spectrometer, Model AM 500 with Accessories. *Manufacturer:* Bruker Instruments, Switzerland. *Intended Use:* See notice at 52 FR 15528, April 29, 1987.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, was being manufactured in the United States at the time the purchase was contracted, July 3, 1985. *Reasons:* The foreign instrument provides 500 megahertz operation with equivalent transmitter, decoupler and receiver phase shifts of one degree or less. The National Institutes of Health advises in its memorandum dated January 26, 1989 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-15778 Filed 7-5-89; 8:45 am]

BILLING CODE 3510-DS-M

Vanderbilt University et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 89-009. *Applicant:* Vanderbilt University, Nashville, TN 37232. *Instrument:* Micromanipulator, Model MK1. *Manufacturer:* Singer Instruments, United Kingdom. *Intended Use:* See notice at 53 FR 51576, December 22, 1988. *Reasons For This Decision:* The foreign instrument can deliver a sample as small as 10.0 µL with a standard deviation of replication of 0.05 µl. *Advice Submitted By:* National Institutes of Health, March 16, 1989.

Docket Number: 89-012. *Applicant:* New York State College of Veterinary Medicine, Ithaca, NY 14853-6401. *Instrument:* Ultrasonic Gas Flowmeter. *Manufacturer:* Birmingham University Research Development Ltd., United Kingdom. *Intended Use:* See notice at 53 FR 51576, December 22, 1988. *Reasons For This Decision:* The foreign instrument provides negligible resistance to air flow with insensitivity to temperature and gas composition changes. *Advice Submitted By:* National Institutes of Health, March 16, 1989.

Docket Number: 89-019. *Applicant:* VA Medical Center, San Francisco, CA 94121. *Instrument:* Spectrophotomer, Model SF-51. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* See notice at 54 FR 3636, January 25, 1989. *Reasons For This Decision:* The foreign instrument provides acid-resistant construction and permits simultaneous optical detection at three different angles. *Advice Submitted By:* National Institutes of Health, March 16, 1989.

Docket Number: 89-021. *Applicant:* University of Nebraska-Lincoln, Lincoln, NE 68583-0728. *Instrument:* Infrared Gas Analyzer, Model E009. *Manufacturer:* Advanced Systems, Inc. Japan. *Intended Use:* See notice at 54 FR 3636, January 25, 1989. *Reasons For This Decision:* The foreign instrument provides fast response to concentration fluctuations and sensitivity to ±0.5 ppm for CO^2. *Advice Submitted By:* National Institutes of Health, March 16, 1989.

Docket Number: 89-027. *Applicant:* Midwest Research Institute, Kansas City, MO 64110. *Instrument:* Mass Spectrometer, Model VG-70-250S. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* See notice at 54 FR 4874, January 31, 1989. *Reasons For This Decision:* The foreign instrument provides: (1) Resolution to 50,000, (2) sensitivity to 50 femtograms of TCDD and (3) a laminated magnet for rapid magnetic field strength switching. *Advice Submitted By:* National Institutes of Health, March 16, 1989.

Comments: Non received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The National Institutes of Health advises that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) if knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-15780 Filed 7-5-89; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications:

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announced that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first *12* months is estimated at *$216,776* for the project performance of *11/1/89* to *10/31/90*. The MBDC will operate in the *Raleigh/Durham/Triad, North Carolina* Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of *$184,260* in Federal Funds and a minimum of *$32,516* in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to

determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications *August 7, 1989.* Applications must be postmarked on or before *August 7, 1989.*

ADDRESS: Atlanta Regional Office, Minority Business Development Agency, U.S. Department of Commerce, Suite 505, Atlanta, Georgia 30309, 404/347-4091

FOR FURTHER INFORMATION CONTACT: *Carlton L. Eccles, Regional Director* of the *Atlanta* Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Carlton L. Eccles, Regional Director
Atlanta Regional Office

Date: June 29, 1989.

Note: A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street NW., Suite 505, Atlanta, Georgia, Friday, July 1, 1989, at 10:00 a.m.

[FR Doc. 89-15818 Filed 7-5-89; 8:45 am]

BILLING CODE 3510-21-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the People's Republic of China

June 30, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 30, 1989.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 847 is being increased for swing and carryforward. The limit for Category 846 is being reduced to account for the swing being applied to Category 847.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 50276, published on December 14, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 30, 1989.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 6, 1988 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1989 and extends through December 31, 1989.

Effective on June 30, 1989, the directive of December 6, 1988 is amended further to adjust the limits for the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted 12-mo limit [1]
846	118,937 dozen.
847	1,077,543 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-15889 Filed 7-5-89; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

The Joint Staff; National Defense University Transition Planning Committee (Long Committee)

AGENCY: Joint Staff, Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The Chairman of the National Defense University Transition Planning Committee (Long Committee), has scheduled a committee meeting.

DATES: The meeting will be held on July 31 and August 1, 1989.

ADDRESSES: The meeting will be held at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Colonel Tom Berta or Colonel Joe Shackelford, Executive Assistants, Long Committee, Park Center Complex, Suite 571, 4401 Ford Avenue, Alexandria, Virginia 22302, phone (703) 756-0616.

SUPPLEMENTARY INFORMATION: The Long Committee will be examining the desirability and feasibility of establishing a National Center for Strategic Studies. The meeting is open to the public, but the limited space available for observers will be allocated on a first-come, first-served basis.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 29, 1989.

[FR Doc. 89-15861 Filed 7-5-89; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, 19 July 1989.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2940 Presidential Drive, Suite 210, Fairborn, Ohio 45433.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 2011 Crystal Drive, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The Microelectronics area includes such programs as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended (5 U.S.C. App. II § 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), (1982), and that accordingly, this meeting will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 29, 1989.

[FR Doc. 89-15862 Filed 7-5-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Logistics Agency

Membership of the Defense Logistics Agency (DLA), Performance Review Board (PRB)

AGENCY: Defense Logistics Agency, Defense.

ACTION: Notice of membership of the DLA PRBs.

SUMMARY: This notice announces the appointment of the members of the PRBs of the Defense Logistics Agency. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The PRB provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance and performance awards to the Director, Defense Logistics Agency.

EFFECTIVE: July 6, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Herbert W. Johnson, Employee Development Specialist, Workforce Effectiveness and Development Division, Defense Logistics Agency, Department of Defense, Cameron Station, Alexandria, VA. (202) 274-6049 or 274-6039.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are names and titles of the executives who have been appointed to serve as members of the PRBs. They will serve a 1-year renewable term, effective upon publication of this notice.

Initial PRB

Mr. Gary P. Quigley, Associate Counsel, Office of General Counsel
Mr. Raymond F. Chiesa, Executive Director, Contracting
Mr. Anthony W. Hudson, Staff Director, Civilian Personnel

2nd Level Review

Mr. William V. Gordon, Executive Director, Contract Management
Mr. William J. Cassell, Comptroller
BG Michael J. Pepe, USA, Executive Director, Quality Assurance.

Anthony W. Hudson,

Staff Director, Civilian Personnel.

[FR Doc. 89-15830 Filed 7-5-89; 8:45 am]

BILLING CODE 3620-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before August 7, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: June 29, 1989.

Carlos U. Rice,

Director, for Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Extension.
Title: Final Performance Report for the Library Services for Indian Tribes and Hawaiian Natives Program
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden:
Responses: 250.
Burden Hours: 625.
Recordkeeping Burden:
Recordkeepers: 250.
Burden Hours: 300.

Abstract: This form will be used by grantees who have participated in the Library Services for Indian Tribes Program. The Department will use the information to assess the accomplishments of project goals and objectives, and to aid in effective program management.

Type of Review: Revision.
Title: The National Public Education Financial Survey (Replace Common Core of Data (CCD), 1988-89 VI
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:

BEST COPY AVAILABLE

Responses: 57
Burden Hours: 1079
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This survey requests fiscal data from States regarding public education which is used in the allocation of Federal funds under Chapter 1, Elementary and Secondary Education Act, as amended. The fiscal data is used in a variety of publications designed to inform the nation of changes and trends in the fiscal status of American education.

Type of Review: Revision.
Title: National Assessment of Educational Progress (NAEP) 1989–90 Assessment: Background/Attitude, Reading, Mathematics, Science
Frequency: Non-Recurring
Affected Public: Individuals or Households; State or Local Governments
Reporting Burden:
Responses: 245,018
Burden Hours: 213,166
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: Congress mandated the collection of the National Assessment survey data. The NEAP data collection for the 1989 school year includes cognitive exercises in reading, mathematics, and science, and achievement-related student, teacher, and school background and attitude questionnaires. The data will be useful for policymakers in education, research, legislatures, and the public.

Office of Postsecondary Education

Type of Review: Extension.
Title: Physician's Certification of Borrower's Total and Permanent Disability
Frequency: One time only
Affected Public: Individuals or households
Reporting Burden:
Responses: 302
Burden Hours: 151
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This form is used by lenders to obtain information from a borrower's physician to support a disability claim to the Department. The Department uses the information to show the aggregate amount of disability claims under the Federal Insured Student Loan Program.

Office of Special Education and Rehabilitative Services

Type of Review: NEW
Title: Longitudinal Study of a Sample of Handicapped Students; Exiters Substudy
Frequency: One time only
Affected Public: Individuals or households
Reporting Burden:
Responses: 848
Burden Hours: 349
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This substudy will collect additional information on a sample of handicapped students who have participated in the longitudinal study. The Department will use the information to evaluate the transition experiences of disabled youth after they left secondary school, and to determine whether the youth received services.

[FR Doc. 89-15863 Filed 7-5-89; 8:45 am]
BILLING CODE 4000-01-M

Office of Bilingual Education and Minority Languages Affairs

Transitional Bilingual Education and Special Alternative Instructional Programs

AGENCY: Department of Education.

ACTION: Notice of final priority for Fiscal Year 1989.

SUMMARY: The Secretary of Education establishes an absolute priority for a special competition under the Transitional Bilingual Education and Special Alternative Instructional programs of the Office of Bilingual Education and Minority Languages Affairs (OBEMLA) in fiscal year (FY) 1989.

EFFECTIVE DATE: This notice takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. A document announcing the effective date will be published in the **Federal Register**. If you want to know the effective date of this notice, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: William Wooten, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue SW., Room 5086, Mary E. Switzer Building, Washington, DC 20202-6510. Telephone: (202) 732-5063.

SUPPLEMENTARY INFORMATION: Authority for the Transitional Bilingual Education (TBE) and the Special Alternative Instructional (SAI) programs is found in Section 7021 of the Bilingual Education Act of 1984, as amended (20 U.S.C. 3291). Under both the TBE and SAI programs, awards are made to local educational agencies (LEAs) to provide programs of instruction for limited English proficient (LEP) children.

Bilingual instructional programs have been funded by the Federal government for over 20 years in an effort to ensure equal educational opportunity for all students. In recent years some school districts have had heavy influxes of immigrant and refugee populations. The Secretary is aware that these districts have a substantial burden because of the influx of LEP students from these new groups, and believes that they should be able to apply for additional Federal assistance under existing programs and appropriations. Also, the Secretary desires that a priority to assist these students apply to both TBE and SAI programs to provide LEPs with flexibility in determining appropriate to provide LEAs with flexibility in determining appropriate instructional approaches. Using available funds to implement this priority will in no way diminish FY 1989 funding levels for other TBE and SAI program, since the funds at issue for this special competition would be allocated to programs authorized by section 7021 of the Act other than TBE and SAI programs, even if the priority were not implemented.

On March 7, 1989, the Secretary published a notice of proposed priority for this special competition in the **Federal Register** (54 FR 9545-9546).

There are major substantive differences between the notice of proposed priority and this final notice. In response to public comments on the notice of proposed priority, and to clarify the original intent, the Secretary hs deleted the requirement that an applicant must not previously have provided services with TBE or SAI funds received from the Department in the native language of those students to be served in the proposed project. In addition, the Secretary has limited the priority to applicants proposing to serve children who have arrived in the school district within the last two years, and applicants who demonstrated in their application to the Secretary that those children represent excess burden to the school district.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, 67 parties submitted comments. An analysis of the comments and of the changes in the priority since publication of the notice of proposed priority follows.

Native Language Limitation

Comments: Many commenters were concerned about the restriction of the proposed priority to LEAs that had not previously provided services with TBE or SAI funds in the native language of the students to be served. Commenters pointed out that many school districts with a substantial need for Federal assistance, as a result of recent influxes of immigrant and refugee populations, would not be eligible for assistance because of their past services in the native languages of these populations.

Discussion: The purpose of Federal assistance under the TBE and SAI programs is to build the capacity of LEAs to continue programs for LEP students after Federal funding ends. Thus LEAs funded in the past should have developed the capacity to conduct programs for groups whose native languages were previously served with TBE and SAI funds. The Secretary recognizes, however, that in some school districts capacity-building efforts have been heavily burdened by influxes of immigrant and refugee populations, and he agrees that these heavily affected LEAs should be able to apply for assistance to help them ensure equal educational opportunities for LEP students who have recently arrived in the districts.

Changes: The Secretary has deleted the reference to native language in the proposed priority and has limited the priority to LEAs proposing to serve LEP students who have arrived in the school districts within the last two years.

Adequacy of Existing Competitive Priorities

Comments: Several Commenters questioned the need for the proposed priority since statutory preference already exists for LEAs needing Federal assistance to serve language groups that have not previously received services with TBE or SAI funds. These commenters suggested that the needs of underserved LEP children are met through the existing process of assigning additional points to competing applications that present additional factors for the Secretary to consider in awarding grants.

Discussion: In the past, the additional points have not proven adequate to ensure that historically underserved populations have received adequate funding.

(*See*, 20 U.S.C. 3291 and 34 CFR 501.32.)

Changes: None.

Eligibility of New Grade Levels for Previously Served Language Groups

Comments: Several commenters criticized the proposed priority as discriminatory against LEAs that have previously provided services in the native language of students at certain grade levels but now need assistance to serve students of the same language group at other grade levels. One commenter maintained that capacity building at the elementary grade levels does not enable an LEA to serve the same language group at the secondary grade levels because program components developed for the lower grades are not adequate or appropriate for influxes of LEP students in the upper grades.

Discussion: The capacity developed in establishing a program at one educational level should ordinarily be transferable to another educational level involving the same language group. The Secretary is concerned, however, that recent influxes of immigrant and refugee populations have impaired the ability of some prior grantees to expand services for previously served language groups to additional grade levels.

Changes: As noted above, the Secretary has deleted the reference to native language in the proposed priority.

Effect of the Proposed Priority on the Earlier FY 1989 TBE and SAI Grant Competitions

Comments: Several commenters were concerned that the awarding of grants under the proposed priority would reduce the number of awards planned for the TBE and SAI programs under the regular FY 1989 grant competitions held earlier.

Discussion: Awarding of grants under the proposed priority will not have this effect, since the funds for the priority will come from reallocated FY 1989 funds originally planned for other programs.

Changes: None.

Impact of the Proposed Priority on Instructional Methodology

Comments: The Secretary received several comments criticizing the proposed priority as an attempt to foster a specific approach in the education of LEP children.

Discussion: The proposed priority applies to applications proposing approaches under either the TBE program or the SAI program. Thus, the priority allows applicants maximum flexibility to determine whether bilingual or English-only methods of instruction are appropriate for children in their districts.

Changes: None.

Relationship of the Proposed Priority to Native American Needs

Comments: Several commenters expressed concern that the awarding of grants under the proposed priority would divert Federal assistance from Native American language groups and signify a lessening of interest in programs for these groups.

Discussion: Under the proposed priority the Secretary does not intend to exclude Native American or other language groups from consideration, but rather gives preference to applicants with special needs. Awarding of grants under this priority is unlikely to have any significant effect on funding for Native American projects.

Changes: None.

Adequacy of Existing Programs to Meet the Needs Addressed by the Proposed Priority

Comments: A few commenters noted the existence of other programs, such as under the Emergency Immigrant Education Act and the Refugee Assistance Act, that they felt addressed the Secretary's concerns about serving new student populations.

Discussion: The priority makes possible an additional response to recent influxes, over and above that of any of the formula grant programs and would provide specific assistance for bilingual education. This priority is made possible this year by the availability of funds and recognition of the priority need. It is not intended at this time to be a regular supplement to the immigrant and refugee program.

Changes: None.

Priority: In accordance with the Education Department General Administrative Regulations in 34 CFR 75.105(c)(3), the Secretary establishes the following absolute priority in FY 1989 for applications under the TBE and SAI programs:

The LEA must propose to provide instructional services to LEP students whom it has not previously served under TBE or SAI programs funded by the Department. Additionally, these students must have arrived in the applicant's district within two years prior to the date of the application to the Department for funds under this competition.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental

partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

(Authority: 20 U.S.C. 3291)

Dated: June 29, 1989.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 89-15864 Filed 7-5-89; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.003A; 84.003E]

Transitional Bilingual Education Program and Special Alternative Instructional Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1989

Purpose of Program: Provides grants to local educational agencies (LEAs) to establish, operate, and improve programs of instruction for limited English proficient (LEP) children.

Deadline for Transmittal of Applications: August 7, 1989.

Deadline for Intergovernmental Review: September 21, 1989.

Applications Available: July 7, 1989.

Available Funds: $2 million.

Estimated Range of Awards: $40,000–$250,000.

Estimated Average Size of Awards: $154,000.

Estimated Number of Awards: 13.

Note: The Department is not bound by an estimates in this notice.

Project Period: 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, and 85; and (b) the regulations for these programs in 34 CFR Parts 500 and 501.

Priority: Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority:

The LEA must propose to provide instructional services to LEP students whom it has not previously served under Transitional Bilingual Education or Special Alternative Instructional programs funded by the Department. Additionally, these students must have arrived in the applicant's district within two years prior to the date of the application to the Department for funds under this competition.

Under 34 CFR 75.105(c)(3), the Secretary funds under this competition only applications that meet this absolute priority.

For Applications or Information Contact: Luis A. Catarineau, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5086, Mary E. Switzer Building, Washington, DC 20202-6510. Telephone: (202) 732-5700.

Program Authority: 20 U.S.C. 3291(a).

Dated: May 31, 1989.

Alicia Coro,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 89-15865 Filed 7-5-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Grant Agreement to Electric Power Research Institute

AGENCY: U.S. Department of Energy (DOE).

ACTION: The U.S. DOE announces, pursuant to 10 CFR 600.7(b), it is restricting eligibility for award of DE-FG01-89FE61891 to the Electric Power Research Institute for conducting a conference on Performance Improvement, Retrofitting, and Repowering of Fossil Fuel Power Plants.

SUMMARY: The symposium will bring together governmental officials, coal consumers, technology developers, and representatives of the coal industry from around the world to address energy technology and policy options of immediate interest to the utility industry and promote the various clean coal technologies. Approximately 500 persons are expected to attend. The symposium will be held March 6-9, 1990 and will feature a series of speeches and panels in various parallel sessions. Speakers will address issues related to coal technology in the areas of finance, environment, policy, and technology development. Topics will include boiler upgrade/retrofit, turbine cycle upgrade/retrofits, diagnostic controls and automation upgrade/retrofit, environmental control systems upgrade/retrofit, emerging repowering technologies, environmental and regulatory policy issues, energy policy and financial issues, and international collaboration.

Scope: This grant will fund $31,118 in support of the International Symposium scheduled to be held at the Crystal Gateway Marriott Hotel in Arlington, VA.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Mary Braxton, MA-452.1, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone No. (202) 586-1028.

Jeffrey Rubenstein,

Director, Contract Operations Division "A", Office of Procurement Operations.

[FR Doc. 89-15895 Filed 7-5-89; 8:45am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (Pub. L. 96-511, 44 U.S.C. 3501 et seq.).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, or management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATE: Comment must be filed on or before August 7, 1989.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards (EI-73), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586-2171.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the DOE contact listed above.)

The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FPC-14.
3. 1902-0027.
4. Annual Report for Importers and Exporters of Natural Gas.
5. Extension.
6. Annually.
7. Mandatory.
8. Businesses or other for-profit.
9. 34 respondents.
10. 34 responses.
11. 4 hours per response.
12. 136 hours (total).
13. The purpose of this report filing requirement is to collect data used to assist in the monitoring and regulation of natural gas imports and exports in the United States.

Statutory Authority: Sections 5(a), 5(b), 13(b), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, June 29, 1989.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 89-15896 Filed 7-5-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project Nos. 3470-004 et al.]

Hydroelectric Applications (Tumalo Irrigation District et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Application:* Surrender of License

b. *Project No.:* 3470-004

c. *Date Filed:* May 15, 1989

d. *Applicant:* Tumalo Irrigation District

e. *Name of Project:* Bend Canal

f. *Location:* On the Bend Feed Canal in Deschutes County, Oregon

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r)

h. *Applicant Contact:* Mr. Ralph McNalty, Tumalo Irrigation District, 64897 Cook Avenue, Bend, OR 97701, (503) 382-3053

i. *Commission Contact:* Mr. James Hunter, (202) 376-1943

j. *Comment Date: July 24, 1989.*

k. Description of Proposed Action: The licensee requests surrender of its license and states that its power sales contract expired while awaiting a resource agency decision on what fish screen to use, and that the project is economical at the current price of power. The project would have consisted of: (1) the existing Bend Diversion Dam; (2) the Bend Feed Canal; (3) a penstock forebay structure; (4) a 500-foot-long penstock; (5) a powerhouse containing a 2-MW generating unit; (6) a tailrace; and (7) a transmission line.

1. This notice also consists of the following standard paragraphs: B, C, D2.

a. *Type of Filing:* Amendment to the pending application for Major License

b. *Project No.:* 5797-002

c. *Date Filed:* December 1, 1988, (Original license application filed April 30, 1984)

d. *Applicant:* B & C Energy, Inc.

e. *Name of Project:* Star Falls Project

f. *Location:* Near Star Falls on the Snake River in Jerome and Twin Falls Counties, Idaho occupying lands of the United States administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-625(r)

h. *Applicant Contacts:* Mr. John G. Lincoln, CH2M Hill, P.O. Box 8748, Boise, ID 83707, (208) 345-5310; Mr. C.B. Beymer, Jr., P.O. Box 34, Twin Falls, ID 83301, (208) 733-0890

i. *FERC Contact:* Thomas Dean, (202) 376-9562.

j. *Comment Date:* July 26, 1989. (The deadline for filing competing applications was June 17, 1985, as stated in the original notice of the application issued on April 16, 1985).

k. Description of Project: The project as modified by this amendment would consist of: (1) A 50-foot-high, 1,500-foot-long earth and rockfill dam with a crest elevation of 3,972 feet National Geodetic Vertical Datum (NGVD) creating an impoundment of 8,700 acre-feet of gross storage capacity, and a maximum surface area of 230-acres; (2) a 24-foot-diameter, 1,240-foot-long buried penstock leading to; (3) a 68-foot-wide, 114-foot-long, 115-foot-high main powerhouse at elevation 3,806 feet NGVD containing a single generating unit with a capacity of 35.6 MW; (4) a 140-foot-long tailrace discharging flows to the Snake River; (5) a 10-foot-diameter, 225-foot-long buried bypass penstock leading to; (6) a 45-foot-wide, 36-foot-long, 40-foot-high bypass powerhouse containing a single generating unit with a capacity of 1.0 MW; (7) a bypass tailrace; (8) a 235-foot-long, 13.8-kV buried transmission line leading from the bypass powerhouse to the main powerhouse; (9) a 4.75-mile-long, 138-kV transmission line; (10) an access road from the north rim of the canyon to the dam and two powerhouses; and (11) appurtenant facilities. The estimated average annual energy production is 114 GWh.

l. *Purpose of Project:* Applicant intends to sell the power generated from the proposed facility to a public or private utility.

m. *This notice also consists of the following standard paragraphs:* A4, B, and C.

3a. *Type of Application:* Preliminary Permit

b. *Project No.:* 10769-000

c. *Date Filed:* April 3, 1989

d. *Applicant:* Alpyn Creek Development Corporation

e. *Name of Project:* Big Ice Creek Energy Storage Project

f. *Location:* Within the town of Ironton, Lawrence County, Ohio

g. *Filed Pursuant to:* Federal Power Act, U.S.C. §§ 791(a)-825(r)

h. *Contact Person:* Mr. David C. Willett, Acres International Corporation, 140 John James Audubon Parkway, Amherst, NY 14228-1180, (716) 689-3737

i. *FERC Contact:* Michael Dees (202) 376-9414

j. *Comment Date:* July 21, 1989.

k. *Description of Project:* The proposed project would consist of: (1) A proposed dam 1,000 feet long and 160 feet high; (2) an upper reservoir with a surface area of 600 acres and a normal maximum surface elevation of 680 feet msl; (3) concrete and steel lined penstocks approximately 2,000 feet long; (4) an underground powerhouse housing three units with a total installed capacity of approximately 200 MW; (5) a lower reservoir consisting of an existing limestone mine approximately 500 feet below ground level; (6) a 138-kV transmission line approximately two miles long; and (7) appurtenant facilities. The applicant estimates that the cost of the studies to be performed under the permit will be $900,000, and that the annual energy generation will be 219 GWh.

Field investigations to determine soil and bedrock characteristics will require boreholes through the depth of the soil into bedrock along the axis of the embankment of the upper reservoir, boreholes through the rock along the axis of the power tunnel and powerhouse location, and boreholes or test pits through the depth of the soil at selected locations for possible borrow sources for the dam. No new permanent roads will be constructed. Access to field test sites not near existing roads will be overland, using fields and previously cleared areas as much as possible. Disturbed areas will be regraded, seeded, and revegetated.

1. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

4a. *Type of Application:* Preliminary Permit

b. *Project No.:* 10771-000

c. *Date Filed:* April 3, 1989

d. *Applicant:* Trenton Falls Hydroelectric Company

e. *Name of Project:* Taberg Project

f. *Location:* On the East Branch of the Fish Creek in Oneida County, New York

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)-825(r)

h. *Applicant Contact:* Mr. Fred T. Samel, Trenton Falls Hydroelectric Company, P.O. Box 169, Prospect, NY 13435, (315) 896-6351

i. *FERC Contact:* Steven H. Rossi, (202) 376-9814

j. *Comment Date:* July 26, 1989.

k. *Description of Project:* The proposed run-of-river project would consist of: (1) An existing 240-foot-long, 15-foot-high concrete gravity dam; (2) an existing 5-acre reservoir with a storage capacity of 100 acre-feet at an elevation of 716 feet MSL; (3) an existing gatehouse; (4) a proposed concrete intake structure; (5) a proposed 8-foot-diameter, 35-foot-long concrete penstock; (6) a proposed concrete powerhouse containing one turbine/generator unit rated at 650 kW; (7) a proposed 15-foot-wide, 40-foot-long concrete tailrace; (8) a proposed 1-mile-long transmission line; (9) a proposed switchyard; and (10) appurtenant facilities.

The applicant estimates the average annual generation would be 2,700,000 kWh. The dam is owned by the City of Rome, New York. The applicant estimates that the cost of studies under permit would be $49,500.

l. *Purpose of Project:* Project power would be sold to the Niagara Mohawk Power Corporation.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

5a. *Type of Application:* Declaratory Order

b. *Project No.:* EL89-28-000

c. *Date Filed:* April 18, 1989

d. *Applicant:* Jerald V. Schwefel

e. *Name of Project:* Sugar River Project (WI)

f. *Location:* Sugar River, Green County, Brodhead, Wisconsin

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. § 817(b)

h. *Applicant Contact:* Jerald V. Schwefel, Post Office Box 154, Brownsville, Wisconsin 53006, (414) 583-4363

i. *FERC Contact:* Etta Foster, (202) 376-9064

j. *Comment Date:* July 26, 1989.

k. *Description of Project:* The proposed Sugar River Project, a run-of-river project, would consist of: (1) A reservoir with a surface area of 47 acres; (2) two 33.6-foot-long penstocks, one 16-foot-wide, the second 8-foot-wide; (3) The Decatur dam, a 6-foot-high, 160-foot-long dam with 1-foot flashboards; (4) a headgate, controlling water in a 3-mile raceway to the powerhouse; (5) a 6,100-foot raceway from the powerhouse to Sugar River; (6) a powerhouse containing an 188-kilovoltamperes (KVA) generator and an 140-KVA generator; (7) a transmission line interconnected with the Wisconsin Power and Light Company; and (8) appurtenant facilities.

When a Declaratory Order is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

1. *Purpose of Project:* Applicant intends to sell energy to the Brodhead Water and Light Commission.

m. *This notice also consists of the following standard paragraphs:* B, C, and D2.

a. *Type of Application:* Declaratory Order.

b. *Project No.:* EL89-35-000.

c. *Date Filed:* 05/23/89.

d. *Applicant:* Pennsylvania Electric Company.

e. *Name of Project:* Deep Creek.

f. *Location:* On Deep Creek, a tributary of the Youghiogheny River, Garrett County, Maryland.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. §§ 817(b).

h. *Applicant Contact:*

William J. Madden, Jr., McNeill Watkins II, Bishop, Cook, Purcell & Reynolds, 1400 L Street NW., Washington, DC 20005-3520, (202) 371-5700.

Timothy N. Atherton, Esquire, Pennsylvania Electric Company, 1001 Broad Street, Johnstown, PA, 15907, (814) 533-8397.

i. *FERC Contact:* Diane M. Scire, (202) 376-1758.

j. *Comment Date:* July 30, 1989.

k. *Description of Project:* The existing Deep Creek Project consists of: (1) A reservoir with a surface area of approximately 4,500 acres; (2) an earth and rock fill dam, 1,300-feet-long and 86-feet-high; (3) a nine-foot-concrete and steel-lined power tunnel about 7,100 feet long with a surge tank; (4) two steel penstocks about six feet in diameter; (5) a powerhouse containing two units each with a rated capacity of approximately 9,600 kW; and (6) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise signficantly modified the project's pre-1935 design or operation.

l. *Purpose of Project:* Power developed by the project is connected to the Pennsylvania Electric Company's transmission system in Pennsylvania.

m. *This notice also consists of the following standard paragraphs:* B, C, and D2.

a. *Type of Application:* Declaration of Intention.

b. *Project No.:* EL89-36-000.

c. *Date Filed:* June 2, 1989.

d. *Applicant:* Georgia J. Ure.

e. *Name of Project:* Locustville Pond Project (RI).

f. *Location:* Brushy Brook, Town of Hopkinton, Washington County, Rhode Island.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. §§ 817(b).

h. *Applicant Contact:*

Georgia J. Ure, Prospect Square, P.O. Box 123, Wyoming, RI 02898, (401) 539-2160.

Vincent L. Naccarato, Nardone, Turo & Naccarato, 96 Franklin Street, Post Office Box 353, Westerly, RI 02891-0353, (401) 596-0321.

i. *FERC Contact:* Hank Ecton, (202) 376-9073.

j. *Comment Date:* July 30, 1989.

k. *Description of Project:* The proposed Locustville Pond Project, a run-of-river project, would consists of: (1) An impoundment of approximately 32 acres, with a storage area of approximately 128-acre feet; (2) an existing 18-foot-high, 320-foot-long earthfilled dam; (3) an existing sluiceway 124 feet long and 8 feet wide; (4) a proposed 59 kilowatt turbine/generator in a proposed weatherproof enclosure; (5) a proposed 45-foot-long, 480 volt transmission line; and (6) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Purpose of Project:* Applicant intends use the energy produced on-site, and to sell excess energy to the Narragansett Electric Company.

m. *This notice also consists of the following standard paragraphs:* B, C, and D2.

Standard Paragraphs

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203-RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: June 29, 1989, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15798 Filed 7-5-89; 8:45 am]

BILLING CODE 6717-01-M

Compression Allowances and Protest Procedures Under NGPA Section 110

[Docket No. GP89-19-000]

June 28, 1989.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Publication of pipeline filings made pursuant to Order No. 473.

SUMMARY: In Order No. 473, 52 FR 21,660 (June 9, 1987), the Federal Energy Regulatory Commission amended its regulations to provide parties an opportunity to protest allowances for delivery of natural gas which were heretofore presumed authorized by "area rate" clauses in gas sales contracts. Order No. 473 amended 18 CFR 271.1104(h) to require all interstate pipelines to provide a listing of those producers that have claimed an entitlement to delivery allowances pursuant to an "area rate" clause. The interstate pipelines were required to indicate whether they concurred in the producers' claim for delivery allowances.

Attached is a list filed by Williams Natural Gas Company (Williams), on June 14, 1989, as required by 18 CFR 271.1104(h) (1987). This list supplements an evidentiary submission made by Williams on October 7, 1987. Williams now adds a contract to the list of contracts as to which Williams disputes the producer's assertion of contractual authority to receive payment for delivery allowances under Section 110 of the NGPA, 15 U.S.C. 3320 and § 154.94(k) of the Commission's regulations. This contract is deemed to be part of the proceeding in Docket No. GP89-19-000.

DATE: As provided in 18 CFR 271.1104(h)(4)(i) (1988), any protest must be filed by October 4, 1989. Because Order No. 473 provided no mechanism for adding producers-sellers to service lists, Williams Natural Gas Company is requested to submit the names and addresses of the producers-sellers in this proceeding so that they can be added to the official service list. This material must be filed by the date protests are due.

ADDRESS: An original and 14 copies of each protest must be filed with the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Edward G. Gingold, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (202) 357-9114.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this notice during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer and a modem by dialing (202) 357-8997. A copy of Williams Natural Gas Company's filings may be obtained from CIPS up to 10 days following the date of issuance by the Commission. The complete text of this notice on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

Williams Natural Gas Company

List of First Sellers and Gas Purchase Contracts for Which Williams Natural Gas Company *Protests* the First Seller's Assertion of Contractual Authority to Collect Delivery Allowances Pursuant to An Area Rate Clause

First seller	Contract date	Rate schedule No.
June 14, 1989 Supplement: Shawmar Oil Company, Inc., C&G Oil Company and C&G Oil Company Special.	May 1, 1973	N/A

[FR Doc. 89-15770 Filed 7-5-89; 8:45 am]

BILLING CODE 6717-01-M

Determinations Under the Natural Gas Policy Act for OCS Leases Issued on or After April 20, 1977

Issued: June 29, 1989.

On September 27, 1983, the Federal Energy Regulatory Commission (Commission) issued Order No. 336 under Docket Nos. RM83-3 and RM81-12 (48 FR 44,508 September 29, 1983). In that order, the Commission amended its regulations relating to filing requirements for well category applications under the Natural Gas Policy Act of 1978 (NGPA). The determination process for natural gas produced from a new lease, i.e., a lease entered into on or after April 20, 1977, on the Outer Continental Shelf (OCS), and qualifying as new natural gas under Section 102 of the NGPA, was amended in two respects. First, the Commission eliminated the requirement that a determination be made for each well producing gas from a new OCS lease. Second, in lieu of filing an application for each well, the Commission now permits the grant of a new OCS lease to constitute the requisite jurisdictional agency determination that the gas is produced from a new OCS lease.

Under the revised procedures, the U.S. Department of Interior, Minerals Management Service (MMS), must file within 60 days of the grant of the lease a notice of determination which includes the lease number, the area and block number, and the date on which the OCS lease was issued by the Secretary of the Interior. The determination is subject to Commission review in the same manner as other jurisdictional agency determinations.

On June 8, 1989, the Commission received notice from MMS, Eastern Gulf of Mexico, that 17 leases were issued as a result of OCS Sale 116 for the Western Gulf of Mexico on November 16, 1988. Gas produced for the following leases has been determined to be gas produced from a new OCS lease under NGPA Section 102:

Effective Date

2-1-89

Lease Nos. OCS-GX: 400, 401, 402, 403, 406, 407, 411, 412, 416, 424 and 425.

Effective Date

3-1-89

Lease No. OCS-GX: 418, 419, 420, 421, 422, and 423.

The complete list of OCS leases submitted by the MMS for this sale, with area and block descriptions, is available for inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, DC. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within twenty days after this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15799 Filed 7-5-89; 8:45 am]

BILLING CODE 6717-01-M

Establishment of Performance Review Board: Names of Board Members

June 29, 1989.

Section 4314(c) of title 5, United States code (as amended by the Civil Service Reform Act of 1978), requires that the Federal Energy Regulatory Commission establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards to review, evaluate, and make final recommendations on performance appraisals assigned to members of the Senior Executive Service in the Commission. The Performance Review Board also makes written recommendations to the Chairman, Federal Energy Regulatory Commission, regarding Senior Executive Service performance bonuses, awards and performance-related actions.

Section 4314(c) of Title 5, United States code requires that notices of appointment of Performance Review Board members be published in the **Federal Register**. The following persons have been appointed to serve on the performance review board standing register for the Federal Energy Regulatory Commission: Cook, Catherine, Herod, J. Steven, Madden, Kevin P. O'Neill, Richard P. Plumb, Kenneth, F, Scherman, William S.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15769 Filed 7-5-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-199-000]

Algonquin Gas Transmission Co., Petition for Waiver of Regulations To Allow Changes in FERC Gas Tariff

June 29, 1989.

Take notice that Algonquin Gas Transmission Company (Algonquin) on June 26, 1989, filed to request that the Commission waive its regulations to grant it the authority to include as part of its Purchased Gas Adjustment, the standby charge assessed Algonquin by its upstream pipeline suppliers due to conversion from firm sales to firm transportation.

Algonquin states that copies of this filing were served to each affected party and interested state commissions, and that its filing contains no revised rates nor revised tariff sheets. Algonquin therefore requests waiver of the Commission's filing fee.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 7, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants, parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15800 Filed 7-5-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-1688-000]

Colorado Interstate Gas Co.; Request Under Blanket Authorization

June 28, 1989.

Take notice that on June 26, 1989, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89-1688-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Questar Energy Company (Quester), a marketer, under the blanket certificate issued in Docket No. CP86-589, et al., pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

CIG states that pursuant to a transportation service agreement dated December 1, 1988, under its Rate Schedule TI-1, it proposes to transport up to 15,000 Mcf per day of natural gas for Quester. CIG states that it would transport the gas from multiple receipt points on its system in Kansas, Wyoming and Colorado, and would redeliver the gas, less fuel gas and lost and unaccounted-for gas, for the account of Quester in Beaver County, Texas.

CIG advises that service under § 284.223(a) commenced April 21, 1989, as reported in Docket No. ST89-3486-000. CIG further advises that it would transport 10,000 Mcf on an average day and 3.65 Bcf annually.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15801 Filed 7-5-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-1689-000]

Colorado Interstate Gas Co.; Request Under Blanket Authorization

June 28, 1989.

Take notice that on June 26, 1989, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89-1689-000 a request pursuant to § 157.205 and 284.223 (18 CFR 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Union Pacific Resources Company (Union Pacific), a producer, under GIC's blanket transportation certificate issued in Docket No. CP86-589, *et. al.* on March 28, 1988, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

CIG states that pursuant to a transportation service agreement dated September 1, 1988, to transport natural gas for Union Pacific from various receipt points in Uinta and Sweetwater Counties, Wyoming and Kearny County, Kansas and deliver the gas for the account of Union Pacific to Natural Gas Pipeline Company of America in Beaver County, Oklahoma. CIG states that the maximum daily volumes of gas to be transported is 10,959,000 Mcf and the average day deliveries are estimated to be 30,000 Mcf of gas. CIG estimates annual delieveries of gas will be 10,950 Mcf of gas. CIG states that transportation service under the 120-day automatic authorization of § 284.223(a) of the Commission's Regulations commenced on April 19, 1989, as reported to the Commission in Docket No. ST89-3612-000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission,

file purusant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15802 Filed 7-5-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-227-016]

Paiute Pipeline Co.; Compliance Filing

June 29, 1989.

Take notice that on June 19, 1989, Paiute Pipeline Company (Paiute), tendered for filing certain revised tariff sheets in compliance with the Commission's Order issued on June 2, 1989 in Docket No. RP88-227-010.

Paiute states that the Commission's June 2, 1989 Order, in part, accepted Substitute Original Sheet No. 77 to Paiute's Original Volume No. 1 FERC Gas Tariff and Substitute Original Sheet No. 71 to its Original Volume No. 1-A FERC Gas Tariff, subject to certain conditions, and directed that Paiute refile, within 15 days of the date of the Order, tariff sheets that conformed to the Commission's Order. Accordingly, in response to the Commission's Order, Paiute filed revised tariff sheets to conform to the Commission's Order.

Paiute further requests waiver of any of the Commission's applicable rules, regulations and orders as may be necessary so as to permit Paiute to implement the tariff sheets submitted on February 1, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 7, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15803 Filed 7-5-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-198-000]

Tennessee Gas Pipeline Co.; Filing

June 29, 1989.

Take notice on June 26, 1989, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following revised tariff sheets in Second Revised Volume No. 1 of its FERC Gas Tariff to be effective on July 26, 1989.

Fouth Revised Sheet No. 207

Tennessee states that the purpose of this filing is to provide Tennessee's shippers increased flexibility in transporting on Tennessee's system and to avoid the incurrence of imbalances. In this filing, Tennessee proposes a weekend nomination procedure to be available during times when Tennessee has a capacity constraint on its system and has allocated the limited capacity available. The procedure will allow shippers receiving interruptible service to submit reduced nominations for weekend periods under certain conditions without jeopardizing their "no bump" protection.

Tennessee states that copies of its filing are available for inspection at its principal place of business in the Tenneco Building, Houston, Texas and have been mailed to all affected customers.

Any person desiring to be heard or to protect said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 7, 1989. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15804 Filed 7-5-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-153-002 and RP89-150-003]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 29, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on June 26, 1989 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Substitute Seventh Revised Sheet No. 76.
Substitute Seventh Revised Sheet No. 77.
Substitute Seventh Revised Sheet No. 78.
Substitute Seventh Revised Sheet No. 79.

Texas Eastern states that this filing makes the revisions to Texas Eastern's April 26, 1989 tariff filing in Docket No. RP89-153-000 as required by the Commission's May 26, 1989 order.

On April 26, 1989, Texas Eastern filed tariff sheets to recover the take-or-pay charges to be paid by Texas Eastern to United Gas Pipe Line Company (United) as proposed by United in Docket No. RP89-147 on April 10, 1989 pursuant to Sea Robin Pipeline Company's (Sea Robin) Docket No. RP89-141. United proposed to bill and recover from Texas Eastern an aggregate principal amount of $13,325,406, which includes a predetermined carrying charge, by means of a monthly charge of $2,220,901 for a 6 month period. The Commission's May 26, 1989 order required Texas Eastern to revise the tariff sheets to reflect an extended amortization period of 36 months, consistent with the amortization period the Commission required United to offer its customers. United filed revised tariff sheets on June 9, 1989. Pursuant to the revised methodology, United will bill and recover from Texas Eastern an aggregate principal amount of $14,550,579, which includes a predetermined carrying charge, by means of a monthly charge of $404,183 for a 36 months period effective May 1, 1989.

Substitute Revised Sheet Nos. 76 through 79 set forth the principal amount plus the allocation factor for carrying costs that each customer will be required to pay in order to recover United's take-or-pay charges billed to Texas Eastern pursuant to United's June 9, 1989 filing. Workpapers setting forth Texas Eastern's determination of the allocation factor for the principal amount (which includes a predetermined carrying charge) and a breakdown of the monthly principal amounts (which include a predetermined carrying charge) each Texas Eastern customer will be required to pay are set forth under Appendix A of the filing.

Texas Eastern also submits for filing as a part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Substitute Sixth Revised Sheet No. 72.
Substitute Sixth Revised Sheet No. 74.

These sheets are being filed to correct a typographical error in a filing made by Texas Eastern on April 21, 1989 in Docket No. RP89-150-000. The tariff sheets filed April 21 inadvertently set forth incorrect allocation factors for Carnegie Natural Gas Company and Midwest Natural Gas Company. The workpapers under Attachment A of the April 21 filing set forth the correct allocation factors, which the above listed sheets reflect. The monthly principal amounts do not change.

Texas Eastern requests that the Commission permit the tariff sheets to become effective May 1, 1989. Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before July 7, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15805 Filed 7-5-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-140116; FRL-3611-5]

Access to Confidential Business Information by Miller Reporting Company

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized Miller Reporting Company (MRC), Washington, DC, access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under a procurement, MRC, 507 C St., NE., Washington, DC will assist the Office of Toxic Substances, the Office of the Administrative Law Judges, and the Office of Enforcement and Compliance Monitoring in providing reporting services for administrative hearings that will require the review of information that may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide MRC access to these CBI materials on a need-to-know basis. Authorization for access by MRC to TSCA CBI, under this procurement was previously announced in the Federal Register on August 25, 1988 (53 FR 32442). All access to TSCA CBI under this procurement will take place at EPA Headquarters facilities.

Clearance for access to TSCA CBI under this procurement is scheduled to expire on July 14, 1990.

MRC personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: June 23, 1989.

Linda A. Travers,

Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-15693 Filed 7-5-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51734; FRL-3611-7]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Secton 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA to least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of 105 such PMNs and provides a summary of each.

DATES: *Close of Review Periods.*

P 89-681—August 2, 1989.
P 89-692—July 30, 1989.
P 89-693, 89-694, 89-695, 89—696, 89-697, 89-698, 89-699, 89-700, 89-701—August 5, 1989.
P 89-702—August 6, 1989.
P 89-703—July 21, 1989.
P 89-704, 89-705—August 6, 1989.
P 89-707—August 7, 1989.
P 89-708, 89-709, 89-710, 89-711, 89-712, 89-713, 89-714, 89-715, 89-716—August 9, 1989.
P 89-717, 89-718, 89-719, 89-720, 89-721, 89-722, 89-723, 89-724, 89-725—August 13, 1989.
P 89-726, 89-727, 89-728—August 14, 1989.
P 89-729, 89-730—August 15, 1989.
P 89-731, 89-732, 89-733, 89-734, 89-735—August 16, 1989.
P 89-736—August 9, 1989.
P 89-737, 89-738, 89-739, 89-740, 89-741, 89-742—August 19, 1989.
P 89-743, 89-744, 89-745, 89-746, 89-747, 89-749—August 20, 1989.
P 89-750—August 21, 1989.
P 89-751, 89-752, 89-753—August 22, 1989.
P 89-754, 89-755, 89-756, 89-757, 89-758, 89-759, 89-760, 89-761—August 23, 1989.
P 89-762, 89-763, 89-764—August 27, 1989.
P 89-765, 89-766, 89-767, 89-768—August 28, 1989.
P 89-769, 89-770—August 29, 1989.
P 89-771, 89-772, 89-773—August 30, 1989.
P 89-774, 89-775, 89-776—September 2, 1989.
P 89-777, 89-778, 89-779, 89-780, 89-781, 89-782, 89-783, 89-784—September 3, 1989.
P 89-785, 89-786, 89-787, 89-788—September 4, 1989.
P 89-789—September 3, 1989.
P 89-790—August 23, 1989.
P89-791—September 4, 1989.
P 89-792, 89-793, 89-794—September 5, 1989.
P 89-796—September 6, 1989.
P 89-797—September 9, 1989.
P 89-798—September 10, 1989.

Written comments by:

P 89-691—July 3, 1989.
P 89-692—June 30, 1989.
P 89-693, 89-694, 89-695, 89-696, 89-697, 89-698, 89-699, 89-700, 89-701—July 6, 1989.

P 89-702—July 7, 1989.
P 89-703—June 21, 1989.
P 89-704, 89-705—July 7, 1989.
P 89-707—July 8, 1989.
P 89-708, 89-709, 89-710, 89-711, 89-712, 89-713, 89-714, 89-715, 89-716—July 10, 1989.
P 89-717, 89-718, 89-719, 89-720, 89-721, 89-722, 89-723, 89-724, 89-725—July 14, 1989.
P 89-726, 89-727, 89-728—July 15, 1989.
P 89-729, 89-730—July 16, 1989.
P 89-731, 89-732, 89-733, 89-734, 89-735—July 17, 1989.
P 89-736—July 10, 1989.
P 89-737, 89-738, 89-739, 89-740, 89-741, 89-742—July 20, 1989.
P 89-743, 89-744, 89-745, 89-746, 89-747, 89-749—July 21, 1989.
P 89-750—July 22, 1989.
P 89-751, 89-752, 89-753—July 23, 1989.
P 89-754, 89-755, 89-756, 89-757, 89-758, 89-759, 89-760, 89-761—July 24, 1989.
P 89-762, 89-763, 89-764—July 28, 1989.
P 89-765, 89-766, 89-767, 89-768—July 29, 1989.
P 89-769, 89-770—July 30, 1989.
P 89-771, 89-772, 89-773—July 31, 1989.
P 89-774, 89-775, 89-776—August 3, 1989.
P 89-777, 89-778, 89-779, 89-780, 89-781, 89-782, 89-783, 89-784—August 4, 1989.
P 89-785, 89-786, 89-787, 89-788—August 5, 1989.
P 89-789—August 4, 1989.
P 89-790—July 24, 1989.
P 89-791—August 5, 1989.
P 89-792, 89-793, 89-794—August 6, 1989.
P 89-796—August 7, 1989.
P 89-797—August 10, 1989.
P 89-798—August 11, 1989.

ADDRESSES: Written comments, identified by the document control number "[OPTS-51734]" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW, Room L-100, Washington, DC 20460, (202) 382-3522.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street, SW, Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 89-691

Importer. Confidential.
Chemical. (G) Polyamide acrylic resin.
Use/Import. (G) Pigment dispersive vehicle. Import range: Confidential.

P 89-692

Manufacturer. Confidential.
Chemical. (G) Hydroxyl functional acrylic intermediate resin.
Use/Production. (G) Intermediate resin for use in acrylated alkyd resin. Prod. range: 24,000-50,000 kg/yr.

P 89-693

Importer. Emser Industries.
Chemical. (G) Copolyacrylester.
Use/Import. (G) Metal surface coating. Import range: Confidential.

P 89-694

Importer. Confidential.
Chemical. (G) Alkenoic acid, trisubstituted-phenylalkyl-disubstituted phenyl ester.
Use/Import. (G) Additives for plastics. Import range: Confidential.

P 89-695

Manufacturer. Texaco Chemical Company.
Chemical. (S) Triethylene glycol diamine.
Use/Production. (G) Destructive use. Prod. range: Confidential.

P 89-696

Manufacturer. Texaco Chemical Company.
Chemical. (S) Tetraethylene glycol diamine.
Use/Production. Destructive use. Prod. range: Confidential.

P 89-697

Importer. Confidential.
Chemical. (G) Alkenoic acid, trisubstituted benzyl-disubstituted-phenyl ester.
Use/Import. (G) Additive for plastics. Import range: Confidential.

P 89-698

Manufacturer. Alkaril Chemical, Inc.
Chemical. (G) Potassium salt of an alkoxylated alkyl alcohol phosphate.
Use/Production. (G) Finish for nylon fiber. Prod. range: Confidential.

P 89-699

Manufacturer. Confidential.
Chemical. (G) Polybutadiene-polymer urethane.
Use/Production. (G) Used in coatings applied by industrial manufacturers. Prod. range: Confidential.

P 89-700

Manufacturer. Hoechst Celanese Chemical Group, Inc.
Chemical. (S) Isobutoxy methanol or methanol, 2-methyloproxy.
Use/Production. (S) Raw material for production of amino resins. Prod. range: Confidential.
Toxicity Data. Skin irritation: strong species (Rabbit).

P 89-701

Importer. Ciba-Geigy Corporation, Additives Div.
Chemical. (S) 2,5-Furanedione, homopolymer hydrolyzed potassium salt butenedioic acid(Z-) homopolymer potassium salt.
Use/Import. (S) Scale control agent for boilers and cooling water. Import range: Confidential.

P 89-702

Manufacturer. Confidential.
Chemical. (S) 2,2-dimethyl 3-hydroxy-(2-cyano-3,3-diphenyl) propenoate.
Use/Production. (G) UV stabilizer. Prod. range: Confidential.

P 89-703

Manufacturer. Confidential.
Chemical. (G) Reaction product of secondary alkyl amines with a substituted benzenesulfonic acid and sulfuric acid.
Use/Production. (G) Component of consumer products. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5 G/KG species (Rat). Acute dermal toxicity: LD50 > 2 G/KG species (Rabbit). Static acute toxicity: LC50 10 MG/L time 96 H species (Fathead Minnow). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: negative.

P 89-704

Importer. Confidential.
Chemical. (G) Polycondensation product of formaldehyde and substituted benzenes.
Use/Import. (G) Additives for adhesive, paint and sealant. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 2,000 MG/KG species (Rat). Skin irritation: negligible species (Rabbit). Mutagenicity: negative.

P 89-705

Importer. Confidential.

Chemical. (G) Trisubstitutedethyl methacrylate polymer.
Use/Import. (G) Contain use; coating resin and clad material. Import range: Confidential.

P 89-707

Importer. Moritex USA, Inc.
Chemical. (G) Sodium salt of polyethyleneimine—carbon disulfidereaction product.
Use/Import. (S) Heavy metal scavenger for wastewater treatment. Import range: 9,000-32,725 kg/yr.

P 89-708

Importer. Confidential.
Chemical. (G) Sulfurized phenol derivative.
Use/Import. (G) Petroleum product additive. Import range: Confidential.

P 89-709

Manufacturer. Confidential.
Chemical. (G) Potassium salt or aklenyl succinate.
Use/Production. (G) Anticorrosion agent. Prod. range: Confidential.
Toxicity Data. Eye irritation: none species (Rabbit). Skin irritation: slight species(Rabbit).

P 89-710

Manufacturer. Confidential.
Chemical. (G) Sodium salt of aklenyl succinate.
Use/Production. (G) Anticorrosion agent. Prod. range: Confidential.
Toxicity Data. Eye irritation: none species (Rabbit). Skin irritation: slight species (Rabbit).

P 89-711

Manufacturer. Confidential.
Chemical. (G) Potassium salt of alkylated bezene sulfonic acid.
Use/Production. (G) Anticorrosion agent. Prod. range: Confidential.
Toxicity Data. Static acute toxicity: LC50 2.6 MG time 96 H species (Fathead Minnow). Eye irritation: slight species (Rabbit). Skin irritation: strong species (Rabbit).

P 89-712

Importer. Confidential.
Chemical. (G) Potassium salt of benzene alkylated sulfonic acids.
Use/Import. (G) Anticorrosion agent. Import range: Confidential.
Toxicity Data. Static acute toxicity: LC50 2.6 MG/L time 96 H species (Fathead Minnow). Eye irritation: strong species (Rabbit).

P 89-713

Manufacturer. Confidential.
Chemical. (G) Potassium salt of fatty acids.
Use/Production. (G) Anticorrosion agent. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 2.0 G/KG species (Rat). Acute dermal toxicity: LD50 3.16 G/KG species (Rabbit). Static acute toxicity: LC50 181 PPM time 96 H species (Sheephead Minnow). Eye irritation: moderate species (Rabbit). Skin irritation: negligible species (Rabbit).

P 89-714

Manufacturer. Confidential.
Chemical. (G) Sodium salt of fatty acids.
Use/Production. (G) Anticorrosion agent. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 2.0 G/KG species (Rat). Acute dermal toxicity: LD50 > 3.16 G/KG species (Rabbit). Static acute toxicity: LC50 181 PPM time species (Sheephead Minnow). Eye irritation: moderate species (Rabbit). Skin irritation: moderate species (Rabbit).

P 89-715

Importer. Ciba-Geigy Corporation.
Chemical. (G) Substituted azo naphthalenesulfonic acid.
Use/Import. (G) Textile dye. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 MG.KG species (Rat). Acute dermal toxicity: LD50 > 2,000 MG/KG species (Rat). Static acute toxicity: LC50 562 PPM time 96 H species (Zebra Fish). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit). Skin sensitization: negative species (Guinea Pig).

P 89-716

Manufacturer. Confidential.
Chemical. (G) Anhydride copolymer of metgacrylate and alcohol half esters.
Use/Production. (S) Electronic photoresist, soldermask graphic plate. Prod. range: Confidential.
Toxicity Data. Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

P 89-717

Manufacturer. Confidential.
Chemical. (G) Unsaturated hydrocarbon.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 89-718

Manufacturer. Confidential.
Chemical. (G) Saturated hydrocarbon.
Use/Production. (G) Liquid lubricant base oil grease base oil. Prod. range: Confidential.

P 89-719

Manufacturer. LanChem.
Chemical. (G) Acrylic resin solution.
Use/Production. (S) Manufacture and industrial coatings. Prod. range: Confidential.

P 89-720

Manufacturer. Confidential.
Chemical. (G) Silane functional rubber.
Use/Production. (S) Coatings. Prod. range: Confidential.

P 89-721

Importer. Confidential.
Chemical. (G) ((substituted heterocycle)azo)substituted aniline, methyl sulfate.
Use/Import. (G) Open, nondispersive. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 216 MG/KG species (Rat). Static acute toxicity: EC50 0.18 MG/L time species (Daphnia Magna). Eye irritation: strong species (Rabbit). Skin irritation: negligible species (Rabbit).

P 89-722

Manufacturer. Ciba-Geigy Corporation.
Chemical. (S) 2-Propenoic acid, polymer with sodium phosphine, sodium salt.
Use/Production. (S) Sulfate scale inhibitor. Prod. range: Confidential.

P 89-723

Manufacturer. Confidential.
Chemical. (S) N(2,2-dimethyl, meta-isopropenyl benzyl),poly(oxy-1,2-ethanediyl), 2-dionyl phenyl) carbamate.
Use/Production. (S) Used in the polymer form a rheology aid in paint. Prod. range: 12,000-27,000 kg/yr.

P 89-724

Manufacturer. Confidential.
Chemical. (S) N(2,2-dimethyl, meta-isopropenyl benzyl), poly(oxy-1,2ethonediyl, 2-(dionyl phenyl) carbamate; methacrylic acid; ethyl acrylate.
Use/Production. (S) As a rheology aid in paints. Prod. range: 40,000-90,000 kg/yr.

P 89-725

Manufacturer. Sanncor Industries, Incorporated.
Chemical. (G) Polyurethane based on polyols polyisocyanates and polyamines.
Use/Production. (G) Coating. Prod. range: Confidential.

P 89-726

Manufacturer. Confidential.
Chemical. (G) Polyurethane acrylate.

Use/Production. (G) Intermediate polyurethane resin. Prod. range: 53,000–320,000 kg/yr.

P 89–727

Manufacturer. Confidential.
Chemical. (G) Polyurethane polyacrylic resin.
Use/Production. (G) Dispersively used coating. Prod. range: 90,000–540,000 kg/yr.

P 89–728

Importer. Asahi Chemical Industry America, Inc.
Chemical. (G) Polyester polymer modified with aliphatic polyisocyanate and polyol.
Use/Import. (G) Coating for fibers. Import range: Confidential.

P 89–729

Manufacturer. Eastman Kodak Company.
Chemical. (S) 4-(4,5-dihydro-4-[(5-hydroxy-3-methyl-1-(4-sulfophenyl)-(1H)-pyrazol-4yl)methylene)-3-methyl-5-oxy-1H-pyrazol-1-yl)benzenesulfonic acid dipotassium salt.
Use/Production. (S) Absorbing dye in film and paper. Prod. range: 11,200–14,600 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 > 5 G/KG species(Rat). Acute dermal toxicity: LD50 > 2 G/KG species(Rabbit). Eye irritation: slight species(Rabbit). Skin irritation: slight species(Guinea Pig). Skin sensitization: negative species(Guinea Pig).

P 89–730

Manufacturer. Confidential.
Chemical. (G) Polyurethane dispersion.
Use/Production. (G) Coating for fibers. Prod. range: Confidential.

P 89–731

Manufacturer. Confidential.
Chemical. (G) Modified polysaccaride.
Use/Production. (G) Binder for fiberglass matting. Prod. range: 454,000–2,727,000 kg/yr.

P 89–732

Manufacturer. Sherex Chemical Company.
Chemical. (G) Dialkyl dimethoxy silane.
Use/Production. (G) Polymerization catalyst. Prod. range: Confidential.

P 89–733

Importer. Sherex Chemical Company.
Chemical. (G) Dialkyl dimethoxy silane.
Use/Import. (G) Polymerization catalyst. Import range: Confidential.

P 89–734

Manufacturer. Confidential.
Chemical. (G) Dimer acids, polymers with ethylenediamine, a dicarboxylic acid, and diamines.
Use/Production. (S) Hot melt adhesive use is in plasticized vinyl. Prod. range: Confidential.

P 89–735

Importer. Tioxide America, Inc.
Chemical. (S) Titanium tetrakis(2,2'-oxybis(ethanolate) (1-))-,.
Use/Import. (S) Catalyst for polyester manufacture. Import range: Confidential.

P 89–736

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Ethoxylated formal.
Use/Production. (S) Fiber lubricant. Prod. range: Confidential.

P 89–737

Manufacturer. Ashland Chemical Company.
Chemical. (G) Copolymer of acrylic acid 2-hydroxymethylacrylate and acrylic acid esters.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 89–738

Manufacturer. Confidential.
Chemical. (G) Isocyanic acid polymethylene polyhenylene ester polymer with polyesterdiol.
Use/Production. (S) Manufacture of polyurethane/polyisocyanate foa Prod. range: Confidential.

P 89–739

Manufacturer. Confidential.
Chemical. (G) Modified polyacrylamide.
Use/Production. (S) Cement additive. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 MG/KG species(Rat).

P 89–740

Importer. Basf Corporation Engineering Plastics.
Chemical. (G) Polyester.
Use/Import. (S) Polymer for moulding, extrusion spinning. Import range: Confidential.

P 89–741

Importer. Basf Corporation Engineering Plastics.
Chemical. (G) Polyester.
Use/Import. (S) Polymer for moulding, extrusion or spinning. Import range: Confidential.

P 89–742

Manufacturer. Confidential.
Chemical. (G) Amine functional acrylic polymer salt.
Use/Production. (S) Coating. Prod. range: Confidential.

P 89–743

Manufacturer. Confidential.
Chemical. (G) Amine functional epoxy resin salt.
Use/Production. (S) Coatings. Prod. range: Confidential.

P 89–744

Manufacturer. Confidential.
Chemical. (G) Amine functional resin salt.
Use/Production. (S) Coatings. Prod. range: Confidential.

P 89–745

Manufacturer. H.B. Fuller Company.
Chemical. (G) Fatty acids, C-16-substituted dimers, polymers with alkyl diacid,1,2-ethanediamine,1-piperazine ethane and polyetherdiamine.
Use/Production. (S) Industrial hot melt adhesive. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 4020 MG species(Rat). Eye irritation: strong species(Rabbit).

P 89–746

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Open nondispersive use. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5.0 G/KG species (Rat). Acute dermal toxicity: LD50 > 5.0 G/KG species (Rabbit). Eye irritation: slight species (Rabbit).

P 89–747

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Open nondispersive use. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5.0 G/KG. species (Rat). Acute dermal toxicity: LD50 > 5.0 G/KG species (Rabbit). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit).

P 89–749

Manufacturer. Ciba-Geigy Corp.
Chemical. (G) Methacrylated polyurethane prepolymer, methacrylated MDI mixture.
Use/Production. (S) Photocurable adhesive and sealant. Prod. range: Confidential.

P. 89–750

Manufacturer. Confidential.
Chemical. (G) Epoxy resin.

Use/Production. (G) Adhesive for metal. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 2750 MG/KG species (Mouse).

P. 89–751

Importer. Confidential.
Chemical. (G) Substituted pyrazolone.
Use/Import. (G) Contained use in an article. Import range: Confidential.
Toxicity Data. Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: negative.

P 89–752

Importer. Confidential.
Chemical. (G) Alkyl substituted benzene.
Use/Import. (G) Contained use in an article. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5.0 G/KG species (Rat). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit). Skin sensitization: negative species (Guinea Pig).

P 89–753

Importer. Confidential.
Chemical. (G) Bisphenol type epoxy resin.
Use/Import. (G) Polymeric industrial coating material. Import range: Confidential.

P 89–754

Manufacturer. Confidential.
Chemical. (G) Polyisocyanate polyaddiiton product (PIPA).
Use/Import. (G) Stable dispersion of polyurethane particles in polyether and polyols. Prod. range: Confidential.

P 89–755

Manufacturer. Confidential.
Chemical. (G) Reaction product of secondary alkyl amines with a substituted benzenesulfonic acid and sulfuric acid.
Use/Production. (G) Component of consumer products. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5 G/KG species (Rat). Acute dermal toxicity: LD50 > 2 G/KG species (Rabbit). Static acute toxicity: LC50 > 10 MG/L time 96H species (Pimephales Promelas). Eye irritation: none species (Rabbit). Mutagenicity: negative. Skin sensitization: negative species (Guinea Pig).

P 89–756

Manufacturer. Confidential.
Chemical. (G) Reaction product of secondary alkyl amines with a substituted benzenesulfonic acid and sulfuric acid.
Use/Production. (G) Component of consumer products. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5 G/KG species (RAt). Acute dermal toxicity: LD50 > 2 G/KG species (Rabbit). Static acute toxicity: LC50 10 MG/L time 96H species (Pimephales Promelas). Eye irritation: none species (Rabbit). Mutagenicity: negative. Skin sensitization: negative species (Guinea Pig).

P 89–757

Manufacturer. Colorado Chemical Specialities, Inc.
Chemical. (G) Potassium salt of maleate ester.
Use/Production. (S) Antenna coating. Prod. range: 2,000–10,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 11.4 G/KG species (Rat). Acute dermal toxicity: LD50 > 20 G/KG species (Rabbit).

P 89–758

Manufacturer. Confidential.
Chemical. (G) Potassium salt of maleate ester.
Use/Production. (G) Contained use catalyst. Prod. range: Confidential.

P 89–759

Manufacturer. Colorado Chemical, Specialties, Inc.
Chemical. (G) Epoxy resin derived from a mixture of maleated polybutadiene and alkylcyclic dianhyride reacted with the dieoxide of bisphenol A.
Use/Production. (S) Antenna coating. Prod. range: 2,000-10,000 kg/yr.

P 89–760

Manufacturer. Confidential.
Chemical. (G) Epoxy resin.
Use/Production. (G) Adhesive for metal. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 2750 MG/KG species (Rat).

P 89–761

Manufacturer. C.J. Osborn.
Chemical. (G) Saturated polyester.
Use/Production. (S) Pigmented and clear finishes. Prod. range: Confidential.

P 89–762

Manufacturer. LanChem.
Chemical. (G) Polyester resin solution.
Use/Production. (S) Manufacture industrial coatings. Prod. range: Confidential.

P 89–763

Importer. Confidential.
Chemical. (S) 2, 2, 3', 7', 7'-pentamethyl-spiro (1, 3-dioxcane-5, 2'-norcaran.
Use/Import. (S) Fragrance ingredient. Import range: 100 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 5,100 MG/KG species (Rat). Acute dermal toxicity: LD50 > 4,000 MG/KG species (Guinea Pig). Eye irritation: moderate species (Rabbit). Skin irritation: negligible species (Rabbit). Skin sensitization: negative species (Guinea Pig).

P 89–764

Importer. Akzo Chemicals Inc.
Chemical. (S) Neodecaneperoxoic acid, 1,1,3,3-tetramethylbutyl ester.
Use/Import. (S) Initiator used in polymerization of vinyl chloride. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD505.0 G/KG species (Rat). Eye irritation: none species (Rabbit). Skin irritation: moderate species (Rabbit). Mutagenicity: negative.

P 89–765

Manufacturer. Confidential.
Chemical. (G) Modified acrylate terpolymer.
Use/Production. (G) Industrial dispersant use. Prod. range: Confidential.

P 89–766

Manufacturer. Confidential.
Chemical. (G) Saturated, oil-free polyester resin.
Use/Production. (S) Epoxy curing agent. Prod. range: Confidential.

P 89–767

Manufacturer. Confidential.
Chemical. (G) Saturated, oil-free polyester resin.
Use/Production. (S) Epoxy curing agent. Prod. range: Confidential.

P 89–768

Importer. NOF America Corporation.
Chemical. (G) Alkyl acrylate; styrene.
Use/Import. (G) Open, nondispersive use (solid). Import range: Confidential.

P 89–769

Manufacturer. Indspec Chemical Corporation.
Chemical. (G) Resorcinol-formaldehyde resin.
Use/Production. (G) Performance additive for rubber. Prod. range: Confidential.

P 89–770

Manufacturer. Capital City Products Company.
Chemical. (G) Oils, glyceridic, palm kernel (or coconut oil), reaction products with tetra-hydroxy branched alkane

esters of tri-substituted benzene-propanoic acid.

Use/Production. (S) Lubricant finish. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LS505 G/KG species (Rat). Eye irritation: none species (Rabbit). Skin irritation: slight species (Rabbit).

P 89-771

Importer. Ciba-Geigy Corporation.

Chemical. (G) Substituted azo naphthalenesulfonic acid.

Use/Import. (G) Textile dye. Import range: Confidential.

Toxixity Data. Acute oral toxicity: LD505,000 MG/KG species (Rat). Acute dermal toxicity: LD502,000 MG/KG species (Rat). Static acute toxicity: LC501,000 MG/L time 96H species (Zebra Magna). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: negative. Skin sensitization: positive species (Guinea Pig).

P 89-772

Manufacturer. Confidential.

Chemical. (S) Barium salt of the azo dye.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 89-773

Manufacturer. Sanncor Industries, Inc.

Chemical. (G) Polyurethane based on polyols, polyisocyanates and polyamines.

Use/Production. (G) Coating. Prod. range: Confidential.

P 89-774

Manufacturer. Confidential.

Chemical. (S) Bis-(dipropylamino)-methane;N,N,N',-tetrapropyl-methylenediamine.

Use/Production. (G) Photographic application. Prod. range: Confidential.

P 89-775

Manufacturer. SCM Glidco Organics.

Chemical. (S) 2,4-dimethyl 2,7 octadien-4-ol-(isolinalool);1,2-dimethyl 3-(l-methylethenyl)-cyclo pentanol(plinol-1); 3,7-dimethyl-1,6-octadien-3-ol(linalool) mixture.

Use/Production. (G) Dispersive use. Prod. range: Confidential.

P 89-776

Manufacturer. Confidential.

Chemical. (G) Substituted aryl sulfonic acid, alkali metal salt.

Use/Production. (G) Cleaning additive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD505.0 G/KG species (Rat). Acute dermal toxicity: LD502 G/KG species (Rabbit). Inhalation toxicity: LC502.87 MG/L species (Rat). Mutagenicity: negative.

P 89-777

Manufacturer. Confidential.

Chemical. (G) Tall oil fatty acids, reaction products with a polyethylenepolyamine and a modifier.

Use/Production. (S) Emulsifier in drilling mud for oil and gas products. Prod. range: Confidential.

P 89-778

Manufacturer. Confidential.

Chemical. (G) High solids polyester.

Use/Production. (S) Automative primer. Prod. range: 12,500-5,000 kg/yr.

P 89-779

Manufacturer. Confidential.

Chemical. (G) High solids polyester.

Use/Production. (S) Automative primer. Prod. range: 12,500-50,000 kg/yr.

P 89-780

Manufacturer. Confidential.

Chemical. (G) Amine terminated polyether urethane.

Use/Production. (G) Open nondispersive use. Prod. range: Confidential.

P 89-781

Manufacturer. Lithium Coroporation of America.

Chemical. (S) Di-tertiary-butyl silane.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 89-782

Manufacturer. Confidential.

Chemical. (G) Modified aluminium stearate.

Use/Production. (G) An additive used in the lumber and textile industries. Prod. range: Confidential.

P 89-783

Manufacturer. Confidential.

Chemcial. (G) Oxyalkylated amine phosphate.

Use/Production. (G) Used in the printing industry. Prod. range: Confidential.

P 89-784

Manufacturer. Confidential.

Chemical. (G) Alkylaryl sulfonate, amine salt.

Use/Production. (G) An additive for the energy production industry. Prod. range: Confidential.

P 89-785

Manufacturer. Confidential.

Chemical. (G) Benzophenonetetracarboxylic acid dimethylester reaction product with diamine.

Use/Production. (G) Continued use. Prod. range: Confidential.

P 89-786

Manufacturer. Eastman Kodak Company.

Chemical. (G) Heterocyclic substituted alkyl amino alkanoic acid.

Use/Production. (S) Export. Prod. range: 15,000-30,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 MG/KG species(Rat). Acute dermal toxicity: LD50 > 2,000 MG/KG species(Rabbit). Eye irritation: none species(Rabbit). Skin irritation: negligible species(Rabbit). Skin sensitization: negative species(Guinea Pig).

P 89-787

Manufacturer. Eastman Kodak Company.

Chemical. (G) Heterocyclic substituted alkyl amino alkanoic acid.

Use/Production. (G) Chemical intermediate. Prod. range: 17,000-35,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 MG/KG species(Rat). Acute dermal toxicity: LD50 > 2,000 MG/KG species(Rabbit). Eye irritation: moderate species(Rabbit). Skin irritation: slight species(Rabbit). Skin sensitization: negative species(Guinea Pig).

P 89-788

Manufacturer. Eastman Kodak Company.

Chemical. (G) Heterocylic substituted alkyl amine.

Use/Production. (G) Chemical intermediate. Rod. range: 10,000-40,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 MG/KG species(Rat). Acute dermal toxicity: LD50 > 2,000 MG/KG species(Rabbit). Eye irritation: slight species(Rabbit). Skin irritation: negligible species(Rabbit). Skin sensitization: negative species(Guinea Pig).

P 89-789

Manufacturer. Confidential.

Chemical. (G) Cathodic epoxy resin.

Use/Production. (G) Cathodic epoxy primer. Prod. range: Confidential.

P 89-790

Manufacturer. Confidential.

Chemical. (G) Polyether MDI prepolymer.

Use/Production. (G) Mold flexible urethane foams. Prod. range: Confidential.

P 89-791

Manufacturer. Confidential.

Chemical. (G) Styrenated polymer of acrylates and methacrylates.

Use/Production. (G) Dispersively applied coating. Prod. range: 80,000 kg/yr.

P 89-792

Manufacturer. Confidential.

Chemical. (G) Zinc carboxylate.

Use/Production. (G) Catalyst. Prod. range: Confidential.

P 89-793

Manufacturer. Confidential.

Chemical. (G) Organo epoxysilane.

Use/Production. (G) Industrial coating application. Prod. range: confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 G/KG species(Rat). Acute dermal toxicity: LD50 > 2 G/KG species(Rabbit). Eye irritation: slight species(Rabbit). Skin irritation: negligible species(Rabbit). Mutagenicity: negative.

P 89-794

Manufacturer. Confidential.

Chemical. (G) Cyclohexanamine 4-4'-methylene bis-N-(2-hydroxy-3-(4-(-methyl-1-(4-oxiranylmethoxy) phenyl) propyl) derives.

Use/Production. (S) Epoxy adhesive thicking agent. Prod. range: 1,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 11.4 G/KG species(Rat). Acute dermal toxicity: LD50 >2 ML/KG species(Rabbit). Eye irritation: moderate species(Rabbit). Skin irritation: moderate species(Rabbit).

P 89-796

Manufacturer. Cardolite Corporation.

Chemical. (S) Phenol, 4-t-butylphenol, 3-N-pentadecylphenol, formaldehyde polymer.

Use/Production. (S) Electrical encapsulation & lamination. Prod. range: Confidential.

P 89-797

Manufacturer. Aldrick Chemical Company.

Chemical. (S) 3-Methylbenzothiazole-2-thione.

Use/Production. (G) Contained use. Prod. range: Confidential.

P 89-798

Manufacturer. Confidential.

Chemical. (G) Acrylic resin.

Use/Production. (G) Container coating. Prod. range: Confidential.

Date: June 27, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-15894 Filed 7-5-89; 8:45 am]

BILLING CODE 6560-50-M

EXECUTIVE OFFICE OF THE PRESIDENT

Council on Environmental Quality

Implementation of National Environmental Policy Act; Council Recommendations

AGENCY: Council on Environmental Quality, Executive Office of the President.

ACTION: Information only. Recommendations of the Council on Environmental Quality regarding the proposal by the Department of the Interior's Bureau of Reclamation to Renew Long-Term Water Contracts for the Orange Cove and other Friant Unit Irrigation Districts of the Central Valley Project in California.

SUMMARY: Findings and Recommendations on a Referral from the Environmental Protection Agency Concerning the Proposal by the Department of the Interior's Bureau of Reclamation to Renew Long-Term Water Contracts for the Orange Cove and Other Friant Unit Irrigation Districts of the Central Valley Project in California.

On February 3, 1989, the Council on Environmental Quality received a referral from the Acting Administrator of EPA, regarding the proposed renewal by the Department of the Interior, Bureau of Reclamation, of long-term water contracts for the Orange Cove and other Friant Unit irrigation districts of the Central Valley Project in the Central Valley of California. The referral process, established under authority of Section 309 of the Clean Air Act and CEQ's NEPA regulations, is a procedure for resolving federal interagency disagreements concerning proposed major federal actions which might cause unsatisfactory environmental effects. EPA recommended that a programmatic EIS be prepared to address the programmatic goals and cumulative impacts of alternative beneficial uses of Central Valley Project water, or, at a minimum, that an EIS be developed regarding the Friant Unit contract renewals. On February 9, 1989, CEQ published a notice in the **Federal Register** announcing an initial 25 day comment period. During this period, CEQ urged that DOI and EPA meet to try to resolve their differences. A number of meetings between those two agencies took place during this period, but a mutually acceptable resolution was not achieved.

On March 26, 1989, CEQ published a notice in the **Federal Register** stating that it intended to accept the referral. CEQ held a public meeting in Washington, DC, on April 13, 1989, and a public meeting in Fresno, California, on April 17, 1989 to take comment on the issue of "whether the renewal of the long-term water contracts for the Friant Unit irrigation districts of the Central Valley project constitute a major federal action significantly affecting the quality of the human environment, and, accordingly, that the contract renewal actions falls under section 102(2)(C) of NEPA?" A written comment period to address the same issue ended on April 28, 1989.

The Findings and Recommendations summarized below are explained in more detail in the full CEQ document, which will be published in the **Federal Register** on Thursday, July 6, 1989. The Council appreciates the many thoughtful and comprehensive submissions of those who participated in the process. Member Jacqueline Schafer has issued an individual statement of explanatory views.

Findings and Recommendations of the Council on Environmental Quality

Findings

1. Under section 309 of the Clean Air Act, the National Environmental Policy Act and the CEQ Regulations, the Environmental Protection Agency had the Legal Authority to Refer this Matter to the Council on Environmental Quality and CEQ has the Authority to Accept and Consider the Matter and Issue Findings and Recommendations.

2. The Secretary of the Department of the Interior has Limited Discretion Regarding the Question of Whether to Renew the CVP/Friant Unit Long-Term Water Contracts. However, the Secretary has Sufficient Discretion Regarding the Terms of the Contracts Such that Renewal of the Long-Term Water Contracts for the Friant Unit Irrigation District of the Central Valley Project Constitutes a Major Federal Action Significantly Affecting the Quality of the Human Environment and,

accordingly, section 102(2)(c) of the National Environmental Policy Act is Applicable to the Renewal of the Contracts.

3. The Bureau of Reclamation's Procedures for Implementing the National Environmental Policy Act Normally Require Preparation of an Environmental Impact Statement (EIS) for Proposed Repayment Contracts and Water Service Contracts or Amendments for Irrigation Where NEPA Compliance Has Not Already Been Accomplished. This Provision applies to the Renewal of Long-Term Water Contracts for the Friant Unit.

4. The Renewal of the Long-Term Water Contracts for the Friant Unit Does Not Properly Fall Within the Department of the Interior's Categorically Exclusions From NEPA Review.

5. The Secretary of the Interior Has Recognized that the Renewal of Long-Term Water Supply Contracts Poses Legitimate Environmental Concerns and has Directed the Bureau of Reclamation to Conduct Assessment Studies Regarding the Environmental Effects and to Explore Opportunities for Environmental Recovery Programs. The Congressionally Mandated Framework for Conducting Environmental Analysis is the National Environmental Policy Act.

Recommendations

1. CEQ Recommends that the Bureau Prepare Environmental Impact Statements for Each of the Water Service Units of the Central Valley Project, Prior to the Renewal of the Individual Long-Term Water Contracts in that Unit, and that the Bureau Consider Whether a Programmatic EIS on all Central Valley Project Long-Term Contracts Would be a Useful, Efficient Approach. CEQ *Strongly Recommends Against* Preparation of Individual EISs on Each Separate Long-Term Water Contract.

2. The Bureau of Reclamation Should Define the "No Action" Alternative in the Environmental Impact Statements as the Renewal of the Long-Term Contracts With No Significant Changes.

3. The Bureau of Reclamation Should Request the Appropriate Entities of the State of California to be a Joint Lead or Cooperating Agency with the Bureau for Purposes of Preparing the Environmental Impact Statement(s).

Dated: June 29, 1989.

A. Alan Hill,
Chairman.

Findings and Recommendations on a Referral From the U.S. Environmental Protection Agency Concerning the Proposal by the Department of the Interior's Bureau of Reclamation To Renew Long-Term Water Contracts for the Orange Cove and Other Friant Unit Irrigation Districts of the Central Valley Project in California

Introduction

Section 309 of the Clean Air Act [1] and the Council on Environmental Quality's (CEQ) regulations implementing the provisions of the National Environmental Policy Act (NEPA) [2] state that the Administrator of the Environmental Protection Agency (EPA) shall review and comment publicly on the environmental impacts of proposed federal activities, including actions for which environmental impact statements are prepared. If, upon review, the Administrator determines that the matter is "unsatisfactory from the standpoint of public health or welfare or environment quality," Section 309 directs that the matter be referred to the Council on Environmental Quality. The referral process, set out in the CEQ NEPA regulations,[3] is a procedure for resolving federal interagency disagreements concerning proposed major federal actions which might cause unsatisfactory environmental effects.

On February 3, 1989, CEQ received a letter from the Acting Administrator of EPA, referring the proposal by the Department of the Interior, Bureau of Reclamation, to renew long-term water contracts for the Orange Cove and other Friant Unit Irrigation Districts of the Central Valley Project (CVP) in the Central Valley of California. EPA's letter stated that:

> Accordingly, I have determined that making irretrievable long-term commitments of water use without benefit of an EIS [environmental impact statement] violates the purposes and intent of NEPA. Further, in the absence of environmental analysis that would indicate otherwise, I believe that renewal of these contracts is unsatisfactory from the standpoint of environmental quality in the San Jaoquin River/Sacramento-San Joaquin Delta/San Francisco Bay area.[4]

On February 9, 1989, CEQ published a notice in the **Federal Register** [5] stating that the referral had been received from EPA and announcing a twenty-five day comment period during which the Department of the Interior (DOI) and any other interested persons could respond to the referral from EPA. Specifically, the notice asked for comments relating to the issue of whether CEQ should proceed with the referral. In response to that notice, CEQ received approximately thirty letters. All letters received have been made available to the public upon request to CEQ.

During this initial comment period, CEQ urged the Department of the Interior and the Environmental Protection Agency to meet and attempt to resolve their differences. While a number of meetings between those two agencies took place during this period, a mutually acceptable resolution was not achieved.

The Department of the Interior stated in its response to CEQ that it did not believe that CEQ should accept the referral. Specifically, it raised the issues of EPA's authority to refer the matter under section 309 of the Clean Air Act, because DOI had determined that no EIS was required under NEPA for the action in question. It also quesitoned CEQ's jurisdiction to accept the referral in light of the litigation over the issue raised in the referral.[6]

After consideration of the comments received, CEQ published a **Federal Register** notice on March 26, 1989,[7] stating that it intended to accept the referral and announcing two meetings, open to the public under the Government in the Sunshine Act, and a written comment period, to take comment on the following issue:

> Whether the renewal of the long-term water contracts for the Friant Unit irrigation districts of the Central Valley Project constitutes a major federal action significantly affecting the quality of the human environment and, accordingly, that the contract renewal action falls under section 102(2)(C) of NEPA?

The notice emphasized that CEQ's examination in this referral would focus exclusively on the applicability of NEPA as it relates to the obligations of the federal government in the renewal of these contracts, and would not address the responsibilities of the State of California for water rights permits.

The first public meeting was held in Washington, DC, on April 13, 1989, followed by a public meeting in Fresno, California, on April 17, 1989. The written comment period ended on April 28, 1989. The Council received well over 1,500 pages of written comments and testimony, as well as numerous booklets, special studies and other related material. The Council appreciates the many thoughtful and comprehensive submissions of those who participated in this process.

Footnotes at the end of article.

Background

The Central Valley Project

Responding to a momentous effort to "open up the West" for agricultural development in the later half of the nineteenth century, Congress passed the Reclamation Act of 1902 (hereinafter, referred to as the Reclamation Act). Among other things, the Reclamation Act authorized and directed the Secretary of the Interior to "make examinations and surveys for, and to locate and construct, as herein provided, irrigation works for the storage, diversion, and development of waters, including artesian wells," [8] and established a special "reclamation fund" for that purpose.[9] It authorized the Secretary to enter into contracts for the construction of irrigation projects, and provided for a system of repayment by annual installment charges "with a view of returning to the reclamation fund the estimated cost of construction of the project." [10] The Reclamation Act provided for a 160 acre restriction on the use of water for land in private ownership, and required that such landowners be an actual bona fide resident on the land or occupant thereof residing in the vicinity of the land.[11] It provided that the title to and the management and operation of the reservoirs and the works necessary for their protection and operation would remain with the U.S. government. Once repayments required by the Reclamation Act for the major portion of the lands irrigated from reclamation facilities were made, the management and operation of the irrigation works should pass to the owners of the lands irrigated thereby, "to be maintained at their expenses under such form of organization and under such rules and regulations as may be acceptable to the Secretary of the Interior." [12] It authorized the Secretary of the Interior to acquire rights or property by purchase or by condemnation to carry out the Reclamation Act, with the assistance of the Attorney General.[13] Finally, in Section 8 of the Reclamation Act, Congress declared that:

> Nothing in this act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this act, shall proceed in conformity with such laws, and nothing herein shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof: Provided, That the right to the use of water acquired under the provisions of this act shall be appurtenant to the land irrigated and beneficial use shall be the basis, the measure, and the limit of the right.[14]

The Central Valley Project was "the largest single undertaking pursuant to the federal reclamation program" in the history of the nation.[15] The project was originally authorized by the California Legislature as the California Central Valley Project Act and approved by California voters. However, the State was unable to sell the bonds necessary to finance the project, and asked the Federal government to construct it.[16] Subsequently, the California plan was authorized by Congress in the Emergency Relief Appropriation Act of 1935.[17] In 1937, the Central Valley Project was authorized as a Reclamation Act project. That authorization provided:

> That the entire Central Valley project, California heretofore authorized and established under the provisions of the Emergency Relief Appropriation Act of 1935 (49 Stat. 1622) and the First Deficiency Appropriation Act, fiscal year 1936 (49 Stat. 1622), is hereby reauthorized and declared to be for the purposes of improving navigation, regulating the flow of the San Joaquin river and the Sacramento River, controlling floods, providing for storage and for the delivery of the stored waters thereof, for the reclamation of arid and semiarid lands of Indian reservations, and other beneficial uses, and for the generation and sale of electric energy as a means of financially aiding and assisting such undertakings and in order to permit the full utilization of the works constructed to accomplish the aforesaid purposes: Provided further, That, except as herein otherwise specifically provided, the provisions of the reclamation law, as amended, shall govern the repayment of expenditures and the construction, operation, and maintenance of the dams, canals, power plants, pumping plants, transmission lines, and incidental works deemed necessary to said entire project, and the Secretary of the Interior may enter into repayment contracts, and other necessary contracts, with State agencies, authorities, associations, persons, and corporations, either public or private, including all agencies with which contracts are authorized under the reclamation law, and may acquire by proceedings in eminent domain, or otherwise, all lands, rights-of-way, water rights, and other property necessary for said purposes: And provided further, That the said dam and reservoirs shall be used, first, for river regulation, improvement of navigation, and flood control; second for irrigation and domestic uses; and third, for power.[18]

Congress passed the Reclamation Project Act of 1939 to provide for a "feasible and comprehensive plan for an economical and equitable treatment of repayment problems and for variable payments of construction charges which can be met regularly and fully from year to year." [19] The Reclamation Project Act essentially authorized two types of CVP contracts: repayment contracts, the term of which was not to exceed forty years from the date when the first installment was due, often referred to as "9(d) contracts", and water service contracts, often known as "9(e) contracts". The law specified that the latter type of contracts, the "9(e) contracts", are in lieu of entering into a repayment contract to cover that part of the cost of the construction of works connected with water supply and allocated to irrigation. Specifically, the Secretary of the Interior, in his or her discretion, was authorized to:

> Enter into either short- or long-term contracts to furnish water for irrigation purposes. Each such contract shall be for such period, not to exceed forty years, and at such rates as in the Secretary's judgment will produce revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost and an appropriate share of such fixed charges as the Secretary deems proper, due consideration being given to that part of the cost of construction of works connected with water supply and allocated to irrigation; and shall require payment of said rates each year in advance of delivery of water for said year.[20]

In 1940, Congress amended the Central Valley Project (CVP) authorization to add to the authorized purposes of the "construction under the provisions of the Federal reclamation laws of such distribution systems as the Secretary of the Interior deems necessary in connection with lands for which said stored waters are to be delivered." [21]

Following passage of the 1939 amendments which provided for water service contracts as well as repayment contracts for recipients of CVP water, the water users became concerned about their right to future water supplies after the expiration of their contracts with the Bureau of Reclamation. As a result, in 1956, Congress passed amendments to the Reclamation Project Act of 1939 which applied to both repayment and water service contracts. Specifically, the amendments direct the Secretary of the Interior to:

> (1) Include in any long-term contract hereafter entered into under said subsection (e) provision [the "9(e) water service contracts], if the other contracting party so requests, for renewal thereof under stated terms and conditions mutually agreeable to the parties. Such terms and conditions shall provide for an increase or decrease in the charges set forth in the contract to reflect, among other things, increases or decreases in construction, operation, and maintenance costs and improvement or deterioration in the party's repayment capacity. Any right of

renewal shall be exercised within such reasonable time prior to the expiration of the contract as the parties shall have agreed upon and set forth therein;.[22]

The amendments also provided for the conversion of any long-term contracts entered into after the date of these amendments under subsection (e) (water service contracts) into contracts under subsection (d) (repayment contracts) upon the request of a contracting organization and upon stated terms and conditions mutually agreeable to the parties.[23] Further, the Secretary was directed to provide to the other party of either repayment contracts or water service contracts:

> During the term of the contract and of any renewal thereof and subject to fulfillment of all obligations thereunder, [the other party has] a first right (to which right the rights of the holders of any other type of irrigation water contract shall be subordinate) to a stated share or quantity of the project's available water supply for beneficial use on the irrigable lands within the boundaries of, or owned by, the party and a permanent right to such share or quantity upon completion of payment of the amount assigned for ultimate return by the party subject to payment of an appropriate share of such costs, if any, as may thereafter be incurred by the United States in its operation and maintenance of the project works;* * * *[24]

The Secretary of the Interior was also authorized to negotiate amendments to water service contracts at the time of the 1956 amendment,[25] and the term "long-term contract" was defined to mean "any contract the term of which is more than ten years." [26]

In 1982, Congress passed the Reclamation Reform Act,[27] applicable to both repayment and water service contracts between the United States and irrigation districts.[28] Among other provisions, that Act revised the pricing provisions for CVP users,[29] increased the acreage limitation from 160 acres to 960 acres,[30] and eliminated the residency requirement.[31] It also instructed the Secretary of the Interior to encourage the full consideration and incorporation of prudent and responsible and economically feasible water conservation measures in the operations of non-Federal recipients of irrigation water from Federal reclamation projects, and required each district which had entered into a repayment contract or water service contract to develop a water conservation plan containing definite goals, appropriate water conservation measures, and a time schedule.[32] Further, the amendments require that the Secretary shall publish notice of a proposed repayment contract or water service contract or amendment thereto and provide for an opportunity for submission of written data, views and arguments no less than sixty days before entering into or amending any such contract, and that the Secretary should consider all substantive comments received during that period.[33]

In 1986, Congress passed a series of amendments dealing with water resource and reclamation projects.[34] Among these amendments is a provision directing that the Secretary of the Interior shall include in all new or amended contracts for the delivery of water from the CVP a provision providing for the automatic adjustments of rates if it is found that the rate in effect may not be adequate to recover "the appropriate share of the existing Federal investment in the project by the year 2030." The contracts must also include a provision authorizing the Secretary to adjust determinations of ability to pay every five years.

The Central Valley Project has developed throughout this century as a complex series of dams, canals, power facilities, fish hatcheries, irrigation distribution systems, pumping plants, reservoirs and related facilities, running virtually the full length of the California Central Valley. Major components of the CVP are the Trinity Dam and Reservoir and the Shasta Dam on the Sacramento River, the Folsom Dam and Reservoir on the American River, the Tracy Pumping Plant, which lifts CVP water into the Delta-Mendota Canal for delivery along the west side of the San Joaquin Valley, the San Luis Dam and Reservoir on the Sacramento and San Joaquin Rivers and the Friant Dam on the San Joaquin River. According to the Bureau of Reclamation, the entire CVP project provides 9.1 million acre feet of water for 2.7 million acres of irrigated land under approximately 300 long-term water service contracts. Approximately ninety percent of this water is used for agriculture purposes. Supplemental municipal and industrial water is supplied to more than two million people on an annual basis.[35]

The Friant Unit

The Friant Dam and the related Madera and Friant/Kern Canals were one of the first major features of the CVP to be authorized and constructed. The Friant Dam is located on the San Joaquin River, and provides flood control, conservation storage and diversion into the two canals. Millerton Lake, created by Friant Dam, has a total capacity of 520,500 acre-feet.[36] The Friant-Kern Canal, with a capacity of 5,000 cubic feet per second, carries water south from Millerton Lake for 151.8 miles and terminates in the Kern River near Bakersfield. The Madera Canal, with a capacity of 1,000 cubic feet per second, carries water north from Millerton Lake for 35.9 miles and terminates at the Chowchilla River. Major construction for the Friant Unit was completed in 1951.[37]

Two types of contracts were entered into in 1939 to provide the United States with the rights to divert and store water from the San Joaquin River. The first, "purchase contracts," involved the purchase by the Bureau of Reclamation of a holder's rights to the flood or "overflow rights" of the San Joaquin River. The second type of contracts, "exchange contracts," allowed the Bureau of Reclamation to divert a hodler's water rights at the Friant Dam in exchange for an alternative supply of water from the Shasta Dam. These arrangements allowed for the operation of the Friant Division of the CVP.[38] The Bureau of Reclamation has emphasized in its presentations and statements in this referral that the Friant Unit is an independent hydrological unit that does not receive a direct supply of water from the rest of the CVP.[39]

The CVP water from the Friant Unit is used to irrigate approximately one million acres of land which produced crops valued at $1.8 billion dollars in 1987.[40] In the Friant Unit, there are twenty-eight long-term water service contracts. The first contract to expire was for the Orange Cove Irrigation District (expired on February 28, 1989); the majority of the contracts expire between now and 1997, with one contract expiring as late as the year 2026.[41]

The National Environmental Policy Act

The National Environmental Policy Act (NEPA) was passed by Congress in 1969, and signed into law by President Nixon on January 1, 1970.[42] It established a national policy for the environment. Title I of the Act declares that:

> The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned pubic and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic and other requirements of present and future generations of Americans.[43]

To aid in implementation of that policy, the Congress directed that all federal agencies include in proposals for major federal action significantly affecting the quality of the human environemnt, a detailed statement by the responsible official on:

(i) The environmental impact of the proposed action,

(ii) Any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) Alternatives to the proposed action,

(iv) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.[44]

Over the past nineteen years, this statutory mandate has developed into what is known as the "NEPA process." Most commonly associated with the preparation of environmental impact statements (EISs), NEPA law has evolved largely through federal court decisions and interpretation by the Council on Environmental Quality through the CEQ regulations, guidance documents and referral findings and recommendations.[45]

The requirements of NEPA and the CEQ regulations implementing the procedural provisions of NEPA [46] apply to all agencies of the federal government,[47] and to all federal actions, excluding judicial or administrative civil or criminal enforcement actions and the distribution of general revenue sharing funds.[48] Actions do include:

> * * * new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals * * *[49]

The CEQ NEPA regulations require each federal agency to develop its own set of NEPA procedures.[50] These agency procedures identify which types of actions normally meet the criteria for preparation of an EIS, which actions normally require environmental assessments, and which actions normally do not have a significant effect on the quality of the human environment and therefore can be categorically excluded from further NEPA review procedures, (unless there are extraordinary circumstances warranting environmental analysis).

Each agency must consult with CEQ while developing its procedures and before publishing them in the **Federal Register** for comment. The procedures are to be adopted only after an opportunity for public review and after review by CEQ for conformity with NEPA and the CEQ implementing regulations.[51]

An environmental assessment (EA) may be prepared to help an agency determine whether the proposed action is of such a magnitude as to require the preparation of an EIS.[52] An EA reaches one of two conclusions: either (1) A decision to prepare an EIS, or (2) a Finding of No Significant Impact, which means that an EIS will not be prepared.

If a proposed federal action is a "major federal action significantly affecting the quality of the human environment,"[53] the agency must prepare an EIS. It begins by publication of a "Notice of Intent" to that effect in the **Federal Register** and, frequently, other media in the affected area.[54] A "scoping process" then is commenced to identify the issues which will be addressed in the EIS, to identify other environmental laws which must be complied with to complete the action, to allocate assignments for preparation of the EIS among the lead and cooperating agencies, and to indicate the relationship between the timing of the preparation of the EIS and the agency's tentative planning and decisionmaking schedule.[55] At this point, the lead agency may also set time limits on the process and page limits on the EIS. This process involves other agencies at all levels of government and the general public. Public meetings are not required but often are held by the agency in affected localities.

A draft EIS is then prepared by either the federal agency or a party under contract to the agency. The EIS must include a discussion of the purpose of and need for the proposed action, alternatives to the proposed action, including a no-action alternative, analysis of the affected environment and of the environmental consequences of the proposed action and alternatives, a list of persons who prepared the document, a list of agencies, organizations and persons to whom the statement is being mailed, and an index. Technical appendices may also be included.[56]

The draft EIS is circulated for public and agency comment for at least forty-five days.[57] Federal agencies with jurisdiction by law or special expertise with respect to any of the relevant environmental impacts are expected to comment.[58] The lead agency must then evaluate the comment letters and prepare a final EIS.[59] Substantive comments received on the draft EIS generally are attached to the final statement, along with the agency's response.[60]

No decision may be made concerning the proposed action until at least thirty days after the notice of availability of the final EIS.[61] At the time of its decision, the agency must prepare a Record of Decision which explains the decision, identifies alternatives considered by the agency in reaching its decision, specifies which alternatives were considered to be environmentally preferable, and discusses factors which were balanced by the agency in making its decision. Further, the Record of Decision states whether all practical methods to avoid or minimize environmental harm are being adopted, and, if not, why not. A description of any applicable monitoring and enforcement program adopted for applicable mitigation is also included.[62]

The CEQ regulations require federal agencies to cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements. A State or local agency may act as a joint lead agency to prepare an EIS.[63] Further, federal agencies are directed to engage in joint planning processes, joint environmental research and studies, joint public hearings and joint environmental assessments with State and local agencies to the extent possible.[64] To better integrate NEPA into State or local planning processes, EISs must discuss any inconsistency of a proposed action with an approved State or local law or plan.[65]

The National Environmental Policy Act and Renewal of the Friant Irrigation District Contracts

The Bureau of Reclamation and the Department of the Interior: Actions Leading up to Determination that NEPA Does Not Require Preparation of EIS for Renewal of Long-Term Water Contracts

Aware that the Friant Irrigation District long-term water contracts under the Central Valley Project would begin to expire in 1989, the Bureau of Reclamation (hereinafter, Bureau) began internal discussions early in 1987 regarding the applicable level of environmental documentation and analysis necessary for renewal of the contracts. On August 13, 1987, the Mid-Pacific Region of the Bureau sent the Basis of Negotiation on the Friant Unit contract renewals to the Commissioner

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of Reclamation. According to the Bureau of Reclamation's submittal to CEQ in the context of this referral, the Bureau's Regional office believed at that time that the contract renewals fell under a categorical exclusion which obviated the need to prepare either an EA or an EIS.[66]

Early in 1988, the Friant Water Users Authority provided the Assistant Secretary of the Interior for Water and Science a copy of a legal opinion from their counsel, arguing that the Bureau is obligated to renew the Friant Unit contracts with only those mutually agreed to contract changes necessary to comply with current Reclamation law. In March of 1988, the Regional office of the Bureau submitted a supplemental Basis for Negotiation on the Friant Unit contract renewals to the Commissioner for approval, incorporating a needs analysis which stated that the Friant Unit contractors had beneficially used their contractural water supplies and had a continuing need for the same water supplies. The Regional Office also stated to the Commissioner at that time their belief that the 1956 amendments to the Reclamation Act of 1902 entitled each contractor to renew its water service contract for the quantities of project water specified in its existing contract unless it was determined that the contractor was not beneficially using such quantities.[67] In a response to that submittal, the Commissioner of the Bureau stated that, "No contract will be given final approval until the Bureau has completed the appropriate level of environmental documentation." He also stated that, "It should be noted that we do not necessarily agree with your conclusion that contractors are entitled to renew their water service contracts for the same quantities of water."[68]

Also in March of 1988, Congressmen Tony Coehlo, Charles Pashayan, Jr., Bill Thomas and Richard Lehman wrote to the Secretary of the Interior expressing concern that the water irrigation district's attempts to renew their long-term water contracts were:

> Being impeded by very questionable interpretations and positions on NEPA's requirements, and on responsibility for determining quantities of water, being taken by the Bureau.
>
> In the way of background, we understand that a preliminary decision has been made by the Bureau to discontinue the contract renewal process until individual environmental assessments are first completed on each applicable contract. However, the Department's NEPA procedures categorically excludes renewal of water service contracts from the environmental assessment process. In our view, the Department's procedures are appropriate. We see no legal ground for the Bureau to waive this provision.[69]

At some point in early 1988, a "Notice of Intent to Prepare Environmental Assessment for the Allocation of Water Presently Used in the Friant Unit Service Area" was prepared, although apparently never published.[70] In April, 1988, the Regional Office of the Bureau began preparation of an environmental assessment on the contract renewals. According to the Bureau's submittal to CEQ, "the contractor's right to the existing water quantities was not being questioned. It was simply felt that an environmental assessment might be an appropriate route to completing the administrative record."[71] A fifty page "Preliminary Draft Environmental Assessment for Friant-Kern Water Allocation" was then prepared by the Mid-Pacific Regional Office of the Bureau and completed in June of 1988.[72] It contained a background and purpose and need analysis, alternatives, including a proposed action of renegotiating the Friant-Kern Contracts without changes to the functions, operations or maintenance of the existing facilities,[73] a "no action" alternative defined as allowing the existing contracts to expire without renewal, an alternative considering reallocation of available Millerton Lake water, and an alternative for modifying operations of the Millerton Lake for allocation to fish, wildlife and for recreational benefits. Further, it included a discussion of the affected environment and environmental consequences of the proposed action and alternatives, including water resources and quality, wetlands, floodplains and ground water, fish, wildlife and vegetation, geology and soils, air quality and climate, land use, recreation and social and economic impacts and cultural resources. It also included a list of preparers and consultants and references, as well as certain exhibits. During this period, the Regional office also had ongoing discussions with the Fish and Wildlife Service to obtain a list of threatened and endangered species which might be located in the Friant Unit.[74]

Also in April, 1988, the Assistant Secretary of the Interior for Water and Science stated in a response to the Congressmen's March 21, 1988 letter, that because of the uncertainty over the potential conflict in legal obligations regarding the applicability of NEPA requirements to the renewal of the Friant Unit contracts, the issue would be reviewed by the Solicitor's Office of the Department of the Interior.[75]

The Solicitor of the Department of the Interior issued his opinion on November 10, 1988.[76] After an analysis of the pertinent Reclamation law, NEPA, the Department of the Interior's NEPA procedures, and the Friant Unit water contracts, the opinion concluded that:

> Based on the foregoing, we conclude that the Bureau of Reclamation is not required to prepare an environmental impact statement or assessment concerning mere renewals of Friant Unit contracts that contain substantially the same terms and conditions as are contained in existing contracts, because such renewals constitute non-discretionary actions and do nothing more than retain the *status quo*. Even if the renewals were subject to NEPA, they would be subject to a categorical exclusion from the preparation of such environmental review documents. Changes in terms and conditions, with the exception of administrative and financial changes such as rates, however, may require some environmental assessment. The applicability of the categorical exclusion for contract renewals involving such changes in the contracts must be measured carefully on a case-by-case basis, utilizing the checklist included in the Bureau's Handbook.[77]

The Environmental Protection Agency: Actions Leading up to Referral of the Matter to the Council on Environmental Quality.

The Regional Office of the Environmental Protection Agency (EPA) reviewed the Bureau's announcements of negotiations for water contracts within the Friant Unit of the CVP in the fall of 1988. On October 19, 1988, the Director of the Office of External Affairs for the EPA's Regional office wrote to the Regional Director of the Bureau and recommended that the Bureau prepare a programmatic EIS for the proposed renewals for all CVP units which are "similar actions" under NEPA, and more detailed supplemental EISs for contract renewals for Friant and each of the other Units.[78] The letter also recommended that forty year contracts not be renewed until the San Francisco Bay/Sacramento River Delta standards were finalized in 1990 by the California State Water Resources Control Board since "new standards could render these contracts unachievable. Interim contracts could be signed until environmental reviews are completed."[79]

In January, 1989, the Regional Office of EPA again wrote to the Regional Office of the Bureau "to reiterate serious concerns * * * about the Bureau's proposal to renew Friant Unit contracts without conducting formal environmental evaluation(s) pursuant to the National Environmental Policy Act (NEPA)."[80] On February 2, 1989, the

EPA Regional Administrator for Region 9 met with Department of the Interior officials to discuss this matter.[81]

On February 2, 1989, EPA referred "the proposal by the Department of Interior's Bureau of Reclamation to renew long-term water contracts for the Orange Cove and other Friant Unit irrigation districts of the Central Valley Project (CVP)."[82] In its Predecision Referral Statement, EPA stated that:

> EPA believes that long-term renewal of Orange Cove and other Friant Unit irrigation district contracts without an EIS strikes at the purpose and utility of NEPA as a sound environmental assessment and management tool for Federal decision making. EPA also finds that BuRec's action is unsatisfactory because it fails to consider water quality impacts of long-term renewal without measures to adjust terms and conditions to control water quantity and quality to maintain and restore in-stream beneficial uses. The current plans for entering into these long-term renewals also fails [sic] to consider the results of the California SWRCB project investigating Delta/San Francisco Bay water quality.[83]

EPA recommended that the Department of the Interior and the Bureau initiate:

> * * * development of a programmatic EIS addressing programmatic goals and cumulative impacts of alternative beneficial uses of CVP waters. At minimum, we recommend that an EIS be developed to describe the Friant Unit contract renewals. EPA recommends that Interior consider a short-term extension of the existing contracts, or interim contracts of perhaps two years, while these matters are under consideration and/or an EIS is being prepared. We believe that interim contracts would prevent an interruption of current water use without compromising national environmental policy. We suggest that the same approach would be applicable to other CVP contract negotiations upcoming before an EIS is prepared, and prior to findings or decisions of the SWRCB.[84]

Actions Taken by the Department of the Interior/Bureau of Reclamation and the Environmental Protection Agency Since the Date of the Referral

As noted earlier,[55] during the period between EPA's referral of this matter to CEQ and CEQ's decision to accept the referral (from February 2, 1989 to March 3, 1989), there were a number of meetings held between officials of EPA and the DOI. However, the meetings did not resolve the differences between the two agencies regarding the applicability of NEPA to the renewal of the Friant Unit contracts.

On April 11, 1989, the Secretary of the Department of the Interior announced that he was offering a forty year renewal of the irrigation contract for the Orange Cove irrigation district of the Friant Unit. Secreary Lujan stated that his decision was guided by three basic principles:

> 1. The federal government has both a legal and a moral obligation to the water users of the Friant Unit. Failure to meet that obligation would be devastating to the economy of the entire area and would represent a severe breach of faith.
>
> 2. The State of California has the primary authority to determine basic water rights and entitlements on the basis of beneficial use, water quality, and other regional considerations. This principle of state primacy is one which must be respected at the federal level and is entirely consistent with this contract renewal.
>
> 3. Within the framework of these long-standing obligations, it must be recognized that the renewal of long-term water supply contracts pose [ ] [sic] legitimate environmental concerns, and I will, along with the state, evaluate these issues.[85]

Secretary Lujan amplified the third point, dealing with environmental studies, by stating:

> To address these environmental issues, I am directing the Commissioner of the Bureau of Reclamation to conduct assessment studies to determine if any environmental effects result from deliveries of water under the renewed contract and to share this research with the state and district. Additionally, I am asking the Commissioner to explore opportunities for environmental recovery programs in the San Joaquin River Basin. It is my intent that these studies be carried out in conjunction with the state and other interested organizations, and that the findings will be considered by the state and the districts as they adopt environmentally sensitive operating procedures and water policies.[87]

Findings and Recommendations of the Council on Environmental Quality

Findings

1. Under section 309 of the Clean Air Act, the National Environmental Policy Act and the CEQ Regulations, the Environmental Protection Agency Had the Legal Authority to Refer this Matter to the Council on Environmental Quality and CEQ Has the Authority to Accept and Consider the Matter and Issue Findings and Recommendations.

During the course of this referral, the Department of the Interior, the Bureau of Reclamation and several other interested parties have argued that because the DOI had made a decision that no EIS was required, EPA had no authority to refer this matter to CEQ, and that CEQ had no authority to accept the referral. These arguments reflect a narrow reading of the agencies' respective authority under NEPA and the Clean Air Act, as well as a misunderstanding of CEQ's historical role in the referral process.

Section 309 of the Clean Air Act provides that:

> (a) The Administrator shall review and comment in writing on the environmental impact of any matter relating to duties and responsibilities granted pursuant to this chapter or other provisions of the authority of the Administrator, contained in any (1) legislation proposed by any Federal department or agency, (2) newly authorized Federal projects for construction and any major Federal agency action (other than a project for construction) to which section 4332(2)(C) of this title applies, and (3) proposed regulations published by any department or agency of the Federal Government. Such written comment shall be made public at the conclusion of any such review.
>
> (b) In the event the Administrator determines that any such legislation, action, or regulation is unsatisfactory from the standpoint of public health or welfare or environmental quality, he shall publish his determination and the matter shall be referred to the Council on Environmental Quality.[88]

The legislative history of this section reveals a direction to EPA to interpret his responsibilities broadly, and to focus on the environmental impacts of a proposed action, as opposed to just an evaluation of the sufficiency of the statement. For example, the Conference agreement "instructs the Administrator to review and comment on Federal actions which affect the environment."[89] There is also evidence that Congress intended the Administrator of EPA to make an independent judgment about whether a proposed federal action has significant environmental impacts. For example, these statements related to section 309 (then referred to as section 310) were made at the confirmation hearing of the first Administrator of EPA:

> With respect to section 310 which I have just read, this makes you a self-starter, whenever you, unilaterally, see an environmental risk. You are given the responsibility to raise the red flag.
>
> What is involved here is not an input to somebody else's decision * * * This is an issue to be taken by you.
>
> Moreover, I think even if an activity started 50 years ago, if there is reason to look at it in the light of current environmental concerns, it is your responsibility to be a self-starter in that connection and undertake to use whatever authority you have to restrain or even to prevent such an ongoing activity if, in your dugement, the judgments of your people, there is an unfortunate environmental impact.[90]

In 1977, CEQ was directed by Executive Order to include in its NEPA regulations procedures:

> (2) For the referral to the Council of conflicts between agencies concerning the

implementation of the National Environmental Policy Act of 1969, as amended, and Section 309 of the Clean Air Act, as amended, for the Council's recommendation as to their prompt resolution.[91]

The CEQ regulations implementing the referral process that:

(b) Under section 309 of the Clean Air Act (42 U.S.C. 7609), the Administrator of the Environmental Protection Agency is directed to review and comment publicly on the environmental impacts of Federal activities, including actions for which environmental impact statements are prepared. If after this review the Administrator determines that the matter is 'unsatisfactory from the standpoint of public health or welfare or environmental quality,' section 309 directs that the matter be referred to the Council (hereinafter 'environmental referrals').[92]

Since 1973, CEQ has had twenty-four matters referred under NEPA and Section 309 of the Clean Air Act. In at least thirteen of those referral matters, CEQ's Findings and Recommendations related to the environmental impacts of the proposed action, and not to the sufficiency of the analysis of those impacts.[93] In at least one referral from EPA, the proposed action had not been the subject of an EIS.[94]

Finally, it has been suggested that CEQ should not proceed with the referral proceedings because the same issue raised in the referral is at issue in the litigation filed in federal district court.[95] CEQ is sensitive to this situation and has closely coordinated its activities with the Department of Justice to avoid potential conflict between the referral process and the ongoing litigation. The federal courts have recognized CEQ's central role in interpreting the requirements of NEPA. The Supreme Court of the United States has stated, and recently reaffirmed, that "CEQ's interpretation of NEPA is entitled to substantial deference." [96]

Resolution of this referral proceeding prior to the court proceedings on the merits, currently scheduled for June of 1990, could potentially obviate the need for litigation or, alternatively, provide the court with CEQ's Findings and Recommendations in this matter. As Secretary Lujan stated in a letter to CEQ, "This will allow the court to examine the Council's final response to the referral before issuing any judgment that may affect renewed water contracts." [97]

2. The Secretary of the Department of the Interior Has Limited Discretion Regarding the Question of *Whether* to Renew the CVP/Friant Unit Long-Term Water Contracts. However, the Secretary Has Sufficient Discretion Regarding the Terms of the Contacts Such That Renewal of the Long-Term Water Contracts For the Friant Unit Irrigation Districts of the Central Valley Project Constitutes a Major Federal Action Significantly Affecting the Quality of the Human Environment and, Accordingly, the Contract Renewal Action Falls Under section 102(2)(C) of NEPA.

The 1956 amendments to the Reclamation Project Act of 1939 [98] were clearly drafted and enacted to give the holders of CVP long-term water contracts a level of reassurance that they would be entitled to special legal and administrative consideration when their current contracts expired. Some distinctions have been made between the right to renewal clauses for pre-1956 contracts, as opposed to contracts entered into after the 1956 amendments.[99] However, as discussed in the Solicitor's opinion of November 10, 1988, there is a strong argument in favor of treating the pre-1956 and post-1956 contracts in a similar manner.[100] The remainder of this discussion will assume that those contracts which have been amended under authority of the 1956 amendments contain a right to a renewal of a contract for water. That assumption also includes the cautionary note in the Solicitor's opinion that "any renewal right created by the 1956 Act, or other authority, is conditioned upon the satisfactory adherence to the terms of water contracts and state and federal law." [101] NEPA is, of course, a federal law, and there is nothing in either reclamation law, or in NEPA, or in general rules of legislative construction to indicate that NEPA or any other laws passed since 1956 are not applicable to the renewal of the water contracts at issue. In fact, the approved contract between the Bureau and the Orange Cove Irrigation District includes contractual provisions binding the contractor to comply with applicable water and air pollution laws and equal opportunity laws which were passed primarily after the execution of the original contracts and after the 1956 amendments.[102]

The inquiry about discretion, however, does not stop here. Assuming, *arguendo*, a right to renewal in compliance with applicable federal and state laws, the inquiry must focus on what the right to renewal means in the context of renewing particular contracts. Nothing in the 1956 amendments or in any other law requires the Secretary of the Interior to authorize renewal of the long-term water contracts on precisely the same terms and conditions as the original contracts. Rather, the 1956 amendments provide that if the other contracting party so requests, the long-term contract shall be renewed under:

standard terms and conditions mutually agreeable to the parties. Such terms and conditions shall provide for an increase or decrease in the charges set forth in the contract to reflect, among other things, increases or decreases in construction, operation, and maintenance costs and improvement or deterioration in the party's repayment capacity.[103]

Further, there is nothing in the 1956 amendments which guarantees the right to renew for the same quantity of water; rather, the pertinent amendment says that parties to these long-term contracts:

have a first right * * * to a stated share or quantity of the project's available water supply for beneficial use on the irrigable lands * * * * [104]

The Solicitor's opinion interprets this provision to mean that "there is no discretion with respect to the quantity of water to be supplied under a renewed contract." [105] EPA's legal opinion, on the other hand, argues that the amendment:

can reasonably be interpreted as simply directing the Secretary, as a matter of federal law, to include in renewed contacts a stated share of the amount of water determined to be available for beneficial irrigation uses, giving preference to existing contractors over other irrigation users. [cite omitted] In making this beneficial use determination, and subject to the State of California's water permitting authority, the Secetary may consider competing beneficial uses, such as augmentation of in-stream flows to meet state water quality standards, and assess whether it is reasonable in today's water environment to devote the full contract amount exclusively to irrigation.[106]

The issue of defining the "stated share or quantity of the project's available water supply for beneficial use" is inextricably bound up in the complicated relationship between federal and state water law. As discussed above, reclamation law specifically provide that beneficial use [107] is the "basis, the measure and the limit of the right" to the use of water acquired under reclamation law and that nothing in reclamation law should be construed as affecting or in any way interfering with state laws regarding control, appropriation, use or distribution of water.[108] Secretary Lujan has specifically recognized the role of state law in determining "basic water rights and entitlements on the basis of beneficial use, water quality, and other regional considerations," which must be respected so long as it is not inconsistent with Federal law.[109]

The U.S. Supreme Court has had several occasions to consider the relationship between federal and state law with regard to water allocation rights in the context of the Central Valley Project.[110] Throughout its consideration of this issue, it has recognized that, depending upon the exact circumstances, either federal or state law or both may apply to a given question. The Court has stated that, "We think it clear that throughout the conception, enactment and subsequent administration of the plan, Congress has recognized the property status of water rights vested under California law," [111] but it has cautioned that "the acquisition of water rights must not be confused with the operation of federal projects." [112] Rather, the United States is required to comply with California state law "when, in the construction and operation of a reclamation project, it becomes necessary for it to acquire water rights or vested interests therein." [113] While thus acknowledging the importance of California's interpretation of "beneficial use" in the context of the Reclamation Project Act and amendments thereto, the U.S. Supreme Court stated that:

As we see it, the authority to impose the conditions of the contracts here comes from the power of the Congress to condition the use of federal funds, works, and projects on compliance with reasonable requirements." [114]

Finally, in its most recent examination of this issue, the Supreme Court, in an exhaustive examination of the law concerning the federal and state water rights related to the CVP, held that the Department of the Interior should follow state law regarding the "control, appropriation, use or distribution of water" except to the extent that state law would impose conditions inconsistent with clear Congressional directive.[115]

It is therefore clear that, while the State of California has primacy concerning the allocation of water rights, the federal government, through the Department of the Interior's Bureau of Reclamation, retains a significant role. During the public meeting held in Washington, DC on this referral, the Associate Solicitor for the Department of the Interior agreed that "* * * at some point between one and fifty percent", a reduction in the water rights allocated to CVP users by the State of California would frustrate the Congressional purpose.[116] Recently, the Bureau argued that the State Water Resources Control Board did not have jurisdiction to impose a warm water discharge restriction on another CVP unit.[117] It is not clear whether the Bureau will comply with the water quality standards being prepared in the current Bay/Delta hearings of the State Water Resource Control Board.[118] Indeed, in his memorandum to the Commissioner of the Bureau of Reclamation approving the proposed renewal contract with Orange Cove Irrigation District, Secretary Lujan directed the Commissioner to add an additional contractual provision which reads:

In the event that the State Water Resources Control Board, in accordance with state and federal law, modifies the permit granted to the United States for appropriation of water, the parties agree to negotiate amendments as necessary to incorporate these modifications. The United States and Contractor shall defend project rights to divert and use water delivered under this agreement before all courts and agencies exercising jurisdiction over said rights. Nothing herein shall permit changes to contract water quantities, except on an equitable sharing basis among all contractors utilizing the water diverted under said permit.[119]

Secretary Lujan explained in his memo that this new provision "will clarify the role of the State in originally providing water rights under permit to the United States and * * * makes explicit the obligation of the United States to defend its project water rights." [120]

To summarize briefly, the Reclamation amendments do not give the original contractors a right to the same amount of water as was granted in the original contract. The State of California, through its water permitting authority, the State Water Resources Control Board, will allocate water to the CVP users based upon the State's definition of beneficial use. The federal government has an obligation to comply with the water permit conditions imposed by the State Water Resources Control Board, unless those conditions frustrate federal law.

Turning to another point, the term of the contracts is not fixed by law at forty years; rather, the 1956 amendments define the term "long term contract" as any contract the term of which is more than ten years [121] and the Reclamation Project Act authorizes contracts "not to exceed forty years."[122]

In sum, CEQ finds that the Secretary of the Interior has limited discretion regarding whether to renew the long-term water contracts for the CVP, and that the Congressional purpose behind the 1956 amendments was to give the original water contractors assurance of considerable priority and preference in regards to renewal of those contracts. However, the Secretary of the Interior may exercise considerable discretion to change significant terms of the contract (such as rates, length of term and adjustments to meet decisions of the State Water Resources Control Board), and thus, for purposes of compliance with NEPA, the renewal of the contracts cannot be viewed as a ministerial act.[123]

3. The Bureau of Reclamation's Procedures for Implementing the National Environmental Policy Act Normally Require Preparation of an Environmental Impact Statement for Proposed Repayment Contracts and Water Service Contracts or Amendments for Irrigation where NEPA Compliance Has Not Already Been Accomplished. This Provision Applies to the Renewal of Long-Term Water Contracts for the Friant Unit.

As stated earlier, the CEQ NEPA regulations require each federal agency to adopt its own NEPA procedures.[124] In accordance with this requirement, the Department of the Interior has published NEPA procedures, approved by CEQ, which include procedures applicable to the Bureau of Reclamation. As appropriate, the Bureau's NEPA procedures identify which activities will normally require an EIS. Among these activities are:

(3) Proposed repayment contracts and water service contracts or amendments thereof, for irrigation, municipal, domestic, or industrial water, where NEPA compliance has not already been accomplished.[125]

This provision describes precisely the situation at issue in this referral, and should be utilized in connection with the renewal of the long-term water contracts in the Friant Unit. Further, it is consistent with CEQ's regulation that "NEPA shall continue to be applicable to actions begun before January 1, 1970, to the fullest extent possible." [126] The Bureau's directive to prepare EISs for proposed repayment and water service contracts where NEPA compliance has not already been accomplished is also consistent with the observations of the Supreme Court of the United States which stated in a recent decision interpreting NEPA that:

* * * the broad dissemination of information mandated by NEPA permits the public and other government agencies to react to the effects of a proposed action at a meaningful time. [cite omitted] It would be incongruous with this approach to environmental protection, and with the Act's manifest concern with preventing uniformed action, for the blinders to adverse environmental effects, once unequivocally removed, to be restored prior to the completion of agency action simply because the relevant proposal has received initial approval.[127]

4. The Renewal of the Long-Term Water Contracts for the Friant Unit

Does Not Properly Fall Within the Department of the Interior's Categorically Exclusions From NEPA Review.

The CEQ regulations implementing NEPA direct agencies to identify those typical agency actions which may be categorically excluded from NEPA documentation. A "categorical exclusion" means:

a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations [cite omitted] and for which, therefore, neither an environmental assessment nor an environmental impact statement is required* * * * Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant effect.[128]

In this matter, the Department of the Interior has argued that the renewal of the Friant Unit contracts falls under the following Bureau categorical exclusion.

Approval, renewal, transfer, and execution of an original, amendatory, or supplemental water service or repayment contract where the only result will be to implement an administrative or financial practice or change.[129]

Several factors negate that conclusion. First, what may appear to be two inconsistent DOI/Bureau NEPA rules (one mandating preparation of an EIS and the other categorically excluding the same action) are not inconsistent if read in the light of the CEQ regulation[130] and relevant case law[131] directing that NEPA is applicable to actions commenced before its passage "to the fullest extent possible." Rather, the DOI/Bureau procedures indicate a commitment to prepare an EIS at the first reasonable opportunity on proposed repayment and water service contracts which were executed without NEPA compliance, and then, later approval, renewals, transfers or executions or such contracts may, if consistent with the rest of the categorical exclusion provisions, be exempted from further NEPA documentation.

Second, the DOI/Bureau's NEPA procedures for categorical exclusions properly list a number of exceptions which apply to individual actions within categorical exclusions. These exceptions include actions which may:

2.2 Have adverse effects on such unique geographic characteristics as historic or cultural resources, park, recreation or refuge lands * * * wetlands, floodplains * * *

2.3 Have highly controversial environmental effects;

2.5 Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects;

2.6 Be directly related to other actions with individually insignificant but cumulatively significant environmental effects;

2.8 Have adverse effects on species listed or proposed to be listed on the List of Endangered or Threatened Species, or have adverse effects on designated Critical Habitat for these species.

2.9 Require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act.[132]

While this listing of exceptions is not meant to indicate that CEQ finds each of them applicable to either a particular CVP contact or the Friant Unit contracts or the CVP contracts as a whole, it does appear reasonable, based upon the cumulative evidence before us, that at least one or more of these exceptions does apply to the renewal of the long-term water contracts. This conclusion is bolstered by Secretary Lujan's finding that , "it must be recognized that the renewal of long-term water supply contracts pose legitimate environmental concerns." [133]

5. The Secretary of the Interior Has Recognized That the Renewal of Long-Term Water Supply Contracts Poses Legitimate Environmental Concerns and Has Directed the Bureau of Reclamation to Conduct Assessment Studies Regarding the Environmental Effects and to Explore Opportunities for Environmental Recovery Programs. The Congressionally Mandated Framework for Conducting Environmental Analysis Is the National Environmental Policy Act.

Secretary Lujan has recognized that the renewal of the long-term water contracts "pose legitimate environmental concerns," and has directed the Bureau of Reclamation to conduct "assessment studies to determine if any environmental effects result from deliveries of water under the renewed contract." [134]

Congress enacted the statutory framework for studying environmental effects of proposed federal actions when it passed NEPA in 1969. "By its passage of the National Environmental Policy Act [cite omitted], the 91st Congress departed from the traditional single-solution treatment of environmental problems and set the stage for full-scale action to restore and maintain the quality of the natural, as well as the manmade environment." [135] Congress took "the major step of requiring all federal agencies to consider values of environmental preservation in their spheres of activity, and it prescribes certain procedural measures to ensure that those values are in fact fully respected." [136]

Over the years, the procedural mandate of the statute has been interpreted quite broadly. Courts have rejected arguments that NEPA does not apply to actions in circumstances similar to that presented in this referral. In one such case, the Bonneville Power Administration (BPA) argued that NEPA did not apply to its offer of long term (twenty year) contracts for power delivery because Congress mandated it to offer contracts and BPA had no discretion with respect to contract terms that might have varying effects upon the environment.[137] The court noted that one of the difficulties with BPA's position was the agency had noted in an environmental report (purporting to look at environmental effects of the renewal, but not within the framework of NEPA) that, "the administrator possess a great deal of discretion in contract matters." [138] The court held that the contracts are significant federal action affecting the environment,[139] and required BPA to prepare a full EIS.[140]

Recommendations

1. CEQ Recommends that the Bureau Prepare Environmental Impact Statements for Each of the Water Service Units of the Central Valley Project, Prior to the Renewal of the Individual Long-Term Water Contracts in that Unit, and That the Bureau Consider Whether a Programmatic EIS on All Central Valley Project Long-Term Contracts Would Be a Useful, Efficient Approach. CEQ Strongly Recommends Against Preparation of Individual EISs on Each Separate Long-Term Water Contract.

The Environmental Protection Agency, along with many other persons who submitted comments, has suggested that a programmatic EIS be prepared by DOI on all CVP long-term water contract renewals.[141] While at first blush this is an attractive concept, CEQ recommends that the Bureau consider this suggestion carefully before proceeding with a programmatic EIS on all CVP renewals. Based upon the oral presentations made and the written testimony submitted to the Council, it appears that at least some of the units—notably the Friant unit—have hydrological independence and other features which may make preparation of a programmatic EIS a less effective means of assessing environmental impacts.[142] Further, the dates of the contract renewals are so widely spaced that a programmatic EIS prepared now could be outdated in part by the time later contracts had expired.

On the other hand, certain aspects of the CVP contract renewals may be reasonably treated by the Bureau on a programmatic basis and may be significant in terms of the requirement to analyze the cumulative impacts of interrelated actions.[143] The Bureau's response to the State of California's new water quality requirements for the San Joaquin-Sacramento-Delta basin might be best analyzed on a programmatic basis. If the Bureau determines that a programmatic EIS would be useful for all or some aspects of the CVP project, it could then, of course, utilize the tiering process to analyze further, site-specific actions.[144] Ultimately, the Bureau will have to determine the scope of its environmental documentation by considering which geographical, environmental and legal parameters best support its decisionmaking process.

Should the Bureau determine that a programmatic EIS is not appropriate, CEQ recommends preparation of an EIS for each water service unit (that is, the Friant Unit, the Shasta Unit, etc.) This approach would allow for analysis of cumulative impacts within hydrologically defined geographic areas, and the water repayment and water service contracts within those areas would appear to be reasonably interrelated actions.[145]

The Council strongly recommends *against* preparation of individual EISs for each renewal of a long-term water contract. Such an approach could result in a tremendous administrative and paperwork burden, promote delay in Bureau proceedings, and trivialize the NEPA process. Further, it would encourage segmentation of important cumulative impact analyses.

2. The Bureau of Reclamation Should Define the "No Action" Alternative in the Environmental Impact Statements as the Renewal of the Long-Term Contracts With No Significant Changes.

While the formulation of alternatives is normally and appropriately left to the lead agency to define in light of its own expertise and comments received during the scoping process, CEQ believes that in this instance it is important to comment on the formulation of the "no action" alternative. Under the CEQ regulations, an agency must include a "no action" alternative in any EIS.[146] The appropriate interpretation of the "no action" alternative initially depends upon the nature and context of the federal agency proposal at issue. There are two basic situations which an agency may face: either the agency is proposing to do something completely new (e.g., build a highway, construct a new facility), or the agency is proposing to continue, with, perhaps, some degree of modification or alteration, an action which is already in existence (e.g., amendments to a forest management plan).

In many respects, the situation at issue in this referral is analogous to the second type of situation—that is, a proposed action relating to a federal activity which is already in existence. CEQ has issued guidance on the question of how the "no action" alternative is applied to this type of situation. That guidance, in relevant part, states that:

Section 1502.14(d) requires the alternatives analysis in the EIS to 'include the alternative of no action'. There are two distinct interpretations of 'no action' that must be considered, depending on the nature of the proposal being evaluated. The first situation might involve an action such as updating a land management plan with ongoing programs initiated under existing legislation and regulations which will continue, even as new plans are being developed. In these cases, 'no action' is 'no change' from current management direction or level of management intensity. *To construct an alternative that is based on no management at all would be a useless academic exercise. Therefore, the 'no action' alternative may be thought of in terms of continuing with the present course of action until that action is changed.* Consequently, projected impacts of alternative management schemes would be compared in the EIS to those impacts projected for the existing plan.[147]

While the contract renewal question poses a slight different circumstance than modification of a land management plan, the Council finds the analogy much more persuasive in terms of meaningful analysis than a "no action" alternative which presupposes a return to the Central Valley environment before the construction of the CVP. CEQ recommends that the Bureau therefore define the "no action" alternative as renewal of the contracts on a status quo basis. The Bureau should incorporate into this alternative whatever changes in the terms of the contract would be required by Congressional amendments to reclamation law and other applicable federal law since execution of the original contracts. Thus, the "no action" alternative can serve as a meaningful alternative itself and as a baseline for comparison with other alternatives, rather than just being a paperwork exercise.

3. The Bureau of Reclamation Should Request the Appropriate Entities of the State of California To Be a Joint Lead or Cooperating Agency With the Bureau of Purposes of Preparing the Environmental Impact Statement(s).

As discussed above, the CEQ regulations mandate joint preparation of NEPA documents whenever possible and practicable.[148] In this instance, close cooperation with the agencies of the State of California seems particularly appropriate. Both DOI and EPA, as well as the vast majority of the commentators, have acknowledged the close relationship between the administration of the CVP water contracts and state water law. Indeed, the entire system of irrigation for the Central Valley of California is a vast complex of interrelated state and federal law, administration and physical water transport, transfer, and diversion. Secretary Lujan has recognized this fact, and has instructed the Commssioner of Reclamation to carry out the environmental studies he ordered "in conjunction with the state and other interested organizations [so] that the findings will be considered by the state and the districts as they adopt environmentally sensitive operating procedures and water policies."[149] Conducting the NEPA process with the involvement of the State of California will produce better analysis and documentation and should ultimately lead to improved decisionmaking.

Final Thoughts

Throughout the course of this referral, there have been a number of inaccurate statements made—many out of ignorance, fear, and confusion. CEQ wishes to take this opportunity to clarify what it is and what it is not doing. Consistent with the mandate of the National Environmental Policy Act, it *is* recommending that the Bureau prepare an environmental impact statement(s) on the renewal of the long-term water contracts for the Friant Unit of the CVP, and other CVP units. It is not making any recommendations regarding the allocation CVP water. Those decisions will be made by the California State Water Resources Control Board, consistent with federal law.

The Council is sensitive to the concerns and fears of the current water users and those contractors within the Friant Unit irrigation district who have wisely utilized the water provided by the CVP system to create one of the most fertile and productive agricultural systems in the world. CEQ does not believe that the current water users should fear that the CVP facilities will be dismantled or that CVP water will stop flowing to their lands. Rather, CEQ agrees with Secretary Lujan's statement that "Renewal of the Friant Unit contracts and protecting the

environment are not mutually exclusive * * *"[150]

Implementation of NEPA over the past twenty years has not prevented, nor was it intended to prevent, continued development of natural resources to meet human needs. In fact, the very first stated purpose of NEPA is, "To declare a national policy which will encourage productive and enjoyable harmony between man and his environment * * *."[151] The analysis prepared under NEPA is meant to ensure that the decisionmaker consider the environmental impacts of his or her decision, and that interested and affected parties (including water users, environmental groups, state and local governments, fishermen and water consumers and others) have an opportunity to participate in that process. The water contracts should be renewed and the NEPA process should be implemented. All interested citizens and the environment will benefit from both actions.

Dated: June 29, 1989.

A. Alan Hill,

Chairman.

Endnotes

1. 42 U.S.C.A., 7609 (1983).
2. 40 CFR 1500–1508 (1986).
3. 40 CFR 1504 *et. seq.*
4. Letter from John A. Moore, Acting Administrator, EPA, to the Honorable A. Alan Hill, Chairman, CEQ (February 2, 1989).
5. 54 FR 6316 (1989).
6. *Natural Resources Defense Council* v. *Houston*, filed December 21, 1988, United States District Court for the Eastern District of California.
7. 54 FR 12735 (1989).
8. 43 U.S.C.A. 411 (West 1989).
9. 43 U.S.C.A. 391 (West 1989).
10. 43 U.S.C.A. 419, 461 (West 1989).
11. 43 U.S.C.A. 431, 439 (West 1989).
12. 43 U.S.C.A. 491, 498 (West 1989).
13. 43 U.S.C.A. 421 (West 1989).
14. 43 U.S.C.A. 372, 383 (West 1989).
15. *California* v. *United States*, 483 U.S. 645, 681, n. 2 (1978), citing brief for United States as *Amicus Curiae*, *Ivanhoe Irrigation District* v. *McCracken*, 357 U.S. 275 (1958).
16. Statement of the Bureau of Reclamation for the President's Council on Environmental Quality, p. 15 (April 29, 1989) (hereinafter, Statement of the Bureau of Reclamation).
17. 49 Stat. 115 (1935).
18. 50 Stat. 850; Section 2, Act of October 17, 1940, 54 Stat. 1199.
19. 43 U.S.C.A. 485 (West 1989).
20. 43 U.S.C.A. 485h(e) (West 1989).
21. 54 Stat. 1198, Act of October 17, 1940.
22. 43 U.S.C.A. 485h–1(1) (West 1989).
23. 43 U.S.C.A. 485h–1(2) (West 1989).
24. 43 U.S.C.A. 485h–1(4) (West 1989).
25. 43 U.S.C.A. 485h–2 (West 1989).
26. 43 U.S.C.A. 485h–3 (West 1989).
27. 43 U.S.C.A. 390aa–390zz–1 (West 1989).
28. "Under California law, an irrigation district is a public corporation governed by a board of directors, usually elected by voters in the district. It is empowered to distribute and otherwise administer water for the beneficial use of its inhabitants and to levy assessments upon the lands served for the payment of its expenses." *Bryant* v. *Yellen*, 447 U.S. 352, 356 n. 1 (1980).
29. 43 U.S.C.A. 390ee (West 1989).
30. 43 U.S.C.A. 390dd (West 1989).
31. 43 U.S.C.A. 390kk (West 1989).
32. 43 U.S.C.A. 390ij (West 1989).
33. 43 U.S.C.A. 485h(f) (West 1989).
34. Pub. L. 99–546, 100 Stat. 3050 (1986).
35. Statement of the Bureau of Reclamation, p. 17.
36. An acre-foot is the volume of water, 43,650 cubic feet, that will cover an area of one acre to a depth of one foot; Webster's II, New Riverside University Dictionary (1984).
37. Table I, Chronology of Central Valley Project Authorization, Exhibit 5, appended to Statement of the Bureau of Reclamation.
38. According to the Bureau of Reclamation, these arrangements left in place the original water rights of the exchange contractors, and "merely provided an alternative means of meeting those rights." Statement of the Bureau of Reclamation, p. 19.
39. Statement of the Bureau of Reclamation, p. 18.
40. *Id.*
41. Central Valley Project (CVP) Contract Expiration Date Tabulation Summary—1989, Bureau of Reclamation.
42. 42 U.S.C.A. 4321–4347 (West 1989).
43. 42 U.S.C.A. 4331 (West 1989).
44. 42 U.S.C.A. 4332(2)(c) (West 1989).
45. The Council on Environmental Quality was established in Title II of NEPA. 42 U.S.C.A. 4342 (West 1989).
46. 40 CFR 1500–1508 (1986).
47. 40 CFR 1508.12 (1986).
48. 40 CFR 1508.18(a) (1986).
49. 40 CFR 1508.18(a) (1986).
50. 40 CFR 1507.3 (1986).
51. 40 CFR 1507.3(a) (1986).
52. An EA may also aid an agency's compliance with NEPA when no EIS is necessary. It is to include brief discussions of the need for the proposal, alternatives, environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted. 40 CFR 1508.9 (1986).
53. 42 U.S.C.A. 4332(2)(C) (West 1989). Note that "Major reinforces but does not have a meaning independent of significantly". 40 CFR 1508.18 (1986).
54. 40 CFR 1501.7, 1508.22 (1986).
55. 40 CFR 1501.7, 1508.25 (1986).
56. 40 CFR 1502.10 (1986).
57. 40 CFR 1506.10(c) (1986).
58. 40 CFR 1503.2 (1986).
59. 40 CFR 1503.4 (1986).
60. 40 CFR 1506.10 (1986).
61. 40 CFR 1506.10 (1986).
62. 40 CFR 1505.2(c) (1986).
63. 40 CFR 1501.5(b) (1986).
64. 40 CFR 1506.2(b) (1986).
65. 40 CFR 1506.2(d) (1986).
66. Statement of the Bureau of Reclamation, p. 21.
67. Statement of the Bureau of Reclamation, p. 21.
68. Memorandum from Commissioner C. Dale Duvall to Regional Director of the Bureau of Reclamation, Sacramento, California (April 29, 1988).
69. Letter from the Honorable Tony Coelho, the Honorable Charles Pashayan, Jr., the Honorable Bill Thomas and the Honorable Richard Lehman, Members of Congress, to the Honorable Donald P. Hodel, Secretary of the Interior (March 21, 1988).
70. Letter from William M. Kier, Executive Secretary, California Advisory Committee on Salmon and Steelhead Trout, to Dinah Bear, General Counsel, Council on Environmental Quality, (Enclosure 1) (April 25, 1989).
71. Statement of the Bureau of Reclamation, p. 22.
72. *Id.* at 22.
73. This alternative included a stipulation regarding unmanaged flood flows and groundwater recharge and a rate change from $3.50 acre-foot to $5.12 acre-foot for irrigation water. Preliminary Draft Environmental Assessment, Prepared by U.S. Bureau of Reclamation, Mid-Pacific Regional Office, Sacramento, California, p. 5, (1988).
74. *Id.* at p. 22.
75. Statement of the Bureau of Reclamation, p. 22.
76. Memorandum from Solicitor Ralph W. Tarr to Assistant Secretary, Water and Science on Renewal of Friant Unit Contracts, (November 10, 1988); (Exhibit 3 appended to Statement of the Bureau of Reclamation), (hereinafter, Solicitor's opinion).
77. *Id.* at p. 15 (emphasis in original).
78. Letter from Deanna M. Wieman, Director, Office of External Affairs, Environmental Protection Agency, Region IX, to David G. Houston, Regional Director, Bureau of Reclamation, Mid-Pacific Regional Office, p. 2, (October 19, 1988).
79. *Id.* at 2.
80. Letter from Deanna M. Wieman, Director, Office of External Affairs, Environmental Protection Agency, Region IX, to David G. Houston, Regional Director, Bureau of Reclamation, Mid-Pacific Regional Office. p. 1. (January 3, 1989).
81. Predecision Referral Statement [40 CFR 1504.3(c)(2) Supporting the U.S. Environmental Protection Agency's Referral to the Council on Environmental Quality of the U.S. Department of the Interior's Proposed Renewal of Water Contracts for the Friant Unit of the Central Valley Project (February 2, 1989) (hereinafter cited as EPA's Predecision Referral Statement).
82. Letter from John A. Moore, Acting Administrator, U.S. Environmental Protection Agency to the Honorable A. Alan Hill, Chairman, Council on Environmental Quality, (February 2, 1989).
83. EPA's Predecision Referral Statement, p. 2. See also, letter from William Reilly, Administrator of the Environmental Protection Agency to A. Alan Hill, Chairman of the Council on Environmental Quality, (April 12, 1989), stating that, "The renewed contracts would commit to existing uses 1.5 million acre-feet of CVP water for the next 40 years, without benefit of the analysis and public review that the National Environmental Policy Act (NEPA) was intended to provide."
84. EPA's Predecision Referral Statement, p. 3.
85. *Supra*, p. 2.

86. Department of the Interior Press Statement (April 11, 1989).
87. *Id.* at 1. Secretary Lujan's announcement of approval of the proposal renewal contract provoked a great deal of controversy about the propriety of proceeding with contract renewal prior to the resolution of the referral pending before CEQ. EPA's letter to the DOI informing the department of the referral requested that DOI "take no action that will lead to entering into CVP long-term contract renewals until the Council acts upon this referral." Letter from John A. Moore, acting Administrator, U.S. Environmental Protection Agency, to the Honorable Earl E. Gjelde, Acting Secretary, Department of the Interior, p. 2 (February 2, 1989). Indeed, the CEQ regulations contemplate that no action will be taken by a lead agency on a matter which is under referral to the Council. *See* 40 CFR 1504.3(c)(1), 1504.3(d) (1986). In this particular referral, the question of whether the Orange Cove contract could be signed prior to DOI compliance with NEPA was, simultaneously with the referral proceedings, the subject of a request for a preliminary injunction in *NRDC* v. *Houston*. Noting that the court had within its authority the ability to grant a legal remedy upon a determination of the merits, the judge in that case denied the motion for preliminary injunction. The judge did not discuss the question of likelihood of the success on the merits as it pertained to the NEPA question. Letter from Sandra K. Dunn, Attorney, U.S. Department of Justice, Land and Natural Resources Division, to William M. Cohen, Chief, General Litigation Section, Land and Natural Resource Division, (March 7, 1989) (summarizing the hearing on the preliminary injunction motion). Shortly before Secretary Lujan issued his approval of the proposed contract, the judge issued an order denying the motion for a preliminary injunction and ordering that the renewal of any Friant Division water service contracts (or the amendment of the contracts to permit renewal) executed prior to the final order in *NRDC* v. *Houston* contain the following clause: "The terms of this contract are subject to the final Order in NRDC v. Houston No. CIVS 88–1658–LKK–EM." Order, *NRDC* v. *Houston*, April 5, 1988.

After the preliminary injunction was denied and prior to his announcement regarding renewal of the contract, Secretary Lujan wrote to Chairman Hill and explained his intent to renew the contract. The Secretary stated the Department's belief that the Orange Cove water service contract could be renewed at that time without offending CEQ's referral process because each Friant Unit contract entered into had to contain the clause stating that the terms of the contract remained subject to the final decision of the court. "This will allow the court to examine the Council's final response to the referral before issuing any judgment that may affect renewed water contracts." Letter from the Honorable Manuel Lujan, Jr., Secretary of the Department of the Interior to the Honorable A. Alan Hill, Chairman, Council on Environmental Quality (April 7, 1989).

88. 42 U.S.C.A. 7609 (West 1989).
89. Summary of the Provisions of Conference Agreement on the Clean Air Act Amendments of 1970, Cong. Rec. 542388 (December 18, 1970).
90. Senator Muskie, Hearings on the Nomination of William Ruckelshaus as EPA Administrator, before the Senate Public Works Committee, 91st Cong., 2d Sess. (Comm. Print 1970), pp. 45–46.
91. Exec. Order No. 11,514, March 5, 1970, as amended by Exec. Order No. 11,991, May 24, 1977, Section 3(h).
92. 40 CFR 1504.1(b) (1986). Agencies other than EPA are only permitted to refer matters for which an EIS has been prepared. See, 40 CFR 1504.1(c) (1986). However, in those instances, the matter is referred on the issue of the "acceptability of anticipated environmental impacts" as well as the EISs themselves. *Id.* See also Rand and Tawater, "Environmental Referrals and the Council on Environmental Quality", Environmental Law Institute, 1986, (hereinafter, the Rand and Tawater study) "Under § 309, the EPA Administrator may refer to CEQ any proposed major federal action which he/she deems to be environmentally unsatisfactory." *Id.* at 4.
93. See the Rand and Tawater study, Table I, pp. 9–10.
94. *See* Findings and Recommendations of the Council on Environmental Quality regarding the proposed amendments to the Army Corps of Engineers' Procedures Implementing the National Environmental Policy Act, 52 FR 22517 (June 12, 1987).
95. *Natural Resources Defense Council* v. *Houston*, filed December 21, 1988, United States District Court for the Eastern District of California.
96. *Robertson* v. *Methow Valley Citizens Council*, 57 U.S.L.W. 4497, 4503 (U.S. May 1, 1989); *Marsh* v. *Oregon Natural Resources Council*, 57 U.S.L.W. 4504, 4507 (U.S. May 1, 1989); *Andrus* v. *Sierra Club*, 442 U.S. 347, 358 (1979). *See also*, *Warm Springs Dam Task Force* v. *Gribble*, 417 U.S. 1301, 1309–10, 94 S. Ct. 1542, 2547, 41 L.Ed. 2d 654 (1974).
97. Letter from The Honorable Manual Lujan Jr., Secretary of the Interior, to the Honorable A. Alan Hill, Chairman of the Council on Environmental Quality (April 7, 1989).
98. See text and notes *supra* at pp. 7–9 for amendments and citations.
99. *See* Letter from Gerald H. Yamada, Acting General Counsel, U.S. Environmental Protection Agency to the Honorable A. Alan Hill, Chairman, Council on Environmental Quality, p. 4 (April 13, 1989).
100 Solicitor's opinion, *supra*, n. 77, pp. 10–13.
101. Soliciter's opinion, *supra* n. 76, p. 13.
102. Contract Between the United States and Orange Cove Irrigation District Providing for Project Water Service, Articles §§ 17, 20 (executed on April 26, 1988).
103. 43 U.S.C.A. 485h–1(1) (West 1986).
104. 43 U.S.C.A. 485h–1(4) (West 1986).
105. Solicitor's opinion, *supra*, n. 76, p. 14.
106. Letter from Gerald H. Yamada, Acting General Counsel, EPA, to the Honorable A. Alan Hill, Chairman, CEQ, p. 4 (April 13, 1989).
107. The identification of "beneficial use" as interpreted by state law is clearly recognized in the legislative history of this provision. The "beneficial use" doctrine is recognized in the California Constitution:

It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare. Constitution of the State of California, Article 10, Section 2 (1976) (originally Article XIV, § 3 (1928).

In California, irrigation, municipal and industrial use, recreation, preservation and enhancement of fish and wildlife resources and groundwater recharge are all "beneficial uses" of water. See Cal. Water Code Sections 100, 106, 1004, 1240, 1243 (West Supp. 1989).

108. *See* text and citations, *supra*, p. 5.
109. Department of the Interior Press Statement, April 11, 1989; Department of the Interior Press Statement, May 25, 1989.
110. *See*, *California* v. *United States*, 438 U.S. 645 (1978); *City of Fresno* v. *California*, 372 U.S. 627 (1963); *Dugan* v. *Rank*, 372 U.S. 609 (1963); *Ivanhoe Irrigation District* v. *McCracken*, 357 U.S. 275 (1958); *United States* v. *Gerlach Live Stock Co.*, 339 U.S. 725 (1950).
111. *U.S.* v. *Gerlach Live Stock Co.*, 339 U.S. 725, 736 (1950).
112. *Ivanhoe Irrigation District* v. *McCracken*, 357 U.S. 275, 291 (1958).
113. *Id.* at 291.
114. *Id.* at 291 (emphasis added).
115. *California* v. *United States*, 438 U.S. 645, 653–679 (1978). The Attorney General's Office for the State of California submitted comments to CEQ supporting EPA's position that an EIS must be prepared prior to the Bureau's renewal of the Friant Unit contracts. Letter from Mary Gray Holt, Deputy Attorney General for John K. Van de Kamp, Attorney General, to the Honorable A. Alan Hill, Chairman, CEQ (April 19, 1989).
116. Oral testimony of Paul B. Symth, Associate Solicitor, Energy and Resources Division, Office of the Solicitor, Department of the Interior, at CEQ public meeting, Washington, D.C. (April 13, 1989).
117. Written testimony of Thomas M. Hagler, Assistant Regional Counsel, Environmental Protection Agency, Region IX, at CEQ Public Meeting, p. 5, Fresno, California (April 17, 1989).
118. Testimony of Thomas M. Hagler, Assistant General Counsel, U.S. Environmental Protection Agency, before the Council on Environmental Quality, Fresno, California, April 17, 1989.
119. Memorandum from the Honorable Manual Lujan, Secretary of the Interor to Commissioner, Bureau of Reclamation (April 11, 1989); *see also*, Contract Between the United States and Orange Cover Irrigation District Providing for Project Water Service, Article 14 (emphasis added).
120. *Id.*
121. 43 U.S.C.A. 485h–3 (West 1986).
122. 43 U.S.C.A. 485h(e) (West 1986).
123. In rare instances, courts have held that an act which is purely ministerial in nature is excluded from the normal course of NEPA review. For example, *Pacific Legal*

Foundation v. *Andrus*, 657 F.2d 829 (6th Cir. 1981), the Court of Appeals for the Sixth Circuit held that the Secretary of the Interior was constrained by specific language in the Endangered Species Act to base a decision on listing a species as endangered solely on certain biological criteria. Thus, the Secretary has no discretion on whether to list or not list a species—the decision is based solely on specified, factual criteria. Further cases discussing this principle can be found in the Solicitor's opinion, *supra* n. 76, pp. 7–8 and Gerald Yamada's letter to Chairman Hill, *supra* at n. 100, pp. 7–9.

124. *Supra* at p. 14. Major subunits within departments are also encouraged to adopt their own procedures. 40 CFR 1507.3(a) (1986).

125. Department of the Interior Manual at 516 DM 6, Appendix 9.3(A)(3), June 8, 1983.

126. 40 CFR 1506.12(b) (1988).

127. *Marsh* v. *Oregon Natural Resources Council*, 57 U.S. L.W. 4504, 4507 (U.S. May 1, 1989) (emphasis added).

128. 40 CFR 1508.4 (1988).

129. Department of the Interior Procedures for Implementing NEPA, 516 DM 6, Appendix 9.4, D(14) (approved by CEQ on January 28, 1983; promulgated in final form on June 8, 1983).

130. 40 CFR 1506.12(b) (1988).

131. *See, Morris City. Trust for Historic Preservation* v. *Pierce*, 271, 177 (3rd Cir. 1983); *Jones* v. *Lynn*, 477 F.2d 885, 889 (1st Cir. 1973); *Greene County Planning Board* v. *Federal Power Commission*, 455 F.2d 412, 424 (2d Cir. 1972), *cert. denied* 409 U.S. 849 (1972).

132. Department of the Interior NEPA Procedures, DOI Manual, 516 DM 2, Appendix 2 (1984).

133. Department of the Interior Press Statement, April 11, 1988.

134. Department of the Interior Press Release, April 11, 1989.

135. "Congress and the Nation's Environment—Environmental Affairs of the 91st Congress", Prepared by the Environmental Policy Division, Congressional Research Service, Library of Congress, at the request of Henry M. Jackson, Chairman, Committee, on Interior and Insular Affairs, United States Senate, February 10, 1971, Introduction, p. xv.

136. *Calvert Cliffs'Coord. Comm.* v. *U.S. Atomic Energy Commission*, 449 F.2d 1109, 1111 (D.C. Cir. 1971), *cert. denied*, 404 U.S. 942 (1972).

137. *Forelaws on Board* v. *Johnson*, 743 F.2d 677, 681 (9th Cir. 1984).

138. *Compare* with statement that, "The Secretary has considerable discretion, however, to change other terms of the renewed contracts." Solicitor's Statement, Exhibit 3 to Bureau of Reclamation's Statement, p. 13.

139. 743 F.2d at 683.

140. *Id.* The court, noting that its decision came at a point in time when many of the twenty year contracts had been in force for three years, declined to enjoin the operation of the contracts. Rather, noting the flexibility in the area of remedies under NEPA law, the court allowed the contracts to remain in force during preparation of the EIS. *Id.* at 685–86. *See also, Port of Astoria, Oregon* v. *Hodel*, 595 F.2d 467 (9th Cir. 1979).

141. *See* Letter from Gerald H. Yamada, Acting General Counsel EPA, and Richard E. Sanderson, Director, Office of Federal Activities, EPA, to the Honorable A. Alan Hill, Chairman, CEQ, pp. 3–5 (April 28, 1989).

142. The Supreme Court's description of the Central Valley Project in one of its several decisions dealing with this project points to the dilemma poised by the question of scope. It reads:

"The Central Valley basin development envisions, in one sense, an integrated undertaking, but also an aggregate of many subsidiary projects, each of which is of first magnitude. It consists of thirty-eight major dams and reservoirs bordering the valley floor and scores and smaller ones in headwaters. It contemplates twenty-eight hydropower generating stations. It includes hundreds of miles of main canals, thousands of miles of laterals and drains, electric transmission and feeder lines and substations, and a vast network of structures for the control and use of water on two million acres of land already irrigated, three million acres of land to be newly irrigated, 360,000 acres in the delta needing protection from intrusions of salt water, and for minicipal and miscellaneous purposes including cities, towns, duck clubs and game refuges. *These projects are not only widely separated geographically, many of them phsically independent in operation, but they are authorized in separate acts from year to year and are to be constructed at different times over a considerable span of years.*" *U.S. v. Gerlach Live Stock Co.*, 339 U.S. 725, 733 (1950) (emphasis added).

143. 40 CFR §§ 1508.7, 1508.25 (1988).

144. 40 CFR §§ 1502.4, 1508.28; *see also*, discussion of tiering in "Memorandum to Agencies Containing Guidance on Agency Implementation of NEPA Regulations", 48 Fed. Reg. 34263 (1983).

145. 40 CFR § 1508.25 (1988).

146. 40 CFR § 1502.14(d) (1988).

147. "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations", Question 3, 46 Fed. Reg. 18026–27 (1981) (emphasis added).

148. 40 CFR § 1506.2 (1988); *see* discussion at *supra* pp. 16–17.

149. Department of the Interior Press Statement, April 11, 1989.

150. Department of the Interior Press Statement, April 11, 1989.

151. 42 U.S.C.A. 4321 (West 1977).

Explanatory Views of Jacqueline E. Schafer

With Respect to the Findings

I cannot find that the Bureau's proposal and the Secretary's subsequent decision to renew one of the pending Friant Unit water service contracts in the absence of preparing environmental analysis under section 102(2)(C) is an unreasonable interpretation of the applicability of NEPA, the agency's own implementing procedures, Federal reclamation law, including the Reclamation Project Act of 1939 and the Act of June 2, 1956, and the terms and conditions governing the United States permits from the State Water Resources Control Board. The Solicitors's conclusion that contract renewal is a ministerial act that retains the *status quo* is a fair reading of applicable law and falls within that agency's authority.

CEQ's role under the referral process is not to interpret all of the relevant law, but to seek resolution of significant environmental issues when a disagreement about environmental impacts arises between federal agencies. That is, CEQ's role is more like that of a mediator than a judge. Although CEQ has been accorded deference concerning interpretation of NEPA, CEQ has no special expertise concerning federal reclamation law, state water law, or the property status of water rights under the Constitution, which are also at issue legally in this matter. When all of this law is brought to bear on the contract renewals, CEQ is hard pressed to justify substituting its legal judgment for that of the agency responsible for making the decision to proceed with the contract.

The legal issue revolves around the nature and extent of the Secretary's discretion, which is not exclusively a matter of NEPA interpretation. The legal constraints on his ability to choose from among meaningful alternatives for various terms and conditions to be applied to the contract are not imposed by NEPA. Arguments have been presented about the degree of this discretion, and its impact on the "status quo", but Interior's judgment in this matter is not unreasonably applied to these contract renewals. Thus, while the referral presents CEQ with the opportunity to offer a contrary opinion, as a matter of policy we should exercise restraint in giving it. This is especially true in this case, where CEQ's opinion will not, by itself, provide the means to resolve the disagreement, which is the purpose of the referral procedure.

With Respect to the Recommendations

The documents received by CEQ in response to the referral raise a number of issues, the importance of which can scarcely be overstated, concerning the future use and allocation of water resources in California's Central Valley, and the environmental impacts of the possible alternatives for putting those resources to other uses, including the opportunity to restore water quality, fisheries, wetlands and other wildlife habitat. In announcing his decision to offer a renewal contract to the Orange Cove Irrigation District, Secretary Lujan pledged to evaluate these issues, which can be expected to have a profound influence on the nature of future Federal-State relationships concerning water resources.

Separate and apart from the Friant Unit contract renewals, it appears that there are other points in the course of agency decisionmaking affecting water use that would present the occasion to incorporate such environmental considerations, making the performance of environmental analysis meaningful. For example, the agency's proposal to adopt or make a change in its rate setting policy applicable to board classes of water contracts provides an occasion to assess the environmental impacts of alternative non-quantity contract terms. Had an environmental review been performed in the recent CVP Irrigation Water Ratesetting Policy (May 1988), for instance, a more meaningful analysis of the potential impacts of this particular type of contract condition might have been available than would be likely for the Friant renewals alone.

In the future, the establishment of the Federal Government's policy in response to the results of the (California) State Water Resources Control Board's investigation of Sacramento Delta/San Francisco Bay water quality provides another occasion to evaluate environmental impacts and avoidance or mitigation measures that could be developed in concert with the State, which has the primary authority to determine basic water rights and entitlements. Recommendations for conservation measures (e.g., metering) and demand management (e.g., pricing) policies would have more utility in this context than in that for contract renewals, where Federal agency discretion is far more highly constrained.

In the case of the Orange Cove contract renewal, for instance, it appears that all water delivered is used in accordance with state of the art water irrigation conservation technology, making the imposition of further terms and conditions with respect to such conservation practices unlikely to effect significant environmental changes. In fact, Friant Unit irrigation contractors appear to have practiced unusually effective water conservation through their "conjunctive use" of groundwater withdrawal and recharge. On the other hand, this may not be the case of "municipal and industrial" contractors which distribute water for domestic consumption without analogous incentives to conserve it.

Should California, as a result of the State Board's review, propose significant changes in its policies to appropriate water, there will be other opportunities to bring about changes in water use than through these particular contract renewals. For example, in the future, water marketing could play a significant role in directing water to preferred uses. Other ways may prove to be possible that are not yet recognized as being available, but which could arise as a result of a cooperative Federal and State effort as pledged by the Secretary, consistent with protecting the valid property rights of water users.

Conclusion

My own views on the matter before the Council are sufficiently different that those set forth in the above-stated Findings and Recommendations that I have determined not to sign that document and, instead, to give this explanation.

Dated: June 29, 1989.

Jacqueline E. Schafer,

Member.

[FR Doc. 89-15607 Filed 7-5-89; 8:45 am]

BILLING CODE 3125-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Report Forms Under OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission. The proposed report form under review is listed below.

DATE: Comments must be received on or before August 21, 1989. If you anticipate commenting on a report form, but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Liaison Officer of your intent as early as possible.

ADDRESS: Copies of the proposed report form, the request for clearance, (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Liaison Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

EEOC Agency Liaison Officer: Margaret P. Ulmer, Financial and Resource Management Services, Room 386, 2401 E Street, NW., Washington, DC 20507; Telephone (202) 634–1932.

OMB Reviewer: James Mason, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503; Telephone (202) 395–6880.

Type of Request: Revision of a currently approved collection.

Title: Higher Education Staff Information Report EEO–6.

Frequency of Report: Biennially.

Type of Respondent: Business/other institutions/State or local governments.

Standard Industrial Classification (SIC) Codes: 822,824,829.

Description of Affected Public: Institutions of higher education with 15 or more full-time employees.

Responses: 3,000.

Reporting Hours: 12,000.

Federal Costs: $48,000.00.

Applicable Under sec. 3504(h) of Pub. L. 95–511: Not applicable.

Number of Forms: 1.

Data are used by EEOC in its compliance, litigation, and conciliation and voluntary programs activities. Data are shared with other Federal agencies, and 25 State and 77 local Fair Employment Practices Commissions (FEPC's) in support of their EEO programs after pledging to abide by EEO–6 confidentiality restrictions.

Dated: June 29, 1989.

For the Commission.

John Seal,

Management Director, Equal Employment Opportunity Commission.

[FR Doc. 89-15703 Filed 7-5-89; 8:45 am]

BILLING CODE 6570-06-M

Agency Report Forms Under OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval and to publish a notice in the Federal Register notifying the public that the agency has made such a submission. The proposed report form under review is listed below.

DATE: Comments must be received on or before August 21, 1989. If you anticipate commenting on a report form, but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Liaison Officer of your intent as early as possible.

ADDRESS: Copies of the proposed report form, the request for clearance, (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Liaison Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

EEOC Agency Liaison Officer: Margaret P. Ulmer, Financial and Resource Management Services, Room 2220, 1801 L Street, NW., Washington, DC 20507; Telephone (202) 663–4279.

OMB Reviewer: Joseph Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget 3201, New Executive Office Building, Washington, DC 20503; Telephone (202) 395–7316.

Type of Request: Extension (No Change)

Title: State and Local Government Information EEO–4

Form Number: EEOC Form 164

Frequency of Report: Annually for respondents with 100 or more employees, a statistical sample of respondents with 15–99 employees.

Type of Respondent: State and local governments with 15 or more employees.

Standard Industrial Classification (SIC) Code: 911–965

Description of Affected Public: State and local governments

Responses: 24,100

Reporting Hours: 125,400

Federal Cost: $298,500

Applicable under Sec. 3504(h) of Pub. L. 96511: Not applicable

Number of Forms: 1

Abstract-Needs/Uses: EEO–4 data are used by EEOC to investigate charges

of discrimination against State and local governments and in EEOC systemic program decisions. Data are shared with several Federal government agencies. Under sec. 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO-4 data are also shared with approximately 38 State and 102 local FEPC agencies. Aggregate data are used by researchers and the general public.

Dated: June 29, 1989.

For the Commission.

John Seal,

Management Director, Equal Employment Opportunity Commission.

[FR Doc. 89-15794 Filed 7-5-89; 8:45 am]

BILLING CODE 6570-06-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Martitime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 and/or § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-003155-008.

Title: Port Authority of New York and New Jersey Terminal Agreement.

Parties: Port Authority of New York and New Jersey (Port) Maersk Container Service Company (MCS).

Synopsis: The Agreement amends the basic lease agreement (Agreement No. 224-003155). The Agreement provides for MCS's use of Building No. 186, Port Newark as an equipment maintenance facility. MCS shall pay the Port an annual rent of $100,050.00 for the use of Building No. 186.

By Order of the Federal Maritime Commission.

Dated: June 29, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-15763 Filed 7-5-89; 8:45 am]

BILLING CODE 6730-01-M

[Agreement No. 202-010424-018]

United States Atlantic and Gulf Hispaniola Steamship Freight Conference; Erratum

Reference is made to the **Federal Register** Notice of June 22, 1989, (FR (26249) Vol. 54, No. 119).

The Synopsis of the subject Agreement Notice should have also stated that the proposed modification further amends the Agreement to permit the parties to rationalize sailings both among themselves and with the parties to Agreement No. 203-010977, the Hispaniola Discussion Agreement.

By Order of the Federal Maritime Commission.

Dated: June 29, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-15795 Filed 7-5-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

June 28, 1989.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340)

Final Approval Under OMB Delegated Authority of the Implementation of the Following Report

Report title: 1989 Survey of Consumer Finances

Agency form number: FR 3059

OMB Docket Number: 7100-0243

Frequency: One-time

Reporters: Sample of households nationwide

Annual reporting hours: 3,600

Estimated average time per response: 80 minutes

Estimated number of respondents: 2,700

Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. 225a, 1828(c), 1842 and 1843). No problem of confidentiality arises since names and other characteristics that would permit personal identification of respondents will not be provided to survey sponsors.

This survey will collect data on the assets, debts, incomes, work history, pension rights, use of financial services, and attitudes of a sample of U.S. households. It will consist of in-person interviews from a sample of approximately 2,700 households.

Board of Governors of the Federal Reserve System, June 28, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-15825 Filed 7-5-89; 8:45 am]

BILLING CODE 6210-01-M

Consumer Advisory Council; Solicitation of Nominations for Membership

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Solicitation of nominations for membership on the Board's Consumer Advisory Council.

SUMMARY: The Board is asking the public to nominate qualified individuals for appointment to its Consumer Advisory Council, which is comprised of representatives both of consumer and community interests and of the financial services industry. New members will be selected for three-year terms that will begin in January 1990. The Board expects to announce the selection of new members by year-end 1989.

DATE: Nominations should be received by August 31, 1989.

ADDRESS: Nominations should be submitted in writing to Dolores S. Smith, Assistant Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Information about nominees will be available for inspection upon request, except as provided in the Board's Rules Regarding Availability of Information (12 CFR 262.6(a)).

FOR FURTHER INFORMATION CONTACT: Bedelia Calhoun, Staff Specialist, Division of Consumer and Community Affairs, (202) 452-2412; or for Telecommunications Device for the Deaf (TDD) users *only*, Earnestine Hill or Dorothea Thompson (202) 452-3544; Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Consumer Advisory Council was established in 1976 at the direction of Congress to advise the Federal Reserve Board on the exercise of its duties under the Consumer Credit Protection Act and on other consumer-related matters. The Council by law represents the interests both of consumers and of the financial community. Members serve three-year terms that are staggered to provide the Council with continuity.

New members will be selected this year for terms beginning January 1, 1990, to replace members whose terms expire this year. The Board invites nominations in all categories, but is particularly interested in receiving nominations of persons from consumer advocacy groups, community organizations, state and local government offices, and the academic community who are familiar with current issues in the area of consumer credit and other consumer financial services.

Nominations should include the address and telephone number of the nominee information about past and present positions held, and a description of special knowledge, interests or experience related to consumer credit or other consumer financial services. Individuals may nominate themselves as well as other candidates. In making the appointments, the Board will seek to complement the qualifications of continuing Council members in terms of affiliation and geographic representation, and to ensure the representation of women and minority groups. The Board expects to announce its selection of new members by year-end.

The Council meets in Washington, DC three times a year for one and a half days. Council members receive $100 per day for participating in meetings and for travel time. The Board also pays travel expenses.

The names and affiliations of current Council members (and the expiration date of each term of office) are listed below:

Members whose terms expire in 1989

Judith N. Brown, President, Judith N. Brown Associates, Edina, Minnesota, December 1989

Richard B. Doby, Financial Services Consultant, Denver, Colorado, December 1989

Richard H. Fink, Executive Vice President, University Advancement and Planning, George Mason University, Fairfax, Virginia, December 1989

Stephen Gardner, Assisting Attorney General, Consumer Protection Division, State of Texas, Dallas, Texas, December 1989

Elena Hanggi, Director, Institute for Social Justice, Little Rock, Arkansas, December 1989

Ramon E. Johnson, Professor of Finance, College of Business and Graduate School of Business, University of Utah, Salt Lake City, Utah, December 1989

Richard L.D. Morse, Professor of Family Economics, Kansas State University, Manhattan, Kansas, December 1989

Members Whose Terms Continue Thru 1990 and 1991

William Odom, Chairman & Chief Executive Officer, Ford Motor Credit Company, Dearborn, Michigan, December 1990

Naomi Albanese, Former Professor of Home Economics, University of North Carolina, Greensboro, North Carolina, December 1990

George H. Braasch, Assistant General Counsel, Sears, Roebuck and Company, Chicago, Illinois, December 1991

Cliff E. Cook, Compliance Officer, Puget Sound Bank, Tacoma, Washington, December 1991

William C. Dunkelberg, Dean, School of Business & Management, Temple University, Philadelphia, Pennsylvania, December 1991

James Fletcher, President & Director, South Shore Bank Chicago, Chicago, Illinois, December 1991

James W. Head, Executive Director & Attorney, National Economic Development and Law Center, Berkeley, California, December 1991

Robert A. Hess, President, Wright Patman Congressional Federal Credit Union, U.S. House of Representatives, Washington DC, December 1990

Jerry D. Craft, Senior Vice President, First National Bank of Atlanta, Atlanta, Georgia, December 1990

Betty Tom Chu, Chairman, Trust Savings Bank, Arcadia, California, December 1990

Donald C. Day, President, New England Securities Corp., Boston, Massachusetts, December 1990

R.B. (Joe) Dean, Jr., Administrator, Community and Consumer Affairs, South Carolina National Bank, Columbia, South Carolina, December 1991

Sandra Phillips, Executive Director, Pittsburgh Partnership for Neighborhood Development, Pittsburgh, Pennsylvania, December 1990

Vincent P. Quayle, Director, St. Ambrose Housing Aid Center, Baltimore, Maryland, December 1991

Clifford N. Rosenthal, Executive Director, National Federation of Community Development Credit Unions, New York, New York, December 1991

Alan M. Silberstein, Senior Vice President, Chemical Bank, New York, New York, December 1991

Barbara Kaufman, Co-Director, KCBS Call for Action, San Francisco, California, December 1991

A.J. (Jack) King, Chairman & Chief Executive Officer, Valley Bank of Kalispell, Kalispell, Montana, December 1990

Michelle Meier, Counsel for Government Affairs, Consumers Union of U.S., Inc., Washington, DC, December 1991

Linda K. Page, Director, Ohio Department of Commerce, Columbus, Ohio, December 1991

Ralph E. Spurgin, President, Limited Credit Services, Inc., Columbus, Ohio, December 1990

David B. Ward, Senior Vice President, Government Relations Department, Beneficial Management Corporation, Peapack, New Jersey, December 1991

Lawrence Winthrop, President, Consumer Credit Counseling Service of Oregon, Portland, Oregon, December 1990

Board of Governors of the Federal Reserve System, June 29, 1989.

William W. Wiles,

Secretary to the Board.

[FR Doc. 89-15821 Filed 7-5-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the change in Bank Control Act (12 U.S.C. 1817 (j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817 (j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice

or to the offices of the Board of Governors. Comments must be received not later than July 20, 1989.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Don Dennis*, Grady, Oklahoma; to acquire an additional 0.60 percent of the voting shares of Citizens Commerce Corporation, Ardmore, Oklahoma, for a cumulative total of 10.49 percent and thereby indirectly acquire Citizens National Bank of Ardmore, Ardmore, Oklahoma.

Board of Governors of the Federal Reserve System, June 29, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-15822 Filed 7-5-89; 8:45 am]

BILLING CODE 6210-01-M

Erie Bankshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 20, 1989.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Erie Bankshares, Inc.*, Erie, Kansas; to merge with Chetopa State Bancshares, Inc., Chetopa, Kansas, and thereby indirectly acquire Chetopa State Bank and Trust Company, Chetopa, Kansas; First Neodesha Bancshares, Inc., Neodesha, Kansas, and thereby indirectly acquire First Neodesha Bank, Neodesha, Kansas; and Neosho County Bancshares, Inc., Chanute, Kansas, and thereby indirectly acquire Bank of Commerce, Chanute, Kansas.

In connection with this application, Applicant also proposes to engage directly and through the acquired banks in credit-related insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 29, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-15823 Filed 7-5-89; 8:45 am]

BILLING CODE 6210-01-M

First Community Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 26, 1989.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Community Bancshares, Inc.*, Princeton, West Virginia; to acquire 100 percent of the voting shares of C.R.N.B. Shares, Inc., Richwood, West Virginia, and thereby indirectly acquire Cherry River National Bank, Richwood, West Virginia. Comments on this application must be received by July 20, 1989.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Marengo Financial Corp.*, Marengo, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank in Marengo, Marengo, Illinois.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Crosswhite Bankshares, Inc.*, Denver, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of The Rocky Ford National Bank, Rocky Ford, Colorado. Comments on this application must be received by July 20, 1989.

D. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Probancshares, Inc.*, Houston, Texas; to become a bank holding company by acquiring 97.9 percent of the voting shares of Woodlands Capital Corporation, Wilmington, Delaware, and thereby indirectly acquired Probank, National Association, The Woodlands, Texas.

2. *Woodlands Capital Corporation*, Wilmington, Delaware; to become a bank holding company by acquiring 97.9 percent of the voting shares of Probank, Natioanl Association, The Woodlands, Texas.

The Board of Governors of the Federal Reserve System, June 29, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-15824 Filed 7-5-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (40 FR 22859, May 27, 1974, as amended most recently at 54 FR 5682, February 6, 1989), is amended to reflect the following changes within the National Institutes of Health effective October 1, 1989: (1) Abolish the Office of Human Genome Research (HNAB) within the Office of the Director, NIH; and (2) establish the National Center for Human Genome Research (HN3). These changes will more properly reflect the high priority placed on mapping and sequencing complex genomes and the expansion of the genome research effort.

Section HN-B, Organization and Functions, is amended as follows effective October 1, 1989:

(1) Under the heading *Office of the Director (HNA)*, delete the title and statement for the *Office of Human Genome Research (HNAB)* in their entirety.

(2) After the statement for the *Clinical Center (HNJ)*, insert the following:

National Center for Human Genome Research (HN3). (1) Advises the Director, NIH, and senior staff on all aspects of genomic analysis; (2) coordinates the integration, review, and planning of genomic analysis research; (3) formulates research goals and long-range plans with the guidance of the NIH Program Advisory Committee on Complex Genomes; (4) serves as a focal point on genomic analysis research within NIH, other components of the Public Health Service, and other Federal agencies (e.g., DOE and NSF); (5) fosters, conducts, supports, and administers research and research training programs directed at promoting the growth and quality of research related to mapping and sequencing of complex genomes through: (a) Research grants, contracts, and cooperative agreements to institutions and individuals; (b) individual and institutional research training awards; (c) promotion of closer interaction with other bases of genomic analysis research; and (d) collection and dissemination of research findings in these areas; (6) develops plans for the centralized, systematic, targeted effort to create detailed maps of the genomes of organisms; (7) establishes research goals and criteria for review or progress in meeting those goals; (8) sponsors scientific meetings and symposia to promote progress through information sharing; and (9) fosters national and international information exchange with industry and academia concerning research on complex genomes.

This reorganization is effective October 1, 1989.

Date: June 22, 1989.

Louis W. Sullivan,

Secretary.

[FR Doc. 89-15767 Filed 7-5-89; 8:45 am]

BILLING CODE 4140-01-M

Centers for Disease Control

Human Neurobehavioral Effects of Combination Chemical Exposures; Meeting Change

This notice announces a change in the telephone number for the contact person for a previously announced meeting.

Federal Register Citation of Previous Announcement: 54 FR 24595, June 8, 1989.

Previously Announced Date and Time of the Meeting: July 7, 1989 9:00 a.m.-5:00 p.m.

Previously Announced Telephone Number: Commercial: (513) 553-8383

Change in the Telephone Number: Commerical: (513) 553-6383

Dated: June 26, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89-15817 Filed 7-5-89; 8:45am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 88N-0097]

Revised Chapter in Regulatory Procedures Manual; Perishable Foods Sampled by the Food and Drug Administration; Reannouncement of Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is reannouncing availability of revised Regulatory Procedures Manual (RPM) Chapter 9-73, previously titled "Perishable Foods, Including Fresh Fish and Seafood and Fresh Produce." It is now titled "Perishable Foods Sampled by the Food and Drug Administration." The availability of the RPM Chapter was previously announced, but implementation was subsequently postponed until further notice because of concerns about the impact of these revised procedures. The revised chapter 9-73 now available continues to provide FDA districts with guidance for uniform handling of sampled imported perishable food but has been modified to reflect recent court decisions affecting all types of guidance issued by the agency. The title has also been changed to distinguish between the past and the current version of the document.

EFFECTIVE DATE: Revised RPM Chapter 9-73 will be effective on September 5, 1989.

ADDRESSES: Submit written requests for single copies of Regulatory Procedures Manual Chapter 9-73 "Perishable Foods Sampled by the Food and Drug Administration" to: Office of Regulatory Affairs, Import Operations Branch (HFC-131), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6553. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist in processing your request. Regulatory Procedures Manual Chapter 9-73 "Perishable Food Sampled by the Food and Drug Administration" is available for public examination in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857-1706, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Marvin Blumberg, Office of Regulatory Affairs (HFC-131), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6553.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 29, 1988 (53 FR 28699), FDA announced the availability of revised Regulatory Procedures Manual Chapter 9-73. However, because of concerns about the impact of these revised procedures, in the **Federal Register** of November 4, 1988 (53 FR 44671), FDA announced that the effective date of the revised chapter had been delayed until further notice.

FDA is again announcing the availability of revised Chapter 9-73. The

version of the document now being made available includes some additional revisions to reflect recent court decisions that affect all guidance made available by the agency.

FDA's regulations (21 CFR 1.90) require that imported products, once sampled, be held pending FDA release. Experience shows that importers can temporarily maintain control of FDA-sampled perishable foods without spoilage and that many FDA sample analyses can be completed within 24 to 32 hours of sample collection. Sampled shipments can be controlled by importers either at the point of entry, or the shipments may proceed intact to some inland point where the shipments would be held. A temporary delay in final distribution of FDA-sampled lots increases the likelihood that any violative shipments will not reach consumers.

Revised RPM Chapter 9-73 advises that FDA has modified the Notice of Sampling involving shipments of perishable food products that are not suspected to be violative, to advise importers that distribution of these FDA-sampled shipments prior to 5 p.m. of the day following sample collection will warrant assessment of damages of up to three times the value of the merchandise. FDA will attempt to complete analysis and notify an importer of the results by 5 p.m. on the day following sample collection. Where nonsuspect shipments, controlled for the prescribed period, are subsequently found violative, districts are advised that they may recommend mitigation of damages.

In revising RPM Chapter 9-73, FDA concluded that it is no longer necessary to require a written agreement by importers that they will retrieve shipments later found violative by FDA analyses. In all cases, redelivery bonds remain in force until shipments are formally released. FDA may recommend to the U.S. Customs Service that liquidated damages of three times the value of unrecovered products be assessed when a shipment is found violative, and redelivery is necessary. In addition, other regulatory action may be initiated by FDA to remove from commercial distribution any violative products that have been distributed.

Dated: May 31, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-15851 Filed 7-5-89; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), Federal Register, Vol. 51, No. 191, pp. 35288–35291, dated Thursday, October 2, 1986; Vol. 52, No. 91, pp. 17832–17833, dated Tuesday, May 12, 1987; Vol. 52, No. 163, pp. 31818–31819, dated Monday, August 24, 1987; Vol. 53, No. 53, p. 8977, dated Friday, March 18, 1988; and Vol. 53, No. 150, pp. 29382–29383, dated Thursday, August 4, 1988) is amended to indicate a reorganization within the Bureau of Data Management and Strategy (BDMS) in the Office of the Associate Administrator for Management. The reorganization changes the organizational and functional alignment of each of BDMS' four offices: The Office of Information Resources Management (OIRM), the Office of Health Program Systems (OHPS), the Office of Statistics and Data Management (OSDM), and Office of Computer Operations (OCO). The changes consolidate the data administration function and the planning and support activities for the Project to Redesign Information Systems Management (PRISM) in OIRM. This was accomplished by abolishing the Data Administration Branch in the Division of Statistical Analysis, OSDM and transferring the function to the Data Administration Staff in OIRM. The PRISM Redesign Staff in OHPS is abolished and its functions transferred to the new Division of PRISM Redesign in OIRM. In addition, the Technical Research and Planning Staff is established in OCO, and there is a minor realignment of data center functions in OCO's subordinate components. Although several organizations in BDMS are unchanged, the entire set of BDMS functional statements are being republished to facilitate the amendment of Part F. of the Department statement.

The specific amendments to Part F. are described below:

• Section FH.10.D., Bureau of Data Management and Strategy (FHE) (Organization)

The Bureau of Data Management and Strategy (BDMS), under the leadership of the Director, BDMS, is comprised of the following organizational components:

1. Office of Information Resources Management (FHE1)
2. Office of Computer Operations (FHE6)
3. Office of Statistics and Data Management (FHE7)
4. Office of Health Program Systems (FHE8)

• Section FH.20.D., Bureau of Data Management and Strategy (FHE) (Functions), is deleted in its entirety and replaced by a new set of functional statements for the Bureau and its subordinate components. The Bureau title, functional statement, and administrative code remain unchanged; however, they are being republished in order to keep all of the Bureau's functional statements together in the **Federal Register.**

The new Section FH.20.D reads as follows:

D. Bureau of Data Management and Strategy (FHE)

Manages statistical data systems on HCFA programs to support program decisions by various HCFA components. Provides mathematical and statistical programming required to answer research inquiries. Develops and coordinates statistical and information policy. Coordinates the development of HCFA information policy as it relates to HCFA's long-range information plans with non-Federal segments of the health care industry. Develops common coding standards and quality assurance monitoring mechanisms. Provides technical information planning and developmental review of HCFA data collection initiatives. Coordinates the development of special purpose statistical data bases required for assessing the impact of proposals which change health care financing programs, special research and evaluation studies, and general data dissemination. Designs and develops the production of periodic statistical tabulations to assess the characteristics of HCFA beneficiaries and the utilization and cost of program benefits. Provides direction for the nationwide operation of a centralized automated data processing (ADP) and telecommunications facility for HCFA including systems analysis, programming, computer operations, and data transmission. Establishes and maintains computerized records supporting HCFA programs including records for determining entitlement to the utilization of Medicare benefits and program management records that facilitate the administration of HCFA programs. Negotiates and administers agreements and provides ADP liaison between HCFA users, the Social Security Administration, and other external organizations for the provision of ADP capacity and support services. Develops, coordinates, and directs the HCFA ADP Systems Security Program including its application to Medicare contractors, in accordance with the Office of Management and Budget, General Services Administration, and Department of Health and Human Services guidelines.

1. Office of Information Resources Management (FHE1)

Serves as the focal point for the planning of HCFA's information systems, information resources management (IRM), data administration, and activities under the Project to Redesign Information Systems Management (PRISM). Develops and assures compliance with HCFA's long and short range information plans and processes. Determines and assures compliance with internal HCFA IRM policies and procedures including information systems planning, systems approval, and security. Provides systematic identification, assessment, and certification of new, revised, or existing HCFA information systems and processes in accordance with departmental, other higher monitoring authorities, and with HCFA policies, standards, and information plans. Develops and maintains an inventory of HCFA's information systems. Coordinates and provides liaison on policy and planning for information systems within HCFA and between HCFA and other governmental agencies and nongovernmental groups. Develops, implements, and maintains a HCFA-wide IRM financial management program to fund and support IRM operation and information systems development activities. Formulates and executes the HCFA IRM common expense budget and Information Technology System plan and budget in conjunction with Agency-wide budgetary submissions to the Department. Administers the HCFA ADP workload management program to monitor selected system-related activities. Performs the Agency-wide ADP resource management function to assess and monitor ADP resource utilization. Develops, coordinates, and directs the HCFA ADP Systems Security Program to ensure the protection of HCFA systems and ADP equipment. Negotiates and administers agreements and provides liaison between HCFA, the Social Security Administration, and other external organizations for the provision of ADP support services. Develops and coordinates HCFA's participation in the Federal Information Processing Standards Program. Develops policies, procedures, and guidelines relating to the IRM aspects of data administration. Directs the management and monitoring of data exchange, privacy, data dictionary, systems interface, and data base support activities. Designs, evaluates, and conducts analyses related to data administration and data base management improvement projects. Establishes and maintains a data library and an inventory of HCFA data bases. Plans, designs, and develops the Data Base Integration Program. Directs and coordinates implementation of PRISM, including all contractor support activities.

a. IRM Planning Staff (FHE1–1)

Formulates and assures compliance with HCFA's Information Resources Managemenmt (IRM) Plan and associated long-range and short-range IRM plans. Develops and assures compliance with HCFA's IRM policies. Formulates the HCFA information technology system 5-year plan and budget in conjunction with the Agency's budget submissions to the Department Develops HCFA's annual ADP spending plan. Develops, implements, and maintains the systems required to monitor the progress of selected bureau projects. Coordinates and provides liaison on information systems policy and planning within HCFA (including regional offices) and between HCFA and other governmental agencies. Provides systematic identification, assessment, and certification of new, revised, or existing HCFA information systems and processes in accordance with departmental, other higher monitoring authorities, and HCFA policies, standards, and information plans.

b. ADP Resources Staff (FHE1–2)

Develops, implements, and maintains a HCFA-wide financial management program to fund and support information resources management (IRM) operations and information systems development activities. Plans, budgets, and controls the acquisition and contractual procurement of all HCFA equipment and related ADP services. Formulates and executes the HCFA ADP common expense budget and executes the information technology system budget. Develops, implements, and maintains the HCFA ADP workload management program to monitor selected system-related activities. Performs an Agency-wide resource accounting function to assess and monitor ADP resource utilization. Develops, coordinates, and directs the HCFA ADP Systems Security Program to ensure that adequate safeguards are in place to protect HCFA systems and ADP equipment. Negotiates and administers agreements and provides ADP liaison between HCFA users, the Social Security Administration, and other external organizations for the provision of ADP capacity and support services. Develops and coordinates HCFA's participation in the Federal Information Processing Standards Program, including the promulgation of Agency ADP standards and review of externally developed standards. Provides staff support to the bureau director in her/his role as the individual authorized to initiate ADP procurement actions and administers HCFA's ADP Contract Administration Program.

c. Data Administration Staff (FHE1–3)

Develops and implements policies, standards, performance requirements, and guidelines for data administration activities. Directs the management/control of data exchange, access, data dictionary, systems interface, and data base support initiatives. Develops and implements the HCFA data dictionary in accordance with data administration policies, goals, and objectives. Designs, evaluates, conducts analyses, and provides support services related to data administration and data base management improvement projects. Maintains an inventory of HCFA data bases and provides guidelines for their access. Plans, design, develops, and implements the Data Base Integration Program. Directs the establishment, issuance, and enforcement of standards for data definition and record data base design. Develops and implements plans and policies for the classification, standardization, identification, development, and administration of data to meet HCFA's information requirements. Develops and conducts programs to promote data sharing among HCFA components and between HCFA and other organizations. Develops and maintains a strategy and plan for applying data planning and management techniques to support the redesign and functioning of Agency systems. Provides staff support to the Information Strategy Council. Determines and ensures compliance with policies and procedures regarding implementation of the Privacy Act and the Freedom of Information Act and responds to related external requests. Provides external liaison on data administration issues. Directs contractor support for data administration.

d. Division of PRISM Redesign (FHE11)

Plans, organizes, coordinates, and controls the activities required to assure

the timely, accurate, cost-effective, and successful completion of the Health Insurance/Supplementary Medical Insurance (HI/SMI), Medicare/Medicaid Decision Support System (MMDSS), Program Management (PM), and Administrative Logical Application Groups (LAGs) related to the development, conversion, and implementation of the Project to Redesign Information Systems Management (PRISM). Advises HCFA managers in the preparation of short, intermediate, and long range plans for the improvement of HCFA information systems. Keeps informed of organizational, legislative, administrative, and technological changes that affect the PRISM LAG processes which impact upon future planning. Works continuously with the appropriate levels of management and with BDMS staff to provide liaison and assistance with respect to Agency-wide planning and participates in planning activities to ensure that the Agency's ADP systems meet the needs of the user community for high quality, reliable data. Develops and designs methods and processes which assure the quality of the enhancements to existing systems and the development of new systems for PRISM LAGs. Plans and conducts comprehensive analyses of complex and diversified areas such as systems analysis and design methodologies, computer programming methods and techniques, softwear testing, validation, systems acceptance, ADP telecommunications resources configuration, and data base security and integrity. Develops ADP systems quality assurance and software testing standards and guidelines for the Agency's ADP systems which ensure that they meet the requirements of the Agency components and support Agency goals and objectives. Plans the integration and validation of the current and future development of all PRISM LAG systems. Formulates contracting strategies and prepares procurement packages for major contractual agreements to support the PRISM systems design, development, and implementation. Coordinates project management for long-range system design plans.

2. Office of Computer Operations (FHE6)

Directs the management, selection, acquisition, operation, maintenance of, and establishes workload planning and controls for HCFA's automated data processing (ADP) and data communications (DC) facilities and equipment including mainframe computers, minicomputers, microcomputer and word processing equipment, associated vendor supplied software, and ADP training (hereafter referred to as ADP). Serves as the project office for the Facility Management Contract. Establishes Agency minicomputer standards for hardware/software and authorizes exceptions to established hardware and software standards. Assesses new technology, determines HCFA's programmatic requirements, and develops plans to meet HCFA's needs. Provides technical assistance and consultation to all HCFA components regarding solutions to ADP equipment and support software problems including system design, selection, procurement, technical evaluation, security, utilization, and operations. Controls ADP resources including cost estimates; planning and scheduling of expenditures; and inventory, purchase, lease, and maintenance of ADP hardware, software, and services. Provides technical review and serves as the Agency's final technical authority for the approval of the purchase, lease, and maintenance for all ADP equipment and systems throughout HCFA. Develops budget estimates and spending plans for activities managed by the office including those with Agency-wide scope in conjunction with the Agency budget process administered by the Office of Budget and Administration. Manages the ADP resource planning function to ensure the availability of HCFA Data Center resources for managing the Project to Redesign Information Systems Mangement (PRISM). Provides technical evaluation and liaison to the Department and other Federal agencies related to ADP procurement actions. Provides analyses, installation, modification, and maintenance of operating systems, microcomputers and minicomputers, and DC systems software for all HCFA components. Manages systems software and software products including data base management systems, graphics, program generators and statistical analysis packages, personal computer packages, and office automation systems. Monitors ADP equipment utilization capacity and performance and makes available the necessary reports for all levels of management. Responsible for all long-term technical and operational capacity planning for solutions to HCFA's ADP mission needs and requirements. Advises the bureau and HCFA executive staff on ADP issues and concerns and represents HCFA in dealings with Federal and non-Federal agencies and organizations on the Agency-wide range of the office's functions including vendor supplied software, hardware systems plans, and ADP acquisition and utilization.

a. Technical Research and Planning Staff (FHE61)

Advises the Director, Office of Computer Operations, and executives throughout HCFA components of the impact in the HCFA Data Center (HDC) of program management activities including new requirements, growth, and new technology. Plans, organizes and directs the acquisition of ADP/DC hardware and software within HCFA. Plans, organizes, coordinates, and controls activities required to maintain a contingency and disaster recovery plan for the HDC. Performs technical assessments of new products, conducts independent evaluations, and acts as liaison for all beta testing. Conducts comprehensive impact analyses on network planning and design to ensure continuity in support of the total HCFA user community. Conducts studies to determine and define communications network user requirements. Tests and evaluates state of the art systems software for planning and development. Serves as the Agency representative and inter- and intra-Department liaison for technology changes in the total ADP environment. Serves as principal focus and coordinator for major system designs resulting from new technology (e.g. PRISM) or significant legislation (e.g. Catastrophic Coverage).

b. Division of Computer and Communications Services (FHE61)

Manages, operates, and maintains HCFA's Data Center (HDC) and data communication (DC) facilities. Establishes workload planning and controls and schedules work to be processed. Directs and manages the Agency-wide installations/relocations of ADP/DC equipment. Manages, evaluates, installs, and maintains HDC operating systems software and software products. Analyzes, evaluates, implements, modifies as necessary, and maintains data base management systems (DBMS). Provides direct interface with vendors and communication carriers for ordering and installing DC facilities. Conducts studies to determine communications network user requirements and provides technical advice and consultation to the user community.

c. Division of User Services and Support (FHE62)

Serves as the principal focal point for coordinating matters relating to the acquisition of end user ADP hardware and software with in HCFA. Develops and manages the HCFA/wide chargeback system for HCFA Data Center (HDC) users for determining and/or recommending the allocation of HDC resources within the user community. Manages and operates an Information Center to provide Agency-wide training and technical assistance for user of the HDC.

3. Office of Statistics and Data Management (FHE7)

Develops and implements plans and policies for the identification, classification coding, standardization, development, and security of data, procedures, and standards to meet HCFA's information requirements. Develops and maintains the Agency program information strategy and plan for applying data planning and management techniques to support the redesign and functioning of Agency systems. Designs, implements, maintains, and ensures the continuing operation of current and revised national health care information and program design support systems. Extracts health care data necessary to support HCFA activities and HCFA, the Social Security Administration, and other health-related sources using large-scale computer systems and/or personal computers, as necessary. Provides sophisticated computational and statistical services, mathematical modeling, simulations, systems analysis, and statistical programming. Designs information systems, data bases, and software applications for research and development. Conducts special purpose information retrieval and processing activities in support of projects undertaken by HCFA. Develops programs to array data in accordance with general specifications developed within HCFA. Develops standards for and monitors the quality of program management and statistical data. Develops policy and procedures concerning the release of program data. Provides direction to HCFA staff, other agencies, and the private sector on the implementation and administration of these policies. Coordinates and provides liaison on data standards activities, the release of data, matters dealing with program data confidentiality, and research plans within HCFA and between HCFA and other governmental agencies and non-governmental groups. Coordinates and provides liaison with HCFA's Privacy Officer and Freedom of Information Officer on all matters pertaining to the Privacy Act or the Freedom of Information Act. Serves as the focal point for the planning and evaluation of HCFA's data standards development. Disseminates statistical data, estimates, analyses, and other information on health-related programs in response to questions from legislators, program administrators, policymakers, researchers, and health planners in the public and private sectors. Screens, evaluates, and responds to requests for publicly available data including developing guidelines and initiating data release agreements. Prepares statistical reports for external publications and management reports on HCFA programs and related areas. Provides support for program analysis, policy development, and epidemiological research for the Federal and Stage Renal Disease (ESRD) Program and disseminates ESRD program information in publications, management reports, and responses to ad hoc requests.

a. Division of Data Development (FHE71)

Designs, implements, maintains, and ensures the continuing operation of national health care information and decision support systems. Extracts health care data necessary to support HCFA activities from HCFA components, the Social Security Administration, and other health-related sources using large-scale computer systems and/or personal computers, as necessary. Develops programs to array data in accordance with general specifications developed within HCFA. Develops and maintains file management systems, data storage techniques, file documentation libraries, and information retrieval systems. Ensures the quality and integrity of program statistical data by advising and consulting on data collection policy and procedures, forms designs, and forms clearance with other HCFA components requiring program data. Arranges for necessary revisions in source records due to legislation or changes in administrative operations.

b. Division of Information Analysis (FHE73)

Disseminates statistical data, estimates, analyses, and related information on health-related programs in response to questions from legislators, program administrators, policymakers, reseachers, and health planners in the public and private sectors. Maintains a data library including publications, computer output, microfilm, and machine-readable data files. Designs and maintains data systems for the analysis and dissemination of program data. Prepares statistical reports for external publications and management reports on HCFA programs and related areas. Provides support for program analysis, policy development, and epidemiological research for the Federal End Stage Renal Disease (ESRD) Program and disseminates ESRD program information in publications, management reports, and responses to ad hoc requests.

c. Division of Data Documentation and Release (FHE75)

Develops policy to measure the quality of data to improve the efficiency and effectiveness of information management in HCFA. Develops and implements procedures to ensure the integrity and proper usage of statistical data. Develops, maintains, and coordinates documentation on the sources, uses, and data limitations on files produced from HCFA statistical systems. Participates in the development and establishment of data standards used for areas such as uniform billing, uniform reporting, and uniform coding systems. Develops, maintains, and coordinates the publication and dissemination of manuals such as the Statistical Files Manual and HCFA Data Profiles to inform other government agencies and non-government organizations of the data maintained in HCFA's statistical systems. Provides advice and consultation on the availability and use of HCFA's data. Develops and implements data release policies and costing methodologies to be used when releasing information to the public. Develops policy and procedures concerning the release of program data. Develops and implements confidentiality policies applying to the generation, collection, analysis, interpretation, and release of Medicare program and enrollment data. Coordinates with HCFA's Privacy Officer and Freedom of Information Officer in developing and applying Privacy Act and Freedom of Information Act policies and procedures to HCFA program data released to other Federal components, research organizations, HCFA contractors, and the public.

d. Division of Statistical Analysis (FHE76)

Performs the planning, organizing, and coordinating of activities required to build and control HCFA's program data needs. Plans, organizes, coordinates, and controls activities required to assure the timely, accurate, cost-effective, and successful development and implementation of new and revised decision support systems to support Medicare statistical policy and program management information development.

Plans and conducts comprehensive analyses of complex and diversified areas such as systems analysis and design methodologies, computer programming methods and techniques, software testing, validation and systems acceptance, configuration of HCFA's automated data processing (ADP) and data communications resources, and data base security and integrity. Formulates contracting strategies and prepares procurement packages for major contractual agreements concerning office workload. Provides highly technical data analysis and processing support needed to analyze current and proposed health care delivery systems; the implications of experimental financing methods on providers and physicians; the quality and accessibility of care being received by beneficiaries; the monetary effects of new legislation on alternative reimbursement methodologies; and related research studies of concern to policymakers and program managers. Develops data bases and computer software for addressing research initiatives; ad hoc data requests; statistical, legislative, and policy issues; and computer-based simulations in support of studies by HCFA's researchers and program managers. Manages the Hospital Cost Report Information System which is the national data base of all Medicare hospital cost reports. Collects, validates, and processes automated and hard copy cost reports; generates routine and user-specific research, actuarial, and budgetary reports; and incorporates modifications to the systems that will handle revised user requirements and changes in cost reports. Prepares documentation for and participates in the preparation of fiscal intermediary manual instructions. Coordinates program support to office staff in such areas as disk space requirements, ADP equipment acquisition, and tape handling. Provides office focus for ADP systems standards and documentation.

e. Division of Medicaid Statistics (FHE77)

Collects annual (HCFA-2082) Medicaid program statistical reports from State Medicaid agencies. Works with State Medicaid agencies to correct errors and collect missing information. Conducts consistency checks across data bases to verify the validity of submitted data and makes corrections to current and historical data to produce accurate statistics. Publishes annual Medicaid statistics in various HCFA publication series and produces statistical tables for use by HCFA Managers in administering the Medicaid program. Collects special project statistics (i.e., early and periodic screening, diagnosis, and treatment and sterilization) to be used by HCFA staff to administer or monitor special Medicaid programs. Responds to Medicaid data requests from HCFA staff, other agencies in the Department of Health and Human Services, the Office of Management and Budget, members of Congress, other Federal departments, State agencies, public and private higher education institutions, and individual researchers. Provides statistical consultation to other HCFA components concerning the Medicaid program. Designs and develops the computerized mechanisms for collecting person-based Medicaid data. Collects individual eligibility, provider, and claims data from State automated-data systems. Processes these data to verify the accuracy of the data consistent with developed standards. Provides technical assistance to the States in the development and submittal of these data and maintains ongoing contact with State agencies to maintain a high quality of data submitted. Designs, develops, and maintains a system for computerizing and making available to all HCFA components the Medicaid program characteristics data contained in State Medicaid Plans. Designs and develops computer systems to utilize the data collected for statistical and actuarial purposes. Provides technical assistance to other components of HCFA in the development and use of these statistical data as they relate to specific program areas.

4. Office of Health Program Systems (FHE8)

Designs, develops, implements, and maintains automated data processing (ADP) and telecommunications systems and software, data files and formats, and manual procedures required to support the Agency's programmatic mission from operational, program management, and quality control aspects. Establishes and maintains a national file of eligible Medicare beneficiaries. Establishes and maintains a history of Medicare benefit utilization. Integrates entitlement data and information from other programs (e.g., Medicaid, Veterans Administration) into Medicare files. Receives and responds to queries regarding beneficiary entitlement and benefit and deductible status from a nation-wide network of Medicare fiscal agents. Provides program data and related information to authorized requestors. Maintains systems that support the certification of providers of service in the Medicare and Medicaid programs. Determines and reconciles payment liability for group health organizations. Maintains systems that support the certification of health maintenance organizations and capitation demonstration projects. Prepares billings for, receives, and processes ADP records for Medicare premium remittances from third-party payers and beneficiaries. Prepares a variety of program management reports (e.g., workloads, processing times) for distribution throughout the Agency, Department, and to Medicare fiscal agents. Provides ADP support to the Agency for quality control systems and beneficiary and provider overpayment systems. Consults with central and regional office components and other government agencies to define programmatic ADP system performance requirements. Negotiates reviews, and approves systems designs. Consults with bureau components to define ADP and teleprocessing resource requirements and provides input to the budget planning and procurement processes. Ensures awareness of and compliance with government-wide and local security and privacy requirements within the office. Provides office focus for systems security, standards, and documentation.

a. Division of Beneficiary and Utilization Systems (FHE82)

Designs and implements automated data processing (ADP) systems, manual processes, and procedural instructions for development and maintenance of a master file of all individuals eligible for Medicare benefits (including Railroad Retirement annuitants); enrollment of beneficiaries and issuance of identification cards; posting of benefit utilization data and responding to utilization queries from intermediaries and carriers; issuance of notices of benefit utilization; maintenance of controls for reconciliation and audit of providers and carriers; and determination, billing, and collection of Medicare premium liability from third party entities and direct paying beneficiaries. Furnishes a variety of management data for review, appraisal, and planning purposes and assists other HCFA systems components in developing and interpreting the data. Provides systems support and technical expertise to the Office of Budget and Administration in resolving electronic exceptions and processing correspondence.

b. Division of Capitation Systems (FHE83)

Designs and implements automated data processing (ADP) systems and operating instructions for development and maintenance of the master file of all individuals enrolled in group health plans; preparation of beneficiary mailings for beneficiaries enrolling in "lock-in" Health Maintenance Organizations (HMOs) and certain HMO solicitation projects; determination and reconciliation of payment liability for group health plans; development and maintenance of certification and financial systems for all HMOs; and development and maintenance of systems to support demonstration projects on Private Health Plan Options (PHPO). Furnishes a variety of management data for review, appraisal, and planning purposes and assists other HCFA systems components in developing and interpreting the data. Provides systems support and technical expertise to the Office of Prepaid Health Care in the payment, audit, reconciliation, certification, and quality assurance of PHPO systems.

c. Division of Program Management Systems (FHE84)

Design, develops, and implements a wide variety of automated data processing (ADP) and telecommunications systems in support of HCFA program management functions including workload and operating systems; Supplemental Medical Insurance physician and laboratory payment information systems; management support systems, beneficiary and provider overpayment systems; provider certification and billing data including an on-line query and reply subsystem; accounting controls for the reconciliation and audit of providers and carriers; and Medicare quality control systems. Provides technical support to HCFA's regional offices in program management systems areas. Provides technical and state-of-the-art expertise in the use of current program data bases for the design and development of new systems which support HCFA's program management objectives.

Date: June 28, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89-15796 Filed 7-5-89; 8:45 am]

BILLING CODE 4120-01-M

National Institutes of Health

Division of Research Grants; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of the following study sections for July 1989, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, fort the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301-496-7534 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each study section. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the executive secretary to confirm the exact date, time and location. All times are A.M. unless otherwise specified.

Study section	July 1989 meeting	Time	Location
Behavioral and Neurosciences-I, Dr. Luigi Giacometti, Rm. 303, Tel. 301-496-5352.	July 19-21	9:00	The Savoy Suites Hotel, Washington, DC.
Behavioral and Neurosciences-2, Dr. Luigi Giacometti, Rm. 303, Tel. 301-496-5352.	July 15	9:00	Omni Shoreham Hotel, Washington, DC.
Biomedical Sciences-1, Dr. Gerald Greenhouse, Rm. 336, Tel. 301-496-7396.	July 19-21	8:30	St. James Hotel, Washington, DC.
Biomedical Sciences-3, Dr. Gene Headley, Rm. A25, Tel. 301-496-7287	July 24-25	8:30	St. James Hotel, Washington, DC.
Biomedical Sciences-4, Dr. Charles Baker, Rm. 219, Tel. 301-496-7150	July 18-20	8:30	Crowne Plaza, Rockville, MD.
Biomedical Sciences-5, Dr. Zain Abedin, Rm. 328, Tel. 301-496-7830	July 17-18	8:30	The Savoy Suites Hotel, Washington, DC.
Biomedical Sciences-6, Dr. Symed M. Amir, Rm. 326, Tel. 301-496-3117	July 19-21	8:30	Holiday Inn, Georgetown, DC.
Clinical Sciences-1, Dr. Lynwood Jones, Jr., Rm. A20, Tel. 301-496-7510	July 19-20	8:30	Crowne Plaza, Rockville, MD.
Clinical Sciences-4, Mrs. Jo Pelham, Rm. 319C, Tel. 301-496-7477	July 20-21	9:00	Holiday Inn, Bethesda, MD.

The Subcommittees of the Biomedical Sciences Study Section will hold combined meetings: Subcommittees 1 & 7 are listed as Subcommittee 1 and Subcommittees 2 & 4 are listed as Subcommittee 4.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, 13.333, 13.337, 13.393-13.396, 13.837-13.844, 13.846-13.878, 13.892, 13.893, National Institutes of Health, HHS)

Dated: June 29, 1989.

William F. Raub,

Deputy Director, NIH

[FR Doc. 89-15814 Filed 7-5-89; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

National Toxicology Program Notification of the Disposal of Wet Tissues from Toxicology and Carcinogenesis Studies in the National Toxicology Program Archives

The National Toxicology Program (NTP) Archives currently maintains records and pathology materials for over 300 National Cancer Institute (NCI) and NTP toxicology and carcinogenesis studies, some of which were started and

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completed more than ten years ago. The storage space for the wet tissues (animal organs and carcasses in formalin) and paper data is no longer adequate and additional storage space would be required. Since most of these studies were completed ten or more years ago, and for most studies histological slides and microfiche copy of paper data are available, we plan to discard the wet tissues and paper data from selected studies where it is anticipated that there is either little current interest or the tissues are considered no longer viable. The histological slides, paraffin blocks and microfiche copy of paper data will remain available for these studies.

Attached is the sixth list of studies for which the wet tissues and paper data are to be discarded. (The first list was published in the **Federal Register** on September 19, 1986, 51 FR 33303–33304; the second list on February 9, 1987, 52 4060–4062; the third list on September 21, 1987, 52 FR 35483–35486; the fourth list on January 22, 1988, 53 FR 1846–1854; and the fifth list on October 12, 1988, 52 FR 39806–39811.) The chemicals are from studies conducted at laboratories under contract to NCI or NTP and where the final sacrifice occurred prior to 1979.

Anyone who are questions about the studies listed should contact Dr. Gary A. Boorman, Project Officer for the NTP Archives, by telephone at (919) 541–3440, FTS 629–3440, or in writing at NIEHS, MD C2–01, P.O. Box 12233, Research Triangle Park, NC 27709.

If no objections are received by 30 days after publication of this notice, the formalin fixed wet tissues and paper data from these studies will be discarded.

Attachment.

Dated: June 23, 1989.

David P. Rall,

Director, National Toxicology Program.

LIST VI — PROPOSED DISPOSAL OF WET TISSUES FOR TOXICOLOGY AND CARCINOGENESIS STUDIES

Exp. No.	Chemical	Single Dose Study		14-Day Study		90-Day Study		2-Year Study	
		Start	End	Start	End	Start	End	Start	End
C01990	4,4'-Methylenebis(N,N-DIM	01/00/72A		03/00/72A		04/00/72A	09/00/73A	01/00/73A	01/00/75A
	TR-186 P:								
	MR Thyroid Gland (Follicular Cell Carcinoma)								
	FR Thyroid Gland (Follicular Cell Carcinoma)								
	MM Liver (Adenoma or Carcinoma)								
	FM Liver (Adenoma or Carcinoma)								
C02006	Michler's Ketone	02/00/71A		04/00/71A		05/00/71A	10/00/71A	02/00/72A	02/00/74A
	TR-181 P:								
	MR Liver (Carcinoma)								
	FR Liver (Carcinoma)								
	MM Circulatory System (Hemangiosarcoma)								
	FM Liver (Carcinoma)								
C02039	*No Match — See Attachment #1 — (CBDS EDSR)								
C02200A	*Styrene	09/00/71A		11/00/71A		12/00/71A	10/00/72A	09/00/72A	03/00/75A
	TR-185 P: MM Lung (Alveolar/Bronchiolar Adenoma or Carcinoma)								
C02244	P-Nitrosodiphenylamine	09/00/71A		11/00/71A		12/00/71A	08/00/72A	09/00/72A	12/00/74A
	TR-190 P:								
	MR Liver (Neoplastic Nodule or Carcinoma)								
	MM Liver (Carcinoma)								
C03850	P-Benzoquinone Dioxime	05/00/72A		07/00/72A		08/00/72A	02/00/73A	05/00/73A	07/00/75A
	TR-179 P: FR Urinary Bladder (Transitional Cell Papilloma or Carcinoma or Squamous Cell Carcinoma)								
C00420A	Nitrofen	09/00/71A		11/00/71A		12/00/71A	08/00/72A	09/00/72A	12/00/74A
	TR-184 P:								
	MM *Liver (Carcinoma)								
	FM Liver (Carcinoma)								
C00420B	Nitrofen	12/00/70A		02/00/71A		09/00/71A	12/00/71A	12/00/71A	01/00/74A
	TR-026 P:								
	FR Pancreas (Carcinoma)								
	MM Liver (Hemangiosarcoma, Carcinoma)								
	FM Liver (Hemangiosarcoma, Carcinoma)								
C00511A	1,2-Dichloroethane	03/00/71A		05/00/71A		06/00/71A	03/00/72A	03/00/72A	05/00/74A
	TR-055 P:								
	MR Forestomach (Squamous Cell Carcinoma)								
	Circulatory System (Hemangiosarcoma)								
	Subcutaneous Tissue (Fibroma)								
	FR Mammary Gland (Adenocarcinoma)								
	MM Lung (Alveolar/Bronchiolar Adenoma)								
	Mammary Gland (Adenocarcinoma)								
	Uterus (Polyp, Sarcoma)								
C03678A	Octachlorodibenzodioxin							08/00/72A	10/00/75A

LIST VI — PROPOSED DISPOSAL OF WET TISSUES FOR TOXICOLOGY AND CARCINOGENESIS STUDIES—Continued

Exp. No.	Chemical	Single Dose Study		14-Day Study		90-Day Study		2-Year Study	
		Start	End	Start	End	Start	End	Start	End
	Ref. No. 21: Positive Controls and Studies with Inadequate Data								
C00293	No Match In Chemtrack Database — See Attachment #1-2 — CBDS EDSR)								
C00704	No Match In Chemtrack Database — ?? See Attachment #3 (Posibly B00704?? In — CBDS EDSR)								
C00293	No Match In Chemtrack Database — See Attachment #3 — CBDS EDSR)								
C00704	No Match In Chemtrack Database — ?? See Attachment #3 (Possibly B00704?? In — CBDS EDSR)								
C00715	No Match In Chemtrack Database — See Attachment #3 — CBDS EDSR)								
C03703A	1,2,3,6,7,8-Hexachlorodib	03/00/74A		09/00/71A		06/00/74A	01/00/75A	02/00/75A	04/00/77A
	TR-198 P:								
	MR Liver (Neoplastic Nodule or Carcinoma)								
	FR Liver (Neoplastic Nodule, Carcinoma)								
	MM Liver (Adenoma, Carcinoma)								
	FM Liver (Adenoma, Carcinoma)								
C03703B	1,2,3,6,7,8-Hexachlorodib	10/00/71A		12/00/71A		05/00/74A	02/00/75A	11/00/75A	11/00/77A
	TR-202 P								
C03714A	2,3,7,8-Tetrachlorodibenz	07/00/74A		08/00/71A		04/00/74A	01/00/75A	02/00/75A	04/00/77A
	TR-209 P:								
	MR Thyroid Gland (Follicular Cell Adenoma)								
	FR Liver (Neoplastic Nodule)								
	MM Liver (Carcinoma)								
	FM Liver (Carcinoma)								
	Thyroid Gland (Follicular Cell Adenoma)								
C03714B	2,3,7,8-Tetrachlorodibenz	10/00/71A		12/00/71A		04/00/74A	02/00/75A	11/00/75A	11/00/77A
	TR-201 P:								
	MM Subcutaneous Tissue (Fibrosarcoma)								
	FM Subcutaneous Tissue (Fibrosarcoma)								
C01876	2-Aminoanthraquinone	03/00/71A		05/00/71A		06/00/71A	02/00/72A	03/00/72A	12/00/74A
	TR-144 P:								
	MR Liver (Neoplastic Nodule or Carcinoma)								
	MM Liver (Carcinoma)								
	FM Liver (Carcinoma)								
	Hematopoietic System (Lymphoma)								
C01956	1-Nitronaphthalene	03/00/71A		05/00/71A		06/00/71A	03/00/72A	03/00/72A	02/00/75A
	TR-064 P								
C03009	2,5-Dithiobiurea	12/00/71A		02/00/72A		03/00/72	08/00/72A	12/00/72A	01/00/75A
	TR-132 P: FM Liver (Carcinoma)								
C03258	Cupferron	03/00/72A		05/00/72A		08/00/72A	11/00/72A	01/00/73A	03/00/75A
	TR-100 P:								
	MR Circulatory System (Hemangiosarcoma)								
	Liver (Carcinoma)								
	Forestomach (Squamous Cell Carcinoma)								
	FR Circularoty System (Hemangiosarcoma)								
	Liver (Carcinoma)								
	Forestomach (Squamous Cell Carcinoma)								
	Zymbal Gland (Carcinoma)								
	MM Circualtory System (Hemangiosarcoma)								
	FM Liver (Carcinoma)								
	Zyumbal Gland (Carcinoma)								
	Circulatory System (Hemangioma or Hemangiosarcoma)								
	Harderian Gland (Adenoma)								
C05981	No Match In Chemtrack Database — See Attachment #4 — CBDS EDSR)								
C03671	No Match In Chemtrack Database — See Attachment #5 — CBDS EDSR)								
C06406	No Match In Chemtrack Database — See Attachment #6 — CBDS EDSR)								

LIST VI — PROPOSED DISPOSAL OF WET TISSUES FOR TOXICOLOGY AND CARCINOGENESIS STUDIES—Continued

Exp. No.	Chemical	Single Dose Study		14-Day Study		90-Day Study		2-Year Study	
		Start	End	Start	End	Start	End	Start	End
C06440	No Match In Chemtrack Database — See Attachment #7 — CBDS EDSR)								
C55550A	Methapyrilene Hydrochlori							12/07/77A	01/15/78A
	TR-00F P								
C0522B	1,2-Dimromoethane (Ethyle)	07/00/75A		09/00/75A		07/00/74A	10/00/76A	07/00/76A	07/00/78A
	TR-210 P:								
	MR Nasal Cavity (Adenoma, Adenocarcinoma, Carcinoma)								
	Circulatory System (Hemangiosarcoma)								
	Tunica Vaginalis (Mesothelioma)								
	FR Nasal Cavity (Adenoma, Adenocarcinoma, Carcinoma)								
	Circulatory System (Hemangiosarcoma)								
	Mammary Gland (Fibroadenoma)								
	Lung (Alveolar/Bronchiolar Ademona or Carcinoma)								
	MM Lung (Alveolar/Bronchiolar Ademona, Alveolar/Bronchiolar Carcinoma)								
	FM Lung (Alveolar/Bronchiolar Ademona, Alveolar/Bronchiolar Carcinoma)								
	Circulatory System (Hemangiosarcoma)								
	Subcutaneous Tissue (Fibrosarcoma)								
	Nasal Cavity (Carcinoma)								
	Mammary Gland (Adenocarcinoma)								
C50317	2,6-Toluenediamine Dihydr	05/00/75A		05/00/75A		06/00/75A	11/00/75A	06/00/76A	73/00/78A
	TR-200 P								
C0500B	1,2-Dibroma-3-Chloropropa	08/00/75A		10/00/75A		07/00/74A	10/00/76A	06/00/76A	08/00/78A
	TR-206 P:								
	MR Nasal Cavity (Benign and Malignant Tumors)								
	Tongue (Squamous Cell Papilloma, Squamous Cell Carcinoma)								
	FR Nasal Cavity (Benign and Malignant Tumors)								
	Tongue (Squamous Cell Papilloma, Squamous Cell Carcinoma)								
	Pharynx (Squamous Cell Papilloma)								
	Adrenal Gland (Adenoma)								
	MM Nasal Cavity (Benign and Malignant Tumors)								
	Lung (Alveolar/Bronchiolar Ademona, Carcinoma)								
	FM Nasal Cavity (Benign and Malignant Tumors)								
	Lung Aveolar/Bronchiolar Adenoma, Carcinoma)								
C50146	4,4'-Oxydianiline	05/00/75A		04/00/75A		05/00/75A	06/00/76A	09/00/76A	10/00/78A
	TR-205 P:								
	MR Liver (Neoplastic Nodule, Carcinoma)								
	Thyroid Gland (follicular Cell Adenoma, Follicular Cell CaArcinoma)								
	FR Liver (Neoplastic Nodule, Carcinoma)								
	Thyroid Gland (Follicular Cell Adenoma, Follicular Cell Carcinoma)								
	MM Harderian Gland (Adenoma)								
	Liver (Adenoma or Carcinoma)								
	FM Harderian Gland (Adenoma)								
	Liver (Carcinoma)								
	Thyroid Gland (Follicular Cel Adenoma)								
C50737	Cytembena					07/00/75A	12/31/75A	01/00/77A	01/00/79A

LIST VI — PROPOSED DISPOSAL OF WET TISSUES FOR TOXICOLOGY AND CARCINOGENESIS STUDIES—Continued

Exp. No.	Chemical	Single Dose Study		14-Day Study		90-Day Study		2-Year Study	
		Start	End	Start	End	Start	End	Start	End
	TR-207 P:								
	MR Tunica Vaginalis (Mesothelioma)								
	Multiple Sites (Mesothelioma)								
	FR Mammary Gland (Fibroadenoma)								
C53838	C.I. Acid Orange 10	04/00/76A		05/00/76A		06/00/76A	01/00/77A	12/00/76A	01/00/79A
	TR-211 P								
C53849	C.I. Acid Red 14	04/00/76A		05/00/76A		06/00/76A	01/00/77A	12/00/76A	01/00/79A
	TR-220 P								
C50635	Bisphenol A	02/00/76A		04/00/76A		05/00/76A	01/00/78A	12/00/77A	02/00/79A
	TR-215 P: MR Hematopoietic System (Leukemia)								
C50646	Caprolactam	01/00/76A		05/00/76A		06/00/76A	01/00/78A	01/00/77A	02/00/79A
	TR-214 P								
C50260	2,6-Dichloro-p-phenylened	01/00/76A		04/00/76A		05/00/76A	01/00/78A	02/00/77A	03/00/79A
	TR-219 P:								
	MM Liver (Adenoma)								
	FM Liver (Adenoma or Carcinoma)								
C50613	11-Aminoundecanoic Acid	02/00/76A		04/00/76A		05/00/76A	01/00/78A	02/00/77A	03/00/79A
	TR-216 P:								
	MR Liver (Neoplastic Nodule)								
	Urinary Bladder (Transitional Cell Carcinoma)								
	MM Hematopoietic System (Lymphoma)								
C53781	C.I. Disperse Yellow 3	06/00/76A		07/00/76A		09/00/76A	03/00/77A	03/00/77A	04/00/79A
	TR-222 P:								
	MR Liver (Neoplastic Nodule)								
	FM Liver (Adenoma)								
C53792	D & C Red No. 9	06/00/76A		07/00/76A		09/00/76A	03/00/77A	03/00/77A	04/00/79A
	TR-225 P:								
	MR Spleen (Sarcoma)								
	Liver (Neoplastic Nodule)								
	FR Liver (Neoplastic Nodule)								
C53929	C.I. Solvent Yellow 14	06/00/76A		07/00/76A		09/00/76A	03/00/77A	03/00/77A	04/00/79A
	TR-226 P:								
	MM Liver (Neoplastic Nodule)								
	FR Liver (Neoplastic Nodule)								
C54375A	Butyl Benzyl Phthalate	06/00/76A		08/00/76A		09/00/76A	02/00/77A	03/31/77A	05/02/79A
	TR-213 P: FR Hematopoietic System (Leukemia)								
C54386	Di(2-Ethylhexyl)adipate	06/00/76A		08/00/76A		10/00/76A	02/00/77A	04/00/77A	05/00/79A
	TR-212 P:								
	MM Liver (Adenoma)								
	FM Liver (Carcinoma)								
C52733A	Di(2-Ethylhexyl) Phthalat	06/00/76A		08/00/76A		09/00/76A	01/00/77A	03/00/77A	06/00/79A
	TR-217 P:								
	MR Liver (Neoplastic Nodule or Carcinoma)								
	FR Liver (Carcinoma)								
	MM Liver (Carcinoma)								
	FM Liver (Carcinoma)								
C54262	Vinylidene Chloride	06/00/76A		07/00/76A		10/00/76A	03/00/77A	06/00/77A	06/00/79A
	TR-228 P								
C50419	Locust Bean Gum	06/00/76A		09/00/76A		10/00/76A	03/00/77A	05/00/77A	07/00/79A
	TR-221 P								
C50748	Gum Arabic	06/00/76A		09/00/76A		11/00/76A	04/00/77A	06/00/77A	07/00/79A
	TR-227 P								
C50395	Guar Gum	06/00/76A		09/00/76A		10/00/76A	03/00/77A	05/00/77A	08/00/79A
	TR-229 P								
C05743C	Dimethyl Hydrazine (DMH)							04/00/77A	11/00/79A
	Ref. No. 21: Positive Controls and Studies with Inadequate Data								
C50475	Agar	10/00/76A		11/00/76A		12/00/76A	05/00/77A	10/00/77A	11/00/79A
	TR-230 P								
C52459	1,1,1,2-Tetrachloroethane	06/00/76A		08/00/76A		12/00/76A	07/00/77A	11/14/78A	11/11/79A
	TR-237 P:								
	MR Liver (Neoplastic Nodule or Carcinoma)								
	MM Liver (Adenoma, Carcinoma)								
	FM Liver (Adenoma, Carcinoma)								
C54364	Tara Gum	10/00/76A		11/00/76A		01/00/76A	05/00/77A	10/00/76A	11/00/79A
	TR-224 P								
C02722	Stannous Chloride	06/03/76A	08/19/76A	07/15/76A	12/20/76A	01/10/77A	06/09/79A	12/00/77A	12/00/79A
	TR-231 P: MR Thyroid Gland (C-Cell Adenoma or Carcinoma)								
C53894	Pentachloroethane	06/00/76A		08/00/76A		12/00/76A	10/00/77A	12/00/77A	12/00/79A
	TR-232 P								

[FR Doc. 89-15815 Filed 7-5-89; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-89-1917; FR-2606]

Underutilized and Unutilized Federal Buildings and Real Property Determined by HUD To Be Suitable for Use for Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice identified unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: July 6, 1989.

ADDRESSES: For further information, contact Morris Bourne, Director, Transitional Housing Development Staff, Room 9140, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 755-9075; TDD number for the hearing- and speech-impaired (202) 426-0015. (These telephone numbers are not toll-free.).

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* versus *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the **Federal Register** identifying the properties determined as suitable.

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency with respect to any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Finally, in lieu of declaring any particular property as excess, the landholding agency may decide to make the property available to the homeless for use on an interim basis.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, Room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's **Federal Register** Notice on June 23, 1989 (54 FR 26421).

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army (Military Facilities) HQ-DA, Attn: DAEN-ZCI-P-Robert Conte; Room 1E671 Pentagon, Washington, DC 20360-2600 (202) 693-4583. (These are not toll-free numbers.)

Date: July 29, 1989.

James E. Schoenberger, *General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.*

Suitable Land (By State)

Note: The landholding agency for all properties in today's Notice is the U.S. Army.

Number of Properties

Kansas

Ft. Leavenworth (1)
Ft. Leavenworth, KS
Location: Property 2 Combined Arms Center
61 acres
Comment: Used as disciplinary farm

Ft. Leavenworth (1)
Ft. Leavenworth, KS
Location: Property 4 Combined Arms Center
24.1 acres
Comment: Currently used for training

Ft. Leavenworth (1)
Ft. Leavenworth, KS

Location: Property 5 Combined Arms Center
250 acres
Comment: Currently used for training

Ft. Leavenworth (1)
Ft. Leavenworth, KS
Location: 14.4 acres
Comment: Requires refencing

Number of properties

California

USAR-C (1)
Bill, CA
Location: Property B-330
Comment: Friable asbestos—building to be demolished

Georgia

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 4066
Comment: Arms building

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 4864
Comment: General storehouse

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 4864
Comment: Batallion headquarters

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 4863
Comment: Arms building

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 4902
Comment: Enlisted barracks without mess

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 4901
Comment: Other instructional site

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 4880
Comment: Trainee barracks

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 4879
Comment: Arms building

Ft. Benning Military Reservation (3)
Muscogee, GA
Location: Property 4878, 4877, 4876
Comment: Trainee barracks

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 4875
Comment: Batallion classroom

Ft. Benning Military Reservation (2)
Muscogee, GA
Location: Property 4874
Comment: Det day room

Ft. Benning Military Reservation (4)
Muscogee, GA
Location: Property 4873, 4872
Comment: Enlisted personnel dining room

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 4871
Comment: Det day room

Ft. Benning Military Reservation (4)
Muscogee, GA
Location: Property 4870, 4869, 4868, 4867
Comment: Trainee barracks

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 278
Comment: 376 sq. ft.

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 366
Comment: 367 sq. ft. gas station

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 2083, 2081, 2080

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 1771
Comment: 2420 square feet

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 2068
Comment: 4828 square feet

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 2285
Comment: Bedless clinic 4574 sq. ft.

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 2369
Comment: 2287 square feet

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 2371
Comment: 5431 sq. ft. open warehouse

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 2406
Comment: Rec. building 2776 square feet

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 2414
Comment: 1472 sq. ft.

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 2510
Comment: 1308 sq. ft.

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 2511
Comment: 7044 square feet

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 3400
Comment: Fire station 2750 sq. ft.

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 4042
Comment: HQ building, 2891 square feet

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 4043
Comment: 4270 square feet

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 4044
Comment: 4270 square feet

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 4045
Comment: Fin. admin. building 4270 square feet

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 4089
Comment: Gas station 176 square feet

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 4164
Comment: 5283 square feet open dining facility

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 4319
Comment: 2584 square vehicle main stor.

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 4479
Comment: 1507 square feet day room

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 4481
Comment: 1507 square feet day room

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 4484
Comment: 1090 square feet storehouse

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 4487
Comment: 1868 square feet telephone exch. building

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 4501
Comment: 1280 square feet

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 4503
Comment: 3776 square feet training barracks

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 4504
Comment: 3776 square feet training barracks

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 4505
Comment: 2145 square feet dining hall

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 4506
Comment: 2145 square feet dining hall

Ft. Benning (1)
Muscogee, GA

Location: Property 5309
Comment: Clinic without beds 1829 square feet
Ft. Benning (1)
Muscogee, GA
Location: Property 5308
Comment: General storehouse 1680 square feet
Ft. Benning (1)
Muscogee, GA
Location: Property 5307
Comment: Arms building 1216 square feet
Ft. Benning (1)
Muscogee, GA
Location: Property 5306
Comment: Enlisted personnel dining room 2406 square feet
Ft. Benning (1)
Muscogee, GA
Location: Property 5305
Comment: Trainee barracks 4248 square feet
Ft. Benning (3)
Muscogee, GA
Location: Property 5304,5303,5301
Comment: Trainee barracks
Ft. Benning (2)
Muscogee, GA
Location: Property 5300,5302
Comment: Det day room 1400 square feet
Ft. Benning (5)
Muscogee, GA
Location: Property 5295, 5294, 5293, 5292, 5291, 5299, 5298
Comment: Enlisted personnel dining room
Ft. Benning (2)
Muscogee, GA
Location: Property 5290, 5288
Comment: Arms building 1216 square feet
Ft. Benning (4)
Muscogee, GA
Location: Property 5283, 5282, 5281, 8280
Comment: Trainee barracks 4248 square feet
Ft. Benning (3)
Muscogee, GA
Location: Property 4507, 4508, 4510
Comment: Trainee barracks 3776 square feet
Ft. Benning (1)
Muscogee, GA
Location: Property 4544
Comment: Vehicle Maintenance storage 2488
Ft. Benning (2)
Muscogee, GA
Location: Property 4545, 4546
Comment: Vehicle storage 2818 square feet
Ft. Benning (1)
Muscogee, GA
Location: Property 4549
Comment: General storehouse 794 square feet
Ft. Benning (1)
Muscogee, GA
Location: Property 4550
Comment: Dispatch building 269 square feet
Ft. Benning (1)
Muscogee, GA
Location: Property 4551
Comment: Vehicle storage 4416 square feet
Ft. Benning (1)
Muscogee, GA
Location: Property 4552
Comment: Vehicle Maintenance storage 8624 square feet
Ft. Benning (1)
Muscogee, GA
Location: Property 4553
Comment: General storehouse 1440 square feet
Ft. Benning (1)
Muscogee, GA
Location: Property 4564
Comment: Vehicle Maintenance and storage 3149 square feet
Ft. Benning (2)
Muscogee, GA
Location: Property 4605, 4615
Comment: Det day room 915 square feet
Ft. Benning (2)
Muscogee, GA
Location: Property 4619, 4622
Comment: General storehouse 794 square feet
Ft. Benning (2)
Muscogee, GA
Location: Property 4747, 4834
Comment: General storehouse 794 square feet
Ft. Benning (1)
Muscogee, GA
Location: Property 4617
Comment: Enlisted barracks without mess 1770 square feet
Ft. Benning (1)
Muscogee, GA
Location: Property 4642
Comment: Enlisted barracks without mess 6136 square feet
Ft. Benning (1)
Muscogee, GA
Location: Property 4643
Comment: Enlisted barracks without mess 3068 square feet
Ft. Benning (1)
Muscogee, GA
Location: Property 4835
Comment: Det day room 1501 square feet
Ft. Benning (1)
Muscogee, GA
Location: Property 4840
Comment: Library branch 2930 square feet
Ft. Benning (2)
Muscogee, GA
Location: Property 5363, 5360
Comment: Recreation building 3759 square feet
Ft. Benning (2)
Muscogee, GA
Location: Property 4844
Comment: Trainee Barracks 3776 square feet
Ft. Benning (2)
Muscogee, GA
Location: Property 4845, 4843
Comment: Clinic without beds 3776 square feet
Ft. Benning (3)
Muscogee, GA
Location: Property 4854, 4853, 4851
Comment: Trainee Barracks 3776 square feet
Ft. Benning (1)
Muscogee, GA
Location: Property 4855
Comment: Det day room 1507 square feet
Ft. Benning (1)
Muscogee, GA
Location: Property 4846
Comment: Enlisted personnel dining room 1455 square feet
Ft. Benning (1)
Muscogee, GA
Location: Property 4847
Comment: Library building 900 square feet
Ft. Benning (1)
Muscogee, GA
Location: Property 4848
Comment: General storehouse 804 square feet
Ft. Benning (1)
Muscogee, GA
Location: Property Property 4852
Comment: Enlisted barracks without mess 3776 square feet
Ft. Benning (4)
Muscogee, GA
Location: Property 4859, 4860, 4861, 4862
Comment: Trainee barracks 3776 square feet
Ft. Benning (4)
Muscogee, GA
Location: Property 5320, 5321, 5324, 5325
Comment: Trainee barracks 4248 square feet
Ft. Benning (3)
Muscogee, GA
Location: Property 5390, 5391, 5392
Comment: Enlisted personnel dining room 2432 square feet
Ft. Benning (1)
Muscogee, GA
Location: Property 4856
Comment: Enlisted personnel dining room 2183 square feet

Ft. Benning (1)
Muscogee, GA
Location: Property 4857
Comment: Batallion classroom 2160 square feet
Ft. Benning (1)
Muscogee, GA
Location: Property 4858
Comment: Det day room 1507 square feet
Ft. Benning (4)
Muscogee, GA
Location: Property 5365, 5366, 5367, 5361
Comment: Recreation building 3759 square feet
Ft. Benning (1)
Muscogee, GA
Location: Property 5404
Comment: Recreation building
Ft. Benning (1)
Muscogee, GA
Location: Property 5310
Comment: Diagnostic center 3484 square feet
Ft. Benning (1)
Muscogee, GA
Location: Property 5311
Comment: Exchange bedroom 5767
Ft. Benning (1)
Muscogee, GA
Location: Property 5315
Comment: Division headquarters
Ft. Benning (1)
Muscogee, GA
Location: Property 5316
Comment: Det day room 1400 square feet
Ft. Benning (1)
Muscogee, GA
Location: Property 5323
Comment: Dining room 2525 square feet
Ft. Benning (1)
Muscogee, GA
Location: Property 5328
Comment: Arms building 2486 square feet
Ft. Benning (1)
Muscogee, GA
Location: Property 2088
Comment: 4828 square feet
Ft. Benning (1)
Muscogee, GA
Location: Property 5297
Comment: General storehouse 1080 square feet
Ft. Benning (1)
Muscogee, GA
Location: Property 5289
Comment: General storehouse 1216 square feet
Ft. Benning (1)
Muscogee, GA
Location: Property 5287
Comment: Arms building 1216 square feet
Ft. Benning (1)
Muscogee, GA
Location: Property 4841
Comment: Exchange branch 2930 square feet

Missouri

Ft. Leonard Wood (1)
Ft. Leonard Wood, MO
Location: Property 1829
Comment: Building scheduled to be demolished very poor condition

South Carolina

Ft. Jackson (1)
Marion Avenue
Ft. Jackson, SC
Location: Property 5485
Comment: Heater plant (obsolete)

Texas

Ft. Bliss (1)
Ft. Bliss, TX
Location: Property T838
Comment: Vehicle maintenance shop
Ft. Bliss (1)
Lufberry Road
Ft. Bliss, TX
Location: Property T847
Comment: General Inst. building
Ft. Bliss (1)
Lufberry Road
Ft. Bliss, TX
Location: Property T848, T849
Comment: General Inst. building
Ft. Bliss (1)
Lufberry Road
Ft. Bliss, TX
Location: Property T851
Comment: General Inst. building
Ft. Bliss (1)
Pleasonton Road
Ft. Bliss, TX
Location: Property T926
Comment: General Inst. building
Ft. Bliss (1)
Haan Road
Ft. Bliss, TX
Location: Property T1634
Comment: General Inst. building
Ft. Bliss (4)
Robert E. Lee Road
Ft. Bliss, TX
Location: Property T5346, T5376, T5445
Comment: General Inst. building
Ft. Bliss (1)
Pleasonton Road
Ft. Bliss, TX
Location: Property T1628
Comment: Admin general purpose building

Virginia

Ft. Lee (1)
Byrd Avenue
Ft. Lee, VA
Location: Property 4103
Comment: Building located in training area must be relocated
Ft. Lee (1)
Shop Road
Ft. Lee, VA
Location: Property 6001
Comment: Building must be moved
Ft. Lee (1)
Lee Avenue
Ft. Lee, VA
Location: Property 6002
Comment: Building must be relocated asbestos present
Ft. Lee (1)
Lee Avenue
Ft. Lee, VA
Location: Property 6003
Comment: Building must be relocated
Ft. Lee (1)
Lee Avenue
Ft. Lee, VA
Location: Property 6011
Comment: Building must be relocated
Ft. Lee (1)
Lee Avenue
Ft. Lee, VA
Location: Property 6006
Comment: Building must be relocated
Ft. Lee (1)
Lee Avenue
Ft. Lee, VA
Location: Property 6012
Comment: Building must be relocated
Ft. Lee (1)
Lee Avenue
Ft. Lee, VA
Location: Property 6013
Comment: Building must be relocated
Ft. Lee (1)
Lee Avenue
Ft. Lee, VA
Location: Property 6018
Comment: Building must be relocated
Ft. Lee (4)
Lee Avenue
Ft. Lee, VA
Location: Property 6026, 6025, 6024, 6015
Comment: Asbestos—building must be relocated
Ft. Lee (1)
Lee Avenue
Ft. Lee, VA
Location: Property 8018
Comment: Building would have to be relocated

Kansas

Ft. Leavenworth (1)
Ft. Leavenworth, KS
Reason: Not accessible by road
Location: Property 3 combined Arms Center
261 acres
Comment: Current use—recreation

Alabama

Cairns Army Airfield (2)
Ft. Rucker, AL

Location: Property 53002T, 53002T
Comment: Secured area

Lowe Army Heliport (2)
Ft. Rucker, AL
Location: Property 54005T, 54005T
Comment: Secured area

California

USAR-C (1)
Bill, CA
Location: Property 5-318
Comment: Secured area

USAR-C (1)
Bill, CA
Location: Property 5-316
Comment: Secured area

Colorado

Fort Carson (4)
Colorado Springs, CO
Location: Property T-1105, T-1104, T-1003, T-1002
Comment: Secured area

Georgia

Ft. Benning Military Reservation (1)
Muscogee, GA
Location: Property 4092
Comment: Used for inflammable material storage

Washington

I Corps and Fort Bliss (1)
Ft. Lewis, WA
Location: Property 2165
Comment: Secured area

I Corps & Fort Lewis (1)
Ft. Lewis, WA
Location: Property 1403
Comment: Secured area

I Corps & Fort Lewis (1)
Ft. Lewis, WA
Location: Property 9627
Comment: Secured area

[FR Doc. 89-15860 Filed 7-5-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-960-4230-15]

Reallocations Pursuant to Section 14(h) of the Alaska Native Claims Settlement Act; Aleut Corp. et al.

Section 14(h) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h), authorizes 2 million acres of land to be conveyed or charged under the following categories: (h)(1) cemetery sites and historical places; (h)(2) Native groups; (h)(3) Natives residing in Sitka, Kenai, Juneau and Kodiak; (h)(5) Native primary place of residence; (h)(6) Native allotment applications approved during the period of 1971-1975; and (h)(8) any portion of the 2 million acres not conveyed by any other subsections, to be allocated and conveyed to the regional corporations on the basis of enrollment.

The decision of January 19, 1977, as amended by the decision of October 31, 1978, 42 FR. 6419 to 6432 (1977), and 43 FR. 53062 (1978), finalized the Section 14(h) acreage percentiles for each region. These were used in determining the section 14(h) (1), (2), (5), and (8) allocations, as published in the **Federal Register**, 48 FR. 37086, (1983).

The Memorandum of Agreement of August 25, 1988 between the Alaska Federation of Natives, Inc., and the Bureau of Land Management, established guidelines for the regional corporations to use in relinquishing any portion of their allocation made under sections 14(h) (1), (2), and (5) and to allow these acreages to be reallocated under section 14(h)(8) as per 43 CFR 2653.1(b).

To date, the following regional corporations have relinquished all or a portion of their allocation under sections 14(h) (1), (2), and (5): The Aleut Corporation—29,500 acres; Bristol Bay Native Corporation—22,000 acres; Chugach Alaska Corporation—10,794.34 acres; Sealaska Corporation—66,377.66 acres; NANA Regional Corporation—35,000 acres; and Arctic Slope Regional Corporation—35,157 acres.

Table 1 shows each region's new acreage allocation for sections 14(h) (1), (2), (5), and (8):

TABLE 1 *

	Percent by population (Pub. 1978) b	Acres allocated 14(h) (1), (2), (5)	Acres allocated under 14(h)(8)
Ahtna	1.41538	27,830.76	20,126.78
Aleut	4.36431	4,226.62	62,060.75
ASRC	5.07850	0.00	72,216.57
BSNC	8.98443	42,968.86	127,759.13
BBNC	7.17430	17,348.60	102,018.97
Calista	17.45725	59,914.50	248,243.14
Chugach	2.73467	19,675.00	38,887.17
CIRI	8.15078	41,301.56	115,904.58
Doyon	12.00348	49,006.96	170,690.20
Koniag	4.40716	33,814.32	62,670.07
NANA	6.38041	2,761.62	90,729.81
Sealaska	21.84863	2,320.00	310,691.67

* The actual acreage conveyed may be different from the allocation because of special legislation, etc.

b Percentiles by population are listed for informational purposes only.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register**.

Should you disagree with the allocations given by this decision you may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the regulations in 43 CFR Part 4, Subpart E. The appellant has the burden of showing that the decision appealed from is in error.

If an appeal is taken, the notice of appeal must be filed in the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage Alaska 99513-7599. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, Alaska Region, U.S. Department of the Interior, 222 West Eighth Avenue, #34, Anchorage, Alaska 99513-7584.

The time limits for filing an appeal are:

1. Parties receiving service of this decision by personal service or certified mail, return receipt requested, shall have thirty days from receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who failed or refused to sign their return receipt, and parties who received a copy of this decision by regular mail which is not certified, return receipt requested, shall have until August 7, 1989, to file an appeal.

Any party, known or unknown, who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska State Office of the Bureau of Land Management.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations. Further information on the manner of the requirements for filing an appeal may be obtained from the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599.

If an appeal is filed, the parties to be served with a copy of the notice of appeal are each of the regional corporations listed in Attachment 1.

Wayne A. Boden,

Deputy State Director for Conveyance Management.

Attachment 1

Ahtna, Inc., P.O. Box 649, Glennallen, Alaska 99588
The Aleut Corporation, One Aleut Plaza, 4300 Old Seward Highway, Suite 300, Anchorage, Alaska 99503

Arctic Slope Regional Corporation, P.O. Box 129, Barrow, Alaska 99723
Bering Straits Native Corporation, P.O. Box 1008, Nome, Alaska 99762
Bristol Bay Native Corporation, P.O. Box 100220, Anchorage, Alaska 99510
Calista Corporation, 601 West Fifth Avenue, Suite 200, Anchorage, Alaska 99501
Chugach Alaska Corporation, Chugach Alaska Building, 3000 A Street, Suite 400, Anchorage, Alaska 99503
Cook Inlet Region, Inc., P.O. Box 93330, Anchorage, Alaska 99509-3330
Doyon, Limited, Dovon Building, 201 First Avenue, Fairbanks, Alaska 99701
Koniag, Inc., 4300 B Street, Suite 407, Anchorage, Alaska 99503
NANA Regional Corporation, P.O. Box 49, Kotzebue, Alaska 99752
Sealaska Corporation, One Sealaska Plaza, Suite 400, Juneau, Alaska 99801

[FR Doc. 89-15800 Filed 7-5-89; 8:45 am]

BILLING CODE 4310-JA-M

[AK-968-4230-15 AA-6666-B, AA-6666-A2]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that the decision to issue conveyance (DIC) to Ahtna, Incorporated, notice of which was published in the **Federal Register** page 22036, Vol. 54, No. 97, on May 22, 1989, is modified as to the rationale for rejection of State selection application AA-4823.

A notice of the modified DIC will be published once a week, for four (4) consecutive weeks, in the VALDEZ VANGUARD. Copies of the modified DIC may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599.

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until August 7, 1989 to file an appeal on the issue in the modified DIC. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. The appellant has the burden of showing that the decision appealed from is in error. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Except as modified, the decision, notice of which was given May 22, 1989, is final.

Margaret J. McDaniel,

Acting Chief, Branch of Cook Inlet and Ahtna Adjudication.

[FR Doc. 89-15843 Filed 7-5-89; 8:45 am]

BILLING CODE 4310-JA-M

[CO-050-4830-12]

Canon City District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-579 that the Canon City District Advisory Council (DAC) meeting will be held Tuesday, August 1, 1989, 10:30 a.m. to 4:30 p.m. and Wednesday, August 2, 1989, 8 a.m. to 2:30 p.m. at the Canon City District Office, 3170 East Main, Canon City, Colorado. The meeting agenda will include:

1. Status of the Arkansas River Recreation Management Plan.

2. Update on the San Luis Resource Management Plan.

3. Slide presentations on the Gold Belt Back-Country Byways and Garden Park Fossil Bed.

The meeting is open to the public. Persons interested may make oral presentations to the council at 2:30 p.m. on August 1, or they may file written statements for the council's consideration. The District Manager may limit the length of the oral presentations depending on the number of people wishing to speak.

ADDRESS: Anyone wishing to make an oral or written presentation to the council should notify the District Manager, Bureau of Land Management, P.O. Box 311, 3170 East Main, Canon City, Colorado 81212, by July 26, 1989.

FOR FURTHER INFORMATION CONTACT: Ken Smith, (719) 275-0631.

SUPPLEMENTARY INFORMATION: Summary minutes of the meeting will be available for public inspection and reproduction during regular working hours at the District Office approximately 30 days following the meeting.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 89-15842 Filed 7-5-89; 8:45 am]

BILLING CODE 4310-JB-M

Albuquerque District, New Mexico; Realty Action on Proposed Land Disposal in Rio Arriba County

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action on proposed land disposal.

SUMMARY: This notice is to advise the public that the Albuquerque District, of the Bureau of Land Management (BLM), is proposing to dispose of approximately 37.00 acres of public land near the Village of Chimayo within Rio Arriba County, State of New Mexico.

SUPPLEMENTARY INFORMATION: The BLM has determined that the acres of public land described below are suitable for disposal under the Color-of-Title Acts of 1928 (45 Stat. 1069), 1932 (47 Stat. 53; 43 USC 178), and Sales Under Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1713 (1976).

New Mexico Principal Meridian

Chimayo II, New Mexico Public Land Disposal Block
Township 21, North, Range 9 East
Sec. 26: Lots 3
Sec. 34: Lots 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24
Sec. 35: Lots 4
Sec. 36: Lots 17, 18, 20, 21, 22
Township 21 North, Range 10 East
Sec. 32: Lots 7, 8
Comprising approximately 37.000 acres

Disposal of these lands is consistent with: (1) The approved Land Use Recommendations of the BLM's 1979 Rio Grande Management Framework Plan, (2) The 1988 Taos Resource Management Plan, (3) Their location as well as the physical characteristics and the private ownership of adjoining lands, make them difficult and uneconomical to manage as public lands, so disposal would best serve the public interest, (4) This Notice of Realty Action will be published once a week for three weeks in a newspaper of general circulation and will be sent to the New Mexico Congressional Delegation and the relevant congressional committees by BLM. The specific parcels of public land will be disposed of using the following "Tract Disposal Criteria" in descending order of priority:

1. *Color of Title.* Color-of-Title disposal will be made to any applicant within the disposal area who qualified under the Color-of-Title Acts.

2. *Non-Competitive (Direct) Sale.* Public lands within the disposal block will be sold without competition at Fair Market Value to those individuals who occupied the parcels before June 11, 1979

(the date land use plans were approved) but who do not qualify for title under one of the color-of-title acts.

The terms and conditions applicable to the disposal are:

1. The patents will contain a reservation to the United States for ditches and canals.

2. All disposals are for surface estate only. The patents will contain a reservation to the United States for all minerals.

3. Tracts which lie within the 100 year floodplain of the Rio Santa Cruz will be subject to EO 11988 which precludes the seeking of compensation from the United States or its agencies in the event existing or future facilities on those tracts are damaged by flood.

4. All disposal will be made subject to prior existing rights.

Additional information pertaining to this disposal including the environmental documents are available for review at the Taos Resource Area Office, Plaza Montevideo, Cruz Alta Road, Taos, New Mexico 87571, or telephone (505) 758-8851. For a period of 45 days from the date of this notice, interested parties may submit written comments to the Taos Resource Area Manager. Any adverse comments will be evaluated by the New Mexico State Director, Bureau of Land Management, who may vacate or modify this realty action and issue a final determination.

In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: June 22, 1989.

Patricia E. McLean,

Associate District Manager.

[FR Doc. 89-15844 Filed 7-5-89; 8:45 am]

BILLING CODE 4310-FB-M

[WY-040-09-4200-90; WYW-89490]

Realty Action; Sublette, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Direct Sale of Public Lands/Termination of Classification in Sublette County, Wyoming.

SUMMARY: The Bureau of Land Management has determined that the lands described below are suitable for public sale under sections 203 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713, 1719):

Sixth Principal Meridian

T. 33 N., R. 110 W.,

Sec. 2, E½ of lot 1, N½SE¼NE¼.

The land described contains 40.43 acres.

FOR FURTHER INFORMATION CONTACT: David E. Harper, Realty Specialist, Bureau of Land Management, Pinedale Resource Area, P.O. Box 768, Pinedale, Wyoming 82941, 307-367-4358.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management (BLM) proposes to sell the surface and mineral estates, except oil and gas, to Sublette County, Wyoming under the above cited authority. Sublette County wishes to acquire these lands in order to continue operations of the Pinedale Sanitary Landfill which presently occupies these lands under a Recreation and Public Purposes Act Lease. The lease will expire on October 9, 1989.

The price of these lands will be determined at market value. A purchase bid will constitute an application for conveyance of the unreserved mineral estate of the above described public lands. Additionally, Sublette County will be required to submit a nonreturnable application fee of $50 in accordance with 43 CFR Part 2720, for conveyance of all unreserved mineral interest in the lands.

The BLM has adopted a nationwide policy of transferring the title of lands leased for sanitary landfills to the entity that leases the landfills. The proposed sale to Sublette County is consistent with this policy. Additionally, the proposed sale is consistent with the Pinedale Resource Management Plan and will serve important public objectives which cannot be otherwise accomplished. The land does not possess any known public values. The Planning Document/Environmental Assessment for the proposed sale will be available for review at the BLM Pinedale Resource Area Office, Pinedale, Wyoming.

The sales patent will be subject to all valid existing rights and will contain certain reservations to the United States. The exact wording of these reservations, as well as specific conditions of the sale, are available for review in the Pinedale Resource Area Office, Pinedale, Wyoming.

The Recreation and Public Purpose Initial Classification Decision W-89433 which became effective on August 31, 1986, will terminate when this realty action becomes final.

Upon the date of this publication in the Federal Register, the public lands described above are segregated from all forms of appropriation under the public land laws, including the mining laws. The segregation will end 270 days from the date of this publication.

For a period of 45 days from the date of issuance of this notice, interested parties may submit comments to the Bureau of Land Management, District Manager, Rock Springs, P.O. Box 1869, Rock Springs, Wyoming 82901. Any adverse comment will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: June 23, 1989.

Arlan G. Hiner,

Area Manager.

[FR Doc. 89-15841 Filed 7-5-89; 8:45 am]

BILLING CODE 4310-22-M

Minerals Management Service

Outer Continental Shelf Advisory Board, North, Mid-, and South Atlantic Regional Technical Working Group

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meetings for the North, Mid-, and South Atlantic Regional Technical Working Groups (RTWG).

SUMMARY: The Atlantic Outer Continental Shelf (OCS) Region has scheduled a meeting of its North, Mid-, and South Atlantic Regional Technical Working Groups. The meetings are designed to collect comments and provide input to the Minerals Management Services's Director and Regional Director, Atlantic OCS Region, on the 5-Year Plan and other topics relevant to the Region.

DATES:

North Atlantic—July 28, 1989
Mid-Atlantic—July 26, 1989
South Atlantic—August 4, 1989

ADDRESSES: Each meeting will begin at 9 a.m.

North Atlantic—Ramada Hotel (by the airport), 225 McClellan Highway, Boston, Massachusetts 02128
Mid-Atlantic—Ramada Renaissance, 13869 Park Center Road, Herndon, Virginia 22071
South Atlantic—Atlanta Airport Hilton, 1031 Virginia Avenue, Atlanta, Georgia 30354

FOR FURTHER INFORMATION CONTACT: Angela Calos, RTWG Coordinator, Atlantic OCS Region, (202) 343-3983.

SUPPLEMENTARY INFORMATION: The RTWG's advise the MMS Director and the Regional Director on technical matters of regional concern regarding offshore prelease and postlease activities in the Atlantic OCS Region. The RTWG membership consists of representatives from Federal Agencies, the east coast States, the petroleum industry, and other private interests. The meetings will solicit the members' comments on the predraft 5-Year Plan covering 1992-1997.

(Federal Advisory Committee Act—Pub. L. No. 92-463)

Dated: June 29, 1989.

Bruce G. Weetman,

Regional Director, Atlantic OCS Region.

[FR Doc. 89-15786 Filed 7-5-89; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf, Western Gulf of Mexico; Oil and Gas Lease Sale 122

1. *Authority.* This Notice is published pursuant to the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1331-1356 (1982)), as amended by the OCSLA Amendments of 1985 (100 Stat. 147), and the regulations issued thereunder (30 CFR Part 256).

2. *Filing of Bids.* Sealed bids will be received by the Regional Director (RD), Gulf of Mexico Region, Minerals Management Service (MMS), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123. Bids may be delivered in person to that address during normal business hours (8 a.m. to 4 p.m.) until the Bid Submission Deadline at 10 a.m., Tuesday, August 22, 1989. All times cited in this Notice refer to Central Standard Time (c.s.t.) unless otherwise stated. Bids will not be accepted the day of Bid Opening, Wednesday, August 23, 1989. Bids received by the RD later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified unless written modification is received by the RD prior to 10 a.m., Tuesday, August 22, 1989. Bids may not be withdrawn unless written withdrawal is received by the RD prior to 8:30 a.m., Wednesday August 23, 1989. Bid Opening Time will be 9 a.m., Wednesday, August 23, 1989, at the Le Meridien, 614 Canal Street, Ile De France Grand Ballroom, New Orleans, Louisiana. All bids must be submitted and will be considered in accordance with applicable regulations including 30 CFR Part 256. The list of restricted joint bidders which applies to this sale appeared in the **Federal Register** at 54 FR 15029, published on April 14, 1989.

3. *Method of Bidding.* A separate bid in a sealed envelope labeled "Sealed Bid for Oil and Gas Lease Sale 122 (map number, map name, and block number(s)), not to be opened until 9 a.m., Wednesday, August 23, 1989," must be submitted for each block or prescribed bidding unit bid upon. The company qualification number should also appear on the envelope. For example, a label would read as follows: "Sealed Bid for Oil and Gas Lease Sale 122, NG 14-3, Corpus Christi, Block 455, not to be opened until 9 a.m., Wednesday, August 23, 1989, Overthrust Inc. #1093." For those blocks which must be bid upon as a bidding unit (see paragraph 12), it is recommended that all numbers of blocks comprising the bidding unit appear on the sealed envelope. A suggested bid form appears in 30 CFR Part 256, Appendix A. In addition, the total amount bid must be in whole dollar amounts (no cents). Bidders must submit with each bid one-fifth of the cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior—Minerals Management Service. The company qualification number should also appear on the check or draft together with bid block identification. No bid for less than all of the unleased portions of a block or bidding unit as described in paragraph 12 will be considered. Bidders are advised to use the description "All the Unleased Federal Portion" for those blocks having only aliquot portions currently available for leasing.

All documents must be executed in conformance with signatory authorizations on file. Partnerships also need to submit or have on file in the Gulf of Mexico regional office a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places after the decimal point, e.g., 50.84593 percent. Other documents may be required of bidders under 30 CFR 256.46. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. *Bidding Systems.* All bids submitted at this sale must provide for a cash bonus in the amount of $25 or more per acre or fraction thereof. All leases awarded will provide for a yearly rental payment of $3 per acre or fraction thereof. All leases will provide for a minimum royalty of $3 per acre or fraction thereof. The bidding systems to be employed for this sale apply to blocks or bidding units as shown on Map 2 (see paragraph 12). The following bidding systems will be used:

(a) *Bonus Bidding with a 12½-Percent Royalty.* Bids on the blocks and bidding units offered under this system must be submitted on a cash bonus basis with a fixed royalty of 12½ percent.

(b) *Bonus Bidding with a 16⅔-Percent Royalty.* Bids on the blocks and bidding units offered under this system must be submitted on a cash bonus basis with a fixed royalty of 16⅔ percent.

5. *Equal Opportunity.* Each bidder must have submitted by the Bid Submission Deadline stated in paragraph 2 the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS-2033 (June 1985), and the Affirmative Action Representation Form, Form MMS-2032 (June 1985). See the Affirmative Action paragraph 14(e) under "Information to Lessees."

6. *Bid Opening.* Bid opening will begin at the Bid Opening Time stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight on the day of Bid Opening, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. *Deposit of Payment.* Any cash, cashier's checks, certified checks, or bank drafts submitted with a bid may be deposited by the Government in an interest-bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. *Withdrawal of Blocks.* The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

9. *Acceptance, Rejection, or Return of Bids.* The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block or bidding unit will be awarded to any bidder, unless:

(a) The bidder has complied with all requirements of this Notice and applicable regulations;

(b) The bid is the highest valid bid; and

(c) The amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount of $25 or more per acre or fraction thereof. Any bid submitted which does not conform to the requirements of this Notice, the OCSLA, as amended, and applicable

regulations may be returned to the person submitting that bid by the RD and not considered for acceptance.

10. *Successful Bidders.* Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease, pay the balance of the cash bonus bid together with the first year's annual rental, as specified below, and satisfy the bonding requirements of 30 CFR Part 256, Subpart I. Successful bidders are required to submit the balance of the bonus and the first year's annual rental payment, for each lease issued, by electronic funds transfer in accordance with the requirements of 30 CFR 218.155.

11. *Leasing Maps and Official Protraction Diagrams.* Blocks or bidding units offered for lease may be located on the following Leasing Maps or Official Protraction Diagrams which may be purchased from the Gulf of Mexico regional office (see paragraph 14(a)):

(a) Outer Continental Shelf (OCS) Leasing Maps—South Texas Set. This set of maps sells for $5.

Map 1 South Padre Island Area
Map 1A South Padre Island Area, East Addition (revised 12/16/85)
Map 2 North Padre Island Area
Map 2A North Padre Island Area, East Addition
Map 3 Mustang Island Area
Map 3A Mustang Island Area, East Addition
Map 4 Matagorda Island Area

(b) OCS Leasing Maps—East Texas Set. This set of maps sell for $7.

Map 5 Brazos Area
Map 5B Brazos Area, South Addition
Map 6 Galveston Area
Map 6A Galveston Area, South Addition
Map 7 High Island Area
Map 7A High Island Area, East Addition
Map 7B High Island Area, South Addition
Map 7C High Island Area, East Addition, South Extension
Map 8 Sabine Pass Area

(c) OCS Protraction Diagrams. These diagrams sell for $2 each.

NG 14–3 Corpus Christi (revised 1/27/76)
NG 14–6 Port Isabel (revised 12/16/85)
NG 15–1 East Breaks (revised 1/27/76)
NG 15–2 Garden Banks (revised 12/2/76)
NG 15–4 Alaminos Canyon (revised 12/16/85)
NG 15–5 Keathley Canyon (revised 03/03/87)
NG 15–8 (No Name) issued 03/03/87)

12. *Description of the Areas Offered for Bids.* (a) Acreages of blocks are shown on Leasing Maps and Official Protraction Diagrams. Some of these blocks, however, may be partially leased or transected by administrative lines such as the Federal/State jurisdictional line. In these cases, the following supplemental documents to this Notice are available from the Gulf of Mexico regional office (see paragraph 14(a)):

(1) Western Gulf of Mexico Lease Sale 122. Unleased Split Blocks.

(2) Western Gulf of Mexico Lease Sale 122. Unleased Acreage of blocks with Aliquots Under Lease.

(b) Maps 1, 2, and 3 referred to in this Notice are available on request from the Gulf of Mexico regional office:

Map 1 entitled "Western Gulf of Mexico Lease Sale 122. Stipulations, Lease Terms, and Warning Areas."

Map 2 entitled "Western Gulf of Mexico Lease Sale 122. Bidding Systems and Bidding Units." Refers largely to Royalty Rates and Bidding Units.

Map 3 entitled "Western Gulf of Mexico Lease Sale 122. Detailed Maps of Biologically Sensitive Areas." Pertains to areas referenced in Stipulation No. 2.

(c) In several instances, two or more blocks have been joined into bidding units totaling less than 5,760 acres. Any bid submitted for a bidding unit having two or more blocks must be for all of the unleased Federal acreage within *all* of the blocks in that bidding unit. A listing of bidding units, including their total acreages, appears on Map 2.

(d) The areas offered for leasing including all those blocks shown on the OCS Leasing Maps and Official Protraction Diagrams listed in paragraph 11(a), (b), and (c), except for those blocks or partial blocks described as follows:

(1) Descriptions of blocks listed represent all Federal acreage leased unless othewise noted.

S. Padre Island

1031, 1032, 1039, 1040, 1050, 1104—(Landward of 8(g) Line), 1123, 1124—(Portion Seaward of 8(g) Line), 1143, 1144, 1153, 1154

S. Padre Island East Addition

1100, 1115, 1116, 1117, 1120, 1155, A–62

N. Padre Island

886, 894, 895, 915, 916, 927, 928, 934, 935, 947, 948, 949, 954, 956, 967, 968, 969, 976, 977, 978, 1000—(Landward of 8(g) Line), 1006, 1007, 1010

N. Padre Island, E. Addition

889, 890, 892, 893, 910, 913, 931, 953, 972, 991, 995, 996, A–4, A–5, A–6, A–7, A–8, A–10, A–12, A–13, A–15, A–16, A–22, A–26, A–27, A–30, A–31, A–33, A–40, A–41, A–42, A–43, A–45, A–46, A–47, A–56, A–57, A–58, A–59, A–60, A–62, A–63, A–65, A–63, A–84

Mustang Island

725, 726, 727, 728, 729, 730, 731, 737, 739, 740, 742, 744, 745, 750, 751, 752, 754, 756, 757, 758, 759, 761, 762, 763, 766, 775, 776, 781, 782, 783, 784, 785, 786, 789, 791, 792, 793, 800, 803, 805, 806, 807, 813, 814, 815, 821, 825, 827, 828, 829, 831, 832, 833, 838, 842, 843, 846, 847, 848, 852, 853, 854, 855, 856, 859, 867, 868, 873, 874, 875, 876, A–1, A–2—(NE¼NW¼NE¼;NE¼NW¼; NE¼SE¼NW¼;W½NW¼NE¼)A–5, A–6, A–7, A–10, A–11, A–12, A–13, A–14, A–15, A–16, A–18, A–19, A–22, A–23, A–24, A–25, A–26, A–28, A–31, A–33, A–34, A–35, A–36, A–37

Mustang Island East Add.

736, A–51, A–52, A–54, A–57, A–58, A–60, A–61, A–62, A–63, A–64, A–65, A–84, A–85, A–86, A–95, A–97, A–98, A–99, A–100, A–102, A–103, A–107, A–108, A–111, A–112, A–114, A–117, A–118, A–120, A–121, A–122 A–133, A–134, A–136, A–137, A–140, A–142, A–146, A–150, A–153, A–162, A–164, A–167

Matagorda Island

487, 518, 519, 520, 526, 527, 529, 555, 556, 557, 558, 564, 565, 566, 567, 568, 569, 586, 587, 588, 589, 591, 592, 603, 604, 605, 606, 617, 618, 619, 620, 621, 622, 623, 624, 632, 633, 634, 635, 636, 637, 638, 639, 646, 647, 650, 651, 652, 653, 654, 656, 657, 663, 664, 665, 668, 669, 670, 672, 673, 675, 677, 680, 681, 682, 683, 684, 685, 686, 687, 688, 696, 697, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 717, 718, A–1, A–2, A–3, A–4, A–5, A–7

Brazos

335, 342, 364, 365, 366, 367, 375, 376, 377, 378, 396, 397, 399, 400, 411, 412, 413, 414, 416, 430, 431, 432, 434, 435—(Seaward of 8(g) Line), 436, 437, 450, 451, 452(E½), 453, 455, 458, 467, 474, 475, 488, 489—(Landward of 8(g) Line), 490, 491, 493, 494, 500, 501, 504, 511, 513, 514, 530, 531, 532, 536, 541, 544, 548, 550, 553, 572, 573, 578, 579, 583, 585, A–1, A–2, A–3, A–7, A–9, A–10, A–16, A–17, A–18, A–19, A–20, A–21, A–22, A–23, A–27, A–28, A–37, A–38, A–39

Brazos South Addition

A–47, A–50, A–51, A–52, A–53, A–54, A–63, A–64, A–65, A–66, A–67, A–68, A–70, A–73, A–76, A–79, A–100, A–102, A–105, A–131, A–132, A–133

Galveston

144, 180, 188, 189, 190 (W½), 191—(Portion seaward of 8(g) Line), 192, 209, 210, 211, 212, 213, 222, 223, 224, 226, 227, 237, 239, 241(S½), 242, 243—(Landward of 8(g) Line), 254, 255, 267, 268, 271, 272—(Seaward of 8(g) Line), 273, 274, 275, 281, 282, 283, 286, 287, 288, 289, 291, 295—(S½NE¼NE¼; NW¼NE¼; W½SW¼ NE¼; NE¼SW¼NE¼; N½SE¼NE¼); W½; W½NW¼SE¼; S½SE¼), 296—(NE¼; NE¼ NE¼NW¼; S½NE¼NW¼; S½SW¼NW¼; SE¼NW¼; N½S½; NE¼SW¼SW¼; N½ SE¼SW¼; N½SW¼SE¼; SE¼SE¼), 298, 302, 303, 312, 314—(Portion seaward of 8(g) Line), 315, 316, 317, 320, 323, 324, 325, 327, 328, 333, 334, 343, 346, 347, 348, 349, 350, 351, 352, 353, 359, 360, 362, 363, 379, 380, 382, 383, 384, 385, 386, 389, 390, 391, 392, 393, 418, 419, 420, 421, 423, 424, 427, 429, 460, 461, 462, 463, 465, A–9, A–16, A–20, A–39, A–55, A–60, A–68, A–95, A–96, A–97, A–99, A–100, A–101

Galveston South Addition

A–115, A–125, A–126, A–127, A–128, A–130, A–131, A–141, A–144, A–145, A–157, A–158, A–176, A–177, A–189, A–192, A–193, A–194, A–200, A–201, A–205, A–206, A–207, A–214, A–217, A–218, A–221, A–226, A–230, A–231, A–236, A–237, A–245, A–248, A–249, A–250

High Island

19, 21, 22, 34, 35, 36, 37, 47, 48, 49, 50, 51, 52, 53 (NE¼; E½NE¼SE¼), 54, 55, 63, 64, 69, 71, 72, 73, 86, 90, 91, 92, 94, 105, 107, 109, 110, 111, 116, 117, 131, 134, 135—(N½; N½S½; SW¼ SW¼; W½SE¼SW¼; NE¼SE¼SW¼; N½ S½SE¼), 136—(E½; E½NE¼SW¼; S½SE¼ SW¼), 137, 138, 139, 140, 141, 148, 153, 154, 155(W½), 156, , 157, 160—(NE¼; NE¼NW¼; E½SE¼NW¼; N½SE¼; N½SE¼SE¼), 161—(NW¼NE¼NW¼; S½NE¼NW¼; W½ NW¼; SE¼NW¼; NE¼NE¼SW¼; W½ NE¼SW¼; NW¼SW¼; NW¼SW¼SW¼), 162, 163, 164, 169, 170, 172, 173, 174, 175, 176, 177, 178, 179, 193, 194, 195, 196, 197, 198, 199, 200, 201, 203, 205, 206, 207, 208, 228, 232, 233, 234, 235, 236, 260, 261, 262, 263, 264, 292, A–2, A–4, A–5, A–6, A–8, A–9, A–10, A–11, A–13, A–14, A–16, A–18, A–19, A–20, A–22, A–23, A–24, A–41, A–45, A–57, A–58, A–59, A–62, A–66, A–68, A–69, A–71, A–72, A–76, A–83, A–99, A–100, A–102, A–103, A–122, A–123, A–124, A–126, A–127, A–129, A–130, A–131, A–132, A–139, A–141, A–142, A–149, A–154, A–155, A–165, A–414, A–416, A–417, A–418, A–419, A–422, A–423, A–425, A–426, A–432, A–437, A–438, A–439, A–440, A–443, A–444, A–445, A–446, A–447, A–448, A–450, A–451, A–460, A–461, A–462, A–463, A–465, A–466, A–467, A–469, A–471, A–472, A–474, A–475, A–476, A–477, A–479, A–480, A–481, A–482, A–483, A–484, A–486, A–487, A–489, A–490, A–494, A–496, A–497, A–499, A–502, A–505, A–510, A–511, A–512, A–513, A–515, A–517, A–519, A–520, A–521, A–522, A–525, A–527, A–528, A–529, A–530, A–531, A–532, A–536, A–537, A–539, A–540, A–542, A–544, A–545, A–546, A–547, A–548, A–550, A–551, A–552, A–553, A–554, A–555, A–556, A–557, A–560, A–561, A–562, A–563, A–564, A–567, A–568, A–570, A–571, A–572, A–573, A–574, A–576, A–582, A–584, A–586, A–587, A–590, A–591, A–594, A–595, A–596

High Island East Addition

38, 39, 46, 74, 83, 84, 85, 116, 119, 120, 128, 129, 130, 166, 167, A–168, A–169, A–170, A–171, A–172, A–173, A–177, A–178, A–180, A–183, A–185, A–187, A–193, A–194, A–196, A–200, A–201, A–205, A–206, A–207, A–214, A–215, A–217, A–224, A–228, A–230, A–231, A–236, A–237, A–239, A–240, A–241, A–244, A–245, A–246, A–250, A–253, A–254, A–255, A–257, A–258, A–259

High Island East Addition, S. Extension

A–260, A–261, A–264, A–269, A–270, A–271, A–272, A–278, A–280, A–281, A–282, A–283, A–285, A–286, A–288, A–289, A–290, A292, A–297, A–302, A–303, A–304, A–305, A–306, A–307, A–308, A–309, A–310, A–312, A–313, A–314, A–315, A–317, A–318, A–320, A–321, A–322, A–323, A–325, A–326, A–327, A–330, A–332, A–333, A–334, A–335, A–336, A–338, A–339, A–340, A–341, A–342, A–344, A–345, A–347, A–348, A–349, A–350, A–351, A–352, A–353, A–354, A–355, A–356, A–357, A–360, A–361, A–362, A–363, A–365, A–366, A–367, A–368, A–369, A–370, A–371, A–372, A–373, A–376, A–378, A–379, A–380, A–381, A–382, A–384, A–385, A–386, A–387, A–389, A–390, A–391, A–393, A–396, A–397, A–399, A–403

Sabine Pass

17, 18, 40

Corpus Christi

521, 595, 598, 609, 610, 872, 916

East Breaks

73, 74, 108, 109, 110, 111, 112, 112, 114, 117, 118, 119, 120, 123, 152, 154, 158, 159, 160, 161, 162, 164, 165, 167, 168, 170, 206, 207, 208, 209, 211, 212, 213, 214, 217, 250, 251, 252, 256, 257, 258, 296, 299, 300, 302, 304, 305, 339, 340, 341, 342, 376, 377, 383, 384, 420, 421, 428, 430, 431, 475, 481, 512, 514, 525, 555, 556, 557, 558, 562, 563, 564, 577, 578, 579, 580, 593, 598, 599, 600, 601, 602, 607, 621, 622, 623, 624, 625, 626, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 684, 685, 686, 688, 689, 690, 728, 729, 732, 904, 943, 945, 946, 948, 949, 988, 989, 901, 992

Garden Banks

21, 22, 23, 25, 26, 27, 28, 29, 35, 65, 68, 69, 70, 71, 72, 73, 81, 85, 95, 96, 97, 98, 102, 105, 106, 112, 115, 117, 121, 122, 124, 125, 129, 134, 139, 140, 141, 142, 143, 152, 153, 154, 156, 161, 163, 171, 172, 173, 180, 181, 184, 186, 187, 189, 191, 192, 193, 195, 197, 198, 199, 204, 205, 208, 210, 211, 212, 213, 215, 216, 217, 222, 223, 224, 226, 228, 230, 231, 232, 235, 236, 237, 240, 241, 244, 245, 248, 251, 252, 255, 256, 257, 259, 260, 266, 267, 268, 271, 274, 275, 279, 283, 285, 287, 295, 296, 297, 298, 300, 302, 303, 304, 305, 314, 315, 324, 334, 335, 339, 341, 343, 344, 346, 348, 349, 359, 360, 367, 368, 369, 370, 371, 372, 373, 378, 379, 380, 382, 386, 387, 388, 396, 405, 406, 414, 415, 416, 417, 423, 424, 425, 426, 427, 441, 447, 448, 451, 452, 453, 458, 459, 460, 461, 462, 463, 464, 469, 470, 471, 485, 494, 498, 499, 500, 501, 505, 515, 516, 517, 523, 524, 525, 529, 535, 536, 537, 538, 543, 544, 545, 582, 583, 579, 580, 588, 606, 607, 625, 633, 634, 650, 651, 653, 695, 697, 736, 741, 754, 782, 785, 798, 803, 804, 808, 826, 831, 832, 833, 848, 849, 850, 861, 862, 875, 876, 877, 905, 908, 921, 950, 975, 996

Port Isabel

130, 131, 166, 167, 174, 175, 214, 217, 218, 296, 481, 482, 525, 526, 562, 563, 564, 568, 570, 606, 607, 653, 654, 697, 698, 876

Alaminos Canyon

20, 24, 25, 28, 65, 133, 192, 236, 237, 280, 336, 337, 380, 390, 398, 441, 442, 475, 518, 557, 558, 578, 595, 600, 601, 602, 622, 645, 647, 648, 691, 719, 720, 728, 729, 730, 731, 734, 736, 763, 764, 766, 767, 770, 774, 775, 776, 778, 779, 780, 781, 796, 797, 810, 811, 813, 814, 818, 822, 827, 854, 856, 857, 865, 900, 901, 903, 904, 908, 947, 951, 954, 955, 998, 999

Keathley Canyon

6, 7, 114, 156, 157, 191, 192, 236, 503, 564

(2) Although currently unleased and shown on Texas Leasing Map No. 7C, High Island Area, East Addition, South Extension, dated October 19, 1981, no bids will be accepted on the following blocks: A–375 and A–398.

13. *Lease Terms and Stipulations.* (a) Leases resulting from this sale will have initial terms as shown on Map 1 and will be issued on Form MMS–2005 (March 1986). Copies of the lease form are available from the Gulf of Mexico regional office (see paragraph 14(a)).

(b) The applicability of the stipulations which follow is as shown on Map 1 and Map 3 and as supplemented by references in this Notice.

Stipulation No. 1—Protection of Archaeological Resources.

(This stipulation will apply to all blocks offered for lease in this sale.)

(a) "Archaeological resource" means any prehistoric or historic district, site, building, structure, or object (including shipwrecks); such term includes artifacts, records, and remains which are related to such a district, site, building, structure, or object (16 U.S.C. 470w(5)). "Operations" means any drilling, mining, or construction or placement of any structure for exploration, development, or production of the lease.

(b) If the Regional Director (RD) believes an archaeological resource may exist in the lease area, the RD will notify the lessee in writing. The lessee shall then comply with subparagraphs (1) through (3).

(1) Prior to commencing any operations, the lessee shall prepare a report, as specified by the RD, to determine the potential existence of any archaeological resource that may be affected by operations. The report, prepared by an archaeologist and a geophysicist, shall be based on an assessment of data from remote-sensing surveys and of other pertinent archaeological and environmental information. The lessee shall submit this report to the RD for review.

(2) If the evidence suggests that an archaeological resource may be present, the lessee shall either:

(i) Locate the site of any operation so as not to adversely affect the area where the archaeological resource may be; or

(ii) Establish to the satisfaction of the RD that an archaeological resource does not exist or will not be adversely affected by operations. This shall be done by further archaeological investigation, conducted by an archaeologist and a geophysicist, using survey equipment and techniques deemed necessary by the RD. A report of the investigation shall be submitted to the RD for review.

(3) If the RD determines that an archaeological resource is likely to be present in the lease area and may be

adversely affected by operations, the RD will notify the lessee immediately. The lessee shall take no action that may adversely affect the archaeological resource until the RD has told the lessee how to protect it.

(c) If the lessee discovers any archaeological resource while conducting operations on the lease area, the lessee shall report the discovery immediately to the RD. The lessee shall make every reasonable effort to preserve the archaeological resource until the RD has told the lessee how to protect it.

Stipulation No. 2—Protection of Topographic Features

(This stipulation will be included in leases located in the areas so indicated on Maps 1 and 3 described in paragraph 12.) The banks which cause this stipulation to be applied to blocks of the Western Gulf are:

No Activity Zone Defined by Isobath

	meters
Bank Name: Shelf Edge Banks:	
West Flower Garden Bank[1] (defined by ¼ ¼ ¼ system)	100
East Flower Garden Bank[1] (defined by ¼ ¼ ¼ system)	100
MacNeil Bank	82
29 Fathom Bank	64
Rankin Bank	55
Geyer Bank	85
Elvers Bank	85
Bright Bank [5]	85
McGrail Bank [5]	85
Rezak Bank [5]	85
Sidner Bank	85
Parker Bank	85
Stetson Bank	62
Applebaum Bank	85
Blackfish Ridge	70
Big Dunn Bar	65
Small Dunn Bar	65
32 Fathom Bank	52
Claypile Bank [3]	50
South Texas Banks: [4]	
Dream Bank	78, 82
Southern Bank	80
Hospital Bank	70
North Hospital Bank	68
Aransas Bank	70
South Baker Bank	70
Baker Bank	70.

[1] Flower Garden Banks—In paragraph (c) a "4-Mile Zone" rather than a "1-Mile Zone" applies.
[2] Low Relief Banks—Only paragraph (a) applies.
[3] Claypile Bank—Paragraphs (a) and (b) apply. In paragraph (b) monitoring of the effluent to determine the effect on the biota of Claypile Bank shall be required rather than shunting.
[4] South Texas Banks—Only paragraphs (a) and (b) apply.
[5] Central Gulf of Mexico bank with a portion of its "1-Mile Zone" and/or "3-Mile Zone" in the Western Gulf of Mexico.

(a) No activity including structures, drilling rigs, pipelines, or anchoring will be allowed within the listed isobath ("No Activity Zone" as shown on Map 3) of the banks as listed above.

(b) Operations within the area shown as "1,000-Meter Zone" shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

(c) Operations within the area shown as "1-Mile Zone" on Map 3 shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom. (Where there is a "1-Mile Zone" designated, the "1,000-Meter Zone" in paragraph (b) is not designated.)

(d) Operations within the area shown as "3-Mile Zone" on Map 3 shall be restricted by shunting all drill cuttings and drilling fluids from development operations to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

Stipulation No. 3—Military Warning Areas

(This stipulation will be included in leases located within Warning Areas shown on Map 1 described in paragraph 12.)

(a) Hold and Save Harmless

Whether compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occur in, on, or above the Outer Continental Shelf (OCS), to any persons of to any property of any person or persons who are agents, employers, or invitees of the lessee, its agents, independent contractors or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the OCS, if such injury or damage to such person or property occurs by reason of the activities of any agency of the U.S. Government; its contractors or subcontractors; or any of their officers, agents, or employees being conducted as a part of, or in connection with, the programs and activities of the command headquarters listed in the following table.

Notwithstanding any limitation of the lessee's liability in section 14 of the lease, the lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States; its contractors or subcontractors; or any of its officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee and to indemnity and save harmless the United States against all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents, or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the aforementioned military installation, whether the same be caused in whole or in part by the negligence or fault if the United States; its contractors or subcontractors; or any of its officers, agents, or employees and whether such claims might be sustained under a theory of strict or absolute liability or otherwise.

(b) Electromagnetic Emissions

The lessee agrees to control its own electromagnetic emissions and those of its agents, employees, invitees, independent contractors or subcontractors emanating from individual designated defense warning areas in accordance with requirements specified by the commander of the command headquarters listed in the following table to the degree necessary to prevent damage to, or unacceptable interference with, Department of Defense flight, testing, or operational activities conducted within individual designated warning areas. Necessary monitoring control and coordination with the lessee, its agents, employees, invitees, independent contractors or subcontractors will be effected by the commander of the appropriate onshore military installation conducting operations, in the particular warning area, provided, however, that control of such electromagnetic emissions shall in no instance prohibit all manner of electromagnetic communication during any period of time between a lessee, its agents, employees, invitees, independent contractors or subcontractors, and onshore facilities.

(c) Operational

The lessee, when operating or causing to be operated on its behalf boat or aircraft traffic in the individual designated warning areas, shall enter into an agreement with the commander of the individual command headquarters listed in the following table, upon utilizing an individual designated warning area prior to commencing such traffic. Such an agreement will provide for positive control of boats and aircraft operating into the warning areas at all times.

WARNING AREAS' COMMAND HEADQUARTERS

Warning Areas	Command Headquarters
W-228	Chief, Naval Air Training, Naval Air Station, ATTN: Lt. Commander Armitage or Major Danuser, Corpus Christi, Texas 78419-5100, ATTN: N33, Telephone: (512) 939-3927/3902.
W-602	Director, Air Space Management, Deputy Chief of Staff, Operations Headquarters, Strategic Air Command, ATTN: Major Rose or Mr. Berube, Offutt AFB, Nebraska 68113-5001, Telephone: (402) 294-3103/3450, or (Scheduling), (402) 294-2334/4549.

14. *Information to Lessees.*—(a) *Supplemental Documents.* For copies of the various documents identified as available from the Gulf of Mexico regional office, prospective bidders should contact the Public Information Unit, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, either in writing or by telephone (504) 736-2519. For additional information, contact the Regional Supervisor for Leasing and Environment at that address or by telephone at (504) 736-2755.

(b) *Navigation Safety.* Operations on some of the blocks offered for lease may be restricted by designation of fairways, precautionary zones, anchorages, safety zones, or traffic separation schemes established by the U.S. Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.), as amended. The U.S. Army Corps of Engineers permits are required for construction of any artificial islands, installations, and other devices permanently or temporarily attached to the seabed located on the OCS in accordance with section 4(e) of the OCS Lands Act, as amended.

A final rulemaking to establish a shipping/safety fairway was published in the **Federal Register** on May 14, 1987, at 52 FR 18231. For additional information, prospective bidders should contact Lt. Commander William P. Prosser, Assistant Marine Port Safety Officer, 8th Coast Guard District, Hale Boggs Federal Building, New Orleans, Louisiana 70130, (504) 589-6901.

(c) *Offshore Pipelines.* Lessees are advised that the Department of the Interior and the Department of Transportation have entered into a Memorandum of Understanding dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

(d) *8-Year Leases.* Bidders are advised that any lease issued for a term of 8 years will be cancelled after 5 years following notice pursuant to the OCS Lands Act, as amended, if within the initial 5-year period of the lease the drilling of an exploratory well has not been initiated, or if initiated, the well has not been drilled in conformance with the approved exploration plan criteria, or if there is not a suspension of operations in effect, etc. Bidders are referred to 30 CFR 256.37.

(e) *Affirmative Action.* Revision of Department of Labor regulations on affirmative action requirements for Government contractors (including lessees) has been deferred pending review of those regulations (see **Federal Register** of August 25, 1981, at 46 FR 42865 and 42968). Should changes become effective at any time before the issuance of leases resulting from this sale, section 18 of the lease form (Form MMS-2005, March 1986) would be deleted from leases resulting from this sale. In addition, existing stocks of the affirmative action forms described in paragraph 5 of this Notice contain languagae that would be superseded by the revised regulations at 41 CFR 60-1.5(a)(1) and 60.1.7(a)(1). Submission of Form MMS-2032 (June 1985) and Form MMS-2033 (June 1985) will not invalidate an otherwise acceptable bid, and the revised regulations' requirements will be deemed to be part of the existing affirmative action forms.

(f) *Ordnance Disposal Areas.* Bidders are cautioned as to the existence of two inactive ordnance disposal areas in the Corpus Christi and East Breaks areas, shown on Map 1 described in paragraph 12 of this Notice. These areas were used to dispose of ordnance of unknown composition and quantity. These areas have not been used since about 1970. Water depths in the Corpus Christi area range from approximately 600 to 900 meters. Water depths in the East Breaks area range from approximately 300 to 700 meters. Bottom sediments in both areas are generally soft consisting of silty clays. Exploration and development activities in these areas require precautions commensurate with the potential hazards. Lessees are advised of an Environmental Protection Agency (EPA) dumping site located in portions of Alaminos Canyon, East Breaks, Garden Banks, and Keathley Canyon.

(g) *Gulf Ocean Incineration Site.* Bidders are advised of the existence of the Gulf Ocean Incineration Site located in the East Breaks, Garden Banks, Alaminos Canyon, and Keathley Canyon leasing areas, as shown on Map 1. This site is designated for the incineration of organohalogen wastes including polychlorinated biphenyls and ethylene dichloride. Lessees are advised to contact the EPA, Washington, DC, office, when formulating plans for undertaking oil and gas activity in the designated incineration site area so that potential conflicts can be mitigated through coordination of activities. The following blocks are affected by the Gulf Ocean Incineration Site:

East Breaks

1008, 1009

Alaminos Canyon

40, 41, 84, 85, 128, 129, 172, 216, 217, 260, 261, 304, 305, 348, 349, 392, 436, 437, 480, 481, 524, 525, 568, 569, 612, 656, 657

Garden Breaks

969-980

Keathley Canyon

1-12, 45-56, 89-100, 133-144, 177-188, 221-232, 265-276, 309-320, 353-364, 397-408, 441-452, 485-496, 529-540, 573-584, 617-628

15. *New Regulatory Provisions.* The regulatory reference to provisions in 30 CFR Part 250 cited in this document refers to the new MMS "Oil and Gas and Sulphur Operations in the Outer Continental Shelf." They were published in the **Federal Register** at 53 FR 10595 on April 1, 1988. This Notice is provided to bidders since any leases issued as a result of this sale will be subject to the April 1, 1988, regulations (not those existing in 30 CFR Part 250, revised as of July 1, 1987, which may be in conflict with the new regulations).

Date: June 29, 1989.

Barry Williamson,

Director Minerals Management Service.

S. Scott Sewell,

Deputy Assistant Secretary—Land and Minerals Management.

[FR Doc. 89-15809 Filed 7-5-89; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf, Western Gulf of Mexico; Leasing Systems, Sale 122

Section 8(a)(8) (43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act (OCSLA) requires that, at least 30 days before any lease sale, a Notice be submitted to the Congress and published in the **Federal Register**:

1. Identifying the bidding systems to be used and the reasons for such use; and

2. Designating the tracts to be offered under each bidding system and the reasons for such designation.

This Notice is published pursuant to these requirements.

1. *Bidding systems to be used.* In the Outer Continental Shelf (OCS) Sale 122, blocks will be offered under the following two bidding systems as authorized by section 8(a)(1) (43 U.S.C. 1337(a)(1)): (a) bonus bidding with a fixed 16⅔-percent royalty on all unleased blocks in less than 400 meters of water; and (b) bonus bidding with a fixed 12½-percent royalty on all remaining unleased blocks.

a. *Bonus Bidding with a 16⅔-Percent Royalty.* This system is authorized by section (8)(a)(1)(A) of the OCSLA. This system has been used extensively since the passage of the OCSLA in 1953 and imposes greater risks on the lessee than systems with higher contingency payments but may yield more rewards if a commercial field is discovered. The relatively high front-end bonus payments may encourage rapid exploration.

b. *Bonus Bidding with a 12½-Percent Royalty.* This system is authorized by section (8)(a)(1)(A) of the OCSLA. It has been chosen for certain deeper water blocks proposed for the Western Gulf of Mexico (Sale 122) because these blocks are expected to require substantially higher exploration, development, and production costs, as well as longer times before initial production, in comparison to shallow water blocks. Department of the Interior analyses indicate that the minimum economically developable discovery on a block in such high-cost areas under a 12½-percent royalty system would be less than for the same blocks under a 16⅔-percent royalty system. As a result, more blocks may be explored and developed. In addition, the lower royalty rate system is expected to encourage more rapid production and higher economic profits. It is not anticipated, however, that the larger cash bonus bid associated with a lower royalty rate will significantly reduce competition, since the higher costs for exploration and development are the primary constraints to competition.

2. *Designation of Blocks.* The selection of blocks to be offered under the two systems was based on the following factors:

a. Lease terms on adjacent, previously leased blocks were considered to enhance orderly development of each field.

b. Blocks in deep water were selected for the 12½-percent royalty system based on the favorable performance of this system in these high-cost areas as evidenced in our analyses.

The specific blocks to be offered under each system are shown on Map 2 entitled "Western Gulf of Mexico Lease Sale 122, Bidding Systems and Bidding Units." This map is available from the Minerals Management Service, Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394.

Barry Williamson,

Director, Minerals Management Service.

S. Scott Sewell,

Deputy Assistant Secretary, Land and Minerals Management.

June 29, 1989.

[FR Doc. 89-15810 Filed 7-5-89; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

Importation of Certain Drug Paraphernalia into the United States

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

EFFECTIVE DATE: June 21, 1989.

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission, Washington, DC 20436 (telephone 202-252-1592).

Background and Scope of Investigation: The Commission instituted investigation No. 332-277, Importation of Certain Drug Paraphernalia into the United States, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), following receipt of a request on May 19, 1989, from the Committee on Finance, United States Senate. As requested, the Commission will investigate the scope of imports of illicit drug paraphernalia, evaluate the effectiveness of the Mail Order Drug Control Act in restricting such imports, determine how the Harmonized Tariff Schedule of the United States (HTS) might be amended to better identify drug paraphernalia in particular, and make any other recommendations it deems appropriate in this regard. The Commission intends to submit its report to the Committee on Finance by September 18, 1989.

Public Hearing: A public hearing in connection with this investigation will be held in the Hearing Room of the U.S. International Trade Commission, 500 E Street, SW, Washington, DC, on August 10, 1989, at 9:30 a.m. All persons shall have the right to appear by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, not later than noon, August 3, 1989. Written prehearing comments (original and 14 copies) should be filed not later than noon, August 4, 1989. Post-hearing comments may be submitted by no later than August 16, 1989.

Written Submission: Interested parties (including other Federal agencies) are invited to submit written statements concerning the subject of the report. Such statements must be submitted by no later than August 16, 1989, in order to be considered by the Commission. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submission, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436.

Hearing-impaird individuals are advised that information on this matter can be obtained by contacting our TDD terminal on 202-252-1809.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: June 28, 1989.

[FR Doc. 89-15889 Filed 7-5-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-291]

Certain Insulated Security Chests; Commission Decision Not To Review Initial Determination of the Presiding Official to Add a Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Notice of amendment of complaint and notice of investigation to add a respondent.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the initial determination (ID) issued by the presiding administrative law judge (ALJ) adding EP Industrial Co., Ltd. (EP) as a respondent to this investigation.

ADDRESSES: Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1000.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1088.

Hearing-impared individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202-252-1810.

SUPPLEMENTARY INFORMATION: On May 26, 1989, the presiding ALJ issued an ID granting the motion of complainant John D. Brush & Co., Inc. (Brush) to amend the complaint and notice of investigation by naming EP as a respondent. In its motion, Brush demonstrated good cause, as required by 19 CFR § 210.22, why it has not included EP as a respondent when Brush Filed its complaint.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.53 of the Commission's Interim Rules of Practice and Procedure (53 FR 33071, Aug. 29, 1988).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: June 26, 1989.

[FR Doc. 89-15900 Filed 7-5-89; 8:45am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31425 (Sub-No. 1)]

Bi-State Development Agency of the Missouri-Illinois Metropolitan District—Acquisition and Operation Exemption—Norfolk and Western Railway Co. and Wabash Railroad Co.

Bi-State Development Agency of the Missouri-Illinois Metropolitan District (Bi-State), a non-carrier, has filed a notice of exemption to acquire and operate approximately 8.14 miles of railroad in St. Louis, MO. The line, which is currently owned by the Wabash Railroad Company (Wabash) and operated under a long-term lease by Norfolk and Western Railway Company (N&W), extends from milepost 1.8 (Valuation Station 80+5) in the City of St. Louis, MO, to milepost 9.94 (Valuation Station 509+39) in the County of St. Louis, MO. In accordance with an agreement entered into with Wabash and N&W, the City of St. Louis, MO (the City) will acquire the line and immediately convey it to Bi-State. The agreement was expected to be consummated on or after June 15, 1989.

Any comments must be filed with the Commission and served on: (1) Kathryn J. Giddings, The Stolar Partnership, The Lammert Building, 911 Washington Avenue, St. Louis, MO 63101; and (2) L. John Osborn, Verner, Liipfert, Bernhard, McPherson and Hand, Chartered, 901 15th Street, N.W., Suite 700, Washington, DC 20005-2301.[1]

The Missouri State Historic Preservation Officer has determined that no properties listed in or eligible for inclusion in the *National Register of Historic Places* will be affected by this transaction.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: June 20, 1989.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-15629 Filed 7-5-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31469]

South Carolina Central Railroad Co., Inc.—Purchase—CSX Transportation, Inc. Line Between East Greenville and Laurens, SC

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision accepting application for consideration.

SUMMARY: The Commission is accepting for consideration the application, filed May 31, 1989, by South Carolina Central Railroad Company, Inc., to purchase from CSX Transportation, Inc., 34.04 miles of rail line between East Greenville and Laurens, SC. The Commission finds that this is a minor transaction under 49 CFR Part 1180.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than August 7, 1989. Comments from the Secretary of Transportation and Attorney General of the United States must be filed by August 21, 1989. Applicants' reply is due September 11, 1989. Comments must be served on all parties of record within 10 days of the Commission's issuance of a service list. The Commission expects to issue the service list by August 21, 1989.

ADDRESSES: Send an original and 10 copies of all documents to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 31469, Interstate Commerce Commission, Washington, DC 20423.

In addition, concurrently send one copy of all documents to the United States Secretary of Transportation, the Attorney General of the United States, and each of applicants' representatives:

Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Room 5101, 400 Seventh Street, SW., Washington, DC 20590

Attorney General of the United States, Washington, DC 20530

Lawrence H. Richmond, CSX Transportation, Inc., 100 North Charles St., Baltimore, MD 21201

Kelvin J. Dowd, Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036

Also, after the Commission issues a service list, send one copy to every part of record.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245 [TDD for hearing impaired: (202) 275-1721]

SUPPLEMENTARY INFORMATION: South Carolina Central Railroad Company, Inc. (SCRF) and CSX Transportation, Inc. (CSXT), collectively "applicants," seek Commission approval under 49 U.S.C. 11343, *et seq.*, for SCRF to purchase for $700,000 cash CSXT's 34.04-mile line between East Greenville and Laurens, SC. They contend that this is a minor transaction under 49 CFR 1180.2(c) and submitted their application in accordance with the railroad consolidation procedures at 49 CFR Part 1180 for such transactions. They intend to consummate the transaction as soon as possible after final Commission approval. They request expedited handling and that a decision granting the application be made effective 7 days after such a decision is issued.

SCRF is a Class III railroad controlled by a noncarrier, Railtex, Inc. It now operates about 55 miles of line between Florence and Bishopville, SC, and between Cheraw and Society Hill, SC. In addition, SCRF was recently authorized to acquire 259 miles of line from CSXT in Alabama and Georgia and

[1] In a letter filed June 13, 1989, Vi-Jon Laboratories, Inc., requests a stay of the effective date of the exemption. The exemption became effective 7 days after filing, or June 13, 1989, in accordance with 49 CFR 1150.32(b).

to lease from Norfolk Southern Corporation a 79-mile line between White Oak and Smithville, GA. It also has filed a now-pending application to purchase from CSXT a 25-mile line between Albany and Dawson, GA. These lines do not connect with the line at issue here.

CSXT is a Class I railroad and a unit of CSX Corporation. It transported about 8,200 originating and about 7,100 terminating carloads on the line during 1987 and 1988, respectively. The line carries no overhead traffic.

Applicants state that the proposed transaction will result in operating economies and improved service, thus enhancing their financial viability. Specifically, the proposed transaction will enable SCRF to enter a new market and spread its administrative, insurance, and operating costs over a larger base. CSXT, on the other hand, will be relieved of inefficiencies inherent in operating what for it is a marginal line. SCRF expects that the revenue generated by traffic on the line will easily cover the additional fixed charges resulting from the debt incurred to acquire the line.

Applicants also state that the transaction will improve service. As a small local carrier, SCRF assertedly will be better able to accommodate the needs of the line's shippers.

Applicants contend that the proposed transaction will not substantially reduce competition, create a monopoly, or restrain trade in freight surface transportation in any region of the United States. As applicants do not compete for traffic on the line, the transactions will merely substitute one rail carrier for another on an existing line. The line is parallel to an Interstate highway, and the area is served by motor carriers. Applicants state that, if anything, the transaction should enhance intermodal competition by allowing the rail mode to compete more effectively with other modes. Since the line at issue connects only with CSXT, applicants do not believe the transaction would have any significant effect on other rail carriers.

SCRF intends to operate the line with its own employees. As a result, CSXT's work force will be reduced by an estimated four positions. No positions with SCRF will be eliminated. It expects to hire additional employees to operate the line and states that it will offer these positions to former CSXT employees.

CSXT states it intends to negotiate employee protection agreements with affected employees pursuant to the conditions set forth in *New York Dock Railway—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979). These conditions are appropriate for employees affected by the acquisition.

Under the consolidation regulations, we must determine initially whether a proposed transaction is major, significant, minor, or exempt. The proposed transaction, involving a Class I and a Class II railroad, has no regional or national significance and will neither result in a major market extension nor reduce the present level of competition. Accordingly, we find the proposal to be a minor transaction under 49 CFR 1180.2(c). Because the application complies with the applicable regulations governing minor transactions, we are accepting it for consideration.

The application and exhibits are available for inspection in the Public Docket Room at the Offices of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained upon request from applicants' representatives named above.

Any interested persons, including government entitites, may participate in this proceeding by submitting written comments. Comments must be filed no later than August 7, 1989. The United States Secretary of Transportation and the Attorney General of the United States must file their comments no later than August 21, 1989. Applicants' reply is due September 11, 1989. An original and 10 copies of all pleadings must be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20432.

Written comments must be served concurently by first-class mail on the Secretary of Transportation, the Attorney General and applicants' representatives. Written comments must also be served on all parties of record within 10 days of service of the service list by the Commission. We plan to issue the service list by August 21, 1989. Any person who files timely written comments shall be considered a party of record if the person's comments so request. In this event, no petition for leave to intervene need be filed.

Consistent with 49 CFR 1180.4(d)(1)(iii), written comments must contain:

(a) The docket number and title of the proceeding;

(b) The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

(c) The commenting party's position, *i.e.*, whether it supports or opposes the proposed transaction;

(d) A statement of whether the commenting party intends to participate formally in the proceeding or merely comment upon the proposal;

(e) If desired, a request for an oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can only be resolved at a hearing; and

(f) A list of all information sought to be discovered from applicant carriers.

Because we have determined that this proposal is a minor transaction, no responsive applications will be permitted. The time limits for processing a minor transaction are set forth at 49 U.S.C. 11345(d). To the extent possible, we will expedite this proceeding within shorter time frames. Parties opposing the transaction should specifically address why approval, if granted, should not be effective within 7 days.

Discovery may begin immediately. We admonish the parties to resolve all discovery matters expeditiously and amicably.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proposal is found to be a minor transaction under 49 CFR 1180.2(c).

2. The application in Finance Docket No. 31469 is accepted for consideration.

3. The parties shall comply with all provisions stated above.

4. This decision is effective on the date of service.

Decided: June 27, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners André, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-15785 Filed 7-5-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree

In accordance with section 122(d)(2)(B) of the Comprehensive Environmental Response, Compensaton, and Liability Act ("CERCLA"), 42 U.S.C. 9622(d)(2)(B), and the policy of the Department of Justice 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States v. Allied-Signal, Inc., et al.*, Civil Action No. 89-CV-807, was lodged with the United States District Court for the Northern District of New York of June 26, 1989. The action was filed pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607. The Complaint seeks a court order requiring the twenty-six defendants to abate an endangerment to public health, welfare or the environment and a declaratory judgment for recovery of certain costs to be incurred by the United States in connection with the Clothier Disposal Site ("Clothier Site"), in Granby, New York.

The consent decree provides that the defendants will fund and implement the remedial action for a cleanup of the Clothier Site. The remedial action includes the following major elements: placement of a foot of clean soil on portions of the Site; long-term restrictions on certain uses of Site; and long-term monitoring of the Site. The defendants also will pay EPA's costs in overseeing implementation of the remedial action, conducting periodic reviews of the remedial action, and assisting the defendants to obtain access to the Clothier Site.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, U.S. Department of Justce, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States v. Allied-Signal, Inc., et al.*, DOJ Reference No. 90-11-3-273.

The proposed consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

U.S. Attorney's Office, Northern District of New York, 369 Federal Building, Syracu a, New York 13260, Contact: Craig Benedict, (315) 423-5165

U.S. EPA, Region II, Office of Regional Counsel, 26 Federal Plaza, New York, New York 10278, Contact: Gregory Snyder, (212) 264-6157

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Departmernt of Justice, Room 1515, 10th Street and Pennsylvania Avenue, NW., Washington, DC. 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the decree, please enclose a check for coping costs in the amount of $5.00 payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-15846 Filed 7-5-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree, Pursuant to the Clean Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on May 31, 1989 a proposed Consent Decree in United States v. University Cogeneration Partners LTD., 1985-1, Civil Action No. 890818B (CM) was lodged with the United States District Court for the Southern District of California. The proposed Consent Decree concerns compliance with the Clean Air Act by University Cogeneration Partners LTD., 1985-1 ("University"). In particular, the proposed Consent Decree requires University to conduct performance tests in accordance with 40 CFR 60.8(a), within fourteen (14) days of the next operation of the duct burners, give notice to the United States within thirty (30) days prior to conducting the tests, and provide the United States with a copy of the performance test report within ninety (90) days of the completion of the test. Under the proposed Consent Decree, the United States, its contractors and agents shall be allowed to enter and inspect the facility, including the record of the data produced by continuous emission monitors, at all reasonable times to ensure compliance with the Decree. University will be required to pay a civil penalty of $25,000 to the United States. Graduated stipulated penalties are provided for under the Consent Decree in the event University fails to comply with specified paragraphs in the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to the University Cogeneration Partners LTD., 1985-1, D.J. Ref. No. 90-5-2-1-1309.

The proposed Consent Decree may be examined at the office of the United States Attorney, Southern District of California, 940 Front Street, Room 5N19, San Diego, California, and at the Region IX, Office of the Environmental Protection Agency, 215 Fremont Street, San Francisco, California. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.00 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-15845 Filed 7-5-89; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 89-22]

Crosstown Drugs; Denial of Application

On March 29, 1989, the Deputy Assistant Administrator, Office of Division Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Crosstown Drugs (Respondent), proposing to deny its application dated April 18, 1988, as a retail pharmacy under 21 U.S.C. 823(f). The Order to Show Cause alleged that the registration of Respondent would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f).

Respondent, acting *pro se*, requested a hearing by letter dated April 17, 1989. The case was docketed by Administrative Law Judge Francis L. Young who promptly ordered prehearing statements from both sides. After the DEA's statement was tendered to Respondent, Mr. Lonnie E. Maze, owner of Respondent Pharmacy, informed the Judge by letter dated May 21, 1989, that he wished to waive his right to a hearing and instead submit a written statement. Judge Young terminated proceedings by Order dated May 31, 1989. The investigative file together with Respondent's written statement was then referred to the Administrator who now issues this Final Order pursuant to 21 CFR 1301.54(e).

The Administrator finds that Lonnie E. Maze has, at all relevant times, been the owner of Crosstown Drugs of Nashville, Tennessee. On March 10, 1983, Mr. Maze was convicted in the Davidson County Criminal Court for the State of Tennessee of seven counts of dispensing a controlled substance without a prescription, felonies relating to controlled substances.

On December 30, 1983, the Tennessee Board of Pharmacy revoked the license of Mr. Maze to practice pharmacy for a period of six months. He was additionally placed on probation for three years.

On July 12, 1983, Mr. Maze submitted a renewal application to the DEA

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indicating that he had not been convicted of a felony relating to controlled substances under State or Federal law. On July 10, 1984, Mr. Maze again submitted a renewal application indicating that he had not been convicted of a felony relating to controlled substances under State or Federal law.

On June 17, 1985, an Order to Show Cause was issued to Crosstown Drugs seeking to revoke its DEA Registration under 21 U.S.C. 824(a), citing the conviction of Mr. Maze and the material falsifications on the two applications submitted by Mr. Maze in 1983 and 1984. A hearing was held in Nashville, Tennessee on November 21, 1985, before Administrative Law Judge Francis L. Young. Judge Young recommended that Respondent's DEA registration be revoked. The Administrator adopted that recommendation and revoked Respondent's registration in a Final Order published at 51 FR 24242 (July 2, 1986).

In his previous Final Order, the Administrator found, *inter alia*, that "[Mr.] Maze illegally sold controlled substances, failed woefully in his obligation to maintain accurate records of the controlled substances carried by his pharmacy, and then materially falsified applications for two years."

In defense of Respondent's present application, Mr. Maze states he has learned a painful and expensive lesson. He has taken over 200 hours of continuing pharmacy education credits and promises to keep stringent accountability records of all controlled substances. He also states that he has operated his pharmacy for three years without a DEA controlled substance license.

The Administrator has no doubt that this experience has been a painful and expensive lesson for Mr. Maze. However, the Administrator is not convinced that Respondent can now be entrusted with the responsibility inherent in a DEA registration. Mr. Maze's statement that he will keep stringent accountability records is commendable but comes too late. He was already required to keep such records and he did not. The Administrator declines to take Mr. Maze's assertion as fact, absent corroboration. Likewise it is commendable that Mr. Maze has taken over 200 hours of continuing pharmacy education credits, however the crimes committed by Mr. Maze are not the result of lack of knowledge, but lack of honesty. Mr. Maze falsified his applications to hide his convictions. As the owner of Respondent pharmacy, Mr. Maze is responsible for the operation of the pharmacy. It is well settled that a registration of a pharmacy may be revoked or application denied based on the wrongdoing of its owner or officers. See *Bloomfield Professional Center Pharmacy*, 53 FR 4910 (February 18, 1988). Quite simply Mr. Maze's past actions outweigh his bare assertions of rehabilitation. Respondent's registration is therefore not in the public interest.

Having concluded that Respondent's application is not in the public interest, the Administrator, pursuant to the powers granted the Attorney General in 21 U.S.C. 823 and 824 and delegated to the Administrator under 21 U.S.C. 871 and 28 CFR 0.100, hereby orders that Respondent's application for registration dated April 18, 1988, be, and it hereby is, denied.

This order is effective July 6, 1989.

Dated: June 23, 1989.

John C. Lawn,

Administrator.

[FR Doc. 89-15765 Filed 7-5-89; 8:45 am]

BILLING CODE 44-09-M

[Docket No. 88-49]

Summer Grove Pharmacy Revocation of Registration

On April 12, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Summer Grove Pharmacy (Respondent), 2865 Summer Grove Drive, Shreveport, Louisiana, proposing to revoke its DEA Certificate of Registration, AS3413755. The Order to Show Cause alleged that the continued registration of the pharmacy would be inconsistent with the public interest in that (1) an audit of the pharmacy's records for the period January 1, 1987, through April 8, 1987, revealed large shortages of controlled substances; (2) the pharmacy filled prescriptions for Schedule III-V controlled substances in excess of five times over a six-month period, in excess of the refills authorized by the prescribing physician, and which did not contain required information; and (3) the pharmacy dispensed controlled substances pursuant to prescriptions not authorized by the physicians whose names were listed as the prescriber.

Respondent, through its owner, Lloyd Rainer, requested a hearing in correspondence dated April 19, 1988. The matter was docketed before Administrative Law Judge Francis L. Young. Following prehearing procedures, a hearing was held in New Orleans, Louisiana on November 17, 1988. On March 29, 1989, the Administrative Law Judge issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. On April 17, 1989, counsel for Respondent filed exceptions to the Administrative Law Judge's opinion and recommended ruling, and on May 5, 1989, the Government filed a response to Respondent's exceptions. On May 8, 1989, Judge Young transmitted the record of these proceedings, including the aformentioned exceptions and response to exceptions, to the Administrator. On May 22, 1989, Respondent filed, with the Administrator, a request to supplement the record. On June 2, 1989, the Government filed a response to that request. The Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon the findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that Lloyd Rainer, R.Ph., has been the owner of Respondent pharmacy since it opened in 1957. A 1985 DEA ARCOS report listed Respondent pharmacy as the fourth top purchaser in the United States of dihydrocodeine, and the fifth top purchaser in the United States of hydrocodone products. This trend continued in the 1986 ARCOS reports. Based, in part, on this information, DEA Investigators conducted an audit of selected controlled substances at Respondent pharmacy in April 1987. Using a zero figure as the initial inventory, the audit period extended from January 1, 1987, through April 8, 1987. The audit revealed large shortages of the controlled substances Tussionex, Tranxene, Halcion, and Xanax. Tussionex is a Schedule III controlled substance containing hydrocodone. Revised audit figures were prepared following verification with suppliers of the pharmacy which revealed additional purchases. The revised audit figures for the four products were as follows:

Tussionex liquid, shortage of 2925 ml.
Tranxene 7.5mg, shortage of 6137 tablets
Halcion .5mg, shortage of 3190 tablets
Xanax .5mg, shortage of 7689 tablets

The Administrative Law Judge concluded that these shortages were significant.

In reviewing the pharmacy's prescription records, the Investigators found many violations regarding Schedule III, IV and V prescriptions. These included failure to mark prescriptions to make them readily retrievable from other records, failure to include all required information on each prescription, filling of prescriptions in excess of five times in a six-month period, and filling prescriptions in excess of the amount prescribed.

Approximately 400 prescriptions were taken from the pharmacy by DEA Investigators for verification. Five of 12 physicians interviewed verified the validity of prescriptions listing them as the prescriber. Six of the physicians interviewed indicated that they did not write or authorize 59 prescriptions which bore their names as the prescribing physician. Nineteen refills were listed on prescriptions which physicians indicated they did not authorize.

On September 9, 1987, Mr. Rainer was advised by DEA Investigators of the results of the audit of Respondent pharmacy and the recordkeeping violations, including unauthorized and incomplete prescriptions. Mr. Rainer had no explanation for the unauthorized prescriptions, but stated that shortages were probably due to the pharmacists' failure to mark refills on prescriptions.

At the hearing, Respondent submitted 13 character affidavits, which included affidavits by physicians, which vouch for Mr. Rainer's high esteem within the community.

In a post-hearing submission, Respondent challenges the validity of the audit and inspection conducted by DEA Investigators. The investigation was conducted pursuant to an Administrative Inspection Warrant obtained by DEA Investigators from a U.S. Magistrate. Respondent argues that the warrant and affidavit were not offered into evidence at the hearing and that since the Investigators did not advise the pharmacy of their suspicions about the pharmacy, the results of the investigation are invalid. There is no requirement that the warrant and affidavit be offered into evidence. They are both public documents to which Respondent had access. The Investigator informed Mr. Rainer that she was present to conduct an audit and presented him with the warrant. Nothing further was required.

The Administrative Law Judge concluded that the audit results showed, at the very least, serious recordkeeping problems. The audit revealed a shortage of almost 20,000 dosage units of four controlled substances in a three-month period. These shortages, coupled with the other recordkeeping violations, reveal a neglect and lack of care by the pharmacy. While the Administrative Law Judge found that the pharmacy was not to be faulted with the filling of forged or unauthorized prescriptions since the Government did not meet its burden of showing that the pharmacists knew or should have known the prescriptions and refills were not legitimate, the Administrative Law Judge did conclude that Mr. Rainer, as owner of Respondent pharmacy, is responsible for the recorkeeping failures and large shortages of controlled substances.

Mr. Rainer testified at the hearing that the violations were unintentional, inadvertent, and due to the pharmacy's high volume. It is not necessary to show that the violations in question were intentional or were caused by Mr. Rainer. The regulatory scheme of the Controlled Substances Act exists to ensure that controlled substances remain in legitimate channels and are accounted for. Mr. Rainer also asserts that a new computer system at the pharmacy will alleviate the violations found by Investigators in 1987. The Administrative Law Judge properly noted that the computer system is only as accurate as the information entered into it. If the shortages were, in fact, caused by pharmacists failing to note refills on prescription, they could just as easily not be entered into the computer.

The Administrative Law Judge concluded that Respondent's experience in dispensing controlled substances and its failure to comply with applicable Federal law relating to controlled substances indicate that Respondent pharmacy's registration is inconsistent with the public interest. The Judge recommended that Respondent pharmacy's DEA registration be revoked. The Administrator adopts the opinion and recommended ruling of the Administrative Law Judge.

Following the transmittal of the record by the Administrative Law Judge to the Administrator, Respondent's counsel filed a request to supplement the record with the Administrator. This request included a copy of a plea agreement, bill of information, and transcript of the taking of the plea in *United States of America* v. *Alvis Loden*, in the United States District Court for the Western District of Louisiana, Criminal No. 89-50018-01. Also attached to the request are many pages of petitions attesting to Mr. Rainer's honesty and service to the community. Alvis Loden was a pharmacist employed at Respondent pharmacy for eight years, having been terminated from his position by Mr. Rainer in July 1988. The supplemental documents indicate that on April 20, 1989, Mr. Loden entered into a plea agreement with the Federal Government in which he agreed to plead guilty to a two count information charging unlawful dispensing of Tussionex on June 23, 1985, and June 29, 1985. Counsel for Respondent argues that this event can only lead one to speculate how much of the shortage of controlled substances was attributable to Mr. Loden, and that Mr. Rainer should not be held accountable. There is absolutely no evidence to support a conclusion that Mr. Loden was responsible for all the shortages and recordkeeping deficiencies.

The Administrator has carefully considered these additional documents, and will include them as part of the record in this matter. The Administrator has also considered the Government's response to Respondent's request to supplement the record. Mr. Loden's conviction does not change the facts in this matter, nor does it alter the basis for the Administrative Law Judge's recommended decision. Mr. Rainer's personal culpability and moral character are not at issue in this matter. His failure to exercise control over the operation of the pharmacy and his failure to supervise his employees to ensure compliance with the law and regulations relating to controlled substances, are, however, of prime importance. The violations cited by the Judge and the plea of Mr. Loden merely demonstrate Mr. Rainer's failure to control the dispensing of controlled substances from the pharmacy. The registration of the pharmacy should be revoked as being inconsistent with the public interest.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AS3413755, previously issued to Summer Grove Pharmacy, be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of the registration, be, and they hereby are, denied. This order is effective August 7, 1989.

Dated: June 23, 1989.

John C. Lawn,

Administrator.

[FR Doc. 89-15766 Filed 7-5-89; 8:45 am]

BILLING CODE 4410-09-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-259, 50-260, 50-296]

Tennessee Valley Authority; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC/the Commission) is considering issuance of a temporary

exemption from certain requirements of 10 CFR 50.71(e) to the Tennessee Valley Authority (TVA/the licensee), for the Browns Ferry Nuclear Power Plant, Units 1, 2 and 3, located at the licensee's site near Decatur, Alabama.

Environmental Assessment

Identification of Proposed Action

The licensee would be temporarily exempted from meeting the requirement of 10 CFR 50.71(e) to update at least annually the Browns Ferry Updated Final Safety Analyses Report (UFSAR). The UFSAR for Browns Ferry is currently required to be updated by July 22, 1989. The licensee's request for temporary exemption would delay transmittal of the 1989 updated UFSAR until the scheduled July 22, 1990 annual update. The request and the supporting bases for the temporary exemption are contained in the licensee's letter dated May 23, 1989.

The Need for the Proposed Action

The temporary exemption is required in order to permit the licensee to complete its UFSAR verification program as well as incorporate the many changes to the plant design and configuration which result from the ongoing restart programs and modifications currently being undertaken at Browns Ferry, Unit 2. Units 1 and 3 are currently defueled and start-up of units will be after the next scheduled UFSAR update (July 1990).

Environmental Impacts of the Proposed Action

The temporary exemption would allow submittal of the updated UFSAR to be delayed for 12 months. This temporary exemption is administrative and will not affect plant hardware or procedures.

The proposed temporary exemption will not affect plant operation since operations personnel will be provided with up-to-date plant configuration drawings which are utilized in the control room as source material. Changes which will affect FSAR sections will be placed in special files so that the latest information concerning any part of the UFSAR will be available for review by TVA personnel engaged in screening reviews and safety evaluations. Accordingly, the temporary exemption will not increase the probability or consequences of any reactor accident sequence. No changes are being made in the types of any effluents that may be released offsite; there is no significant increase in the allowable individual or cumulative occupational radiation exposure; and the temporary exemption will not otherwise affect any other radiological impact associated with the facility. Consequently, the Commission concludes that there are no significant radiological impacts associated with the proposed temporary exemption.

With regard to potential non-radiological impacts, the proposed temporary exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed temporary exemption.

Alternatives to the Proposed

The Commission has concluded that there is no significiant environmental impact associated with the proposed temporary exemption. Therefore, any alternatives to the temporary exemption will have either equal or greater environmental impact and need not be evaluated.

The principal alternative would be to deny the requested temporary exemption. Such action would not reduce the environmental impact of the Browns Ferry Nuclear Plant, Units 1, 2 and 3, operations.

Alternative Use of Resources

These actions associated with the granting of the proposed temporary exemption as detailed above do not involve the use or resources not previously considered in connection with the Final Environmental Statement (construction permit and operating license) (FES) for the Browns Ferry Nuclear Plant, Units 1, 2 and 3, dated September 1, 1972.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's submittal that supports the proposed temporary exemption discussed above and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for temporary exemption dated May 23, 1989 which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the NRC's Local Public Document Room located at the Athens Public Library, South Street, Athens, Alabama 35611.

Dated at Rockville, Maryland, this 26th day of June, 1989.

For the Nuclear Regulatory Commission.

Gerald E. Gears,

Acting Assistant Director for Projects, TVA Projects Division, Office of Nuclear Reactor Regulation.

[FR Doc. 89-15856 Filed 7-5-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-271]

Vermont Yankee Nuclear Power Corp.; Vermont Yankee Nuclear Power Station; Exemption

I

Vermont Yankee Nuclear Power Corporation ("licensee") is the holder of Operating License No. DPR-28, which authorizes the operation of the Vermont Yankee Nuclear Power Station. This license provides, among other things, that the Vermont Yankee Nuclear Station is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The plant is a boiling water reactor at the licensee's site located in Vernon, Vermont.

II

On November 19, 1980, the Commission published a revised § 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. Two of these subsections, III.G.2.a and III.J, are the subject of the licensee's exemption requests.

Section III.G.2.a of Appendix R to 10 CFR Part 50, requires separation of cables and equipment and associated non-safety trains by a fire barrier having a three hour rating. Penetration seals forming a part of such fire barriers shall be qualified to provide fire resistance equivalent to that required of the barrier. Section III.J of Appendix R, requires emergency lighting units to have at least an 8-hour battery backup power supply in all areas needed for operation of safe shutdown equipment, as well as access to and from such equipment.

III

By letter dated February 2, 1989, Vermont Yankee Nuclear Power Corporation requested an exemption from the technical requirements of section III.G.2.a of Appendix R to 10 CFR Part 50, "Fire Protection of Safe Shutdown Capability." The exemption is for an unqualified penetration seal for the four main steam lines and two feedwater lines through the Reactor Building west wall into the Turbine Building. The wall itself is qualified as a 3-hour rated fire barrier, however, the penetration seal is not.

The subject penetration is located in the barrier separating the Reactor Building Steam Tunnel and the Turbine Building High Pressure Bay. These are high radiation areas during plant operation. Therefore, access is controlled and transient combustibles are absent. The penetration seal is constructed of steel sleeves and steel plate assembled with rivets designed to break at a predetermined load to provide blow-out panels in the event of a steam line break inside the steam tunnel. The piping is covered with composite insulation and a zippered fabric bellows incorporating an air tight vinyl gasket to support secondary containment integrity. Based on our evaluation, above, that the subject penetration area is inaccessible to personnel during plant operation and that there will be no transient combustibles as a consequence, and as there are no other possible sources of a fire, we conclude that the subject penetration provides adequate fire protection even with the unqualifed seal. In addition, we conclude that fire protection would not be particularly enhanced if the existing unqualified penetration seal was replaced with a seal qualified to 3-hour fire resistance rating as there is no credible source for initiation and maintenance of a fire.

By letter dated June 29, 1988, the licensee also requested an exemption from the technical requirements of section III.J of Appendix R. Section III.J requires that "Emergency lighting units with at least an eight-hour battery supply shall be provided in all areas needed for operation of safe shutdown equipment and in access and egress routes thereto."

Vermont Yankee's Appendix R Alternate Shutdown System was designed to address a fire in the Control Room, Cable Vault, and West Switchgear Room. Alternate shutdown utilizes the Residual Heat Removal (RHR) System for torus cooling and shutdown cooling to help achieve cold shutdown. In the event of a Loss of Off-Site Power (LOOP), an Emergency Diesel Generator (EDG) is required to operate RHR. Although torus cooling is not required for several hours following a fire and LOOP, operation of an EDG is established by procedure early in the scenario. One of the advantages of bringing on the EDG is establishing backup ac lighting. However, the area of the torus catwalk does not have an eight-hour battery supply for backup illumination power.

In order to ensure proper valve line-up for torus cooling, an operator is required by procedure to check that RHR-38A (suppression chamber spray valve) and RHR-66 (discharge to radwaste isolation valve) are closed. These valves are located in the Reactor Building torus area off the catwalk. This area, as well as access to the area, is provided with 120 V ac lighting backed by an EDG rather than a backup battery supply.

Based on the above, we conclude that the availability of the EDG for backup power eliminates the need for an individual 8-hour battery power supply in this specified area and provides for a superior backup power supply.

The licensees stated in their February 2, 1989 submittal regarding Appendix R section III.G.2.a regarding the special circumstance requirements of 10CFR50.12a(2)(ii) that sealing the main steam lines and feedwater lines penetration between the Reactor Building and Turbine Building with a qualified three-hour fire rated seal is not necessary to achieve the underlying purpose of section III.G.2.a. The staff agrees with this conclusion because the subject penetration provides fire protection comparable to that provided by Section III.G.2.a.

The licensee's June 29, 1989 letter addressed the special circumstances regarding Appendix R section III.J by stating that the provision of a 120V ac emergency lighting system driven by an emergency diesel generator rather than a battery driven system achieves the purpose of Appendix R, section III.J. As stated above, the staff finds the 120V ac system superior to the battery system and agrees with the licensee's conclusion on special circumstances.

Therefore, an exemption to the requirements of section III.G.2.a of Appendix R in relation to the need for a three-hour fire-rated seal and section III.J in regard to backup power supplies should be granted.

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) the exemption as described in section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security, and (2) in this case, special circumstances are present in that application of the regulation is not necessary to achieve the underlying purpose of Appendix R to 10 CFR Part 50. Therefore, the Commission hereby grants the exemption from the requirements of section III.G.2.a and section III.J of Appendix R to 10 CFR Part 50 as discussed above.

Pursuant to 10 CFR 51.32, the Commission had determined that the granting of this exemption will not result in any significant environmental impact (54 FR 22988). A copy of the licensee's submittals dated June 29, 1988 and February 2, 1989 are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301. Copies may be obtained upon written request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

This Exemption is effective upon issuance.

Dated at Rockville, Maryland this 26th day of June, 1989.

For The Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulations.

[FR Doc. 89-15857 Filed 7-5-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Leesa Martin, (202) 632-0728.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on May 23, 1989 (54 FR 22387). Individual authorities established or revoked under Schedule A, B, or C

between May 1, 1989, and May 31, 1989, appear in a listing below.

Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule C

U.S. Arms Control and Disarmament Agency

One Special Assistant to the Director. Effective May 31, 1989.

Action

One Special Assistant to the Deputy Director. Effective May 23, 1989.

Agency for International Development

One Special Assistant to the Assistant Administrator. Effective May 18, 1989.

One Director, White House Liaison to the Administrator. Effective May 24, 1989.

Department of Agriculture

One Confidential Assistant to the Deputy Secretary. Effective May 5, 1989.

One Staff Assistant to the Secretary. Effective May 10, 1989.

One Private Secretary to the Under Secretary. Effective May 11, 1989.

One Staff Assistant to the Executive Assistant for Operations and Correspondence. Effective May 11, 1989.

One Chauffeur for the Secretary. Effective May 19, 1989.

One Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs. Effective May 26, 1989.

Commission on Civil Rights

One Special Assistant to the Commissioner. Effective May 10, 1989.

Department of Commerce

One Congressional Liaison Assistant to the Deputy Assistant Secretary. Effective May 2, 1989.

One Confidential Assistant to the Director, Minority Business Affairs. Effective May 9, 1989.

One Deputy Director to the Director, Office of Business Liaison. Effective May 9, 1989.

One Confidential Assistant to the Director, Office of Business Liaison. Effective May 9, 1989.

One Confidential Assistant to the Director, Office of Business Liaison. Effective May 10, 1989.

One Director, Office of Congressional Affairs to the Assistant Secretary for Communications and Information. Effective May 12, 1989.

One Confidential Assistant to the Secretary. Effective May 12, 1989.

One Confidential Assistant to the Deputy Under Secretary for Trade and Information Analysis. Effective May 12, 1989.

One Senior Advisor to the Assistant Administrator for Ocean Services and Coastal Zone Management. Effective May 19, 1989.

One Special Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs. Effective May 19, 1989.

One Confidential Assistant to the Assistant Secretary for Trade Development. Effective May 19, 1989.

One Congressional Affairs Specialist to the Director, Office of Legislative Affairs. Effective May 24, 1989.

One Confidential Assistant to the Deputy Assistant Secretary for Loan Programs. Effective May 26, 1989.

One Special Assistant to the Assistant Secretary for Economic Development. Effective May 26, 1989.

One Confidential Assistant to the Director, Office of Public Affairs. Effective May 30, 1989.

One Confidential Assistant to the Director, Office of Executive Programs. Effective May 30, 1989.

One Confidential Assistant to the Deputy Assistant Secretary for Capital Goods and International Construction. Effective May 30, 1989.

One Confidential Assistant to the Deputy Assistant Secretary for Science and Electronics. Effective May 31, 1989.

Department of Energy

One Staff Assistant reporting to the Executive Assistant to the Secretary. Effective April 27, 1989. Note: this position should have appeared in the listing dated Tuesday, May 23, 1989; FR 54: 22387.

One Staff Assistant to the Assistant Secretary for Defense Programs. Effective May 1, 1989.

One Special Assistant to the Deputy Secretary. Effective May 5, 1989.

One Special Assistant to the Assistant Secretary for Fossil Energy. Effective May 9, 1989.

One Staff Assistant to the Principal Deputy Assistant Secretary for Conservation and Renewable Energy. Effective May 9, 1989.

One Confidential Assistant to the Director, Division of Intergovernmental Affairs. Effective May 10, 1989.

One Confidential Assistant to the Executive Assistant to the Secretary. Effective May 11, 1989.

One Legal Advisor to the Chairman, Federal Regulatory Commission. Effective May 26, 1989.

Department of Defense

One Attorney Advisor to the Judge, U.S. Court of Military Appeals. Effective May 19, 1989.

One Executive Assistant to the Secretary. Effective May 30, 1989.

Department of Transportation

One Staff Assistant to the Secretary. Effective May 5, 1989.

One Staff Assistant to the Assistant Secretary for Public Affairs. Effective May 5, 1989.

One Deputy Executive Secretary for Policy to the Secretary. Effective May 5, 1989.

One Congressional Liaison Officer to the Director, Office of Congressional Affairs. Effective May 11, 1989.

One Special Assistant to the Assistant Secretary for Public Affairs. Effective May 19, 1989.

Department of Education

One Confidential Assistant to Chief of Staff/Counselor to the Secretary. Effective May 2, 1989.

One Confidential Assistant to the Director, Intergovernmental Affairs. Effective May 3, 1989.

One Special Assistant to the Deputy Under Secretary for Management. Effective May 5, 1989.

Three Confidential Assistants to the Director, Private Sector Initiative Staff. Effective May 8, 1989.

One Special Assistant to the Executive Secretary. Effective May 8, 1989.

One Confidential Assistant to the Executive Assistant, Private Education Staff. Effective May 8, 1989.

One Confidential Assistant to the Chief of Staff/Counselor to the Secretary. Effective May 8, 1989.

One Regional Representative for the Secretary. Effective May 8, 1989.

One Confidential Assistant to the Director, Scheduling and Briefing. Effective May 8, 1989.

One Special Assistant to the Deputy Under Secretary, Office of Intergovernmental and Interagency Affairs. Effective May 11, 1989.

One Special Assistant to the Assistant Secretary for Educational Research and Improvement. Effective May 16, 1989.

One Confidential Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective May 17, 1989.

One Confidential Assistant to the Assistant Secretary for Postsecondary Education. Effective May 17, 1989.

One Special Assistant to the the Assistant Secretary for Educational Research and Improvement. Effective May 17, 1989.

One Confidential Assistant to the Assistant Secretary for Educational Research and Inprovement. Effective May 19, 1989.

One Special Assistant to the Deputy Under Secretary for Management. Effective May 25, 1989.

Two Confidential Assistants to the Deputy Assistant Secretary for Legislation. Effective May 30, 1989.

One Director, Legislative Liaison to the Deputy Assistant Secretary for Legislation. Effective May 30, 1989.

One Confidential Assistant to the Deputy Assistant Secretary for Legislation. Effective May 30, 1989.

General Services Administration

One Confidential Assistant to the Regional Administrator. Effective May 18, 1989.

Department of Housing and Urban Development

Note: The two following positions should have appeared in the listing dated Tuesday May 23, 1989; 54 FR 22387:

One Executive Assistant to the Under Secretary. Effective April 27, 1989.

One Special Assistant to the Assistant Secretary for Community Planning and Development. Effective April 27, 1989.

One Special Assistant to the Director, Office of Small and Disadvantaged Business Utilization. Effective May 5, 1989.

One Special Assistant reporting to the President, Government National Mortgage Association. Effective May 9, 1989.

One Staff Assistant to the Assistant Secretary for Community Planning and Development. Effective May 9, 1989.

One Staff Assistant to the Assistant Secretary for Policy Development and Research. Effective May 11, 1989.

One Assistant to the Assistant Secretary for Legislation and Congressional Affairs. Effective May 11, 1989.

One Special Assistant to the Assistant Secretary for Administration. Effective May 11, 1989.

One Staff Assistant to the Assistant Secretary for Administration. Effective May 11, 1989.

One Intergovernmental Relations Officer to the Deputy Under Secretary for Intergovernmental Relations. Effective May 12, 1989.

One Executive Assistant to the Deputy Under Secretary for Field Coordination. Effective May 12, 1989.

One Staff Assistant to the President, Government National Mortgage Association. Effective May 16, 1989.

One Special Assistant to the Secretary. Effective May 26, 1989.

Department of Health and Human Services

One Director, Youth 2000 Program to the Assistant Secretary for Human Development Services. Effective May 3, 1989.

One Attorney-Advisor to the General Counsel. Effective May 11, 1989.

One Executive Assistant to the Assistant Secretary for Human Development. Effective May 15, 1989.

One Confidential Assistant to the Secretary. Effective May 15, 1989.

One Confidential Assistant to the Secretary. Effective May 16, 1989.

One Special Assistant to the Deputy Assistant Secretary for Legislation. Effective May 19, 1989.

One Special Assistant to the Deputy Assistant Secretary for Planning and Evaluation/Health Policy. Effective May 19, 1989.

One Executive Assistant to the Assistant Secretary for Legislation. Effective May 19, 1989.

Interstate Commerce Commission

One Congressional Liaison Representative to the Director, Office of Government and Public Affairs. Effective May 19, 1989.

Department of the Interior

One Special Assistant to the Assistant to the Secretary and the Director, External Affairs. Effective May 19, 1989.

One Deputy Director to the Assistant to the Secretary and the Director, Office of Public Affairs. Effective May 19, 1989.

One Confidential Assistant to the Director, Minerals Management Service. Effective May 26, 1989.

Department of Labor

One Deputy Legislative Officer to the Assistant Secretary for Congressional Affairs. Effective May 1, 1989.

One Senior Legislative Officer to the Assistant Secretary for Congressional Affairs. Effective May 5, 1989.

One Deputy Legislative Officer to the Assistant Secretary for Congressional Affairs. Effective May 9, 1989.

One Special Assistant to the Assistant Secretary for Occupational Safety and Health. Effective May 11, 1989.

One Special Assistant to the Assistant Secretary for Employment and Training. Effective May 12, 1989.

One Staff Assistant to the Assistant Secretary for Employment and Training. Effective May 15, 1989.

One Senior Legislative Officer to the Assistant Secretary for Congressional Affairs. Effective May 16, 1989.

One Executive Assistant to the Assistant Secretary for Employment Standards. Effective May 16, 1989.

One Special Assistant to the Deputy Under Secretary for International Affairs. Effective May 16, 1989.

One Special Assistant to the Assistant Secretary for Employment Standards. Effective May 26, 1989.

One Special Assistant to the Assistant Secretary for Employment and Training. Effective May 30, 1989.

One Staff Assistant to the Assistant Secretary for Intergovernmental and Public Affairs. Effective May 31, 1989.

Office of Management and Budget

One Public Affairs Assistant to the Director, Office of External Affairs. Effective May 3, 1989.

One Confidential Assistant to the Associate Director for Natural Resources, Energy and Science. Effective May 11, 1989.

Small Business Administration

One Special Assistant to the Chief of Staff. Effective May 3, 1989.

One Special Assistant to the Associate Deputy Administrator for Special Programs. Effective May 19, 1989.

One Special Assistant to the Assistant Administrator for Public Communications. Effective May 22, 1989.

Department of State

One Secretary (Typing) to the Secretary. Effective April 27, 1989.

Note: this position should have appeared in the listing dated Tuesday, May 23, 1989; Fr 54: 22387.

One Staff Assistant to the Counselor of the Department. Effective May 8, 1989.

One Member to the Director, Policy Planning Staff. Effective May 9, 1989.

One Confidential Assistant to the Assistant Secretary for Public Affairs. Effective May 18, 1989.

One Protocol Officer to the Chief of Protocol. Effective May 19, 1989.

One Member to the Director, Policy Planning Staff. Effective May 19, 1989.

One Special Assistant to the Under Secretary for Management. Effective May 26, 1989.

Department of the Treasury

One Executve Assistant to the Deputy Secretary. Effective May 8, 1989.

One Deputy Assistant Secretary to the Assistant Secretary for Legislative Affairs. Effective May 11, 1989.

One Legislative Manager to the Assistant Secretary for Legislative Affairs. Effective May 11, 1989.

One Director, Office of Legislative Affairs to the Assistant Secretary for Legislative Affairs. Effective May 15, 1989.

One Staff Assistant to the Executive Secretary. Effective May 15, 1989.

One Staff Assistant to the Assistant Secretary for Policy Management. Effective May 15, 1989.

One Director to the Deputy Assistant Secretary for Corporate Finance. Effective May 19, 1989.

One Staff Assistant to the Assistant Secretary for Enforcement. Effective May 26, 1989.

One Legislative Manager to the Assistant Secretary for Legislative Affairs. Effective May 31, 1989.

U.S. Information Agency

One Special Assistant to the Associate Director for Management. Effective May 9, 1989.

One Special Assistant to the Director. Effective May 9, 1989.

U.S. Office of Personnel Management.

Constance B. Newman,

Director.

Authority: 5 U.S.C. 3301, 3303; E.O 10555, 3 CFR 1954–1958 Com., P. 218.

[FR Doc. 89–15856 Filed 7–5–89; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, [202] 272–2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–1002.

New: Rule 15c2–12; File no. 270–330

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 [44 U.S.C. 3501 et seq.], the Securities and Exchange Commission has submitted for OMB approval Rule 15c2–12 which requires underwriters participating in primary offerings of municipal securities of $1,000,000 or more to obtain, review, and distribute to investors copies of the issuer's disclosure document. It is estimated that approximately five-hundred broker-dealers will incur an estimated average of one burden hour to comply with this rule.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the cost of SEC rules.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–6004, and Gary Waxman, Clearance Officer, Office of Management and Budget [Paperwork Reduction Project 3235–040F], Room 3208, New Executive Office Building, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

June 28, 1989.

[FR Doc. 89–15874 Filed 7–5–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26958; File No. SR-CBOE-89–12]

Self-Regulatory Organizations; Notice and Order Granting Accelerated Approval Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Interest Rate Options; and Notice of Filing and Immediate Effectiveness of Transaction Fees for Transactions in Interest Rate Options.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 21, 1989, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as describe in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

1. Text of Proposed Rule Change

Note: Brackets indicate language to be deleted; italics indicate language to be added.

The Exchange intends to charge the following transaction fees for transactions in interest rate options:

firms—$0.10 per contract side

customers—$0.40 per contract side if premium of $1.00 or more, $0.20 per contract side if premium under $1.00

market makers—$0.05 per contract side.

The interest rate composites will trade on the March quarterly cycle with three near term months and two far term months that coincide with the March cycle such that neither is more than nine months from expiration.

Rule 6.2 No change.

* * * Interpretations and Policies:

.01 and .02 No change.

.03 A closing trading rotation shall be employed for each series of individual stock options on the last business day prior to its expiration (hereinafter "closing rotation"). Open trading in such expiring series shall be permitted until 3:10 p.m. Chicago time. The closing rotation shall commence at 3:10 p.m. Chicago time or after a closing price of the stock in its primary market is established, whichever is later. Open trading on expiring series of index options shall be permitted on the last business day prior to expiration until 3:15 p.m. Chicago time, but a closing rotation for such expiring series of index options shall not be employed. *Open trading on expiring series of interest rate options shall be permitted on the last business day prior to expiration until 2:00 p.m. Chicago time, but as soon as possible thereafter, a closing rotation shall commence.*

Open trading on expiring series of interest rate options shall be permitted on the last business day prior to expiration until 2:00 p.m. Chicago time, but as soon as possible thereafter, a closing rotation shall commence.

Rule 23.5 a through c No change.

** * * Interpretations and Policies:*

.01 The procedures for adding and deleting strike prices for interest rate options are provided in Rule 5.5 and Interpretations and Policies related thereto, or as otherwise provided in Rule 23.5 and include the following:

(a) New series of interest rate option contracts may be added up to the fifth business day prior to expiration.

(b) When a new series of interest rate option contracts with a new expiration cycle are opened for trading up to four strike prices above and four strike prices below the current interest rate measure may be added.

(c) When the value of the interest rate measure underlying a class of interest rate options reaches a strike price the Exchange may add one or more additional strike prices such that there may be up to five strike prices above and five strike prices below the strike price which has been reach.

(d) In unusual market conditions, the Exchange may add additional series of interest rate option contracts up to six strike prices above and six strike prices below the current interest rate measure.

Rule 23.6 Days and Hours of Business

[The Exchange will determine when transactions in interest rate option contracts may be effected on the Exchange, which shall be no earlier than 8:00 a.m. and no later than 3:15 p.m. Chicago time, except under unusual conditions.]

The Board of Directors resolved that, except under unusual conditions as may be determined by the Board or its designee, transactions in interest rate options may be effected on the Exchange between the hours of 7:20 a.m. Chicago time and 2:00 p.m. Chicago Time except for rotations as necessary.

Rule 23.7. [Trading Rotations] *RAES*

[The opening rotation for interest rate option contracts shall be held at or as soon as practicable after the time set by the Exchange for the opening of trading. The Order Book Official or Designated Primary Market Maker shall open first those series of a class which have the nearest expiration. Thereafter, the Order Book Official or Designated Primary Market maker shall open the remaining series in a manner he deems appropriate under the circumstances.]

The Retail Automated Execution System (RAES) for interest rate options uses the provisions established for equity options except as otherwise provided in this rule.

(i) The Modified Trading System Committee shall determine what series will be eligible for RAES and the size of eligible orders.

(ii) Eligible orders must be market or marketable limit orders for ten or fewer contracts in series placed on the system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and it set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In this filing, the Exchange is establishing the transaction fees for the interest rate products and determining that the composites will trade on the March cycle. The other proposals are clarifications to existing rules dealing with the number of new series which can be added, the time of expiration trading rotations, RAES, the hours of business and that trading rotation procedures used in equity options will apply to interest rate options. In that strike price intervals of 2½ points will be used instead of 5 points in this product, the number of series to be listed in Rule 23.5 has been expanded to cover the same or less incremental amounts.

These proposals are unique for the interest rate composites in that they allow the options to trade at the times when the market for interest rates is predominately open. In addition, the proposal regarding the listing of strike prices will not act as a proliferation of strike prices because it applies only to the two classes of interests rate composite options. Also, the Exchange intends to initially list only two series above and two series below the composite rate measures except that in the three far out months of IRX there will be three of the money strikes. Therefore, while the proposal requests the ability to list up to four strikes below and four strikes above the composite rate measure, the Exchange will exercise discretion when listing new series so that unnecessary series will not be available for trading.

The Exchange believes the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder, in particular, the proposed rule change is consistent with Section 6(b)(5) of the Act, which provide among other things, that the rules of the Exchange are designed to promote just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The portion of the proposed rule change that establishes transaction fees for interest rate product has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such portion of the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

In regard to the other portions of the proposed rule change, the Exchange requests accelerated approval. Accelerated approval of the Exchange proposal will enable the Exchange, before the commencement of trading, to clarify the appropriate application of existing rules to the trading of interest rate option contracts.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, the particular, the requirements of Section 6 and the rules and regulations thereunder. By permitting trading in interest rate options until 2:00 p.m. Chicago time, with a closing rotation as soon as possible thereafter, the Exchange will allow interest rate options to trade at times that correspond with the underlying trading market for interest rate instruments. The Commission also believes that permitting the execution of up to ten interest rate option contracts through the Retail Automated Execution System ("RAES") will extend the benefits provided by RAES to public customer orders. Additionally, the proposed procedures for adding and deleting strike prices for interest rate option contracts will permit the Exchange to adapt to changes in the value of the interest rate that underlying interest rate option contracts. The Commission notes that although the proposed rule changes permits the Exchange to add up to six strike prices above and six strike prices below the current interest rate measure, the Exchange intends to list fewer series. The Commission believes that the use of Exchange discretion in listing new series will prevent problems associated with the proliferation of unnecessary options series. Moreover, because there are only two interest rate measure contracts, the number of extra series due to the additional possible strike prices and series for the contracts would be small.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof. In particular, accelerated approval will permit the Exchange to implement its revised trading procedures on June 23, 1989, the date that trading in interest rate option contracts is scheduled to commence. In addition, the proposed changes are minor in nature and merely clarify the existing rules governing trading of the interest rate measure contracts.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC, 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-89-12 and should be submitted by July 27, 1989.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[1] that the portion of the proposed rule, that was not immediately effective upon filing, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Dated: June 22, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-15806 Filed 7-5-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26976; Filed No. SR-NASD-89-22]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Registration of NASDAQ Market Makers

The National Association of Securities Dealers, Inc. ("NASD") submitted on May 4, 1989, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to amend Part VI, section 1(d) of schedule D to the NASD By-Laws to provide that a market maker in the NASDAQ System may become registered in an issue included in the NASDAQ System on the day after a registration request is entered by the market maker.

[1] 15 U.S.C. 78s(b)(2) (1982).

[2] 17 CFR 200.30-3(a)(12) (1986).

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 34-26826, May 18, 1989) and by publication in the **Federal Register** (54 FR 22047, May 22, 1989). No comments were received with respect to the proposed rule change.

The Commission finds the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and, in particular, the requirements of Section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: June 27, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc 89-15876 Filed 7-5-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26978; File No. SR-NASD-89-18]

Self-Regulatory Organizations; Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Trade Reporting in NASDAQ/NMS Securities.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) notice is hereby given that on March 24, 1989, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. On June 6, 1989, the NASD file an amendment to the proposed rule change which is incorporated herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend Part XII, Section 2(b) of Schedule D of the NASD By-Laws ("Schedule D"), to clarify certain trade reporting requirements. The test of the proposed amendments are attached as Exhibit 1 to this filing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significiant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change is intended to alleviate some minor problems and make trade reporting in National Association of Securities Automated Quotation (NASDAQ)/National Market System (NMS) securities more accurate. Under the present trade reporting rule, a market maker who acts as a principal to the two sides of a transaction must report the two trades separately. "Agency cross" and "riskless principal" trades are required to be reported only once.

Some minor trade reporting problems have arisen with respect to the reporting requirements for "agency cross" and "riskless principal" trades, with the result being that on occasion, these types of trades are being reported twice. Specifically, in the case of riskless principal trades, nonmarket makers have reported trades in instances where a market maker has already reported; in the case of agency cross transactions, members simetimes report the trade twice, as a buy and a sell, neglecting to use the appropriate modifier, "X".

In order to address instances of duplicative reporting with respect to these types of transactions, the NASD Board determined that the trade reporting requirements in Schedule D be modified so as to clarify their intent and ensure that only one side of a trade is being reported. The proposed rule change restates current trade reporting requirements in more concise and simple terms.

The NASD believes that the proposed rule change will improve the quality of trade reporting for NASDAQ/NMS securities and that it is therefore consistent with the provisions of section 15A(a)(6) of the Securities Exchange Act of 1934, which provides that the rules of an association be designed to "remove impediments to and perfect the mechanism of a free and open market and a national market system."

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by July 31, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: June 27, 1989.

Jonathan G. Katz,

Secretary.

Note: Brackets indicate deletions; italics indicate additions.

Section 2

(b) Which Party Reports Transactions

(1) [In transactions between two Registered Market Makers, only the member representing the sell side shall report.] *A Registered Reporting Market Maker shall report all transactions in a subject under all circumstances except a purchase from another Registered Reporting Market Maker.*

(2) [In transaction between a Registered Reporting Market Maker and a Non-Registered Reporting Member, only the Registered Reporting Market Maker shall report.] *Members who are not Registered Reporting Market Makers generally should not report any transactions except where:*

(a) *they have sold securities to another non-market making member, or*

(b) *they have bought from or sold securities to a customer.*

(3) [In transactions between two Non-Registered Reporting Members, only the Member representing the sell side shall report.]

[(4)] In transactions between a member and a customer, the member shall report[.]

except as provided for in Section (d)(3) pertaining to "riskless principal" transactions.

(c) (No change).

(d) Procedures for Reporting Price and Volume

Members which are required to report pursuant to paragraph (b) above shall transmit last sale reports for all purchases and sales in designated securities in the following manner:

(1) For agency transactions, report the number of shares and the price excluding the commission charged.

Example: SELL as agent 100 shares *ABCD* at 40 less a commission of $12.50, REPORT *S 100 ABCD 40.*

(2) [For dual agency transactions, report the number of shares only once, and report the price excluding the commission charged.] *In transactions where the member has acted as agent for both the buyer and seller ("agency cross"), report the number of shares from only one side of the transaction using the "X" modifer at the price at which the cross occurred exclusive of commission.*

Example: SELL as agent 100 shares *ABCD* at 40 less a commission of $12.50; BUY as agent 100 shares *ABCD* at 40 plus a commission of $12.50; REPORT *X 100 ABCD 40.*

(3) (No change).

* * *

Exception:

A non-market member shall not report a purchase or sale for or from a customer if, on a contemporaneous basis, the transaction is offset by a transaction with a registered market maker. For purposes of Schedule D, contemporaneous shall be defined as meaning within the same 24-hour period.

[FR Doc. 89-15877 Filed 7-5-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26691; File No. SR-NASD-89-25]

Self-Regulatory Organizations: Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Automated Confirmation Transaction Service

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 31, 1989, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (and Amendment No. 1 thereto on June 20, 1989) as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Rules of Practice and Procedures for the Automated Confirmation Transaction service ("ACT Rules") define terms and procedures for the system, including match processing cycles and risk management services and establish participant obligations, including among other things, trade report input requirements, and obligations to clear and settle trades identified through the system. The full text of the ACT Rules is contained in Exhibit 1 to the filing. In addition to the ACT Rules, the following is the full text of a proposed amendment to the Rules of Practice and Procedure for the Small Order Executive System ("SOES Rules"), section (a) and (c), and to Schedule D, Part VI, section 8. The proposed amendment to the SOES Rules and Schedule D would eliminate the 20 day suspension from SOES and NASDAQ to accommodate ACT participant NASDAQ/NMS market makers that may lose their clearing arrangement and be removed from ACT and from NASDAQ/NMS. The proposed ACT Rules and the proposed revisions to the SOES Rules and Schedule D would permit market makers that have withdrawn from NASDAQ/NMS because of the loss of a clearing arrangement to reenter NASDAQ, SOES and ACT after a clearing arrangement is reestablished. (New language is underlined; deleted language is bracketed).

SOES Rules

(a) Definitions

* * *

13. *The term "Automated Confirmation Transaction" service or "ACT" shall mean the automated system owned and operated by NASD Market Services, Inc. which compares trade information entered by ACT Participants and submits "locked-in" trades to clearing.*

* * *

(b) Participation Obligations In SOES

* * *

(F) Notwithstanding the provisions of subsection (E) above, *(i)* a market maker that obtains an excused withdrawal pursuant to Part VI, Section 7 of Schedule D to the NASD By-Laws prior to withdrawing from SOES may reenter SOES according to the conditions of its withdrawal[.]; *and (ii) a market maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency, and is thereby withdrawn from participation in ACT and SOES for NASDAQ/NMS securities, may reenter SOES after a clearing arrangement has been reestablished and the market maker has complied with ACT participant requirements.*

Schedule D

Part VI

Section 8: Voluntary Termination of Registration

A market maker may voluntarily terminate its registration in a security by withdrawing its quotations from the NASDAQ System. A market maker that voluntarily terminates its registration in a security may not re-register as a market maker in that security for twenty (20) business days. Withdrawal from SOES participation as a market maker in a NASDAQ/NMS security shall constitute termination of registration as a market maker in that security for purposes of this section[.]; *provided, however, that a market maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the Automated Confirmation Transaction System and thereby terminates its registration as a market maker in NASDAQ/NMS issues may re-register as a market maker at any time after a clearing arrangement has been reestablished and the market maker has complied with ACT participant requirements.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Automated Confirmation Transaction service is designed to facilitate comparison and clearing of inter-dealer over-the counter ("OTC") equity trades by requiring input of trade reports within specific time frames, comparing that trade data, and submitting matched, "locked-in" trades to clearing. Participation in ACT will be mandatory for all NASD broker-dealers that are clearing or comparison members of a clearing agency registered pursuant to Section 17A of the Securities Exchange Act of 1934, or that have a clearing or comparison arrangement with such a firm. ACT has three primary features: (1) Match processing, that will compare trade information and submit locked-in trades for regular way settlement to clearing on a trade date or next day ("T+1") basis; (2) trade reporting for transanctions in national market system ("NMS") securities that must be reported pursuant to the National Market System Securities Designation Plan with Respect to NASDAQ Securities; and (3) risk management features that will provide firms with a centralized, automated environment for assessment of market exposure during and after the trading day and that will permit clearing firms to monitor and respond to the on-going trading activities of their correspondents.

1. Background

The back office problems experienced by the securities industry in comparing trades and submitting trade reports to clearing agencies following the October 1987 market break highlighted the need for same day automated comparison procedures. In the over-the-counter market, the rate of uncompared trades rose from an average of 5% to 12% in the month of October and NASDAQ, along with the exchanges, closed the market two hours early from October 23 through October 30 in order to allow broker-dealers the time needed to alleviate back office work. The Presidential Task Force on Market Mechanisms, the staff of the Securities and Exchange Commission and the Working Group on Financial Markets, as part of their extensive analyses of the causes and effects of the October 1987 market break, recognized the potential dangers in today's procedures for comparing and clearing trades and focused on measures necessary to expedite the process.[1] Specifically, in its *Report on the 1987 Market Break*, the Commission's Division of Market Regulation found that "while the securities industry deserves praise for its fast resolution of an unprecedented number of uncompared trades, the Division staff believes that the NYSE and the NASD should consider accelerating their efforts . . . to generate same day compared trades, thereby enabling members to know their positions and market exposure before trading commences the next day." [2] The Commission reiterated the Division's findings, and in testimony before Congress, the Chairman of the Commission stated that, among other things, efficient markets will require same-day, floor derived comparison.[3]

In response to the October market break, the Association proposed a number of initiatives designed to promote more confidence in the operations of the market as a whole and, in the clearing area, the proposals were designed to resolve trade comparison discrepancies more quickly. Because of the risks associated with unresolved and late trade comparisons, especially in the turbulent October market, as well as the uncertainties inherent in manual trade comparison mechanisms, two of the Association's post October initiatives included systems to deliver locked-in trades to clearing—the Order Confirmation Transaction service ("OCT") and an enhancement to the Small Order Execution System ("SOES") requiring mandatory participation for all NMS market makers. A third proposal

[1] *See Report of the Presidential Task Force on Market Mechanisms*, Study VI (January, 1988); *The October 1987 Market Break*, a report by the Division of Market Regulation, Chapter 10 (February 1988), (hereinafter *Division Report*); and *Interim Report of the Working Group on Financial Markets*, Appendix D (May 1988).

[2] *Division Report* p. 10–12, (February 1988).

[3] *See*, Securities and Exchange Commission Recommendations regarding the October 1987 Market Break, Testimony before the State Committee on Banking, Housing and Urban Affairs, 23–24 (February 3, 1988).

was mandatory participation in the Trade Acceptance and Reconciliation Service ("TARS"), a system approach of facilitating resolution of trade differences.

The Order Confirmation System was developed as a auxiliary medium for member firms to communicate with one another to confirm order executions, in response to real and perceived difficulties encountered in contacting market makers by telephone during the week of October 19.[4] OCT was designed as an alternative to telephonic communication and provides participants with a system to communicate and confirm details of individual trades. OCT users enter priced orders into the system, and the system allows participant market makers to accept, reject, or enter counter offers; when a trade is negotiated successfully, the system generates a confirmation and a locked-in trade is sent to clearing. Necessarily, all members using OCT must maintain appropriate clearing arrangements with registered clearing agencies.

The Commission approved the mandatory SOES rules on June 9, 1988,[5] and participation in the NASDAQ system as a market maker in NMS securities now requires continuous publication of quotes in the system, obligates the market maker to honor SOES executions against those quotes, and requires membership in a clearing agency (or an access arrangmeent with a clearing agency member). Trades executed through SOES are locked-in automatically and forwarded to a registered clearing agency for clearance and settlement.

Mandatory TARS, approved in July 1988 [6] and implemented on June 5, 1989, was designed to augment manual trade reconciliation and comparison procedures for nonsystematized OTC transactions. TARS is an on-line trade reconciliation facility that allows both parties to an unresolved trade to view, on their NASDAQ terminals, uncompared and advisory OTC transactions that are cleared through the facilities of a registered clearing agency and to enter corrections through those terminals. The corrections made through the system are transmitted to the clearing agency, thus eliminating the need to transmit separate trade correction tickets.

[4] OTC was approved on a temporary basis in January, 1986, Release No. 34–25263, 53 FR 1430; and permanently approved in May, 1986, Release No. 34–25690, 53 FR 17523.

[5] *See* Release No. 34–25791, 53 FR 22594.

[6] *See* Release No. 34–25595, 53 FR 13370.

While the OCT and SOES systems generate locked-in trades, and TARS assists the trade reconciliation process, the Association developed the ACT system as the primary vehicle for compressing the comparison cycle, thus reducing inherent risks of market fluctuations for all OTC inter-dealer trades not already subject to system comparison. The dynamic feature of the ACT system is capturing trade information in close proximity to execution and locking the details of the trade in for submission to clearing. The other attributes of ACT—trade reporting and risk management—are innovative adjuncts to a unified approach to system development. As discussed below, features of the trade reporting and risk management applications will enable all NASD owned and operated execution systems to interface with ACT to avoid duplicative processing and to provide firms with the total picture of their market exposure.

The NASD believes that the ACT system is responsive to the recommendations made by the Commission following the October 1987 market break and will provide the OTC market with the safety and certainty of same day comparison, the ability to lock-in trades within minutes after execution, and the capacity to enable members to monitor their positions and market exposure in a live computerized environment.

2. ACT Processing

Today OTC trades that are cleared through a registered clearing agency are compared by the National Securities Clearing Corporation ("NSCC") and ACT processed transactions will be submitted to NSCC as locked-in trades on trade date or T+1. ACT is designed as an on-line and end of day matching system that will allow two participants, usually a market maker and an order entry firm,[7] to lock-in details of a trade within minutes of the transaction. Once the two sides have negotiated an OTC transaction, the market maker participating in ACT will be obligated to input the details of the trade, including security identification, unit price, quantity, buy or sell, and contra side—both executing broker and clearing broker, within specific time frames depending on the security and the method of accessing the system.

[7] The ACT system is designed for a "market maker" side and an "order entry firm" side for ease of system application and terminology. ACT may of course be used by two market makers or two order entry firms, and the rules applicable to each party to a transaction are set out in the ACT Operating Rules.

Transactions in OTC reportable securities, i.e., round lots of NMS securities, must be reported to ACT within 90 seconds after execution, and the ACT system will forward the reports to the NMS high speed tape, the National Trade Reporting System. Firms that access the ACT system through computer interface must report all trades within 90 seconds after execution; firms that report to ACT through terminal entry, either Harris, Harris emulation or NASDAQ Workstation™, must report NMS trades to ACT within 90 seconds if acting as a selling market maker, and all other trades within 6½ minutes.

The order entry side, if a terminal entry firm, may also input details of the trade, or utilize the Browse feature of the system and accept or decline the trade as reported, within the 6½ minute time frame.

Locked-in trades must be guaranteed to settle by the two parties to the transaction, except that clearing firms that allow their names to be given up by executing correspondents must also guarantee the trades of those correspondents. The ACT system utilizes three methods to lock-in trades on trade date: trade by trade match, trade acceptance, or aggregate volume match. As both sides of the trade are reported to ACT, or one side is reported and accepted by the other, the ACT system performs on-line match processing, and if all elements match or the trade report has been accepted by the other side, the trade will be locked-in and submitted as such to NSCC at the end of the day. In addition to matched and accepted trades, Act processing will run a batch type comparison at the end of each day that will aggregate volume of previously unmatched trade reports to effect a match. For example, if a market maker enters reports of two trades, 300 shares and 400 shares of the same stock, same price and same contra side, but the order entry side aggregates the volume and reports one 700 share trade, the trades would not match in the trade by trade comparison process because the "number of shares" field in the trade reports are not identical. At the end of the day, however, the ACT aggregate volume match cycle will compare the remaining unmatched trade reports, select those in which all the other data fields match, aggregate the share volume in the reports, lock those trades in and submit them to clearing.

Not all trade reports will be processed and locked-in by ACT on trade date. If a trade report has been declined by the order entry side on trade date, the ACT system will delete the report at the end

of the day and the trade report will not be sent to clearing. A participant may decline a trade because there is a mistake in the terms reported, and may enter his version of the transaction into ACT; the market maker also has the opportunity to correct the error that caused the trade to be declined. In addition, any trade report that is "open" (unmatched and not declined at the end of trade date processing) will be carried over to T+1 for further processing.

ACT matching continues on T+1: trade date reports submitted on T+1 will be considered "as-of" trades and will be accepted for matching; any other correction or adjustments to trade date input by the entering party will be accepted from either side of the transaction. At the end of the T+1 cycle, declined trades and open "as-of" trades will be removed from the system and not forwarded to NSCC.

ACT T+1 trade acceptance and end of day matching procedures are similar to those described above for trade date, with one notable exception. Those trade date reports that remain open at the end of the T+1 cycle will automatically be treated as locked-in trades and sent as such to NSCC. For example, two ACT participants negotiate a trade for 500 shares of XYZ stock at 20½. The market maker reports the transaction to ACT as 500 shares at 20½; the order entry side, however, reports the trade to ACT as 500 shares at 20⅝. Since match by match processing will not lock-in this trade, it will appear in each party's ACT trade file as an open report on trade date and on T+1. If neither the market maker nor the order entry side reviews its open trades on the ACT display and accepts or corrects the open trades, at the end of T+1 processing *both* trades will be treated as locked-in and both participants will be obligated to clear and settle 1000 shares of XYZ stock. Further, in the example noted above in which one side inputs two trade reports, but the other side aggregates the reports, if one side has input an erroneous number, the system will match and aggregate to the extent possible and display any remaining shares to each side as an open report. Take for example a situation in which there were two trades for 300 and 400 shares, but the market maker erroneously submits trade reports for 500 and 400 shares, for a total of 900 shares, into the system. The order entry side, believing the trades to be for 300 and 400 shares, appropriately aggregates the reports and inputs a trade report of 700 shares into ACT. The end of day aggregate volume process will match and lock-in 700 shares, but the ACT system will not display the remaining 200 shares to each participants as an open trade. If neither party declines this report, at the end of T+1, each will be obligated to accept and clear the 200 share trade.

Treating open trade reports that were input on trade date at the end of T+1 processing as locked-in trades is necessary to maintain the integrity of the system and promote the goals of certainty and finality of trades in the OTC market. Furthermore, ACT has been designed to provide participants with ample opportunities to review trade details, both intra-day and with end-of-day recaps, and a conscientious participant, using the safeguards provided by the system should be caught unaware and obligated for multiple trade reports.

3. Tape Reporting and Risk Management

The ACT Rules will require participants to report tape reportable NMS trades to the system within 90 seconds after execution, and the system will transmit the appropriate trade reports, i.e., internalized and inter-dealer NMS trades of round lots, to the NASDAQ/NMS High speed tape. The ACT Rules in no way abolish or abrogate any of the obligations of market makers or reporting members as defined in Schedule D, Part XII, Reporting Transactions in NASDAQ National Market System Designated Securities, except to the extent that participants in ACT will not be obligated to report NMS transactions to two systems. Transactions not reported within 90 seconds after execution shall be reported as late, and the ACT system will transmit the late reports to the high speed tape. In addition, although the NMS reporting rules permit aggregation of trade reports in certain circumstances,[8] the ACT system can only match aggregated reports of transactions with the same contra party. Therefore, if a market maker wishes to aggregate all reports of orders received prior to the opening for tape reporting purposes, he would later be required to amend the reports and distinguish the contra sides for ACT purposes.

The ACT system offers several risk management features that should enhance firms' back office operations. First, the ACT system has the capacity to compute the dollar value of each trade report entered, thus enabling firms to assess their market exposure during the trade day, if the firm chooses to access ACT through computer interface. Second, even without computer interface, ACT participants will be able to review the details of each trade entered into the system naming their firm as a party to the trade, so that the day's trading is available for review and analysis. Third, clearing firms will, for the first time through ACT, be able to assess dynamically their ultimate market exposure by having the ability to monitor their correspondents' positions, both intra-day and after trading hours.

Further, to be responsive to clearing firms' concerns regarding immediate liability for correspondent activity in a lock-in trading environment, the Association has developed numerous facilities that will provide them with enhanced risk management capabilites;

(a) Clearing firms will be able to establish daily threshold dollar amounts for each correspondent's trading activity;

(b) The system will alert clearing firms with a correspondent approaches (at 80%) and reaches the daily threshold;

(c) The system will provide clearing firms with intra-day access to correspondents' transactions as well as an end of day recap; and

(d) The system will provide clearing firms the ability to remove themselves from a clearing arrangement at any time.

In addition to these risk management applications, the Association has developed a "single trade limit" feature that establishes a 15 minute review period for clearing firms prior to becoming obligated to clear a trade of $1,000,000 or more executed by one of its correspondents. This feature allows a clearing firm 15 minutes to decide whether to accept or decline clearing obligations for a large trade and was designed as an additional risk management tool to give clearing firms an opportunity to limit their liability for large locked-in trades. The Association believes that the risk management features of the ACT system preserve the integrity of a "floor" derived, same day comparison system, while at the same time offer protections and opportunities for clearing firms to perform risk management analyses unsurpassed in today's marketplace.

4. Implementation of ACT

a. Eligible Securities. Securities eligible for inclusion in the ACT system will be phased in over a long range implementation schedule. Phase 1 will include all NASDAQ securities, NMS and regular NASDAQ, brought on to the system alphabetically as operational considerations permit. Phase 2 will add listed securities traded in the third market. Planning for phases 3 and 4 for ACT eligible securities include, respectively, non-NASDAQ stocks

[8] *See* Schedule D, Part XII, Section 2(f).

cleared by a registered clearing agency and all other OTC equity securities, for comparison purposes only. During all phases of ACT implementation, the securities available for actual inclusion in the system will be added on a gradual basis, consistent with the system's operational considerations. The Association has no specific timetable for phasing in eligible securities, but will proceed at a pace designed to accommodate the participants and the system's capabilities, and will update the Division of Market Regulation staff periodically as to the status of each phase of implementation.

b. Eligible Participants. Although participation in ACT is mandatory for all NASD members that are members of a registered clearing agency or that have a clearing arrangement with such a member, the system has been designed to support firms that may not be immediately capable of participating in ACT when it becomes operational or that may, from time to time, experience operational difficulties. These various stages of readiness are identified in the system as "availability states:"

(1) Not Ready, where a firm is not yet an ACT Participant (e.g., firms that intend to access ACT through computer interface, but whose programming may not be completed);

(2) Unavailable, where an ACT Participant is temporarily unable to participate due to technical malfunctions; and

(3) Available, where the firm is an ACT Participant and all ACT rules and procedures apply.

A firm's ability to interact with the system will determine the scope of its participation. For example, a Not Ready firm, while it is unable to enter trade reports into ACT, may be able to view the trades entered by contra parties naming it as a party to the trade, but the system will not lock-in any such trade. Instead, ACT will submit a one-sided trade report to NSCC at the end of trade date processing on behalf of the firm that made the ACT entry, and NSCC will handle that trade report as it does today, without the Association's identifying it as a locked-in ACT trade. A firm that is Unavailable for ACT processing will also be protected from automatic processing; at the end of the T+1 cycle, the open trades entered against an Unavailable firm will not be locked-in, as described above, but will be sent to NSCC as one-sided trade reports. Available firms will of course be able to participate in all of the ACT system's features and will be obligated to abide by the rules and procedures of the system.

c. Interaction With Other NASD Systems. As an independent system, ACT was designed initially to compare trade reports and lock-in trades for submission to clearing. Because the membership and the Board decided to make participation in ACT mandatory for firms with clearing arrangements, and because the tape reporting and risk management applications were integrated into the system, ACT necessarily interacts with many other automated systems. For example, all SOES market makers in National Market System securities are required to maintain a clearing arrangement with a registered clearing agency and may be penalized with a 20 day suspension for an unexcused withdrawal from NASDAQ. But, if a market maker loses its clearing arrangement because of some activity in ACT, it will be removed from the ACT system and necessarily from NASDAQ/NMS until another clearing arrangement is made. Regardless of the time needed to establish another clearing arrangement, the market maker would face the 20 day suspension because of the SOES Rules and Schedule D. The Uniform Practice Committee recommended, and the Board approved, an exception to the 20 day penalty so that a market maker that loses its clearing arrangement in ACT would not be penalized in NASDAQ. The ACT Rules and the proposed amendment to the SOES Rules and Schedule D would therefore allow a market maker to be reinstated in NASDAQ when a clearing arrangement has been reestablished.

One of the back office features available through ACT is the maintenance of a net amount traded file for each executing broker. Every applicable non-systematized inter-dealer OTC equity transaction will be reported to ACT and the system has the capacity to track each firm's activity, thereby offering an on-line risk management monitoring capability as well as offering clearing firms an overview of their correspondents' market activity at any given moment. In order to be truly effective for clearing firms, however, correspondent trades that are occurring in SOES and OCT and in the MSI's Advanced Computerized Execution System ("ACES"), are planned to be interfaced with the ACT system software so that those trades will also be reflected in the firm's net amount traded balances.

Once ACT is fully operational, the need for TARS will be reduced. The Association anticipates, however, that TARS will be used for other than regular-way settlements, such as cash, seller's option or next-day settlement, for processing as-of or withholds entered after T+1, and for non-ACT members, i.e., members of the NASD that do not maintain a clearing arrangement with a registered clearing agency, or clear through such a member. TARS, therefore, will remain accessible to members and any necessary filings regarding changes in the status of TARS will be made with the Commission at that time.

5. Participant Obligations in ACT

Pursuant to Article VII, sections 1(a)(6) and (7) of the By-Laws of the Association, the Board has determined that participation in ACT is mandatory for all broker-dealers that are members of a clearing agency registered with the Securities and Exchange Commission pursuant to the section 17A of the Securities Exchange Act of 1934, and for all broker-dealers that have a clearing arrangement with such a member. Participation in ACT is conditioned upon execution of a participant application agreement, prompt payment of fees for the service, and compliance with rules and requirements of the system. ACT participants shall be obligated to accept and clear each transaction that the system identifies as having been effected by the party, as a principal to the trade, until such time as the participant is removed from the system.

The statutory basis for the proposed rule change is found in section 15A(b)(6) of the Securities Exchange Act of 1934. Among other things, section 15A(b)(6) requires that the Association's rulemaking initiatives be designed to foster cooperation and coordination with persons engaged in clearing, settling and facilitating transactions in securities. As described in detail above, the ACT system will facilitate the prompt and accurate clearance and settlement of trades by performing the comparison automatically and transmitting locked-in trades to the clearing agency.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association believes that the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act. Although use of the ACT system will be mandatory for members with an access arrangement with a registered clearing agency, the benefits of ACT, increasing the efficiency of post trade comparison and reducing the length of time that investors and members are exposed to market risk from uncompared trades,

outweigh any potential competitive burden.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

General membership comments on ACT were neither solicited nor received; however, the Association did solicit comments on a proposed amendment to the NASD By-Laws authorizing the NASD to require the reporting of trade information by members conducting an inter-dealer over-the-counter business. These comments were reviewed by the Commission and the By-Law was approved in October, 1988.[9]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from the date of publication].

[9] *See* Release No. 34-25215, 53 FR 43958.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: June 29, 1989.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-15878 Filed 7-5-89; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-26977; File No. SR-NYSE-89-08]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc., Relating to Options Facilitation Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 2, 1989, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The New York Stock Exchange, Inc. ("Exchange") proposes to amend Rules 750 and 753 to expand the use of facilitation orders and clarify the rules pertaining to options facilitation orders.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) *Purpose*—The Exchange's rules provide that, in cross transactions, market participants may compete for both sides of the trade, thus providing for the possibility that a public's customer's order might not be completely filled. To ensure the complete execution of the public customer portion of a cross transaction, the Exchange added a new type of options order in 1983, known as "facilitation order." This order is defined in Rule 750 as "an order for the proprietary account of a member organization which is only executed, in whole or in part, in a cross transaction with an order for a public customer of the member organization."

When a member organization uses a facilitation order to cross a public customer order, market participants can compete with the facilitating member organization's order by accepting the bid or offer made on behalf of the public customer. Market participants may not compete with the public customer's side of the order by changing the established market. The member organization using a facilitation order with respect to a public customer must comply with specific procedures detailed in Rule 753 to ensure that the customer receives a full execution at the best price available and that the contingencies (in any) on the customer order are satisfied.

Under the present rule, a facilitation order can only be used in crosses involving an order of a public customer and an order for the proprietary account of the customer's member organization. The Exchange now proposes that member organizations be allowed to cross a public customer's order with other types of orders. These orders include orders for the proprietary accounts of the customer's member organization and other members or member organizations. By expanding the types of facilitation orders, this proposed rule change will enable public customers to receive executions on orders which may not have been executable otherwise. Therefore, public customers will benefit from this proposed rule change.

The Exchange also proposes to clarify the intent of Rule 753 by deleting an ambiguous phrase. The phrase "at the same price" could be read to provide market participants with a second opportunity to make a quotation which could block the customer side of the order by changing the established market.

(b) *Statutory Basis*—The basis under the Securities Exchange Act of 1934, as amended ("Act"), for this proposed rule change is the requirement under section 6(b)(5) that an exchange have rules that promote just and equitable principles of trade, and project investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 27, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 27, 1989.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-15879 Filed 7-5-89; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 26975; (OCC-89-5)]

Securities Exchange Act of 1934; Self-Regulatory Organizations; Filing of Proposed Rule Change by The Options Clearing Corp.; Relating to the Proposed Amendment to Rule 206.04 (Submission to Corporation)

June 26, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on June 7, 1989 the Options Clearing Corporation ("OCC") file with the Securities and Exchange Commission ("Commission") the proposed rule change as described below. The Commission is publishing this notice to solicit comments by interested persons on the proposed rule change.

I. Description of the Rule Change

The proposed rule change would amend OCC's Rule 206.04 empowering it to require clearing members to submit specific types of reports, notices, instructions, data or other items by the on-line data entry system known as Clearing Management and Control Systems ("C/MACS"). The following description summarizes the proposed rule change as set forth by OCC in its filing.

On May 23, 1984, the Commission approved a rule change filed by OCC, that established a fully automated participant terminal system for communicating options clearance and settlement data between OCC and its clearing members.[1] The system, known as C/MACS, initially provided for the on-line input of all post-trade transactions via a leased-line communications hook-up from the clearing member's office to OCC. Subsequently, OCC notes, the system has been enhanced for personal computer availability and to provide added functionality. The system currently includes exercise by exception processing and assignment/asset inquiry.

[1] Securities Exchange Act of 1934, Release No. 20983, May 22, 1983.

In its filing, OCC explains that C/MACS has extended OCC's clearing members input time frames, reduced the risk associated with clerical error through on-line edits, reduced the data entry risk associated with the processing of form transactions and reduced OCC's paper costs. OCC believes that its experience with C/MACS to date provides the foundation for on-line, real-time trade monitoring and reporting, pricing, bank settlements and billing.

OCC's records indicate that 112 of its clearing members interface with OCC through C/MACS, representing 70% of total cleared volume. OCC asserts that mandating clearing member use of C/MACS would position OCC for future technological enhancements, eliminate data entry and clerical risk, and reduce paper and printer costs.

OCC believes the proposed rule change is consistent with Section 17A of the Securites Exchange Act of 1934 in that it creates the opportunity for more efficient, effective and safe procedures for clearance and settlement. OCC also believes that the proposed rule change will have no impact on competition. OCC has not solicited and does not intend to solict comments on the proposed rule change and OCC has not received any comments.

II. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to section 19(b), (1) & (2) of the Act, 15 U.S.C. 78s(b) (1) & (2), the Commission, within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which OCC consents, will either approve OCC's proposed rule change by order, or institute proceedings to determine whether the proposed rule change should be disapproved.

III. Solicitation of Comments

You are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW. Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed

rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at OCC's principal office. All submissions should refer to File Number SR-OCC-89-5 and should be submitted by July 27, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-15880 Filed 7-5-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26988; File No. SR-PSE-89-5]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change by Pacific Stock Exchange, Inc. Relating to Capital Requirements for Specialist Posts and Competing and Alternate Specialists

I. Introduction

On April 3, 1989, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder,[1] a proposed rule change that would increase capital requirements for specialist posts and competing and alternate specialists.[2]

II. Description of Proposed Rule Change

The proposed rule change would amend PSE Rule V, sections 2(a) and 2(b), and add Commentaries .01 and .02 to Section 2 concerning capital requirements for specialist posts and competing and alternate specialists. Currently, Rule V, sections 2(a) and 2(b), require each specialist post to maintain the greater of $100,000 in cash or marketable securities or 25% of the market value of its securities position. Each competing or alternate specialist who is not subject to the provisions under section 2(a) is required to maintain the greater of $10,000 in cash or marketable securities or 25% of the market value of its securities position for each registered security. Under the proposed rule change, the minimum capital requirement for each specialist post would be increased to $150,000. The minimum capital requirement for competing and alternate specialists would be increased to $15,000. The PSE stated that these increases are intended to ensure that capital levels will be sufficient to enable specialists to perform their affirmative obligations during volatile markets. Proposed Commentaries .01 and .02 provide that the new capital requirements for specialist posts and for competing and alternate specialists shall become effective July 1, 1989.

III. Discussion

The Commission believes that, in view of the market volatility encountered during and in the months following the October 1987 market break, it is appropriate to increase capital requirements for PSE specialist posts and for competing and alternate specialists. The Commission staff study on the October 1987 market break found that while specialist capital appeared sufficient during normal trading situations, it was not sufficient where markets encountered continued high volatility levels.[3] The report also stated that additional specialist capital might ensure that in any future down market specialists do not reach the limit of their buying power or become in jeopary of failing. The Commission believes that the proposed rule change will provide an increased level of protection against market volatility for specialists, so that their buying power is not jeopardized by market volatility.[4]

The Commission believes that the requirements of the proposed rule are reasonable and that conformity with these standards will not be unduly burdensome on PSE specialist units. In this regard, the PSE has stated that the vast majority of its specialist units are already in compliance with the increased capital requirements of the proposed rule.[5]

IV. Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the proposed rule change is consistent with the requirements of section 11(b) of the Act,[6] which permits national securities exchanges to promulgate rules regulating the activities of specialists as necessay or appropriate in the public interest, for the protection of investors, and to maintain fair and orderly markets, and section 6(b)(5) of the Act,[7] which directs that the rules of a national securities exchange be designed to facilitate transactions in securities and to protect investors and the public interest.

The Comission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing therefore so that the Exchange may impose increased capital requirements on specialists by the previously announced July 1 deadline to help ensure greater specialist liquidity and thus greater capacity to cope with market volatility. Moreover, the Commission did not receive any comments on the proposed rule change.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Dated: June 28, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-15881 Filed 7-5-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26973; File No. SR-PSE-89-17]

Proposed Rule Change by The Pacific Stock Exchange Incorporated Relating to the Provisions Governing the Facilitation of Non-broker/Dealer Option and Stock/Option Orders, and the Solicitation of Such Facilitation Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 8, 1989, the Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Stock Exchange Incorporated ("PSE" or the "Exchange"), proposes to amend Rule VI, sections 57(i) and 63, to expand the provisions governing facilitation to allow for the crossing of a public order with a facilitation order from a source other than the proprietary account of the executing member organization. The proposed amendment would additionally provide for the solicitation of a facilitation order, in the event the response of the trading crowd has been insufficient to fill a public customer order (Brackets indicate language to be deleted, italics indicates new language.)

Rule VI, Section 57 Certain Types of Orders Defined

Sec. 57 (a)-(h) No change.

(i) Facilitation Order. A facilitation order is an order [for the proprietary account of a member organization] which is only to be executed in whole or in part in a cross transaction with an order for a public customer of [the] *a* member organization *and which is clearly designated as a facilitation order.*

(j) No change.

Rule VI, Section 63 "Crossing" Orders

Sec. 63.

Non-Facilitation (Regular Way) Crosses

(a) No change.

Facilitation Crosses

(b) A Floor Broker who holds an order for a public customer of a member organization and a facilitation order may cross such orders provided that he proceeds in the following manner.

(1) The option order tickets of both the [member organization] *facilitation order* and the public customer *order subject to facilitation* must display all of the terms of [the public customer order] *such orders,* including any contingency involving, and all related transactions in, either options or underlying or related securities.

(2) The Floor Broker shall disclose all securities which are components of the [public customer order] *order subject to facilitation* and then shall request bids and offers for the execution of all components of the order, making all persons in the trading crowd, including the Order Book Official, aware of his request for a market.

(3) After providing an adequate opportunity for such bids and offers to be made, the Floor Broker must, on behalf of the public customer *whose order is subject to facilitation,* either bid above the highest bid in the market or offer below the lowest offer in the market, identify the order as being subject to facilitation, and disclose all terms and conditions of [the public customer] *such* order. After all other market participants are given an opportunity to accept the bid or offer made on behalf of the public customer *whose order is subject to facilitation,* the Floor Broker may cross all or any remaining part of [the public customer] *such* order and the facilitation order at [the public] *such* customer's bid or offer by announcing in public outcry that he is crossing and by stating the quantity and price(s). Once such bid or offer has been made, the [public customer] order *subject to facilitation* has precedence over any other bid or offer in the crowd at the same price, to trade immediately with the facilitation order. *The order subject to facilitation may not be blocked by revised bids or offers; however, the bid or offer of the order subject to facilitation may be accepted or improved by members in the trading crowd or orders represented in the trading crowd.*

Crossing of Solicited Orders

(c) A Floor Broker who holds an order for a public customer of a member organization may solicit an opposing side for such order. The solicited order shall be entitled to priority of execution on the original order amount of the order which prompted the solicitation, provided the following criteria are met.

(1) The initial order shall be first represented in the trading crowd by public outcry, at which time the size and all components of the order shall be disclosed. This order must remain active in the trading crowd during the entire solicitation process.

(2) The prevailing bid/ask quotation on the underlying security must remain unchanged between the time the initial order is first represented in the trading crowd pursuant to paragraph (1) above and the consummation of the subject transaction.

(3) Both the order prompting the solicitation and the solicited order shall be represented by a member affiliated with the member organization that had initially represented the order prompting the solicitation pursuant to paragraph (1) above.

(4) "Solicited" shall be written in the "Optional Data" area on the order ticket of the solicited order. If the solicited order is for a market maker account, the order ticket shall be personally initialled by the solicited market maker, who must have in his possession a copy of such order ticket at all times such order is active.

Commentary:

.01 and .02 No change.

.03 Spread, straddle, combination or stock/option orders may be crossed, provided that the Floor Broker holding such orders proceeds in the manner described in paragraphs (a), [or] (b) *or (c)* above, as appropriate. Representation and acceptance of these orders, as well as stock/option orders, may be made on the basis of either the net debit/credit of the order or the prices for each component separately. Members may not prevent a spread, straddle, combination or stock/option cross from being completed by giving a competing bid or offer for one component of such order.

.04 No change.

.05 *Market Makers are under an affirmative obligation to indicate their market and size so that the Floor Broker may establish the current market.* A Floor Broker, in all cases, must allow members in the trading crowd a reasonable period of time for response to his request for a market and the bids or offers made prior to consummating the cross transaction. An attempt to execute the cross transaction in an uninterrupted sequence is a violation of this Section *and Section 47.*

[.06 Market Makers are under an affirmative obligation to indicate their market and size so that the Floor Broker may establish the current market.]

[.07] *.06* The Options Floor Trading Committee has determined that deliberate misrepresentation of an order will subject a member to disciplinary action.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries.

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[1] 15 U.S.C. 78s(b) and 17 CFR 240.19b-4 (1988).

[2] On May 12, 1989, the PSE filed Amendment No. 1 to SR-PSE-89-5 making certain technical corrections to the filing. The proposed rule change, as amended, was noticed in Securities Exchange Act Release No. 26878, May 30, 1989, 54 FR 24616. No comments were received on this proposal.

[3] *See* The October 1987 Market Break, a Report by the Division of Market Regulation, U.S. Securities and Exchange Commission, February 1988, at p. xviii.

[4] The Commission has approved similar proposed rule changes by the New York Stock Exchange (SR-NYSE-88-12) and the American Stock Exchange (SR-Amex-88-14) increasing capital requirements for specialists. *See* Securities Exchange Act Release No. 25677, May 6, 1988, 53 FR 17286; Securities Exchange Act Release No. 25863, June 28, 1988, 53 FR 25225.

[5] The Exchange informed Commission staff, that, as of June 16, 1989, 80% of PSE specialist firms meet or exceed the proposed increased specialist capital requirements. Telephone conversation between David P. Semak, Vice President, PSE, and Robert Sevigny, Attorney, Division of Market Regulation, on June 22, 1989.

[6] 15 U.S.C. 78k(b) (1982).

[7] 15 U.S.C. 78f(b)(5) (1982).

[8] 17 CFR 200.30-3(a)(12) (1988).

set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to enable member organizations to facilitate large customer block orders by crossing them with orders for accounts other than a firm proprietary account. Exchange Rule VI, Section 63(b), presently provides for the crossing of a public customer order with a "facilitation order", which is defined in Rule VI, Section 57(i), to include only orders for a member organization's proprietary account. The proposed amendments to Rule VI, Sections 57(i) and 63(b), would expand the provisions governing facilitation to allow for the crossing of a public customer order with a facilitation order from another source.

The procedures for accomplishing a facilitation cross would remain unchanged. Language has been added which serves to clarify that the order subject to facilitation may not be blocked by revised bids or offers, but that the bid or offer of the order subject to facilitation may be accepted or improved upon at any time. The customer entering the facilitation order would be informed by the executing member organization that his order would be executed as a facilitation order, and would be thus subject to the limitations and procedures imposed under PSE rules on such orders.

The proposed rule change will benefit public customers by expanding the number of potential facilitators, thus enabling public customers to receive executions on orders which may not have been otherwise executable.

The proposed Rule VI, section 63(c), sets forth provisions for the solicitation of buying or selling interest for the opposite side of a public customer order, in the event the response of the trading crowd has been insufficient to fill the order. Provided certain criteria are met, the solicited order would be entitled to priority of execution with the order prompting the solicitation. The criteria have been developed to ensure that members present in the trading crowd are provided ample opportunity to consider an order and respond with their market, prior to the effectuation of a cross transaction with a solicited order. To ensure this, and additionally, that members present in the trading crowd are afforded the opportunity to participate on the same terms as any solicited party, the order must remain active in the trading crowd throughout the solicitation process, and the size and all components of the order must be disclosed at the time the order is initially announced at the trading post. The solicited order, upon its announcement as such at the trading post, would then be entitled to priority of execution, to be crossed with the initial order, in an amount of contracts not exceeding that initially disclosed to the crowd, provided the prevailing bid/ask quotation on the underlying security has not changed from the time the initial order was first represented at the trading post. So as to prevent the appearance of a prearranged or directed trade, the solicited order, to be guaranteed priority of execution, must be executed as a cross transaction by a member affiliated with the member organization that had initially represented the order prompting the solicitation. A member appearing personally in response to having been solicited would not be entitled to priority of execution.

The proposed Rule VI, section 63(c), has been designed to allow for enhanced depth and liquidity provided by the practice of solicitation outside the trading crowd, without detracting from or compromising the auction marketplace. Members present in the trading crowd would be afforded an opportunity to participate in transactions on equal terms with a solicited party, which would provide for more competitive markets and executions at the best available price.

The proposed rule change is consistent with Section 6(b) of the 1934 Act in general and furthers the objective of Section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade and to protect the investing public.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 27, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

June 26, 1989.

[FR Doc. 89-15882 Filed 7-5-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-17032; File No. 812-7336]

Canada Life Insurance Co. of America; Application for Exemption under the Investment Company Act of 1940

Date: June 27, 1989.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Canada Life Insurance Company of America ("Canada Life"), Canada Life Insurance Company of America Variable Annuity Account 1 (the "Account"), and Canada Life of America Financial Services, Inc. ("CLAFS").

Relevant 1940 Act Sections: Exemption requested under section 6(c) of the 1940 Act from sections 26(a)(2) and 27(c)(2) thereof.

Summary of Application: Applicants seek an order approving the assessment and deduction of the mortality and expenses risk charge with respect to certain flexible premium variable deferred annuity contracts (the "Contracts").

Filing Date: The application was filed on May 31, 1989 and amended on June 16, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the Commission by 5:30 p.m., on July 24, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, David A. Hopkins, Esquire, Canada Life Insurance Company of America, 6201 Powers Ferry Road, NW., Atlanta, Georgia 30339. Copies to Stephen E. Roth, Esquire, Sutherland, Asbill & Brennan, 1275 Pennsylvania Avenue, NW., Washington, DC 20004-2402.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Ulness, Staff Attorney (202) 272-3027, or Clifford E. Kirsch, Acting Assistant Director (202) 272-2061 (Office of Insurance Products and Legal Compliance).

Supplementary Information: Following is a summary of the application; the complete application is available for a fee from either the Public Reference Branch in-person or the Commission's commercial copier which may be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Canada Life is a stock life insurance company incorporated under the laws of Michigan. Canada Life is a wholly-owned subsidiary of The Canadian Life Assurance Company, a Canadian life insurance company, and is principally engaged in the sales and reinsurance of annuity contracts.

2. The Account, a unit investment trust, filed with the Commission a registration statement with respect to the Contracts on Form N-4 under the 1940 Act and the Securities Act of 1933 (the "1933 Act"). The Account will invest in shares of the Canada Life of America Series Fund, Inc. (the "Series Fund"). The Series Fund is a diversified, open-end management investment company with a number of series of portfolios.

3. CLAFS is the principal underwriter and distributor of the Contracts. CLAFS, a broker-dealer registered under the Securities Exchange Act of 1934, is a member of the National Association of Securities Dealers, Inc.

4. The Contracts may be purchased on a non-tax qualified basis or they may be purchased and used in connection with retirement plans or individual retirement accounts that qualify for favorable federal income tax treatment.

5. Canada Life deducts an administration charge of $30 per contract year ($45 if a policy owner has executed a pre-authorized check agreement for additional premiums to be automatically withdrawn monthly from the contract owner's bank account) from the contract value at the end of each contract year prior to the annuity date (and upon a full surrender on any date other than a contract anniversary). Canada Life does not expect or intend to make a profit from this charge and such charge is guaranteed not to increase.

6. Canada Life imposes no charge for the first four transfers in each contract year, and imposes a $25 charge for the fifth and each subsequent transfer request made by the contract owner during a single contract year.

7. No sales charge will be deducted from payments under the Contracts when initially received. However, a contingent deferred sales charge of 6% of the amount withdrawn is imposed on certain full or partial withdrawals of contract value to cover expenses relating to the sales of the Contracts, including commissions to registered representatives and other promotional expenses.

8. Canada Life imposes a charge to compensate it for bearing certain mortality and expense risks under the Contracts. The mortality risk borne by Canada Life arises from its contractual obligation to make annuity payments regardless of how long all annuitants or any individual annuitant may live and its guarantee to pay a death benefit if the annuitant dies before the annuity date. The expense risk assummed by Canada Life is the risk that Canada Life's actual administrative costs will exceed the amounts recovered through the administration charge.

9. To compensate it for assuming mortality and expense risks, Canada Life will deduct from the net assets of the Account a daily charge in an amount equal to 1.25% on an annual basis. The 1.25% cumulative charge consists of .40% attributable to the mortality risk and .85% attributable to the expense risk.

10. Canada Life submits that it is entitled and reasonable compensation for its assumption of mortality and expense risks. Applicants represent that the level of the mortality and expense risk charge imposed is within the range of industry practice with respect to comparable annuity products. Applicants state that this representation is based upon their analysis of publicly available information regarding similar industry product, taking into consideration such factors as curent charge levels, the existence of charge level guarantees, and guaranteed annuity rates. Applicants represent that they will maintain at their administrative offices and make available to the Commission a memorandum setting forth in detail the products analyzed and the methodology, and results of, Applicants' comparative survey.

11. The contingent deferred sales charge may be insufficient to cover all costs relating to the distribution of the Contracts. Applicants acknowledge that if the revenues generated by that charge are insufficient to cover Canada Life's actual costs related to the distribution of the Contracts, and if profit is realized from the mortality and expense risk charge, all or portion of such profit may be viewed as being offset by distribution expenses not reimbursed by the sales charge.

12. Notwithstanding the foregoing, Applicants have concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Account and contract owners. The basis for this conclusion is set forth in a memorandum which will be maintained by Canada Life at its administrative offices and will be available to the Commission.

13. Applicants represent that the Account will invest only in an underlying mutual fund that undertakes, in the vent such company adopts any plan under Rule 12b-1 under the 1940 Act to finance distribution expenses, to have a board of directors (trustees), a majority of the members of which are not interested persons of the company,

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formulate and approve any such plan under Rule 12b-1.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-15883 Filed 7-5-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17030; File No. 811-3344]

LFS Variable Account A; Application for an Order Under the Investment Company Act of 1940

June 27, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("the Act").

Applicant: LFS Variable Account A.

Relevant 1940 Act Sections: Order requested under Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on June 8, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on July 24, 1989. Request a hearing in writing, giving the nature of your interest, the reasons for the request and the issues you contest. Serve the Applicant with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, One Virginia Avenue, Indianapolis, IN 46204.

FOR FURTHER INFORMATION CONTACT: Michael V. Wible, Staff Attorney, (202) 272-2190 or Clifford E. Kirsch, Acting Assistant Director, (202) 272-2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231-3282 (in Maryland (301) 253-4300).

Applicant's Representations

1. The Applicant was organized as a separate account of the Jefferson National Life Insurance Company (formerly the Lomas Financial Security Insurance Company) pursuant to the insurance laws of Indiana on November 10, 1981. The Applicant is registered under the Investment Company Act of 1940 as an open-end, non-diversified management investment company (Registration No. 811-3344). On November 25, 1981, the Applicant filed a Registration Statement (File No. 2-75139) on Form N-1 under the Securities Act of 1933 for an indefinite amount of Individual Variable Annuity Contracts (the "Contracts"). The Registration Statement became effective on February 1, 1983 and the Contracts were offered until December 31, 1985 when sales were suspended. Only four Contracts had been sold and they have all been completely surrendered (redeemed). There are no Contracts outstanding.

2. The Applicant has effected winding up of its affairs in connection with its liquidation. All of its assets have been distributed, and as such, the Applicant has no liabilities.

3. The Applicant has not within the last 18 months transferred any of its assets to a separate trust, and is not a party to any litigation or administrative proceeding. The Applicant is not now engaged, nor does it propose to engage, in any business activities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority

Jonathan G. Katz,

Secretary.

[FR Doc. 89-15884 Filed 7-5-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-17033; 812-7286]

ND Tax-Free Fund, Inc.; Application

June 28, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: ND Tax-Free Fund, Inc. (the "Fund") and ND Capital, Inc. (collectively the "Applicants").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 22(c), 22(d) and Rule 22c-1 thereunder.

Summary of Application: Applicants seek an order permitting the Fund and any future registered investment companies for which ND Capital, Inc. serves as principal underwriter to impose a contingent deferred sales charge ("CDSC") on certain redemptions.

Filing Date: The application was filed on April 5, 1989, and amended on May 17, 1989 and on June 27, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m., on July 24, 1989, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 201 South Broadway, Minot North Dakota 58701.

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, Staff Attorney, at (202) 272-3022, or Stephanie M. Monaco, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representation

1. The Fund is an open-end, non-diversified investment company registered under the 1940 Act. ND Capital, Inc. serves as the Fund's principal underwriter.

2. Applicants request an order under section 6(c) granting exemptions from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the 1940 Act and Rule 22c-1 thereunder in order to impose a CDSC on certain redemptions of Fund shares and on redemptions of certain shares of any future registered investment companies for which ND Capital, Inc. serves as principal underwriter. Applicants also propose to waive the CDSC for certain defined classes of purchasers and occasionally to vary the amount of the CDSC.

3. The amount of the CDSC would decline over five years, with no change assessed on shares held more than five years. The CDSC will be four percent of net asset value of shares redeemed which are held less than two years; three percent for shares held less than three years; two percent for shares held less than four years; and one percent for shares held less than five years. No CDSC will be applied to shares that represent (i) reinvestment of distribution on Fund shares, or (ii) net appreciation in the value of shares purchased during five years preceding the redemption.

4. The CDSC would be waived for certain classes of purchasers for which the principal underwriter incurs no distribution costs. These classes include directors, officers, and employees of the Fund, its investment adviser, its principal underwriter, and ND Holdings, Inc.; certain family members of such persons; and any trust, pension plan, profit-sharing plan, or other benefit plan of such persons or family members.

5. The Fund has adopted a distribution plan pursuant to Rule 12b-1 under the 1940 Act to compensate ND Capital, Inc. for payment of initial sales commissions.

6. Applicants believe that the proposed CDSC arrangements and the requested exemptions are appropriate and in the public interest, are consistent with the protection of investors and are consistent with the purposes intended by the 1940 Act.

Applicants' Conditions

Applicants agree to the following conditions in connection with the requested relief:

1. The Fund will comply with Rule 12b-1 in its current form and in such revised form as the SEC may adopt in the future.

2. The terms of the proposed CDSC and any variations therein or waivers thereof will comply with Rule 6c-10 as it is currently proposed and as it may be further revised and adopted.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-15885 Filed 7-5-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel No. IC-17031; 812-7193]

PaineWebber Executive Investments Fund, L.P.; NCRS Holdings Inc.; Notice of Application

June 27, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: PaineWebber Executive Investments Fund, L.P. ("Partnership") and NCRS Holdings Inc. ("NCRS").

Relevant 1940 Act Sections: Order requested under section 17(b) exempting transaction from the provisions of section 17(a).

Summary of Application: Applicants seek an order relating to the sale by the Partnership and purchase by NCRS of certain securities. The Partnership and NCRS are "affiliated persons," as defined in the 1940 Act.

Filing Date: The application was filed on December 12, 1988 and amended on June 26, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 19, 1989, and should state the nature of the requester's interest, the reason for the request, and the issues contested. Hearing requests also should be accompanied by proof of service on the Applicants in the form of affidavits or, for lawyers, certificates of service. Requests for notification of a hearing may be made by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, Washington, DC 20549. Applicants, PaineWebber Executive Investments Fund, L.P., 1285 Avenue of the Americas, New York, New York 10019 and NCRS Holdings Inc., 7700 France Avenue South, Minneapolis, Minnesota 55435.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Cathey Baker (202) 272-3033 or Branch Chief Karen L. Skidmore (202) 272-3023 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee. One may obtain a copy by going to the SEC's Public Reference Branch or by telephoning the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations: 1. The Partnership, a Delaware limited partnership, is registered under the 1940 Act as a non-diversified closed-end management investment company and is an "employees' securities company" within the meaning of section 2(a)(13) of the 1940 Act. The sole general partner of the Partnership is PaineWebber Employee Investments Management Inc. ("General Partner"), a Delaware corporation and a wholly-owned subsidiary of Paine Webber Group, Inc. ("PW Group"), a full-service securities firm. The purpose of the Partnership is to enable eligible employees of PW Group and its subsidiaries to pool their resources and benefit from investment opportunities which might not otherwise be available to them individually and which come to the attention of PW Group and its subsidiaries. The Partnership operates in accordance with an order under sections 6(b) and 6(e) of the 1940 Act (Investment Company Act Release No. 15063; April 18, 1986) ("1986 Exemptive Order") granting an exemption from section 17(d) of the 1940 Act to the extent necessary to permit the Partnership to make tandem investments with PW Group and its subsidiaries, other partnerships whose general partner is a direct or indirect subsidiary of PW Group (such subsidiaries and partnerships, together with PW Group, "PaineWebber") and affiliates of PaineWebber.

2. NCRS is a Delaware corporation organized by Fidelco Capital Group ("Fidelco"), a New Jersey limited partnership which operates as a private investment banking firm and investment vehicle for its general partners. NCRS was organized in order to effect the transactions contemplated by the Agreement described below.

3. National Car is the third largest car rental agency in the United States. Prior to September 30, 1988, the common stock of National Car consisted of two classes (together, "National Car Common Stock"), identical in all respects, except that Class A shares had voting rights whereas Class B shares did not. As of September 8, 1988, PaineWebber Capital Inc. ("PW Capital"), a Delaware corporation and wholly-owned subsidiary of PW Group, owned 48,621 shares of National Car Common Stock; the Partnership owned 5,775 shares; three limited partnerships indirectly controlled by PW Group owned an aggregate number of 27,889 shares; and two indviduals owned an aggregate number of 1,869 shares.

4. On September 8, 1988, the Partnership entered into an Agreement by and among Fidelco, on the one hand, and PW Group, the Partnership, PW Capital, the limited partnerships indirectly controlled by PW Group and the individual owners of National Car Common Stock (collectively, "Sellers"), on the other hand. The Agreement provided that the Sellers would sell all of their shares of National Car Common Stock (a total of 84,154 shares) to Fedelco or its assignee at a price per share of $867.89 ("Unadjusted Per Share Price") on September 30, 1988. Prior to

that date, Fidelco assigned its rights under the Agreement to NCRS. On September 30, 1988, Fidelco contributed its shares of National Car Common Stock to NCRS in exchange for 36.5% of the outstanding voting securities of NCRS and certain notes of NCRS. All of the Sellers except the Partnership sold their shares of National Car Common Stock to NCRS at the Unadjusted Per Share Price.

5. An issue was raised as to whether the Partnership might be prohibited by section 17(a) of the 1940 Act, in the absence of an exemptive order of the Commission, from transferring its shares of National Car Common Stock to NCRS as contemplated by the Agreement. On September 30, 1988, National Car was an "affiliated person" of the Partnership within the meaning of section 17(a) and 2(a)(3)(C) of the 1940 Act, as PW Group indirectly owned all of the outstanding voting securities of the General Partner (which controls the Partnership) and was also presumed to control National Car under section 2(a)(9) of the 1940 Act by virtue of its indirect ownership of more than 25% of the outstanding voting securities of National Car. National Car was also an affiliated person of NCRS by virtue of Fidelco's ownership of more than 25% of the outstanding National Car Class A shares and the fact that all of NCRS' officers and directors were designees of Fidelco. Following the distribution on September 30, 1988 of NCRS voting securities to Fidelco, as described above, National Car remained an affiliated person of NCRS, as NCRS owned more than 25% of the outstanding voting securities of National Car.

6. Because of the possible statutory bar, the Partnership and NCRS executed a Supplement to the Agreement on September 30, 1988, pursuant to which the Partnership's 5,775 shares of National Car Common Stock, along with the purchase price of $5,012,067, were placed in escrow. Interest on these funds is payable to the Partnership if the requested order is granted and is otherwise payable to NCRS. Neither party is obligated to consummate the transaction if the order is not issued.

7. Following the transactions on September 30, 1988, the capital stock of National Car was restructured to create a single class of common stock ("New Common Stock"). All shares of National Car Common Stock were converted into 1,000 shares of New Common Stock. The 5,775 shares of National Car Common Stock owned by the Partnership were thus converted into 27.89221771 shares of New Common Stock, and the price per share of National Car Common Stock of $876.89 under the Agreement was adjusted to a price per share of New Common Stock of $179,694 ("Adjusted Per Share Price"). The recapitalization did not affect the total consideration to be received by the Partnership for the sale of its National Care shares. The application requests relief for the proposed sale of the New Common Stock by the Partnership and purchase by NCRS ("Proposed Transaction").

Applicants' Legal Conclusions: 8. The Applicants submit that the terms of the Proposed Transaction are fair and reasonable. PW Capital negotiated the Unadjusted Per Share Price on behalf of the Partnership and the other Sellers for no fee (although each of the Sellers paid, and the Partnership will pay, if the requested order is granted, a proportionate share of legal fees and all other out-of-pocket expenses incurred by PW Capital). Prior to entering into the Agreement, PW Capital explored various methods of disposing of its National Car Common Stock, including public and private placements, but ultimately determined that the transaction contemplated by the Agreement was optimal from the Sellers' standpoint. PW Capital took into account appraisals of its National Car Common Stock prior to concluding that the Unadjusted Per Share Price constituted a fair value for the shares. The Sellers (other than PW Capital) agreed that the Unadjusted Per Share Price was a favorable one. The Board of Directors of the General Partner are sophisticated and experienced in valuing securities and in evaluating transactions generally. The Directors of the General Partner also acted in various capacities on behalf of the other Sellers and considered all information deemed relevant to the Proposed Transaction, including the nature of the investments, the fairness of the Unadjusted Per Share Price, the alternative methods of disposing of the Partnership's National Car Common Stock and the appraisals of National Car Common Stock referred to above. Consistent with its fiduciary duty to the limited partners of the Partnership, the General Partner approved the terms of the Proposed Transaction.

9. The Applicants submit that the Adjusted Per Share Price and the other terms of the Proposed Transaction are not the result of any overreaching by any interested party. Neither NCRS nor Fidelco nor any of Fidelco's general partners had any economic interest in, voting rights or managerial discretion with respect to, or continuing business relationship with, the Partnership or any of the other Sellers which were directly or indirectly affiliated with PW Group, and conversely. Moreover, PW Capital had every incentive to obtain the highest possible price for the Partnership's investment in National Car because PW Capital was also negotiating on its own behalf, beause the persons responsible for negotiating the Unadjusted Per Share Price were all limited partners of one or more of the Sellers, and because the Partnership was originally created in large part to reward PaineWebber's most productive employees. The transaction contemplated by the Agreement, of which the Proposed Transaction is a part, was negotiated at arms length over a period of two months by sophisticated entities with different interests and objectives.

10. The Partnership states that the Proposed Transaction is consistent with its purposes as an "employees' securities company" and its stated policies. It was indicated in the application granted in the 1986 Exemptive Order, as well as in the prospectus of the Partnership, that many investment opportunities would come to the General Partner's attention through PW Group or its subsidiaries. It was expressly anticipated that the Partnership would make investments in tandem with PW Group, its subsidiaries, and limtied partnerships directly or indirectly controlled by PW Group. In addition, the 1986 Exemptive Order was conditioned upon an undertaking that the Partnership would be permitted to liquidate its tandem investments at the same time and on the same terms as its Paine Webber affiliates. The Partnership relied upon the 1986 Exemptive Order in acquiring the National Car Common Stock and relies upon the order also with respect to any exemption from Section 17(d) of the 1940 Act and Rule 17d-1 necessary to carry out the Proposed Transaction.

Applicant's Conditions: If the requested order is granted, the Applicants agree to the following conditions:

1. The Proposed Transaction will be consummated in the manner and on the terms set forth in the application.

2. In connection with the deliberations and determinations by the Board of Directors of the General Partner regarding the Proposed Transaction, appropriate record-keeping will be maintained and make available for inspection by the Commission in accordance with the 1986 Exemptive Order and the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-15086 Filed 7-5-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC—17034; 812-7041]

Premier Acceptance Corporation and Piper Jaffray Inc.; Application

June 28, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

Applicant: Premier Acceptance Corporation and Piper Jaffray Incorporated, one or more direct wholly-owned limited purpose finance subsidiaries of Piper Jaffray Incorporated and one or more trusts that may be established for which a Finance Subsidiary is the depositor (the "Applicants").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from all provisions of the Act.

Summary of Application: Applicants seek an order exempting certain limited purpose finance subsidiaries and certain trusts that may be established by it from all provisions of the Act to permit such entities to issue collateralized mortgage obligations and to sell residual interests in any excess cash flow on such obligations.

File Date: The application was filed on June 1, 1988 and amended on September 23, 1988, and March 29, 1989. A third clarifying amendment will be filed during the notice period.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 19, 1989, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant: Piper Jaffray Tower, 222 South Ninth Street, Minneapolis, MN 55402, Attention: Michael P. Jansen.

FOR FURTHER INFORMATION CONTACT: Cecilia C. Kalish, Staff Attorney (202) 272-3035 or Karen L. Skidmore, Branch Chief (202) 272-3023 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Premier Acceptance Corporation, a Delaware corporation ("PAC") is a direct, wholly owned limited purpose finance subsidiary of Piper Jaffray Incorporated ("PJI"). PAC, together with other direct wholly-owned limited purpose finance subsidiaries of PJI, is referred to herein as a "Finance Subsidiary". Each Finance Subsidiary intends to engage in certain limited activities, including directly issuing one or more series (each, a "Series") of collateralized mortgage obligations (the "Bonds") and establishing trusts (the "Issuer Trusts") which will issue Bonds and sell the beneficial interests therein. Each Issuer Trust will be established under a separate trust agreement (the "Trust Agreement") between a Finance Subsidiary, acting as a depositor, and a bank or trust company acting as an independent trustee for the holders of the beneficial interests of the Issuer Trusts ("Owner Trustee"). Collectively, the Finance Subsidiaries and any Issuer Trusts formed by a Finance Subsidiary to issue a Series are referred to as an "Issuing Affiliate".

2. An Issuing Affiliate will issue one or more Series of Bonds under the terms of a trust indenture (the "Indenture") between the Issuing Affiliate (the Owner Trustee in the case of an Issuer Trust) and an independent trustee (the "Bond Trustee"). The Indenture will be qualified under the Trust Indenture Act of 1939 unless an appropriate exemption is available.

3. Pursuant to each such Trust Agreement, the Finance Subsidiary will deposit cash with each Issuer Trust in return for Residual Interests (as defined in paragraph 9) and will instruct the Owner Trustee to purchase such deposited Mortgage Certificates from an Issuing Affiliate, an affiliate of an Issuing Affiliate or from third parties, or a combination thereof, on behalf of the Issuer Trust, with the proceeds of the issuance of the Bonds. Under each Trust Agreement, the Owner Trustee will be obligated to collect all amounts released from the lien of the Indenture by the Bond Trustee for the Bonds to pay all expenses of the Issuer Trust, including its own fees, and to remit the balance to the owners of the Residual Interests on a pro rata basis. Each Trust Agreement will also contemplate that the Owner Trustee may enter into a consulting agreement whereby a third party, which may be the Issuing Affiliate or an affiliate of the Issuing Affiliate, may provide certain management services in connection with the issuance of the Bonds.

4. An Issuing Affiliate will invest primarily in "fully modified pass-through" certificates (the "GNMA Certificates") guaranteed by the Government National Mortgage Association ("GNMA"), Guaranteed Mortgage Pass-Through Securities (the "FNMA Certificates") issued and guaranteed by the Federal National Mortgage Association ("FNMA"), and Mortgage Participation Certificates (the "FHLMC Certificates") issued and guaranteed by the Federal Home Loan Mortgage Corporation ("FHLMC") (the "Mortgage Certificates") which will be used to collateralize the Bonds. Each Series of Bonds may also be secured by one or more accounts and funds established in the name of the Bond Trustee including (1) an account into which will be deposited the remittances with respect to the Mortgage Certificates, together with reinvestment earnings thereon, available for the payment of the principal of and interest on the Bonds on the next payment date (the "Collateral Proceeds Account"); (2) one or more funds in which the Issuing Affiliate will deposit cash, certificates of deposit or letters of credit in an amount set forth in the Indenture which may be used to make required payments of interest on the Bonds to the extent funds in the Collateral Proceeds Account are not otherwise available (the "Reserve Fund"); and/or (3) such other funds and accounts as may be specified in the Indenture relating to a series of Bonds.

5. Each Issuing Affiliate will hold no substantial assets other than the Mortgage Certificates, the accounts and funds established under the Indenture and the eligible investments (the "Eligible Investments") in which such accounts and funds are temporarily invested. The Eligible Investments include (1) certain obligations of the United States or certain agencies thereof, provided such obligations are backed by the full faith and credit of the United States, (2) federal funds, certificates of deposit, demand and time deposits or bankers' acceptances issued or sold by eligible depository

institutions or trust companies, (3) certain repurchase agreements with respect to United States government securities, (4) interest-bearing securities or securities sold at a discount issued by eligible corporations, (5) commercial paper having the rating or ratings specified in the relevant Series supplement from each rating agency rating the Bonds, (6) a guaranteed investment contract issued by an insurance company or other corporation or entity acceptable to each rating agency rating the Bonds of such Series, (7) any other money market or demand deposit obligation, security or investment acceptable to the rating agency that rated the Bonds as collateral for securities having ratings equivalent to the respective ratings of the Bonds and (8) any shares of any investment company registered as such under the Act and which are rated "AAAm" by Standard & Poor's Corporation. Investments in Eligible Investments described in clauses (7) and (8) above will comply with the limitations contained in section 12(d)(1) of the Act. An Issuing Affiliate may not purchase or otherwise deal in property other than Mortgage Certificates and Eligible Certificates. The Mortgage Certificates, the accounts and funds established in the name of the Bond Trustee and the Eligible Investments in which such accounts and funds are temporarily invested are referred to collectively as the "Collateral".

6. The Mortgage Certificates will be assigned to the Bond Trustee and will be subject to the lien of the related Indenture. The Mortgage Certificates securing each series of Bonds will have a collateral value determined under the related Indenture, at the time of issuance and following each payment date, equal to or greater than the outstanding principal balance of the Bonds. Distributions of principal and interest received on the Mortgage Certificates securing each Series of Bonds and any applicable Reserve Funds, plus reinvestment income thereon, will be sufficient to pay all interest on the Bonds and to retire each class of Bonds by its stated maturity.

7. Each Series of Bonds will consist of one or more classes of any of the following types of Bonds: "Current Interest Bonds," "Accretion Bonds," and "Variable Rate Bonds." Each class of Bonds will bear a separate interest rate. Each class of Bonds will have a stated maturity date as indicated in a prospectus supplement for such Bonds. Interest is paid or accrued on each class on the basis of its adjusted principal amount. A Current Interest Bond is one on which all interest due is paid periodically throughout the life of the Bonds. An Accretion Bond is one on which interest is not paid currently, but instead is accrued and added to the principal amount of the Bonds and is not due or payable until the first payment date specified for such Bond. A Variable Rate Bond is one on which the interest rate adjusts periodically according to a fixed index set forth in a prospectus supplement with respect to such Bonds. Each class of Variable Rate Bonds will have a set maximum interest rate (an interest rate cap) and may or may not have a minimum interest rate (an interest rate floor).

8. Certain Series of Bonds may provide for optional and mandatory redemption on terms specified for each series. However, the Bondholders are not entitled to have their Bonds redeemed in full, whether absolutely or only out of surplus. Further, redemptions are effectuated only to the extent that funds are available and the amount of Bonds redeemed may be limited.

9. In addition to the issue and sale of the Bonds, an Issuing Affiliate may sell the residual interests in the right to receive any excess cash flows not required to pay principal of and interest on the Bonds. The applicable Finance Subsidiary will initially own all such excess cash flows. The sale of the right to receive such excess cash flows may be accomplished through the sale of Residual Bonds or Residual Interest Certificates (collectively, "Residual Interests"). An Indenture of a Series of Bonds may provide for the issuance of a class of Bonds of such series which, according to the terms of such class, entitle the holder to a pro rata share of the excess cash flows, after payment of principal and interest then due on all other classes of Bonds of such Series and provisions for certain reserves (the "Residual Bonds"). Residual Interests will be issued as Residual Bonds only where an election is made to treat an Issuing Affiliate or the Collateral securing a Series of Bonds as a real estate mortgage investment conduit (a "REMIC") under federal income tax law. Residual Bonds will constitute the residual interest in a REMIC. Residual Bonds may be issued with or without a stated principal amount. If Residual Bonds are issued with a stated principal amount, repayment of such principal shall be due only following the return of principal of and interest on all other classes of Bonds of such Series. The sale of the right to receive excess cash flows may also be accomplished outside of the Indenture, in the case of a Series of Bonds issued by an Issuer Trust, through the sale of the beneficial ownership interests in the Issuer Trust (the "Residual Interest Certificates"). Each Issuing Affiliate will issue only Bonds, Residual Interests and in the case of Finance Subsidiaries, common and preferred stock, all of which will be owned directly by PJI.

10. The sale of the Residual Interests will not alter the payment of cash flows under the Indenture including the amounts to be deposited in the Collateral Proceeds Account or any Reserve Fund created pursuant to the Indenture to support payments of principal and interest on the Bonds. The interests of the Bondholders will not be compromised or impaired by the ability of the Issuing Affiliate to sell Residual Interests, and there will not be a conflict of interest between the Bondholders and the holders of the Residual Interests for several reasons: (a) The Collateral which initially will be pledged to secure the Bonds issued by the Issuing Affiliate will not be speculative in nature because it will consist primarily of GNMA Certificates, FNMA Certificates or FHLMC Certificates, which Mortgage Certificates are guaranteed as to timely payment of interest and timely or ultimate payment of principal by each respective agency; (b) the Bonds will only be issued provided an independent nationally recognized statistical rating agency has rated such Bonds in one of the two highest rating categories, which by definition means that the capacity of the Issuing Affiliate to repay principal and interest on the Bonds is extremely strong; (c) the Indenture under which the Bonds will be issued subjects the Collateral pledged to secure the Bonds, all income distributions thereon and all proceeds from a conversion, voluntary or involuntary, of any such Collateral to a first priority perfected security interest in the name of the Bond Trustee on behalf of the Bondholders; and (d) the owners of the Residual Interests will be entitled to receive current distributions representing the residual payments on the Collateral from each Series in accordance with the terms of sale of such interests (with respect to an Issuer Trust, the applicable Trust Agreement), which distributions are analogous to dividends payable to a shareholder of a corporate issuer of collateralized mortgage obligations. Furthermore, unless an Issuer Trust elects to be treated as a "real estate mortgage investment conduit" under the Internal Revenue Code of 1986, the Residual Interest owners will be liable for the expenses, taxes and other liabilities of the Issuer Trust (other than the principal and interest on the Bonds) to the extent

not previously paid from the trust estate. The choice of the form of issuer for the collateralized mortgage obligations and the identity of the owners of the benefical interests in such issuer, however, will not alter in any way the residual payments made to the holders of such collateralized mortgage obligations, which are payments governed by an Indenture which will meet the requirements of the Trust Indenture Act of 1939.

11. Except for the limited right of the Finance Subsidiary to substitute Mortgage Certificates,[1] it will not otherwise be possible for the owners of the Residual Interests to alter the Mortgage Certificates initially pledged to secure a Series of Bonds, and in no event will any right to substitute Mortgage Certificates result in a diminution in the value or quality of such Mortgage Certificates. Although it is possible under the limited right of substitution that any Mortgage Certificates substituted for Mortgage Certificates initially pledged to secure a Series of Bonds may have a different prepayment experience than the original Mortgage Certificates, the interests of the Bondholders will not be impaired because: (a) The prepayment experience of any Mortgage Certificates will be determined by market conditions beyond the control of the owners of the Residual Interests, which market conditions are likely to affect all Mortgage Certificates of similar payment terms and maturities in a similar fashion; (b) the interests of the holders of the Residual Interests are not likely to be greatly different from those of the Bondholders with respect to Mortgage Certificates prepayment experience; and (c) to the extent that it may be possible for the owners of the Residual Interests to cause the substitution of Mortgage Certificates which has a different prepayment experience than the original Mortgage Certificates, this situation is no different for the Bondholders than the traditional collateraliazed mortgage obligation structure where bonds are issued by an entity that is a wholly owned subsidiary. With respect to any Issuer Trust for which a limited right to substitution exists, due to the fact that there usually will be more than one owner of the Issuer Trust, it appears less likely that the owners will be able to agree on any desired substitution of Mortgage Certificates than if there were a single owner that could unilaterally decide on the timing and execution of the substitution.

12. The aggregate interests of the owners of the Residual Interests in the Collateral and the expected returns earned by such owners will be far less than the payments made to Bondholders. A Finance Subsidiary will not pledge as security for any Series, Mortgage Certificates with a collateral value which exceeds 110% of the aggregate principal amount of the related bonds.

13. Neither the Finance Subsidiary, the holders of the Residual Interests, the Owner Trustee, if any, nor the Bond Trustee will be able to impair the security afforded by the Mortgage Certificates of the holders of the Bonds. That is, without the consent of each Bondholder to be affected, neither the Finance Subsidiary, the holders of the Residual Interests, the Owner Trustee, if any, nor the Bond Trustee will be able to: (1) Change the stated maturity on any Bonds; (2) reduce the principal amount or the rate of interest on any Bonds; (3) change the priority of payment on any class of any Series of Bonds; (4) impair or adversely affect the Mortgage Certificates securing a Series of Bonds; (5) permit the creation of a lien ranking prior to or on a parity with the lien of the related Indenture with respect to the Mortgage Certificates; or (6) otherwise deprive the Bondholders of the security afforded by the lien of the related Indenture.

[1] A Finance Subsidiary will have very limited rights to substitute new Mortgage Certificates for the Mortgage Certificates initially pledged to secure a Series of Bonds. Substitution will occur infrequently and will be subject to the restrictions as to type, terms and collateral value specified in the Indenture and the express conditions stated below. Any such substitutions would be made only if the Bonds would continue to be rated in the rating category in which they were originally rated by the rating agency or agencies rating such Series of Bonds.

Applicants' Legal Conclusions

The requested order is necessary and appropraite in the public interest because: (a) The Applicant and the Issuing Affiliates should not be deemed to be entities to which the provisions of the Act were intended to be applied; (b) the activities of the Applicant and the Issuing Affiliates are intended to serve a recognized and critical public need; (c) granting of the requested order will be consistent with the protection of investors because they will be protected during the offering and sale of the Bonds by the registration or exemption provisions of the 1933 Act and thereafter by the Bond Trustee representing their interests under the Indenture; and (d) the Residual Interests, if any, in an Issuing Affiliate may be offered and only to a limited number of sophisticated investors through private placements.

Applicant's Conditions

Applicant agrees that if an order is granted it will be expressly conditioned upon the following:

1. Each Series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration pursuant to section 4(2) of the 1933 Act.

2. The Bonds will be "mortgage-related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934, as amended. The Collateral directly securing the Bonds will be limited to GNMA Certificates, FNMA Certificates and FHLMC Certificates.

3. If new Mortgage Certificates are substituted for original Mortgage Certificates, the substitute Mortgage Certificates will: (i) Be of equal or better quality than the Mortgage Certificates replaced; (ii) have similar payment terms and cash flow as the Mortgage Certificates replaced; (iii) be insured or guaranteed to the same extent as the Mortgage Certificates replaced; and (iv) meet the conditions set forth in paragraphs (2) and (4). In addition, new Mortgage Certificates may not be substituted for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged as Certificates. In no event may any new Mortgage Certificates be substituted for any substitute Mortgage Certificates.

4. All Mortgage Certificates, funds, accounts or other collateral securing a Series of Bonds ("Collateral") will be held by a Bond Trustee, or on behalf of a Bond Trustee by an independent custodian. Neither the Owner Trustee, the Bond Trustee or the custodian will be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405) of the Applicant or of an Issuing Affiliate. The Bond Trustee will be provided with a first priority perfected security interest in and to all Collateral.

5. Each Series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating agency that is not affiliated with the Issuing Affiliate. The Bonds will not be "redeemable securities" within the meaning of section 2(a)(32) of the Act.

6. No less often than annually, an independent public accountant will audit the books and records of the Issuing Affiliate, and in addition, will report on whether the anticipated payments of principal and interest on the Collateral continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms.

Upon completion, copies of the auditor's reports will be provided to the Bond Trustee.

7. Each Class of Variable Rate Bonds will have a set maximum interest rate (an interest rate cap).

8. At the time of the deposit of the Collateral with the Bond Trustee, as well as during the life of the Bonds, the scheduled payments of principal and interest to be received by the Bond Trustee on all Collateral pledged to secure the Bonds, plus reinvestment income thereon, and funds, if any pledged to secure the Bonds (as described in the Application for the Order) will be sufficient to make all payments of principal and interest on the Bonds then outstanding, assuming the maximum interest rate on each class of Variable Rate Bonds. Such Collateral will be paid down as the mortgages underlying the Mortgage Certificates are repaid, but will not be released from the lien of the Indenture prior to the payment of the Bonds.

9. The election by an Issuing Affiliate to treat the arrangements by which the Bonds are issued as a REMIC will have no effect on the level of the expenses that would be incurred by the Issuing Affiliate. If an Issuing Affiliate elects to be treated as a REMIC it will provide for the payment of administrative fees and expenses as set forth in the Application. Each Issuing Affiliate will insure that the anticipated level of fees and expenses will be more than adequately provided for regardless of the method selected by such Issuing Affiliate to provide the payment of such fees and expenses.

10. Any Residual Interests may be offered and sold only to: (i) Institutions which are "accredited investors" as defined in Rule 501(a) under the 1933 Act or, (ii) certain non-institutional "accredited investors" as defined in Rule 501(a) under the 1933 Act. All investors will have sufficient knowledge and experience in financial and business matters as to be capable to evaluate the risks of purchasing Residual Interests and understand the volatility of interest rate fluctuations as they affect the value of mortgages, mortgage-related securities and residual interests therein. Eligible institutions will be limited to mortgage lenders, thrift institutions, commercial and investment banks, savings and loan associations, pension funds, employee benefit plans, insurance companies, real estate investment trusts and other institutional investors as described above which customarily engage in the purchase of mortgages and mortgage-related securities. Non-institutional accredited investors will purchase at least $200,000 of such Residual Interests and will have a net worth at the time of purchase that exceeds $1,000,000 (exclusive of their primary residence). Further, all non-institutional investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage-related securities, as to be able to evaluate the risk of purchasing Residual Interests and will have direct, personal and significant experience in making investments in mortgage-related securities and because of such knowledge and experience, understand the volatility of interest rate fluctuations as they affect the value of mortgage-related securities and residual interests therein. The subsequent transfer of the Residual Interests will also be limited to private placements to such purchasers. Moreover, each investor will be required to represent that it or he is purchasing such Residual Interests for investment purposes. The Indenture relating to the Bonds or the Trust Agreement, as applicable, relating to any Issuer Trust, will further prohibit the transfer of any Residual Interests if there would be more than 100 owners of such Residual Interests at any time. Notwithstanding the sale of the Residual Interests, all of the stock in any Finance Subsidiary will continue to be owned by PJI. A Finance Subsidiary will not issue any other stock, except to PJI. Residual Interests in a Series will be sold to no more than 35 non-institutional accredited investors.

11. Each sale of a Residual Interest in a Series will qualify as a transaction not involving any public offering within the meaning of section 4(2) of the 1933 Act.

12. Each sale of a Residual Interest in a Series will require each purchaser thereof to represent that it is purchasing for investment not for distribution that it will hold such Residual Interest in its own name and not as nominee for undisclosed investors.

13. If the sale of the Residual Interests or an equity interest results in the transfer of control (as the term "control" is defined in the Rule 405 under the 1933 Act) of an Issuer Trust, the relief afforded by any Order granted on the Application would not apply to subsequent bond offerings by that Issuer Trust; if the transfer of control is of a Finance Subsidiary, the relief afforded by such Order would not apply to subsequent bond offering by such Finance Subsidiary or by any Issuer Trust established by such Finance Subsidiary.

14. Applicant will secure from each Finance Subsidiary and Issuer Trust its consent to comply with all of the applicable representations and conditions set forth hereinabove. Each Finance Subsidiary will adopt a resolution of its Board of Directors covenanting compliance with such representations and conditions. Each Trust Agreement will contain covenants requiring such Issuer Trust to comply with such representations and conditions.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-15887 Filed 7-5-89; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-17035; File No. 811-5257]

USLIFE Separate Account I

June 28, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("the 1940 Act").

Applicant: USLIFE Separate Account I.

Relevant 1940 Act Sections: Order requested under section 8(f).

Summary of Application: Applicant seeks an order under Section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Date: The application was filed on May 24, 1989.

Hearing Date: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on July 24, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also serve it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 125 Maiden Lane, New York, New York 10038.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Michael V. Wible (202) 272-2190 or Acting Assistant Director Clifford E. Kirsch, (202) 272-2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations: 1. The Applicant has no separate legal existence under the law of the State of New York, pursuant to which it was created in 1987. The Applicant filed a registration statement on Form N-8A and N-8B-2 as a unit investment trust under the 1940 Act, and a registration statement for flexible premium variable life insurance policies on Form S-6 under the Securities Act of 1933, which was never made effective.

2. The Applicant did not have any assets or policyholders nor did it ever make a public offering of securities and is in the process of effecting a winding up of its affairs.

3. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust. In addition, the Applicant is not a party to any litigation or administrative proceeding and it not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-15888 Filed 7-5-89; 8:45 am]
BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 03/03-5141]

Albright Venture Capital, Inc.; Surrender of License

Notice is hereby given that Albright Venture Capital, Inc., (AVCI), 1355 Piccard Drive, Rockville, Maryland 20850 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). AVCI was licensed by the Small Business Administration on August 10, 1979.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the License was accepted on June 23, 1989, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small business Investment Companies)

Robert G. Lineberry,
Deputy Associate Administrator for Investment.

Dated: June 29, 1989.

[FR Doc. 89-15827 Filed 7-5-89; 8:45 am]
BILLING CODE 8025-01-M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1980, as Amended by Pub. L. 99-591; Information Collection Under Review by the Office of Management Budget (OMB)

AGENCY: Tennessee Valley Authority.

ACTION: Information collection under review by the Office of Management Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Pub. L. 99-591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer, and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management Budget, Washington, DC 20503; Telephone: (202) 395-3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751-2523.

Type of Request: Regular submission

Title of Information Collection: Prevailing Wage Survey for TVA Regular Operating and Maintenance Work.

Frequency of Use: Annually

Type of Affected Public: Businesses or other for-profit, Federal agencies or employees.

Small Businesses or Organizations Affected: No

Federal Budget Functional Category Code: 999

Estimated Number of Annual Responses: 40

Estimated Total Annual Burden Hours: 60

Estimated Average Burden Hours Per Response: 1.5

Need For and Use of Information: TVA surveys industrial firms and public utilities whose employees perform work similar to that performed by TVA's operating and maintenance employees. The data collected is used in negotiations to determine prevailing rates of wages in the vicinity to be paid by TVA as required by the TVA Act.

Louis S. Grande,
Vice President, Information Services Senior Agency Official.

[FR Doc. 89-15847 Filed 7-5-89; 8:45 am]
BILLING CODE 8120-01-M

Paperwork Reduction Act of 1980, as Amended by Pub. L. 99-591; Information Collection Under Review by the Office of Management and Budget (OMB)

AGENCY: Tennessee Valley Authority

ACTION: Information Collection Under Review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Pub. L. 99-591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395-3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751-2523.

Type of Request: Regular submission.

Title of Information Collection: Foreign Line Crossing Data

Frequency of Use: On occasion.

Type of Affected Public: State or local governments, small businesses or organizations, businesses or other for-profit.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 135

Estimated Total Annual Burden Hours: 1,350.
Estimated Average Burden Hours Per Response: 10.
Need For and Use of Information: When a company wishes to build a line over or under a Power Transmission line owned by TVA, TVA must review certain engineering data to ensure reliability of the power system and to protect the public by ensuring that the crossing meets the National Electrical Safety Code. The information collection provides such engineering data.

Louis S. Grande,
Vice President, Information Services, Senior Agency Official.

[FR Doc. 89-15848 Filed 7-5-89; 8:45 am]

BILLING CODE 8120-01-M

Paperwork Reduction Act of 1980, as Amended by Pub. L. 99-591; Information Collection Under Review by the Office of Management and Budget (OMB)

AGENCY: Tennessee Valley Authority.

ACTION: Information Collection Under Review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Pub. L. 99-591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Office whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395-3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, Edney Building 4W 13B, Chattanooga, TN 37401; (615) 751-2523.
Type of Request: Regular submission.
Title of Information Collection: TVA Trades and Labor Wage Survey for Construction of Major Projects.
Frequency of Use: Annually.
Type of Affected Public: Businesses or other for-profit.
Small Businesses or Organizations Affected: No.
Federal Budget Functional Category Code: 999.
Estimated Number of Annual Responses: 20.
Estimated Total Annual Burden Hours: 20.
Estimated Average Burden Hours Per Response: 1.0.
Need For and Use of Information: TVA surveys major construction projects in the vicinity to collect prevailing wage and benefit data for use in negotiations to determine the prevailing rate of wages to be paid by TVA, as required by the TVA Act.

Louis S. Grande,
Vice President, Information Services, Senior Agency Official.

[FR Doc. 89-15849 Filed 7-5-89; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. EX89-3; Notice 1]

Avanti Automotive Corporation; Receipt of Petition for Temporary Exemption From Federal Moter Vehicle Safety Standard No. 208

Avanti Automotive Corporation of Youngstown, Ohio, has petitioned for a temporary exemption of its convertible models from the automatic restraint requirements of Motor Vehicle Safety Standard No. 208, *Occupant Restraint Systems.* The basis of the petition is that compliance would cause substantial economic hardship.

This notice of receipt of the petition is published in accordance with the regulations of the National Highway Traffic Safety Administration on this subject (49 CFR Part 555) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Petitioner's total production from January 1987 to June 1989 was 434 passenger cars, of which 203 were convertibles, and the remainder, coupes. It requested an exemption of three years from the automatic restraint requirements of Motor Vehicle Safety Standard No. 208 for its convertible models, which become effective September 1, 1989, for that type of motor vehicle. The company's coupes and contemplated 4-door sedan are and will be fitted with automatic restaints.

In arguing that compliance would cause it substantial economic hardship, Avanti discusses the recent troubled history of the company. The original Avanti Corporation acquired tooling from the Studebaker Corporation in 1964, and manufactured passenger cars in South Bend, Indiana, from that time until recently. In 1985, Avanti filed for bankruptcy, and its assets were purchased in 1986 and formed the basis of a new corporation, The New Avanti Motor Corporation. Business interests in Youngstown, Ohio, offered incentives to move production to that economically troubled area, including "an eight million dollar financial package . . . which included loans and grants from the State of Ohio, local grants, private financing, and equity." New Avanti accepted, and moved in September 1987. However, start-up costs, including the training of a new work force, absorbed available capital, and the specter of bankruptcy again arose. A reorganization occurred in the Fall of 1988, and the Avanti Automotive Corporation emerged. Much of the time since then has been devoted to a reevaluation of its market, a search for a suitable chassis for its 1991 and subsequent models, and an examination of ways to reduce production costs. Although "over the last four months, Avanti Automotive Corporation has received additional capital of $600,000 per month," such an infusion is required to compensate for the company's continuing losses over the past few years. Its latest income statement (June 1-November 30, 1988) shows a net loss of over $2,000,000. In the year ending April 30, 1988, it had a net losss of almost $3,000,000. In the year ending April 30, 1987, it has a net gain of slightly less than $25,000.

With regard to its efforts to comply with Standard No. 208, Avanti has investigated the feasibility of providing a three point automatic restraint system. This, however, is feasible in the Avanti convertible only with a roll bar. Avanti believes that installation of a roll bar would substantially reduce the consumer appeal of the convertible (This would result in fewer sales, with a resulting negative effect on the income that would be available for development and implementation of an airbag system). Nevertheless, it is attempting to make the roll bar/three point system available as an option, "possibly as early as the 1990 model year." In the meantime, it has been planning to install a driver's side air bag, and commenced its efforts in the Spring of 1988. It has learned from Breed Corporation and Allied Signal that total design and tooling costs will exceed $1,500,000 for the convertible alone (it believes that this system will be easily adaptable for the coupe and planned 4-door sedan). Avanti did not have sufficient funds to undertake this, at that time, since it did not know whether it would even be in business 18 months later when the

requirement came into effect. However, it believes that it could develop and implement an air bag system over the 3-year period that its exemption would be in effect, and thus, produce a conforming convertible by September 1, 1992, if not 6 to 12 months before then. It estimates that, if the exemption is granted, 600 convertibles will be produced over the next 3 years and covered by it. In the absence of an exemption, Avanti argues that it would be forced to cease operations as the convertible now forms a large majority (64% thus far in 1989) of its production.

Petitioner states that an exemption would be in the public interest and consistent with the objectives of the National Traffic and Motor Safety Act. Its convertibles will continue to be equipped with the three point active belt system presently installed, and the small number of vehicles likely to be produced under the exemption will not materially affect motor vehicle safety. An exemption will afford Avanti the opportunity to modify the intended air bag system for use in its enclosed vehicles, to replace the automatic system presently offered. Avanti affords job opportunities in an economically depressed area, its payroll approximately $250,000 a month. Other jobs have been created by supplier to Avanti. Finally, maintaining the existing diversity of motor vehicles is also in the public interest and an objective of the Vehicle Safety Act.

Interested persons are invited to submit comments on the petition of Avanti Automotive Corporation described above. Comments should refer to the docket number and be submitted to Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The petition and supporting materials, and all comments received, are available for examination in the docket both before and after the closing date. Comments received after the closing date will be considered to the extent practicable. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 7, 1989.

(Sec. 3, Pub. L. 92-548, 86 Stat. 1159 (15 U.S.C. 1410); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: June 30, 1989.

Barry Felrice,
Associate Administrator for Rulemaking.

[FR Doc. 89-15854 Filed 7-5-89; 8:45 am]

BILLING CODE 4910-59-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 128
Thursday, July 6, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, July 11, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-15945 Filed 7-3-89; 10:15 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Monday, July 17, 1989.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Regulation of Hybrid Instruments/Final Rule.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-15946 Filed 7-3-89; 10:15 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Monday, July 17, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-15947 Filed 7-3-89; 10:15 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, July 26, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-15948 Filed 7-3-89; 10:15 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Wednesday, July 26, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-15949 Filed 7-3-89; 10:15 am]

BILLING CODE 6351-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:04 p.m. on Friday, June 30, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider matters relating to the possible failure of certain insured banks.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: July 3, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-16007 Filed 7-3-89; 2:03 pm]

BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, July 11, 1989, 10:00 a.m..

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, July 13, 1989, 10:00 a.m..

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE DISCUSSED:

Setting of Dates for Future Meetings.

Correction and Approval of Minutes.

Regulations: Loans from Lending Institutions to Candidates and Political Committees: Revised Notice of Proposed Rulemaking.

Albert Gore, Jr. For President Committee, Inc.—Final Audit Report.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Hilda Arnold,

Administrative Assistant, Office of the Secretariat, Federal Election Commission.

[FR Doc. 89-16034 Filed 7-3-89; 2:55 pm]

BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 3:00 p.m.—July 10, 1989.

PLACE: Hearing Room One—1100 L Street, NW., Washington, DC 20573-0001.

STATUS: Part of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion Open to the Public

1. Docket No. 88-16—Service Contracts—Petition for Reconsideration.

Portion Closed to the Public

Service Contract Docket No. 89-09—Asia North America Eastbound Rate Agreement Correction of Clerical Errors in Service Contract S.C. No. 1345/89.

CONTACT PERSON FOR MORE INFORMATION: Ronald D. Murphy, Assistant Secretary, (202) 523-5725.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 89-16032 Filed 7-3-89; 2:54 pm]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 27096, June 27, 1989.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 12:00 Noon, Monday, July 3, 1989.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Consideration of legislation relating to banking structure.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: July 3, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-16035 Filed 7-3-89; 3:25 pm]

BILLING CODE 6210-01-M

INTERSTATE COMMERCE COMMISSION

TIME: AND DATE: 10:00 a.m., Thursday, July 13, 1989.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: Open Special Conference.

MATTERS TO BE DISCUSSED: FY 1991 Budget.

CONTACT PERSON FOR MORE INFORMATION: A Dennis Watson, Office of Government and Public Affairs, Telephone: (202) 275-7252.

Noreta R. McGee,

Secretary.

[FR Doc. 89-15681 Filed 6-29-89; 1:52 pm]

BILLING CODE 7035-01-M

RAILROAD RETIREMENT BOARD

Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on July 11, 1989, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion Open to the Public

(1) Proposed Changes in the RUIA Regulations.

(2) Proposed Regulation, Part 327, Availability for Work.

(3) 20 CFR Part 255—Recovery of Overpayments.

(4) Recommendation for Accepting as Valid Delayed Registrations Made by Ron E. Walls.

(5) Discussion of Management Initiative Regarding Communications, Productivity and Training.

Portion Closed to the Public

(A) Appeal of Nonwaiver of Overpayment, Marjorie L. Miller.

(B) Appeal from Referee's Denial of Disability Annuity, John R. Rogers.

(C) Appeal from Referee's Denial of Sickness Benefits, Raymond J. Strycharz.

The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312-751-4920, FTS No. 386-4920.

Dated: June 30, 1989.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89-15969 Filed 7-3-89; 11:04 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of July 10, 1989.

A closed meeting will be held on Monday, July 10, 1989, at 9:30 a.m. An open meeting will be held on Monday, July 10, 1989, at 1:00 p.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Monday, July 10, 1989, at 9:30 a.m., will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Vacate injunctive actions.

The subject matter of the open meeting scheduled for Monday, July 10, 1989, at 1:00 p.m., will be:

1. Consideration of whether to publish for comment proposed regulations that would facilitate multijurisdictional offerings by U.S. and Canadian issuers. For further information, please contact Sara Hanks or William Haseltine at (202) 272-3246.

2. Consideration of whether to propose for public comment Rule 12d1-1 under the Investment Company Act of 1940. Rule 12d1-1 would provide an exemption from the limitations imposed by Section 12(d)(1)(A) of that Act for acquisitions of securities of foreign banks and foreign insurance companies by registered investment companies. For further information, please contact Ann M. Glickman at (202) 272-3042.

3. Consideration of whether to propose for public comment amendments to Rule 12d3-1 Under the Investment Company Act of 1940. The proposed amendments would facilitate the acquisition of the equity securities of a foreign securities firm by a registered investment company and any company or companies controlled by such company. For further information, please contact Christopher Sprague at (202) 272-7779.

4. Consideration of whether to repropose for public comment Rule 144A, which would provide a safe harbor exemption from the registration requirements of the Securities Act of 1933 for resale of restricted securities to "qualified institutional buyers" as defined in the Rule. The Commission also is reproposing amendments to Rules 144 and 145 under the Securities Act, which would redefine the required holding period for restricted securities, whether acquired pursuant to Rule 144A or otherwise. For further information, please contact Daniel W. Rumsey at (202) 272-3246.

5. Consideration of whether to propose for publish comment a revised proposed regulation that would clarify the extraterritorial application of the registration provisions of the Securities Act of 1933. For further information, please contact Sara Hanks at (202) 272-3246.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Amy Kroll at (202) 272-2200.

Jonathan G. Katz,

Secretary.

July 3, 1989.

[FR Doc. 89-16037 Filed 7-3-89; 8:45 am]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 54, No. 128
Thursday, July 6, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Proposed Additions

Correction

In notice document 89-14941 appearing on page 26828 in the issue of Monday, June 26, 1989, make the following correction:

In the first column, the last line should read "2562 Avery Avenue."

BILLING CODE 1505-01-D

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

Correction

In notice document 89-15143 appearing on page 27061 in the issue of Tuesday, June 27, 1989, make the following correction:

On page 27061, in the third column, in the line immediately following the second complete paragraph, the agreement number should read: "232-011230-001".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-010-09-4212-13; CA 22479]

Realty Action; Termination of Proposed Exchange of Public Lands in Placer and Yuba Counties, CA

Correction

In notice document 89-2433 appearing on page 5283 in the issue of Thursday, February 2, 1989, make the following correction:

In the second column, under the first **Placer County, California**, in the seventh line, "Sec. 5," should read "Sec. 35,".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 7

Advisory Committees; Policies and Procedures

Correction

In rule document 89-15080 beginning on page 26947 in the issue of Tuesday, June 27, 1989, make the following corrections:

§ 7.10 [Corrected]

On page 26951, in the first column, in § 7.10(b)(1), "At" should read "A".

§ 7.11 [Corrected]

2. On the same page, in the second column, in § 7.11(b), in the fifth line, "expect" should read "except".

3. On the same page, in the second column, in § 7.11(d)(2), in the second line, "adjournment" was misspelled.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26805; File Nos. SR-NYSE-88-29; SR-NYSE-88-8; SR-NASD-88-29; SR-NASD-88-51;SR-NASD-89-19; SR-AMEX-88-29]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes by the New York Stock Exchange, Inc., National Association of Securities Dealers, Inc., and the American Stock Exchange, Inc. Relating to the Arbitration Process and the Use of Predispute Arbitration Clauses

Correction

In notice document 89-11723 beginning on page 21144 in the issue of Tuesday, May 16, 1989, make the following correction:

On page 21155, in the second column, in footnote 61, in the last line, "September 13, 1989" should read "September 7, 1989".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-ANE-04; Amdt. 39-5221]

Airworthiness Directives; GQ Parachutes, Ltd., Type 350 Parachute Assemblies (P/N's MRI GQ 1277, MRI GQ 1304 and MRI GQ 1325), 850 Parachute Assemblies (P/N's MRI GQ 1284, MRI GQ 1315 and MRI GQ 1330), and 4.8m SAC Parachutes (P/N's MRI GQ 1308 and MRI GQ D22918/2)

Correction

In rule document 89-14235 beginning on page 25445 in the issue of Thursday, June 15, 1989, make the following correction:

§ 39.13 [Corrected]

On page 25446, in the first column, in the sixth complete paragraph, in the fourth line, the date should read "January 18, 1989".

BILLING CODE 1505-01-D

federal register

Thursday
July 6, 1989

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1 and 602

Taxation of Fringe Benefits and Exclusions From Gross Income for Certain Fringe Benefits; Final and Temporary Regulations

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8256]

RIN 1545-AH73

Taxation of Fringe Benefits and Exclusions From Gross Income for Certain Fringe Benefits

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations concerning the taxation and valuation of fringe benefits and exclusions from gross income for certain fringe benefits. This document also specifies the effective dates for certain temporary regulations relating to the same matters. Changes to the applicable law were made by the Tax Reform Act of 1984, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Repeal of Contemporaneous Recordkeeping Requirements, and the Tax Reform Act of 1986. The regulations affect any person providing or receiving fringe benefits. The regulations provide these persons with the guidance necessary to comply with the law.

EFFECTIVE DATE: The final regulations are effective as of January 1, 1989, except that §§ 1.132-1(b)(1) with respect to the use of air transportation by a parent of an employee and 1.132-4(d) are effective as of January 1, 1985. The temporary regulations are effective from January 1, 1985, through December 31, 1988.

FOR FURTHER INFORMATION CONTACT: Richard Pavel at telephone 202-377-9372 (Not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545-0771. The estimated average burden per respondent/recordkeeper is 5 hours and 30 minutes.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require more or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer TR:FP, Washington, DC 20224, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Background

On December 23, 1985, the **Federal Register** published temporary regulations (50 FR 52281) on the taxation and valuation of fringe benefits and exclusions from gross income for certain fringe benefits. Those regulations provide guidance on the tax treatment of taxable and nontaxable fringe benefits and general rules for the valuation of taxable fringe benefits. The regulations also provide special rules for valuing employer-provided vehicles, flights on employer-provided aircraft, employer-provided free or discounted flights on commercial airlines, and meals at employer-operated eating facilities. The text of those temporary regulations also served as the comment document for a notice of proposed rulemaking ("the proposed regulations") published in the **Federal Register** for the same day (50 FR 52333).

Many comments were received from the public on the proposed regulations. In addition, on April 29, 1986, the Internal Revenue Service held a public hearing concerning the regulations. In response to the comments received and the statements made at the public hearing, the proposed regulations have been adopted as revised by this Treasury decision.

The final regulations contained in this document apply as of January 1, 1989. The final regulations under section 61 are contained in § 1.61-21. The final regulations under section 132 are contained in § 1.132-0 through § 1.132-8; § 1.132-0 contains an outline of the section 132 regulations. For benefits received in 1985, 1986, 1987 and 1988, the temporary regulations published in the **Federal Register** for December 23, 1985, apply. Those regulations are contained in § 1.61-2T and § 1.132-1T through § 1.132-8T.

Certain provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) and the Tax Reform Act of 1986 apply to benefits received after 1984. Even though these provisions are reflected in the final regulations and not in the temporary regulations, the provisions are effective as of January 1, 1985. For these rules, see the following discussion concerning no-additional-cost services.

Summary of Comments and Explanation of Provisions

Cost of Group-Term Life Insurance on the Life of an Individual Other Than an Employee

The final regulations clarify that the cost of group-term life insurance on the life of an individual other than an employee (such as the spouse of an employee), even if an incidental cost, is to be included in the employee's gross income.

Provider of a Fringe Benefit

The final regulations make clear that a fringe benefit provided to an employee by someone other than the employer (such as a client or customer of the employer) must be included in the employee's income, unless otherwise excluded.

Election To Use Special Valuation Rules

Many comments were received on the requirement that employers notify employees of their intent to use a special valuation rule. Commentators questioned the purpose of the notification requirement. Commentators also suggested that the regulations provide guidance on the manner of providing the notice to employees and the information that must be contained in the notice.

The purpose of the notification requirement is to advise employees of the substantiation requirements that apply when certain special valuation rules are used. For example, if an employer intends to use the automobile lease valuation rule or the vehicle cents-per-mile valuation rule, adequate records that substantiate the employee's business use of the vehicle must be maintained (see section 274(d) and the regulations thereunder). On the other hand, if the commuting valuation rule is used, the employee need only keep track of the number of one-way commutes in the vehicle. When the commuting valuation rule is used, the section 274(d) substantiation requirement is satisfied by the employer's written policy statement and records that indicate that the conditions of the commuting valuation rule are satisfied.

The final regulations provide that employers must notify employees of (1) the special valuation rule or rules that they intend to use, (2) the applicable substantiation requirements, and (3) the effect of failing to comply with the substantiation requirements. The final regulations also provide that the notice must be provided in a manner reasonably expected to come to the attention of all affected employees. For example, the notice may be provided in a mailing or with the employees' paychecks.

The final regulations also provide that employers need not notify employees of their intention to continue using a particular valuation rule in a subsequent calendar year. Therefore, if an employer notified an employee that the automobile lease valuation rule would be used for 1989 the employer need not provide additional notification that the same rule will be used for 1990.

Commentators questioned the effect of an employer's failure to satisfy the notification requirement with respect to a particular employee. The final regulations provide that an employer may use a special valuation rule for a year even though the employer did not provide the requisite notice for that year only if the employer receives a statement from the affected employee indicating that the employee knows (1) that the employer intends to use a particular valuation rule for that year, (2) the applicable substantiation requirements, and (3) the effect of a failure to comply with such requirements. The employee statement must be received by January 31 of the year following the year for which the notice was not provided.

Automobile Lease Valuation Rule

Commentators requested that the final regulations provide guidance on determining the fair market value of automobiles that are leased by an employer. In response to the comments, the final regulations provide that employers who lease automobiles may treat the manufacturer's suggested retail price of an automobile less eight percent as the fair market value of the automobile for purposes of calculating the Annual Lease Value of a leased automobile.

It should also be noted that the determination of the fair market value of an automobile that is purchased by an employer has been revised in the final regulations, so that sales tax and title fees attributable to the purchase of an automobile are part of the purchase price of the automobile.

The proposed regulations provide that the value of an automobile available to an employee for less than 30 consecutive days is the Daily Lease Value. The Daily Lease Value is four hundred percent of a pro-rated Annual Lease Value. With respect to three situations, commentators complained that the Daily Lease Value is not the appropriate measure of value.

The first situation occurs when an automobile is provided to an employee for a continuous period of more than 30 days, but the period of availability straddles two calendar years. The final regulations permit use of a pro-rated Annual Lease Value in this case.

The second situation occurs with respect to the provision of demonstration automobiles to employees of automobile dealerships. Commentators stated that employees of automobile dealerships are provided automobiles on a continuous basis, but that because the automobiles are included in the dealership's inventory and thus are subject to sale, a particular automobile may not be available to an employee for at least 30 consecutive days. Because the employees have demonstration automobiles available on a continuous basis for periods in excess of 30 days, the Annual Lease Value or a pro-rated Annual Lease Value more appropriately reflects the value of the benefit provided to the employees. The final regulations permit this treatment and provide that such values are generally determined by reference to the average of the fair market values of the automobiles available to the employees.

The third situation involves fleet automobiles. Commentators stated that employees who have fleet automobiles continuously available for 30 or more days may not have the use of the same automobile for at least 30 consecutive days. The final regulations provide that if an employer is using the fleet-average valuation rule and makes fleet automobiles available to an employee for a period of at least 30 consecutive days, the employer may treat the employee as having one of the fleet automobiles available to him for the entire period. In this case, the automobile deemed available is treated as having a fair market value equal to the fleet-average value.

The proposed regulations provided that the value of fuel provided in kind may be valued at 5.5 cents per mile and that the cost of fuel reimbursements or charges to the employer must be determined by reference to the actual amount of reimbursement or charge. Many commentators objected stating that it is difficult to determine the amount reimbursed or charged when fuel is provided for many automobiles. They stated that the fuel valuation rule should be the same whether or not the fuel is provided in kind.

For administrative convenience, the final regulations provide that an employer using the fleet-average valuation rule may value fuel provided to employees (whether or not provided in kind) at 5.5 cents per mile if it would impose unreasonable administrative burdens on the employer to determine the actual amount reimbursed or charged.

Valuation of Chauffeur Services

Commentators also requested that the regulations provide guidance on the valuation of chauffeur services. The final regulations provide that the services of a chauffeur may be valued by reference to either: (1) The fair market value of such services as determined in an arm's length transaction; or (2) the compensation of the chauffeur. For this purpose, the chauffeur's compensation includes compensation as defined in section 414 (q) (7) as well as the fair market value of nontaxable lodging (if any) provided to the chauffeur by the employer. Under either method, the amount of time that a chauffeur is on-call to perform driving services for the employer is included in the value of such services. If a chauffeur drives an employee for both business and personal purposes, the value of the chauffeur's services that is includible in the employee's income is based on the amount of time the chauffeur spends driving or is on-call to drive the employee for personal purposes. The final regulations elaborate upon these rules and provide examples of the computations.

An employee may exclude from gross income, as a working condition fringe benefit, the excess of the value of the chauffeur services over the value of the chauffeur services for personal purposes as determined under § 1.61-21(b)(5).

Moreover, if an employer provides an employee with a bodyguard/chauffeur for a bona fide business-oriented security concern, and but for such bona fide business-oriented security concern, the employee would not have been provided such a bodyguard/chauffeur, the entire value of the services of the bodyguard/chauffeur is excludable from gross income as a working condition fringe. A bodyguard/chauffeur must be trained in evasive driving techniques.

Vehicle Cents-per-Mile Valuation Rule

Many commentators were pleased that the proposed regulations provided a vehicle cents-per-mile valuation rule. Commentators stated, however, that the rule is not available to value the personal use of vehicles valued at greater than the threshold amount (e.g., $12,800 for 1988). Because application of the cents-per-mile rule to the personal use of vehicles valued at greater than the threshold amount results in undervaluation of the benefit provided, the final regulations retain the

restriction contained in the proposed regulations.

The threshold amount is determined by reference to the total recovery deductions available with respect to a vehicle placed in service in the current year. The final regulations provide, that the threshold amount for vehicles placed in service before 1989 remains no more than $12,800. With respect to vehicles placed in service in or after 1989, the threshold amount is $12,800 as adjusted for the automobile price inflation adjustment.

Commentators requested that the regulations provide guidance on the requirement that the vehicle be regularly used in the employer's business. In response, the final regulations provide two safe harbor rules. A vehicle is considered regularly used in an employer's business if the vehicle is generally used each workday to transport at least three employees in an employer-sponsored commuting vehicle pool. A vehicle is also considered regularly used in an employer's business if at least 50 percent of the miles placed on the vehicle during the year are for the employer's business. The requirements for the use of the vehicle cents-per-mile rule are relaxed in the final regulations by deleting the requirement that the vehicle must be driven by each employee who wants to take advantage of the rule at the rate of 10,000 miles per year. Therefore, as long as the vehicle is driven 10,000 miles during a year and meets the other requirements of the vehicle cents-per-mile rule, each employee who makes use of that vehicle may take advantage of the vehicle cents-per-mile rule.

Co-Owner or Co-Lessee

To determine the fair market value of an automobile for purposes of applying the annual lease valuation rule or the dollar limitation required by the vehicle cents-per-mile rule, the final regulations provide special rules for calculating such amounts when a vehicle is owned or leased by both an employer and an employee.

Generally, if the employee receives an ownership interest in the vehicle, the fair market value of the vehicle for purposes of determining the Annual Lease Value, or for applying the vehicle cents-per-mile dollar limitation is computed by deducting the amount of the employee's contribution. If the interest acquired by the employee in the vehicle is not proportionate to the employee's contribution, the reduction in fair market value is decreased. Similar rules apply in the situation of an employee contribution to a lease. If the employee does not receive an ownership interest in the employer-provided vehicle, then the fair market value is determined without regard to any amount contributed by the employee. However, the amounts contributed by the employee will then reduce the amount includible in the employee's income for the personal use of the vehicle. An example illustrates the application of this rule.

Commuting Valuation Rule

In General

The commuting valuation rule is available to value the commuting-only use of employer-provided vehicles. The rule is not available if an employee is allowed to make more than de minimis use of the vehicle for any personal purpose other than commuting or if the employee in fact makes more than de minimis use of the vehicle for other personal purposes. The proposed regulations also provided that the rule is not available if the employee is a control employee. The final regulations retain the control employee restriction provided in the proposed regulations. The restriction was retained because there was concern that employees who are able to control the use or assignment of employer-provided vehicles might not impose these usage restrictions on themselves. There is also concern that control employees are provided the commuting use of more expensive vehicles than are provided to non-control employees.

The commuting valuation rule applies only if the employer requires the employee to use the vehicle in the employer's business and provides the vehicle to employees for a bona fide noncompensatory business reason of the employer. Commentators stated that the commuting valuation rule should be available when the vehicle is provided for use in an employer-sponsored commuting vehicle pool but does not meet these two requirements. The final regulations provide that a vehicle generally used each workday to transport at least three employees to and from work in an employer-sponsored commuting pool is deemed to meet the business use and business reason requirements.

Shared Vehicle Usage

Although the proposed regulations set forth a number of special valuation rules for the use of a vehicle, those regulations did not address the situation of shared vehicle usage by more than one employee at the same time. The final regulations provide that if an employer provides a vehicle to employees for use by more than one employee at the same time, the employer may use any of the special valuation rules that would otherwise be applicable to value the use of that vehicle. However, the employer must apply the same rule with respect to all such employees and must allocate the value of the use of the vehicle among the employees who share the use of the vehicle based upon the relevant facts and circumstances.

Control Employee Definition

The preamble to the proposed regulations requested comments from the public on the definition of a control employee of a government employer. Commentators requested that the Service and Treasury clarify the definition of an executive officer of a state or local government. In response, the final regulations replace both the executive officer test and the appointment and confirmation test of the proposed regulations with a single compensation test. Thus, under the final regulations, a control employee of a government employer is either an elected official or an employee whose compensation equals or exceeds the compensation paid to a Federal Government employee holding a position at Executive Level V, determined under chapter 11 of title 2, United States Code, as adjusted by section 5318 of title 5, United States Code.

Since the temporary regulations were issued, some commentators have expressed concern that the nongovernment control employee definition provided in the proposed regulations may inappropriately treat certain employees as control employees. For example, employees who are named officers of nongovernment employers but who do not have the authority to control the use or availability of employer-provided vehicles should not be treated as control employees. In response, the final regulations amend the definition of a control employee of a nongovernment employer to provide that an officer of an employer is a control employee only if the officer's compensation equals or exceeds $50,000, as indexed (for 1988 the compensation level rose to $52,235).

It is also apparent that many employees of nongovernment employers have the ability to control the use or availability of employer-provided vehicles but are not officers or owners of the employer. Because these employees should be treated as control employees but were not under the definition in the proposed regulations, the final regulations provide that an employee whose compensation equals or exceeds $100,000 is a control employee, whether or not the employee is also an officer or owner of the employer.

To provide uniformity within the fringe benefits rules, the final regulations permit an employer to treat all employees who are "highly compensated" employees under the nondiscrimination rules of section 132 as control employees in lieu of applying the commuting rule control employee definition. Under this option, all employees who are "highly compensated" employees are considered "control employees" for purposes of the commuting valuation rule, and employees who are not "highly compensated" are not considered "control employees" regardless of their positions.

Noncommercial Aircraft Flight Valuation Rule

Flight on an Employer-Provided Aircraft

The proposed regulations provided a single general valuation rule to determine the fair market value of a personal flight on an employer-provided aircraft. The final regulations provide further guidance on the appropriate determination and distinguish between a piloted aircraft and an aircraft furnished without a pilot.

The value of a flight on a piloted employer-provided aircraft solely for personal purposes is equal to the amount that an individual would have to pay in an arm's-length transaction to charter the same or a comparable piloted aircraft for that period for the same or a comparable flight. The value of a flight on an employer-provided aircraft that is furnished without a pilot solely for personal purposes is the amount that an individual would have to pay in an arm's-length transaction to lease the same or comparable aircraft on the same or comparable terms for the same period in the geographic area in which the aircraft is used.

If the flight is for both business and personal purposes, then the portion attributable to personal purposes will be included in the employee's income. Moreover, a flight by any employee which is solely for business purposes may be excludable from income pursuant to section 132(d) and § 1.132–5.

Control Employee Definition

Under the proposed regulations, the safe harbor value of a flight on an employer-provided aircraft depends on whether the employee is a control employee. Those regulations define a control employee as any officer of the employer, limited to the lesser of one percent of all employees of the employer, or ten employees. If an employer is part of a controlled group of corporations or is otherwise required to be aggregated with other employers under certain aggregation rules, the proposed regulations provide that the officer test must be applied with respect to each separate employer, rather than with respect to the employer group.

Commentators objected stating that the officer test should be applied with respect to the employer group, rather than to each separate employer. Under this approach, an employee would be a control employee only if the employee were an officer of the controlled group of entities. Because employees are generally officers of separate entities of a controlled group of corporations, rather than officers of the group, the final regulations retain the rule of the proposed regulations. However, an officer of one entity of a controlled group of entities shall not be treated as an officer of any of the other entities of the controlled group.

A similar limitation rule is provided with respect to the highly-paid control employee test. The final regulations define a control employee as an employee within the top one-percent most highly-paid employees, limited to a maximum of 50 employees.

The final regulations also provide guidance as to the circumstances under which a control employee who is no longer employed by the employer will continue to be treated as a control employee. The former employee rule does not affect the number of employees who may be treated as control employees under the officer and compensation limits of the control employee definition used for the aircraft valuation rule.

Seating Capacity Rule

The proposed regulations provided a special seating capacity rule under which the value of a flight on an employer-provided aircraft may in some situations be deemed to be zero. The special rule is based on the regular passenger seating capacity of the aircraft.

Commentators requested that the regulations provide additional guidance on determining the regular passenger seating capacity of an aircraft. In response, the final regulations provide that the regular passenger seating capacity of an aircraft does not include seats that cannot legally be used during takeoff and have not at any time been used during takeoff. Jumpseats and removable seats used solely for purposes of flight crew training are included in the regular passenger seating capacity if the seats can legally be used or have ever been used during takeoff for other than flight crew training. The final regulations also provide that the regular passenger seating capacity of an aircraft reflects any permanent reduction in the number of seats on the aircraft. However, if at any time within 24 months after such reduction, any seats are added back to the aircraft, the total passenger seating capacity prior to the reduction will be counted for purposes of this rule.

Under the seating capacity rule of the proposed regulations, if at least 50 percent of the regular passenger seating capacity of an aircraft is occupied by individuals whose flights are primarily for the employer's business, the value of a flight on the aircraft by an employee, his spouse, or dependent child is deemed to be zero. When determining whether the seating capacity rule is satisfied, the proposed regulations provide that the 50-percent test must be satisfied when the individual whose flight is being valued boards the aircraft and when the individual deplanes.

Commentators stated that the 50-percent test should be applied either at the time the individual boards the aircraft or at the time the individual deplanes. Other commentators stated the seating capacity rule should be replaced by a rule providing that the value of a flight is zero if at least 50 percent of the passengers on board were flying for the employer's business.

The seating capacity rule provided in the proposed regulations reflects the provisions of a Treasury Department letter addressed to Senator Robert Dole (131 Cong. Rec. S6369 (daily ed. May 16, 1985)). For the reasons cited in the letter, the final regulations retain the seating capacity rule as proposed.

Commercial Aircraft Flight Valuation Rule—Space Available Flight

For purposes of the definition of a space available flight in the commercial flight valuation rule, the final regulations clarify that a flight will not be considered a space available flight unless the nondiscrimination requirements of § 1.132–8 of the regulations is satisfied.

No-Additional-Cost Services

Prior to the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), a no-additional-cost service (such as a space-available flight on a commercial airline) was excludable from gross income if provided to an employee of the airline, the employee's spouse, or the employee's dependent

child. The proposed regulations reflect this provision. COBRA amended this rule, however, to provide that the no-additional-cost service exclusion is also available in the case of air transportation provided to the parents of an airline employee. The final regulations reflect the COBRA change which is effective for flights taken after December 31, 1984.

COBRA also provided rules concerning the applicability of the no-additional-cost service exclusion to space-available flights provided to employees working in airline-related services and employees working for qualified air transportation organizations. In addition, the Tax Reform Act of 1986 provided rules concerning the applicability of the no-additional-cost service exclusion to telephone service provided to pre-divestiture employees. The final regulations reflect these rules which are effective January 1, 1985.

Line of Business

A no-additional-cost service or a qualified employee discount provided to an employee (or a no-additional-cost service provided pursuant to a reciprocal agreement) is only available with respect to property or services that are offered for sale to customers in the ordinary course of the same line of business in which the employee receiving the property or service performs substantial services.

The final regulations clarify that the line of business limitation is not satisfied if the employer's products or services are sold primarily to employees of the employer, rather than to customers. Moreover, the final regulations clarify that the line of business requirement is a limitation upon, and may not be used as a means to expand, the fringe benefits that may be offered to employees.

Finally, the regulations provide for certain grandfather rules relating to certain retail stores, telephone services provided to pre-divestiture retirees, certain affiliates of commercial airlines, affiliated groups operating airlines, and qualified air transportation organizations.

Employer-Operated Eating Facility Rules

Section 132(e) provides that gross income does not include the value of meals provided at an employer-operated eating facility if revenues from the facility normally equal or exceed the direct operating costs of the facility and certain nondiscrimination rules are satisfied. The proposed regulations defined direct operating costs and provided that the direct operating costs test must be applied to each separate facility operated by an employer. A special exclusion for the costs and revenues attributable to meals received by volunteers at a hospital, either free or at a discount, has been added in the final regulations.

Many commentators stated that administrative burdens would be relieved if employers were allowed to aggregate the costs and revenues of their eating facilities to determine whether the direct operating costs test is met. The final regulations adopt this approach. It should be noted, however, that the final regulations do not permit employers to aggregate eating facilities for purposes of the nondiscrimination rules.

The proposed regulations defined an employer-operated eating facility for employees. One of the conditions provided in those regulations is that substantially all of the use of the facility is by employees of the employer. As requested by commentators, the final regulations remove the restriction.

Where the value of meals in an employer-operated eating facility may not be excluded from income under these regulations, that value must be included in the employee's income. The final regulations provide that the amounts to be included in the employee's income must be calculated separately with respect to each separate eating facility, even if the facilities were aggregated for other purposes.

The final regulations clarify that the individual meal subsidy rule is only available if a charge is made to each employee for each meal selection and if each employee is charged the same price for any given meal selection.

Finally, for purposes of applying the total meal subsidy rule, the final regulations provide that an employer may only allocate the total meal subsidy on a per-employee basis if such employer has information that would substantiate that each employee was provided approximately the same number of meals at the facility.

Working Condition Fringes—In General

The final regulations provide additional examples to illustrate many of the working condition fringe benefit rules.

The final regulations further provide that in lieu of excluding the value of a working condition fringe with respect to an automobile, an employer using the automobile lease valuation rule may include in an employee's gross income the entire Annual Lease Value of the automobile.

Security Transportation

The value of transportation provided for security reasons may be excludable from gross income as a working condition fringe to the extent a deduction under section 162 or 167 would be allowable to the employee had the employee paid for the same mode of transportation.

The proposed regulations provided guidance on when bona fide business-oriented security concerns exist both in and outside the United States. Commentators stated that the regulations should not distinguish between security provided in and outside the United States. In addition, commentators stated that the final regulations should provide that the security concerns listed in the proposed regulations are merely examples of when bona fide business-oriented security concerns exist and are not the only ways to demonstrate such concerns. Commentators also suggested that the final regulations provide additional examples of when security concerns exist.

In response to comments, the final regulations eliminate the domestic/foreign distinction and provide the following examples of factors indicating the existence of bona fide business-oriented security concerns—death threats, threats of kidnapping or serious bodily harm, and a history of violent terrorist activity in the relevant geographic area.

If transportation is provided for security reasons to the spouse or dependents of an employee, the proposed regulations provide that the security rules must be satisfied independently with respect to those individuals. Commentators stated that the security rules should be treated as satisfied with respect to the spouse and dependents of an employee if they are satisfied with respect to the employee.

The final regulations provide that if a bona fide business-oriented security concern is deemed to exist with respect to an employee, such concern is deemed to exist with respect to the spouse and dependents of the employee as well. If the requirements for a security program are then satisfied with respect to the spouse and dependents, the excess value attributable to security provided for their protection is excludable from the employee's gross income.

The final regulations provide that when an employee's spouse and dependents fly on board the same aircraft as the employee for a bona fide business-oriented security concern, the requirements for a security program are deemed to be satisfied with respect to the spouse and dependents for that flight. In all other situations, the security program requirements must be satisfied independently with respect to the spouse and dependents of an employee.

Moreover, the regulations clarify that for purposes of the working condition safe harbor for travel on an employer-provided aircraft because of a bona fide business-oriented security concern, the value of the safe harbor airfare is determined under the non-commercial flight special valuation rule by requiring the employee to include in income 200 percent of the applicable cents-per-mile rate and then adding the applicable terminal charge.

Commentators requested that the final regulations clarify the tax treatment to the employee of a bodyguard/chauffeur provided to such employee for security reasons. The final regulations provide that if the security rules are satisfied, the entire value of the services of a bodyguard/chauffeur are excludable from the gross income of the protected employee as a working condition fringe. The final regulations require that a bodyguard/chauffeur be trained in evasive driving techniques.

Product Testing

Based on the legislative history of the Tax Reform Act of 1984, the proposed regulations provided that the value of the use of consumer goods provided to employees under a product testing program may be excluded from gross income as a working condition fringe.

Commentators also requested that the final regulations provide that certain conditions of the product testing exclusion are not violated if the employer charges the employee for the personal use of the product, such as an automobile. In response to this suggestion, the final regulations provide that any charge by the employer for the personal use by an employee of a product being tested shall be taken into account in determining whether the employer has imposed limits on the employee's use of the product that significantly reduce the value of the personal benefit to the employee.

Qualified Automobile Demonstration Use

Section 132(h)(3) provides an exclusion for the value of the qualified automobile demonstration use of demonstration automobiles by full-time automobile salesmen. The proposed regulations defined a full-time automobile salesman as an individual who is employed by the dealership, customarily spends substantially all of a normal business day on the sales floor selling automobiles of the dealership, and derives at least 85 percent of his gross income from the dealership directly as a result of his sales activities.

Commentators stated that full-time automobile salesmen do not necessarily spend most of the business day on the sales floor, but that they engage in sales activities off the dealership premises. In response, the final regulations amend the definition of a full-time salesman to provide that the employee must customarily spend at least half of a normal business day performing the functions of a floor salesperson or sales manager and must directly engage in substantial promotion and negotiation of sales to customers.

In response to comments, the final regulations also reduce the 85-percent income test to a 25-percent income test.

Shared Usage of Qualified Nonpersonal Use Vehicle

The proposed regulations provided that 100% of the value of the use of a qualified nonpersonal use vehicle is excluded from the gross income of the employee. The final regulations provide that, in general, a working condition fringe is available to the driver and all passengers of a qualified nonpersonal use vehicle. However, a working condition fringe exclusion for a qualified nonpersonal use vehicle is available only with respect to the driver and not with respect to any of the passengers of a passenger bus or school bus.

Parking

The final regulations provide that if an employer provides an employee with a general transportation allowance, and the employee is not required to use such allowance for parking, no portion of such amount is excludable as a parking expense even if those funds are actually used for parking.

De minimis Fringes

The proposed regulations provided a special de minimis fringe exclusion for the value of public transit passes that do not exceed $15 per month provided to employees to defray commuting expenses. Commentators stated that this exclusion should also apply if the employer provides vouchers or similar instruments exchangeable solely for tokens, farecards, or other instruments that enable the employee to use the transit system. The final regulations adopt this suggestion (subject to the $15 per month limit).

The proposed regulations also provided a special de minimis exclusion for occasional meal money or local transportation fare provided to employees whose normal workday is extended because of overtime work. Commentators requested a definition of the term "occasional." In response, the final regulations provide guidance on this issue.

The final regulations also provide special rules for local transportation fare provided in unusual circumstances and for security reasons. These rules permit an exclusion from gross income for the fare that exceeds $1.50 per one-way commute. The final regulations define when unusual circumstances and security concerns exist.

Nondiscrimination Rules

The proposed regulations provided guidance concerning the nondiscrimination requirements applicable to no-additional-cost services, qualified employee discounts, and employer-operated eating facilities for employees. Under these rules, the value of benefits provided to officers, owners, or highly compensated employees could not be excluded from their gross incomes unless the benefits were available on substantially the same terms to either (1) all of the employees of the employer or (2) each member of a group of employees that is defined under a reasonable classification that does not discriminate in favor of such employees. The Tax Reform Act of 1986 changes the prohibited group of employees to "highly compensated employees" defined as any employee who (1) is a five percent or greater owner, (2) received compensation in excess of $75,000, (3) received compensation in excess of $50,000 and who was in the top-paid 20 percent of employees, or (4) was an officer of the employer at any time and received compensation greater than 150 percent of the section 415(c)(1)(A) limit for this year. The final regulations reflect this change.

The employees who may be excluded from consideration have been changed in the final regulations. The proposed regulations included unionized employees unless all such employees were excluded. The final regulations exclude those employees who may be excluded from consideration under section 89(h).

A special nondiscrimination rule applies for benefits allocated on a seniority basis. In such circumstances, a benefit shall not fail to be treated as available to a group of employees on substantially the same terms if (1) notice of the terms of availability is provided to all employees in the group; and (2) the average value of the benefit provided per non-highly compensated employee is at least 75% of that provided per highly

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compensated employee. In determining the average value of benefit provided, all employee's of the employer are counted, including those who receive no benefit from the employer.

Definition of Compensation

Generally, for purposes of the final regulations, a uniform definition of compensation has been added. Compensation is generally defined as the amount determined under section 414(q)(7). A chauffeur's compensation is defined as the sum of the amount determined under section 414(q)(7) plus the value of nontaxable lodging.

Consumer Price Index Adjustments

The final regulations generally provide that the limitations on the applicable values of vehicles for purposes of the special valuation rules (e.g., the $16,500 limitation on vehicles for use of the fleet average valuation rule) are to be adjusted annually for changes in the consumer price index automobile component. Similar adjustments to reflect changes in the consumer price index are to be made to the compensation limitations provided in the definition of control employee.

Prizes and Awards

These regulations do not address issues concerning prizes and awards. Separate guidance will be provided with respect to those issues.

Frequent Flyer

These regulations do not address issues concerning the tax treatment of frequent flyer bonus programs, and similar programs because these issues are still under consideration.

Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is therefore not required.

Although a notice of proposed rulemaking that solicited public comment was issued, the Internal Revenue Service concluded when the notice of proposed rulemaking was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 did not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of these final regulations is Rhonda G. Migdail of the Office of the Assistant Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. Personnel from other offices of the Internal Revenue Service and Treasury Department also participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR 1.61-1—1.281-4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR 1.861-1—1.997-1

Income taxes, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, Sources of income, United States investments abroad.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1 and 602 are amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Sections 1.61-21, 1.132-0, 1.132-1, 1.132-2, 1.132-3, 1.132-4, 1.132-5, 1.132-6, 1.132-7, and 1.132-8 also issued under 26 U.S.C. 132.

Par. 2. Section 1.61-2T is amended by revising the title of such section to read as follows:

§ 1.61-2T Taxation of fringe benefits—1985 through 1988 (Temporary).

Par. 3. Section 1.61-2T is amended by revising paragraphs (a)(6) and (e)(1)(iii) to read as follows:

(a) *Fringe benefits.* * * *

(6) *Effective date.* This section is effective from January 1, 1985, to December 31, 1988, with respect to fringe benefits furnished before January 1, 1989. No inference may be drawn from the promulgation or terms of this section concerning the application of law in effect prior to January 1, 1985.

(e) * * *

(1) * * *

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(iii) *Limitation on use of the vehicle cents-per-mile valuation rule.* The value of the use of an automobile (as defined in paragraph (d)(1)(ii) of this section) may not be determined under the vehicle cents-per-mile valuation rule of this paragraph (e) if the fair market value of the automobile (determined pursuant to paragraphs (d)(5) (i) through (iv) of this section as of the later of January 1, 1985, or the first date on which the automobile is made available to any employee of the employer for personal use) exceeds $12,800. No inference may be drawn from the promulgation or terms of this section concerning the application of law in effect prior to January 1, 1985.

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§ 1.61-2 [Amended]

Par. 4. Section 1.61-2 is amended by revising paragraph (d)(2)(ii)(b) to read as follows:

(*b*) *Cost of group-term life insurance on the life of an individual other than an employee.* The cost (determined under paragraph (d)(2) of § 1.79-3) of group-term life insurance on the life of an individual other than an employee (such as the spouse or dependent of the employee) provided in connection with the performance of services by the employee is includible in the gross income of the employee.

Par. 5. Section 1.61-21 is added immediately following § 1.61-15 and reads as follows:

§ 1.61-21 Taxation of fringe benefits.

(a) *Fringe benefits*—(1) *In general.* Section 61(a)(1) provides that, except as otherwise provided in subtitle A of the Internal Revenue Code of 1986, gross income includes compensation for services, including fees, commissions, fringe benefits, and similar items. For an outline of the regulations under this section relating to fringe benefits, see paragraph (a)(7) of this section. Examples of fringe benefits include: an employer-provided automobile, a flight on an employer-provided aircraft, an employer-provided free or discounted commercial airline flight, an employer-provided vacation, an employer-provided discount on property or services, an employer-provided membership in a country club or other social club, and an employer-provided ticket to an entertainment or sporting event.

(2) *Fringe benefits excluded from income.* To the extent that a particular fringe benefit is specifically excluded from gross income pursuant to another section of subtitle A of the Internal Revenue Code of 1986, that section shall govern the treatment of that fringe benefit. Thus, if the requirements of the governing section are satisfied, the fringe benefits may be excludable from gross income. Examples of excludable fringe benefits include qualified tuition reductions provided to an employee (section 117(d)); meals or lodging furnished to an employee for the convenience of the employer (section 119); benefits provided under a dependent care assistance program (section 129); and no-additional-cost services, qualified employee discounts, working condition fringes, and de minimis fringes (section 132). Similarly, the value of the use by an employee of an employer-provided vehicle or a flight provided to an employee on an employer-provided aircraft may be excludable from income under section 105 (because, for example, the transportation is provided for medical reasons) if and to the extent that the requirements of that section are satisfied. Section 134 excludes from gross income "qualified military benefits." An example of a benefit that is not a qualified military benefit is the personal use of an employer-provided vehicle. The fact that another section of subtitle A of the Internal Revenue Code addresses the taxation of a particular fringe benefit will not preclude section 61 and the regulations thereunder from applying, to the extent that they are not inconsistent with such other section. For example, many fringe benefits specifically addressed in other sections of subtitle A of the Internal Revenue Code are excluded from gross income only to the extent that they do not exceed specific dollar or percentage limits, or only if certain other requirements are met. If the limits are exceeded or the requirements are not met, some or all of the fringe benefit may be includible in gross income pursuant to section 61. See paragraph (b)(3) of this section.

(3) *Compensation for services.* A fringe benefit provided in connection with the performance of services shall be considered to have been provided as compensation for such services. Refraining from the performance of services (such as pursuant to a covenant not to compete) is deemed to be the performance of services for purposes of this section.

(4) *Person to whom fringe benefit is taxable*—(i) *In general.* A taxable fringe benefit is included in the income of the person performing the services in connection with which the fringe benefit is furnished. Thus, a fringe benefit may be taxable to a person even though that person did not actually receive the fringe benefit. If a fringe benefit is furnished to someone other than the service provider such benefit is considered in this section as furnished to the service provider, and use by the other person is considered use by the service provider. For example, the provision of an automobile by an employer to an employee's spouse in connection with the performance of services by the employee is taxable to the employee. The automobile is considered available to the employee and use by the employee's spouse is considered use by the employee.

(ii) *All persons to whom benefits are taxable referred to as employees.* The person to whom a fringe benefit is taxable need not be an employee of the provider of the fringe benefit, but may be, for example, a partner, director, or an independent contractor. For convenience, the term "employee" includes any person performing services in connection with which a fringe benefit is furnished, unless otherwise specifically provided in this section.

(5) *Provider of a fringe benefit referred to as an employer.* The "provider" of a fringe benefit is that person for whom the services are performed, regardless of whether that person actually provides the fringe benefit to the recipient. The provider of a fringe benefit need not be the employer of the recipient of the fringe benefit, but may be, for example, a client or customer of the employer or of an independent contractor. For convenience, the term "employer" includes any provider of a fringe benefit in connection with payment for the performance of services, unless otherwise specifically provided in this section.

(6) *Effective date.* Except as otherwise provided, this section is effective as of January 1, 1989 with respect to fringe benefits provided after December 31, 1988. See § 1.61-2T for rules in effect from January 1, 1985, to December 31, 1988.

(7) *Outline of this section.* The following is an outline of the regulations in this section relating to fringe benefits:

§ 1.61-21 (a) *Fringe benefits.*
- (1) In general.
- (2) Fringe benefits excluded from income.
- (3) Compensation for services.
- (4) Person to whom fringe benefit is taxable.
- (5) Provider of a fringe benefit referred to as an employer.
- (6) Effective date.
- (7) Outline of this section.

§ 1.61-21 (b) *Valuation of fringe benefits*
- (1) In general.
- (2) Fair market value.
- (3) Exclusion from income based on cost.
- (4) Fair market value of the availability of an employer-provided vehicle.
- (5) Fair market value of chauffeur services.
- (6) Fair market value of a flight on an employer-provided piloted aircraft.
- (7) Fair market value of the use of an employer-provided aircraft for which the employer does not furnish a pilot.

§ 1.61-21 (c) *Special valuation rules.*
- (1) In general.
- (2) Use of the special valuation rules.
- (3) Election to use the special valuation rules.
- (4) Application of section 414 to employers.
- (5) Valuation formulae contained in the special valuation rules.
- (6) Modification of the special valuation rules.
- (7) Special accounting rule.

§ 1.61-21 (d) *Automobile lease valuation rule.*
- (1) In general.
- (2) Calculation of Annual Lease Value.
- (3) Services included in, or excluded from, the Annual Lease Value Table.
- (4) Availability of an automobile for less than an entire calendar year.
- (5) Fair market value.
- (6) Special rules for continuous availability of certain automobiles.
- (7) Consistency rules.

§ 1.61-21 (e) *Vehicle cents-per-mile valuation rule.*
- (1) In general.
- (2) Definition of vehicle.
- (3) Services included in, or excluded from, the cents-per-mile rate.
- (4) Valuation of personal use only.
- (5) Consistency rules.

§ 1.61-21 (f) *Commuting valuation rule.*
- (1) In general.
- (2) Special rules.
- (3) Commuting value.
- (4) Definition of vehicle.
- (5) Control employee defined—Non-government employer.
- (6) Control employee defined—Government employer.
- (7) "Compensation" defined.

§ 1.61-21 (g) *Non-commercial flight valuation rule.*
- (1) In general.
- (2) Eligible flights and eligible aircraft.
- (3) Definition of a flight.
- (4) Personal and non-personal flights.
- (5) Aircraft valuation formula.
- (6) Discretion to provide new formula.
- (7) Aircraft multiples.
- (8) Control employee defined—Non-government employer.
- (9) Control employee defined—Government employer.
- (10) "Compensation" defined.
- (11) Treatment of former employees.
- (12) Seating capacity rule.
- (13) Erroneous use of the non-commercial flight valuation rule.
- (14) Consistency rules.

§ 1.61-21 (h) *Commercial flight valuation rule.*
- (1) In general.
- (2) Space-available flight.
- (3) Commercial aircraft.
- (4) Timing of inclusion.
- (5) Consistency rules.

§ 1.61-21 (i) *[Reserved]*

§ 1.61-21 (j) *Valuation of meals provided at an employer-operated eating facility for employees.*
- (1) In general.
- (2) Valuation formula.

(b) *Valuation of fringe benefits*—(1) *In general.* An employee must include in gross income the amount by which the fair market value of the fringe benefit exceeds the sum of—

(i) The amount, if any, paid for the benefit by or on behalf of the recipient, and

(ii) The amount, if any, specifically excluded from gross income by some other section of subtitle A of the Internal Revenue Code of 1986.

Therefore, for example, if the employee pays fair market value for what is received, no amount is includible in the gross income of the employee. In general, the determination of the fair market value of a fringe benefit must be made before subtracting out the amount, if any, paid for the benefit and the amount, if any, specifically excluded from gross income by another section of subtitle A. See paragraphs (d)(2)(ii) and (e)(1)(iii) of this section.

(2) *Fair market value.* In general, fair market value is determined on the basis of all the facts and circumstances. Specifically, the fair market value of a fringe benefit is the amount that an individual would have to pay for the particular fringe benefit in an arm's-length transaction. Thus, for example, the effect of any special relationship that may exist between the employer and the employee must be disregarded. Similarly, an employee's subjective perception of the value of a fringe benefit is not relevant to the determination of the fringe benefit's fair market value nor is the cost incurred by the employer determinative of its fair market value. For special rules relating to the valuation of certain fringe benefits, see paragraph (c) of this section.

(3) *Exclusion from income based on cost.* If a statutory exclusion phrased in terms of cost applies to the provision of a fringe benefit, section 61 does not require the inclusion in the recipient's gross income of the difference between the fair market value and the excludable cost of that fringe benefit. For example, section 129 provides an exclusion from an employee's gross income for amounts contributed by an employer to a dependent care assistance program for employees. Even if the fair market value of the dependent care assistance exceeds the employer's cost, the excess is not subject to inclusion under section 61 and this section. However, if the statutory cost exclusion is a limited amount, the fair market value of the fringe benefit attributable to any excess cost is subject to inclusion. This would be the case, for example, where an employer pays or incurs a cost of more than $5,000 to provide dependent care assistance to an employee.

(4) *Fair market value of the availability of an employer-provided vehicle*—(i) *In general.* If the vehicle special valuation rules of paragraph (d), (e), or (f) of this section do not apply with respect to an employer-provided vehicle, the value of the availability of that vehicle is determined under the general valuation principles set forth in this section. In general, that value equals the amount that an individual would have to pay in an arm's-length transaction to lease the same or comparable vehicle on the same or comparable conditions in the geographic area in which the vehicle is available for use. An example of a comparable condition is the amount of time that the vehicle is available to the employee for use, e.g., a one-year period. Unless the employee can substantiate that the same or comparable vehicle could have been leased on a cents-per-mile basis, the value of the availability of the vehicle cannot be computed by applying a cents-per-mile rate to the number of miles the vehicle is driven.

(ii) *Certain equipment excluded.* The fair market value of a vehicle does not include the fair market value of any specialized equipment not susceptible to personal use or any telephone that is added to or carried in the vehicle, provided that the presence of that equipment or telephone is necessitated by, and attributable to, the business needs of the employer. However, the value of specialized equipment must be included, if the employee to whom the vehicle is available uses the specialized equipment in a trade or business of the employee other than the employee's trade or business of being an employee of the employer.

(5) *Fair market value of chauffeur services*—(i) *Determination of value*—(A) *In general.* The fair market value of chauffeur services provided to the employee by the employer is the amount that an individual would have to pay in an arm's-length transaction to obtain the same or comparable chauffeur services in the geographic area for the period in which the services are provided. In determining the applicable fair market value, the amount of time, if any, the chauffeur remains on-call to perform chauffeur services must be included. For example, assume that A, an employee of corporation M, needs a chauffeur to be on-call to provide services to A during a twenty-four hour period. If during that twenty-four hour period, the chauffeur actually drives A for only six hours, the fair market value of the chauffeur services would have to be the value of having a chauffeur on-call for a twenty-four hour period. The cost of taxi fare or limousine service for the six hours the chauffeur actually drove A would not be an accurate measure of the fair market value of chauffeur services provided to A. Moreover, all other aspects of the chauffeur's services (including any special qualifications of the chauffeur (e.g., training in evasive driving skills) or the ability of the employee to choose the particular chauffeur) must be taken into consideration.

(B) *Alternative valuation with reference to compensation paid.* Alternatively, the fair market value of the chauffeur services may be determined by reference to the compensation (as defined in paragraph (b)(5)(ii) of this section) received by the chauffeur from the employer.

(C) *Separate valuation for chauffeur services.* The value of chauffeur services is determined separately from the value of the availability of an employer-provided vehicle.

(ii) *Definition of compensation*—(A) *In general.* For purposes of this paragraph (b)(5)(ii), the term "compensation" means compensation as defined in section 414(q)(7) and the fair market value of nontaxable lodging (if any) provided by the employer to the chauffeur in the current year.

(B) *Adjustments to compensation*—For purposes of this paragraph (b)(5)(ii), a chauffeur's compensation is reduced proportionately to reflect the amount of time during which the chauffeur performs substantial services for the employer other than as a chauffeur and is not on-call as a chauffeur. For example, assume a chauffeur is paid $25,000 a year for working a ten-hour day, five days a week and also receives $5,000 in nontaxable lodging. Further assume that during four hours of each day, the chauffeur is not on-call to perform services as a chauffeur because that individual is performing secretarial functions for the employer. Then, for purposes of determining the fair market value of this chauffeur's services, the employer may reduce the chauffeur's compensation by $4/10$ or $12,000 ($.4\times$ ($25,000+$5,000)=$12,000). Therefore, in this example, the fair market value of the chauffeur's services is $18,000 ($30,000 −$12,000). However, for purposes of this paragraph (b)(5)(ii), a chauffeur's compensation is not to be reduced by any amounts paid to the chauffeur for time spent "on-call," even though the chauffeur actually performs other services for the employer during such time. For purposes of this paragraph (b)(5)(ii), a determination that a chauffeur is performing substantial services for the employer other than as a chauffeur is based upon the facts and circumstances of each situation. An employee will be deemed to be performing substantial services for the employer other than as a chauffeur if a certain portion of each working day is regularly spent performing other services for the employer.

(iii) *Calculation of chauffeur services for personal purposes of the employee.* The fair market value of chauffeur services provided to the employee for personal purposes may be determined by multiplying the fair market value of chauffeur services, as determined pursuant to paragraph (b)(5)(i) (A) or (B) of this section, by a fraction, the numerator of which is equal to the sum of the hours spent by the chauffeur actually providing personal driving services to the employee and the hours spent by the chauffeur in "personal on-call time," and the denominator of which is equal to all hours the chauffeur spends in driving services of any kind paid for by the employer, including all hours that are "on-call."

(iv) *Definition of on-call time.* For purposes of this paragraph, the term "on-call time" means the total amount of time that the chauffeur is not engaged in the actual performance of driving services, but during which time the chauffeur is available to perform such services. With respect to a round-trip, time spent by a chauffeur waiting for an employee to make a return trip is generally not treated as on-call time; rather such time is treated as part of the round-trip.

(v) *Definition of personal on-call time.* For purposes of this paragraph, the term "personal on-call time" means the amount of time outside the employee's normal working hours for the employer when the chauffeur is available to the employee to perform driving services.

(vi) *Presumptions.* (A) An employee's normal working hours will be presumed to consist of a ten hour period during which the employee usually conducts business activities for that employer.

(B) It will be presumed that if the chauffeur is on-call to provide driving services to an employee during the employee's normal working hours, then that on-call time will be performed for business purposes.

(C) Similarly, if the chauffeur is on-call to perform driving services to an employee after normal working hours, then that on-call time will be presumed to be "personal on-call time."

(D) The presumptions set out in paragraph (b)(5)(vi) (A), (B), and (C) of this section may be rebutted. For example, an employee may demonstrate by adequate substantiation that his or her normal working hours consist of more than ten hours. Furthermore, if the employee keeps adequate records and is able to substantiate that some portion of the driving services performed by the chauffeur after normal working hours is attributable to business purposes, then personal on-call time may be reduced by an amount equal to such personal on-call time multiplied by a fraction, the numerator of which is equal to the time spent by the chauffeur after normal working hours driving the employee for business purposes, and the denominator of which is equal to the total time spent by the chauffeur driving the employee after normal working hours for all purposes.

(vii) *Examples.* The rules of this paragraph (b)(5) may be illustrated by the following examples:

Example (1). An employer makes available to employee A an automobile and a full-time chauffeur B (who performs no other services for A's employer) for an entire calendar year. Assume that the automobile lease valuation rule of paragraph (d) of this section is used and that the Annual Lease Value of the automobile is $9,250. Assume further that B's compensation for the year is $12,000 (as defined in section 414(q)(7)) and that B is furnished lodging with a value of $3,000 that is excludable from B's gross income. The maximum amount subject to inclusion in A's gross income for use of the automobile and chauffeur is therefore $24,250 ($12,000+$3,000+$9,250). If 70 percent of the miles placed on the automobile during the year are for A's employer's business, then $6,475 is excludable from A's gross income with respect to the automobile as a working condition fringe ($9,250×.70). Thus, $2,775 is includible in A's gross income with respect to the automobile ($9,250−$6,475). With respect to the chauffeur, if 20 percent of the chauffeur's time is spent actually driving A or being on-call to drive A for personal purposes; then $3,000 is includible in A's income (.20×$15,000). Eighty percent of $15,000, or $12,000, is excluded from A's income as a working condition fringe.

Example (2). Assume the same facts as in example (1) except that in addition to providing chauffeur services, B is responsible for performing substantial non-chauffeur-related duties (such as clerical or secretarial functions) during which time B is not "on-call" as a chauffeur. If B spends only 75 percent of the time performing chauffeur services, then the maximum amount subject to inclusion in A's gross income for use of the automobile and chauffeur is $20,500 (($15,000×.75)+$9,250). If B is actually driving A for personal purposes or is on-call to drive A for personal purposes for 20 percent of the time during which B is available to provide chauffeur services, then $2,250 is includible in A's gross income (.20×$11,250). The income inclusion with respect to the automobile is the same as in example (1).

Example (3). Assume the same facts as in example (2) except that while B is performing non-chauffeur-related duties, B is on call as A's chauffeur. No part of B's compensation is excluded when determining the value of the benefit provided to A. Thus, as in example (1), $3,000 is includible in A's gross income with respect to the chauffeur.

(6) *Fair market value of a flight on an employer-provided piloted aircraft*—(i) *In general.* If the non-commercial flight special valuation rule of paragraph (g) of this section does not apply, the value of a flight on an employer-provided piloted aircraft is determined under the general valuation principles set forth in this paragraph.

(ii) *Value of flight.* If an employee takes a flight on an employer-provided piloted aircraft and that employee's flight is primarily personal (see § 1.162–2(b)(2)), the value of the flight is equal to the amount that an individual would have to pay in an arm's-length transaction to charter the same or a comparable piloted aircraft for that period for the same or a comparable flight. A flight taken under these circumstances may not be valued by reference to the cost of commercial airfare for the same or a comparable flight. The cost to charter the aircraft must be allocated among all employees on board the aircraft based on all the facts and circumstances unless one or more of the employees controlled the use of the aircraft. Where one or more employees control the use of the aircraft, the value of the flight shall be allocated solely among such controlling employees, unless a written agreement among all the employees on the flight otherwise allocates the value of such flight. Notwithstanding the allocation required by the preceding sentence, no additional amount shall be included in the income of any employee whose flight is properly valued under the special valuation rule of paragraph (g) of this section. For purposes of this paragraph (b)(6), "control" means the ability of the employee to determine the route, departure time and destination of the flight. The rules provided in paragraph (g)(3) of this section will be used for purposes of this section in defining a flight. Notwithstanding the allocation required by the preceding sentence, no additional amount shall be included in the income of an employee for that portion of any such flight which is excludible from income pursuant to section 132(d) or § 1.132–5 as a working condition fringe.

(iii) *Examples.* The rules of paragraph (b)(6) of this section may be illustrated by the following examples:

Example (1). An employer makes available to employees A and B a piloted aircraft in New York, New York. A wants to go to Los Angeles, California for personal purposes. B

needs to go to Chicago, Illinois for business purposes, and then wants to go to Los Angeles, California for personal purposes. Therefore, the aircraft first flies to Chicago, and B deplanes and then boards the plane again. The aircraft then flies to Los Angeles, California where A and B deplane. The value of the flight to employee A will be no more than the amount that an individual would have to pay in an arm's length transaction to charter the same or a comparable piloted aircraft for the same or comparable flight from New York City to Los Angeles. No amount will be imputed to employee A for the stop at Chicago. As to employee B, the value of the personal flight will be no more than the value or the flight from Chicago to Los Angeles. Pursuant to the rules set forth in § 1.132–5(k), the flight from New York to Chicago will not be included in employee B's income since that flight was taken solely for business purposes. The charter cost must be allocated between A and B, since both employees controlled portions of the flight. Assume that the employer allocates according to the relative value of each employee's flight. If the charter value of A's flight from New York City to Los Angeles is $1,000 and the value of B's flight from Chicago to Los Angeles is $800 and the value of the actual flight from New York to Chicago to Los Angeles is $1,200, then the amount to be allocated to employee A is $750 ($1,000/($1,000+$800)×$1,200) and the amount to be allocated to employee B is $450 ($800/($1000+$800)×$1,200).

Example (2). Assume the same facts as in example (1), except that employee A also deplanes at Chicago, Illinois, but for personal purposes. The value of the flight to employee A then becomes the value of a flight from New York to Chicago to Los Angeles, i.e., $1,200. Therefore, the amount to be allocated to employee A is $800 ($1,200/($1,200+$800)×$1,200) and the amount to be allocated to employee B is $400 ($800/($1,200+$800)×$1,200).

(7) *Fair market value of the use of an employer-provided aircraft for which the employer does not furnish a pilot.* (i) *In general.* If the non-commercial flight special valuation rule of paragraph (g) of this section does not apply and if an employer provides an employee with the use of an aircraft without a pilot, the value of the use of the employer-provided aircraft is determined under the general valuation principles set forth in this paragraph (b)(7).

(ii) *Value of flight.* In general, if an employee takes a flight on an employer-provided aircraft for which the employer does not furnish a pilot, the value of that flight is equal to the amount that an individual would have to pay in an arm's-length transaction to lease the same or comparable aircraft on the same or comparable terms for the same period in the geographic area in which the aircraft is used. For example, if an employer makes its aircraft available to an employee who will pilot the aircraft for a two-hour flight, the value of the use of the aircraft is the amount that an individual would have to pay in an arm's-length transaction to rent a comparable aircraft for that period in the geographic area in which the aircraft is used. As another example, assume that an employee uses an employer-provided aircraft to commute between home and work. The value of the use of the aircraft is the amount that an individual would have to pay in an arm's-length transaction to rent a comparable aircraft for commuting in the geographic area in which the aircraft is used. If the availability of the flight is of benefit to more than one employee, then such value shall be allocated among such employees on the basis of the relevant facts and circumstances.

(c) *Special valuation rule*—(1) *In general.* Paragraphs (d) through (j) of this section provide special valuation rules that may be used under certain circumstances for certain commonly provided fringe benefits. For general rules relating to the valuation of fringe benefits not eligible for valuation under the special valuation rules, see paragraph (b) of this section.

(2) *Use of the special valuation rules*—(i) *In general.* The special valuation rules may be used for income tax, employment tax, and reporting purposes. The employer has the option to use any of the special valuation rules. However, an employee may only use a special valuation rule if the employer uses the rule. Moreover, an employee may only use the special rule that the employer uses to value the benefit provided; the employee may not use another special rule to value that benefit. The employee may always use general valuation rules based on facts and circumstances (see paragraph (b) of this section) even if the employer uses a special rule. If a special rule is used, it must be used for all purposes. If an employer properly uses a special rule and the employee uses the special rule, the employee must include in gross income the amount determined by the employer under the special rule reduced by the sum of—

(A) Any amount reimbursed by the employee to the employer, and

(B) Any amount excludable from income under another section of subtitle A of the Internal Revenue Code of 1986.

If an employer properly uses a special rule and properly determines the amount of an employee's working condition fringe under section 132 and § 1.132–5 (under the general rule or under a special rule), and the employee uses the special valuation rule, the employee must include in gross income the amount determined by the employer less any amount reimbursed by the employee to the employer. The employer and employee may use the special rules to determine the amount of the reimbursement due the employer by the employee. Thus, if an employee reimburses an employer for the value of a benefit as determined under a special valuation rule, no amount is includable in the employee's gross income with respect to the benefit.

(ii) *Vehicle special valuation rules*—(A) *Vehicle by vehicle basis.* Except as provided in paragraphs (d)(7)(v) and (e)(5)(v) of this section, the vehicle special valuation rules of paragraphs (d), (e), and (f) of this section apply on a vehicle by vehicle basis. An employer need not use the same vehicle special valuation rule for all vehicles provided to all employees. For example, an employer may use the automobile lease valuation rule for automobiles provided to some employees, and the commuting and vehicle cents-per-mile valuation rules for automobiles provided to other employees. For purposes of valuing the use or availability of a vehicle, the consistency rules provided in paragraphs (d)(7) and (e)(5) of this section (relating to the automobile lease valuation rule and the vehicle cents-per-mile valuation rule, respectively) apply.

(B) *Shared vehicle usage.* If an employer provides a vehicle to employees for use by more than one employee at the same time, such as with an employer-sponsored vehicle commuting pool, the employer may use any of the special valuation rules that may be applicable to value the use of the vehicle by the employees. The employer must use the same special valuation rule to value the use of the vehicle by each employee who shares such use. The employer must allocate the value of the use of the vehicle based on the relevant facts and circumstances among the employees who share use of the vehicle. For example, assume that an employer provides an automobile to four of its employees and that the employees use the automobile in an employer-sponsored vehicle commuting pool. Assume further that the employer uses the automobile lease valuation rule of paragraph (d) of this section and that the Annual Lease Value of the automobile is $5,000.

The employer must treat $5,000 as the value of the availability of the automobile to the employees, and must apportion the $5,000 value among the employees who share the use of the automobile based on the relevant facts and circumstances. Each employee's share of the value of the availability of the automobile is then to be reduced by the amount, if any, of each employee's

working condition fringe exclusion and the amount reimbursed by the employee to the employer.

(iii) *Commercial and noncommercial flight valuation rules.* Except as otherwise provided, if either the commercial flight valuation rule or the non-commercial flight valuation rule is used, that rule must be used by an employer to value all eligible flights taken by all employees in a calendar year. See paragraph (g)(14) of this section for the applicable consistency rules.

(3) *Election to use the special valuation rules*—(i) *In general.* A particular special valuation rule is deemed to have been elected by the employer (and, if applicable, by the employee), if the employer (and, if applicable, the employee) determines the value of the fringe benefit provided by applying the special valuation rule and treats that value as the fair market value of the fringe benefit for income, employment tax, and reporting purposes. Neither the employer nor the employee must notify the Internal Revenue Service of the election.

(ii) *Notification to employee.* (A) *Requirement to provide notice.* An employer who elects to use a special valuation rule must notify the employee of the election by the later of January 31 of the calendar year for which the election is to apply, October 31 for calendar year 1989 or 30 days after the employer first provides the benefit to the employee. If an employer elected to use a special valuation rule for the immediately preceding calendar year and notified the affected employee in the manner prescribed by this paragraph (c)(3)(ii), then the employer need not notify the employee that the employer elects to continue using the same special valuation rule. If, consistent with the rules of paragraphs (d)(7) and (e)(5) of this section, an employer elects to discontinue using a special valuation rule and either elects to use another special valuation rule or applies general valuation principles to determine the value of the employer-provided benefit, the employer must notify the affected employee of the change in election in the manner prescribed by this paragraph (c)(3)(ii).

(B) *Content of notice.* The notice required by this paragraph (c)(3)(ii) must state that an employer is electing to use a special valuation rule for valuing a benefit provided to an employee (or is discontinuing the use of such a rule if that is the case). The notice must also alert employees to any applicable section 274(d) substantiation requirements and to the effect of failure to comply with such requirements. In addition, the notice must state the date on which the notice is provided. If an employer is not certain which vehicle special valuation rule will be applied with respect to a particular employer-provided vehicle, the employer must notify the affected employee of the special valuation rules that the employer may apply. For example, if an employer intends to use either the automobile lease valuation rule or the vehicle cents-per-mile valuation rule depending upon which rule yields a lesser amount of taxable income with respect to the use of a particular vehicle (or, alternatively, with respect to the use of a specific group of vehicles), the employer must notify the affected employee that the employer elects to use either of the specified valuation rules depending on which rule yields a lesser amount of taxable income with respect to the vehicle (or, alternatively, with respect to the specified group of vehicles).

(C) *Manner of providing notification to employee.* The notice required by this paragraph (c)(3)(ii) must be provided in a manner reasonably expected to come to the attention of all affected employees. For example, this may be accomplished by providing the notice directly to the employee in a mailing or with the employee's paycheck, or by posting the notice at a location where there is a strong likelihood that the notice will be read by all affected employees.

(D) *Failure to provide notice.* Except as provided in this paragraph (c)(3)(ii)(D), with respect to benefits provided in a calendar year, if an employer does not provide notice of an election to use a special valuation rule at the time and in the manner prescribed by this paragraph (c)(3)(ii), the employer may not use any such special valuation rule or any related special valuation rule to value the benefit provided in such year to employees who were not so notified but rather must use general valuation principles. However, if before January 31 of the year following the year in which notice was not provided, the employer receives written notification from an employee who was not notified, and such notification clearly indicates that the employee knows of

(*1*) The employer's use of a special valuation rule,

(*2*) The substantiation requirements that apply with respect to the special valuation rule, and

(*3*) The effect of a failure to comply with such requirements,

the employer may use the special valuation rule identified in the written employee notification with respect to the benefit provided to such employee. The rules set out in this paragraph (d)(3)(ii)(D) also apply, with appropriate adjustments, when an employer is discontinuing the use of a special valuation rule.

(4) *Application of section 414 to employers.* For purposes of paragraphs (c) through (j) of this section, except as otherwise provided therein, the term "employer" includes all entities required to be treated as a single employer under section 414 (b), (c), (m), or (o).

(5) *Valuation formulae contained in the special valuation rules.* The valuation formula contained in the special valuation rules are provided only for use in connection with those rules. Thus, when a special valuation rule is properly applied to a fringe benefit, the Commissioner will accept the value calculated pursuant to the rule as the fair market value of that fringe benefit. However, when a special valuation rule is not properly applied to a fringe benefit (see, for example, paragraph (g)(13) of this section), or when a special valuation rule is used to value a fringe benefit by a taxpayer not entitled to use the rule, the fair market value of that fringe benefit may not be determined by reference to any value calculated under any special valuation rule. Under the circumstances described in the preceding sentence, the fair market value of the fringe benefit must be determined pursuant to the general valuation rules of paragraph (b) of this section.

(6) *Modification of the special valuation rules.* The Commissioner may, to the extent necessary for tax administration, add, delete, or modify any special valuation rule, including the valuation formulae contained herein, on a prospective basis by regulation, revenue ruling or revenue procedure.

(7) *Special accounting rule.* If the employer is using the special accounting rule provided in Announcement 85–113 (1985–31 I.R.B. 31, August 5, 1985) (relating to the reporting of and withholding on the value of noncash fringe benefits), benefits which are deemed provided in a subsequent calendar year pursuant to that rule are considered as provided in that subsequent calendar year for purposes of the special valuation rules (including the notice requirements). Thus, if a particular special valuation rule is in effect for a calendar year, it applies to benefits deemed provided during that calendar year under the special accounting rule.

(d) *Automobile lease valuation rule*—(1) *In general*—(i) *Annual Lease Value.* Under the special valuation rule of this paragraph (d), if an employer provides

an employee with an automobile that is available to the employee for an entire calendar year, the value of the benefit provided is the Annual Lease Value (determined under paragraph (d)(2) of this section) of that automobile. Except as otherwise provided, for an automobile that is available to an employee for less than an entire calendar year, the value of the benefit provided is either a pro-rated Annual Lease Value or the Daily Lease Value (both as defined in paragraph (d)(4) of this section), whichever is applicable. Absent any statutory exclusion relating to the employer-provided automobile (see, for example, section 132(a)(3) and § 1.132–5(b)), the amount of the Annual Lease Value (or a pro-rated Annual Lease Value or the Daily Lease Value, as applicable) is included in the gross income of the employee.

(ii) *Definition of automobile.* For purposes of this paragraph (d), the term "automobile" means any four-wheeled vehicle manufactured primarily for use on public streets, roads, and highways.

(2) *Calculation of Annual Lease Value*—(i) *In general.* The Annual Lease Value of a particular automobile is calculated as follows:

(A) Determine the fair market value of the automobile as of the first date on which the automobile is made available to any employee of the employer for personal use. For an automobile first made available to any employee for personal use prior to January 1, 1985, determine the fair market value as of January 1 of the first year the special valuation rule of this paragraph (d) is used with respect to the automobile. For rules relating to determination of the fair market value of an automobile for purposes of this paragraph (d), see paragraph (d)(5) of this section.

(B) Select the dollar range in column 1 of the Annual Lease Value Table, set forth in paragraph (d)(2)(iii) of this section corresponding to the fair market value of the automobile. Except as otherwise provided in paragraphs (d)(2)(iv) and (v) of this section, the Annual Lease Value for each year of availability of the automobile is the corresponding amount in column 2 of the Table.

(ii) *Calculation of Annual Lease Value of automobile owned or leased by both an employer and an employee*—(A) *Purchased automobiles.* Notwithstanding anything in this section to the contrary, if an employee contributes an amount toward the purchase price of an automobile in return for a percentage ownership interest in the automobile, the Annual Lease Value or the Daily Lease Value, whichever is applicable, is determined by reducing the fair market value of the employer-provided automobile by the lesser of—

(*1*) The amount contributed, or

(*2*) An amount equal to the employee's percentage ownership interest multiplied by the unreduced fair market value of the automobile.

If the automobile is subsequently revalued, the revalued amount (determined without regard to this paragraph (d)(2)(ii)(A)) is reduced by an amount which is equal to the employee's percentage ownership interest in the vehicle). If the employee does not receive an ownership interest in the employer-provided automobile, then the Annual Lease Value or the Daily Lease Value, whichever is applicable, is determined without regard to any amount contributed. For purposes of this paragraph (d)(2)(ii)(A), an employee's ownership interest in an automobile will not be recognized unless it is reflected in the title of the automobile. An ownership interest reflected in the title of an automobile will not be recognized if under the facts and circumstances the title does not reflect the benefits and burdens of ownership.

(B) *Leased automobiles.* Notwithstanding anything in this section to the contrary, if an employee contributes an amount toward the cost to lease an automobile in return for a percentage interest in the automobile lease, the Annual Lease Value or the Daily Lease Value, whichever is applicable, is determined by reducing the fair market value of the employer-provided automobile by the amount specified in the following sentence. The amount specified in this sentence is the unreduced fair market value of a vehicle multiplied by the lesser of—

(*1*) The employee's percentage interest in the lease, or

(*2*) A fraction, the numerator of which is the amount contributed and the denominator of which is the entire lease cost.

If the automobile is subsequently revalued, the revalued amount (determined without regard to this paragraph (d)(2)(ii)(B)) is reduced by an amount which is equal to the employee's percentage interest in the lease) multiplied by the revalued amount. If the employee does not receive an interest in the automobile lease, then the Annual Lease Value or the Daily Lease Value, whichever is applicable, is determined without regard to any amount contributed. For purposes of this paragraph (d)(2)(ii)(B), an employee's interest in an automobile lease will not be recognized unless the employee is a named co-lessee on the lease. An interest in a lease will not be recognized if under the facts and circumstances the lease does not reflect the true obligations of the lessees.

(C) *Example.* The rules of paragraph (d)(2)(ii) (A) and (B) of this section are illustrated by the following example:

Example. Assume that an employer pays $15,000 and an employee pays $5,000 toward the purchase of an automobile. Assume further that the employee receives a 25 percent interest in the automobile and is named as a co-owner on the title to the automobile. Under the rule of paragraph (d)(2)(ii)(A) of this section, the Annual Lease Value of the automobile is determined by reducing the fair market value of the automobile ($20,000) by the $5,000 employee contribution. Thus, the Annual Lease Value of the automobile under the table in paragraph (d)(2)(iii) of this section is $4,350. If the employee in this example does not receive an ownership interest in the automobile and is provided the use of the automobile for two years, the Annual Lease Value would be determined without regard to the $5,000 employee contribution. Thus, the Annual Lease Value would be $5,600. The $5,000 employee contribution would reduce the amount includible in the employee's income after taking into account the amount, if any, excluded from income under another provision of subtitle A of the Internal Revenue Code, such as the working condition fringe exclusion. Thus, if the employee places 50 percent of the mileage on the automobile for the employer's business each year, then the amount includible in the employee's income in the first year would be ($5,600–2,800–2,800), or $0, the amount includible in the employee's income in the second year would be ($5,600–2,800–2,200 ($5,000–2,800)) or $600 and the amount includible in the third year would be ($5,600–2,800) or $2,800 since the employee's contribution has been completely used in the first two years.

(iii) *Annual Lease Value Table.*

Automobile fair market value (1)	Annual lease value (2)
$0 to 999	$600
1,000 to 1,999	850
2,000 to 2,999	1,100
3,000 to 3,999	1,350
4,000 to 4,999	1,600
5,000 to 5,999	1,850
6,000 to 6,999	2,100
7,000 to 7,999	2,350
8,000 to 8,999	2,600
9,000 to 9,999	2,850
10,000 to 10,999	3,100
11,000 to 11,999	3,350
12,000 to 12,999	3,600
13,000 to 13,999	3,850
14,000 to 14,999	4,100
15,000 to 15,999	4,350
16,000 to 16,999	4,600
17,000 to 17,999	4,850
18,000 to 18,999	5,100
19,000 to 19,999	5,350
20,000 to 20,999	5,600
21,000 to 21,999	5,850
22,000 to 22,999	6,100
23,000 to 23,999	6,350

Automobile fair market value (1)	Annual lease value (2)
24,000 to 24,999	6,600
25,000 to 25,999	6,850
26,000 to 27,999	7,250
28,000 to 29,999	7,750
30,000 to 31,999	8,250
32,000 to 33,999	8,750
34,000 to 35,999	9,250
36,000 to 37,999	9,750
38,000 to 39,999	10,250
40,000 to 41,999	10,750
42,000 to 43,999	11,250
44,000 to 45,999	11,750
46,000 to 47,999	12,250
48,000 to 49,999	12,750
50,000 to 51,999	13,250
52,000 to 53,999	13,750
54,000 to 55,999	14,250
56,000 to 57,999	14,750
58,000 to 59,999	15,250

For vehicles having a fair market value in excess of $59,999, the Annual Lease Value is equal to: (.25 × the fair market value of the automobile) + $500.

(iv) *Recalculation of Annual Lease Value.* The Annual Lease Values determined under the rules of this paragraph (d) are based on four-year lease terms. Therefore, except as otherwise provided in paragraph (d)(2)(v) of this section, the Annual Lease Value calculated by applying paragraph (d)(2) (i) or (ii) of this section shall remain in effect for the period that begins with the first date the special valuation rule of paragraph (d) of this section is applied by the employer to the automobile and ends on December 31 of the fourth full calendar year following that date. The Annual Lease Value for each subsequent four-year period is calculated by determining the fair market value of the automobile as of the first January 1 following the period described in the previous sentence and selecting the amount in column 2 of the Annual Lease Value Table corresponding to the appropriate dollar range in column 1 of the Table. If, however, the employer is using the special accounting rule provided in Announcement 85–113 (1985–31 I.R.B. 31, August 5, 1985) (relating to the reporting of and withholding on the value of noncash fringe benefits), the employer may calculate the Annual Lease Value for each subsequent four-year period as of the beginning of the special accounting period that begins immediately prior to the January 1 described in the previous sentence. For example, assume that pursuant to Announcement 85–113, an employer uses the special accounting rule. Assume further that beginning on November 1, 1988, the special accounting period is November 1 to October 31 and that the employer elects to use the special valuation rule of this paragraph (d) as of January 1, 1989. The employer may recalculate the Annual Lease Value as of November 1, 1992, rather than as of January 1, 1993.

(v) *Transfer of the automobile to another employee.* Unless the primary purpose of the transfer is to reduce Federal taxes, if an employer transfers the use of an automobile from one employee to another employee, the employer may recalculate the Annual Lease Value based on the fair market value of the automobile as of January 1 of the calendar year of transfer. If, however, the employer is using the special accounting rule provided in Announcement 85–113 (1985–31 I.R.B. 31, August 5, 1985) (relating to the reporting of and withholding on the value of noncash fringe benefits), the employer may recalculate the Annual Lease Value based on the fair market value of the automobile as of the beginning of the special accounting period in which the transfer occurs. If the employer does not recalculate the Annual Lease Value, and the employee to whom the automobile is transferred uses the special valuation rule, the employee may not recalculate the Annual Lease Value.

(3) *Services included in, or excluded from, the Annual Lease Value Table*—(i) *Maintenance and insurance included.* The Annual Lease Values contained in the Annual Lease Value Table include the fair market value of maintenance of, and insurance for, the automobile. Neither an employer nor an employee may reduce the Annual Lease Value by the fair market value of any service included in the Annual Lease Value that is not provided by the employer, such as reducing the Annual Lease Value by the fair market value of a maintenance service contract or insurance. An employer or employee who wishes to take into account only the services actually provided with respect to an automobile may value the availability of the automobile under the general valuation rules of paragraph (b) of this section.

(ii) *Fuel excluded*—(A) *In general.* The Annual Lease Values do not include the fair market value of fuel provided by the employer, whether fuel is provided in kind or its cost is reimbursed by or charged to the employer. Thus, if an employer provides fuel, the fuel must be valued separately for inclusion in income.

(B) *Valuation of fuel provided in kind.* The provision of fuel in kind may be valued at fair market value based on all the facts and circumstances or, in the alternative, it may be valued at 5.5 cents per mile for all miles driven by the employee. However, the provision of fuel in kind may not be valued at 5.5 cents per mile for miles driven outside the United States, Canada or Mexico. For purposes of this section, the United States includes the United States, its possessions and its territories.

(C) *Valuation of fuel where cost reimbursed by or charged to an employer.* The fair market value of fuel, the cost of which is reimbursed by or charged to an employer, is generally the amount of the actual reimbursement or the amount charged, provided the purchase of the fuel is at arm's-length.

(D) *Fleet-average cents-per-mile fuel cost.* If an employer with a fleet of at least 20 automobiles that meets the requirements of paragraph (d)(5)(v)(D) of this section reimburses employees for the cost of fuel or allows employees to charge the employer for the cost of fuel, the fair market value of fuel provided to those automobiles may be determined by reference to the employer's fleet-average cents-per-mile fuel cost. The fleet-average cents-per-mile fuel cost is equal to the fleet-average per-gallon fuel cost divided by the fleet-average miles-per-gallon rate. The averages described in the preceding sentence must be determined by averaging the per-gallon fuel costs and miles-per-gallon rates of a representative sample of the automobiles in the fleet equal to the greater of ten percent of the automobiles in the fleet or 20 automobiles for a representative period, such as a two-month period. In lieu of determining the fleet-average cents-per-mile fuel cost, if an employer is using the fleet-average valuation rule of paragraph (d)(5)(v) of this section and if determining the amount of the actual reimbursement or the amount charged for the purchase of fuel would impose unreasonable administrative burdens on the employer, the provision of fuel may be valued under the rule provided in paragraph (d)(3)(ii)(B) of this section.

(iii) *Treatment of other services.* The fair market value of any service not specifically identified in paragraph (d)(3)(i) of this section that is provided by the employer with respect to an automobile (other than the services of a chauffeur) must be added to the Annual Lease Value of the automobile in determining the fair market value of the benefit provided. See paragraph (b) (5) of this section for rules relating to the valuation of chauffeur services.

(4) *Availability of an automobile for less than an entire calendar year*—(i) *Pro-rated Annual Lease Value used for continuous availability of at least 30 days*—(A) *In general.* Except as

otherwise provided in paragraph (d)(4)(iv) of this section, for periods of continuous availability of at least 30 days, but less than an entire calendar year, the value of the availability of an automobile provided by an employer electing to use the automobile lease valuation rule of this paragraph (d) is the pro-rated Annual Lease Value. The pro-rated Annual Lease Value is calculated by multiplying the applicable Annual Lease Value by a fraction, the numerator of which is the number of days of availability and the denominator of which is 365.

(B) *Special rule for continuous availability of at least 30 days that straddles two reporting years.* If an employee is provided with the continuous availability of an automobile for at least 30 days, but the continuous period straddles two calendar years (or two special accounting periods if the special accounting rule of Announcement 85–113 (1985–31 I.R.B. 31, August 5, 1985) (relating to the reporting of and withholding on noncash fringe benefits) is used), the pro-rated Annual Lease Value, rather than the Daily Lease Value, may be applied with respect to such period of continuous availability.

(ii) *Daily Lease Value used for continuous availability of less than 30 days.* Except as otherwise provided in paragraph (d)(4)(iii) of this section, for periods of continuous availability of one or more but less than 30 days, the value of the availability of the employer-provided automobile is the Daily Lease Value. The Daily Lease Value is calculated by multiplying the applicable Annual Lease Value by a fraction, the numerator of which is four times the number of days of availability and the denominator of which is 365.

(iii) *Election to treat all periods as periods of at least 30 days.* The value of the availability of an employer-provided automobile for a period of continuous availability of less than 30 days may be determined by applying the pro-rated Annual Lease Value by treating the automobile as if it had been available for 30 days, if doing so would result in a lower valuation than applying the Daily Lease Value to the shorter period of actual availability.

(iv) *Periods of unavailability*—(A) *General rule.* In general, a pro-rated Annual Lease Value (as provided in paragraph (d)(4)(i) of this section) is used to value the availability of an employer-provided automobile when the automobile is available to an employee for a continuous period of at least 30 days but less than the entire calendar year. Neither an employer nor an employee, however, may use a pro-rated Annual Lease Value when the reduction of Federal taxes is the primary reason the automobile is unavailable to an employee at certain times during the calendar year.

(B) *Unavailability for personal reasons of the employee.* If an automobile is unavailable to an employee because of personal reasons of the employee, such as while the employee is on vacation, a pro-rated Annual Lease Value, if used, must not take into account such periods of unavailability. For example, assume that an automobile is available to an employee during the first five months of the year and during the last five months of the year. Assume further that the period of unavailability occurs because the employee is on vacation. The Annual Lease Value, if it is applied, must be applied with respect to the entire 12-month period. The Annual Lease Value may not be pro-rated to take into account the two-month period of unavailability.

(5) *Fair market value*—(i) *In general.* For purposes of determining the Annual Lease Value of an automobile under the Annual Lease Value Table, the fair market value of an automobile is the amount that an individual would have to pay in an arm's-length transaction to purchase the particular automobile in the jurisdiction in which the vehicle is purchased or leased. That amount includes all amounts attributable to the purchase of an automobile such as sales tax and title fees as well as the purchase price of the automobile. Any special relationship that may exist between the employee and the employer must be disregarded. Also, the employee's subjective perception of the value of the automobile is not relevant to the determination of the automobile's fair market value, and, except as provided in paragraph (d)(5)(ii) of this section, the cost incurred by the employer in connection with the purchase or lease of the automobile is not determinative of the fair market value of the automobile.

(ii) *Safe-harbor valuation rule*—(A) *General rule.* For purposes of calculating the Annual Lease Value of an automobile under this paragraph (d), the safe-harbor value of the automobile may be used as the fair market value of the automobile.

(B) *Automobiles owned by the employer.* For an automobile owned by the employer, the safe-harbor value of the automobile is the employer's cost of purchasing the automobile (including sales tax, title, and other expenses attributable to such purchase), provided the purchase is made at arm's-length. Notwithstanding the preceding sentence, the safe-harbor value of this paragraph (d)(5)(ii)(B) is not available with respect to an automobile manufactured by the employer. Thus, for example, if one entity manufactures an automobile and sells it to an entity with which it is aggregated pursuant to paragraph (c)(4) of this section, this paragraph (d)(5)(ii)(B) does not apply to value the automobile by the aggregated employer. In this case, value must be determined under paragraph (d)(5)(i) of this section.

(C) *Automobiles leased by the employer.* For an automobile leased but not manufactured by the employer, the safe-harbor value of the automobile is either the manufacturer's suggested retail price of the automobile less eight percent (including sales tax, title, and other expenses attributable to such purchase), or the value determined under paragraph (d)(5)(iii) of this section.

(iii) *Use of nationally recognized pricing sources.* The fair market value of an automobile that is—

(A) Provided to an employee prior to January 1, 1985,

(B) Being revalued pursuant to paragraphs (d)(2) (iv) or (v) of this section, or

(C) A leased automobile being valued pursuant to paragraph (d)(5)(ii) of this section, may be determined by reference to the retail value of such automobile as reported by a nationally recognized pricing source that regularly reports new or used automobile retail values, whichever is applicable. That retail value must be reasonable with respect to the automobile being valued. Pricing sources consist of publications and electronic data bases.

(iv) *Fair market value of special equipment.* When determining the fair market value of an automobile, the employer may exclude the fair market value of any specialized equipment or telephone that is added to or carried in the automobile provided that the presence of that equipment or telephone is necessitated by, and attributable to, the business needs of the employer. The value of the specialized equipment must be included if the employee to whom the automobile is available uses the specialized equipment in a trade or business of the employee other than the employee's trade or business of being an employee of the employer.

(v) *Fleet-average valuation rule*—(A) *In general.* An employer with a fleet of 20 or more automobiles meeting the requirements of this paragraph (d)(5)(v) (including the business-use and fair market value conditions of paragraph (d)(5)(v)(D) of this section) may use a fleet-average value for purposes of calculating the Annual Lease Values of the automobiles in the fleet. The fleet-average value is the average of the fair market values of all automobiles in the fleet. The fair market value of each automobile in the fleet shall be determined, pursuant to the rules of paragraphs (d)(5) (i) through (iv) of this section, as of the date described in paragraph (d)(2)(i)(A) of this section.

(B) *Period for use of rule.* The fleet-average valuation rule of this paragraph (d)(5)(v) may be used by an employer as of January 1 of any calendar year following the calendar year in which the employer acquires a sufficient number of automobiles to total a fleet of 20 or more automobiles. The Annual Lease Value calculated for the automobiles in the fleet, based on the fleet-average value, shall remain in effect for the period that begins with the first January 1 the fleet-average valuation rule of this paragraph (d)(5)(v) is applied by the employer to the automobiles in the fleet and ends on December 31 of the subsequent calendar year. The Annual Lease Value for each subsequent two-year period is calculated by determining the fleet-average value of the automobiles in the fleet as of the first January 1 of such period. An employer may cease using the fleet-average valuation rule as of any January 1. If, however, the employer is using the special accounting rule provided in Announcement 85–113 (1985–31 I.R.B. 31, August 5, 1985) (relating to the reporting of and withholding on noncash fringe benefits), the employer may apply the rules of this paragraph (d)(5)(v)(B) on the basis of the special accounting period rather than the calendar year. (This is accomplished by substituting (*1*) the beginning of the special accounting period that begins immediately prior to the January 1 described in this paragraph (d)(5)(v)(B) for January 1 wherever it appears in this paragraph (d)(5)(v) (B) and (*2*) the end of such accounting period for December 31.) If the number of qualifying automobiles in the employer's fleet declines to fewer than 20 for more than 50 percent of the days in a year, then the fleet-average valuation rule does not apply as of January 1 of such year. In this case, the Annual Lease Value must be determined separately for each remaining automobile. The revaluation rules of paragraph (d)(2) (iv) and (v) of this section do not apply to automobiles valued under this paragraph (d)(5)(v).

(C) *Automobiles included in the fleet.* An employer may include in a fleet any automobile that meets the requirements of this paragraph (d)(5)(v) and is available to any employee of the employer for personal use. An employer may include in the fleet only automobiles the availability of which is valued under the automobile lease valuation rule of this paragraph (d). An employer need not include in the fleet all automobiles valued under the automobile lease valuation rule. An employer may have more than one fleet for purposes of the fleet-average rule of this paragraph (d)(5)(v). For example, an employer may group automobiles in a fleet according to their physical type or use.

(D) *Limitations on use of fleet-average rule.* The rule provided in this paragraph (d)(5)(v) may not be used for any automobile the fair market value of which (determined pursuant to paragraphs (d)(5) (i) through (iv) of this section as of either the first date on which the automobile is made available to any employee of the employer for personal use or, if later, January 1, 1985) exceeds $16,500. The fair market value limitation of $16,500 shall be adjusted pursuant to section 280F(d)(7) of the Internal Revenue Code of 1986. The first such adjustment shall be for calendar year 1989 (substitute October 1986 for October 1987 in applying the formula). In addition, the rule provided in this paragraph (d)(5)(v) may only be used for automobiles that the employer reasonably expects will regularly be used in the employer's trade or business. For rules concerning when an automobile is regularly used in the employer's business, see paragraph (e)(1)(iv) of this section.

(E) *Additional automobiles added to the fleet.* The fleet-average value in effect at the time an automobile is added to a fleet is treated as the fair market value of the additional automobile for purposes of determining the Annual Lease Value of the automobile until the fleet-average value changes pursuant to paragraph (d)(5)(v)(B) of this section.

(F) *Use of the fleet-average rule by employees.* An employee may only use the fleet-average rule if it is used by the employer. If an employer uses the fleet-average rule, and the employee uses the special valuation rule of paragraph (d) of this section, the employee must use the fleet-average value determined by the employer.

(6) *Special rules for continuous availability of certain automobiles*—(i) *Fleet automobiles.* If an employer is using the fleet-average valuation rule of paragraph (d)(5)(v) of this section and the employer provides an employee with the continuous availability of an automobile from the same fleet during a period (though not necessarily the same fleet automobile for the entire period), the employee is treated as having the use of a single fleet automobile for the entire period, e.g., an entire calendar year. Thus, when applying the automobile lease valuation rule of this paragraph (d), the employer may treat the fleet-average value as the fair market value of the automobile deemed available to the employee for the period for purposes of calculating the Annual Lease Value, (or pro-rated Annual Lease Value or Daily Lease Value whichever is applicable) of the automobile. If an employer provides an employee with the continuous availability of more than one fleet automobile during a period, the employer may treat the fleet-average value as the fair market value of each automobile provided to the employee provided that the rules of paragraph (d)(5)(v)(D) of this section are satisfied.

(ii) *Demonstration automobiles*—(A) *In general.* If an automobile dealership provides an employee with the continuous availability of a demonstration automobile (as defined in § 1.132–5(o)(3)) during a period (though not necessarily the same demonstration automobile for the entire period), the employee is treated as having the use of a single demonstration automobile for the entire period, e.g., an entire calendar year. If an employer provides an employee with the continuous availability of more than one demonstration automobile during a period, the employer may treat the value determined under paragraph (d)(6)(ii)(B) of this section as the fair market value of each automobile provided to the employee. For rules relating to the treatment as a working condition fringe of the qualified automobile demonstration use of a demonstration automobile by a full-time automobile salesman, see § 1.132–5(o).

(B) *Determining the fair market value of a demonstration automobile.* When applying the automobile lease valuation rule of this paragraph (d), the employer may treat the average of the fair market values of the demonstration automobiles which are available to an employee and held in the dealership's inventory during the calendar year as the fair market value of the demonstration automobile deemed available to the employee for the period for purposes of calculating the Annual Lease Value of the automobile. If under the facts and circumstances it is inappropriate to take into account, with respect to an employee, certain models of demonstration automobiles, the value of the benefit is determined without reference to the fair market values of such models. For example, assume that an employee has the continuous availability for an entire calendar year

of one demonstration automobile, although not the same one for the entire year. Assume further that the fair market values of the automobiles in the dealership inventory during the year range from $8,000 to $20,000. If there is not a substantial period (such as three months) during the year when the employee uses demonstration automobiles valued at less than $16,000, then those automobiles are not considered in determining the value of the benefit provided to the employee. In this case, the average of the fair market values of the demonstration automobiles in the dealership's inventory valued at $16,000 or more is treated as the fair market value of the automobile deemed available to the employee for the calendar year for purposes of calculating the Annual Lease Value of the automobile.

(7) *Consistency rules*—(i) *Use of the automobile lease valuation rule by an employer.* Except as provided in paragraph (d)(5)(v)(B) of this section, an employer may adopt the automobile lease valuation rule of this paragraph (d) for an automobile only if the rule is adopted to take effect by the later of—

(A) January 1, 1989, or

(B) The first day on which the automobile is made available to an employee of the employer for personal use (or, if the commuting valuation rule of paragraph (f) of this section is used when the automobile is first made available to an employee of the employer for personal use, the first day on which the commuting valuation rule is not used).

(ii) *An employer must use the automobile lease valuation rule for all subsequent years.* Once the automobile lease valuation rule has been adopted for an automobile by an employer, the rule must be used by the employer for all subsequent years in which the employer makes the automobile available to any employee except that the employer may, for any year during which (or for any employee for whom) use of the automobile qualifies for the commuting valuation rule of paragraph (f) of this section, use the commuting valuation rule with respect to the automobile.

(iii) *Use of the automobile lease valuation rule by an employee.* An employee may adopt the automobile lease valuation rule for an automobile only if the rule is adopted—

(A) By the employer, and

(B) Beginning with the first day on which the automobile for which the employer (consistent with paragraph (d)(7)(i) of this section) adopted the rule is made available to that employee for personal use (or, if the commuting valuation rule of paragraph (f) of this section is used when the automobile is first made available to that employee for personal use, the first day on which the commuting valuation rule is not used).

(iv) *An employee must use the automobile lease valuation rule for all subsequent years.* Once the automobile lease valuation rule has been adopted for an automobile by an employee, the rule must be used by the employee for all subsequent years in which the automobile for which the rule is used is available to the employee. However, the employee may, for any year during which use of the automobile qualifies for use of the commuting valuation rule of paragraph (f) of this section and for which the employer uses such rule, use the commuting valuation rule with respect to the automobile.

(v) *Replacement automobiles.* Notwithstanding anything in this paragraph (d)(7) to the contrary, if the automobile lease valuation rule is used by an employer, or by an employer and an employee, with respect to a particular automobile, and a replacement automobile is provided to the employee for the primary purpose of reducing Federal taxes, then the employer, or the employer and the employee, using the rule must continue to use the rule with respect to the replacement automobile.

(e) *Vehicle cents-per-mile valuation rule*—(1) *In general*—(i) *General rule.* Under the vehicle cents-per-mile valuation rule of this paragraph (e), if an employer provides an employee with the use of a vehicle that—

(A) The employer reasonably expects will be regularly used in the employer's trade or business throughout the calendar year (or such shorter period as the vehicle may be owned or leased by the employer), or

(B) Satisfies the requirements of paragraph (e)(1)(ii) of this section, the value of the benefit provided in the calendar year is the standard mileage rate provided in the applicable Revenue Ruling or Revenue Procedure ("cents-per-mile rate") multiplied by the total number of miles the vehicle is driven by the employee for personal purposes. The cents-per-mile rate is to be applied prospectively from the first day of the taxable year following the date of publication of the applicable Revenue Ruling or Revenue Procedure. An employee who uses an employer-provided vehicle, in whole or in part, for a trade or business other than the employer's trade or business, may take a deduction for such business use based upon the vehicle cents-per-mile rule as long as such deduction is at the same standard mileage rate as that used in calculating the employee's income inclusion. The standard mileage rate must be applied to personal miles independent of business miles. Thus, for example, if the standard mileage rate were 24 cents per mile for the first 15,000 miles and 11 cents per mile for all miles over 15,000 and an employee drives 20,000 personal miles and 45,000 business miles in a year, the value of the personal use of the vehicle is $4,150 ((15,000×$.24)+(5,000×$.11)). For purposes of this section, the use of a vehicle for personal purposes is any use of the vehicle other than use in the employee's trade or business of being an employee of the employer.

(ii) *Mileage rule.* A vehicle satisfies the requirements of this paragraph (e)(1)(ii) for a calendar year if—

(A) It is actually driven at least 10,000 miles in that year; and

(B) Use of the vehicle during the year is primarily by employees. For example, if a vehicle is used by only one employee during the calendar year and that employee drives the vehicle at least 10,000 miles during the year, the vehicle satisfies the requirements of this paragraph (e)(1)(ii) even if all miles driven by the employee are personal. A vehicle is considered used during the year primarily by employees in accordance with the requirement of paragraph (e)(1)(ii)(B) of this section if employees use the vehicle on a consistent basis for commuting. If the employer does not own or lease the vehicle during a portion of the year, the 10,000 mile threshold is to be reduced proportionately to reflect the periods when the employer did not own or lease the vehicle. For purposes of this paragraph (e)(1)(ii), use of the vehicle by an individual (other than the employee) whose use would be taxed to the employee is not considered use by the employee.

(iii) *Limitation on use of the vehicle cents-per-mile valuation rule*—(A) *In general.* Except as otherwise provided in the last sentence of this paragraph (e)(1)(iii)(A), the value of the use of an automobile (as defined in paragraph (d)(1)(ii) of this section) may not be determined under the vehicle cents-per-mile valuation rule of this paragraph (e) for a calendar year if the fair market value of the automobile (determined pursuant to paragraphs (d)(5) (i) through (iv) of this section as of the later of January 1, 1985, or the first date on which the automobile is made available to any employee of the employer for personal use) exceeds the sum of the maximum recovery deductions allowable under section 280F(a)(2) for a five-year period for an automobile first placed in service during that calendar year (whether or not the automobile is actually placed in service during that year) as adjusted by section 280F(d)(7). With respect to a vehicle placed in service prior to January 1, 1989, the limitation on value will be not less than $12,800. With respect to a vehicle placed in service in or after 1989, the limitation on value is $12,800 as adjusted by section 280F(d)(7).

(B) *Application of limitation with respect to a vehicle owned by both an employer and an employee.* If an employee contributes an amount towards the purchase price of a vehicle in return for a percentage ownership interest in the vehicle, for purposes of determining whether the limitation of this paragraph (e)(1)(iii) applies, the fair market value of the vehicle is reduced by the lesser of—

(*1*) The amount contributed, or

(*2*) An amount equal to the employee's percentage ownership interest multiplied by the unreduced fair market value of the vehicle. If the employee does not receive an ownership interest in the employer-provided vehicle, then the fair market value of the vehicle is determined without regard to any amount contributed. For purposes of this paragraph (e)(1)(iii)(B), an employee's ownership interest in a vehicle will not be recognized unless it is reflected in the title of the vehicle. An ownership interest reflected in the title of a vehicle will not be recognized if under the facts and circumstances the title does not reflect the benefits and burdens of ownership.

(C) *Application of limitation with respect to a vehicle leased by both an employer and employee.* If an employee contributes an amount toward the cost to lease a vehicle in return for a percentage interest in the vehicle lease, for purposes of determining whether the limitation of this paragraph (e)(1)(iii) applies, the fair market value of the vehicle is reduced by the amount specified in the following sentence. The amount specified in this sentence is the unreduced fair market value of a vehicle multiplied by the lesser of—

(*1*) The employee's percentage interest in the lease, or

(*2*) A fraction, the numerator of which is the amount contributed and the denominator of which is the entire lease cost. If the employee does not receive an interest in the vehicle lease, then the fair market value is determined without regard to any amount contributed. For purposes of this paragraph (e)(1)(iii)(C), an employee's interest in a vehicle lease will not be recognized unless the employee is a named co-lessee on the lease. An interest in a lease will not be recognized if under the facts and circumstances, the lease does not reflect the true obligations of the lessees.

(iv) *Regular use in an employer's trade or business.* Whether a vehicle is regularly used in an employer's trade or business is determined on the basis of all facts and circumstances. A vehicle is considered regularly used in an employer's trade or business for purposes of paragraph (e)(1)(i)(A) of this section if one of the following safe harbor conditions is satisfied:

(A) At least 50 percent of the vehicle's total annual mileage is for the employer's business; or

(B) The vehicle is generally used each workday to transport at least three employees of the employer to and from work in an employer-sponsored commuting vehicle pool. Infrequent business use of the vehicle, such as for occasional trips to the airport or between the employer's multiple business premises, does not constitute regular use of the vehicle in the employer's trade or business.

(v) *Application of rule to shared usage.* If an employer regularly provides a vehicle to employees for use by more than one employee at the same time, such as with an employer-sponsored vehicle commuting pool, the employer may use the vehicle cents-per-mile valuation rule to value the use of the vehicle by each employee who shares such use. See § 1.61-21(c)(2)(ii)(B) for provisions relating to the allocation of the value of an automobile to more than one employee.

(2) *Definition of vehicle.* For purposes of this paragraph (e), the term "vehicle" means any motorized wheeled vehicle manufactured primarily for use on public streets, roads, and highways. The term "vehicle" includes an automobile as defined in paragraph (d)(1)(ii) of this section.

(3) *Services included in, or excluded from, the cents-per-mile rate*—(i) *Maintenance and insurance included.* The cents-per-mile rate includes the fair market value of maintenance of, and insurance for, the vehicle. The cents-per-mile rate may not be reduced by the fair market value of any service included in the cents-per-mile rate but not provided by the employer. An employer or employee who wishes to take into account only the particular services provided with respect to a vehicle may value the availability of the vehicle under the general valuation rules of paragraph (b) of this section.

(ii) *Fuel provided by the employer*—(A) *Miles driven in the United States, Canada, or Mexico.* With respect to miles driven in the United States, Canada, or Mexico, the cents-per-mile rate includes the fair market value of fuel provided by the employer. If fuel is not provided by the employer, the cents-per-mile rate may be reduced by no more than 5.5 cents or the amount specified in any applicable Revenue Ruling or Revenue Procedure. For purposes of this section, the United States includes the United States, its possessions and its territories.

(B) *Miles driven outside the United States, Canada, or Mexico.* With respect to miles driven outside the United States, Canada, or Mexico, the fair market value of fuel provided by the employer is not reflected in the cents-per-mile rate. Accordingly, the cents-per-mile rate may be reduced but by no more than 5.5 cents or the amount specified in any applicable Revenue Ruling or Revenue Procedure. If the employer provides the fuel in kind, it must be valued based on all the facts and circumstances If the employer reimburses the employee for the cost of fuel or allows the employee to charge the employer for the cost of fuel, the fair market value of the fuel is generally the amount of the actual reimbursement or the amount charged, provided the purchase of fuel is at arm's length.

(iii) *Treatment of other services.* The fair market value of any service not specifically identified in paragraph (e)(3)(i) of this section that is provided by the employer with respect to a vehicle is not reflected in the cents-per-mile rate. See paragraph (b)(5) of this section for rules relating to valuation of chauffeur services.

(4) *Valuation of personal use only.* The vehicle cents-per-mile valuation rule of this paragraph (e) may only be used to value the miles driven for personal purposes. Thus, the employer must include an amount in an employee's income with respect to the use of a vehicle that is equal to the product of the number of personal miles driven by the employee and the appropriate cents-per-mile rate. The term "personal miles" means all miles for which the employee used the automobile except miles driven in the employee's trade or business of being an employee of the employer. Unless additional services are provided with respect to the vehicle (see paragraph (e)(3)(iii) of this section), the employer may not include in income a greater amount; for example, the employer may not include in income 100 percent (all business and personal miles) of the value of the use of the vehicle.

(5) *Consistency rules*—(i) *Use of the vehicle cents-per-mile valuation rule by an employer.* An employer must adopt the vehicle cents-per-mile valuation rule

of this paragraph (e) for a vehicle to take effect by the later of—

(A) January 1, 1989, or

(B) The first day on which the vehicle is used by an employee of the employer for personal use (or, if the commuting valuation rule of paragraph (f) of this section is used when the vehicle is first used by an employee of the employer for personal use, the first day on which the commuting valuation rule is not used).

(ii) *An employer must use the vehicle cents-per-mile valuation rule for all subsequent years.* Once the vehicle cents-per-mile valuation rule has been adopted for a vehicle by an employer, the rule must be used by the employer for all subsequent years in which the vehicle qualifies for use of the rule, except that the employer may, for any year during which use of the vehicle qualifies for the commuting valuation rule of paragraph (f) of this section, use the commuting valuation rule with respect to the vehicle. If the vehicle fails to qualify for use of the vehicle cents-per-mile valuation rule during a subsequent year, the employer may adopt for such subsequent year and thereafter any other special valuation rule for which the vehicle then qualifies. If the employer elects to use the automobile lease valuation rule of paragraph (d) of this section for a period in which the automobile does not qualify for use of the vehicle cents-per-mile valuation rule, then the employer must comply with the requirements of paragraph (d)(7) of this section. For purposes of paragraph (d)(7) of this section, the first day on which the automobile with respect to which the vehicle cents-per-mile rule had been used fails to qualify for use of the vehicle cents-per-mile valuation rule may be deemed to be the first day on which the automobile is available to an employee of the employer for personal use.

(iii) *Use of the vehicle cents-per-mile valuation rule by an employee.* An employee may adopt the vehicle cents-per-mile valuation rule for a vehicle only if the rule is adopted—

(A) By the employer, and

(B) Beginning with respect to the first day on which the vehicle for which the employer (consistent with paragraph (e)(5)(i) of this section) adopted the rule is available to that employee for personal use (or, if the commuting valuation rule of paragraph (f) of this section is used when the vehicle is first used by an employee for personal use, the first day on which the commuting valuation rule is not used).

(iv) *An employee must use the vehicle cents-per-mile valuation rule for all subsequent years.* Once the vehicle cents-per-mile valuation rule has been adopted for a vehicle by an employee, the rule must be used by the employee for all subsequent years of personal use of the vehicle by the employee for which the rule is used by the employer. However, see paragraph (f) of this section for rules relating to the use of the commuting valuation rule for a subsequent year.

(v) *Replacement vehicles.* Notwithstanding anything in this paragraph (e)(5) to the contrary, if the vehicle cents-per-mile valuation rule is used by an employer, or by an employer and an employee, with respect to a particular vehicle, and a replacement vehicle is provided to the employee for the primary purpose of reducing Federal taxes, then the employer, or the employer and the employee, using the rule must continue to use the rule with respect to the replacement vehicle if the replacement vehicle qualifies for use of the rule.

(f) *Commuting valuation rule*—(1) *In general.* Under the commuting valuation rule of this paragraph (f), the value of the commuting use of an employer-provided vehicle may be determined pursuant to paragraph (f)(3) of this section if the following criteria are met by the employer and employees with respect to the vehicle:

(i) The vehicle is owned or leased by the employer and is provided to one or more employees for use in connection with the employer's trade or business and is used in the employer's trade or business;

(ii) For bona fide noncompensatory business reasons, the employer requires the employee to commute to and/or from work in the vehicle;

(iii) The employer has established a written policy under which neither the employee, nor any individual whose use would be taxable to the employee, may use the vehicle for personal purposes, other than for commuting or de minimis personal use (such as a stop for a personal errand on the way between a business delivery and the employee's home);

(iv) Except for de minimis personal use, the employee does not use the vehicle for any personal purpose other than commuting; and

(v) The employee required to use the vehicle for commuting is not a control employee of the employer (as defined in paragraphs (f) (5) and (6) of this section).

Personal use of a vehicle is all use of the vehicle by an employee that is not used in the employee's trade or business of being an employee of the employer. An employer-provided vehicle that is generally used each workday to transport at least three employees of the employer to and from work in an employer-sponsored commuting vehicle pool is deemed to meet the requirements of paragraphs (f)(1) (i) and (ii) of this section.

(2) *Special rules.* Notwithstanding anything in paragraph (f)(1) of this section to the contrary, the following special rules apply—

(i) *Chauffeur-driven vehicles.* If a vehicle is chauffeur-driven, the commuting valuation rule of this paragraph (f) may not be used to value the commuting use of any person (other than the chauffeur) who rides in the vehicle. (See paragraphs (d) and (e) of this section for other vehicle special valuation rules.) The special rule of this paragraph (f) may be used to value the commuting-only use of the vehicle by the chauffeur if the conditions of paragraph (f)(1) of this section are satisfied. For purposes of this paragraph (f)(2), an individual will not be considered a chauffeur if he or she performs non-driving services for the employer, is not available to perform driving services while performing such other services and whose only driving services consist of driving a vehicle used for commuting by other employees of the employer.

(ii) *Control employee exception.* If the vehicle in which the employee is required to commute is not an automobile as defined in paragraph (d)(1)(ii) of this section, the restriction of paragraph (f)(1)(v) of this section (relating to control employees) does not apply.

(3) *Commuting value*—(i) *$1.50 per one-way commute.* If the requirements of this paragraph (f) are satisfied, the value of the commuting use of an employer-provided vehicle is $1.50 per one-way commute (e.g., from home to work or from work to home). The value provided in this paragraph (f)(3) includes the value of any goods or services directly related to the vehicle (e.g., fuel).

(ii) *Value per employee.* If there is more than one employee who commutes in the vehicle, such as in the case of an employer-sponsored commuting vehicle pool, the amount includible in the income of each employee is $1.50 per one-way commute. Thus, the amount includible for each round-trip commute is $3.00 per employee. See paragraphs (d)(7)(vi) and (e)(5)(vi) of this section for use of the automobile lease valuation and vehicle cents-per-mile valuation special rules for valuing the use or availability of the vehicle in the case of an employer-sponsored vehicle or automobile commuting pool.

(4) *Definition of vehicle.* For purposes of this paragraph (f), the term "vehicle" means any motorized wheeled vehicle manufactured primarily for use on public streets, roads, and highways. The term "vehicle" includes an automobile as defined in paragraph (d)(1)(ii) of this section.

(5) *Control employee defined—Non-government employer.* For purposes of this paragraph (f), a control employee of a non-government employer is any employee—

(i) Who is a Board- or shareholder-appointed, confirmed, or elected officer of the employer whose compensation equals or exceeds $50,000,

(ii) Who is a director of the employer,

(iii) Whose compensation equals or exceeds $100,000, or

(iv) Who owns a one-percent or greater equity, capital, or profits interest in the employer.

For purposes of determining who is a one-percent owner under paragraph (f)(5)(iv) of this section, any individual who owns (or is considered as owning under section 318(a) or principles similar to section 318(a) for entities other than corporations) one percent or more of the fair market value of an entity (the "owned entity") is considered a one-percent owner of all entities which would be aggregated with the owned entity under the rules of section 414(b), (c), (m), or (o). For purposes of determining who is an officer or director with respect to an employer under this paragraph (f)(5), notwithstanding anything in this section to the contrary, if an entity would be aggregated with other entities under the rules of section 414 (b), (c), (m), or (o), the officer definition (but not the compensation requirement) and the director definition apply to each such separate entity rather tha to the aggregated employer. An employee who is an officer or a director of an entity (the "first entity") shall be treated as an officer or a director of all entities aggregated with the first entity under the rules of section 414 (b), (c), (m), or (o). Instead of applying the control employee definition of this paragraph (f)(5), an employer may treat all, and only, employees who are "highly compensated" employees (as defined in § 1.132-8(g)) as control employees for purposes of this paragraph (f).

(6) *Control employee defined—Government employer.* For purposes of this paragraph (f), a control employee of a government employer is any—

(i) Elected official, or

(ii) Employee whose compensation equals or exceeds the compensation paid to a Federal Government employee holding a position at Executive Level V, determined under Chapter 11 of title 2, United States Code, as adjusted by section 5318 of Title 5 United States Code.

For purposes of this paragraph (f), the term "government" includes any Federal, state or local governmental unit, and any agency or instrumentality thereof. Instead of applying the control employee definition of paragraph (f)(6), an employer may treat all and only employees who are "highly compensated" employees (as defined in § 1.132-8(f)) as control employees for purposes of this paragraph (f).

(7) *"Compensation" defined.* For purposes of this paragraph (f), the term "compensation" has the same meaning as in section 414(q)(7). Compensation includes all amounts received from all entities treated as a single employer under section 414 (b), (c) (m), or (o). Levels of compensation shall be adjusted at the sam time and in the same manner as provided in section 415(d). The first such adjustment shall be for calendar year 1988.

(g) *Non-commercial flight valuation rule*—(1) *In general.* Under the non-commercial flight valuation rule of this paragraph (g), except as provided in paragraph (g)(12) of this section, if an employee is provided with a flight on an employer-provided aircraft, the value of the flight is calculated using the aircraft valuation formula of paragraph (g)(5) of this section. For purposes of this paragraph (g), the value of a flight on an employer-provided aircraft by an individual who is less than two years old is deemed to be zero. See paragraph (b)(1) of this section for rules relating to the amount includible in income when an employee reimburses the employee's employer for all or part of the fair market value of the benefit provided.

(2) *Eligible flights and eligible aircraft.* The valuation rule of this paragraph (g) may be used to value flights on all employer-provided aircraft, including helicopters. The valuation rule of this paragraph (g) may be used to value international as well as domestic flights. The valuation rule of this paragraph (g) may not be used to value a flight on any commercial aircraft on which air transportation is sold to the public on a per-seat basis. For a special valuation rule relating to certain flights on commercial aircraft, see paragraph (h) of this section.

(3) *Definition of a flight*—(i) *General rule.* Except as otherwise provided in paragraph (g)(3)(iii) of this section (relating to intermediate stops), for purposes of this paragraph (g), a flight is the distance (in statute miles, i.e., 5,280 feet per statute mile) between the place at which the individual boards the aircraft and the place at which the individual deplanes.

(ii) *Valuation of each flight.* Under the valuation rule of this paragraph (g), value is determined separately for each flight. Thus, a round-trip is comprised of at least two flights. For example, an employee who takes a personal trip on an employer-provided aircraft from New York City to Denver, then Denver to Los Angeles, and finally Los Angeles to New York City has taken three flights and must apply the aircraft valuation formula separately to each flight. The value of a flight must be determined on a passenger-by-passenger basis. For example, if an individual accompanies an employee and the flight taken by the individual would be taxed to the employee, the employee would be taxed on the special rule value of the flight by the employee and the flight by the individual.

(iii) *Intermediate stop.* If a landing is necessitated by weather conditions, by an emergency, for purposes of refueling or obtaining other services relating to the aircraft or for any other purpose unrelated to the personal purposes of the employee whose flight is being valued, that landing is an intermediate stop. Additional mileage attributable to an intermediate stop is not considered when determining the distance of an employee's flight.

(iv) *Examples.* The rules of paragraph (g)(3)(iii) of this section may be illustrated by the following examples:

Example (1). Assume that an employee's trip originates in St. Louis, Missouri, with Seattle, Washington as its destination, but, because of weather conditions, the aircraft lands in Denver, Colorado, and the employee stays in Denver overnight. Assume further that the next day the aircraft flies to Seattle where the employee deplanes. The employee's flight is the distance between the airport in St. Louis and the airport in Seattle.

Example (2). Assume that a trip originates in New York, New York, with five passengers and that the aircraft makes a stop in Chicago, Illinois, so that one of the passengers can deplane for a purpose unrelated to the personal purposes of the other passengers whose flights are being valued. The aircraft then goes on to Los Angeles, California, where the other four passengers will deplane. The flight of the passenger who deplaned in Chicago is the distance between the airport in New York and the airport in Chicago. The stop in Chicago is disregarded as an intermediate stop, however, when measuring the flights taken by each of the other four passengers. Their flights would be the distance between the airport in New York and the airport in Los Angeles.

(4) *Personal and non-personal flights*—(i) In *general.* The valuation rule

of this paragraph (g) applies to personal flights on employer-provided aircraft. A personal flight is one the value of which is not excludable under another section of subtitle A of the Internal Revenue Code of 1986, such as under section 132(d) (relating to a working condition fringe). However, solely for purposes of paragraphs (g)(4)(ii) and (g)(4)(iii) of this section, references to personal flights do not include flights a portion of which would not be excludable from income by reason of section 274(c).

(ii) *Trip primarily for employer's business.* If an employee combines, in one trip, personal and business flights on an employer-provided aircraft and the employee's trip is primarily for the employer's business (see § 1.162–2(b)(2)), the employee must include in income the excess of the value of all the flights that comprise the trip over the value of the flights that would have been taken had there been no personal flights but only business flights. For example, assume that an employee flies on an employer-provided aircraft from Chicago, Illinois, to Miami, Florida, for the employer's business and that from Miami the employee flies on the employer-provided aircraft to Orlando, Florida, for personal purposes and then flies back to Chicago. Assume further that the primary purpose of the trip is for the employer's business. The amount includible in income is the excess of the value of the three flights (Chicago to Miami, Miami to Orlando, and Orlando to Chicago), over the value of the flights that would have been taken had there been no personal flights but only business flights (Chicago to Miami and Miami to Chicago).

(iii) *Primarily personal trip.* If an employee combines, in one trip, personal and business flights on an employer-provided aircraft and the employee's trip is primarily personal (see § 1.162–2(b)(2)), the amount includible in the employee's income is the value of the personal flights that would have been taken had there been no business flights but only personal flights. For example, assume that an employee flies on an employer-provided aircraft from San Francisco, California, to Los Angeles, California, for the employer's business and that from Los Angeles the employee flies on an employer-provided aircraft to Palm Springs, California, primarily for personal reasons and then flies back to San Francisco. Assume further that the primary purpose of the trip is personal. The amount includible in the employee's income is the value of personal flights that would have been taken had there been no business flights but only personal flights (San Francisco to Palm Springs and Palm Springs to San Francisco).

(iv) *Application of section 274(c).* The value of employer- provided travel outside the United States away from home may not be excluded from the employee's gross income as a working condition fringe, by either the employer or the employee, to the extent not deductible by reason of section 274(c). The valuation rule of this paragraph (g) applies to that portion of the value any flight not excludable by reason of section 274(c). Such value is includible in income in addition to the amounts determined under paragraphs (g)(4)(ii) and (g)(4)(iii) of this section.

(v) *Flights by individuals who are not personal guests.* If an individual who is not an employee of the employer providing the aircraft is on a flight, and the individual is not the personal guest of any employee of the employer, the flight by the individual is not taxable to any employee of the employer providing the aircraft. The rule in the preceding sentence applies where the individual is provided the flight by the employer for noncompensatory business reasons of the employer. For example, assume that G, an employee of company Y, accompanies A, an employee of company X, on company X's aircraft for the purpose of inspecting land under consideration for purchase by company X from company Y. The flight by G is not taxable to A. No inference may be drawn from this paragraph (g)(4)(v) concerning the taxation of a flight provided to an individual who is neither an employee of the employer nor a personal guest of any employee of the employer.

(5) *Aircraft valuation formula.* Under the valuation rule of this paragraph (g), the value of a flight is determined under the base aircraft valuation formula (also known as the Standard Industry Fare Level formula or SIFL) by multiplying the SIFL cents-per-mile rates applicable for the period during which the flight was taken by the appropriate aircraft multiple (as provided in paragraph (g)(7) of this section) and then adding the applicable terminal charge. The SIFL cents-per-mile rates in the formula and the terminal charge are calculated by the Department of Transportation and are revised semi-annually. The base aircraft valuation formula in effect from January 1, 1989 through June 30, 1989, is as follows: a terminal charge of $26.48 plus ($.1449 per mile for the first 500 miles, $.1105 per mile for miles between 501 and 1500, and $.1062 per mile for miles over 1500). For example, if a flight taken on January 15, 1989, by a non-control employee on an employer-provided aircraft with a maximum certified takeoff weight of 26,000 lbs. is 2,000 miles long, the value of the flight determined under this paragraph (g)(5) is: $100.36 ((.313×(($.1449×500)+($.1105×1,000)+ ($.1062×500)))+$26.48). The aircraft valuation formula applies separately to each flight being valued under this paragraph (g). Therefore, the number of miles an employee has flown on employer-provided aircraft flights prior to the flight being valued does not affect the determination of the value of the flight.

(6) *Discretion to provide new formula.* The Commissioner may prescribe a different base aircraft valuation formula by regulation, Revenue Ruling or Revenue Procedure in the event that the calculation of the Standard Industry Fare Level is discontinued.

(7) *Aircraft multiples*—(i) *In general.* The aircraft multiples are based on the maximum certified takeoff weight of the aircraft. When applying the aircraft valuation formula to a flight, the appropriate aircraft multiple is multiplied by the product of the applicable SIFL cents-per-mile rates multiplied by the number of miles in the flight and then the terminal charge is added to the product. For purposes of applying the aircraft valuation formula described in paragraph (g)(5) of this section, the aircraft multiples are as follows:

Maximum certified take-off weight of the aircraft	Aircraft multiple for a control employee (percent)	Aircraft multiple for a non-control employee (percent)
6,000 lbs. or less	62.5	15.6
6,001–10,000 lbs.	125	23.4
10,001–25,000 lbs.	300	31.3
25,001 lbs. or more	400	31.3

(ii) *Flights treated as provided to a control employee.* Except as provided in paragraph (g)(12) of this section, any flight provided to an individual whose flight would be taxable to a control employee (as defined in paragraphs (g)(8) and (9) of this section) as the recipient shall be valued as if such flight had been provided to that control employee. For example, assume that the chief executive officer of an employer, his spouse, and his two children fly on an employer-provided aircraft for personal purposes. Assume further that the maximum certified takeoff weight of the aircraft is 12,000 lbs. The amount includible in the employee's income is 4×((300 percent×the applicable SIFL cents-per-mile rates provided in paragraph (g)(5) of this section multiplied by the number of miles in the flight) plus the applicable terminal charge).

(8) *Control employee defined—Non-government employer*—(i) *Definition.* For purposes of this paragraph (g), a control employee of a non-government employer is any employee—

(*A*) Who is a Board- or shareholder-appointed, confirmed, or elected officer of the employer, limited to the lesser of—

(*1*) One percent of all employees (increased to the next highest integer, if not an integer) or

(*2*) Ten employees;

(B) Who is among the top one percent most highly-paid employees of the employer (increased to the next highest integer, if not an integer) limited to a maximum of 50;

(C) Who owns a five-percent or greater equity, capital, or profits interest in the employer; or

(D) Who is a director of the employer.

(ii) *Special rules for control employee definition*—(A) *In general.* For purposes of this paragraph (g), any employee who is a family member (within the meaning of section 267(c)(4)) of a control employee is also a control employee. For purposes of paragraph (g)(8)(i)(B) of this section, the term "employee" does not include any individual unless such individual is a common-law employee, partner, or one-percent or greater shareholder of the employer. Pursuant to this paragraph (g)(8), an employee may be a control employee under more than one of the requirements listed in paragraphs (g)(8)(i) (A) through (D) of this section. For example, an employee may be both an officer under paragraph (g)(8)(i)(A) of this section and a highly-paid employee under paragraph (g)(8)(i)(B) of this section. In this case, for purposes of the officer limitation rule of paragraph (g)(8)(i)(A) of this section and the highly-paid employee limitation rule of paragraph (g)(8)(i)(B) of this section, the employee would be counted in applying both limitations. For purposes of determining the one-percent limitation under paragraphs (g)(8)(i) (A) and (B) of this section, an employer shall exclude from consideration employees described in § 1.132–8(b)(3). Instead of applying the control employee definition of this paragraph (g)(8), an employer may treat all (and only) employees who are "highly compensated" employees (as defined in § 1.132–8(f)) as control employees for purposes of this paragraph (g).

(B) *Special rules for officers, owners, and highly-paid control employees.* In no event shall an employee whose compensation is less than $50,000 be a control employee under paragraph (g)(8)(i) (A) or (B) of this section. For purposes of determining who is a five-percent (or one-percent) owner under this paragraph (g)(8), any individual who owns (or is considered as owning under section 318(a) or principles similar to section 318(a) for entities other than corporations) five percent (or one-percent) or more of the fair market value of an entity (the "owned entity") is considered a five-percent (or one-percent) owner of all entities which would be aggregated with the owned entity under the rules of section 414(b), (c), (m), or (o). For purposes of determining who is an officer or director with respect to an employer under this paragraph (g)(8), notwithstanding anything in this section to the contrary, if the employer would be aggregated with other employers under the rules of section 414 (b), (c), (m), or (o), the officer definition and the limitations and the director definition are applied to each such separate employer rather than to the aggregated employer. An employee who is an officer or director of one employer (the "first employer") shall not be counted as an officer or a director of any other employer aggregated with the first employer under the rules of section 414 (b), (c), or (m). If applicable, the officer limitations rule of paragraph (g)(8)(i)(A) of this section is applied to employees in descending order of their compensation. Thus, if an employer has 11 board-appointed officers and the limit imposed under paragraph (g)(8)(i)(A) of this section is 10 officers, the employee with the least compensation of those officers would not be a control employee under paragraph (g)(8)(i)(A) of this section.

(9) *Control employee defined—Government employer.* For purposes of this paragraph (g), a control employee of a government employer is any—

(i) Elected official, or

(ii) Employee whose compensation equals or exceeds the compensation paid to a Federal Government employee holding a position at Executive Level V, determined under Chapter 11 of title 2, United States Code, as adjusted by section 5318 of title 5 United States Code.

For purposes of paragraph (f), the term "government" includes any Federal, state or local governmental unit, and any agency or instrumentality thereof. Instead of applying the control employee definition of paragraph (f)(6), an employer may treat all and only employees who are "highly compensated" employees (as defined in § 1.132–8(f)) as control employees for purposes of this paragraph (f).

(10) *"Compensation" defined.* For purposes of this paragraph (g), the term "compensation" has the same meaning as in section 414(q)(7). Compensation includes all amounts received from all entities treated as a single employer under section 414 (b), (c), (m), or (o). Levels of compensation shall be adjusted at the same time and in the same manner as provided in section 415(d). The first such adjustment was for calendar year 1988.

(11) *Treatment of former employees.* For purposes of this paragraph (g), an employee who was a control employee of the employer (as defined in this paragraph (g)) at any time after reaching age 55, or within three years of separation from the service of the employer, is a control employee with respect to flights taken after separation from the service of the employer. An individual who is treated as a control employee under this paragraph (g)(11) is not counted when determining the limitation of paragraph (g)(8)(i) (A) and (B) of this section. Thus, the total number of individuals treated as control employees under such paragraphs may exceed the limitations of such paragraphs to the extent that this paragraph (g)(11) applies.

(12) *Seating capacity rule*—(i) *In general*—(A) *General rule.* Where 50 percent or more of the regular passenger seating capacity of an aircraft (as used by the employer) is occupied by individuals whose flights are primarily for the employer's business (and whose flights are excludable from income under section 132(d)), the value of a flight on that aircraft by any employee who is not flying primarily for the employer's business (or who is flying primarily for the employer's business but the value of whose flight is not excludable under section 132(d) by reason of section 274(c)) is deemed to be zero. See § 1.132–5 which limits the working condition fringe exclusion under section 132(d) to situations where the employee receives the flight in connection with the performance of services for the employer providing the aircraft.

(B) *Special rules*—(*1*) *Definition of "employee."* For purposes of this paragraph (g)(12), the term "employee" includes only employees of the employer, including a partner of a partnership, providing the aircraft and does not include independent contractors and directors of the employer. A flight taken by an individual other than an "employee" as defined in the preceding sentence is considered a flight taken by an employee for purposes of this paragraph

(g)(12) only if that individual is treated as an employee pursuant to section 132(f)(1) or that individual's flight is treated as a flight taken by an employee pursuant to section 132(f)(2). If—

(*i*) A flight by an individual is not considered a flight taken by an employee (as defined in this paragraph (g)(12)(i)),

(*ii*) The value of that individual's flight is not excludable under section 132(d), and

(*iii*) The seating capacity rule of this paragraph (g) (12) otherwise applies, then the value of the flight provided to such an individual is the value of a flight provided to a non-control employee pursuant to paragraph (g)(5) of this section (even if the individual who would be taxed on the value of the flight is a control employee).

(*2*) *Example.* The special rules of paragraph (g)(12)(i)(B)(*1*) of this section are illustrated by the following example:

Example. Assume that 60 percent of the regular passenger seating capacity of an employer's aircraft is occupied by individuals whose flights are primarily for the employer's business and are excludable from income under section 132(d). If a control employee, his spouse, and his dependent child fly on the employer's aircraft for primarily personal reasons, the value of the three flights is deemed to be zero. If, however, the control employee's cousin were provided a flight on the employer's aircraft, the value of the flight taken by the cousin is determined by applying the aircraft valuation formula of paragraph (g)(5) of this section (including the terminal charge) and the non-control employee aircraft multiples of paragraph (g)(7) of this section.

(ii) *Application of 50-percent test to multiple flights.* The seating capacity rule of this paragraph (g)(12) must be met both at the time the individual whose flight is being valued boards the aircraft and at the time the individual deplanes. For example, assume that employee A boards an employer-provided aircraft for personal purposes in New York, New York, and that at that time 80 percent of the regular passenger seating capacity of the aircraft is occupied by individuals whose flights are primarily for the employer's business (and whose flights are excludable from income under section 132(d)) ("the business passengers"). If the aircraft flies directly to Hartford, Connecticut where all of the passengers, including A, deplane, the requirements of the seating capacity rule of this paragraph (g)(12) have been satisfied. If instead, some of the passengers, including A, remain on the aircraft in Hartford and the aircraft continues on to Boston, Massachusetts, where they all deplane, the requirements of the seating capacity rule of this paragraph (g)(12) will not be satisfied with respect to A's flight from New York to Boston unless at least 50 percent of the seats comprising the aircraft's regular passenger seating capacity were occupied by the business passengers at the time A deplanes in Boston.

(iii) *Regular passenger seating capacity.* (A) *General rule.* Except as otherwise provided, the regular passenger seating capacity of an aircraft is the maximum number of seats that have at any time on or prior to the date of the flight been on the aircraft (while owned or leased by the employer). Except to the extent excluded pursuant to paragraph (g)(12)(v) of this section, regular seating capacity includes all seats which may be occupied by members of the flight crew. It is irrelevant that, on a particular flight, less than the maximum number of seats are available for use because, for example, some of the seats are removed.

(B) *Special rules.* When determining the maximum number of seats that have at any time on or prior to the date of the flight been on the aircraft (while owned or leased by the employer), seats that could not at any time be legally used during takeoff and have not at any time been used during takeoff are not counted. As of the date an employer permanently reduces the seating capacity of an aircraft, the regular passenger seating capacity is the reduced number of seats on the aircraft. The previous sentence shall not apply if at any time within 24 months after such reduction any seats are added in the aircraft. Unless the conditions of this paragraph (g)(12)(iii)(B) are satisfied, jumpseats and removable seats used solely for purposes of flight crew training are counted for purposes of the seating capacity rule of this paragraph (g)(12).

(iv) *Examples.* The rules of paragraph (g)(12)(iii) of this section are illustrated by the following examples:

Example (1). Employer A and employer B order the same aircraft, except that A orders it with 10 seats and B orders it with eight seats. A always uses its aircraft as a 10-seat aircraft; B always uses its aircraft as an eight-seat aircraft. The regular passenger seating capacity of A's aircraft is 10 and of B's aircraft is eight.

Example (2). Assume the same facts as in example (1), except that whenever A's chief executive officer and spouse use the aircraft eight seats are removed. Even if substantially all of the use of the aircraft is by the chief executive officer and spouse, the regular passenger seating capacity of the aircraft is 10.

Example (3). Assume the same facts as in example (1), except that whenever more than eight people want to fly in B's aircraft, two extra seats are added. Even if substantially all of the use of the aircraft occurs with eight seats, the regular passenger seating capacity of the aircraft is 10.

Example (4). Employer C purchases an aircraft with 12 seats. Three months later C remodels the interior of the aircraft and permanently removes four of the seats. Upon completion of the remodeling, the regular passenger seating capacity of the aircraft is eight. If, however, any seats are added within 24 months after the remodeling, the regular seating capacity of the aircraft is treated as 12 throughout the entire period.

(v) *Seats occupied by flight crew.* When determining the regular passenger seating capacity of an aircraft, any seat occupied by a member of the flight crew (whether or not such individual is an employee of the employer providing the aircraft) shall not be counted, unless the purpose of the flight by such individual is not primarily to serve as a member of the flight crew. If the seat occupied by a member of the flight crew is not counted as a passenger seat pursuant to the previous sentence, such member of the flight crew is disregarded in applying the 50-percent test described in the first sentence of paragraph (g)(12)(i) of this section. For example, assume that prior to application of this paragraph (g)(12)(v) the regular passenger seating capacity of an aircraft is one. Assume further that an employee pilots the aircraft and that the employee's flight is nor primarily for the employer's business. If the employee's spouse occupies the other seat for personal purposes, the seating capacity rule is not met and the value of both flights must be included in the employee's income. If, however, the employee's flight were primarily for the employer's business (unrelated to serving as a member of the flight crew), then the seating capacity rule is met and the value of the flight for the employee's spouse is deemed to be zero. If the employee's flight were primarily to serve as a member of the flight crew, then the seating capacity rule is not met and the value of a flight by any passenger for primarily personal reasons is not deemed to be zero.

(13) *Erroneous use of the non-commercial flight valuation rule*—(i) *Certain errors in the case of a flight by a control employee.* If—

(A) The non-commercial flight valuation rule of this paragraph (g) is applied by an employer or a control employee, as the case may be, on a return as originally filed or on an amended return on the grounds that either—

(*1*) The control employee is not in fact a control employee, or

(*2*) The aircraft is within a specific weight classification, and

(B) Either position is subsequently determined to be erroneous, the valuation rule of this paragraph (g) is not available to value the flight taken by that control employee by the person or persons taking the erroneous position. With respect to the weight classifications, the previous sentence does not apply if the position taken is that the weight of the aircraft is greater than it is subsequently determined to be. If, with respect to a flight by a control employee, the seating capacity rule of paragraph (g)(12) of this section is used by an employer or the control employee, as the case may be, on a return as originally filed or on an amended return, the valuation rule of this paragraph (g) is not available to value the flight taken by that control employee by the person or persons taking the erroneous position.

(ii) *Value of flight excluded as a working condition fringe.* If either an employer or an employee, on a return as originally filed or on an amended return, excludes from the employee's income or wages all or any part of the value of a flight on the grounds that the flight was excludable as a working condition fringe under section 132, and that position is subsequently determined to be erroneous, the valuation rule of this paragraph (g) is not available to value the flight taken by that employee by the person or persons taking the erroneous position. Instead, the general valuation rules of paragraph (b) (5) and (6) of this section apply.

(14) *Consistency rules*—(i) *Use by the employer.* Except as otherwise provided in paragraph (g)(13) of this section or § 1.132–5 (m)(4), if the non-commercial flight valuation rule of this paragraph (g) is used by an employer to value any flight provided to an employee in a calendar year, the rule must be used to value all flights provided to all employees in the calendar year.

(ii) *Use by the employee.* Except as otherwise provided in paragraph (g)(13) of this section or § 1.132–5 (m)(4), if the non-commercial flight valuation rule of this paragraph (g) is used by an employee to value a flight provided by an employer in a calendar year, the rule must be used to value all flights provided to the employee by that employer in the calendar year.

(h) *Commercial flight valuation rule*—(1) *In general.* Under the commercial flight valuation rule of this paragraph (h), the value of a space-available flight (as defined in paragraph (h) (2) of this section) on a commercial aircraft is 25 percent of the actual carrier's highest unrestricted coach fare in effect for the particular flight taken. The rule of this paragraph (h) is available only to an individual described in § 1.132–1(b)(1).

(2) *Space-available flight.* The commercial flight valuation rule of this paragraph (h) is available to value a space-available flight. The term "space-available flight" means a flight on a commercial aircraft—

(i) Which is subject to the same types of restrictions customarily associated with flying on an employee "stand-by" or "space-available" basis, and

(ii) Which meets the definition of a no-additional-cost service under section 132(b), except that the flight is provided to an individual other than the employee or an individual treated as the employee under section 132(f). Thus, a flight is not a space-available flight if the employer guarantees the employee a seat on the flight or if the nondiscrimination requirements of section 132(h)(1) and § 1.132–8 are not satisfied. A flight may be a space-available flight even if the airline that is the actual carrier is not the employer of the employee.

(3) *Commercial aircraft.* If the actual carrier does not offer, in the ordinary course of its business, air transportation to customers on a per-seat basis, the commercial flight valuation rule of this paragraph (h) is not available. Thus, if, in the ordinary course of its line of business, the employer only offers air transportation to customers on a charter basis, the commercial flight valuation rule of this paragraph (h) may not be used to value a space-available flight on the employer's aircraft. If the commercial flight valuation rule is not available, the flight may be valued under the non-commercial flight valuation rule of paragraph (g) of this section.

(4) *Timing of inclusion.* The date that the flight is taken is the relevant date for purposes of applying section 61(a)(1) and this section to a space-available flight on a commercial aircraft. The date of purchase or issuance of a pass or ticket is not relevant. Thus, this section applies to a flight taken on or after January 1, 1989, regardless of the date on which the pass or ticket for the flight was purchased or issued.

(5) *Consistency rules*—(i) *Use by employer.* If the commercial flight valuation rule of this paragraph (h) is used by an employer to value any flight provided in a calendar year, the rule must be used to value all flights eligible for use of the rule provided in the calendar year.

(ii) *Use by employee.* If the commercial flight valuation rule of this paragraph (h) is used by an employee to value a flight provided by an employer in a calendar year, the rule must be used to value all flights provided by that employer eligible for use of the rule taken by such employee in the calendar year.

(i) [Reserved.]

(j) *Valuation of meals provided at an employer-operated eating facility for employees*—(1) *In general.* The valuation rule of this paragraph (j) may be used to value a meal provided at an employer-operated eating facility for employees (as defined in § 1.132–7). For rules relating to an exclusion for the value of meals provided at an employer-operated eating facility for employees, see section 132(e)(2) and § 1.132–7.

(2) *Valuation formula*—(i) *In general.* The value of all meals provided at an employer-operated eating facility for employees during a calendar year ("total meal value") is 150 percent of the direct operating costs of the eating facility determined separately with respect to such eating facility whether or not the direct operating costs test is applied separately to such eating facility under § 1.132–7(b)(2). For purposes of this paragraph (j), the definition of direct operating costs provided in § 1.132–7(b) and the adjustments specified in § 1.132–7(a)(2) apply. The taxable value of meals provided at an eating facility may be determined in two ways. The "individual meal subsidy" may be treated as the taxable value of a meal provided at the eating facility (see paragraph (j)(2)(ii) of this section) to a particular employee. Alternatively, the employer may allocate the "total meal subsidy" among employees (see paragraph (j)(2)(iii) of this section).

(ii) *"Individual meal subsidy" defined.* The "individual meal subsidy" is determined by multiplying the amount paid by the employee for a particular meal by a fraction, the numerator of which is the total meal value and the denominator of which is the gross receipts of the eating facility for the calendar year and then subtracting the amount paid by the employee for the meal. The taxable value of meals provided to a particular employee during a calendar year, therefore, is the sum of the individual meal subsidies provided to the employee during the calendar year. This rule is available only if there is a charge for each meal selection and if each employee is charged the same price for any given meal selection.

(iii) *Allocation of "total meal subsidy."* Instead of using the individual meal subsidy method provided in paragraph (j)(2)(ii) of this section, the employer may allocate the "total meal subsidy" (total meal value less the gross receipts of the facility) among employees in any manner reasonable under the circumstances. It will be

presumed reasonable for an employer to allocate the total meal subsidy on a per-employee basis if the employer has information that would substantiate to the satisfaction of the Commissioner that each employee was provided approximately the same number of meals at the facility.

§§ 1.132-1T, 1.132-2T, 1.132-3T, 1.132-4T, 1.132-5T, 1.132-6T, 1.132-7T and 1.132-8T [Amended]

Par. 6. Sections 1.132-1T, 1.132.2T, 1.132-3T, 1.132-4T, 1.1325T, 1.132-6T, 1.132-7T and 1.132-8T are amended by revising the titles of such sections to read as follows:

§ 1.132-1T Exclusion from gross income of certain fringe benefits—1985 through 1988 (Temporary).

§ 1.132-2T No-additional-cost service—1985 through 1988 (Temporary).

§ 1.132-3T Qualified employee discount—1985 through 1988 (Temporary).

§ 1.132-4T Line of business limitation—1985 through 1988 (Temporary).

§ 1.132-5T Working condition fringe—1985 through 1988 (Temporary).

§ 1.132-6T De minimis fringe—1985 through 1988 (Temporary).

§ 1.132-7T Treatment of employer-operated eating facilities—1985 through 1988 (Temporary).

§ 1.132-8T Nondiscrimination rules—1985 through 1988 (Temporary).

Par. 7. Section 1.132-0 is added and reads as follows:

§ 1.132-0 Outline of regulations under section 132.

The following is an outline of regulations in this section relating to exclusions from gross income for certain fringe benefits:

§ 1.132-0 Outline of regulations under section 132.

§ 1.132-1 Exclusion from gross income for certain fringe benefits.

§ 1.132-1 (a) In general.
§ 1.132-1 (b) Definition of employee.
(1) No-additional-cost services and qualified employee discounts.
(2) Working condition fringes.
(3) On-premises athletic facilities.
(4) De minimis fringes.
(5) Dependent child.
§ 1.132-1 (c) Special rules for employers—Effect of section 414.
§ 1.132-1 (d) Customers not to include employees.
§ 1.132-1 (e) Treatment of on-premises athletic facilities.
(1) In general.
(2) Premises of the employer.
(3) Application of rules to membership in an athletic facility.
(4) Operation by the employer.
(5) Nonapplicability of nondiscrimination rules.
§ 1.132-1 (f) Nonapplicability of section 132 in certain cases.
(1) Tax treatment provided for in another section.
(2) Limited statutory exclusions.
§ 1.132-1 (g) Effective date.
§ 1.132-2 No-additional-cost services.
§ 1.132-2 (a) In general.
(1) Definition.
(2) Excess capacity services.
(3) Cash rebates.
(4) Applicability of nondiscrimination rules.
(5) No substantial additional cost.
(6) Payments for telephone service.
§ 1.132-2 (b) Reciprocal agreements.
§ 1.132-2 (c) Example.
§ 1.132-3 Qualified employee discounts.
§ 1.132-3 (a) In general.
(1) Definition.
(2) Qualified property or services.
(3) No reciprocal agreement exception.
(4) Property of services provided without charge, at a reduced price, or by rebates.
(5) Property or services provided directly by the employer or indirectly through a third party.
(6) Applicability of nondiscrimination rules.
§ 1.132-3 (b) Employee discount.
(1) Definition.
(2) Price to customers.
(3) Damaged, distressed, or returned goods.
§ 1.132-3 (c) Gross profit percentage.
(1) In general.
(2) Line of business.
(3) Generally accepted accounting principles.
§ 1.132-3 (d) Treatment of leased sections of department stores.
(1) In general.
(2) Employees of the leased section.
§ 1.132-3 (e) Excess discounts.
§ 1.132-4 Line of business limitation.
§ 1.132-4 (a) In general.
(1) Applicability.
(2) Definition.
(3) Aggregation of two-digit classifications.
§ 1.132-4 (b) Grandfather rule for certain retail stores.
(1) In general.
(2) Taxable year of affiliated group.
(3) Definition of "sales".
(4) Retired and disabled employees.
(5) Increase of employee discount.
§ 1.132-4 (c) Grandfather rule for telephone service provided to pre-divestiture retirees.
§ 1.132-4 (d) Special rule for certain affiliates of commercial airlines.
(1) General rule.
(2) "Airline affiliated group" defined.
(3) "Qualified affiliate" defined.
§ 1.132-4 (e) Grandfather rule for affiliated groups operating airlines.
§ 1.132-4 (f) Special rule for qualified air transportation organizations.
§ 1.132-4 (g) Relaxation of line of business requirement.
§ 1.132-4 (h) Line of business requirement does not expand benefits eligible for exclusion.
§ 1.132-5 Working condition fringes.
§ 1.132-5 (a) In general.
(1) Definition.
(2) Trade or business of the employee.
§ 1.132-5 (b) Vehicle allocation rules.
(1) In general.
(2) Use of different employer-provided vehicles.
(3) Provision of a vehicle and chauffeur services.
§ 1.132-5 (c) Applicability of substantiation requirements of sections 162 and 274(d).
(1) In general.
(2) Section 274(d) requirements.
§ 1.132-5 (d) Safe harbor substantiation rules.
(1) In general.
(2) Period for use of safe harbor rules.
§ 1.132-5 (e) Safe harbor substantiation rule for vehicles not used for personal purposes.
§ 1.132-5 (f) Safe harbor substantiation rule for vehicles not available to employees for personal use other than commuting.
§ 1.132-5 (g) Safe harbor substantiation rule for vehicles used in connection with the business of farming that are available to employees for personal use.
(1) In general.
(2) Vehicles available to more than one individual.
(3) Examples.
§ 1.132-5 (h) Qualified nonpersonal use vehicles.
(1) In general.
(2) Shared usage of qualified nonpersonal use vehicles.
§ 1.132-5 (i) [Reserved].
§ 1.132-5 (j) Application of section 280F.
§ 1.132-5 (k) Aircraft allocation rule.
§ 1.132-5 (l) [Reserved].
§ 1.132-5 (m) Employer-provided transportation for security concerns.
(1) In general.
(2) Demonstration of bona fide business-oriented security concerns.
(3) Application of security rules to spouses and dependents.
(4) Working condition safe harbor for travel on employer-provided aircraft.
(5) Bodyguard/chauffeur provided for a bona fide business-oriented security concern.
(6) Examples.
§ 1.132-5 (n) Product testing.
(1) In general.
(2) Employer-imposed limits.
(3) Discriminating classifications.
(4) Factors that negate the existence of a product testing program.
(5) Failure to meet the requirements of this paragraph (n).
(6) Example.
§ 1.132-5 (o) Qualified automobile demonstration use.
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Par. 8. Section 1.132-1 is added and reads as follows:

§ 1.132-1 Exclusion from gross income for certain fringe benefits.

(a) *In general.* Gross income does not include any fringe benefit which qualifies as a—

(1) No-additional-cost service,
(2) Qualified employee discount,
(3) Working condition fringe, or
(4) De minimis fringe.

Special rules apply with respect to certain on-premises gyms and other athletic facilities (§ 1.132-1(e)), demonstration use of employer-provided automobiles by full-time automobile salesmen (§ 1.132-5(o)), parking provided to an employee on or near the business premises of the employer (§ 1.132-5(p)), and on-premises eating facilities (§ 1.132-7).

(b) *Definition of employee—(1) No-additional-cost services and qualified employee discounts.* For purposes of section 132(a)(1) (relating to no-additonal-cost services) and section 132(a)(2) (relating to qualified employee discounts), the term "employee" (with respect to a line of business of an employer means—

(i) Any individual who is currently employed by the employer in the line of business,

(ii) Any individual who was formerly employed by the employer in the line of business and who separated from service with the employer in the line of business by reason of retirement or disability, and

(iii) Any widow or widower of an individual who died while employed by the employer in the line of business or who separated from service with the employer in the line of business by reason of retirement or disability.

For purposes of this paragraph (b)(1), any partner who performs services for a partnership is considered employed by the partnership. In addition, any use by the spouse or dependent child (as defined in paragraph (b)(5) of this section) of the employee will be treated as use by the employee. For purposes of section 132(a)(1) (relating to no-additional-cost services), any use of air transportation by a parent of an employee (determined without regard to section 132(f)(1)(B) and paragraph (b)(1)(iii) of this section) will be treated as use by the employee.

(2) *Working condition fringes.* For purposes of section 132(a)(3) (relating to working condition fringes), the term "employee" means—

(i) Any individual who is currently employed by the employer,

(ii) Any partner who performs services for the partnership,

(iii) Any director of the employer, and

(iv) Any independent contractor who performs services for the employer.

Notwithstanding anything in this paragraph (b)(2) to the contrary, an independent contractor who performs services for the employer cannot exclude the value of parking or the use of consumer goods provided pursuant to a product testing program under § 1.132-5(n); in addition, any director of the employer cannot exclude the value of the use of consumer goods provided pursuant to a product testing program under § 1.132-5(n).

(3) *On-premises athletic facilities.* For purposes of section 132(h)(5) (relating to on-premises athletic facilities), the term "employee" means—

(i) Any individual who is currently employed by the employer,

(ii) Any individual who was formerly employed by the employer and who separated from service with the employer by reason of retirement or disability, and

(iii) Any widow or widower of an individual who died while employed by the employer or who separated from service with the employer by reason of retirement or disability.

For purposes of this paragraph (b)(3), any partner who performs services for a partnership is considered employed by the partnership. In addition, any use by the spouse or dependent child (as defined in paragraph (b)(5) of this section) of the employee will be treated as use by the employee.

(4) *De minimis fringes.* For purposes of section 132(a)(4) (relating to de minimis fringes), the term "employee" means any recipient of a fringe benefit.

(5) *Dependent child.* The term "dependent child" means any son, stepson, daughter, or stepdaughter of the employee who is a dependent of the employee, or both of whose parents are deceased and who has not attained age 25. Any child to whom section 152(e) applies will be treated as the dependent of both parents.

(c) *Special rules for employers—Effect of section 414.* All employees treated as employed by a single employer under section 414 (b), (c), (m), or (o) will be treated as employed by a single employer for purposes of this section. Thus, employees of one corporation that is part of a controlled group of corporations may under certain circumstances be eligible to receive section 132 benefits from the other corporations that comprise the controlled group. However, the aggregation of employers described in this paragraph (c) does not change the other requirements for an exclusion, such as the line of business requirement. Thus, for example, if a controlled group of corporations consists of two corporations that operate in different lines of business, the corporations are not treated as operating in the same line of business even though the corporations are treated as one employer.

(d) *Customers not to include employees.* For purposes of section 132 and the regulations thereunder, the term

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"customer" means any customer who is not an employee. However, the preceding sentence does not apply to section 132(c)(2) (relating to the gross profit percentage for determining a qualified employee discount). Thus, an employer that provides employee discounts cannot exclude sales made to employees in determining the aggregate sales to customers.

(e) *Treatment of on-premises athletic facilities—(1) In general.* Gross income does not include the value of any on-premises athletic facility provided by an employer to its employees. For purposes of section 132(h)(5) and this paragraph (e), the term "on-premises athletic facility" means any gym or other athletic facility (such as a pool, tennis court, or golf course)—

(i) Which is located on the premises of the employer, (ii) Which is operated by the employer, and (iii) Substantially all of the use of which during the calendar year is by employees of the employer, their spouses, and their dependent children.

For purposes of paragraph (e) (1) (iii) of this section, the term "dependent children" has the same meaning as the plural of the term "dependent child" in paragraph (b)(5) of this section. The exclusion of this paragraph (e) does not apply to any athletic facility if access to the facility is made available to the general public through the sale of memberships, the rental of the facility, or a similar arrangement.

(2) *Premises of the employer.* The athletic facility need not be located on the employer's business premises. However, the athletic facility must be located on premises of the employer. The exclusion provided in this paragraph (e) applies whether the premises are owned or leased by the employer; in addition, the exclusion is available even if the employer is not a named lessee on the lease so long as the employer pays reasonable rent. The exclusion provided in this paragraph (e) does not apply to any athletic facility that is a facility for residential use. Thus, for example, a resort with accompanying athletic facilities (such as tennis courts, pool, and gym) would not qualify for the exclusion provided in this paragraph (e). An athletic facility is considered to be located on the employer's premises if the facility is located on the premises of a voluntary employees' beneficiary association funded by the employer.

(3) *Application of rules to membership in an athletic facility.* The exclusion provided in this paragraph (e) does not apply to any membership in an athletic facility (including health clubs or country clubs) unless the facility is owned (or leased) and operated by the employer and substantially all the use of the facility is by employees of the employer, their spouses, and their dependent children. Therefore, membership in a health club or country club not meeting the rules provided in this paragraph (e) would not qualify for the exclusion.

(4) *Operation by the employer.* An employer is considered to operate the athletic facility if the employer operates the facility through its own employees, or if the employer contracts out to another to operate the athletic facility. For example, if an employer hires an independent contractor to operate the athletic facility for the employer's employees, the facility is considered to be operated by the employer. In addition, if an athletic facility is operated by more than one employer, it is considered to be operated by each employer. For purposes of paragraph (e) (1) (iii) of this section, substantially all of the use of a facility that is operated by more than one employer must be by employees of the various employers, their spouses, and their dependent children. Where the facility is operated by more than one employer, an employer that pays rent either directly to the owner of the premises or to a sublessor of the premises is eligible for the exclusion. If an athletic facility is operated by a voluntary employees' beneficiary association funded by an employer, the employer is considered to operate the facility.

(5) *Nonapplicability of nondiscrimination rules.* The nondiscrimination rules of section 132 and § 1.132–8 do not apply to on-premises athletic facilities.

(f) *Nonapplicability of section 132 in certain cases*—(1) Tax treatment provided for in another section. If the tax treatment or a particular fringe benefit is expressly provided for in another section of Chapter 1 of the Internal Revenue Code of 1986, section 132 and the applicable regulations (except for section 132 (e) and the regulations thereunder) do not apply to such fringe benefit. For example, because section 129 provides an exclusion from gross income for amounts paid or incurred by an employer for dependent care assistance for an employee, the exclusions under section 132 and this section do not apply to the provision by an employer to an employee of dependent care assistance. Similarly, because section 117 (d) applies to tuition reductions, the exclusions under section 132 do not apply to free or discounted tuition provided to an employee by an organization operated by the employer, whether the tuition is for study at or below the graduate level. Of course, if the amounts paid by the employer are for education relating to the employee's trade or business of being an employee of the employer so that, if the employee paid for the education, the amount paid could be deducted under section 162, the costs of the education may be eligible for exclusion as a working condition fringe.

(2) *Limited statutory exclusions.* If another section of Chapter 1 of the Internal Revenue Code of 1986 provides an exclusion from gross income based on the cost of the benefit provided to the employee and such exclusion is a limited amount, section 132 and the regulations thereunder may apply to the extent the cost of the benefit exceeds the statutory exclusion.

(g) *Effective date.* Sections 1.132–0, 1.132–1, 1.132–2, 1,132–3, 1.132–4, 1.132–5, 1.132–6, 1.132–7 and 1.132–8 are effective as of January 1, 1989, except that §§ 1.132–1(b)(1) with respect to the use of air transportation by a parent of an employee and 1.132–4(d) are effective as of January 1, 1985. See §§ 1.132–1T, 1.132–2T, 1.132–3T, 1.132–4T, 1.132–5T, 1.132–6T, 1.132–7T and 1.132–8T for rules in effect for benefits received from January 1, 1985, to December 31, 1988.

Par. 9. Section 1.132–2 is added and reads as follows:

§ 1.132–2 No-additional-cost services.

(a) *In general*—(1) *Definition.* Gross income does not include the value of a no-additional-cost service. A "no-additional-cost service" is any service provided by an employer to an employee for the employee's personal use if—

(i) The service is offered for sale by the employer to its customers in the ordinary course of the line of business of the employer in which the employee performs substantial services, and

(ii) The employer incurs no substantial additional cost in providing the service to the employee (including foregone revenue and excluding any amount paid by or on behalf of the employee for the service).

For rules relating to the line of business limitation, see § 1.132–4. For purposes of this section, a service will not be considered to be offered for sale by the employer to its customers if that service is primarily provided to employees and not to the employer's customers.

(2) *Excess capacity services.* Services that are eligible for treatment as no-additional-cost services include excess capacity services such as hotel accommodations; transportation by aircraft, train, bus, subway, or cruise line; and telephone services. Services that are not eligible for treatment as no-additional-cost services are non-excess capacity services such as the facilitation by a stock brokerage firm of the purchase of stock. Employees who receive non-excess capacity services may, however, be eligible for a qualified employee discount of up to 20 percent of the value of the service provided. See § 1.132–3.

(3) *Cash rebates.* The exclusion for a no-additional-cost service applies whether the service is provided at no charge or at a reduced price. The exclusion also applies if the benefit is provided through a partial or total cash rebate of an amount paid for the service.

(4) *Applicability of nondiscrimination rules.* The exclusion for a no-additional-cost service applies to highly compensated employees only if the service is available on substantially the same terms to each member of a group of employees that is defined under a reasonable classification set up by the employer that does not discriminate in favor of highly compensated employees. See § 1.132–8.

(5) *No substantial additional cost*—(i) *In general.* The exclusion for a no-additional-cost service applies only if the employer does not incur substantial additional cost in providing the service to the employee. For purposes of the preceding sentence, the term "cost" includes revenue that is forgone because the service is provided to an employee rather than a nonemployee. (For purposes of determining whether any revenue is forgone, it is assumed that the employee would not have purchased the service unless it were available to the employee at the actual price charged to the employee.) Whether an employer incurs substantial additional cost must be determined without regard to any amount paid by the employee for the service. Thus, any reimbursement by the employee for the cost of providing the service does not affect the determination of whether the employer incurs substantial additional cost.

(ii) *Labor intensive services.* An employer must include the cost of labor incurred in providing services to employees when determining whether the employer has incurred substantial additional cost. An employer incurs substantial additional cost, whether non-labor costs are incurred, if a substantial amount of time is spent by the employer or its employees in providing the service to employees. This would be the result whether the time spent by the employer or its employees in providing the services would have been "idle," or if the services were provided outside normal business hours. An employer generally incurs no substantial additional cost, however, if the services provided to the employee are merely incidental to the primary service being provided by the employer. For example, the in-flight services of a flight attendant and the cost of in-flight meals provided to airline employees traveling on a space-available basis are merely incidental to the primary service being provided (i.e., air transportation). Similarly, maid service provided to hotel employees renting hotel rooms on a space-available basis is merely incidental to the primary service being provided (i.e., hotel accommodations).

(6) *Payments for telephone service.* Payment made by an entity subject to the modified final judgment (as defined in section 559(c)(5) of the Tax Reform Act of 1984) of all or part of the cost of local telephone service provided to an employee by a person other than an entity subject to the modified final judgment shall be treated as telephone service provided to the employee by the entity making the payment for purposes of this section. The preceding sentence also applies to a rebate of the amount paid by the employee for the service and a payment to the person providing the service. This paragraph (a)(6) applies only to services and employees described in § 1.132–4 (c). For a special line of business rule relating to such services and employees, see § 1.132–4 (c).

(b) *Reciprocal agreements.* For purposes of the exclusion from gross income for a no-additional-cost service, an exclusion is available to an employee of one employer for a no-additional-cost service provided by an unrelated employer only if all of the following requirements are satisfied—

(1) The service provided to such employee by the unrelated employer is the same type of service generally provided to nonemployee customers by both the line of business in which the employee works and the line of business in which the service is provided to such employee (so that the employee would be permitted to exclude from gross income the value of the service if such service were provided directly by the employee's employer);

(2) Both employers are parties to a written reciprocal agreement under which a group of employees of each employer, all of whom perform substantial services in the same line of business, may receive no-additional-cost services from the other employer; and

(3) Neither employer incurs any substantial additional cost (including forgone revenue) in providing such service to the employees of the other employer, or pursuant to such agreement. If one employer receives a substantial payment from the other employer with respect to the reciprocal agreement, the paying employer will be considered to have incurred a substantial additional cost pursuant to the agreement, and consequently services performed under the reciprocal agreement will not qualify for exclusion as no-additional-cost services.

(c) *Example.* The rules of this section are illustrated by the following example:

Example. Assume that a commercial airline permits its employees to take personal flights on the airline at no charge and receive reserved seating. Because the employer forgoes potential revenue by permitting the employees to reserve seats, employees receiving such free flights are not eligible for the no-additional-cost exclusion.

Par. 10. Section 1.132–3 is added and reads as follows:

§ 1.132–3 Qualified employee discounts.

(a) *In general*—(1) *Definition.* Gross income does not include the value of a qualified employee discount. A "qualified employee discount" is any employee discount with respect to qualified property or services provided by an employer to an employee for use by the employee to the extent the discount does not exceed—

(i) The gross profit percentage multiplied by the price at which the property is offered to customers in the ordinary course of the employer's line of business, for discounts on property, or

(ii) Twenty percent of the price at which the service is offered to customers, for discounts on services.

(2) *Qualified property or services*—(i) *In general.* The term "qualified property or services" means any property or services that are offered for sale to customers in the ordinary course of the line of business of the employer in which the employee performs substantial services. For rules relating to the line of business limitation, see § 1.132–4.

(ii) *Exception for certain property.* The term "qualified property" does not include real property and it does not include personal property (whether tangible or intangible) of a kind commonly held for investment. Thus, an employee may not exclude from gross income the amount of an employee discount provided on the purchase of securities, commodities, or currency, or of either residential or commercial real estate, whether or not the particular purchase is made for investment purposes.

(iii) *Property and services not offered in ordinary course of business.* The term

"qualified property or services" does not include any property or services of a kind that is not offered for sale to customers in the ordinary course of the line of business of the employer. For example, employee discounts provided on property or services that are offered for sale primarily to employees and their families (such as merchandise sold at an employee store or through an employer-provided catalog service) may not be excluded from gross income. For rules relating to employer-operated eating facilities, see § 1.132–7, and for rules relating to employer-operated on-premises athletic facilities, see § 1.132–1(e).

(3) *No reciprocal agreement exception.* The exclusion for a qualified employee discount does not apply to property or services provided by another employer pursuant to a written reciprocal agreement that exists between employers to provide discounts on property and services to employees of the other employer.

(4) *Property or services provided without charge, at a reduced price, or by rebates.* The exclusion for a qualified employee discount applies whether the property or service is provided at no charge (in which case only part of the discount may be excludable as a qualified employee discount) or at a reduced price. The exclusion also applies if the benefit is provided through a partial or total cash rebate of an amount paid for the property or service.

(5) *Property or services provided directly by the employer or indirectly through a third party.* A qualified employee discount may be provided either directly by the employer or indirectly through a third party. For example, an employee of an appliance manufacturer may receive a qualified employee discount on the manufacturer's appliances purchased at a retail store that offers such appliances for sale to customers. The employee may exclude the amount of the qualified employee discount whether the employee is provided the appliance at no charge or purchases it at a reduced price, or whether the employee receives a partial or total cash rebate from either the employer-manufacturer or the retailer. If an employee receives additional rights associated with the property that are not provided by the employee's employer to customers in the ordinary course of the line of business in which the employee performs substantial services (such as the right to return or exchange the property or special warranty rights), the employee may only receive a qualified employee discount with respect to the property and not the additional rights. Receipt of such additional rights may occur, for example, when an employee of a manufacturer purchases property manufactured by the employee's employer at a retail outlet.

(6) *Applicability of nondiscrimination rules.* The exclusion for a qualified employee discount applies to highly compensated employees only if the discount is available on substantially the same terms to each member of a group of employees that is defined under a reasonable classification set up by the employer that does not discriminate in favor of highly compensated employees. See § 1.132–8.

(b) *Employee discount*—(1) *Definition.* The term "employee discount" means the excess of—

(i) The price at which the property or service is being offered by the employer for sale to customers, over

(ii) The price at which the property or service is provided by the employer to an employee for use by the employee. A transfer of property by an employee without consideration is treated as use by the employee for purposes of this section. Thus, for example, if an employee receives a discount on property offered for sale by his employer to customers and the employee makes a gift of the property to his parent, the property will be considered to be provided for use by the employee; thus, the discount will be eligible for exclusion as a qualified employee discount.

(2) *Price to customers*—(i) *Determined at time of sale.* In determining the amount of an employee discount, the price at which the property or service is being offered to customers at the time of the employee's purchase is controlling. For example, assume that an employer offers a product to customers for $20 during the first six months of a calendar year, but at the time the employee purchases the product at a discount, the price at which the product is being offered to customers is $25. In this case, the price from which the employee discount is measured is $25. Assume instead that, at the time the employee purchases the product at a discount, the price at which the product is being offered to customers is $15 and the price charged the employee is $12. The employee discount is measured from $15, the price at which the product is offered for sale to customers at the time of the employee purchase. Thus, the employee discount is $15 −$12, or $3.

(ii) *Quantity discount not reflected.* The price at which a property or service is being offered to customers cannot reflect any quantity discount unless the employee actually purchases the requisite quantity of the property or service.

(iii) *Price to employer's customers controls.* In determining the amount of an employee discount, the price at which a property or service is offered to customers of the employee's employer is controlling. Thus, the price at which the property is sold to the wholesale customers of a manufacturer will generally be lower than the price at which the same property is sold to the customers of a retailer. However, see paragraph (a)(5) of this section regarding the effect of a wholesaler providing to its employees additional rights not provided to customers of the wholesaler in the ordinary course of its business.

(iv) *Discounts to discrete customer or consumer groups.* Subject to paragraph (2)(ii) of this section, if an employer offers for sale property or services at one or more discounted prices to discrete customer or consumer groups, and sales at all such discounted prices comprise at least 35 percent of the employer's gross sales for a representative period, then in determining the amount of an employee discount, the price at which such property or service is being offered to customers for purposes of this section is a discounted price. The applicable discounted price is the current undiscounted price, reduced by the percentage discount at which the greatest percentage of the employer's discounted gross sales are made for such representative period. If sales at different percentage discounts equal the same percentage of the employer's gross sales, the price at which the property or service is being provided to customers may be reduced by the average of the discounts offered to each of the two groups. For purposes of this section, a representative period is the taxable year of the employer immediately preceding the taxable year in which the property or service is provided to the employee at a discount. If more than one employer would be aggregated under section 414 (b), (c), (m), or (o), and not all of the employers have the same taxable year, the employers required to be aggregated must designate the 12-month period to be used in determining gross sales for a representative period. The 12-month period designated, however, must be used on a consistent basis.

(v) *Examples.* The rules provided in this paragraph (b)(2) are illustrated by the following examples:

Example (1). Assume that a wholesale employer offers property for sale to two discrete customer groups at differing prices.

Assume further that during the prior taxable year of the employer, 70 percent of the employer's gross sales are made at a 15 percent discount and 30 percent at no discount. For purposes of this paragraph (b)(2), the current undiscounted price at which the property or service is being offered by the employer for sale to customers may be reduced by the 15 percent discount.

Example (2). Assume that a retail employer offers a 20 percent discount to members of the American Bar Association, a 15 percent discount to members of the American Medical Association, and a ten percent discount to employees of the Federal Government. Assume further that during the prior taxable year of the employer, sales to American Bar Association members equal 15 percent of the employer's gross sales, sales to American Medical Association members equal 20 percent of the employer's gross sales, and sales to Federal Government employees equal 25 percent of the employer's gross sales. For purposes of this paragraph (b)(2), the current undiscounted price at which the property or service is being offered by the employer for sale to customers may be reduced by the ten percent Federal Government discount.

(3) *Damaged, distressed, or returned goods.* If an employee pays at least fair market value for damaged, distressed, or returned property, such employee will not have income attributable to such purchase.

(c) *Gross profit percentage*—(1) *In general*—(i) *General rule.* An exclusion from gross income for an employee discount on qualified property is limited to the price at which the property is being offered to customers in the ordinary course of the employer's line of business, multiplied by the employer's gross profit percentage. The term "gross profit percentage" means the excess of the aggregate sales price of the property sold by the employer to customers (including employees) over the employer's aggregate cost of the property, then divided by the aggregate sales price.

(ii) *Calculation of gross profit percentage.* The gross profit percentage must be calculated separately for each line of business based on the aggregate sales price and aggregate cost of property in that line of business for a representative period. For purposes of this section, a representative period is the taxable year of the employer immediately preceding the taxable year in which the discount is available. For example, if the aggregate amount of sales of property in an employer's line of business for the prior taxable year was $800,000, and the aggregate cost of the property for the year was $600,000, the gross profit percentage would be 25 percent ($800,000 minus $600,000, then divided by $800,000). If two or more employers are required to aggregate under section 414 (b), (c), (m), or (o) (aggregated employer), and if all of the aggregated employers do not share the same taxable year, then the aggregated employers must designate the 12-month period to be used in determining the gross profit percentage. The 12-month period designated, however, must be used on a consistent basis. If an employee performs substantial services in more than one line of business, the gross profit percentage of the line of business in which the property is sold determines the amount of the excludable employee discount.

(iii) *Special rule for employers in their first year of existence.* An employer in its first year of existence may estimate the gross profit percentage of a line of business based on its mark-up from cost. Alternatively, an employer in its first year of existence may determine the gross profit percentage by reference to an appropriate industry average.

(iv) *Redetermination of gross profit percentage.* If substantial changes in an employer's business indicate at any time that it is inappropriate for the prior year's gross profit percentage to be used for the current year, the employer must, within a reasonable period, redetermine the gross profit percentage for the remaining portion of the current year as if such portion of the year were the first year of the employer's existence.

(2) *Line of business.* In general, an employer must determine the gross profit percentage on the basis of all property offered to customers (including employees) in each separate line of business. An employer may instead select a classification of property that is narrower than the applicable line of business. However, the classification must be reasonable. For example, if an employer computes gross profit percentage according to the department in which products are sold, such classification is reasonable. Similarly, it is reasonable to compute gross profit percentage on the basis of the type of merchandise sold (such as high mark-up and low mark-up classifications). It is not reasonable, however, for an employer to classify certain low mark-up products preferred by certain employees (such as highly compensated employees) with high mark-up products or to classify certain high mark-up products preferred by other employees with low mark-up products.

(3) *Generally accepted accounting principles.* In general, the aggregate sales price of property must be determined in accordance with generally accepted accounting principles. An employer must compute the aggregate cost of property in the same manner in which it is computed for the employer's Federal income tax liability; thus, for example, section 263A and the regulations thereunder apply in determining the cost of property.

(d) *Treatment of leased sections of department stores*—(1) *In general*—(i) *General rule.* For purposes of determining whether employees of a leased section of a department store may receive qualified employee discounts at the department store and whether employees of the department store may receive qualified employee discounts at the leased section of the department store, the leased section is treated as part of the line of business of the person operating the department store, and employees of the leased section are treated as employees of the person operating the department store as well as employees of their employer. The term "leased section of a department store" means a section of a department store where substantially all of the gross receipts of the leased section are from over-the-counter sales of property made under a lease, license, or similar arrangement where it appears to the general public that individuals making such sales are employed by the department store. A leased section of a department store which, in connection with the offering of beautician services, customarily makes sales of beauty aids in the ordinary course of business is deemed to derive substantially all of its gross receipts from over-the-counter sales of property.

(ii) *Calculation of gross profit percentage.* For purposes of paragraph (d) of this section, when calculating the gross profit percentage of property and services sold at a department store, sales of property and services sold at the department store, as well as sales of property and services sold at the leased section, are considered. The rule provided in the preceding sentence does not apply, however, if it is more reasonable to calculate the gross profit percentage for the department store and leased section separately, or if it would be inappropriate to combine them (such as where either the department store or the leased section but not both provides employee discounts).

(2) *Employees of the leased section*—(i) *Definition.* For purposes of this paragraph (d), "employees of the leased section" means all employees who perform substantial services at the leased section of the department store regardless of whether the employees engage in over-the-counter sales of property or services. The term "employee" has the same meaning as in section 132(f) and § 1.132–1(b)(1).

(ii) *Discounts offered to either department store employees or employees of the leased section.* If the requirements of this paragraph (d) are satisfied, employees of the leased section may receive qualified employee discounts at the department store whether or not employees of the department store are offered discounts at the leased section. Similarly, employees of the department store may receive a qualified employee discount at the leased section whether or not employees of the leased section are offered discounts at the department store.

(e) *Excess discounts.* Unless excludable under a provision of the Internal Revenue Code of 1986 other than section 132(a)(2), an employee discount provided on property is excludable to the extent of the gross profit percentage multiplied by the price at which the property is being offered for sale to customers. If an employee discount exceeds the gross profit percentage, the excess discount is includible in the employee's income. For example, if the discount on employer-purchased property is 30 percent and the employer's gross profit percentage for the period in the relevant line of business is 25 percent, then 5 percent of the price at which the property is being offered for sale to customers is includible in the empoyee's income. With respect to services, an employee discount of up to 20 percent may be excludable. If an employee discount exceeds 20 percent, the excess discount is includible in the employee's income. For example, assume that a commercial airline provides a pass to each of its employees permitting the employees to obtain a free round-trip coach ticket with a confirmed seat to any destination the airline services. Neither the exclusion of section 132(a)(1) (relating to no-additional-cost services) nor any other statutory exclusion applies to a flight taken primarily for personal purposes by an employee under this program. However, an employee discount of up to 20 percent may be excluded as a qualified employee discount. Thus, if the price charged to customers for the flight taken is $300 (under restrictions comparable to those actually placed on travel associated with the employee airline ticket), $60 is excludible from gross income as a qualified employee discount and $240 is includible in gross income.

Par. 11. Section 1.132-4 is added and reads as follows:

§ 1.132-4 Line of business limitaiton.

(a) *In general*—(1) *Applicability*—(i) *General rule.* A no-additional-cost service or a qualified employee discount provided to an employee is only available with respect to property or services that are offered for sale to customers in the ordinary course of the same line of business in which the employee receiving the property or service performs substantial services. Thus, an employee who does not perform substantial services in a particular line of business of the employer may not exclude from income under section 132 (a)(1) or (a)(2) the value of services or employee discounts received on property or services in that line of business. For rules that relax the line of business requirement, see paragraphs (b) through (g) of this section.

(ii) *Property and services sold to employees rather than customers.* Because the property or services must be offered for sale to customers in the ordinary course of the same line of business in which the employee performs substantial services, the line of business limitation is not satisfied if the employer's products or services are sold primarily to employees of the employer, rather than to customers. Thus, for example, an employer in the banking line of business is not considered in the variety store line of business if the employer establishes an employee store that offers variety store items for sale to the employer's employees. See § 1.132-7 for rules relating to employer-operated eating facilities, and see § 1.132-1(e) for rules relating to employer-operated on-premises athletic facilities.

(iii) *Performance of substantial services in more than one line of business.* An employee who performs services in more than one of the employer's lines of business may only exclude no-additional-cost services and qualified employee discounts in the lines of business in which the employee performs substantial services.

(iv) *Performance of services that directly benefit more than one line of business*—(A) *In general.* An employee who performs substantial services that directly benefit more than one line of business of an employer is treated as performing substantial services in all such line of business. For example, an employee who maintains accounting records for an employer's three lines of business may receive qualified employee discounts in all three lines of business. Similarly, if an employee of a minor line of business of an employer that is significantly interrelated with a major line of business of the employer performs substantial services that directly benefit both the major and the minor lines of business, the employee is treated as performing substantial services for both the major and the minor lines of business.

(B) *Examples.* The rules provided in this paragraph (a)(1)(iv) are illustrated by the following examples:

Example (1). Assume that employees of units of an employer provide repair or financing services, or sell by catalog, with respect to retail merchandise sold by the employer. Such employees may be considered to perform substantial services for the retail merchandise line of business under paragraph (a)(1)(iv)(A) of this section.

Example (2). Assume that an employer operates a hospital and a laundry service. Assume further that some of the gross receipts of the laundry service line of business are from laundry services sold to customers other than the hospital employer. Only the employees of the laundry service who perform substantial services which directly benefit the hospital line of business (through the provision of laundry services to the hospital) will be treated as performing substantial services for the hospital line of business. Other employees of the laundry service line of business will not be treated as employees of the hospital line of business.

Example (3). Assume the same facts as in example (2), except that the employer also operates a chain of dry cleaning stores. Employees who perform substantial services which directly benefit the dry cleaning stores but who do not perform substantial services that directly benefit the hospital line of business will not be treated as performing substantial services for the hospital line of business.

(2) *Definition*—(i) *In general.* An employer's line of business is determined by reference to the Enterprise Standard Industrial Classification Manual (ESIC Manual) prepared by the Statistical Policy Division of the U.S. Office of Management and Budget. An employer is considered to have more than one line of business if the employer offers for sale to customers property or services in more than one two-digit code classification referred to in the ESIC Manual.

(ii) *Examples.* Examples of two-digit classifications are general retail merchandise stores; hotels and other lodging places; auto repair, services, and garages; and food stores.

(3) *Aggregation of two-digit classifications.* If, pursuant to paragraph (a)(2) of this section, an employer has more than one line of business, such lines of business will be treated as a single line of business where and to the extent that one or more of the following aggregation rules apply:

(i) If it is uncommon in the industry of the employer for any of the separate lines of business of the employer to be operated without the others, the separate lines of business are treated as one line of business.

(ii) If it is common for a substantial number of employees (other than those employees who work at the headquarters or main office of the employer) to perform substantial services for more than one line of business of the employer, so that determination of which employees perform substantial services for which line or lines of business would be difficult, then the separate lines of business of the employer in which such employees perform substantial services are treated as one line of business. For example, assume that an employer operates a delicatessen with an attached service counter at which food is sold for consumption on the premises. Assume further that most but not all employees work both at the delicatessen and at the service counter. Under the aggregation rule of this paragraph (a)(3)(ii), the delicatessen and the service counter are treated as one line of business.

(iii) If the retail operations of an employer that are located on the same premises are in separate lines of business but would be considered to be within one line of business under paragraph (a)(2) of this section if the merchandise offered for sale in such lines of business were offered for sale at a department store, then the operations are treated as one line of business. For example, assume that on the same premises an employer sells both women's apparel and jewelry. Because, if sold together at a department store, the operations would be part of the same line of business, the operations are treated as one line of business.

(b) *Grandfather rule for certain retail stores*—(1) *In general.* The line of business limitation may be relaxed under the special grandfather rule of this paragraph (b). Under this special grandfather rule, if—

(i) On October 5, 1983, at least 85 percent of the employees of one member of an affiliated group (as defined in section 1504 without regard to subsections (b)(2) and (b)(4) thereof) ("first member") were entitled to receive employee discounts at retail department stores operated by another member of the affiliated group ("second member"), and

(ii) More than 50 percent of the previous year's sales of the affiliated group are attributable to the operation of retail department stores, then, for purposes of the exclusion from gross income of a qualified employee discount, the first member is treated as engaged in the same line of business as the second member (the operator of the retail department stores). Therefore, employees of the first member of the affiliated group may exclude from income qualified employee discounts received at the retail department stores operated by the second member. However, employees of the second member of the affiliated group may not under this paragraph (b)(1) exclude any discounts received on property or services offered for sale to customers by the first member of the affiliated group.

(2) *Taxable year of affiliated group.* If not all of the members of an affiliated group have the same taxable year, the affiliated group must designate the 12-month period to be used in determining the "previous year's sales" (as referred to in the grandfather rule of this paragraph (b)). The 12-month period designated, however, must be used on a consistent basis.

(3) *Definition of "sales."* For purposes of this paragraph (b), the term "sales" means the gross receipts of an affiliated group, based upon the accounting methods used by its members.

(4) *Retired and disabled employees.* For purposes of this paragraph (b), an employee includes any individual who was, or whose spouse was, formerly employed by the first member of an affiliated group and who separated from service with the member by reason of retirement or disability if the second member of the group provided employee discounts to the t individual on October 5, 1983.

(5) *Increase of employee discount.* If, after October 5, 1983, the employee discount described in this paragraph (b) is increased, the grandfather rule of this paragraph (b) does not apply to the amount of the increase. For example, if on January 1, 1989, the employee discount is increased from 10 percent to 15 percent, the grandfather rule will not apply to the additional 5 percent discount.

(c) *Grandfather rule for telephone service provided to predivestiture retirees.* All entities subject to the modified final judgment (as defined in section 559(c)(5) of the Tax Reform Act of 1984) shall be treated as a single employer engaged in the same line of business for purposes of determining whether telephone service provided to certain employees is a no-additional-cost service. The preceding sentence applies only in the case of an employee who by reason of retirement or disability separated before January 1, 1984, from the service of an entity subject to the modified final judgment. This paragraph (c) only applies to services provided to such employees as of January 1, 1984. For a special no-additional-cost service rule relating to such employees and such services, see § 1.132-2(a)(8).

(d) *Special rule for certain affiliates of commercial airlines*—(1) *General rule.* If a qualified affiliate is a member of an airline affiliated group and employees of the qualified affiliate who are directly engaged in providing airline-related services are entitled to no-additional-cost service with respect to air transportation provided by such other member, then, for purposes of applying § 1.132-2 (relating to no-additional-cost services with respect to such air transportation), such qualified affiliate shall be treated as engaged in the same line of business as such other member.

(2) *"Airline affiliated group" defined.* An "airline affiliated group" is an affiliated group (as defined in section 1504 (a)) one of whose members operates a commercial airline that provides air transportation to customers on a per-seat basis.

(3) *"Qualified affiliate" defined.* A "qualified affiliate" is any corporation that is predominantly engaged in providing airline-related services. The term "airline-related services" means any of the following services provided in connection with air transportation:

(i) Catering,

(ii) Baggage handling,

(iii) Ticketing and reservations,

(iv) Flight planning and weather analysis, and

(v) Restaurants and gift shops located at an airport.

(e) *Grandfather rule for affiliated groups operating airlines.* The line of business limitation may be relaxed under the special grandfather rule of this paragraph (e). Under this special grandfather rule, if, as of September 12, 1984—

(1) An individual—

(i) Was an employee (within the meaning of § 1.132-1 (b)) of one member of an affiliated group (as defined in section 1504(a)) ("first corporation"), and

(ii) Was eligible for no-additional-cost services in the form of air transportation provided by another member of such affiliated group ("second corporation"),

(2) At least 50 percent of the individuals performing services for the first corporation were, or had been employees of, or had previously performed services for, the second corporation, and

(3) The primary business of the affiliated group was air transportation of passengers, then, for purposes of applying sections 132(a) (1) and (2), with respect to no-additional-cost services and qualified employee discounts

provided after December 31, 1984, for that individual by the second corporation, the first corporation is treated as engaged in the same air transporation line of business as the second corporation. For purposes of the preceding sentence, an employee of the second corporation who is performing services for the first corporation is also treated as an employee of the first corporation.

(f) *Special rule for qualified air transportation organizations.* A qualified air transportation organization is treated as engaged in the line of business of providing air transportation with respect to any individual who performs services for the organization if those services are peformed primarily for persons engaged in providing air transportation, and are of a kind which (if performed on September 12, 1984) would qualify the individual for no-additional-cost services in the form of air transportation. The term "qualified air transportation organization" means any organization—

(1) If such organization (or a predecessor) was in existence on September 12, 1984,

(2) If such organization is—

(i) A tax-exempt organization under section(c)(6) whose membership is limited to entities engaged in the transportation by air of individuals or property for compensation or hire, or

(ii) Is a corporation all the stock of which is owned entirely by entities described in paragraph (f)(2)(i) of this section, and

(3) If such organization is operated in furtherance of the activities of its members or owners.

(g) *Relaxation of line of business requirement.* The line of business requirement may be relaxed under an elective grandfather rule provided in section 4977. For rules relating to the section 4977 election, see § 54.4977–1T.

(h) *Line of business requirement does not expand benefits eligible for exclusion.* The line of business requirement limits the benefits eligible for the no-additional-cost service and qualified employee discount exclusions to property or services provided by an employer to its customers in the ordinary course of the line of business of the employer in which the employee performs substantial services. The requirement is intended to ensure that employers do not offer, on a tax-free or reduced basis, property or services to employees that are not offered to the employer's customers, even if the property or services offered to the customers and the employees are within the same line of business (as defined in this section).

Par. 12. Section 1.132–5 is added and reads as follows:

§ 1.132–5 Working condition fringes.

(a) *In general*—(1) *Definition.* Gross income does not include the value of a working condition fringe. A "working condition fringe" is any property or service provided to an employee of an employer to the extent that, if the employee paid for the property or service, the amount paid would be allowable as a deduction under section 162 or 167.

(i) A service or property offered by an employer in connection with a flexible spending account is not excludable from gross income as a working condition fringe. For purposes of the preceding sentence, a flexible spending account is an agreement (whether or not written) entered into between an employer and an employee that makes available to the employee over a time period a certain level of unspecified non-cash benefits with a pre-determined cash value.

(ii) If, under section 274 or any other section, certain substantiation requirements must be met in order for a deduction under section 162 or 167 to be allowable, then those substantiation requirements apply when determining whether a property or service is excludable as a working condition fringe.

(iii) An amount that would be deductible by the employee under a section other than section 162 or 167, such as section 212, is not a working condition fringe.

(iv) A physical examination program provided by the employer is not excludable as a working condition fringe even if the value of such program might be deductible to the employee under section 213. The previous sentence applies without regard to whether the employer makes the program mandatory to some or all employees.

(v) A cash payment made by an employer to an employee will not qualify as a working condition fringe unless the employer requires the employee to—

(A) Use the payment for expenses in connection with a specific or pre-arranged activity or undertaking for which a deduction is allowable under section 162 or 167,

(B) Verify that the payment is actually used for such expenses, and

(C) Return to the employer any part of the payment not so used.

(vi) The limitation of section 67(a) (relating to the two-percent floor on miscellaneous itemized deductions) is not considered when determining the amount of a working condition fringe. For example, assume that an employer provides a $1,000 cash advance to Employee A and that the conditions of paragraph (a)(1)(v) of this section are not satisfied. Even to the extent A uses the allowance for expenses for which a deduction is allowable under section 162 and 167, because such cash payment is not a working condition fringe, section 67(a) applies. The $1,000 payment is includible in A's gross income and subject to income and employment tax withholding. If, however, the conditions of paragraph (a)(1)(v) of this section are satisfied with respect to the payment, then the amount of A's working condition fringe is determined without regard to section 67(a). The $1,000 payment is excludible from A's gross income and not subject to income and employment tax reporting and withholding.

(2) *Trade or business of the employee*—(i) *General.* If the hypothetical payment for a property or service would be allowable as a deduction with respect to a trade or business of an employee other than the employee's trade or business of being an employee of the employer, it cannot be taken into account for purposes of determining the amount, if any, of the working condition fringe.

(ii) *Examples.* The rule of paragraph (a)(2)(i) of this section may be illustrated by the following examples:

Example (1). Assume that, unrelated to company X's trade or business and unrelated to employee A's trade or business of being an employee of company X, A is a member of the board of directors of company Y. Assume further that company X provides A with air transportation to a company Y board of director's meeting. A may not exclude from gross income the value of the air transportation to the meeting as a working condition fringe. A may, however, deduct such amount under section 162 if the section 162 requirements are satisfied. The result would be the same whether the air transportation was provided in the form of a flight on a commercial airline or a seat on a company X airplane.

Example (2). Assume the same facts as in example (1) except that A serves on the board of directors of company Z and company Z regularly purchases a significant amount of goods and services from company X. Because of the relationship between Company Z and A's employer, A's membership on Company Z's board of directors is related to A's trade or business of being an employee of Company X. Thus, A may exclude from gross income the value of air transportation to board meetings as a working condition fringe.

Example (3). Assume the same facts as in example (1) except that A serves on the board of directors of a charitable organization. Assume further that the service by A on the charity's board is substantially related to company X's trade or business. In this case, A may exclude from gross income the value of air transportation to board meetings as a working condition fringe.

Example (4). Assume the same facts as in example (3) except that company X also provides A with the use of a company X conference room which A uses for monthly meetings relating to the charitable organization. Also assume that A uses company X's copy machine and word processor each month in connection with functions of the charitable organization. Because of the substantial business benefit that company X derives from A's service on the board of the charity, A may exclude as a working condition fringe the value of the use of company X property in connection with the charitable organization.

(b) *Vehicle allocation rules*—(1) *In general*—(i) *General rule.* In general, with respect to an employer-provided vehicle, the amount excludable as a working condition fringe is the amount that would be allowable as a deduction under section 162 or 167 if the employee paid for the availability of the vehicle. For example, assume that the value of the availability of an employer-provided vehicle for a full year is $2,000, without regard to any working condition fringe (i.e., assuming all personal use). Assume Further that the employee drives the vehicle 6,000 miles for his employer's business and 2,000 miles for reasons other than the employer's business. In this situation, the value of the working condition fringe is $2,000 multiplied by a fraction, the numerator of which is the business-use mileage (6,000 miles) and the denominator of which is the total mileage (8,000 miles). Thus, the value of the working condition fringe is $1,500. The total amount includible in the employee's gross income on account of the availability of the vehicle is $500 ($2,000 − $1,500). For purposes of this section, the term "vehicle" has the meaning given the term in § 1.61–21(e)(2). Generally, when determining the amount of an employee's working condition fringe, miles accumulated on the vehicle by all employees of the employer during the period in which the vehicle is available to the employee are considered. For example, assume that during the year in which the vehicle is available to the employee in the above example, other employees accumulate 2,000 additional miles on the vehicle (while the employee is not in the automobile). In this case, the value of the working condition fringe is $2,000 multiplied by a fraction, the numerator of which is the business-use mileage by the employee (including all mileage (business and personal) accumulated by other employees) (8,000 miles) and the denominator of which is the total mileage (including all mileage accumulated by other employees) (10,000 miles). Thus, the value of the working condition fringe is $1,600; the total amount includible in the employee's gross income on account of the availability of the vehicle is $400 ($2,000 − $1,600). If, however, substantially all of the use of the automobile by other employees in the employer's business is limited to a certain period, such as the last three months of the year, the miles driven by the other employees during that period would not be considered when determining the employee's working condition fringe exclusion. Similarly, miles driven by other employees are not considered if the pattern of use of the employer-provided automobiles is designed to reduce Federal taxes. For example, assume that an employer provides employees A and B each with the availability of an employer-provided automobile and that A uses the automobile assigned to him 80 percent for the employer's business and that B uses the automobile assigned to him 30 percent for the employer's business. If A and B alternate the use of their assigned automobiles each week in such a way as to achieve a reduction in federal taxes, then the employer may count only miles placed on the automobile by the employee to whom the automobile is assigned when determining each employee's working condition fringe.

(ii) *Use by an individual other than the employee.* For purposes of this section, if the availability of a vehicle to an individual would be taxed to an employee, use of the vehicle by the individual is included in references to use by the employee.

(iii) *Provision of an expensive vehicle for personal use.* If an employer provides an employee with a vehicle that an employee may use in part for personal purposes, there is no working condition fringe exclusion with respect to the personal miles driven by the employee; if the employee paid for the availability of the vehicle, he would not be entitled to deduct under section 162 or 167 any part of the payment attributable to personal miles. The amount of the inclusion is not affected by the fact that the employee would have chosen the availability of a less expensive vehicle. Moreover, the result is the same even though the decision to provide an expensive rather than an inexpensive vehicle is made by the employer for bona fide noncompensatory business reasons.

(iv) *Total value inclusion.* In lieu of excluding the value of a working condition fringe with respect of an automobile, an employer using the automobile lease valuation rule of § 1.61–21(d) may include in an employee's gross income the entire Annual Lease Value of the automobile. Any deduction allowable to the employee under section 162 or 167 with respect to the automobile may be taken on the employee's income tax return. The total inclusion rule of this paragraph (b)(1)(iv) is not available if the employer is valuing the use or availability of a vehicle under general valuation principles or a special valuation rule other than the automobile lease valuation rule. See section § 1.162–25T for rules relating to the employee's deduction.

(v) *Shared usage.* In calculating the working condition fringe benefit exclusion with respect to a vehicle provided for use by more than one employee, an employer shall compute the working condition fringe in a manner consistent with the allocation of the value of the vehicle under section 1.61–21(c)(2)(ii)(B).

(2) *Use of different employer-provided vehicles.* The working condition fringe exclusion must be applied on a vehicle-by-vehicle basis. For example, assume that automobile Y is available to employee D for 3 days in January and for 5 days in March, and automobile Z is available to D for a week in July. Assume further that the Daily Lease Value, as defined in § 1.61–21(d)(4)(ii), of each automobile is $50. For the eight days of availability of Y in January and March, D uses Y 90 percent for business (by mileage). During July, D uses Z 60 percent for business (by mileage). The value of the working condition fringe is determined separately for each automobile. Therefore, the working condition fringe for Y is $360 ($400 × .90) leaving an income inclusion of $40. The working condition fringe for Z is $210 ($350 × .60), leaving an income inclusion of $140. If the value of the availability of an automobile is determined under the Annual Lease Value rule for one period and Daily Lease Value rule for a second period (see § 1.61–21(d)), the working condition fringe exclusion must be calculated separately for the two periods.

(3) *Provision of a vehicle and chauffeur services*—(i) *General rule.* In general, with respect to the value of chauffeur services provided by an employer, the amount excludable as a working condition fringe is the amount that would be allowable as a deduction under section 162 and 167 if the employee paid for the chauffeur services. The working condition fringe with respect to a chauffeur is determined separately from the working condition fringe with respect to the vehicle. An employee may exclude from

gross income the excess of the value of the chauffeur services over the value of the chauffeur services for personal purposes (such as commuting) as determined under § 1.61-21(b)(5). See § 1.61-21(b)(5) for additional rules and examples concerning the valuation of chauffeur services. See § 1.132-5(m)(5) for rules relating to an exclusion from gross income for the value of bodyguard/chauffeur services. When determining whether miles placed on the vehicle are for the employer's business, miles placed on the vehicle by a chauffeur between the chauffeur's residence and the place at which the chauffeur picks up (or drops off) the employee are with respect to the employee (but not the chauffeur) considered to be miles placed on the vehicle for the employer's business and thus eligible for the working condition fringe exclusion. Thus, because miles placed on the vehicle by a chauffeur between the chauffeur's residence and the place at which the chauffeur picks up (or drops off) the employee are not considered business miles with respect to the chauffeur, the value of the availability of the vehicle for commuting is includible in the gross income of the chauffeur. For general and special rules concerning the valuation of the use of employer-provided vehicles, see paragraphs (b) through (f) of § 1.61-21.

(ii) *Examples.* The rules of paragraph (b)(3)(i) of this section are illustrated by the following examples:

Example (1). Assume that an employer makes available to an employee an automobile and a chauffeur. Assume further that the value of the chauffeur services determined in accordance with § 1.61-21 is $30,000 and that the chauffeur spends 30 percent of each workday driving the employee for personal purposes. There may be excluded from the employee's income 70 percent of $30,000, or $21,000, leaving an income inclusion with respect to the chauffeur services of $9,000.

Example (2). Assume that the value of the availability of an employer-provided vehicle for a year is $4,850 and that the value of employer-provided chauffeur services with respect to the vehicle for the year is $20,000. Assume further that 40 percent of the miles placed on the vehicle are for the employer's business and that 60 percent are for other purposes. In addition, assume that the chauffeur spends 25 percent of each workday driving the employee for personal purposes (i.e., 2 hours). The value of the chauffeur services includible in the employee's income is 25 percent of $20,000, or $5,000. The excess of $20,000 over $5,000 or $15,000 is excluded from the employee's income as a working condition fringe. The amount excludable as a working condition fringe with respect to the vehicle is 40 percent of $4,850, or $1,940 and the amount includible is $4,850 − $1,940, or $2,910.

(c) *Applicability of substantiation requirements of sections 162 and 274 (d)*—(1) *In general.* The value of property or services provided to an employee may not be excluded from the employee's gross income as a working condition fringe, by either the employer or the employee, unless the applicable substantiation requirements of either section 274(d) or section 162 (whichever is applicable) and the regulations thereunder are satisfied. The substantiation requirements of section 274(d) apply to an employee even if the requirements of section 274 do not apply to the employee's employer for deduction purposes (such as when the employer is a tax-exempt organization or a governmental unit).

(2) *Section 274(d) requirements.* The substantiation requirements of section 274(d) are satisfied by "adequate records or sufficient evidence corroborating the [employee's] own statement". Therefore, such records or evidence provided by the employee, and relied upon by the employer to the extent permitted by the regulations promulgated under section 274(d), will be sufficient to substantiate a working condition fringe exclusion.

(d) *Safe harbor substantiation rules*—(1) *In general.* Section 1.274-6T provides that the substantiation requirements of section 274(d) and the regulations thereunder may be satisfied, in certain circumstances, by using one or more of the safe harbor rules prescribed in § 1.274-6T. If the employer uses one of the safe harbor rules prescribed in § 1.274-6T during a period with respect to a vehicle (as defined in § 1.61-21(e)(2)), that rule must be used by the employer to substantiate a working condition fringe exclusion with respect to that vehicle during the period. An employer that is exempt from Federal income tax may still use one of the safe harbor rules (if the requirements of that section are otherwise met during a period) to substantiate a working condition fringe exclusion with respect to a vehicle during the period. If the employer uses one of the methods prescribed in § 1.274-6T during a period with respect to an employer-provided vehicle, that method may be used by an employee to substantiate a working condition fringe exclusion with respect to the same vehicle during the period, as long as the employee includes in gross income the amount allocated to the employee pursuant to § 1.274-6T and this section. (See § 1.61-21(c)(2) for other rules concerning when an employee must include in income the amount determined by the employer.) If, however, the employer uses the safe harbor rule prescribed in § 1.274-6T(a)(2) or (3) and the employee without the employer's knowledge uses the vehicle for purposes other than de minimis personal use (in the case of the rule prescribed in § 1.274-6T(a)(2)), or for purposes other than de minimis personal use and commuting (in the case of the rule prescribed in § 1.274-6T(a)(3)), then the employees must include an additional amount in income for the unauthorized use of the vehicle.

(2) *Period for use of safe harbor rules.* The rules prescribed in this paragraph (d) assume that the safe harbor rules prescribed in § 1.274-6T are used for a one-year period. Accordingly, references to the value of the availability of a vehicle, amounts excluded as a working condition fringe, etc., are based on a one-year period. If the safe harbor rules prescribed in § 1.274-6T are used for a period of less than a year, the amounts referred to in the previous sentence must be adjusted accordingly. For purposes of this section, the term "personal use" has the same meaning as prescribed in § 1.274-6T (e)(5).

(e) *Safe harbor substantiation rule for vehicles not used for personal purposes.* For a vehicle described in § 1.274-6T(a)(2) (relating to certain vehicles not used for personal purposes), the working condition fringe exclusion is equal to the value of the availability of the vehicle if the employer uses the method prescribed in § 1.274-6T(a)(2).

(f) *Safe harbor substantiation rule for vehicles not available to employees for personal use other than commuting.* For a vehicle described in § 1.274-6T(a)(3) (relating to certain vehicles not used for personal purposes other than commuting), the working condition fringe exclusion is equal to the value of the availability of the vehicle for purposes other than commuting if the employer uses the method prescribed in § 1.274-6T(a)(3). This rule applies only if the special rule for valuing commuting use, as prescribed in § 1.61-21(f), is used and the amount determined under the special rule is either included in the employee's income or reimbursed by the employee.

(g) *Safe harbor substantiation rule for vehicles used in connection with the business of farming that are available to employees for personal use*—(1) *In general.* For a vehicle described in § 1.274-6T(b) (relating to certain vehicles used in connection with the business of farming), the working condition fringe exclusion is calculated by multiplying the value of the availability of the vehicle by 75 percent.

(2) *Vehicles available to more than one individual.* If the vehicle is available to more than one individual, the

employer must allocate the gross income inclusion attributable to the vehicle (25 percent of the value of the availability of the vehicle) among the employees (and other individuals whose use would not be attributed to an employee) to whom the vehicle was available. This allocation must be done in a reasonable manner to reflect the personal use of the vehicle by the individuals. An amount that would be allocated to a sole proprietor reduces the amounts that may be allocated to employees but is otherwise to be disregarded for purposes of this paragraph (g). For purposes of this paragraph (g), the value of the availability of a vehicle may be calculated as if the vehicle were available to only one employee continuously and without regard to any working condition fringe exclusion.

(3) *Examples.* The following examples illustrate a reasonable allocation of gross income with respect to an employer-provided vehicle between two employees:

Example (1). Assume that two farm employees share the use of a vehicle that for a calendar year is regularly used directly in connection with the business of farming and qualifies for use of the rule in § 1.274-6T(b). Employee A uses the vehicle in the morning directly in connection with the business of farming and employee B uses the vehicle in the afternoon directly in connection with the business of farming. Assume further that employee B takes the vehicle home in the evenings and on weekends. The employer should allocate all the income attributable to the availability of the vehicle to employee B.

Example (2). Assume that for a calendar year, farm employees C and D share the use of a vehicle that is regularly used directly in connection with the business of farming and qualifies for use of the rule in § 1.2.4-6T(b). Assume further that the employees alternate taking the vehicle home in the evening and alternate the availability of the vehicle for personal purposes on weekends. The employer should allocate the income attributable to the availability of the vehicle for personal use (25 percent of the value of the availability of the vehicle) equally between the two employees.

Example (3). Assume the same facts as in example (2) except that C is the sole proprietor of the farm. Based on these facts, C should allocate the same amount of income to D as was allocated to D in example (2). No other income attributable to the availability of the vehicle for personal use should be allocated.

(h) *Qualified nonpersonal use vehicles.* (1) *In general.* Except as provided in paragraph (h)(2) of this section, 100 percent of the value of the use of a qualified nonpersonal use vehicle (as described in § 1.274-5T(k)) is excluded from gross income as a working condition fringe, provided that, in the case of a vehicle described in paragraph (k) (3) through (6) of that section, the use of the vehicle conforms to the requirements of that paragraph.

(2) *Shared usage of qualified nonpersonal use vehicles.* In general, a working condition fringe under paragraph (h) of this section is available to the driver and all passengers of a qualified nonpersonal use vehicle. However, a working condition fringe under this paragraph (h) is available only with respect to the driver and not with respect to any passengers of a qualified nonpersonal use vehicle described in § 1.274-5T(k)(2)(ii) (L) or (P). In this case, the passengers must comply with provisions of this section (excluding this paragraph (h)) to determine the applicability of the working condition fringe exclusion. For example, if an employer provides a passenger bus with a capacity of 25 passengers to its employees for purposes of transporting employees to and/or from work, the driver of the bus may exclude from gross income as a working condition fringe 100 percent of the value of the use of the vehicle. The value of the commuting use of the employer-provided bus by the employee-passengers is includible in their gross incomes. See § 1.61-21(f) for a special rule to value the commuting-only use of employer-provided vehicles.

(i) [Reserved].

(j) *Application of section 280F.* In determining the amount, if any, of an employee's working condition fringe, section 280F and the regulations thereunder do not apply. For example, assume that an employee has available for a calendar year an employer-provided automobile with a fair market value of $28,000. Assume further that the special rule provided in § 1.61-21(d) is used yielding an Annual Lease Value, as defined in § 1.61-21(d), of $7,750, and that all of the employee's use of the automobile is for the employer's business. The employee would be entitled to exclude as a working condition fringe the entire Annual Lease Value, despite the fact that if the employee paid for the availability of the automobile, an income inclusion would be required under § 1.280F-6(d)(1). This paragraph (j) does not affect the applicability of section 280F to the employer with respect to such employer-provided automobile, nor does it affect the applicability of section 274 to either the employer or the employee. For rules concerning substantiation of an employee's working condition fringe, see paragraph (c) of this section.

(k) *Aircraft allocation rule.* In general, with respect to a flight on an employer-provided aircraft, the amount excludable as a working condition fringe is the amount that would be allowable as a deduction under section 162 or 167 if the employee paid for the flight on the aircraft. For example, if employee P and P's spouse fly on P's employer's airplane primarily for business reasons of P's employer so that P could deduct the expenses relating to the trip to the extent of P's payments, the value of the flights is excludable from gross income as a working condition fringe. However, if P's children accompany P on the trip primarily for personal reasons, the value of the flights by P's children are includible in P's gross income. See § 1.61-21 (g) for special rules for valuing personal flights on employer-provided aircraft.

(l) [Reserved.]

(m) *Employer-provided transportation for security concerns*—(1) *In general.* The amount of a working condition fringe exclusion with respect to employer-provided transportation is the amount that would be allowable as a deduction under section 162 or 167 if the employee paid for the transportation. Generally, if an employee pays for transportation taken for primarily personal purposes, the employee may not deduct any part of the amount paid. Thus, the employee may not generally exclude the value of employer-provided transportation as a working condition fringe if such transportation is primarily personal. If, however, for bona fide business-oriented security concerns, the employee purchases transportation that provides him or her with additional security, the employee may generally deduct the excess of the amount actually paid for the transportation over the amount the employee would have paid for the same mode of transportation absent the bona fide business-oriented security concerns. This is the case whether or not the employee would have taken the same mode of transportation absent the bona fide business-oriented security concerns. With respect to a vehicle, the phrase "the same mode of transportation" means use of the same vehicle without the additional security aspects, such as bulletproof glass. With respect to air transportation, the phrase "the same mode of transportation" means comparable air transportation. These same rules apply to the determination of an employee's working condition fringe exclusion. For example, if an employer provides an employee with a vehicle for commuting and, because of bona fide business-oriented security concerns, the vehicle is specially designed for security, then the employee may exclude from gross income the value of the special security design as a working

condition fringe. The employee may not exclude the value of the commuting from income as a working condition fringe because commuting is a nondeductible personal expense. Similarly, if an employee travels on a personal trip in an employer-provided aircraft for bona fide business-oriented security concerns, the employee may exclude the excess, if any, of the value of the flight over the amount the employee would have paid for the same mode of transportation, but for the bona fide business-oriented security concerns. Because personal travel is a nondeductible expense, the employee may not exclude the total value of the trip as a working condition fringe.

(2) *Demonstration of bona fide business-oriented security concerns*—(i) *In general.* For purposes of this paragraph (m), the existence of a bona fide business-oriented security concern for the furnishing of a specific form of transportation to an employee is determined on the basis of all facts and circumstances. Examples of factors indicating a bona fide business-oriented security concern are—

(A) *Terrorist activity.* A recent history of violent terrorist activity (such as bombings) in the geographic area in which the transportation is provided, unless that activity (*1*) is focused on a group of individuals which does not include the employee or a similarly situated employee of an employer, or (*2*) occurs to a significant degree only in a location within the geographic area where the employee does not travel;

(B) *Death threat.* A threat on the life of the employee because of the employee's status as an employee of the employer, or on the life of a similarly situated employee because of such employee's status as an employee of an employer;

(C) *Threat of kidnapping.* A threat of kidnapping the employee because of the employee's status as an employee of the employer or of kidnapping a similarly situated employee because of such employee's status as an employee of an employer; or

(D) *Threat of serious bodily harm.* A threat of imposing serious bodily harm on the employee because of the employee's status as an employee of the employer, or on a similarly situated employee because of such employee's status as an employee of an employer.

(ii) *Establishment of overall security program.* Notwithstanding anything in paragraph (m)(2)(i) of this section to the contrary, no bona fide business-oriented security concern will be deemed to exist unless the employee's employer establishes to the satisfaction of the Commissioner that an overall security program has been provided with respect to the employee involved. An overall security program is deemed to exist if the requirements of paragraph (m)(2)(iv) of this section are satisfied (relating to an independent security study).

(iii) *Overall security program*—(A) *Defined.* An overall security program is one in which security is provided to protect the employee on a 24-hour basis. The employee must be protected while at the employee's residence, while commuting to and from the employee's workplace, and while at the employee's workplace. In addition, the employee must be protected while traveling both at home and away from home, whether for business or personal purposes. An overall security program must include the provision of a bodyguard/chauffeur who is trained in evasive driving techniques; an automobile specially equipped for security; guards, metal detectors, alarms, or similar methods of controlling access to the employee's workplace and residence; and, in appropriate cases, flights on the employer's aircraft for business and personal reasons.

(B) *Application.* There is no overall security program when, for example, security is provided at the employee's workplace but not at the employee's residence. In addition, the fact that an employer requires an employee to travel on the employer's aircraft, or in an employer-provided vehicle that contains special security features, does not alone constitute an overall security program. The preceding sentence applies regardless of the existence of a corporate or other resolution requiring the employee to travel in the employer's aircraft or vehicle for personal as well as business reasons.

(iv) *Effect of an independent security study.* An overall security program with respect to an employee is deemed to exist if the conditions of this paragraph (m)(2)(iv) are satisfied:

(A) A security study is performed with respect to the employer and the employee (or a similarly situated employee of the employer) by an independent security consultant;

(B) The security study is based on an objective assessment of all facts and circumstances;

(C) The recommendation of the security study is that an overall security program (as defined in paragraph (m)(2)(iii) of this section) is not necessary and the recommendation is reasonable under the circumstances; and

(D) The employer applies the specific security recommendations contained in the security study to the employee on a consistent basis.

The value of transportation-related security provided pursuant to a security study that meets the requirements of this paragraph (m)(2)(iv) may be excluded from income if the security study conclusions are reasonable and, but for the bona fide business-oriented security concerns, the employee would not have had such security. No exclusion from income applies to security provided by the employer that is not recommended in the security study. Security study conclusions may be reasonable even if, for example, it is recommended that security be limited to certain geographic areas, as in the case in which air travel security is provided only in certain foreign countries.

(3) *Application of security rules to spouses and dependents.* (i) *In general.* If a bona fide business-oriented security concern exists with respect to an employee (because, for example, threats are made on the life of an employee), the bona fide business-oriented security concern is deemed to exist with respect to the employee's spouse and dependents to the extent provided in this paragraph (m)(3).

(ii) *Certain transportation.* If a working condition fringe exclusion is available under this paragraph (m) for transportation in a vehicle or aircraft provided for a bona fide business-oriented security concern with respect to an employee, the requirements of this paragraph (m) are deemed to be satisfied with respect to transportation in the same vehicle or aircraft provided at the same time to the employee's spouse and dependent children.

(iii) *Other.* Except as provided in paragraph (m)(3)(ii) of this section, a bona fide business oriented security concern is deemed to exist for the spouse and dependent children of the employer only if the requirements of paragraph (m)(2) (iii) or (iv) of this section are applied independently to such spouse and dependent children.

(4) *Working condition safe harbor for travel on employer-provided aircraft.* Under the safe harbor rule of this paragraph (m)(4), if, for a bona fide business-oriented security concern, the employer requires that an employee travel on an employer-provided aircraft for a personal trip, the employer and the employee may exclude from the employee's gross income, as a working condition fringe, the excess value of the aircraft trip over the safe harbor airfare without having to show what method of transportation the employee would have flown but for the bona fide business-oriented security concern. For purposes of the safe harbor rule of this paragraph (m)(4), the value of the safe harbor

airfare is determined under the non-commercial flight valuation rule of § 1.61–21(g) (regardless of whether the employer or employee elects to use such valuation rule) by multiplying an aircraft multiple of 200-percent by the applicable cents-per-mile rates and the number of miles in the flight and then adding the applicable terminal charge. The value of the safe harbor airfare determined under this paragraph (m)(4) must be included in the employee's income (to the extent not reimbursed by the employee) regardless of whether the employee or the employer uses the special valuation rule of § 1.61–21(g). The excess of the value of the aircraft trip over this amount may be excluded from gross income as a working condition fringe. If, for a bona fide business-oriented security concern, the employer requires that an employee's spouse and dependents travel on an employer-provided aircraft for a personal trip, the special rule of this paragraph (m)(4) is available to exclude the excess value of the aircraft trips over the safe harbor airfares.

(5) *Bodyguard/chauffeur provided for a bona fide business-oriented security concern.* If an employer provides an employee with vehicle transportation and a bodyguard/chauffeur for a bona fide business-oriented security concern, and but for the bona fide business-oriented security concern the employee would not have had a bodyguard or a chauffeur, then the entire value of the services of the bodyguard/chauffeur is excludable from gross income as a working condition fringe. For purposes of this section, a bodyguard/chauffeur must be trained in evasive driving techniques. An individual who performs services as a driver for an employee is not a bodyguard/chauffeur if the individual is not trained in evasive driving techniques. Thus, no part of the value of the services of such an individual is excludable from gross income under this paragraph (m)(5). (See paragraph (b)(3) of this section for rules relating to the determination of the working condition fringe exclusion for chauffeur services.)

(6) *Examples.* The provisions of this paragraph (m) may be illustrated by the following examples:

Example (1). Assume that in response to several death threats on the life of A, the president of X a multinational company, X establishes an overall security program for A, including an alarm system at A's home and guards at A's workplace, the use of a vehicle that is specially equipped with alarms, bulletproof glass, and armor plating, and a bodyguard/chauffeur. Assume further that A is driven for both personal and business reasons in the vehicle. Also, assume that but for the bona fide business-oriented security concerns, no part of the overall security program would have been provided to A. With respect to the transportation provided for security reasons, A may exclude as a working condition fringe the value of the special security features of the vehicle and the value attributable to the bodyguard/chauffeur. Thus, if the value of the specially equipped vehicle is $40,000, and the value of the vehicle without the security features is $25,000, A may determine A's inclusion in income attributable to the vehicle as if the vehicle were worth $25,000. A must include in income the value of the availability of the vehicle for personal use.

Example (2). Assume that B is the chief executive officer of Y, a multinational corporation. Assume further that there have been kidnapping attempts and other terrorist activities in the foreign countries in which B performs services and that at least some of such activities have been directed against B or similarly situated employees. In response to these activities, Y provides B with an overall security program, including an alarm system at B's home and bodyguards at B's workplace, a bodyguard/chauffeur, and a vehicle specially designed for security during B's overseas travels. In addition, assume that Y requires B to travel in Y's airplane for business and personal trips taken to, from, and within these foreign countries. Also, assume that but for bona fide business-oriented security concerns, no part of the overall security program would have been provided to B. B may exclude as a working condition fringe the value of the special security features of the automobile and the value attributable to the bodyguards and the bodyguard/chauffeur. B may also exclude the excess, if any, of the value of the flights over the amount A would have paid for the same mode of transportation but for the security concerns. As an alternative to the preceding sentence, B may use the working condition safe harbor described in paragraph (m)(4) of this section and exclude as a working condition fringe the excess, if any, of the value of personal flights in the Y airplane over the safe harbor airfare determined under the method described in paragraph (m)(4) of this section. If this alternative is used, B must include in income the value of the availability of the vehicle for personal use and the value of the safe harbor.

Example (3). Assume the same facts as in example (2) except that Y also requires B to travel in Y's airplane within the United States, and provides B with a chauffeur-driven limousine for business and personal travel in the United States. Assume further that Y also requires B's spouse and dependents to travel in Y's airplane for personal flights in the United States. If no bona fide business-oriented security concern exists with respect to travel in the United States, B may not exclude from income any portion of the value of the availability of the chauffeur or limousine for personal use in the United States. Thus, B must include in income the value of the availability of the vehicle and chauffeur for personal use. In addition, B may not exclude any portion of the value attributable to personal flights by B or B's spouse and dependents on Y's airplane. Thus, B must include in income the value attributable to the personal use of Y's airplane. See § 1.61–21 for rules relating to the valuation of an employer-provided vehicle and chauffeur, and personal flights on employer-provided airplanes.

Example (4). Assume that company Z retains an independent security consultant to perform a security study with respect to its chief executive officer. Assume further that, based on an objective assessment of the facts and circumstances, the security consultant reasonably recommends that 24-hour protection is not necessary but that the employee be provided security at his workplace and for ground transportation, but not for air transportation. If company Z follows the recommendations on a consistent basis, an overall security program will be deemed to exist with respect to the workplace and ground transportation security only.

Example (5). Assume the same facts as in example (4) except that company Z only provides the employee security while commuting to and from work, but not for any other ground transportation. Because the recommendations of the independent security study are not applied on a consistent basis, an overall security program will not be deemed to exist. Thus, the value of commuting to and from work is not excludable from income. However, the value of a bodyguard with professional security training who does not provide chauffeur or other personal services to the employee or any member of the employee's family may be excludable as a working condition fringe if such expense would be otherwise allowable as a deduction by the employee under section 162 or 167.

(n) *Product testing*—(1) *In general.* The fair market value of the use of consumer goods, which are manufactured for sale to nonemployees, for product testing and evaluation by an employee of the manufacturer outside the employer's workplace, is excludible from gross income as a working condition fringe if—

(i) Consumer testing and evaluation of the product is an ordinary and necessary business expense of the employer;

(ii) Business reasons necessitate that the testing and evaluation of the product be performed off the employer's business premises by employees (i.e., the testing and evaluation cannot be carried out adequately in the employer's office or in laboratory testing facilities);

(iii) The product is furnished to the employee for purposes of testing and evaluation;

(iv) The product is made available to the employee for no longer than necessary to test and evaluate its performance and (to the extent not exhausted) must be returned to the employer at completion of the testing and evaluation period;

(v) The employer imposes limits on the employee's use of the product that significantly reduce the value of any personal benefit to the employee; and

(vi) The employee must submit detailed reports to the employer on the testing and evaluation. The length of the testing and evaluation period must be reasonable in relation to the product being tested.

(2) *Employer-imposed limits.* The requirement of paragraph (n)(1)(v) of this section is satisfied if—

(i) The employer places limits on the employee's ability to select among different models or varieties of the consumer product that is furnished for testing and evaluation purposes; and

(ii) The employer generally prohibits use of the product by persons other than the employee and, in appropriate cases, requires the employee, to purchase or lease at the employee's own expense the same type of product as that being tested (so that personal use by the employee's family will be limited). In addition, any charge by the employer for the personal use by an employee of a product being tested shall be taken into account in determining whether the requirement of paragraph (n)(1)(v) of this section is satisfied.

(3) *Discriminating classifications.* If an employer furnishes products under a testing and evaluation program only, or presumably, to certain classes of employees (such as highly compensated employees, as defined in § 1.132–8(g)), this fact may be relevant when determining whether the products are furnished for testing and evaluation purposes or for compensation purposes, unless the employer can show a business reason for the classification of employees to whom the products are furnished (e.g., that automobiles are furnished for testing and evaluation by an automobile manufacturer to its design engineers and supervisory mechanics).

(4) *Factors that negate the existence of a product testing program.* If an employer fails to tabulate and examine the results of the detailed reports submitted by employees within a reasonable period of time after expiration of the testing period, the program will not be considered a product testing program for purposes of the exclusion of this paragraph (n). Existence of one or more of the following factors may also establish that the program is not a bona fide product testing program for purposes of the exclusion of this paragraph (n):

(i) The program is in essence a leasing program under which employees lease the consumer goods from the employer for a fee;

(ii) The nature of the product and other considerations are insufficient to justify the testing program; or

(iii) The expense of the program outweighs the benefits to be gained from testing and evaluation.

(5) *Failure to meet the requirements of this paragraph (n).* The fair market value of the use of property for product testing and evaluation by an employee outside the employee's workplace, under a product testing program that does not meet all of the requirements of this paragraph (n), is not excludable from gross income as a working condition fringe under this paragraph (n).

(6) *Example.* The rules of this paragraph (n) may be illustrated by the following example:

Example. Assume that an employer that manufactures automobiles establishes a product testing program under which 50 of its 5,000 employees test and evaluate the automobiles for 30 days. Assume further that the 50 employees represent a fair cross-section of all of the employees of the employer, such employees submit detailed reports to the employer on the testing and evaluation, the employer tabulates and examines the test results within a reasonable time, and the use of the automobiles is restricted to the employees. If the employer imposes the limits described in paragraph (n)(2) of this section, the employees may exclude the value of the use of the automobile during the testing and evaluation period.

(o) *Qualified automobile demonstration use*—(1) *In general.* The value of qualified automobile demonstration use is excludable from gross income as a working condition fringe. "Qualified automobile demonstration use" is any use of a demonstration automobile by a full-time automobile salesman in the sales area in which the automobile dealer's sales office is located if—

(i) Such use is provided primarily to facilitate the salesman's performance of services for the employer; and

(ii) There are substantial restrictions on the personal use of the automobile by the salesman.

(2) *Full-time automobile salesman*—(i) *Defined.* The term "full-time automobile salesman" means any individual who—

(A) Is employed by an automobile dealer;

(B) Customarily spends at least half of a normal business day performing the functions of a floor salesperson or sales manager;

(C) Directly engages in substantial promotion and negotiation of sales to customers;

(D) Customarily works a number of hours considered full-time in the industry (but at a rate not less than 1,000 hours per year); and

(E) Derives at least 25 percent of his or her gross income from the automobile dealership directly as a result of the activities described in paragraphs (o)(2)(i) (B) and (C) of this section.

For purposes of paragraph (o)(2)(i) (E) of this section, income is not considered to be derived directly as a result of activities described in paragraphs (o)(2)(i) (B) and (C) of this section to the extent that the income is attributable to an individual's ownership interest in the dealership. An individual will not be considered to engage in direct sales activities if the individual's sales-related activities are substantially limited to review of sales price offers from customers. An individual, such as the general manager of an automobile dealership, who receives a sales commission on the sale of an automobile is not a full-time automobile salesman unless the requirements of this paragraph (o)(2)(i) are met. The exclusion provided in this paragraph (o) is available to an individual who meets the definition of this paragraph (o)(2)(i) whether the individual performs services in addition to those described in this paragraph (o)(2)(i). For example, an individual who is an owner of the automobile dealership but who otherwise meets the requirements of this paragraph (o)(2)(i) may exclude from gross income the value of qualified automobile demonstration use. However, the exclusion of this paragraph (o) is not available to owners of large automobile dealerships who do not customarily engage in significant sales activities.

(ii) *Use by an individual other than a full-time automobile salesman.* Personal use of a demonstration automobile by an individual other than a full-time automobile salesman is not treated as a working condition fringe. Therefore, any personal use, including commuting use, of a demonstration automobile by a part-time salesman, automobile mechanic, or other individual who is not a full-time automobile salesman is not "qualified automobile demonstration use" and thus not excludable from gross income. This is the case whether or not the personal use is within the sales area (as defined in paragraph (o)(5) of this section).

(3) *Demonstration automobile.* The exclusion provided in this paragraph (o) applies only to qualified use of a demonstration automobile. A demonstration automobile is an automobile that is—

(i) Currently in the inventory of the automobile dealership; and

(ii) Available for test drives by customers during the normal business hours of the employee.

(4) *Substantial restrictions on personal use.* Substantial restrictions on the personal use of a demonstration automobile exist when all of the following conditions are satisfied:

(i) Use by individuals other than the full-time automobile salesmen (e.g., the salesman's family) is prohibited;

(ii) Use for personal vacation trips is prohibited;

(iii) The storage of personal possessions in the automobile is prohibited; and

(iv) The total use by mileage of the automobile by the salesman outside the salesman's normal working hours is limited.

(5) *Sales area—(i) In general.* Qualified automobile demonstration use consists of use in the sales area in which the automobile dealer's sales office is located. The sales area is the geographic area surrounding the automobile dealer's sales office from which the office regularly derives customers.

(ii) *Sales area safe harbor.* With respect to a particular full-time salesman, the automobile dealer's sales area may be treated as the area within a radius of the larger of—

(A) 75 miles or

(B) The one-way commuting distance (in miles) of the particular salesman from the dealer's sales office.

(6) *Applicability of substantiation requirements of sections 162 and 274(d).* Notwithstanding anything in this section to the contrary, the value of the use of a demonstration automobile may not be excluded from gross income as a working condition fringe, by either the employer or the employee, unless, with respect to the restrictions of paragraph (o)(4) of this section, the substantiation requirements of section 274(d) and the regulations thereunder are satisfied. See § 1.132–5(c) for general and safe harbor rules relating to the applicability of the substantiation requirements of section 274(d).

(7) *Special valuation rules.* See § 1.61–21(d)(6)(ii) for special rules that may be used to value the availability of demonstration automobiles.

(p) *Parking*—(1) *In general.* The value of parking provided to an employee on or near the business premises of the employer is excludable from gross income as a working condition fringe under the special rule of this paragraph (p). If the rules of this paragraph (p) are satisfied, the value of parking is excludable from gross income whether the amount paid by the employee for parking would be deductible under section 162. The working condition fringe exclusion applies whether the employer owns or rents the parking facility or parking space.

(2) *Reimbursement of parking expenses.* A reimbursement to the employee of the ordinary and necessary expenses of renting a parking space on or near the business premises of the employer is excludable from gross income as a working condition fringe, if, but for the parking expense, the employee would not have been entitled to receive and retain such amount from the employer. If, however an employee is entitled to retain a general transportation allowance or a similar benefit whether or not the employee has parking expenses, no portion of that allowance is excludable from gross income under this paragraph (p) even if it is used for parking expenses.

(3) *Parking on residential property.* With respect to an employee, this paragraph (p) does not apply to any parking facility or space located on property owned or leased by the employee for residential purposes.

(q) *Nonapplicability of nondiscrimination rules.* Except to the extent provided in paragraph (n)(3) of this section (relating to discriminating classifications of a product testing program), the nondiscrimination rules of section 132 (h)(1) and § 1.132–8 do not apply in determining the amount, if any, of a working condition fringe.

Par. 13. Section 1.132–6 is added and reads as follows:

§ 1.132–6 De minimis fringes.

(a) *In general.* Gross income does not include the value of a de minimis fringe provided to an employee. The term "de minimis fringe" means any property or service the value of which is (after taking into account the frequency with which similar fringes are provided by the employer to the employer's employees) so small as to make accounting for it unreasonable or administratively impracticable.

(b) *Frequency*—(1) *Employee-measured frequency.* Generally, the frequency with which similar fringes are provided by the employer to the employer's employees is determined by reference to the frequency with which the employer provides the fringes to each individual employee. For example, if an employer provides a free meal in kind to one employee on a daily basis, but not to any other employee, the value of the meals is not de minimis with respect to that one employee even though with respect to the employer's entire workforce the meals are provided "infrequently."

(2) *Employer-measured frequency.* Notwithstanding the rule of paragraph (b)(1) of this section, except for purposes of applying the special rules of paragraph (d)(2) of this section, where it would be administratively difficult to determine frequency with respect to individual employees, the frequency with which similar fringes are provided by the employer to the employer's employees is determined by reference to the frequency with which the employer provides the fringes to the workforce as a whole. Therefore, under this rule, the frequency with which any individual employee receives such a fringe benefit is not relevant and in some circumstances, the de minimis fringe exclusion may apply with respect to a benefit even though a particular employee receives the benefit frequently. For example, if an employer exercises sufficient control and imposes significant restrictions on the personal use of a company copying machine so that at least 85 percent of the use of the machine is for business purposes, any personal use of the copying machine by particular employees is considered to be a de minimis fringe.

(c) *Administrability.* Unless excluded by a provision of chapter 1 of the Internal Revenue Code of 1986 other than section 132(a)(4), the value of any fringe benefit that would not be unreasonable or administratively impracticable to account for is includible in the employee's gross income. Thus, except as provided in paragraph (d)(2) of this section, the provision of any cash fringe benefit is never excludable under section 132(a) as a de minimis fringe benefit. Similarly except as otherwise provided in paragraph (d) of this section, a cash equivalent fringe benefit (such as a fringe benefit provided to an employee through the use of a gift certificate or charge or credit card) is generally not excludable under section 132(a) even if the same property or service acquired (if provided in kind) would be excludable as a de minimis fringe benefit. For example, the provision of cash to an employee for a theatre ticket that would itself be excludable as a de minimis fringe (see paragraph (e)(1) of this section) is not excludable as a de minimis fringe.

(d) *Special rules*—(1) *Transit passes.* A public transit pass provided at a discount to defray an employee's commuting costs may be excluded from the employee's gross income as a de minimis fringe if such discount does not exceed $15 in any month. The exclusion provided in this paragraph (d)(1) also applies to the provision of tokens or fare cards that enable an individual to travel on the public transit system if the value

of such tokens and fare cards in any month does not exceed by more than $15 the amount the employee paid for the tokens and farecards for such month. Similarly, the exclusion of this paragraph (d)(1) applies to the provision of a voucher or similar instrument that is exchangeable solely for tokens, farecards, or other instruments that enable the employee to use the public transit system if the value of such vouchers and other instruments in any month does not exceed $15. The exclusion provided in this paragraph (d)(1) does not apply to the provision of any benefit to defray public transit expenses incurred for personal travel other than commuting.

(2) *Occasional meal money or local transportation fare*—(i) *General rule.* Meals, meal money or local transportation fare provided to an employee is excluded as a de minimis fringe benefit if the benefit provided is reasonable and is provided in a manner that satisfies the following three conditions:

(A) *Occasional basis.* The meals, meal money or local transportation fare is provided to the employee on an occasional basis. Whether meal money or local transportation fare is provided to an employee on an occasional basis will depend upon the frequency i.e. the availability of the benefit and regularity with which the benefit is provided by the employer to the employee. Thus, meals, meal money, or local transportation fare or a combination of such benefits provided to an employee on a regular or routine basis is not provided on an occasional basis.

(B) *Overtime.* The meals, meal money or local transportation fare is provided to an employee because overtime work necessitates an extension of the employee's normal work schedule. This condition does not fail to be satisifed merely because the circumstances giving rise to the need for overtime work are reasonably foreseeable.

(C) *Meal money.* In the case of a meal or meal money, the meal or meal money is provided to enable the employee to work overtime. Thus, for example, meals provided on the employer's premises that are consumed during the period that the employee works overtime or meal money provided for meals consumed during such period satisfy this condition.

In no event shall meal money or local transportation fare calculated on the basis of the number of hours worked (e.g., $1.00 per hour for each hour over eight hours) be considered a de minimis fringe benefit.

(ii) *Applicability of other exclusions for certain meals and for transportation provided for security concerns.* The value of meals furnished to an employee, an employee's spouse, or any of the employee's dependents by or on behalf of the employee's employer for the convenience of the employer is excluded from the employee's gross income if the meals are furnished on the business premises of the employer (see section 119). (For purposes of the exclusion under section 119, the definitions of an employee under § 1.132–1(b) do not apply.) If, for a bona fide business-oriented security concern, an employer provides an employee vehicle transportation that is specially designed for security (for example, the vehicle is equipped with bulletproof glass and armor plating), and the conditions of § 1.132–5(m) are satisfied, the value of the special security design is excludable from gross income as a working condition fringe if the employee would not have had such special security design but for the bona fide business-oriented security concern.

(iii) *Special rule for employer-provided transportation provided in certain circumstances.* (A) *Partial exclusion of value.* If an employer provides transportation (such as taxi fare to an employee for use in commuting to and/or from work because or unusual circumstances and because, based on the facts and circumstances, it is unsafe for the employee to use other available means of transportation, the excess of the value of each one-way trip over $1.50 per one-way commute is excluded from gross income. The rule of this paragraph (d)(2)(iii) is not available to a control employee as defined in § 1.61–21(f) (5) and (6).

(B) *"Unusual circumstances".* Unusual circumstances are determined with respect to the employee receiving the transportation and are based on all facts and circumstances. An example of unusual circumstances would be when an employee is asked to work outside of his normal work hours (such as being called to the workplace at 1:00 am when the employee normally works from 8:00 am to 4:00 pm). Another example of unusual circumstances is a temporary change in the employee's work schedule (such as working from 12 midnight to 8:00 am rather than from 8:00 am to 4:00 pm for a two-week period).

(C) *"Unsafe conditions".* Factors indicating whether it is unsafe for an employee to use other available means of transportation are the history of crime in the geographic area surrounding the employee's workplace or residence and the time of day during which the employee must commute.

(3) *Use of special rules or examples to establish a general rule.* The special rules provided in this paragraph (d) or examples provided in paragraph (e) of this section may not be used to establish any general rule permitting exclusion as a de minimis fringe. For example, the fact that $180 (i.e., $15 per month for 12 months) worth of public transit passes can be excluded from gross income as a de minimis fringe in a year does not mean that any fringe benefit with a value equal to or less than $180 may be excluded as a de minimis fringe. As another example, the fact that the commuting use of an employer-provided vehicle more than one day a month is an example of a benefit not excludable as a de minimis fringe (see paragraph (e)(2) of this section) does not mean that the commuting use of a vehicle up to 12 times per year is excludable from gross income as a de minimis fringe.

(4) *Benefits exceeding value and frequency limits.* If a benefit provided to an employee is not de minimis because either the value or frequency exceeds a limit provided in this paragraph (d), no amount of the benefit is considered to be a de minimis fringe. For example, if an employer provides a $20 monthly public transit pass, the entire $20 must be included in income, not just the excess value over $15.

(e) *Examples*—(1) *Benefits excludable from income.* Examples of de minimis fringe benefits are occasional typing of personal letters by a company secretary; occasional personal use of an employer's copying machine, provided that the employer exercises sufficient control and imposes significant restrictions on the personal use of the machine so that at least 85 percent of the use of the machine is for business purposes; occasional cocktail parties, group meals, or picnics for employees and their guests; traditional birthday or holiday gifts of property (not cash) with a low fair market value; occasional theater or sporting event tickets; coffee, doughnuts, and soft drinks; local telephone calls; and flowers, fruit, books, or similar property provided to employees under special circumstances (e.g., on account of illness, outstanding performance, or family crisis).

(2) *Benefits not excludable as de minimis fringes.* Examples of fringe benefits that are not excludable from gross income as de minimis fringes are: season tickets to sporting or theatrical events; the commuting use of an employer-provided automobile or other vehicle more than one day a month; membership in a private country club or athletic facility, regardless of the frequency with which the employee uses the facility; employer-provided group-term life insurance on the life of the spouse or child of an employee; and use of employer-owned or leased facilities (such as an apartment, hunting lodge, boat, etc.) for a weekend. Some amount of the value of certain of these fringe benefits may be excluded from income under other statutory provisions, such as the exclusion for working condition fringes. See § 1.132–5.

(f) *Nonapplicability of nondiscrimination rules.* Except to the extent provided in § 1.132–7, the nondiscrimination rules of section 132(h)(1) and § 1.132–8 do not apply in determining the amount, if any, of a de minimis fringe. Thus, a fringe benefit may be excludable as a de minimis fringe even if the benefit is provided exclusively to highly compensated employees of the employer.

Par. 14. Section 1.132–7 is added and reads as follows:

§ 1.132–7 Employer-operated eating facilities.

(a) *In general*—(1) *Condition for exclusion*—(i) *General rule.* The value of meals provided to employees at an employer-operated eating facility for employees is excludable from gross income as a de minimis fringe only if on an annual basis, the revenue from the facility equals or exceeds the direct operating costs of the facility.

(ii) *Additional condition for highly compensated employees.* With respect to any highly compensated employee, an exclusion is available under this section only if the condition set out in paragraph (a)(1)(i) of this section is satisfied and access to the facility is available on substantially the same terms to each member of a group of employees that is defined under a reasonable classification set up by the employer that does not discriminate in favor of highly compensated employees. See § 1.132–8. For purposes of this paragraph (a)(1)(ii), each dining room or cafeteria in which meals are served is treated as a separate eating facility, whether each such dining room or cafeteria has its own kitchen or other food-preparation area.

(2) *Employer-operated eating facility for employees.* An employer-operated eating facility for employees is a facility that meets all of the following conditions—

(i) The facility is owned or leased by the employer,

(ii) The facility is operated by the employer,

(iii) The facility is located on or near the business premises of the employer, and

(iv) The meals furnished at the facility are provided during, or immediately before or after, the employee's workday.

For purposes of this section, the term "meals" means food, beverages, and related services provided at the facility. If an employer can reasonably determine the number of meals that are excludable from income by the recipient employees under section 119, the employer may, in determining whether the requirement of paragraph (a)(1)(i) of this section is satisfied, disregard all costs and revenues attributable to such meals provided to such employees. If an employer can reasonably determine the number of meals received by volunteers who receive food and beverages at a hospital, free or at a discount, the employer may, in determining whether the requirement of paragraph (a)(1)(i) of this section is satisfied, disregard all costs and revenues attributable to such meals provided to such volunteers. If an employer charges nonemployees a greater amount than employees, in determining whether the requirement of paragraph (a)(1)(i) of this section is satisfied, the employer must disregard all costs and revenues attributable to such meals provided to such nonemployees.

(3) *Operation by the employer.* If an employer contracts with another to operate an eating facility for its employees, the facility is considered to be operated by the employer for purposes of this section. If an eating facility is operated by more than one employer, it is considered to be operated by each employer.

(4) *Example.* The provisions of this paragraph (a)(2) may be illustrated by the following example:

Example (1). Assume that a not-for-profit hospital system maintains cafeterias for the use of its employees and volunteers. Only the employees are charged for food service at the cafeteria and the policy of the hospital is to charge the employees only for the costs of food, beverage and labor directly attributable to the meal. Most of the cafeterias within the system furnish more free meals to volunteers than they serve paid meals to employees. For purposes of this paragraph, as long as the employer can accurately determine the number of meals received free or at a discount by volunteers, the employer may disregard all the costs and revenues attributable to such meals provided to volunteers. Therefore, for purposes of this paragraph, the costs of the hospital system for furnishing meals to employees who pay for them are the costs to be compared to determine if the revenues from the facility equal or exceed direct operating costs of the facility's service to employees.

(b) *Direct operating costs*—(1) *In general.* For purposes of this section, the direct operating costs of an eating facility are—

(i) The cost of food and beverages, and

(ii) The cost of labor for personnel whose services relating to the facility are performed primarily on the premises of the eating facility. Direct operating costs do not include the labor cost attributable to personnel whose services relating to the facility are not performed primarily on the premises of the eating facility. Thus, for example, the labor costs attributable to cooks, waiters, and waitresses are included in direct operating costs, but the labor cost attributable to a manager of an eating facility whose services relating to the facility are not primarily performed on the premises of the eating facility is not included in direct operating costs. If an employee performs services relating to the facility both on and off the premises of the eating facility, only the portion of the total labor cost of the employee relating to the facility that bears the same proportion to such total labor cost as time spent on the premises bears to total time spent performing services relating to the facility is included in direct operating costs. For example, assume that 60 percent of the services of a cook in the above example are not related to the eating facility. Only 40 percent of the total labor cost of the cook is includible in direct operating costs. For purposes of this section, labor costs include all compensation required to be reported on a Form W–2 for income tax purposes and related employment taxes paid by the employer. In determining the direct operating costs of an eating facility, the employer may include as part of the facility, vending machines that are provided by the employer and located on the same premises as the other eating facilities operated by the employer.

(2) *Multiple dining rooms or cafeterias.* The direct operating costs test may be applied separately for each dining room or cafeteria. Alternatively, the direct operating costs test may be applied with respect to all the eating facilities operated by the employer.

(3) *Payment to operator of facility.* If an employer contracts with another to operate an eating facility for its employees, the direct operating costs of the facility consist both of direct operating costs, if any, incurred by the employer and the amount paid to the operator of the facility to the extent that such amount is attributable to what would be direct operating costs if the employer operated the facility directly.

(c) *Valuation of non-excluded meals provided at an employer-operated eating facility for employees.* If the exclusion for meals provided at an employer-operated eating facility for employees is not available, the recipient

of meals provided at such facility must include in income the amount by which the fair market value of the meals provided exceeds the sum of—

(1) The amount, if any, paid for the meals, and

(2) The amount, if any, specifically excluded by another section of chapter 1 of this subtitle.

For special valuation rules relating to such meals, see § 1.61–21(j).

Par. 15. Section 1.132–8 is added and reads as follows:

§ 1.132–8 Fringe benefit nondiscrimination rules.

(a) *Application of nondiscrimination rules*—(1) *General rule.* A highly compensated employee who receives a no-additional cost service, a qualified employee discount or a meal provided at an employer-operated eating facility for employees shall not be permitted to exclude such benefit from his or her income unless the benefit is available on substantially the same terms to:

(i) All employees of the employer; or

(ii) A group of employees of the employer which is defined under a reasonable classification set up by the employer that does not discriminate in favor of highly compensated employees. See paragraph (f) of this section for the definition of a highly compensated employee.

(2) *Consequences of discrimination*—(i) *In general.* If an employer maintains more than one fringe benefit program, i.e., either different fringe benefits being provided to the same group of employees, or different classifications of employees or the same fringe benefit being provided to two or more classifications of employees, the nondiscrimination requirements of section 132 will generally be applied separately to each such program. Thus, a determination that one fringe benefit program discriminates in favor of highly compensated employees generally will not cause other fringe benefit programs covering the same highly compensated employees to be treated as discriminatory. If the fringe benefits provided to a highly compensated individual do not satisfy the nondiscrimination rules provided in this section, such individual shall be unable to exclude from gross income any portion of the benefit. For example, if an employer offers a 20 percent discount (which otherwise satisfies the requirements for a qualified employee discount) to all non-highly compensated employees and a 35 percent discount to all highly compensated employees, the entire value of the 35 percent discount (not just the excess over 20 percent) is includible in the gross income and wages of the highly compensated employees who make purchases at a discount.

(ii) *Exception*—(A) *Related fringe benefit programs.* If one of a group of fringe benefit programs discriminates in favor of highly compensated employees, no related fringe benefit provided to such highly compensated employees under any other fringe benefit program may be excluded from the gross income of such highly compensated employees. For example, assume a department store provides a 20 percent merchandise discount to all employees under one fringe benefit program. Assume further that under a second fringe benefit program, the department store provides an additional 15 percent merchandise discount to a group of employees defined under a classification which discriminates in favor of highly compensated employees. Because the second fringe benefit program is discriminatory, the 15 percent merchandise discount provided to the highly compensated employees is not a qualified employee discount. In addition, because the 20 percent merchandise discount provided under the first fringe benefit program is related to the fringe benefit provided under the second fringe benefit program, the 20 percent merchandise discount provided the highly compensated employees is not a qualified employee discount. Thus, the entire 35 percent merchandise discount provided to the highly compensated employees is includible in such employees' gross incomes.

(B) *Employer operated eating facilities for employees.* For purposes of paragraph (a)(2)(ii)(A) of this section, meals at different employer-operated eating facilities for employees are not related fringe benefits, so that a highly compensated employee may exclude from gross income the value of a meal at a nondiscriminatory facility even though any meals provided to him or her at a discriminatory facility cannot be excluded.

(3) *Scope of the nondiscrimination rules provided in this section.* The nondiscrimination rules provided in this section apply only to fringe benefits provided pursuant to section 132 (a)(1), (a)(2), and (e)(2). These rules have no application to any other employee benefit that may be subject to nondiscrimination requirements under any other section of the Code.

(b) *Aggregation of employees*—(1) *Section 132(a) (1) and (2).* For purposes of determining whether the exclusions for no-additional-cost services and qualified employee discounts are available to highly compensated employees, the nondiscrimination rules of this section are applied by aggregating the employees of all related employers (as defined in § 1.132–1(c)), except that employees in different lines of business (as defined in § 1.132–4) are not to be aggregated. Thus, in general, for purposes of this section, the term "employees of the employer" refers to all employees of the employer and any other entity that is a member of a group described in sections 414 (b), (c), (m), or (o) and that performs services within the same line of business as the employer which provides the particular fringe benefit. Employees in different lines of business will be aggregated, however, if the line of business limitation has been relaxed pursuant to paragraphs (b) through (g) of § 1.132–4.

(2) *Section 132 (e) (2).* For purposes of determining whether the exclusions for meals provided at employer-operated eating facilities are available to highly compensated, the nondiscrimination rules of this section are applied by aggregating the employees of all related employers (as defined in section § 1.132–1(c)) who regularly work at or near the premises on which the eating facility is located, except that employees in different lines of business (as defined in § 1.132–4) are not to be aggregated. The nondiscrimination rules of this section are applied separately to each eating facility. Each dining room or cafeteria in which meals are served is treated as a separate eating facility, regardless of whether each such dining room or cafeteria has its own kitchen or other food-preparation area.

(3) *Classes of employees who may be excluded.* For purposes of applying the nondiscrimination rules of this section to a particular fringe benefit program, there may be excluded from consideration employees who may be excluded from consideration under section 89(h), as enacted by the Tax Reform Act of 1986, Pub. L. 99–514, 100 Stat. 2085 (1986) and amended by the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, 102 Stat. 3342 (1988).

(c) *Availability on substantially the same terms*—(1) *General rule.* The determination of whether a benefit is available on substantially the same terms shall be made upon the basis of the facts and circumstances of each situation. In general, however, if any one of the terms or conditions governing the availability of a particular benefit to one or more employees varies from any one of the terms or conditions governing the availability of a benefit made available to one or more other employees, such benefit shall not be considered to be available on substantially the same terms except to the extent otherwise provided in paragraph (c)(2) of this section. For example, if a department store provides a 20 percent qualified employee discount to all of its employees on all merchandise, the substantially the same terms requirement will be satisfied. Similarly, if the discount provided to all employees is 30 percent on certain merchandise (such as apparel), and 20 percent on all other merchandise, the substantially the same terms requirement will be satisfied. However, if a department store provides a 20 percent qualified employee discount to all employees, but as to the employees in certain departments, the discount is available upon hire, and as to the remaining departments, the discount is only available when an employee has completed a specified term of services, the 20 percent discount is not available on substantially the same terms to all of the employees of the employer. Similarly, if a greater discount is given to employees with more seniority, full-time work status, or a particular job description, such benefit (i.e., the discount) would not be available to all employees eligible for the discount on substantially the same terms, except to the extent otherwise provided in paragraph (c)(2) of this section. These examples also apply to no-additional-cost-services. Thus, if an employer charges non-highly compensated employees for a no-additional-cost service and does not charge highly compensated employees (or charges highly compensated employees a lesser amount), the substantially the same terms requirement will not be satisfied.

(2) *Certain terms relating to priority.* Certain fringe benefits made available to employees are available only in limited quantities that may be insufficient to meet employee demand. This situation may occur either because of employer policy (such as where an employer determines that only a certain number of units of a specific product will be made available to employees each year) or because of the nature of the fringe benefit (such as where an employer provides a no-additional-cost transportation service that is limited to the number of seats available just before departure). Under these circumstances, an employer may find it necessary to establish some method of allocating the limited fringe benefits among the employees eligible to receive the fringe benefits. The employer may establish the priorities described below.

(i) *Priority on a first come, first served, or similar basis.* A benefit shall not fail to be treated as available to a group of employees on substantially the same terms merely because the employer allocates the benefit among such employees on a "first come, first served" or lottery basis, provided that the same notice of the terms of availability is given to all employees in the group and the terms under which the benefit is provided to employees within the group are otherwise the same with respect to all employees. For purposes of the preceding sentence, a program that gives priority to employees who are the first to submit written requests for the benefit will constitute priority on a "first come, first served" basis. Similarly, if the employer regularly engages in the practice of allocating benefits on a priority basis to employees demonstrating a critical need, such benefit shall not fail to be treated as available on substantially the same terms to all of the employees with respect to whom such priority status is available as long as the determination is based upon uniform and objective criteria which have been communicated to all employees in the group of eligible employees. An example of a critical need would be priority transportation given to an employee in the event of a medical emergency involving the employee (or a member of the employee's immediate family) or a recent death in the employee's immediate family. Frustrated vacation plans or forfeited deposits would not be treated as giving rise to particularly critical needs.

(ii) *Priority on the basis of seniority.* Solely for purposes of § 1.132–8, a benefit shall not fail to be treated as available to a group of employees of the employer on substantially the same terms merely because the employer allocates the benefit among such employees on a seniority basis provided that:

(A) The same notice of the terms of availability is given to all employees in the group; and

(B) The average value of the benefit provided for each nonhighly compensated employee is at least 75% of that provided for each highly compensated employee. For purposes of this test, the average value of the benefit provided for each nonhighly compensated (highly compensated) employee is determined by taking the sum of the fair market values of such benefit provided to all the nonhighly compensated (highly compensated) employees, determined in accordance with § 1.61–21, and then dividing that sum by the total number of nonhighly compensated (highly compensated) employees of the employer. For purposes of determining the average value of the benefit provided for each employee, all employee's of the employer are counted, including those who are not eligible to receive the benefit from the employer.

(d) *Testing for discrimination.*

(1) *Classification test.* In the event that a benefit described in section 132 (a)(1), (a)(2) or (e)(2) is not available on substantially the same terms to all of the employees of the employer, no exclusion shall be available to a highly compensated employee for such benefit unless the program under which the benefit is provided satisfies the nondiscrimination standards set forth in this section. The nondiscrimination standard of this section will be satisfied only if the benefit is available on substantially the same terms to a group of employees of the employer which is defined under a reasonable classification established by the employer that does not discriminate in favor of highly compensated employees. The determination of whether a particular classification is discriminatory will generally depend upon the facts and circumstances involved, based upon principles similar to those applied for purposes of section 410(b)(2)(A)(i) or, for years commencing prior to January 1, 1988, section 410(b)(1)(B). Thus, in general, except as otherwise provided in this section, if a benefit is available on substantially the same terms to a group of employees which, when compared with all of the other employees of the employer, constitutes a nondiscriminatory classification under section 410(b)(2)(A)(i) (or, if applicable, section 410(b)(1)(B)), it shall be deemed to be nondiscriminatory.

(2) *Classifications that are per se discriminatory.* A classification that, on its face, makes fringe benefits available principally to highly compensated employees is per se discriminatory. In addition, a classification that is based on either an amount or rate of compensation is per se discriminatory if it favors those with the higher amount or rate of compensation. On the other hand, a classification that is based on factors such as seniority, full-time vs. part-time employment, or job description is not per se discriminatory but may be discriminatory as applied to the workforce of a particular employer.

(3) *Former employees.* When determining whether a classification is discriminatory, former employees shall be tested separately from other employees of the employer. Therefore, a classification is not discriminatory solely because the employer does not

make fringe benefits available to any former employee. Whether a classification of former employees discriminates in favor of highly compensated employees will depend upon the particular facts and circumstances.

(4) *Restructuring of benefits.* For purposes of testing whether a particular group of employees would constitute a discriminatory classification for purposes of this section, an employer may restructure its fringe benefit program as described in this paragraph. If a fringe benefit is provided to more than one group of employees, and one or more such groups would constitute a discriminatory classification if considered by itself, then for purposes of this section, the employer may restructure its fringe benefit program so that all or some of the members of such group may be aggregated with another group, provided that each member of the restructured group will have available to him or her the same benefit upon the same terms and conditions. For example, assume that all highly compensated employees of an employer have fewer than five years of service and all nonhighly compensated employees have over five years of service. If the employer provided a five percent discount to employees with under five years of service and a ten percent discount to employees with over five years of service, the discount program available to the highly compensated employees would not satisfy the nondiscriminatory classification test; however, as a result of the rule described in this paragraph (d)(4), the employer could structure the program to consist of a five percent discount for all employees and a five percent additional discount for nonhighly compensated employees.

(5) *Employer-operated eating facilities for employees*—(i) *General rule.* If access to an employer-operated eating facility for employees is available to a classification of employees that discriminates in favor of highly compensated employees, then the classification will not be treated as discriminating in favor of highly compensated employees unless the facility is used by one or more executive group employees more than a de minimis amount.

(ii) *Executive group employee.* For purposes of this paragraph (d)(5), an employee is an "executive group employee" if the definition of paragraph (f)(1) of this section is satisfied. For purposes of identifying such employees, the phrase "top one percent of the employees" is substituted for the phrase "top ten percent of the employees" in section 414(q)(4) (relating to the definition of "top-paid group").

(e) *Cash bonuses or rebates.* A cash bonus or rebate provided to an employee by an employer that is determined with reference to the value of employer-provided property or services purchased by the employee, is treated as an equivalent employee discount. For example, assume a department store provides a 20 percent merchandise discount to all employees under a fringe benefit program. In addition, assume that the department store provides cash bonuses to a group of employees defined under a classification which discriminates in favor of highly compensated employees. Assume further that such cash bonuses equal 15 percent of the value of merchandise purchased by each employee. This arrangement is substantively identical to the example described in paragraph (e)(2)(i) of this section concerning related fringe benefit programs. Thus, both the 20 percent merchandise discount and the 15 percent cash bonus provided to the highly compensated employees are includible in such employees' gross incomes.

(f) *Highly compensated employee*—(1) *Government and nongovernment employees.* A highly compensated employee of any employer is any employee who, during the year or the preceding year—

(i) Was a 5-percent owner,

(ii) Received compensation from the employer in excess of $75,000,

(iii) Received compensation from the employer in excess of $50,000 and was in the top-paid group of employees for such year, or

(iv) Was at any time an officer and received compensation greater than 150 percent of the amount in effect under section 415(c)(1)(A) for such year.

For purposes of determining whether an employee is a highly compensated employee, the rules of sections 414 (q), (s), and (t) apply.

(2) *Former employees.* A former employee shall be treated as a highly compensated employee if—

(i) The employee was a highly compensated employee when the employee separated from service, or

(ii) The employee was a highly compensated employee at any time after attaining age 55.

Par. 16. Section 1.912–2 is revised to read as follows:

§ 1.912-2 Exclusion of certain allowances of Foreign Service personnel.

Gross income does not include amounts received by personnel of the Foreign Service of the United States as allowances or otherwise under the provisions of chapter 9 of title I of the Foreign Service Act of 1980 or the provisions of section 28 of the State Department Basic Authorities Act (formerly section 914 of title IX of the Foreign Service Act of 1946).

PART 602—[AMENDED]

Par. 17. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 18. Section 602.101 (c) is revised by inserting in the appropriate places in the table "§ 1.61–2 . . . 1545–0771"; "§ 1.132–2 . . . 1545–0771"; and "§ 1.132–5 . . . 1545–0771".

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

Approved: March 20, 1989.

Dennis Earl Ross,

Acting Assistant Secretary of the Treasury

[FR Doc. 89–15645 Filed 7–5–89; 8:45 am]

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Thursday
July 6, 1989

Part III

Environmental Protection Agency

40 CFR Part 131

Water Quality Standards for the Colville Indian Reservation in the State of Washington; Final Rule

BEST COPY AVAILABLE

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[WH-FRL-3539-9]

Water Quality Standards for the Colville Indian Reservation in the State of Washington

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This rule establishes Federal water quality standards on the Colville Confederated Tribes Reservation located within the State of Washington. The standards consist of designated uses and criteria for all surface waters on the reservation.

EFFECTIVE DATE: August 7, 1989.

ADDRESSES: The public may inspect the administrative record for this rulemaking and all comments received on the proposed regulation at the Environmental Protection Agency, Region X, 1200 Sixth Avenue, Seattle, WA 981001 between the hours of 8:00 am and 4:00 p.m. on business days. A reasonable fee will be charged for copying. Portions of the record, including the correspondence and other actions cited in this rulemaking and written public comments will be available from the Criteria and Standards Division, OWRS, 401 M Street SW., Room 919 East Tower, Washington DC 20460, during usual business hours. Inquiries can be made over the phone by calling (206) 442-8293 or (202) 475-7315.

FOR FURTHER INFORMATION CONTACT: Fletcher Shives, Environmental Protection Agency, Region X (M/S 433), 1200 Sixth Avenue, Seattle, WA 98101, (206) 442-8293.

SUPPLEMENTARY INFORMATION:

Information in this preamble is organized as follows:

A. Background
B. Response to Public Comments
C. Changes to the Proposed Rule
D. Regulatory Flexibility Act
E. Executive Order 12291
F. Paperwork Reduction Act
G. List of Subjects in 40 CFR Part 131

A. Background

On February 7, 1986, the Environmental Protection Agency received a request from the Colville Confederated Tribes to promulgate the Tribes water quality standards as Federal standards for waters of the reservation. Although Tribal standards had recently been adopted, the Tribe was concerned that their standards were not Federally recognized under Clean Water Act ("CWA" or "the Act") section 303.

Section 303(c)(4) of the CWA authorizes the EPA Administrator to promulgate Federal water quality standards for waters of the Nation, including waters on Indian lands, whenever he determines a revised or new standard is "necessary to meet the requirements of the Act." The CWA does not, by itself, authorize States to implement or enforce water quality management programs on Indian lands. In some cases a State may have authority to regulate the water quality of a particular Indian land because of a treaty or a Federal statute. Where State authority may be in doubt, it may be appropriate for EPA to promulgate Federal water quality standards for waters on Indian lands.

Subsequent to receiving the request from the Colville Confederated Tribes, Congress passed the CWA amendments of 1987. These amendments established in the Act a new section 518 which addresses the issue of water quality standards on Indian lands and directs EPA to promulgate regulations specifying how Indian Tribes shall be treated as States for purposes of the water quality standards program. Despite the pending opportunity to qualify to be treated as a State for purposes of water quality standards, the Colville Confederated Tribes, in commenting on the proposed rulemaking, expressed enthusiastic support for EPA's action to promulgate Federal water quality standards for the reservation.

EPA is in the process of responding to the Section 518 directive to specify how Indian Tribes shall be treated as States for purposes of water quality standards. If, after promulgation of the regulations pursuant to section 518, the Colville Confederated Tribes qualify for the standards program and submit standards which are approved by EPA, EPA will withdraw these Federal water quality standards at the Tribes request.

EPA notes that today's rule does not establish a precedent for future EPA promulgations. This promulgation action is unique because: (1) It was initiated before the 1987 amendments to the Clean Water Act were enacted, and (2) it is based on water quality standards previously developed by the Colville Confederated Tribes for application to waters on their reservation. This process is not intended as a model for other reservations. Where other Indian Tribes wish to establish standards under the CWA, EPA would expect such Tribes to apply, under the CWA section 518 regulation, to be treated as States for purposes of water quality standards. Once recognized by EPA as qualified to be treated as States, such Tribes would be responsible for developing their own water quality standards under the Act and making ongoing refinements to suit particular Tribal needs.

Indian Tribes should not conclude from today's action that Federal promulgation is EPA's preferred method of establishing water quality standards on reservations. Historically, EPA's preference has been to work cooperatively with States on water quality standards issues and to initiate Federal promulgation actions only where absolutely necessary. EPA believes that this preference is consistent with the intent of the Act to provide States, and Tribes qualifying for treatment as States, with the first opportunity to set standards. Today's rule represents only the ninth Federal promulgation of water quality standards to be completed by EPA. Six of the eight completed Federal promulgations have been withdrawn. Tribes should also note that Federal promulgation of water quality standards is a very deliberate process. In the case of today's rule, it took EPA more than three years (from the time of the request by the Colville Confederated Tribes until today's final action) to promulgate final water quality standards.

The CWA amendments of 1987 also added new section 303(c)(2)(B), which requires that States "* * * shall adopt criteria for all toxic pollutants listed pursuant to section 307(a)(1) of this Act for which criteria have been published under section 304(a), the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses." As part of the proposed rulemaking, EPA decided not to propose numeric criteria for section 307(a) pollutants for inclusion in the Colville reservation water quality standards.

In response to comments received on the proposed rulemaking, EPA considered promulgating today's rule as proposed and simultaneously proposing numeric toxics criteria for the reservation. EPA decided against this action primarily because there are no known or suspected sources of toxics on the reservation. The Colville Confederated Tribes report only one point source discharger on the reservation and no toxics discovered from that discharger. EPA is aware of no other sources or potential sources of toxics in the area. Although the State of Washington has adopted twenty numeric toxics criteria for the protection of aquatic life, and the State and the

Tribes have an agreement to maintain consistent standards on common bodies of water, EPA is not a party to this agreement. For the reasons stated above, it is EPA's judgment that toxics criteria should not be proposed at this time.

This decision does not preclude the Tribes from amending their own water quality standards to include toxics criteria. Tribal adoption would allow the Tribes to develop any associated monitoring capabilities or otherwise make arrangements for such monitoring without EPA intervention.

Until numeric toxics criteria are adopted by EPA (or by the Tribes if they qualify for treatment as a State for purposes of the standards program) in response to additional information substantiating the need for numeric toxics criteria, EPA will use the Agency's 304(a) criteria guidance to implement the narrative toxics "free from" criterion in any situation that might arise concerning the discharge of toxics.

EPA believes this decision is appropriate, under the present circumstances, and that it is consistent with CWA section 303(c)(2)(B) and EPA's Indian Policy. This decision was made after careful consideration of the available information and the somewhat transitional nature of water quality management on the reservation (i.e., the pending CWA section 518 regulations). The decision not to adopt numeric toxics criteria for the reservation should not be interpreted as a general reluctance on the part of the Agency to adopt numeric toxics criteria, nor does it preclude proposing such criteria in the future.

Additional background information can be found in the proposed rulemaking, which appeared in the **Federal Register** on July 15, 1988 (53 FR26968). Public comments on the proposal were invited until September 13, 1988. A public hearing was held August 18, 1988 on the Colville Indian Reservation in Nespelem, Washington. Fourteen people attended this hearing. EPA received four letters and statements on the proposal.

B. Response to Public Comments

Comments on the proposed rulemaking were received from the Colville Confederated Tribes, the Puyallup Tribe, Cavenham Forest Industries, Inc., and the State of Washington Department of Ecology (DOE). These comments and EPA's responses are presented below.

One commenter strongly suggested that EPA should withdraw the proposed rule. The commenter asserted that it is unnecessary for EPA to promulgate water quality standards under section 303(c)(4)(B) of the Act because the State of Washington has already adopted and implemented standards for the reservation. The commenter contested EPA's assertion that the Act does not authorize States to implement or enforce their water quality standards on Indian lands. The commenter cited section 510 of the Act as evidence that the Act does not preempt state jurisdiction.

EPA disagrees with this analysis. Under accepted principles of Federal Indian Law, State authority to regulate activities on Indian lands is generally preempted absent an explicit Congressional statute to the contrary. *California* v. *Cabazon Band of Mission Indians*, 107 S.Ct. 1083, 1092 and n.18 (1987). The CWA contains no language which explicitly grants a State the authority to regulate activities related to water quality management on Indian lands. Section 510 of the Act clarifies only that the CWA does not preempt a State from adopting any water quality standard or effluent limitation more stringent than the Federal minima. *International Paper Co.* v. *Ouelette*, 107 S.Ct. 805 (1987). Section 510 does not, however, address the authority of a State to implement or enforce its water quality standards on Indian lands.

EPA construes the CWA in a manner very similar to the Resource, Conservation and Recovery Act (RCRA) with respect to Congressional authorization of State jurisdiction on Indian lands. As with the CWA, RCRA does not explicitly discuss or address the extent of a State's authority to regulate environmental activities on Indian lands. On this basis, EPA decided in 1983 not to authorize the State of Washington to regulate hazardous waste activities on Indian lands in the State (48 FR 34954 (1983)). EPA rejected Washington's argument that the statutory language of RCRA authorized the State's assertion of jurisdiction over Indian lands within the State. This decision was upheld by the U.S. Court of Appeals for the Ninth Circuit. *Washington Dept. of Ecology* v. EPA, 752 F.2d 1465 (9th Cir. 1985). The court found that, in light of Congressional silence, EPA had reasonably interpreted RCRA not to grant the State jurisdiction over activities on Indian lands. The court noted that EPA's interpretation was "buttressed by well-settled principles of Federal Indian law." *Id.* at 1469. As with RCRA, EPA rejects the argument that the CWA constitutes Congressional authorization of State regulatory jurisdiction over discharges to surface waters on Indian lands.

The same commenter also argued that the State retains inherent authority to regulate water quality on fee lands owned by non-Indians. This commenter asserted that EPA promulgation of water quality standards for the Colville reservation is unnecessary because the State of Washington has already established water quality standards which apply, at a minimum, over fee lands owned by non-Indians within the exterior boundaries of the reservation. EPA does not believe it necessary to resolve this issue. First, the Tribe and Washington have an agreement that water quality standards on and off the reservation will be as similar as possible. Also, the State of Washington, in a companion agreement with EPA, has already agreed that, in the absence of Tribal NPDES program assumption, EPA will issue all future NPDES permits on the reservation (without conceding its own authority to do so under State law).[1] As a result, to give effect to these agreements, EPA believes it necessary and appropriate to promulgate the standards contained in today's rule.

EPA notes that there may be some doubts as to whether the State of Washington would be able to adequately demonstrate its authority under State law to regulate activities affecting surface water quality on the Colville reservation in light of the relevant precedents regarding preemption of state regulatory authority on Indian lands.[2] As the commenter noted, the proper test for determining the extent of State regulatory authority was clearly stated by the Supreme Court in *Cabazon*.

> State jurisdiction is pre-empted * * * if it interferes or is incompatible with Federal and tribal interests reflected in Federal law unless the State interests at stake are sufficient to justify the assertion of State authority. The inquiry is to proceed in light of traditional notions of Indian self-government, including its overriding goal of encouraging tribal self-sufficiency and economic development.

Cabazon, 107 S.Ct. at 1092 (quoting *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 333-35 (1983)). EPA believes that the adoption of section 518 of the CWA evinces strong Congressional preference for Tribal

[1] A copy of both cooperative agreements is available in the docket for today's rule.

[2] EPA has also determined that the State of Washington cannot adequately demonstrate its authority to regulate hazardous waste activities and underground injection activities on Indian lands in the State, and has declined to authorize Washington to administer these programs on Indian lands. *See Washington Dept. of Ecology v. EPA*, 752 F.2d 1465 (9th Cir. 1985) (hazardous waste); 53 FR 42,060 (1988) (underground injection).

control of water quality on Indian reservations, where the Tribe meets the statutory criteria. Thus, the Federal interest in ensuring enforcement of tribal water quality standards is strong and the continued applicability of the State standards may be subject to question. However, in light of the fact that both the Tribe and the State have "plac[ed] environmental protection ahead of jurisdictional conflicts in developing the (tribal water quality management) plan," [3] EPA does not today attempt to finally resolve this question, nor does it feel that it must resolve this question before it can find that today's rule is necessary under section 303(c)(4)(B) of the CWA. Thus, EPA declines to do so.

Finally, this commenter argued that EPA may not promulgate these standards, since the Confederated Tribes of the Colville Reservation have not qualified to be treated as a State under section 518 of the CWA for purposes of developing water quality standards for EPA approval under section 303 of the CWA. EPA believes that the commenter may have misunderstood the statutory basis for today's action. Section 518(e) establishes statutory prerequisites that must be satisfied by a Tribe before it may submit water quality standards for approval by EPA under section 303. EPA is in the process of developing regulations to implement section 518 for purposes of the standards program, which it plans on proposing in the summer of 1989 for public comment. However, today's action is not an approval of Tribal standards under section 303(a)(3)(A), but Federal promulgation of standards under 303(c)(4)(B). Section 518 does not affect EPA's authority to promulgate Federal water quality standards.

The statutory context in which today's rule is adopted is very similar to the situation presented to the U.S. Court of Appeals in *Phillips Petroleum Co.* v. *EPA*, 803 F.2d 545 (10th Cir. 1986). In that case, Phillips challenged EPA's regulation promulgating a Federal Underground Injection Control (UIC) program under the Safe Drinking Water Act (SDWA) for the Osage Mineral Reserve. Phillips argued that EPA lacked the authority to promulgate such regulations prior to the 1986 SDWA Amendments, which explicitly authorized EPA to promulgate Federal UIC programs on Indian lands. The Tenth Circuit upheld EPA's regulations, stating that the strong national interest in applying SDWA regulatory standards "ocean to ocean" overcame Congress' failure to address the implenemtation of SDWA on Indian lands. *Id.*, at 553, 555–56. The Court also noted that its conclusion that "the SDWA empowered the EPA to prescribe regulations for Indian lands is also consistent with the presumption that Congress intends a general statute applying to all persons to include Indians and their property interests." *Id.* at 556. EPA believes that same logic applies to the CWA, both prior to and subsequent to the adoption of section 518.

EPA disagrees that today's action would be premature or inconsistent with the regulations to be developed under section 518. One commenter stated that adoption of section 518 supersedes EPA's 1984 Indian Policy statement and the cooperative agreements discussed above, which were adopted pursuant to the policy. EPA disagrees with this statement. Adoption of section 518 grew out of EPA's efforts to implement the CWA on Indian lands in a manner consistent with the 1984 policy. There is no legislative history to suggest Congress intended EPA to alter its 1984 policy; indeed it suggests the opposite. Furthermore, section 518(d) of the CWA explicitly authorizes States and Tribes to enter cooperative agreements "to jointly plan and administer the requirements of (the CWA)," precisely what the Tribe and the State have done.

EPA does not believe that today's action must wait for section 518 regulations to be finalized. The Confederated Tribes requested EPA to promulgate the Tribal water quality standards as Federal standards on February 7, 1986, nearly one year before passage of the Water Quality Act of 1987. EPA sees no reason to delay promulgation of this rule while regulations are developed under section 518. EPA notes that, in a draft of the regulations to be proposed under section 518 which has been made publicly available, Federal promulgation of standards on Indian lands is mentioned as one method of implementing the water quality standards program (although not the preferred method, as discussed above), where the Tribe is not yet able, or chooses not to qualify for treatment as a State and submit its own standards for approval. Consistent with the draft regulations, EPA believes that today's action is entirely consistent with section 518 of the CWA. EPA would also point out that if, after promulgation of the regulations authorizing Indian Tribes to develop water quality standards, the Confederated Tribes of the Colville reservation qualify for the standards program and submit standards which are approved by EPA, EPA will withdraw these Federal water quality standards at the Tribes' request.

One commenter noted that although a narrative toxics "free from" criterion was included in the proposal, numeric criteria were not, and recommended that EPA consider the fact that the State of Washington adopted numeric criteria for certain toxics in January, 1988, and propose to adopt equivalent critera for reservation/State boundary waters.

Although an agreement exists between the State and the Tribe to maintain consistent water quality standards on boundary waters, this agreement does not involve EPA. It is EPA's judgment that, at present, it is appropriate not to propose numeric toxics criteria for waters of the Colville reservation. A primary factor in this decision is that EPA knows of no toxic pollutant that can reasonably be expected to be interfering with designated uses of the reservation. The Colville Tribes report only one point source discharger on the reservation and no toxics discovered from that discharger. EPA is aware of no other source of toxics in the area. Given these circumstances, numeric criteria for CWA section 307(a) pollutants are not required by CWA section 303(c)(2)(B). Until the Tribes qualify for treatment as a State for purposes of the standards program, or until additional information substantiating the need for numeric toxics criteria leads EPA to adopt numeric toxics criteria, EPA believes it is sufficient for the Agency to use the Agency's 304(a) criteria guidance to implement the narrative toxics "free from" criterion in any situation that might arise concerning the discharge of toxics.

One commenter noted that EPA erroneously noted in the Preamble to the proposed rulemaking that the Colville Water Quality Standards Act was amended by resolution (#1985–20) after the August 28, 1985 EPA approval of the Colville Water Quality Management Program, when in fact the amendment occurred before such EPA approval. EPA acknowledges the error.

One commenter noted several differences between the standards adopted by the State of Washington and the proposal. First, the State standards use the fecal coliform organism as a bacterial indicator, instead of enterococcus as used in the proposal. Second, the proposed Class III (equivalent to State B waters) includes primary contact recreation as a designated use, while State Class B does not. Third, the proposed Class III and IV have different oxygen criteria than equivalent State Class B and C.

With regard to the first difference, EPA uses enterococcus because research has established that it is a better indicator. EPA encourages the State to change its bacterial indicator to be consistent with EPA's section 304(a) guidance. With regard to the second difference, EPA has included primary contact recreation as a designated use in support of the fishable/swimmable goal of the Clean Water Act, and assumes that the State conducts Use Attainability Analyses during each triennial review to determine whether the primary contact recreation use is attainable in their Class B waters. With regard to the third difference, EPA has based the dissolved oxygen criteria on the 1986 dissolved oxygen criteria document, and encourages States to update their criteria to reflect the most recent aquatic effects research.

C. Changes to the Proposed Rule

On EPA's initiative, the definition of "Reservation" was changed in the final rule to be consistent with the statutory definition provided in section 518 of the CWA. Specifically, the definition of "Reservation" which appeared in the proposed rulemaking was expanded to also include the language which was used in defining "Federal Indian Reservation" in CWA section 518(h) (i.e., "Federal Indian Reservation" means all land within the limits of any Indian Reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation). Since the definition of "reservation" in section 518(h) tracks the common definition of the term (see 18 U.S.C. 1151(a)), this change will have no substantive effect on the rule. The change is meant only as a clarification.

On EPA's initiative, paragraph (c)(2) was re-written to be consistent with the requirements of § 131.13 of the water quality standards regulation. Section 131.13 authorizes the States to adopt general policies affecting the application of their water quality standards such as mixing zone, variance, and low-flow policies, but only if such policies are included as a part of the State's water quality standards. Proposed paragraph (c)(2), however, would have allowed the Regional Administrator to implement such general policies without including such policies in § 131.35. The new paragraph (c)(2) establishes a mixing zone policy in § 131.35, consistent with § 131.13, which authorizes the Regional Administrator to designate mixing zones, provided that such mixing zones are consistent with the most current EPA mixing zone guidelines in the Water Quality Standards Handbook and the Technical Support Document for Water Quality Based Toxics Control. EPA notes that a low-flow policy was already included in proposed paragraph (c)(6). At this time, EPA declines to establish a variance policy in § 131.35.

On EPA's initiative, the definition of "Acute toxicity" was changed in the final rule to be more consistent with the definition of "acute" in EPA's Technical Support Document for Water Quality Based Toxics Control. The proposed definition limited acutely toxics effects only to mortality and the period of exposure only to 96 hours.

D. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a Regulatory Flexibility Analysis for all proposed regulations that have a significant impact on a substantial number of small entities. EPA has determined that, because a Tribal regulation is already in place which is essentially equivalent in stringency to this rule, this Rule will not have significant adverse impact on small entities.

E. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of preparing a Regulatory Impact Analysis. A major rule is defined as a regulation which is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers; individual industries; Federal, State, and local government agencies; or geographic regions; or

(3) Significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA has determined that this rule does not meet the definition of a major regulation; therefore, no Regulatory Impact Analysis is required. Also, as required by Executive Order 12291 this rule has been reviewed by the Office of Management and Budget (OMB). Any written comments from OMB to EPA and any response to those comments are available for public inspection through contacting the person listed at the beginning of this notice.

F. Paperwork Reduction Act

Promulgation of Federal water quality standards was one of the actions contemplated under the water quality standards regulation, which is covered by ICR # 2040–0049 approved by OMB. Since there are no significant additional information collection provisions in this rule, there is no requirement for approval of an additional ICR by OMB for the Paperwork Reduction Act of 1980.

G. List of Subjects in 40 CFR Part 131

Indian Reservation water quality standards, Water pollution control, Water quality standards.

Date: June 23, 1989.

William K. Reilly,

Administrator.

For the reasons set out in the SUPPLEMENTARY INFORMATION section, Part 131 of the Title 40 of the Code of Federal Regulations is amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for Part 131 continues to read as follows:

Authority: Clean Water Act, P.L. 92–500, as amended; 33 U.S.C. 1251 et seq.

2. Section 131.35 is added to read as follows:

§ 131.35 Colville Confederated Tribes Indian Reservation.

The water quality standards applicable to the waters within the Colville Indian Reservation, located in the State of Washington.

(a) *Background.* (1) It is the purpose of these Federal water quality standards to prescribe minimum water quality requirements for the surface waters located within the exterior boundaries of the Colville Indian Reservation to ensure compliance with section 303(c) of the Clean Water Act.

(2) The Colville Confederated Tribes have a primary interest in the protection, control, conservation, and utilization of the water resources of the Colville Indian Reservation. Water quality standards have been enacted into tribal law by the Colville Business Council of the Confederated Tribes of the Colville Reservation, as the Colville Water Quality Standards Act, CTC Title 33 (Resolution No. 1984–526 (August 6, 1984) as amended by Resolution No. 1985–20 (January 18, 1985)).

(b) *Territory Covered.* The provisions of these water quality standards shall apply to all surface waters within the

[3] *See* letter from Ernesta Barnes, Regional Administrator, Region X, to the Honorable Booth Gardner, Governor, State of Washington, August 28, 1985, a copy of which is in the docket for today's rule.

exterior boundaries of the Colville Indian Reservation.

(c) *Applicability, Administration and Amendment.* (1) The water quality standards in this section shall be used by the Regional Administrator for establishing any water quality based National Pollutant Discharge Elimination System Permit (NPDES) for point sources on the Colville Confederated Tribes Reservation.

(2) In conjunction with the issuance of section 402 or section 404 permits, the Regional Administrator may designate mixing zones in the waters of the United States on the reservation on a case-by-case basis. The size of such mixing zones and the in-zone water quality in such mixing zones shall be consistent with the applicable procedures and guidelines in EPA's Water Quality Standards Handbook and the Technical Support Document for Water Quality Based Toxics Control.

(3) Amendments to the section at the request of the Tribe shall proceed in the following manner.

(i) The requested amendment shall first be duly approved by the Confederated Tribes of the Colville Reservation (and so certified by the Tribes Legal Counsel) and submitted to the Regional Administrator.

(ii) The requested amendment shall be reviewed by EPA (and by the State of Washington, if the action would affect a boundary water).

(iii) If deemed in compliance with the Clean Water Act, EPA will propose and promulgate an appropriate change to this section.

(4) Amendment of this section at EPA's initiative will follow consultation with the Tribe and other appropriate entities. Such amendments will then follow normal EPA rulemaking procedures.

(5) All other applicable provisions of this Part 131 shall apply on the Colville Confederated Tribes Reservation. Special attention should be paid to §§ 131.6, 131.10, 131.11 and 131.20 for any amendment to these standards to be initiated by the Tribe.

(6) All numeric criteria contained in this section apply at all in-stream flow rates greater than or equal to the flow rate calculated as the minimum 7-consecutive day average flow with a recurrence frequency of once in ten years (7Q10); narrative criteria (§ 131.35(e)(3)) apply regardless of flow. The 7Q10 low flow shall be calculated using methods recommended by the U.S. Geological Survey.

(d) *Definitions.* (1) "Acute toxicity" means a deleterious response (e.g., mortality, disorientation, immobilization) to a stimulus observed in 96 hours or less.

(2) "Background conditions" means the biological, chemical, and physical conditions of a water body, upstream from the point or non-point source discharge under consideration. Background sampling location in an enforcement action will be upstream from the point of discharge, but not upstream from other inflows. If several discharges to any water body exist, and an enforcement action is being taken for possible violations to the standards, background sampling will be undertaken immediately upstream from each discharge.

(3) "Ceremonial and Religious water use" means activities involving traditional Native American spiritual practices which involve, among other things, primary (direct) contact with water.

(4) "Chronic Toxicity" means the lowest concentration of a constituent causing observable effects (i.e., considering lethality, growth, reduced reproduction, etc.) over a relatively long period of time, usually a 28-day test period for small fish test species.

(5) "Council" or "Tribal Council" means the Colville Business Council of the Colville Confederated Tribes.

(6) "Geometric mean" means the "nth" root of a product of "n" factors.

(7) "Mean retention time" means the time obtained by dividing a reservoir's mean annual minimum total storage by the non-zero 30-day, ten-year low-flow from the reservoir.

(8) "Mixing Zone" or "dilution zone" means a limited area or volume of water where initial dilution of a discharge takes place; and where numeric water quality criteria can be exceeded but acutely toxic conditions are prevented from occurring.

(9) "pH" means the negative logarithm of the hydrogen ion concentration.

(10) "Primary contact recreation" means activities where a person would have direct contact with water to the point of complete submergence, including but not limited to skin diving, swimming, and water skiing.

(11) "Regional Administrator" means the Administrator of EPA's Region X.

(12) "Reservation" means all land within the limits of the Colville Indian Reservation, established on July 2, 1872 by Executive Order, presently containing 1,389,000 acres more or less, and under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

(13) "Secondary contact recreation" means activities where a person's water contact would be limited to the extent that bacterial infections of eyes, ears, respiratory, or digestive systems or urogenital areas would normally be avoided (such as wading or fishing).

(14) "Surface water" means all water above the surface of the ground within the exterior boundaries of the Colville Indian Reservation including but not limited to lakes, ponds, reservoirs, artificial impoundments, streams, rivers, springs, seeps and wetlands.

(15) "Temperature" means water temperature expressed in Centigrade degrees (C).

(16) "Total dissolved solids" (TDS) means the total filterable residue that passes through a standard glass fiber filter disk and remains after evaporation and drying to a constant weight at 180 degrees C. it is considered to be a measure of the dissolved salt content of the water.

(17) "Toxicity" means acute and/or chronic toxicity.

(18) "Tribe" or "Tribes" means the Colville Confederated Tribes.

(19) "Turbidity" means the clarity of water expressed as nephelometric turbidity units (NTU) and measured with a calibrated turbidimeter.

(20) "Wildlife habitat" means the waters and surrounding land areas of the Reservation used by fish, other aquatic life and wildlife at any stage of their life history or activity.

(e) *General considerations.* The following general guidelines shall apply to the water quality standards and classifications set forth in the use designation Sections.

(1) *Classification Boundaries.* At the boundary between waters of different classifications, the water quality standards for the higher classification shall prevail.

(2) *Antidegradation Policy.* This antidegradation policy shall be applicable to all surface waters of the Reservation.

(i) Existing in-stream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

(ii) Where the quality of the waters exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the Regional Administrator finds, after full satisfaction of the inter-governmental coordination and public participation provisions of the Tribes' continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the Regional Administrator shall assure water quality adequate to protect existing uses fully. Further, the Regional Administrator shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

(iii) Where high quality waters are identified as constituting an outstanding national or reservation resource, such as waters within areas designated as unique water quality management areas and waters otherwise of exceptional recreational or ecological significance, and are designated as special resource waters, that water quality shall be maintained and protected.

(iv) In those cases where potential water quality impairment associated with a thermal discharge is involved, this antidegradation policy's implementing method shall be consistent with section 316 of the Clean Water Act.

(3) *Aesthetic Qualities.* All waters within the Reservation, including those within mixing zones, shall be free from substances, attributable to wastewater discharges or other pollutant sources, that:

(i) Settle to form objectionable deposits;

(ii) Float as debris, scum, oil, or other matter forming nuisances;

(iii) Produce objectionable color, odor, taste, or turbidity;

(iv) Cause injury to, are toxic to, or produce adverse physiological responses in humans, animals, or plants; or

(v) produce undesirable or nuisance aquatic life.

(4) *Analytical Methods.* (i) The analytical testing methods used to measure or otherwise evaluate compliance with water quality standards shall to the extent practicable, be in accordance with the "Guidelines Establishing Test Procedures for the Analysis of Pollutants" (40 CFR Part 136). When a testing method is not available for a particular substance, the most recent edition of "Standard Methods for the Examination of Water and Wastewater" (published by the American Public Health Association, American Water Works Association, and the Water Pollution Control Federation) and other or superseding methods published and/or approved by EPA shall be used.

(f) *General Water Use and Criteria Classes.* The following criteria shall apply to the various classes of surface waters on the Colville Indian Reservation:

(1) *Class I (Extraordinary)*—(i) *Designated uses.* The designated uses include, but are not limited to, the following:

(A) Water supply (domestic, industrial, agricultural).

(B) Stock watering.

(C) Fish and shellfish: Salmonid migration, rearing, spawning, and harvesting; other fish migration, rearing, spawning, and harvesting.

(D) Wildlife habitat.

(E) Ceremonial and religious water use.

(F) Recreation (primary contact recreation, sport fishing, boating and aesthetic enjoyment).

(G) Commerce and navigation.

(ii) *Water quality criteria.* (A) Bacteriological Criteria. The geometric mean of the enterococci bacteria densities in samples taken over a 30 day period shall not exceed 8 per 100 milliliters, nor shall any single sample exceed an enterococci density of 35 per 100 milliliters. These limits are calculated as the geometric mean of the collected samples approximately equally spaced over a thirty day period.

(B) Dissolved oxygen—The dissolved oxygen shall exceed 9.5 mg/l.

(C) Total dissolved gas—concentrations shall not exceed 110 percent of the saturation value for gases at the existing atmospheric and hydrostatic pressures at any point of sample collection.

(D) Temperature—shall not exceed 16.0 degrees C due to human activities. Temperature increases shall not, at any time, exceed $t=23/(T+5)$.

(*1*) When natural conditions exceed 16.0 degrees C, no temperature increase will be allowed which will raise the receiving water by greater than 0.3 degrees C.

(*2*) For purposes hereof, "t" represents the permissive temperature change across the dilution zone; and "T" represents the highest existing temperature in this water classification outside of any dilution zone.

(*3*) Provided that temperature increase resulting from nonpoint source activities shall not exceed 2.8 degrees C, and the maximum water temperature shall not exceed 10.3 degrees C.

(E) pH shall be within the range of 6.5 to 8.5 with a human-caused variation of less than 0.2 units.

(F) Turbidity shall not exceed 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 10 percent increase in turbidity when the background turbidity is more than 50 NTU.

(G) Toxic, radioactive, nonconventional, or deleterious material concentrations shall be less than those of public health significance, or which may cause acute or chronic toxic conditions to the aquatic biota, or which may adversely affect designated water uses.

(2) *Class II (Excellent).*—(i) *Designated uses.* The designated uses include but are not limited to, the following:

(A) Water supply (domestic, industrial, agricultural).

(B) Stock watering.

(C) Fish and shellfish: Salmonid migration, rearing, spawning, and harvesting; other fish migration, rearing, spawning, and harvesting; crayfish rearing, spawning, and harvesting.

(D) Wildlife habitat.

(E) Ceremonial and religious water use.

(F) Recreation (primary contact recreation, sport fishing, boating and aesthetic enjoyment).

(G) Commerce and navigation.

(ii) *Water quality criteria.* (A) Bacteriological Criteria—The geometric mean of the enterococci bacteria densities in samples taken over a 30 day period shall not exceed 16/100 ml, nor shall any single sample exceed an enterococci density of 75 per 100 milliliters. These limits are calculated as the geometric mean of the collected samples approximately equally spaced over a thirty day period.

(B) Dissolved oxygen—The dissolved oxygen shall exceed 8.0 mg/l.

(C) Total dissolved gas—concentrations shall not exceed 110 percent of the saturation value for gases at the existing atmospheric and hydrostatic pressures at any point of sample collection.

(D) Temperature-shall not exceed 18.0 degrees C due to human activities. Temperature increases shall not, at any time, exceed $t=28/(T+7)$.

(*1*) When natural conditions exceed 18 degrees C no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3 degrees C.

(*2*) For purposes hereof, "t" represents the permissive temperature change across the dilution zone; and "T" represents the highest existing temperature in this water classification outside of any dilution zone.

(*3*) Provided that temperature increase resulting from non-point source activities shall not exceed 2.8 degrees C, and the maximum water temperature shall not exceed 18.3 degrees C.

(E) pH shall be within the range of 6.5 to 8.5 with a human-caused variation of less than 0.5 units.

(F) Turbidity shall not exceed 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 10 percent increase in turbidity when the background turbidity is more than 50 NTU.

(G) Toxic, radioactive, nonconventional, or deleterious material concentrations shall be less than those of public health significance, or which may cause acute or chronic toxic conditions to the aquatic biota, or which may adversely affect designated water uses.

(3) *Class III (Good).*—(i) *Designated uses.* The designated uses include but are not limited to, the following:

(A) Water supply (industrial, agricultural).

(B) Stock watering.

(C) Fish and shellfish: Salmonid migration, rearing, spawning, and harvesting; other fish migration, rearing, spawning, and harvesting; crayfish rearing, spawning, and harvesting.

(D) Wildlife habitat.

(E) Recreation (secondary contact recreation, sport fishing, boating and aesthetic enjoyment).

(F) Commerce and navigation.

(ii) *Water quality criteria.* (A) Bacteriological Criteria—The geometric mean of the enterococci bacteria densities in samples taken over a 30 day period shall not exceed 33/100 ml, nor shall any single sample exceed an enterococci density of 150 per 100 milliliters. These limits are calculated as the geometric mean of the collected samples approximately equally spaced over a thirty day period.

(B) Dissolved oxygen.

	Early life stages [1, 2]	Other life stages
7 day mean	9.5 (6.5)	[3] NA
1 day minimum [4]	8.0 (5.0)	6.5

[1] These are water column concentrations recommended to achieve the required intergravel dissolved oxygen concentrations shown in parentheses. The 3 mg/L differential is discussed in the dissolved oxygen criteria document (EPA 440/5-86-003, April 1986). For species that have early life stages exposed directly to the water column, the figures in parentheses apply.

[2] Includes all embryonic and larval stages and all juvenile forms to 30-days following hatching.

[3] NA (not applicable)

[4] All minima should be considered as instantaneous concentrations to be achieved at all times.

(C) Total dissolved gas concentrations shall not exceed 110 percent of the saturation value for gases at the existing atmospheric and hydrostatic pressures at any point of sample collection.

(D) Temperature shall not exceed 21.0 degrees C due to human activities. Temperature increases shall not, at any time, exceed $t=34/(T+9)$.

(*1*) When natural conditions exceed 21.0 degrees C no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3 degrees C.

(*2*) For purposes hereof, "t" represents the permissive temperature change across the dilution zone; and "T" represents the highest existing temperature in this water classification outside of any dilution zone.

(*3*) Provided that temperature increase resulting from nonpoint source activities shall not exceed 2.8 degrees C, and the maximum water temperature shall not exceed 21.3 degrees C.

(E) pH shall be within the range of 6.5 to 8.5 with a human-caused variation of less than 0.5 units.

(F) Turbidity shall not exceed 10 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 20 percent increase in turbidity when the background turbidity is more than 50 NTU.

(G) Toxic, radioactive, nonconventional, or deleterious material concentrations shall be less than those of public health significance, or which may cause acute or chronic toxic conditions to the aquatic biota, or which may adversely affect designated water uses.

(4) *Class IV (Fair)*—(i) *Designated uses.* The designated uses include but are not limited to, the following:

(A) Water supply (industrial).

(B) Stock watering.

(C) Fish (salmonid and other fish migration).

(D) Recreation (secondary contact recreation, sport fishing, boating and aesthetic enjoyment).

(E) Commerce and navigation.

(ii) *Water quality criteria.* (A) Dissolved oxygen.

	During periods of salmonid and other fish migration	During all other time periods
30 day mean	6.5	5.5
7 day mean	[1] NA	[1] NA
7 day mean minimum	5.0	4.0
1 day minimum [2]	4.0	3.0

[1] NA (not applicable).

[2] All minima should be considered as instantaneous concentrations to be achieved at all times.

(B) Total dissolved gas—concentrations shall not exceed 110 percent of the saturation value for gases at the existing atmospheric and hydrostatic pressures at any point of sample collection.

(C) Temperature shall not exceed 22.0 degrees C due to human activities. Temperature increases shall not, at any time, exceed $t=20/(T+2)$.

(*1*) When natural conditions exceed 22.0 degrees C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3 degrees C.

(*2*) For purposes hereof, "t" represents the permissive temperature change across the dilution zone; and "T" represents the highest existing temperature in this water classification outside of any dilution zone.

(D) pH shall be within the range of 6.5 to 9.0 with a human-caused variation of less than 0.5 units.

(E) Turbidity shall not exceed 10 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 20 percent increase in turbidity when the background turbidity is more than 50 NTU.

(F) Toxic, radioactive, nonconventional, or deleterious material concentrations shall be less than those of public health significance, or which may cause acute or chronic toxic conditions to the aquatic biota, or which may adversely affect designated water uses.

(5) *Lake Class*—(i) *Designated uses.* The designated uses include but are not limited to, the following:

(A) Water supply (domestic, industrial, agricultural).

(B) Stock watering.

(C) Fish and shellfish: Salmonid migration, rearing, spawning, and harvesting; other fish migration, rearing, spawning, and harvesting; crayfish rearing, spawning, and harvesting.

(D) Wildlife habitat.

(E) Ceremonial and religious water use.

(F) Recreation (primary contact recreation, sport fishing, boating and aesthetic enjoyment).

(G) Commerce and navigation.

(ii) *Water quality criteria.* (A) Bacteriological Criteria. The geometric mean of the enterococci bacteria densities in samples taken over a 30 day period shall not exceed 33/100 ml, nor shall any single sample exceed an enterococci density of 150 per 100 milliliters. These limits are calculated as the geometric mean of the collected samples approximately equally spaced over a thirty day period.

(B) Dissolved oxygen—no measurable decrease from natural conditions.

(C) Total dissolved gas concentrations shall not exceed 110 percent of the saturation value for gases at the existing atmospheric and hydrostatic pressures at any point of sample collection.

(D) Temperature—no measurable change from natural conditions.

(E) pH—no measurable change from natural conditions.

(F) Turbidity shall not exceed 5 NTU over natural conditions.

(G) Toxic, radioactive, nonconventional, or deleterious material concentrations shall be less than those which may affect public health, the natural aquatic environment, or the desirability of the water for any use.

(6) *Special Resource Water Class (SRW)*—(i) *General characteristics.* These are fresh or saline waters which comprise a special and unique resource to the Reservation. Water quality of this class will be varied and unique as determined by the Regional Administrator in cooperation with the Tribes.

(ii) *Designated uses.* The designated uses include, but are not limited to, the following:

(A) Wildlife habitat.

(B) Natural foodchain maintenance.

(iii) Water quality criteria.

(A) Enterococci bacteria densities shall not exceed natural conditions.

(B) Dissolved oxygen—shall not show any measurable decrease from natural conditions.

(C) Total dissolved gas shall not vary from natural conditions.

(D) Temperature—shall not show any measurable change from natural conditions.

(E) pH shall not show any measurable change from natural conditions.

(F) Settleable solids shall not show any change from natural conditions.

(G) Turbidity shall not exceed 5 NTU over natural conditions.

(H) Toxic, radioactive, or deleterious material concentrations shall not exceed those found under natural conditions.

(g) *General Classifications.* General classifications applying to various surface waterbodies not specifically classified under § 131.35(h) are as follows:

(1) All surface waters that are tributaries to Class I waters are classified Class I, unless otherwise classified.

(2) Except for those specifically classified otherwise, all lakes with existing average concentrations less than 2000 mg/L TDS and their feeder streams on the Colville Indian Reservation are classified as Lake Class and Class I, respectively.

(3) All lakes on the Colville Indian Reservation with existing average concentrations of TDS equal to or exceeding 2000 mg/L and their feeder streams are classified as Lake Class and Class I respectively unless specifically classified otherwise.

(4) All reservoirs with a mean detention time of greater than 15 days are classified Lake Class.

(5) All reservoirs with a mean detention time of 15 days or less are classified the same as the river section in which they are located.

(6) All reservoirs established on pre-existing lakes are classified as Lake Class.

(7) All wetlands are assigned to the Special Resource Water Class.

(8) All other waters not specifically assigned to a classification of the reservation are classified as Class II.

(h) *Specific Classifications.* Specific classifications for surface waters of the Colville Indian Reservation are as follows:

(1) Streams:	
Alice Creek	Class III
Anderson Creek	Class III
Armstrong Creek	Class III
Barnaby Creek	Class II
Bear Creek	Class III
Beaver Dam Creek	Class II
Bridge Creek	Class II
Brush Creek	Class III
Buckhorn Creek	Class III
Cache Creek	Class III
Canteen Creek	Class I
Capoose Creek	Class III
Cobbs Creek	Class III
Columbia River from Chief Joseph Dam to Wells Dam.	
Columbia River from northern Reservation boundary to Grand Coulee Dam (Roosevelt Lake).	
Columbia River from Grand Coulee Dam to Chief Joseph Dam.	
Cook Creek	Class I
Cooper Creek	Class III
Cornstalk Creek	Class III
Cougar Creek	Class I
Coyote Creek	Class II
Deerhorn Creek	Class III
Dick Creek	Class III
Dry Creek	Class I
Empire Creek	Class III
Faye Creek	Class I
Forty Mile Creek	Class III
Gibson Creek	Class I
Gold Creek	Class II
Granite Creek	Class II
Grizzly Creek	Class III
Haley Creek	Class III
Hall Creek	Class II
Hall Creek, West Fork	Class I
Iron Creek	Class III
Jack Creek	Class III
Jerred Creek	Class I
Joe Moses Creek	Class III
John Tom Creek	Class III
Jones Creek	Class I
Kartar Creek	Class III
Kincaid Creek	Class III
King Creek	Class III
Klondyke Creek	Class I
Lime Creek	Class III
Little Jim Creek	Class III
Little Nespelem	Class II
Louie Creek	Class III
Lynx Creek	Class II
Manila Creek	Class III
McAllister Creek	Class III
Meadow Creek	Class III
Mill Creek	Class II
Mission Creek	Class III
Nespelem River	Class II
Nez Perce Creek	Class III
Nine Mile Creek	Class II
Nineteen Mile Creek	Class III
No Name Creek	Class II
North Nanamkin Creek	Class III
North Star Creek	Class III
Okanogan River from Reservation north boundary to Columbia River.	Class II
Olds Creek	Class I
Omak Creek	Class II
Onion Creek	Class II
Parmenter Creek	Class III
Peel Creek	Class III
Peter Dan Creek	Class III
Rock Creek	Class I
San Poil River	Class I
Sanpoil, River West Fork.	Class II
Seventeen Mile Creek	Class III
Silver Creek	Class III
Sitdown Creek	Class III
Six Mile Creek	Class III
South Nanamkin Creek	Class III
Spring Creek	Class III
Stapaloop Creek	Class III
Stepstone Creek	Class III
Stranger Creek	Class II
Strawberry Creek	Class III
Swimptkin Creek	Class III
Three Forks Creek	Class I
Three Mile Creek	Class III
Thirteen Mile Creek	Class II
Thirty Mile Creek	Class II
Trail Creek	Class III
Twentyfive Mile Creek	Class III
Twentyone Mile Creek	Class III
Twentythree Mile Creek	Class III
Wannacot Creek	Class III
Wells Creek	Class I
Whitelaw Creek	Class III
Wilmont Creek	Class II
(2) Lakes:	
Apex Lake	LC
Big Goose Lake	LC
Bourgeau Lake	LC
Buffalo Lake	LC
Cody Lake	LC
Crawfish Lakes	LC
Camille Lake	LC
Elbow Lake	LC
Fish Lake	LC
Gold Lake	LC
Great Western Lake	LC
Johnson Lake	LC
LaFleur Lake	LC
Little Goose Lake	LC
Little Owhi Lake	LC
McGinnis Lake	LC
Nicholas Lake	LC
Omak Lake	SRW
Owhi Lake	SRW
Penley Lake	SRW
Rebecca Lake	LC
Round Lake	LC
Simpson Lake	LC
Soap Lake	LC
Sugar Lake	LC
Summit Lake	LC
Twin Lakes	SRW

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Part IV

Merit Systems Protection Board

5 CFR Parts 1201-1206 and 1209
Miscellaneous Regulations; Final Rules

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

RIN 3124-AA10

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Interim regulations; request for comment.

SUMMARY: The U.S. Merit Systems Protection Board is revising its entire rules of practice and procedure in this part, with the exception of Appendix I, for the convenience of the public, parties and practitioners before the Board. The Board has completed a thorough review of its existing regulations to identify any portions that could be rewritten in plain English so that the Board's requirements and practice could be more readily understood by persons who are not practitioners in personnel administration or the law. The regulations published today reflect that review and also implement the Whistleblower Protection Act of 1989, Pub. L. 101-12. Except for the sections described below, the revised language is not intended to change the meaning or requirements of any of the existing sections. The Board invites public comment on these regulations with respect to the ease of understanding and adherence to legal requirements.

DATES: Effective date: July 9, 1989. Submit written comments on or before September 5, 1989.

ADDRESS: Send comments to Robert E. Taylor, Clerk of the Board, U.S. Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, DC 20419.

FOR FURTHER INFORMATION CONTACT: Charles J. Stanislav, (202) 653-8931.

SUPPLEMENTARY INFORMATION: On July 10, 1986, the Board published final regulations in this part as a first attempt to enhance the public's and practitioners' awareness and understanding of the Board's rules of practice. (51 FR 25146) The regulations published today are a further attempt to present the Board's requirements in plain English, to implement the Whistleblower Protection Act of 1989 (Pub. L. 101-12) and to make the following changes:

(a) Section 1201.3 is amended at (a)(6) to add cites to 5 CFR Part 842 and 5 U.S.C. 8461(e)(1). A new paragraph (b) is added to provide that this part applies to cases under Part 1209 unless other specific provisions are made in that part. The existing paragraph (b) is renumbered paragraph (c) and a new paragraph (d) is added to provide that appealability is not affected by retirement status.

(b) Section 1201.4 is amended by deleting paragraph (b) and paragraphs (c) through (m) are renumbered (b) through (1).

(c) Section 1201.11 is amended by adding that Subpart B applies to whistleblower cases under Part 1209 unless other specific provisions are made in that part.

(d) Section 1201.24 is amended at (a)(8) to add that an appellant must inform the Board whether a formal discrimination complaint has been filed regarding the matter appealed. Paragraph (a) is amended at (9) to make it clear that a petition for appeal must contain the original signature of the appellant. Paragraph (e) is amended to remove the provision that failure to make a timely request for a hearing will be deemed to constitute a waiver of the right to a hearing.

(e) Section 1201.25 is amended by removing paragraph (b) and eliminating the provision that agencies can request a hearing. This section is restructured accordingly since paragraphs are no longer needed.

(f) Section 1201.34 is amended at paragraph (b)(2) to require that the Special Counsel obtain permission to intervene from the individual in certain cases. Paragraph (e) is amended by adding a definition of amicus curiae.

(g) Section 1201.37 is amended at paragraph (a) by renumbering subparagraph (2) as subparagraph (3). A new subparagraph (2) is added to state that an agency is liable for attorney fees and other reasonable costs when the appellant prevails and the decision is based upon a finding of any prohibited personnel practice.

(h) Section 1201.41 paragraph (b) is amended at (5) to remove the authority to order a hearing at the request of an agency. Paragraph (b) is also amended by redesignating (13) as (15) and adding a new (13) to require that persons who can be identified from the record as clearly and directly affected in a retirement-related case be notified of a pending appeal and of their opportunity to request to intervene. New subparagraphs (14) and (16) are added to provide for issuing protective orders and to determine whether interim relief is appropriate for prevailing appellants.

(i) Section 1201.42 paragraph (b) is amended to provide that the reasons for requesting a presiding official to withdraw may be set out in either an affidavit or a signed and dated declaration in accordance with 28 U.S.C. 1746.

(j) Section 1201.51 paragraph (b) is amended by moving the portion concerning postponement to a new paragraph (c) and redesignating the existing paragraph (c) as paragraph (d). The new paragraph (c) is amended to provide that a motion for postponement may be accompanied by either an affidavit or a signed and dated declaration in accordance with 28 U.S.C. 1746.

(k) Section 1201.53 paragraph (c) is amended to provide that the reasons for a request for exception may be set out either in an affidavit or in a signed and dated declaration in accordance with 28 U.S.C. 1746.

(l) Section 1201.55 paragraph (a) is amended by adding that motions made at prehearing conferences are not required to be in writing and to eliminate the requirement that a proposed order be submitted with a motion. A new paragraph (d) is added to state the requirements for filing a motion for a protective order.

(m) Section 1201.67 is amended by adding a definition of official notice.

(n) Section 1201.81 is amended at paragraph (a) to change the citation. Paragraph (c) is amended to state that a presiding official who lacks authority to rule on a subpoena request is to refer it to an official with authority to rule rather than to specifically the ALJ or a Board member.

(o) Section 1201.83 is amended by numbering the existing paragraph as (a) and adding paragraph (b) to provide for service of a subpoena in a foreign country.

(p) Section 1201.85 is amended by numbering the existing paragraph as (a), changing the citation and adding that the U.S. District Court for the District of Columbia has jurisdiction to enforce subpoenas issued to individuals in foreign countries. Paragraph (b) is added to state Board authority to seek enforcement of Special Counsel subpoenas.

(q) Section 1201.101 paragraph (b) is amended at (2) by adding officer [of the Board] to the definition of decision-making official.

(r) Section 1201.111 is amended to add subparagraph (4) to paragraph (b), stating that an initial decision will contain a statement as to whether interim relief is granted to a prevailing appellant. Paragraph (c) is added to provide for interim relief.

(s) Section 1201.114 is amended at paragraph (g)(2) to state that the Special Counsel cannot intervene in cases brought under 5 U.S.C. 1221 or 7701 without the consent of the individual.

(t) Section 1201.115 is amended by numbering the first sentence as paragraph (a) and adding paragraph (b) with respect to interim relief where the appellant was the prevailing party and the requirements an agency must meet when it files a petition for review. The remaining portion of the existing paragraph is numbered (c).

(u) Section 1201.123 is amended by numbering the first sentence as paragraph (a) and existing paragraph (a) is renumbered as paragraph (a)(1) with clarifying language added that corrective action can be brought for prohibited personnel practices or a pattern of prohibited practice and to change the citation. The existing paragraph (b) is deleted and (c) is renumbered (a)(2) along with a citation change. Paragraph (a)(3) is added providing that the Special Counsel may file complaints with respect to other matters within the jurisdiction of the Special Counsel under 5 U.S.C. 1216. Existing paragraph (d) is renumbered (a)(4) and the citation is changed. The remainder of the existing paragraph is renumbered paragraph (b) and a new paragraph (c) is added providing that the Special Counsel cannot continue to seek corrective action on behalf of an individual who has brought an individual right of action case to the Board unless the individual consents.

(v) Section 1201.124 is amended by renumbering paragraph (a) as paragraph (b) and renumbering the subparagraphs from (a) through (e) as (1) through (5) and changing the citation. A new paragraph (a) is added setting forth the rights of individuals on whose behalf the Special Counsel seeks corrective action.

(w) Section 1201.126 is amended by changing the citation in paragraph (a). Existing paragraph (b) is deleted and a new paragraph (b) is added which provides that the Board must order corrective action if the Special Counsel proves that whistleblowing was a contributing factor in the personnel action, unless the agency demonstrates by clear and convincing evidence that it would have taken the same action in the absence of the individual's whistleblowing. The citation is changed in paragraphs (c) and (e). Paragraph (d) is changed to make it clear that the Board's determination that removal is warranted is made under 5 U.S.C. 1505 and the withholding of funds may be ordered under 5 U.S.C. 1506.

(x) Section 1201.127 is amended by changing the citation in the first sentence and paragraph (c) is revised to reflect new procedures for Special Counsel stay requests to conform to Pub. L. 101-12. Paragraph (c)(3) is added to require reports during the pendency of a stay. Paragraph (e) is added to implement the Board's authority to issue protective orders.

(y) Section 1201.128 is amended by numbering the first sentence as paragraph (a). Paragraph (b) is added to state the right of an individual adversely affected by a Board order in a corrective action case to seek review in the Court of Appeals for the Federal Circuit. The remainder of the existing paragraph is numbered (c), the citation is changed and the language is revised to provide that an individual subject to a final order imposing disciplinary action may seek review in the Court of Appeals for the Federal Circuit.

(z) Section 1201.129 paragraph (a) is amended to provide that pleadings may be filed as directed rather than only with the clerk and the citation is changed. Paragraph (d) is added to provide that no additional evidence will be accepted with a request for exception unless it is shown to be new and material evidence that was not available, despite due diligence, before the record was closed.

(aa) Section 1201.154 is amended by restructuring this section to clarify the filing requirements for petitions raising an issue of discrimination in an action otherwise appealable to the Board and to add paragraph (e) providing for the closing of the record and the conditions for considering evidence or argument submitted after the record has been closed.

(bb) Section 1201.181 is amended by changing the citation in paragraph (a).

(cc) Section 1201.182 is amended by renumbering the last sentence of the existing section as paragraph (d) and adding a new paragraph (c) setting forth the procedures and requirements for an employee aggrieved by the failure of any other employee to comply with an order of the Board to petition the Board for enforcement.

(dd) Section 1201.183 is amended by changing the citations in paragraphs (b), (c), and (d).

(ee) Section 1201.191 is amended by renumbering the existing paragraph as paragraph (a) and renumbering the subparagraphs from (a) through (c) as (1) through (3). A new paragraph (b) is added to state the savings provisions applicable to the Whistleblower Protection Act of 1989.

Regulatory Flexibility Act

The Clerk, Merit Systems Protection Board, certifies that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees.

List of Subject in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Merit Systems Protection Board revises 5 CFR part 1201 as follows:

PART 1201—PRACTICES AND PROCEDURES

Subpart A—Jurisdiction and Definitions

Sec.
1201.1 General.
1201.2 Original jurisdiction: Definition and scope of jurisdiction.
1201.3 Appellate jurisdiction: Definition and scope of jurisdiction.
1201.4 General definitions.

Subpart B—Procedures for Appellate Cases

1201.11 Scope and policy.
1201.12 Revocation, amendment, or waiver of rules.
1201.13 Appeals by Board employees.

Petitions for Appeal of Agency Action; Pleadings

1201.21 Notice of appeal rights.
1201.22 Filing petitions for appeal and responses to petitions.
1201.23 Computation of time.
1201.24 Content of petition for appeal; right to hearing.
1201.25 Content of agency response.
1201.26 Number of pleadings, service, and response.
1201.27 Class appeals.

Parties, Representatives and Witnesses

1201.31 Representation.
1201.32 Witnesses; right to representation.
1201.33 Federal witnesses.
1201.34 Intervenors and amicus curiae.
1201.35 Substituting parties.
1201.36 Consolidating and joining appeals.
1201.37 Fees.

Presiding Officials

1201.41 Presiding officials.
1201.42 Disqualifying presiding official.
1201.43 Sanctions.

Hearings

1201.51 Scheduling the hearing.
1201.52 Public hearings.
1201.53 Verbatim record.
1201.54 Official record.
1201.55 Motions.
1201.56 Burden and degree of proof; affirmative defenses.
1201.57 Order of hearing.
1201.58 Closing the record.

Evidence

1201.61 Serving documents on other parties.
1201.62 Admissibility of evidence and testimony.
1201.63 Presiding official's authority to order production of evidence.
1201.64 Producing prior statements.
1201.65 Admitting facts and genuineness of documents.
1201.66 Stipulations.
1201.67 Official notice.

Discovery

1201.71 Purpose of discovery.
1201.72 Explanation and scope of discovery.
1201.73 Discovery procedures.
1201.74 Orders for discovery.
1201.75 Taking depositions.

Subpoenas

1201.81 Requests for subpoenas.
1201.82 Motions to quash subpoenas.
1201.83 Serving subpoenas.
1201.84 Proof of service.
1201.85 Enforcing subpoenas.

Interlocutory Appeals

1201.91 Explanation.
1201.92 Criteria for certifying interlocutory appeals.
1201.93 Procedures.

Ex Parte Communications

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Authority: 5 U.S.C. 1204, and 7701 unless otherwise noted.

Subpart A—Jurisdiction and Definitions

§ 1201.1 General.

The Board has two types of jurisdiction, original and appellate.

§ 1201.2 Original jurisdiction: Definition and scope of jurisdiction.

The Board has original jurisdiction over cases in which the agency has taken no formal action with respect to an employee. These cases include the following:

(a) Actions brought by the Board's Special Counsel;

(b) Requests, by persons removed from the Senior Executive Service for performance deficiencies, for informal hearings; and

(c) Actions taken against administrative law judges under 5 U.S.C. 7521.

§ 1201.3 Appellate jurisdiction: Definition and scope of jurisdiction.

(a) *Appellate jurisdiction generally.* The Board has jurisdiction over appeals from agency actions when the appeals are authorized by law, rule, or regulation. These include appeals from the following actions:

(1) Reduction in grade or removal for unacceptable performance (5 CFR Part 432; 5 U.S.C. 4303(e));

(2) Removal, reduction in grade or pay, suspension for more than 14 days, or furlough for 30 days or less for cause that will promote the efficiency of the service. (5 CFR Part 752, Subparts C and D; 5 U.S.C. 7512);

(3) Removal, or suspension for more than 14 days, of a career appointee in the Senior Executive Service (5 CFR Part 752, Subparts E and F; 5 U.S.C. 7541–7543);

(4) Reduction-in-force action affecting a career appointee in the Senior Executive Service (5 U.S.C. 3595);

(5) Reconsideration decision sustaining a negative determination of competence for a general schedule employee (5 CFR 531.410; 5 U.S.C. 5335(c));

(6) Determinations affecting the rights or interests of an individual or of the United States under the Civil Service Retirement System or the Federal Employees' Retirement System (5 CFR Parts 831 and 842; 5 U.S.C. 8347(d)(1)–(2) and 8461(e)(1));

(7) Disqualification of an employee or applicant because of a suitability determination (5 CFR 731.401);

(8) Termination of employment during probation or the first year of a veterans readjustment appointment, when the employee alleges discrimination because of partisan political reasons or marital status, or, if the termination was based on conditions arising before appointment, when the employee alleges that the action is procedurally improper (5 CFR 315.806, 5 U.S.C. 2014(b)(1)(D));

(9) Termination of appointment during a managerial or supervisory probationary period when the employee alleges discrimination because of partisan political affiliation or marital status (5 CFR 315.908(b));

(10) Separation, reduction in grade, or furlough for more than 30 days, when the action was effected because of a reduction in force (5 CFR 351.901);

(11) Furlough of a career appointee in the Senior Executive Service (5 CFR 359.805);

(12) Failure to restore a former employee to employment following military service, or following partial or full recovery from a compensable injury (5 CFR 353.401);

(13) Employment of another applicant when the person who wishes to appeal to the Board is entitled to priority employment consideration after a reduction-in-force action, or after partial or full recovery from a compensable injury (5 CFR 302.501, 5 CFR 330.202);

(14) Failure to reinstate a former employee after service under the Foreign Assistance Act of 1961 (5 CFR 352.508);

(15) Failure to re-employ a former employee after movement between executive agencies during an emergency (5 CFR 352.209);

(16) Failure to re-employ a former employee after detail or transfer to an international organization (5 CFR 352.313);

(17) Failure to re-employ a former employee after service under the Indian Self-Determination Act (5 CFR 352.707);

(18) Failure to re-employ a former employee after service under the Taiwan Relations Act (5 CFR 352.807); and

(19) Employment practices administered by the Office of Personnel Management to examine and evaluate the qualifications of applicants for appointment in the competitive service (5 CFR 300.104).

(b) *Appeals involving an allegation that the action was based on appellant's "whistleblowing."* Appeals of actions appealable to the Board under any law, rule, or regulation, in which the appellant alleges that the action was taken because of the appellant's "whistleblowing" (a violation of the prohibited personnel practice described in 5 U.S.C. 2302(b)(8)), are governed by part 1209 of this title. The provisions of Subparts B, C, E, F, and G of this Part 1201 apply to appeals and stay requests governed by Part 1209 unless other specific provisions are made in that part.

(c) *Limitations on appellate jurisdiction, collective bargaining agreements, and election of procedures:* (1) For an employee covered by a collective bargaining agreement under 5 U.S.C. 7121, the negotiated grievance procedures contained in the agreement are the exclusive procedures for resolving any action that could otherwise be appealed to the Board, with the following exceptions:

(i) An appealable action involving discrimination under 5 U.S.C. 2302(b)(1), reduction in grade or removal under 5 U.S.C. 4303, or adverse action under 5 U.S.C. 7512, may be raised under the Board's appellate procedures, or under the negotiated grievance procedures, but not under both;

(ii) Any appealable action that is excluded from the application of the negotiated grievance procedures may be raised only under the Board's appellate procedures.

(2) *Choice of procedure.* When an employee has a choice of raising an appealable action under the Board's appeal procedures or under negotiated grievance procedures, the Board considers the choice between those procedures to have been made when the employee timely files an appeal with the Board or timely files a written grievance, whichever event occurs first.

(3) *Review of discrimination grievances.* If an employee chooses the negotiated grievance procedure under paragraph (c)(2) of this section and alleges discrimination as described at 5 U.S.C. 2302(b)(1), then the employee, after having obtained a final decision under the negotiated grievance procedure, may ask the Board to review that final decision. The request must be filed with the Clerk of the Board in accordance with § 1201.154.

(d) *Appealability not affected by retirement status or election.* In determining the appealability of an action to the Board under any law, rule, or regulation, neither the status of the appellant under any retirement system established under a federal statute nor any election made by the appellant under such system may be taken into account.

§ 1201.4 General definitions.

(a) *Presiding official.* Any person authorized by the Board to hold a hearing or to decide a case without a hearing, including an attorney-examiner, an administrative judge, an administrative law judge, the Board, or any member of the Board.

(b) *Pleading.* Written submission setting out claims, allegations, arguments, or evidence. Pleadings include briefs, motions, petitions, attachments, and responses.

(c) *Motion.* A request, submitted to a presiding official, that the presiding official take a particular action.

(d) *Appropriate regional office.* The regional office of the Board that has jurisdiction over the area where the appellant's duty station was located when the agency took the action. Appeals of Office of Personnel Management reconsideration decisions concerning retirement benefits, and appeals of adverse suitability determinations under 5 CFR Part 731, must be filed with the regional office that has jurisdiction over the area where appellant lives. Appendix II of these regulations lists the geographic areas over which each of the Board's regional offices has jurisdiction. Appeals, however, may be transferred from one regional office to another.

(e) *Party.* A person, an agency, or an intervenor, who is participating in a Board proceeding. This term applies to the Office of Personnel Management and to the Office of the Special Counsel when those organizations are participating in a Board proceeding.

(f) *Petition for appeal.* A request review of an agency action.

(g) *Petition for review.* A request for review of an initial decision of a presiding official.

(h) *Day.* Calendar day.

(i) *Service.* The process of furnishing a copy of any pleading to Board officials, other parties, or both, either by mail or by personal delivery.

(j) *Date of service.* The date on which documents are served on Board officials, other parties, or both.

(k) *Certificate of Service.* A document certifying that a party has served copies of pleadings on Board officials, other parties, or both.

(l) *Date of filing.* A document that is filed with a Board office by personal delivery is considered filed on the date on which the Board office receives it. The date of filing by mail is determined by the postmark date; if no legible postmark date appears on the mailing, the submission is presumed to have been mailed five days before its receipt.

Subpart B—Procedures for Appellate Cases

General

§ 1201.11 Scope and policy.

The regulations in this subpart apply to Board appellate proceedings except as otherwise provided in § 1201.13. The regulations in this subpart apply also to appellate proceedings and stay requests covered by Part 1209 unless other specific provisions are made in that part. These regulations also apply to original jurisdiction proceedings of the Board except as otherwise provided in Subpart D. It is the Board's policy that these rules will be applied in a manner that expedites the processing of each case, but with due regard to the rights of all parties.

§ 1201.12 Revocation, amendment, or waiver of rules.

The Board may revoke, amend, or waive any of these regulations as they apply generally to all cases. A presiding

official may waive a Board regulation as that regulation applies to a matter pending before him or her. The presiding official must give notice of the waiver to all parties, but is not required to give the parties an opportunity to respond. A presiding official may waive a regulation for good cause shown unless a statute requires application of the regulation.

§ 1201.13 Appeals by Board employees.

Appeals by Board employees will be filed with the Clerk of the Board and will be assigned to an administrative law judge for adjudication under this subchapter. The Board's policy is to insulate the adjudication of its own employees' appeals from agency involvement as much as possible. Accordingly, the Board will not disturb initial decisions in those cases unless the party shows that there has been harmful procedural irregularity in the proceedings before the administrative law judge or a clear error of law. In addition, the Board, as a matter of policy, will not rule on any interlocutory appeals or motions to disqualify the administrative law judge assigned to those cases until the initial decision has been issued.

Petitions for Appeal of Agency Action; Pleadings

§ 1201.21 Notice of appeal rights.

When an agency issues a decision notice to an employee on a matter that is appealable to the Board, the agency must provide the employee with the following:

(a) Notice of the time limits for appealing to the Board, the requirements of § 1201.22(c), and the address of the appropriate Board office for filing the appeal;

(b) A copy, or access to a copy, of the Board's regulations;

(c) A copy of the appeal form in Appendix I of this part; and

(d) Notice of any right the employee has to file a grievance.

§ 1201.22 Filing petitions for appeal and responses to petitions.

(a) *Place of filing.* Petitions for appeal, and responses to those petitions, must be filed with the appropriate Board regional office. See § 1201.4(e) of this part.

(b) *Time of filing.* A petition for appeal must be filed during the period beginning on the day after the effective date of the action being appealed and ending 20 days after the effective date. A petition for appeal from a final or reconsideration decision that does not set an effective date must be filed within 25 days of the date of the issuance of the decision. (Paragraphs (a) (5), (6), (7), (12), (13), (14), (15), (16), (17), and (18) of § 1201.3 of this part list actions covered by the latter rule.) A response to a petition for appeal must be filed within 20 days of the date of the Board's acknowledgment order.

(c) *Timeliness of petitions for appeal.* Failure to file a petition for appeal within the time limit set by statute, regulation, or order of a presiding official will, absent a showing of good cause, result in a dismissal of the appeal as untimely filed. The presiding official or the Board will provide the party an opportunity to show why the appeal should not be dismissed as untimely.

(d) *Method of filing.* Filing must be made either by personal delivery to the appropriate Board office during normal business hours or by mail addressed to that office.

§ 1201.23 Computation of time.

In computing the number of days allowed for filing a submission, the first day counted is the day after the event from which the time period begins to run. If the date that ordinarily would be the last day for filing falls on a Saturday, Sunday, or Federal holiday, the filing period will include the first workday after that date.

Example: If an employee receives a decision notice that is effective on June 1, the 20-day period for filing an appeal starts to run on June 2. The filing ordinarily would be timely only if it is made by June 21. If June 21 is a Saturday, however, the last day for filing would be Monday, June 23.

§ 1201.24 Content of petition for appeal; right to hearing.

(a) *Content.* Only an appellant, his or her designated representative, or a party properly substituted under § 1201.35 may file a petition for appeal. Petitions may be in any format, including letter form, but they must contain the following:

(1) The name, address, and telephone number of the appellant, and the name and address of the agency that took the action;

(2) A description of the action the agency took and its effective date;

(3) A request for hearing if the appellant wants one;

(4) A statement of the reasons why the appellant believes the agency action is wrong;

(5) A statement of the action the appellant would like the presiding official to order;

(6) The name, address, and telephone number of the appellant's representative, if the appellant has a representative;

(7) The notice of the decision to take the action being appealed, along with any relevant documents;

(8) A statement telling whether the appellant or anyone acting on his or her behalf has filed a grievance or a formal discrimination complaint with any agency regarding this matter; and

(9) Original signatures of the appellant and, if the appellant has a representative, of the representative.

(b) Failure to state a claim or defense in the petition will not preclude the appellant from raising that claim or defense later unless a party shows that the late submission would prejudice the rights of the other parties or substantially delay the proceedings.

(c) *Use of Board form.* An appellant may comply with paragraph (a) of this section, and with § 1201.31 of this part if a representative is designated in the form, by completing the form in Appendix I of this part, if appropriate.

(d) *Right to hearing.* Under 5 U.S.C. 7701, an appellant has a right to a hearing.

(e) *Timely request.* The appellant must submit any request for a hearing with the petition for appeal, or within any other time period the presiding official sets for that purpose. If the appellant does not request a hearing, the presiding official may adjudicate the appeal on the record without holding a hearing.

§ 1201.25 Content of agency response.

The agency response to a petition for appeal must contain the following:

(a) The name of the appellant and of the agency whose action the appellant is appealing;

(b) A statement identifying the agency action taken against the appellant and stating the reasons for taking the action;

(c) A specific response admitting, denying, or explaining, in whole or in part, each allegation in the appellant's petition;

(d) All documents contained in the agency record of the action;

(e) Designation of and signature by the authorized agency representative; and

(f) Any other documents or responses requested by the Board.

§ 1201.26 Number of pleadings, service, and response.

(a) *Number.* The appellant must file one original and one copy of the petition for appeal with the appropriate Board office. Each party who makes an additional submission must file one original of it.

(b) *Service.* (1) *Service by the Board.* The appropriate office of the Board will mail a copy of the petition for appeal to each party to the proceeding other than the appellant. It will attach to each copy a service list, consisting of a list of the names and addresses of the parties to the proceeding or their designated representatives.

(2) *Service by the parties.* The parties must serve on each other one copy of each pleading, as defined by § 1201.4(c), except for petitions for appeal. They may do so by mailing the copy or by delivering it personally to each party on the service list previously provided to them. A certificate of service stating how and when service was made must accompany each pleading. The parties must notify the appropriate Board office and one another, in writing, of any changes in the names or addresses on the service list.

(c) *Paper size.* Pleadings and attachments must be filed on 8½ by 11-inch paper. This requirement enables the Board to comply with standards established for U.S. courts.

§ 1201.27 Class appeals.

(a) *Petition.* One or more employees may file an appeal as representatives of a class of employees. The presiding official will hear the case as a class appeal if he or she finds that a class appeal is the fairest and most efficient way to adjudicate the appeal and that the representative parties will adequately protect the interests of all parties. When a petition for class appeal is filed, the time from the filing date until the presiding official issues his or her decision under paragraph (b) of this section is not counted in computing the time limit for individual members of the potential class to file individual appeals.

(b) *Procedure.* The presiding official will consider the appellant's request and any opposition to that request, and will issue an order within 30 days after the petition is filed stating whether the appeal is to be heard as a class appeal. If the presiding official denies the petition, the appellants affected by the decision may file individual appeals within 25 days after the denial. Each individual appellant is responsible for either (1) filing an individual appeal within the original time limit, or (2) keeping informed of the status of a petition for class appeal and, if the petition for class appeal is denied, filing an individual appeal within the additional 25-day period.

(c) *Standards.* In determining whether it is appropriate to treat an appeal as a class action, the presiding official will be guided but not controlled by the applicable provisions of the Federal Rules of Civil Procedure.

Parties, Representatives, and Witnesses

§ 1201.31 Representation.

(a) A party to an appeal may be represented in any matter related to the appeal. The parties must designate their representatives, if any, in writing. Any change in representation, and any revocation of a designation of representative, also must be in writing. Notice of the change must be filed and served on the other parties in accordance with § 1201.26 of this part.

(b) A party may choose any representative as long as that person is willing and available to serve. The other party or parties may challenge the designation, however, on the ground that it involves a conflict of interest or a conflict of position. Any party who challenges the designation must do so by filing a motion with the presiding official within 15 days after the date of service of the notice of designation. The presiding official will rule on the motion before considering the merits of the appeal. These procedures apply equally to each designation of representative, regardless of whether the representative was the first one designated by a party or a subsequently designated representative. If a representative is disqualified, the presiding official will give the party whose representative was disqualified a reasonable time to obtain another one.

(c) The presiding official, on his or her own motion, may disqualify a party's representative on the grounds described in paragraph (b) of this section.

§ 1201.32 Witnesses; right to representation.

Witnesses have the right to be represented when testifying. The representative of a nonparty witness has no right to examine the witness or otherwise participate in the development of testimony.

§ 1201.33 Federal witnesses.

Every Federal agency or corporation must make its employees or personnel available to furnish sworn statements or to appear as witnesses at the hearing when ordered by the presiding official to do so. When providing those statements or appearing at the hearing, witnesses will be in official duty status.

§ 1201.34 Intervenors and amicus curiae.

(a) *Explanation of Intervention.* Intervenors are organizations or persons who want to participate in a proceeding because they believe the proceeding, or its outcome, may affect their rights or duties. Intervenors as a "matter of right" are those parties who have a statutory right to participate. "Permissive" intervenors are those parties who may be permitted to participate if the proceeding will affect them directly and if intervention is otherwise appropriate under law. A request to intervene may be made by motion filed with the presiding official.

(b) *Intervenors as a matter of right.* (1) The Director of the Office of Personnel Management may intervene as a matter of right under 5 U.S.C. 7701(d)(1). The motion to intervene must be filed at the earliest practicable time.

(2)(i) Except as provided in paragraph (b)(2)(ii) of this section, the Special Counsel may intervene as a matter of right under 5 U.S.C. 1212(c). The motion to intervene must be filed at the earliest practicable time.

(ii) The Special Counsel may not intervene in an action brought by an individual under 5 U.S.C. 1221, or in an appeal brought by an individual under 5 U.S.C. 7701, without the consent of that individual. The Special Counsel must present evidence that the individual has consented to the intervention at the time the motion to intervene is filed.

(c) *Permissive intervenors.* (1) Any person may, by motion, ask the presiding official, or the Board in a petition for review, for permission to intervene. The motion must explain why the person should be permitted to intervene.

(2) A motion for permission to intervene will be granted where the requester will be affected directly by the outcome of the proceeding. Any person alleged to have committed a prohibited personnel practice under 5 U.S.C. 2302(b) may request permission to intervene. A presiding official's denial of a motion for permissive intervention may be appealed to the Board under § 1201.91 of this part.

(d) *Role of intervenors.* Intervenors have the same rights and duties as parties, with the following two exceptions:

(1) Intervenors do not have an independent right to a hearing; and

(2) Permissive intervenors may participate only on the issues affecting them. The presiding official or the Board, as appropriate, is responsible for determining the issues on which permissive intervenors may participate.

(e) *Amicus curiae.* An *amicus curiae* is a person or organization that, although not a party to an appeal, gives advice or suggestions to the Board or presiding official regarding an appeal. Any person or organization, including those who do not qualify as intervenors, may, in the discretion of the presiding official or the Board, be granted permission to file an amicus curiae brief.

§ 1201.35 Substituting parties.

(a) If an appellant dies or is otherwise unable to pursue the appeal, the processing of the appeal will be completed either upon substitution of a proper party or upon a determination that the original party's representative may continue to represent the party's interests. Any substitution will be made in accordance with existing law. Substitution will not be permitted where the interests of the appellant have terminated because of the appellant's death or other disability.

(b) The representative or proper party must file a motion for substitution within 90 days after the death or other disabling event.

(c) In the absence of a timely substitution of party, the processing of the appeal may continue if the interests of the proper party will not be prejudiced.

§ 1201.36 Consolidating and joining appeals.

(a) *Explanation.* (1) Consolidation occurs when the appeals of two or more parties are united for consideration because they contain identical or similar issues. For example, individual appeals rising from a single reduction in force might be consolidated.

(2) Joinder occurs when one person has filed two or more appeals and they are united for consideration. For example, a presiding official might join an appeal challenging a 30-day suspension with a pending appeal challenging a subsequent dismissal if the same appellant filed both appeals.

(b) *Action by presiding official.* A presiding official may consolidate or join cases on his or her own motion or on the motion of a party if doing so would:

(1) Expedite processing of the cases; and

(2) Not adversely affect the interests of the parties.

(c) Any objection to a motion for consolidation or joinder must be filed within 10 days of the date of service of the motion.

§ 1201.37 Fees.

(a) *Attorney fees.* Except as provided in paragraphs (a)(1) and (a)(2) of this section, the presiding official may require the agency to pay reasonable attorney fees if the appellant is the prevailing party and payment is warranted in the interest of justice.

(1) If an appellant is the prevailing party and the decision is based on a finding of discrimination prohibited under 5 U.S.C. 2302(b)(1), the motion for an attorney fee award will be considered under the standards of section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(k)).

(2) If an appellant is the prevailing party in an appeal covered by 5 U.S.C. 1221(g) and the decision is based on the finding of any prohibited personnel practice under 5 U.S.C. 2302(b), the agency shall be liable for payment of reasonable attorney fees and any other reasonable costs incurred.

(3) Any request for payment of attorney fees must be made by motion. The motion must be filed with the presiding official within 20 days of the date on which an initial decision becomes final under § 1201.113 of this part or within 25 days of the date of a final decision under § 1201.116. The appellant must serve a copy of the motion on the agency. The agency may file a pleading responding to that motion within the time limit set by the presiding official. The motion must state why the appellant believes he or she is entitled to an award under the applicable statutory standard, and must be supported by evidence substantiating the amount of the request. That evidence must include, at a minimum:

(i) Accurate and current time records;

(ii) A copy of the terms of the fee agreement (if any); and

(iii) The attorney's customary billing rate for similar work if the attorney has a billing practice or, in the absence of that practice, other evidence of the prevailing community rate that will establish a market value for the attorney's services. A petition for Board review of the presiding official's decision on the motion must be filed within 35 days of the date of that decision, and must comply with § 1201.114 of this part.

(b) *Witness fees.* (1) *Federal employees.* Employees of a Federal agency or corporation testifying in any Board proceeding or making a statement for the record will be in official duty status and will not receive witness fees.

(2) *Other witnesses.* Witnesses who are not covered by paragraph (b)(1) of this section are entitled to the same witness fees as those paid to subpoenaed witnesses under 28 U.S.C. 1821.

(3) *Payment of witness fees and travel costs.* The party requesting the presence of a witness must pay that witness' fees. Those fees must be paid or offered to the witness at the time the subpoena is served, or, if the witness appears voluntarily, at the time of appearance. A Federal agency or corporation is not required to pay or offer witness fees in advance. Applicable law and regulation govern payment of travel and per diem expenses.

Presiding Officials

§ 1201.41 Presiding officials.

(a) *Exercise of authority.* Presiding officials may exercise authority as provided in paragraphs (b) and (c) of this section on their own motion or on the motion of a party, as appropriate.

(b) *Authority.* Presiding officials will conduct fair and impartial hearings and will take all necessary action to avoid delay in all proceedings. They will have all powers necessary to that end unless those powers are otherwise limited by law. Presiding officials' powers include, but are not limited to, the authority to:

(1) Administer oaths and affirmations;

(2) Issue subpoenas under § 1201.81 of this part;

(3) Rule on offers of proof and receive relevant evidence;

(4) Rule on discovery motions under § 1201.73 of this part;

(5) After notice to the parties, order a hearing on his or her own initiative if the presiding official determines that a hearing is necessary:

(i) To resolve an important issue of credibility;

(ii) To ensure that the record on significant issues is fully developed; or

(iii) To otherwise ensure a fair and just adjudication of the case.

(6) Convene a hearing as appropriate, regulate the course of the hearing, maintain decorum, and exclude any disruptive persons from the hearing;

(7) Exclude from the hearing any witness whose later testimony might be affected by testimony of other witnesses or any persons whose presence might have a chilling effect on the testimony of another witness;

(8) Rule on all motions, witness and exhibit lists, and proposed findings;

(9) Require the parties to file memoranda of law and to present oral argument with respect to any question of law;

(10) Order the production of evidence and the appearance of witnesses whose testimony would be relevant, material, and nonreptitious;

(11) Impose sanctions as provided under § 1201.43 of this part;

(12) Hold prehearing conferences for the settlement and simplification of issues;

(13) Require that all persons who can be identified from the record as being clearly and directly affected by a pending retirement-related case be notified of the appeal and of their right to request intervention so that their interests can be considered in the adjudication;

(14) Issue any order that may be necessary to protect a witness or other individual from harassment and provide for enforcement of such order in accordance with subpart F;

(15) Issue initial decisions; and

(16) Determine, in decisions in which the appellant is the prevailing party, whether the granting of interim relief is appropriate.

(c) *Settlement.* (1) *Settlement discussion.* The presiding official may initiate attempts to settle the appeal informally at any time. The parties may agree to waive the prohibitions against *ex parte* communications during settlement discussions, and they may agree to any limits on the waiver.

(2) *Agreement.* If the parties agree to settle their dispute, the settlement agreement is the final and binding resolution of the appeal, and the presiding official will dismiss the appeal with prejudice.

(i) If the parties offer the agreement for inclusion in the record, and if the presiding official approves the agreement, it will be made a part of the record, and the Board will retain jurisdiction to ensure compliance with the agreement.

(ii) If the agreement is not entered into the record, the Board will not retain jurisdiction to ensure compliance.

§ 1201.42 Disqualifying a presiding official.

(a) If a presiding official considers himself or herself disqualified, he or she will withdraw from the case, state on the record the reasons for doing so, and immediately notify the Board of the withdrawal.

(b) A party may file a motion asking the presiding official to withdraw on the basis of personal bias or other disqualification. This motion must be filed as soon as the party has reason to believe there is a basis for disqualification. The reasons for the request must be set out in an affidavit or in a signed and dated declaration or statement subscribed under penalty of perjury under 28 U.S.C. 1746.

(c) If the presiding official denies the motion, the party requesting withdrawal may request certification of the issue to the Board as an interlocutory appeal under § 1201.91 of this part. Failure to request certification is considered a waiver of the request for withdrawal.

§ 1201.43 Sanctions.

The presiding official may impose sanctions upon the parties as necessary to serve the ends of justice. This authority covers, but is not limited to, the circumstances set forth in paragraphs (a), (b), and (c) of this section.

(a) *Failure to comply with an order.* When a party fails to comply with an order, the presiding official may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) Prohibit the party failing to comply with the order from introducing evidence concerning the information sought, or from otherwise relying upon testimony related to that information;

(3) Permit the requesting party to introduce secondary evidence concerning the information sought; and

(4) Eliminate from consideration any appropriate part of the pleadings or other submissions of the party that fails to comply with the order.

(b) *Failure to prosecute or defend appeal.* If a party fails to prosecute or defend an appeal, the presiding official may dismiss the appeal with prejudice or rule in favor of the appellant.

(c) *Failure to make timely filing.* The presiding official may refuse to consider any motion or other pleading that is not filed in a timely fashion in compliance with this subpart.

Hearings

§ 1201.51 Scheduling the hearing.

(a) The hearing will be scheduled not earlier than 15 days after the date of the hearing notice unless the parties agree to an earlier date. The agency, upon request of the presiding official, must provide appropriate hearing space.

(b) The presiding official may change the time, date, or place of the hearing, or suspend, adjourn, or continue the hearing. The change will not require the 15-day notice provided in paragraph (a) of this section.

(c) Either party may file a motion for postponement of the hearing. The motion must be made in writing and must either be accompanied by an affidavit or be submitted in accordance with 28 U.S.C. 1746, which requires a signed and dated declaration or statement subscribed under penalty of perjury. The affidavit or declaration must describe the reasons for the request. The presiding official will grant the request for postponement only upon a showing of good cause.

(d) The Board has established certain approved hearing locations, which are published as a notice in the **Federal Register**. *See* Appendix III. Parties, for good cause, may file motions requesting a different hearing location. Rulings on those motions will be based on a showing that a different location will be more advantageous to all parties and to the Board.

§ 1201.52 Public hearings.

Hearings are open to the public. The presiding official may order a hearing or any part of a hearing closed, however, when doing so would be in the best interests of the appellant, a witness, the public, or any other person affected by the proceeding. Any order closing the hearing will set out the reasons for the presiding official's decision. Any objections to the order will be made a part of the record.

§ 1201.53 Verbatim record.

(a) *Preparation.* A verbatim record of every hearing, made under the supervision of the presiding official, will be kept and will be the sole official record of the proceeding.

(b) *Copies.* Upon request, and upon payment of costs, a copy of a tape recording or transcript (if one is prepared) of the hearing will be made available to the parties. Parties must direct requests for copies of tape recordings or transcripts to the official hearing reporter.

(c) *Exceptions to payment of costs.* Exceptions to the payment requirement may be granted under extenuating circumstances for good cause shown. A motion for an exception must be filed with the presiding official. The reasons for the request must be set out in an affidavit or in a signed and dated declaration or statement subscribed under penalty of perjury under 28 U.S.C. 1746.

(d) *Corrections.* Corrections of the official transcript may be permitted on motion by a party or on the presiding official's own motion. Motions for corrections must be filed within 10 days after the receipt of a transcript. Corrections of the official transcript will be permitted only when errors of substance are involved and only on approval of the presiding official.

§ 1201.54 Official record.

Exhibits and the verbatim record of testimony, if a hearing is held, together with all pleadings filed during the appellate proceedings, and all orders and decisions of the presiding official and the Board, constitute the exclusive and official record of the case.

§ 1201.55 Motions.

(a) *Form.* All motions, except those made during a prehearing conference or a hearing, must be in writing. All motions must include a statement of the reasons supporting them. Written motions must be filed with the presiding official or the Board, as appropriate, and must be served upon all other parties in accordance with § 1201.26(b)(2) of this part. A party filing a motion for

extension of time, a motion for postponement of a hearing, or any other procedural motion must first contact the other party to determine whether there is any objection to the motion, and must state in the motion whether the other party has an objection.

(b) *Objection.* Unless the presiding official provides otherwise, and unless the motion is one for payment of attorney fees under § 1201.37(a) of this part, any objection to a written motion must be filed within 10 days from the date of service of the motion. Presiding officials, in their discretion, may grant or deny motions for extensions of time to file pleadings without providing any opportunity to respond to the motions.

(c) *Motions for extension of time.* Motions for extension of time will be granted only on a showing of good cause.

(d) *Motions for protective orders.* A motion for an order under 5 U.S.C. 1204(e)(1)(B) to protect a witness or other individual from harassment must be filed as early in the proceeding as practicable. The party seeking a protective order must include a concise statement of reasons justifying the motion, together with any relevant documentary evidence. An agency, other than the Office of Special Counsel, may not request such an order with respect to an investigation by the Special Counsel during such investigation. An order issued under this paragraph may be enforced in the same manner as provided under Subpart F for Board final decisions and orders.

§ 1201.56 Burden and degree of proof; affirmative defenses.

(a) *Burden and degree of proof.* (1) *Agency:* Under 5 U.S.C. 7701(c)(1), and subject to the exceptions stated in paragraph (b) of this section, the agency action must be sustained if:

(i) It is brought under 5 U.S.C. 4303 or 5 U.S.C. 5335 and is supported by substantial evidence; or

(ii) It is brought under any other provision of law or regulation and is supported by a preponderance of the evidence.

(2) *Appellant:* The appellant has the burden of proof, by a preponderance of the evidence, with respect to:

(i) Issues of jurisdiction;

(ii) The timeliness of the appeal; and

(iii) Affirmative defenses.

In appeals from reconsideration decisions of the Office of Personnel Management involving retirement benefits, if the appellant filed the application, the appellant has the burden of proving, by a preponderance of the evidence, entitlement to the benefits. An appellant who has received an overpayment from the Civil Service Retirement and Disability Fund has the burden of proving, by substantial evidence, eligibility for waiver or adjustment.

(b) *Affirmative defenses of the appellant.* Under 5 U.S.C. 7701(c)(2), the Board is required to overturn the action of the agency, even where the agency has met the evidentiary standard stated in paragraph (a) of this section, if the appellant:

(1) Shows harmful error in the application of the agency's procedures in arriving at its decision;

(2) Shows that the decision was based on any prohibited personnel practice described in 5 U.S.C. 2302(b); or

(3) Shows that the decision was not in accordance with law.

(c) *Definitions.* The following definitions apply to this part:

(1) Substantial evidence: The degree of relevant evidence that a reasonable person, considering the record as a whole, might accept as adequate to support a conclusion, even through other reasonable persons might disagree. This is a lower standard of proof than preponderance of the evidence.

(2) Preponderance of the evidence: The degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.

(3) Harmful error: Error by the agency in the application of its procedures that is likely to have caused the agency to reach a conclusion different from the one it would have reached in the absence or cure of the error. The burden is upon the appellant to show that the error was harmful, i.e., that it caused substantial harm or prejudice to his or her rights.

§ 1201.57 Order of hearing.

(a) In cases in which the agency has taken an action against an employee, the agency will present its case first.

(b) The appellant will proceed first at hearings convened on the issues of:

(1) Jurisdiction;

(2) Timeliness; or

(3) Office of Personnel Management disallowance of retirement benefits, when the appellant applied for those benefits.

(c) The presiding official may vary the normal order of presenting evidence.

§ 1201.58 Closing the record.

(a) When there is a hearing, the record ordinarily will close at the conclusion of the hearing. When the presiding official allows the parties to submit argument, briefs, or documents previously identified for introduction into evidence, however, the record will remain open for as much time as the presiding official grants for that purpose.

(b) If the appellant waives the right to a hearing, the record will close on the date the presiding official sets as the final date for the receipt of filing of submissions of the parties.

(c) Once the record closes, no additional evidence or argument will be accepted into the record unless the party submitting it shows that new and material evidence is available that was not readily available before the record closed. The presiding official will include in the record, however, any approved corrections of the transcript, if one has been prepared.

Evidence

§ 1201.61 Serving documents on other parties.

The parties must serve all documents that they file with their pleadings on all other parties in accordance with § 1201.26(b)(2) of this part.

§ 1201.62 Admissibility of evidence and testimony.

(a) The presiding official may exclude evidence or testimony from consideration if it is irrelevant, immaterial, or unduly repetitious.

(b) Any evidence and testimony that is offered in the hearing and excluded by the presiding official will be described, and that description will be made a part of the record.

§ 1201.63 Presiding official's authority to order production of evidence.

At any stage of a proceeding, the presiding official may request further evidence concerning an issue, and may order its submission.

§ 1201.64 Producing prior statements.

After an individual has given evidence in a proceeding, any party may request a copy of any prior signed statement made by that individual that is relevant to the evidence given. If the party refuses to furnish the statement, the presiding official may excluded the relevant evidence from consideration.

§ 1201.65 Admitting facts and genuineness of documents.

(a) The presiding official may order any party to respond to a request that the party admit that relevant documents identified within the request are genuine, or that it admit the truth of any relevant matters of fact, or that it concur in the application of law to the facts as that application is stated in the request.

(b) Within the time period set by the presiding official, the party on whom the

request is served must file with the presiding official:

(1) A sworn statement specifically denying, admitting, or expressing a lack of knowledge regarding the specific matters on which an admission is requested; and/or

(2) An objection to the request in whole or in part on the ground that the matters contained in the request are privileged, irrelevant, or otherwise improper.

§ 1201.66 Stipulations.

The parties may stipulate to any matter of fact. The stipulation will satisfy a party's burden of providing the fact alleged.

§ 1201.67 Official notice.

Official notice is the Board's or presiding official's recognition of certain facts without requiring evidence to be introduced establishing those facts. The presiding official, on his or her own motion or on the motion of a party, may take official notice of matters of common knowledge or matters that can be verified. The parties will be given an opportunity to object to the taking of official notice. The taking of official notice of any fact satisfies a party's burden of proving that fact.

Discovery

§ 1201.71 Purpose of discovery.

Proceedings before the Board will be conducted as expeditiously as possible with due regard to the rights of the parties. Discovery is designed to enable a party to obtain relevant information needed to prepare the party's case. These regulations are intended to provide a simple method of discovery. They will be interpreted and applied so as to avoid delay and to facilitate adjudication of the case. Parties are expected to start and complete discovery with a minimum of Board intervention.

§ 1201.72 Explanation and scope of discovery.

(a) *Explanation.* Discovery is the process, apart from the hearing, by which a party may obtain relevant information from another person, including a party, that the other person has not otherwise provided. Relevant information includes information that appears reasonably calculated to lead to the discovery of admissible evidence. This information is obtained to assist the parties in preparing and presenting their cases. The Federal Rules of Civil Procedures may be used as a general guide for discovery practices in proceedings before the Board. Those rules, however, are instructive rather than controlling.

(b) *Scope.* Discovery covers any nonprivileged matter that is relevant to the issues involved in the appeal, including the existence, discription, nature, custody, condition, and location of documents or other tangible things, and the identity and location of persons with knowledge of relevant facts. Discovery requests that are directed to nonparties and nonparty Federal agencies and employees are limited to information that appears directly material to the issues involved in the appeal.

(c) *Methods.* Parties may use one or more of the methods provided under the Federal Rules of Civil Procedure. These methods include written interrogatories, depositions, requests for production of documents or things for inspection or copying, and requests for admission. Failure to deny a request for admission will not be considered a binding admission.

§ 1201.73 Discovery procedures.

(a) *Discovery from a party.* A party seeking discovery from another party must start the process by serving a request for discovery on the other party. The request for discovery—

(1) Must state the time limit for responding, as prescribed in § 1201.73(d), and

(2) In the case of a request for a deposition of a party or of an employee of a Federal agency that is a party:

(i) Must specify the time and place of the taking of the deposition, and

(ii) Also must be served on the person to be deposed. When a party directs request for discovery to an officer or employee of a Federal agency that is a party, the agency must make the officer or employee available on official time to respond to the request, and must assist the officer or employee as necessary in providing relevant information that is available to the agency.

(b) *Discovery from a nonparty, including a nonparty Federal agency.* Parties should try to obtain voluntary discovery from nonparties whenever possible. A party seeking discovery from a nonparty Federal agency or employee must start the process by serving a request for discovery on the nonparty Federal agency or employee. A party may begin discovery from other nonparties by serving a request for discovery on the nonparty directly. If the party seeking the information does not make that request, or if it does so but fails to obtain voluntary cooperation, it may obtain discovery from a nonparty by filing a written motion with the presiding official, showing the relevance, scope, and materiality of the particular information sought. If the party seeks to take a deposition, it should state in the motion the date, time, and place of the proposed deposition. An authorized official of the Board will issue a ruling on the motion, and will serve the ruling on the moving party. That official also will provide that party with a subpoena, if approved, that is directed to the individual or entity from which discovery is sought. The subpoena will specify the manner in which the party may seek compliance with it, and it will specify the time limit for seeking compliance. The party seeking the information is responsible for serving any Board-approved discovery request and subpoena on the individual or entity, or for arranging for their service.

(c) *Responses to discovery requests.* (1) A party, or a Federal agency that is not a party, must answer a discovery request within the time provided under paragraph (d)(2) of this section, either by furnishing to the requesting party the information or testimony requested or agreeing to make deponents available to testify within a reasonable time, or by stating an objection to the particular request and the reasons for the objection.

(2) If a party fails or refuses to respond in full to a discovery request, or if a nonparty fails or refuses to respond in full to a Board-approved discovery order, the requesting party may file a motion to compel discovery. The requesting party must file the motion with the presiding official, and must serve a copy of the motion on the other party and on any nonparty entity or person from whom the discovery was sought. The motion must be accompanied by:

(i) A copy of the original request and a statement showing that the information sought is relevant and material; and

(ii) A copy of the response to the request (including the objections to discovery) or, where appropriate, a statement that no response has been received, along with an affidavit supporting the statement.

(3) The other party and any other entity or person from whom discovery was sought may respond to the motion to compel discovery within the time limits stated in paragraph (d)(4) of this section

(d) *Time limits.* (1) Parties who wish to make discovery requests or motions must serve their initial requests or motions within 25 days after the date on which the presiding official issues an order to the respondent agency to produce the agency file and response.

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(2) A party or nonparty must file a response to a discovery request promptly, but not later than 20 days after the date of service of the request or order of the presiding official. Any discovery requests following the initial request must be served within 10 days of the date of service of the prior response, unless the parties are otherwise directed. Deposition witnesses must give their testimony at the time and place stated in the request for deposition or in the subpoena, unless the parties agree on another time or place.

(3) Any motion to depose a nonparty (along with a request for a subpoena) must be submitted to the presiding official within the time limits stated in paragraph (d)(1) of this section or as the presiding official otherwise directs.

(4) Any motion for an order to compel discovery must be filed with the presiding official within 10 days of the date of service of objections or, if no response is received, within 10 days after the time limit for response has expired. Any pleading in opposition to a motion to compel discovery must be filed with the presiding official within 10 days of the date of service of the motion.

(5) Discovery must be completed within the time the presiding official designates, but no later than 65 days after the appeal has been filed. The presiding official may establish a different time limit after due consideration of the particular situation, including the dates set for hearing and for closing the case record.

§ 1201.74 Orders for discovery.

(a) *Motion for an order compelling discovery.* Motions for orders compelling discovery and motions for the appearance of nonparties must be filed with the presiding official in accordance with §§ 1201.73(c)(2) and 1201.73(d)(4).

(b) *Content of order.* Any order issued will include, where appropriate:

(1) A provision that the person to be deposed must be notified of the time and place of the deposition;

(2) Any conditions or limits concerning the conduct or scope of the proceedings or the subject matter that may be necessary to prevent undue delay or to protect a party or other individual or entity from undue expense, embarrassment, or oppression;

(3) Limits on the time for conducting depositions, answering written interrogatories, or producing documentary evidence; and

(4) Other restrictions upon the discovery process that the presiding official sets.

(c) *Noncompliance.* Failure to comply with an order compelling discovery may cause the noncomplying party to be subjected to sanctions under § 1201.43 of this part.

§ 1201.75 Taking depositions.

Depositions may be taken before any person who has no interest in the outcome of the proceedings and who is authorized by law to administer oaths.

Subpoenas

§ 1201.81 Requests for subpoenas.

(a) *Request.* Parties who wish to obtain subpoenas that would require the attendance and testimony of witnesses, or subpoenas that would require the production of documents or other evidence under 5 U.S.C. 1204(b)(2)(A), should file their motions for those subpoenas with the presiding official. Subpoenas are not ordinarily required to obtain the attendance of Federal employees as witnesses.

(b) *Form.* Parties requesting subpoenas must file their requests, in writing, with the presiding official. Each request must identify specifically the books, papers, or testimony desired. In addition, it must be supported by a showing that the evidence sought is generally relevant and that the scope of the request is reasonable, and by a statement of the facts expected to be proven by the evidence.

(c) *Rulings.* Any presiding official who does not have the authority to issue subpoenas will refer the request to an official with authority to rule on the request, with a recommendation for decision. The official to whom the request is referred will rule on the request promptly. Presiding officials who have the authority to rule on these requests themselves will do so directly.

§ 1201.82 Motions to quash subpoenas.

Any person to whom a subpoena is directed, or any party, may file a motion to quash or limit the subpoena. The motion must be filed with the presiding official, and it must include the reasons why compliance with the subpoena should not be required or the reasons why the subpoena's scope should be limited.

§ 1201.83 Serving subpoenas.

(a) Any person who is at least 18 years of age and who is not a party to the appeal may serve a subpoena. This category includes private process servers and other persons authorized to serve process in actions brought in state courts of general jurisdiction or in Federal courts. The party who requested the subpoena, and to whom the subpoena has been issued, is responsible for serving the subpoena.

(b) A subpoena directed to an individual outside the territorial jurisdiction of any court of the United Sates may be served in the manner described by the Federal Rules of Civil Procedure for service of a subpoena in a foreign country.

§ 1201.84 Proof of service.

The person who has served the subpoena must certify that he or she did so: (a) By delivering it to the witness in person, (b) by registered or certified mail, or (c) by delivering the subpoena to a responsible person (named in the document certifying the delivery) at the residence or place of business (as appropriate) of the person for whom the subpoena was intended. The document in which the party makes this certification also must include a statement that the prescribed fees have been paid or offered.

§ 1201.85 Enforcing subpoenas.

(a) If a person who has been served with a Board subpoena fails or refuses to comply with its terms, the party seeking compliance may file a written motion for enforcement with the presiding official or make an oral motion for enforcement while on the record at a hearing. That party must present the document certifying that the subpoena was served and, except where the witness was required to appear before the presiding official, must submit an affidavit describing the failure or refusal to obey the subpoena. The Board, in accordance with 5 U.S.C. 1204(c), may then ask the appropriate United States district court to enforce the subpoena. If the person who has failed or refused to comply with a Board subpoena is located in a foreign country, the U.S. District Court for the District of Columbia will have jurisdiction to enforce compliance, to the extent that a U.S. court can assert jurisdiction over an individual in the foreign country.

(b) Upon application by the Special Counsel, the Board may seek court enforcement of a subpoena issued by the Special Counsel in the same manner in which it seeks enforcement of Board subpoenas, in accordance with 5 U.S.C 1212(b)(3).

Interlocutory Appeals

§ 1201.91 Explanation.

An interlocutory appeal is an appeal to the Board of a decision made by a presiding official during a proceeding. The presiding official may permit the appeal if he or she determines that the issue presented in it is of such importance to the proceeding that it requires the Board's immediate attention. Either party may make a motion for certification of an interlocutory appeal. In addition, the presiding official, on his or her own motion, may certify an interlocutory appeal to the Board. If the appeal is certified, the Board will decide the issue and the presiding official will act in accordance with the Board's decision.

§ 1201.92 Criteria for certifying interlocutory appeals.

The presiding official will certify a ruling for review only if the record shows that:

(a) The ruling involves an important question of law or policy about which there is substantial ground for difference of opinion; and

(b) An immediate ruling will materially advance the completion of the proceeding, or the denial of an immediate ruling will cause undue harm to a party or the public.

§ 1201.93 Procedures.

(a) *Motion for certification.* A party seeking the certification of an interlocutory appeal must file a motion for certification within 10 days of the date of the determination to be appealed. The motion must be filed with the presiding official, and must include arguments in support of both the certification and the determination to be made by the Board. The opposing party may file objections within 10 days of the date of service of the motion, or within any other time period that the presiding official may designate.

(b) *Certification and review.* The presiding official will grant or deny a motion for certification within five days after receiving all pleadings or, if no response is filed, within 10 days after receiving the motion. If the presiding official grants the motion for certification, he or she will refer the record to the Board. If the presiding official denies the motion, the party that sought certification may raise the matter at issue in a petition for review filed after the initial decision is issued, in accordance with §§ 1201.113 and 1201.114 of this part.

(c) *Rulings.* Rulings of the presiding official may not be appealed during the hearing unless the official certifies the ruling for review by the Board.

(d) *Stay of hearing.* The presiding official has the authority to stay the hearing while an interlocutory appeal is pending with the Board, or to proceed with the hearing during that time. Despite this authority, however, the Board may stay a hearing on its own motion while an interlocutory appeal is pending with it.

Ex Parte Communications

§ 1201.101 Explanation and definitions.

(a) *Explanation.* An ex parte communication is an oral or written communication between a decision-making official of the Board and an interested party to a proceeding, when that communication is made without providing the other parties to the appeal with a chance to participate. Not all ex parte communications are prohibited. Only those that involve the merits of the case, or those that violate other rules requiring submissions to be in writing, are prohibited. Accordingly, interested parties may ask about such matters as the status of a case, when it will be heard, and methods of submitting evidence to the Board. Parties may not ask about matters such as what defense they should use or whether their evidence is adequate, and they may not make a submission orally if that submission is required to be made in writing.

(b) *Definitions for purposes of this section.*

(1) "Interested party" includes:

(i) Any party or representative of a party involved in a proceeding before the Board; and

(ii) Any other person who might be affected by the outcome of a proceeding before the Board.

(2) "Decision-making official" means any presiding official, as well as any officer or other employee of the Board who reasonably can be expected to participate in the decision-making process of the Board.

§ 1201.102 Prohibition on ex parte communications.

Except as otherwise provided in § 1201.41(c)(1) of this part, ex parte communications that concern the merits of any matter before the Board for adjudication, or that otherwise violate rules requiring written submissions, are prohibited from the time the persons involved know that the Board may consider the matter until the time the Board has issued a final decision on the matter.

§ 1201.103 Placing communications in the record; sanctions.

(a) Any communication made in violation of § 1201.102 of this part will be made a part of the record. If the communication was oral, a memorandum stating the substance of the discussion will be placed in the record.

(b) If there has been a violation of § 1201.102 of this part, the presiding official or the Clerk of the Board, as appropriate, will notify the parties in writing that the regulation has been violated, and will give the parties 10 days to file a response.

(c) The following sanctions are available:

(1) *Parties:* The offending party may be required to show why, in the interest of justice, his or her claim or motion should not be dismissed, denied, or otherwise adversely affected.

(2) *Board personnel:* Offending Board personnel will be treated in accordance with the Board's standards of conduct.

(3) *Other persons:* The Board may invoke appropriate sanctions against other offending parties.

Final Decisions

§ 1201.111 Initial decision by presiding official.

(a) The presiding official will prepare an initial decision after the record closes, and will serve that decision on the Clerk of the Board, on the Director of the Office of Personnel Management, and on all parties to the appeal, including named parties, permissive intervenors, and intervenors of right.

(b) Each initial decision will contain:

(1) Findings of fact and conclusions of law upon all the material issues of fact and law presented on the record;

(2) The reasons or bases for those findings and conclusions;

(3) An order making final disposition of the case, including appropriate relief;

(4) A statement, if the appellant is the prevailing party, as to whether interim relief is provided effective upon the making of the decision, pending the outcome of any petition for review filed by another party under Subpart C of this part.

(5) The date upon which the decision will become final (a date that, for purposes of this section, is 35 days after issuance); and

(6) A statement of any further process available, including, as appropriate, a petition for enforcement under § 1201.182 of this part, a petition for review under § 1201.114, and a petition for judicial review.

(c) *Interim relief.* Under 5 U.S.C. 7701(b)(2), if the appellant is the prevailing party, the appellant will be granted the relief provided in the initial decision effective upon the making of the decision and remaining in effect pending the outcome of any petition for review, unless the presiding official determines that the granting of such relief is not appropriate. Nothing in this paragraph shall be construed to require any payment of back pay or attorney fees before the decision of the Board becomes final.

§ 1201.112 Jurisdiction of presiding official.

After issuing the initial decision, the presiding official will retain jurisdiction over the case only to the extent necessary to correct the transcript, when one is obtained; to rule on motions for exceptions to the requirement that a party seeking a transcript must pay for it; to rule on a request by the appellant for attorney fees; and to process any petition for enforcement filed under Subpart F of this part.

§ 1201.113 Finality of decision.

The initial decision of the presiding official will become final 35 days after issuance. Initial decisions are not precedential.

(a) *Exceptions.* The initial decision will not become final if, within 35 days after issuance of the decision, any party files a petition for review, or if the Board reopens the case on its own motion.

(b) *Petition for review denied.* If the Board denies all petitions for review, the initial decision will become final when the Board issues its last decision denying a petition for review.

(c) *Petition for review granted or case reopened.* If the Board grants a petition for review or a cross petition for review, or if it reopens or dismisses a case, the decision of the Board is the final decision of the Board unless the decision states otherwise.

(d) *Extensions.* The Board may extend the 35-day time limit for filing a petition for good cause shown as specified in § 1201.114 of this part.

(e) *Exhaustion.* Administrative remedies are exhausted when a decision becomes final in accordance with this section.

Subpart C—Petitions for Review of Initial Decisions

§ 1201.114 Filing petition for review and cross petition for review.

(a) *Who may file.* Any party to the proceeding, the Director of the Office of Personnel Management (OPM), or the Special Counsel may file a petition for review. The Director of OPM may request review only if he or she believes that the decision is erroneous and will have a substantial impact on any civil service law, rule, or regulation under OPM's jurisdiction. 5 U.S.C. 7701(e)(2). All submissions to the Board must contain an original signature of the appellant or of the party's designated representative.

(b) *Cross petition for review.* If a party, the Director of OPM, or the Special Counsel files a timely petition for review, any other party, the Director of OPM, or the Special Counsel may file a timely cross petition for review. The Board normally will consider only issues raised in a timely filed petition for review or in a timely filed cross petition for review.

(c) *Place for filing.* A petition for review, cross petition for review, responses to those petitions, and all motions and pleadings associated with them must be filed with the Clerk of the Merit Systems Protection Board, Washington, DC 20419, either by personal delivery during normal business hours or by mail addressed to the Clerk of the Board.

(d) *Time for filing.* Any petition for review must be filed within 35 days after the initial decision is issued. A cross petition for review must be filed within 25 days of service of the petition for review. Any response to a petition for review or to a cross petition for review must be filed within 25 days after the date of service of the petition or cross petition. The date of filing by mail is the postmark date; if no legible postmark date appears on the mailing, the Board will presume that the document was mailed five days before it was received. If the document is delivered personally, the Board will consider it to have been filed on the date the Clerk of the Board received it.

(e) *Extension of time to file.* The Board will grant a motion for extension of time to file a petition for review, a cross petition, or a response only if the party submitting the motion shows good cause. Motions for extensions must be filed with the Clerk of the Board before the date on which the petition or other pleading is due. The Board, in its discretion, may grant or deny those motions without providing the other parties the opportunity to comment on them. A motion for an extension must either be accompanied by an affidavit or be submitted in accordance with 28 U.S.C. 1746, which requires a signed and dated declaration or statement subscribed as true under penalty of perjury. The affidavit or declaration must include a specific and detailed description of the circumstances alleged to constitute good cause, and it must be accompanied by documentation or other evidence supporting the matters asserted.

(f) *Late filings.* Unless the Board has specifically granted an extension of time under paragraph (e) of this section, or unless a motion for extension is pending before the Board, any petition for review, cross petition for review, or response that is filed late must be accompanied by a motion for waiver that shows good cause for the untimely filing. The motion must either be accompanied by an affidavit or be submitted in accordance with 28 U.S.C. 1746, which requires a signed and dated declaration or statement subscribed as true under penalty of perjury. The affidavit or declaration must include:

(1) The reasons for failing to request an extension before the deadline for the submission; and

(2) A specific and detailed description of the circumstances causing the late filing, accompanied by supporting documentation or other evidence.

Any response to the motion for waiver may be included in the response to the petition for review, the cross petition for review, or the response to the cross petition for review. The response will not extend the time provided by paragraph (d) of this section to file a cross petition for review or to respond to the petition or cross petition. In the absence of a motion for waiver, the Board may, in its discretion, determine on the basis of the existing record whether there was good cause for the untimely filing, or it may provide the party that submitted the document with an opportunity to show why it should not be dismissed or excluded as untimely.

(g) *Intervention.* (1) *By Director of OPM.* The Director of OPM may intervene in a case before the Board under the standards stated in 5 U.S.C. 7701(d), if he or she exercises that right as early in the proceeding as practicable. For purposes of this paragraph, if the Director did not intervene while the case was pending before the regional office, the notice of intervention is timely if it is filed with the Clerk of the Board within 20 days of the date of service of the cross petition or response to the petition for review, or, if no response is filed, within 20 days of the date on which it is due. If the Director requests additional time for filing a brief on intervention, the Board may, in its discretion, grant the request. A party may file a response to the Director's brief within 15 days of the date of service of that brief. The Director must serve the notice of intervention and the brief on all parties.

(2) *By Special Counsel.* (i) Under 5 U.S.C. 1212(c), the Special Counsel may intervene as a matter of right, except as provided in paragraph (g)(2)(ii) of this section. For purposes of this paragraph, if the Special Counsel did not intervene while the case was pending before the regional office, the notice of intervention is timely if it is filed with the Clerk of the Board within 20 days of the date of service for the cross petition or response to the petition for review, or, if no response is filed, within 20 days of the date on which it is due. If the Special Counsel requests additional time for filing a brief on intervention, the Board may, in its discretion, grant the request. A party may file a response to the Special Counsel's brief within 15 days of the date of service. The Special Counsel must serve the notice of intervention and the brief on all parties.

(ii) The Special Counsel may not intervene in an action brought by an individual under 5 U.S.C. 1221, or in an appeal brought by an individual under 5 U.S.C. 7701, without the consent of that individual. The Special Counsel must present evidence that the individual has consented to the intervention at the time the motion to intervene is filed.

(3) *Permissive intervenors.* Any person, by motion made in a petition for review, may ask for permission to intervene. The motion must state in detail the reasons why the person should be permitted to intervene. A motion for permission to intervene will be granted if the requester shows that he or she will be affected directly by the outcome of the proceeding. Any person alleged to have committed a prohibited personnel practice under 5 U.S.C. 2302(b) may ask for permission to intervene.

(h) *Service.* For purposes of this section, service of a document occurs upon its filing, as that action is determined under paragraph (d) of this section. A party submitting a pleading must serve a copy of it on each party and on each representative on the service list for the initial decision. Service must be made either by mailing or by personal delivery. The submission must be accompanied by a certificate stating specifically how and when the service was made. Each party is responsible for notifying the Board and each other, in writing, of any changes in the names and addresses on the service list.

(i) *Closing the record.* The record closes on expiration of the period for filing the response to the petition for review, or to the cross petition for review, or to the brief on intervention, if any, or on any other date the Board sets for this purpose. Once the record is closed, the Board will not consider additional evidence or argument unless a party shows that new and material evidence is available that was not available before the record closed.

§ 1201.115 Contents of petition for review.

(a) The petition for review must state objections to the initial decision that are supported by references to applicable laws or regulations and by specific references to the record.

(b)(1) If the appellant was the prevailing party in the initial decision, and that decision stated that the appellant was granted interim relief, any petition for review or cross petition for review filed by the agency must be accompanied by evidence that the agency has provided the interim relief required, except when the agency has made a determination as described in paragraph (b)(2) of this section.

(2) Under 5 U.S.C. 7701(b)(2), interim relief will not be granted fully if the initial decision provides that the appellant return to or be present at the place of employment pending the outcome of any petition for review and the agency determines that the return or presence of the appellant will be unduly disruptive to the work environment. If the agency makes such a determination, it must notify both the appellant and the presiding official in writing and must provide evidence of such notification to the Board at the time of filing a petition or cross petition for review. The evidence must show that the agency has provided that the appellant will receive pay, compensation, and all other benefits as terms and conditions of employment during the period a petition for review is pending.

(3) Nothing in paragraphs (b)(1) or (b)(2) of this section shall be construed to require any payment of back pay or attorney fees before the decision of the Board becomes final.

(4) Failure of the agency to submit evidence that it has complied with the granting of interim relief in accordance with paragraph (b)(1) of this section, or that it has provided notification that interim relief will not be granted fully in accordance with paragraph (b)(2) of this section, may result in the dismissal of the agency's petition or cross petition for review.

(c) The Board, after providing the other parties with an opportunity to respond, may grant a petition for review when it is established that:

(1) New and material evidence is available that, despite due diligence, was not available when the record closed; or

(2) The decision of the presiding official is based on an erroneous interpretation of statute or regulation.

§ 1201.116 Procedures for review or reopening.

(a) In any case that is reopened or reviewed, the Board may:

(1) Issue a single decision that grants a petition for review, reopens the appeal, and decides the case;

(2) Hear oral arguments;

(3) Require that briefs be filed;

(4) Remand the appeal so that the presiding official may take further testimony or evidence or make further findings or conclusions; or

(5) Take any other action necessary for final disposition of the case.

(b) The Board may affirm, reverse, modify, or vacate the decision of the presiding official, in whole or in part. Where appropriate, the Board will issue a final decision and order a date for compliance with that decision.

§ 1201.117 Board reopening of case and reconsideration of initial decision.

The Board may reopen an appeal and reconsider a decision of a presiding official on its own motion at any time, regardless of any other provisions of this part.

§ 1201.118 OPM petition for reconsideration.

(a) *Criteria.* Under 5 U.S.C. 7703(d), the Director of the Office of Personnel Management may file a petition for reconsideration of a Board final order if he or she determines:

(1) That the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management, and

(2) That the Board's decision will have a substantial impact on a civil service law, rule, regulation, or policy directive.

(b) *Time limit.* The Director must file the petition for reconsideration within 35 days after the date of service of the Board's final order.

(c) *Briefs.* After the petition is filed, the Board will make the official record relating to the petition for reconsideration available to the Director for review. The Director's brief in support of the petition for reconsideration must be filed within 20 days after the Board makes the record available for review. Any party's opposition to the petition for reconsideration must be filed within 25 days from the date of service of the Director's brief.

(d) *Stays.* If the Director of OPM files a petition for reconsideration, he or she also may ask the Board to stay its final order. An application for a stay, with a supporting memorandum, must be filed at the same time as the petition for reconsideration.

§ 1201.119 Judicial review.

Any employee or applicant for employment who is adversely affected by a final order or decision of the Board under the provisions of 5 U.S.C. 7703 may obtain judicial review in the United States Court of Appeals for the Federal Circuit. As § 1201.175 of this part provides, an appropriate United States district court has jurisdiction over a request for judicial review of cases involving the kinds of discrimination issues described in 5 U.S.C. 7702.

Subpart D—Procedures for Original Jurisdiction Cases

Actions Brought by the Special Counsel

§ 1201.121 Scope of jurisdiction; compliance with Subpart B.

(a) *Scope.* The Board has original jurisdiction over actions brought by the Special Counsel and over the Special Counsel's requests for stays of certain personnel actions.

(b) *Compliance with Subpart B.* Except as otherwise expressly provided by this subpart, the Special Counsel will comply with the regulations regarding hearing procedures that are set out in Subpart B of this part in connection with all complaints or requests he or she files with the Board.

§ 1201.122 Filing complaints and requests; serving documents on parties.

(a) *Initial filing.* The Special Counsel must file two copies of each complaint or request, together with numbered and tabbed exhibits or attachments, if any, with the Clerk of the Board. In addition, he or she must file with that office, for service by the Board in accordance with paragraph (b) of this section, a sufficient number of copies of complaints or requests, together with numbered and tabbed exhibits and a certified list of parties or their representatives. The list must show the last known address of each party or representative.

(b) *Service by the Board.* The Board will mail copies of complaints and requests to the parties to the proceeding, or their representatives, at their last known addresses. It also will mail them any exhibits or attachments to the complaints and requests, along with copies of the pertinent regulations of the Board.

(c) *Subsequent filings and service.* Each party must serve on every other party one copy of each of its pleadings, as defined by § 1201.4(c). Service consists of mailing or delivering personally a copy of the pleading to each party on the service list previously provided by the Board. A certificate of service describing how and when service was made must accompany each pleading. All parties are responsible for notifying the Board and one another in writing of any changes in the names or addresses on the service list.

§ 1201.123 Contents of complaint.

(a) If the Special Counsel determines that the Board should take any of the actions listed below, he or she must file a written complaint stating with particularity any alleged violations of law or regulation, along with the supporting facts.

(1) Action to require an agency to take action to correct a prohibited personnel practice (or a pattern of prohibited personnel practices) under 5 U.S.C. 1214(b)(4);

(2) Action to discipline an employee under 5 U.S.C. 1215(a);

(3) Action with respect to other matters within the jurisdiction of the Special Counsel under 5 U.S.C. 1216; and

(4) Action to discipline an employee under the Federal Employees Flexible and Compressed Work Schedule Act, 5 U.S.C. 6101.

(b) The Board may order the Special Counsel and the responding party to file briefs, memoranda, or both in any action the Special Counsel brings before the Board.

(c) If the Special Counsel files a corrective action with the Board on behalf of an employee, former employee, or applicant for employment who has sought corrective action from the Board directly under 5 U.S.C. 1214(a)(3), the Special Counsel must provide evidence that the employee, former employee, or applicant has consented to the Special Counsel's seeking corrective action. 5 U.S.C. 1214(a)(4).

§ 1201.124 Rights of employees.

(a) When the Special Counsel files a complaint seeking corrective action under 5 U.S.C. 1214(b)(2)(B), the Board shall provide the individual alleged to have been the subject of the prohibited personnel practice the opportunity to make written comments.

(b) When the Special Counsel files a complaint proposing a disciplinary action against an employee under 5 U.S.C. 1215(a)(1), the employee has the right:

(1) To file an answer, supported by affidavits and documentary evidence;

(2) To be represented;

(3) To a hearing on the record before the Board or an administrative law judge;

(4) To a written Board decision, issued at the earliest practicable date, in which the Board states the reasons for its conclusion; and

(5) To a copy of any final order imposing disciplinary action.

§ 1201.125 Answer to complaint.

(a) *Filing and default.* A party named in a Special Counsel complaint may file an answer with the Clerk of the Board within 35 days of the date of service of the complaint. If a party fails to answer, and does not show good cause for that failure, the failure will constitute waiver of the right to contest the allegations in the complaint. Unanswered allegations are considered admitted and will form the basis of a recommended or final decision as appropriate.

(b) *Content.* An answer must contain a specific denial, admission, or explanation of each fact alleged in the complaint. If the respondent has no knowledge of a fact, he or she must say so. The respondent may include statements of fact and appropriate documentation to support each denial or defense. Allegations that are unanswered or admitted in the answer are considered true and may not be denied later.

§ 1201.126 Final order of the Board.

(a) In any action seeking correction of a prohibited personnel practice, the Board may order the corrective actions it considers appropriate after providing an opportunity for the Special Counsel, the agency, and the Office of Personnel Management to comment. 5 U.S.C. 1214(b)(4)(A).

(b) (1) Subject to the provisions of paragraph (b)(2) of this section, in any case involving an alleged prohibited personnel practice described in 5 U.S.C. 2302 (b)(8), the Board will order such corrective action as the Board considers appropriate if the Special Counsel demonstrates that a disclosure described under 5 U.S.C. 2302(b)(8) was a contributing factor in the personnel action that was taken or is to be taken against the individual.

(2) Corrective action under paragraph (b)(1) of this section may not be ordered if the agency demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure. 5 U.S.C. 1214(b)(4)(B).

(c) In any action to discipline an employee, except as provided in paragraphs (e) and (f) of this section, the Board may order a removal, a reduction in grade, a debarment (not to exceed five years), a suspension, a reprimand, or an assessment of civil penalty not to exceed $1,000. 5 U.S.C. 1215(a)(3).

(d) If a State or local agency fails to remove an employee whose removal is found to be warranted by the Board under 5 U.S.C. 1505, or if it reappoints such an employee within 18 months of a Board final order finding that removal was warranted, the Board may order the Federal agency administering loans or grants to the State or local agency, to withhold money from the agency. The amount to be withheld will not exceed two years of the offending employee's pay at the rate he or she was being paid at the time of the violation. 5 U.S.C. 1506.

(e) In any action to discipline an employee under the Federal Employees Flexible and Compressed Work Schedule Act, 5 U.S.C. 6101, a final order of the Board may impose disciplinary action consisting of:

(1) Removal from Federal employment for any period of time the Board may prescribe;

(2) Suspension; or

(3) Other discipline that the Board considers appropriate.

(f) In any action in which the Board finds that an employee has violated 5 U.S.C. 7324, the Board will order the employee's removal, unless it finds by unanimous vote that the violation does not warrant removal and imposes instead a penalty of not less than 30 days suspension without pay.

§ 1201.127 Requesting stay of personnel action; protective orders.

Under 5 U.S.C. 1214(b)(1), the Special Counsel may ask a member of the Board to stay any personnel action if he or she determines that there are reasonable grounds to believe that the action was taken or is about to be taken as a result of a prohibited personnel practice.

(a) *Content of request.* The Special Counsel, or that official's representative, must sign each request, and must include the following information in the request:

(1) The names of the parties;

(2) The agency and officials involved;

(3) The nature of the action to be stayed;

(4) A concise statement of facts justifying the charge that the personnel action was or will be the result of a prohibited personnel practice; and

(5) The laws or regulations that were violated, or that will be violated if the stay is not issued.

(b) *Filing and serving of request.* The request for a stay must be filed and served on all parties in accordance with § 1201.122 of this part.

(c) *Action on the request for stay.* (1) *Initial stay.* Within three days after the filing of a request, excluding Saturdays, Sundays, and legal holidays, any member of the Board will grant a request for a stay of 45 days under 5 U.S.C. 1214(b)(1)(A) unless the Member determines that, under the facts and circumstances, the requested stay would not be appropriate. Unless the stay is denied within the 3-day period, it is considered granted by operation of law.

(2) *Extension of stay.* Upon the Special Counsel's request, the Board may extend any stay granted under 5 U.S.C. 1214(b)(1)(A) for whatever time it considers appropriate, but only after providing the Special Counsel and the agency with an opportunity to comment on the request, and only after the board has concurred in the request of the Special Counsel. At the time he or she files a request for an extension of stay under 5 U.S.C. 1214(b)(1)(B), the Special Counsel must also file a brief describing the facts and any relevant legal authority that the Board should consider. The agency must respond in accordance with any order of the Board.

(3) *Reports during pendency of a stay.* If the Board grants an extension of the initial stay, the Special Counsel must report to the Board, at intervals specified in the order granting extension of the stay, regarding the status of the case. Such reports will continue to be required until the Special Counsel files a corrective action with the Board or requests termination of the stay, or until the stay expires according to its terms.

(4) *Termination of stay.* The Board may terminate a stay at any time, except it may not terminate a stay:

(i) On its own motion or on the motion of an agency without first providing notice and opportunity for oral or written comments to the Special Counsel and the individual on whose behalf the stay was ordered; or

(ii) On the motion of the Special Counsel without first providing notice and opportunity for oral or written comments to the individual on whose behalf the stay was ordered.

(d) *Additional information.* At any time, the board or, where appropriate, a member of the Board may require the Special Counsel, the agency, or both to appear and present further information or explanation regarding a request for a stay, to file supplemental briefs or memoranda, or to supply factual information that the Board needs in order to make a decision regarding a stay.

(e) *Protective orders.* The board, during an investigation by the Special Counsel or during the pendency of any Special Counsel proceeding before the Board, may issue any order that may be necessary to protect a witness or other individual from harassment. The Special Counsel must submit any motion for a protective order to the Clerk of the Board. The motion must include a concise statement of the reasons justifying the request, together with any relevant documentary evidence. An agency, other than the Office of the Special Counsel, may not request a protective order with respect to an investigation by the Special Counsel during such investigation. An order issued under this paragraph may be enforced in the same manner as provided under Subpart F for Board final decisions and orders.

§ 1201.128 Administrative appeal; judicial review.

(a) A party in a Special Counsel complaint does not have the right to file an administrative appeal from an order of the Board.

(b) An employee, former employee, or applicant for employment who is adversely affected by an order of the Board resulting from a corrective action brought by the Special Counsel may obtain judicial review of the order of the Board in the United States Court of Appeals for the Federal Circuit. 5 U.S.C. 1214(c).

(c) An employee subject to a final order imposing disciplinary action under 5 U.S.C. 1215 may obtain judicial review of the order of the Board in the United States Court of Appeals for the Federal Circuit. 5 U.S.C. 1215(a)(4).

§ 1201.129 Presiding official; exceptions and replies to exceptions.

(a) Except for requests for stays under 5 U.S.C. 1214(b)(1), and other matters specifically reserved for hearing by the Board, an action brought by the Special Counsel is heard by an administrative law judge, who will issue a recommended decision to the board in accordance with 5 U.S.C. 557. Unless directed otherwise, the parties must file all pleadings with the Clerk of the Board.

(b) The parties may file with the Clerk of the Board any exceptions they may have to the recommended decision of the administrative law judge. Those exceptions must be filed within 35 days after the date of service of the recommended decision.

(c) The parties may file replies to exceptions within 25 days after the date of service of the exceptions, as that date is determined by the certificate of service.

(d) No additional evidence will be accepted with a party's exceptions or with a reply to exceptions unless the party shows that the evidence is new and material evidence that was not available, despite due diligence, before the administrative law judge closed the record.

Actions Against Adminstrative Law Judges

§ 1201.131 Procedures.

When an agency proposes an action against an administrative law judge, the procedures established under Subpart B will apply to the hearing, unless these regulations expressly provide otherwise. Initial and susequent pleadings, however, must be filed and served in accordance with § 1201.122 of this subpart.

§ 1201.132 Board jurisdiction.

The jurisdiction of the Board under this section is limited to proposals to take the following actions:

(a) Removal;

(b) Suspension;

(c) Reduction in grade;

(d) Reduction in pay; and

(e) Furlough of 30 days or less.

§ 1201.133 Filing a complaint.

To initiate an action against an administrative law judge, an agency must file a complaint with the Board describing with particularity the facts that support the proposed action.

§ 1201.134 Answer to complaint.

The administrative law judge against whom the complaint is filed may file an answer to the complaint. The answer must comply with the timeliness and other requirements of § 1201.125 of this subpart.

§ 1201.135 Presiding official; exceptions and replies to exceptions.

(a) Unless it is specifically reserved for hearing by the Board, an action by an employing agency against an administrative law judge will be heard by an administrative law judge, who will issue a recommended decision in accordance with 5 U.S.C. 557. All pleadings in those actions must be filed with the Clerk of the Board.

(b) The parties may file with the Clerk of the Board any exceptions they have to the recommended decision of the administrative law judge. Those exceptions must be filed within 35 days after the date on which the administrative law judge issues the recommended decision.

(c) The parties may file replies to exceptions within 25 days from the date of service of the exceptions.

§ 1201.136 Requirement for finding of good cause.

The Board will authorize the agency to take a disciplinary action, and will specify the penalty to be imposed, only after the Board has made a finding of good cause as required by 5 U.S.C. 7521.

Removal From the Senior Executive Service

§ 1201.141 Right to hearing.

If an agency proposes to remove a career appointee from the Senior Executive Service under 5 CFR 359.502, and to place that employee in another civil service position, the appointee may request an informal hearing before an official appointed by the Board. If the appointee files the request with the Office of the Clerk at least 15 days before the effective date of the proposed removal, the request will be granted.

§ 1201.142 Hearing procedures; referring the record.

The appointee, the appointee's representative, or both may appear and present arguments in an informal hearing before the Board or its designee. A verbatim record of the proceeding will be made. The appointee has no other procedural rights before the Board. The Board will refer a copy of the record to the Special Counsel, the Office of Personnel Management, and the employing agency for whatever action may be appropriate.

§ 1201.143 Appeal.

There is no right under 5 U.S.C. 7703 to appeal the agency's or Board's actions in cases arising under § 1201.141 of this part. The removal action will not be delayed as a result of the hearing.

Subpart E—Procedures for Cases Involving Allegations of Discrimination

§ 1201.151 Scope and policy.

(a) *Scope.* (1) The rules in this subpart implement 5 U.S.C. 7702. They apply to any case in which an employee or applicant for employment alleges that a personnel action appealable to the Board was based, in whole or in part, on prohibited discrimination.

(2) "Prohibited discrimination," as that term is used in this subpart, means discrimination prohibited by:

(i) Section 717 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–16(a));

(ii) Section 6(d) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(d));

(iii) Section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791);

(iv) Sections 12 and 15 of the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 631, 633a); or

(v) Any rule, regulation, or policy directive prescribed under any provision of law described in (i) through (iv) above.

(b) *Policy.* The Board's policy is to adjudicate impartially, thoroughly, and fairly all issues raised under this subpart. The Board will allow appellants an opportunity to raise allegations of discrimination during the appeals process and to present evidence supporting their claims.

§ 1201.152 Compliance with subpart B procedures.

Unless this subpart expressly provides otherwise, all actions involving allegations of prohibited discrimination must comply with the regulations that are included in Subpart B of this part.

§ 1201.153 Contents of petition.

(a) *Contents.* A petition for appeal raising issues of prohibited discrimination must comply with § 1201.24 of this part, with the following exceptions:

(1) The petition must state that there was discrimination in connection with the matter appealed, and it must provide specific examples of how the agency discriminated against the appellant; and

(2) The petition must state whether the appellant has filed a formal discrimination complaint or a grievance with any agency. If he or she has done so, the petition must state the date on which the appellant filed the complaint or grievance, and it must describe any action that the agency took in response to the complaint or grievance.

(b) *Use of form.* Completing the form in Appendix I of these regulations constitutes compliance with paragraph (a) of this section.

§ 1201.154 Time for filing petition; closing record in cases involving grievance decisions.

Appellants who file petitions raising issues of prohibited discrimination in connection with a matter otherwise appealable to the Board must comply with the following time limits:

(a) Where the appellant has been subject to an action appealable to the Board, he or she may either file a timely complaint of discrimination with the agency or file an appeal with the Board within 20 days after the effective date of the agency action being appealed.

(b) If the appellant has filed a timely formal complaint of discrimination with the agency:

(1) A petition must be filed within 20 days after the appellant receives the agency resolution or final decision on the discrimination issue; or

(2) If the agency has not resolved the matter or issued a final decision on the formal complaint within 120 days, the appellant may appeal the matter directly to the Board at any time after the expiration of 120 calendar days.

(c) If the appellant files an appeal prematurely under this subpart, the presiding official will dismiss the appeal without prejudice to its later refiling under §§ 1201.12 and 1201.22(b) of this part. If holding the petition for a short time would allow it to become timely, the presiding official, in his or her discretion, may hold the petition rather than dismiss it.

(d) If the appellant has filed a grievance with the agency under its negotiated grievance procedure in accordance with 5 U.S.C. 7121, he or she may ask the Board to review the final decision under 5 U.S.C. 7702 within 20 days after the appellant receives that decision. The appellant must file the request with the Clerk of the Board, Merit Systems Protection Board, Washington, DC 20419. The request for review must contain:

(1) A statement of the grounds on which review is requested;

(2) References to evidence of record or rulings related to the issues before the Board;

(3) Arguments in support of the stated grounds that refer specifically to relevant documents, and that include relevant citations of authority; and

(4) Legible copies of the final grievance or arbitration decision, the agency decision to take the action, and other relevant documents. Those documents may include a transcript or tape recording of the hearing.

(e) In cases arising under paragraph (d) of this section, the record will close upon expiration of the period for filing the response to the petition for review, or to the brief on intervention, if any, or on any other date the Board sets for this purpose. Once the record closes, the Board will not consider additional evidence or argument unless a party shows that new and material evidence is available that was not available before the record closed.

§ 1201.155 Allegations of discrimination not raised in petition.

(a) *Timeliness.* An appellant may raise an allegation of discrimination at any time during the Board's consideration of an appeal of the agency's action, if the apellant did not know of the existence of a basis for the allegation at the time the petition for appeal was filed. The issue of discrimination may be excluded from consideration only if the agency shows that considering the issue would prejudice the agency's rights and unduly delay the proceedings, or if it shows that the discrimination issue is not directly related to the matter being appealed. If the issue of discrimination is excluded from consideration in the appeal, it will be remanded to the agency for appropriate consideration under any applicable law or regulation.

(b) *Effect.* When an appellant raises an allegation of prohibited discrimination that was previously raised before the agency, the presiding official will develop the record sufficiently to make a determination on the merits of the allegation. In developing the record under those circumstances, the time limits imposed on the production of evidence and filing of memoranda may, in order to meet the statutory 120-day processing requirement, be much more constricted than those imposed in an appeal under 5 U.S.C. 7701.

(c) *Remand.* If the parties file a written agreement that the discrimination issue should be remanded to the agency for consideration, and if the presiding official determines that action would be in the interest of justice, the must be completed. In no instance will that time period exceed 120-days. While the issue is pending with the agency, the presiding official will retain jurisdiction over the appeal, and the appeal's adjudication will be suspended. When the agency has completed its consideration of the issue and returned that issue to the presiding official, that official will merge the appeal with the agency action on the issue, and will issue a decision within 120-days after the agency returned the issue.

(d) *Agency answer.* When an appellant alleges prohibited discrimination for the first time during a proceeding, and the matter is not remanded to the agency, the presiding official will give the agency a reasonable opportunity to refute the allegation.

§ 1201.156 Time for processing appeals involving allegations of discrimination.

(a) *Issue raised in petition.* When an appellant alleges prohibited discrimination in the petition for appeal, the presiding official will decide both the issue of discrimination and the appealable action within 120 days after the appeal is filed.

(b) *Issue not raised in petition.* When an appellant has not alleged prohibited discrimination in the petition for appeal, but has raised the issue later in the proceeding, the presiding official will decide both the issue of discrimination and the appealable action within 120 days after the issue is raised.

(c) *Discrimination issue remanded to agency.* When the presiding official remands an issue of discrimination to the agency, adjudication will be completed within 120 days after the agency completes its action and returns the case to the Board.

§ 1201.157 Presiding official.

In an appeal from a final decision or order issued under 5 U.S.C. 7121 or 7122 by an arbitrator or the Federal Labor Relations Authority, the presiding official will be an administrative law judge, the Board, a member of the Board, or another person the Board designates to hear the case.

§ 1201.158 Notice of right to judicial review.

Any final decision of the Board under 5 U.S.C. 7702 will notify the appellant of his or her right, within 30 days after receiving the Board's final decision, to petition the Equal Employment Opportunity Commission ("the Commission") to consider the Board's decision, or to file a civil action in an appropriate United States district court.

Review of Board Decision

§ 1201.161 Action by the Commission; judicial review.

(a) Time limit for determination. In cases in which an appellant petitions the Commission for consideration of the Board's decision under 5 U.S.C. 7702(b)(2), the Commission will determine, within 30 days after the date of petition, whether it will consider the decision.

(b) *Judicial review.* The Board's decision will become judicially reviewable on:

(1) The date on which the decision is issued, if the appellant does not file a petition with the Commission under 5 U.S.C. 7702(b)(1); or

(2) The date of the Commission's decision that it will not consider the petition filed under 5 U.S.C. 7702(b)(2).

(c) *Commission processing and time limits.* If the Commission decides to consider the decision of the Board, within 60 days after making its decision it will complete its consideration and either:

(1) Concur in the decision of the Board; or

(2) Issue in writing and forward to the Board for its action under § 1201.162 of this subpart another decision, which differs from the decision of the Board to the extent that the Commission finds that, as a matter of law:

(i) The decision of the Board constitutes an incorrect interpretation of any provision of any law, rule, regulation, or policy directive related to prohibited discrimination; or

(ii) The Evidence in the record as a whole does not support the decision involving that provision.

(d) *Transmittal of record.* The Board will transmit a copy of its record to the Commission upon request.

(e) *Development of additional evidence.* When asked by the Commission to do so, the Board or a presiding official will develop additional evidence necessary to supplement the record. This action will be completed within a period that will permit the Commission to make its decision within the statutory 60-day time limit to which paragraph (c) of this section refers. The

Board or the presiding official may schedule additional proceedings if necessary in order to comply with the Commission's request.

(f) *Commission concurrence in Board decision.* If the Commission concurs in the decision of the Board under 5 U.S.C. 7702(b)(3)(A), the decision of the Board may be appealed to an appropriate United States district court.

§ 1201.162 Board action on the Commission decision; judicial review.

(a) *Board decision.* Within 30 days after receipt of a Commission; or

(2) To the extent that the Board finds that, as a matter of law:

(i) The Commission decision is based on an incorrect interpretation of any provision of any civil service law, rule, regulation, or policy directive, or

(ii) The evidence in the record as a whole does not support the Commission decision involving that provision, it may reaffirm the decision of the Board. In doing so, it may make revisions in the decision that it determines are appropriate.

(b) *Judicial review.* If the Board concurs in or adopts the decision of the Commission under paragraph (a)(1) of this section, the decision of the Board is a judicially reviewable action.

§ 1201.165 Mixed cases governed by Reorganization Plan No. 1 of 1978.

(a) *Definitions.* (1) *Prohibited discrimination* as used in this section means discrimination prohibited by section 717 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–16(c)); section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791); and sections 12 and 15 of the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 631, 633a).

(2) *Initial decision* as used in this section means a decision rendered by a presiding official of the MSPB pursuant to 29 CFR 1613 or 5 CFR Part 772 (as in effect prior to January 11, 1979) on an appeal in which issues of prohibited discrimination have been raised.

(3) *Preliminary decision as used in this section means:*

(i) An initial decision within the meaning of § 1201.165 (a)(2) which has not been reopened by a Board member or as to which no petition to reopen was filed by a party within 35 days after issuance of the decision;

(ii) A decision by the Board itself pursuant to 29 CFR Part 1613 or 5 CFR Part 772, in which issues of prohibited discrimination are addressed, or a decision by the Board denying all petitions to reopen.

(b) *Contents of petition.* A petition for appeal raising issues or prohibited discrimination shall state there was discrimination in conjunction with the matter appealed and provide specific examples of how the appellant was discriminated against.

(c) *Procedures.* (1) Appeals under 29 CFR Part 1613 (formerly 5 CFR Part 713) Shall be processed by the Board consistent with the provisions set forth in that part. Such appeals shall be filed in writing with the appropriate Board Regional Office.

(2) Appeals under the provisions of 5 CFR Part 772 shall be processed as provided therein, except that under 5 CFR 772.306(b) the discrimination investigation shall be completed and the investigative file and report sent to the Board with 120 days. Except when this time has been extended upon a verified showing of good cause, the Board may impose the sanctions provided in 5 CFR 1201.43 if an agency fails to timely complete and file the result of such an investigation.

(3) An initial decision on an appeal which includes issues of prohibited personnel discrimination shall be rendered by an employee of the Board, pursuant to 29 CFR 1613 or 5 CFR Part 772, on all issues raised in the appeal.

(4) Unless a petition to reopen is filed with the Board or unless a Board member reopens on his/her own motion, within 35 days from issuance of an initial decision, the initial decision shall become the preliminary decision of the Board.

(d) *Review by EEOC.* (1) *Time for filing.* A petition to review the preliminary decision of the Board on issues of prohibited discrimination shall be filed with the EEOC within 35 days after initial decision of the Board becomes the preliminary decision.

(2) *Petition filed.* In the event a petition for review is filed with the EEOC, the Board decision shall become final on all issues, other than issues of prohibited discrimination, on the date EEOC's decision on these issues becomes final.

(3) *Petition not filed.* If a petition for review is not filed with the EEOC, the decision of the Board shall become final on all issues. (5 U.S.C. 1205(g)).

Special Panel

§ 1201.171 Referral of case to special panel.

If the Board reaffirms its decision under § 1201.162(a)(2) of this part with or without modification, it will certify the matter immediately to a special panel established under 5 U.S.C. 7702(d). Upon certification, the Board, within 5 days (excluding Saturdays, Sundays, and Federal holidays), will transmit the administrative record in the proceeding to the chairman of the special panel and to the Commission. That record will include the following:

(a) The factual record compiled under this section, which will include a transcript of any hearing;

(b) The decisions issued by the Board and the Commission under 5 U.S.C. 7702; and

(c) A transcript of oral arguments made, or legal briefs filed, before the Board or the Commission.

§ 1201.172 Organization of Special Panel; designation of members.

(a) A special panel is composed of:

(1) A Chairman, appointed by the President with the advice and consent of the Senate, whose term is six (6) years;

(2) One member of the Board, designated by the Chairman of the Board each time a panel is convened;

(3) One member of the Commission, designated by the Chairman of the Commission each time a panel is convened.

(b) *Designation of special panel members.* (1) *Time of designation.* Within 5 days of certification of a case to a special panel, the Chairman of Board and the Chairman of the Commission each will designate one member from his or her agency to serve on the special panel.

(2) *Manner of designation.* Letters designating the panel members will be served on the chairman of the panel and on the parties to the appeal.

§ 1201.173 Practices and procedures of special panel.

(a) *Scope.* The rules in this subpart apply to proceedings before a special panel.

(b) *Suspension of rules.* Unless a rule is required by statute, the chairman of a special panel may suspend the rule, in the interest of expediting a decision or for other good cause shown, and may conduct the proceedings in a manner he or she directs. The chairman may take this action at the request of a party, or on his or her own motion.

(c) *Time limit for proceedings.* In accordance with 5 U.S.C. 7702(d)(2)(A), the special panel will issue a decision within 45 days after a matter has been certified to it.

(d) *Administrative assistance to the special panel.*

(1) The Board and the Commission will provide the panel with the administrative resources that the chairman of the special panel determines are reasonable and necessary.

(2) Assistance will include, but is not limited to, processing vouchers for pay and travel expenses.

(3) The Board and the Commission are responsible for all administrative costs the special panel incurs, and, to the extent practicable, they will divide equally the costs of providing administrative assistance. If the Board and the Commission disagree on the manner in which costs are to be divided, the chairman of the special panel will resolve the disagreement.

(e) *Maintaining the official record.* The Board will maintain the official record of the appeal. It will transmit two copies of each submission that is filed to each member of the special panel in an expeditious manner.

(f) *Filing and service of pleadings.* (1) The parties must file the original and six copies of each submission with the Clerk, Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, DC 20419. The Office of the Clerk will serve one copy of each submission on the other parties.

(2) A certificate of service specifying how and when service was made must accompany all submissions of the parties.

(3) Service may be made by mail or by personal delivery during the Board's normal business hours (8:30 a.m. to 5:00 p.m.). Because of the short statutory time limit for processing these cases, parties must file their submissions by overnight Express Mail, provided by the U.S. Postal Service, if they file their submissions by mail.

(4) A submission filed by Express Mail is considered to have been filed on the date of the Express Mail Order. A submission that is delivered personnally is considered to have been filed on the date the Office of the Clerk of the Board receives it.

(g) *Briefs and responsive pleadings.* If the parties wish to submit written argument, they may file briefs with the special panel within 15 days after the date of the Board's certification order. Because of the sort statutory time limit for processing these cases, the special panel ordinarily will not permit responsive pleadings.

(h) *Oral argument.* The parties have the right to present oral argument. Parties wishing to exercise this right must indicate this desire when they file their briefs or, if no briefs are filed, within 15 days after the date of the Board's certification order. Upon receiving a request for argument, chairman of the special panel will determine the time and place for argument and the amount of time to be allowed each side, and he or she will provide this information to the parties.

(i) *Postargument submission.* Because of the short statutory time limit for processing these cases, the parties may not file postargument submissions unless the chairman of the special panel permits those submissions.

(j) *Procedural matters.* Any procedural matters not addressed in these regulations will be resolved by written order of the chairman of the special panel.

§ 1201.174 Enforcing the special panel decision.

The Board, upon receipt of the decision of the special panel, will order the agency concerned to take any action appropriate to carry out the decision of the panel. The Board's regulations regarding enforcement of a final order of the Board apply to this matter. These regulations are set out in Subpart F of this part.

§ 1201.175 Judicial review of cases decided under 5 U.S.C. 7702.

(a) *Place and type of review.* The appropriate United States district court is authorized to conduct all judicial review of cases decided under 5 U.S.C. 7702. Those cases include appeals from actions taken under the following provisions: Section 717(c) of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–16(c)); section 15(c) of the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 633a(c)); and section 15(b) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 216(b)).

(b) *Time for filing request.* Regardless of any other provision of law, requests for judicial review of all cases decided under 5 U.S.C. 7702 must be filed within 30 days after the appellant received notice of the judicially reviewable action.

Subpart F—Enforcement of Final Decisions and Orders

§ 1201.181 Authority and explanation.

(a) Under 5 U.S.C. 1204(a)(2), the Board has the authority to order any federal agency or employee to comply with decisions and orders issued under its jurisdiction, and the authority to enforce compliance with its orders and decisions. The parties are expected to cooperate fully with each other so that compliance with the Board's orders and decisions can be accomplished promptly and in accordance with the laws, rules, and regulations that apply to individual cases. The Board's decisions and orders will contain a notice of the Board's enforcement authority.

(b) In order to avoid unnecessary petitions under this subpart, the agency must inform the appellant promptly of the actions it takes to comply, and it must tell the appellant when it believes it has completed its compliance. The appellant must provide all necessary information that the agency requests in order to comply, and, if not otherwise notified, he or she should, from time to time, ask the agency about its progress.

§ 1201.182 Petition for enforcement.

(a) *Appellate jurisdiction.* Any party may petition the Board for enforcement of a final decision issued under the Board's appellant jurisdiction. The petition must be filed promptly with the regional office that issued the initial decision; a copy of it must be served on the other party or that party's representative; and it must describe specifically the reasons the petitioning party believes there is noncompliance. The petition also must include the date and results of any communications regarding compliance. Any petition for enforcement that is filed more than 30 days after the date of service of the agency's notice that it has complied must contain a statement and evidence showing good cause for the delay and a request for an extension of time for filing the petition.

(b) *Original jurisdiction.* Any party seeking enforcement of a Board order issued under its original jurisdication must file a petition for enforcement with the Clerk of the Board and must serve a copy of that petition on the other party or that party's representative. The petition must describe specifically the reasons why the petitioning party believes there is noncompliance.

(c) *Petition by an employee other than a party.* Under 5 U.S.C. 1204(e)(2)(B), any employee who is aggrieved by the failure of any other employee to comply with an order of the Board may petition the Board for enforcement. The Board will entertain a petition for enforcement from an aggrieved employee how is not a party only if the employee seeks and is granted party status as a permissive intervenor under 5 CFR 1201.34(c). The employee must file a motion to intervene at the time of filing the petition for enforcement. The petition and motion to intervene must be filed promptly with the regional office that issued the order or, if the order was issued by the Board, with the Clerk of the Board. The petitioner must serve a copy of the petition and motion to intervene on each party or the party's representative. The petition for enforcement must describe specifically why the petitioner believes there is noncompliance and in what way the petitioner is aggrieved by the noncompliance. The motion to intervene

will be considered in accordance with 5 CFR 1201.34(c).

(d) *Process.* Petitions for enforcement will be processed under the procedures described in § 1201.183 of this subpart.

§ 1201.183 Procedures.

(a) *Initial Processing.* (1) When a party has filed a petition for enforcement of a final decision, the party that is alleged not to have complied must file one of the following within 15 days of the date of service of the petition: (i) Evidence of compliance; (ii) a statement of the compliance actions that the party has completed, the actions that are in process, and the actions that remain to be taken, along with a reasonable schedule for full compliance; or (iii) a statement showing good cause for the failure to comply completely with the decision of the Board. The party that filed the petition may respond to that submission within 10 days after the date of service of the submission. The parties must serve copies of their pleadings on each other as required under § 1201.28(b)(2) of this part.

(2) The regional director or a designated presiding official may convene a hearing if one is necessary to resolve matters at issue.

(3) If the regional director or designated presiding official finds that there has been compliance or a good faith effort to take all actions required to be in compliance with the final decision, he or she will state those findings in a decision. That decision will be subject to the procedures for petitions for review by the Board under subpart C of this part, and subject to judicial review under section 1201.119.

(4) If the regional director or designated presiding official finds that:

(i) The party that is alleged not to have complied has not taken, or has not make a good faith effort to take, any action required to be in compliance with the final decision, or

(ii) That party has taken or made a good faith effort to take one or more, but not all, actions required to be in compliance with the final decisions; he or she will issue a recommendation containing his or her findings, a statement of the actions required by the party to be in compliance with the final decision, and a recommendation that the Board enforce the final decision.

(5) If a recommendation described under paragraph (a)(4) of this section is issued, the party that is alleged not to have complied must do one of the following:

(i) If it decides to take the actions required by the recommendation, it must submit to the Clerk of the Board, within 15 days after the issuance of the recommendation, evidence that it has taken those actions.

(ii) If it decides not to take any of the actions required by the recommendation, it must file a brief supporting its nonconcurrence in the recommendation. The brief must be filed with the Clerk of the Board within 30 days after the recommendation is issued and, if it is filed by the agency, it must identify by name, title, and grade the agency official responsible for the failure to take the actions required by the recommendation for compliance.

(iii) If the party decides to take one or more, but not all, actions required by the recommendation, it must submit both evidence of the actions it has taken and, with respect to the actions that it has not taken, a brief supporting its disagreement with the recommendation. The evidence and brief must be filed with the Clerk of the Board within 30 days after issuance of the recommendation and, if it is filed by the agency, it must contain the identifying information required by paragraph (a)(5)(ii) of this section.

(6) The petitioner may file a brief that responds to the submission described in paragraph (a)(5) of this section, and that asks the Board to review any finding in the recommendation, make under paragraph (a)(4)(ii) of this section, that the other party is in partial compliance with the final decision. The petitioner must file this brief with the Clerk of the Board within 20 days of the date of service of the submission described in paragraph (a)(5) of this section.

(b) *Consideration by the Board.* (1) The Board will consider the recommendation, along with the submissions of the parties, promptly. When appropriate, the Board may require the party that allegedly has not complied, or that party's representative, to appear before the Board to show why sanctions should not be imposed under 5 U.S.C. 1204(a)(2) and 1204(e)(2)(A) against the person responsible for the failure to comply. The Board also may require the party or its representative to make this showing in writing, or to make it both personally and in writing.

(2) The Board may hold a hearing on an order to show cause, or it may issue a decision without a hearing.

(3) The Board's final decision on the issues of compliance is subject to judicial review under section 1201.119 of this part.

(c) *Certification to the Comptroller General.* When appropriate, the Board may certify to the Comptroller General of the United States, under 5 U.S.C. 1204(e)(2)(A), that no payment is to be made to a certain Federal employee. This order may apply to any Federal employee, other than a Presidential appointee subject to confirmation by the Senate, who is found to be in noncompliance with the Board's order.

(d) *Effect of Special Counsel's action or failure to act.* Failure by the Special Counsel to file a complaint under 5 U.S.C. 1215(a)(1)(C) and subpart D of this part will not preclude the Board from taking action under this subpart.

Subpart G—Savings Provisions

§ 1201.191 Savings provisions.

(a) *Civil Service Reform Act of 1978 (Pub. L. 95–454).*

(1) *Scope.* All executive orders, rules and regulations relating to the Federal service that were in effect prior to the effective date of the Civil Service Reform Act shall continue in effect and be applied by the Board in its adjudications until modified, terminated, superseded, or repealed by the President, Office of Personnel Management, the Merit System Protection Board, the Equal Employment Opportunity Commission, or the Federal Labor Relations Authority, as appropriate.

(2) *Administrative proceedings and appeals therefrom.* No provision of the Civil Service Reform Act shall be applied by the Board in such a way as to affect any administrative proceeding pending at the effective date of such provision. "Pending" is considered to encompass existing agency proceedings, and appeals before the Board or its predecessor agencies, that were subject to judicial review or under judicial review on January 11, 1979, the date on which the Act became effective. An agency proceeding is considered to exist once the employee has received notice of the proposed action.

(3) *Explanation.* Mr. X was advised of agency's intention to remove him for abandonment of position, effective December 29, 1978. Twenty days later Mr. X appealed the agency action to the Merit Systems Protection Board. The Merit Systems Protection Board docketed Mr. X's appeal as an "old system case," i.e., one to which the savings clause applied. The appropriate regional office processed the case, applying the substantive laws, rules and regulations in existence prior to the enactment of Act. The decision, dated February 28, 1979, informed Mr. X that he is entitled to judicial review if he files a timely notice of appeal in the appropriate United States district court or the United States Court of Claims under the statute of limitations applicable when the adverse action was taken.

(b) *Whistleblower Protection Act of 1989 (Pub. L. 101–12).*

(1) *Scope.* All orders, rules, and regulations issued by the Board and the Special Counsel before the effective date of the Whistleblower Protection Act of 1989 shall continue in effect, according to their terms, until modified, terminated, superseded, or repealed by the Board or the Special Counsel, as appropriate.

(2) *Administrative proceedings and appeals therefrom.* No provision of the Whistleblower Protection Act of 1989 shall be applied by the Board in such a way as to affect any administrative proceeding pending at the effective date of such provision. "Pending" is considered to encompass existing agency proceedings, including personnel actions that were proposed, threatened, or taken before July 9, 1989, the effective date of the Whistleblower Protection Act of 1989, and appeals before the Board or its predecessor agencies that were subject to judicial review on that date. An agency proceeding is considered to exist once the employee has received notice of the proposed action.

* * * * *

PART 1201

Appendix II to Part 1201—Appropriate Regional Office for Filing Appeals

All submissions shall be addressed to the Regional Director, Merit Systems Protection Board, at the addresses listed below, according to geographic region of the employing agency or as required by § 1201.4(d) of this part. Address of Appropriate Regional Office and Area Served:

1. Atlanta Regional Office, Suite 500, 1365 Peachtree Street, NE., Atlanta, Georgia 30309–3199, (Alabama, Florida, Georgia, Mississippi, North Carolina, and South Carolina.)
2. Boston Regional Office, 10 Causeway Street, Room 1078, Boston, Massachusetts 02222–1042, (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.)
3. Chicago Regional Office, 230 South Dearborn Street, 31st Floor, Chicago, Illinois 60604–1669, (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.)
4. Dallas Regional Office, 1100 Commerce Street, Room 6F20, Dallas, Texas 75242–9979, (Arkansas, Louisiana, Oklahoma, and Texas.)
5. Denver Regional Office, 730 Simms Street, Suite 301, P.O. Box 25025, Denver, Colorado 80225–0025, (Arizona, Colorado, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Utah, and Wyoming.)
6. New York Regional Office, 26 Federal Plaza, Room 3137–A, New York, New York 10278–0022, (New York, Puerto Rico, Virgin Islands, and the following counties in New Jersey: Bergen, Essex, Hudson, Hunterdon, Morris, Passaic, Somerset, Sussex, Union, and Warren.)
7. Philadelphia Regional Office, U.S. Customhouse, Room 501, Second and Chestnut Streets, Philadelphia, Pennsylvania 19106–2904, (Delaware, Pennsylvania, Virginia, except Alexandria (etc), West Virginia, and the following counties in New Jersey: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Middlesex, Monmouth, Ocean, and Salem.)
8. St. Louis Regional Office, 911 Washington Avenue, Room 615, St. Louis, Missouri 63101–1203, (Iowa, Kentucky, Missouri, and Tennessee.)
9. San Francisco Regional Office, 525 Market Street, Room 2800, San Francisco, California 94105–2789 (California.)
10. Seattle Regional Office, 915 Second Avenue, Suite 1840, Seattle, Washington 98174–1001, (Alaska, Hawaii, Idaho, Oregon, Washington, and Pacific overseas areas.)
11. Washington Regional Office, 5203 Leesburg Pike, Suite 1109, Falls Church, Virginia 22041–3473, (Washington, DC., Maryland, all overseas areas not otherwise covered, and the following cities and counties in Virginia: Alexandria, Falls Church, Arlington, Fairfax City, Fairfax County, Loudoun, and Prince William.)

Appendix III to Part 1201—Approved Hearing Locations by Regional Office

Atlanta Region
Atlanta, Georgia
Augusta, Georgia
Macon, Georgia
Savannah, Georgia
Birmingham, Alabama
Huntsville, Alabama
Montgomery, Alabama
Jacksonville, Florida
Miami, Florida
Orlando, Florida
Pensacola, Florida
Tampa/St. Petersburg, Florida
Jackson, Mississippi
Asheville, North Carolina
Jacksonville, North Carolina
Raleigh, North Carolina
Columbia, South Carolina
Charleston, South Carolina

Boston Region
Boston, Massachusetts
Hartford, Connecticut
New Haven, Connecticut
Bangor, Maine
Portland, Maine
Manchester, New Hampshire
Portsmouth, New Hampshire
Providence, Rhode Island
Burlington, Vermont

Chicago Region
Chicago, Illinois
Davenport, Iowa/Rock Island, Illinois
Indianapolis, Indiana
Detroit, Michigan
Minneapolis/St. Paul, Minnesota
Cleveland, Ohio
Cincinnati, Ohio
Columbus, Ohio
Dayton, Ohio
Milwaukee, Wisconsin

Dallas Region
Dallas, Texas
Corpus Christi, Texas
El Paso, Texas
Houston, Texas
San Antonio, Texas
Temple, Texas
Texarkana, Texas
Little Rock, Arkansas
Alexandria, Louisiana
New Orleans, Louisiana
Oklahoma City, Oklahoma
Tulsa, Oklahoma

Denver Region
Denver, Colorado
Pueblo, Colorado
Phoenix, Arizona
Tucson, Arizona
Wichita, Kansas
Billings, Montana
Great Falls, Montana
Missoula, Montana
Omaha, Nebraska
Las Vegas, Nevada
Reno, Nevada
Albuquerque, New Mexico
Bismarck, North Dakota
Rapid City, South Dakota
Sioux Falls, South Dakota
Salt Lake City, Utah
Casper, Wyoming

New York Region
Albany, New York
New York, New York
Buffalo, New York
Syracuse, New York
Newark, New Jersey

Philadelphia Region
Philadelphia, Pennsylvania
Harrisburg, Pennsylvania
Pittsburgh, Pennsylvania
Wilkes-Barre, Pennsylvania
Trenton, New Jersey
Dover, Delaware
Norfolk, Virginia
Richmond, Virginia
Roanoke, Virginia
Charleston, West Virginia
Morgantown, West Virginia

San Francisco Region
San Francisco, California
Fresno, California
Los Angeles, California
Sacramento, California
San Diego, California

Seattle Region
Seattle, Washington
Spokane, Washington
Richland, Kennewick, and Pasco, Washington
Anchorage, Alaska
Honolulu, Hawaii
Boise, Idaho
Pocatello, Idaho
Medford, Oregon
Portland, Oregon
St. Louis Region
St. Louis, Missouri
Kansas City, Missouri
Springfield, Missouri
Des Moines, Iowa
Lexington, Kentucky
Louisville, Kentucky
Knoxville, Tennessee
Nashville, Tennessee
Washington Region
Bailey's Crossroads, Falls Church, Virginia
Washington, DC
Baltimore, Maryland

Date: June 29, 1989.

Robert E. Taylor,
Clerk of the Board.

[FR Doc. 89-15755 Filed 7-5-89; 8:45 am]

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5 CFR Part 1209

RIN 3124-AA19

Practices and Procedures for Appeals of Personnel Actions Allegedly Based on Whistleblowing and Requests for Stays of Personnel Actions in Such Cases

AGENCY: Merit Systems Protection Board.

ACTION: Interim rule with request for comments.

SUMMARY: The U.S. Merit Systems Protection Board (the Board) is amending its regulations by adding a new part to implement the Whistleblower Protection Act of 1989, Pub. L. 101-12.

DATES: Interim regulations effective July 9, 1989; comments must be received on or before September 5, 1989.

ADDRESS: Send written comments to Robert E. Taylor, Clerk of the Board, Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, DC 20419.

FOR FURTHER INFORMATION CONTACT: Patricia Price, (202) 653-8919.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act

The Clerk, Merit Systems Protection Board, certifies that the Board is not required to prepare an initial or final regulatory analysis of this interim rule pursuant to sections 603 and 604 of the Regulatory Flexibility Act, because of the determination that this regulation would not have significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small governmental jurisdictions.

List of Subjects in 5 CFR Part 1209

Administrative practice and procedure, Government employees.

Accordingly, the Merit Systems Protection Board amends 5 CFR by adding Part 1209 as follows:

PART 1209: PRACTICES AND PROCEDURES FOR APPEALS OF PERSONNEL ACTIONS ALLEGEDLY BASED ON WHISTLEBLOWING AND REQUESTS FOR STAYS OF PERSONNEL ACTIONS IN SUCH CASES

Subpart A—Jurisdiction and Definitions

Sec.
1209.1 General.
1209.2 Jurisdiction.
1209.3 Scope.
1209.4 Application of 5 CFR Part 1201.
1209.5 Definitions.

Subpart B—Appeals of Personnel Actions Allegedly Based on Whistleblowing

1209.6 Filing of petitions for appeal and responses.
1209.7 Content of petition for appeal, request for a hearing.
1209.8 Content of agency response.
1209.9 Intervention of Special Counsel.
1209.10 Attorney fees under 5 U.S.C. 1221(g).
1209.11 Burden and degree of proof.
1209.12 Time limits for discovery.
1209.13 Initial decision.

Subpart C—Requests for Stays of Personnel Actions

1209.14 Filing of requests for stays of personnel actions and responses.
1209.15 Content of stay request and response.
1209.16 Hearing and order ruling on stay request.
1209.17 Duration of stays, interim compliance.
1209.18 Board review of orders granting or denying stays.

Subpart D—Reports on Applications for Transfers

1209.19 Filing of agency reports.

Authority: 5 U.S.C. 1204, 1221, and 7701.

Subpart A—General

§ 1209.1 General.

The Board exercises jurisdiction over appeals authorized by 5 U.S.C. 1221(a). These appeals are known as Individual Right of Action appeals. The Board also has jurisdiction over appeals authorized by any law, rule, or regulation other than 5 U.S.C. 1221(a). Examples of such otherwise appealable actions are generally listed in 5 CFR 1201.3(a)(1)-(19).

§ 1209.2 Jurisdiction.

Subject to 5 U.S.C. 1214(a)(3), the Board has jurisdiction over appeals by an employee, former employee, or applicant for employment with respect to a personnel action taken, proposed, threatened, or not taken because of the individual's whistleblowing activities, as defined in 5 U.S.C. 2302(b)(8). Where it is alleged that a personnel action within the Board's jurisdiction was based on whistleblowing, the Board may also stay the personnel action.

§ 1209.3 Scope.

This part governs any appeal where the appellant alleges that a personnel action defined in 5 U.S.C. 2302(a)(2) was threatened, proposed, taken, or not taken because of the individual's whistleblowing activities. Included are Individual Right of Action appeals authorized by 5 U.S.C. 1221(a) and other appealable actions where a law, rule, or regulation authorizes a direct appeal to the Board and the appellant alleges that the agency action was based on his or her whistleblowing activities. Subpart C of this part governs any request for a stay of a personnel action allegedly based on the appellant's whistleblowing activities.

§ 1209.4 Application of 5 CFR Part 1201.

Where appropriate and unless provided otherwise, the Board shall apply Subparts A, B, C, E, F, and G of 5 CFR Part 1201 to appeals and stay requests governed by this Part.

§ 1209.5 Definitions.

(a) "Personnel action" means, as to individuals and agencies covered by 5 U.S.C. 2302:

(1) An appointment;

(2) A promotion;

(3) An adverse action under Chapter 75 of Title 5, United States Code or other disciplinary or corrective action;

(4) A detail, transfer, or reassignment;

(5) A reinstatement;

(6) A restoration;

(7) A reemployment;

(8) A performance evaluation under Chapter 43 of Title 5, United States Code;

(9) A decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other personnel action; or

(10) Any other significant change in duties or responsibilities which is inconsistent with the employee's salary or grade level.

(b) "Whistleblowing" includes: (1) Any disclosure of information by an employee, former employee, or applicant that the individual reasonably believes evidences a violation of any law, rule, or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(2) Any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the individual reasonably believes evidences a violation of any law, rule, or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(c) An "Individual Right of Action" is an appeal, authorized by 5 U.S.C. 1221, of a personnel action that the appellant alleges was threatened, proposed, taken, or not taken because of the appellant's whistleblowing activities. Before filing an Individual Right of Action with the Board, the appellant must have sought corrective action from the Special Counsel, and, as required by 5 U.S.C. 1214(a)(3), exhausted those proceedings. Individual Right of Action appeals are governed by Part 1209.

(d) An "otherwise appealable action" means an agency action that is directly appealable to the Board under a law, rule, or regulation which does not require the individual to first seek corrective action from the Special Counsel and which was allegedly taken because of the appellant's whistleblowing activities. Examples of the types of personnel actions which may be appealed directly to the Board without the requirement that the individual first seek corrective action from the Special Counsel are generally listed in 5 CFR 1201.3(a)(1)-(19). If an individual is authorized under a law, rule, or regulation to file an appeal directly with the Board, but elects to seek corrective action from the Special Counsel before appealing to the Board, the appeal to the Board is still an otherwise appealable action which is governed by this Part if the individual alleges that the action was taken because of whistleblowing.

(e) The following examples illustrate some of the differences between an Individual Right of Action and an otherwise appealable action.

Example 1: Agency A gives Mr. X a performance evaluation under 5 U.S.C. Chapter 43 which rates him as "minimally satisfactory." Mr. X believes that the agency has rated him "minimally satisfactory" because of his whistleblowing activities. Because a performance evaluation is not, standing alone, an action which is directly appealable to the Board under a law, rule, or regulation, Mr. X must first seek corrective action from the Special Counsel concerning the evaluation before appealing to the Board or before seeking a stay of the evaluation from the Board. If Mr. X appeals the evaluation to the Board after the Special Counsel proceeding is terminated or exhausted, his appeal is an Individual Right of Action appeal that is governed by Part 1209 of the Board's regulations.

Example 2: Agency B removes Ms. Y for alleged misconduct under 5 U.S.C. 7513. Ms. Y believes that the agency removed her because of her whistleblowing activities. Because the removal action is directly appealable to the Board under 5 U.S.C. 7513, Ms. Y may elect to file an appeal with the Board without first seeking corrective action from the Special Counsel or she may seek corrective action from the Special Counsel and then appeal to the Board after the Special Counsel proceeding is terminated or exhausted, as provided in 5 U.S.C. 1214(a)(3). In either case, her appeal to the Board is governed by Part 1209 if she alleges that the removal action was taken because of her whistleblowing activities.

Subpart B—Appeals of Personnel Actions Allegedly Based on Whistleblowing

§ 1209.6 Filing of petitions for appeal and responses.

(a) *Requirement for termination or exhaustion of Special Counsel proceeding in Individual Right of Action appeals.* Except in a case in which an employee, former employee, or applicant for employment has the right to appeal directly to the Board under any law, rule, or regulation, the individual shall first seek corrective action from the Special Counsel before appealing to the Board concerning a personnel action allegedly based on whistleblowing.

(b) *Place of filing.* Petitions for appeal shall be filed at the appropriate Board regional office as set forth in 5 CFR 1201.4(d).

(c) *Time of filing.* (1) Direct appeals to the Board: Where an individual seeks corrective action directly from the Board concerning an otherwise appealable action allegedly based on whistleblowing without first seeking corrective action from the Special Counsel, the time for filing the appeal is governed by 5 CFR 1201.22(b). That section provides that a petition for appeal must be filed during the period beginning with the day after the effective date of the action being appealed until not later than 20 days after the effective date. A petition for appeal from a final or reconsideration decision that does not set an effective date must be filed within 25 days of the date of the issuance of the decision.

(2) Appeals to the Board after corrective action has been sought from the Special Counsel: Where an employee, former employee, or applicant for employment has sought corrective action from the Special Counsel concerning a personnel action allegedly based on whistleblowing, the time limit for filing an appeal of such action with the Board is governed by 5 U.S.C. 1214(a)(3). Under that section, any petition for appeal must be filed:

(i) No later than 60 days after the Office of Special Counsel provided the individual with notification that it was terminating its investigation concerning the individual's allegations; or,

(ii) If the Office of Special Counsel has not notified the individual that it shall seek corrective action on the individual's behalf, no earlier than the 120th day after the individual sought corrective action from the Special Counsel.

(3) Appeals to the Board after a stay request has been decided: Where an individual has filed a request for a stay of a personnel action with the Board without first filing a petition for appeal of the action, any petition for appeal must be filed within 20 days after the date of the issuance of the order ruling on the stay request. Failure to file an appeal within this time limit may result in the termination of any stay that has been granted, absent a showing of good cause.

(d) *Method of filing.* Filing must be made either by personal delivery during normal business hours to the appropriate Board regional office as set forth in 5 CFR 1201.4(d) or by mail addressed to that office.

§ 1209.7 Content of petition for appeal, request for a hearing.

(a) *Content.* A petition for appeal must be filed by the appellant, his/her designated representative, or a party properly substituted under 5 CFR 1201.35. Petitions may be in any format, including letter form, but must contain the following:

(1) The nine (9) items or types of information required in 5 CFR 1201.24(a)(1)-(9) for the filing of a petition for appeal;

(2) In cases where the individual first sought corrective action from the Special Counsel concerning the

personnel action now being appealed, documentary evidence that the appeal has been filed within the time limits set forth in § 1209.6(c)(2);

(3) A description of the action that is being appealed, identification of employees by name and position who took the action or actions, if known to the appellant, and a chronology of facts concerning the personnel action complained of;

(4) Evidence or argument that:

(i) The appellant was or will be subjected to a personnel action as defined in § 1209.5(a), or that the agency has threatened to take or not to take such a personnel action; and

(ii) The personnel action was or will be based on the appellant's whistleblowing, as described in § 1209.5(b).

(b) *Request for a hearing.* A request for a hearing shall be filed with the petition for appeal, or within such time period as set by the presiding official. Failure to make a timely request will be deemed to constitute a waiver of any right to a hearing. If a hearing is not requested, or if the appellant fails to appear for the scheduled hearing without good cause, the appeal may be adjudicated on the record.

§ 1209.8 Content of agency response.

The agency shall comply with 5 CFR 1201.25 with respect to the content of its response to the appeal.

§ 1209.9 Intervention of Special Counsel.

The Special Counsel may intervene as a matter of right in an action brought by an individual under 5 U.S.C. 1221 or an appeal brought by an individual under 5 U.S.C. 7701 only with the individual's consent.

§ 1209.10 Attorney fees under 5 U.S.C. 1221(g).

The presiding official shall require payment by the agency involved of reasonable attorney fees and any other reasonable costs if the appellant is the prevailing party in an appeal covered by 5 U.S.C. 1221(g).

§ 1209.11 Burden and degree of proof.

(a) Subject to the provisions of paragraph (b) of this section, in any case involving an alleged prohibited personnel practice described in 5 U.S.C. 2302(b)(8), the Board shall order such corrective action as the Board considers appropriate if the employee, former employee, or applicant for employment demonstrates that a disclosure described under 5 U.S.C. 2302(b)(8) was a contributing factor in the personnel action which was taken, not taken, or is to be taken against such employee, former employee, or applicant.

(b) Corrective action under paragraph (a) of this section may not be ordered if the agency demonstrates by clear and convincing evidence that it would have taken or not taken (as appropriate) the same personnel action in the absence of such disclosure.

§ 1209.12 Time limits for discovery.

Presiding officials shall have the authority on their own motion or at the request of the parties to waive the time limits for discovery set forth in 5 CFR 1201.73(d) to accommodate the particular circumstances of an appeal covered by this part. A party may request the presiding official to expand the time limits for discovery to permit the party to obtain answers to interrogatories before serving notice of depositions.

§ 1209.13 Initial decision.

The presiding official shall prepare an initial decision after the closing of the record that meets the requirements of 5 CFR 1201.111.

Subpart C—Requests for Stays of Personnel Actions

§ 1209.14 Filing of requests for stays of personnel actions and responses.

(a) *Prerequisites for filing a request for a stay.* An individual who seeks, or is required to seek, corrective action from the Special Counsel concerning a personnel action that the individual alleges was or will be based on whistleblowing, may request a stay of the personnel action from the Board when the individual is eligible to file an appeal with the Board under 5 U.S.C. 1214(a)(3). An individual may also seek a stay of an otherwise appealable action, as defined in section 1209.5(d), allegedly based on whistleblowing. A stay orders the agency to suspend the complained-of personnel action.

(b) *Place of filing.* Requests for stays of personnel actions and responses to such requests shall be filed at the appropriate Board regional office as set forth in 5 CFR 1201.4(d).

(c) *Time of filing.* (1) An individual seeking a stay of a personnel action from the Board must:

(i) File a request for a stay and a petition for appeal of the same personnel action no later than the time limit set forth in 5 CFR 1209.6(c) for the filing of a petition for appeal; or

(ii) First file a timely petition for appeal of the personnel action, as provided in § 1209.6(c), and then file a request for a stay of the same action no later than the time limit set for close of discovery in the appeal; or

(iii) File a stay request within the time limit set forth in § 1209.6(c), and then file a petition for appeal within 20 days after the date of the issuance of the order ruling on the stay request.

(2) If an individual files a stay request and petition for appeal pursuant to paragraph (c)(1)(i) of this section, the stay request and petition for appeal may be filed at the same time or in any order, but both must be filed within the time limit set forth in § 1209.6(c).

(d) *Service of stay request on agency.* If an individual filing a request for a stay of a personnel action has not yet filed an appeal with the Board concerning that action, or the agency has not yet designated a representative in the appeal, the individual shall serve copies of the stay request upon the local servicing personnel officer *and* the agency's General Counsel no later than the date the stay request is filed with the Board's regional office. If an individual filing a stay request has previously filed an appeal with the Board concerning the same personnel action, he or she shall serve the stay request on the representative whom the agency designated in the appeal. The individual filing the stay request shall include a certificate of service with the request indicating how and when service on the agency was made.

(e) *Method of filing.* Filing must be made either by personal delivery during normal business hours to the appropriate Board regional office or by mail addressed to that office.

§ 1209.15 Content of stay request and response.

(a) A request for a stay must be filed by the individual affected by the personnel action for which a stay is sought, his or her representative, or a party properly substituted under 5 CFR 1201.35 and must contain:

(1) The name, address, and telephone number of the individual requesting the stay, and the name and address of the acting agency;

(2) The name, address, and telephone number of the individual's representative, if any;

(3) The signature of the individual requesting the stay and his or her representative, if any;

(4) A chronology of facts, including a description of the individual's disclosure and the action taken by the agency;

(5) Evidence and/or argument demonstrating that there is a substantial likelihood that the:

(i) Action proposed, threatened, taken, or not taken is a personnel action, as defined in § 1209.5(a); and

(ii) Agency action complained of was based on whistleblowing, as defined in § 1209.5(b); and

(iii) Individual will prevail on the merits of his or her appeal of the personnel action;

(6) Evidence and/or argument addressing how long the stay should remain in effect;

(7) Any documentary evidence that supports the stay request; and

(8) A certificate of service specifying how and when service of the stay request on the agency was made.

(b) *Agency response.* (1) The agency's response to the stay request must be served so that it is received by the regional office within five calendar days (excluding Saturdays, Sundays, and legal holidays) of the date that the individual served the stay request on the agency, as shown by the certificate of service submitted by the appellant with the stay request. If the agency is unable to file a written response within this time limit, it shall request that the presiding official hold a conference to receive the agency's oral response. Such request must be received by the regional office within five days of the date that the individual served the stay request on the agency. If the agency is allowed to submit an oral response, it shall, if ordered by the presiding official, submit a written response which memorializes its oral response on the date specified by the presiding official.

(2) The agency's response to the stay request shall include:

(i) A specific response admitting, denying or explaining, in whole or in part, each allegation in the individual's stay request; and

(ii) Evidence and/or argument addressing whether there is a substantial likelihood that the individual will prevail on the merits of the appeal and whether granting the stay would result in extreme hardship to the agency. The agency response shall also include any documentation relevant to the agency's position on these issues. If the appellant has filed a stay request and an appeal at the same time, the agency shall also furnish, on the date set by the presiding official, a response to the appeal as required by 5 CFR 1209.8.

§ 1209.16 Hearing and order ruling on stay request.

(a) *Hearing.* The presiding official may hold a hearing on the request for a stay upon his or her own motion, or upon request of a party.

(b) *Order ruling on stay request.* (1) If the presiding official determines that granting a stay is appropriate, it shall be granted within 10 calendar days (excluding Saturdays, Sundays, and legal holidays) after the request is received by the appropriate Board office.

(2) The presiding official shall prepare a written order ruling on the stay request, if possible, or make an oral ruling on the stay request followed by a written order. The written order shall set forth the factual and legal basis on which the ruling granting or denying the stay is made. In ruling on the stay request, the presiding official shall consider primarily whether there is a substantial likelihood that the individual will prevail on the merits of the appeal and whether the stay would result in extreme hardship to the agency. If the presiding official grants the stay request, the order shall specify the effective date and duration of the stay, and shall inform the agency of the requirement for interim compliance and the procedures for appeal of the order, as set forth below in §§ 1209.17 and 1209.18.

§ 1209.17 Duration of stays, interim compliance.

(a) If a stay is granted, it will become effective on the date specified in the order. The stay will remain in effect for the time period set forth in the order, until the Board issues a final decision on the appeal of the underlying personnel action which was stayed, or until the Board vacates or modifies the stay, whichever occurs first. An agency shall immediately comply with an order granting a stay notwithstanding the fact that the order has not become final.

(b) A party may seek enforcement of any order granting a stay request. Petitions for enforcement of orders granting stay requests shall generally be processed in accordance with the procedures set forth in 5 CFR Part 1201, Subpart F, except that such procedures shall be applicable notwithstanding the fact that the order granting the stay request is not a final order, and an agency which has been ordered to stay a personnel action shall continue to comply with the stay for the time period set forth in the order, until the Board issues a final decision on the appeal of the underlying personnel action, or vacates or modifies the stay, whichever occurs first.

§ 1209.18 Board review of orders granting or denying stays.

Any party to the proceeding may file an interlocutory appeal of an order granting or denying a stay as provided in 5 CFR 1201.93. However, if an agency files a motion for certification of an order granting a stay, it shall include with the motion evidence that it has complied with the stay. The presiding official shall grant any motion for certification filed by either party, except that an agency motion for certification of an order granting a stay shall be denied if the agency has failed to file evidence of compliance with the stay.

Subpart D—Reports on Applications for Transfers

§ 1209.19 Filing of agency reports.

When an employee who has applied for a transfer to another position in an Executive agency under 5 U.S.C. 3352(d) requests the agency head to review a rejection of his or her application of transfer, § 3352(d) requires the agency head to complete the review and provide a written statement of findings to the employee and the Board within 30 days after receiving the request. The agency shall file the written statement of findings with the Clerk of the Board within the 30-day time limit.

Date: June 29, 1989.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 89-15756 Filed 7-5-89; 8:45 am]

BILLING CODE 7400-01-M

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5 CFR Part 1202

RIN 3124-AA18

Statutory Review Board

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The U.S. Merit Systems Protection Board is revising its regulations in this Part in plain English and otherwise changing the regulations to use current terminology, and revising the authority citation to conform to Pub. L. 101-12. It is removing § 1202.1(b) since there should be no further need to designate employees to chair performance rating review boards to review performance ratings pending prior to the effective date of the Civil Service Reform Act of 1978 (Pub. L. 95-454). It is substituting the term "presiding official" for "hearing officer" to conform to present Board usage.

EFFECTIVE DATE: July 9, 1989.

FOR FURTHER INFORMATION CONTACT: Charles J. Stanislav, (202) 653-8931.

List of Subjects in 5 CFR Part 1202

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Merit Systems Protection Board revises 5 CFR Part 1202 consisting of § 1201.1 as follows:

PART 1202—STATUTORY REVIEW BOARD

The authority for 5 CFR Part 1202 is revised to read:

Authority: 5 U.S.C. 1204.

§ 1202.1 Designating Chairman of Statutory Review Board.

At the written request of the Department of Transportation, the Chairman of the Board will designate a presiding official of the Board to serve as the Chairman of any Board of Review established by the Secretary of Transportation under 5 U.S.C. 3383(b) to review certain actions to remove air traffic controllers.

Date: June 29, 1989.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 89-15757 Filed 7-5-89; 8:45 am]

BILLING CODE 7400-01-M

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5 CFR Part 1203

RIN 3124-AA07

Procedures for Review of Rules and Regulations of the Office of Personnel Management

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: On June 2, 1989, [54 FR 23632], the Board published final regulations in this Part in "plain English". On July 9, 1989, the Whistleblower Protection Act of 1989, Pub. L. 101-12 becomes effective. That law makes certain changes in Title 5 U.S. Code which require that technical and conforming changes be made in this Part.

EFFECTIVE DATE: July 9, 1989.

FOR FURTHER INFORMATION CONTACT: Charles J. Stanislav, (202) 653-8931.

SUPPLEMENTARY INFORMATION:

List of Subjects in 5 CFR Part 1203

Administrative practice and procedure, Civil rights, Government employees.

Accordingly the Board amends Part 1203 as follows:

PART 1203—PROCEDURES FOR REVIEW OF RULES AND REGULATIONS OF THE OFFICE OF PERSONNEL MANAGEMENT

1. Authority for Title 5 CFR Part 1203 is revised to read:

Authority: 5 U.S.C. 1204(a), 1204(f), and 1204(h).

2. Section 1203.1 is amended by revising paragraph (a) to read as follows:

§ 1203.1 Scope: Application of Part 1201, Subpart B.

(a) *General.* This part applies to the Board's review, under 5 U.S.C. 1204(a)(4) and 1204(f), of any rules or regulations ("regulations") issued by the Office of Personnel Management (OPM). It applies to the Board's review of the way in which an agency implements regulations, as well as to its review of the validity of the regulations on their face.

* * * * *

3. Section 1203.2 is amended by revising paragraph (f) to read as follows:

§ 1203.2 Definitions.

* * * * *

(f) "Regulation review" means the procedure under which the Board, under 5 U.S.C. 1204(f), reviews regulations issued by OPM on their face, or reviews those regulations as they have been implemented, or both, in order to determine whether the regualtions require any employee to commit a prohibited personnel practice.

* * * * *

4. Section 1203.15 is revised to read as follows:

§ 1203.5 Review of Regulations on the Board's own motion.

The Board may, from time to time, review a regulation on its own motion under 5 U.S.C. 1204(f)(1)(A). When it does so, it will publish notice of the review in the **Federal Register.**

Date: June 29, 1989.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 89-15758 Filed 7-5-89; 8:45 am]

BILLING CODE 7400-01-M

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5 CFR Part 1204

RIN 3124-AA08

Availability of Official Information

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board is revising its regulations in this Part in plain English. The Board has completed a thorough review of its existing regulations to identify any words or phrases that could be rewritten to be more readily understood by persons who are not practitioners in personnel administration or the law. The regulations published today reflect that review. The revised language is not intended to change the meaning or requirements of the existing sections. In addition the Board is revising the authority citation to conform to Pub. L. 101-12.

EFFECTIVE DATE: July 9, 1989.

FOR FURTHER INFORMATION CONTACT: Charles J. Stanislav, (202) 653-8931.

List of Subjects in 5 CFR Part 1204

Freedom of Information, Administrative practice and procedure, Privacy.

Accordingly, 5 CFR Part 1204 is revised as follows:

PART 1204—AVAILABILITY OF OFFICIAL INFORMATION

Subpart A—Purpose and Scope

Sec.
1204.1 Purpose.
1204.2 Scope.

Subpart B—Procedures for Disclosure of Records under the Freedom of Information Act

1204.11 Requests for access to Board records.
1204.12 Fees.
1204.13 Denials.
1204.14 Requests for access to confidential commercial information.

Subpart C—Appeals

1204.21 Submission.
1204.22 Decisions on appeal.

Authority: 5 U.S.C. 552 and 1204, Pub. L. 99-570 and E.O. 12600.

Subpart A—Purpose and Scope

§ 1204.1 Purpose.

This part implements the Freedom of Information Act (FOIA), 5 U.S.C. 552, by prescribing the procedures to follow when requesting information from the Board, and by stating the fees that will be charged for that information.

§ 1204.2 Scope.

(a) For the purpose of this part, the term "information" has the same meaning as the term "records" in § 552 of Title 5, United States Code. All written requests for information that are not processed under Part 1205 of the Board's regulations will be processed under this part. The Board may continue, without complying with the provisions of this part, to furnish the public with the information it customarily has furnished in the regular course of performing its official duties, unless furnishing the information would violate the Privacy Act of 1974, 5 U.S.C. 552a, or another law.

(b) When the subject of the record, or the subject's authorized representative, requests a record from a Privacy Act system of records, as that term is defined by 5 U.S.C. 552a(a)(5), and the Board retrieves the record by the subject's name or other personal identifier, the Board will handle the request under the procedures and fees applicable in 5 CFR Part 1205. When a third party makes a request for access to those records, without the express written consent of the subject of the record, the Board will handle the request under this part.

(c) When a party to an appeal requests a copy of a tape recording or transcript (if one has been prepared) of a hearing that the Board or a presiding official of the Board conducted under Part 1201 or Part 1209 of this chapter, the Board will handle the request under 5 CFR 1201.53. When someone other than a party to the appeal makes this request, the Board will handle the request under this part.

(d) In accordance with 5 U.S.C. 552(a)(2), the Board's final opinions and orders (including concurring and dissenting opinions), those statements of policy and interpretations adopted by the Board and that are not published in the Federal Register, and administrative staff manuals and instructions to staff that affect a member of the public are available for public inspection and copying in the Board's Headquarters Library, Room 828, 1120 Vermont Avenue NW., Washington, DC 20419.

Subpart B—Procedures for Disclosure of Records Under the Freedom of Information Act

§ 1204.11 Requests for access to Board records.

(a) *Submission of a request.* A person may request a record of the Board under this part by writing to the office that maintains the record. If the requester has reason to believe that the records in question are located in a regional office, the request must be submitted to that office. A list of the addresses of the Board's 11 regional offices appears in Appendix II of 5 CFR Part 1201. Other requests must be addressed to the Clerk of the Board, 1120 Vermont Avenue NW., Washington, DC 20419. Requests submitted under this part must be clearly marked "Freedom of Information Act Request" on both the envelope and the request.

(b) *Form.* A request must describe the records sought in enough detail to enable Board personnel to locate the records with no more than a reasonable effort. Wherever possible, a request must include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record. In addition, if the request seeks records pertaining to cases decided by the Board, it must indicate the title of the case, the MSPB docket number, and the date of the decision.

(c) *Time limits and decisions.* The Board will make a decision on a request within 10 workdays after the regional office or the Office of the Clerk receives it, except under "unusual circumstances" as that term is defined at 5 U.S.C. 552(a)(6)(B). Where "unusual circumstances" exist, the Board may extend the time period for making a decision on the request by no more than 10 additional working days. When it does so, it will provide written notification of the extension to the requester. If a request or an appeal is not properly labeled or is submitted to the wrong office, the time for processing the request will being when the proper office receives it. The Clerk of the Board or the Director of any of the Board's regional offices may make a decision on a request.

§ 1204.12 Fees.

(a) *General.* The Board will charge the requester fees for services provided in responding to and processing requests for information. Those fees will be charged according to the schedule contained in paragraph (d) of this section, and will recover the full allowable direct costs that the Board incurs. Fees may be charged for time spent searching for information, even if the Board fails to locate responsive records, and even if it determines that the information is exempt from disclosure. It will not charge the requester, however, if the fee for any request is less than $25 (the cost to the Board of processing and collecting the fee).

(b) *Definitions.* (1) The term "direct costs" means those costs that an agency actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Overhead expenses, such as costs of space and of heating or lighting the facility in which the records are stored, are not included in direct costs.

(2) The term "search" includes all time spent looking for material in response to a request, including page-by-page or line-by-line identification of material within documents. Searches will be done in the most efficient and least expensive manner in order to minimize costs for both the Board and the requester. Searches may be done manually or by computer using existing programming.

(3) The term "duplication" means the process of making a copy of a document necessary to respond to a FOIA request. Those copies can take the form of paper, microform, audio-visual materials, or machine-readable documentation (e.g., magnetic tape or disk), among others. The copy provided will be in a form that is reasonably usable by requesters.

(4) The term "review" includes the process of examining documents to determine whether any portion of them may be exempt from disclosure under the FOIA, when the documents have been located in response to a request that is for a commercial use. The term also includes processing any documents for disclosure, e.g., doing all that is necessary to edit them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding whether exemptions apply.

(5) The term "commercial use request" means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Board will determine the use the requester will make of the documents requested. Moreover, where the Board has reasonable cause to doubt the use a requester will make of the records sought, or where that use is not clear from the request itself, the Board will seek additional clarification before assigning the request to a specific category.

(6) The term "educational institution" means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education that operates a program or programs of scholarly research.

(7) The term "noncommercial scientific institution" means an institution that is not operated on a "commercial" basis as that term is used above, and that is operated solely for the purpose of conducting scientific research whose results are not intended to promote any particular product or industry.

(8) The term "representative of the news media" means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term

"news" means information that concerns current events or that would be of current interest to the public.

(c) *Categories of requesters.* There are four categories of FOIA requesters: Commercial use requesters; educational and noncommercial scientific institutions; representatives of the news media; and all other requesters. To be included in the category of educational and noncommercial scientific institutions, requesters must show that the request is authorized by a qualifying institution and that they are seeking the records not for a commercial use, but in furtherance of scholarly or scientific research. To be included in the news media category, a requester must meet the definition in paragraph (b)(8) of this section and the request must not be made for a commercial use. To avoid commercial use charges, requesters must show that they should be included in a category or categories other than that of commercial use requesters. The board will determine the categories in which to place requesters for fee purposes. It will make these determinations based on information provided by the requesters and information otherwise known to the Board.

(d) *Charges.* The Board will provide all requesters, except commercial use requesters as that term is defined above, the first 100 pages (paper copies of standard agency size) of duplication and the first two hours of search time without charge.

(1) When the Board receives a request:

(i) From a commercial use requester, it will assess charges that recover the full direct costs for searching for the information requested, reviewing it for release at the initial request stage, reviewing it after an appeal to determine whether other exemptions not considered prior to the appeal apply to it, and duplicating it;

(ii) From an educational and noncommercial scientific institution or, to the extent duplication exceeds 100 pages, from a representative of the news media, it will assess only charges for the cost of duplication of the requested information;

(iii) From all other requesters, to the extent reproduction exceeds 100 pages and search time exceeds 2 hours, it will assess fees to recover the full direct cost of searching for and duplicating requested records.

(2) When the Board reasonably believes that a requester or group of requesters is attempting to divide a request into a series of requests in order to evade the assessment of fees, the Board will combine the requests and charge fees accordingly. The Board will not combine multiple requests on unrelated subjects from one requester.

(3) When the Board determines that charges for a request are likely to exceed $250, the Board will require the requester to provide an advance payment of the entire fee before continuing to process the request.

(4) When a requester has an outstanding fee charge or has failed previously to pay a fee on time, the Board will require the requester to pay any outstanding amount owed, and to make an advance payment of the full amount of the estimated fee before the Board begins to process a new or pending request from that requester, and before it applies administrative time limits for making a determination on the new or pending request.

(e) *Fee schedule.* (1) Fees for document searches for records will be charged at a rate of $3.75 for each quarter of an hour.

(2) Fees for computer searches for records will be charged at a rate of 90 cents for each computer minute.

(3) Fees for review at the initial administrative level to determine whether records or portions of records are exempt from disclosure, and for review after an appeal to determine whether the records are exempt on other legal grounds, will be assessed, for commercial use requests, at the rate of $8.50 an hour.

(4) Fees for paper copy duplication will represent the reasonable direct costs to the Board of making copies, taking into account the salary of the operator, as well as the cost of the reproduction machinery. Based on these criteria, the Board has determined that the fee for photocopying records is 10 cents a page, the fee for duplicating audio tapes is $5.75 a cassette tape, the fee for computer printouts is 10 cents a page, the fee for records produced on magnetic computer tapes is $21 a tape, and the fee for records produced on computer diskettes is $2.70 a diskette. When the Board estimates that duplication costs will exceed $25, it will notify the requester of the estimated amount unless the requester has indicated in advance a willingness to pay an equal or higher amount.

(f) *Fee waivers.* (1) Upon request, the Clerk of the Board or regional director, as appropriate, will furnish information without charge or at reduced charges if it is established that disclosure "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." Factors on which this decision will be based include:

(i) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the government;

(ii) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(iii) Whether disclosure of the requested information is likely to contribute to public understanding of the subject of the disclosure; and

(iv) The significance of the contribution the disclosure would make to public understanding of government operations or activities.

(2) If information is to be furnished without charge or at reduced rates, the requester must also establish that disclosure of the information is not primarily in the commercial interest of the requester. Factors on which this decision will be based include:

(i) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(ii) Whether the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(3) The requester has the burden of establishing eligibility for a waiver of fees or for reduced fees. The denial of a request for waiver of fees may be appealed under subpart C of this part.

§ 1204.13 Denials.

A denial of a request for reduced fees or of a request for waiver of fees, or denial of a request for a record, in whole or in part, will be made in writing, will state the reasons for the denial, and will notify the requester of the right to appeal the denial.

§ 1204.14 Requests for access to confidential commercial information.

(a) *General.* Confidential commercial information provided to the Board by a business submitter will not be disclosed in response to a Freedom of Information Act request except in accordance with this section.

(b) *Definitions.* (1) The term "confidential commercial information" means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) The term "submitter" means any person or entity who provides confidential commercial information to the government. The term "submitter" includes, but is not limited to corporations, state governments, and foreign governments.

(c) *Notice to business submitters.* The Board will provide a business submitter with prompt written notice of a request encompassing its confidential commercial information whenever that action is required under paragraph (d) of this section, and except as provided in paragraph (h) of this section. This written notice will either describe the exact nature of the confidential information requested or will provide copies of the records or portions of records containing the commercial information.

(d) *When initial notice is required.* (1) With respect to confidential commercial information submitted to the Board before January 1, 1988, the Board will give the business submitter notice of a request whenever:

(i) The information is less than 10 years old; or

(ii) The Board has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(2) With respect to confidential commercial information submitted to the Board on or after January 1, 1988, the Board will give notice to the business submitter whenever:

(i) The business submitter has designated the information in good faith as commercially or financially sensitive information; or

(ii) The Board has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(3) Notice of a request for commercially confidential information submitted before January 1, 1988, is required for a period of not more than 10 years after the date on which the information is submitted unless the business submitter requests, and provides justification for, a longer specific notice period. Whenever possible, the submitter's claim of confidentiality must be supported by a statement or certification, by an officer or authorized representative of the company, that the information in question is in fact confidential commercial information and has not been disclosed to the public.

(e) *Opportunity to object to disclosure.* Through the notice described in paragraph (c) of this section, the Board will afford a business submitter a reasonable period within which to provide a detailed statement of any objection to disclosure. The statement must specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act. In addition, in the case of Exemption 4, the statement must demonstrate why the information is alleged to be a trade secret, or to be commercial or financial information that is privileged or confidential. Information a business submitter provides under this paragraph may itself be subject to disclosure under the Freedom of Information Act.

(f) *Notice of intent to disclose information.* The Board will consider carefully a business submitter's objections and specific grounds for claiming that the information should not be disclosed before determining whether to disclose confidential commercial information. Whenever the Board decides to disclose confidential commerical information over the objection of a business submitter, it will forward to the business submitter a written notice that includes:

(1) A statement of the reasons for which the business submitter's disclosure objections were not sufficient;

(2) A description of the confidential commercial information to be disclosed; and

(3) A specified disclosure date. The Board will forward the notice of intent to disclose the information a reasonable number of days, as circumstances permit, before the specified date upon which disclosure is expected. It will forward a copy of the disclosure notice to the requester at the same time.

(g) *Notice of Freedom of Information Act lawsuit.* Whenever a requester files a lawsuit seeking to compel disclosure of business information covered by paragraph (d) of this section, the Board will notify the business submitter promptly.

(h) *Exceptions to notice requirements.* The notice requirements of this section do not apply when:

(1) The Board determines that the information should not be disclosed;

(2) The information lawfully has been published or otherwise made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The disclosure is required by an agency rule that:

(i) Was adopted pursuant to notice and public comment;

(ii) Specifies narrow classes of records submitted to the agency that are to be released under the Freedom of Information Act; or

(iii) Provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted or a reasonable time thereafter, that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(5) The information requested is not designated by the submitter as exempt from disclosure in accordance with agency regulations promulgated pursuant to this section, when the submitter has an opportunity to do so at the time of submission of the information or a reasonable time thereafter, unless the agency has substantial reason to believe that disclosure of the information would result in competitive harm; or

(6) The designation made by the submitter in accordance with Board regulations appears obviously frivolous; except that, in such case, the Board must provide the submitter with written notice of any final administrative disclosure determination within a reasonable period prior to the specified disclosure date.

Subpart C—Appeals

§ 1204.21 Submission.

A person may appeal a denial by the Clerk of the Board, or by any regional director, of access to agency records, waiver of fees, or reduction of fees. The appeal must be filed with the Deputy Executive Director for Management, Merit System Protection Board, 1120 Vermont Avenue, NW., Washington, DC 20419. Any appeal must include a copy of the initial request, a copy of the letter denying the request, and a statement of the reasons why the appellant believes the denying official erred.

§ 1204.22 Decisions on appeal.

Decisions on an appeal will be made within 20 workdays after the appeal is received. Each decision will be in writing and, if the denial of access to records is upheld, will contain the reasons for the decision, as well as information about the appellant's right to seek judicial review of the denial.

Date: June 29, 1989.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 89-15759 Filed 7-5-89; 8:45 am]

BILLING CODE 7400-01-M

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5 CFR Part 1205

RIN 3124-AA05

Privacy Act Regulations

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board is revising its regulations in this part in plain English. The Board has completed a thorough review of its existing regulations to identify any words or phrases that could be rewritten to be more readily understood by persons who wish to exercise their rights under the Privacy Act of 1974. The regulations published today reflect that review. The revised language is not intended to change the meaning or requirements of the existing sections. Section 1205.2 is amended by adding a reference to Part 1209 of this title. The Board is also revising the authority citation to conform to Pub. L. 101-12.

EFFECTIVE DATE: July 9, 1989.

FOR FURTHER INFORMATION CONTACT: Charles J. Stanislav, (202) 653-8931.

List of Subjects in 5 CFR Part 1205

Privacy, Administrative practice and procedure, Government employees.

Accordingly, 5 CFR Part 1205 is revised as follows:

PART 1205—PRIVACY ACT REGULATIONS

Subpart A—General Provisions

Sec.
1205.1 Purpose.
1205.2 Policy and scope.
1205.3 Definitions.
1205.4 Disclosure of Privacy Act records.

Subpart B—Procedures for Obtaining Records

1205.11 Access to Board records.
1205.12 Time limits and determinations.
1205.13 Identification.
1205.14 Granting access.
1205.15 Denying access.
1205.16 Fees.

Subpart C—Amendment of Records

1205.21 Request for amendment.
1205.22 Action on request.
1205.23 Time limits.

Subpart D—Appeals

1205.31 Submitting appeal.
1205.32 Decision on appeal.

Authority: 5 U.S.C. 552a and 1204

Subpart A—General Provisions

§ 1205.1 Purpose.

This subpart implements the Privacy Act of 1974, 5 U.S.C. 552a, ("the Act") by prescribing the procedures by which individuals may determine the existence of, seek access to, and request amendment of Board records concerning themselves, and by stating the requirements that apply to Board employees' use and dissemination of those records.

§ 1205.2 Policy and scope.

The Board's policy is to apply these regulations to all records that can be retrieved from a system of records under the Board's control by using an individual's name or by using a number, symbol, or other means of identifying the individual. These regulations, however, do not govern the rights of parties in adversary proceedings before the Board to obtain discovery from adverse parties; those rights are governed by Part 1201 and Part 1209 of this chapter. These regulations also are not intended to permit the alteration, either before or after the Board has issued a decision on an appeal, of evidence presented during the Board's adjudication of the appeal.

§ 1205.3 Definitions.

The definitions of 5 U.S.C. 552a apply to this part. In addition, as used in this part:

(a) "Inquiry" means a request by an individual regarding whether the Board has a record that pertains to that individual.

(b) "Request for access" means a request by an individual to inspect or copy a record.

(c) "Request for amendment" means a request by an individual to change the substance of a particular record by addition, deletion, or other correction.

(d) "Requester" means the individual requesting access to or amendment of a record. The individual may be either the person to whom the requested record pertains, a legal guardian acting on behalf of the individual, or a representative designated by that individual.

§ 1205.4 Disclosure of Privacy Act records.

(a) Except as provided in 5 U.S.C. 552a(b), the Board will not disclose any personal record information from systems of records it maintains to any individual other than the individual to whom the record pertains, or to any other agency, without the express written consent of the individual to whom the record pertains, or his or her agent or attorney.

(b) The Board's staff will take necessary steps, in accordance with the law and these regulations, to protect the security and integrity of the records and the personal privacy interests of the subjects of the records.

Subpart B—Procedures for Obtaining Records

§ 1205.11 Access to Board records.

(a) *Submission of request.* Inquiries or requests for access to records must be submitted to the appropriate regional office of the Board, or to the Office of the Clerk of the Board, U.S. Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, DC 20419. If the requester has reason to believe the records in question are located in a regional office, the request must be submitted to that office. Requests submitted to the region must be addressed to the regional director at the appropriate regional office listed in Appendix II of 5 CFR Part 1201.

(b) *Form.* Each submission must contain the following information:

(1) The name, address, and telephone number of the individual to whom the record pertains;

(2) The name, address, and telephone number of the individual making the request if the requester is someone other than the person to whom the record pertains, such as a legal guardian or an attorney, along with evidence of the relationship. Evidence of the relationship may consist of an authenticated copy of: (i) the birth certificate of the minor child, and (ii) the court document appointing the individual legal guardian, or (iii) an agreement for representation signed by the individual to whom the record pertains;

(3) Any additional information that may assist the Board in responding to the request, such as the name of the agency that took an action against an individual, or the docket number of the individual's case;

(4) The date of the inquiry or request;

(5) The inquirer's or requester's signature; and

(6) A conspicuous indication, both on the envelope and the letter, that the inquiry is a "PRIVACY ACT REQUEST".

(c) *Identification.* Each submission must comply with the identification requirements stated in § 1205.13 of this part.

(d) *Payment.* Records usually will not be released until fees have been received.

§ 1205.12 Time limits and determinations.

(a) *Board determinations.* The Board will acknowledge the request and make a determination on it within 10 workdays after it receives the request, except under the unusual circumstances described below:

(1) When the Board needs to obtain the records from other Board offices;

(2) When it needs to obtain and examine a large number of records;

(3) When it needs to consult with another agency that has a substantial interest in the records requested; or

(4) When other extenuating circumstances prevent the Board from processing the request within the 10-day period.

(b) *Time extensions.* When unusual circumstances exist, the Board may extend the time for making a determination on the request for no more than 10 additional workdays. If it does so, it will notify the requester of the extension.

(c) *Improper request.* If a request or an appeal is not properly labeled, does not contain the necessary identifying information, or is submitted to the wrong office, the time period for processing the request will begin when the correct official receives the properly labeled request and the necessary information.

(d) *Determining officials.* The Clerk of the Board or a regional director will make determinations on requests.

§ 1205.13 Identification.

(a) *In person.* Each requester must present satisfactory proof of identity. The following items, which are listed in order of the Board's preference, are acceptable proof of the requester's identity when the request is made in person:

(1) A document showing the requester's photograph;

(2) A document showing the requester's signature; or

(3) If the items described in paragraphs (a)(1) and (2) of this section are not available, a signed statement in which the requester asserts his or her identity and acknowledges understanding that misrepresentation of identity in order to obtain a record is a misdemeanor and subject to a fine of up to $5,000 under 5 U.S.C. 552a(i)(3).

(b) *By mail.* The identification of a requester making a request by mail must be certified by a notary public or equivalent official or contain other information sufficient to identify the requester. Sufficient information could be the date of birth of the requester and some item of information in the record that only the requester would be likely to know.

(c) *Parents of minors, legal guardians, and representatives.* Parents of minors, legal guardians, and representatives must submit identification under paragraph (a) or (b) of this section. Additionally, they must present an authenticated copy of:

(1) The minor's birth certificate, and

(2) The court order of guardianship, or

(3) The agreement of representation, where appropriate.

§ 1205.14 Granting access.

(a) The Board may allow a requester to inspect records through either of the following methods:

(1) It may permit the requester to inspect the records personally during normal business hours at a Board office or other suitable Federal facility closer to the requester; or

(2) It may mail copies of the records to the requester.

(b) A requester seeking personal access to records may be accompanied by another individual of the requester's choice. Under those circumstances, however, the requester must sign a statement authorizing the discussion and presentation of the record in the accompanying individual's presence.

§ 1205.15 Denying access.

(a) *Basis.* In accordance with 5 U.S.C. 552a(k)(2), the Board may deny access to records that are of an investigatory nature and that are compiled for law enforcement purposes. Those requests will be denied only where access to them would otherwise be unavailable under Exemption (b)(7) of the Freedom of Information Act.

(b) *Form.* All denials of access under this section will be made in writing and will notify the requester of the right to judicial review.

§ 1205.16 Fees.

(a) No fees will be charged except for making copies of records.

(b) Photocopies of records duplicated by the Board will be subject to a charge of 10 cents a page.

(c) If the fee to be assessed for any request is less than $25 (the cost to the Board of processing and collecting the fee), no charge will be made to the requester.

(d) Fees for duplicating audio tapes and computer records will be charged at a rate representing the actual costs to the Board, as those costs are shown below.

(1) Audio tapes will be provided at a charge of $5.75 for each cassette tape.

(2) Computer printouts will be provided at a charge of 1 cent a page.

(3) Records reproduced on magnetic computer tapes will be provided at a charge of $21 a tape.

(4) Records produced on computer diskettes will be provided at a charge of $2.70 a diskette.

(e) If duplication costs exceed $25, the Board will notify the requester of the estimated amount before copying the records.

(f) When the Board determines that charges for a request are likely to exceed $250, it will require the requester to pay the entire fee before it continues to process the request.

(g) The Board will provide one copy of the amended parts of any record it amends free of charge as evidence of the amendment.

Subpart C—Amendment of Records

§ 1205.21 Request for amendment.

A request for amendment of a record must be submitted to the director of the appropriate regional office, or to the Office of the Clerk of the Board, U.S. Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, DC 20419, depending on which office is maintaining the record. The request must be in writing, must be identified conspicuously on the outside of the envelope and the letter as a "PRIVACY ACT REQUEST," and must include the following information:

(a) An identification of the record to be amended;

(b) A description of the amendment requested; and

(c) A statement of the basis for the amendment, along with supporting documentation, if any.

§ 1205.22 Action on request.

(a) *Amendment granted.* If the Board grants the request for amendment, it will notify the requester and provide him or her with a copy of the amendment.

(b) *Amendment denied.* If the Board denies the request for amendment in whole or in part, it will provide the requester with a written notice that includes the following information:

(1) The basis for the denial; and

(2) The procedures for appealing the denial.

§ 1205.23 Time limits.

The regional director or the Board will rule on a request for amendment within 10 workdays of receipt of the request in the regional office or the Office of the Clerk except under the unusual circumstances described in paragraphs (a)(1) through (a)(4) of § 1205.12 of this part.

Subpart D—Appeals

§ 1205.31 Submitting appeal.

(a) A partial or complete denial, by the Clerk of the Board or a regional director, of a request for amendment may be appealed to the Deputy Executive Director for Management, U.S. Merit Systems Protection Board, 1120

Vermont Avenue NW., Washington, DC 20419.

(b) Any appeal must be in writing, must be clearly and conspicuously identified as a Privacy Act appeal on both the envelope and letter, and must include:

(1) A copy of the original request for amendment of the record;

(2) A copy of the denial; and

(3) A statement of the reasons why the original denial should be overruled.

§ 1205.32 Decision on appeal.

(a) The Deputy Executive Director for Management will decide the appeal within 30 working days unless that official determines that there is good cause for extension of that deadline. If an appeal is improperly labeled, does not contain the necessary information, or is submitted to an inappropriate official, the time period for processing the appeal will begin when the Deputy Executive Director for Management receives the appeal and the necessary information.

(b) If the request for amendment of a record is granted on appeal, the Deputy Executive Director for Management will direct that the amendment be made. A copy of the amended record will be provided to the requester.

(c) If the request for amendment of a record is denied, the Deputy Executive Director for Management will notify the requester of the denial and will inform the requester of:

(1) The basis for the denial;

(2) The right to judicial review of the decision under 5 U.S.C. 552a(g)(1)(A); and

(3) The right to file a concise statement with the Board stating the reasons why the requester disagrees with the denial. This statement will become a part of the requester's record.

Date: June 29, 1989.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 89-15760 Filed 7-5-89; 8:45 am]

BILLING CODE 7400-01-M

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5 CFR Part 1206

RIN 3124-AA06

Open Meetings

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: On May 11, 1989 (54 FR 20367), the Board published final regulations in this Part in "plain English". Section 1206.7 contained an error in paragraph (a)(2) which requires correction.

EFFECTIVE DATE: July 9, 1989.

FOR FURTHER INFORMATION CONTACT: Charles J. Stanislav, (202) 653-8931.

SUPPLEMENTARY INFORMATION:

List of Subjects in 5 CFR Part 1206

Administrative practice and procedure, Board meetings.

Accordingly the Board amends Part 1206 as follows:

PART 1206—OPEN MEETINGS

1. Authority for Title 5 CFR Part 1206 continues to read:

Authority: 5 U.S.C. 552(b).

2. Section 1206.7(a)(2) is corrected to read as follows:

§ 1206.7 Record of meetings.

(a) * * *

(2) A copy of the General Counsel's certification under § 1206.6(b) of this part;

* * * * *

Date: June 29, 1989.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 89-15761 Filed 7-5-89; 8:45 am]

BILLING CODE 7400-01-M

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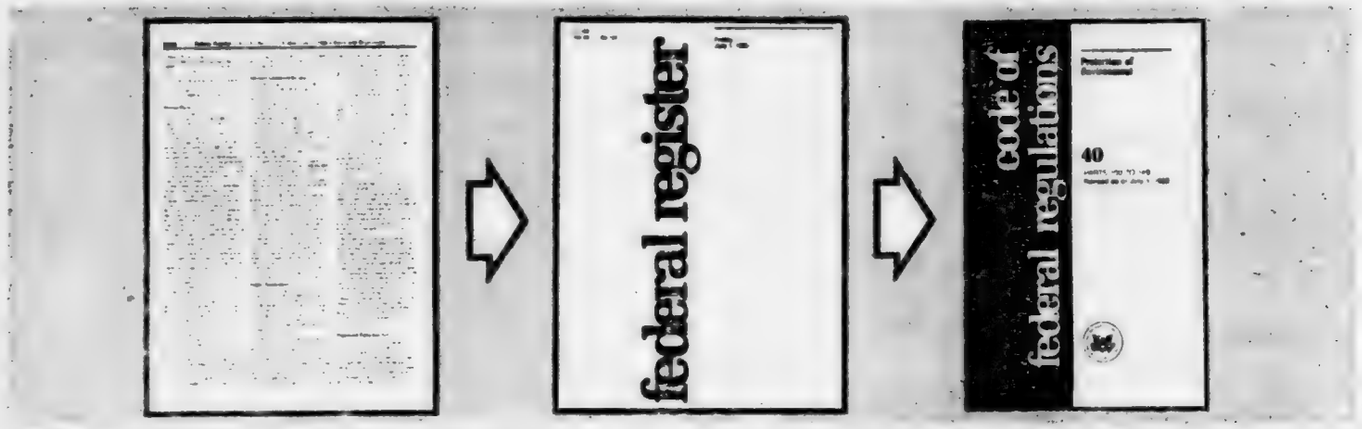

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federal register

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Delegation of Authority; Executive Order 12580; Correction

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule; correction.

SUMMARY: In the **Federal Register** of Friday, April 7, 1989, 54 FR 14043, amendment 7 appearing in the third column of page 14045 added incorrectly a new paragraph "(q)" to § 2.42. The correct paragraph designation should be "(s)". In addition, in the same **Federal Register** issue, amendment 12 appearing in the first column of page 14048 added incorrectly a new paragraph "(a)(32)" to § 2.70. The correct paragraph designation should be "(a)(35)".

EFFECTIVE DATE: July 7, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Siegler, Deputy Assistant General Counsel, Office of the General Counsel, U.S. Department of Agriculture, Washington, DC (202) 447-6035.

Done this 30th day of June, 1989, at Washington, DC.

Clayton Yeutter,

Secretary of Agriculture.

[FR Doc. 89-15997 Filed 7-6-89; 8:45 am]

BILLING CODE 3410-14-M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R-0655]

RIN 7100-AA91

Truth in Lending; Home Equity Disclosure and Substantive Rules; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; correction.

SUMMARY: The Board is correcting a technical error to footnote 10b of Regulation Z, which appeared in the **Federal Register** on June 9, 1989 (54 FR 24670).

FOR FURTHER INFORMATION CONTACT: Sharon Bowman or Leonard Chanin, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452-3667.

SUPPLEMENTARY INFORMATION: On June 9, 1989, the Board issued a final rule amending Regulation Z to implement the Home Equity Loan Consumer Protection Act of 1988. The final rule contained two references to footnote 10b. The first reference accompanies § 226.5b(d)(5)(ii). The second reference accompanies § 226.16(d)(3). This notice changes the second footnote 10b reference to refer to new footnote 36b.

The following corrections are made to FR Doc. 89-13507; Truth in Lending:

PART 226—[AMENDED]

1. Section 226.16(d)(3) is corrected by revising the reference to the footnote at the end of the paragraph and by adding a new footnote 36b to read as follows:

§ 226.16 Advertising.

* * * * *

(d) * * *

(3) * * * [36b]

* * * * *

[36b] See footnote 10b.

* * * * *

By order of the Board of Governors of the Federal Reserve System, June 30, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-15916 Filed 7-6-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 774

[Docket No. 80996-9122]

Reexports into COCOM Participating Countries

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Omnibus Trade and Competitiveness Act (OTCA), signed by the President on August 23, 1988, amended section 5(a)(4) of the Export Administration Act of 1979 (EAA) to require the removal of controls on most reexports to COCOM and countries qualifying for full benefits under section 5(k) of the EAA. On November 21, 1988, the Bureau of Export Administration published a proposed rule in the **Federal Register** to implement this provision. Having received and considered comments, the Bureau of Export Administration is issuing a final rule expanding the permissive reexport provisions of § 774.2 of the Export Administration Regulations (EAR) (15 CFR 774.2) to allow reexports of U.S. commodities to and among COCOM participating countries, Finland, and Switzerland, without prior U.S. authorization. Certain limited exceptions are specified.

The reexporter must submit a written notification report to the Office of Export Licensing if the U.S. origin commodities listed in Supplement No. 1 or 4 to Part 773 are being reexported from a country other than a COCOM participating country, Finland or Switzerland. The rule specifies what information must be included in the notification.

The permissive reexport provision would require that a Swiss Blue Import Certificate be obtained by the reexporting party before reexporting into Switzerland.

This procedure will not in any way alter the licensing requirements for items to the Soviet Union and other COCOM-proscribed countries.

This rule exempts reexports of supercomputers. The Department will treat cases involving supercomputers on a case-by-case basis.

EFFECTIVE DATE: This rule is effective July 7, 1989..

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Regulations Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-2440.

SUPPLEMENTARY INFORMATION:

Background

The Omnibus Trade and Competitiveness Act (OTCA), signed by the President on August 23, 1988, amends section 5(a)(4) of the Export Administration Act of 1979 (EAA), requiring the removal of controls over most reexports to COCOM and 5(k) countries. Consistent with the OTCA, the Department of Commerce issued a proposed rule on November 21, 1988 (53 FR 46878) with a request for comments on ways to implement the legislative requirements.

The proposed rule would have expanded the permissive reexport provisions of § 774.2 to allow reexports of U.S. commodities to and among COCOM participating countries, and Switzerland without prior U.S. authorization, provided that the Office of Export Licensing is notified in writing when the U.S. commodities being reexported are above the PRC Green Zone level. In addition, this proposal would not have authorized the use of the permissive reexport provision for reexports to entities that the reexporter knows or has reason to know are controlled-in-fact by Country Groups Q, W, Y, or Z.

The Department received comments from 18 firms and associations. In general, public comments acknowledged that the proposed rule was a positive step toward reducing unnecessary licensing burdens in order to increase competitiveness of U.S. exports abroad. However, most commenters expressed reservations that the proposal severely limited the usefulness of the provision for U.S. controlled commodities moved to and among COCOM participating countries.

Some commenters objected to one provision of the proposed rule under which a party that reexports U.S. commodities not identified in any of the Advisory Notes in the Commodity Control List must submit a reexport notification in writing to the Department, no later than the next business day following shipment and by a means intended to effect delivery within five days of transmission. With two exceptions, the final rule removes the notification requirement if reexports are between COCOM participating countries, Finland, and Switzerland. Although this final rule retains the notification requirement for reexports into COCOM, Finland and Switzerland from other countries, it is modified to a more sensitive level of technology. Specifically, this final rule requires notification only if the commodities are identified in Supplement No. 1 or 4 to Part 773. In addition, the notification reports need not be sent until the second business day following shipment. The notification reports are to be sent by airmail or another means that will provide equally expeditious delivery.

Some commenters observed that the Act addresses "goods and technology" while the proposal dealt only with goods. BXA is revising the technical data regulations and will address reexports of technology in that separate document.

The proposed rule would not have made this permissive reexport provision available when the reexporter knows or has reason to know that the shipment is intended for persons or entities that are controlled-in-fact by governments of Country Groups Q, W, Y, or Z. Many commenters expressed concern that other COCOM countries do not have the same restriction and that these unilateral controls placed an unfair restriction on U.S. competitiveness. This final rule removes the restriction in its entirety.

In addition, the proposed rule specified Switzerland as the only non-COCOM country eligible to benefit from the permissive reexport provision. Many commenters questioned why only Switzerland was included; they believed that Congress intended to include other countries for eligibility. The EAA provides for the exercise of judgment as to whether a country's export controls are comparable in practice to those of COCOM participating countries. The Department of Commerce can also treat a country like a COCOM participating country in some or all respects under the EAR without having determined that the country's export controls are fully comparable in practice to the COCOM system. Because of the continued improvement in its export controls, this final rule adds Finland on this discretionary basis as a country to which this permissive reexport provision will apply. Possible extension to other countries will be considered.

The Department will monitor the effectiveness of the notification requirement to determine the extent to which such requirement should be continued or modified. The Department estimated that if the general license had been in effect in FY 1988, approximately 11,214 reexport authorization requests representing approximately 11.28 billion dollars would not have been necessary.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule includes a collection of information requirement under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection of information has been approved by the Office of Management and Budget under control number 0694-0052. The proposed rule, published on November 21, 1988 (53 FR 46878) estimated the public reporting burden for the reexport notification collection to average approximately 16 minutes per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The public was encouraged to comment to the Office of Management and Budget on the reporting burden at that time. The Office of Management and Budget and BXA will continue to accept comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden. Comments should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attn: Paperwork Reduction Act Project 0694-0052, Office of Security and Management Support, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. Nevertheless, to help ascertain the economic impact of the regulation upon the general public, the regulation was issued in proposed form and public comment was solicited. Because this rule was originally issued in proposed form, it complies with section 13(b) of the Export Administration Act.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

List of Subjects in 15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 730-799) are amended as follows:

PART 774—[AMENDED]

1. The authority citation for Part 774 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of Dec. 29, 1981, by Pub. L. 99-64 of July 12, 1985, and Pub. L. 100-418 of Aug. 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of Dec. 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of Sept. 9, 1985 (50 FR 36861, Sept. 10, 1985), as affected by notice of Sept. 4, 1986 (51 FR 31925, Sept. 8, 1986); Pub. L. 99-440 of Oct. 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of Oct. 27, 1986 (51 FR 39505, Oct. 29, 1986).

2. Section 774.2 is amended by adding paragraph (k) to read as follows:

§ 774.2 Permissive reexports.

* * * * *

(k) Reexports to and among COCOM participating countries, Finland, and Switzerland

(1) *Except:* (i) Supercomputers; and

(ii) Electronic, mechanical or other devices, as described in ECCN 4517B, primarily useful for surreptitious interception of wire or oral communications.

(2) *Provided* That: (i) Eligible commodities are for use or consumption within a COCOM participating country (as defined in § 774.3(e)(i)(D)(ii)) Finland, or Switzerland, or for reexport from such country in accordance with other provisions of the Export Administration regulations; and

(ii) For reexports into Switzerland, the reexporting party has obtained a Swiss Blue Import Certificate if that document would be required for an identical shipment from the United States.

(3) *Reporting requirement:* (i) For reexports under this § 774.2(k), a reexport notification must be submitted in writing, signed by an authorized representative of the reexporter, to the Office of Export Licensing, P.O. Box 273, Department of Commerce, Washington, DC 20230, Attention: Reexport Notification, for the following:

(A) Reexports of commodities identified in Supplement Nos. 1 or 4 to Part 773 from a country other than a COCOM participating country, Finland, or Switzerland of commodities identified in Supplement Nos. 1 or 4 to Part 773; and

(B) The following equipment, regardless of the country from which the goods are reexported:

(*1*) ECCN 1355A: Lithography equipment for mask and reticle production capable of manufacturing integrated circuits with line width geometries of less than one micron; and

(*2*) ECCN 1357A: Filament winding machines with programs capable of operating in three or more axes specially designed to fabricate composite structures or laminates.

(ii) The reexport notification shall be transmitted to the Office of Export Licensing no later than the second business day following shipment, by airmail or other means intended to effect equally timely delivery.

(iii) The reexport notification shall identify:

(A) The reexporter and the new ultimate consignee;

(B) The type (including the ECCN, if known), quantity and value of the commodity;

(C) The actual or expected date of reexport; and

(D) If known, the original U.S. export license number under which the commodity was exported from the U.S. and the identity of the U.S. party from whom the reexporter received the goods.

3. A parenthetical is added at the end of § 774.2 to read as follows:

(The reporting requirements in paragraph (k) are approved by the Office of Management and Budget under control number 0694-0052).

Dated: July 5, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-16105 Filed 7-5-89; 2:21 pm]

BILLING CODE 3510-DT-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900-AC27

Quality Assurance Confidentiality

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) is amending the regulations that provide for the VA quality assurance program. These regulations delineate the responsibilities of VA's Veterans Health Services and Research Administration (VHS&RA) with respect to the conduct of the Quality Assurance (QA) program and establish standards that assure that certain quality assurance records and documents are adequately safeguarded and used only for proper purposes. These amendments amend the medical quality assurance program to include a peer review program, Medical District Initiated Peer Review Organization (MEDIPRO), add occurrence screening to the medical facility level quality assurance activities as a new continuous monitor, and delete credentialing and privileging from the list of mandatory quality assurance activities protected as part of the Systematic Internal Review (SIR) program at VA medical facilities. However, VA facilities will still be required to undertake credentialing and privileging activities.

EFFECTIVE DATE: Sections 17.506(16), 17.507(xvi), 17.517 and 17.518 are effective January 1, 1985. The remainder of these regulations are effective August 7, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Lubran, Chief, Systems Review Staff, Office of Quality Assurance (10QA1), Veterans Health Services and Research Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 (202) 233-3115.

SUPPLEMENTARY INFORMATION: On October 27, 1988, the Department of Veterans Affairs (formerly the Veterans Administration) published on pages 43452 through 43457 of the **Federal Register** proposed amendments to the VA regulations implementing 38 U.S.C. 3305. These amendments are required to comply with changes to Title 38, United States Code, enacted by the Veterans Benefits and Services Act of 1988 (Pub. L. 100-322) and the Veterans Health Care Amendments of 1985 (Pub. L. 99-166) as well as to include the MEDIPRO program. Title 38, United States Code, section 3305, requires the Secretary of the Department of Veterans Affairs to specify, by regulation, activities which the Department wishes to make part of the VA's medical quality assurance programs for which the records are protected by section 3305. Because this act explicity precludes any activity from being designated as a quality assurance program activity for the purposes of confidentiality unless such designation has been specified in regulation, it has been necessary to develop these regulations.

The Department gave interested parties 30 days to submit comments on the proposed regulations. Some comments were received in response to the notice of proposed rulemaking and have been considered in the final rule. The Secretary has also considered internal Department comments in drafting this final rule as a means of clarifying or interpreting specific regulatory requirements.

Two comments were received which suggested that § 17.506(a), Continuous

Monitoring, be amended to include medical facility-specific service monitors and medical facilitywide monitors. One commenter pointed out that medical facility clinical services are required by the Joint Commission on Accreditation of Healthcare Organizations, an organization which VA contracts with for accreditation purposes, to conduct ongoing monitoring and evaluation of the quality, appropriateness and safety of patient care services. The commenter suggested that §§ 17.506(a)(5) through 17.506(a)(7) be incorporated into a new continuous monitoring element, service level continuous monitors. Another commenter pointed out that medical facilitywide monitors employing generic criteria are used to look at aspects of quality and appropriateness of care that spans all services or quality assurance activities. The Secretary believes that because these comments, in effect, propose additional activities for protection by section 3305 rather than commenting on the changes under consideration, the comments are outside the scope of the proposed regulation and cannot be accepted. The Department, however, will take the suggestions under advisement.

One commenter stated that credentialing and privileging are an integral part of the VA quality assurance program and should not be deleted as one of the five mandatory Health Services Review Organization-Systematic Internal Review (HSRO–SIR) functions. While the Secretary firmly agrees that credentialing and privileging are important elements of the VA medical facility quality assurance program, the confidentiality protections provided by 38 U.S.C. 3305 and these regulations are no longer required for the credentialing and privileging function because of the overriding public interest in permitting access to information about VA practitioner credentials and clinical privileges. Removing credentialing and privileging from these regulations does not alter the medical center requirement to implement the function. The Secretary firmly supports the use of credentialing and privileging as an integral part of the medical facilities' quality assurance activities. These activities are essential to the effective monitoring of the performance and competency of individual practitioners. However, for the purpose of confidentiality, credentialing and privileging are being removed from the medical facilities' HSRO–SIR program, as defined by these regulations. The Department plans to establish policy which would clarify further that credentialing and privileging are fundamental quality assurance activities, and, to provide medical facilities with guidance on the conduct and performance of these activities.

Section 17.516(c) has been amended to state that confidential records protected by a specific statute, such as HSRO records (for example, occurrence screening data) do not lose their statutory protection when examined in the course of a protected HSRO quality assurance activity.

Furthermore, § 17.527(c) states that persons who are legally entitled to have access to records protected by section 3305 and these regulations and who have a need for access to confidential and privileged HSRO records and documents can be authorized access by the VA medical facility director. The Secretary believes that such access is reasonable for the VA medical facility medical staff designated to perform credentialing and privileging activities. (Additionally, § 17.527(c) states that confidential and privileged HSRO records and documents retain confidentiality protections under 38 U.S.C. 3305 when used in the HSRO program.) However, records protected by section 3305 and these regulations may not be used to restrict, reduce or revoke privileges.

The VA has reconsidered whether the "predetermined list of criteria" referenced in § 17.507(xvi), Occurrence Screening, is meant to refer only to criteria specified by the Chief Medical Director in policy directives. Occurrence screening must be performed in accordance with VHS&RA policy directives. The predetermined criteria specified in the present VHS&RA policy are viewed as an appropriate, minimal set of requirements that medical facilities are to establish in their occurrence screening continuous monitoring activity. The Secretary agrees, however, that other criteria may be established and applied by medical facilities; any locally adopted criteria are protected by these regulations, provided the criteria conform to any relevant VHS&RA directives and are approved in advance of implementation by the facility director. This can be accomplished in a variety of ways including, for example, having the facility director specifically approve and adopt in writing the quality assurance plan or individual committee minutes which contain such criteria. The description of the occurrence screening continuous monitoring activity, § 17.507(a)(4)(xvi), has been modified, therefore, to support the Secretary's interpretation of that policy.

Sections 17.514(f) and 17.518(b)(4) have also been added to make clear that contractors evaluating a MEDIPRO activity(ies) or performing a MEDIPRO function are covered by these regulations. VHS&RA is not planning to have any MEDIPRO functions performed under contract at this time.

The proposed rule is adopted as final with the amendments noted above.

VA has determined that these regulations are not a major rule as defined by Executive Order 12291, Federal Regulation. They will not have an effect on the economy of $100 million and will not result in any major increases in costs or prices for anyone; nor will they have significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary hereby certifies that these regulations will not, when promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–602. Pursuant to 5 U.S.C. 605(b), these regulations are, therefore, exempt from the regulatory analysis requirements of sections 603 and 604. The reason for this certification is that the regulations are for the express purpose of implementing laws intended to establish a VA quality assurance program, affect only a small category of confidential VA records, and impose no regulatory burdens on small entities.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Veterans.

Approved: June 21, 1989.

Edward J. Derwinski,

Secretary.

38 CFR, Part 17, MEDICAL, is amended as follows:

PART 17—[AMENDED]

1. Section 17.500 is amended by revising paragraph (b), (c) and (d) to read as follows:

§ 17.500 General.

* * * * *

(b) HSRO is a three faceted program:

(1) Health Services Review Organization-Systematic Internal Review (HSRO–SIR) is an integrated quality assurance process that is internal to each VA medical facility.

(2) Health Services Review Organization-Medical District Initiated Peer Peview Organization (HSRO/MEDIPRO) is a clinically oriented, medical district based, peer review system of quality of care and resource utilization assessment external to the medical facility.

(3) Health Services Review Organization-Systematic External Review Program (HSRO–SERP) is a systemwide VA review mechanism external to each VA medical facility in which health care evaluators review clinical and administrative aspects of the quality of care in VA medical facilities and the effectiveness of their HSRO–SIR programs. HSRO–SERP may include a review of the effectiveness of HSRO–MEDIPRO programs.

(c) Corrective action on all medical facility problems or recommendations identified by a HSRO–SIR, HSRO–MEDIPRO or HSRO–SERP review will be initiated and implemented at the lowest possible organizational level through existing lines of authority.

(d) HSRO–SIR, HSRO–MEDIPRO and HSRO–SERP program activities will be established, conducted and maintained at Veterans Health Services and Research Administration (VHS&RA) organizational levels as prescribed in these regulations and VA policy.

(Authority: 38 U.S.C. 3305)

2. Section 17.501 is revised to read as follows:

§ 17.501 Departmental responsibility.

(a) The Chief Medical Director is responsible for the implementation, maintenance, and enforcement of these regulations and will ensure that each VHS&RA organizational element maintains an effective and efficient HSRO program as specified in VA policy.

(b) The Director, Office of Quality Assurance, will provide guidance, oversight, and recommendations to the Chief Medical Director concerning the effectiveness of the HSRO program and the need to make improvements.

(c) Each regional director will ensure that HSRO–MEDIPRO is operational in the region and that clinical care and resource utilization problems unresolved at the district level are acted upon. The regional director will monitor and evaluate the implementation of district HSRO–MEDIPRO plans; review HSRO–MEDIPRO minutes and reviews; approve HSRO–MEDIPRO reports; provide necessary followup on HSRO–MEDIPRO program documents; and approve HSRO–MEDIPRO Board appointments.

(d) Each medical district director is responsbile for implementing and supervising the HSRO–MEDIPRO program within the district and for providing administrative and analytical support. The authority for day-to-day planning, coordination, implementing and monitoring compliance with policies and procedures is delegated to the HSRO–MEDIPRO coordinator. Supervision of the HSRO–MEDIPRO staff will be by the medical district director or designee.

(Authority: 38 U.S.C. 3305)

3. Section 17.504 is revised to read as follows:

§ 17.504 Conduct.

(a) Any VA employee participating in HSRO–SIR, HSRO–MEDIPRO or HSRO–SERP activities or having access to confidential and privileged quality assurance records and documents will comply with the requirements of these regulations. Participating employees will exercise prudent and diligent care and act in good faith while gathering and analyzing factual information prior to making any judgment which may reflect adversely on another VA employee or a VA medical facility. Employees will perform their duties in accordance with prevailing standards and procedures to ensure the safety and welfare of VA beneficiaries and others.

(b) Only those employees in supervisory, executive, or HSRO capacities who have sufficient job related needs to study or otherwise use confidential and privileged records and documents should have access to patient or provider specific identification information or to the confidential coding system. Access to HSRO records within the Department is gaverned by § 17.527 of this part.

(c) VA employees, upon voluntary or involuntary termination of VA employment for any reason, will not disclose to any person or organization any HSRO records or documents which are designated as confidential and privileged by 38 U.S.C. 3305 and these regulations.

(Authority: 38 U.S.C. 3305)

4. Section 17.506 is amended by adding paragraph (a)(16) to read as follows:

§ 17.506 Mandatory HSRO–SIR functions and elements.

* * * * *

(a) * * *

(16) Occurrence screening.

* * * * *

5. In § 17.506, paragraph (e) is removed.

6. In § 17.507, paragraph (a)(4)(XVI) is added to read as follows:

§ 17.507 Description of continuous monitoring.

* * * * *

(a) * * *

(4) * * *

(xvi) *Occurrence screening.* This involves screening cases against a predetermined list of criteria concerning the provision of care to patients, which criteria are specified in advance in any policy directive from the Chief Medical Director. Other occurrence screening criteria may be established locally at VA medical facilities, provided that the locally established criteria conform to the relevant VHS&RA occurrence screening policy directives issued by the Chief Medical Director, and that the medical facility director establishes the facility-specific screening criteria in a policy directive in advance of implementation. Criteria may be established when the responsible authority determines that the use of the criteria in occurrence screening will be for the purpose of improving the quality of care in VHS&RA health care facilities, including how use of the criteria are expected to improve the quality of care. Those cases which involve one or more of the occurrences will be reviewed to identify possible problems in patient care. Where appropriate, action will be taken to correct problems identified in individual cases. Cases meeting the criteria will be entered into an ongoing occurrence screening data base which will be reviewed and analyzed regularly to identify patterns which may be problematic. The Chief Medical Director may delete VHS&RA-wide criteria by means of a policy release. Locally established occurrence screening criteria may be removed from the protection of 38 U.S.C. 3305 and these regulations if permitted by VHS&RA policy directives and if the facility director specifically approves their deletion in writing. Criteria may be deleted when the responsible official determines that a basis no longer exists for including the criteria or criterion among the 38 U.S.C. 3305-protected occurrence screens. Criteria will be added and deleted when necessary.

7. Sections 17.511 through 17.513 are added and reserved and § 17.514 is added to read as follows:

§§ 17.511-17.513 [Reserved]

§ 17.514 HSRO-MEDIPRO.

(a) Each medical district, in accordance with any directives from the Chief Medical Director, will develop and establish a written MEDIPRO plan which establishes responsibilities, defines policy and describes procedures and mechanisms necessary to maintain an effective HSRO-MEDIPRO program. The plan will be reviewed annually by the HSRO-MEDIPRO board, updated as appropriate and will address the following subjects:

(1) Purpose of HSRO-MEDIPRO program.

(2) Program objectives.

(3) HSRO-MEDIPRO board structure and functions.

(4) Use of physician/dental advisors.

(5) HSRO-MEDIPRO staff roles and responsibilities.

(6) Meeting schedule and protocol.

(7) Review process.

(8) Plans for periodic reliability checks on HSRO-MEDIPRO staff and physician/dental advisors.

(9) Reporting.

(10) Relationship to other district councils.

(b) HSRO-MEDIPRO provides a means for representative VA health care professionals to evaluate VA medical facility, patient and practitioner records and documents to assess the quality of care and appropriateness of resource utilization. The goal of the HSRO-MEDIPRO program is to foster quality care under a prospective resource allocation methodology. HSRO-MEDIPRO is designed to function as a data driven system which combines data analysis and subsequent chart review to focus peer review activities. HSRO-MEDIPRO is intended to augment and not duplicate existing VA quality assurance activities including HSRO-SIR and HSRO-SERP.

(c) EAch HSRO-MEDIPRO program, in accordance with any directives from the Chief Medical Director, will establish uniform procedures and conduct peer review activities including, but not limited to, the following:

(1) Analyzing data to identify potential problems in quality of care or validity of data and to develop and review objectives on a regular basis. VA data sources include, but are not limited to, Patient Treatment File (PTF), records maintained on the Decentralized Hospital Computer Program (DHCP), tort claims, incident reports, and Automated Management Information System (AMIS). Problem areas may be indicated by statistically significant variations between appropriate medical district, regional or national peer group patterns of care. The following categories are examples of potential problem areas for the purpose of HSRO-MEDIPRO data analysis and focused review and these regulations:

(i) Mortality.

(ii) Interhospital transfers.

(iii) Interservice transfers.

(iv) Inpatient admissions/readmissions.

(v) Applicants found not in need of care.

(vi) One-day inpatient stays.

(vii) Length of stay by Diagnostic Related Group (DRG).

(viii) Discharge planning.

(ix) Appropriateness of levels of care such as acute care, long-term care, and ambulatory care.

(x) Ancillary services.

(2) Selecting topics for focused review. HSRO-MEDIPRO boards, in accordance with any directives from the Chief Medical Director, will select and prioritize topics for review based on medical district, regional and national considerations. Such considerations may include, for example, topics which reflect deviations of clinical indicators from VA system norms; topics which reflect large numbers of patients or serious consequences such as death or disability; topics which are likely to reflect systemwide problems related to resource allocation systems and other VA cost containment efforts; and topics which lend themselves to intervention at the medical center level.

(3) Generating clinical hypotheses and study objectives. Each HSRO-MEDIPRO board and staff will generate clinical hypotheses and study objectives for focused review topics.

(4) Developing criteria. HSRO-MEDIPRO board and staff will develop and/or use specific, objective criteria to guide records review and analysis. A variety of resources may be used in the development of criteria including previously developed criteria and physician and dental advisor expertise.

(5) Conducting focused review and, as necessary, referring records and other documents to physician/dental advisors for peer review. Focused review refers to the review of a well-defined, limited or structured topic by a health professional peer in order to evaluate a potential quality of care problem or opportunity for improvement. Peer review refers to an assessment by health care practitioners of services ordered or furnished by other practitioners in the same professional field.

(6) Sharing findings with VA medical facilities. HSRO-MEDIPRO will provide medical facilities with information relative to quality of care and practice patterns. Such information may include practitioner-specific and aggregate district, region and national data. VA medical facilities will use these findings in their HSRO-SIR program to document statisfactory or superior quality of care and to identify areas where attention should be directed. If necessary, medical centers will take action to correct identified problems or make improvements through appropriate interventions such as education and training of VA medical staff or management. Other HSRO-MEDIPRO information that may be provided to medical facilities includes study criteria, data validation information, HSRO-MEDIPRO study summaries pertaining to the medical center, HSRO-MEDIPRO minutes and quarterly reports, and letters of observation indicating potential problems found in areas other than the topic under consideration for focused review.

(7) Resolving facility disagreement with HSRO-MEDIPRO study findings. Medical facilities may communicate in writing to the HSRO-MEDIPRO board where there is a disagreement over the findings of a HSRO-MEDIPRO study. The HSRO-MEDIPRO board will review all such medical facility documents; unresolved issues will be referred to the appropriate regional director for action.

(8) Providing HSRO-MEDIPRO board followup as necessary. HSRO-MEDIPRO boards, in accordance with any directives from the Chief Medical Director, will conduct followup evaluations of medical center actions after an appropriate period of time has elapsed.

(9) Integrating findings with the appropriate VHS&RA organizational elements. HSRO-MEDIPRO will report periodically on its findings and followup actions to the respective regional director and to the Director, Office of Quality Assurance. Where study findings have implications for planning or resource allocation purposes, communication should occur with the appropriate organizational unit, e.g., the District Planning Board or the District Executive Council.

(d) VA may conduct a health care review(s) of HSRO-MEDIPRO to determine the effectiveness of the HSRO-MEDIPRO program in meeting its objectives, assess compliance with relevant policies and procedures, validate medical record reviews and to accomplish other similar objectives.

(e) Each medical district will have an HSRO-MEDIPRO board consisting of clinically active VA physicians and dentists to conduct HSRO-MEDIPRO activities. The membership and selection process for the HSRO-MEDIPRO boards will be determined by VA policy directive(s).

(f) A medical district or the VHS&RA may contract in writing with non-VA personnel or entities for the performance of MEDIPRO activities or functions or for an evaluation of MEDIPRO activities or functions. An evaluation of MEDIPRO activities or functions, whether performed by VA personnel or by a contractor, is a MEDIPRO activity.

(Authority: 38 U.S.C. 3305)

§ 17.515 [Removed]

§§ 17.516, and 17.517 [Redesignated as §§ 17.515 and 17.516]

8. a. Section 17.515 is removed, and § 17.516 and § 17.517 are redesignated § 17.515 and § 17.516, respectively.

b. Newly-designated § 17.515 is revised and newly-designated § 17.516 is amended by adding paragraphs (c) and (d) to read as follows:

§ 17.515 HSRO-SERP.

(a) HSRO-SERP is an ongoing review program concerned principally with the quality of patient care provided at each VA medical facility and the effectiveness of its HSRO-SIR program. HSRO-SERP evaluates each VA medical facility service as well as the facility as a whole. The HSRO-SERP review includes a periodic assessment conducted at each VA medical facility by a multidisciplinary peer review team of VA health care professionals. Team members are selected from other VA medical facilities for their expertise in their respective disciplines and their evaluation skills. The HSRO-SERP review may also address the effectiveness of the HSRO-MEDIPRO program.

(b) HSRO-SERP also includes reviews and analyses of HSRO-SIR, HSRO-SERP and HSRO-MEDIPRO documents by VA central office officials.

(c) The HSRO-SERP program is intended to complement other evaluations, reviews and surveys of VA medical facilities that utilize standards and criteria which may be unrelated to the quality of patient care. Such activities are conducted by a variety of agencies and organizations including VA's VHS&RA accrediting bodies such as the Joint Commission on Accreditation of Healthcare Organizations, Federal regulatory agencies, e.g., Nuclear Regulatory Commission, and veterans' organizations.

(Authority: 38 U.S.C. 3305)

§ 17.516 HSRO records and documents.

* * * * *

(C) When reviewed or examined in a HSRO program, confidential records protected by statutes such as 38 U.S.C. 3305; 5 U.S.C. 552a, the Privacy Act; 38 U.S.C. 4132 (drug and alcohol abuse and sickle cell anemia treatment records); and 38 U.S.C. 3301 (veterans' names and addresses), retain whatever confidentiality protection they have under these laws and applicable regulations and will be handled accordingly. To the extent that information protected by 38 U.S.C. 3301 or 4132 is incorporated into HSRO records, the information in the HSRO records is still protected by these statutes.

(d) Records and documents generated by a contractor or consultant in the course of conducting an HSRO program activity or function as specified in these regulations or an evaluation of any HSRO program as specified in these regulations shall be confidential and privileged to the same extent that the records and documents would be confidential and privileged if created by the Department under these regulations.

§ 17.518 [Redesignated as § 17.517]

9. Section 17.518 is redesignated as § 17.517.

10. Newly redesignated § 17.517 is amended by revising paragraph (c) to read as follows:

§ 17.517 HSRO-SIR records and documents.

* * * * *

(c) Continuous monitoring and utilization review functions generate individual, committee or study team minutes, notes, reports and memoranda produced in the process of deliberations by health care evaluators. Such documents are confidential and privileged in their entirety. Individual continuous monitoring and utilization review documents comparing one or more patient's treatment with objective criteria or norms would be such a confidential document. Other memoranda and study documents or records prepared for review by HSRO-SIR committees are confidential and privileged only if they reveal the identity, even by implication, of individual VA employees or other individuals involved in the quality assurance process or the results or outcomes of HSRO-SIR reviews or studies. Summary documents or records which only identify study topics, the period of time covered by the study, criteria, norms, interpretive comments and major overall findings, but which do not identify health care providers, even by implication, are not considered confidential and privileged documents or records under 38 U.S.C. 3305 and these regulations. In addition, occurrence screening records generated in the course of screening cases against either centrally established or locally adopted criteria are protected by 38 U.S.C. 3305 and these regulations. However, the criteria and the documents signed by the Chief Medical Director or facility director establishing them are not protected. After one of the criteria is deleted from the list of occurrence screens protected by 38 U.S.C. 3305 and these regulations, records generated in the course of screening cases against that criterion are not protected by 38 U.S.C. 3305 and these regulations; however, records generated while the particular occurrence screen was protected will retain that protection.

* * * * *

11. In newly-designated § 17.517, paragraph (f) is removed.

12. Section 17.518 is added to read as follows:

§ 17.518 HSRO-MEDIPRO records and documents.

(a) Those records and documents generated by HSRO-MEDIPRO activities in accordance with § 17.514 of this part are confidential and privileged.

(b) HSRO-MEDIPRO records and documents made confidential and privileged as provided by 38 U.S.C. 3305 include the following:

(1) Records and documents which reveal the actual results or outcomes of studies of individual patient care and treatment as compared with clinical criteria or norms or which may identify, even by implication, individual VA patients or employees or other individuals involved in peer review activities. Such studies are based on analyses of data from such sources as the PTF, records maintained on the DHCP and medical records. Those records and documents which are maintained in personnel or similar files are not made confidential and privileged by 38 U.S.C. 3305. 38 U.S.C. 3305 makes confidential and privileged the minutes, notes, reports and other documents produced in the process of deliberations by the HSRO-MEDIPRO board when it reviews the performance of a medical facility or health care professional for the purpose of peer review.

(2) HSRO-MEDIPRO notes, working papers, staff reports and memoranda that contain the deliberations of health care evaluators.

(3) HSRO-MEDIPRO board minutes, memoranda, deliberations, reports, letters, studies or other documents pertaining to HSRO-MEDIPRO peer review activities.

(4) Records, notes, reports, working papers, memoranda, correspondence and all other documents concerning the evaluation of the MEDIPRO program peer review activities. Routine administrative documents, e.g., a letter transmitting a substantive report, but itself not containing any substantive information and not identifying a program participant, are not protected.

(c) Other documents concerning HSRO–SIR reviews or studies prepared for review by HSRO–MEDIPRO staff or board are confidential and privileged only if they reveal the identity, even by implication, of VA employees or others involved in the quality assurance process or the results or outcomes of HSRO–SIR reviews or studies, as provided in § 17.517.

(d) Summary documents or records, other than those discussed in paragraphs (a), (b), and (c) of this section, which only identify study topics, the period of time covered by the study, criteria, norms or a summary of findings, and which do not identify VA patients or employees or others involved in peer review activities, even by implication, are not considered confidential and privileged documents or records under 38 U.S.C. 3305 and these regulations.

(e) Records and documents, to the extent that they are aggregations of statistical data and do not identify, even by implication, individual VA employees or other individuals involved in the peer review process, are not confidential or privileged. Nothing in these regulations shall be construed to authorize or require the withholding of such aggregate statistical data or information from disclosure.

(f) HSRO–MEDIPRO documents must not be filed in a manner by which they can be retrieved by reference to an individual identifier.

(Authority: 38 U.S.C. 3305)

13. Sections 17.523 and 17.524 are revised to read as follows:

§ 17.523 Disclosure authorities.

(a) The VA medical facility director is authorized to disclose any confidential and privileged HSRO–SIR records or documents to other agencies, organizations, or individuals where these regulations expressly provide for disclosure.

(b) The VA medical district director is authorized to disclose any confidential and privileged HSRO–MEDIPRO records or documents to other agencies, organizations, or individuals where these regulations expressly provide for disclosure.

(c) The VA regional director is authorized to disclose any confidential and privileged HSRO–SERP records or documents to other agencies, organizations, or individuals where these regulations expressly provide for disclosure.

(d) The VA Chief Medical Director is authorized to disclose any confidential and privileged HSRO records or documents to other agencies, organizations, or individuals where these regulations expressly provide for disclosure.

(Authority: 38 U.S.C. 3305)

§ 17.524 Appeal of decision to deny disclosure.

When a request for records or documents subject to these regulations is denied by the VA medical facility director, medical district director, regional director or Chief Medical Director, the VA official denying the request will notify the requestor of the right to appeal this decision to the Secretary of the Veterans Affairs within 60 days. The Secretary's decision is the Department's final decision.

(Authority: 38 U.S.C. 3305)

14. Section 17.527 is amended by revising paragraphs (b), (d), (g), and (h), to read as follows:

§ 17.527 Access to HSRO data within the Department.

* * * * *

(b) No individual shall be permitted physical access to privileged and confidential HSRO records and documents identified in §§ 17.517, 17.518 and 17.519 of this part unless such individual has received adequate training and has been informed of the penalties for unauthorized disclosure. Any misuse of confidential and privileged HSRO records or documents shall be reported through the HSRO confidentiality officer to the appropriate VHS&RA official.

* * * * *

(d) A list should be maintained at each medical facility, medical district, region and the central office of those VA employees or others who are authorized access to confidential and privileged HSRO records and documents. Each authorized individual will sign a statement that he or she is aware of the requirements for confidentiality and will not divulge any information in any way to any source or person except in accordance with these regulations.

* * * * *

(g) Confidential and privileged HSRO records and documents shall be maintained in secure filing cabinets and locked when not under personal supervision. A security system for storing, processing, accessing and retrieving automated data will be developed and maintained at each medical facility, medical district, region and VACO. Such security systems will include procedures and internal controls to identify individuals who have authorized access to those data and at what time such access occurred. Adequate internal controls will be developed and maintained so that confidential and privileged data, including automated data, may not be retrieved by an individual identifier(s). Each VA medical facility, medical district, region and the VACO will provide for the periodic review of confidential and privileged HSRO records and documents, including data, to determine whether security is adequate and which, if any, records and documents shall be retained. In general, confidential and privileged HSRO records and documents will be maintained for a minimum of 3 years and may be held longer if needed for HSRO research studies, legal purposes, or related quality assurance purposes.

(h) HSRO–SIR records and documents, as defined in § 17.517 of this part, will be available to HSRO–MEDIPRO staff and board members, the medical district director and other medical district management officials, regional directors and HSRO–SERP team members. HSRO–SIR, HSRO–MEDIPRO and HSRO–SERP records and documents will be available to VA central office management officials working in HSRO functions, service and staff office directors, and assistant chief medical directors.

* * * * *

15. Section 17.534 is amended by revising paragraph (f) to read as follows:

§ 17.534 Authorized disclosure: non-VA requests.

* * * * *

(f) In general, Joint Commission (Joint Commission on Accreditation of Healthcare Organizations) survey teams and similar national accreditation agencies or boards and other organizations requested by VA to consult, assess or evaluate the effectiveness of HSRO–SIR, HSRO–MEDIPRO or HSRO–SERP program activities are entitled to full disclosure of any and all privileged and confidential HSRO records or documents with the following qualifications:

(1) Accreditation agencies which are charged with assessing all aspects of medical facility patient care, e.g., Joint Commission, may have access to all confidential HSRO records and documents.

(2) Accreditation agencies charged with more narrowly focused review (e.g., College of American Pathologists, American Association of Blood Banks, Nuclear Regulatory Commission, etc.) may have access only to such confidential and privileged HSRO records and documents as are relevant to their respective focus.

* * * * *

[FR Doc. 89-15926 Filed 7-6-89; 8:45 am]
BILLING CODE 8320-01-M

38 CFR Part 17

RIN 2900-AC66

Health Professional Scholarship Program

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: These regulations implement amendments to the law governing the Department of Veterans Affairs (VA) health professional scholarship program made by the Veterans' Benefits and Services Act of 1988. These amendments to the VA Health Professional Scholarship Program (38 CFR Part 17) identify generic requirements for awarding scholarships, revise the method for determining the length of service obligation for scholarship participants provided awards to attend school full-time, indicate that when selecting scholarship participants priority will be given to students entering their final year of education or training, and remove the provision for scholarship participants to serve periods of obligated service in another Federal entity or the Armed Forces, if the Secretary of Veterans Affairs, the head of another Federal department and the participant consent to such service. The intended effect is to permit scholarship awards in additional disciplines, and change the length of service obligation to one year service for each year of scholarship support.

EFFECTIVE DATE: May 20, 1988, the effective date of Pub. L. 100-322.

FOR FURTHER INFORMATION CONTACT: Charlotte Beason, Ed.D., Director, Health Professional Scholarship Program (14N), Office of Academic Affairs, Veterans Health Services and Research Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3588.

SUPPLEMENTARY INFORMATION: The Department of Veterans Affairs Health Care Amendments of 1980 (Pub. L. 96-330) established the Department of Veterans Affairs Health Professional Scholarship Program to assist in providing an adequate supply of trained physicians and nurses for VA and for the nation and, if needed by VA, other specified health-care professionals. The Veterans' Benefits and Services Act of 1988 (Pub. L. 100-322) amended the Scholarship Program by permitting scholarship awards to students in additional health disciplines, by changing length of service obligation incurred by scholarship participants, and by changing priority for selecting participants. These new regulations implement section 322 of Pub. L. 100-322 enacted May 20, 1988.

On January 18, 1989, proposed regulations to 38 CFR Part 17 implementing Pub. L. 100-322 were published in the **Federal Register** on pages 1950 through 1953 (54 FR 1950). Interested persons were given 30 days to submit comments, suggestions, or objections. The Department of Veterans Affairs received three letters. Each writer suggested that § 17.600 of the proposed regulations be modified to list all eligible health disciplines. The final regulations have been changed to list all disciplines for which VA may award scholarships if they are needed to relieve staff shortages.

Two writers commented that § 17.600 implies VA has authority to award scholarships to physical therapy students without notifying the Committees on Veterans' Affairs of the Senate and House of Representatives. The law requires VA to notify the Committees prior to awarding initial scholarships to students in any discipline other than nursing or medicine. VA does not have authority to use the regulation to overturn a provision of the law.

Two writers suggested that the definition of degree in § 17.601(h) include the doctor of optometry degree. Doctor of optometry and doctor of podiatry degrees have been added in final regulations.

One writer suggested public interest would be served if specific VA criteria for determining existence of staff shortages in various disciplines, a statement describing VA's policy for determining disciplines, and a listing of factors and personnel data used to decide upon eligible disciplines were to be made publicly available in the **Federal Register**. We do not believe it is necessary for criteria to actually be published in the **Federal Register** since the regulations make reference to the existence of such criteria.

One writer suggested that eligible degrees be published annually in the **Federal Register**. Information about eligible degrees is broadly disseminated by VA on an annual basis through a press release to the general public and through program announcements to professional associations and all accredited colleges/universities. It is indeed intended by VA to continue to broadly announce the program and; consequently, we do not believe it is necessary that eligible degrees be published annually in the **Federal Register**.

VA finds that for good cause, the regulations should be made effective retroactively to May 20, 1988, the effective date of Pub. L. 100-322, which the regulations implement. Good cause for a retroactive effective date exists because a delayed effective date would be contrary to the public interest. The law which the regulations implement was liberalizing in that it extended scholarship benefits to new groups of students. Moreover, Congress intended that it be implemented as soon as possible. To achieve the maximum benefit of the legislation, it was implemented prior to amendment of implementing regulations. A retroactive effective date will ratify actions to implement the program prior to publication of the final regulations, and will simplify administration of the law.

These final regulations have been designated as non-major under the criteria of Executive Order 12291, Federal Regulation. The regulations will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices or consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary hereby certifies that these final regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act 5 U.S.C. 601-612. These final regulations will be directed to individuals who apply for and are selected for VA Health Professional Scholarship Program awards. They will, therefore, have no significant direct impact on small entities.

The Catalog of Federal Domestic Assistance number for this program is 64.023.

List of Subjects in 38 CFR Part 17

Health professionals, scholarships and fellowships.

Approved: June 19, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR Part 17, MEDICAL, is amended to read as follows:

PART 38—[AMENDED]

1. Section 17.600 is revised to read as follows:

§ 17.600 Purpose.

The purpose of §§ 17.600 through 17.612 is to set forth the requirement for the award of scholarships under the Department of Veterans Affairs Health Professional Scholarship Program to students receiving education or training in a direct or indirect health-care services discipline to assist in providing an adequate supply of such personnel for VA and for the Nation. If necessary, VA may award scholarships to individuals training to become a physician assistant, expanded function dental auxiliary, clinical or counseling psychologist, certified or registered respiratory therapist, licensed physical therapist, or licensed practical or vocational nurse. If necessary, the Secretary may designate additional fields of education or training for which scholarships may be awarded, provided they involve direct patient-care services, or services incident to direct patient-care services.

(Authority: Pub. L. 96–330; 38 U.S.C. 4141–4146, as amended by Pub. L. 97–251 and Pub. L. 100–322)

* * * * *

2. a. In § 17.601, paragraph (a) is amended by removing the words "full-time."

b. In § 17.601, paragraphs (b), (e), (f), (h), (i), (m), (o), (r), and the authority citation in paragraph (u), are revised to read as follows:

§ 17.601 Definitions.

* * * * *

(b) "Act" means the Veterans Administration Health-Care Amendments of 1980, Pub. L. 96–330, (38 U.S.C. 4141–4146), as amended by Pub. L. 97–251, the Veterans Administration Health-Care Programs Improvement and Extension Act of 1982, Pub. L. 99–576, Veterans Benefits Improvement and Health Care Authorization Act of 1986, and Pub. L. 100–322, the Veterans' Benefits and Services Act of 1988.

(Authority: Pub. L. 96–330; 38 U.S.C. 4141–4146, as amended by Pub. L. 97–251; Pub. L. 99–576 and Pub. L. 100–322)

* * * * *

(e) "Secretary" means the Secretary of Veterans Affairs or designee.

(f) "Chief Medical Director" means the Chief Medical Director of the Veterans Health Services and Research Administration (VSH&RA), or designee.

* * * * *

(h) "Degree" means a course of study leading to a doctor of medicine, doctor of osteopathy, doctor of dentistry, doctor of optometry, doctor of podiatry, or a baccalaureate or master's degree in other direct or indirect health-care service disciplines needed by VA.

(Authority: 38 U.S.C. 4302(a)(1))

(i) "Full-time student" means an individual pursuing a course of study leading to a degree who is enrolled for a sufficient number of credit hours in any academic term to complete the course of study within not more than the number of academic terms normally required by the school, college or university. If an individual is enrolled in a school and is pursuing a course of study which is designed to be completed in more than 4 years, the individual will be considered a full-time student for only the last 4 years of the course study.

* * * * *

(m) "Scholarship Program" or "Scholarship" means the Department of Veterans Affairs Health Professional Scholarship Program authorized by section 216 of the Act.

* * * * *

(o) "School" means an academic institution which (1) provides training leading to a degree in a direct or indirect health-care service discipline needed by the Department of Veterans Affairs, and (2) which is accredited by a body or bodies recognized for accreditation by the Secretary.

(Authority: 38 U.S.C. 4302(a)(1)(2))

* * * * *

(r) "Part-time student" means an individual who is a Department of Veterans Affairs employee permanently assigned to a Department of Veterans Affairs health care facility who has been accepted for enrollment or enrolled for study leading to a degree on a less than full-time but not less than half-time basis.

* * * * *

(u) * * *

(Authority: 38 U.S.C. 4333)

* * * * *

3. In § 17.602, paragraph (a)(2) is revised, and the authority citations following paragraphs (a)(5), (b)(2) and (c) are revised, to read as follows:

§ 17.602 Eligibility.

(a) * * *

* * * * *

(2) Be pursuing a degree annually designated by the Secretary for participation in the Scholarship Program;

(Authority: 38 U.S.C. 4302(a)(1), 4312(b)(1))

* * * * *

(5) * * *

(Authority: 38 U.S.C. 4302(a))

(b) * * *

(2) * * *

(Authority: 38 U.S.C. 4312(c)(3)(B))

(c) * * *

(Authority: 38 U.S.C. 4302(b))

* * * * *

4. Section 17.603 is revised to read as follows:

§ 17.603 Availability of scholarships.

Scholarships will be awarded only when necessary to assist the Department of Veterans Affairs in alleviating shortages or anticipated shortages of personnel in particular health professions. The existence of a shortage of personnel will be determined in accordance with specific criteria for each health profession, promulgated by the Chief Medical Director. The Secretary has the authority to determine the number of scholarships to be awarded in a fiscal year, and the number that will be awarded to full-time and part-time students.

(Authority: 38 U.S.C. 4312(b)(4) and 4303(b)(1))

* * * * *

5. In § 17.604, the authority citation is revised to read as follows:

§ 17.604 Application for the scholarship program.

* * * * *

(Authority: 38 U.S.C. 4312(c)(1)(B))

6. In § 17.605, paragraph (a), the authority citation in paragraph (a)(2), paragraph (b)(1), the authority citation in paragraph (b)(4), and the authority citations in paragraph (d), and (e)(2), are revised to read as follows:

§ 17.605 Selection of participants.

(a) *General.* In deciding which Scholarship Program applications will be approved by the Secretary, priority will be given to applicants entering their final year of education or training and priority will be given to applicants who previously received scholarship awards and who meet the conditions of paragraph (d) of this section. Except for continuation awards (see paragraph (d) of this section), applicants will be evaluated under the criteria specified in paragraph (b) of this section. A situation may occur in which there are a larger number of equally qualified applicants than there are awards to be made. In such cases, a random method may be used as the basis for selection. In selecting participants to receive awards as part-time students, the Secretary may, at the Secretary's discretion—

(Authority: 38 U.S.C. 4312(b)(5))

* * * * *

(2) * * *

(Authority: 38 U.S.C. 4303(d))

(b) * * *

(1) Work/volunteer experience, including prior health care employment and Department of Veterans Affairs employment;

* * * * *

(4) * * *

(Authority: 38 U.S.C. 4333)

* * * * *

(d) * * *

(Authority: 38 U.S.C. 4312(c)(1)(A) and 4314(3))

(e) * * *

(2) * * *

(Authority: 38 U.S.C. 4303(d))

* * * * *

7. a. In § 17.606, paragraph (b) is amended by removing the word "will" in the first sentence, and replacing it with the word "may".

b. In § 17.606, the authority citation in paragraph (a)(1), paragraph (a)(3), and the authority citations in paragraphs (a)(5), (a)(6), and (b) are revised to read as follows:

§ 17.606 Award procedures.

(a) * * *

(1) * * *

(Authority: 38 U.S.C. 4336)

* * * * *

(3) The Secretary may determine the amount of the stipend paid to participants, whether part-time students or full-time students, but that amount may not exceed the maximum amount provided for in 38 U.S.C. 4313(b).

* * * * *

(5) * * *

(Authority: 38 U.S.C. 4314(2))

(6) * * *

(Authority: 38 U.S.C. 4313(c))

(b) * * *

(Authority: 38 U.S.C. 4333)

8. a. In § 17.607, paragraph (e), (e)(1), and (e)(2) are removed, and paragraph (f) is redesignated as paragraph (e).

b. In § 17.607, paragraphs (a), (b)(1), the authority citation in paragraph (b)(2), paragraphs (c) and (d), and the authority citation following newly-designated paragraph (e), are revised to read as follows:

§ 17.607 Obligated service.

(a) *General.* Except as provided in paragraph (d) of this section, each participant is obligated to provide service as a Department of Veterans Affairs employee in full-time clinical practice in the participant's discipline in an assignment or location determined by the Secretary.

(Authority: 38 U.S.C. 4316(a))

(b) * * *

(1) Except as provided in paragraph (b)(2) of this section, a participant's obligated service shall begin on the date the Secretary appoints the participant as a full-time VA employee in the Department of Veterans Affairs Veterans Health Services and Research Administration in a position for which the degree program prepared the participant. The Secretary shall appoint the participant to such position within 60 days after the participant's degree completion date, or the date the participant becomes licensed in a State to practice in the discipline for which the degree program prepared the participant, whichever is later. At least 60 days prior to the appointment date, the Secretary shall notify the participant of the work assignment, its location, and the date work must begin.

(2) * * *

(Authority: 38 U.S.C. 4316 (b) and (c))

(c) *Duration of service.* The period of obligated service for a participant who attended school as a full-time student shall be 1 year for each school year or part thereof for which the participant received a scholarship award under these regulations. The period of obligated service for a participant who attended school as a part-time student shall be reduced from that which a full-time student must serve in accordance with the proportion that the number of credit hours carried by the part-time student in any school year bears to the number of credit hours required to be carried by a full-time student, whichever is the greater, but shall be a minimum of 1 year of full-time employment.

(Authority: 38 U.S.C. 4312(c)(1)(B) and (3)(A))

(d) *Location for service.* The Secretary reserves the right to make final decisions on location for service obligation. A participant who received a scholarship as a full-time student must be willing to move to another geographic location for service obligation. A participant who received a scholarship as a part-time student may be allowed to serve the period of obligated service at the health care facility where the individual was assigned when the scholarship was authorized.

(Authority: 38 U.S.C. 4316(a))

(e) * * *

(Authority: 38 U.S.C. 4316(b)(3)(A)(ii))

9. a. In § 17.608, paragraph (e) is removed, and paragraph (f) is redesignated as paragraph (e).

b. In § 17.608, paragraphs (a), (b), (c)(1), the authority citation in paragraph (c)(2), paragraph (d), and the authority citation in newly-designated paragraph (e), are revised to read as follows:

§ 17.608 Deferment of obligated service.

(a) *Request for deferment.* A participant receiving a degree from a school of medicine, osteopathy, dentistry, optometry, or podiatry, may request deferment of obligated service to complete an approved program of advanced clinical training. The Secretary may defer the beginning date of the obligated service to allow the participant to complete the advanced clinical training program. The period of this deferment will be the time designated for the specialty training.

(Authority: 38 U.S.C. 4316(a)(A)(i))

(b) *Deferment requirements.* Any participant whose period of obligated service is deferred shall be required to take all or part of the advanced clinical training in an accredited program in an educational institution having an Affiliation Agreement with a Department of Veterans Affairs health care facility, and such training will be undertaken in a Department of Veterans Affairs health-care facility.

(Authority: 38 U.S.C. 4316(b)(u))

(c) * * *

(1) At the rate of one-half of a calendar year for each year of approved clinical training (or a proportionate ratio thereof) if the training is in a specialty determined to be necessary to meet health care requirements of the Veterans Health Services and Research Administration; Department of Veterans Affairs; or

(2) * * *

(Authority: 38 U.S.C. 4316(b)(u)(B))

(d) *Altering deferment.* Before altering the length or type of approved advanced clinical training for which the period of obligated service was deferred under paragraphs (a) or (b) of this section, the participant must request and obtain the Secretary's written approval of the alteration.

(Authority: 38 U.S.C. 4333)

(e) * * *

(Authority: 38 U.S.C. 4316(b)(2))

* * * * *

§ 17.609 [Amended]

10. In § 17.609, in the last sentence, remove the words "He or she" and insert in their place, the words "A physician".

11. In § 17.610, the authority citation in paragraph (a), paragraph (b)(4), the first sentence in paragraph (c), and the authority citation in paragraph (c), are revised to read as follows:

§ 17.610 Failure to comply with terms and conditions of participation.

(a) * * *

(Authority: 38 U.S.C. 4317(a))

(b) * * *

(4) Fails to become licensed to practice in the discipline for which the degree program prepared the participant, if applicable, in a State within 1 year from the date such person becomes eligible to apply for State licensure; or

(Authority: 38 U.S.C. 4317(b)(4))

(5) * * *

(Authority: 38 U.S.C. 4317(b))

(c) Participants who breach their contracts by failing to begin or complete their service obligation (for any reason) other than as provided for under paragraph (b) of this section are liable to repay the amount of all scholarship funds paid to them and to the school on their behalf, plus interest, multiplied by three, minus months of service obligation satisfied, as determined by the following formula:

$$\left(A = \frac{t-s}{t} \right)$$

in which: * * *

(Authority: 38 U.S.C. 4317(c)(1)(2))

* * * * *

12. In §17.611, the authority citation is revised to read as follows:

§ 17.611 Bankruptcy.

* * * * *

(Authority: 38 U.S.C. 4334(c))

13. In §17.612, the authority citations in paragraphs (a), (b)(2), (c), and (d), are revised to read as follows:

§ 17.612 Cancellation, waiver, or suspension of obligation.

(a) * * *

(Authority: 38 U.S.C. 4334(a))

(b) * * *

(2) * * *

(Authority: 38 U.S.C. 4334(b))

(c) * * *

(Authority: 38 U.S.C. 4334(b))

(d) * * *

(Authority: 38 U.S.C. 4334(b))

[FR Doc. 89-15927 Filed 7-6-89; 8:45 am]

BILLING CODE 8320-01-M

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38 CFR Part 21

RIN: 2900-AD66

Veterans Education; Procedural Due Process

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) has been reviewing regulations for the purpose of improving due process procedures. These amended regulations provide that in certain instances if VA does not furnish claimants or beneficiaries with notice of the time limits within which they are required to act, those time limits do not apply until notice is provided. These regulations will provide increased due process to veterans and eligible persons affected by these time limits.

EFFECTIVE DATE: August 7, 1989.

FOR FURTHER INFORMATION CONTACT: Alan R. Zoeckler, Acting Assistant Director for Policy and Program Administration, Education Service (225C), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, 233-2092.

SUPPLEMENTARY INFORMATION: On pages 5640 and 5641 of the **Federal Register** of February 6, 1989 (54 FR 5640), there was published a notice of intent to amend Part 21 in order to provide increased due process to veterans and eligible persons. Interested persons were given 30 days to provide comments, suggestions, or objections. VA received no comments, suggestions or objections. Accordingly, VA is making these regulations final with some technical amendments of a minor nature which reflect the change in status to a Department (see 54 FR 10476).

VA has determined that these final regulations do not contain a major rule as that term is defined by Executive Order 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that these final regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the final regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the final regulations affect only individuals. They will have no significant economic impact on entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

(The Catalog of Federal Domestic Assistance number for the programs affected by these regulations are 64.111 and 64.117)

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: June 19, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR Part 21, Vocational Rehabilitation and Education, is amended as follows:

PART 21—[AMENDED]

1. In § 21.1032, paragraph (c) is revised and an authority citation added to read as follows:

§ 21.1032 Time limits.

* * * * *

(c) *Failure to furnish claim or notice of time limit.* (1) VA's failure to furnish any form or information concerning the right to file a claim or to furnish notice of the time limit for the filing of a claim will not extend the periods allowed for these actions.

(2) VA's failure to furnish a veteran or serviceperson notice of the time limit within which evidence must be submitted to perfect a claim, or notice of the time limit within which to challenge an adverse VA decision shall extend the time limit for such action in accordance with the provision of § 3.110 of this chapter.

(Authority: 38 U.S.C. 3001, 3013)

2. In § 21.3032, paragraph (b) is revised and an authority citation is added to read as follows:

§ 21.3032 Time limits.

* * * * *

(b) *Failure to furnish claim or notice of time limit.* (1) VA's failure to furnish any form or information concerning the right to file a claim or to furnish notice of the time limit for the filing of a claim will not extend the periods allowed for these actions.

(2) VA's failure to furnish an eligible person notice of the time limit within which evidence must be submitted to perfect a claim, or notice of the time limit within which to challenge an adverse VA decision, shall extend the time limit for such action in accordance with the provisions of § 3.110 of this chapter.

(Authority: 38 U.S.C. 3001, 3013)

* * * * *

3. In § 21.4131, paragraphs (e)(1)(i)(B), (e)(1)(ii)(B), (e)(1)(iii), (e)(2)(i) (B) and (C) are revised and an authority citation is added at the end of paragraph (e)(2)(i)(C) to read as follows:

§ 21.4131 Commencing dates.

* * * * *

(e) *Increase for dependent—Chapter 34.*

(1) * * *

(i) * * *

(B) VA receives any necessary evidence within 1 year of the date VA requested the evidence and informed the veteran of the time limit for submitting it.

(ii) * * *

(B) VA receives any necessary evidence within 1 year of the date VA requested the evidence and informed the veteran of the time limit for submitting it.

(iii) The effective date will be the date VA receives all necessary evidence, if that evidence is received more than 1 year from the date VA requested it, and informed the veteran of the time limit for submitting it.

* * * * *

(2) * * *

(i) * * *

(B) Date notice is received of the dependent's existence if evidence is received within 1 year of the date VA requested the evidence and informed the veteran of the time limit for submitting the evidence.

(C) Date VA receives evidence if this date is more than 1 year after the date VA requested the evidence and informed the veteran of the time limit for submitting it.

(Authority: 38 U.S.C. 3010(n))

4. In § 21.4136, paragraph (k)(1)(ii) is revised to read as follows:

§ 21.4136 Rates; educational assistance allowance; 38 U.S.C. Chapter 34.

* * * * *

(k) * * *

(1) * * *

(ii) The veteran submits the circumstances in writing to VA within 1 year from the date VA notifies the veteran that he or she must submit the mitigating circumstances, and informs the veteran of the time limit for submitting them.

(Authority: 38 U.S.C. 1780(a))

* * * * *

5. In § 21.4137, paragraph (h)(1)(ii) is revised to read as follows:

§ 21.4137 Rates; educational assistance allowance; 38 U.S.C. Chapter 35.

* * * * *

(h) * * *

(1) * * *

(ii) The eligible person submits the circumstances in writing to VA within 1 year from the date VA notifies the eligible person that he or she must submit the mitigating circumstances, and informs the eligible person of the time limit for submitting them.

(Authority: 38 U.S.C. 1780(a))

* * * * *

[FR Doc. 89-15928 Filed 7-6-89; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-3612-7]

North Carolina; Order To Recommence Proceedings to Determine Whether to Withdraw Hazardous Waste Program Approval

AGENCY: Environmental Protection Agency.

ACTION: Notice of Continuance of hearing to determine whether to withdraw hazardous waste program approval.

SUMMARY: On April 20, 1989 EPA issued an Order to Recommence Proceedings to Determine Whether to Withdraw Hazardous Waste approval of North Carolina's Hazardous Waste Management program (54 FR 15940). This notice schedules a continuance of the hearing which was held on May 31-June 1, and June 5-8, 1989 in Raleigh, North Carolina.

DATE: The continuance of these proceedings will be held on July 18-21, 1989 and July 24-28, 1989 from 9:00 a.m. to 5:00 p.m.

ADDRESS: Radisson Plaza Hotel, 420 Fayetteville Street Mall, Raleigh, North Carolina 27601.

FOR FURTHER INFORMATION CONTACT: For further information contact Otis Johnson, Jr., Chief, Waste Planning Section, RCRA Branch, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365.

Joe R. Franzmathis,

Acting Regional Administrator.

[FR Doc. 89-16001 Filed 7-6-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-263; RM-6341]

Radio Broadcasting Services; Brooklyn, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Randy E. Henry, substitutes Channel 256C2 for Channel 257A at Brooklyn, Iowa, and modifies its license for Station KSKB to specify the higher powered channel. Channel 256C2 can be allotted to Brooklyn in compliance with the Commission's minimum distance separation requirements and can be used at site specified in Station KSKB's license. The coordinates for this allotment are North Latitude 41-42-36 and West Longitude 92-27-54. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-263, adopted June 15, 1989, and released June 30, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Brooklyn, Iowa, is amended by removing Channel 257A and adding Channel 256C2.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-15976 Filed 7-6-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-262; RM-6340]

Radio Broadcasting Services; Laughlin, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of John Brush, allots Channel 228C to Laughlin, Nevada, as the community's second local FM service. Channel 228C can be allotted to Laughlin in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.7 kilometers (3.5 miles) east to avoid a short-spacing to Stations KRCK, Channel 229B, Coachella, California, and KXTZ, Channel 231C, Henderson, Nevada. The coordinates for this allotment are North Latitude 35-09-03 and West Longitude 114-30-49. Mexican concurrence has been received. With this action, this proceeding is terminated.

DATES: Effective August 14, 1989. The window period for filing applications will open on August 15, 1989, and close on September 14, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-262, adopted June 15, 1989, and released June 30, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Laughlin, Nevada, is amended by adding Channel 228C.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-15977 Filed 7-6-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-366; RM-6260, RM-6531]

Radio Broadcasting Services; Jupiter and White City, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Dennis L. Johnson and U.S. Three Broadcasting Corporation, allots 288A to Jupiter, Florida, as the community's second local FM service, and Channel 284A to White City, Florida, as the community's first local FM service, respectively. Channel 288A can be allotted to Jupiter in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 25-56-30 and West Longitude 80-05-36. Channel 284A can be allotted to White City with a site restriction of 8.6 kilometers (4.2 miles) north to avoid a short-spacing to Station WEAT-FM, Channel 282C, West Palm Beach, Florida. The coordinates for this allotment are North Latitude 27-26-03 and West Longitude 80-20-41. With this action, this proceeding is terminated.

DATES: Effective August 14, 1989. The window period for filing applications will open on August 15, 1989, and close on September 14, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-366, adopted June 15, 1989, and released June 30, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.032 [Amended]

2. Section 73.202(b), the FM Table of Allotments is amended by amending the entry for Jupiter, Florida, by adding Channel 288A, and by adding the following entry, White City, Florida, Channel 284A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-15975 Filed 7-6-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 90

[PR Docket No. 88-576; FCC 89-208]

Private Land Mobile Radio Services, Secondary Fixed Tone Signaling

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Report and Order that extends tone signaling capability to all Part 90 radio services. Licensees may use their base/mobile frequencies for fixed tone signaling operations on a secondary basis for any use consistent with the Rules. Criteria for message duration, message repetition, and automatic transmitter deactivation are established. Existing signaling systems are grandfathered until December 31, 1999 under the rules in effect at the time of signaling system authorization.

EFFECTIVE DATE: August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PR Docket No. 88-576, adopted June 15, 1989, and released August 14, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, 2100 M St. NW., Suite 140, Washington, DC, telephone (202) 857-3800.

Summary of Report and Order

1. In response to petitions for rule making filed by Forest Industries Telecommunications and the Manufacturers Radio Frequency Advisory Committee, a Notice of Proposed Rule Making was released proposing to amend § 90.235 of the Rules to permit analog and digital secondary tone signaling in all Part 90 radio services with certain message length and repetition requirements. After consideration of the comments, final rules have been adopted concerning tone signaling operations.

2. Over the years, the Commission has authorized tone signaling capability in a limited number of Part 90 radio services to provide various point-to-point alarm and operational functions. Since the Commission cannot find any basis for distinguishing the tone signaling needs of one radio service from another, it is extending the benefits of secondary tone signaling operations to all Part 90 radio services.

3. The new rules establish a maximum tone signaling message duration of two seconds which may be repeated three times at any interval. To prevent a "stuck" tone signaling transmitter from disrupting voice communications, automatic transmitter deactivation is required after an r.f. carrier remains on for more than three minutes or after five tone signaling transmissions for the same event. Licensees may utilize tone signaling, on a secondary basis, for any purpose consistent with the Rules. Existing signaling systems will be permitted to operate until December 31, 1999 under signaling criteria in effect at the time of the signaling system authorization.

Final Regulatory Flexibility Act Analysis

4. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, a final regulatory flexibility analysis has been prepared. It is available for public viewing as a part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

Paperwork Reduction Act Statement

5. The rules established herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements, and will not increase burden hours imposed upon the public.

Ordering Clauses

6. Accordingly, *It is ordered* That, pursuant to sections 4(e) and 302(r) of the Communications Act of 1934, as amended, Part 90 of the Commission's Rules are amended as set forth in the Appendix.

7. *It is further ordered* That the Rules in this *Report and Order* will become effective on

8. *It is further ordered* That this proceeding is terminated.

List of Subjects in 47 CFR Part 90

Private land mobile radio services, Secondary fixed tone signaling.

Amendatory Text

47 CFR Part 90 is amended as follows:

PART 90—[AMENDED]

1. The authority citation for Part 90 continues to read as follows:

Authority: Section 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. 47 CFR 90.235 is revised in its entirety to read as follows:

§ 90.235 Secondary fixed signaling operations.

Fixed operations may, subject to the following conditions, be authorized on a secondary basis for voice, tone or impulse signaling on a licensee's mobile service frequency(ies) above 25 MHz within the area normally covered by the licensee's mobile system. Voice signaling will be permitted only in the Police Radio Service.

(a) The bandwidth shall not exceed that authorized to the licensee for the primary operations on the frequency concerned.

(b) The output power shall not exceed 30 watts at the remote site.

(c) A1D, A2D, F1D, F2D, G1D and G2D emissions may be authorized. In the Police Radio Service, A3E, F1E, F2E, F3E, G1E, G2E, or G3E emissions may also be authorized.

(d) Except for those systems covered under paragraph (e) of this section, the maximum duration of any non-voice signaling transmission shall not exceed 2 seconds and shall not be repeated more than 3 times. Signaling transmissions may be staggered at any interval or may be continuous. In the Police Radio Service, the maximum duration of any voice signaling transmission shall not exceed 6 seconds and shall not be repeated more than 3 times.

(e) Until December 31, 1999, for systems in the Public Safety Radio Services authorized prior to June 20, 1975, and in the Power and Petroleum Radio Services authorized prior to June 1, 1976, the maximum duration of any signaling transmission shall not exceed 6 seconds and shall not be repeated more than 5 times. For Power Radio Service systems authorized between June 1, 1976 and (effective date of the rules), a signaling message duration shall not exceed 2 seconds and shall not be repeated more than 5 times. Such systems include existing facilities and additional facilities which may be authorized as a clear and direct expansion of existing facilities. After December 31, 1999, all signaling systems shall be required to comply with the two second message duration and three repetition requirements.

(f) Systems employing automatic interrogation shall be limited to non-voice techniques and shall not be activated for this purpose more than 10 seconds out of any 60 second period. This 10 second timeframe includes both transmit and response times.

(g) Automatic means shall be provided to deactivate the transmitter in the event the r.f. carrier remains on for a period in excess of 3 minutes or if a transmission for the same signaling function is repeated consecutively more than five times.

(h) Fixed stations authorized pursuant to the provisions of this section are exempt from the requirements of §§ 90.137(b), 90.425, and 90.429.

(i) Base, mobile, or mobile relay stations may transmit secondary signaling transmissions to receivers at fixed locations subject to the conditions set forth in this section.

(j) Under the provisions of this section, a mobile service frequency may not be used exclusively for secondary signaling.

(k) The use of secondary signaling will not be considered in whole or in part as a justification for authorizing additional frequencies in a licensee's land mobile radio system.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-15874 Filed 7-6-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 89

[Docket No. 46375; Amdt. 89-2]

RIN 2105-AB51

Referral of Debts to the IRS for Tax Refund Offset

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Final rule; request for comments.

SUMMARY: These regulations explain the procedures that the Department of Transportation (DOT) will follow when referring delinquent debts to the Internal Revenue Service (IRS) for offset against the income tax refunds of taxpayers owing money to DOT. DOT became eligible in March to participate in the IRS Federal Tax Refund Offset Program. These regulations are authorized by the Deficit Reduction Act of 1984 which allows the Department to collect debts by means of offset from income tax refunds of persons owing money to DOT provided certain conditions are met.

DATES: This rule becomes effective August 7, 1989. Comments should be filed on or before September 5, 1989. Late filed comments will be considered to the extent practical.

ADDRESSES: Send comments to Docket Clerk, Docket No. 46375 Room 4107, Department of Transportation, 400 Seventh Street SW., Washington DC 20590. Comments are available for public examination at that address Monday through Friday except Federal holidays, from 9:00 to 5:30 p.m. Commenters wishing the Department to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 46375". The postcard will be date/time stamped and returned to the commenter.

FOR FURTHER INFORMATION CONTACT: Paul B. Larsen, Department of Transportation, Office of the General Counsel, 400 7th Street SW., Room 10102, Washington, DC 20590, (202) 366-9161.

SUPPLEMENTARY INFORMATION: This rulemaking adopts detailed procedures for referring past-due legally enforceable debts to the IRS for offset against the income tax refunds of taxpayers owing debts to DOT. These procedures replace general procedures previously adopted in 49 CFR 89.33 (53 FR 51237; December 21, 1988).

These regulations are authorized by Section 3720A of Title 33 of the United States Code which codified portions of the Deficit Reduction Act of 1984. The purpose of the Act, in part, is to improve the ability of the Government to collect money owed it, while adding notice requirements and other protections applicable to the Government's relationship to the debtor. Section 2653 of the Act directs any Federal agency that is owed a past-due legally enforceable debt to notify the Secretary of Treasury.

Before the Government may offset, it must attempt to: (1) Notify the debtor that the agency proposes to refer the debt for a tax refund deduction; (2) give the debtor 60 days from the date of the attempted notification to present information that all or part of the debt is not past-due or legally enforceable; and (3) consider any information that may be presented by the debtor in determining whether any amount of such debt is past-due and legally enforceable. The IRS regulations are published at 26 CFR 301.6402-6T. The current IRS program for tax refund offsets extends through January 10, 1994.

These regulations provide that before the Department refers a debt to the IRS, a notice (Notice of Intent) will be sent to the debtor. The Notice of Intent will inform the debtor of the amount of the debt and unless the debt is repaid within 60 days from the date of the Notice of Intent, the Department will refer the debt to the IRS for offset against any tax refund payable to the debtor. In addition, the Notice of Intent will state that the debtor may during the 60-day period present information that all or part of the debt is not past-due or legally enforceable. This regulation also establishes procedures for the debtor who intends to present such information.

E.O. 12291 and DOT Regulatory Policies and Procedures

These regulations are classified as a "non-major" regulation under Executive Order 12291. These regulations have also been evaluated under the Department of Transportation's Regulatory Policies and Procedures: the regulation is not significant under those procedures. The anticipated economic impact relates to the collection of an additional $2,000,000 in debts that would otherwise be uncollectable.

These regulations are being promulgated as a final rule. Pursuant to the Administrative Procedure Act, a notice of proposed rulemaking (NPRM) was not published for this rulemaking. These regulations relate to agency procedures and under the Administrative Procedure Act, 5 U.S.C. 553b(B), an NPRM is not required. In addition, publishing an NPRM pursuant to the Administrative Procedure Act would have been impractical because timely action is needed to assure DOT participation in the IRS Federal Tax Refund Offset program for the 1989 tax year.

The Department does, however, solicit public comment on the provisions of this rule. A 60-day comment period is being provided. The Department will review the comments, amend the rule if appropriate, and publish a notice indicating the Department's responses to the comments.

Federalism Implications

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 89

Administrative practice and procedure, claims.

In consideration of the foregoing, the Department hereby proposes to amend Part 89 of Title 49 of the Code of Federal Regulations by deleting § 89.33 and by adding a new Subpart C as set forth below.

PART 89—[AMENDED]

1. The authority for Part 89 is revised to read as follows:

Authority: Pub. L. 89-508, July 19, 1966, 80 Stat. 308 (31 U.S.C. 3701, 3711; Pub. L. 97-365 secs 3, 10, 11, 13(b), Oct. 25, 1982, 96 Stat. 1749, 1754, 1755, 1757 (31 U.S.C. 3701-3720A Pub. L. 98-167, Nov. 29, 1983, 97 Stat. 1104 (31 U.S.C. 3716); Pub. L. 98-369, June 27, 1984, 98 Stat. 1153 (31 U.S.C. 3720A); Pub. L. 99-578, Oct. 28, 1986, 100 Stat. 3305 (31 U.S.C. 3716).

§ 89.33 [Removed and Reserved]

2. Section 89.33 is removed and reserved.

3. Subpart C is added to read as follows:

Subpart C—Referral of Debts to IRS for Tax Refund Offset

Sec.
89.37 Applicability and scope.
89.39 Administrative charges.

Sec.
89.41 Notice requirement before offset.
89.43 Review within the Department.
89.45 Department determination.
89.47 Stay of offset.

Subpart C—Referral of Debts to IRS for Tax Refund Offset

§ 89.37 Applicability and scope.

(a) This subpart implements 31 U.S.C. 3720A which authorizes the IRS to reduce a tax refund by the amount of a past-due legally enforceable debt owed to the United States.

(b) For purposes of this subpart, a past-due legally enforceable debt referable to the IRS is:

(1) A debt which:

(i) Is owed to the United States;

(ii) Is at least $25.00;

(iii) Except in the case of a judgment debt, has been delinquent for at least three months but has not been delinquent for more than ten years at the time the offset is made;

(iv) Cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(v) Is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2) or cannot be collected by administrative offset under 31 U.S.C. 3716(a) by the Department against amounts payable to or on behalf of the debtor by or on behalf of the Department;

(vi) Has been disclosed by the Department to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), unless a consumer reporting agency would be prohibited from using such information by 15 U.S.C. 1681c, or unless the amount of the debt does not exceed $100.00; and

(2) A debt for which the Department has:

(i) Notified or has made reasonable attempt to notify the taxpayer that the debt is past-due and, that the debt, unless repaid within 60 days thereafter, will be referred to the IRS for offset against any overpayment of tax;

(ii) Given the debtor at least 60 days from the date of notification to present information that all or part of the debt is not past-due or legally enforceable, has considered information presented by such debtor, and has determined that an amount of debt is past-due and legally enforceable;

§ 89.39 Administrative charges.

In accordance with 4 CFR 102.13, all administrative charges incurred in connection with the referral of the debt to the IRS shall be added to the debt and thus increase the amount of the offset.

§ 89.41 Notice requirement before offset.

A request for offset from an IRS tax refund will be made only after the Department has made a determination that an amount is owed and past-due and provides the debtor with 60 days written notice. The Department's notice of intention to collect by IRS tax refund offset (Notice of Intent) includes:

(a) The amount of the debt;

(b) That unless the debt is repaid within 60 days from the date of the Department's Notice of Intent, the Department will refer the debt to the IRS for offset against any amount due the debtor as a tax refund;

(c) That the debtor has a right to present information that all or part of the debt is not past-due or legally enforceable; and

(d) A mailing address for forwarding any written correspondence and a contact name and telephone number for any questions.

§ 89.43 Review within the Department.

(a) *Notification by debtor.* A debtor who receives a Notice of Intent may present, for 60 days from the date of the Notice of Intent, information that all or part of the debt is not past-due or legally enforceable. (However, this does not extend the regulatory period for submitting written statements or for requesting an administrative hearing on the merits of an alleged violation, nor does it extend the period to appeal an assessed civil penalty.) To comply with this procedure, the debtor must:

(1) Send a written request for a review of the information to the address provided in the notice.

(2) State in the request the amount disputed and the reasons why the debtor believes that the debt is not past-due or legally enforceable.

(3) Include in the request any documents which the debtor wishes to be considered or state that additional information will be submitted within the remainder of the 60 day period.

(b) *Submission of information.* The debtor may submit information showing that all or part of the debt is not past-due or not legally enforceable along with the notification required by paragraph (a) of this section. Failure to submit the information within the remainder of the 60 day period will be interpreted as there is no additional information for consideration.

(c) *Review of the information.* The Department considers all available information related to the issue of whether the debt is past-due and the issue of whether the debt is legally enforceable. After a decision has been reached, the Department notifies the debtor whether the Department has sustained amended, or cancelled its determination that the debt is past-due and legally enforceable.

§ 89.45 Department determination.

(a) Following review of the information, the Department notifies the debtor with a written decision that includes the supporting rationale.

(b) If the Department either sustains or amends its determination, it shall notify the debtor that the debt is being referred to the IRS for offset against the debtor's Federal income tax refund. If the Department determines that there is no legally enforceable debt or that full payment has been made, the case will be closed.

§ 89.47 Stay of offset.

If the debtor timely notifies the Department that he or she is complying with the procedures in § 89.43(a) of this subpart and timely submits additional information in accordance with § 89.43(b) of this subpart, the debt will not be referred to the IRS while the matter is under review by the Department. Referral will not be made until the issuance of a written decision, in accordance with § 89.45 of this subpart, which sustains or amends the Department's original determination.

Issued in Washington, DC on ths 29th day of June, 1989.

Jon H. Seymour,

Assistant Secretary for Administration, Department of Transportation.

[FR Doc. 89-15919 Filed 7-6-89; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 81132-9033]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the total allowable catch (TAC) of "other rockfish" in the Central Regulatory Area of the Gulf of Alaska has been reached. The Secretary of Commerce (Secretary) is prohibiting directed fishing for and further retention of "other rockfish" by vessels fishing in this area from 12:00 noon, Alaska Daylight Time (ADT), on July 5, 1989, through December 31, 1989.

DATES: Effective from 12:00 noon, ADT, on July 5, until midnight, Alaska Standard Time, December 31, 1989. Public comments will be received through July 20, 1989.

ADDRESSES: Comments should be addressed to Steven Pennoyer, Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker, Fishery Management Biologist, 907-586-7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. Regulations implementing the FMP are at 50 CFR Part 672. Section 672.20(a) of the regulations establishes an optimum yield (OY) range of 116,000-800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. Total allowable catches (TACs) for target species and species groups are specified annually within the OY range and apportioned among the regulatory areas and districts.

The 1989 TAC specified for "other rockfish" in the Central Regulatory Area is 8,452 mt (54 FR 6524, February 13, 1989). The Regional Director reports that vessels have landed 7,037 mt of "other rockfish" through June 17 in the Central Regulatory Area. At recent catch and effort rates, the entire TAC will be harvested by July 5.

Therefore, pursuant to § 672.20(c)(2)(i), the Secretary is prohibiting further fishing for and retention of "other rockfish" in the Central Regulatory Area effective 12:00 noon, ADT, July 5, 1989. Any "other rockfish" caught in the Central Regulatory Area after that date must be treated as prohibited species and discarded at sea. The category "other rockfish" is defined for the Central Regulatory Area as all fish of the genus Sebastes except pelagic shelf rockfish. See the **Federal Register** notice of 1989 initial specifications for the Gulf of Alaska groundfish fishery for a complete species list (54 FR 6524, February 13, 1989).

Overharvesting of "other rockfish" will result unless this notice takes effect promptly. NOAA therefore finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed.

Public comments on the necessity for this action are invited for a period of 15 days after the effective date of this notice. Public comments on this notice of closure may be submitted to the Regional Director at the address above until July 20, 1989. If written comments are received which oppose or protest this action, the Secretary will reconsider the necessity of this action, and, as soon as practicable after that reconsideration, will publish in the **Federal Register** a notice either of continued effectiveness of the adjustment, responding to comments received, or modifying or rescinding the adjustment.

Classification

This action is taken under §§ 672.22 and 672.24, and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801, *et seq.*
Dated: June 30, 1989.

Richard H. Schaefer,
Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-15935 Filed 7-3-89; 9:20 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 129
Friday, July 7, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO-066-88 and CO-005-89]

RIN 1545-AL62 and 1545-AN12

Consolidated Return and Distributions After the Sale of Stock of a Subsidiary

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to determining the basis and the earnings and profits of members of an affiliated group filing consolidated returns following certain changes in the structure of the group; and, relating to a dividend or other distribution subject to section 301 that is declared with respect to stock of a subsidiary member of an affiliated group filing consolidated Federal income tax returns if the stock of the subsidiary member is disposed of before the distribution is made, but after the selling member becomes entitled to the distribution.

DATES: The public hearing will begin at 10:00 a.m. on Monday, September 18, 1989. Outlines of oral comments must be delivered by Monday, August 28, 1989.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:CORP:T:R (CO-066-88) or (CO-005-89), Room 4429, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Cynthia Grigsby of the Regulations Unit, Assistant Chief Counsel (Corporate), Internal Revenue Service, Room 4429, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone 202-566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 1502 of the Internal Revenue Code of 1986. The proposed regulations appeared in the **Federal Register** for September 8, 1988, (53 FR 34779) and March 16, 1989, (54 FR 11007), respectively.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit no later than Monday, August 28, 1989, an outline of oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers thereto.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

Dale D. Goode,
Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 89-15906 Filed 7-6-89; 8:45 am]
BILLING CODE 4830-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900-AD30

Loan Guaranty; Processing Assumptions of VA Guranteed Home Loans

AGENCY: Department of Veterans Affairs.

ACTION: Correction and extension of comment period; proposed regulations.

SUMMARY: On June 15, 1989, commencing on page 25469, (54 FR 25469), the Department of Veterans Affairs (VA) published a proposed rule to amend its regulations for processing assumptions of VA guaranteed home loans. Under the proposed rule, as published, §§ 36.4209(h)(1)(ii)(D) and 36.4303(k)(1)(ii)(D) were incorrect. Those sections should state that VA loan holders are required to refund $50 of any fee collected for processing an assumption of a VA loan if the assumption is not underwritten by the loan holder or its authorized agent pursuant to VA automatic authority. An additional $50 must be refunded if the VA does not approve the assumption.

At this time, VA is publishing the correct version and is opening a new comment period for those two sections only. In addition, VA is correcting § 36.4209(h)(1)(i)(B) to correct a typographical error.

VA regrets the errors; this notice hereby corrects the errors and the correct regulations are published below.

DATES: Comments on §§ 36.4209(h)(1)(ii)(D) and on 36.4304(k)(1)(ii)(D) must be received on or before August 7, 1989. Comments will be available for public inspection until August 16, 1989.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in room 132, Veterans Services Unit, at the above address only between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays) until August 16, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard Levy, Assistant Director for Loan Management (261), Loan Guaranty Service, (202) 233-6376.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan programs-housing and community developments, Manufactured homes, Veterans.

Dated: June 30, 1989.

Charles A. Fountaine III,
Chief, Directives Management Division.

38 CFR Part 36, Loan Guaranty, is proposed to be amended as follows:

In § 36.4209, paragraphs (h)(1)(i)(B) and (h)(1)(ii)(D) are revised to read as follows:

§ 36.4209 Reporting requirements.

* * * * *

(h) * * *
(1) * * *
(i) * * *

(B) If the application for assumption is disapproved, the holder shall notify the seller and the purchaser that the decision may be appealed to the Department of Veterans Affairs office of jurisdiction within 30 days. The holder shall make available to the Department of Veterans Affairs office copies of all items used by the holder in making the holder's decision in case the decision is appealed to the Department of Veterans Affairs, if the application remains disapproved after 60 days (to allow time for appeal to and review by the Department of Veterans Affairs) then the holder must refund $50 of any fee previously collected under the provisions of § 36.4275(a)(3)(iii) of this section.

* * * * *

(ii) * * *

(D) The notice and documents required by this section must be submitted to the Department of Veterans Affairs no later than 35 days after the date of receipt by the holder of an application for approval of an assumption, subject to the same extensions as provided in paragraph (h)(1)(i) of this section. If the assumption is not automatically approved by the holder or its authorized agent, pursuant to the automatic authority provisions, $50 of any fee collected in accordance with § 36.4275(a)(3)(iii) of this section must be refunded. If the Department of Veterans Affairs does not approve the assumption, the holder will be notified and an additional $50 of any fee collected under § 36.4275(a)(3)(iii) of this section must be refunded following the expiration of the 30-day appeal period set out in paragraph (h)(1)(i)(B) of this section. If such an appeal is made to the Department of Veterans Affairs, then the review will be conducted at the Department of Veterans Affairs by an individual who was not involved in the original disapproval action.

* * * * *

2. In § 36.4303, paragraph (k)(1)(ii)(D) is revised to read as follows:

§ 36.4303 Reporting requirements.

* * * * *

(k) * * *
(1) * * *
(ii) * * *

(D) The notice and documents required by this section must be submitted to the Department of Veterans Affairs no later than 35 days after the date of receipt by the holder of an application for approval of an assumption, subject to the same extensions as provided in paragraph (k)(1)(i) of this section. If the assumption is not automatically approved by the holder or its authorized agent, pursuant to the automatic authority provisions, $50 of any fee collected in accordance with § 36.4312(d)(8) of this section must be refunded. If the Department of Veterans Affairs does not approve the assumption, the holder will be notified and an additional $50 of any fee collected under § 36.4312(d)(8) of this section must be refunded following the expiration of the 30-day appeal period set out in paragraph (k)(1)(i)(B) of this section. If such an appeal is made to the Department of Veterans Affairs, then the review will be conducted at the Department of Veterans Affairs by an individual who was not involved in the original disapproval action.

* * * * *

[FR Doc. 89-15929 Filed 7-6-89; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-3612-2]

Approval and Promulgation of Air Quality Implementation Plans; Maine; NSR/PSD Revisions, and Related Revisions for Stack Heights, Visibility, and PM_{10}

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Maine. These revisions were made to satisfy the current federal new source review (NSR) requirements for the preconstruction permitting of new sources and modifications in both attainment and nonattainment areas. In addition, EPA is proposing to approve revisions that were included in the State's submittal which incorporate stack height and dispersion techniques regulations, visibility protection provisions for mandatory federal class I areas and associated integral vistas, and the national ambient air quality standards (NAAQS) for particulate matter (PM_{10}). The intended effect of this action is to propose approval of the State's request to amend its SIP to incorporate these current federal requirements. This action is being taken under section 110 of the Clean Air Act (the Act).

DATES: Comments must be received on or before August 7, 1989.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2311, JFK Federal Bldg., Boston, MA 02203. Copies of Maine's submittal and EPA's Technical Support Documents prepared for this revision are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2311, JFK Federal Bldg., Boston, MA 02203; and the Department of Environmental Protection, Bureau of Air Quality Control, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: For new source review contact Lynne Hamjian, (617) 565-3246; FTS 835-3246 and for stack heights, visibility and PM_{10} contact Susan Kulstad, (617) 565-3225; FTS 835-3225.

SUPPLEMENTARY INFORMATION: On August 22, 1988, the Maine Department of Environmental Protection (DEP) submitted revisions to its State Implementation Plan (SIP). This notice discusses the proposed revisions and EPA's rationale for proposing to approve them. The notice is divided into four separate sections for clarify. Section I discusses the revisions to Maine's new source review (NSR) regulations including the State's regulations for the prevention of significant deterioration (PSD). Section II discusses the revisions to Maine's stack height regulations. Section III discusses Maine's visibility protection requirements for class I areas. Section IV discusses revisions to Maine's regulations which incorporate certain requirements for PM_{10}.

I. New Source Review Revisions

A. Background

In 1979, the Maine DEP adopted NSR regulations (including those for PSD) to satisfy the requirements for SIPs codified at 40 CFR Part 51. EPA approved these regulations and incorporated them into the SIP on January 30, 1980 and February 19, 1980. On August 7, 1980 EPA promulgated major revisions to 40 CFR Part 51's NSR/PSD requirements for SIPs pursuant to a court decision. (*Alabama Power Company et al.*, v. *Costle*, D.C. Cir. No. 78-1006 December 14, 1979.) In addition, on October 14, 1981, EPA promulgated a change in the definition of the term "stationary source" in the Part 51 regulations for nonattainment areas. The Maine DEP has adopted revisions to its SIP's NSR/PSD regulations to be consistent with the current NSR/PSD requirements codified at 40 CFR 51.160 through 51.166.

B. Summary of Maine's Submittal

On August 22, 1988, the Maine DEP submitted these amended regulations to EPA as revisions to its SIP. The revisions include changes to Chapter 100, "Definitions," Chapter 110, "Ambient Air Quality Standards," Chapter 113, "Growth Offset Regulations," Chapter 114, "Classification of Air Quality Control Regions," Chapter 115 (formerly Chapter 108), "Emission License Regulations," and portions of Chapter 1, "Regulations for the Processing of Applications."

These revisions also include a letter from the Maine DEP that certifies that the Maine DEP is implementing the "Top Down" approach in determining Best Available Control Technology (BACT) in accordance with EPA's December 1987 memorandum from Craig Potter entitled, "Improving New Source Review Implementation" and in accordance with the BACT document issued by the Northeast States for Coordinated Air Use Management (NESCAUM) dated October, 1988. In addition, the Maine DEP committed to using the "Top Down" approach in all future BACT determinations.

EPA has evaluated these proposed revisions and found that they are equivalent to, or in some instances, more stringent than, the requirements in 40 CFR 51.160 through 51.166.

Maine's regulations for NSR/PSD, and EPA's evaluation are detailed in a memorandum dated March 10, 1988 entitled, "Technical Support Document—Maine New Source Review Revisions." Copies of that document are available, upon request, from the EPA Regional Office listed in the ADDRESSES section of this notice.

C. Amendments to Maine's NSR/PSD Regulations Necessary for Final Approval

Chapter 100 of Maine's regulations define "major source" as any source which emits or has the potential to emit any regulated pollutant greater than the significance levels found at 40 CFR 51.166(b)(23)(i). In general this means that Maine's definition is more stringent than the definition of "major stationary source" in 40 CFR 51.165 and 51.166. However, Maine's definition is not as stringent for new stationary sources in all cases. Maine's definition of "major source" does not include the portion of the federal definition which states that a major stationary source is also any physical change at a stationary source, not otherwise qualifying under the definition of major stationary source, if the change would constitute a major stationary source by itself. Therefore, prior to final rulemaking, Maine must include the provisions of 40 CFR 51.165(a)(1)(iv)(A)(2) and 40 CFR 51.166(b)(1)(i)(c) in its definition of "major source."

Chapter 100 of Maine's regulations does not include a definition of the term, "Begin Actual Construction." Prior to final rulemaking, Maine must include the definition of this term found at 40 CFR 51.166(b)(11).

Maine submitted portions of Chapter 1 of its regulations for incorporation into the SIP. However, the version of Chapter 1 submitted by the Maine DEP for approval and incorporation into the SIP is numbered and formatted differently from the version of Chapter 1 adopted and effective on the State level. The numbering and format of the version of Chapter 1 submitted to EPA should match the numbering of current State version of the regulation. Prior to final rulemaking, the Maine DEP must resubmit Chapter 1 in its State-adopted form with the appropriate numbers and references.

D. Today's Action

Proposed Action

EPA is proposing to approve Maine's request to revise the following SIP regulations: Chapter 100, "Definitions," Chapter 110, "Ambient Air Quality Standards," Chapter 113, "Growth Offset Regulations," Chapter 114, "Classification of Air Quality Control Regions," Chapter 115 (formerly Chapter 108), "Emission License Regulations," and Chapter 1, "Regulations for the Processing of Applications." These revisions incorporte the current federal new source review and prevention of significant deterioration requirements of 40 CFR 51.160 through 51.166. EPA is proposing approval with the understanding that the Maine DEP will revise the regulations as outlined in this notice prior to final EPA approval of these revisions.

II. Stack Height Revisions

A. Background

On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by section 123 of the Act. These regulations were challenged in the U.S. Court of Appeals for the D.C. Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club* v. *EPA*, 710 F.2d 436 (D.C. Cir. 1983). On October 11, 1983, the court issued its decision ordering EPA to reconsider portions of the stack height regulations, reversing certain portions and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition, 104 S.Ct. 3571 (1984), and on July 18, 1984, the Court of Appeals' mandate was formally issued, implementing the court's decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985. Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878) and finalized on July 8, 1985 (50 FR 27892).

The revisions redefine a number of specific terms including "excessive concentrations," "dispersion techniques," "nearby," and other important concepts, and modified some of the bases for determining good engineering practice (GEP) stack height.

Pursuant to section 406(d)(2)(B) of the Act, all states were required to (1) review and revise, as necessary, their SIPs to include provisions that limit stack height credits and dispersion techniques in accordance with the revised regulations; and (2) review all existing emission limitations to determine whether any of these limitations have been effected by stack height credits above GEP or any other dispersion techniques. For any limitations so effected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA, as required by section 406. Subsequently, EPA issued detailed guidance on the performance of the required reviews.

On January 22, 1988, the U.S. Court of Appeals issued a decision in *NRDC* v. *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988), regarding EPA's revised July 8, 1985 stack height regulations. Subsequent petitions for reheaing were denied. The Court remanded three provisions to EPA that may potentially bear on state actions now being taken pursuant to EPA's July 8, 1985 regulations. However, since EPA is currently in the process of reconsidering the remanded provisions and the outcome is as yet unknown, our review of Maine's August 22, 1988 submittal addresses its consistency with the July 8, 1985 regulations only. If EPA

further revises its regulations in response to the remand at some future date, Maine will, at that time, be required to revise its regulations accordingly. Sources may have to have their permits amended and/or be required to submit new demonstrations that applicable ambient standards are met if affected by such revisions.

B. Summary of Maine's Submittal

Maine's August 22, 1988 SIP submittal includes revised regulations at Chapter 116 which limit stack height credits and dispersion techniques in accordance with the current requirements of 40 CFR 51.100 and 51.118. Additionally, Maine's revisions to Chapter 116 define the term "ambient air." A separate SIP revision submittal, received by EPA on September 30, 1988, contains the Maine DEP's review of all existing emission limitations. EPA has approved that SIP revision in a separate rulemaking notice published in the **Federal Register** on February 27, 1989 (54 FR 8190).

Chapter 116 of Maine's Air Regulations, "Prohibited Dispersion Techniques," specifies the stack height and dispersion techniques requirements for the permitting of air emission sources within the State of Maine. Additionally, Chapter 116 sets forth the locations where applicants must demonstrate that ambient air quality standards will be met (i.e., locations which constitute "ambient air").

With one significant exception, Maine's stack height and dispersion techniques regulations at Chapter 116(II)(A) through (E) adequately parallel and are as stringent as those of 40 CFR 51.100 as amended on July 8, 1985. Maine has adopted the language from 40 CFR Part 51's stack height regulations virtually verbatim except in one case.

The one significant exception appears at Chapter 116(II)(E)(2) in the definition of "excessive concentration." For sources seeking credit for increases in existing stack height up to formula height after October 11, 1983, Maine correctly sets forth the requirement that a maximum ground-level concentration be individually "* * * at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects * * *." However, Maine's regulation omits the essential provisions from 40 CFR 51.100(kk)(2) that refer to pertinent language at (kk)(1), "* * * *and* which contributes to a total concentration due to emissions from all sources that is greater than an ambient air standard * * * [or] a prevention of significant deterioration increment." (Emphasis added.) By this omission, Maine has failed to adopt a provision as stringent as 40 CFR 51.100(kk)(2). However, the Maine DEP has agreed to revise its requirement for consistency with 40 CFR 51.100(kk)(2), and to submit the revised version of Chapter 116(II)(E)(2) before EPA takes final rulemaking action on these revisions.

Maine's requirement at Chapter 116(I) is at least as stringent as the definition of "ambient air" at 40 CFR 50.1(e). Maine's regulation further and more specifically limits inaccessible plant property to only the "production area," where "the source regularly conducts activities necessary to the production of goods or services * * * which is of a size not larger than reasonably necessary to conduct such activities * * *"

EPA's evaluation of Maine's stack height and dispersion techniques requirements is detailed in a memorandum entitled, "Technical Support Document—Chapter 116 of Maine DEP's Regulations," dated December 19, 1988. Copies of this document are available, upon request, from the EPA Regional Office listed in the ADDRESSES section of this notice.

C. Amendments to Maine's Stack Height Regulations Necessary for Final Approval

As previously stated, Maine's requirements for stack heights and dispersion techniques at Chapter 116(II) adequately meet the applicable requirements of 40 CFR 51.100 except for 51.100(kk)(2). The Maine DEP has agreed to adequately revise and submit Chapter 116(II)(E)(2) to include the requirements of 40 CFR 51.100(kk)(2) before EPA takes final rulemaking action on these revisions.

D. Today's Action

Proposed Action

EPA proposes to approve and incorporate by reference revisions to SIP regulation Chapter 116, "Prohibited Dispersion Techniques," for the permitting of air emission sources. These revisions incorporate the current provisions of 40 CFR 50.1(e), 51.100, and 51.118, which specify ambient air, stack height and dispersion techniques requirements for SIPs. EPA proposes approval with the understanding that the Maine DEP will revise and submit Chapter 116(II)(E)(2) concerning credit for raising the height of existing stacks as outlined in this notice prior to final EPA approval of these revisions.

III. Visibility Revisions

A. Background

Congress set a national goal of preventing any future, and remedying any existing, impairment of visibility resulting from manmade air pollution in mandatory class I federal areas in Section 169A of the Act. On December 2, 1980, EPA promulgated Phase I visibility regulations, 40 CFR 51.300 through 51.307, to address "plume blight" impairment—that impairment which can be traced to a single existing stationary facility or small group of existing stationary facilities by simple monitoring techniques.

Part 51 regulations require that SIPs address the following:

1. Coordination with the class I area Federal Land Manager,
2. Review of proposed new sources for their impact on visibility in class I areas and integral vistas,
3. A monitoring strategy for evaluating visibility in class I areas,
4. Best available retrofit technology (BART) analyses for existing facilities identified as reasonably anticipated to cause or contribute to visibility impariment in class I areas, and
5. A long-term strategy (10–15 years) for making reasonable progress toward the national visibility goal.

On July 12, 1985, EPA promulgated a visibility Federal Implementation Plan (FIP) covering the monitoring and new source review provisions for Maine and a number of other states. The FIP was promulgated pursuant to Part 1 of a settlement agreement reached in response to a citizen's suit filed in the U.S. District Court for the Northern District of California by the Environmental Defense Fund (EDF) and other environmental groups, *EDF* v. *Gorsuch*, Number C82–6850 RPA (Dec., 1982).

On November 24, 1987 pursuant to Part 2 of the settlement agreement, EPA promulgated a visibility FIP covering the long-term strategy provisions and revising the new source review FIP to include integral vista provisions. However, the FIP promulgated on November 24, 1987, defers action on BART control strategies at existing sources.

B. Summary of Maine's Submittal

Maine's August 22, 1988 SIP revision submittal includes many of the requirements covered under EPA's visibility protection regulations at 40 CFR 51.300 through 51.307, and therefore, those included in EPA's Part 1 visibility FIP. A summary of the visibility-related revisions in Maine's August 22, 1988 submittal is provided below.

Purpose and Applicability (40 CFR 51.300). Maine's Chapter 114, "Classification of Air Quality Control Regions," correctly lists the mandatory class I areas in section (I)(C), both within Maine and within New Hampshire where there is any Maine source "* * * the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility in such area" (40 CFR 51.300(b)(ii)). These class I areas are the following: Acadia National Park, Moosehorn National Wildlife Refuge, and Roosevelt Campobello International Park in Maine, and the Presidential Range Dry River Wilderness and Great Gulf Wilderness of the White Mountain National Forest in New Hampshire. Maine's Chapter 115(VII)(D)(5)(b) specifies the required inclusion in the class I area of any "conservation easements under the jurisdiction of an appropriate Federal Land Manager as of August 7, 1977," which agrees with EPA's understanding of the Federal Land Manager's original intent for the class I area designation of Acadia National Park.

Definitions. (40 CFR 51.301). The definitions contained in Maine's Air Regulations at Chapter 100 are adequate to satisfy the definitions at 40 CFR 51.301. In two instances the Maine DEP's definitions are more broadly applicable than the definitions in 40 CFR Part 51:

(a) With regard to visibility protection for integral vistas, the Maine DEP definition of "adverse impace on visibility" at Chapter 100(2) specifically includes effects on integral vistas whereas the definition at 40 CFR 51.301(a) specifically does not; and

(b) In choosing not to define "existing stationary facility" the Maine DEP rules more widely require BART applicability, because the definition at 40 CFR 51.301(e) grandfathers sources in existence before August 7, 1962 from BART requirements and limits applicability to 26 source categories having the potential to emit greater than 250 tons per year of any visibility impairing pollutant.

Implementation control strategies (40 CFR 51.302). The Maine DEP's submittal adequately meets certain requirements of 40 CFR 51.302, but does not include others.

The Maine DEP invited each affected Federal Land Manager to attend the public workshops and hearings held during the State's adoption of its visibility regulations as required by 40 CFR 51.302(a). At Chapter 114(I)(C), the Maine DEP lists all federally and state declared integral vistas as required by 40 CFR 51.302(b)(1)(i). At Chapter 115(VI)(A)(3), the Maine DEP sets forth BART requirements for existing sources within 5 years of a determination by the Maine Board of Environmental Protection that emissions from such a source are reasonably attributable to visibility impairment certified by the Federal Land Manager of any class I area or integral vista. In combination with the definitions in Chapter 100 of Maine's regulations, this requirement fulfills 40 CFR 51.302(c)(4)(iv).

For those requirements of 40 CFR 51.302 that were not included in Maine's August 22, 1988 submittal, the FIP covering those provisions shall remain in effect. (Further discussion of these provisions is provided in III.D. of this notice.)

Integral vistas (40 CFR 51.304). The Maine DEP adequately identifies federally declared integral vistas from Roosevelt Campobello International Park (with one minor exception noted below) at Chapter 114(I)(C) as required by 40 CFR 51.304.

Additionally, Maine's Chapter 114(I)(C) specifies state declared integral vistas, as viewed from Cadillac Summit and Sunset Point at Acadia National Park, which are subject to the same requirements as federally declared ones. In declaring additional integral vistas, the Maine DEP consulted with the Federal Land Manager.

The Maine DEP, in identifying "key features" observed from Con Robinson's Point at Roosevelt Campobello International Park, inadvertently and erroneously indicated "portions viewed from Liberty Point" for Herring Cove. The Maine DEP has agreed to correct this error in its list at Chapter 114(I)(C), and to resubmit the revised list to EPA before final rulemaking action is taken on these revisions.

Visibility monitoring (40 CFR 51.305). The Maine DEP regulations adequately meet EPA's current monitoring requirements for visibility. EPA currently participates in the operation of a national visibility monitoring network, "IMPROVE", and has not as yet developed a reference method for visibility monitoring. IMPROVE instruments are currently operating at Acadia National Park and Moosehorn Wildlife Refuge. At Chapter 115, the Maine DEP includes requirements allowing it to require visibility monitoring for the following:

1. Existing sources located in or near a class I area where available air quality is limited, or other extenuating circumstances exist (Chapter 115(VIII)(B)(3));
2. Minor new sources or modifications as determined on a case-by-case basis considering their location including proximity to class I areas, integral vistas (Chapter 115(VII)(C)(3)); and
3. Major new sources and modifications, where pre-construction (Chapter 115(VII)(D)(5)(e)) and post-construction (Chapter 115(VII)(D)(6)) visibility monitoring may be required as the Maine DEP determines is necessary. (This satisfies the requirements of 40 CFR 51.307(d).)

New source review (40 CFR 51.307). The Maine DEP's Air Regulations at Chapter 115(VII) adequately meet the new source review requirements at 40 CFR 51.307, with one exception which is discussed below.

The Maine DEP's submittal requires that Federal Land Managers receive written notification of any proposed new major stationary source or modification, including an analysis of the anticipated visibility impacts on any federal class I area or integral vista prior to the Maine DEP's acceptance of the application and at least 60 days prior to any public hearing. The Maine plan also specifies the circumstances under which such a proposed source must conduct a visibility analysis and lists the appropriate Federal Land Manager contacts, thereby fulfilling the requirements of 40 CFR 51.307(a)(1).

At chapter 115(VII)(D)(5)(d), the Maine plan requires the Maine DEP to consider the analysis and comment of any affected Federal Land Manager received during the public comment period; specifies the procedures the Maine DEP will follow when it does not concur with a Federal Land Manager's determination that adverse impacts will result (which include the appropriate public notice and a mandatory public hearing); and provides that an emission license shall be denied where the Maine DEP concurs with a Federal Land Manager finding of adverse impairment. Therefore, Maine's regulations satisfy the requirments of 40 CFR 51.307(a)(3).

All of the requirements of Maine's visibility plan for new source review apply to federally and state declared integral vistas as well as to mandatory class I areas. The Maine visibility regulations also apply to new major stationary sources and major modifications locating in nonattainment areas when those sources may impact a class I area. Therefore, Maine's plan satisfies 40 CFR 51.307 (b) and (c).

For the provision of 40 CFR 51.307(a)(2) regarding advanced notification to any affected Federal Land Manager that was not included in Maine's submittal, the FIP covering that provision shall remain in effect. (See III.D. of this notice).

EPA's detailed evaluation of the Maine DEP's revisions pertaining to visibility protection is contained in a memorandum, "Technical Support Document—Maine's Class I Visibility Protection Regulations," dated December 19, 1988. Copies of that document are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this notice.

C. Amendments to Maine's Visibility Regulations Necessary for Final Approval

As described above, Maine's identification of integral vistas at Chapter 114(I)(C) contains an error in identifying a "key feature" observed from Roosevelt Campobello International Park. Prior to final rulemaking on its August 22, 1988 submittal, Maine must correct this error and submit the revised list in Chapter 114(I)(C).

D. Today's Actions

Proposed Action

EPA proposes to approve the visibility-related definitions in the Maine DEP's Air Regulations at Chapter 100; the listing of federally mandated class I areas and federally and state declared integral vistas at Chapter 114(I)(C) with the understanding that Maine will revise that Chapter as explained in this notice at III.C., above; the general BART requirements for existing sources at Chapter 115(VI)(A)(3); and the visibility-related existing and new source review provisions contained in Chapter 115(VII).

While Maine's August 22, 1988 submittal addresses many of the requirements for FIPs covered by 40 CFR Part 51's visibility regulations, it should be clearly noted that other provisions of those regulations still require action on Maine's part to supersede all of the FIP. Therefore, relevant portions of the FIP will remain in effect in Maine until such time as Maine submits additional SIP revisions to address:

(1) A long-term strategy for remedying existing impairment as required at 40 CFR 51.306;

(2) The identification and application of BART and other measures to applicable existing sources as required at 40 CFR 51.302 (b) and (c)(2), (3) and (4); and

(3) Explicit provisions of advanced notification to any affected Federal Land Manager as required at 40 CFR 51.307(a)(2).

EPA shall take separate rulemaking actions on those additional SIP revisions at such time as they are submitted by the Maine DEP for approval.

Proposed Action

As Maine has essentially met the requirements concerning visibility protection monitoring and new source review of 40 CFR 51.305 and 51.307, which are addressed in the FIP requirements at 40 CFR 52.26 and 52.27, EPA proposes to revise those FIP provisions incorporated into Maine's SIP at 40 CFR 52.1032 by deleting the current subsections and inserting the following text: "The requirements of section 169A of the Act are not met because the plan does not include approvable procedures for meeting all of the requirements of 40 CFR 51.302, 51.306, or the requirements of 51.307(a)(2) for protection of visibility in mandatory class I Federal areas."

IV. PM_{10} Revisions

A. Background

On July 1, 1987, EPA promulgated a revised national ambient air quality standard (NAAQS) for particulate matter (52 FR 2463). EPA revised the old definition of the NAAQS from Total Suspended Particulate (TSP) to a new definition. The new definition applies to particulate matter with aerodynamic diameters of 10 micrometers or less.

B. Summary of Maine's Submittal

On August 22, 1988, the Maine DEP submitted amended regulations to EPA as revisions to its SIP. These revisions incorporate NSR-related PM_{10} requirements which include changes to the following regulations: Chapter 100, "Definitions," Chapter 110, "Ambient Air Quality Standards," and Chapter 115, "Emissions License Requirements." These amendments include the relevant definitions, the PM_{10} standard, the PSD provisions. These amendments do not include the definitions of the terms "particulate matter emissions" and "PM_{10} emissions," nor do they include provisions related to significant harm levels and emergency episode plans for PM_{10}. Future action by the State of Maine is required to address these definitions and provisions.

Maine's NSR-related PM_{10} regulations and EPA's evaluation are detailed in a memorandum dated January 5, 1989, entitled, "Technical Support Document-Maine's Particulate Matter Regulations." Copies of that memorandum are available, upon request, from the EPA Regional Office listed in the ADDRESSES section of this notice.

C. Amendments to Maine's NSR-Related PM_{10} Requirements Necessary for Final Approval

Forty CFR 51.165(b) requires that States develop a preconstruction permitting program for sources which locate in attainment areas and "cause or contribute to a violation of a NAAQS." Chapter 100 of Maine's regulations correctly includes the PM_{10} significant impact concentrations which define the term "cause or contribute to a violation of a NAAQS." However, Chapter 115 of Maine's regulations does not state how these significant impact concentrations are to be applied in regulating new and modified sources of PM_{10}. As submitted, Maine's regulations require that sources which emit a nonattainment pollutant and which locate in or significantly impact a nonattainment area must comply with all of the nonattainment area new source review provisions (i.e. lowest achievable emission rate, offsets, etc.). However, EPA determined that section 110 of the Act and not Part D, governs the implementation of the PM_{10} standards. Therefore, there are no PM_{10} nonattainment areas within the meaning of section 107 of the Act. Therefore, Maine's regulations for sources which emit a "nonattainment pollutant" would not apply to new and modified sources of PM_{10}. No other provision contained in Maine's August 22, 1988 submittal specifies how new or modified sources that would cause or contribute to a violation of the PM_{10} NAAQS are to be regulated. Therefore, Maine has agreed to adopt the necessary language to insure that the requirements of 40 CFR 51.165(b) are met for PM_{10} prior to final rulemaking approving these revisions.

D. Today's Action

Proposed Action

EPA is proposing to approve Maine's PM_{10} related revisions to the following SIP regulations: Chapter 100, Definitions," Chapter 110, "Ambient Air Quality Standards," Chapter 114, "Classification of Air Quality Control Regions," and Chapter 115, "Emission Licensing Regulations." These revisions incorporate federal PM_{10} requirements for new source review. EPA is proposing approval with the understanding that the Maine DEP will revise the regulation as outlined in this notice prior to final rulemaking approving these revisions.

In adopting the Act, Congress designated EPA as the agency primarily responsible for interpreting the statutory provisions and overseeing their implementation by the states. EPA must approve state programs that meet the requirements of 40 CFR Part 51.

Conversely, EPA cannot approve programs that do not meet those requirements. However, the requirements of the Act and 40 CFR Part 51 for NSR including those for PSD, stack heights/dispersion techniques, and visibility are by nature very complex and dynamic. It would be administratively impracticable to include all statutory interpretations in the EPA regulations and the SIPs of the various states, or to amend the regulations and SIPS every time EPA interprets the statute or regulations or issues guidance regarding the proper implementation of the NSR program. Moreover, the Act does not require EPA to do so. Rather, action by EPA to approve these NSR-related regulations and narrative as part of the Maine SIP still have the effect of requiring the state to follow EPA's current and future interpretations of the Act's provisions and regulations, as well as EPA's operating policies and guidance (but only to the extent that such policies are intended to guide the implementation of approved state NSR programs). Similarly, EPA approval also will have the effect of superceding and interpretations or policies that the state might otherwise follow to the extent they are at variance with EPA's interpretations and applicable policies. Of course, any fundamental changes in the administration of NSR would have to be accomplished through amendments to the regulations in 40 CFR Part 51 and subsequent SIP revisions.

Upon approval of these revisions to the NSR requirements of the Maine SIP, EPA will continue to oversee implementation of this important program by reviewing and commenting upon proposed permits as appropriate. Specifically, EPA will comment upon proposed permits that do not implement the letter of the law, as well as EPA's statutory and regulatory interpretations and applicable guidance. If a final permit is issued which still does not reflect consideration of the relevant factors, EPA may deem the permit inadequate for purposes of implementing the requirements of the Act and Maine's SIP, and may consider enforcement action under section 113 and 167 of the Act to address the permit deficiency.

EPA is proposing to approve revisions to the Maine SIP, which were submitted on August 22,1988, and is soliciting public comments on issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal Rulemaking procedure by submitting written comments to the Region I office listed in the ADDRESSES section of this notice.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

The Administrator's decision to approve or disapprove the plan revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and 110(a)(3) of the Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Paul G. Keough,
Acting Regional Administrator, Region I.

Date: March 28, 1989.

[FR Doc. 89-15907 Filed 7-6-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3612-4]

40 CFR Part 52

Approval and Promulgation of Implementation Plans; Michigan State Implementation Plan: Extension of Comment Period

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of extension of the public comment period.

SUMMARY: USEPA is giving notice that the public comment period for a notice of proposed rulemaking, published May 10, 1989, (54 FR 20153) has been extended an additional 30 days from date of publication. This notice proposed to disapprove a revision to the Michigan State Implementation Plan, which concerns a Consent Order for volatile organic compound emissions from James River-KVP. This source is located in Kalamazoo County, Michigan. USEPA is taking this action based on an extension request by a commentor.

DATE: Comments are now due on or before July 10, 1989.

FOR FURTHER INFORMATION CONTACT: Fayette Bright, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604 (312) 886-6069.

Date: June 22, 1989.

Valdas V. Adamkus,
Regional Administrator.

[FR Doc. 89-15908 Filed 7-6-89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[FRL-3612-3]

Approval and Promulgation of Implementation Plans; Ohio State Implementation Plan

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking; extension of the public comment period.

SUMMARY: USEPA is giving notice that the public comment period for a notice of proposed rulemaking published May 30, 1989, (54 FR 22915), has been extended an additional 30 days. This notice proposed to approve and disapprove specific portions of the Ohio Environmental Protection Agency submittal as a revision to the Ohio State Implementation Plan. This includes new volatile organic compound (VOC) regulations for additional VOC source categories. The notic discusses the results of USEPA's review of the State's amendments to the VOC control portion of its SIP as well as solicits public comments on the revisions and USEPA's proposed action. USEPA is taking this action based on an extension request by a commentor.

DATE: Comments are now due on or before July 31, 1989.

FOR FURTHER INFORMATION CONTACT: Fayette Bright, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6069.

Date: June 27, 1989.

Frank M. Covington,
Acting Regional Administrator.

[FR Doc. 89-15909 Filed 7-6-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[General Docket 89-116; FCC 89-154]

RIN 3060-AD68

FCC Procedure for Measurement of Intentional Radiators (Except for Periodic and Spread Spectrum Devices and Devices Operating Below 30 MHz)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to establish a new procedure for measuring the electromagnetic emissions of intentional radiators operating under Part 15 of its rules. This new procedure is necessary due to the expanded authorization for operation of intentional radiators and changes in technical standards and measurement requirements for such devices that were adopted in the Commission's recent comprehensive revision of the Part 15 rules in GEN. Docket 87-389. In order to make the test procedure more readily available and to clarify that it has the force of rules, the Commission intends to include the test procedure in its rules.

DATES: Comments are due to be filed August 17, 1989 and reply comments are due to be September 1, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Richard Fabina, telephone (301) 725-1585.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in GEN. Docket 89-116, adopted May 12, 1989, and released June 29, 1989. The full text of the Commission proposal, including the proposed test procedure, is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230) 1919 M Street NW., Washington, DC. The complete text of this proposal, including the proposed test procedure, may also be purchased from the Commission's copy contractors, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037.

The following collection of information contained in this proposed rule making has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Copies of the submission may be purchased from the Commission's copy contractor International Transcription Service. (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785. A copy of any comments made should also be sent to the Federal Communications Commission, Office of the Managing Director, Washington, DC 20554. For further information contact Jerry Cowden, Federal Communications Commission. (202) 632-7513.

OMB Number: None.

Title: 47 CFR 15.31 (a)—Reporting and Recordkeeping Requirements for Radio Frequency Device Test Procedures (TP-3).

Action: New Collection.

Respondents: Businesses (including small businesses).

Frequency of Response: Recordkeeping and on occasion reporting.

Estimated Annual Burden: 350 responses, 5,250 total hours; 15 hours each.

Needs and Uses: Data gathered using these test procedures, and reported to the Commission or retained by the appropriate party, will be used by the Commission to determine compliance of the proposed equipment with the Commission's Rules.

Summary of the Notice of Proposed Rule Making

1. By this action, the Commission proposes to establish a new procedure for measuring electromagnetic emissions from intentional radiators operating under Part 15 of the Commission's Rules. This new procedure, "FCC Procedure for Measurement of Intentional Radiators (Except for Periodic and Spread Spectrum Devices and Devices Operating below 30 MHz), FCC/OET TP-3" (TP-3), is intended to set forth uniform methods for testing such devices for compliance with the technical standards adopted in the Commission's recent comprehensive revision of Part 15.

2. In Docket No. 87-389, the Commission revised a number of the technical standards that apply to intentional radiators, including the limits on permissible electromagnetic emissions (EME), the permissible bandwidth occupied, and the permissible operating frequency and frequency deviation. The Commission also specified certain requirements for measuring emissions from such devices for the purpose of determining compliance with the rules. For example, the rules were revised to specify the use of instrumentation with peak, average and quasi-peak detector functions, extend the range of frequencies to be measured for EME to include frequencies above 1000 MHz, standardize the range of the scan height of the measuring receiver antenna at 1 to 4 meters and establish the measurement distance for most intentional radiators at a uniform 3 meters.

3. The proposed TP-3 specifies the test environment, test instrumentation, configuration of the equipment under test and instructions for setting up and performing measurements to be used in evaluating intentional radiators for compliance with the Part 15 technical standards. Instructions are provided for measuring: (1) Line conducted EME; (2) radiated EME; (3) operating frequency; (4) operating frequency stability with variation in ambient temperature; (5) operating frequency with variation in primary supply voltage; (6) occupied bandwidth; and (7) input power. The proposed TP-3 also provides instructions for recording/reporting test results.

4. Comments are requested on the degree to which the proposed measurement procedure would provide an effective means of evaluating intentional radiators for compliance with the rules. Comments are also sought on the burden, in terms of both direct costs and time to complete tests, this procedure would impose on those who evaluate intentional radiators. The Commission invites suggestions for minimizing this burden in a manner that would not compromise the quality and consistency of the test measurements. In addition, comments are requested on whether the format of the test procedure is clear and whether the level of guidance furnished in the procedure is sufficient to permit the procedures to readily perform. Interested parties are requested to suggest changes which would improve the accuracy and repeatability of the test results when measurements are performed at different facilities.

5. In order to make the proposed test procedures more readily available and to clarify that they have the force of rules of Commission intends to include the test procedures in its rules. The Commission welcomes comments on all aspects of the proposed test procedures, and any other issues that may bear on the effectiveness of these procedures for safeguarding the radio frequency environment with the minimum burden on equipment suppliers. However, it does not intend to consider comments that deal with issues that were previously decided or are being

addressed in related proceedings. In particular, it will not consider comments proposing changes in the technical standards for intentional radiators.

Procedural Matters

6. Under the procedures set out in § 1.415 of the Commission's Rules, interested persons may file comments on or before (Date), 1989, and reply comments on or before (Date), 1989. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided such information or writing indicating the nature and source of such information is placed in the public file and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

7. In accordance with the provisions of § 1.419 of the Commission's Rules, formal participants shall file an original and five (5) copies of their comments and other materials. Participants wishing each Commissioner to have a copy of their comments should file an original and 11 copies. Members of the public who wish to express their comments are given the same consideration regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours at the Commission's Public Reference Room at its headquarters in Washington, DC.

8. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's rules, 47 CFR 1.1231, for rules governing permissible *ex parte contacts.*

Initial Regulatory Flexibility Analysis

9. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the Commission's initial analysis is as follows:

I. *Need and purpose of this action.* The purpose of this proposed procedure is to set forth uniform methods for testing intentional radiators for compliance with the recent comprehensive revision of Part 15 of the Commission's Rules adopted in the *Report and Order* in Gen. Docket No. 87-389. Since the existing measurement procedures used to evaluate these devices are not satsifactory for evaluating devices under the revised rules, it is necessary to develop a new measurement procedure.

II. *The objectives.* Our objectives in proposing this new measurement procedure for intentional radiators is to provide the basis for a consistent and repeatable test program for evaluating these devices for compliance with the newly revised rules.

III. *Legal Basis.* The actions proposed herein are taken pursuant to the authority contained in sections 4(i), 301, 302, 303, 304, and 307 of the Communications Act of 1934, as amended.

IV. *Description of potential impact and number of small entities affected.* It is believed that the test procedure will benefit manufactures and test laboratories by speeding testing and reducing compliance costs. The proposed test procedure would modify the present procedures for measuring intentional radiators. Its adoption potentially would affect all manufacturers of intentional radiators and laboratories performing equipment authorization tests on such devices. However, the exact number of small entities affected is not known.

V. *Recording, record keeping and other compliance requirements.* The proposed measurement procedures would increase the reporting/record keeping requirements of parties responsible for Part 15 intentional radiators to the extent that the range of frequencies that must be measured has been increases slightly. However the format and content of the reporting/recording requirements has not been significantly modified.

VI. *Federal rules which overlap or conflict with this rule.* None.

VII. *Any significant alternates minimizing impact on small entities and consistent with the stated objectives.* None.

10. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the office of Management and Budget as prescribed by the Act.

11. For further information on this proceeding, contact Richard Fabina, FCC Laboraory, 7435 Oakland Mills Road, Columbia, MD 21046, telephone (301) 725-1585. For further information concerning Part 15 of the Commissions Rules contact, FCC, Technical Standards Branch, Room 7122, 2025 M St. NW., Washington, DC 20554, telephone (202) 653-6288.

List of Subjects in 47 CFR Part 15

Radio frequency devices.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-15981 Filed 7-6-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 15

[General Docket 89-177; FCC 89-155]

RIN 3060-AD68

FCC Procedure for Measuring FR Emissions From Intentional Radiators With Periodic Operation and Associated Superregenerative Receivers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to establish a new procedure for measuring the electromagnetic emissions of intentional radiators with periodic operation and associated superregenerative receivers that operate under Part 15 of its rules. This new procedure is necessary due to the changes in technical standards and measurement requirements for such devices that were adopted in the Commission's recent comprehensive revision of the Part 15 rules in GEN. Docket 87-389. In order to make the test procedure more readily available and to clarify that it has the force of rules, the Commission intends to include the test procedure in its rules.

DATES: Comments are due to be filed August 21, 1989. Reply comments are due to be filed September 5, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Hugh Van Tuyle, telephone (301) 725-1585.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in GEN. Docket 89-117, adopted May 12, 1989, and released June 29, 1989. The full text of the Commission proposal, including the proposed test procedure, is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230) 1919 M Street NW., Washington, DC. The complete text of this proposal, including the proposed test procedure, may also be purchased from the Commission's copy contractors, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037.

The following collection of information contained in this proposed

rule making has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Copies of the submission may be purchased from the Commission's copy contractor International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785. A copy of any comments made should also be sent to the Federal Communications Commission, Office of the Managing Director, Washington DC 20554. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632-7513.

OMB Number: None.

Title: 47 CFR 15.31(a)—Reporting and Recordkeeping Requirements for Radio Frequency Device Test Procedures (TP-6).

Action: New Collection.

Respondents: Businesses (including small businesses).

Frequency of Response: Recordkeeping and on occasion reporting.

Estimated Annual Burden: 450 responses; 6,750 total hours; 15 hours each.

Needs and Uses: Data gathered using these test procedures, and reported to the Commission or retained by the appropriate party, will be used by the Commission to determine compliance of the proposed equipment with the Commission's Rules.

Summary of the Notice of Proposed Rule Making

1. By this action, the Commission proposed to establish a new procedure for measuring electromagnetic emissions from intentional radiators with periodic operation and associated superregenerative receivers that operate under Part 15 of the Commissions' Rules. This new procedure, "FCC Procedure for measuring RF Emissions from Intentional Radiators with Periodic Operation and Associated Superregenerative Receivers, FCC/OET TP-6" (TP-6), is intended to set forth uniform methods for testing such devices for compliance with the technical standards adopted in the Commission's recent comprehensive revision of Part 15. The new procedure would replace the existing measurement procedure set forth in FCC publication "OST Bulletin MP-1" (MP-1).

2. In the *First Report and Order* in Docket No. 87-389 (Docket No. 87-389), the Commission, *inter alia*, revised a number of the technical standards that apply to periodic transmitters and their associated superregenerative receivers, including the limits on permissible line-conducted and radiated EME, the permissible bandwidth occupied by their fundamental signal, the permissible operating frequencies and the permissible frequency deviation. The Commission also established certain specifications for measuring RF devices for compliance with the Part 15 technical standards.

3. The new Part 15 rules permit the operation of new types of periodic transmitters for which new measurement procedures must be developed. In addition, the measurement procedures for the types of such devices authorized under the existing rules will need to be revised when the new Part 15 rules become effective. The measurement procedure TP-6 is resigned to address these needs for both new and modified test procedures. The proposed TP-6 would have the full force and effect of FCC regulations.

4. The proposed TP-6 specifies the test environment, test instrumentation, configuration of the equipment under test and instructions for setting up and performing measurements to be used in evaluating periodic intentional radiators and associated superregenerative receivers for compliance with Part 15 technical standards. Instructions are provided for measuring: (1) Line conducted EME; (2) receiver antenna conducted power measurements; (3) radiated EME; (4) transmitter bandwidth; (5) transmitter frequency stability; and (6) transmitter duty cycle. The proposed TP-6 also provides instructions for recording/reporting the test results.

5. Comments are requested on the degree to which the proposed measurement procedure would provide an effective means of evaluating periodic transmitters and associated receivers for compliance with the rules. Comments are also sought on the burden, in terms of both direct costs and time to complete tests, this procedure would impose on those who evaluate Part 15 periodic intentional radiators and associated superregenerative receivers. We invite suggestions for minimizing this burden in a manner that would not compromise the quality and consistency of the test measurements. In addition, comments are requested on whether the format of the test procedure is clear and whether the level of guidance furnished in the procedure is sufficient to permit the procedures to readily performed. Interested parties are requested to suggest changes which would improve the accuracy and repeatability of the test results when measurements are performed at different facilities.

6. In order to make the proposed test procedures more readily available and to clarify that they have the force of rules, the Commission intends to include the test procedures in its rules. The Commission welcomes comments on all aspects of the proposed test procedures and any other issues that may bear on the effectiveness of these procedures for safeguarding the radio frequency environment with the minimum burden on equipment suppliers. However, the Commission does not intend to consider comments that deal with issues that were previously decided or are being addressed in related proceedings. In particular, the Commission will not consider comments proposing changes in the technical standards for periodic transmitters and associated receivers.

Procedural Matters

7. Under the procedures set out in § 1.415 of the Commission's Rules, interested persons may file comments on or before (Date), 1989, and reply comments on or before (Date), 1989. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided such information or writing indicating the nature and source of such information is placed in the public file and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

8. In accordance with the provisions of § 1.419 of the Commission's Rules, formal participants shall file an original and five (5) copies of their comments and other materials. Participants wishing each Commissioner to have a copy of their comments should file an original and 11 copies. Members of the public who wish to express their comments are given the same consideration regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours at the Commission's Public Reference Room at its headquarters in Washington, DC.

9. This is a non-restricted notice and comment rule making proceeding. *See* 1.1231 of the Commission's rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

Initial Regulatory Flexibility Analysis

10. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the Commission's initial analysis is as follows:

I. *Need and purpose of this action.* The purpose of this proposed procedure is to set forth uniform methods for testing periodic transmitters and associated receivers for compliance with the recent comprehensive revision of Part 15 of the Commission's Rules adopted in the *First Report and Order* in GEN. Docket No. 87-389. Since the existing measurement procedures used to evaluate these devices are not satisfactory for evaluating devices under the revised rules, it is necessary to develop a new measurement procedure.

II. *The objectives.* Our objective in proposing this new measurement procedure for intentional radiators is to provide the basis for a consistent and repeatable test program for evaluating these devices for compliance with the newly revised rules.

III. *Legal basis.* The actions proposed herein are taken pursuant to the authority contained in sections 4(i), 301, 302, 303, 304, and 307 of the Communications Act of 1934, as amended.

IV. *Description of potential impact and number of small entities affected.* The Commission believes that the proposed measurement procedure will benefit manufacturers and test laboratories by speeding testing and reducing compliance costs. The proposed test procedure would modify the present procedures for measuring intentional radiators. Its adoption potentially would affect all manufacturers of intentional radiators and laboratories performing equipment authorization tests on such devices. However, the exact number of small entities affected is not known.

V. *Recording, record keeping and other compliance requirements.* The proposed measurement procedures would increase the reporting/record keeping requirements of parties responsible for Part 15 intentional radiators to the extent that the range of frequencies that must be measured has been increased slightly. However the format and content of the reporting/recording requirements has not been significantly modified.

VI. *Federal rules which overlap or conflict with this rule.* None.

VII. *Any significant alternates minimizing impact on small entities and consistent with the stated objectives.* None.

11. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

12. For further information on this proceeding, contact Hugh Van Tuyl, FCC Laboratory, 7435 Oakland Mills Road, Columbia, MD 21046, telephone (301) 725-1585. For further information concerning Part 15 of the Commission's Rules contact, FCC, Technical Standards Branch, Room 7122, 2025 M Street NW., Washington, DC 20554, telephone (202) 653-6288.

List of Subjects in 47 CFR Part 15

Radio frequency devices.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-15980 Filed 7-6-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 15

[General Docket 89-118; FCC 89-156]

RIN 3060-AD68

FCC Procedure for Measurement of Unintentional Radiators (Except Digital Devices and Devices Operating Below 30 MHz)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to establish a new procedure for measuring the electromagnetic emissions of unintentional radiators with periodic operation and associated superregenerative receivers that operate under Part 15 of its rules. This new procedure is necessary due to the changes in technical standards and measurement requirements for such devices that were adopted in the Commission's recent comprehensive revision of the Part 15 rules in GEN. Docket 87-389. In order to make the test procedure more readily available and to clarify that it has the force of rules, the Commission intends to include the test procedure in its rules.

DATES: Comments are due to be filed August 21, 1989. Reply Comments are due to be filed September 5, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Richard Fabina, telephone (301) 725-1585.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in GEN. Docket 89-118, adopted May 12, 1989, and released June 29, 1989. The full text of the Commission proposal, including the proposed test procedure, is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230) 1919 M Street NW., Washington, DC. The complete text of this proposal, including the proposed test procedure, may also be purchased from the Commission's copy contractors, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037.

The following collection of information contained in this proposed rule making has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Copies of the submission may be purchased from the Commission's copy contractor International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785. A copy of any comments made should also be sent to the Federal Communications Commission, Office of the Managing Director, Washington DC 20554. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632-7513

OMB Number: None.

Title: 47 CFR 15.31 (a)—Reporting and Recordkeeping Requirements for Radio Frequency Device Test Proocedure (TP-4)

Action: New Collection

Respondents: Businesses (including small businesses)

Frequency of Response: Recordkeeping and on occasion reporting

Estimated Annual Burden: 775 responses; 3700 recordkeepers; 67,125 total hours; 15 hours each

Needs and Uses: Data gathered using these test procedures, and reported to the Commission or retained by the appropriate party, will be used by the Commission to determine compliance of the proposed equipment with the Commission's Rules.

Summary of the Notice of Proposed Rule Making

1. By this action, the Commission proposes to establish a new procedure for measuring electromagnetic emissions from most unintentional radiators operating under Part 15 of the Commission's rules. This new procedure, "FCC Procedure for Measurement of Unintentional

Radiators (Except Digital Devices, and Devices Operating below 30 MHz) FCC/OET TP-4" (TP-4) is intended to set forth uniform testing methods for testing such devices for compliance with the technical standards adopted in the Commission's recent comprehensive revision of Part 15.

2. In the *First Report and Order* in GEN. Docket No. 87-389 (Docket No. 87-389) the Commission, *inter alia*, adopted new classifications for non-licensed RF devices permitted to operate under Part 15. One of the new classifications, unintentional radiators, includes devices that intentionally generate RF energy for use within the device or that send signals by conduction to associated equipment via connecting wires but which are not intended to emit RF energy by radiation or induction. Examples of unintentional radiators include radio and TV receivers, TV interface devices, and cable terminal devices. These devices were classified as restricted radiation devices under the former Part 15 rules.

3. In Docket No. 87-389, the Commission revised a number of the technical standards that apply to unintentional radiators, including the limits on permissible electromagnetic emissions (EME) from such devices. The Commission also specified certain requirements for measuring EME from such devices for the purpose of determining compliance with the rules. For example, the rules were amended to specify the use of instrumentation with peak, average and quasi-peak detector functions, extend the range of frequencies to be measured for EME to include frequencies above 1000 MHz, standardize the range of the scan height of the measuring receiver antenna at 1 to 4 meters and establish the measurement distance for most unintentional radiators at a uniform 3 meters.

4. The Commission currently employs several measurement procedures for evaluating Part 15 unintentional radiator devices for compliance with the rules. Emissions from TV interface devices and transfer switch characteristics are measured using OET Bulletin MP-3. The procedure for measurement of the UHF noise figure from TV receivers is set forth in OET Bulletin MP-2. Cable input selector switch isolation is measured using the procedures in OET Bulletin MP-9. Other types of unintentional radiators are tested using unpublished, but generally accepted methods for measuring line-conducted and radiated EME from RF devices.

5. The new Part 15 rules include revised operational standards and new measurement standards for most unintentional radiators which necessitate revision of the measurement procedures for such devices. The measurement procedure TP-4 is designed to address these needs for revisions to the Part 15 test procedures for unintentional radiators. The new procedure, which is presented in Appendix A, would provide measurement instructions for the majority of unintentional radiators. However, measurement of digital devices, CB Receivers, carrier current systems and cable isolation switches for compliance with the technical standards requires special procedures not applicable to other types of unintentional radiators. In addition, measurement of the UHF noise figure of TV receivers requires a special procedure. Measurement of these devices and TV UHF noise figure therefore will continue to be addressed in separate procedures.

6. The proposed TP-4 continues the existing practice of measuring TV receivers on all VHF channels and measuring the UHF oscillator frequencies of such receivers as required under § 15.31(n). This measurement requirement was not addressed in Docket No. 87-389, however, in reviewing this rule we believe that it may not be necessary to measure TV receivers this extensively. For example, it may be more desirable to measure TV receivers a fixed number of VHF and UHF channels. For example, measurements would be made on three VHF channels 2, 6, and 13 and three representative UHF channels 14, 39, and 69. We are considering changing § 15.31(n) of the rules to reduce the current testing burden and request comment on this procedure.

7. Comments are requested on the degree to which the proposed measurement procedure would provide an effective means of evaluating unintentional radiators for compliance with the rules. Comments are also sought on the burden, in terms of both direct costs and time to complete tests, this procedure would impose on those who evaluate unintentional radiators. The Commission invites suggestions for minimizing this burden in a manner that would not compromise the quality and consistency of the test measurements. In addition, comments are requested on whether the format of the test procedure is clear and whether the level of guidance furnished in the procedure is sufficient to permit the procedures to readily performed. Interested parties are requested to suggest changes which would improve the accuracy and repeatability of the test results when measurements are performed at different facilities.

8. In order to make the proposed test procedures more readily available and to clarify that they have the force of rules, the Commission intends to include the test procedures in its rules. The Commission welcomes comments on all aspects of the proposed test procedures, and any other issues that may bear on the effectiveness of these procedures for safeguarding the radio frequency environment with the minimum burden on equipment suppliers. However, it does not intend to consider comments that deal with issues that were previously decide or are being addressed in related proceedings. In particular, it will not consider comments proposing changes in the technical standards for unintentional radiators.

Procedural Matters

9. Under the procedures set out in § 1.415 of the Commission's rules, interested persons may file comments on or before (Date), 1989, and reply comments on or before (Date), 1989. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided such information or writing indicating the nature and source of such information is placed in the public file and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

10. In accordance with the provisions of § 1.419 of the Commission's rules, formal participants shall file an original and five (5) copies of their comments and other materials. Participants wishing each Commission to have a copy of their comments should file an original and 11 copies. Members of the public who wish to express their comments are given the same consideration regardless of the numbers of copies submitted. All documents will be available for public inspection during regular business hours at the Commission's Public Reference Room at its headquarters in Washington, DC.

11. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contracts.

Initial Regulatory Flexibility Analysis

12. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the Commission's initial analysis is as follows:

I. *Need and purpose of this action.* The purpose of this proposed procedure is to set forth uniform methods for testing periodic transmitters and associated receivers for compliance with the recent comprehensive revision of Part 15 of the Commission's rules adopted in the *First Report and Order* in GEN. Docket No. 87-389. Since the existing measurement procedures used to evaluate these devices are not satisfactory for evaluating devices under the revised rules, it is necessary to develop a new measurement procedure.

II. *The objectives.* Our objective in proposing this new measurement procedure for unintentional radiators is to provide the basis for a consistent and repeatable test program for evaluating these devices for compliance with the new revised rules.

III. *Legal basis.* The actions proposed herein are taken pursuant to the authority contained in sections 4(i), 301, 302, 303, 304, and 307 of the Communications Act of 1934, as amended.

IV. *Description of potential impact and number of small entities affected.* The Commission believes that the proposed measurement procedure will benefit manufactures and test laboratories by speeding testing and reducing compliance costs. The proposed test procedure would modify the present procedures for measuring unintentional radiators. Its adoption potentially would affected all manufacturers of unintentional radiators and laboratories performing equipment authorization tests on such devices. However, the exact number of small entities affected is not known.

V. *Recording, record keeping and other compliance requirements.* The proposed measurement procedures would increase the reporting/record keeping requirements of parties responsible for Part 15 unintentional radiators to the extent that the range of frequencies that must be measured has been increased slightly. However, the format and content of the reporting/recording requirements has not be significantly modified.

VI. *Federal rules which overlap or conflict with this rule.* None.

VII. *Any significant alternates minimizing impact on small entities and consistent with the stated objectives.* None.

13. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the office of Management and Budget as prescribed by the Act.

14. For further information on this proceeding, contact Hugh Van Tuyle, FCC Laboratory, 7435 Oakland Mills Road, Columbia, MD 21046, telephone (301) 725-1585. For further information concerning Part 15 of the Commissions rules contact, FCC, Technical Standards Branch, Room 7122, 2025 M Street NW., Washington DC 20554, telephone (202) 653-6288.

List of Subjects in 47 CFR, Part 15

Radio frequency devices.

Federal Communications Commission,
Donna R. Searcy,
Secretary.

[FR Doc. 89-15982 Filed 7-6-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-298, RM-6703]

Radio Broadcasting Services; Decorah, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Decorah Radio, Inc. seeking the substitution of Channel 263C2 for Channel 265A at Decorah, Iowa, and the modification of its permit for Station KRDI-FM to specify the higher powered channel. Channel 263C2 can be allotted to Decorah in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.9 kilometers (1.8 miles) north to accommodate petitioner's desired site.

DATES: Comments must be filed on or before August 21, 1989, and reply comments on or before September 5, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dennis F. Begley, Esq., Reddy, Begley & Martin, 2033 M Street, NW., Suite 500, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-298, adopted June 15, 1989, and released June 30, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission
Karl A. Kensinger,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-15983 Filed 7-6-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-300, RM-6708]

Radio Broadcasting Services; York, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Gleason Bradcasting Company, Inc. seeking the substitution of Channel 285C2 for Channel 285A at York, Nebraska, and the modification of its license for Station KAWL-FM to specify operation on the higher powered channel. Channel 285C2 and be allotted to York in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.0 kilometers (3.1 miles) southwest to avoid a short-spacing to Station KTCH-FM, Wayne, Nebraska, and to accommodate petitioner's desired transmitter site. The coordinates for this allotment are North Latitude 40-49-51 and West Longitude

97-37-06. In accordance with § 1.402(g) of the Commission's Rules, we shall not accept competing expressions of interest in use of the channel of York or require the petitioner to demostrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before August 21, 1989, and reply comments on or before September 5, 1989.

ADDRESS: Federal Communications Comission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Anne Thomas Paxson, Esq., Bechtel, Borsari, Cole & Paxson, 2101 L Street, NW., Suite 502, Washington, DC 20037 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-300, adopted June 15, 1989, and released June 30, 1989. The full text of this Commission decision is available for inspection and copying during normal hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. the complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR 73

Radio broadcasting.

Federal Communications Commission

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-15984 Filed 7-6-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-299, RM-6696]

Radio Broadcasting Services; Lopez, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Robin B. Thomas seeking the allotment of Channel 233A to Lopez, Pennsylvania, as its first local FM service. Petitioner is requested to furnish additional information to demonstrate that Lopez is a community for allotment purposes. Channel 233A can be allotted to Lopez in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 41-27-28 and West Longitude 76-20-00. Canadian concurrence is required since Lopez is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before August 21, 1989, and reply comments on or before September 5, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robin B. Thomas, R.D. 1, Box 114A, Muncy, Pennsylvania 17756 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-299, adopted June 15, 1989, and released June 30, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (20) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-15985 Filed 7-6-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 512

[Docket No. 78-10; Notice 9]

RIN 2127-AC95

Confidential Business Information

AGENCY: National Highway Traffic Safety Administration, Department of Transportation.

ACTION: Notice of proposed rulemaking and response to a petition for rulemaking.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) is proposing to revise its existing regulation contained in 49 CFR Part 512—Confidential Business Information. Revisions to the existing regulation are necessary to ensure efficient processing and proper protection of business information received by NHTSA. This action is intended to clarify certain provision, to revise certain sections to conform to statutory and case law, to include additional class determinations and to respond to a petition from General Motors Corporation recommending that the agency consider adding a presumptive class determination. The agency requests comments on the proposed changes discussed in this notice.

DATE: Comments must be received by August 21, 1989.

ADDRESS: Comments should refer to the docket and notice numbers set forth above and be submitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. Docket hours are from 8 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. E. William Fox, Office of the Chief Counsel, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366-1834.

SUPPLEMENTARY INFORMATION: NHTSA published Part 512, entitled "Confidential Business Information," a final rule on June 7, 1982, 47 FR 24587. This regulation has not been amended or revised since that time.

The agency believes that the procedures for submitting confidential business information have generally worked well since 1982, but practical experience in processing this information has shown that some improvements and clarifications should be considered. The modifications being proposed are described below.

Assertion of Claim

The agency is proposing to require that submitters of allegedly confidential business information submit two copies of the documents containing such information instead of one. This proposed amendment to § 512.4(a)(4) of the regulation would permit the agency's technical staff to utilize one copy of the information while the second copy is being evaluated by the Chief Counsel pursuant to the submitter's claim for confidentiality. Since the submitted material is being reproduced for the agency by the submitter in the first instance, the agency believes that the submitter is in a better position to make a second copy initially than is the agency after the material has been received. This change will expedite the processing of confidentiality requests at the agency and constitute a minimal burden upon the submitter.

This proposal excepts blueprints from the requirement for two copies because (1) the current regulation presumptively determines that the disclosure of blueprints will likely result in competitive harm; and (2) blueprints are generally bulky and difficult to copy without extra expense and effort. The presumption normally allows for expedited processing of claims for confidentiality relating to blueprints which makes the extra expense and effort for copying them unnecessary.

The Claim of Confidentiality for Privileged Information

The agency is proposing to insert the term "privileged" in § 512.4(b)(3)(i) and § 512.5. These proposed changes would modify the regulation to conform more closely to the language of Exemption 4 of the Freedom of Information Act (the "Act"), 5 U.S.C. 552(b)(4). Although the term "privileged" was omitted from the original regulation, the agency has consistently followed the applicable judicial decisions construing the Act, which includes this term. This amendment will permit the agency to avoid the appearance of being unwilling to consider future claims for confidential treatment based solely upon "privilege," as such claims may be recognized under applicable case law.

Impairment of Protectable Government Interests

Courts have determined that in some instances business information may be protected from disclosure in order to protect an identifiable government interest, *9 to 5 Organization for Women Office Workers* v. *Board of Governors of the Federal Reserve System*, 721 F.2d 1 (1st Cir. 1983); *National Parks & Conservation Association* v. *Morton*, 498 F.2d 765, 770 n. 17 (D.C. Cir. 1974). The agency proposes to add § 512.5(c) in recognition of this additional consideration. This proposed change would also be reflected in § 512.4(b)(3)(viii).

Submitter's Supporting Certification

Under the current regulation, submitters of allegedly confidential information must submit a certification that a diligent inquiry has been made to insure that the information has not been disclosed, or appeared publicly. Appendix A to the regulation requires that the certification take the form of an affidavit. NHTSA believes that it is important for submitters to make special inquiries about the nature of the information being submitted to avoid the making of frivolous claims. However, the use of an affidavit may be unduly burdensome for many submitters since the same purposes may be affected through the use of a certification which need not be notarized. See 28 U.S.C. 1746 and 18 U.S.C. 1001. Accordingly, the agency proposes to replace the form of affidavit in Appendix A with a form of certification. Nevertheless, the agency would continue to accept affidavits which contain the statements contained in the proposed Appendix A.

Reconsideration Request Procedures

A new section, § 512.7, entitled "Petitions for reconsideration upon denial of a request for confidential treatment," is proposed, and § 512.6 is reorganized. This new section provides for essentially the same procedures established by the present regulation at § 512.6(g), but the agency believes that the new provisions clarify questions that may arise concerning specific issues, such as extension requests and notification to the submitter of the agency's decision. Proposed § 512.7(a) provides specifically that determinations responding to petitions for reconsideration will be administratively final. To insure that submitters have a full opportunity to present their justification to the agency, we propose to remove the limitation that petitions may be based only upon information or arguments not available at the time of the original request. Nevertheless, we continue to encourage submitters to include all relevant information with the initial submission to avoid unnecessary correspondence and duplicative work.

New Class Determinations

The agency proposes to add new class determinations in Appendix B to the types of information that would presumptively be likely to result in substantial competitive harm if publicly disclosed. Based upon the agency's experience with the regulation over the past six years, it is proposed that the presumptions apply to projected production as well as sales figures for vehicles. Protection will be granted only until the end of the model year to which the information pertains because experience has shown that vehicle figures become available through public sources, such as trade publications, at that time.

The agency also tentatively concludes that protection for model specific product plans should be revised. Confidential treatment of product plans under the agency's proposal would be limited to the beginning of the applicable model year since product plans lose their competitive value once the product line is introduced.

Submitters would continue to be required under the proposed regulation, § 512.4(i) (currently § 512.4(h)) to notify the agency of any information, previously determined to be confidential, which becomes publicly available, as well as to submit the certification required under § 512.4(e).

NHTSA has received a petition from General Motors Corporation to amend the class determinations in Appendix B to include cost information as a type of information that would presumptively be likely to result in substantial competitive harm if disclosed to the public. The following language was suggested:

> Cost information relating to any aspect of product cost, including but not limited to purchased material costs, labor costs, equipment costs, and wholesale parts costs.

In the petition, General Motors cites several judicial decisions in which

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various types of costs have been protected from disclosure and states that the agency typically grants confidential treatment for manufacturers' cost information. They conclude that it is, therefore, a needless use of both manufacturer and agency resources to require the manufacturer to substantiate, and the agency to review, each claim for confidential treatment relating to cost information. The General Motors petition has been placed in the public docket.

NHTSA agrees that the agency has generally withheld actual detailed cost information pursuant to Exemption 4 of the Freedom of Information Act, especially as such data relate to development, distribution and product. However, we are concerned that General Motors' proposed language may be overbroad because it does not distinguish between general cost estimates or ranges of cost and specific actual cost data directly relating to the product. Moreover, certain kinds of cost information may already be in the public domain or otherwise be widely disseminated among the retail automobile dealerships of the company so that any confidentiality claim would be effectively compromised.

Nevertheless, we would like to receive comments from the public on the General Motors proposal. We especially invite suggestions on how, if at all, a class determination could be drafted in a way that avoids impermissively broad language, without enumerating many detailed examples of confidential cost information which have been approved by the courts.

Miscellaneous Revisions

Revisions to other portions of the regulation have been proposed in order to provide a clearer and more effective presentation. We have also attempted to remove provisions that have become obsolete or have proved to be superfluous.

We propose to remove references in the regulation to the term "significant competitive damage," which is contained in Title V of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2001 *et seq.*, and to incorporate the phrase into the definition of "substantial competitive harm" in § 512.3.

The proposal would also simplify portions of § 512.6 pertaining to the timing of agency determinations and specifically provide that documents purged of allegedly confidential information be placed directly in appropriate public files or dockets.

In § 512.4(j) (currently § 512.4(i)) the agency proposes to remove the provision that the agency shall deny claims for confidential treatment that do not include the certification required by § 512.4(e) because such a requirement is unnecessarily harsh. The agency tentatively concludes that it is sufficient that noncompliance with any of the provisions in § 512.4 may result in a denial of a claim for confidential treatment.

The agency has determined that, under the current regulation, submitters may technically rely on the presumptive class determinations in Appendix B in order to obtain more than two decisions from the Chief Counsel relating to their claim for confidential treatment. This is discriminatory to other submitters, and there is potential for abuse of the process by making intentionally erroneous presumptive classification claims. Therefore, the agency proposes that the additional time granted to a submitter who relies on a class determination be removed from § 512.4(c)(2)(ii), and that, like everyone else, such submitter receive only one opportunity for reconsideration.

The agency also tentatively concludes that the definition relating to voluntary submissions in § 512.5(a)(2) of the current regulation should be changed to reflect more accurately the case law. The agency proposes to amend the language of § 512.5(b) so that any apparent conflict between the regulation and the applicable judicial decisions is removed. Whether future submissions of information could be compelled is only a factor to be considered in deciding if governmental access to information will be impaired by disclosure, but it is not necessarily dispositive. *Public Citizen Health Research Group* v. *FDA*, 704 F.2d 1280, 1291 n. 29 (D.C. Cir. 1983); *Washington Post Co.* v. *HHS*, 690 F.2d 252 (D.C. Cir. 1982).

Finally, we propose to combine the sections currently numbered as §§ 512.8 and 512.10 into § 512.9 of the regulation since both sections relate to the conditions under which information claimed or determined to be confidential may be released.

Comments

Interested persons are invited to comment on this proposal. All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15 page limit. (49 CFR 553.21.) This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

Written comments to the public docket must be received by August 21, 1989.

All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. NHTSA will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Copies of all comments will be placed in Docket 78–10; Notice 9 of the NHTSA Docket Section in Room 5109, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Federalism Assessment

The agency has considered whether this action would have any federalism implications. We have determined that this proposal would not have any impact upon the principles of federalism.

Economic and Other Effects

NHTSA has analyzed the effect of this action and has determined that it is not "major" within the meaning of Executive Order 12291 or "significant" within the meaning of Department of Transportation regulatory policies and procedures. The proposed amendments would have a minimal effect on submitters of alleged confidential information to the agency. This determination has been made because the regulation is essentially procedural. It will not have an appreciable impact on the cost of seeking confidential treatment for data submitted to the agency. It will also not have an appreciable impact on what information is or is not accorded confidential protection. Therefore, neither a draft Regulatory Analysis nor a Preliminary Evaluation is required.

In compliance with the Regulatory Flexibility Act, the agency has evaluated the effects of this rule on small entities. For the reasons stated above, I certify that this rule would not have a significant economic impact on a substantial number of small entities. Accordingly, the preparation of an Initial Regulatory Flexibility Analysis is unnecessary.

The requirements of Part 512 are considered to be information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. Accordingly, the existing requirements of Part 512 have been submitted to and approved by OMB pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements have been approved through June 30, 1989. Under this proposed revision these requirements remain collection requirements within the meaning published in 5 CFR Part 1320, and a request for continued approval is being submitted to OMB concurrently with this notice.

The agency has also analyzed this action for the purpose of the National Environmental Policy Act. The agency has determined that this action would not have any effect on the human environment.

List of Subjects in 49 CFR Part 512

Administrative practice and procedure, Confidential business information, Freedom of information, Motor vehicle safety, Reporting and recordkeeping requirements.

In accordance with the foregoing, NHTSA proposes the revision of Part 512 of Title 49 of the Code of Federal Regulations as follows:

PART 512—CONFIDENTIAL BUSINESS INFORMATION

Sec.
512.1 Purpose and scope.
512.2 Applicability.
512.3 Definitions.
512.4 Asserting a claim for confidential treatment of information.
512.5 Substantive standards for affording confidential treatment.
512.6 Determination of confidential treatment.
512.7 Petitions for reconsideration upon denial of a request for confidential treatment.
512.8 Modification of confidentiality determinations.
512.9 Release of confidential business information.
512.10 Class determinations.

Appendix A to Part 512—Certificate In Support of Request for Confidentiality

Appendix B to Part 512—Class Determinations

Appendix C to Part 512—OMB Clearance

Authority: 49 U.S.C. 322; 5 U.S.C. 552; 15 U.S.C. 1401; 15 U.S.C. 1402; 15 U.S.C. 1407; 15 U.S.C. 1418; 15 U.S.C. 1914; 15 U.S.C. 1944; 15 U.S.C. 1990d; 15 U.S.C. 2005; 15 U.S.C. 2029; delegation of authority at 49 CFR 1.50.

§ 512.1 Purpose and scope.

The purpose of this part is to establish the procedure by which NHTSA will consider claims that information submitted to the agency, or which the agency otherwise obtains, is confidential business information, as described in 5 U.S.C. 552(b)(4).

§ 512.2 Applicability.

(a) This part applies to all information which is submitted to NHTSA, or which NHTSA otherwise obtains, except as provided in paragraph (b) of this section.

(b) Information received as part of the procurement process is subject to the Federal Acquisition Regulation, 48 CFR, Chapter 1, as well as this part. In any case of conflict between the Federal Acquisition Regulation and this part, the provisions of the Federal Acquisition Regulation prevail.

§ 512.3 Definitions.

"Administrator" means the Administrator of the National Highway Traffic Safety Administration.

"Chief Counsel" means the Chief Counsel of the National Highway Traffic Safety Administration.

"Confidential business information" means information described in 5 U.S.C. 552(b)(4).

"NHTSA" means the National Highway Traffic Safety Administration.

"Substantial competitive harm" encompasses "significant competitive damage" under Title V of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2001 *et seq.*

§ 512.4 Asserting a claim for confidential treatment of information.

(a) Any person submitting information to NHTSA and requesting that the information be withheld from public disclosure as confidential business information shall:

(1) Stamp or mark "confidential," or some other term which clearly indicates the presence of information claimed to be confidential, on the top of each page containing information claimed to be confidential.

(2) On each page marked in accordance with paragraph (a)(1) of this section, mark each item of information which is claimed to be confidential with brackets "[ ]".

(3) If an entire page is claimed to be confidential, indicate clearly that the entire page is claimed to be confidential.

(4) Submit two copies of the documents containing allegedly confidential information (except only one copy of blueprints) and one copy of the documents from which information claimed to be confidential has been deleted to the Office of Chief Counsel, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street SW., Washington, DC 20590. Include the name, address, and telephone number of a representative for receipt of a response from the Chief Counsel under this part.

(5) If a document containing information claimed to be confidential is submitted in connection with an investigation or proceeding, a rulemaking action, or pursuant to a reporting requirement, for which there is a public file or docket, simultaneously submit to the appropriate NHTSA official a copy of the document from which information claimed to be confidential has been deleted. This copy will be placed in the public file or docket pending the resolution of the claim for confidential treatment.

(b) (1) When submitting each item of information marked confidential in accordance with paragraph (a) of this section, the submitter shall also submit to the Office of the Chief Counsel information supporting the claim for confidential treatment in accordance with paragraph (b)(3) and paragraph (e) of this section.

(2) If submission of the supporting information is not possible at the time the allegedly confidential information is submitted, a request for an extension of time in which to submit the information, accompanied by an explanation describing the reason for the extension and the length of time needed, must be submitted. The Chief Counsel shall determine the length of the extension. The recipient of an extension shall submit the supporting information in accordance with the extension determination made by the Chief Counsel and paragraph (b)(3) of this section.

(3) The supporting information must show:

(i) That the information claimed to be confidential is a trade secret, or commercial or financial information that is privileged or confidential.

(ii) Measures taken by the submitter of the information to ensure that the information has not been disclosed or otherwise made available to any person, company, or organizataion other than the submitter of the information.

(iii) Insofar as is known by the submitter of the information, the extent to which the information has been disclosed, or otherwise become available, to persons other than the submitter of the information, and why such disclosure or availability does not compromise the confidential nature of the information.

(iv) Insofar as is known by the submitter of the information, the extent to which the information has appeared publicly, regardless of whether the

submitter has authorized that appearance or confirmed the accuracy of the information. The submitter must include citations to such public appearances, and an explanation of why such appearances do not compromise the confidential nature of the information.

(v) Prior determinations of NHTSA or other Federal agencies or Federal courts relating to the confidentiality of the submitted information, or similar information possessed by the submitter including class determinations under this part. The submitter must include any written notice or decision connected with any such prior determination, or a citation to any such notice or decision, if published in the **Federal Register**.

(vi) Whether the submitter of the information asserts that disclosure would be likely to result in substantial competitive harm, what the harmful effects of disclosure would be, why the effects should be viewed as substantial, and the casual relationship between the effects and disclosure.

(vii) If information is voluntarily submitted, within the meaning of § 512.5(b), why disclosure by NHTSA would be likely to impair NHTSA's ability to obtain similar information in the future.

(viii) Whether the submitter of the information asserts that disclosure would be likely to impair other protectable government interests, what the effect of disclosure is likely to be and why disclosure is likely to impair such interests.

(ix) The period of time for which confidentiality is claimed (permanently or until a certain date or until the occurrence of a certain event) and why earlier disclosure would result in the harms set out in paragraphs (b)(2)(vi), (vii) or (viii) of this section.

(c) If any element of the showing to support a claim for confidentiality required under paragraph (b)(3) of this section is presumptively established by a class determination, as issued pursuant to § 512.10, affecting the information for which confidentiality is claimed, the submitter of information need not establish that element again.

(d) Information in support of a claim for confidentiality submitted to NHTSA under paragraph (b) of this section must consist of objective data to the maximum extent possible. To the extent that opinions are given in support of a claim for confidential treatment of information, the submitter of the information shall submit in writing to NHTSA the basis for the opinions, and the name, title and credentials showing the expertise of the person supplying the opinion.

(e) The submitter of information for which confidential treatment is requested shall submit to NHTSA with the request a certification in the form set out in Appendix A from the submitter or an agent of the submitter that a diligent inquiry has been made to determine that the information has not been disclosed, or otherwise appeared publicly, except as indicated n accordance with paragraphs (b)(3)(iii) and (iv) of this section.

(f) A single submission of supporting information, in accordance with paragraph (b) of this section, may be used to support a claim for confidential treatment of more than one item of information claimed to be confidential. However, general or nonspecific assertions or analysis may be insufficient to form an adequate basis for the agency to find that information may be afforded confidential treatment, and may result in the denial of a claim for confidentiality.

(g) Where confidentiality is claimed for information obtained by the submitter from a third party, such as a supplier, the submitter of the information is responsible for obtaining all information and a certification from the third party necessary to comply with paragraphs (b), (d), and (e) of this section.

(h) Information received by NHTSA that is identified as confidential and whose claim for confidentiality is submitted in accordance with this section will be kept confidential until a determination of its confidentiality is made under § 512.6 of this part. Such information will not be publicly disclosed except in accordance with this part.

(i) A submitter of information shall promptly amend supporting information provided under paragraphs (b) or (e) of this section if the submitter obtains information upon the basis of which the submitter knows that the supporting information was incorrect when provided, or that the supporting information, though correct when provided, is no longer correct and the circumstances are such that a failure to amend the supporting information is in substance a knowing concealment.

(j) Noncompliance with this section may result in a denial of a claim for confidential treatment of information. Noncompliance with paragraph (i) of this section may subject a submitter of information to civil penalties.

(1) If the submitter fails to comply with paragraph (a) of this section at the time the information is submitted to NHTSA so that the agency is not aware of a claim for confidentiality, or the scope of a claim for confidentiality, the claim for confidentiality may be waived unless the agency is notified of the claim before the information is disclosed to the public. Placing the information in a public docket or file is disclosure to the public within the meaning of this part, and any claim for confidential treatment of information disclosed to the public may be precluded.

(2) If the submitter of the information does not provide all of the supporting information required in paragraphs (b)(3) and (e) of this section, or if the information is insufficient to establish that the information may be afforded confidential treatment under the substantive tests set out in § 512.5, a request that such information be afforded confidential protection may be denied. The Chief Counsel may notify a submitter of information of inadequacies in the supporting information, and may allow the submitter additional time to supplement the showing, but is under no obligation to provide either notice or additional time to supplement the showing.

§ 512.5 Substantive standards for affording confidential treatment.

Information submitted to or otherwise obtained by NHTSA may be afforded confidential treatment if it is a trade secret, or commercial or financial information that is privileged or confidential. Information is considered to be confidential when:

(a) Disclosure of the information would be likely to result in substantial competitive harm to the submitter of the information; or

(b) The information was voluntarily submitted, and failure to afford the information confidential treatment would impair the ability of NHTSA to obtain similar information in the future. Information whose production NHTSA could not compel by compulsory process may be considered to be voluntarily submitted information within the meaning of this part; or

(c) Disclosure of the information would be likely to impair other protectable government interests.

§ 512.6 Determination of confidential treatment.

(a) The decision as to whether an item of information shall be afforded confidential treatment under this part is made by the Office of Chief Counsel.

(b) Copies of documents submitted to NHTSA under § 512.4(a)(5), from which information claimed to be confidential or privileged has been deleted, are placed in the public file or docket pending the resolution of the claim for confidential treatment.

(c) When information claimed to be confidential or privileged is requested under the Freedom of Information Act, the determination of confidentiality is made within ten working days after NHTSA receives such a request, or within twenty working days in unusual circumstances as provided under 5 U.S.C. 522(a)(6).

(d) For information not requested pursuant to the Freedom of Information Act, the determination of confidentiality is made within a reasonable period of time at the discretion of the Chief Counsel.

(e) The time periods prescribed in paragraph (c) of this section may be extended by the Chief Counsel for good cause shown on the Chief Counsel's own motion, or on request from any person. An extension is made only in accordance with 5 U.S.C. 552, and is accompanied by a written statement setting out the reasons for the extension.

(f) If the Chief Counsel believes that information which a submitter of information asserts to be within a class of information set out in Appendix B is not within that class, the Chief Counsel:

(1) Notifies the submitter of the information that the information does not fall within the class as claimed, and briefly explains why the information does not fall within the class; and

(2) Renders a determination of confidentiality in accordance with paragraph (g) of this section.

(g) A person submitting information to NHTSA with a request that the information be withheld from public disclosure as confidential or privileged business information is given notice of the Chief Counsel's determination regarding the request as soon as the determination is made.

(1) If a request for confidentiality is granted, the submitter of the information is notified in writing of that determination and of any appropriate limitations.

(2) If a request for confidentiality is denied in whole or in part, the submitter of the information is notified in writing of that decision, and is informed that the information will be made available to the public not less than ten working days after the submitter of the information has received notice of the denial of the request for confidential treatment, if practicable, or some earlier date if the Chief Counsel determines in writing that the public interest requires that the information be made available to the public on such earlier date. The written notification of a denial specifies the reasons for denying the request.

(h) There will be no release of information processed pursuant to this section until the Chief Counsel advises the appropriate office(s) of NHTSA that the confidentiality decision is final according to this section, § 512.7 or § 512.9.

§ 512.7 Petitions for reconsideration upon denial of a request for confidential treatment.

(a) A submitter of information whose request for confidential treatment is denied may petition for reconsideration of that denial. Petitions for reconsideration must be addressed to and received by the Office of Chief Counsel prior to the date on which the information would otherwise be made available to the public. The determination by the Chief Counsel upon such petition for reconsideration shall be administratively final.

(b) If submission of a petition for reconsideration is not feasible by the date on which the information would otherwise be made available to the public, a request for an extension of time in which to submit a petition, accompanied by an explanation describing the reason for the request and the length of time needed, must be received by the Office of Chief Counsel by that date. The Chief Counsel determines whether to grant or deny the extension and the length of the extension.

(c) Upon receipt of a petition or request for an extension, the Chief Counsel shall postpone making the information available to the public in order to consider the petition, unless the Chief Counsel determines in writing that disclosure would be in the public interest.

(d) If a petition for reconsideration is granted, the petitioner is notified in writing of that determination and of any appropriate limitations.

(e) If a petition for reconsideration is denied in whole or in part or a request for an extension for additional time to submit a petition for reconsideration is denied, the petitioner is notified in writing of that denial, and is informed that the information will be made available to the public not less than ten working days after the petitioner has received notice of the denial of the petition, if practicable, or some earlier date if the Chief Counsel determines in writing that the public interest requires that the information be made available to the public on such earlier date. The written notification of a denial specifies the reasons for denying the petition.

§ 512.8 Modification of confidentiality determinations.

(a) A determination that information is confidential or privileged business information remains in effect in accordance with its terms, unless modified by a later determination based upon:

(1) Newly discovered or changed facts,

(2) A change in the applicable law,

(3) A class determination under § 512.10, or

(4) A finding that the prior determination is clearly erroneous.

(b) If NHTSA believes that an earlier determination of confidentiality should be modified based on one or more of the factors listed in paragraphs (a)(1) through (a)(4) of this section, the submitter of the information is notified in writing that NHTSA has modified its earlier determination and of the reasons for that modification, and is informed that the information will be made available to the public in not less than ten working days from the date of receipt of notice under this paragraph. The submitter may seek reconsideration of the modification pursuant to § 512.7.

§ 512.9 Release of confidential business information.

(a) Information that has been claimed or determined to be confidential business information under §§ 512.4, 512.6 and 512.7 may be disclosed to the public by the Administrator notwithstanding such determination or claim if disclosure would be in the public interest as follows:

(1) Information obtained under Part A, Subchapter I of the National Traffic and Motor Vehicle Safety Act, relating to the establishment, amendment, or modification of Federal motor vehicle safety standards, may be disclosed when relevant to a proceeding under that part.

(2) Information obtained under Part B, Subchapter I of the National Traffic and Motor Vehicle Safety Act, relating to motor vehicle safety defects, and failures to comply with applicable motor vehicle safety standards, may be disclosed if the Administrator determines that disclosure is necessary to carry out the purposes of the Act.

(3) Information obtained under Title I, V or VI of the Motor Vehicle Information and Cost Savings Act may be disclosed when that information is relevant to a proceeding under the title under which the information was obtained.

(b) No information is disclosed under this section unless the submitter of the information is given written notice of the Administrator's intention to disclose information under this section. Written notice is normally given at least ten working days before the day of release, although the Administrator may provide

shorter notice if the Administrator finds that such shorter notice is in the public interest. The notice under this paragraph includes a statement of the Administrator's reasons for determining to disclose the information, and affords the submitter of the information an opportunity to comment on the contemplated release of information. The Administrator may also give notice of the contemplated release of information to other persons, and may allow these persons the opportunity to comment. When a decision is made to release information pursuant to this section, the Administrator will consider ways to make the release with the least possible adverse effects to the submitter.

(c) Notwithstanding any other provision of this part, information which has been determined or claimed to be confidential business information, may be released:

(1) To Congress;

(2) Pursuant to an order of a court with valid jurisdiction;

(3) To the Office of the Secretary, United States Department of Transportation and other Executive branch offices or other Federal agencies in accordance with applicable laws;

(4) With the consent of the submitter of the information;

(5) To contractors, if necessary for the performance of a contract with the Administration. In such instances, the contract limits further release of the information to named employees of the contractor with a need to know and provides that unauthorized release constitutes a breach of the contract for which the contractor may be liable to third parties.

§ 512.10 Class determinations.

(a) The Chief Counsel may issue a class determination relating to confidentiality under this section if the Chief Counsel determines that one or more characteristics common to each item of information in that class will in most cases necessarily result in identical treatment of each item of information under this part, and that it is appropriate to treat all such items as a class for one or more purposes under this part. The Chief Counsel obtains the concurrence of the Office of the General Counsel, United States Department of Transportation, for any class determination that has the effect of raising the presumption that all information in that class is eligible for confidential treatment. Class determinations are published in the **Federal Register**.

(b) A class determination clearly identifies the class of information to which it pertains.

(c) A class determination may state that all of the information in the class:

(1) Is or is not governed by a particular section of this part, or by a particular set of substantive criteria under this part.

(2) Fails to satisfy one or more of the applicable substantive criteria, and is therefore ineligible for confidential treatment,

(3) Satisfies one or more of the applicable substantive criteria, and is therefore eligible for confidential treatment, or

(4) Satisfies one of the substantive criteria during a certain period of time, but will be ineligible for confidential treatment thereafter.

(d) Class determinations will have the effect of establishing rebuttable presumptions, and do not conclusively determine any of the factors set out in paragraph (c) of this section.

Appendix A to Part 512—Certificate in Support of Request for Confidentiality

I, _____, pursuant to the provisions of 49 CFR 512, state as follows:

(1) I am (official) and I am authorized by (company) to execute documents on behalf of (company):

(2) The information contained in (pertinent document[s]) is confidential and proprietary data and is being submitted with the claim that it is entitled to confidential treatment under 5 U.S.C. 552(b)(4) (as incorporated by reference in and modified by the statute under which the information is being submitted.)

(3) I have personally inquired of the responsible (company) personnel who have authority in the normal course of business to release the information for which a claim of confidentiality has been made to ascertain whether such information has ever been released outside (company).

(4) Based upon such inquiries, to the best of my knowledge the information for which (company) has claimed confidential treatment has never been released or become available outside (company) except as hereinafter specified:

(5) I make no representations beyond those contained in this certificate and in particular I make no representations as to whether this information may become available outside (company) because of unauthorized or inadvertent disclosure except as stated in Paragraph 4; and

(6) I certify under penalty of perjury that the foregoing is true and correct. Executed on this the _____. (If executed outside of the United States of America: I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.)

(signature of official)

Appendix B to Part 512—Class Determinations

The Administration has determined that the following types of information would presumptively be likely to result in substantial competitive harm if disclosed to the public:

(1) Blueprints and engineering drawings containing process of production data where the subject could not be manufactured without the blueprints of engineering drawings except after significant reverse engineering;

(2) Future model specific product plans (to be protected only until the beginning of the model year to which the information pertains);

(3) Model specific projections of future vehicle production or sales figures (to be protected only until the end of the model year to which the information pertains).

Appendix C to Part 512—OMB Clearance

The OMB clearance number for this regulation is _____.

Issued on July 3, 1989.

Jeffrey R. Miller,

Acting Administrator, National Highway Traffic Safety Administration.

[FR Doc.89-16026 Filed 7-3-89; 4:16 pm]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 54, No. 129
Friday, July 7, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

June 30, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection: (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contract person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Extension

• *Forest Service*

36 CFR 228 Subpart A—Locatable Minerals (National Forests Surface Use under U.S. Mining Laws)
None
On occasion
Individuals or households; Businesses or other for-profit; Small businesses or organizations; 10,313 responses; 20,626 hours; not applicable under 3504(h)
Norman F. Day (703) 235-9784

• *Forest Service*

Application for Permit Non-Federal Commercial Use of Roads Restricted by Order
FS-7700-40
On occasion
State or local governments; Farms; Businesses or other for-profit; Small businesses or organizations; 2,000 responses; 500 hours; not applicable under 3504(h)
T. Zeally (703) 235-3122

• *Foreign Agricultural Service*

Request for Vessel Approval/Request for Vessel Approval (Cotton) CCC-105; CCC-105 (Cotton)
On occasion
Businesses or other for-profit; Small businesses or organizations; 548 responses; 1,370 hours; not applicable under 3504(h)
Donald R. Pickett (202) 447-6711

• *Rural Electrification Administration*

Manual for Preservation of Borrowers' Records (Electric)
REA Bulletin 180-2
Recordkeeping
Small businesses or organizations; 5,956 respondents; 19,120 hours; not applicable under 3504(h)
William E. Davis (202) 382-9450

• *Cooperative State Research Service*

Grant Application Kit
CSRS-661, 662, 663, and 55 and AD-1047, 1048, 1049 and 1050
Annually
Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; 3,000 responses; 16,500 hours; not applicable under 3504(h)
Pat Shelton (202) 475-5050

Donald E. Hulcher,

Acting Departmental Clearance Officer.

[FR Doc. 89-15998 Filed 7-6-89; 8:45 am]

BILLING CODE 3410-01-M

Animal and Plant Health Inspection Service

[Docket No. 89-110]

Notice of Receipt of a Permit Application for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release genetically engineered organisms into the environment is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR Part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Analyst, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340, "Introduction of Organisms and Products Through Genetic Engineering Which are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release genetically engineered organisms into the environment:

Application number	Applicant	Date received	Organism	Field test location
89-150-01	Monsanto Agricultural Company	05-30-89	Genetically engineered cotton plants to express delta-endotoxin protein intended to confer lepidopteran insect resistance; cotton plants genetically engineered to confer glyphosate herbicide tolerance.	Hawaii.

Done in Washington, DC, this 30th day of June 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-15999 Filed 7-6-89; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Mt. Reba Ski Area, Stanislaus National Forest, CA; Intent To Prepare Environmental Impact Statement

AGENCY: Forest Service, Agriculture.

ACTION: Revised notice of intent.

SUMMARY: The Notice of Intent to prepare an environmental impact statement for the expansion of the Mt. Reba Ski Area was published in the **Federal Register** on Friday, October 30, 1981, 46 FR 53734. A Revised Notice of Intent setting new dates for the release of the draft environmental impact statement (DEIS) and the final environmental impact statement (FEIS) was published in the **Federal Register** on Thursday, September 23, 1982, 47 FR 42011.

The dates for release of the documents have again been changed. The DEIS will be available for public review September, 1989 and the FEIS will be issued in January, 1990.

DATES: Comments on this project must be received within 45 days following the release of the DEIS.

ADDRESSES: Submit written comments and suggestions concerning this project to Blaine Cornell, Forest Supervisor, Stanislaus National Forest, 19777 Greenley Road, Sonora, CA 95370.

FOR FURTHER INFORMATION CONTACT: Rich Phelps, Resource Officer, Calaveras Ranger District, P.O. Box 500, Hathaway Pines, CA 95233. Phone: (209) 795-1381.

SUPPLEMENTARY INFORMATION: All previous input and comments received by the Forest Service relative to this project will be considered during the preparation of this EIS.

After the comment period on the DEIS ends, the comments received will be analyzed and considered by the Forest Service in preparing the final environmental impact statement.

The responsible official will review the EIS, considering the comments, responses, environmental consequences along with their mitigations, applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in a Record of Decision.

Blaine L. Cornell,

Forest Supervisor.

Date: June 28, 1989.

[FR Doc. 89-15956 Filed 7-6-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration

Title: Foreign Fishing Vessel Permit Application

Form Number: NOAA Form 88-120; OMB—0648-0089

Type of Request: Request for extension of OMB approval of a currently cleared collection

Burden: 500 respondents; 347 reporting hours; average hours per response—.7 hours

Needs and Uses: Vessels of foreign nations with fishing agreements with the U.S. must submit annual applications for fishing permits. The information provided in the application is used to determine if the vessel should receive a permit and to identify those vessels being permitted

Affected Public: Business or other for profit

Frequency: Annual

Respondent's Obligation: Required to maintain or obtain a benefit

OMB Desk Officer: Russell Scarato, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 30, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-15920 Filed 7-6-89; 8:45 am]

BILLING CODE 3510-CW-M

Bureau of Export Administration

MCTL Implementation Technical Advisory Committee; Partially Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held July 26, 1989, at 10:30 a.m., in the Herbert C. Hoover Building, Room 1617-F, 14th Street and Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis in the implementation of the Militarily Critical Technologies List (MCTL) into the Export Administration Regulations as needed. The meeting is called on short notice because of COCOM deliberations which have just recently been scheduled.

Agenda

General Session

1. Opening Remarks by the Commerce Representative.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Comparison of MCTL List and COCOM List.
5. Goals and Objectives of the Committee.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202-377-4959.

Date: June 26, 1989.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analyses.

[FR Doc. 89-15921 Filed 7-6-89; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

Endangered Species; Issuance of Permit; State of Connecticut, Department of Environmental Protection (P430)

On December 2, 1988, Notice was published in the **Federal Register** (53 FR 48679) that an application had been filed with the National Marine Fisheries Service by the State of Connecticut, Department of Environmental Protection, Fisheries Bureau, Marine Fisheries Office, P.O. Box 248, Waterford, Connecticut 06385, for a permit to take shortnose sturgeon (*Acipenser brevirostrum*) for scientific purposes.

Notice is hereby given that on June 28, 1989, and as authorized by the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531-1407), the National Marine Fisheries Service issued a Scientific Purposes Permit for the above taking to the State of Connecticut, Department of Environmental Protection subject to certain conditions set forth therein.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on the finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) will be consistent with the purposes and policies set forth in section 2 of the Act.

The Permit is available for review in the following Offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, Maryland 20910; and

Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

Date: June 28, 1989.

[FR Doc. 89-15936 Filed 7-6-89; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Inventions; Availability of Licensing

June 26, 1989.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Licensing information and copies of patent applications bearing serial numbers with prefix E may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151. All other patent applications may be purchased, specifying the serial number listed below, by writing NTIS, 5285 Port Royal Road, Springfield, Virginia 22161 or by telephoning the NTIS Sales Desk at (703) 487-4650. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 7-189,037 Cockroach Growth Regulating Composition and Method

SN 7-323,729 Avian Lymphokines Protective Against Coccidiosis

SN 7-332,901 Apparatus and Process for Detection of Insect Infestation in an Agricultural Commodity

SN 7-334,069 Antibodies to Cytokinins Having a Glycosylated Isoprenoid Side Chain and Immunoassay Methods

Department of Commerce

SN 7-262,763 Apparatus for Sterilizing Objects

Department of Health and Human Services

SN 6-217,143 (4,321,915) Everting Tube Device with Relative Advance Control

SN 6-903,723 (4,831,175) Backbone Polysubstituted Chelates for Forming a Metal Chelate-Protein Conjudgate

SN 7-165,302 Novel Interleukin 2 Receptor and Applications Thereof

SN 7-284,368 Human Liver Epithelial Cell Line

SN 7-304,853 Cross-Axis Synchronous Flow Through Coil Planet Centrifuge for Large-Scale Preparative Countercurrent Chromatography

SN 7-311,217 A Clone of Double-Stranded RNA Virus and Applications Thereof

SN 7-312,097 Hybridomas and Resulting Monoclonal Antibodies Directed Against Antigens of Bordetella Pertussis

SN 7-316,958 Stabilized Nitric Oxide—Primary Amine Complexes Useful as Cardiovascular Agents

SN 7-322,266 Computer-Assisted Design of Anti-Peptides Based on the Amino Acid Sequence of a Target Peptide

SN 7-331,212 Characterization of a Replication Competent Human Immunodeficiency Type 2 Proviral Clone

SN 7-340,073 Novel Oligodeoxynucleotides with 5'-Linked Chemical Groups, Methods of Production Thereof and Use Thereof

SN 7-340,443 Process for Removing C-Reactive Protein and Anti-

Phosphorycholine Antibodies from Biological Fluids
SN 7-341,949 Elisa Methods for the Determination of Human Platelet Derived Growth Factor (PDGF) Dimer Forms Present in Human Tissues and Fluids
SN 7-344,304 Novel Recombinant Proteins Containing Human CD4 Sequences Linked to Immunoglobulin Constant Regions
SN 7-351,448 Selectively Cytotoxic Fusion Protein
SN 7-355,207 RNA Probe for Detecting c-fes mRNA
SN 7-356,999 Cloned Endothelial Cells of Endocrine Origin
SN E-168-89 A Sensitive Diagnostic Test for Lyme Disease

Department of the Army

SN 7-335,632 Method of Creating a Large Magnetic Field in a Hollow Cylindrical Superconducting Ring
SN 7-345,045 Field Adjustable Transverse Flux Sources

Department of the Interior

SN 6-480,793 (4,537,133) Non-Incendive Rock-Breaking Explosive Charge

[FR Doc. 89-15957 Filed 7-6-89; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTAICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review a revision of a currently approved information collection requirement concerning Special Tooling.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition and Regulatory Policy, (202) 523-3775.

SUPPLEMENTARY INFORMATION: a. *Purpose:* FAR Section 45.306 and the clause at 52.245-17, Special Tooling, contain policy and contractual language on furnishing special tooling to contractors or allowing contractors to acquire special tooling of fixed-price contracts. The clause requires contractors to maintain and report certain identification and use information on special tooling.

The information collection requirements contained in this FAR amendment were initially approved by the Office of Management and Budget (OMB) when the amendment was issued as a proposed rule under OMB Control Number 9000-0075. However, those estimates underestimated the usage requirement of DOD concerning special tooling. In addition, the final rule has consolidated the initial and updated listing requirements. Therefore, a revised Paperwork Reduction Act Analysis depicting a more realistic estimate of burden impact has been submitted to OMB for review. This identification and use information is used by the contractor in performing its contract and then it is used by the Government buying offices and logistics offices to determine whether any of the special tooling can be used by the Government or contractors subsequent to its use during production by the acquiring contractor. In addition, the information enables the Government to direct retention or disposition of the special tooling following its use in major systems, components, and parts.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *10,000;* average responses per respondent, *2;* total annual responses, *20,000;* preparation hours per response, *1;* and total response burden hours, *20,000.*

c. *Annual recordkeeping burden:* The annual recordkeeping burden is estimated as follows: Recordkeepers, *10,000;* annual hours per recordkeeper, *40;* and total recordkeeping burden hours, *400,000.*

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telepohone (202) 523-4755. Please cite OMB Control No. 9000-0075, Special Tooling.

Dated: June 28, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89-15958 Filed 7-6-89; 8:45 am]

BILLING CODE 6820-JC-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

Action: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number. Application for a Department of the Army Permit; ENG Form 4345; OMB Control Number 0702-0036.

Type of Request: Extension.

Average Burden Hours Minutes Per Response: 5 hrs.

Frequency of Response: On Occasion.

Number of Respondents: 15,500.

Annual Burden Hours: 77,500.

Annual Responses: 15,500.

Needs and Uses: The Application for a Department of the Army Permit is used to regulate the alteration and quality of U.S. waters. The public submits the application to obtain permission to undertake construction related activities that would affect navigation channels and other U.S. waters.

Affected Public: Individuals or households; State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Nonprofit institutions; and Small businesses or organizations.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dr. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 3, 1989.

[FR Doc. 89-16010 Filed 7-6-89; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Advisory Committee on Uncompensated Overtime; Meeting

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of advisory committee meeting.

SUMMARY: Pursuant to the provisions of Pub. L. 92-463 (Federal Advisory Committee Act), notice is hereby given that a meeting of the Department of Defense Advisory Committee on Uncompensated Overtime is scheduled to be held on July 28, 1989, from 1:00 pm to 4:00 pm, at the U.S. Chamber of Commerce, Herman Lay Room, 1615 H Street, NW, Washington, DC. This is the fourth meeting of the advisory committee. The meeting is open to the public.

The Department of Defense Advisory Committee on Uncompensated Overtime was established pursuant to section 804 of Pub. L. 100-456 (FY89 National Defense Authorization Act). The advisory committee is responsible for: (1) Developing criteria to ensure that proposals for contracts for professional and technical services are evaluated on a basis which does not encourage contractors to propose mandatory uncompensated overtime for professional and technical employees, and (2) making recommendations to the Secretary of Defense on the criteria to be adopted by the Secretary. In developing the recommendations, the advisory committee shall address the following issues: (A) How the Department of Defense can best be assured that it receives the best quality services for the amounts expended and that the contractors supplying such services follow sound personnel management practices and observe established labor-management policies and regulations; (B) Whether contract competitions should be structured in a manner that requires offerors to compete on the basis of factors other than the number of hours per week its professional and technical employees of similar annual salaries work; and (C) Whether the Department of Defense can allow contractors to maintain different accounting systems (for example, 40-hour work week, full time accounting) and still allow the Department to evaluate proposals on the basis of a work rate of 40 hours per week and 2,080 hours per year.

FOR FURTHER INFORMATION: Persons desiring additional information or planning to attend the meeting should contact Mr. Ted Godlewski, Action Officer, Office of the Deputy Assistant Secretary of Defense for Procurement, Directorate of Cost, Pricing and Finance, The Pentagon—Room 3C800, Washington, DC 20301-1900, telephone (202) 695-7249, not later than July 25, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 3, 1989.

[FR Doc. 89-16011 Filed 7-6-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Brilliant Pebbles; Meeting

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Brilliant Pebbles will meet in closed session on July 25, 1989 at the Naval Ocean Systems Center, San Diego, California, and August 22-23 and September 19-20, 1989 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will discuss classified technical and programmatic details associated with the Brilliant Pebbles space-based interceptor concept including technical maturity, potential military effectiveness, and cost and schedule risk associated with the development, testing and possible deployment.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 3, 1989.

[FR Doc. 89-16004 Filed 7-6-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Brilliant Pebbles; Meeting Cancelled

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Brilliant Pebbles scheduled for June 16-17 at the Pentagon, Arlington, Virginia, and June 27-28, 1989 at Lawrence Livermore Laboratory, California as published in the **Federal Register** (Vol. 54, No. 93, Page 21092-21093, Tuesday, May 16, 1989, FR Doc. 89-11637) has been cancelled.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 3, 1989.

[FR Doc. 89-16003 Filed 7-6-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Defense Industrial Cooperation With Pacific Rim Nations

AGENCY: Change in location of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Defense Industrial Cooperation With Pacific Rim Nations scheduled for July 19, 1989 at the Hughes Corporation, Rosslyn, Virginia as published in the **Federal Register** (Vol. 54, No. 113, Page 25318-25319, Wednesday, June 14, 1989, FR Doc. 89-14071) will be held at the Institute for Defense Analyses, Alexandria, Virginia.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 3, 1989.

[FR Doc. 89-16005 Filed 7-6-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Defense Procurement With a Global Technology Base; Meeting

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Defense Procurement with a Global Technology Base will meet in closed session on September 14, 1989 at Science Applications International Corporation, McLean, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will address the management, technology transfer, and program acquisition issues associated with balancing national security and international trade in the mutual interests of the DoD and the defense industrial base.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C.

App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c) (1) (1982), and that accordingly this meeting will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 3, 1989.

[FR Doc. 89-16006 Filed 7-6-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on International Research and Development will meet on July 17 and 18, 1989. The meeting will be held at the General Dynamics Corporation, 1525 Wilson Blvd., Rosslyn, Virginia. The meeting will commence at 8:30 a.m. and terminate at 5:00 p.m. on July 17 and 18, 1989. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members related to ongoing international research and development programs. The agenda will include briefings and discussions related to program objectives, and government, industry and foreign perspectives. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L.W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000, Telephone Number: (202) 696-4488.

Date: June 30, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-15913 Filed 7-6-89; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Tactical Defense Suppression in the Year 2000 will meet on July 19 and 20, 1989. The meeting will be held at the Naval Strike Warfare Center, Fallon, Nevada. The meeting will commence at 9:00 a.m. and terminate at 5:00 p.m. on July 19 and 20, 1989. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members related to naval aviation's ability to conduct lethal defense suppression missions in the year 2000. The agenda will include briefings and discussions related to program objectives, current concepts of defense suppression tactics, weapons technology, and industry perspectives. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L.W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000, Telephone Number: (202) 696-4488.

Date: June 30, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-15914 Filed 7-6-89; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/JA(EU)-47, for the transfer from the Federal Republic of Germany to Japan of 6,060 grams of uranium, enriched to 19.75 percent in the isotope uranium-235, 5,050 grams of uranium, enriched to 10.2 percent in the isotope uranium-235, and 10,100 grams of uranium, enriched to 8.2 percent in the isotope uranium-235, for use in fabrication of fuel elements and coated particles for irradiation testing.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: July 3, 1989.

Richard H. Williamson,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 89-16015 Filed 7-6-89; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (Pub. L. 96-511, 44 U.S.C. 3501 *et seq.*).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, or management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden, and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards (EI-73), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585 (202) 586-2171.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the DOE contact listed above.)

The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC-550.
3. 1902-0089.
4. Oil Pipeline Rates: Tariff Filings.
5. Extension.
6. On occasion.
7. Mandatory.
8. Business or other for-profit.
9. 140 respondents.
10. 325 responses.
11. 20 hours per response.
12. 6,500 hours (total).
13. The purpose of this tariff filing requirement is to provide data used by the Commission to establish just and reasonable rates that may be charged by jurisdictional oil pipeline companies.

Statutory Authority: Sections 5(a), 5(b), 13(b), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, June 30, 1989.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 89-16017 Filed 7-6-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. TA89-1-31-002 and TQ89-3-31-001]

Filing of Revised Tariff Sheets Reflecting Tariff Adjustment and Take-or-Pay Recovery

June 30, 1989.

Take notice that on June 23, 1989, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing certain tariff sheets.

AER states that its revised tariff sheets reflect corrections of clerical errors in the tariff sheets filed in its PGAs effective April 1, 1989 and July 1, 1989.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such protests should be filed on or before July 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15932 Filed 7-6-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 89-31-NG]

First Energy Associates, a Limited Partnership; Application To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for long-term authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on May 19, 1989, of an application filed by First Energy Associates, A Limited Partnership (FEA), for authorization to import up to 13,000 Mcf per day and a total of 71,227,000 Mcf of natural gas from Canada over a term of 15 years. The gas would be purchased form Western Gas Marketing Limited, an Alberta corporation (WGML), to fuel FEA's new combined cycle cogeneration facility to be built in Orange, Connecticut. Commercial operation of the facility is expected to begin in 1991. Under FEA's proposed gas purchase agreement with WGML, delivery of the gas would begin on the first day of the test phase of the cogeneration facility which also would initiate the term of the requested import authorization.

The gas will enter the United States at the international border near Waddington, New York, where the pipeline facilities of TransCanada PipeLines Limited (TCPL) and the proposed Iroquois Gas Transmission System (Iroquois) interconnect, and then would be transported through Iroquois to FEA. Iroquois has an application pending before the Federal Energy Regulatory Commission (FERC) to construct its new pipeline and provide transportation for the imported volumes.

The application is filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed no later than August 7, 1989.

FOR FURTHER INFORMATION CONTACT:

P.J. Fleming, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-094, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586-4819

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: FEA is a New Hampshire partnership consisting of Merrimack Valley Power Generation Corporation, as general partner, and various individuals as limited partners. The proposed cogeneration facility was certified by the Federal Energy Regulatory Commission (FERC) in FERC Docket No. QF87-412-000 as a "qualifying facility" under the Public Utility Regulatory Policies Act of 1978 (PURPA). On June 8, 1989, FEA filed with the DOE a Certification of Compliance with the coal capability requirement for proposed new electric powerplants pursuant to the Powerplant and Industrial Fuel Use Act of 1978, as amended. The electricity produced by the cogeneration facility would be sold to Consolidated Edison Company of New York, Inc. (Con Edison). Thermal energy recovered from the facility would be used by Miles Pharmaceuticals Division of Miles Laboratories, Inc.

In accordance with a precedent agreement dated May 1, 1989, FEA and WGML, the marketing subsidiary of TCPL, will execute a gas purchase agreement when all governmental authorizations have been obtained and all conditions relating to the completion of the required new facilities have been met. Under the provisions of the draft gas purchase agreement furnished with its application, FEA would pay WGML a two-part border price comprised of a demand charge and a commodity charge. The base price of the gas would be indexed to the fuel adjustment provision of Con Edison's SC-21 tariff for buy-back service and Con Edison's Industrial Gas Tariff, both as approved by the New York Public Service Commission. FEA states that the initial border price at 100 percent load factor (Initial Base Price) would be $2.75 per Mcf based on the Con Edison indices for the month of March 1989. The price will be adjusted monthly based on changes in the indices. The total cost of gas delivered to FEA's cogeneration facility would include charges incurred for pipeline transmission from the international border.

The monthly demand charge under the proposed contract between FEA and WGML would be the product of the average of the daily contract quantities on each day of the relevant month (excluding quantities delivered to the new cogeneration facility during its test phase) and the monthly demand rate. The monthly demand rate would be the sum of (a) the monthly demand toll per Mcf for the firm transportation of gas on TCPL's system from the Alberta-Saskatchewan border to the point of delivery on the international border; (b) the average monthly demand toll equivalent per Mcf as billed by Nova to WGML for transportation of the gas to the Alberta border during the previous year; and (c) a current supply reservation fee of $4.563 per Mcf per month which is the equivalent of the average monthly demand toll per MMBtu as billed by WGML in the preceding contract year.

The commodity charge would be equal to the adjusted base price (ABP) less the product of the monthly demand charge rate per Mcf calculated as described above and converted to a charge per MMBtu based on an average monthly heating value of the gas transported to the point of delivery, and 12, divided by 265. The ABP for each delivery month would be adjusted in accordance with a formula stated as ABP = 2.75 × AFC. AFC (adjusted fuel cost) for any month is calculated by the following formula:

$$AFC = \frac{CEAFC}{CEAFC1} \times 0.5 + \frac{CEGC}{CEGC1} \times 0.5$$

Where:

CEAFC (Con Edison Average Fuel Cost) is equal to the sum of the values included under the headings "Base Cost of Fuel per Kilowatt Hour" and the "Rate Adjustment per Kilowatt Hour For All Bills Rendered Monthly" published during the month preceding the delivery month in the statement of Fuel Adjustment filed for Con Edison with the New York State Public Service Commission under the heading "Applicable to All Service Classifications Except for 25-Cycle Service"; and CEAFC1 is equal to 2.8328 cents per kilowatt hour: And CEGC (Con Edison Gas Cost) is equal to Con Edison's Retail Natural Gas Price during the month preceding the delivery month of Commercial and Industrial Firm Gas service of 100,000 Mcf per month as set forth in the Monthly Energy Price Report published by the New York State Energy Office; and CEGC1 is equal to $5.5400 per Mcf.

Either FEA or WGML may require renegotiation of the pricing terms of the contract during the contract years commencing November 1, 1993, November 1, 1998, and November 1, 2003. In the event there is no agreement on such pricing terms, either party has the right to refer the matter to arbitration.

If FEA's gas purchases from WGML fall below 75 percent of the aggregate of the maximum daily quantities in a contract year (13,000 × 365 days), FEA must pay a deficiency charge levied on the volumes not taken below the minimum quantity, equal to the average of the commodity charges in effect during the year. In addition, the amount which WGML is obligated to supply is subject to reduction if FEA takes less tha minimum contract volumes.

In support of its application, FEA states that the import arrangement is competitive and would remain so over the term of the authorization. FEA asserts that this import would be secure because WGML has under contract with producers in the Province of Alberta sufficient quantities of gas to meet all of its supply commitments, including the volumes to be purchased by FEA. In addition, FEA asserts that any curtailment of WGML commitments to this project would occur "only if all other WGML exports are curtailed and then only on a pro rata basis." According to FEA, current estimates place Alberta reserves from conventional producing areas at 65.3 Tcf and potential marketable reserves at 150 Tcf. By contrast, FEA states that at full deliveries under its proposed purchase contract with WGML the total quantity would be 0.07 Tcf.

The decision on FEA's application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684). Other matters that may be considered in making a public interest determination include need for gas, security of the long-term supply, and any relevant issues that may be unique to cogeneration facilities. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines. The applicant asserts that this import arrangement is in the public interest because it is competitive and its gas source will be secure. Parties opposing the import arrangement bear the burden of overcoming these assertions.

All parties should be aware that if the requested import is approved, the authorization would be conditioned on the filing of quarterly reports indicating volumes imported and the purchase price.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. The FERC, in Docket No. CP89-634-000 encompassing the Iroquois pipeline project, is currently performing an environmental review of the impacts of constructing and operating the proposed facilities through which Iroquois would transport the import before making its decision on the certificate application. The DOE will participate in the environmental review process at the appropriate level. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities regarding the FEA application.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., e.d.t., August 7, 1989.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial questions of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a conditional or final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of FEA's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8:00 a.m.and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 29, 1989.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 89-16016 Filed 7-6-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed During the Week of June 2 Through June 9, 1989

During the week of June 2 through June 9, 1989, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

June 29, 1989.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 2 through June 9, 1989]

Date	Name and location of applicant	Case No.	Type of submission
June 8, 1989	Plaquemines/Buras Fuel Dock, Hardin, KY	RR305-4	Modification/rescission in the Plaquemines refund proceeding. If granted: The May 11, 1989 Decision and Order (Case No. RR305-3) issued to Buras Fuel Dock would be modified regarding the firm's application for refund submitted in the Plaquesmines refund proceeding.

REFUND APPLICATIONS RECEIVED

[Week of June 2 through June 9, 1989]

Date received	Name of refund application	Case No.
Feb. 9, 1989	Arrowhead Blacktop Company	RF309-1360
Do	The Best Gas & Oil Company	RF309-1359
June 1, 1989	Parkway Gulf Service	RF300-10826
June 2, 1989 thru June 9, 1989.	Crude Oil Refund; applications received	RF272-75499 thru RF272-75507
Do	Atlantic Richfield Refund; applications received	RF304-9406 thru RF304-9423
Do	Exxon Refund; applications received	RF307 9966 thru RF307-9979

REFUND APPLICATIONS RECEIVED—Continued

[Week of June 2 through June 9, 1989]

Date received	Name of refund application	Case No.
Do	Shell Refund; applications received	RF315-6067 thru RF315-6109
June 5, 1989	Michel's Oil & Gas Company	RF308-11
Do	Nelson Oil Company	RF300-10825
June 7, 1989	Houston Oil Company	RF300-10827
Do	Merritt Park Service	RF264-19
Do	Lorentz Gas Company	RF308-12

[FR Doc. 89-16018 Filed 7-6-89; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decision and Order During the Period of June 12 Through June 23, 1989

During the period of June 12 through June 23, 1989, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

June 29, 1989.

Range Oil Company, Inc., Wichita, Kansas, Case No. KEE-0170

The Range Oil Company filed an Application for Exception from the requirement to complete and file Form EIA-23. The exception request, if granted, would excuse Range Oil Company from its responsibility to file the form. On March 20, 1989, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 89-16019 Filed 7-6-89; 8:45 am]

BILLING CODE 6450-01-M

Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $862,500 plus accrued interest obtained by the DOE under the terms of a consent order entered into with Tri-Service Drilling Company. The OHA has tentatively determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Cases, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Comments must be filed in duplicate within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a reference to case number KEF-0135.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585 (202) 586-2860.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282 (b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tenatively formulated to distribute funds obtained from Tri-Service Drilling Company (Tri-Service). The funds are being held in an interest-bearing escrow account pending distribution by the DOE.

The DOE has tenatively determined to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Cases, 51 FR 27899 (August 4, 1986). Under the Modified Policy, crude oil overcharge monies are divided among the states, the Federal government, and injured purchasers of refined products. Under the plan we are proposing, refunds to the states would be distributed in proportion to each state's consumption to petroleum products during the period of price controls. Refunds to eligible purchasers would be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: June 30, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

(Proposed) Implementation of Special Refund Procedures

Name of Firm: Tri-Service Drilling Company
Date of Filing: May 15, 1989
Case Number: KEF-0135

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

The ERA has filed a Petition for the Implementation of Special Refund Proedures for crude oil overcharge funds obtained from Tri-Service Drilling Company (Tri-Service). This firm remitted $862,500.00 to the DOE pursuant to a March 24, 1989 Consent Order between Tri-Service and the DOE. This Proposed Decision and Order sets forth the OHA's plan to distribute these funds. Comments are solicited.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). We have considered the ERA's request to implement Subpart V procedures with respect to the monies received from Tri-Service, and have determined that such procedures are appropriate.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 Fed. Reg. 27899 (August 4, 1986) (MSRP). The MSRP, issued as a result of a court-approved Settlement Agreement in *In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan.), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to 20 percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

The OHA has been applying the MSRP to all Subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). That Order provided a period of 30 days for the filing of any objections to the application of the MSRP, and solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 6, 1987, the OHA issued a Notice analyzing the numerous comments which it received in response to the August 1986 Order. 52 FR 11737 (April 10, 1987). The Notice set forth generalized procedures and provided guidance to assist claimants that wish to file refund applications for crude oil monies under the Subpart V regulations. All applicants for refunds would be required to document their purchase volumes of petroleum products during the period of Federl crude oil price controls and to prove that they were injured by the alleged overcharges. The Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry would be presumed to have absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. Finally, we stated that refunds would be calculated on the basis of a per-gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would consist of crude oil overcharge monies that were in the DOE's escrow account at the time of the M.D.L. 378 settlement, or were subsequently deposited in the escrow account, and a portion of the funds in the M.D.L. 378 escrow at the time of the settlement.

The DOE has applied these procedures in numerous cases since the April 1987 Notice, *see, e.g., Shell Oil Co.*, 17 DOE ¶ 85,204 (1988) (*Shell Oil*), *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 (1988) (*Allerkamp*), and the procedures have been approved by the United States District Court for the District of Kansas. Various States had filed a Motion with the Court, claiming that the OHA violated the Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. On August 17, 1987, the Court issued an Opinion and Order denying the States' Motion in its entirety. The Court concluded that the Settlement Agreement "does not bar OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *In Re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1318, 1323 (D. Kan. 1987). The Court also ruled that, as specified in the April 1987 Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. The latter ruling was affirmed by the Temporary Emergency Court of Appeals. *In Re: The Department of Energy Stripper Well Exemption Litigation*, 857 F.2d 1481 (Temp. Emer. Ct. App. 1988).

II. Proposed Refund Procedures

A. Refund Claims

We now propose to apply the procedures discussed in the April 1987 Notice to the crude oil Subpart V proceeding that is the subject of the present determination. As noted above, and $862,500 alleged crude oil violation amount is covered by this Proposed Decision. We have decided to reserve initially the full 20 percent of the alleged crude oil violation amount, or $172,500 (plus interest), for direct refunds to claimants, in order to ensure that sufficient funds will be available for refunds to injured parties. The amount of the reserve may be adjusted downward later if circumstances warrant.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *See Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986) (*Mountain Fuel*). As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry and who were not subject to the DOE price regulations, are presumed to have absorbed rather than passed on alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond proof of the volumes of product purchased during the period of crude oil price controls. *See A. Tarricone, Inc.*, 15 DOE ¶ 85,495 at 88,893-96 (1987). The end-user presumption of injury can be rebutted if evidence shows that the specific end-user in question was not injured by the crude oil overcharges. Reseller and retailer claimants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. *Id.* They can, however, use econometric evidence of the type employed in the OHA Report to the District Court in the Stripper Well Litigation, 6 Fed. Energy Guidelines ¶ 90,507 (June 19, 1985). Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Stripper Well Exemption Litigation Settlement Agreement have waived their rights to apply for crude oil refunds under Subpart V. *See Mid-America Dairymen, Inc. v. Herrington*, Fed. Energy Guidelines ¶ 26,617 (Temp. Emer. Ct. App. 1989); *accord, Boise Cascade Corp.*, 18 DOE ¶ 85,970 (1989).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the crude oil violation amount involved in this determination ($862,500.00) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). *See Mountain Fuel*, 14 DOE at 88,868. This approach reflects the fact that crude oil overcharges were spread equally throughout the country by the Entitlements Program.*

* The Department of Energy established the Entitlements Program to equalize access to the benefits of crude oil price controls among all domestic refiners and their downstream customers. To accomplish this goal, refiners were required to make transfer payments among themselves through

Continued

This yields a volumetric refund amount of $0.00000042677 per gallon.

As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. *See Allerkamp*, 17 DOE at 88,176. Any party that has previously submitted a refund application in the crude oil refund proceedings need not file another application. A deadline of June 30, 1988, was established for all first stage crude oil refund proceedings implemented pursuant to the MSRP up to and including *Shell Oil. See A. Tarricone, Inc.*, 16 DOE at 89,339; *Allerkamp*, 17 DOE at 88,178; *Shell Oil*, 17 DOE at 88,408. Any applicant that files a refund application after that deadline will be eligible to receive a refund based only on the volumetric amounts approved subsequent to that date in the second stage of disbursements. The volumetric refund amount will be increased as additional crude oil violation amounts are received in the future. Applicants may be required to submit additional information to document their refund claims for these future amounts. Notice of any additional amounts available in the future will be published in the **Federal Register**.

B. Payments to the States and Federal Government

Under the terms of the MSRP, we propose that the remaining 80 percent of the alleged crude oil violation amounts subject to this Proposed Decision, or $890,000 plus interest, be disbursed in equal shares to the states and Federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Exemption Litigation Settlement Agreement. These funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Settlement Agreement.

Before taking the actions we have proposed in this Decision, we intend to publicize our proposal and solicit comments on it. Comments regarding the tentative distribution process set forth in this Proposed Decision and Order should be filed with the OHA within 30 days of its publication in the **Federal Register**.

It Is Therefore Ordered That: The refund amount remitted to the Department of Energy by Tri-Services Drilling Company pursuant to the Consent Order executed on March 24, 1989, will be distributed in accordance with the foregoing Decision.

[FR Doc. 89-16020 Filed 7-6-89; 8:45 am]

BILLING CODE 6450-01-M

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the purchase and sale of "entitlements." This balancing mechanism had the effect of evenly disbursing overcharges resulting from crude oil miscertifications throughout the domestic refining industry. *See Amber Refining Inc.*, 13 DOE ¶ 85,217 at 88,564 (1985).

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3612-5]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed June 26, 1989 Through June 30, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890175, Final, FHW, MD, MD-228 Extension, US 301 to MD-210 and MD-210 Improvement, MD-228 Exended to Old Fort Road, Funding, Charles and Prince Georges Counties, MD, Due: August 7, 1989, Contact: Herman Rodrigo (301) 962-4132.

EIS No. 890176, Draft, AFS, WY, Threemile Area Timber Sale and Road Construction, Medicine Bow National Forest Land and Resource Management Plan, Medicine Bow National Forest, Carbon County, WY, Due: September 1, 1989, Contact: Gary Rorvig (307) 745-8971.

EIS No. 890177, Draft, BLM, UT, USPCI Clive Tranfer/Storage/Incineration Facility and Associated Transportation/Utility Corridors, Construction and Operation, Right-of-Ways and/or Land Exchange, Tooele County, UT, Due: September 5, 1989, Contact: Dennis Oaks (801) 524-5348.

EIS No. 890178, Draft, AFS, WA, White Pass Ski Area Expansion, Special Use Permit, Wenatchee and Gifford Pinchot National Forests, Lewis and Yakima Counties, WA, Due: August 31, 1989, Contact: Phillip Glass (509) 662-4332.

EIS No. 890179, FSuppl, USA, PAC, TT, Johnston Atoll Chemical Agent Disposal System (JACADS) of Generated Liquid and Solid Waste, Additional Information, Special Use Permit, Pacific Ocean Trust Territory, Due: August 7, 1989, Contact: James Maragos (808) 438-2263.

EIS No. 890180, Final, FHW, TX, US 67 Bypass Construction, Near FM-1434 to Near Spur 102, Cleburne, Funding, Johnson County, TX, Due: August 6, 1989, Contact: William Hall (512) 482-5988.

EIS No. 890181, Draft, UAF, MA, OTIS Air National Guard Base Wastewater Treatment Facility, Continuing Operation, Barnstable County, MA, Due: August 21, 1989, Contact: Leroy Barnstable (301) 981-2464.

Amended Notices

EIS No. 890149, Final, SFW, MA, RI, CT, NH, VT, ME, New England Atlantic Salmon Restoration Activities 1989-2021, Implementation, Connecticut, Pawcatuck, Merrimack, Saco, Union, Androscoggin, Kennebec, Penobscot, St. Croix, Meduxnekeag and Aroostook Rivers, CT, RI, MA, NH, VT and ME, Due: August 15, 1989, Contact: Dan Kimball (617) 965-5100. Published FR 6-23-89—Review period reestablished.

EIS No. 890162, Draft, AFS, PA, Allegheny Reservoir Motel-Restaurant Complex, Site Selection and Construction, Allegheny National Forest, Warren County, PA, Due: August 14, 1989, Contact: David Wright (814) 723-5150. Published FR 6-23-89—Review period reestablished.

Dated: July 3, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-16027 Filed 7-6-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3612-6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 19, 1989 through June 23, 1989 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 1989 (54 FR 15006).

Draft EISs

ERP No. D-AFS-L65019-OR, Rating LO, Tepee Butte Fire Recovery Project, Implementation, August thru September 1988 Tepee Butte Fire Damage Recovery Land Management Plan, Hells Canyon National Recreation Area, Wallowa-Whitman National Forest, Wallowa County, OR.

Summary: EPA has no objections to the projects as described in the draft EIS. However, a fully developed monitoring plan for water quality and fish needs to be prepared and included in the final EIS.

ERP No. D-BOP-C81012-PR, Rating EC2, Guaynabo Metropolitan Detention Center, Construction and Operation, Implementation, PR.

Summary: EPA has concerns about the construction of the Metropolitan Detention Center because information regarding sewage treatment plant capacity, availability of adequate water, and the adequacy of the drainage system is lacking in the draft EIS. EPA has requested that the final EIS discuss these issues in more detail.

ERP No. D-FHW-D40241-VA, Rating EO2, VA-17 Bypass Extension, VA-17/29 Business to VA-17 northwest of Warrenton, Construction, Funding and COE General Permit, Town of Warrenton, Fauquier County, VA.

Summary: EPA rated Alternatives B and C EO-2, because of the potential adverse impacts to wetlands, wildlife habitat, surface and groundwater, and historical sites. Alternatives A and D were rated EC-2. Alternative A has a good level of service. Alternative D is preferred from an environmental standpoint, but has a poor predicted level of service. EPA recommended that the environmental concerns be addressed in the final EIS.

ERP No. D-USA-A11067-UT, Rating EC2, Tooele Army Depot On-Site Facility for Disposal of Stockpiled Chemical Agents and Munitions, Construction and Operations, Tooele County, UT.

Summary: EPA did not identify any major concerns, however EPA recommended a number of improvements, clarifications, and suggestions concerning the project.

Final EISs

ERP No. F-FHW-G40122-LA, Old Metairie Railroad Project, Railroad and Traffic Flow Conflicts Alleviation, Orleans Parish and Jefferson Parish Line to the Airline Highway and Causeway Boulevard Intersection, Funding, Jefferson Parish, LA.

Summary: EPA expresses no objections to the proposed alternative as described in the final EIS.

Regulations

ERP No. R-COE-A35052-00, 33 CFR Part 326; Proposal to Amend Permit Regulations for Controlling Certain Activities in Waters of the United States (54 FR 20608).

Summary: EPA has few concerns because of the consultations during development of the proposed regulation governing administrative penalties for violation of permits issued pursuant to section 404 of the Clean Water Act. EPA was concerned that the Corps maintain its ability to commence suit after proceeding with an administrative penalty; the respondent be able to provide both oral and written testimony; and the respondent be subject to the same privileges and responsbilities of other witnesses.

Dated: July 3, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-16028 Filed 7-6-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

June 30, 1989.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0062

Title: Application for Authorization to Construct New or Make Changes in an Instructional Television Fixed and/or Response Station(s), or to Assign or Transfer Such Station(s)

Form Number: FCC 330

Action: Extension

Respondents: Non-profit institutions

Frequency of Response: On occasion

Estimated Annual Burden: 163 Responses; 1,113 Hours

Needs and Uses: FCC Form 330 is required when applying for authority to construct or make changes in Instructional Television Fixed or Response Stations and Low Power Relay Stations. Data is used by FCC staff to determine if applicant is qualified and meets basic statutory requirements.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-15986 Filed 7-6-89; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

June 30, 1989.

The Federal Communications Commission has submitted the following information collection requirements to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501-3520).

Copies of the submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on these information collections should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785. Copies of these comments should also be sent to the Commission. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632-7513.

Please note: The Commission has requested expedited review of these items by July 28, 1989, under the provisions of 5 CFR 1320.18.

OMB Number: None

Title: Section 73.3523, Dismissal of applications in renewal proceedings

Action: New collection

Respondents: Businesses (including small businesses)

Frequency of Response: On occasion

Estimated Annual Burden: 70 responses; 168 hours; 2.4 hours average burden per respondent

Needs and Uses: Section73.3523 requires an applicant for a construction permit to obtain approval from the FCC to dismiss or withdraw its application when the application is mutually exclusive with a renewal application. The data is used by the FCC staff to ensure that an application was filed under appropriate circumstances and not to extract payment in excess of legitimate and prudent expenses.

Note: The text of 47 CFR 73.3523 (Dismissal of applications in renewal proceedings) may be found in the May 25, 1989, issue of the **Federal Register** on page 22598 (54 FR 22598).

OMB Number: None

Title: Section 73.3524, Dismissal of petitions to deny in renewal proceedings

Action: New collection

Respondents: Businesses (including small businesses)

Frequency of Response: On occasion

Estimated Annual Burden: 40 responses; 60 hours; 1.5 hours average burden per respondent

Needs and Uses: Section 73.3524 requires a petitioner to deny to obtain approval from the FCC to dismiss or withdraw its petition when it is filed against a renewal application. The data is used by FCC staff to ensure that a petition to deny or citizens agreement was filed under appropriate circumstances and not to extract payment in excess of legitimate and prudent expenses.

Note: The text of 47 CFR 73.3524 (Dismissal of petitions to deny in renewal proceedings) may be found in the May 25, 1989, issue of the **Federal Register** on pages 22598–99 (54 FR 22598–99).

OMB Number: None

Title: BC Docket No. 81–742, Amendments to pre-hearing designation applications in renewal proceedings

Action: New collection

Respondents: Businesses (including small businesses)

Frequency of Response: One-time filing requirement

Estimated Annual Burden: 34 responses; 2,720 hours; 80 hours average burden per respondent

Needs and Uses: All applicants in comparative renewal proceedings whose pending applications are in a pre-hearing designation status and who have relied upon the availability of the incumbent's transmitter site in their applications must amend their applications to show reasonable assurance of site availability and, if necessary, amend the engineering data submitted.

Note: The requirement for the above collection of information (BC Docket No. 81–742, Amendments to pre-hearing designation applications in renewal proceedings) may be found in the May 25, 1989, issue of the **Federal Register** in paragraphs 19 and 20 on page 22597 (54 FR 22597).

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–15987 Filed 7–6–89; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for three new FM stations:

I.

Applicant, City and State	File No.	MM Docket No.
A. Opal Carrol Coley, Orange Beach, AL.	BPH–871201MC	89–292
B. Mark Allen Bodiford, Orange Beach, AL.	BPH–871203MA	.....
C. Pleasure Island Broadcasting, Inc., Orange Beach, AL.	BPH–871203MO	.....
D. Quaz Communications, Inc., Orange Beach, AL.	BPH–871203MR	.....
E. Gulf Shore Radio Limited Partnership, Orange Beach, AL.	BPH–871203MV	.....
F. Betty P. Barnhill d/b/a RNG Communications, Orange Beach, AL.	BPH–871203MX	.....
G. J. McCarthy Miller, Orange Beach, AL.	BPH–871203NM	.....
H. Coastal Alabama Broadcast Associates, Orange Beach, AL.	BPH–871203NO	.....
I. Pete Wolff, III, Orange Beach, AL.	BPH–871203NW	.....

Issue Heading	Applicants
1. See Appendix	E
2. See Appendix	E
3. See Appendix	E
4. See Appendix	E
5. Air Hazard	E
6. Comparative	A–I
7. Ultimate	A–I

II.

Applicant, City and State	File No.	MM Docket No.
A. Margaret Escriva, Topeka, KS.	BPH–871124MG	89–293
B. American Indian Broadcast Group, Inc., Topeka, KS.	BPH–871124MM	.....
C. Plains FM Limited Partnership, Topeka, KS.	BPH–871124MP	.....
D. Spacecom, Inc., Topeka, KS.	BPH–871124MW	.....

Issue Heading	Applicants
1(a). See Appendix	B
1(b). See Appendix	B
2. See Appendix	C
3. See Appendix	C
4. See Appendix	C
5. See Appendix	C
6. Air Hazard	B, C
7. Comparative	A–D
8. Ultimate	A–D

III.

Applicant, City and State	File No.	MM Docket No.
A. Christian FM Application Partnership, Marion, KY.	BPH–8703130A	89–294

Issue Heading	Applicants
1. See Appendix	A
2. See Appendix	A
3. See Appendix	A

IV.

Applicant, City and State	File No.	MM Docket No.
A. Midland Educational Broadcasting Foundations, Midland, TX.	BPED–831121AI	89–291
B. Radio Ministries, Midland, TX.	BPED–8407311G	.....

Issue Heading	Applicants
1. Air Hazard	A
2. Comparative Noncommercial	A, B
3. Ultimate	A, B

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to tha particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay, Assistant Chief,

Audio Services Division, Mass Media Bureau.

Appendix I—Orange Beach, Alabama

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of D (Gulf Shore).

2. To determine whether E's (Gulf Shore's) organizational structure is a sham.

3. To determine whether E (Gulf Shore) violated § 1.65 of the Commission's Rules, and/or lacked candor, by failing to timely report the designation of character issues against other applicants in which one or more of its partners has an ownership interest and/or the dismissal of such ownership interest and/or the dismissal of such applications with unresolved character issues pending.

4. To determine, from the evidence adduced pursuant to Issues 1 through 3 above, whether E (Gulf Shore) possesses the basic qualifications to be a licensee of the facilities sought herein.

Appendix II—Topeka, Kansas

1. To determine: (a) whether B's (American Indian's) filing of the instant application constitutes a violation of the Commission's multiple ownership rules, 47 CFR 73.3555; and (b) if so, whether the filing of B's (American Indian's) application constitutes a violation of the Commission's inconsistent application rule, 47 CFR 73.3518 which, if so, would warrant dismissal of the application.

2. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of C (Plains).

3. To determine whether C's (Plains') organizational structure is a sham.

4. To determine whether C (Plains) violated § 1.65 of the Commission's Rules, and/or lacked candor, by failing to report the designation of character issues against other applicants in which one or more of its partners has an ownership interest and/or the dismissal of such ownership interest and/or the dismissal of such applications with unresolved character issues pending.

5. To determine, from the evidence adduced pursuant to Issues 2 through 4 above, whether C (Plains) possesses the basic qualifications to be a licensee of the facilities sought herein.

Appendix III—Marion, Kentucky

1. To determine whether Sonrise Management Services, Inc. is an undisclosed real party-in-interest to the application of A (Christian FM).

2. To determine whether A's (Christian FM) organizational structure is a sham.

3. To determine, based on the evidence adduced pursuant to issues 1 and 2 above, whether A (Christian FM) possesses the basic qualifications to be a Commission licensee.

[FR Doc. 89–15988 Filed 7–6–89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: This submission is summarized as follows:

Type of Review: Extension of the expiration date without any change in the substance or in the method of collection.

Title: Recordkeeping and Disclosure Requirements in Connection with Regulation B (Equal Credit Opportunity).

Form Number: Not applicable.

OMB Number: 3064–0085.

Expiration Date of Current OMB Clearance: September 30, 1989.

Frequency of Response: On occasion.

Respondents: Insured nonmember banks.

Number of Respondents: 8,400.

Average Number of Hours per Respondent: 37.6.

Total Annual Burden Hours: 316,122.

OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FDIC Contact: John Keiper, (202) 898–3810, Assistant Executive Secretary, Room 6096, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before September.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to the OMB reviewer listed. The FDIC contact would be interested in receiving a copy of the comments.

SUPPLEMENTARY INFORMATION: The FDIC is requesting OMB approval to extend the expiration date of the collection of information required by Regulation B (12 CFR 202) as issued by the Board of Governors of the Federal Reserve System under the authority of title VII of the Consumer Credit Protection Act (15 U.S.C. 1691). Section 703 of the Act (15 U.S.C. 1691b) designates the FRB as the issuer of the implementing regulations, and section 704(a) of the Act (15 U.S.C. 1691c) designates the FDIC as having enforcement responsibilities in the case of insured nonmember banks. This information collection is mandatory (15 U.S.C. 1691) and is not given confidential treatment.

Regulation B prohibits creditors from discriminating against credit applicants on any of the bases specified by the Equal Credit Opportunity Act, establishes guidelines for gathering and evaluating credit information and requires creditors to give applicants a written notification of rejection of an application.

Dated: June 30, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89–16006 Filed 7–6–89; 8:45 am]

BILLING CODE 6714-01-M

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: This submission is summarized as follows:

Type of Review: Extension of the expiration date without any change in the substance or in the method of collection.

Title: Recordkeeping and Disclosure Requirements in Connection with Regulation E (Electronic Fund Transfers).

Form Number: Not applicable.

OMB Number: 3064–0084.

Expiration Date of Current OMB Clearance: September 30, 1989.

Frequency of Response: On occasion.

Respondents: Insured nonmember banks.

Number of Respondents: 8,400.

Average Number of Hours Per Respondent: 72.9.

Total Annual Burden Hours: 612,767.

OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FDIC Contact: John Keiper, (202) 898–3810, Assistant Executive Secretary, Room 6096, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before September 5, 1989.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to the OMB reviewer listed. The FDIC contact would be interested in receiving a copy of the comments.

SUPPLEMENTARY INFORMATION: The FDIC is requesting OMB approval to extend the expiration date of the collection of information required by Regulation E (12 CFR 205) as issued by the Board of Governors of the Federal Reserve System under the authority of title IX of the Consumer Credit Protection Act (15 U.S.C. 1693). Section 904 of the Act (15 U.S.C. 1693b) designates the FRB as the issuer of the implementing regulations, and section 917(a) of the Act (15 U.S.C. 1693o) designates the FDIC as having enforcement responsibilities in the case of insured nonmember banks. This information collection is mandatory (15 U.S.C. 1693) and is not given confidential treatment.

BEST COPY AVAILABLE

Regulation E establishes the rights, liabilities, and responsibilities of parties in electronic fund transfers and protects consumers using EFT systems.

Dated: June 30, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-16009 Filed 7-6-89; 8:45 am]

BILLING CODE 6714-01-M

Information Collection Submitted to OMB For Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: The submission is summarized as follows:

Type of Review: Extension of the expiration date without any change in the substance or in the method of collection.

Title: Recordkeeping and Disclosure Requirements in Connection with Regulation M (Consumer Leasing).

Form Number: Not applicable.

OMB Number: 3064-0083.

Expiration Date of Current OMB Clearance: September 30, 1989.

Frequency of Response: On occasion.

Respondents: Insured nonmember banks.

Number of Respondents: 8,400.

Average Number of Hours Per Respondent: 3.9.

Total Annual Burden Hours: 32,984.

OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FDIC Contact: John Keiper, (202) 898-3810, Assistant Executive Secretary, Room 6096, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before September 5,1989.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to the OMB reviewer listed. The FDIC contact would be interested in receiving a copy of the comments.

SUPPLEMENTARY INFORMATION: The FDIC is requesting OMB approval to extend the expiration date of the collection of information required by Regulation M (12 CFR Part 213) as issued by the Board of Governors of the Federal Reserve System under the authority of title I of the Consumer Credit Protection Act (15 U.S.C. 1601 *et seq.*). Section 105 of the Act (15 U.S.C. 1604) designates the FRB as the issuer of the implementing regulations, and section 108(a) of the Act (15 U.S.C. 1607) designates the FDIC as having enforcement responsibilities in the case of insured nonmember banks. This information collection is mandatory (15 U.S.C. 1667) and is not given confidential treatment.

Regulation M implements the consumer leasing provisions of the Truth in Lending Act.

Dated: June 30, 1989.

Federal Deposit Insurance Corporation,

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-16012 Filed 7-6-89; 8:45 am]

BILLING CODE 6714-01-M

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: The submission is summarized as follows:

Type of Review: Extension of the expiration date without any change in the substance or in the method of collection.

Title: Recordkeeping and Disclosure Requirements in Connection with Regulation Z (Truth in Lending).

Form Number: Not applicable.

OMB Number: 3064-0082.

Expiration Date of Current OMB Clearance: September 30, 1989.

Frequency of Response: On occasion.

Respondents: Insured nonmember banks.

Number of Respondents: 8,400.

Average Number of Hours Per Respondent: 245.

Total Annual Burden Hours: 2,059,986.

OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FDIC Contact: John Keiper, (202) 898-3810, Assistant Executive Secretary, Room 6096, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before September 5, 1989.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to the OMB reviewer listed. The FDIC contact would be interested in receiving a copy of the comments.

SUPPLEMENTARY INFORMATION: The FDIC is requesting OMB approval to extend the expiration date of the collection of information required by Regulation Z (12 CFR Part 226) as issued by the Board of Governors of the Federal Reserve System under the authority of title I of the Consumer Credit Protection Act (15 U.S.C. 1601 *et seq.*). Section 105 of the Act (15 U.S.C. 1604) designates the FRB as the issuer of the implementing regulations, and section 108(a) of the Act (15 U.S.C. 1607) designates the FDIC as having enforcement responsibilities in the case of insured nonmember banks. This information collection is mandatory (15 U.S.C. 1601 *et seq.*) and is not given confidential treatment.

Regulation Z prescribes uniform methods of computing the cost of credit, disclosure of credit terms, and procedures for resolving billing errors on certain credit accounts.

Dated: June 30, 1989.

Federal Deposit Insurance Corporation

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-16013 Filed 7-6-89; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217-011246.

Title: Mitsui O.S.K. Lines, Ltd. and Noram Ocean Transport, Ltd. Space Charter Agreement in the U.S. Pacific Coast—Far East Trades.

Parties: Mitsui O.S.K. Lines, Ltd. ("MOL"), Noram Ocean Transport, Ltd. ("NORAM").

Synopsis: The proposed Agreement would authorize MOL to charter space on NORAM vessels in the westbound trade from ports on the U.S. Pacific Coast and inland points via such ports to ports and points in the Far East.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

Dated: June 30, 1989.

[FR Doc. 89-15924 Filed 7-6-89; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 and/or 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-010810-002.

Title: Port of Portland Terminal Agreement.

Parties: Port of Portland (Port), Pacific Molasses Company (PMC).

Filing Party: Elaine Lycan, Manager, Price Estimating & Regulatory Affairs, Port of Portland, P.O. Box 3529, Portland, OR 97208.

Synopsis: Agreement provides for an additional berth to handle bulk commodities. In return for PMC constructing bulk liquid pipes to the additional berth, the Agreement provides that the Port will: (1) Reduce, for two years, the per ton rate on bulk liquids leaving the facility paid by PMC as basic rent; and (2) provide PMC with preferential nonexclusive use of the wharf and apron at Berth 401 of Terminal 4.

Agreement No.: 224-004041-001.

Title: Puerto Rico Ports Authority Terminal Agreement.

Parties: Puerto Rico Ports Authority Rice Growers Association of California (P.R.), Inc.

Filing Party: Manuel Alvarez Melendez, Chief, Contracts, Real Estate, Insurance and Claims, Commonwealth of Puerto Rico Ports Authority, G.P.O. Box 2829, San Juan, PR 00936.

Synopsis: The Agreement proposes to extend the basic agreement to June 29, 1992, and to increase the monthly rental for berthing facilities to $3,666.66.

Agreement No.: 224-200262.

Title: Georgia Ports Authority Terminal Agreement.

Parties: Georgia Ports Authority (GPA), Hapag Lloyd AG (HL), Gulf Container Line (GCL), Compagnie Generale Maritime (CGM).

Synopsis: The Agreement provides for HL, GCL and CGM (Sagumex) to have exclusive use of certain premises on GPA's Container Berth 5, Garden City Terminal, Savannah, Georgia for their steamship operations, container storage and handling, transport of containers to be loaded/offloaded from vessels calling at the terminal and for parking an office trailer. GPA grants Sagumex certain incentive rates on wharfage, crane rental and slot costs, expressed as a single charge per TEU. The rates will increase by an amount equal to 60 percent of the Consumer Price Index annually. Sagumex will pay for dockage and other GPA services at GPA's published tariff rates.

By Order of the Federal Maritime Commission.

Dated: June 30, 1989.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 89-16023 Filed 7-6-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Hometown Bancshares, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 28, 1989.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Hometown Bancshares, Inc.*, Middlebourne, West Virginia; to engage *de novo* through its subsidiary, Hometown Insurance Agency, Inc., Middlebourne, West Virginia, in general insurance agency activities in a town having a population of 5,000 or less pursuant to § 225.25 (b)(8)(iii)(3) of the Board's Regulation Y. These activities will be conducted in the rural communities of Middlebourne, Pennsboro and Sistersville, West Virginia.

Board of Governors of the Federal Reserve System, June 30, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-15940 Filed 7-6-89; 8:45 am]

BILLING CODE 6210-01-M

Mackinaw Valley Financial Services, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 27, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Mackinaw Valley Financial Services, Inc.*, Mackinaw, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First Security Bank, Mackinaw, Illinois.

2. *North Linn Corporation*, Coggon, Iowa; to become a bank holding company by acquiring 99 percent of the voting shares of Linn County State Bank, Coggon, Iowa.

Board of Governors of the Federal Reserve System, June 30, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-15941 Filed 7-6-89; 8:45 am]

BILLING CODE 6210-01-M

Merchant House; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(C)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 21, 1989.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Merchant House*, Santa Ana, California; to become a bank holding company by acquiring 52.60 percent of the voting shares of PNB Financial Group, Inc., Newport Beach, California, and thereby indirectly acquire Pacific National Bank, Newport Beach, California.

In connection with this application, Applicant also proposes to acquire Pacific National Realty Finance, Newport Beach, California, and thereby engage in mortgage banking pursuant to § 225.25(b)(1); and real estate appraisal pursuant to § 225.25(b)(13) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 30, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-15942 Filed 7-6-89; 8:45 am]

BILLING CODE 6210-01-M

PKBANKEN; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 28, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *PKBANKEN*, Stockholm, Sweden; to acquire Independent Finance, Inc., Bellevue, Washington, and thereby engage in making, acquiring, and servicing loans and other extensions of credit for the company's account and for the account of others, such as would be made by mortgage or commercial finance companies pursuant to § 225.25(b)(1), and such loans would be either secured or unsecured, with the collateral consisting of real estate, equipment and other tangible personal property; and leasing personal or real property, or acting as agent, broker or adviser in leasing such property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 30, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-15943 Filed 7-6-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meetings in August

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agendas of the forthcoming meetings of one of the agency's initial review committees and a national advisory council in the month of August 1989. These committees will be performing review of applications for Federal assistance. Therefore, portions of the meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 10(d). Notice of these meetings is required under the Federal Advisory Committee Act, Pub. L. 92-463.

Committee Name: National Advisory Council on Drug Abuse, NIDA

Date and Time: August 15: 9:00 a.m.

Place: National Institutes of Health, Building 31C, Conference Room 9, 9000 Rockville Pike, Bethesda, MD 20892.

Status of Meeting: Closed.

Contact: Sheila Gardner, Room 8A-54, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-0441.

Purpose: The Council advises and makes recommendations to the Secretary, Department of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute on Drug Abuse, on the development of new initiatives and priorities, and the efficient administration of drug abuse research, including prevention and treatment research, and research training. The Council also gives advice on policies and priorities for drug abuse grants and contracts, and reviews and makes final recommendations on grant applications.

* * * * *

Committee Name: Mental Health AIDS Research Review Committee, NIMH.

Date and Time: August 18: 8:30 a.m.

Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852.

Status of Meeting: OPEN—August 18: 8:30-9:15 a.m., CLOSED—Otherwise.

Contact: Regina Thomas, Room 9C-15, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-6470.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and research training activities in the areas of psychoneuro-immunological, psychosocial, behavioral, and psychological aspects of AIDS as they relate to mental health, with recommendations to the National Advisory Mental Health Council for final review.

* * * * *

Substantive information, summaries of the meetings, and rosters of committee members may be obtained as follows: Ms. Camilla Holland, NIDA Committee Management Officer, Room 10-42, (301) 443-2620: Ms. Joanna Kieffer, NIMH Committee Management Officer, Room 9-105, (301) 443-4333. The mailing address for the above parties is: Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

Date: June 30, 1989.

[FR Doc. 89-15953 Filed 7-6-89; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

Injury Research Grant Review Committee; Meeting Change

This notice announces a change in the telephone number for the contact person for a previously announced meeting.

Federal Register Citation of Previous Announcement: 54 FR 26254

Name: Injury Research Grant Review Committee

Previously Announced Time and Date: 8:00 a.m.-5:00 p.m.—July 10-12, 1989

Previously Announced Telephone Number: Commercial: 404/639-4690

Change in the Telephone Number: 404/488-4690

Dated: July 4, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 89-16061 Filed 7-6-89; 8:45 am]

BILLING CODE 4160-18-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on Friday, June 16, 1989.

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

1. Temporary Exemptions for Purposes of Conducting Authorized Food Labeling Experiments (21 CFR 101.108(b))—0910-0151—This regulation provides means for firms to petition FDA and receive approval for conducting experiments with new labeling formats and information (that are not provided for by existing regulations) to increase consumer awareness. Respondents: Businesses or other for-profit, small businesses or organizations: Number of Respondents: 2; Number of Responses per Respondent: 1; Average Burden per Response: 40 hours; Estimated Annual Burden: 80 hours.

2. Scientific and Technical Competency Form—0925-0287—The National Cancer Institute has established a computer-based system for identifying and referring highly qualified laboratory support candidates to program officials. Applicants are requested to identify on the form those scientific and technical competencies they possess. This information is entered into an automated database. Respondents: Individuals or households, Federal agencies or employees; Number of Respondents: 600; Number of Responses per Respndent: 1; Average

Burden per Response: .083 hours; Estimated Annual Burden: 50 hours.

3. Health Education Assistance Loan (HEAL) Program Regulations—42 CFR Part 60—0915-0108—This submission is for reinstatement of the notification, reporting, and recordkeeping requirements to ensure that the lenders, holders, and schools participating in the HEAL program follow sound management procedures in the administration of federally insured loans for the approximately 29,000 annual borrowers. The HEAL Deferment Reporting Requirements (0915-0125) and the HEAL Recordkeeping Requirements (0915-0054) are being consolidated in this submission. Respondents: Non-profit institutions, State or local governments, businesses or other for-profit.

	No. of respondents	No. of hours per response	No. of responses per respondent
School:			
Notification	400	.067	72-73
Reporting	400	.017	72-73
Recordkeeping	400	.083	72-73
Lenders:			
Notification	66	.050	439
Reporting	66	.083	439
Recordkeeping	66	.033	439

Estimated Annual Burden.....9,668 hours

4. Program of Financial Assistance for Disadvantaged Health Professionas Students (FADHPS) Application and Regulations—42 CFR Part 57—0915-0110—The Agency needs the information collected under these regulatory requirements to assure that the schools are properly administering FADHPS funds. The information supplied on the application will help determine the number and type of scholarships each school will receive. This submission extends approval of information collections currently approved under this number and incorporates the FADHPS application currently approved under 0915-0117. Respondents: Non-profit institutions.

	No. of respondents	No. of hours per response	No. of responses per respondent
Reporting			
42 CFR			
57.2903	200	.50	1.0
57.2909	200	.083	.5
Recordkeeping			
42 CFR			
57.2909(b)	200	.033	1.0

Estimated Annual Burden.....175 hours

Note: Information collection burden for recordkeeping under 42 CFR 57.2909(b)(1)(ii) is separately approved under OMB No. 0915-0047.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: June 29, 1989.

James M. Friedman,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 89-15917 Filed 7-6-89; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. 89-2014]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: June 28, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Optional Relocation Payment Claim Forms

Office: Community Planning and Development

Description of the Need for the Information and its Proposed Use: Under the Uniformed Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the Housing and Community Development Act of 1974, as amended, displaced persons must make proper application for relocation assistance payments for which they are eligible. The Department's optional claim forms will be used by both displaced persons to apply for payments for moving expenses and residential occupants to apply for replacement housing payments

Form Number: HUD-40054, 40055, 40056, 40057, 40058, 40061, and 40072

Respondents: Individuals or Households, State or Local Governments, Farms, Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations

Frequency of Submission: Other

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD 40054	9,000		1		.5		4,500
HUD 40055	400		1		1.5		600
HUD 40056	400		1		1.0		400
HUD 40057	1,250		1		1.0		1,250
HUD 40058	5,750		1		1.0		5,750
HUD 40061	9,000		1		1.0		9,000
HUD 40072	2,000		1		1.0		2,000

Total Estimated Burden Hours: 23,500

Status: Reinstatement

Contact: Melvin Geffner, HUD, (202) 755-6336; John Allison, OMB, (202) 395-6880.

Date: June 28, 1989.

[FR Doc. 89-15911 Filed 7-6-89; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-89-2015]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as requried by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: June 28, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Inspection Form, Section 8 Existing Housing Program

Office: Housing

Description of the Need for the Information and its Proposed Use: Annual inspections are required to ensure that housing units leased in the Section 8 Existing Housing Program are and continue to be decent, safe, and sanitary as required by law. The forms will be used by the Public Housing Authorities staff to certify compliance with HUD when inspecting a dwelling unit and maintained in a file.

Form Number: HUD-52580 and HUD-52580A

Respondents: State or Local Governments

Frequency of Submission: Annually

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Annual Reporting	2,000		600		.05		600,000

Total Estimated Burden Hours: 600,000

Status: Extension

Contact: Gwen Carter, HUD (202) 755-6477; John Allison, OMB, (202) 395-6880.

Date: June 28, 1989.

[FR Doc. 89-15912 Filed 7-6-89; 8:45 am]

BILLING CODE 4210-01-M

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-89-2005]

Dart Associates, Inc.; Hearing Date Change

AGENCY: Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of hearing date change in the matter of Dart Associates, Inc. HUDALJ 89-01-MH.

SUMMARY: This notice announces a new date for a Presentation of Views previously set, in an earlier notice, for July 10, 1989.

FOR FURTHER INFORMATION CONTACT: Honorable Alan W. Heifetz, Administrative Law Judge, U.S. Department of Housing and Urban Development, Room 2156, 451 Seventh

Street SW., Washington, DC 20410, Telephone: (202) 755-2540.

SUPPLEMENTARY INFORMATION: On June 20, 1989, in 54 FR 25909 the Department of Housing and Urban Development published notice of a Presentation of Views that was to commence at 9:30 a.m. on July 10, 1989. By order of the Administrative Law Judge, the schedule for the Presentation of Views has been extended and will now commence at 9:30 a.m. on July 17, 1989 in Room 2155, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

Issued at Washington, DC, on June 30, 1989.

Stephen A. Martin,

Acting Deputy Assistant Secretary for Single Family Housing.

[FR Doc. 89-15930 Filed 7-6-89; 8:45 am]

BILLING CODE 4210-27-M

[Docket No. N-89-2006]

Dart Associates, Inc.; Hearing Date Change

AGENCY: Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of hearing date change in the matter of Dart Associates, Inc. HUDALJ 89-02-MH.

SUMMARY: This notice announces a new date for a Presentation of Views previously set, in an earlier notice, for July 10, 1989.

FOR FURTHER INFORMATION CONTACT: Honorable Alan W. Heifetz, Administrative Law Judge, U.S. Department of Housing and Urban Development, Room 2156, 451 Seventh Street SW., Washington, DC 20410, Telephone: (202) 755-2540.

SUPPLEMENTARY INFORMATION: On June 20, 1989, in 54 FR 25908 the Department of Housing and Urban Development published notice of a Presentation of Views that was to commence at 9:30 a.m. on July 10, 1989. By order of the Administrative Law Judge, the schedule for the Presentation of Views has been extended and will now commence at 9:30 a.m. on July 17, 1989 in Room 2155, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

Issued at Washington, DC, on June 30, 1989.

Stephen A. Martin,

Acting Deputy Assistant Secretary for Single Family Housing.

[FR Doc. 89-15931 Filed 7-6-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Performance Review Board Appointments

AGENCY: Department of the Interior.

ACTION: Notice of performance review board appointments.

SUMMARY: This notice provides the names of individuals who have been appointed to serve as members of the Department of the Interior Performance Review Boards. The publication of these appointments is required by section 405(a) of the Civil Service Reform Act of 1978 (Pub. L. 95-454, 5 U.S.C. 4314(c)(4).

DATES: These appointments are effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Morris A. Simms, Director of Personnel, Office of the Secretary, Department of the Interior, 1800 C Street NW., Washington, DC 20240, Telephone Number: 343-6761.

SES Performance Review Boards (PRB)—1989-1990

Assistant Secretary for Fish and Wildlife and Parks

Robert Stanton, FNP, CA
Charles Odegaard, FNP, CA
Joseph Marler, FWS, CA
Jay Berst, FWS, CA
Joseph Doddridge, FWP, CA

Assistant Secretary for Indian Affairs

Jerry Jaeger, IA, (CA)
Walter Mills, IA, (CA)
Wilson Barber, IA, (CA)
James Stevens, IA, (CA)
Hazel Elbert, IA, (CA)

Assistant Secretary—Land and Minerals Management

James Hughes, LMM, (NC)
Thomas Allen, LLM, (CA)
Dean Stepanek, LLM, (CA)
Carson Culp, LLM, (CA)
Ed Cassidy, LMS, (NC)
Thomas Gernhofer, LMS, (CA)
Robert Fagin, LSM, (CA)

Office of the Secretary and Assistant Secretary—Policy Budget and Administration

Bart House, PBA, (CA)
James Jadlos, PBA, (CA)
Larry Cardwell, PBA, (CA)
Carmen Maymi, O/S, (CA)
Mary Ann Lawler, PBA, (CA)

Office of the Solicitor

Martin J. Suuberg, SOL, (NC)
Carol A. Clancy, SOL, (CA)
Timothy Elliott, SOL, (CA)
Anthony R. Conte, SOL, (CA)
Lawrence E. Cox, SOL, (CA)

Assistant Secretary for Water and Science

Billy Martin, WBR, (CA)
John Keyes, WBR, (CA)
David Brown, WBM, (CA)
George Dooley, WBM, (CA)
Peter Bermel, WGS, (CA)
Stanley Sauer, WGS, (CA)
Harlan Watson, W&S, (NC)

Departmental Performance Review Board

Lou Gallegos, PBA, (NC)
Robert F. Weimer, O/S, (NC)
Doyle Frederick, WGS, (CA)
Charles (Ed) Kay, PBA, (CA)
Morris A. Simms, PBA, (CA)
Charlotte Spann, O/S, (CA)
Herbert Cables, FNP, (CA)

Approved:

Charles E. Kay,

Principal Deputy Assistant Secretary, Policy, Budget and Administration.

Date: June 29, 1989.

[FR Doc. 89-15976 Filed 7-6-89; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

[AZ 020-09-4212-11; AZA 18069]

Realty Action: Recreation and Public Purposes (R&PP) Act Classification, Arizona

The city of Tempe proposes development of the following public land within its Rio Salado Project of river reclamation and recreation. Approximately 420 acres are affected.

Gila and Salt River Meridian, Maricopa County, Arizona

T. 1 N., R. 4 E.
Sec. 8, portion of S½SW¼, SW¼SE¼;
Sec. 14, N½NE¼;
Sec. 17, N½.

Lease A 18069 has been granted affecting the NE¼NW¼, sec. 14.

The lands have been examined and found suitable for classification for lease and conveyance under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*) and the regulations of 43 CFR Parts 2740 and 2912.

In addition, the land is determined to meet general classification criteria of 43 CFR 2410.1(a-d) and specific public purposes classification criteria of 43 CFR 2430.4(c).

Classification of this land under the provisions of the above cited R&PP Act segregates them from appropriations under the public lands laws and the mining laws, but not from applications under the mineral leasing laws or the R&PP Act for a period of eighteen months from the date this notice is published in the **Federal Register** (43 CFR 2741.5(2)).

Federal Aviation Administration withdrawal application A 23853 affects sec. 17. Existing withdrawals for Salt River Project purposes will be modified by the holding agency, the Bureau of Reclamation. BLM will ensure the compatibility of all proposed uses prior to leasing additional and to the city of Tempe.

For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Charles R. Frost,

Associate Manager.

Date: June 26, 1989.

[FR Doc. 89-15915 Filed 7-6-89; 8:45 am]

BILLING CODE 4310-32-M

[UT-020-09-4333-12-ABVD]

Salt Lake District; District Multiple Use Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of multiple use advisory council meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Salt Lake District Multiple Use Advisory Council will be held on August 7 and 8, 1989. The Council will convene at 1:00 p.m. at the Salt Lake District Office. Following a brief business meeting the Council will depart for a one and one-half day tour of West Desert development sites and/or other sites of interest. That first evening (August 7), the Council will reconvene for a second business meeting starting 7:00 p.m. at the Stateline Inn, Wendover, NV.

During the meetings and accompanying tour the Council will address issues including: The salt loss at the Bonneville Salt Flats, the Pony Express OHV Plan, hazardous waste facility developments, Firex 88 rehabilitation progress, noxious weed infestations, the riparian enhancement initiative in Rich County, and updates on other general District programs.

The public is invited to attend this meeting or to file a written statement for the Council's consideration. Those wishing to make an oral statement must notify Deane Zeller, District Manager, 2370 South 2300 West, Salt Lake City, Utah, 84119 by August 1, 1989.

Ernest J. Eberhard,

Acting District Manager.

[FR Doc. 89-15950 Filed 7-6-89; 8:45 am]

BILLING CODE 4310-DQ-M

[OR-933-09-4332-09; GP9-263]

Public Review Period for USGS/USBM "Mineral Survey Reports" Prepared for BLM Wilderness Study Areas; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Oregon Bureau of Land Management (BLM) is requesting public review of combined U.S. Geological Survey (USGS) and U.S. Bureau of Mines (USBM) "Mineral Survey Reports" for the following Wilderness Study Areas (WSAs). These WSAs have been preliminarily recommended suitable for inclusion into the National Wilderness Preservation System:

1. Alvord Desert WSA (OR-2-74), East Alvord WSA (OR-2-73A), Harney and Malheur Counties, Oregon (USGS Bulletin 1739-B), cost—$3.25;
2. Home Creek WSA (OR-2-85H), Harney County, Oregon (USGS Bulletin 1740-C), cost—$1.00;
3. Blitzen River WSA (OR-2-86E), Harney County, Oregon (USGS Bulletin 1740-D), cost—$1.25;
4. Fifteen Mile Creek WSA (OR-3-156), Oregon Canyon WSA (OR-3-157), Twelve Mile Creek WSA (OR-3-162), Willow Creek WSA (OR-3-152), Malheur and Harney Counties, Oregon (USGS Bulletin 1742-B), cost—$2.00;
5. Jordan Craters WSA (OR-3-128), Malheur County, Oregon (USGS Open File Report 88-572), cost—$2.25;
6. North Pole Ridge WSA (OR-5-8), Sherman and Gilliam Counties, Oregon (USGS Bulletin 1743-B), cost—$1.50;
7. Spring Basin WSA (OR-5-9), Wheeler County, Oregon (USGS Bulletin 1743-C), cost—$1.50.

If the public provides a new interpretation of the data presented in the mineral reports or submits new mineral data for consideration, BLM will send these comments to USGS/USBM. Significant new findings, if any, will be documented in the BLM "Wilderness Study Report" which will be reviewed by the Secretary, the President, and by Congress before final decisions on wilderness designation are made.

Copies of the mineral survey reports are available for review in BLM offices in Portland, Salem, Eugene, Roseburg, Medford, Coos Bay, Lakeview, Burns, Prineville, Vale, and Spokane. These copies are not available for sale or removal from BLM offices. Copies, however, may be purchased from the following address: Books and Open-File Report Section, U.S. Geological Survey, Federal Center, Box 25425, Denver, CO 80225, (303) 236-7476. Payment by check or money order must accompany all orders.

DATE: The public review of the mineral survey reports named in this notice shall conclude on September 15, 1989.

ADDRESS: Send comments and information to: State Director (920), BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Eric Hoffman, Division of Mineral Resources at (503) 231-6974 or David Harmon, Division of Lands and Renewable Resources at (503) 231-6823, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208.

SUPPLEMENTARY INFORMATION: Section 603 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2765, directed the Secretary of Interior to inventory lands having wilderness characteristics as described in the Wilderness Act of September 3, 1964, and from time to time report to the President his recommendations as to the suitability or non-suitability of each area for preservation as wilderness. The USGS and USBM are charged with conducting mineral surveys for areas that have been preliminarily recommended suitable by BLM for inclusion into the wilderness system to determine the mineral values, if any, that may be present in such areas.

There are about 2.8 million acres of Wilderness Study Areas identified by BLM in Oregon, of which about 1.3 million acres have been preliminarily recommended as suitable. These 7 reports are part of approximately 45 combined mineral survey reports that will be prepared by USGS/USBM. The next batch of mineral survey reports will be available for public review during the fall of 1989.

The BLM Oregon State Director is providing this public review and comment period in order to insure that all available minerals data are considered by Congress prior to making its final wilderness suitability decisions. BLM will review the public comments and will forward to USGS/USBM any

significant new minerals data or new interpretations of the minerals data submitted by the public.

The information requested from the public via this invitation is not limited to any specific energy or mineral resource. Comments should be provided in writing and should be as specific as possible and include:

1. The name and number of the subject Wilderness Study Area and USGS/USBM Mineral Survey Report.
2. Mineral(s) of interest.
3. A map or land description by legal subdivision of the public land survey grid or protracted surveys showing the specific parcel(s) of concern within the subject Wilderness Study Area.
4. Information and documents that depict the new data or reinterpretation of data.
5. The name, address, and phone number of the person who may be contacted by technical personnel of the BLM, USGS, or USBM assigned to review the information.

Geologic maps, cross sections, drill hole records and sample analyses, etc. should be included. Published literature and reports may be cited. Each comment should be limited to a specific Wilderness Study Area. All information submitted and marked confidential will be treated as proprietary data and will not be released to the public without consent.

Dated: June 28, 1989.

Charles W. Luscher,

State Director.

[FR Doc. 89-15959 Filed 7-6-89; 8:45 am]

BILLING CODE 4310-33-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. Parent corporation and address of principal office: Browning-Ferris Industries, Inc., 757 N. Eldridge, Houston, Texas 77079, Delaware.

B. Wholly-owned subsidiaries which will participate in the operations, address of their respective offices, and states of incorporation:

1. Action Disposal System, Inc., Minnesota.
2. American Sheds, Inc., California.
3. Ameride Corporation, California.
4. Area Ninety Landfill, Inc./Ninety Plus, Inc., Louisiana.
5. Atkinson Enterprises, Inc., Indiana.
6. Azusa Land Reclamation Co., Inc., California.
7. BFI of Ponce, Inc., Puerto Rico.
8. BFI Constructors, California.
9. BFI Energy Systems, Inc./BFI Ref-Fuel, Inc., Delaware.
10. BFI Energy Systems, Inc., of Albany, Inc., Delaware.
11. BFI Energy Systems of Bergen County, Inc., New Jersey.
12. BFI Energy Systems of Boston, Inc., Massachusetts.
13. BFI Energy Systems of Brookhaven, Inc., Delaware.
14. BFI Energy Systems of Broward County, Inc., Delaware.
15. BFI Energy Systems of Delaware County, Inc., Delaware.
16. BFI Energy Systems of Essex County, Inc., New Jersey.
17. BFI Energy Systems of Fresno, Inc., California.
18. BFI Energy Systems of Hemsptead, Inc., Delaware.
19. BFI Energy Systems of Lehigh Valley, Inc., Delaware.
20. BFI Energy Systems of Los Angeles, Inc., Delaware.
21. BFI Energy Systems of Lowell, Inc., Delaware.
22. BFI Energy Systems of Midstate Connecticut, Inc., Delaware.
23. BFI Energy Systems of Oyster Bay, Inc., Delaware.
24. BFI Energy Systems of Plymouth, Inc., Delaware.
25. BFI Energy Systems of Southeastern Connecticut, Inc., Delaware.
26. BFI Energy Systems of Texas, Inc., Delaware.
27. BFI Environmental Waste Systems, Inc., Delaware.
28. BFI Medical Waste Systems of California, Inc., Georgia.
29. BFI Medical Waste Systems of Arizona, Inc., Delaware.
30. BFI Medical Waste Systems of Colorado, Inc., Delaware.
31. BFI Medical Waste Systems of Illinois, Inc., Delaware.
32. BFI Medical Waste Systems of Minnesota, Inc., Minnesota.
33. BFI Medical Waste Systems of Oregon, Inc., Delaware.
34. BFI Medical Waste Systems of Utah, Inc., Delaware.
35. BFI Medical Waste Systems of (East Central) Inc., Delaware.
36. BFI Medical Waste Systems (Steel), Inc., Delaware.
37. BFI Medical Waste Systems (South Central), Inc., Tennessee.
38. BFI Medical Waste Systems (Southeast), Inc., Delaware.
39. BFI Modern Landfill, Inc., Illinois.
40. BFI Portable Services, Inc., Delaware.
41. BFI Recycling Systems of Minnesota, Inc., Minnesota.
43. BFI of North Metro, Inc., Michigan.
44. BFI Stephens, Inc., Texas.
45. BFI Waste Systems, Inc., Texas.
46. BFI Waste Systems of Indiana, Inc., Indiana.
47. Bio-Medical Services Corp., Georgia.
48. Bio-Tech Services, Inc., Missouri.
49. Brooks Disposal Service, Inc., Illinois.
50. Browning-Ferris, Inc., Delaware.
51. Browning-Ferris, Inc., Maryland.
52. Browning-Ferris Industries Chemical Services, Inc., Nevada.
53. Browning-Ferris Industries (DC), Inc., Delaware.
54. Browning-Ferris Industries, Delaware.
55. Browning-Ferris Industries Waste Systems, Inc., New Jersey.
56. Browning-Ferris Industries, Inc., Massachusetts.
57. Browning-Ferris Industries of Alabama, Inc., Alabama.
58. Browning-Ferris Industries of Arkansas, Inc., Arkansas.
59. Browning-Ferris Industries of Arizona, Inc., Delaware.
60. Browning-Ferris Industries of California, Inc., California.
61. Browning-Ferris Industries of Central Jersey, Inc., Delaware.
62. Browning-Ferris Industries of Colorado, Colorado.
63. Browning-Ferris Industries of Connecticut, Inc., Delaware.
64. Browning-Ferris Industries of Eastern Pennsylvania, Inc., Pennsylvania.
65. Browning-Ferris Industries of Elizabeth, N.J., Inc., New Jersey.
66. Browning-Ferris Industries of Florida, Inc., Delaware.
67. Browning-Ferris Industries of Georgia, Inc., Georgia.
68. Browning-Ferris Industries of Hawaii, Inc., Delaware.
69. Browning-Ferris Industries of Idaho, Inc., Idaho.
70. Browning-Ferris Industries of Illinois, Inc., Delaware.
71. Browning-Ferris Industries of Indiana, Inc., Indiana.
72. Browning-Ferris Industries of Iowa, Inc., Iowa.
73. Browning-Ferris Industries of Kansas, Inc., Kansas.
74. Browning-Ferris Industries of Kansas City, Inc., Missouri.
75. Browning-Ferris Industries of Kentucky, Inc., Delaware.
76. Browning-Ferris Industries of Louisiana, Inc., Louisiana.
77. Browning-Ferris Industries of Maine, Delaware.

78. Browning-Ferris Industries of Michigan, Inc., Michigan.
79. Browning-Ferris Industries of Minnesota, Inc., Minnesota.
80. Browning-Ferris Industries of Mississippi, Inc., Mississippi.
81. Browning-Ferris Industries of Montana, Inc., Nevada.
82. Browning-Ferris Industries of Nebraska, Inc., Nebraska.
83. Browning-Ferris Industries of New Hampshire, Inc., New Hampshire.
84. Browning-Ferris Industries of New Jersey, Inc., New Jersey.
85. Browning-Ferris Industries of New York, Inc., New York.
86. Browning-Ferris Industries of New Jersey, Inc., New Jersey.
87. Browning-Ferris Industries of Ohio, Inc., Delaware.
88. Browning-Ferris Industries of Ohio and Michigan, Inc., Ohio.
89. Browning-Ferris Industries of Oregon, Inc., Oregon.
90. Browning-Ferris Industries of Oyster Bay, Inc., Delaware.
91. Browning-Ferris Industries of Paterson, N.J., Inc., New Jersey.
92. Browning-Ferris Industries of Pennsylvania, Inc., Delaware.
93. Browning-Ferris Industries of Puerto Rico, Inc., Puerto Rico.
94. Browning-Ferris Industries of Quincy, Illinois, Inc., Iowa.
95. Browning-Ferris Industries of Rhode Island, Inc., Delaware.
96. Browning-Ferris Industries of Rochester, Inc., Minnesota.
97. Browning-Ferris Industries of South Atlantic, Inc., North Carolina.
98. Browning-Ferris Industries of South Jersey, Inc., New Jersey.
99. Browning-Ferris Industries of Southern Illinois, Inc., Delaware.
100. Browning-Ferris Industries of Southeastern Michigan, Inc., Michigan.
101. Browning-Ferris Industries of Southern Indiana, Inc., Indiana.
102. Browning-Ferris Industries of Southern Illinois, Inc., Illinois.
103. Browning-Ferris Industries of Springfield, Inc., Missouri.
104. Browning-Ferris Industries of St. Louis, Inc., Delaware.
105. Browning-Ferris Industries of Tennessee, Inc., Tennessee.
106. Browning-Ferris Industries of Utah, Inc., Utah.
107. Browning-Ferris Industries of Vermont, Inc., Vermont.
108. Browning-Ferris Industries of Washington, Inc., Washington.
109. Browning-Ferris Industries of West Virginia, Inc., Delaware.
110. Browning-Ferris Industries of Western Jersey, Inc., New Jersey.
111. Browning-Ferris Industries of Wisconsin, Inc., Wisconsin.
112. Browning-Ferris Industries of Wyoming, Inc., Wyoming.
113. Browning-Ferris Services, Inc., Delaware.
114. Cape Coral Disposal Service, Inc., Florida.
115. Captiva Disposal, Inc., Florida.
116. CECOS International, Inc., New York.
117. CECOS Treatment Corporation, Connecticut.
118. CMS Development Corp., North Carolina.
119. Chemical Reclamation Services, Inc., Texas.
120. Community Transit Services, Inc., California.
121. Dave Systems, Inc., California.
122. DeWatering Services, Inc., Louisiana.
123. Disposal Specialists, Inc., Vermont.
124. Dooley Equipment Corporation, Massachusetts.
125. Empire Sweeping Company, Ohio.
126. E & E Hauling, Inc., Illinois.
127. ESI, Inc., Pennsylvania.
128. Geneva Waste Services, Inc., New York.
129. George Fenske Sanitary Service, Inc., Minnesota.
130. Hall's Ferry Investments, Inc., Missouri.
131. Heavy Equipment Leasing Services Co., Inc., New York.
132. Health Management, Inc., Tennessee.
133. Health Management of New Orleans, Inc., Louisiana.
134. Highway 36 Land Development Company, Colorado.
135. Homestead Land Corp., Pennsylvania.
136. HL-NIW, Inc., New York.
137. Indoco, Inc., Texas.
138. International Disposal Corp., Texas.
139. International Disposal Corp. of California, California.
140. International Disposal Corporation of Indiana, Delaware.
141. International Disposal Corporation of Kansas, Kansas.
142. Isler's Refuse Service, Inc., Ohio.
143. Jeffco Land Reclamation Company, Colorado.
144. Jeffco Land Reclamation, Inc., Missouri.
145. Jefferson Pike Landfill, Inc., Tennessee.
146. Joe Ball Sanitation Service, Inc., New York.
147. Karas Trucking Co., Inc., Ohio.
148. LaGrange Disposal Co., Inc., Illinois.
149. Land Reclamation, Inc., New York.
150. Landfill, Inc., Colorado.
151. Lanfill, Inc., Missouri.
152. Louis Kmito & Son, Inc., Massachusetts.
153. Lyon Development Co., Michigan.
154. Merrimack Valley Medical Services Company, Inc., Masachusetts.
155. National Disposal Service, Nebraska.
156. Newco Waste Systems, Inc., New York.
157. Newco Waste Systems of New Jersey, Inc., New Jersey.
158. Niagara Landfill, Inc., New York.
159. Niagara Recycling, Inc., New York.
160. Niagara Sanitation Company, Inc., New York.
161. Norcal Trans, Inc., California.
162. Northern Disposal, Inc., Massachusetts.
163. Pine Bend Landfill, Inc., Minnesota.
164. Pine Island Disposal, Inc., Florida.
165. RHF, Inc., Texas.
166. RPS, Inc., Colorado.
167. RWCGP, Inc., Texas.
168. Residential Service, Inc., Nebraska.
169. Resource Recovery Corporation, Massachusetts.
170. River City Refuse Removal, Inc., Wisconsin.
171. Rot's Disposal Service, Inc., Illinois.
172. Springfield Relay Systems, Inc., Missouri.
173. Tanis Leasing Company, Florida.
174. TRC, Inc., Pennsylvania.
175. Town and Country Waste Service, Inc., Wisconsin.
176. Troy Area Landfill, Inc., Wisconsin.
177. United Nottingham, Inc., California.
178. Van Tran of Tucson, Inc., Arizona.
179. Warner Hill Development Company, Ohio.
180. Warner Hill Improvement Company, Ohio.
181. Waste Disposal, Inc., Kansas.
182. West Roxbury Crushed Stone Co., Massachusetts.
183. Westowns Disposal Systems, Inc., Wyoming.
184. Woodlake Sanitary Service, Inc., Minnesota.

Noreta R. McGee,

Secretary.

[FR Doc. 89-15784 Filed 7-6-89; 8:45 am]

BILLING CODE 7035-01-M

Intent To Engage in Compensated Intercorporate Haulings Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use

compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation: The Clorox Company, 1221 Broadway, Oakland, CA 94612-1888.

2. Wholly-owned subsidiaries which will participate in the operations and state(s) of incorporation:

1. The Clorox Company (Household Products Company, a Delaware corporation.

2. [1] Food Service Products Company, a Delaware corporation.

3. The HVR Company, a Delaware corporation.

4. The Kingsford Products Company, a Delaware corporation.

5. Olympic HomeCare Products Company, a Delaware corporation.

6. Prince Castle, Inc., an Illinois corporation.

7. Aspen Water Company, a Delaware corporation.

8. Deer Park Spring Water, Inc., a Delaware corporation.

9. Deep Rock Water Company, a Florida corporation.

Noreta R. McGee,

Secretary.

[FR Doc. 89-15783 Filed 7-6-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket Nos. 31493 and 31493 (Sub-No. 1)]

Filing and Schedule of Submissions; Blackstone Capital Partners L.P., et al.

On June 15, 1989, Blackstone Capital Partners L.P. filed a petition for exemption to acquire control of CNW Corporation (CNW), Chicago and North western Transportation Company (CNWT) and certain carriers operated as part of the CNWT system. Blackstone seeks an exemption under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 11343 regarding its common control of CNW/CNWT and the carriers it was authorized to control through control of Transtar, Inc., in Finance Docket No. 31363, *Blackstone Capital Partners L.P.—Exemption from 49 U.S.C. 10746, 11321, and 11343* (not printed), served December 23, 1988. Blackstone also seeks an exemption under section 10505 from applicable provisions of 49 U.S.C. 11321 and requests that the Commission make such findings as may be required to grant that exemption.

On June 21, 1989, CNWT and Midwestern Railroad Properties, Inc. (MRPI) filed a notice of exemption for issuance of securities and assumption of liabilities under 49 CFR Part 1175 and 49 U.S.C. 10505 and 11301. The securities, obligations, and liabilities of CNWT identified in the notice relate to long-term financing, including the execution of promissory notes by CNWT in an amount up to $310 million. The notice also covers the issuance of guarantees, security interests or mortgages by CNWT and/or MRPI in a principal amount of up to $1,060 million. The Commission has stayed the effective date of this exemption until July 31, 1989, in a decision served July 5, 1989.

The Commission requests comments in response to both the petition for exemption filed in Finance Docket No. 31493 and the notice of exemption for issuance of securities filed in Finance Docket 31493 (Sub-No. 1). Although docketed separately, these two transactions appear interrelated, and we will consolidate them. The lead case will be Finance Docket No. 31493, and all comments should refer to that case number. Comments on the petition should address the section 10505 exemption criteria in light of the statutory standards at section 11344(d) of the Act. Comments on the notice should address whether permitting the proposed securities issuance to take effect through exemption would be consistent with the provisions of 49 CFR Part 1175, or whether the proposed issuance should be considered under the standards of 49 U.S.C. 11301. Comments also should indicate whether we should approve the issuance if considered under 49 U.S.C. 11301.

Copies of the petition for exemption can be obtained from Blackstone's representative: Betty Jo Christian or Timothy M. Walsh, Steptoe & Johnson, 1330 Connecticut Avenue NW., Washington, DC 20036-1795, (202) 429-3000.

Copies of the notice of the securities exemption can be obtained from the CNWT: James P. Daley or Stuart F. Gassner, Chicago and North western Transportation Company, One North Western Center, Chicago, Illinois 60606, (312) 559-7000.

Parties should both notify the Commission of their intent to participate in this proceeding and file any comments on the procedural schedule established below, no later than July 14, 1989. If comments we receive on the procedural schedule convince us that this schedule is inappropriate, we will immediately issue a notice establishing a new schedule or postponing the due dates of the existing one. Otherwise, parties should file comments and supporting verified statements in response to the petition and notice no later than July 28, 1989. Applicants may file a reply and rebuttal verified statements no later than August 4, 1989.

In connection with Blackstone's proposed acquisition of control of CNW, Union Pacific Corporation (UPC) will take certain actions. In addition to the planned acquisition of certain trackage rights over CNW lines by Union Pacific Railroad, UPC will acquire a substantial preferred stock interest in Chicago and North Western Holdings Corp. At UPC's option, after five years this interest would be convertible into common stock representing 25 percent of Holding's common stock on a fully-diluted basis. UPC has indicated it will seek Commission approval, exemption, or declaration that no approval or exemption is required for the trackage rights and any conversion of preferred to common stock interest after the Commission acts on the Blackstone proposals.

We specifically seek comments on whether the Blackstone and UPC proposals can or should be considered in isolation. The competitive considerations which will be the primary focus of either an application or exemption proceeding may require contemporaneous analysis of all aspects of the CNW takeover. Comments directed to this issue will substantially assist the Commission in making a determination on this question. Comments must be filed no later than July 14, 1989, with a Commission determination on this issue to made shortly thereafter.

An original and ten (10) copies of all comments should be filed with the Secretary of the Commission. In addition, a copy of any such comments must be served on petitioners' representatives at the address indicated above.

Dated: June 30, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners André, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-16101 Filed 7-6-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31447]

Burlington Northern Railroad Co.—Sale, Purchase, and Operation Exemption—Missouri Pacific Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission, under 49 U.S.C. 10505, exempts from the requirements of 49 U.S.C. 11343-11345 the purchase from the Missouri Pacific Railroad Company and operation by Burlington Northern Railroad Company (BN) of approximately 1.055 miles of rail line and the real property between milepost 13.97 and milepost 15.025 near Centralia, in Marion and Clinton Counties, IL, subject to standard labor protective conditions and a historic preservation condition.

DATES: This exemption is effective on July 9, 1989. Petitions for reconsideration must be filed by July 31, 1989.

ADDRESSES: Send pleadings referring to Finance Docket No. 31447 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioners' representatives:

William R. Power (BN), 777 Main Street, Fort Worth, TX 76102

Joseph D. Anthofer (MP), 1416 Dodge Street, Omaha, NE 68179

FOR FURTHER INFORMATION CONTACT:

Joseph H. Dettmar, (202) 275-7245 [TDD for hearing impaired: (202) 275-1721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services, (202) 275-1721.]

Decided: June 19, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners André, Lamboley, and Phillips. Commissioner Lamboley concurred with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 89-15938 Filed 7-6-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 89-11]

Leonardo Tomas Amador d/b/a Amador Pharmacy Discount Miami, FL; Hearing

Notice is hereby given that on December 21, 1988, the Drug Enforcement Administration, Department of Justice, issued to Leonardo Tomas Amador, d/b/a Amador Pharmacy Discount, an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate or Registration, AA2348173, and deny any pending applications for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Thursday, July 6, 1989, commencing at 9:30 a.m., at the United States Tax Court, Room 1524, 51 Southwest First Avenue, Miami, Florida.

Dated: June 23, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-15910 Filed 7-6-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to labors and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions being added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-

[1] Food Service Products Company is a successor by merger of: Moore's Food Products, Inc., Domani Foods Company and/or DFC Foods Company.

Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume I

Maryland
MD89-19
pp. 456c-456d
Maryland
MD89-20
pp. 456e-456f
Maryland
MD89-21
pp. 456g-456h

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut
CT89-1 (Jan. 6, 1989)
p. 63
District of Columbia
DC89-1 (Jan. 6, 1989)
p. 84
Maryland
MD89-1 (Jan. 6, 1989)
p. 411
Maryland
MD89-5 (Jan. 6, 1989)
pp. 427-428
Maryland
MD89-15 (Jan. 6, 1989)
p. 449
Tennessee
TN89-5 (Jan. 6, 1989)
pp. 1095-1098
Virginia
VA89-56 (Jan. 6, 1989)
p. 1188rrr

Volume II

Iowa
IA89-6 (Jan. 6, 1989)
p. 52
Texas
TX89-3 (Jan. 6, 1989)
p. 986
Texas
TX89-11 (Jan. 6, 1989)
p. 1014

Volume III

Idaho
ID89-1 (Jan. 6, 1989)
pp. 146-156a
Idaho
ID89-2 (Jan. 6, 1989)
pp. 158-159
Nevada
NV89-1 (Jan. 6, 1989)
p. 244
Washington
WA89-1 (Jan. 6, 1989)
pp. 346-387
Washington
WA89-3 (Jan. 6, 1989)
pp. 402-407
Washington
WA89-7 (Jan. 6, 1989)
pp. 418-422
Washington
WA89-8 (Jan. 6, 1989)
pp. 424-425

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issue on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 30th day of June 1989.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 89-15937 Filed 7-6-89; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-89-102-C]

Carolina Stalite Co.; Petition for Modification of Application of Mandatory Safety Standard

Carolina Stalite Company, P.O. Box 1037, Salisbury, North Carolina 28144 has filed a petition to modify the application of 30 CFR 77.501 (electric distribution circuits and equipment; repair) to its Stalite Coal Mine (I.D. No. 31-02032) located in Rowan County, North Carolina. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that no electrical work be performed on electric distribution circuits or equipment, except by a qualified person or by a person trained to perform electrical work and to maintain electrical equipment under the direct supervision of a qualified person.

2. As an alternate method, petitioner proposes the person required to perform electrical work include individuals employed by Tri Electric, Inc., of Spencer, North Carolina, who have been certified by the North Carolina Board of Electrical Examiners.

3. In support of this request, petitioner states that—

(a) The highest voltage in the coal yard is 480 volts; and

(b) There are three or four employees working in the coal yard. The recent addition of a seasonal bagging operation and the sale of small quantities of coal technically re-classifying Stalite Coal Company as a "coal mine", adds no new electrical hazards commonly associated with a conventional coal mine engaged in extraction; and there are no enclosed or underground facilities.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 7, 1989. Copies of the petition are available for inspection at that address.

Dated: June 28, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-15990 Filed 7-6-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-100-C]

H.L.&W. Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

H.L.&W. Coal Company, 14 Maple Street, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its No. 2 Slope (I.D. No. 36-07269) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Effective safety catches or other devices are not available for the conveyances used on the steeply pitching and undulating slopes with numerous curves and knuckles in the main haulage slopes of this anthracite mine.

3. If "makeshift" safety devices are installed they would activate on knuckles and curves when no emergency exists and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat, and to the hoisting rope above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 7, 1989. Copies of the petition are available for inspection at that address.

Dated: June 29, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-15991 Filed 7-6-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-97-C]

Island Creek Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Island Creek Coal Company, P.O. Box 11430, Lexington, Kentucky 40575-1430 has filed a petition to modify the application of 30 CFR 75.1707 (escapeways; intake air, separation from belt and trolley haulage entries) to its Dobbin Mine (I.D. No. 46-05480) located in Grant County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the escapeway ventilated with intake air be separated from the belt and trolley haulage entries.

2. As an alternate method, petitioner proposes to use the intake trolley haulage entry as the intake escapeway in continuous and longwall mining sections.

3. The velocity of air in the trolley entry would be increased, by using the trolley entry as an intake.

4. The development of three entries would result in 25 percent less exposure of miners to roof and rib hazards typical of this mine when compared to the four entry development.

5. In support of this request, petitioner proposes to install a low level carbon monoxide (CO) detection system in first and second mining areas where trolley systems are installed in the intake entry. The monitoring devices would be capable of giving warning of a fire for four hours should the power fail; a visual alert signal would be activated when the CO level is 10 parts per million (ppm) above the ambient air and an audible signal would sound at 15 ppm above the ambient air. All persons would be withdrawn to a safe area at 10 ppm and evacuated at 15 ppm. The fire alarm signal would be activated at an attended surface location where there is two-way communication. The CO system would be capable of monitoring electrical continuity and detecting electrical malfunctions.

6. The CO system would be visually examined at least once each coal-producing shift and tested weekly to ensure the monitoring system is functioning properly. The monitoring system would be calibrated with known concentrations of CO and air mixtures at least monthly.

7. If the CO monitoring system becomes inoperative, the trolley would continue to operate and qualified persons would patrol and monitor the trolley entry using hand-held CO detecting devices.

8. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 7, 1989. Copies of the petition are available for inspection at that address.

Date: June 28, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-15992 Filed 7-6-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-103-C]

Mountain Run Enterprises; Petition for Modification of Application of Mandatory Safety Standard

Mountain Run Enterprises, P.O. Box 85, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Orchard Vein Slope (I.D. No. 36-07864) located in Schuylkill County, Pennsylvania. The petition if filed under section 101(c) of the Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Effective safety catches or devices are not available for the conveyances used on the steeply pitching and undulating slopes with numerous curves and knuckles in the main haulage slopes of this anthracite mine.

3. If "makeshift" safety devices are installed they would activate on knuckles and curves when no emergency exists and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat, and to the hoisting rope above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same

degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 7, 1989. Copies of the petition are available for inspection at that address.

Dated: June 28, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-15993 Filed 7-6-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-98-C]

Snyder Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Snyder Coal Company, RD No. 2, Box 93, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1405 (automatic couplers) to its Rothermel Slope (I.D. No. 36-07588) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that track haulage cars be equipped with automatic couplers.

2. Installation of automatic couplers on the track haulage cars would result in a diminution of safety to the miners affected due to the sharp radius curves in the track, the undulating pitch of the slopes, the different types of small lightweight cars, and the systems of haulage.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 7, 1989. Copies of the petition are available for inspection at that address.

Dated: June 29, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-15994 Filed 7-6-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-99-C]

Tab-Col Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Tab-Col Mining, Inc., P.O. Box 2662, Pikeville, Kentucky 41501 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 2 (I.D. No. 15-09763) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine is in the Elkhorn Seam ranging from 41 to 47 inches in height. The seam has ascending and descending grades creating hilly areas over which the cars must traverse.

3. Petitioner states that the use of canopies on the mine's electric face equipment would result in a diminution of safety to the miners affected because the canopies would limit the operator's visibility and seating position, and the canopies would strike the roof and rib support on the high spots, possibly creating a hazard to all involved.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 7, 1989. Copies of the petition are available for inspection at that address.

Date: June 29, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-15995 Filed 7-6-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-101-C]

West End Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

West End Coal Company, R.D. No. 1, Box 315-A, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Last Chance Slope (I.D. No. 36-07859) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Effective safety catches or other devices are not available for the conveyances used on the steeply pitching and undulating slopes with numerous curves and knuckles in the main haulage slopes of this anthracite mine.

3. If "makeshift" safety devices are installed they would activate on knuckles and curves when no emergency exists and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat, and to the hoisting rope above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington 22203. All comments must be postmarked or received in that office on or before August 7, 1989. Copies of the petition are available for inspection at that address.

Dated: June 29, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-15996 Filed 7-6-89; 8:45 am]

BILLING CODE 4510-43-M

LOWER MISSISSIPPI DELTA DEVELOPMENT COMMISSION

Meeting and Public Hearing

Background

The Lower Mississippi Delta Development Commission was created by Pub. L. 100-460, signed on October 1, 1988. The purpose of the Commission is to identify and study the economic development, infrastructure, employment, transportation, resource development, education, health care, housing, and recreation needs of the Lower Mississippi Delta region by seeking and encouraging the participation of interested citizens, public officials, groups, agencies, and others in developing a 10-year plan that makes recommendations and establishes priorities to alleviate the needs identified. The Commission will make its report to Congress, the President, and the Governors of Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee no later than May 14, 1990.

This notice announces a meeting and public hearing of the Commission.

Meeting

Time: 5:00 p.m., July 13, 1989
Place: Sikeston Inn, I-55 and U.S. 62, Sikeston, MO 63801
Status: Open meeting.

Public Hearing

Time: 7:30 p.m., July 13, 1989
Place: Sikeston Inn, I-55 and U.S. 62, Sikeston, MO 63801
Status: Public oral and written testimony encouraged.
Contact: Ann Sartwell, Telephone (901) 753-1400.

Wilbur F. Hawkins,

Executive Director.

[FR Doc. 89-15960 Filed 7-6-89; 8:45 am]

BILLING CODE 6820-SN-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 89-52]

Granting of Federal Information Processing Standards (FIPS) Waiver Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of granting of FIPS waiver request.

SUMMARY: NASA hereby gives notices that NASA's Senior Official for Information Resources Management granted a request for a waiver of FIPS 60-2, 61-1, 63-1, and 97 to acquire a Massively Parallel Processor (MPP) Computing System for the Science Information Systems Center (SISC) to the Goddard Space Flight Center, Greenbelt, MD.

DATE: The waiver was effective May 10, 1989.

ADDRESS: National Aeronautics and Space Administration, Code NT, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Wallace O. Keene, Assistant Associate Administrator for Information Resources Management, (202) 453-1775.

C. Howard Robins, Jr.,

Associate Administrator for Management.

June 29, 1989.

[FR Doc. 89-15939 Filed 7-6-89; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATE: Requests for copies must be received in writing on or before August 21, 1989. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year US. Govenment agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Defense Nuclear Agency (N1-374-89-26). Routine Visual Information Records. (Historic photographic files, documentary motion picture film of Research and Development projects, and official command presentations will be retained as permanent records.)

2. Defense Nuclear Agency (N1-374-89-27). Routine Headquarters Medical Unit files.

3. Defense Nuclear Agency (N1-374-89-29 and N1-374-89-30). Temporary military personnel records. (Official personnel files are maintained by the Armed Service component.)

4. Defense Nuclear Agency (N1-374-89-31). Local and temporary duty travel request files.

5. Defense Nuclear Agency (N1-374-89-34). Routine civilian Personnel Management Administrative files.

6. Defense Nuclear Agency (N1-374-89-35). Publications Distribution Records.

7. Defense Nuclear Agency (N1-374-89-36). Records relating to Equal Employment and Opportunity Programs.

8. Defense Nuclear Agency (N1-374-89-37). Monthly Materials Handling Reports and other storage operations reports.

9. Farm Credit Administration (N1-103-89-3). Association correspondence, shareholder disclosure information, and miscellaneous reports produced by Farm Credit System institutions.

10. Farm Credit Administration (N1-103-89-4). Office files of a former member of the Farm Credit Administration Board.

11. Department of the Interior, National Park Service (N1-79-89-1). Construction and Professional Service Contract Files.

12. Department of the Interior, Minerals Management Service (N1-473-88-1). Revised comprehensive records schedule.

13. National Council of Public Works Improvement (N1-220-89-8). Routine administrative items, duplicates and non-record items which do not substantially document the activities of the Council. Substantial correspondence, meetings and public hearing files, reports, studies, press releases and audiovisual files are being retained for permanent retention.

14. Department of State, Bureau of Administration (N1-59-88-39). Routine administrative and facilitative records.

15. Department of State, Bureau of European and Canadian Affairs, Regional Political Economic Affairs (N1-59-89-11). Documents of the Organization of European Economic Cooperation.

16. Tennessee Valley Authority, Division of Medical Services (N1-142-88-18). Psychological case records and Employee Assistance Program Files.

17. Department of the Treasury, United States Secret Service (N1-87-88-1). Revisions to a comprehensive records schedule for the Intelligence Division.

18. Department of the Treasury, Financial Management Service (N1-425-89-1). Reconstruction Finance Corporation closed litigation files, 1961-1963.

Dated: June 30, 1989.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 89-15970 Filed 7-6-89; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Challenge III Section) to the National Council on the Arts will be held on August 1, 1989, from 9:15 a.m.-5:30 p.m. in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6), and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-15961 Filed 7-6-89; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-325 and 50-324; License Nos. DPR-71 and DPR-62; EA 87-165]

Carolina Power & Light Co. (Brunswick Units 1 and 2); Order Imposing Civil Monetary Penalty

I

Carolina Power and Light Company, Raleigh, North Carolina (licensee) is the holder of Operating License Nos. DPR-71 and DPR-62 (licenses) issued by the Nuclear Regulatory Commission (Commission or NRC) on November 12, 1976, and December 27, 1974, respectively. The licenses authorize the licensee to operate the Brunswick Units 1 and 2 in accordance with the conditions specified therein.

II

NRC inspection of the licensee's activities under the licenses was conducted on July 6-10, 1987. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the licensee by letter dated May 5, 1988. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice by letter dated July 1, 1988. In its response, the licensee agreed that the deficiencies constituted violations of regulatory requirements. However, for a variety of reasons associated with the application of the NRC's "Modified Enforcement Policy Relating to 10 CFR 50.49" (Modified Policy), the licensee contended that no civil penalty should be levied.

III

After consideration of the licensee's response and the statements of fact, explanations, and argument for mitigation contained therein, the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support (DEDS) has determined, as set forth in the Appendix to this Order, that the violations, with the exception of the violation involving Vulkene wire in a Unit 2 motor operator, occurred as stated. The DEDS has also determined that the remaining violations still constitute a Category B problem under the Modified Policy and that the penalty proposed for this problem in the Notice of Violation and Proposed Imposition of the Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96-295) and 10 CFR 2.205, *It is hereby ordered that:*

The licensee pay a civil penalty in the amount of Fifty Thousand Dollars ($50,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of the Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with copies to the Assistant General Counsel for Hearings and Enforcement, at the same address, the Regional Administrator, Region II, 101 Marietta Street NW., Atlanta, Georgia 30323, and a copy to the NRC Resident Inspector at Brunswick.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions to this Order shall be effective without further proceedings. If payments has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in section II as modified in section III, and

(b) Whether, on the basis of such a violations, this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 26th day of June 1989.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

Appendix—Evaluations and Conclusion

On May 5, 1988, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) to Carolina Power and Light Company (CP&L or licensee) for deficiencies relating to the environmental qualification (EQ) of electrical equipment important to safety. On June 3, 1988, CP&L requested, and was granted, a 30 day extension to respond to the Notice. By letter dated July 1, 1988, CP&L responded to the Notice by stating that CP&L has reviewed the Notice and agrees that the violations occurred, with one exception. However, the licensee disagreed with the proposed civil penalty. Principally, the licensee argues that the NRC's "Modified Enforcement Policy Relating to 10 CFR 50.49" (Modified Policy) was misapplied. The NRC's evaluation and conclusions regarding CP&L's response follow.

Restatement of the Violations

10 CFR 50.49 (d), (f) and (j), respectively, require, in part, that: (1) A list of electric equipment important to safety be prepared, and information concerning performance specifications, electrical characteristics and postulated environmental conditions for this equipment be maintained in a qualification file, (e) each item of electric important to safety shall be qualified by testing of, or experience with, identical or similar equipment, and qualifications shall include a supporting analysis to show that the equipment to be qualified is acceptable, and (3) a record of the qualification of the electrical equipment shall be maintained in a qualification file in an auditable form to permit verification that the required equipment is qualified and that the equipment meets the specified performance requirements under postulated environmental conditions.

Contrary to the above:

1. From November 30, 1985 to October 18, 1986, for Unit 1, and from June 15, 1986 to October 21, 1986, for Unit 2, the licensee did not have: (1) The Woodward speed sensors for the High Pressure Coolant Injection (HPCI) system on the list of electric equipment important to safety (Master List of qualified equipment), (2) the speed sensors for HPCI turbines tested for qualification, and (3) documentation to verify qualification of the speed sensors in an auditable form.

2. From November 30, 1985 to September 1986, for Unit 2, the licensee did not have: (1) The Vulkene wire installed by the licensee, in valve actuators required to be environmentally qualified, on the Master List of qualified equipment, (2) the wire tested for qualification, and (3) documentation to verify qualification of the wire in an auditable form.

3. From November, 30, 1985, to July 1987, for Unit 1, the licensee did not have: (1) the Whitney-Blake wire installed by the licensee, in valve actuators required to be environmentally qualified, on the Master list of qualified equipment, (2) the wire tested for qualification, and (3) documentation to verify qualification of the wire in an auditable form.

(4) From November 30, 1985 to November 21, 1986, for Units 1 and 2, the licensee did not have: (1) The control relays for the Standby Gas Treatment (SBGT) skid on the Master List of qualified equipment, (2) the relays tested for qualification, and (3) documentation to verify qualification of the relays in an auditable form.

(5) From November 30, 1985 to March 10, 1987, for Unit 1, the licensee did not have: (1) Kulka terminal blocks, for components required to be environmentally qualified, on the Master List of qualified equipment, (2) the terminal block test for qualification, and (3) documentation to verify qualification of the terminal block.

(6) From November 30, 1985 to July 7, 1987, for Unit 2, the licensee did not have: (1) Cinch terminal blocks, for components required to be environmentally qualified, on the Master List of qualified equipment (2) the terminal blocks tested for qualification, and (3) documentation to verify qualification of the terminal blocks.

(7) From November 30, 1985 to March 11, 1987, for Unit 1, the licensee did not have: (1) Unidentified teflon-type wire (used on the SBGT skid) on the Master List of qualified equipment, (2) the unidentified teflon-type wire tested for qualification, and (3) documentation to verify qualification of the unidentified teflon-type wire.

(8) From November 30, 1985 to July 1987, for Units 1 and 2, the licensee did not have: (1) Documentation to verify that qualification of the HPCI condensate float switches was not required or (2) the HPCI condensate float switches on the Master List of qualified equipment with documentation of qualification in an auditable form.

(9) From November 30, 1985 to October 1987, for Units 1 and 2, the licensee did not have documentation to verify qualification of the following items used in Limitorque Motor Operators: Allen-Bradley nylon terminal blocks, GE phenolic terminal block, and electrical butt splices. Additionally, various motor operator contined Collier PVC wire installed by the licensee for which qualification documentation was not available.

Summary of Licensee's Response

CP&L contends that the Notice fails to establish that CP&L "clearly should have known" of the violations prior to November 30, 1985. CP&L maintains that the Notice also (1) incorrectly alleges an EQ violation in the case of the Vulkene wire in the Unit 2 motor operator, (2) incorrectly classified the violations as significant, and (3) incorrectly groups the violations as an EQ Category B problem.

1. "Clearly Should Have Known" Test

CP&L contends that the NRC staff failed to specifically analyze the factors

set forth in the Modified Policy and has failed to describe in detail, for each alleged deficiency, the facts relied upon in concluding that CP&L "clearly should have known" of the deficiencies. Additionally, CP&L stated that "A mere recitation of the conclusion that the licensee clearly should have known is not sufficient."

CP&L states it is possible that NRC staff conducted a detailed inquiry. In this case, however, the licensee concludes that the Notice provides only a cursory summary of the conclusions reached. Despite that conclusion, the licensee did provide arguments to support the position that CP&L should not clearly have known of these violations. The broadest of the arguments provided was the assertion that, based on previous NRC and NRC-sponsored reviews, CP&L had a reasonable basis to believe that compliance with 10 CFR 50.49 had been achieved.

In summary, CP&L feels that the NRC failed to provide a legally sufficient factual basis for each and every "clearly should have known" finding and, therefore, cannot conclude that CP&L "clearly should have known" of the violations. Thus, CP&L has been deprived of the opportunity to respond meaningfully to the Notice.

2. The Vulkene Wire in the Unit 2 Motor Operator Replaced Prior to Operation After the Deadline

CP&L contends that the violation involving the Vulkene wire should be withdrawn as the deficiency on Unit 2, although it existed prior to the deadline, was corrected prior to Unit 2 operation after the deadline.

3. EQ Violations not Sufficiently Significant to Merit a Civil Penalty Under the Modified Policy

CP&L contends that violations 1, 2, 3, 4, 5, 6, and 8, and part of violation 9 are in a category analogous to the category described in Part III of the Modified Policy, which addresses those violations of 10 CFR 50.49 found not to be sufficently significant as to warrant a civil penalty under the Modified Policy. This contention is based on the premise that the only difference between the cited violations and the violations in the Modified Policy is that the cited violations were licensee-identified. CP&L maintains that it is inappropriate to apply escalated enforcement for each of the referenced licensee-identified violations. CP&L also maintains that, based on data available to the company, it was able to demonstrate that the components were qualified or qualifiable. CP&L also contends that the resolution to the deficiencies was performed in a time period commensurate with the time that a licensee would have had during an inspection to respond to an inspector.

Based on the above, CP&L contends that the referenced violations should be classified as not sufficiently significant for assessment of civil penalties.

4. Categorization of the Violations

As noted above, CP&L argues that only violation 7 and part of violation 9 are significant deficiencies in accordance with the Modified Policy, affecting only two components in two systems. Therefore, the licensee contends that only two deficiencies should be considered in aggregate resulting in an EQ Category C problem for which full mitigation is warranted.

5. Other Reasons Why the Civil Penalty Should Not Be Imposed

CP&L contends that the NRC is taking escalated enforcement for violations 1, 2, and 9 when the NRC is on record as saying that it would take no enforcement action for deficiencies involving Limitorque motor operator wiring qualification.

6. Summary

CP&L agrees that the deficiencies cited in the Notice with one exception constitute violations of 10 CFR 50.49. The licensee maintains, however, that due to the circumstances that apply to the specific deficiencies and following the guidance of the Modified Policy, no civil penalty should be levied for these EQ deficiencies.

NRC's Evaluation of Licensee's Response

1. NRC Evaluation of the "Clearly Should have Known" Test

Contrary to the licensee's arguments, the Notice and transmittal letter issued to CP&L contained all the necessary elements for assessing a civil penalty required by Section 234b of the Atomic Energy Act and as set forth in 10 CFR 2.205. The NRC staff, in the context of applying the Modified Policy, agrees that the licensee should be provided with sufficient information regarding the NRC staff's finding that the licensee "clearly should have known" of the unqualified equipment in order to provide the licensee with the opportunity to contest that finding. Several steps have been taken in this matter to provide the licensee with the appropriate information. First, the Modified Policy has been made available to the licensee. Second, the NRC inspection report, which has been sent to the licensee, and upon which the enforcement action is based, documents the NRC's findings from which the basis for the "clearly should have known"conclusion can be generally inferred. Third, an enforcement conference was held at which the inspection findings were discussed in depth. Finally, and most importantly, the NRC staff has articulated, in the cover letter which transmitted the Notice, the reasons why it believes the license "clearly should have known" of the EQ deficiencies. In that letter, the NRC staff highlighted the significant facts supporting the staff's conclusion. The NRC staff disagrees that the cover letter's explanation must be exhaustive and include all the facts and factors considered. The NRC staff's approach is consistent with the approach taken under the General Enforcement Policy whenever the NRC discusses the determination of the severity level of a violation or application of the escalation and mitigating factors. In such cases, the NRC staff provides the licensee with reasonable notice and a number of meaningful opportunities during the enforcement process to respond.

In the NRC staff's view, the transmittal letter provided the licensee with sufficient information regarding the "clearly should have known" test. Based on the information provided, the licensee should have assessed the items as shown below:

a. Woodward speed sensors for the High Pressure Coolant Injection (HPCI) system: The licensee clearly should have known of this deficiency because of the information contained in a report provided to the licensee in October 1985 by General Electric (NEDC-31001-1) which specified that these sensors needed to be replaced.

b. Whitney Blake wire: The licensee clearly should have known of these deficiencies. The use of qualified wire in equipment that is important to safety is a basic requirement of any environmental qualification program. In this case, the licensee installed this type of wire in valve actuators which were important to safety without verifying the wire's qualification and clearly its qualification should have been checked prior to use.

c. Standby Gas Treatment control relays and temperature switch leads: As the licensee acknowledged in its response to the Notice, more thorough design interface control or field verification would have identified these problems. The question is whether these components were either so significant or obvious that the licensee should have clearly recognized that they had not

been accounted for in the environmental qualification record of Standby Gas Treatment System. The NRC staff recognizes that the vendor, as well as the architect engineer, had extensive involvement in the development of the list of skid mounted subcomponents to be environmentally qualified. However, as discussed in the "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors" (Attachment 4 to NRC Bulletin 79-01B) reliance simply on a document such as an unsupported vendor certification is not considered adequate verification of qualification.

With respect to the control relays, the NRC staff concludes that these components are obviously necessary for the coperation of the system and that should have warranted early consideration in ensuring that the design control process and field verifications supported a complete record of environmental qualification. In the case of these components, it was not a question of inadequate qualification documentation, but the total lack of documentation. Clearly any knowledgeable individual with pertinent information on EQ issues should have discovered this problem because of the importance of the components and the complete lack of a qualification record.

In the case of temperature switch leads, wire is such a basic component of any electrical system that it is clear that an adequate design verification program would have discovered the total lack of documentation for this wire which was used in a portion of the electrical circuitry of the Standby Gas Treatment System. In addition, field verifications clearly should have recognized that the blue wire used on these temperature switches did not match the wire employed in other similar applications and that in turn should have caused the wire's environmental qualification record to be checked.

In neither of these cases is the NRC applying interpretations not known prior to November 30, 1985.

d. Kulka terminal blocks, Cinch terminal blocks, and various other components in Limitorque operators: As discussed in the Notice and the NRC staff's June 13, 1988 letter regarding CP&L's response to the Notice, the need to qualify terminal blocks and wire has long been recognized as a necessary element of any EQ program. The NRC staff agrees with CP&L that it has never been required that a licensee perform inspection of every component in every vendor-supplied assembly. However, the NRC does expect that a certain number of assemblies would be inspected as part of the EQ walkdowns. The scope of such inspections would be determined by the quality of qualification record available. Clearly in this case the qualification record for motor operators was not outstanding or complete enough to warrant total reliance upon it without appropriate field verification.

Had such inspections been properly performed and the information in the NRC's generic issuances, such as Information Notice (IN) 83-72, been properly utilized, to determine the types of components of particular concern, CP&L would have clearly found these unqualified components. The position CP&L has taken relative to the information that was provided in IN 83-72 is overly narrow. The fact that the IN specifically cites the discovery of a Buchanan terminal block is not extremely important. The important issue raised by the IN was the general one of unqualified components being found in equipment previously thought to be qualified.

The NRC staff has reviewed the letter Limitorque Corporation issued in response to IN 83-72 and found that the conclusion reached by Limitorque, in the last paragraph of the letter that licensees need take no action with respect to IN 83-72, is not supported by the body of the letter. Not only does the NRC staff reject the letter as the basis for a licensee not pursuing the issues raised in the IN but the staff finds that the letter in its totality supports the NRC staff's "clearly should have known" finding. Consistent with that point, the NRC found that a number of licensees had acted upon the IN after reviewing the Limitorque letter.

The NRC staff was concerned that the Limitorque letter started out apparently intent on describing an isolated problem with terminal blocks at the Midland site and then abruptly went into discussing the generic use of Buchanan 0824 terminal blocks in Westinghouse supplied equipment. The discussion of the Buchanan terminal blocks in Westinghouse equipment is, in the staff's view, significant for both plants with such equipment and those without it. Most importantly, the Midland facility did not have Westinghouse supplied equipment yet Limitorque chose to discuss this issue among a number of seemingly Midland specific issues. It is clear that the Buchanan terminal block information along with other discussion supplied in the letter about the Midland specific problems should have alerted licensees to the potential for environmental qualification deficiencies as the result of work performed not only by the vendor (Limitorque) but that performed by the nuclear steam supply system provider or the architect engineer. Therefore, it is clear that assurances from the vendor may not provide a sufficient basis for concluding that no problem existed with motor operators because changes to the motor operators may have been required or made by other organizations.

The letter then shifts back to problems characterized as Midland specific including a discussion of unidentifiable terminal blocks. That discussion in the Limitorque letter (#9 of the numbered items) does not provide adequate information to allow a knowledgeable reader to fully understand the situation including whether it was truly only a Midland problem. First, given that the Limitorque qualification tests for motor operators used only certain types of terminal blocks, the letter did not provide a basis for assuring customers that these or other types of unidentifiable terminal blocks did not exist in motor operators at other plants. Second, the letter states that the unidentifiable terminal blocks were used in low voltage control circuits and were identified and found "suitable" for their application. The letter does not answer such questions as whether the terminal blocks were ultimately identified to be of the types that had previously been used in testing, whether they were "suitable" in all possible control circuit applications at Midland as well as at other plants, and if not of a type previously tested, how the suitability discussed in the letter equated to the record of qualification required by 10 CFR 50.49.

e. HPCI Condensate Float Switches: 10 CFR 50.49(b)(2) requires that nonsafety-related electrical equipment whose failure under postulated environmental conditions could prevent satisfactory accomplishment of various safety functions be qualified under those postulated environmental conditions. Alternatively, the licensee can demonstrate by appropriate testing and analysis that the failure of the nonsafety-related electrical equipment would not prevent satisfactory accomplishment of the required safety functions of the HPCI system. In this case, it was clearly indicated on the design drawing that the HPCI float switches were powered from a safety-related power supply and as such, the failure of the float switches clearly could adversely affect the safety-related power supply. The failure of the power supply could have resulted in the HPCI system not performing its intended safety function, yet the licensee had neither qualified the float switches for the postulated environment nor provided an analysis that demonstrated

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their qualification was not required. Given the explicit nature of 10 CFR 50.49(b)(2) and the fact that the switches were clearly indicated on the drawing as being powered from a safety related power supply, a knowledgeable engineer with pertinent environmental qualification information clearly should have discovered the lack of qualification documentation for the float switches.

With regard to the licensee's contention that, based on various NRC and NRC-sponsored review and audit activities conducted in the period 1980–1985, it had a reasonable basis to believe that the EQ program met applicable regulatory requirements, three points should be made. First, the licensee has not provided specific information that demonstrates that any of the specific equipment discussed in the Notice was accepted as environmentally qualified by the NRC. Second, the examination of program documents, which is largely what was accomplished by the NRC reviews and audits, could not verify proper program implementation. Such verification needed to be done by the licensee. Finally, during the period of 1980–1985, the NRC was periodically providing additional information and guidance in the EQ area to the industry. Such information and guidance clearly could have affected the validity of earlier NRC acceptance of licensee programs. It was therefore incumbent upon the licensee to ascertain whether that was in fact the case for conclusions reached about its program. In summary, the NRC staff finds that the licensee's reliance on NRC general programmatic reviews to serve as a basis for acceptance of the full EQ program, including implementation, was unreasonable given the general nature of the NRC reviews and the potential that earlier conclusions reached by the NRC may have been invalidated by more current information provided to licensees by the NRC.

It is the NRC staff's conclusion that these examples meet the "clearly should have known" test and demonstrate a Category B problem under the Modified Policy.

2. NRC Evaluation of the Use of Vulkene Wire

The NRC concludes that the licensee is correct in its assertion that the example involving the use of Vulkene wire in a Unit 2 motor operator should not be considered for enforcement under the Modified Policy. Given that the unit was shut down at the time of the deadline and the deficiency was corrected prior to operation after the deadline, use of this example is inappropriate. It should be noted that a similar problem was discovered on Unit 1 and that could have been included as an example in the proposed enforcement action.

3. NRC Evaluation of Classification of Violation as Significant

Part III of the Modified Policy is intended to address minor discrepancies and documentation problems in existing EQ files or records. For much of the equipment associated with the stated violations, the licensee did not have EQ files and construction of files for such equipment clearly constitutes more than correction of minor file deficiencies. For the remaining equipment, for which EQ files did exist, either additional testing and/or analysis beyond that permitted by Part III of the Modified Policy was required in order to establish qualification or the licensee, after providing some arguments concerning qualifiability, chose to replace the equipment and never adequately demonstrated qualification. The NRC staff does agree that the licensee was able to subsequently demonstrate qualification of the Unit 1 SGBT control relays. However, the Unit 1 relay qualification was not made until well after identification and qualification was not demonstrated for the Unit 2 relays.

4. NRC Evaluation of CP&L's Position on the Categorization of the Problem

As discussed Paragraph 3 above, the NRC staff concludes that the violations given in the Notice, with the exception of the Vulkene wire, were properly evaluated as significant. Consequently, for these remaining violations, classification as an EQ Category B problem is appropriate.

5. NRC Evaluation of CP&L's Position Regarding Limitorque Motor Operator Wiring Qualification

CP&L references SECY 87-32 in an attempt to argue this point. The recommendation of this NRC staff document was that the NRC staff should be allowed to exercise discretion and take no enforcement action for certain violations (Limitorque internal wiring). This position was subsequently endorsed by the Commission.

CP&L also references the Memorandum from James Taylor, Director of the Office of Inspection and Enforcement, to Regional Administrators, dated April 10, 1987. This memorandum states: "Violations that involve deficiencies in the qualification of internal wiring for Limitorque motor operated valves should not be processed unless significant programmatic weaknesses exist or inadequate licensee responses or corrective actions are identified."

It should first be noted that CP&L is attempting to claim that this position holds true for the speed sensor on the HPCI turbine (violation 1). This violation is not related to the issue of the internal wiring and, as such, does not warrant discussion here. Given that the NRC staff's position relating to violation 2 has been modified as discussed above the discussion below relates only to the internal wiring issue cited in violation 9.

SECY-87-32 states that discretion will be exercised for certain violations involving unqualified valve motor operator internal wiring. As noted by CP&L on page 6 of Attachment 1 to its July 1, 1988 letter, discretion would be exercised due in large part to extenuating circumstances such as misleading and inadequate vendor-supplied documentation. In this case, as stated in the Notice, the NRC staff concludes that the licensee installed the wire. The licensee in responding to the violation did not dispute that statement, and therefore the use of enforcement discretion as discussed in SECY-87-32 is inappropriate for this particular violation.

Conclusion

The NRC staff has concluded that violation 2 should be withdrawn. The NRC staff further concludes that the remaining violations constitute an EQ Category B problem and that they "clearly should have been known" to the licensee. No additional information has been provided that would alter the classification of the violation, or the imposition of the civil penalty. The Notice was issued in accordance with the regulatory requirements and the civil penalty was proposed in accordance with the Modified Policy. Therefore, the NRC concludes the imposition of the $50,000 is proper.

[FR Doc. 89-15966 Filed 7-6-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-483]

Union Electric Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 47 to Facility Operating License No. NPF-30, issued to Union Electric Company, which revised the Technical Specifications for operation of the Callaway Plant, Unit 1, located in Callaway County, Missouri. The amendment was effective as of the date of issuance.

The amendment modified the Technical Specifications to increase the allowed flow variations of the control room emergency ventilation system and reduce the control room pressurization requirement from ¼ inch water gauge to ⅛ inch water gauge.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission had made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on May 20, 1988 (53 FR 18187). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated March 25, 1988, and supplemented by letters dated December 28, 1988 and March 31, 1989, (2) Amendment No. 47 to License No. NPF-30, (3) the Commission's related Safety Evaluation dated June 27, 1989 and (4) the Environmental Assessment dated June 16, 1989. All of these items are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street NW, and at the Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251, and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland this 27th day of June 1989.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Acting Director, Project Directorate III-3, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-15967 Filed 7-6-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-8714]

Cleveland Cliffs Iron Co.; Final Finding of No Significant Impact Regarding the Termination of Source Material License SUA-1352 for the Collins Draw Research and Development in Situ Leach Project Located in Campbell County, Wyoming.

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of final finding of no significant impact.

1. Proposed Action

The proposed administrative action is to terminate Source and Byproduct Material License SUA-1352.

2. Reasons for Final Finding of No Significant Impact

An envionmental assessment was prepared by the staff at the U.S. Nuclear Regulatory Commission (NRC) and issued by the Commission's Uranium Recovery Field Office, Region IV. The environmental assessment performed by the Commission's staff evaluated the restoration and decontamination efforts which took place at the project. Documents used in preparing the assessment included operational data from the Collins Draw Research and Development in situ leach operation, as well as verification samples taken by the NRC and State of Wyoming. Based on the review of the operational data and the verification sampling, the Commission has determined that no significant impact will result from the proposed action and therefore, an Environment Impact Statement is not warranted.

The following statements support the final finding of no significant impact and summarize the conclusions resulting from the environmental assessment.

A. After solution mining, the licensee, using a combination of reverse osmosis, ground-water sweep, air stripping and clean water injection, conducted several episodes of restoration which partially improved ground-water quality. The utilization of an ammonium carbonate lixiviant in the A-1 and B well fields as well as the dissolution of precipitates from the production zone, continue to maintain elevated levels of chemical, metallic and radionuclide species.

Alternatives considered for removing or containing the remaining contamination included additional ground-water restoration involving recirculation with reverse osmosis treatment, ground-water sweep, open pit or underground mining of the production zone, isolation of the production zone by grout or chemical substances and oxidative destruction of residual ammonia by chlorine. Evaluation of these alternatives follows.

Additional restoration utilizing recirculation of production zone water with reverse osmosis treatment would be costly. Previous utilization of the reverse osmosis unit maintained at the site indicates that without the construction of an appropriately sized evaporation pond (estimated to cost $400,000+), such an effort would have little or no effect on the elevated ground-water parameters. The data on ground-water restoration in the A-1 well field where reverse osmosis was utilized indicates that 13 ground-water parameters are elevated. Ground-water in the B well field where reverse osmosis was not utilized, shows elevated levels of the same 13 constituents as in the A-1 well field, as well as three additional parameters. Based upon this data, the utilization of reverse osmosis restoration would probably have only minimal improvements on ground-water quality.

Ground-water sweep may cause temporary improvements in ground-water quality. However, the relative differences between water qualities in the production zone and the unmined portions of the formation indicate the circulation restoration option would not be successful to any measurable extent.

Actual mining of the production zone as well as chemically isolating the area would be extremely costly and have unacceptable environmental impacts associated with them. Furthermore, chemically isolating the production zone is not a proven technology and could result in large financial inputs with marginal success.

Oxidative destruction of residual ammonia by chlorine is technology that has not been utilized on a field scale. Due to this, its success is questionable. Additionally, the utilization of this method would lower the production zone aquifer pH and potentially increase concentrations of heavy metals, resulting in overall degradation of the existing water quality.

Due to the above restoration options and potential problems associated with their implementation, adding a chemical

reductant in the form of hydrogen sulfide to the well field was utilized as a final restoration step. This action resulted in modifying the ground-water quality to the satisfaction of the State and Federal licensing authorities.

B. Prior to mining at the Collins Draw project, baseline water quality sampling showed water quality to be high in total dissolved solids and radium. Although these concentrations were high, they did not preclude the water usage as a domestic water source; however, no domestic usage was known to exist in the area. Furthermore, no current water usage in the vicinity of the well field is known to exist.

Overall, the production zone covers approximately 0.5 acre and consists of approximately 3.6 million gallons of water in an aquifer system which covers thousands of acres and contains billions of gallons of water. Due to this, the incremental contamination caused by the Collins Draw Research and Development project is not significant when considering the overall quality and utilization of the ground water in this area. Furthermore, the current ground-water uses of stock watering and oil well development have not been precluded due to uranium recovery operations.

C. Decommissioning and decontamination of the facility are complete and no residual contamination exists. Therefore, the site will be returned to its premining land use of open range.

In accordance with 10 CFR 51.33(a), the Director of the Uranium Recovery Field Office, made the determination to issue a final finding of no significant impact. This findig, together with the environmental assessment setting forth the basis for the findings, is available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Colorado, and at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC. Concurrent with this finding, the staff will terminate Source and Byproduct Material License SUA-1352.

Dated at Denver, Colorado, this 26th day of June, 1989.

For the Nuclear Regulatory Commission.

Edward F. Hawkins,

Branch Chief, Uranium Recovery Field Office, Region IV.

[FR Doc. 89-15964 Filed 7-6-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-294]

Environmental Assessment and Finding of No Significant Impact Regarding Proposed Order Authorizing Dismantling of the Reactor and Disposition of Component Parts; Michigan State University

The Nuclear Regulatory Commission is considering issuance of an Order authorizing the Michigan State University (licensee) to dismantle the TRIGA Nuclear Reactor in East Lansing, Michigan and to dispose of the reactor components in accordance with the application dated January 20, 1989, as supplemented on May 4, 1989.

Environmental Assessment

Identification of Proposed Action

By application dated January 20, 1989, as supplemented, the licensee requested authorization to dismantle the 250 kilowatt (thermal) Michigan State University Research Reactor (MSURR), to dispose of its components parts and radioactive material, and decontaminate the facility in accordance with the proposed dismantling plan, and to terminate Facility License No. R-114. The MSURR was shut down in October 1987, and has not been operated since then. The reactor fuel has been removed from the facility and shipped to Department of Energy facilities in accordance with DOE, NRC, and DOT requirements.

Need for Proposed Action

In order to prepare the facility for unrestricted access and use, the dismantling and decontamination activities proposed by MSURR must be accomplished.

Environmental Impact of the Proposed Action

All decontamination will be performed by trained personnel in accordance with previously reviewed procedures and will be overseen by experienced health physics staff. Solid and liquid waste will be removed from the facility and managed in accordance with NRC requirements. The operations are calculated to result in a total radiation exposure of 9.05 person-rem to facility staff and the public.

These conclusions were based on the fact that all proposed operations are carefully planned and controlled, all contaminated components are removed, packaged, and shipped offsite, and that the radiological control procedures ensure that releases of radioactive wastes from the facility are within the limits of 10 CFR Part 20 and are as low as reasonably achievable (ALARA).

Based on the review of the specific proposed activities associated with the dismantling and decontamination of the MSURR facility, the staff has determined that there will be no significant increase in the amounts of effluents that may be released offsite, and no significant increase in individual or cumulative occupational or population radiation exposure.

The staff has also determined that the proposed activities will not result in any significant impacts on air, water, land, or biota in the area.

Alternative Use of Resources

The only alternative to the proposed dismantling and decontamination activities is to maintain the facility as a restricted area. This approach would include monitoring and reporting for the duration of the safe storage period. However, the facility management intends to use the area for other purposes.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed action based upon the foregoing environmental assessment. We conclude that the proposed action will not have a significant effect on the quality of the human environment.

For detailed information with respect to this proposed action, see the application for dismantling, decontamination and license termination dated January 20, 1989, as supplemented and the Safety Evaluation prepared by the staff. These documents are available for public inspection at the Commissions' Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 30th day of June 1989.

For The Nuclear Regulatory Commission.

Charles L. Miller,

Director Standardization and Non-Power Reactor Project Directorate Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-15965 Filed 7-6-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Revised Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on July 13-15, 1989 in Room P-110, 7920 Norfolk Avenue, Bethesda, MD. Notice of this meeting was published in the **Federal Register** on June 20, 1989 and June 29, 1989.

Thursday, July 13, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, MD

8:30 a.m.-8:45 a.m.: Comments by ACRS Chairman (Open)—The ACRS Chairman will report on items of current interest.

8:45 a.m.-10:15 a.m.: USI A-40, Seismic Design Criteria (Open)—The Committee will review and comment on proposed resolution of USI A-40, Seismic Design Criteria (Short Term Items).

10:30 a.m.-11:30 a.m.: Containment Performance Improvement Program (Open)—A briefing will be presented regarding the status of this program.

11:30 a.m.-12:00 Noon: Future ACRS Activities (Open)—The Committee will discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

1:00 p.m.-2:45 p.m.: Reactor Pressure Vessel Integrity (Open/Closed)—A briefing and discussion will be held regarding the status of activities including related safety research to operating nuclear power plant reactor pressure vessels.

Portions of this session will be closed as necessary to discuss Proprietary Information regarding this matter.

3:00 p.m.-4:45 p.m.: Fire Risk Scoping Study (Open)—The Committee will review and report regarding the staff's proposed plans to implement the recommendations resulting from the Fire Risk Scoping Study.

4:45 p.m.-5:45 p.m.: ACRS Subcommittee Activities (Open)—The Committee will discuss the status of assigned ACRS subcommittee activities including nuclear power plant valve performance and reliability, consideration of a proposed power level increase for the Indian Point Nuclear Power Station, Unit 2, and review of ACRS Bylaws.

Friday, July 14, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, MD

8:30 a.m.-10:00 a.m.: Multiple System Responses Program (Open)—A briefing and discussion will be held regarding the status of this program.

10:15 a.m.-12:15 p.m.: Comanche Peak Nuclear Station, Units 1 and 2 (Open)—The Committee will hear a briefing by the NRC staff regarding proposed issuance of an operating license for this facility.

1:15 p.m.-2:15 p.m.: Human Factors (Open)—A briefing and discussion will be held regarding the Chernobyl "spin-off" study.

2:30 p.m.-4:30 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss ACRS reports regarding topics considered during this meeting.

Portions of this session will be closed as necessary to discuss Proprietary Information regarding this matter.

4:30 p.m.-5:00 p.m.: Nomination of ACRS Member (Open/Closed)—The Committee will discuss the status and qualifications of candidates nominated for appointment to the ACRS.

Portions of this session will be closed as necessary to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

Saturday, July 15, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, MD

8:30 a.m.-12:00 Noon: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

1:00 p.m.-2:30 p.m.: Miscellaneous (Open)—The Committee will complete discussion of items considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 27, 1988 (53 FR 43487). In accordance with these procedures, oral or written statements may be presenterd by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub.L. 92-463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6) and Proprietary Information applicable to the matters being discussed (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492-8049), between 8:15 a.m. and 5:00 p.m.

Date: June 30, 1989.

John C. Hoyle,

Committee Management Officer.

[FR Doc. 89-16029 Filed 7-6-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-24911]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

June 29, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 24, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or,

in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified or any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Entergy Corporation (70–7119)

Entergy Corporation ("Entergy") (formerly Middle South Utilities, Inc.), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, has filed a post-effective amendment to its declaration pursuant to section 12(b) of the Act and Rule 45 thereunder.

By orders dated May 28, 1986 and July 18, 1988 (HCAR Nos. 24107 and 24679, respectively) Entergy was authorized to guarantee certain obligations of its subsidiary service company, Entergy Services, Inc. ("Services") (formerly MSU System Services, Inc.), in connection with the leasing by Services of an IBM 3090 computer system and related equipment for use at Services' data processing center in Gretna, Louisiana. The computer system is leased from Comdisco, Inc., a nonassociate company, under a Master Lease Agreement, dated May 9, 1980, and four separate schedules thereto, for an aggregate monthly rental payment of $346,566 through September 30, 1991. Services has now accepted an offer from Comdisco to extend the lease of the computer system and related equipment for a new 36-month term, effective July 1, 1989, at a monthly rental payment of $312,000. Entergy requests authorization to guarantee the performance by Services of its computer lease obligations pursuant to these revised arrangements, without recourse to Servcies first being required.

Northeast Utilities, et al. (70–7422)

Northeast Utilities ("Northeast"), 170 Brush Hill Avenue, West Springfield, Massachusetts 01089, a registered holding company, and its wholly owned subsidiary companies, The Connecticut Light and Power Company ("CL&P"), 107 Selden Street, Berlin, Connecticut 06037 and Western Massachusetts Electric Company ("WMECO"), 170 Brush Hill Avenue, West Springfield, Massachusetts 01089, have filed a post-effective amendment to the declaration filed by CL&P and WMECO pursuant to sections 6 and 7 of the Act.

By prior order, dated September 2, 1987 (HCAR No. 24454), CL&P and WMECO were authorized to enter into a Credit Agreement ("Credit Agreement") for a term of three years with a right for either CL&P or WMECO to renew on a year-by-year basis, under which CL&P and WMECO were permitted to borrow and reborrow, at any time and from time-to-time, up to an aggregate of $350 million from a syndicate of commercial banks for which Chemical Bank acts as agent, with $350 million available to CL&P and $105 million to WMECO.

CL&P, WMECO, and Northeast are now seeking authorization to enter into an Amendment and Restatement of the Credit Agreement under which Northeast would be permitted to borrow up to $100 million, provided that the sum of the borrowings of CL&P, WMECO and Northeast may not exceed $350 million.

Eastern Utilities Associates et al. (70–7511)

Eastern Utilites Associates ("EUA"), P.O. Box 2333, Boston, Massachusetts 02107, a registered holding company, and its subsidiary, Eastern Edicon Company ("Eastern Edison"), 110 Mulbery Street, Brockton, Massachusetts 02403, have filed a post-effective amendment to their application-declaration pursuant to Section 6, 7, 9, 10 and 12(c) of the Act and Rules 40, 42 and 50 thereunder.

By Commission order dated September 16, 1988 (HCAR No. 24717) Eastern Edison was authorized, among other things, to issue and sell from time to time during the period ending May 31, 1990 the following securities:

(a) Up to 200,000 shares of a new class of Preferred Stock, of Eastern Edison, par value $100 per share ("Additional Preferred Stock");

(b) Up to $75,000,000 aggregate principal amount of one or more series of First Mortgage and Collateral Trust Bonds of Eastern Edison ("Additional Bonds").

Jurisdiction was reserved over the issuance and sale through May 31, 1990 of up to 1,500,000 common shares of EUA, par value $5 per share ("Additional Shares").

The Additional Shares will be sold by the competitive bidding procedures of Rule 50 of the Act, as modified by the Commission's Statement of Policy, dated September 2, 1982 (HCAR No. 22623). Should market conditions make it impractical to sell the Additional Shares in compliance with Rule 50 of the Act, as modified, EUA may request an exception from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5).

By post-effective amendment, EUA has completed the record with respect to the use of proceeds from the issuance and sale of the Additional Shares. The aggregate proceeds from the sale or sales of the Additional Shares will be applied to any or all of the following: (i) To repay short-term bank borrowings of EUA; (ii) to provide funds for, or to repay short-term bank borrowings or other debt incurred in connection with EUA's offers to purchase all of the outstanding common stock of UNITIL Corporation and/or Fitchburg Gas and Electric Light Company; (iii) to pay underwriting costs and other expenses of the financing and (iv) for other corporate purposes.

The proceeds or any part thereof of the Additional Shares may be temporarily invested in securities meeting the requirements of section 9(c)(1) of the Act of Rule 40(a)(1) or (2) thereunder.

UNITIL Corporation (70–7628)

Unitil Corporation ("UNITIL"), 216 Epping Road, Exeter, New Hampshire 03833–1115, an exempt public-utility holding company, has filed an application with the Commission pursuant to sections 9(a)(2), 10 and 11(b)(1) of the Act.

UNITIL was incorporated on September 7, 1984 and has two retail utility subsidiaries, Concord Electric Company and Exeter & Hampton Electric Company, both New Hampshire electric utility companies. Fitchburg Gas and Electric Company ("Fitchburg"), a Massachusetts public utility company, serves both electric and gas customers. UMC Electric Company, Inc. ("UMC Electric"), a subsidiary of UNITIL, was incorporated as an electric utility company on March 1, 1989 for the purpose of effecting the proposed transaction. Upon the receipt of certain approvals of the Massachusetts Department of Public Utilities, all of the 1,000 shares of common stock of UMC Electric will be issued to UNITIL for $1,000.

UNITIL proposes to enter into a transaction whereby it would combine its operations with Fitchburg and, pursuant thereto, would become the owner of all of the outstanding shares of common stock of Fitchburg. UNITIL, Fitchburg and UMC Electric have entered into an Agreement and Plan of Merger dated March 1, 1989 stating that: (1) UMC Electric will merge with and into Fitchburg with Fitchburg as the surviving corporation ("Surviving Corporation"); (2) all of the common stock of UMC Electric will be converted into common stock of the Surviving Corporation; (3) UNITIL will pay to its shareholders of record prior to the effective time of the merger an 11% stock dividend; and (4) each share of Fitchburg common stock outstanding immediately prior to the effective time of the merger will be converted into and exchangeable for one share of common stock of UNITIL after the 11% stock dividend referred to in (3) above. Fitchburg will continue as a gas and electric utility company and its electric utility operations will represent approximately one-third of the new UNITIL system with respect to customers and kilowatt-hour sales.

The proposed merger is conditioned upon, among other things: (i) The affirmative vote of the holders of two-thirds of the outstanding shares of Fitchburg common stock and preferred stock, voting together as a single class; (ii) the affirmative vote of the holders of two-thirds of the outstanding Fitchburg common stock; and (iii) the affirmative vote of a majority of the shares of UNITIL common stock voting on the proposal to approve the issuance of the shares of UNITIL common stock into which the shares of Fitchburg common stock will be converted.

Upon consummation of the proposed transaction, UNITIL will no longer be eligible for exemption under the Act. It therefore intends to file a notification of registration pursuant to Rule 1 under the Act prior to the consummation of the proposed transaction and to file a registration statement and any other required documentation within 90 days thereafter.

Columbus Southern Power Company (70–7631)

Columbus Southern Power Company ("CSPC"), 215 N. Front Street, Columbus, Ohio, 43215, an electric public utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed a declaration pursuant to Section 12(d) of the Act and Rule 44 thereunder.

CSPC proposes to sell to its commercial customer, Ashland Chemical Company ("Ashland"), certain primary distribution equipment and other related equipment ("Facilities") located in Dublin, Ohio, for a purchase price of $109,691 in cash. The Facilities are situated on real property owned by Ashland in Dublin, Ohio and are now employed by CSPC for providing service exclusively to Ashland. It is stated that the Facilities are not adaptable, at that location, for use in serving any other customer.

Louisiana Power and Light Company (70–7653)

Louisiana Power and Light Company ("LP&L"), 317 Baronne Street, New Orleans, Louisiana 70112, a wholly owned subsidiary of Entergy Corporation, formerly known as Middle South Utilities, Inc., a registered holding company, has filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12(d) of the Act and Rules 44 and 50(a)(5) thereunder.

LP&L proposes to sell and leaseback approximately 20% of its 100% undivided ownership interest ("Undivided Interest") in Unit 3 of the Waterford Steam Electric Generating Station ("Waterford 3"). LP&L plans to enter into one or more Participation Agreements providing for the sale of its Undivided Interest to a trustee ("Owner Trustee/Lessor") acting on behalf of an equity investor or investors ("Owner Participants") and the simultaneous lease of such Undivided Interest pursuant to separate net lease agreements ("Lease") to be entered into with the Owner Trustee/Lessor which will not exceed a term of approximately 27½ years. LP&L anticipates that the implicit interest rate of the lease will not be greater than approximately 12%. LP&L expects that the maximum aggregate fair market value of its Undivided Interest in Waterford 3 will not exceed $515 million. It is proposed that 10–25% of the aggregate cost will be provided by the Owner Participants and 75–90% of the cost will be borrowed by the Owner Trustee/Lessor. Subject to certain conditions, LP&L will have the right to renew the lease for successive terms for the useful life of Waterford 3 at rentals as will be specified in the lease. Such rentals would in no case exceed a fair market rental value.

LP&L proposes to use the net proceeds from the sale of the Undivided Interest (1) to redeem, in whole or in part, prior to their respective maturities, one or more series of LP&L's outstanding first mortgage bonds at par, pursuant to the provisions of LP&L's Mortgage and Deed of Trust, (2) to pay the costs of LP&L continuing construction program and (3) for other corporate purposes.

In connection with the equity funding of the proposed transaction, letters of credit ("Letter of Credit") will be provided by one or more banks or other financial institutions. Upon the occurrence of certain adverse operating events with respect to Waterford 3, the Owner Participants would be entitled to draw on the Letter of Credit in amounts equal to amounts owed by LP&L under the Lease. LP&L will become obligated, pursuant to a Reimbursement Agreement to be entered into between LP&L and the Letter of Credit banks, to repay the amount drawn under the Letter of Credit.

With respect to that portion of the cost to be borrowed, long-term debt financing may be provided through the issuance by the Owner Trustee/Lessor, pursuant to a trust indenture, of one or more series of long-term notes or bonds ("Long-term Notes") publicly or privately placed. The Long-term Notes will be non-recourse and will be secured by the Owner Trustee/Lessor's interest in Waterford 3 and certain of the Owner Trustee/Lessor's rights under the lease. In the event of a public offering, long-term debt financing may be provided by the issuance of the Long-term Notes to a special purpose corporation ("Funding Corporation"), unaffiliated with LP&L or any of its affiliates. The Funding Corporations's acquisition of the Long-term Notes will be funded, pursuant to a collateral trust indenture, through the issuance of long-term collateral trust notes ("Collateral Trust Notes") publicly placed and secured by the Long-term Notes.

Interim financing may be provided by one or more domestic or foreign financial institutions ("Interim Lenders"), who will make non-recourse loans to the Owner Trustee/Lessor, secured in the same manner as the Long-term Notes. Interim financing will be provided in return for non-recourse notes ("Interim Notes") of the Lessor. Any Interim Notes will be refunded after the closing of the sale of the Undivided Interest with the proceeds of the issuance of the Long-term Notes (and, if applicable, the Collateral Trust Notes) as described above. (Hereinafter, the Long-term Notes, the Collateral Trust Notes and the Interim Notes will be referred to as the "Notes").

Upon the occurrence of certain loss events (as defined in the Lease), LP&L will be obligated to pay to the Owner Trustee/Lessor a Casualty Value or Special Casualty Value (as defined in the Lease) reduced by the unpaid principal amount of the Notes and thereupon either assume full payment responsibility for the Notes, or, if such assumption is precluded, accept transfer of the Owner Participant's interest in the Owner Trust. Upon the occurrence of default events (as defined in the Lease), LP&L may also assume the Notes or the Owner Participant's interest after the Owner Participant draws on the Letter of Credit.

LP&L has requested an exception from the competitive bidding requirements of Rule 50 of the Act pursuant to Rule 50(a)(5) in order to negotiate and privately place the Notes. It may do so.

Eastern Utilities Associates (70–7655)

Eastern Utilities Associates ("EUA"), P.O. Box 2333, Boston, Massachusetts 02107, a registered public-utility holding

company, has filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 43, 45 and 51 thereunder.

EUA proposes to acquire Fitchburg Gas and Electric Light Company ("Fitchburg"), a Massachusetts corporation and a public-utility company, and UNITIL Corporation ("UNITIL"), a New Hampshire corporation and an exempt holding company under the Act. On April 24, 1989, EUA commenced separate cash tender offers to acquire all of the outstanding common stock of Fitchburg and all of the outstanding common stock of UNITIL. In each case the common stock of the company is its only voting security. EUA is offering $36 for each outstanding share of Fitchburg common stock and $40 for each outstanding share of UNITIL common stock. EUA intends the tender offers to be open through July 7, 1989, unless extended by EUA. EUA anticipates that it will extend the offers, as required, to obtain the regulatory approvals necessary to consummate the offers.

The Fitchburg acquisition and the UNITIL acquisition are each conditioned upon, among other things: (i) There being validly tendered to EUA, in the case of Fitchburg, at least two-thirds of the outstanding common stock and, in the case of UNITIL, a majority of the outstanding common stock; (ii) all necessary regulatory approvals having been obtained; (iii) the proposed Fitchburg-UNITIL merger not being consummated, (The proposed merger was announced on March 1, 1989 and is presently the subject of S.E.C. File No. 70-7628.); and (iv) the maintenance of EUA's lines of credit. In addition, it is a condition to the consummation of the Fitchburg tender offer that voting rights for all Fitchburg shares acquired by EUA which would otherwise be denied voting rights under the Massachusetts "control share" acquisition statute be authorized by the stockholders at a special meeting, or that EUA be satisfied that the provisions of the statute are inapplicable to it and to the Fitchburg transactions. Neither the completion of the Fitchburg tender offer nor the completion of the UNITIL tender offer is conditioned upon completion of the other.

EUA estimates that the acquisition price for all of the Fitchburg common stock and all of the UNITIL common stock together with expenses of such acquisitions will approximate $77 million. EUA proposes to finance the acquisitions by borrowings under a $75 million unsecured credit agreement with The Bank of New York ("Credit Agreement"), supplemented, if necessary, (1) by short-term borrowings not exceeding $5 million under EUA's existing bank lines of credit or (2) with the proceeds of one or more public offerings of common shares of EUA if such a public offering is completed before the proposed acquisitions are consummated (In S.E.C. File No. 70-7511 EUA has requested authorization to issue and sell up to 1,500,000 shares of common stock through May 31, 1990.)

EUA expects that funds for the repayment of such borrowings made under the Credit Agreement and under the existing credit lines will be provided by a combination of the following sources: internally generated cash; EUA's dividend reinvestment plan and its employees' savings plan; application of cash generated by the above-mentioned public offering or offerings of additional EUA common shares; and a sale of Fitchburg's gas distribution properties. To effectuate compliance with section 11(b)(1) of the Act, EUA will file a plan under section 11(e) of the Act for the disposition of Fitchburg's gas distribution properties within two years following the date of the acquisition by EUA of all of the common stock of Fitchburg.

EUA proposes to seek, in a second phase of these acquisitions, to acquire the remainder of the common stock of each company through a cash-out merger for the same price as that paid in the tender offer, $36 per share for Fitchburg common stock and $40 per share for UNITIL common stock. To facilitate the mergers, EUA proposes to acquire all of the capital stock (a single share) of each of two corporations ("Merger Sub") to be organized, one a Massachusetts corporation for Fitchburg's merger and the other a New Hampshire corporation for UNITIL's merger. EUA, by voting the shares acquired pursuant to the tender offers, will cause each of the Merger Subs to be merged with and into Fitchburg or UNITIL, whereupon the single share of capital stock of each Merger Sub will be converted into a number of shares of common stock of Fitchburg or UNITIL equal to the number of shares of such common stock as are outstanding and owned by any holder of record other than EUA. The shares of common stock so held by other holders, other than those who exercise dissenter's rights, will be converted into the right to receive an amount in cash equal to the tender offer price. Each company will thus become a wholly owned subsidiary of EUA. EUA expects that UNITIL will ultimately be eliminated in order to conform to the requirements of the Act. In consummation of either or both of these cash-out mergers were to become impossible or inadvisable for any reason, EUA would consider filing a plan under section 11(e) of the Act for the purpose of eliminating the minority interests in common stock of Fitchburg and UNITIL.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-16000 Filed 7-6-89; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

June 29, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-l thereunder, for unlisted trading privileges in the following securities:

Empresa Nacional De Electricidal, S.A.
American Depositary Receipts, No Par Value (File No. 7-4661)
Putnam Intermediate Government Income Trust
Common Stock, No Par Value (File No. 7-4662)
Kaufman & Broad Home, Inc.
Common Stock, $.10 Par Value (File No. 7-4663)
Itel Corporation
Common Stock, $1.00 Par Value (File No. 7-4664)
Blockbuster Entertainment Corporation
Common Stock, $.10 Par Value (File No. 7-4665)
Briggs & Stratton Corporation
Common Stock, $3.00 Par Value (File No. 7-4666)
Ferro Corporation
Common Stock, $1.00 Par Value (File No. 7-46647)
Century Communications Corporation
Class A Common Stock, $.01 Par Value (File No. 7-4668)
Jan Bell Marketing, Inc.
Common Stock, $.0001 Par Value (File No. 7-4669)
O'Brien Energy Systems, Inc.
Common Stock, $.01 Par Value (File No. 7-4670)
Telephone & Data Systems, Inc.
Common Stock, $1.00 Par Value (File No. 7-4671)
Americus Trust for AT&T
Common Shares, Series 2—Units, No Par Value (File No. 7-4672)

Americus Trust for AT&T
Common Shares, Series 2—Score, No Par Value (File No. 7-4673)
Americus Trust for AT&T
Common Shares, Series 2—Prime, No Par Value (File No. 7-4674)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 21, 1989, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-16041 Filed 7-6-89; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

June 28, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Benetton Group S.P.A.
American Depositary Shares (File No. 7-4653)
Capital Housing & Mortgage Partners Inc.
Common Stock, $.01 Par Value (File No. 7-4654)
Magnetek, Inc.
Common Stock, $0.01 Par Value (File No. 7-4655)
CML Group Inc.
Common Stock, $0.10 Par Value (File No. 7-4656)
Network Equipment Technologies Inc.
Common Stock, $.01 Par Value (File No. 7-4657)
Wierton Steel Corp.
Common Stock, $.01 Par Value (File No. 7-4658)
CRS Sirrine, Inc.
Common Stock, $1 Par Value (File No. 7-4659)
Total System Services, Inc.
Common Stock, $.10 Par Value (File No. 7-4660)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 20, 1989, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlised trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-16042 Filed 7-6-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1116]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

SUMMARY: In order to determine the adverse impact (if any) of Foreign Service selection procedures, and to determine whether the candidates selected are representative of the population of the United States, it is necessary to collect the information from applicants on the registration form. This information is also used to determine the focus of the Department's recruitment effort. The following summarizes the information collection proposal submitted to OMB:

Type of request—Extension
Originating office—Bureau of Personnel
Title of information collection—Registration/Applicant Record Form—Foreign Service Written Examination.
Form number—DSP-24
Frequency—Annual
Respondents—Applicants for the Foreign Service.
Estimated number of respondents—26,000
Average hours per response—15 minutes
Total estimated burden hours—6,500

Section 3504(h) of Pub. L. 96-511 does not apply.

Additional Information or Comments: Copies of the proposed form and supporting documents may be obtained from Gail J. Cook (202) 647-3538. Comments and questions should be directed to (OMB) John Harrigan (202) 395-7340.

Date: June 7, 1989.

Sheldon J. Krys,

Assistant Secretary for Administration and Information Management.

[FR Doc. 89-15962 Filed 7-6-89; 8:45 am]

BILLING CODE 4710-24-M

Bureau of Diplomatic Security

[Public Notice 1115]

Anti-Terrorism Assistance Training

In accordance with Office of Management and Budget Circular No. A-102, dated March 3, 1988, the Department of State hereby gives notice of intention to establish a cooperative agreement for purposes of facilitating the accomplishment of the objectives of 22 U.S.C. 2349aa, et seq. Under this authority, assistance may be furnished to foreign law enforcement personnel to enhance their ability to deter terrorists and terrorist groups from engaging in international terrorist acts. The proposed agreement will encompass crisis response team training under the referenced authority.

The Department of State has identified the City of Charleston, South Carolina Police Department as having the necessary capabilities to conduct the training contemplated by this agreement. This agreement addresses a one-time requirement, and contemplates total funding of under $25,000. Training materials provided by the City of Charleston and consumed in the training will be reimbursed by the Department of State. Training materials for the

participants provided by the City of Charleston and not consumed during the training, will be reimbursed by the Department of State, and will be granted to the participants.

If a similar need is identified in the future, the Department will entertain consideration of additional sources. Public comment on this intended action may be submitted within 20 days after the date of the **Federal Register** in which this notice appears, addressed to David Epstein, Office of Counterterrorism Programs (DS/CTP/ATA), SA-22, U.S. Department of State, Washington, DC 20520. Tel. (202)673-3890.

Dated: June 27, 1989.

Alan Golacinski,

Acting Deputy Assistant Secretary for Policy and Counterterrorism.

[FR Doc. 89-15963 Filed 7-6-89; 8:45 am]

BILLING CODE 9710-24-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[OST Docket No. 22; Notice 89-5]

Standard Time Zone Boundaries; Operating Exception for the Burlington Northern Railroad

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Operating exception.

SUMMARY: The Burlington Northern Railroad is granted an exception from the standard time of the time zones created by Congress. The exception permits operation under mountain time from Troy, Montana to Boyer, Idaho despite the fact that the Idaho portion of the track is in the Pacific time zone. It does not, however, permit the railroad in its public schedule and notices to show the area as being in other than the Pacific time zone.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the General Counsel (C-50), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590; (202) 366-9306.

SUPPLEMENTARY INFORMATION: Under the Standard Time Act of 1918, as amended by the Uniform Time Act of 1966 (15 U.S.C. 260-64), the Secretary of Transportation has authority to issue regulations modifying the boundaries between time zones in the United States in order to move an area from one time zone to another. He also has authority (delegated to the General Counsel) to grant to a railroad an exception from the time zones to permit for internal purposes only operation of a railroad line on one time, despite the fact that it crosses a time zone boundary. When there is less confusion, railroad operations are less harzardous and more efficient.

The Request

The Burlington Northern Railroad Company (BN) has formally requested that it be granted an operating exception permitting internal operation of its line between Troy, Montana, and Boyer, Idaho, (a distance of approximately 65 miles) on mountain time. This railroad line is currently bisected by the time zone boundary between mountain and Pacific time at the state border. Control of trains on this line is now in a single dispatching territory and under the control of one dispatching office, which is located in the mountain time zone. The railroad stated that operating in two time zones is hazardous and inefficient. Granting the exemption would lessen potential confusion and would allow all the activities of the dispatching office in question to operate on one time. Burlington Northern, therefore, asked DOT to grant an operational exception that would move the existing operational time zone boundary westward to the west switch at Boyer, Idaho. BN noted that although Amtrak trains operate on the line, it should have no impact on Amtrak operations since Amtrak operations on the line are controlled by the BN dispatcher.

Decision

Time zone boundaries were created in the United States by the railroads about a hundred years ago to reduce the hazards resulting from confusion over time zone boundaries and to improve scheduling. For example, when two trains use the same track, one must be put onto a siding to let the other pass. Knowing what time each train is to reach a certain point is therefore necessary for safety. DOT's experience indicates that confusion about the precise time of train orders and similar railroad directives can cause hazardous conditions. The exception is therefore granted. This exception does not, however, permit the railroad in its public schedule and notices to show the area as being in other than the mountain time zone. The grant of the exception does not affect the public since it only affects internal operations of the railroad.

Authority: Act of March 19, 1918, as amended by the Uniform Time Act of 1966 and Pub. L. 97-449, 15 U.S.C. 260-64; 49 CFR 1.57(b).

Issued in Washington, DC, on June 29, 1989.

Phillip D. Brady,

General Counsel.

[FR Doc. 89-15918 Filed 7-6-89; 8:45 am]

BILLING CODE 9910-62-M

Research and Special Programs Administration

[Docket No. 89-2W; Notice 2]

Transportation of Natural and Other Gas by Pipeline; Grant of Waiver; Tennessee Gas Pipeline Co.

The Tennessee Gas Pipeline Company (Tennessee) petitioned the Office of Pipeline Safety for a waiver from compliance with 49 CFR 192.553(d), which prohibits, when uprating a pipeline, the establishment of a maximum allowable operating pressure (MAOP) greater than would be permitted for a new pipeline segment constructed of the same materials in the same location. To accommodate additional gas from TransCanada Pipelines, Ltd., Tennessee requested a waiver to permit the MAOP of eight pipeline segments to be uprated from 760 to 877 psig. The eight segments are all in Class 3 locations, which are generally characterized as areas with 46 or more occupied buildings per mile of pipeline (see § 192.5). The segments are located in Erie and Niagara Counties, New York, and range from 241 to 3,274 feet in length. They are shown on drawings TO-E11-230B-100-2A, 3, 3A, 5, and 8, which are available in the docket.

The eight segments are part of Tennessee's 20-inch Niagara Spur, which began operation in 1959. The MAOP of the Niagara Spur is 760 psig, established in 1970 under § 192.619. In 1987 the entire pipeline was hydrostatically tested to slightly more than 90 percent of the specified minimum yield strength (SMYS) of the pipe. This test and certain other steps made all but the eight segments of the line eligible for operation at 877 psig. Because they were in Class 3 locations, §192.553(d) precluded operation of the eight segments at 877 psig. Since the 1987 pressure test, two additional segments have changed to Class 3, but because they had previously been tested to more than 90 percent of SMYS and were eligible to operate at 877 psig, under § 192.611(a) they may operate at that pressure.

In response to this petition, the Office of Pipeline Safety (OPS) issued Notice 1 of this proceeding, proposing to grant the requested waiver and inviting interested parties to comment (54 FR 26001; May 9, 1989). In that notice, OPS explained that granting the waiver would not affect safety because the eight Class 3 segments are not materially different with respect to design, construction, test, operation, maintenance, and leak history from the two other Class 3 segments that may operate at 877 psig.

Comments were received from seven pipeline operators and one industry trade association, each of whom endorsed the petition and recommended granting the waiver.

For the reasons set forth above and in Notice 1 of this proceeding, OPS, by this order, finds that granting the requested waiver would not be inconsistent with gas pipeline safety. Accordingly, effective immediately, Tennessee is granted a waiver from compliance with § 192.553(d) regarding the eight segments of the Niagara Spur described above for the purpose of uprating to 877 psig.

(49 App. U.S. 1672(d); 49 CFR 1.53, and Appendix A of Part 106)

Issued in Washington, DC on June 30, 1989.

Richard L. Beam,

Director, Office of Pipeline Safety.

[FR Doc. 89-15989 Filed 7-6-89; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: June 30, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0001
Form Number: 7509
Type of Review: Revision
Title: Air Cargo Manifest
Description: The CF 7509 is the source of information that provides for the accountability, integrity, and security of goods in air commerce that are imported into the United States.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 150
Estimated Burden Hours Per Response/Recordkeeping: 34 minutes
Frequency of Response: On occasion
Estimated Total Recordkeeping/Reporting Burden: 116,586 hours
OMB Number: 1515-0104
Form Number: None
Type of Review: Extension
Title: Declaration of Ultimate Consignee that Articles Were Exported for Temporary Scientific or Educational Purposes
Description: This information in the declaration is needed to insure duty free entry of scientific and educational materials which have been exported for scientific and educational purposes.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 55
Estimated Burden Hours Per Response/Recordkeeping: 25 minutes
Frequency of Response: On occasion
Estimated Total Recordkeeping/Reporting Burden: 41 hours
Clearance Officer: Dennis Dore, (202) 535-9267, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-15951 Filed 7-6-89; 8:45 am]

BILLING CODE 4820-02-M

Public Information Collection Requirements Submitted to OMB for Review

Date: June 30, 1989.

The Department of Treasury has submitted the following public information collection requirements(s) to OMB for review and clearance under the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: 8803
Type of Review: New Collection
Title: Alternative Minimum Tax for Minor Children Subject to Section 59(j)
Description: Form 8803 is used to figure alternative minimum tax for children under age 14 with investment income of over $1,000 who also have adjustment or tax preference items.
Respondents: Individuals or households
Estimated Number of Respondents/Recordkeepers: 100
Estimated Burden Hours Per Response:
Recordkeeping: 13 minutes
Leaning about the law or the form: 5 minutes
Preparing the form: 26 minutes
Copying, assembling, and sending the form to IRS: 17 minutes
Frequency of Response: Annually
Estimated Total Recordkeeping/Reporting Burden: 104 hours
OMB Number: 1545-0227
Form Number: 6251
Type of Review: Revision
Title: Alternative Minimum Tax—Individuals
Description: Form 6251 is used by individuals having adjustments or tax preference items or a taxable income above certain exemption amount together with credits against their regular tax. The form provides a computation of the alternative minimum tax which is added to tax liability. The infomration is needed to see whether taxpayers are complying with the law.
Respondents: Individuals or households
Estimated Number of Respondents/Recordkeepers: 118,300
Estimated Burden Hours Per Response:
Recordkeeping: 2 hours, 17 minutes
Leaning about the law or the form: 16 minutes
Preparing the form: 1 hour, 11 minutes
Copying, assembling, and sending the form to IRS: 17 minutes
Frequency of Response: Annually
Estimated Total Recordkeeping/Reporting Burden: 610,428 hours
OMB Number: 1545-0773
Form Number: None
Type of Review: Revision
Title: Notice Required of Executor or Reciever
Description: Internal Revnue Code section 6036 requires executors or receivers to advise the district director of their appointment or authorization to act. This information is necessary so that the IRS will know of the proceedings and who to contact for delinquent returns or taxes.
Respondents: Individuals or households

Estimated Number of Respondents: 50,000

Estimated Burden Hours Per Response: 15 minutes

Frequency of Response: Nonrecurring

Estimated Total Reporting Burden: 12,500 hours

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-15952 Filed 7-6-89; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Supp. to Dept. Circular—Public Debt Series—No. 17-89]

Treasury Notes, Series AB-1991

Washington, June 28, 1989.

The Secretary announced on June 27, 1989, that the interest rate on the notes designated Series AB-1991, described in Department Circular—Public Debt Series—No. 17-89 dated June 22, 1989, will be 8¼ percent. Interest on the notes will be payable at the rate of 8¼ percent per annum.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 89-16021 Filed 7-6-89; 8:45 am]

BILLING CODE 4810-40-M

[Supp. to Dept. Circular—Public Debt Series—No. 18-89]

Treasury Notes, Series P-1993

Washington, June 29, 1989.

The Secretary announced on June 28, 1989, that the interest rate on the notes designated Series P-1993, described in Department Circular—Public Debt Series—No. 18-89 dated June 22, 1989, will be 8⅛ percent. Interest on the notes will be payable at the rate of 8⅛ percent per annum.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 89-16022 Filed 7-6-89; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 129
Friday, July 7, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, July 12, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 3, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-16062 Filed 7-5-89; 9:54 am]

BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 54, No. 129
Friday, July 7, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 89-088]

U.S. Veterinary Biological Product and Establishment Licenses Issued, Suspended, Revoked, or Terminated

Correction

In notice document 89-14107 beginning on page 25312 in the issue of Wednesday, June 14, 1989, make the following corrections:

On page 25312, in the table, in the third column, in the 10th entry, "multocide" should read "multocida".

On the same page, in the same table, in the same column, in the 15th entry, in the first line, "aureau" should read "aureus".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173 and 176

[Docket No. HM-126C; Amdt. Nos. 171-102, 172-116, 173-213, 176-28]

Emergency Response Communication Standards

Correction

In rule document 89-15190 beginning on page 27138 in the issue of Tuesday, June 27, 1989, make the following corrections:

1. On page 27138, in the 2nd column, in the 1st complete paragraph, in the 16th line, "(MDSD)" should read "(MSDS)".

2. On the same page, in the same column, in the last complete paragraph, in the seventh line, "(53 FR 31486)" should read "(52 FR 31486)".

3. On page 27141, in the first column, in the second line, "Transportation" should read "Transport".

4. On page 27142, in the first column, in the second complete paragraph, in the sixth line, "RSPAaagrees" should read "RSPA agrees".

5. On page 27143, in the third column, under **IV. Review by Sections**, in the third paragraph, in the second line, "added" was misspelled.

6. On the same page, in the third column, under **IV. Review by Sections**, in the fourth paragraph, "§ 172.202" should read "§ 172.201".

7. On page 27144, in the first column, in the third complete paragraph, in the fourth line, "in" should read "on".

§ 172.203 [Corrected]

8. On the same page, in the third column, in § 172.203(k), in the sixth line, "paragraph (R)(3)" should read "paragraph (k)(3)".

§ 172.600 [Corrected]

9. On page 27145, in the third column, in § 172.600(c)(1), in the fourth line, "and" should read "the".

10. On page 27146, in the second column, in the § 172.602(c)(2), in the last line, "hazardous" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 178

[Docket Nos. HM-183, 183A; Amdt. Nos. 107-20, 171-100, 172-115, 173-212, 176-27, 177-71, 178-69, 180-2]

RIN2137-AA42

Requirements for Cargo Tanks

Correction

In rule document 89-13086 beginning on page 24982 in the issue of Monday, June 12, 1989, make the following corrections:

On page 25031, in § 178.348-2, in Table II, the second and third lines in the first column, and the corresponding entries in all succeeding columns, should be removed.

BILLING CODE 1505-01-D

federal register

Friday
July 7, 1989

Part II

Department of the Treasury

Fiscal Service

31 CFR Part 344

United States Treasury Certificates of Indebtedness, Notes, Bonds, and Demand Deposit United States Treasury Certificates of Indebtedness; State and Local Government Series; Final Rule and Notice

DEPARTMENT OF THE TREASURY

Fiscal Service

[Department of the Treasury Circular, Public Debt Series No. 3-72, Third Revision]

31 CFR Part 344

Bureau of the Public Debt; United States Treasury Certificates of Indebtedness, Treasury Notes, and Treasury Bonds, State and Local Government Series

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury hereby publishes, as a final rule, regulations governing United States Treasury Certificates of Indebtedness, Notes, and Bonds of the State and Local Government Series. These securities are available for purchase, as provided in this offering, by State and local governments and certain other entities with proceeds (or amounts treated as proceeds) which are subject to yield restrictions or arbitrage rebate requirements under the Internal Revenue Code. The securities are characterized in the regulations as time deposit, demand deposit, and special zero interest.

EFFECTIVE DATE: The regulations are effective September 1, 1989, except for Subpart C, "Demand Deposit Securities" (§§ 344.6 through 344.9), which is effective August 1, 1989.

FOR FURTHER INFORMATION CONTACT: Sandy Dyson, Attorney-Advisor (202-376-4320), or Margaret Marquette, Attorney-Advisor (202-447-9859).

SUPPLEMENTARY INFORMATION: The regulations finalize the interim rule on this subject published in the **Federal Register** on December 31, 1986, at 51 FR 47400. The regulations are a revision of the proposed rule published in the **Federal Register** on August 29, 1980, at 45 FR 57747.

Subpart A—General Information

Provisions included in the general information section apply to time deposit, demand deposit, and special zero interest State and Local Government Series securities. Changes from the 1980 regulations are as follows:

(1) Section 344.0(b)—The definition of the term "government body" is expanded to include any entity that holds funds which are subject to the arbitrage provisions of the Internal Revenue Code.

(2) Section 344.1(d)—The term "selected" has been added to provide for a possible change in the way subscriptions are processed by the Federal Reserve Banks.

(3) Section 344.1(g)—The Department reserves the right to make special provisions relating to subscriptions for the issuance and redemption of securities when it appears likely that new or extended Treasury borrowing authority will not be timely enacted.

Subpart B—Time Deposit Securities

Time deposit Treasury securities are offered to State and local government investors to enable these investors to satisfy yield restrictions in the Internal Revenue Code. The major changes to the time deposit offering from the 1980 regulations are as follows:

(1) Section 344.2(a)(1)—Certificates will be available for terms of 30 days to one year. This reduces the 45-day minimum heretofore provided.

(2) Section 344.2(a)(3)—The maximum term for Treasury bonds will be reduced to 30 years from 40 years.

(3) Section 344.2(b)—The interest rate tables are changed from weekly tables to daily tables.

(4) Section 344.2(c)(2)—All payments of principal and interest on time deposit securities subscribed for on or after February 1, 1987, are being or will be made by the Automated Clearing House method (ACH) to the financial institution for the account of the investor.

(5) Section 344.3(b)—The 20-day notice of the intention to invest is reduced to 15 calendar days. In addition, the subscriber may defer the issue date up to seven calendar days after the date originally specified for issuance.

(6) Section 344.3(b)—A subscription may be amended on or before the proposed issue date for the purpose of changing the aggregate principal amount up or down by no more than ten percent, previously five percent, and changing the interest rate to any other rate, which does not exceed the maximum allowable rate, on the applicable table.

(7) Section 344.3(c)—Subscribers must certify that none of the proceeds submitted in payment is derived from the redemption before maturity of other securities of the State and Local Government Series. Subscribers must also certify that either none of the proceeds submitted in payment is derived from the sale of escrowed open market securities or, if so, the yield of the State and Local Government Series securities being purchased does not exceed the yield at which the open market securities were sold.

(8) Section 344.4—The six-month penalty for failure to make settlement on a subscription is modified to provide that the penalty applies if the failure to settle is due to a desire to take advantage of changes in interest rates, but not if the change was necessitated by an adversity in the financing. Certification to this effect is required.

(9) Section 344.4—The provision allowing subscribers to cancel the issuance of a security within 25 calendar days after the issue date is deleted.

(10) Section 344.5(b)(2)—A minimum 15-calendar day notice is required on early redemptions. This reduces the 20-day requirement previously imposed for most early redemptions.

(11) Section 344.5(b)(3)—A new subsection (b)(3) has been inserted and the following subsections have been renumbered appropriately. The new subsection (b)(3) provides for the Treasury to pay accrued interest for any fractional period since the last interest payment date, and for calculating the market charge for an early redemption of time deposit securities issued on or after September 1, 1989. The market charge, which is to be computed using the formulas in the Appendix, will reflect the present value of the remaining stream of payments on the time deposit security in the current market. Proceeds will not be reduced by any overpayment of interest which the entity may have received during the actual holding period as a result of having subscribed to a longer term security.

(12) Section 344.5(b)(4)—This section was renumbered from § 344.5(b)(3) to § 344.5(b)(4) and changed to apply to time deposit securities issued from December 28, 1976, through August 31, 1989.

(13) Section 344.5(b)(4)(iii)—For purposes of calculating the market charge for an early redemption, the term "current borrowing rate" is changed to mean the applicable rate shown in the table of maximum interest rates payable on State and Local Government securities for the day the request for early redemption is received or postmarked, rather than the week in which the early redemption date occurred, plus one-eighth of one percentage point.

Subpart C—Demand Deposit Securities

The Tax Reform Act of 1986 imposed arbitrage rebate requirements on issuers of tax-exempt bonds and directed the Department of the Treasury to modify its State and Local Government Series (SLGS) program to accommodate the new requirements and enable entities to invest qualifying funds in a Treasury money-market type investment vehicle. Accordingly, the Department expanded the program with its 1986 regulations to include a new "demand deposit" security offering for investing proceeds from tax-exempt bond issues. This security is not treated as investment property for purposes of sections 143(g)(3) and 148 of the Internal Revenue Code and, therefore, enables eligible entities to invest proceeds of tax-exempt bonds in an obligation which avoids the earning of rebatable arbitrage. In addition, amounts earned from investing gross proceeds pursuant to Exception (6) in § 344.7(b)(5) of these regulations, relating to certain amounts of less than $25,000, are not subject to arbitrage rebate.

Other major features of this offering include:

(1) Section 344.6(a)—The demand deposit securities are issued in a minimum amount of $1,000 and any increment above that amount. The securities, defined as one-day certificates of indebtedness, roll over each day until the day of redemption.

(2) Section 344.6(b)—Interest is computed daily. The rate is based on an adjustment of the average yield in the most recent auction of three-month Treasury bills. Interest is accrued and added to the principal daily.

(3) Section 344.6(c)—Upon determination by the Secretary of the Treasury that the proceeds of any unredeemed demand deposit certificate may not be reinvested because of uncertainty that new or extended debt limit legislation will be timely enacted, the proceeds will be placed in a special interest-bearing, redeemable certificate of indebtedness, having a term of 90 days.

(4) Section 344.7(a)—The securities are issued upon a minimum notice of three business days.

(5) Section 344.7(b)(1)—Subscriptions are limited to bond issues of $35 million or less.

(6) Section 344.9(a)—The securities may be redeemed upon a minimum notice of one business day.

Subpart D—Special Zero Interest Securities

In order to give State and local government investors greater flexibility in investing certain proceeds that may become subject to yield restrictions, a new special zero interest security is being offered for the first time with these 1989 regulations. Under the terms of this offering, subscribers are not required to certify that as of the date of investment all the proceeds subject to yield restrictions are being invested in State and Local Government securities. This offering is the same as that for time deposit securities, except for the following:

(1) Section 344.11(a)—Only certificates of indebtedness and notes are offered.

(2) Section 344.11(b)—The interest yield on the security is zero percent.

(3) Section 344.12—The subscriber must certify that the investment consists only of original or investment proceeds of a tax-exempt bond issue that are not proceeds of an advance refunding issue to be used to discharge another issue, and that the original proceeds of the tax-exempt bond issue were not subject to arbitrage yield restrictions on the date of receipt thereof.

(4) Section 344.13—No penalty shall apply for redemption of the security before maturity.

Discussion of Final Rule

Background

The final rule reflects changes in the interim rule, including those made for purposes of clarification and those made in response to comments received to the notice of proposed rulemaking. Ten written comments were received on the interim regulations for United States Treasury State and Local Government Series securities. Following is a summary of the issues addressed in the comments and an explanation of the action taken with respect thereto.

Section 344.0(a) Offering of Securities

One comment was received requesting that consideration be given to offering notes and bonds that do not pay interest until maturity. The Department has not adopted this comment given that the Treasury has not traditionally issued such securities and making such securities available to State and local governments is not necessary in order for these entities to comply with arbitrage yield restrictions.

Section 344.0(b) Offering of Securities

One comment was received related to the definition of eligible purchasers of certificates of indebtedness. The request was made that the definition of eligible purchaser be expanded to include national banks acting in the capacity of trustee for collateralized mortgage obligations issued under debt instruments, and national banks acting as trustees for collective investment funds established and operated pursuant to 12 CFR 9.18. This comment was for the propose of allowing investments unrelated to tax-exempt bond issues. The Department has determined that expansion of the definition of eligible investors to include such entities and to permit such investments is not in keeping with the purpose and intent of the State and Local Government Securities program. The purpose of this program is to provide securities that enable State and local governments to comply with arbitrage yield restrictions.

Section 344.1(f) General Provisions

One commenter recommended that the regulations state that the penalty for improper certification or other misrepresentation by the subscriber would be applied only when the pertinent certifications were not made in good faith. The regulations have been amended to indicate that the penalty is not intended to apply to inadvertent error.

Section 344.3(c)(1) Subscription for Purchase

Several comments were received on the requirement that time deposit State and Local Government securities be purchased only with amounts which are subject to yield restrictions. The recommendation was made that this requirement be revised to read "the total investment consists only of proceeds which are subject to yield restrictions or arbitrage rebate requirements under the Internal Revenue Code." This recommendation has not been adopted. The sole purpose of the time deposit program is to offer a below-market rate security to enable State and local governments to comply with arbitrage yield restrictions. Allowing the investment of all bond proceeds would be inconsistent with this limited purpose.

Section 344.3(c)(2) Subscription for Purchase

Comments were received on the requirement that all proceeds of an issue subject to yield restrictions must be invested. One commenter suggested that "proceeds" should be defined as "original proceeds" or "investment proceeds," as opposed to transferred proceeds, sinking fund proceeds, replacement proceeds, collateral funds and amounts other than original proceeds or investment proceeds deposited in a reasonably required reserve fund. A statement has been added to § 344.0(b) to provide that the definitions are those adopted by the Internal Revenue Service. In addition, § 344.3(c) has been amended to provide that the "all or none" rule does not apply to transferred proceeds if no portion of such proceeds is being invested.

The same commenter suggested that the "all or none" restriction be waived

in those cases where a government investor desires to subscribe to SLGs bearing zero percent interest. In response to this and other comments expressing a need for a special exception to the "all or none" rule in order to facilitate investments subject to arbitrage yield restrictions under the Tax Reform Act of 1986, Subpart D, "Special Zero Interest Securities," has been added herein, providing for a new State and Local Government Series security offering.

Section 344.4(a) Issue Date and Payment

A comment was made that the provision in the regulations that the six-month penalty for failure to settle due to a subscriber attempting to take advantage of changes in the interest rate is unclear. The provision is intended to refer to changes in the State and Local Government Series interest rate or to changes in market interest rates.

It was also stated that the regulations do not make clear how a government body procedurally obtains a waiver of penalty. The Department believes that the regulations adequately state in § 344.4 that waiver authority lies with the Commissioner of the Public Debt and that a certified statement must be submitted to the Bureau of the Public Debt to request a waiver of the six-month penalty.

Section 344.6(b) Description of Securities

Comments were received relative to the interest rate for demand deposit securities. All commenters felt that the formula designed by the Treasury to determine the weekly interest rate on demand deposit securities results in a rate that is too volatile and too low. Recommendations included (1) setting a rate that is an index of short-term municipal rates and is not further reduced by an administrative fee, and (2) basing the rate on the market yield on Treasury bills and subtracting only the allocable cost of administering the program.

The interest rate formula for demand deposit securities has been changed. The new interest rate is based on an adjustment of the average yield in the most recent auction of three-month Treasury bills, rather than an adjustment of the Federal Funds rate. The new interest rate base is expected to result in less volatility in the demand deposit rate. In addition, it is anticipated that Treasury administrative costs will be significantly reduced.

Section 344.7(b) Subscription for Purchase

Comments were received related to the requirement that all of the proceeds received upon the sale of an issue of State or local government obligations be invested in demand deposit securities if any of such proceeds is to be invested therein. One commenter stated that this forces investors to invest longer term monies in low interest rate demand deposit securities in order to use them at all and thereby causes large negative arbitrage losses. This commenter recommended that issuers be permitted to invest part of the proceeds in time deposit securities at an interest rate no higher than the yield on the bond issue.

In response to these comments, a change has been made to require that only 25 percent of the proceeds received from the sale of the issue be invested in demand deposit securities, provided that the remainder of the proceeds are invested pursuant to one of the available exceptions. The available exceptions have been expanded to allow issuers, for example, to invest part of the proceeds in taxable obligations with a yield no higher than the yield on the bond issue. In light of these and other changes to the demand deposit program and in keeping with its limited purpose, a change has been made to exclude very large bond issues (in excess of $35 million) from the demand deposit program.

One commenter suggested that the demand deposit regulations be changed because investment of bond proceeds on the date of delivery is impossible if the issuer does not get "same day funds" when the bonds are delivered. A change has been made in the certification requirements to make allowance for a delay in receipt of funds.

Section 344.9(c) Redemption

A comment was received related to the certification requirement for demand deposit securities that any amount requested for redemption be expended within one day of receipt thereof for the purpose of the tax-exempt bond issue used to purchase the certificate. The recommendation is to modify that requirement so that redemption proceeds could be immediately reinvested in time deposit securities. A more general comment was that considerably greater flexibility should be permitted for mixing of investments among demand deposit SLGs and time deposit SLGs. The Department believes that implementing these recommendations would compromise the distinction between the purpose and design of the demand deposit and time deposit programs.

General

This rule is not considered a "major rule" for purposes of Executive Order 12291. A regulatory impact analysis, therefore, is not required.

Although public comments were solicited in conjunction with the interim regulations, the notice and public procedures requirements of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2). As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C 601, *et seq.*) do not apply.

The collections of information contained in this regulation have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1535-0091. The estimated annual burden per respondent varies from 10 to 45 minutes, depending on individual circumstances, with an estimated average of 15 minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to Bureau of the Public Debt, Forms Management Officer, Washington, DC 20239-1300, and to the Office of Management and Budget, Paperwork Reduction Project (1535-0091), Washington, DC 20503.

List of Subjects in 34 CFR Part 344

Bonds, Government securities, Securities.

Dated: June 28, 1989.

Gerald Murphy,

Fiscal Assistant Secretary.

Part 344 of Title 31, Code of Federal Regulations, is revised as follows and issued as Department of the Treasury Circular, Public Debt Series No. 3-72, Third Revision:

PART 344—REGULATIONS GOVERNING UNITED STATES TREASURY CERTIFICATES OF INDEBTEDNESS—STATE AND LOCAL GOVERNMENT SERIES, UNITED STATES TREASURY NOTES—STATE AND LOCAL GOVERNMENT SERIES, AND UNITED STATES TREASURY BONDS—STATE AND LOCAL GOVERNMENT SERIES

Subpart A—General Information

Sec.
344.0 Offering of securities.
344.1 General provisions.

Subpart B—Time Deposit Securities

344.2 Description of securities.
344.3 Subscription for purchase.
344.4 Issue date and payment.
344.5 Redemption.

Subpart C—Demand Deposit Securities

344.6 Description of securities.
344.7 Subscription for purchase.
344.8 Issue date and payment.
344.9 Redemption.

Subpart D—Special Zero Interest Securities

344.10 General.
344.11 Description of securities.
344.12 Subscription for purchase.
344.13 Redemption.

Appendix—Early Redemption Market Charge Formulas and Examples

Authority: 31 U.S.C. 3102, *et seq.*; sec. 1301, Pub. L. 99-514, 100 Stat. 2657.

Subpart A—General Information

§ 344.0 Offering of securities.

(a) In order to provide issuers of tax exempt securities with investments which allow them to comply with yield restriction and arbitrage rebate provisions of the Internal Revenue Code, the Secretary of the Treasury offers for sale the following State and Local Government Series securities:

(1) Time deposit securities:

(i) United States Treasury Certificates of Indebtedness,

(ii) United States Treasury Notes, and

(iii) United States Treasury Bonds.

(2) Demand deposit securities—United States Treasury Certificates of Indebtedness.

(3) Special zero interest securities:

(i) United States Treasury Certificates of Indebtedness.

(ii) United States Treasury Notes.

(b) As appropriate, the definitions of terms used in these regulations are those found in the relevant portions of the Internal Revenue Code and regulations. The term "government body" refers to issuers of State or local bonds described in section 103 of the Internal Revenue Code, as well as to any other entity subject to the yield restrictions in sections 141-150, or the arbitrage rebate requirements in section 143(g)(3) or 148, of the Internal Revenue Code. The term "postmark date" refers to the date affixed by the U.S. Postal Service, not to a postage meter date.

(c) This offering will continue until terminated by the Secretary of the Treasury.

§ 344.1 General provisions.

(a) *Regulations.* United States Treasury State and Local Government Series securities shall be subject to the general regulations with respect to United States securities, which are set forth in the Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), to the extent applicable. Copies of the circular may be obtained from the Bureau of the Public Debt, Department F, Washington, DC 20239-1200, or a Federal Reserve Bank or Branch.

(b) *Issuance.* The securities will be issued in book-entry form on the books of the Department of the Treasury, Bureau of the Public Debt, Washington, DC 20239-0101. Transfer of securities by sale, exchange, assignment or pledge, or otherwise will not be permitted.

(c) *Transfers.* Securities held in an account of any one type, i.e., time deposit, demand deposit, or special zero interest, may not be transferred within that account or to an account of any other type.

(d) *Fiscal agents.* Selected Federal Reserve Banks and Branches, as fiscal agents of the United States, may be designated to perform such services as may be requested of them by the Secretary of the Treasury in connection with the purchase of, transactions involving, and redemption of, the securities.

(e) *Authority of subscriber.* Where a commercial bank submits an initial or final subscription on behalf of a government body, it must certify that it is acting under the latter's specific authorization; ordinarily, evidence of such authority will not be required. Subscriptions submitted by an agent other than a commercial bank must be accompanied by evidence of the agent's authority to act. Such evidence must describe the nature and scope of the agent's authorization, must specify the legal authority under which the agent was designated, and must relate by its terms to the investment action being undertaken. Subscriptions unsupported by such evidence will not be accepted.

(f) *Reservations.* Transaction requests, including requests for subscription and redemption, will not be accepted if unsigned, inappropriately completed, or not timely submitted. The Secretary of the Treasury reserves the right:

(1) To reject any application for the purchase of securities under this offering;

(2) To refuse to issue any such securities in any case or any class(es) of cases; and

(3) To revoke the issuance of any security, and to declare the subscriber ineligible thereafter to subscribe for securities under this offering, if any security is issued on the basis of an improper certification or other misrepresentation by the subscriber, other than as the result of an inadvertent error, if the Secretary deems such action to be in the public interest.

Any of these actions shall be final. The authority of the Secretary to waive regulations under 31 CFR 306.126 applies to these regulations.

(g) *Debt limit contingency.* The Department of the Treasury reserves the right to change or suspend the terms and conditions of this offering, including provisions relating to subscriptions for and issuance of securities, interest payments, redemptions, and rollovers, as well as notices relating hereto, at any time the Secretary determines that issuance of obligations sufficient to conduct the orderly financing operations of the United States cannot be made without exceeding the statutory debt limit. Announcement of such changes shall be provided by such means as the Department deems appropriate.

(Approved by the Office of Management and Budget under control number 1535-0091)

Subpart B—Time Deposit Securities

§ 344.2 Description of securities.

(a) *Terms.*—(1) *Certificates of Indebtedness.* The certificates will be issued in a minimum amount of $1,000, or in any larger amount, in multiples of $100, with maturity periods fixed by the government body, from 30 calendar days up to and including one year, or for any intervening period.

(2) *Notes.* The notes will be issued in a minimum amount of $1,000, or in any larger amount, in multiples of $100, with maturity periods fixed by the government body, from one year and one day up to and including 10 years, or for any intervening period.

(3) *Bonds.* The bonds will be issued in a minimum amount of $1,000, or in any larger amount, in multiples of $100, with maturity periods fixed by the government body, from 10 years and one day up to and including 30 years, or for any intervening period.

(b) *Interest rate.* Each security shall bear such rate of interest as the government body shall designate, but the rate shall not exceed the maximum rate. The applicable maximum interest rates for each day shall equal rates shown in a table (Form PD 4262), which will be released to the public by 10:00 a.m., Eastern time, each business day. If the Treasury finds that due to circumstances beyond its control the rates will not be available to the public by 10 a.m., Eastern time, on any given business day, it will provide an immediate announcement of that fact and advise that the applicable interest for the last preceding business day shall apply. The applicable rate table for any

subscription is the one in effect on the date the initial subscription is actually received during customary business hours by a Federal Reserve Bank or Branch, or if the initial subscription was mailed, the postmark date. Subscriptions postmarked on a non-business day will be subject to those interest rates which are in effect for the next business day. The rates specified in the tables are one-eighth of one percent below the then current estimated Treasury borrowing rate for a security of comparable maturity.

(c) *Payment.*—(1) *Interest computation and payment dates.* Interest on a certificate will be computed on an annual basis and will be paid at maturity with the principal. Interest on a note or bond will be paid semiannually. The subscriber will specify the first interest payment date, which must occur any time between 30 days and one year of the date of issue, and the final interest payment date must coincide with the maturity date of the security. Interest for other than a full semiannual interest period is computed on the basis of a 365-day or 366-day year (for certificates) and on the basis of the exact number of days in the half-year (for notes and bonds). See Appendix to Subpart E of Part 306 of this chapter for rules regarding computation of interest.

(2) *Method of payment.* For securities for which subscriptions are submitted on or after February 1, 1987, payment will only be made by the Automated Clearing House method (ACH) for the owner's account at a financial institution designated by the owner. To the extent applicable, provisions of § 357.26 on "Payments," as set forth in 31 CFR Part 357, shall govern ACH payments made under this offering. For securities for which subscriptions were submitted prior to February 1, 1987, payment will be made:

(1) By a direct credit to a Federal Reserve Bank or Branch for the account of the financial institution servicing the investor; or

(2) By ACH for the owner's account at a financial institution; or

(3) By Treasury check; or

(4) In accordance with other prior arrangements made by the subscriber with the Bureau of the Public Debt.

§ 344.3 Subscription for purchase.

(a) *Subscription requirements.* Subscriptions for purchase of securities under this offering must be submitted to a designated Federal Reserve Bank or Branch. Subscriptions may be submitted in person, by mail, or by other carrier. All subscriptions submitted by mail, whether initial or final, should be sent by certified or registered mail. A subscription filed at a designated Federal Reserve Bank or Branch is accepted, subject to verification by the Bureau of the Public Debt.

(b) *Initial subscriptions.* (1) An initial subscription, either on a designated Treasury form or in letter form, stating the principal amount to be invested and the issue date, must be received (or where mailed, must be postmarked) at least 15 calendar days before issue date. For example, if the securities are to be issued on March 16, the subscription must be postmarked no later than March 1. If the initial subscription is in letter form, it should read substantially as follows:

To: Federal Reserve Bank or Branch at

Pursuant to the provisions of Department of the Treasury Circular, Public Debt Series No. 3-72, current revision, the undersigned hereby subscribes for United States Treasury Time Deposit Securities—State and Local Government Series, to be issued as entries on the books of the Bureau of the Public Debt, Department of the Treasury, in the total amount and with the issue date shown below, which date is at least 15 calendar days after the date of this subscription:

Principal Amount
$ _____

Issue Date
_____

The undersigned agrees that the final subscription, together with the remittance, will be submitted on or before the issue date.

_____
(Tax I.D. Number of State or local government body or other entity eligible to purchase State and Local Government Series securities)

_____
(Name of State or local government body or other entity eligible to purchase State and Local Government Series securities)

_____
(Date)

by _____
(Signature and Title)

(2) The provisions set out in paragraph (e) of § 344.1, dealing with the authority of the subscriber to act on behalf of a government body, and in § 344.4, relating to the failure to complete a subscription, apply to initial as well as final subscriptions.

(3) An initial subscription may be amended on or before the issue date, with the following exceptions:

(i) The issue date may not be changed to require issuance more than seven calendar days later than originally specified, and, if such change is made, written notification to the Federal Reserve Bank to which the subscription was submitted should be provided as soon as possible, but no later than one business day before the originally specified issue date;

(ii) The aggregate amount may not be changed by more than the ten percent limitation set out in paragraph (c) of this section; and

(iii) An interest rate may not be changed to a rate that exceeds the maximum interest rate in the table that was in effect at the time the initial subscription was submitted.

No initial subscription will be required where a final subscription is received or postmarked at least 15 calendar days before the issue date. Such final subscription will be treated as the initial subscription for purposes of determining the applicable interest rate table (see § 344.2(b)), and may be amended on or before the issue date, subject to the exceptions noted above.

(c) *Final subscriptions.* On or before the issue date, a final subscription must be submitted to the same Federal Reserve Bank or Branch to which the initial subscription was submitted. The final subscription must be for a total principal amount that is no more than ten percent above or below the aggregate principal amount specified in the initial subscription. The final subscription, dated and signed by an official authorized to make the purchase and showing the taxpayer identification number of the beneficial owner, must be accompanied by a copy of the initial subscription, where applicable. The various maturities, interest rates, and semiannual interest payment dates (in the case of notes and bonds), must be specified in the final subscription, as well as the title(s) of the designated official(s) authorized to request early redemption. Final subscriptions submitted for certificates, notes and bonds must separately itemize securities of each maturity and each interest rate. The final subscription must contain a certification by the subscriber that, as of the date of investment (without regard to any temporary period of no longer than 30 days):

(1) The total investment consists only of proceeds (including amounts treated as proceeds) of at tax-exempt bond issue which are subject to yield restrictions under sections 141–150 of the Internal Revenue Code during the entire period of investment;

(2) The total investment is not less than all of such proceeds except for—

(i) An amount not to exceed $100, and

(ii) Amounts required for payment due less than 30 days from the date of issue:

(3) None of the proceeds submitted in payment is derived (directly or indirectly) from the redemption before maturity of other securities of the State and Local Government Series; and

(4)(i) No portion of the investment is being made (directly or indirectly) with amounts that are to be used to discharge a tax-exempt bond issue and that are derived or are to be derived (directly or indirectly) from the sale of escrowed open market securities, the proceeds of which were to be used to discharge a tax-exempt bond issue; or

(ii) Although a portion of the investment is being made (directly or indirectly) with amounts that are to be used to discharge a tax-exempt bond issue and that are derived or are to be derived (directly or indirectly) from the sale of escrowed open market securities, the proceeds of which were to be used to discharge a tax-exempt bond issue, the composite yield to maturity of all investments being purchased with such amounts does not exceed the composite yield to maturity of the securities that were sold, based on the price at which they were sold.

Where proceeds are subject to yield restrictions for a limited period of time, under paragraph (c)(1) of this section, no investment of such proceeds beyond such period may be made. For example, if a reserve fund of a refunding issue is subject to yield restrictions for a period of four years, the securites purchased as an investment of the reserve fund may not have a maturity longer than four years. With respect to obligations described in section 103 of the Internal Revenue Code issued after January 31, 1987, paragraph (c)(2) of this section is satisfied only if on the date of investment, all the proceeds of the issue which are subject to yield restrictions are invested in State and Local Government Series securities. Paragraph (c)(2) of this section does not apply to purpose investments, such as mortgage notes or student loan obligations. Transferred proceeds of the tax exempt bond issue that were proceeds of another issue shall not be treated as proceeds for purposes of paragraph (c)(2) of this section if no portion of the total investment consists of such proceeds. See § 344.1(f) as to improper certifications.

(Approved by the Office of Management and Budget under control number 1535–0091)

§ 344.4 Issue date and payment.

The subscriber shall fix the issue date of each security in the initial subscription. The issue date may not exceed by more than 60 calendar days either the date of receipt of the initial subscription at the Federal Reserve Bank or Branch to which it was submitted or, where mailed, the postmark date thereof. Full payment for each subscription must be available in an account for debit by a Federal Reserve Bank or Branch on or before the date of issue. Any subscriber which fails to make settlement on a subscription once submitted shall be ineligible thereafter to subscribe for securities under this offering for a period of six months, beginning on the date the subscription is withdrawn or the proposed issue date, whichever occurs first, unless the Commissioner of the Public Debt determines that such failure is due to circumstances not foreseen or contemplated by the subscriber at time of subscription. Where failure to settle is due to adversity in the financing, reasonable accommodation will be made, provided the subscriber submits a certified statement to the Commissioner of the Public Debt, Bureau of the Public Debt, Washington, DC 20239–0001, with respect to those circumstances. The penalty will apply in other instances, for example, where failure to settle is due to a subscriber attempting to take advantage of changes in interest rates.

(Approved by the Office of Management and Budget under control number 1535–0091)

§ 344.5 Redemption

(a) *General.* A security may not be called for redemption by the Secretary of the Treasury prior to maturity. Upon the maturity of a security, the Department will make payment of the principal amount and interest due to the owner thereof. A security scheduled for redemption on a non-business day will be redeemed on the next business day.

(b) *Before maturity.*—(1) *In general.* A security may be redeemed at the owner's option no earlier than 25 calendar days after the issue date in the case of a certificate, and one year after the issue date in the case of a note or bond. Partial redemptions may be requested in multiples of $100; however, an account balance of less than $1,000 will be redeemed in total.

(2) *Notice.* Notice for redemption prior to maturity must be submitted, by letter or wire, by the official(s) authorized to redeem the securities, as shown on the final subscription form, to the Bureau of the Public Debt, Department L, Washington, DC 20239–0101. The notice must show the account number, the maturities of the securities to be redeemed, and the tax identification number of the subscriber. This notice must be received no less than 15 calendar days before the requested redemption date. However, owners are encouraged to provide as much notice of redemption as possible to assure that payment can be timely made. Once received, a notice of redemption prior to maturity cannot be cancelled.

(3) *Redemption proceeds—subscriptions on or after September 1, 1989.* For securities subscribed for on or after September 1, 1989, the amount of the redemption proceeds is calculated as follows:

(i) *Interest.* If a security is redeemed before maturity on a date other than a scheduled interest payment date, interest will be paid for the fractional interest period since the last interest payment date.

(ii) *Market charge.* An amount shall be deducted from the redemption proceeds in all cases where the current borrowing rate of the Department of the Treasury for the remaining period to original maturity of the security prematurely redeemed exceeds the rate of interest originally fixed for such security. The amount shall be the present value of the future increased borrowing cost to the Treasury. The annual increased borrowing cost for each interest period is determined by multiplying the principal by the difference between the two rates. For notes and bonds, the increased borrowing cost for each remaining interest period to original maturity is determined by dividing the annual cost by two. For certificates, the increased borrowing cost for the remaining period to original maturity is determined by multiplying the annual cost by the number of days remaining until original maturity divided by the number of days in the calendar year. Present value shall be determined by using the current borrowing rate as the discount factor. The term "current borrowing rate" means the applicable rate shown in the table of maximum interest rates payable on United States Treasury securities—State and Local Government Series—for the day the request for early redemption is received or, where mailed, the postmark date, plus one-eighth of one percentage point. Where redemption is requested as of a date less than 30 calendar days before the original maturity date, such applicable rate is the rate shown for a security with a maturity of 30 days. The market charge for bonds, notes, and certificates of indebtedness can be computed by use of the formulas set forth in the Appendix to this Part 344.

(4) *Redemption proceeds—subscriptions from December 28, 1976 through August 31, 1989.* For securities subscribed for from December 28, 1976 through August 31, 1989, the amount of the redemption proceeds is calculated as follows:

(i) *Interest.* Interest for the entire period the security was outstanding shall be recalculated on the basis of the

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lesser of the original interest rate at which the security was issued, or the interest rate that would have been set at the time of the initial subscription had the term for the security been for the shorter period. If a note or bond is redeemed before maturity on a date other than a scheduled interest payment date, no interest will be paid for the fractional interest period since the last interest payment date.

(ii) *Overpayment of interest.* If there have been overpayments of interest, as determined under paragraph (b)(4)(i) of this section, there shall be deducted from the redemption proceeds the aggregate amount of such overpayments, plus interest, compounded semiannually, thereon from the date of each overpayment to the date of redemption. The interest rate to be used in calculating the interest on the overpayment shall be one-eighth of one percent above the maximum rate that would have applied to the initial subscription had the term of the security been for the shorter period.

(iii) *Market charge.* An amount shall be deducted from the redemption proceeds in all cases where the current borrowing rate of the Department of the Treasury for the remaining period to original maturity of the security prematurely redeemed exceeds the rate of interest originally fixed for such security. The amount shall be calculated using the formula in paragraph (b)(3)(ii) of this section.

(5) *Redemption proceeds—subscriptions on or before December 27, 1976.* (i) For securities subscribed for on or before December 27, 1976, the amount of the redemption proceeds is calculated as follows.

(ii) The interest for the entire period the security was outstanding shall be recalculated on the basis of the lesser of the original interest rate at which the security was issued, or an adjusted interest rate reflecting both the shorter period during which the security was actually outstanding and a penalty. The adjusted interest rate is the Treasury rate which would have been in effect on the date of issuance for a marketable Treasury certificate, note, or bond maturing on the quarterly maturity date prior to redemption (in the case of certificates), or on the semiannual maturity period prior to redemption (in the case of notes and bonds), reduced in either case by a penalty which shall be the lesser of

(A) One-eighth of one percent times the number of months from the date of issuance to original maturity, divided by the number of full months elapsed from the date of issue to redemption, or

(B) One-fourth of one percent.

There shall be deducted from the redemption proceeds, if necessary, any overpayment of interest resulting from previous payments made at a higher rate based on the original longer period to maturity.

(Approved by the Office of Management and Budget under control number 1535-0091)

Subpart C—Demand Deposit Securities

§ 344.6 Description of securities.

(a) *Terms.* The securities are defined as one-day certificates of indebtedness. The securities will be issued in a minimum of $1,000 and any increment above that amount. Each subscription will be established as a unique account. Securities will be automatically rolled over each day unless redemption is requested.

(b) *Interest rate.* (1) Each security shall bear a variable rate of interest based on an adjustment of the average yield for three-month Treasury bills at the most recent auction. A new rate will be effective on the first business day following the regular auction of three-month Treasury bills and will be shown in the table (Form PD 4262), available to the public on such business day. Interest will be accrued and added to principal daily. Interest will be computed on the balance of the principal, plus interest accrued through the immediately preceding day.

(2) The annualized effective demand deposit rate in decimals, designated "I" in the formula below, is calculated as:

$$I=[(100/P)^{Y/DTM}-1]\,(1-MTR)-TAC$$

Where

P = The average auction price for the Treasury bill, per hundred, to three decimal places.

Y = 365 if the year following issue date does not contain a leap year day and 366 if it does contain a leap year day.

DTM = The number of days from date of issue to maturity for the auctioned Treasury bill.

MTR = Estimated average marginal tax rate, in decimals, of purchasers of short-term tax exempt bonds.

TAC = Treasury administrative costs, in decimals.

The daily factor for the demand deposit rate is then calculated as:

$$DDR = (1+I)^{1/Y}-1$$

(3) Information as to the estimated average marginal tax rate and costs for administering the demand deposit State and Local Government securities program, both to be determined by Treasury from time to time, will be published in a separate notice in the **Federal Register**.

(c) *Payment.* Interest earned on the securities will be added to the principal and will be reinvested daily until redemption. At any time the Secretary determines that issuance of obligations sufficient to conduct the orderly financing operations of the United States cannot be made without exceeding the statutory debt limit, the Department will invest and unredeemed demand deposit securities in special 90-day certificates of indebtedness. These 90-day certificates will be payable at maturity, but redeemable before maturity, provided funds are available for redemption, or reinvested in demand deposit securities when regular Treasury borrowing operations resume, both at the owner's option. Funds invested in the 90-day certificates of indebtedness will earn simple interest equal to the daily factor in effect at the time demand deposit security issuance is suspended, multiplied by the number of days outstanding.

§ 344.7 Subscription for purchase.

(a) *Subscription requirements.* Subscriptions of purchase of securities under this offering must be submitted to a designated Federal Reserve Bank or Branch. Subscriptions must be submitted on a designated Treasury form, must specify the principal amount to be invested and the issue date, and must be signed by an official authorized to make the purchase. The Federal Reserve Bank or Branch must receive the subscription by 1:00 p.m., Eastern time, at least three business days before the issue date. The principal amount to be invested may be changed without penalty. The notification of change, if any, must be received by the same Federal Reserve Bank or Branch to which the subscription was submitted by 1:00 p.m., Eastern time, at least one business day before the issue date.

(b) *Certification:* By completing the subscription form, subscribers certify to the following:

(1) Neither the aggregate issue price nor the stated redemption price at maturity of the bonds that are part of the tax-exempt issue exceeds $35 million. Issue price and stated redemption price at maturity have the meanings given such terms in sections 1273 and 1274 of the Internal Revenue Code;

(2) No portion of the tax-exempt bond issue has been or will be issued or permitted to remain outstanding, and the expenditure of gross proceeds of the tax-exempt bond issue has not and will not be delayed, for the principal purpose of investing in demand deposit securities;

(3) Only eligible gross proceeds of the tax-exempt bond issue have been and will be submitted in payment for demand deposit securities. Eligible gross proceeds are all gross proceeds of the tax-exempt bond issue except—

(i) Gross proceeds of an advance refunding issue to be used to discharge another issue;

(ii) Gross proceeds accumulated in a reserve or replacement fund (other than a bona fide debt service or reasonably required reserve or replacement fund); and

(iii) Solely for purposes of this paragraph (b)(3), gross proceeds previously invested at any time pursuant to any exception in paragraph (b)(5) of this section, other than Exception (6) (relating to amounts of less than $25,000) and Exception (8) (relating to inadvertent error).

(4) At least 25 percent of the eligible gross proceeds received from the sale of the tax-exempt bond issue have been or will be invested in demand deposit securities within three business days of the date of receipt thereof;

(5) All eligible gross proceeds of the tax-exempt bond issue have been and will be invested within four business days of the date of receipt thereof in demand deposit securities (principal repayments on purpose investments are treated as gross proceeds received on the date of repayment). This paragraph (b)(5) shall not apply to gross proceeds that are at all times (prior to the date of expenditure thereof) invested pursuant to one of the exceptions described below:

(i) *Exception (1).* Gross proceeds that are invested solely in investments the earnings on which are not subject to rebate under section 148(f) or 143(g)(3) of the Internal Revenue Code (whichever applies).

(ii) *Exception (2).* Gross proceeds that are invested in obligations the earnings on which are not reasonably expected to be subject to rebate by reason of section 148(f)(4)(A)(ii) (relating to certain bona fide debt service funds) or section 148(f)(4)(B) (relating to exception for temporary investments) of the Internal Revenue Code.

(iii) *Exception (3).* Gross proceeds that are not reasonably expected to be gross proceeds of the tax-exempt bond issue for more than seven business days.

(iv) *Exception (4).* Gross proceeds that are part of a reasonably required reserve or replacement fund (other than a bona fide debt service fund) for the tax-exempt bond issue.

(v) *Exception (5).* Gross proceeds that are invested in taxable obligations, but only if the yield on each obligation (computed separately and on the basis of an arm's length purchase price) is no higher than the yield on the tax-exempt bond issue.

(vi) *Exception (6).* Eligible gross proceeds that are not invested in one-day certificates of indebtedness or pursuant to Exceptions (1) through (5) above, but only if the total amount of such eligible gross proceeds on any particular day is less than $25,000. This Exception (6) shall not apply to gross proceeds that are part of a reasonably required reserve or replacement fund (other than a bona fide debt service fund).

(vii) *Exception (7).* Gross proceeds that are not invested pursuant to Exception (4) or (6) above, and that are invested in any taxable obligation the yield on which is higher than the yield on the tax-exempt bond issue, but only if taxable obligations described in Exception (5) above, the tax-exempt obligations described in Exception (1) above, are not available for investment (for example, because market interest rates are too high and statutory or indenture restrictions prevent investments in tax-exempt obligations).

(viii) *Exception (8).* Gross proceeds that are not invested in demand deposit securities due to an inadvertent error.

See § 344.1(f) as to improper certifications.

§ 344.8 Issue date and payment.

The subscriber shall fix the issue date on the subscription, the issue date to be a business day at least three business days after receipt of the subscription by a designated Federal Reserve Bank or Branch. Full payment for each subscription must be available in an account for debit by the Bank or Branch on or before the date of issue. Any subscriber which fails to settle a subscription shall be ineligible thereafter to subscribe for securities under this offering for a period of six months, unless the Commissioner of the Public Debt determines that such failure is due to circumstances not foreseen or contemplated by the subscriber at the time of subscription. Where failure to settle is due to adversity in the financing, the restriction on investment may be waived, provided the subscriber submits a certified statement to the Commissioner of the Public Debt, Bureau of the Public Debt, Washington, DC 20239-0001, with respect to the circumstances.

(Approved by the Office of Management and Budget under control number 1535-0091)

§ 344.9 Redemption.

(a) *General.* A security may be redeemed at the owner's option provided a request for redemption is received not less than one business day prior to the requested redemption date. Partial redemptions may be requested; however, an account balance of less than $1,000 will be redeemed in total. Payment will be made by crediting an account maintained at the Federal Reserve Bank or Branch by the financial institution servicing the subscriber.

(b) *Notice.* Notice of redemption must be received by a designated Federal Reserve Bank or Branch by 1:00 p.m., Eastern time, one business day prior to the requested redemption date. The notice must be provided on a designated Treasury redemption form or by letter and must be signed by an official(s) authorized to redeem the securities.

(c) *Certification.* By completing the redemption form, subscribers certify to the fact that the proceeds to be received will be expended within one day of receipt thereof for the purpose for which the tax-exempt bond was issued.

Subpart D—Special Zero Interest Securities

§ 344.10 General.

Provisions of Subpart B, Time Deposit Securities, apply except as specified below.

§ 344.11 Description of securities.

(a) *Terms.* Only certificates of indebtedness and notes are offered.

(1) *Certificates of Indebtedness.* The certificates will be issued in a minimum amount of $1,000, or in any larger amount, in multiples of $100, with maturity periods fixed by the government body, from 30 calendar days up to and including one year, or for any intervening period.

(2) *Notes.* The notes will be issued in a minimum amount of $1,000, or in any larger amount, in multiples of $100, with maturity periods fixed by the government body, from one year and one day up to and including 10 years, or for any intervening period.

(b) *Interest rate.* Each security shall bear no interest.

§ 344.12 Subscription for purchase.

In lieu of the certification under § 344.3(c), the final subscription must contain a certification by the subscriber that:

(a) The total investment consists only of original or investment proceeds of a tax-exempt bond issue that are subject to yield restrictions under sections 141–150 of the Internal Revenue Code;

(b) None of the original proceeds of the tax-exempt bond issue were subject to arbitrage yield restrictions under section 148 of the Internal Revenue Code on the date of receipt thereof; and

(c) None of the proceeds submitted in payment are proceeds of an advance refunding issue to be used to discharge another issue or part of a reserve or replacement fund for the advance refunding issue.

§ 344.13 Redemption.

(a) *General.* Provisions of § 344.5(a) apply.

(b) *Before maturity.*—(1) *In general.* A security may be redeemed at the owner's option no earlier than 25 calendar days after the issue date in the case of a certificate and one year after the issue date in the case of a note. No market charge or penalty shall apply in the case of the redemption of a special zero interest security before maturity.

(2) *Notice.* Notice of redemption prior to maturity must be received by the Bureau of the Public Debt, Department L, Washington, DC 20239–0101. The notice must be provided, by letter or wire, by the official(s) authorized to redeem the securities, as shown on the final subscription form. The notice must show the account number, the maturities of the securities to be redeemed, and the tax identification number of the subscriber. This notice must be received no less than 15 calendar days before the requested redemption date. However, owners are encourged to provide as much notice of redemption as possible to assure that payment can be timely made. Once received, a notice of redemption prior to maturity cannot be cancelled.

(Approved by the Office of Management and Budget under control number 1535–0091)

Appendix—Formulas for Determining the Amount of Market Charge for Early Redemption of Securities under Subsections 344.5 (b)(3)(ii) and (b)(4)(iii)

The amount of the market charge for bonds and notes can be determined through use of the following formula:

$$M = \frac{\left(\frac{b}{2}\right)\left(\frac{r}{s}\right) + \left(\frac{b}{2}\right)(a)}{1 + \left(\frac{r}{s}\right)\left(\frac{i}{2}\right)},$$

where

M = market charge

b = increased annual borrowing cost (i.e., principal multiplied by the excess of the current borrowing rate for the period from redemption to original maturity of note or bond over the rate for the security)

r = number of days from redemption to beginning of next semiannual interest period

s = number of days in current semiannual period

i = current borrowing rate for period from redemption to maturity (expressed in decimals)

n = number of remaining full semiannual periods to the original maturity date

$$a = \frac{(1 - v^n)}{\frac{i}{2}}$$

$$v^n = \frac{1}{\left(1 + \frac{i}{2}\right)^n}$$

The application of this formula may be illustrated by the following example:

(1) Assume that a $600,000 note is issued on July 1, 1985, to mature on July 1, 1995. Interest is payable at a rate of 8% on January 1 and July 1.

(2) Assume that the note is redeemed on February 1, 1989, and that the current borrowing rate for Treasury at that time for the remaining period of 6 years and 150 days is 11%.

(3) The increased annual borrowing cost is $18,000. ($600,000) × (11% − 8%)

(4) The market charge is computed as follows:

$$M = \frac{\left(\frac{\$18,000}{2}\right)\left(\frac{150}{181}\right) + \left(\frac{\$18,000}{2}\right)(a)}{1 + \left(\frac{150}{181}\right)\left(\frac{.11}{2}\right)} =$$

$$\frac{\$7,458.56 + (\$9,000)(a)}{1.045580111} =$$

$$\frac{\$7,458.56 + (\$9,000)\left(\frac{1 - \frac{1}{\left(1 + \frac{.11}{2}\right)^{12}}}{\frac{.11}{2}}\right)}{1.045580111} =$$

$$\frac{\$7,458.56 + (\$9,000)(8.618517849)}{1.045580111} =$$

$$\frac{\$7,458.56 + \$77,566.66}{1.045580111} =$$

$$\$81,318.71$$

The amount of the market charge for certificates can be determined through use of the following formula:

$$M = \frac{(b)\left(\frac{r}{s}\right)}{1 + \frac{r}{s}(i)},$$

where

M = market charge

b = increased borrowing cost for full period

r = number of days from redemption date to original maturity date

s = number of days in current annual period (365 or 366)

i = current borrowing rate expressed in decimals (discount factor)

The application of this formula may be illustrated by the following example:

(1) Assume that a $50,000 certificate is issued on March 1, 1987, to mature on November 1, 1987. Interest is payable at a rate of 10%.

(2) Assume that the certificate is redeemed on July 1, 1987, and that the current borrowing cost to Treasury for the 123-day period from July 1, 1987, to November 1, 1987, is 11.8%.

(3) The increased annual borrowing cost is $900. ($50,000 − 11.8% − 10%)

(4) The market charge is computed as follows:

$$M = \frac{\$900\left(\frac{123}{365}\right)}{1 + \left(\frac{123}{365}\right)(.118)} =$$

$$\frac{303.29}{1.039764384} =$$

$$\$291.69$$

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DEPARTMENT OF THE TREASURY

Fiscal Service

Bureau of the Public Debt

Demand Deposit Securities of the State and Local Government Series; Average Marginal Tax Rate and Treasury Administrative Costs

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Notice of estimated average marginal tax rate and Treasury administrative costs for Demand Deposit United States Treasury Certificates of Indebtedness—State and Local Government Series.

SUMMARY: This notice is being published to provide the information necessary to apply the interest rate formula for Demand Deposit United States Treasury Certificates of Indebtedness—State and Local Government Series (31 CFR Part 344 Subpart C). The final regulations governing securities of the State and Local Government Series which appear in the current issue of the **Federal Register**, in setting out the formula, make provision for such publication (31 CFR 344.6). The factor necessary to convert the interest rate to a tax-exempt equivalent (1 − the average marginal tax rate of purchasers of short-term tax-exempt bonds) is estimated to be .68. The Treasury's administrative costs have been estimated to be 12.5 basis points (.125 percent).

EFFECTIVE DATE: August 1, 1989.

FOR FURTHER INFORMATION CONTACT: Sandy Dyson, Attorney-Advisor, (202) 376–4320, or Margaret Marquette, Attorney-Advisor, (202) 447–9859.

SUPPLEMENTARY INFORMATION: The Department of the Treasury, under authority of Chapter 31 of Title 31, United States Code, and pursuant to the Tax Reform Act of 1986, Pub. L. 99–514, offers a demand deposit United States Treasury Certificate of Indebtedness—State and Local Government Series. This security is a one-day certificate of indebtedness, issued in an amount of $1,000 or any higher dollar amount, with interest accrued and added to the principal daily. In the final regulations published simultaneously with this notice, provision is made to provide by notice the information necessary to apply the interest rate formula to the new demand deposit certificate, *i.e.*, the average yield for three-month Treasury bills at the most recent auction, multiplied by one minus the estimated average marginal tax rate ("1 − MTR") of purchasers of short-term tax-exempt bonds, less Treasury administrative costs. The factor "1 − MTR" is .68. The administrative cost have been determined to be 12.5 basis points (.125 percent). Both the estimated "1 − MTR" and the administrative costs are subject to redetermination by the Department of the Treasury; any future changes thereof will be published by notice in the **Federal Register**.

Dated: May 30, 1989.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89–15934 Filed 7–5–89; 8:45 am]

BILLING CODE 4810-35-M

federal register

Friday
July 7, 1989

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 107

Airport Security; Delegation of Authority; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 107

[Docket No. 25952; Amdt. No. 107-5]

Airport Security; Delegation of Authority

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the airport security regulations by removing references to certain obsolete official titles and by adding the current official titles. This amendment is necessary because a recent agencywide reorganization resulted in the adoption of several new official titles and in delegations of authority under those titles. This action makes the airport security regulations consistent with current agency structure and should alleviate confusion regarding the agency's reorganization.

EFFECTIVE DATE: July 7, 1989.

FOR FURTHER INFORMATION CONTACT: James E. Parker, Office of Civil Aviation Security [ACS-3], Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591. Telephone: (202) 267-9864.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1988, the FAA underwent a far-reaching reorganization that affected both headquarters and regional organizations. The most significant change is that the Regional Offices, which formerly reported directly to the Administrator, are now under "straight line" authority, meaning that certain individual units within each Regional Office must now report to whichever Headquarters office is responsible for the functions of those individual units.

Within Part 107 of the Federal Aviation Regulations (FAR), various elements of the FAA have been delegated decision-making authority by the Administrator. These delegations need to be updated. In addition, throughout the Federal Aviation Regulations references are made to offices that have been renamed or are no longer in existence as a result of the reorganization.

Part 107 must therefore be amended to reflect the reorganizations and changes that have taken place.

Paperwork Reduction Act

The paperwork requirements in sections being amended by this document have already been approved. There will be no increase or decrease in paperwork requirements as a result of these amendments, since the changes are completely editorial in nature.

Good Cause Justification for Immediate Adoption

Because this amendment is needed immediately to avoid confusion and to effectively implement the agency's reorganization, good cause exists for adopting this amendment in less than 30 days.

Reason for No Notice

In view of the fact that this amendment merely makes an editorial change to Part 107, notice and public procedure on this amendment are unnecessary. Moreover, publication for prior comment would not reasonably be expected to result in the receipt of useful information on this minor change in the regulation.

Federalism Implications

The regulations herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, it is determined that this regulation does not have federalism implications requiring the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this action merely involves an editorial amendment that imposes no additional burden on any person. It simply implements the use of new official titles consistent with the agency's reorganization. Accordingly, it has been determined that: The action does not involve a major rule under Executive Order 12291; it is not significant under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and its anticipated impact is so minimal that a full regulatory evaluation is not required. In addition, the FAA certifies that this amendment will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 107

Air carriers, Air safety, Air transportation, Aircraft, Airplanes, Airports, Arms and munitions, Aviation safety, Baggage, Charter flights, Firearms, Foreign air carriers, Guns, Law enforcement officers, Police, Safety, Security measures.

The Amendment

In consideration of the foregoing the Federal Aviation Administration amends Part 107 of the Federal Aviation Regulations (14 CFR Part 107) as follows:

PART 107—AIRPORT SECURITY

1. The authority for Part 107 continues to read as follows:

Authority: 49 U.S.C. 1354, 1356, 1357, 1358, and 1421; 49 U.S.C. 106 (g) (Revised, Pub. L. 97-449, January 12, 1983).

§ 107.3 [Amended]

2. Section 107.3 is amended by removing the words "Regional Director" in paragraph (a)(4) and substituting therefore "Director of Civil Aviation Security"; by removing the words "Civil Aviation Security Inspector" in paragraph (d) and substituting therefor "Civil Aviation Security Special Agent"; and by removing the words "Director of the Civil Aviation Security Service" in paragraph (e) and substituting therefor "Director of Civil Aviation Security".

§ 107.5 [Amended]

3. Section 107.5 is amended by removing the words "Regional Director" and substituting therefore "Director of Civil Aviation Security" wherever they appear.

§ 107.9 [Amended]

4. Section 107.9 is amended by removing the words "Regional Director" and substituting therefor "Director of Civil Aviation Security" wherever they appear.

§ 107.11 [Amended]

5. Section 107.11 is amended by removing the words "Regional Director" and substituting therefor "Director of Civil Aviation Security" wherever they appear.

Issued in Washington, DC, on June 28, 1989.

Robert E. Whittington,

Acting Administrator.

[FR Doc. 89-15923 Filed 7-6-89; 8:45 am]

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federal register

Friday
July 7, 1989

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Cockpit Voice Recorders (CVR) and Flight Recorders; Disposition of Comments

DEPARTMENT OF TRANSPORTATION

14 CFR Part 91

[Docket No. 25530; Amendment No. 91-205]

RIN 2120-AC48

Cockpit Voice Recorders (CVR) and Flight Recorders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Disposition of comments (Part 91 requirements).

SUMMARY: When the Federal Aviation Administration (FAA) issued a final rule on cockpit voice recorders (CVR) and flight recorders (June 30, 1988) (53 FR 26134; July 11, 1988), it invited further comments on the Part 91 requirements that the rule amended. This document acknowledges those comments. Because these comments are consistent with the initial intent of this rule, the FAA has determined that there is no need for further action other than making this response.

DATES: *Effective date:* October 11, 1988. *Compliance date:* October 11, 1991.

ADDRESSES: The Cockpit Voice Recorder (CVR) and Flight Recorder Final Rule docket may be examined at the Federal Aviation Administration, Office of the Chief Counsel, Rules Docket, Room 915-G, 800 Independence Avenue SW., Washington, DC 20591. The Rules Docket is open weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mike Smith, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; Telephone (202) 267-9684.

SUPPLEMENTARY INFORMATION

Discussion of Comments

At the time the final rule on cockpit voice recorders (CVRs) and flight recorders was published (53 FR 26134, July 11, 1988), the FAA requested further comment on the Part 91 requirements adopted in the rule. Twenty comments were received, half of which are photocopies of the same letter, although the signatures differ. Moreover, these ten comments lay beyond the scope of the request set forth in the final rule, and neither opposed nor supported the rule or the Part 91 requirements. Of the remaining ten comments, two were in support; four were in opposition; and three wanted further clarification or suggested corrections. One remaining comment expanded upon the commenter's earlier submission. Those comments which pointed out corrections to be made will be addressed in a separate corrective document, which is being developed.

Specifically, one commenter based his opposition on the belief that the Part 91 requirement would not contribute to the safety of flight and would simply burden operators/owners with increased costs. Additionally, the commenter felt that his and others' Fifth Amendment rights would be violated by requiring aircraft owners to pay for installation of equipment that could give information which might be used against them in any civil or criminal proceeding. Recent reports, especially those from the National Transportation Safety Board (NTSB), continue to support the use of CVRs and flight recorders as a means for learning as much as possible about accident circumstances. Obviously, although the presence of the device will not prevent accidents, such devices might reveal information that could prevent accidents in the future. Fears of intrusion into the Fifth Amendment rights of aircraft owners are unfounded; FAR § 121.359(e) states that information obtained from CVRs is used to assist in determining the cause of an accident or occurrence, and that such record is not used in any civil penalty or certificate action by the Administrator. With regard to any criminal action, the rule does not compel testimony, the right protected by the Fifth Amendment; the rule requires only that CVRs be installed. In addition, where a pilot is not the owner/operator of an aircraft, any evidence would be provided by a third party, a situation not covered by the Fifth Amendment.

Several commenters, in opposing the rule, cite high costs which, in their view, will outweight any probable benefits. For example, the Airline Owners and Pilots Association (AOPA) asserts that the FAA used a complicated formula to obfuscate the fact that the rule is significant and, therefore, minimized or dismissed the economic impact of the rule on Part 91 operators. The AOPA also maintains that the costs resulting from this rule are significant. It reasons that, while the FAA estimates the cost of adding a CVR to an affected aircraft at $25,000, on average, AOPA's sources indicate the real cost will range from $18,500 to $30,000. The AOPA also asserts that installation of a flight recorder would require an additional $40,000 to $45,000. Thus, the total would range from $60,000 to $75,000 and, therefore, unduly burden many Part 91 operators.

In another argument, GTE asserts that it has little faith in forecasts for light-weight, low-cost recorders and believes that in reality they are expensive and heavy. GTE indicates that the Cessna Citation options list contain CVRs priced at $35,750 with a weight of 42 pounds. This list also contains flight recorders priced at $60,775 with a weight yet to be determined.

Premark International (Premark) expresses a different concern. Premark states that the FAA did not follow its usual pattern of "grandfathering" older aircraft in order to avoid expensive retrofit costs to the Part 91 community. Premark also maintains that the cost of CVR modifications for each of its aircraft is estimated to range from $18,000 to $30,000. These estimated costs are for installation only and do not include associated costs such as downtime and ferrying.

In support of the rule, DOW Chemical U.S.A. (DOW) estimates the actual costs of equipping King Airs with CVRs to be about $13,000 per aircraft, including down time. DOW points out that these aircraft are already wired for this equipment.

In order to estimate the cost of the CVR/flight recorder final rule, the FAA averaged many of the possible costs of adding CVR and flight recorder equipment to Part 91 aircraft. Thus, the FAA is not surprised, and neither should the commenters be surprised, the costs for adding such equipment to individual aircraft should vary, in some instances by a considerable amount, from this average. The FAA's estimated $25,000 cost falls easily within the range of costs—$13,000 to $30,000—presented by commenters. In addition, the FAA has provided additional relief from the burdens of this rule by extending the compliance date by 1 year to October 11, 1991.

Regarding flight recorders only, it appears that certain commenters still do not understand that the rule does not require aircraft currently in use to be retrofitted with flight recorder equipment. The rule does require such equipment for aircraft manufactured after October 11, 1991, which have a passenger seating capacity of 10 or more. Hence, no costs related to flight recorder equipment retrofitting may be attributed to this rule.

Conclusion

The FAA has determined, based on the above discussion, that no further rulemaking action is necessary at this time. Amendment No. 91-204 remains in effect as prescribed by the July 11, 1988, final rule.

Issued in Washington, DC, on June 29, 1989.

William J. Sullivan,

Acting Director, Aircraft Certification Service.

[FR Doc. 89-15922 Filed 7-6-89; 8:45 am]

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federal register

Friday
July 7, 1989

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 310

Hair Grower and Hair Loss Prevention Drug Products for Over-the-Counter Human Use; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 80N-0357]

RIN 0905-AA06

Hair Grower and Hair Loss Prevention Drug Products for Over-the-Counter Human Use

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that any over-the-counter (OTC) hair grower or hair loss prevention drug product for external use is not generally recognized as safe and effective and is misbranded. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final rule, and all new data and information on hair grower and hair loss prevention drug products that have come to the agency's attention. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: January 8, 1990.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 7, 1980 (45 FR 73955), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking that would classify OTC hair grower and hair loss prevention drug products as not generally recognized as safe and effective and as being misbranded and would declare these products to be new drugs within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)). The notice was based on the recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products (Miscellaneous External Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by February 5, 1981. Reply comments in response to comments filed in the initial comment period could be submitted by March 9, 1981.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, after deletion of a small amount of trade secret information.

The agency's proposed regulation, in the form of a tentative final rule, for hair grower and hair loss prevention drug products was published in the **Federal Register** of January 15, 1985 (50 FR 2190). Interested persons were invited to file by May 15, 1985, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency's economic impact determination by May 15, 1985. New data could have been submitted until January 15, 1986, and comments on the new data until March 17, 1986. Final agency action occurs with the publication of this final rule on OTC hair grower and hair loss prevention drug products.

As discussed in the proposed regulation for OTC hair grower and hair loss prevention drug products (50 FR 2190), the agency advised that the drug products covered by this regulation would be subject to the regulation effective 6 months after the date of publication of the final rule in the **Federal Register**. On or after January 8, 1989, no OTC drug products that are subject to this final rule may be initially introduced or initially delivered for introduction into interstate commerce unless they are the subject of an approved new drug application (NDA).

In response to the proposed rule on OTC hair grower and hair loss prevention drug products, 218 consumers and 4 manufacturers submitted comments. No requests for oral hearing before the Commissioner were received. Copies of the comments received are on public display in the Dockets Management Branch. Additional information that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

In proceeding with this final rule, the agency has considered all comments and changes in the procedural regulations.

I. The Agency's Conclusions on the Comments

A. General Comments

1. A number of comments agreed with the agency's proposal that currently marketed drug products containing active ingredients for OTC external use for hair grower and hair loss prevention are ineffective and should be eliminated from the OTC market. One comment said the proposal was long overdue and that purchasers of these drugs are bilked of millions of dollars each year. Another comment strongly supported the proposal in instances where manufacturers cannot substantiate their claims. Other comments stated that these drugs should either be shown to be effective before they are marketed or be taken off the market. Two comments pointed out that FDA's statutory mandate includes protection and promotion of the public health by ensuring that drugs are not only safe but also effective for their intended use.

2. One comment suggested that the proposal to ban from the market all topical nonprescription products claiming to grow hair or prevent baldness should be extended to include vitamin or "food supplement" products claimed to restore hair, prevent hair loss, or provide nourishment to the hair. Another comment stated that the agency's proposal to ban hair loss products should include control of fraudulent claims.

As noted in the tentative final monograph, this rulemaking covers only products for external use, i.e., all active ingredients and labeling claims for OTC drug products marketed for external (topical) use as hair growers or for hair loss prevention. (See comment 8 at 50 FR 2193.) Upon the effective date of the final rule, any OTC drug product that is labeled, represented, or promoted for external use as a hair grower or for hair loss prevention will be a new drug within the meaning of section 201(p) of the act (21 U.S.C. 321(p)), for which an approved NDA under section 505 of the act (21 U.S.C. 355) is required for marketing. In the absence of an approved NDA, marketing of these products would be a violation of sections 505(a) and 301(d) of the act (21 U.S.C. 355(a) and 331(d)). Such products are also considered misbranded under section 502 of the act (21 U.S.C. 352). The marketing of unapproved new drugs or misbranded drugs subjects them to regulatory action.

The agency emphasizes that orally ingested products marketed for the same or similar hair grower or hair loss prevention indications are also subject to regulatory action. Such products are presently marketed as vitamins, "food supplements," or other orally ingested products. These products are frequently marketed with claims making them "drugs" within the meaning of section 201(g) of the act (21 U.S.C. 321(g)). (See 50 FR at 2193). Any orally ingested drug product marketed for these indications

must be generally recognized as safe and effective (21 U.S.C. 321(p)) or the subject of an approved NDA. As with external drug products covered by this rulemaking, in the absence of an approved NDA, the marketing of these orally ingested drug products would be a violation of sections 505(a) and 301(d) of the act (21 U.S.C. 355(a) and 331(d)). Such products would also be misbranded under section 502 of the act (21 U.S.C. 352). Because orally ingested drug products for these indications are not covered by any OTC drug rulemaking, regulatory actions for these products will be handled on a case-by-case basis.

FDA Compliance Policy Guide 7132b.15 (Ref. 1) generally defers regulatory action for OTC drug products pending the establishment of a final monograph covering the products involved. On the effective date of this final rule, Compliance Policy guide 7132b.15 is revoked with respect to all OTC drug products, whether topical or orally ingested, that are marketed with hair grower, hair loss prevention, or similar claims.

Reference

(1) OTC Drugs—General Provisions and Administrative Procedures for Recognition as Safe and Effective, Office of Enforcement, Division of Compliance Policy, Associate Commissioner for Regulatory Affairs, Compliance Policy Guide No. 7132b.15, Food and Drug Administration, 1987.

3. A number of comments contained testimonials from consumers for several drug products labeled for hair growth and hair loss prevention. The comments wanted to continue using the products and did not want them taken off the market. Many of these comments supported a particular product which they claimed reduced or stopped hair loss, thickened hair, and in some cases stimulated hair growth. One comment considered the proposed FDA restriction too stringent and stated that it took away the right of choice. This comment contended that the most that should be done is to label herbal preparations as "not approved by the AMA or FDA as being of value in hair loss * * *". Two comments contended that it was unjust to prohibit the sale of products that perform as advertised or make a claim which a company can support, even though such products were not reviewed by the Panel or the agency. (See also comment 5 below for a discussion of one of these products.)

The agency discussed "freedom of choice" and statutory standards for marketing OTC drug products in the tentative final rule. (See 50 FR 2190 at 2191.) Agency regulations in 21 CFR 330.10(a)(4)(ii) state that standards for effectiveness include a requirement for controlled clinical investigations. Isolated case reports, random experience, and reports lacking the details that permit scientific evaluation are not considered adequate to establish effectiveness. As mentioned in the tentative final rule, testimonials from consumers cannot be considered as adequate proof of effectiveness or safety (50 FR 2194 and 2195).

FDA has a statutory mandate to ensure that all OTC drug products are safe and effective for their intended use. The status of OTC topical hair grower and hair loss prevention drug products is being determined in this rulemaking. Such products have been found not to be generally recognized as safe and effective. Therefore, a labeling statement that the product has not been approved by FDA for a particular use, as one comment suggested, would be meaningless because under the act the products cannot be marketed in any event.

4. One individual submitted information on personal research performed on hair loss. The information included a discussion of the cause, prevention, and cure of male pattern baldness. According to the research theory, reduced circulation in the scalp is implicated in male pattern baldness. However, because the research did not include any information on specific products or ingredients, the agency cannot evaluate it as part of this rulemaking.

B. Comments on Hair Grower and Hair Loss Prevention Drug Products

5. One comment referred to a product that it claimed helped many individuals reduce excessive hair loss and in many cases allowed new hair growth for individuals affected by androgenic alopecia (male pattern baldness). The comment explained that the product was not developed until 1983 and, therefore, was not considered by the Panel. However, according to the comment, the ingredients were all approved by FDA for OTC human use. The comment stated that it had monitored a group of test subjects for periods ranging from 8 to 15 months, that all subjects showed no increased baldness, and that at least 60 percent of the subjects noticed varying degrees of new hair growth. The comment also submitted numerous signed testimonials from customers who claimed reduction of excessive hair loss and/or new hair growth while using the product. The comment informed the agency that it would submit a testing protocol for future planned testing of the product, by October 15, 1985. Subsequently, the comment indicated by letter (Ref. 1) that the submission of the protocol would be delayed.

The agency is unable to assess the safety and effectiveness of the product referred to by the comment because the comment did not identify the specific ingredient(s) contained in it. In addition, the comment did not submit sufficient data to support safety and effectiveness. As stated in comment 3 above, reports lacking the details that permit scientific evaluation, such as the 8- to 15-month monitoring of test subjects described by the comment, and consumers' testimonials are not adequate to establish effectiveness. Further, the testing protocol mentioned by the comment was never submitted. In the absence of any information regarding the active ingredient(s) and without safety and effectiveness data, the product cannot be evaluated for possible inclusion in a monograph.

Reference

(1) Comment No. LET00025, Docket No. 80N-0357, Dockets Management Branch.

6. One comment described two products, a shampoo and a scalp cleanser/conditioner, containing a surfactant that purportedly combines with excess oil in the hair and helps to stop hair fallout by removing excess oil and allowing normal hair growth to resume. The comment provided consumer testimonials containing statements that the product stopped abnormal hair fallout and in some cases caused regrowth of hair.

The comment did not identify the ingredient(s) present in the products and did not provide a copy of the products' labeling. The agency informed the company of the need for more information about the products, including ingredients, claims made on the labels, data from studies, and any other information relating to the safety and effectiveness of the ingredients (Ref. 1). No further information has been received from the company. In the absence of any information regarding the active ingredient(s) and without safety and effectiveness data, the products cannot be evaluated for possible inclusion in a monograph.

Reference

(1) Letter from W.E. Gilbertson, FDA, to R. Tepper, Growth Plus Laboratories, coded LET00022, Docket No. 80N-0357, Dockets Management Branch.

7. One manufacturer submitted data (Ref. 1) to support the effectiveness of a

scalp hygiene regimen for sebum hair loss that listed a number of ingredients, including estradiol. The data included a protocol and information on hair fall counts from a preliminary study; a protocol, information on hair fall counts, and photographs related to hair density and hair growth measurements from the main study; and a summary of two clinical studies involving ingredients other than estradiol and comparing hygiene regimen treatments with placebos. The instructions provided by the manufacturer for the treatment regimen also claimed that hair growth is stimulated.

The Miscellaneous External Panel reviewed and evaluated data on estradiol and the other ingredients in the manufacturer's products for "sebum hair loss" (45 FR 73955 at 73958 and 73959). The Panel concluded that the available data failed to demonstrate the effectiveness of the ingredients, and classified estradiol as not generally recognized as being effective and as being misbranded for OTC use (45 FR 73958). In the tentative final monograph, the agency noted that doses of estradiol that were safe for OTC use were not found by the Panel to be effective (50 FR 2190 at 2194) and tentatively adopted the Panel's recommendation that all OTC drug products labeled for external use as a hair grower or for hair loss prevention be classified Category II (not generally recognized as safe and effective) (50 FR 2196).

Regarding the manufacturer's claim that its scalp regimen was for "sebum hair loss," the Panel noted that the theory that sebum can cause hair loss is not generally accepted by the medical profession today. The Panel stated that studies have shown no quantitative difference in the normal amount of sebum and the hourly production of sebum on the bald scalp, the hairy scalp of balding men, and the scalp of men who showed no baldness (45 FR 73955 at 73958). In the notice of proposed rulemaking for OTC hair grower and hair loss prevention drug products, the agency agreed with the Panel that hair loss has not been shown to be related to the production of sebum (50 FR 2190 at 2195, comment 13). Data to show that sebum causes hair loss have not been submitted since the notice of proposed rulemaking was published. Further, Orentreich, a leading dermatologist, indicated that sebum contains very high concentrations of dihydrotestosterone, which is associated with hair loss (Ref. 2). However, he noted that although the androgen in sebum has been measured, it has not been shown that dihydrotestosterone is the sebum can partition out of the sebum into the skin. Moreover, no scientific study has shown that shampooing the scalp frequently, to reduce sebum on the scalp, has any effect in reducing dihydrotestosterone and thereby reducing hair loss.

Daily shampooing and cleansing of the scalp with the manufacturer's treatment as well as placebo appeared to reduce shedding of hair in the submitted studies (Ref. 1). The Panel noted that daily shampooing with any nonmedicated shampoo would remove surface oil, scale, and loose hairs (45 FR 73955 at 73959). This phenomenon was discussed at one of the Panel's meetings (Ref. 2) in a presentation by Orentreich, who indicated that normally 100 hairs are shed per day, 700 a week. On the first day of shampooing, 300 hairs will be shed, the next day 25, the next day 50, the next day 75, then back to 100 hairs a day. The more often the hair is shampooed, the less hair loss occurs per shampoo. For example, if an individual shampoos once a week, 700 hairs will be shed; if an individual shampoos once in 2 weeks, 1,400 hairs will be shed. Another important factor discussed by Orentreich as affecting hair shedding is seasonal cycles, with October, November, and December being months of greater shedding, with shedding heaviest in November. As stated by Orentreich, awareness of these two factors (shampooing and seasonal shedding cycles) is important in any evaluation of a product claiming hair loss prevention. The agency notes that some subjects were evaluated during the months of October, November, December, while some subjects were evaluated in other months. There is no indication that the manufacturer considered seasonal shedding cycles in any of its data analyses. There is also no showing of the impact that the failure to consider this factor had on the results obtained.

The data in the preliminary tests consisted of daily counts of hair loss in three groups, each using a different regimen (estradiol, hygiene, and placebo) during pretreatment and treatment phases. The scalps of the subjects in the estradiol and hygiene groups were treated daily with a conditioner, cleanser, shampoo, and antiseptic dressing. The estradiol group received an application of a lotion containing estradiol 0.011 milligram per fluid ounce. The hygiene group received a lotion without estradiol. The third group received a placebo regimen and was the control group. The preliminary tests were done to check study parameters before beginning the main study.

The main study of prevention of hair loss was a double-blind test designed to evaluate the effectiveness of estradiol in an isopropyl alcohol vehicle after the hair was treated with a conditioner, cleanser, and shampoo. The data for this study consisted of raw data on sheets containing the test subjects' hair fall counts, hair density counts from a photographic technique, and photographs of scalp test areas designed to evaluate changes in the number of hairs per square centimeter of scalp, changes in the morphology of the hair in the study site, and changes in linear growth. Initially, the manufacturer indicated that estradiol played an important role in controlling hair loss, and the test objectives included determining the effectiveness of estradiol treatment for reducing hair fall and possibly stimulating hair growth. After completing the studies, the manufacturer concluded that most of the effects on hair fall and any resulting change in scalp hair densities were due mostly to the scalp hygiene regimen tested along with the estradiol treatment. However, the agency notes that the statistical analysis of the study, dated June 21, 1988, and prepared by the manufacturer's consultant (Ref. 3), does not support the company's conclusion. This analysis indicated that while there was improvement with all three of the regimens tested, hair fall counts decreased at a faster rate in the estradiol group.

As part of the main study, the three regimens were tested in subjects with hair loss less than and greater than 80 hairs per day. The manufacturer indicated that in the group with low hair fall the estradiol regimen results were not significantly different from the results for the other two regimens, and in the group with high hair fall, the subjects did not stay in the study long enough to provide a sufficient number of subjects for proper analysis of the results. Although stated to be statistically insignificant by the manufacturer, the consultant's analysis of the exact hair counts, based on pictures of scalp areas, indicated that some improvement occurred with all three regimens used but that there was no clear differentiation among the groups.

The consultant's statistical analysis is based on a linear least squares fit of log transformed average weekly hair fall counts as a function of week since the beginning of the study. Using this type of analysis, the slope of a linear regression line which is significantly less than zero would imply an overall decreasing trend in hair fall over time. The agency agrees with this concept. However, as discussed below, the agency has determined that simple linear regression models are not the appropriate method of analysis for the data obtained from these studies.

The consultant's method of analysis compared the following treatment groups in the preliminary tests: (1) Low order daily hygiene plus placebo, (2) high order daily hygiene plus placebo, and (3) high order daily hygiene plus estrogen. The method of analysis used in the main study compared the following treatment groups: (1) Full regimen plus estrogen, high hair fall group, (2) full regimen plus estrogen, low hair fall group, (3) full regimen plus placebo, high hair fall group, (4) full regimen plus placebo, low hair fall group, (5) low order regimen plus placebo, high hair fall group, and (6) low order regimen plus placebo, low hair fall group. (High hair fall denotes an average of at least 80 hairs per day before treatment, and low hair fall signifies less than 80 hairs.) The agency finds that this method of analysis is valid provided the data in each of the treatment groups can be adequately modeled by a simple linear regression model. However, the agency points out that a simpler and more direct comparison of the treatment groups with respect to decreasing hair fall could be accomplished by just analyzing change from baseline scores at the end of the treatment period after adjusting for baseline differences between the treatment groups (if any).

The agency has reanalyzed the data from both the preliminary tests and the main study. The agency has determined that simple linear regression models are not the best fit of the data in the treatment groups. Specifically, investigation of the scatter plot of the high order daily hygiene plus estrogen data (average daily hair fall (AHF) vs. week) indicates a definite change in the trend of the data between week 7 and 8. Conventional statistical model-building techniques dictate use of a piecewise linear model, i.e., a model which fits separate linear regression models to both pieces of the data. For both the high and low order daily hygiene plus placebo data, scrutiny of residual plots reveals a curvilinear trend in the residuals over time. Again, statistical model-building methods imply that the high and low order daily hygiene plus placebo data require at least a quadratic regression model. When these (nonlinear) models are fit to the data, the slope comparison criterion proposed by the manufacturer's consultant is not feasible. Similarly, the single model (i.e., log (AHF) = week) used by the manufacturer's consultant for all six subsets of the data in the main study is not the model that best fits the data. The agency finds that the statistical significance of estradiol over placebo has not been demonstrated. The agency concludes that these data do not establish that estradiol is effective for hair loss reduction.

The summary of the two clinical studies described double-blind, comparative tests on individuals with varying degrees of daily hair loss. These studies appear to be adjuncts to the main study because they involved evaluation of various daily hygiene regimes. In one study, a daily hygiene regimen involved treatment with a mixture of isopropyl alcohol and methyl ethyl ketone, a sulfonated oil mixture, and a strong shampoo with ammonium lauryl sulfate base. That regimen was compared with a placebo regimen in which placebos replaced the treatment ingredients and a shampoo of moderate strength with an amphoteric base replaced the strong shampoo. The second study was similar except that a strong shampoo was used 4 days a week, and the results were compared to a placebo regimen using a weak shampoo 3 days a week. The treatment regimen included a sulfonated oil mixture, a strong shampoo with an ammonium lauryl sulfate base (4 days a week), and a mild amphoteric base shampoo (3 days a week). The placebo regimen consisted of only three shampoos a week with use of a placebo oil mixture, placebo shampoo (water and dye), and a mild amphoteric base shampoo.

The results of these two clinical studies appeared to show that daily shampooing over a long period of time, regardless of ingredients, reduced hair fall, but there were no significant differences in hair loss reduction between the two groups in both studies. The summary of the two clinical studies lacks the detail necessary for the agency to evaluate any significant effectiveness of the different regimens. In addition, the number of subjects participating in the studies was not given. The agency concludes that these studies do not provide sufficient data to demonstrate that daily shampooing, using either a drug or cosmetic product, affects hair loss reduction.

After reviewing the available data, the agency concludes that the studies are not sufficient to support Category I status for the claims of hair loss prevention or hair growth. The claim for hair growth is not well-documented because the study model is short and poorly controlled. Regarding the claim for hair loss prevention, there appeared to be a trend to reduce shedding of hair based on increased shampooing and cleansing of the scalp with the products tested: cleanser, plus estradiol and placebo. There was a slight indication in the study that estradiol, with the cleansing agents, could be more helpful. However, to fully establish the claim of decreased hair loss (rather than prevention), it would be necessary to conduct a controlled 6- to 12-month double-blind study, preferably with crossover, with adequate numbers of patients (in the hundreds) in order to generate data sufficient for appropriate statistical review.

In conclusion, the agency has determined that estradiol is not generally recognized as safe and effective for claims of hair loss prevention and hair growth. Accordingly, estradiol is a nonmonograph ingredient. The other ingredients in the manufacturer's scalp hygiene regimen were determined to be inactive ingredients by the Panel (45 FR 73955 at 73957). The agency concurs that these ingredients are not active drug ingredients for these claims. Further, shampoos and scalp cleansers used to cleanse the hair (and not labeled with any claims relating to hair loss prevention or hair growth) are cosmetics and are not covered by this rulemaking proceeding.

The agency recommends that in order to establish the general recognition of safety and effectiveness of a potential OTC hair grower drug product, studies similar to those performed for the evaluation of the safety and effectiveness of the only agency-approved hair growth drug product would be appropriate (Ref. 4). Although that particular product is marketed as a prescription drug product, the methods used to study it would be applicable for an OTC hair grower drug product.

There are no agency-approved OTC hair loss prevention drug products. The agency recommends that any person wishing to study the safety and effectiveness of such a drug product submit a protocol for agency review before beginning such studies.

References

(1) Comments No. C00254, C000268, RPT00002, and RPT00003, Docket No. 80N-0357, Dockets Management Branch.

(2) Transcript of Twenty-Ninth Meeting of the Advisory Review Panel on OTC Miscellaneous External Drug Products, January 14, 1979, pp. 63, 65, and 93–98.

(3) Comment No. RPT00003, Docket No. 80N-0357, Dockets Management Branch.

(4) NDA 19-501, Food and Drug Administration.

8. One comment submitted a protocol (Ref. 1) for a double-blind study of a hair treatment product containing biotin (versus placebo) to determine the comparative effects on excessive hair fall out and hair regrowth. At least 50 subjects with male pattern alopecia were to be evaluated.

The agency reviewed the protocol and found it deficient in a number of aspects: (1) The randomization procedure was not mentioned in the protocol. (2) The sample size was not a fixed number, but was a vague goal of more than 50, and the statistical rationale for a particular sample size was not given. (3) Statistical methods to analyze the hair loss data were not described in the protocol. (4) Procedures to rate the pictures of balding areas were not mentioned in the protocol. (Such a rating scheme for evaluating new hair growth needs to be clearly defined and validated across different blinded observers. However, nonparametric methods to be used for analyzing the photographic data were not presented in the protocol.) (5) Because the duration of the study was 1 year, incomplete observations were expected, yet the protocol did not mention how missing data and drop-outs from the study would be handled in the analysis. The agency concluded that without the above-listed information the protocol was not acceptable from a statistical viewpoint.

Subsequently, the comment submitted a protocol addendum (Ref. 2) addressing the agency's five comments. The agency reviewed the protocol addendum and concluded that the revised protocol also was not statistically acceptable until the following revisions were made:

(1) Revision of the randomization procedure for assigning successive subjects as they are accepted into the study;

(2) Analysis of the data using the method of analysis of covariance, adjusting for baseline values, to compare treatment groups with respect to the number of hairs lost;

(3) Revision of the method for comparing the proportion of successes in each treatment group.

The company's proposed "binomial test" was determined not to be appropriate because this was a parallel group study and there was no matching. The agency recommended using Fisher's exact test or the chi-square test.

Without these revisions, the agency concluded that the protocol was not acceptable from a statistical viewpoint. The agency's detailed comments are on file in the Dockets Management Branch (Ref. 3).

The agency did not receive any further response from the comment regarding this study protocol, nor has it received any study results from the comment. No other data were submitted for biotin. Accordingly, biotin is a nonmonograph ingredient.

References

(1) Comment No. LET016, Docket No. 70N-0357, Dockets Management Branch.

(2) Comment No. LET019, Docket No. 80N-0357, Dockets Management Branch.

(3) Letter from W.E. Gilbertson, FDA, to M.H. Shapiro, Kleinfeld, Kaplan and Becker, coded LET021, Docket No. 80N-0357, Dockets Management Branch.

II. The Agency's Final Conclusions on OTC Hair Grower and Hair Loss Prevention Drug Products

Although the Panel recommended that the hair grower and hair loss prevention active ingredients ascorbic acid, benzoic acid, estradiol (not to exceed 5.5 micrograms per day), lanolin, tetracaine hydrochloride, and wheat germ oil were safe, it did not find sufficient data to determine that any of these ingredients were generally recognized as effective for these uses in an OTC drug product. The agency has determined that none of these ingredients or any other hair grower or hair loss prevention active ingredient, including biotin, has been found to be generally recognized as safe and effective and not misbranded for use as a hair grower or for hair loss prevention. Therefore, all hair grower and hair loss prevention ingredients, including amino acids, aminobenzoic acid, ascorbic acid, benzoic acid, biotin and all other B-vitamins, dexpanthenol, estradiol and other topical hormones, jojoba oil, lanolin, nucleic acids, polysorbate 20, polysorbate 60, sulfanilamide, sulfur 1 percent on carbon in a fraction of paraffinic hydrocarbons, tetracaine hydrochloride, urea, and wheat germ oil, are considered nonmonograph ingredients and misbranded under section 502 of the act (21 U.S.C. 352) and are new drugs under section 201(p) of the act (21 U.S.C. 321(p)) for which an approved NDA under section 505 of the act (21 U.S.C. 355) and Part 314 of the regulations (21 CFR Part 314) is required for marketing. As an alternative, where there are adequate data establishing general recognition of safety and effectiveness, such data may be submitted in a citizen petition to establish a monograph. (See 21 CFR 10.30.) Any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce after the effective date of this final rule that is not in compliance with the regulation is subject to regulatory action.

No comments were received in response to the agency's request on January 15, 1985 (50 FR 2190 at 2197) for specific comment on the economic impact of this rulemaking. The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule for OTC hair grower and hair loss prevention drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96-354). That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC hair grower and hair loss prevention drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations is amended in Part 310 to read as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR Part 310 continues to read as follows:

Authority: Secs. 501, 502, 503, 505, 701, 704, 705, 52 Stat. 1049-1053 as amended, 52 Stat. 1055-1056 as amended, 67 Stat. 477 as amended, 52 Stat. 1057-1058 (21 U.S.C. 351, 352, 353, 355, 371, 374, 375); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

2. Section 310.527 is added to Subpart E to read as follows:

§ 310.527 Drug products containing active ingredients offered over-the-counter (OTC) for external use as hair growers or for hair loss prevention.

(a) Amino acids, aminobenzoic acid, ascorbic acid, benzoic acid, biotin and all other B-vitamins, dexpanthenol, estradiol and other topical hormones, jojoba oil, lanolin, nucleic acids, polysorbate 20, polysorbate 60, sulfanilamide, sulfur 1 percent on carbon in a fraction of paraffinic hydrocarbons, tetracaine hydrochloride, urea, and wheat germ oil have been marketed as ingredients in OTC drug products for external use as hair growers or for hair loss prevention. There is a lack of adequate data to establish general recognition of the safety and effectiveness of these or any other ingredients intended for OTC external use as a hair grower or for hair loss prevention. Based on evidence currently available, all labeling claims for OTC hair grower and hair loss prevention drug products for external use are either false, misleading, or unsupported by scientific data. Therefore, any OTC drug product for external use containing an ingredient offered for use as a hair grower or for hair loss prevention cannot be considered generally recognized as safe and effective for its intended use.

(b) Any OTC drug product that is labeled, represented, or promoted for external use as a hair grower or for hair loss prevention is regarded as a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act), for which an approved new drug application under section 505 of the act and Part 314 of this chapter is required for marketing. In the absence of an approved new drug application, such product is also misbranded under section 502 of the act.

(c) Clinical investigations designed to obtain evidence that any drug product labeled, represented, or promoted for OTC external use as a hair grower or for hair loss prevention is safe and effective for the purpose intended must comply with the requirements and procedures governing the use of investigational new drugs set forth in Part 312 of this chapter.

(d) After January 8, 1990, any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce that is not in compliance with this section is subject to regulatory action.

Dated: April 28, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89-15955 Filed 7-6-89; 8:45 am]

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July 7, 1989

Part VI

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 310

Aphrodisiac Drug Products for Over-the-Counter Human Use; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

21 CFR Part 310

[Docket No. 80N-0419]

RIN 0905-AA06

Aphrodisiac Drug Products for Over-the-Counter Human Use

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that any aphrodisiac drug product for over-the-counter (OTC) human use is not generally recognized as safe and effective and is misbranded. Aphrodisiac drug products claim to arouse or increase sexual desire (libido) or to improve sexual performance. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final rule, and all new data and information on aphrodisiac drug products that have come to the agency's attention. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: January 8, 1990.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 1, 1982 (47 FR 43572), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking that would classify OTC aphrodisiac drug products as not generally recognized as safe and effective and as being misbranded and would declare these products to be new drugs within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)). The notice was based on the recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products (Miscellaneous Internal Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by December 30, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by January 31, 1983.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, after deletion of a small amount of trade secret information.

The agency's proposed regulation, in the form of a tentative final rule, for OTC aphrodisiac drug products was published in the **Federal Register** of January 15, 1985 (50 FR 2168). Interested persons were invited to file by May 15, 1985, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency's economic impact determination by May 15, 1985. New data could have been submitted until January 15, 1986, and comments on the new data until March 17, 1986. Final agency action occurs with the publication of this final rule on OTC aphrodisiac drug products.

As discussed in the proposed regulation for OTC aphrodisiac drug products (50 FR 2168), the agency advised that the drug products covered by this regulation would be subject to the regulation effective 6 months after the date of publication of the final rule in the **Federal Register**. On or after January 8, 1990, no OTC drug products that are subject to this final rule may be initially introduced or initially delivered for introduction into interstate commerce unless they are the subject of an approved new drug application (NDA). If, in the future, any ingredient is determined to be generally recognized as safe and effective for use in an OTC aphrodisiac drug product, the agency will promulgate an appropriate regulation at that time.

In response to the proposed rule on OTC aphrodisiac drug products, 35 consumers and 2 health care groups submitted comments. Requests for oral hearing before the Commissioner were also received on seven different issues. Copies of the comments and the hearing requests received are on public display in the Dockets Management Branch. Additional information that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

In proceeding with this final rule, the agency has considered all objections, requests for oral hearings, and the changes in the procedural regulations.

I. The Agency's Conclusions on the Comments

1. Numerous comments requested that the notice of proposed rulemaking for aphrodisiac drug products for OTC use be withdrawn or, as an alternative, that a new Panel be convened with "appropriate," qualified experts including nutritionists, herbalists, sexologists, or physicians with expertise in sex therapy. The comments contended that the Miscellaneous Internal Panel lacked expertise in the fields relevant to the use of aphrodisiacs, and because the Panel did not consult a "biochemist, physician, psychologist, or other scientist with successful clinical experience using nutritional aphrodisiacs," it was in violation of FDA's own regulations under 21 CFR 330.10(a) which require that the Commissioner appoint "qualified experts" to the panel. The comments contended that the food supplement industry, food manufacturers, and the public have been denied the benefits of a full scientific discourse on aphrodisiac products by qualified experts in the field. The comments also requested a hearing on these issues before the Commissioner.

The comments further stated that the Miscellaneous Internal Panel, which was mandated to cover a wide variety of drugs, ranging from weight reduction ingredients to smoking deterrents, was a biased panel that regarded aphrodisiacs as a "throw away" as shown by the fact that only two studies on aphrodisiacs were reviewed, when additional data were available. Stating that the agency "does not like" aphrodisiac products, the comments claimed that the rather short "shrift" given these products by the Panel, along with the fact that none of the Panel members were experts in this field, suggests that the agency may have prejudged the entire issue of the safety and effectiveness of OTC aphrodisiacs.

The agency has determined that the Miscellaneous Internal Panel was qualified to review OTC aphrodisiac drug products and that such a panel was not in violation of FDA regulations. The Panel was composed of pharmacists and physicians. Although the Panel reviewed a wide variety of drugs, and Panel members were not specialists in aphrodisiac drug products, the agency believes that the scientific background and knowledge of the Panel were sufficient to provide an impartial and scientific review of the various classes of drug products that were evaluated. Further, representatives of consumer and industry interests served as nonvoting members of the Panel, and the Panel utilized consultants in pharmacognosy and statistics. In summary, the Panel was chosen carefully to insure representation from a variety of groups, and the Panel called upon individuals with expertise in other fields as necessary.

All interested parties had the opportunity to appear before the Panel, but none made such a request. Further, no submissions of data were made to the Panel. The Panel on its own initiative found seven references concerning aphrodisiacs (47 FR 43572 at 43575). The agency reviewed two additional references that were submitted in response to the Panel's report (50 FR 2168 at 2169). Furthermore, as part of its review for this final rule, the agency has evaluated additional materials in this document. (See comment 8 below.)

The comments' contention that the entire issue of the safety and efficacy of OTC aphrodisiacs may have been prejudged by the agency is not supported by any factual basis. The agency concludes that this drug category has been reviewed in accordance with the administrative procedures set forth in 21 CFR 330.10 in the same manner as all other OTC drug categories included in the agency's OTC drug review program. Thus, the agency has not treated aphrodisiacs differently from any other class of drugs in the OTC drug review.

The agency also concludes that a hearing on this issue is not warranted. The comment related only to procedural matters and did not identify any factual issues relating to the safety or effectiveness of OTC aphrodisiac drug products.

2. One comment objected to the inclusion of topical aphrodisiacs in the proposed rulemaking for OTC aphrodisiac drug products (50 FR 2168 at 2169) on the grounds that neither the Panel nor the agency suggested inclusion of topical aphrodisiacs in the advance notice of proposed rulemaking for OTC aphrodisiac drug products (47 FR 43572). The comment stated that the Panel repeatedly indicated throughout its deliberations that only systemic aphrodisiacs would be considered, and that the advance notice of proposed rulemaking indicated that the rulemaking was restricted to products taken internally [or for oral use] (47 FR 43572). The comment contended that expanding the scope of the proposed regulation at the notice of proposed rulemaking stage to include topical aphrodisiacs as well as those taken internally violates standard administrative law principles of notice, is inconsistent with the requirement that the agency follow its own rules, and is not supported by adequate evidence or by the record. The comment requested a hearing on this matter before the Commissioner.

The agency disagrees with the comment. At the same time that the agency published its first call-for-data notice in the **Federal Register** requesting data on aphrodisiacs for internal use (38 FR 31696), the agency also requested data on all external OTC drug products "not previously the subject of a request for data and information for this OTC Review" (38 FR 31697). Any views regarding topical aphrodisiacs could have been presented at that time. A second opportunity for presenting data and information occurred when the agency made a second request for supplemental and original data and information (40 FR 38179), which covered both OTC miscellaneous external and internal drug products.

Further, there is no violation of administrative law principles resulting from the inclusion of OTC topical aphrodisiac drug products for the first time at the notice of proposed rulemaking stage because that document provided adequate notice and an opportunity for views on this subject to be considered before the rule is finalized. The notice of proposed rulemaking on OTC aphrodisiac drug products was published in the **Federal Register** of January 15, 1985 (50 FR 2168). As stated above, the agency provided adequate notice (12 months for new data, and an additional 2 months for comments on the new data) for interested persons to submit comments, objections, new data, or requests for oral hearing on both OTC internal and external aphrodisiac drug products. The comment is incorrect in suggesting that the agency cannot include material in a notice of proposed rulemaking that was not contained in an advance notice of proposed rulemaking.

The agency also concludes that a hearing on this issue is not warranted. The comment related only to legal interpretations and procedural matters and did not identify any factual issues related to the safety or effectiveness of OTC aphrodisiac drug products.

3. Numerous comments contended that herbs, vitamins, minerals, amino acids, and other foods truthfully labeled with non-misleading aphrodisiac claims should not be regulated as prescription drugs. The comments requested that FDA hold a full public oral hearing and then withdraw or amend its proposed rulemaking on aphrodisiacs before issuing a final rule.

One comment claimed that aphrodisiacs are not drugs under section 201(g)(1)(B) of the act (21 U.S.C. 321(g)(1)(B)) because they are not necessarily used to cure, mitigate, treat, or prevent a disease. The comment also argued that many products with aphrodisiac claims, e.g., zinc, licorice, mandrake, fennel, and anise, are clearly foods and are expressly excluded by the parenthetical phrase (other than food) from the definition of drug under section 201(g)(1)(C) of the act (21 U.S.C. 321(g)(1)(C)). The comment concluded that claims such as "arouses or increases sexual desire * * *" or "improves performance * * *," which were listed as Category II in the notice of proposed rulemaking (50 FR 2170), are not drug claims because a person who takes what is otherwise a food for these purposes is not thereby taking a drug for a disease.

The act defines a drug as "(A) articles recognized in the official United States Pharmacopeia, official Homeopathic Pharmacopeia of the United States, or official National Formulary, or any supplement to any of them; and (B) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (C) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (D) articles intended for use as a component of any articles specified in clause (A), (B), or (C); but does not include devices or their components, parts, or accessories" (21 U.S.C. 321(g)(1)). The act defines a food as "(1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article" (21 U.S.C. 321(f)).

It is well established that the definitions of "food" and "drug" in 21 U.S.C. 321 (f) and (g)(1) are not mutually exclusive. An article of "food" that is intended for use in the treatment of disease may also be a "drug" under 21 U.S.C. 321(g)(1)(B) of the act. See *Nutrilab, Inc.* v. *Schweiker*, 713 F.2d 335, 336 (7th Cir. 1983) and cases cited therein. Accordingly, when articles of food are marketed as aphrodisiacs for use in the cure, mitigation, or treatment of sexual dysfunction, or related disease conditions, they are drugs under 21 U.S.C. 321(g)(1)(B).

The comment's assertion that the "other than food" exception in 21 U.S.C. 321(g)(1)(C) applies to aphrodisiac products is also without merit. The Court in the *Nutrilab* case, *supra*, noted that double use of the word "food" in 21 U.S.C. 321(f) requires careful analysis of the parenthetical "other than food" exclusion in the drug definition in 21 U.S.C. 321(g)(1)(C). The Court stated that in the exclusion Congress obviously meant a drug to be something "other than food," but it is not clear whether Congress was referring to "food" as a term of art in the statutory sense or to

food in its ordinary meaning. The Court stated that because all foods are "intended to affect the structure or any function of the body of man or other animals" and would thus come within the Part C drug definition exclusion, presumably Congress meant to exclude only common-sense foods. The Court concluded that when the act defines "food" as "articles used for food," it means that the statutory definition of "food" includes articles used by people in the ordinary way most people use food—primarily for taste, aroma, or nutritive value.

Articles containing ingredients that have food uses but that are marketed with claims for their aphrodisiac effects do not meet the exception for food in 21 U.S.C. 321(g)(1)(C). The claims made for these products make clear that their primary intended use is to improve sexual performance or to increase sexual desire, both of which are functions of the body within the meaning of 21 U.S.C. 321(g)(1)(C). These products are not intended to be used as a food—that is, they are not intended to be consumed for their taste, aroma, or nutritive value.

Thus, in determining whether a product is a food or a drug, the agency considers the purpose for which a particular ingredient or product is intended. For example, starch blockers, which are prepared from raw beans, and spirulina, which is derived from algae, have both been declared by the agency to be drugs because of the claimed effects of the products on the function of the body. In both instances, the manufacturers were promoting products containing these ingredients for nonfood purposes, even though both are derived from plant sources. The starch blockers were claimed to block or interfere with digestion of starch (Ref. 1), and spirulina was claimed to act on the brain's appetite center (Ref. 2). The Court in the *Nutrilab* case, *supra*, stated that starch blockers were drugs under 21 U.S.C. 321(g)(1)(C). The Court found that they indisputably satisfy the requirement of "intended to affect the structure or any function of the body of man or other animals" because they are intended to affect digestion in the people who take them.

Similarly, aphrodisiacs are drugs because they are offered for a non-food purpose (i.e., other than for their taste, aroma, or nutritive value) and purport to affect the function of the body. The Panel defined an aphrodisiac as "any drug which is claimed to arouse or increase sexual desire or improve sexual performance," (47 FR 43572 at 43573). Dorland's (Ref. 3) defines an aphrodisiac as exciting the libido or any drug that arouses the sexual instinct. Food, in contrast, when used in the ordinary way is not intended for these purposes. Accordingly, products containing ingredients that are intended to be used as aphrodisiacs, whether or not these ingredients have food uses, and making aphrodisiac claims are clearly drugs within the definition of 21 U.S.C. 321(g)(1)(C).

The agency also notes that some aphrodisiacs have been traditionally sold as drugs (Ref. 4). Yohimbine, for example, has been marketed as a prescription drug (5 milligram (mg) tablet) with indications such as used "experimentally for the treatment and the diagnostic classification of certain types of male erectile impotence" and "may have activity as an aphrodisiac," (Ref. 4). (Additional discussion of prescription versus OTC status is contained in comment 6 below.)

In conclusion, ingredients that are derived from normal food items but that are sold for their aphrodisiac effects are drugs and not foods because they are intended to treat a disease condition or because they are intended to affect the function of the body. The Commissioner also concludes that a hearing on this issue is not warranted. The issue relates solely to the legal question of whether aphrodisiacs are drugs and does not raise factual matters relating to the safety or effectiveness of OTC aphrodisiac drug products.

References

(1) HHS News, FDA, News Release, Subject: Starch Blockers, July 1, 1982.

(2) Talk Paper, FDA, "Spirulina," June 23, 1981.

(3) "Dorland's Illustrated Medical Dictionary," 27th Ed., W.B. Saunders Co., Philadelphia, 1988, s.v. "aphrodisiac."

(4) Huff, B.B., editor, "Physicians' Desk Reference," 42d Ed., Medical Economics Publishing Co., Oradell, NJ, pp. 1111–1112, 1521, 2076, 1988.

4. One comment stated that it is well-established in botanical application in the healing arts of India, known as "Ayurveda" and "Kayakalpa," that a variety of herbs and food sources, such as asparagus and mineral pitch, serve to "revitalize and rejuvenate the human organism" leading to "increased sexual stamina and improved performance." The comment cited two references and requested a hearing on this subject before the Commissioner, adding that further references and expert testimony will be presented at the hearing (Ref. 1).

The agency emphasizes that the purpose of the OTC drug review is to determine whether there is general recognition of the safety and efficacy of particular classes of drugs used for self-medication. Therapeutic practices and procedures such as the "healing arts of India" and their relation to certain food sources are outside the scope of the OTC drug review. The agency also concludes that a hearing on this issue is not warranted because no genuine issues of material facts were raised relating to the safety and effectiveness of particular ingredients used in OTC aphrodisiac drug products.

Reference

(1) Comment No. HER002, Docket No. 80N–0419, Dockets Management Branch.

5. One comment stated that even if aphrodisiacs are found to be drugs, they are not new drugs. The comment explained that since these drugs have been used in this manner for centuries, as noted by FDA at 47 FR 43572 to 43574, they are exempt from the NDA requirement of section 505 of the act (21 U.S.C. 355) because they are "grandfathered." The comment further cited examples of use of these drugs dating back to biblical times. The comment requested a hearing on this issue before the Commissioner.

To qualify for exemption from the "new drug" definition under the 1938 grandfather clause of the act, the drug product must have been subject to the Food and Drug Act of 1906, prior to June 25, 1938, and at such time its labeling must have contained the same representations concerning the conditions of its use (21 U.S.C. 321(p)(1)). Under the 1962 grandfather clause of the act, a drug product which on October 9, 1962, (1) was commercially used or sold in the United States, (2) was not a "new drug" as defined in the 1938 act, and (3) was not covered by an effective NDA under the 1938 act, would not be subject to the added requirement of effectiveness "when intended solely for use under conditions prescribed, recommended, or suggested in labeling with respect to such drug on that day." Pub. L. 87–781, section 107(c)(4), 76 Stat. 788, note following 21 U.S.C. 321.

The person seeking to show that a drug comes within a grandfather exemption must prove every essential fact necessary for invocation of the exemption. See *United States* v. *An Article of Drug * * * "Bentex Ulcerine,"* 469 F.2d 875, 878 (5th Cir. 1972), *cert. denied*, 412 U.S. 938 (1973). Furthermore, the grandfather clause will be strictly construed against one who invokes it. See *id.*; *United States* v. *Allan Drug Corp.*, 357 F.2d 713, 718 (10th Cir.), *cert. denied*, 385 U.S. 899 (1966). A change in composition or labeling precludes the applicability of the grandfather exemption. See *USV Pharmaceutical Corp.* v. *Weinberger*, 412 U.S. 655, 663 (1973).

No evidence was submitted to the agency to show that the labeling and composition of aphrodisiac drug products have remained unchanged since either 1938 or 1962. Without such evidence, the products cannot qualify for either grandfather exemption. The burden of proof with respect to the grandfather exemption is not on FDA, but on the person seeking the exemption. See *An Article of Drug * * * "Bentex Ulcerine," supra.*

In any event, the 1938 and 1962 grandfather clauses apply only to the new drug provisions of the act and not to the adulteration and misbranding provisions. The OTC drug review was designed to implement both the misbranding and the new drug provisions of the act. [See 21 CFR 330.10; 37 FR 9466 (May 11, 1972)]. The grandfather clauses do not preclude the agency from reviewing any currently marketed OTC drug, regardless of whether it has grandfather protection from the new drug provisions, in order to ensure that the drug is not misbranded.

The agency concludes that a hearing on this issue is not warranted; the question of whether a drug is a "new drug" is a matter of law and not a material and substantial issue of fact that could be resolved at a hearing.

6. One comment contended that the agency's conclusions regarding self-medication with aphrodisiacs are inconsistent with the law and public policy. The comment stated that the agency had erroneously based its "conclusion that OTC distribution of these substances is inappropriate on the nature of the condition, not on the risks of the product." The comment argued that none of the criteria for restricting a drug to prescription status as set forth in section 503(b)(1) of the act (21 U.S.C. 353(b)(1)) apply to aphrodisiac drug products, i.e., (1) there is no evidence that yohimbine or other herbs are habit-forming drugs to which section 502(d) of the act (21 U.S.C. 352(d)) applies; (2) there is no indication of toxicity or other potentially harmful effect, method of use, or collateral measures necessary to use that make these products not safe except for use under the supervision of a doctor; or (3) the product is not limited by an approved application under section 505 of the act (21 U.S.C. 355) to use under professional supervision. In addition, the comment asserted that a disorder such as impotence is appropriate for self-medication because in the majority of cases it is not a serious medical disorder and cited an article by Slag et al. (Ref. 1) in support of this position. The comment requested a hearing on this issue before the Commissioner.

The agency disagrees with the comment. The OTC drug review is determining whether aphrodisiac drug products intended for OTC use are generally recognized as safe and effective for OTC use. There is no evidence to establish that such drug products are generally recognized as safe and effective. Therefore, an approved NDA is required to permit marketing of such products. The prescription or OTC status for aphrodisiac drug products will be determined in conjunction with the evaluation of safety and effectiveness data submitted, if any, in support of an NDA. The agency emphasizes that this rulemaking does not, in itself, restrict all aphrodisiac drug products to prescription status. If the data submitted as part of an NDA support OTC marketing for a particular aphrodisiac drug product, then such a product could be marketed OTC under the NDA.

However, as previously stated in both the Panel's report (47 FR 43572 at 43575) and the tentative final monograph (50 FR 2168 at 2169), the agency believes that, based on the data available to date, individuals suffering from decreased libido and impaired sexual performance should seek treatment under professional supervision. Moreover, the agency believes that the study on impotence cited by the comment (Ref. 1), rather than illustrating the suitability of aphrodisiacs for OTC use, gives support to the position that these types of products should be restricted to use under a physician's supervision. Impotence is defined by Dorland (Ref. 2) as the lack of power, chiefly of copulative power in the male due to failure to initiate an erection or to maintain an erection until ejaculation. It may be atonic, due to paralysis of the motor nerves without evidence of lesion of the central nervous system; paretic, due to lesion in the central nervous system, particularly in the spinal cord; psychic, dependent on mental complex; or symptomatic, due to some other disorder, such as injury to nerves in the perineal region, by virtue of which the sensory portion of the erection reflex arc is interrupted. The article (Ref. 1) identifies a number of reasons for impotence, including medication effect, psychogenic causes, neurological and cardiovascular complications, diabetes, and hormonal imbalances. The agency believes that this information strongly suggests that a physician's diagnostic expertise is warranted before a sexual dysfunction condition is treated and a physician's supervision is required during treatment in order to monitor its progress.

The agency disagrees with the comment that the criteria for restricting a drug to prescription status (as set forth in section 503(b)(1) of the act) may not be applicable to some or all aphrodisiac drug products. The statutory criteria in section 503(b)(1)(B) of the act could be applicable to all or some aphrodisiac drugs. The collateral measures necessary to use, e.g., the need for a physician to diagnose the condition, determine its cause, and determine whether drug treatment is the appropriate therapy, are important factors in determining whether aphrodisiac drug products should be marketed OTC or on a prescription basis. The Panel stated that sexual drive (libido) and sexual performance are governed by multiple factors, the most common of which are psychological, and that impotence and frigidity have often been successfully treated by psychotherapy (47 FR 43572 at 43574). If the psychotherapy included drug treatment, it would have to be under a physician's supervision. The Panel further noted that hormonal factors also affected libido (47 FR 43572 at 43574). Any hormonal imbalance would also have to be treated by a physician.

In addition, the agency is concerned that the OTC use of some aphrodisiac drugs could present a safety concern, thus falling within the "toxicity or other potentiality for harmful effect" provision of section 503(b)(1)(B) of the act. The agency is aware that several manufacturers currently market products containing yohimbine hydrochloride as a prescription drug indicated as a sympathicolytic and mydriatic, with possible activity as an aphrodisiac (Ref. 3). The package inserts for these products state that the action of yohimbine on peripheral blood vessels is similar to that of reserpine (which is a prescription drug). It is also stated that yohimbine exerts a stimulating action on mood and can increase anxiety, but that these actions have not been adequately studied or related to dosage. The only contraindications provided are sensitivity to the drug and renal diseases. However, the statement is made that "no additional contraindications can be offered due to the limited and inadequate information available." A warning is provided that the drug is not for use in cardio-renal patients with gastric or duodenal history or in geriatric patients. It is also stated that the drug should not be used in

conjunction with mood modifying agents such as antidepressants, nor in psychiatric patients. In addition, a number of adverse reactions are listed, e.g., antidiuresis, central excitation, elevation of blood pressure and heart rate, tremor, and increased motor activity.

The agency also has some concerns about yohimbine being available as an OTC drug because of reports of its stimulant and hallucinogenic properties (Refs. 4 and 5). In addition, the agency is aware of at least two reports of adverse reactions involving overdoses of yohimbine (Refs. 5 and 6). A 2½-year-old boy died due to direct toxic effects on the capillaries after ingesting 300 to 400 mg of yohimbine hydrochloride, and a 16-year-old girl suffered from headache, hallucinations, dizziness, chest pains, and partial hearing loss after ingesting 250 mg of yohimbine. Although the reported dosage was high, the reports indicate potential problems in having a safe OTC dose for this ingredient. For the above reasons, the agency is of the opinion that the "toxicity and other potentiality for harmful effect" provision of section 503(b)(1)(B) of the act applies to drug products containing yohimbine or any of its derivatives. However, it is possible that other aphrodisiac ingredients may be safe for OTC use if efficacy is eventually established under appropriate NDA approval procedures.

The agency also concludes that a hearing on this issue is not warranted because issues of material and substantial facts were not raised relating to the safety or effectiveness of ingredients used in OTC aphrodisiac drug products.

References

(1) Slag, M.F., et al., "Impotence in Medical Clinic Outpatients," *The Journal of the American Medical Association*, 249:1736–1740, 1983.

(2) "Dorland's Illustrated Medical Dictionary," 26th Ed., W.B. Saunders Company, Philadelphia, 1981, s.v. "yohimbine."

(3) Huff, B.B., editor, "Physicians' Desk Reference," 42d Ed., Medical Economics Publishing Co., Oradell, NJ, pp. 1111–1112, 1521, 2076, 1988.

(4) Spoerke, D.G., "Topic: Plants—Yohimbine," contained in computerized list: Poisindex® Substance Identification, Vol. 57, Micromedex, Inc., August 1988.

(5) Linden, C.H., et al., "Yohimbine: A New Street Drug," *Annals of Emergency Medicine*, 14:1002–1004, 1985.

(6) Patscheider, H., and R. Dirnhofer, "Fatal Poisoning of a Small Child by Yohimbine," *Beitrage Zur Gerichtlichen Medizin*, 30:336–344, 1973.

7. One comment contended that the agency's determination that aphrodisiac products are to be available only on a prescription basis, or not at all, will have a severe economic impact that the agency has not considered. The comment stated that this decision will increase costs by requiring people who want to use these products for "enhancement of sexual pleasure" to do so under the supervision of a physician and to incur the costs of visits to physicians, which is a "hardly cost-effective" means of dealing with these people's desires. The comment also cited several examples of the agency's and Congress' traditionally favorable view of the concept of self-medication.

The comment submitted no documentation in support of its contention that a severe economic impact will occur, and the agency points out that it has not made a decision that all aphrodisiac drugs products are to be sold only by prescription. (See comment 6 above.) The agency has concluded at this time that the traditionally-used aphrodisiac ingredients have not been shown to be generally recognized as safe and effective for OTC use based on currently-available data and, therefore, these products will require an approved NDA for marketing. In addition, the agency has determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. (See Part II. below—The Agency's Final Conclusions on OTC Aphrodisiac Drug Products.)

The agency therefore concludes that not one of these rules, including this final rule for OTC aphrodisiac drug products, is a major rule. Accordingly, the agency finds that issuance of this final rule will not have an adverse economic impact on consumers.

8. Many comments contended that yohimbine is an effective aphrodisiac. Citing a number of supporting references (Refs. 1 through 8), one comment maintained that sufficient data exist to demonstrate the effectiveness of "yohimbe" and other herbs for aphrodisiac use. (The comment stated that it used the term "yohimbe" to include the ingredient's derivatives such as yohimbine, yohimbinum, and yohimbine hydrochloride. The agency is using the term yohimbine in this document to refer collectively to all of these ingredients.) The comment stated that the Panel rejected the study by Bruhl and Leslie (Ref. 1) because (1) the drugs were coded A and B and the code could be deciphered, and (2) the low placebo success rate was questionable because "psychological factors are so important" (47 FR 43572 at 43574). However, the comment contended that there is no evidence that the code was broken, and that more recent data have suggested that the emphasis on psychological factors may have been misplaced (Ref. 9). The comment also noted that the Queen's University study (Ref. 2) concluded that yohimbine is effective; however, the agency found fault with the study because "the number of satisfactory results is lower than the number given in previous reports" (50 FR 2168 at 2169). The comment stated that it was unaware of any requirement under the law that the "number of satisfactory results" be equal to or higher than a "number given in previous reports."

The comments concluded that the available data support the effectiveness of yohimbine and other herbs and substances for aphrodisiac use, and requested a hearing on this issue before the Commissioner.

The agency has reviewed the references (Refs. 1 through 9) cited by one comment and noted the comment's criticism of the Panel's rejection of the Bruhl and Leslie study (Ref. 1). The agency finds that, regardless of the study defects mentioned by the Panel (i.e., inadequate blinding, low placebo response rate, and failure to define the study measurements of effectiveness (47 FR 43572 at 43574)), this study does not support the effectiveness of yohimbine because the product contained other ingredients in addition to yohimbine. The product contained 5 mg each of methyltestosterone, nux vomica, and yohimbine. Thus, any favorable results could not be attributed solely to yohimbine, because there were no studies to demonstrate the effectiveness of that ingredient alone. Furthermore, in four additional studies cited by the comment as supportive of the effectiveness of yohimbine (Refs. 3 through 6), the product used also contained a combination of methyltestosterone, nux vomica, and yohimbine. Therefore, these studies cannot be considered supportive of the effectiveness of yohimbine alone.

The study by Albert-Puleo (Ref. 7) regarding herbs (fennel and anise) as estrogenic agents narrates the history of use of these herbs, but does not provide any data relating to safety or efficacy. Clark et al. (Ref. 8) found that yohimbine increased sexual motivation in genital anesthetized rats. Although such data are encouraging, this preliminary animal study cannot be used to demonstrate the effectiveness of yohimbine in humans.

Slag et al. (Ref 9) studied the causes of impotence in 1,180 middle-aged men and concluded that although erectile dysfunction has long been considered to be primarily a psychogenic disorder, underlying organic disease is often responsible for the impotence. They found that in 25 percent of the patients, the effect of medication was the likely cause of the impotence, 14 percent had psychogenic causes, 7 percent were of neurological origin (e.g., cerebrovascular accident), 44 percent were due to organic disease (e.g., urologic problems, diabetes, hypo/hyperthyroidism), 7 percent were due to unknown causes, and 4 percent were of miscellaneous origin. The agency concludes that this study has no relevance to the efficacy of yohimbine, but it does point out the need for patients to undergo a thorough medical evaluation to determine the cause of impotence.

The study from Queen's University by Reid et al. (Ref. 2) is a 10-week, placebo-controlled, double-blind, partial crossover study involving the use of capsules containing yohimbine (6 mg) and riboflavin (2 mg) versus placebo capsules containing only riboflavin. The capsules were taken three times a day. The study was designed to determine yohimbine's effect in restoring erectile function. Forty-eight subjects meeting strict diagnostic criteria for psychogenic impotence were included in the study. Impotence was defined as "failure to obtain an erection sufficient for intromission for at least 3 months." In phase I of the study, 29 subjects received yohimbine and 19 received placebo. Patients and their partners made independent ratings of treatment response according to the following scale of 0 through 2:

2=complete; return to satisfactory sexual functioning with erections sufficient for penetration.

1=partial; some improvement in the quality, frequency, or rigidity of erections, but not sufficient to restore satisfactory sexual functioning.

0=none; no change in sexual functioning from pretreatment levels.

At the end of phase I, 9 yohimbine patients reported "complete improvement," 9 reported "partial improvement," and 11 reported "no improvement." Of the patients, receiving the placebo, 1 reported "complete improvement," 2 reported "partial improvement," and 16 reported "no improvement."

At the end of the first 10 weeks, the 19 patients who had received the placebo were crossed over to yohimbine (phase II of the study). However, a complete crossover was not used because the investigators felt it would be disruptive to marital relationships to switch those patients who had taken the yohimbine to a placebo. Patients who crossed over from placebo to yohimbine did not show a significant change in sexual functioning from pretreatment levels. Three patients reported "complete improvement," 1 reported "partial improvement," and 15 reported "no improvement." No serious undesirable effects were reported.

The agency concludes that the study (Ref. 2) provides some suggestive evidence that yohimbine may be useful in treating male impotence. In phase I of the study, 31 percent of the yohimbine patients reported complete improvement versus 5 percent of the placebo patients. However, in phase II, only 16 percent reported complete improvement. The investigators speculated that this lower response of patients who received yohimbine after receiving placebo may have been due to a negative expectancy effect. The agency concludes that this small scale study is not sufficient to establish the general recognition of yohimbine or any of its derivatives as safe and effective for treating male impotence. Further studies using adequate numbers of patients are needed to determine yohimbine's effectiveness in treating male impotence. In addition, the agency has safety concerns regarding OTC use of yohimbine. (See comment 6 above.) The agency encourages further study of yohimbine or any of its derivatives to establish their safety and usefulness in relieving male impotence. Such data may be submitted as the subject of an NDA. (See 21 CFR Part 314.) As an alternative, where there are adequate data establishing general recognition of safety and effectiveness, such data may be submitted in an appropriate citizen petition to establish a monograph. (See 21 CFR 10.30.)

The agency has carefully considered the data in the administrative record and the arguments included in the comments. The agency has determined that at present there is insufficient evidence to establish that any ingredient, including yohimbine, used in OTC aphrodisiac drug products is generally recognized as safe and effective. Because these matters have been fully considered and because the agency concludes that a hearing on this issue is not likely to provide any additional useful information or insights, the agency concludes that a hearing is not warranted.

References

(1) Bruhl, D. E., and C. H. Leslie, "Afrodex: Double-Blind Test in Impotence," *Medical Record and Annals*, 56:22–23, 1963.

(2) Reid, et al., "Double-Blind Trial of Yohimbine in Treatment of Psychogenic Impotence," *The Lancet*, 2:421–423, 1987.

(3) Miller, W. W., "Afrodex in the Treatment of Male Impotence: A Double-Blind Cross-Over Study," *Current Therapeutic Research*, 10:354–359, 1968.

(4) Margolis, R., et al., "Statistical Summary of 10,000 Male Cases Using Afrodex in the Treatment of Impotence," *Current Therapeutic Research*, 13:616–622, 1971.

(5) Sobotka, J. J., "An Evaluation of Afrodex in the Management of Male Impotency: A Double-Blind Crossover Study," *Current Therapeutic Research*, 11:87–94, 1969.

(6) Margolis, R., et al., "Review of Studies on a Mixture of Nux Vomica, Yohimbine, and Methyl Testosterone in the Treatment of Impotence," *Current Therapeutic Research*, 8:280–283, 1966.

(7) Albert-Puleo, M., "Fennel and Anise as Estrogenic Agents," *Journal of Ethnopharmacology*, 2:337–344, 1980.

(8) Clark, J. T., E. R. Smith, and J. M. Davidson, "Enhancement of Sexual Motivation in Male Rats by Yohimbine," *Science*, 225:847–849, 1984.

(9) Slag, M. F., et al., "Impotence in Medical Clinic Outpatients," *The Journal of the American Medical Association*, 249:1736–1740, 1983.

9. One comment requested that publication of the final monograph be delayed until data from studies, reportedly ongoing, on yohimbine can be appropriately considered.

The comment was submitted in May 1985. The agency has received no additional information on these or any other studies. The agency cannot further delay publication of this final rule to await results of any reportedly ongoing studies. Such a delay would allow products that have not been shown to be safe and effective to remain in the marketplace for a prolonged period of time and is not in the public interest. Further, manufacturers have been alerted about the proposed nonmonograph status of aphrodisiacs since the Panel's report was published in the **Federal Register** on October 1, 1982 (47 FR 43572). The agency reiterated the proposed nonmonograph status of aphrodisiacs in the notice of proposed rulemaking over 3 years ago in the **Federal Register** of January 15, 1985 (50 FR 2168). Thus, manufacturers have had ample opportunity to conduct clinical trials and to submit the results to the agency.

The agency points out that publication of a final rule does not preclude a manufacturer's testing an ingredient. New, relevant data can be submitted to

the agency at a later date as the subject of an NDA that may provide for prescription or OTC marketing status. (See 21 CFR Part 314.) As an alternative, where there are adequate data establishing general recognition of safety and effectiveness, such data may be submitted in an appropriate citizen petition to establish a monograph. (See 21 CFR 10.30.)

For the above reasons, the agency will not delay the final rule until publication of these studies.

II. The Agency's Final Conclusions on OTC Aphrodisiac Drug Products

The agency has determined that all products that bear labeling claiming that they will arouse or increase sexual desire, or that they will improve sexual performance, are aphrodisiac drug products. Moreover, the agency has determined that no aphrodisiac drug product has been found to be generally recognized as safe and effective and not misbranded for use in treating sexual dysfunction. Therefore, all aphrodisiac drug products, including those containing such ingredients as anise, cantharides, don qual, estrogens, fennel, ginseng, golden seal, gotu kola, Korean ginseng, licorice, mandrake, methyltestosterone, minerals, nux vomica, Pega Palo, sarsaparilla, strychnine, testosterone, vitamins, yohimbine, yohimbine hydrochloride, and yohimbinum, are considered nonmonograph ingredients and misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352) and are new drugs under section 201(p) of the act (21 U.S.C. 321(p)) for which an approved NDA under section 505 of the act (21 U.S.C. 355) and Part 314 of the regulations (21 CFR Part 314) is required for marketing. In appropriate circumstances, a citizen petition to establish a monograph may be submitted under 21 CFR 10.30 in lieu of an NDA. Any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce after the effective date of this final rule that is not in compliance with the regulation is subject to regulatory action.

In response to the agency's request for specific comment on the economic impact of this rulemaking (50 FR 2168), one comment was received. (See comment 7 above.) The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule for OTC aphrodisiac drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96-354. That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC aphrodisiac drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations is amended in Part 310 to read as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR Part 310 continues to read as follows:

Authority: Secs. 501, 502, 503, 505, 701, 704, 705, 52 Stat. 1049–1053 as amended, 52 Stat. 1055–1056 as amended, 67 Stat. 477 as amended, 52 Stat. 1057–1058 (21 U.S.C. 351, 352, 353, 355, 371, 374, 375); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

2. New § 310.528 is added to Subpart E to read as follows:

§ 310.528 Drug products containing active ingredients offered over-the-counter (OTC) for use as an aphrodisiac.

(a) Any product that bears labeling claims that it will arouse or increase sexual desire, or that it will improve sexual performance, is an aphrodisiac drug product. Anise, cantharides, don qual, estrogens, fennel, ginseng, golden seal, gotu kola, Korean ginseng, licorice, mandrake, methyltestosterone, minerals, nux vomica, Pega Palo, sarsaparilla, strychnine, testosterone, vitamins, yohimbine, yohimbine hydrochloride, and yohimbinum have been present as ingredients in such drug products. Androgens (e.g., testosterone and methyltestosterone) and estrogens are powerful hormones when administered internally and are not safe for use except under the supervision of a physician. There is a lack of adequate data to establish general recognition of the safety and effectiveness of any of these ingredients, or any other ingredient, for OTC use as an aphrodisiac. Labeling claims for aphrodisiacs for OTC use are either false, misleading, or unsupported by scientific data. The following claims are examples of some that have been made for aphrodisiac drug products for OTC use: "acts as an aphrodisiac;" "arouses or increases sexual desire and improves sexual performance;" "helps restore sexual vigor, potency, and performance;" "improves performance, staying power, and sexual potency;" and "builds virility and sexual potency." Based on evidence currently available, any OTC drug product containing ingredients for use as an aphrodisiac cannot be generally recognized as safe and effective.

(b) Any OTC drug product that is labeled, represented, or prompted for use as an aphrodisiac is regarded as a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act, (the act), for which an approved new drug application under section 505 of the act and Part 314 of this chapter is required for marketing. In the absence of an approved new drug application, such product is also misbranded under section 502 of the act.

(c) Clinical investigations designed to obtain evidence that any drug product labeled, represented, or promoted for OTC use as an aphrodisiac is safe and effective for the purpose intended must comply with the requirements and procedures governing the use of investigational new drugs set forth in Part 312 of this chapter.

(d) After January 8, 1990, any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce that is not in compliance with this section is subject to regulatory action.

Dated: March 20, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

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federal register

Friday
July 7, 1989

Part VII

Federal Communications Commission

47 CFR Ch. I

Broadcast Television and Satellite Services; Syndicated Exclusivity Requirements for Television Broadcast Signals Delivered by Satellite to Home Satellite Earth Station B Receiver; Extension of Comments

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[Gen Docket No. 89-89, DA 89-753]

Broadcast Television and Satellite Services; Syndicated Exclusivity Requirements for Television Broadcast Signals Delivered by Satellite to Home Satellite Earth Station Receivers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Commission extends the comment period established in the *Notice of Inquiry and Notice of Proposed Rule Making* (*"Notice"*) in this proceeding (54 FR 19413, May 5, 1989) from July 7, 1989, to August 7, 1989, and the reply comment perod from August 4, 1989, to September 5, 1989. The action is taken in response to two motions for extension of time filed by the Satellite Broadcasting and Communications Association of America ("SBCA") and jointly by the National Association of Broadcasters, the Association of Independent Television Stations, and the Motion Picture Association of America ("NAB *et al.*"). SCBA requested an extension of time to analyze the impact of a recent report that a group of cable multiple system operators is planning to deliver by satellite a package of programming that includes distant broadcast signals. NAB *et al.* requested an extension for two reasons: (1) To provide sufficient time for its recently retained experts to fully analyze the issues and to incorporate that analysis in their comments; and (2) to allow the petitioners a chance to review the comments submitted in response to a related *Notice of Inquiry* in general Docket No. 89-78 (54 FR 18125, April 27, 1989), concerning the need for a universal encryption standard. As indicated in the *Notice*, the Commission is dependent on interested parties to provide an analysis of a broad range of complex technical and economic issues raised in this proceeding. As representatives of the industries affected by the Commission's proceeding, the petitioners are in a unique position to provide analysis of the technical and economic issues raised in the *Notice*. Thus, the Commission believes an extension of time may greatly increase the quality and scope of the data and analysis submitted, and may be instrumental in resolving the issues presented in the *Notice*.

DATES: Initial comments are due on August 7, 1989, and reply comments are due on September 5, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David E. Horowitz, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Order Granting Motions for Extension of Time To File Comments*, adopted June 28, 1989, and released July 3, 1989. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, (202) 857-3800, 1919 M Street, NW., Room 246, Washington, DC.

Federal Communications Commission.

Alex D. Felker,

Chief, Mass Media Bureau.

[FR Doc. 89-16163 Filed 7-6-89; 10:41 am]

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federal register

Friday
July 7, 1989

Part VIII

Department of Energy

Waste Isolation Pilot Plant (WIPP); Draft Supplement to the Environmental Impact Statement; Public Hearing Change in Date

DEPARTMENT OF ENERGY

Waste Isolation Pilot Plant (WIPP); Draft Supplement to the Environmental Impact Statement; Public Hearing Change in Date

AGENCY: Department of Energy.

ACTION: Change in date of a public hearing in Utah on the draft Supplemental Environmental Impact Statement (SEIS) on WIPP.

SUMMARY: On April 21, 1989, the Department of Energy (DOE) published a notice in the **Federal Register** (54 FR 16350) announcing the availability of the draft SEIS, the subsequent 60-day public comment period, and the six public hearing schedules, locations and procedures. On June 12, 1989, a notice was published (54 FR 24940), announcing two additional hearings in Texas and New Mexico and a 7-day extension of the comment period. On June 26, 1989, a notice was published (54 FR 26828) announcing a third additional public hearing on the SEIS in Ogden, Utah, and an extension of the public comment period to July 11, 1989. The date for the Ogden, Utah, public hearing has been postponed to July 10, 1989, to allow for additional advertisement of the hearing and to ensure that interested citizens have time to register to comment.

The hearing will take place on July 10, 1989, at the Ogden Hotel, 247 24th Street, Ogden, Utah. It will begin at 9:00 a.m. and will continue as needed, through the day and evening with recesses for meals.

Participation Procedures: Written comments should be mailed to the address below and postmarked by July 11, 1989. Persons wishing to preregister to make oral comments at the public hearing in Ogden, Utah, should call DOE's WIPP SEIS Project Office at the phone number below. Commenters may also register at the door and will be accommodated as time allows.

ADDRESSES: Written comments should be directed to: W. John Arthur III, Project Manager, WIPP SEIS Project Office, U.S. Department of Energy, 6301 Indian School Road, NE, 7th Floor, Albuquerque, NM 87110. Those wishing to be placed on the list of preregistered oral commenters should call DOE's toll-free number 1-800-274-0585 and leave their name, phone number, and address with zip code.

FOR FURTHER INFORMATION CONTACT: W. John Arthur, III, WIPP SEIS Project Manager, U.S. Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, NM 87110 (505) 889-3038, or Carol Borgstrom, Director, Office of NEPA Project Assistance (EH-25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4600.

Dated in Washington, DC, this 5th day of July, 1989, for the U.S. Department of Energy.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 89-16171 Filed 7-6-89; 11:13 am]

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H.R. 2344/Pub. L. 101-44

To authorize the transfer to the Republic of the Philippines of two excess naval vessels. (June 30, 1989; 103 Stat. 96; 1 page) Price: $1.00

H.R. 2402/Pub. L. 101-45

Dire Emergency Supplemental Appropriations and Transfers, Urgent Supplementals, and Correcting Enrollment Errors Act of 1989. (June 30, 1989; 103 Stat. 97; 35 pages) Price: $1.25

S. 694/Pub. L. 101-46

To extend title I of the Energy Policy and Conservation Act. (June 30, 1989; 103 Stat. 132; 2 pages) Price: $1.00

S. 1077/Pub. L. 101-47

To authorize the President to appoint Admiral James B. Busey to the Office of Administrator of the Federal Aviation Administration. (June 30, 1989; 103 Stat. 134; 2 pages) Price: $1.00

S. 1180/Pub. L. 101-48

To authorize the President to appoint Rear Admiral Richard Harrison Truly to the Office of the Administrator of the National Aeronautics and Space Administration. (June 30, 1989; 103 Stat. 136; 2 pages) Price: $1.00

S. 1184/Pub. L. 101-49

To allow the obsolete destroyer United States ship Edson (DD946) to be transferred to the Intrepid Sea-Air-Space Museum in New York before the expiration of the otherwise applicable sixty-day congressional review period. (June 30, 1989; 103 Stat. 138; 1 page) Price: $1.00

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Designating July 2, 1989, as "National Literacy Day". (June 30, 1989; 103 Stat. 139; 2 pages) Price: $1.00

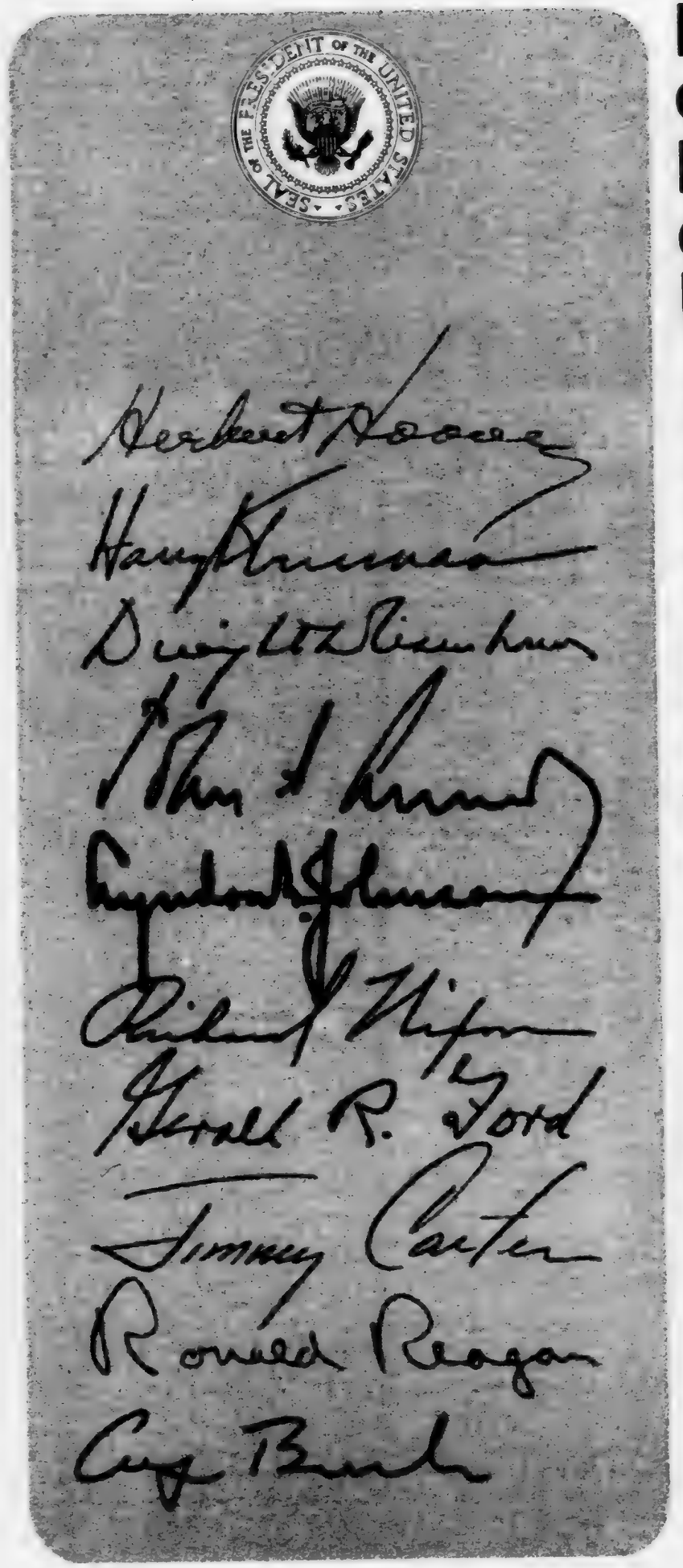

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. 49; Docket No. 6939S]

General Crop Insurance Regulations; Safflower Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1990 and succeeding crop years, to: (1) amend the Safflower Endorsement with respect to cancellation and termination dates and the dates by which contract changes must be on file in the service offices in California and, (2) to review these regulations under the procedures of Department Regulation 1512-1 for the purpose of establishing a new sunset review date. The intended effect of this proposed rule is to provide cancellation, termination, and filing dates appropriate to the California safflower crop and to establish a new sunset review date.

EFFECTIVE DATE: August 9, 1989.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. These regulations have been reviewed under the procedures established by Departmental Regulations 1512-1 as to the need, currency, clarity, and effectiveness of these regulations. The sunset review date established for the regulations in the Safflower Endorsement is February 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The present safflower crop insurance cancellation and termination date is April 15 for all states and the contract change date is the previous December 31. Safflower plantings in California are generally done in January or February and are growing and well established by April 15.

In order to provide that contract changes are filed timely before the sales period begins, and allow an appropriate amount of time for applications to be accepted before the end of the sales period, it is necessary to change the sales closing date to February 15 and to change the date by which contract changes are to be filed in the service office in California to the previous November 30. Since the sales closing date is almost always the same date as the cancellation and termination date, the changing of the sales closing date will require that the cancellation and termination date in California also be changed to February 15.

On Thursday, May 11, 1989, FCIC published a notice of proposed rulemaking in the **Federal Register** at 54 FR 20391, to provide cancellation, termination, and filing dates appropriate to the California safflower crop and to establish a new sunset review date. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received.

In the published notice of proposed rulemaking, the effective year in the Summary of the rule incorrectly indicated that the rule would be "effective for the 1989 and succeeding crop years." This should have read "effective for the 1990 and succeeding crop years." This error is corrected herein.

Therefore, with the exception of the effective crop year corrected in the Summary as indicated above, FCIC herewith adopts the rule published at 54 FR 20391, as a final rule with no changes.

List of Subjects in 7 CFR 401

General Crop Insurance Regulations, Safflowers.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1990 and succeeding crop years, in the following instances:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. The Safflower Seed Crop Insurance Regulations (7 CFR § 401.123), are amended by revising subsections 8 and 9 to read as follows:

§ 401.123 Safflower Seed Crop Endorsement

* * * * *

Safflower Seed Crop Endorsement

* * * * *

8. Cancellation and Termination Date. The cancellation and termination date for California is February 15. For all other states, the cancellation and termination date is April 15.

9. Contract Changes. Contract changes will be available at your service office by December 31 prior to the cancellation date for counties with an April 15 cancellation date and by November 30 prior to the cancellation date for all other counties.

* * * * *

Done in Washington, DC on June 22, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-16124 Filed 7-7-89; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 673]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 673 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 380,000 cartons during the period July 9 through July 15, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulations 673 (§ 910.973) is effective for the period July 9 through July 15, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1988-89. The Committee met publicly on July 5, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that overall demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.973 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.973 Lemon Regulation 673.

The quantity of lemons grown in California and Arizona which may be handled during the period July 9, 1989, through July 15, 1989, is established at 380,000 cartons.

Dated: July 6, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89-16252 Filed 7-7-89; 8:45 am]

BILLING CODE 3410-02-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Rel. No. 34-26986]

Delegation of Authority to the Director of the Division of Market Regulation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule amendment.

SUMMARY: The Commission is amending its Rules of Practice to delegate authority to the Director of the Division of Market Regulation to grant exemptions from Rule 15c2-12 under the Securities Exchange Act of 1934 pursuant to paragraph (d) of that Rule.

EFFECTIVE DATE: July 10, 1989.

FOR FURTHER INFORMATION CONTACT: Robert L.D. Colby, Esq., Chief Counsel, or Edward L. Pittman Esq., Assistant Chief Counsel (202-272-2848), Division of Market Regulation, Mail Stop 5-1, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced an amendment to its Rules of Practice governing Delegation of Authority to the Director of the Division of Market Regulation (17 CFR 200.30-3). The amendment adds to Rule 30-3, new paragraph (a)(48), authorizing the Director of the Division of Market Regulation to grant exemptions, where appropriate, pursuant to paragraph (d) of Rule 15c2-12 under the Securities Exchange Act of 1934 (17 CFR 240.15c2-12), which the Commission adopted on June 28, 1989.[1]

Paragraph (d) of Rule 15c2-12 provides that:

> The Commission, upon written request, or upon its own motion, may exempt any Participating Underwriter that is a participant in a transaction or class of transactions from any requirement of this rule, either unconditionally or on specified terms and conditions, if the Commission determines that such an exemption is consistent with the public interest and the protection of investors.

The delegation of authority is intended to conserve Commission resources by permitting the staff to accommodate requests on a more expedited basis. Nevertheless, the staff may submit matters to the Commission for consideration as it deems appropriate. Moreover, in light of the exemptions already present in Rule 15c2-12, and the fact that the Rule codifies, to a great degree, responsible industry practice, the Commission does not expect that exemptions will be routinely granted. Requests for exemptive relief should be addressed to the Chief Counsel, Division of Market Regulation, Mail Stop 5-1, Securities and Exchange Commission, Washington, DC 20549.

The Commission finds, in accordance with section 553(b)(A) of the Administrative Procedure Act,[2] that this amendment relates solely to agency organization, procedure, or practice, and does not relate to a substantive rule. Accordingly, notice, opportunity for public comment, and publication of the amendment prior to its effective date are unnecessary.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Securities.

Text of Amendment

The Commission hereby amends Title 17, Chapter II of the Code of Federal Regulations as follows:

[1] Securities Exchange Act Release No. 26985 (June 28, 1989).

[2] 5 U.S.C. 553(b)(A).

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

1. The authority citation for Part 200, Subpart A, continues to read in part as follows:

Authority: Secs. 19, 23, 48 Stat. 65, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855, 15 U.S.C. 77s, 78w, 79t, 77sss, 80a-37, 80b-11

* * *

2. Title 17 CFR 200.30-3 is amended by adding new paragraph (a)(48) to read as follows:

§ 200.30-3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(48) Pursuant to paragraph (d) of Rule 15c2-12 (17 CFR 15c2-12), to grant or deny exemptions, either unconditionally or on specified terms and conditions, from Rule 15c2-12.

* * * * *

By the Commission.

Dated: June 28, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-16040 Filed 7-7-89; 8:45 am]

BILLING CODE 8010-01-M

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17 CFR Part 201

[Rel. No. 34-26994]

Applications for Bounty Awards on Civil Penalties Imposed in Insider Trading Litigation

AGENCY: Securities and Exchange Commission.

ACTION: Final Rules.

SUMMARY: The Commission has adopted rules setting forth the procedures by which persons providing information that leads to the imposition of civil penalties in insider trading cases may apply for the award of a bounty. The rules implement the bounty provisions of the Insider Trading and Securities Fraud Enforcement Act of 1988.

EFFECTIVE DATE: July 10, 1989.

ADDRESSES: A pamphlet entitled "Information on Bounties" explains Commission policies and procedures on bounty payments and may be obtained by contacting the Office of Public Affairs, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Hall (202 272-2253), Senior Counsel, Division of Enforcement, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Bounty Payments Under Section 21A(e)

Section 21A(e) of the Securities Exchange Act of 1934 (the "Exchange Act")[1] authorizes the Commission to award bounties to persons who provide information that leads to the imposition of a civil penalty in insider trading litigation.[2] To implement the bounty provisions of section 21A(e), the Commission has added new Subpart C to its Rules of Practice. Subpart C is intended to inform the public of the possibility of bounty payments; to encourage those who may have information indicating violations of the federal securities laws to provide that information to the Commission; and to provide the structure for an orderly administration of the process of making bounty payments.[3]

Under section 21A(e), all Commission determinations regarding bounties, including whether to make a payment, to whom a payment shall be made, and the amount of a payment (if any), are in the sole discretion of the Commission. Any such determination is final and not subject to judicial review. Nothing in Subpart C is intended to limit the Commission's discretion with respect to bounties.

Section 21A(e) contains a number of limitations on the Commission's ability to award bounties. Bounties may only be awarded from amounts that are imposed as civil penalties in insider trading litigation under section 21A of the Exchange Act and that are recovered by the Commission or by the Attorney General on behalf of the

[1] 15 U.S.C. 78u-1(e). Section 21A(e), which became effective on November 19, 1988, was added to the Exchange Act by the Insider Trading and Securities Fraud Enforcement Act of 1988, Pub. L. No. 100-704, 102 Stat. 4677.

[2] In general, section 21A authorizes courts to impose civil penalties against any person who has violated the Exchange Act by purchasing or selling a security while in possession of material, nonpublic information in, or has violated [the Exchange Act] by communicating such information in connection with, a transaction on or through the facilities of a national securities exchange or from or through a broker or dealer.' * *

Section 21A(a)(1). In addition, section 21A(a)(1)(B) authorizes imposition of civil penalties against persons who directly or indirectly control such violators.

[3] While the new rules are procedural in nature and do not require notice and comment rulemaking, any interested person may provide comments on the rules to the individual named and at the address provided under the caption "For Further Information Contact."

Commission. The total amount of bounties that may be paid from a penalty may not exceed ten percent of that penalty. In addition, bounty payments may be made only to the person or persons who provided information leading to the imposition of the penalty. Finally, section 21A provides that no bounty may be paid to "any member, officer, or employee of any appropriate regulatory agency, the Department of Justice, or a self-regulatory organization." [4]

In making determinations regarding bounty applications, the Commission will be guided both by the purposes of the Congress in enacting Section 21A and by the limitations contained in section 21A(e). The Commission will also consider whatever other factors it deems relevant, including, as examples, the importance of the information provided by an applicant, whether that information was provided voluntarily, other applications in the matter, and the amount of the penalty from which bounties may be paid.

II. Description of Subpart C

Subpart C consists of eight new rules, Rules 61–68. Rule 61 sets forth the general scope of Subpart C, refers to the statutory premises of the bounty procedures, and provides that nothing contained in the subpart limits the Commission's discretion regarding bounty determinations or subjects those determinations to judicial review.

Rule 62 provides procedures relating to bounty applications. Written applications that conform to the provisions of Subpart C are required before a bounty payment may be made. Upon request of the Commission or its staff, persons seeking bounties must also provide other relevant information. This provision is designed to permit the Commission to be certain that its bounty payments are in accordance with law and to assure that the Commission has all relevant information needed to make informed decisions regarding applications for bounties. The Commission anticipates that the classes of information that may be relevant may include: the employment and affiliations of the applicant; the conduct of the applicant in connection with the violative activity and the relationship of the applicant to other persons and entities involved in the matter; the means by which the applicant came into possession of the information for which an award is sought; and any action taken by the applicant to mitigate the effects of violative conduct or to prevent further violative conduct in the matter.

Rule 63 specifies the time and place of filing for applications for bounties. Applications must be filed no later than 180 days after entry of the court order requiring the payment of the penalty that is subject to the application.

Rule 64 governs the form of bounty applications and requires a detailed statement of the information upon which a bounty may be based, i.e., the information that the applicant believes led or may lead to the imposition of a penalty under Section 21A of the Exchange Act. Where the application is not the means by which a bounty applicant initially provides information to the Commission, the application must also specify the dates and times when the information was previously provided; to whom the information was provided; how the information was provided (*e.g.*, by telephone call or in person); and, when information was initially provided anonymously, sufficient other information to confirm that the applicant is the person who provided the information to the Commission.

Any person who desires to provide information to the Commission that may result in the payment of a bounty may do so by any means desired. However, the Commission wishes to emphasize the utility of providing such information in writing as soon as possible, either in the form of an application for a bounty or otherwise. Providing information in writing reduces the possibility of error, helps assure that appropriate action will be taken, and minimizes subsequent burdens and the possibility of factual disputes.

The Commission recognizes that there may be instances when a bounty applicant wishes to remain temporarily anonymous.[5] Rule 65 takes into account these instances. All applications must identify and be signed by the applicant, and must provide the applicant's mailing address. However, that information may be omitted provided that it is submitted by an amendment to the application. The amendment must be filed within 180 days after the entry of the court order requiring the payment of the penalty upon which the bounty is based.

Rule 66 provides that the Commission will notify an applicant of its determination on the application. Normally, determinations will not be made until a payment of a penalty is both ordered by a court and recovered. The Commission wishes to emphasize that anonymous applicants (and those who fail to make written applications) will not receive the notice provided by Rule 66. Thus, they will bear the risk of losing eligibility for a bounty award through lapse of time or ignorance of the fact that a penalty has been recovered.

Rule 67 contains provisions for filing an application by an executor, administrator or other legal representative of a person who provided information that led or may lead to imposition of a civil penalty, or by the parent or guardian of such a person if that person is a minor. Rule 68 provides that no person is authorized by the new rules to make any offer or promise or otherwise to bind the Commission with respect to bounty payments or their amounts.

The Commission has determined that the final rules relate solely to agency organization, procedure or practice. Therefore, the provisions of the Administrative Procedure Act ("APA") regarding notice of proposed rulemaking and opportunities for public participation, 5 U.S.C. 553, are not applicable. Similarly, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, which apply only when notice and comment rulemaking are required by the APA or other law, are not applicable. The Commission finds that the rules will not impose any burden on competition. The Commission further finds, because of the procedural nature of the rules, that the APA requirement with respect to delay in the effective date of substantive rules, 5 U.S.C. 553(d), is also inapplicable.

List of Subjects in 17 CFR Part 201

Rules of practice.

[4] Depending upon the circumstances, the term "appropriate regulatory agency" may include federal bank regulatory authorities as well as the Commission. Section 3(a)(34) of the Exchange Act, 15 U.S.C. 78c(a)(34). "Self-regulatory organizations" include national securities exchanges, registered securities associations, and registered clearing agencies. Section 3(a)(26) of the Exchange Act, 15 U.S.C. 78c(a)(26).

[5] Individuals who provide information to the Commission often request that their identities be held in confidence. Absent compelling cause, the Commission ordinarily does not disclose the identities of these persons. The Freedom of Information Act (5 U.S.C. 552(b)(7)(D)), and the Privacy Act of 1974 (5 U.S.C. 552a(k)(5)) permit agencies to withhold the identity of a confidential source. However, there may be circumstances in which disclosure will nonetheless be legally required or will be essential for the protection of the public interest. For example, in litigation a court may order disclosure, or the Commission may have to present a bounty claimant as a witness in order to assure the success of an enforcement action. Thus, while the Commission and its staff will give serious consideration to requests for confidentiality of identity, no guarantees of confidentiality are possible.

PART 201—[AMENDED]

For the reasons set out in the preamble, Title 17, Part 201 of the Code of Federal Regulations, is amended by adding Subpart C as set forth below:

Subpart C—Procedures Pertaining to the Payment of Bounties Pursuant to Subsection 21A(e) of the Securities Exchange Act of 1934

Sec.
201.61 Scope of subpart.
201.62 Application required.
201.63 Time and place of filing.
201.64 Form of application and information required.
201.65 Identity and signature.
201.66 Notice to applicants.
201.67 Applications by legal guardians.
201.68 No promises of payment.

Authority: Sec. 21A, 102 Stat. 4679, sec. 23, 48 Stat. 901, as amended, 15 U.S.C. 78u–1, 78w.

Subpart C—Procedures Pertaining to the Payment of Bounties Pursuant to Subsection 21A(e) of the Securities Exchange Act of 1934

§ 201.61 Scope of subpart.

Section 21A of the Securities Exchange Act of 1934 authorizes the courts to impose civil penalties for certain violations of that Act. Subsection 21A(e) permits the Commission to award bounties to persons who provide information that leads to the imposition of such penalties. Any such determination, including whether, to whom, or in what amount to make payments, is in the sole discretion of the Commission. This subpart sets forth procedures regarding applications for the award of bounties pursuant to subsection 21A(e). Nothing in this subpart shall be deemed to limit the discretion of the Commission with respect to determinations under subsection 21A(e) or to subject any such determination to judicial review.

§ 201.62 Application required.

No person shall be eligible for the payment of a bounty under subsection 21A(e) of the Securities Exchange Act of 1934 unless such person has filed a written application that meets the requirements of this subpart and, upon request, provides such other information as the Commission or its staff deems relevant to the application.

§ 201.63 Time and place of filing.

Each application pursuant to this subpart and each amendment thereto must be filed within one hundred and eighty days after the entry of the court order requiring the payment of the penalty that is subject to the application. Such applications and amendments shall be addressed to: Office of the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

§ 201.64 Form of application and information required.

Each application pursuant to this subpart shall be identified as an Application for Award of a Bounty and shall contain a detailed statement of the information provided by the applicant that the applicant believes led or may lead to the imposition of a penalty. Except as provided by Rule 65 of this subpart, each application shall state the identity and mailing address of, and be signed by, the applicant. When the application is not the means by which the applicant initially provides such information, the application shall contain: the dates and times upon which, and the means by which, the information was provided; the identity of the Commission staff members to whom the information was provided; and, if the information was provided anonymously, sufficient further information to confirm that the person filing the application is the same person who provided the information to the Commission.

§ 201.65 Identity and signature.

Applications pursuant to this subpart may omit the identity, mailing address, and signature of the applicant; *provided*, that such identity, mailing address and signature are submitted by an amendment to the application. Any such amendment must be filed within one hundred and eighty days after the entry of the court order requiring the payment of the penalty that is subject to the application.

§ 201.66 Notice to applicants.

The Commission will notify each person who files an application that meets the requirements of this subpart, at the address specified in such application, of the Commission's determination with respect to such person's application. Nothing in this subpart shall be deemed to entitle any person to any other notice from the Commission or its staff.

§ 201.67 Applications by legal guardians.

An application pursuant to this subpart may be filed by an executor, administrator, or other legal representative of a person who provides information that may be subject to a bounty payment, or by the parent or guardian of such a person if that person is a minor. Certified copies of the letters testamentary, letters of administration, or other similar evidence showing the authority of the legal representative to file the application must be annexed to the application.

§ 201.68 No promises of payment.

No person is authorized under this subpart to make any offer or promise, or otherwise to bind the Commission with respect to the payment of any bounty or the amount thereof.

By the Commission.

Jonathan G. Katz,

Secretary.

June 30, 1989.

[FR Doc. 89–16039 Filed 7–7–89; 8:45 am]

BILLING CODE 8010–01–M

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17 CFR Parts 240 and 241

RIN 3235–AD58

[Rel. No. 34–26985, File No. S7–20–88]

Municipal Securities Disclosure

AGENCY: Securities and Exchange Commission

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission today announced the adoption of Rule 15c2–12, which requires underwriters participating in primary offerings of municipal securities of $1,000,000 or more to obtain, review, and distribute to investors copies of the issuer's disclosure documents. Under the rule, in a primary offering of municipal securities the underwriter will be required: (1) to obtain and review a copy of an official statement deemed final by an issuer of the securities, except for the omission of specified information; (2) in non-competitively bid offerings, to make available, upon request, the most recent preliminary official statement, if any; (3) to contract with an issuer of the securities, or its agent, to receive, within specified time periods, sufficient copies of the issuer's final official statement, both to comply with this rule and any rules of the Municipal Securities Rulemaking Board; and (4) to provide, for a specified period of time, copies of final official statements to any potential customer upon request. The rule contains exemptions for underwriters participating in certain offerings of municipal securities issued in large denominations that are sold to no more than 35 sophisticated investors, have short-term maturities, or have short-term tender or put features. The release also modifies, in limited respects, a previously published interpretation of the legal obligations of municipal securities underwriters.

EFFECTIVE DATE: Rule 15c2–12 is effective on January 1, 1990. The

modification of the intepretation of the legal obligations of municipal underwriters is effective June 28, 1989.

FOR FURTHER INFORMAITION CONTACT: Catherine McGuire, Special Assistant to the Director (202) 272-2790 (prior to the effective date); Robert L.D. Colby, Chief Counsel, or Edward L. Pittman, Assistant Chief Counsel, (202) 272-2848 (concerning the rule and release generally); or Christine A. Sakach, Branch Chief—Market Structure (202) 272-2857 (concerning interpretation of the term "nationally recognized municipal securities information repository"), Division of Market Regulation, Mail Stop 5-1, Securities and Exchange Commission, Washington, DC 20549.

I. Introduction

On September 22, 1988, the Commission released to Congress the results of an extensive investigation into the default of the Washington Public Power Supply System ("Supply System").[1] At the same time, it published Securities Exchange Act Release No. 26100 ("Release"),[2] which requested comment on several initiatives that were designed to improve the quality, timing, and dissemination of disclosure in the Municipal securities markets. The Release proposed for adoption Rule 15c2-12 ("Proposed Rule") under the Securities Exchange Act of 1934 [3] ("Exchange Act"), provided an interpretation of underwriter's responsibilities in municipal offerings ("Interpretation"), and solicited comment on proposals advanced by the Municipal Securities Rulemaking Board ("MSRB") and other members of the industry to create a repository for municipal disclosure documents.

Comment was requested on each aspect of the Proposed Rule, Interpretation, and the creation of a central repository for municipal disclosure documents. In response to the request for comments, the Commission received over sixty letters from all segments of the industry, including issuers, underwriters, institutional investors, bond counsel, analysts, financial advisers, insurance providers, disclosure services, the MSRB, and state securities regulators. The comment letters presented a variety of thoughtful views on the major issues raised by the Release, as well as the commentators' assessment of the general adequacy of disclosure in the municipal markets and current letters, the Commission has determined to adopt Rule 15c2-12 ("Rule"), with certain modifications that are designed to address the concerns expressed by commentators.[4] The Commission also is amending portions of its Interpretation in light of the comments.

II. Rule 15c2-12

The Commission proposed Rule 15c2-12, in part, under its authority in section 15(c) of the Exchange Act to adopt rules and regulations "reasonably designed to prevent [] such acts and practices as are fraudulent, deceptive, or manipulative".[5] As indicated in the Release, the Proposed Rule was designed to establish standards for the procurement and dissemination by underwriters of disclosure documents as a means of enhancing the accuracy and timeliness of disclosure to investors in municipal securities. Specific provisions of the Proposed Rule also were intended to assist underwriters in meeting their responsibilities under the general antifraud provisions of the federal securities laws, by providing them with a mandatory opportunity to review the issuer's disclosure documents before commencing sales to investors.

In proposing Rule 15c2-12, the Commission recognized that, as a result of efforts by the industry to improve disclosure, most issuers in offerings above $1 million prepare offering documents that are available to investors. The Government Finance Officers Association ("GFOA") Disclosure Guidelines [6] state, however, that "[i]ssuers of municipal securities should, in addition to preparing official statements, take appropriate steps to further the avilability to the public of the information therein." Among other things, the GFOA's Disclosure Guidelines encourage the dissemination of official statements to investors "as early as possible." [7]

In responding to the Commission's request for comments, numerous issuers confirmed that it was their practice to produce preliminary and final official statements in connection with an offering of bonds. Moreover, among frequent issuers, the quality of disclosure was reported to be quite good. The Public Securities Association ("PSA") noted, for example, that most of those responding to its survey of current disclosure practices in the municipal markets [8] had rated disclosure in new issues as "satisfactory" and "very good".[9] It pointed out that 94% of those responding to the survey rated "content and completeness" of disclosure documents in new issues as "satisfactory" to "excellent". Nevertheless, the PSA reported that this very positive assessment of disclosure practices dropped sharply when the availability of disclosure was considered. Forty-five percent of those responding to its survey rated "availability of documents (preliminary and final) in a timely fashion" as less than "satisfactory".

The views of the PSA generally correspond to the comments received from issuers, underwriters, and investors. While most issuers are conscientious about providing adequate quantities of official statements in a timely fashion, commentators indicated that there was a range of practices. Investors, in particular, have complained about the ability to obtain disclosure documents prepared by issuers at a time that would permit review prior to making an investment decision.[10]

[1] *Securities and Exchange Commission Staff Report on the Investigation in the Matter of Transactions in Washington Public Power Supply System Securities* (1988) ("Supply System Report"). The Commission's investigation of the Supply System default revealed serious problems in the disclosure practices observed by securities professionals particiapting in the Supply System's bond offerings.

[2] Securities Exchange Act Release No. 26100 (Sept. 22, 1988), 53 FR 37778.

[3] 15 U.S.C. 78a et. seq.

[4] The comment letters and a summary of the comment letters prepared by the staff of the Division of Market Regulation are contained in Public File No. S7-20-88.

[5] Rule 15c2-12, although denominated under Section 15(c) of the Exchange Act (15 U.S.C. 78o), also was proposed, and is herein adopted, under the Commission's authority in Sections 2, 3, 10, 15B, 17, and 23 of the Exchange Act, 15 U.S.C. 78b, 78c, 78j, 78o-4, 78q, and 78w.

[6] GFOA, *Disclosure Guidelines for State and Local Government Securities* (January 1988) (hereinafter "GFOA Disclosure Guidelines").

[7] *See* Procedural Statement No. 3, "Availability of Official Statements to the Public and Delivery of Official Statements to Underwriters," Id. at 83.

[8] *Public Securities Association, Municipal Disclousure Task Force Report: Initial Analysis of Current Disclosure Practices in the Municipal Securities Market.* (June 1988) (hereinafter "PSA Task Force Report").

[9] Letter from Austin V. Koenen, Chairman, Municipal Securities Division, PSA, to Jonathan G. Katz, Secretary, SEC (Dec. 23, 1988).

[10] *See e.g.*, Letter from Peter J.D. Gordon, Vice President and Director, Municipal Bond Division, T. Rowe Price, to Jonathan G. Katz, Secretary, SEC (Dec. 27, 1988). The PSA's survey also indicates that when disclosure documents are prepared, they are furnished to dealers prior to settlement of the transaction only 41% of the time. Respondents to the PSA's survey reported that official statements are furnished to underwriters and dealers after settlement of the transaction approximately 30% of the time. *PSA Task Force Report, supra* note 8 at III-14, 15.

In addition, there is concern among underwriters that, in light of their responsibilities under the general antifraud provisions of the federal securities laws, greater opportunity should be afforded to review the disclosure of infrequent issuers, so that any problems in the disclosure documents may be detected before recommendations are made to investors. One association, representing bank municipal securities dealers, commented, for example, that in some geographic areas underwriters are able to examine official statements a week prior to the bid date for competitive offerings, while in other geographic areas the preliminary official statements are not available, if at all, until after the bids are due.[11]

The Commission believes that Rule 15c2-12 will promote greater industry professionalism and confidence in the integrity of the municipal markets without unnecessarily burdening issuers. As suggested in the Release, and reflected in the comment letters, it has generally been the view of state and local governments that regulation intended to enhance disclosure in the municipal markets is beneficial, so long as it does not adversely affect the capital-raising function of responsible issuers. In determining to adopt the Rule, the Commission is sensitive to the impact that the Rule may have on efficient financing practices developed in the municipal market. In this regard, the Commission has attempted to take into account commentators' concerns that the use of certain financing techniques, including tax-exempt commercial paper, variable rate offerings, and multi-mode issues,[12] as well as limited placements to sophisticated investors, might be unduly restricted if the Rule is adopted as proposed. Accordingly, the Commission has provided exemptions in the Rule to facilitate such offerings, which generally do not raise the concerns sought to be addressed by the Rule. Although the Commission has chosen to adopt Rule 15c2-12 at this time, it encourages a continuing dialogue with members of all segments of the municipal industry. The Commission has specifically provided in paragraph (d) of the Rule, discussed later, that exemptions from any of the provisions of the Rule may be granted, upon written request, where the exemption is consistent with the public interest and the protection of investors. The exemptive provisions in paragraph (d) are designed to afford immediate flexibility to correct unforeseen burdens.

A. Scope of the Rule

As indicated above, Rule 15c2-12 is being promulgated under the Commission's authority in section 15(c) of the Exchange Act as a means reasonably designed to prevent fraud. The Rule applies only to underwriters participating in "a primary offering of municipal securities with an aggregate principal amount of $1,000,000 or more". In addition, the Rule contains exemptions for underwriters participating in offerings of municipal securities in large denominations that are sold to no more than 35 sophisticated investors, or have short-term maturities, or have short-term tender or put features.

1. Thresholds

Proposed Rule 15c2-12 would have applied to underwriters participating in an offering of municipal securities with an aggregate offering price in excess of $10 million. The Commission proposed an initial threshold of $10 million in an effort to assure that any costs that the Rule might impose would be offset by the potential protection to the largest number of investors. Data supplied by the PSA indicated that if the proposed threshold were implemented, 25% of long-term bond offerings, accounting for 86% of the total dollar volume of such offerings, would be subject to the Proposed Rule. The Commission also requested comment on whether some alternative level was more appropriate, including $1 million, $5 million, $20 million, or $50 million.[13]

Thirty-nine commentators expressed a view on the appropriate theshold for the Rule. The alternative suggestions ranged from no threshold to $50 million. Eight commentators generally favored a higher threshold, while 29 suggested lower thresholds, usually at the $1 million level.[14] In particular, the PSA and the MSRB strongly recommended that the Commission move the Rule's threshold to $1 million dollars.

The comment letters expressed a strong sentiment that a substantial portion of both defaults and disclosure dissemination problems in the municipal securities markets occurred in offerings below the proposed threshold. The Bond Investors Association, for example, noted that of the defaults occurring in bonds issued between 1981 and 1985, 79% of issues and 40% of the dollar amount of defaults were in issues below $10 million.[15] While there is not a direct correlation between economic defaults and the adequacy of disclosure, many of the offerings below the proposed $10 million threshold are in types of securities that present higher risks to investors that should be highlighted in a complete disclosure document. In addition, a greater portion of offerings below $10 million are by infrequent issuers, with whom the market is unfamiliar. The PSA, along with other commentators, noted that the quality of disclosure correlates directly with the size of the bond issue. Generally, the larger the bond issue, the better the disclosure.[16] Thus, the Commission is persuaded that the structural safeguards contained in Rule 15c2-12 will have added significance in offerings below $10 million.

Apart from the actual quality of disclosure in offerings below $10 million, there was also concern about the

[11] Letter from Richard L. DeCair, Executive Director, Bank Capital Markets Association, to Jonathan G. Katz, Secretary, SEC (Jan. 12, 1989). Similar comments were received from individual underwriters who stated that even when preliminary official statements are distributed to potential bidders in competitive offerings, they may not arrive in sufficient time to permit an appropriate review. *See, e.g.* Letter from Susan V. Dushock, First Vice President, Municipal Bond Department, and Walter J. Peters, Vice President and Associate General Counsel, Shearson Lehman Hutton, to Jonathan G. Katz, Secretary, SEC (Dec. 27, 1988).

[12] See discussion *infra* at note 81 concerning variable rate demand notes and multi-mode offerings. *See generally*, Amdrusky, *Creative State and Local Financing Techniques*, in *State and Local Government Financing* (Gelfand ed. 1987).

[13] The Commission inquired about the costs that issuers and underwriters would experience if the threshold were set at alternative offering amounts, and invited comment about the quality and timeliness of disclosure provided at the alternative offering amounts. In addition, the Commission requested comment on whether the threshold should be based upon the type of issuer, maturity, or complexity of the bonds being offered.

[14] Many of the commentators conditioned their support for lower thresholds on appropriate exemptions for certain types of offerings. Some commentators, including the GFOA, that supported higher thresholds for governmental issuers, also indicated that lower, or no thresholds, would be appropriate for conduit offerings, which they reported have shown the greatest degree of disclosure problems. Two commentators supported the proposed threshold.

[15] Letter from C. Richard Lehman, President, Bond Investors Association, to Jonathan G. Katz, Secretary, SEC (Nov. 22, 1988). The Bond Investors Association indicated that it selected the five year period from 1981 to 1985 to avoid most of the distortion created by the Supply System default in pre-1981 statistics. The period chosen also ignores the last three years in which the Association indicated that defaults are a future event for the most part.

[16] The PSA's Task Force Report on municipal securities stated that only 5% of the 264 dealers responding to its survey found that the adequacy of disclosure was below satisfactory in negotiated offerings above $50 million. In contrast, 20% of the respondents found disclosure to be less than satisfactory in negotiated offerings of $10 million or less. *PSA Task Force Report, supra* note 8, Table 11A. *See also*, Forbes & McGrath, *Disclosure Practices in Tax-Exempt General Obligation Bonds: An Update*, 7 *Mun. Fin. J.* 207 (1986).

perception that a high threshold would create among investors.

Specifically, some commentators conjectured that if a $10 million threshold were utilized, it would result in a "tiering" of the municipal markets.[17] They indicated that investors might view all offerings below the $10 million threshold as lacking the same quality of disclosure as those subject to the Rule, and may have discriminated against such offerings. Accordingly, issuers offering securities in amounts below the threshold may have been required to pay increased underwriting spreads compared to securities subject to the Rule's safeguards.

While the Commission has determined to lower the threshold to one million dollars, it is sensitive to concerns that the Rule not impose unnecessary costs on municipal issuers.[18] Recent studies indicate that the large majority of issuers, 84% of municipal securities offerings, including both competitive and negotiated offerings, provide official statements.[19] Even with the lower threshold, many commentators, including the MSRB and PSA, indicated that the Rule, as adopted, will not impose unnecessary costs or force a majority of responsible issuers to depart from their current practices. The commentators suggested that the Rule should, however, encourage more effective disclosure practices among those issuers that do not currently provide adequate and timely information to the market. In this connection, support for a one million dollar threshold also was found in the comment letters from some issuers and issuer trade associations.[20]

In addition to requesting comment on whether the proposed threshold should be revised, the Commission also invited comment on whether thresholds should be implemented that distinguish among different types of offerings. A number of the commentators suggested that most of the problems in municipal disclosure had occurred in conduit offerings. In light of the low default rate of general obligation bonds, they argued that some distinction should be made according to the type of debt being offered.

The GFOA, among others, recommended that governmental purpose bonds should alternatively be exempt from the Rule's requirements or subject to a $25 million threshold.[21] In contrast, an almost equal number of commentators, including issuers,[22] objected to any distinction in applying the Rule. One issuer noted, for example, "if disclosure is good and most responsible issuers are currently complying with reasonable guidelines, no harm is done in requiring the 9% of government issuer's [sic] who are not making adequate disclosure (according to the PSA Survey) to comply with the proposed rule, and therefore strengthen acceptance for all of us in the market." [23]

After reviewing the comment letters, the Commission has decided not to draw a distinction between types of offerings in the Rule. In reaching this decision, the Commission is mindful that there is a range of creditworthiness and risk associated with both governmental and conduit bonds that may vary significantly according to the issuer.[24] Moreover, while defaults may have the most severe impact on the value of a security, investors are more likely to be affected by the exercise of call provisions or other terms of the offering. The MSRB, in its comment letter, emphasized that as offerings have become more complex, information concerning the structure of the offering has acquired increased significance to investors. Thus, notwithstanding the relatively low default rate enjoyed by general obligation debt, the Commission believes that it is equally important for investors to receive timely and complete information about terms of the offering in all types of issues.[25]

2. Primary Offerings

The Commission also modified the Rule to clarify that it applies only to "primary offerings", a term that is defined in paragraph (e)(7).[26] The Commission determined to restrict the scope of the Rule to primary offerings in response to concerns expressed by commentators that broader language in the Proposed Rule may have incorporated concepts concerning the registration of secondary offerings of securities under the Securities Act of 1933 ("Securities Act").[27] While, as discussed later, the Rule will apply to certain reofferings of municipal securities conducted pursuant to the conversion of a multi-mode issue,[28] the Rule does not generally apply to secondary distributions.

B. Requirements of the Rule

1. Obtain and Review "Near Final" Official Statement

The Proposed Rule would have required that underwriters receive a copy of a "near final" official statement

[17] *See, e.g.*, Letter from John W. Rowe, Chairman, MSRB, to Jonathan G. Katz, Secretary, SEC (Nov. 8, 1988); Letter from PSA.

[18] At the one million dollar threshold, the Rule will apply to 76% of all long-term bond issues, accounting for 99% of the total dollar amount of long-term municipal offerings. Release 53 FR at 37783. In 1988, approximately $23.358 million in short-term debt (less than 13 months) was offered. At the current threshold of $1 million, 90% of the dollar amount and 71% of short-term debt issues would be subject to the Rule. Source: IDD/PSA Database.

[19] *PSA Task Force Report*, *supra* note 8, at 84.

[20] Letter from Earle E. Morris, Jr., President, National Association of State Auditors, Comptrollers and Treasurers ("NASACT") to Jonathan G. Katz, Secretary, SEC (Jan. 12, 1989); Letter from Janet C. Rzewnicki, President, National Association of State Treasurers, to Jonathan G. Katz, Secretary, SEC (Jan. 18, 1989); Letter from Carl W. Reidy, Jr. and Roy T. Deaton, National Council of State Housing Agencies, to Jonathan G. Katz, Secretary, SEC (Dec. 22, 1988).

[21] Letter from Jeffrey L. Esser, Executive Director, GFOA, to Jonathan G. Katz, Secretary, SEC, (Jan. 12, 1989).

[22] *See*, e.g. Letter from John M. Gunyou, City Finance Officer, Minneapolis, Minnesota, to Jonathan G. Katz, Secretary, SEC (Feb. 16, 1989); Letter from Max R. Bohnstedt, Director of Finance, Montgomery County, Maryland, to Jonathan G. Katz, Secretary, SEC (Dec. 27, 1988); Letter from NASACT; and, Letter from National Council of State Housing Agencies.

[23] Letter from John M. Gunyou.

[24] One commentator noted, for example, that only the general obligation of an issuer of meaningful size, with full governmental powers, is likely to produce a distinct level of security to investors. Similarly, a "conduit" bond of a reporting company may have more in common with the general obligation debt of a major city than either does with the bonds of an irrigation district or conduit bonds for a start-up retirement facility. Moreover, a government hospital may have the identical credit risk as a hospital owned by a not-for-profit organization. Letter from Robert Dean Pope, Partner, Hunton & Williams, to Jonathan G. Katz, Secretary, SEC (Jan. 31, 1989).

[25] Although the Proposed Rule was published for comment at the same time that the Commission released the *Supply System Report* to Congress, the Proposed Rule was not aimed at preventing municipal defaults. While defaults may pose the most serious economic threat to investors, the Commission noted in the Release that "no amount of increased review of offering materials by municipal underwriters will prevent municipal defaults totally." 53 FR at 37781. The Commission is aware that municipal securities, particularly general obligation bonds, have enjoyed a relatively low default rate, when compared to corporate offerings. In addition, as discussed in the Release, efforts by the industry have improved greatly the quality of disclosure provided to investors in municipal securities.

Several commentators provided statistics on the current default ratios for municipal securities by type of issuer. The GFOA stated that the default rate, by type of issuer, was as follows: conduit securities—1.2%; governmental obligations (Supply System default included)—0.5%; governmental obligations (Supply System default excluded)—0.1%. It compared municipal default rates to a corporate default rate of 1.1%.

[26] The term "primary offering," for purposes of Rule 15c2-12, is defined in paragraph (e)(7) to mean an offering of municipal securities directly or indirectly by or on behalf of an issuer of such securities, including any remarketing of municipal securities that is accompanied by a decrease in the authorized denominations of the securities to less than $100,000 or by an increase in the maturity of such securities to more than nine months.

[27] 15 U.S.C. 77a et seq.

[28] See discussion *infra* at note 81 and accompanying text.

before bidding for or purchasing an offering of municipal securities. The Release states that the purpose of this provision was to assure that underwriters have received and availed themselves of an opportunity to review an official statement containing "complete" disclosure about the issuer and the basic structure of the financing, before becoming obligated to purchase a large issue of securities. The Proposed Rule identified specific information that could be excluded from the official statement at the time that the underwriter bid for or purchased the securities. Specifically, the "near-final" official statement need not have contained information regarding the "offering price, interest rate, selling compensation, amount of proceeds, delivery dates, other terms depending on such factors, and the identity of the underwriter."

Paragraph (b)(1) of the Rule requires any underwriter that bids for, purchases, offers, or sells, whether as principal or as agent, municipal securities in a primary offering, to obtain and review an official statement that is deemed final by the issuer, except for the omission of certain information. Thus, in a competitive offering, an underwriter will need to receive a copy of disclosure documents prepared in conjunction with the offering by the issuer, or on its behalf, before bidding on the issuer's securities.

The Commission recognizes that in most negotiated offerings the underwriter has a much closer relationship with the issuer and generally participates in drafting the issuer's official statement. In negotiated offerings, the Rule would require the underwriter to obtain a copy of the official statement, deemed final by the issuer, prior to the earlier of the time it executes the bond purchase agreement or the first sale of the bonds. Generally, in negotiated offerings, bonds are offered to investors immediately following the pricing of the securities and the bond purchase agreement is executed a few days later. Consequently, for practical purposes, the underwriter would need to have a copy of a "near-final" official statement at the time of pricing.[29]

As adopted, paragraph (b)(1) contains modifications from the Proposed Rule that are designed to reflect the views of commentators. In response to commentators' suggestions, the Rule specifies that any determination concerning whether the official statement provided to underwriters should be deemed final for purposes of satisfying the terms of the paragraph is made by the issuer. In changing this provision from the Proposed Rule, the Commission was persuaded that allowing the issuer to determine whether the official statement would be deemed final for purposes of paragraph (b)(1) will eliminate uncertainty as to how, and in what manner, an underwriter should ascertain that the disclosure document is "complete" [30] prior to its review of the document.[31]

Although paragraph (b)(1) requires the underwriter to obtain a copy of an official statement that is deemed final by the issuer, the Commission recognizes that certain information frequently is omitted from preliminary official statements. As provided in the Rule, the official statement required by paragraph (b)(1) need not include the offering price(s), interest rate(s), selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, other terms or provisions required by an issuer of such securities to be specified in a competitive bid, ratings, other terms of the securities depending on such matters, and the identity of the underwriter(s). The types of information that can be omitted also has been modified based on comment letters that suggested a need for greater flexibility with respect to disclosure concerning ratings, as well as credit enhancements and other information that may be specified by the underwriter in a competitively bid offering.

The GFOA's Disclosure Guidelines suggest that "the preliminary official statement should be as complete and accurate as possible".[32] The absence of the information specified above should not prevent the underwriter from soliciting indications of interest, so long as material information is supplied to potential investors prior to the time that an investment decision is made. In this regard, the Commission wishes to emphasize that, while the Rule requires that the underwriter obtain official statements which are deemed final by the issuer, except for the omission of certain information, disclosure is a dynamic process and even substantial changes to the document required by paragraph (b)(1) may be necessary to comply with the federal securities laws at the time of sale to investors.[33]

By requiring the underwriter to receive information concerning the offering at the time that it will most actively be engaged in selling efforts, the Rule is intended to assist the underwriter in satisfying its responsibilities under the antifraud provisions of the federal securities laws. As emphasized in the Interpretation, by participating in an offering, an underwriter makes an implied recommendation about the securities. This recommendation implies that the underwriter has a reasonable basis for belief in truthfulness and completeness of the key representations contained in the official statement. Once the underwriter has received and reviewed the official statement, it will be in a better position to assess the accuracy of the disclosure and to make informed recommendations to investors. Moreover, since the issuer is responsible for the disclosure in the final official statement, it is the ultimate beneficiary of any objective review of its disclosure prior to sale.[34] In this regard, it is

[29] Furthermore, an underwriter in a best efforts offering or remarketing that meets the definition of "primary offering" also would have to comply with the provisions of the paragraph, unless it could take advantage of one of the exemptions discussed below.

[30] Reference to a final official statement as a complete document has been moved to the definition of "final official statement" and, accordingly, will be applicable only to the final disclosure documents required to be contracted for under paragraph (b)(3) and disseminated to potential customers upon request under paragraph (b)(4).

[31] Some commentators suggested that use of the term "complete" in the Proposed Rule implied substantive disclosure obligations concerning the offering documents. The Rule was not intended to govern the content of the offering documents. The Commission is aware that efforts by the industry have produced disclosure guidelines that are widely followed in the preparation of municipal official statements. The GFOA's Disclosure Guidelines were first exposed for comment in 1975 and have been revised on several occasions, most recently in January of 1988. In addition, the National Federation of Municipal Analysts has recently proposed draft disclosure guidelines that would provide guidance on disclosure for 17 separate sectors of municipal securities. The Commission believes that both of these guidelines will assist issuers in fulfilling their current obligations under the general antifraud provisions of the federal securities laws. Moreover, these guidelines, in conjunction with the underwriter's own disclosure experience, aid the underwriter in satisfying its own obligation to assess the accuracy and completeness of key representations contained in the issuer's disclosure documents.

[32] Procedural Statement No. 2, "Use of Preliminary and Final Official Statements", *GFOA Disclosure Guidelines*, *supra* note 6 at 81.

[33] Although the Rule does not require the highlighting of changes that occur between the preliminary official statement and final official statement, some commentators have suggested that this practice is desirable. Hunton & Williams, for example, recommended that alterations and amendments suggested by the winning syndicate could more easily be brought to the attention of investors by (a) noting information in the final official statement not appearing in the preliminary or (b) providing a special section that makes reference to such information in the final official statement (other than ordinary completion of pricing data). The Commission believes that these practices are beneficial to investors and would encourage their use.

[34] The GFOA Disclosure Guidelines recognize the importance of objective review of the issuer's

Continued

important to note that paragraph (b)(1) of the Rule need not prevent an underwriter from bidding on an issuer's securities in a competitive offering, even when it determines that disclosure problems exist, so long as the underwriter receives assurances that the disclosure will be corrected.[35]

The comment letters indicate that many issuers routinely provide potential bidders with preliminary official statements that would satisfy the requirements of paragraph (b)(1). Nevertheless, some commentators were concerned that the requirement in paragraph (b)(1) might conflict with certain practices used in connection with refundings and other interest rate sensitive offerings. While the Rule requires that the underwriter have disclosure documents before it bids for, purchases, offers or sells the securities, the Commission has changed the definition of a "final official statement" in paragraph (e)(3), discussed below, to reflect the fact that adequate disclosure may be made through the use of multiple documents. A similar philosophy would apply to the official statement required by paragraph (b)(1). Frequent issuers, for example, may be able to meet market windows for refundings or other types of offerings by supplying a recent official statement, together with supplementary information that contains the terms of the current offering and highlights any material changes from the previous offering materials. Nevertheless, the Commission expects that the Rule will require greater planning and discipline by some issuers.

2. Distribute Copies of Preliminary Official Statements in Non-Competitive Offerings

Paragraph (b)(2) of the Rule requires that, except in competitively bid offerings, an underwiter must send a single copy of the most recent preliminary official statement, no later than next business day, to any potential customer, on request. As proposed, paragraph (b)(2) would have required that the underwriter distribute copies of any preliminary official statement that is prepared by the issuer, to any person upon request. The purpose of the requirement is to provide potential investors with access to any preliminary official statement prepared by the issuer, at a time when it may be of use in making their investment decision. The Release noted that preliminary official statements frequently are used as selling documents to large investors, but that practices among underwriters may vary. Commentators confirmed that the current practice of providing preliminary official statements to investors varies from firm to firm and may depend, in great measure, upon a number of factors, including the issuer, whether the offering is conducted on a competitive or negotiated basis, and the position of the underwriter in the syndicate.

The preliminary official statement is an important disclosure document, even though in some cases the information concerning the precise terms of the offering is incomplete and must be supplemented. Despite the importance of the disclosure provided in preliminary official statements, the Commission has received comment from one major institutional investor which indicates that when preliminary official statements are prepared, only 70% arrive in time for the investor to conduct a professional review prior to the time of purchase.[36] Moreover, potential customers who are not institutional investors may not have access to either a preliminary or final official statement until several days following the sale of the securities.

While the Commission has chosen to require that preliminary official statements be provided by the underwriter, upon request, it has narrowed the original proposal in several respects. As adopted, the Rule requires an underwriter in a negotiated offering to send a single copy of the most recent preliminary official statement to any "potential customer" who requests a copy. Dissemination of preliminary official statements is beneficial for both issuers and investors. Nevertheless, paragraph (b)(2) does not require that issuers prepare a preliminary official statement for delivery to investors. If a preliminary official statement is produced, however, and any potential customer requests a copy, the underwriter would be required to send it by first class mail or another equally prompt means.

In response to concerns expressed in the comment letters that the original proposal would have placed unnecessary costs on underwriters, the Commission decided to limit the scope of persons to whom underwriters would be required to provide copies of the preliminary official statement to potential customers. In many cases, however, the commenters noted that it was their practice, as a matter of course, to honor such requests. The Commission believes that a decision about whether to provide copies of such documents to persons other than potential customers [37] should be left to the business judgment of the underwriter.[38]

The Commission also is modifying the Proposed Rule to except underwriters who participate in competitively bid offerings from the requirements of paragraph (b)(2). Many commentators suggested that the Proposed Rule would have forced underwriters bidding competitively on offerings to incur the cost of reproducing preliminary official statements at a point in the selling process when they may have had only limited access to copies of the preliminary official statement and could not be assured of winning the competition. Moreover, underwriters were concerned about distributing preliminary official statements that they had no role in preparing and had not had a full opportunity to review. By limiting application of the paragraph to negotiated offerings, the underwriter only will have to provide copies of the preliminary official statement in those offerings in which it has had the opportunity to participate in the preparation of the disclosure document and will have the direct ability to recover any expenses incurred in providing copies of preliminary official statements through sales of the issuer's securities.

As stated in the Rule, the underwriter's obligation under paragraph (b)(2) arises "from the time that * * * [it] has reached an understanding with an issuer that it will become an underwriter until a final official statement is available."

disclosure. Procedural Statement No. 5, "Assistance by Issuers to Underwriters and Investors Inquiring about Information", states:

Issuers, underwriters and investors are concerned that information in official statements prepared by issuers be accurate and sufficient in all material respects. It has become common practice for underwriters and investors to assist in this effort by raising questions with issuers based on reviews of official statements and upon other information to which the underwriters and investors have access. Generally, the questions raised will relate to (i) possible information voids in an official statement, (ii) possible inconsistencies within the document, or (iii) possible inconsistencies between the document and other available information.

GFOA Disclosure Guidelines, supra note 6, at 86.

[35] *See* Release, 53 FR at 37790, n. 94 (discussing the need for the underwriter to provide in the underwriting agreement for the ability to correct inaccurate or incomplete disclosure).

[36] Letter from T. Rowe Price.

[37] At the suggestion of the PSA, and others, the term "potential customer" is defined in paragraph (e)(4) to mean a person contacted by the participating underwriter concerning the purchase of municipal securities that are intended to be offered or have been sold in the offering; any person who has expressed an interest in purchasing such securities; and any person who has a customer account with the participating underwriter.

[38] Copies of preliminary official statements also frequently are available to anyone, upon request, from the issuer.

Generally, the underwriter's formal contractural obligation to purchase the bonds will arise following pricing, at the time that it signs the bond purchase agreement. Notwithstanding the fact that the underwriter has not signed a document agreeing to purchase the bonds in a negotiated offering, its obligation under the Rule would begin at the time it has reached an understanding with the issuer that it will offer the bonds, either directly, or by agreeing to join a syndicate.[39] In many cases, this would mean that the managing underwriter's obligation to provide copies of preliminary official statements will commence at the point that it is chosen by the issuer pursuant to the request for proposal process. Once the underwriter's obligation is incurred, the Rule requires that the underwriter continue to provide copies of the most recent preliminary official statement, upon request, until the final official statement becomes available.[40]

The Proposed Rule contained no definition of "preliminary official statement," although it suggested that a preliminary official statement was a document "prepared by the issuer for dissemination to potential bidders or purchasers." Commentators expressed confusion about the relationship between a "preliminary official statement" and the official statement required to be reviewed by underwriters pursuant to paragraph (b)(1) of the Rule. The Rule now contains a definition of a preliminary official statement in paragraph (e)(6).

The definition of preliminary official statement contains no description of the disclosure content of the document. Instead, the term preliminary official statement is defined only be reference to the issuer's intention that it be distributed to potential customers. Thus, a document (or set of documents) utilized to comply with paragraph (b)(1) need not be disseminated pursuant to paragraph (b)(2), unless the document also is intended to be, or has been, disseminated to any potential customer.[41] This definition is consistent with the purpose of paragraph (b)(2), the only paragraph in which the term is used, in that paragraph (b)(2) is designed to assure access by all potential customers to information prepared by issuers for dissemination to prospective investors.[42]

3. Receive Copies of Final Official Statements

Paragraph (b)(3) of the Rule requires that an underwriter contract with the issuer, or its agents, to receive sufficient quantities of the final statement to provide them to potential customers upon request and to comply with any rules of the MSRB. The purpose of the provision is to facilitate the prompt distribution of disclosure documents so that investors will have a reference document to guard against misrepresentations that may occur in the selling process. In addition, the paragraph, in conjunction with paragraph (b)(4), will assure that both investors and dealers in the secondary market have greater access to information regarding the terms of the securities.

As noted earlier, while the quality of disclosure has improved greatly in the municipal markets, the PSA Task Force Report reveals that significant problems exist in the distribution of disclosure documents. Currently, the MSRB's rule G–32 requires that, if an official statement is prepared, an underwriter participating in a primary offering of municipal securities must make the official statement available to investors "promptly after the date of sale of the issue but no later than two business days before the date all securities are delivered by the syndicate manager to the syndicate members." In addition, the GFOA's Disclosure Guidelines note that "it is important for the official statement to be made available at such time and in such quantity as will permit the official statement to be mailed expeditiously by the underwriters in time for receipt by investors at or prior to settlement." [43]

Notwithstanding underwriters' current obligations under the MSRB's rules, the MSRB stated its concern that the task of distributing official statements often is relegated to a low priority by underwriters. By adopting paragraph (b)(3), which serves as a foundation for fostering compliance with the requirements of MSRB rule G–32, the Commission wishes to emphasize the importance it places on the prompt distribution of final official statements.

Under pararaph (b)(3), the underwriter would be required to contract with the issuer or its agents to receive copies of the final official statement within the time periods mandated by the Rule. Generally, issuers will state in notices of sale for competitive offerings that the successful bidder will be provided with a "reasonable number" of final official statements. Before bidding on a competitive offering, or as a condition to bidding, the underwriter would need to determine that it can comply with the terms of the Rule.

Because the bond purchase agreement in a negotiated offering typically is not signed until a late point in the offering process, the underwriter would need to be sure that contractural terms meeting the requirements of paragraph (b)(3) are separately negotiated or are otherwise a clear condition to its participation in the offering. Either the issuer or its agent may be the party contractually bound to provide the underwriter sufficient copies of the final official statement. In syndicated offerings, members of the syndicate would need to assure themselves that provision has been made by the managers to comply with the terms of the Rule and may require such an undertaking in the agreement among underwriters.

Generally, the underwriter's responsibility would be satisfied under paragraph (b)(3) if it has arranged for sufficient quantity of the final official statement to be made available from either the issuer or a financial printer within the time periods stated in the Rule. While the Rule does not provide rigid quantitative standards for the minimum number of official statements that would be required, the underwriter would need to obtain copies sufficient to comply with paragraph (b)(4) of the Rule and to satisfy MSRB rule G–32 or any other rules adopted by the MSRB. Under current MSRB rule G–32, therefore, the underwriter would have to provide each investor a copy of the final official statement no later than settlement. Also, as discussed below, paragraph (b)(4) generally requires that the underwriter provide copies of the final official statement, upon request, to any potential customer for a period of at least 25 days, and up to 90 days following the end of the underwriting period.

[39] *Cf.* Rule 10b–6(c)(2)(ii) (17 CFR 240.10b–6(c)(2)(ii)) (defining a "prospective underwriter" to include one "who has reached an understanding, with the issuer or other person on whose behalf a distribution is to be made, that he will become an underwriter, whether or not the terms and conditions of the underwriting have been agreed upon").

[40] If a broker, dealer or municipal securities dealer reaches an initial understanding that it will offer an issuer's securities, and later, for example, at pricing, determines not to act as an underwriter, its obligations under paragraph (b)(2) would cease.

[41] The Commission does not expect that an underwriter who determines that the preliminary official statement is inaccurate or contains misleading omissions regarding the issuer, would provide copies to potential customers, upon request, pursuant to paragraph (b)(2).

[42] Whether a document identified by an issuer as a preliminary official statement meets the requirements of paragraph (b)(1) depends on whether it is deemed final by an issuer, except for the information specifically permitted to be omitted by that paragraph.

[43] Procedural Statement No. 3, "Availability of Official Statements to the Public and Delivery of Official Statements to Underwriters", *GFOA Disclosure Guidelines, supra* note 6, at 83.

Any contract with the issuer or its agents would have to provide that copies of the final official statement will be delivered, at the latest, within seven business days following the bond purchase agreement, and in sufficient time to accompany or precede any confirmation requesting payment ("money confirmation").[44] Apart from requiring that the underwriter contract to obtain copies of the final official statements within a reasonable period of time, the Commission has chosen to leave the determination of the precise method and timing of delivery to the MSRB. Moreover, if the MSRB determines that specific recordkeeping requirements are necessary to assure compliance with this or other provisions of the Rule, it would be able to use its authority under section 15B(b)(2)(G) of the Exchange Act to adopt such rules.

(a) *Definition of "issuer".* In addition to comments on the mechanical requirements of paragraph (b)(3) of the Rule, the Commission received numerous comments on the content of disclosure required in a final official statement and the persons who would be considered "issuer(s)" for purposes of the Rule. The term "issuer of municipal securities" is used in the Rule to identify the person from whom disclosure documents must be received, for purposes of paragraph (b)(1), and with whom the underwriter must contract to obtain disclosure documents, for purposes of paragraph (b)(3). In response to commentators' concerns that the Proposed Rule did not properly distinguish between governmental issuers and the private borrower in conduit offerings, the Commission has specifically defined the term "issuer of municipal securities" in paragraph (e)(4). Commentators had argued that, among other things, the conduit borrower is the economic beneficiary of the transaction and that review of information by the underwriter for purposes of paragraph (b) of this Rule should be focused on the conduit borrower. In light of these comments,[45] the Commission has determined to clarify the Rule by defining the term "issuer of municipal securities" to account for the multiple credit sources that may be considered issuers for purposes of the Rule.[46] As defined, the term encompasses both the governmental issuer specified in section 3(a)(29) of the Exchange Act,[47] as well as the issuer of any separate security, including a separate security as identified in Rule 240.3b–5(a) of the Exchange Act.[48] Accordingly, underwriters would be free to contract with any issuer, or its agent, that is in a position to supply the documents required by paragraph (b)(3) of the Rule.

(b) *Definition of "final official statement".* The term "final official statement", which is used in both paragraphs (b)(3) and (b)(4), is defined in paragraph (e)(3) to mean a document or set of documents prepared by an issuer of municipal securities, or its agents, setting forth, among other matters, information concerning the issuer of the municipal securities and the proposed issue of securities, that is complete on the date of delivery to the Participating Underwriter. As adopted, the term "final official statement" contains several modifications from the Proposed Rule that are designed to reflect the views of commentators.

The term "complete" is used to indicate that the final official statement should not be in preliminary form or intended by the issuer to be subject to amendment after its delivery to the underwriters, except to take account of subsequent events or to correct any errors that are discovered. Also, in response to suggestions from the American Bar Association,[49] and other commentators, the date as of which the official statement must be complete has been changed from the time of the agreement to purchase the securities, to the time at which the final official statement is to be delivered to the underwriters. This avoids the problem that might otherwise arise if events occur between the time of agreement to purchase the securities and the date on which the final official statement is made available to underwriters for dissemination pursuant to this Rule and the rules of the MSRB.

Another modification to the definition of final official statement in the Proposed Rule relates to the use of multiple documents. In the Proposed Rule, the term final official statement referred to a single document that has generally been viewed by the industry as the final official statement. As noted in the Release, the Commission is aware that in competitive offerings a preliminary official statement may be circulated to potential bidders which omits the information described in paragraph (b)(1). In some cases, the issuer will prepare a final official statement containing all the terms of the offering, while in other cases, pricing, underwriting, and other information is appended to the preliminary official statement, which is then regarded by the issuer as its final official statement.

The revised definition of a final official statement specifically recognizes that the issuer's final official statement may be comprised of one or more documents, "not necessarily bound together in a single booklet."[50] Thus, in the context of competitive offerings described above, the term would encompass a preliminary official statement coupled with pricing information. In addition, the term "final official statement" would incorporate a group of documents, containing disclosure about the offering, that collectively present an accurate description of its terms. Some commentators maintained that if an issuer had prepared a complete disclosure document for a recent offering, underwriters should be permitted to use that document, together with supplemental information updating the disclosure and describing the terms of the current offering, to satisfy the requirements of the Rule. It was suggested that this procedure may be appropriate in the context of certain "wire deals" and short-term offerings.[51]

4. Provide Copies of Final Official Statements to Potential Customers

As adopted, paragraph (b)(4) of the Rule requires that underwriters provide copies of any final official statement to any potential customer, on request. Once it receives a request for a copy of the final official statement, the underwriter must send the copy no later than the next business day, by first class mail or another equally prompt means. The requirements in this paragraph of the Rule differ from the Proposed Rule in two limited respects.

First, there no longer is a requirement that copies of the final official statement be provided to "any person." Many of the commentators suggested that this requirement was too broad, and would have placed an unnecessary burden on the underwriter. Accordingly, the Commission has limited the obligation of underwriters so that, consistent with paragraph (b)(2), they need respond only to requests for copies from potential customers.[52]

A second modification is the addition of specific time periods during which the underwriter must supply copies of the final official statement. The Proposed Rule would have required underwriters to supply copies of the final official statement, on request, for an indefinite period. Many of the commentators indicated that this requirement would have placed an unreasonable burden on underwriters and suggested that the Commission limit the delivery period. Suggestions for the termination of the delivery obligation ranged from completion of the offering to the maturity or redemption of the bonds. If a municipal disclosure repository were created, commentators argued that the underwriters' obligation to distribute copies of the final official statement should terminate at the time the documents were available from the repository.

After reviewing the comment letters, the Commission has decided to limit the underwriter's delivery obligation to a period commencing with the availability of the final official statement and terminating at a maximum of 90 days following the "end of the underwriting period," a term that is defined in paragraph (e)(2) of the Rules.[53] Moreover, while the underwriter must supply copies of the final official statement to potential customers on request for a period of at least 25 days following the end of the underwriting period,[54] its obligation under paragraph (b)(4) will terminate after the 25-day period, if the final official statement is made available to any person from a nationally recognized municipal securities information repository ("NRMSIR").[55] If the final official statement is not available from a NRMSIR, the underwriter's obligation to deliver copies of the final official statements, upon request, would continue for the full 90-day period.

(a) *Nationally Recognized Municipal Securities Information Repository.* In the Release, the Commission solicited comment on the creation of a central repository for municipal disclosure documents.[56] Of the more than 60 comment letters the Commission received, 45 commentators expressed a view on the concept of a central repository. Forty commentators supported some form of a central repository.[57] The primary reason given for supporting the creation of one or more central repositories was the need to have a readily accessible central source of information on municipal bonds.

Even among the 40 commentators that supported the development of a central repository, there was a substantial difference of opinion on how it should be implemented, what documents should be filed, and who should file them. A number of commentators argued that competing private organizations that meet government-imposed standards offer a better approach than a single governmental or quasi-governmental service.[58]

The Commission strongly supports the development of one or more central repositories for municipal disclosure documents.[59] The use of such repositories will substantially increase the availability of information on municipal issues and enhance the efficiency of the secondary trading market. In this regard, the Commission welcomes the recent announcement of the MSRB[60] that it is prepared to establish and manage a central repository that would be funded both by the MSRB and user fees, and would provide for the collection and dissemination of official statements and refunding documents.[61] The Commission understands that in conjunction with the adoption of Rule 15c2–12, the MSRB intends to propose an amendment to its rule G–32, that would require underwriters to submit copies of final official statements to the repository. Once the documents are received from the underwriter, the MSRB has indicated that the repository will function like a public library that stores and keeps an index of its documents. Private vendors will be encouraged to utilize the MSRB's repository as a means of collecting documents for dissemination, in complete or summary form, to their customers.

Although the Commission supports the MSRB's recent initiative, it recognizes the benefits that may accrue from the creation of competing private repositories.[62] The Commission, therefore, views positively the recent statements by disclosure services indicating their intention to acquire information from the MSRB's repository,

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[44] The Commission is aware that in many cases underwriters provide interim confirmations to investors, notifying them of the precise amount of municipal securities purchased and the terms of the purchase. This interim confirmation is followed later by a money confirmation requesting payment for the bonds purchased. The Rule requires only that the underwriter contract to receive copies of the final official statement prior to the time that money confimations are sent to customers.

[45] Apart from the mechanical requirements of the Rule the Commission notes that the actual disclosure responsibilities of the parties under the general antifraud provisions of the federal securities laws will depend on the facts and circumstances in each case.

[46] Under the definition in paragraph (e)(3), the issuer of a letter of credit would also be considered an issuer of the securities for purposes of this Rule.

[47] 15 U.S.C. 78c(a)(29).

[48] 17 CFR 240.3b–5(a).

[49] Letter from James H. Cheek, Chairman, Committee on Federal Regulation of Securities, and Robert S. Amdursky, Chairman, Subcommittee on Municipal and Governmental Obligations, American Bar Association, to Jonathan G. Katz, Secretary, SEC (Jan. 26, 1989).

[50] *See* Letter from the American Bar Association.

[51] As defined in paragraph (e)(3), these documents would constitute a final official statement when combined. In order to meet the requirements of paragraph (b)(3), however it would be necessary for the underwriter to contract with the issuer for a sufficient quantity of the combined documents for dissemination to investors.

[52] As pointed out earlier, underwriters commenting on the Proposed Rule informed the Commission that in many cases they routinely respond to requests for copies of documents, regardless of the source of the request. In addition, copies of final official statements are generally maintained by the issuer. For example, Procedural Statement No. 3 of the GFOA's Disclosure Guidelines, "Availability of Official Statements to the Public and Delivery of Official Statements to Underwriters", states "all parties other than underwriters who contact the issuer should receive, without charge, at least one copy of the official statement." *GFOA Disclosure Guidelines, supra* note 6 at 83.

[53] The term "and of the underwriting period" differs from similar terms utilized in MSRB rules G–11 and G–32. As used in paragraph (b)(4) of the Rule, the term identifies the period from which the underwriter's obligation to provide final official statements to potential customers is measured. For issues that are sold prior to settlement with the issuer, the settlement date (i.e. the date the issuer delivers the securities to the underwriter) would be the "end of the underwriting period". For securities that are not sold by settlement, the underwriting period is defined to end when the underwriter sells its unsold balance of securities. The definition recognizes that generally in municipal securities offerings, until the syndicate breaks, each underwriter is considered responsible for a portion of the unsold syndicate balance.

[54] During the underwriting period, the underwriter must remain sensitive to developments that impact the accuracy and completeness of the key representations contained in the final official statement. If there are material changes, the final official statement should be amended or "stickered" to provide complete and accurate disclosure.

[55] The elements the Commission would consider in determining whether a particular entity is a NRMSIR are discussed in *infra* note 65.

[56] The concept of a central repository for municipal official statements has been discussed by the industry for a number of years and was specifically presented to the Commission in a proposal by the MSRB. *See* Letter from James B.C. Hearty, Chairman, MSRB, to David S. Ruder, Chairman, SEC (Dec. 17, 1987). As initially envisioned by the MSRB, participation in the repository by municipal issuers would have been mandatory and information concerning new issues would have been made available of interested persons for a fee.

[57] The Commission received comments from a broad spectrum of entities on this issue. As indicated earlier, a detailed description of the comments is included in the comment summary, which is available in the Commission's Public File No. S7–20–88.

[58] *See, e.g.*, Letter from J. Kevin Kenny, Chairman and Chief Executive Officer, J.J. Kenny Co., Inc., to Jonathan G. Katz, Secretary, SEC (Dec. 27, 1988).

[59] The Commission notes that the creation of multiple repositories should be accompanied by the development of an information linkage among these repositories. The advent of a linked repository system would afford the widest retrieval and dissemination of information to the secondary markets.

[60] Letter from John W. Rowe, Chairman, MSRB, to Jonathan G. Katz, Secretary, SEC (June 1, 1989).

[61] Under section 15B(b)(2)(J) of the Exchange Act, 15 U.S.C. 78o–4(b)(2)(J), any fees charged by the MSRB must be reasonable.

[62] For example, the Bond Buyer maintains a repository for municipal securities information under the name "Munifiche."

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once created.[63] Regardless of whether private vendors choose to utilize the services of the MSRB's proposed repository, or to gather information independently, the creation of central sources for municipal offering documents is an important first step that may eventually encourage widespread use of repositories to disseminate annual reports and other current information about issuers to the secondary markets.[64]

The Commission believes that paragraph (b)(4) of Rule 15c2-12 provides an important incentive to underwriters that will further encourage the development of one or more central repositories. By submitting copies of final official statements to any NRMSIR,[65] the underwriter avoids the responsibility to deliver, upon request, copies of final official statements to any potential customer for the full 90 day period specified in the Rule. In this regard, the provisions of paragraph (b)(4) are consistent with the views of a significant number of commentators who suggested that an underwriter's responsibility to distribute copies of the final official statement should terminate upon deposit of the documents in a central repository. At the same time, the Commission believes that investors will benefit by having access to information directly from underwriters during the twenty-five days after the end of the underwriting period, when the issuer's securities are most likely to be traded actively.

C. Exemptions.

In addition to inviting comments about the specific provisions of the Proposed Rule, the Release noted that there may be a range of credit risks and disclosure concerns that vary according to the type of municipal bonds being offered, the presence of unusual or complex financing techniques, and the maturity of the securities. Moreover, the Release recognized that many offerings of municipal securities are conducted in a manner that is akin to a "private placement." In light of this practice, the Commission requested the views of commentators on whether exemptions from the Rule should be created for, among other things, offerings made to a limited number of sophisticated investors or offerings of securities with short maturities.

While the Rule is designated to emphasize the implemenation of responsible disclosure practices, it is not intended to restrict access to the capital markets by any issuer. Many of the commentators stated that, as a general matter, the Proposed rule would not have affected significantly the manner in which they conduct offerings currently. There were, however, suggestions that some provisions of the Proposed Rule should be modified, or exemptions created, in order to accommodate certain offerings where application of the Proposed Rule would have created unnecessary hardships.

The National Association of Bond Lawyers ("NABL"), along with others, commented that if the Rule were adopted as proposed, it may have impeded the use of certain efficient market practices.[66] The exemptions contained in the Rule are designed to facilitate certain of those offerings where the Commission believes that, given the sophistication of the investors and the alternative mechanisms developed by the industry to facilitate disclosure in connection with such offerings,[67] the specific requirements of the Rule are not necessary to prevent fraud and encourage the dissemination of disclosure into the secondary market.

After reviewing the comment letter, the Commission has determined to provide exemptions from the Rule for offerings of municipal securities in authorized denominations of $100,000, (1) that are sold in "limited placements," (2) that have maturities of less than nine months, or (3) that contain provisions that allow the investor to redeem or sell to the issuer or its agent the securities at least as frequently as every nine months. In addition, the Rule would permit the Commission to grant exemptions that are consistent with the public interest and the protection of investors. The Commission wishes to emphasize that underwriters participating in offerings that are able to utilize an exemption from the Rule, nevertheless remain subject to the general antifraud provisions of the federal securities laws.[68] Moreover, any participating underwriter in a remarketing of securities initially offered in reliance upon the exemptions contained in paragraph (c)(3), when the remarketing is a primary offering as that term is defined in paragraph (e)(7), would be subject to the Rule, unless that primary offering qualified for exemptions under paragraph (c)(1) or (c)(2).

A condition of each of the exemptions discussed below is the requirement that the municipal securities be offered in authorized denominations of $100,000 or more. In choosing the $100,000 minimum denomination, the Commission was persuaded by the comments of NABL and others that, in this context, minimum denominations on the securities would not unnecessarily interfere with the ability of underwriters to sell securities to sophisticated investors in situations where the investors currently obtain adequate information.[69]

[63] *See e.g.*, Letter from J. Kevin Kenny, Chairman and Chief Executive Officer, J.J. Kenny Co., Inc. to Jonathan G. Katz, Secretary, SEC (June 6, 1989).

[64] The Commission notes that the GFOA Disclosure Guidelines currently state: "Submission of documents to a public or private central repository may be used as one part of accomplishing the purposes of disseminating and preserving official statements, annual reports, information statements, releases, and escrow arrangements. [. . .] Issuers are strongly urged to send, promptly upon availability, a copy of each document to a repository." Procedural Statement No. 8, "Dissemination of Information and Providing Statements, Reports, and Releases to a Central Repository," *GFOA Disclosure Guidelines, supra* note 6, at 91.

[65] In determining whether a particular entity is a NRMSIR, the Commission will look, among other things, at whether the repository: (1) is national in scope; (2) maintains current, accurate information about municipal offerings in the form of official statements; (3) has effective retrieval and dissemination systems; (4) places no limits on the issuers from which it will accept official statements or related information; (5) provides access to the documents deposited with it to anyone willing and able to pay the applicable fees; and (6) charges reasonable fees.

[66] Letter from Paul S. Maco, Chairman, Special Committee on Securities Law and Disclosure, NABL, to Jonathan G. Katz, Secretary, SEC (Jan 31, 1989). Specifically, NABL noted that the Proposed Rule may have effectively eliminated: (1) tax-exempt commercial paper programs; (2) flexible mode and variable rate issues; (3) municipal short-term note issues used as cash management techniques; (4) competitive bid local issues whose only purchases are local banks and institutions, where bidding practice is mandated by statute; (5) underwritten sales limited to sophisticated investors and privately placed issues where purchasers conduct their own credit investigation; and (6) "subject to delivery of paper deals" or "wire deals," where an advantageous rate may be achieved if satisfactory disclosure and other documents are delivered prior to closing.

[67] For example, the Commission notes that issues of tax-exempt commerical paper generally prepare a commerical paper memorandum, containing disclosure about the issuer, that is then used in subsequent roll-overs. A "10b-5 certificate" is usually obtained from the issuer's chief financial officer on each roll-over date to assure the accuracy of the the issuer's disclosure. Similarly, commentators indicated that in traditional municipal private placements, many investors condition their purchases upon receipt of a placement memorandum containing complete disclosure about the securities being sold.

[68] Underwriters also must be aware that separate MSRB provisions may be applicable, as well as state securities laws. For example, even where the provisions of the Rule are not applicable, the MSRB may require dissemination of final official statements, if they are prepared by the issuer. *See, e.g., Disclosure Requirements for New Issue Securities: Rule G-31, MSRB Reports*, (Sept. 1986) at 17 (indicating that rule G-32 applies to both private and public offerings).

[69] NABL suggested that use of a $100,000 minimum denomination would assure that only sophisticated purchasers are sold bonds in offerings

Continued

The term "authorized denomination of $100,000 or more" is defined in paragraph (e)(1) of the Rule. The definition recognizes that municipal securities currently are issued in registered form and that instructions to the transfer agent are necessary to assure that securities sold in denominations of $100,000 are not resold in smaller amounts. At the suggestion of the commentators, the definition also is tailored to address the offering of securities with original issue discount, such as zero coupon securities, by making the reference to the purchase price, rather than the principal amount of the securities.[70]

1. Limited Placements

The Release requested comment on whether the Rule should contain some type of "private placement" exemption.[71] The Release noted that the primary intent of the Proposed Rule was to focus on those offerings that involve the general public and are likely to be actively traded in the secondary market. The absence of a limited placement exemption in the Proposed Rule reflected the Commission's concern that, without transfer restrictions, municipal securities initially sold on a limited basis to sophisticated investors could be resold to numerous secondary market investors, who lacked the sophistication of the initial purchasers.

Comment was requested on whether, and in what manner, the Rule should distinguish between offerings sold to a limited number of investors and those involving broader sales and related efforts. The Commission inquired whether the Rule should contain an exemption for offerings sold to no more than 10, 25, 35 or 50 investors, and whether the exemption should look at the institutional nature or sophistication of the investors. To avoid having securities that are sold to sophisticated investors pursuant to a limited placement exemption immediately be resold in the retail market, the Commission inquired about whether the underwriter should be required to assure that initial investors purchase with investment intent, or whether holding periods or transfer restrictions should be required.

Commentators discussing the issue almost unanimously favored an exemption from the requirements of the Rule for offerings that are similar to traditional municipal private placements. Nevertheless, there were a variety of opinions given on how the exemption should be structured. Among other things, commentators drew analogies to concepts developed under the Securities Act, including proposed Rule 144A.[72]

As some of the commentators noted, the federal securities laws have traditionally distinguished between sales of securities to the general public and limited offerings made to sophisticated investors. In general, offerings of securities to sophisticated investors are not required to comply with the more formal disclosure regimen applicable to registered offerings, because of the investors' perceived ability to "fend for themselves" by demanding the disclosure necessary to make an informed investment decision, and by having such knowledge and experience to be capable of evaluating the merits of the prospective investment. Based in part on similar reasoning, the Commission has determined to incorporate a conditional exemption in the Rule for offerings of securities that are sold to a limited number of sophisticated investors in denominations of $100,000 or more.

Paragraph (c)(1) provides an exemption from the Rule for offerings sold to no more than 35 investors, each of whom the underwriter reasonably believes is not purchasing for more than one account and has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the prospective investment. As discussed above, the Commission was concerned that any securities offered pursuant to a limited placement exemption could immediately be resold to public investors without the benefit of the Rule's requirements. Accordingly, the Commission requested comment on whether, in conjunction with a limited offering exemption, any specific terms or restrictions, such as minimum holding periods, should be imposed on securities offered in reliance on the exemption. A number of commentators, including the PSA and NASACT, suggested that some limitations on resales may be appropriate. Commentators also indicated that current practice in many municipal private placements is to require letters of investment intent.[73]

The Commission is aware that restrictions on resales of securities are of concern even to institutional investors who initially purchase securities as part of a buy and hold strategy, because they limited the institution's ability to resell securities in changing market conditions. Rather than imposing specific transfer restrictions, the Commission has chosen to require that the securities be issued in relatively large denominations and that the underwriter have a reasonable belief that the securities are being acquired by the purchaser for investment.

Consistent with current practice, the Commission believes that an underwriter will satisfy its obligation under paragraph (c)(1) if it obtains a statement indicating that the investor has purchased the securities with investment intent. Furthermore, as suggested by the American Bar Association, in order to maintain the integrity of the 35 person limit, the Rule requires that each of the purchasers acquire securities for only one account. Finally, the Rule requires that the underwriter make a subjective determination that each investor have the knowledge and experience required to evaluate the merits and risks of the prospective investment.[74] The Commission believes that this procedure also is consistent with the current practice in the municipal securities markets, where limited placements are generally made only to institutional purchasers.

(a) *Definition of Underwriter.* Some commentators suggested that since the term "underwriter" in the Proposed

not subject to the Rule and would have the benefit of: (1) not interfering with cost-savings financing programs using commerical paper, variable rate demand notes, multimode securities and cash flow borrowings; (2) not requrie elaborate development of concepts such as accredited investor, safe harbor, restricted resale, etc.; (3) not adversely affect the institutional market, where investors are often loath to purchase (or are prohibited from purchasing) restricted or legended securities; (4) set the focus of the exemption on the type of investors to be protected, not on the type or volume the issue (thus avoiding a complicated scheme of districtions among issuer type); (5) be applied easily in both the initial issueance and secondary market context; and (6) preserve existing avenues of funding for municipal issuers, without imposing unnecessary costs.

[70] For zero coupon and deep discount securities, the term authorized denomination is defined in paragraph (e)(1) based on the market value of the security.

[71] In 1988, approximately $2.716 million in municipal private placements were reported, amounting to 2.3% of total long-term bond offerings. These figures, however, are considered to underestimate the actual issuance of municipal securities through private placements. Source: IDD/PSA Database.

[72] *See* Securities Act Release No. 6806 (October 21, 1988) 53 FR 44016 (proposing Rule 144A).

[73] *See also*, Procedural Statement No. 6, "Practices in Note and Bond Sales: Private Placements" *GFOA Disclosure Guidelines, supra* note 6, at 88 (indicating that the issuer should receive assurances that the transaction is in fact a direct placement).

[74] This differs from Regulation D under the Securities Act, which provides that the issuer in private placements may presume that accredited investors meet the purchaser qualifications.

Rule [75] was defined as a broker, dealer, or municipal securities dealer who participated in a "distribution" the Commission had created an implicit private placement exception.[76] Specifically, they noted that persons selling securities in an offering that did not involve a distribution would not be subject to the Rule. The word "distribution", which was used in the definition of "underwriter" in the Proposed Rule, has been replaced with the term "offering". This change is intended to clarify that a broker, dealer or municipal securities dealer may be acting as underwriter, for purposes of the Rule, in connection with a private offering. Unless the offering meets the requirements of paragraph (c)(1), the underwriter would be subject to the requirements of the Rule.

2. Short-Term Securities

Another issue on which the Commission requested comment was whether an exemption should be provided for short-term debt. Of the commentators who responded to this issue, many distinguished between traditional short-term debt, such as bond, tax, and revenue anticipation notes, which may be sold to a variety of investors, and tax-exempt commercial paper, which primarily is sold in large denominations to institutional investors.[77] Commentators argued that imposition of the requirements of the Rule to tax-exempt commercial paper would seriously impact an issuer's ability to enter the market. The MSRB, along with others, also compared short-term municipal debt to corporate commercial paper that is exempt from the registration provisions of the Securities Act.[78] The MSRB noted that its own rule G-32 contains a specific exemption for tax-exempt commercial paper.

After reviewing the comment letters, the Commission has determined to provide an exemption for offerings of short-term debt with fixed maturities of less than nine months.[79] As with the other exemptions, underwriters would only be able to use the exemption in those offerings in which the securities are issued in authorized denominations of $100,000 or more. The Commission believes that the philosophy of the exemption is consistent with the exemption in section 3(a)(3) of the Securities Act.[80] Nevertheless, the Commission does not want to imply a direct correlation between tax-exempt commercial paper, as the term is used frequently in the municipal markets, and commercial paper offered pursuant to Section 3(a)(3).

3. Securities With Demand Features

In addition to traditional short-term debt issues with fixed maturities of less than nine months, many issuers have utilized multi-mode bonds and variable rate demand notes as a means of efficiently financing their operations. Variable rate demand notes have fixed maturities equivalent to long-term bonds, but provide the purchaser with the opportunity to tender the bonds to the issuer or a third-party liquidity facility at preset tender dates that may be weekly, monthly, or annually. By offering variable rate demand notes, or tender option bonds, the investor is able to reduce interest rate risk, while the issuer can offer short-term yields on long-term bonds.

Variable rate demand notes, as well as tax-exempt commercial paper, may be a component of multi-mode offerings that permit the issuer to convert outstanding debt from short-term variable rates to long-term fixed rates. Investors are notified of the issuer's determination to exercise its conversion option and typically are given the opportunity to redeem their securities at par or retain the securities in their converted form. Bonds that are redeemed upon conversion are generally offered pursuant to a remarketing agreement, with liquidity support typically provided by a third-party financial institution.

Although the use of variable rate financing has declined in recent years in response to a flattening of the yield curve, the Commission recognizes that variable rate debt remains an important method of financing for many issuers.[81] Some commentators expressed concern that applying the provisions of the Proposed Rule to variable rate demand notes, or similar securities, might unnecessarily hinder the operation of this market, if underwriters were required to comply with the provisions of the Proposed Rule on each tender or reset date. To assure that these means of financing are not unnecessarily affected, the Commission has provided an exemption in Rule 15c2-12 that permits sales of variable rate demand notes and other flexible mode securities with effective maturities of less than nine months.

Paragraph (c)(3) provides an exemption for securities issued in authorized denominations of $100,000 or more that, at the option of the holder, may be tendered to an issuer of such securities, or its designated agent, for redemption or purchase at par value or more, at least as frequently as every nine months until maturity, or earlier redemption, or until such securities are remarketed in a primary offering. Thus, variable rate demand notes, tax-exempt commercial paper with an automatic roll-over feature, and tender option bonds with maturities or reset dates of less than nine months, would be eligible for the exemption. In multi-mode offerings, upon conversion to a fixed maturity of greater than nine months, the exemption would no longer be applicable and any primary offering of the securities by a remarketing agent would be subject to the Rule.

D. Exemptive Authority

In addition to the express exemptions contained in paragraphs (c)(1), (2) and (3) of the Rule, paragraph (d) provides that the Commission may, upon written request, or upon its own motion, exempt any participating underwriter from any requirement of the Rule. The Commission recognizes that there is a continuing evolution in financial products and the means of selling securities. While the Commission believes that the exemptions contained in the Rule will accommodate those offerings in which current practice is appropriate, without the need for the additional requirements of the Rule, it is also aware that instances may arise where the objectives of the Rule can be achieved without strict compliance with its provisions.

Paragraph (d) permits the Commission to exempt from the Rule underwriters participating in particular primary offerings of municipal securities, or classes of transactions, either unconditionally, or upon specified terms and conditions. In determining whether any exemption is appropriate, the Commission would consider whether such an exemption is consistent with the public interest and the protection of investors. Among other things, the Commission would, in some cases, expect persons requesting an exemption to demonstrate that the objectives of the Rule can be achieved using alternative procedures. In light of the fact that the Rule codifies, to a great degree, responsible industry practice, and the fact that the current exemptions are designed to adequately accommodate financing techniques where departure from the specific provisions of the Rule is appropriate, the Commission does not expect that exemptions will be granted routinely.[82]

E. Transitional Provision

Paragraph (f) of the Rule provides an exemption from the provisions of the Rule relating to the dissemination of the final official statements, for remarketings of securities that were initially issued prior to July 28, 1989, and where the underwriter has a contractual commitment to act as remarketing agent. The transition period applies only to paragraphs (b)(3) and (b)(4) of the Rule. The Commission does not believe there is a need for an exemption from the other paragraphs of the Rule, since dissemination of a preliminary official statement is only required if one is prepared and the information needed to comply with paragraph (b)(1) of the Rule is information reasonably foreseeable as necessary to facilitate compliance with the anti-fraud provisions of the Federal securities laws that were in effect at the time of the contract. In this regard, the Commission understands that it is common to provide in remarketing agreements that the remarketing agent will have access to the information necessary to comply with the federal securities laws.

III. Interpretation of Underwriter Responsibilities

In the Release, the Commission also included an interpretation of the responsibilities of underwriters of municipal securities under the general antifraud provisions of the federal securities laws.[83] In light of the practices revealed in the staff's investigation of the Supply System default, the Commission determined it was appropriate to articulate clearly the obligations of underwriters participating in municipal offerings. While the focus of the Interpretation was on activities of underwriters, the Commission recognizes that the primary responsibility for disclosure rests with the issuer.[84]

The Interpretation applies to all offerings of municipal securities, regardless of whether the offering is subject to the provisions of Rule 15c2-12. The Interpretation emphasized the obligation of underwriters under the general antifraud provisions of the federal securities laws to have a reasonable basis for recommending any municipal securities. The Interpretation noted that when the underwriter provides disclosure documents to investors, it makes an implied representation that it has a reasonable basis for belief in the accuracy and completeness of the key representations contained in the documents.

The Interpretation stated that the extent of review necessary for the underwriter to attain a reasonable basis for its belief in the accuracy and completeness of key representations in the final official statement will depend upon all the circumstances. The factors enumerated in the Interpretation were: the extent to which the underwriter relied upon municipal officials, employees, experts and other persons whose duties have given them special knowledge of particular facts; the type of underwriting arrangement (*e.g.* firm commitment or best efforts); the role of the underwriter (manager, syndicate member, or selected dealer); the type of bonds being offered (general obligation, revenue, or private activity); the past familiarity of the underwriter with the issuer; the length of time to maturity of the bonds; the presence or absence of credit enhancements; and whether the bonds are competitively bid or are distributed in a negotiated offering. The Interpretation stated that, at a minimum, the Commission expects that in all offerings underwriters will review the issuer's disclosure document(s) in a professional manner for possible inaccuracies and omissions.[85]

The Interpretation presented the Commission's view of the current responsibilities of underwriters of municipal securities under the federal securities laws. It did not create new standards of liability.[86] Moreover, although the Interpretation was based on judicial decisions and previous administrative actions, the Commission sought comment on the extent to which underwriters currently meet the standards articulated in the Interpretation, and whether alternative

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[75] The Proposed Rule defined "underwriter" to include "any person who has purchased from an issuer with a view to, or offers or sells to, an issuer in connection with the distribution of, any security . . ." The definition in the Proposed Rule paralleled the definition in section 2(11) of the Securities Act, 15 U.S.C. 77b(11), with one modification to more clearly reflect the terminology used in the municipal securities industry for a customary distributor's or seller's commission. *See* Release, 53 FR at 37786, n. 58.

[76] *See generally* Securities Act Release No. 6806 (October 21, 1988) 53 FR 44016, at n.145 (discussing the term "distribution" in the context of the definition of "underwriter" found in section 2(11) of the Securities Act). *But see* Rule 10b-6(c)(5) of the Exchange Act, 17 CFR 10b-6(c)(5) (defining for purposes of that rule, the term distribution to mean an offering of securities that is distinguished from ordinary trading by the magnitude of the offering and special selling efforts and selling methods).

[77] The Commission understands that concerns about reissuance problems under the federal tax laws have reduced true tax-exempt commercial paper offerings in recent years. In 1988, for example, only 16 issues of tax-exempt commercial paper, amounting to $1.142 million were offered. This figure is up from 6 offerings in 1987, amounting to $65 million. Source: IDD/PSA Database.

[78] Section 3(a) (3) of the Securities Act, 15 U.S.C. 77c(a)(3) exempts from registration "[a]ny note, draft, bill of exchange, or bankers acceptance which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited".

[79] In 1988, 1,482 short-term bond issues (less than 13 months), totaling $23,125 million, were offered with par amounts exceeding $1 million. Four hundred ninety offerings above one million, with a total par amount of 6,246.9 million, had final maturities of less than nine months. Source: IDD/PSA Database.

[80] *See generally*, Securities Act Release 4412 (Sept. 20, 1961) 26 FR 9158 (discussing short-term corporate debt).

[81] Issuance of variable rate demand obligations peaked in 1985, at $66,855 million (based on issues with a par amount exceeding $5 million). In 1988, 903 issues were offered, with a total volume of $21,622 million. Source: IDD/PSA Database.

[82] In conjunction with the adoption of the Rule, the Commission also is adopting Rule 30-3(a)(48) of the Rules of Practice. 17 CFR 241.30-3(a)(48), which delegates to the Division of Market Regulation, the authority to grant exemptive requests under Rule 15c2-12. Securities Exchange Act Release No. 26966 (June 28, 1989). The Commission expects that the Division will consider any exemptive requests in light of the goals of the Rule and will submit such matters to the Commission for consideration as appropriate. Requests for exemptive relief, as well as interpretive and no-action advice concerning the Rule, should conform with the Commission's published procedures and should be addressed to the Chief Counsel, Division of Market Regulation, Mail Stop 5-1, Securities and Exchange Commission, Washington, DC 20549. The procedures to be followed in requesting no-action or exemptive relief are outlined in Securities Act Release No. 5127, 36 FR 2600 (Jan. 25, 1971); *see generally*, Lemke, *The SEC No-Action Letter Process*, 42 *Bus. Law.* 1019 (1987).

[83] The Interpretation was based on judicial and administrative decisions applying the federal securities laws and did not address the responsibilities of underwriters under the MSRB's rules or the provisions of state securities laws. Underwriters should be aware that their responsibilities under state securities laws may be different from those articulated in the Commission's Interpretation.

[84] Although the focus of the Commission's Interpretation was on underwriter practices, issuers are primarily responsible for the content of their disclosure documents and may be held liable under the federal securities laws for misleading disclosure. *See, e.g. In re Washington Public Power Supply System Securities Litigation*, 823 F. Supp 1466, 1478-1480 (W.D.Wa. 1985), *aff'd*, 823 F.2d 1349 (9th Cir. 1987); *In re Citisource, Inc. Securities Litigation*, 694 F. Supp. 1069, 1072-1075 (S.D.NY 1988); *In re New York City Municipal Securities Litigation*, 507 F. Supp. 169, 184-185 (S.D.N.Y. 1980). Because they are ultimately liable for the content of their disclosure, issuers should insist that any persons retained to assist in the preparation of their disclosure documents have a professional understanding of the disclosure requirements under the federal securities laws.

[85] In offerings where the issuer has not produced disclosure documents, including those that are exempted from Rule 15c2-12, the underwriter must take other measures to develop a reasonable basis for its recommendation.

[86] The Commission explained in the Release that the factors set forth in the Interpretation do not change the applicable legal standards against which the underwriter's conduct must be measured, or attempt to set an objective standard against which to measure recklessness for purposes of any scienter requirement under specific antifraud provisions. Release 53 FR at 37789, n. 84.

formulations of the Interpretation would be more appropriate.

The Commission received comments on the Interpretation from all segments of the municipal industry. Most comments addressing the issue agreed that the Interpretation accurately reflected practices currently employed by responsible underwriters of municipal securities. In light of the comments, the Commission remains convinced that the Interpretation correctly articulates the legal responsibilities of underwriters of municipal securities under the federal securities laws. Nevertheless, the Commission has determined to clarify and modify limited portions of the Interpretation to address concerns raised by commentators.

Some commentators suggested additional factors that should be included among those enumerated in the Interpretation, while others disputed the relevance of some factors that were cited. In this regard, the Commission wishes to further emphasize that the factors enumerated in the Interpretation were not intended to be an exclusive list of factors bearing upon the reasonableness of the underwriter's investigation. While the Commission believes that, as modified below, the factors cited generally will be relevant in most offerings, any determination about the reasonableness of the underwriter's investigation in a particular offering "will depend upon all the circumstances" and will likely include factors not enumerated in the Interpretation as modified.[87]

Similarly, certain factors specificially enumerated in the Interpretation may not be relevant in some offerings.[88] In this regard, the Commission had determined that the comments generated in response to two of the factors enumerated in the Interpretation suggest that these factors are sufficiently ambiguous so as not to be relevant in most offerings. Thus, the Interpretation is modified to the extent that it indicates that the nature of the underwriting arrangement (*e.g.*, best efforts or firm commitment) would generally be a signficant factor in assessing the reasonableness of the underwriter's investigation in muncipal offerings. In addition, although the Commission included the presence or absence of credit enhancements as a consideration that might be relevant in gauging the underwriter's investigation, it is apparent, based upon the comments, that there is a diversity of opinion among participants in the municipal markets regarding the protection actually provided by credit enhancements.

In the Commission's view, the presence of credit enhancements generally would not be a substitute for material disclosure concerning the primary obligor on municipal bonds.[89] Several commentators, including analysts, investors, and insurers, have indicated that even in credit enhanced offerings they rely upon disclosure concerning the primary obligor. In credit enhanced offerings, there is event risk, including default or the primary obligor, that may impair the value of the municipal bonds. Empirical evidence was provided by the Association of Financial Guarantors illustrating the discount imposed by the market on credit enhanced offerings, compared to offerings with similar ratings without credit enhancements.[90] In light of these comments, the Commission wishes to emphasize that the presence of credit enhancement does not foreclose the need for a reasonable investigation of the accuracy and completeness of key representations concerning the primary obligor. Accordingly, the Interpretation is modified to the extent that it suggests the presence or absence of credit enhancements generally would be a significant factor in assessing the reasonableness of the underwriter's investigation.

The Commission's Interpretation is modified in accordance with the discussion presented above.

IV. Effects on Competition and Regulatory Flexibility Act Considerations

Section 23(a)(2) of the Exchange Act [91] requires that the Commission, in adopting rules under the Act, consider the anticompetitive effects of such rules, if any, and balance any anticompetitive impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission is of the view that Rule 15c2–12 will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

In addition, the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA"), pursuant to the requirements of the Regulatory Flexibility Act,[92] regarding the Rule. Commentators were invited in the Release to provide data concerning the costs and benefits of the Proposed Rule. The FRFA indicates that Rule 15c2–12 could impose some additional costs on small broker-dealers and municipal issuers. Nevertheless, the Commission believes that many of the substantive requirements of the Rule already are observed by underwriters and issuers as a matter of good business practice, or to fulfill their existing obligations under the general antifraud provisions of the federal securities laws. Morever, in the Commission's view, any costs are substantially outweighed by the benefits of improved disclosure and access to information that are provided by the Rule.

A copy of the FRFA may be obtained from Edward L. Pittman, Assistant Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5–1, Washington, DC 20549, (202) 272–2848.

V. Statutory Basis and Text of Amendments

The Commission proposes to adopt § 240.15c2–12 in Chapter II of Title 17 of the Code of Federal Regulations as follows: (List of Subjects in 17 CFR Part 240) Reporting and recordkeeping requirements, securities.

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[87] Indeed, the factors that have been withdrawn below may be relevant in particular circumstances.

[88] For example, the Commission stated in the Interpretation that the fact an offering is nominally classified as competitively bid would not be relevant to the scope of an underwriter's review, where there is little uncertainty about the choice of underwriters or where other factors are present that would command a closer examination.

[89] The Commission noted in 1987, in the context of an examination of the financial guarantee markets, that:

[w]hile the presence of a guarantor is a material factor that investors may wish to consider in determining whether to invest in a particular debt issue, the Commission does not believe that it can, in general, serve as a substitute for disclosure of material information regarding the offering.

Investors in public offerings of securities backed by insurance policies have an interest in information allowing them to assess the financial resources of both the issuer and the insurer. Investors also have an interest in assessing other material matters in addition to the solvency of the issuer and its guarantor. * * * Thus, the Commission observes that the presence of an insurance policy may not, in general, serve as an adequate substitute for disclosure of material terms of the proposed transaction.

Report of the United States Securities and Exchange Commission on the Financial Guarantee Market: The Use of the Exemption in Section 3(a)(2) of the Securities Act of 1933 for Securities Guaranteed by Banks and the Use of Insurance Policies to Guarantee Debt Securities (1987) at 82, 83.

[90] Letter from Phillip R. Kastellec, Chairman, Disclosure Committee, Association of Financial Guaranty Insurors, to Jonathan G. Katz, Secretary, SEC (Dec. 22, 1988).

[91] 15 U.S.C. 78w(a)(2).

[92] 5 U.S.C. 604.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citation:

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w. * * * § 240.15c2–12 also issued under 15 U.S.C. 78b, 78c, 78j, 78*o*, 78*o*–4 and 78q.

2. By adding § 240.15c–12 as follows:

§ 240.15c2–12 Municipal securities disclosure.

(a) *General.* As a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices, it shall be unlawful for any broker, dealer, or municipal securities dealer (hereinafter "Participating Underwriter") to act as an underwriter in a primary offering of municipal securities with an aggregate principal amount of $1,000,000 or more (hereinafter "Offering") unless the Participating Underwriter complies with the requirements of this rule or is exempted from the provisions of this rule.

(b) *Requirements.* (1) Prior to the time the Participating Underwriter bids for, purchases, offers, or sells municipal securities in an Offering, the Participating Underwriter shall obtain and review an official statement that an issuer of such securities deems final as of its date, except for the omission of no more than the following information: The offering price(s), interest rate(s), selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, any other terms or provisions required by an issuer of such securities to be specified in a competitive bid, ratings, other terms of the securities depending on such matters, and the identity of the underwriter(s).

(2) Except in competitively bid offerings, from the time the Participating Underwriter has reached an understanding with an issuer of municipal securities that it will become a Participating Underwriter in an Offering until a final official statement is available, the Participating Underwriter shall send no later than the next business day, by first-class mail or other equally prompt means, to any potential customer, on request, a single copy of the most recent preliminary official statement, if any.

(3) The Participating Underwriter shall contract with an issuer of municipal securities or its designated agent to receive, within seven business days after any final agreement to purchase, offer, or sell the municipal securities in an Offering and in sufficient time to accompany any confirmation that requests payment from any customer, copies of a final official statement in sufficient quantity to comply with paragraph (b)(4) of this rule and the rules of the Municipal Securities Rulemaking Board.

(4) From the time the final official statement becomes available until the earlier of—

(i) Ninety days from the end of the underwriting period or

(ii) The time when the official statement is available to any person from a nationally recognized municipal securities information repository, but in no case less than twenty-five days following the end of the underwriting period, the Participating Underwriter in an Offering shall send no later than the next business day, by first-class mail or other equally prompt means, to any potential customer, on request, a single copy of the final official statement.

(c) *Exemptions.* This rule shall not apply to a primary offering of municipal securities in authorized denominations of $100,000 or more, if such securities:

(1) Are sold to no more than thirty-five persons each of whom the Participating Underwriter reasonably believes (i) has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the prospective investment and (ii) is not purchasing for more than one account or with a view to distributing the securities; or

(2) Have a maturity of nine months or less; or

(3) At the option of the holder thereof may be tendered to an issuer of such securities or its designated agent for redemption or purchase at par value or more at least as frequently as every nine months until maturity, earlier redemption, or purchase by an issuer or its designated agent.

(d) *Transactional Exemptions.* The Commission, upon written request, or upon its own motion, may exempt any Participating Underwriter that is a participant in a transaction or class of transactions from any requirement of this rule, either unconditionally or on specified terms and conditions, if the Commission determines that such an exemption is consistent with the public interest and the protection of investors.

(e) *Definitions.* For the purposes of this rule—(1) The term "authorized denominations of $100,000 or more" means municipal securities with a principal amount of $100,000 or more and with restrictions that prevent the sale or transfer of such securities in principal amounts of less than $100,000 other than through a primary offering; except that, for municipal securities with an original issue discount of 10 percent or more, the term means municipal securities with a minimum purchase price of $100,000 or more and with restrictions that prevent the sale or transfer of such securities, in principal amounts that are less than the original principal amount at the time of the primary offering, other than through a primary offering.

(2) The term "end of the underwriting period" means the later of such time as

(i) the issuer of municipal securities delivers the securities to the Participating Underwriters or

(ii) the Participating Underwriter does not retain, directly or as a member or an underwriting syndicate, an unsold balance of the securities for sale to the public.

(3) The term "final official statement" means a document or set of documents prepared by an issuer of municipal securities or its representatives seeting forth, among other matters, information concerning the issuer(s) of such municipal securities and the proposed issue of securities that is complete as of the date of delivery of the document or set of documents to the Participating Underwriter.

(4) The term "issuer of municipal securities" means the governmental issuer specified in section 3(a)(29) of the Act and the issuer of any separate security, including a sepatate security as defined in rule 3b–5(a) under the Act.

(5) The term "potential customer" means (i) Any person contacted by the Participating Underwriter concerning the purchase of municipal securities that are intended to be offered or have been sold in an offering, (ii) Any person who has expressed an interest to the Participating Underwriter in possibly purchasing such municipal securities, and (iii) Any person who has a customer account with the Participating Underwriter.

(6) The term "preliminary official statement" means an official statement prepared by or for an issuer of municipal securities for dissemination to potential customers prior to the availability of the final official statement.

(7) The term "primary offering" means an offering of municipal securities directly or indirectly by or on behalf of an issuer of such securities, including any remarketing of municipal securities.

(i) That is accompanied by a change in the authorized denomination of such securities from $100,000 or more to less than $100,000, or

(ii) That is accompanied by a change in the period during which such securities may be tendered to an issuer of such securities or its designated agent for redemption or purchase from a period of nine months or less to a period of more than nine months.

(8) The term "underwriter" means any person who has purchased from an issuer of municipal securities with a view to, or offers or sells for an issuer of municipal securities in connection with, the offering of any municipal security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; except, that such term shall not include a person whose interest is limited to a commission, concession, or allowance from an underwriter, broker, dealer, or municipal securities dealer not in excess of the usual and customary distributors' or sellers' commission, concession, or allowance.

(f) *Transitional Provision.* If on July 28, 1989 a Participating Underwriter was contractually committed to act as underwriter in an Offering of municipal securities originally issued before July 29, 1989, the requirements of paragraphs (b)(3) and (b)(4) shall not apply to the Participating Underwriter in connection with such an Offering.

List of Subjects in 17 CFR Part 241

Reporting and recordkeeping Requirements, Securities, Issuers, Broker-Dealers, Fraud.

PART 241—INTERPRETIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

Part 241 of Title 17 of the Code of Federal Regulations is amended by adding Securities Exchange Act Release No. 26100 (53 FR 37778) concerning "Municipal Securities Underwriter Responsibilities" and this Release "Modifying and confirming the Interpretation of Municipal Underwriter Securities Responsibilities" to the list of interpretive releases set forth thereunder.

By the Commission.

Dated: June 28, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-16038 Filed 7-7-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-89-61]

Special Local Regulations for Marine Events; Seventh Annual Intra-Harbor Powerboat Regatta, Elizabeth River, Norfolk, VA and Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.501.

SUMMARY: This notice implements 33 CFR 100.501 for the Seventh Annual Intra-Harbor Powerboat Regatta. The event will be held on the Elizabeth River between the Norfolk and Portsmouth downtown areas. The special local regulations are necessary to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and participants.

EFFECTIVE DATES: The regulations in 33 CFR 100.501 are effective from 11:30 a.m. to 6:00 p.m., July 16, 1989. If inclement weather causes the postponement of the event, the regulations will be effective from 11:30 a.m. to 6:00 p.m., September 17, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, (804) 398-6204.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Portsmouth Powerboat Association has submitted an application to hold the Seventh Annual Intra-Harbor Powerboat Regatta on July 16, 1989, in the vicinity of the "Waterside" area of downtown Norfolk, Virginia, and the "Portside" area of downtown Portsmouth, Virginia. This area area is covered by 33 CFR 100.501 and generally includes the waters of the Elizabeth River between Town Point Park, Norfolk, Virginia, the mouth of the Eastern Branch of the Elizabeth River, and Hospital Point, Portsmouth, Virginia. Since this event is of the type contemplated by this regulation and the safety of the participants and spectators viewing this event will be enhanced by the implementation of special local regulations for the Elizabeth River, 33 CFR 100.501 will be in effect. Because commercial vessels will be permitted to transit the regulated area between heats, commercial traffic should not be severely disrupted.

In addition to regulating the area for the safety of life and property, this notice of implementation also authorizes the Patrol Commander to regulate the operation of the Berkley drawbridge in accordance with 33 CFR 117.1007, and authorizes spectators to anchor in the special anchorage areas described in 33 CFR 110.72aa. The implementation of 33 CFR 100.501 also implements regulations in 33 CFR 110.72aa and 117.1007. 33 CFR 110.72aa establishes the spectator anchorages in 33 CFR 100.501 as special anchorage areas under Inland Navigation Rule 30, 33 U.S.C. 2030(g). 33 CFR 117.1007 closes the draw of the Berkley Bridge to vessels during and for one hour before and after the effective period under 33 CFR 100.501.

These regulations are implemented by publication of this implementing notice in the **Federal Register** and a notice in the Local Notice to Mariners.

Date: June 27, 1989.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 89-16064 Filed 7-7-89; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP San Diego Reg. 89-06]

Safety Zone; San Diego Bay, California, Pacific Ocean

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a moving safety zone in San Diego Bay, San Diego, California. This safety zone consists of the water area within five hundred (500) yards ahead and three hundred (300) yards off each side and astern of the M/V Exxon Valdez as it transits San Diego Bay from sea to National Steel and Shipbuilding berth #6. The M/V Exxon Valdez is scheduled to transit San Diego Bay between 11-13 July 1989. The actual date and time will be announced in a Broadcast Notice to Mariners. The safety zone is needed to protect the M/V Exxon Valdez from hazards associated with the possibility of spectators or other vessel traffic impeding her transit to the shipyard. Entry into this zone is prohibited during this operation unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation becomes effective at 0500 Pacific Daylight Time (p.d.t.) on 11 July 1989 and terminates upon the vessel arriving at National Steel, or sooner if terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT Tom S. Orzech, USCG, C/O U. S. Coast Guard Captain of the Port, 2710 N. Harbor Drive, San Diego, CA 92101-1064, telephone (619) 557-5860.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking (NPRM) was not published for this regulation and it is being made effective in less than 30 days from the date of publication. Following the normal rulemaking process would have been contrary to the public interest since immediate action is needed to respond to potential hazards to vessels and persons in the area.

Drafting Information

The drafters of this notice are LT Tom S. Orzech, project officer for the Captain of the Port, and CDR Samuel E. Burton, project attorney, Eleventh Coast Guard District Legal Office.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Discussion of Regulation

This safety zone consists of the water area within five hundred (500) yards ahead of the M/V Exxon Valdez and three hundred (300) yards off each side and astern as it transits San Diego Bay on the published date. This safety zone moves with the M/V Exxon Valdez as it transits San Diego Bay from the San Diego sea buoy #1 through the ship channel to National Steel and Shipbuilding in San Diego. This regulation is needed to provide a safe, clear passage for the M/V Exxon Valdez on its way to the drydock and to protect vessels and persons which may impede her transit. Positive control during the movement of the M/V Exxon Valdez is necessary to prevent injury and property damage during her transit.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165:

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 33 CFR 160.5.

2. In Part 165, a new § 165.T1104 is added, to read as follows:

§ 165.T1104—Safety Zone: San Diego Bay, California, Pacific Ocean.

(a) *Location.* This safety zone consists of the water area within five hundred (500) yards ahead of the M/V Exxon Valdez and 300 yards off each side and astern as she transits San Diego Bay inbound from San Diego sea buoy #1 to National Steel and Shipbuilding in San Diego, California, berth #6.

(b) *Effective Dates.* This regulation becomes effective at 0500 Pacific Daylight Time (PDT) on 11 July 1989 and terminates upon the arrival of the M/V Exxon Valdez at National Steel and Shipbuilding or sooner if terminated by the Captain of the Port.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port, San Diego, California.

(2) Section 165.23 also contains other general requirements.

Dated: June 29, 1989.

D. P. Montoro,

Commander, U.S. Coast Guard, Alternate Captain of the Port, San Diego, California.

[FR Doc. 89-16063 Filed 7-7-89; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 86-495; FCC 89-163]

Basic Exchange Telecommunications Radio Service; Order on Reconsideration

AGENCY: Federal Communications Commission.

ACTION: Final rule; Order on reconsideration.

SUMMARY: The Commission has determined that no additional spectrum will be allocated to Basic Exchange Telecommunications Service in the Public Land Mobile Service. The Commission also declined to change its standards for determining waivers of the 100-mile boundary from Metropolitan Statistical Areas for private radio frequencies available to BETRS licensees. In addition, the Commission declined to change its processing for BETRS applications for private radio frequencies. Finally, the Commission decided to codify its ruling in the Report and Order that existing Rural Radio Service licensees must provide frequency coordination information to *bona fide* potential co-channel and adjacent channel applicants. The purpose of this action is to ensure that no unwarranted filing delays are encountered by applicants for Public Land Mobile Radio Services, Rural Radio Services, and Basic Exchange Telecommunications Radio Service.

EFFECTIVE DATE: August 9, 1989. For the rule promulgated in the Order, the effective date will be announced by public notice in the **Federal Register** after the requisite approval of the Office of Management and Budget is received.

FOR FURTHER INFORMATION CONTACT: Susan E. Magnotti, Mobile Services Division, Common Carrier Bureau, (202) 632-6450.

SUPPLEMENTARY INFORMATION: CFR Part Amended: 47 CFR, Part 22, "Public Mobile Service." Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

This is a summary of the Commission's order on Reconsideration, CC Docket No. 86-495, adopted May 22, 1989, and released June 21, 1989.

The full text of Commission decisions is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary of Order on Reconsideration

The Commission has determined that no additional spectrum will be allocated to Basic Exchange Telecommunications Service in the Public Land Mobile Service. In this Order, the Commission states that adequate spectrum appears to be available in rural areas in the VHF and UHF common carrier mobile allocation. Moreover, the Commission's recent order Amendment of Parts 2 and 22 of the Commission's Rules to Permit Liberalization of Technology and Auxiliary Service Offerings in the Domestic Public Cellular Radio Telecommunications Service, Report and Order, 3 FCC Rcd. 7033 (1988) (the "Auxiliary Cellular Services Order") permits cellular frequencies to be used for fixed basic exchange service. There are an abundant number of frequencies available in the cellular allocation, and the Commission found that radio basic exchange service may draw from them.

The Commission also declined to change its standards for determining waivers of the 100-mile boundary from Metropolitan Statistical Areas for private radio frequencies available to BETRS licensees. Two parties had proposed different waiver standards from those contained in Section 22.19 of the Commission's Rules. The Commission found that its present standards are such that all relevant factors would be taken into account on a case by case basis should a waiver of the 100-mile rule be requested.

In addition, the Commission declined to change its processing for BETRS applications for private radio frequencies. Parties had argued that processing would be delayed for such frequency requests because it is necessary for two Commission bureaus to coordinate processing the applications. The Commission stated that it does not anticipate a substantial increase in processing time.

The Commission also decided to codify its ruling in the Report and Order that existing Rural Radio Service licensees must provide frequency coordination information to *bona fide* potential co-channel and adjacent channel applicants. The purpose of this action is to ensure that no unwarranted filing delays are encountered by applicants for Rural Radio Services and Basic Exchange Telecommunications Radio Service. The Report and Order had found that Rural Radio Licensees should have co-primary access to common carrier mobile frequencies with licensees in the Public Land Mobile Radio Service. Thus, the same frequency coordination information required of PLMRS licensees must also be required of RRS licensees.

Ordering Clauses:

Wherefore, the foregoing premises considered, IT IS ORDERED that the Petition for Reconsideration filed by United States Telephone Association is denied.

It is further ordered that the Petition for Reconsideration filed by Pacific Bell and Nevada Bell is denied.

The effective date of the rule promulgated herein will be announced by public notice in the **Federal Register** after the requisite approval of the Office of Management and Budget is received.

List of Subjects in 47 CFR Part 22

Reporting and recordkeeping requirements.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Appendix

Part 22 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for Part 22 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154, 303), sec. 553 of the Administrative Procedure Act (5 U.S.C. 553), unless otherwise noted.

2. Section 22.609 is amended by adding new paragraph (e) as follows:

§ 22.609 Supplementary showing required with applications for rural radio facilities.

* * * * *

(e) All licensees in the Rural Radio Service, must, upon request by a *bona fide* prospective applicant, provide to such applicant the information in paragraph (d) of this part regarding the portion of the licensee's operations which potentially affects, or potentially is affected by, the prospective applicant's proposed system, if such information is not already on file with the Commission. This information must be given to the *bona fide* prospective applicant within thirty days of receipt of the information request.

[FR Doc. 89-15973 Filed 7-7-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 22

[CC Docket No. 88-135; FCC 89-126]

Public Mobile Services

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: The Commission has authorized Public Mobile Service (PMS) licensees to increase the effective radiated power (ERP) of their stations in the 35 MHz, 152 MHz, and 450 MHz bands, when their interference contours do not exceed the existing interference contours of co-channel stations operating under the control of the same licensee. This change will enhance the efficiency of PMS operations because fewer transmitters will be needed to cover the same geographic area, building penetration will be increased and the system's ability to overcome man-made noise will be improved. This, in turn, will permit more economical and efficient use of the spectrum, without creating interference to other licensees. Previously, PMS stations were limited to a maximum ERP of 500 watts at a maximum antenna height of 500 feet above average terrain for stations operating in the 35, 43, 152 and 450 MHz frequency bands. This Report and Order adopts an increase in permissible power to 600 watts in the 35 MHz band, and increase to 1400 watts in the 150 MHz band and an increase to 3500 watts in the 450 MHz band. Additionally, the Report and Order retains the present power limitations for 4 adjacent channels in the 150 MHz band and from the one channel adjacent to the Petroleum Radio Service in the 450 MHz band because an increase in radiated power at these frequencies might cause interference to private radio services. The Commission retains the present power limitations in the 43 MHz band because any further increase in power would cause TV interference. The Commission declined to increase height limitations because serious questions were raised concerning the accuracy of the propagation curves used to calculate interference contours for the common carrier public mobile service for antenna heights greater than 500 feet. Lastly, the Commission permitted the three nationwide paging channels in the 931 MHz band to operate without height restrictions since the channels are controlled nationwide by the same entity and will not cause interference to other licensees.

EFFECTIVE DATE: August 14, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Linda Dubroof, Mobile Services Division, Common Carrier Bureau, (202) 632-6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order adopted April 26, 1989, and released June 29, 1989. The full text of this action is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this action may also be purchased from the Commission's copy contractors, International Transcription Services (ITS), (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. This Order adopts an increase in radiated power for Public Mobile Service licensees in the 35, 150 and 450 MHz bands, when their interference contours do not exceed the existing interference contours of co-channel stations operating under the control of the same licensees, and retains the current rules for height-power limitations in the remaining frequency bands. Because each frequency band is affected uniquely by changes in radiated power and antenna height, the Order adopts an increase in permissible power to 600 watts in the 35 MHz band, and increase to 1400 watts in the 150 MHz band and an increase to 3500 watts in the 450 MHz band. The increases in radiated power adopted in this Order will permit more economical and efficient use of the spectrum, without creating interference to other licensees. The changes incorporated in this Order will also enhance the efficiency of service operations, increase signal penetration in buildings and further enable public mobile service systems to overcome man-made noise.

Additionally, the Order retains the present power limitations for four adjacent channels in the 150 MHz band and for the one channel adjacent to the Petroleum Radio Service in the 450 MHz band because an increase in radiated power at these frequencies might cause interference to private radio services. Moreover, the Order retains the present power limitations in the 43 MHz band because any further increase in power would cause TV interference.

Similarly, the Order declines to increase height limitations because of the inability to determine co-channel interference with other Commission licensees. The Order does allow the three nationwide paging channels in the 931 MHz band to operate without height restrictions since the channels are controlled nationwide by the same entity and will not cause interference to other licensees.

2. *Final Regulatory Flexibility Analysis.* The rulemaking will enhance the efficiency of PMS operations because fewer transmitters will be needed to cover the same geographic area. In addition, building penetration will be increased and the PMS systems' ability to overcome man-made noise will be improved. Our objective is to provide service to the public with greater speed and efficiency.

The Order takes into consideration the various issues raised by the public concerning the proposed rules. As a result of these comments, whenever possible, we have modified our proposal so as to permit both economical and efficient spectrum use but without creating interference to other services. We have determined no specific alternatives which could accomplish the objective achieved in this rulemaking Order.

3. *Paperwork Reduction.* This proposal has been analyzed with respect to the Paperwork Reduction Act of 1980 and found not to impose a new or modified information collection requirement on the public.

Ordering Clauses

4. Authority for this Rulemaking is contained in Sections 1, 4(i) and (j), 301, 303 and 309 of the Communications Act of 1934, as amended, and Section 503 of the Administrative Procedure Act;

5. Wherefore, for the foregoing reasons, Part 22 of the Commission's Rules are hereby amended as specified in the Rules Section appended to this summary. The amendments adopted in this Order for Part 22 licensees will become effective August 14, 1989.

List of Subjects in 47 CFR Part 22

Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rules Section

Part 22 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for Part 22 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154, 303), sec. 553 of the Administrative Procedure Act (5 U.S.C. 553), unless otherwise noted.

2. Section 22.100 is amended by adding paragraph (e) to read as follows:

§22.100 Frequencies, Interference.

* * * * *

(e) *Blanketing.* Areas adjacent to the transmitting antenna that receive a signal strength of 115 dBu or greater will be assumed to be blanketed. In determining the blanketed area, the 115 dBu contour is determined by calculating the inverse distance field using the maximum radiated lobe of the antenna without considering its vertical radiation pattern or height. For directional antennas, the effective radiated power in the pertinent bearing shall be used.

(1) The distance to the 115 dBu contour is determined using the following equation:

$$D \text{ (in miles)} = 0.245 \times (P)^{1/2}$$

Where P is the maximum effective radiated power (ERP), measured in kilowatts, of the maximum radiated lobe.

(2) Licensees of new or modified stations ("licensee(s)"); must resolve all complaints of blanketing interference (as defined in this Section) which are received by licensee within one year of filing a "Notification of Status of Facilities," FCC Form 489. Resolution of complaints shall be at no cost to the complainant. These requirements specifically do not include interference complaints resulting from malfunctioning or mistuned receivers, improperly installed antenna systems, or the use of high gain antennas or antenna booster amplifiers. Mobile receivers and non-RF devices are also excluded.

(3) A licensee co-locating with one or more existing licensees must assume full financial responsibility for remedying new complaints of blanketing interference for a period of one year. Two or more licensees concurrently co-locating facilities are jointly responsible for remedying blanketing interference unless the commission can readily determine the offending station and then that station shall assume full responsibility.

(4) Following the one year period of full financial responsibility to satisfy blanketing complaints, licensees shall provide technical information to complainants on remedies for blanketing interference.

3. Section 22.505 is amended by adding paragraph (c) to read as follows:

§ 22.505 Antenna height-power limit.

* * * * *

(c) Base stations in the 35, 43, 152, and 454 MHz bands that exceed a maximum effective radiated power of 500 watts, pursuant to section 22.506(f), may not exceed 500 watts in any radial direction where the height above average terrain exceeds 500 feet. Base stations on 931.8875, 931.9125, and 931.9375 MHz are

exempt from the height limits of this section.

4. Section 22.506 is amended by adding paragraph (f) to read as follows:

§ 22.506 Power.

* * * * *

(f) Proposed base stations, other than in the air-ground radio service, the 43 MHz band, 152.24, 152.84, 158.10, 158.70 and 454.025 MHz, the 470–512 MHz band, and the 931 MHz Band, whose interference contours do not exceed the interference contours(s) of existing co-channel station(s), which are operated under the control of the same licensee, may operate with the following power limits:

Frequency band (MHz)	Maximum effective radiated power (in Watts)
35	600
152	1,400
454	3,500

[FR Doc. 89–15972 Filed 7–7–89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 390, 391, and 393

[FHWA Docket No. MC-88-18]

RIN 2125-AC21

Federal Motor Carrier Safety; General; Exempt Intracity Zone; Foreign Motor Carriers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Reopening of comment period.

SUMMARY: On March 24, 1989, the FHWA published in the **Federal Register** a final rule and request for comments (54 FR 1200). In the final rule, the FHWA amended Parts 390, 391, and 393 of the Federal Motor Carrier Safety Regulation (FMCSRs). Particularly, the applicability of Part 393 was delayed until November 18, 1989, for certain foreign motor carriers operating commercial motor vehicles in the United States. The FHWA requested comments from all interested parties regarding the issue of the exemption of certain foreign motor carriers from the provisions of 49 CFR Part 393. The comment period for this final rule closed on June 22, 1989. The FHWA has received a formal request from the Rio Grande Valley Trucking Coalition (RGV) and the Border Trade Alliance (BTA) for extension of the comment period because they are encountering difficulty in obtaining specific information they believe to be relevant. The FHWA is granting the request for an extension by reopening the docket.

The comment period, therefore, is being reopened until July 24, 1989. No further requests for extensions will be considered where this rulemaking action is concerned.

DATE: Comments must be received on or before July 24, 1989.

ADDRESS: Submit written, signed comments to FHWA Docket No. MC–88–18, Room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC. 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk (either 1.2Mb or 360Kb density) in a format that is compatible with either word processing programs, Word Perfect or WordStar. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m. ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards, (202) 366–2981, or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 366–1350, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The RGV and BTA have jointly requested a 30-day extension of the comment period established when the aforementioned final rule was published. Both organizations stated that an extension would provide adequate time to assemble the necessary manufacturing data and information from the Mexican manufacturers of commercial motor vehicles. They also noted that members of the BTA would be meeting in Arizona in June, and in Mexico in early July and that an extension would allow time to thoroughly review the data and provide more meaningful comments to the docket. The FHWA does not anticipate receiving similar requests from other organizations within the transportation industry.

The FHWA, therefore, concludes that the request to extent the comment period has merit. Accordingly, the comment period for this docket is being reopened until Monday, July 24, 1989.

Authority: 49 U.S.C. App. 2503 and 2505; 49 U.S.C. 3102 and 3104; 49 CFR 1.48.

List of Subjects in 49 CFR Parts 390, 391, and 393

Highway safety, Highways and roads, Motor carriers, Drivers, Reporting and recordkeeping requirements, Motor vehicle safety.

(Catalog of Federal Domestic Assistance Program Number 20.217, motor carrier safety.)

Issued on: June 30, 1989.

Eugene R. McCormick,

Deputy Administrator.

[FR Doc. 89–16069 Filed 7–7–89; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 90515-9115]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California; Corrections

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of 1989 fishery management measures, modification of the Klamath River fall chinook spawning escapement rate; corrections.

SUMMARY: A notice of 1989 fishery management measures for the commercial and recreational ocean salmon fisheries off Washington, Oregon, and California, was published May 8, 1989 (54 FR 19798), and corrected June 6, 1989 (54 FR 24175 and 24288). This notice makes additional corrections to (1) the seasons for the commercial troll fishery between Horse Mountain and Point Arena to be consistent with the descriptive text in the May 8 notice, and (2) two longitudinal coordinates used to describe the open area in the August commercial troll fishery between the U.S.-Canada border and Carroll Island, Washington.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206–526–6140, or Rodney R. McInnis, 213–514–6199.

In rule document 89–10793 beginning on page 19788 in the issue of May 8, 1989, make the following corrections:

1. In Table 1 (pages 19803 and 19804), the seasons for the subarea from Horse Mountain to Point Arena are corrected by changing the following, all on page 19804.

(a) Column for Area and season, entry beginning on line 1 with "Earlier", on lines 2 and 3, "September 30" should read "June 17".

(b) Immediately after that entry, add a new entry on a new line as follows: Column for Area and season to read "Coho reserve thru June 17."; column for species to read "All except coho."; column for Quota for Chinook to read "None"; and column for Quota for Coho to read "* * *".

(c) Column for Area and season, entry beginning on line 7 with "Earlier", lines 8 and 9, "September 30" should read "July 14".

(d) Immediately after that entry, add a new entry on a new line as follows: Column for Area and season to read "Coho reserve thru July 14."; column for species to read "All except coho."; column for Quota for Chinook to read "None"; and column for Quota for Coho to read "* * *".

2. On Page 19805, under "C. Special Requirements, Restrictions, and Exceptions", in C–8, in the third line, "125°49'30" W." should read "124°49'30" W." and, in the same line, "125°49'00" W." should read "124°49'00" W.".

Dated: July 5, 1989.

James W. Brennan,

Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 89–16112 Filed 7–7–89; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 130
Monday, July 10, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Admt. 40; Docket No. 6750S]

General Crop Insurance Regulations; Raisin Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1990 and succeeding crop years, by adding a new section, 7 CFR 401.142, the Raisin Endorsement. The intended effect of this rule is to provide the provisions of crop insurance protection on raisins in an endorsement to the general crop insurance policy.

DATE: Written comments, data, and opinions on this proposed rule should be received not later than August 9, 1989, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Department Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as March 1, 1994.

John Marshall Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC proposes to add to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.142, the Raisin Endorsement, effective for the 1990 and succeeding crop years, to provide the provisions for insuring raisins.

Upon publication of 7 CFR 401.142 as a final rule, the provisions for insuring raisins contained therein will supersede those provisions contained in 7 CFR Part 402, the Raisin Crop Insurance Regulations, effective with the beginning on the 1990 crop year. The present policy contained in 7 CFR Part 402 will be terminated at the end of the 1989 crop year and later removed and reserved. FCIC will propose to amend the title of 7 CFR Part 402 by separate document so that the provisions therein are effective only through the 1989 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Raisin Endorsement to 7 CFR Part 401, FCIC makes other changes in the provisions for insuring raisins as follows:

1. Subsection 1.—Add language regarding share in the event of a loss. For purposes of raisin insurance, in case of an indemnity, the share should nor exceed the share when the raisins are removed from the vineyard rather than at the beginning of harvest. Remove language allowing raisin insurance on grapes that have been sized for table grapes. This change was made due to unfavorable loss experience when insuring raisins made from table grapes.

2. Subsection 3.—Change the tonnage to be reported from net tons to delivered tons. Raisin maturity standards have made the use of net tonnage (or net paid tonnage) inappropriate when determining premium amounts.

3. Subsection 9.—Include language to authorize us to obtain records from the Raisin Administrative Committee and other parties who may have such records.

This authorization is needed to allow us to determine insured tonnage when a tonnage report is not submitted.

4. Subsection 7—Unit division provisions are included in this subsection of the endorsement to indicate that additional premium may be required for unit division on noncontiguous land.

5. Subsection 9—Change language regarding the value of undamaged raisins. The new term used is the "insurance price." This change was made because the term "field price" has generally been used in the raisin industry to define only the free tonnage price. Add language to clarify that the number of tons of raisins on which we allow a reconditioning allowance will be the actual (unadjusted) tonnage to be reconditioned. This clarification was made to eliminate inconsistencies in loss adjustment procedure.

6. Subsection 12—Add the definitions of "Delivered ton," "Noncontiguous Land," "Insurance price," and "Substandard."

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register**. Written comment should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

Crop insurance; Raisin endorsement.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), to be effective for the 1990 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. Title 7 CFR Part 401 is amended to add a new section to be known as § 401.142, Raisin Endorsement, effective for the 1990 and Succeeding Crop Years, to read as follows:

§ 401.142 Raisin endorsement.

The provisions of the Raisin Crop Insurance Endorsement for the 1990 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Raisin Endorsement

1. Crop, Tonnage, and Share Insured

a. The crop insured will be raisins of grape varieties designated insurable by the actuarial table.

b. The tonnage insured will be the tonnage in which you have a share (as reported by you or as determined by us, whichever we elect).

c. In lieu of subsection 2.c.(2) of the general crop insurance policy, for the purpose of determining the amount of indemnity, your share will not exceed your share at the time the raisins are removed from the vineyard.

d. In addition to the raisins not insurable under section 2 of the general crop insurance policy, we do not insure any raisins:

(1) laid on trays after September 8 in vineyards with north-south rows in Merced or Stanislaus Counties or after September 20 in all other instances;

(2) made from table grape strippings; or

(3) made from vines that have had manual, mechanical, or chemical treatment to produce table grape sizing.

2. Causes of Loss

The insurance provided is against the unavoidable loss of production resulting from rain, occurring within the insurance period, while raisins are in the vineyard, on trays or in rolls, for drying unless limited by the actuarial table.

3. Report of Tray Count, Tonnage, and Share (Tonnage Report)

In lieu of section 3 of the general crop insurance policy, you must report on our form:

a. For all raisins which are not damaged, the delivered tons of insured raisins produced in the county in which you have a share and your share as soon as delivery records are available, but in any event no later than March 1 following the crop year;

b. For insured raisins which are damaged:

(1) the variety;

(2) the location of the vineyard;

(3) the number of trays upon which the raisins have been placed for drying; and

(4) your share.

By execution of the application for insurance you authorize us to determine or verify the insured tonnage from records maintained by the Raisin Administrative Committee of the United States Department of Agriculture or any other person who may have such records. You must report separately any tonnage that is not insurable. You must report if you do not have a share in any insurable tonnage in the county. This report must be submitted annually on or before March 1 of the year following the crop year. Indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may determine by unit the insured tonnage and share or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval. Errors in reporting units may be corrected by us to conform to applicable guidelines at the time of adjusting a loss.

4. Amounts of Insurance and Production Reporting

a. The amount of insurance for the unit will be determined by multiplying the insured tonnage times the amount of insurance per ton, times your share. Insured tonnage is determined for raisins:

(1) not damaged by rain, by the raisins delivered (delivered tons); or

(2) damaged by rain, by adding raisins delivered (delivered tons), if any, to any verifiable loss of production due to rain damage in the vineyard. Tray weights will be used to establish raisin tonnage not removed from the vineyard.

b. Subsection 4.d. of the general crop insurance policy is not applicable to this crop.

5. Annual Premium

a. The annual premium amount is computed by mulitplying the amount of insurance per ton times the premum rate, times the insured tonnage, times your share on the date insurance attaches.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the experience table contained in the raisin policy in effect for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) no premium reduction will be retained after the 1991 crop year;

(2) the premium reduction will not increase because of favorable experience;

(3) the premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1984 crop year;

(4) once the loss ration exceeds .80, no further premium reduction will apply; and

(5) participation must be continuous.

6. Insurance Period

In lieu of section 7 of the general crop insurance policy, insurance attaches at the time the raisins are placed on trays for drying and ends the earlier of:

a. October 20;

b. the date the raisins are boxed; or

c. the date the raisins are removed from the vineyard.

7. Unit Division

a. Raisin acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into units by grape variety.

b. Raisin acreage that would otherwise be one unit as defined in section 17 of the general crop insurance policy and subsection 7.a. above may be divided into more than one unit if you agree to pay additional premium if required by the actuarial table and if, for each proposed (optional) unit:

(1) you maintain written, verifiable records of raisin production for at least the previous crop year; and

(2) the acreage of insured raisins is located on noncontiguous land.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

8. Notice of Damage or Loss

In lieu of section 8 of the general crop insurance policy, if you are going to claim an indemnity on any unit, we must be given notice within 72 hours of the time the rain fell on the raisins. We may reject any claim for indemnity if such damage is not reported within 72 hours.

9. Claim for Indemnity

a. In lieu of subsection 9.a. of the general crop insurance policy any claim for indemnity must be submitted to us on our form not later than March 31 after the calendar date for the end of the insurance period.

b. In addition to the requirements in subsection 9.b. of the general crop insurance policy, we will not pay any indemnity unless you authorize us in writing to examine and obtain any records pertaining to the production and marketing of any raisins in which you have a share from the raisin packer, raisin reconditioner, Raisin Administrative Committee established under order of the United States Department of Agriculture, or any other party who may have such records.

c. The indemnity will be determined on each unit by:

(1) multiplying the insured tonnage of raisins by the amount of insurance per ton;

(2) subtracting therefrom the total value of all insured damaged and undamaged raisins; and

(3) multiplying this result by your share.

d. Undamaged raisins or raisins damaged solely by uninsured causes will be valued at the insurance price (see subsection 12.c.).

e. Raisins damaged partially by rain and partially by uninsured causes will be valued at the highest price obtainable, subject to an adjustment for any reduction in value due to uninsured causes.

f. Raisins damaged by rain, but which are reconditioned and meet the Raisin Administrative Committee (RAC) standards for raisins, will be valued at the insurance price. An allowance for reconditioning will be deducted from the value only if you obtained our written consent prior to reconditioning. The allowance for reconditioning will be made only when the raisins have been inspected by the USDA and, due to rain damage while on the tray are found to contain mold, embedded sand, excessive moisture, or micro/organisms in excess of RAC tolerances.

The reconditioning allowance will be made based on the actual (unadjusted) weight of raisins to be reconditioned. Additionally, when raisins contain excessive moisture due to rain, the reconditioning allowance will be made only when the moisture is determined to be in excess of 18.0 percent and the raisins are wash-and-dry reconditioned. The maximum allowance for reconditioning is contained in the actuarial table, but the total reconditioning allowance will not exceed the value of the raisins after reconditioning. We may require you to recondition a representative sample of not more than 10 tons of raisins to determine if they meet RAC standards for marketable raisins. On the basis of determinations made after such sampling, we may require you to recondition all raisins, or we may value such raisins at the insurance price. If the representative sample does not meet RAC standards for marketable raisins, the cost of reconditioning the sample will be deducted from the total value of the raisins for the unit.

g. The value to count for any raisins produced on the unit and not removed from the vineyard will be the larger of the appraised salvage value of $35.00 per ton. You must box and deliver any raisins that can be removed from the vineyard.

h. We may acquire all the rights and title to your share of any raisins damaged by rain. In such event, the raisins will be valued at "zero" in determining the amount of loss and we will have the right of ingress or egress to the extent necessary to take possession of, care for, and removed such raisins.

i. Raisins destroyed without USDA inspection or put to another use without our consent will be valued at the amount of insurance

10. Cancellation and Termination Dates

The cancellation and termination dates are July 31.

11. Contract Changes

The date by which contract changes will be available in your service office is April 30 preceding the cancellation date.

12. Meaning of Terms

a. *"Crop year"* means the calendar year in which the raisins are placed on trays for drying.

b. *"Delivered ton"* means a ton of raisins or raisin material delivered to a buyer or a reconditioner, adjusted for moisture over 16 percent and adjusted for substandard raisins over 5 percent.

c. *"Insurance price"* means the value established by us for raisin tonnage for the purpose of determining indemnities. This value is shown in the actuarial table.

d. *"Noncontiguous land"* means land which is not touching at any point. Land which is separated by only a public or private right-of-way will be considered to be touching (contiguous).

e. *"Raisins"* means specific varieties of grapes, designated insurable by the actuarial table, which have been laid on trays or are in rolls in the vineyard to dry.

f. *"Raisin tonnage report"* means a form prescribed by us for annually reporting all the tonnage or raisins in the county in which you have a share.

g. *"Substandard"* means a quality of raisins that fail to meet the requirements of U.S. Grade C except that layer or cluster raisins with seeds or Zante Currant raisins will be considered substandard if they fail to meet the requirements of U.S. Grade B.

h. *"Table grapes"* mean grapes which are grown for commercial sales as fresh grapes on acreage where the cultural practices to produce fresh marketable grapes were carried out.

i. *"Ton"* means 2,000 pounds. Raisin tonnage may be computed on the basis of one ton of raisins insured for every four and one-half tons of fresh grapes when first placed on trays for drying.

j. *"USDA inspection"* means the actual determination by a USDA inspector of all defects. Limited inspections or inspections on submitted samples are not considered "USDA inspections."

Done in Washington, DC on June 22, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-16123 Filed 7-7-89; 8:45am]

BILLING CODE 3410-08-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150-AD17

Informal Hearing Procedures for Nuclear Reactor Operator Licensing Adjudications

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Extension of comment period.

SUMMARY: On April 26, 1989, (54 FR 17961), the NRC published for public comment a proposed rule to amend its regulations to provide procedures for the conduct of informal adjudicatory hearings in nuclear reactor operator licensing proceedings. The comment period for this proposed rule was to have expired on June 26, 1989. On June 26, 1989, the Professional Reactor Operator Society requested a thirty-day extension of the comment period and on June 27, 1989, Shaw, Pittman, Potts & Trowbridge law firm, on behalf of several of its clients, requested an extension until July 3, 1989. Around this same time, two other individuals requested copies of the rule and indicated that they may file written requests for extensions of time. In view of the importance of the proposed rule, the recent interest of the public in the rule, the amount of time that the requesters suggest is required in order to provide meaningful comments, and the desirability of developing a final rule as soon as practicable, the NRC has decided to extend the comment period for an additional forty-five days. The extended comment period now expires on August 10, 1989.

DATES: The comment period has been extended and now expires August 10, 1989. Comments received after this date will be considered if it is practical to do so but the Commission is able to assure consideration only for comments received before this date.

ADDRESSES: Send written comments or suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch. Hand deliver comments to Docketing and Service Branch, One White Flint North, 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. Examine comments received at: The NRC Public Document Room, 2120 L Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karla Smith, Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492-1606.

Dated at Washington, DC, this 3rd day of July, 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89-16125 Filed 7-7-89; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 320

[Docket Nos. 77N-0194, 77N-0425, 78N-0178, 79N-0034, 79N-0133, 79N-0464, 79N-0477, 80N-0183, 80N-0191, 80N-0235, 80N-0315]

Bioequivalence Requirements; Withdrawal of Proposed Rules

AGENCY: Food and Drug Administration.

ACTION: Withdrawal of proposed rules.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing 11 proposed rules that would have established bioequivalence requirements for certain drug products. Elsewhere in this issue of the **Federal Register**, FDA is proposing regulations to implement Title I of the Drug Price Competition and Patent Term Restoration Act of 1984. That proposal supersedes the proposals being withdrawn.

DATE: This withdrawal is effective July 10, 1989.

FOR FURTHER INFORMATION CONTACT: Marilyn L. Watson, Center for Drug Evaluation and Research (HFD-360), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8038.

SUPPLEMENTARY INFORMATION: The regulations regarding methods and procedures for in vivo testing to determine the biovailability of drug products (21 CFR 320.22(c)) list specific drug products with known or potential bioequivalence problems for which the agency intended to establish bioequivalence requirements.

On September 24, 1984, the President signed into law the Drug Price Competition and Patent Term Restoration Act. Title I of the new law amended the Federal Food, Drug, and Cosmetic Act to expand the universe of drugs for which FDA may accept abbreviated new drug applications (ANDA's). The new law imposes a bioequivalence requirement on all drug products that are the subject of ANDA's and that refer to and are the same as one of the drug products listed under § 302.22(c). FDA no longer intends to establish separate bioequivalence requirements for those drug products.

Elsewhere in this issue of the **Federal Register**, FDA is proposing regulations to implement Title I of the new law.

Therefore, for the reasons set forth above and under the Federal Food, Drug, and Cosmetic Act (secs. 201(p), 502, 505, 701(a), 52 Stat. 1041-1042 as amended, 1050-1053 as amended, 1055 (21 U.S.C. 321(p), 352, 355, 371(a))) and under 21 CFR 5.11, the agency is withdrawing the following proposed bioequivalence requirements published in the **Federal Register** on the dates indicated:

Drug name	Docket No.	Date of publication
Anticonvulsants	77N-0194	August 5, 1977 (42 FR 39675).
Carbonic anhydrase inhibitors	79N-0477	Februrary 22, 1980 (45 FR 11849).
Corticosteroids, oral	79N-0034	April 13, 1979 (44 FR 22111).
Phenothiazine products	80N-0191	August 26, 1980 (45 FR 56832).
Probenecid	80N-0183	July 18, 1980 (45 FR 48160).
Procainamide hydrochloride	78N-0178	August 8, 1978 (43 FR 35056).
Quinidine	80N-0315	October 31, 1980 (45 FR 72200).
Sulfonamide anti-infectives, certain	79N-0133	October 19, 1979 (44 FR 60320).
Sulfones	80N-0235	August 22, 1980 (45 FR 56075).
Tricyclic anti-depressants	77N-0425	February 17, 1978 (43 FR 6965).
Vitamin K-type coagulants	79N-0464	March 4, 1980 (45 FR 14063).

Dated: March 2, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89-16025 Filed 7-7-89; 8:45 am]

BILLING CODE 4160-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 87

[PR Docket No. 89-295; FCC 89-207; RM-6620, RM-6649]

Aviation Services; Rules To Permit the Aviation Services To Use Frequencies in the 136-137 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: The proposed rule would permit aircraft to use the frequencies in the 136-137 MHz band. This action was initiated in response to two petitions. One petition (RM-6620) was filed by the Aeronautical Radio, Inc. (ARINC) and the other (RM-6649) filed by the American Petroleum Institute (API). The effect of the proposed rule is to permit the aviation community to use additional frequencies in order to alleviate the frequency congestion that currently exists in the aviation services.

DATES: Comments must be received on or before August 11, 1989, and reply comments must be received on or before August 28, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William P. Berges, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632-7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, PR Docket No. 89-295, adopted June 15, 1989, and released June 28, 1989. The full text of this Commission decision including the proposed rule change is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The full text of this decision including the proposed rule change may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rulemaking

In response to two petitions for rulemaking, one filed by the Aeronautical Radio, Inc. (ARINC) and the other by the American Petroleum Institute (API), the FCC proposes to amend the rules to authorize the aviation services to use the frequencies in the 136-137 MHz band. Authorization to use these frequencies will help to alleviate the frequency congestion currently being experienced in the aviation services.

Ordering Clauses

This is a non-restricted notice and comment rule making proceeding. *See*

§ 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

The Commission hereby certifies pursuant to Section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), that these rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. Although these proposed changes allow the aviation community greater flexibility in the selection of operating frequencies and result in some expenditures for equipment, these additional optional expenditures should be minimal.

The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

Authority for issuance of this *Notice* is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415 and 1.419, interested parties may file comments and reply comments as indicated in the "DATES" paragraph of this document. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

A copy of the Notice of Proposed Rule Making will be served on the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 2

Frequency allocations, Treaties

47 CFR Part 87

Aviation services, Aeronautical stations.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Parts 2 and 87 of Chapter I, Title 47 of the Code of Federal Regulations are proposed to be amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS: GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 continues to read as follows:

Authority: Sec. 4, 302, 303, 307, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 302, 303, 307, unless otherwise noted.

2. In § 2.106, United States footnote US244 is revised to read as follows:

§ 2.106 Table of frequency allocations.

* * * * *

United States (US) Footnotes

* * * * *

US244 The band 136.000–137.000 MHz is allocated to the non-Government aeronautical mobile (R) service on a primary basis, and is subject to pertinent international treaties and agreements. The frequencies 136.000 MHz, 136.025 MHz, 136.050 MHz, 136.075 MHz, 136.125 MHz, 136.150 MHz, 136.175 MHz, 136.225 MHz, 136.250 MHz, 136.300 MHz, 136.325 MHz, 136.350 MHz, 136.400 MHz, 136.425 MHz and 136.450 MHz are available on a shared basis to the Federal Aviation Administration for air traffic control purposes, such as automatic weather observation services (AWOS), automatic terminal information services (ATIS) and airport control tower communications. Existing stations using the 136–137 MHz band as an alternative allocation to the space operation (space-to-earth), meteorological-satellite service (space-to-earth) and the space research service (space-to-earth) may continue to use this band on a secondary basis to the aeronautical mobile (R) service stations. No new assignments will be made to stations in the above space services.

* * * * *

PART 87—AVIATION SERVICES

1. The authority citation for Part 87 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–156, 301–609.

§ 87.137 [Amended]

2. In § 87.137, paragraph (a), footnote 5 is amended by removing the period after § 87.263(a)(1) and adding "and (5)."

§ 87.173 [Amended]

3. In § 87.173, the frequency table in paragraph (b) is amended by adding the following four columnar entries in frequency numerical order:

Frequency of frequency band	Subpart	Class of station	Remarks
*	*	*	*
136.000–136.075 MHz	O, S	MA, FAC, FAW	Air traffic control operations.
136.100 MHz			Reserved for future unicom or AWOS.
136.125–136.175	O, S	MA, FAC, FAW	Air traffic control operations.
136.200 MHz			Reserved for future unicom or AWOS.
136.225–136.250 MHz	O, S	MA, FAC, FAW	Air traffic control operations.
136.275 MHz			Reserved for future unicom or AWOS.
136.300–136.350 MHz	O, S	MA, FAC, FAW	Air traffic control operations.
136.375 MHz			Reserved for future unicom or AWOS.
136.400–136.450 MHz	O, S	MA, FAC, FAW	Air traffic control operations.
136.475 MHz			Reserved for future unicom or AWOS.
136.500–136.600 MHz	I	MA, FAE	Domestic VHF.
136.625 MHz	I	MA, FAE	Domestic VHF (special).
136.650 MHz	I	MA, FAE	Domestic VHF.
136.675 MHz	I	MA, FAE	Domestic VHF (special).
136.700 MHz	I	MA, FAE	Domestic VHF.
136.725 MHz	I	MA, FAE	Domestic VHF (special).
136.750 MHz	I	MA, FAE	Domestic VHF.
136.775 MHz	I	MA, FAE	Domestic VHF (special).
136.800 MHz	I	MA, FAE	Domestic VHF.
136.825 MHz	I	MA, FAE	Domestic VHF (special).
136.850 MHz	I	MA, FAE	Domestic VHF.
136.875 MHz	I	MA, FAE	Domestic VHF (special).
136.900 MHz	I	MA, FAE	Domestic VHF.
136.925 MHz	I	MA, FAE	Domestic VHF (special)
136.950 MHz	I	MA, FAE	Domestic VHF.
136.975 MHz	I	MA, FAE	Domestic VHF (special).
*	*	*	*

4. In § 87.263, paragraph (a)(1) is revised and a new paragraph (a)(5) is added to read as follows:

§ 87.263 Frequencies.

(a) *Domestic VHF Service.* (1) The frequencies in the 128.825–132.000 MHz band and the frequencies 136.500 MHz, 136.525 MHz, 136.550 MHz, 136.575 MHz, 136.600 MHz, 136.650 MHz, 136.700 MHz, 136.750 MHz, 136.800 MHz, 136.850 MHz, 136.900 MHz and 136.950 MHz are available to serve domestic routes. Frequency assignments are based on 25 kHz spacing. Proposed operations must be compatible with existing operations. Use of these frequencies must be in accordance with pertinent international treaties and agreements.

* * * * *

(5) The frequencies 136.625 MHz, 136.675 MHz, 136.725 MHz, 136.775 MHz, 136.825 MHz, 136.875 MHz, 136.925 MHz and 136.975 MHz are available for special purpose assignment to aeronautical enroute stations. Frequency assignments will be based on 25 kHz channel spacing, will be coordinated by the Commission and are not subject to the conditions contained in § 87.261 (b), (c) and (d), and paragraph (a)(2) of this section. Use of these frequencies must be in accordance with pertinent international treaties and agreements.

5. In § 87.421, the introductory text is revised to read as follows:

§ 87.421 Frequencies.

The Commission will assign VHF frequencies after coordination with the FAA. Frequencies in the following bands are available to control towers. Channel spacing is 25 kHz.

118.000–121.400 MHz	136.225–136.250 MHz
121.600–121.925 MHz	136.300–136.350 MHz
123.600–128.800 MHz	136.400–136.450 MHz
132.025–136.075 MHz	
136.125–136.175 MHz	

* * * * *

[FR Doc. 89–15979 Filed 7–7–89; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 54, No. 130
Monday, July 10, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

1989-Crop Peanuts; National Poundage Quota

AGENCY: Agricultural Stabilization and Conservation Service.

ACTION: Notice of determination.

SUMMARY: This notice affirms the determination of the national poundage quota for the 1989 crop of quota peanuts. On December 15, 1988, the Secretary of Agriculture announced that the national poundage quota for the 1989–90 marketing year would be 1,440,000 short tons, 37,800 short tons above last year's quota. That determination was made pursuant to the statutory requirements of the Agricultural Adjustment Act of 1938, as amended (hereinafter referred to as "the Act").

EFFECTIVE DATE: December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Gypsy Banks or Robert Miller, Agricultural Economists, Agricultural Stabilization and Conservation Service, USDA, Room 3734–South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–7477 or (202) 447–8839. The final regulatory impact analysis describing the impact of implementing this determination will be available on request from the above-named individuals.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major." The matters under consideration will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, industries, Federal, State, or local governments or geographical regions: or, (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program that this final rule applies to are: Title—Commodity Loans and Purchases: Number 10.051, as found in the Catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order No. 12372 relating to intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since ASCS is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this determination.

The Secretary of Agriculture proposed, by a notice published on November 25, 1988 (53 FR 47740), that the quota for the 1989 crop of peanuts be set at 1,440,000 short tons. The 1988-crop quota was 1,402,200 short tons. Under section 358(p) of the Act, quota peanuts are those produced on a farm within the farm's poundage quota as established for the farm under the Act. Section 358(q)(1) of the 1938 Act requires that the national poundage quota for peanuts for each of the 1986 through 1990 marketing years be established by the Secretary at a level that is equal to the quantity of peanuts in tons that the Secretary estimates will be devoted in each such marketing year to domestic edible, seed, and related uses. Section 358(q)(1) further provides that the national poundage quota for any such marketing year shall not be less than 1,100,000 short tons. The marketing year for the 1989 crop of peanuts will run from August 1, 1989 through July 31, 1990. Poundage quotas for the 1986–1990 crops of peanuts were approved by producers in a mail ballot held January 27–31, 1986.

Through December 7, comments were receivd from 18 respondents—one national producer group, two area producer groups, three State producer groups, two producers, one regional sheller association, one shelling firm, two procesor associations and six processors.

One respondent recommended reducing the quota to 1,361,000 short tons, one respondent supported no change in the quota from the 1988-crop quantity, and six supported the proposed quota of 1,440,000 short tons. These eight respondents were concerned that a quota level above the proposed 1,440,000 short tons would produce a surplus of peanuts for domestic edible use resulting in potential losses to the Commodity Credit Corporation. One producer specifically suggested that the crushing residual component used to calculate the proposed quota was excessive and had resulted in a proposed quota that was too high.

Ten respondents recommended an increase in the quota, ranging from an unspecified increase to a quota of 1,525,000 short tons. These respondents suggested that inadequate demand projections, an inadequate crushing residual estimate, and the failure to allow for increased government purchases of peanut butter were the primary reaons that the proposed quota was too low.

On December 15, 1988, the Secretary announced that the quota would be the proposed amount, 1,440,000 short tons. That determination was based on the estimates of domestic edible, seed and related uses set out in the November 25, 1988, notice published in the **Federal Register**. The sources of those estimates were set out in that notice and no better figures were offered in the comments. The demand estimates set out in the notice of proposed determination were determined to be the most reliable available at the time of the final determination. The plans for purchases of peanut butter by the government cited by the respondents as a basis for a higher quota are planned purchases that will affect the 1988 crop, rather than the 1989 crop; in addition, the plans for such purchases are subject to change.

Determination

Accordingly, the national poundage quota for 1989-crop peanuts is 1,440,000 short tons.

Authority: 7 U.S.C. 1358.

Signed at Washington, DC on July 3, 1989.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 89–16119 Filed 7–7–89; 8:45 am]

BILLING CODE 3410-05-M

Commodity Credit Corporation

1989-Crop Peanuts; Program Determinations Regarding National Average Support Levels for Quota and Additional Peanuts and the Minimum Commodity Credit Corporation Export Edible Sales Price for Additional Loan Peanuts

AGENCY: Commodity Credit Corporation.

ACTION: Notice of determinations.

SUMMARY: This notice affirms determinations announced on February 15, 1989, with respect to the following for the 1989 crop of peanuts: (1) The national average level of price support for quota peanuts shall be $615.87 per short ton; (2) the national average level of support for additional peanuts shall be $149.75 per short ton; and (3) the Commodity Credit Corporation (CCC) minimum sales price for export for edible use of 1989-crop additional peanuts which were pledged as collateral for a price support loan shall be $400.00 per short ton.

FOR FURTHER INFORMATION CONTACT: Gypsy Banks, Agricultural Economist, Agricultural Stabilization and Conservation Service, USDA, Room 3732-South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–7477. The final regulatory impact analysis describing the impact of implementing this determination is available upon request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice of determination has been reviewed under Department of Agriculture (USDA) procedures established to implement Executive Order 12291 and Department Regulation 1512–1 and has been classified "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loans and Purchases, Number—10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

Section 1017 of the Food Security Act of 1985 provides that the Secretary of Agriculture shall determine the rate of loans, payments, and purchases under the 1949 Act for the 1986–90 crops of commodities without regard to the requirements for notice and public participation in rulemaking prescribed in section 553 of title 5 of the United States Code or in any directive of the Secretary.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The announcement of the national average support level for the 1989 crop of quota and additional peanuts was required to be made by the Secretary of Agriculture no later than February 15, 1989.

1. *Quota Peanut Suport Level.* In accordance with Section 108B(1)(B)(ii) of the 1949 Act, the national average price support level for the 1989 crop of quota peanuts must be the corresponding 1988-crop price support level adjusted to reflect any increase in the national average cost of peanut production (excluding any changes in the cost of land) during the calendar year immediately preceding the marketing year for the 1989 crop. Furthermore, the price support level cannot exceed the 1988 crop support level by more than 6 percent. The 1988-crop quota peanut price support level was $615.27 per short ton.

Based on estimates of the Department of Agriculture's Economic Research Service, it was determined that peanut production costs, as calculated in accordance with the statute had increased $0.60 per short ton. The 1989-crop quota peanut price support level will accordingly be $615.87 per short ton.

2. *Additional Peanut Support Level.* Section 106B(2)(A) of the 1949 Act provides that price support shall be made available for additional peanuts at such level as the Secretary finds appropriate taking into consideration the demand for peanut oil and peanut meal, expected prices of other vegetable oils and protein meals, the demand for peanuts in foreign markets, and that will ensure that there are no losses to CCC on the sale or disposal of such peanuts. CCC supports peanuts through loans. Peanuts pledged as collateral for a price support loan are sold to recover the loan and related costs. Peanuts pledged as collateral for price support loans are accounted for by CCC by "pools."

Depending on peanut supply and demand, it is possible that all peanuts in some pools of additional peanuts may be sold for crushing. The estimated average price expected to be received for 1989-crop peanuts sold for domestic crushing is $214 per ton. Expected CCC handling and storage costs are $63 per short ton, a difference of $151 per short ton.

It was determined that the 1989-crop support level for additional peanuts should, accordingly, remain at the 1988-crop price support level of $149.75 per short ton. That price will provide a cushion against higher than expected handling costs or lower than expected market prices.

3. *CCC Minimum Sales Price for Additional Peanuts Sold for Export Edible Use.* The announcement of a minimum price at which additional peanuts pledged for collateral for a price support loan may be sold for use as edible peanuts in export markets is discretionary. That price is announced at the same time that the quota and additional peanut support levels are announced. It is announced to provide information for producers and handlers contracting for the upcoming crop year for the private sale of additional peanuts.

An overly-high price may create an unrealistic expectation of high price support pool dividends and an excess supply of additional peanuts pledged as collateral for price support loans. If too low, the price will reduce pool revenues.

Because of expected world market conditions for the 1989/90 marketing year, it has been determined with respect to additional peanuts pledged as collateral for a price support loan that the minimum sales price for such peanuts of the 1989 crop which are sold for export for edible use should remain at the 1988-crop level of $400 per short ton.

Determinations

Accordingly, the following determinations, announced by the Secretary of Agriculture on February 15, 1989, are affirmed:

(1) The national average level of price support for the 1989 crop of quota

BEST COPY AVAILABLE

peanuts shall be $615.87 per short ton. This level of price support is applicable to eligible 1989-crop farmers stock peanuts in bulk or in bags, net weight basis.

(2) The national average level of price support for the 1989 crop of additional peanuts shall be $149.75 per short ton. This level of price support is applicable to eligible 1989-crop farmers stock peanuts in bulk or in bags, net weight basis.

(3) The minimum sales price for additional peanuts of the 1989 crop which are sold for export for edible use is $400 per short ton for peanuts: (1) owned by CCC, or (2) which are pledged as collateral for a price support loan made available by CCC.

Authority: 7 U.S.C. §§ 1359, 1445c-2.

Signed at Washington, DC on July 3, 1989.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89-16120 Filed 7-7-89; 8:45 am]

BILLING CODE 3410-05-M

Rural Electrification Administration

Dairyland Power Cooperative; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), the Council on Environmental Quality Regulations (40 CFR Parts 1500-1508), and REA Environmental Policy and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact (FONSI) with respect to the construction of the Barron-Apple River 161/69 kV transmission line and associated facilities. Associated facilities include the expansion of the Barron and Apple River Substations to provide space to accommodate terminations of the new 161/69 kV line. Also, space will be provided at the Apple River Substation for the addition of a second 161/69 kV 60 MVA transformer in the future. The proposed facilities will be located in Polk and Barron Counties, Wisconsin. The Barron Substation is located about one-half mile south of the City of Barron in Section 33, Township 34 North, Range 12 West in the Barron Township, Barron County. The Apple River Substation is located about 2 miles southwest of the City of Range in Section 2, Township 33 North, Range 16 West in the Lincoln Township, Polk County. The proposed facilities will be built by the Dairyland Power Cooperative (DPC) of La Crosse, Wisconsin.

FOR FURTHER INFORMATION CONTACT: REA's Environmental Assessment (EA) and FONSI and DPC's Borrower's Environmental Report (BER) may be reviewed at the REA, Office of the Director, Northwest Area-Electric, Room 0230, South Agriculture Building, Washington, DC 20250, telephone (202) 382-1400; or at the Office of DPC, Mr. James W. Taylor, Manager, P.O. Box 817, La Crosse, Wisconsin 54602-0817, telephone (608) 788-4000, during regular business hours. Copies of the BER, EA and FONSI can be obtained from either of the contacts listed above. All comments or questions should be directed to the REA contact.

SUPPLEMENTARY INFORMATION: REA reviewed the BER submitted by DPC and determined that it represents an accurate assessment of the environmental impacts of the proposed project. The line consists of a 161/69 kV transmission line approximately 43 kilometers (27 miles) in length and associated facilities. Associated facilities include the expansion of the 161 kV bus at Barron Substation into a breaker-and-a-half scheme and expansion of the 161 kV bus at Apple River Substation to accommodate a new 161 kV line. DPC at a future date also intends to install a second 161/69 kV 60 MVA transformer at the Apple River Substation. The BER and EA adequately consider the potential impacts of the proposed project, and REA has concluded that approval of the project would not result in a major Federal action significantly affecting the quality of the human environment. REA determined that the proposed project will have no significant effect on air quality, water quality, floodplains, wetlands, important farmlands, prime rangelands or prime forest lands, Federal or State listed or proposed threatened or endangered species or their critical habitat, or any property listed or eligible for listing in the *National Register of Historic Places.* REA identified no other matters of potential environmental concern related to the proposed project.

Various alternatives to the proposed project were considered including no action, rebuilding the existing Barron to Apple River 69 kV transmission line, energy conservation, local generation, alternative voltage, alternative sources of power, alternative transmission route, and undergound construction. REA determined that the proposed project is an environmentally acceptable alternative that meets DPC's need with a minimum of adverse environmental impact. REA has concluded that project approval would not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, the preparation of an Environmental Impact Statement is not necessary.

In accordance with REA's Environmental Policies and Procedures, 7 CFR Part 1794, DPC advertised in the area newspapers requesting comments on the environmental aspects of the proposed project. DPC also held three meetings in the project areas to solicit public input. All comments were resolved and incorporated in its BER.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.850—Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the final rule related notice to 7 CFR Part 3015, Subpart V in 50 FR 47034, November 14, 1985, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Date: June 29, 1989.

John H. Arnesen,

Assistant Administrator—Electric.

[FR Doc. 89-16104 Filed 7-7-89; 8:45 am]

BILLING CODE 3410-15-M

Soil Conservation Service

McCoy Wash Watershed, CA; Intent To Prepare Environmental Impact Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the McCoy Wash Watershed, Riverside County, California.

FOR FURTHER INFORMATION CONTACT: Eugene E. Andreuccetti, State Conservationist, Soil Conservation Service, 2121-C Second Street, Davis, California, 95616, telephone (916) 449-2848.

SUPPLEMENTARY INFORMATION: The environmental evaluation of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Eugene E. Andreuccetti, State Conservationist, has determined that the preparation and review of an environemtnal impact statement are needed for this project.

The project concerns a plan for flood prevention. Alternatives under consideration include a diversion structure in the upper watershed; a temporary storage structure (dam); channel enlargement, realignment, or consolidation and channel lining. There will be a land use permit and a possible land exchange between the United States Department of the Interior, Bureau of Land and Mangement, and the local flood district.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdication or interest in the preparation of the draft environmental impact statemnt. Further information on the proposed action or future meetings may be obtained from Eugene E. Andreauccetti, State Conservationist, at the above address or telephone (916) 449-2848.

(This activity is listed in the Catalog of Federal Domestic Assistance Under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Eugene E. Andreauccetti,

State Conservationist.

[FR Doc. 89-16044 Filed 7-7-89; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

Performance Review Board Membership

This notice announces the appointment by the Department of Commerce Under Secretary for International Trade, J. Michael Farren, of the Performance Review Board. This is a revised list of membership which includes previous members as listed in the August 3, 1988, **Federal Register** Announcement (52 FR 29248) with additional members added to serve a two year term. The purpose of the International Trade Administration's PRB is to review and make recommendations to the appointing authority on performance recommendations and other issues concerning members of the Senior Executive Service (SES). The members of the PRB are:

Maureen R. Smith, Deputy Assistant Secretary for Japan, International Economic Policy

Joseph Spetrini, Deputy Assistant Secretary for Compliance, Import Administration

Saul Padwo, Director, Office of Trade Promotion, U.S. & Foreign Commercial Service

Marilyn Wagner, Assistant General Counsel for Administration

James C. Lake, Director, Office of Planning and Coordination, Trade Development

Jonathan C. Menes, Director, Office of Industry Assessment, Trade Development

Donald N. De Marino, Deputy Assistant Secretary for Africa, Near East, South Asia, International Economic Policy

Dated: June 29, 1989.

James T. King, Jr.,

Personnel Officer, ITA.

[FR Doc. 89-16115 Filed 7-7-89; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Exxon Company, USA From an Objection by the New Jersey Department of Environmental Protection

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of decision.

SUMMARY: Exxon Company, USA (Appellant) proposes to construct an automobile service station on a 1.068 acre parcel near Barnegat Bay in Dover Township, Ocean County, New Jersey. Construction of the service station according to the Appellant's design would necessitate the filling of approximately 5,660 square feet of wetlands on the lot. Accordingly, in 1986, the Appellant applied to the U.S. Army Corps of Engineers (Corps) for a permit to fill the wetlands with sand. In conjunction with that Federal permit application, the Appellant submitted to the Corps a consistency certification for the proposed activity for the State of New Jersey's (State) review under Section 307 (c)(3)(A) of the Coastal Zone Management Act of 1982, as amended (CZMA), 16 U.S.C. 1456(c)(3)(A).

In December, 1986, the State objected to the Appellant's consistency certification for the proposed project on the ground that it violates the State Coastal Management Program's prohibition of the filling of wetlands. Pursuant to the CZMA and its implementing regulations, see 15 CFR 930.131 (1988), the State's consistency objection precludes the Corps from issuing any permit or license necessary for the Appellant's proposed activity unless the Secretary of Commerce (Secretary) determines that the activity may be federally approved, notwithstanding the State's objection, because the activity is either (1) consistent with the objectives or purposes of the CZMA (Ground I), or (2) necessary in the interest of national security (Ground II). If the requirements of either Ground I or Ground II are met, the Secretary must overide the State's objection.

In January, 1987, in accordance with CZMA Section 307(c)(3)(A) and 15 CFR Part 930, Subpart H (1988), counsel for the Appellant filed with the Secretary a notice of appeal from the State's objection to the Appellant's consistency certification for the proposed project. The Appellant based its appeal on Ground I. Upon consideration of the information submitted by the Appellant, the State and several Federal agencies, the Under Secretary for Oceans and Atmosphere found, pursuant to 15 CFR 930.121 (1988), that the proposed filling of wetlands to construct the service station does not further the objectives or purposes of the CZMA. Accordingly, the requriements of Ground I are not met, and the Under Secretary, therefore, will not override the State's objection to the Appellant's consistency certification. This decision precludes the Corps and other Federal agencies from issuing any permits for the Appellant's proposed project.

FOR ADDITIONAL INFORMATION CONTACT: Katherine A. Pease, Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673-5200.

Date: June 30, 1989.

B. Kent Burton,

Assistant Secretary for Oceans and Atmosphere.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance]

[FR Doc. 89-16113 Filed 7-7-89; 8:45 am]

BILLING CODE 3510-08-M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council will hold its 45th Scientific and Statistical Committee (SSC) meeting on July 20–21, 1989, at 9 a.m., at the National Marine Fisheries Service, Honolulu Laboratory Conference/Seminar Rooms, 2570 Dole Street, Honolulu, HI.

The SSC will review the status of programmatic projects in support of fishery management plans (FMPs) for bottomfish, crustaceans, precious corals, and pelagic species. The Committee will also review reports of the Plan Monitoring Team for each FMP and formulate recommendations for the Council. In particular, the SSC will: (1) Review a draft document outlining the Council's program for 1990–1995; (2) review the revised guidelines for National Standards 1 and 2; (3) review the status of the Fishing Rights for Indigenous People and Limited Entry Project; (4) review the status of annual reports for pelagics, bottomfish, and crustaceans, and (5) discuss reauthorization of the Magnuson Fishery Conservation and Management Act.

For further information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813; telephone: (808) 532–1368.

Date: July 3, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–16110 Filed 7–7–89; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council and its Standing Committees will hold public meetings on July 24–26, 1989, at the Turtle Bay Hilton Hotel, Kahuku, HI. The Council will begin meeting on July 25 and 26 at 9 a.m. The Council's Standing Committees will meet on July 24 at 9 a.m.

At its 66th meeting, the Council will hear routine fisheries reports from state, territorial, and federal governments' representatives on the Council, as well as from private sector Council members from Hawaii, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (CNMI). The status of fishery management plans (FMPs) covering crustaceans, bottom fish and seamount groundfish, pelagics, and precious corals will also be discussed. The Council will adopt a program for 1990–1995.

The Council will review the: (1) 1988 annual report for crustaceans; (2) 1988 annual report for bottomfish; (3) first and second annual reports for pelagics; (4) Fishing Rights of Indigenous People and Limited Entry Projects for American Samoa, Guam, and the CNMI; (5) Congressional hearings on reauthorization of the Magnuson Fishery Conservation and Act; (6) status of the North and South Pacific foreign drift gillnet fishing situations, and (7) general administrative matters, including review of the Council's Statement of Organization, Practices and Procedures, and other routine Council business.

For further information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813; telephone: (808) 532–1368.

Date: July 3, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–16111 Filed 6–7–89; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

June 30, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 11, 1989.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6494. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Group II and certain categories in Groups I and II are being adjusted, variously, for swing, carryover, carryforward, carryforward used and special allowance provided for under the agreement for 100 percent cotton garments made from handloomed fabrics.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 54 FR 50071, published on December 13, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 30, 1989

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 8, 1988, as amended, from the Chairman, Committee for the Implementation of Textile Agreements. That directive establishes restraint limits for certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-months period which began on January 1, 1989 and extends through December 31, 1989.

Effective on July 11, 1989, you are directed to amend further the December 8, 1988 directive to include the following adjusted limits, as provided under the terms of the current bilateral textile agreements between the Governments of the United States and India:

Category	Adjusted twelve-month limit [1]
Levels in Group I:	
218	7,885,500 square meters
219	30,621,811 square meters
313	21,609,525 square meters
314	4,855,937 square meters
315	8,782,861 square meters
335	206,623 dozen
336/636	535,492 dozen
338/339/340	1,391,651 dozen
341	3,017,128 dozen of which, not more than 1,720,292 dozen shall be in Category 341–Y [2]
342	495,444 dozen
347/348	343,247 dozen
363	25,416,780 numbers
Group II:	
200, 201, 220–223, 237, 239, 300/301, 317, 326, 330–334, 345, 349–352, 359–362, 369–O [3], 369–S [4], 600–607, 611–635, 638–652, 659, 665pt.[5], 666–679 and 831–859, as a group.	102,617,030 square meters equivalent
Sublevels in Group II:	
237	104,476 dozen
369–S	379,839 kilograms
640	158,795 dozen
641	939,468 dozen
642	285,491 dozen

[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.
[2] In Category 341–Y, only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.
[3] In Category 369–O, all HTS numbers except 6307.10.2005 in Category 369–S; 6302.60.0010 and 6302.91.0020 in Category 369–D; and rugs exempt from the bilateral agreement in HTS numbers 5702.10.9020, 5702.49.1010 and 5702.99.1010.
[4] In Category 369–S, only HTS number 6307.10.2005.
[5] In Category 665pt., and HTS numbers except rugs exempt from the bilateral agreement in HTS number 5702.10.9030, 5702.42.2010, 5702.92.0010 and 5703.20.1000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–16103 Filed 7–7–89; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

June 30, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 11, 1989.

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535–6735. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 633 is being increased by application of special shift, reducing the limit for Category 634.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 49343, published on December 7, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 30, 1989.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 2, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the Philippines and exported during the period which began on January 1, 1989 and extends through December 31, 1989.

Effective on July 11, 1989, the directive of December 2, 1988 is being amended to adjust the limits for the following categories, under the terms of the current bilateral textile agreement between the Governments of the United States and the Philippines:

Category	Twelve-month limit [1]
Levels in Group I:	
633	26,865 dozen
634	241,628 dozen

[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-16102 Filed 7-7-89; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1989 a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: August 8, 1989.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On May 5, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (54 FR 19429) of proposed addition to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

No comments were received concerning the proposed addition to the Procurement List. After consideration of the material presented to it concerning capability of qualified workshops to provide the service at fair market prices and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 1-2.6.

I Certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1989: Janitorial/Custodial for the following locations in Rssellville, Arkansas:

Federal Building, 115 South Denver Street

Henry R. Koen Federal Building, W. Main and Fargo Street

Beverly L. Milkman,

Executive Director.

[FR Doc. 89-16116 Filed 7-7-89; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1989; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1989 commodities to be produced by workshops for the blind or other severely handicapped.

Comments Must Be Received on or Before: August 8, 1989.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to produce the commodities listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018):

Strap Assembly, Webbing
2540-00-894-9545

Correction Fluid
7510-01-020-2806

Solvent, Correction Fluid
7510-01-013-9215

Beverly L. Milkman,

Executive Director.

[FR Doc. 89-16117 Filed 7-7-89; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Navy

Federal Information Processing Standards (FIPS)

ACTION: Notice of FIPS waivers.

SUMMARY: Notice is hereby given that, pursuant to a delegation of authority by the Department of Commerce and a redelegation of authority by the Department of Defense, the Department of the Navy has granted waivers from FIPS 60-2, 61-1, 62, 63-1, and 97 (Input/Output Standards) and FIPS 146 (Government Open Systems Interconnection Profile) for an expansion and technology upgrade of computer systems supporting the Navy Headquarters Budgeting System (NHBS) at the Pentagon and other locations. These waivers were necessary because compliance with the FIPS would cause a major adverse financial impact on the operator of the NHBS which is not offset by Government-wide savings, and would adversely affect the accomplishment of the mission of the operator of the NHBS.

FOR FURTHER INFORMATION CONTACT: Dr. James L. Raney, Office of the Director, Department of the Navy Information Resources Management, Washington, DC 20350-1000, telephone (202) 697-7216.

Date: July 5, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-16058 Filed 7-7-89; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Indian Education National Advisory Council; Meeting

AGENCY: National Advisory Council on Indian Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Commitee Act.

DATES: July 17-18, 1989, 9:00 a.m. until conclusion of business each day.

ADDRESS: Summer House Inn, 7955 La Jolla Shores Drive, La Jolla, California 619/459-0261.

FOR FURTHER INFORMATION CONTACT: Jo Jo Hunt, Executive Director, National Advisory Council on Indian Education, 330 C Street, SW., Room 4072, Switzer Building Washington, DC 20202-7556 (212/732-1353).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 5342 of the Indian Education Act of 1988 (25 U.S.C. 2642). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act of 1988 (Part C, Title V, Public Law 100-297) and to advise Congress and the Secretary of Education with regard to federal education programs in which Indian children or adults participate or from which they can benefit.

The Executive Committee of the Council will meet starting at approximately 9:00 a.m. and will end at the conclusion of business each day at approximately 5:00 p.m. The meeting is open to the public. The agenda includes reports by the Chairman and Executive Director; a review of the updated NACIE Handbook; a planning session for the agenda of the Full Council Meeting to be scheduled in October 1989 in conjunction with the meeting of the National Indian Education Association in Anchorage, Alaska, and planning of any site visits in Alaska; discussion of the staff evaluation process; and approval of the 1990 revised budget proposal and the 1991 proposed budget for the Council.

The public is being given less than 15 days notice due to scheduling problems and delay in permission for an out-of-town meeting.

Date: July 3, 1989. Signed at Washington, DC.

Jo Jo Hunt,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 89-16033 Filed 7-7-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of the Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement Between the United States and Canada

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Canada concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves the agreement between the Government of the United States of America and the Government of Canada to the reprocessing of irradiated fuel rods from the NRU research reactor in Canada for the purpose of radioisotope recovery for commercial sale. The recovered uranium and associated transuranic products, including plutonium will be recovered for subsequent return to the United States of America for storage and reprocessing. Approximately 10 fuel rods are to by processed each year. Each fuel rod contains approximately 200 grams of uranium, enriched to 50 percent in the isotope uranium-235, and 0.5 grams of plutonium.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131(b)(1) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

For the Department of Energy.

Date: July 5, 1989.

Richard W. Williamson,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 89-16121 Filed 7-7-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP84-13-005 et al.]

Michigan Consolidated Gas Co., et al.; Filing of Pipeline Refund Reports

June 30, 1989.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports. The date of filing and docket number are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, on or before July 20, 1989. Copies of the respective filings are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

Filing date	Company	Docket No.
6/2/89	Michigan Consolidated Gas Company.	RP84-13-005
6/9/89	Columbia Gas Transmission Corp..	RP78-20-027
6/12/89	Transcontinental Gas Pipe Line Corporation.	RP87-7-054
6/19/89	Northwest Pipeline Corporation.	RP72-154-018
6/26/89	Texas Eastern Transmission Corporation.	RP74-41-045

[FR Doc. 89-16116 Filed 7-7-89; 8:45 am]

BILLING CODE 6717-01-M

Southwestern Power Administration

Initial Town Bluff Dam Power Rate; Order Confirming, Approving, and Placing Initial Town Bluff Dam Power Rate in Effect on an Interim Basis

AGENCY: Southwestern Power Administration, Department of Energy.

ACTION: Notice of Power Rate Order.

SUMMARY: The Deputy Secretary of Energy, acting under Delegation Order No. 0204-108, as amended, has confirmed, approved and placed in effect on an interim basis, an initial annual power rate of $373,068 for the sale of power and energy by the Southwestern Power Administration (SWPA) from Town Bluff Dam to the Sam Rayburn Municipal Power Agency (SRMA). This rate is the first to be effective for this isolated project and provides for recovery of all annual operating costs, as well as expected future capital additions or replacements. The rate has no original investment amortization component since all design and construction costs were financed by the non-Federal sponsor of the project, SRMA, which has, in essence, prepaid this element in return for receipt of the project's entire output for a period of 50 years.

EFFECTIVE DATES: Rate Order No. SWPA-22 specifies the date of commercial operation (expected about July 1, 1989) through September 30, 1993,

as the effective period of the initial annual rate of $373,068 for the sale of power and energy from Town Bluff Dam.

FOR FURTHER INFORMATION CONTACT: Francis R. Gajan, Director, Power Marketing, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 581-7529.

SUPPLEMENTARY INFORMATION: The SWPA Administrator has prepared a 1989 Town Bluff Dam Revised Initial Power Repayment Study based on an annual power rate of $373,068, beginning about July 1, 1989 (the expected date of commercial operation). The study indicates that this initial power rate is adequate to satisfy cost recovery criteria for the sale of power and energy from Town Bluff Dam to Sam Rayburn Municipal Power Agency under Contract No. DE-PM75-65SW00117, and will satisfy the provisions of section 5 of the Flood Control Act of 1944 and Department of Energy Order No. RA 6120.2. In this regard, the Administrator has determined that the initial annual rate of $373,068 is the lowest possible rate to the customer consistent with sound business principles. The rate has been approved on an interim basis through September 30, 1993, or until confirmed and approved on a final basis by the FERC.

Issued in Washington, DC, this 28th day of June 1989.

W. Henson Moore,

Deputy Secretary.

[Rate Order No. SWPA-22]

Order Confirming, Approving and Placing Initial Power Rate in Effect on an Interim Basis

In the matter of: Southwestern Power Administration—Town Bluff Dam Rate.

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95-91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, for the Southwestern Power Administration were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204-33, effective January 1, 1979, 43 FR 60636 (December 28, 1978), the Secretary of Energy delegated to the Assistant Secretary for Resource Applications the authority to develop power and transmission rates, acting by and through the Administrator, and to confirm, approve and place into effect such rates on an interim basis, and delegated to the Federal Energy Regulatory Commission the authority to confirm and approve on a final basis or to disapprove rates developed by the Assistant under the Delegation. Due to a Department of Energy organizational realignment, Delegation Order No. 0204-33 was amended, effective March 19, 1981, to transfer the authority of the Assistant Secretary for Resource Applications to the Assistant Secretary for Conservation and Renewable Energy. By Delegation Order No. 0204-108, effective December 14, 1983, 48 FR 55664 (December 14, 1983) the Secretary of Energy delegated to the Deputy Secretary of Energy on a non-exclusive basis the authority to confirm, approve and place into effect on an interim basis power and transmission rates, and delegated to the Federal Energy Regulatory Commission on an exclusive basis the authority to confirm, approve and place in effect power and transmission rates on a final basis. Amendment No. 1 to Delegation Order No. 0204-108, effective May 30, 1986, 51 FR 19744 (May 30, 1986), revised the delegation of authority to confirm, approve and place into effect on an interim basis power and transmission rates by delegating such authority to the Under Secretary of Energy rather than the Deputy Secretary of Energy. However, on October 27, 1988, the Secretary of Energy issued a notice (DOE N 1110.29) which has the effect of amending Delegation Order No. 0204-108 by transferring the authority to place rates into effect on an interim basis from the Under Secretary of the Department of Energy to the Deputy Secretary of the Department of Energy. This rate order is issued pursuant to the amended Delegation Order to the Deputy Secretary of Energy.

Background

The Town Bluff project is located on the Neches River in eastern Texas downstream from the Sam Rayburn Dam, was originally constructed in 1951 by the U.S. Army Corps of Engineers (Corps) and, now, primarily provides streamflow regulation of releases from the Sam Rayburn Dam. The Lower Neches Valley Authority (LNVA) contributed funds toward construction of both projects and makes established annual payments for the right to withdraw up to 2000 cubic feet of water per second from Town Bluff for its own use. Power was legislatively authorized at the project, but installation of hydroelectric facilities was deferred until justified by economic conditions. A determination of feasibility was made in a 1982 Corps study. In 1983, the SRMA proposed to sponsor the development of hydropower at Town Bluff in return for the output of the project to be delivered to its member municipalities; Jasper, Liberty and Livingston, Texas and Vinton, Louisiana, as well as, the participating member cooperatives of the Sam Rayburn Dam Electric Cooperative, of which the SRMA municipals are also members and through which they receive a portion of the power produced at the Sam Rayburn Dam. SRMA provided non-Federal funds for the entire design and construction of the project which was performed by the Corps at a cost of approximately $18 million. SRMA will pay all annual operating and marketing costs, as well as expected capital replacement costs, through the rate paid to the SWPA, and will receive all power and energy produced at the project for a period of 50 years from the commercial on-line date.

The 1989 Town Bluff Dam Revised Initial Power Repayment Study indicates that an annual rate of $373,068 will be required beginning on the date the project's generators are declared in commercial operation, to recover annual costs of marketing and operation and maintenance (O&M), and to repay the isolated project's investment in additions or replacements in accordance with Department of Energy Order No. RA 6120.2 and Section 5 of the Flood Control Act of 1944. The proposed rate is classified as a minor rate adjustment in accordance with Title 10, Part 903, Subpart A of the code of Federal Regulations (10 CFR Part 903), "Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions" (50 FR 37837), since it is for establishment of a rate for a new service from a power system with an installed capacity of less than 20 MW.

SWPA published Notice in the **Federal Register** April 6, 1989, announcing a 30-day period for public review and comment concerning a proposed annual rate of $285,444 as required by 10 CFR 903. By letter dated April 11, 1989, SWPA provided a copy of the **Federal Register** Notice and supporting data for the 1989 Power Repayment Study to the customer for information and review. The letter also confirmed a meeting among SRMA, SWPA and the Corps which was held on April 20, 1989, to discuss the rate proposal, among other things. At the meeting, the Corps provided new and more detailed information which significantly increased their previous estimates of annual O&M costs. Further, the Corps indicated that the commercial on-line date for the project would be delayed until about July 1, 1989, rather than June 1 as expected earlier. In accordance with 10 CFR 903.18, SWPA extended the initial comment period by 15 days to announce a revised proposed rate of $373,068 annually, made necessary by the new O&M estimates and on-line date. By letter dated May 5, 1989, SWPA provided a preliminary copy of the **Federal Register** Notice, which was published on May 19, 1989 (54 FR 21929), and a 1989 Revised Initial Power Repayment Study with supporting data to the customer for review and comment. Written comments from the customer and interested parties were accepted through May 23, 1989, and are contained along with SWPA's responses in the Comments and Responses Section of this Rate Order.

Discussion

The 1989 Revised Initial Power Repayment Study tests the adequacy of the revised proposed initial rate based on a cost evaluation period extending from initial commercial operation in FY 1989 through FY 1993, to cover annual expenses for marketing, operation and maintenance, and to amortize additions to plant and major replacement of the generating facilities. Since the project's design and construction were financed in their entirety by the non-Federal sponsor, SRMA, no component for amortization of the original investment of some $18 million is included in the rate determination. The Power Repayment Study is, therefore, presented somewhat differently than normal, and illustrates the collection of revenues in advance of their need for repayment of future replacement investments. Revenues in excess of current year expenses are accumulated as

surpluses, accruing an interest credit as provided by DOE Order RA 6120.2 and Corps accounting procedures, awaiting their use to cover replacement costs as they occur. The original estimates of future project replacements were provided by the Corps in their December 6, 1988, letter to SWPA and were based on 1988 cost data. The 1988 cost estimates were escalated to FY 1989 cost levels by SWPA using "The Handy-Whitman Index of Public Utility Construction Costs" for use in the revised Study and adjusted to show FY 1990 as the first full year of commercial operation instead of FY 1989. The 1989 Initial Power Repayment Study estimated project replacements totaling $1,138,200 for the period FY 1989 through FY 2039. The 1989 Revised Initial Power Repayment Study estimates replacements totaling $1,107,600 for the period.

By letter dated December 6, 1988, the Corps originally provided estimates of Town Bluff Dam O&M expense for the 1989 Initial Power Repayment Study based on FY 1989 cost levels. SWPA adjusted those projections for inflation using Gross National Product Deflators for FY 1990 through FY 1993. The original estimates of Corps O&M expense for the 1989 Initial Power Repayment Study varied from $76,700 in FY 1989 (4 months) to a maximum inflation-adjusted O&M expense figure of $258,100 for FY 1993, which was extended through the end of the repayment period in FY 2039. Based on a more detailed analysis of costs, the Corps provided new estimates of O&M expense by letter dated April 27, 1989. The more detailed analysis included a number of assumptions about the costs of operating and maintaining the Town Bluff project in conjunction with the Sam Rayburn Dam project immediately upstream. Town Bluff hydropower will be operated and maintained from Sam Rayburn Dam with the addition of only a few maintenance staff rather than having its own full complement of operators, superintendent, maintenance and clerical support. In developing the estimated O&M costs for Town Bluff, the Corps assumed the operators' time and labor costs would be shared equally (50/50) between Sam Rayburn and Town Bluff, while two man-years of labor would be necessary to maintain Town Bluff. Supervisory and clerical staff would spend one-fourth and one-eight of their time, respectively, on Town Bluff work. Further, about 45 percent of the supervisor's time assigned to Town Bluff (25 percent of time) is assumed to relate to operations while 55 percent relates to maintenance. Clerical support assigned to Town Bluff (12.5 percent of time) is assumed to relate 50 percent to operations and 50 percent to maintenance. Until some actual experience in these areas is obtained and a detailed efforts analysis can be made, these assumptions appear reasonable. The assumptions utilized produce an end result that about 60 percent of the total cost of operations (as distinct from maintenance) of the two projects is assigned to Sam Rayburn Dam and about 40 percent to Town Bluff. The resulting estimates of O&M for Town Bluff were used for the 1989 Revised Initial Power Repayment Study and vary from $94,587 in FY 1989 (3 months) to a maximum inflation-adjusted O&M expense figure of $346,124 for FY 1993 and thereafter.

Estimates of General Administrative and Overhead (GA&O) expense for both the 1989 Initial and Revised Initial Power Repayment Studies were based on SWPA's FY 1989 Department of Energy Internal Review Budget for FY 1989-1993. The FY 1993 amount is used for each subsequent year of the Power Repayment Study. GA&O Expense is assigned to isolated projects, including both the Town Bluff and the Sam Rayburn Dam projects, based on the capital investment in the Southwestern Federal Power System (SWFPS) excluding transmission investment, as a percentage of total capital investment in the SWFPS, and the installed hydroelectric capacity of the project as a percent of the total installed hydroelectric capacity in the SWFPS. A five year average (FY 1984-FY 1988) of actual Transmission and GA&O Expense for the SWFPS indicates that GA&O Expense comprises 45.6 percent and Transmission Expense 54.4 percent of the total Transmission and GA&O Expense. Transmission Expense is not chargeable to the Town Bluff Dam project. The project was expected to have 6 MW of installed capacity (two 3 MW generators) according to the Corps' plan for development of the most economical project. However, during construction, a decision was made to substitute two 4 MW units for the two 3 MW units originally planned, based on "off-the-shelf" availability at no more than an equivalent price. Consequently, 8 MW of installed capacity was used instead of 6 MW in the assignment of GA&O costs to the project in both the Initial and Revised Initial Power Repayment Studies. The 1989 Initial Power Repayment Study estimated GA&O expense assignable to the Town Bluff Dam Project to be $6,500 in FY 1989 (4 months), while the 1989 Revised Initial Power Repayment Study estimates the GA&O expense to be $4,900 for FY 1989 (3 months). Both the Initial and Revised Initial Studies show the assignable GA&O costs to increase to $21,800 in FY 1993, which was carried through the end of the repayment period.

Comments & Responses

The Southwestern Power Administration received two written replies by letters dated May 4 and May 22, 1989, both from the customer, SRMA, concerning the Notices published in the Federal Register April 6, 1989, and May 19, 1989, which announced the proposed and revised proposed Town Bluff Dam power rates respectively, scheduled for implementation upon commercial operation of the project. A summary of the four major comments and SWPA's responses to those comments follows:

Use of 6 MW Vs. 8 MW Installed Capacity to Assign GA&O

Comment: SRMA believes it would be inequitable to utilize 8 MW based on the installed capacity of units not originally designed for the project to assign SWPA General Administration and Overhead (GA&O) costs to the Town Bluff Dam in the Power Repayment Study, if the units are in fact able to produce only 6 MW, or some other rating. Since the actual capacity will soon be determined during testing, SRMA suggests the 6 MW contemplated in the power sales contract be used in the initial rate to assign GA&O costs.

Response: SWPA agrees that the correct capacity quantity should be used to establish the GA&O assignment to Town Bluff and that testing will soon determine whether each unit is able to produce the rated 4 MW of installed capacity at the design head. However, the original 6 MW was chosen for installation at the project because that capacity produced the greatest net economic benefits, not necessarily because it was the optimum project design capacity. In fact a variety of installed capacities ranging from 2 to 11 MW were evaluated, with unit numbers and sizes including one 2 MW unit (2 MW installed); two 3 MW units (6 MW installed); four 2.5 MW units (10 MW installed); and two 3 MW units with two 2.5 MW units (11 MW installed). Since economics (lowest cost construction) was the driving factor in the use of two 4 MW unit as opposed to the planned two 3 MW units, and it is likely that the units will generate at their design capacity of 4 MW, SWPA has elected to stay with the name plate capacity of 8 MW until testing confirms this or determines another rating. As a point of interest, the larger units may increase the expected project energy production of the project by some 15 percent. Certainly, if the units will produce only at a level commensurate with the expected production from the two 3 MW units, since the two substituted 4 MW units are specified to have operating characteristics no less than those of the 3 MW units, the GA&O assignment will be modified and the rate adjusted accordingly at the next practical time following the development of the next annual Power Repayment Study, expected in January 1990.

Estimated Corps O&M Costs

Comment: SRMA believes, given that Town Bluff will be remotely operated from the Sam Rayburn Dam power house, the Corps' proposal to share power house operators' costs equally between Sam Rayburn and Town Bluff Dams would be unfair, and has proposed that such costs could be distributed based on installed plant capacity (approximately 85/15 percent respectively) or in such a way that the split of operation costs reflects the power and energy benefits accruing from the sales relationships between the projects and the SRDEC and SRMA entities and their members (approximately 60/40 percent respectively).

Response: The Corps has recommended that the 50/50 split of power house operator labor costs be retained at the present time, since it believes that the complexity of Town Bluff power operations coupled with water releases for salt water intrusion may require more than 50 percent of an operator's time. The Corps suggests that, after the initial operation and training time is completed, an actual time/work study could be performed to determine actual operator attention and work performed for the Town Bluff project for use in determining this cost split. This issue could appropriately be reviewed and dicussed as part of the ongoing agenda of the Informal Working Group (IWG) for Town Bluff which SRMA, SWPA and the Corps

have agreed to establish. SWPA believes that, as a practical matter, the entities involved (SRDEC and SRMA) can sort out the costs of the two projects between themselves irrespective of the Corps split, as long as those entities remain the recipients of Sam Rayburn and Town Bluff Dam outputs. Also, as a practical matter, while the assumption of a 50/50 split in operator costs between Sam Rayburn and Town Bluff may remain debatable, the impact of other assumptions regarding the times of the superintendent and clerical support personnel assigned to the operations of Town Bluff (as opposed to maintenance) noted in the discussion of O&M cost estimates in both the Rate Order and the Record of Decision, results in a split of total operations costs of about 60 percent to Sam Rayburn and 40 percent to Town Bluff.

Updating/Replacing Scada and Microwave System

Comment: SRMA is concerned about updating and replacing the SCADA and microwave systems after only 15 years, as per the Corps replacement schedule, and is also concerned about the proposed rotor rewinding rehabilitation at or near the end of the 50-year contract period, submitting that equity argues for continuation of SRMA as the recipient of Town Bluff power after the current 50-year Power Sales Agreement since there will be substantial value in the remaining service lives of other capital investments for which payments will have been initiated.

Response: The estimated service life of the SCADA and microwave systems, as well as other major components of plant, is established by the Corps' Engineering Regulations (ERs). These ERs are based on the best historical information available and the service lives given represent the average experienced lives for that equipment. These service lives do not necessarily mean that the times will be replaced at this time, but items are replaced as needed based on condition and reliability. Incidentally, SWPA is anticipating replacement of its SCADA system in FY 1991 which is about 15 years from the year of installation. This action is necessary due to both physical deterioration and technological obsolescence.

SRMA is correct in recognizing that replacements occurring late in the 50-year replacement period are prorated so that only a portion of the investment cost of such items is charged to SRMA during the initial 50-year term of the Power Sales Agreement. However, while SRMA may believe it has a vested interest in the project, having fully funded its construction and having paid all of its costs including replacement costs, to keep it fully operational past the initial 50-year period, SWPA believes SRMA is no different than any other customer purchasing Federal hydroelectric power, except that it has prepaid a portion of its power bill for 50 years. While this method of paying for its power is different, it results in having paid a certain price for power received and provides no special consideration, or equity interest, for SRMA over another potential applicant for Town Bluff power after the 50-year contract. Current policy provides for continuation of capacity allocations beyond present contract terms, and SRMA's proximity to the project and the ready availability of transmission facilities provided by SRMA would appear to be positive factors in considering any future disposition of the power producing resources of the project.

O&M Cost Increases Since 1983

Comment: SRMA is concerned that the annual costs for O&M and major rehabilitation have increased from some $226,000 estimated in 1983, to over $300,000 today in spite of having directly absorbed several costs included in the original estimate which were intended to reduce those annual O&M costs. While acknowledging recent sizeable salary increase by power operating personnel, SRMA believes further explanation is appropriate.

Response: The earlier estimates of annual costs were based on a generic "cost per megawatt" curve and past plant historical costs. The most recent, approximately $300,000 cost, is based on a detailed operation and scheduled maintenance estimate. Corps maintenance schedules are determined by Engineering Regulations which outline required maintenance for Corps power plants. Operator personnel have received one pay raise in 1983, and two since 1983 totalling over 30%, while inflation has accounted for the remaining increase in the level of estimated O&M costs.

Availability of Information

Information regarding this rate proposal including studies, comments and other supporting material, is available for public review in the offices of the Southwestern Power Administration, 333 West 4th, Tulsa, Oklahoma 74103.

Administrator's Certification

The 1989 Revised Initial Town Bluff Dam Power Repayment Study indicates that an annual Town Bluff Dam Power rate of $373,068 will repay all annual costs of the project including amortization of the expected replacement investment consistent with provisions of Department of Energy Order No. RA 6120.2. In accordance with Section 1 of Delegation Order No. 0204-108, as amended May 30, 1986 (51 FR 19744), the Administrator has determined that the revised proposed Town Bluff Dam power rate is consistent with applicable law and is the lowest possible rate consistent with sound business principles in accordance with Section 5 of the Flood Control Act of 1944.

Environment

The environmental impact of the revised proposed Town Bluff Dam power rate has been analyzed in consideration of the Department of Energy "Environmental Compliance Guide." An Environment Assessment of the revised proposed initial rate resulted in a finding of no significant impact in accordance with these regulations.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm, approve and place in effect on an interim basis, effective on the date of commercial operation (expected about July 1, 1989), the initial annual rate of $373,068 ($31,089 per month) for the sale of power and energy from Town Bluff Dam to Sam Rayburn Municipal Power Agency under Contract No. DE-PM75-85SW00117, as amended. The rate shall remain in effect on an interim basis through September 30, 1993, or until the FERC confirms and approves the rate on a final basis.

Issued at Washington, DC, this 28th day of June 1989.

W. Henson Moore,

Deputy Secretary.

[FR Doc. 89-16122 Filed 7-7-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3612-8]

Meeting of Policy Review Board of the Gulf of Mexico Program

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of meeting of the Policy Review Board of the Gulf of Mexico Program.

SUMMARY: The Gulf of Mexico Program Policy Review Board will hold a meeting on Wednesday, July 26, 1989, at the EPA Regional Office, 345 Courtland Street NE., Atlanta, Georgia 30365.

DATE: July 11, 1989.

ADDRESSEE: Comments should be mailed to the Gulf of Mexico Program Office, Building 1103, John C. Stennis Space Center, Stennis Space Center, Mississippi 39529-6000.

FOR FURTHER INFORMATION CONTACT: Mr. William Whitson, Assistant Director for Operations, (601) 688-3726 commercial, FTS 494-3726.

SUPPLEMENTARY INFORMATION: A meeting of the Policy Review Board (PRB) of the Gulf of Mexico Program will be held on July 26, 1989, at the EPA Region IV Office in Atlanta, Georgia, starting at 9:30 a.m. and ending at 5:00 p.m.

The PRB consists of senior level representatives from state and federal agencies and representatives of the Gulf Program's Technical Steering Committee and Citizens Advisory Committee. The PRB is chaired by the EPA Region IV Regional Administrator and co-chaired by the EPA Region VI Regional Administrator. The Board guides and reviews activities of the Gulf of Mexico Program, approves program goals and objectives, and establishes priorities and direction for the program. It provides broad-based support in all policy and political matters.

Agenda meeting items will include the Gulf of Mexico's proposed FY 90 budget, reports from the program's Technical Steering Committee and Citizens Advisory Committee, and the status of several demonstration projects and workshops. Also on the agenda will be discussion of the Charter for the PRB as provided for under the Federal Advisory Committee Act (FACA) administered through the General Services Administration. The meeting will be open to the public with a limited number of seats available.

Joseph R. Franzmathes,

Assistant Regional Administrator for Policy and Management.

Dated: June 29, 1989.

[FR Doc. 89-16030 Filed 7-7-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-44532; FRL-3613-2]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on tetrabromobisphenol A (CAS No. 79-94-7), submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room EB-44, 401 M Street SW., Washington, DC 20460, (202) 554-1404, TDD (202) 544-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions

Test data for tetrabromobisphenol A were submitted by the Brominated Flame Retradant Industry Panel and Springborn Life Sciences, Inc. (on behalf of the Brominated Flame Retardant Industry Panel) pursuant to a test rule at 40 CFR 799.4000. They were received by EPA on February 22, 1989. The submissions describe acute toxicity of tetrabromobisphenol A to eastern oysters (*Crassostrea virginica*) under flow-through conditions and bioconcentration and elimination of ^{14}C-residues by eastern oysters (*Crassostrea virginic*) exposed to tetrabromobisphenol A. Acute toxicity and bioconcentration testing are required by this test rule.

EPA has intiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket Number OPTS-44532). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M Street SW., Washngton, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: June 30, 1989.

Richard G. Sigman,

Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 89-16127 Filed 7-7-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59870; FRL-3613-1]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 8 such PMN(s) and provides a summary of each.

DATES: Close of Review Periods:

Y 89-132, 89-133, June 20, 1989.
Y 89-134, June 22, 1989.
Y 89-135, June 25, 1989.
Y 89-136, June 26, 1989.
Y 89-137, June 29, 1989.
Y 89-138, 89-139, July 3, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room EB-44, 401 M Street SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 89-132

Manufacturer. H.B. Fuller Company.

Chemical. (G) Polyethylene glycol ester.

Use/Production. (S) Adhesive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 28 G/KG species(Rat). Eye irritation: slight species(Rabbit).

Y 89-133

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) An aqueous solution of a polyacrylate.

Use/Production. (G) Additive used in the manufacture of concrete. Prod. range: Confidential.

Y 89-134

Manufacturer. Confidential.

Chemical. (G) Polymer of alkaline glycol, alkane polyol, benezene dicarboxylic acid maleic anhydride dibasic acids.

Use/Production. (G) Degree of containment—open, nondispersive use. Prod. range: Confidential.

Y 89-135

Importer. Confidential.

Chemical. (G) Ketone resin.

Use/Import. (G) Dispersive additive. Import range: Confidential.

Toxicity Data. Mutagenicity: negative.

Y 89-136

Manufacturer. Confidential.

Chemical. (G) Polyester resin of alkyl and aryl dibasic acids and alkyl polyols.

Use/Production. (G) Resin for coatings, Prod. range: Confidential.

Y 89-137

Manufacturer. Confidential.

Chemical. (G) Polymer of an alkanedioic acid and alkanediols.

Use/Production. (G) Polyurethane production. Prod. range: Confidential.

Y 89-138

Manufacturer. Confidential.
Chemical. (G) Alkyd resin.
Use/Production. (G) Container coating. Prod. range: Confidential.

Y 89-139

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (G) Container coating. Prod. range: Confidential.

Date: June 27, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-16128 Filed 7-7-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3612-9]

Approvals and Disapprovals of Lists and Individual Control Strategies Submitted Under Section 304(1) of the Clean Water Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of approvals and disapprovals of lists and individual control strategies (ICSs) submitted under Section 304(1) of the Clean Water Act.

SUMMARY: Notice is hereby given of the availability and opportunity to comment on the United States Environmental Protection Agency's (U.S. EPA) decisions of approval and disapproval of the lists of waters, point sources and pollutants and the individual control strategies for the States of North Carolina, South Carolina, Georgia, Florida, Mississippi, Alabama, Tennessee, and Kentucky under Section 304(1) of the Clean Water Act as amended by the Water Quality Act of 1987.

DATES: Comments on all aspects of the Agency's decisions with regard to the lists of waters, point sources, pollutants and individual control strategies must be submitted to U.S. EPA on or before October 4, 1989. Petitions to add waters to the lists must be submitted on or before October 4, 1989.

ADDRESSES: The U.S. EPA's decisions with regard to approving and disapproving the lists of waters, point sources, and pollutants and the individual control strategies are available for public review and comment upon request at the following location. Comments and petitions are also mailed to the following address. Diane Brown, Public Notice Coordinator, Office of Public Affairs, U.S. Environmental Protecton Agency, Region IV, 345 Courtland Street NE., Atlanta, GA 30365.

FOR FURTHER INFORMATION CONTACT: Diane Brown of the EPA, Region IV at the address given above; telephone (404) 347-3004, (FTS) 257-3004.

SUPPLEMENTARY INFORMATION: Section 304(1) of the Clean Water Act (CWA) as amended by the Water Quality Act of 1987 requires every State to develop lists of impaired waters, identify certain point sources and amounts of pollutants causing toxic impact, and to develop individual control strategies for each point source.

The deadline for submitting lists of waters, point sources, amounts of pollutants and the individual control strategies by each State to the U.S. EPA was February 4, 1989. The administrative record containing the U.S. EPA's documentation on its decisions of approval and disapproval is on file and may be inspected at the U.S. EPA, Region IV office between the hours of 8:30 a.m and 4:30 p.m., Monday through Friday except holidays. To make arrangements to examine the administrative record, contact the person named as the contact person above.

Section 304(1) allows any person to submit to the U.S. EPA a petition to add waters to one or more of the three lists of waters submitted by a State. Petitions are due October 4, 1989 and should be addressed to Diane Brown, Public Notice Coordinator, Office of Public Affairs, U.S. EPA, Region IV, 345 Courtland St., NE., Atlanta, Georgia 30365. The petition should identify and describe the water with sufficient detail so that the U.S. EPA is able to determine the location and boundaries of the water. The petition must also identify the list or lists for which the petitioner believes the water qualifies, and the petiton must explain why the water satisfies the criteria for the list or lists.

Following the close of the comment and petition period and after a public hearing, if such hearing is held, the Regional Administrator will issue a response to comments and petitions. The Regional Administrator will consider all petitions and comments received and will provide a written response to the comments and petitions no later than January 4, 1990.

Joseph R. Franzmathes,

Assistant Regional Administrator for Policy and Management.

Dated: June 29, 1989.

[FR Doc. 89-16031 Filed 7-7-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

Alamo Federal Savings Association of Texas; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Alamo Federal Savings Association, San Antonio, Texas on June 28, 1989.

Dated: July 31, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-16080 Filed 7-7-89; 8:45 am]

BILLING CODE 6720-01-M

Benjamin Franklin Federal Savings Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Benjamin Franklin Federal Savings Association, Houston, Texas, on June 28, 1989.

Dated: July 3, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-16082 Filed 7-7-89; 8:45 am]

BILLING CODE 6720-01-M

Commonwealth Federal Savings Association; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Commonwealth Federal Savings Association, Houston, Texas, on May 23, 1989.

Dated: July 3, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-16086 Filed 7-7-89; 8:45 am]

BILLING CODE 6720-01-M

First Savings of Americus, a Federal Savings and Loan Association; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for First Savings of Americus, A Federal Savings and Loan Association, Americus, Georgia on June 22, 1989.

Dated: July 3, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-16087 Filed 7-7-89, 8:45 am]

BILLING CODE 6720-01-M

Great Southern Savings and Loan Association; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Great Southern Federal Savings and Loan Association, Savannah, Georgia on June 22, 1989.

Dated: July 3, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-16088 Filed 7-7-89, 8:45 am]

BILLING CODE 6720-01-M

Habersham Federal Savings & Loan Association; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Habersham Federal Savings and Loan Association, Cornelia, Georgia, on June 28, 1989.

Dated: July 3, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-16089 Filed 7-7-89; 8:45 am]

BILLING CODE 6720-01-M

Mid Missouri Savings & Loan Association, F.A.; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Mid Missouri Savings and Loan Association, F.A. Boonville, Missouri, on June 28, 1989.

Dated: July 3, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-16108 Filed 7-7-89; 8:45 am]

BILLING CODE 6720-01-M

Missouri Savings Association, F.A.; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Missouri Savings Association, F.A. on June 28, 1989.

Dated: July 3, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-16090 Filed 7-7-89; 8:45 am]

BILLING CODE 6720-01-M

Peoples Savings & Loan Association, FA; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c (c)(2)(1982), as amended, the Federal Home Loan Bank Board has duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Peoples Savings & Loan Association, FA, Hampton, Virginia, on June 28, 1989.

Dated: July 3, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-16083 Filed 7-7-89; 8:45 am]

BILLING CODE 6720-01-M

Sun State Savings and Loan Association, F.S.A.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Sun State Savings and Loan Association, F.S.A., Phoenix, Arizona, on June 14, 1989.

Dated: July 3, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-16084 Filed 7-7-89; 8:45 am]

BILLING CODE 6720-01-M

Sun State Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(C)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Sun State Savings and Loan Association, Phoenix, Arizona, on June 14, 1989.

Dated: July 3, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-16085 Filed 7-7-89; 8:45 am]

BILLING CODE 6720-01-M

University Federal Savings Association; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for University Federal Savings Association, Houston, Texas on May 23, 1989.

Dated: July 3, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni

Assistant Secretary.

[FR Doc. 89-16091 Filed 7-7-89; 8:45 am]

BILLING CODE 6720-01-M

Victoria Savings Association, F.S.A.; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained is section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Victoria Savings Association, F.S.A., San Antonio, Texas, on June 28, 1989.

Dated: July 3, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-16097 Filed 7-7-89; 8:45 am]

BILLING CODE 6720-01-M

Western Savings and Loan Association, F.A.; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(5)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Western Savings and Loan Association, F.A., Phoenix, Arizona, on June 14, 1989.

Dated: July 3, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-16092 Filed 7-7-89; 8:45 am]

BILLING CODE 6720-01-M

[No. 89-1745]

Power of Receiver and Conduct of Receiverships; Repurchase Agreements

Date: June 30, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Federal Home Loan Bank Board ("Board") is supplementing Board Resolution No. 84-572 to clarify its position concerning the protections afforded to those dealing with insured savings and loan associations in "repos" of government and mortgage backed securities. With particular reference to MeraBank, A Federal Savings Bank, Phoenix, Arizona ("MeraBank"), which has engaged in a substantial volume of such "repo" transactions, the Board wishes to make it clear that the protections given to securities dealers and others in the "repo" market by amendments to the Bankruptcy Code would also be afforded to securities dealers and others engaged in repo transactions with MeraBank.

EFFECTIVE DATE: June 30, 1989.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Hayes, Deputy General Counsel for FSLIC, (202) 906-6428; or Jody E. Kresch, Attorney, Office of General Counsel, (202) 906-7204: Federal Home Loan Bank Board, 1700 G. Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Board has adopted the following resolution:

Whereas, The Federal Home Loan Bank Board ("Board") has considered the particular importance of Repos (as defined below) in providing liquidity and funding for MeraBank, A Federal Savings Bank, Phoenix, Arizona ("MeraBank"), the accounts of which are insured by Federal Savings and Loan Insurance Corporation ("FSLIC"), and the potential disruption to the markets in such Repos that could arise as a result of a receivership, conservatorship, or similar proceeding with respect to MeraBank, which disruption could have additional negative effects on the cost of the funding and liquidity of Repo Assets (as defined below) for other FSLIC insured institutions and institutions chartered by the Board; and

Whereas, The Board as operating head of the FSLIC has decided, pursuant to its powers under section 5(d)(11) of the Home Owners Loan Act of 1933, as amended, and section 406(c)(3) of the National Housing Act, as amended, to adopt the following resolutions.

Now, therefore, the Board resolves as follows:

1. The Board commits that it shall use its powers under the National Housing Act to ensure that any receivership (and to the fullest extent permitted by law, any conservatorship or similar proceeding) with respect to MeraBank shall be conducted solely by the FSLIC (and not the Superintendent of Banks for the State of Arizona) as receiver, conservator or similar official ("Receiver") under federal law and regulations, Board Resolution No. 84-572, and these resolutions.

2. The Receiver will perform all of MeraBank's obligations under Repos outstanding at the time of its appointment according to their then existing terms and conditions (including payment and margin maintenance terms) and will perform all obligations under any New Repos (as defined below) in accordance with their terms and conditions.

3. The Receiver shall have the power to renew, extend, or modify any Repo, and to enter into new Repos (collectively, "New Repos"), but may only exercise such power with the consent of the Repo counterparty.

4. In any termination of the receivership of MeraBank or disposition of MeraBank's liabilities under any Repo or New Repo, the Board and the Receiver shall provide for the performance of obligations and the exercise of remedies under Repos and New Repos in a manner consistent with Board Resolution No. 84-572 and these resolutions.

5. Notwithstanding any other provision of law, regulation, or these resolutions, if the Receiver does not perform all such obligations in accordance with their terms, the counterparty to such Repos or New Repos shall have the absolute right to exercise all of its rights and remedies with respect to such Repos and New Repos (including liquidation of Repo Assets).

6. In the event of a Cross-Default (as defined below), a counterparty to a Repo or New Repo shall have the absolute right to accelerate the repurchase and other obligations thereunder (without notice to the Receiver) and exercise all of its rights and remedies with respect to such Repos and New Repos (including liquidation of Repo Assets to satisfy such accelerated obligations).

7. The failure or delay of a counterparty to exercise any of its rights or remedies upon a failure to perform or a Cross-Default shall not constitute a waiver of any rights or remedies in connection therewith.

8. In conncection with a Repo or New Repo counterparty's exercise of remedies upon failure to perform or a Cross-Default, neither the Board nor the Receiver shall object to or seek to oppose or stay such exercise or assert or seek to assert any adverse claims (including stop-transfer instructions) against the Repo Assets or any holder or transferee thereof in connection therewith.

9. The Receiver may enforce its claim to any excess received by a counterparty upon the exercise of such remedies over the stated repurchase price (including interest to the date of liquidation of the Repo Assets) and reasonable expenses of liquidation; *provided*, however, that nothing herein shall be construed to limit any set-off rights that such counterparty shall have against any such excess.

10. Notwithstanding any provision of law or regulation, neither the Board nor the Receiver shall seek to avoid or recover any payment or transfer of Repo Assets or funds made in connection with any Repo or New Repo or the liquidation thereof as a preferential transfer or fraudulent conveyance (other than any fraudulent conveyance made by MeraBank, voluntarily or involuntarily, with actual intent to hinder, delay or defraud its creditors; provided, however, any transferee of such a transfer that takes for value and in good faith has a lien on or may retain any interests transferred, and shall not be subject to a fraudulent conveyance claim in respect of such transfer, in each case to the extent that such transferee gave value to MeraBank in exchange for such transfer and provided further that in no event shall the Board or the Receiver make any such fraudulent conveyance claim against any Repo Assets).

11. Nothing herein shall limit the power of the Board or the Receiver to make a claim against a counterparty (but not Repo Assets) based on such counterparty's fraud or failure to liquidate a Repo or a New Repo in a commercially reasonable manner. In light of the substantial volume of MeraBank's Repos, the Board and the FSLIC hereby confirm that liquidation of Repo Assets over a period, not in excess of 90 days from the date of termination of a Repo or New Repo, would constitute a liquidation of a Repo or New Repo in a commercially resonable time, and that the counterparty shall be entitled (but in the case of a Repo only from the proceeds of liquidation of Repo Assets or by way of set-off) to interest, at the contract rate, accruing during such period; provided, however, that a liquidation of Repo Assets at any point during such period or after a longer period of time shall not in and of itself constitute a commercially unreasonable time.

12. In connection with any Repo or New Repos, the Board and the FSLIC, in its corporate capacity, each irrevocably waives compliance by counterparties to Repos or New Repos with the FSLIC right or notice and purchase (12 CFR 563.B-2) and the contractual language required thereby, if applicable to any Repo Assets.

13. Nothing herein shall limit the exercise by a counterparty to a Repo or New Repo of its rights and remedies thereunder in reliance on the Board's Resolution No. 84-572, which Resolution shall continue in full force and effect; provided, however, that paragraphs 2, 4, 5, 6, 7, 8, 10 and 12, the proviso to paragraph 9, and the second sentence of paragraph 11 of these resolutions shall not apply to a termination of a Repo prior to the stated repurchase or maturity date therefor based solely on the appointment of the Receiver for MeraBank.

14. In recognition of the reliance counterparties to Repos and New Repos place and will place on Resolution No. 84-572 and these resolutions in continuing to renew and enter into Repos and MeraBank, the Board intends itself, the FSLIC, in its corporate capacity, and the Receiver to be bound by Resolution No. 84-572 and these resolutions, and will not amend or rescind them without appropriate public notice of a least 45 days and any such amendment or rescission shall opeerate only prospectively.

"Cross Default" means, as to any counterparty to a Repo or New Repos, the failure by MeraBank or the Receiver to make any payment of funds or delivery of additional Repo Asset to any other Repo or New Repo counterparty when due, (b) the failure by MeraBank or the Receiver to make any payment of funds or delivery of securities under any "securities contract" or "commodities contract" (each as defined in the federal Bankruptcy Code), or interest rate exchange agreement, when due, or (c) such counterparty is unable to finance or sell under repo, on reasonable terms and conditions, any Repo Assets (whether due to market insecurity, a breach by the Board of its commitments hereunder, or otherwise).

"Repo Assets" means assets that are "liquid assets" under 12 CFR 523.10 or assets that would be so "liquid" but for their remaining term to maturity, "mortgage-related securities" (as defined in section 3(a)(41) of the Securities Exchange Act of 1934).

"Repo" means an agreement, whether documented as a purchase and sale transaction or a secured loan transaction, by MeraBank (or the Receiver, in the case of New Repos) pursuant to which MeraBank or the Receiver transfers Repo Assets to a counterparty that is a registered broker-dealer (including a registered government securities broker-dealer) or an affiliate thereof, the Federal Home Loan Mortgage Corporation, or (to the extent that Repo Assets are securities that are direct obligations of or that are fully guaranteed as to principal and interest by the United States of any agency thereof, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association) a Federal Home Loan Bank, against the transfer of funds with a simultaneous agreement by the counterparty to retransfer such Repo Assets to MeraBank or the Receiver on a date certain or on demand against the transfer of funds.

Resolved further, that these resolutions shall be effective immediately upon their adoption by the Board.

Resolved further, that the Secretary to the Board shall forward this resolution for publication in the **Federal Register**.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-16043 Filed 7-7-89; 8:45 am]

BILLING CODE 6720-01-M

Benjamin Franklin Savings Association; Replacement of Conservator With Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(D) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(D) (1982), the Federal Home Loan Bank Board duly replaced the Federal Savings and Loan Insurance Corporation ("FSLIC") as Conservator for Benjamin Franklin Savings Association, Houston, Texas ("Association"), with the FSLIC as sole Receiver for the Association on June 28, 1989.

Dated: July 3, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-16078 Filed 7-7-89; 8:45 am]

BILLING CODE 6720-01-M

Commonwealth Savings Association; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(D) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(D) (1982), the Federal Home Loan Bank Board duly replaced the Federal Savings and Loan Insurance Corporation ("FSLIC") as Conservator for Commonwealth Savings Association, Houston, Texas ("Association") with the FSLIC as sole receiver for the Association on May 23, 1989.

Dated: July 3, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-16100 Filed 7-7-89; 8:45 am]

BILLING CODE 6720-01-M

Great Southern Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation ("FSLIC") as sole receiver ("Receiver") for Great Southern Federal Savings Bank, Savannah, Georgia ("Association") June 22, 1989.

Dated: July 3, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-16093 Filed 7-7-89; 8:45 am]

BILLING CODE 6720-01-M

Mid Missouri Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(1) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Mid Missouri Savings and Loan Association, Boonville, Missouri, on June 28, 1989.

Dated: July 3, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-16094 Filed 7-7-89; 8:45 am]

BILLING CODE 6720-01-M

Victoria Savings Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(1) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Victoria Savings and Loan Association, Victoria, Texas, on June 28, 1989.

Dated: July 3, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-16095 Filed 7-7-89; 8:45 am]

BILLING CODE 6720-01-M

Western Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(1) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Western Savings and Loan Association, Phoenix, Arizona, on June 14, 1989.

Dated: July 3, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-16096 Filed 7-7-89; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-773; FHLBB No. 4869]

DeKalb Federal Savings Bank; Final Action on Approval of Conversion Application

Date: June 30, 1989.

Notice is hereby given that on June 14, 1989, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of DeKalb Federal Savings Bank, Decatur, Georgia, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-16081 Filed 7-7-89; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-771]

First Federal Savings and Loan Association; Final Action on Approval of Conversion Application

Date: June 30, 1989.

Notice is hereby given that on April 27, 1989, the Federal Home Loan Bank Board ("Board") approved the application of First Federal Savings and Loan Association, Charlotte, North Carolina ("First Federal"), for permission to convert to the stock form of organization pursuant to a voluntary supervisory conversion and the acquisition of First Federal by Fairfield Community, Inc.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-16079 Filed 7-7-89; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-772]

Heritage Federal Savings Bank; Final Action on Approval of Conversion Application

Date: June 30, 1989.

Notice is hereby given that on June 22, 1989, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Heritage Federal Savings Bank, Taylor, Michigan, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Indianapolis, 1350 Merchants Plaza, South Tower, 115 West Washington Street, Indianapolis, Indiana 46204.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-16098 Filed 7-7-89; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-774]

Royal Oak Federal Savings and Loan Association; Final Action on Denial of Conversion Application

Date: June 29, 1989.

Notice is hereby given that on June 29, 1989, the Federal Home Loan Bank Board denied the application of Royal Oak Federal Savings and Loan Association, Randallstown, Maryland ("Association"), for permission to convert to the stock form of organization pursuant to a voluntary supervisory conversion and merger of the Association with and into Liberty Federal Savings Bank, Randallstown, Maryland.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-16099 Filed 7-7-89; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200233-004

Title: Philadelphia Port Corporation Terminal Agreement

Parties: Philadelphia Port Corporation, Holt Cargo Systems, Inc.

Synopsis: The Agreement amends Article 2(b)(4) of Exhibit B of Agreement No. 224-200233 by adding at the end thereof the following: with respect to containers having an immediately prior or subsequent movement to or from the terminal by vessel or barge.

Agreement No.: 224-200263

Title: Port of Seattle Terminal Agreement

Parties: Port of Seattle (Port), Jacob Stern & Sons, Inc.

Synopsis: The Agreement provides for a two and one-half year lease of terminal premises and fixtures for receiving, delivery, processing and storage of non-petroleum bulk liquids, oils and fats and provides for the use of berthing facilities pursuant to the Port's tariff. The Agreement may be renewed for an additional one-year period.

Agreement No.: 224-200264

Title: Port of Seattle Terminal Agreement

Parties: Port of Seattle (Port), Jore Corporation (Jore)

Synopsis: Agreement No. 224-200264 provides for Jore's use of 15.85 acres of the Port's Terminal 115 (Premises) as a barge terminal. Of the 15.85 acres, 11.33 acreas, including a warehouse and other facilities, are assigned to Jore for its exclusive use and 4.52 acres, including a barge loading facility and pier, are assigned to Jore for its preferential use. The lease is for a term of 5 years.

Agreement No.: 224-004161-003

Title: San Francisco Terminal Agreement

Parties: San Francisco Port Commission, Marine Terminals Corporation

Synopsis: The Agreement amends the basic agreement (Agreement No. 224-004161). It provides that the basic agreement originally scheduled to expire on June 30, 1989, shall be extended through July 30, 1989. All other provisions of the agreement remain in effect.

By Order of the Federal Maritime Commission.

Dated: July 3, 1989.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 89-16055 Filed 7-7-89; 8:45 am]

BILLING CODE 6730-01-M

Notice of Issuance of Certificate (Performance); China Navigation Co. Ltd.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Pub. L. 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

The China Navigation Co. Ltd.,
c/o Lamorte Burns & Co., Inc.,
505 Thornall Street, #205,
Edison, New Jersey 08837.
Vessel: Coral Princess

Date: July 5, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-16107 Filed 7-7-89; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 89-13]

Ceres Terminal Incorporated v. Indiana Port Commission et al.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by Ceres terminals Incorporated ("Complainant") against the Indiana Port Commission ("IPC"), Lakes and Rivers—a Division of Jack Gray Transport, Inc., Pacific Great Lakes Transport Burns Harbor, Inc., and Brown Inc. (hereinafter "Respondents") was served June 30, 1989. Complainants allege that Respondents violated sections 10(a)(2) and 10(a)(3) of the Shipping Act of 1984 (the "Act"), 46 U.S.C. app. 1709 (a)(2) and (a)(3), by operatng under an unfiled agreement to refuse to deal or negotiate with Complainant and to eliminate Complainant as a marine terminal operator and/or stevedore at Burns International Harbor (Indiana). Complainant also alleges that Respondents' practices violate sections 10 (d)(1), (d)(3), and (b)(12) of the Act, 46 U.S.C. app. 1709 (d)(1), (d)(3), and (b)(12), and that practices of Respondent IPC also violate section 10(b)(11) of the Act, 46 U.S.C. app. 1709(b)(11).

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by June 30, 1990, and the final decision of the Commission shall be issued by October 30, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 89-16073 Filed 7-7-89; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Injury Research Grant Review Committee: Meeting—Notice of Change

This notice announces a change in the telephone number for the contact person for a previously announced meeting.

Federal Register Citation of Previous Announcement: 54 FR 26254.

Name: Injury Research Grant Review Committee.

Previously Announced Time and Date: 8:00 a.m.-5:00 p.m.—July 24-25, 1989, 8:00 a.m.-12:00 Noon—July 26, 1989.

Previously announced telephone number: Commercial: 404/639-4690.

Change in the Telephone Number: Commercial: 404/488-4690.

Dated: July 4, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89-16060 Filed 7-7-89; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 89D-0204]

Country of Origin Labeling; Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of revised Compliance Policy Guide (CPG) 7119.02, "Country of Origin Labeling." FDA has revised CPG 7119.02 to make explicit that it is FDA's policy to defer to the U.S. Customs Service (Customs) on matters related to false or misleading country of origin labeling.

ADDRESSES: Submit written requests for single copies of CPG 7119.02 to the Division of Compliance Policy (HFC-230), Office of Enforcement, Food and Drug Administration, Rm. 12A-55, 5600 Fishers Lane, Rockville, MD 20857. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your requests. CPG 7119.02 is available for public examination in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Alvin L. Gottlieb, Division of Compliance Policy (HFC-230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1500.

SUPPLEMENTARY INFORMATION: A statement of the country of origin on the labeling of imported foods is not required by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.). Such a statement is required by Customs, as authorized by the Tariff Act and Customs' regulations (19 U.S.C. 1304 and 19 CFR Part 134). Thus, FDA's policy regarding false or misleading country of origin labeling is to defer to Customs. FDA has revised CPG 7119.02, "Country of Origin Labeling," to explain FDA's and Customs' respective jurisdiction over false and misleading country of origin labeling, to set forth FDA's policy to defer to Customs for actions against false or misleading country labeling, and to provide guidance to FDA personnel regarding referrals to Customs.

This notice is issued under 21 CFR 10.85.

Dated: June 30, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-16071 Filed 7-7-89; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Meetings; Amendment of Notice of Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending a notice that announces a public meeting of the Vaccines and Related Biological Products Advisory Committee. The amendment reflects a change in the location of the meeting. Notice of the July 20 and 21, 1989, meeting was published in the **Federal Register** of June 23, 1989 (54 FR 26418 at 26419).

SUPPLEMENTARY INFORMATION: In FR Doc. 89-14872, appearing at page 26418 in the **Federal Register** of Friday, June 23, 1989, the following correction is made: On page 26419, in the 2nd column, under the heading "Vaccines and Related Biological Products Advisory Committees", the *"Date, time, and place"* paragraph is corrected to read *"Date, time, and place.* July 20 and 21, 1989, 8:30 a.m., Hyatt Regency, 1 Bethesda Metro Center, Bethesda, MD."

Dated: July 3, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-16070 Filed 7-7-89; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicare and Medicaid Programs; Meeting of the Advisory Panel on the Development of Uniform Needs Assessment Instrument(s)

[HSQ-174-N]

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the sixth and final meeting of the Advisory Panel on the Development of Uniform Needs Assessment Instrument(s). The Panel is responsible for the development of a standard method to be used to evaluate the post-hospitalization needs of patients. The meeting is open to the public.

DATES: July 24-25, 1989.

Time:

July 24: 8:30 a.m.-5:00 p.m.
July 25: 9:00 a.m.-5:00 p.m.
Eastern Daylight Saving Time

ADDRESSES: Washington Marriott, 1221 22nd Street, NW., Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: Sue Nonemaker, (301) 966-6825.

SUPPLEMENTARY INFORMATION: Section 9305(c) of the Omnibus Budget Reconciliation Act of 1986 (OBRA '86), Pub. L. 99-509, in amending section 1861(e) of the Social Security Act, requires that hospitals, as a condition to participate in the Medicare program, provide discharge planning. Discharge planning activities vary and we currently lack a standardized method for evaluating a patient's need for health care after hospitalization. The development of a standardized method would allow more uniformity among those responsible for discharge planning and improve detemination of a patient's need for post-hospital services.

Section 9305(h) of OBRA'86 requires the secretary to develop a uniform needs assessment instrument in consultation with an advisory panel made up of experts in the delivery of post-hospital extended care services, home health services, and long term care services. The panel is made up of experts in the delivery of post-hospital extended care services, home health services, long term care services and representatives of physicians, Medicare beneficiaries, hospitals, skilled nursing facilities, home health agencies, long term care providers, and fiscal intermediaries.

- Mr. Jay Rudman, Director of the Clinical Social Work Department at the University of California at Los Angeles Medical Center is chairman of the panel.

At the previous panel meetings, the activities have focused on the following:

- Developing a standard method to evaluate an individual's ability to function or engage in activities of daily living, the nursing and other care requirements necessary to meet health care needs, and the social and familial resources available to the individual;
- Constructing the standard method so that it could be used by discharge planners, hospitals, nursing facilities, ther health care providers and fiscal intermediaries in evaluating an individual's needs for post-hospital extended care; and
- Evaluating the advantages and disadvantages of using the tool as a basis for determining whether payment should be made for posthospital extended care services and home health services which are provided to Medicare beneficiaries.

At this final meeting the Advisory Panel will hear a report summarizing the results of a period of review and comment on the draft needs assessment instrument by experts in the health services delivery field. There will be discussion regarding the need to modify the draft instrument and the Panel's recommendations for its use. The Advisory Panel will also ratify its report to the Secretary of Health and Human Services.

Items of discussion are subject to change as priorities dictate. With the exception of Executive Sessions to be held at 7:30 a.m. on July 24 and 25, the meeting is open to the public and there is no registration fee. There will be an opportunity for public comment. The chairman reserves the right to adjourn the public portion of the meeting and reconvene in Executive Session should it prove necessary to facilitiate the business of the Advisory Panel.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; No. 13.773, Medicare—Hospital Insurance; No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: July 6, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89-16234 Filed 7-6-89; 1:31 am]

BILLING CODE 4120-01-M

Public Health Service

Indian Health Service; Medical Reimbursement Rates for Fiscal Year 1989; Inpatient and Outpatient Medical Care

Notice is given that the Assistant Secretary for Health, under the authority of sections 321(a) and 322(b) of the Public Health Service Act (42 U.S.C. 248(a) and 249(b)), has approved the following reimbursement rates for inpatient and outpatient medical care in facilities operated by the Indian Health Service for Fiscal Year 1989: Emergency Non-Beneficiaries, Beneficiaries of Other Federal Agencies, Medicare and Medicaid Beneficiaries.

Inpatient Services Per Day
Hospital—$380
Physician—$20
(In Alaska—Hospital $458
Physician $22)
Outpatient—$72 Per Visit
(In Alaska—$122 Per Visit)

Ambulatory Surgery shall be charged at the current Medicare rates as published in the **Federal Register** by the Health Care Financing Administration.

Dated: June 26, 1989.

James O. Mason,

Assistant Secretary for Health.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-89-2017]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr.Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: June 30, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Application for Approval as a Mortgage Backed Securities Issuer

Office: Government National Mortgage Association (GNMA)

Description of the Need for the Information and Its Proposed Use: This form will be used by applicants proposing to become Mortgage-Backed Securities Issuers. It will summarize the applicants' business background and experience and is necessary for GNMA to determine whether the applicant meets all GNMA eligibility requirements contained in CFR, Part 390.

Form Number: HUD-11701

Respondents: Businesses or Other For-Profit and Small Businesses or Organizations

Frequency of Submission: On Occasion

Reporting Burden:

	Number of respondents	×	Frequency response	×	Hours per response	=	Burden hours
HUD-11701	50		1		.75		38

Total Estimated Burden Hours: 38
Status: Extension
Contact: Charles Clark, HUD, (202) 755-5535; John Allison, OMB, (202) 395-6880
Date: June 30, 1989.

Proposal: Insurance Information
Office: Public and Indian Housing
Description of the Need for the Information and Its Proposed Use: The Annual Contributions Contract requires public housing agencies and Indian housing authorities to obtain adequate fire insurance, extended coverage insurance, and boiler insurance to protect the Federal interest. Form HUD-5460 provides the format for determining the initial amount of insurance required for each project.
Form Number: HUD-5460
Respondents: Non-Profit Institutions
Frequency of Submission: Other
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-54601	125		1		1.00		125
Recordkeeping	125		1		0.25		31

Total Estimated Burden Hours: 156
Status: Extension
Contact: Ralph Lecky, HUD, (202) 755-8145; John Allison, OMB, (202) 395-6880
Date: June 30, 1989.

Proposal: Statement of Profit and Loss
Office: Housing
Description of the Need for the Information and Its proposed Use: Multifamily project owners are required to submit HUD-92410 each year to the Department as part of their annual financial statement. The data will be used by HUD to review requests for rent increases and to prevent defaults by monitoring the reasonableness of the projects's operating expenses and the adequacy of the projects's cash flow.
Form Number: HUD-92410
Respondents: Businesses or Other For-Profit
Frequency of Submission: Annually
Reporting Burden:

	Number of respondents	×	Frequency response	×	Hours per response	=	Burden hours
HUD-92410	16,000		1		1		16,000

Total Estimated Burden Hours: 16,000
Status: Extension
Contact: Tom Coleman, HUD, (202) 426-3944; John Allison, OMB, (202) 395-6880
Date: June 30, 1989.

Proposal: Annual Contributions for Operating Subsidies—Performance Funding System; Determination of Operating Subsidy
Office: Public and Indian Housing
Description of the Need for the Information and Its Propsed Use: Public Housing Authorities (PHAs) and Indian Housing Authorities (IHAs) must determine an appropriate and justifiable occupancy percentage to be used in calculating operating subsidy eligibility under the Performance Funding System. PHAs/IHAs classified as "Low Occupany" must submit a Comprehensieve Occupancy Plan to use an occupany percentage less that 97 percent.
Form Number: HUD-52728A, HUD-52728B, and HUD 52728C
Respondents: State of Local Governments and Non-Profit Institutions
Frequency of Submission: Annually and Other
Reporting Burden:

	Number of respondents	×	Frequency response	×	Hours per response	=	Burden hours
HUD-52728A	2,400		1		1		2,400
HUD-52728B	45		1		40		1,800
HUD-52729C	45		1		80		3,600

Total Estimated Burden Hours: 7,800
Status: Extension
Contract: John T. Comerford, HUD (202) 426-1872; John Allison, OMB, (202) 395-6880
Date: June 30, 1989.

[FR Doc. 89-16056 Filed 7-7-89; 8:45 am]
BILLING CODE 4210-01-M

[Docket No. N-89-2018]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for emergency processing, an information collection package with respect to the section 8 Moderate Rehabilitation Program.

This information collection will allow the Department to respond to a request for information from the Employment and Housing Subcommittee of the Committee on the Government Operations, House of Representatives, which is holding fact-finding hearings on the section 8 Moderate Rehabilitation Program. The Subcommittee's request includes a listing of the Moderate Rehabilitation project names and owners for projects funded FY 1984 through FY 1989. In order for the Department to respond to this request, we must obtain the information from Public Housing Authorities by July 7, 1989. Any control number issued by OMB to cover this emergency situation would be valid for no more than 90 days.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: July 3, 1989.

David S. Cristy,
Deputy Director, Information Policy and Management Division.

Proposal: Section 8 Moderate Rehabilitation—A listing of the Moderate Rehabilitation Project Names and Owners for Projects Funded from Fiscal Year (FY) 1984 through FY 1989.
Office: Housing
Description of the Need for the Information and Its Proposed Use: Selected public housing authorities will compile a list of moderate rehabilitation project names and owner for section 8 Moderate Rehabilitation projects funded from FY 1984 through FY 1989 for the Employment and Housing Subcommittee of the Committee on Government Operations, House of Representatives.
Form Number: None
Respondents: State or Local Governments
Frequency of Submission: One Time Only
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information Collection	250		1		1		250

Total Estimated Burden Hours: 250
Status: New
Contact: Maddie Hastings, HUD, (202) 755-6887; John Allison, OMB, (202) 395-6880
Date: July 3, 1989.

[FR Doc. 89-16057 Filed 7-7-89; 8:45 am]
BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-08-4120-11; WYW116383]

Coal Exploration License; Cheyenne, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Invitation for coal exploration license.

SUMMARY: Cordero Mining Company hereby invites all interested parties to participate on a pro rata cost sharing basis in its coal exploration program concerning federally owned coal underlying the following described land in Campbell County, Wyoming:

T. 46 N., R. 71 W., 6th P.M., WY
Sec. 11: Lots 1-10, 15, 16.
Containing 466.95 acres

All of the coal in the above land consists of unleased Federal coal, within the Powder River Basin known coal leasing area. The purpose of the exploration is to investigate the potential of acquiring this area of unleased Federal coal for incorporation into an existing mining operation.

ADDRESSES: A detailed description of the proposed drilling program is available for review during normal business hours in the following offices (under serial number WYW116383): Bureau of Land Management, 2515 Warren Avenue, Cheyenne, Wyoming 82003; and Bureau of Land Management, 1701 East 'E' Street, Casper, Wyoming 82601.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in a newspaper once each week for two consecutive weeks beginning the week of July 10, 1989, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and to Cordero Mining Company no later than 30 days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: Mr. Stephen M. Schoen, Regulatory Affairs and Permitting Coordinator, Cordero Mining Company, P.O. Box 1499, Gillette, Wyoming 82717-1449 and the Bureau of Land Management, Wyoming State Office, Branch of Mining Law and Solid Minerals, P.O. Box 1828, Cheyenne, Wyoming 82003-1828.

The foregoing is published in the **Federal Register** pursuant to Title 43 Code of Federal Regulations, § 3410.2-1(c)(1).

David J. Walters,
Acting State Director.

[FR Doc. 89-16046 Filed 7-7-89; 8:45 am]
BILLING CODE 4310-22-M

BEST COPY AVAILABLE

[NV-060-4321-02]

Battle Mountain District Advisory Council; Rescheduled Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction; Date of Battle Mountain District Advisory Council meeting in Battle Mountain, Nevada.

SUMMARY: Federal Register Document 89-14292, appearing in 54 Federal Register 25502 on June 15, 1989, incorrectly identified the date of the Battle Mountain District Advisory Council meeting. The meeting will be held on Wednesday, July 12, 1989, and will convene at 9:00 a.m.

With the exception of the date of the meeting, all other items published in Federal Register Document 89-14292 remain unchanged.

Date: June 27, 1989.

James D. Currivan,

District Manager.

[FR Doc. 89-16047 Filed 7-7-89; 8:45 am]

BILLING CODE 4310-HC-M

[NV-060-09-4320-02]

Battle Mountain District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Grazing Advisory Board Meeting

SUMMARY: In accordance with Pub. L. 94-579 and section 3, Executive Order 12548 of February 14, 1986, a meeting of the Battle Mountain District Grazing Advisory Board will be held.

DATE: August 16, 1989, beginning at 1:00 p.m. in the Tonopah Convention Center, 301 Brougher, Tonopah, Nevada.

SUPPLEMENTAL INFORMATION: The meeting agenda will include: (1) Election of Chairperson and Vice Chairperson, (2) Status of FY 89 range improvements, and (3) FY 90 range improvement proposals.

The meeting is open to the public. Interested persons may make oral statements to the board between 4:00 and 4:30 p.m. on August 16, 1989, or file written statements for the Board's consideration. If you wish to make oral comments, please contact James D. Currivan by August 9, 1989.

FOR FURTHER INFORMATION CONTACT: James D. Currivan, District Manager, P.O. Box 1420, Battle Mountain, Nevada 89820 or phone (702) 635-5181.

Date Signed: June 30, 1989.

James D. Currivan,

District Manager, Battle Mountain, Nevada.

[FR Doc. 89-16074 Filed 7-7-89; 8:45 am]

BILLING CODE 4310-HC-M

[CO-920-99-4111-15; COC44871]

Colorado; Proposed Reinstatement

Notice is hereby given that a petition for reinstatement of oil and gas lease COC44871 for lands in Mesa County, Colorado, was timely filed and was accompanied by all the required rentals and royalties accruing from February 1, 1989, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the estimated cost of this **Federal Register** notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920, as amended, (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective February 1, 1989, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 236-1772.

Janet M. Budzilek,

Chief, Fluid Minerals Adjudication Section.

[FR DOC. 89-16046 Filed 7-7-89; 8:45 am]

BILLING CODE 4310-JB-M

[AZ-942-09-4730-12]

Arizona; Filing of Plats of Survey

June 28, 1989.

1. The plats of survey of the following described lands were officially filed in the Arizona State Office, Phoenix, Arizona, on the dates indicated:

A plat (in two sheets) representing a dependent resurvey of a portion of the south boundary and a portion of the subdivisional lines, and a survey of the subdivision of section 33 and a metes-and-bounds survey in sections 28 and 33, Township 14 North, Range 20 West, Gila and Salt River Meridian, Arizona, was accepted June 2, 1989, and was officially filed June 5, 1989.

This plat was prepared at the request of the Bureau of Land Management, Lands and Minerals Operations.

2. These plats will immediately become the basic records for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

James P. Kelley,

Chief, Branch of Cadastral Survey.

[FR Doc. 89-16049 Filed 7-7-89; 8:45 am]

BILLING CODE 4310-32-M

Fish and Wildlife Service

Availability of Draft Recovery Plan for White Cat's Paw Pearly Mussel for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft recovery plan for the white cat's paw pearly mussel. This species occurs in streams in northwestern Ohio and possibly in northeastern Indiana. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before August 24, 1989 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may examine a copy during normal business hours at the Twin Cities Regional Office, the Reynoldsburg Field Office, or the Bloomington Field Office. Persons wishing to obtain a copy of the recovery plan should contact the Twin Cities Office. Written comments and materials regarding the plan should be addressed to the Twin Cities Office. All comments and materials received will be available for public inspection, by appointment, during normal business hours at that office for the duration of the comment period.

Twin Cities Regional Office: Division of Endangered Species, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111, (612) 725-3276.

Reynoldsburg Field Office: U.S. Fish and Wildlife Service, 6950-H Americana Parkway, Reynoldsburg, Ohio 43068, (614) 469-6923.

Bloomington Field Office: U.S. Fish and Wildlife Service, 718 North Walnut Street, Bloomington, Indiana 47401, (812) 334-4261.

FOR FURTHER INFORMATION CONTACT: Ronald L. Refsnider, at the above Twin Cities Regional Office address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 et seq.) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The white cat's paw pearly mussel is currently known to occur only in Fish Creek (a tributary of the St. Joseph River) in Williams County, Ohio. Due to its low population level and limited distribution, the species is unlikely to recovery to the point that it can be removed from the list of threatened and endangered species. Therefore, the recovery plan is focused upon protecting and preserving the only known population of white cat's paw pearly mussels. Other recovery plan tasks deal with surveys for additional populations, life history research, and public education programs. If the Fish Creek population can be adequately protected the recovery plan describes subsequent steps to be taken to reestablish additional populations of the species within its historic range.

Public Comments Solicited

The Service solicits written comments on this recovery plan. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 29, 1989.

Marvin E. Moriarty,

Acting Regional Director.

[FR Doc. 89-16045 Filed 7-7-89; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Outer Continental Shelf Advisory Board Gulf of Mexico Regional Technical Working Group Meeting

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Gulf of Mexico Regional Technical Working Group (RTWG) Meeting.

SUMMARY: Notice of this meeting is issued in accordance with the Federal Advisory Committee Act (Pub. L. No. 92-463). The Gulf of Mexico RTWG meeting will be held August 1-2, 1989, at the Ramada Inn-North, 2900 North Monroe Street, Tallahassee, Florida.

Dates and times are as follows:

August 1, 1989—9:00 a.m. to 4:15 p.m.

August 2, 1989—9:00 a.m. to 11:30 a.m.

Tentative agenda items for the business meeting include:

Gulf of Mexico Current Activities

Gulf of Mexico Trends in Leasing, Exploration, and Development

Status of Task Forces: Presidential and State/Federal

Call for Comments on New 5-Year Program (1992-1997)

Scoping Report—Call for Information, Proposed Sales 131/135/137

Exxon Valdez Oil Spill—Government's and Industry's Response

FOR FURTHER INFORMATION: This meeting is open to the public. Individuals wishing to make oral presentations to the Committee concerning agenda items should contact Eileen P. Angelico of the Gulf of Mexico OCS Regional Office at (504) 736-2959 by July 28, 1989. Written statements should be submitted by the same date to the Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123. A taped cassette transcript and complete summary minutes of the Business Meeting will be available for public inspection in the Office of the Regional Director at the above address not later than 60 days after the meeting.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico RTWG is one of six such Committees that advises the Director of the Minerals Management Service on technical matters of regional concern regarding offshore prerelease and postlease sale activities. The RTWG membership consists of representatives from Federal Agencies, the coastal States of Alabama, Florida, Louisiana, Mississippi, and Texas, the petroleum industry, the environmental community, and other private interests.

Date: June 29, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-16068 Filed 7-7-89; 8:45 am]

BILLING CODE 4310-MR-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Railroad Separation Allowance or Severance Pay Report.

(2) *Form(s) submitted:* BA-9.

(3) *OMB Number:* New collection.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* New collection.

(6) *Frequency of response:* Quarterly.

(7) *Respondents:* Businesses or other for-profit.

(8) *Estimated annual number of respondents:* 500.

(9) *Total annual responses:* 1,500.

(10) *Average time per response:* 1.25 hours.

(11) *Total annual reporting hours:* 1,875.

(12) *Collection description:* Section 7301 of the Railroad Unemployment and Retirement Improvement Act of 1988 (Pub. L. 100-647) provides for a lump-sum payment to an employee or the employee's survivor equal to the Tier 2 taxes paid by the employee on a separation allowance or severance payment for which the employee did not receive credits towards retirement. The collection obtains the information needed from railroad employers concerning the separation allowances and severance payments paid after December 31, 1988.

Additional Information or Co
Copies of the proposed forms a: supporting documents can be obtained from Ronald Ritter, the agency clearance officer, (312-751-4692). Comments regarding the information collection should be addressed to Ronald Ritter, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Justin Kopca, (202-395-7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Ronald Ritter,
Acting Director of Information Resources Management.

[FR Doc. 89-16050 Filed 7-7-89; 8:45 am]
BILLING CODE 7905-01-M

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.
ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Medical Reports.
(2) *Form(s) submitted:* G-3EMP, G-250, G-260, RL-11b and RL-11d.
(3) *OMB Number:* 3220-0038.
(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.
(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.
(6) *Frequency of response:* On occasion.
(7) *Respondents:* State or local governments, Businesses, or other for-profit, Non-profit institutions, Small businesses or organizations.
(8) *Estimated annual number of respondents:* 27,400
(9) *Total annual responses:* 27,400
(10) *Average time per response:* .38883 hours.
(11) *Total annual reporting hours:* 10,654.
(12) *Collection description:* The Railroad Retirement Act provides disability annuities for qualified railroad employees whose physical or mental condition renders them incapable of working in their regular occupation (occupational disability) or any occupation (total disability). The medical reports obtain information needed for determining the nature and severity of the impairment.

Additional Information or Comments: Copies of the proposed forms and supporting documents can be obtained from Ronald Ritter, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Ronald Ritter, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Justin Kopca (202-395-7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Ronald Ritter,
Acting Director of Information Resources Management.

[FR Doc. 89-16051 Filed 7-7-89; 8:45 am]
BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-26974; File No. SR-CBOE-89-10]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Inc., Relating to Delta Position Limits

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 12, 1989 the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(Brackets indicate deletions and italic indicates additions.)

Rule 24.4 (a)*(i)* In determining compliance with Rule 4.11, option contracts on a market index shall be subject to a contract limitation fixed by the board, which shall not be larger than 25,000 contracts on the same side of the market, with no more than 15,000 of such contracts in the series of such market index with the nearest expiration date, *except as described in subparagraph (ii) below.*

(ii) In determining compliance with Rule 4.11, market-makers in options contracts on a market index may elect, subject to prior Exchange approval, position limits not to exceed the following standard:

15,000 DEC (total delta equivalent contracts); and 35,000 adjusted DEC (adjusted for potential liquidation risk), where DEC is defined as the absolute value of the sum of the number of series contracts (i.e., the number of contracts held of a given series) multiplied by the series delta for all series of a market index class. The adjusted DEC is the number of delta equivalent contracts calculated separately for the long call/short put series and for the short call/long put series, where the option series deltas are constrained to be at least .25. The maximum DEC and maximum adjusted DEC positions are the greatest positions, respectively, determined by calculating the DEC and the adjusted DEC at 2% intervals over a range of market movement of from −20% through +20%.

Where the positions of related accounts are currently aggregated to determine compliance with subparagraph (a)(i), such positions shall similarly be aggregated to determine compliance with this subparagraph (a)(ii). Where the use of this alternate standard for any of such aggregated accounts is disapproved, none of the aggregated accounts may elect the position limits of this subparagraph (a)(ii). Positions in the same series in aggregated accounts shall not be netted when calculating either the DEC or the adjusted DEC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The Exchange herein proposes a one year pilot of a market maker position limit based upon delta equivalent contracts in market index option classes. The purpose of the proposal is to provide market makers the ability to more effectively respond to retail and institutional orders without increasing unduly the risk in maintaining the resulting positions.

This position limit proposal is divided into two components: the total delta equivalent contracts in a market index class (DEC) and the DEC adjusted for potential liquidation risk (adjusted DEC). Both the DEC and the adjusted DEC are to be calculated at 2% intervals over a range of market movement of from −20% to +20%, with a minimum delta set at .25 when determining the adjusted DEC. The maximum number of contracts calculated under these two tests may not exceed 15,000 and 35,000, respectively. The calculation of a maximum DEC over a broad range of market movement has been proposed to account for the tendency of delta to change rapidly in volatile markets. The establishment of a minimum delta of .25 for the liquidation test ensures that the potential impact of deep out-of-the-money contracts is not minimized. The pilot shall be limited to those market makers in market index contracts who have received Exchange approval to elect this delta standard, based upon their submissions to the Exchange of acceptable written applications, which shall include, but not be limited to, a copy of the member's computer program for calculating the DEC and adjusted DEC positions.

This proposal is consistent with the provisions of the Securities Exchange Act of 1934, and in particular, section 6(b)(5), in that the proposal is designed to perfect the mechanism for a free and open market, to enhance the ability of investors to use options for investment purposes, and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reasons forso finding or (ii) as to which the self-regulatory organization consents, the commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 31, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

Dated: June 26, 1989.

Exhibit 1

The DEC is defined as the absolute value of: Sum [series contracts series delta] for all series.

The maximum DEC is defined in the relation:

Max DEC = Max [DEC(−20%), DEC(−18%), • • •, DEC(−2%), DEC, DEC(2%) • • •, DEC(18%), DEC(20%)] which must be less than 15,000.

Similarly, the maximum adjusted DEC is defined in the relation:

Max adjusted DEC = Max [Sum LongMarket, Sum ShortMarket] which must be less than 35,000,

where, at a given index level:

Sum LongMarket = Sum (abs (series contracts × option delta) for all series that are long the market i.e., long calls and short puts, and

Sum ShortMarket = Sum (abs (series contacts × option delta) for all series that are short the market i.e., long calls and short puts, and

subject to the condition that the option delata is set at 0.25 if it is less than 0.25 initially, and the Max is over the index moves −20% to +20% by 2% increments. The term "abs" means the absolute value.

EXAMPLE.—AS AN EXAMPLE, CONSIDER THE FOLLOWING CALENDAR SPREAD: DATE; 9-1-88. INDEX AT 250. INTEREST RATE: 7%. VOLATILITY: 20%.

[long 20,000 255 NOV calls—79 days to exp.]

[short 20,000 255 OCT calls—51 days to exp.]

Index at	NOV delta	OCT delta	DEC [1]	Adj DEC [2]
−20% 200	.0082	.0010	143	5,000
−18% 205	.0163	.0030	267	5,000
−16% 210	.0302	.0076	453	5,000
−14% 215	.0521	.0173	698	5,000
−12% 220	.0842	.0354	976	5,000
−12% 225	:1280	.0660	1,240	5,000
−8% 230	.1842	.1126	1,428	5,000
−6% 235	.2519	.1777	1,485	5,038
−4% 240	.3292	.2602	1,379	6,583
−2% 245	.4127	.3568	1,117	8,254
250	.4966	.4615	742	9,972
+2% 255	.5829	.5668	322	11,658
+4% 260	.6620	.6657	(72)	13,313
+6% 265	.7333	.7526	(387)	15,052

EXAMPLE.—AS AN EXAMPLE, CONSIDER THE FOLLOWING CALENDAR SPREAD: DATE; 9-1-88. INDEX AT 250. INTEREST RATE: 7%. VOLATILITY: 20%.—Continued

[long 20,000 255 NOV calls—79 days to exp.]

[short 20,000 255 OCT calls—51 days to exp.]

Index at	NOV delta	OCT delta	DEC [1]	Adj DEC [2]
+8% 270	.7949	.8245	(592)	16,491
+10% 275	.8463	.8806	(686)	17,613
+12% 280	.8877	.9221	(687)	18,442
+14% 285	.9200	.9511	(624)	19,023
+16% 290	.9443	.9705	(525)	19,411
+18% 295	.9621	.9829	(416)	19,658
+20% 300	.9748	.9904	(313)	19,908
Max [adj DEC]				1,485
Max [adj DEC]				19,808

[1] DEC=20,000×NOV Delta−20,000×OCT delta.
[2] adj DEC=Max [20,000×NOV Delta, 20,000×OCT delta] where the option delta is taken to be at least 0.25.

[FR Doc. 89-16109 Filed 7-7-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB on July 3, 1989

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on July 3, 1989, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson, or Cordelia Shepherd, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone, (202) 366-4735, or Gary Waxman or Edward Clarke, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial approval, or for renewal, under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on July 2, 1989.

DOT No.: 3237
OMB No.: 2130-0504
Administration: Federal Railroad Administration
Title: Special Notice for Repairs

Need for Information: To determine if proper repairs have been made to freight cars, locomotives, or track which was found unsafe and was removed from service.

Proposed Use of Information: To notify the railroad in writing of an unsafe condition involving a car, a locomotive, or track.

Frequency: On occasion
Burden Estimate: 47 hours
Respondents: 400 Railroads
Form(s): None
Average Burden Hours Per Respondent: 5 minutes
DOT No.: 3238
OMB No.: 2137-0575
Administration: Research and Special Programs Administration
Title: Bulk Packaging Marking Requirements

Need for Information: To aid emergency response personnel in determining what hazards and actions are needed in the event of an accident or other incident involving hazardous materials in transportation.

Proposed Use of Information: To allow emergency response personnel to determine if necessary to evacuate persons not involved in combatting the incident and type of equipment needed to control the fire, leakage, etc.

Frequency: Each package of bulk hazardous materials.
Burden Estimate: 247,000 hours annually
Respondents: Shippers and carriers of bulk packages of hazardous materials.
Form(s): None
Average Burden Hours Per Respondent: 5 minutes
DOT No: 3239
OMB No: 2133-0008
Administration: Maritime Administration

Title: Statement of Shipbuilder or ship operator in Compliance with Section 807 of the Merchant Marine Act 1936.

Need for Information: To document requests to present matters before the agency.

Proposed Use of Information: To evaluate requests to present matters before the agency.

Frequency: Monthly
Burden Estimate: 290 hours
Respondents: Attorneys, Lobbyists
Form(s): MA-807-2

Average Burden Hours Per Respondent: 20 minutes
DOT No: 3240
OMB No: 2115-0504
Administration: U.S. Coast Guard

Title: Tank Vessel Examination Letter, Certificate of Compliance, Boiler/Pressure Vessel Repairs, Cargo Gear Records and Shipping Papers

Need for Information: This information collection requirement is needed to enable the Coast Guard to fulfill its responsibilities of ensuring maritime safety.

Proposed Use of Information: Coast Guard uses this information as a means to indicate compliance with safety standards and regulation.

Frequency: On occasion
Total Estimated Burden: 22202
Respondents: Some owners/operators of large merchant vessels and all foreign flag tankers calling at U.S. ports
Form(s): CG-840S-1 and CG-840S-2
Average Burden Per Response: Reporting burden is 10 minutes; recordkeeping burden is 3 hours and 24 minutes.
DOT No: 3241
OMB No: 2115-0553
Administration: U.S. Coast Guard
Title: Equivalent and Approved Equipment

Need for Information: This information is needed to implement the best available and safest technological concept to comply with the Outer Continental Shelf (OCS) Lands Act.

Proposed Use of Information: Coast Guard uses this information for comparison with existing standards or procedures to insure that at least an equivalent level of safety is maintained as provided for in the regulations.

Frequency: On occasion
Burden Estimate: 10
Respondents: Owners, operators, equipment manufacturers and subcontractors
Form(s): N/A
Average Burden Hours Per Respondent: 10 hours
DOT No: 3242
OMB No: 2115-0559
Administration: U.S. Coast Guard
Title: Stability Regulation

Need for Information: Coast Guard needs this requirement to enforce the laws and regulations promoting the safety of life and property in marine transportation.

Proposed Use of Information: Coast Guard uses this information to determine if the vessel meets the appropriate stability requirements.

Frequency: On occasion
Burden Estimate: 12,360
Respondents: Naval Architects, Shipbuilders and Ship Operators
Form(s): N/A
Average Burden Hours Per Respondent: 3 hours reporting; 4 hours and 30 minutes recordkeeping
DOT No: 3243
OMB No: 2137-0550
Administration: Research and Special Programs Administration
Title: Rail Carrier and Tank Car Tank Requirements

Need for Information: To verify that rail tank cars are properly maintained for transport of hazardous materials.

Proposed Use of Information: To verify that rail tank cars are in a safe condition for transporting hazardous materials and that they are properly routed, stored, loaded and unloaded.

Frequency: Annually
Burden Estimate: 10,159 hours annually
Respondents: Rail carriers and owners of rail tank car tanks.
Form(s): None
Average Burden Hours Per Respondent: 43 minutes
DOT No: 3244
OMB No: 2125-0541
Administration: Federal Highway Administration

Title: Certification of Enforcement of Heavy Vehicle Use Tax

Need for Information: For FHWA to obtain certification from each State as proof of payment of the heavy vehicle use tax.

Proposed Use of Information: For each State to certify proof of payment of heavy vehicle use tax and to provide supporting records for each vehicle subject to the tax.

Frequency: Annually
Burden Estimate: 612
Respondents: State highway agencies
Form(s):
Average Burden Hours Per Response: 2 hours reporting and 10 hours recordkeeper.
DOT No: 3245
OMB No: 2120-0098
Administration: Federal Aviation Administration
Title: Airplane Operator Security—FAR 108

Need for Information: The information is needed to ensure compliance with FAR 108 by the air carriers in providing protection of persons and property of the traveling public against criminal violence and aircraft piracy.

Proposed Use of Information: The security programs required by FAR 108 indentify the procedures to be used by air carriers in carrying out their responsibilities under the law with regard to the protection of persons and property against acts of criminal violence and aircraft piracy. The information is reviewed by FAA Civil Aviation Security Inspectors to ensure that the contents of the program are current, complete, and correct. The X-ray System Radiation Leakage Report is used to ascertain that the X-ray system meets all applicable requirements.

Frequency: On occasion
Burden Estimate: 6,479 total hours annually
Respondents: Air carriers
Form(s): FAA Form 1650-17
Average Burden Hours Per Response: 1 hour and 20 minutes

Issued in Washington, DC on July 2, 1989.

Richard B. Chapman,
Acting Director of Information Resource Management.

[FR Doc. 89-16052 Filed 7-7-89; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 89-051]

Houston/Galveston Navigation Safety Advisory Committee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of the twenty-first meeting of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, September 21, 1989 in the conference room of the Houston Pilots Office, 8150 South Loop East, Houston, Texas. The meeting is scheduled to begin at approximately 9:30 a.m. and end at approximately 1:00 p.m. The agenda for the meeting consists of the following items:

1. Call to Order
2. Presentation of the minutes of the Inshore and Offshore Waterways Subcommittees and discussion of recommendations.
3. Discussion of previous recommendations made by the Committee.
4. Presentation of any additional new items for consideration of the Committee.
5. Adjournment.

The purpose of this Advisory Committee is to provide recommendations and guidance to the Commander, Eighth Coast Guard District on navigation safety matters affecting the Houston/Galveston area.

Attendance is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander C. T. Bohner, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), Room 1141, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130-3396, telephone number (504) 589-4686.

Dated: June 20, 1989.

W.F. Merlin,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 89-16065 Filed 7-7-89; 8:45 am]

BILLING CODE 4910-14-M

[CGD 89-052]

Houston/Galveston Navigation Safety Advisory Committee; Inshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Inshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, August 24, 1989 at the West Gulf Maritime Association, 1717 East Loop, Suite 200, Houston, Texas. The meeting is scheduled to begin at 9:00 a.m. and end at 10:30 a.m. The agenda for the meeting consists of the following items:

1. Call to Order
2. Discussion of previous recommendations made by the full Advisory Committee and the Inshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration of the Subcommittee.
4. Adjournment.

Attendance is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander C.T. Bohner, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), Room 1141, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130-3396, telephone number (504) 589-4686.

Dated: June 20, 1989.

W.F. Merlin,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 89-16066 Filed 7-7-89; 8:45 am]

BILLING CODE 4910-14-M

[CGD 89-053]

Houston/Galveston Navigation Safety Advisory Committee; Offshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Offshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, August 24, 1989 at the West Gulf Maritime Association, 1717 East Loop, Suite 200, Houston, Texas. The meeting is scheduled to begin at 10:30 a.m. and end at 12:00 p.m. The agenda for the meeting consists of the following items:

1. Call to Order
2. Discussion of previous recommendations made by the full Advisory Committee and the Onshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration by the Subcommittee.
4. Adjournment.

Attendance is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander C.T. Bohner, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), Room 1141, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130-3396, telephone number (504) 589-4686.

Dated: June 20, 1989.

W.F. Merlin,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 89-16067 Filed 7-7-89; 8:45 am]

BILLING CODE 4910-14-M

Federal Highway Administration

Environmental Impact Statement; Lucas, Ottawa, and Wood Counties, OH

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advice the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Lucas, Ottawa, and Wood Counties, Ohio.

FOR FURTHER INFORMATION CONTACT: Mr. Fred J. Hempel, Division Administrator, or Mr. Roberto Fonseca-Martinez, District Engineer, Federal Highway Administration, 200 North High Street, Columbus, Ohio 43215. Telephone: (614) 469-6896 or 469-7443.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration, in cooperation with the Ohio Department of Transportation, will prepare an environmental impact statement on the proposed construction of approximately 27.4 miles of new highway in Lucas, Ottawa, and possibly Wood Counties, from the interchange of Interstate Route 280 and State Route 2 in the City of Oregon easterly to a point on an improved section of State Route 2 approximately 1.25 miles west of State Route 358 near Camp Perry, just west of the City of Port Clinton on Lake Erie.

The proposed highway, an improvement of the State Route 2, would have new roadway on or adjacent to the alignment of the existing route. Approximately 13.2 miles would be five-lane roadway and approximately 14.2 miles would be four-land divided roadway, with full access.

Other alternatives under consideration include the following: (1) Adding additional lanes to existing Interstate Route 280 from its interchange with State Route 2 south to the Curtice Road interchange, constructing a four-lane divided highway on new location easterly to the existing alignment of State Route 2 near its junction with State Route 579, and then following the existing alignment to the easterly terminus near Camp Perry; (2) modifying the last scheme to shift the alignment south of State Route 579 for approximately four miles east of Williston; and (3) providing Interstate 280 with additional lanes south to the Walbridge Road interchange, constructing a fully controlled, limited access facility easterly to existing State Route 2 south of the Toussaint River, approximately six miles west of State Route 358, and then paralleling existing State Route 2 to the easterly terminus on the improved portion of the route. The no-build alternative is also under consideration.

The proposed project would complete the improvement of State Route 2 from the Toledo metropolitan area to the Cleveland metropolitan area, thereby providing an uninterrupted multiple-lane facility. It would also give better access to the numerous recreational facilities and area, along Lake Erie and in the surrounding area, helping to allieviate seasonal and weekend traffic. It would serve commuters in the Toledo area. The proposed project would also fulfill the goals of long-term planning for the region.

A program of public involvement and coordination with Federal, State, and local agencies has been conducted. It is envisioned that involvement with the public and other agencies will continue throughout the development of the project and, therefore, it is not anticipated that a formal scoping meeting will held.

To insure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments or questions concerning this action and the EIS should be addressed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on:

Roberto Fonseca-Martinez,

District Engineer.

[FR Doc. 89-16114 Filed 7-7-89; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Wayne and Wilson Counties, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project between the cities of Goldsboro and Wilson, North Carolina.

FOR FURTHER INFORMATION CONTACT: Robert L. Lee, District Engineer, Federal Highway Administration, 4505 Falls of Neuse Road, Raleigh, North Carolina 27611, Telephone (919) 790-2856.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the North Carolina Department of Transportation (NCDOT) will prepare an environmental impact statement (EIS) for the improvement of the US 117 Corridor between Wilson and Goldsboro. The proposed action would be the construction of a multilane divided highway, potentially on a new location with controlled access from US 301, southwest of Wilson, to US 70, north of Goldsboro, a distance of about 21 miles. The thoroughfare plans for both Wilson and Wayne Counties include US 117. Improvements to the corridor are considered necessary to increase safety and traffic service between Wilson and Goldsboro.

Alternatives under consideration include: (1) The "no-build", (2) improving existing facilities, (3) partial relocation, and (4) a controlled access highway on new location.

Solicitation of comments on the proposed action are being sent to appropriate Federal, State and local agencies. A complete public involvement program has been developed for the project to include: the distribution of newsletters to interested parties, along with public meetings and a public hearing to be held in the study area. Information on the time and place of the public hearing will be provided in the local news media. The draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To assure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: June 29, 1989.

Robert L. Lee,

District Engineer, Raleigh, NC.

[FR Doc. 89-16076 Filed 7-7-89; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

Petitions for Waivers of Compliance; Southern Pacific Transportation Co. et al.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for waivers of compliance with certain requirements of its safety standards. The individual petitions are described below, including the parties seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Southern Pacific Transportation Company

[Waiver Petition Docket Number LI-89-4]

The Southern Pacific Transportation Company (SP) requests a conditional waiver of compliance with § 229.91 of the Railroad Locomotive Safety Standards (49 CFR Part 229) which stiulates that, "A motor or generator may not have any of the following conditions:

(a) Be shorted or grounded.

(b) Throw solder excessively.

(c) Show evidence of coming apart.

(d) Have an overheated support bearing.

(e) Have an excessive accumulation of oil."

Section 229.9(b) states that, "A locomotive that develops a non-complying condition enroute may continue to utilize its propelling motors, if the requirements of paragraph (a) are otherwise fully met, until the earlier of—

(1) The next calendar day inspection, or

(2) The nearest forward repair point where the repairs necessary to bring it into compliance can be made."

If condition (1) occurs first and the calendar day inspection performed on a locomotive with a traction motor cut out enroute reveals that said traction motor is defective as described in § 229.91, the carrier is permitted to move the locomotive only under the provisions of § 229.9(a), that is, tagged as a non-complying locomotive and moved to a repair point as a lite locomotive or a dead locomotive. The SP states, "Even though [traction] motors may be cutout for a variety of reasons (i.e. transition problems, loading problems, etc.), Rule 229.9(b) requires that traction motors cutuout enroute be considered a 'major defect' and requires that the locomotive be tagged 'non-complying locomotive' and the defect repaired at the *nearest* forward point where repairs can be made or within the 'next calendar day inspection' or moved lite or dead in train."

The SP goes on to say, "[D]ue to extreme distances [between a calendar day inspection point and a repair facility where traction motors can be repaired], strict compliance is oftentimes difficult within the next calendar day inspection and it is punitive to cut a serviceable unit out of revenue service and suffer the cost incurred from out of service time, delay and dead in train movement." When motors are cut out, SP practice is to inspect it for unsafe conditions (i.e. locked axle, noise, etc.), and operate the locomotive to destination.

The SP requests that it be granted a waiver providing that if a traction motor is cut out enroute and no safety-related condition exists with the motor (and it is not in compliance with § 229.91), that the locomotive be allowed to operate in

revenue service beyond the next calendar day inspection, if necessary, to reach a destination at which repairs can be made by direct route. The SP says, "In considering this matter, please understand the significant detrimental impact a negative finding would have on train schedules and locomotive utilization, with no off-setting safety benefits."

Napa Valley Railroad Company

[Waiver Petition Docket Number LI-89-5]

The Napa Valley Railroad Company (NVR) requests a waiver of compliance with certain provisions of the Railroad Locomotive Safety Standards (49 CFR Part 229). The NVR request is that it be permitted to operate a dead locomotive as a controlling locomotive contrary to the requirements of § 229.9(d), which states, "A dead locomotive may not continue in use following a calendar day inspection as a controlling locomotive or at the head end of a train of locomotive consist." Also, the dead locomotive would have its slip/slide alarm nullified and not be in compliance with § 229.115(b), which states in part that "* * * an equipped locomotive may not be dispatched in road service, or continue in road service following a daily inspection, unless the wheel slip/slide protective device of whatever type—

(1) Is functioning for each powered axle under power; and

(2) Would function on each powered axle if it were under power."

The NVR recently purchased four Alco FA-4 passenger diesel electric locomotives to be used in hauling passenger trains at low speeds (25 mph) through the Napa Valley between Napa and St. Helena, California, a distance of 21 miles. Two of the four locomotives, Nos. 70 and 71, were purchased in excellent operating condition, according to the railroad. The locomotives Nos. 72 and 73 were not operable when purchased, but the NVR thought that it would not require much work or cost to return them to service. However, the carrier found this not to be the case and states that budget constraints and manpower shortages could affect its ability to complete repairs for a year.

The NVR plan is to operate the four locomotives, which are carbody type "A" locomotives with an engineer's control compartment at one end, in back-to-back paired consists. One paired consist would be used per train. Each consist would have two operating control compartments, but only one locomotive would be capable of producing power and the other would be dead and not capable of producing power. The carrier selected this operational procedure because it has no turning facility at either end of its railroad, but does have passing sidings where the locomotive consist can run around the train.

The NVR is requesting a temporary one-year waiver from § 229.9(d) and § 229.115(b) in order for it to operate dead locomotives Nos. 72 and 73 as controlling locomotives when hauling a passenger train. The carrier needs the one-year period of time to complete repairs to the two dead locomotives.

Oregon, California & Eastern Railway Company

[Waiver Petition Docket Number LI-89-6]

The Oregon, California & Eastern Railway Company (OC&E) requests a waiver of compliance with certain provisions of the Railroad Locomotive Safety Standards (49 CFR Part 229) in Subpart B, "Inspection and Tests." The OC&E specifically seeks waivers of § 229.23, "Periodic Inspection, General" and § 229.33, "Out-of-Use Credit."

The OC&E states that it "is a 64-mile long common carrier primarily engaged in hauling logs for conversion to finished products * * * and asphaltic compounds for road oiling and paving * * *. The OC&E owns five locomotives that are maintained by Weyerhaeuser Company, the parent of the OC&E. As a result of severe economic conditions, the OC&E now only operates about six months a year. However, during the six-month period of no log hauling, periodic cars of asphalt are switched for our other customers. This could be one job per month for approximately two hours * * *."

The OC&E states that "very seldom is a locomotive out of service for the '30 or more consecutive days' " described in § 229.33, which is a necessary prerequisite for automatically extending the time intervals for the inspections required in Subpart B. During the "92-day inspection period, the locomotive could conceivably run no more than four times (eight hours total) but still require a 'periodic inspection' " as described in § 229.23.

The OC&E is requesting a waiver that will allow it to use actual hours run (eight hours equals one day) to reach the 92-day inspection frequency. "All of [their] locomotives are operated on a per-hour basis, they are not interchanged, and there would be no additional costs in tracking operating time to schedule inspections." The OC&E estimates a savings of $11,000 per year if the waiver petition is approved; further, it feels that this current expenditure "has not resulted in an increase in safety or productivity."

Southern Pacific Transportation Company; Norfolk Southern Corporation

[Waiver Petition Docket Numbers PB-89-3 and SA-89-6]

The Southern Pacific Transportation Company (SP) and the Norfolk Southern Corporation (NS) (on behalf of its operating subsidiaries) jointly request waivers of compliance with certain provisions of the Railroad Safety Appliance Standards (49 CFR Part 231), under Docket No. SA-89-6, and the Railroad Power Brakes and Drawbars Regulations (49 CFR Part 232), under Docket No. PB-89-3.

The SP and NS seek these waivers of compliance to permit the operation of railroad/highway vehicles which are designated as "RoadRailer" units. The SP and NS are entering into an agreement for the SP to use NS RoadRailer equipment between East St. Louis, Illinois and Dallas, Houston and San Antoinio, Texas. The SP proposes to interchange RoadRailer equipment with the NS at Valley Junction in East St. Louis.

The NS is presently operating 1,600 RoadRailer vehicles under a conditional waiver (Docket Numbers SA-87-2 and PB-87-4) issued by FRA on July 28, 1987. (See notice of waiver petitions, 52 FR 16326, May 4, 1987, for more detailed discussion.) These vehicles are almost identical to the standard semi-trailer presently used to haul cargo over the highway, the only difference being that they are equipped with a special drawbar, railroad running wheels and a special railroad air brake system. The railroad wheels are mounted on a single axle between the tandem highway wheels of the semi-trailer on the Mark IV RoadRailer. The Mark V RoadRailer is carried on a standard 70-ton freight car truck equipped with a suitable adaptor to accommodate and support the vehicle. The Mark IVs and Mark Vs are indiscriminately operated together in NS trains. The RoadRailer vehicles, by design, cannot be subjected to traditional switching procedures conducted in railroad classification yards. The coupler assembly will only couple to another RoadRailer vehicle or to a specially designed adapter car between the locomotive and a RoadRailer train, and the drawbar height is nonstandard.

The conditional waiver granted to the NS permits noncompliance with all the provisions of the Railroad Safety Appliance Standards (49 CFR Part 231). These standards nclude provisions that provide the number, location and dimensinal specifications for the handholds, ladders and sill steps that are required for each railroad freight and passenger car. In addition, the NS waiver permits noncompliance with a provision of the Railroad Power Brakes and Drawbars Regulations (49 CFR 232.2) which regulates height of drawbars. It was for these reasons that the NS applied for relief from Parts 231 and 232. It is for the same reasons that the SP is seeking conditional waivers similar to those that were granted to the NS. One of the conditions of the NS waiver is that the NS is not permitted to interchange the RoadRailer units with any other railroads, except the operating subsidiaries of the NS Corporation (Norfold Western Railway and Southern Railway). The SP and NS are petitioning the FRA to have this conditgion modified so as to allow interchange of the RoadRailer units between the SP and NS to provide the service described in the SP's petition. The SP and NS would agree to all other terms and conditions that presently exist for the operation of the RoadRailer equipment by the NS.

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with this proceeding since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning this proceeding shold identify the appropriate docket number (e.g., Waiver Petition Docket Numbert LI 89-4) ands must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before August 24, 1989 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9 a.m. to 5 p.m.) in Room 8201 Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC on June 30, 1989.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89-16059 Filed 7-7-89; 8:45 am]

BILLING CODE 4910-06-M

Maritime Administration

[Docket No. S-853]

Waterman Steamship Corp.; Application for Privilege Call Service on Trade Routes 10 and 13

By letter of June 29, 1989, Waterman Steamship Corporation (Waterman), applied pursuant to the Merchant Marine Act, 1936, as amended (Act), for authority to provide privilege call service on Trade Routes (TR) 10 and 13, excluding ports in Portugal, Spain, France, and Italy. Alternatively stated, the proposed privilege call service would encompass trade between U.S. Atlantic and Gulf ports and ports in Atlantic Morocco and the Mediterranean Sea, including the Adriatic Sea, Ionian Sea, Aegean Sea, and Black Sea, but excluding ports in Spain, France, and Italy. Waterman proposes to make its privilege calls on a maximum of 25 sailings annually.

Waterman presently operates four LASH vessels on TRs 18 and 17 between U.S. Atlantic and Gulf ports and ports in the Middle East and South and Southeast Asia, with authorization to perform up to 40 subsidized sailings annually. On 18 of those sailings, Waterman already is authorized to provide privilege call service between the U.S. Gulf/South Atlantic and Egypt. However, Waterman believes that since all of its TRs 18/17 sailings transit the Mediterranean, and since there is an obvious need for added service to and from other Mediterranean countries, Waterman seeks to expand its privilege call service. Nevertheless, Waterman claims that there would be no increase in the operating-differential subsidy paid to it, since all the proposed privilege calls would be performed in conjunction with Waterman's already authorized sailings on TRs 18/17.

Waterman states that the requested privilege service will be provided with the U.S.-flag LASH vessels now owned or operated by Waterman and its affiliates, or with vessels that may be acquired hereafter, excluding full containerships. Waterman will continue to operate its service, including the requested privilege calls, in a manner that will not preclude it from receiving at least 50 percent of its inbound gross revenues and at least 50 percent of its out gross revenues from the carriage of commercial cargoes, conference-rated civilian preference cargoes, or open-rated civilian preference cargoes carried at world rates.

According to Waterman, under the provisions of section 605(c) of the Act, Waterman's application should be granted if U.S.-flag service on TRs 10 and 13 (excluding Portugal, Spain, France, and Italy) is found to be inadequate and in the accomplishment of the purposes and policy of the Act additional US.-flag service should be provided. Waterman submits that the most recently available U.S. Bureau of Census data for these routes shows the following cargo movements in long tons:

	Outbound total	U.S. (percent)	Inbound total	U.S. (percent)
TRs 10 and 13 [1]	10,035,647	29	837,926	31
TR 10	287,136	26	425,202	33
TR 13	748,511	30	412,724	28

[1] 1988 preliminary annual totals, excluding Portugal, Spain, France, and Italy.

Thus, for the predominant leg of the combined TR 10/13 service proposed by Waterman, U.S.-flag service is only 29 percent, which Waterman indicates is drastically below the 50 percent U.S.-flag participation consistently required in order to achieve adequate U.S.-flag service. Waterman avers that the relevant percentages for TRs 10 and 13, taken separately, are virtually the same, demonstrating obvious U.S.-flag inadequacy.

Given the clear inadequacy of U.S.-flag service in the trades encompassed by Waterman's application, Waterman contends that the need for added U.S.-flag service is readily apparent. That need especially exists in regard to *non*-container service by U.S.-flag vessels, according to Waterman, which has been sorely lacking since the termination of the TRs 10 and 13 LASH service previously offered by Prudential Lines, Inc. Waterman proposes to fill that gap and to offer an attractive U.S.-flag alternative to the foreign-flag vessels that overwhelmingly dominate non-container service to these routes.

Waterman believes that all the foregoing facts establish a prima facie

case warranting approval of this particular privilege call application without the need for a full evidentiary hearing. Rather, a "show-cause" type proceeding would suffice to afford full participation and a hearing to all interested parties.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5:00 P.M. on July 20, 1989. The Maritime Subsidy Board will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies))

By Order of the Maritime Subsidy Board.

Date: July 6, 1989.

James E. Saari,

Secretary.

[FR Doc. 89-16169 Filed 7-7-89; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

Announcement of Fifth Meeting of the Rollover Subcommittee of the Motor Vehicle Safety Research Advisory Committee

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting announcement.

SUMMARY: This notice announces the fifth meeting of the Rollover Subcommittee of the Motor Vehicle Safety Research Advisory Committee (MVSRAC). The MVSRAC established this subcommittee at the February 1988 meeting to examine research questions regarding crashworthiness and crash avoidance for vehicles under 10,000 pounds GVW.

DATE AND TIME: The meeting is scheduled for Thursday, July 27, 1989, from 10:00 a.m. to 5:00 p.m.

ADDRESS: The meeting will be held in Room 6200 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street, SW., Washington, DC.

SUPPLEMENTARY INFORMATION: In May 1987, the Motor Vehicle Safety Research Advisory Committee was established. The purpose of the Committee is to provide an independent source of ideas for safety research. The MVSRAC will provide information, advice, and recommendations to NHTSA on matters relating to motor vehicle safety research, and provide a forum for the development, consideration, and communication of motor vehicle safety research, as set forth in the MVSRAC Charter.

This meeting of the Rollover Subcommittee will focus on crash avoidance and crashworthiness subjects. Discussions will cover: effects of high lift suspensions on braking, steering and rollover; effects of stability and control on rollover propensity; reconstruction of rollover accidents; test maneuvers to induce rollover; and other crash avoidance research.

The meeting is open to the public, and participation by the public will be determined by the Subcommittee Chairman.

Records shall be kept of all Subcommittee proceedings and shall be available for public inspection in public reference file Number 88-01—Rollover Subcommittee during the hours of 8:00 a.m. to 4:00 a.m. in the National Highway Traffic Safety Administration's Technical Reference Division, Room 5108, 400 Seventh Street, SW., Washington, DC 20590, telephone: (202) 366-2768.

FOR FURTHER INFORMATION CONTACT: Louis V. Lombardo, Office of Research and Development, 400 Seventh Street, SW., Room 6208, Washington, DC 20590, telephone: (202) 366-4862.

Issued on: July 3, 1989.

Howard M. Smolkin,

Chairman, Motor Vehicle Safety Research Advisory Committee.

[FR Doc. 89-16036 Filed 7-7-89; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: July 3, 1989.

The Department of Treasury has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0091
Form Number: 1040X
Type of Review: Revision
Title: Amended U.S. Individual Income Tax Return
Description: Form 1040X is used by individuals to claim a refund of income taxes, pay additional income taxes, or designate a dollar to a presidential election campaign fund. The information is needed to help verify that the individual has correctly figured his or her income tax.
Respondents: Individuals or households, Farms, Businesses or other for-profit
Estimated Number of Respondents/Recordkeepers: 2,300,000
Estimated Burden Hours Per Response:
Recordkeeping, 1 hour, 12 minutes
Learning about the law or the form, 19 minutes
Preparing the form, 1 hour, 13 minutes
Copying, assembling, and sending the form to IRS, 35 minutes
Frequency of Response: On occasion
Estimated Total Recordkeeping/Reporting Burden: 7,636,000 hours

OMB Number: 1545-0121
Form Number: 1116
Type of Review: Revision
Title: Computation of Foreign Tax Credit—Individual, Fiduciary, or Nonresident Alien Individual
Description: Form 1116 is used by individuals (including nonresident aliens) and fiduciaries who paid foreign income taxes on U.S. taxable income, to compute the foreign tax credit. This information is used by IRS to verify the foreign tax credit.
Respondents: Individuals or households
Estimated Number of Respondents/Recordkeepers: 589,900
Estimated Burden Hours Per Response:
Recordkeeping, 2 hours, 44 minutes
Learning about the law or the form, 39 minutes
Preparing the form, 1 hour, 23 minutes
Copying, assembling, and sending the form to IRS, 35 minutes
Frequency of Response: Annually
Estimated Total Recordkeeping/Reporting Burden: 3,150,066 hours

OMB Number: 1545-0139
Form Number: 2106
Type of Review: Revision
Title: Employee Business Expenses
Description: Internal Revenue Code section 62 allows employees to deduct their businesses expenses to the extent of reimbursement in computing Adjusted Gross Income. Expenses in excess of reimbursements are allowed as an itemized deduction. Unreimbursed meals and entertainment are allowed to the extent of 80% of the expense. Form 2106 is used to figure these expenses.
Respondents: Individuals or households
Estimated Number of Respondents/Recordkeepers: 5,797,756
Estimated Burden Hours Per Response:
Recordkeeping, 2 hours, 17 minutes
Learning about the law or the form, 19 minutes
Preparing the form, 1 hour, 19 minutes
Copying, assembling, and sending the form to IRS, 35 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 26,089,902 hours

OMB Number: 1545-0257
Form Number: 8109, 8109A, and 8109B
Type of Review: Extension
Title: Federal Tax Deposit Coupon, FTD Reorder Form
Description: Federal Tax Deposit Coupons are used to deposit various taxes at authorized depositaries. Coupons are sent to IRS centers for crediting to taxpayers' accounts. Data is used by IRS to make the credit and to verify tax deposits claimed on returns. FTD Reorder Form is used to request more coupons. Affected public is all taxpayers required to use the deposit system.
Respondents: State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations
Estimated Number of Respondents/Recordkeeping: 9,800,700
Estimated Burden Hours Per Response:

	8109	8109A	8109B
Recordkeeping	1 hr., 39 min	58 minutes	1 hr., 55 min.
Preparing the form	1 minute	2 minutes	2 minutes.

Frequency of Response: Eight-monthly and semi-monthly
Estimated Total Recordkeeping/Reporting Burden: 175,709,825 hours

OMB Number: 1545-0998
Form Number: 8615
Type of Review: Revision
Title: Computation of Tax for Children Under Age 14 Who Have Investment Income of More Than $1,000
Description: Under section 1 (i), children under age 14 who have unearned income may be taxed on part of that income at their parent's tax rate. Form 8615 is used to see if any of the child's unearned income is taxed at the parent's rate and, if so, to figure the child's tax on his or her unearned income and earned income, if any.
Respondents: Individuals or households
Estimated Number of Respondents/Recordkeepers: 500,000
Estimated Burden Hours Per Response:
Recordkeeping, 7 minutes
Learning about the law or the form, 5 minutes
Preparing the form, 28 minutes
Copying, assembling, and sending the form to IRS, 17 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 480,000 hours
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-16075 Filed 7-7-89; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Grants Program for Private Not-For-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the private sector. The program is designed to increase mutual understanding between the people of the U.S. and other countries and to strengthen the ties which unite our societies. The information collection involved in this solicitation is covered by OMB Clearance Number 3116-0175 entitled "A Grants Program for Private, Non-Profit Organization in Support of International Educational and Cultural Activities," announced in the **Federal Register** February 9, 1989.

Private Sector organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate:

Government Regulation of Private Enterprise

This project would bring to the United States two separate twelve-member mixed delegations of government officials and private business executives from Africa, the Near East, and South Asia. This four-week program is designed to explain how private sector business activities in the United States are regulated, both by government agencies at the national, state and local levels and by businesses themselves, often through professional associations. Each delegation will be from four to six key countries. The project would provide the participants with alternative models of regulating business practices through various kinds of government regulation, self regulation and free market competition.

The Government Regulation of Private Enterprise program will take place in the Fall of 1989. USIA prefers that the project include stops in the midwest, south, New York City and Washington, DC If necessary to insure logistical coordination, the program may include co-sponsorship on a consultative basis with one or more other non-profit organizations.

USIA is most interested in working with organizations that show promise for innovative and cost-effective programming; and with organizations that have potential for obtaining private sector funding in addition to USIA

support. Organizations must have the substantive expertise and logistical capability needed to successfully develop and conduct the above project and should also demonstrate a potential for designing programs which will have lasting impact on their participants.

Interested organizations should submit a request for complete application materials—postmarked no later than twenty-one days from the date of this notice—to the address listed below. The Office of Private Sector Progams will then forward a set of materials, including proposal guidelines. Please refer to this specific program by name in your letter of interest: Office of Private Sector Programs, Bureau of Educational and Cultural Affairs (Attn: Dr. Raymond H. Harvey), United States Information Agency, 301 4th Street SW., Room 216, Washington, DC 20547.

Roger C. Rasco,

Deputy Director, Office of Private Sector Programs.

Date: June 30, 1989.

[FR Doc. 89-16054 Filed 7-7-89; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register

Vol. 54, No. 130

Monday, July 10, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

July 5, 1989.

FEDERAL ENERGY REGULATORY COMMISSION.

DATE AND TIME: July 12, 1989, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda, 900th Meeting—July 12, 1989 Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 7633-004, Kenai Hydro, Inc.
CAP-2.
Project No. 190-002, Moon Lake Electrical Association, Inc.
CAP-3.
Project No. 5251-016, City of Fort Smith, Arkansas
CAP-4.
Project No. 10726-001, City and County of San Francisco
Project No. 10658-001, Pacific Water and Power, Inc.
CAP-5.
Project No. 10739-001, Casitas Municipal Water District
Project No. 10656-001, Pacific Water and Power, Inc.
CAP-6.
Project No. 3195-027, Sayles Hydro Associates
CAP-7.
Project No. 2216-007, Power Authority of the State of New York
CAP-8.
Project No. 6221-003, Weyerhaeuser Company
CAP-9.
Project No. 2959-019, The City of Seattle, Washington
CAP-10.
Docket No. ER89-265-000, Arizona Public Service Company
CAP-11.
Docket No. ER89-110-001, Duke Power Company
CAP-12.
Docket No. EC88-2-006, Utah Power & Light Company, PacifiCorp and PC/UP&L Merging Corporation
CAP-13.
Docket No. ER89-47-000, Montaup Electric Company
CAP-14.
Omitted
CAP-15.
Docket No. EL89-26-000, Southern California Edison Company v. Arizona Public Service Company
CAP-16.
Docket No. QF09-96-000, United States Army Training Center and Fort Dix

Consent Miscellaneous Agenda

CAM-1.
Docket No. RM87-33-001, Hydroelectric Relicensing Regulations Under the Federal Power Act
CAM-2.
Docket No. RM89-15-000, Generic Determination of Rate of Return on Common Equity for Public Utilities
CAM-3.
(A) Docket No. FA86-23-002, Montaup Electric Company
(B) Docket No. RA85-8-001, Public Service Company of New Hampshire
CAM-4.
Docket No. GP89-35-000, Jennings Exploration Company
CAM-5.
Docket No. GP88-31-000, BASF Corporation, Complaint v. Samson Resources Company, Respondent

Consent Gas Agenda

CAG-1.
Docket No. RP89-136-003, Northern Natural Gas Company
CAG-2.
Docket No. RP89-196-000, Northwest Pipeline Corporation
CAG-3.
Docket Nos. RP85-209-023, RP86-93-000, RP86-158-000, RP88-8-000, CP86-246-000, RP87-34-000, TC88-6-000, RP88-92-017, RP88-27-000, RP88-263-000, RP88-264-000, RP88-265-000, CP88-430-000, CP87-524-000, CP88-329-000, CP88-478-000, RP82-42-000, IN86-5-001 and CP88-6-001, United Gas Pipe Line Company
CAG-4.
Docket Nos. RP89-140-003 and RP89-195-000, Williams Natural Gas Company
CAG-5.
Docket No. RP89-194-000, Texas Gas Transmission Corporation
CAG-6.
Docket Nos. TQ89-2-45-002 and RP89-14-006, Inter-City Minnesota Pipeline Ltd., Inc.
CAG-7.
Docket Nos. RP89-130-003 and RP89-130-004, Transwestern Pipeline Company
CAG-8.
Docket No. TA89-1-59-000, Northern Natural Gas Company
CAG-9.
Omitted
CAG-10.
Docket No. RP88-94-024, Natural Gas Pipeline Company of America
CAG-11.
Docket No. RP88-221-007, Texas Eastern Transmission Corporation
CAG-12.
Docket Nos. RP89-154-001 and TM89-6-17-001, Texas Eastern Transmission Corporation
CAG-13.
Docket No. RP89-153-001, Texas Eastern Transmission Corporation
CAG-14.
Docket No. RP89-150-002, Texas Eastern Transmission Corporation
CAG-15.
Docket Nos. CP89-470-001 and CP88-552-006, Tennessee Gas Pipeline Company
CAG-16.
Docket No. TM89-3-21-001, Columbia Gas Transmission Corporation
CAG-17.
Docket No. TQ89-7-51-002, Great Lakes Gas Transmission Company
CAG-18.
Docket No. RP89-44-002, Florida Gas Transmission Company
CAG-19.
Docket No. RP89-158-001, Mississippi River Transmission Corporation
CAG-20.
Docket No. RP89-51-002, United Gas Pipe Line Company
CAG-21.
Omitted
CAG-22.
Docket No. RP89-147-001, United Gas Pipe Line Company
CAG-23.
Docket No. RP88-259-009, Northern Natural Gas Company, Division of Enron Corporation
CAG-24.
Docket No. RP88-211-005, CNG Transmission Corporation
CAG-25.
Docket Nos. RP89-140-002, TA89-1-43-001 and RP88-39-002, Williams Natural Gas Company
CAG-26.
Docket Nos. RP88-190-002, TM89-2-27-003, TA88-1-27-004, RP88-57-002 and RP88-110-002, North Penn Gas Company
Docket Nos. RP85-178-000 and RP88-191-000, Tennessee Gas Pipeline Company
Docket Nos. RP88-68-000, RP88-68-001 and RP87-7-012, Transcontinental Gas Pipe Line Corporation
Docket No. RP88-217-000, CNG Transmission Corporation
CAG-27.
Docket Nos. TQ89-1-46-017, RP86-165-011 and RP89-166-011, Kentucky West Virginia Gas Company
CAG-28.

Docket Nos. RP89–84–002 and RP88–228–015, Tennessee Gas Pipeline Company
CAG–29.
Omitted
CAG–30.
Docket Nos. RP88–45–000 and RP88–46–000, Arkla Energy Resources, A Division of Arkla, Inc.
CAG–31.
Docket Nos. IS88–24–000, Texas Eastern Products Pipeline Company
CAG–32.
Docket No. ST89–2352–000, Cranberry Pipeline Corporation
CAG–33.
Docket No. G–16679–001, Jupiter Corporation and Tennessee Gas Pipeline Company
CAG–34.
Docket No. GP89–37–000, Lester Pollack
CAG–35.
Omitted
CAG–36.
(A) Docket No. CP89–3–002, Panhandle Eastern Pipe Line Company
(B) Docket Nos. CP88–490–001 and CP88–548–001, Panhandle Eastern Pipe Line
(C) Docket Nos. CP89–23–000, CP89–64–000 and CP89–67–000, Williams Natural Gas Company
CAG–37.
Docket No. CP84–34–001, Trunkline Gas Company
CAG–38.
Docket No. CP87–358–002, Tennessee Gas Pipeline Company
Docket No. CP87–428–002, CNG Transmission Corporation
CAG–39.
Docket No. CP87–75–002, Tennessee Gas Pipeline Company
CAG–40.
Docket No. CP89–465–001, Arkansas Oklahoma Gas Corporation
CAG–41.
Docket No. CP89–619–001, Panhandle Eastern Pipe Line Company
CAG–42.
Docket No. CP89–138–001, Panhandle Eastern Pipe Line Company
CAG–43.
Docket No. CP88–540–001, Northern Natural Gas Company, Division of Enron Corporation
CAG–44.
Docket No. CP86–286–003, Cascade Natural Gas Corporation v. Northwest Pipeline Corporation, Chevron Chemical Company, Intermountain Gas Company, Hadson Gas Systems, Inc., Llano, Inc., Corpus Christi Industrial Pipeline Company, and Transco Energy Marketing Company
CAG–45.
Docket No. CP86–232–028, Panhandle Eastern Pipe Line Company
CAG–46.
Docket No. CP89–782–001, Columbia Gas Transmission Corporation
CAG–47.
Omitted
CAG–48.
Docket Nos. CP89–7–000 and 001, Transcontinental Gas Pipe Line Corporation
Docket Nos. CP88–194–000 and 001, National Fuel Gas Supply Corporation
Docket Nos. CP88–195–000, 001 and 002, PennEast Gas Service Company
CAG–49.
Docket Nos. CP89–129–000, 001, 002, 003, CP88–163–000 and 001, Columbia Gas Transmission Corporation
Docket Nos. CP89–656–000 and 001, Algonquin Gas Transmission Corporation
CAG–50.
Docket No. CP88–825–000, Northwest Pipeline Corporation
CAG–51.
Docket No. CP89–274–000, United Gas Pipe Line Company
CAG–52.
Docket No. CP88–869–000, Natural Gas Pipeline Company of America
CAG–53.
Docket No. CP89–657–000, Commonwealth Gas Pipeline Corporation
CAG–54.
Docket Nos. RP88–27–015, RP88–264–012 and CP87–524–006, United Gas Pipeline Company and Texas Gas Transmission Corporation

I. Licensed Project Matters

P–1.
Project Nos. 1962–000, 1988–006 and 007, Pacific Gas and Electric Company
Project No. 6729–001, Sacramento Municipal Utility District, Northern California Power Agency and the Cities of Anaheim, Azusa, Banning, Colton and Riverside, California. Order addressing issues under Section 10 of the Electric Consumers Protection Act of 1986.
P–2.
(A) Project No. 5073–016, Benton Falls Associates
(B) Project No. 2322–006, 2325–003 and 2552–003, Central Maine Power Company
(C) Project No. 2574–007, Merimil Limited Partnership
(D) Project No. 2611–009, Scott Paper Company and UAH–Hydro and Kennebec Limited Partnership. Orders concerning motion to intervene and appeal by American Rivers, Inc.

II. Electric Rate Matters

ER–1.
Reserved

Miscellaneous Agenda

M–1.
Reserved
M–2.
Reserved

I. Pipeline Rate Matters

RP–1.
Docket Nos. RP88–68–000, RP87–7–012, RP87–7–000, RP89–122–000, RP89–123–000, TA88–1–29–000, TA88–4–29–000, TQ88–1–29–000, TA88–5–29–000, TQ89–1–29–000, TQ89–2–29–000, TQ89–4–29–000 and CP89–1631–000, Transcontinental Gas Pipe Line Corporation. Order concerning settlement on take-or-pay liability

II. Producer Matters

CI–1.
Reserved

III. Pipeline Certificate Matters

CP–1.
Reserved

Lois D. Cashell,
Secretary.
[FR Doc. 89–16266 Filed 7–6–89; 3:57 pm]
BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATIONS OF PREVIOUS ANNOUNCEMENT: July 6, 1989—54 FR 28552.

PREVIOUSLY ANNOUNCED DATE AND TIME OF THE MEETING: July 10, 1989—3:00 p.m.

CHANGE IN THE MEETING: This meeting has been canceled.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,
Secretary.
[FR Doc. 89–16253 Filed 7–6–89; 2:45 pm]
BILLING CODE 6730–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 9:00 A.M. July 17, 1989.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of last meeting.
2. Thrift Savings Plan activities report by the Executive Director.
3. Review of proposed legislation.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 523–5660.

Francis X. Cavanaugh,
Executive Director, Federal Retirement Thrift Investment Board.
[FR Doc. 89–16320 Filed 7–7–89; 11:48 am]
BILLING CODE 6760–01–M

federal register

Monday
July 10, 1989

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 10, 310, 314, and 320
Abbreviated New Drug Application Regulations; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 10, 310, 314, and 320

[Docket No. 85N-0214]

RIN 0905-AB63

Abbreviated New Drug Application Regulations

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing regulations to implement Title I of the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417), which amends section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355). The proposal provides for the submission of abbreviated new drug applications for generic versions of drug products first approved after 1962. Before enactment of Pub. L. 98-417, abbreviated applications were permitted under FDA regulations for generic versions of drug products first approved between 1938 and 1962. These new provisions will benefit consumers by making generic drug products available more quickly.

DATES: Comments by October 10, 1989. FDA proposes that any final rule based on this proposal would become effective 60 days after its publication in the **Federal Register**.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marilyn L. Watson, Center for Drug Evaluation and Research (HFD-360), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8038.

SUPPLEMENTARY INFORMATION:

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P. Removing Drugs from the List
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VII. Economic Assessment
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IX. Paperwork Reduction Act of 1980
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I. Introduction

On September 24, 1984, the President signed into law the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417). Title I of the law amended the Federal Food, Drug, and Cosmetic Act (the act) to expand the universe of drugs for which FDA would accept abbreviated new drug applications (ANDA's). Before enactment of Pub. L. 98-417, ANDA's were permitted under FDA regulations for duplicates, i.e., generic (different manufacturers') versions, only of drug products first approved between 1938 and 1962. The term "duplicate" applied to a drug product that was the same as an already approved drug product in dosage form, route of administration, kind and amount of active ingredient, indication(s), and any other conditions of use. The regulations permitted ANDA's for "similar" and "related" products only if FDA had made a separate finding, following a manufacturer's petition, that an ANDA was appropriate for that product. Title I provides for the submission of ANDA's for duplicates and certain related versions of drug products previously approved by FDA for safety and effectiveness and listed in the approved drug product list published by the agency. Title I further makes the existence of a patent on an approved drug a factor in the approval of generic copies of that drug, and establishes a system (the so-called "exclusivity provisions") for rewarding research associated with significant innovation by providing for a delay in the submission or effective approval date of certain generic applications.

Title II of Pub. L. 98-417 amended the patent law to provide for the extension, under certain circumstances, of the normal 17-year term of a product, use, or process patent of a patented product which is subject to premarketing clearance.

The proposed rule set forth below, if adopted as a final rule, will implement Title I of Pub. L. 98-417. Final regulations implementing the provisions of Title II of the law were published in the **Federal Register** of March 7, 1988 (53 FR 7298). It should be noted that although antibiotics are expressly covered by Title II, they are not covered by Title I. Title I applies only to drugs approved under section 505 of the act (21 U.S.C. 355). Antibiotics are approved under section 507 of the act (21 U.S.C. 357). This proposed rule would, however, reorganize the current regulations governing the abbreviated antibiotic application procedures by placing them in a new subpart.

II. Background

The act as passed by Congress in 1938 established a system of premarket clearance for drugs under which applicants seeking drug approval were required to submit to FDA a new drug application containing, among other things, data showing the drug's safety. (Sections 201(p)(1) and 505(a) as enacted (21 U.S.C. 321(p) and 355(a)).) The law at that time provided that a new drug application would automatically become effective (i.e., the product could be lawfully marketed) within a fixed period unless the agency affirmatively refused to approve the application.

In addition to products for which a new drug application had become effective, many products were marketed without effective applications that were identical, similar, or related to products with effective applications. Manufacturers of such products either had concluded that their products were generally recognized as safe, or had received advisory opinions from the agency that a new drug application was not required because their products were generally recognized as safe (i.e., were not "new drugs").

In 1962, Congress amended the drug approval provisions of the act to require affirmative approval of new drug applications before marketing. That approval was to be granted on the basis of a showing that a drug product was not only safe but also effective. (Pub. L. 87-781 (October 10, 1962).) Thus, on or after October 10, 1962, a new drug could not be marketed without an approved new drug application that contained, in addition to safety data, substantial evidence establishing that the drug was effective for its intended uses (21 U.S.C. 355(d)).

Under the 1962 amendments, new drug applications that had become effective before the effective date of those amendments were "deemed" approved. The requirement that drugs be shown to be effective for their intended uses was also made applicable to drugs that had been deemed approved. To implement this Congressional mandate, FDA undertook a program to evaluate the drugs that had been deemed approved to determine whether there was substantial evidence of their effectiveness, as the law required. The systematic evaluation of these drugs and the implementation of the findings of this evaluation became known as the Drug Efficacy Study Implementation (DESI). Under this program, FDA contracted with the National Academy of Sciences/National Research Council (NAS/NRC), which established panels of experts to review available evidence of effectiveness and to provide recommendations to the agency. FDA considered the NAS/NRC panels' recommendations about the effectiveness of these DESI drugs, and announced the agency's conclusions in **Federal Register** notices. These notices, referred to as DESI notices, set forth the acceptable marketing conditions for the class of products covered by the notice. The DESI review covered over 4,000 specific products which had had new drug applications evaluated for safety only and had been allowed to become effective between 1938 and 1962.

A. The Abbreviated New Drug Application (ANDA) Procedure for Pre-1962 Drugs

If a manufacturer had a pre-1962 new drug application in effect for a drug product, FDA continued its approval if the manufacturer submitted a supplemental new drug application to conform the product's indications for use to those determined to be effective in the DESI review. As noted above, however, there were many drug products on the market that were identical in active ingredients and indications or very similar to the drug products found effective in the DESI review but for which no new drug application had ever been submitted. In implementing the DESI program with respect to these duplicate products, FDA concluded that each such drug product was a "new drug" that required its own approved new drug application before it could be legally marketed. *United States* v. *Generix Drug Corp.*, 460 U.S. 453 (1983) (act's definition of "new drug" applies to the drug product rather than to the generic active ingredient). In addition, FDA issued a statement of policy that revoked the earlier advisory opinions that drugs could be marketed without preclearance by the agency. The statement of policy was published in the **Federal Register** of May 28, 1968 (33 FR 7758), and later codified at 21 CFR 310.100.

To provide an appropriate procedure for approval of duplicate products in reliance on the DESI evaluation, a procedure for submission of ANDA's was established (34 FR 2673 (February 27, 1969); 35 FR 6574 (April 24, 1970)). After FDA had found through the DESI review that a particular drug product was effective and suitable for ANDA's, FDA published in the **Federal Register** a DESI notice announcing these conclusions; any manufacturer of a duplicate of the drug not already holding an approved new drug application was then required to submit an ANDA to obtain approval to market the duplicate version of the approved drug (35 FR 11273; July 14, 1970).

The approval of an ANDA before passage of Pub. L. 98-417 was based on the theory that the evidence of effectiveness necessary for approval of a new drug application had been provided, reviewed, and accepted during the DESI process. The evidence of safety of the drug had been determined on the basis of information included in the pioneer new drug application and by the subsequent marketing experience with the drug. The information currently required to be in an ANDA is specified in FDA's regulations in 21 CFR 314.55(e) and consists of information showing the applicant's ability to manufacture a product of acceptable quality that will be equivalent in its effectiveness and safety to the drug product whose safety and effectiveness is established. The ANDA thus contains information on the drug product's formulation, manufacture, quality control procedures, and labeling. In addition, the DESI notice may identify other information that FDA requires in an ANDA for a specific drug product, usually data on the bioavailability of the product showing that it is similar to that of a standard product. The ANDA, therefore, provides for agency review of the same kind of product quality information required in a full new drug application but omits the reports of investigations establishing the safety and effectiveness of the drug which are already established.

B. Procedure for Duplicates of Post-1962 Drugs ("Paper NDA" Policy)

FDA's ANDA policy established for pre-1962 drugs was never extended to duplicates of drugs first approved for marketing on or after October 10, 1962. The agency long recognized the value of an ANDA system for the post-1962 drugs and at various times considered and announced the possibility of establishing such a system either by regulation or through legislation (see, e.g., Drug Regulation Reform Act of 1978 (95th Cong., 2d Sess. (1978), Drug Regulation Reform Act of 1979 (96th Cong., 1st Sess. (1979), and proposed rule of September 1, 1978 (43 FR 39126)). During the 1970's and early 1980's, patents expired for many post-1962 drugs, including some high volume, therapeutically important drugs. As a result, many drug manufacturers became increasingly interested in changing FDA's new drug approval system to permit the submission of ANDA's for duplicate versions of post-1962 drugs.

FDA did allow some duplicate drug products of drugs first marketed after 1962 to be marketed under FDA's "paper NDA" policy. (See 46 FR 27396; May 19, 1981, publication of "Paper NDA" memorandum.) Under that policy, FDA could approve new drug applications for post-1962 duplicate drug products on the basis of evidence of safety and effectiveness derived primarily from published reports, if those reports were of well-controlled studies, thus eliminating the need for manufacturers to perform most of their own tests. Although the courts upheld the legality of paper NDA's (see, e.g., *Burroughs Wellcome Co.* v. *Schweiker*, 649 F.2d 221 (4th Cir. 1981)), adequate literature, including detailed reports of adequate and well-controlled studies, was available for only a fraction of post-1962 drugs. Moreover, the staff effort involved in reviewing paper NDA's for

drugs that were already available and whose evidence of safety and effectiveness was already well documented in a prior application was a substantial and wasteful use of agency resources.

C. The Drug Price Competition and Patent Term Restoration Act of 1984

Beginning in 1978, Congress considered various forms of legislation that would have expressly authorized an ANDA procedure for duplicate versions of post-1962 drugs, and, concurrently, legislation to restore patent life lost during the new drug approval process. In 1984, Congress passed the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) which became law on September 24, 1984. The new law consists of two titles. Title I authorizes approval of generic new drugs and Title II authorizes extension of patent terms for approved new drugs. The two parts of the bill were intended to provide a careful balance between promoting competition among pioneer or brand-name and generic drugs, and encouraging research and innovation. The ANDA provisions of Title I provide for approval of duplicate or related versions of approved drugs whose patents have expired, and that have been shown through the ANDA approval requirements to be as safe and effective as their brand name counterparts, but without the submission of duplicative safety and effectiveness data. Thus, these provisions are intended to encourage competition by decreasing the time and expense of bringing generic drugs to market, and thereby to provide the public with low cost drugs.

The patent term extension provisions of Title II provide for the extension of drug patent terms beyond the normal 17 years to reflect the period of patent life lost during FDA's review of safety and effectiveness data for the drug. These extensions of patent life are intended to encourage the innovation necessary for the development of important new drug products, by increasing the period during which innovative products are protected from competition.

Title I specifically amends only the new drug provisions of the act at section 505 and applies only to nonantibiotic human drugs submitted and approved under section 505 of the act. The statutory authority for approving antibiotics, including generic antibiotics and antibiotics in combination with other antibiotics or nonantibiotic active ingredients, is section 507 of the act. Therefore, Title I does not apply to antibiotics. Title I does, however, apply to new drugs containing insulin. Although certified under section 506 of the act (21 U.S.C. 356), insulin-containing products are approved under section 505 of the act.

Section 505(j) of the act, as amended by the 1984 Amendments, establishes a statutory ANDA procedure for duplicate and related versions of previously approved pioneer drug products, in which Congress intended to adopt with few modifications the policies developed by FDA in the agency's approval of ANDA's for pre-1962 drugs. Section 505(b)(1) of the act, as amended, requires that certain patent information be submitted to FDA for all previously approved new drug applications, all newly submitted applications, and all applications previously submitted but not yet approved. Section 505(b)(2) of the act, as amended, provides for the submission and approval of applications for which the investigations relied on by the applicant to satisfy the "full reports" of safety and effectiveness requirement were not conducted by or for the applicant and for which the applicant has not obtained a right of reference or use from the person who conducted the investigations.

Section 505(l) of the act establishes rules for the public disclosure of safety and effectiveness data submitted as part of a new drug application.

The new law also provides patent protection for the developer of pioneer new drugs by delaying the effective date of approval of an ANDA or 505(b)(2) application until all relevant product and use patents for the pioneer drug have expired, or until the patent owner is notified of, and given an opportunity to litigate, a challenge to such patents. In addition, for new chemical entities (active moieties never before approved in the U.S.) and significant innovations in already approved chemical entities, the law prohibits the submission or delays the effective date of approval of an ANDA or 505(b)(2) application during specified periods that are independent of the patent status of the pioneer drug.

The 1984 Amendments require FDA to promulgate new implementing regulations. The new law further provides that, until such time as FDA has new implementing regulations in effect, the currently existing regulations or ANDA's under § 314.55 (formerly § 314.2) will be effective, absent a conflict with the new law.

In the **Federal Register** of May 24, 1985 (50 FR 21460), FDA published a notice requesting public comment on Title I of Pub. L. 98–417. The notice also announced the establishment of a public file (Docket No. 85N–0214) for all comments, views, and other information submitted to FDA concerning Title I. The purpose of the notice was to obtain public comment on interpretation of the new law to assist the agency in its regulation writing process. In the **Federal Register** of August 7, 1985 (50 FR 31887), FDA published a notice reopening for an unspecified period of time the period for public comment on Title I. Interested persons may now focus their comments on this proposed rule during the 90 day comment period on the proposal. Therefore, the period of time for comment on Title I under the August 7 notice ends on July 10, 1989.

Since passage of the 1984 Amendments, FDA has issued a series of letters to NDA and ANDA holders and applicants offering interim guidance on the more controversial provisions of the new law. Copies of these letters are in a public file under Docket No. 85N–0214. To the extent that the provisions of this proposed rule differ from the guidance in these letters, this proposed rule supersedes the previous guidance.

D. Relationship to New Drug Regulations

In the **Federal Register** of February 22, 1985 (50 FR 7452), FDA published revised regulations in 21 CFR Part 314 governing the approval for marketing of new drugs and antibiotic drugs for human use. Those regulations set forth procedures and requirements for the submission to, and the review by, FDA of full applications (NDA's) and abbreviated applications, as well as amendments, supplements, and postmarketing reports to such applications, by persons seeking or holding approval from FDA of an application under section 505 of the act to market a new drug or an application under section 507 of the act to market an antibiotic drug. Those regulations were not intended to implement the 1984 Amendments to the act. (See 50 FR 7466.) The provisions of this proposed rule further revise 21 CFR Part 314 to implement the 1984 Amendments.

III. Highlights of This Proposal

This proposed rule would (1) reorganize and revise 21 CFR Part 314 to incorporate the new requirements and procedures imposed upon applicants by the 1984 Amendments, and (2) revise 21 CFR Part 320 consistent with the bioequivalence requirements of the 1984 Amendments and current agency policy. The major provisions implementing the 1984 Amendments are summarized as follows:

A. Abbreviated Applications

New section 505(j) of the act governs the requirements and procedures for ANDA's. Under the statute, an ANDA is permitted for (1) a drug product that is the "same" as a drug product listed in the approved drug product list published by the agency (listed drug), with respect to active ingredient(s), route of administration, dosage form, strength, and conditions of use recommended in the labeling and (2) a drug product with certain changes from a listed drug if FDA has approved a petition from a prospective applicant permitting the submission of an ANDA for the changed drug product. The agency proposes in a new Subpart C to describe the content of and procedures for submission of an ANDA. The proposal would retain the current ANDA format which requires the submission of an archival and review copy of the ANDA. For an ANDA for a drug product that is the "same" as a listed drug, the focus of the proposed requirements is to provide FDA with sufficient information to assure that the drug product for which the applicant is seeking approval (1) is the same as the listed drug referred to by the applicant with respect to active ingredient(s), route of administration, dosage form, strength, and conditions of use, except for those conditions of use that are protected by patent or that have been accorded periods of exclusivity, (2) is bioequivalent to the listed drug, and (3) has the same labeling as that of the listed drug except for changes because the proposed drug has a different manufacturer or distributor. In addition, the regulations would require that the ANDA contain a certification with respect to product and use patents covering the listed drug and information about the applicant's ability to manufacture a drug product of acceptable quality.

B. ANDA Suitability Petitions

The statute provides that an ANDA applicant may petition FDA for permission to file an ANDA under section 505(j)(2)(C) of the act for a drug product that has one different active ingredient (permitted only in a combination product), or whose route of administration, dosage form, or strength differs from that of a listed drug. These are the only types of changes permitted in an ANDA. The proposed rule describes the kinds of information a petitioner must include in its petition to demonstrate to FDA that the change from the listed drug requested for the proposed drug product may be adequately evaluated for approval without data from investigations to show the safety and effectiveness of the proposed drug product or that a drug product with a different active ingredient may be adequately evaluated for approval as safe and effective on the basis of the information required to be submitted in an ANDA.

An ANDA submitted pursuant to an approved petition generally would be required to contain the same information as an ANDA for a drug product that is the same as a listed drug except that additional information may be required regarding the difference in the proposed drug product from the listed drug. In addition, FDA proposes to require that the listed drug referred to in the ANDA be the one upon which the petition was based and that the applicant refer in its ANDA to the petition and include in the ANDA a copy of FDA's response approving submission of the ANDA.

C. 505(b)(2) Applications

In addition to ANDA's, the 1984 Amendments recognize another type of application for an applicant seeking approval of a generic drug: a 505(b)(2) application. Although similar to FDA's "paper NDA" policy, section 505(b)(2) of the act has broader applicability. Section 505(b)(2) of the act applies to any application for which the investigations relied on by the applicant to provide the "full reports" of safety and effectiveness required by section 505(b)(1)(A) of the act were not conducted by or for the applicant and for which the applicant has not obtained a right of reference or use from the person who conducted the investigations. Thus, section 505(b)(2) of the act covers not only literature-supported NDA's for duplicates of approved drugs, but any NDA's for drug products that rely for approval on studies not conducted by or for the applicant or for which the applicant does not have a right of reference.

Applications described in section 505(b)(2) of the act are submitted under section 505(b)(1) of the act. They are therefore subject to the same statutory provisions that govern full new drug applications. However, the new statutory provisions impose on a 505(b)(2) applicant additional requirements with respect to patent certification, notification of such certification to the patent owner, and exclusivity that are generally the same as those that apply to ANDA's. The agency proposes to include in the regulations requirements applicable to 505(b)(2) applications.

D. Patent Information, Certification, and Notice of Certification to Patent Owner and Certain Application Holders

The statute prohibits the agency from making effective the approval of an ANDA or an application described by section 505(b)(2) of the act before all relevant product and use patents for the listed drug have expired, except where the generic applicant asserts either that its product will not infringe the patent or that the patent is invalid. In the latter case, approval of the ANDA or 505(b)(2) application may not be made effective until the patent owner and NDA holder have been notified and have had an opportunity to litigate the issue of patent infringement or validity. To facilitate the patent protection provisions, the statute requires that applications submitted under section 505(b) of the act include the patent number and expiration date of all relevant product patents that claim the drug in the application or use patents that claim a method of using the drug. The agency publishes this patent information in its approved drug product list for each listed drug for which patent information has been submitted. A generic drug applicant submitting an ANDA that refers to a listed drug must include a certification as to the status of all patents applicable to the listed drug. Similarly, an applicant submitting a 505(b)(2) application must make certifications with respect to patents claiming any listed drug on which investigations that are relied upon by the applicant for approval of its application were conducted or claiming a use for such listed drug. If a generic applicant certifies that a relevant patent expires on a specified date, the effective date of approval of the ANDA or 505(b)(2) application will be delayed until the expiration of the patent. When a generic applicant certifies that any product or use patent is invalid or will not be infringed, the applicant must give notice of such certification to the patent owner and appropriate approved application holder for the listed drug. The generic applicant must include in the notice the factual and legal basis for the applicant's opinion that the patent is invalid or will not be infringed. Finally, a patent owner or NDA holder has 45 days from receipt of the notice of certification to file suit against the generic applicant to defend the patent. If the patent owner or NDA holder files suit within 45 days, the effective date of approval of the ANDA or 505(b)(2) application may be delayed up to 30 months pending resolution of the lawsuit.

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The proposed rule describes (1) the requirements for the submission of patent information by a pioneer NDA holder, (2) the patent certification requirements applicable to generic applicants and (3) the content of a patent certification notice. The proposal also specifies (1) when and to whom the notice is to be sent and (2) the effect of each type of patent certification on the effective date of approval of an application for a generic drug product.

E. Exclusivity

Sections 505(j)(4)(D) and 505(c)(3)(D) of the act protect certain listed drugs, or certain changes in listed drugs, from generic copying for specified periods by placing a moratorium on the submission, or by delaying the effective date of approval, of ANDA's and 505(b)(2) applications for those listed drugs. These so-called "exclusivity provisions" provide the following periods of protection from generic competition: (1) a 10-year period of exclusivity for new chemical entities approved during the period January 1, 1982, to September 24, 1984, the date of enactment of the 1984 Amendments; (2) a 5-year period of exclusivity for new chemical entities approved after September 24, 1984; (3) a 3-year period of exclusivity for non-new chemical entities approved after September 24, 1984, if the applicant submitted an application containing reports of "new clinical investigations (other than bioavailability studies) essential to the approval and conducted or sponsored by the applicant"; (4) a 3-year period of exclusivity for certain changes made after September 24, 1984, if the applicant submitted a supplement containing reports of "new clinical investigations (other than bioavailability studies) essential to the approval and conducted or sponsored by the person submitting the application"; and (5) a 2-year period of exclusivity for non-new chemical entities, or for certain changes made to already approved drug products, approved during the period January 1, 1982, to September 24, 1984.

The agency proposes to codify the first four of these five exclusivity provisions; the fifth provision will not be codified because it expired on September 24, 1986. The agency also proposes to define certain terms used in the regulations, and clarify the agency's interpretation of each of the provisions.

F. Withdrawal or Suspension of Approval of an ANDA

The statute authorizes the Secretary to remove from the market, by withdrawal or suspension of approval, any generic drugs already approved if the approval of the listed drug referred to by the generic applicant is withdrawn or suspended or if the listed drug is voluntarily withdrawn from sale by its manufacturer for what the agency determines are safety or effectiveness reasons. The agency proposes to establish in the regulations a procedure for the withdrawal or suspension of approval of an ANDA under these circumstances.

IV. The List

Section 505(j)(6) of the act requires FDA to publish and make publicly available a list of all drug products approved for safety and effectiveness under section 505(c) or approved under section 505(j) of the act. The agency's publication, "Approved Drug Products with Therapeutic Equivalence Evaluations" (the list), and its monthly supplements, are being used to satisfy this statutory requirement. In accordance with section 505(j)(6) of the act, FDA updates the list monthly through publication of cumulative supplements. Under the act, a drug product approved for safety and effectiveness under section 505(c) or approved under section 505(j) is deemed to be a listed drug on the date of its approval even though the drug product is not actually included in the list until the next monthly update of the agency's published list. (See section 505(j)(6)(B) of the act.) A drug will not be listed as eligible for approval under an ANDA for the following reasons: (1) the approval of the drug product has been withdrawn or suspended for grounds described under section 505(e) (1) through (5) or 505(j)(5) of the act, or (2) FDA determines that the drug product has been voluntarily withdrawn from sale by the manufacturer due to safety or effectiveness concerns. (See discussion about removing drugs from listed status at part V. section P. below.)

Further, the agency will withdraw approval of and remove from the list any drug product that is the subject of a new drug application and that may now be marketed over-the-counter (OTC) pursuant to an effective final OTC monograph. Drug products that conform to an OTC final monograph are considered by the agency to be generally recognized as safe and effective and, as such, are no longer considered to be "new drugs" as defined in section 201(p) of the act. Thus, such products do not require an approved new drug application. In addition, FDA's enforcement policy for prescription drugs undergoing review in the agency's OTC drug review (21 CFR 330.13) permits a prescription drug to be marketed OTC without approval before a final monograph issues in each of the following circumstances: (1) where the drug is classified by an OTC advisory review panel in Category I (generally recognized as safe and effective and not misbranded) and FDA does not dissent in the preamble to the panel report or thereafter, (2) where FDA concludes that a drug that was not classified by a panel in Category I later tentatively qualifies for classification in Category I and so states in a **Federal Register** announcement, and (3) where the agency, on its own initiative, proposes by **Federal Register** announcement OTC marketing of a prescription drug not reviewed by an OTC advisory review panel, and public notice that OTC marketing may commence is issued after a formal comment period on the agency's proposed change.

Section 505(j)(6) of the act also requires FDA to include in the list the date of approval and application number of each drug product approved after 1981, whether in vitro or in vivo bioequivalence studies or both such studies are required for ANDA's for a listed drug, and the patent information required by section 505 (b) or (c) of the act. Although not required by the act, the list, as published, also identifies all drug products that qualify under the act for periods of exclusive marketing, regardless of patent status, and states therapeutic equivalence evaluations for approved multisource prescription drug products. (Information on therapeutic equivalence evaluations is provided under the policy announced in the **Federal Register** of October 31, 1980 (45 FR 72582). These proposed regulations do not modify or affect in any way the policy announced in that notice, nor do they affect any therapeutic equivalence evaluation published in the list.) As a general rule, FDA intends to use the list and its supplemental updates as the primary means of announcing information regarding patent status, exclusivity, type of bioequivalence study needed, and eligibility for consideration in an ANDA.

The list and its supplements are available on an annual subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. In addition, a copy of the list and its supplemental updates will be placed on public display in the Dockets Management Branch (address above) when FDA sends them forward for printing.

V. Provisions of This Proposal

FDA proposes to reorganize 21 CFR Part 314 by revoking existing §§ 314.55 and 314.56, which describe the requirements for abbreviated applications and the drug products for which abbreviated applications are suitable, by adding a new Subpart C, and by redesignating the existing subparts. The agency further proposes to revise existing sections of 21 CFR Part 314, where necessary, to implement the 1984 Amendments. New proposed Subpart C contains regulations on abbreviated applications for new drugs and antibiotics and the responsibilities and rights of applicants concerning their abbreviated applications. As revised, Subpart B would contain regulations on new drug applications submitted under section 505(b) of the act and antibiotic applications other than abbreviated antibiotic applications. FDA proposes to revise existing sections under Subpart B to remove any reference to abbreviated applications. Existing Subparts C through F are redesignated as Subparts D through G, respectively. Because the 1984 Amendments impose new procedural requirements upon applicants submitting ANDA's, FDA believes that placement of these requirements in a separate subpart will make them easier to find, read, and understand.

As noted above, Title I of the 1984 Amendments does not apply to antibiotics. Section 507 of the act, however, already provides for abbreviated applications for duplicates of approved antibiotic drugs. Therefore, except for a proposed revision to the adverse drug experience reporting requirements for new drugs and antibiotics, the agency proposes to retain the current requirements contained in Subpart B for abbreviated antibiotic applications, but restate them in the new Subpart C. (See discussion under part V. section G. below.)

A. Definitions

FDA proposes to revise § 314.3(b) to incorporate definitions and interpretations necessary to implement the 1984 Amendments. The regulations would define "abbreviated application" to mean the application described under § 314.94, including all amendments and supplements to the application. The term "abbreviated application" applies to both an abbreviated new drug application and an abbreviated antibiotic application. When particular regulations apply to only one of these groups, or to specific drugs, however, the agency will be more specific by referring to an "abbreviated new drug application" or an "abbreviated antibiotic application." The proposed regulations would revise the definition of "application" to mean the application described under § 314.50, including all amendments and supplements to the application.

Proposed revised § 314.3(b) incorporates the statutory description in section 505(b)(2) as the definition of a "505(b)(2) application."

The agency proposes to retain the current definition of "drug product" under § 314.3(b). The agency notes that the term "drug" is used throughout section 505 of the act. For purposes of this proposed rule, FDA interprets the term "drug" to mean "drug product" unless otherwise specified.

The agency proposes to define "listed drug" to mean a new drug product that has been approved for safety and effectiveness under section 505(c) of the act or approved under section 505(j) of the act, the approval of which has not been withdrawn or suspended under section 505(e) (1) through (5) or (j)(5) of the act, and which has not been withdrawn from sale for what FDA has determined are reasons of safety or effectiveness. A list of such drugs is published in the current edition of FDA's publication, "Approved Drug Products with Therapeutic Equivalence Evaluations" (the list) and any current supplement to the list. A drug product is deemed to be a "listed drug" if it has been approved for safety and effectiveness under section 505(c) of the act or approved under section 505(j) of the act but has not yet been included in the list. For a drug product that is subject to FDA's DESI review, the agency will consider the applicable DESI notice published in the **Federal Register** a listed drug until a drug product subject to the notice meets the conditions for approval of effectiveness set forth in the notice and becomes a listed drug.

FDA recognizes that approved drug products with delayed effective dates, see part V. sections K. and L. below, will be considered "listed" drugs to which subsequent ANDA's can refer. The agency believes that permitting such references will, in some cases, conserve agency resources and reduce burdens on ANDA applicants. For example, there will be drug products with delayed effective dates for which changes in dosage form, strength, route of administration or active ingredients were approved pursuant to ANDA suitability petitions. Some of these products will represent beneficial alternatives to, or improvements over, existing drug products. Permitting subsequent ANDA applicants to refer to these drug products with delayed effective dates will eliminate the burden on the subsequent applicants to submit, and FDA to review, duplicative ANDA suitability petitions. However, consistent with the patent protection and exclusivity provisions of the 1984 Amendments, the subsequent applicant's ANDA will generally share the same delayed effective date as the listed drug.

The agency proposes to define "reference listed drug" to mean the listed drug identified in an abbreviated new drug application or identified by FDA as the drug product upon which an applicant relies in seeking approval of its abbreviated application.

The agency proposes to define "the list" to mean the current edition of FDA's publication "Approved Drug Products with Therapeutic Equivalence Evaluations" and any current supplement to the publication.

B. Drug Products for Which Abbreviated Applications May Be Submitted

The agency proposes to revoke existing § 314.56 and propose a new § 314.92 that describes the drug products for which abbreviated applications may be submitted to the agency. As described in proposed § 314.92(a), FDA proposes to accept an abbreviated application for the following drug products:

1. *Duplicates of a listed drug.* Section 505(j) of the act provides for the submission of ANDA's for generic versions (duplicates) of any drug product listed under section 505(j)(6) of the act (hereinafter referred to as a "listed drug"). Thus, an applicant may submit an ANDA for a drug product that has the same active ingredient(s), dosage form, strength, route of administration, and conditions of use as a listed drug, so long as its submission is not precluded by exclusivity. (See discussion at part V. section L.1.)

Drug products approved after enactment of the 1984 Amendments, but not marketed, or those approved and for which marketing has been discontinued but for which FDA has made no determination that the marketing ceased for reasons of safety or effectiveness will be included in the list, but identified with a special symbol or placed in a special appendix. In addition, some drug products reviewed under DESI and approved for safety and effectiveness and some post 1962 approved drug products are not published in the list because marketing was discontinued before September 24, 1984. Although technically such drug products are listed drugs under section 505(j)(6)(B) of the act, FDA does not intend to update the list retrospectively to include drug products that no longer generate interest with respect to marketing either by the

pioneer applicant or by another applicant. A firm wishing to submit an ANDA for such a listed drug should petition the agency under § 314.122 to relist the drug product and submit information to show that its withdrawal from sale was not for safety or effectiveness reasons. (Also see discussion under part V. section 0.1. below.)

2. *Drug Products that differ from a listed drug.* Section 505(j) of the act permits the submission of an ANDA for a drug product that differs from the listed drug if FDA has approved a petition from a prospective applicant requesting the change. The differences from the listed drug for which petitions may be submitted are differences in route of administration, dosage form, and strength, or, when the listed drug contains more than one active ingredient, a change in one of its active ingredients. To alert interested persons to petitions that have been approved permitting the submission of an abbreviated application for a drug product that differs from a listed drug, the agency will publish in the list all approved petitions submitted under section 505(j)(2)(C) of the act and a description of the permitted changes. Subsequent applicants who wish permission to make a change permitted in an already approved petition may refer in their ANDA's to the approved petition rather than filing a duplicative petition. To aid potential petitioners in preparing their petitions, the list also includes all petitions that have been denied. All such petitions are also on public display in FDA's Dockets Management Branch (address above).

3. *Antibiotics.* Section 507(a) of the act permits the submission of abbreviated applications for duplicates of all antibiotics the agency has already approved for marketing. The agency includes approved antibiotic drug products in the list, even though antibiotics are not covered in the 1984 Amendments, and, therefore, are not subject to, for example, the patent certification and exclusivity provisions of the act.

4. *DESI drug products.* Under its DESI program, the agency has accepted ANDA's for drug products that were the same as certain pre-1962 drug products reviewed under the DESI program. Under this program, each **Federal Register** notice announcing that a particular drug has been found effective has included, when appropriate, an FDA finding that an ANDA is the suitable mechanism by which manufacturers or suppliers of the drug product may obtain FDA approval. In addition, an ANDA may be submitted for a drug product that is similar or related to a DESI drug and for which FDA has made a separate finding, in response to a petition, that an ANDA is suitable.

A pre-1962 approved drug product in the DESI review does not qualify for marketing exclusivity under the 1984 Amendments if the applicant seeks only approval of the indications in the DESI notice. However, DESI products for which additional new uses beyond those reviewed in the DESI program are approved may qualify for periods of marketing exclusivity for the new use under certain circumstances.

C. ANDA Suitability Petitions

Proposed § 314.93 would implement section 505(j)(2)(C) of the act. That section of the act permits an applicant to petition the agency for permission to submit an ANDA for a drug product that differs from a listed drug when the change is one authorized by the statute and the agency has granted a petition for the change. Under the proposal, an applicant may petition FDA for permission to submit an ANDA for a drug product that differs from a listed drug in route of administration, dosage form, or strength. If a proposed drug product were more bioavailable than the innovator's product and the applicant proposed to reduce the dose to a level that delivered plasma levels equivalent to the innovator's product, a petition for a change in strength would be permitted.

In addition, an applicant may seek to change one of the active ingredients of the listed drug when the listed drug is a combination product. For example, the agency may find acceptable the substitution of one analgesic for another, e.g., acetaminophen for aspirin, in a combination product. The active ingredient the applicant wishes to substitute in its product must be approved for safety and effectiveness in a listed drug or must be an ingredient of a drug product that does not meet the definition of "new drug" under section 201(p) of the act. The remaining active ingredients of the combination product, however, must be identical to the other active ingredients of the reference listed drug. (See discussion at part V. section D.1.c. below.)

An applicant is not permitted to petition for any other kinds of changes from listed drugs. H. Rept. 98–857, Part 1, 98th Cong., 2d Sess. at 23 (1984). Thus, for example, an applicant may not petition to submit an ANDA for a different active ingredient in a single active ingredient drug product, for an extra active ingredient in a combination product, or for a new use for an already approved drug product. The legislative history of the 1984 Amendments supports the agency's position that a different active ingredient may be substituted only in a combination drug product. Part 1 of the House Report describes FDA's authority to grant petitions requesting changes from listed drugs:

> If an applicant wishes to vary the route of administration, dosage form or strength of the generic drug from the listed drug, it must first petition the FDA for permission to file an ANDA for the differing generic drug. In addition, the applicant may request to vary one of the active ingredients in the generic drug from the listed drug *when the listed drug is a combination product.* The remaining active ingredients of the generic drug must be the same as the other active ingredients of the listed drug.
>
> *These are the only changes from the listed drug for which an applicant may petition.*

H. Rept. 98–857, Part 1, 98th Cong., 2d Sess. 23 (1984) (emphasis added). Section 314.93(e)(1)(ii) requires denial of a petition seeking to change an active ingredient, if the drug that is the subject of the petition is not a combination drug.

FDA considers a salt or ester of an active ingredient to be a different active ingredient, and will not approve petitions that seek permission to submit an ANDA for a drug product which substitutes a different salt or ester of an active ingredient from that of a listed drug, unless the petition seeks a change in a combination product and the new salt or ester has been approved or is not a new drug. No petition is necessary for a change in the inactive ingredients from those of the listed drug.

Proposed § 314.93(d) would require a petitioner to identify a listed drug and include in its petition a copy of the proposed labeling for the drug product that is the subject of the petition and a copy of the approved labeling for the reference listed drug. A petitioner may, under limited circumstances, identify more than one listed drug, e.g., when the petitioner seeks permission to submit an ANDA for a drug product that substitutes one of the active ingredients in a combination listed drug and the substituted ingredient itself is a listed drug. (Also see discussion under submitting an application for, or a suitability petition that relies on, a listed drug that is no longer marketed at part V. section 0.1.)

Sections 505(j)(2)(A)(v) and 505(j)(3)(G) of the act require that the labeling of generic drugs be the "same" as the labeling approved for the listed drug, except where a change in labeling is "required because of differences approved under a petition filed under section 505(j)(2)(C) of the act or because the drug and the listed drug are produced or distributed by different manufacturers." FDA emphasizes that the exceptions to the requirement of "same labeling" are limited. The agency will not approve a petition under section 505(j)(2)(C) of the act that seeks permission to submit an ANDA for a product with significant changes in labeling (such as new warnings or precautions) intended to address newly introduced safety or effectiveness problems not presented by the listed drug. Such labeling changes are not the kind that were intended to fall within the limited exceptions in sections 505(j)(2)(A)(v) and 505(j)(3)(G) of the act. FDA does not believe that it would be consistent with the purpose of section 505(j) of the act, which is to assure the marketing of generic drugs that are as safe and effective as their brand-name counterparts, to interpret section 505(j)(2)(C) of the act as permitting the marketing of generic drugs with diminished safety or effectiveness and concomitantly heightened labeled warnings. Rather than waste agency resources by approving a petition for a drug that cannot satisfy the ANDA approval requirements, FDA is proposing to deny a suitability petition for a change that would necessitate significant new labeled warnings or precautions.

Under the act, the agency must approve an appropriately submitted petition for a change authorized by the statute, unless it finds (1) that investigations are necessary to show the safety and effectiveness of the drug product or of any of its active ingredients, the route of administration, dosage form, or strength which differ from the listed drug (see section 505(j)(2)(C)(i) of the act), or (2) in reviewing a petition to substitute one of the active ingredients in a combination product, that the safety or effectiveness of the drug product may not be adequately evaluated by the information in an ANDA (see section 505(j)(2)(C)(ii) of the act).

The legislative history of the 1984 Amendments makes clear that section 505(j)(2)(C)(ii) of the act was added to clarify FDA's authority to reject petitions for new combination products that raise safety or effectiveness issues. See H. Rept. 98–857, Part 1, 98th Cong., 2d Sess. 23 (1984); 130 Cong. Rec. H9114 (daily edition September 6, 1984) (statement of Representative Waxman). The agency anticipates that it will only rarely approve petitions to submit ANDA's for new combinations, because data on the safety and effectiveness of the new combinations will almost always be needed. See hearing on S. 2748 before the Committee on Labor and Human Resources, 98th Cong., 2d. Sess. 31–2 (June 28, 1984) (statement of Mark Novitch, Acting Commissioner of Food and Drugs).

Section 314.93(e)(1)(iii) specifies the grounds for denying a petition to change an active ingredient in a combination product. Under the proposal at § 314.93(e)(1)(iii)(B), the agency would not approve a petition to substitute one of the active ingredients in a combination product if the petition failed to contain information to show that the different active ingredient of the drug product is of the same pharmacological or therapeutic class as the ingredient of the reference listed drug that is to be changed and that the drug product could be expected to have the same therapeutic effect as the reference listed drug when administered to patients for a condition of use identical to that of the reference listed drug. Under section 505(j)(2)(A)(iv) of the act, this information is required to be contained in an ANDA for a product with a different active ingredient than the listed drug. (See § 314.94(a)(7) and discussion at Part V., section D.1.f.) FDA believes that this information must also be included in a petition to substitute an active ingredient because the ANDA could not be approved without this information and because substitution of an active ingredient of a pharmacological or therapeutic class different from that of the ingredient in the reference listed drug that is to be changed may be presumed to result in a product with a different degree of safety or effectiveness. Such a product would require investigations to show its safety and effectiveness; thus an ANDA would not be appropriate.

The information needed to provide scientific support for the safety and effectiveness of the new combination drug product should consist of well-documented evidence of the general acceptance that the ingredients to be substituted for each other are interchangeable and have known equipotent doses. Such information could be in the form of agency findings or conclusions in previous **Federal Register** notices. For example, FDA has allowed, in appropriate cases, substitution between aspirin and acetaminophen based on extensive scientific data establishing their safety and effectiveness and their equipotent doses and on long-term experience with these ingredients when used in combination with other drugs (see 47 FR 34636 at page 34641; August 10, 1982). If interchangeability is not generally accepted, investigations would be required to establish the safety and effectiveness of the new proposed combination product, and the product would properly be the subject of a new drug application submitted under section 505(b) of the act. New clinical data would not be an appropriate means of establishing that a new combination would have the same therapeutic effect as the listed combination drug because the need to review such data would require denial of the petition.

Sections 314.93(e)(1)(iii) (C) and (D) similarly require denial of a petition if the petition fails to demonstrate that the substituted active ingredient is already approved in a listed drug or is in a drug satisfying the requirements of section 201(p) of the act, or that the remaining active ingredients in the combination are identical to those of the listed combination drug. (See section 505(j)(3)(C) and H. Rept. 98–857, Part 1, *supra*, at 23.) In the absence of information that the safety and effectiveness of the changed ingredient has already been established and that the remaining active ingredients have not also been changed, the safety and effectiveness of the new combination cannot be evaluated without new investigations and thus cannot be the subject of an ANDA.

Under the proposal at § 314.93(e)(1)(v), the agency would not approve a petition that relies on a listed drug that has been voluntarily withdrawn from sale and that has not been referred to in an approved ANDA, unless the agency determines that the withdrawal of the listed drug was not for safety or effectiveness reasons. A generic applicant may obtain approval of a suitability petition to submit an ANDA for a change from a listed drug only when the safety and effectiveness of the listed drug can be relied on to support approval of the change. To assure that ANDA's will not be submitted for drug products that rely on a listed drug whose safety or effectiveness is questionable, the agency will refuse to approve a suitability petition that relies on a listed drug that has been voluntarily withdrawn from sale until the agency can determine that there are no safety or effectiveness concerns about the listed drug.

If the agency approves a petition for a change from a listed drug, FDA may require that certain information supporting the change be included in the ANDA. (See section 505(j)(2)(A) of the act.) The agency may also require additional data concerning the change during its review of an application.

If preclinical or clinical data are needed to support safety, or if clinical data are needed to support the effectiveness of the requested change, then an ANDA is not appropriate for the proposed drug product, and FDA will not approve a petition. However, under certain circumstances, data from limited confirmatory testing to show that the characteristics that make the proposed drug product different from the listed drug do not alter its safety and effectiveness may be accepted in a petition or as additional data to be included in an ANDA resulting from an approved petition. By limited confirmatory testing, the agency means simple studies intended to rule out unlikely problems. For example, data from acute animal studies to show the absence of liver enzyme induction properties of the substituted analgesic active ingredient might be required and be acceptable in a petition. (See 48 FR 2751 at 2753; January 21, 1983, at paragraph 4.) A study intended to answer basic safety or effectiveness questions or one that would require substantial scientific review would not be considered limited confirmatory testing.

A petitioner must use the procedures set forth in § 10.20 (21 CFR 10.20) and the format of a petition established in § 10.30 (21 CFR 10.30). However, unlike a citizen petition under § 10.30, section 505(j)(2)(C) requires FDA to approve or disapprove a petition requesting permission to submit an ANDA for a drug product differing from a listed drug within 90 days of its submission to the agency. Both proposed § 314.93 and proposed revised § 10.30 incorporate this statutory requirement. As is the case under the DESI review in which the hearing opportunity provided by section 505(c) of the act does not apply to ANDA applicants who disagree with an adverse agency decision on whether their products may rely on DESI conclusions, there is no legal right to an opportunity for a hearing on a petition denial under section 505(j)(2)(C) of the act. See H. Rept. 98–857, Part 1, 98th Cong., 2d Sess. 23 (1984). In addition, for the purposes of 21 CFR 10.45, the agency is proposing, at 21 CFR 10.45(d), that a petition for reconsideration of a response to an ANDA suitability petition be submitted and acted upon before the agency's response will be considered final agency action.

The proposal retains the current regulations on the public availability of data and information in a petition. The availability of a petition for public examination and copying is governed by 21 CFR Part 20. Under those provisions, all data submitted in a petition, except data incorporated by reference, are available for public disclosure. The agency has on several occasions been asked to maintain confidentiality of petitions in which a petitioner seeks a determination of the suitability of an ANDA for a proposed drug product. Some petitioners oppose the public availability of such petitions on the ground that information contained in the petition may provide commercial advantage to competitors by, for example, disclosing a petitioner's marketing plans or new dosage form technology. The agency considered revising the regulations to provide for the confidentiality of any petition submitted under section 505(j)(2)(C) of the act until FDA has either approved or disapproved the petition, and if the agency disapproved a petition, to provide confidentiality for an additional 30 days to permit the petitioners to file a petition for reconsideration. The agency has initially rejected that position because it believes that the benefits in keeping the process a public one outweigh potential commercial problems to petitioners. In addition, data requiring confidentiality would ordinarily not need to be submitted in a petition under section 505(j)(2)(C) of the act. The public is specifically invited to comment on the alternative policy of nondisclosure of a petition submitted under section 505(j)(2)(C) of the act until final agency action on the petition. FDA does not anticipate that it will need to repropose this regulation if it ultimately adopts such a policy. Interested persons should prepare their comments accordingly.

D. Content and Format of an ANDA

The agency proposes to retain the current requirement that an applicant submit two copies of an ANDA, an archival copy, and a review copy. The agency will maintain guidelines under § 10.90(b) (21 CFR 10.90(b)) to help applicants comply with the content and format requirements of an ANDA.

1. *Archival copy.* Section 314.94 of the proposed rule describes the content and format requirements for ANDA's. In addition to the proposed requirements described below, the archival copy of an ANDA would contain, as now, the application form that contains the information described in § 314.50 (a) (1), (3), (4), and (5), a statement whether the submission is an abbreviated application under § 314.94 or a supplement under § 314.97, and a table of contents.

The proposed content requirements for an ANDA under § 314.94 (a) implement section 505(j)(2)(A) of the act. For a drug product that is the same as the reference listed drug, the ANDA procedures focus on the kinds of information necessary to assure that the duplicate product is the same as the reference listed drug and on the ability of the applicant to produce a drug product of acceptable quality. In these regulations, the term "same as" is used to describe drug products that are identical in specific key aspects (i.e., indications, dosage form, strength, route of administration, and active ingredient(s)), but allows certain appropriate differences due to different manufacturers (e.g., differences in inactive ingredients and certain labeling statements). (See discussion under Samples and labeling at part V. section D.1.i.) A description of the proposed requirements for information to be included in an ANDA follows.

a. *Basis for ANDA submission.* The agency proposes in § 314.94(a)(3)(i) to require applicants to submit the name of the reference listed drug, including its dosage form and strength, that is the basis for the ANDA. In addition, for ANDA's submitted pursuant to an approved petition, proposed § 314.94(a)(3)(iii) would require reference to the petition by FDA assigned docket number and a copy of the agency's response to the petition stating that an ANDA may be submitted. (Section 505(j)(2)(C) of the act prohibits an applicant from submitting an ANDA for a drug product that differs from a listed drug in one of the active ingredients, route of administration, dosage form, or strength, unless FDA has approved a petition for the change.) Ordinarily both an ANDA and a petition submitted under section 505(j)(2)(C) of the act must refer to a single listed drug. However, as discussed above at part V. section C., a petition may, under limited circumstances, rely on more than one listed drug. The agency's response to a petition permitting submission of an ANDA will identify the listed drug or drugs relied on for approval of the petition. The listed drug referred to in an ANDA for which a suitability petition was approved must be the same as the listed drug relied on in the petition.

Currently, the agency uses one product as a reference standard for bioequivalence determinations. Usually that reference standard is the pioneer drug product. Applicants will be required to refer and show bioequivalence to the listed drug selected by the agency as the standard for bioequivalence determinations. Therefore, where there is more than one listed drug for the same drug product, prospective applicants are encouraged to consult with the Director, Division of Bioequivalence before selecting a reference listed drug.

Under FDA's DESI program, each **Federal Register** notice announcing the effectiveness conclusions reached in the DESI review about a drug product first approved for marketing before October 10, 1962, has included, when appropriate, an FDA finding that an ANDA is the suitable mechanism by which manufacturers or suppliers of duplicate versions of the first approved drug product could obtain FDA approval. Similar findings may, under the DESI or related programs, be made by the agency in the future. Where the agency has made such a finding and there is no other approved NDA or ANDA at the time of submission of an ANDA, the listed drug referred to in the ANDA would be the agency's notice published in the **Federal Register**. If the ANDA is for a duplicate of a drug product that is subject to FDA's DESI review and there is a listed drug, the applicant would refer to the listed drug as the basis for submission of the ANDA unless FDA has selected a different drug product as the standard for bioequivalence determinations.

The applicant must also include a statement as to whether the reference listed drug is entitled to a period of marketing exclusivity as provided under section 505(j)(4)(D) of the act. Exclusivity information on listed drugs is published in the list. If the listed drug is entitled to 5 years of exclusivity under section 505(j)(4)(D)(ii) of the act, ANDA's that refer to the drug may not be submitted until the exclusivity expires. All remaining periods of exclusivity accorded by sections 505(j)(4)(D)(i), (iii), (iv), and (v) of the act do not bar an applicant from submitting an ANDA. Such exclusivity does, however, require the agency to delay the effective date of approval of an ANDA.

b. *Conditions of use.* The agency proposes to require in § 314.94(a)(4) that the ANDA include sufficient information to show that the conditions of use, which include, among other things, indications and dosage instructions for which the applicant is seeking approval, have been previously approved for the reference listed drug. Except in extraordinary circumstances, an applicant would be expected to seek approval for all of the indications previously approved for the reference listed drug except for those indications that are protected by patent or that have been accorded periods of exclusivity. Consistent labeling for duplicate versions of a drug product, insofar as this is possible, will avoid differences that might confuse health care professionals who prescribe and dispense prescription drug products or might create omissions of significant information.

An applicant, however, may not seek approval in an ANDA or through an ANDA suitability petition for an indication that has not been previously approved. Approval of a new indication requires investigations to demonstrate the safety and effectiveness of the drug product for the new indication, and thus may not be obtained through an ANDA or suitability petition.

The requirement that the applicant show that its proposed conditions of use have been previously approved for the reference listed drug is satisfied if the applicant includes in the ANDA: (1) a statement that the conditions of use for which the applicant is seeking approval and for which the drug product will be marketed have previously been approved for the reference listed drug; and (2) reference to the applicant's annotated proposed labeling and to the currently approved labeling for the reference listed drug contained elsewhere in the ANDA.

c. *Active ingredients.* The agency proposes to require in § 314.94(a)(5) that the applicant provide sufficient information to show that the active ingredients of the drug product for which the applicant seeks approval are the same as those of the reference listed drug. The agency interprets the requirement that the active ingredients in the proposed drug product be the same as those of the listed drug to mean that the active ingredients must be identical. For example, if the proposed drug product contained a different salt or ester of the active ingredient in the listed drug, the active ingredient in the proposed drug product would not be identical to the active ingredient in the listed drug, and could not, therefore, be approved in an ANDA. Active ingredient in this context means the active ingredient in the finished drug product prior to its administration.

In some cases, an applicant may petition the agency to permit the applicant to vary an active ingredient in a proposed combination drug product. If the reference listed drug has one active ingredient, then the active ingredient in the applicant's drug product must be identical to that of the listed drug. See section 505(j)(2)(A)(ii)(I) and (j)(3)(C)(i) of the act. If the reference listed drug has more than one active ingredient, then all of the active ingredients in the applicant's drug product must be identical to those in the listed drug, except that an applicant may seek to vary one of the active ingredients of a listed combination drug product by the ANDA suitability petition procedure.

Under proposed § 314.94(a)(5), the requirement that the active ingredients in the applicant's drug product be shown to be the "same as" those of the reference listed drug is satisfied if the applicant includes in its ANDA: (1) A statement that the active ingredients in its product are the same as that of the reference listed drug except for any different active ingredient in a combination drug product that has been the subject of an approved petition and (2) reference to the applicant's annotated proposed labeling and to the currently approved labeling for the reference listed drug contained elsewhere in the ANDA.

For a combination drug product with an active ingredient different from that of the listed drug, the applicant would be required to provide information to show that (1) The different active ingredient is an active ingredient of another listed drug or of a drug which does not meet the definition of "new drug" in section 201(p) of the act and (2) the other active ingredients of the drug product are the same as those of the reference listed drug by referring to the applicant's annotated proposed labeling and the reference listed drug's approved labeling contained in the ANDA. The applicant would also be required to provide any other information about the different active ingredient that FDA may require.

d. *Route of administration, dosage form, and strength.* Under proposed § 314.94(a)(6), the applicant would be required to include in an ANDA sufficient information to show that the route of administration, the dosage form and the strength of the drug product for which the applicant is seeking approval are identical to those of the reference listed drug. An applicant may vary the route of administration, dosage form or strength of its product from the reference listed drug only if the applicant has petitioned FDA for permission to submit an ANDA for the differing drug product and the agency has approved the petition. An applicant satisfies the requirement to show that the route of administration, dosage form, and strength of its drug product are the same as those of the reference listed drug except for differences that have been the subject of an approved petition if the applicant includes in its ANDA: (1) a statement that the route of administration, dosage form, and strength are the same as those of the reference listed drug and (2) reference to the applicant's annotated proposed labeling and to the currently approved

labeling for the reference listed drug contained elsewhere in the ANDA. If the applicant has obtained permission to vary the route of administration, dosage form, or strength of the proposed product, the application must contain any information about the change as FDA may require.

e. *Bioequivalence.* The agency proposes at § 314.94(a)(7)(i) to require the applicant to include in an ANDA information sufficient to show that the drug product for which the applicant is seeking approval is bioequivalent to the reference listed drug. In addition, the proposed rule provides that for each in vivo study, an applicant include in the ANDA a description of the analytical and statistical methods used and a statement with respect to the applicant's compliance with the institutional review board regulations under 21 CFR Part 56 and the informed consent regulations under 21 CFR Part 50.

Under this proposal, the agency would retain, with one modification, the current definitions of the terms "bioequivalence" and "bioavailability" under Subpart A of 21 CFR Part 320. These terms are similarly characterized in section 505(j)(7)(A) and (B) of the act. The language of section 505(j)(7)(A) and (B) of the act is adopted except for a minor wording difference as noted below. Thus, a drug product for which an applicant is seeking approval in an ANDA would be considered bioequivalent to the reference listed drug if: (1) the rate and extent of absorption of the applicant's drug product do not show a significant difference from the rate and extent of absorption of the reference listed drug when administered at the same molar dose of the active moiety under similar experimental conditions in either a single dose or multiple doses or (2) the extent of absorption of the applicant's drug product does not show a significant difference from the extent of absorption of the reference listed drug when administered at the same molar dose of the active moiety under similar experimental conditions in either a single dose or multiple doses and the difference from the reference listed drug in the rate of absorption of the drug product is intentional, is reflected in the proposed labeling, is not essential to the attainment of effective body drug concentrations on chronic use, and is considered medically insignificant for the drug product (21 CFR 320.1(e)). The second definition of bioequivalence in existing § 320.1(e) is similar to that proposed except that under the existing regulation a difference in rate of absorption must be: (1) Intentional and reflected in the labeling; (2) not essential to the attainment of effective body drug concentrations; or (3) considered medically insignificant for the particular drug. The language of section 505(j)(7)(B)(ii) of the act thus differs from the current regulatory definition in that a drug must now meet all three of the current criteria. FDA is proposing to adopt the statutory definition. (Also see part VI. Conforming Amendments.)

The second definition of the term bioequivalence may be applied, for example, in considering whether two controlled release products are bioequivalent. Therefore, for purposes of approval of an ANDA, if a controlled release dosage form of a drug product meets the four criteria in the second definition, it would be regarded as bioequivalent to the reference standard. However, for purposes of including the product in the list, FDA reserves the right to rate the product not "therapeutically equivalent" to any other listed drug containing the same active ingredient.

The term "bioavailability" means the rate and extent to which the active ingredient or active moiety is absorbed from a drug product (21 CFR 320.1(a)). The agency proposes to expand this definition to include a reference to drugs that are not intended to be absorbed.

Currently, the agency uses one product as a reference standard against which the bioequivalence of the applicant's product is compared. The agency intends to continue that practice. Usually that reference product is the innovator's product, which would also usually be the listed drug referred to by the applicant. However, if the listed drug chosen by the applicant is different from that chosen by the agency as the standard for bioequivalence determinations, the agency will require the applicant to amend its application to refer to the agency's bioequivalence reference standard as its listed drug. This policy is intended to assure that all generic products remain equivalent to a common standard and thus to each other.

The agency notes that the statutory definitions of "bioavailability" (section 505(j)(7)(A) of the act) and "bioequivalence" (section 505(j)(7)(B) of the act) use the phrase "therapeutic ingredient" rather than the phrase "therapeutic moiety," which is used in 21 CFR Part 320. FDA does not believe Congress intended a meaning different from that in 21 CFR Part 320 for drug products that are the subject of ANDA's, because the legislative history of the 1984 Amendments, in discussing the terms "bioavailability" and "bioequivalence," refers to 21 CFR 320.1 (a) and (e). See H. Rept. 98-857, Part 1, 98th Cong., 2d Sess. at 31 (1984). The agency, however, believes that the term "active moiety" is more appropriate and proposes to substitute this term for the term "therapeutic moiety" or "therapeutic ingredient" in defining the terms "bioavailability" and "bioequivalence."

Both the statutory definition of "bioequivalence" and the definition under § 320.1(e) describe a standard for demonstrating in vivo bioequivalence for systemically absorbed drug products. Some drug products are not intended for systemic absorption, e.g., a topically applied drug product, an antacid or a radiopaque medium. Nevertheless, the statute imposes a bioequivalence requirement on all drug products for which an applicant is seeking approval in an ANDA. Where the usual in vivo bioequivalence methods (blood level measurements) are not applicable, suitable alternative methods, such as measurement of acute pharmacologic effect or demonstration of equivalent clinical effectiveness (with appropriate confidence intervals), may be established where FDA determines that they are capable of demonstrating bioequivalence. FDA notes, however, that where no methodology capable of establishing bioequivalence has been shown to exist for a particular drug or class of drugs, ANDA's for the drug cannot be approved until adequate methodology becomes available. (See section 505(j)(3)(F) of the act.)

In vitro dissolution may also be determined by the agency to be an appropriate means of demonstrating bioequivalence, for example, where an in vitro test has been correlated with human in vivo bioavailability data. The list specifies whether an in vitro or in vivo bioequivalence study will be required for ANDA's that refer to a listed drug. One method of demonstrating bioequivalence will generally apply to all indications for which the listed drug is approved, unless there is more than one route of administration in which case it may be necessary to study bioequivalence by more than one route. If any person believes that a specified method demonstrates bioequivalence only for a certain indication, that person may raise the issue with the agency. The agency will decide each such issue on a case-by-case basis.

Before enactment of the 1984 Amendments, the agency deferred or waived the requirement for the submission of evidence of in vivo bioavailability for various drugs for a number of reasons. For example, FDA deferred the requirement if adequate methodology were not available for in vivo testing. However, section 505(j)(2)(A)(iv) of the act requires that the applicant provide information to show that its drug product is bioequivalent to the listed drug referred to by the applicant. Thus, there is no statutory provision for deferral of the requirement. Therefore, in those situations where methodology for in vivo testing is not available, the applicant is required to develop adequate methodology for such testing, or to carry out clinical studies to assess therapeutic equivalence, unless the agency determines that in vitro methods can be used to demonstrate bioequivalence.

In some cases, the in vivo bioavailability of a drug product may be self-evident, e.g., for a drug product that is a solution intended for intravenous or oral administration. The regulations under 21 CFR Part 320 set forth the criteria for waiver of evidence of in vivo bioavailability. (Also see discussion about proposed revisions to the waiver criteria under part VI.) The agency does not believe Congress intended that unnecessary human research be conducted in cases where an applicant could demonstrate that a product is inherently bioequivalent to another product and therefore meets the statutory standard of bioequivalence. Therefore, the agency proposes to continue its policy that if an applicant can demonstrate that its proposed drug product falls in this category, such a demonstration would be considered adequate information to show bioequivalence to the reference listed drug, as required in proposed § 314.94(a)(7)(i). Likewise, if the agency concludes that bioequivalence can be demonstrated by in vitro tests, the agency proposes to require only such tests rather than in vivo studies. (See section 505(j)(6)(A)(i)(III) of the act.) The agency informs prospective applicants of whether in vivo or only in vitro tests will be required through its list. In addition, the agency may from time to time, prepare or modify existing guidance documents for conducting bioequivalence studies. To assure that all applicants receive the most up-to-date version of any available guidance documents on the types of studies recommended for establishing bioequivalence, FDA publishes a complete listing of the most current available guidance documents in the list.

Many applicants now submit bioequivalence protocols to obtain agency review and comment before beginning bioequivalence tests. The agency proposes to continue to permit the submission of these protocols. An ANDA that contains a bioequivalence protocol and the chemistry, manufacturing, and controls data required by § 314.94(a)(9) would be considered sufficiently complete to start the statutory 180-day review period. However, an applicant certifying patent invalidity or noninfringement must submit completed bioequivalence studies with the initial ANDA submission (see section 505(j)(2)(B) of the act).

f. *Therapeutic effect.* Under the petition procedure, an applicant may seek to substitute one of the active ingredients in its proposed combination drug product for one of the active ingredients in the reference listed combination drug. If FDA approves a petition permitting the submission of an ANDA for such a change, the ANDA must contain information to show that the different active ingredient in the proposed drug product is of the same pharmacological or therapeutic class as the ingredient in the reference listed drug that was changed and that the proposed drug product can be expected to have the same therapeutic effect as the reference listed drug when administered to patients for the conditions of use approved for the listed drug and for which the applicant is seeking approval. (See section 505(j)(2)(A)(iv) of the act.)

With respect to the requirement that the substituted active ingredient be "of the same pharmacological or therapeutic class" as that of the listed drug, FDA would view the different active ingredient as being of the same pharmacological or therapeutic class as that of the listed drug if the applicant can show that the different active ingredient in its proposed drug product has similar pharmacologic properties to the ingredient in the listed drug that has been changed. FDA would view a drug product as being expected to have the same therapeutic effect as the listed drug if the applicant can demonstrate that: (1) There is an adequate scientific basis for determining that substitution of the specific proposed dose of the different active ingredient for the dose of the member of the same pharmacological or therapeutic class in the reference listed drug will yield a resulting drug product of the same safety and effectiveness. This will ordinarily require a showing that there is general acceptance in the scientific community that the specified doses of the two ingredients are equipotent; (2) the unchanged active ingredients in the applicant's drug product are bioequivalent to those in the reference listed drug; and (3) the different active ingredient in the applicant's drug product is bioequivalent to an approved dosage form of a drug product containing that ingredient and approved for the same indication(s) as the proposed product or is bioequivalent to a drug product offered for that indication which does not meet the definition of "new drug" under section 201(p) of the act. This would demonstrate that the different active ingredient is as bioavailable from the combination drug product as it is when separate preparations of the active ingredient are given. During its review of the ANDA, FDA may request the submission of additional information to show that the proposed drug product can be expected to have the same therapeutic effect as the listed drug.

g. *Chemistry, manufacturing, and controls.* The agency proposes at § 314.94(a)(9)(i) to retain the current requirement of the submission of adequate chemistry, manufacturing, and controls information described under § 314.50(d)(1). Current agency practice permits applicants to submit this information and bioequivalence protocols before beginning bioequivalence tests of their drug products and submitting the results of these tests to FDA. Thus, applicants are able to obtain agency review and comment on their formulation data, bioequivalence protocols, and pilot studies before conducting bioequivalence tests. The agency intends to continue this practice, except that ANDA's that contain a section 505(j)(2)(A)(vii)(IV) patent certification must submit completed bioequivalence studies with the initial ANDA submission.

h. *Inactive ingredients.* The inactive ingredients or composition used in a generic drug product must not raise serious safety questions. (See discussion in part V. section M., *infra.*) The agency intends to place more stringent limitations on the variations permitted in the inactive ingredients in the formulation of parenteral, ophthalmic, and otic drug products than on other dosage forms. This is because each parenteral, ophthalmic, and otic drug product represents an individual pharmaceutical system with its own characteristics and requirements. In the formulation of parenteral drug products, certain added substances are used to maintain solubility, stability, sterility, and to increase patient comfort (i.e., by adjusting toxicity and reducing tissue irritation). Added substances selected

for parenteral drug products must be known to be of the highest quality, must be known to not interfere with the therapeutic effectiveness of the product and must be known to be nontoxic in the quantities used. The sensitivity of inactive ingredients in parenteral drug products is reflected in regulations under 21 CFR 201.100 which require that certain added substances and their concentrations be listed on the label of the product. Similarly, added substances are used in the formulation of products intended for ophthalmic and otic use such as buffers, antimicrobial preservatives, chemicals to adjust toxicity, and thickening agents.

Generally, in an ANDA, the formulation of ingredients in parental, ophthalmic, and otic dosage forms must be identical to the formulation of the reference listed drug identified in the ANDA. For the reasons described above, the agency will presume any inactive ingredient in an applicant's proposed drug product different from that in the reference listed drug to be unsafe unless the applicant can rebut the presumption by demonstrating that the different inactive ingredient will not affect the safety of its proposed drug product. Differences from the reference listed drug in the types of added substances described above for parenteral, ophthalmic, and otic dosage forms may be permitted if the applicant includes in its ANDA an identification and characterization of the differences in added substances between the proposed drug product and reference listed drug and demonstrates that such differences will not affect the safety of the proposed drug product.

For all dosage forms, the applicant would be required to identify and characterize any differences between the formulation of its proposed drug product and that of the reference listed drug and include in the ANDA information to show that the inactive ingredient will not adversely affect the drug product's safety.

i. *Samples and labeling.* The agency proposes at § 314.94(a)(10) to: (1) retain the current requirement under § 314.50(e) that upon FDA's request, the applicant submit samples of the finished drug product, the drug substances used in the manufacture of the drug product, and reference standards and blanks and (2) retain the current requirement under § 314.50(e) with respect to the submission of analytical methods and descriptive information needed to perform the tests on the samples and to validate the applicant's analytical methods.

The agency also proposes at § 314.94(a)(8)(ii) to retain the current requirement under § 314.50(e)(2)(ii) for the submission of copies of the proposed or final printed label and labeling for the drug product for which the applicant is seeking approval, i.e., four copies of draft labeling or 12 copies of final printed labeling.

The agency proposes to add a new requirement with respect to the submission of labeling. The statutory provisions of section 505(j) of the act require that an applicant provide sufficient information to assure that a generic version of a previously approved drug product is the same as the listed drug in dosage form, strength, and route of administration, contains the same active ingredients, except for differences from the listed drug that have been the subject of an approved petition, and generally is recommended for administration under the same conditions of use. In addition, the act requires that an applicant include in the ANDA information adequate to show that the proposed labelling for its drug product is the same as that of the reference listed drug except for changes required because of differences approved under a petition or because the drug product and the reference listed drug are produced or distributed by different manufacturers. Thus, an applicant's proposed labeling might differ from that of the reference listed drug because: (1) the method of formulation (e.g., inactive ingredients) differs; (2) the applicant's product and the reference listed drug have different strengths (in the case of petition-approved drug products) or with respect to the "how supplied" section of the labeling, the generic manufacturer does not supply all strengths of the drug product; (3) the reference listed drug labeling does not reflect current agency labeling standards; for example, the agency may require a change in the labeling of a drug product to make available important new information about the safe use of a drug product, but the reference listed drug's labeling has not yet been updated to reflect this change; (4) the reference listed drug labeling includes conditions of use that are protected by a patent or are accorded a period of exclusive marketing; (5) the name and address of the manufacturers of the proposed and listed drug products vary; (6) the expiration dates for the proposed product and the reference listed drug differ; (7) the National Drug Code (NDC) number for the proposed product and the reference listed drug differ, if displayed on the label and in the labeling; and (8) there are differences in the color used in a tablet (e.g., the listed drug contains Yellow No. 5, which must be declared in the label, while the proposed product uses a different color).

FDA emphasizes that the exceptions to the requirement that a generic drug's labeling be the same as that of the listed drug are limited. The agency will not accept ANDA's for products with significant changes in labeling (such as new warnings or precautions) intended to address newly introduced safety or effectiveness problems not presented by the listed drug. Such labeling changes do not fall within the limited exceptions in sections 505(j)(2)(A)(v) and 505(j)(3)(G) of the act. Moreover, FDA does not believe that it would be consistent with the purpose of section 505(j) of the act, which is to assure the marketing of generic drugs that are as safe and effective as their brand-name counterparts, to interpret section 505(j)(2)(A)(v) of the act as permitting the marketing of generic drugs with diminished safety or effectiveness and concomitantly heightened labeled warnings. Thus, where a proposed change in a generic drug, e.g., in packaging or inactive ingredients or, for a petition-approved drug, in the approved change, would jeopardize the safe or effective use of the product so as to necessitate the addition of significant new labeled warnings, the proposed product would not satisfy the labeling requirements of sections 505(j)(2)(A)(v) and 505(j)(3)(G) of the act.

To assist the agency in determining if the applicant's proposed labeling is the "same as" that of the reference listed drug, except for the types of differences described above, FDA proposes in § 314.94(a)(8)(iv) to require the applicant to include in the ANDA a side-by-side comparison of the applicant's proposed labeling with the currently approved labeling for the listed drug referred to in the ANDA with all differences annotated and explained. Current approved labeling for any approved drug product may be obtained under 21 CFR Part 20 pursuant to the Freedom of Information Act. In addition, the proposed rule provides that an applicant must include in the ANDA a statement that the proposed labeling is the same as that of the listed drug except for those allowable differences specifically cited by the applicant. Where the agency has issued class labeling or another labeling standard, e.g., labeling requirements set forth in a DESI notice, and the applicant believes such labeling is more appropriate than the listed drug product's labeling, the applicant should refer to such labeling or standard and explain why it is more appropriate.

j. *Patent certification.* The statute prevents an ANDA from becoming effective before all relevant listed product and use patents that have been filed for the listed drug have expired or, if the generic applicant asserts either that the generic product will not infringe the patent or that the patent is invalid, until the patent owner and listed drug holder have been notified and have had an opportunity to litigate the matter. Sections 505 (b) and (c) of the act require that applicants for all newly submitted or pending new drug applications and holders of all previously approved new drug applications submitted under section 505(b) of the act submit to FDA the patent number and the expiration date of any patent that claims the drug in the new drug application or that claims a method of using such drug with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner of the patent engaged in the manufacture, sale, or use of the drug product.

The patents covered by the statutory provisions for submission of patent information are those that claim the drug product for which approval is being sought, including an active ingredient in such product and use patents that claim a particular indication or method of using the drug product. The agency interprets the statutory language "any patent which claims the drug" to include formulation and composition patents that claim the drug product for which approval is being sought. The 1984 Amendments do not authorize the submission of information for patents that claim a method of manufacturing a listed drug or that claim drug products for which the applicant is not seeking or has not obtained approval. FDA is required to publish the required patent information submitted under section 505 (b) or (c) of the act. The patent information appears in the list.

i. *Patents requiring a certification or statement.* Proposed § 314.94(a)(12), which implements sections 505(j)(2)(A) (vii) and (viii) of the act, requires applicants to include in their original ANDA submission a certification or statement as to each patent that, in the opinion of the applicant and to the best of its knowledge, claims the reference listed drug or a use of the reference listed drug for which the applicant seeks approval. A certification under § 314.94(a)(12)(i) or statement under § 314.94(a)(12)(iii), as appropriate, must be submitted whenever an applicant believes that the reference listed drug is claimed by an ingredient patent, drug product patent (including a formulation and composition patent), or a method of use patent. In some instances, an applicant may have to make multiple certifications if there is more than one relevant patent on the listed drug. For example, if the active ingredient patent for the listed drug has expired but a valid formulation patent will not expire for 3 years, then the applicant would be required to certify, for example, that one patent has expired and the other will expire in 3 years.

The patent information submitted to FDA, whether or not published in the list, should be the basis of the applicant's certification. To assist the applicant in determining whether information on a relevant patent has been submitted to FDA, the agency will place copies of new patent submissions on approved drug products and, prior to its publication, a copy of the patent information supplement to the list on public display in the Freedom of Information Office (HFI-35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Once a year, FDA conducts a review of the patent information published in the list and deletes all patents that have expired in the course of the year. Thus, an applicant should check the list for published patent information and FDA's Freedom of Information Office for patent information submitted to FDA but not yet published. FDA would also expect that an applicant would check the Patent Office for U.S. patents issued but not yet submitted to FDA. If the applicant is aware of a U.S. patent that claims the drug, drug product, or a method of using the drug that has been granted but not yet submitted to FDA, it must submit a certification under section 505(j)(2)(A)(vii)(I) of the act or, if applicable, a statement under section 505(j)(2)(a)(viii) of the act. If an applicant becomes aware, after submitting an ANDA, of a newly issued patent or if a patent is timely submitted after the submission of the ANDA, an appropriate new certification would be required in the form of an amendment to the pending ANDA.

ii. *Patent certifications or statement.* Under section 505(j)(2)(A)(vii)(I) of the act, an applicant must make a "paragraph I" certification if the applicant is aware, e.g., through a patent search, that a patent exists that claims the listed drug or that claims a use for such listed drug for which the applicant is seeking approval and for which patent information is required to be submitted, but for which the holder of the approved application for the listed drug has not submitted the information to FDA (proposed § 314.94(a)(12)(i)(A)(*1*)).

Under section 505(j)(2)(A)(vii)(II) of the act, an applicant must make a "paragraph II" certification if the applicant believes that there was a patent that claimed the listed drug or that claimed a use for such listed drug but that such patent has expired (proposed § 314.94(a)(12)(i)(A)(*2*)).

Under section 505(j)(2)(A)(vii)(III) of the act, an applicant must make a "paragraph III" certification if the applicant believes that there is an unexpired patent that claims the reference listed drug or that claims a use for such listed drug and the applicant does not want to certify that the patent is invalid or will not be infringed by the applicant's proposed drug product. The certification must state the date on which the patent will expire (proposed § 314.94(a)(12)(i)(A)(*3*)).

Under section 505(j)(2)(A)(vii)(IV) of the act, an applicant must make a "paragraph IV" certification if the applicant believes that there is a relevant unexpired patent that claims the listed drug or that claims a use for such listed drug, but also believes that the patent is invalid or will not be infringed by the applicant's proposed drug product. In addition, if the proposed drug product is a generic copy of a listed, patented drug and is the subject of a patent licensing agreement with the patent owner, the applicant would submit a paragraph IV certification. The agency proposes at § 314.94(a)(12)(i)(A)(*4*) that a paragraph IV certification be submitted to FDA in the following form:

I, (*name of applicant*), certify that Patent No. ____(*is invalid or will not be infringed by the manufacture, use, or sale of) (name of proposed drug product*) for which this application is submitted.

The certification must be accompanied by the statement required by section 505(j)(2)(B)(i) of the act that the applicant will give the notice required by section 505(j)(2)(B)(ii) of the act and proposed § 314.95(a) to the patent owner or its representative and the holder of the approved application for the listed drug and by a statement that the applicant will comply with the requirements under proposed § 314.95(c) with respect to the content of the notice. A certification in any other form will not be accepted by the agency as a paragraph IV certification.

If, in the applicant's opinion and to the best of its knowledge, no relevant patents claim the listed drug or a method of using the listed drug, the agency proposes at § 314.94(a)(12)(ii) to require the applicant to include in its ANDA the following certification:

In the opinion and to the best knowledge of (*name of applicant*), there are no patents that

claim the listed drug referred to in this application or that claim a use of the listed drug.

This will assist the agency in assuring that each applicant has complied with section 505(j)(2)(A)(vii) of the act. If a patent is removed from the list after an applicant has submitted one of the certifications described in § 314.94(a)(12)(i)(A), and the application is pending or has a delayed effective date, the applicant should submit an amended certification under § 314.94(a)(12)(ii) certifying that there are no relevant patents. The new certification should be submitted either as an amendment to a pending application or by letter to an approved application.

If there is a patent claiming a method of using the listed drug, and the labeling for the applicant's proposed drug product does not include any indications that are covered by the use patent, proposed § 314.94(a)(12)(iii) would require the applicant to submit a statement that the method of use patent does not claim any of the proposed indications. The applicant should not submit a certification under § 314.94(a)(12)(i)(A) for such a patent. If, however, the labeling of the proposed drug product includes an indication that, according to the patent information submitted to FDA under sections 505 (b) and (c) of the act or in the opinion of the applicant, is claimed by the use patent, the applicant must submit an applicable certification under § 314.94(a)(12)(i)(A).

If patent information is submitted on a listed drug and, if, as of the time FDA concludes that an ANDA that refers to that drug is approvable, the ANDA applicant has not submitted an appropriate certification or statement on the patent, FDA will notify the applicant of the existence of the submitted patent before approval. (Because the applicant will then have to comply with any applicable certification and notification requirements, possibly delaying approval, applicants should make every effort to keep themselves informed as to whether patent information has been submitted while their ANDA's are pending.) If, however, a patent on the listed drug is issued by the Patent Office after an ANDA is submitted to FDA, and the holder of the approved application for the listed drug does not submit patent information within 30 days of issuance of the patent as required by section 505(c) of the act, the agency is proposing that no recertification be required for a pending ANDA that refers to that drug, if the ANDA applicant has previously submitted an appropriate certification. If the approved application holder ultimately submits the information late, the applicant need not submit an amended certification. A generic applicant whose application is submitted *after* a late submission of patent information on the listed drug or whose application is pending but does not contain a previously submitted certification, must, however, certify as to that patent. (See proposed § 314.94(a)(12)(vi) and discussion at part V., section Q.4, *infra*.)

iii. *Patent licensing agreements.* The agency proposes in § 314.94(a)(12)(i)(B) and (v) to implement the following patent certification rules where the proposed drug product or the listed drug is a copy of a patented drug and is the subject of a patent licensing agreement with the patent owner. If the proposed drug product is a generic copy of a patented drug and the applicant has obtained a licensing agreement with the patent owner, FDA proposes to require the applicant to submit a certification under section 505(j)(2)(A)(vii)(IV) of the act. In response to the notice of certification from the generic applicant to the patent owner, the patent owner may consent to an immediate effective date of approval of the generic applicant's application by providing FDA with a written statement that the patent owner and the applicant have entered into a patent licensing agreement and consent to an immediate effective date. In such cases, i.e., when the agency is informed by the patent owner of a licensing agreement, the agency may, if all other requirements are met, approve the ANDA before the 45-day statutory period has elapsed. The written statement from the patent owner should be in the following form:

(*Name of patent owner*), owner of Patent No. _____, and (*name of applicant*) have entered into a patent licensing agreement that authorizes (*name of applicant*) to engage in the manufacture and sale of (*name of proposed drug product*). (*Name of patent owner*) does not object if FDA makes the approval of (*name of applicant's*) ANDA for (*name of proposed drug product*) effective at any time on or after the date of this statement.

If an ANDA refers to a listed drug that is itself a licensed generic version of a patented pioneer drug, the ANDA must include a certification as to any relevant patent on the pioneer drug. Section 505(j)(2)(A)(vii) of the act requires an applicant to make a certification "* * * *with respect to each patent which claims the listed drug referred to in clause (i) or which claims a use for such listed drug for which the applicant is seeking approval* under [section 505(j)] and for which information is required to be filed under subsection (b) or (c) * * *" (emphasis added). Because, where a licensing agreement is necessary, the patent will claim both the pioneer drug product and generic copies of that drug product, an ANDA that refers to the licensed copy must include a certification as to any patent on the pioneer for which information was required to be filed under section 505 (b) or (c) of the act. When the agency is aware of a patent licensing agreement between the applicant of a listed generic drug and a patent owner, it will publish in the list information on the patent next to the listing for the licensed generic drug.

iv. *Amended certifications.* FDA is proposing to require an applicant who has made a paragraph IV certification to amend its patent certification if the applicant has a pending ANDA or an ANDA with a delayed effective date and one of the following occurs: (1) a final judgment is entered finding that the applicant's product infringes the patent, or (2) the patent is removed from the list for any reason other than because the patent has been declared invalid in a lawsuit brought by the patent owner within 45 days of the receipt of notice under section 505(j)(2)(B) of the act. Once amended, the application will not be considered to be one containing a paragraph IV certification for purposes of section 505(j)(4)(B)(iv) of the act.

A patent certification must also be amended if the applicant learns that its previous certification is incorrect, with two exceptions. First, as described above in part V. section D.1.j.ii., an applicant who has made an appropriate certification would not be required to amend the certification if, following the first certification, the listed drug applicant submits information on a patent on the listed drug, but the submission is untimely.

Second, FDA is proposing not to require an amended certification if after an ANDA is approved, whether or not the approval is effective, the listed drug applicant submits information on a patent on the listed drug, whether the submission is timely or not. Once an ANDA becomes effective, new patents issued on a listed drug are not subject to the patent certification provisions of the 1984 Amendments; the patent holder may enforce such a patent under the patent provisions of Title 35 of the United States Code, but is not entitled to notice from the ANDA applicant or to a period during which the ANDA applicant is kept off the market while the patent issue is litigated. Any delay in an ANDA's effective date will be entirely unrelated to the timing of the issuance of a new patent on the listed drug. Accordingly, FDA believes that requiring an amended certification if a patent is issued after approval of an ANDA but before its effective date would provide an unintended windfall to the listed drug applicant, who, but for the fortuitous delay in the ANDA's effective date, would not have reaped the benefits of the patent certification provisions of the 1984 Amendments. However, FDA specifically seeks comment on whether an amended certification should be required under these circumstances, and on the policies, if any, that would be served by requiring such an amendment.

2. *Review copy.* The agency proposes to retain the current requirement that, in addition to the complete archival copy, an applicant submit a review copy of an ANDA that contains two separately bound sections. One section would be required to contain a copy of the application form, the chemistry, manufacturing, and controls information described in proposed § 314.94(a)(9), the information described in proposed § 314.94(a)(3) (basis for ANDA submission), § 314.94(a) (4) through (6), (8), and (12), and one copy of the analytical methods and descriptive information needed by FDA's laboratories to perform tests on samples of the proposed drug product and to validate the applicant's analytical methods. The other section will contain a copy of the application form, the information described in § 314.94(a)(3) (basis for ANDA submission) and (7) (bioequivalence information) and a copy of the currently approved labeling for the reference listed drug and of the applicant's annotated proposed labeling.

E. Notice of Certification of Invalidity or Noninfringment of a Patent

Proposed § 314.95 incorporates the requirements of section 505(j)(2)(B) of the act with respect to notification of the patent owner and the holder of the approved application for the listed drug when an applicant certifies under section 505(j)(2)(A)(vii)(IV) of the act that a patent is invalid or will not be infringed. In addition, proposed § 314.95 describes the information to be included in the notice.

The act permits an applicant who wishes to market a generic version of a listed drug product to challenge a drug or use patent that the pioneer application holder identifies as precluding the marketing of the generic version. An applicant who submits an ANDA to FDA for the generic version of the listed drug and wishes to initiate such a challenge must certify that the relevant patent submitted by the pioneer application holder to the agency is invalid or will not be infringed. The applicant must then give notice of its certification to (1) the owner(s) of each relevant patent or the representative designated by the patent owner to receive such notice and (2) the holder of the approved application under section 505(b) of the act for the reference listed drug claimed by the patent or the holder's representative (attorney, agent, or other authorized official).

Under the proposal, an applicant is required to provide the notice of certification when it receives FDA's acknowledgment of the receipt of an ANDA that is acceptable for review. Although the legislative history states that Congress intended that the notice be sent simultaneously with submission to FDA of the ANDA, the statute requires the applicant to state in the notice that an application "has been submitted." Moreover, the statute requires the notice to state that the application contains data from bioavailability or bioequivalence studies. Receipt of the notice by the patent owner or its representative or the approved application holder triggers the start of the 45-day clock within which a patent owner or application holder must bring suit if it wishes to challenge an applicant's certification of patent invalidity or noninfringement. The statute and legislative history of Title I demonstrate that Congress did not intend incomplete application submissions to trigger legal action by a patent owner or approved application holder.

The agency therefore proposes that the notice be sent only upon submission of a "complete" application. An applicant must first submit an ANDA and certify in the application that it will provide the required notice to the patent owner or its representative and to the pioneer application holder. After receipt of the application, the agency will determine if the application is acceptable for review. An application containing a paragraph IV certification that does not contain the results of any required completed bioavailability or bioequivalence studies that meets an appropriate FDA guidance or that is reasonable in design, and that purports to show that the proposed drug is bioequivalent to the listed drug, would not be considered acceptable for review. Neither a protocol nor a pilot study will be considered acceptable. If, however, the ANDA is for a drug for which a bioequivalence study is not required, e.g., a parenteral product, the application may be considered acceptable for review if it contains a waiver of a bioequivalence study requirement. If the application is acceptable for review, FDA will notify the applicant in writing and provide the applicant with the ANDA number assigned by FDA. Immediately upon receipt by the applicant of FDA's acknowledgement letter, the applicant would be required to notify the persons described in the statute of the certification of invalidity or noninfringement, and amend the ANDA to include a statement certifying that the notice has been provided and that the notice contains the required information, described at § 314.95(c). If an abbreviated application is amended to include a paragraph IV certification because the applicant learns of a relevant patent after the abbreviated application is submitted and before its approval, the applicant would be required to notify the appropriate parties when the amendment is submitted to FDA. If a patent on a listed drug is issued after an abbreviated application is approved, the generic applicant need take no further action.

The agency does not propose to require the applicant to notify holders of approved applications for drugs other than the listed drug claimed by the product or use patent. If an ANDA refers to a licensed generic version of a patented pioneer drug and the applicant made a certification as to the patent on the pioneer drug, the applicant must notify the patent owner and the holder of the approved pioneer application of its certification.

An applicant may obtain the name and address of the patent owner or the attorney or agent designated to represent the patent owner in patent proceedings (attorney or agent of record) from the United States Patent and Trademark Office. The name and address of the holder of the approved application or the holder's attorney, agent, or authorized official (i.e., the person who signed the Form FDA 356h) may be obtained from FDA's Center for Drug Evaluation and Research, Division of Drug Information Resources (HFD-80).

The 45-day clock would start on the first day after the date of receipt of the notice by the patent owner or its representative or by the approved application holder if it is an exclusive patent licensee as documented by the applicant under proposed § 314.95(e). Although an applicant is required to provide the notice to the patent owner and approved application holder, FDA believes it is appropriate to rely solely on the patent owner to make decisions about bringing patent infringement actions, unless there is a patent license

agreement and the approved application holder is the exclusive patent licensee. In the latter situation, FDA would expect the exclusive licensee to bring suit for patent infringement. Therefore, the date of receipt of the notice by an application holder who is not an exclusive licensee for the patent will not trigger the start of the 45-day clock. The agency specifically seeks comment on this policy.

FDA will accept as adequate documentation of the date of receipt of the notice (1) a return receipt or (2) a letter acknowledging receipt from the patent owner and approved application holder. If an applicant wishes to rely on another form of documentation, the applicant should first check with the agency. The applicant would be required to amend the ANDA to include a copy of the return receipt or other such evidence of the date the notification was received by the patent owner and approved application holder.

Proposed § 314.95(c) lists the information to be included in the notice. Under the proposal, the notice would cite section 505(j)(2)(B)(ii) of the act as the relevant statutory authority for the notice and contain: (1) a statement that FDA has received an ANDA submitted by the applicant containing any required bioavailability or bioequivalence data or information, (2) the ANDA number assigned by FDA, (3) the established name, if any, of the drug product that is the subject of the ANDA, (4) the active ingredient, strength, and dosage form of the proposed drug product, (5) the patent number and expiration date, as submitted to the agency or as known to the applicant, of each patent alleged to be invalid or not infringed, (6) a detailed statement of the factual and legal basis of the applicant's opinion that the patent is not valid or will not be infringed, and (7) if the applicant does not reside or have a place of business in the United States, the name and address of an agent in the United States authorized to accept service of process for the applicant. With respect to the factual and legal basis for the applicant's certification, the agency proposes that for each claim of a patent noninfringement, the notice would be required to include an explanation of the alleged noninfringement. In addition, for formulation or composition patents, the notice would be required to include a description of a mechanism through which the applicant agrees to make the formulation or composition of the proposed drug product known to the patent owner or to a designated intermediary who will act as a referee. The agency believes that only by making the formulation or composition available to the patent owner or a designated third party will the patent owner have sufficient information to make an informed decision whether to sue for patent infringement. For each claim of patent invalidity, the notice would be required to include an explanation of the grounds supporting the allegation, including all statutory bases, affirmative defenses, reasoning, and evidence supporting the allegation, citing any relevant case precedent upon which the allegation is based, providing a copy of any patent or publication relied upon, and indicating that portion of each such patent or publication that is alleged to invalidate such claim and the reasons supporting such allegation.

Although the proposed regulations describe the information required by statute that an applicant must include in a notice, the applicant is not required to include a copy of the notice in its ANDA as suggested by the Pharmaceutical Manufacturers Association (PMA) (comments filed under Docket No. 85N-0214). Only a statement that such notice has been given by the applicant is required (21 U.S.C. 355(j)(2)(B)(i)). Determinations concerning the scope of patents are the province of the United States Patent and Trademark Office and of the courts. FDA does not have the expertise, nor is it required to review the notice as suggested by PMA. FDA proposes only to ensure that such notice has been sent and received. If the applicant meets the requirements under proposed § 314.95, which FDA believes will assure adequate notice, the agency will presume the notice to be complete and sufficient. Thus, the agency does not intend to intervene in cases where the patent owner or exclusive patent licensee claims that the notice was deficient. However, in cases where the notice was deemed inadequate by the patent owner or exclusive patent licensee and where the ANDA applicant subsequently amends the notice, the agency may, if the applicant amends its ANDA with a written statement that the date of receipt of the amended notification should be considered the date of receipt of notice, use the date of the amended notification to begin the 45-day statutory period for institution of an action for patent infringement.

F. Amendments to an Unapproved ANDA

The agency proposes to revise its regulations regarding amendments to pending ANDA's.

Proposed § 314.96 would provide for extensions to the 180-day review clock under section 505(j)(4)(A) of the act only for evaluating major amendments (i.e., those requiring substantial FDA review time). Examples of such major amendments would involve amendments that contain data from a new bioequivalence study or stability or sterility study resulting from a drug product reformulation or change in the manufacturing or controls procedures, significant updated data from a change in the source of the drug substance or change in manufacturing facility, or data from a bioequivalence study where only a protocol was contained in the original submission. The agency would consider such an amendment, whether submitted on the applicant's own initiative or at the request of the agency, to constitute an agreement by FDA and the applicant to an extension of the review period under section 505(j)(4)(A) of the act. Any extension would start with the date of receipt by FDA of the amendment and would be limited to the time necessary for FDA to review the submission.

Under the proposal, an amendment that contains data and information to resolve substantial deficiencies in the ANDA as set forth in a not approvable letter under § 314.120 would extend the review period for 120 days from the date of receipt by FDA of the amendment. Although the agency now attempts to review these amendments quickly, the agency believes this is a reasonable period for review of an amendment to resolve substantial deficiencies and that establishing a uniform length of time for this review will eliminate the need to notify each applicant of the amount of time needed to review its amendment.

G. Other Applicant Responsibilities

1. *General.* The agency proposes to retain the current requirements for applicants under 21 CFR Part 314 regarding: (1) withdrawal by an applicant of an unapproved ANDA, (2) submission of supplements and other changes to an approved ANDA, (3) change in ownership of an ANDA, (4) submission of postmarketing reports, other than adverse drug experience reports, and (5) request for waiver of submission requirements.

2. *Postmarketing reports.* With respect to the requirements set forth under § 314.80 for reporting adverse drug experiences, the agency proposes in § 314.98 to require an applicant of an approved ANDA to comply with those requirements but only if the approval is effective under § 314.107. The objective of the adverse drug experience reporting requirements is to signal potential serious safety problems with marketed drugs, especially newly marketed drugs. An applicant cannot market a drug product before it has an effective approval for its ANDA, so it is unlikely that the applicant, before this effective approval, would receive adverse drug experience information about other drug products through literature reports or unpublished scientific papers that would not also be received by the marketers of those drug products.

FDA is also proposing in § 314.98 the following changes in its adverse drug experience reporting requirements for applicants of ANDA's and abbreviated antibiotic applications. First, ANDA and abbreviated antibiotic application applicants would no longer be required to submit duplicate copies of adverse drug experience reports. This change is made possible by the centralization of FDA's processing of drug experience reports on generic versions of approved drug products in a single office in the Center for Drug Evaluation and Research that has the responsibility for ensuring the proper distribution and analysis of these reports. Ordinarily, the Division of Generic Drugs will not evaluate these reports and therefore no longer needs to receive a copy. Applicants should send one copy of each adverse drug experience report directly to the Division of Epidemiology and Surveillance (HFD-730).

Second, the proposed regulations would provide that an ANDA and abbreviated antibiotic application applicant submit to FDA periodic reports of adverse drug experiences only if (1) the applicant has received during the periodic reporting cycle adverse drug experiences not previously reported or (2) there are labeling changes initiated by the applicant.

FDA is also proposing the following revisions to § 314.80. First, the agency proposes to revise the definition of the term "adverse drug experience" by deleting the word "significant" in the phrase "any significant failure of expected pharmacological action." The word "significant" has been a source of confusion and ambiguity. FDA considers any report of failure of a drug to produce the expected pharmacological action to be significant. This proposed revision would unambiguously require that all reports of a therapeutic failure (lack of effect) be submitted to FDA. Second, the agency proposes to add the following new adverse drug experience reporting requirement. Under the proposal, applicants of both full and abbreviated applications would be required to review periodically (at least as often as the periodic reporting cycle) the frequency of reports of failure of a drug to produce the expected pharmacological action (lack of effect) received by an applicant and report any significant increase in frequency of therapeutic failure (lack of effect) to FDA within 15 working days of determining that an increase in frequency exists. Determinations of significant increases in frequency are to be based on FDA's "Guideline for Postmarket Reporting of Adverse Drug Reactions." Applicants would be required to submit these reports in narrative form (including the time period on which the increased frequency is based, the method of analysis, and the interpretation of results). These narrative reports would be required to be submitted under separate cover and not in a periodic report except for summary purposes. The intent of this proposed revision is to facilitate the identification of possible therapeutic failures with both generic and brand-name drug products, and to obtain evidence to confirm or refute reports of therapeutic inequivalence between generic drugs and their brand-name counterparts. (Also see part VI. Conforming Amendments.)

The agency proposes to retain the current requirement for the submission of other postmarketing reports under § 314.81, if applicable, upon approval of an ANDA, whether or not the approval is effective. For example, certain manufacturing and control changes not requiring a supplemental application under § 314.70(b) and (c) must be reported in an annual report, and advertising and promotional material must be submitted to FDA at the time of initial dissemination or initial publication.

3. *Waivers.* The agency proposes to retain the current requirement under § 314.90 under which an applicant may obtain a waiver of requirements for the submission of information in an application. The applicable sections are those set forth under new proposed Subpart C. FDA may not, however, waive statutory requirements.

H. Time Frames for FDA Actions on ANDA's

The agency proposes to revise its regulations regarding agency actions in receiving, reviewing, and approving or refusing to approve ANDA's to implement the provisions of section 505(j) of the act.

1. *Receiving and reviewing ANDA's.* Under section 505(j)(4)(A) of the act, within 180 days of the initial receipt of an ANDA, FDA must either approve or refuse to approve the ANDA, unless FDA and the applicant agree to an extension. If FDA refuses to approve the ANDA, it must give the applicant a notice of an opportunity for a hearing (NOOH) on whether the ANDA is approvable and will issue such a notice if the applicant elects to request a hearing rather than to amend or withdraw its application, see § 314.120.

Although the statute mentions "filing" an ANDA, filing does not trigger the statutory time period in which FDA must either approve or disapprove the ANDA. For an ANDA submitted to FDA under section 505(j) of the act, it is the time between the initial receipt of the ANDA and approval or disapproval. This differs from an application submitted under section 505(b) of the act, for which, within 180 days after filing an application, FDA must either approve the application or give the applicant a notice of opportunity for a hearing on whether the application is approvable, unless FDA and the applicant agree to an extension of time. For applications submitted under section 505(j) of the act, the agency considers the date of initial receipt of an ANDA to be the date FDA receives a submission that, on its face, is sufficiently complete to permit a substantive review. Such an ANDA may contain only the chemistry, manufacturing, and controls information required by § 314.94(a)(9) and a bioequivalence protocol unless the applicant certifies that a relevant patent is invalid or will not be infringed. In the latter case, the ANDA must contain also the results of any required bioequivalence studies.

Accordingly, the agency proposes revisions to § 314.101 to add the requirements for receipt of an ANDA. ANDA's will be reviewed for completeness when they are submitted. If an ANDA is not sufficiently complete to permit a substantive review, the applicant will be notified, normally by telephone. The applicant may then withdraw the application, amend the application to correct deficiencies, or take no action. FDA may elect to allow a deficiency to be corrected without a formal withdrawal of the ANDA and resubmission. If the applicant does not correct the deficiency, FDA will not consider the ANDA "received." If an ANDA is sufficiently complete to permit a substantive review, the application will be "received" and reviewed. (See proposed § 314.101(b).)

To clarify its applicability, the agency also proposes to revise the provision under § 314.101(e)(1) under which FDA will refuse to file an application if the drug product that is the subject of the submission is already covered by an approved application. The provision is intended to permit FDA to refuse to review spurious applications. For example, persons or firms who are

merely distributors of an already approved drug product do not need an approved application for the products they distribute. Therefore, the agency proposes to revise the provision to read, "The drug product that is the subject of the submission is already covered by an approved application and the applicant of the submission is merely a distributor and/or a repackager of the already approved drug product." The agency specifically seeks comment on whether there are appropriate exceptions or additions to this provision that should be expressly noted in the provision, e.g., for joint developers of a drug product, or distributors who engage in activities beyond that of a distributor because of a special relationship to the developer of the drug product.

2. *Approval of ANDA's.* Section 505(j)(3) of the act requires FDA to approve an ANDA if it finds that none of the statutory grounds for disapproval of the ANDA apply. The agency proposes to revise § 314.105 to state this requirement. Under the proposed revision, if FDA finds that none of the grounds in the statute for disapproval of an ANDA applies, the agency would approve the ANDA and send the applicant an approval letter. If only minor deficiencies exist in the applicant's draft labeling or if the applicant has not submitted final printed labeling to FDA and the application is otherwise approvable, FDA will send the applicant an approvable letter. The approvable letter will describe the information or material FDA requires and state a time period within which the applicant must respond. Unless the applicant corrects the deficiencies by amendment or submits final printed labeling within the specified time period, the agency would formally refuse to approve the application. The agency proposes to revise § 314.110 by adding a new paragraph (b) to state when FDA will send the applicant an approvable letter.

I. Applications Described by Section 505(b)(2) of the Act

Since 1977, FDA has permitted applicants who want to market generic copies of new drugs first approved after 1962 to file new drug applications that meet the "full reports" requirement of section 505 of the act with published reports in the medical literature establishing the generic drug's safety and effectiveness. FDA's policy of permitting approval of generic copies of approved drugs based on literature reports is commonly referred to as the "paper NDA policy," a complete description of which appears in the Federal Register of May 19, 1981 (46 FR 27396). The "paper NDA policy" applied only to duplicate drug products of post-1962 drugs, i.e., drug products which contained an active ingredient identical to an already marketed drug product first approved for marketing after 1962 in the same or closely related dosage form, and offered for the same indications as those of the already marketed drug product.

A paper NDA was a new drug application for a duplicate drug product submitted under section 505(b) of the act that satisfied the statutory criteria for a full application except that the full reports of investigations required by section 505(b) of the act to prove safety and effectiveness consisted entirely of references from the medical literature. A paper NDA differed from an abbreviated new drug application in that, in an abbreviated application, studies of safety and effectiveness (other than bioavailability) were not required to be submitted or identified by the applicant.

The 1984 Amendments to the act include provisions applicable to applications submitted under section 505(b)(1) of the act similar to those previously denominated paper NDA's. These new provisions, under sections 505(b)(2) and 505(c)(3) (D) of the act, describe an application submitted under section 505(b)(1) in which the investigations described in clause (A) of section 505(b)(1) of the act and relied upon by the applicant for approval of the application "were not conducted by or for the applicant and for which the applicant has not obtained a right of reference or use from the person by or for whom the investigations were conducted." The requirement in clause (A) to which this provision refers mandates submission of "* * * full reports of investigations which have been made to show whether or not such drug is safe for use and whether such drug is effective in use." Section 505(b)(2) of the act is significant because newdrug applications that contain full reports of investigations that were not conducted by or for the applicant or for which the applicant has not obtained a right of reference are subject to the patent certification and exclusivity provisions of the act. (See part V. sections K. and L.)

Despite certain similarities between section 505(b)(2) of the act and the "paper NDA policy," the new statutory provision is broader than the paper NDA policy. Although the legislative history of the 1984 Amendments refers to "paper NDA's" in discussing the applications described in sections 505(b)(2) and 505(c)(3)(D) of the act, the language of these provisions does not limit the applications described to duplicates of already approved products. Instead, sections 505(b)(2) and 505(c)(3)(D) of the act, by their terms, apply to any application that relies on investigations which the applicant has not conducted, sponsored, or obtained a right of reference to, regardless of the similarity or dissimilarity of the drug product to an already approved drug product.

The agency therefore proposes, in accordance with the plain language of the statute, to interpret sections 505(b)(2) and 505(c)(3)(D) of the act to cover any application in which one or more of the investigations without which the application could not be approved, as described below, were not conducted or sponsored by the applicant or to which the applicant does not have a right of reference. Such applications may be for variations of approved drug products, or, rarely, for new chemical entities. (An application, however, for a new chemical entity would not be subject to any patent protection or exclusivity accorded a previously approved drug, because, by definition, there will be no applicable previously approved drug.)

Because the 1984 Amendments established a statutory scheme for the approval of all applications that, before the Amendments, would have been approved under the paper NDA policy, the agency believes that the policy is no longer necessary. For this reason, and to avoid confusion caused by the differences between the coverage of the paper NDA policy and the 1984 Amendments, FDA is hereby revoking the policy. FDA proposes to revise § 314.50 to delete the term "paper NDA" wherever it now appears.

The agency does not, however, propose to treat all applications previously covered by the paper NDA policy as 505(b)(2) applications. Applications for duplicates of listed drugs eligible for approval under ANDA's will be treated as submitted under section 505(j) of the act rather than under section 505(b) of the act, even if such applications are supported by literature reports of safety and effectiveness. The agency intends to treat any application for a duplicate of a listed drug eligible for approval under an ANDA as an application under section 505(j) of the act because it believes that Congress intended the ANDA provisions to, among other things, assist the agency in avoiding duplicative reviews of safety and effectiveness information about already approved drugs. It would be inconsistent with this purpose to require FDA to

review safety and effectiveness information in 505(b)(2) applications when the statute also authorizes an abbreviated review under section 505(j) of the act. Moreover, because the patent certification and exclusivity provisions apply equally to applications described under section 505(b)(2) or 505(j) of the act, an applicant will not be disadvantaged by the review of its application under section 505(j) of the act rather than 505(b)(2) of the act.

The agency has considered expanding this policy to include applications for drug products that are modified versions of previously approved products, where the types of changes are those for which a section 505(j)(2)(C) petition could be approved permitting submission of an ANDA. As described above in part V. section C., certain types of changes from an approved product, i.e., changes in dosage form, strength, route of administration and active ingredients, can be reviewed in a 505(j) application, if a petition under section 505(j)(2)(C) of the act is approved permitting the submission of an ANDA. Currently, an applicant can submit a 505(b)(2) application for a drug product with any of these types of changes rather than request permission to submit an ANDA through a 505(j)(2)(C) petition. Under an expanded policy, one option would be to treat a 505(b)(2) application for these types of changes as a 505(j)(2)(C) petition. Another option would be to return the 505(b)(2) application to the applicant and request the submission of a 505(j)(2)(C) petition. This expanded policy would also further assist the agency in avoiding reviews of safety and effectiveness information in a 505(b)(2) application for drug products for which the statute authorizes an abbreviated review under section 505(j) of the act. The agency specifically seeks comment on whether FDA should adopt such an expanded policy.

Applications described by sections 505(b)(2) and 505(c)(3)(D) of the act may therefore currently be submitted for: (1) drug products that could not be approved under section 505(j) of the act and (2) drug products with changes from an approved product that could be reviewed in an ANDA submitted pursuant to a 505(j)(2)(C) petition for which the applicant chose to submit a 505(b)(2) application rather than a petition. In practice, with respect to the first category of drug products, this means that 505(b)(2) applications will generally be submitted for never before approved changes in already approved drug products, where the change cannot be reviewed under section 505(j). As described above in part V. section C., certain types of changes from an approved product, in dosage form, strength, route of administration and active ingredients, can be reviewed in a 505(j) application, as long as investigations are not necessary to evaluate the safety and effectiveness of the changed product. If such investigations are necessary, they can be reviewed only under the procedures applicable to 505(b) applications. Therefore, a 505(b)(2) application will be appropriately submitted for a drug product where the safety and effectiveness of the change must be, at least in part, established by investigations. Examples of such cases would be applications seeking approval of significantly different dosage forms or of new uses of already approved drugs. If it is necessary for FDA to review the results of investigations to approve the drug, but the applicant has not conducted, sponsored, or obtained a right of reference to one or more of the investigations necessary for approval of the application, the application will be treated as a 505(b)(2) application.

In addition to applications supported by literature reports or a combination of literature reports and new clinical investigations, FDA is proposing to treat as a 505(b)(2) application an application for a change in an already approved drug supported by a combination of literature or new clinical investigations and the agency's finding that a previously approved drug is safe and effective. (See part V. section J., *infra.*)

The agency proposes to interpret the phrase "right of reference or use" as a right of reference to, or use of, the underlying raw data which provide the basis for the reports of investigations submitted in a 505(b)(2) application. Proposed revised § 314.3(b) incorporates this interpretation as the definition of the term "right of reference or use." A right of reference or use must be granted by the owner of the raw data. If the raw data are in the public domain, e.g., because they were developed in a publicly funded study, no express right of reference is necessary. FDA is proposing, under revised § 314.50(g), to require an applicant that has obtained a right of reference to, or use of, such raw data, to include in its application a written statement signed by the owner of the data that authorizes the applicant to use, in support of its submission to FDA, the raw data that provide the basis for each report of an investigation submitted in its application. Thus, the applicant must be able physically to make available the raw data for FDA audit, if necessary, or the data must be available for review by FDA in another application to which the applicant has a right of reference.

FDA proposes to interpret the phrase "investigations described in clause (A) * * * and relied upon * * * for approval" in sections 505(b)(2) and 505(c)(3)(D) of the act to mean any investigations without which the application could not be approved. Accordingly, an application is described by section 505(b)(2) of the act if the applicant has not conducted or sponsored or obtained a right of reference to every safety or effectiveness investigation without which the drug could not be approved. An application that contains one study conducted by the applicant but that relies on literature citations for the remainder of the safety and effectiveness data without rights of reference is thus considered an application described by section 505(b)(2) of the act.

In light of this interpretation, an applicant seeking to submit a so-called "full NDA" and thereby avoid any exclusivity or patent rights attaching to a pioneer drug must conduct or sponsor the adequate and well-controlled investigations necessary to establish the effectiveness of the drug, or, if the applicant relies on literature for these studies, must obtain rights of reference to the data. The applicant must conduct, sponsor, or obtain rights of reference to these studies even if the pioneer applicant relied on literature citations. Similarly, the applicant must conduct, sponsor, or obtain a right of reference to all the safety tests without which the application could not be approved. In general, such tests will include animal carcinogenicity and reproduction studies, certain animal toxicity studies, and some clinical investigations. When a drug product has a U.S. marketing history, an analysis of the spontaneous adverse reaction reports may, in some cases, be substituted for some of the safety data described. Appropriate reliance on an analysis of these adverse reaction reports will not cause the application to be one described by section 505(b)(2) or 505(c)(3)(D) of the act.

This interpretation is consistent with Congress' intent to encourage the pharmaceutical industry to develop and seek approval of significant new therapies by conferring periods of exclusive marketing. If exclusivity could easily be avoided by an application containing only minimal data generated or purchased by the applicant, the incentive created by the availability of such exclusivity would decrease considerably.

The term "application" as defined in § 314.3 means both a full application submitted under section 505(b)(1) of the act that contains full reports of investigations conducted or sponsored by the applicant or for which the applicant has obtained a right of reference or use and an application submitted under section 505(b)(1) of the act that meets the description in section 505(b)(2) of the act, i.e., one or more of the investigations without which the application could not be approved relied on by the applicant for approval of the application were not conducted by or for the applicant and the applicant has not obtained a right of reference or use from the person by or for whom the investigations were conducted.

Applications that meet the description in section 505(b)(2) of the act have been (under the "paper NDA policy"), and will continue to be, submitted under section 505(b)(1) of the act. They are therefore subject to the same statutory provisions that govern full new drug applications, except, of course, that the applicant has not conducted, sponsored, or obtained a right of reference to one or more of the investigations necessary to demonstrate safety and effectiveness. Thus, for example, 505(b)(2) applications may be entitled to periods of exclusivity and should submit any relevant information required under proposed § 314.50(j), and any relevant patent information required under § 314.53.

A new drug application that meets the statutory description in sections 505(b)(2) and 505(c)(3) of the act must satisfy patent certification requirements and is subject to any exclusivity accorded a relevant previously approved drug. The patent and exclusivity provisions applicable to 505(b)(2) applications are generally the same as those that apply to abbreviated new drug applications.

An applicant submitting a section 505(b)(2) application must make the same certifications with respect to patents as an applicant submitting an ANDA. (See part V section D.1.j., *supra*.) A 505(b)(2) applicant must make certifications with respect to each patent which, in the opinion of the applicant and to the best of its knowledge, claims the drug or drugs on which investigations that are relied upon by the applicant for approval of its application were conducted, or which claims a use for such drug or drugs. With respect to a use patent, if the labeling of the applicant's proposed drug product includes an indication that, according to the patent information submitted to FDA or in the opinion of the applicant, is claimed by the use patent, the applicant must submit to FDA an appropriate certification under section 505(b)(2)(A) of the act. If, however, there is a patent on a method of using the drug that was the subject of an investigation relies on in the application and the labeling for the applicant's proposed drug product does not include the indications that are covered by the use patent, the applicant must submit a statement under section 505(b)(2)(B) of the act that the method of use patent does not claim any of the proposed indications. As with ANDA's, if the applicant certifies that a patent is invalid or will not be infringed, the applicant is required to give notice to patent owners and holders of approved new drug applications. Applicants who have licensing agreements with patent owners will also be required to follow the same rules as licensed ANDA applicants. FDA proposes to revise § 314.50 by adding a new paragraph (i) that would contain the regulations implementing the statutory provision regarding the certification requirements and to add new § 314.52 to describe the notice requirements.

As with ANDA's, under proposed revised § 314.80, an applicant of an approved 505(b)(2) application would comply with the requirements for reporting adverse drug experiences only if the approval is effective under § 314.107.

J. Applications for Changes in Approved Drug Products That Require the Review of Investigations

As described in part V. section C., *supra*, an applicant may petition for permission to submit an ANDA for certain changes in the listed drug when the change does not require the review of investigations. An applicant may also wish to make a modification in an approved drug where the modification requires the submission of data that cannot be reviewed in an ANDA. For example, an applicant may wish to obtain approval of a new indication for a listed drug that is only approved for other indications. If the applicant has an approved ANDA for the approved indications, the applicant may of course submit a supplemental application that contains reports of clinical investigations needed to support approval of the new indication. (Because such a supplement would require the review of clinical data, FDA would process it as a submission under section 505(b) of the act.)

An applicant may also wish to seek approval of, for example, a new dosage form of a listed drug that requires the review of investigations but may have no interest in marketing the drug in its approved dosage form. The 1984 Amendments do not directly address the appropriate mechanism for obtaining approval of such a change, but permit several alternatives. The statute could be interpreted to require such an applicant to first obtain approval of an ANDA for the listed drug's approved dosage form, and then file a 505(b) supplement to the approved ANDA containing clinical data to obtain approval of the new dosage form. If the applicant did not first obtain an ANDA for the approved dosage form, the applicant could be required to submit a full new drug application under section 505(b) of the act for the new dosage form and duplicate the basic safety and effectiveness studies conducted on the listed drug. FDA has concluded that such an interpretation would be inconsistent with the legislative purposes of the 1984 Amendments because it would serve as a disincentive to innovation and could require needless duplication of research.

FDA believes that a more consistent, less burdensome interpretation of the 1984 Amendments is to allow a generic applicant to submit a 505(b) application for a change in an already approved drug that requires the submission and review of investigations, without first obtaining approval of an ANDA for a duplicate of the listed drug. Therefore, under proposed § 314.54, applications will be accepted for changes requiring the review of investigations, including changes in dosage form, strength, route of administration, and active ingredients (in a combination product), as well as new indications. Like similar supplements to approved ANDA's, these applications will rely on the approval of the listed drug together with the data needed to support the change. The applicant will thus be relying on the approval of the listed drug only to the extent that such reliance would be allowed under section 505(j) of the act: to establish the safety and effectiveness of the underlying drug. FDA notes, however, that it will not accept such an application for a drug that differs from the listed drug only in that its extent of absorption is significantly less than that of the listed drug. To allow such a drug to be approved under section 505(b)(2) would thwart Congress' clear intention to require that a duplicate of a listed drug be shown to be bioequivalent to that listed drug. (See section 505(j)(3)(F) of the act.)

FDA also believes that it would be inconsistent with the policies of the 1984 Amendments to allow these applications to rely on the approval of a listed drug unless they were subject to the listed drug applicant's patent rights and exclusivity. Therefore, an application that relies in part on the approval of a listed drug, is, for this purpose, considered an application described in section 505(b)(2) and must make a certification as to any relevant patents that claim the listed drug. In addition, the date of submission and effective approval of these applications may, under section 505(c)(3), be delayed to give effect to any patent or period of exclusivity accorded the listed drug.

Because these submissions will be reviewed as applications under section 505(b) of the act, they will be subject to the statutory and regulatory requirements applicable to such applications, including the patent submission requirements of sections 505 (b) and (c) of the act, and may be eligible for 3 years of exclusivity under sections 505(c)(3)(D) (iii) and (iv) of the act. These applications should be directed to the address specified in § 314.440(a)(1). The agency proposes to revise § 314.440(a)(1) to so state.

K. Delay in the Effective Date of Approval of an ANDA and 505(b)(2) Application Because of the Existence of a Patent

The 1984 Amendments require an important change from previous practice for ANDA's and those 505(b)(2) applications previously handled as paper NDA's with respect to the effective date of their approval. The effective dates of approval of ANDA's and 505(b)(2) applications are dependent on the existence of any patents on the pioneer drug for which the generic applicant is seeking approval (sections 505(j)(4)(B) and 505(c)(3) of the act) and on any periods of exclusive marketing accorded the reference listed drug or other listed drug under the so-called "exclusivity" provisions of the act (sections 505(j)(4)(D) and 505(c)(3)(D) of the act). Thus, an ANDA or 505(b)(2) application may be approved with a delayed effective date, as specified by the agency in its approval letter. No new drug product may be introduced or delivered for introduction into interstate commerce under a full or abbreviated new drug application unless the approval of the application is effective (section 505(a) of the act). The agency proposes to add new § 314.107 to the regulations to codify the statutory requirements with respect to effective dates of approval of ANDA's and 505(b)(2) applications.

With respect to patent status, proposed § 314.107 provides that approval of an ANDA or 505(b)(2) application, if approval is otherwise warranted, would be made effective in accordance with the following conditions. First, if the applicant certified that there are no relevant patents, or the holder of the approved application for a drug product covered by a relevant patent did not submit to FDA any patent information, or that the relevant patents submitted to FDA have expired, approval of the ANDA or 505(b)(2) application would be made effective immediately.

Second, if the applicant certified that any relevant patents would expire on a certain future date, based on information submitted to FDA, approval of the ANDA or 505(b)(2) application would become effective on that date, unless that date had already passed, in which case the approval would be immediately effective.

Third, if the applicant certified that any relevant patent was invalid or would not be infringed, approval of the ANDA or 505(b)(2) application could be made effective 45 days from the date of the receipt of the notice of certification by the patent owner or the approved application holder who is an exclusive patent licensee, unless the patent owner or exclusive patent licensee filed an action for patent infringement before the 45 days have elapsed. As discussed in part V. section D.1.j. above, FDA proposes to require that an applicant who has obtained a patent license to manufacture a generic copy of a patented drug certify under section 505(b)(2)(A)(iv) or 505(j)(2)(A)(vii)(IV) of the act that the relevant patent is invalid or will not be infringed. Although the statute does not expressly address the effect of patent licensing agreements on effective dates, FDA does not believe that Congress intended to interfere with such agreements between pioneer and generic drug manufacturers. See section 505(b)(1) of the act (defining applicable patents as those "to which a claim of patent infringement would reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug"). Accordingly, FDA proposes to make the approval of an ANDA or 505(b)(2) application effective immediately where the applicant submits (1) information establishing that the proposed drug is covered by a patent licensing agreement with the patent owner, and (2) a written statement from the patent owner consenting to an immediate effective date. FDA invites comment on this approach.

Even in the absence of a licensing agreement, the patent owner or exclusive patent licensee may waive its opportunity to file an action for patent infringement provided it submits a valid waiver to FDA before the 45 days elapses. Under proposed § 314.107(f)(3), if a patent owner or exclusive patent licensee does not intend to file action for patent infringement against the generic applicant within the 45-day time period and the applicant seeks an effective approval date before the 45-day period has elapsed, the patent owner or exclusive patent licensee must submit to FDA a waiver in the form prescribed in the proposed regulation.

1. *The 45-day clock.* Both the PMA and the Generic Pharmaceutical Industry Association (GPIA) offered FDA suggested regulatory language designed to ensure that the recipient of a notice of patent certification has the full 45 days in which to decide whether to bring a patent infringement suit. (PMA and GPIA comments filed under Docket No. 85N-0214.) FDA believes its proposed requirements under § 314.52 for an application submitted under section 505(b)(2) of the act and § 314.95 for an ANDA under section 505(j) of the act with respect to documentation of receipt of notice of certification and the proposed requirements in § 314.107 address the concerns of the PMA and GPIA. Under this proposal, the 45-day clock would begin on the day after the date of receipt by the patent owner or its representative or by the approved application holder if the holder is an exclusive patent licensee of the applicant's notice of certification. Thus, the applicant's return receipt or a letter acknowledging receipt from the patent owner or exclusive patent licensee would be deemed to be legal notice of receipt of the applicant's notification by the patent owner or its representative or exclusive patent licensee. Action would then have to be filed in federal court by the patent owner or exclusive patent licensee before the end of the 45th day.

In computing the 45 days, Saturdays, Sundays, and Federal holidays are included. When, however, the 45th day falls on Saturday, Sunday, or on a Federal holiday, the 45th day would be the next succeeding day that is not a Saturday, Sunday, or a Federal holiday. FDA intends to strictly apply the 45-day statutory time period. Therefore, unless FDA is notified in writing by the ANDA or 505(b)(2) applicant before the expiration of the 45-day time period or before the completion of the review period, whichever is later, of the commencement of legal action for patent infringement within the 45-day time period, approval of the ANDA or 505(b)(2) application may be made effective immediately upon expiration of the 45 days or upon completion of the review process, whichever is later. Even

if the commencement of legal action occurs before the ANDA is ready for approval but after the 45-day period has elapsed, the agency will approve the ANDA with an immediate effective date when the application review is complete and satisfactory. Notification by the generic applicant of the filing of a complaint alleging patent infringement shall include: (1) the ANDA or 505(b)(2) application number, (2) the ANDA or 505(b)(2) applicant's name, (3) established name of the drug, if any, strength, and dosage form, and (4) a certification that action to defend the patent, identified by number, has been filed in an appropriate court and the date of the filing. An ANDA applicant shall submit the notification to FDA's Division of Generic Drugs (HFD–230); a 505(b)(2) applicant shall submit the notification to the appropriate division in the Center for Drug Evaluation and Research reviewing the application.

If an action for patent infringement is filed before the expiration of the 45 days, FDA is precluded from making the approval of the ANDA or 505(b)(2) application effective for a period of 30 months while the matter is in litigation or until a date of a final decision determined by a court, with one exception. The exception is for a patented drug entitled to 5 years of marketing exclusivity under section 505(c)(3)(D)(ii) or (j)(4)(D)(ii) of the act, where the patent holder files an action for patent infringement during the 1-year period beginning 4 years after the date the patented drug was approved (and within 45 days of receiving the notice of patent certification). In this situation, FDA must extend the 30-month period by that amount of time required for 7½ years to elapse from the date of approval of the patented drug. Once the 30 months, or 7½ years where applicable, have expired, the applicant would have an effective approval of its drug product subject to the outcome of the pending litigation, unless the court itself orders otherwise.

If before the expiration of the 30-month or 7½-year period the court decides that any relevant patent is invalid or not infringed, approval of the ANDA or 505(b)(2) application would be made effective on the date that final judgment is entered by the court.

If before the expiration of the 30-month or 7½-year period the court decides that any relevant patent would be infringed, the approval would be made effective on the date the patent expires or on the date the court orders. If before the expiration of the 30-month or 7½-year period the court grants a preliminary injunction prohibiting an applicant from manufacture or marketing of its drug product until the court decides the issues of patent validity and infringement and if the court later decides that the patent is invalid or not infringed, approval would be made effective on the date the court enters final judgment on the merits.

For purposes of establishing the proper effective date for an ANDA or 505(b)(2) application approval in the above situations, FDA proposes that the applicant submit to the Division of Generic Drugs (HFD–230), within 10 working days of the entry of any relevant judgment, a copy of the court order. There is a potential ambiguity in the statutory language concerning what "court" decision triggers an effective date. The agency has interpreted that language as referring to the final decision of that court from which no appeal can be or has been taken by the affected party.

FDA will issue a revised approval letter stating the effective approval date. However, an applicant may begin marketing its approved drug product on the date that final judgment is entered by the court or on any other court ordered effective date whether or not the applicant has received a revised approval letter from FDA.

2. *The 180-day exclusivity period.* Finally, under the proposal and the statute, if any subsequent ANDA's for the same drug product as the first drug product to be involved in a patent infringement action also contain a certification of the invalidity or noninfringement of a patent, approval of those subsequent ANDA's would not become effective until 180-days after the first commercial marketing of the drug product under the first ANDA, or until 180 days after the court has determined that the patents in dispute are invalid or not infringed, whichever is earlier. (See section 505(j)(4)(B)(iv) of the act.) This provision does not apply to 505(b)(2) applications.

FDA has concluded that the 180-day delay of subsequent ANDA's is available only to a previous applicant who has been sued for patent infringement following its notification to the patent owner of the filing of a certification of invalidity and noninfringement. Although section 505(j)(4)(B)(iv) of the act can be interpreted in several ways, FDA believes that the structure of the provision reflects Congress' intention to provide to the first generic applicant who spends its resources to litigate the scope or validity of a patent a 180-day period free from generic competition.

The formula provided by section 505(j)(4)(B)(iv) of the act for calculating the date from which the 180-day period runs, and particularly the reference to "first commercial marketing," can be applied logically and consistently with the statutory scheme only if Congress intended the provision to apply only when the first ANDA applicant was actually sued for patent infringement. Every other exclusivity provision in the 1984 Amendments begins with date of approval of the application. Congress' decision to begin the 180-day period under section 505(j)(4)(B)(iv)(I) of the act from "the first commercial marketing of the drug," rather than from the effective date of the ANDA, serves a rational policy only if Congress contemplated a situation in which an approval of an ANDA is in effect but the applicant's decision not to market the drug deserves to be protected because a delay in marketing serves the public interest.

Such a situation occurs where, under the terms of section 505(j)(4)(B)(iii) of the act, an ANDA goes into effect 30 months after a lawsuit is filed, but the lawsuit is still pending. It serves the public interest to permit a prudent ANDA holder in that situation to stay off the market until the litigation is resolved, thereby minimizing potential damages.

As drafted, sections 505(j)(4)(B)(iv)(I) and (II) of the act carefully avoid providing an incentive for immediate marketing: the 180-day reward of exclusive marketing begins when the applicant wins the lawsuit or when the applicant actually begins marketing, "whichever is earlier." The applicant thus does not lose any of the 180-day period by electing to stay off the market until the lawsuit is over.

If, on the other hand, section 505(j)(4)(B)(iv) of the act is interpreted to apply even if the first applicant has not been sued, dating the 180-day period from "first commercial marketing" rather than from the effective date of the ANDA approval serves no purpose. Indeed, it might provide a counterproductive incentive to the first ANDA applicant to delay marketing so as to prolong the period during which other ANDA's may not be marketed. In contrast to the delay occasioned by a prudent plaintiff in a lawsuit, this delay serves no public interest. To remove this unproductive incentive for delay, the agency would therefore consider it necessary to read into section 505(j)(4)(B)(iv)(I) of the act various additional requirements and presumptions.

Section 505(j)(4)(B)(iv) can thus be applied straightforwardly only when an

applicant who seeks the 180-day period of exclusive marketing has been involved in a patent infringement lawsuit. To apply the section where there has been no lawsuit, requires either that the agency ignore the plain language of the section, essentially reading out the phrase "first commercial marketing," or that the agency assume, contrary to the goals of the 1984 Amendments, that Congress intended to create an incentive for delay in competition, without any countervailing benefit to society. Moreover, the policy embodied in the provision, of rewarding the applicant who devotes the considerable time and money necessary for patent litigation, is not served by providing 180 days of exclusive marketing to an applicant who avoids a lawsuit. Accordingly, proposed § 314.107(c) applies only when the first applicant has been sued.[1]

FDA has also concluded that the 180-day period of exclusivity delays approval of all generic copies of the same listed drug whose applications contain paragraph IV certifications. It has been suggested that where a formulation or composition patent is the subject of certification and lawsuit, the exclusivity granted under section 505(j)(4)(B)(iv) should delay the effective approval only of subsequent applications that raise claims of noninfringement identical or similar to those raised by the holder of the exclusivity. The legislative history of section 505(j)(4)(B)(iv) is silent as to the purpose of the provision and does not limit its applicability to subsequent applicants that receive a benefit from the first applicant's finding of noninfringement. The 180-day period can be interpreted as a reward not only for the benefit provided to subsequent ANDA applicants but for the benefit to the public of removing an obstacle to competition. Moreover, FDA lacks the expertise in patent law that would allow it to determine whether a subsequent applicant raised issues of noninfringement in common with the previous applicant. Therefore, the 180-day period is available to the applicant who resolves an issue of patent coverage, regardless of the judgment's applicability to subsequent ANDA applicants.

3. *Other provisions.* FDA proposes to implement other aspects of section 505(j)(4)(B)(iv) of the act as follows:

a. *Date of submission.* The date of submission of a prior application that contained a certification of invalidity or noninfringement will be considered the date on which the applicant submitted a substantially complete ANDA. In most cases, to be "substantially complete," an ANDA must contain data from any required bioavailability or bioequivalence studies. A required bioequivalence study is one that meets any FDA guidance document or is otherwise reasonable in design and purports to show that the drug product for which the applicant seeks exclusivity is bioequivalent to the listed drug. Neither a protocol nor a pilot study will satisfy these requirements. (An ANDA may be substantially complete without such studies only if such studies are not required to establish bioequivalence, i.e., where bioequivalence can be established through other information and the applicant has requested a waiver of the study requirements.) Although the provision could be read to permit the mere submission of the first certification of invalidity or noninfringement to delay the effective date of subsequent ANDA's, regardless of the completeness of the application, the legislative history of the 1984 Amendments makes clear that such an interpretation would be inconsistent with the purposes of the patent certification and notification scheme.

The purpose of section 505(j)(4)(B)(iv) of the act is to reward the first applicant to test the scope or validity of a patent by litigating an action for patent infringement. However, it is only the giving of notice to the patent owner under section 505(j)(2)(B)(ii) of the act, and not the filing of a certification of invalidity or noninfringement with FDA, that can initiate a lawsuit. The notice required by section 505(j)(2)(B)(ii) of the act must state that the applicant has submitted an ANDA "which contains data from bioavailability or bioequivalence studies." (Section 505(j)(2)(B)(ii) of the act.) The purpose of requiring a statement that the ANDA contains data from bioavailability or bioequivalence studies is to prevent applicants from testing an innovator's patent through the filing of "sham ANDA's or ANDA's that are substantially incomplete." H. Rept. 98 857, Part I, 98th Cong., 2d Sess. 24–5 (1984).

FDA believes that to fulfill the purposes of the patent provisions of the statute, the date of submission of a previous application under section 505(j)(4)(B)(iv) of the act must therefore be the date on which the previous applicant submitted a substantially complete ANDA, and thus was in a position to notify the patent owner. As described in part V section E., supra, an ANDA that contains a certification of invalidity or noninfringement will not be accepted for review unless it contains the results of any required bioequivalence studies.

b. *Delay when first application is not yet approved.* If the first ANDA applicant for a listed drug is sued for patent infringement and a subsequent ANDA for the drug is submitted before the first ANDA is approved, FDA will delay the effective date of approval of the subsequent ANDA only as long as the agency remains satisfied that the first applicant is actively pursuing approval of its ANDA.

c. *"First commercial marketing."* "First commercial marketing" is defined as the first date of introduction or delivery for introduction into interstate commerce outside the control of the manufacturer, except for investigational use under 21 CFR Part 312, but does not include transfer of a drug product for reasons other than sale within the control of the manufacturer or application holder.

d. *"Court decision."* Section 314.107(c)(1)(ii) specifies as one of the two dates from which the 180 days runs "the date of a decision of the court holding the patent invalid or not infringed." This date will be the date of a final decision of a court from which no appeal can or has been taken, or the date of a settlement order or consent decree signed by a Federal judge, which enters final judgment and includes a finding that the patent is invalid or not infringed. A final adjudication on the merits is not required to trigger the 180-day period.

e. *Amended certification after finding of infringement.* If a final judgment is entered in an action for patent infringement finding the patent to be infringed by a drug product that is the subject of an abbreviated new drug application, and the application contains a paragraph IV certification, the applicant should submit an amended certification, certifying under § 314.94(a)(12)(i)(A)(*3*) that the patent will expire on a specific date. The new certification should be submitted either as an amendment to a pending application or as a letter if the application is approved. Once the amendment or letter has been submitted, the application will no longer be considered to be one containing a paragraph IV certification.

f. *Amended certification after removal of a patent from the list.* If, after one or

[1] Note: Subsequent to the Commissioner's signing of this document, a Federal district court reached a contrary conclusion. See Inwood v. Young, No. 89–0645 (D.D.C. May 12, 1989). An appeal from that decision is under consideration.

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more applicants have made paragraph IV certifications on a patent, that patent is removed from the list for any reason other than because that patent has been declared invalid in a lawsuit brought by that patent owner within 45 days of receiving notice under § 314.95 any applicant with a pending application or delayed effective date who has made such a certification should submit an amended patent certification, certifying under § 314.94(a)(12)(ii) if applicable, that no relevant patents claim the drug. If other relevant patents still claim the drug, the applicant should instead submit a request to withdraw the paragraph IV certification. Once the amendment or letter has been submitted, the application will no longer be considered to be an application containing a paragraph IV certification.

L. Exclusivity

1. *Exclusivity for certain approved drug products.* Sections 505(j)(4)(D) and 505(c)(3)(D) of the act partially protect certain listed drugs, or certain changes in listed drugs, from competition in the marketplace for specified periods by placing a moratorium on the submission of, or by delaying the effective date of approval of, ANDA's and 505(b)(2) applications for those listed drug products. (The exclusivity provisions of the act do not provide any protection from the marketing of a generic version of the same drug product if the generic version is the subject of a full new drug application submitted under section 505(b)(1) of the act.) These periods of exclusive marketing are independent of any marketing exclusivity accorded an orphan drug pursuant to section 527 of the act and of any protection a listed drug may have as a result of a patent. Proposed § 314.108 implements the exclusivity provisions of sections 505(j)(4)(D) and 505(c)(3)(D) of the act. The holder of a new drug application or supplemental new drug application submitted under section 505(b) of the act that was approved on or after January 1, 1982, may be entitled to a period of exclusive marketing (hereinafter referred to as "exclusivity") for the drug product subject to the approved application or supplemental application.

Briefly, the exclusivity provisions provide the following protection. Sections 505(c)(3)(D)(i) and 505(j)(4)(D)(i) grant a 10-year period of exclusivity to new chemical entities approved during a specified "window period": January 1, 1982, to September 24, 1984, the date of enactment of the 1984 Amendments. Sections 505(c)(3)(D)(ii) and 505(j)(4)(D)(ii) of the act grant a 5-year period of exclusivity to new chemical entities approved after September 24, 1984. Sections 505(c)(3)(D)(v) and 505(j)(4)(D)(v) of the act grant a 2-year period of exclusivity for non-new chemical entities, or for certain changes made to already approved products, approved during the "window period." (This 2-year period expired on September 24, 1986.) There is no requirement that an applicant have conducted clinical investigations to qualify a drug for exclusivity under the above three provisions. On the other hand, the remaining two exclusivity provisions, sections 505(c)(3)(D)(iii) and (iv) and 505(j)(4)(D)(iii) and (iv) of the act, which grant a 3-year period of exclusivity, specifically require that the applicant have "conducted or sponsored new clinical investigations essential to the approval" of the application, or the supplement.

With the exception of the 2-year exclusivity provision for non-new chemical entities or changes approved between January 1, 1982, and September 24, 1984 (sections 505(j)(4)(D)(v) and 505(c)(3)(D)(v) of the act), the exclusivity provisions are limited to new chemical entities, which by definition are innovative, and to those significant changes in already approved drug products, such as a new use, which require new clinical studies. Congress understood that the substantial economic rewards of exclusivity might well encourage drug companies to make minor and unimportant alterations in their marketed drug products or to conduct additional tests which they could claim provide important new information about a marketed drug product. To avoid rewarding such behavior, the 3-year provision includes the special criteria intended to restrict eligibility to significant innovations. See Cong. Rec. H9114, 9124 (daily edition September 6, 1984) (statement of Representative Waxman); Cong. Rec. S10505 (daily edition August 10, 1984) (statement of Senator Hatch).

The exclusivity provisions of section 505(j)(4)(D) of the act operate to prohibit the submission or delay the effective date of approval of (1) an ANDA submitted under section 505(j) of the act for a duplicate of a listed drug that is entitled to exclusivity and (2) an ANDA submitted under section 505(j) of the act pursuant to an approved petition under section 505(j)(2)(C) of the act for a drug product that is similar to a listed drug that is entitled to exclusivity. The exclusivity provisions of section 505(c)(3)(D) of the act affect applications described under section 505(b)(2) of the act and are essentially the same as those for abbreviated new drug applications. The legislative history of the 1984 Amendments makes clear that Congress intended the exclusivity provisions of section 505(c)(3)(D) of the act to delay submission or approval of applications described by section 505(b)(2) of the act to the same extent that section 505(j)(4)(D) of the act delays submission or approval of ANDA's. Section 505(c)(3)(D) of the act, however, unlike section 505(j)(4)(D) of the act, could be interpreted to apply only to those 505(b)(2) applications that are required to submit a patent certification. (See section 505(c)(3) of the act.) Under this interpretation, applications described by section 505(b)(2) of the act that were not required to submit a patent certification because, for example, the pioneer drug was unpatentable, would be exempt from the exclusivity provisions of section 505(c)(3)(D) of the act.

The agency does not believe that this interpretation is reasonable and intends to apply section 505(c)(3)(D) of the act to all 505(b)(2) applications. Although section 505(c)(3) of the act states that the delayed effective dates specified in section 505(c)(3)(A) through (D) apply to "an application filed under subsection (b) which contains a certification required by paragraph (2) of such subsection," patent certification is relevant only to section 505(c)(3)(A) through (C) of the act. These paragraphs delay an application's effective date on the basis of the patent status of the pioneer drug. Section 505(c)(3)(D) of the act, however, delays an effective date on the basis of exclusivity, which is entirely independent of the patent status of the pioneer drug. Indeed, in the floor debates preceding enactment of the 1984 Amendments, Congressman Waxman specifically stated that one of the purposes served by the exclusivity provisions was to supply needed incentives to develop new drugs where little or no patent life remains. Cong. Rec. H9113 (daily edition, September 6, 1984). It would thus be illogical and inconsistent with Congressional intent to apply the exclusivity provisions only to those 505(b)(2) applications required to make a patent certification.

Exclusivity provides the holder of an approved new drug application limited protection from new competition in the marketplace for the innovation represented by its approved drug product. Thus, if the innovation relates to a new active moiety or ingredient, then exclusivity protects the pioneer drug product from other competition from products containing that moiety or ingredient. If the innovation is a new dosage form or route of administration, then exclusivity protects only that

aspect of the drug product, but not the active ingredients. If the innovation is a new use, then exclusivity protects only that labeling claim and not the active ingredients, dosage form, or route of administration.

The language of sections 505(c)(3)(D) and 505(j)(4)(D) of the act is ambiguous as to which ANDA's or 505(b)(2) applications are affected by an innovator's exclusivity. The statutory language allows at least two interpretations. The narrower interpretation of the protection offered by exclusivity is that exclusivity covers only specific drug products and therefore protects from generic competition only the first approved version of a drug, or change in a drug. Under this interpretation, an innovator's exclusivity could lose its value as soon as FDA approved a second full new drug application for a version of the drug, because an ANDA could be approved by reference to the second approved version of the drug, which would not be covered by exclusivity.

The broader interpretation of the coverage of exclusivity is that it covers the active moieties in new chemical entities or changes in non-new chemical entities rather than covering only specific drug products. Thus exclusivity would protect the new active moiety of a new chemical entity or the innovative change in a non-new chemical entity from generic competition even after FDA had approved subsequent full new drug applications for subsequent versions of the drug. Under this theory, an ANDA or 505(b)(2) application for a drug with the same active moiety as the innovator's new chemical entity or as the innovator's change in a non-new chemical entity could not be approved until the innovator's exclusivity expired, even if the ANDA or 505(b)(2) application relied on another approved version of the innovator's drug.

The language of the five exclusivity provisions (similarly worded in both sections 505(c)(3)(D) and 505(j)(4)(D) of the act) is inconsistent on this issue, tending to support the narrower interpretation of the coverage of exclusivity for new chemical entities (sections 505(c)(3)(D) (i) and (ii) and 505(j)(4)(D) (i) and (ii) of the act and for drugs approved between January 1, 1982, and September 24, 1984 (sections 505(c)(3)(D)(v) and 505(j)(4)(D)(v) of the act), and the broader interpretation for innovative changes in already approved drugs (sections 505(c)(3)(D) (iii) and (iv) and 505(j)(4)(D) (iii) and (iv) of the act). Sections 505(c)(3)(D) (i), (ii), and (v) and 505(j)(4)(D) (i), (ii), and (v) of the act confer exclusivity by prohibiting submission or delaying approval of ANDA's or 505(b)(2) applications that "refer to the drug for which the [first approved] subsection (b) application was submitted." Depending upon the meaning of the phrase "refer to" and the word "drug," these provisions could be interpreted to allow ANDA's and 505(b)(2) applicants, once FDA approved subsequent new drug applications for different versions of the same drug, to circumvent the innovator's exclusivity by "referring to" the subsequent versions of the innovator's drug.

On the other hand, the two provisions that confer exclusivity on changes in already approved drugs delay the effective date of approval of all ANDA's or 505(b)(2) applications that have the same "conditions of approval" as the innovator's drug, without regard to whether the ANDA "refers to" the innovator's drug product or to another version of the same product for which a subsequent new drug application was approved.

FDA does not believe that Congress intended the exclusivity provisions to operate inconsistently, or that Congress intended the protection offered by the exclusivity for changes in approved drugs to be broader than the protection offered by exclusivity for new chemical entities. FDA therefore proposes to adopt a uniform interpretation of the scope of exclusivity. In addition, FDA has concluded that adopting the narrower interpretation of the scope of exclusivity for all types of exclusivity would seriously undermine its value, reducing the incentives for research and innovation in the pharmaceutical industry.

For example, if FDA adopted the narrower interpretation that exclusivity covers only a specific drug product and does not prevent ANDA's from copying subsequent versions of the innovative product, a manufacturer of a new chemical entity (entitled to 5 years of exclusivity), could not make improvements in the drug, e.g., by making a new dosage form of the drug, without destroying the value of its exclusivity. Approval of a new dosage form, and certain other changes in approved drugs, require the submission of a new drug application; once approved, the new dosage form would become a new drug product that an ANDA application could copy, without being subject to the exclusivity covering the original drug product.

For the same reasons, an innovator whose drug was entitled to exclusivity could not license another company to make a copy of the pioneer drug without losing the value of its exclusivity. Under the narrow theory of exclusivity, once the licensed company's product was approved, ANDA applicants could copy the licensed product, without regard to the innovator's exclusivity.

The agency does not believe that Congress intended the exclusivity provisions to discourage innovators from making improvements in their drug products nor from authorizing the marketing of competitive products. Accordingly, FDA has concluded that the broader interpretation of the scope of exclusivity should be applied to all types of exclusivity conferred by sections 505(c)(3)(D) and 505(j)(4)(D) of the act.

Therefore, when exclusivity attaches to an active moiety or to an innovative change in an already approved drug, the submission or effective date of approval of ANDA's and 505(b)(2) applications for a drug with that active moiety or innovative change will be delayed until the innovator's exclusivity has expired, whether or not FDA has approved subsequent versions of the drugs entitled to exclusivity, and regardless of the specific listed drug product to which the ANDA or 505(b)(2) application refers.

Proposed new § 314.108 implements the exclusivity provisions with respect to both ANDA's and 505(b)(2) applications.

a. *Definitions.* To understand how the agency intends to administer the exclusivity provisions of the act, it is necessary to define a number of terms that are used in those provisions. Some of those definitions have already been discussed; others are as follows:

i. *New chemical entity.* "New chemical entity" means a drug that contains no active moiety that has been approved by the Food and Drug Administration in any other application submitted under section 505(b) of the act. Thus, FDA interprets the statutory requirement that a drug (new chemical entity) contain "no [previously approved] active ingredient (including any ester or salt of the active ingredient)" to mean that the drug must not contain any previously approved active moiety. FDA bases this interpretation on the statutory language and on the definition of a "new molecular entity" or "Type 1" drug in FDA's IND/NDA classification scheme (which is used to classify new drugs by chemical type and therapeutic significance), which was in effect at the time the 1984 Amendments were under consideration in Congress. FDA's longstanding interpretation of the term "new molecular entity" is that it is a compound containing an entirely new

active moiety. FDA's interpretation of the scope of the 5-year exclusivity provision is also consistent with the legislative history, which reveals that Congress was aware of FDA's classification scheme and did not intend to confer significant periods of exclusivity on minor variations of previously approved chemical compounds. (See, e.g., Cong. Rec. H9124 (September 6, 1984) (statement of Representative Waxman); H. Rept. 857, Part I, 98th Cong., 2d Sess. 38 (1984).)

ii. *Active moiety.* The "active moiety" in a drug is the molecule or ion, excluding those appended portions of the molecule that cause the drug to be an ester, salt (including a salt with hydrogen or coordination bonds) or other noncovalent derivative (such as a complex, chelate, or clathrate) of the molecule, responsible for the physiological or pharmacological action of the drug substance. A drug product will thus not be considered a "new chemical entity" entitled to 5 years of exclusivity if it contains a previously approved active moiety, even if the particular ester or salt (including a salt with hydrogen or coordination bonds) or other noncovalent derivative has not been previously approved. A compound (other than an ester) that requires metabolic conversion to produce an already approved active moiety is considered a "new molecular entity," however, and will be considered a new chemical entity entitled to 5 years of exclusivity. FDA will consider whether a drug contains a previously approved active moiety on a case-by-case basis. FDA notes that a single enantiomer of a previously approved racemate contains a previously approved active moiety and is therefore not considered a new chemical entity.

iii. *Date of approval.* An issue has arisen as to how the date of approval of a new drug application is determined. This issue is particularly important when an applicant is claiming that its new drug application was approved between January 1, 1982, and September 24, 1984, referred to in sections 505(c)(3)(D) (i) and (v) and 505(j)(4)(D) (i) and (v) of the act of the exclusivity provisions. The "date of approval" of the application as used in these provisions means the date on the approval letter sent by FDA to the applicant. A requirement in the approval letter for submission (but not for approval) of final printed labeling or other material that might delay the actual initiation of marketing of the product is not relevant to a determination of the date of approval, so long as the product could be legally marketed. Two cases have addressed FDA's interpretation of "date of approval." *Mead Johnson Pharmaceutical Group* v. *Bowen*, 838 F.2d 1332 (D.C. Cir. 1988), and *Norwich Eaton Pharmaceuticals, Inc.* v. *Bowen*, 808 F.2d 486 (6th Cir.), *cert. denied*, 108 S. Ct. 68 (1987). In these cases, two separate drug manufacturers challenged FDA's determinations that their products were not entitled to 10 years of exclusivity under sections 505(c)(3)(D)(i) and 505(j)(4)(D)(i) of the act, which grant such exclusivity to certain products approved between January 1, 1982, and September 24, 1984. FDA's determinations were based on its position that the two drugs were approved on the date the approval letters were issued, in both cases prior to January 1, 1982. The plaintiffs argued that the date of approval did not occur until the firms submitted final printed labeling. In both cases, the courts upheld FDA's position that the date an approval letter issues is the date of approval of a new drug application.

b. *Periods of exclusivity.* Drug products that are the subject of the following types of applications are eligible for specified periods of exclusivity.

i. Sections 505(c)(3)(D)(i) and 505(j)(4)(D)(i) of the act provide exclusivity for a drug product containing a new chemical entity that is the subject of a new drug application submitted under section 505(b) of the act and approved during the period beginning January 1, 1982, and ending on September 24, 1984. The approval of an ANDA or 505(b)(2) application for a drug product that contains the same active moiety as the listed drug may not become effective for 10 years after the date of approval of the listed drug entitled to exclusivity. Thus, a drug product covered by an ANDA or a 505(b)(2) application would be subject to a listed drug's 10-year exclusivity if it contains the active moiety in the listed drug.

A drug product is entitled to 10 years of exclusivity only if it does not contain an active moiety that has been part of a drug product previously approved under section 505(b) of the act either as a single ingredient or as one ingredient of a combination drug product. An application is one "approved under section 505(b)" if it was submitted under section 505(b) of the act and approved after the passage of the 1962 Amendments to the act or was "deemed approved" under section 107(c)(2) of the 1962 Amendments. Because the exclusivity conferred by this provision covers the active moiety of a drug, the exclusivity also protects a different ester or salt or other noncovalent derivative, or a different dosage form, strength, route of administration, or condition of use approved in a subsequent application or supplemental application for a drug product containing the same active moiety. Any modification in dosage form, strength, route of administration, or indication of a new chemical entity entitled to 10 years of exclusivity will be protected for the period of exclusivity remaining on the original application. Different salts, esters, or other changes that do not result in a change in active moiety are also protected. Significant changes to the drug product that occur after or toward the end of the initial 10 years of exclusivity and that independently qualify for exclusivity, e.g., a new use requiring new clinical investigations for approval (see discussion under provision d. below) may result in an additional period of exclusivity, but only for the change.

ii. Sections 505(c)(3)(D)(ii) and 505(j)(4)(D)(ii) of the act provide exclusivity for a drug product containing a new chemical entity that is the subject of a new drug application submitted under section 505(b) of the act and approved after September 24, 1984. No ANDA or 505(b)(2) application for a drug product that contains an active moiety in the listed drug may be submitted to FDA before the expiration of 5 years after the date of approval of the application for the listed drug entitled to exclusivity, except that an application challenging a patent that claims the listed drug may be submitted 4 years after approval of the listed drug. In the latter case, because this exclusivity provision blocks only submission of the ANDA or 505(b)(2) application, approval of the ANDA or 505(b)(2) application properly submitted after 4 years is not delayed by this provision, unless the patent owner initiates a lawsuit for patent infringement. Where litigation is initiated, the ANDA or 505(b)(2) application may not be made effective by FDA for a total of 7½ years after the approval of the reference listed drug, unless the court holds the patent invalid or not infringed at an earlier date. (See discussion under part V. section K.)

As with sections 505(b)(3)(D)(i) and 505(j)(4)(D)(i) of the act, the agency interprets the exclusivity provided by this provision to cover any subsequent approval of an application or supplemental application for a different ester, salt, or other noncovalent derivative, or a different dosage form, strength, route of administration, or new

use of a drug product with the same active moiety. Any modification to the product will be protected for the period of exclusivity remaining on the original application, unless the change occurs after or toward the end of the initial 5 years of exclusivity and independently qualifies for exclusivity under another exclusivity provision. (See discussion under provision b.i. above.)

iii. Sections 505(c)(3)(D)(iii) and 505(j)(4)(D)(iii) of the act provide exclusivity for a drug product that does not contain a new chemical entity, is the subject of a new drug application submitted under section 505(b) of the act and approved after September 24, 1984, and which contains reports of new clinical investigations (other than bioavailability studies) essential to the approval of the application and conducted or sponsored by the applicant. For example, a drug product containing a previously approved active ingredient may be approved for a new indication, dosage form, strength, or route of administration for which clinical studies are essential to approval. Exclusivity would be provided only if the clinical studies were "new," "essential to approval," and "conducted or sponsored by the applicant." If these requirements are met, approval of an ANDA or of a 505(b)(2) application for a duplicate drug product or an ANDA submitted pursuant to an approved petition under section 505(j)(2)(C) for a similar drug product that relies on the information supporting the new conditions of approval of the first-approved application, may not be made effective before the expiration of 3 years from the date of approval of the original new drug application.

iv. Sections 505(c)(3)(D)(iv) and 505(j)(4)(D)(iv) of the act provide exclusivity for a drug product that is the subject of a supplement to an approved application under section 505(b) approved after September 24, 1984, that contains reports of new clinical investigations (other than bioavailability studies) essential to the approval of the supplement and conducted or sponsored by the applicant. Approval of an ANDA submitted under section 505(j) of the act for a duplicate of, or submitted under section 505(j) of the act pursuant to an approved petition under section 505(j)(2)(C) of the act for a similar drug product that relies on the information supporting the new conditions of approval of a listed drug that is entitled to exclusivity or a 505(b)(2) application for a change approved in the supplemental application may not become effective for 3 years from the date of approval of the supplemental application. Under this provision, only the change approved in the supplemental application would be granted exclusivity and that exclusivity would be provided only if "new clinical investigations" were "essential to approval" of the change and the investigations were "conducted or sponsored by the applicant." The three requirements for exclusivity under this provision are identical to those of the third provision described above.

FDA expects that only those changes in an approved drug product that affect its active ingredient(s), strength, dosage form, route of administration or conditions of use would be granted exclusivity. These are the types of changes in a drug product that require prior approval by FDA before the change may be made (21 CFR 314.70).

To qualify for exclusivity under section 505(j)(4)(D) (iii) and (iv) of the act or section 505(c)(3)(D) (iii) and (iv) of the act, an application or supplemental application proposing a change to an already approved drug product must contain "reports of new clinical investigations (other than bioavailability studies) essential to the approval of the application and conducted or sponsored by the applicant." All three of these criteria must be satisfied in order to qualify a drug product or change in a drug product for the exclusivity provided by these sections of the act.

Congress intended the term "clinical" to mean human studies, and intentionally excluded all animal studies, regardless of the purpose for which they are conducted. In *Zenith Laboratories, Inc.* v. *Heckler*, No. 85-3646 (D.N.J. May 19, 1986), Zenith Laboratories challenged the agency's interpretation of the term "clinical," arguing that clinical testing also includes animal testing. The court granted the government's motion for summary judgment, holding that FDA's interpretation was reasonable.

Further, Congress specifically excluded "bioavailability studies," which also may be clinical studies, to limit eligibility for exclusivity to changes in a drug product that are significant enough to require human safety or effectiveness studies for approval. The proposed regulations would, therefore, for purposes of exclusivity, define "clinical investigation" to mean any experiment, other than a bioavailability study, in which a drug is administered or dispensed to, or used on, human subjects. The agency believes that most studies qualifying for exclusivity will be efficacy studies. There may, however, be occasional clinical investigations qualifying for exclusivity that establish that a product is safer than originally thought and that permit broader use of the drug. Studies that establish new risks will not be eligible for exclusivity because protection of the public health demands that all products' labeling contain all relevant warnings.

The legislative history makes clear that Congress intended to reward with 3 years of exclusivity only those investigations that require a considerable investment of time and money, see Cong. Rec. S10505 (daily edition August 10, 1984) (statement of Senator Hatch), and that are necessary for approval of important innovations requiring substantial study, such as significant new therapeutic uses, see Cong. Rec. H 9114, 9124 (daily edition September 6, 1984) (statements of Representative Waxman). The 3-year exclusivity provision, therefore, could be interpreted to confer exclusivity only for innovations requiring adequate and well-controlled trials in human subjects that meet the substantial evidence requirement for approval. Further, because the statutory language of this provision uses the term "clinical investigations" (plural) the provision could be interpreted to mean that more than one well-controlled trial is needed to support approval of the applicant's proposed change. The agency's interpretation of this exclusivity provision, however, is ordinarily to require only one clinical study and that it be of the type necessary to support approval of the proposed change.

The clinical investigations must be "new." Under this proposal, the agency would consider a clinical investigation "new" if the data from such a study (1) have not been relied on by the Food and Drug Administration to demonstrate substantial evidence of effectiveness of a previously approved drug for any indication or of safety for a new patient population and (2) do not duplicate the results of another investigation that was relied on by the agency to demonstrate the effectiveness or safety in a new patent population of a previously approved drug product. In this context, "new" is intended to convey lack of prior use of this particular study or another similar study in successfully supporting the approval of the effectiveness of a drug product rather than any temporal requirement. The agency does not believe Congress intended to preclude use of data from a previously conducted study if such data provide important new information in support of the applicant's proposed change to its drug product. The agency would still consider to be "new" data from a clinical investigation previously

submitted in a new drug application for use only in a comprehensive evaluation of the safety of a drug product but not to support the effectiveness of the drug product or safety in a specific new patient population.

Second, the studies referred to must also have been "conducted or sponsored by the applicant." PMA and GPIA submitted their views on this issue to the agency prior to publication of this proposal. (See Docket No. 85N-0214.) The PMA interpretation of "sponsored" would have that term apply whenever the applicant had provided financial, technical, or in kind support to the scientific studies, whether or not that support was the major funding of the investigations and whether or not it was received in advance of the performance of the investigations. GPIA disagreed, pointing out that the exclusivity provisions were intended to reward those who make a substantial investment and take the risk associated with clinical testing of a new drug or a new indication for a drug.

The Food and Drug Administration agrees that Congress intended these exclusivity provisions to reward only those who have made a substantial investment in new clinical studies. The underlying basis of exclusivity should, under the agency's policy, be transferable upon transfer of ownership of a company or rights to a drug. By making the product of the research more valuable, the agency believes this policy will foster and reward innovation and research to the full extent intended by Congress. However, the agency concludes that Congress did not intend that applicants qualify for exclusivity by simply collecting and submitting to FDA information from the literature, or buying the results of tests already done and submitting them to FDA. (See letter to Dr. Frank Young from Congressman Henry Waxman, August 5, 1985, on file in Docket No. 85N-0214.)

Therefore, in this proposal, the agency would consider an investigation "conducted or sponsored" by the applicant if, before or during the conduct of the investigation (1) the applicant was the sponsor of the IND under which the investigation was conducted, i.e., named as the sponsor of the IND in Form FDA-1571 filed with the agency, or (2) the applicant (or the applicant's predecessor in interest) provided substantial financial support for the study (see proposed § 314.108). For this purpose, the applicant's predecessor in interest may be a company the applicant purchased or merged with or a company that sold all rights to the drug to the applicant. Generally, if the applicant was the sponsor named in the Form FDA-1571 for a new clinical investigation that is essential to the approval, the applicant will be presumed to have conducted or sponsored that investigation. If the applicant was not the sponsor of the IND, e.g., because the study was conducted outside the United States, the applicant would be required to demonstrate sponsorship by showing that it provided substantial support for the study before it was completed. Ordinarily, to claim "substantial support," the applicant must have provided 50 percent or more of the cost of the study. In rare cases, the applicant may have provided less than 50 percent and still show "substantial support," if, for example, the study was extraordinarily expensive and the applicant's contribution to the total cost was significant. Merely supplying the drugs or providing other in kind support would not normally constitute "conducting or sponsoring" a study.

The applicant must show that its support for the study was provided before the study was conducted or while it was ongoing. The only exception to this rule is when, after completion of the study, the applicant purchased or merged with the company that sponsored or provided substantial support for the study or purchased all rights to the drug that is the subject of the application. Purchasing the study itself after the study has been completed does not constitute conducting or sponsoring a study. Under proposed § 314.50(j), an applicant would be required to include in its application (1) a statement that the applicant was the sponsor of the investigation named in Form FDA-1571 filed with the agency under the IND for the investigation, or (2) a certification with supporting information that the applicant or its predecessor in interest provided substantial support for the investigation. The agency acknowledges that it does not possess expertise and records essential to determining what elements should properly be considered in determining the cost of a study and what constitutes 50 percent funding of that study. The agency does not ordinarily intend to substitute its judgment for that of the applicant with respect to the 50 percent threshold. The agency will only look to see if the investigations were conducted under an IND in which the applicant was the sponsor or that the application contains the certification with supporting information. The agency specifically seeks comment on how to equitably interpret the term "sponsored by."

Third, the clinical studies must be "essential to the approval of the application." That is, without these new clinical studies, FDA would not have sufficient information to conclude that the drug product or change to a marketed drug product for which the applicant is seeking approval is safe and effective. Thus, to qualify for exclusivity, there must not be published reports of studies other than those conducted or sponsored by the applicant, or other information available to the agency sufficient for FDA to conclude that a proposed drug product or change to an already approved drug product is safe and effective. In addition, there must not be an already approved drug product for which the applicant could submit an ANDA or 505(b)(2) application. The agency disagrees with the suggestion by PMA that any "new information that will support the approvability of an application or supplement" is sufficient to satisfy this requirement. Rather, the studies must be truly "essential," rather than simply supportive, to qualify the application for exclusivity. A study will not be considered essential to approval merely because it was necessary for the applicant to conduct the study to avoid the exclusivity of the pioneer and obtain an immediate effective date of approval.

The PMA suggested regulatory language that it believed would help applicants to determine, in advance, the types of clinical investigations that would be considered "essential to the approval" of an application or supplemental application under section 505(b) of the act. The PMA urged FDA, upon request from a person planning to conduct or sponsor clinical tests on a proposed new drug, or upon submission of an IND, to examine a proposed testing protocol or general clinical outline to determine whether such clinical tests would be essential to approval of the new drug. PMA would have an investigation deemed essential unless FDA notified the applicant otherwise within 30 days following receipt of this information. GPIA opposed this PMA proposal.

What studies will be essential to the approval of an application cannot be determined, in each case, by a review of protocols without knowing what drugs have been approved and what is in the published literature at the time the application is approved. If published reports of investigations, other than those conducted or sponsored by the applicant, are sufficient to approve a drug product in a literature-supported application, no additional studies would be essential to the approval of that drug

product as of the date of approval. The agency encourages meetings between FDA and sponsors of clinical investigations to facilitate drug development and the approval process. However, the agency does not agree that it is possible to determine before approval which, if any, studies will be essential based on such discussions.

Under proposed § 314.50(j), an applicant would be required to include in its application a list of all published studies or publicly available reports of clinical investigations known to the applicant through a literature search that are relevant to the conditions for which the applicant is seeking approval. The list would be accompanied by a certification that the applicant has thoroughly searched the scientific literature and, to the best of the applicant's knowledge, the list is complete and accurate and, in the applicant's opinion, the listed studies or publicly available reports do not provide a sufficient basis for the approval of its application or supplement without reference to the new clinical investigation(s) in the application. The agency proposes that the applicant explain why the studies and reports are insufficient.

v. Sections 505(c)(3)(D)(v) and 505(j)(4)(D)(v) of the act provide exclusivity for a drug product that does not contain a new chemical entity and is the subject of a new drug application or supplemental application submitted under section 505(b) of the act and approved between January 1, 1982, and September 24, 1984. The approval of an ANDA or 505(b)(2) application that refers to the previously approved drug product or which refers to a change approved in a supplemental application may not be made effective before September 24, 1986. Because this date has passed, the proposed rule contains no reference to this provision.

Applications described in sections 505(b)(2) and 505(c)(3)(D) of the act present one issue not encountered with ANDA's. Because applications submitted under section 505(b) of the act may be entitled to exclusivity, there is an issue as to the treatment of concurrently pending 505(b)(2) applications for the same conditions of approval where the first approved 505(b)(2) application for a drug is entitled to exclusivity, and the approval of subsequent 505(b)(2) applications for that drug may be delayed. FDA proposes to interpret the exclusivity provisions with respect to competing 505(b)(2) applications in the following manner. Section 505(c)(3)(D)(ii), states that "* * * no application which refers to the drug for which the subsection (b) application [entitled to exclusivity] was submitted * * * may be *submitted* * * *." (Emphasis added.) The agency intends to interpret this phrase to mean that any 505(b)(2) application submitted to FDA before the approval of another new drug application that qualifies for exclusivity under section 505(c)(3)(D)(ii) is not affected by this exclusivity provision. The agency believes, however, that an exception to this rule must be made where the first applicant to obtain approval and qualify for exclusivity publishes its data and the competing applicant amends its application to include the first applicant's published data. Where that data would be essential to the approval of the competing application, the second application will be deemed to refer to the first application. FDA is proposing to amend § 314.60 to ensure that the competing applicant cannot, without a right of reference, rely on the first applicant's data and at the same time avoid the first applicant's exclusivity.

Under proposed § 314.60(b), an amendment submitted by the competing applicant to include reports of investigations conducted or sponsored by the exclusivity holder, to which the competing applicant had not obtained a right of reference, and which would be essential to the approval of the competing application, would cause the application to be deemed withdrawn and resubmitted. Because an application for a drug entitled to 5 years of exclusivity cannot be submitted until the exclusivity expires, the resubmission would not be accepted until the exclusivity had expired (or until the expiration of 4 years from the date the first application was approved, where the competing applicant sought to challenge a patent on the first applicant's drug).

The exclusivity provisions of sections 505(c)(3)(D) (iii) and (iv) of the act delay the effective date of approval of any 505(b)(2) application that is for the conditions of use of a previously approved application that contained new clinical investigations essential for approval. Consequently, if two 505(b)(2) applications are under review at the same time and one is approved before the other, the effective date of approval of the second application to be approved will be delayed, regardless of the date of submission, if the first contained new clinical investigations essential for approval and thereby qualified for exclusivity.

The issue of competing applications under section 505(c)(3)(D)(i) of the act is moot. No 505(b)(2) applications were submitted for any of the drug products qualifying for exclusivity under this provision before the approval of the qualifying applications.

2. *Exclusion of DESI upgrades from exclusivity.* Under FDA's DESI review, if a manufacturer had an effective new drug application for a drug product before 1962, FDA reaffirmed its approval if the manufacturer submitted a supplemental new drug application to conform the product's indications for use to those determined to be effective in the DESI review. This is known as a DESI upgrade.

The agency believes as a matter of policy and statutory interpretation that a grant of exclusivity is inappropriate for any DESI upgrade. Except for the 2-year exclusivity provision (sections 505(j)(4)(D)(v) and 505(c)(3)(D)(v) of the act), Congress carefully limited the exclusivity provisions of the statute to new chemical entities, which by definition were innovative, and to those changes in already marketed drug products, such as a new use, which are important innovations. A DESI upgrade does not constitute a change in a marketed drug or a major innovation; rather it permits the continued marketing of an already existing product for an already existing indication. Thus, FDA does not believe that DESI upgrades qualify for exclusivity. Changes in DESI drugs that were not shown to be effective in the DESI review may, however, be entitled to exclusivity.

3. *Challenges to exclusivity determinations.* Drug products that qualify for exclusivity under one of the statutory provisions discussed above are identified in FDA's list and its monthly supplements, which state the expiration date of the period of exclusivity for any listed drug that FDA believes qualifies for exclusivity. The authority to make final exclusivity determinations has been delegated to the Center for Drug Evaluation and Research's Office of Drug Standards. (See 52 FR 10881; April 6, 1987.)

Interested persons may disagree with the agency's findings with respect to a period of exclusivity accorded or not accorded a drug product. An interested person should first informally contact the agency to determine that the conclusion represented in the list is real and not an error. Having established that the entry or lack of entry in the list represents an agency finding, the interested person who disagrees with the finding should petition the agency pursuant to 21 CFR 10.25 to include, exclude, or revise exclusivity information in the list if the petitioner believes the information in the list is

incorrect. The agency will generally publish in the **Federal Register** a notice of availability of any such petition it receives. Such publication is constructive notice to all interested persons who may be affected by the petition. Persons who may be affected include holders of approved new drug applications, approved ANDA's and approved 505(b)(2) applications, applicants with pending applications or potential applicants. (See also 50 FR 39177; September 27, 1985.)

To resolve exclusivity issues as early as possible in the drug approval process, FDA proposes that, if an applicant believes its drug product or change to an already marketed drug product is entitled to exclusivity under the act, the applicant include this information in its new drug application. Under proposed § 314.50(j) for a new drug product and proposed § 314.70(e) for a change to an already marketed drug product, an applicant would be required to include: (1) a statement that the applicant is claiming exclusivity for its drug product or change, if approved; (2) a reference to the provision under proposed § 314.108 that supports the claim; (3) if the applicant is claiming exclusivity under § 314.108(b)(2), information to show that no drug product has previously been approved under section 505(b) containing any active moiety in the drug product for which the applicant is seeking approval and (4) if an applicant is claiming exclusivity under proposed § 314.108(b) (4) or (5), information to show that the application contains "new clinical investigations," "essential to approval," of the application or supplement and "conducted or sponsored by" the applicant. (See discussion at part V. section L.1., *supra*.)

M. Refusal to Approve ANDA's

The statutory grounds for refusing to approve an ANDA in part parallel the ANDA submission requirements. Thus, under proposed § 314.127, the agency would deny approval of an ANDA if (1) the methods used in, or the facilities and controls used for, the manufacture, processing, and packing of the drug product are inadequate to assure and preserve its identity, strength, quality, and purity; (2) information included in the ANDA is insufficient to show that each of the proposed conditions of use have been previously approved for the reference listed drug; (3) if the proposed drug product has one active ingredient, information in the ANDA is insufficient to show that the active ingredient is the same as that of the reference listed drug, or, if the proposed drug product is a combination product, (i) information in the ANDA is insufficient to show that the active ingredients are the same as those of the reference listed drug, or (ii) if one of the active ingredients differs, information in the ANDA is insufficient to show that the other active ingredients are the same as those of the reference listed drug, or that the differing active ingredient is an active ingredient of a listed drug or a drug that does not meet the requirements of section 201(p) of the act, or (iii) no petition to file an ANDA for the drug product with the different ingredient was approved under section 505(j)(2)(C) of the act; (4) information in the ANDA is insufficient to show that the route of administration, dosage form, or strength of the drug product are the same as those of the reference listed drug, or, if they are not the same, no petition to vary the changed elements was approved under section 505(j)(2)(C) of the act; (5) if the ANDA was filed pursuant to the approval of a petition to file an ANDA for a drug product with a different active ingredient, route of administration, dosage form, or strength, the ANDA did not contain the information required by FDA respecting the different active ingredient, route of administration, dosage form, or strength; (6) information in the ANDA is insufficient to show that the drug product is bioequivalent to the reference listed drug, or, if the ANDA was filed pursuant to an approved petition, the information is insufficient to show that the active ingredients of the drug product are of the same pharmacological or therapeutic class as those of the reference listed drug and that the drug product can be expected to have the same therapeutic effect as the reference listed drug when administered to patients for the same conditions of use; (7) information in the ANDA is insufficient to show that the labeling proposed for the drug product is the same as that for the reference listed drug except for changes required because of differences approved under a petition or because the drug product and reference listed drug are produced or distributed by different manufacturers.

1. *Inactive ingredients.* The statute also provides for denial of approval if information in the ANDA or any other information available to FDA shows that the inactive ingredients of the drug product are unsafe for use under the proposed conditions for use or that the composition of the drug product is unsafe under the proposed conditions of use because of the type or quantity of inactive ingredients in the drug product or the manner in which the inactive ingredients are included.

It is well-established that changing the inactive ingredients in a drug can adversely affect the drug's safety or effectiveness. Interpreting the act to require approval of generic drugs with potentially unsafe inactive ingredients would thwart one of the major purposes of the basic act, which was to prevent a repetition of the Sulfanilamide tragedy, in which the inactive ingredient of an untested drug was responsible for many deaths. The desire to avoid another such incident led to passage of the 1938 amendments to the act and the requirement that new drugs be shown to be safe. FDA is therefore proposing to consider inactive ingredients or composition "unsafe" if there is a reasonable basis to conclude that its inactive ingredients or composition raise serious questions about the drug's safety.

FDA's interpretation is consistent with the statutory scheme and with the purpose of the 1984 Amendments, which was to assure a supply of low cost generic drugs that are as safe and effective as their brand name counterparts.

Any other interpretation of section 505(j)(3)(H) of the act would produce absurd results when read in conjunction with the withdrawal provisions of section 505(e), which permit FDA to withdraw approval of an ANDA with less evidence of the hazard posed by an inactive ingredient than would be required to disapprove it. Section 505(e)(2) of the act permits FDA to withdraw approval of an application if there is evidence that shows that the drug "is not shown to be safe." FDA can invoke this provision if there is a reasonable basis from which to infer serious questions as to the safety of the drug, even if the agency lacks proof that the drug is unsafe. See Commissioner's Decision on DES, 44 FR 54852, 54861 (September 21, 1979), *aff'd, Rhone-Poulenc, Inc., Hess & Clark Div.* v. *FDA*, 636 F.2d 750 (D.C. Cir. 1980). Thus, if the agency believed that a new inactive ingredient was potentially dangerous but lacked proof that it was unsafe, and if section 505(j)(3)(H) of the act required proof that it was unsafe before it could disapprove the application, the agency would be required to approve the ANDA and then immediately initiate a proceeding to withdraw it.

The Supreme Court has held that in interpreting the Federal Food, Drug, and Cosmetic Act, the act must be given " 'the most harmonious, comprehensive meaning possible' in light of the legislative policy and purpose," and must not " 'impute to Congress a purpose to paralyze with one hand what it sought to promote with the other.' " It would be inconsistent with these

principles to interpret section 505(j)(3)(H) of the act as requiring either (1) a burden of proof on the agency that would allow approval of potentially unsafe drugs, or (2) a greater showing of unsafety to disapprove a drug than is required to withdraw it. Therefore, FDA proposes to harmonize section 505(j)(3)(H) of the act with other provisions of the act and therefore interprets that section as authorizing disapproval of an ANDA on the same basis as withdrawal under section 505(e)(2) of the act. Thus, an ANDA may be disapproved if there is a reasonable basis to conclude that one of its inactive ingredients or its composition raises serious questions about the drug's safety.

FDA is proposing to implement this interpretation in proposed § 314.127(h). That section provides that FDA will disapprove an ANDA if its inactive ingredients or composition raise serious questions of safety and cites examples of changes in inactive ingredients that FDA will consider to raise such serious questions. The examples reflect FDA's experience with types of changes in inactive ingredients that can adversely affect a drug's safety. The examples are not intended to be exhaustive, however, and FDA may conclude, on the basis of its experience or other information, that other types of changes raise serious questions about the safety of a drug. FDA solicits comments on additional types of changes in inactive ingredients and composition which create a reasonable basis from which to infer serious questions as to the drug's safety.

The agency lists in the regulations at proposed § 314.127(h)(2) examples of the types of changes in inactive ingredients that FDA will consider to raise serious questions about the safety of a drug product. In addition, for drug products intended for parenteral, ophthalmic, or optic use, the regulations identify the categories of added substances in which variations are not permitted and those in which variations may be permitted if the applicant demonstrates that the variation will not affect the safety of the product. (See discussion at part V. section D.1.h.)

2. *Withdrawal or suspension of listed drug.* Section 505(j) of the act allows approval of ANDA's that refer to previously approved drugs, i.e., "listed drugs" within the meaning of 505(j)(2)(A)(i) and (6) of the act. The policy of allowing approval of generic copies of previously approved drugs would present significant problems if that policy allowed approval of generic copies of drugs whose approval had been withdrawn by FDA or that had been voluntarily withdrawn from sale for safety or effectiveness reasons. The statute seeks to assure that that will not happen by providing, in section 505(j)(6)(C) of the act, that a drug will be removed from listing, thus prohibiting approval of generic copies of that drug, if either of the above conditions occurs. In addition, section 505(j)(3)(I) bars the agency from approving an ANDA, even if the drug it refers to is still "listed," if there has been published a notice of opportunity for hearing on the withdrawal of approval of that listed drug. Section 505(j)(5) of the act, moreover, authorizes FDA to remove from the market, by withdrawal or suspension of approval, any generic copies already approved if the listed drug is removed from the market by FDA withdrawal or suspension of approval or is voluntarily withdrawn from sale for what the agency determines are safety or effectiveness reasons.

To assure that the intent of section 505(j)(3)(I) of the act is not evaded, the agency proposes to interpret this section broadly. Thus, § 314.162(a)(1) of the proposed rules is designed to deal with the following sequence of events: Drug A is approved under a full new drug application. Drug B is approved under an ANDA, and Drug A is the listed drug upon which it relies. The agency issues a notice of opportunity for hearing on withdrawal of approval of Drug A. Approval of Drug B will be withdrawn, in accordance with procedures discussed below, at the same time as that of Drug A. Section 505(j)(3)(I) of the act, by its terms, would prevent approval of an ANDA for Drug C that refers to Drug A as its listed drug after the notice of opportunity for hearing issues. Logically, that section should also prohibit approval of Drug C if it refers to Drug B as its listed drug, and the proposed regulation interprets the statutory language to produce that result.

A notice of opportunity for hearing is published only if the "listed" drug is being withdrawn under sections 505(e) or 505(j)(5) of the act. A drug must also be removed from the list when the agency determines that it has been voluntarily withdrawn from sale for safety or effectiveness reasons. To fulfill Congress' intent that new drugs not be approved pending the removal of a drug from the list, the agency will also refuse to approve an ANDA if the "listed" drug referred to in the ANDA was voluntarily withdrawn from sale and the agency has not determined that the withdrawal was not for safety or effectiveness reasons. (See proposed §§ 314.122 and 314.127(k).)

Where the listed drug is approved for more than one indication and the notice of proposed withdrawal proposes withdrawal of less than all of the approved indications, FDA will not approve an ANDA that includes an indication covered by the notice unless the applicant amends its ANDA with respect to labeling to remove the indication. Proposed § 314.127(i) would not apply if the ANDA seeks approval of the remaining indications only.

3. *Other grounds for disapproval.* Finally, FDA is authorized to disapprove an ANDA if the ANDA does not meet any other requirement of section 505(j)(2)(A) of the act, for example, does not contain the certifications regarding patents required in section 505(j)(2)(A)(vii) of the act, or the ANDA contains any untrue statement of material fact.

The agency proposes to add new § 314.127 to the regulations codifying the statutory reasons for disapproving an ANDA and to revise § 314.120 to state the administrative procedure governing this agency action. Under proposed revised § 314.120, if the agency concludes that there are grounds for denying approval of the ANDA, it will send the applicant a not approvable letter describing the deficiencies in the ANDA. The applicant must then either (1) withdraw its ANDA, (2) amend the ANDA incorporating already reviewed materials together with new information intended to correct all deficiencies identified in the not approvable letter, or (3) ask the agency to provide the applicant an opportunity for a hearing on the question of whether there are grounds for denying approval of the ANDA under section 505(j) of the act.

The regulations describing notices of opportunity for hearing on proposals to refuse to approve applications and abbreviated applications are set forth at § 314.200. The agency proposes to make editorial, but not substantive changes in these regulations. FDA will give an applicant written notice of opportunity for hearing on its refusal to approve an ANDA if the applicant asks the agency to provide it an opportunity for a hearing. The notice of opportunity for a hearing on a refusal to approve an ANDA would generally provide, as such notices now do, a detailed description and analysis of the specific facts resulting in the agency's refusal to approve the ANDA and would refer to specific requirements in the act and regulations under which the agency refused to approve the ANDA. An applicant would have, as it now does

under § 314.200, 30 days to respond to such notice. If the applicant requests a hearing, the hearing must begin not later than 90 days after the expiration of the 30-day period, unless both the agency and the applicant agree to a later date.

N. Withdrawal or Suspension of Approval of ANDA's

ANDA's may be withdrawn or suspended under two separate sections of the act. An ANDA may be withdrawn under section 505(e) of the act, on the same grounds that a full new drug application (NDA) may be withdrawn, or an ANDA may be withdrawn or suspended under section 505(j)(5) of the act, if a listed drug on which the approval of the ANDA depends is withdrawn or suspended by FDA or voluntarily withdrawn from sale for safety or effectiveness reasons. The agency proposes to retain its current regulations under § 314.150 stating the grounds for the withdrawal of approval of applications and abbreviated applications for new drugs under section 505(e) of the act. The agency proposes to add §§ 314.151 and 314.153, however, to describe the additional circumstances under which the agency will suspend or withdraw ANDA approval under section 505(j)(5) of the act.

The procedures to be followed when NDA's and ANDA's are withdrawn under section 505(e) of the act are specified by statute. Congress was silent, however, about the procedural requirements for the withdrawal or suspension of ANDA's under section 505(j)(5) of the act. The agency therefore proposes to establish procedures that will satisfy the requirements of due process.

Section 505(e) of the act requires the Secretary to provide "due notice and opportunity for hearing" when the agency proposes to withdraw approval of an NDA or an ANDA for grounds enumerated in that section. To satisfy this requirement, the agency currently affords an opportunity for a formal evidentiary hearing under 21 CFR Part 12 when it proposes to withdraw an NDA or an ANDA under section 505(e) of the act. FDA has tentatively concluded that different procedural safeguards are due an ANDA holder under section 505(j)(5) of the act than are due an NDA holder under section 505(e) of the act, for the reasons described below.

An ANDA for a generic drug exists legally and factually only by virtue of duplicating a previously approved listed drug. The investment in gaining approval of an ANDA is generally substantially less than the investment in gaining approval of an NDA. Unlike a full new drug application, an ANDA is not required to contain evidence of the safety and effectiveness of the drug entity for its intended use. Rather, the ANDA applicant relies on a prior agency finding of safety and effectiveness for approval. That prior agency finding is dependent on the evidence presented in a previously approved new drug application. The property rights and privileges that attach to an ANDA are therefore dependent and contingent upon the validity of the innovator drug manufacturer's NDA. Under the statutory scheme, an ANDA holder has no expectation of the continued marketing of its approved drug if approval of the underlying application for the reference drug is withdrawn or suspended. Accordingly, the agency concludes that the constitutionally protected interest of an ANDA holder is different than that of an NDA holder.

The agency recognizes, however, that ANDA holders may be entitled to more extensive procedural protections when the agency proposes to withdraw approval of their applications under sections 505(e) of the act rather than under 505(j)(5) of the act. This result is procedurally fair because of the different types of issues to be resolved under the two sections of the act. When the agency proposes to withdraw an ANDA under section 505(e) of the act, rather than section 505(j)(5) of the act, the basis for withdrawal will directly concern aspects of safety and effectiveness, labeling, or manufacturing that are specific to the ANDA holder's product; the basis for such a withdrawal will not be the safety and effectiveness of the underlying drug substance. In a 505(e) proceeding that concerns only a specific ANDA and not the underlying drug substance, therefore, the ANDA holder will be in the best position to present relevant evidence and to represent its interests. In many instances, an ANDA holder alone will possess the information essential to resolving factual issues necessary for the agency to make an informed judgment about whether or not approval of the application should be withdrawn or suspended for grounds specified under section 505(e) of the act.

In 505(j)(5) proceedings, on the other hand, the basis for the agency's decision to withdraw a reference listed drug will generally only indirectly concern the ANDA holder's product. Rather, the withdrawal will be based on the safety and effectiveness of the listed drug on which the ANDA approval depends. The issues in such a proceeding will usually involve the underlying safety and effectiveness data that supported the approval of the original full new drug application. For this reason, in 505(j)(5) withdrawal proceedings, an ANDA holder will not be uniquely able to present relevant evidence.

FDA notes that Congress did not amend section 505(e) of the act to require that ANDA holders be given an opportunity for hearing when the agency proposes to withdraw the listed drug to which the ANDA referred. Instead, Congress added new section 505(j)(5) of the act, which provides for the withdrawal or suspension of an ANDA when the approval of the listed drug on which the ANDA depends, is withdrawn or suspended. The agency believes this adds weight to its interpretation that ANDA's approved under section 505(j) of the act have different rights with respect to withdrawal proceedings. Section 505(j)(5) of the act does not require an opportunity for hearing.

1. *Type of hearing to be provided.* The agency has concluded that for withdrawals of ANDA approvals under section 505(j)(5), an opportunity for an oral hearing is not required. Where no hearing of any kind is required by statute, the agency believes procedural fairness requires adequate notice of the agency's position and an opportunity to respond to the agency's contentions, before a final determination. *Aeron Marine Shipping Co.* v. *United States*, 525 F. Supp. 527, 535 (D.D.C. 1981), *aff'd*, 695 F.2d 567 (D.C. Cir. 1982). Many courts, applying the Supreme Court's balancing test in *Mathews* v. *Eldridge*, 424 U.S. 319, 334–35 (1976), have held "paper hearing" procedures adequate where, in the total context of the process, they are deemed to ensure adequate notice and a genuine opportunity to explain one's case. See, e.g., *Carson Products* v. *Califano*, 594 F.2d 453, 459 (5th Cir. 1979); *Basciano* v. *Herkimer*, 605 F.2d 605 (2nd Cir. 1978), *cert. denied*, 442 U.S. 929 (1979); *Zotos Internat,l, Inc.* v. *Kennedy*, 460 F. Supp. 268, 279 (D.D.C. 1978), following remand to agency, No. 82–1480 (D.D.C. August 14, 1986), *aff'g* Magis. Op. (filed August 21, 1985) (upholding FDA's written procedures for contesting agency determinations of trade secret status of certain ingredients). (See also *Geneva Towers Tenants Org.* v. *Federated Mortgage Investors*, 504 F.2d 483 (9th Cir. 1974).)

The agency has concluded that an oral hearing is not necessary to satisfy the requirements of due process for withdrawal or suspension of ANDA's under section 505(j)(5) of the act. As discussed above, the interests at stake and the nature of the issues to be resolved do not demand trial-type proceedings. Accordingly, the agency intends to provide written due process safeguards that assure adequate notice, accurate fact-finding, and an opportunity to respond to agency findings.

Nevertheless, if the agency finds that there are dispositive factual issues about the reasons for the withdrawal of the listed drug that it cannot resolve on the basis of the written submissions alone, it will provide for a limited, informal oral hearing. The discretion to hold this hearing lies exclusively with the agency. The agency generally will not provide for an oral hearing unless it cannot make an informed determination without assessing the credibility and veracity of the witnesses.

The specific procedures afforded an ANDA holder under section 505(j)(5) of the act will depend on whether the ANDA is being withdrawn or suspended because (1) the listed drug referred to in the ANDA is being withdrawn or suspended by the agency for grounds described in the first sentence of section 505(e) of the act or under section 505(j)(5) of the act or (2) the manufacturer of the listed drug has voluntarily withdrawn its drug from sale for safety or effectiveness reasons. Section N.3. and 4. below discusses the procedures provided in each case.

2. *ANDA's subject to withdrawal or suspension.* Section 505(j)(5) of the act requires that the agency withdraw or suspend a drug approved under section 505(j) of the act that "refers in its application" to a listed drug that has been withdrawn or suspended by the agency or voluntarily withdrawn by its own manufacturer for safety or effectiveness reasons. Thus, the statute might be read to permit a withdrawal or suspension under section 505(j)(5) of the act only of generic drug A, which referred in its application to the listed drug, but not of generic drug B, which referred in its application to generic drug A. If this reading were correct, section 505(j)(5) would require the agency, following the withdrawal or suspension of generic drug A, to conduct a subsequent proceeding to withdraw or suspend generic drug B.

To avoid a series of repetitive proceedings, the agency proposes to include in a single proceeding under section 505(j)(5) of the act all applications for drug products that refer to any drug that would be withdrawn or suspended under section 505(j)(5) of the act, either immediately or sequentially, as a result of the withdrawal or suspension of the listed drug. Thus, if generic drug A refers in its application to the listed drug, generic drug B refers to drug A, and generic drug C refers to generic drug B, FDA will notify the manufacturers of drugs A, B, and C that it is proposing to withdraw or suspend their approvals and give each the opportunity to participate in a single proceeding, in accordance with the terms of either § 314.151 or § 314.153. (See section N.3. and 4. below.) It should be noted, however, that cases of generic drugs sequentially referring to different listed drugs are unlikely, because in most cases the agency would require all generic applicants to refer to a single listed drug to assure uniform labeling and bioequivalence continuity.

If, as a result of this policy, a large number of manufacturers elect to participate as nonparty participants in any hearing held under 21 CFR Part 12, the presiding officer is authorized to exclude repetitive submissions. (See 21 CFR 12.94.)

The agency notes that prospective ANDA applicants, i.e., persons without approved ANDA's, have no constitutionally protected interest in whether the pioneer drug remains on the list of approved drugs and thus are not entitled to participate in the decisionmaking process concerning withdrawal or removal of a drug from "listed" status.

3. *Withdrawal of approval of an ANDA when the listed drug is withdrawn for grounds described in section 505(e)(1) through (5) of the act.* If the agency proposes to withdraw a listed drug for grounds enumerated in the first sentence of section 505(e) of the act, the listed drug's manufacturer has a right to notice and an opportunity for a formal evidentiary hearing on the withdrawal of approval of the listed drug. Except for persons subject to notice and an opportunity for a hearing under 21 CFR 310.6, the holder of an abbreviated application that is dependent on the approval of the listed drug does not have an independent right to hearing. Such an ANDA holder may, however, submit written comments on the notice of opportunity for hearing issued on the proposed withdrawal of the listed drug. The agency recognizes that there may be rare cases in which the reason for the withdrawal of the listed drug product is not applicable to the ANDA holder's drug product. For example, a withdrawal caused by a problem related to a particular dosage form might not be relevant to the safety and effectiveness of a generic version of the drug which was marketed in a different dosage form, pursuant to an approved petition under section 505(j)(2)(C) of the act. In such a case, the burden would be on the ANDA holder to submit information establishing to the agency's satisfaction the inapplicability to the generic drug product of the grounds for withdrawal.

If a hearing is granted, any ANDA holder that submitted comments on the notice of opportunity for hearing may participate in the hearing as a nonparty participant as provided for in 21 CFR 12.89. (See proposed § 314.151.) If the listed drug is withdrawn without a hearing, any ANDA's whose holders did not submit comments will be withdrawn at the same time as the listed drug. If a hearing is requested but denied, each ANDA listed in the notice of opportunity for hearing will be withdrawn at the same time as the listed drug, unless the agency determines, pursuant to proposed § 314.151(d), that the grounds for withdrawal are not applicable to a specific ANDA.

If an affected ANDA holder that has commented on the notice of opportunity for hearing does not have an opportunity to participate in a 21 CFR Part 12 hearing because a hearing is not requested, or is settled, the ANDA holder will be provided the "paper hearing" procedures set forth in proposed § 314.151. If the drug has been suspended pursuant to § 314.153 (see discussion at section N.4. below), a hearing will be provided after the drug has been removed from the market. The published notice of opportunity for hearing on the withdrawal of the listed drug will serve as the written notice detailing the reasons for the proposed withdrawal of approval of affected ANDA's and providing a summary of the evidence that the agency considers most relevant.

ANDA holders will have had an opportunity, as described above, to comment on the agency's proposed withdrawal of the drug from "listed" status. An ANDA holder should submit evidence that directly challenges the accuracy of the information considered by the agency as well as the correctness of the agency's conclusions.

Any comments received will be considered by the agency. Where no 21 CFR Part 12 hearing is held, an initial decision on the withdrawal of the listed drug and related ANDA's, which responds to significant comments, will be sent to each ANDA holder that submitted comments. These ANDA holders will then have 30 days in which to object to the agency's initial determination, in the form of a written rebuttal. If necessary to resolve dispositive factual issues, the agency may, at its discretion, hold a limited informal oral hearing. If there are no objections to the initial decision, it will become final at the expiration of 30 days from the date of its issuance. If there are

objections to the initial decision, the written rebuttals will be reviewed and responded to in the final decision.

The Director will publish a notice announcing the availability of the final decision in the **Federal Register**. If the final decision withdraws approval of the listed drug, the published notice will also (1) remove the reference drug from the list and (2) withdraw approval of and remove from the list all ANDA's identified in the notice of opportunity for hearing. See proposed §§ 314.152 and 314.162.

4. *Suspension of approval of an ANDA when the "listed" drug is voluntarily withdrawn from sale for safety or effectiveness reasons.* When the agency proposes to suspend an ANDA because it determines that the listed drug on which the ANDA's approval depends was voluntarily withdrawn from sale by the manufacturer for safety or effectiveness reasons, the ANDA holder will have an opportunity to show that the withdrawal was not for safety or effectiveness reasons or that the reasons for the withdrawal are not applicable to the generic drug. By "voluntary withdrawal," the agency means any withdrawal from sale other than a withdrawal ordered under section 505(e) or 505(j)(5) of the act. A "paper hearing" procedure will be afforded affected ANDA holders for this purpose. (See proposed § 314.153.) If the drug has been suspended pursuant to § 314.153, a hearing will be provided after the drug has been removed from the market.

If a listed drug is voluntarily withdrawn from sale and the agency determines that the withdrawal from sale was for safety or effectiveness reasons, each affected ANDA holder will be sent a copy of the agency's initial decision setting forth the reasons for its determination and its intention to remove the listed drug from the list and suspend approval of the identified ANDA's. For a discussion of the factors the agency will consider in making this determination, see section O., *infra*.

ANDA holders will have 30 days from the date the initial decision is issued to present, in writing, comments on the agency's proposed decision. An ANDA holder may also submit evidence demonstrating that the reasons for the withdrawal of the listed drug are not applicable to the drug subject to the ANDA. The agency may, at its discretion, hold a limited informal oral hearing to resolve dispositive factual issues.

If no significant comments on the proposed decision are received, the initial decision will become final at the expiration of 30 days from the date the initial decision was issued. If significant comments are received, a final decision responding to them will be issued. The final decision will be in writing and will be sent to ANDA holders who submitted comments. If the final decision affirms the agency's initial decision, it will be published in the **Federal Register** and will remove the listed drug from the list and suspend approval of, and remove from the list, all ANDA's whose holders were notified of the proposed agency action. (See proposed § 314.153(b).) For a discussion of removal of drugs from the list, see section P. *infra*.

The agency is using the term "suspended" rather than "withdrawn" to describe the status of ANDA's approved by reference to a listed drug that the agency determines has been voluntarily withdrawn from sale for safety or effectiveness reasons. Section 505(j)(5) of the act provides that an ANDA approval "shall be withdrawn or suspended * * * for the period of [the listed drug's] withdrawal from sale, or, if earlier, the period ending on the date the Secretary determines that the withdrawal from sale is not for safety and effectiveness reasons." The agency believes that Congress intended that ANDA approval be reinstated immediately when either of these two conditions is met. The agency therefore intends to suspend rather than withdraw approval of ANDA's because once withdrawn, ANDA approval cannot be automatically reinstated. Instead, to regain approval of a withdrawn application, the ANDA applicant would have to obtain a new approval.

Therefore, to permit reinstatement of ANDA's, the agency proposes to suspend ANDA approval rather than withdraw it when the listed drug is determined to have been voluntarily withdrawn for safety or effectiveness reasons. Accordingly, if the approval of an ANDA depends on the approval of a drug that the agency determines is voluntarily withdrawn for safety or effectiveness reasons, the ANDA's approval will be suspended, i.e., the approval will cease to be in effect, for the period specified in section 505(j)(5)(B) of the act. The agency notes that the "imminent hazard" procedures in section 505(e) of the act do not apply to suspensions under section 505(j) of the act. The authority for "imminent hazard" suspensions cannot be delegated beyond the level of the Secretary of Health and Human Services, while no such statutory limitation applies to section 505(j) suspensions. Accordingly, the agency believes that Congress intended section 505(j) suspensions to be accomplished more expeditiously than section 505(e) suspensions.

ANDA approval will be reinstated if the agency has evidence or evidence is presented in a citizen petition demonstrating that the listed drug was not withdrawn for safety or effectiveness reasons and the agency therefore relists the withdrawn drug, or if evidence is presented in a citizen petition establishing that the basis for the withdrawal of the reference drug does not apply to the generic drug (proposed § 314.161(e)).

5. *Imminent public health hazards.* If the agency determines that a drug approved under section 505 of the act presents an unacceptable hazard to the public health, approval of its new drug application may be suspended pursuant to the "imminent hazard" provision of section 505(e) of the act. The holder of an abbreviated new drug application drug whose approval rests on a listed drug that is the subject of an "imminent hazard" proceeding will be permitted to participate in the proceeding. If approval of the listed drug is suspended as an imminent hazard, the approval of ANDA's whose approval rests on the listed drug will be suspended immediately (proposed § 314.153(a)(1)).

To assure that ANDA's for all drug products affected by an imminent hazard proceeding are suspended immediately, proposed § 314.153(a)(1) provides for the suspension of any ANDA that refers in its application to a listed drug suspended under authority of section 505(e) of the act or under authority of § 314.153(a)(1). Thus, if Drug B refers to Drug A and Drug A refers to a listed drug that is suspended in an imminent hazard proceeding under 505(e) of the act, Drug A will be suspended under § 314.153(a)(1) because its reference listed drug was suspended under authority of section 505(e) and Drug B will be suspended because its reference listed drug (Drug A) was suspended under authority of § 314.153(a)(1).

The holder of an ANDA suspended because a listed drug is found to be an "imminent hazard" will also be permitted to participate as a nonparty participant in any subsequent hearing on withdrawal of approval of the listed drug, as described above in section N.3.

If a listed drug is voluntarily withdrawn from sale for safety or effectiveness reasons and the agency concludes that the drug presents an unacceptable risk to the public, the proposed regulations also provide for the immediate suspension of ANDA approval of any drug whose approval rests on the approval of the withdrawn drug (proposed § 314.153(a)(2)). As discussed in section N.4. above, the agency does not believe that the imminent hazard provisions of section 505(e) of the act apply to suspensions under section 505(j) of the act.

O. Determination That a Listed Drug Was Withdrawn for Safety or Effectiveness Reasons

The 1984 Amendments do not specify procedures to be followed in determining whether a drug that is voluntarily withdrawn from sale by its manufacturer is withdrawn for safety or effectiveness reasons. The statute does not require that the agency make this determination for every drug that is voluntarily withdrawn from sale, nor does it specify at what point after a voluntary withdrawal such a determination can or must be made. Many drugs are withdrawn from the market every year, and it would be a needless expenditure of resources for the agency to determine the reason for each such withdrawal. The agency is therefore interpreting section 505(j)(5) of the act to permit it to determine whether a drug is withdrawn for safety or effectiveness reasons at any time after it has ceased to be marketed.

The agency anticipates that a determination of the reasons for withdrawal of a listed drug will generally be made either when there are existing approved ANDA's that depend upon the approval of the listed drug, see § 314.153(b), when an ANDA applicant seeks to refer to a listed drug that has been voluntarily withdrawn from sale, see proposed § 314.122, or when an interested person petitions for a determination under §§ 10.25 and 10.30. The agency may, however, also make the determination at any other time on its own initiative. (See proposed § 314.161.)

The agency may determine whether a listed drug was withdrawn from sale for safety or effectiveness reasons, as required by section 505(j)(5) of the act, by attempting to focus on the intent of its manufacturer. Often, however, there will be more than one reason for the withdrawal of a drug from market by the manufacturer. Withdrawals are often accompanied by statements from the drug's manufacturer that the firm continues to have confidence in the safety and effectiveness of the product but is acting for business purposes. Drug manufacturers have also sometimes stated that the product was withdrawn from the market due to unwarranted product liability.

Because Congress did not provide the agency with subpoena power to call as witnesses the persons who made the decision to withdraw a product from sale, Congress cannot have expected the agency to discern the actual intent of the decisionmakers by direct evidence. The legislative history of this provision does make clear, however, Congress' intent that the agency examine whether the manufacturer had safety or effectiveness concerns about the withdrawn drug independent of the reasons given by the manufacturer for the withdrawal. (H. Rept. 857, Part I, at 30.) Congress, therefore, must have expected the agency to rely upon circumstantial evidence and logical inference to determine the actual intent of those who decided to withdraw the product from the market. The agency's inquiry, therefore, will focus on whether there were sufficient concerns about safety and effectiveness to make a withdrawal from sale likely and reasonable.

A determination on this issue by the agency will be based in part on the assumption that a pharmaceutical manufacturer would not cease distribution of a profitable drug if safety or effectiveness concerns had not arisen. If the withdrawn drug accounted for significant sales of the company withdrawing it, in the absence of convincing evidence to the contrary, that would be persuasive evidence that safety or effectiveness concerns prompted the manufacturer to withdraw the drug from sale. As a means of implementing the statute, the agency may establish the following rebuttable presumption. If a drug manufacturer withdraws a drug from the market which accounted for significant sales to that manufacturer, and there is no evidence to the contrary, it will be presumed that the withdrawal was for safety or effectiveness reasons. FDA seeks comments on a sales figure or other methodology that would be appropriate to establish this presumption.

The agency will also consider other factors in determining whether a market withdrawal was for safety and effectiveness reasons, such as increases in the number of adverse drug reactions reported on the drug and published or unpublished studies of the drug questioning its safety or effectiveness.

If the agency makes a final decision, pursuant to § 314.153(b) or § 314.161, determining that a listed drug is withdrawn for safety or effectiveness reasons, the agency will publish a notice of the determination in the **Federal Register** (proposed § 314.161). The notice will also serve to remove the drug from the list (proposed § 314.162).

At any time after a drug is removed from the list under proposed § 314.162(a)(2), the drug may be relisted if the agency determines that the drug was not withdrawn for safety or effectiveness reasons. The agency may make this determination on its own initiative or in response to a petition submitted under §§ 10.25(a) and 10.30. If the agency decides on the basis of evidence before it that the drug was not withdrawn for safety or effectiveness reasons, it will publish a notice in the **Federal Register** announcing its determination. (See proposed § 314.161(e).) The notice will announce that the drug is relisted and serve to reinstate approval of ANDA's that were suspended when the agency published its final decision removing the listed drug from the list.

1. *Submitting an application or a suitability petition that refer to a listed drug that is no longer marketed.* Because there are many instances each year in which a drug company decides not to continue selling a drug, FDA normally will not determine whether the drug was withdrawn for safety or effectiveness reasons simply because it learns that the product was voluntarily withdrawn from sale. To assure that generic versions of unsafe or ineffective drugs do not remain on the market, the agency will, however, promptly determine the reasons for the withdrawal of a listed drug if the agency has approved ANDA's that referred to the listed drug. The agency will require persons who wish to submit ANDA's for those listed drugs that have been withdrawn from sale and for which no ANDA's have been approved or who wish to submit suitability petitions that rely on those listed drugs to show that the withdrawals from sale were not for safety or effectiveness reasons. For purposes of sections 505(j)(5) and 505(j)(6)(C) of the act, a drug shall be considered to have been "withdrawn from sale" if the applicant has ceased its own distribution of the drug, whether or not it has ordered recall of previously distributed lots of the drug. A routine, temporary interruption in the supply of a drug product would not be considered a withdrawal from sale, however, unless triggered by safety or effectiveness concerns.

Persons who wish to submit an ANDA or a suitability petition that relies on a listed drug that has been voluntarily withdrawn from the market must petition the agency with supporting documentation that the withdrawal from sale was not for safety or effectiveness reasons (proposed § 314.122). If the agency receives an ANDA or a suitability petition for such a drug unaccompanied by a petition with supporting documentation, it will refuse to approve the ANDA or suitability

petition until it can determine that the listed drug is not withdrawn for safety or effectiveness reasons (proposed §§ 314.93(e)(v) and 314.127(k)).

2. *Informing FDA of withdrawals.* The agency proposes to require holders of approved applications to notify FDA in writing when commercial distribution of a drug has been discontinued. Section 510(j)(2)(B) of the act requires the reporting of this information to FDA semi-annually as part of updating drug listing information. However, section 505(j)(6)(C) of the act requires FDA to remove a drug from the list immediately if the drug has been withdrawn from sale for safety or effectiveness reasons. Under current regulations, a manufacturer that has voluntarily withdrawn a drug from sale may, at its discretion, report the information when the discontinuance occurs (§ 207.30).

To permit FDA to satisfy its obligations under 505(j)(6)(C) of the act and to assure that ANDA's will not be approved for generic copies of listed drugs that have been voluntarily withdrawn from sale for safety or effectiveness reasons, the agency is proposing to revise § 314.81 to require the applicant to tell the agency as soon as commercial distribution of a listed drug ceases, other than for temporary interruptions in the supply of the drug. The proposed revision would require an applicant to submit to FDA on Form FDA-2657 (Drug Product Listing) a report whenever the applicant discontinues commercial marketing of an approved drug, other than for routine, temporary interruptions in the supply of the drug not caused by safety or effectiveness concerns. The report would have to be submitted within 15 working days of the discontinuance and include the following information: (1) the National Drug Code (NDC) number; (2) the identity of the drug product by established name and any proprietary name; (3) the new drug application (NDA) or abbreviated new drug application (ANDA) number; and (4) the date of discontinuance. The applicant may state the reason for its decision to withdraw the drug from sale. The proposed regulation would require the report to be submitted to the Drug Listing Branch (HFD-315), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

P. Removing Drugs from the List

Section 505(j)(6)(C) of the act requires that FDA remove from the list any drug that was withdrawn or suspended for grounds described in the first sentence of section 505(e) or in section 505(j)(5) of the act, or that the agency determines was voluntarily withdrawn for safety or effectiveness reasons. The statute requires that removal occur immediately after the agency orders suspension or withdrawal or upon the agency's determination that the drug was voluntarily withdrawn for safety or effectiveness reasons. The only procedural requirement imposed by the statute is that the agency publish a notice in the **Federal Register** announcing the removal.

The agency is proposing to combine the procedures for removal of drugs from the list with the procedures already in place for the withdrawal and suspension of listed drugs, and for a determination of the reasons for a voluntary withdrawal. The publication in the **Federal Register** of the agency's final decision withdrawing or suspending a listed drug, or of the agency's decision determining that the drug was voluntarily withdrawn for safety or effectiveness reasons will also announce the removal of the drug from the list (proposed §§ 314.152, 314.153(b)(5), and 314.161).

Q. Patent Information in Full New Drug Applications and Supplements

1. *Introduction.* Sections 505(b)(1) and 505(c)(2) of the act require that an NDA applicant "file with its application the patent number and the expiration date of any patent which claims the drug for which the applicant submitted the application or which claims a method of using such drug and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug." This provision requires that an applicant submit information about any patent that meets the statutory description whether or not the applicant owns or is licensed under such a patent. Required patent information must be submitted with all original applications submitted under section 505(b) of the act, including applications described in section 505(b)(2) of the act and with certain supplemental applications. Upon approval of the application, the statute requires that FDA publish patent information submitted under section 505(b) of the act. Patent information on unapproved products or on patents beyond the scope of the act (i.e., process patents) will not be published. Proposed new § 314.53 would contain the regulations implementing the statutory provision requiring the submission of patent information. FDA also proposes to revise § 314.50 by designating paragraph (h) as paragraph (k) and adding a new paragraph (h) that would refer to the requirements of proposed new § 314.53.

2. *Patents for which information must be submitted.* The patents that FDA regards as covered by this statutory provision are those that claim the drug (active ingredient or ingredients) or drug product, and use patents for a particular indication or method of using the product. The agency has concluded that formulation and composition patents are drug product patents within the meaning of this statutory provision about which information must be submitted to and published by FDA. Process patents (patents that claim a method of manufacturing) are not covered by the statute and information on these patents are not to be submitted and will not be published by FDA.

The agency will not accept patent information that pre-dates an official notice by the United States Patent and Trademark Office that a patent has been granted. Thus, an applicant should not anticipate the granting of a patent. The applicant may informally notify the agency of an impending patent, but no official action will be taken in response to such notice.

3. *Reporting requirements.* The agency proposes in § 314.53(c) that each required submission of patent information contain the patent number, the date on which the patent will expire, a statement as to whether the patent is a drug patent, drug product patent, or use patent, and the name of the patent owner. Identifying the type of patent will assist the agency in assuring that those types of patents that require a certification by a generic applicant have such certification and that use patents are clearly identified for publishing in the list. Under this proposal, if the patent owner or applicant does not reside or have a place of business in the United States, the application would be required to include the name of an agent (representative) of the patent owner or applicant who resides or maintains a place of business within the United States authorized to receive notice of patent certification under sections 505(b)(3) and 505(j)(2)(B) of the act.

As noted above, information will be published in the list only on patents that claim approved drug products or that claim approved indications or other conditions of use. Therefore, to assist the agency in ensuring that only appropriate patents are published for patents that claim a drug, drug product, or method of use an applicant would submit information only on those patents that claim an approved drug product or approved method of using such drug product, or drug product or a

method of using such drug or drug product for which the applicant has submitted an application to obtain FDA approval. The patent information for each formulation or composition (drug product) patent would be required to include the following certification:

> The undersigned certifies that the drug and the formulation or composition of (*name of drug product*) is claimed by Patent No. _____. This product is (*currently approved under section 505 of the Federal Food, Drug, and Cosmetic Act*) [*or*] (*the subject of this application for which approval is being sought*).

Under the proposal, an applicant would, before approval of the application, submit a certification for each formulation or composition patent that claimed the drug product for which the applicant was seeking approval. Because formulations are often changed during the approval process, within 30 days after the date of approval of the application, if the original application submission included a certification about a formulation or composition patent, the applicant would be required to submit an amended certification identifying the patents that claim the approved formulation or composition of the drug product. If an approved formulation is changed by an applicant through the submission and approval of a supplemental application and an existing formulation patent no longer claims the new approved formulation, the new drug application holder must notify FDA so that the patent can be removed from the list. Similarly, FDA should be notified if a patent holder no longer intends to enforce a patent, for example, because the patent is no longer valid. This will assist the agency in maintaining accurate patent information in its list and generic applicants in complying with the patent certification requirements under sections 505(b)(2) and 505(j) of the act.

With respect to a use patent, the agency proposes to require an applicant to submit a certification that identifies each patent that claims indications or conditions of use that are approved or are the subject of the application for which the applicant is seeking approval. Because all indications or conditions of use for which an applicant sought approval may not be approved, within 30 days after the date of approval of the application, if the original application submission included a certification about a method of use patent, the applicant would be required to submit an amended certification identifying the approved indications or conditions of use and the patents that claim those uses. The purpose of this requirement is to provide some guidance to applicants required to submit either a patent certification under section 505(b)(2)(A) or 505(j)(2)(A)(vii) or a statement under section 505(b)(2)(B) or 505(j)(2)(A)(viii) of the act (proposed § 314.94(a)(12)). When a generic applicant concludes that a use patent does not claim the use for which the applicant seeks approval, the applicant is required only to submit a statement under section 505(b)(2)(B) or 505(j)(2)(A)(viii) so stating to FDA. The applicant is not required to notify the patent owner of the applicant's intent to market a copy of the patented drug. If the patent owner does not specify which approved indications or conditions of use are covered by its patent, the generic applicant may interpret the scope of the patent more narrowly than would the patent owner, thereby avoiding the certification and notification provisions of the statute.

FDA's experience implementing the patent certification provisions suggests that where the patent owner and generic applicant disagree as to the applicability of a use patent, the patent owner may seek to have FDA intervene, by alleging that the generic applicant has not complied with the patent certification and notification provisions of the act. Because FDA has no expertise in the field of patents, the agency has no basis for determining whether a use patent covers the use sought by the generic applicant. Nor does FDA believe that Congress intended the patent provisions of Title I of the 1984 Amendments to require the agency to make such determinations. On the contrary, the 1984 Amendments are plainly structured to allow any patent disputes to be litigated in federal court. To ensure that FDA is not required to determine the scope of a use patent, the agency can either require the applicant to make a certification as to the covered approved indications and require generic applicants to file patent certifications as to those indications, or the agency can allow the generic applicant complete discretion to interpret the scope of any relevant use patent. The agency believes that the first approach more fairly implements Congress' intent that patent owners receive preapproval notice of potentially infringing products.

FDA therefore proposes that after approval of an application submitted under section 505 of the act that contained a certification that a method of use patent covered an indication for which the applicant sought approval, the applicant would be required to amend its certification to identify the specific indications or conditions of use that have been approved and the patents that claim those uses. If the applicant is not the patent owner, the applicant should obtain this amended certification from the patent owner, because the applicant has the responsibility for providing FDA with the required patent information. Upon approval of an application, the agency will publish in the list all use patents that claim an approved indication and for each patent identify the approved indications or conditions of use covered by the patent.

The proposal also would require that if an applicant believes that there are no patents that claim the drug or drug product, nor that claim an approved method of using the drug product and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner of the patent engaged in the manufacture, use, or sale of the drug product, the applicant would include in its application a certification stating this belief.

Finally, under proposed § 314.53, a certification required under the section must be signed by the applicant or patent owner, or the applicant's or patent owner's attorney, agent (representative), or other authorized official.

4. *When and where to submit patent information.* If a patent is issued on a drug or drug product or on a method of using a drug product before an application is filed with FDA, information on the patent must be submitted with the application. If a patent is issued after an application is filed with FDA but before the application is approved, the applicant must submit the required patent information in an amendment to the application under § 314.60. If a patent is issued after the application has been approved, the applicant must submit the required patent information by letter within 30 days of the date of issuance of the patent.

The act and proposed regulations contemplate amendment of an application when a patent is issued after submission, and before approval, of a full application. If a patent has not been submitted to FDA by the time FDA determines that an abbreviated new drug application or a 505(b)(2) application can be approved, and the generic applicant certifies that it is unaware of any relevant patents, the agency will not delay approval of the application. If the holder of a new drug application submits patent information after the application for the generic drug has already been approved, FDA will not attempt to rescind or withdraw approval.

Holders of or applicants for ANDA's or 505(b)(2) applications who are

licensed under a patent are encouraged to submit information concerning the patent license so that information on the patent can be listed with their products as well as with the patent owner's product, thus assuring that the patent protection features of the act are preserved for that patent. Licensees are also required to submit information concerning a patent licensing agreement if they wish to avoid a delayed effective date. (See proposed § 314.107(b)(1).)

In general, supplements are subject to the same patent submission requirements as original applications. Many supplements, however, are for changes that could not be patented. Rather than require patent submissions for every supplement, the agency proposes to require that patent information be submitted only for the following types of changes for which applicants must submit supplements: (1) changes in formulation; (2) new indications or other conditions of use, including a change in route of administration; (3) changes in strength; or (4) any other patented changes. FDA recognizes that there are formulation changes that are unpatentable and could be specifically excluded from the requirement of submitting patent information. However, FDA does not have the expertise to identify such unpatentable formulation changes. FDA solicits comments on this policy of requiring patent information only for certain supplements, and on the types of supplements for which patent information should be required.

Under the proposal, if new patents or existing patents cover the changes for which approval is sought in a supplement, the applicant would be required to submit the required patent information with the supplement. If existing patents for which information has already been submitted claim the change, the applicant would be required to submit a certification with the supplement identifying the patents that claim the change. If the applicant submits a supplement for one of the changes listed above and no patents, including previously submitted patents, claim the change, the applicant would be required to so certify. The patent information and certifications would be required to be submitted by letter separate from, but at the same time as, the supplement.

The agency proposes to require an applicant to submit two copies of each submission of patent information; an archival copy and a copy for the chemistry, manufacturing and controls section of the review copy of an application or supplement. The regulations would require the applicant to submit patent information to the Central Document Room, Center for Drug Evaluation and Research, Food and Drug Administration, Park Bldg., Rm. 214, 12420 Parklawn Dr., Rockville, MD 20857. Each submission of patent information, except information submitted with an original application, and its mailing cover would be required to bear prominent identification as to its contents, i.e., "Patent Information" or, if submitted after approval of the application, "Time Sensitive Patent Information."

5. *Untimely submission.* PMA suggested regulatory language designed to allow a pioneer holder to update, at any time, its patent information. FDA does not believe that specific regulatory language is necessary. If patent information on a patent issued after approval of an application is not timely submitted, i.e., is submitted more than 30 days after issuance of the patent, the agency could refuse to publish in the list the untimely information, or could withdraw approval of the new drug application if its applicant failed to respond within 30 days to a notice from the agency (21 U.S.C. 355(e)(4)). FDA has concluded, however, that while Congress clearly intended to enforce timely submission, a less severe penalty for late submission would effectuate Congress' intent without eliminating all statutory patent protection or withdrawing approval of the new drug application itself. Therefore, if a new drug application applicant submits required patent information on an approved drug product more than 30 days after issuance of the patent, FDA will publish the untimely information but will not require ANDA and 505(b)(2) applicants with pending applications who have previously submitted a certification, i.e., those applicants who would be prejudiced by the late submission, to recertify as to the new patent. Only applicants who initially submit ANDA's or 505(b)(2) applications after the submission of the patent information or whose pending applications do not contain a valid certification at the time of the submission would be required to submit a certification as to that patent. (See proposed §§ 314.50(i)(4) and 314.94(a)(12)(vi).)

The date that the patent information is received by the Central Document Room will generally be considered the date the information was submitted. Determining the date on which patent information is submitted is important because ANDA and 505(b)(2) applicants are required to notify a patent owner of the submission of an application for a potentially infringing drug product only if information on the patent has been submitted to FDA before approval of the ANDA or 505(b)(2) application. If questions arise as to whether patent information has been submitted, FDA will review the archival records in the Central Document Room. If there is no evidence then that patent information has been submitted, no patent information will be considered to have been submitted.

6. *Submission errors.* In deciding whether a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug, the agency will defer to the information submitted by the NDA applicant. If any interested person disputes the accuracy or relevance of patent information submitted by an NDA applicant and published by FDA in the list, or believes that an applicant has failed to submit required patent information, that person should first notify the agency informally, stating the grounds for the disagreement by writing to the Director, Office of Drug Standard (HFD–200), 5600 Fishers Lane, Rockville, MD 20857. The agency will contact the new drug application holder requesting that the correctness of the submission or omission be confirmed. Unless the new drug application holder withdraws or changes the patent submission, the agency will not change the patent information in the list. If there is no change to the patent information in the list, a section 505(b)(2) or 505(j)-application submitted for the drug must, despite any disagreement, contain a certification for each listed patent and any patent challenge must then be pursued through private legal action under the patent laws.

The agency proposes to revise § 314.125 to add an additional reason for refusing to approve a new drug application. Under section 505(d)(6) of the act, the agency is obligated to refuse to approve an application if the application failed to contain the required patent information.

The agency proposes to revise § 314.150 to add an additional ground for the withdrawal of approval of a new drug application. As noted above, the statute provides that the agency is obligated to withdraw approval of an application if the application fails to contain the required patent information within 30 days after receipt of a written notice from FDA specifying the failure to provide such information. Although ordinarily the agency intends to invoke a less severe penalty for late submissions (see discussion under section 0.5., FDA has the authority to withdraw approval of an application if an applicant has been notified of its failure to provide required patent information and the applicant does not respond within 30 days.

R. Public Disclosure of Safety and Effectiveness Data

Section 505(l) of the act specifies when safety and effectiveness data submitted as part of a new drug application are publicly disclosable. Those provisions were implemented by the agency's final rule published in the **Federal Register** of February 22, 1985 (50 FR 7452) that revised 21 CFR Part 314 governing the approval for marketing of new drugs and antibiotic drugs for human use. No changes to those provisions are being made by this proposed rule.

VI. Conforming Amendments

21 CFR 310.305 requires adverse drug experience reporting for marketed prescription drugs not the subject of approved new drug or abbreviated new drug applications. Those rules were patterned after the adverse drug experience reporting provisions under 21 CFR 314.80. To ensure consistency between these two sets of rules, the agency is proposing to revise § 310.305 to adopt changes identical to those proposed in this document for § 314.80 concerning the definition of the term "adverse drug experience" and reports on increased frequency of therapeutic failure (lack of affect).

The provisions of the 1984 Amendments with respect to bioequivalence, FDA's followup to the Bioequivalence Hearing held September 29 through October 1, 1986, and current agency policy necessitate changes in the regulations in 21 CFR Part 320.

In 21 CFR Part 320, FDA proposes to revise the table of contents to reflect the changes described below.

In § 320.1, FDA proposes to (1) revise the definition of "bioavailability" to add a reference to drugs that are not intended to be absorbed, (2) restate the definition of "bioequivalence," and (3) remove the definition of "bioequivalence requirement."

In § 320.21, FDA proposes to restate the requirements for submission of bioavailability and bioequivalence data.

In § 320.22, FDA proposes to revise paragraph (b)(1) to restate the waiver provision and to remove the automatic waiver of evidence of in vivo bioavailability for topically applied preparations (§ 320.22(b)(2)) and oral dosage forms not intended to be absorbed (§ 320.22(b)(3)) because the agency believes the in vivo bioavailability of such products should not be considered self-evident in every case. Variations in the manufacturing process (including a change in product formulation) used by each individual manufacturer may result in differences in the bioavailability of these drug products. Therefore, the agency intends to review each product on a case-by-case basis to determine if an in vivo bioavailability study is necessary.

It should be emphasized, however, that although the automatic waiver provisions under § 320.22 would no longer apply to topical drug products and oral dosage forms not intended to be absorbed, the agency may, in appropriate cases, waive the in vivo requirement.

In § 320.22(b)(4)(i) (proposed § 320.22(b)(2)), FDA proposes to delete the words "or vapor." These words have been inaccurately interpreted by applicants to apply to aerosol drug products.

In § 320.22(b)(5)(ii) (proposed § 320.22(b)(3)), FDA proposes to require that the active drug ingredient be in the same concentration and dosage form. This change conforms to current agency policy.

Current § 320.22(c)(1) states that FDA shall waive the requirement of in vivo bioavailability testing for a solid oral dosage form (other than an enteric-coated or controlled release dosage form) of a drug product determined to be effective for at least one indication in a DESI notice, if the drug is not on the list of so-called "bioproblem drugs" codified in § 320.22(c)(1). The waiver embodied in this provision resulted from the DESI review. During the review, because of the need to evaluate large numbers of products in a short time and in light of FDA's long experience with these drugs, FDA developed criteria for determining whether products approved before 1962 could be found bioequivalent on the basis of in vitro rather than in vivo data. (These criteria are codified in current § 320.52, proposed § 320.32.) If, after applying the criteria, FDA determined that a drug presented an actual or potential bioequivalence problem, it was placed on the list of bioproblem drugs, and in vivo data were required for approval. Those drugs that did not present such a problem could satisfy the bioavailability/bioequivalence requirements by meeting an appropriate in vitro standard.

There is no evidence that the policy of waiver of in vivo bioavailability for those DESI oral dosage forms that do not present an actual or potential bioequivalence problem has resulted in the approval of products that are not bioequivalent. FDA has therefore concluded that there is no reason to change the policy at this time. Proposed § 320.22(d) will thus continue to provide for a waiver of in vivo studies for DESI oral dosage forms that do not present an actual or potential bioequivalence problem. The list of bioproblem drugs currently codified in the regulation, however, is no longer necessary. The 1984 Amendments provide that FDA shall publish in the list of approved drugs a statement of whether, for each drug, in vitro or in vivo studies are required to show bioequivalence. (See section 505(j)(6)(III) of the act.) FDA satisfies this requirement through the use of therapeutic equivalence codes in the list. Thus, for each DESI product (as well as for each post-1962 product), the list provides notice of FDA's determination whether the drug presents an actual or potential bioequivalence problem, requiring an in vivo study. Consequently, FDA's implementation of the requirement in section 505(j)(6)(III) of the act makes the codified list of bioproblem drugs in § 320.22(c)(2) superfluous.

In addition, the list of bioproblem drugs, which has not been amended since 1981, does not include all pre-1962 products that FDA currently believes present an actual or potential bioequivalence problem. For example, a complete list of bioproblem drugs would also include products that are "identical, related, or similar" to those products on the list (See current § 320.22(c)(1)). In addition, since 1981, the agency has publicly identified, e.g., through **Federal Register** notices, additional drug products covered by the DESI review that the agency has determined present actual or potential bioequivalence problems, and that therefore require in vivo studies.

FDA is therefore proposing to remove the list of bioproblem drugs from existing § 320.22(c)(1), and to provide notice of in vitro or in vivo study requirements for particular DESI drugs through the list. As proposed, § 320.22(d) (formerly § 320.22(c)(1)) will continue to require FDA to waive in vivo studies for those DESI oral dosage forms that FDA determines do not present an actual or potential bioequivalence problem, but those determinations will appear in the list rather than in the regulation. If FDA determines that a DESI product previously considered a nonbioproblem drug should be reclassified as a bioproblem drug, FDA will provide notice of its tentative conclusion in a monthly supplement to the list and solicit comment. After considering any comments received, FDA will make a final determination, which will be

reflected in a subsequent monthly supplement.

In § 320.22, FDA proposes to remove paragraphs (c)(3) and (d)(1) because they are no longer relevant. FDA no longer intends to establish separate bioequivalence requirements for bioproblem drug products.

In proposed § 320.22(e) (formerly § 320.22(d)), FDA proposes to revise paragraph (4) to clarify that the differences in color, flavor, or preservative could not affect the bioavailability of the reformulated product.

In proposed § 320.22(e) (formerly § 320.22(d)), FDA proposes to remove paragraph (d)(5). The agency has no evidence to show that in vitro data alone are regularly sufficient to assure bioequivalence. In vitro testing can be used for drugs where there is a known in vivo/in vitro correlation, and has been used for pre-1962 drugs not suspected of having, or not likely to have, a bioavailability problem. For all other drug products, an in vivo bioequivalence study on the product is required to support at least one strength of the product. Notice of FDA's determination whether in vivo or in vitro studies are required to show bioequivalence is published in the list.

In proposed § 320.22(f), FDA proposes to modify the provision to clarify that deferral of a requirement for the submission of evidence of in vivo bioavailability is applicable only to full new drug applications. Under the 1984 Amendments, there is no authority to defer a showing of bioequivalence for abbreviated new drug applications.

In § 320.22, FDA proposes to add new paragraph (g) to state that FDA, for good cause, may require evidence of in vivo bioavailability for any drug product if the agency determines that any difference between a proposed drug product and a listed drug may affect the bioavailabilty of the proposed drug product. For example, the generic applicant may use a manufacturing process (including a formulation change) different from that used by the manufacturer of the listed drug, a difference that may affect the proposed product's bioavailability.

In § 320.23, FDA proposes to revise the provision to refer to the statutory standard for bioequivalence.

In § 320.24, FDA proposes to state the methods that may be used to meet an in vivo or in vitro testing requirement.

In § 320.30, FDA proposes to revise the provisions to apply both to inquiries about bioavailability and bioequivalence requirements.

In § 320.31, FDA proposes to clarify when an "Investigational New Drug Application" is required for an in vivo bioavailability or bioequivalence study.

Because the 1984 Amendments impose a bioequivalence requirement on all drug products that are the subject of ANDA's, FDA no longer intends to establish separate bioequivalence requirements for bioproblem drug products. Therefore, FDA proposes to amend its regulations in 21 CFR Part 320 under Subpart C by removing the subpart heading and those regulations that apply to establishing a bioequivalence requirement, and to revise the remaining regulations to delete any reference to establishing a bioequivalence requirement. The agency proposes to retain, move to Subpart B, and redesignate § 320.52 (proposed § 320.32) *Criteria and evidence to assess actual or potential bioequivalence problems*, § 320.55 (proposed § 320.33) *Requirements for batch testing and certification by the Food and Drug Administration*, § 320.56 (proposed § 320.34) *Requirements for in vitro testing of each batch*, and § 320.62 (proposed § 320.35) *Requirements for maintenance of records of bioequivalence testing*. In addition, elsewhere in this issue of the **Federal Register**, FDA is withdrawing 11 proposed rules that would have established bioequivalence requirements for certain drug products listed under existing § 320.22(c).

VII. Economic Assessment

The agency has considered the economic impact of this rule, and the relationship of the requirements in this rule with Pub. L. 98–417. The provisions in Title I of Pub. L. 98–417 that eliminated unnecessary regulatory barriers for duplicate products have demonstrated a capacity to achieve their intended economic consequences. Generic competition has already commenced on many important post-1962 drugs. Recent public reports of generic drug sales estimate their market share at nearly 25 percent of total prescription drug sales. At least half of these generic sales may be post-1962 drugs that would not have benefited from the price savings of multisource competition without enactment of Pub. L. 98–417. Thus, this increased competition is already saving consumers hundreds of millions of dollars per year. The agency concludes that these impacts are directly attributable to the statute. This rule will not affect the pace or magnitude of these already evident economic impacts. The procedures and interpretations provided by the rule will clarify and facilitate implementation of Title I, but the rule by itself does not create a significant economic impact.

Thus, the agency concludes that this rule is not a "major rule" as defined by Executive Order 12291 and does not require a regulatory impact analysis. Similarly, the agency certifies that this rule will not have a significant economic impact on a substantial number of small entities, and therefore, does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354).

VIII. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this proposed action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Paperwork Reduction Act of 1980

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Abbreviated New Drug Application Regulations.

Description: The information requirements contained in the proposed rule would collect information from persons who must obtain FDA approval prior to marketing generic copies of previously approved drugs. These persons must submit information in the form of applications, notices, and certifications. FDA will use the information submitted to determine whether the proposed generic drug is eligible for consideration, under what provisions an application would be considered, and whether the proposed drug is identical to the pioneer drug it purports to copy.

Description of Respondents: Businesses.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
314.50(g)	1	1	1 hour	1
314.50(i)	8	1	2 hours	16
314.50(j)	50	1	2 hours	100
314.52	30	1	8 hours	240
314.53	200	1	1 hour	200
314.54	10	1	80 hours	800
314.80, 310.305	40	1	8 hours	320
314.81	700	1	10 minutes	119
314.93	82	1	10 hours	820
314.94	850	1	160 hours	136,000
314.95	30	1	16 hours	480
314.107	10	1	8 hours	80
314.110	10	1	40 hours	400
314.122, 314.161	1	1	10 hours	10
Total				139,586

The agency has submitted a copy of this proposed rule to OMB for its review of these information collections. Interested persons are requested to send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to, FDA's Dockets Management Branch (address above), and to the Office of Information and Regulatory Affairs, OMB, Rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Desk Officer for FDA.

X. Request for Comments

Interested persons may, on or before October 10, 1989, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 10

Administrative practice and procedure, News media.

21 CFR Part 310

Administrative practice and procedure, Drugs, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 314

Administrative practice and procedure, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 320

Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner, it is proposed that Parts 10, 310, 314, and 320 be amended as follows:

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

1. The authority citation for 21 CFR Part 10 is revised to read as follows:

Authority: Sec. 201 *et seq.*, Pub. L. 717, 52 Stat. 1040 as amended (21 U.S.C. 321 *et seq.*); sec. 1 *et seq.*, Pub. L. 410, 58 Stat. 682 as amended (42 U.S.C. 201 *et seq.*); sec. 4, Pub. L. 91–513, 84 Stat. 1241 (42 U.S.C. 257a); sec. 301 *et seq.*, Pub. L. 91–513, 84 Stat. 1253 (21 U.S.C. 821 *et seq.*); sec. 409(b), Pub. L. 242, 81 Stat. 600 (21 U.S.C. 679(b)); sec. 24(b), Pub. L. 85–172, 82 Stat. 807 (21 U.S.C. 467f(b)); sec. 2 *et seq.*, Pub. L. 91–597, 84 Stat. 1620 (21 U.S.C. 1031 *et seq.*); secs. 1–9, Pub. L. 625, 44 Stat. 1101–1103 as amended (21 U.S.C. 141–149); secs. 1–10, Ch. 358, 29 Stat. 604–607 as amended (21 U.S.C. 41–50); sec. 2 *et seq.*, Pub. L. 783, 44 Stat. 1406 as amended (15 U.S.C. 401 *et seq.*); sec. 1 *et seq.*, Pub. L. 89–755, 80 Stat. 1296 as amended (15 U.S.C. 1451 *et seq.*); sec. 101, Pub. L. 98–417, 98 Stat. 1585 (21 U.S.C. 355).

2. Section 10.30 is amended by revising the introductory text of paragraph (e)(2) and by adding a new paragraph (e)(4) to read as follows:

§ 10.30 Citizen petition.

* * * * *

(e) * * *

(2) Except as provided in paragraph (e)(4) of this section, the Commissioner shall furnish a response to each petitioner within 180 days of receipt of the petition. The response will either:

* * * * *

(4) The Commissioner shall furnish a response to each petitioner within 90 days of receipt of a petition filed under section 505(j)(2)(C) of the act. The response will either approve or disapprove the petition. Agency action on a petition shall be governed by § 314.93 of this chapter.

* * * * *

3. Section 10.45 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 10.45 Court review of final administrative action; exhaustion of administrative remedies.

* * * * *

(d) The Commissioner's final decision constitutes final agency action (reviewable in the courts under 5 U.S.C. 701 et seq. and, where appropriate, 28 U.S.C. 2201) on a petition submitted under § 10.25(a), on a petition for reconsideration submitted under § 10.33, on a petition for stay of action submitted under § 10.35, on an advisory opinion issued under § 10.85, on a guideline issued under § 10.90, on a matter involving administrative action which is the subject of an opportunity for a hearing under § 16.1(b) of this chapter, or on the issuance of a final regulation published in accordance with § 10.40, except that the agency's response to a petition filed under section 505(j)(2)(C) of the act and § 314.93 of this chapter will not constitute final agency action until any petition for reconsideration submitted by the petitioner is acted on by the Commissioner.

* * * * *

PART 310—NEW DRUGS

4. The authority citation for 21 CFR Part 310 continues to read as follows:

Authority: Secs. 501, 502, 503, 505, 701, 704, 705, 52 Stat. 1049–1053 as amended, 52 Stat.

1055–1056 as amended, 67 Stat. 477 as amended, 52 Stat. 1057–1058 (21 U.S.C. 351, 352, 353, 355, 371, 374, 375); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

5. Section 310.305 is amended by revising paragraph (a), by removing the word "significant" in paragraph (b)(2), by revising the first sentence in paragraph (c)(4) and by removing the words "(Drug Experience Report)" and replacing them with "(Adverse Reaction Report)" in paragraph (d)(1), to read as follows:

§ 310.305 Records and reports concerning adverse drug experiences on marketed prescription drugs for human use without approved new drug applications.

(a) *Scope.* FDA is requiring manufacturers, packers, and distributors of marketed prescription drug products that are not the subject of an approved new drug or abbreviated new drug application to establish and maintain records and make reports to FDA of:

(1) All serious, unexpected adverse drug experiences associated with the use of their drug products,

(2) Any significant increase in the frequency of a serious, expected adverse drug experience, and

(3) Any significant increase in the frequency of therapeutic failure (lack of effect).

These reports will enable FDA to protect the public health by helping to monitor the safety of marketed drug products and to assure that these drug products are not adulterated or misbranded.

* * * * *

(c) * * *

(4) Each person identified in paragraph (c)(1) of this section shall review periodically (at least once each year) the frequency of reports of adverse drug experiences that are both serious and expected and reports of therapeutic failure (lack of effect), received or otherwise obtained, and report any significant increase in frequency as soon as possible but in any case within 15 working days of determining that a significant increase in frequency exists.

* * * * *

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

6. Part 314 is amended by redesignating existing Subparts C, D, E, and F as Subparts D, E, F, and G, respectively, by adding new Subpart C, consisting of §§ 314.92 through 314.99, and by revising the table of contents and the authority citation to read as follows:

Subpart A—General Provisions

Sec.
314.1 Scope of this part.
314.2 Purpose.
314.3 Definitions.

Subpart B—Applications

314.50 Content and format of an application.
314.52 Notice of certification of invalidity or noninfringement of a patent.
314.53 Submission of patent information.
314.54 Procedure for submission of an application requiring investigations for approval of a new indication for, or other change from, a listed drug.
314.60 Amendments to an unapproved application.
314.65 Withdrawal by the applicant of an unapproved application.
314.70 Supplements and other changes to an approved application.
314.71 Procedures for submission of a supplement to an approved application.
314.72 Change in ownership of an application.
314.80 Postmarketing reporting of adverse drug experiences.
314.81 Other postmarketing reports.
314.90 Waivers.

Subpart C—Abbreviated Applications

314.92 Drug products for which abbreviated applications may be submitted.
314.93 Petition to request a change from a listed drug.
314.94 Content and format of an abbreviated application.
314.95 Notice of certification of invalidity or noninfringement of a patent.
314.96 Amendments to an unapproved abbreviated application.
314.97 Supplements and other changes to an approved abbreviated application.
314.98 Postmarketing reports.
314.99 Other responsibilities of an applicant of an abbreviated application.

Subpart D—FDA Action on Applications and Abbreviated Applications

314.100 Time frames for reviewing applications and abbreviated applications.
314.101 Filing an application and an abbreviated antibiotic application and receiving an abbreviated new drug application.
314.102 Communications between FDA and applicants.
314.103 Dispute resolution.
314.104 Drugs with potential for abuse.
314.105 Approval of an application and an abbreviated application.
314.106 Foreign data.
314.107 Effective date of approval of a 505(b)(2) application or abbreviated new drug application under section 505(j) of the act.
314.108 New drug product exclusivity.
314.110 Approvable letter to the applicant.
314.120 Not approvable letter to the applicant.
314.122 Submitting an application for, or a 505(j)(2)(C) petition that relies on, a listed drug that is no longer marketed.
314.125 Refusal to approve an application or abbreviated antibiotic application.
314.126 Adequate and well-controlled studies.
314.127 Refusal to approve an abbreviated new drug application.
314.150 Withdrawal of approval of an application or abbreviated application.
314.151 Withdrawal of approval of an abbreviated new drug application pursuant to section 505(j)(5) of the act.
314.152 Notice of withdrawal of approval of an application or abbreviated application for a new drug.
314.153 Suspension of approval of an abbreviated new drug application.
314.160 Approval of an application or abbreviated application for which approval was previously refused, suspended, or withdrawn.
314.161 Determination of reasons for voluntary withdrawal of a listed drug.
314.162 Removal of a drug product from the list.
314.170 Adulteration and misbranding of an approved drug.

Subpart E—Hearing Procedures for New Drugs

314.200 Notice of opportunity for hearing; notice of participation and request for hearing; grant or denial of hearing.
314.201 Procedure for hearings.
314.235 Judicial review.

Subpart F—Administrative Procedures for Antibiotics

314.300 Procedure for the issuance, amendment, or repeal of regulations.

Subpart G—Miscellaneous Provisions

314.410 Imports and exports of new drugs and antibiotics.
314.420 Drug master files.
314.430 Availability for public disclosure of data and information in an application or abbreviated application.
314.440 Addresses for applications and abbreviated applications.
314.445 Guidelines.

Authority: Secs. 501, 502, 503, 505, 506, 507, 701, 52 Stat. 1049–1053 as amended, 1055–1056 as amended, 98 Stat. 1585, 55 Stat. 851, 59 Stat. 463 as amended (21 U.S.C. 351, 352, 353, 355, 356, 357, 371); 21 CFR 5.10, 5.11.

§ 314.1 [Amended]

7. Section 314.1 *Scope of this part* is amended in paragraphs (a)(1) and (2) by adding the phrase "or abbreviated application" after the word "application".

8. Section 314.3 is amended by revising paragraph (b) to read as follows:

§ 314.3 Definitions.

* * * * *

(b) The following definitions of terms apply to this part:

"Abbreviated application" means the application described under § 314.94, including all amendments and supplements to the application. "Abbreviated application" applies to both an abbreviated new drug application and an abbreviated antibiotic application.

"Act" means the Federal Food, Drug, and Cosmetic Act (sections 201–901, 52 Stat. 1040 et seq., as amended (21 U.S.C. 301–392)).

"Applicant" means any person who submits an application or abbreviated application or an amendment or supplement to them under this part to obtain FDA approval of a new drug or an antibiotic drug and any person who owns an approved application or abbreviated application.

"Application" means the application described under § 314.50, including all amendments and supplements to the application.

"Approvable letter" means a written communication to an applicant from FDA stating that the agency will approve the application or abbreviated application if specific additional information or material is submitted or specific conditions are met. An approvable letter does not constitute approval of any part of an application or abbreviated application and does not permit marketing of the drug that is the subject of the application or abbreviated application.

"Approval letter" means a written communication to an applicant from FDA approving an application or an abbreviated application.

"Drug product" means a finished dosage form, for example, tablet, capsule, or solution, that contains a drug substance, generally, but not necessarily, in association with one or more other ingredients.

"Drug substance" means an active ingredient that is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease or to affect the structure or any function of the human body, but does not include intermediates used in the synthesis of such ingredient.

"FDA" means the Food and Drug Administration.

"Listed drug" means a new drug product that has been approved for safety and effectiveness under section 505(c) or approved under section 505(j) of the act, the approval of which has not been withdrawn or suspended under section 505(e) (1) through (5) or (j)(5) of the act, and which has not been withdrawn from sale for what FDA has determined are reasons of safety or effectiveness. Listed drug status is evidenced by the drug product's inclusion in the current edition of FDA's "Approved Drug Products with Therapeutic Equivalence Evaluations" (the list) or any current supplement to the list. A drug product is deemed to be included in the list on the date of approval of the application or abbreviated application for that drug product. For a drug product that is subject to FDA's Drug Efficacy Study Implementation (DESI) program, FDA will consider the applicable DESI notice published in the **Federal Register** a listed drug until a drug product subject to the notice meets the conditions for approval of effectiveness set forth in the notice and becomes a listed drug.

"Not approvable letter" means a written communication to an applicant from FDA stating that the agency does not consider the application or abbreviated application approvable because one or more deficiencies in the application or abbreviated application preclude the agency from approving it.

"Reference listed drug" means the listed drug identified in an abbreviated new drug application or identified by FDA as the drug product upon which an applicant relies in seeking approval of its abbreviated application.

"Right of reference or use" means the authority to rely upon, and otherwise use an investigation for the purpose of obtaining approval of an application, including the ability to make available the underlying raw data from the investigation for FDA audit, if necessary.

"The list" means the current edition of FDA's publication "Approved Drug Products with Therapeutic Equivalence Evaluations" and any current supplement to the publication.

"505(b)(2) application" means an application submitted under section 505(b)(1) of the act for a drug for which the investigations described in section 505(b)(1)(A) and relied upon by the applicant for approval of the application were not conducted by or for the applicant and for which the applicant has not obtained a right of reference or use from the person by or for whom the investigations were conducted.

9. Section 314.50 is amended by revising the first and fifth sentences in the introductory paragraph, paragraph (a)(2), the second sentence in paragraph (c)(1), by adding new paragraph (g)(3), by redesignating existing paragraph (h) as paragraph (k), and by adding new paragraphs (h), (i), and (j) to read as follows:

§ 314.50 Content and format of an application.

Applications and supplements to approved applications are required to be submitted in the form and contain the information, as appropriate for the particular submission, required under this section. * * * These include an application of the type described in section 505(b)(2) of the act, an amendment, and a supplement. * * *

(a) * * *

(2) A statement whether the submission is an original submission, a 505(b)(2) application, a resubmission, or a supplement to an application under § 314.70.

* * * * *

(c) *Summary.* (1) * * * The summary is not required for supplements under § 314.70. * * *

* * * * *

(g) * * *

(3) If an applicant who submits a new drug application under section 505(b) of the act obtains a "right of reference or use," as defined under § 314.3(b), to an investigation described in clause (A) of section 505(b)(1) of the act, the applicant shall include in its application a written statement signed by the owner of the data from each such investigation that the applicant may rely on in support of the approval of its application, and provide FDA access to, the underlying raw data that provide the basis for the report of the investigation submitted in its application.

(h) *Patent information.* The application is required to contain the patent information described under § 314.53.

(i) *Patent certification*—(1) *Contents.* A 505(b)(2) application is required to contain the following:

(i) *Patents claiming drug, drug product, or method of use.* (*a*) Except as provided in paragraph (i)(2) of this section, a certification with respect to each patent issued by the United States Office of Patent and Trademark that, in the opinion of the applicant and to the best of its knowledge, claims the drug or drugs on which investigations that are relied upon by the applicant for approval of its application were conducted or that claims an approved use for such drug or drugs and for which information is required to be filed under section 505 (b) and (c) of the act and § 314.53. For each such patent, the applicant shall provide the patent number and certify, in its opinion and to the best of its knowledge, one of the following circumstances:

(*1*) That the patent information has not been submitted to FDA. The applicant shall entitle such a certification "Paragraph I Certification";

(*2*) That the patent has expired. The applicant shall entitle such a certification "Paragraph II Certification";

(*3*) The date on which the patent will expire. The applicant shall entitle such a

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certification "Paragraph III Certification"; or

(4) That the patent is invalid or will not be infringed by the manufacture, use, or sale of the drug product for which the application is submitted. The applicant shall entitle such a certification "Paragraph IV Certification." This certification shall be submitted in the following form:

I, (*name of applicant*), certify that Patent No. (*is invalid or will not be infringed by the manufacture, use, or sale of*) (*name of proposed drug product*) for which this application is submitted.

The certification shall be accompanied by a statement that the applicant will comply with the requirements under § 314.52(a) with respect to providing a notice to each owner of the patent or their representatives and to the holder of the approved application for the drug product which is claimed by the patent or a use of which is claimed by the patent and with the requirements under § 314.52(c) with respect to the content of the notice.

(*b*) If the drug on which investigations that are relied upon by the applicant were conducted is itself a licensed generic drug of a patented drug first approved under section 505(b) of the act, the appropriate patent certification under this section with respect to each patent that claims the first-approved patented drug or that claims an approved use for such drug.

(ii) *No relevant patents.* If, in the opinion of the applicant and to the best of its knowledge, there are no patents described in paragraph (i)(1)(i) of this section, a certification in the following form:

In the opinion and to the best knowledge of (*name of applicant*), there are no patents that claim the drug or drugs on which investigations that are relied upon in this application were conducted or that claim a use of such drug or drugs.

(iii) *Method of use patent.* (*a*) If information that is submitted under section 505 (b) or (c) of the act and § 314.53 is for a method of use patent, and the labeling for the drug product for which the applicant is seeking approval does not include any indications that are covered by the use patent, a statement explaining that the method of use patent does not claim any of the proposed indications.

(*b*) If the labeling of the drug product for which the applicant is seeking approval includes an indication that, according to the patent information submitted under section 505 (b) or (c) of the act and § 314.53 or in the opinion of the applicant, is claimed by a use patent, the applicant shall submit an applicable certification under paragraph (i)(1)(i) of this section.

(2) *Method of manufacturing patent.* An applicant is not required to make a certification with respect to any patent that claims only a method of manufacturing the drug product for which the applicant is seeking approval.

(3) *Licensing agreements.* If a 505(b)(2) application is for a drug or method of using a drug claimed by a patent and the applicant has a licensing agreement with the patent owner, the applicant shall submit a certification under paragraph (i)(1)(i)(*a*)(*4*) of this section ("Paragraph IV Certification") as to that patent and a statement that it has been granted a patent license. If the patent owner consents to an immediate effective date upon approval of the 505(b)(2) application, the application shall contain a written statement from the patent owner that it has a licensing agreement with the applicant and that it consents to an immediate effective date.

(4) *Late submission of patent information.* If a patent described in paragraph (i)(1)(i)(*a*) of this section is issued and the holder of the approved application for the patented drug does not submit the required information on the patent within 30 days of issuance of the patent, an applicant who submitted a 505(b)(2) application that before the submission of the patent information contained an appropriate patent certification is not required to submit an amended certification. An applicant whose 505(b)(2) application is filed after a late submission of patent information or whose 505(b)(2) application was previously filed but did not contain an appropriate patent certification at the time of the patent submission shall submit a certification under paragraph (i)(1)(i) or (ii) or a statement under paragraph (i)(1)(iii) of this section as to that patent.

(5) *Disputed patent information.* If an applicant disputes the accuracy or relevance of patent information submitted to FDA, the applicant may seek a confirmation of the correctness of the patent information in accordance with the procedures under § 314.53(f). Unless the patent information is withdrawn or changed, the applicant must submit an appropriate certification for each relevant patent.

(6) *Amended certifications.* A certification submitted under paragraphs (i)(1)(i) through (iii) of this section may be amended at any time before the effective date of the approval of the application. An applicant shall submit an amended certification as an amendment to a pending application or by letter to an approved application. Once an amendment or letter for the change in certification has been submitted, the application will no longer be considered to be one containing the prior certification.

(i) *After finding of infringement.* An applicant who has submitted a certification under paragraph (i)(1)(i)(*a*)(*4*) of this section and is sued for patent infringement within 45 days of the receipt of notice sent under § 314.52, shall amend the certification if a final judgment in the action is entered finding the patent to be infringed. In the amended certification, the applicant shall certify under paragraph (i)(1)(i)(*a*)(*3*) of this section that the patent will expire on a specific date.

(ii) *After removal of a patent from the list.* If a patent is removed from the list for any reason other than because the patent has been declared invalid in a lawsuit brought within 45 days of a notice issued under § 314.52, after one or more applicants have made certifications under paragraph (i)(1)(i)(*a*)(*4*) of this section on that patent, any applicant with a pending application or delayed effective date who has made such a certification shall amend the certification. In the amended certification, the applicant shall certify under paragraph (i)(1)(ii) of this section, if applicable, that no patents described in paragraph (i)(1)(i) of this section claim the drug. If other relevant patents claim the drug, the applicant shall instead submit a request to withdraw the certification under paragraph (i)(1)(i)(*a*)(*4*) of this section.

(iii) *Other amendments.* (*a*) Except as provided in paragraphs (i)(4) and (i)(6)(iii)(*b*) of this section, an applicant shall amend a submitted certification if, at any time before the effective date of the approval of the application, the applicant learns that the submitted certification is no longer accurate.

(*b*) An applicant is not required to amend a submitted certification when information on an otherwise applicable patent is submitted after the 505(b)(2) application is approved, whether or not the approval of the abbreviated application is effective.

(j) *Claimed exclusivity.* A new drug product, upon approval, may be entitled to a period of marketing exclusivity under the provisions of § 314.108. If an applicant believes its drug product is entitled to a period of exclusivity, it shall submit to the new drug application prior to approval the following information:

(1) A statement that the applicant is claiming exclusivity.

(2) A reference to the appropriate paragraph under § 314.108 that supports its claim.

(3) If the applicant claims exclusivity under § 314.108(b)(2), information to show that no drug has previously been approved under section 505(b) of the act containing any active moiety in the drug for which the applicant is seeking approval.

(4) If the applicant claims exclusivity under § 314.108(b)(4) or (5), the following information to show that the clinical investigations in its application are "new clinical investigations," "essential to approval of the application or supplement," and were "conducted or sponsored by the applicant":

(i) "*New clinical investigations.*" A certification that to the best of the applicant's knowledge the clinical investigations included in the application meet the definitions of "new" and "clinical investigations" set forth in § 314.108(a).

(ii) "*Essential to approval.*" A list of all published studies or publicly available reports of clinical investigations known to the applicant through a literature search that are relevant to the conditions for which the applicant is seeking approval, a certification that the applicant has thoroughly searched the scientific literature and, to the best of the applicant's knowledge, the list is complete and accurate and, in the applicant's opinion, such published studies or publicly available reports do not provide a sufficient basis for the approval of the conditions for which the applicant is seeking approval without reference to the new clinical investigation(s) in the application, and an explanation as to why the studies or reports are insufficient.

(iii) "*Conducted or sponsored by.*" If the applicant was the sponsor named in the Form FDA-1571 for an investigational new drug (IND) under which the new clinical investigation(s) that is essential to the approval of its application was conducted, identification of the IND by number. If the applicant was not the sponsor of the IND under which the clinical investigation(s) was conducted, a certification that the applicant or its predecessor in interest provided substantial support for the clinical investigation(s) that is essential to the approval of its application, and information supporting the certification.

* * * * *

10. New §§ 314.52, 314.53, and 314.54 are added to Subpart B to read as follows:

§ 314.52 Notice of certification of invalidity or noninfringement of a patent.

(a) For each patent which claims the drug or drugs on which investigations that are relied upon by the applicant for approval of its application were conducted or which claims a use for such drug or drugs and which the applicant certifies under § 314.50(i)(1)(i)(*a*)(*4*) that a patent is invalid or will not be infringed, the applicant shall send notice of such certification by registered or certified mail, return receipt requested to each of the following persons:

(1) Each owner of the patent that is the subject of the certification or the representative designated by the owner to receive the notice. The name and address of the patent owner or its representative may be obtained from the United States Patent and Trademark Office; and

(2) The holder of the approved application under section 505(b) of the act for each drug product which is claimed by the patent or a use of which is claimed by the patent and for which the applicant is seeking approval, or, if the application holder does not reside or maintain a place of business within the United States, the application holder's attorney, agent, or other authorized official. The name and address of the application holder or its attorney, agent, or authorized official may be obtained from the Division of Drug Information Resources (HFD-80), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

(3) This paragraph does not apply to a use patent that claims no uses for which the applicant is seeking approval.

(b) The applicant shall send the notice required by paragraph (a) of this section when it receives from FDA an acknowledgment letter stating that its application has been filed. At the same time, the applicant shall amend its application to include a statement certifying that the notice has been provided to each person identified under paragraph (a) of this section and that the notice met the content requirement under paragraph (c) of this section.

(c) *Content of a notice.* In the notice, the applicant shall cite section 505(b)(3)(B) of the act and shall include, but not be limited to, the following information:

(1) A statement that a 505(b)(2) application submitted by the applicant has been filed by FDA.

(2) The application number.

(3) The established name, if any, as defined in section 502(e)(3) of the act, of the proposed drug product.

(4) The active ingredient, strength, and dosage form of the proposed drug product.

(5) The patent number and expiration date, as submitted to the agency or as known to the applicant, of each patent alleged to be invalid or not infringed.

(6) A detailed statement of the factual and legal basis of the applicant's opinion that the patent is not valid or will not be infringed. The applicant shall include in the detailed statement:

(i) For each claim of a patent alleged not to be infringed, an explanation of why the claim is not infringed.

(ii) For each claim of a patent alleged to be invalid, an explanation of the grounds supporting the allegation, including all statutory bases, affirmative defenses, reasoning, and evidence supporting the allegation, citing any relevant case precedent upon which the allegation is based, providing a copy of any patent or publication which is alleged to invalidate such claim and the reasons supporting such allegation.

(iii) For formulation or composition patents, a description of a mechanism through which the applicant agrees to make the formulation or composition of the proposed drug product known to the patent owner or to a designated intermediary who will act as a referee.

(7) If the applicant does not reside or have a place of business in the United States, the name and address of an agent in the United States authorized to accept service of process for the applicant.

(d) *Amendment to an application.* If an application is amended to include the certification described in § 314.50(i), the applicant shall send the notice required by paragraph (a) of this section at the same time that the amendment to the application is submitted to FDA.

(e) *Documentation of receipt of notice.* The applicant shall amend its application to document receipt of the notice required under paragraph (a) of this section by each person provided the notice. The applicant shall include a copy of the return receipt or other similar evidence of the date the notification was received. FDA will accept as adequate documentation of the date of receipt a return receipt or a letter acknowledging receipt by the person provided the notice. An applicant may rely on another form of documentation only if FDA has agreed to such documentation in advance. A copy of the notice itself need not be submitted to the agency.

(f) If the above requirements are met, the agency will presume the notice to be complete and sufficient, and it will count the day following the date of receipt of the notice by the patent owner or its representative or by the approved application holder if the holder is an exclusive patent licensee as the first day

of the 45-day period provided for in section 505(c)(3)(C) of the act.

§ 314.53 Submission of patent information.

(a) *Who must submit patent information.* This section applies to any applicant who submits to FDA a new drug application or an amendment to it under section 505(b) of the act and § 314.50 or a supplement to an approved application under § 314.70, except as provided in paragraph (d)(2) of this section.

(b) *Patents for which information must be submitted.* An applicant described in paragraph (a) of this section shall submit information on each patent that claims the drug or a method of using the drug that is the subject of the new drug application or amendment or supplement to it and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner of the patent engaged in the manufacture, use, or sale of the drug product. For purposes of this part, such patents consist of drug (ingredient) patents, drug product (formulation and composition) patents, and method of use patents. Process patents are not covered by this section and information on process patents may not be submitted to FDA. For patents that claim a drug or drug product, the applicant shall submit information only on those patents that claim an approved drug product or a drug product for which the applicant has submitted an application to obtain FDA approval. For patents that claim a method of use, the applicant shall submit information only on those patents that claim approved indications or other conditions of use or that claim indications or other conditions of use for which the applicant is seeking approval in an application.

(c) *Reporting requirements.* (1) *General requirements.* An applicant described in paragraph (a) of this section shall submit the following information for each patent described in paragraph (b) of this section:

(i) Patent number and the date on which the patent will expire.

(ii) Type of patent, i.e., drug, drug product, or method of use.

(iii) Name of the patent owner.

(iv) If the patent owner or applicant does not reside or have a place of business within the United States, the name of an agent (representative) of the patent owner or applicant who resides or maintains a place of business within the United States authorized to receive notice of patent certification under sections 505(b)(3) and 505(j)(2)(B) of the act and §§ 314.52 and 314.95.

(2) *Formulation or composition patents.* (i) *Original certification.* For each formulation or composition patent, in addition to the patent information described in paragraph (c)(1) of this section the applicant shall submit the following certification:

The undersigned certifies that the drug and the formulation or composition of *(name of drug product)* is claimed by Patent No. _____. This product is *(currently approved under section 505 of the Federal Food, Drug, and Cosmetic Act) [or] (the subject of this application for which approval is being sought).*

(ii) *Amendment of patent information upon approval.* Within 30 days after the date of approval of its application, if the application contained a certification required under paragraph (c)(2)(i) of this section, the applicant shall by letter amend the certification to identify each patent that claims the formulation and composition that has been approved.

(3) *Method of use patents.*—(i) *Original certification.* For a patent that claims a method of using the drug product, the patent information described in paragraph (c)(1) of this section shall be accompanied by the following certification that identifies each relevant patent that claims indications or other conditions of use that are approved or are the subject of the application for which approval is being sought:

The undersigned certifies that Patent No. _____ covers the use of *(name of drug product)* that is *(approved) [or] (the subject of this application for which approval is being sought):*

_____

(ii) *Amendment of patent information upon approval.* Within 30 days after the date of approval of its application, if the application contained a certification required under paragraph (c)(3)(i) of this section, the applicant shall by letter amend the certification to identify the specific indications or other conditions of use that have been approved and each patent that claims the approved indications or other conditions of use.

(4) *No relevant patents.* If the applicant believes that there are no patents which claim the drug or the drug product or which claim a method of using the drug product and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner of the patent engaged in the manufacture, use, or sale of the drug product, it shall so certify.

(5) *Authorized signature.* The certifications required by this section shall be signed by the applicant or patent owner, or the applicant's or patent owner's attorney, agent (representative), or other authorized official.

(d) *When and where to submit patent information.*—(1) *Original application.* An applicant shall submit with its original application submitted under this part, including an application described in section 505(b)(2) of the act, the information described in paragraph (c) of this section on each drug (ingredient), drug product (formulation and composition), and method of use patent issued before the application is filed with FDA and for which patent information is required to be submitted under this section. If a patent is issued after the application is filed with FDA but before the application is approved, the applicant shall submit the required patent information in an amendment to the application under § 314.60.

(2) *Supplements.* (i) If a patent is issued for a drug, drug product, or method of use after an application is approved, the applicant shall submit to FDA the required patent information within 30 days of the date of issuance of the patent.

(ii) An applicant shall submit patent information required under paragraph (c) of this section for a patent that claims the product or method of using the product for which approval is sought in any of the following supplements:

(A) To change the formulation;

(B) To add a new indication or other condition of use, including a change in route of administration;

(C) To change the strength;

(D) To make any other patented change.

(iii) If the applicant submits a supplement for one of the changes listed under paragraph (d)(2)(ii) of this section and existing patents for which information has already been submitted to FDA claim the changed product, the applicant shall submit a certification with the supplement identifying the patents that claim the changed product.

(iv) If the applicant submits a supplement for one of the changes listed under paragraph (d)(2)(ii) of this section and no patents, including previously submitted patents, claim the changed product, it shall so certify.

(v) The applicant shall comply with the requirements for amendment of formulation or composition and method of use patent information under paragraphs (c)(2)(ii) and (3)(ii) of this section.

(3) The applicant shall submit two copies of each submission of patent information, an archival copy and a copy for the chemistry, manufacturing and controls section of the review copy, to the Central Document Room, Center for Drug Evaluation and Research, Food and Drug Administration, Park Bldg. (Rm. 214), 12420 Parklawn Dr., Rockville, MD 20857. The applicant shall submit the patent information by letter separate from, but at the same time as, submission of the supplement.

(4) Patent information shall be considered to be submitted to FDA as of the date the information is received by the Central Document Room.

(5) Each submission of patent information, except information submitted with an original application, and its mailing cover shall bear prominent identification as to its contents, i.e., "Patent Information," or, if submitted after approval of an application, "Time Sensitive Patent Information."

(e) *Public disclosure of patent information.* FDA will publish in the list the patent number and expiration date of each patent that is required to be, and is, submitted to FDA by an applicant, and for each use patent, the approved indications or other conditions of use covered by a patent and any unapproved indications or condition of use to which the applicant certified. FDA will publish such patent information upon approval of the application, or, if the patent information is submitted by the applicant after approval of an application as provided under paragraph (d)(2) of this section, as soon as possible after the submission to the agency of the patent information. Patent information submitted by the last working day of a month will be published in that month's supplement to the list. Patent information received by the agency between monthly publication of supplements to the list will be placed on public display in FDA's Freedom of Information Staff. A request for copies of the file shall be sent in writing to the Freedom of Information Staff (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857.

(f) *Correction of patent information errors.* If any person disputes the accuracy or relevance of patent information submitted to the agency under this section and published by FDA in the list, or believes that an applicant has failed to submit required patent information, that person must first notify the agency in writing stating the grounds for the disagreement. Such notification should be directed to the Office of Drug Standards (HFD-200), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. The agency will then request of the applicable new drug application holder that the correctness of the patent information or omission of patent information be confirmed. Unless the application holder withdraws or amends its patent information in response to FDA's request, the agency will not change the patent information in the list. If the new drug application holder does not change the patent information submitted to FDA, a 505(b)(2) application or an abbreviated new drug application under section 505(j) of the act submitted for a drug that is claimed by a patent for which information has been submitted must, despite any disagreement as to the correctness of the patent information, contain an appropriate certification for each listed patent.

§ 314.54 Procedure for submission of an application requiring investigations for approval of a new indication for, or other change from, a listed drug.

(a) The act does not permit approval of an abbreviated new drug application for a new indication, nor does it permit approval of other changes in a listed drug if investigations, other than bioavailability or bioequivalence studies, are essential to the approval of the change. Any person seeking approval of a drug product that represents a modification of a listed drug (e.g., a new indication or new dosage form) and for which investigations, other than bioavailability or bioequivalence studies, are essential to the approval of the change may, except as provided in paragraph (b), submit a 505(b)(2) application. This application need contain only that information needed to support the modification(s) of the listed drug.

(1) The applicant shall submit a complete archival copy of the application that contains the following:

(i) The information required under § 314.50(a), (b), (c), (d)(1) and (3), (e), and (g).

(ii) The information required under § 314.50(d)(2), (4) (if an anti-infective drug), (5), and (6), and (f) as needed to support the safety and effectiveness of the drug product.

(iii) Identification of the listed drug for which FDA has made a finding of safety and effectiveness and on which finding the applicant relies in seeking approval of its proposed drug product by established name, if any, proprietary name, dosage form, strength, route of administration, name of listed drug's application holder, and listed drug's approved application number.

(iv) If the applicant is seeking approval only for a new indication and not for the indications approved for the listed drug on which the applicant relies, a certification so stating.

(v) Any patent information required under § 314.53 with respect to any patent which claims the drug for which approval is sought or a method of using such drug and to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner of the patent engaged in the manufacture, use, or sale of the drug product.

(vi) Any patent certification or statement required under § 314.50(i) with respect to any relevant patents that claim the listed drug or that claim any other drugs on which investigations relied on by the applicant for approval of the application were conducted, or that claim a use for the listed or other drug.

(vii) If the applicant believes the change for which it is seeking approval is entitled to a period of exclusivity, the information required under § 314.50(j).

(2) The applicant shall submit a review copy that contains the technical sections described in § 314.50(d)(1) and (3), and the technical sections described in § 314.50(d)(2), (4), (5), and (6), and (f) when needed to support the modification. Each of the technical sections in the review copy is required to be separately bound with a copy of the information required under § 314.50(a), (b), and (c) and a copy of the proposed labeling.

(3) The information required by § 314.50(d)(2), (4) (if an anti-infective drug), (5), (6), and (f) for the listed drug on which the applicant relies shall be satisfied by reference to the listed drug under paragraph (a)(1)(iii) of this section.

(b) An application may not be submitted under this section for a drug product whose only difference from the reference listed drug is that the extent to which its active ingredient(s) is absorbed or is otherwise made available to the site of action is less than that of the reference listed drug.

§ 314.55 [Removed]

11. Section 314.55 *Abbreviated application* is removed.

§ 314.56 [Removed]

12. Section 314.56 *Drug products for which abbreviated applications are suitable* is removed.

12a. Section 314.60 is amended by redesignating the existing paragraph as paragraph (a) and by revising the first sentence, and by adding a new paragraph (b) to read as follows:

§ 314.60 Amendments to an unapproved application.

(a) Except as provided in paragraph (b) of this section, the applicant may submit an amendment to an application that is filed under § 314.100, but not yet approved. * * *

(b)(1) An unapproved application may not be amended if all of the following conditions apply:

(i) The unapproved application is for a drug for which a previous application has been approved and granted a period of exclusivity under § 314.108(b)(2) that has not expired;

(ii) The applicant seeks to amend the unapproved application to include a published report of an investigation that was conducted or sponsored by the applicant entitled to exclusivity for the drug;

(iii) The applicant has not obtained a right of reference to the investigation described in paragraph (b)(1)(ii) of this section; and

(iv) The report of the investigation described in paragraph (b)(1)(ii) of this section would be essential to the approval of the unapproved application.

(2) The submission of an amendment described in paragraph (b)(1) will cause the unapproved application to be deemed to be withdrawn by the applicant under § 314.65 on the date of receipt by FDA of the amendment. The amendment will be considered a resubmission of the application, which may not be accepted except as provided under § 314.108(b)(2).

13. Section 314.70 is amended by adding new paragraphs (e) and (f) to read as follows:

§ 314.70 Supplements and other changes to an approved application.

* * * * *

(e) *Claimed exclusivity.* If an applicant claims exclusivity under § 314.108 upon approval of a supplemental application for a change to its previously approved drug product, the applicant shall include with its supplemental application the information required under § 314.50(j).

(f) *Patent information.* The applicant shall comply with the patent information requirements under § 314.53(d)(2).

14. Section 314.71 is amended in paragraph (b) by revising the first sentence to read as follows:

§ 314.71 Procedures for submission of a supplement to an approved application.

* * * * *

(b) All procedures and actions that apply to an application under § 314.50 also apply to supplements, except that the information required in the supplement is limited to that needed to support the change. * * *

* * * * *

15. Section 314.80 is amended by removing the word "significant" under "Adverse drug experience" in paragraph (a), by revising paragraph (b), the first sentence in paragraph (c)(1)(ii), and the last sentence in paragraph (d)(1) to read as follows:

§ 314.80 Postmarketing reporting of adverse drug experiences.

* * * * *

(b) *Review of adverse drug experiences.* Each applicant having an approved application under § 314.50 or in the case of a 505(b)(2) application, an effective approved application under § 314.107 shall promptly review all adverse drug experience information obtained or otherwise received by the applicant from any source, foreign or domestic, including information derived from commercial marketing experience, postmarketing clinical investigations, postmarketing epidemiological/surveillance studies, reports in the scientific literature, and unpublished scientific papers.

(c) * * *

(1) * * *

(ii) The applicant shall review periodically (at least as often as the periodic reporting cycle) the frequency of reports of adverse drug experiences that are both serious and expected and reports of therapeutic failure (lack of effect), regardless of source, and report any significant increase in frequency as soon as possible but in any case within 15 working days of determining that a significant increase in frequency exists. * * *

* * * * *

(d) *Scientific literature.* (1) * * * The 15-day reporting requirements in paragraph (c)(1)(ii) of this section (i.e., a significant increase in frequency of a serious, expected adverse drug experience or of a therapeutic failure) apply only to reports found in scientific and medical journals either as the result of a formal clinical trial, or from epidemiological studies or analyses of experience in a monitored series of patients.

* * * * *

16. Section 314.81 is amended in paragraph (a) by removing "505(j)" and replacing it with "505(k)" and by adding new paragraph (b)(3)(iii) to read as follows:

§ 314.81 Other postmarketing reports.

* * * * *

(b) * * *

(3) * * *

(iii) *Withdrawal of approved drug product from sale.*

(*a*) The applicant shall submit on Form FDA 2657 (Drug Product Listing), within 15 working days of the withdrawal from sale of a drug product, the following information:

(*1*) The National Drug Code (NDC) number.

(*2*) The identity of the drug product by established name and by proprietary name.

(*3*) The new drug application or abbreviated application number.

(*4*) The date of withdrawal from sale. It is requested but not required that the reason for withdrawal of the drug product from sale be included with the information.

(*b*) The applicant shall submit each Form FDA-2657 to the Drug Listing Branch (HFD-315), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

(*c*) Reporting under paragraph (b)(3)(iii) of this section constitutes compliance with the requirements under § 207.30(a) to report "at the discretion of the registrant when the change occurs."

* * * * *

17. New Subpart C consisting of §§ 314.92 to 314.99 is added to read as follows:

Subpart C—Abbreviated Applications

§ 314.92 Drug products for which abbreviated applications may be submitted.

(a) Abbreviated applications are suitable for the following drug products within the limits set forth under § 314.93:

(1) Drug products that are the same as a listed drug. A "listed drug" is defined in § 314.3. For determining the suitability of an abbreviated new drug application, the term "same as" means identical in active ingredient(s), dosage form, strength, route of administration, and conditions of use, except that conditions of use for which approval cannot be granted because of exclusivity or an existing patent may be omitted. If a listed drug has been voluntarily withdrawn from or not offered for sale by its manufacturer, a person who wishes to submit an abbreviated new drug application for the drug shall comply with § 314.122.

(2) Drug products that meet the monograph for an antibiotic drug for which FDA has approved an application.

(3) Drug products for which FDA made a finding that an abbreviated new drug application was suitable and such finding was announced by notice in the **Federal Register**.

(4) Drug products that have been declared suitable for an abbreviated new drug application submission by FDA through the petition procedures set forth under § 10.30 of this chapter and § 314.93.

(b) FDA will publish in the list listed drugs for which abbreviated applications may be submitted. The list is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, 202-783-3238.

§ 314.93 Petition to request a change from a listed drug.

(a) The only changes from a listed drug for which the agency will accept a petition under this section are those changes described in paragraph (b). Petitions to submit abbreviated new drug applications for other changes from a listed drug will not be approved.

(b) A person who wants to submit an abbreviated new drug application for a drug product which is not identical to a listed drug in route of administration, dosage form, and strength, or in which one active ingredient is substituted for one of the active ingredients in a listed combination drug, must first obtain permission from FDA to submit such an abbreviated application.

(c) To obtain permission to submit an abbreviated new drug application for a change described in paragraph (b) of this section, a person must submit and obtain approval of a petition requesting the change. A person seeking permission to request such a change from a reference listed drug shall submit a petition in accordance with § 10.20 of this chapter and in the format specified in § 10.30 of this chapter. The petition shall contain the information specified in § 10.30 of this chapter and any additional information required by this section. If any provision of § 10.20 of this chapter or § 10.30 of this chapter is inconsistent with any provision of this section, the provisions of this section apply.

(d) The petitioner shall identify a listed drug and include a copy of the proposed labeling for the drug product that is the subject of the petition and a copy of the approved labeling for the listed drug. The petitioner may, under limited circumstances, identify more than one listed drug, for example, when the proposed drug product is a combination product with one different active ingredient than the combination reference listed drug and the different active ingredient itself is a listed drug. The petitioner shall also include information to show that:

(1) The active ingredients of its proposed drug product are of the same pharmacological or therapeutic class as those of the reference listed drug.

(2) The drug product can be expected to have the same therapeutic effect as the reference listed drug when administered to patients for each condition of use in the reference listed drug's labeling for which the applicant seeks approval.

(3) If the proposed drug product is a combination product with one different active ingredient, including a different ester or salt, from the reference listed drug, that the different active ingredient has previously been approved in a listed drug or is a drug that does not meet the definition of "new drug" in section 201(p) of the act.

(e) No later than 90 days after the date a petition that is permitted under paragraph (a) of this section is submitted, FDA will approve or disapprove the petition.

(1) FDA will approve a petition properly submitted under this section unless it finds that:

(i) Investigations must be conducted to show the safety and effectiveness of the drug product or of any of its active ingredients, its route of administration, dosage form, or strength which differs from the reference listed drug; or

(ii) For a petition that seeks to change an active ingredient, the drug product that is the subject of the petition is not a combination drug; or

(iii) For a combination drug product that is the subject of the petition and has an active ingredient different from the reference listed drug:

(A) The drug product may not be adequately evaluated for approval as safe and effective on the basis of the information required to be submitted under § 314.94; or

(B) The petition does not contain information to show that the different active ingredient of the drug product is of the same pharmacological or therapeutic class as the ingredient of the reference listed drug that is to be changed and that the drug product can be expected to have the same therapeutic effect as the reference listed drug when administered to patients for each condition of use in the listed drug's labeling for which the applicant seeks approval; or

(C) The different active ingredient is not an active ingredient in a listed drug or a drug that meets the requirements of section 201(p) of the act; or

(D) The remaining active ingredients are not identical to those of the listed combination drug; or

(iv) Any of the proposed changes from the listed drug would jeopardize the safe or effective use of the product so as to necessitate significant new labeling changes to address the newly introduced safety or effectiveness problem; or

(v) FDA has determined that the reference listed drug has been withdrawn from sale for safety or effectiveness reasons under § 314.161, or the reference listed drug has been voluntarily withdrawn from sale and the agency has not determined whether the withdrawal is for safety or effectiveness reasons.

(2) For purposes of this paragraph, "investigations must be conducted" means that information derived from animal or clinical studies is necessary to show that the drug product is safe or effective. Such information may be contained in published or unpublished reports.

(3) If FDA approves a petition submitted under this section, the agency's response may describe what additional information, if any, will be required to support an abbreviated new drug application for the drug product. FDA may, at any time during the course of its review of an abbreviated new drug application, request additional information required to evaluate the change approved under the petition.

§ 314.94 Content and format of an abbreviated application.

Abbreviated applications are required to be submitted in the form and contain the information required under this section. Two copies of the application are required, an archival copy and a review copy. FDA will maintain guidelines on the format and content of applications to assist applicants in their preparation.

(a) *Abbreviated new drug applications.* Except as provided in paragraph (b) of this section, the applicant shall submit a complete archival copy of the abbreviated new drug application that includes the following:

(1) *Application form.* The applicant shall submit a completed and signed application form that contains the information described under § 314.50(a)(1), (3), (4), and (5). The applicant shall state whether the submission is an abbreviated application under § 314.94 or a supplement to an abbreviated application under § 314.97.

(2) *Table of contents.* The archival copy of the abbreviated new drug application is required to contain a table of contents that shows the volume number and page number of the contents of the submission.

(3) *Basis for abbreviated new drug application submission.* An abbreviated new drug application must refer to a

listed drug. Ordinarily that listed drug will be the drug product selected by the agency as the reference standard for conducting bioequivalence testing. The application shall contain:

(i) The name of the reference listed drug, including its dosage form and strength. For an abbreviated new drug application based on an approved petition pursuant to § 10.30 of this chapter or § 314.93, the reference listed drug must be the same as the listed drug referred to in the petition. If the abbreviated new drug application is submitted on the basis of an FDA finding published by notice in the **Federal Register** that an abbreviated new drug application is suitable for the product that is the subject of the abbreviated application, and there is no listed drug, the **Federal Register** notice will be considered the listed drug, and the application must contain a reference to the **Federal Register** citation.

(ii) A statement as to whether according to the information published in the list, the reference listed drug is entitled to a period of marketing exclusivity under section 505(j)(4)(D) of the act.

(iii) For an abbreviated new drug application based on an approved petition pursuant to § 10.30 of this chapter or § 314.93, a reference to FDA-assigned docket number for the petition and a copy of FDA's correspondence approving the petition.

(4) *Conditions of use.* (i) A statement that the conditions of use prescribed, recommended, or suggested in the labeling proposed for the drug product have been previously approved for the reference listed drug.

(ii) A reference to the applicant's annotated proposed labeling and to the currently approved labeling for the reference listed drug provided under paragraph (a)(8) of this section.

(5) *Active ingredients.* (i) For a single-active-ingredient drug product, information to show that the active ingredient is the same as that of the reference single-active-ingredient listed drug, as follows:

(A) A statement that the active ingredient of the proposed drug product is the same as that of the reference listed drug.

(B) A reference to the applicant's annotated proposed labeling and to the currently approved labeling for the reference listed drug provided under paragraph (a)(8) of this section.

(ii) For a combination drug product, information to show that the active ingredients are the same as those of the reference listed drug except for any different active ingredient that has been the subject of an approved petition, as follows:

(A) A statement that the active ingredients of the proposed drug product are the same as those of the reference listed drug, or if one of the active ingredients differs from one of the active ingredients of the reference listed drug and the abbreviated application is submitted pursuant to the approval of a petition under § 314.93 to vary such active ingredient, information to show that the other active ingredients of the drug product are the same as the other active ingredients of the reference listed drug, information to show that the different active ingredient is an active ingredient of another listed drug or of a drug which does not meet the definition of "new drug" in section 201(p) of the act, and such other information about the different active ingredient that FDA may require.

(B) A reference to the applicant's annotated proposed labeling and to the currently approved labeling for the reference listed drug provided under paragraph (a)(8) of this section.

(6) *Route of administration, dosage form, and strength.* (i) Information to show that the route of administration, dosage form, and strength of the drug product are the same as those of the reference listed drug except for any differences that have been the subject of an approved petition, as follows:

(A) A statement that the route of administration, dosage form, and strength of the proposed drug product are the same as those of the reference listed drug.

(B) A reference to the applicant's annotated proposed labeling and to the currently approved labeling for the reference listed drug provided under paragraph (a)(8) of this section.

(ii) If the route of administration, dosage form, or strength of the drug product differs from the reference listed drug and the abbreviated application is submitted pursuant to an approved petition under § 314.93, such information about the different route of administration, dosage form, or strength that FDA may require.

(7) *Bioequivalence.* (i) Information which shows that the drug product is bioequivalent to the reference listed drug upon which the applicant relies or to the standard identified in an applicable **Federal Register** notice permitting the submission of an abbreviated new drug application for the drug product, or

(ii) If the abbreviated new drug application is submitted pursuant to a petition to vary an active ingredient, approved under § 314.93, the results of any bioavailability or bioequivalence testing required by the agency, and any other information required by the agency to show that the different active ingredient is of the same pharmacological or therapeutic class as that of the changed ingredient in the reference listed drug, and that the proposed drug product can be expected to have the same therapeutic effect as the reference listed drug. FDA will consider a proposed drug product to have the same therapeutic effect as the reference listed drug if the applicant provides information demonstrating that:

(A) There is an adequate scientific basis for determining that substitution of the specific proposed dose of the different active ingredient for the dose of the member of the same pharmacological or therapeutic class in the reference listed drug will yield a resulting drug product of the same safety and effectiveness.

(B) The unchanged active ingredients in the proposed drug product are bioequivalent to those in the reference listed drug.

(C) The different active ingredient in the proposed drug product is bioequivalent to an approved dosage form containing that ingredient and approved for the same indication as the proposed drug product or is bioequivalent to a drug product offered for that indication which does not meet the definition of "new drug" under section 201(p) of the act.

(iii) For each in vivo bioequivalence study contained in the abbreviated new drug application, a description of the analytical and statistical methods used in each study and a statement with respect to each study that it either was conducted in compliance with the institutional review board regulations in Part 56 of this chapter, or was not subject to the regulations under § 56.104 or 56.105 of this chapter and that each study was conducted in compliance with the informed consent regulations in Part 50 of this chapter.

(8) *Labeling*—(i) *Listed drug labeling.* A copy of the currently approved labeling for the listed drug referred to in the abbreviated new drug application, if the abbreviated new drug application relies on a reference listed drug.

(ii) *Proposed labeling.* Copies of the label and all labeling for the drug product (4 copies of draft labeling or 12 copies of final printed labeling).

(iii) A statement that the applicant's proposed labeling is the same as the labeling of the reference listed drug except for differences annotated and explained under paragraph (a)(8)(iv) of this section.

(iv) A side-by-side comparison of the applicant's proposed labeling with the approved labeling for the reference listed drug with all differences annotated and explained. Labeling (including the container label and package insert) proposed for the drug product must be the same as the labeling approved for the reference listed drug, except for changes required because of differences approved under a petition filed under § 314.93 or because the drug product and the reference listed drug are produced or distributed by different manufacturers. Such differences between the applicant's proposed labeling and labeling approved for the reference listed drug may include differences in expiration date, formulation, bioavailability, or pharmacokinetics, labeling revisions made to comply with current FDA labeling guidelines or other guidance, or omission of an indication protected by patent or accorded exclusivity under section 505(j)(4)(D) of the act.

(9) *Chemistry, manufacturing, and controls.* (i) The information required under § 314.50(d)(1).

(ii) *Inactive ingredients.* If an applicant seeks approval of a drug product which differs from the reference listed drug in one or more inactive ingredients or composition, the applicant shall identify and characterize these differences and provide information demonstrating that the differences do not affect the safety of the proposed drug product.

(iii) *Inactive ingredient changes permitted in drug products intended for parenteral use.* Generally, a drug product intended for parenteral use shall contain the same inactive ingredients and in the same concentration as the reference listed drug identified by the applicant under § 314.94(a)(3). However, an applicant may seek approval of a drug product that differs from the reference listed drug in preservative, buffer, or antioxidant provided that the applicant identifies and characterizes the differences and provides information demonstrating that the differences do not affect the safety of the proposed drug product.

(iv) *Inactive ingredient changes permitted in drug products intended for ophthalmic or otic use.* Generally, a drug product intended for ophthalmic or otic use shall contain the same inactive ingredients and in the same concentration as the reference listed drug identified by the applicant under § 314.94(a)(3). However, an applicant may seek approval of a drug product that differs from the reference listed drug in preservative, buffer, substance to adjust tonicity, or thickening agent provided that the applicant identifies and characterizes the differences and provides information demonstrating that the differences do not affect the safety of the proposed drug product, except that in a product intended for ophthalmic use, an applicant may not change a buffer or substance to adjust tonicity for the purpose of claiming a therapeutic advantage over or difference from the listed drug, e.g., by using a balanced salt solution as a diluent as opposed to an isotonic saline solution, or by making a significant change in the pH or other change that may raise questions of irritability.

(10) *Samples.* The information required under § 314.50(e) (1) and (2)(i). Samples need not be submitted until requested by FDA.

(11) *Other.* The information required under § 314.50(g).

(12) *Patent certification*—(i) *Patents claiming drug, drug product, or method of use.* (A) Except as provided in paragraphs (a)(12)(iv) of this section, a certification with respect to each patent issued by the United States Patent and Trademark Office that, in the opinion of the applicant and to the best of its knowledge, claims the reference listed drug or that claims a use of such listed drug for which the applicant is seeking approval under section 505(j) of the act and for which information is required to be filed under section 505 (b) and (c) of the act and § 314.53. For each such patent, the applicant shall provide the patent number and certify, in its opinion and to the best of its knowledge, one of the following circumstances:

(*1*) That the patent information has not been submitted to FDA. The applicant shall entitle such a certification "Paragraph I Certification;"

(*2*) That the patent has expired. The applicant shall entitle such a certification "Paragraph II Certification;"

(*3*) The date on which the patent will expire. The applicant shall entitle such a certification "Paragraph III Certification;" or

(*4*) That the patent is invalid or will not be infringed by the manufacture, use, or sale of the drug product for which the abbreviated application is submitted. The applicant shall entitle such a certification "Paragraph IV Certification." This certification shall be submitted in the following form:

I (*name of applicant*), certify that Patent No. _____ (*is invalid or will not be infringed by the manufacture, use, or sale of*) (*name of proposed drug product*) for which this application is submitted.

The certification shall be accompanied by a statement that the applicant will comply with the requirements under § 314.95(a) with respect to providing a notice to each owner of the patent or their representatives and to the holder of the approved application for the listed drug, and with the requirements under § 314.95(c) with respect to the content of the notice.

(B) If the abbreviated new drug application refers to a listed drug that is itself a licensed generic product of a patented drug first approved under section 505(b) of the act, the appropriate patent certification under paragraph (a)(12)(i) of this section with respect to each patent that claims the first-approved patented drug or that claims a use for such drug.

(ii) *No relevant patents.* If, in the opinion of the applicant and to the best of its knowledge, there are no patents described in paragraph (a)(12)(i) of this section, a certification in the following form:

In the opinion and to the best knowledge of (*name of applicant*), there are no patents that claim the listed drug referred to in this application or that claim a use of the listed drug.

(iii) *Method of use patent.* (A) If patent information is submitted under section 505 (b) or (c) of the act and § 314.53 for a patent claiming a method of using the listed drug, and the labeling for the drug product for which the applicant is seeking approval does not include any indications that are covered by the use patent, a statement explaining that the method of use patent does not claim any of the proposed indications.

(B) If the labeling of the drug product for which the applicant is seeking approval includes an indication that, according to the patent information submitted under section 505 (b) or (c) of the act and § 314.53 or in the opinion of the applicant, is claimed by a use patent, an applicable certification under paragraph (a)(12)(i) of this section.

(iv) *Method of manufacturing patent.* An applicant is not required to make a certification with respect to any patent that claims only a method of manufacturing the listed drug.

(v) *Licensing agreements.* If the abbreviated new drug application is for a drug or method of using a drug claimed by a patent and the applicant has a licensing agreement with the patent owner, a certification under paragraph (a)(12)(i)(A)(*4*) ("Paragraph IV Certification") as to that patent and a statement that it has been granted a patent license. If the patent owner consents to an immediate effective date upon approval of the abbreviated

application, the abbreviated application shall contain a written statement from the patent owner that it has a licensing agreement with the applicant and that it consents to an immediate effective date.

(vi) *Late submission of patent information.* If a patent on the listed drug is issued and the holder of the approved application for the listed drug does not submit the required information on the patent within 30 days of issuance of the patent, an applicant who submitted an abbreviated new drug application for that drug that contained an appropriate patent certification before the submission of the patent information is not required to submit an amended certification. An applicant whose abbreviated new drug application is submitted after a late submission of patent information, or whose pending abbreviated application was previously submitted but did not contain an appropriate patent certification at the time of the patent submission, shall submit a certification under paragraph (a)(12)(i) or a statement under paragraph (a)(12)(iii) of this section as to that patent.

(vii) *Disputed patent information.* If an applicant disputes the accuracy or relevance of patent information submitted to FDA, the applicant may seek a confirmation of the correctness of the patent information in accordance with the procedures under § 314.53(f). Unless the patent information is withdrawn or changed, the applicant shall submit an appropriate certification for each relevant patent.

(viii) *Amended certifications.* A certification submitted under paragraphs (a)(12) (i) through (iii) of this section may be amended at any time before the effective date of the approval of the application. An applicant shall submit an amended certification as an amendment to a pending application or by letter to an approved application. Once an amendment or letter is submitted, the application will no longer be considered to contain the prior certification.

(A) *After finding of infringement.* An applicant who has submitted a certification under paragraph (a)(12)(i)(A)(*4*) of this section and is sued for patent infringement within 45 days of the receipt of notice sent under § 314.95, shall amend the certification if a final judgment in the action against that applicant is entered finding the patent to be infringed. In the amended certification, the applicant shall certify under paragraph (a)(12)(i)(A)(*3*) of this section that the patent will expire on a specific date. Once an amendment or letter for the change has been submitted, the application will no longer be considered to be one containing a certification under paragraph (a)(12)(i)(A)(*4*) of this section.

(B) *After removal of a patent from the list.* If a patent is removed from the list, for any reason other than because the patent has been declared invalid in a lawsuit brought pursuant to a notice under § 314.95, after one or more applicants have submitted certifications under paragraph (a)(12)(i)(A)(*4*) of this section on that patent, any applicant with a pending application or with an approved application with a delayed effective date who has made such a certification shall amend the certification. The applicant shall certify under paragraph (a)(12)(ii) of this section, if applicable, that no patents described in paragraph (a)(12)(i) of this section claim the drug. If other relevant patents claim the drug, the applicant shall instead submit a request to withdraw the certification under paragraph (a)(12)(i)(A)(*4*) of this section. Once an amendment or letter for the change has been submitted, the application will no longer be considered to be one containing a certification under paragraph (a)(12)(i)(A)(*4*) of this section.

(C) *Other amendments.* (*1*) Except as provided in paragraphs (a)(12)(iv) and (viii)(C)(*2*) of this section, an applicant shall amend a submitted certification if, at any time before the effective date of the approval of the application the applicant learns that the submitted certification is no longer accurate.

(*2*) An applicant is not required to amend a submitted certification when information on a patent on the listed drug is submitted after the abbreviated application is approved, whether or not the approval of the abbreviated application is effective.

(b) *Drug products subject to the Drug Efficacy Study Implementation (DESI) review.* (1) If the abbreviated new drug application is for a duplicate of a drug product that is subject to FDA's Drug Efficacy Study Implementation (DESI) review (a review of drug products approved as safe between 1938 and 1962) or other DESI-like review and the drug product evaluated in the review is a listed drug, the applicant shall comply with the provisions of paragraph (a) of this section.

(2) If the abbreviated new drug application is for a duplicate of a drug product that is subject to FDA's DESI review or other DESI-like review and the drug product evaluated in the review is not a listed drug at the time of submission of the abbreviated application, the applicant shall comply with the conditions set forth in the applicable DESI notice or other notice with respect to conditions of use and labeling and with the provisions of paragraph (a) of this section. However, if a drug product has been approved pursuant to a DESI notice and later withdrawn from sale, the applicant shall follow the procedures in § 314.122.

(c) *Abbreviated antibiotic application.* For applications submitted under section 507 of the act, the applicant shall submit a complete archival copy of the abbreviated application that contains the information described under § 314.50(a) (1), (3), (4), and (5), (b), (d) (1) and (3), (e), and (g). The applicant shall state whether the submission is an abbreviated application under § 314.94 or a supplement to an abbreviated application under § 314.97.

(d) *Format of an abbreviated application.* (1) The applicant shall submit a complete archival copy of the abbreviated application as required under paragraphs (a) and (c) of this section. FDA will maintain the archival copy during the review of the application to permit individual reviewers to refer to information that is not contained in their particular technical sections of the application, to give other agency personnel access to the application for official business, and to maintain in one place a complete copy of the application. An applicant may submit all or portions of the archival copy of the abbreviated application in any form (e.g., microfiche) that the applicant and FDA agree is acceptable.

(2) For abbreviated new drug applications, the applicant shall submit a review copy of the abbreviated application that contains two separately-bound sections. One section shall contain the information described under paragraphs (a) (3) through (6), (8), (9), and (12) of this section and 1 copy of the analytical methods and descriptive information needed by FDA's laboratories to perform tests on samples of the proposed drug product and to validate the applicant's analytical methods. The other section shall contain the information described under paragraphs (a) (3), (7), and (8) of this section. Each of the sections in the review copy is required to contain a copy of the application form described under § 314.50(a).

(3) For abbreviated antibiotic applications, the applicant shall submit a review copy that contains the technical sections described in § 314.50(d) (1) and (3). Each of the technical sections in the review copy is required to be separately bound with a copy of the application form required under § 314.50(a).

(4) The applicant may obtain from FDA sufficient folders to bind the archival and the review copies of the abbreviated application.

§ 314.95 Notice of certification of invalidity or noninfringement of a patent.

(a) For each patent that claims the listed drug or that claims a use for such listed drug for which the applicant is seeking approval and that the applicant certifies under § 314.94(a)(12) is invalid or will not be infringed, the applicant shall send notice of such certification by registered or certified mail, return receipt requested to each of the following persons:

(1) Each owner of the patent which is the subject of the certification or the representative designated by the owner to receive the notice. The name and address of the patent owner or its representative may be obtained from the United States Patent and Trademark Office; and

(2) The holder of the approved application under section 505(b) of the act for the listed drug that is claimed by the patent and for which the applicant is seeking approval, or, if the application holder does not reside or maintain a place of business within the United States, the application holder's attorney, agent, or other authorized official. The name and address of the application holder or its attorney, agent, or authorized official may be obtained from the Division of Drug Information Resources (HFD-80), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

(3) This paragraph does not apply to a use patent that claims no uses for which the applicant is seeking approval.

(b) The applicant shall send the notice required by paragraph (a) of this section when it receives from FDA an acknowledgment letter stating that its abbreviated new drug application is sufficiently complete to permit a substantive review. At the same time, the applicant shall amend its abbreviated new drug application to include a statement certifying that the notice has been provided to each person identified under paragraph (a) of this section and that the notice met the content requirements under paragraph (c) of this section.

(c) *Content of a notice.* In the notice, the applicant shall cite section 505(j)(2)(B)(ii) of the act and shall include, but not be limited to, the following information:

(1) A statement that FDA has received an abbreviated new drug application submitted by the applicant containing any required bioavailability or bioequivalence data or information.

(2) The abbreviated application number.

(3) The established name, if any, as defined in section 502(e)(3) of the act, of the proposed drug product.

(4) The active ingredient, strength, and dosage form of the proposed drug product.

(5) The patent number and expiration date, as submitted to the agency or as known to the applicant, of each patent alleged to be invalid or not infringed.

(6) A detailed statement of the factual and legal basis of the applicant's opinion that the patent is not valid or will not be infringed. The applicant shall include in the detailed statement:

(i) For each claim of a patent alleged not to be infringed, an explanation of why the claim is not infringed.

(ii) For each claim of a patent alleged to be invalid, an explanation of the grounds supporting the allegation, including all statutory bases, affirmative defenses, reasoning, and evidence supporting the allegation, citing any relevant case precedent upon which the allegation is based, providing a copy of any patent or publication relied upon, and indicating that portion of each such patent or publication which is alleged to invalidate such claim and the reasons supporting such allegation.

(iii) For formulation or composition patents, a description of a mechanism through which the applicant agrees to make the formulation or composition of the proposed drug product known to the patent owner or to a designated intermediary who will act as a referee.

(7) If the applicant does not reside or have a place of business in the United States, the name and address of an agent in the United States authorized to accept service of process for the applicant.

(d) *Amendment to abbreviated application.* If an abbreviated application is amended to include the certification described in § 314.94(a)(12)(i)(A)(*4*), the applicant shall send the notice required by paragraph (a) of this section at the same time that the amendment to the abbreviated application is submitted to FDA.

(e) *Documentation of receipt of notice.* The applicant shall amend its abbreviated application to document receipt of the notice required under paragraph (a) of this section by each person provided the notice. The applicant shall include a copy of the return receipt or other similar evidence of the date the notification was received. FDA will accept as adequate documentation of the date of receipt a return receipt or a letter acknowledging receipt by the person provided the notice. An applicant may rely on another form of documentation only if FDA has agreed to such documentation in advance. A copy of the notice itself need not be submitted to the agency.

(f) If the above requirements are met, FDA will presume the notice to be complete and sufficient, and it will count the day following the date of receipt of the notice by the patent owner or its representative or by the approved application holder if the holder is an exclusive patent licensee as the first day of the 45-day period provided for in section 505(j)(4)(B)(iii) of the act. FDA may, if the applicant amends its ANDA with a written statement that a later date should be used, count from such later date.

§ 314.96 Amendments to an unapproved abbreviated application.

(a) *Abbreviated new drug application.* (1) An applicant may amend an abbreviated new drug application that is submitted under § 314.94, but not yet approved, to revise existing information or provide additional information.

(2) Ordinarily, an amendment submitted before the end of the 180-day review period will not extend the review period. If, however, the agency concludes that an amendment contains significant new data requiring additional time for agency review, FDA will extend the review period, but only for the length of time needed to review the submission and for no more than 180 days. The agency will notify the applicant of the length of the extension.

(3) Submission of an amendment to resolve substantial deficiencies in the application as set forth in a not approvable letter issued under § 314.120 will extend the review period for 120 days from the date of receipt by FDA of the amendment. The submission of such an amendment constitutes an agreement by FDA and the applicant under section 505(j)(4)(A) of the act to extend the date by which the agency is required to reach a decision on the abbreviated new drug application.

(b) *Abbreviated antibiotic application.* The applicant shall comply with the provisions of § 314.60.

§ 314.97 Supplements and other changes to an approved abbreviated application.

The applicant shall comply with the requirements of §§ 314.70 and 314.71 regarding the submission of supplemental applications and other changes to an approved abbreviated application.

§ 314.98 Postmarketing reports.

(a) Except as provided in paragraphs (b) and (c) of this section, each applicant having an approved abbreviated antibiotic application under § 314.94 or approved abbreviated new drug application under § 314.94 that is effective under § 314.107 shall comply with the requirements of § 314.80 regarding the reporting of adverse drug experiences.

(b) Except as provided in paragraph (c) of this section, the applicant shall submit one copy of each report required under § 314.80 to the Division of Epidemiology and Surveillance (HFD-730), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

(c) Periodic reporting of adverse drug experiences under § 314.80(c)(2) is not required if no adverse drug experience reports have been received and no labeling changes have been initiated by the applicant during the reporting interval.

(d) Each applicant shall make the reports required under § 314.81 and sections 505(k) and 507(g) of the act for each of its approved abbreviated applications.

§ 314.99 Other responsibilities of an applicant of an abbreviated application.

(a) An applicant shall comply with the requirements of § 314.65 regarding withdrawal by the applicant of an unapproved abbreviated application and § 314.72 regarding a change in ownership of an abbreviated application.

(b) An applicant may ask FDA to waive under this section any requirement that applies to the applicant under §§ 314.92 through 314.99. The applicant shall comply with the requirements for a waiver under § 314.90.

18. Part 314 is amended by revising the heading for Subpart D, §§ 314.100, 314.101, and 314.102 to read as follows:

Subpart D—FDA Action on Applications and Abbreviated Applications

§ 314.100 Time frames for reviewing applications and abbreviated applications.

(a) Within 180 days of receipt of an application for a new drug under section 505(b) of the act, or of an abbreviated application for a new drug under section 505(j) of the act, or of an application or abbreviated application for an antibiotic drug under section 507 of the act, FDA will review it and send the applicant either an approval letter under § 314.105, an approvable letter under § 314.110, or a not approvable letter under § 314.120. This 180-day period is called the "review clock."

(b) During the review period an applicant may withdraw an application under § 314.65 or an abbreviated application under § 314.99 and later resubmit it. FDA will treat the resubmission as a new application or abbreviated application.

(c) The review clock may be extended by mutual agreement between FDA and an applicant or as provided in §§ 314.60 and 314.96, as the result of a major amendment.

§ 314.101 Filing an application and an abbreviated antibiotic application and receiving an abbreviated new drug application.

(a)(1) Within 60 days after FDA receives an application or abbreviated antibiotic application, the agency will determine whether the application or abbreviated antibiotic application may be filed. The filing of an application or abbreviated antibiotic application means that FDA has made a threshold determination that the application or abbreviated antibiotic application is sufficiently complete to permit a substantive review.

(2) If FDA finds that none of the reasons in paragraphs (d) and (e) of this section for refusing to file the application or abbreviated antibiotic application apply, the agency will file the application or abbreviated antibiotic application and notify the applicant in writing. The date of filing will be the date 60 days after the date FDA received the application or abbreviated antibiotic application. The date of filing begins the 180-day period described in section 505(c) of the act. This 180-day period is called the "filing clock."

(3) If FDA refuses to file the application or abbreviated antibiotic application, the agency will notify the applicant in writing and state the reason under paragraph (d) or (e) of this section for the refusal. If FDA refuses to file the application or abbreviated antibiotic application under paragraph (d) of this section, the applicant may request in writing within 30 days of the date of the agency's notification an informal conference with the agency about whether the agency should file the application or abbreviated antibiotic application. If following the informal conference the applicant requests that FDA file the application or abbreviated antibiotic application (with or without amendments to correct the deficiencies), the agency will file the application or abbreviated antibiotic application over protest under paragraph (a)(2) of this section, notify the applicant in writing and review it as filed. If the application or abbreviated antibiotic application is filed over protest, the date of filing will be the date 60 days after the date the applicant requested the informal conference. The applicant need not resubmit a copy of an application or abbreviated antibiotic application that is filed over protest. If FDA refuses to file the application or abbreviated antibiotic application under paragraph (e) of this section, the applicant may amend the application or abbreviated antibiotic application and resubmit it and the agency will make a determination under this section whether it may be filed.

(b)(1) An abbreviated new drug application will be reviewed after it is submitted to determine whether the abbreviated application may be received. Receipt of an abbreviated new drug application means that FDA has made a threshold determination that the abbreviated application is sufficiently complete to permit a substantive review.

(2) If FDA finds that none of the reasons in paragraphs (d) and (e) of this section for considering the abbreviated new drug application not to have been received apply, the agency will receive the abbreviated new drug application and notify the applicant in writing.

(3) If FDA considers the abbreviated new drug application not to have been received under paragraphs (d) or (e) of this section, FDA will notify the applicant, ordinarily by telephone. The applicant may then:

(i) Withdraw the abbreviated new drug application pursuant to § 314.99, or

(ii) Amend the abbreviated new drug application to correct the deficiencies, or

(iii) Take no action, in which case FDA will refuse to receive the abbreviated new drug application.

(c) [Reserved]

(d) FDA may refuse to file an application or abbreviated antibiotic application or may not consider an abbreviated new drug application to be received if any of the following applies.

(1) The application or abbreviated application does not contain a completed application form.

(2) The application or abbreviated application is not submitted in the form required under § 314.50 or § 314.94.

(3) The application or abbreviated application is incomplete because it does not on its face contain information required under section 505(b), section 505(j), or section 507 of the act and § 314.50 or § 314.94.

(4) The applicant fails to submit a complete environmental assessment which addresses each of the items specified in the applicable format under § 25.31 of this chapter or fails to provide sufficient information to establish that the requested action is subject to categorical exclusion under § 25.24 of this chapter.

(5) The application or abbreviated application does not contain an accurate and complete English translation of each part of the application that is not in English.

(6) The application does not contain a statement for each nonclinical laboratory study that it was conducted in compliance with the requirements set forth in Part 58, or, for each study not conducted in compliance with Part 58, a brief statement of the reason for the noncompliance.

(7) The application does not contain a statement for each clinical study that it was conducted in compliance with the institutional review board regulations in Part 56 of this chapter, or was not subject to those regulations, and that it was conducted in compliance with the informed consent regulations in Part 50; or, if the study was subject to but was not conducted in compliance with those regulations, the application does not contain a brief statement of the reason for the noncompliance.

(8) The abbreviated new drug application contains a certification under § 314.94(a)(12)(i)(A)(*4*), but does not contain the results of any required and completed bioequivalence or bioavailability study, or, if appropriate, a request for waiver of such study requirement.

(e) The agency will refuse to file an application or abbreviated antibiotic application or will consider an abbreviated new drug application not to have been received if any of the following applies:

(1) The drug product that is the subject of the submission is already covered by an approved application or abbreviated application and the applicant of the submission is merely a distributor and/or a repackager of the already approved drug product.

(2) The drug product is subject to licensing by FDA under the Public Health Service Act (58 Stat. 632 as amended (42 U.S.C. 201 *et seq.*)) and Subchapter F of Chapter I of Title 21 of the Code of Federal Regulations.

(f)(1) Within 180 days after the date of filing, plus the period of time the review period was extended (if any), FDA will either (i) approve the application or abbreviated antibiotic application or (ii) issue a notice of opportunity for hearing if the applicant asked FDA to provide it an opportunity for a hearing on an application or abbreviated antibiotic application in response to an approvable letter or a not approvable letter.

(2) Within 180 days after the date of receipt, plus the period of time the review clock was extended (if any), FDA will either approve or disapprove the abbreviated new drug application. If FDA disapproves the abbreviated new drug application, FDA will issue a notice of opportunity for hearing if the applicant asked FDA to provide it an opportunity for a hearing on an abbreviated new drug application in response to a not approvable letter.

(3) This paragraph does not apply to applications or abbreviated applications that have been withdrawn from FDA review by the applicant.

§ 314.102 Communications between FDA and applicants.

(a) *General principles.* During the course of reviewing an application or an abbreviated application, FDA shall communicate with applicants about scientific, medical, and procedural issues that arise during the review process. Such communication may take the form of telephone conversations, letters, or meetings, whichever is most appropriate to discuss the particular issue at hand. Communications shall be appropriately documented in the application in accordance with § 10.65. Further details on the procedures for communication between FDA and applicants are contained in a staff manual guide that is publicly available.

(b) *Notification of easily correctable deficiencies.* FDA reviewers shall make every reasonable effort to communicate promptly to applicants easily correctable deficiencies found in an application or an abbreviated application when those deficiencies are discovered, particularly deficiencies concerning chemistry, manufacturing, and controls issues. The agency will also inform applicants promptly of its need for more data or information or for technical changes in the application or the abbreviated application needed to facilitate the agency's review. This early communication is intended to permit applicants to correct such readily identified deficiencies relatively early in the review process and to submit an amendment before the review period has elapsed. Such early communication would not ordinarily apply to major scientific issues, which require consideration of the entire pending application or abbreviated application by agency managers as well as reviewing staff. Instead, major scientific issues will ordinarily be addressed in an action letter.

(c) *Ninety-day conference.* Approximately 90 days after the agency receives the application, FDA will provide applicants with an opportunity to meet with agency reviewing officials. The purpose of the meeting will be to inform applicants of the general progress and status of their applications, and to advise applicants of deficiencies which have been identified by that time and which have not already been communicated. This meeting will be available on applications for all new chemical entities and major new indications of marketed drugs. Such meetings will be held at the applicant's option, and may be held by telephone if mutually agreed upon. Such meetings would not ordinarily be held on abbreviated applications because they are not submitted for new chemical entities or new indications.

(d) *End of review conference.* At the conclusion of FDA's review of an application or an abbreviated application as designated by the issuance of an approvable or not approvable letter, FDA will provide applicants with an opportunity to meet with agency reviewing officials. The purpose of the meeting will be to discuss what further steps need to be taken by the applicant before the application or abbreviated application can be approved. This meeting will be available on all applications or abbreviated applications, with priority given to applications for new chemical entities and major new indications for marketed drugs and for the first duplicates for such drugs. Requests for such meetings shall be directed to the director of the division responsible for reviewing the application or abbreviated application.

(e) *Other meetings.* Other meetings between FDA and applicants may be held, with advance notice, to discuss scientific, medical, and other issues that arise during the review process. Requests for meetings shall be directed to the director of the division responsible for reviewing the application or abbreviated application. FDA will make every attempt to grant requests for meetings that involve important issues and that can be scheduled at mutually convenient times. However, "drop-in" visits (i.e., an unannounced and unscheduled visit by a company representative) are discouraged except for urgent matters, such as to discuss an important new safety issue.

19. Section 314.103 is amended by revising paragraph (a), the first sentence in paragraph (b), and the fourth sentence in paragraph (c)(2), to read as follows:

§ 314.103 Dispute resolution.

(a) *General.* FDA is committed to resolving differences between applicants and FDA reviewing divisions with respect to technical requirements for applications or abbreviated applications as quickly and amicably as possible through the cooperative exchange of information and views.

(b) *Administrative and procedural issues.* When administrative or procedural disputes arise, the applicant should first attempt to resolve the matter with the division responsible for reviewing the application or abbreviated application, beginning with the consumer safety officer assigned to the application or abbreviated application.

* * *

(c) * * *

(2) * * * Requests for such meetings shall be directed to the director of the division responsible for reviewing the application or abbreviated application.* * *

* * * * *

20. Part 314 is amended by revising §§ 314.104 and 314.105 to read as follows:

§ 314.104 Drugs with potential for abuse.

The Food and Drug Administration will inform the Drug Enforcement Administration under section 201(f) of the Controlled Substances Act (21 U.S.C. 801) when an application or abbreviated application is submitted for a drug that appears to have an abuse potential.

§ 314.105 Approval of an application and an abbreviated application.

(a) The Food and Drug Administration will approve an application or an abbreviated antibiotic application and send the applicant an approval letter if none of the reasons in § 314.125 for refusing to approve the application or abbreviated antibiotic application apply. The date of the agency's approval letter is the date of approval of the application or abbreviated antibiotic application. When FDA sends an applicant an approval letter for an antibiotic, it will promulgate a regulation under § 314.300 providing for certification of the drug, if necessary. A new drug product or antibiotic approved under this paragraph may not be marketed until an approval letter is issued, except that a new drug product subject to a 505(b)(2) application may not be marketed until approval of the application is effective under § 314.107. Marketing of an antibiotic need not await the promulgation of a regulation under § 314.300.

(b) FDA will approve an application or abbreviated antibiotic application and issue the applicant an approval letter (rather than an approvable letter under § 314.110) on the basis of draft labeling if the only deficiencies in the application or abbreviated antibiotic application concern editorial or similar minor deficiencies in the draft labeling. Such approval will be conditioned upon the applicant incorporating the specified labeling changes exactly as directed, and upon the applicant submitting to FDA a copy of the final printed labeling prior to marketing.

(c) FDA will approve an application after it determines that the drug meets the statutory standards for safety and effectiveness, manufacturing and controls, and labeling, and an abbreviated antibiotic application after it determines that the drug meets the statutory standards for manufacturing and controls, and labeling. While the statutory standards apply to all drugs, the many kinds of drugs that are subject to the statutory standards and the wide range of uses for those drugs demand flexibility in applying the standards. Thus FDA is required to exercise its scientific judgment to determine the kind and quantity of data and information an applicant is required to provide for a particular drug to meet the statutory standards. FDA makes its views on drug products and classes of drugs available through guidelines, recommendations, and other statements of policy.

(d) FDA will approve an abbreviated new drug application and send the applicant an approval letter if none of the reasons in § 314.127 for refusing to approve the abbreviated new drug application apply. The date of the agency's approval letter is the date of approval of the abbreviated new drug application. A new drug product approved under this paragraph may not be introduced or delivered for introduction into interstate commerce until approval of the abbreviated new drug application is effective under § 314.107. Ordinarily, the effective date of approval will be stated in the approval letter.

21. Part 314 is amended by adding §§ 314.107 and 314.108 to read as follows:

§ 314.107 Effective date of approval of a 505(b)(2) application or abbreviated new drug application under section 505(j) of the act.

(a) *General.* A drug product may be introduced or delivered for introduction into interstate commerce when approval of the application or abbreviated application for the drug product becomes effective. Except as provided in this section, approval of an application or abbreviated application for a drug product becomes effective on the date FDA issues an approval letter under § 314.105 for the application or abbreviated application.

(b) *Effect of patent on the listed drug.* If approval of an abbreviated new drug application submitted under section 505(j) of the act or of a 505(b)(2) application is granted, that approval will become effective in accordance with the following:

(1) *Date of approval letter.* Except as provided in paragraph (c) of this section, approval will become effective on the date FDA issues an approval letter under § 314.105 if the applicant certifies under § 314.50(i) or § 314.94(a)(12) that:

(i) There are no relevant patents, or

(ii) The applicant is aware of a relevant patent but the patent information required under section 505 (b) or (c) of the act has not been submitted to FDA, or

(iii) The relevant patent has expired, or

(iv) The relevant patent is invalid or will not be infringed.

(A) The patent owner or its representative or the exclusive patent licensee has not brought suit for patent infringement within 45 days of the receipt of the applicant's notice of certification required under § 314.52 or § 314.95, or

(B) The drug product is covered by a patent licensing agreement and the abbreviated new drug application or 505(b)(2) application includes:

(*1*) A statement that the applicant has been granted a patent license;

(*2*) A statement from the patent owner that it has a licensing agreement with the applicant covering the proposed drug product and consents to an immediate effective date; and

(*3*) The patent owner's name and address.

(2) *Upon patent expiration.* If the applicant certifies under § 314.50(i) or § 314.94(a)(12) that the relevant patent will expire on a specified date, approval will become effective on the specified date.

(3) *Upon disposition of patent litigation.* (i)(A) Except as provided in paragraphs (b)(3) (ii), (iii), and (iv) of this section, if the applicant certifies under § 314.50(i) or § 314.94(a)(12) that the relevant patent is invalid or will not be infringed, and the patent owner or its representative or the exclusive patent licensee brings suit for patent infringement within 45 days of receipt of the notice of certification from the applicant under § 314.52 or § 314.95, approval will be made effective 30 months after the date of the receipt of the notice of certification by the patent owner or by the exclusive licensee (or their representatives) unless the court has extended or reduced the period because of a failure of either the plaintiff or defendant to cooperate reasonably in expediting the action, or

(B) If the patented drug product qualifies for 5 years of exclusive marketing under § 314.108(b)(2) and the patent owner or its representative or the exclusive patent licensee brings suit for patent infringement during the 1-year period beginning 4 years after the date the patented drug was approved and within 45 days of receipt of the notice of certification, the 30-month period will be extended by an amount of time, if any, that is required for 7½ years to have elapsed from the date of approval of the application for the patented drug product and approval will be made effective at the expiration of the 7½ years.

(ii) If before the expiration of the 30-month period, or 7½ years where applicable, the court issues a final order that the patent is invalid or not infringed, approval will be made effective on the date the court enters judgment,

(iii) If before the expiration of the 30-month period, or 7½ years where applicable, the court issues a final order that the patent has been infringed, approval will be made effective on the date the court determines that the patent will expire or otherwise orders, or

(iv) If before the expiration of the 30-month period, or 7½ years where applicable, the court grants a preliminary injunction prohibiting the applicant from engaging in the commercial manufacture or sale of the drug product until the court decides the issues of patent validity and infringement, and if the court later decides that the patent is invalid or not infringed, approval will be made effective on the date the court enters final judgment.

(4) *Multiple certifications.* If the applicant has submitted certifications under § 314.50(i) or § 314.94(a)(12) for more than one patent, the date of approval will be calculated for each certification, and the approval will become effective on the last applicable date.

(c) *Subsequent abbreviated new drug application submission.* (1) If an abbreviated new drug application contains a certification that a relevant patent is invalid or will not be infringed and the application is for a generic copy of the same listed drug for which an abbreviated new drug application was previously submitted containing a certification that the same patent was invalid or would not be infringed and the previous applicant has been sued for patent infringement within 45 days of the patent owner's receipt of notice submitted under § 314.95, approval of the subsequent abbreviated new drug application will be made effective no sooner than 180 days from whichever of the following dates is earlier:

(i) The date the first of the previous applicants to submit a substantially complete abbreviated new drug application containing a certification that a patent on the listed drug was invalid or not infringed and to be sued within 45 days of the patent owner's receipt of notice submitted under § 314.95 first commences commercial marketing of its drug product, or

(ii) The date of a decision of the court holding the relevant patent invalid or not infringed.

(2) For purposes of paragraph (c)(1) of this section, an abbreviated new drug application will be considered to have been "previously submitted" with respect to another application for the same listed drug if the date on which the first application was both substantially complete and contained a certification that the patent was invalid or not infringed is earlier than the date on which the second application was both substantially complete and contained the same certification. A "substantially complete" application must contain the results of any required bioequivalence studies, or, if applicable, a request for a waiver of such studies.

(3) For purposes of paragraph (c)(1) of this section, if the "first applicant" described in paragraph (c)(1)(i) of this section has not yet received approval of its abbreviated new drug application, FDA will make the approval of subsequent abbreviated applications immediately effective if FDA concludes that the first applicant is not actively pursuing approval of its abbreviated application.

(4) For purposes of paragraph (c)(1)(i) of this section, the first applicant that makes a certification that one or more patents on a drug is invalid or will not be infringed and that has been sued for patent infringement shall notify FDA of the date that it commences commercial marketing of its drug product. Commercial marketing commences with the first date of introduction or delivery for introduction into interstate commerce outside the control of the manufacturer of a drug product, except for investigational use under 21 CFR Part 312, but does not include transfer of the drug product for reasons other than sale within the control of the manufacturer or application holder. If an applicant does not promptly notify FDA of such date, the effective date of approval shall be deemed to be the date of the commencement of first commercial marketing.

(d) *Delay due to exclusivity.* The agency will also delay the effective date of the approval of an abbreviated new drug application under section 505(j) of the act or a 505(b)(2) application if delay is required by the exclusivity provisions in § 314.108. When the effective date of an application is delayed under both this section and § 314.108, the effective date will be the later of the 2 days specified under this section and § 314.108.

(e)(1) References to actions of "the court" in paragraphs (b) and (c) of this section are to the court that enters final judgment from which no appeal can be or has been taken.

(2) For purposes of establishing the effective date of approval based on a court judgment, the applicant shall submit to the Division of Generic Drugs (HFN–230), within 10 working days of a final judgment, a copy of the entry of judgment.

(f) *Computation of 45-day time clock.* (1) The 45-day clock described in paragraph (b)(3) of this section begins on the day after the date of receipt of the applicant's notice of certification by the patent owner or its representative, or by the approved application holder if the holder is an exclusive patent licensee. When the 45th day falls on Saturday, Sunday, or on a Federal holiday, the 45th day will be the next day that is not a Saturday, Sunday, or a Federal holiday.

(2) If the applicant of the abbreviated new drug application or 505(b)(2) application does not notify FDA in writing before the expiration of the 45-day time period or the completion of the agency's review of the application, whichever occurs later, that a legal action for patent infringement was filed within 45 days of receipt of the notice of certification, approval of the abbreviated new drug application or 505(b)(2) application will be made effective immediately upon expiration of the 45 days or upon completion of the agency's review and approval of the application, whichever is later. The 505(b)(2) applicant or abbreviated new drug applicant shall notify FDA of the filing of any such legal action and shall include in such notification:

(i) The abbreviated new drug application or 505(b)(2) application number.

(ii) The name of the abbreviated new drug application or 505(b)(2) applicant.

(iii) The established name of the drug, if any, strength, and dosage form.

(iv) A certification that action to defend the patent, identified by number, has been filed in an appropriate court on a specified date. The applicant of an abbreviated new drug application shall send the notification to FDA's Division of Generic Drugs (HFD–230). A 505(b)(2) applicant shall send the notification to the appropriate division in the Center for Drug Research and Evaluation reviewing the application.

(3) If the patent owner or approved application holder who is an exclusive patent licensee waives its opportunity to file a legal action for patent infringement within 45 days of receipt of the notice of certification and the patent owner or approved application holder who is an exclusive patent licensee submits to FDA a valid waiver before the 45 days elapses, approval of the abbreviated new drug application or 505(b)(2) application will be made effective upon completion of the agency's review and approval of the application. FDA will only accept a waiver in the following form:

(*Name of patent owner or exclusive patent licensee*) has received notice from (*name of applicant*) under (*section 505(b)(3) or 505(j)(2)(B) of the act*) and does not intend to file an action for patent infringement against (*name of applicant*) concerning the drug (*name of drug*) before (*date on which 45 days elapses*). (*Name of patent owner or exclusive patent licensee*) waives the opportunity provided by (*section 505(c)(3)(C) or 505(j)(4)(B)(iii) of the act*) and does not object if (*name of applicant*)'s (*505(b)(2) or abbreviated new drug application*) for (*name of drug*) is approved with an immediate effective date on or after the date of this letter.

§ 314.108 New drug product exclusivity.

(a) The following definitions of terms apply to this section:

"Active moiety" means the molecule or ion, excluding those appended portions of the molecule that cause the drug to be an ester, salt (including a salt with hydrogen or coordination bonds) or other noncovalent derivative (such as a complex, chelate, or clathrate) of the molecule, responsible for the physiological or pharmacological action of the drug substance.

"Approved under section 505(b)" means an application submitted under section 505(b) and approved on or after October 10, 1962, or an application that was "deemed approved" under section 107(c)(2) of Pub. L. 87–781.

"Clinical investigation" means any experiment other than a bioavailability study in which a drug is administered or dispensed to, or used on human subjects.

"Conducted or sponsored by the applicant" with regard to an investigation means that before or during the investigation, the applicant was named in Form FDA 1571 filed with FDA as the sponsor of the investigational new drug application under which the investigation was conducted, or the applicant or the applicant's predecessor in interest, provided substantial support for the investigation. Ordinarily, substantial support will mean providing 50 percent or more of the cost of conducting the study. A predecessor in interest is an entity, e.g., a corporation, that the applicant has taken over, merged with, or purchased, or from which the applicant has purchased all rights to the drug. Purchase of a clinical investigation itself or the rights to an investigation after it is completed is not sufficient to satisfy this definition.

"Date of approval" means the date on the letter from the Food and Drug Administration (FDA) stating that the new drug application is approved, whether or not final printed labeling or other materials must yet be submitted as long as approval of such labeling or materials is not expressly required.

"Essential to approval" with regard to an investigation means that the application could not be approved by FDA without that investigation, even with a delayed effective date.

"New chemical entity" means a drug that contains no active moiety that has been approved by FDA in any other application submitted under section 505(b) of the act.

"New clinical investigation" means an investigation in humans the results of which have not been relied on by FDA to demonstrate substantial evidence of effectiveness of a previously approved drug product for any indication or of safety for a new patient population and do not duplicate the results of another investigation that was relied on by the agency to demonstrate the effectiveness or safety in a new patient population of a previously approved drug product. For purposes of this section, data from a clinical investigation previously submitted for use in the comprehensive evaluation of the safety of a drug product but not to support the effectiveness of the drug product would be considered new.

(b) *Submission of and effective date of approval of an abbreviated new drug application submitted under section 505(j) of the act or a 505(b)(2) application.* (1) If a drug product that contains a new chemical entity was approved between January 1, 1982, and September 24, 1984, in an application submitted under section 505(b) of the act, the agency will not make effective for a period of 10 years from the date of approval of the first approved new drug application the approval of a 505(b)(2) application or an abbreviated new drug application submitted under section 505(j) of the act for a drug product that contains the same active moiety in the new chemical entity in the first approved application.

(2) If a drug product that contains a new chemical entity was approved after September 24, 1984, in an application submitted under section 505(b) of the act, no person may submit a 505(b)(2) application or abbreviated new drug application under section 505(j) of the act for a drug product that contains the same active moiety as in the new chemical entity for a period of 5 years from the date of approval of the first approved new drug application, except that the 505(b)(2) application or abbreviated application may be submitted after 4 years if it contains a certification of patent invalidity or noninfringement described in § 314.50(i)(1)(i)(*a*)(*4*) or § 314.94(a)(12)(i)(A)(*4*).

(3) The approval of a 505(b)(2) application or abbreviated application described in paragraph (b)(2) of this section will become effective as provided in § 314.107(b) (1) or (2), unless the owner of a patent that claims the drug or the patent owner's representative, or exclusive licensee brings suit for patent infringement against the applicant during the 1-year period beginning 48 months after the date of approval of the new drug application for the new chemical entity and within 45 days after receipt of the notice described at § 314.52 or § 314.95, in which case, approval of the 505(b)(2) application or abbreviated application will be made effective as provided in § 314.107(b)(3).

(4) If an application:

(i) Was submitted under section 505(b) of the act;

(ii) Was approved after September 24, 1984;

(iii) Was for a drug product that contains an active moiety that has been previously approved in another application under section 505(b) of the act; and

(iv) Contained reports of new clinical investigations (other than bioavailability studies) conducted or sponsored by the applicant that were essential to approval of the application, the agency will not make effective for a period of 3 years after the date of approval of the application the approval of: a 505(b)(2) application or an abbreviated new drug application for the conditions of approval of the original application, or an abbreviated new drug application submitted pursuant to an approved petition under section 505(j)(2)(C) of the act that relies on the information supporting the conditions of approval of an original new drug application.

(5) If a supplemental application:

(i) Was approved after September 24, 1984, and

(ii) Contained reports of new clinical investigations (other than bioavailability studies) that were conducted or sponsored by the applicant that were essential to approval of the supplemental application, the agency will not make effective for a period of 3 years after the date of approval of the supplemental application the approval of a 505(b)(2) application or an abbreviated new drug application for a change, or an abbreviated new drug application submitted pursuant to an approved petition under section 505(j)(2)(C) of the act that relies on the information supporting a change approved in the supplemental new drug application.

22. Part 314 is amended by revising §§ 314.110 and 314.120 to read as follows:

§ 314.110 Approvable letter to the applicant.

(a) In selected circumstances it is useful at the end of the review period for the Food and Drug Administration to indicate to the applicant that the application or abbreviated application is basically approvable providing certain issues are resolved. An approvable letter may be issued in such circumstances. FDA will send the applicant an approvable letter if the application or abbreviated application substantially meets the requirements of this part and the agency believes that it can approve the application or abbreviated application if specific additional information or material is submitted or specific conditions (for example, certain changes in labeling) are agreed to by the applicant. The approvable letter will describe the information or material FDA requires or the conditions the applicant is asked to meet. As a practical matter, the approvable letter will serve in most instances as a mechanism for resolving outstanding issues on drugs that are about to be approved and marketed. For an application or an abbreviated antibiotic application, the applicant shall, within 10 days after the date of the approvable letter:

(1) Amend the application or abbreviated antibiotic application or notify FDA of an intent to file an amendment. The filing of an amendment or notice of intent to file an amendment constitutes an agreement by the applicant to extend the review period for 45 days after the date FDA receives the amendment. The extension is to permit the agency to review the amendment;

(2) Withdraw the application or abbreviated antibiotic application. FDA will consider the applicant's failure to respond within 10 days to an approvable letter to be a request by the applicant to withdraw the application under § 314.65 or the abbreviated antibiotic application under § 314.99. A decision to withdraw an application or abbreviated antibiotic application is without prejudice to a refiling;

(3) For a new drug application, ask the agency to provide the applicant an opportunity for a hearing on the question of whether there are grounds for denying approval of the application under section 505(d) of the act. The applicant shall submit the request to the Division of Regulatory Affairs (HFD–360), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Within 60 days of the date of the approvable letter, or within a different time period to which FDA and the applicant agree, the agency will either approve the application under § 314.105 or refuse to approve the application under § 314.125 and give the applicant written notice of an opportunity for a hearing under § 314.200 and section 505(c)(2) of the act on the question of whether there are grounds for denying approval of the application under section 505(d) of the act;

(4) For an antibiotic, file a petition or notify FDA of an intent to file a petition proposing the issuance, amendment, or repeal of a regulation under § 314.300 and section 507(F) of the act; or

(5) Notify FDA that the applicant agrees to an extension of the review period under section 505(c) of the act, so that the applicant can determine whether to respond further under paragraphs (a) (1), (2), (3), or (4) of this section. The applicant's notice is required to state the length of the extension. FDA will honor any reasonable request for such an extension. FDA will consider the applicant's failure to respond further within the extended review period to be a request to withdraw the application under § 314.65 or the abbreviated antibiotic application under § 314.99. A decision to withdraw an application or abbreviated antibiotic application is without prejudice to a refiling.

(b) FDA will send the applicant of an abbreviated new drug application an approvable letter only if the application substantially meets the requirements of this part and the agency believes that it can approve the abbreviated application if minor deficiencies in the draft labeling are corrected and final printed labeling is submitted. The approvable letter will describe the labeling deficiencies and state a time period within which the applicant must respond. Unless the applicant corrects the deficiencies by amendment or submits final printed labeling within the specified time period, FDA will refuse to approve the abbreviated application under § 314.127.

§ 314.120 Not approvable letter to the applicant.

(a) The Food and Drug Administration will send the applicant a not approvable letter if the agency believes that the application or abbreviated antibiotic application may not be approved for one of the reasons given in § 314.125 or the abbreviated new drug application may not be approved for one of the reasons given in § 314.127. The not approvable letter will describe the deficiencies in the application or abbreviated application. Except as provided in paragraph (b), within 10 days after the date of the not approvable letter, the applicant shall:

(1) Amend the application or abbreviated application or notify FDA of an intent to file an amendment. The filing of an amendment or a notice of intent to file an amendment constitutes an agreement by the applicant to extend the review period under § 314.60 or § 314.96;

(2) Withdraw the application or abbreviated application. Except as provided in paragraph (b), FDA will consider the applicant's failure to respond within 10 days to a not approvable letter to be a request by the applicant to withdraw the application under § 314.65 or abbreviated application under § 314.99. A decision to withdraw the application or abbreviated application is without prejudice to refiling;

(3) For a new drug application, ask the agency to provide the applicant an opportunity for a hearing on the question of whether there are grounds for denying approval of the application under section 505(d) or section 505(j)(3) of the act. The applicant shall submit the request to the Division of Regulatory Affairs (HFD–360), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Within 60 days of the date of the not approvable letter, or within a different time period to which FDA and the applicant agree, the agency will either approve the application or abbreviated application under § 314.105

or refuse to approve the application or abbreviated antibiotic application under § 314.125 or abbreviated new drug application under § 314.127 and give the applicant written notice of an opportunity for a hearing under § 314.200 and section 505(c)(1)(B) or 505(j)(4)(C) of the act on the question of whether there are grounds for denying approval of the application under section 505(d) or 505(j)(3) of the act;

(4) For an antibiotic application, file a petition or notify FDA of an intent to file a petition proposing the issuance, amendment, or repeal of a regulation under § 314.300 and section 507(F) of the act; or

(5) Notify FDA that the applicant agrees to an extension of the review period under section 505(c)(1) or 505(j)(4)(A) of the act, so that the applicant can determine whether to respond further under paragraphs (a) (1), (2), (3), or (4) of this section. The applicant's notice is required to state the length of the extension. FDA will honor any reasonable request for such an extension. FDA will consider the applicant's failure to respond further within the extended review period to be a request to withdraw the application under § 314.65 or abbreviated application under § 314.99. A decision to withdraw an application or abbreviated application is without prejudice to a refiling.

(b) The 10-day time period in this section for responding to a not approvable letter does not apply to abbreviated new drug applications. FDA may consider the applicant's failure to respond within 180 days to a not approvable letter to be a request by the applicant to withdraw the abbreviated new drug application under § 314.99.

23. New § 314.122 is added to Subpart D to read as follows:

§ 314.122 Submitting an application for, or a 505(j)(2)(C) petition that relies on, a listed drug that is no longer marketed.

(a) An abbreviated new drug application that refers to, or a petition under section 505(j)(2)(C) of the act and § 314.93 that relies on, a listed drug that has been voluntarily withdrawn from sale in the United States must be accompanied by a petition seeking a determination whether the listed drug was withdrawn for safety or effectiveness reasons. The petition must be submitted under §§ 10.25(a) and 10.30 of this chapter and must contain all evidence available to the petitioner concerning the reasons for the withdrawal from sale.

(b) When a petition described in paragraph (a) of this section is submitted, the agency will consider the evidence in the petition and any other evidence before the agency, and determine whether the listed drug is withdrawn from sale for safety or effectiveness reasons, in accordance with the procedures in § 314.161.

(c) An abbreviated new drug application described in paragraph (a) of this section will be disapproved, pursuant to § 314.127(k), and a 505(j)(2)(C) petition described in paragraph (a) of this section will be disapproved, pursuant to § 314.93(e)(1)(iv), unless the agency determines that the withdrawal of the listed drug was not for safety or effectiveness reasons.

(d) Certain drug products approved for safety and effectiveness that were no longer marketed on September 24, 1984, are not included in the list. Any person who wishes to obtain marketing approval for such a drug product under an abbreviated new drug application must petition FDA for a determination whether the drug product was withdrawn from the market for safety or effectiveness reasons and request that the list be amended to include the drug product. A person seeking such a determination shall use the petition procedures established in § 10.30 of this chapter. The petitioner shall include in the petition information to show that the drug product was approved for safety and effectiveness and all evidence available to the petitioner concerning the reason that marketing of the drug product ceased.

24. Section 314.125 is amended by revising the section heading, the introductory text of paragraph (a), the introductory text of paragraph (b), paragraphs (b) (7), (9), (10), (12), (14), (15), (16), and by adding new paragraph (b)(17) to read as follows:

§ 314.125 Refusal to approve an application or abbreviated antibiotic application.

(a) The Food and Drug Administration will refuse to approve the application or abbreviated antibiotic application and for a new drug give the applicant written notice of an opportunity for a hearing under § 314.200 on the question of whether there are grounds for denying approval of the application under section 505(d) of the act, or for an antibiotic publish a proposed regulation based on an acceptable petition under § 314.300, if:

* * * * *

(b) FDA may refuse to approve an application or abbreviated antibiotic application for any of the following reasons: * * *

(7) The application or abbreviated antibiotic application contains an untrue statement of a material fact.

* * * * *

(9) The application or abbreviated antibiotic application does not contain bioavailability or bioequivalence data required under Part 320.

(10) A reason given in a letter refusing to file the application or abbreviated antibiotic application under § 314.101(d), if the deficiency is not corrected.

* * * * *

(12) The applicant does not permit a properly authorized officer or employee of the Department of Health and Human Services an adequate opportunity to inspect the facilities, controls, and any records relevant to the application or abbreviated antibiotic application.

* * * * *

(14) The application or abbreviated antibiotic application does not contain an explanation of the omission of a report of any investigation of the drug product sponsored by the applicant, or an explanation of the omission of other information about the drug pertinent to an evaluation of the application or abbreviated antibiotic application that is received or otherwise obtained by the applicant from any source.

(15) A nonclinical laboratory study that is described in the application or abbreviated antibiotic application and that is essential to show that the drug is safe for use under the conditions prescribed, recommended, or suggested in its proposed labeling was not conducted in compliance with the good laboratory practice regulations in Part 58 of this chapter and no reason for the noncompliance is provided or, if it is, the differences between the practices used in conducting the study and the good laboratory practice regulations do not support the validity of the study.

(16) Any clinical investigation involving human subjects described in the application or abbreviated antibiotic application, subject to the institutional review board regulations in Part 56 or informed consent regulations in Part 50 of this chapter, was not conducted in compliance with those regulations such that the rights or safety of human subjects were not adequately protected.

(17) For a new drug, the application failed to contain the patent information required by section 505(b)(1) of the act and § 314.53.

24a. New § 314.127 is added to Subpart D to read as follows:

§ 314.127 Refusal to approve an abbreviated new drug application.

FDA will refuse to approve an abbreviated application for a new drug under section 505(j) of the act for any of the following reasons:

(a) The methods used in, or the facilities and controls used for, the manufacture, processing, and packing of the drug product are inadequate to assure and preserve its identity, strength, quality, and purity;

(b) Information submitted with the abbreviated new drug application is insufficient to show that each of the proposed conditions of use have been previously approved for the listed drug referred to in the application;

(c)(1) If the reference listed drug has only one active ingredient, information submitted with the abbreviated new drug application is insufficient to show that the active ingredient is the same as that of the reference listed drug.

(2) If the reference listed drug has more than one active ingredient, information submitted with the abbreviated new drug application is insufficient to show that the active ingredients are the same as the active ingredients of the reference listed drug, or

(3) If the reference listed drug has more than one active ingredient and if the abbreviated new drug application is for a drug product which has an active ingredient different from the reference listed drug,

(i) Information submitted with the abbreviated new drug application is insufficient to show:

(A) That the other active ingredients are the same as the active ingredients of the reference listed drug, or

(B) That the different active ingredient is an active ingredient of a listed drug or a drug which does not meet the requirements of section 201(p) of the act, or

(ii) No petition to submit an abbreviated application for the drug product with the different active ingredient was approved under § 314.93;

(d)(1) If the abbreviated new drug application is for a drug product whose route of administration, dosage form, or strength purports to be the same as that of the listed drug referred to in the abbreviated new drug application, information submitted in the abbreviated new drug application is insufficient to show that the route of administration, dosage form, or strength is the same as that of the reference listed drug, or

(2) If the abbreviated new drug application is for a drug product whose route of administration, dosage form, or strength is different from that of the listed drug referred to in the application, no petition to submit an abbreviated new drug application for the drug product with the different route of administration, dosage form, or strength was approved under § 314.93.

(e) If the abbreviated new drug application was submitted pursuant to the approval of a petition under § 314.93, the abbreviated new drug application did not contain the information required by FDA with respect to the active ingredient, route of administration, dosage form, or strength that is not the same as that of the reference listed drug;

(f)(1) Information submitted in the abbreviated new drug application is insufficient to show that the drug product is bioequivalent to the listed drug referred to in the abbreviated new drug application or, (2) if the abbreviated new drug application was submitted pursuant to a petition approved under § 314.93, information submitted in the abbreviated new drug application is insufficient to show that the active ingredients of the drug product are of the same pharmacological or therapeutic class as those of the reference listed drug and that the drug product can be expected to have the same therapeutic effect as the reference listed drug when administered to patients for each condition of use approved for the reference listed drug;

(g) Information submitted in the abbreviated new drug application is insufficient to show that the labeling proposed for the drug is the same as the labeling approved for the listed drug referred to in the abbreviated new drug application except for changes required because of differences approved in a petition under § 314.93 or because the drug product and the reference listed drug are produced or distributed by different manufacturers;

(h)(1) Information submitted in the abbreviated new drug application or any other information available to FDA shows that:

(i) The inactive ingredients of the drug product are unsafe for use, as described in paragraph (h)(2) of this section, under the conditions prescribed, recommended, or suggested in the labeling proposed for the drug product, or

(ii) The composition of the drug product is unsafe, as described in paragraph (h)(2) of this section, under the conditions prescribed, recommended, or suggested in the proposed labeling because of the type or quantity of inactive ingredients included or the manner in which the inactive ingredients are included;

(2)(i) FDA will consider the inactive ingredients or composition of a drug product unsafe and refuse to approve an abbreviated new drug application under paragraph (h)(1) of this section if, on the basis of information available to the agency, there is a reasonable basis to conclude that one or more of the inactive ingredients of the proposed drug or its composition raise serious questions of safety. From its experience with reviewing inactive ingredients, and from other information available to it, FDA may identify changes in inactive ingredients or composition that may adversely affect a drug product's safety. The inactive ingredients or composition of a proposed drug product will be considered to raise serious questions of safety if the product incorporates one or more of these changes. Examples of the changes that raise serious questions of safety include:

(A) change in an inactive ingredient so that the product does not comply with an official compendium.

(B) A change in composition to include an inactive ingredient that has not been previously approved in a drug product for human use by the same route of administration.

(C) A change in the composition of a parental drug product to include an inactive ingredient that has not been previously approved in a parental drug product.

(D) A change in composition of a drug product for ophthalmic use to include an inactive ingredient that has not been previously approved in a drug for ophthalmic use.

(E) The use of a controlled release mechanism never before approved for the drug.

(F) A change in composition to include a significantly higher concentration of one or more inactive ingredients than previously used in the drug product.

(G) If the drug product is intended for topical administration, a change in the properties of the vehicle or base that might increase absorption of certain potentially toxic active ingredients thereby affecting the safety of the drug product, or a change in the lipophilic properties of a vehicle or base, e.g., a change from an oleaginous to a water soluble vehicle or base.

(ii) FDA will consider an inactive ingredient in, or the composition of, a drug product intended for parenteral use to be unsafe and will refuse to approve the abbreviated new drug application unless it contains the same inactive ingredients, other than preservatives, buffers, and antioxidants, in the same concentration as the listed drug, and, if it differs from the listed drug in a preservative, buffer, or antioxidant, the application contains sufficient

information to demonstrate that the difference does not affect the safety of the drug product.

(iii) FDA will consider an inactive ingredient in, or the composition of, a drug product intended for ophthalmic or otic use unsafe and will refuse to approve the abbreviated new drug application unless it contains the same inactive ingredients, other than preservatives, buffers, substances to adjust toxicity or thickening agents, in the same concentration as the listed drug, and if it differs from the listed drug in a preservative, buffer, substance to adjust toxicity or thickening agent, the application contains sufficient information to demonstrate that the difference does not affect the safety of the drug product and the labeling does not claim any therapeutic advantage over or difference from the listed drug.

(i) Approval of the listed drug referred to in the abbreviated new drug application has been withdrawn or suspended for grounds described in § 314.150(a) or FDA has published a notice of opportunity for hearing to withdraw approval of the reference listed drug under § 314.150(a);

(j) Approval of the reference listed drug has been withdrawn under § 314.151 or FDA has proposed to withdraw approval of the reference listed drug under § 314.151(a);

(k) FDA has determined that the reference listed drug has been withdrawn from sale for safety or effectiveness reasons under § 314.161, or the reference listed drug has been voluntarily withdrawn from sale and the agency has not determined whether the withdrawal is for safety or effectiveness reasons, or approval of the reference listed drug has been suspended under § 314.153, or the agency has issued an initial decision proposing to suspend the reference listed drug under § 314.153(a)(1);

(l) The abbreviated new drug application does not meet any other requirement under section 505(j)(2)(A) of the act; or

(m) The abbreviated new drug application contains an untrue statement of material fact.

25. Section 314.150 is revised to read as follows:

§ 314.150 Withdrawal of approval of an application or abbreviated application.

(a) The Food and Drug Administration will notify the applicant, and, if appropriate, all other persons who manufacture or distribute identical, related, or similar drug products as defined in §§ 310.6 and 314.151(a) and for a new drug afford an opportunity for a hearing on a proposal to withdraw approval of the application or abbreviated new drug application under section 505(e) of the act and under the procedure in § 314.200, or, for an antibiotic, rescind a certification or release, or amend or repeal a regulation providing for certification under section 507 of the act and under the procedure in § 314.300, if any of the following applies:

(1) The Secretary of Health and Human Services has suspended the approval of the application or abbreviated application for a new drug on a finding that there is an imminent hazard to the public health. FDA will promptly afford the applicant an expedited hearing following summary suspension on a finding of imminent hazard to health.

(2) FDA finds:

(i) That clinical or other experience, tests, or other scientific data show that the drug is unsafe for use under the conditions of use upon the basis of which the application or abbreviated application was approved; or

(ii) That new evidence of clinical experience, not contained in the application or not available to FDA until after the application or abbreviated application was approved, or tests by new methods, or tests by methods not deemed reasonably applicable when the application or abbreviated application was approved, evaluated together with the evidence available when the application or abbreviated application was approved, reveal that the drug is not shown to be safe for use under the conditions of use upon the basis of which the application or abbreviated application was approved; or

(iii) Upon the basis of new information before FDA with respect to the drug, evaluated together with the evidence available when the application or abbreviated application was approved, that there is a lack of substantial evidence from adequate and well-controlled investigations as defined in § 314.126, that the drug will have the effect it is purported or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling; or

(iv) That the application or abbreviated application contains any untrue statement of a material fact; or

(v) That the patent information prescribed by section 505(c) of the act was not submitted within 30 days after the receipt of written notice from FDA specifying the failure to submit such information.

(b) FDA may notify the applicant, and, if appropriate, all other persons who manufacture or distribute identical, related, or similar drug products as defined in § 310.6, and for a new drug afford an opportunity for a hearing on a proposal to withdraw approval of the application or abbreviated new drug application under section 505(e) of the act and under the procedure in § 314.200, or, for an antibiotic, rescind a certification or release, or amend or repeal a regulation providing for certification under section 507 of the act and the procedure in § 314.300, if the agency finds:

(1) That the applicant has failed to establish a system for maintaining required records, or has repeatedly or deliberately failed to maintain required records or to make required reports under section 505(k) or 507(g) of the act and §§ 314.80, 314.81, or 314.98, or that the applicant has refused to permit access to, or copying or verification of, its records.

(2) That on the basis of new information before FDA, evaluated together with the evidence available when the application or abbreviated application was approved, the methods used in, or the facilities and controls used for, the manufacture, processing, and packing of the drug are inadequate to assure and preserve its identity, strength, quality, and purity and were not made adequate within a reasonable time after receipt of written notice from the agency.

(3) That on the basis of new information before FDA, evaluated together with the evidence available when the application or abbreviated application was approved, the labeling of the drug, based on a fair evaluation of all material facts, is false or misleading in any particular; and the labeling was not corrected by the applicant within a reasonable time after receipt of written notice from the agency.

(4) That the applicant has failed to comply with the notice requirements of section 510(j)(2) of the act.

(5) That the applicant has failed to submit bioavailability or bioequivalence data required under Part 320 of this chapter.

(6) The application or abbreviated application does not contain an explanation of the omission of a report of any investigation of the drug product sponsored by the applicant, or an explanation of the omission of other information about the drug pertinent to an evaluation of the application or abbreviated application that is received or otherwise obtained by the applicant from any source.

(7) That any nonclinical laboratory study that is described in the application or abbreviated application and that is essential to show that the drug is safe for use under the conditions prescribed, recommended, or suggested in its labeling was not conducted in compliance with the good laboratory practice regulations in Part 58 of this chapter and no reason for the noncompliance was provided or, if it was, the differences between the practices used in conducting the study and the good laboratory practice regulations do not support the validity of the study.

(8) Any clinical investigation involving human subjects described in the application or abbreviated application, subject to the institutional review board regulations in Part 56 of this chapter or informed consent regulations in Part 50 of this chapter was not conducted in compliance with those regulations such that the rights or safety of human subjects were not adequately protected.

(c) FDA will withdraw approval of an application or abbreviated application if the applicant requests its withdrawal because the drug subject to the application or abbreviated application is no longer being marketed, provided none of the conditions listed in paragraphs (a) and (b) of this section apply to the drug. FDA will consider a written request for withdrawal under this paragraph to be a waiver of an opportunity for hearing otherwise provided for in this section. Withdrawal of approval of an application or abbreviated application under this paragraph is without prejudice to refiling.

(d) FDA may notify an applicant that it believes a potential problem associated with a drug is sufficiently serious that the drug should be removed from the market and may ask the applicant to waive the opportunity for hearing otherwise provided for under this section, to permit FDA to withdraw approval of the application or abbreviated application for the product, and to remove voluntarily the product from the market. If the applicant agrees, the agency will not make a finding under paragraph (b) of this section, but will withdraw approval of the application or abbreviated application in a notice published in the **Federal Register** that contains a brief summary of the agency's and the applicant's views of the reasons for withdrawal.

26. New § 314.151 is added to Subpart D to read as follows:

§ 314.151 Withdrawal of approval of an abbreviated new drug application pursuant to section 505(j)(5) of the act.

(a) Approval of an abbreviated new drug application approved under § 314.105(d) may be withdrawn when the agency withdraws approval, under § 314.150(a) or under this section, of the approved drug referred to in the abbreviated new drug application. If the agency proposes to withdraw approval of a listed drug under § 314.150(a), the holder of an approved application for the listed drug has a right to notice and opportunity for hearing. The published notice of opportunity for hearing will identify all drug products approved under § 314.105(d) whose applications are subject to withdrawal under this section if the listed drug is withdrawn, and will propose to withdraw such drugs. Holders of approved applications for the identified drug products will be provided notice and an opportunity to respond to the proposed withdrawal of their applications as described in paragraphs (b) and (c) of this section.

(b)(1) The published notice of opportunity for hearing on the withdrawal of the listed drug will serve as notice to holders of identified abbreviated new drug applications of the grounds for the proposed withdrawal.

(2) Holders of applications for drug products identified in the notice of opportunity for hearing may submit written comments on the notice of opportunity for hearing issued on the proposed withdrawal of the listed drug. If an abbreviated new drug application holder submits comments on the notice of opportunity for hearing and a hearing is granted, the abbreviated new drug application holder may participate in the hearing as a nonparty participant as provided for in § 12.89 of this chapter.

(3) Except as provided in paragraphs (c) and (d) of this section, the approval of an abbreviated new drug application for a drug product identified in the notice of opportunity for hearing on the withdrawal of a listed drug will be withdrawn when the agency has completed the withdrawal of approval of the listed drug.

(c)(1) If the holder of an application for a drug identified in the notice of opportunity for hearing has submitted timely comments but does not have an opportunity to participate in a hearing because a hearing is not requested or is settled, the submitted comments will be considered by the agency, which will issue an initial decision. The initial decision will respond to the comments, and contain the agency's decision whether there are grounds to withdraw approval of the listed drug and of the abbreviated new drug applications on which timely comments were submitted. The initial decision will be sent to each abbreviated new drug application holder that has submitted comments.

(2) Abbreviated new drug application holders to whom the initial decision was sent, may, within 30 days of the issuance of the initial decision submit written objections.

(3) The agency may, at its discretion, hold a limited oral hearing to resolve dispositive factual issues that cannot be resolved on the basis of written submissions.

(4) If there are no timely objections to the initial decision, it will become final at the expiration of 30 days.

(5) If timely objections are submitted, they will be reviewed and responded to in a final decision.

(6) The written comments received, the initial decision, the evidence relied on in the comments and in the initial decision, the objections to the initial decision, and, if a limited oral hearing has been held, the transcript of that hearing and any documents submitted therein, shall form the record upon which the agency shall make a final decision.

(7) Except as provided in paragraph (d) of this section, any abbreviated new drug application whose holder submitted comments on the notice of opportunity for hearing shall be withdrawn upon the issuance of a final decision concluding that the listed drug should be withdrawn for grounds as described in § 314.150(a). The final decision shall be in writing and shall constitute final agency action, reviewable in a judicial proceeding.

(8) Documents in the record will be publicly available in accordance with § 10.20(j) of this chapter. Documents available for examination or copying will be placed on public display in the office of the Dockets Management Branch promptly upon receipt in that office.

(d) If the agency determines, based upon information submitted by the holder of an abbreviated new drug application, that the grounds for withdrawal of the listed drug are not applicable to a drug identified in the notice of opportunity for hearing, the final decision will state that the approval of the abbreviated new drug application for such drug is not withdrawn.

27. Section 314.152 is revised to read as follows:

§ 314.152 Notice of withdrawal of approval of an application or abbreviated application for a new drug.

If the Food and Drug Administration withdraws approval of an application or abbreviated application for a new drug, FDA will publish a notice in the **Federal Register** announcing the withdrawal of

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approval. If the application or abbreviated application was withdrawn for grounds described in § 314.150(a) or § 314.151, the notice will announce the removal of the drug from the list of approved drugs published pursuant to section 505(j)(6) of the act and shall satisfy the requirement of § 314.162(b).

28. New § 314.153 is added to Subpart D to read as follows:

§ 314.153 Suspension of approval of an abbreviated new drug application.

(a) The approval of an abbreviated new drug application approved pursuant to § 314.105(d) shall be suspended for the period stated when:

(1) The Secretary, pursuant to the imminent hazard authority of section 505(e) of the act or the authority of this paragraph, suspends approval of a listed drug referred to in the abbreviated new drug application, for the period of the suspension;

(2) The agency, in the notice described in paragraph (b) of this section, or in any subsequent written notice given an abbreviated new drug application holder by the agency, concludes that the risk of continued marketing and use of the drug is inappropriate, pending completion of proceedings to withdraw or suspend approval under § 314.151 or paragraph (b) of this section; or

(3) The agency, pursuant to the procedures set forth in paragraph (b) of this section, issues a final decision stating his determination that the abbreviated application is suspended because the listed drug on which the approval of the abbreviated new drug application depends has been withdrawn from sale for reasons of safety or effectiveness or has been suspended under paragraph (b) of this section. The suspension will take effect on the date stated in the decision and will remain in effect until the agency determines that the marketing of the drug has resumed or that the withdrawal is not for safety or effectiveness reasons.

(b) *Procedures for suspension of abbreviated new drug applications when a listed drug is voluntarily withdrawn for safety or effectiveness reasons.* (1) If a listed drug is voluntarily withdrawn from sale, and the agency determines that the withdrawal from sale was for reasons of safety or effectiveness, the agency will send each holder of an approved abbreviated new drug application that is subject to suspension as a result of the determination a copy of the agency's initial decision setting forth the reasons for the determination. The initial decision will also be placed on file with the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, Rockville, MD 20857.

(2) Each abbreviated new drug application holder will have 30 days from the issuance of the initial decision to present, in writing, comments and information bearing on the initial decision. If no comments or information are received, the initial decision will become final at the expiration of 30 days.

(3) Comments and information received within 30 days of the issuance of the initial decision will be considered by the agency and responded to in a final decision.

(4) The agency may, in its discretion, hold a limited oral hearing to resolve dispositive factual issues that cannot be resolved on the basis of written submissions.

(5) If the final decision affirms the agency's initial decision that the listed drug was withdrawn for reasons of safety or effectiveness, the decision will be published in the **Federal Register** in compliance with § 314.152, and will, except as provided in paragraph (b)(6) of this section, suspend approval of all abbreviated new drug applications identified pursuant to paragraph (b)(1) of this section and remove from the list the listed drug and any drug whose approval was suspended pursuant to this paragraph. The notice will satisfy the requirement of § 314.162(b). The agency's final decision and copies of materials on which it relies will also be filed with the Dockets Management Branch (address in paragraph (b)(1) of this section).

(6) If the agency determines in its final decision that the listed drug was withdrawn for reasons of safety or effectiveness but, based upon information submitted by the holder of an abbreviated new drug application, also determines that the reasons for the withdrawal of the listed drug are not relevant to the safety and effectiveness of the drug subject to such abbreviated new drug application, the final decision will state that the approval of such abbreviated new drug application is not suspended.

(7) Documents in the record will be publicly available in accordance with § 10.20(j) of this chapter. Documents available for examination or copying will be placed on public display in the Dockets Management Branch (address in paragraph (b)(1) of this section) promptly upon receipt in that office.

29. Section 314.160 is revised to read as follows:

§ 314.160 Approval of an application or abbreviated application for which approval was previously refused, suspended, or withdrawn.

Upon the Food and Drug Administration's own initiative or upon request of an applicant, FDA may, on the basis of new data, approve an application or abbreviated application which it had previously refused, suspended, or withdrawn approval. FDA will publish a notice in the **Federal Register** announcing the approval.

30. New §§ 314.161 and 314.162 are added to Subpart D to read as follows:

§ 314.161 Determination of reasons for voluntary withdrawal of a listed drug.

(a) A determination whether a listed drug that has been voluntarily withdrawn from sale was withdrawn for safety or effectiveness reasons may be made by the agency at any time after the drug has been voluntarily withdrawn from sale, but must be made:

(1) Prior to approving an abbreviated new drug application that refers to the listed drug;

(2) Whenever a listed drug is voluntarily withdrawn from sale and abbreviated new drug applications that referred to the listed drug have been approved; and

(3) When a person petitions for such a determination under §§ 10.25(a) and 10.30 of this chapter.

(b) Any person may petition under §§ 10.25(a) and 10.30 of this chapter for a determination whether a listed drug has been voluntarily withdrawn for safety or effectiveness reasons. Any such petition must contain all evidence available to the petitioner concerning the reason that the drug is withdrawn from sale.

(c) If the agency determines that a listed drug is withdrawn from sale for safety or effectiveness reasons, the agency will, except as provided in paragraph (d) of this section, publish a notice of the determination in the **Federal Register**.

(d) If the agency determines under paragraph (a) of this section that a listed drug is withdrawn from sale for safety or effectiveness reasons and there are approved abbreviated new drug applications that are subject to suspension under section 505(j)(5) of the act, FDA will initiate a proceeding in accordance with § 314.153(b).

(e) A drug that the agency determines is withdrawn for safety or effectiveness reasons will be removed from the list, pursuant to § 314.162. The drug may be relisted if the agency has evidence that marketing of the drug has resumed or that the withdrawal is not for safety or effectiveness reasons. A determination that the drug is not withdrawn for safety or effectiveness reasons may be made at any time after its removal from the list, upon the agency's initiative or upon the submission of a petition pursuant to §§ 10.25(a) and 10.30 of this chapter. If the agency determines that the drug is not withdrawn for safety or effectiveness reasons, the agency shall publish a notice of this determination in the **Federal Register**. The notice will also announce that the drug is relisted, pursuant to § 314.162(c). The notice will also serve to reinstate approval of all suspended abbreviated new drug applications that referred to the listed drug.

§ 314.162 Removal of a drug product from the list.

(a) FDA will remove a previously approved new drug product from the list for the period stated when:

(1) The agency withdraws or suspends approval of a new drug application or an abbreviated new drug application pursuant to § 314.150(a) or § 314.151 or pursuant to the imminent hazard authority of section 505(e) of the act, for the same period as the withdrawal or suspension of the application; or

(2) The agency, in accordance with the procedures in § 314.153(b) or § 314.161, issues a final decision stating that the listed drug was withdrawn from sale for safety or effectiveness reasons, or suspended pursuant to § 314.153(b), until the agency, determines that the withdrawal from the market has ceased or is not for safety or effectiveness reasons.

(b) FDA will publish a notice announcing the removal of a drug from the list in the **Federal Register**.

(c) At the end of the period specified in paragraph (a) (1) or (2) of this section, FDA will relist a drug that has been removed from the list. The agency will publish a notice announcing the relisting of the drug in the **Federal Register**.

31. Section 314.200 is amended by revising the introductory text of paragraph (a), paragraphs (b) (1) and (2), the last sentence in paragraph (c)(1), and paragraph (c)(3), and the first sentence in paragraph (g)(1) to read as follows:

§ 314.200 Notice of opportunity for hearing; notice of participation and request for hearing; grant or denial of hearing.

(a) *Notice of opportunity for hearing.* The Director of the Center for Drug Evaluation and Research, Food and Drug Administration, will give the applicant, and all other persons who manufacture or distribute identical, related, or similar drug products as defined in § 310.6 of this chapter, notice and an opportunity for a hearing on the Center's proposal to refuse to approve an application or abbreviated application or to withdraw the approval of an application or abbreviated application pursuant to section 505(e) of the act. The notice will state the reasons for the action and the proposed grounds for the order.

* * * * *

(b) * * *

(1) To any person who has submitted an application or abbreviated application, by delivering the notice in person or by sending it by registered or certified mail to the last address shown in the application or abbreviated application.

(2) To any person who has not submitted an application or abbreviated application but who is subject to the notice under § 310.6 of this chapter, by publication of the notice in the **Federal Register**.

(c)(1) *Notice of participation and request for a hearing, and submission of studies and comments.* * * * The applicant, or other person, may incorporate by reference the raw data underlying a study if the data were previously submitted to FDA as part of an application, abbreviated application or other report.

* * * * *

(3) Any other interested person who is not subject to the notice of opportunity for a hearing may also submit comments on the proposal to withdraw approval of the application or abbreviated application. The comments are requested to be submitted within the time and under the conditions specified in this section.

* * * * *

(g) * * *

(1) Where a specific notice of opportunity for hearing (as defined in paragraph (a)(1) of this section) is used, the Commissioner will enter summary judgment against a person who requests a hearing, making findings and conclusions, denying a hearing, if it conclusively appears from the face of the data, information, and factual analyses in the request for the hearing that there is no genuine and substantial issue of fact which precludes the refusal to approve the application or abbreviated application or the withdrawal of approval of the application or abbreviated application; for example, no adequate and well-controlled clinical investigations meeting each of the precise elements of § 314.126 and, for a combination drug product, § 300.50 of this chapter, showing effectiveness have been identified. * * *

* * * * *

32. Section 314.430 is amended by revising the section heading, paragraphs (a), (b), (c), and (d), the introductory text of paragraph (e), paragraphs (f) (5) and (6), and the introductory text of paragraph (g), to read as follows:

§ 314.430 Availability for public disclosure of data and information in an application or abbreviated application.

(a) The Food and Drug Administration will determine the public availability of any part of an application or abbreviated application under this section and Part 20 of this chapter. For purposes of this section, the application or abbreviated application includes all data and information submitted with or incorporated by reference in the application or abbreviated application, including investigational new drug applications, drug master files under § 314.420, supplements submitted under § 314.70 or § 314.97, reports under § 314.80 or § 314.98, and other submissions. For purposes of this section, safety and effectiveness data include all studies and tests of a drug on animals and humans and all studies and tests of the drug for identity, stability, purity, potency, and bioavailability.

(b) FDA will not publicly disclose the existence of an application or abbreviated application before an approvable letter is sent to the applicant under § 314.110, unless the existence of the application or abbreviated application has been previously publicly disclosed or acknowledged. The Center for Drug Evaluation and Research will maintain and make available for public disclosure a list of applications or abbreviated applications for which the agency has sent an approvable letter to the applicant.

(c) If the existence of an unapproved application or abbreviated application has not been publicly disclosed or acknowledged, no data or information in the application or abbreviated application is available for public disclosure.

(d) If the existence of an application or abbreviated application has been publicly disclosed or acknowledged before the agency sends an approval letter to the applicant, no data or information contained in the application or abbreviated application is available for public disclosure before the agency sends an approval letter, but the Commissioner may, in his or her discretion, disclose a summary of selected portions of the safety and effectiveness data that are appropriate

for public consideration of a specific pending issue, for example, for consideration of an open session of an FDA advisory committee.

(e) After FDA sends an approval letter to the applicant, the following data and information in the application or abbreviated application are immediately available for public disclosure, unless the applicant shows that extraordinary circumstances exist. A list of approved applications and abbreviated applications, entitled "Approved Drug Products with Therapeutic Equivalence Evaluations," is available from the Government Printing Office, Washington DC 20402. The list is updated monthly.

* * * * *

(f) * * *

(5) For applications submitted under section 505(b) of the act, the effective date of the approval of the first abbreviated application submitted under section 505(j) of the act which refers to such drug, or the date on which the approval of an abbreviated application under section 505(j) which refers to such drug could be made effective if such an abbreviated application had been submitted.

(6) For applications or abbreviated applications submitted under sections 505(j), 506, and 507 of the act, when FDA sends an approval letter to the applicant.

(g) The following data and information in an application or abbreviated application are not available for public disclosure unless they have been previously disclosed to the public as set forth in § 20.81 of this chapter or they relate to a product or ingredient that has been abandoned and they do not represent a trade secret or confidential commercial or financial information under § 20.61 of this chapter:

* * * * *

33. Section 314.440 is amended by revising the section heading and paragraph (a), introductory text, and paragraphs (a) (1) and (2) to read as follows:

§ 314.440 Addresses for applications and abbreviated applications.

(a) Applicants shall send applications, abbreviated applications, and other correspondence relating to matters covered by this part, except for products listed in paragraph (b) of this section, to the Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, and directed to the appropriate office identified below:

(1) An application under § 314.50 or § 314.54 submitted for filing should be directed to the Central Document Room, Center for Drug Evaluation and Research, Park Bldg., Rm. 214, 12420 Parklawn Dr., Rockville, MD 20852. Applicants may obtain folders for binding applications from that office. After FDA has filed the application, the agency will inform the applicant which division is responsible for the application. Amendments, supplements, resubmissions, requests for waivers, and other correspondence about an application that has been filed should be directed to the appropriate division.

(2) An abbreviated application under § 314.94, and amendments, supplements, resubmissions, and other correspondence about an abbreviated application should be directed to the Division of Generic Drugs (HFD-230). Applicants may obtain folders for binding abbreviated applications from that office.

* * * * *

PART 320—BIOAVAILABILITY AND BIOEQUIVALENCE REQUIREMENTS

34. Part 320 is amended by revising the table of contents, by adding an authority citation to follow the table of contents, and by removing the authority citations following § 320.1 and the authority citations following the headings for Subparts B and C to read as follows:

PART 320—BIOAVAILABILITY AND BIOEQUIVALENCE REQUIREMENTS

Subpart A—General Provisions

Sec.
320.1 Definitions.

Subpart B—Procedures for Determining the Bioavailability or Bioequivalence of Drug Products

320.21 Requirements for submission of in vivo bioavailability and bioequivalence data.
320.22 Criteria for waiver of evidence of in vivo bioavailability or bioequivalence.
320.23 Basis for demonstrating bioavailability or bioequivalence.
320.24 Types of evidence to establish bioavailability or bioequivalence.
320.25 Guidelines for the conduct of an in vivo bioavailability study.
320.26 Guidelines on the design of a single-dose in vivo bioavailability study.
320.27 Guidelines on the design of a multiple-dose in vivo bioavailability study.
320.28 Correlation of bioavailability with an acute pharmacological effect or clinical evidence.
320.29 Analytical methods for an in vivo bioavailability study.
320.30 Inquiries regarding bioavailability and bioequivalence requirements and review of protocols by the Food and Drug Administration.
320.31 Applicability of requirements regarding an "Investigational New Drug Application".
320.32 Criteria and evidence to assess actual or potential bioequivalence problems.
320.33 Requirements for batch testing and certification by the Food and Drug Administration.
320.34 Requirements for in vitro testing of each batch.
320.35 Requirements for maintenance of records of bioequivalence testing.

Authority: Secs. 201(p), 501, 502, 505, 701(a) (21 U.S.C. 321(p), 351, 352, 355, 371(a)).

§ 320.1 [Amended]

35. Section 320.1 is amended by revising paragraphs (a) and (e), and by removing paragraph (f) to read as follows:

329 § 320.1 Definitions.

(a) "Bioavailability" means the rate and extent to which the active ingredient or active moiety is absorbed from a drug product and becomes available at the site of action. For drug products that are not intended to be absorbed into the bloodstream, bioavailability may be assessed by measurements intended to reflect the rate and extent to which the active ingredient or active moiety becomes available at the site of action.

* * * * *

(e) "Bioequivalence" means the absence of a significant difference in the rate and extent to which the active ingredient or active moiety in pharmaceutical equivalents or pharmaceutical alternatives becomes available at the site of drug action when administered at the same molar dose under similar conditions in an appropriately designed study. Where there is an intentional difference in rate (e.g., in certain controlled release dosage forms), certain pharmaceutical equivalents or alternatives may be considered bioequivalent if there is no significant difference in the extent to which the active ingredient or moiety from each product becomes available at the site of drug action. This applies only if the difference in the rate at which the active ingredient or moiety becomes available at the site of drug action is reflected in the proposed labeling, is not essential to the attainment of effective body drug concentrations on chronic use, and is considered medically insignificant for the drug.

36. Part 320 is amended by revising the heading for Subpart B, §§ 320.21, 320.22, 320.23, 320.24, 320.30, and 320.31, and by removing the heading for Subpart C to read as follows:

Subpart B—Procedures for Determining the Bioavailability or Bioequivalence of Drug Products

§ 320.21 Requirements for submission of in vivo bioavailability and bioequivalence data.

(a) Any person submitting a full new drug application to the Food and Drug Administration (FDA) shall include in the application either:

(1) Evidence demonstrating the in vivo bioavailability of the drug product that is the subject of the application; or

(2) Information to permit FDA to waive the submission of evidence demonstrating in vivo bioavailability.

(b) Any person submitting an abbreviated new drug application to FDA shall include in the application either:

(1) Evidence demonstrating that the drug product that is the subject of the abbreviated new drug application is bioequivalent to the reference listed drug (defined in § 314.3(b)); or,

(2) Information to show that the drug product is bioequivalent to the reference listed drug which would permit FDA to waive the submission of evidence demonstrating bioequivalence as provided in paragraph (f) of this section.

(c) Any person submitting a supplemental application to FDA shall include in the supplemental application the evidence or information set forth in paragraph (a) and (b) of this section if the supplemental application proposes any of the following changes:

(1) A change in the manufacturing process, including a change in product formulation or dosage strength, beyond the variations provided for in the approved application.

(2) A change in the labeling to provide for a new indication for use of the drug product, if clinical studies are required to support the new indication for use.

(3) A change in the labeling to provide for a new dosage regimen or for an additional dosage regimen for a special patient population, e.g., infants, if clinical studies are required to support the new or additional dosage regimen.

(d) FDA may approve a full new drug application, or a supplemental application proposing any of the changes set forth in paragraph (c) of this section, that does not contain evidence of in vivo bioavailability or information to permit waiver of the requirement for in vivo bioavailability data, if all of the following conditions are met:

(1) The application was under review by FDA on July 7, 1977.

(2) The application is otherwise approvable.

(3) The applicant agrees to submit, within the time specified by FDA, either:

(i) Evidence demonstrating the in vivo bioavailability of the drug product that is the subject of the application; or,

(ii) Information to permit FDA to waive demonstration of in vivo bioavailability.

(e) Evidence demonstrating the in vivo bioavailability and bioequivalence of a drug product shall be obtained using one of the approaches for determining bioavailability set forth in § 320.24.

(f) Information to permit FDA to waive the submission of evidence demonstrating in vivo bioavailability or bioequivalence shall meet the criteria set forth in § 320.22.

(g) Any person holding an approved full or abbreviated new drug application shall submit to FDA a supplemental application containing new evidence demonstrating the in vivo bioavailability or bioequivalence of the drug product that is the subject of the application if notified by FDA that:

(1) There are data demonstrating that the dosage regimen in the labeling is based on incorrect assumptions or facts regarding the pharmacokinetics of the drug product and that following this dosage regimen could potentially result in subtherapeutic or toxic levels; or,

(2) There are data demonstrating significant intra-batch and batch-to-batch variability, e.g., plus or minus 25 percent, in the bioavailability of the drug product.

(h) The requirements of this section regarding the submission of evidence demonstrating in vivo bioavailability and bioequivalence apply only to a full or abbreviated new drug application or a supplemental application for a finished dosage formulation.

§ 320.22 Criteria for waiver of evidence of in vivo bioavailability or bioequivalence.

(a) Any person submitting a full or abbreviated new drug application, or a supplemental application proposing any of the changes set forth in § 320.21(c), may request the Food and Drug Administration (FDA) to waive the requirement for the submission of evidence demonstrating the in vivo bioavailability or bioequivalence of the drug product that is the subject of the application. An applicant shall submit a request for waiver with the application. Except as provided in paragraph (g) of this section, FDA shall waive the requirement for the submission of evidence of in vivo bioavailability or bioequivalence if the drug product meets any of the provisions of paragraphs (b), (c), (d), or (e) of this section.

(b) For certain drug products the in vivo bioavailability or bioequivalence of the drug product may be self-evident. FDA shall waive the requirement for the submission of evidence obtained in vivo demonstrating the bioavailability or bioequivalence of these drug products. A drug product's in vivo bioavailability or bioequivalence is considered self-evident if the product meets one of the following criteria:

(1) The drug product:

(i) Is a solution intended solely for intravenous administration, and

(ii) Contains the same active and inactive ingredients in the same concentration as a drug product that is the subject of an approved full new drug application.

(2) The drug product:

(i) Is administered by inhalation as a gas, e.g., a medicinal or an inhalation anesthetic, and

(ii) Contains an active drug ingredient in the same dosage form as a drug product that is the subject of an approved full new drug application.

(3) The drug product:

(i) Is an oral solution, elixir, syrup, tincture, or similar other solubilized form,

(ii) Contains an active drug ingredient in the same concentration and dosage form as a drug product that is the subject of an approved full new drug application, and

(iii) Contains no inactive ingredient that may significantly affect absorption of the active drug ingredient or active moiety.

(c) FDA shall waive the requirement for the submission of evidence demonstrating the in vivo bioavailability of a parenteral drug product that is determined to be effective for at least one indication in a Drug Efficacy Study Implementation notice or that, upon submission of evidence, is shown to be identical in both active and inactive ingredient formulation to that drug as currently approved in a new drug application, if the drug product is not one of the following:

(1) A drug in suspension form.

(2) Phenytoin sodium powder for injection.

(d) FDA shall waive the requirement for the submission of evidence demonstrating the in vivo bioavailability of a solid oral dosage form (other than an enteric coated or controlled release dosage form) of a drug product determined to be effective for at least one indication in a Drug Efficacy Study Implementation notice or which is identical, related, or similar to such a drug product under § 310.6 of this chapter unless FDA has evaluated the drug product under the criteria set forth in § 320.32, included the drug product in the Approved Drug Products with Therapeutic Equivalence Evaluations

List, and rated the drug product as having a known or potential bioequivalence problem. A drug product so rated reflects a determination by FDA that an in vivo bioequivalence study is required.

(e) For certain drug products bioavailability or bioequivalence may be demonstrated by evidence obtained in vitro in lieu of in vivo data. FDA shall waive the requirement for the submission of evidence obtained in vivo demonstrating the bioavailability of the drug product if the drug product meets one of the following criteria:

(1) [Reserved]

(2) The drug product is in the same dosage form, but in a different strength, and is proportionally similar in its active and inactive ingredients to another drug product for which the same manufacturer has obtained approval and the following conditions are met:

(i) The bioavailability of this other drug product has been demonstrated,

(ii) Both drug products meet an appropriate in vitro test approved by FDA, and

(iii) The applicant submits evidence showing that both drug products are proportionally similar in their active and inactive ingredients.

(3) The drug product is, on the basis of scientific evidence submitted in the application, shown to meet an in vitro test that has been correlated with in vivo data.

(4) The drug product is a reformulated product that is identical, except for a different color, flavor, or preservative that could not affect the bioavailability of the reformulated product, to another drug product for which the same manufacturer has obtained approval and the following conditions are met:

(i) The bioavailability of the other product has been demonstrated, and

(ii) Both drug products meet an appropriate in vitro test approved by FDA.

(f) FDA, for good cause, may waive a requirement for the submission of evidence of in vivo bioavailability if waiver is compatible with the protection of the public health. For full new drug applications, FDA may defer a requirement for the submission of evidence of in vivo bioavailability if deferral is compatible with the protection of the public health.

(g) FDA, for good cause, may require evidence of in vivo bioavailability or bioequivalence for any drug product if the agency determines that any difference between the drug product and a listed drug may affect the bioavailability or bioequivalence of the drug product.

§ 320.23 Basis for demonstrating in vivo bioavailability or bioequivalence.

(a)(1) The in vivo bioavailability of a drug product is demonstrated if the product's rate and extent of absorption, as determined by comparison of measured 338 parameters, e.g., concentration of the active drug ingredient in the blood, urinary excretion rates, or pharmacological effects, do not indicate a significant difference from the reference material's rate and extent of absorption. For drug products that are not intended to be absorbed into the bloodstream, bioavailability may be assessed by measurements intended to reflect the rate and extent to which the active ingredient or active moiet" becomes available at the site of action.

(2) Statistical techniques used shall be of sufficient sensitivity to detect differences in rate and extent of absorption that are not attributable to subject variability.

(3) A drug product that differs from the reference material in its rate of absorption, but not in its extent of absorption, may be considered to be bioavailable if the difference in the rate of absorption is intentional, is appropriately reflected in the labeling, is not essential to the attainment of effective body drug concentrations on chronic use, and is considered medically insignificant for the drug product.

(b) Two drug products will be considered bioequivalent drug products if they are pharmaceutical equivalents or pharmaceutical alternatives whose rate and extent of absorption do not show a significant difference when administered at the same molar dose of the active moiety under similar experimental conditions, either single dose or multiple dose. Some pharmaceutical equivalents or pharmaceutical alternatives may be equivalent in the extent of their absorption but not in their rate of absorption and yet may be considered bioequivalent because such differences in the rate of absorption are intentional and are reflected in the labeling, are not essential to the attainment of effective body drug concentrations on chronic use, and are considered medically insignificant for the particular drug product studied.

§ 320.24 Types of evidence to establish bioavailability or bioequivalence.

(a) Bioavailability or bioequivalence may be determined by several in vivo and in vitro methods. FDA may require in vivo or in vitro testing, or both, to establish the bioavailability of a drug product or the bioequivalence of specific drug products. Information on bioequivalence requirements for specific products is included in the current edition of FDA's publication "Approved Drug Products with Therapeutic Equivalence Evaluations" and any current supplement to the publication. The selection of the method used to meet an in vivo or in vitro testing requirement depends upon the purpose of the study, the analytical methods available, and the nature of the drug product. Applicants shall conduct bioavailability and bioequivalence testing using the most accurate, sensitive, and reproducible approach available among those set forth in paragraph (b) of this section. The method used must be capable of demonstrating bioavailability or bioequivalence, as appropriate, for the product being tested.

(b) The following in vivo and in vitro approaches, in descending order of accuracy, sensitivity, and reproducibility are acceptable for determining the bioavailability or bioequivalence of a drug product.

(1)(i) An in vivo test in humans in which the concentration of the active ingredient or active moiety and its active metabolites, in whole blood, plasma, serum, or other appropriate biological fluid is measured as a function of time. This approach is particularly applicable to dosage forms intended to deliver the active moiety to the bloodstream for systemic distribution within the body; or

(ii) An in vitro test that has been correlated with and is predictive of human in vivo bioavailability data; or

(iii) An in vivo test in animals that has been correlated with and is predictive of human bioavailability data.

(2) An in vivo test in humans in which the urinary excretion of the active moiety and its active metabolites are measured as a function of time. The intervals at which measurements are taken should ordinarily be as short as possible so that the measure of the rate of elimination is as accurate as possible. Depending on the nature of the drug product, this approach may be applicable to the category of dosage forms described in paragraph (b)(1)(i) of this section. This method is not appropriate where urinary excretion is not a significant mechanism of elimination.

(3) An in vivo test in humans in which an appropriate acute pharmacological effect of the active moiety and its active metabolites are measured as a function of time if such effect can be measured with sufficient accuracy, sensitivity, and reproducibility. This approach is applicable to the category of dosage forms described in paragraph (b)(1)(i) of this section only when appropriate methods are not available for measurement of the concentration of the active moiety and its active metabolites in biological fluids or excretory products but a method is available for the measurement of an appropriate acute pharmacological effect. This approach may be particularly applicable to dosage forms that are not intended to deliver the active moiety to the bloodstream for systemic distribution.

(4) Well-controlled clinical trials in humans that establish the safety and effectiveness of the drug product, for purposes of establishing bioavailability or, appropriately designed comparative clinical trials, for purposes of demonstrating bioequivalence. This approach is the least accurate, sensitive, and reproducible of the general approaches for determining bioavailability or bioequivalence. For dosage forms intended to deliver the active moiety to the bloodstream for systemic distribution, this approach may be considered acceptable only when analytical methods cannot be developed to permit use of one of the approaches outlined in paragraphs (b)(1)(i) and (2) of this section, when the approaches described in paragraphs (b)(1) (ii) and (iii) and (b)(3) are not available. This approach may also be considered sufficiently accurate for determining the bioavailability or bioequivalence of dosage forms intended to deliver the active moiety locally, e.g., topical preparations for the skin, eye, and mucous membranes; oral dosage forms not intended to be absorbed, e.g., an antacid or radiopaque medium; and bronchodilators administered by inhalation if the onset and duration of pharmacological activity are defined.

(5) Any other approach deemed adequate to establish bioavailability or bioequivalence by the Food and Drug Administration (FDA).

(c) FDA may, notwithstanding prior requirements for establishing bioavailability or bioequivalence, require in vivo testing in humans of a product at any time if the agency has evidence that the product:

(1) May not produce therapeutic effects comparable to a pharmaceutical equivalent or alternative with which it is intended to be used interchangeably;

(2) May not be bioequivalent to a pharmaceutical equivalent or alternative with which it is intended to be used interchangeably; or

(3) Has greater than anticipated potential toxicity related to pharmacokinetic or other characteristics.

§ 320.30 Inquiries regarding bioavailability and bioequivalence requirements and review of protocols by the Food and Drug Administration.

(a) The Commissioner of Food and Drugs strongly recommends that, to avoid the conduct of an improper study and unnecessary human research, any person planning to conduct a bioavailability or bioequivalence study submit the proposed protocol for the study to the Food and Drug Administration (FDA) for review prior to the initiation of the study.

(b) FDA may review a proposed protocol for a bioavailability or bioequivalence study and will offer advice with respect to whether the following conditions are met:

(1) The design of the proposed bioavailability or bioequivalence study is appropriate.

(2) The reference material to be used in the bioavailability or bioequivalence study is appropriate.

(3) The proposed chemical and statistical analytical methods are adequate.

(c)(1) General inquiries relating to in vivo bioavailability requirements and methodology shall be submitted to the Food and Drug Administration, Center for Drug Evaluation and Research, Division of Biopharmaceutics (HFD–420), 5600 Fishers Lane, Rockville, MD 20857.

(2) General inquiries relating to bioequivalence requirements and methodology shall be submitted to the Food and Drug Administration, Center for Drug Evaluation and Research, Division of Bioequivalence (HFD–250), 5600 Fishers Lane, Rockville, MD 20857.

§ 320.31 Applicability of requirements regarding an "Investigational New Drug Application."

(a) Any person planning to conduct an in vivo bioavailability or bioequivalence study in humans shall submit an "Investigational New Drug Application" (IND) if:

(1) The test product contains a new chemical entity as defined in § 314.108(a) of this chapter; or

(2) The study involves a radioactively labeled drug product; or

(3) The study involves a cytotoxic drug product.

(b) Any person planning to conduct a bioavailability study in humans using a drug product that contains an already approved non-new chemical entity shall submit an IND if the study is one of the following:

(1) A single-dose study in normal subjects or patients where either the single or total daily dose exceeds that specified in the labeling of the drug product that is the subject of an approved new drug application or abbreviated new drug application.

(2) A multiple-dose study in normal subjects or patients where either the single or total daily dose exceeds that specified in the labeling of the drug product that is the subject of an approved new drug application or abbreviated new drug application.

(3) A multiple-dose study on a controlled release product on which no single-dose study has been completed.

(c) The provisions of Part 312 of this chapter are applicable to any bioavailability or bioequivalence study conducted under an "Investigational New Drug Application."

(d) [Reserved]

(e) [Reserved]

(f) An in vivo bioavailability or bioequivalence study in humans shall be conducted in compliance with the requirements for institutional review set forth in Part 56 of this chapter, and informed consent set forth in Part 50 of this chapter, regardless of whether the study is conducted under an "Investigational New Drug Application."

§ 320.50 [Removed]

37. Section 320.50 *Purpose* is removed.

§ 320.51 [Removed]

38. Section 320.51 *Procedures for establishing or amending a bioequivalence requirement* is removed.

§ 320.52 [Redesignated as § 320.32]

39. Part 320 is amended by redesignating § 320.52 as § 320.32 in Subpart B, and by revising the section heading and the introductory paragraph to read as follows:

§ 320.32 Criteria and evidence to assess actual or potential bioequivalence problems.

The Commissioner shall consider the following factors, when supported by well-documented evidence, to identify specific pharmaceutical equivalents and pharmaceutical alternatives that are not or may not be bioequivalent drug products:

* * * * *

§ 320.53 [Removed]

40. Section 320.53 *Types of bioequivalence requirements* is removed.

§ 320.54 [Removed]

41. Section 320.54 *Contents of a petition to establish a bioequivalence requirement* is removed.

§§ 320.55 and 320.56 [Redesignated as §§ 320.33 and 320.34]

42. Part 320 is amended by redesignating § 320.55 *Requirements for batch testing and certification by the Food and Drug Administration* and § 320.56 *Requirements for in vitro testing of each batch* as §§ 320.33 and 320.34 in Subpart B, respectively.

§ 320.57 [Removed]

43. Section 320.57 *Requirements for the conduct of in vivo bioequivalence testing in humans* is removed.

§ 320.58 [Removed]

44. Section 320.58 *Requirements for marketing a drug product subject to a bioequivalence requirement* is removed.

§ 320.59 [Removed]

45. Section 320.59 *Bioequivalence requirements based on data voluntarily submitted* is removed.

§ 320.60 [Removed]

46. Section 320.60 *Bioequivalence requirements for a drug product subject to an old drug monograph* is removed.

§ 320.61 [Removed]

47. Section 320.61 *Requirements for in vivo testing of a drug product not meeting an in vitro bioequivalence standard* is removed.

§ 320.62 [Redesignated]

48. Part 320 is amended by redesignating § 320.62 *Requirements for maintenance of records of bioequivalance testing* as § 320.35 in Subpart B.

Dated: March 2, 1969.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89-16024 Filed 7-7-89; 8:45 am]

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federal register

Monday
July 10, 1989

Part III

Pension Benefit Guaranty Corporation

29 CFR Part 2610

Payment of Premiums; Final Rule

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2610

RIN 1212-AA53

Payment of Premiums

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule revises the Pension Benefit Guaranty Corporation's interim regulation on Payment of Premiums, 29 CFR Part 2610. The PBGC published the interim regulation expeditiously, on June 30, 1988, in order to provide necessary guidance for 1988 premium payments. Thereafter, on October 5, 1988, the PBGC issued a notice of proposed rulemaking that addressed certain issues not covered in the interim rule and that afforded the public the opportunity to comment on the entire premium regulation. The effect of this final regulation is to replace the interim rule, effective for premium payment years beginning on or after January 1, 1989.

EFFECTIVE DATE: July 10, 1989.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Senior Counsel, Office of the General Counsel (Code 22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW. Washington, DC 20006; telephone 202-778-8823 (202-778-8059 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

The Omnibus Budget Reconciliation Act of 1987, Pub.L. 100-203, ("OBRA '87") includes the Pension Protection Act, which amends section 4006 of the Employee Retirement Income Security Act of 1974, as amended, ("ERISA") to establish a two-part premium structure for single-employer plans, *i.e.*, a flat rate per capita assessment and a variable rate assessment based on a plan's unfunded vested benefits, effective for plan years beginning on or after January 1, 1988. In order to reflect and to implement these changes, the Pension Benefit Guaranty Corporation (the "PBGC") on June 30, 1988, issued an interim rule revising its regulation on Payment of Premiums at 29 CFR Part 2610 (53 FR 24906). Because of the urgent need to provide plans with the rules for computing and paying premiums for 1988 plan years, the PBGC determined that it would be impracticable and contrary to the public interest to provide for notice of and public comment on that regulation prior to issuance.

On October 5, 1988, the PBGC issued a notice of proposed rulemaking that largely restated the interim rule, in order to solicit public comment (53 FR 39200). The proposed rulemaking also included a number of proposed amendments to the interim rule and addressed a number of issues that the PBGC had not previously addressed. Twenty comments were submitted on the proposed rule, with most of the comments coming from actuarial consulting firms. The PBGC has reviewed these comments and has made a number of changes in the regulation in response to them. The PBGC has also made other changes in the regulation on its own initiative, many of them in response to questions asked by plan professionals preparing their 1988 premium filings.

Statutory and Regulatory Framework

The statutory provisions governing the variable rate premium are discussed in some detail in the preamble to the interim regulation and are only briefly summarized here. Under section 9331 of OBRA '87 (amending ERISA section 4006), the single-employer plan premium for plan years beginning on or after January 1, 1988, is composed of a flat rate per capita assessment (as under prior law) and a new variable rate assessment that is based on the value of a plan's unfunded vested benefits and is also determined on a per participant basis (section 4006(a)(3)(A) and (a)(3)(E)). The flat rate assessment is $16 per participant.

ERISA section 4006(a)(3)(E) provides the basic formula for computing the variable rate assessment for each participant: $6 for each $1,000 (or fraction thereof) of a plan's "unfunded vested benefits" (determined as of the last day of the preceding plan year) with that product divided by the number of participants in the plan as of the last day of the preceding plan year. The variable rate assessment is subject to a statutory ceiling (ERISA section 4006(a)(3)(E)(iv)(I)) of $34 per participant, resulting in a maximum per participant premium of $50. This $34 statutory ceiling is subject to reduction based on the contribution history of the plan.

The formula for computing the variable rate assessment for each participant is based, in large part, on the determination of the plan's "unfunded vested benefits." This term is defined in the statute (ERISA section 4006(a)(3)(E)(iii)) as the amount that would be the plan's "unfunded current liability" (within the meaning of ERISA section 302(d)(8)(A)) as of the close of the preceding plan year, subject to two qualifications: (1) Only vested benefits are taken into account in the calculation (ERISA section 4006(a)(3)(E)(iii)(I)): and (2) The interest rate used in valuing vested benefits must equal 80% of the annual yield on 30-year Treasury securities for the month preceding the month in which the plan year begins (ERISA section 4006(a)(3)(E)(iii)(II)).

The PBGC's proposed rule, like the interim rule, provided two methods for determining the amount of a plan's unfunded vested benefits. Under the "general rule" (§ 2610.23(a)), an enrolled actuary must determine the amount of the plan's unfunded vested benefits as of the last day of the plan year preceding the premium payment year based on the plan's provisions and population as of that date, and must certify that the determination was made in a manner consistent with generally accepted actuarial principles and practices. Under the "alternative calculation method" (§ 2610.23(c)), which is subject to certain restrictions for large plans (*i.e.*, those with 500 or more participants), the plan administrator must calculate the amount of the plan's unfunded vested benefits based on certain data from the plan's Form 5500, Schedule B, for the plan year preceding the premium payment year, using formulae specified in the regulation. Finally, both the interim rule and the proposed rule provide a number of exemptions and special rules (§ 2610.24) regarding the variable rate portion of the premium.

General Comments

While most of the comments addressed particular sections of the proposed regulation, some addressed more general matters. These general comments are discussed first.

Two commenters objected to the increase in the flat rate assessment to $16. The new premium structure was designed to generate enough revenue to eliminate the PBGC's deficit over a reasonable period of time and to pay future claims and expenses as they are incurred. The introduction of a premium charge based on plan underfunding permits a fairer allocation of cost among plans based on their funding levels. However, it would not have been possible to generate all the additional revenue needed from a charge on underfunded plans without overburdening these plans and, in many cases, the companies maintaining them. The combination of flat rate and variable rate charges enacted by the Congress reflects a careful balancing of concerns for equity and affordability. Finally, the PBGC points out that the increase in the flat rate assessment is required by statute and is thus outside the scope of the PBGC's rulemaking authority.

Three commenters objected to the imposition of a variable rate assessment on plans that, while underfunded for premium purposes, are overfunded for funding purposes. The reason that this may occur is that the statutory interest rate used for premium purposes is different from the rate or rates used for funding purposes. The statute does not exempt plans at the full funding limit from the variable rate premium requirements, and the PBGC does not have the authority to create such an exemption by regulation.

Five commenters expressed concern about the administrative burden and the related costs imposed on plans as a result of the variable rate premium requirements. The comments focused particularly on the burdens for small plans (*i.e.*, those with fewer than 100 participants). (One of these commenters argued, erroneously, that the premium requirements are burdensome for small plans in that actuarial certification is required; in fact, under the alternative calculation method, such certification is required only for plans with more than 500 participants (§ 2610.23(d)).) Two of the commenters suggested that small plans be exempted from the variable rate premium. The PBGC has no authority under the law to exempt small plans from the new premium requirements, and thus has not adopted this suggestion.

Nevertheless, the PBGC shares the concerns expressed by the commenters. The new statutory rules obviously add complexity to the premium payment process and, as a result, some level of increased burden and cost is unavoidable. The PBGC has attempted in the premium regulation to keep these burdens and costs to a minimum. Thus, for example, the interim and proposed regulations permit plans to use data collected for other purposes as the starting point for determining unfunded vested benefits under the general rule; provide plans with the option of using a simplified alternative calculation method; include a number of exemptions and special rules to simplify or, in some cases, to eliminate calculation requirements; and establish a later due date for the variable rate portion of the premium. Moreover, this final regulation contains additional simplifications not included in the interim or proposed regulations. The PBGC will continue to explore ways in which it may further reduce the burdens and costs imposed on premium payers in a manner consistent with the pertinent statutory requirements.

The premium regulation requires enrolled actuaries to make a number of determinations in a manner consistent with generally accepted actuarial principles and practices. One commenter requested that the PBGC elaborate on the scope of the actuary's responsibility under the regulation, the penalties the actuary could face, and the recourse available to the actuary in connection with any such penalty.

The responsibility of the actuary, simply put, is to comply with the premium regulation in a manner consistent with generally accepted actuarial principles and practices. The PBGC, of course, does not establish these principles and practices. If the PBGC has reason to believe that an actuary has not met this responsibility and premiums are underpaid as a result, the PBGC may bring appropriate legal action against an actuary. In addition, the PBGC may refer a matter involving apparent misfeasance by an actuary to an appropriate authority, such as the Joint Board for the Enrollment of Actuaries. The penalties that might be imposed in this event, and the recourse available to the actuary, are matters that fall outside the jurisdiction of the PBGC.

The same commenter requested that the PBGC provide specific guidelines regarding the degree of error in a premium filing that would be material enough to require an amended filing, and asked to whom the enrolled actuary should report any such error and how the error should be reported. Another commenter asked whether an amended premium filing is required if the plan would not owe a variable rate amount under both the original and the amended filing. An enrolled actuary who determines that a premium filing is erroneous is required to report the error to the plan administrator, and the plan administrator is required to correct the error through an amended premium filing with the PBGC. These steps must be followed anytime the enrolled actuary or the plan administrator determines that any of the data reported on the premium payment forms or any of the underlying data were incorrect. Of course, in cases where the error resulted in an underpayment of the premium, the PBGC would assess interest and, unless waived, penalties.

Another commenter proposed that plan administrators submit the plan's Schedule B to the PBGC as part of the plan's premium filing, and that the PBGC compute the plan's premium obligation based on the data on the Schedule B. The PBGC does not have the staff to do this and, thus, has not adopted the proposal.

In the proposed rule, the PBGC solicited public comment on the frequency with which it should update the interest rates in Appendix B. One commenter addressed this issue, expressing a preference that the PBGC continue updating Appendix B on a monthly basis so as to facilitate the ability of actuaries to calculate a plan's premium obligation as part of a plan valuation prepared early in the plan year.

After careful consideration of this matter, the PBGC has concluded that the best approach is to consolidate the publication of both sets of interest rates under the premium regulation on a quarterly basis, to publish these rates on the same date as the various other Title IV rates are published, and to continue the monthly distribution of PBGC rates to plan professionals through the PBGC's "Technical Updates." As an example, the PBGC will publish on October 13, 1989, (because the normal publication date, the 15th, is a Sunday) the Appendix A late payment interest rate applicable to the October to December quarter and the Appendix B valuation interest rates for August, September and October. (The PBGC notes that under this system, it would publish the Appendix A rate every quarter, even when there is no change from the prior quarter. This change is made in response to complaints from practitioners that they have difficulty keeping track of the Appendix A rate under the current system in which a new rate is published only when there is a rate change.)

The valuation interest rates collected in Appendix B change monthly, and a given rate applies with respect to all premium payment years beginning during that month. Thus, for a calendar year plan, the January interest rate is used to value vested benefits for the variable rate portion of the premium due on September 15. Because few plan professionals do plan valuations at the very beginning of a plan year, the PBGC does not believe that a one or two month delay in its publication of the interest rates in the **Federal Register** will be an inconvenience. Those actuaries that are doing a valuation within the first two months of a plan year can obtain the rates by subscribing to the PBGC's monthly "Technical Updates" (for which the PBGC has a mailing list of some 4,000 plan professionals) or by checking the pertinent Federal Reserve Board publications, Statistical Release G.13 and H.15.

Finally, one commenter requested that the PBGC specify which changes in the premium regulation are effective only for 1989 and later premium payment years. In order to provide the clearest possible guidance for the public, the PBGC has indicated in the final regulation which provisions apply for which premium payment years. Unless otherwise indicated, Subpart A of the final regulation (covering both single-employer and multiemployer plans) is effective for all premium payment years; Subpart B (covering single-employer plans only) is effective for post-1987 premium payment years; and Subpart C is effective for all premium payment years for multiemployer plans and for pre-1988 premium payment years for single-employer plans.

Section 2610.2—Definitions

One commenter suggested a change in the definition of active participant (§ 2610.2(a)(2)) to permit plans not to count as participants for premium purposes certain non-vested individuals that leave employment. The PBGC has received numerous inquiries about the same subject since the Retirement Equity Act of 1984 ("REA") established certain rights for non-vested individuals who had left employment. The specific suggestion in the comment was to exclude non-vested employees who had either incurred a one-year break-in-service (or had a one-year severance from service in a plan using elapsed time vesting rules), or who had quit or been discharged. The PBGC is generally sympathetic to the commenter's position, but believes that nonvested individuals should not be dropped from the premium count as soon as they separate from employment, regardless of the reason for separation. The final regulation, like the proposed and interim regulations, excludes from the definition of participant for premium purposes individuals who have had a break in service the greater of one year or the break-in-service period specified in the plan. For example, in a plan with a one-year or shorter break-in-service period, a nonvested individual would be counted as a participant for premium purposes if he or she left covered employment less than a year before the participant count date but would not be counted if he or she left a year or more before the participant count date. The PBGC does not believe that counting the former individual as a participant creates an undue premium burden.

On a related issue, the PBGC notes that under REA, a nonvested participant who has a break in service retains credit for the pre-break service if the number of consecutive one-year breaks is equal to or less than the greater of five years or the aggregate pre-break service. Apparently after REA, some plans were amended to redefine a break-in-service period as five years instead of one year. However, a plan with a break-in-service period longer than one year may be amended prospectively to provide for five consecutive one-year break-in-service periods and still meet the REA requirements. This amendment may reduce the number of individuals that must be counted as participants for premium purposes and thus provide the premium relief sought by the commenter.

Finally, the PBGC notes that the instructions to the PBGC Form 1 have been misleading on this point, in that the instructions have stated that the participant count reported on the Form 1 should usually be the same as the Form 5500 participant count for the plan year preceding the premium payment year. This probably would not be true for a plan that has a five-year or 60-month break-in-service period. Accordingly, the 1989 Form 1 instructions will be clarified on this point and will provide that the Form 5500 participant count may be used as a safe harbor for premium computation purposes.

Section 2610.3—Forms

One commenter suggested that the PBGC publish its annual premium Payment Package (which contains the Form 1–ES, Form 1 and Schedule A, along with instructions) in proposed form each year so as to give the public an opportunity to comment on it. While agency forms are not typically published as proposals for public comment, as are regulations, there is an existing procedure for the public to comment on agency forms prior to their issuance. This procedure is established under the Paperwork Reduction Act of 1980, as amended, and is administered by the Office of Management and Budget ("OMB"). *See* 5 CFR Part 1320.

Any time an agency wants to issue a new or revised form, that form must first be approved by OMB. (Every approved form carries an OMB number in the upper right-hand corner.) In addition, forms that do not change must nevertheless be re-approved by OMB every three years. When an agency submits a form to OMB for approval, it must publish concurrently a notice in the **Federal Register** advising the public that it has requested approval of the form, stating where copies of the form can be obtained and how interested persons may submit comments on the form. This review period normally runs 60 days. The PBGC Form 1, Form 1–ES and Schedule A go through this procedure, and the PBGC welcomes public comment on the forms.

One commenter suggested that the PBGC adopt a "substitute forms" program like that of the Internal Revenue Service (the "IRS"), so that plan professionals can input data into their computers and run the data off directly onto suitable forms that could be filed with the PBGC. While the PBGC does not presently have staff resources adequate to review and to approve substitute forms, as is done under the IRS program, it will permit the use of re-typed or other facsimile forms. However, any such forms must present the same information items, with each in the same location, as on the PBGC forms. A form that does not satisfy this condition may be treated as not having been filed and returneu to the submitter.

Section 2610.4—Mailing Address

One commenter requested that the PBGC publish a street address for premium filings, in addition to the Post Office Box address it now publishes, so that mail delivery services other than the U.S. Postal Service may compete for delivery of premium filings. The PBGC agrees and has amended § 2610.4 to include a street address.

Section 2610.11—Recordkeeping Requirements; PBGC Audits

Section 2610.11 of the proposed regulation required plan administrators to retain "all plan records * * * that are necessary to support or to validate premium payments." One commenter suggested that the PBGC instead require only that plan administrators retain documentation needed to support adjustments made to entries reported (or to be reported) on the Schedule B, since the documentation needed to support the Schedule B must already be retained under section 107 of ERISA. The PBGC has not adopted this suggestion. The PBGC's recordkeeping requirement is needed to enable the PBGC to monitor and to enforce compliance with the premium regulation and, as such, it is properly included in the premium regulation. Because this recordkeeping requirement is, as the commenter states, largely duplicative of the recordkeeping requirements of section 107 of ERISA, it should not impose any significant additional burden on plan administrators.

Section 2610.22(a)(3)—Cap on Variable Rate Amount

One commenter objected to the proposed rule in § 2610.22(a)(3)(iii) establishing the qualifications for the cap reduction when the sponsor maintains at least one defined contribution plan and at least one defined benefit plan. The comment asserted that, as written, the rule would require that contributions to the defined benefit plan had equalled the Code section 404(a)(7)(A) limit in order for the plans to qualify for the cap reduction, determined without regard to participant coverage of the plans. The comment objected to this result.

The PBGC notes that the rule as proposed referenced Code section 404(a)(7)(A), which, by its own terms, applies only in situations where a plan sponsor maintains both defined contribution and defined benefit plans and some employees are participants in both. (The final regulation has been revised to reflect explicitly this common-participation requirement.) In all other situations (*e.g.*, both defined contribution and defined benefit plans but with separate participant groups, or multiple defined benefit plans covering overlapping groups of participants but no defined contribution plans), the general maximum deductibility rules in Code section 404 (a)(1)–(a)(3) apply, as does the usual rule under the premium regulation that all plans maintained by the same sponsor (or controlled group) are treated separately. Thus, if a sponsor maintained several defined benefit plans but no defined contribution plans, the determination of whether the cap reduction applied would be made in a plan-by-plan basis, comparing the contributions to each against the maximum deductible limit for each during the five base period years. This rule is unchanged even if the plans cover some of the same participants.

The PBGC has also revised § 2610.22(a)(3)(iii) to clarify that it applies only when the plan did not receive the maximum deductible amount determined without regard to the Code section 404(a)(7)(A) limitation. Thus, a covered defined benefit plan does not lose the benefit of the cap reduction merely because the contributing sponsor reduced contributions to another covered defined benefit plan below the Code section 404(a)(1) limitation in order to meet the Code section 404(a)(7)(A) limitation.

A commenter requested that the PBGC provide for carryover of contributions where a contributing sponsor credits a contribution to the plan's funding standard account for a particular plan year, but does not reflect the contribution for deduction purposes until the contributing sponsor's next taxable year. The statutory provisions governing the cap reduction measure the contribution history of the plan with respect to plan years rather than taxable years. The taxable year in which the contribution is reflected for deduction purposes is not relevant, and there is thus no need to provide for carryover rules.

The PBGC stated in the preamble to the proposed rule that it was considering whether the cap reduction should apply in the case of a plan maintained by a nonprofit entity and, if so, how to determine whether a contribution during the base period equalled the maximum deductible amount. One commenter addressed these issues, arguing that, since nonprofit entities get the maximum tax deduction with a contribution of zero dollars, they should get the benefit of the cap reduction even if they made no contribution during a base period year. The PBGC does not believe that this approach is consistent with the underlying purpose of the cap reduction, *i.e.*, to provide relief in the case of plan sponsors that attempted to improve the plan's funding level by making the maximum deductible contribution, and therefore has not adopted it.

The PBGC believes that a plan maintained by a nonprofit entity should get the benefit of the cap reduction on the same basis as for-profit entities, *i.e.*, when the nonprofit entity made contributions in amounts that would have been the maximum deductible contribution under Code section 404 if the contributing sponsor were a for-profit entity. This approach furthers the purposes of the cap reduction by providing relief in the case of all plan sponsors that made comparable attempts to improve the plan's funding level, irrespective of the tax status of the sponsor. Accordingly, beginning with the 1989 premium payment year, a plan maintained by a nonprofit entity is entitled to the cap reduction with respect to a base period year if an enrolled actuary certifies that the amounts contributed to the plan for that year were at least equal to the amount that would have been the maximum deductible contribution if the contributing sponsor of the plan was a for-profit entity.

A question has been raised in connection with a 1988 premium filing as to whether and under what circumstances the cap reduction applies in the case of plans that have received funding waivers. The IRS permits the contributing sponsor of such a plan to deduct (subject to the full funding limit) contributions sufficient to create a credit balance in the funding standard account (as of the end of the plan year) equal to the total of the outstanding balances of all waived funding deficiencies. Accordingly, if the credit balance in the plan's funding standard account (as of the end of the plan year) for a base period year is less than this total, the plan did not receive the maximum deductible contribution and thus is not entitled to the benefit of the cap reduction with respect to that base period year.

One commenter requested that the PBGC establish rules providing for the pass-through of the cap reduction in the case of mergers and spinoffs. Such rules would have to be complex in order to deal properly with all transfers of plan liabilities. The PBGC does not believe that the addition of this complexity to the premium regulation is warranted, particularly since the cap reduction is only a transitional, and thus temporary, part of the premium structure.

Section 2610.22(d)—Special refund rule for certain short plan years

The PBGC stated in the preamble to the proposed rule that it had decided not to promulgate the lengthy and complicated rules that would be needed to eliminate so-called "duplicate premiums" in connection with certain mergers, consolidations and spinoffs. Two commenters requested that the PBGC issue such rules. For the reasons stated in the proposed rule preamble, the PBGC is not doing so at this time. However, the PBGC will continue to consider whether to issue these rules at a future time.

The PBGC did propose a special refund rule for short plan years resulting from events other than multiple plan transactions (§ 2610.22(d)). This special rule, covering short initial plan years, changes in plan years and short final plan years, is effective beginning with the 1989 premium payment year. (However, as noted in the preamble to the proposed rule (53 FR 39205), the special refund rule applicable to a change in plan years is a codification of the PBGC's existing practice with regard to pre-1989 premium payment years.) One commenter requested that the PBGC extend the special refund rule to apply to the 1988 premium payment year. The retroactive application of this rule would create significant administrative burdens for the PBGC. In addition, the PBGC sees no reason in this case to depart from the general principle of prospective rulemaking. Accordingly, the PBGC has decided not to change the effective date of this special rule.

Finally, one commenter suggested that the refund for a plan's final short plan

year be determined by treating the plan year as ending (in the case of a standard termination) at the expiration of the period within which the PBGC may issue a notice of noncompliance under ERISA section 4041(b)(2)(C). The statute does not permit this. Under ERISA section 4007(a), premiums continue to accrue until the plan's assets are distributed pursuant to the termination procedure, or until a trustee is appointed pursuant to ERISA section 4042, whichever is earlier. Accordingly, the PBGC has not adopted this suggestion.

Section 2610.23(a)—General rule

The PBGC stated in the preamble to the proposed rule that it is left to the enrolled actuary to decide, in a manner consistent with generally accepted actuarial principles and practices, whether to perform a separate valuation for premium purposes or to rely on an existing valuation. One commenter objected to the PBGC's reference in this context to generally accepted actuarial principles and practices, arguing that the actuary's decision to rely on an existing valuation may be based on the unavailability of the data needed to perform a new valuation, rather than on generally accepted actuarial principles and practices. The concept of generally accepted actuarial principles and practices necessarily encompasses practical considerations such as the availability of needed data and, therefore, is adequate to define the actuary's responsibility in the context cited.

One commenter requested guidance regarding the adjustments an actuary would have to make to an earlier valuation (*e.g.*, a valuation performed as of the first day of the prior plan year) so as to reflect the plan's population on the statutory date for determining unfunded vested benefits (*i.e.*, the last day of the prior plan year). As the PBGC stated in the preamble to the interim rule, the actuary may determine the plan's population either on the basis of an actual census or a representative sample of the plan's population. It is up to the enrolled actuary to determine, in a manner consistent with generally accepted actuarial principles and practices, what data to collect, and what sampling technique to use, in connection with any such sample.

The same commenter stated that the requirement that the actuary determine the plan's population as of the last day of the prior plan year is burdensome in the case of a plan for which the valuation is done as of a date other than the first or last day of the plan year. The commenter recommended that the actuary be permitted in such a case to base the determination of the plan's unfunded vested benefits on the plan's population as of any date in the prior plan year. The PBGC has not adopted this recommendation. Under the statute, a plan's unfunded vested benefits must be determined as of the last day of the prior plan year, irrespective of the date as of which the plan valuation is performed. Moreover, the problem does not appear to be a significant one. In this connection, the PBGC points out that relatively few plans have a valuation date other than the first or last day of the plan year; that the actuary for such a plan may, as noted above, rely on a representative sample rather than on an actual census; and that the plan may avoid the problem altogether by using the alternative calculation method.

The PBGC has made a change in the general rule regarding premium valuations that are done as of the first day of the premium payment year. Under the proposed rule, the actuary was required to base such a valuation on the assumptions and methods used for funding purposes for the prior plan year. The PBGC has revised the final rule (§ 2610.23(a)(1)) to provide that when the actuary is using a valuation as of the first day of the premium payment year, that valuation must be based on the assumptions and methods used for funding purposes for the premium payment year. However, the PBGC reminds enrolled actuaries that if the premium valuation results are materially different than what would have been determined as of the last day of the prior plan year, the enrolled actuary is required to make adjustments so as to reflect appropriately the values as of the last day of the prior plan year (except where the unadjusted valuation would result in greater unfunded vested benefits) (§ 2610.23(a)(2)).

Finally, the PBGC reminds plan professionals that the various adjustments and modifications required or permitted under the general rule (and under the alternative calculation method) in determining a plan's unfunded vested benefits apply only for premium calculation purposes and are not applicable to the determination of current liability under section 302 of ERISA and section 412 of the Code.

Section 2610.23(b)(1)—Vested Benefits Amount

One commenter requested that the PBGC clarify the assumptions to be used in determining the vested portion of current liability for premium purposes, or at least give interim guidance that may be used pending clarification by the IRS. The PBGC is unable to provide the requested guidance, because only the IRS has authority to prescribe the assumptions to be used in determining current liability. The PBGC has discussed this issue with the IRS, and the IRS is not yet ready to issue guidance on this matter.

Another commenter suggested that the PBGC require that the interest rate used in valuing vested benefits for premium purposes be the same for all plan years beginning in a given calendar year. The statute does not permit this. Under ERISA section 4006(a)(3)(E)(iii)(II), the required interest rate is tied to the month, rather than the calendar year, in which the plan year begins. Accordingly, the PBGC has not adopted this suggestion.

Finally, under the proposed regulation, both the general rule (§ 2610.23(b)(1)) and the alternative calculation method (§ 2610.23(c)) provided that vested benefits need not be adjusted to reflect the statutory interest rate if the rate (or rates) used under the plan to determine vested benefits was (or were all) lower than the statutory rate. A commenter suggested that the PBGC substitute "not greater than" for "lower than" so that a plan would have the benefit of the interest rate adjustment exemption even though one of the plan rates used to value vested benefits equalled the statutory rate. The PBGC agrees and has made the requested change both in the general rule and in the alternative calculation method.

In addition, the PBGC has made a minor revision in § 2610.23(b)(1) to delete the ambiguous reference to the interest rate used "in the plan's funding valuation," because for 1988 and later plan years, many plans will use a valuation interest rate determined under Code section 412(c)(3) for some purposes and the statutory rate prescribed under section 412(b)(5) for determining current liability. Therefore, § 2610.23(b)(1) is revised to refer to the interest rate used for determining current liability.

Section 2610.23(b)(2)—Actuarial Value of Assets

One commenter objected to the proposed rule's exclusion of contributions "for the premium payment year" from the actuarial value of assets, pointing out that employer contributions enhance benefit security regardless of the plan year for which they are made. Initially, the PBGC notes that contributions for the premium payment year would rarely be part of a plan's assets as of the statutory date for determining unfunded vested benefits, *i.e.*, the last day of the prior plan year. Moreover, even in those few cases in

which an employer has made advance contributions for the premium payment year, the PBGC believes that it would be inappropriate to count those contributions as part of the plan's assets for premium purposes.

The determination of unfunded vested benefits serves as a snapshot of the plan's funding status as of the end of the plan year preceding the premium payment year. Changes in plan liabilities relating to the premium payment year are not taken into account, whether they result from benefit accruals, benefit payouts, a change in actuarial assumptions or methods, a plan amendment or other causes. Similarly, any increase or decrease in asset values during the premium payment year is irrelevant, regardless of the cause. The PBGC believes that the inclusion of contributions for the premium payment year in the plan's asset values, without also taking into account the various other changes to asset and benefit values relating to the premium payment year, would distort the determination of the plan's unfunded vested benefits.

The same commenter requested guidance regarding how to determine whether a particular contribution is "for" a plan year preceding the premium payment year. The plan year for which a contribution is made is the plan year for which the contribution is credited to the funding standard account as "the amount considered contributed by the employer to or under the plan for the plan year" pursuant to section 412(b)(2)(A) of the Code and section 302(b)(2)(A) of ERISA. If this designation has been ambiguous in the past, it should no longer be so, now that contributions must be paid quarterly. Beginning with contributions for the 1989 plan year, contributing sponsors will have to designate the plan year for which a contribution is to be credited so as to distinguish the quarterly contributions required during the plan year from the final contribution(s) made for the previous plan year.

The same commenter also requested that the PBGC eliminate the requirement that contributions paid during the premium payment year be discounted with interest to the last day of the prior plan year, arguing that such discounting is not required for funding purposes and therefore should not be required for premium purposes. Code section 412(c)(10)(A) provides for an eight and one-half month "grace period" for contributions, thereby eliminating the need for discounting of contributions made during that period. However, the funding rules recognize that the contribution was made after the last day of the plan year by treating the "lost" earnings on that contribution as an experience loss that is amortized over future plan years. No such mechanism exists for premium purposes. Thus, the only way to recognize, for premium purposes, the date on which the contribution is made is to discount the contribution on a current basis.

The proposed rule specifies that the interest rate used to discount contributions is the plan asset valuation rate under the general rule (§ 2610.23(b)(2)) and the statutory rate under the alternative calculation method (§ 2610.23(c)(3)). Two commenters argued that the statutory rate should also be used to discount contributions under the general rule. The PBGC disagrees.

Under the general rule, all asset values must be determined in accordance with the plan's assumptions and methods used to value assets for funding purposes. It would be inconsistent with this requirement to discount the value of certain assets (i.e., contributions received after the last day of the plan year preceding the premium payment year) at a different interest rate. Under the alternative calculation method, in the interest of simplicity, contributions are discounted back to the first day of the plan year preceding the premium payment year at the same rate used to bring forward the value of the plan's unfunded vested benefits determined as of that date, i.e., the statutory 2ate. Thus, the discounting rules in the regulation ensure that the value of plan assets is adjusted in a manner appropriate to the method used for determining a plan's unfunded vested benefits.

Two commenters raised a number of questions concerning the requirement to discount contributions on a daily compound basis. (The proposed rule required daily compounding both under the general rule and the alternative calculation method.) The PBGC has modified this rule in the final regulation. With respect to the general rule, a plan must discount contributions at the plan asset valuation rate and in accordance with the plan's discounting rules. Thus, if a plan normally discounts asset values with interest compounded monthly, it is required to discount contributions at the plan's interest rate compounded monthly. This is consistent with the overall approach under the general rule of requiring plans to determine unfunded vested benefits using the same methods and assumptions that are used for funding purposes. This rule applies for 1988 and later premium payment years.

With respect to the alternative calculation method, the PBGC has determined that daily compounding of interest in the discounting calculation may be unduly burdensome for some plans. Accordingly, under the final rule, contributions are to be discounted at the statutory interest rate, with interest generally compounded annually. However, for any partial years within the discounting period, a plan may, at its discretion, use simple interest. This rule applies for premium payment years beginning on or after January 1, 1989. (For 1988 premium payment years, plans using the alternative calculation method were required simply to discount contributions at the statutory interest rate. Therefore, for 1988 premiums, any reasonable method of discounting is acceptable.)

Finally, the PBGC has made a change on its own initiative with respect to the adjustment for contributions in the case of a plan with fewer than 500 participants. Under the final regulation, such a plan is not required, under either the general rule or the alternative calculation method, to add to the value of plan assets contributions for plan years preceding the premium payment year. This will eliminate one more calculation, for all but the largest plans, in cases where the calculation would not affect the premium obligation because, *e.g.*, the plan is fully funded without the addition of contributions. This new rule applies for premium payment years beginning on or after January 1, 1989.

Section 2610.23(c)—Alternative Method for Calculating Unfunded Vested Benefits

Proposed § 2610.23(c) exempted plans from the interest rate adjustment requirement if the plan administrator certifies that the "plan's interest rate (or rates) used to determine the values in lines 6d(i) and 6d(ii) of the Schedule B was (or were all) lower than" the statutory rate. The PBGC has substituted "not greater than" for "lower" in this provision, for the same reasons noted above in the discussion of § 2610.23(b)(2). In addition, one commenter stated that the use of the term, "plan's interest rate," is confusing in that either the plan rate or the disclosure rate may be used to determine the values in line 6d of the Schedule B. (Whether the plan rate or the disclosure rate is used, it must, pursuant to the instructions for the 1988 Schedule B, be within 10% of the weighted average of the 30-year

Treasury bond rate as published by the IRS.) The PBGC agrees, and has therefore deleted the word, "plan's."

One commenter raised a question as to whether contributions made during the plan year preceding the premium payment year, but not included in the asset values reported on the Schedule B for that prior plan year, are to be included in the asset value under the alternative calculation method. Section 2610.23(c)(4) states that the asset values reported on the Schedule B (normally line 8b) are to be adjusted in accordance with the provisions governing asset values under the general rule (§ 2610.23(b)(2)), subject to the exception relating to discounting of contributions. Thus, as under the general rule, contributions for any plan year prior to the premium payment year are to be included (or may be included, for plans with fewer than 500 participants) in the asset value if paid by the earlier of the due date or payment date for the variable rate portion of the premium. This is so irrespective of whether the contribution is included in the asset values reported on the Schedule B.

The PBGC proposed the use under the alternative calculation method of a surrogate for calculating a plan's accruals during the plan year preceding the premium payment year (proposed § 2610.23(c)(1)). That surrogate was 7% of the value reported in line 6d(ii) of the Schedule B for vested benefits of active and deferred vested participants. The PBGC received one comment on this surrogate. That commenter objected to the surrogate on the basis that it would overstate benefit values for a plan with a low percentage of active participants. The commenter suggested that plans be permitted, as an alternative to the 7% surrogate, to use the value of the prior plan year's accruals as calculated for purposes of determining the "150% of current liability" full funding limit (Code section 412(c)(7)(A)(i)(I)). The PBGC has not adopted this suggestion because the calculation is not required to be reported on the Schedule B.

The PBGC has decided to include the 7% surrogate in the final regulation. Except for the above comment, the PBGC received no comments that objected to the use of the 7% surrogate or that suggested an alternative approach. While this surrogate will not be a precise measure of the prior plan year's accruals for each plan, the use of a surrogate that would be more reflective of each plan's population and benefit structure would involve substantial complications and would thus defeat the primary goal of keeping the alternative calculation method relatively simple. Those plans that believe they are disadvantaged by the use of the 7% surrogate are free to use the general rule.

The PBGC received numerous inquiries from plan administrators in connection with 1988 premium filings, regarding the computations required for the mathematical term, $.94^{(RIR-BIR)}$, in the alternative calculation method's interest rate adjustment formula. The PBGC recognizes that persons other than actuaries may have difficulty with this term, because it will generally contain an exponent that is fractional, negative or both. In order to simplify this computation, the PBGC has developed tables (§ 2610.23(c)(3)) that convert this term to a "substitution factor," expressed as a decimal fraction carried out to four decimal places. Thus, the user need only select the appropriate factor from the tables (based on the difference between the statutory interest rate and the interest rate used to determine the values on the Schedule B) and substitute that factor for the term, $.94^{(RIR-BIR)}$, in the interest rate adjustment formula.

The PBGC has rounded all substitution factors up or down, as appropriate, whichever produces the higher value of vested benefits. The impact of this rounding, however, is minimal for any given plan; at most, it would lead to an increase in the value of vested benefits of just under 1%. The use of this table is optional, and is effective beginning with the 1989 premium payment year.

The PBGC has received a number of inquiries from plan administrators attempting to complete 1988 premium filings for plans that have terminated, or that are in the process of doing so. These inquiries fall into two categories. First, in the case of standard terminations with proposed termination dates falling on or before the statutory date for determining unfunded vested benefits, plan administrators have argued that the PBGC should not impose any variable rate premium because the plan must provide funding for all benefits in order to satisfy the requirements for a standard termination. Second, in the case of distress and involuntary terminations in which the plan does not have a Schedule B for the plan year preceding the premium payment year, plan administrators have expressed concern that, because of the unavailability of the Schedule B needed for the alternative calculation method, they must incur the expense of a general rule determination.

The PBGC believes these concerns are valid and has, therefore, made two changes in the final premium regulation in response to these inquiries. First, a new variable rate exemption (§ 2610.24(a)(4)) exempts a plan from the variable rate portion of the premium if the plan is terminating in a standard termination with a proposed termination date during a plan year preceding the premium payment year. This exemption is conditional, subject to the plan's actually closing out in a standard termination. If the plan does not complete the standard termination and, thus, becomes an ongoing plan again, the unpaid variable rate portion(s) of the premium(s) will be due and payable with interest and, unless waived by the PBGC, penalties. In addition, the PBGC is adopting a new special rule (§ 2610.24(c)) applicable to plans undergoing distress or involuntary terminations with termination dates during a plan year preceding the premium payment year. These plans may use the Schedule B filed for the plan year in which the termination date fell, or, if the Schedule B for that plan year is not filed, the Schedule B for the preceding plan year, as the basis for the alternative calculation method. Both of these new rules are effective beginning with the 1989 premium payment year.

Finally, one commenter suggested that the PBGC not make reference in the premium regulation to specific line numbers on the Schedule B, since these line numbers may change and thus require a corresponding change in the premium regulation. The PBGC recognizes that the referenced line numbers may change, but has nonetheless decided to use specific line numbers in the premium regulation in the interest of ease of reference for premium payers.

Section 2610.23(d)—Restrictions on Alternative Calculation Method for Large Plans

One commenter requested guidance on how to perform the alternative calculation method in the case of a plan into which another plan has merged. If the merged plan has 500 or more participants, the merger (except if *de minimis*) must be recognized as a "significant event" requiring an appropriate adjustment by an enrolled actuary to the value of unfunded vested benefits. As is the case with all significant events, the enrolled actuary must make this adjustment in a manner consistent with generally accepted actuarial principles and practices. Thus, the various assumptions and formulae in the alternative calculation method may not be used as a "safe harbor" in making this adjustment.

One commenter argued that two of the proposed significant events—§ 2610.23(d)(4) (dealing with certain shutdowns) and § 2610.23(d)(5) (dealing with certain early retirement windows)—are not automatically significant and thus should be deleted, with the result that they would be reflected only in the catch-all significant event in § 2610.23(d)(7). The PBGC recognizes that these two significant events will not result in all cases in a material increase in the value of unfunded vested benefits. Nonetheless, the PBGC believes that these events are of sufficient importance to require in all cases that an actuary determine their impact for premium purposes. Accordingly, the PBGC has retained these significant events in the final regulation.

Another commenter suggested that the PBGC delete the catch-all significant event in § 2610.23(d)(7) because it is too nebulous. While the PBGC has attempted to specify those significant events that are most likely to result in a material increase in the value of unfunded vested benefits, it is impossible to predict all such events. The PBGC finds that it is, therefore, necessary to retain § 2610.23(d)(7).

Section 2610.24—Variable Rate Exemptions and Special Rules

Two commenters objected to the PBGC's elimination of the "$5 rule" under the interim regulation for plans with fewer than 100 participants that had not reported the Schedule B data needed to use the alternative calculation method for the 1988 premium payment year. As the PBGC noted in the preamble to the proposed rule, the $5 rule was a temporary measure that is no longer necessary beginning with the 1989 premium payment year, because all plans, regardless of size, are now required to report on the Schedule B the data needed to use the alternative calculation method. The PBGC does not believe that the alternative calculation method is so burdensome for small plans as to justify retention of the $5 rule.

One commenter expressed concern that the PBGC not eliminate the $5 rule before the IRS finalizes the related change to Schedule B reporting requirements. While the Schedule B change was not yet final when the PBGC proposed the deletion of the $5 rule, it is in effect now.

Another commenter suggested that the PBGC impose certain restrictions on the use of the actuarial certification option (§ 2610.24(a)(1)) and on the use of the special rule permitting the enrolled actuary to report the value of accrued benefits in lieu of the value of vested benefits if the value of plan assets exceeds the value of accrued benefits (§ 2610.24(b)). Under the suggested restrictions, these options would be available only to plans using interest rates that do not exceed the statutory rate by a specified percentage, with that percentage linked to the plan's funding level. The PBGC does not believe that such restrictions are necessary. Under the regulation, the enrolled actuary may select these options only when the pertinent regulatory criteria are met, irrespective of the plan's interest rate or funding level. The PBGC expects to be able to monitor and to ensure compliance with these requirements through appropriate audits.

Section 2610.25—Filing Requirement

Four commenters requested that the filing deadline for the variable rate portion of the premium (which is September 15, 1989, for calendar year plans paying 1989 premiums) be changed to conform to the filing deadline for the prior plan year's Schedule B (which is generally September 15, 1989, for calendar year plans filing their 1988 Schedule B's, with extensions available to October 15, 1989). The PBGC has not adopted this suggestion.

Prior to enactment of the Pension Protection Act, PBGC premiums were due by the last day of the second month following the close of the prior plan year for large plans and by the last day of the seventh month following the close of the prior plan year for all other plans. With the enactment of the variable rate premium, however, it was apparent that the due date, at least for large plans, would have to be deferred. When the PBGC began to develop the new premium regulation and decided to give plans the option to use the Schedule B data as the basis for the premium calculation, it also decided to defer the premium due date for plans with fewer than 500 participants in order to approximate more closely the filing schedule for Form 5500.

However, in deciding to defer the premium due date, the PBGC also had to give close consideration to the impact this decision would have on its revenues. At a time when a major increase in premium rates was needed in order to preserve the solvency of the single-employer insurance system, the PBGC had to be very cautious in implementing rules that would have a negative impact on premium revenues. For this reason, the PBGC dismissed the idea of allowing plans to pay their premiums (or the variable rate portion of the premium in the case of large plans) at whatever filing deadline they had for the Form 5500. (Such a rule would also have created significant administrative burdens for the PBGC, because it would never know in advance what premium due date plans would be using. Plan administrators, too, would be disadvantaged by this uncertainty.)

The PBGC instead settled on a due date of the fifteenth day of the eighth calendar month following the month in which the premium payment year began (September 15 for calendar year plans). This date was chosen in recognition of the fact that many corporations routinely obtain the automatic extension of the due date for corporate tax returns, from March 15 to September 15 for calendar year tax years, and for corporate plan sponsors this automatically moves the Form 5500 due date to September 15.

While September 15 is, thus, the Form 5500 due date for a great number of premium payers, the PBGC recognizes that a significant number of plans do extend their Form 5500 due date to October 15. Nevertheless, the Schedule B data needed for the alternative calculation method ought to be, and generally is, available by the September 15 premium deadline. Under the alternative calculation method, it is not necessary that the Schedule B be filed before the PBGC Form 1 is completed and filed. Premium calculations can be based on the Schedule B data that is expected to be reported.

While an amended premium filing is required if that data, as ultimately reported on the Schedule B, is different, interest and penalties may be assessed only if the premium paid by the filing deadline is less than that required.

A number of plan professionals have asked the PBGC whether it is necessary for a plan to distribute excess assets in order for the premium obligation to cease accruing. Under section 4007(a) of ERISA and § 2610.25(e) of the proposed rule, the obligation to pay premiums continues through the plan year in which all plan assets are distributed pursuant to a plan's termination or in which a trustee is appointed under section 4042 of ERISA, whichever occurs first. For purposes of this rule, a plan's assets are considered distributed pursuant to a termination procedure upon the distribution of all assets that must be allocated to Priority Categories 1 through 6 of ERISA section 4044(a), irrespective of whether there are any assets to be allocated and distributed under ERISA section 4044(d).

Finally, the PBGC has had difficulty in securing voluntary compliance with premium requirements in a number of

cases involving terminating plans. Plan professionals involved in such cases are reminded that failure to pay premiums in accordance with these requirements may lead to a number of adverse consequences, including the addition of penalties and interest to the amount of the premium and the initiation of a lawsuit by the PBGC against any or all of the plan administrator, the contributing sponsor, and members of the contributing sponsor's controlled group. In addition, ERISA section 4003(e)(5) provides that, "[i]n any action brought under [Title IV of ERISA], whether to collect premiums, penalties and interest under section 4007 or for any other purpose, the court may award to the [PBGC] all or a portion of the costs of litigation incurred by the [PBGC] in connection with such action." The PBGC intends to pursue these remedies, as appropriate, in order to ensure compliance with the premium regulation.

E.O. 12291 and the Regulatory Flexibility Act

The PBGC has determined that this rule is a "major rule" within the meaning of Executive Order 12291, February 17, 1981 (46 FR 13193) because the single-employer plan premium increase implemented in this regulation will have an annual effect on the economy of more than $100 million. In accordance with E.O. 12291, the PBGC has prepared a Regulatory Impact Analysis. Interested persons may obtain copies of the Regulatory Impact Analysis from the PBGC's Communications and Public Affairs Department (Code 38000), 2020 K Street, NW., Washington, DC 20006.

Under section 605(b) of the Regulatory Flexibility Act, the PBGC certifies that these rules will not have a significant economic impact on a substantial number of small entities. The purpose and effect of this regulation is to provide rules for calculating the premium owed under ERISA section 4006. The costs attendant thereto for small pension plans (those with fewer than 100 participants) will not be significant, since virtually all such plans will either use the simplified calculation method or will be exempt from performing the calculation.

List of Subjects in 29 CFR Part 2610

Employee benefit plans, Penalties, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, Part 2610 of Chapter XXVI of Title 29, Code of Federal Regulations, is revised as follows:

PART 2610—PAYMENT OF PREMIUMS

Subpart A—General Provisions

Sec.
2610.1 Purpose and scope.
2610.2 Definitions.
2610.3 Forms.
2610.4 Mailing address.
2610.5 Date of filing.
2610.6 Computation of time.
2610.7 Late payment interest charges.
2610.8 Late payment penalty charges.
2610.9 Coverage for guaranteed basic benefits.
2610.10 Special rule for certain mergers and spinoffs.
2610.11 Recordkeeping requirements; PBGC audits.

Subpart B—Single-Employer Premiums for Post-1987 Plan Years

2610.21 Purpose and scope.
2610.22 Premium rate.
2610.23 Determination of unfunded vested benefits.
2610.24 Variable rate exemptions and special rules.
2610.25 Filing requirement.
2610.26 Liability for premiums.

Subpart C—Single-Employer Premiums for Pre-1988 Plan Years; Multiemployer Premiums

2610.31 Purpose and scope.
2610.32 Single-employer premium rates.
2610.33 Multiemployer premium rates.
2610.34 Filing requirement.

Appendix A to Part 2610—Late Payment Interest Charges

Appendix B to Part 2610—Interest Rates For Valuing Vested Benefits

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307, as amended by sec. 9331, Pub.L. 100-203, 101 Stat. 1330.

Subpart A—General Provisions

§ 2610.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to provide rules for computing and procedures for paying the premiums imposed by sections 4006 and 4007 of the Employee Retirement Income Security Act of 1974, as amended. Subpart A contains the rules that apply both to single-employer and multiemployer plans with respect to all plan years. These general rules cover such matters as the definitions of terms under this part, procedural requirements, and late payment interest and penalty charges. Subpart B contains the premium rates and due dates and computational rules for single-employer plans under the variable rate premium structure enacted as part of the Pension Protection Act. These rules apply to single-employer plans for plan years beginning on or after January 1, 1988 (except as otherwise specifically noted). Subpart C contains the premium rates and due dates for single-employer plans with respect to all prior plan years and for multiemployer plans with respect to all plan years.

(b) *Scope.* This part applies to all plans that are covered by Title IV of the Act pursuant to section 4021 of the Act.

§ 2610.2 Definitions.

For purposes of this part:

"Act" means the Employee Retirement Income Security Act of 1974, as amended.

"Code" means the Internal Revenue Code of 1986, as amended.

"Multiemployer plan" means a plan defined in section 4001(a)(3) of the Act.

"New plan" means a plan that became effective within the premium payment year and includes a plan resulting from a consolidation or spinoff. A plan that meets this definition is considered to be a new plan for purposes of this part even if the plan constitutes a successor plan within the meaning of section 4021(a) of the Act.

"Newly covered plan" means a plan that is not a new plan and that was not covered by Title IV of the Act pursuant to section 4021 of the Act immediately prior to the premium payment year.

"Participant" means any individual who is included in one of the categories below:

(a) *Active.*

(1) Any individual who is currently in employment covered by the plan and who is earning or retaining credited service under the plan. This category includes any individual who is considered covered under the plan for purposes of meeting the minimum coverage requirements, but because of offset or other provisions (including integration with Social Security benefits), the individual does not have any accrued benefits.

(2) Any non-vested individual who is not currently in employment covered by the plan but who is earning or retaining credited service under the plan. This category does not include a non-vested former employee who has incurred a break in service the greater of one year or the break in service period specified in the plan.

(b) *Inactive*—(1) *Inactive receiving benefits.* Any individual who is retired or separated from employment covered by the plan and who is receiving benefits under the plan. This category does not include an individual to whom an insurer has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

(2) *Inactive entitled to future benefits.* Any individual who is retired or separated from employment covered by the plan and who is entitled to begin receiving benefits under the plan in the future. This category does not include an individual to whom an insurer has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

(c) *Deceased.* Any deceased individual who has one or more beneficiaries who are receiving or entitled to receive benefits under the plan. This category does not include an individual if an insurer has made an irrevocable commitment to pay all the benefits to which the beneficiaries of that individual are entitled under the plan. *Provided that,* for plan years beginning before September 2, 1975, a retiree or former employee for whom a fully paid-up immediate or deferred annuity has been purchased shall be treated as a "participant" if such individual retains a legal claim against the plan for benefits or if the plan retains a participating interest in the annuity policy.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Plan year" means the calendar, policy or fiscal year on which the records of the plan are kept.

"Premium payment year" means the plan year for which the premium is being paid.

"Short plan year" means a plan year that is less than twelve full months.

§ 2610.3 Forms.

The estimation, declaration, reconciliation and payment of premiums shall be made using the forms prescribed by and in accordance with the instructions in the PBGC Annual Premium Payment Package.

§ 2610.4 Mailing address.

Plan administrators shall mail all forms required to be filed under this part and all payments for premiums, interest and penalties required to be made under this part to: Pension Benefit Guaranty Corporation, P.O. Box 105655, Atlanta, GA 30348-5655 or, if hand-delivered, to Retail Lockbox Processing Center, 1740 Phoenix Parkway, PBGC Lockbox 105655, College Park, GA 30349.

§ 2610.5 Date of filing.

(a) Any form required to be filed under the provisions of this part and any payment required to be made under the provisions of this part shall be deemed to have been filed or made on the date on which it is mailed.

(b) A form or payment shall be presumed to have been mailed on the date on which it is postmarked by the United States Postal Service, or three days prior to the date on which it is received by the PBGC if it does not contain a legible United States Postal Service postmark.

§ 2610.6 Computation of time.

In computing any period of time prescribed by this part, the day of the act, event, or default from which the designated period of time begins to run is not counted. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or federal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or federal holiday. For purposes of computing late payment interest charges under § 2610.7 and late payment penalty charges under § 2610.8, a Saturday, Sunday or federal holiday referred to in the previous sentence shall be included.

§ 2610.7 Late payment interest charges.

(a) If any premium payment due under this part is not paid by the due date prescribed for such payment by § 2610.25 or § 2610.34, as applicable, an interest charge will accrue on the unpaid amount at the rate imposed under section 6601(a) of the Code for the period from the date payment is due to the date payment is made. Late payment interest charges accrue as simple interest before January 1, 1983, and thereafter are compounded daily. (The interest rates for specified time periods are set forth in Appendix A to this part.)

(b) When PBGC issues a bill for premium payments necessary to reconcile the premiums paid with the actual premium due, interest will be accrued on the unpaid premium until the date of the bill if paid no later than 30 days after the date of such bill. If the bill is not paid within the 30-day period following the date of such bill, interest will continue to accrue throughout such 30-day period and thereafter, until the date paid.

(c) PBGC bills for interest assessed under this section will be deemed paid when due if paid no later than 30 days after the date of such bills. Otherwise, interest will accrue in accordance with paragraph (a) of this section on the amount of the bill from the date of the bill until the date of payment.

§ 2610.8 Late payment penalty charges.

(a) *Penalty charge.* If any premium payment due under this part is not paid by the due date prescribed for such payment by § 2610.25 or 2610.34, as applicable, the PBGC will, unless a waiver is granted pursuant to paragraph (b) of this section, assess a late payment charge on the unpaid premium at the rate provided in paragraph (a)(1), (a)(2), or (a)(3) of this section, as applicable.

(1) If the due date for the premium is prior to October 2, 1975, the late payment charge shall be at the rate specified in the following table:

Days late from due date	Late payment charge (percent)
1 to 60	0
61 to 90	25
91 to 120	50
121 to 180	75
More than 180	1000

(2) If the due date for the premium is on or after October 2, 1975, and before July 31, 1984, the late payment charge shall be at the rate specified in the following table:

Days late from due date	Late payment charge (percent)
1 to 30	5
31 to 60	10
61 to 90	20
91 to 120	40
121 to 150	60
151 to 180	80
More than 180	100

(3) If the due date for the premium is on or after July 31, 1984, the late payment charge (not to exceed 100% of the unpaid premium) shall be equal to the greater of—

(i) 5% per month (or fraction thereof) of the unpaid premiums; or

(ii) $25.

(b) *Waiver of penalty charge.* The late payment penalty charge will be waived, in whole or in part—

(1) With respect to any premium payment made within 60 days after the due date prescribed for such payment in § 2610.25 or § 2610.34, as applicable, if, before such due date, the PBGC grants a waiver upon a showing of substantial hardship arising from the timely payment of the premium and a showing that the premium will be paid within such 60-day period;

(2) If the PBGC grants a waiver based on any other demonstration of good cause;

(3) If the PBGC, on its own motion, waives the application of paragraph (a) of this section;

(4) With respect to any premium payment (excluding any variable rate portion of the premium under § 2610.22(a)(2)), if a plan that is required to make a reconciliation filing described in § 2610.25(b)(2)(iii) or § 2610.34(b)—

(i) Paid at least 90 percent of the flat rate portion of the premium due for the

premium payment year by the due date specified in § 2610.25(b)(2)(i) or § 2610.34(b); or

(ii) Paid by the due date specified in § 2610.25(b)(2)(i) or § 2610.34(b) an amount equal to the premium that would be due for the premium payment year, computed using the flat per capita premium rate for the premium payment year and the participant count upon which the prior year's premium was based; and

(iii) Pays 100 percent of the premium due for the premium payment year under § 2610.22 (excluding any variable rate portion of the premium under § 2610.22(a)(2)), § 2610.32, or § 2610.33, as applicable, on or before the due date for the reconciliation filing under § 2610.25(b)(2)(iii) or § 2610.34(b), as applicable; or

(5) With respect to any PBGC bills for the premium payment necessary to reconcile the premium paid with the actual premium due, if such bills are paid no later than 30 days after the date of such bills.

§ 2610.9 Coverage for guaranteed basic benefits.

(a) The failure by a plan administrator to pay the premiums due under this part will not result in that plan's loss of coverage for basic benefits guaranteed under sections 4022(a) or 4022A(a) of the Act.

(b) The payment of the premiums imposed by this part will not result in coverage for basic benefits guaranteed under sections 4022(a) or 4022A(a) of the Act for plans not covered under Title IV of the Act pursuant to section 4021 of the Act.

§ 2610.10 Special rule for certain mergers and spinoffs.

(a) With respect to a plan described in paragraph (b) of this section that is paying its premium for a premium payment year beginning on or after January 1, 1988, all references in §§ 2610.22, 2610.23, 2610.24 and 2610.33, as applicable, to the last day of the plan year preceding the premium payment year shall be deemed to refer to the first day of the premium payment year.

(b) A plan is described in this paragraph if—

(1) The plan engages in a merger or spinoff that is not *de minimis* pursuant to the regulations under section 414(1) of the Code (in the case of single-employer plans) or pursuant to Part 2672 of this chapter (in the case of multiemployer plans), as applicable;

(2) The merger or spinoff is effective on the first day of the plan's premium payment year; and

(3) The plan is the transferee plan in the case of a merger or the transferor plan in the case of a spinoff.

§ 2610.11 Recordkeeping requirements; PBGC audits.

(a) *Retention of records to support premium payments.* With respect to plan years beginning on or after January 1, 1988, all plan records, including calculations and other data prepared by an enrolled actuary or, for a plan described in section 412(i) of the Code, by the insurer from which the insurance contracts are purchased, that are necessary to support or to validate premium payments under this part shall be retained by the plan administrator for a period of six years after the premium due date. Records that must be retained pursuant to this paragraph include, but are not limited to, records that establish the number of plan participants, that reconcile the calculation of the plan's unfunded vested benefits with the actuarial valuation upon which the calculation was based, and, for plans that assert entitlement to the reduction in the cap on the variable rate portion of the premium, that demonstrate the methods and assumptions used by the plan during the base period with respect to calculating its maximum deductible contribution pursuant to section 404 of the Code. Records retained pursuant to this paragraph shall be made available to the PBGC upon request for inspection and photocopying.

(b) *PBGC audit.* Premium payments under this part are subject to audit by the PBGC. If, upon audit, the PBGC determines that a premium due under this part was underpaid, the late payment interest charges under § 2610.7 and the late payment penalty charges under § 2610.8 shall apply to the unpaid balance from the premium due date to the date of payment. In determining the premium due—

(1) If, in the judgment of the PBGC, the plan's records fail to establish the number of plan participants with respect to whom premiums were required for any premium payment year, the PBGC may rely on data it obtains from other sources (including the Internal Revenue Service and the Department of Labor) for presumptively establishing the number of plan participants for premium computation purposes; and

(2) If, in the judgment of the PBGC, the plan's records fail to establish that the plan's unfunded vested benefits were of the amount reported by the plan for the premium payment year, the variable rate portion of the premium owed by the plan with respect to that premium payment may be deemed to be the maximum $34 per participant charge, pursuant to § 2610.22(a)(3).

(Approved by the Office of Management and Budget under control no. 1212-0009.)

Subpart B—Single-Employer Premiums for Post-1987 Plan Years

§ 2610.21 Purpose and scope.

This subpart provides rules for computing and procedures for paying premiums for single-employer plans with respect to plan years beginning, generally, on or after January 1, 1988. Certain provisions, as specifically noted, apply to plan years beginning on or after January 1, 1989.

§ 2610.22 Premium rate.

(a) *General rule.* For plan years beginning on or after January 1, 1988, the premium paid by a single-employer plan for basic benefits guaranteed under section 4022(a) of the Act shall equal the sum of the amounts in paragraphs (a)(1) and (a)(2) of this section (subject to the limitation in paragraph (a)(3) of this section), multiplied by the number of participants in the plan on the last day of the plan year preceding the premium payment year.

(1) *Flat rate amount.* The amount under this paragraph is $16.

(2) *Variable rate amount.* Except for plans covered by an exemption or special rule pursuant to § 2610.24, the amount under this paragraph is $6 for each $1,000 (or fraction thereof) of a plan's unfunded vested benefits, as determined under § 2610.23, with that product divided by the number of participants in the plan on the last day of the plan year preceding the premium payment year. The resulting amount shall be rounded to the nearest cent, with a fraction of one-half cent or more rounded up and a fraction of less than one-half cent rounded down.

(3) *Cap on variable rate amount.* Except as modified by the next sentence, in no event shall the variable rate amount determined under paragraph (a)(2) of this section exceed $34 per participant. For each of the five consecutive premium payment years commencing with the first premium payment year beginning on or after January 1, 1988, the $34 maximum shall be reduced by the product of $3 multiplied by the number of plan years during the last five plan years commencing before January 1, 1988, with respect to which the contributing sponsor or contributing sponsors made contributions to the plan in an amount not less than the maximum amount allowable as a deduction under section 404 of the Code, as determined in

accordance with paragraphs (a)(3)(i) through (a)(3)(v) of this section. The rules in paragraphs (a)(3)(ii), (a)(3)(iii) and (a)(3)(v) apply with respect to plan years beginning on or after January 1, 1989.

(i) *Determination of maximum deductible contribution.* The determination of whether contributions were in an amount not less than the maximum amount allowable as a deduction under section 404 of the Code shall be based on the methods of computing the maximum deductible contribution under section 404, including actuarial assumptions and funding methods, used by the plan and the contributing sponsor or contributing sponsors (provided such assumptions and methods met the requirements for reasonableness under section 412 of the Code) with respect to each of the last five plan years commencing before January 1, 1988.

(ii) *Special rule for rounding of de minimis amounts.* Any contribution that is rounded down to no less than the next lower multiple of one hundred dollars (in the case of maximum deductible amounts up to one hundred thousand dollars) or to no less than the next lower multiple of one thousand dollars (in the case of maximum deductible amounts above one hundred thousand dollars) shall be deemed for purposes of this paragraph to be in an amount not less that the maximum deductible amount.

(iii) *Determination of maximum deductible contribution for sponsors maintaining defined benefit and defined contribution plans.* For purposes of this paragraph, if a contributing sponsor is subject to the limitation on deductions described in section 404(a)(7)(A) of the Code (relating to total deductions in connection with one or more defined contribution plans and one or more defined benefit plans with common participants in each) and if the contributing sponsor or contributing sponsors made contributions to the plan with respect to which the premium is being determined in an amount less than the maximum deductible amount (determined without regard to the Code section 404(a)(7)(A) limitation), amounts contributed to a defined contribution plan (or plans), or to a defined benefit plan (or plans) not covered by Title IV of the Act pursuant to section 4021 of the Act, shall be disregarded in determining whether the amounts contributed equalled the maximum deductible contribution under section 404 of the Code. If the contributing sponsor maintains more than one defined benefit plan covered by Title IV of the Act pursuant to section 4021 of the Act, the determination shall be made by aggregating the amounts contributed to all such plans and comparing that total to the section 404(a)(7)(A) limitation.

(iv) *Determination of maximum deductible contribution in certain cases when plan year and taxable year do not coincide.* If a contributing sponsor determined the maximum deductible contribution for a taxable year by using a weighted average of the maximum deductible contributions for the plan years falling within the taxable year pursuant to 26 CFR 1.404(a)-14(c)(3), the determination under this paragraph of whether the contribution for a plan year was the maximum deductible amount shall be made by aggregating all contributions for the plan year, irrespective of the taxable year in which they were applied. If this total is less than the maximum deductible amount under Code section 404 (without applying the limitation in Code section 404(a)(7)(A)) determined on the basis of the plan year, the contribution shall be treated as being the maximum deductible amount under this paragraph only if the portion of the contribution applied in each taxable year in which the plan year fell equalled the maximum deductible amount (with respect to that plan year) for that taxable year under the limitation in section 404(a)(7)(A).

(v) *Special rule for nonprofit entities.* A plan maintained by a nonprofit entity shall be deemed, for purposes of paragraph (a)(3) of this section, to have received the maximum deductible amount for a plan year if an enrolled actuary certifies that the contributions made to the plan for that plan year were in an amount not less than the maximum amount that would have been allowable as a deduction under section 404 of the Code, as determined under paragraphs (a)(3)(i) through (a)(3)(iv) of this section, if the contributing sponsor(s) of the plan was a (were) for-profit entity(ies).

(b) *Special computation date for new and newly covered plans.* For purposes of this section, the number of plan participants for purposes of computing the premium owed with respect to a new plan or a newly covered plan (as defined in § 2610.2) shall be determined as of the first day of the premium payment year or, if later, the date on which the plan became effective for benefit accruals for future service, and all references in paragraph (a) of this section to the last day of the plan year preceding the premium payment year shall be deemed to refer to such day or date.

(c) *Plans that change plan years.* A plan that changes its plan year shall pay the premium prescribed by this section for the short plan year.

(d) *Special refund rule for certain short plan years.* A plan described in this paragraph is entitled to a refund for a short plan year that begins on or after January 1, 1989. The plan must pay the full premium due and request a refund from the PBGC. The amount of the refund will be determined by prorating the premium for the short plan year by the number of months (treating a part of a month as a month) in the short plan year. A plan is described in this paragraph if—

(1) The plan is a new or newly covered plan that becomes effective for premium purposes on a date other than the first day of its first plan year;

(2) The plan adopts an amendment changing its plan year, resulting in a short plan year;

(3) The plan's assets are distributed pursuant to the plan's termination, in which case the short plan year for purposes of computing the amount of the refund under this paragraph shall be deemed to end on the later of the asset distribution date or the date 30 days prior to the date the PBGC receives the plan's post-distribution certification; or

(4) A trustee of the plan is appointed pursuant to section 4042 of the Act, in which case the short plan year for purposes of computing the amount of the refund under this paragraph shall be deemed to end on the date of appointment.

§ 2610.23 Determination of unfunded vested benefits.

(a) *General rule.* Except as permitted by paragraph (c) of this section or as provided in the exemptions and special rules under § 2610.24, the amount of a plan's unfunded vested benefits (as defined in paragraph (b) of this section) shall be determined as of the last day of the plan year preceding the premium payment year, based on the plan provisions and the plan's population as of that date. The determination shall be made in accordance with paragraph (a)(1) (for premium payment years beginning in 1988) or (a)(2) (for premium payment years beginning on or after January 1, 1989), and shall be certified to in accordance with paragraph (a)(3).

(1) *Determination for 1988 premium payment years.* The determination of vested benefits shall be based on a plan valuation that meets the requirements imposed by section 302(c)(9) of the Act and section 412(c)(9) of the Code, and that was performed as of the first day of the premium payment year or that was the most recent valuation performed (by on or before the date the variable rate

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portion of the premium for the premium payment year is due under § 2610.25) for a plan year within the three plan years immediately preceding the premium payment year. If a significant event described in paragraph (d) of this section or other event that has a material impact on the value of vested benefits occurred between the date of the plan valuation and the last day of the plan year preceding the premium payment year, the value of vested benefits shall be determined using assumptions that reflect the occurrence of such significant event. If the plan valuation on which the determination of vested benefits is based was performed as of the first day of the premium payment year, the amount of the plan's vested benefits as of such date shall be deemed to equal the amount of the plan's vested benefits as of the last day of the plan year preceding the premium payment year unless the plan's enrolled actuary determines that there is a material difference between such amounts.

(2) *Determination for post-1988 premium payment years.* The unfunded vested benefits shall be determined using the same actuarial assumptions and methods used by the plan for purposes of determining the minimum funding contribution under section 302 of the Act and section 412 of the Code for the plan year preceding the premium payment year (or, in the case of a new or newly covered plan, for the premium payment year), except to the extent that other actuarial assumptions are specifically prescribed by this section or are necessary to reflect the occurrence of a significant event described in paragraph (d) of this section between the date of the funding valuation and the last day of the plan year preceding the premium payment year (If the plan does a valuation as of the last day of the plan year preceding the premium payment year, no separate adjustment for significant events is needed.) Under this rule, the determination of the unfunded vested benefits may be based on a plan valuation done as of the first day of the premium payment year, provided that—

(i) The actuarial assumptions and methods used are those used by the plan for purposes of determining the minimum funding contribution under section 302 of the Act and section 412 of the Code for the premium payment year, except to the extent that other actuarial assumptions are specifically prescribed by this section or are required to make the adjustment described in paragraph (a)(2)(ii) of this section; and

(ii) If an enrolled actuary determines that there is a material difference between the values determined under the valuation and the values that would have been determined as of the last day of the preceding plan year, the valuation results are adjusted to reflect appropriately the values as of the last day of the preceding plan year. (This adjustment need not be made if the unadjusted valuation would result in greater unfunded vested benefits.)

(3) In the case of any plan that determines the amount of its unfunded vested benefits under the general rule described in this paragraph, an enrolled actuary must certify, in accordance with the Premium Payment Package, that the determination was made in a manner consistent with generally accepted actuarial principles and practices.

(b) *Unfunded vested benefits.* The amount of a plan's unfunded vested benefits under this section shall be the excess of the plan's vested benefits amount (determined under paragraph (b)(1) of this section) over the actuarial value of the plan's assets (determined under paragraph (b)(2) of this section).

(1) *Vested benefits amount.* A plan's vested benefits amount under this section shall be the plan's current liability (within the meaning of section 302(d)(7) of the Act) determined by taking into account only vested benefits and by using an interest rate equal to 80% of the annual yield for 30-year Treasury constant maturities, as reported in Federal Reserve Statistical Release G.13 and H.15, for the calendar month preceding the calendar month in which the premium payment year begins. (Appendix B to this part sets forth the required intereat rates.) For premium payment years beginning on or after January 1, 1989, if the interest rate (or rates) used by the plan to determine current liability was (or were all) not greater than the required interest rate, the vested benefits need not be revalued if an enrolled actuary certifies that the interest rate (or interest rates) used was (or were all) not greater than the required interest rate.

(2) *Actuarial value of assets.* The actuarial value of a plan's assets under this section shall be determined in accordance with section 302(c)(2) of the Act, except that the value is not reduced by a credit balance in the funding standard account. Contributions owed for any plan year preceding the premium payment year shall be included for premium payment years beginning during 1988 and, for premium payment years beginning on or after January 1, 1989, shall be included for plans with 500 or more participants and may be included for any other plan. However, contributions may be included only to the extent such contributions have been paid into the plan on or before the earlier of the due date for payment of the variable rate portion of the premium under § 2610.25 or the date that portion is paid. Contributions included that are paid after the last day of the plan year preceding the premium payment year shall be discounted at the plan asset valuation rate (on a simple or compound basis in accordance with the plan's discounting rules) to such last day to reflect the date(s) of payment. Contributions for the premium payment year may not be included for any plan.

(c) *Alternative method for calculating unfunded vested benefits.* In lieu of determining the amount of the plan's unfunded vested benefits pursuant to paragraph (a) of this section, a plan administrator may calculate the amount of a plan's unfunded vested benefits under this paragraph using the plan's Form 5500, Schedule B, for the plan year preceding the premium payment year. Pursuant to this paragraph, unfunded vested benefits shall be determined from the entries in lines 6d(i), 6d(ii) and, usually, 8b of the plan's Schedule B. The value of the vested benefits shall be adjusted in accordance with paragraph (c)(1) of this section (for premium payment years beginning on or after January 1, 1989) to reflect accruals during the plan year preceding the premium payment year and with paragraph (c)(2) of this section to reflect the interest rate prescribed in paragraph (b)(1) of this section, and the value of the assets shall be adjusted in accordanoe with paragraph (c)(4) of this section. (For premium payment years beginning on or after January 1, 1989, if the plan administrator certifies that the interest rate (or rates) used to determine the values in lines 6d(i) and 6d(ii) of the Schedule B was (or were all) not greater than the interest rate prescribed in paragraph (b)(1) of this section, the interest rate adjustment prescribed in paragraph (c)(2) of this section is not required.) The resulting unfunded vested benefits amount shall be adjusted in accordance with paragraph (c)(5) of this section to reflect the passage of time from the date of the Schedule B data to the last day of the plan year preceding the premium payment year.

(1) *Vested benefits adjustment for accruals.* For premium payment years beginning on or after January 1, 1989, the value of vested benefits entered in line 6d(ii) shall be adjusted to reflect the increase in vested benefits attributable to accruals during the plan year preceding the premium payment year by multiplying that value by 1.07.

(2) *Vested benefits interest rate adjustment.* The value of vested benefits as entered on the Schedule B shall be adjusted in accordance with the following formula (except as provided in paragraph (c)(3) of this section) to reflect the interest rate prescribed in paragraph (b)(1) of this section:

$$VB_{adj} = VB_{6d(i)} \times .94^{(RIR-BIR)} + VB_{6d(ii)} \times .94^{(RIR-BIR)} \times ((100+BIA)/(100+(RIR))^{(ARA-50)}, \text{ where—}$$

(i) VB_{adj} is the adjusted vested benefits amount (as of the first day of the plan year preceding the premium payment year) under the alternative calculation method;

(ii) $VB_{6d(i)}$ is the amount entered in line 6d(i) of the Schedule B;

(iii) $VB_{6d(ii)}$ is the amount entered in line 6d(ii) of the Schedule B, multiplied, for premium payment years beginning on or after January 1, 1989, by 1.07 in accordance with paragraph (c)(1) of this section;

(iv) RIR is the required interest rate set forth in Appendix B to this part;

(v) BIR is the interest rate entered on line 12c (post-retirement) of the Schedule B that was used to determine the entry on line 6d(i) of the Schedule B;

(vi) BIA is the interest rate entered on line 12c (pre-retirement) of the Schedule B that was used to determine the entry in line 6d(ii) of the Schedule B: and

(vii) ARA is the assumed retirement age entered on line 12d of the Schedule B that was used to determine the entries on lines 6d(i) and 6d(ii) of the Schedule B.

(3) *Optional use of substitution factors in interest rate adjustment formula.* The substitution factor set forth in Table A (when RIR is equal to or greater than BIR rounded to the nearest hundredth) or Table B (when BIR rounded to the nearest hundredth is greater than RIR) below may be used in lieu of the term, $.94^{(RIR-BIR)}$, in the formula prescribed by paragraph (c)(2) of this section:

TABLE A

If RIR minus BIR (rounded to nearest hundredth) is: At least	But less than	The substitution factor is—
0.00	0.10	1.0000
0.10	0.20	0.9938
0.20	0.30	0.9877
0.30	0.40	0.9816
0.40	0.50	0.9756
0.50	0.60	0.9695
0.60	0.70	0.9636
0.70	0.80	0.9576
0.80	0.90	0.9517
0.90	1.00	0.9458
1.00	1.10	0.9400
1.10	1.20	0.9342
1.20	1.30	0.9284
1.30	1.40	0.9227
1.40	1.50	0.9170
1.50	1.60	0.9114
1.60	1.70	0.9057
1.70	1.80	0.9002
1.80	1.90	0.8946
1.90	2.00	0.8891

TABLE A—Continued

If RIR minus BIR (rounded to nearest hundredth) is: At least	But less than	The substitution factor is—
2.00	2.10	0.8836
2.10	2.20	0.8781
2.20	2.30	0.8727
2.30	2.40	0.8673
2.40	2.50	0.8620
2.50	2.60	0.8567
2.60	2.70	0.8514
2.70	2.80	0.8461
2.80	2.90	0.8409
2.90	3.00	0.8357
3.00	3.10	0.8306
3.10	3.20	0.8255
3.20	3.30	0.8204
3.30	3.40	0.8153
3.40	3.50	0.8103
3.50	3.60	0.8053
3.60	3.70	0.8003
3.70	3.80	0.7954
3.80	3.90	0.7905
3.90	4.00	0.7856
4.00	4.10	0.7807
4.10	4.20	0.7759
4.20	4.30	0.7711
4.30	4.40	0.7664
4.40	4.50	0.7617
4.50	4.60	0.7570
4.60	4.70	0.7523
4.70	4.80	0.7477
4.80	4.90	0.7430
4.90	5.00	0.7385
5.00	5.10	0.7339
5.10	5.20	0.7294
5.20	5.30	0.7249
5.30	5.40	0.7204
5.40	5.50	0.7160
5.50	5.60	0.7115
5.60	5.70	0.7072
5.70	5.80	0.7028
5.80	5.90	0.6985
5.90	6.00	0.6942

TABLE B

If BIR (rounded to nearest hundredth) minus RIR is: At least	But less than	The substitution factor is—
0.01	0.10	1.0062
0.10	0.20	1.0125
0.20	0.30	1.0187
0.30	0.40	1.0251
0.40	0.50	1.0314
0.50	0.60	1.0378
0.60	0.70	1.0443
0.70	0.80	1.0507
0.80	0.90	1.0573
0.90	1.00	1.0638
1.00	1.10	1.0704
1.10	1.20	1.0771
1.20	1.30	1.0838
1.30	1.40	1.0905
1.40	1.50	1.0973
1.50	1.60	1.1041
1.6?	1.70	1.1109
1.70	1.80	1.1178
1.80	1.90	1.1248
1.90	2.00	1.1317
2.00	2.10	1.1388
2.10	2.20	1.1458
2.20	2.30	1.1529
2.30	2.40	1.1601
2.40	2.50	1.1673

TABLE B—Continued

If BIR (rounded to nearest hundredth) minus RIR is: At least	But less than	The substitution factor is—
2.50	2.60	1.1745
2.60	2.70	1.1818
2.70	2.80	1.1892
2.80	2.90	1.1965
2.90	3.00	1.2040
3.00	3.10	1.2114
3.10	3.20	1.2190
3.20	3.30	1.2265
3.30	3.40	1.2341
3.40	3.50	1.2418
3.50	3.60	1.2495
3.60	3.70	1.2573
3.70	3.80	1.2651
3.80	3.90	1.2729
3.90	4.00	1.2808
4.00	4.10	1.2888
4.10	4.20	1.2968
4.20	4.30	1.3048
4.30	4.40	1.3129
4.40	4.50	1.3211
4.50	4.60	1.3293
4.60	4.70	1.3375
4.70	4.80	1.3458
4.80	4.90	1.3542
4.90	5.00	1.3626
5.00	5.10	1.3710
5.10	5.20	1.3795
5.20	5.30	1.3881
5.30	5.40	1.3967
5.40	5.50	1.4054
5.50	5.60	1.4141
5.60	5.70	1.4229
5.70	5.80	1.4317
5.80	5.90	1.4406
5.90	6.00	1.4495

(4) *Adjusted value of plan assets.* The value of plan assets shall be the amount reported on line 8b of the Schedule B, unless that amount was determined as of a date other than the first day of the plan year preceding the premium payment year. In that event, the value of plan assets shall be the amount entered in line 6c of the Schedule B. The value of assets reported on line 8b (or 6c) of the Schedule B shall be adjusted in accordance with paragraph (b)(2) of this section, except that the amount of all contributions that are included in the value of assets and that were made after the first day of the plan year preceding the premium payment year shall be discounted to such first day at the interest rate listed in Appendix B of this part for the premium payment year, using any reasonable discounting method for premium payment years beginning during 1988, and for all subsequent plan years, compounded annually except that simple interest may be used for any partial years.

(5) *Adjustment for passage of time.* The amount of the plan's unfunded vested benefits shall be adjusted to reflect the passage of time between the date of the Schedule B data (the first

day of the plan year preceding the premium payment year) and the last day of the plan year preceding the premium payment year in accordance with the following formula:

$UVB_{adj} = (VB_{adj} - A_{adj}) \times (1 + RIR/100)^{Y}$;

where—

(i) UVB_{adj} is the amount of the plan's adjusted unfunded vested benefits;

(ii) VB_{adj} is the value of the adjusted vested benefits calculated in accordance with paragraphs (c)(1) and (c)(2) of this section;

(iii) A_{adj} is the adjusted asset amount calculated in accordance with paragraph (c)(3) of this section;

(iv) RIR is the required interest rate set forth in Appendix B to this part; and

(v) Y is deemed to be equal to 1 (unless the plan year preceding the premium payment year is a short plan year, in which case Y is the number of years between the first day and the last day of the short plan year, expressed as a decimal fraction of 1.0 with two digits to the right of the decimal point).

(d) *Restrictions on alternative calculation method for large plans.* A plan with 500 or more participants as of the last day of the plan year preceding the premium payment year may use the alternative calculation method described in paragraph (c) of this section only if no significant event, as described in this paragraph, has occurred between the first day and the last day of the plan year preceding the premium payment year and an enrolled actuary so certifies in accordance with the Premium Payment Package. If a significant event has occurred between those dates, the alternative method may be used only if an enrolled actuary makes an appropriate adjustment to the value of unfunded vested benefits to reflect the occurrence of the significant event and certifies to that fact in accordance with the Premium Payment Package. Significant events described in this paragraph are—

(1) An increase in the plan's actuarial costs (consisting of the plan's normal cost under section 412(b)(2)(A) of the Code, amortization charges under section 412(b)(2)(B) of the Code, and amortization credits under section 412(b)(3)(B) of the Code) attributable to a plan amendment, unless the cost increase attributable to the amendment is less than 5% of the actuarial costs determined without regard to the amendment;

(2) The extension of coverage under the plan to a new group of employees resulting in an increase of 5% or more in the plan's liability for accrued benefits;

(3) A plan merger, consolidation or spinoff that is not *de minimis* pursuant to the regulations under section 414(1) of the Code;

(4) The shutdown of any facility, plant, store, etc., that creates immediate eligibility for benefits that would not otherwise be immediately payable for participants separating from service;

(5) The offer by the plan for a temporary period to permit participants to retire at benefit levels greater than that to which they would otherwise be entitled;

(6) A cost-of-living increase for retirees resulting in an increase of 5% or more in the plan's liability for accrued benefits;

(7) For premium payment years beginning on or after January 1, 1989, any other event or trend that results in a material increase in the value of unfunded vested benefits; and

(8) For premium payment years beginning in 1988, an increase in the average age of plan participants by more than two years.

(e) *Special calculation date for new and newly covered plans.* For purposes of this section, the determination or calculation of a plan's unfunded vested benefits with respect to a new plan or a newly covered plan (as defined in § 2610.2) shall be made as of the first day of the premium payment year or, if later, the date on which the plan became effective for benefit accruals for future service, and all references in paragraphs (a) through (d) of this section to the last day of the plan year preceding the premium payment year shall be deemed to refer to such day or date.

§ 2610.24 Variable rate exemptions and special rules.

(a) *Exemptions.* A plan described in paragraphs (a)(1), (a)(2), (a)(3), or (a)(4) of this section is not required to determine its unfunded vested benefits under § 2610.23 and does not owe a variable rate amount under § 2610.22(a)(2).

(1) *Certain fully funded plans.* With respect to premium payment years beginning on or after January 1, 1989, a plan is described in this paragraph if the plan had fewer than 500 participants on the last day of the plan year preceding the premium payment year, and an enrolled actuary certifies in accordance with the Premium Payment Package that, as of that date, the plan had no unfunded vested benefits (valued at the interest rate prescribed in § 2610.23(b)(1)).

(2) *Plans without vested benefit liabilities.* A plan is described in this paragraph if it did not have any participants with vested benefits as of the last day of the plan year preceding the premium payment year, and the plan administrator so certifies in accordance with the Premium Payment Package.

(3) *Section 412(i) plans.* A plan is described in this paragraph if the plan was a plan described in section 412(i) of the Code and the regulations thereunder at all times during the plan year preceding the premium payment year and the plan administrator so certifies, in accordance with the Premium Payment Package. If the plan is a new plan or a newly covered plan (as defined in § 2610.2), the certification under this paragraph shall be made as of the due date for the premium under § 2610.25(d) and shall certify to the plan's status at all times during the premium payment year through such due date.

(4) *Plans terminating in standard terminations.* The exemption for a plan described in this paragraph applies with respect to premium payment years beginning on or after January 1, 1989, and is conditioned upon the plan's making a final distribution of assets in a standard termination. If a plan is ultimately unable to do so, the exemption is revoked and all variable rate amounts not paid pursuant to this exemption are due retroactive to the applicable due date(s). A plan is described in this paragraph if—

(i) The plan administrator has issued notices of intent to terminate the plan in a standard termination in accordance with section 4041(a)(2) of the Act; and

(ii) The proposed termination date set forth in the notice of intent to terminate is on or before the last day of the plan year preceding the premium payment year.

(b) *Special rule for determining vested benefits for certain large plans.* For premium payment years beginning on or after January 1, 1989, with respect to a plan that had 500 or more participants on the last day of the plan year preceding the premium payment year, if an enrolled actuary determines pursuant to § 2610.23(a) that the actuarial value of plan assets equals or exceeds the value of all benefits accrued under the plan (valued at the interest rate prescribed in § 2610.23(b)(1)), the enrolled actuary need not determine the value of the plan's vested benefits, and may instead report in the Premium Payment Package the value of the accrued benefits.

(c) *Special rule for determining unfunded vested benefits for plans terminating in distress or involuntary terminations.* With respect to premium payment years beginning on or after January 1, 1989, a plan described in this paragraph may determine its unfunded vested benefits by using the special alternative calculation method set forth in this paragraph. A plan is described in this paragraph if it has issued notices of intent to terminate in a distress termination in accordance with section

4041(a)(2) of the Act with a proposed termination date on or before the last day of the plan year preceding the premium payment year, or if the PBGC has instituted proceedings to terminate the plan in accordance with section 4042 of the Act and has sought a termination date on or before the last day of the plan year preceding the premium payment year. Pursuant to this paragraph, a plan shall determine its unfunded vested benefits in accordance with the alternative calculation method in § 2610.23(c), except that—

(2) the calculation shall be based on the Form 5500, Schedule B, for the plan year which includes (in the case of a distress termination) the proposed termination date or (in the case of an involuntary termination) the termination date sought by the PBGC, or, if no Schedule B is filed for that plan year, on the Schedule B for the immediately preceding plan year;

(2) All references in § 2610.23(c) and § 2610.23(d) to the first day of the plan year preceding the premium payment year shall be deemed to refer to the first day of the plan year for which the Schedule B was filed;

(3) The value of vested benefits entered in line 6d(ii) of the Schedule B shall be adjusted (in lieu of the adjustment required by § 2610.23(c)(1)) by multiplying that value by the sum of 1 plus the product of .07 and the number of years (rounded to the nearest hundredth of a year) between the date of the Schedule B data and (in the case of a distress termination) the proposed termination date or (in the case of an involuntary termination) the termination date sought by the PBGC; and

(4) The exponent, "Y," in the time adjustment formula of § 2610.23(c)(5) shall be deemed to equal the number of years (rounded to the nearest hundredth of a year) between the date of the Schedule B data and the last day of the plan year preceding the premium payment year.

(d) *New and newly covered plans.* In the case of a new plan or a newly covered plan, all references in paragraphs (a), (b), (e) or (f) of this section to the last day of the plan year preceding the premium payment year shall be deemed to refer to the first day of the premium payment year or, if later, the date on which the plan became effective for benefit accruals for future service.

(e) *Small plan exemption for 1988 premium payment years.* For premium payment years beginning in 1988, a plan described in this paragraph is not required to determine its unfunded vested benefits under § 2610.23 and does not owe a variable rate amount under § 2610.22(a)(2). A plan is described in this paragraph if—

(1) The plan had fewer than 100 participants on the last day of the plan year preceding the premium payment year;

(2) The plan is not eligible to use the alternative method for determining unfunded vested benefits under § 2610.23 because the plan does not have a Form 5500, Schedule B, meeting the requirements of that section; and

(3) The plan's enrolled actuary certifies, in accordance with the Premium Payment Package, that the plan had no unfunded vested benefits as of the last day of the plan year preceding the premium payment year.

(f) *Small plan $5 rule for 1988 premium payment years.* For premium payment years beginning in 1988, the plan administrator of a plan that meets the requirements of paragraphs (e)(1) and (e)(2) of this section may elect to pay, in lieu of the amount described in § 2610.22(a)(2), an amount of $5 per participant, resulting in a total premium under § 2610.22 of $21 per participant. In this event, the variable rate amount owed for such plan for the premium payment year pursuant to § 2610.22(a) shall be deemed to be $5 per participant, and the plan administrator is not required to determine the plan's unfunded vested benefits under § 2610.23.

§ 2610.25 Filing requirement.

(a) *General rule.* The plan administrator of each plan shall file the form or forms prescribed by this part and any premium payments due, in accordance with the instructions in the Premium Payment Package. The premium forms and payments shall be filed no later than the applicable due date specified in paragraph (b) or, for new plans or newly covered plans, paragraph (d) of this section.

(b) *Due dates.* For plan years beginning on or after January 1, 1988, the due date for small plans is prescribed in paragraph (b)(1) of this section and the due dates for large plans are prescribed in paragraph (b)(2) of this section.

(1) *Plans with fewer than 500 participants.* If the plan has fewer than 500 participants, as determined under paragraph (c) of this section, the due date is the fifteenth day of the eighth full calendar month following the month in which the plan year began.

(2) *Plans with 500 or more participants.* If the plan has 500 or more participants, as determined under paragraph (c) of this section—

(i) The due date for the flat rate portion of the premium required by § 2610.22(a)(1) is the last day of the second full calendar month following the close of the plan year preceding the premium payment year; and

(ii) The due date for the variable rate portion of the premium required by § 2610.22(a)(2) is the fifteenth day of the eighth full calendar month following the month in which the premium payment year begins.

(iii) If the number of plan participants on the last day of the plan year preceding the premium payment year is not known by the date specified in paragraph (b)(2)(i) of this section, a reconciliation filing (on the form prescribed by this part) and any required premium payment or request for refund shall be made by the date specified in paragraph (b)(2)(ii) of this section.

(3) *Plans that change plan years.* For any plan that changes its plan year, the premium form or forms and payment or payments for the short plan year shall be filed by the applicable due date or dates specified in paragraphs (b)(1), (b)(2), or (d) of this section. For the plan year that follows a short plan year, the due date or dates for the premium forms and payments shall be, with respect to each such due date, the later of—

(i) The applicable due date or dates specified in paragraphs (b)(1) or (b)(2) of this section; or

(ii) 30 days after the date on which the amendment changing the plan year was adopted.

(c) *Participant count rule for purposes of determining filing due dates.* For purposes of determining under paragraph (b) of this section whether a plan has fewer than 500 participants, or 500 or more participants, the plan administrator shall use the number of participants for whom premiums were payable for the plan year preceding the premium payment year.

(d) *Due dates for new and newly covered plans.* Notwithstanding the provisions of paragraph (b) of this section, the premium form and payment for both the flat rate portion and the variable rate portion of the premium for the first plan year of coverage of any new plan or newly covered plan (as defined in § 2610.2) shall be filed on or before the latest of—

(1) The fifteenth day of the eighth full calendar month following the month in which the plan year began or, if later, in which the plan became effective for benefit accruals for future service;

(2) 90 days after the date of the plan's adoption; or

(3) 90 days after the date on which the plan became covered by Title IV of the Act pursuant to section 4021 of the Act.

(e) *Continuing obligation to file.* The obligation to file the form or forms prescribed by this part and to pay any premiums due continues through the plan year in which all plan assets are distributed pursuant to a plan's termination or in which a trustee is appointed under section 4042 of the Act, whichever occurs earlier. The entire premium computed under this subpart is due, irrespective of whether the plan is entitled to a refund for a short plan year pursuant to § 2610.22(d).

(f) *Improper filings.* Any form not filed in accordance with this part, not filed in accordance with the instructions in the Premium Payment Package, not accompanied by the required premium payment, or otherwise incomplete, may, in the discretion of the PBGC, be returned with any payment accompanying the form to the plan administrator, and such payment shall be treated as not having been made. If on the form or forms filed with the PBGC, any of the items necessary to establish the correct variable rate premium owed by the plan are omitted, the variable rate portion of the premium owed by the plan with respect to that premium payment may be deemed to be the maximum $34 per participant charge, pursuant to § 2610.22(a)(3).

§ 2610.26 Liability for premiums.

(a) The designation under this subpart of the plan administrator as the person required to file the applicable forms and to submit the premium payment is a procedural requirement only and does not alter the liability for premium payments imposed by section 4007 of the Act. Pursuant to section 4007(e) of the Act, both the plan administrator and the plan's contributing sponsor are liable for premium payments, and, if the contributing sponsor is a member of a controlled group, each member of the controlled group is jointly and severally liable for the required premiums. Any entity that is liable for required premiums is also liable for any interest and penalties assessed with respect to such premiums.

(b) For any plan year in which a plan administrator issues (pursuant to section 4041(a)(2) of the Act) notices of intent to terminate in a distress termination under section 4041(c) of the Act or the PBGC initiates a termination proceeding under section 4042 of the Act, and for each plan year thereafter, the obligation to pay the premiums (and any interest or penalties thereon) imposed by the Act and this Part shall be an obligation solely of the contributing sponsor and the members of its controlled group, if any.

Subpart C—Single-Employer Premiums for Pre-1988 Plan Years; Multiemployer Premiums

§ 2610.31 Purpose and scope.

This subpart provides rules for calculating and procedures for paying premiums for single-employer plans with respect to plan years beginning before 1988, and for multiemployer plans with respect to all plan years.

§ 2610.32 Single-employer premium rates.

(a) For plans other than multiemployer plans, the premium rate for basic benefits guaranteed under section 4022(a) of the Act is as follows:

(1) For plan years beginning before September 2, 1976: one dollar for each individual who is a participant in the plan at any time during the plan year;

(2) For plan years beginning on or after September 2, 1976, up to and including plan years beginning on December 31, 1977: one dollar for each individual who is a participant in the plan on the last day of the preceding plan year;

(3) For plan years beginning on or after January 1, 1978, up to and including plan years beginning on December 31, 1985: two dollars sixty cents for each individual who is a participant in the plan on the last day of the preceding plan year;

(4) For plan years beginning on or after January 1, 1986, up to and including plan years beginning on December 31, 1987: eight dollars fifty cents for each individual who is a participant in the plan on the last day of the preceding plan year.

(b) *Newly covered plans.* For any plan not previously covered by section 4021 of the Act, the plan administrator shall pay the applicable premium under paragraph (a) of this section for each individual who is a participant in the plan on the date the plan becomes covered by section 4021(a) of the Act.

(c) *Changes in plan years.* For the first full plan year beginning after a plan changes its plan year, the plan administrator shall pay the applicable premium under paragraph (a) of this section for each individual who is a participant in the plan on the last day of the short plan year.

§ 2610.33 Multiemployer premium rates.

(a) For multiemployer plans, the premium rate for basic benefits guaranteed under section 4022A(a) is as follows:

(1) For plan years beginning after September 26, 1980, multiemployer plans shall pay premiums at the rate set forth in the following table for each individual who is a participant in such plan on the last day of the plan year preceding the premium payment year.

For premium payment years	Rate
After Sept. 26, 1980, and before Sept. 27, 1984	$1.40
After Sept. 26, 1984, and before Sept. 27, 1986	1.80
After Sept. 26, 1986, and before Sept. 27, 1988	2.20
After Sept. 26, 1988	2.60

(2) For the plan year in which September 26, 1980, falls (the "enactment year"), multiemployer plans shall pay a premium for each individual who is a participant in the plan on the last day of the preceding plan year at the rate set forth in the following table:

For premium payment years beginning in	Rate
September 1979	$.50
October 1979	.54
November 1979	.58
December 1979	.62
January 1980	.67
February 1980	.71
March 1980	.75
April 1980	.79
May 1980	.83
June 1980	.88
July 1980	.92
August 1980	.96
September 1980 (on or before Sept. 26)	1.00

(b) *New and newly covered plans.* For any new plan or newly covered plan (as defined in § 2610.2), the plan administrator shall pay the applicable premium under paragraph (a) of this section for each individual who is a participant in the plan on—

(1) The date the plan becomes covered by section 4021(a) of the Act, if the premium payment year begins before January 1, 1988; or

(2) The first day of the premium payment year or, if later, the date on which the plan became effective for benefit accruals for future service, if the premium payment year begins on or after January 1, 1988.

(c) *Changes in plan years.* For the first full plan year beginning after a plan changes its plan year, the plan administrator shall pay the applicable premium under paragraph (a) of this section for each individual who is a participant in the plan on the last day of the short plan year.

(d) *Special refund rule for certain short plan years.* A plan described in this paragraph is entitled to a refund for a short plan year that begins on or after January 1, 1989. The plan must pay the full premium due and request a refund from the PBGC. The amount of the refund will be determined by prorating the premium for the short plan year by the number of months (treating a part of a month as a month) in the short plan year. A plan is described in this paragraph if—

(1) The plan is a new or newly covered plan that becomes effective for premium purposes on a date other than the first day of its first plan year;

(2) The plan adopts an amendment changing its plan year, resulting in a short plan year; or

(3) The plan's assets are distributed pursuant to the plan's termination, in which case the short plan year for purposes of computing the amount of the refund under this paragraph shall be deemed to end on the asset distribution date.

§ 2610.34 Filing requirement.

(a) The plan administrator of each covered plan shall file the form prescribed by this part and any premium payments due, in accordance with the premium declaration instructions accompanying the form. Due dates for new or newly covered plans and plans with short plan years are in paragraphs (a)(8) and (a)(9) of this section. For other plans, the premium form and payments shall be filed no later than the date specified in the applicable paragraph (a)(1) through (a)(7)(ii) as follows:

(1) For plan years beginning before and in progress on September 2, 1974: October 2, 1974;

(2) For plan years beginning on or after September 2, 1974, up to and including plan years beginning on December 31, 1977: 30 days after the beginning of the plan year;

(3) For plan years beginning on or after January 1, 1978, up to and including plan years beginning on December 31, 1980: seven months after the close of the prior plan year;

(4) For plan years beginning on or after January 1, 1981, up to and including plan years beginning on December 31, 1984: the last day of the seventh month following the close of the prior plan year;

(5) For plan years beginning on or after January 1, 1985, up to and including plan years beginning on December 31, 1985:

(i) If the plan has fewer than 10,000 participants for the plan year, as determined under paragraph (a)(10) of this section, the last day of the seventh month following the close of the prior plan year; or

(ii) If the plan has 10,000 or more participants for the plan year, as determined under paragraph (a)(10) of this section, the last day of the second full month following March 29, 1985 or, if later, the last day of the second month following the close of the prior plan year; and

(6) For plan years beginning on or after January 1, 1986, up to and including plan years beginning on December 31, 1987:

(i) If the plan has fewer than 500 participants for the plan year, as determined under paragraph (a)(10) of this section, the last day of the seventh month following the close of the prior plan year; or

(ii) If the plan has 500 or more participants for the plan year, as determined under paragraph (a)(10) of this section, the last day of the second month following the close of the prior plan year.

(7) For plan years of multiemployer plans beginning on or after January 1, 1988—

(i) If the plan has fewer than 500 participants for the plan year, as determined under paragraph (a)(10) of this section, the fifteenth day of the eighth full calendar month following the month in which the premium payment year begins; or

(ii) If the plan has 500 or more participants for the plan year, as determined under paragraph (a)(10) of this section, the last day of the second month following the close of the prior plan year.

(8) Notwithstanding the provisions of paragraphs (a)(1) through (a)(7) of this section, for any new plan or plan newly covered by section 4021 of the Act, the first premium form and payments due for the first year of coverage shall be filed on or before the latest of—

(i) In the case of plan years beginning before January 1, 1988:

(A) The last day of the seventh month following the beginning of the plan year;

(B) 90 days after the date of the plan's adoption;

(C) 90 days after the date on which the plan became effective for benefit accruals for future service; or

(D) 90 days after the date on which the plan became covered by section 4021 of the Act; and

(ii) In the case of plan years beginning on or after January 1, 1988:

(A) The fifteenth day of the eighth full calendar month following the month in which the plan year began or, if later, in which the plan became effective for benefit accruals for future service;

(B) 90 days after the date of the plan's adoption; or

(C) 90 days after the date on which the plan became covered by Title IV of the Act pursuant to section 4021 of the Act.

(9) For any plan that changes its plan year, the premium form and payments for the short plan year are due in accordance with the provisions of paragraphs (a)(1) through (a)(7) of this section. Premium forms and payments for the plan year that follows a short plan year shall be filed on or before the later of 30 days after the date on which the amendment to change the plan year was adopted, or the date specified in the applicable paragraph as follows:

(i) For plan years beginning before January 1, 1985, the last day of the seventh month following the close of the preceding short plan year; and

(ii) For plan years beginning on or after January 1, 1985, up to and including plan years beginning on December 31, 1985—

(A) If the plan has fewer than 10,000 participants for the plan year, as determined under paragraph (a)(10) of this section: the last day of the seventh month following the close of the preceding short plan year; or

(B) If the plan has 10,000 or more participants for the plan year, as determined under paragraph (a)(10) of this section: the last day of the second month following the close of the preceding short plan year; and

(iii) For plan years beginning on or after January 1, 1986, up to and including plan years beginning on December 31, 1987—

(A) If the plan has fewer than 500 participants for the plan year, as determined under paragraph (a)(10) of this section: the last day of the seventh month following the close of the preceding short plan year; or

(B) If the plan has 500 or more participants for the plan year, as determined under paragraph (a)(10) of this section: the last day of the second month following the close of the preceding short plan year.

(iv) For plan years of multiemployer plans beginning on or after January 1, 1988—

(A) If the plan has fewer than 500 participants for the plan year, as determined under paragraph (a)(10) of this section, the fifteenth day of the eighth full calendar month following the month in which the premium payment year begins; or

(B) If the plan has 500 or more participants for the plan year, as determined under paragraph (a)(10) of this section, the last day of the second month following the close of the prior plan year.

(10) For purposes of paragraphs (a)(5), (a)(6), (a)(7), (a)(9), (b)(4), (b)(5), and (b)(6) of this section, the number of participants in a plan year is determined as of the following dates:

(i) If the plan year is the plan's second plan year, the first day of the first plan year; or

(ii) If the plan year is the plan's third or a subsequent plan year, the last day of the second preceding plan year.

(b) *Reconciliation due date.* The plan administrator of each covered plan shall file the premium reconciliation form prescribed by this part, in accordance with the instructions accompanying the form, no later than the date specified in the applicable paragraph as follows:

(1) For plan years beginning before September 2, 1976: two years and 30 days after the beginning of the plan year;

(2) For plan years beginning on or after September 2, 1976, up to and including plan years beginning on December 31, 1976: one year and 30 days after the beginning of the plan year;

(3) For plan years beginning on or after January 1, 1977, up to and including plan years beginning on December 31, 1977: seven months after the close of the plan year; or

(4) For plan years beginning on or after January 1, 1985, up to and including plan years beginning on December 31, 1985, if the plan has 10,000 or more participants for the plan year, as determined under paragraph (a)(10) of this section: the last day of the seventh month following the close of the prior plan year.

(5) For plan years beginning on or after January 1, 1986, up to and including plan years beginning on December 31, 1987, if the plan has 500 or more participants for the plan year, as determined under paragraph (a)(10) of this section: the last day of the seventh month following the close of the prior plan year.

(6) For plan years of multiemployer plans beginning on or after January 1, 1988, if the plan has 500 or more participants for the plan year, as determined under paragraph (a)(10) of this section, the fifteenth day of the eighth full calendar month following the month in which the premium payment year begins.

(c) *Continuing obligation to file.* The obligation to file the form prescribed by this subpart and to pay any premiums due continues until plan assets are distributed under a termination procedure or until a trustee is appointed under section 4042 of the Act, whichever occurs earlier. The entire premium computed under this subpart is due, irrespective of whether the plan is entitled to a refund for a post-1988 short plan year (in the case of certain multiemployer plans) pursuant to § 2610.33(d).

(d) *Improper filings.* Any form not filed in accordance with this subpart, not filed in accordance with the instructions contained in the form, not accompanied by the required premium payment, or otherwise incomplete, may, in the discretion of the PBGC, be returned in whole or in part to the plan administrator and treated as not having been filed.

(e) *Transitional rule for multiemployer plans.* For the plan year in which September 26, 1980, falls ("the enactment year"), the premium determined under § 2610.33 is due on the date determined under paragraphs (a)(3) or (a)(4) of this section, unless the enactment year begins before July 1, 1980. If the enactment year begins before July 1, 1980, the premium is due in two installments as follows:

(1) The multiemployer plan shall pay, on the date determined under paragraph (a)(3) or (a)(4) of this section, a premium of fifty cents for each individual who is a participant in the plan on the last day of the preceding plan year; and

(2) The plan shall pay, within 30 days after PBGC issues a notice of the additional premium due under § 2610.33, such additional premium. However, if the plan fails to pay the amount described in paragraph (e)(1) before January 31, 1981, the additional premium shall be due on the earlier of 30 days after the PBGC issues a notice of the additional premium or March 31, 1981.

Appendix A to Part 2610—Late Payment Interest Charges

The following table lists the late payment interest rates under § 2610.7(a) for the specified time periods:

From—	Through—	Interest rate (percent)
September 2, 1974.	June 30, 1975	6
July 1, 1975	January 31, 1976	9
February 1, 1976	January 31, 1978	7
February 1, 1978	January 31, 1980	6
February 1, 1980	January 31, 1982	12
February 1, 1982	December 31, 1982	20
January 1, 1983	June 30, 1983	16
July 1, 1983	December 31, 1984	11
January 1, 1985	June 30, 1985	13
July 1, 1985	December 31, 1985	11
January 1, 1986	June 30, 1986	10
July 1, 1986	September 30, 1987	9
October 1, 1987	December 31, 1987	10
January 1, 1988	March 31, 1988	11
April 1, 1988	September 30, 1988	10
October 1, 1988	March 31, 1989	11
April 1, 1989		12

Appendix B to Part 2610—Interest Rates For Valuing Vested Benefits

The following table lists the required interest rates to be used in valuing a plan's vested benefits under § 2610.23(b) and in calculating a plan's adjusted, vested benefits under § 2610.23(c)(1):

For premium payment years beginning in—	Required interest rate [1]
January 1988	7.30
February 1988	7.06
March 1988	6.74
April 1988	6.90
May 1988	7.16
June 1988	7.38
July 1988	7.20
August 1988	7.31
September 1988	7.46
October 1988	7.25
November 1988	7.11
December 1988	7.22
January 1989	7.21
February 1989	7.14
March 1989	7.21
April 1989	7.34
May 1989	7.22

[1] The required interest rate listed above is equal to 80% of the annual yield for 30-year Treasury constant maturities, as reported in Federal Reserve Statistical Release G.13 and H.15, for the calendar month preceding the calendar month in which the premium payment year begins.

Issued in Washington, DC this 29th day of June 1989.

Elizabeth Dole,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth pursuant to a resolution of the Board of Directors authorizing its chairman to issue this final rule.

Carol Connor Flowe,

Secretary, Board of Directors Pension Benefit Guaranty Corporation.

[FR Doc. 89-15866 Filed 7-7-89; 8:45 am]

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July 10, 1989

Part IV

Administrative Conference of the United States

1 CFR Parts 302, 305, and 310

Recommendations and Statement of the Administrative Conference Regarding Administrative Practice and Procedure

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Parts 302, 305 and 310

Recommendations and Statement of the Administrative Conference Regarding Administrative Practice and Procedure

AGENCY: Administrative Conference of the United States.

ACTION: Recommendations, a statement and bylaw amendment.

SUMMARY: The Administrative Conference of the United States, at its Thirty-ninth Plenary Session, adopted six recommendations, a statement, and a bylaw amendment.

Recommendation 89-1, Peer Review and Sanctions in the Medicare Program, recommends changes to the procedures used by the Medicare program's peer review organizations (PROs) and related procedures of the Department of Health and Human Services. The changes are designed to improve the accessibility of PRO-related policies, the fairness and firmness of PRO-recommended sanctions imposed on providers and practitioners, and the effectiveness of PRO safeguards for beneficiary rights.

Recommendation 89-2, Contracting Officers' Management of Disputes, urges steps to increase the ability and authority of contracting officers to resolve contract disputes. Recommended steps include agency encouragement of the use of alternative dispute resolution (ADR) techniques by contracting officers in resolving contract disputes and increased training of contracting officers in ADR techniques.

Recommendation 89-3, Conflict-of-Interest Requirements for Federal Advisory Committees, urges Congress to establish special conflict-of-interest rules for members of federal advisory committees. First, the Conference recommends a uniform minimal disclosure requirement for all advisory committee members, whether or not they are classified as special government employees. Second, the Conference recommends that agencies be required to determine which of their advisory committee members are special government employees when they charter a committee, and it recommends new criteria for making this determination.

Recommendation 89-4, Asylum Adjudication Procedures, endorses the creation of a new Asylum Board, located within the Executive Office of Immigration Review (Department of Justice), which would consist of an adjudication division, an appellate division, and a documentation center. These changes to the process for adjudicating asylum claims are intended to foster increased expertise and independence of the adjudicators and to assure fair and expeditious adjudications.

In Recommendation 89-5, Achieving Judicial Acceptance of Agency Statutory Interpretations, the Conference recommends that agencies use certain procedures when they adopt interpretations of statutes that are intended to be definitive on judicial review under the deference test set forth by the U.S. Supreme Court in *Chevron U.S.A.* v. *Natural Resources Defense Council*, 467 U.S. 837 (1984).

Recommendation 89-6, Public Financial Disclosure by Executive Branch Officials, calls upon Congress to review and amend the Ethics in Government Act's executive branch public financial disclosure requirements, consistent with an appropriate balance of the benefits and costs of such disclosure. The Conference recommends lowering the threshold level for the reporting of a covered individual's liabilities from the $10,000 to $1,000, which is the current level for the reporting of assets. Other recommended changes include (1) reducing the number of categories of value for the reporting of an individual's assets and (2) requiring that gifts be reported in broad categories of value instead of precise amounts.

A Statement, Mass Decisionmaking Programs: The Alien Legalization Experience, describes the Immigration and Naturalization Services' implementation of the Alien Legalization Program authorized by the Immigration Reform and Control Act of 1986. The statement suggests improvements that can be made by the INS in the remaining phases of the legalization program, and lessons that can be applied in future mass decisionmaking programs by the INS or by other agencies.

The bylaw amendment authorizes the Chairman of the Conference, subject to Council approval, to appoint special counsels to advise the Conference in areas of their expertise. The amendment also specifies the privileges of Conference senior fellows, special counsels and liaison members.

Recommendations and statements of the Administrative Conference are published in full text in the **Federal Register** upon adoption. Complete lists of recommendations and statements, together with the texts of those deemed to be of continuing interest, are published in the Code of Federal Regulations (1 CFR Parts 305 and 310).

DATES: These recommendations, statement and bylaw were adopted June 15-16, 1989, and issued June 30, 1989.

FOR FURTHER INFORMATION CONTACT: Jean R. Conrad, Librarian and Information Officer or Jeffrey S. Lubbers, Research Director (202-254-7065).

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States was established by the Administrative Conference Act, 5 U.S.C. 571-576. The Conference studies the efficiency, adequacy, and fairness of the administrative procedures used by federal agencies in carrying out administrative programs, and makes recommendations for improvements to the agencies, collectively or individually, and to the President, Congress, and the Judicial Conference of the United States (5 U.S.C. 574(1)).

At its Thirty-ninth Plenary Session, held June 15-16, 1989, the Assembly of the Administrative Conference of the United States adopted six recommendations and one statement, the texts of which are set out below. The texts of recommendations will be transmitted to the affected agencies and, if so directed, to the Congress of the United States. The Administrative Conference of the United States has advisory powers only, and the decision on whether to implement the recommendations must be made by each body to which the various recommendations are directed.

The transcript of the Plenary Session will be available for public inspection at the Conference's offices at Suite 500, 2120 L Street, NW., Washington, DC.

List of Subjects

1 CFR Part 302

Administrative practice and procedure.

1 CFR Parts 305 and 310

Administrative practice and procedure, Government ethics, Health care procedures, Immigration procedures, Judicial review.

PART 302—BYLAWS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1. The authority citation for Part 302 continues to read as follows:

Authority: 5 U.S.C. 552, 571-576.

2. Paragraph (e) of 1 CFR 302.2 is revised to read as follows:

§ 302.2 Membership.

* * * * *

(e) *Senior Fellows.* The Chairman may, with the approval of the Council, appoint persons who have served as members of the Conference for eight or more years, or former Chairmen of the Conference, to the position of senior fellow. The terms of senior fellows shall terminate at 2-year intervals in even-numbered years. Senior fellows shall have all the privileges of members, but may not vote, except in committee deliberations, where the conferral of voting rights shall be at the discretion of the committee chairman.

3. Paragraph (f) is added to 1 CFR 302.2, to read as follows:

(f) *Special Counsels.* The Chairman may, with the approval of the Council, appoint persons who do not serve under any of the other official membership designations, to the position of special counsel. Special counsels shall advise and assist the membership in areas of their special expertise. Their terms shall terminate at 2-year intervals in odd-numbered years. Special counsels shall have all the privileges of members, but may not vote, except in committee deliberations, where the conferral of voting rights shall be at the discretion of the committee chairman.

4. Section 302.4 is revised to read as follows:

§ 302.4 Liaison arrangements.

The Chairman may, with the approval of the Council, make liaison arrangements with representatives of the Congress, the judiciary, federal agencies that are not represented on the Conference, and professional associations. Persons appointed under these arrangements shall have all the privileges of members, but may not vote, except in committee deliberations, where the conferral of voting rights shall be at the discretion of the committee chairman.

PART 305—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

PART 310—MISCELLANEOUS STATEMENTS

1. The authority citation for Part 305 continues to read as follows:

Authority: 5 U.S.C. 571-576.

2. The table of contents to Part 305 of Title 1 CFR is amended to add the following new sections:

Sec.
305.89-1 Peer Review and Sanctions in the Medicare Program (Recommendation No. 89-1).
305.89-2 Contracting Officers' Management of Disputes (Recommendation No. 89-2).
305.89-3 Conflict-of-interest requirements for Federal Advisory Committees (Recommendation No. 89-3).
305.89-4 Asylum Adjudication Procedures (Recommendation No. 89-4).
305.89-5 Achieving Judicial Acceptance of Agency Statutory Interpretations (Recommendation No. 89-5).
305.89-6 Public Financial Disclosure by Executive Branch Officials (Recommendation No. 89-6).

3. The authority citation for Part 310 continues to read as follows:

Authority: 5 U.S.C. 571-576.

4. The table of contents to Part 310 of Title 1 CFR is amended to add the following new section:

Sec.
310.14 Mass Decisionmaking Programs: The Alien Legalization Experience.

5. New §§ 305.89-1 through 305.89-6 are added to Part 305, to read as follows:

§ 305.89-1 Peer Review and Sanctions in the Medicare Program (Recommendation 89-1).

As the Administrative Conference noted in Recommendation 86-5 [1], the Medicare program relies heavily on implementation of federal requirements by localized carriers, intermediaries and, increasingly, peer review organizations (PROs).

The PRO system was created in 1982. It is made up of state-wide, Physician-controlled organizations under individual contracts with the Department of Health and Human Services (HHS). These contracts are negotiated pursuant to a general contractual "Scope-of-Work" promulgated by HHS every three years. PROs are delegated a number of important responsibilities under the Medicare system. They identify substandard, unnecessary or inappropriate services rendered to Medicare beneficiaries, and oversee education and corrective actions for substandard providers (e.g., hospitals) and medical practitioners. They also recommend to HHS that it sanction providers and practitioners when they find seriously improper practices, deny Medicare payment for inappropriate or unnecessary services, and protect the rights of beneficiaries.

This recommendation follows the suggestion made in Recommendation 86-5 that the PRO program was deserving of further study. It recognizes the evolutionary nature of the PRO's role in Medicare, and the administrative difficulties posed for HHS in overseeing this decentralized program—especially since new legislative directions affecting the program appear regularly, often contained in year-end omnibus budget reconciliation acts. Nevertheless, the Conference urges the Department (and, where necessary, Congress) to make changes designed to improve the accessibility of PRO-related policies, the fairness and firmness of PRO sanctions imposed on providers and practitioners, and the effectiveness of PRO safeguards for beneficiary rights.

In Paragraph A of the Recommendation, the Conference urges several enhancements of HHS' current practices in disseminating, making accessible, and soliciting comments on, PRO program guidelines of general applicability, including the scopes of work, manuals, and the criteria and norms used to evaluate medical care. Paragraph B seeks to promote improvements in the PRO's assigned duty of investigating complaints by beneficiaries, and urges Congress to allow PROs to act in response to oral complaints.

Paragraph C recommends invigorating the process of investigating and adjudicating sanctions against health care practitioners and providers charged with violations of their obligations under the Medicare program. The current sanction process begins when a PRO gives formal notice to the practioner or provider involved that it considers that poor quality care may have been rendered or that other violations have occurred. The PRO is required to have at least one quite formalized meeting with the practitioner or provider to discuss the allegations that the care rendered either "failed in a substantial number of cases substantially to comply" with the statutory obligations to render proper medical care, or "grossly and flagrantly violated such obligations in one or more instances." 42 U.S.C. § 1320c-5(b). (In the former type of case, at least two meetings are required.) If, after the meeting, the PRO believes that violations have occurred, it recommends to the HHS Office of Inspector General (OIG) that a sanction be imposed, either in the form of an exclusion from participation in the Medicare program for some period of time, or a civil monetary penalty of no more than the amount of the cost of medically improper or unnecessary services. If the OIG agrees that violations have occurred, and in addition finds that the practitioner or provider is unwilling or unable to comply with the obligations to render proper care, the OIG may impose one of these sanctions. If the sanction is exclusion, it becomes effective fifteen days after notice.[2] The sanction is appealable to an ALJ, then to the Appeals Council; judicial review is subsequently available.

This recommendation seeks to balance the vital interest in protecting the health and safety of program beneficiaries and the need to assure fairness to the accused provider or practitioner whose livelihood is at stake and whose services might be needed. The Conference urges that the current PRO sanction process be streamlined. It also urges that all providers and practitioners, not just some, be permitted to seek a stay of an HHS order to exclude them from the Medicare program, in a proceeding akin to that of a temporary restraining order at the administrative law judge adjudication stage of that process. However, the burden would

[1] ACUS Recommendation 86-5, *Medicare Appeals*, 1 CFR 305.86-5.

[2] Certain practitioners in rural areas are permitted to have the exclusion stayed, pending OIG proof that the practitioner would pose a "serious risk" to program beneficiaries if allowed to remain in the program during the pendency of the administrative appeal.

be on the practitioner or provider to show that no serious risk would be posed to beneficiaries during the pendency of the administrative appeal. The Conference also urges changes that, while maintaining the requirement that the OIG prove that violations have occured, would eliminate the additional requirement of proving that the practitioner or provider is unwilling or unable to comply with the obligations to provide quality care. The offenses or oversights, which have been found both by peers (PROs) and regulators (OIG) to be substantial or gross and flagrant, already serve as indicators of inability or unwillingness to comply. Under the current law, before excluding a provider or practitioner on the basis of these findings, the government must bear an additional evidentiary burden that is inappropriate for this type of proceeding. It must prove what amounts to a speculative negative—that violators would be unwilling or unable to comply with the law in the future. The apparent result of this evidentiary requirement has been to chill the initiation of exclusion proceedings against providers and practitioners who are providing improper care or otherwise violating the law. Further, the Conference recommends legislative changes to provide for meaningful civil money penalties, as well as for the current sanction of exluding providers and practitioners from the program. It should be noted that the Conference views the changes in the sanction procedure contained in this paragraph as a unified package, one that in its present form balances conflicting interests but that will become unbalanced if any one significant portion were not to be accepted.

Paragraph D urges changes in the PRO statute and regulations to ensure that beneficiaries are better informed of their rights to appeal decisions concerning their lack of coverage or discharge from a hospital or other facility, and that they will not be discharged until such appeals are resolved. Paragraph E covers the PRO's role in denials of payment for care determined to be unnecessary, substandard or rendered in an inappropriate setting. It recommends that HHS implement in final rules 1985 legislation concerning PRO denials for substandard care.[3] It also urges HHS to amend its rules to require that PROs not make any final decisions affecting payment without adequate review by medical practitioners who are qualified in the relevant area. Finally, Paragraph F urges HHS to take steps to permit PROs to share information with provider facilities and state medical boards.

Recommendation

A. *Publication and Dissemination of PRO Program Guidelines.* 1. HHS should enhance its current practice of publishing and disseminating all Peer Review Organization (PRO) program rules having a substantial effect on providers, medical practitioners and beneficiaries by taking the following steps:

(a) Notice-and-comment procedures should be used for rulemaking except when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.[4]

(b) Proposed PRO "scopes of work" and any generally applicable modifications or interpretations of the responsibilities of PROs during a contract cycle should be published in the **Federal Register** and disseminated to relevant interest groups. Interested parties should be allowed 30–45 days of commenting, unless explicit Congressional deadlines would be contravened thereby, or unless there is good cause for immediate implementation.

(c) HHS should make PRO contracts, manual instructions, and other guidelines of general applicability regarding the PRO program readily available to the public at convenient locations, including social security offices. HHS should publish an updated list of such materials in the Federal Register at least quarterly.

2. HHS should encourage PROs to use outreach and consensus-building techniques analogous to negotiated rulemaking when they are developing criteria and norms for PRO review of the quality, necessity and appropriateness of medical care.[5] HHS should further encourage PROs to make these criteria and norms consistent nationwide.

B. *PRO Investigations of Beneficiary Complaints.* 1. Congress and HHS should coordinate the system of PRO review of beneficiary complaints concerning quality of services with other federal and state regulatory schemes. Initially, priority consideration should be given to complaint investigations in the hospital setting, where PROs have the most expertise and where alternative means to investigate complaints are least available.

2. Congress should amend 42 U.S.C. 1320c–3(a)(14) to permit PROs to investigate and otherwise act on oral complaints concerning the quality of services. Until it does so, HHS should require PROs to receive such oral complaints from beneficiaries or witnesses, and reduce them to writing, before acting on them.

3. HHS should require PROs to use investigative techniques that, so far as may be feasible, protect from disclosure the identity of complainants who do not expressly and voluntarily consent to such disclosure. Where the identity of a complainant who desires anonymity cannot be kept confidential, the PRO should give the complainant the option of withdrawing the complaint in lieu of disclosure, although the PRO may at its discretion continue to investigate the underlying problem.

4. HHS should amend the PRO Scope of Work to conform to the 1986 Omnibus Budget Reconcilation Act by requiring PROs to inform beneficiaries fully regarding the final disposition of all complaints, whether involving providers or practitioners. PROs also should be required promptly to inform providers and practitioners of the final disposition of investigations involving them.

5. HHS should establish guidelines and a significantly more expedited schedule than the current several-month process for PROs to complete initial investigations of complaints of potentially life-threatening quality deficiencies. HHS also should establish procedures for receiving and acting on requests for intervention in cases where PROs do not process complaints on a timely basis.

C. *Sanctions Against Providers or Practitioners Who Have Provided Improper or Unnecessary Services.* Congress should streamline the sanction process by taking the following interrelated steps to promote heightened enforcement, while preserving fairness to the accused provider or practitioner.

1. HHS should seek to ensure greater uniformity among PROs through training and the development of a model sanction referral form. To preserve needed healthcare resources, HHS and the PROs should continue to emphasize education and corrective action rather than sanctions as the primary means of addressing quality problems. HHS should also amend its rules (a) to require that, once a PRO determines that there is a quality problem for which a sanction is the appropriate intervention, it immediately start the sanction process, and (b) to provide that, ordinarily, there will be only one formal meeting between the PRO and the accused provider or practitioner after the sanction proceeding has been initiated.

2. Congress should amend the PRO statute to offer all providers and practitioners (urban and rural), upon their receipt of an HHS notice of exclusion pursuant to 42 U.S.C. 1320c–5(b), the opportunity for a preliminary hearing and decision. Such a proceeding would be conducted by an ALJ on the issue of whether the provider or practitioner would pose a serious risk to

[3] On January 18, 1989, HHS published a proposed rule covering this subject. 54 Fed. Reg. 1950.

[4] See ACUS Recommendation 83–2, *The "Good Cause" Exemption from APA Rulemaking Requirements*, 1 CFR § 305.83–2.

[5] See ACUS Recommendations 82–4, 85–5, Procedures for Negotiating Proposed Regulations, 1 CFR § 305.82–4, 85–5.

patients during the pendency of the subsequent ALJ proceeding on the merits of the exclusion. The preliminary hearing would be in the nature of a temporary restraining order proceeding, and would arise and be conducted according to the following procedures:

(a) If, within 10 days of receipt of notice of the exclusion, the provider or practitioner appeals the decision of the HHS Office of Inspector General (OIG) imposing an exclusion, a preliminary hearing on the "serious risk" issue should take place before the exclusion takes effect.

(b) If the provider or practitioner establishes at the preliminary hearing that continued participation in the Medicare program pending the ALJ's decision on the underlying appeal will not pose a serious risk to patients, or that such participation can be restricted to preclude such risk, the HHS exclusion order shall be stayed or modified by the ALJ until the ALJ issues a final decision on the merits of the exclusion.

(c) The ALJ must render the preliminary decision on the "serious risk" issue as quickly as possible but within no more than 30 days after the filing of the appeal, and a final decision on the exclusion within a time period reflecting assignment of the highest priority to the adjudication.

3. Congress should retain the requirement in 42 U.S.C. 1320c–5(b)(1) that sanctions be based on determinations that a practitioner or provider has either (A) "failed in a substantial number of cases substantially to comply" with statutory obligations to render appropriate and quality care, or (B) "grossly and flagrantly violated such obligations in one or more instances." However, Congress should eliminate the separate and additional requirement in 42 U.S.C. 1320c–5(b)(1) that the OIG must determine the provider's or practitioner's "unwillingness or lack of ability substantially to comply" with program obligations before imposing sanctions on the provider or practitioner.

4. Currently the PRO statute [42 U.S.C. 1320c–5(b)(3)] limits monetary penalties to "the actual or estimated cost of * * * medically improper or unnecessary services." In order to provide for a wider range of sanctions, Congress should amend the PRO statute to allow the OIG to assess a substantial civil money penalty for each violation against providers and practitioners who are found to have grossly and flagrantly violated their obligations on one or more occasions, or to have substantially violated such obligations in a substantial number of cases. The OIG should be given the discretion to impose such monetary penalties in addition to an exclusion where appropriate.

5. HHS should assign PRO sanction cases to ALJs attached to the Departmental Appeals Board (who currently hear other sanction cases in the Department) rather than to Social Security ALJs, as is the current practice.

D. *Notice to Beneficiaries of Noncoverage.* 1. Congress should amend 42 U.S.C. § 1320c–3(e)(3) to assure that hospitalized beneficiaries who appeal the hospital's notice of noncoverage by noon of the day following receipt of the notice, should not have such coverage discontinued until the PRO rules on their request for review.

2. HHS should amend the PRO regulations to assure that, at the time a hospital informs beneficiaries of its decision to discharge them or of the discontinuance of coverage, they are informed of their discharge appeal rights under the PRO program.

3. The notice of a right to appeal should be on a form drafted by HHS (developed in consultation with beneficiary organizations and other interested parties), and should include a concise and easily understood statement of the basic beneficiary right to a no-liability appeal to the PRO. If the current system of separate appeal tracks (depending on whether the hospital and attending physician concur or not) is retained, separate notices should be given for each track to avoid the confusion caused by a notice that describes multiple procedures.

E. *PRO Denials of Payment for Substandard or Unnecessary Care.* 1. HHS should proceed expeditiously to final rulemaking to implement PRO authority, contained in 42 U.S.C. § 1320c–3(a)(2), to deny payment to practitioners or providers for care that does not meet professionally recognized standards.

2. HHS should require by regulation that PROs not make final utilization review denials (denials of payment for care that has been determined to be unnecessary or rendered in an inappropriate setting) until a proposed denial and the response to it by the affected provider or practitioner have been reviewed by at least one practitioner qualified by professional training and experience relevant to the matters in controversy. Although HHS should at a minimum apply the same standard to reviews of denials of payment for failure to meet professional standards of care, it may be appropriate in this context to require that the review be performed by a physician practicing in the same care specialty.

F. *PRO Sharing of Information.* 1. HHS should issue PRO manual instructions and amend the Scope of Work in order to implement the Congressional mandate requiring the sharing of information among the PROs and state medical boards and licensing authorities regarding practitioners and providers who violate quality standards, and should modify its current confidentiality and disclosure regulations to require that a copy of any PRO final sanction recommendation be provided to such bodies. HHS should explore the feasibility of including sanction recommendations in the National Practitioner Data Bank.

2. HHS should amend PRO regulations to require PROs to share with hospitals information about confirmed violations of quality of care standards involving doctors on the staffs of such hospitals, including the contents of corrective action plans.

§ 305.89–2 Contracting Officers' Management of Disputes (Recommendation 89–2).

An increasing number of problems in the management of government contracts are now referred to lawyers, accountants, and judges for resolution. This accelerating trend has tended to deemphasize the responsibility of the agency contracting officers, who (in most agencies) have traditionally played a key role in the procurement process, including dispute handling.[1] Many contracting officers ("COs") today are subject to restrictive regulations and close oversight that can inhibit their willingness to negotiate settlements. For this and other reasons, many cases proceed to needless litigation that are in fact susceptible to prompt, direct resolution by COs at an early stage when parties are often less entrenched and more congizant of program interests.[2]

[1] Conference Recommendation 87–11, *Alternatives for Resolving Government Contract Disputes*, 1 CFR § 306.87–11, describes one aspect:

"The dispute handling system established by the Contract Disputes Act begins with the contracting officer ("CO"), an agency official whose function is to enter into and administer government contracts. Any claim arising out of a contract is to be presented to the CO. The CO has a dual role: to represent the government as a party to the contract, but also to make initial decisions on claims subject to certain procedural safeguards. If the dispute is not amicably resolved, the CDA requires the CO to issue a brief written decision stating his or her reasons. A contractor dissatisfied with a CO's decision may appeal either to an agency board of contract appeals or directly to the U.S. Claims Court, where proceedings become considerably more formal."

[2] This report addresses only dispute resolution during contract performance; it does not extend to controveries which arise during the contract formation process.

Several Conference studies have demonstrated opportunities for improving agencies' resolution of contract disputes consonant with the Contract Disputes Act's [3] goal of expeditious resolution without disrupting performance.[4] While a few agencies have experimented with alternative means of dispute resolution at the appeal level, these methods are even more likely to be useful prior to issuance of a contracting officer decision. This potential has been neglected. Current training for COs does not address ADR and gives minimal attention to negotiation skills. These methods [5] serve the agency by helping to expedite dispute handling. They serve the parties by keeping outcomes in the control of the contracting parties, preserving cooperative business relations, avoiding litigation (and the concomitant loss of control as to results), and—most important—allowing the parties to return to concentrating on productive work rather than conflict.

This recommendation builds on an earlier one (87-11), in which the Conference focused primarily on possible uses for consensual means of resolving contract disputes at the appeal level. It identified the decreased authority of COs as a major factor contributing to the inefficiency and cost of resolving many conflicts. Recommendation 87-11 (in pertinent part) calls for (1) legislation, an executive order, by the Office of Federal Procurement Policy, policy statement, and Federal Acquisition Regulation changes to encourage COs, before issuing a decision likely to be unacceptable to a claimant, to explore use of ADR to resolve their differences; (2) agency adoption of policies encouraging ADR and regular use of rules or notices to alert COs and other parties to ADR availability; (3) agency designation of an employee to serve as an ADR specialist in connection with contract disputes; and (4) agency attention to the need to offer training in negotiation and other ADR skills to COs and others involved in contract disputes.

The instant recommendation seeks to go further to enhance the CO's ability and authority in the resolution of contract disputes. Calling for CO training in negotiation and dispute handling, as well as increased use of ADR techniques as part of a CO's decisionmaking process, it supplements the prior recommendation by focusing on the integration of consensual dispute resolution into already existing dispute and training systems at the CO level, overcoming obstacles to ADR use, and practical guidance in improving CO-level dispute resolution.

Recommendation

1. Agencies with significant acquisition activity, acting in consultation with expert groups, should encourage COs, and other key personnel involved in the resolution of contract disputes, to make greater efforts routinely to consider and utilize ADR to help resolve claims. Since dispute resolution at the CO level is very much a shared activity, these persons may include progrm and project managers, attorneys, auditors, engineers, specialists in pricing, packaging, production, maintenance and quality control, and other technical experts or contracting officials. These agencies should undertake comprehensive programs of promotion ADR at the CO level. The programs should include application of ADR techniques in specific test cases, conduct of training, case screening, and information and guidance for personnel and contractors.

2. Agency heads should direct senior officials within the acquisition hierarchy to act as proponents for dispute resolution, with the specific mission of developing more effective contact dispute resolution practices. Agencies with extensive acquisition activity should designate a senior official within the acquisition hierarchy with the specific mission of developing more effective contract disputes resolution practices. This official's mission would include challenging barriers to wider ADR use, educating disputants in industry and government, and improving understanding and use of ADR procedures at the CO level.

3. The Federal Acquisition Regulation should be amended to describe specifically the full range of dispute resolution methods available for consideration by the parties at or before the time a claim is presented to the CO for resolution under the Contract Disputes Act.

4. COs involved in the disputes process should be specifically evaluated, as part of the annual performance evaluation cycle, on their effectiveness in managing contract disputes.

5. In addition to those techniques set forth in Recommendation 87-11, agencies should be encouraged to use the following specific methods in CO-level disputes:

(1) Employing factfinding to offer an advisory decision, or designating a CO who was not involved in the disputed issues, or a particular distinguished government official or other knowledgeable person, to make an advisory decision;

(b) Employing minitrial or other processes to permit a structured presentation of facts and arguments to the CO or other government officer with authority to settle;

(c) Agreeing in advance that disputes arising under a particular contract will be voluntarily submitted to an expert or panel for nonbinding opinion as soon as a disagreement occurs; and

(d) Encouraging agency COs to employ the services of mediators or other neutrals to enhance negotiations to settle contract disputes.

6. Board of Contract Appeals judges should take greater advantage of opportunities to suggest returning to the CO cases which evidently should be pursued more vigorously for settlement.

7. ADR training programs, for both industry and government personnel, should be integrated into existing management training programs, as follows:

(a) Training should focus on the use of these techniques as tools to improve the contract formation and contract administration process, so as to abate conditions which later lead to disputes, and to expedite decisionmaking under the Contract Disputes Act.

(b) Training should reflect the fact that negotiation is a key dispute resolution method, and that most COs would become more effective professionals by devoting increased training and attention to these methods. The Federal Acquisition Institute and other government entities specializing in acquisition training should devote increased attention to listening and communications skills, use of "interest" and "principled" rather than "positional" bargaining, and systematic attention to negotiation techniques. The training should also enable a CO to engage in meaningful discussion with a contractor by first working as a "team builder" to develop a coherent intraagency position that takes into account the views and needs of attorneys, auditors, program managers, engineers and others within the agency. Consistent with best management practice and the Packard Commission Report for greater efficiency in procurement,[6] the training should

[3] 41 U.S. Code 601-613; 5 U.S.C. 5108(c)(3); 28 U.S.C. 1346(a)(2), 149(a)(2), 2401(a), 2414, 2510, 2517, 31 U.S.C. 1304(a)(3)(C) (1982); enacted November 1, 1978 by Pub. L. No. 95-563, 92 Stat. 2383.

[4] Section 33.204 of the Federal Acquisition Regulation, which guides agency procurement practices, includes the following possible inducement to ADR:

"In appropriate circumstances, the contracting officer, before issuing a decision on a claim, should consider the use of informal discussions between the parties by individuals who have not participated substantially in the matter in dispute, to aid in resolving the differences."

This suggestion for a "fresh look" at the issues recognizes the potential usefulness of an objective evaluation.

[5] They include arbitration, mediation, minitrial, factfinding, convening, facilitation and negotiation. These are defined in the Appendix to Conference Recommendation 86-3, *Agencies' Use of Alternative Means of Dispute Resolution*, 1 CFR 305.86-3.

[6] *A Quest for Excellence*, Final Report by the President's Blue Ribbon Commission on Defense Management (June 1986).

encourage the CO, even without the assistance of a third-party neutral, to avert appeals by reducing the number of situations where disputes, encumbered by internal disagreements or incoherent positions, are passed on to boards of contract appeals.

(c) Professional organizations concerned with the public contract disputes process, such as the American Bar Association, Federal Bar Association, and National Contract Management Association, should develop and encourage increased learning opportunities in effective dispute resolution techniques for representatives of the government and private sector.

§ 305.89-3 Conflict-of-Interest Requirements for Federal Advisory Committees (Recommendations 89-3).

The Law and practice regarding conflict-of-interest requirements for federal advisory committee members have developed from the interaction of three statutory schemes: the Federal Advisory Committee Act,[1] the conflict-of-interest laws, and the federal personnel laws. However, none of these statutory schemes was drafted to deal specifically with conflict-of-interest standards for government advisers.

In 1982 the Office of Government Ethics issued guidance to agencies that sought to meld a coherent analytical framework from the three statutory schemes. In determining whether the conflict-of-interest laws applied, the Office distinguished between those advisers who were selected as committee members because of their individual qualifications, and were thus deemed to be special government employees (SGE's), and those who instead were selected as representatives of nongovernmental groups or organizations (or in some cases, as independent contractors). While this guidance has reduced the confusion somewhat, the determination of a committee member's status as an SGE or a representative of a nongovernmental group or organization remains difficult, and agency practice in classifying advisory committee members as SGE's or representatives varies greatly and often appears arbitary.

The classification of an advisory committee member as an SGE or a representative is significant because only the former are subject to the conflict-of-interest and financial disclosure laws. The most significant of these laws for advisory committee members is Section 208 of Title 18, United States Code, which makes it a criminal offense to participate "personally and substantially" as a government employee "through decision", * * * recommendation, the rendering of advice, investigation, or otherwise in * * * any particular matter in which to his knowledge, he, his spouse, minor child, partner, organization * * * has a financial interest." The term "particular matter" in Section 208 has been interpreted broadly by the Department of Justice and the Office of Government Ethics to extend to all discrete matters that are the subject of agency action, including rulemaking and general policy matters.[2]

Section 208 is especially a problem for advisory committee members. Often they have been selected precisely because they are especially well qualified to provide advice concerning problems in a particular field in which they themselves may be active both professionally and financially.

Because of its breadth, Congress provided for agency waivers of Section 208's prohibition, either by rule or on a case-by-case basis, where the appointing official makes a determination that the employee's interest is too remote or insubstantial to affect the integrity of his or her services. Agencies, however, may be unable or reluctant under current law to grant a waiver where a financial interest is significant, even though the agency concludes that any bias arising from that interest will be offset through committee balance, disclosure of the interest, or the individual's status as only an adviser and not as a decisionmaker.

Faced with the specter of criminal liability and the limitations of waivers, or simply for administrative convenience, some agencies have adopted a policy of declaring most or all of their advisory committee members to be interest group representatives, rather than SGE's, except in the clearest cases. Thus, in practice, agencies may be requiring too little disclosure from members who are not SGE's, while imposing significant burdens, principally potential criminal liability, on those members who are SGE's.

In this recommendation the Conference urges the establishment of a uniform minimal disclosure requirement for all advisory committee members, whether or not they are classified as SGE's.[3] The recommendation seeks to balance the government's and the public's need for information to evaluate potential conflicts of interest and the burden placed on the individual who agrees to serve on an advisory committee, frequently without pay.

The Conference also recommends that Congress direct agencies to determine, when chartering or renewing the charter of an advisory committee, whether or not the committee's responsibilities require indentifying its members as special government employees for purposes of the conflict-of-interest laws. The recommendation (¶ 2) includes criteria for making this determination. This approach places the burden of foreseeing and preventing conflicts of interest on the agency that seeks an individual's services on an advisory committee, rather than on the individual asked to serve, as does reliance on § 208 waivers.

This recommendation does not extend to privately established advisory committees that are utilized for advice in particular matters because the members of these committees are not appointed by a federal agency. Consequently, an agency's relationship with such committees must be considered on a *ad hoc* basis. Nevertheless, the Conference believes agencies should be alert to possibilities for bias or self-interest in the advice of utilized committees and, where appropriate, should request information respecting the affiliations and interests of the members.

Recommendation

1. *Disclosure by Advisory Committee Members.* (a) Congress should require that each individual selected to serve on a federal advisory committee, excluding a regular government employee, furnish to the agency or appointing authority at the time of the appointment or designation—

(1) The identity of the individual's principal employment;

(2) A list of positions held (whether paid or unpaid) and any contractual relationships for the performance of services with any corporation, company, firm, partnership or other business enterprise, any non-profit organization, any labor organization, or any educational or other institution whose activities or purposes may be (or may forseeably become) relevant to the purposes and functions of the advisory committee as determined by the agency or appointing authority and described in the committee charter;

(3) The identity, but not value or amount, of any other sources of income or any interests in a trade or business, real estate, or other asset held for investment or production of income, exceeding $1,000 in value which are relevant to the purposes and functions of the advisory committee as determined by the agency or appointing authority and described in the committee charter;

(b) Advisory committee members should be required to file updated disclosure reports annually.

(c) The agency or appointing authority should make publicly available the information furnished pursuant to subparagraphs (a)(1) and (a)(2) above. The financial information described in subparagraph (a)(3) should ordinarily be held confidential unless the member consents to its release or the agency determines after consulting with the

[1] 5 U.S.C. App. I.

[2] The test of whether a financial interest exists with respect to the matter is whether the government action in which the employee participates will have a "direct and predictable effect" on the entity in question. Participation in the presence of a known conflict constitutes a violation of Section 208, whether or not the employee's action furthers or is likely to further his or her financial interest.

[3] The Conference recognizes that advisory committee members who are classified as special government employees may be required to furnish financial information pursuant to regulations of the appointing agency or the Office of Government Ethics. It is further noted that the Office of Government Ethics has under consideration a proposed regulation governing financial disclosure for all government employees, including special government employees.

member that public disclosure is required in the public interest.

2. *Classification of Advisory Committee Members.* Congress, by amendment to the Federal Advisory Committee Act or other pertinent statute, should require that each agency determine, when chartering or renewing the charter of an advisory committee, whether its responsibilities are such as to require some or all of its members to be identified as special government employees for purposes of the conflict-of-interest laws. Congress should require the agency to consult with the Office of Government Ethics in making such a determination, and it should direct the agency to be guided by the following considerations—

(a) Ordinarily, where an advisory committee is expected to provide advice of a general nature from which no preference or advantage over others might be gained by a particular person or organization, the members of the committee need not be special government employees.

(b) The members of an advisory committee which renders advice with respect to the agency's disposition of particular matters involving a specific party or parties should be considered special government employees.

(c) The principal consideration in classifying an advisory committee member should be the nature of the committee's function rather than whether or not the member receives compensation.

3. *Coverage.* This recommendation applies to advisory committees which are established and whose members are appointed or designated by the federal government, and to advisory committees whose operations are funded by the government. It does not apply to privately established advisory committees which are "utilized" by the federal agencies in particular matters.

4. *Technical Amendment.* Congress should amend 18 U.S.C. 207(g) to provide that a partner of a special government employee shall not be barred from any representational activity because of that employee's participation in a particular matter where the employee himself would not be barred from such representation by 18 U.S.C. 203 or § 205.

§ 305.89–4 Asylum Adjudication Procedures (Recommendation 89–4.

Providing asylum to the persecuted is a vital and treasured part of the American humanitarian tradition. It deserves reaffirmation and continued commitment. The asylum process, however, can also become a misused exception in the nation's immigration laws, especially in a time of improved transcontinental travel and communications. Two important public values thus come into conflict in the asylum program. On the one hand stands the promise of refuge to the persecuted; on the other stands the demand for reasonable assurance of national control over the entry of aliens. This tension becomes acute whenever application numbers rise.

In the 1970s, the United States received approximately 2000 applications for asylum each year. By 1988, that number had risen to approximately 60,000 applications. The Immigration and Naturalization Service (INS) projects 100,000 applications in 1989. Government expenditures for coping with the increase have risen rapidly, both for adjudication and for detaining or otherwise arranging to shelter and feed the applicants. But this is necessarily only a stopgap measure. It would be far more cost effective in the long run to devote the resources necessary to improve asylum adjudication procedures.

Although it should be possible to distinguish qualified from unqualified asylum applicants and thereby both honor the humanitarian tradition and avoid misuse of the asylum provision, several factors hinder our ability to do so. First, the "well-founded fear of persecution" standard, upon which asylum is based, is far from self-defining; there is no uniform understanding of its application to particular cases. Second, judgments about the relative risks faced by asylum seekers upon return to their native countries are unavoidably affected by preconceptions about what conditions may be like in those countries. It may also be misleading to posit a sharp distinction between economic migrants and political refugees. Asylum seekers represent a spectrum of motivations, and many leave their home countries because of a mix of political and economic reasons. Third, the facts upon which adjudication must rest are elusive, largely because they turn on conditions in distant countries. Moreover, the individual applicant, often inarticulate and uneasy, may be the only available witness to the specific events that underlie the claim. Therefore, credibility determinations can be crucial, but they are complicated by barriers to effective crosscultural communication. Improvements in the system must make allowance for all these difficulties.

The central standard for determining whether an applicant will be granted asylum derives from the definition of "refugee" contained in a United Nations (UN) treaty, the 1951 Convention relating to the Status of Refugees, amended by its 1967 Protocol. Under section 208 of the Immigration and Nationality Act (INA), the Attorney General may, in his descretion, provide asylum to applicants who establish that they have a "well-founded fear of persecution" in the home country because of race, religion, nationality, membership in a particular social group, or political opinion. Additionally, section 243(h) of the INA establishes a mandatory country-specific protection which is known as *nonrefoulement.* Section 243(h) provides that the government may not return an alien to a country where his "life or freedom would be threatened" on any of the same five grounds. Under current administrative practice, the most important test has become the "well-founded fear" standard, because people granted asylum status are necessarily shielded against removal from the United States.

Historically, the United States has employed a mix of adversarial and nonadversarial procedures for deciding on asylum and *nonrefoulement* claims. Currently, "walk-in" claims are adjudicated by examiners in the district offices of the INS after an essentially nonadversarial interview. It typically lasts about twenty minutes as the interviewer reviews the application form (I–589) and the applicant's supporting information, and also prepares and issues work authorization papers (provided that the claim is adjudged "nonfrivolous"). The file is then sent to the State Department for its advisory views. The applicant is given fifteen days to respond to any recommendation by the State Department to deny the application. Subsequently, an INS examiner will review the file and issue a decision. This process may take eight months or more. Informal review of district office decisions is provided by the Asylum Policy and Review Unit (APRU), a small office in the Department of Justice created in April 1987.

Denials in the district office are not appealable, but unsuccessful applicants may renew the application in adversarial exclusion or deportation proceedings before an immigration judge, who will consider the matter de novo. These judges are officials in the Executive Office of Immigration Review (EOIR), which is wholly separate from INS but is also a part of the Department of Justice. Aliens who do not file for asylum until such proceedings have started have no access to the district office; they will be heard only by an immigration judge.

The immigration judge's ruling on asylum is appealable to the Board of Immigration Appeals (BIA), which is also located in EOIR. Appeals can easily consume a year or more, largely because of delays in receiving transcripts of immigration court hearings. No further administrative appeals are possible at the instance of the applicant, but on rare occasions, cases are considered by the Attorney General personally upon certification or referral. Judicial review of individual asylum denials almost always occurs as part of the review of exclusion or deportation orders under section 106 of the INA.

Administrative adjudication alone involves five distinct administrative units (the District Office, the State Department, APRU, the Immigration Judges, and BIA), only two of which see the applicant in person. This multiplicity of agencies spreads resources thin, resources that should be concentrated efficiently so as to improve the quality of the procedure and assure that genuine refugees are granted asylum.

Adjudication of an asylum claim through the various administrative and judicial levels requires several months and often consumes years. Such delays increase the attraction for marginal applicants because applicants can enjoy substantial benefits, including work authorization and freedom of movement, throughout the period their claim is pending.

Deterrents such as detention or limitations on work authorization could be used to minimize this magnet effect. Those measures, however, carry substantial disadvantages. Primarily, they are indiscriminate in their impact and may fall most heavily on genuine refugees who have already suffered greatly. These measures also entail higher costs for the federal government, especially when asylum claims remain pending for lengthy periods.

The Conference believes that fair but speedy conclusion of adjudication, leading either to a grant of asylum or to an enforceable removal order, is crucial to any healthy asylum adjudication system. This objective can be promoted through attention to two elements. First, delay derives in part from the point of two separate rounds of de novo consideration of asylum claims. One unified initial asylum proceeding should be established instead. (If the alien has other defenses to deportation or exclusion, those other defenses should continue to be heard by immigration judges in contemporaneous and separate proceedings). Second, additional delay derives from the qualified right to counsel as specified by current statutes and regulations, which provide for counsel in exclusion or deportation cases "at no expense to the government". Because so many applicants are indigent, delays often result from the need to accommodate the schedules of those attorneys who are willing to take the cases on a pro bono basis—a problem that is compounded when applications increase in a particular geographic location. A healthy system of asylum adjudication must be able to schedule hearings expeditiously, even if pro bono counsel are not immediately available in sufficient numbers. Fairness must be sought, therefore, through hearing procedures, training, and monitoring that assure a special role for the adjudicator in developing a complete record when the applicant is not represented.

The conference also believes that a healthy asylum adjudication process must foster the greatest possible accuracy as well as public confidence that decisions are rigorous, professional, and unbiased. Reliance on a specialized adjudicative board without routine reference of applications to the State Department would serve these ends and minimize any perception that asylum decisions are influenced by political considerations. Additionally, arrangements must be made to provide the adjudicators with information concerning foreign country conditions that is as accurate and complete as possible, derived from a wide variety of sources, both to help dislodge any preconceptions and to foster systematic expertise for use in developing the record and making the ultimate judgment on the claim.

For several years the Department of Justice has been considering amended asylum regulations that would serve many of these ends. A version proposed in August 1987 [52 Fed. Reg. 32552] would have established a specially-trained corps of adjudicators, responsible to the INS Central Office rather than to the district directors, and it would have eliminated de novo reconsideration of asylum claims by immigration judges. These regulations drew criticism, in part because of concern about the professionalism and independence of the adjudicators, and the Department responded with modified proposed regulations in April 1988 [53 Fed. Reg. 11300] that retained the new corps of adjudicators but also restored the availability of de novo consideration before the immigration judges. Those regulations are still pending in the Attorney General's office and the Department has encouraged this study and analysis.

Recommendation

The Attorney General should adopt regulations creating a new asylum adjudication process that would eliminate much of the duplication and division of responsibility associated with the current complicated system. Resources should be applied to enhance the professionalism, independence, and expertise of the adjudicators, and to assure fair and expeditious adjudications, so that genuine refugees may be speedily given a secure status and unqualified applicants, absent circumstances which would allow them to remain in this country, may be promptly deported.

I. Creation of a New Asylum Board

The Attorney General should create a new Asylum Board located, for administrative purposes, within the Executive Office of Immigration Review (EOIR) of the Department of Justice and consisting of an adjudication division, an appellate division, and a documentation center. The chairperson of the Asylum Board would be responsible for administrative support and supervision of the operation of all three units.

A. *The Adjudication Division*—1. *Jurisdiction.* All claims for asylum under section 208 of the Immigration and Nationality Act (INA) or withholding of deportation under INA section 243(h) (hereinafter collectively "asylum" claims) should be heard exclusively by asylum adjudicators in the adjudication division of the Asylum Board.

2. *Nature of the asylum hearing.* Asylum claim proceedings should be recorded.[1] The asylum adjudicator should be responsible for developing a complete record of the specific facts relating to the applicant's claim, including those which might support a grant of asylum and those which might cast doubt on the claim or on the applicant's credibility. Care should be taken to assure the service of skilled interpreters. The adjudicator should be responsible for most of the questioning, with a reasonable and adequate opportunity for additional questioning and entry of relevant information, including the presentation of witnesses, by the applicant and counsel. The Immigration and Naturalization Service (INS) should not be represented as an opposing party in the proceedings.[2]

3. *Representation of applicants.* Applicants should be encouraged to secure counsel (or a qualified nonattorney representative) to develop the initial claim and to provide representation during the asylum proceedings. Although reasonable accommodation should be provided for counsel to be obtained, proceedings should not be unduly delayed, because expeditious initial decisions are essential.

4. *Use of official notice of country conditions.* Asylum adjudicators should develop substantial cumulative expertise regarding country conditions, to be used in developing the record, and should be responsible for posing illuminating questions to the applicant and other witnesses, for evaluating evidence, and for reaching the ultimate determination about likely risks to the applicant upon return to the home country. The accepted standards for official notice, in accordance with the Administrative Procedure Act, should govern use of such information. Ordinarily, these standards will simply require an adequate statement of reasons for accepting or rejecting the asylum claim, reflecting such expertise. In instances when specific and detailed facts developed from the documentation center or other sources (and not from information supplied by the applicant) appear to be crucial, the applicant should be given notice of intent to deny based on such information, along with an opportunity to offer information or argument in rebuttal.

5. *The adjudicators.* Asylum adjudicators should be recruited from among attorneys possessing adjudicative skills and appropriate judgment and temperament, with close attention given to those who are familiar with international relations and refugee affairs and who are sensitive to the difficulties of cross-culture communication. Adjudicators should receive salary, benefits, and guarantees of adjudicative independence equivalent to those of immigration judges, and they should be assigned no other enforcement or adjudication responsibilities. The adjudicators should

[1] The Administrative Conference recommends experimentation with other methods for creating a record that would maintain flexibility but preserve objectivity, professionalism, and fairness to the applicant.

[2] The Administrative Conference takes no position on the possible application of the Equal Access to Justice Act to asylum proceedings.

be given thorough and ongoing training, especially on techniques for fairly conducting this specialized type of proceeding and on conditions in those countries from which a substantial number of asylum applications is received. If, alternatively, a separate Asylum Board is not created and the adjudication assignment is given to immigration judges, then such judges should be assigned to a separate unit in EOIR.

B. Appellate Division—1. *Composition and functions.* The appellate division of the Asylum Board should consist of the chairperson and two additional members, assisted by staff attorneys and other support personnel. The division's principal responsibilities should be to consider appeals filed by persons denied asylum at the initial stage, in light of the administrative record compiled before an adjudicator, and such other information as the applicant may wish to submit or of which official notice may be taken. The division, however, should also monitor cases, and should have the authority to require certification to it of selected cases, either granting or denying asylum, in order to foster consistency, fairness, and political neutrality. It will thus absorb the principal functions now performed by the Asylum Policy and Review Unit.

2. *Certification or referral to the Attorney General.* The Attorney General should retain the authority to review decisions of the Asylum Board, upon formal certification or referral or *sua sponte*.

3. *Expeditious completion of appeals.* A high priority should be placed on completing all asylum appeals expeditiously, preferably within three months of filing. The Department of Justice should ensure that transcripts, where required, are made from recorded hearings in a timely fashion.

C. *Documentation Center.* A documentation center, staffed with regional specialists, should maintain current and detailed information on country conditions, from both governmental and nongovernmental sources, periodically compile and publish usable summaries on selected countries, and respond to requests for more specific information received from officials of the Asylum Board. Special effort should be devoted to assuring complete compilations of ongoing reports from established nongovernmental human rights organizations, and to drawing upon information from documentation centers in other countries. Information and procedures developed by other countries can be particularly useful in minimizing start-up costs. The center's collections and publications shall be accessible to the public.

D. *Role of the Department of State and the United Nations High Commissioner for Refugees.* The Department of Justice should take advantage of resources, assistance, and information available through the State Department and the United Nations High Commissioner for Refugees (UNHCR). In particular, arrangements should be made with both to assist in training adjudicators and to augment information available through the documentation center.

If it so requests, on an across-the-board or country-specific basis, the State Department should receive notice of individual asylum applications, so that it may offer its judgment, in particular, about appropriate responses in sensitive, such cases, as those involving foreign government officials.

II. Detention

Where detention of asylum seekers is deemed necessary,[3] the Department should limit it to short-term detention in "asylum processing centers", as recommended by the Select Commission on Immigration and Refugee Policy. Such centers should also keep families together wherever possible, minimize the length of detention, provide assistance in securing representation, and otherwise foster conditions which reflect that the purpose of detention is not punitive.

III. Deportation

The Department of Justice should ensure that individuals denied asylum are removed promptly if they are otherwise excludable or deportable, subject to any policy decision by the Attorney General to grant extended voluntary departure to nationals of particular countries.

IV. Judicial Review

Judicial review of asylum denials should be available as part of the review under section 106 of the INA for orders of deportation or exclusion. Appropriate arrangements therefore should be made to combine, for purposes of judicial review, the record of proceedings before the Asylum Board with that of the regular deportation or exclusion proceedings before the immigration judges and the Board of Immigration Appeals.

[3] The Administrative Conference does not take a position on the suitability of detention in asylum proceedings.

§ 305.89-5 Achieving Judicial Acceptance of Agency Statutory Interpretations (Recommendation 89-5).

Agencies continually interpret the statutes they administer. Their interpretations are expressed in a great variety of formats—including, among others, legislative regulations, adjudicatory opinions, court briefs, interpretive rules, policy statements, staff instructions, correspondence, informal advice, press releases, guidance manuals, testimony before Congress, speeches, and internal memoranda. This recommendation addresses the relationship between the procedures used by an agency in interpreting a statute and the role of the courts in statutory interpretation.

Interpretation of a statute presents a question of law, traditionally the province of the judicial branch (see the scope of review provision of the APA, 5 U.S.C. 706). However, for many years courts have accorded respectful attention or even controlling effect to interpretations of statutes made by the agencies that administer them. In some situations, in which the courts reserve the power to arrive independently at their own interpretations, they will give respectful consideration to an agency's construction but may reject it, even if it seems reasonable. In other cases, courts consider themselves bound to accept an agency's interpretation outright, provided only that it is consistent with the statute and is reasonable. The law governing judicial acceptance of agency statutory interpretations is now dominated by *Chevron U.S.A.* v. *Natural Resources Defense Council*, 467 U.S. 837 (1984). In that case, one involving legislative rulemaking, the Supreme Court laid out a general framework for reviewing agency interpretations of statutes. First, the court is to determine whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, the court (like the agency) must give effect to the congressional intent. Where Congress' intent is not clear, however, the court must determine whether the agency's interpretation is based on a reasonable construction of the statute. Chevron thus requires a reviewing court to accept an agency interpretation that (a) is not contrary to statute or specific statutory intent and (b) is reasonable.

When an agency issues a legislative rule or interprets its statute in a formal adjudication, its interpretation of the statute it administers is entitled to judicial acceptance under the *Chevron* standard. Similarly, acceptance under the *Chevron* standard is appropriate if the reviewing court finds a congressional delegation of authority to make definitive interpretations in an informal format such as the informal agency staff ruling involved in *Ford Motor Credit Co.* v. *Milhollin*, 444 U.S. 555 (1980). But agencies rarely possess congressionally delegated authority to make definitive interpretations, carrying the force of law, by informal means. Thus, when an agency states its interpretation of a statute in an informal format, it should understand that courts ordinarily will not be bound to accept such an interpretation.

This is not to say that reviewing courts may ignore an agency interpretation set forth in an informal format. Numerous decisions of courts at all levels indicate that the views of the agencies charged with responsibility for administering a statute are accorded weight and may be highly influential in shaping courts' decisions. In this way courts retain the advantage of administrative agencies' expertise and remain free to adopt agencies' interpretations, even though not required to do so.

Even when interpretations are expressed informally, however, agencies have in some instances successfully asserted that these interpretations should be accepted as definitive by the courts, without consideration of whether the agency possesses the authority to make binding interpretations in the format it has used.

When an agency interprets a statute without using procedures authorized by Congress for the development of definitive statutory interpretations, it should not expect that its interpretation will be entitled to judicial acceptance as definitive. Procedures so authorized by Congress, in almost all cases, will be relatively formal ones that ensure some level of public participation and encourage reasoned and thoughtful decisionmaking by the agencies. However, this recommendation is not intended to discourage agencies and their staffs from using informal means to keep the public apprised of their views on questions of statutory interpretation. It is often useful and appropriate for agencies to provide informal guidance of this type. The agency may reasonably expect that interpretations like these are entitled to such special consideration as their nature and the circumstances of their adoption warrant. But it is important for both agencies and courts to remember that these informal expressions should not be accorded the same weight as definitive agency interpretations.

This recommendation relates solely to the procedures that should be preconditions to agencies' assertion of the *Chevron* standard of review. It thus takes no position concerning any other aspect of the *Chevron* standard.

Accordingly, the Administrative Conference recommends that the following process be observed.

Recommendation

In developing an interpretation of a statute that is intended to be definitive, an agency should use procedures such as rulemaking, formal adjudication, or other procedures authorized by Congress for, and otherwise appropriate to, the development of definitive agency statutory interpretations.

§ 305.89-6 Public Financial Disclosure by Executive Branch Officials (Recommendation 89-6).

Public financial disclosure by federal officials is intended to make it possible to monitor actual or potential conflicts of interest of such officials. This, in turn, may deter public officials from even considering conduct that would present the appearance of a conflict of interest. However, these benefits of public financial disclosure must be balanced against the burdens imposed on the federal officials who are subject to them.

Determining appropriate public financial disclosure requirements requires an assessment and accommodation of three concerns: the relevance of the information to conflicts of interest which might be faced by the individual in his or her official capacity; the practical burden faced by an individual who must assemble and report information accurately (including whether a nominee or employee would reasonably be expected to have at hand the information which he or she is required to report); and the psychological burden imposed on an individual who must make his or her financial status publicly available to others (i.e., whether public disclosure constitutes an excessive invasion of privacy).

The Administrative Conference has studied the Ethics in Government Act's executive branch financial disclosure requirements (codified at 5 U.S.C. 201–209) and in this recommendation urges Congress to make specific changes to those requirements, consistent with an appropriate balance of the benefits and costs of such disclosure.

This recommendation is not made with the intention of generally requiring either more or less disclosure of public officials. Rather, the Conference's goal is to rationalize the Ethics in Government Act's requirements and eliminate those that appear to bear no reasonable relationship to the Act's purposes. On the one hand, the recommendation increases disclosure by reducing the current threshold level for the reporting of a covered individual's liabilities from $10,000 to $1,000, to be consistent with the current threshold level of $1,000 for the reporting of assets (¶ 2 b (1)). On the other hand, the recommendation would lessen disclosure by reducing the number of categories of value for the reporting of assets from the current six to two, which the Conference believes is sufficient for conflict-of-interest analysis and the maintenance of public confidence in the integrity of executive branch officials (¶ 2 b (2)).

Because the Act's executive branch financial disclosure provisions are so detailed, this recommendation has been organized to clearly distinguish between current provisions that the Conference believes generally further the Act's purposes and, therefore, should be retained, and those provisions that appear unnecessary to achieve the Act's purposes and, therefore, should be eliminated or changed. However, in recommending the retention of particular provisions, the Conference does not mean to imply that such provisions cannot be improved. To the contrary, the Conference urges the Congress to systematically review the coverage and language of all of the Act's public financial disclosure provisions, and to rewrite those that can be made clearer and simpler.

To illustrate, the Conference recommends continuation of the current requirement that nominees for positions covered by the Act report the source of all earned income in excess of $5,000 received by a reporting individual from one source in the two years preceding the year of filing (¶ 2a(2)). However, the current statutory provision (5 U.S.C. 202(a)(6)(B)) requires reporting of such compensation paid "in any of the two calendar years prior to the calendar year during which the individual files his first report * * *." If strictly applied, a nominee who filed a report in October of 1989 would be required to disclose such compensation for calendar years 1987 and 1988, but not for the period in 1989 prior to his or her entering government service. This theoretical gap in coverage should be closed whether or not in practice it has proven to be a problem.

The same statutory provision exempts from the "over-$5,000 from one source" disclosure requirement the reporting of "any information with respect to any person for whom services were provided by any firm or association of which such individual was a member, partner, or employee unless such individual was *directly involved* in the provision of such services." 5 U.S.C. 202(a)(6)(B) (emphasis added). In redrafting this provision, Congress should consider either defining the term "directly involved" or delegating to the Office of Government Ethics the responsibility to clarify its meaning by regulation, especially as applied to individuals who provide services to others, such as lawyers. Therefore, although the Conference supports the retention of the substance of this and other of the Act's financial reporting provisions, it is clear that improvements to the language and coverage can be made.

Because of its limited mandate,[1] the Conference takes no position on the public financial disclosure requirements applicable to legislative and judicial branch officials. However, the similarity of those requirements to executive branch requirements suggests the desirability of reviewing and possibly amending legislative and judicial branch requirements as well.

Recommendation

1. **Persons Required To File.** a. *Positions For Which Coverage Should Be Retained.* Congress should continue to require the following categories of executive branch personnel to make public financial disclosure:

(1) The President, Vice President, and nominees for and incumbents in positions which require Senate confirmation;

(2) Full-time officers and employees of the executive branch (including independent agencies) whose positions are classified as GS–16 or above or who are paid at or above the minimum rate of pay fixed for GS–16;

(3) Each member of a uniformed service whose pay grade is at or in excess of O–7;

(4) The Postmaster General, Deputy Postmaster General, each Governor of the United States Postal Service, and each Postal Service and Postal Rate

[1] The Conference is authorized by statute to study and make recommendations relating to administrative procedure used by administrative agencies in carrying out administrative programs. 5 U.S.C. § 574.

Commission officer or employee whose rate of pay equals or exceeds the minimum rate of basic pay for GS–16;

(5) Each administrative law judge appointed pursuant to 5 U.S.C. § 3105; and

(6) All other employees determined by the Director of the Office of Government Ethics to be in positions equal in responsibility to those normally classified at GS–16 or above.

b. *Positions For Which Coverage Should Be Removed.* Congress should amend the Ethics in Government Act to remove the reporting requirement, except as may be required under subsection c below, from the following persons:

(1) Candidates for the offices of President and Vice President who are not receiving federal funds under the federal election laws and who are not government officials otherwise required to report; [2]

(2) Special government employees; [3] and

(3) Designated agency ethics officers whose rate of pay or other responsibilities would not otherwise subject them to the reporting requirement.

c. *Administrative Extensions of Coverage.* Congress should amend the Ethics in Government Act to permit the Director of the Office of Government Ethics to extend the reporting requirement, on a position or categorical basis, to any officer, employee or special government employee of the executive branch not covered by the Act, whose position is determined by the Director to present an unusual opportunity for conflicts of interest.

d. *Administrative Exemption From Coverage.* Congress should amend the Ethics in Government Act to permit the Director of the Office of Government Ethics to exempt from the reporting requirement those positions included in subsection a above whose responsibilities are identified by their agencies and determined by the Director to be unlikely to place their incumbents in situations of conflict of interest.

e. *Review of Coverage Extensions and Exemptions.* Congress should require the Office of Government Ethics annually to review, based on the recommendaton of the designated agency ethics officials, all determinations currently in effect under c and d above.

2. **Information Required To Be Filed.**

a. *Reporting Requirements That Should Be Retained.* Congress should leave the Ethics in Government Act unchanged in the following respects:

(1) *Reporting by Both Incumbent and Nominated Officials.* Congress should continue to require both *incumbent* executive branch officers and employees whose positions are covered by the Ethics in Government Act, and *nominees* for those positions, to disclose publicly the following categories of information:

(a) the identity of any interest in a trade or business or asset held for investment or production of income, if the value of the interest exceeds $1,000;

(b) the identity of all positions held by the reporting individual as an officer, director, trustee, partner, proprietor, representative, employee or consultant of any corporation, company, firm, partnership, or other business enterprise, any non-profit organization, any labor organization, or any educational or other institution other than the United States, but not including positions held in religious, social, fraternal, or political entities, or positions solely of an honorary nature; and

(c) the date, parties to, and terms of any future employment arrangements negotiated by the reporting individual, leaves of absence during the period of federal service, continuing payments from a former employer, or continuing participation in a former employer's welfare or benefit plan.

(2) *Reporting Only by Nominated Officials.* In addition to the information required to be reported by incumbent and nominated executive branch officers and employees under subsection (1) above, Congress should continue to require that nominees for positions covered by the Ethics in Government Act report the source of all earned income in excess of $5,000 received by the reporting individual from one source in the two years preceding the one in which the nominee files, and a brief description of the services for which the compensation was paid. As current law provides, this requirement should not apply to information about any person for whom services were provided by the firm or association of which the nominee was a member, partner, or employee, unless the nominee was directly involved in the provision of such services.

(3) *Reporting Only by Incumbent Officials.* In addition to the information required to be reported by incumbent and nominated executive branch officers and employees under subsection (1) above, Congress should continue to require covered incumbent executive branch officers and employees to disclose the following categories of information: [4]

(a) the source, type and amount of non-governmental earned income received by the reporting individual, including honoraria, which in the aggregate exceeded $100; and

(b) the date and a brief description of each purchase, sale or exchange of real property, stocks, bonds, commodities futures or other property with a value over $1,000, *except* (i) transactions between the reporting individual and a spouse or dependent children, (ii) transactions involving a personal residence of the reporting individual or the individual's spouse, and (iii) transactions involving an investment in the nature of a cash equivalent (*e.g.*, a money market fund, certificate of deposit, or personal bank account.)

(4) *Interests of Spouses and Dependent Children.* The present statutory provisions on reporting of the interests of spouses and dependent children of the reporting official should be retained.

b. *Reporting Requirements That Should be Changed.* Congress should amend the Ethics in Government Act to change the reporting requirements in the following ways:

(1) *Liabilities.* The present requirement of reporting the identity of liabilities in excess of $10,000 owed by the reporting individual should be changed to a requirement of reporting liabilities in excess of $1,000, the same value which the statute now uses for reporting of assets. As present law provides, the reporting requirement should not extend to the individual's home mortgage, loans for the purchase of personal property which are secured by the property purchased and which do not exceed the value of the security, sums owed to a relative, and revolving charge accounts with a balance less than a specified amount at the end of the reporting period (currently $10,000).

(2) *Categories of Value.* The present requirement that assets, liabilities, and transactions in assets above the $1,000 threshold be reported in numerous categories of value should be eliminated. However, in order to distinguish large interests from those of lesser significance, the reporting individual should be required to state whether each particular asset, liability or transaction was in excess of a specified higher amount (*e.g.*, $50,000 or $100,000 each).

(3) *Sources of Earned Income Prior to Government Service.* The requirement that all nominees for covered positions report the source, type and amount of non-government earned income which they received in the year prior to entering government service should be eliminated, except for amounts in excess of $5,000 received from one source (*see* 2 a (2) above).

(4) *Income from Assets Otherwise Reported.* The requirement that both incumbents and nominated officials report income in excess of $100 from each of their investments should be eliminated because the assets themselves are already reported.

(5) *Reimbursements and Gifts.* (i) *Reporting Period.* The date after which all covered reimbursements and gifts should be required to be reported should be the date on which the official is nominated for or appointed to the position covered by the Ethics in Government Act, not the date the official takes office.

(ii) *Reimbursement and Gifts of Travel or Entertainment.* The threshold amount for reporting reimbursements and gifts of transportation, lodging, food or entertainment, other than personal hospitality from an individual, received by the reporting individual from any source other than a relative during the reporting period should be changed from $250 per year to a per event amount (*e.g.*, $100 or $150) to avoid reporting de minimis information. The statute should be amended further to require, in addition to the source and a brief description, the reporting of the value or amount of such reimbursements or gifts in broad categories (*e.g.*, under $1,000; $1,000 to $10,000; over $10,000) in accordance with regulations issued by the Office of Government Ethics.

(iii) *All Other Covered Gifts.* The requirement of reporting all gifts to the reporting individual, other than gifts of transportation, lodging, food or entertainment, which aggregated more than $100 in value over the reporting period, excluding gifts from relatives of the reporting individual, and not aggregating gifts of $35 or less in calculating the $100, should be retained. However, the statute should be amended to require, in addition to the source and a brief description, the reporting of the value or amount of such gifts in broad categories (*e.g.*, under $1,000; $1,000 to $10,000; over $10,000) in accordance with regulations issued by the Office of Government Ethics.

6. New § 310.14 is added to Part 310, to read as follows:

§ 310.14 Statement on mass decisionmaking programs: The alien legalization experience.

The Alien Legalization Program, authorized under the Immigration Reform and Control Act of 1986, created a program to allow certain aliens present illegally in the United States to convert their status to that of a legal resident. The program is administered by the Immigration and Naturalization Service and has a short and defined lifetime, which is heading toward completion. The legalization program contains two separate pieces: the "section 245A" program, for aliens who have been in the country since January 1, 1982; and the "special agricultural worker" program, for alien farmworkers who worked in specified agricultural employment for at least 90 days during a specified period. The application period for the "section 245A" program ran from May 5, 1987 through May 4, 1988. The application for the SAW program ran from June 1, 1987 through November 30, 1988. Although the INS has acted on most of the cases, some are likely to remain pending for months. Moreover, as described below, the second phase of the process is still ongoing.

The Administrative Conference has studied the INS's processing of alien legalization applications from the standpoints of what improvements can be made by the INS in the remaining phases of the legalization program itself, and what lessons can be applied in future mass decisionmaking programs by the INS or by other agencies. This Statement does not address the merits of litigation over the regulatory ground rules of the program, but only the procedures for handling the applications themselves.

Description of the Process

The Alien Legalization Program has been administered by the INS using a framework of local Legalization Offices (LOs) (107 of them across the country) and four Regional Processing Facilities (RPFs) to process the more than three million applications for legalization that were received. Applications are filed with the LOs, where interviews are conducted and recommendations for action are made. The files are then sent to a central processing center in London, Kentucky, following which they are forwarded to one of the four RPFs across the country. The RPFs make the determinations on the applications, based on the file material. Appeal of a denial of legalization status is available to the Legalization Appeals Unit (LAU) in Washington, D.C., and is based on the "administrative record." 8 U.S.C. 1255a(f)(3)(B).

The legalization process has two phases. The first phase is to determine whether an applicant qualifies for legalization. The second phase, which applies only to qualified section 245A applicants, involves a determination whether they qualify for permanent resident alien status. (In the agricultural program, permanent resident alien status is automatic.) The initial application period for both programs is now closed, and the INS has processed a large number, although not all, of those applications.

The "remote decisionmaking" system employed in the Alien Legalization Program involves decisionmaking at the four RPFs rather than at local levels. This system has provided more consistency in decisions than other, more decentralized systems within the INS. Having the determination made by a person removed from the individual who actually interviewed the applicant reduced the potential subjectivity of decisionmakers. Because interviewers at the local levels knew that their files would be examined in virtually every case, the quality of work in the files has been relatively high. There are also suggestions that the system of regional facilities promoted cost-efficiency.

The RPF remote decisionmaking system, however, has not been without problems. The elimination of direct contact between the decisionmaker and the applicant, which helps eliminate bias or prejudice, also eliminates the opportunity for first-hand credibility determinations by the ultimate decisionmaker. The RPFs also have been very isolated from the public, making it difficult for applicants or their representatives to acquire information about the status of cases, among other things. The RPFs have had only limited access to legal advice from INS attorneys, requiring them in at least one facility to seek advice from the LAU, which is the appellate unit that reviews appeals of their decisions. There have been some difficulties relating to the interaction between the LOs and the RPFs, and relating to the provision of adequate notice to applicants at different stages of the program. There also has been reported an unexpectedly high incidence of fraudulent applications, particularly in the agricultural worker program, which the RPFs were not equipped to handle.

Overall, however, the system for deciding legalization applications appears to be working fairly well. The results among the regions have been quite consistent so far. The INS has been able to process large numbers of the applications, particularly in the first phase of the section 245A program. Moreover, the INS has recognized many of the problems, and taken steps to address them.

[2] The Conference recognizes that candidates for these offices are not executive branch officials; nonetheless, this recommendation addresses coverage of candidates because they are included in the current statute setting forth executive personnel financial disclosure requirements.

[3] It is noted that the Administrative Conference has recommended minimal financial disclosure for all members of federal advisory committees, including those members who are special government employees. *See* ACUS Recommendation 89–3, Conflict-of-Interest Requirements for Federal Advisory Committees, 1 CFR § 305.89–3.

[4] Under current practice individuals who joined the government in the preceding calendar year are only required to report this information for their period of government service and not before.

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From the INS experience, it is possible to derive some lessons, not only from other INS programs in the future, but for other agencies that may consider using a system of remote decisionmaking for a large volume of cases. There are also a number of lessons that can be drawn about the Alien Legalization Program in particular. While that program is nearing completion, to the extent that these comments refer to elements of the program that are ongoing, the Conference encourages the INS to implement the suggestions to the extent possible and to the extent that it has not already done so.

Conclusions

A. The Conference encourages agencies, including the INS, to consider using remote decisionmaking where there is a large volume of cases to be decided on the basis of objectively verifiable information within a written file, particularly where bias, prejudice or other subjectivity may be a significant problem. This system appears to promote consistency among decisionmakers, perhaps because of the more centralized nature of the process, and the fact that it is easier for a small group of managers to confer on a regular basis about the decisionmaking process. Agencies should, in implementing such a system, consider the following suggestions:

1. In a remote decisionmaking system in which a file prepared on a local level will be the basis for decisionmaking, there must be clear guidelines as to what are the necessary contents of the file, and the use of standardized forms and checklists is encouraged.

2. Where the local office is making a preliminary recommendation to the remote decisionmaking center, the local office should be instructed to provide an explanation for its recommended decision that is sufficient to provide the remote center with the maximum benefit of the local office's information and interaction with the applicant or other interested person whose case is being determined (hereinafter "applicant"). Appropriate forms or formats (e.g., computer entry) should be designed to ensure that the necessary information is transmitted in a uniform manner to assist in review and retrieval.

3. It is important that adequate information be available to the applicants and their representatives concerning their cases. To facilitate this, case tracking systems capable of responding to inquiries should be developed. Applicants should be clearly informed of the process relating to their cases, and be given adequate notice of each step that requires or provides an opportunity for action or participation on their part.

4. To avoid the appearance or actuality of conflict, it is important that the remote decisionmaking centers have adequate access to legal advice relating to the merits of matters before them from agency legal staff other than from the appellate unit, if any, that reviews appeals of their decisions.

5. Ensuring imput from local personnel on credibility issues is of particular importance. It may be useful to consider ways of videotaping or otherwise recording interviews where the applicant's credibility is at issue.

6. Where helpful, the decisionmakers at remote decisionmaking centers should be provided the opportunity to work for a short period of time at a local office, giving them first-hand experience in interviewing applicants, in order to provide them a better sense of the implications of the information they receive.

7. The remote decisionmaking centers' managers should consult with each other regularly on substantive and procedural matters, in order to ensure that their actions are consistent.

8. It is important that the system be able to provide new or amended instructions to the local offices quickly, so that consistency can be maintained and the benefits of experience transmitted.

B. With respect to the Alien Legalization Program specifically, the Conference encourages the INS to implement or continue to implement the following suggestions to the extent that they refer to elements of the program that are ongoing:

1. Action should be taken to ensure that information concerning individual applications for legalization is readily available to the applicant or his or her representative. INS should:

(a) Establish a method of tracking cases that would enable applicants or their representatives to obtain information expeditiously concerning the status of their cases;

(b) Ensure that applicants are clearly informed concerning all of the steps required to complete the legalization process, both initially and as actions are taken on their applications, particularly where further action on their part may be called for;

(c) Recognize the need to extend completion times where applicants are unable to fulfill educational requirements due to a shortage of educational facilities or programs;

(d) Supplement existing mail communication with applicants, including through the use of broadcast media. Particular attention should be paid to the mobility of many applicants, as well as to the fact that applicants have not always understood the multiple-step nature of the process, and thus have not realized that INS may be seeking to communicate with them.

2. INS should ensure that RPFs have sufficient access to legal advice from INS attorneys; however, the RPFs should not seek legal advice from the Legalization Appeals Unit (LAU), the office that reviews appeals of RPF decisions.

3. INS should consider making the following modifications in the way applications are processed by the Legalization Offices (LOs) and RPFs:

(a) Including in the recommendation forms used by the LOs an additional option, "recommended scrutiny", in order to assure that the RPF reviews the application, without having to recommend denial for lack of another option.

(b) Arranging for the following in cases where fraud is suspected:

(i) Reinterviewing applicants whose cases have not been decided; in the case of SAW applicants, such interviews should be done by specially-trained decisionmakers with knowledge of agriculture.

(ii) Using video cameras to tape remaining interviews, in order to have a record on which credibility can be better assessed.

(iii) Assigning remaining cases at the RPFs to specially trained teams of decisionmakers; in the case of SAW applicants, such decisionmakers should be trained to review agricultural cases and the types of fraud that may appear in such cases.

(c) Considering whether LO personnel should have more direct impact on legalization decisions, since they are the ones who actually have the opportunity to assess the credibility of applicants.

Michael W. Bowers,

Deputy Research Director.

Dated: June 30, 1989.

[FR Doc. 89-15888 Filed 7-7-89; 8:45 am]

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federal register

Monday
July 10, 1989

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 1 et al.

TCAS II and Windshear Implementation Schedules; Notice of Public Meeting

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 91, 121, 125, 129, and 135

[Docket No. 25954]

TCAS II and Windshear Implementation Schedules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting to provide the public the opportunity to discuss possible changes to existing regulations requiring installation and use of an airborne collision avoidance system known as TCAS II, and airborne windshear warning and escape path flight guidance systems. Specific subjects on which public discussion is planned include whether changes to the TCAS II installation schedule are desirable; whether a new schedule should include a time-phased equipage requirement and, if so, what fraction of the fleet should be equipped with TCAS II by which dates; whether the Government should include an operational evaluation phase in the TCAS II schedule and, if so, who should participate; whether the airbone windshear warning and escape path flight guidance equipage requirements should be modified as requested in a petition from the Air Transport Association; and whether the equipage schedule for airborne windshear warning and escape path flight guidance equipage schedule should be modified to be compatible with that adopted for TCAS II equipage. The Federal Aviation Administration (FAA) recognizes that provisions of the Airport and Airway Safety and Capacity Expansion Act of 1987 governing the TCAS II equipage schedule differ from some of the changes to be discussed at this meeting, but anticipates the possibility of statutory changes in the near future that may provide authority for some or all of the changes listed. In the event that those statutory changes are enacted into law, it is essential that regulatory action proceed immediately. The objective of this meeting is to provide all interested parties an opportunity to comment on these issues so that, when and if the statutory changes become law, the Agency can promptly move to issue a final rule based in part upon the information received at this meeting. The FAA will consider all comments prior to taking such action.

DATES: The public meeting will be held on August 16, and August 17, 1989, if necessary, from 9:00 a.m. to 3:00 p.m. Comments must be received on or before August 23, 1989.

ADDRESSES: The public meeting will be held in the 3rd floor auditorium, FAA, 800 Independence Avenue SW., Washington, DC 20591.

Comments on the subjects in this notice should be submitted, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-10], Docket No. 25954, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No. Comments may be examined in Room 915G weekdays between 8:30 a.m. and 5:00 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Frank Rock, Aircraft Engineering Division, AIR-120, FAA, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267-9567.

SUPPLEMENTARY INFORMATION:

TCAS II Discussion

The Federal Aviation Administration (FAA) published the Traffic Alert and Collision Avoidance System (TCAS) Final Rule (54 FR 940; January 10, 1989) in compliance with the Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law 100-223. Prior to the publication of the final rule and in response to numerous questions on the implementation schedule of TCAS, the Subcommittee on Aviation of the Senate Committee on Commerce, Science and Transportation requested the Office of Technology Assessment (OTA) to assess whether the FAA, manufacturers, and airlines have the capability to comply with the TCAS II schedule enacted by Congress and to identify any other important issues raised by the final rule. In addition to interviews and visits to the FAA, manufacturers, and airlines, OTA invited representatives from airframe and avionic manufacturers, airline labor unions, repiar and alteration stations, FAA, and NASA to a 1-day workshop, January 12, 1989, to assist OTA in evaluating the information that had been provided by the aviation community, as well as to obtain a variety of perspectives on TCAS. Subsequently, OTA issued a special report, in February 1989, entitled "Safer Skies With TCAS."

The House Subcommittee on Aviation held a hearing May 4, 1989, on Collision Avoidance System Equipment and Compliance Deadlines. The hearing covered issues involving the legislatively mandated installation of TCAS II.

Testimony at this hearing, and the OTA report, suggested that airlines could experience implementation difficulties that would make it desirable to revise the current schedule. Further, a fairly large-scale operational evaluation program was recommended by OTA and a number of witnesses, to ensure that a large number of TCAS units can be installed and operated as designed in the air traffic environment.

Based on the OTA report, and testimony presented at the May 4, 1989, hearing, the FAA seeks public comment on the following modified TCAS II schedule, which will be considered in the event Congress modifies the statutory mandate:

Date	Required equipage
December 30, 1990	20% of all civil aircraft with more than 30 passenger seats operated by airlines who operate more than 30 or more such aircraft under the provisions of 14 CFR Parts 121 and 129.
December 30, 1991	50% of all civil aircraft with more than 30 passenger seats operated by airlines who operate under the provisions of 14 CFR Parts 121 and 129.
December 30, 1993	100% of all civil aircraft with more than 30 passenger seats operating in the United States.

The FAA also seeks public comment on the need to conduct an operational test and evaluation program during 1990, during which approximately 6 months of in-use data would be collected to ensure practicability of the production of TCAS II systems and to assess their impact, in large numbers, on the safe and efficient operation of the air traffic control system, as recommended by the OTA.

Windshear Discussion

An extended compliance date for TCAS II would, in terms of efficiency and cost effectiveness, be incompatible with the current installation schedule for airborne windshear warning and escape flight path guidance equipment, in that some carriers would have to take aircraft out of service for two cycles of retrofit. In addition, the FAA has received a petition from the Air Transport Association (Docket No. 25924) requesting that an extended compliance schedule for installing windshear warning and flight guidance systems be based on fleet compliance rather than the currently mandated phased schedule. The ATA also requests that the FAA remove the requirement that certain older aircraft be retrofitted with flight guidance systems. If the TCAS II schedule is revised, the FAA solicits comments at this public meeting on whether the windshear-equipment retrofit schedule should also be revised to make it compatible with the TCAS II schedule, and whether escape path flight guidance requirements should be modified as requested by the petitioner.

Need for This Meeting

The present requirements of the Federal Aviation Regulations call for completion of the TCAS II installations by December 30, 1991, and the airborne windshear warning and escape path flight guidance equipment installations by January 2, 1991, unless extensions are granted extending the compliance date to January 4, 1993. Testimony of a number of witnesses at the May 4, 1989, hearing of the Aviation Subcommittee, as well as the independent evaluation by the OTA, suggest that uniform attainment of the TCAS II schedule as presently required may not be feasible. Since time is becoming critically short to permit reasonable scheduling of the TCAS II retrofit installations, it would be necessary for the FAA to move as quickly as possible following enactment of any legislation that amends the compliance dates to establish a new retrofit schedule so that TCAS II equipment could receive the widest possible usage in the shortest period of time consistent with a prudent operational phase-in of this new equipment. In doing so, the Agency seeks to consider other issues that, if they are to be addressed, must be considered with any modifications to the TCAS II schedule. These issues include those discussed above concerning the appropriate phase-in of the TCAS II installation schedule, establishment of the operational evaluation program, and modifications to the windshear equipment requirements and installation schedule. The purpose of this meeting is to provide for the widest possible public comment on these complex issues in a short period of time.

Meeting Procedures

The meeting will be informal in nature and will be conducted by representatives of the FAA. Representatives from the FAA will present a formal briefing on options for changes in the schedule, depending on the outcome of proposed legislation. All other participants will be given an opportunity to make a presentation.

The meeting will be open to all persons on a space-available basis. There will be no admission fee or charge to attend.

Any person wishing to make a presentation to the FAA will be asked to sign in and estimate the amount of time needed for such presentation; this will permit allocation of an appropriate amount of time for each presenter. The FAA may allocate the time available for each presentation in order to accommodate all speakers. The FAA will make every effort to see that everyone on the list has an opportunity to address the panel. The meeting may be adjourned at any time if all persons present have had the opportunity to speak.

Any person who wishes to present a position paper at the meeting to the FAA pertinent to the topics, TCAS rule extension, phased-in implementation schedule, operational flight evaluation program, and windshear equipment installation schedule, may either submit all written comments prior to the meeting by mailing such comments to the address listed above or by presenting the papers at the meeting.

The meeting will be recorded to ensure that each respondent's comments are noted accurately. A copy of the comments will be placed in the docket.

Agenda

Opening Remarks and Discussion of Meeting Procedures
Public Presentations
- TCAS II Schedule and Operational Evaluation Program
- Windshear Schedule and Older Aircraft Issues

Closing Comments.

Issued in Washington, DC, on July 3, 1989.

Anthony J. Broderick,

Associate Administrator for Regulation and Certification.

[FR Doc. 89-16053 Filed 7-7-89; 8:45 am]

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federal register

Monday
July 10, 1989

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 108

Security Directives and Information Circulars; Final Rule and Request for Comment

Explosives Detection Systems for Checked Baggage; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 108

[Docket No. 25953; Amdt. No. 108-6]

RIN 2120-AD14

Security Directives and Information Circulars

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule and request for comment.

SUMMARY: This final rule provides for the issuance of Security Directives and Information Circulars to enable air carriers and the security community to coordinate responses to threats against civil aviation. This rule also requires mandatory compliance with the countermeasures prescribed in Security Directives and prohibits the release of the information contained in both Security Directives and Information Circulars to unauthorized persons. This action is necessary to simplify and expedite existing procedures, to ensure that appropriate officials take specific measures to counter terrorism directed at civil aviation, and to prohibit the unauthorized disclosure of sensitive security information. This regulation is intended to increase protection of passengers and crewmembers traveling in air transportation and air commerce.

DATES: Effective July 10, 1989. Comments must be submitted by August 9, 1989.

ADDRESSES: Comments on this final rule should be mailed or delivered, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Room 915-G, Docket No. [25953], 800 Independence Ave. SW., Washington, DC 20591.

Comments may be examined in the Rules Docket, Room 915-G, weekdays (except Federal holidays) between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Quinten T. Johnson, Civil Aviation Security Division (ACS-100), Office of Civil Aviation Security, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591; telephone (202) 267-8058.

SUPPLEMENTARY INFORMATION:

Background

The dramatic increase in international terrorism since the 1970's has also affected civil aviation. The explosion and crash of Pan American World airways (Pan Am) Flight 103 in Lockerbie, Scotland, in December 1988 illustrate the vulnerability of civil aviation to terrorist acts. The threat is both sophisticated and multifaceted.

In order to support aviation security efforts, the FAA Intelligence Division analyzes classified and unclassified information on threats against civil aviation. This information comes from a variety of sources, including air carriers, law enforcement agencies, and other Federal agencies. If the Intelligence Division determines the information is credible, it disseminates it to air carriers. Prior to the adoption of today's regulation, notification was made through Security Bulletins that discussed both general security concerns, for which there were no specific remedies, and specific threats which could be countered by particular remedies. Since 1986, 93 bulletins have been issued, approximately one-third of which addressed specific threats for which countermeasures were possible. Air carriers, however, were not required to acknowledge Security Bulletins or comply with the actions recommended in them.

Security Bulletins were sent to U.S. air carrier corporate security officers, the Air Transport Association of America, certain other Federal agencies, and FAA security personnel. In addition, the State Department transmitted the Security Bulletins to appropriate overseas posts. Upon receipt of the Security Bulletins, each air carrier's corporate security officer determined whether any further dissemination was necessary. Occasionally, the FAA included its own recommendations for specific actions. Although the FAA believes the air carriers have been responsive to the actions recommended by Security Bulletins, mandatory compliance requires amendments to the air carrier's overall security program.

The Civil Aviation Security Program, referenced in the Federal Aviation Regulations (FAR), was initated in 1973. Part 108 of the FAR was promulgated in 1981 (46 FR 3782; January 15, 1981) and requires certain U.S. air carriers to adopt and use FAA-approved security programs to screen passengers and property, control access to airplanes and facilities, and prevent criminal acts against civil aviation. The FAA can amend an individual carrier's security program if it determines that there is an emergency requiring immediate action to protect safety in air transportation or air commerce (see § 108.25), and compliance with such amendments is mandatory. It is not customary, however, for the FAA to amend a carrier's overall security program with flight-specific, date-specific, or site-specific information. Information of this type has been distributed through the Security Bulletin system.

On April 3, 1989, Secretary of Transportation Samuel K. Skinner announced a number of aviation security initiatives to ensure protection of travelers on U.S. air carriers. Among these initiatives, and the subject of a separate rulemaking action, was the commitment to propose requiring the widespread deployment of explosives detection systems. Another initiative, the establishment of a mandatory Security Directive system, is the subject of this rulemaking action.

Discussion of the Amendments

When threats against civil aviation become known, it is crucial that the information and any appropriate countermeasures be disseminated as soon as possible to air carrier security personnel. A system that will allow the FAA to disseminate critical threat information and, when necessary, establish mandatory security countermeasures responsive to that threat in a single document, will improve and simplify the current process. In order to ensure that the wide variety of threats can be effectively countered, the FAA will issue two kinds of security alerts—Information Circulars and Security Directives.

Information Circulars will be used to notify U.S. air carriers of general situations for which FAA will not prescribe mandatory countermeasures. The purpose of Information Circulars will be to provide air carriers with general information relevant to a civil aviation security.

Security Directives will be used to notify U.S. air carriers of information on specific credible threats that are limited by such factors as location, number or identity of carriers, method of attack, or duration of time. Security Directives will set forth mandatory countermeasures and will eliminate the need to amend the air carriers' ongoing security programs. Air carriers will be required to acknowledge receipt of Security Directives and to notify the FAA of how they implemented the countermeasures prescribed by the FAA. In unusual situations, such as when an air carrier is precluded from implemenitng the prescribed countermeasures, the air carrier shall submit alternative countermeasures for the approval of the Director of Civil Aviation Security. The air carrier is required to submit any proposed alternative measures within the time period specified in the Security Directive. Air carriers will also be required to distribute the information to the personnel specified in Security Directives and to others with an operational need to know. Personnel with an operational need to know are those personnel with security-related responsibilities for air transportation operations affected by the Security Directive. Such personnel could include the in-flight security coordinator (ISC) (pilot in command), the ground security coordinator (GSC), airline and airport security personnel, and Federal, State, or local law enforcement officials.

In order to protect the sensitive nature of Security Directives and Information Circulars, their availability will be restricted to air carriers and personnel with an operational need to know, and release of any information contained in them without the prior written authorization of the Director of Civil Aviation Security will be prohibited.

By adopting a two-tiered system for disseminating threat information, the FAA believes the civil aviation security community will be better able to distinguish between information that is general in nature and that which has been assessed to require a specific security response. As a result, the security community and the air carriers will have a better understanding of how to coordinate their actions in response to specific threats. By prohibiting unauthorized disclosure, the FAA will be able to protect intelligence sources and ensure that countermeasures can be effectively implemented.

Good Cause Justification for Immediate Adoption and No Notice

Under the current regulatory scheme, the FAA may amend an air carrier's approved security program and require the carrier to take certain steps that address a specific threat to civil aviation security. However, the FAA has determined that the most effective method of ensuring that threats are addressed in a complete and uniform manner requires amendment of Part 108 of the Federal Aviation Regulations. Because the general level of the threat to U.S. air carriers operating in air commerce and air transportation could rapidly increase, the FAA has determined that good cause exists to make this final rule effective in less than 30 days. In addition, this final rule is being adopted without prior notice and opportunity for public comment. For the reasons stated above and because immediate action is necessary to protect passengers and crewmembers traveling in air transportation, the FAA believes prior notice and opportunity for public comment are impracticable and, furthermore, are contrary to the public interest.

The Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979) provide that, to the maximum extent possible, operating administrations of the Department of Transportation (DOT) should provide an opportunity for public comment on regulations issued without prior notice. Thus, the FAA has provided a 30-day period during which interested persons may comment on the final rule.

Procedure for Submitting Comments

In accordance with the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, February 26, 1979), interested persons are invited to comment on this final rule by August 9, 1989. Comments should identify the regulatory docket number and be submitted in triplicate to the Rules Docket (see **ADDRESSES**). Commenters wishing the FAA to acknowledge receipt of their comments must include a self-addressed, stamped postcard containing the following statement: "Comments to Docket No. 25953". All comments will be available for examination, both before and after the closing date, in the Rules Docket.

Paperwork Reduction Act

Information collection requirements in Part 108 have previously been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and has been assigned OMB control number 2120-0098. The slight additional paperwork burden associated with § 108.18 was approved by OMB as an amendment to 2120-0098.

Regulatory Evaluation Summary

The following is a summary of the final cost impact and benefit assessment of a regulation amending FAR Part 108, Airplane Operator Security, to require that U.S. air carrier operators comply with measures to counter terrorist threats against civil aviation as prescribed in FAA Security Directives. Under the new requirements, air carriers will be required to acknowledge receipt of Security Directives within the time specified, distribute Security Directives to the appropriate individuals, implement mandatory countermeasures as furnished by individuals, implements mandatory countermeasures as furnished by the FAA (or, in unusual situations, alternative countermeasures if approved by the Director of Civil Aviation Security), and report to the FAA on those actions taken to comply with the Security Directives.

The FAA has determined that these amendments will affect approximately 20 air carriers, including both scheduled air carriers and demand charter service air carriers. The major impact is expected to be on six of these air carriers with significant operations to the Middle East, Europe, and South Asia, since most of the threats pertain to these parts of the world. These air carriers will receive most of the Security Directives issued by the FAA. The remaining air carriers have infrequent service to these areas, and thus, are expected to receive and be required to process only a small share of the Security Directives issued. The regulatory evaluation prepared for this rule estimates that the total cost of compliance to the affected U.S. air carriers is $48,260 in 1989 dollars; the present value of this amount is $29,654 over a 10-year period using a discount rate of 10 percent.

The primary benefits of these amendments will be the prevention of potential fatalities, injuries, and property losses resulting from criminal acts and acts of terrorism perpetrated against domestic aviation interests. The FAA has not been able to quantitatively estimate the extent to which this rule will be effective in deterring acts of criminal violence, air piracy, and sabotage. The FAA believes, however, that the estimated costs of compliance will be fully recovered if only one life, based on a generally accepted statistical value of a minimum of $1,000,000, is saved during that period as a result of the prevention of such acts. In addition to the estimated quantifiable benefits associated with the prevention of fatalities, injuries, and property losses during the 10-year period following its implementation, an unquantifiable benefit of this amendment will accrue to the affected air carriers based on the public perception of the additional safety. The increase in public confidence will likely result in increased air travel and revenues. The FAA recognizes that the benefits of these amendments are derived from both the system of distributing and processing Security Directives to U.S. carriers and implementation of mandatory security measures contained in Security Directives by U.S. air carriers. The FAA has estimated the cost to U.S. air carriers associated with distributing and processing Security Directives because this system is an essential part of, and integrally related to, achievement of the benefits of reduced fatalities, injuries, and property losses.

Regulatory Flexibility Determination

The FAA has determined that, under the criteria of the Regulatory Flexibility

Act (RFA), these amendments will not have a significant economic impact on a substantial number of small entities. The RFA requires agencies to specifically review rules that may have a "significant economic impact on a substantial number of small entities." None of the scheduled air carriers impacted by this rule are small entities. A portion of the charter air carriers which will be impacted by this rule are small entities. The estimated annual cost to these charter carriers from this regulation is $127 per company. This is significantly less than the threshold for significant economic impact. Even if twice the number of Security Directives were issued to these small entities, the total cost would still be significantly less than the threshold. Accordingly, it is certified that the amendment to Part 108 will not have a significant economic impact, positive or negative, on a substantial number of small entities and no further regulatory flexibility analysis is required.

Trade Impact Statement

This rule is expected to have no impact on trade opportunities for either U.S. firms doing business overseas or foreign firms doing business in the United States. These amendments affect only certain domestic air carriers subject to Part 108 of the FAR. Since the cost to these air carriers is small, there is expected to be no impact on trade opportunities for either U.S. firms overseas or foreign firms in the United States.

Federalism Implications

The amendments contained in this final rule revise the manner by which the FAA communicates security information and mandatory procedures to U.S. carriers. The FAA has determined that the final rule adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. In accordance with Executive Order 12612, the FAA has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Conclusion

For reasons discussed in the preamble, it is certified that this final rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In addition, because the final rule will not result in an annual effect on the economy of $100 million or more or result in a significant increase in consumer prices, the FAA has determined that the final rule is not a major rule under the criteria of Executive Order 12291. Since the final rule involves issues of substantial interest to the public, however, the FAA has determined that it is significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 108

Airplane operator security, Aviation safety, Air transportation, Air carriers, Airlines, Security measures, Transportation, Weapons.

The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends Part 108 of the Federal Aviation Regulations (14 CFR Part 108) as follows:

PART 108—AIRPLANE OPERATOR SECURITY

1. The authority citation for Part 108 continues to read as follows:

Authority: 49 U.S.C. 1354, 1356, 1357, 1358, 1421, 1424, and 1511; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983).

2. Section 108.1 is amended by adding paragraph (a)(4) to read as follows:

§ 108.1 Applicability.

(a) * * *

(4) Each certificate holder who receives a Security Directive or Information Circular and each person who receives information from a Security Directive or an Information Circular issued by the Director of Civil Aviation Security.

* * * * *

3. Part 108 is amended by adding § 108.18 to read as follows:

§ 108.18 Security Directives and Information Circulars.

(a) Each certificate holder required to have an approved security program for passenger operations shall comply with each Security Directive issued to the certificate holder by the Director of Civil Aviation Security, or by any person to whom the Director has delegated the authority to issue Security Directives, within the time prescribed in the Security Directive for compliance.

(b) Each certificate holder who receives a Security Directive shall—

(1) Not later than 24 hours after delivery by the FAA or within the time prescribed in the Security Directive, acknowledge receipt of the Security Directive;

(2) Not later than 72 hours after delivery by the FAA or within the time prescribed in the Security Directive, specify the method by which the certificate holder has implemented the measures in the Security Directive; and

(3) Ensure that information regarding the Security Directive and measures implemented in response to the Security Directive are distributed to specified personnel as prescribed in the Security Directive and to other personnel with an operational need to know.

(c) In the event that the certificate holder is unable to implement the measures contained in the Security Directive, the certificate holder shall submit proposed alternative measures, and the basis for submitting the alternative measures, to the Director of Civil Aviation Security for approval. The certificate holder shall submit proposed alternative measures within the time prescribed in the Security Directive. The certificate holder shall implement any alternative measures approved by the Director of Civil Aviation Security.

(d) Each certificate holder who receives a Security Directive or Information Circular and each person who receives information from a Security Directive or Information Circular shall—

(1) Restrict the availability of the Security Directive or Information Circular and information contained in the Security Directive or the Information Circular to those persons with an operational need to know; and

(2) Refuse to release the Security Directive or Information Circular and information regarding the Security Directive or Information Circular to persons other than those with an operational need to know without the prior written consent of the Director of Civil Aviation Security.

(Approved by the Office of Management and Budget under control number 2120-0098)

Issued in Washington, DC, on July 6, 1989

James B. Busey,

Administrator.

[FR Doc. 89-16260 Filed 7-6-89; 8:45 am]

BILLING CODE 4910-13

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 108

[Docket No. 25956; Notice No. 89-18]

RIN 2120-AD12

Explosives Detection Systems for Checked Baggage

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend the airplane operator security regulations to require U.S. air carriers required to conduct screening under a security program to use an explosives detection system (EDS), approved by the Administrator, to screen checked baggage on international flights. These procedures are designed to prevent the carriage of explosives aboard aircraft. Additionally, the FAA specifically requests comments on whether any final rule should require an EDS to screen checked baggage on domestic flights, as well as whether installation should be restricted to fewer flights, in operations selected on a threat-driven basis. The FAA expects to phase-in the implementation of this proposed rule, with 100 percent screening of international checked baggage at approximately 40 airports located in the United States and abroad as the goal for the initial implementation period. Following the initial implementation, the FAA foresees extending the applicability of explosives detection screening under an air carrier's approved security program to all checked baggage on all international flights. This action is needed due to the increased sophistication of terrorist acts, and it responds to Congressional legislation enacted on June 30, 1989. The intended effect is to increase the safety of passengers and crewmembers aboard U.S. air carriers conducting international flights.

DATE: Comments must be submitted on or before August 7, 1989.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 25956, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 25956. Comments may be examined in Room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Quinten T. Johnson, Civil Aviation Security Division (ACS-100), Office of Civil Aviation Security, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, DC 20591; telephone (202) 267-8058.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed rules by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25956." The postcard will be date stamped and mailed to the commenter.

Availability of NPRM's

Any interested person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center (APA-430), 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267-3484. Requests must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Statement of the Problem

Attacks against international civil aviation have increased in sophistication over the past decade. As a result, security has become an even greater concern of the aviation community. In recent years, sophisticated explosive devices have been used to damage or destroy civilian airliners resulting in the loss of many lives. For example, 259 people on board Pan American World Airways (Pan Am) Flight 103 plus 11 persons on the ground in Lockerbie, Scotland, were killed by the explosion and subsequent crash of that airliner.

The attack against Pan Am 103, as well as other similar incidents, demonstrate the increasing need to protect the safety and security of passengers, aircraft, and crewmembers aboard U.S. air carriers. Effective explosives detection equipment would help address this need.

History

The FAA's Civil Aviation Security Program, initiated in 1973, requires certain U.S. air carriers to conduct security screening of passengers and their carry-on baggage to prevent or deter the carriage aboard aircraft of any explosive, incendiary, or deadly or dangerous weapon on or about any individual's person or accessible property. Part 108 of the Federal Aviation Regulations (FAR) (14 CFR Part 108), which pertains to U.S. air carriers, was promulgated in 1981 (46 FR 3782; January 15, 1981).

For many years, the passenger screening system was very effective in countering the threat to domestic and international civil aviation, which primarily came from hijackers. In recent years, this threat has expanded to include aircraft bombings. To meet this threat, new methods of detection are required to detect explosive devices.

The U.S. Government has actively supported research and development efforts in explosives detection. For example, over the last 4 years, the FAA has spent over $30 million on research and development related to explosives detection. The need for more effective explosives detection equipment also has received worldwide attention. In February 1989, the International Civil Aviation Organization (ICAO), convened a special session of its Council to discuss acts of sabotage directed against international civil aviation and the need to expedite research and development on the detection of explosives. In March, ICAO

held a meeting of world experts in explosives detection to address the issue. Similar discussions have taken place in European organizations.

There have been significant technological advancements made in explosives detection equipment. The FAA has tested several of these systems, and has decided to purchasse six Thermal Neutron Analysis (TNA) units for initial installation at selected airports. The TNA equipment was tested at San Francisco International and Los Angeles International Airports and was shown to have the highest degree of explosives detection capability currently possible for detecting known civilian and military explosives, manufactured here and abroad.

On March 24, 1989, the Victims of Pan Am Flight 103, an unincorporated association of 300 persons whose relatives were killed on that flight, petitioned the FAA to, among other things, require "that all checked baggage be examined by physical inspection, a TNA device, or a colorized electronic x-ray." While the notice addresses that aspect of the petition, it does not address other issues raised by the Victims of Pan Am Flight 103 petition. Hence, this action is not intended to dispose of that petition, a summary of which has been published in the **Federal Register** for comment so that all issues can be thoroughly discussed by interested commenters [54 FR 24354; June 7, 1989].

Related Activities

The tragedy of Pan Am Flight 103 is a global reminder that civil aviation, despite detailed and sophisticated security procedures, is still vulnerable to criminal or terrorist acts. A comprehensive review of security procedures has been conducted to determine where existing procedures may be improved and where new procedures may be warranted. On April 3, 1989, Secretary of Transportation Samuel K. Skinner announced a number of aviation security initiatives to ensure protection of travelers at airports in the United States and other countries. Most significant among these initiatives was the commitment to propose requiring the widespread deployment of explosives detection systems (EDS). A second major initiative, the establishment of a mandatory security bulletin system, is the subject of a separate rulemaking action.

Congressional Activity

On June 30, 1989, the President signed legislation that included a provision relating to the installation and use of explosive detection equipment [sic]. The legislation, Pub. L. 101–45, provided that "Not later than thirty days after the date of the enactment of this Act, the Federal Aviation Administrator shall initiate action, including such rulemaking or other actions as necessary, to require the use of explosive detection equipment that meets minimum performance standards requiring application of technology equivalent to or better than thermal neutron analysis technology at such airports (whether located within or outside the United States) as the Administrator determines that the installation and use of such equipment is necessary to ensure the safety of air commerce. The Administrator shall complete these actions within sixty days of enactment of this Act[.]" As a result of the Congressionally-mandated timeframe for final action, the comment period in this rulemaking is shorter than usually provided.

Current Requirements

Presently, Part 108 requires each holder of an FAA air carrier operating certificate required to conduct screening to use the procedures, facilities, and equipment described in its approved security program to prevent or deter carriage aboard airplanes of any explosives, incendiaries, or deadly or dangerous weapons.

General Discussion of the Proposals

The FAA is proposing to amend Part 108 to require air carriers conducting scheduled or public charter operations in international service with aircraft having a passenger seating configuration of more than 60 seats to use an EDS that meets performance criteria and standards developed by the Administrator to screen checked baggage under the certificate holder's approved security program. Although not part of the current proposal, the FAA is considering the advisability of extending EDS screening to domestic flights as well. Therefore, the FAA asks commenters to address this issue. Any final rule adopted in this proceeding could include EDS on domestic flights. However, the current proposal, if adopted, would require air carriers to use an EDS to detect explosives only in international operations.

If adopted, the following minimum performance criteria would be established for the system:

1. The system must be automated.
2. It must detect defined quantities and configurations of FAA-defined explosives.
3. It must be safe for operators and baggage.

More detailed information about the capabilities and use of the system would be incorporated into each air carrier's approved security program. In accordance with 14 CFR § 191.5, the FAA will not publish the full performance criteria or detailed operational information in any document generally available to the public. The Director of Civil Aviation Security has determined that disclosure of this information would be detrimental to the safety of persons traveling in air transportation or intrastate air transportation.

For the same reasons, the specific locations and numbers of the units would not be available to the public. It is the FAA's intent to require deployment initially at the busiest international airports in the United States and at designated airports outside the United States that are served by U.S. air carriers. This would potentially require installation of EDS at approximately 40 airports located in the United States and abroad. The specific compliance dates, locations, and phase-in schedule would be described in each air carrier's approved security program. The FAA and the Department of Transportation have initiated discussions with foreign governments and will continue to consult with foreign governments to facilitate implementation of these procedures.

No matter which alternative is selected, the FAA expects to phase-in the implementation of this proposed rule, with 100 percent screening of international checked baggage at designated airports as the goal for the initial implementation period. Following the initial implementation, the FAA foresees extending the applicability of explosives detection screening under an air carrier's approved security program to all checked baggage on all international flights unless a more limited installation alternative is selected, in which case EDS screening would apply to additional flights on a threat-driven basis. Although not part of the current proposal, the FAA is also seeking comments on the advisability of extending the EDS requirements to all checked baggage on all domestic flights as well. The proposed rule is a broad enablement for the FAA to require air carriers to use an EDS. If this proposed rule is issued without change as a final rule, the FAA would have authority to require U.S. air carriers, by amending each air carrier's approved security program, to use an EDS to screen all checked baggage on all international flights for which screening is required.

In determining whether and when to require the installation of EDS units at particular airports beyond the initial deployment described above, the FAA would consider a variety of factors. These factors would include where necessary the successful consultation with affected foreign governments, as well as the level of vulnerability at the particular location and the projected level of usage of the EDS equipment. The level of usage is a function of the number of passengers enplaned and is therefore related to the cost per passenger of EDS screening for flights from that location.

In order to elicit public participation and to get the broadest spectrum of response regarding the economic costs and benefits involved in acquiring and using state-of-the-art EDS, the FAA has initiated this rulemaking action. State-of-the-art EDS are expensive to acquire and to operate. The use of such systems may have other effects as well; for example, their use on domestic flights may require earlier check-in times than currently required. However, the FAA analysis projects that the number of EDS at affected airports would be sufficient to minimize passenger delay and avoid disruptions. The FAA requests comments on the degree to which EDS should be used for various types of flights.

Section 108.7

New paragraph (b)(8) of this section would require certificate holders to describe in their approved security program the procedures, facilities, and equipment used by the certificate holder to comply with the new EDS requirements.

Section 108.20

This new section would mandate that certificate holders required to conduct screening under an approved security program use an approved EDS to detect explosives in checked baggage on international flights under the air carrier's approved security program. Because of the costs involved and the fact that different categories of airports would require varying numbers of these systems, this proposal would not require each individual certificate holder to own an EDS, and would not preclude use of each EDS by several air carriers.

Regulatory Evaluation Summary

This section summarizes the preliminary cost and benefit assessment of a proposed revision to Part 108 of the Federal Aviation Regulations that would require U.S. air carriers required to conduct screening under an approved security program to use an explosives detection system (EDS) approved by the Administrator, to screen checked baggage on international flights. The proposed addition of new paragraph 108.7(b) would require affected air carriers to use explosives detection systems in accordance with the provisions established by the Administrator and contained in their approved security programs. Since the FAA is also requesting comment in broadening the scope of coverage to include screening domestic baggage with EDS, a preliminary evaluation of the cost and benefit of such an extension is included. In addition, the evaluation considers the cost and benefits of a narrower EDS system, in which screening would be conducted only for international operations at airports selected on a threat-driven basis.

The primary objective of this proposed rule is the prevention of criminal acts or acts of terrorism against U.S. air carriers by individuals using explosive devices. Toward this end, the FAA has conducted extensive research aimed at detecting explosives. This research has concentrated on EDS devices, including the Thermal Neutron Analysis (TNA) system and vapor detection systems, as well as advanced x-ray systems. The TNA device is the most advanced explosives detection system now available. Therefore, the FAA has elected to analyze three alternative solutions for explosives detection using TNA systems over the 10-year period of 1990 to 1999. These are:

I. *Domestic and International Alternative.* Install EDS at 427 airports in the U.S. and at airports in 95 foreign countries over a 10-year phase-in period. (100% checked baggage screening of U.S. domestic and international flights, eventally requiring 1,250 DES by 1999.)

II. *International Alternative (The Current Proposal).* Install only enough EDS to screen U.S. carrier international flights at domestic and foreign airports over a three year phase-in period. (100% checked baggage screening of all U.S. international flights, eventually requiring 400 EDS by 1999.)

III. *Threat-Driven Alternative.* Install 200 EDS at an unspecified number of domestic and foreign airports over a three year phase-in period, based on a threat-driven approach. (100% checked baggage screening of all international flights at selected airports, eventually requiring 270 EDS to be installed by 1999.)

Alternative II is the Alternative being proposed. The costs and number of machines being proposed in Alternative III are a subset of those in Alternative II. Alternative I is presented to provide information about and to invite comment on extending the EDS requirement to domestic flights.

The methods and assumptions used in the analyses for the alternatives revisions affecting Part 108 have been developed by the FAA. A major consideration guiding the conduct of this analysis is the assumption that 100% screening of checked baggage on flights where passenger screening is currently required would be conducted under all three scenarios at those airports where EDS are to be installed. The analyses assume enough machines to take into account peak hour travel and the projected growth in travel; this would ensure minimal delays. Preliminary cost factors were obtained from manufacturers and research organizations. Information for the formulation of benefits was obtained from the safety records of the International Civil Aviation Organization and the FAA. The costs and benefits of each of these Alternatives have been analyzed over the 10-year span of 1990 to 1999.

To estimate the potential benefits of the proposal and the Alternatives, the FAA reviewed the safety record for the 10 year period between 1979 and 1988. This review reveals that 19 separate criminal acts and incidents of terrorism using explosives were perpetrated against U.S. air carriers during this period. The FAA has classified these incidents into Class I and Class II categories. The Class I category includes those incidents, such as the explosion aboard Pan American Flight 103 that involve the loss of an entire aircraft and a large number of fatalities. Class II accounts for all other incidents in which airplanes were only partially damaged or the incident was partially averted such as explosions that occurred outside the aircraft (usually somewhere in the airport itself). These two types of incidents vary significantly both in terms of costs and their frequency. The FAA estimates that those Class II incidents that would occur over the 10 years from 1990 to 1999 would result in a discounted cost of $31.0 million.

The losses associated with Class I or major incidents would, of course, be substantially greater. For example, the loss on human life and property, and lost revenues for the loss of U.S. carriers' market share associated with Pan American Flight 103 are estimated to have a present value range of $411.0 million to $520.0 million depending on the extent of market reduction. It is difficult to predict the extent to which international terrorism would increase.

Nevertheless, the FAA believes that in the absence of additional preventive measures, terrorists attacks against U.S. air carriers would continue. The FAA cannot predict the number and severity of future incidents. The frequency of such incidents would depend on several factors, including, but not limited to, the world-wide political climate, the skill and technical sophistication of terrorist organizations, and the success of efforts to avert these incidents. However, in this case, the present value of the benefit associated with the prevention of these incidents would be as high as $1.071 billion. Table I of this summary shows the estimated costs and benefits of these Alternatives:

TABLE I.—SUMMARY OF COSTS AND BENEFITS

[Net present value in millions of dollars]

Options	Estimated costs	Percentage of total incidents avoided for breakeven*	Calculations
Alternative I (Domestic and international alternative)	$1,004	94	$1,004/$1,071=94%
Alternative II (International alternative—the current proposal)	$476	45	$476/$1,071=45%
Alternative III (Threat-driven alternative)	$346	33	$346/$1,071=33%

* Total incidents is equal to two Class I incidents and all Class II incidents avoided. The discounted present value of these incidents avoided is $1,071 million. The percentages do not represent a judgment of the relative effectiveness of each Alternative.

Table I examines how many Class I and Class II incidents would have to be prevented by each Alternative for the Alternatives to be cost beneficial. The percentages in the table do not represent a judgment of the relative effectiveness of each Alternative; they show the percentage of total incidents whereby each of the three Alternatives will have different breakeven points so as to become cost beneficial. The costs associated with each Alternative are compared with those benefits projected from avoiding two Class I incidents and a discounted present value of the $31 million worth of projected costs from Class II incidents. For the purposes of this analysis, this is the projected universe of incidents.

For the current proposal, Alternative II, to be cost beneficial, it would have to prevent nearly one-half (45 percent) of this projected set of Class I and Class II incidents. If EDS coverage is expanded to include domestic operations (Alternative I), this option would have to prevent nearly the entire set of Class I and Class II incidents to be cost effective. And, the costs associated with limiting installation of EDS to those international operations at airports selected on a threat-driven basis (Alternative III) is roughly one-third of the assumed set of incidents.

Because the number and potential severity of future attacks and the scope and location of international threats are difficult to predict and due to the sensitive nature of this proposal, the FAA has elected not to attempt to quantify which Alternative would be the most cost effective in reducing the risk of future terrorist attacks. For similar reasons, the FAA will not assign values to the probabilities of a Class I or Class II event for each Alternative scenario.

In addition to these quantifiable benefits, the FAA expects further significant unquantifiable benefits. The rule would result in public recognition of additional safety factors implemented by U.S. air carriers. The public's subsequent higher confidence levels should result in more passengers and higher revenues.

The deterrence of terrorist attacks against U.S. civil aviation also has very significant public and foreign policy benefits. An attack on an American aircraft disrupts the lives and plans of great numbers of people who have suffered no direct loss in the incident. (Indeed, this is presumably one of the goals of those who perpetrate acts of terrorism.) The FAA cannot calculate the cost of uncompleted business, disrupted education, and deferred vacations. Nevertheless, that cost is unquestionably significant, and it will be avoided if the public retains a high level of confidence in the safety of the air transportation system. Maintaining and improving the public's confidence is a central goal in this rulemaking.

The costs of compliance with the three Alternatives subject to this analysis are constructed on the assumption that EDS would be placed within the sheltered confines of affected airports in accordance with the configuration of the terminal and the needs of air carriers. There is uncertainty concerning the number of EDS that would require placement outdoors. The FAA has been unable to estimate the cost associated with protecting these systems from the effects of weather. Therefore, the FAA solicits information relating to the cost of sheltering EDS from the elements. In addition to comments on expanding the scope of EDS screening to domestic operations, or narrowing it to cover only operations selected on a threat-driven basis, specific comments are requested on the following issues:

1. The number of airports that would need to place EDS machines outdoors.

2. Estimates of costs associated with the construction of shelters.

The FAA requests information and comment about the technologies and systems for explosives detection. This information should address the maturity of the technology, the general capabilities of the system, the cost of the system, and the commercial availability of the system. Detailed, security sensitive information about the capabilities of various technologies should not be sent to the public docket, rather such security-sensitive information should be sent directly to the Director of Civil Aviation Security, FAA, 800 Independence Avenue SW., Washington, DC 20591, ATTENTION: Explosives Detection System for Checked Baggage Rulemaking.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to insure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires Federal agencies to review rules that may have a "significant economic impact on a substantial number of small entities". Issuance of the proposed revision of Part 108 of the FAR would affect some small air carriers. The FAA's Order prescribing small entity size standards identifies a small air carrier as one with nine or fewer operating aircraft. According to the FAA data for the period ending December 31, 1988, there were 54 air carriers subject to the rules of Part 121 that operated nine or fewer airplanes. These 54 carriers are the entities affected by the proposed rule.

The criteria for a "substantial number of small entities" is one-third of the small firms subject to the proposed rules, but no fewer than 11 firms. A review of the 54 small carriers engaged in scheduled and unscheduled service shows that only 10 firms would be subject to the proposal. Therefore, the proposed amendments to Part 108 would not affect a substantial number of small entities.

Trade Impact Statement

The FAA finds that this rule would only impact Part 121 operators and thus it is not likely to affect international trade. This proposed rule is expected to have no impact on trade opportunities for either U.S. firms doing business overseas or foreign firms doing business in the United States. While there would be an increased cost to U.S. air carriers as a consequence of this proposed rule, these increased costs would be offset by the increase of public confidence, the avoidance of incidents, and by the ability to reduce the use of certain costly security procedures now required by U.S. air carriers.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is major under Executive Order 12291. In addition, the FAA certifies that this proposal, if adopted, would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). An initial regulatory impact analysis of this proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 108

Air carriers, Airports, Air safety, Air transportation, Aviation safety, Baggage, Safety, Security measures, Transportation.

The Proposed Amendments

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 108 of the Federal Aviation Regulations (14 CFR Part 108) as follows:

PART 108—AIRPLANE OPERATOR SECURITY

1. The authority citation for 14 CFR Part 108 is revised to read as follows:

Authority: 49 U.S.C. 1354, 1356, 1357, 1421, 1424, and 1511; 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983).

2. Section 108.7 is amended by adding a new paragraph (b)(8) to read as follows:

§ 108.7 Security program: form, content, and availability.

* * * * *

(b) * * *

(8) The procedures and a description of the facilities and equipment used to comply with the requirements of § 108.20 regarding explosives detection systems.

3. Part 108 is amended by adding § 108.20 to read as follows:

§ 108.20 Use of explosives detection systems

When the Administrator shall require by amendment under § 108.25, each certificate holder, required to conduct screening under a security program, shall use an explosives detection system that has been approved by the Administrator to screen checked baggage on international flights in accordance with the certificate holder's security program.

Issued in Washington, DC, on July 6, 1989.

Raymond A. Salazar,

Director of Civil Aviation Security.

[FR Doc. 89–16261 Filed 7–6–89; 4:40 pm]

BILLING CODE 4910–13–M

federal register

Monday
July 10, 1989

Part VII

The President

Proclamation 5996—Captive Nations Week, 1989

Executive Order 12680—Administration of Foreign Assistance and Related Functions and Arms Export Controls

Executive Order 12681—Exclusions From the Federal Labor-Management Relations Program

Federal Register
Vol. 54, No. 130
Monday, July 10, 1989

Presidential Documents

Title 3—

The President

Proclamation 5996 of July 6, 1989

Captive Nations Week, 1989

By the President of the United States of America

A Proclamation

Each July, we Americans celebrate our Nation's independence and the blessings of self-government. As we give thanks for the rights and freedoms that citizens of this Nation have enjoyed for more than 200 years, we also recall our obligation to speak out for oppressed peoples around the world. We thus pause during Captive Nations Week to remember in a special way those peoples who suffer from foreign domination and from ideologies that are inimical to the ideas of national sovereignty and individual liberty.

Today, the leaders of the Soviet Union and other Communist governments are discovering that the voices of those who long for freedom and self-determination cannot be silenced. Around the world, men and women in captive nations are calling for recognition of their basic human rights. Their calls—the undeniable expression of just aspirations—are beginning to be heard.

In Afghanistan, the nightmarish years of Soviet occupation are over, and the Afghan people's demand for self-determination is drawing closer to realization. Unfortunately, a decisive end to the Afghans' long ordeal remains elusive while a puppet regime in Kabul continues the proxy devastation of their war-ravaged homeland.

In Africa, the people of Angola have a real chance to find peace after years of violent struggle against the ruling Marxist-Leninist regime. Our hopes for national reconciliation in Angola will remain tempered, however, as long as armed Cuban mercenaries continue to stalk the forests and veldt of that land and other countries on the African continent.

Communist expansionism has been frustrated in Southeast Asia, and today there is new hope that the people of Cambodia, Laos, and Vietnam will regain some day their long-denied political and religious freedom. Such hope has also returned for many of our neighbors to the south. In Nicaragua and other Latin American nations, popular resistance to attempts at repression by local dictators—as well as resistance to political and military interference from Cuba and the Soviet Union—has proved to be formidable.

In Eastern Europe, even as we see rays of light in some countries, we must recognize that brutal repression continues in other parts of the region, including the persecution of ethnic and religious minorities.

This week, we recall with deep sadness the infamous Molotov-Ribbentrop pact between Nazi Germany and the U.S.S.R. that doomed Poland, Estonia, Latvia, and Lithuania to dismemberment and foreign domination. The United States refuses to accept the subsequent incorporation by the Soviet Union of the Baltic States during World War II. Since their forcible annexation in 1940, the people of Lithuania, Latvia, and Estonia have faced political oppression, religious persecution, and repression of their national consciousness. But decades of oppression have not broken the great spirit of the Baltic people and other victims of Soviet domination.

Hundreds of thousands of men and women around the world continue to demonstrate publicly their desire for liberty and democratic government,

demanding freedom of speech, assembly, and movement, as well as the freedom to practice their religious beliefs without fear of persecution.

Their voices are being heard; there have been improvements in human rights practices by the ruling regimes in many of these countries. But justice demands that more positive steps be taken. The fundamental rights and dignity of individuals must be recognized in law and respected in practice; the peoples living in captive nations not only ask for but are entitled to lasting protection of their God-given rights.

The United States shall continue to call upon all governments and states to uphold the letter and the spirit of the United Nations Charter and the Helsinki Final Act until freedom and independence have been achieved for all captive nations.

Affirming all Americans' determination to keep faith with those who are denied their fundamental rights, the Congress, by Joint Resolution approved July 17, 1959 (73 Stat. 212), has authorized and requested the President to issue a proclamation designating the third week in July of each year as "Captive Nations Week."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning July 16, 1989, as Captive Nations Week. I call upon the people of the United States to observe this week with appropriate programs, ceremonies, and activities, and I urge them to reaffirm their devotion to the aspirations of all peoples for justice, self-determination, and liberty.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of July, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-16298
Filed 7-7-89; 10:20 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12680 of July 5, 1989

Administration of Foreign Assistance and Related Functions and Arms Export Controls

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including section 621 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2381), and section 301 of Title 3 of the United States Code, and in order to delegate certain functions to the Secretary of State and the Secretary of Defense, it is hereby ordered as follows:

Section 1. Section 1-102(a) of Executive Order No. 12163, as amended, is further amended by amending paragraphs (9) and (10) to read as follows:

"(9) section 536 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100-461), to be exercised by the Administrator of the Agency for International Development within IDCA; and

"(10) the first proviso under the heading 'Population, Development Assistance' contained in Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100-461), to be exercised by the Administrator of the Agency for International Development within IDCA."

Sec. 2. Section 1-201(a) of Executive Order No. 12163, as amended, is further amended by amending paragraphs (26), (27), (28), and (29) to read as follows:

"(26) sections 513, 526, 527, 539, 556, 564, and 565 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100-461);

"(27) the fourth proviso under the heading 'Southern Africa, Development Assistance' contained in Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100-461);

"(28) the proviso relating to tied aid credits under the heading 'Economic Support Fund' contained in Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100-461), which shall be exercised in consultation with the Administrator of the Agency for International Development within IDCA;

"(29) subsection (c)(2) under the heading 'Foreign Military Sales Debt Reform' contained in Title III of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (Public Law 100-202), and section 573(c) of that Act, both of which shall be exercised in consultation with the Secretary of Defense. In addition, section 573(c) shall be exercised in consultation with the Director of the United States Arms Control and Disarmament Agency;"

Sec. 3. Section 1-201(a) of Executive Order No. 12163, as amended, is further amended by inserting the following new paragraphs at the end thereof:

"(30) Section 566(d) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (as enacted in Public Law 100-461), which shall be exercised in consultation with the Secretary of Defense: and

"(31) sections 4101(b), 4205(d), 4307(a), and 4309 of the Anti-Drug Abuse Act of 1988 (Public Law 100-690). The Secretary of State in implementing the functions delegated to him under section 4205(d) shall consult with the Secretary of Defense."

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Sec. 4. Section 1-301 of Executive Order No. 12163, as amended, is further amended by amending section (f) to read as follows:

"(f) The functions conferred upon the President under section 566(c) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100-461)."

Sec. 5. Section 1 of the Executive Order No. 11958, as amended, is further amended:

(1) by inserting in the first paragraph "and related legislation," after "the Act,".

(2) by inserting the following new paragraphs at the end of the section:

"(q) Those under Section 2(b)(6) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(6)) to the Secretary of State.".

"(r) Those under Section 588(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100-461), to the Secretary of Defense, except with respect to the determination of an emergency as provided by subsection (b)(3). The Secretary of Defense in implementation of the functions delegated to him under section 588(b) shall consult with the Secretary of State."

Sec. 6. Section 1(e) of Executive Order No. 11958, as amended, is further amended by inserting "and section 580 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100-461)," after "Section 23 of the Act".

Sec. 7. Section 1(l) of Executive Order No. 11958, as amended, is further amended by striking out the semicolon at the end of the second sentence of paragraph (l) and inserting a period in lieu thereof, and by adding the following sentence at the end of paragraph (l):

"The authority to undertake activities to ensure compliance with established export conditions may be redelegated to the Secretary of Defense, or to the head of another department or agency as appropriate, which shall exercise such functions in consultation with the Secretary of State;".

Sec. 8. Section 2(a) of Executive Order No. 11958, as amended, is further amended by deleting "and" after "International Development Cooperation Agency" and inserting "and the Chairman of the Export-Import Bank," after "Arms Control and Disarmament Agency,".

THE WHITE HOUSE,
July 5, 1989.

[FR Doc. 89-16299
Filed 7-7-89; 10:21 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12681 of July 6, 1989

Exclusions From the Federal Labor-Management Relations Program

By the authority vested in me as President by the Constitution and laws of the United States of America, including Chapter 71 of title 5 of the United States Code, and having determined under section 7103(b)(1) of said Chapter, that certain subdivisions of the National Preparedness Directorate of the Federal Emergency Management Agency have as a primary function intelligence, counterintelligence, investigative, or national security work, and having determined that the provisions of chapter 71 of title 5 of the United States Code cannot be applied to certain subdivisions of the National Preparedness Directorate of the Federal Emergency Management Agency, in a manner consistent with national security requirements and considerations, it is hereby ordered that Executive Order No. 12171, as amended, is further amended by adding to Section 1-2 "Exclusions" the following new subsection 1-214:

"1-214. Subdivisions of the National Preparedness Directorate of the Federal Emergency Management Agency.

"(a) Office of Associate Director.

"(b) Office of Analysis and Support.

"(c) Office of Mobilization Preparedness.

"(d) The following offices of the Office of Systems Engineering.

"(1) Office of the Assistant Associate Director.

"(2) NEMS-DCWS Program Office.

"(3) Systems Design Division.

"(4) Telecommunications Systems Development Division.

"(5) Systems Support Division.

"(e) The following offices of the Office of Operations.

"(1) Office of the Assistant Associate Director.

"(2) Planning Division.

"(3) The following branches of the Readiness Division.

"(A) Exercise Branch.

"(B) Operations Branch.

"(C) National Warning Center.

"(D) Alternate National Warning Center.

"(4) Mobile Emergency Response Support Operations Divisions.

"(5) Federal Agency Support and Coordination Division.

"(f) The following offices in the Office of Information Resource Management.

"(1) Office of the Assistant Associate Director.

"(2) Information Systems Policy, Planning and Evaluation Policy and Planning Branch.

"(3) Information Systems Application Branch.

"(4) EICC Support Center."

THE WHITE HOUSE,
July 6, 1989.

[FR Doc. 89-16301
Filed 7-7-89; 10:22 am]
Billing code 3195-01-M

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1988 to Dec. 31, 1988. The CFR volume issued January 1, 1988, should be retained.

[3] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1988. The CFR volume issued January 1, 1987, should be retained.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[7] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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Presidential Documents

Title 3—

The President

Proclamation 5997 of July 6, 1989

To Amend the Generalized System of Preferences

By the President of the United States of America

A Proclamation

1. Pursuant to section 504(a)(1) of the Trade Act of 1974 (the 1974 Act) (19 U.S.C. 2464(a)(1)), the President may withdraw, suspend, or limit the application of the duty-free treatment afforded under the Generalized System of Preferences (GSP) with respect to any article or any country upon consideration of the factors set forth in sections 501 and 502(c) of the 1974 Act (19. U.S.C. 2461 and 2462(c)). Pursuant to section 504(c)(5) of the 1974 Act (19 U.S.C. 2464(c)(5)), a country that has not been treated as a beneficiary developing country with respect to an eligible article may be redesignated with respect to such article if imports of such article from such country did not exceed the limitations in section 504(c)(1) of the 1974 Act (19 U.S.C. 2464(c)(1)) (after application of section 504(c)(2) of the 1974 Act (19 U.S.C. 2464(c)(2))) during the preceding calendar year.

2. Pursuant to section 504(a)(1) of the 1974 Act, after taking into account the factors set forth in section 501 of the 1974 Act, I have determined that it is appropriate to withdraw the duty-free treatment afforded under the GSP to imports from all designated beneficiary developing countries of the cigarette leaf tobacco provided for in subheading 2401.20.40 of the Harmonized Tariff Schedule of the United States (HTS). Further, I have determined, pursuant to section 504(c)(5) of the 1974 Act, that a certain country should be redesignated as a beneficiary developing country with respect to a specific previously designated eligible article. This country had been previously excluded from benefits of the GSP with respect to such eligible article pursuant to section 504(c)(1) of the 1974 Act.

3. Section 201(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (the Implementation Act) (Public Law No. 100–449, 102 Stat. 1851) authorizes the President to proclaim such modifications or continuance of existing duties, such continuance of existing duty-free or excise treatment, and such additional duties, as the President determines are necessary or appropriate to carry out Article 401 of the United States-Canada Free-Trade Agreement (including the schedule of duty reductions with respect to goods originating in the territory of Canada set forth in Annexes 401.2 and 401.7).

4. Pursuant to section 201(a) of the Implementation Act, I have determined that it is necessary to provide for the continued staged reduction in duties on certain tobacco for goods originating in the territory of Canada.

5. Section 604 of the 1974 Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the provisions of that Act, of other acts affecting import treatment, and of actions taken thereunder.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States, including but not limited to Title V and section 604 of the 1974 Act, and section 201 of the Implementation Act:

(1) In order to withdraw the duty-free treatment afforded under the GSP to certain cigarette leaf tobacco and in order to reflect that a country should no

longer be treated as ineligible for benefits of the GSP with respect to a previously eligible article, the HTS is modified as provided in Annex I to this Proclamation.

(2) In order to provide for the continued staged reductions on Canadian goods in particular HTS subheadings (as established in Annex I to this Proclamation), effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after the dates specified in Annex II to this Proclamation, the rate of duty in the HTS set forth in the Rates of Duty 1-Special subcolumn followed by the symbol "CA" in parentheses for each of the HTS subheadings enumerated in such Annex II shall be deleted and the rate of duty provided in such Annex inserted in lieu thereof.

(3) Any provisions of previous proclamations and Executive orders inconsistent with the provisions of this Proclamation are hereby superseded to the extent of such inconsistency.

(4) The amendments made by Annex I of this Proclamation shall be effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after the date that is 2 days after the publication of this Proclamation in the **Federal Register.**

(5) The amendments made by Annex II of this Proclamation shall be effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after the dates specified in such Annexes.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of July, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-16408
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Editorial note: For the President's remarks of July 7 on signing Proclamation 5997, see the *Weekly Compilation of Presidential Documents* (vol. 25, no. 27).

ANNEX I

Notes:

1. Bracketed matter is included to assist in the understanding of proclaimed modifications.

2. The following supersedes matter now in the Harmonized Tariff Schedule of the United States (HTS). The subheadings and superior descriptions are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special", and "Rates of Duty 2", respectively.

Effective as to articles entered, or withdrawn from warehouse for consumption, on or after the date that is 2 days after the publication of this Proclamation in the Federal Register.

Subheading 2401.20.40 is superseded by:

[Unmanufactured tobacco...:]
[Tobacco,...:]
[Not threshed...:]
[Other:]
"Not containing wrapper tobacco, or not containing over 35 percent wrapper tobacco:

2401.20.30	Cigarette leaf.....	44.1¢/kg + 92.9¢/kg on wrapper tobacco content	Free (E,IL) 39.6¢/kg + 83.6¢/kg on wrapper tobacco content (CA)	$1.10/kg + $5.35/kg on wrapper tobacco content
2401.20.50	Other, including cigar leaf.....	44.1¢/kg + 92.9¢/kg on wrapper tobacco content	Free (A,E,IL) 39.6¢/kg + 83.6¢/kg on wrapper tobacco content (CA)	$1.10/kg + $5.35/kg on wrapper tobacco content"

Conforming change: General note 3(c)(ii)(D) to the HTS is modified by deleting "2401.20.40 Brazil".

Annex II

Effective with respect to good originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the following tabulation.

For each of the following subheadings created by Annex I of this Proclamation, the rate of duty in the Rates of Duty 1-Special subcolumn in the HTS that is followed by the symbol "CA" in parentheses is deleted and the following rates of duty inserted in lieu thereof on the date specified below.

HTS Subheading	January 1, 1990	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
2401.20.30	35.2¢/kg + 74.3¢/kg on wrapper tobacco content	30.8¢/kg + 65¢/kg on wrapper tobacco content	26.4¢/kg + 55.7¢/kg on wrapper tobacco content	22¢/kg + 46.4¢/kg on wrapper tobacco content	17.6¢/kg + 37.1¢/kg on wrapper tobacco content	13.2¢/kg + 27.8¢/kg on wrapper tobacco content	8.8¢/kg + 18.5¢/kg on wrapper tobacco content	4.4¢/kg + 9.2¢/kg on wrapper tobacco content	Free
2401.20.50	35.2¢/kg + 74.3¢/kg on wrapper tobacco content	30.8¢/kg + 65¢/kg on wrapper tobacco content	26.4¢/kg + 55.7¢/kg on wrapper tobacco content	22¢/kg + 46.4¢/kg on wrapper tobacco content	17.6¢/kg + 37.1¢/kg on wrapper tobacco content	13.2¢/kg + 27.8¢/kg on wrapper tobacco content	8.8¢/kg + 18.5¢/kg on wrapper tobacco content	4.4¢/kg + 9.2¢/kg on wrapper tobacco content	Free

Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 89-069]

9 CFR Part 92

Importation of Swine Semen From China

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adding specific requirements for the importation of porcine semen from China to the regulations concerning importation of animal semen from countries where rinderpest or foot-and-mouth disease (FMD) exists. The requirements concern the respective responsibiltiies of the official veterinary organization of the People's Republic of China and of the United States Department of Agriculture, isolation and handling procedures for donor boars, blood and semen testing requirements for donor boars, and other matters related to importation of porcine semen from China. These amendments are necessary to ensure that porcine semen imported from China does not transmit FMD or other diseases to the United States.

EFFECTIVE DATE: July 5, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Samuel S. Richeson, Senior Staff Veterinarian, Import-Export Products Staff, Veterinary Services, APHIS, USDA, Room 759, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8144.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92 set forth, among other things, the conditions under which animal semen from countries affected with rinderpest or foot-and-mouth disease (FMD) may be imported into the United States. These requirements are contained in § 92.4(d). Generally, these requirements include importation under a United States Department of Agriculture (USDA) permit; inspection of the donor animals by a USDA veterinarian; determination by a USDA veterinarian that the donor animals have not been exposed to or vaccinated against rinderpest or FMD; isolation of the donor animals at a USDA-approved facility beginning prior to semen collection and continuing until blood tests have been completed with negative results; and supervision by a USDA veterinarian of semen collection, preparation for shipment, and shipment.

On March 28, 1989, we published in the **Federal Register** (54 FR 12639-12642, Docket Number 89-021) a proposal to add to Part 92 certain requirements specifically designed for importation of porcine semen from China.

Our proposal invited the submission of written comments, which were required to be postmarked or received on or before April 12, 1989. We subsequently reopened and extended that comment period to consider comments received by May 1, 1989, in another document published in the **Federal Register** on April 14, 1989 (54 FR 14968, Docket Number 89-058). In response to requests for a public hearing on the proposed rule, we published another document in the **Federal Register** on May 19, 1989 (54 FR 21626-21627, Docket Number 89-090), that announced a public hearing in Cedar Rapids, Iowa, on June 6, 1989, and extended the comment period until June 20, 1989.

Twenty-one persons spoke at the public hearing, and ninteen of these persons also submitted written comments by mail. We received a total of 95 written comments, of which 6 were solely requests for a public hearing or an extension of the comment period.

Of the 91 commenters with substantive comments, 52 supported the proposed rule and 39 either opposed the rule or requested that changes be made before publication of a final rule.

Those commenters supporting the proposed rule generally stated their belief that the requirements in the rule would be effective in preventing the introduction of disease associated with swine semen. Many commenters also stated that the importation of Chinese swine semen would provide benefits in the form of research opportunities and possibilities for improving domestic breeds of swine.

Those commenters opposed to the rule as proposed frequently addressed four issues: The risk of disease spread associated with imported semen; the adequacy of quarantine, testing, and other procedures contained in the proposed rule; the reliability of certifications by the official veterinary organization (OVO) of the People's Republic of China (PRC); and the relationship of Chinese swine semen import requirements to live Chinese swine import requirements.

Comments opposing the proposed rule and comments requesting change to the proposed rule are summarized and italicized below, followed by our response to each. No changes were made to the proposed rule in response to the comments.

The tests specified in the proposed rule may not be adequate to detect diseases in semen, particularly low-level infections. The full range of disease transmission possible through semen is unknown.

The final rule states that aliquots of each ejaculate of semen collected shall be submitted to the Foreign Animal Disease Diagnostic Laboratory (FADDL) for pathogen isolation tests for FMD, brucellosis, swine vesicular disease (SVD), hog cholera, Japanese encephalitis B, and pseudorabies. The test procedures in use at FADDL are recognized by the international scientific community, and extensive assessment of their use at FADDL has found them to be accurate. Some specific shortcomings of *in vitro* semen tests, and the procedures in place to compensate, are discussed below. It should be noted that the final rule contains requirements in addition to testing of the semen itself, i.e. premises and isolation facility requirements and serologic testing of the donor boars for diseases. Because of the possibility that unknown methods of disease transmission may exist, through semen or other means, APHIS import requirements employ a variety of diagnostic tools (clinical examination, serologic test, inoculation and observation of sentinel animals) that reveal disease transmission if it occurs,

even if the precise means of transmission is not understood.

Comment: Physical characteristics of swine semen do not permit in vitro semen testing procedures comparable to live animal quarantines.

In addition to testing the semen collected, the donor boars are also subjected to the same serologic tests required for imported live Chinese swine. The semen tests are not primarily *in vitro;* instead, they are based on the inoculation of pigs susceptible to the diseases of concern with raw semen from the donor boars, and observation and testing of the test pigs for signs of disease. The semen tests alone do not replace the quarantine required for live animals; instead, the tests are used in conjunction with quarantine and observation of the donor boars in China, serologic tests, and other requirements to reduce the overall risk of disease transmission through semen to a level comparable to or less than the risk associated with importation of live animals.

Comment: In vitro testing of semen aliquots provided to FADDL would not necessarily detect diseases, due to the cytotoxicity of semen to cell monolayers, the indeterminate number of blind passages necessary to detect pathogens, the reduction of sensitivity of in vitro tests caused by semen pooling, and the presence of natural antiviral activity in some boars' semen. A requirement for in vivo tests should be added, consisting of breeding female swine with the imported semen, quarantining them until they have farrowed normal litters, and subjecting the sows and their litters to physical, serologic, microbiologic, and pathologic evaluations throughout the quarantine.

We agree that swine semen is cytotoxic for cell culture and that the other problems described make the reliability of *in vitro* testing of swine semen questionable. That is why the semen tests conducted at FADDL rely on the more sensitive procedure of inoculating susceptible pigs with raw semen from donor boars, followed by observation of the test animals for clinical signs of disease and serologic, microbiologic, and pathologic evaluations of the test animals. Numerous studies have shown that host animals can become infected and show signs of diseases when infected by an inoculum that was negative by cell culture standards (Blackwell and Hyde, 1976; Blackwell, 1978; Hyde et al. 1975; McKercher et al. 1987; Mebus, unpublished). We believe that this *in vivo* semen test procedure is effective, and that there is no need for *in vivo* tests of impregnated sows and their litters.

Comment: The rule should require serologic testing of donor boars in China for African swine fever (ASF) and Japanese B encephalitis, and serum should be provided to FADDL for confirmatory tests for all tests performed in China.

The final rule does require hemagglutination inhibition tests for Japanese B encephalities to be performed in China, in accordance with § 92.4(d)(7)(iii)(E). Testing for ASF is not required because the PRC has certified China to be free of ASF and there are no reports from any source of ASF occurring in China. We believe that if ASF occurred in China, its existence would quickly become obvious, in view of the nature and virulence of the disease.

The rule requires two rounds of serological testing in China, during and 21 days after the end of semen collection. These tests are performed at laboratories designated by the OVO of the PRC, and use materials provided by FADDL for the FMD types C and Asia tests and the brucellosis and tuberculosis tests. The SVD tests are conducted at FADDL. In views of this testing regime and the other safeguards contained in the rule, we do not believe that a third round of confirmatory testing at FADDL is necessary.

Comment: APHIS cannot effectively monitor quarantine, testing, and certification requirements for the swine in China.

Under the final rule, the isolation and semen collection facility operates under the joint supervision of APHIS and PRC veterinarians, who ensure that the facility is operated in accordance with all requirements of the rule. APHIS and PRC veterinarians also supervise collection of the serum samples used for serologic tests in China and at FADDL, and APHIS veterinarians are responsible for the raw semen aliquots sent to FADDL for tests. The laboratories performing the tests in China were designated by the official veterinary organization of the PRC, the organization responsible for a wide variety of certification and enforcement activities related to export of animals and animal products from China. APHIS monitors foreign governments' veterinary programs in terms of their effectiveness in meeting our import requirements, and at this time we have no reason to doubt the effectiveness of such programs in the PRC.

Comment: The methods for certifying the PRC free of certain diseases (ASF, rinderpest, Teschen's) are not clear.

One of the requirements of the final rule is that the OVO of the PRC, the organization responsible for animal disease surveillance and reporting in China, must certify that the PRC is free of ASF, rinderpest, and Teschen's disease prior to any importation of Chinese swine semen. The OVO of the PRC has made this certification, based on the records they maintain on the status of animal diseases in China. It is APHIS policy to rely on the certifications of official veterinary organizations of foreign countries regarding the presence of diseases in those countries unless we have evidence or reports to the contrary, or unless the organization has a history of making certifications which are later proven invalid.

Nations have a vital economic interest in ensuring that the certifications provided by their OVOs are valid, because the trust placed in these certifications directly affects the extent to which a nation's animals and animal products will be allowed import into other countries. Based on experience with previous certifications provided by the OVO of the PRC, we believe that the certification regarding ASF, rinderpest, and Teschen's disease is reliable. In addition, outbreaks of these diseases are a subject of keen international interest due to the serious nature of the diseases, and are usually reported extensively in government and industry publications. There have been no recent reports of outbreaks of these diseases in China.

Comment: The proposed requirement that the donor board originate from premises free from FMD, SVD and hog cholera for 3 years, seems to rely only on epidemiologic data provided by China and may not reliably ensure disease freedom of the premises. Without an active disease surveillance model and serologic confirmation of signs of disease, these time and distance criteria are meaningless.

The premises of the donor boars have been certified by the OVO of the PRC to meet the requirements of the final rule. Donor boars were selected by a selection team composed of industry officials. Chinese and USDA officials. evaluated herd records and records of the OVO of the PRC, and physically examined the animals on the premises. The same procedures were used to select animals for the recent live Chinese swine importation. These officials found no evidence of infection on the premises within the time limits of the rule, and found no other evidence to contradict the certification of the PRC that the premises met the requirements of the rule.

Comment: If semen imported from China did cause an exotic disease outbreak, the costs would be very high, and therefore the risks of importing semen are not justified.

APHIS recognizes that any importation of swine, swine products, and related articles presents some risk of introducing exotic diseases, and also recognizes that the cost of eradicating outbreaks of certain diseases could be very high. To attempt to eliminate all risks, we would have to ban all imports of swine, swine products, and related articles, and even then some risk would exist due to smuggling and accidents. APHIS policy is to allow imports when the risks associated with the imports are reduced to insignificant levels. We believe the final rule reduces the risks associated with importation of Chinese swine semen to an insignificant level, comparable to the risks associated with a variety of other imports, including live swine from China, allowed under APHIS regulations.

Comment: The project to import live Chinese swine through HSTAIC is safer and will better meet research needs for Chinese swine genetics.

APHIS is authorized to permit or deny importation requests based on assessment of the animal disease risk associated with the importations, not based on assessments of the comparative research values of different importations. We have determined that the importation of swine semen from China would not present a significant risk of introducing disease.

Comment: The proposal should be considered a major rule because of the potential costs of a disease outbreak resulting from infected semen.

A rule is considered a "major rule" in accordance with Executive Order 12291 if the rule is likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. APHIS does not agree that adoption of the proposed rule is likely to result in any of these effects. These effects could only occur if the requirements of the rule failed to prevent the introduction of a serious exotic animal disease, and if that disease became established and spread in the United States. APHIS has carefully designed the requirements of the rule to prevent such an occurrence.

Comment: The rule would benefit only a few commercial interests and would be against the interests of the larger pork production industry.

The rule will allow any importer interested in importing Chinese swine semen to do so if the importation complies with the requirements of Part 92. It is unlikely that there will be many such importations in the near future, due to the difficulty and complexity of making the necessary arrangements in China to comply with the requirements of Part 92. We believe that the availability of Chinese swine germplasm for breeding research, and the possible eventual availability of improved breeds incorporating traits from Chinese swine, are in the interests of the larger pork production industry.

Comment: If the semen is used to impregnate sows in the U.S., the sows and their litters should be subject to quarantine safeguards.

APHIS believes that imported Chinese swine semen that has satisfied all the requirements of Part 92 doesn't present a significant risk of spreading animal disease, and therefore we have no grounds for imposing further restrictions on sows impregnated with the semen or their litters.

Comment: Unlike the live swine imported from China, there is no 120-day U.S. quarantine for Chinese swine semen donors or recipients. If 60 days quarantine in China is sufficient for swine semen donors, why quarantine live swine for 60 days in China then 120 days in the U.S.?

Live swine require a longer quarantine period because live swine present more possibilities for becoming infected and spreading disease than semen does. Once semen is collected, there is almost no possibility that it will become infected; if it is infected, there is almost no possibility that it will spread the disease unless it is used for artificial insemination. It is possible that live swine could show no symptoms, but be infected and capable of spreading diseases.

We also note that extreme caution was exercised in setting requirements for the first importation of live Chinese swine, due to the novelty of the project and the disease risks associated with it. It is possible that the total quarantine time required for future importations of live Chinese swine, if any, may be reduced based on evaluation of the experience gained through the first importation project.

Comment: It is premature to import China semen before the potential benefits and costs of Chinese genetics have been evaluated, e.g., by results from research on imported live Chinese swine.

APHIS is authorized to permit or deny importation of animals and animal products based on risk of spreading animal diseases, not based on the potential benefits of cross-breeding projects using imported animals or semen. Research results and the marketplace will ultimately determine the uses to which imported Chinese swine and swine semen will be applied.

Comment: The rule should require inclusion of an antibacterial agent in the semen extender, and lavaging of the prepuce of each donor boar with a broad spectrum antibacterial preparation prior to semen collection.

This comment seems to address prevention of bacterial contamination of the collected semen. We agree that this is a valid concern, and the two recommendations made represent two of the many approaches commonly used by industry during semen collection to minimize the risk of bacterial contamination.

We did not address this issue in the proposed rule because many effective procedures exist to prevent bacterial contamination, and the use of one or several of them is normal practice during semen collection. The collection procedure for the first semen shipment scheduled for import under this rule, for example, utilizes an antibacterial agent in the semen extender and filtration of the semen during collection to exclude particles to which bacterial colonies may adhere.

We do not believe it is necessary to specify particular procedures to avoid bacterial contamination of collected semen, in view of normal industry practices to prevent such contamination, and in view of the fact that the semen test requirements would reveal such contamination if it occurs.

Comment: Semen collection should not be allowed until 14 days after the second dihydrostreptomycin injection to prevent the possible transmission of bacterial diseases, especially Leptospirosis.

If any donor boars are infected with bacterial diseases transmissible through semen, such as Leptospirosis, the *in vivo* semen tests performed at FADDL should reveal the infection. We do not wish to postpone semen collection until after the second dihydrostreptomycin injection because of the possibility that the antibiotics could reduce the level of bacteria in semen to a level that, while still theoretically capable of infecting inseminated animals, might escape detection through the tests at FADDL.

Comment: Prior to implementing the final rule, APHIS should arrange a meeting of animal health experts to form a consensus on the technical requirements necessary to safely import swine semen from China.

USDA animal health experts designed the technical requirements contained in the final rule, which was published for comment. The public hearing also provided a forum for comments on the technical requirements. The views of interested parties, including many technically qualified commenters from outside USDA, have been taken into account in developing this final rule. We do not believe there are significant technical issues that have not been raised during this process, and see no need for a special meeting of animal health experts.

Comment: This rule sets a precedent for importing semen from countries with devastating diseases. What is USDA's objective?

One of the basic legislative mandates of APHIS is to regulate the importation of animals and animal products to prevent the introduction or dissemination of contagious, infectious, or communicable disease of animals into the United States. The objective of APHIS is to prohibit importations that could result in such introduction or dissemination of disease, and to allow importations, in accordance with specified procedures and safeguards, that do not pose a significant risk of introducing animal disease. This is the same basic policy that guides all APHIS activities in the area of animal and animal products importation. When APHIS receives a request to import an animal product from a country, such as swine semen from China, we determine whether and under what conditions the requested importation can be allowed, based on our legislative mandate and assessment of the risks involved. This is the same process that has been followed in the past to allow the safe importation, under appropriate restrictions, of animals and animal products from a number of countries where serious animal diseases occur, e.g., FMD and rinderpest. This rule does not set a precedent for allowing a higher level of risk in importations than was previously accepted.

This rule does mark the first time swine semen has been imported from a country where FMD or rinderpest may occur. However, the basic regulations allowing such importations to occur have existed in 9 CFR Part 92 since 1966. The objective of APHIS now is the same as it was when those regulations were enacted; to allow such importations to proceed if they can be accomplished without significant risk of disease introduction or dissemination.

Comment: APHIS should have informed the Agricultural Research Service (ARS), Iowa State University, and the University of Illinois about the proposed importation of semen earlier, so they could consider whether to commit money and resources to the importation of live swine. Participants in the live swine importation were under the impression that the live swine would be the only source of Chinese swine germplasm for research in the U.S. for at least several years.

In September, 1988, APHIS was first informed by PRC officials that the PRC would cooperate in developing and implementing procedures for the safe importation into the United States of Chinese swine semen. By this date, the major arrangements, protocols, and funding agreements for the importation of live Chinese swine had already been completed. APHIS informed ARS of the possibility of swine semen importation soon after the PRC indicated their willingness to cooperate on such projects. In December, 1988, a company filed with APHIS an application to import Chinese swine semen. On March 28, 1989, after determining that safe importation of Chinese swine semen seemed possible, we published a proposed rule on the subject in the **Federal Register** (54 FR 12639–12642, Docket No. 89-021). This rule provided public notice of our proposed requirements for importation of Chinese swine semen.

Our regulations are established pursuant to animal quarantine and related laws which generally provide authority to take action to prevent the introduction of certain animal diseases. These statutory provisions do not provide authority for establishing prohibitions in order to establish or guarantee access to imported animals or animal products for one group and not another. The position of APHIS has always been that importation of swine or swine products from China could be allowed whenever the importer and the exporting country arranged to meet regulatory requirements to ensure that the importation was safe.

Effective Date

Pursuant to the provisions of 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the **Federal Register.** Arrangements for the quarantine of Chinese swine and semen collection have already been completed by the importer, USDA, and the People's Republic of China. Any further delay would be unnecessary and would disrupt research schedules and unnecessarily increase the cost for importers. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this final rule should be effective upon signature.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

International trade in porcine semen is a very small business. During recent years, porcine semen imported into the United States has consisted of the ejaculates of no more than two dozen swine a year. Porcine semen imported from China in accordance with this rule will amount to a considerable percentage of the porcine semen imported in 1989, since the one company currently engaged in importations of this type plans to import ejaculates of approximately 16 Chinese boars. It is anticipated that very few additional Chinese porcine semen importation requests will occur in the near future. The ratio of Chinese swine semen imported to total swine semen imported will vary depending on the number and types of requests received for permits to import swine semen in future years.

The semen imported in accordance with this rule will be used in breeding research projects and will have no effects on the U.S. swine industry in the near future.

Importation of Chinese porcine semen may eventually help to improve United States breeds of swine, by its role in developing breeds with increased litter size and other desirable attributes known to be present in Chinese swine breeds.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this rule contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501*et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, 9 CFR Part 92 is amended as follows:

1. The authority citation for Part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 92.4, a new paragraph (d)(7) is added to read as follows:

§ 92.4 [Amended]

* * * * *

(d) *Animal semen from countries where rinderpest or foot-and-mouth disease exists.* * * *

(7) *Porcine semen from the People's Republic of China.* In addition to the other requirements of this part, porcine semen may be imported into the United States from the People's Republic of China (PRC) only after the official veterinary organization (OVO) of the PRC has certified that the PRC is free of African swine fever, rinderpest, and Teschen's disease, and after the following conditions have been fulfilled:

(i) The donor boars must pass a 60-day isolation/collection period in a facility jointly approved by the OVO of the PRC and the USDA as adequate to prevent exposure of the donor boars to infectious diseases. Any other swine at the isolation facility, such as teaser animals, must also meet the requirements of this paragraph. No animals may be added to the group after the start of the 60-day isolation/collection period. The Department will permit collection of semen to be initiated at the beginning of the isolation/collection period. The facility shall be cleaned and disinfected with a 4 percent sodium carbonate solution used in accordance with applicable label instructions in the presence of OVO quarantine personnel prior to the start of the isolation. During the isolation/collection period, personnel handling the animals shall not have contact with other domestic farm livestock (this term does not include pets such as dogs and cats). Raw animal food wastes (garbage) shall not be fed to the donor boars while in isolation. At the start of the isolation/collection period, and again after 14 days of isolation, all animals offered for collection of semen must be given an intramuscular injection of dihydrostreptomycin at a rate of 25 mg/kg dosage as a precautionary treatment for leptospirosis. Feed and bedding used during the isolation/collection period shall not originate from areas infected with epizootic diseases and must meet veterinary hygienic requirements established by the OVO of the PRC concerning freedom of the feed and bedding from contamination that could transmit diseases. During the isolation/collection period the swine at the collection center shall not have direct contact with, or exposure to, any other animals not included in the group at the isolation facility. Exposure consists of contact with yards, pens, or other facilities or vehicles that have been in contact with animals and have not been cleaned and disinfected.

(ii) Donor boars shall be selected from premises which are solely swine breeding operations. These premises must be located at the center of an area with a 16 km radius that was free of foot-and-mouth disease (FMD), swine vesicular disease (SVD), and hog cholera for three years prior to semen collection. Donor boars shall not have been vaccinated against these diseases. There shall have been no cases of these diseases on these premises for five years prior to the collection of semen. There shall have been no animal introduced into these premises from farms affected with these diseases for three years prior to the collection of semen. There shall have been no evidence of brucellosis, tuberculosis, or pseudorabies on these premises or on premises adjacent to these premises for one year prior to the collection of semen.

(iii) During the 60-day isolation/collection period, the boars offered for collection of semen shall be subjected to the following tests,[4] in lieu of the tests required by paragraphs (d)(iv) and (d)(vi) of this section. If test samples from any donor boars are lost, damaged, or destroyed prior to testing, or if test results are inconclusive, the donor boars involved shall be subjected to retesting:

(A) Foot-and-mouth disease:

(*1*) Microtiter virus neutralization (VN) test for types A, O, C, and Asia. (The PRC will test for types A and O, and the United States will test for types C and Asia at the USDA Foreign Animal Disease Diagnostic Laboratory (FADDL)).

(*2*) Agar gel immunodiffusion (AGID) test using virus infection associated antigen (VIAA) in serum. (Animals having responses to the AGID test or reacting to the VN test at 1:10 dilution or greater shall be eliminated as semen donors, and all other swine in contact with them shall be retested within 30 days. If the whole group does not have the above responses and there is no clinical evidence of FMD, the group shall be eligible for collection of semen with respect to FMD. Otherwise, none of the group shall qualify as donors of semen for export.)

(B) Brucellosis: Standard tube test (STT) at less than 30 IU/ml, and card test (antigen and protocol to be supplied by USDA).

(C) Swine vesicular disease: Virus neutralization test at 1:40 dilution (serums to be tested at FADDL).

(D) Hog cholera: Fluorescent antibody neutralization (FAN) test at 1:16 dilution.

(E) Japanese B encephalitis: Hemagglutination inhibition (HI) test, negative according to PRC standards.

(F) Pseudorabies: Virus neutralization at 1:4 dilution.

(G) Tuberculosis: Intradermal test using bovine PPD tuberculin (Positive animals will be necropsied. If there are lesions of TB in the test positive pigs, the whole group will be ineligible as semen donors. If no lesions are found, the rest of the pigs will be eligible as semen donors with respect to tuberculosis.

All samples of the above tests, except as noted for FMD, SVD, and TB, will be submitted to laboratories designated by the OVO of the PRC. At least 21 days after the final collection of semen for exportation, the donor animals will be retested for the diseases listed above, with the exception of tuberculosis and

[4] Technical information on laboratory methods and procedures for these tests may be obtained from the Administrator, c/o Director, National Veterinary Services Laboratories, P.O. Box 844, Ames, IA 50010.

Japanese encephalitis. In addition, aliquots of each ejaculate of semen collected shall be submitted to FADDL for pathogen isolation tests for FMD, brucellosis, swine vesicular disease, hog cholera, Japanese encephalitis, and pseudorabies.

(iv) The semen will not be eligible for release in the United States until all tests in paragraph (d)(7)(iii) of this section have been completed with negative results.

(v) Each semen straw or ampule for export must be identified with the name or identification number of the donor boar and with the date of collection. A USDA veterinarian shall certify that he or she has supervised the collection and processing of the semen and its storage until the time it is shipped to the United States. Each shipment will be accompanied by a USDA veterinarian unless the semen is shipped directly to the port of New York with no stops en route. Shipment to the United States will be in accordance with the terms of a USDA import permit. Semen imported in accordance with this section shall be released by USDA to the importer only after all requirements of this section have been met.

* * * * *

Done in Washington, DC, this 5th day of July 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-16233 Filed 7-10-89; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150-AD22

Manner of Service of Pleadings Upon the Secretary of the Commission; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published on June 26, 1989 (54 FR 26730), that requires all parties in NRC proceedings to file copies of all pleadings filed with any agency adjudicatory tribunal with the Office of the Secretary in the same or equivalent manner in which they were filed with the tribunal. The action is necessary to correct an omission in the mailing address for the Secretary of the Commission, and the telecopier phone number.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Acting Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7758.

In the June 26, 1989, edition of the **Federal Register**, on page 26731 make the following corrections:

PART 2—[AMENDED]

1. In § 2.712, paragraphs (d)(4) (i), (ii), and (iii) are correctly added to read as follows:

§ 2.712 Service of papers, methods, proof.

* * * * *

(d) * * *

(4) * * *

(i) First class mail: Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

(ii) Express mail: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Docketing and Service Branch.

(iii) Telecopier: (301) 492-1672; (301) 492-0275; and (301) 492-1977 (verification).

* * * * *

Dated at Bethesda, Maryland, this 3rd day of July 1989.

For the Nuclear Regulatory Commission.

John D. Philips,

Acting Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 89-16185 Filed 7-10-89; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM 189-AD; Amdt. 39-6260]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive, applicable to certain Boeing Model 747 series airplanes, which requires replacement of the takeoff warning system stabilizer limit switch assembly mounting brackets with new brackets to move the switch operating band outside the stabilizer green band. This amendment is prompted by reports that, even though the stabilizer controls have been set within safe operating limits, air loading on the horizontal stabilizer has caused sufficient movement when trim is set at the end of the "green band" to cause the takeoff warning alarm to sound during takeoff. This condition, if not corrected, could result in unnecessary rejected takeoffs and the consequent high potential for airplane incidents and accidents.

EFFECTIVE DATE: August 14, 1989.

ADDRESS: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark J. Perini, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1944. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires replacement of the takeoff warning system stabilizer limit switch assembly mounting brackets on Boeing Model 747 series airplanes, was published in the **Federal Register** on January 26, 1989 (54 FR 3782).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The Air Transport Association (ATA) of America provided comments from one of its member operators who expressed concern that a reported 72-week delivery period for parts kits will allow only four months to modify a fleet of 30 airplanes. The operator requested that the compliance time be increased to 24 months if the reported delivery schedule is correct. The FAA does not concur. The manufacturer has advised the FAA that kit delivery schedules should not be unduly lengthy and parts can be supplied to operators in a timely manner. In light of this information, the FAA considers the proposed compliance time to be appropriate.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 330 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 137 Model 747 airplanes of U.S. registry will be affected by this AD, that it will take approximately 17.5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The average cost of parts is estimated to be $96 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $109,052.

The regulations adopted therein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding the following new airworthiness directive.

Boeing: Applies to Model 747 series airplanes, as listed in Boeing Service Bulletin 747-27-2228, Revision 1, dated October 26, 1984, certificated in any category. Compliance required within the next 18 months following the effective date of this AD, unless previously accomplished.

To prevent rejected takeoffs as a result of false takeoff warnings, accomplish the following:

A. Replace the stabilizer limit switch assembly mounting brackets, in accordance with Boeing Service Bulletin 747-27-2228, Revision 1, dated October 26, 1984.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective August 14, 1989.

Issued in Seattle, Washington, on June 29, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-16212 Filed 7-10-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-ANE-36; Amdt. 39-6248]

Airworthiness Directives; Garrett Engine Division (Hereinafter Called "Garrett") Allied-Signal Incorporated, Models TFE731-3, -3A, -3AR, and -3R Turbofan Engines.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Garrett Turbofan Engine TFE731-3 models by individual priority letters. AD 88-13-03 requires an inspection of twelve suspect reworked high pressure turbine rotor (HPTR) discs having a reground curvic coupling. The AD was needed to prevent uncontained HPTR disc failures which could occur on engines containing certain suspect reworked discs.

DATES: Effective July 21, 1989, as to all persons except those to whom it was made immediately effective by emergency priority letter AD issued August 30, 1988, which contained this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of June 21, 1989.

Compliance: As indicated in the body of this AD.

ADDRESSES: The applicable engine manufacturer's service bulletin (SB) may be obtained from Garrett General Aviation Services Division, Distribution Center, 2340 East University, Phoenix, Arizona 85034; telephone (602) 225-2548, or may be examined in the Regional Rules Docket, Room 311, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Part, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Propulsion Branch, ANM-140L, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5246.

SUPPLEMENTARY INFORMATION: The FAA determined, during an investigation of a recent uncontained engine failure on a Westwind II airplane, that the failed engine was assembled with an HPTR disc having a reground curvic coupling. Examination of the failed disc and another reground HPTR disc revealed that the curvic coupling tooth root fillet radii were ground below minimum drawing tolerance. The FAA has determined that, if improperly ground discs remain in service, additional uncontained engine failures could occur since the discs' cyclic lives are reduced. This investigation further revealed that there are twelve (12) suspect reworked

turbine discs, therefore, AD action was necessary to prevent additional uncontained engine failure. This AD requires the review of engine maintenance records on TFE731-3, -3A, -3AR, and -3R engine models to determine if part numbers 3072316-2 or -3 or 3073110-1 or -2 HPTR discs were installed and to remove suspect serial numbered discs.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual priority letters issued August 30, 1988, to all known U.S. owners and operators of certain Garrett Turbofan Engine TFE731 models. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations (FAR) to make it effective as to all persons.

The regulations adopted herein do not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is nor required). A copy of it, when filed, may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, and Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends Section 39.13 of 14 CFR Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

Garrett Engine Division, Allied-Signal, Inc. (formerly Garrett Turbine Engine Company, GTEC): Applies to Garrett TFE731-3 turbofan engine models installed in airplane models as follows:

Garrett Model No.	Airplane Model
TFE31-3-1C	Falcon 50
TFE31-3-1E	731 Jetstar
TFE31-3-1F	Jetstar II
TFE31-3-1G	Westwind 1124
TFE31-3-1H	BAe HS125-Series
TFE31-3-1J	CASA 101
TFE31-3-1K	Jetstar II (Springfield)
TFE31-3A-2B	Learjet 55
TFE31-3A-2B1	Learjet 55
TFE31-3A-200G	Westwind 1125
TFE31-3AR-2B	Learjet 55
TFE31-3AR-2B1	Learjet 55
TFE31-3AR-200G	Westwind 1125
TFE31-3R-1D	Saberliner 65/65A
TFE31-3R-1G	Westwind 1124
TFE31-3R-1H	Bae HS125-Series

Compliance is required as indicated, unless already accomplished.

To prevent uncontained engine failures, accomplish the following within 25 cycles in service, after the effective date of this AD:

(a) Review the engine maintenance records on the above listed engine models to determine if part number 3072316-2 or -3, or 3073110-1 or -2, high pressure turbine rotor (HPTR) disc with one of the following serial numbers is installed. Spare discs must also be checked for applicable part number and serial number.

1-18040-9514	5-12112-938	7-12112-875
4-12112-167	5-12112-954	8-12112-199
4-12112-1536	5-12112-960	9-12112-3862
4-12112-1654	6-12112-1938	9-12112-3878

(b) Inspect and remove from service, if necessary, suspect serial number disc installed in engines in accordance with the accomplishment instructions of Garrett Alert Service Bulletin TFE731-A72-3376, dated August 19, 1988, and replace it with a serviceable HPTR disc.

(c) Inspection of the disc is required per paragraph (b) above, before further flight operation, if a suspect serial number disc is located in a spare engine or as a spare part.

(d) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(e) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, Los Angeles Aircraft Certification Office, Transport Airplane Directorate; Aircraft Certification Service, Federal Aviation Administration, 3229 East Spring Street, Long Beach, California 90806-2425, may approve an equivalent means of compliance or an adjustment of the compliance schedule which provides an equivalent level of safety.

The HPTR disc inspection shall be done in accordance with Garrett SB TFE731-A72-3376 date August 14, 1986. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Garrett General Aviation Services Division, Distribution Center, 2340 East University, Phoenix, Arizona 85034; telephone (602) 225-2548. Copies may be inspected at the Regional Rules Docket, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Room 311, Burlington, Massachusetts 01803, or at the Office of the Federal Register, 1100 L Street, Room 8301, Washington, DC 20591.

This amendment becomes effective July 21, 1989, as to all persons except those persons to whom it was made immediately effective by Priority Letter AD 88-18-03, issued August 30, 1988, which contained this amendment.

Issued in Burlington, Massachusetts, on June 9, 1989.

Arthur J. Pidgeon,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 89-16213 Filed 7-10-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 50

Fee Structure for Age Search and Citizenship Information

ACTION: Final rule.

SUMMARY: The Bureau of the Census is hereby amending Title 15, Code of Federal Regulations, Chapter 1, Part 50 § 50.5, fee structure for age search and citizenship information, to increase the fee for an age search from $15.00 to $25.00. This change is being made to recover the increase in cost to process a request. Title 13, United States Code, requires recovery of the costs. No transcript of any record will be furnished that would violate statutes requiring that information furnished to the Bureau of the Census be held confidential and not used to the detriment of the person to whom it relates.

EFFECTIVE DATE: October 1, 1989.

FOR FURTHER INFORMATION CONTACT: Glen Everhart, Bureau of the Census, Pittsburg, Kansas 66762, (316) 231-7100.

SUPPLEMENTARY INFORMATION: This is not a major rule within the meaning of section 1 of Executive Order 12291. It will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the rulemaking provisions of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), it has been determined that notice and opportunity to comment on this schedule of fees are unnecessary because this is a minor rule, making a technical amendment to adjust the agency's fee structure to recover the actual cost for searching the records and furnishing information therefrom. The actual or estimated cost recovery is required by 13 U.S.C. 8(a). This cost increase is minimal, reflecting the actual increased costs for searching and furnishing the information, and funds for this purpose are not available from any other source. Requests for searches should be directed to the Bureau of the Census, Pittsburg, Kansas 66762.

Since notice and opportunity to comment are not required by the APA or any other law, this rule is not a "rule" within the meaning of the Regulatory Flexibility Act and neither an initial nor final regulatory flexibility analysis will be prepared.

Accordingly, the Department of Commerce's General Counsel has determined and so certified to the Office of Management and Budget that dispensing with notice and opportunity for comment is consistent with the APA and other relevant laws.

This rule does not impose an information collection requirement for purposes of the Paperwork Reduction Act.

The legal authority is Title 13, United States Code.

List of Subjects in 15 CFR Part 50

Census data.

PART 50—[AMENDED]

1. The authority citation for 15 CFR Part 50 continues to read as follows:

Authority: Sec. 349 Stat. 293, as amended; 15 U.S.C. 192A. Interprets or applies sec. 1, 40 Stat. 1256, as amended, sec. 1.49 Stat. 292, sec. 8, 60 Stat. 1013, as amended, 15 U.S.C. 192, 169A. 13 U.S.C. 8, unless otherwise noted.

2. 15 CFR Part 50 is amended by revising § 50.5 to read as follows:

§ 50.5 Fee structure for age search and citizenship information.

Type of service	Fee
Searches of not more than two censuses for one person and one transcript of the more appropriate record	$25.00
Each additional copy of census transcript	2.00
Each full schedule requested	6.00

Note—The $6.00 for each full schedule requested is in addition to the fee increase to $25.00.

Dated: July 5, 1989.

C.L. Kincannon,

Deputy Director, Bureau of the Census.

[FR Doc. 89-16206 Filed 7-10-89; 8:45 am]

BILLING CODE 3510-07-M

Bureau of Export Administration

15 CFR Parts 771, 774, and 786

[Docket No. 81139-9123]

General License G-COCOM

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Omnibus Trade and Competitiveness Act (OTCA), signed by the President on August 23, 1988, amended section 5(b)(2) of the Export Administration Act of 1979 (EAA) to allow commodities described in the Advisory Notes for the People's Republic of China to be exported without a license to COCOM participating countries and countries determined to be COCOM comparable. On December 6, 1988, the Bureau of Export Administration published a proposed rule in the **Federal Register** to implement this provision. Having received and considered comments, the Bureau of Export Administration is issuing a final rule creating a new general license designated G-COCOM. General License G-COCOM is designed for exports to COCOM countries and countries determined to have sufficient export control systems to warrant this benefit under section 5(k) of the EAA. Commodities that may be exported under General License G-COCOM are those described in Supplement No. 2 to Part 771, and those commodities eligible for General License G-COM or GFW. Supplement No. 2 to Part 771 lists commodities that could have been exported to the People's Republic of China with only notification to other COCOM governments as of the date of enactment of the Trade Act. The list of eligible commodities may be upgraded from time to time to reflect action taken by the Coordinating Committee (COCOM).

Some commodities are ineligible for General License G-COCOM because they are controlled for other than national security reasons or because their export requires more than mere notification to COCOM.

A Swiss Blue Import Certificate will be required for exports to Switzerland under this General License G-COCOM.

EFFECTIVE DATE: This rule is effective July 11, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Regulations Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-2440.

SUPPLEMENTARY INFORMATION:

Background

The Omnibus Trade and Competitiveness Act (OTCA), signed by the President on August 23, 1988, amended section 5(b)(2) of the Export Administration Act of 1979 (EAA), by allowing exports of "Green Zone" commodities to COCOM participating countries and countries determined to be COCOM comparable. Consistent with the OTCA, the Department of Commerce issued a proposed rule on December 6, 1988 (53 FR 49202) with a request for comments on ways to implement the legislative requirements.

The proposed rule created a new General License G-COCOM to allow shipments of additional low level dual use items to COCOM participating countries and countries determined to have sufficient export control systems to warrant the benefit under section 5(k) of the EAA. A proposed new Supplement No. 2 to Part 771 listed commodities that could be exported to the People's Republic of China with only notification to other COCOM governments as of the date of enactment of the Trade Act. In addition, the proposal would not have authorized the use of the general license provision for exports to entities that the exporter knows or has reason to know are controlled-in-fact by Country Groups Q, W, Y, or Z.

The Department received comments from 14 firms and associations. In general, the comments were opposed to the scope and limitation of the proposed General License G-COCOM.

Most commenters felt that creation of yet another general license was confusing, and that it was the intent of

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Congress to expand General License G–COM to allow exports of "Green Zone" commodities, not to create a new general license or restrict commodities to the "PRC Green Zone" as of August 23, 1988. Commenters felt that the proposed General License G–COCOM will cause confusion in implementation. The final rule retains the proposed General License G–COCOM structure of listing the eligible "Green Zone" commodities, as of the date of enactment of the Trade Act, in Supplement No. 2 to Part 771. However, the final rule adds four entries to the Supplement that were erroneously omitted in the proposal and raises the maximum bit transfer rate of Disk Drives from 3 Mbytes/sec. to 6 Mbytes/sec.

The proposed rule would not have made the general license provision available when the exporter knows or has reason to know that the recipient is a person or entity controlled-in-fact by governments of Country Groups Q, W, Y, or Z. Many commenters expressed concern that other COCOM countries do not have the same restriction and that these unilateral controls placed an unfair advantage on U.S. competitiveness. This final rule removes the restriction in its entirety.

A number of commenters noted that the restriction to consumption within eligible countries would prevent shipments for inventory, where ultimate use was not yet established. The final rule allows shipment under G–COCOM where the goods might be reexported under other authorization.

Some commenters observed that the Act addressed "goods and technology" while the proposal dealt only with goods. BXA is revising the technical data regulations and will address the Trade Act revisions in that separate document.

In addition, the proposed rule specified Switzerland as the only non-COCOM country eligible to benefit from General License G–COCOM. Many commenters questioned why only Switzerland was included; they believed that Congress intended to include other countries for eligibility. The EAA provided for the exercise of judgment as to whether a country's export controls are comparable in practice to those of COCOM participating countries. The Department of Commerce can also treat a country like a COCOM participating country in some or all respects under the EAR without having determined that the country's export controls are fully comparable in practice to the COCOM system. Because of continued improvement in its export controls, this final rule adds Finland on this discretionary basis as a country to which this General License provision will apply. Possible extension to other countries will be considered.

Export license applications do not generally specify whether the goods are within advisory notes or not. Thus, the Department has no statistical basis for determining how many individual validated license applications will be eliminated as a result of this new general license. However, we expect a sharp decrease in applications because G–COCOM covers a broad range of goods destined to the major markets for U.S. exporters.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule does not contain a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). As a result of this rule, a reduction of paperwork burden on the public is anticipated. Affected OMB controlled collection actions include 0694–0005, 0694–0007, and 0694–0010.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. Nevertheless, to help ascertain the economic impact of the regulation upon the general public, the regulation was issued in proposed form and public comment was solicited. Because this rule was originally issued in proposed form it complies with section 13(b) of the Export Administration Act.

List of Subjects in 15 CFR Parts 771, 774, and 786

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 771, 774, and 786 of the Export Administration Regulations (15 CFR Parts 768–799) are amended as follows:

1. The authority citations for Parts 771 and 786 continue to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 et seq.), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985 and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 et seq.); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 et seq.); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

2. The authority citation for 15 CFR Part 774 is revised to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, Pub. L. 99–64 of July 12, 1985, and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

PART 771—[AMENDED]

3. A new § 771.24 is added to read as follows:

§ 771.24 General License G–COCOM: certain shipments to cooperating countries.

(a) *Scope.* A general license designated G–COCOM is established, authorizing exports to COCOM participating countries, Finland and Switzerland, for use or consumption therein, of commodities that the United States may approve for export to controlled countries with only notification to the COCOM governments, as well as commodities within the China "Green Zone", as of August 23, 1988.

(b) *Eligible countries.* The countries that are eligible to receive exports under this general license are Australia, Belgium, Denmark, France, the Federal Republic of Germany, Finland, Greece, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Spain, Switzerland, Turkey, and the United Kingdom. Exports may be made under G–COCOM only when intended for consumption within the importing country, reexport among and consumption within eligible countries, or reexport in accordance with other provisions of the Export Administration Regulations.

(c) *Eligible exports.* The commodities eligible for export under this general license are those also eligible for General License G–COM or GFW, and those described in Supplement No. 2 to Part 771. End-use and quantity restrictions in Supplement No. 2 to Part 771, and in the notes identifying those commodities that may be shipped under General License G–COM or GFW (see § 771.8 and § 771.23), may be disregarded in determining whether G–COCOM may be used. Shipments of eligible commodities are subject to the prohibitions contained in § 771.2(c).

(d) *Special documentation requirements for Switzerland.* Prior to shipment to Switzerland under this General License G–COCOM, the exporter must obtain and retain on file a Swiss Blue Import Certificate.

4. A new Supplement No. 2 to Part 771 is added to read as follows:

Supplement No. 2 to Part 771—Commodities Eligible for General License G–COCOM.

This Supplement provides a list of commodities eligible for General License G–COCOM by Export Control Commodity Number and commodity description. Use of this general license is subject to the conditions of § 774.24.

1091—Numerical control units, numerically controlled machine tools, dimensional inspection machines and specially designed software therefor, and specially designed sub-assemblies therefor, as follows:

(a) Numerical control units having all of the following characteristics:

Note: Numerical control units exported separately from equipment must be for use with and specially configured for equipment permitted by paragraph (b) of this entry.

(1) No more than four contouring interpolating (any mathematical function including linear and circular) axes can be simultaneously coordinated. Units may have:

(i) One or more additional axes in which the rate of movement is not coordinated, varied, or modulated with that of another axis; or

(ii) One additional set of four contouring axes provided that separate feedrate numbers, standard or optional, do not control more than any four contouring axes;

(2) Minimum programmable increment equal to or greater then 0.001 mm;

(3) Interfaces as follows:

(i) No more than one integral interface designed to meet ANSI/IEEE standard 488–1978, IEC publication 625–1, or any equivalent standard; and

(ii) An unlimited number of interfaces meeting EIA standard RS–232–C or any equivalent standard;

(4) On-line (real-time) modification of the tool path, feedrate and spindle data limited to the following:

(i) Cutter diameter compensation normal to the center line path;

(ii) Automatic acceleration and deceleration for starting, cornering and stopping;

(iii) Axis transducer compensation including lead screw pitch compensation (measurements on one axis may not compensate another axis);

(iv) Constant surface speed with or without limits;

(v) Spindle growth compensation;

(vi) Feedrate and spindle speed override;

(vii) Fixed and repetitive cycles, including automatic cut vector generation;

(viii) Tool and fixture offset;

(ix) Part program tape editing, including source program language and centerline location data (CLDATA);

(x) Tool length compensation;

(xi) Part program storage;

(xii) Variable pitch threading;

(xiii) Inch/metric conversion; and

(xiv) Feedrate override based on spark voltage for electrical discharge machines;

(5) Word size equal to or less than 32 bits (excluding parity bits);

(6) "Software" or "firmware", including "software" or "firmware" of any programmable unit or device furnished, not exceeding control unit functions as provided in paragraphs (a)(1) to (a)(5) of this entry, and restricted as follows:

(i) Application programs executable without further compilation, assembly, interpretation or processing, other than control unit parameter initialization, and memory storage loading, and each supplied as an entity rather than in modular form, as follows:

(A) An operating program to allow the unit to perform its normal functions;

(B) One or more diagnostic programs to verify control or machine performance and to permit localization of hardware malfunctions; and

(C) A translator program for programming the control-to-machine interface;

(ii) Documentation for application programs not containing the following:

(A) Listing of program instructions, except that necessary for diagnostics for routine hardware maintenance;

(B) Description of program organization or function beyond that required for program use and for maintenance of exported hardware and "software";

(C) Flow charts, logic diagrams or algorithms employed, except those necessary for use of diagnostics for routine hardware maintenance;

(D) Any reference to specific memory storage locations, except those necessary for diagnostics for routine hardware maintenance; and

(E) Any other information that would assist in the analysis or modification of all or of part of the software;

(b) Machine tools and dimensional inspection machines that, according to the manufacturers' technical specifications, can be equipped with numerical control units covered by paragraph (a) of this entry, as follows:

(1) Boring mills, milling machines and machining centers having all of the following characteristics:

(i) No more than four axes capable of simultaneously coordinated contouring motion, of which no more than three axes shall be linear and no more than one axis shall be rotary;

Note: A secondary contouring axis, parallel with a primary axis, e.g., W-axis on horizontal boring mills, is not counted in the total of four contouring axes. A secondary rotary table with the centerline parallel to the primary rotary table is also not counted in the total of four contouring axes. (Machines may have non-contouring parallel or non-contouring non-parallel rotary axes in addition to the four axes capable of simultaneously coordinated contouring motion.)

(ii) Maximum traverse (X-axis) travel equal to or less than 30,000 mm;

(iii) Maximum vertical (Y-axis) travel equal to or less than 8,000 mm;

(iv) Maximum horizontal (Z-axis) travel equal to or less than 5,000 mm;

(v) Unlimited spindle drive motor power;

(vi) No more than two simultaneously working spindles (the machine may have multiple tool heads or turrets; a spindle capable of driving a multiple drill head is considered as a single spindle);

(vii) Axial and radial axis motions measured at the spindle axis in one revolution of the spindle equal to or greater than $D \times 2\ 10^{-6}$ mm TIR (peak-to-peak) where D is the spindle diameter in mm;

(viii) An incremental positioning accuracy equal to or greater (coarser) than + or 0.002 mm in any 200 mm of travel;

(ix) An overall positioning accuracy in the axis equal to or greater (coarser) than:

(A) + or − 0.003 mm for machines with a total length of axis travel equal to or less than 300 mm;

(B) + or − (0.003 + (0.001/300 × (L–300))) mm for machines with a total length of axis travel, L, greater than 300 mm and equal to or less than 3,300 mm;

(C) + or − 0.013 mm for machines with a total length of axis travel greater than 3,300 mm;

(2) Machine tools, other than boring mills, milling machines and machining centers described in sub-paragraph (b)(1) of this entry, and dimensional inspection machines, having all the following characteristics:

(i) No more than four axes capable of simultaneously coordinated contouring motion, of which no more than three axes shall be linear and no more than one axis shall be rotary;

Note: Up to four secondary contouring axes parallel with the primary axis but not simultaneously coordinated with four primary axes may be permitted.

(ii) No more than two simultaneously working spindles (the machine may have multiple tool heads or turrets);

(iii) Radial axis motion measured at the spindle axis equal to or greater than 0.0006 mm TIR (peak-to-peak) in one revolution of the spindle (for lathes, turning machines, contour grinding machines, etc.);

(iv) An incremental positioning accuracy equal to or greater (coarser than + or − 0.002 mm in any 200 mm of travel;

(v) An overall positioning accuracy in any axis equal to or greater (coarser) than:

(A) + or − 0.005 mm for machines with a total length of axis travel equal to or less than 300 mm;

(B) + or − (0.005 + (0.002/300 × (L–300))) mm for machines with a total length of axis travel, L, greater than 300 mm and equal to or less than 3,300 mm;

(C) + or − 0.025 mm for machines with a total length of axis greater than 3,300 mm.

1312—Presses having no controlled thermal environment within the closed cavity and that are used for the manufacture of industrial refractory and ceramic products.

1353—Equipment specially designed for the manufacture of silicon-based optical fiber or cable, provided that it is designed to produce non-militarized silicon-based optical fiber or cable that is optimized to operate at a wavelength of 1,350 mm or less.

1354—Equipment for the manufacture of printed circuit boards, as follows:

(a) Equipment specially designed for the removal of resists or printed circuit board materials by dry (e.g., plasma) methods;

(b) "Stored program controlled" multi-spindle drills and routers with the following characteristics:

(1) Absolute positioning accuracy of + or − 5 micrometers or worse; and

(2) X and Y positioning speeds of 0.210 meter/second or slower for drilling or for routing.

1355—Equipment, as follows, for use in silicon semi-conductor manufacturing:

(a) Equipment for the production of polycrystalline silicon;

(b) Crystal pullers, except those that:

(1) Are rechargeable without replacing the crucible; or

(2) Operate at pressures above 1 atmosphere;

(c) Diffusion furnaces, except those that use computer feedback control operated from an "associated" computer;

Note: "Associated" with equipment or system means:

(a) Can feasibly be either:

(i) Removed from the equipment or systems; or

(ii) Used for other purposes; and

(b) Is not essential to the operation of such equipment or systems.

(c) No paragraph (c) exists for this note.

(d) Vacuum induction-heated zone refining equipment;

(e) Epitaxial reactors, except those that are:

(1) For molecular beam epitaxy; or

(2) Specially designed for organo-metallic deposition or liquid-phase epitaxy;

(f) Magnetically enhanced multiple-wafer sputtering equipment;

(g) Ion implantation, ion-enhanced or photo-enhanced diffusion equipment, except having:

(1) Patterning capability;

(2) An accelerating voltage for more then 200 keV; or

(3) A current greater than 0.5 mA;

(h) "Batch" planar, "batch" reactive ion, barrel or barrel-planar dry etching equipment, except equipment incorporating end-point detection (Note: "Batch" refers to equipment capable of etching two or more wafers simultaneously.)

(i) Low pressure chemical vapor deposition equipment, except equipment capable of metal deposition;

(j) Reserved;

(k) Single-sided lapping and polishing equipment for wafer surfacing finishing;

(1) Hard surface (e.g., chromium, silicon, iron oxide) coated substrates (e.g., glass, quartz, sapphire) for the preparation of masks having dimensions greater than 12.5 cm x 12.5 cm;

(m) Mask fabrication equipment using photo-optical method that was either commercially available before January 1, 1980, or has a performance no better than such equipment;

(n) Manually operated mask inspection equipment;

(o) Photo-optical contact and proximity mask align and exposure equipment defined in paragraph (b)(2)(vi), and projection aligners that can produce pattern sizes no finer than 3 micrometers;

(p) Contact image transfer equipment;

(q) Wafer and chip inspection equipment that was either commercially available before January 1, 1981, or has a performance no better than such equipment;

(r) Equipment for concurrent etching and doping profile analysis employing capacitance-voltage or current-voltage analysis techniques;

(s) "Stored program controlled" wire or die bonders;

(t) "Stored program controlled" wafer probing equipment that does not include associated test equipment or drive circuitry other than those identified in paragraphs (u) or (v) of ECCN 1355A;

(u) Test equipment for:

(1) Television circuit testing;

(2) Operational amplifier testing;

(3) Voltage regulator testing;

(4) Analog-to-digital and digital-to-analog converter testing; or

(5) Discrete semi-conductor testing at frequencies of 18 GHz or less;

(v) "Stored program controlled" equipment for functional testing (truth table) at a pattern rate of 10 MHz or less for micro-circuits or microcircuit assemblies.

1358—The following equipment:

(a) "Automatic" and "semi-automatic" equipment for monitoring, grading, exercising or testing recording media controlled by paragraph (d) of ECCN 1572 or free from export control under paragraph (c)(4) of Exception 3 to ECCN 1572A having the following characteristics:

(1) For digital recording tape, a maximum recording density of less than 3,937 bits per cm; or

(2) For analog recording tape, a coating thickness greater than 2.54 micrometers;

(b) Diskette unit test equipment.

1359—Tooling and fixtures for the manufacture of fiber-optic connectors and couplers controlled for export by ECCN 1528(e), provided that the tooling and fixtures are not specially designed to manufacture fiber-optic connectors and couplers for use with:

(a) Non-silicon-based fiber or cable; or

(b) Fiber-optic bulkhead or hull penetrators in ships or vessels.

1391—The following equipment:

(a) "Robots" controlled for export by sub-paragraph (a) of this entry that are for civil use and not covered by sub-paragraph (a)(2) to (a)(8), (a)(10) or (a)(11);

(b) Electronic controllers covered by sub-paragraph (b) for the control of "robots" eligible for treatment under this entry;

(c) "End effectors" covered by sub-paragraph (c) for use with "robots" eligible for treatment under this entry;

(d) Vision systems, limited as follows:

(1) Capable of processing no more than 200,000 pixels using an industrial television camera or a solid-state camera;

(2) Not programmable by the user except:

(i) To input reference images through the system's camera;

(ii) To input valves of fixed parameters, including teach-in parameters; or

(iii) To select pre-programmed sub-routines;

(3) Not capable of continuous reaction or continuously updating the "robot" position while the "robot" is moving;

Note: This limitation precludes the use of vision systems for weld seam tracking during the welding operation but does not preclude straight-line or single-plane weld seam tracking using a single pass.

(4) Capable of no more than one scene analysis every 0.02 second;

(5) The "software" provided for the vision processor shall be in "object code" only and shall not be capable of full three-dimensional mathematical modeling or full three-dimensional scene analysis;

Note: This scene analysis limitation does not preclude approximation of the third dimension by viewing at a given angle, nor limited gray scale interpretation for the perception of depth or texture for the approved tasks (2½ D).

1460—Aircraft and helicopters considered to be of the types that are in bona fide normal civil use, containing equipment controlled for export by ECCNs 1485A or 1501A, provided that:

(a) Any controlled components in such aircraft or helicopters are limited to those normally installed by the manufacture;

(b) Repair and maintenance of controlled inertial navigation systems and complete overhaul of controlled engines will be performed in a non-proscribed country or by representatives of the Western supplier; and

(c) Parts controlled for export will be replaced on a one-for-one basis.

1510—The following equipment:

(a) Acoustic systems or equipment for positioning surface vessels or underwater vehicles, providing that:

(1) They are not capable of processing responses from more than 8 beacons in the calculation of a single point;

(2) They have neither devices nor "software" for correcting automatically velocity-of-propagation errors for point calculation;

(3) They have no coherent signal processing means; and

(4) Transducers, acoustic modules, beacons or hydrophones therefor are not designed to withstand pressure during normal operation at depths greater than 1,000 meters;

(b) Side-scan sub-bottom profile systems, no portion of which is specially designed for operation at depths greater than 1,000 meters.

1519—The following equipment or components and accessories controlled for exports by paragraphs (a) or (b) of this ECCN:

(a) General communication transmission equipment, provided that:

(1) The equipment is to be used in non-strategic applications;

(2) It is to be permanently installed in circuit (radio, coaxial cable, or multimode optical fiber) operated by the civilian authorities of the importing country; and

(3) It is to be used for general commercial traffic with a total digital bit rate at the highest level multiplex point of or less for optical fiber or 140 Mbits per second or less for radio or coaxial cable, as follows:

(i) With a total number of voice channels per each physical bearer of 1,920 or less for radio or coaxial cable; or

(ii) With four monochrome or color television channels with a maximum nominal bandwidth of 6 MHz and associated sound channels in the case of radio or coaxial cable;

(b) Intra-city communication transmission equipment, provided that it is:

(1) Designed for operation at a total digital data signalling rate at the highest level multiplex point of 140 Mbits per second or less;

(2) Installed under the supervision of the seller in a permanent circuit (radio, coaxial cable, multimode optical fiber with, or single mode optical fiber without repeaters/regenerators) between communication switching equipment; and

(3) Intended for general commercial traffic in an intra-city civil communication system;

(c) The minimum set of spare parts;

(d) Test or measurement equipment necessary for the use (i.e., installation, operation and maintenance) of equipment exported under the provision of this entry, provided:

(1) It cannot operate at a data rate exceeding 140 Mbits per second; and

(2) It will be supplied in the minimum quantity required for the transmission equipment eligible for export under this entry.

1519—The following equipment:

Modems and multiplexers controlled for export by subparagraph (a)(2) of this ECCN designed for operation at data signalling rates of 19,200 bps or less.

1520—The following radio relay communication equipment:

(a) Digital microwave radio links for fixed civil installations operating at fixed frequencies not exceeding 19.7 GHz with a capacity of up to 1,920 voice channels of 3.1 kHz or four television channels of 6 MHz maximum nominal bandwidth and associated sound channels;

(b) Ground communication radio equipment for use with temporarily-fixed services operated by the civilian authorities and designed to be used at frequencies not exceeding 20 GHz;

(c) Radio transmission media simulators/channel estimators designed for the testing of equipment covered by (a) or (b) above;

(d) Power amplifiers not exceeding 10 W and ¾-GHz-transmitters/receivers for communication satellites.

1522—The following equipment:

(a) Tunable pulsed flowing-dye lasers having all of the following characteristics, and specially designed components therefor:

(1) An output wavelength shorter than 0.8 micrometer;

(2) A pulse duration not exceeding 100 ns; and

(3) A peak output power not exceeding 15 MW;

(b) CO_2, CO or CO/CO_2 lasers having an output wavelength in the range from 9 to 11 micrometers and a pulsed output not exceeding 2 joules per pulse and a maximum rated average single- or multi-mode output power not exceeding 5 KW or a continuous wave maximum rated single- or multi-mode output power not exceeding 10 KW;

(c) Equipment specially designed for medical applications incorporating ND:YAG lasers covered by paragraph (a)(vi) of ECCN 1522A;

(d) Laser systems for trimming resisters or thick/thin film electronic circuits;

(e) Equipment incorporating CO_2 lasers with average or continuous wave output power not exceeding 5 kW, not exceeding the parameters of ECCN 1091A, and specially designed for welding, cutting, bonding or drilling metals for civil applications.

1529—The following equipment:

(a) Quartz or rubidium frequency standards not specially designed for military use;

(b) Swept frequency network analyzers or sweep generators for use at frequencies not exceeding 40 GHz and that cannot be controlled remotely;

(c) Swept frequency network analyzers for the automatic measurement of complex equivalent circuit parameters over a range of frequencies where the maximum frequency does not exceed 20 GHz;

(d) Instruments in which the functions can be controlled by the injection of digitally coded electrical signals from an external source where the maximum frequency does not exceed 20 GHz;

(e) Instruments incorporating computing facilities with "user-accessible programability" and an alterable program and data memory of a total of less than 32 Kbytes;

(f) Digital test instruments with "users-accessible programability" controlled for export by sub-paragraph (b)(5) of this ECCN 1529A, required for the use (installation, operation or maintenance) of microcircuits or computers that are exported to the People's Republic of China under Advisory Notes to ECCNs 1564A or 1565A;

(g) Microprocessor and microcomputer development instruments for 8 bit microcircuits, i.e., microcircuits having an operand (data) word length of less than or equal to 8 bit(s) and an arithmetic logic unit (ALU) of less than or equal to 16 bit;

(h) Digital counters with any of the following characteristics:

(1) Not capable of counting successive input signals with less than 1.8 ns time difference without prescaling (digital division) of the input signal;

(2) Employing prescaling of the input signal in which the prescaler is not capable of resolving successive input signals with less than 0.5 ns time difference; or

(3) Not capable of measuring burst frequencies exceeding 250 MHz for a burst duration of less than 2 ms;

(i) Time interval measuring equipment employing digital techniques, not capable of measuring time intervals of less than 1 ns or a single shot basis;

(j) Instruments controlled by sub-paragraph (f) of this entry, not capable of more than 1,000 independent measurements per second;

(k) Transient recorders, not capable of sampling single input signals at successive intervals of less than 20 ns.

(1) PROM programers controlled by subparagraph (b)(6) of this ECCN.

1531—The following and specially designed components and accessories therefor:

(a) "Frequency synthesizers" controlled only by paragraph (a) and not incorporating cesium beam standards;

(b) Instruments "frequency synthesizers" and synthesized signal generators controlled only by paragraphs (b)(1) and (b)(3) and having a maximum output frequency of 18 GHz, provided the "frequency switching time" is 2.0 ms or more;

(c) Instrument "frequency synthesizers" and synthesized signal generators not controlled by paragraph (b)(4) and having a maximum output frequency of 2.6 GHz, provided the "frequency switching time" is 0.3 ms or more;

(d) Conventional synthesizer based, digitally controlled, civil land or marine mobile radio receivers and transmitters, provided:

(1) They operate at frequencies not exceeding 960 MHz;

(2) The power output and frequency resolution parameters specified in paragraph (e)(3)(ii) remain in force;

(3) The equipment has "frequency switching time" of 5 ms or more;

(4) The equipment does not employ either frequency agility or other spread spectrum techniques; and

(5) The synthesizers are embedded in the radio receivers or transmitters;

(e) Radio receivers controlled by paragraph (d)(1) that have 1000 selective channels or fewer.

1533—The following equipment:

(a) Non-programmable signal analyzers including those with a tracking signal generator, provided the display bandwidth is 4.4 GHz or less;

(b) Programmable signal analyzers, including those with a scanning preselector or a tracking signal generator, having both of the following characteristics:

(1) Operating at frequencies of 4.4 GHz or less; and

(2) The overall dynamic range of the display not exceeding 100 dB;

(c) Signal analyzers employing time compression of the input signal of Fast Fourier Transform techniques not capable of:

(1) Analyzing signals with a frequency higher than 100 KHz if the instrument uses time compression, or

(2) Calculating 512 complex lines in less than 50 ms.

1537—Microwave equipment controlled for export by sub-paragraphs (a), (b) or (c) of ECCN 1537A, when designed for use at frequencies not exceeding 40 GHz and when specially designed for use with conventional commercial instruments described in ECCNs 1529A, 1531A or 1533A, provided that the equipment does not in any way extend the frequency range of the basic instrument.

1548—Semi-conductor photodiodes for previously approved and installed Western civil communications equipment with a

response time constant of 0.5 ns or more and with a peak sensitivity at a wavelength neither longer than 1,350 nm nor shorter than 300 nm.

Note: The photodiodes will be supplied on a replacement basis with no enhancement of the system.

1555—Electron tubes, as follows:

(a) Image intensifier and image conversion tubes that incorporate fiber optic face-plates or microchannel-plates, except image tubes specially designed for cameras controlled for export by ECCN 1585A;

(b) Television and video camera tubes that incorporate:

(1) Fiber optic face-plates; or

(2) Microchannel-plate electron multipliers not controlled by ECCN 1556A.

Note: Eligibility Note does not apply to electron tubes incorporating a gallium arsenide (or similar semi-conductor) photocathode.

1564—"Assemblies", for printed circuit boards and integrated circuits not specially designed to military standards for radiation hardening or temperature as follows:

(a) "Substrates" for printed circuits, except those exceeding the limits of subparagraph (a)(1)(E) or (a)(2) of this ECCN;

(b) Silicon-based devices exceeding the limits of:

(1) Subparagraphs (d)(2)(D)(a), (b) or (c), except those with more than 28 terminals;

(2) Subparagraphs (d)(2)(D)(g),or (h)

(3) Subparagraphs (d)(2)(D)(k), (1), (m)(4) and (5), (n), (r), (s), or (u); or

(4) Subparagraphs (d)(2)(D)(f) or (g);

(c) Silicon-based 8 bit or less "microcomputer microcircuits" exceeding the limit of subparagraphs (d)(2)(D)(e)(1) to (7);

(d) Silicon-based "microprocessor microcircuits" with an operand length of 16 bits or less and an arithmetic logic unit (ALU) not wider than 32 bit and exceeding the limits of subparagraphs (d)(2)(D)(i)(1) to (6), except:

(1) Those with a total processing data rate exceeding 28 million bits per second;

(2) Bit-slice "microprocessors microcircuits";

(e) Silcon-based memory devices, as follows:

(1) MOS DRAMs with no more than 256 Kbits;

(2) MOS SRAMs with no more than 64 Kbits;

(3) Mask PROMS with no more than 512 Kbits;

(4) UV–EPROMs (except keyed access EPROMs) with no more than 256 Kbits;

(5) EAROMs with no more than 64 Kbits; or

(6) EEROMs with no more than 64 Kbits; [Note: 1 kbit = 1,024 bits.]

(f) Operational amplifiers exceeding the limits of subparagraph (d)(2)(D)(k)(4) that do not have slew rates exceeding 100 volts per microsecond;

(g) Analog-to-digital and digital-to-analog converters exceeding the limits of subparagraphs (d)(2)(D)(m)(1) to (3), except:

(1) Analog-to-digital converters with less than a 500 ns conversion time to a maximum resolution of 12 bits;

(2) Digital-to-analog converters with less than 500 ns settling time for voltage output and a maximum resolution of 12 bits;

(3) Digital-to-analog converters with less than 25 ns settling time for current output and a maximum resolution of 12 bits;

(h) Silicon-based 8-bits or less user-programmable single chip "microcomputer microcircuits" controlled for export by subparagraph (d) of this ECCN;

(i) "Optical integrated circuits":

(1) Controlled for export by subparagraph (d) of this ECCN;

(2) With no more than 2,046 elements; and

(3) Not exceeding the limits of paragraphs (a) and (b) of ECCN 1548A; and

(j) Non-reprogrammable silicon-based integrated circuits specially designed or programed by the manufacturer for business or office use.

1565—"Digital computers" or "related equipment" therefor controlled for export by paragraph (h) of this ECCN 1565A, provided that:

(a) The "digital computers" or "related equipment" therefor:

(1) Are exported as complete systems or enhancements to previously exported systems up to the limits of paragraph (b) below;

(2) Do not fall within the scope of both paragraphs (h)(1)(ii) (A) and (B);

(b) The "digital computers" or "related equipment" therefor do not exceed any of the following limits:

(1) Central processing unit with a "total processing data rate" of 550 million bit/s;

(2) Array transform processors:

(i) "Equivalent multiply rate"—800,000 operations per second;

(ii) Fast Fourier Transform of 1,024 complex points—40 ms;

(c) The "digital computers" or "related equipment" therefor do not have the following characteristics:

(1) Those identified in paragraphs (h)(1)(i) (D) to (H) or (M); or

(2) Those identified in paragraph (h)(1)(i)(b) having an "equivalent multiply rate" of more than 2 million operations per second;

1565—"Digital computer" or "related equipment" therefor in accordance with Advisory Note 5 , on the understanding that:

(a) Paragraph (b)(1) of Advisory Note 5 does not apply;

(b) The "total processing data rate" under paragraph (c) of Advisory Note 5 does not exceed 155 million bit/s.

1565—Peripheral equipment and input/output interface or control units therefor as follows:

(a) Cathode ray tube graphic displays that do not exceed:

(1) 1,024 resolvable elements along one axis and 1,280 resolvable elements along the perpendicular axis; or

(2) 256 shades of gray or color (8 bit per pixel);

(b) Plotting equipment and digitalizing equipment that has an accuracy of 0.002% or worse, and an active area of 254 cm × 254 cm or smaller;

(c) Non-impact type printers and laser printers having a resolution not exceeding 120 dots per cm (300 dots per inch);

(d) Optical character recognition (OCR) equipment;

(e) Light gun devices or other manual graphic input devices.

(f) Disk drives having either an unformatted capacity that does not exceed 5.04 giga bytes or a maximum bit transfer rate that does not exceed 6 million bytes/sec.

1565—Spare parts in accordance with Advisory Note 7 (a) and (b) to this ECCN 1565A.

1567—"Data (message) switching" equipment or systems, controlled for export by subparagraph (a) of this entry, provided that:

(a) The equipment or systems are designed to meet the requirements of either:

(1) CCITT Recommendations F.1 to 79 for store-and forward systems (Volume II-Fascicle II.4, VIIth Plenary Assembly, November 10–21, 1980); or

(2) ICAO Recommendations for store-and-forward civil aviation communication networks (Annex 10 to the Convention on International Civil Aviation, including all amendments agreed upon, up to and including December 14, 1981);

(b) The equipment or systems:

(1) Are designed and used for fixed civil "data (message) switching" applications;

(2) Will be used primarily for the specified civil application; and

(3) Will be operated in the importing country by:

(i) The Post, Telegraph and Telephone Authority in order to provide public "data (message) switching" services for:

(A) Domestic civil use; or

(B) International civil use with Western countries;

(ii) A civil authority that is a member of an intergovernmental organization including Western countries (e.g., ITU and ICAO) in order to promote an extension of international "data (message) switching" services in the importing country to fulfill a commitment to the intergovernmental organization; or

(iii) A civil public service organization in order to provide "data (message) switching" services in a densely populated, commercial area for:

(A) Private domestic civil use; or

(B) Private international civil use with Western countries;

(c) Reserved;

(d) The equipment or systems do not contain: digital "computers" or "related equipment" controlled by:

(1) ECCN 1565A(f);

(2) ECCN 1565A(h)(1)(i) (A) to (J), or (L) or (M); or

(3) ECCN 1565A(h)(1)(ii);

(e) The "software" supplied:

(1) Is limited to:

(i) The minimum "specially designed software" necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; and

(ii) Machine-executable form; and

(2) Does not include "software":

(i) Controlled by ECCN 1572A or paragraph (a)(5) of Supplement No. 3 to Part 779 of Item 11 on the U.S. Department of State's Munitions List (Supplement No. 2 to Part 770); or

(ii) To permit user-modification of generic "software" or its associated documentation;

(f) If the equipment or systems are not designed for installation by the user without support from the supplier, then the "software" necessary for commissioning is:

(1) Exported on a temporary basis only; and

(2) Kept under control of the supplier;

(g) Reserved;

(h) Reserved.

1567—"Stored-program-controlled telephone circuit switching" equipment or systems controlled by sub-paragraph (b) of this entry, provided that:

(a) The equipment or systems are designed for fixed civil use as "space-division digital exchanges" or "time-division digital exchanges" that fulfill the definition of "private automatic branch exchanges" ("PABXs");

(b) The equipment or systems are designed and used for fixed civil "stored-program-controlled telephone circuit switching" applications;

(c) The equipment or systems do not contain "digital computers" or "related equipment" controlled for export by:

(1) ECCN 1565A(f);

(2) ECCN 1565A(h)(1)(i) (a) to (k) or (m); or

(3) ECCN 1565A(h)(1)(ii);

(d) The "PABXs" do not have the following features:

(1) Multi-level call pre-emption, including overriding or seizing of busy subscriber lines, "trunk circuits" or switches;

Note: This limitation does not preclude single level call pre-emption (e.g., executive override).

(2) "Common channel signaling";

(3) Automatic tandem "trunk circuit" switching, including adaptive routing, or algorithms that would permit a search for "trunk circuit" connection paths within a network;

(4) Reserved;

(5) Reserved;

(6) Digital synchronization circuitry for networking two or more exchanges except that permitting slave exchanges to be synchronized by master exchanges;

(7) Reserved;

(8) Centralized maintenance by means of transmission or reception of instructions for the purpose of:

(i) Controlling traffic;

(ii) Directionalizing paths;

(iii) Altering routing tables;

(iv) Connecting or disconnecting subscriber circuits or "trunk circuits"; or

(v) Managing the network;

(e) "Communication channels" or "terminal devices" used for administrative and control purposes:

(1) Are fully dedicated to these purposes; and

(2) Do not exceed a "total data signaling rate" of 19,200 bit per second;

(f) "Communication channels" or "terminal devices" used for administrative and control purposes:

(1) Are fully dedicated to these purposes; and

(2) Do not exceed a "total data signaling rate" of 19,200 bit per second;

(g) Reserved;

(h) Reserved;

(i) Reserved;

(j) The "software" supplied:

(1) Is limited to:

(i) The minimum "specially designed software" necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; and

(ii) Machine-executable form; and

(2) Does not include "software":

(i) Controlled by ECCN 1527A or paragraph (a)(5) of Supplement No. 3 to Part 779 or Item 11 on the U.S. Department of State's Munitions List (Supplement No. 2 to Part 770); or

(ii) To permit user-modification of generic "software" or its associated documentation;

(k) If the equipment or systems are not designed for installation by the user without support from the supplier, then the "software" necessary for commissioning is:

(1) Exported on a temporary basis only; and

(2) Kept under the controls of the supplier;

(l) Reserved.

1567—"Stored-program-controlled circuit switching" equipment or systems controlled for export by sub-paragraph (b) of this ECCN 1567A, provided that:

(a) The equipment or systems are designed for fixed civil use of "stored-program-controlled telegraph circuit switching" for data;

(b) The equipment or systems are designed and used for fixed civil "stored-program-controlled telegraph circuit switching" applications;

(c) The equipment or systems do not contain "digital computers" or "related equipment" controlled by:

(1) ECCN 1565A(f);

(2) ECCN 1565A(h)(1)(i) (a) to (k) or (m); or

(3) ECCN 1565A(h)(1)(ii);

(d) The equipment or systems do not have the following features:

(1) Multi-level call pre-emption including overriding or seizing of busy subscriber lines, "trunk circuits" or switches;

Note: This limitation does not preclude single level call pre-emption (e.g., executive override).

(2) "Common channel signaling";

(e) The maximum internal bit rate per channel does not exceed 19,200 bit per second;

(f) Reserved;

(g) The "software" supplied:

(1) Is limited to:

(i) The minimum "specially designed software" necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; and

(ii) Machine-executable form; and

(2) Does not include "software":

(i) Controlled by ECCN 1527A or paragraph (a)(5) of Supplement No. 3 to Part 779 or Item 11 on the U.S. Department of State's Munitions List (Supplement No. 2 to Part 770); or

(ii) To permit user-modification of generic "software" or its associated documentation;

(h) Reserved;

(i) If the equipment or systems are not designed for installation by the user without support from the supplier, then the "software" necessary for commissioning is:

(1) Exported on a temporary basis only;

(2) Kept under the control of the supplier;

(j) Reserved.

1567—"Stored-program-controlled circuit switching" equipment or systems, controlled for export by sub-paragraph (b) of this entry, provided that:

(a) The equipment or systems are designed for fixed civil use as "stored-program-controlled telephone circuit switching" exchanges that fulfill the definitions of either "terminal exchange" or "transit exchange";

(b) Reserved;

(c) The equipment or systems are designed and used for fixed civil "stored-program-controlled telephone circuit switching" applications;

(d) The equipment or systems cannot be adapted to mobile use or security use, as described in ECCN 1565A(f)(1) to (4), (g) or (h)(1)(ii)(a) and (b);

(e) Reserved;

(f) The equipment or systems do not have the following features:

(1) Multi-level call pre-emption including overriding or seizing of busy subscriber lines, "trunk circuits" or switches;

Note: This limitation does not preclude single level call pre-emption (e.g., executive override).

(2) "Common channel signaling";

(3) Adaptive routing or algorithms that would permit a search for "trunk circuit" connection paths within a network;

(4) Reserved;

(5) Reserved;

(6) Digital synchronization circuitry for networking two or more exchanges except that permitting slave exchanges to be synchronized by master exchanges; or

(7) Centralized maintenance by means of transmission or reception of instructions for the purposes of:

(i) Controlling traffic;

(ii) Directionalizing paths;

(iii) Altering routing tables;

(iv) Connecting or disconnecting subscriber circuits or "trunk circuits"; or

(v) Managing the network;

(g) "Communication channels" or "terminal devices" used for administrative and control purposes:

(1) Are fully dedicated to these purposes; and

(2) Do not exceed a "total data signalling rate" of 19,200 bit per second;

(h) Reserved;

(i) Reserved;

(j) The "software" supplied:

(1) Is limited to:

(i) The minimum "specially designed software" necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; and

(ii) Machine-executable form; and

(2) Does not include "software":

(i) Controlled by ECCN 1527A or paragraph (a)(5) of Supplement No. 3 to Part 779 or Item 11 on the U.S. Department of State's Munitions List (Supplement No. 2 to Part 770); or

(ii) To permit user-modification of generic "software" or its associated documentation;

(k) Reserved;

(l) If the equipment or systems are not designed for installation by the user without

support from the supplier, then the "software" necessary for commissioning is:

(1) Exported on a temporary basis only; and

(2) Kept under control of the supplier.

1572—Recording and reproducing equipment, as follows:

(a) Graphic instruments capable of continuous direct recording of sine waves at frequencies exceeding 20 KHz, and not containing a cathode ray tube with a fiber optic face plate;

(b) Analog magnetic tape recorders with all of the following characteristics:

(1) Bandwidth of up to:

(i) 4 MHz per track and having up to 28 tracks; or

(ii) 2 MHz per track and having up to 42 tracks;

(2) Tape speed of 610 cm (240 inches) per second or less;

(3) Not designed for underwater use;

(4) Not ruggedized for military use; and

(5) Recording density not exceeding 6,532 magnetic flux sine waves per cm;

(c) Instrumentation digital recorders having all of the following characteristics:

(1) "Packing density" of 13,125 bits per cm or less;

(2) Maximum of 28 tracks;

(3) Tape speed of 305 cm (120 inches) per second or less;

(4) Not designed for underwater use; and

(5) Not ruggedized for military use;

(d) Magnetic tape appropriate for use with magnetic tape recorders free from control or exportable under this entry, provided that the tape length, "packing density" and "recording density" do not exceed the performance limits of the magnetic tape recorders;

(e) Disks appropriate for use with disk drives free from control or exportable under this entry, provided that the "packing density" and inner and outer diameters do not exceed the performance limits of the disk drives;

(f) Video magnetic tape recorders specially designed for television recording.

1586—Analog-to-digital or digital-to analog converters, as follows:

(a) Analog-to-digital converters with more than a 200 ns conversion time to a maximum resolution of 12 bit;

(b) Digital-to-analog converters with more than 200 ns settling time for voltage output and a maximum resolution of 12 bit;

(c) Digital-to-analog converters with more than 25 ns settling time for current output and a maximum resolution of 12 bit.

1584—Cathode-ray oscilloscope not having any of the following characteristics:

(a) An amplifier bandwidth exceeding 350 MHz;

(b) A horizontal sweep speed faster than 1 ns per cm and an accuracy (linearity) better than 2%;

(c) Using sampling techniques for the analysis of recurring phenomena that increase the effective bandwidth of an oscilloscope or time-domain reflectometer to a frequency greater than 5 GHz;

(d) Digital oscilloscopes with sequential sampling of the input signal at intervals of less than 20 ns;

(e) Ruggedized to meet military specifications; or

(f) Rated for operation over a temperature range of below −25 degrees C to above +55 degrees C.

1585—The following:

(a) Non-ruggedized cinema recording cameras, controlled for export by paragraph (a) of this ECCN, for normal civil purposes;

(b) Mechanical framing cameras controlled for export by paragraph (b) of this entry that are designed for civil purposes (i.e., non-nuclear use) with a framing speed of not more than 2×10^6 frames per second;

(c) Electronic streak and/or framing cameras having all of the following characteristics:

(1) Not ruggedized;

(2) Capable in the framing mode of speeds of no more than 10^6 frames per second;

(3) Capable in the streak mode of writing speeds no more than 10mm per second;

(4) Designed for civil use;

(5) The performance of the camera is not field-upgradable such as through the substitution of electronic plug-ins;

(6) Exported for non-nuclear use; and

(7) Not using an electron tube having a gallium arsenide (GaAs) photocathode.

1587A—The following:

(a) Temperature-compensated crystal oscillators (TCXOs) controlled for export only by sub-paragraph (c)(1) of this ECCN 1587A;

(b) Quartz crystals for use as oscillator elements specially designed for temperature-controlled crystal ovens or for TCXOs covered by sub-paragraph (c) and having an average aging rate of + or − 1×10^{-11} per day or better (less) except stress compensated (SC) cut crystals.

3605A—Nickel powder obtained by the carbonyl process for non-nuclear civil applications.

1757A—Silicon and compounds, as follows:

(a) Monocrystalline silicon N-type, crystal orientation 1–1–1 with a resistivity not exceeding 100 ohm/cm;

(b) Monocrystalline silicon P-type, crystal orientation 1–1–1 with a resistivity not exceeding 5 ohm/cm.

(c) Polycrystalline silicon;

(d) Compounds used in the synthesis of polycrystalline silicon.

1767A—Optical fiber preforms specially designed for the manufacture of silicon-based optical fibers, provided that they are designed to produce non-militarized silicon-based optical fibers that are optimized to operate at a wavelength of 1,350 nm or less.

PART 774—[AMENDED]

§ 774.2 [Amended]

4. Section 774.2(a)(1) is amended by adding the phrase "G–COCOM" immediately after the phrase "G–COM" and before the phrase "GFW".

PART 786—[AMENDED]

5. Section 786.6 is amended by revising paragraph (a)(1)(ii) to read as follows:

§ 786.6 Destination control statements.

(a) * * *

(1) * * *

(ii) General License GLV, CTF–US, GTE, GLR, G–COM, G–COCOM or C–CEU.

* * * * *

Dated: July 5, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89–16106 Filed 7–6–89; 10:47 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket Nos. 87F–0302 and 88F–0140]

Indirect Food Additives; Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of a Nylon 6I/6T polymer manufactured by the condensation of hexamethylenediamine, terephthalic acid, and isophthalic acid for contact with all types of food except beverages containing more than 8 percent alcohol. This action responds to two petitions filed by E.I. du Pont de Nemours and Co.

DATES: Effective July 11, 1989; written objections and requests for a hearing by August 10, 1989.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 7, 1987 (52 FR 37524), FDA announced that a food additive petition (FAP 7B4001) had been filed by E.I. du Pont de Nemours and Co., Wilmington DE 19898, proposing that the food additive regulations be amended to provide for the safe use of a polymer manufactured by the condensation of hexamethylenediamine, terephthalic acid, and isopthalic acid (Nylon 6I/6T polymers) for contact with all types of food except beverages contianing more than 8 percent alcohol. These Nylon 6I/6T polymers would have an average thickness that could not exceed 1.5 mils

(0.038 millimeter). However, subsequent to the filing of FAP 7B4001, E.I. du Pont de Nemours and Co. submitted an additional petition that contained data that would support the safe use of Nylon 6I/6T polymers of unlimited thickness in contact with all types of food except alcoholic beverages containing more than 8 percent alcohol. In a notice published in the **Federal Register** of May 24, 1988 (53 FR 18610), FDA announced that this new petition (FAP 8B4078) had been filed.

FDA has evaluated data in the petitions and other relevant material. The agency concludes that the proposed food alternative use is safe, and that the regulations should be amended in 21 CFR 177.1500 as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petitions and the documents that FDA considered and relied upon in reaching its decision to approve the petitions are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before August 10, 1989 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularlity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and applied Nutrition, Part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR Part 177 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 177.1500 is amended in the table in paragraph (b) by revising item 12 to read as follows:

§ 177.1500 Nylon resins.

* * * * *

(b) * * *

Nylon resins	Specific gravity	Melting point (degrees Fahrenheit)	Solubility in boiling 4.2N HC1	Viscosity number (mL/g)	Maximum extractable fraction in selected solvents (expressed in percent by weight of resin)			
					Water	95 percent ethyl alcohol	Ethyl acetate	Benzene
* * *								
12. Nylon 6I/6T resins for use in contact with all types of food except alcoholic beverages containing more than 8 percent alcohol.	1.207±0.1	N/A	Insoluble after 1 hour.	.....	0.2	1.0	0.1	0.1
* * *								

* * * * *

Dated: June 27, 1989.

Richard J. Ronk,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–16168 Filed 7–10–89; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 573

[Docket No. 86F–0060]

Selenium; Environmental Impact; Opportunity for Comment

AGENCY: Food and Drug Administration.

ACTION: Opportunity for comments on tentative responses to certain objections to final rule.

SUMMARY: The Food and Drug Administration's (FDA's) Center for Veterinary Medicine (CVM) is providing opportunity for comment on its tentative responses to certain environmentally based objections to the agency's final rule of April 6, 1987 (52 FR 10887), raising the level of selenium permitted in certain animal feeds. This notice and opportunity for comment on this food additive regulation will assist FDA in determining whether to grant a formal evidentiary public hearing on objections received in this formal rulemaking proceeding.

DATE: Written comments by August 10, 1989.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, identified with the docket number found in brackets in the heading of this document. Copies of the environmental impact analysis report, the finding of no significant impact, the objections, the references cited in this notice, and any comments received are available for public examination at the Dockets

Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Woodrow M. Knight, Center for Veterinary Medicine (HFV-226), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3390.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 6, 1987 (52 FR 10887) (corrected June 4, 1987; 52 FR 21001), FDA published a food additive regulation amending 21 CFR 573.920 (the 1987 amendments), permitting an increase in the level of selenium (as sodium selenite or sodium selenate) in complete feeds for cattle, sheep, chickens, swine, turkeys, and ducks, and also in salt-mineral mixtures and feed supplements for beef cattle and sheep. The permitted level of supplemental selenium that could be provided was increased from 0.1 or 0.2 part per million (ppm) to 0.3 ppm in complete feed (except for weanling swine, which was already approved at 0.3 ppm), and from 1 milligram (mg) per head per day to 3 mg per head per day from salt-mineral mixtures and feed supplements for beef cattle.

The 1987 amendments were issued in response to a food additive petition (FAP 2201) from the American Feed Industry Association (AFIA), 1701 North Fort Myer Dr., Arlington, VA 22209. In issuing the 1987 amendments, FDA determined, based in part on an environmental impact analysis report (EIAR) submitted by AFIA, that they would not have a significant impact on the human environment. The agency made that determination in a document known as a finding of no significant impact (FONSI).

In April, May, and July 1987, the following organizations filed objections to the 1987 amendments:

National Mixer-Feed Association (NMFA), P.O. Box 9262, Amarillo, TX 79105.

American Council of Independent Laboratories, Inc. (ACIL), 1725 K St. NW., Washington, DC 20006.

Micro Tracers, Inc. (MT), 1370 Van Dyke Ave., San Francisco, CA 94124.

Natural Resources Defense Council (NRDC), 122 East 42d St., New York, NY 10168.

State of California Health and Welfare Agency (CHWA), Department of Health Services, 2151 Berkeley Way, Berkeley, CA 94704.

Some of these organizations requested a hearing on their objections, a stay of the 1987 amendments, or both a hearing and a stay.

CVM has nearly completed its analysis of all the objections, which were based on environmental and nonenvironmental concerns, and will soon recommend to the Commissioner of Food and Drugs (see 21 CFR 10.55) whether to grant or deny a hearing, in whole or in part, and whether to stay the 1987 amendments, also in whole or in part. Before making its recommendations, CVM wishes to obtain additional comments on certain environmental issues raised by one or more of the objections in connection with the EIAR or the FONSI. Accordingly, CVM is setting out a summary of, and its tentative responses to, the objections in question and is providing interested persons an opportunity to submit written comments on these responses. CVM emphasizes that its responses are tentative; it has not reached a final conclusion on the merits of any of the objections summarized below.

Summary of the Five Objections and CVM's Tentative Responses

1. NMFA, ACIL, MT, NRDC, and CHWA argue that the environmental impact of the 1987 amendments was not adequately addressed by the EIAR and the FONSI. According to one or more of these organizations, the literature demonstrates that selenium bioconcentrates, bioaccumulates, and biomagnifies and that selenium thereby creates environmental problems, particularly in aquatic ecosystems.

Bioconcentration is a process by which there is a net accumulation of a chemical directly from water into aquatic organisms when uptake is greater than elimination. Bioaccumulation is a general term describing the combined accumulation of a chemical in aquatic organisms from water directly (bioconcentration) and through consumption of food containing the chemical. Biomagnification is the increase in concentration of a bioaccumulated chemical which can result when the chemical passes up through trophic levels of a food chain or web. The bioconcentration factor (BCF) is usually defined for an aquatic organism as the concentration of a chemical in a tissue or whole organism divided by the concentration of the chemical in the water in which the organism lived. Bioaccumulation and, ordinarily, biomagnification of selenium must occur in order for selenium to cause toxic effects in the environment. Bioconcentration, bioaccumulation, and biomagnification do not occur if a compound is not bioavailable.

Environmental introductions of selenium from naturally seleniferous areas and from certain industrial and agricultural activities can threaten the health of fish and wildlife, as NRDC and others point out (Refs. 1-6). Compared to natural sources of selenium, contributions of selenium from industrial activities are small (Ref. 1). Compared to the total contribution of selenium to the environment from industrial activities, the environmental introductions of selenium attributable to the 1987 amendments are small. None of the references or other materials submitted by any of the five organizations identified in this notice discusses as a relevant environmental factor the addition of selenium to animal feeds and its consequent disposal via animal wastes, even though selenium supplementation of animal feeds has occurred since at least 1973.

CVM does not dispute that bioconcentration, bioaccumulation, and biomagnification of some chemical forms of selenium can occur and that under the right circumstances, these forms can cause adverse environmental impacts, including fish mortalities and reproductive failures, waterfowl deaths, and severe deformities of embryos and hatchlings. CVM also does not dispute that introductions of selenium into the environment occur when domestic animals are fed selenium supplements, or that these introductions can occur via runoff from animal farms and from agricultural soils to which manure from animals fed supplemental selenium has been applied. Finally, CVM does not dispute that aquatic ecosystems are more sensitive than terrestrial ecosystems to selenium inputs.

The issue, however, is whether the environmental introductions expected to result from the 1987 amendments will be of adequate quantity and bioavailability to cause significant adverse environmental impacts, particularly in aquatic ecosystems.

The FONSI estimated that, on a local basis, the worst-case increase in concentration (loading) of selenium in agricultural soils amended with manure from animals receiving selenium supplementation would be about 2 parts per billion (ppb) per application (typically once per year). (As discussed in paragraph 3 of this notice, the FONSI's estimated maximum loading of selenium is a grossly exaggerated worst-case estimate.) The FONSI then concluded that selenium loading would not have the potential to cause significant environmental effects on a local scale. The following is a reevaluation of this issue in light of the information submitted by the organizations identified above as well as scientific information that has become available since the FONSI was prepared.

To address this issue, one must first understand the cycling of selenium in the environment.

The Selenium Cycle

Selenium cycles in the environment in what is called a biogeochemical cycle. The amount of selenium added to the cycle, the speed of the cycle, and the balance of biological, chemical, and geological forces that mobilize and immobilize various inorganic and organic forms of selenium, all determine, at a particular locality, the selenium content of the biota, water, air, and soil and whether it is toxic to members of the food web. Bioconcentration factors in the biota must be examined in light of the biogeochemical cycle for selenium for these factors, as applied to selenium, to have any meaning.

Lemly and Smith (Ref. 7) and Hodson (Ref. 8) provide a good overview of selenium biogeochemical cycling in aquatic environments. These reviews support several conclusions or generalizations:

a. The selenium status of an aquatic ecosystem cannot always be readily determined by measuring selenium concentration in water, because the selenium biogeochemical cycle works to minimuze the presence of selenium in solution.

b. The quantities of selenium added to the ecosystem in question and the speed at which selenium is cycling in the ecosystem are probably better predictors than worst-case modeling of the potential for adverse effects to be seen in the biota.

c. The chemical and biochemical processes that reduce the valence state of selenium from +VI (selenate, $SeO_4^{=}$) to lower valence states +IV (selenite, $SeO_3^{=}$), O (elemental selenium, Se^{o}), and −II (selenides, $Se^{=}$), and the deposition of organic forms of selenium as detritus from dead animals and plants, serve to isolate and reduce the bioavailability of selenium.

d. The chemical and biological processes that oxidize selenium increase the mobility and bioavailability of selenium.

e. Selenium is bioaccumulated more efficiently by fish through the food chain than through direct bioconcentration from water.

f. The role of selenium as an essential micronutrient may play a part in its efficient bioaccumulation in food chains.

g. Shallow, slow-moving bodies of water with large volumes of fine organic sediments, rooted aquatic plants, and active, large, benthic invertebrate populations accumulate selenium most efficiently and, where accumulations reach damaging levels, are probably among the slowest to recover after selenium inputs cease.

In some locations these factors coincide to cause selenium excesses in the food web and toxic effects in higher trophic levels, e.g., predatory fish and waterfowl (Ref. 9). In most locations in the United States, however, these factors, when combined with the constant removal of selenium from the land through harvest of agricultural crops, result in reduced availability of selenium forms in aquatic ecosystems. For example, Lowe, et al. (Ref. 10) determined the trend in average selenium levels of freshwater fish sampled at more than 100 locations all over the continental United States. They found that the geometric mean of selenium levels in fish decreased from 0.6 ppm (wet weight) in 1972, to 0.58 ppm in 1976-77, and 0.46 ppm in 1978-79. Lowe et al., found that this decreasing trend ceased in 1980-81, when the geometric mean of selenium levels in fish reached 0.47 ppm (470 ppb).

Selenium is converted from one chemical form to another in the environment by the action of living organisms and chemical processes and moved throughout the environment by geological forces. Some selenium chemical forms are bioavailable and bioaccumulated by living organisms, some selenium forms are volatile and lost from the ecosystem, and others are not bioavailable and, therefore, are not toxic.

Selenium Geology

Burau (Ref. 11) surveyed the geochemical factors affecting the range of selenium concentrations found in soils. He states that, in most soils, higher concentrations of selenium in parent rocks and low rainfall favor the formation of soils with high selenium contents. Magmatic rocks have the lowest selenium content, ranging from 10 to 50 ppb. Sedimentary rocks are generally higher in selenium. Shales have the highest selenium contents, ranging from 500 to 28,000 ppb. Worldwide, the average selenium concentration in soils is 400 ppb, but there is quite a range of concentrations represented. Some high selenium soils of the Great Plains, derived from Cretaceous-age Pierre Shale, range from 6,000 to 28,000 ppb. Allaway's analysis (Ref. 12) of the selenium biogeochemical cycle concluded that, in acid to neutral soils, the pool of bioavailable selenium will eventually be depleted.

Most cropland in the United States does not have a sufficient pool of bioavailable selenium to grow feed grains containing sufficient selenium for the nutritional needs of domestic animals. This is the situation that created the need for selenium supplementation of feeds in the first place. Without such supplementation, domestic livestock raised in selenium-deficient areas, and which therefore receive selenium-deficient diets, often exhibit nutritional myopathies and reproductive problems that can lead to death.

Selenium Retention and Excretion by Selenium Supplemented Animals

The chemical form in which selenium is excreted by farm animals receiving selenium supplements has much to do with its bioavailability and its mobility in the environment, once that waste is amended into agricultural soils. Selenium bioavailability, retention, and the chemical form of selenium excreted by domestic animals are affected by the nutrient level, the selenium compound fed, the feed matrix, and the age and metabolic status of the animal.

Nonruminants (e.g., poultry, swine, rodents, humans) readily absorb sodium selenate and selenite after consumption. Most of the selenium consumed by nonruminants is excreted in the urine. Studies with rats have shown that, even with increasing levels of selenium supplementation (as sodium selenite), only a small and constant fraction of selenium is excreted fecally and the rest is excreted in the urine (Ref. 13). Chemical analysis of the selenium component of the urine of rats supplemented with sodium selenate found 21 percent excreted as inorganic selenium, 26 percent excreted as trimethylselenonium ion, and 21 percent as an unidentified compound (Ref. 14). Depending on the form of selenium supplementation, 20 to 50 percent of the urinary excretion of selenium is excreted in the form of the trimethylselenonium ion (Ref. 14). Olson and co-workers (Ref. 15) have shown that trimethylselenonium is minimally available for plant uptake, and that which is absorbed is not biologically active. (See also Ref. 12.) They determined, moreover, that FDA's regulation permitting the supplementation of 0.1 ppm selenium in animal diets did not affect the selenium status of selenium deficient and borderline agronomic areas (Ref. 15). This work suggests that selenium supplementation would not be detrimental to borderline toxic areas, in the unlikely event that food producers in such areas chose to provide such

supplementation to their livestock. (See paragraph 5 of this notice.)

A large proportion of the selenium in selenium supplemented animals is not excreted but is retained by the growing animal. Young swine supplemented with 0.3 ppm selenium in their diets retained 44 percent of the selenium (Ref. 16). Swine fed 0.3 ppm sodium selenite absorbed 88 percent of the supplemented selenium and retained 50 percent of the absorbed levels (Ref. 17). Due to the anatomy of the bird, retention (digestibility) studies are not routine. In a calculation using the selenium deposited in the muscle, organs, and blood of an adult broiler as indication of overall retention, a very conservative estimate of 18 percent of the supplemented selenium (when selenium was supplemented at 0.3 ppm of the diet) may be interpolated, with values ranging from 78.3 to 13.2 percent retention in diets containing 0, 0.1, 0.2, and 0.4 ppm supplemental selenium (Ref. 18).

Ruminants (e.g., cattle and sheep) metabolize and excrete selenium differently from nonruminants. In contrast with the urinary excretion seen in nonruminants, ruminants excrete the majority of their selenium in the feces (Ref. 19). Experiments with fecal selenium have demonstrated that most of the selenium is not water soluble, and other solubility mediums suggest that the primary excretory product is elemental selenium (Se^{o}) (Ref. 12). That elemental selenium is formed is supported by the fact that the rumen is known to be conducive to reduction of compounds due to its anaerobic and highly reductive environment (Ref. 19).

In a study in which sheep were fed radiolabeled organically bound selenium, more than 50 percent of the selenium dose was excreted in the feces and less than 7 percent of the dose was excreted in the urine (Ref. 20). Of the labeled fecal selenium, only 0.3 percent could be found in forage species grown on feces-amended soils, suggesting that fecally excreted selenium from ruminants is not significantly available to plants (Ref. 20). In a study in which radiolabeled selenium (as selenious acid, Se +IV) was fed to sheep, 51 percent of the dose was found in the feces, and this selenium was mostly unavailable to rye grass (Ref. 21). Studies have shown that elemental selenium has only 7.4 percent of the biological availability of sodium selenite (Se Se +IV) to young chickens (Ref. 22).

In summary, oxidized, bioavailable forms of selenium (selenite and selenate, valence states +IV and +VI, respectively) are used to supplement the diets of domestic livestock. These forms are readily absorbed, partially retained by the growing animal as an essential micronutrient, and partially excreted. Nonruminants excrete a mixture of selenium compounds, a large proportion of which is the organic selenium compound trimethylselenonium. Ruminants excrete reduced forms of selenium, a large portion of which is elemental selenium. These excreted compounds have much reduced bioavailability and, hence, little potential for bioaccumulation and biomagnification, as evidenced by the poor uptake of these compounds by plants.

Introductions of Selenium Into the Environment

The contribution to the total amount of selenium in the environment due to the 1987 amendments is minimal, at best. Nationwide, 46,000 metric tons of selenium are introduced each year from fossil fuel combustion, industrial losses, and municipal wastes (FONSI, p. 3 and references cited there), and 11,000 and 31,000 metric tons per year are introduced from air emissions and solid waste disposal, respectively (id.). By contrast, on a "worst-case basis," selenium introductions due to the 1987 amendments are estimated to reach 22.4 metric tons per year, assuming that all animals are supplemented at the maximum permitted levels (id. at 4.). One expert estimates that no more than 10 metric tons per year of selenium are used in animal feeds and veterinary medicine (Ref. 23). As discussed above, only one-half to two-thirds of this amount would be introduced into the environment from manure from selenium-supplemented animals; the rest would be retained in the tissues of the animals.

It should also be noted that the FONSI's worst-case estimates of selenium loadings from waste applications are extremely conservative (see paragraph 3 of this notice), and that the contribution of selenium to the agricultural system from animal waste will probably be lost in the much larger pool of selenium already naturally present in most soils.

Fate of Excreted Selenium in the Environment

The selenium excreted by farm animals will mostly be incorporated into agricultural soils when the manure from these animals is used as fertilizer for crops. After incorporation into soils, the selenium will be subject to the chemical, biological, and geological forces that convert one form of selenium to another.

Some of the selenium may be released as volatile organic forms of selenium, from plants and through the action of the microbial communities present in the soil and sediment (Ref. 24). The amount of selenium lost through these means will vary with the plant species present and the activity of the soil community.

Some of the selenium will enter the terrestrial-based food chain in herbivorous insects, in birds eating both crops and insects, in grazing animals, and in man.

Some of the selenium will be bioaccumulated by the crops grown on the amended soil, and a portion of this bioaccumulated selenium will be removed at harvest. The quantity bioaccumulated and removed will depend on the forms of selenium introduced, the activities of soil microbial populations, the soil type, the climate, the weather, the ability of the crop plant to accumulate selenium, and the portions of the crop plant harvested.

Some of the selenium will be present in runoff from the amended soil. The amount will depend on the forms of selenium present, the ability of the soil community to convert them to more soluble forms, the quantity and frequency of rainfall, the topography of the land, and the type of ground cover and soil. Selenium present in runoff may be either in solution or absorbed to particulate clays or organic matter.

The forms of selenium excreted by animals are not readily bioavailable to plants, and in acid to neutral soils these forms become progressively more bound into ferric hydroxide selenite and metal selenide complexes, which are also not bioavailable. Although some forms of excreted selenium can be oxidized to selenates in alkaline, well-aerated soils, this process is characterized by Allaway as a slow reaction, and other excreted selenium forms are considered as a "sink," or loss, from the cycle (Ref. 12).

In summary, FDA considered selenium bioconcentration, bioaccumulation, and biomagnification when the FONSI was prepared in 1986. CVM has considered these issues again in light of subsequently available research. The environmental introduction and fate modeling conducted in the FONSI are crude, perhaps, but are also extremely conservative. CVM believes that the modeling is conservative enough to account for the uncertainties and local variations involved in an environmental fate and effects of the selenium introduced into the environment as a result of the 1987 amendments. CVM has tentatively concluded that further environmental assessment of these phenomena is neither required nor necessary here, where the contribution

of selenium from animal waste due to the 1987 amendments, compared to the total amount of selenium in the environment, is so small and the selenium contributed is in a form that is not initially bioavailble, and may only slowly become partially bioavailable. Selenium must be in a bioavailable form in order to bioaccumulate.

2. MT argues that the FONSI referred only to bioaccumulation in animals and failed to consider bioaccumulation in plants, insects, and microbiota.

As explained in paragraph 1 of this notice, the FONSI cites pertinent literature concerning selenium bioconcentration, bioaccumulation, and biomagnification. In that context, the term "organisms" includes plants, microbes, and animals, including insects. To the extent that MT's argument is related to the comments summarized in paragraph 1 of this notice, CVM's tentative conclusion there also applies here.

3. NRDC argues that the environmental fate model in the FONSI is unrealistic, and proffers two allegedly improved models. NRDC's models include increases in the watershed area with and without manure stockpiled in that area. As a result of these claimed improvements over the environmental fate model in the FONSI, NRDC calculates that there would be a 5- to 10-fold greater concentration of selenium in the 1-hectare pond featured in that model than the FONSI estimates. NRDC then compares its estimates with background levels of selenium in freshwater lakes and rivers, concludes that the former are equal to or greater than the latter, and argues that this additional burden can contribute to harmful effects of selenium on the biota.

Employing a worst-case analysis and using extremely conservative assumptions, the FONSI (p. 9) estimates that, as a result of the 1987 amendments, there will be an influx of 0.02 to 0.24 ppb/year selenium into the modeled 1-hectare pond, which already contains approximately 0.2 ppb selenium (Ref. 11). On a long-term basis, concentrations of selenium in water ranging from 2 to 5 pb should not be harmful (Refs. 3 and 7); indeed, they should provide protection for all freshwater life, since there is no indication in the literature of any deleterious effects of selenium on any aquatic organism at those concentrations (Ref. 3). Moreover, according to the Environmental Protection Agency (Ref. 25), freshwater aquatic organisms and their uses should not be affected unacceptably if the 4-day average concentration of selenium does not exceed 5 ppb more than once every 3 years and if the 1-hour average concentration does not exceed 20 ppb more than once every 3 years.

CVM has tentatively concluded that, in all likelihood, the influx of selenium into local aquatic environments as a result of the 1987 amendments will not begin to approach even 0.02 ppb/year, even if NRDC's allegedly improved environmental fate models are employed. That is because the unstated assumptions underlying the FONSI are extremely conservative.

The FONSI assumes that none of the supplemented selenium will stay in the tissues of the growing food-producing animals receiving supplemented feeds, i.e., that all the supplemented selenium will be excreted directly into the animals' waste and then onto the soil. In fact, selenium at nutritional levels given to growing animals is readily absorbed and is substantially retained in their tissues, as discussed in paragraph 1 of this notice.

The FONSI also assumes that the excreted selenium will be in a chemical form that is readily soluble in water, i.e., selenate. In fact, selenium excreted by domestic animals is primarily in chemical forms—elemental selenium, selenides, and trimethylselenonium—that have low solubility in water, poor mobility through soils, low bioavailability, and low toxicity, as discussed in paragraph 1 of this notice. (See also Refs. 1, 26, and 27.)

Additionally, the FONSI assumes that maximum amounts of selenium will be used in feeds, mineral mixes, and feed supplements, even though it is unlikely that selenium supplementation will be provided in geographical areas of the country that are selenium sufficient (paragraph 5 of this notice).

Next, the FONSI assumes that up to 10 percent of the selenium in the waste-amended soil will be lost to runoff from a single, large rainfall event. But soil-incorporated pesticides show losses to runoff of no more than 0.5 to 1.5 percent (FONSI, p. 9 and reference cited there), and selenium incorporated into the top 6 inches of the soil should not show greater losses to runoff, given the relatively insoluble chemical forms of selenium excreted by supplemented animals.

Finally, the FONSI assumes that the runoff from the large rainfall event will constitute 20 percent of all the water in the pond. That figure is high as a proportion of the water one would expect to find in the 1-hectare farm pond and, to an even greater extent, as a proportion of the higher volumes of water normally present in rivers and lakes.

NRDC does not dispute these conservative assumptions. Instead, it replaces the 10-hectare watershed used in the environmental fate model in the FONSI with runoff from a 50-hectare watershed and with runoff from a 50-hectare watershed augmented by an equivalent amount of runoff from manure piles and other unsecured waste stored in that watershed. According to NRDC, use of its environmental fate model would result in 5- and 10-fold increases, respectively, in the concentrations of selenium one would expect in the 1-hectare pond after receiving this runoff.

CVM believes that NRDC's models contain mathematical errors (Ref. 28) and are based on unrealistic assumptions. It also believes that even if the assumptions are regarded as true (with or without the mathematical errors corrected), the models would not result in concentrations of selenium of environmental concern.

Use of NRDC's model employing runoff from a 50-hectare watershed results in a 2.75-fold increase over the FONSI's maximum estimate of 0.24 ppb/year influx of selenium into local aquatic environments, to a maximum of 0.67 ppb; use of NRDC's model employing runoff from a 50-hectare watershed augmented by an equivalent amount of runoff from unsecured manure piles results in a 5.5-fold increase, to a maximum of 1.3 ppb (Ref. 28). Taking NRDC's calculations for the latter model as true results in 10-fold increase, to a maximum of 2.4 ppb.

Only the last of these concentrations (2.4 ppb) of selenium would exceed the concentrations of selenium at which there is any evidence of deleterious effects on aquatic organisms. And that concentration is based on a mathematical error (Ref. 28) and is derived from the FONSI's maximum estimate (0.24 ppb), which incorporates a series of extremely conservative assumptions. Moreover, the assumptions underlying NRDC's environmental fate models are wholly unrealistic. They assume, for example, that all 50 hectares of the watershed are in plowed farmland, that all of them are amended with the maximum amount of poultry waste, and that all the runoff from the entire watershed drains into the 1-hectare pond. NRDC's second model assumes, in addition, that an equal amount of poultry waste, piled up and otherwise unsecured, will be located on the same farmland and that the rainfall event will similarly leach the selenium from such storage areas into the pond. Such "double counting" is especially unrealistic with respect to poultry

waste. The vast majority of poultry are raised in covered buildings or enclosures that do not allow much, if any, of the poultry waste to be touched by rainfall; poultry waste is often not removed from the buildings for up to 2 years; and poultry waste is a valuable soil conditioner and, as such, is spread over and incorporated into agricultural lands.

4. NRDC argues that the FONSI fails to assess the potential effects of the 1987 amendments on wildlife living near acquatic environments, and claims that it should have taken into account food-chain BCF's. NRDC cites a range of BCF's from 460 to 32,000, on the ground that they may vary for various acquatic species. It then applies 3 BCF's (500, 5,000 and 30,000) to the environmental fate models discussed in paragraph 3 of this notice. Using the various BCF's and models, NRDC estimates that aquatic species may accumulate 120 to 72,000 ppb selenium. NRDC suggests that dietary selenium levels above 5,000 ppb may be harmful to migratory birds.

As discussed in paragraph 1 of this notice, bioconcentration and biomagnification must be considered within the context of the selenium biogeochemical cycle, including the loading or quantity of selenium introduced into the system and the factors that mobilize and immobilize selenium in the environment. CVM has re-examined the model used in the FONSI, which attempts to evaluate selenium inputs and the potential environmental effects on a pond receiving runoff from land amended with wastes from animals receiving selenium supplementation. If one assumes that the worst-case losses of selenium from the amended agricultural soils are in the form of water soluble, bioavailable selenate, then the addition of less than 10 grams of selenate to a shallow, 1-hectare pond all at once could result in an undesirable level of food chain biomagnification and adverse effects due to selenium toxicity on the top trophic levels. As discussed in paragraph 1 of this notice, however, animals do not excrete selenium in the form of selenate, but, rather, in reduced forms with limited or no bioavailability, low toxicity, and very limited mobility through soil. Furthermore, where environmental conditions favor the transformation of some of the excreted forms into selenates, this can occur only slowly (Ref. 12).

CVM now believes that the FONSI grossly overestimates the potential mobility and bioavailability, and, therefore, the potential for environmental impact, of selenium entering the environment as a consequence of the 1987 amendments.

5. MT argues that environmental problems caused by selenium are not limited to California, but are widespread in the United States.

As the FONSI (pp. 11–12) acknowledges, a few sites in the United States have been contaminated with high concentrations of selenium and some fish and wildlife from those sites have been adversely affected. These sites include, in addition to the Kesterson Reservoir, sites contaminated in North Carolina and Texas due to coal-fired power plants. Kesterson is the first documented problem area created by a combination of high levels of naturally occurring selenium in the soil and the leaching of high levels of selenium by irrigation return water by agricultural practices (Ref. 29). That problem area, however, does not extend very far. The Volta Wildlife Area, which is only 6 miles from Kesterson and which is used as the control site for most chemical and biological comparison with Kesterson, is not affected (Ref. 30). And fish sampled from a variety of locations in the nearby San Joaquin River had concentrations of selenium within the range around the national average (approximately 0.5 ppm wet weight (Ref. 10)) to 5 ppm dry weight (equivalent to some 1 ppm wet weight) (Ref. 31)). More to the point, CVM is unaware of any evidence that more than a handful of aquatic environments in the United States are contaminated with high concentrations of selenium, and CVM does not believe that food producers in those areas will choose to provide supplemental selenium to their livestock. (The 1987 amendments, after all, permit but do not require, selenium supplementation.) Such supplementation is not inexpensive. Food producers are unlikely to provide it unless the animals are in selenium-deficient areas.

References

The following references, together with the other documents cited in this notice, and any comments received have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m. Monday through Friday.

1. Eisler, R., "Selenium Hazards to Fish, Wildlife, and Invertebrates: A Synoptic Review," *U.S. Fish and Wildlife Service Biology Report 85*, 57 pp., 1985.
2. Bennett, W.N., A.S. Brooks, and M.E. Boras, "Selenium Uptake and Transfer in an Aquatic Food Chain and its Effect on Fathead Minnow Larvae," *Archives of Environmental Contamination and Toxicology*, 35:513, 1986.
3. Lemly, A.D., "Toxicology of Selenium in a Freshwater Reservoir: Implications for Environmental Hazard Evaluation and Safety," *Ecotoxicology and Environmental Safety*, 10:314, 1985.
4. North Carolina Department of Natural Resources Community Development, North Carolina Water Chemistry Standards Documentation: "The Freshwater Chemistry and Toxicology of Selenium with Emphasis on its Effects in North Carolina," 52 pp., 1986.
5. Finley, K.A., "Observations of Bluegills Fed Selenium-Contaminated Hexegenia Nymphs Collected from Belews Lake, North Carolina," *Bulletin of Environmental Contamination and Toxicology*, 35:816, 1985.
6. Lemly, A.D., "Ecological Basis for Regulating Aquatic Emissions from the Power Industry: The Case with Selenium," *Regulatory Toxicology and Pharmacology*, 5:465, 1985.
7. Lemly, A.D., and G.J. Smith, "Aquatic Cycling of Selenium: Implications for Fish and Wildlife," *U.S. Fish and Wildlife Service Fish and Wildlife Leaflet 12*, 1987.
8. Hodson, P.V., "The Effect of Metal Metabolism on the Uptake, Disposition, and Toxicity in Fish," *Aquatic Toxicology*, 11:3, 1988.
9. Presser, T.S., and H.M. Ohlendorf, "Biogeochemical Cycling of Selenium in the San Joaquin Valley, California, USA," *Environmental Management*, 11:805, 1987.
10. Lowe, T.P., T.W. May, W.G. Brombaugh, and D.A. Kane, "National Contaminant Biomonitoring Program: Concentrations of Seven Elements in Freshwater Fish, 1978–81," *Archives of Environmental Contamination and Toxicology*, 14:363, 1985.
11. Burau, R.G., "Environmental Chemistry of Selenium," *California Agriculture*, 39:16, 1985.
12. Allaway, W.H., "Selenium in the Food Chain," *Cornell Veterinarian*, 63:151, 1973.
13. Burk, R.F., D.G. Brown, R.J. Seely, and C.C. Scaief, III, "Influence of Dietary and Injected Selenium on Whole-Body Retention, Route of Excretion and Tissue Retention of $^{75}SeO_3^{2-}$ in the Rat," *Journal of Nutrition*, 102:1049, 1972.
14. Palmer, I.S., R.P. Gunsalus, A.W. Halverson, and O.E. Olson, "Trimethylselenonium Ion as a General Excretory Product from Selenium Metabolism in the Rat," *Biochimica et Biophysica Acta*, 208:260, 1970.
15. Olson, O.E., E.E. Cary, and W.H. Allaway, "Absorption of Trimethylselenonium by Plants," *Agronomy Journal*, 66:805, 1976.
16. Mahan, D.C. "Effect of Inorganic Selenium Supplementation on Selenium Retention in Post-Weaning Swine," *Journal of Animal Science*, 61:173, 1985.
17. Parsons, M.J., P.K. Ku, D.E. Ullrey, H.D. Stowe, P.A. Whetter, and E.R. Miller, "Effects of Riboflavin Supplementation and Selenium Source on Selenium Metabolism in the Young Pig," *Journal of Animal Science*, 60:451, 1985.
18. Cantor, A., memorandum of calculation addressed to K. Smedley, 1989.
19. Cousins, F.B., and I.M. Cairney, "Some Aspects of Selenium Metabolism in Sheep," *Australian Journal of Agricultural Research*, 12:927, 1961.

20. Peterson, P.J., and D.J. Spedding, "The Excretion by Sheep of 75 Selenium Incorporated into Red Clover (*Trifolium pratense* L.): The Chemical Nature of the Excreted Selenium and its Uptake by Three Plant Species," *New Zealand Journal of Agricultural Research*, 6:13, 1963.
21. Butler, G.W., and P.J. Peterson, "Aspects of the Faecal Excretion of Selenium by Sheep," *New Zealand Journal of Agricultural Research*, 4:484, 1961.
22. Cantor, A.H., M.L. Scott, and T. Noguchi, "Biological Availability of Selenium in Feedstuffs and Selenium Compounds for Prevention of Exudative Diathesis in Chicks," *Journal of Nutrition*, 105:96, 1975.
23. Oldfield, J.E., "Selenium: Uses in Agriculture by Plants, Animals, and Humans," Selenium-Tellurium Development Association, Inc., Darien, CT, 10 pp., 1987.
24. Cooke, T.D., and K.W. Bruland, "Chemistry of Selenium: Evidence of Biomethylation," *Environmental Science Technology*, 21:1214, 1987.
25. EPA, "Ambient Water Quality Criteria for Selenium—1987," U.S. EPA, Office of Water Regulations and Standards, EPA–440/5–87–006, 121 pp., 1987.
26. Bennett, B.G., "Exposure of Man to Environmental Selenium—An Exposure Commitment Assessment," *Science of the Total Environment*, 31:117, 1983.
27. NRC Subcommittee on Selenium, "Selenium in Nutrition," revised edition, National Academy Press, Washington, DC, 174 pp., 1983.
28. Zeeman, M., memorandum explaining NRDC errors in calculation, 1989.
29. Ohlendorf, A.M., A.W. Kilness, J.L. Simmons, R.K. Stroup, D.J. Hoffman, and J.F. Moore, "Selenium Toxicosis in Wild Aquatic Birds," *Journal of Toxicology and Environmental Health*, 24:67, 1988.
30. Clark, D.R., "Selenium Accumulation in Mammals Exposed to Contaminated California Irrigation Drainwater," *Science of the Total Environment*, 66:147, 1987.
31. Saiki, M.R., and T.W. May, "Trace Element Residues in Bluegills and Common Carp from the Lower San Joaquin River, California, and its Tributaries," *Science of the Total Environment*, 74:199, 1988.

Interested persons may, on or before August 10, 1989 submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document.

List of Subjects in 21 CFR Part 573

Animal feeds, Food additives.

Dated: June 30, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89–16072 Filed 7–10–89; 8:45 am]

BILLING CODE 4160–01–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2670 and 2675

Powers and Duties of Plan Sponsor of Plan Terminated by Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This regulation provides rules for the administration of multiemployer pension plans that have terminated by mass withdrawal, including rules for determining the sufficiency of plan assets, distributing plan assets and reporting to the Pension Benefit Guaranty Corporation. This regulation is necessary because the Employee Retirement Income Security Act, as amended, establishes certain requirements for plans terminated by mass withdrawal and requires the PBGC to prescribe regulations governing the plan sponsor's powers and duties when a mass-withdrawal-terminated plan is insolvent. The Act also authorizes the PBGC to prescribe rules and standards for the administration of such plans in order to protect the interests of plan participants and beneficiaries and to prevent unreasonable loss to the multiemployer insurance program. The regulation is intended to establish rules that encourage the efficient administration of mass-withdrawal-terminated plans in order to preserve plan assets and thus protect the interests of plan participants and beneficiaries and the insurance program. The regulation provides explicit rules for plan sponsors to follow in handling a variety of recurring and non-recurring situations.

EFFECTIVE DATE: August 10, 1989.

FOR FURTHER INFORMATION CONTACT: J. Ronald Goldstein, Senior Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; (202) 778–8850, (202) 778–8859 for TTY and TDD). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

Background

Under section 4041A(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or "the Act"), a multiemployer plan is terminated in one of two ways: (1) A plan amendment may be adopted that provides that participants will receive no credit for any purpose under the plan for service with any employer after a specified date, or that causes the plan to become a defined contribution plan ("termination by plan amendment"); or (2) every employer either withdraws from the plan or ceases to have an obligation to contribute to the plan ("termination by mass withdrawal").

In the case of a mass withdrawal termination, there is no continuing obligation to fund the plan. If a mass-withdrawal-terminated plan has sufficient assets and is closed out by purchasing annuities or making other permitted forms of distributions that provide all nonforfeitable benefits upon the termination, or if it becomes sufficient to close out based on its collection of withdrawal liability after the termination and does so, plan participants and the multiemployer insurance program will not be harmed. If, however, the plan experiences financial difficulties, such as losses in the value of plan assets, adverse mortality, or inability to collect the full amount of withdrawal liability owed the plan, the interests of plan participants and the insurance program may be adversely affected.

Because a mass-withdrawal-terminated plan cannot look to employers for continued contributions or for additional withdrawal liability (beyond that assessed pursuant to ERISA section 4219(c)(1)(D) and 29 CFR Part 2648 as a result of the mass withdrawal), the Act imposes certain rules and obligations on the sponsor of a plan that has terminated by mass withdrawal and gives the Pension Benefit Guaranty Corporation (PBGC) authority to prescribe others. These rules require a plan sponsor to monitor the financial condition of the plan and, depending on the condition of the plan, reduce or suspend benefits and apply to the PBGC for financial assistance. The Act also restricts the types of payments that may be made by a plan that is not closing out, regardless of its financial condition.

The Proposed Regulation and Comments

On July 7, 1986 (51 FR 24536), the PBGC published a proposed regulation on Powers and Duties of Plan Sponsor of Plan Terminated by Mass Withdrawal. The proposed regulation contained rules for the administration of multiemployer plans that terminated by mass withdrawal, including rules for determining the sufficiency of plan assets, distributing plan assets and reporting to the PBGC.

The PBGC received comments on the proposed regulation from one interested party. The PBGC has reviewed the comments and made several changes in the regulation as a result of them. The PBGC has also made several editorial changes in the regulation.

The commenter noted that proposed § 2675.12(c) reflected the limitation in ERISA section 4041A(c)(1) that a mass-withdrawal-terminated plan not pay benefits in excess of the amount that is nonforfeitable under the plan as of the termination date. The proposed regulation did not, however, contain a provision restating the PBGC's authority under section 4041A(f)(1) to permit payments in excess of nonforfeitable benefits if the PBGC determines that such payments are not adverse to the interests of the plan's participants and beneficiaries generally and do not unreasonably increase the PBGC's risk of loss with respect to the plan. (The same standard applies to PBGC approval to pay benefits valued at more than $1,750 in a form other than as an annuity.) The commenter urged that this authority be specifically included in the regulation, and the PBGC believes this point is well taken. Therefore, the PBGC has added a new § 2675.17 to the final regulation, which essentially restates section 4041A(f)(1).

On a related point, the commenter questioned whether the limitation in § 2675.12(c) was intended to cover the payment of qualified pre-retirement survivor annuities (QPSA's) where the participant had not died prior to the date of the plan termination. The commenter noted that pursuant to the definition of "nonforfeitable benefit" in ERISA section 4001(a)(8), the PBGC has always taken the position that pre-retirement death benefits are not nonforfeitable if the participant is still alive at plan termination. The commenter went on to suggest that it was Congress' intent that QPSA's be payable under terminated plans, even though the participant had not died before termination. The commenter cited as evidence the amendment to ERISA section 4022, which applies only to single-employer plans, contained in the Single-Employer Pension Plan Amendments Act of 1986 (SEPPAA). Under that amendment, a QPSA under a terminated plan is not to be treated as forfeitable under section 4022 solely because the participant has not died as of the plan termination date (section 4022(d), subsequently redesignated section 4022(e)). Given this expression of Congressional intent, the commenter concluded, the PBGC should not interpret Title IV's multiemployer plan provisions so as to reach a contrary result.

The PBGC agrees with the commenter that the Congress, through the enactment of the Retirement Equity Act of 1984 (REA) and the subsequent amendment to ERISA section 4022, has demonstrated a clear intent that pension plans, both ongoing and terminated, provide and pay qualified pre-retirement survivor annuities. However, in effecting this intent under Title IV, Congress did not change the Title IV definition of "nonforfeitable benefit". Under that definition the PBGC has taken the position described by the commenter: that QPSA's and other pre-retirement death benefits are not nonforfeitable if the participant is still alive at plan termination. Thus, it would be permissible for a terminated multiemployer plan to pay QPSA's only if the plan obtained the PBGC's approval to do so pursuant to ERISA section 4041A(f)(1).

After carefully reviewing this matter, the PBGC has concluded that it should grant a blanket approval under section 4041A(f)(1) permitting all terminated plans to pay QPSA's to the extent otherwise permitted by Subtitle E of Title IV. This approval is set forth in an amended paragraph (c) of § 2675.12.

This decision is based on the PBGC's determination under section 4041A(f)(1) that the payment of QPSA's by terminated plans would not in any case be adverse to the interests of plan participants and beneficiaries generally, nor unreasonably increase the PBGC's risk of loss with respect to a terminated plan. The Congress has, in essence, already determined that the payment of QPSA's is beneficial to plan participants and beneficiaries. The PBGC does not find that the slight risk of a plan's becoming underfunded for nonforfeitable benefits or insolvent as a result of paying subsidized QPSA's supports a finding that the payment of QPSA's is adverse to the interests of plan participants and beneficiaries generally. (In fact, in plans that pay unsubsidized QPSA's, even this slight risk disappears.) The PBGC also notes in this regard that if a plan became insufficient for nonforfeitable benefits, it would be required to stop paying and eliminate from the plan QPSA's (and any other non-guaranteeable benefits), to the extent necessary to ensure that plan assets are sufficient to pay when due all nonforfeitable benefits under the plan (ERISA section 4281(c)).

Similarly, the PBGC finds that because QPSA's are not guaranteed benefits and because the value of QPSA subsidies is small, their payment cannot unreasonably increase the PBGC's risk of loss with respect to a terminated plan.

Finally, it is emphasized that because QPSA's are not nonforfeitable benefits, they remain subject to reduction or elimination under ERISA section 4281. This authorization for terminated plans to pay QPSA's in no way alters the section 4281 rules pertaining to benefit reductions and suspensions in financially trouble terminated plans.

Section 2675.14(a) of the proposed regulation required plan sponsors to determine the value of plan assets and nonforfeitable benefits not later than 150 days after the end of each plan year. The commenter objected to this, asserting that this deadline is much shorter than that provided in the regulation on Redetermination of Withdrawal Liability Upon Mass Withdrawal, § 2648.2, for computing the amount of withdrawal liability to be reallocated to employers after a mass withdrawal termination. The PBGC finds this argument unpersuasive.

The relatively long time frame for calculating reallocation liability under Part 2648 is not intended to permit plans to delay the actuarial valuation for the plan year in which the mass withdrawal termination occurred. Rather, it is intended to give the plan sponsor adequate time to determine the uncollectible amounts of outstanding withdrawal liability assessments (including those arising from the mass withdrawal), an integral part of the calculation of reallocation liability. Thus, the liberal time limit of § 2648.2(b)(3) should normally provide enough time for the resolution of most withdrawal liability disputes prior to the deadline for calculating reallocation liability.

The time limit for performing the annual plan valuation required of all mass-withdrawal-terminated plans (section 4281(b)(1)) is a separate issue. One purpose of the valuation is to enable the plan sponsor to determine whether the plan must be amended to reduce or eliminate any nonguaranteeable benefits provided under the plan pursuant to section 4281(c). (Nonguaranteeable benefits must be reduced or eliminated whenever the annual valuation shows that the value of the plan's nonforfeitable benefits exceeds the value of plan assets.) Since any such amendment must be effective no later than six months after the end of the plan year, it follows that the valuation must be performed less than six months after the end of the plan year. For that reason, the final regulation provides that the annual valuation must be completed within 150 days after the close of a plan year. The PBGC believes that 150 days is fully adequate for performing valuations of mass-withdrawal-terminated plans.

With respect to the benefit reductions required by section 4281(c), § 2675.21 of the proposed regulation contained the following sentence:

> Benefit reductions required to be made under this subpart shall apply only to *accrued* benefits under plans or plan amendments adopted after March 26, 1980, or under collective bargaining agreements entered into after March 26, 1980. (Emphasis added).

The commenter noted that this sentence could be read to permit reductions only with respect to accrued benefits. This was not the PBGC's intent. Rather, this provision was meant to protect benefits accrued under pre-March 27, 1980, plans, plan amendments or collective bargaining agreements. The final rule has, therefore, been revised to clarify this point.

The commenter raised two issues relating to the rules in Subpart E for closing out mass-withdrawal-terminated plans. First, the commenter suggested that § 2675.42 of the proposed regulation could be read as requiring plan sponsors of sufficient plans to pay out all benefits in all cases. The commenter recommended that plans be allowed to apply for a waiver of this requirement and also suggested that a provision be added to the final regulation authorizing the PBGC to waive any of the requirements in the regulation.

Section 2675.42, which addresses the method of distributing plan assets, is applicable only when the plan sponsor chooses to close out a sufficient plan. Section 2675.41 does not require the closeout of a sufficient plan. Rather, it provides merely that the plan sponsor of such a plan *may* close out the plan in accordance with the rules in Subpart E of the regulation. Read in context, it is thus clear that § 2675.42 does not require the plan sponsor of a sufficient plan to distribute plan assets in full satisfaction of plan liabilities, unless it chooses to do so. There is, therefore, no need to permit plans to apply for a waiver of the requirements of § 2675.42 to protect plans from having to close out when that is not in the best interests of plan participants. Further, since the commenter offered no other examples of situations in which waivers of the regulation's requirements might be appropriate, the PBGC is not persuaded that a broader waiver provision should be added to the regulation.

The commenter also addressed § 2675.43(b)(1) of the proposed regulation, which (pursuant to ERISA section 4041A(f)(1)) permitted a plan sponsor that was closing out a plan to pay benefits attributable to employer contributions in a form other than an annuity if the present value of the participant's entire nonforfeitable benefit did not exceed $1,750. The commenter noted that REA increased the non-consensual cashout limit for ongoing plans to $3,500 and suggested that the regulation be changed to incorporate this higher cashout limit. The commenter also suggested that the regulation clarify whether plans must use select and ultimate interests rates in determining the present value of a participant's nonforfeitable benefit for this purpose.

As alluded to previously the PBGC is authorized under section 4041A(f)(1) to permit the payment in a lump sum of benefits that exceed $1,750. In order to approve these higher cashouts, the PBGC must find that they are not adverse to the interests of the plan's participants and beneficiaries generally and do not unreasonably increase the PBGC's risk of loss with respect to the plan. When a plan is being closed out under Subpart 4, a higher cashout limit would not be adverse to the interests of the plan's participants and beneficiaries, since their nonforfeitable benefits must be fully satisfied as part of the closeout. This fact also ensures that the higher cashout limit will not unreasonably increase the PBGC's risk of loss with respect to the plan. Therefore, the PBGC has amended § 2675.43(b)(1) in the final regulation to increase to $3,500 the cashout limit for mass-withdrawal-terminated plans that are closing out. Such plans may, of course, apply to the PBGC for permission to pay lump sum benefits greater than $3,500 (§ 2675.17).

The select and ultimate interest rates referred to by the commenter are part of the PBGC's regulation on Valuation of Plan Assets and Plan Benefits Following Mass Withdrawal (29 CFR Part 2676). Proposed § 2675.43(b)(1) required that benefits be valued in accordance with that regulation for purposes of determining whether a benefit could be paid as a lump sum. The PBGC has since concluded that this is not the best approach.

Section 1139 of the Tax Reform Act of 1986 (TRA), which applies to both single-employer and multiemployer plans, provides that plans must calculate the present value of benefits to be paid as a lump sum using "the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for determining the present value of a lump sum distribution on plan termination." The only situation in which the PBGC determines the present value of a lump sum distribution in a terminated plan is under terminated single-employer plans trusteed by the PBGC. Thus, the reference in TRA section 1139 is to the interest rates prescribed under 29 CFR Part 2619, Subpart C. These are the interest rates that ongoing multiemployer plans are required to use for calculating sump sum benefits, and the PBGC believes that no valid purpose would be served by requiring these plans to use a different interest assumption for these calculations after plan termination. (The PBGC also notes that, for some plans, the Part 2619, Subpart C interest assumption may be easier to use for calculating lump sum than the Part 2676 interest assumption.) Accordingly, the PBGC has modified § 2675.43(b)(1) to provide that the present value of the benefit is to be determined using the interest assumption under Subpart C of Part 2619.

(The PBGC reminds plan sponsors that they may not use the Part 2619, Subpart C mortality assumption for calculating lump sum benefits. Rather, the plan must employ a unisex mortality assumption for this purpose. The mortality assumption used must be, in conjunction with the Part 2619, Subpart C interest assumption, reasonable in the aggregate.)

Finally, the PBGC, at its own initiative, has made one minor change in § 2675.43(c), deleting the requirement that the notice of election for alternative forms of distribution contain a statement that the PBGC does not guarantee the alternative form. This language was misleading in possibly suggesting that the PBGC's guarantee of multiemployer plan benefits extends beyond the obligation to provide financial assistance to insolvent plans (*see* PBGC Opinion Letter 85-24).

E.O. 12291 and Regulatory Flexibility Act

The Pension Benefit Guaranty Corporation has determined that this regulation is not a "major rule" for the purposes of Executive Order 12291 because the rule will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or import markets. ERISA establishes requirements and standards for the administration of multiemployer plans that have terminated by mass withdrawal; this regulation implements those requirements and standards.

Under section 605(b) of the Regulatory Flexibility Act, the PBGC certifies that this rule will not have a significant

economic impact on a substantial number of small entities. Pension plans with fewer than 100 participants have traditionally been treated as small plans. The proposed regulation affects only multiemployer plans covered by the PBGC under Title IV of ERISA. If "small" plans are defined as those with fewer than 100 participants, the PBGC's coverage of small plans extends to less than 14 percent of all multiemployer plans covered by the PBGC (346 out of 2,485 plans). Further, small multiemployer plans represent only 0.4 percent of all small plans covered by the PBGC (346 out of 84,288 plans). Based on the PBGC's experience to date, it is estimated that no more than 10 multiemployer plans will be terminated by mass withdrawal in any given year. Thus, the PBGC expects there to be few plans that may need to be administered under these rules. Therefore, compliance with sections 603 and 604 of the Regulatory Flexibility Act is waived.

List of Subjects

29 CFR Part 2670

Employee benefit plans, Pension insurance.

29 CFR Part 2675

Employee benefit plans, Pensions and reporting requirements.

In consideration of the foregoing, Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations is amended as follows:

PART 2670—DEFINITIONS

1. The authority for Part 2670 is revised to read as follows:

Authority: 29 U.S.C. 1302.

2. Part 2670 is amended by revising § 2670.4 to read as follows:

* * * * *

§ 2670.4 Plans terminated by mass withdrawal and other insolvent plans.

For purposes of Parts 2674 and 2675—

"Actuarial valuation" means a report submitted to the plan in connection with a valuation of plan assets and liabilities, which, in the case of a plan covered by Part 2675, shall be performed in accordance with Part 2676 of this chapter.

"Available resources" means, for a plan year, the plan's cash, marketable assets, contributions, withdrawal liability payments and earnings, less reasonable administrative expenses and amounts owed for the plan year to the PBGC under section 4261(b)(2) of the Act.

"Benefits subject to reduction" means those benefits accrued under plan amendments (or plans) adopted after March 26, 1980, or under collective bargaining agreements entered into after March 26, 1980, that are not eligible for the PBGC's guarantee under section 4022A(b) of the Act.

"Financial assistance" means financial assistance from the PBGC under section 4261 of the Act.

"Insolvency benefit level" means the greater of the resource benefit level or the benefit level guaranteed by the PBGC for each participant and beneficiary in pay status.

"Insolvency year" means a plan year in which the plan is insolvent.

"Insolvent" means that a plan is unable to pay benefits when due during the plan year. A plan terminated by mass withdrawal is not insolvent unless it has been amended to eliminate all benefits that are subject to reduction under section 4281(c), or, in the absence of an amendment, no benefits under the plan are subject to reduction under section 4281(c).

"Insurer" means a company authorized to do business as an insurance carrier under the laws of a State or the District of Columbia.

"Nonguaranteed benefits" means those benefits that are eligible for the PBGC's guarantee under section 4022A(b) of the Act, but exceed the guarantee limits under section 4022A(c).

"Participants and beneficiaries reasonably expected to enter pay status" means plan participants and beneficiaries (other than participants and beneficiaries in pay status), who, according to plan records, are disabled, have applied for benefits, or have reached or will reach during the applicable period the normal retirement age under the plan, and any others whom it is reasonable for the plan sponsor to expect to enter pay status during the applicable period.

"Plan" means a plan terminated under section 4041A(a)(2) of the Act.

"Pro rata" means that the required benefit reduction or payment shall be allocated among affected participants in the same proportion that each such participant's nonforfeitable benefits under the plan bear to all nonforfeitable benefits of those participants under the plan.

"Reorganization" means reorganization under section 4241(a) of the Act.

"Resource benefit level" means the highest level of monthly benefits that the plan sponsor determines can be paid for a plan year out of the plan's available resources.

"Valuation date" means the last day of the plan year in which the plan terminates and the last day of each plan year thereafter.

3. Part 2675 is revised to read as follows:

PART 2675—POWERS AND DUTIES OF PLAN SPONSOR OF PLAN TERMINATED BY MASS WITHDRAWAL

Subpart A—General Provisions

Sec.
2675.1 Purpose and scope.
2675.2 Submission of documents.
2675.3 Collection of information.

Subpart B—Plan Sponsor Duties

2675.11 General rule.
2675.12 Payment of benefits.
2675.13 Imposition and collection of withdrawal liability.
2675.14 Annual plan valuations and monitoring.
2675.15 Periodic determinations of plan solvency.
2675.16 Financial assistance.
2675.17 PBGC approval to pay benefits not otherwise permitted.

Subpart C—Benefit Reductions

2675.21 Purpose and scope.
2675.22 Plan amendment.
2675.23 Notices of benefit reductions.
2675.24 Restoration of benefits.

Subpart D—Benefit Suspensions

2675.31 Purpose and scope.
2675.32 Benefit suspensions.
2675.33 Retroactive payments.
2675.34 Notices of insolvency and annual updates.
2675.35 Contents of notices of insolvency and annual updates.
2675.36 Notices of insolvency benefit level.
2675.37 Contents of notices of insolvency benefit level.
2675.38 Application for financial assistance.

Subpart E—Closeout of Sufficient Plans

2675.41 General rule.
2675.42 Method of distribution.
2675.43 Benefit forms.
2675.44 Cessation of withdrawal liability.

Authority: 29 U.S.C. 1302(b)(3), 1341a and 1441.

Subpart A—General Provisions

§ 2675.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to establish rules for the administration of multiemployer plans that have terminated by the withdrawal of every employer or the cessation of all employers' obligations to contribute to the plan ("termination by mass withdrawal"). Sections 4041A and 4281 of the Act establish certain requirements for mass-withdrawal-terminated plans and authorize the PBGC to prescribe additional rules and standards for the administration of such plans. This regulation prescribes the duties of plan sponsors of mass-withdrawal-terminated plans and provides rules for administering benefit reductions that are required under section 4281(c) of the Act and benefit suspensions required under section 4281(d). This part also contains procedures for closing out sufficient plans and applying to the PBGC for financial assistance under section 4261 of the Act.

(b) *Scope.* This part applies to multiemployer plans covered by section 4021(a) of the Act and not excluded by section 4021(b) that have terminated by mass withdrawal under section 4041A(a)(2) of the Act (including a plan created by a partition pursuant to section 4233 of the Act).

§ 2675.2 Submission of documents.

(a) *Filing date.* Any notice, document or information required to be filed with the PBGC under this part shall be considered filed on the date of the United States postmark stamped on the cover in which the document or information is mailed, provided that the postmark was made by the United States Postal Service and the document was mailed postage prepaid, properly packaged and addressed to the PBGC. If these conditions are not met, the document shall be considered filed on the date on which it was received by the PBGC.

(b) *Address.* All notices, documents and information required to be filed with the PBGC under this part shall be addressed to the Case Classification and Control Division (25400), Insurance Operations Department, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006.

§ 2675.3 Collection of information.

The collection of information requirements contained in this part have been approved by the Office of Management and Budget under control number 1212–0032.

Subpart B—Plan Sponsor Duties

§ 2675.11 General rule.

The plan sponsor shall continue to administer the plan in accordance with applicable statutory provisions, regulations and plan provisions until a trustee is appointed under section 4042 of the Act or until plan assets are distributed in accordance with Subpart E of this part. In addition, the plan sponsor shall be responsible for the specific duties described in this subpart.

§ 2675.12 Payment of benefits.

(a) Except as provided in paragraph (b), the plan sponsor shall pay benefits attributable to employer contributions, other than death benefits, only in the form of an annuity.

(b) The plan sponsor may pay benefits in a form other than an annuity if—

(1) The plan distributes plan assets in accordance with Subpart E of this part;

(2) The PBGC approves the payment of benefits in an alternative form pursuant to § 2675.17; or

(3) The value of the entire nonforfeitable benefit does not exceed $1,750.

(c) Except to the extent provided in the next sentence, the plan sponsor shall not pay benefits in excess of the amount that is nonforfeitable under the plan as of the date of plan termination, unless authorized to do so by the PBGC pursuant to § 2675.17. Subject to the restriction stated in paragraph (d) of this section, however, the plan sponsor may pay a qualified preretirement survivor annuity with respect to a participant who died after the termination date.

(d) The payment of benefits subject to reduction shall be discontinued to the extent provided in § 2675.22 if the plan sponsor determines, in accordance with § 2675.14, that the plan's assets are insufficient to provide all nonforfeitable benefits.

(e) The plan sponsor shall, to the extent provided in § 2675.32, suspend the payment of nonguaranteed benefits if the plan sponsor determines, in accordance with § 2675.15, that the plan is insolvent.

(f) The plan sponsor shall, to the extent required by § 2675.33, make retroactive payments of suspended benefits if it determines under that section that the level of the plan's available resources requires such payments.

§ 2675.13 Imposition and collection of withdrawal liability.

Until plan assets are distributed in accordance with Subpart E of this part, or until the end of the plan year as of which the PBGC determines that plan assets (exclusive of claims for withdrawal liability) are sufficient to satisfy all nonforfeitable benefits under the plan, the plan sponsor shall be responsible for determining, imposing and collecting withdrawal liability (including the liability arising as a result of the mass withdrawal), in accordance with Part 2644 of the PBGC's regulations and sections 4201–4225 of the Act.

§ 2675.14 Annual plan valuations and monitoring.

(a) *Annual valuation.* Not later than 150 days after the end of the plan year, the plan sponsor shall determine or cause to be determined in writing the value of nonforfeitable benefits under the plan and the value of the plan's assets, in accordance with 29 CFR Part 2676. This valuation shall be done as of the end of the plan year in which the plan terminates and each plan year thereafter (exclusive of plan year for which the plan receives financial assistance from the PBGC under section 4261 of the Act) up to but not including the plan year in which the plan is closed out in accordance with Subpart E.

(b) *Plan monitoring.* Upon receipt of the annual valuation described in paragraph (a) of this section, the plan sponsor shall determine whether the value of nonforfeitable benefits exceeds the value of the plan's assets, including claims for withdrawal liability owed to the plan. When benefits do exceed assets, the plan sponsor shall—

(1) If the plan provides benefits subject to reduction, amend the plan to reduce those benefits in accordance with the procedures in Subpart C of this part to the extent necessary to ensure that the plan's assets are sufficient to discharge when due all of the plan's obligations with respect to nonforfeitable benefits; or

(2) If the plan provides no benefits subject to reduction, make periodic determinations of plan solvency in accordance with § 2675.15.

(c) *Notices of benefit reductions.* The plan sponsor of a plan that has been amended to reduce benefits shall provide participants and beneficiaries and the PBGC notice of the benefit reduction in accordance with § 2675.23.

§ 2675.15 Periodic determinations of plan solvency.

(a) *Annual insolvency determination.* The plan sponsor of a plan that has been amended to eliminate all benefits that are subject to reduction under section 4281(c) of the Act shall determine in writing whether the plan is expected to be insolvent for the first plan year beginning after the effective date of the amendment and for each plan year thereafter. In the event that a plan adopts more than one amendment reducing benefits under section 4281(c) of the Act, the initial determination shall be made for the first plan year beginning after the effective date of the amendment that effects the elimination of all such benefits, and a determination shall be made for each plan year thereafter. The plan sponsor of a plan under which no benefits are subject to reduction under section 4281(c) of the Act as of the date the plan terminated shall determine in writing whether the plan is expected to be insolvent. The initial determination shall be made for the second plan year beginning after the

first plan year for which it is determined under section 4281(b) of the Act that the value of nonforfeitable benefits under the plan exceeds the value of the plan's assets. The plan sponsor shall also make a solvency determination for each plan year thereafter. A determination required under this paragraph shall be made no later than six months before the beginning of the plan year to which it applies.

(b) *Other determination of insolvency.* Whether or not a prior determination of plan solvency has been made under paragraph (a) of this section (or under section 4245 of the Act), a plan sponsor that has reason to believe, taking into account the plan's recent and anticipated financial experience, that the plan is or may be insolvent for the current or next plan year shall determine in writing whether the plan is expected to be insolvent for that plan year.

(c) *Benefit suspensions.* If the plan sponsor determines that the plan is, or is expected to be, insolvent for a plan year, it shall suspend benefits in accordance with § 2675.32.

(d) *Insolvency notices.* If the plan sponsor determines that the plan is, or is expected to be, insolvent for a plan year, it shall issue notices of insolvency or annual updates and notices of insolvency benefit level of the PBGC and to plan participants and beneficiaries in accordance with Subpart D.

§ 2675.16 Financial assistance.

A plan sponsor that determines a resource benefit level under section 4245(b)(2) of the Act that is below the level of guaranteed benefits or that determines that the plan will be unable to pay guaranteed benefits for any month during an insolvency year shall apply for financial assistance from the PBGC in accordance with § 2675.38.

§ 2675.17 PBGC approval to pay benefits not otherwise permitted.

Upon written application by the plan sponsor, the PBGC may authorize the plan to pay benefits other than nonforfeitable benefits or to pay benefits valued at more than $1,750 in a form other than an annuity. The PBGC will approve such payments if it determines that the plan sponsor has demonstrated that the payments are not adverse to the interests of the plan's participants and beneficiaries generally and do not unreasonably increase the PBGC's risk of loss with respect to the plan.

Subpart C—Benefit Reductions

§ 2675.21 Purpose and scope.

This subpart sets forth procedures under which the sponsor of a terminated plan shall amend the plan to reduce benefits subject to reduction in accordance with section 4281(c) of the Act and § 2675.14(b) of this part. This subpart applies to a plan for which the annual valuation required by § 2675.14(a) indicates that the value of nonforfeitable benefits under the plan exceeds the value of the plan's assets including claims for withdrawal liability, if, at the end of the plan year for which that valuation was done, the plan provided any benefits subject to reduction. Benefit reductions required to be made under this subpart shall not apply to accrued benefits under plans or plan amendments adopted on or before March 26, 1980, or under collective bargaining agreements entered into on or before March 26, 1980.

§ 2675.22 Plan amendment.

The plan sponsor of a plan described in § 2675.21 shall amend the plan to eliminate those benefits subject to reduction in excess of the value of benefits that can be provided by plan assets. Such reductions shall be effected by a *pro rata* reduction of all benefits subject to reduction or by elimination or *pro rata* reduction of any category of benefit. Benefit reductions required by this section shall apply only prospectively. An amendment required under this section shall take effect no later than six months after the end of the plan year for which it is determined that the value of nonforfeitable benefits exceeds the value of the plan's assets.

§ 2675.23 Notices of benefit reductions.

(a) *Requirement of notices.* A plan sponsor of a multiemployer plan under which a plan amendment reducing benefits is adopted pursuant to section 4281(c) of the Act, shall so notify the PBGC and plan participants and beneficiaries whose benefits are reduced by the amendment. The notices shall be delivered in the manner and within the time prescribed and shall contain the information described in this section. The notice required in this section shall be filed in lieu of the notice described in section 4244A(b)(2) of the Act.

(b) *When delivered.* The plan sponsor shall mail or otherwise deliver the notices of benefit reduction no later than the earlier of—

(1) 45 days after the amendment reducing benefits is adopted; or

(2) The date of the first reduced benefit payment.

(c) *Method of delivery.* The notices of benefit reductions shall be delivered by mail or by hand to the PBGC and to plan participants and beneficiaries who are in pay status when the notice is required to be delivered or who are reasonably expected to enter pay status before the end of the plan year after the plan year in which the amendment is adopted. The notice to other participants and beneficiaries whose benefit is reduced by the amendment shall be provided in any manner reasonably calculated to reach those participants and beneficiaries. Reasonable methods of notification include, but are not limited to, posting the notice at participants' worksites or publishing the notice in a union newsletter or newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to the participant's beneficiary or beneficiaries.

(d) *Contents of notice to the PBGC.* A notice of benefit reduction required to be filed with the PBGC pursuant to paragraph (a) of this section shall contain the following information:

(1) The name of the plan.

(2) The name, address, and telephone number of the plan sponsor and of the plan sponsor's duly authorized representative, if any.

(3) The nine-digit Employer Identification Number (EIN) assigned by the Internal Revenue Service to the plan sponsor and the three-digit Plan Identification Number (PIN) assigned by the plan sponsor to the plan, and, if different, the EIN or PIN last filed with the PBGC. If no EIN or PIN has been assigned, the notice shall so state.

(4) The case number assigned by the PBGC to the filing of the plan's notice of termination pursuant to Part 2673 of this chapter.

(5) A statement that a plan amendment reducing benefits has been adopted, listing the date of adoption and the effective date of the amendment.

(6) A certification, signed by the plan sponsor or its duly authorized representive, that notice of the benefit reductions has been given to all participants and beneficiaries whose benefits are reduced by the plan amendment, in accordance with the requirements of this section.

(e) *Contents of notice to participants and beneficiaries.* A notice of benefit reductions required under paragraph (a) of this section to be given to plan participants and beneficiaries whose benefits are reduced by the amendment shall contain the following information:

(1) The name of the plan.

(2) A statement that a plan amendment reducing benefits has been adopted, listing the date of adoption and the effective date of the amendment.

(3) A summary of the amendment, including a description of the effect of the amendment on the benefits to which it applies.

(4) The name, address, and telephone number of the plan administrator or other person designated by the plan sponsor to answer inquiries concerning benefits.

§ 2675.24 Restoration of benefits.

(a) *General.* The plan sponsor of a plan that has been amended to reduce benefits under this subpart shall amend the plan to restore those benefits before adopting any amendment increasing benefits under the plan. A plan is not required to make retroactive benefit payments with respect to any benefit that was reduced and subsequently restored in accordance with this section.

(b) *Notice to the PBGC.* The plan sponsor shall notify the PBGC in writing of any restoration under this section. The notice shall include the information specified in § 2675.23 (d)(1)–(d)(4); a statement that a plan amendment restoring benefits has been adopted, the date of adoption, and the effective date of the amendment; and a certification, signed by the plan sponsor or its duly authorized representative, that the amendment has been adopted in accordance with this section.

Subpart D—Benefit Suspensions

§ 2675.31 Purpose and scope.

This subpart sets forth the procedures under which the plan sponsor of an insolvent plan must suspend benefit payments and issue insolvency notices in accordance with section 4281(d) of the Act and § 2675.15 (c) and (d). This subpart applies to a plan that has been amended under section 4281(c) of the Act and Subpart C of this part to eliminate all benefits subject to reduction and to a plan that provided no benefits subject to reduction as of the date on which the plan terminated.

§ 2675.32 Benefit suspensions.

If the sponsor determines that the plan is or is expected to be insolvent for a plan year, it shall suspend benefits to the extent necessary to reduce the benefits to the greater of the resource benefit level or the level of guaranteed benefits.

§ 2675.33 Retroactive payments.

(a) *Erroneous resource benefit level.* If, by the end of a year in which benefits were suspended under § 2675.32, the plan sponsor determines in writing that the plan's available resources in that year could have supported benefit payments above the resource benefit level determined for that year, the plan sponsor may distribute the excess resources to each affected participant and beneficiary who received benefit payments that year on a *pro rata* basis. Distributions under this paragraph per participant may not exceed the amount that, when added to benefit payments already made, brings the total benefit for the plan year up to the total benefit provided under the plan.

(b) *Benefits paid below resource benefit level.* If, by the end of a plan year in which benefits were suspended under § 2675.32, any benefit has not been paid at the resource benefit level, amounts up to the resource benefit level that were unpaid shall be distributed to each affected participant and beneficiary on a *pro rata* basis to the extent possible, taking into account the plan's total available resources in that year.

§ 2675.34 Notices of insolvency and annual updates.

(a) *Requirement of notices of insolvency.* A plan sponsor that determines that the plan is, or is expected to be, insolvent for a plan year shall issue notices of insolvency to the PBGC and to plan participants and beneficiaries. Once notices of insolvency have been issued to the PBGC and to plan participants and beneficiaries, no notice of insolvency needs to be issued for subsequent insolvency years. Notices shall be delivered in the manner and within the time prescribed in this section and shall contain the information described in § 2675.35.

(b) *Requirement of annual updates.* A plan sponsor that has issued notices of insolvency to the PBGC and to plan participants and beneficiaries shall thereafter issue annual updates to the PBGC and participants and beneficiaries for each plan year beginning after the plan year for which the notice of insolvency was issued. However, the plan sponsor need not issue an annual update to plan participants and beneficiaries who are issued notices of insolvency benefit level in accordance with § 2675.36 for the same insolvency year. A plan sponsor that, after issuing annual updates for a plan year, determines under § 2675.15(b) that the plan is or may be insolvent for that plan year need not issue revised annual updates. Annual updates shall be delivered in the manner and within the time prescribed in this section and shall contain the information described in § 2675.35.

(c) *Notices of insolvency—when delivered.* Except as provided in the next sentence, the plan sponsor shall mail or otherwise deliver the notices of insolvency no later than 30 days after the plan sponsor determines that the plan is or may be insolvent. However, the notice to plan participants and beneficiaries in pay status may be delivered concurrently with the first benefit payment made after the determination of insolvency.

(d) *Annual updates—when delivered.* Except as provided in the next sentence, the plan sponsor shall mail or otherwise deliver annual updates no later than 60 days before the beginning of the plan year for which the annual update is issued. A plan sponsor that determines under § 2675.15(b) that the plan is or may be insolvent for a plan year and that has not at that time issued annual updates for that year, shall mail or otherwise deliver the annual updates by the later of 60 days before the beginning of the plan year or 30 days after the date of the plan sponsor's determination under § 2675.15(b).

(e) *Notices of insolvency—method of delivery.* The notices of insolvency shall be delivered by mail or by hand to the PBGC and to plan participants and beneficiaries in pay status when the notice is required to be delivered. Notice to participants and beneficiaries not in pay status shall be provided in any manner reasonably calculated to reach those participants and beneficiaries. Reasonable methods of notification include, but are not limited to, posting the notice at participants' worksites or publishing the notice in a union newsletter or newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to that participant's beneficiary or beneficiaries.

(f) *Annual updates—method of delivery.* Each annual update shall be delivered by mail or by hand to the PBGC. Each annual update to plan participants and beneficiaries shall be provided in any manner reasonably calculated to reach participants and beneficiaries. Reasonable methods of notification include, but are not limited to, posting the notice at participants' worksites and publishing the notice in a union newsletter of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to that participant's beneficiary or beneficiaries.

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§ 2675.35 Contents of notices insolvency and annual updates.

(a) *Notice of insolvency to the PBGC.* A notice of insolvency required under § 2675.34(a) to be filed with the PBGC shall contain the following information:

(1) The name of the plan.

(2) The name, address, and telephone number of the plan sponsor and of the plan sponsor's duly authorized representative, if any.

(3) The nine-digit Employer Identification Number (EIN) assigned by the Internal Revenue Service to the plan sponsor and the three-digit Plan Identification Number (PIN) assigned by the plan sponsor to the plan, and, if different, the EIN or PIN last filed with the PBGC. If no EIN or PIN has been assigned, the notice shall so state.

(4) The IRS Key District that has jurisdiction over determination letters with respect to the plan.

(5) The case number assigned by the PBGC to the filing of the plan's notice of termination pursuant to Part 2673 of this chapter.

(6) The plan year for which the plan sponsor has determined that the plan is or may be insolvent.

(7) A copy of the plan document currently in effect, *i.e.*, a copy of the last restatement of the plan and all subsequent amendments. However, if a copy of the plan document was submitted to the PBGC with a previous filing, only subsequent plan amendments need be submitted, and the notice shall state when the copy of the plan document was filed.

(8) A copy of the most recent actuarial valuation for the plan. If the actuarial valuation was previously submitted to the PBGC, it may be omitted and the notice shall state the date on which the document was filed and that the information is still accurate and complete.

(9) The estimated amount of annual benefit payments under the plan (determined without regard to the insolvency) for the insolvency year.

(10) The estimated amount of the plan's available resources for the insolvency year.

(11) The estimated amount of the annual benefits guaranteed by the PBGC for the insolvency year.

(12) A statement indicating whether the notice of insolvency is the result of an insolvency determination under § 2675.15(a) or (b).

(13) A certification, signed by the plan sponsor or its duly authorized representative, that notices of insolvency have been given to all plan participants and beneficiaries in accordance with this part.

(b) *Notice of insolvency to participants and beneficiaries.* A notice of insolvency required under § 2675.34(a) to be issued to plan participants and beneficiaries shall contain the following information:

(1) The name of the plan.

(2) A statement of the plan year for which the plan sponsor has determined that the plan is or may be insolvent.

(3) A statement that benefits above the amount that can be paid from available resources or the level guaranteed by the PBGC, whichever is greater, will be suspended during the insolvency year, with a brief explanation of which benefits are guaranteed by the PBGC.

(4) The name, address, and telephone number of the plan administrator or other person designated by the plan sponsor to answer inquiries concerning benefits.

(c) *Annual update to the PBGC.* Each annual update required by § 2675.34(b) to be filed with the PBGC shall contain the following information:

(1) The case number assigned by the PBGC to the filing of the plan's notice of termination pursuant to Part 2673 of this chapter.

(2) A copy of the annual update to plan participants and beneficiaries, as described in paragraph (d) of this section, for the plan year.

(3) A statement indicating whether the annual update is the result of an insolvency determination under § 2675.15 (a) or (b).

(4) A certification, signed by the plan sponsor or a duly authorized representative, that the annual update has been given to all plan participants and beneficiaries in accordance with this part.

(d) *Annual updates to participants and beneficiaries.* Each annual update required by § 2675.34(b) to be issued to plan participants and beneficiaries shall contain the following information:

(1) The name of the plan.

(2) The date the notice of insolvency was issued and the insolvency year identified in the notice.

(3) The plan year to which the annual update pertains and the plan sponsor's determination whether the plan may be insolvent in that year.

(4) If the plan may be insolvent for the plan year, a statement that benefits above the amount that can be paid from available resources or the level guaranteed by the PBGC, whichever is greater, will be suspended during the insolvency year, with a brief explanation of which benefits are guaranteed by the PBGC.

(5) If the plan will not be insolvent for the plan year, a statement that full nonforfeitable benefits under the plan will be paid.

(6) The name, address, and telephone number of the plan administrator or other person designated by the plan sponsor to answer inquiries concerning benefits.

§ 2675.36 Notices of insolvency benefit level.

(a) *Requirement of notices.* For each insolvency year, the plan sponsor shall issue a notice of insolvency benefit level to the PBGC and to plan participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year. The notices shall be delivered in the manner and within the time prescribed in this section and shall contain the information described in § 2675.37.

(b) *When delivered.* The plan sponsor shall mail or otherwise deliver the notices of insolvency benefit level no later than 60 days before the beginning of the insolvency year. A plan sponsor that determines under § 2675.15(b) that the plan is or may be insolvent for a plan year shall mail or otherwise deliver the notices of insolvency benefit level by the later of 60 days before the beginning of the insolvency year or 60 days after the date of the plan sponsor's determination under § 2675.15(b).

(c) *Method of delivery.* The notices of insolvency benefit level shall be delivered by mail or by hand to the PBGC and to plan participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year.

§ 2675.37 Contents of notices of insolvency benefit level.

(a) *Notice to the PBGC.* A notice of insolvency benefit level required by § 2675.36(a) to be filed with the PBGC shall contain the following information:

(1) The name of the plan.

(2) The name, address, and telephone number of the plan sponsor and of the plan sponsor's duly authorized representative, if any.

(3) The nine-digit Employer Identification Number (EIN) assigned by the Internal Revenue Service to the plan sponsor and the three-digit Plan Identification Number (PIN) assigned by the plan sponsor to the plan, and, if different, the EIN or PIN last filed with the PBGC. If no EIN or PIN has been assigned, the notice shall so state.

(4) The IRS Key District that has jurisdiction over determination letters with respect to the plan.

(5) The case number assigned by the PBGC to the filing of the plan's notice of termination pursuant to Part 2673 of this chapter.

(6) The insolvency year for which the notice is being filed.

(7) A copy of the plan document currently in effect, *i.e.*, a copy of the last restatement of the plan and all subsequent amendments. However, if a copy of the plan was submitted to the PBGC with a previous notice of insolvency or notice of insolvency benefit level, only subsequent plan amendments need by submitted, and the notice shall state when the copy of the plan was submitted.

(8) A copy of the most recent actuarial valuation for the plan. If the actuarial valuation was previously submitted to the PBGC, it may be omitted from the notice, and the notice shall state the date on which the document was filed and that the information is still accurate and complete.

(9) The estimated amount of annual benefit payments under the plan (determined without regard to the insolvency) for the insolvency year.

(10) The estimated amount of the plan's available resources for the insolvency year.

(11) The estimated amount of the annual benefits guaranteed by the PBGC for the insolvency year.

(12) The amount of financial assistance, if any, requested from the PBGC. (When financial assistance is requested, the plan sponsor shall submit an application in accordance with § 2675.38.)

(13) A statement indicating whether the notice of insolvency benefit level is the result of an insolvency determination under § 2675.15(a) or (b).

(14) A certification, signed by the plan sponsor or its duly authorized representative, that a notice of insolvency benefit level has been sent to all plan participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year, in accordance with this part.

(b) *Notice to participants in or entering pay status.* A notice of insolvency benefit level required by § 2675.36(a) to be delivered to plan participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year for which the notice is given, shall contain the following information:

(1) The name of the plan.

(2) The insolvency year for which the notice is being sent.

(3) The monthly benefit that the participant or beneficiary may expect to receive during the insolvency year.

(4) A statement that in subsequent plan years, depending on the plan's available resources, this benefit level may be increased or decreased but not below the level guaranteed by the PBGC, and that the participant or beneficiary will be notified in advance of the new benefit level if it is less than the participant's full nonforfeitable benefit under the plan.

(5) The amount of the participant's or beneficiary's monthly nonforfeitable benefit under the plan.

(6) The amount of the participant's or beneficiary's monthly benefit that is guaranteed by the PBGC.

(7) The name, address, and telephone number of the plan administrator or other person designated by the plan sponsor to answer inquiries concerning benefits.

§ 2675.38 Application for financial assistance.

(a) *General.* If the plan sponsor determines that the plan's resource benefit level for an insolvency year is below the level of benefits guaranteed by PBGC or that the plan will be unable to pay guaranteed benefits when due for any month during the year, the plan sponsor shall apply to the PBGC for financial assistance pursuant to section 4261 of the Act. The application shall be filed within the time prescribed in paragraph (b) of this section. When the resource benefit level is below the guarantee level, the application shall contain the information set forth in paragraph (c) of this section. When the plan is unable to pay guaranteed benefits for any month, the application shall contain the information set forth in paragraph (d) of this section.

(b) *When to apply.* When the plan sponsor determines a resource benefit level that is less than guaranteed benefits, it shall apply for financial assistance at the same time that it submits its notice of insolvency benefit level pursuant to § 2675.36. When the plan sponsor determines an inability to pay guaranteed benefits for any month, it shall apply for financial assistance within 15 days after making that determination.

(c) *Contents of application—resource benefit level below level of guaranteed benefits.* A plan sponsor applying for financial assistance because the plan's resource benefit level is below the level of guaranteed benefits shall file an application that includes the following information:

(1) The name of the plan.

(2) The name, address and telephone number of the plan sponsor and of the plan sponsor's duly authorized representative, if any.

(3) The nine-digit Employer Identification Number (EIN) assigned to the plan sponsor by the Internal Revenue Service and the three-digit Plan Identification Number (PIN) assigned to the plan by the plan sponsor. If different, the sponsor shall also include the EIN or PIN last filed with the PBGC. If no EIN or PIN has been assigned, the application shall so state.

(4) The IRS Key District that has jurisdiction over determination letters with respect to the plan.

(5) The case number assigned by the PBGC to the filing of the plan's notice of termination pursuant to Part 2673 of this chapter.

(6) The insolvency year for which the application is being filed.

(7) A participant data schedule showing each participant and beneficiary in pay status or reasonably expected to enter pay status during the year for which financial assistance is requested, listing for each—

(i) Name;

(ii) Sex;

(iii) Date of birth;

(iv) Credited service;

(v) Vested accrued monthly benefit;

(vi) Monthly benefit guaranteed by PBGC;

(vii) Benefit commencement date; and

(viii) Type of benefit.

(d) *Contents of application—unable to pay guaranteed benefits for any month.* A plan sponsor applying for financial assistance because the plan is unable to pay guaranteed benefits for any month shall file an application that includes the data described in paragraphs (c)(1)–(c)(5) of this section, the month for which financial assistance is requested, and the plan's available resources and guaranteed benefits payable in that month. The participant data schedule described in paragraph (c)(7) shall be submitted upon the request of the PBGC.

(e) *Additional information.* The PBGC may request any additional information that it needs to calculate or verify the amount of financial assistance necessary as part of the conditions of granting financial assistance pursuant to section 4261 of the Act.

Subpart E—Closeout of Sufficient Plans

§ 2675.41 General rule.

If a plan's assets, excluding any claim of the plan for unpaid withdrawal liability, are sufficient to satisfy all obligations for nonforfeitable benefits provided under the plan, the plan sponsor may close out the plan in accordance with this subpart by distributing plan assets in full satisfaction of all nonforfeitable benefits under the plan.

§ 2675.42 Method of distribution.

The plan sponsor shall distribute plan assets by purchasing from an insurer contracts to provide all benefits required by § 2675.43 to be provided in annuity form and by paying in a lump sum (or other alternative elected by the participant) all other benefits.

§ 2675.43 Benefit forms.

(a) *General rule.* Except as provided in paragraph (b) of this section, the sponsor of a plan that is closed out shall provide for the payment of benefits attributable to employer contributions only in the form of an annuity.

(b) *Exceptions.* The plan sponsor may pay benefits attributable to employer contributions in a form other than an annuity under any of the following circumstances:

(1) The present value of the participant's entire nonforfeitable benefit, determined using the interest assumption under Subpart C of Part 2619, does not exceed $3,500.

(2) The payment is for death benefits provided under the plan.

(3) The participant elects an alternative form of distribution under paragraph (c) of this section.

(c) *Alternative forms of distribution.* The plan sponsor may allow participants to elect alternative forms of distribution in accordance with this paragraph. When a form of distribution is offered as an alternative to the normal form, the plan sponsor shall notify each participant, in writing, of the form and estimated amount of the participant's normal form of distribution. The notification shall also describe any risks attendant to the alternative form. Participants' elections of alternative forms shall be in writing.

§ 2675.44 Cessation of withdrawal liability.

The obligation of an employer to make payments of initial withdrawal liability and mass withdrawal liability shall cease on the date on which the plan's assets are distributed in full satisfaction of all nonforfeitable benefits provided by the plan.

Issued at Washington, DC on this 18th day of March, 1989.

Elizabeth Dole,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued pursuant to a resolution of the Board of Directors approving this final regulation and authorizing its chairman to issue same.

Carol Connor Flowe,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. 89-16170 Filed 7-10-89; 8:45 am]

BILLING CODE 7708-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-3613-4]

Ocean Dumping; Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates a dredged material disposal site located in the Gulf of Mexico offshore of Port Aransas, Texas for the continued disposal of material dredged from the Corpus Christi Ship Channel. This action is necessary to provide an environmentally acceptable ocean dumping site alternative for the current and future disposal of this material. This final site designation is for an indefinite period of time and is subject to future site management and monitoring to insure that unacceptable adverse impacts do not occur.

DATE: This designation shall become effective on August 10, 1989.

ADDRESSES: Information supporting this designation is available for public inspection at the following locations: EPA, Region 6 (6E-FF), 1445 Ross Avenue, 9th Floor, Dallas, Texas 75202. Corps of Engineers, Galveston District, 444 Barracuda Avenue, Galveston, Texas 77550.

FOR FURTHER INFORMATION CONTACT: Norm Thomas, 214/655-2260 or FTS/255-2260.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 et seq. ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*). That list established the Corpus Christi Ship Channel site as an interim site for the disposal of material dredged from the entrance channel. In January 1980, the interim status of the site was extended indefinitely.

B. EIS Development

Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare Environmental Impact Statements (EISs) on proposals for major Federal actions significantly affecting the quality of the human environment. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with its ocean dumping site designations (30 FR 16186, May 7, 1974).

In September 1988, EPA distributed a Draft Environmental Impact Statement entitled "Environmental Impact Statement (EIS) for the Corpus Christi Ship Channel Ocean Dredged Material Disposal Site Designation," to interested agencies and the public for a 45-day review and comment period. Seven comment letters were received on the Draft EIS. The Agency responded to these comments in the Final EIS. Editorial or factual corrections required by the comments were incorporated in the text and noted in the Agency's response. Comments which could not be appropriately treated as text changes were addressed point by point in the Final EIS. On April 21, 1989, a Notice of Availability of the Final EIS for public review and comment was published in the **Federal Register**. The public comment period on the Final EIS closed on May 22, 1989.

One comment letter was received on the Final EIS from the National Marine Fisheries Service (NMFS). The NMFS stated that EPA's site designation did not give adequate consideration to deepwater and upland disposal alternatives since these options were eliminated early in the review process due to costs. NMFS also requested additional information regarding EPA's preference of nearshore disposal to offshore or upland disposal. In response to NMFS's comments, EPA recognizes that some federal agencies do evaluate an environmental quality ("EQ") alternative irrespective of costs. Nevertheless, consideration of costs is a necessary factor in EPA's evaluation of "reasonable" ocean disposal site alternatives. Site designation in itself does not preclude the consideration of other disposal options. However, once an alternative is determined to be economically infeasible or unimplementable, it becomes fruitless to continue to evaluate any additional or more specific environmental merits.

The federal action discussed in the EISs is designation of an ocean disposal site for dredged material. The purpose of the site designation is to provide an environmentally acceptable ocean disposal alternative for dredged material. The appropriateness of ocean disposal is determined on a case-by-case basis.

The EIS discussed the need for the action and examined ocean disposal sites and alternatives. Land based disposal alternatives were examined in a previously published EIS prepared by the Corps of Engineers and the analysis was updated in the draft EIS. The nearest available land disposal area was 48 acres in size and located 4 miles away from the seaward end of the project. Because of the high costs of transport as well as the limited capacity of the area, this alternative was not feasible. Also, since the surrounding land areas are wetlands or shallow bay habitats, development and use of a suitably sized replacement area would result in a significant loss of quality wetlands or bay bottoms.

Four ocean disposal alternatives—two nearshore sites, a mid-shelf site and a deepwater site—were evaluated. Both the mid-shelf and deepwater sites involved limited feasibility for monitoring, increased transportation costs and increased safety risks. Because of safety and economic disadvantages, monitoring limits and the lack of environmental benefit, the mid-shelf site and the deepwater site were eliminated from further consideration. Those portions of the interim-designated site located within the navigational buffer zone, the jetty buffer zone and the beach buffer zone were eliminated from consideration. The disposal site includes much of the area of historical impact but excludes these three buffer zones.

In accordance with the requirements of the Endangered Species Act, EPA completed a biological assessment and determined that no adverse impacts on listed endangered or threatened species would result from site designation. The National Marine Fisheries Service concurred with this determination.

This final rulemaking notice serves the same purpose as the Record of Decision required under regulations promulgated by the Council on Environmental Quality for federal actions subject to NEPA.

C. Site Designation

On November 4, 1988, EPA proposed designation of the Corpus Christi Ship Channel disposal site for the continued disposal of materials dredged from the Corpus Christi Ship Channel. The public comment period on this proposed rule closed on December 19, 1988. No comments were received on the proposed rule.

The disposal site is located approximately 1.5 miles from the coast at its closest point. The water depths at the proposed site range from 35 to 50 feet. The coordinates of the site are as follows: 27°49'10" N, 97°01'09" W; 27°48'42" N, 97°00'21" W; 27°48'06" N, 97°00'48" W; 27°48'33" N, 97°01'36" W.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If disposal operations at a site cause unacceptable adverse impacts, further use of the site may be terminated or limitations placed on the use of the site to reduce the impacts to acceptable levels. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations; § 228.6 lists eleven specific criteria used in evaluating a proposed disposal site to assure that the general criteria are met.

EPA has determined, based on information presented in the Draft and Final EISs, that the disposal site is acceptable under the five general criteria. The Continental Shelf location is not feasible and no environmental benefit would be obtained by selecting such a site. Historical use of the site has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment. The characteristics of the site are presented below in terms of the eleven specific criteria.

1. *Geographical position, depth of water, bottom topography and distance from coast.* [40 CFR 228.6(a)(1).]

Geographical position, average water depth, and distance from the coast for the disposal site are given in paragraph C above. Bottom topography is flat with no unique features or relief.

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.* [40 CFR 228.6(a)(2).]

Living resources' breeding, spawning, nursery and passage areas in the project area were identified as excluded areas during the siting feasibility process and eliminated from consideration. Approximately 3.5 miles to the southeast and 8 miles to the east southeast of the preferred site, there are fish havens which are excluded, including one mile buffer zones. The pass between the jetties serves as a migratory route for white shrimp, brown shrimp, blue crab, drum, sheepshead and southern flounder. This area, including a one-mile buffer zone, was excluded as a migratory passage. Also excluded were lighted platforms and non-submerged shipwrecks which improve fishing.

3. *Location in relation to beaches and other amenity areas.* [40 CFR 228.6(a)(3).]

The site is approximately 1.5 miles from Mustang Island and San Jose Island beaches or other amenity areas; e.g., Mustang Island State Park and Caldwell Pier.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the wastes, if any.* [40 CFR 228.6(a)(4).]

Only maintenance material from the Corpus Christi Ship Channel that conforms to EPA's Ocean Dumping Regulations [40 CFR Part 227] will be disposed of at the site. Historically, an average of 955,000 cubic yards per year has been dredged from the channel at roughly 18-month intervals. This material has historically been transported by hopper dredges but could be transported by pipeline.

5. *Feasibility of surveillance and monitoring.* [40 CFR 228.6(a)(5).]

The disposal site is amenable to surveillance and monitoring. Based on historic data, an intense monitoring program is not warranted. However, a site management plan consisting of water, sediment and elutriate chemistry; bioassays; bioaccumulation studies; and benthic infaunal analyses, will be developed for the Corpus Christi Ship Channel site by EPA and the COE.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.* [40 CFR 228.6(a)(6).]

Physical oceanographic parameters including dispersal, horizontal transport and vertical mixing characteristics were used: (1) To develop the necessary buffer zones for the sitting feasibility analysis; and (2) to determine the minimum size of the disposal site. Predominant longshore currents, and thus predominant longshore transport, is to the southwest. Long-term mounding has not historically occurred. Steady longshore transport and occasional storms, including hurricanes, remove the disposed material from the site.

7. *Existence and effects of current and previous discharges and dumping in the*

area (including cumulative effects). [40 CFR 228.6(a)(7).]

Based on the results of chemical and bioassay testing of past maintenance material and material from the existing disposal site plus chemical analyses of water from the area, there are no indications of water or sediment quality problems. Testing of past maintenance material indicated that it was acceptable for ocean disposal under 40 CFR Part 227. Studies of the benthos at the interim-designated site and nearby areas indicated that the composition of the benthos was different from that in nearby "natural bottom" areas. This was because the substrate at the interim-designated site was almost pure sand versus the mixed grain size of the "natural bottom". The disposal site was placed as near shore as possible to take advantage of the nearshore substrate which was sandier than the substrate further offshore.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean.* [40 CFR 228.6(a)(8).]

Impacts on shipping, mineral extraction, commercial and recreational fishing, recreational areas and historic sites were evaluated for the Corpus Christi Ship Channel site designation. The disposal site was determined not to interfere with other legitimate uses of the ocean based on the siting feasibility process and because disposal operations in the past have not interfered with other uses.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.* [40 CFR 228.6(a)(9).]

Monitoring studies demonstrated only short-term water-column perturbations of turbidity, and some increased chemical oxygen demand (COD), resulted from disposal operations. No short-term sediment quality perturbation, except grain size, have been directly related to disposal operations. In general, the water and sediment quality was good throughout the disposal area and there have been no long-term adverse impacts on water and sediment quality from disposal operations. However, there has been a long-term impact on the grain size, and thus, on the benthos at the interim-designated site.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site.* [40 CFR 228.6(a)(10).]

Past disposal of dredged material has not resulted in the development or recruitment of nuisance species. Continued disposal of maintenance material at the site should not attract nor promote the development or recruitment of nuisance species.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.* [40 CFR 228.6(a)(11).]

Areas and features of historical importance were evaluated during the siting feasibility process. The nearest site of historical importance was located within the buffer zone surrounding the jetties. Use of the site would not adversely impact any known historical or cultural sites.

E. Action

Based on the completed EIS process and available data, EPA concludes that the Corus Christi Ship Channel ocean dredged material disposal site may appropriately be designated for use. The site is compatible with the five general and eleven specific criteria used for site evaluation. The designation of the Corpus Christi Ship Channel Site as an EPA approved ocean dumping site for disposal of dreded material is being published as a final rulemaking. Before ocean dumping of dredged material at the site may occur, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. While the Corps does not administratively issue itself a permit, the requirements that must be met before dredged material derived from Federal projects can be discharged into ocean waters at the same as where a permit would be required. EPA has the authority to approve or to disapprove or to propose conditions upon dredged material permits for ocean dumping.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Final Rule does not contain any information collection requirements subject to the Office of Management and Budget review under the paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Date: June 28, 1989.

Philip Charles,

Acting Regional Administrator, Region 6.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by removing from paragraph (a)(3) under "Dredged Material Sites" the entry for Corpus Christi Ship Channel and adding paragraph (b)(39) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(39) Corpus Christi Ship Channel, Texas—Region 6 Location: 27° 49′ 10″ N., 97° 01′ 09″ W.; 27° 48′ 42″ N., 97° 00′ 21″ W.; 27° 48′ 06″ N., 97° 00′ 48″ W.; 27° 48′ 33″ N., 97° 01′ 36″ W.

Size: 0.63 square nautical miles.

Depth: Ranges from 35–50 feet.

Primary Use: Dredged material.

Period of Use: Indefinite period of time.

Restriction: Disposal shall be limited to dredged material from the Corpus Christi Ship Channel, Texas.

[FR Doc. 89-16209 Filed 7-10-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Part 502

[Docket No. 88-19]

Rule on Effective Date of Tariff Changes

AGENCY: Federal Maritime Commission.

ACTION: Stay of Final Rule.

SUMMARY: The effective date of the Final Rule in Docket No. 88-19 concerning the effective date of tariff changes is stayed pending decision on a recently filed petition for reconsideration.

DATE: Effective July 10, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: The Commission published a Final Rule in this proceeding in the **Federal Register** on May 10, 1989 (54 FR 20127) with an effective date of July 10, 1989. A petition for reconsideration of the Final Rule has now been filed. Several replies in support of the petition have also been filed. At least two conferences and one carrier have further requested a stay of the effective date to allow sufficient time for the Commission to make a final decision on the petition for reconsideration.

The Commission has determined to grant the requested stay of the Final Rule in Docket No. 88-19, pending a decision on the petition for reconsideration.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89-16165 Filed 7-10-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 89-167]

Administrative Practice and Procedure; Ex Parte Presentations

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: This order adopts minor changes and clarifications to the Commission's *ex parte* rules, 47 CFR 1.1200–1.1216, and certain other related rules of practice and procedure. This action is being taken to expedite the processing of *ex parte* filings and other documents in non-restricted proceedings.

EFFECTIVE DATE: September 25, 1989. This rule is subject to OMB approval. If approval is not received, FCC will publish a change to the effective date in the **Federal Register**.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Donna Viert, Office of General Counsel, (202) 632-6990.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, FCC 89-167, adopted May 26, 1989 and released June 9, 1989.

The complete text of this decision is available for public inspection and copying in Room 616, FCC, 1919 M Street, NW., Washington, DC. A copy may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Public reporting burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and to the Office of Management and Budget, Washington, DC 20503.

Summary of *Order*

1. In this order, the Commission adopts minor changes and clarifications to its *ex parte* rules, 47 CFR 1.1200—1.1216, and certain other related rules of practice and procedure. In order to expedite the processing of *ex parte* filings and other documents in non-restricted proceedings, the Commission is amending §§ 1.419(b) and 1.1206(a) to require that all written *ex parte* presentations, memoranda summarizing oral ex parte presentations, and informal comments be filed with the Commission in duplicate. In addition, §§ 1.51 and 1.419 are amended regarding the number of copies to be filed in rulemaking proceedings and the internal distribution of these copies. Other minor changes and clarifications to the *ex parte* rules have also been made as shown below.

2. Accordingly, it is ordered that the Rules and Regulations of the Federal Communications Commission are amended in the manner indicated below to become effective September 25, 1989, subject to approval by the Office of Management and Budget.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

Part 1 (Practice and Procedure) of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

1. The authority citation for Part 1 continues to read:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. Section 1.51 is amended by revising paragraph (b) to read as follows:

§ 1.51 Number of copies of pleadings, briefs and other papers.

* * * * *

(b) In rulemaking proceedings which have not been designated for hearing, see section 1.419 of this Chapter.

* * * * *

3. Section 1.419 is amened by revising paragraph (b) to read as follows:

§ 1.419 Form of comments and replies; number of copies.

* * * * *

(b) An original and 4 copies of all comments, briefs and other documents filed in a rulemaking proceeding shall be furnished the Commission. The distribution of such copies shall be as follows:

Secretary (original and 1)	2
Bureau	2
Information office	1
Total	5

Participants filing the required 5 copies who also wish each Commissioner to have a personal copy of the comments may file an additional 5 copies. The distribution of such copies shall be as follows:

Commissioners	5
Secretary	2
Bureau	2
Information office	1
Total	10

However, members of the general public who wish to express their interest by participating informally in a rulemaking proceeding may do so by submitting an original and one copy of their comments, without regard to form, provided only that the Docket Number is specified in the heading. Informal comments filed after close of the reply comment period, or, if on reconsideration, the reconsideration reply comment period, should be labeled "ex parte" pursuant to section 1.1206(a) of this Chapter. Letters submitted to Commissioners or Commission staff will be treated in the same way as informal

comments, as set forth above. Also such informal participants who wish the responsible members of the staff and the Commissioners to have personal copies may file an additional 7 copies. The distribution of such copies shall be as follows:

Commissioners	5
Secretary	2
Bureau	2
Total	9

* * * * *

4. Section 1.1202 is amended by revising the concluding text of paragraph (b) as follows:

§ 1.1202 Definitions.

* * * * *

(b) * * *

Comments and reply comments (including informal comments) filed prior to the expiration of the reply comment period, or, if the matter is on reconsideration, the reconsideration reply comment period, in informal rulemaking proceedings pursuant to §§ 1.415 and 1.419, but not in channel allotment rulemaking proceedings pursuant to § 1.420, are not considered ex parte presentations even if they are not served on other parties.

* * * * *

§ 1.1203 [Amended]

5. Section 1.1203(b) is amended by adding a new second sentence, "The disclosure requirement set forth in § 1.1204(b)(7) Note will apply.", immediately following the word "agreements."

§ 1.1204 [Amended]

6. Section 1.1204(b)(5) is amended by removing the words "staff of" following the phrase "to or from", adding the words "or branch" following the word "agency" in both places that it appears and adding the phrase "or its staff" following the word Government.

§ 1.1206 [Amended]

7. Section 1.1206 is amended by revising paragraphs (a)(1), (a)(2), and the Note immediately following (a)(3), adding a new Note below the Note immediately following (a)(3), and by adding two new Notes immediately following (a)(4), to read as follows:

§ 1.1206 Non-restricted proceedings; ex parte presentations generally permissible but subject to disclosure

(a) * * *

(1) *Written ex parte presentations made by persons outside the Commission.* Any person who makes or submits a written ex parte presentation shall provide on the same day it is submitted two copies of same under separate cover to the Commission's Secretary for inclusion in the public record. The presentation (as well as any transmittal letter) must clearly indicate on its face the docket number of the particular proceeding(s) to which it relates and the fact that two copies of it have been submitted to the Secretary, and must be labeled or captioned as an ex parte presentation.

(2) *Oral ex parte presentations made by persons outside the Commission.* Any person who in making an oral ex parte presentation presents data or arguments not already reflected in that person's written comments, memoranda, or other previous filings in that proceeding shall provide on the day of the oral presentation an original and one copy of a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summarizes the data and arguments. The memorandum (as well as any transmittal letter) must clearly indicate on its face the docket number of the particular proceeding and the fact that an original and one copy of it have been submitted to the Secretary, and must be labeled or captioned as an ex parte presentation.

(3) * * *

Note 1: Unless otherwise exempted under Section 1.1204, presentations from members of Congress or their staff or from other agencies or branches of the Federal Government or their staff that are of substantial significance and clearly intended to affect the ultimate decision shall be treated as ex parte presentations and placed (if oral, a written summary of the presentation shall be prepared and placed) in the record of the proceeding by Commission staff or in accordance with the procedures set forth in Section 1.1206(a)(1)–(3).

Note 2: Where a written ex parte presentation (or memorandum summarizing an oral ex parte presentation) relates to more than one proceeding, two copies (or an original and one copy) shall be filed for each separate proceeding.

(4) * * *

Note 1: Interested persons should be aware that some ex parte filings, for example, those not filed in accordance with the requirements of ths subsection, might not be placed on the referenced public notice. All ex parte presentations and memoranda filed under this section will be available for public inspection in the public file or record of the proceeding, and parties wishing to ensure awareness of all filings should review the public file or record.

Note 2: As a matter of convenience, the Secretary may also list on the referenced public notices materials, even if not ex parte presentations, that are filed after the close of the reply comment period or, if the matter is on reconsideration, the reconsideration reply comment period.

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[FR Doc. 89-15971 Filed 7-10-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 81-742]

Broadcast Services; Comparative Renewal and Abuse of the Renewal Process

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This action corrects Paragraph 1 of the **SUPPLEMENTARY INFORMATION** section of the **Federal Register** Preamble of the *First Report and Order* in this proceeding (FCC 89-108, 54 FR 22595, May 25, 1989). Paragraph 1 contained estimates of information collection and reporting burdens on persons seeking Commission approval for the dismissal of competing applications and petitions to deny filed in license renewal proceedings. This action corrects these burden estimates. In addition, this action adds a burden estimate for persons required to amend their applications pursuant to the Commission's elimination of the *Cameron* doctrine in the *First Report and Order.* This burden estimate was inadvertently omitted. The *Cameron* doctrine was a policy which permitted competing applicants to assume that an incumbent's transmitter site would be available in the event the competing applicant prevailed in a license renewal proceeding. Elimination of that policy requires that competing applicants demonstrate reasonable assurance of site availability, including appropriate engineering studies. To implement these corrections, the first two sentences of Paragraph 1 should be deleted and replaced with the following:

The information collection and reporting burden on all parties seeking Commission approval for the dismissal of pre-Initial Decision competing applications is estimated to average one hour per response. The information collection and reporting burden on parties seeking approval for the dismissal of post-Initial Decision competing applications is estimated to average eight hours per response for the competing applicant seeking the dismissal, and one hour per response for the remaining parties required to file affidavits. The information collection and reporting burden on persons seeking approval of the dismissal of petitions to deny, including citizens' agreements, is estimated to average two hours per response for the petitioner seeking dismissal and one hour per response for the remaining parties required to file affidavits. The information collection and reporting on burden on those applicants that are required to amend their applications to conform to the Commission's revised requirement for assuring transmitter site availability due to the elimination of the *Cameron* doctrine is estimated to average 80 hours per response.

EFFECTIVE DATE: July 11, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marilyn Mohrman-Gillis, Mass Media Bureau, Policy and Rules Division at (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-16136 Filed 7-10-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 74

[MM Docket No. 83-523; FCC 89-179]

Amendment of Part 74 of the Commission's Rules and Regulations in Regard to the Instructional Television Fixed Service.

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: This action adopts a procedure for breaking ties among mutually exclusive competing applications in the Instructional Television Fixed Service which may remain after the primary comparative criteria are applied. This Order provides that the tied applicant with the greater student enrollment will receive the authorization.

EFFECTIVE DATE: August 14, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Bruce Romano, tele: (202) 632-9356.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information is estimated to average one hour per response, including the time for review instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of the Managing Director, Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

This is a summary of the Commission's *Third Report and Order* in MM Docket No. 83-523, FCC 89-179, Adopted May 31, 1989, and Released June 13, 1989.

1. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

2. In this *Third Report and Order,* the Commission modifies its procedure for comparative consideration of mutually exclusive competing applications in the Instructional Television Fixed Service ("ITFS"). Competing applicants get points based on various characteristics of the applicant and its application; *i.e.,* whether it is local, is accredited, has other channels, is vacating MDS channels, and the amount of ITFS programming it is proposing to provide. If the application of these criteria results in a tie for the highest point total, the contested authorization will be awarded to the tied applicant with the greatest student enrollment. For these purposes, all full- and part-time students formally enrolled in courses for credit towards an academic degree or diploma, or a legally required certification or license, and receiving their instruction at locations listed as receive site, will be counted. For current and recent applications, the date for counting enrollment will be the last date for filing competing applications. For applications filed before July 28, 1986, enrollment will be the most recent available up to sixty days from the effective date of this Order, and only students at those receive sites on file as of that date will be included. In the case of applicants not serving their own students, students at a receive site will be counted only if that receive site has adequately expressed its intention to participate in the proposed ITFS service as prescribed in § 74.932 of the Commission's rules (47 CFR 74.932).

3. This tie-breaking criterion had been proposed by the Commission in its *Order and Second Further Notice of Proposed Rulemaking* in MM Docket No. 83-523, 3 FCC Rcd 4564 (1988), 53 FR 29493 (8/5/88). In adopting this criterion, the Commission rejected the proposal of one group of commenters that the contested authorization be awarded based on the applicants' experience and existing facilities and staff.

4. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b) it is certified that the final rule does not have a significant economic impact on a substantial number of small entities because only a few comparative selection cases each year result in a tie which would require application of criterion adopted.

5. The rule contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520) and found to impose a new information requirement on the public. Implementation of this new requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

6. Accordingly, *It is ordered,* That Part 74 of the Commission's Rules and Regulations is amended as set forth below, upon approval by the Office of Management and Budget, effective August 14, 1989, pursuant to 5 U.S.C. 553(d)(1), under authority contained in 47 U.S.C. 2, 4(i), and 303.

7. *It is further ordered,* That the Office of the Managing Director shall send to the Chief Counsel for Advocacy of the Small Business Administration the certification that the rules adopted will have no significant impact on a substantial number of small entities.

List of Subjects in 47 CFR Part 74

Experimental, Auxiliary and special broadcast, and other program distributional services, Television broadcasting.

Rule Changes

Part 74 of Title 47 of the Code of Federal Regulations is amended to read as follows:

1. The authority citation for Part 74 continues to read as follows:

Authority: 47 C.F.R. Secs. 4, 303 48 Stat. 1066, as amended, 1082, as amended, 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply Secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended; 47 U.S.C. 301, 303, 307.

2. Section 74.913 is amended by revising paragraph (d) and adding note 4 to read as follows:

§ 74.913 Selection procedure for mutually exclusive ITFS applications.

* * * * *

(d) The tie-breaker will operate as follows: each of the tied applicants will be directed to submit to the Commission a statement of the number of students at

its proposed receive locations who are formally enrolled in classes for credit toward an academic degree or diploma, or a legally required certification or license. It must also demonstrate that this claim of students who would benefit from the proposed system is supported by the educational programs proposed in its application. Each applicant will serve it submission(s) on the other tied competing applicant(s), who will have an opportunity to respond to any aspect of the enrollment submissions. If any applicant's system would reach less than 80% as many students as another applicant's would reach, the application which would result in service to the fewer number of students will be denied. The application(s) of any remaining applicant(s) will be granted. If more than one application is to be granted under this procedure, the channels or channel capacity will be divided evenly among the remaining applicants. At any time during this process, the applicants may advise the Commission that they are negotiating or have reached settlement for disposition of the contested facilities, and the Commission will withhold further comparative processing upon such notification.

(1) Enrollment will be considered as of the final date for filing of the competing applications at issue. Enrollment figures should be the latest available from a regular term or session prior to that filing date, and must be taken from a statement or submission of data made by the subject school for some other official purpose or function, such as a mid-year or year-end fiscal report, or a budget proposal, and they must represent actual, not projected, student population. Each applicant must identify the source(s) from which its submitted enrollment figures are drawn.

(2) All full- and part-time students formally enrolled in classes for credit toward an academic degree or diploma, or a legally required certification or license, at any school, campus, or other locations listed in the application as a receive site may be counted, except if an applicant's system would serve only students in a particular discipline (or disciplines) or at a particular grade level (or levels), only students in classes and programs within that discipline(s) or grade level(s) may be counted.

(3) For off-campus sites, only students who can be shown to be recipients of formal ITFS educational material may be counted.

(4) Applicants serving students other than their own count only students at schools, campuses, and other receive sites which have submitted a letter indicating their intention to use the proposed service. The validity of such expressions of intention will be judged pursuant to § 74.932 of these rules. If several schools from the same school system are listed as receive sites, a single letter from an appropriate person representing the school board or system will be sufficient to demonstrate the intention to use the proposed service at each of these receive sites if each receive site's participation is specifically acknowledged.

* * * * *

Note 4. —For applications pending as of August 14, 1989, the enrollment which will be counted will be the most recent available up to August 22, 1989, for which receive sites are on file by that date.

Donna R. Searcy,

Federal Communications Commission Secretary.

[FR Doc. 89-16138 Filed 7-10-89; 8:45 am]

BILLING CODE 6712-01-M

FCC 89-193

47 CFR Part 80

Maritime Services; Amendment of the Maritime Services Rules to Permit Operation of Frequencies Offset From Assigned AMTS Channels

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has decided to permit Automated Maritime Telecommunications System (AMTS) licensees to operate on frequencies offset from channels assigned to the AMTS. This action was taken in response to a Request for Rule Waiver to Permit Operation on Offset Frequencies submitted by Waterway Communications System, Inc. (Watercom). The effect of this Commission decision is to allow licensees in the AMTS service to operate on frequencies offset from assigned channels. This will promote spectrum efficiency without causing additional interference potential.

EFFECTIVE DATE: July 11, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: George R. Dillon or Eric J. Malinen, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632-7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order FCC 89-193, adopted June 1, 1989, and released June 28, 1989.

1. The full text of this Commission decision, including the rule amendment, is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Order

2. The Commission has decided to amend the rules to allow offset frequency use on all frequencies assigned to the AMTS. Allowing the use of offset frequencies will increase the number of channels available to this service and will alleviate congestion on channels currently licensed in the AMTS service.

3. This rule amendment contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520, and found to contain no new or modified form, information collection or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

4. This rule amendment provides AMTS licensees technical flexibility in the use of spectrum exclusively assigned to them in specified service areas. The only existing AMTS licensee requested this capability and a commenter supported the approach taken herein. This action benefits the public and adds no additional burdens. The change is thus noncontroversial and therefore constitutes a minor amendment to our Rules in which the public is not likely to be interested. Therefore, we find for good cause that compliance with the notice and comment procedure of the Administrative Procedure Act is unnecessary. *See* 5 U.S.C. 553(b)(B).

5. We certify that Section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) does not apply to this rule making proceeding because it will not have a significant economic impact on a substantial number of small entities. The amendment provides optional technical flexibility and will not cause a significant economic impact on any entity.

6. Because only one licensee will be immediately affected by this amendment and because that licensee already is operating on offset frequencies within Groups A and B under a special temporary authority, we find good cause to allow AMTS licensees to operate on frequencies offset from AMTS channels effective immediately. Therefore, this rule amendment will be effective upon publication in the **Federal Register**. *See* 5 U.S.C. 533(d).

Ordering Clause

7. *It Is Ordered* that under the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), § 80.385 of the Commission's Rules, 47 CFR 80.385, IS AMENDED as shown at the end of this document effective as indicated in the "**EFFECTIVE DATE**" paragraph of this document.

List of Subjects in 47 CFR Part 80

Maritime services, Maritime mobile stations.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Amended Rules

Part 80 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted.

2. Section 80.385 is amended by redesignating the existing paragraph "(b)" to paragraph "(c)", and by adding a new paragraph "(b)" to read:

§ 80.385 Frequencies for automated systems.

* * * * *

(b) *Narrowband operations in AMTS.* AMTS licensees may operate on frequencies offset from the assignable channels specified in paragraph (a)(2) of this section provided such licensees are also licensed for channels on each side of the offset frequency. Licensees using offset frequencies must conform with all other conditions of operation.

* * * * *

[FR Doc. 89-16257 Filed 7-10-89; 2:20 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85-08; Notice 4]

RIN 2127-AB71

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Response to petition for reconsideration; final rule.

SUMMARY: The requirements for safety belt systems in trucks, buses and multipurpose passenger vehicles with a gross vehicles weight rating of more than 10,000 pounds were recently expanded to include special provisions to make those safety belt systems more convenient to use. In its proposal, NHTSA indicated that these special provisions would apply to safety belt systems installed at *front* outboard seating positions. However, NHTSA inadvertently omitted the word "front" in the final rule, so that the special provisions for safety belt systems apply to all outboard seating positions, both front and rear. This corrects this inadvertent omission so that the special provisions for safety belt systems apply only to those installed at *front* outboard seating positions, as was proposed.

DATES: *Effective date:* The changes made in this rule become effective January 8, 1990. Vehicles manufactured on or after September 1, 1990 must be certified as complying with these changes.

Petitions for reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA not later than August 10, 1989.

ADDRESS: Petitions for reconsideration of this rule should refer to Docket No. 85-08; Notice 4 and be submitted to: Aministrator, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Please submit 10 copies of any petition.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Strombotne, Chief, Crashworthiness Division, NRM-12, Room 5320, NHTSA, 400 Seventh Street, S.W., Washington, DC 20590 (202-366-2264).

SUPPLEMENTARY INFORMATION: Since January 1, 1972, Federal Motor Vehicle Safety Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208) has required vehicle manufacturers to install safety belt systems in heavy vehicles (i.e., trucks, buses, and multipurpose passenger vehicles [MPV's] with a gross vehicle weight rating of more than 10,000 pounds). The safety belts required in those vehicles have had to meet all of the strength requirements set for belt systems in passenger cars and light trucks, buses, and MPV's (those with a gross vehicle weight rating of 10,000 pounds or less). However, the safety belts required in heavy vehicles have not had to meet several requirements for lighter vehicle safety belt systems that make the safety belts more comfortable to wear and easier to use.

The agency proposed several changes to the requirements for belt systems in heavy vehicles to make such belt systems more comfortable to wear and easier to use. The proposed changes were set forth in a notice of proposed rulemaking (NPRM) published on May 30, 1985 (50 FR 23041). That notice proposed that these changes would apply to safety belt systems installed at all *front* outboard seating positions in heavy trucks and MPV's and to the safety belt system installed at the driver's seat in heavy buses.

A final rule adopting new requirements for heavy vehicle safety belt systems was published on July 6, 1988 (53 FR 25337). No commenters suggested that the proposed changes should be extended to apply to seating positions other than front outboard ones, nor did the preamble to this final rule suggest that NHTSA intended to extend the proposed changes to apply to both front and rear outboard seating positions. However, the specific regulatory change adopted in Standard No. 208 inadvertently omitted the word "front" in referring to outboard seating positions in heavy trucks and MPV's, and instead referred simply to outboard seating positions in those vehicles as the seating positions subject to these changed requirements.

The Recreation Vehicle Industry Association (RVIA) filed a petition for reconsideration of the final rule, arguing that the agency's purpose could be achieved without imposing additional requirements on rear outboard seating positions in motor homes. NHTSA did not intend the final rule to impose any additional requirements on safety belt systems at seating positions other than front outboard seating positions. This notice corrects the omission from the final rule, and adopts the proposed approach of applying additional requirements to *front* outboard seating positions in heavy vehicles.

The regulatory language at the end of this rule simply inserts the word "front" in the appropriate places of the regulatory language published in the

July 6, 1988 final rule on this subject. Today's rule should not be misinterpreted as a reaffirmation of the July 6, 1988, rule's approach of considering only the workings of the retractor to evaluate whether the safety belt system complies with some of the comfort requirements. A proposal to expand that approach to evaluate the workings of the entire belt system appears elsewhere in today's edition of the **Federal Register**.

NHTSA has considered the effects of this corrected rule and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. This correction simply implements the agency's intent as expressed in the proposal and addressed by the commenters. Accordingly, the agency has determined that the economic and other impacts of this correction are so minimal that a full regulatory evaluation is not required.

NHTSA has also considered the effects of this corrected rule under the Regulatory Flexibility Act. I hereby certify that this correction will not have a significant economic impact on a substantial number of small entities. As explained above, this correction is simply implementing the approach that was proposed by the agency and addressed by the commenters.

The agency has also analyzed this correction for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

Finally, NHTSA has considered the federalism implications of this correction, as required by Executive Order 12612, and determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. S4.3.2.2 of § 571.208 is revised to read as follows:

* * * * *

§ 571.208 Standard No. 208; Occupant crash protection.

S4.3.2.2 *Second option—belt system.* The vehicle shall, at each designated seating position, have either a Type 1 or a Type 2 seat belt assembly that conforms to § 571.209 of this part and S7.2 of this Standard. A Type 1 belt assembly or the pelvic portion of a dual retractor Type 2 belt assembly installed at a front outboard seating position shall include either an emergency locking retractor or an automatic locking retractor. An automatic locking retractor provided for one of these belt assemblies at a front outboard seating position shall not retract webbing to the next locking position until at least ¾ inch of webbing has moved into the retractor. In determining whether an automatic locking retractor complies with this requirement, the webbing is extended to 75 percent of its length and the retractor is locked after the initial adjustment. An automatic locking retractor that is used at a front outboard seating position that has some type of suspension system for the seat shall be attached to the seat structure that moves as the suspension system functions.

Issued on July 5, 1989.

Jeffrey R. Miller,

Acting Administrator.

[FR Doc. 89-16224 Filed 7-10-89; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 571

[Docket No. 86-16; Notice 2]

RIN: 2127-AC-54

Federal Motor Vehicle Safety Standards; Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: Standard No. 102 has long required the "identification of shift lever positions of automatic transmissions" to be "permanently displayed in view of the driver." This notice amends the standard for automatic transmission vehicles which have a shift lever position which puts the transmission in park. For these vehicles, the requirement for "permanent display" is replaced with a requirement that identification of automatic transmission shift lever positions be displayed in view of the driver whenever any of the following conditions exist: (a) The ignition is in a position where the transmission can be shifted; (b) the transmission is not in park. The new requirements will facilitate the use of electronic displays, while ensuring that the information in question is displayed at all times when it may be needed for safety.

DATES: The amendments made by this rule are effective August 10, 1989. Petitions for reconsideration must be received by August 10, 1989.

ADDRESS: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Rutland, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington DC, (202-366-5267).

SUPPLEMENTARY INFORMATION: One of the stated purposes of Standard No. 102, *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect*, is to reduce the likelihood of shifting errors. Since 1967, section S3.2 of the standard has required "identification of shift lever positions of automatic transmissions" to be "permanently displayed in view of the driver." NHTSA has interpreted the term "positions" to include both the position actually selected. NHTSA has interpreted the requirement that identification be "permanently displayed in view of the driver" to require a display whenever there is a driver in the driver's seating position, even if the ignition is not turned on.

On August 25, 1988, NHTSA published in the **Federal Register** (53 FR 32409) a notice of proposed rulemaking (NPRM) to amend Standard No. 102. As discussed in the NPRM, Chrysler and GM had submitted petitions for rulemaking requesting that section S3.2 of the standard be amended to "permit" or "more clearly allow" the use of electronic displays of automatic transmission shift lever positions. (These displays are often called PRNDL displays, the acronym PRNDL referring to the following gear positions: *p*ark, *r*everse, *n*eutral, *d*rive, and *l*ow.) Chrysler argued that the requirement for permanent display of the PRNDL was design restrictive and prevented the use of electronics. That company stated that since an electronic display requires electrical current for activation, a permanent and constantly activated display would drain the vehicle's battery in a short period of time. Chrysler stated that fifteen minutes is the maximum amount of time that it can allow an electronic display to draw

energy from the battery of a parked vehicle.

Both Chrysler and GM argued that the use of electronic PRNDL displays can offer several benefits, as compared to conventional mechanical displays. These include more precise indication of the selected gear, visibility which does not depend on ambient light and/or headlamp activation, designs with improved human factors characteristics, and improved customer satisfaction through product distinction and innovation.

In light of Chrysler's and GM's petitions for rulemaking and changed technology since the requirement for "permanent display" was promulgated, NHTSA reexamined the issue of whether permanent display of PRNDL information is necessary for safety. The agency explained in the NPRM that it had tentatively determined that a less stringent requirement could maintain the safety aspects of section S3.2 while facilitating the use of electronic technology.

As indicated above, the stated purpose of the requirement for permanent display of PRNDL information is to reduce the likelihood of shifting errors. NHTSA stated in the NPRM that, with respect to a driver making a mistake in shifting gears, it believed that this purpose could be accomplished by requiring PRNDL information to be displayed whenever the ignition is in a position where it is possible for the driver to shift the transmission. Another safety concern about shifting errors is the possibility that a driver will leave a vehicle believing that it is in park when it is not. The agency stated in the NPRM that, with respect to the contribution that a PRNDL display can make to reducing the likelihood of such an occurrence, it believed that purpose could be accomplished by requiring PRNDL information to be displayed whenever the transmission is not in park.

NHTSA therefore proposed to amend Standard No. 102 by replacing section S3.2's requirement for "permanent display" with a requirement that identification of shift lever positions of automatic transmissions, including both the position of the gears in relation to each other and the position selected, be displayed in view of the driver when either of the following conditions exist: (A) the ignition is in a position where the transmission can be shifted, or (B) the transmission is not in park. Under the proposal, however, such display would not be required when the ignition is in a position that is used only to start the vehicle. The only time the ignition is in that position is momentarily during the starting of the vehicle, and full battery power may be needed at that time to start the vehicle. NHTSA noted that the proposed requirements focused on the vehicle conditions where the agency believed there is a safety need for PRNDL information to be displayed to the driver.

NHTSA explained that, as a practical matter, manufacturers choosing to avail themselves of the increased flexibility offered by the proposed requirements would likely use an electronic PRNDL display coupled with a transmission shift interlock system. The interlock system could be designed to prevent the transmission from being shifted when the vehicle is parked, i.e., when the transmission is in park and the ignition is in the lock position. The PRNDL information would not be required to be displayed in this situation, since the transmission would be in park and the ignition would be in a position where the transmission could not be shifted. There would thus not be a problem of the vehicle's battery being drained as a result of a driver's leaving the vehicle with the PRNDL display illuminated.

NHTSA also noted that the use of transmission shift interlock systems could result in safety benefits unrelated to the display of PRNDL information. In a separate rulemaking concerning Standard No. 114, the agency has proposed requirements that would have the effect of requiring transmission shift interlock systems for automatic transmission vehicles (i.e., the ignition key-locking system shall not permit removal of the key except when the transmission lever is in the park position). See 53 FR 11105, April 5, 1988. That proposal was issued in light of a safety concern about the rolling away of some automatic transmission vehicles when they are parked on slanted surfaces with the ignition key removed and the parking brake not applied. The rollaway accidents occur because the ignition key can be removed, but the gear shift lever can be left in neutral or in gear, or it can be inappropriately or indavertently shifted out of park by another occupant, typically an unattended child.

NHTSA received seven comments on the NPRM concerning Standard No. 102. Both of the petitioners supported the proposal, although GM's support was limited to vehicles other than heavy duty vehicles. GM stated that it supports the agency's view that the proposed requirements would preserve the safety benefits of section S3.2 while facilitating the use of electronic technology. That company expressed concern, however, that the proposed amendments would not provide the same flexibility for heavy duty trucks. GM stated that the increased flexibility is only available when the electronic PRNDL is used in conjunction with a transmission interlock system which precludes shifting the transmission whenever it is in the park position and the ignition is in the lock or accessory position. According to GM, however, its heavy duty trucks with GVWR is excess of 10,000 pounds do not have a park position or transmission interlock system. That company recommended a different amendment for heavy duty vehicles. Chrysler stated that while the proposed requirements were somewhat different than it had recommended in its petition, the proposal would achieve the desired objective.

Like GM, Ford expressed support for the proposal, while recommending different requirements for medium and heavy duty trucks. Ford stated that automatic transmission-equipped medium and heavy duty trucks do not have a shift lever park position and urged that a provision be made for these vehicles to provide the same flexibility for use of electronic display of shift lever positions as in vehicles with a shift lever park position. The Motor Vehicle Manufacturers Association (MVMA) and Navistar International also recommended that different requirements be established for medium and heavy duty vehicles.

Two manufacturers, Volkswagen and Austin Rover, supported the intent of the proposal to permit additional design flexibility but argued that the proposal did not go far enough. Volkswagen expressed concern that the proposed requirements could increase the potential for unwanted battery drain. That company noted that the NPRM had cited the possibility of battery drain occurring if the key remains in the ignition and the vehicle is not in park. Volkswagen argued that existing NHTSA requirements along with a shift interlock would adequately protect against this type of problem without increasing the potential for unwanted battery drain and urged the agency to modify its proposal to accommodate such systems. That company explained its position as follows:

> If a driver leaves a vehicle without removing the key from the ignition, FMVSS 114 S4.5 requires that a warning be provided to the driver. This warning is intended to attract the driver's attention to the fact that the key is left in the ignition. A driver who responds to this warning, who has not placed the transmission in park, will not be able to remove the key if the vehicle is equipped with a shift interlock. Hence, the driver's attention will be attracted to the factor prohibiting removal of the key and the

transmission will be placed in park in order to remove the key. In addition, FMVSS 102 S3.1.3 requires that the engine starter be inoperative when the transmission shift lever is in a forward or reverse drive position. Therefore a driver who ignores the signal and returns later to start the vehicle will not be able to do so unless the transmission is in park or neutral. A driver who left the vehicle in park or neutral will see the electronic PRNDL display just before and immediately after safely starting the vehicle. A driver who left the vehicle in drive or reverse will see the display when an attempt is made to start the vehicle and it will not respond.

Volkswagen also stated that all of its currently produced Audi vehicles, with automatic transmissions, are equipped with an audible warning to the driver if the transmission is left in a position other than park. That company requested that the agency allow this design alternative. Austin Rover argued that there are alternative systems to the "General Motors system" described in the NPRM which could be used without any reduction in the level of safety offered by the present standard and recommended requirements that would permit such systems. That company suggested that complete PRNDL information is needed only when the vehicle is capable of powered motion, and that in situations where the vehicle is not capable of powered motion, the driver only needs to be able to determine whether the park position has been selected.

After carefully considering the comments, NHTSA has decided to issue a final rule along the lines of the proposal for automatic transmission vehicles which have a shift lever park position. The agency has concluded that the amended requirements will maintain the safety aspects of section S3.2 while facilitating the use of electronic technology for passenger cars and other light vehicles.

NHTSA recognizes the concerns expressed by several commenters that the amended requirements may not facilitate the use of electronic technology in medium and heavy duty vehicles, since those vehicles do not have a shift lever park position. However, the requirements recommended by those commenters are significantly different than those proposed in the NPRM. The agency therefore plans to address the issue in a separate rulemaking. NHTSA notes that Volkswagen suggested in its comment that Standard No. 102 be amended to provide greater flexibility for manual transmission pattern displays as well as for automatic transmission shift lever position displays. The agency plans to address that issue in the separate rulemaking. For now, NHTSA is maintaining the existing requirements both for automatic transmission vehicles which do not have a park position and for manual transmission vehicles. However, the agency is amending the language requiring that information be "permanently displayed in view of the driver" to reflect its past interpretations that display is required whenever there is a driver in the driver's seating position.

As discussed above, in developing its August 1988 proposal, NHTSA focused on the vehicle conditions where it believes three is a safety need for PRNDL information, i.e., whenever it is possible for the driver to shift the transmission and whenever the transmission is not in park. The agency does not believe that Volkswagen or Austin Rover demonstrated either a need for further flexibility for purposes of facilitating electronic technology or that their suggested alternative amendments would ensure that PRNDL information is always available when needed.

With respect to Volkswagen's comment concerning possible battery drain, NHTSA notes that the NPRM specifically requested comment on this issue. Only two commenters directly addressed the issue, Volkswagen and Chrysler. While Volkswagen expressed concern that the proposed requirements could increase the potential for unwanted battery drain, Chrysler stated the following:

> We do not believe that a problem will be created for motorists if the PRNDL display is activated when the ignition switch is in the "off" position. In fact, it should encourage drivers to place the transmission in "park" and turn the ignition switch to the lock position in order to avoid battery rundown. Since the agency's proposal allows the PRNDL display to be off when the transmission is in "park" and the ignition switch is in the "lock" position, leaving the key in the ignition switch for an extended period, as often happens in parking lots and garages, poses no problem * * *.

While GM and Ford did not directly address the issue of possible battery drain, NHTSA believes that their general support of the proposal and statements that the proposal will facilitate the use of electronic technology indicate that they do not consider the issue to present a significant problem for their customers.

In the NPRM, NHTSA noted that the possibility of battery drain occurring when the key remains in the ignition and the vehicle is not in park is not unlike other situations, such as leaving headlamps or a radio on for extended periods. The agency also noted that manufacturers could provide warnings to the driver before the battery is drained to the point that it could no longer start the vehicle. In the absence of evidence indicating that battery drain would be a significant actual problem for drivers, as opposed to a theoretical possibility, NHTSA does not believe that further flexibility should be provided at the expense of ensuring that PRNDL information is available when needed. The agency also believes that the chances of this problem occurring would be much lower than for a driver leaving lights on. That problem typically occurs when a driver forgets to turn off lights when parking during daylight or under brightly lit conditions. However, while a driver typically needs to turn off a vehicle's lights separately, that would not be true for PRNDL displays. The potential problem of battery drain occurring from the PRNDL display would be limited to the rare situation where the driver parks the vehicle not only leaving the key in the ignition but also with the vehicle not in park.

Volkswagen suggested that a driver who responds to an audible warning that the key is left in the ignition would not be able to remove the key if the vehicle is equipped with a shift interlock, and thereby would have his or her attention attracted to the factor prohibiting removal of the key. That company stated that the transmission would be placed in park in order to remove the key. NHTSA believes, however, that some drivers who choose to ignore the audible warning about the key might wish to check the PRNDL display as to whether the vehicle is in park, as part of ensuring that the vehicle is securely parked, or simply notice the PRNDL display. Also, in the situation posited by Volkswagen, the PRNDL display might assist the driver in comprehending what factor was preventing removal of the key, thereby making it more likely that the driver would place the vehicle in park.

Volkswagen also suggested that manufacturers should be permitted the alternative of providing an audible warning to the driver if the transmission is left in a position other than park. While manufacturers are free to provide such warnings, NHTSA does not believe that the warning should be a substitute for a PRNDL display that advises the driver that the vehicle is not in park. Drivers may not understand the meaning of the audible warning and are likely to check the PRNDL display if they are in doubt as to whether the vehicle is in park.

As indicated above, Austin Rover suggested that complete PRNDL information is needed only when the vehicle is capable of powered motion, and that in situations where the vehicle is not capable of powered motion, the driver only needs to be able to determine whether the park position has been selected. NHTSA disagrees. First, whenever a vehicle is not already in park, the agency believes that a driver needs complete PRNDL information in order to be able to easily shift the vehicle to park. The issue of whether the vehicle is then capable of powered motion or not is irrelevant to that point. Second, a driver might choose to shift gears and move a vehicle for short distances without the engine on. In this situation, where the vehicle is not capable of powered motion, the agency believes that the driver needs full PRNDL information in order to safely move the vehicle.

Volkswagen stated that the proposal presented one aspect of ambiguity, whether the functions of two PRNDL displays can be used together to demonstrate compliance with the standard. That company asked whether an electronic display on the instrument panel could be used to show the gear position selected and an embossed display on the floor console be used to show the position of the gears in relation to each other.

Section S3.2's current requirement that "(i)dentification of shift lever positions of automatic transmissions * * * be permanently displayed in view of the driver" does not expressly require the specified information to be provided in a single display. However, NHTSA believes that requirement was written with the assumption that the specified information would be provided in a single display, and that current vehicle designs reflect that assumption. The agency is concerned that if the information is not provided in a single display, the standard may be less effective in achieving its purpose of reducing the likelihood of shifting errors. NHTSA plans to address this issue in the separate rulemaking cited above.

Since the amendments adopted today impose no new requirements but instead increase manufacturer flexibility, NHTSA has determined that an effective date of 30 days after publication in the **Federal Register** is in the public interest.

The agency has analyzed these amendments and determined that they are neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The agency has determined that the economic effects of these amendments are so minimal that a full regulatory evaluation is not required. Since the PRNDL amendment imposes no new requirements but simply permits additional flexibility in meeting Standard No. 102's requirements for display of automatic transmission gear positions, any cost impacts would be in the nature of slight, nonquantifiable cost savings.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that these amendments will not have a significant economic impact on a substantial number of small entities. Small businesses, small organizations, and small governmental units are affected by the amendments only to the extent that they purchase motor vehicles. For the reasons discussed above, the amendments will not significantly affect vehicle price. Accordingly, no regulatory flexibility analysis has been prepared.

The agency has also analyzed this rule for the purposes of the National Environmental Policy Act, and determined that it will not have any significant impact on the quality of the human environment.

Finally, this rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.102 [Amended]

2. SS3.1.4, 3.1.4.1, 3.1.4.2, 3.1.4.3 are added to § 571.102 to read as follows:

S3.1.4 *Identification of shift lever positions.*

S3.1.4.1 Except as specified in S3.1.4.3, if the transmission shift lever sequence includes a park position, identification of shift lever positions, including the positions in relation to each other and the position selected, shall be displayed in view of the driver whenever any of the following conditions exist:

(a) The ignition is in a position where the transmission can be shifted.

(b) The transmission is not in park.

S3.1.4.2 Except as specified in S3.1.4.3, if the transmission shift lever sequence does not include a park position, identification of shift lever positions, including the positions in relation to each other and the position selected, shall be displayed in view of the driver at all times when a driver is present in the driver's seating position.

S3.1.4.3 Such information need not be displayed when the ignition is in a position that is used only to start the vehicle.

3. S3.2 is revised to read as follows:

S3.2 *Manual transmissions.* Identification of the shift lever pattern of manual transmissions, except three forward speed manual transmissions having the standard "H" pattern, shall be displayed in view of the driver at all times when a driver is present in the driver's seating position.

Issued on July 5, 1989.

Jeffrey R. Miller,

Acting Administrator.

[FR Doc. 89-16227 Filed 7-10-89; 8:45 am]

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49 CFR Part 571

[Docket No. 74-14; Notice 61]

RIN 2127-AC 49

Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule makes two relatively minor amendments to Standard No. 208, *Occupant Crash Protection.* The first amendment extends existing requirements for safety belt systems that incorporate tension-relieving devices to manual belt assemblies installed in conjunction with air bags. This amendment will ensure that the effectiveness of the belts in a crash situation is not reduced by misuse of the tension-relieving devices. This amendment will apply to cars manufactured on or after September 1, 1990.

The second amendment specifies that adjustable anchorages for belt assemblies shall be set at the vehicle manufacturer's nominal design position for a 50th percentile adult male. Adjustable anchorages permit the occupant of a seating position to move one of the belt system's anchorages within a limited range, to optimize the fit of the belt for the occupant. Standard No. 208 does not currently specify the adjustment position at which adjustable

anchorages will be set during compliance testing. To avoid any difficulties or confusion that might result if the agency were to select an adjustment position other than the one selected by a vehicle's manufacturer, this rule specifies that vehicles with adjustable anchorages will be tested at the position appropriate for the size of the dummy used in compliance testing, the 50th percentile adult male. This amendment will apply to cars manufactured on or after September 1, 1989.

DATES: The amendments made by this rule to the Code of Federal Regulations are effective on September 1, 1989. The provisions for vehicles with adjustable anchorages will apply to vehicles manufactured on or after September 1, 1989, and the provision for vehicles with tension-relieving devices at seating positions also equipped with air bags will apply to vehicles manufactured on or after September 1, 1990.

Any petitions for reconsideration of this rule must be received by NHTSA not later than August 10, 1989. Any petitions received after that date will be treated as petitions for rulemaking, in accordance with 49 CFR 553.35.

ADDRESS: Any petitions for reconsideration should refer to the docket and notice numbers set forth at the beginning of this notice and be submitted to: Administrator, NHTSA, Room 5220, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Strombotne, Chief, Crashworthiness Division, NRM-12, Room 5320, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202-366-2264).

SUPPLEMENTARY INFORMATION: On July 6, 1988 (53 FR 25354), NHTSA proposed to make the two relatively minor amendments to Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208) that are the subject of this final rule. The first amendment proposed in that notice was to extend the existing provisions for safety belts at the front outboard seating positions to belt systems installed at those seating positions in conjunction with air bags.

Tension-relieving devices on safety belts are intended to relieve shoulder belt pressure and increase the comfort of the belt, thereby increasing the likelihood that the belt will be used to protect the occupant. However, if these tension-relieving devices are misused so as to introduce excessive slack in the belt webbing, the tension-relieving devices may reduce the effectiveness of the belt in a crash situation. To strike an appropriate balance between the need to increase belt use and the need to avoid belt misuse, section 7.4.2 of Standard No. 208 specifies additional requirements for some front outboard safety belts that incorporate tension-relieving devices. These additional requirements currently apply to automatic belts with tension-relieving devices installed at front outboard seating positions in passenger cars. These additional requirements are:

1. The vehicle owner's manual must include an explanation of how the tension-relieving device works and recommend a maximum amount of slack that should be introduced into the belt under normal circumstances;

2. The vehicle must comply with the injury criteria specified in § 5.1 of Standard No. 208 with the shoulder belt webbing adjusted to introduce the maximum amount of slack recommended by the manufacturer; and

3. The vehicle must have an automatic means to cancel any shoulder belt slack introduced into the belt system by a tension-relieving device.

NHTSA tentatively concluded that the same factors that had led it to apply the requirements of § 7.4.2 to automatic safety-belts (the balancing of the need to encourage belt use with the need to minimize belt misuse) were equally applicable to manual belts installed in conjunction with air bags. Accordingly, the notice proposed to extend the requirements of § 7.4.2 to manual belts installed in conjunction with an air bag at a front outboard seating position.

The second change proposed in the notice addressed adjustable anchorages on belt systems. Adjustable anchorages allow the occupant of a seating position to move the anchorage location within a limited range, so as to optimize the fit of the belt for the individual occupant. Some current vehicles already incorporate adjustable upper anchorages.

Standard No. 208 does not presently specify any positioning requirements for adjustable anchorages during compliance testing. Absent some guidance in the standard for positioning an adjustable feature, considerable difficulties could arise. The positioning of an anchorage for a belt system can affect the performance of the belt system during a crash. However, absent any positioning for adjustable anchorages in Standard No. 208, the various manufacturers of vehicles with adjustable anchorages might all select different anchorage adjustment positions to certify the vehicles' compliance with Standard No. 208. NHTSA, in turn, might select an anchorage adjustment position different from that chosen by any of the manufacturers for its compliance testing. The different anchorage adjustment positions could lead to unreasonable and unnecessary difficulties for both the agency and the manufacturers.

To avoid any difficulties, the notice proposed that adjustable anchorages be set to the vehicle manufacturer's nominal design position for a 50th percentile adult male occupant, which is the size of the test dummy used in NHTSA's compliance testing. This would ensure that compliance testing was conducted under realistic and representative conditions for adjustable anchorages. The notice also asked for comments on the appropriateness of requiring that vehicles that use adjustable anchorages comply with the requirements of Standard No. 208 with the anchorages in any adjustment position. Such an approach would ensure that adjustable anchorages afforded adequate protection even when they were not properly adjusted.

Eight parties responded to the request for comments on the proposal. All of these comments were considered in developing this final rule, and the most significant comments are discussed below.

Four of the commenters addressed the proposal to extend the existing requirements for belts equipped with tension-relieving devices to manual belts with tension-relieving devices installed in conjunction with air bags at a seating position. Chrysler supported the proposal for the reasons stated in the proposal. The Insurance Institute for Highway Safety (IIHS) opposed the proposal, asserting that tension-relieving devices are detrimental to occupant protection in crashes. Based on this assertion, IIHS urged the agency to initiate rulemaking to prohibit the installation of tension-relieving devices on any belt systems.

Contrary to the assertion by IIHS, NHTSA is unaware of any data showing that occupants of cars equipped with tension-relieving devices suffer a higher level of injuries in crashes. In fact, a recent examination of this subject by the National Transportation Safety Board concluded that "the cases as a whole do not demonstrate that occupants of window shade-equipped cars are injured more often or more seriously than occupants of nonwindow shade equipped cars." *Performance of Lap/Shoulder Belts in 187 Vehicle Crashes*, NTSB/SS-88/02. Because of the absence of any such data, NHTSA has repeatedly declined to adopt suggestions that tension-relieving devices be prohibited on belt systems. NHTSA believes that the possibility of misuse is not a sufficient justification for prohibiting devices that have the potential to increase safety belt use, particularly when there is no evidence that the public is misusing tension-relieving devices to any significant extent. Instead, the agency believes the more appropriate course of action is to take steps to minimize the likelihood of misuse, and has done so by means of the requirements in § 7.4.2. IIHS has provided no additional information or data that would cause the agency to reexamine its previous decisions.

Ford questioned whether there was a safety need to extend the requirements for belts with tension-relieving devices to such belts installed in conjunction with air bags. According to Ford, excessive slack in a shoulder belt during a frontal crash would result in the occupant's head and chest being stopped primarily or solely by the air bag, a condition that would not pose any added safety risks to the occupant. Thus, Ford seemed to be asserting that since there are no adverse safety consequences associated with misuse of tension-relieving devices on belt systems installed in conjunction with air bags, there is no safety need for the agency to take regulatory steps to minimize the likelihood of misuse of tension-relieving devices on such belt systems.

NHTSA disagrees with this assertion. If excessive slack is introduced into the shoulder belt, the protection offered by the shoulder belt would be substantially reduced or even eliminated. Ford's assertion is correct that the absence of full protection from the shoulder belt might not result in lesser occupant protection in crashes similar to the dynamic test specified in Standard No. 208, because the air bag would protect the occupant's head and chest during the crash. However, many other types of real-world crashes (e.g., side impacts and rollovers) do *not* result in air bag deployment, and thus require effective restraint by the shoulder belt for maximum protection of the occupant. The agency recognizes that, under Standard No. 208, lap/shoulder belts are "optional" for seating positions equipped with air bags (only lap belts are required). Nevertheless, NHTSA has strongly encouraged manufacturers to provide the additional protection of lap/shoulder belts. When lap/shoulder belts are provided, NHTSA believes it is reasonable, appropriate, and valuable from a safety perspective to minimize the likelihood that the shoulder-belt portion of the belt might be misused so as to substantially reduce its effectiveness. Those concerns apply to cars that are equipped with air bags as well as those that are not. This extension of the requirements for tension-relieving devices will help assure that all motor vehicle safety belt systems are effective systems, and minimize the likelihood that those belt systems will be misused.

Additionally, the agency believes that an extension of the requirements for tension-relieving devices will help induce use of lap/shoulder belt systems installed in conjunction with air bags. Specifically, if the requirements for automatic cancellation of slack do not apply to those belt systems, a belt user might inadvertently introduce excessive slack into the shoulder belt, especially when exiting the vehicle. If the owner's manual for this vehicle does not include an explanation of how the tension-relieving device works (another existing requirement for tension-relieving devices), the belt user might not realize how to cancel the excessive slack. This would result in a shoulder belt that could loosely dangle in front of the occupant. NHTSA believes that a lap/shoulder belt system in which the shoulder belt portion dangles in front of an occupant could actually discourage use of the belt system, by conveying to the occupant the idea that the belt system may not afford adequate crash protection. A belt system that discourages use will result in lesser occupant crash protection. Hence, NHTSA disagrees with Ford's assertion that there are no potential adverse safety consequences associated with the misuse of tension-relieving devices on safety belt systems installed in conjunction with air bags.

General Motors (GM) also questioned the agency's tentative determination that there is a safety need to extend the requirements of S7.4.2 to safety belt systems installed in conjunction with air bags. GM stated that it supported the extension of requirements to include a recommendation about the maximum amount of slack in the owner's manual and to test the vehicle with the recommended maximum amount of slack introduced into the belt systems. However, GM objected to the requirements for automatic tension-relief cancellation, on the grounds that this automatic cancellation is primarily a convenience feature. GM asserted that this convenience feature is unnecessary in this case, because the occupant entering the vehicle is, in many cases, the same person who left the vehicle from that position. When it is a different occupant, GM asserted that the excessive slack should be obvious to the occupant and that the occupant can remove the excessive slack by a slight adjustment to the shoulder belt.

NHTSA was not persuaded by this argument. The purpose of S7.4.2, including the requirement for automatic cancellation of any slack, is to minimize the likelihood that tension-relieving devices will be misused. As explained above in response to Ford's comments, NHTSA believes the need to minimize the likelihood of misuse could be as important for belt systems installed in conjunction with air bags as it is for those belt systems to which the requirements of S7.4.2 already apply. The automatic cancellation feature serves this purpose by ensuring that a new occupant entering a vehicle will encounter a belt system without any slack and will then make adjustments to that belt system that are appropriate for that occupant. NHTSA concludes that avoiding misuse of belts equipped with tension-relieving devices is a legitimate safety need and that the requirement for automatic slack cancellation is a reasonable and necessary means of achieving this end.

GM also argued that the proposed requirement was not as minor as NHTSA had suggested. According to GM's comments, the retractors for most belt systems that incorporate tension-relieving devices are mounted on either the door pillar or the rocker panel of the car body. For these retractors, vehicle manufacturers design the retractor to automatically retract webbing whenever the adjacent door is opened or the belt is unbuckled. The reason for this design is to prevent the belt webbing from being damaged by being closed in the door. This design feature fully complies with the automatic slack cancellation requirement in S7.4.2 of Standard No. 208. Hence, no design or production changes would be needed on vehicles equipped with these retractors that will be equipped with air bags.

However, some of GM's two door models are equipped with roof mounted retractors. These retractors are not, according to GM's comments, already designed to automatically retract webbing when the adjacent door is opened, because shoulder belt webbing extended from roof mounted retractors is not "subject to damage from an adjacent door closure." GM stated that it would need at least 18 months leadtime to make the necessary design and production changes to the vehicles on which it plans to introduce driver's side air bags that are equipped with roof mounted retractors.

NHTSA has reexamined its proposed requirement in light of this comment. The agency statements that this

proposal was a minor change was based on the assumption that manufacturers of vehicles subject to the proposed requirement already complied voluntarily with the requirements of S7.4.2. Based on this assumption, the agency believed that a requirement for the manufacturers to follow a practice they already followed voluntarily would not require any design or manufacturing changes, and that any burdens associated with such a requirement would be minimal.

However, GM's comments indicate that this assumption by the agency was erroneous with respect to that manufacturer. Since GM was not voluntarily complying with the requirements of S7.4.2 for all of its cars equipped with tension-relieving devices, it would be required to make production and design changes to some of its vehicles to comply with this requirement. The agency agrees that some additional leadtime is necessary to permit GM to make these design and production changes. Therefore, this requirement will apply to cars manufactured on or after September 1, 1990.

The second proposed change was to specify that belt systems with adjustable anchorages would have those anchorages set to the manufacturer's nominal design position for a 50th percentile adult male for the purposes of Standard No. 208 compliance testing. This proposal was supported by Mitsubishi, Volkswagen, Chrysler, Toyota, Range Rover, GM, and Ford. Ford stated that it has been reluctant to offer adjustable anchorages because of its uncertainty about the adjustment position NHTSA would select in Standard No. 208 compliance testing, and that the proposed adjustment position would encourage manufacturers to provide adjustable anchorages on their vehicles.

These same commenters indicated that a requirement to test adjustable anchorages at any adjustment position should not be adopted. Mitsubishi, Chrysler, and Volkswagen commented that testing at the manufacturer's nominal design position would be more representative of real world crashes, since most 50th percentile adult males would adjust their anchorage properly to enhance belt fit and comfort. Volkswagen, Range Rover, and Ford argued that manufacturers would be obliged to conduct a number of repetitive crash tests before certifying that a vehicle with adjustable anchorages complied with Standard No. 208 with the anchorages adjusted to any position, and that the cost of these repetitive tests would discourage manufacturers from offering adjustable anchorages. Toyota argued that the effect of requiring compliance at any adjustment position would be to narrow the range of adjustment positions offered for anchorages. While this narrow range would ensure that the vehicle would comply with the anchorage in any adjustment position, it would also make the adjustable anchorage superfluous, since they would not adjust sufficiently to enhance belt fit and comfort for occupants who were not close to the size of a 50th percentile adult male.

The agency is persuaded by these comments. Adjustable anchorages allow occupants to adjust the belt fit to be more comfortable than is the case with fixed anchorages. This adjustment feature is particularly desirable for short adults and children, as well as tall adults. NHTSA has no reason for imposing a requirement that might discourage manufacturers from installing adjustable anchorages. Therefore, this final rule adopts the proposed requirement that adjustable anchorages will be adjusted to the manfacturer's nominal design position for a 50th percentile adult male prior to Standard No. 208 compliance testing.

Ford commented that the agency should also amend the provisions of S7.1 (relating to belt adjustment) and S7.4.4 (relating to latchplate access) to specify that adjustable anchorages will be adjusted to the manufacturer's nominal design position for a 50th percentile adult male occupant to determine compliance with those provisions of Standard No. 208. NHTSA agrees with this comment and this final rule makes the requested changes.

This rule becomes effective September 1, 1989. For those manufacturers that choose to equip their vehicles with adjustable anchorages, this rule will remove the existing uncertainties about the proper adjustment position for such anchorages during compliance testing. Removing these uncertainties is an advantage for those manufacturers, the agency, and the public. For those manufacturers whose vehicles are not equipped with adjustable anchorages, this rule will not impose any additional obligations. Since no party is adversely affected by this rule and some parties will be positively affected, the agency has concluded that there is good cause for specifying an effective date sooner than 180 days after publication of this rule.

The agency has analyzed the impacts of this final rule and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. The extension of the existing requirements for cars with tension-relieving devices on safety belts to safety belts installed in conjunction with air bags will impose costs on only one manufacturer, General Motors. With the additional leadtime specified in this rule for achieving compliance, the agency estimates that those costs will be well below the threshold of $100 million for classifying a rule as either major or significant.

The requirement specifying the position to which adjustable anchorages will be adjusted to determine compliance with Standard No. 208 will not impose any additional costs. It will simply ensure that the manufacturers and other interested members of the public know how the agency will conduct compliance testing of vehicles equipped with adjustable anchorages. Because of these minimal impacts, the agency has not prepared a full regulatory evaluation of this rule.

NHTSA has also analyzed the effects of this rule on small entities, in accordance with the Regulatory Flexibility Act. Based on that analysis, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. NHTSA believes that the only entity that will experience any economic impact as a result of this rule is GM, which does not qualify as a small entity. Even if GM were a small entity, the impacts would not be significant, as explained above. This rule will not significantly affect the manufacturing process of any safety belt manufacturers that are small entities or the retail price of vehicles purchased by any small organizations or small governmental units.

The agency has also analyzed this rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment. After analyzing the rule in accordance with the principles and criteria set forth in Executive Order 12612, NHTSA has determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The requirement in this rule to provide information in the owner's manual about the maximum amount of slack that should be introduced into safety belts installed in conjunction with air bags is an information collection requirement, as that term is defined in 5 CFR Part 1320. Pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this information collection requirement was submitted to and approved by the Office of Management and Budget. These requirements were assigned OMB #2127-0541 and approved through March 31, 1992.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.208 [Amended]

2. S7.1.1 of § 571.208 is revised to read as follows:

S7.1.1 Except as specified in S7.1.1.1 and S7.1.1.2, the lap belt of any seat belt assembly furnished in accordance with S4.1.2 shall adjust by means of any emergency-locking or automatic-locking retractor that conforms to § 571.209 to fit persons whose dimensions range from those of a 50th percentile 6-year-old child to those of a 95th percentile adult male and the upper torso restraint shall adjust by means of an emergency-locking retractor or a manual adjusting device that conforms to § 571.209 to fit persons whose dimensions range from those of a 5th percentile adult female to those of a 95th percentile adult male, with the seat in any position, the seat back in the manufacturer's nominal design riding position, and any adjustable anchorages adjusted to the manufacturer's nominal design position for a 50th percentile adult male occupant. However, an upper torso restraint furnished in accordance with S4.1.2.3.1(a) shall adjust by means of an emergency-locking retractor that conforms to § 571.209.

§ 571.208 [Amended]

3. S7.4.2 of § 571.208 is amended by revising the introductory text to read as follows:

S7.4.2 *Webbing tension-relieving device.* Each vehicle with an automatic seat belt assembly or with a Type 2 manual seat belt assembly that must comply with S4.6 of this standard and each vehicle manufactured on or after September 1, 1990, with a manual seat belt assembly installed to comply with S4.1.2.1(c)(2) of this standard, which has such a seat belt assembly installed at a front outboard designated seating position and equipped with either manual or automatic tension-relieving devices permitting the introduction of slack in the webbing of the shoulder belt (e.g., "comfort clips" or "window-shade" devices), shall:

* * * * *

§ 571.208 [Amended]

4. S7.4.4 of $571.208 is revised to read as follows:

S7.4.4 *Latchplate access.* Any seat belt assembly latchplate that is located outboard of a front outboard seating position in accordance with S4.1.2 shall also be located within the outboard reach envelope of either the outboard arm or the inboard arm described in S10.6 of this standard and, in the case of a Part 572 Subpart B test dummy, Figure 3A of this standard, or, in the case of a Part 572 Subpart E test dummy, Figure 3B of this standard, when the latchplate is in its normal stowed position and any adjustable anchorages are adjusted to the manufacturer's nominal design position for a 50th percentile male occupant. There shall be sufficient clearance between the vehicle seat and the side of the vehicle interior to allow the test block defined in Figure 4 unhindered transit to the latchplate or buckle.

5. S8.1.3 of § 571.208 is revised to read as follows:

S8.1.3 Place adjustable seat backs in the manufacturer's nominal design riding position in the manner specified by the manufacturer. Place any adjustable anchorages at the manufacturer's nominal design position for a 50th percentile adult male occupant. Place each adjustable head restraint in its highest adjustment position. Adjustable lumbar supports are positioned so that the lumbar support is in its lowest adjustment position.

Issued on July 5, 1989.

Jeffrey R. Miller,
Acting Administrator.

[FR Doc. 89-16226 Filed 7-10-89; 8:45 am]
BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 54, No. 131
Tuesday, July 11, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS Number: 1219-89]

8 CFR Part 242

Apprehension, Custody, and Detention; Clarification of Force and Effect of Service Detainers (Form I-247)

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule will serve to clarify the effect of placing a Service detainer (Form I-247) with a correctional institution. This clarification is necessary so that it is clear that Service detainers are not meant to affect, among other things, the security level of confinement, quarters assignment and offender classification, furloughs or work release of the institution. These matters are determined at the discretion of the correctional institution. Accordingly, the detainer will serve to place a "hold" only at the time the alien is actually released from confinement.

DATE: Comments must be received no later than August 10, 1989.

ADDRESS: Submit written comments, in triplicate, to Director, Policy Directives and Instructions, Immigration and Naturalization Service, Room 2011, 425 I Street NW., Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Ira L. Frank, Senior Special Agent, Investigations Division, Immigration & Naturalization Service, 425 I Street NW., Room 7240, Washington, DC 20536, Telephone: (202) 633-3098.

SUPPLEMENTARY INFORMATION: This proposed rule will clarify the force and effect of Service detainers (Form I-247) and make clear that a Service detainer has no effect upon the alien or correctional institution until the alien has been released from the custody of the correctional institution. The detainer (Form I-247) merely serves to notify the correctional institution that the Service wishes to assume custody of the alien upon the alien's release from confinement. The correctional institution has full discretion in such concerns as security level of confinement, quarters assignment and offender classification, furloughs and work release. These matters can be accomplished without any concurrence from the Service. 8 U.S.C. 1251(h) prohibits an alien sentenced to imprisonment to be deported until such imprisonment has been terminated by the release of the alien from confinement.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 242

Administrative practice and procedure, Aliens, Deportation.

Accordingly, Part 242 of Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

1. The authority citation for Part 242 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1254, 1362, 8 CFR 2.

2. In § 242.2, paragraph (a)(1) is revised to read as follows:

§ 242.2 Apprehension, custody, and detention.

(a) *Detainers in general.* (1) Only an immigration officer as defined in section 101(a)(18) of the Act, or § 103.1(q) of this chapter is authorized to issue a detainer (Form I-247). Detainers may only be issued in the case of an alien who is amenable to exclusion or deportation proceedings under any provision of the law. A Service detainer should not be construed by a correctional institution as a demand that the alien's security level of confinement, quarters assignment and offender classification, furloughs, work release and related matters be affected. Such matters are within the discretion of the correctional institution in accordance with its own individual policies and procedures and do not require the concurrence of the Service. A detainer merely serves to notify the correctional institution that the Service wishes to assume custody of the alien upon the alien's release from confinement. The detainer will serve to place a "hold" on the alien only upon the alien's actual release from confinement. No detainer shall be issued in the case of an alien who is in the United States without legal authority and is eligible to apply, or has applied, for legalization or special agricultural worker status under the provisions of section 245A or 210 of the Act, unless the Service has denied, or has issued a notice of intent to deny, the benefit for which applied.

* * * * *

Dated June 27, 1989.

Clarence M. Coster,

Associate Commissioner, Enforcement Immigration and Naturalization Service.

[FR Doc. 89-16235 Filed 7-10-89; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-78-AD]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, which would require inspection for cracks of stringers 22 to 28 run-outs at fuselage frame 47, and repair, if necessary. This proposal is prompted by fatigue testing by the manufacturer, which revealed cracks on the run-outs of stringers 22 to 28 at the forward and rear internal side of the left-hand and right-hand frame 47. This condition, if not corrected, could lead to reduced structural capability of the fuselage and subsequent decompression of the airplane.

DATES: Comments must be received no later than August 28, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-78-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Transport Airplane Directorate, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-78-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Genrale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with the provisions of an existing bilateral airworthiness agreement, has notified the FAA of an unsafe condition that exists on Airbus Industrie Model A300 series airplanes. The manufacturer reported that, during full-scale fatigue tests, cracks developed in the run-outs of stringers 22 to 28 at the forward and rear internal side of left-hand and right-hand fuselage frame 47. This condition, if not corrected, could lead to reduced structural capability of the fuselage and subsequent decompression of the airplane.

Airbus Industrie has issued Service Bulletin A300-53-237, dated January 18, 1989, which describes procedures for inspection for cracks of stringers 22 to 28 run-outs at fuselage frame 47, and repair, if necessary. The DGAC has classified this service bulletin as mandatory.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require inspection for cracks of stringers 22 to 28 run-outs at the fuselage frame 47, and repair, if necessary, in accordance with the service bulletin previously described.

It is estimated that 66 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $21,120.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive.

Airbus Industrie: Applies to Model A300 series airplanes, as listed in Airbus Industrie Service Bulletin A300-53-237, dated January 18, 1989. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural capability of the fuselage and subsequent decompression of the airplane, accomplish the following:

A. Prior to the accumulation of the number of landings indicated below or within 750 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals indicated below, perform either a detailed visual or eddy current inspection of stringers 22 to 28 run-outs at fuselage frame 47, in accordance with Airbus Industrie Service Bulletin A300-53-237, dated January 18, 1989.

1. For airplanes identified as Configuration 1 in the service bulletin, the initial inspection must be performed prior to the accumulation of 20,500 landings.

a. If the immediately preceding inspection was performed using the detailed visual method, the next inspection must be performed within 9,200 landings.

b. If the immediately preceding inspection was performed using the eddy current method, the next inspection must be performed within 18,400 landings.

2. For airplanes identified as Configuration 3 in the service bulletin, the initial inspection must be performed prior to the accumulation of 17,500 landings.

a. If the immediately preceding inspection was performed using the detailed visual

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method, the next inspection must be performed within 7,900 landings.

b. If the immediately preceding inspection was performed using the eddy current method, the next inspection must be performed within 15,800 landings.

3. For airplanes identified as Configuration 5 in the service bulletin, the initial inspection must be performed prior to the accumulation of 13,800 landings.

a. If the immediately preceding inspection was performed using the detailed visual method, the next inspection must be performed within 6,200 landings.

b. If the immediately preceding inspection was performed using the eddy current method, the next inspection must be performed within 12,400 landings.

4. For airplanes identified as Configuration 6 in the service bulletin, the initial inspection must be performed prior to the accumulation of 22,200 landings.

a. If the immediately preceding inspection was performed using the detailed visual method, the next inspection must be performed within 10,000 landings.

b. If the immediately preceding inspection was performed using the eddy current method, the next inspection must be performed within 20,100 landings.

B. If cracks found are less than or equal to 1 mm (.039 inch), repair prior to further flight and perform an eddy current inspection to ensure that the crack has been eliminated, in accordance with Airbus Industrie Service Bulletin A300-53-237, dated January 18, 1989. Repeat inspections at intervals indicated in paragraph A., above.

C. If cracks are greater than 1 mm (.039 inch), repair prior to further flight, in a manner approved by the Manager, Standardization Branch, ANM-113, Northwest Mountain Region. Repeat the inspections at intervals indicated in paragraph A., above.

D. If no cracks are found, perform repetitive inspections at intervals shown in paragraph A., above.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South Seattle, Washington.

Issued in Seattle, Washington, on June 28, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 89-16214 Filed 7-10-89; 8:45am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-92-AD]

Airworthiness Directives; Airbus Industrie Model A300, A310, A300-600 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300, A310, and A300-600 series airplanes, which would require inspection of the pitch trim electrical circuit for defective trim switches, and replacement of faulty switches, if necessary. This proposal is prompted by reports of electrical trim malfunction due to faulty trim switches. This condition, if not corrected, could result in pitch trim runaway.

DATE: Comments must be received no later than August 28, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-92-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-92-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Airbus Industrie Model A300, A310, and A300-600 series airplanes. The manufacturer has identified certain electrical switches that control the normal pitch trim function, which may have been improperly produced and may malfunction. This condition, if not corrected, could lead to pitch trim runaway.

Airbus Industrie has issued All Operators Telex, (AOT) 22/88/01, dated November 23, 1988 which describes procedures for inspection of the pitch trim electrical circuit for defective trim switches, Part Number BP 20-455, serial numbers 110 to 923, inclusive, and replacement, if necessary, with a serviceable switch having a serial number of 924 or higher. For details on removal and installation of the pitch trim control switch, the AOT references Airplane Maintenance Manual (AMM) 22-27-12 for the Model A310 and A300-600 series airplanes, and AMM 27-11-11 for the Model A300 series airplanes. The

DGAC has issued French Airworthiness Directive 89-063-(AB) addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require inspection and replacement, if necessary, of certain trim switches, in accordance with the AOT previously described.

It is estimated that 103 airplanes of U.S. registry would be affected by this AD, that it would take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $24,720.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie Applies to Models A300, A310, and A300-600 series airplanes, certificated in any category. Compliance is required within 30 days after the effective date of this AD, unless previously accomplished.

To prevent pitch trim runaway, accomplish the following:

A. Perform an inspection to determine if SAMM trim switches, Part Number BP 20-455, serial numbers 110 to 923, inclusive, are fitted on the normal pitch trim electrical circuit, in accordance with All Operators Telex (AOT) 22/88/01, dated November 23, 1988. If any trim switch is determined to have any of these serial numbers, prior to further flight, replace the switch with a serviceable trim switch having a serial number 924 or higher, in accordance with Airplane Maintenance Manual (AMM) 22-27-12 (for Model A310 and A300-600 series airplanes) or AMM 27-11-11 (for Model A300 series airplanes), as appropriate.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 28, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-16215 Filed 7-10-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-93-AD]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to Airbus Industrie Model A300 series airplanes, which would require a one-time inspection of certain main landing gear (MLG) uplock control bellcrank support bearings, and replacement, if necessary. This proposal is prompted by one report that both MLG's did not extend in a free-fall mode due to a jam caused by defective bearings. This condition, if not corrected, could result in the inability to extend the MLG in the free-fall mode following a failure of the normal extend mode.

DATE: Comments must be received no later than August 28, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-93-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should indentify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the

Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submited in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-93-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on Airbus Model A300 series airplanes. There has been one report of non-extension of both main landing gears in the free-fall mode. Further investigation revealed that bearings, Part Number NSA 8116-16, installed on the right MLG uplock control bellcrank support, were jammed; this prevented any movement of the control rods and resulted in the failure of the MLG to extend. This condition, if not corrected, could result in the inability to extend the MLG following a failure of the normal extend mode.

Airbus Industrie has issued All Operator Telex (AOT) 32/88/02, Issue 2, dated December 14, 1988, which describes procedures for a one-time inspection of the right and left main landing gears (MLG) for defective bearings, and replacement of the bearings, if necessary. The DGAC has classified the All Operators Telex (AOT) as mandatory, and has issued French Airworthiness Directive 89-040-091(B) addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this action proposes to require a one-time inspection of the MLG for defective bearings, and replacement of the bearings, if necessary, in accordance with the AOT previously described.

It is estimated that 66 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $13,200.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 48 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 series airplanes, serial numbers up to and including 253, certificated in any category. Compliance is required within 100 landings after the effective date of this AD, unless previously accomplished.

To prevent malfunction of the main landing gear in the free fall mode, accomplish the following:

A. Inspect both main landing gears for defective uplock control bellcrank support bearings, P/N NSA 8116-16, in accordance with All Operators Telex (AOT) 32/88/02, dated December 14, 1988. If a defective bearing is found, replace it with a serviceable bearing prior to further flight.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 28, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-16218 Filed 7-10-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-10-AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This notice proposes to revise an earlier proposed airworthiness directive (AD), applicable to all Boeing Model 727 series airplanes, which would have required inspection of the number 1 and 3 engine aft mount support fittings, and repair or replacement, if necessary. That action was prompted by reports of cracks in the aft engine mount support fittings. This condition, if not corrected, could result in an engine separating from the airplane. This action revises the proposed rule by reducing the initial compliance threshold for airplanes with support fittings made of 7079-T6 material.

DATE: Comments must be received no later than August 14, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-10-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Kathi N. Ishimaru, Airframe Branch, ANM-120S; telephone (206) 431-1525. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-10-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD), applicable to all Boeing Model 727 series airplanes, which would have required inspection of the number 1 and number 3 engine aft mount support fittings, and repair or replacement, if necessary, was published in the **Federal Register** on March 20, 1989 (54 FR 11381). That action was prompted by reports of cracks in the number 1 and 3 engine aft mount support fittings which, if undetected, can result in separation of the engine from the airplane.

Since issuance of that proposal, an operator has reported cracks in both the numbers 1 and 3 engine aft mount support fittings made of 7079-T6 material on an airplane with 21,500 flight cycles, which is below the previously proposed threshold of 25,000 flight cycles.

The FAA has determined that this NPRM must be revised to delete the threshold for the initial compliance for airplanes with support fittings made of 7079-T6 material. To ensure that cracking is detected in a timely manner, the FAA has revised paragraph A.1. of the NPRM to require the initial inspection be performed within 1,000 flight cycles or one year, whichever occurs first.

There are approximately 1,710 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 1,143 airplanes of U.S. registry would be affected by this AD, that it would take approximately 12 manhours per airplane to accomplish the required inspections, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $548,640.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by revising paragraph A.1. of the Notice of Proposed Rulemaking, Docket 89-NM-10-AD, which was published in the **Federal Register** on March 20, 1989 (54 FR 11381), FR Doc. 89-6404, as follows:

Boeing: Applies to all Model 727 series airplanes certificated in any category. Compliance is required as indicated, unless previously accomplished.

To detect cracking in the number 1 or 3 engine aft mount support fitting, accomplish the following:

A. Conduct a detailed visual inspection for cracks of the number 1 and number 3 engine aft mount support fittings, in accordance with section III.D and Figure 1 of Boeing Service Bulletin 727-54-0017, dated December 22, 1988, in accordance with the following schedule:

1. For airplanes with engine aft mount support fittings made of 7079-T6 material: within the next 1,000 flight cycles or 1 year, after the effective date of this AD, whichever occurs first, unless previously accomplished within the last 2,000 flight cycles.

Note: 7079-T6 material is used in the aft support fitting on the number 1 engine strut on airplanes line numbers 001 through 883, and the number 3 engine strut on airplanes line numbers 001 through 880.

2. For airplanes with engine aft support fittings made of 7075-T73 material: prior to the accumulation of 40,000 flight cycles, or within the next 1,000 flight cycles after the effective date of this AD, whichever occurs

later, unless previously accomplished within the last 2,000 flight cycles.

Note: 7075-T73 material is used in the aft support fitting on the number 1 engine strut on airplanes line number 884 and all later airplanes, and the number 3 engine strut on airplanes line number 881 and all later airplanes.

B. For the initial inspection required in paragraph A., above, as an option to the detailed visual inspection, perform an eddy current inspection of the support fittings outboard of the body skins, and a detailed visual inspection of the support fittings inboard of the body skins, in accordance with Section III.A and Figure 1 of Boeing Service Bulletin 727-54-0017, dated December 22, 1988.

C. Repeat the detailed visual inspection required in paragraph A., above, at intervals not to exceed 3,000 flight cycles.

D. If cracked fittings are found as a result of the inspections required by this AD, prior to further flight, repair or replace in accordance with a procedure approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 29, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-16217 Filed 7-10-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-100-AD]

Airworthiness Directives; Boeing Model 757 and 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 757 and 767 series airplanes, which would require the inspection and replacement of the Ram Air Turbine (RAT) Ground Checkout Module (GCM) and possible replacement of the RAT hydraulic pump. This proposal is prompted by reports of four RAT hydraulic pumps which may have been damaged by fragments from a filter screen in the GCM. This condition, if not corrected, could result in an inoperable RAT hydraulic pump and complete loss of RAT hydraulic power should a dual engine loss occur.

DATE: Comments must be received no later than August 28, 1989.

ADDRESSES: Send comments on the proposal in duplicate the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-100-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commerical Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. David M. Herron, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1949. Mailing address: FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-100-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

One operator, while incorporating the content of a service bulletin on its Model 767 airplanes, noted that the majority of Ram Air Turbine (RAT) Ground Checkout Modules (GCM) removed were missing portions of or the entire downstream filter screen. This screen is part of the orifice plug in the GCM. Two operators have reported four RAT hydraulic pumps that were inoperable, possibly due to ingestion of filter screen fragments. In these four cases, the RAT GCM's were missing or had an eroded downstream filter screen. In the event of a dual engine loss, an inoperable RAT hydraulic pump could result in the complete loss of hydraulic power.

The same part is used in the GCM of both Model 757 and 767 series airplanes. The manufacturer has determined that the downstream filter screen in the orifice plug is unnecessary.

The FAA has reviewed and approved Boeing Alert Service Bulletins 757-29A0037, Revision 1 (for Model 757 airplanes), and 767-29A0035, Revision 1 (for Model 767 airplanes), both dated November 23, 1988, which describe the replacement of RAT GCM and hydraulic pumps. Those service bulletins also reference Sundstrand Service Bulletin 734933-29-2, which describes the modification of the Ground Checkout Modules.

Since this condition is likely to exist or develop on other airplanes of these same type designs, an AD is proposed which would require the inspection and replacement of the RAT Ground Checkout Module with a different or reworked GCM and replacement of the RAT hydraulic pump, if necessary, in accordance with the service bulletins previously described.

There are approximately 400 Model 757 and 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 215 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $68,800.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 757 and 767 series airplanes, as listed in Boeing Alert Service Bulletins 757-29A0037, Revision 1, and 767-29A0035, Revision 1, both dated November 23, 1988, certificated in any category. Compliance required within the next 6,000 hours time-in-service after the effective date of this AD, unless previously accomplished.

To prevent the possible complete loss of hydraulic power, accomplish the following:

A. Remove and rework or replace the Ram Air Turbine (RAT) Ground Checkout Module (GCM) in accordance with Boeing Service Bulletin 757-29A0037, Revision 1 (for Model 757 airplanes), or 767-29A0035, Revision 1 (for Model 767 airplanes), both dated November 23, 1988, as appropriate. Prior to returning the airplane to service, inspect the downstream filter screen. If the screen is damaged or missing, prior to flight, replace the RAT hydraulic pump in accordance with the service bulletin.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 28, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 89-16218 Filed 7-10-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-ASW-15]

Proposed Revision of Control Zone; Midland, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the control zone located at Midland, TX. The existing legal description is carrying the old name of the airport, that being Midland Regional Air Terminal. The correct name is the Midland International Airport. Additionally, the coordinates of the airport have been revised slightly. The need to correct the name of the airport, as well as revise its coordinates, has made this proposal necessary. The current layout of the Midland, TX, Control Zone will be not be altered. The intended effect of this proposal is to only change the legal description of the Midland, TX, Control Zone by correcting the name of the airport and revising its coordinates.

DATES: Comments must be received on or before August 7, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 89-ASW-15, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASW-15." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A

report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM'S

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of the Federal Aviation Regulations (14 CFR Part 71) by revising the control zone located at Midland, TX. The current legal description of the Midland, TX, Control Zone states that the control zone is built around the Midland Regional Air Terminal. The name of the airport has been changed to the Midland International Airport, and the legal description must be changed to reflect this. Also, the coordinates of the airport have been slightly revised and should also be changed. Both of these required corrections have necessitated this proposed revision. The present layout of the control zone will not be altered. The intended effect of this proposal is to revise the legal description of the Midland, TX, Control Zone to reflect the correct name of the airport and its coordinates, not to change the control zone itself. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Midland, TX [Revised]

Within a 5-mile radius of the Midland International Airport (latitude 31°56'33"N., longitude 102°12"06"W.), and within 2 miles each side of the Midland ILS localizer NW course, extending from the 5-mile radius area to 7 miles northwest of the airport.

Issued in Fort Worth, TX, on June 19, 1989.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 89–16219 Filed 7–10–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 89–ASW–18]

Proposed Removal of Transition Area; Farmerville, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to remove the transition area located at Farmerville, LA. The cancellation of the VOR/DME–A standard instrument approach procedure (SIAP) to the Farmerville Airport, which utilizes the Monroe Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (VORTAC), has made this proposed action necessary. The intended effect of this proposal is to return that controlled airspace no longer required due to the cancellation of the VOR/DME–A SIAP. Coincident with this action will be the changing of the status of the Farmerville Airport from instrument flight rules (IFR) to visual flight rules (VFR).

DATES: Comments must be received on or before August 7, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 89–ASW–18, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: (817) 624–5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–ASW–18." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) to remove the transition area located at Farmerville, LA. The cancellation of the VOR/DME–A SIAP serving the Farmerville Airport, which utilizes the Monroe VORTAC, has necessitated this proposal removal. The VOR/DME–A SIAP is the only instrument approach serving the Farmerville Airport. The intended effect of this proposal is to return that controlled airspace no longer required due to the cancellation of the VOR/DME–A SIAP. Coincident with this action will be the changing of the status of the Farmerville Airport from IFR to VFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Farmerville, LA [Removed]

Issued in Fort Worth, TX, on June 19, 1989.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 89–16220 Filed 7–10–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 89–ASW–09]

Proposed Revision of Transition Area: Killeen, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the transition area located at Killeen, TX. The development of a new VOR/DME RWY 15 standard instrument approach procedure (SIAP) to the Robert Gray Army Airfield (AAF), utilizing the Gray Very High Frequency Omindirectional Range (VOR), has made this proposed revision necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing this new SIAP.

DATES: Comments must be received on or before August 7, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 89–ASW–09, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: (817) 624–5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–ASW–09." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM'S

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Section 71.181 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at Killeen, TX. The development of a new VOR/DME RWY 15 SIAP to the Robert Gray AAF has necessitated this proposed revision. This proposed revision would add a 5-mile long, 4-mile wide arrival extension to the north of the airport. The existing 6.5-mile transition area around the Robert Gray AFF will remain unchanged. The intended effect of this proposed revision is to provide adequate controlled airspace for executing the new SIAP.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbok 7400.6E dated January 3, 1989.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Killeen, TX [Amended]

By adding to the end of the legal description: "and within 2 miles each side of the 339° radial of the Gray VOR (latitude 31°01'58"N., longitude 97°46'49"W.), extending from the 6.5-mile radius area to 11.5 miles north of the Robert Gray AAF."

Issued in Fort Worth, TX on June 19, 1989.

Larry L. Craig,
Manager, Air Traffic Division, Southwest Region.

[FR Doc. 89-16221 Filed 7-10-89; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. 86-5, Notice No. 3]

RIN 2125—AB48

Truck Size and Weight; Specialized Equipment

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Withdrawal of advance notice of proposed rulemaking..

SUMMARY: The FHWA is withdrawing an advance notice of proposed rulemaking (ANPRM) concerning the designation of the maxi-cube design, a particular combination of vehicles, as specialized equipment under Section 411(d) of the Surface Transportation Assistance Act (STAA) of 1982. This action is being taken based on comments received and legislative changes discussed below.

EFFECTIVE DATE: This withdrawal is effective on July 11, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Max Pieper, Office of Motor Carrier Information Management and Analysis (202) 366-4029, or Mr. David C. Oliver, Office of the Chief Counsel (202) 366-1356, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: A manufacturer, LHT Industries, has petitioned the FHWA to designate either of two proposed alternate vehicle combinations, called maxi-cube, as specialized equipment under section 11(d) of the STAA of 1982 (Pub. L. 97-424, 96 Stat. 2097, 2160). This section permits the Secretary of Transportation to establish length and width rules for the operation of specialized equipment on the National Network of highways, thereby preempting State dimensional rules for such vehicles.

On December 27, 1985 (50 FR 52940), the FHWA published an advance notice of proposed rulemaking (ANPRM) requesting comments from the public on the proposed designation of the petitioner's maxi-cube vehicle as specialized equipment. It consisted of a three-axle shortcab truck designed to carry a removable 24-foot, 2-inch cargo box and tow a 28-foot, 5-inch or 33-foot, 5-inch tandem axle semitrailer connected by a drawbar and single pintle hook hitch. The cargo box can be raised by means of jacks at each corner, enabling the power unit to drive out from under it. The comment period (FHWA Docket No. 86-5) closed on February 10, 1986.

On February 28, 1986 (51 FR 7085) the FHWA published a supplemental ANPRM requesting comments on an alternate design for the maxi-cube combination. It differs principally in that a two-axle truck (truck tractor) is utilized rather than a three-axle power unit and the front cargo box (semitrailer) is equipped with a single axle rather than no axles. The cargo unit is mounted on the power unit in such a manner that its axle appears to be in tandem with the rear axle of the power unit. They are connected by a kingpin and fifth wheel assembly in front and by coupling pins in the rear but there is no articulation. The intent of this design is for the power unit to be able to leave both cargo units much the same as a typical truck tractor leaves a semitrailer. The comment period (Docket No. 86-5, Notice No. 2) closed on March 17, 1986.

In response to these ANPRMs, thirty-seven commenters supported and 22 opposed the designation of the maxi-cube vehicle combination as specialized equipment.

Federal Legislation

Section 302(1) of the Act Making Continuing Appropriations for the Fiscal Year 1987 (Pub. L. 99-591, 100 Stat. 3341-308) incorporated by reference Section 324 of HR 5205 and purported to amend the STAA of 1982 to authorize the maxi-cube vehicle to operate on the National Network in the same way as other vehicles authorized by the STAA.

Section 324 of HR 5205 defined the vehicle as a truck-tractor combined with a semitrailer and a separable cargo unit designed to be loaded and unloaded through the semitrailer. The entire combination is not to exceed 65 feet in length. The section further states that the separable cargo unit is not to exceed 34 feet in length.

Determination

As Section 324 of HR 5205 describes a maxi-cube vehicle by name that is significantly different from either alternate design submitted by the petitioner, we are withdrawing this ANPRM. At such future time as a clarifying statute may be enacted, the FHWA may reconsider and establish implementing regulations.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction). The regulations implementing Executive Order 12372 regarding intergovernmental consultations on Federal programs and activities apply to this program.

Authority: 23 U.S.C. 315; 49 U.S.C. 2311(d); 49 CFR 1.48

List of Subjects in 23 CFR Part 658

Grant programs—transportation, Highway and roads, Motor carriers—size and weight.

Issued on: June 30, 1989.

R.D. Morgan,
Executive Director.

[FR Doc. 89-16259 Filed 7-10-89; 8:45 am]

BILLING CODE 4910-11-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-217-84]

RIN 1545-AH49

Golden Parachute Payments; correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to the **Federal Register** publication for Friday, May 5, 1989, at 54 FR 19390 of the notice of proposed rulemaking. The proposed rules relate to golden parachute payments.

FOR FURTHER INFORMATION CONTACT: Stuart Wessler, (202) 566-6016, or Robert Misner, (202) 566-4752 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of this correction contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 280G of the Internal Revenue Code of 1986.

Need for Correction

As published, the notice of proposed rulemaking contains an error which may prove to be misleading and is in need of correction.

Correction

Accordingly, the publication of the proposed rule which was the subject of FR Doc. 89-10603, is corrected as follows:

PART 1—[AMENDED]

Paragraph 1. In § 1.280G-1, A-32, page 19403, third column, line eleven, the language "determined. See Q/As 24 and 35." is removed and the language "determined. See Q/As 24 and 31." is added in its place.

Dale D. Goode,
Chief, Regulations Unit, Assistant Chief Counsel, (Corporate).

[FR Doc. 89-16256 Filed 7-10-89; 12:53 pm]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision Kern County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to disapprove a volatile organic compound (VOC) rule submitted on October 14, 1988, by the California Air Resources Board (CARB) as a revision to the California State Implementation Plan (SIP). The rule regulates polystyrene foam manufacturing in the Kern County Air Pollution Control Disrict (APCD).

Section 110(a)(2)(A) and 172(a)(1) of the CAA, 40 CFR 51.110, and EPA policy require that SIPs provide for the attainment of the National Ambient Air Quality Standards (NAAQS) "as expeditiously as practicable." Section 110(a)(3)(B) of the CAA, 40 CFR 51.104 extend the SIP requirements in section 110 and 40 CFR Part 51 to SIP revisions. The revision to Kern County Rule 414.4 represents a weakening of SIP requirements in that it will permit increased VOC emissions by extending the compliance date. The State has failed to demonstrate that this SIP revision will provide for the attainment and maintenance of NAAQS as expeditiously as practicable.

In addition to not meeting the CAA requirements listed above, amended Kern County Rule 414.4 is inconsistent with EPA policy. The rule lacks a test method, the compliance period is not specified, and there are no recordkeeping requirements. The incorporation of non-specific guidelines for the design of the collection system is also inconsistent with EPA policy. As a result of this disapproval, the original version of Rule 414.4 will remain a part of the Federally approved SIP.

EFFECTIVE DATE: Comments will be considered by EPA if they are submitted on or before August 10, 1989.

ADDRESSES: Please address any comments to: Colleen McKaughan, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105. Attn: State Implementation Plan Section (A-2-3), Air and Toxics Division.

Copies of EPA's Technical Evaluation Report and the submitted revision are available for public inspection during normal business hours at the EPA Region 9 office. The submitted revision can also be reviewed at the California Air Resources Board and the appropriate Air Pollution Control Districts listed below.

EPA Library, Public Information References Unit, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460

California Air Resources Board, Stationary Source Division, Industrial Section, 1025 P Street, Room 210, Sacramento, CA 95812

Kern County Air Pollution Control Agency, 2700 M Street, Suite 275, Bakersfield, CA 93301

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas, State Implementation Plan Section (A-2-3), Air and Toxics Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105, (415) 974-8066; FTS 454-8066.

SUPPLEMENTARY INFORMATION:

A. Background

1. Kern County Ozone SIP

EPA has proposed to disapprove Kern County's Ozone Plan (52 FR 26428) since it failed to provide for attainment of the ozone NAAQS by December 31, 1987, or a fixed near-term date thereafter. As a nonattainment area, Kern County is subject to the requirements of Part D of the CAA and EPA policy that pertains to post-87 nonattainment areas. The following is a summary of the history of Kern County's ozone SIP. For a more complete background, see 52 FR 26428, July 14, 1987.

On March 3, 1978, EPA promulgated a list of nonattainment areas that included Kern County as a nonattainment area for the ozone NAAQS (43 FR 8962). On October 12, 1979, CARB submitted to

EPA an ozone control plan for Kern County that purported to show attainment of the ozone standard by December 31, 1982, and to satisfy the requirements of Part D of the CAA.

On August 21, 1981, EPA published a notice of final rulemaking conditionally approving the 1979 Kern County Ozone Plan, with the stipulation that the emissions inventory and emission reduction estimates be corrected and that a revised control strategy reflecting the corrections be submitted to EPA by October 1, 1981 (46 FR 42450). CARB did not meet this deadline.

Kern County did not attain the ozone standard by the statutory date of December 31, 1982. Subsequently, EPA supplemented the conditions described above with a notice of SIP deficiency under section 110(a)(2)(H), and thereby issued a call for a SIP revision. The State was required to submit a revised ozone attainment demonstration to EPA, showing attainment of the ozone standard by the statutory deadline of December 31, 1987.

On July 14, 1987 (52 FR 26428), EPA published a notice proposing disapproval of the attainment and RFP (reasonable further progress) demonstration portion of the 1979 SIP because it failed to provide for attainment of the ozone NAAQS by December 31, 1987, or a fixed near-term date thereafter. In doing so, EPA also proposed to rescind its prior conditional finding that the 1979 Plan satisfied Part D of the CAA. This action was taken because the condition of approval on the 1979 Kern County Ozone Plan, regarding the attainment demonstration, had not been met.

Kern County again failed to attain the standard by the statutory deadline on May 26, 1988. EPA issued a finding that the SIP is substantially inadequate to attain or maintain the NAAQS. In addition, the State failed to fulfill certain conditions in the SIP. Under these circumstances, EPA does not consider Kern County to have an approved ozone plan (see 53 FR 45104, November 8, 1988).

2. Kern County Rule 414.4

CARB first submitted Kern County Rule 414.4 Polystyrene Foam Manufacturing, to EPA on July 30, 1981. EPA approved this version for inclusion in the California SIP on October 11, 1983 (48 FR 46046). The rule requires that any person operating any equipment for the storage and extrusion of recycled polystyrene foam or the storage of blowing agents containing VOCs, either reduce emissions by at least 95% by weight, use a non-VOC compound, or control emissions by a method equivalent in emissions control to the first two options.

On November 18, 1985, the Kern County Air Pollution Control Board rescinded Rule 414.4. The Board then transmitted its action to CARB as a proposed revision to the SIP. CARB determined that the rescission of Rule 414.4 would constitute a relaxation of the SIP and informed Kern County's Air Pollution Control Officer (APCO) on May 15, 1986, that it would not be submitting the rescission of Rule 414.4 to EPA as a SIP revision.

On July 11, 1988, the Kern County Air Pollution Control Board adopted a new version on Rule 414.4. CARB forwarded it to EPA as a SIP revision on October 14, 1988. EPA requested additional information from the Kern County APCD through CARB. On February 13, 1989, EPA deemed the submittal complete and began evaluation of the proposed SIP revision. Because the November 18, 1985, rescission was not forwarded to EPA, the original version of Rule 414.4 remains part of the federally approved SIP. The submittal of the revised version of 414.4 is therefore being evaluated as a rule revision, rather than a new rule submittal.

B. EPA Evaluation

The revision of Rule 414.4 incorporates several changes to the original version, some of which are inconsistent with the Clean Air Act and EPA policy. These changes, and other deficiencies that EPA has identified, are divided into three categories and discussed below.

1. Compliance Date Extension

Among the proposed revisions to Rule 414.4 is a change in the compliance date from December 31, 1982, to December 31, 1988. This revision, if approved by EPA, would effectively grant the source a six year extension on the compliance deadline. EPA has a policy of approving compliance date extensions, but only under certain circumstances. A detailed discussion of EPA policy regarding compliance date extensions is found in Appendix A of 53 FR 45103 (November 8, 1988). Appendix A provides:

> A SIP revision seeking a compliance date extension amounts to a relaxation of the SIP requirements because the company would be permitted to emit greater amounts of pollutants for a longer period. EPA may approve the SIP revision only if the state shows the greater amounts of pollution will not interfere with attainment and maintenance of the NAAQS by the required date, and with RFP [1] in the interim. The State cannot make this showing if it has not submitted an approvable attainment demonstration identifying the attainment date and the RFP line. Accordingly, EPA cannot approve a compliance date extension in an area locking an approved attainment demonstration.

In summary, when extending a compliance date, the State must demonstrate that the action does not or did not interfere with the attainment and maintenance of the NAAQS as expeditiously as practicable, but in no case later than the statutory attainment date (December 31, 1987). The compliance date in this case (December 31, 1988), goes beyond the statutory deadline. In addition, Kern County lacks an approved attainment demonstration which precludes EPA's approval of a compliance date extension.

2. Technical Deficiencies

The revised version of Rule 414.4 adds an exemption for stationary tanks, reservoirs and containers that hold or store VOC blowing agents and have a capacity of 200 gallons or less. This change weakens the SIP by relaxing the requirements of the rule and could result in increased emissions. Adequate technical information that would justify the relaxation of control requirements has not been submitted to the EPA.

3. Enforceability/Legal Sufficiency Issues

In addition to relaxing the federally approved version of Kern County Rule 414.4 as discussed above, the amended version does not comply with EPA policy. EPA has identified certain key provisions (enforceability criteria) that are required in SIPs to ensure enforceability and legal sufficiency. See "Review of SIPs and Revisions for Enforceability and Legal Sufficiency", policy memorandum, Michael S. Alushin, Associate Enforcement Counsel for Air Enforcement, *et al.*, to Regional Offices, September 23, 1987. In addition, in Appendix D of "State Implementation Plans; Approval of Post-1987 Ozone and Carbon Monoxide Plan Revisions for Areas Not Attaining the National Ambient Air Quality Standards" (52 FR 45044, November 24, 1987), EPA affirmed the importance of enforceability criteria to rule effectiveness and summarized common inconsistencies and discrepancies from EPA policy found in current SIPs. Finally, on May 25, 1988, EPA's Office of Air Quality Planning and Standards issued "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations." This document provided additional clarification to the deficiencies cited in Appendix D (52 FR 45044).

Kern County Rule 414.4 contains some of the deficiencies noted in the documents cited above. The rule does not specify a test method or compliance period, and it lacks recordkeeping requirements. Without these provisions, it is impossible to determine if the source is in compliance with the rule. Both EPA and CARB noted these deficiencies in comments provided to the Kern County APCD during the rule development stage.

It is EPA's policy that "regulation(s) must be sufficiently specific so that a source is fairly on notice as to the standard it must meet" (see the September 23, 1987, policy memo cited above). Revised Rule 414.4 requires that the collection system must be "designed to meet American Conference of Industrial Hygienists Guidelines and Sheet Metal and Air Conditioning Contractors National Association Guidelines." The Sheet Metal and Air Conditioning National Association has published several sets of guidelines, some of which have multiple editions. The American Conference of Industrial Hygienists has published twenty editions of their industrial ventilation manual. It is unclear which of these guidelines must be followed. The inclusion of these ill-defined standards in Rule 414.4 is inconsistent with EPA policy.

EPA Proposed Action

Under section 110 and Part D of the CAA, EPA is proposing to disapprove amended Kern County Rule 414.4 because it weakens the existing California SIP and is inconsistent with the CAA, 40 CFR Part 51, and EPA policy.

Regulatory Process

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.) This action does not subject the source to a new rule. It retains a 1983 EPA approved rule in its entirety.

This action has been classified as a Table 2 action by the Regional Administrator under procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and Table 3 SIP revisions (52 FR 2222) from the requirements of Section 3 of Executive order 12291 for a period of two years.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Authority: 42 U.S.C. 7401–7642.

Date: June 22, 1989.

Daniel W. McGovern,

Regional Administrator.

[FR Doc. 89–16210 Filed 7–10–89; 8:45 am]

BILLING CODE 6560–50–M

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[1] "Reasonable further progress" (RFP) is defined (in the Clean Air Act) as—annual incremental reductions in emissions of the applicable air pollutant (including substantial reductions in the early years following approval or promulgation of plan provisions * * * and regular reductions thereafter) which are sufficient in the judgment of the Administrator, to provide for attainment of the applicable national ambient air quality standard by the date required * * * 42 U.S.C. 7501(1).

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40 CFR Part 52

[FRL-3613-3]

Approval and Promulgation of Implementation Plans; Illinois, Indiana, and Wisconsin

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: USEPA is today giving advance notice of the first three elements in a Federal implementation plan (FIP) which USEPA is currently developing. This plan is being designed to assure the attainment and maintenance of the National Ambient Air Quality Standard (NAAQS) for ozone in the Chicago area. This planning area covers portions of northeastern Illinois, northwestern Indiana, and southeastern Wisconsin.

This notice solicits comment on: (1) The emissions inventory for the area, (2) the Empirical Kinetics Modeling Approach (EKMA) dispersion modeling analysis, and (3) the required degree of emission reduction. The inventory, modeling, and percent emission reduction are the only elements in the development of this plan that are presently being published for comment; the control measures that would be implemented under the FIP will be proposed in a future **Federal Register** notice.

DATE: Comments on the three elements described in this notice for use in the Chicago FIP must be received by August 10, 1989.

ADDRESS: Comments on the three elements should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

Docket: Docket No. 5A–89–1, containing the complete documentation supporting the emissions inventories and dispersion modeling results, is available for public inspection and copying at the following addresses. (It is recommended that you telephone Randolph O. Cano at (312) 886–6036 before visiting the Region V office.) A reasonable fee may be charged for copies.

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

U.S. Environmental Protection Agency, Docket No. 5A–89–1, Air Docket (LE–131), Room M1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

A file on the emissions inventories, dispersion modeling and the results can be seen at the following locations:

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706.

Office of Air Management, Indiana Department of Environmental Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46206–6015.

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION:

Background

The Clean Air Act (Act), 42 U.S.C. 7401 et seq., establishes in Section 110 the State Implementation Plan (SIP) as the mechanism for attaining and maintaining the various National Ambient Air Quality Standards (NAAQS). Section 110(a)(1) directs each State to submit a SIP within 9 months after an applicable NAAQS is promulgated. When Congress amended the Act in 1977, it created a new Part D, which required a new planning process to revise the SIPs for areas that were exceeding the NAAQS.

Congress enacted Section 110(c) in 1970 as the sole means of ensuring that its goal of clean air was not frustrated in the event a State defaulted on its planning obligations. If a State fails to submit a SIP which meets (or is determined by the Administrator to not be in accordance with) the requirements

of Section 110, then Section 110(c)(1) provides that the USEPA Administrator may prepare, propose, and promulgate regulations setting forth an implementation plan. Congress included new sanctions when it enacted Part D in 1977, which included a ban on the construction or modification of major stationary emission sources in nonattainment areas for which a Part D plan has not been approved. The intent was clearly to induce State and local governments to fulfill their obligation to develop plans assuring the attainment and maintenance of the NAAQS, and, thus, minimize the Federal role in the attainment planning process.

Chicago Area Part D Ozone Plans

Under Section 107 of the Act, USEPA designated certain areas in Illinois and Indiana as not attaining the NAAQS (nonattainment area) for ozone. See 43 FR 8962 (March 3, 1978), and 43 FR 45993 (October 5, 1978). For these areas, Part D of the Act required that each of these States revise its SIP to provide for attaining the primary NAAQS by December 31, 1982. However, for ozone, if a State determined that it could not attain the NAAQS by that date, despite the adoption of all reasonably available measures, the State could request and USEPA could approve an extension of this attainment date of up to December 31, 1987. Under these circumstances, each State was required to submit by July 1, 1982, a plan (1982 ozone plan) which assured the attainment and maintenance of the ozone NAAQS by no later than December 31, 1987.[1] Illinois and Indiana submitted extension requests for Northeast Illinois and Northwest Indiana, respectively, and, thus, were required to submit 1982 ozone plans for these areas.

Illinois submitted a draft 1982 ozone plan on June 30, 1982. On February 3, 1983, (48 FR 5110), USEPA proposed to disapprove the State's plan. In response to USEPA's proposed disapproval, the State submitted numerous corrections to its draft plan intending to remedy the draft plan's deficiencies identified by USEPA. On July 14, 1987, USEPA again proposed to disapprove the Illinois plan. By this time it had become apparent that all controls required by the Clean Air Act would not be adopted and implemented in time to attain the ozone NAAQS by the December 31, 1987, statutory deadline or shortly thereafter, and that the Chicago area would not attain the ozone NAAQS by the same date. On October 17, 1988 (53 FR 40415), USEPA disapproved Illinois' most recent 1982 ozone plan for the Chicago area.

A similar sequence of events occurred in Indiana. Indiana submitted a deficient draft 1982 ozone plan on September 2, 1982, followed by numerous revisions intended to remove the deficiencies. USEPA proposed action on these plans several times and ultimately disapproved Indiana's most recent 1982 ozone plan on November 18, 1988, (53 FR 46608).

Wisconsin v Reilly

In April 1987 the State of Wisconsin filed a suit under Section 304 of the Act in the United States District Court for the Eastern District of Wisconsin against Lee M. Thomas, then USEPA Administrator (Civil Action No. 87-C-395).[2] Two counts of the complaint alleged that USEPA had failed to perform a non-discretionary duty to approve or disapprove the greater Chicago area ozone SIPs of Illinois and Indiana. Two other counts requested the Court to order USEPA to develop a FIP for the northeastern Illinois and northwestern Indiana portions of the Chicago-Gary-Lake County (IL), IL-IN-WI Consolidated Metropolitan Statistical Area (CMSA) within 6 months. The complaint also sought an injunction compelling USEPA to impose and enforce a moratorium on the construction and modification of major stationary sources in the Illinois and Indiana portions of the CMSA. While the litigation was in progress, USEPA published final disapprovals of the ozone SIP for Illinois on October 17, 1988, and for Indiana on November 18, 1988.

The court, on January 18, 1989, ordered USEPA to develop a FIP within 14 months. Thus, USEPA is preparing a FIP on a schedule to meet the court's deadline, March 18, 1990. The first two significant steps in this effort are the development of an emission inventory for the area and the modeling of the area to determine the level of emission reductions needed to achieve the ozone NAAQS.

Emissions Inventory and Modeling

In preparing an up-to-date emissions inventory for the Chicago area, and in performing the ozone modeling analyses, USEPA has generally followed the Agency's proposed post-1987 policy for attainment of the ozone NAAQS and related guidance documents. (See the November 24, 1987, **Federal Register** [52 FR 45044]). Although most of this proposed policy addresses the requirements that SIPs must satisfy in order to lead to expeditious attainment of the standards, much of the guidance for developing acceptable SIPs also applies equally well to the development of a FIP. Due to the court ordered 14-month schedule, the Agency was not able to wait until it issued a final post-1987 ozone policy before proceeding with the Chicago area FIP. Reliance on the proposed guidance here to develop the technical data bases for the Chicago FIP does not affect USEPA's determination as to what may be included in the final post-1987 ozone policy.

One way in which USEPA has relied upon the proposed post-1987 ozone policy is in the geographic scope of the area for which emission inventories were gathered and the EKMA modeling conducted. Immediately following the enactment of Part D in 1977, States typically were required to tabulate such information only for areas that were designated nonattainment. In the post-1987 policy proposal, however, USEPA recognized the shortcomings of this approach. The proposal noted that a CMSA or MSA (Metropolitan Statistical Area) by definition contains a large urban center together with adjacent communities that have a high degree of social and economic integration. Since many people live in the surrounding communities and commute into the urban core by automobile, suburban vehicles generally are responsible for significant ozone precursor emissions. Thus, the Agency proposed that where an ozone SIP was deficient, it would require all counties within the MSA or CMSA to be included in the planning area (52 FR 45055).

The Chicago-Gary-Lake County (IL), IL-IN-WI CMSA contains the following counties: Cook DuPage, Grundy, Kane, Kendall, Lake, McHenry, and Will Counties in Illinois [3]; Lake and Porter Counties in Indiana; and Kenosha County in Wisconsin. Thus, emission inventories have been gathered in and EKMA modeling conducted for all these eleven counties.[4] In addition, USEPA has included Racine County, Wisconsin for these purposes, because it is downwind from the CMSA and USEPA believes that ozone precursor emissions from the counties in the CMSA contribute to the ozone nonattainment problem in Racine County.

Emissions Inventory

In order for an effective ozone control strategy to be developed, accurate information must be compiled on the significant sources of ozone precursor emissions in and near the nonattainment area. The emissions inventory is used for several functions: (a) As input data for the modeling, (b) in conjunction with the model output to quantify the emission level needed to attain the NAAQS, (c) in the control strategy evaluation and development, and (d) as a basis for tracking progress toward attainment. The proposed control strategy will be set forth in a future rulemaking notice. However, USEPA hopes that these critical uses of the inventory will prompt careful public review and comment. The benefits of an accurate inventory include enhanced confidence in the data, better representation of model input data, and more reliable control measure evaluations and emissions tracking.

USEPA has developed inventories of volatile organic compounds (VOC) [5], oxides of nitrogen (NO_x), and carbon monoxide (CO) emissions from point, area, and Racine County, WI, which is adjacent to and predominantly downwind of the CMSA and has been experiencing exceedances of the ozone NAAQS. CO is included in the emission inventory because recent smog chamber studies indicate that CO plays a small, but quantifiable, role in ozone formation chemistry. Procedures outlined in the proposed post-1987 ozone policy and in the document, *Emission Inventory Requirements for Post-1987 Ozone State Implementation Plans*. EPA-450/4-88-019. December 1988, were followed to the extent possible under the time constraints of the schedule. The baseline emissions inventory was prepared for a base year of 1988. Projected future year inventories have also been developed.

Point sources have been defined in the inventory to include facilities with actual emissions of 10 tons per year (TPY) or greater of VOC, or 100 TPY or greater of NO_x or CO. In addition, major stationary sources that emit 100 TPY or greater of any of these three pollutants and are located outside, but within 25 miles, of the demonstration area boundary have been included in the inventory. (This border area does not extend north of Racine County to avoid including another Primary Metropolitan Statistical Area, Milwaukee.) Data for the point source base year inventory were provided to USEPA by each State air agency, and consist generally of information that the States have been collecting for their own control program and SIP purposes. The States updated their existing information in early 1989 through survey questionnaires sent to facilities and through recent site inspection reports. USEPA, with contractor assistance, took the States' data and performed detailed consistency and quality assurance work, as part of the development of a single data base.

All significant emission sources, other than mobile sources, that emit less than the threshold for point sources are grouped together by category and included in the area source inventory. This inventory concentrates primarily on small combustion sources, such as boilers and furnaces; evaporative loss sources, including service stations, dry cleaners, road marking paints, and use of VOC-containing products in the home; and on certain types of other operations that have been unaccounted for in most previous inventories. These new categories include hazardous waste treatment, storage, and disposal facilities (TSDFs), publicly owned waste water treatment works (POTWs), and municipal solid waste landfills. Data for these categories have been collected directly from the State agencies where available, as well as from local planning agencies, reports of county business patterns, census figures, and other specific statistical and summary reports.

Emissions of VOC, NO_x and CO from mobile sources are a very significant part of the total emissions in the Chicago area. USEPA's MOBILE4 model was used to calculate emission factors for eight individual vehicle types: gasoline light-duty vehicles (LDVs), light-duty trucks up to 6000 pounds (LDT1s), light-duty trucks between 6000-8500 pounds (LDT2s), heavy-duty vehicles (HDVs), and motorcycles; and diesel LDVs, LDTs, and HDVs.

MOBILE4 incorporates several advanced features and new test data that differ from previous generations of MOBILE models, including consideration of running evaporative losses, refueling (Stage II) emissions, and effects of variable fuel volatility (RVP). The output from this model consists of emission factors in units of grams per mile for each of the vehicle types. These emission factors were combined with estimates of vehicle miles traveled (VMT) by vehicle type throughout the Chicago area in order to produce the final mobile source inventory.

The emissions inventory has been summarized and is presented in Table 1 for each county in the Chicago demonstration area. The table shows that total VOC emissions are 2666 tons per day (TPD), NO_x emissions are 1948 TPD, and CO emissions are 7249 TPD. The table illustrates the importance of mobile sources to the overall emission totals, with motor vehicles accounting for approximately 44 percent of the VOC, 22 percent of the NO_x, and 78 percent of the CO emissions throughout the area.

A report presenting the proposed inventory, including the complete methodology used to create the inventory, is available for review in the rulemaking docket. The docket also contains the data from which the final inventory figures were derived. USEPA solicits any additional or revised emissions data. Commentors are encouraged to provide any available emissions data with their comments.

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[1] The requirements for an approvable SIP are described in a "General Preamble" for Part D rulemaking published at 44 FR 20372 (April 4, 1979), and four additional notices: 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979), and 44 FR 67182 (November 23, 1979). Guidance on 1982 ozone SIPs was given at 46 FR 7182 (January 22, 1981).

[2] Subsequent to William K. Reilly assuming the duties of Administrator of the USEPA, William K. Reilly was substituted as named defendant for Lee Thomas.

[3] When USEPA notified the Governor of Illinois on Mary 26, 1988 that the State's ozone SIP was substantially inadequate to attain the standard, it noted that the finding of SIP inadequacy applied to the SIP for all these counties. Similarly, when USEPA proposed to redesignate certain areas as nonattainment pursuant to the Mitchell-Conte Amendment of December 22, 1987 (contained in the Budget Reconciliation Act of 1987, Pub. L. 100-202), it proposed to redesignate all these Illinois counties as nonattainment for ozone (53 FR 20727, 20729, June 6, 1988).

[4] In addition, emissions from major stationary sources that emit specified amounts of ozone precursors and are located generally within 25 miles of the CMSA have also been included. See discussion, *infra*.

[5] For the purposes of the Chicago area FIP, the term "volatile organic compound" (VOC) means any organic compound which participates in atmospheric photochemical reactions. This includes any organic compound other than the following compounds: Methane, ethane, methyl chloroform (1,1,1-trichloroethane), CFC-113 (trichlorotrifluoroethane), methylene chloride (dichloromethane), CFC-11 (trichlorofluoromethane), CFC-12 (dichlorodifluoromethane), CFC-22 (chlorodifluoromethane), FC-23 (trifluoromethane), CFC-114 (dichlorotetrafluoroethane), CFR-115 (chloropentafluoroethane), HCFC-123 (dichlorotrifluoroethane), HFC-134a (tetrafluoroethane), HCFC-14b (dichlorofluoroethane) and HCFC-142B (chlorodifluoroethane). These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOC will be measured by the approved test methods (40 CFR Part 60, Appendix A, Methods 25 and 26). Where such a method also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

TABLE 1.—STATE AND COUNTY TOTALS FOR POINT, AREA AND MOBILE EMISSIONS SOURCES OF VOCs, MO_x and CO Within the Twelve-County Area [5]

State and County	Point sources (TPD)			Area sources (TPD)			Mobile sources (TPD)		
	VOC	NO_x	CO	VOC	NO_x	CO	VOC	NO_x	CO
Illinois:									
Cook	255	135	182	358	244	481	690	242	3,270
DuPage	12	5	1	46	32	58	131	44	635
Grundy	106	27	6	12	3	8	10	4	51
Kane	19	2	1	27	16	29	51	16	278
Kendall	3	11	1	4	3	8	8	2	45
Lake	69	89	3	42	21	10	105	33	523
McHenry	6	2	0	13	10	23	32	9	178
Will	49	207	24	40	12	29	58	20	301
Subtotal	568	490	221	542	341	646	1,086	369	5,280
Indiana:									
Lake	240	187	421	52	88	64	27	17	111
Porter	48	168	202	10	37	25	28	18	114
Subtotal	288	503	627	63	125	89	55	35	225
Wisconsin:									
Kenosha	5	55	5	8	5	17	15	7	51
Racine	5	3	2	12	7	24	17	7	62
Subtotal	11	58	7	20	11	42	32	15	113
Total FIP area	866	1,052	855	625	477	776	1,174	419	5,618

[5] Subtotal and total emission values also contain emissions from major stationary sources that emit 100 TPY or greater of any of these three pollutants and are located outside, but within 25 miles, of the demonstration area boundary. (This border area does not extend north of Racine County to avoid including another Primary Metropolitan Statistical Area, Milwaukee.)

Modeling Analysis

A computer air dispersion modeling analysis has been performed for the development of this FIP. The modeling estimated ground level ozone concentrations by simulating photochemical reactions, and predicted the precursor emission reductions needed to bring the peak concentrations to the ambient standard. These modeled predictions are an integral part of the development of a control strategy for the Chicago area.

The model being used for the FIP is EKMA, which is an accepted model in USEPA's "Guideline on Air Quality Models (Revised)", July 1987 and in the proposed post-1987 policy for urban-scale demonstrations of attainment. The EKMA modeling was conducted in accordance with USEPA's proposed *Guideline for Use of City-Specific EKMA in Preparing Post-1987 Ozone SIP's*. The *Guideline* breaks down the modeling procedure into five basic steps. These are:

(1) Selecting the observed ozone cases to model,

(2) Formulating the model inputs,

(3) Predicting peak ozone,

(4) Computing VOC emission reductions, and

(5) Selecting VOC emission reduction targets.

In performing the modeling analysis, the five highest daily maximum ozone concentrations at each monitor site in the area were selected as candidates for modeling. As recommended by the *Guideline*, these five highest values were obtained from the most recent 3 years of quality assured data available during which measurements were made at a site, which were 1986, 1987, and 1988. The sites whose fourth highest value was not an exceedance of the standard were eliminated from those to be modeled.

To best accomplish the objectives of the modeling, the model inputs were based on either the day-specific data or the median of the highest concentration days for which complete data were available. However, in some instances, insufficient or inadequate data did not allow such determinations, so approximations or default values were used.

Peak predictions were then compared to observed ozone peaks. In cases where the relative deviation was found to be within ±30 percent, then agreement was judged to be sufficient to proceed with control estimate calculations. In cases where the deviation was greater than ±30 percent, model inputs were reviewed and adjusted as directed by the *Guideline* to obtain agreement within ±30 percent. The EKMA option in OZIPM4 was used to predict the VOC emission reductions needed to reduce the peak ozone concentration to the ambient standard of 0.12 parts per million (ppm). This was calculated on a day-specific and site-specific basis.

A complete report of the modeling methodology and results is contained in the docket and is available for public review. Also available are copies of the guidance documents used in the analysis.

Emission Reduction Target

The ozone NAAQS allow one exceedance per year per site. Therefore, the emission reduction target is the fourth highest value from the 3 years of monitor data. (If a site had only 1 year of data, then the second highest emission reduction is the target value.) Emission reduction targets for all sites studied were determined in this manner. The highest VOC emission reduction target for any one site was selected as the overall reduction target. This target is a VOC emission reduction of 72 percent. USEPA is proposing a single emission reduction target for the Chicago area. USEPA wishes to emphasize that the actual geographic boundaries, over which this target applies, have not yet been determined. Although this issue will be covered in future proposed rulemaking on the control strategy, USEPA invites advance comment on the boundaries of the emission reduction target area.

Public Participation

USEPA is concerned that the public and affected industries be fully informed about this planning process and that they have the opportunity for input and comment. Due to the effect that control measures instituted under a FIP could have on a large cross-section of society, the Agency is encouraging active involvement of those groups and individuals who wish to participate in the rulemaking effort. Comments on today's notice (and on the supporting information in the docket) are being sought and will be considered in promulgating this plan. USEPA will also publish a future **Federal Register** notice that will propose and solicit comment on USEPA's overall strategy for assuring the attainment and maintenance of the ozone NAAQS in the Chicago area, including any new emission control regulations and measures. USEPA is providing a 30-day comment period on this portion (i.e., the emission inventory and the modeling analyses) of the Chicago area FIP for ozone. The public is requested to comment on the modeling, inventory, and necessary emission reduction in the Chicago FIP as early in the process as possible, due to the very tight schedule for rulemaking. USEPA believes that 30 days is ample time for the public to review and comment on today's advanced notice of proposed rulemaking. If requested, a public hearing will be held on these matters in the future.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Environmental Protection Agency, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone.

Authority: 42 U.S.C. 7401–7642.

Dated: June 16, 1989.

Frank M. Covington,

Regional Administrator.

[FR Doc. 89–16129 Filed 7–10–89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–15, DA 89–725]

Broadcast Service; License Lotteries

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This action exends the period for filing reply comments in this proceeding from June 30, 1989, to July 17, 1989. The Federal Communications Bar Association requested the extension due to the heavy volume of comments to be reviewed in this proceeding, and to allow its new Executive Committee, which begins a new term on July 1, 1989, an opportunity to consider the issues raised in the proceeding. Because numerous and extensive comments have already been filed in this proceeding, the Commission determined that it would serve the public interest to grant the limited extension of time that had been requested.

DATE: Reply comments are now due on July 17, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Policy and Rules Division, Mass Media Bureau, (202) 632–7792.

Order Granting Motion for Extension of Time for Filing Reply Comments

Adopted: June 27, 1989.

Released: June 28, 1989.

By the Chief, Mass Media Bureau:

In the matter of amendment of the Commission's rules to allow the selection from among competing applicants for new AM, FM, and television stations by random selection (lottery).

1. On January 30, 1989, the Commission adopted a *Notice of Proposed Rule Making* ("*Notice*") in the above-captioned proceeding,[1] regarding whether it would serve the public interest to utilize lotteries rather than comparative hearings for selecting among competing applicants for new AM, FM, and television stations. Comments were due on June 6, 1989, and reply comments are currently due on June 30, 1989, pursuant to an *Order* extending the filing deadlines in this proceeding.[2]

2. On June 22, 1989, a motion for extension of time to file reply comments was submitted by the Federal Communications Bar Association ("FCBA"). The motion requests that the deadline for filing reply comments be extended to July 17, 1989.

3. The FCBA contends that the requested extension of time is necessary because of the volume of comments filed in this proceeding and the limited time available to review the comments, draft an appropriate pleading, and have such pleading approved by its Executive Committee. In addition, the FCBA states that the terms for new officers and Executive Committee members begins on July 1, 1989, and that the extension would enable its new Executive Committee to consider the important issues raised by this proceeding. Finally, the FCBA contends that the extension should not affect the Commission's consideration of this proceeding since it already has a substantial set of comments to review.

4. As set forth in § 1.46 of the Commission's Rules, it is the policy of the Commission that extensions of time shall not be routinely granted. However, because numerous and extensive comments have already been filed in this proceeding, we believe that it would serve the public interest to grant the limited extension of time requested by the FCBA. We believe that such an extension will not only benefit institutional organizations like the FCBA, which must coordinate the preparation of their reply comments among various committees, but also will give all commenters additional time in which to review the record in this proceeding and to respond to the issues raised. At the same time, because this constitutes the second extension of time granted in this proceeding and parties have already been afforded additional time for the filing of comments and replies, we do not anticipate entertaining any additional time extension requests in this proceeding.

5. Accordingly, *it is ordered* That the motion for extension of time filed by the Federal Communications Bar Association is granted.

6. *It is further ordered* That the time for the filing of reply comments in MM Docket No. 89–15 is hereby extended to July 17, 1989.

7. This action is taken pursuant to authority found in sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, and §§ 0.204(b), 0.283, and 1.45–46 of the Commission's Rules.

Federal Communications Commission.

Alex D. Felker,

Chief, Mass Media Bureau.

[FR Doc. 89–16164 Filed 7–10–89; 8:45 am]

BILLING CODE 6712-01-M

[1] 4 FCC Rcd 2256 (1989), *summarized* at 54 FR 11416 (March 20, 1989).

[2] 4 FCC Rcd 3944 (1989); 54 FR 19578 (May 8, 1989). The *Notice* originally provided that comments and reply comments were due on May 8, 1989, and June 22, 1989, respectively.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Response to Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Response to petition for rulemaking.

SUMMARY: NHTSA received two petitions for rulemaking requesting issuance of standards for brake linings, one from the American Trucking Associations (ATA) and the other from a private individual, Mr. Ralph Grabowsky. In March 1989, NHTSA granted the ATA petition and partially granted and partially denied Mr. Grabowsky's petition. This notice sets forth the reasons for the partial denial of that petition.

FOR FURTHER INFORMATION CONTACT: Mr. Vernon Bloom, Office of Vehicle Safety Standards, National Highway

Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-5277).

SUPPLEMENTARY INFORMATION: NHTSA received two petitions for rulemaking requesting issuance of standards for brake linings. The American Trucking Associations (ATA) petitioned for a standard that would require rating the effectiveness (coefficient of friction) of all heavy truck brake linings, and to have that rating permanently marked on the lining. ATA argued that a standard is needed to enable users to replace brake linings with linings that perform the same as the original linings. ATA stated that the current Society of Automotive Engineers (SAE) rating procedure, which has been adopted in some State laws, rates some lining materials as identical when in fact they exhibit more than a 280-percent difference in brake torque on the same brake assembly under the same test conditions.

The other petition was submitted by a private individual, Mr. Ralph Grabowsky, who petitioned for rulemaking to establish a brake lining standard for motor vehicles and equipment, covering stability, friction, fade, proper identification and wear. (NHTSA understands Mr. Grabowsky's references to "friction" and "proper identification" to correspond to ATA's references to effectiveness rating (coefficient of friction) and permanent marking.) The petitioner stated that NHTSA has had this rulemaking on the back-burner for many years and that it is now time to act. Mr. Grabowsky stated that the results of an aftermarket brake investigation by NHTSA's Office of Defects Investigation activities by SAE indicate an acute need for such a standard. Mr. Grabowsky did not provide any other information to support his petition.

In March 1989, NHTSA granted the ATA petition. The agency indicated that it was planning research investigations in the subject area and that information derived from those investigations would be used to help determine whether a notice of proposed rulemaking would be issued.

NHTSA also granted that portion of Mr. Grabowsky's petition that related to the marking and identification of heavy truck brake linings. The agency stated that it was denying all other portions of the petition, and that a Federal Register notice would be issued setting forth the reasons for the denial. The purpose of this notice is to set forth those reasons.

With respect to Mr. Grabowsky's assertion that the agency has had this rulemaking on the "back-burner" for many years, NHTSA notes that it has considered establishing brake lining requirements in the past. For example, the agency issued an advance notice of proposed rulemaking (ANPRM) in October 1967 which addressed, among other things, performance requirements for brake linings. 32 FR 14278, October 14, 1967. Also, NHTSA's 1978 five-year plan included an entry on aftermarket brake shoes and pads in its section on "Exploratory Rulemakings." However, NHTSA has not had brake lining requirements as part of its rulemaking agenda during the past decade.

NHTSA recognizes that brake lining performance is a critical part of overall brake performance, which in turn is one of the most important aspects of a vehicle's crash avoidance capability. The agency has addressed brake performance in several safety standards, including Standard No. 105, *Hydraulic Brake Systems*, Standard No. 122, *Motorcycle Brake Systems*, and Standard No. 121, *Air Brake Systems*. These standards cover, for new vehicles, a number of the aspects of performance cited by the petitioner. However, the standards do not apply directly to motor vehicle equipment, and thus do not apply to, for example, replacement linings.

NHTSA notes that since particular brake systems are designed to use particular types of brake linings, a lining that is good for one brake system may not be good for another. For example, if a brake system is designed for a lining with a relatively low coefficient of friction, installation in that system of a lining with a relatively high coefficient of friction could lead to premature wheel lockup.

In order to maintain the braking capability designed into the vehicle by the manufacturer, it is thus important that drivers be able to replace brake linings with ones that have similar performance to the original linings. In granting ATA's petition concerning the rating and marking of heavy truck brake linings, and partially granting Mr. Grabowsky's petition, the agency intended to focus on requirements for heavy trucks that would help ensure that proper replacement linings could more easily be obtained.

The same general safety concern applies to replacement linings for other vehicles. As discussed below, however, NHTSA does not believe that it would be appropriate to extend the rulemaking to other vehicles at this time.

The agency notes first that the issues involved in such rulemaking and their specific resolution would vary significantly from one vehicle type to another. For example, one likely part of the development of a test procedure to rate brake linings is the selection of referee materials (drums, brake shoes, etc.) which are representative of those used on vehicles. Since brake systems vary significantly from one vehicle type to another, the referee materials would need to vary as well.

NHTSA also notes that SAE has been working on a new rating procedure for heavy truck brake linings for several years, and its work is relatively well advanced. The agency is evaluating SAE's work and is also conducting its own research on heavy truck brake linings. In the case of light vehicles, there is not a rating procedure that is as well developed as the new SAE procedure for heavy truck brake linings. Also, there is a much wider variety of types of brake systems, and sizes and shapes of brake linings, for passenger cars and other light vehicles, which could make the development of a rating procedure more difficult for these vehicles.

In initiating rulemaking with respect to heavy truck brake linings, NHTSA has not yet developed sufficient information to determine whether an NPRM will be issued. At a time when the agency is in the relatively early and difficult stages of evaluating this complex issue for a single vehicle type, it does not wish to commit the resources necessary to study the broader issues that would be involved if the rulemaking were extended to other vehicle types. Since work on a heavy truck brake lining rating procedure is well advanced and appears to involve fewer issues than light vehicle brake linings, NHTSA believes that it is appropriate to initially devote its resources to determining whether a standard can be developed for heavy truck linings. Later, depending in part on the agency's experience with heavy truck brake linings, the agency may decide to consider rating procedures for light vehicle brake linings.

In addition to being broader than ATA's petition with respect to vehicle type, Mr. Grabowsky's petition was also broader with respect to performance requirements. In addition to friction and marking, the petitioner cited stability, fade and wear.

With respect to stability, the petitioner may be referring to either vehicle stability or stability of a lining's friction characteristics during use. NHTSA notes that vehicle stability is, to some extent, addressed in the agency's vehicle braking regulations. Moreover, as part of its rulemaking for an internationally harmonized passenger car brake standard, the agency has proposed new requirements to help ensure vehicle stability. See 52 FR 1474, January 14, 1987.

NHTSA recognizes that lining stability and fade are related to safety. The agency notes that the friction characteristics of all linings change during use, including mild use and more severe use such as conditions that result in fade. However, excessive changes could result in vehicle brake imbalance or reduced stopping capability.

While these factors are related to safety, NHTSA does not believe that rulemaking should be initiated at this time. These issues involve a high level of technical difficulty, and addressing them in rulemaking would require significant expenditure of agency resources. The petitioner did not present any approach for addressing these issues, and the agency is unaware of any existing test procedures which could be considered for purposes of a standard. A major resource effort would be required in order to attempt to develop requirements covering these aspects of performance. Finally, the petitioner did not provide, and the agency is unaware of, any data or arguments demonstrating a magnitude of safety need in these areas sufficient to cause NHTSA to divert significant resources from other agency programs in order to address these issues.

NHTSA believes that the relationship between brake wear and safety is further removed, and that premature brake wear usually has a minimal impact on safety. The main consequence of premature brake wear is increased maintenance costs, and the issue is primarily one of customer satisfaction. NHTSA notes that the petitioner did not provide any arguments or data to support the argument that there is a safety need for brake wear requirements.

While NHTSA denied several portions of Mr. Grabowsky's petition for rulemaking, the agency has a continuing interest in many of the areas cited by the petitioner. As resources permit, the agency may examine those issues further in the context of research and/or rulemaking. (15 U.S.C. 1392, 1407, 1410a; delegations of authority at 49 CFR 1.50 and 501.8.)

Issued on July 5, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-16230 Filed 7-10-89; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Part 571

[Docket No. 85-08; Notice 3]

RIN 2127-AC86

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Response to petitions for reconsideration; notice of proposed rulemaking.

SUMMARY: The requirements for safety belt systems in trucks, buses and multipurpose passenger vehicles with a gross vehicle weight rating of more than 10,000 pounds manufactured on or after September 1, 1990, currently include special provisions to make those safety belt systems more convenient to use. One of these requirements is that any automatic locking retractors (ALRs) installed on such safety belt systems must meet certain additional performance requirements, to ensure that belt systems equipped with ALRs will not progressively tighten around the occupant. The additional requirements for belt systems equipped with ALR's focus on the working of the retractor mechanism itself as the means of ensuring comfort for users of these belt systems.

Two petitioners for reconsideration of this rule suggested that the agency could achieve its goal of ensuring comfort for users of belt systems equipped with ALRs in a less restrictive manner, by applying the additional performance requirements to the entire belt system instead of the retractor mechanism alone. NHTSA has tentatively determined that the approach suggested in these petitions would be a more appropriate means of achieving the agency's goal of ensuring comfort for belt users. This notice invites public comments on this approach and on the method developed by the agency for measuring performance of the belt system as a whole, instead of the performance of the ALR alone.

DATES: Comments must be received by the agency no later than August 25, 1989. If adopted as a final rule, the proposed amendments would become effective September 1, 1990.

ADDRESS: Comments should refer to Docket No. 85-08; Notice 3 and be submitted to NHTSA Docket Section, Room 5109, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours are 8:00 am to 4:00 pm Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Dr. Richard Strombotne, Chief, Crashworthiness Division, NRM-12, Room 5320, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202-366-2264).

SUPPLEMENTARY INFORMATION: Since January 1, 1972, Federal Motor Vehicle Safety Standard No. 208, *Occupant Crash Protection* (49 CFR § 571.208) has required vehicle manufacturers to install safety belt systems in heavy vehicles (i.e. trucks, buses, and multipurpose passenger vehicles [MPVs] with a gross vehicle weight rating of more than 10,000 pounds). The safety belts required in those vehicles have had to meet all of the strength requirements set for belt systems in passenger cars and light trucks, buses, and MPVs (those with a gross vehicle weight rating of 10,000 pounds or less). However, the safety belts required in heavy vehicles have not had to meet several requirements for lighter vehicle safety belt systems that make the safety belts more comfortable to wear and easier to use.

The agency proposed several changes to the requirements for belt systems in heavy vehicles to make such belt systems more comfortable to wear and easier to use. The proposed changes were set forth in a notice of proposed rulemaking (NPRM) published on May 30, 1985 (50 FR 23041). Among other things, that notice proposed that emergency locking retractors (ELRs) be installed on the safety belt system at each outboard seating position in heavy trucks and MPVs and on the safety belt system at the driver's seat in heavy buses. The notice proposed to require ELRs because those retractors do not give rise to the "cinch down" problem for safety belt occupants that has occurred with some designs of ALRs. With designs of ALRs that were current in 1985, the safety belt could "cinch down" (become progressively tighter) around an occupant as the vehicle travelled over potholes or other jarring surfaces of the road. Vehicle occupants that experienced this "cinching down" effect were often discouraged from continued use of the safety belt system. The agency had tentatively determined that it could eliminate this problem by focusing on the working of the retractor mechanism.

A number of commenters objected to the proposed prohibition of belt systems with ALRs. These commenters indicated that NHTSA had proposed an overly restrictive approach to solving the problem of progressive tightening or "cinching down" of belt systems that used ALRs. These commenters suggested that newer innovative designs of belt systems that incorporated ALRs

did not experience the problem of "cinch down." NHTSA further investigated these newer designs by visiting three retractor manufacturers (IMMI, TRW, and Allied) to review their anti-cinch ALR programs. As a result of the information gained from reviewing these manufacturers' programs, NHTSA concluded that the cinching down problem for ALRs may have been solved.

A final rule setting forth additional requirements for the safety belt systems installed in heavy vehicles was published on July 6, 1988 (53 FR 25337). With respect to the type of retractor required to be installed on heavy vehicle belt systems, this rule expanded the proposed approach to permit ALRs with anti-cinch capability to be installed on the safety belts in heavy vehicles. For the purposes of this rule, the determination of whether a heavy vehicle safety belt system with an ALR had this anti-cinch capability was to be made by examining the working of the retractor mechanism. For a safety belt assembly equipped with an ALR and installed in a heavy vehicle to comply with this requirement, the retractor could not retract webbing to the next locking position until at least ¾ of an inch of webbing had moved into the retractor.

NHTSA received three petitions for reconsideration of this rule. The petition that was filed by the Recreation Vehicle Industry Association is granted in a final rule published elsewhere in today's edition of the **Federal Register**. Indiana Mills & Manufacturing, Inc. (IMMI) filed a petition for reconsideration asking NHTSA to amend this rule to permit safety belt systems installed in heavy vehicles to comply with the ¾ inch minimum webbing travel requirement by means other than the working of the retractor itself. According to IMMI, a minimum webbing travel requirement that focused on the performance of the entire belt system in meeting the goal of preventing "clinch down," instead of focusing on the performance of the retractor alone, would permit the development of more innovative means of overcoming the cinch down problem for safety belt systems equipped with ALRs. Grumman Olson raised substantially similar points in its petition for reconsideration.

NHTSA has reexamined its minimum webbing travel requirements in response to these petitions. The purpose of including minimum webbing travel requirements for safety belt systems equipped with ALRs was to ensure that these belt systems would be more comfortable for users than safety belt systems equipped with ALRs that cinched down. The proposed and final requirements for heavy vehicle safety belt systems have focused exclusively on the working of the retractor mechanism itself as the means for ensuring increased occupant comfort, because "cinch down" can be prevented simply and effectively by the working of the retractor mechanism. Nevertheless, any safety belt system equipped with an ALR that provided enhanced comfort for belt users by preventing "cinch down" would seem to fulfill the purpose of the minimum webbing travel requirement, regardless of whether the retractor alone met that requirement. After this reexamination, NHTSA has tentatively determined that the current requirement for heavy vehicle safety belt systems is unnecessarily restrictive.

To reflect this tentative determination, this notice proposes to adopt a less restrictive approach to ensuring occupant comfort when using safety belt systems equipped with ALRs. Instead of focusing solely on the workings of the retractor mechanism to determine if the belt system complies with the minimum webbing travel requirement, as the July 1988 final rule does, this notice proposes to examine the workings of the belt system *as a whole* to determine if it complies with the minimum webbing travel requirement. A bench test would be used to evaluate the workings of the belt system as a whole. First, the belt system would be buckled. Then the retractor end of the belt system would be anchored. The other end of the belt system would not be anchored during this bench test, and is referred to as the "free end" of the belt system in this rule. The belt webbing would be extended to 75 percent of its length and the ALR would be locked after this initial adjustment. A load of 20 pounds would be applied to the free end of the belt system in the direction away from the retractor. The position of the free end of the belt system would be recorded. Then the 20 pound load would be slowly released (i.e., released within a 30 second period) until the retractor moves to the next locking position. The position of the free end of the belt system would be recorded again. The distance between the recorded positions of the free end of the belt system would have to be equal to or greater than ¾ inch.

NHTSA believes that this proposed bench test would be satisfied by any safety belt system incorporating an ALR that meets the current requirement for a ¾ inch spacing between ratcheting positions on the retractor. Additionally, vehicles could comply with this proposed bench test if the safety belt system incorporates a device or devices external to the ALR mechanism itself that will operate *automatically* to prevent cinch down. This proposed bench test would *not* be satisfied by devices that must be manually operated to prevent cinch down, because no manual adjustments will be performed during the bench testing.

NHTSA has considered the effects of this proposed rulemaking action and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has also determined that the economic and other impacts of this proposed rule are so minimal that a full regulatory evaluation is not required.

Those heavy vehicle manufacturers that choose to rely on the working of the retractor mechanism alone to comply with the test for "cinch down," as required by the current regulatory language will not have to change their plans if this proposal were adopted as a final rule. On the other hand, this proposal would also give manufacturers the opton of adopting other innovative approaches to comply with the test for "cinch down." Those manufacturers that choose to take advantage of this proposal to use an innovative means of solving "cinch down" could experience some slight cost savings. However, the costs of complying with the anti-cinch retractor requirement have been estimated throughout this rulemaking as being minimal, so any savings from the costs of anti-cinch retractors would necessarily also be minimal.

NHTSA has also considered the effects of this proposed rule under the Regulatory Flexibility Act. I hereby certify that any final rule adopting this proposal would not have a significant economic impact on a substantial number of small entities. Few, if any, of the heavy vehicle manufacturers are small entities. To the extent that these manufacturers might experience a cost savings as a result of this proposal, the savings would be minimal, as explained above. Likewise, small organizations and small governmental entities will not be significantly affected by this rule. Although those groups do purchase havey vehicles, this proposed action would not result in any price increases for heavy vehicles.

The agency has also analyzed this proposal for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment, if the proposal were adopted as a final rule.

Finally, NHTSA has considered the federalism implications of this proposal, as required by Executive Order 12612, and determined that the proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestons for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, it is proposed that 49 CFR Part 571 be amended as follows:

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.208 [Amended]

2. S4.3.2.2 of § 571.208 would be revised to read as follows:

* * * * *

S4.3.2.2 *Second option—belt system.* The vehicle shall, at each designated seating position, have either a Type 1 or a Type 2 seat belt assembly that conforms to § 571.209 of this Part and S7.2 of this Standard. A Type 1 belt assembly or the pelvic portion of a dual retractor Type 2 belt assembly installed at a front outboard seating position shall include either an emergency locking retractor or an automatic locking retractor. A seat belt asembly equipped with an automatic locking retractor that is installed at a front outboard seating position must allow at least ¾ inch of webbing movement before retracting webbing to the next locking position. To determine compliance with this requirement, the seat belt assembly is buckled and the retractor end of the seat belt assembly is anchored to the test bench. The webbing is extended to 75 percent of its length and the retractor is locked after the initial adjustment. A load of 20 pounds is applied to the free end of the belt assembly (i.e., the end of the belt assembly that is not anchored to the test bench) in the direction away from the retractor. The position of the free end of the belt assembly is recorded. Within a 30 second period, the 20 pound load is slowly decreased, until the retractor moves to the next locking position. The position of the free end of the belt assembly is recorded again. The difference between the two positions recorded for the free end of the belt assembly shall be equal to or greater than ¾ inch. An automatic locking retractor used at a front outboard seating position that has some type of suspension system for the seat shall be attached to the seat structure that moves as the suspension system functions.

3. S4.2.2 of § 571.208 would be revised to read as to follows:

* * * * *

S4.2.2 *Second option—belt system—driver only.* The vehicle shall, at the driver's designated seating position, have either a Type 1 or a Type 2 seat belt assembly that conforms to § 571.209 of this Part and S7.2 of this Standard. A Type 1 belt assembly or the pelvic portion of a dual retractor Type 2 belt assembly installed at the driver's seating position shall include either an emergency locking retractor or an automatic locking retractor. A seat belt assembly equipped with an automatic locking retractor that is installed at the driver's seating position must allow at least ¾ inch of webbing movement before retracting webbing to the next locking position. To determine compliance with this requirement, the seat belt assembly is buckled and the retractor end of the seat belt assembly is anchored to the test bench. The webbing is extended to 75 percent of its length and the retractor is locked after the initial adjustment. A load of 20 pounds is applied to the free end of the belt assembly (i.e., the end of the belt assembly that is not anchored to the test bench) in the direction away from the retractor. The position of the free end of the belt assembly is recorded. Within a 30 second period, the 20 pound load is slowly decreased, until the retractor moves to the next locking position. The position of the free end of the belt assembly is recorded again. The difference between the two positions recorded for the free end of the belt assembly shall be equal to or greater than ¾ inch. An automatic locking retractor used at a driver's seating position that has some type of suspension system for the seat shall be attached to the seat structure that moves as the suspension system functions.

Issued on July 5, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-16225 Filed 7-10-89; 8:45 am]

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49 CFR Part 571 and 572

[Docket No. 89-13; Notice 01]

RIN 2127-AB94

Anthropomorphic Test Dummies—3-Year-Old Child

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this notice, NHTSA proposes changes to its specifications for the 3-year-old child test dummy.

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First, the agency proposes a new head assembly for the 3-year-old test dummy. The current head of the 3-year-old dummy has a low natural frequency response, which causes it to give unreliable data in test environments where the head may contact a rigid surface. Until January 22, 1988, Standard 213 specified performance and test criteria only for add-on child restraint systems. In tests of those systems, the dummy's head does not contact a rigid surface. On that date, a final rule became effective, establishing performance and test criteria for a child restraint system that is an integral part of the vehicle (built-in restraint). During compliance testing of these built-in restraints, the dummy's head may contact a rigid surface. The new head has a higher natural frequency response, and should be suitable for testing in all environments, including ones in which rigid surface contacts occur.

Second, the agency proposes to set generic specifications for two accelerometers which may be used with the dummy. The regulation currently specifies that a particular accelerometer model made by one manufacturer will be used in the 3-year-old dummy. The manufacturer has discontinued production of that particular model. NHTSA has tentatively concluded that it is unnecessary to specify a particular model for use in compliance testing, because any accelerometer that meets the specified response criteria, and is positioned in the test dummy at the specified reference points, will give the same measurements as any other accelerometer with the equivalent response characteristics and positioning. Therefore, this notice proposes to specify response criteria for the triaxial accelerometer, and positioning requirements for the accelerometer cube that will align the seismic masses of each sensing element with the head and thoracic reference points.

DATES: *Comment closing date:* November 8, 1989.

Proposed effective date: The changes proposed in this notice would take effect 30 days after any final rule is published.

ADDRESSES: Comments should refer to the docket and notice numbers of this proposal and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590.

Docket Room hours are 8 a.m. to 4 p.m., Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Stan Backaitis, Office of Vehicle Safety Standards, NRM-12, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590, (202) 366-4912.

SUPPLEMENTARY INFORMATION:

Background

On December 27, 1979, NHTSA published a final rule establishing specifications in 49 CFR Part 572 for an anthropomorphic test dummy representing a 3-year-old child. (44 FR 76527.) The agency specified the use of that dummy in dynamic testing of child restraints under what was then a newly revising Standard 213, *Child Restraints*. The child restraints were tested in simulated barrier impacts using a standard seat assembly. The assembly is not surrounded by an actual or simulated vehicle during the test. Although the standard did not expressly so provide, it had the effect of permitting only "add-on" child restraints, i.e., child restraints that do not form an integral part of a vehicle, but are placed on a vehicle seat and secured by the vehicle belt.

The New Dummy Head Assembly

After NHTSA issued the 3-year-old dummy specifications, Ford Motor Company (Ford) and General Motors Corporation (GM) petitioned the agency to reconsider whether the specified dummy was an appropriate test device. In Standard 213 tests, petitioners said it was important to ensure that the test results reflect the force of the impact and not vibration in the head materials or structure. The petitioners asserted that the summy's head had a relatively low natural frequency (the freqency of a free vibration at which an elastic system starts to vibrate when impacted by a force). This low natural frequency, petitioners argued, interfered with acceleration measurements because small variations in applied force could produce a large variation in the measured acceleration. The tester could not determine the extent to which those measurements were attributable, at least in part, to natural frequency vibration in the dummy instead of the applied test force.

In a document published December 15, 1980, (45 FR 82265), NHTSA denied these petitions for a number of reasons, one of which is relevant here. The agency found that while the dummy head showed a relatively low natural frequency, this characteristic did not effect Standard 213 compliance testing. The agency explained that resonance in the head would not occur in testing, if the surfaces with which the head came in contact provided forces with frequencies below the natural frequency of the head. Under the dynamic test procedures promulgated in 1979, the test environment for a child restraint system was a standard vehicle seat assembly to which the restraint was attached by a lap belt. During testing, the dummy would contact only the seat belt or the padded surfaces of the child restraint, all of which produced a force with a frequency below that of the dummy's head. therefore, there was no possibility of contact with a hard, unyielding surface (such as a vehicle instrument panel) which would produce a force having a frequency equal to or higher than the natural frequency of the test device.

Need for new head assembly. The need for a new dummy head was created by the special compliance test procedures adopted in a final rule issued in January 1988. That notice amended Standard No. 213 expressly to permit a manufacturer to install built-in child restraint systems in motor vehicles. (A built-in child restraint is one that forms an integral part of a vehicle.) These restraints may be tested for compliance either as installed in a specific vehicle (barrier impact testing), or as installed in a specific vehicle shell which is mounted on a test platform (for simulated barrier impact testing). (49 CFR § 571.213, S6.1.1[a], [c]. In testing these restraints, the dummy's head may contact the hard surfaces of the vehicle or the vehicle shell. As a consequence of such impacts and the current head's low natural frequency response (about 250 HZ), that head may not give dependable head acceleration measurements in tests of built-in restraints. The test data could misrepresent the head's acceleration because testers could not determine the extent to which a measurement arose from applied test forces instead of resonances in the head assembly. As a consequence, the data would yield inaccurate head impact criteria (HIC) values.

The new head assembly specifications NHTSA proposes today are the result of research initiated by the agency in October 1980. The upgraded head acceleration measurement capability of the new head assembly extends the range of impacts which can be measured with the 3 year-old test dummy. (See Contract Numbers DTNH 22-80-P-02093 and DTNH 22-82-P-02066; Report Number DOT HS 806 742, Performance Measurements of Three Year-Old Test Dummy Heads, December 1983.)

Development and selection of a new 3-year-old dummy head. There were six candidate dummy heads in the selection pool from which NHTSA selected the new dummy head. A threshold determination made by the agency in selecting a new head assembly involved the level of the natural frequency response of the assembly. NHTSA considered a response of over 1000 Hz to be desirable because this level is accepted universally as the lowest natural frequency response appropriate for a dummy's head used in automobile crash testing.

To determine the natural frequency response for each of the six heads considered, NHTSA conducted head-drop tests. Each head-drop test consisted of dropping the head from a height of 7 inches onto a 2-inch thick, polished steel plate. Two heads met the essential minimum natural frequency response of 1000 Hz. Of those two heads, NHTSA tentatively selected the polyester/fiberglass design with a 0.5 inch vinyl "skin" as the one most similar in impact performance characteristics to the old head. The head-drop test further showed that the "g" measurements of the selected new head were more similar than those of the other candidate head to the measurements of the current head. Although the new head showed a shorter duration pulse response measurement, this disparity in pulse width response is insignificant, and is a direct consequence of the difference in materials used for the new head. The new material and construction considerably raise the natural frequency response of the head and make it a useful test device in all types of test environments, including ones in which the head strikes a hard surface.

Comparing the old and new dummy heads. After the agency tentatively selected a new head with an acceptable natural frequency response, NHTSA then evaluated the new head under calibration and performance procedures set out in 49 CFR Part 572 and Standard 213, to determine whether the new head produced calibration and performance measurements comparable to those for the head currently specified, and to determine variability in the measurements obtained. (Variability has two elements: repeatability and reproducibility. Repeatability is a measurement of dispersion in test results for an individual test dummy when that dummy is subjected to a series of identical tests. Reproducibility is a measurement of dispersion among two or more test dummies built to the same specifications, and subjected to the same tests.)

The agency's evaluation consisted of calibration tests under 49 CFR Part 572, Subpart C, and compliance-type tests based on Standard 213 test procedures. NHTSA notes that head calibration tests prescribed under Subpart C are different from the head drop tests which determine the natural frequency response; therefore, test results showed different peak accelerations and pulse widths. The Subpart C test involves impacting the forehead of a seated, unsupported test dummy at 7 fps with a cylindrical test probe weighing 10 pounds, six ounces. The agency tested three heads with four head impacts on each head. These test results were compared with calibration test data on the old head. The comparison showed equivalent measurements between the old and new heads except with respect to one measurement, i.e., the time interval of the recorded acceleration-time curve at the 50g level.

The new head has an average acceleration pulse width of 1.5 milliseconds at or above the 50g level. This is a smaller width than that of the old head. Its average is 2.5 milliseconds at the same "g" level. This disparity is a direct consequence of the difference in materials used for the new head. The old head is constructed of urethane, while the new head material is fiberglass epoxy. The epoxy has different stiffness and damping properties. Since the change in materials is necessary to produce a head with a higher natural frequency response, the disparity in acceleration pulse widths is an unavoidable consequence.

Overall, the variability of the new head in Part 572 calibration tests (both repeatability and repoducibility range) was never more than five percent. Similar testing with four specimens of the current head shows repeatability range of one percent, and reproducibility range of 10 percent. (See Calibration of Three-Year-Old Child Dummies, May 1, 1978.)

In the compliance-type sled tests, the agency used one test dummy equipped with a new head and one with the old head, and seated the dummies side-by-side. NHTSA tested two different child restraint models. Each model was tested twice. Tests results showed comparable head acceleration measurements between the two heads, with the new head showing slightly less dispersion in repeatability of peak accelerations. Repeatability for the new head was 5 percent compared with 17 percent for the old head.

Because the new head requires different installations than the currently specified head, NHTSA is proposing to amend section 572.17, *Neck*, to set out installation specifications for the new head assembly.

NHTSA is also proposing to amend Standard No. 213, *Child Restraint Systems*, to specify the use of the appropriate head assembly in compliance testing of child restraints.

Built-in child restraints. Only the head assembly proposed in this notice would be used in compliance testing of built-in child restraint systems beginning 30 days after publication of the final rule adopting the new head assembly proposed in this notice. As explained above, the higher natural frequency response of the proposed head assembly will ensure that the head acceleration measurements taken during testing of built-in child restraints are accurate and reliable. The need for accurate and reliable head acceleration measurements forms the basis for the agency's proposed finding of good cause for this effective date.

Add-on child restraints. Either the current or the proposed head assembly would give accurate and reliable head acceleration measurements for add-on child restraints, since there is no possibility of head contact with a hard, unyielding surface in compliance testing of add-on child restraints. Therefore, this notice proposes that manufacturers of add-on child restraints would have the option of specifying the use of the current or proposed head assembly during NHTSA's compliance testing, beginning 30 days after publication of the final rule adopting the new head assembly proposed in this notice. Permitting optional use of the proposed head assembly beginning 30 days after publication of a final rule will not impose any burdens on any party, and will further the public interest by allowing manufacturers to gain experience testing with this new head assembly. Hence, NHTSA would find good cause for such an effective date.

In spite of the equivalence of the current and proposed head assemblies, this notice proposes to require the use of the proposed head assembly in all compliance testing three years after publication of a final rule adopting the proposed new head assembly. As explained above, the current head assembly may not give accurate or reliable head acceleration measurements for built-in child restraints. Since the current and proposed head assemblies are outwardly identical, it is possible that the agency would inadvertently use the current head assembly in compliance testing of a built-in child restraint. Such errors would represent a needless waste of time and resources.

Further, test dummy heads on average must be replaced after approximately three years use in compliance testing, because of the wear resulting from the testing and the aging of the rubbers and

plastics used in the test dummy head. Thus, no costs should be imposed by specifying mandatory use of the proposed head assembly three years after publication of a final rule. Testing facilities could continue to use the head assemblies they currently own and purchase the new head assemblies specified in the final rule when the current head assemblies must be replaced.

The New Accelerometer Specifications

NHTSA is proposing to amend its accelerometer specification to specify the instrumentation by location and sensitivity of the triaxial cluster instead of identifying a particular model of triaxial accelerometer to be used in compliance testing. The proposed specifications would be set forth in Part 572 and in documents incorporated by that Part. Under these proposed specifications, *any* accelerometer that conforms with the specific locations of seismic masses along sensitive axes aligned with the specified reference point in the dummy assembly may be used in compliance testing.

The current version of Part 572 specifies the accelerometer to be used in the three-year-old test dummy by model and manufacturer, and also specifies the precise dimensions for the platform on which the accelerometer is to be mounted. When NHTSA first promulgated specifications for the three-year-old dummy, agency and industry experience with the test device was limited, and there was concern with ensuring the objectivity of the test procedures. At that time, the agency believed that specifiying the accelerometer by manufacturer and model and specifying the precise dimensions of the platform on which the accelerometer was mounted was necessary to minimize the potential variability in test results. *See* 45 FR 43355; June 26, 1980 and 45 FR 82265; December 15, 1980. However, the manufacturer of the accelerometer currently specified for use in compliance testing with the three-year-old test dummy has discontinued production of that model. Therefore, NHTSA must amend its specifications for the three-year-old test dummy in Part 572 or it will become impossible to conduct compliance testing in accordance with Standard No. 213.

NHTSA has tentatively concluded that there are no legitimate policy reasons at this time to propose specifying any one particular accelerometer model as the only one that can be used in compliance testing. Broader experience with test dummies has shown that any triaxial cluster within specified dimensions will produce reliable data if the instrument itself meets specified response characteristics, and if its installation is such that the point of intersection of the sensitive axes of the sensing masses in the cube align with the center of gravity for the head or chest. Under Part 572, the centers of gravity for the head and chest assembly are designated respectively as the head and thorax reference points. Accordingly, NHTSA believes it would be unnecessarily restrictive for this notice to propose the use of any particular model accelerometer.

Similarly, past rulemakings regarding the 3-year-old dummy have specified the dimensions of the block or platform upon which the accelerometer was to be mounted, in order to achieve the specified relationship between the accelerometer elements and the head and thorax reference points. However, the agency has tentatively concluded that it is no longer necessary to specify dimensions of the mounting platform or block for the accelerometer, for essentially the same reasons as the agency has tentatively decided not to propose any particular accelerometer model. That is, any triaxial accelerometer should yield repeatable and reliable test data as long as the accelerometer's measuring sensors have the specified impact response characteristics, and the seismic mass centers of each sensing element are positioned correctly with respect to the appropriate reference points within the dummy.

To reflect these tentative decisions, NHTSA is proposing to establish two specifications for accelerometers that can be used in the 3-year-old dummy during compliance testing. The first proposed specification consists of generic requirements for a triaxial accelerometer and its installation based on the characteristics of the currently specified accelerometer model and mounting block. NHTSA is proposing this to allow continued use of 3-year-old test dummies instrumented as specified in the current version of Part 572.

The second proposed specification is also a generic requirement for a triaxial accelerometer and its installation. In this case, however, the alignment of the seismic masses, sensitive axes, and head and thorax reference points are *not* based on the characteristics of the currently specified accelerometer and mounting block. Instead, the agency is proposing to reflect the characteristics common to the newer, state-of-the-art accelerometers, without identifying any particular model. By avoiding references to the characteristics of any one particular accelerometer model, NHTSA is seeking to ensure that it will not have to amend Part 572 whenever the manufacturer of the specified model discontinues production of that model.

To determine the appropriate locations for the seismic mass centers of newer accelerometers, NHTSA conducted testing to ensure that a three-year-old test dummy with accelerometers installed in accordance with the second proposed specifications would produce essentially the same results as a 3-year-old test dummy with the accelerometer installed and positioned in accordance with the current requirements. Because of this testing, NHTSA has tentatively determined that equivalent test results will be obtained using a 3-year-old test dummy instrumented in accordance with the current requirements or either of the two sets of specifications proposed in this notice. (Report Number DOT HS 806 642, Performance Evaluation of a 3-Year-Old Child Test Dummy, December 1982). Since test results would be equivalent, the proposed changes to the accelerometer requirements for the 3-year-old test dummy would not require a manufacturer to recertify any child restraint system that was certified using the current accelerometer and installation specifications for that test dummy, nor would this proposal indirectly affect the requirements of Standard No. 213 by resulting in higher or lower force readings for identical impact conditions.

Comments

Comments which provide data on the head assembly's durability, variability of results, and test conditions would be particularly useful. The agency invites comments from all interested persons on these issues and other relevant issues.

The agency asks that comments on the proposal be submitted in writing, and requests (but does not require) that such persons supply 10 copies of each comment. To encourage commenters to be concise, NHTSA requires that interested persons limit their remarks to no more than 15 pages (49 CFR 553.21). A commenter may attach any necessary supporting document without regard to the 15-page limit. All comments will be filed and available for examination in the Docket Section both before and after the comment closing date.

If a commenter wishes to submit certain information under a claim of confidentiality, then it must send three copies of the complete submission, including purportedly confidential business information, to the Chief Counsel, NHTSA, at the street address given in the "**ADDRESS**" caption. Further, the commenter must send seven copies from which the purportedly confidential information has been deleted to the Docket Section. Submit each request for confidentiality with a cover letter setting out the information specified in the agency's confidential business information regulation (49 CFR Part 512).

NHTSA will consider all comments received before the close of business on the comment closing date indicated in the "Dates" caption of this proposal. If possible, NHTSA also will consider comments filed after the closing date. Ifa the agency receives a comment too late for consideration in the final rule, then the comment will be considered as a suggestion for further rulemaking action. After the closing date, NHTSA will continue to file relevant information in the Docket as this information becomes available, and recommends that interested persons continue to examine the Docket for new material.

Persons who wish to be notified of the receipt of their comments in the rules Docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the Docket supervisor will return the postcard by mail.

Impact Assessments

Executive Order 12291 and Department of Transportation Regulatory Policies and Procedures. NHTSA has considered costs and other factors associated with this proposal and tentatively determined that the proposal, if adopted, would neither be major under Executive Order 12291, nor significant under the Department of Transportation's Regulatory Policies and Procedures. The agency anticipates that this proposal will not result in new costs which a manufacturer would pass on to consumers. The costs of new and old head assemblies and accelerometers are comparable; and manufacturers and test facilities periodically must buy new items to replace old ones so that tests may be conducted with properly specified and instrumented dummies. The agency concludes therefore that a fully regulatory evaluation is not required.

Small Business Impact. The Regulatory Flexibility Act of 1980 requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions. There are no small business manufacturing test surrogates or accelerometers. Of the 15 manufacturers currently producing child restraints, seven are small businesses. Manufacturers that choose to have their restraints tested usually do so by contracting with a test laboratory. Because the cost to test a restraint system should not change if this rule becomes final, there should be no new cost to small businesses. Consequently, there should be no new costs to small governmental jurisdictions or small organizations that may be child restraint systems purchasers.

Therefore, I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Environmental Impact. Under the National Environmental Policy Act of 1969, NHTSA has considered the environmental impact of this proposed rule, and has determined that this proposal would not be a major Federal action significantly affecting the quality of the human environment.

Paperwork Reduction Act. This proposed rule does not involve a collection of information request or requirement.

Executive Order 12612. The agency has analyzed this proposed rule under the principles and criteria in Executive Order 12612, and has determined that the rule does not have sufficient Federalism implications to warrant preparing a Federalism Assessment.

List of Subjects

49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

49 CFR Part 572

Motor vehicle safety.

In consideration of the foregoing, NHTSA proposed to amend 49 CFR Parts 571 and 572 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

* * * * *

2. S7.2 of § 571.213 would be revised to read as follows:

§ 571.213 Standard No. 213; Child Restraint Systems

S7.2 *Three-year-old dummy.* A three-year-old dummy conforming to Subpart C of Part 572 of this chapter is used for testing a child restraint that is recommended by its manufacturer in accordance with S5.6 for use by children in a weight range that includes children weighing more than 20 pounds. When a three-year-old dummy is used for testing a built-in child restraint, the dummy shall be assembled with the head assembly specified in § 572.16(a)(1). When a three-year-old dummy is used for testing an add-on child restraint, the dummy shall be assembled using either head assembly specified in § 572.16(a) until three years after publication of a final rule on this proposal. After the date three years after publication of a final rule on this proposal, when a three-year-old dummy is used for testing an add-on child restraint, the dummy shall be assembled with the head assembly specified in § 572.16(a)(1).

* * * * *

PART 572—ANTHROPOMORPHIC TEST DUMMIES

1. The Authority Citation for Part 572 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1407; delegation of authority at 49 CFR 1.50.

Subpart C—3-Year-Old Child

2. Paragraphs (a) and (b) of section 572.16 would be revised to read as follows:

§ 572.16 Head.

(a) The head consists of the assembly designated as SA 103C 010 on drawing no. SA 103C 001, and conforms to either—

(1) Each item specified on drawing SA 103C 002(B), sheet 8; or

(2) Each item specified on drawing SA 103C 002, sheet 8.

(b) When the head is impacted by a test probe specified in § 572.21(a)(1) at 7 fps, then the peak resultant acceleration measured at the location of the accelerometer mounted in the headform according to § 572.21(b) is not less than 95g and not more than 118g.

(1) The recorded acceleration-time curve for this test is unimodal at or above the 50g level, and lies at or above that level for intervals:

(i) In the case of the head assembly specified in paragraph (a)(1) of this section, not less than 1.3 milliseconds and not more than 2.0 milliseconds;

(ii) In the case of the head assembly specified in paragraph (a)(2) of this section, not less than 2.0 milliseconds and not more than 3.0 milliseconds.

(2) The lateral acceleration vector does not exceed 7g.

* * * * *

3. Section 572.17(a) would be revised to read as follows:

§ 572.17 Neck.

(a)(1) The neck for use with the head assembly described in § 572.16(a)(1) consists of the assembly designated as

SA 103C 020 on drawing No. SA 103C 001, and conforms to each item specified on drawing No. SA 103C 002(B), sheet 9.

(2) The neck for use with the head assembly described in § 572.16(a)(2) consists of the assembly designated as SA 103C 020 on drawing No. SA 103C 001, and conforms to each item specified on drawing No. SA 103C 002, sheet 9.

* * * * *

4. Section 572.21 would be amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 572.21 Test conditions and instrumentation.

(a) (1) The test probe use for head and thoracic impact tests is a cylinder 3 inches in diameter, 13.8 inches long, and weighing 10 lbs., 6 ozs. Its impacting end has a flat right face that is rigid and that has an edge radius of 0.5 inches.

(2) The head and Thorax assembly may be instrumented with a Type A or Type C accelerometer.

(i) Type A accelerometer is defined in drawing SA–572 S1.

(ii) Type C accelerometer is defined in drawing SA–572 S2.

(b) *Head Accelerometers.* Install one of the triaxial accelerometers defined in § 572.21(a)(2) on a mounting block located on the horizontal transverse bulkhead as shown in the drawings subreferenced under assembly SA 103C 010 so that the seismic mass centers of each sensing element are positioned as specified in this paragraph, relative to the head accelerometer reference point located at the intersection of a line connecting the longitudinal centerlines of the transfer pins in the side of the dummy head with the midsagittal plane of the dummy head.

(1) The sensing elements of the Type C triaxial accelerometer will be aligned as follows:

(i) Align one sensitive axis parallel to the vertical bulkhead and midsagittal plane, with the seismic mass center located 0.2 inches dorsal to, and 0.1 inches inferior to the head accelerometer reference point.

(ii) Align the second sensitive axis with the horizontal plane, perpendicular to the midsagittal plane, with the seismic mass center located 0.1 inches inferior. 0.4 inches to the right of, and 0.9 inches dorsal to the head accelerometer reference point.

(iii) Align the third sensitive axis so that it is parallel to the midsagittal and horizontal planes, with the seismic mass center located 0.1 inches inferior to, 0.6 inches dorsal to, and 0.4 inches to the right of the head accelerometer reference point.

(iv) All seismic mass centers will be positioned with ±0.05 inches of the specified locations.

(2) The sensing elements of the Type A triaxial accelerometer will be aligned as follows:

(i) Align one sensitive axis parallel to the vertical bulkhead and midsagittal planes, with the seismic mass center located from 0.2 to 0.047 inches dorsal to, from 0.01 inches inferior to 0.21 inches superior, and from 0.0 to 0.17 inches right of the head accelerometer reference point.

(ii) Align the second sensitive axis with the horizontal plane, perpendicular to the midsagittal plane, with the seismic mass center located 0.1 to 0.13 inches inferior to, 0.17 to 0.4 inches to the right of, and 0.47 to 0.9 inches dorsal of the head accelerometer reference point.

(iii) Align the third sensitive axis so that it is parallel to the midsagittal and horizontal planes, with the seismic mass center located 0.1 to 0.13 inches inferior to, 0.6 to 0.81 inches dorsal to, and from 0.17 inches left to 0.4 inches right of the head accelerometer reference point.

(c) *Thorax Accelerometers.* Install one of the triaxial accelerometers defined in § 572.21(a)(2) on a mounting plate attached to the vertical transverse bulkhead shown in the drawing subreferenced under assembly No. SA 103C 030 in drawing SA 103C 001, so that the seismic mass centers of each sensing element are positioned as specified in this paragraph, relative to the thorax accelerometer reference point located in the midsagittal plane 3 inches above the top surface of the lumbar spine, and 0.3 inches dorsal to the accelerometer mounting plate surface.

(1) The sensing elements of the Type C triaxial accelerometer will be aligned as follows:

(i) Align one sensitive axis parallel to the vertical bulkhead and midsagittal planes, with the seismic mass center located 0.2 inches to the left of, 0.1 inches inferior to, and 0.2 inches ventral to the thorax accelerometer reference point.

(ii) Align the second sensitive axis so that it is in the horizontal transverse plane, and perpendicular to the midsagittal plane, with the seismic mass center located 0.2 inches to the right of, 0.1 inches inferior to, and 0.2 inches ventral to the thorax accelerometer reference point.

(iii) Align the third sensitive axis so that it is parallel to the midsagittal and horizontal planes, with the seismic mass center located 0.2 inches superior to, 0.5 inches to the right of, and 0.1 inches ventral to the thorax accelerometer reference points.

(iv) All seismic mass centers shall be positioned with ±0.05 inches of the specified locations.

(2) The sensing elements of the Type A triaxial accelerometer will be aligned as follows:

(i) Align one sensitive axis parallel to the vertical bulkhead and midsagittal planes, with the seismic mass center located from 0.2 inches left to 0.28 inches right, from 0.5 to 0.15 inches inferior to, and from 0.15 to 0.25 inches of the thorax accelerometer reference point.

(ii) Align the second sensitive axis so that it is in the horizontal transverse plane and perpendicular to the midsagittal plane, with the seismic mass center located from 0.6 inches left to 0.2 inches right of, from 0.1 inches inferior to 0.24 inches superior, and 0.15 to 0.25 inches ventral to the thorax accelerometer reference point.

(iii) Align the third sensitive axis so that it is parallel to the midsagittal and horizontal planes, with the seismic mass center located 0.15 to 0.25 inches superior to, 0.28 to 0.5 inches to the right of, and from 0.1 inches ventral to 0.19 inches dorsal to the thorax accelerometer reference point.

* * * * *

Issued on July 5, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89–16229 Filed 7–10–89; 8:45 am]

BILLING CODE 4910–59–M

Notices

Federal Register
Vol. 54, No. 131
Tuesday, July 11, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Meat Import Limitations; Third Quarterly Estimate

Public Law 88–482, enacted August 22, 1964, as amened by Pub. L. 96–177, Pub. L. 100–418, and Public Law 100–449 (hereinafter referred to as the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of bovine, sheep except lamb, and goats; and processed meat of beaf or veal (Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.20, 0201.20.40, 0201.20.60, 0201.30.20, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.20, 0202.20.40, 0202.20.60, 0202.30.20, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00), which may be imported, other than products of Canada, into the United States in any calendar year. Such limitations are to be imposed when the Secretary of Agriculture estimates that imports of articles, other than products of Canada, provided for in Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.40, 0201.20.60, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.40, 0202.20.60, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1989 by subsection 2(c) as adjusted under subsection 2(d) of the Act.

As announced in the Notice published in the **Federal Register** on April 4, 1989 (54 FR 13538), the estimated aggregate quantity of meat articles other than products of Canada prescribed by subsection 2(c) as adjusted by subsection 2(d) of the Act for calendar year 1989 is 1,245.3 million pounds.

In accordance with the requirements of the Act, I have determined that the third quarterly estimate of the aggregate quantity of meat articles other than products of Canada which would, in the absence of limitations under the Act, be imported during calendar year 1989 is 1,250 million pounds.

Done at Washington, DC, this 3rd day of July 1989.

Clayton Yeutter,

Secretary of Agriculture.

[FR Doc. 89–16140 Filed 7–10–89; 8:45 am]

BILLING CODE 3410–10–M

COMMISSION ON CIVIL RIGHTS

District of Columbia Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the District of Columbia Committee to the Commission will convene at 2:00 p.m. and adjourn at 4:00 p.m. on Wednesday, July 26, 1989, at 1121 Vermont Avenue, NW., Washington, DC 20425, 5th floor conference room. The Committee will discuss activity plans and select a project topic. Loretta Caldwell, director, DC Office of Human Rights and Minority Business, will speak on continuing liaison and interagency coordination.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson James G. Banks or John I. Binkley, Director, Eastern Regional Division at (202) 523–5264, TDD (202) 376–8117. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 5, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89–16240 Filed 7–10–89; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–021]

Cell-Site Transceivers and Related Subassemblies From Japan; Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke

AGENCY: International Trade Administration/Import Administration; Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and intent to revoke.

SUMMARY: In response to a request from a manufacturer/exporter, the Department of Commerce has conducted an administrative review of the antidumping duty order on cell-site transceivers and related subassemblies from Japan. The review covers one manufacturer/exporter of this merchandise to the U.S., Kokusai Electric Co., Ltd. ("Kokusai"), and the period January 1, 1988 through July 28, 1988. There were no known shipments of this merchandise to the United States by Kokusai during the period and there are no known unliquidated entries.

As a result of the review, the Department intends to revoke the antidumping duty order.

Interested parties are invited to comment on these preliminary results and intent to revoke.

EFFECTIVE DATE: July 11, 1989.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Phyllis Derrick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–4195/2923.

SUPPLEMENTARY INFORMATION:

Background

On December 20, 1988 the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 51127) the final results of its last administrative review of the antidumping duty order on cell-site transceivers and related subassemblies from Japan (50 FR 307, January 3, 1985). Kokusai requested in accordance with section 353.54(f) of the 1988 Commerce Regulations that we conduct an

administrative review. We published a notice of initiation on March 8, 1989 (54 FR 9868). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act".)

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are cell-site transceivers and related subassemblies which are part of the radio frequency (RF) equipment in the base station of a cellular radio communications system. This single-package equipment functions as a locating receiver and provides simultaneous two-way voice and data communications between the base station and the subscriber's mobile telephone by using different frequencies to transmit and receive. Subassemblies are an assemblage of parts dedicated for use in cell-site transceivers as defined above. During the review period such merchandise was classifiable under *Tariff Schedules of the United States Annotated* item numbers 685.2810 and 685.2820. Such merchandise is currently classifiable under HTS item numbers 8525.20.15, 8525.20.20, and 8525.20.30. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of this merchandise to the U.S., Kokusai, and the period January 1, 1988 through July 28, 1988. There were no known shipments by Kokusai of this merchandise to the United States during the period and there are no known unliquidated entries.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margin exists:

Manufacturer/Exporter	Time period	Margin (percent)
Kokusai	1/1/88–07/28/88	[1] 0.08

[1] No shipments during the period; margin from last period in which there were shipments.

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 45 days after the date of publication, or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication.

On July 28, 1988 we tentatively revoked the order with respect to Kokusai. However since Kokusai is the only manufacturer/exporter that we have covered in this or past administrative reviews of this order, we intend to revoke the entire order. If this revocation is made final, it will apply to all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the tentative revocation.

This administrative review, intent to revoke, and notice are in accordance with sections 751(a) (1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1), (c)) and sections 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.53a, 353.54) (1988).

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

Date: June 30, 1989.

[FR Doc. 89-16134 Filed 7-10-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-223-401]

Portland Hydraulic Cement From Costa Rica; Final Results of Countervailing Duty Administrative Review, Determination To Cancel Suspension Agreement, and Resumption of Investigation

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review, Determination to Cancel Suspension Agreement, and Resumption of Investigation.

SUMMARY: On January 9, 1989, the Department of Commerce published the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation and tentative determination to cancel suspension agreement on portland hydraulic cement from Costa Rica. We have completed that review and determined to cancel the suspension agreement and resume the investigation.

EFFECTIVE DATE: July 11, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Paul J. McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On January 9, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 654) the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation and tentative determination to cancel the suspension agreement (49 FR 47280; December 2, 1984).

On January 19, 1989, we received a certified statement from the Central Bank of Costa Rica indicating that Cementos del Pacifico, S.A. ("CPSA"), the sole exporter of the subject merchandise during the review period and not a signatory to the suspension agreement, had not received Tax Credit Certificates (Certificados de Abono Tributario, or "CAT" certificates) on its exports of portland hydraulic cement to the United States. On February 3, 1989, we received a copy of the suspension agreement, signed by a CPSA official, indicating that firm's desire to be recognized as a signatory to the suspension agreement.

Scope of the Review

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989 the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of Costa Rican portland hydraulic cement. During the period of review, such merchandise was classifiable under item number 511.1440 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS item number 2523.29.00. The written description remains dispositive.

The review covers the period October 1, 1985 through September 30, 1986, and two firms, Industria Nacional de Cementos, S.A. ("INCSA") and CPSA.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from the Government of Costa Rica and from the petitioners, the Puerto Rican Cement Co., Inc. (including Ponce Cement Corp.) and the San Juan Cement Co., Inc.

Comment: The Government of Costa Rica requested that the Department accept CPSA's agreement to become a signatory to the suspension agreement and requested that the suspension agreement be maintained. Conversely, petitioners urged the Department to cancel the suspension agreement with INCSA, resume its investigation and proceed to a final determination, imposing countervailing duties in the amount of 15 percent *ad valorem* on imports of the subject merchandise from Costa Rica.

Department's Position: It has long been our practice to consider submissions made after publication of the preliminary results of administrative review as not timely filed and to disregard those submissions (see, *e.g., Michelin X-Radial Steel Belted Tires from Canada; Final Results of Administrative Review of Countervailing Duty Order* (46 FR 48737; October 2, 1981)). This long-standing practice has recently been incorporated into § 355.31(a)(ii) of the Department of Commerce Regulations, published in the **Federal Register** on December 27, 1988 (53 FR 52358). In suspended investigations, as in all other proceedings, it is imperative that any submission be timely filed so that not only the Department, but interested parties as well, will have adequate opportunity to consider and comment on the content of the submission. Neither CPSA's agreement to become a signatory nor the certification of nonreceipt of benefits were filed in a timely manner.

In our May 1986 questionnaire in this review, we pointed out that INCSA might no longer account for substantially all U.S. imports of the subject merchandise, and afforded other shippers the opportunity to become signatories to the suspension agreement. After receipt of CPSA's questionnaire response, we advised the respondents several times that if CPSA chose not to become a signatory, we would have to terminate the agreement and reopen the investigation. Thus, CPSA was clearly aware of the consequences of noncooperation but did not avail itself of the opportunity to become a signatory to the suspension agreement and did not submit the requested documentation until *after* the Department had published its preliminary results. Accordingly, we cannot take CPSA's submission into account in the final results in this review.

Final Results of Review and Cancellation of Suspension Agreemenet

As a result of our review, we determine that the suspension agreement no longer meets the requirements of sections 704(b) and (d) of the Tariff Act. Section 704(b) requires that exporters accounting for "substantially all" U.S. imports of the subject merchandise be signatories to any agreement suspending a countervailing duty investigation. Section 355.18(c) of the new Commerce Regulations defines "substantially all" as 85 percent of total U.S. imports. Section 704(d) of the Tariff Act mandates that a suspension agreement must be in the public interest and must be reasonably monitorable.

Because the Costa Rican exporter accounting for 100 percent of exports of the subject merchandise to the United States was not a signatory to the agreement during the period of review and chose not to rectify the situation within a reasonable period, we determine that the requirements of section 704(b) of the Tariff Act have not been satisfied and that continuation of the suspension agreement is not in the public interest. Accordingly, we have determined to cancel the suspension agreement and resume the investigation.

Resumption of Investigation

In accordance with section 704(i)(1)(B) of the Tariff Act, we are resuming the investigation as if the Department's affirmative preliminary determination under section 703(b) of the Tariff Act had been published on the date of publication of this notice of final results of review.

Suspension of Liquidation

As provided by section 704(i)(1)(A) of the Tariff Act, we are instructing the Customs Service to suspend liquidation on all shipments of portland hydraulic cement exported directly or indirectly to the United States from Costa Rica and entered, or withdrawn from warehouse, for consumption on or after [insert date 90 days prior to date of publication]. The Department will also instruct the Customs Service, in accordance with section 703 of the Tariff Act, to require a cash deposit or bond for each such entry of the merchandise in the amount of 15 percent *ad valorem*, the rate found in our preliminary affirmative countervailing duty determination (49 FR 37134; September 21, 1984).

Concurrent with the publication of this notice the Department is notifying the petitioners and all interested parties who are or were parties to the investigation of this action, as required by section 704(i)(1)(E) of the Tariff Act.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and §§ 355.19 and 355.22 of the new Commerce Regulations published in the **Federal Register** on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 355.19 and 355.22).

Eric I. Garfinkel,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-16133 Filed 7-10-89; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of application for an amendment to an Export Trade Certification of Review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be amended.

FOR FURTHER INFORMATION CONTACT: Douglas J. Aller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in

compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be amended. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1223, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 84-4A012."

OETCA has received the following application for an amendment to Export Trade Certificate of Review No. 84-00012 which was issued on June 11, 1984 (49 FR 24581, June 14, 1984).

Summary of the Application

Applicant: Northwest Fruit Exporters, 1005 Tieton Drive, Yakima, Washington 98902.

Contact: Kenneth F. Severn, Secretary/Treasurer, telephone: (509) 453-4837.

Application No.: 84-4A012.

Date Deemed Submitted: June 23, 1989.

Northwest Fruit Exporters seeks to amend its Certificate to:

1. Add the following additional companies as "Members" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): Yakima Fruit & Cold Storage, Yakima, WA and Oneonta Trading Corp., Wenatchee, WA.

2. Delete the following companies as "Members:" Muriel Oliver-Winterscheid, Mercer Island, WA and Mojonnier & Sons, Sunnyside, WA.

3. Change the address location of the "Member" company Amerifresh from Yakima, WA to Wenatchee, WA.

Date: June 29, 1989.

Douglas J. Aller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 89-16130 Filed 7-10-89; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

[Docket No. 90643-9143]

RIN 0648-AC34

King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of approval of a fishery management plan.

SUMMARY: NOAA announces the approval of the Fishery Management Plan for Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands (FMP). This FMP establishes a State/Federal cooperative management regime that defers much of crab management to the State of Alaska (State) with Federal oversight. The management measures are ones that have been used in managing the King and Tanner crab fisheries of the Bering Sea/Aleutian Islands area and have evolved over the history of the fishery.

EFFECTIVE DATE: June 2, 1989.

ADDRESS: Copies of the FMP and Environmental Assessment may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510. A copy of the Federalism Assessment may be obtained from the Regional Director, NOAA Fisheries, P.O. Box 21668, Juneau, Alaska 99802-1668.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin, 907-586-7229.

SUPPLEMENTARY INFORMATION:

Background

The FMP was adopted by the North Pacific Fishery Management Council (Council) on January 17, 1989. This FMP culminates a ten-year effort by the Council to address the concerns of various user groups while at the same time acknowledging more than 20 years of management of crab by the State. It contains a general management goal with seven management objectives identified, and relevant management measures required to meet the objectives that are presented. The FMP establishes three categories of management measures: (1) Fixed measures implemented by the State, that require an FMP amendment to change; (2) measures that the State may implement and amend, subject to Federal criteria specified in the FMP, and enforce against State-registered vessels in the exclusive economic zone (EEZ); and (3) measures that the State may implement and amend, without specific Federal criteria specified in the FMP, and enforce against State-registered vessels in the EEZ. Several management measures may contribute to more than one objective, and several objectives may mesh in any given decision on a case-by-case basis.

In adopting the FMP, the Council intended that, to the extent practicable, the State should continue to play a leading role in the management of the King and Tanner crab fisheries in the Bering Sea/Aleutians Islands. Alaska has developed a comprehensive management system for managing the King and Tanner Crab fisheries off its shores, both within and beyond the three-mile limit. This system, representing the acquired expertise of scores of State employees and an investment by that State over the years of many millions of dollars, could not be duplicated in the near future by the National Marine Fisheries Service (NMFS). At the same time, some residents of States other than Alaska who participate or previously participated in the crab fisheries have long been concerned about their lack of representation on the Alaska Board of Fisheries (Board) and in the Alaska Department of Fish and Game (AD&G), the agencies that manage fisheries on behalf of Alaska.

In order to take minimum advantage of Alaska's ability and willingness to continue to manage the King and Tanner crab fisheries while at the same time providing sufficient Federal oversight to ensure representation and consideration of non-Alaskan concerns, the FMP provides for a special means of access to the Bering Sea/Aleutian Islands King and Tanner crab regulatory process for nonresidents of Alaska through a Pacific Northwest Crab Industry Advisory Committee (PNCIAC). The PNCIAC will meet at appropriate times and places throughout the year to review and advise the State and the Council on crab management issues, stock status information, and biological and economic analyses relating to the crab fisheries. The FMP also establishes a Crab Interim Action Committee (CIAC) composed of the Alaska Regional Director of NMFS, the Commissioner of ADF&G, and the Director of the Washington State Department of Fisheries, or their designees. The CIAC will provide oversight of the FMP and provide for Council review of management measures and other relevant matters.

Representatives from the Council, NMFS, and NOAA General Counsel will participate in the State development of regulations for management of King and Tanner crab fisheries in the Bering Sea/

Aleutian Islands area, including directly participating in the Board meeting for the purpose of assisting the State in determining the extent to which proposed management measures are consistent with the FMP, the Magnuson Act, and other applicable Federal law. Federal management oversight is also provided in the form of a review and appeals procedure for all State preseason and in-season crab management measures applicable to State-registered vessels in the EEZ. All current State laws applicable to fishing vessels in the EEZ have been reviewed by the Secretary and found facially consistent with the FMP. Preseason and in-season State management measures will be reviewed by the Secretary of Commerce (Secretary) as a matter of discretion, or upon timely appeal by an interested party. Secretarial review is limited to whether the challenged State law is consistent with the FMP, the Magnuson Act, or other applicable Federal law.

Public Comments

Written comments were received from the ADF&G and three industry associations.

In general, the ADF&G commented that the FMP is not necessary for the management of King and Tanner crab fisheries of the Bering Sea/Aleutian Islands (BS/AI), but ADF&G will participate in a cooperative FMP provided that Federal funds are available to cover implementation costs to the State.

Two of the industry associations recommend the approval of the FMP with various modifications.

One industry association objects to deferring management authority to the State and believes that a conventional FMP is necessary.

The following are specific comments on the FMP and NOAA's responses:

Comment: One commenter noted the following three key factors influencing the need for an FMP for the BS/AI crab fisheries: (1) The majority of participants in the fisheries are nonresidents of Alaska, (2) the coastal boundary of the fishing area is unique, incorporating the largest coastline of any EEZ fishery and bordering only one state, and (3) controversial allocation issues necessitate the protection afforded by an FMP.

Response: This comment reaffirms past concerns expressed by some crab industry members and contains some of the chief reasons why the Council has submitted the FMP for Secretarial review.

Comment: One commenter indicated that his association is now substantially in agreement on most of the FMP issues except pot limits, exclusive registration, and closed waters, all of which the State maintains it must preside over. This commenter stated his concerns as follows:

1. Pot limits (gear limitation): A limit on the number of pots would be unenforceable in this high seas, offshore and remote fishery.

2. (Exclusive) Registration: This is a *defacto form* of limited entry that would ultimately favor resident small boat fishermen that do not depend on the need for mobility, to move from one fishery to another within the geographic area.

3. Closed Waters (Jurisdiction): State priority giving subsistence users exclusive fishing areas is objectionable. Expansion and or creation of new subsistence fishing zones should be restricted to the jurisdiction of the NPFMC along with jurisdiction over #1 and #2 above.

Response: 1. Although section 8.2.7 of the FMP authorizes the State to promulgate pot limits for purposes specified in the FMP, NOAA notes that no pot limits are currently imposed in the management area. The Secretary also notes that section 8.2.7 of the FMP requires the State to consider, among other factors, the enforceability of any proposed pot limits. Consequently, practicality of enforcement will be addressed if and when the State decides to promulgate any limits on the number of pots a vessel may deploy or carry.

2. Section 8.2.8 of the FMP authorizes the State to designate, subject to limitations, crab exclusive registration areas. Under exclusive area designation, the operator of any fishing vessel may register for fishing in a single exclusive area without restriction, but cannot fish in any other exclusive area during the registration year. Any vessel may, however, fish in all nonexclusive areas without restriction, even if registered in an exclusive area.

In an appropriate case, exclusive area designation may aid in dispersing fishing effort while still allowing the fleet the opportunity to harvest the available crab resource. Exclusive area designation may also allow small, less mobile vessels the opportunity to fish in accessible waters near the home port of those vessels, while allowing the larger, more mobile vessels to fully harvest available crab resources elsewhere.

Exclusive area designation may, in any particular case, result in allocation of fishing opportunities among the fleet. Such allocation may be permissible under national standard 4 of the Magnuson Act if fair and equitable to all fishermen, reasonably calculated to promote conservation, and carried out in such a manner that no single entity acquires an excessive share of fishing privileges. In addition, section 8.2.8 of the FMP specifies six factors that the State must consider when proposing an exclusive area designation. Those factors include the extent to which the proposed designation will encourage efficiency and provide all vessels a reasonable opportunity to participate in the fishery. These factors must be considered if and when exclusive areas are designated.

3. Section 8.2.9 of the FMP authorizes the State to designate and modify commercial fishery closures to meet State subsistence obligations. The State, if and when it proposes such a closure or modification, must consider the need to protect subsistence fisheries, the need to protect critical habitat, prevention of conflict, and creation of navigational hazard.

It is important to remember that the Secretary will review measures adopted by the State to determine if they are consistent with the FMP, the Magnuson Act, and its national standards in accordance with chapters 9 and 10 of the FMP.

Restricting the authority of the Council over these three management measures by placing them into Category 1 (fixed measures) was considered and rejected by the Council. The State is and has been intimately involved in the management of the king and Tanner crab fisheries and has long-term monitoring, enforcement, and research programs in place. The perceived net benefits of utilizing the existing State programs versus the costs of developing entirely new Federal programs led the Council to direct the Council's Crab Management Committee to develop a cooperative State/Federal management plan in which significant authority is deferred to the State.

The Council wanted to avoid problems that were experienced with the repealed Tanner crab FMP, and ensure that the new FMP is flexible enough to provide for management based on the best scientific information available and provide for timely Federal and State coordination of management.

Comment: One commenter concluded that E.O. 12612, the Executive Order on Federalism, in no way interferes with adoption and implementation of the FMP.

Response: A Federalism Assessment prepared by NOAA concluded that the FMP complies with the criteria and principles of Executive Order 12612. Copies are available from the Alaska Regional Office.

Comment: One commenter discussed the importance and necessity of an FMP for the BS/AI crab stocks. In supporting

the need for an FMP, he cited Congressional intent, conservation and management requirement of the BS/AI crab fishery, and Federal statutes and guidelines.

Response: Comment noted.

Comment: Several commenters presented several suggested modifications for the Secretary to incorporate into the FMP.

Response: The Secretary is required to approve, disapprove, or partially disapprove plans after the 75th day, but before the close of the 95th day, following receipt of a plan. He is to review the FMP to determine whether it is consistent with the national standards, other provisions of the Magnuson Act, and any other applicable law. There is no provision for making substantive modifications to the FMP at this stage of the review process. The commenters should make any request for substantive charges to the FMP to the Council for future consideration.

Comment: One commenter stated that the FMP descriptions of the use of economic data within the crab management process do not clearly recognize that socioeconomic or bio-economic objectives are secondary to resource conservation concerns.

Response: NOAA refers the commenter to section 7.2.1 of the FMP, which states that "* * * the maintenance of adequate reproductive potential in each crab stock will take precedence over economic and social considerations." Provisions of the Magnuson Act, including National Standard 1, also establish the paramountcy of resource conservation.

Comment: One commenter said that the Secretary should clearly state that economic and social considerations alone may not be used to justify management measures. He recommended modifying the FMP so that market and other economic considerations are not the sole criterion used in setting minimum size limits or setting guidelines harvest levels (GHLs).

Response: As stated above, NOAA cannot make substantive changes to the Council's FMP text at this time. However, the commenter's suggested addition is unnecessary; Magnuson Act national standard 5 states that no conservation and management measure may have economic allocation as its sole purpose.

Comment: One commenter states that the descriptions in the FMP which justify management measures that maintain or improve the economic stability of coastal communities cause deep concern. The commenter believes that this will likely create conflict, cause inefficiency, and serve as an economic allocation scheme, potentially violating National Standard 5, and that such a preference scheme should not be the sole criterion on which EEZ management measures are based.

Response: The Secretary will review measures adopted by the State to determine if they are consistent with the FMP, the Magnuson Act, and its national standards in accordance with chapters 9 and 10 of the FMP. Because measures aimed at stabilizing coastal communities have purposes beyond economic allocation, they are unlikely to conflict with national standard 5.

Comment: One commenter states that the FMP allows State and Federal observer programs to coexist without coordination.

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Response: NOAA refers the commenter to section 8.1.3 of the FMP which states, "To the maximum extent practicable, the Regional Director will coordinate any Federal observer program with that required by the State." NOAA notes that there are no present plans for a Federal observer program for the crab fisheries under this FMP.

Comment: One commenter contends that separate but similar observer programs are burdensome and cause unnecessary duplication.

Response: The State currently has a crab observer program in place, while the Federal Government does not. Any concern of duplication of future observer programs will be reviewed by the Secretary if and when a Federal program is considered. NOAA notes that Magnuson Act national standard 7 prohibits, where practicable, unnecessary duplication.

Comment: Frameworking does not adequately prevent the inequitable and discriminatory application of pot limtis against larger vessels.

Response: The framework language in section 8.2.7 of the FMP requires that pot limits be designated in a nondiscriminatory manner. For example, the FMP states that pot limits related to vessel size could affect small and large vessels equally. Currently, there are no pot limits in effect in the management unit. If pot limits are implemented in the future, they must be designated in a nondiscriminatory manner.

Comment: One commenter points out that pot limits are unnecessary because alternative management measures may be utilized to meet the same objectives served by pot limits.

Response: NOAA believes that the availability of other types of management measures for meeting the same objective is not sufficient reason to eliminate a viable management tool, assuming it is applied consistently with the FMP, the Magnuson Act, and other applicable law. The Council has prepared a cooperative FMP to try to preserve the flexibility of State management, not restrict it unnecessarily.

Comment: Registration areas do not need to be frameworked. An amendment cycle does not place a restraint on the State great enough to justify discretionary use of a frameworked management measure.

Response: NOAA approves the Council's designation of registration areas as Category 2 (frameworked) measures. The Council determined that situations might arise in which a timely change to registration area designation would serve a legitimate conservation and management purpose.

Comment: Closed water regulations unnecessarily duplicate other FMP regulations.

Response: NOAA believes that the State should have the flexibility to achieve its legitimate management purposes by a combination of measures, and that there is no reason why the Federal Government should unnecessarily restrict the State. NOAA notes that any State measures closing waters to commercial fishing must be consistent with the provisions of the FMP, the Magnuson Act, and other applicable law.

Comment: Frameworking of closed water designations provides the State with too much discretion to prohibit commercial fishing.

Response: The FMP is intended to preserve, within the limits of Federal law, the State's management flexibility. The Secretary will review management actions taken by the State, including changes in closed waters, and if the State action violates the FMP, the Magnuson Act, or other applicable Federal law, the Secretary will act to supersede the State regulation in the EEZ.

Comment: The FMP unlawfully grants to the State jurisdiction to close waters outside of State territorial waters. Furthermore, the FMP does not discuss the extent to which it recognizes the State regulations relevant to Tanner crabs, subsistence harvests, and commercial fisheries.

Response: Section 306(a)(3) of the Magnuson Act provides that a State may regulate fishing vessels outside its boundaries if the vessels are registered under the law of the State. The FMP, at Section 8.1.2, assumes that all crab vessels are licensed and registered under the laws of the State. While fishing in the EEZ they are subject to all State regulations that are consistent with the FMP, Magnuson Act, and other applicable Federal law. If, in the future, vessels participate in the fishery without registering with the State, it is likely that an FMP amendment will be required to establish vessel registration for those fishermen operating in the EEZ.

Comment: The Board of Fisheries and the Commissioner of ADF&G currently entertain only administrative appeals concerning conservation emergencies. Moreover, the FMP states that the Secretary will not consider an appeal unless the appeal asserts a state regulation or statute is inconsistent with the FMP, the Magnuson Act, or other applicable Federal law. Consequently, interested parties have no forum for appeals which do not meet any of the State or Federal criteria. The commenter recommends language changes to chapters 9 and 10 of the FMP broadening the scope of the Secretarial appeals section to include more Federal policy oversight on State management decisions.

Response: This FMP is written as a cooperative FMP in an attempt to avoid problems that were encountered in the implementation of the previous Tanner and King crab FMPs. It is intended to optimize the use of limited State and Federal resources and prevent duplication of effort by making use of the existing State management expertise.

The State has made a substantial investment in facilities, communications, information systems, vessels, equipment, experienced personnel capable of carrying out extensive crab management, and research and enforcement programs. The intent of the FMP is to preserve the State's management flexibility within the bounds of Federal law. The FMP is predicated on continued sound State management policy, with full public participation in the State's regulatory process. The language changes suggested by the commenter would diminish the State's ability to exercise that policy discretion.

Comment: The CICA decision process is unclear. The FMP does not clarify how the CIAC recommendations and decisions will be made.

Response: The Council will establish operating procedures for the CIAC as it does for all standing committees. The commenter is urged to raise its concerns with the Council.

Comment: One commenter indicated that his association is pleased to see an FMP covering the BS/AI crab stocks. He also strongly recommended that work begin immediately to prepare an FMP for the Gulf of Alaska crab stocks.

Response: Comment noted. The commenter should make his request for an FMP for the Gulf of Alaska stocks to the Council.

Comment: The State believes that an FMP is unnecessary and that the primary changes resulting from the FMP are merely the additional regulatory processes associated with extra layers of administration of crab management. The State questions whether the FMP will resolve critical problems and provide meaningful benefits to participants in the fisheries, regulatory agencies, and the nation overall.

Response: The FMP is the product of a ten-year effort by the Council to balance the concerns of various user groups with the 20-year record of successful management of crab by the State. It formalizes commitments by the State and Federal governments, providing for the Board to take the lead role in crab management, but reserves oversight responsibility to the Secretary to ensure that State preseason and in-season actions comply with the FMP, the Magnuson Act, and other Federal law. NOAA believes that the cooperative FMP is the best approach to management of the crab fisheries in the BS/AI area and that it will provide meaningful benefits by limiting the State's discretion so that discrimination by state of residence will be less likely.

Comment: The State believes that the benefits derived from an FMP could be obtained more efficiently and effectively by instituting the following five modifications to the current regulatory system: (1) ADF&G and the Board could formally adopt a policy of nondiscrimination based on residency for allocation decisions within commercial fisheries; (2) an industry funded PNCIAC could be sanctioned without implementing an FMP; a nonresident seat on the Dutch Harbor Advisory Committee has already been created and an informal guide describing the State regulatory system could be prepared; (3) more frequent meetings could be held between the ADF&G, Board of Fisheries, NMFS, and interestd crab industry members; (4) a joint statement of principles could be prepared between NMFS and ADF&G, with an annual review by the Secretary of all State management actions, and (5) a memorandum of understanding could be developed between the State and the U.S. Coast Guard to formalize enforcement commitments.

Response: NOAA believes that the cooperative FMP is a preferable form of management. Controversial management measures are either fixed in the FMP requiring an FMP amendment to change or frameworked with factors for the State to consider when information is available. This provides an extra degree of predictability to the management process. NOAA also believes that additional benefits will be derived from the formal appeals process that is contained in the FMP.

Comment: The State indicated that if the Secretary determines an FMP is necessary for managing the king and Tanner crab fisheries of the BS/AI, it will require Federal funds in the amount of $181,400 to cover costs to the State associated with implementation of the FMP during the first year, and $171,400 annually thereafter.

Response: The Alaska Region, NMFS, has requested supplemental funding to cover any additional costs to the State, and will work with the State on determination of what such costs should be. NOAA has made no advance commitment of specific funding.

Comment: One commenter expressed concern with an FMP that delegates Federal management authority to the State.

Response: The FMP does not delegate Federal management authority to the State. The FMP allows continuation of the State's authority over vessels in the EEZ, to the extent authorized under the Magnuson Act, subject to Federal oversight.

Three categories of management measures are created: (1) Those that are specifically fixed in the FMP, and require an FMP amendment to change; (2) those that are framework-type measures which the State can change following criteria set out in the FMP, and (3) those measures that are neither rigidly specified nor frameworked in the FMP. The measures in (2) and (3) may be adopted as State laws subject to the appeals process outlined in the FMP.

Comment: One commenter believes that nonresidents of the State will not receive equal treatment with Alaska residents.

Response: Magnuson Act national standard 4 and other Federal and State laws protect against discrimination based on state of residence. The FMP also affords a formalized review and appeals procedure to prevent the possibility of such discrimination.

Comment: One commenter expressed concern that the FMP's concept could become a precedent for management of groundfish fisheries.

Response: This FMP recognizes the State's expertise in managing the king and Tanner crab fisheries. NOAA, at this time, is not considering deferring

management authority for the groundfish to the State.

Comment: The FMP should be amended to allow for groundfish fishermen to participate in the crab decisionmaking process relative to crabbers' bycatch needs. The FMP should specify criteria for selection of groundfish fishermen as participants on both the Alaska Board of Fisheries and the advisory PNCIAC.

Response: Under current State regulations, groundfish fishermen, as well as any other interested members of the public, may participate in the Board's regulatory process (see Appendix C of the FMP). NOAA considers this level of public participation adequate. The Council is responsible for establishing membership qualifications for the PNCIAC.

Comment: The cooperative management contemplated by the FMP is a total abandonment of the entire purpose and policy underlying the enactment of the Magnuson Act.

Response: This FMP incorporated management measures necessary and appropriate for the conservation and the management of the fishery. The FMP limits direct Federal involvement but retains Federal oversight to assure compliance with the FMP, Magnuson Act, and other applicable Federal law. This approach is consistent with the purposes and policy of the Magnuson Act and is not an abandonment of Federal responsibilities. Regionalization was built into the Magnuson Act to provide flexibility and creativity in dealing with unique or unusual fisheries.

Comment: Although the FMP requires the State to consider the impacts on coastal communities of its management measures, it does not define which coastal communities will be considered and how impacts on coastal communities will be quantified, and how those impacts for non-Alaskan coastal communities effectively can be presented and evaluated under the FMP. The special interest treatment envisioned is ill-conceived and will not square with national standards. These oversights should be corrected before FMP implementation.

Response: Section 7.2.2 of the FMP states that fishery management measures shall maximize economic and social benefits to the nation over time. Economic and social benefit is a complex term as it relates to fishery management. The FMP broadly defines economic and social benefits to include, without limitation, "profits, income, employment, benefits to consumers, and less tangible or less quantifiable social benefits such as the economic stability of coastal communities;" (FMP § 7.2.2). Thus, economic stability of coastal communities is just one of the broad range of issues that may be considered when assessing the economic and social effects of any management measure.

The commenter correctly points out that the FMP does not specify which coastal communities will be considered and how impacts on those communities will be quantified. This lack of specificity is unavoidable at this point. However, as particular management measures are proposed and evaluated, relevant impacts on affected coastal communities will be evaluated as thoroughly as available data allow.

The commenter is also apparently concerned that the FMP ignores social and economic dependence of communities outside Alaska. NOAA notes that the FMP does not prohibit the State and the Secretary from considering the relevant impacts of proposed measures on all affected communities, whether inside or outside the State of Alaska. NOAA also notes that Magnuson Act National Standard 4, the FMP, and other applicable law prohibit conservation and management measures that discriminate between residents of different states.

Comment: The FMP fails to specify, in detail, procedures to be used in deriving guideline harvest levels (GHLs) or biomass estimates for the crab stocks. Use of this resource and attainment of optimum yield (OY) must maintain a national perspective. The FMP relies upon historical harvest levels as a basic methodology to establish maximum sustainable yield (MSY), OY, and upper limits for annual catch levels. This approach is questionable and could lead to arbitrary and politically motivated management decisions. This could be avoided through mandatory annual stock assessment procedures to attain crab biomass data which will provide confidence in determining the amount of crab available.

Response: Although the estimate of MSY is of questionable utility in managing crab stocks due primarily to highly variable recruitment, MSY has been estimated on the basis of the best scientific data available for each species and stock of king and Tanner crab covered in this FMP. Lacking detailed information, MSY is equated to the average catch levels in recent fisheries.

The FMP defines optimum yield in Chapter 4. The definition of OY prescribes that the benefits of the fishery resources be allocated among all of the people affected by the fishery. The estimates of OY indicate short-term harvest potential during periods of high crab abundance. However, they may overstate the harvest potential on a continuing basis, because peaks of harvest associated with developing fisheries may have contributed to subsequent volatility in the abundance of crab stocks.

In addition the OY estimates do not indicate which stocks should be subject to rebuilding schedules, not the manner in which the national interest is served over time through a balance of economic, social, and ecological factors relevant to OY. Because of temporal variability in these factors, GHLs are adjusted annually based upon current evaluations of the biological and socioeconomic components. The large upper limit on OYs is specified to accommodate the full range of possible GHL specifications depending upon annual assessments of short- and long-term tradeoffs in these factors.

The GHL is composed primarily of two interrelated components: a biological component and a socioeconomic component. The FMP requires the State to consider five factors (see section 8.2.2 of the FMP) to the extent information is available when establishing GHLs.

The process of determining a GHL which prevents recruitment overfishing and maximizes socioeconomic benefits includes the routine collection and analysis of biological, economic, social, and other data. Crab resources of the BS/AI area vary in the level of scientific information available for management. Consequently, exact procedures for determining appropriate acceptable biological catches and GHLs vary due to differences in the quality and quantity of resource data bases. Information necessary to evaluate the five Federally approved factors for establishing GHLs include data from trawl surveys, pot surveys, fishery performance statistics (catch per unit of effort), price, personal income, employment and other market and income data.

NOAA fisheries already conducts an annual trawl survey in the eastern Bering Sea to determine the distribution and abundance of the crab resources.

Comment: Observers are needed on crab vessels. The current State program has not collected detailed data on a timely basis. The FMP should require all crab catcher vessels to accept NMFS observers if requested to do so. A requirement placing NMFS observers on crab catcher vessels while fishing in the EEZ should be incorporated into the FMP.

Response: NOAA agrees observer requirements are important to attainment of the biological conservation and research and management objectives of the FMP. The commenter is referred to section 8.1.3 of the FMP, which states, "Any vessel fishing for king or Tanner crab, and/or processing king or Tanner crab within the BS/AI area, shall be required to take aboard an observer, when so requested by the Director, Alaska Region, NMFS." NOAA considers the current level of State observer coverage adequate at this time.

Comment: Allocative management measures should be confined to Category 1; as a minimum, the following should be fixed in the FMP as Federal management measures: pot limits, registration areas, closed waters, reporting requirements, and bycatch limits. They key management concepts currently listed within the frameworking Category 2 should be placed within Category 1. This will ensure a balanced approach and prevent discrimination on the basis of State residence.

Response: The Council designed this FMP as a cooperative FMP for reasons previously mentioned. The FMP describes legitimate and non-allocative reasons for all of these management measures. There is no reason to deny the State the flexibility needed to manage the crab resources in the most efficient and timely manner possible. All management measures must be consistent with the FMP, Magnuson Act, and other applicable Federal law, all of which prevent discrimination on the basis of State residence.

Comment: One commenter states that the FMP framework provisions do not conform with the NMFS Operational Guidelines-Fishery Management Plan Process (1983).

Response: The commenter evidently has confused the concept of Federal frameworking with the concept of frameworking utilized in this FMP. The NMFS Operational Guideline citation refers to a conventional frameworked FMP, implemented by Federal regulations pursuant to the Magnuson Act. Although this cooperative FMP uses the term "framework," it results instead in the limited deferral of management authority to the State within the boundaries defined in the FMP. The cited NMFS Operational Guidelines are inapposite.

Comment: The FMP defers reporting requirements to the State. This is unacceptable because the crab fishery bycatch of both crab and halibut remain unaccounted. Handling and other bycatch mortality of crab is not effectively measured under this system. Reporting requirements need to be designated Category 1 management measures.

Response: Placing reporting requirements into Category 1 would unnecessarily limit the State's flexibility to promulgate conservation and management measures in a timely manner. NOAA notes that the State already collects information on incidental catches in crab pots from ADF&G samplers, interviews and observers on board catcher processors and uses such information in determining the need for fisheries closures (see State E.O. 4-2-09-89). The commenter is urged to suggest any modifications to this program to the appropriate State agency.

Comment: Any decision regarding the amount of crab allowable as bycatch in groundfish fisheries is an allocation decision, and should be reserved to the Council.

Response: The crab FMP only defers bycatch limits in crab fisheries to the State. Crab bycatch in groundfish fisheries is managed under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands area implemented by regulations at 50 CFR 611.93 and 50 CFR Part 675.

Comment: Bycatch limits should be set for crab fishermen. This will have the positive impact of encouraging a reduction in the crab fishermen's incidence of non-target crab bycatch.

Reponse: The FMP already authorizes the State to impose bycatch limits without the need for FMP amendment. The commenter is urged to raise this issue with the appropriate State agency.

Comment: One commenter expressed concern with the appeal procedure described in chapter 10 of the FMP to set aside in-season actions. He wanted to be certain that actions taken would be based on a written public record.

Response: A written record of the appeal and the Secretary's final action will be made available for review by interested parties.

Comment: The CIAC could delay the appeals process. The CIAC's comments should be in writing and be made available to the public within 30 days of making its recommendations.

Response: The CIAC consists of the Regional Director of NMFS, the Commissioner of ADF&G and the Director of the Washington State Department of Fisheries or their designees. NOAA expects these members to fulfill their responsibilities in a timely fashion. For in-season management actions the Secretary allows CIAC five days for comment on an appeal. However, if the Secretary determines that there is not sufficient time available for this review, he will seek comments by telephone from the Commissioner of ADF&G and from the Council.

The CIAC's comments will be in writing and will be made available upon request.

Comment: One commenter questioned the fairness of informal hearings provided for by the FMP.

Response: The purpose of informal hearings is to supplement the record to increase the Secretary's knowledge of issues. NOAA believes the informal hearings may be necessary before taking final action on any appeals.

Comment: One commenter questioned the FMP's prohibition against bringing an in-season appeal of a State regulation that had been unsuccessfully appealed preseason.

Response: Controversy regarding the consistency of State regulations with the FMP and applicable law must be put to rest promptly and finally, after full consideration of relevant issues. NOAA sees no need to allow an additional opportunity for in-season appeal of State regulations already determined to be consistent with the Magnuson Act, the FMP, and other applicable Federal law.

Comment: A requirement which will advise the interested public of the basis for rejection or acceptance of an appeal should be required by the FMP.

Response: A written record of the notice and all public documents will be available for review by interested parties.

Comment: One commenter recommended instituting a federally managed crab FMP for both BS/AI and the GOA.

Response: The Council considered several factors in determining the boundaries for the management unit. It noted that the stocks in the BS/AI are discrete from stocks in the GOA and that the physical environment has attributes that are distinguishable. It also noted that the fisheries, composition of resident and nonresident fishermen, the composition and mix of vessel size classes and portion of fisheries occurring in state territorial waters is different.

One of the alternatives that the Council considered and ultimately rejected was a conventional federal crab FMP.

Comment: One commenter would like the Board, the PNCIAC, and the CIAC to take the same oath of office as the Council members take.

Response: Members of the Council's standing committees are not required to take an oath; only appointed Council members are. All appointed members of the Board do sign a State oath of office. NOAA does not believe that it is necessary for the members of the Board

to take the same oath of office as the Council.

Implementation of FMP

No immediate Federal regulatory action is necessary to implement this FMP. The Secretary has preliminarily determined that existing State laws appear to be consistent with the FMP, the Magnuson Act, and other applicable Federal law. The Secretary later may find that a State regulation or statute governing king or Tanner crab in the BS/AI is inconsistent with the FMP, the Magnuson Act, or other applicable Federal law, either as the result of an appeal or the discretionary review of measures adopted by the Board provided for in the FMP. If necessary, he may publish a regulation in the **Federal Register** superseding such State regulation or statute as it applies in the EEZ.

Appeals to the Secretary

Sections 9 and 10 of the FMP establish a procedure for interested members of the public to appeal State of Alaska regulations and statutes to the Secretary. Appeals conforming to the criteria described in those sections may be submitted in writing to the Regional Director, NOAA Fisheries, P.O. Box 21668, Juneau, Alaska 99802–1668. Appeals must set forth the reasons why the appellant believes the challenged regulations or statutes are inconsistent with the FMP, the Magnuson Act, or other applicable Federal law, and must include any supporting facts or documentation.

Classification

The Regional Director has determined that the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands is necessary for the conservation and management of the Bering Sea and Aleutian Islands crab fisheries, and that this FMP is consistent with the Magnuson Act and other applicable law. A copy of the FMP may be obtained from the Council at the address above.

The Council prepared an environmental assessment (EA) for this FMP. The Assistant Administrator for Fisheries concluded that there will be no significant impact on the environment as a result of FMP approval. A copy of the EA may be obtained from the Council at the address above.

Because this FMP requires no implementing regulations, 5 U.S.C. section 553 of the Administrative Procedure Act, Executive Order 12291 and the Regulatory Flexibility Act do not apply to this notice of FMP approval.

This FMP does not contain collection of information requirements subject to the Paperwork Reduction Act.

The Council determined that this FMP is consistent to the maximum extent practicable with the approved coastal zone management program of Alaska. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. The State agencies failed to comment within the statutory time period; therefore, State concurrence is assumed.

The Federalism Implementation Officer of the Department of Commerce has certified that the policies in the FMP are consistent with the federalism principles, criteria, and requirements set forth in the sections 2 through 5 of Executive Order 12612. A copy of the Federalism Assessment prepared for this FMP may be obtained from the Regional Director, Alaska, at the address above.

The Secretary approved the FMP on June 2, 1989, and determined that it is consistent with the Magnuson Act and other applicable law. Therefore, NOAA issues this notice announcing approval of the FMP.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 6, 1989.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 89–10236 Filed 7–10–89; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Guatemala

July 5, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: July 13, 1989.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715. For information on categories on which consultations have been requested, call (202) 377–3740.

SUPPLEMENTARY INFORMATION:

Authority. E.O. 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Article 3 of the Arrangement Regarding International Trade in Textiles.

Inasmuch as the consultations held between the Governments of the United States and Guatemala have not resulted in a mutually satisfactory limit for Categories 347/348, the United States Government has decided to establish a twelve-month limit on these categories for the period April 26, 1989 through April 25, 1990.

The United States remains committed to finding a solution concerning Categories 347/348. Should such a solution be reached in further consultations with the Government of Guatemala, further notice will be published in the **Federal Register.**

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 54 FR 21268, published on May 17, 1989.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

July 5, 1989.

Commissioner of Customs,
Department of Commerce,
Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 13, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 347/348, produced or manufactured in Guatemala and exported during the twelve-month period which began on April 26, 1989 and extends through April 25, 1990, in excess of 686, 682 dozen.[1]

Textile products in Categories 347/348 which have been exported to the United States prior to April 26, 1989 shall not be subject to this directive.

Textile products in Categories 347/348 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–10167 Filed 7–10–89; 8:45am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after April 25, 1989.

COMMODITY FUTURES TRADING COMMISSION

Coffee, Sugar & Cocoa Exchange, Inc.; Proposed Amendment Relating to the Coffee "C" Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Proposed Contract Market Rule Changes.

SUMMARY: The Coffee, Sugar & Cocoa Exchange, Inc. ("CSCE" or "Exchange") has submitted a proposal to amend its coffee "C" futures contract. The proposed amendment will increase the minimum permissible price change to five one-hundredths of one cent per pound from one one-hundredth of one cent per pound for trading in the coffee "C" futures contract. In accordance with Section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that this proposal is of major economic significance. On behalf of the Commission, the Division is requesting comment on this proposal.

DATE: Comments must be received on or before August 10, 1989.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the amendments to the CSCE coffee "C" futures contract.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254–7303.

SUPPLEMENTARY INFORMATION: The coffee "C" contract's current rules mandate that all bids and offers to buy or sell coffee "C" contracts shall be quoted on a per pound basis, in cents and decimal fractions of one cent. The contract's current rules do not permit transactions in coffee "C" futures contracts at prices consisting of fractions smaller than one one-hundredth of one cent per pound ($.0001).

Under the proposed amendment, transactions in coffee "C" futures contracts would not be permitted at prices consisting of fractions smaller than five one-hundredths of one cent per pound ($.0005). In its submission proposing the amendment, the Exchange indicated that it has conducted a study of trading in coffee "C" futures contracts during the last six trading days of February 1989 and found that approximately 97 to 99 percent of all price changes that occurred during the study period were at fractional price intervals of $.0005 per pound. The Exchange indicates that, following Commission approval, the amended rules would be made effective with respect to all existing and newly listed contract months.

The Division, on behalf of the Commission, requests comment on the proposed increase in the minimum price fluctuation. The Division also specifically requests comment on the Exchange's proposal to apply the proposed increase in the minimum permissible price change to existing positions in currently listed coffee "C" futures contract months.

Copies of the proposed amendment will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

The material submitted by the Exchange in support of the proposed amendment may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)). Requests for copies of such material should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendment should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC, by the specified date.

Issued in Washington, DC on July 5, 1989.

Steven Manaster,

Director, Division of Economic Analysis.

[FR Doc. 89–16135 Filed 7–10–89; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Army Tracking Study (ATS); No Form; and No OMB Control Number.

Type of Request: New.

Average Burden Hours/Minutes per Response: 25 minutes.

Frequency of Response: Quarterly.

Number of Respondents: 1,000.

Annual Burden Hours: 250.

Annual Responses: 1,000.

Needs and Uses: The data is to be used by staff agencies within USAREC and Headquarters, Department of the Army, as the basis for developing incentives and advertising programs for near term recruiting activities related specifically to the target population. Without this survey, the planner will have no substantive national current data on which to base policy and program design decisions.

Affected Public: Individuals or households.

Frequency: Quarterly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written reqeusts for copies of the information collection proposal should be sent to Ms. Rascee-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway,

Suite 1204, Arlington, Virginia 22202-4302.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 6, 1989.

[FR Doc. 89-16231 Filed 7-10-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

June 8, 1989.

The USAF Scientific Advisory Board Ad Hoc Committees on Electronic Combat and Air-to-Surface Conventional Munitions will meet on 12 August 1989 from 8:00 a.m. to 12:00 p.m. at the Pentagon, Washington DC.

The purpose of this meeting is to brief the conclusions and recommendations of the summer studies. This meeting will involve discussions of classified defense matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-16160 Filed 7-10-89; 8:45 am]

BILLING CODE 3910-01-M

Defense Mapping Agency

Membership; Defense Mapping Agency Performance Review Board

AGENCY: Defense Mapping Agency (DMA), Department of Defense (DoD).

ACTION: Notice of membership of the Defense Mapping Agency Performance Review Board (DMA PRB).

SUMMARY: This notice announces the appointment of the members of the DMA PRB. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). The Board provides fair and impartial performance appraisals and makes recommendations regarding performance ratings and performance awards to the Director, DMA.

EFFECTIVE DATE: August 1, 1989.

FOR FURTHER INFORMATION CONTACT: Gerald F. Pittman, Defense Mapping Agency, Civilian Personnel Division, 8613 Lee Highway, Fairfax, VA 22031-2137, telephone (703) 756-9153.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following is a standing register of executives appointed to the DMA PRB; specific PRB panels will be constituted from this standing register. Executives listed will serve a one-year renewable term, effective August 1, 1989.

Ancell, A. Clay, Deputy Director for Programs, Production and Operations, DMA Aerospace Center
Berg, Richard A., Chief, Scientific Data Department, DMA Hydrographic/Topographic Center
Brown, William J., Deputy Director for Programs, Production and Operations, DMA Hydrographic/Topographic Center
Coglan, Thomas K., Chief, Digital Products Department, DMA Hydrographic/Topographic Center
Daugherty, Kenneth I., Director, DMA Systems Center
Dierdorff, Curtis L., Director, Personnel Office, Headquarters, DMA
Gilliam, Penman R., Deputy Director for Management and Technology, Headquarters, DMA
Hall, Charles D., Deputy Director for Research and Engineering, Headquarters, DMA
Hall, Robert H., Deputy Director for Programs, Production and Operations, DMA Reston Center
Hogan, William N., Deputy Director for Programs, Production and Operations, Headquarters, DMA
Jackson, Mikel F., Assistant Deputy Director for Production and Distribution, Headquarters, DMA
Krygiel, Annette J., Deputy Director for Modernization Development, DMA Systems Center
Labovitz, Mordecai Z., Director of Acquisition, Headquarters, DMA
Mendez, John M., Deputy Director for Transition Management, Headquarters, DMA
Muncy, Larry N., Chief, Scientific Data Department, DMA Aerospace Center
Peeler, Paul L., Jr., Technical Director, DMA Reston Center
Phillips, Earl W., Assistant Deputy Director for Programming, Headquarters, DMA
Robinson, Bill E., Director, DMA Telecommunications Services Center
Skidmore, James R., Technical Director, DMA Aerospace Center
Smith, Kathleen M., Chief, Digital Products Department, DMA Aerospace Center
Smith, Lon M., Technical Director, DMA Hydrographic/Topographic Center
Smith, Robert N., Chief, Data Services Department, DMA Reston Center
Smith, William D., Chief, Program/Budget Division (Deputy Comptroller), Headquarters, DMA
Vaughn, John R., Comptroller, Headquarters, DMA
Ward, Curtis B., Deputy Director for Program Integration and Operation, DMA Systems Center.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 6, 1989.

[FR Doc. 89-16232 Filed 7-10-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.044]

Notice Inviting Applications From Current Grantees for New Initiatives Under the Talent Search Program for Fiscal Year 1989

Purpose:

To provide grant awards to current Talent Search grantees to attract seventh and eighth grade students and dropouts as project participants in order to encourage them to complete high school and continue their education at the postsecondary level after graduation. In order to be considered for funding, applicants must submit proposals that include the following project activities: (a) Identification of eligible seventh and eighth grade participants; (b) academic, personal, and career counseling; (c) basic skills instruction; (d) tutoring; (e) mentoring; (f) participant follow-up; (g) involvement; (h) campus visits; and (i) evidence of cooperative relationships with local businesses, community groups, and school districts.

Deadline for Transmittal of Applications: August 11, 1989.

Applications Available: July 12, 1989.

Funds Available: The Secretary of Education has set aside $2.9 million for awards for this new initiative under the Talent Search Program.

Estimated Size of Award: $50,000.

Estimated Number of Awards: 55.

Note: The Department is not bound by any estimates in this notice.

Project Period: 24 months.

Applicable Regulations: Regulations applicable to the Talent Search Program are: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 85; (b) the Notice of Final Priority soon to be published in the **Federal Register**; and (c) the Talent Search regulations in 34 CFR Part 643.

It is the policy of the Department of Education not to solicit applications before the publication of a notice of final priority. However, in this case it is essential to solicit applications for this competition on the basis of the notice of proposed funding priority published in the **Federal Register** on May 5, 1989 at 54 FR 19534 in order to make the awards in fiscal year 1989.

The Secretary has carefully reviewed the few public comments received on the proposed priority and does not expect to make any changes in the priority on the basis of the comments. If any changes are made in the final priority for this program, applicants will be given a chance to amend their appalications.

For Applications or Information Contact: Mrs. Goldia Hodgdon, Chief, Education Outreach Branch, Division of Student Services, U.S. Department of Education (Room 3060, Regional Office Building 3), 400 Maryland Avenue SW., Washington, DC 20202-5249.

Telephone number: (202) 732-4804.

Program Authority: 20 U.S.C. 1070d, 1070d-1.

Dated: June 29, 1989.

James B. Williams,

Acting Assistant Secretary for Postsecondary Education.

(Catalog of Federal Domestic Assistance Number: 84.044—Talent Search Program)

[FR Doc. 89-16310 Filed 7-10-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Intent To Negotiate a Grant Renewal With the Research Foundation of the State University of New York (SUNY)

Summary: The Department of Energy, Idaho Operations Office, intends to negotiate on a noncompetitive basis with SUNY at Syracuse, New York for the purpose of renewing Grant No. DE-FG07-87ID12673. The proposed research will allow the awardee to evaluate the performance of membranes developed in earlier phases of the grant. The evaluation will be performed through a pilot scale test program involving membrane separations of several industrially important organic/water streams at an industrial host site, W. R. Grace and Co. The authority and justification for the determination to make this renewal award on a noncompetitive basis is DOE Financial Assistance Rules 10 CFR 600.7(b)(2)(i), (A), and (B). The proposed work is a renewal of and necessary to the satisfactory completion of Program objectives for the work presently being conducted at SUNY under the current grant. Competition would have a significant adverse effect on continuity of the work. The effort would likely be conducted using resources donated by a third party. However, without DOE support SUNY's involvement and public dissemination of the results would be minimal. DOE support will, therefore, enhance the public benefits to be derived. DOE knows of no other entity which is conducting or is planning to conduct this activity. The renewal award will extend the project term of the grant by one year at an estimated cost of $225,000. This funding level will be shared 56% DOE and 44% SUNY. Public response may be addressed to the contract specialist stated below.

Contact: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402, Elizabeth M. Bowhan, Contract Specialist (208) 526-1229.

Issued this 29th day of June, at Idaho Falls, Idaho.

Date: June 29, 1989.

J. Roger Gonzales,

Director, Contracts Management Division.

[FR Doc. 89-16173 Filed 7-10-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 89-36-NG]

Northern Natural Gas Company, Division of Enron Corp.; Application To Import Natural Gas From Canada

AGENCY: Department of Energy.

ACTION: Notice of Application for Blanket Authorization to Import Natural Gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on June 13, 1989, of an application filed by Northern Natural Gas Company, Division of Enron Corp. (Northern), requesting a blanket authorization to import up to 219 Bcf of natural gas from Canada over a two-year term beginning on the date of first delivery. Northern states that it intends to use existing facilities to transport the imported gas and will file quarterly reports detailing each transaction.

The application is filed under to section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than August 10, 1989.

FOR FURTHER INFORMATION:

Larine A. Moore, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478;
Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Northern, a division of Enron Corp. which is organized under the laws of the State of Delaware, with its principal place of business located in Houston, Texas, proposes to purchase gas from a variety of Canadian suppliers on a short-term, interruptible basis at market responsive prices. Northern intends to import the purchased gas for system supply for resale to its customers. The specific terms of each import transaction, including price and volumes, would be negotiated on an individual basis to reflect market conditions. Northern contemplates that the imported volumes would enter the U.S. either at Monchy, Saskatchewan, and be transported from that point via the existing pipeline facilities related to the Alaska Natural Gas Transportation System (ANGTS) or at Emerson, Manitoba, via the facilities of Great Lake Gas Transmission Company, or at other existing import points. The decision on the application for import authority will be made consistent with the DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The application asserts that this import arrangement will be competitive and thus in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if this request is granted, the authorization would be conditioned on the filing of quarterly reports to facilitate monitoring of the operation and effectiveness of the blanket import program.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, et seq., can be accomplished by means of a categorical exlcusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that

notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import-export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., e.d.t., August 10, 1989.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Northern's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 30, 1989.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 89-16174 Filed 7-10-89; 8:45 am]

BILLING CODE 6450-01-M

Waste Isolation Pilot Plant (WIPP) Draft Supplement to the Environmental Impact Statement Public Comment Period Extension

AGENCY: U.S. Department of Energy.

ACTION: Extension of the public comment period on the draft Supplemental Environmental Impact Statement (SEIS) on WIPP.

SUMMARY: On April 21, 1989, the Department of Energy (DOE) published a notice in the **Federal Register** (54 FR 16350) announcing the availability of the draft SEIS, the subsequent 60-day public comment period, and the six public hearing schedules, locations and procedures. On June 12, 1989, a notice was published (54 FR 24940), announcing two additional hearings in Texas and New Mexico and a 7-day extension of the comment period. On June 26, 1989, a notice was published (54 FR 26828) announcing a third additional public hearing on the SEIS in Ogden, Utah and an extension of the public comment period to July 11, 1989. In response to requests, the public comment period has been extended to July 20, 1989 (90-days total), to ensure that all interested citizens have time to comment.

Participation Procedures: Written comments should be mailed to the address below and postmarked by July 20, 1989.

ADDRESSES: Written comments should be directed to: W. John Arthur III, Project Manager, WIPP SEIS Project Office, U.S. Department of Energy, 6301 Indian School Road NE., 7th Floor, Albuquerque, NM 87110.

FOR FURTHER INFORMATION CONTACT:

W. John Arthur, III, WIPP SEIS Project Manager, U.S. Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, NM 87110, (505) 889-3038

or

Carol Borgstrom, Director, Office of NEPA Project Assistance (EH-25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4600.

Issued in Washington, DC, this 6th day of July 1989.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 89-16311 Filed 7-7-89; 12:03 pm]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. G-13299-007, et al.]

ARCO Oil and Gas Co., Division of Atlantic Richfield Company, et al.; Applications for Termination or Amendment of Certificates [1]

June 29, 1989.

Take notice that each of the Applicants listed herein has filed an applicatin pursuant to section 7 of the Natural Gas Act for authorization to terminate or amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before July 10, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Filing code:
A—Initial service
B—Abandonment
C—Amendment to add acreage
D—Assignment of acreage
E—Succession
F—Partial succession

Docket No. and date filed	Applicant	Purchaser and location	Description
G-13299-007 D 5-30-89	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Houston, TX 75221.	ANR Pipeline Company, Laverne Field, Beaver and Harper Counties, Oklahoma.	Assigned 9-1-89 to Cheyenne Petroleum Company.
G-13552-001 D 6-5-89	Texaco, Inc., P.O. Box 52332, Houston, TX 77052.	Texas Eastern Transmission Corporation, Hidalgo Field, Hidalgo County, Texas.	Assigned 4-1-89 to Sue-Ann Oil Gas Company.
CI61-819-000 D 5-3-89	Texaco Producing Inc., P.O. Box 52332, Houston, TX 77052.	ANR Pipeline Company, Cedardale Field, Major County, Oklahoma.	Assigned 11-1-88 to Plains Resources Inc. and 1-1-89 Post Oak Oil Company.
CI63-1261-001 D 2-7-89	Amoco Production Company, P.O. Box 50879, New Orleans, LA 70150.	Valley Gas Transmission Company, Big Lake Field, Cameron Parish, Louisiana.	Assigned 11-30-84 to Dazet Oil & Gas Company.
CI70-674-000 D 5-22-89	Oryx Energy Company, P.O. Box 2880, Dallas, TX 75221.	NI Gas Supply, Elk City Field, Beckham County, Oklahoma.	Assigned 4-1-89 to Scarth Oil and Gas Company.
CI76-533-001 D 5-15-89	Chevron U.S.A. Inc., P.O. Box 3725, Houston, TX 77253.	Panhandle Eastern Pipe Line Company, Hansford Field, Hansford County, Texas.	Assigned 2-1-89 to Faulconer Energy Joint Venture.
CI88-192-001 D 3-13-89	Terra Resources, Inc., P.O. Box 2329, Tulsa, Oklahoma 74101.	Arkla Energy Resources, a division of Arkla, Inc., Leflore, Latimer, and Pittsburg Counties, Oklahoma.	Assigned 9-30-88 to Puritan Oil & Gas Corp.
CI88-192-002 D 3-13-89	Terra Resources, Inc.	Arkla Energy Resources, a division of Arkla, Inc., Leflore, Latimer and Pittsburg Counties, Oklahoma.	Assigned 9-30-88 to Puritan Oil & Gas Company.
CI89-383-000 (G-10165) D 4-25-89	Chevron U.S.A	Tennessee Gas Pipeline Company, Bully Camp Field, Lafourche Parish, Louisiana.	Assigned 10-1-86 to Greenhill Petroleum Corporation.
CI89-419-000 (G-18235) D 5-15-89	Oxy USA Inc., P.O. Box 300, Tulsa, OK 74102	Transwestern Pipeline Company, Section 52, Block 1, I&GN Survey, Hemphill County, Texas.	Assigned 5-3-89 to Paco Petroleum Inc.
CI89-426-000 (CI76-779) D 5-26-89	Union Pacific Resources Company, P.O. Box 7, Forth Worth, TX 76101.	Western Gas Processors Ltd., Manning Field, Converse County, Wyoming.	Assigned 1-1-89 to Berenergy Corporation.
CI89-427-000 (CI77-763) D 5-26-89	Union Pacific Resources Company	Colorado Interstate Gas Company, Shell Creek Field, Moffat County, Colorado.	Assigned 1-1-89 to Berenergy Corporation.
CI89-429-000 (CI65-1275) D 5-30-89	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Williams Natural Gas Company, Weis "A" Unit, Ellis County, Oklahoma.	Assigned 1-1-87 to Hondo Oil and Gas Company.
CI89-430-000 (CI88-192-000) D 3-13-89	Terra Resources, Inc.	Arkla Energy Resources, a division of Arkla, Inc., Leflore, Latimer and Pittsburg Counties, Oklahoma.	Assigned 9-30-88 to Puritan Oil & Gas Corporation.
CI89-431-000 (CI88-192-000) D 3-13-89	Terra Resources, Inc.	Arkla Energy Resources, a division of Arkla, Inc., Leflore, Latimer and Pittsburg Counties, Oklahoma.	Assigned 9-30-88 to Puritan Oil & Gas Corporation.
CI89-432-000 (CI88-192-000) D 3-13-89	Terra Resources, Inc.	Arkla Energy Resources, a division of Arkla, Inc., Leflore, Latimer and Pittsburg Counties, Oklahoma.	Assigned 9-30-88 to Puritan Oil & Gas Corporation.
CI89-433-000 (CI88-192-000) D 3-13-89	Terra Resources, Inc.	Arkla Energy Resources, a division of Arkla, Inc., Leflore, Latimer and Pittsburg Counties, Oklahoma.	Assigned 9-30-88 to Puritan Oil & Gas Corporation.
CI89-434-000 (CI88-192-000) D 3-13-89	Terra Resources, Inc.	Arkla Energy Resources, a division of Arkla, Inc., Leflore, Latimer and Pittsburg Counties, Oklahoma.	Assigned 9-30-88 to Puritan Oil & Gas Corporation.
CI89-435-000 (CI88-192-000) D 3-13-89	Terra Resources, Inc.	Arkla Energy Resources, a division of Arkla, Inc., Leflore, Latimer and Pittsburg Counties, Oklahoma.	Assigned 9-30-88 to Puritan Oil & Gas Corporation.

BEST COPY AVAILABLE

Docket No. and date filed	Applicant	Purchaser and location	Description
CI89-439-000 (G-4624) D 2-7-89	Amoco Production Company	Arkla Energy Resources, a division of Arkla, Inc., Bear Creek Field, Bienville Parish, Louisiana.	Assigned 9-28-84 to B. R. Eubanks, M.D.
CI89-440-000 (G-16465) D 2-7-89	Amoco Production Company	Texas Gas Transmission Corporation, Calhoun and Carlton Fields, Lincoln and Ouachita Parishes, Louisiana.	Assigned 9-30-84 to B. R. Eubanks, M.D.
CI89-441-000 (CI69-883) D 2-7-89	Amoco Production Company	Arkla Energy Resources, a division of Arkla, Inc., Calhoun Field, Ouachita Parish, Louisiana.	Assigned 9-28-84 to B. R. Eubanks, M.D.
CI89-442-000 (CI67-1666) D 2-7-89	Amoco Production Company	Arkla Energy Resources, a division of Arkla, Inc., Danville Field, Bienville Parish, Louisiana.	Assigned 9-28-84 to B. R. Eubanks, M.D.
CI89-443-000 (G-4070) D 2-7-89	Amoco Production Company	Arkla Energy Resources, a division of Arkla, Inc., East Haynesville Field, Clairborne Parish, Louisiana.	Assigned 9-30-84 to B. R. Eubanks, M.D.
CI89-444-000 (G-17582) D 2-7-89	Amoco Production Company	Texas Gas Transmission Corporation, Minden Field, Webster Parish, Louisiana.	Assigned 9-12-84 to Crystal Oil Company.
CI89-445-000 (G-4305) D 2-7-89	Amoco Production Company	Arkla Energy Resources, a division of Arkla, Inc., Ruston Field, Lincoln Parish, Louisiana.	Assigned 9-28-84 to B. R. Eubanks, M.D.
CI89-446-000 (G-3660) D 2-7-89	Amoco Production Company	Arkla Energy Resources, a division of Arkla, Inc., Sentell Field, Bossier Parish, Louisiana.	Assigned 9-28-84 to B. R. Eubanks, M.D.
CI89-447-000 (G-15130) D 2-7-89	Amoco Production Company	ANR Pipeline Company, Big Lake Field, Cameron Parish, Louisiana.	Assigned 11-30-84 to Dazst Oil & Gas Company.
CI89-448-000 (CI61-143) D 2-7-89	Amoco Production Company	United Gas Pipe Line Company, Chauvin Field, Terrebone Parish, Louisiana.	Assigned 9-12-84 to IMC Exploration Company.
CI89-449-000 (G-3209) D 2-7-89	Amoco Production Company	Columbia Gas Transmission Company, Church Point Field, Acadia Parish, Louisiana.	Assigned 1-9-85 to Sierra Production Company.
CI89-450-000 (G-6076) D 2-7-89	Amoco Production Company	ANR Pipeline Company, South Jennings Field, Jefferson Davis Parish, Louisiana.	Assigned 7-19-85 to Riceland Petroleum Company.
CI89-451-000 (CI78-554) D 2-7-89	Amoco Production Company	Tennessee Gas Pipeline Company, Lake Washington Field, Plaquemines Parish, Louisiana.	Assigned 9-28-89 to B.R. Eubanks, M.D..
CI89-452-000 (G-15225) D 2-7-89	Amoco Production Company	United Gas Pipe Line Company, Napoleonville Field, Assumption Parish, Louisiana.	Assigned 10-21-85 to Jolen Production Company.
CI89-453-000 (CI64-304) D 2-7-89	Amoco Production Company	Tennessee Gas Transmission Company, Patterson Field, St. Mary Parish, Louisiana.	Assigned 9-28-84 to B. R. Eubanks, M.D.

[FR Doc. 89-16157 Field 7-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI89-422-000, et al.]

Louis Dreyfus Energy Corp., et al.; Applications for Blanket Certificates with Pregranted Abandonment [1]

June 29, 1989.

Take notice that each Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for a blanket certificate with pregranted abandonment authorization for an unlimited term, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before July 19, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date filed	Applicant
CI89-422-000	6-12-89	Louis Dreyfus Energy Corporation, 10 Westport Road, P.O. Box 810, Wilton, Connecticut 06879-0810.
CI89-461-000	6-16-89	Quantum Chemical Corporation, c/o Baker & Botts, 555 13th Street, NW., Suite 500 East, Washington, DC 20004-1109.
CI89-465-000	6-21-89	Union Pacific Fuels, Inc., 801 Cherry Street, Fort Worth, Texas 76102.

[FR Doc. 89-16158 Filed 7-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP-1340-000, et al.]

Sabine Pipe Line Co., et al.; Natural Gas Certificate Filings

June 29, 1989.

Take notice that the following filings have been made with the Commission:

1. Sabine Pipe Line Company

[Docket No. CP89-1340-000]

Take notice that on May 9, 1989, Sabine Pipe Line Company (Sabine), P.O. Box 52332, Houston, Texas 77052, filed in Docket No. CP89-1340-000 an application, as supplemented June 21, 1989, pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Sabine to lease, install and operate compression facilities and to construct and operate appurtenant compression facilities at its Lake Charles valve station in Calcasieu Parish, Louisiana. Sabine, also, requests authorization to flow gas in either a westerly or easterly direction depending upon market and operating conditions. Further, Sabine requests authorization to temporarily waive its current firm allocation priority tariff provision, all as more fully set forth in the application on file with the Commission and open to public inspection.

Sabine proposes to lease, install and operate two compressors, or their equivalent, with a rated horsepower (hp) of approximately 2,4000 hp. Sabine states that the installation of the proposed compression facilities would allow Sabine to transport, on a firm basis, a maximum quantity of 70 MMcf per day of natural gas in a west to east direction on its mainline system. Sabine indicates that firm and interruptible transportation service utilizing the proposed facilities would be provided under its currently effective FT-1 and IT-1 Rate Schedules. Sabine proposes to temporarily waive its current firm allocation priority tariff provisions in order to conduct an open season, of not less than ten days, to allow all current and potential shippers an equal opportunity to request firm transportation service utilizing the newly available capacity of the proposed compression facilities. Sabine states the estimated cost of these facilities is $630,000 with an estimated annual rental and operation expense of $763,415. Sabine plans to finance the proposed facilities from internally generated funds or a combination of internally generated funds and short-term borrowing.

Comment date: July 20, 1989, in accordance with Standard Paragraph F at the end of this notice.

2. Panhandle Eastern Company Pipe Line

[Docket No. CP89-1643-000]

Take notice that on June 15, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1643-000 a request, as supplemented on June 21, 1989, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for National Steel Corporation (National), a shipper and end user of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport up to 17,000 dekatherms (dkt) of natural gas equivalent per day on a firm basis for National pursuant to a transportation agreement dated May 1, 1989, between Panhandle and National. Panhandle would receive the gas from Phillips-Kingfisher in Kingfisher County, Oklahoma and deliver equivalent volumes, less fuel used and unaccounted for line loss, to National and Union Gas Limited in Wayne County, Michigan. Panhandle also states that National may nominate quantities from interruptible points of receipt on Panhandle's system as long as the sum of the volumes nominated from such interruptible points together with the sum of the quantity nominated from firm points of receipt shall not exceed the contract quantity of the transportation agreement for service under Rate Schedule PT.

Panhandle states that the estimated daily and annual quantities would be 17,000 dkt and 6,205,000 dkt, respectively. Service under § 284.223(a) commenced on May 1, 1989, as reported in Docket No. ST89-3763-000.

Comment date: August 14, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Colorado Interstate Gas Company

[Docket No. CP89-1673-000]

Take notice that on June 21, 1989, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado, 80944, filed in Docket No. CP89-1673-000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act, to establish a new delivery point for Peoples Natural Gas Company, Division of UtiliCorp United, Inc. (Peoples), an existing customer, under CIG's blanket certificate issued in Docket No. CP83-21-000, pursuant to section 7 of the Natural Gas Act all as more fully set forth in the request on file with the Commission and open to public inspection.

CIG states that it would construct and operate a delivery point on its Valley Line Transmission System to provide for another point of delivery to Peoples. The new delivery point would be known as the Spruce Hill Meter Station and would be located in Douglas County, Colorado for serving customers in the Palmer

Lake/Monument area of Colo asserted.

CIG projects the volume of gas delivered to be 10,000 Mcf per day and the amount is within CIG's currently authorized level of sales.

Comment date: August 14, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Northwest Pipeline Corporation

[Docket No. CP89-1677-000]

Take notice that on June 22, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-1677-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of Willamette Industries, Inc. (Willamette), an end user of natural gas, under Northwest's blanket certificate issued in Docket No. CP86-578-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest proposes to transport up to 6,500 Ncf per day on an interruptible basis for Willamette pursuant to a transportation agreement, under Rate Schedule TI-1, dated May 8, 1989, as amended May 8, 1989, between Northwest and Willamette. Northwest would receive gas from existing points of receipt on its system in Colorado, Oklahoma, Oregon, Utah, Washington, and Wyoming, and redeliver at existing points of delivery on its system in Colorado, Idaho, New Mexico, Oklahoma, Oregan, Utah, Washington, and Wyoming.

Northwest further states that the maximum daily transportation volumes would be no more than 6,500 MMBtu, while it estimates that average day and annual transportation volumes initially will be approximately 100 MMBtu and 36,500 MMBtu, respectively.

Service under § 284.233(a) commenced on May 25, 1989 as reported in Docket No. ST89-3889-000, Northwest advises.

Comment date: August 14, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Northwest Pipeline Corporation

[Docket No. CP89-1678-000]

Take notice that on June 22, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-1678-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Phillips Gas Marketing Company (Phillips), a marketer, under the blanket certificate issued in Docket No. CP86-578-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that pursuant to a transportation agreement dated February 10, 1988, as amended December 5, 1988, and April 11, 1989, under its Rate Schedule TI-1, it proposes to transport up to 75,000 MMBtu per day equivalent of natural gas for Phillips. Northwest states that it would transport the gas through its system from any transportation receipt point on its system to any transportation delivery point on its system, as defined in the December 5, 1988, amendment.

Northwest advises that service under Section 284.223(a) commenced May 13, 1989, as reported in Docket No. ST89-3866 (filed June 12, 1989). Northwest further advises that it would transport 100 MMBtu on an average day and 36,500 MMBtu annually.

Comment date: August 14, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Northwest Pipeline Corporation

[Docket No. CP89-1679-000]

Take notice that on June 22, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-1679-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Columbus Energy Corporation (Columbus), a producer of natural gas, under Northwest's blanket certificate issued in Docket No. CP86-578-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest requests authorization to transport, on an interruptible basis, up to a maximum of 8,000 MMBtu of natural gas per day for Columbus from receipt points located in Colorado, Oklahoma, Oregon, Utah, Washington and Wyoming to delivery points located in Colorado, Idaho, New Mexico, Oklahoma, Oregon, Utah, Washington and Wyoming. Northwest anticipates transporting on an average day 100 MMBtu and an annual volume of 36,500 MMBtu.

Northwest states that the transportation of natural gas for Columbus commenced May 18, 1989, as reported in Docket No. ST89-3890-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Northwest in Docket No. CP86-578-000.

Comment date: August 14, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. United Gas Pipe Line Company

[Docket No. CP89-1682-000]

Take notice that on June 23, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1682-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for American Central Gas Companies (American), a marketer, under the blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United states that pursuant to a transportation agreement dated November 9, 1988, as amended on April 21, 1989, under its Rate Schedule ITS, it proposes to transport up to 185,400 MMBtu per day equivalent of natural gas for American. United states that it would transport the gas from multiple receipt points as shown in Exhibit "A" of the transportation agreement and would deliver the gas to multiple delivery points shown in Exhibit "B" of the agreement.

United advises that service under § 284.223(a) commenced April 25, 1989, as reported in Docket No. ST89-3749-000 (filed June 1, 1989). United further advises that it would transport 185,400 MMBtu on an average day and 67,671,000 MMBtu annually.

Comment date: August 14, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Panhandle Eastern Pipe Line Co.

[Docket No. CP89-1689-000]

Take notice that on June 26, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77251-1642 filed in Docket No. CP89-1686-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Transtate Gas Service Company (Transtate), a shipper and marketer of natural gas, under Panhandle's blanket certificate, issued in Docket No. CP86-585-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that Panhandle requests authority to transport on an interruptible basis up to 275,000 dt equivalent on a peak day, 150,000 dt equivalent on an average day, and 54,750,000 dt equivalent on an annual basis on behalf of Transtate pursuant to Transportation Agreement dated August 29, 1988 between Panhandle and Transtate (Transportation Agreement). It is further stated that Panhandle would receive gas from various existing points of receipt on its system for redelivery to Michigan Gas Storage in Oakland County, Michigan. It is stated that service under § 284.223(a) commenced on May 1, 1989, as reported in Docket No. ST89-3731.

Comment date: August 14, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16156 Filed 7-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10290-001 Washington]

Washington Hydro Development Co.; Surrender of Preliminary Permit

June 29, 1989.

Take notice that Washington Hydro Development Company, permittee for the Sandy and Dillard Creeks Project, has requested that its preliminary permit be terminated. The preliminary permit was issued August 18, 1987, and would have expired on July 31, 1990. The project would have been located within the Snoqualmie-Mt. Baker National Forest in Whatcom County, Washington, near the town of Concrete.

The permittee filed the request on June 2, 1989, and the preliminary permit for Project No. 10290 shall remain in effect through the thirtieth day after issuance of this notice, unless that day is a Saturday, Sunday, or holiday, as described in 18 CFR 385.2007, in which case the business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16151 Filed 7-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2775-002 Massachusetts]

Linweave, Inc.; Availability of Environmental Assessment

June 26, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a minor license for the proposed Gill Mill, D Wheel, Hydroelectric Project located on the Holyoke Canal System, on the Connecticut River, in Holyoke, Hampden County, Massachusetts, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impact of the proposed project and has concluded that approval of the proposed project would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street NW., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16150 Filed 7-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2497-002 Massachusetts]

Linweave, Inc.; Availability of Environmental Assessment

June 26, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a minor license for the proposed Mt. Tom Mill Hydroelectric Project located on the Holyoke Canal System, on the Connecticut River, in Holyoke, Hampden County, Massachusetts, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16143 Filed 7-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2758-003 Massachusetts]

Linweave, Inc.; Availability of Environmental Assessment

June 26, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a minor license for the proposed Crocker Mill, A and B Wheels, Hydroelectric Project located on the Holyoke Canal System, on the Connecticut River, in Holyoke, Hampden County, Massachusetts, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16144 Filed 7-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2766-002 Massachusetts]

Linweave, Inc.; Availability of Environmental Assessment

June 26, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a minor license for the proposed Albion Mill, D Wheel, Hydroelectric Project located on the Holyoke Canal System, on the Connecticut River, in Holyoke, Hampden County, Massachusetts, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16145 Filed 7-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2768-002 Massachusetts]

Linweave, Inc.; Availability of Environmental Assessment

June 26, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a minor license for the proposed Albion Mill, A Wheel, Hydroelectric Project located on the Holyoke Canal System, on the Connecticut River, in Holyoke, Hampden County, Massachusetts, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16146 Filed 7-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2770-002 Massachusetts]

Linweave, Inc.; Availability of Environmental Assessment

June 26, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Crocker Mill, C Wheel, Hydroelectric Project located on the Holyoke Canal System, on the Connecticut River, in Holyoke, Hampden County, Massachusetts, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16147 Filed 7-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2771-002 Massachusetts]

Linweave, Inc.; Availability of Environmental Assessment

June 26, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Nonotuck Mill Hydroelectric Project located on the Holyoke Canal System, on the Connecticut River, in Holyoke, Hampden County, Massachusetts, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16148 Filed 7-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10690-000]

Utah Power and Light Co.; Availability of Environmental Assessment

June 5, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for exemption from licensing for the proposed Fountain Green Hydropower Project located on Big Springs in Sanpete County, Utah, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the potential environmental impact of the proposed project and has concluded that approval of the proposed project with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16152 Filed 7-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP89-32-000]

List of First Sellers Who Have Asserted Contractural Authority To Collect Delivery Allowances Pursuant to § 271.1104 of the Commission's Regulations; Compression Allowances and Protest Procedures

July 3, 1989.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Republication to avoid possible confusion and to assure adequate notice of Transcontinental Gas Pipe Line Corporation's (Transco) list of first sellers who have asserted contractural authority to collect delivery allowances pursuant to Section 271.1104(h) of the Commission's regulations.

SUMMARY: In Order No. 473, 52 FR 21,660 (June 9, 1987), the Federal Energy Regulatory Commission amended its regulations for the delivery of natural gas which were heretofore presumed authorized by "area rate" clauses in gas sales contracts. Order No. 473 amended 18 CFR 271.1104(h) to require all interstate pipelines to provide a listing of those producers that have claimed an entitlement to delivery allowances pursuant to "area rate" clause. The interstate pipelines were required to indicate whether they concurred in the producers' claim for delivery allowances.

DATE: As required by § 271.1104(h) by the Commission regulations, Transco submitted on July 8, 1988, a list of first sellers who have asserted contractural authority to collect delivery allowances. The Commission noticed Transco's filing in the Federal Register in October 1988 under Docket No. RM86-7-000. Subsequently, the Commission redocketed the proceeding under Docket No. GP89-32-000. The Commission now renotices certain of Transco's producer contracts (List III) to avoid possible confusion and provide adequate notice to all interested persons.

DATE: As provided in 18 CFR 271.1104(h)(4)(i) (1987), any protest must be filed by October 10, 1989. Because Order No. 473 provided no mechanism for adding producers-sellers to service lists, Transco is requested to submit the names and addresses of the producers-sellers in this proceeding so that they can be added to the official service list. This material must be filed by the date protests are due.

ADDRESS: An original and 14 copies of each protest must be filed with the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Edward G. Gingold, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, (202) 357-9114.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the comments of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. The full text of this list of first sellers who have asserted contractual authority to collect delivery allowances pursuant to § 271.1104 of the Commission's Regulations is available to CIPS for 10 days from the date of issuance. The complete text on diskette is in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

LIST III.—TRANSCONTINENTAL GAS PIPE-LINE CORPORATION (TRANSCO) PRODUCER CONTRACTS WHICH DO CONTAIN CONTRACTUAL AUTHORIZATION FOR DELIVERY ALLOWANCES UNDER FERC ORDER NO. 94-A.

Producer name and address	Transco contract	
	Number	Date
Louisiana Land & Exploration Company	00034	04/12/79
Canadian Occidental of California, Inc	00036	04/20/79
Canadian Occidental of California, Inc	00045	08/01/79
Canadian Occidental of California, Inc	00048	08/03/79
Arco Oil and Gas Company	00049	10/24/79
Petro-Lewis Funds, Inc	00051	11/19/79
Arco Oil and Gas Company	00056	12/30/81
Arco Oil and Gas Company	00062	09/29/79
Elf Aquitaine, Inc	00067	06/22/83
Mobil Oil Explor. & Prod., SE, Inc	06032	09/12/47
Suburban Propane Gas Corporation	06100	03/07/58
Sun Exploration & Prod. & Marion Corp	06159	02/12/58
Superior Oil Company	06182	12/30/58
BHP Petroleum (Americas, Inc.)	06233	07/28/60
Knob Hill	06243	07/03/60
Amoco Production Company	06256	04/04/61
Amoco Production Company	06273	01/10/63
Conoco, Inc	06273	07/14/60
Gulf Oil Corporation	06286	07/07/65
Knob Hill	06320	03/28/60
Superior Oil Company	06322	05/27/68
Amoco Production Company	06326	03/03/69
Gulf Oil Corporation	06345	06/16/69
Superior Oil Company	06368	07/28/74
Sun Exploration and Production Co	06391	06/09/71
Superior Oil Company	06414	05/23/72
Highland Resources	06415	05/24/72
Canadian Superior Oil (US) Ltd	06417	05/25/72
Kerr-McGee Corporation	06418	06/08/72
Getty Oil Company	06420	07/03/72
Getty Oil Company	06438	04/02/73
C and K Petroleum	06443	03/20/74
Getty Oil Company	06501	03/22/76
Texaco, Inc	06502	02/10/76
Sun Oil Company	06570	10/26/77
Getty Oil Company	06573	10/26/77
Natresco, Inc	06582	12/19/77
Kerr-McGee Corporation	06732	02/22/79
Pioneer Production Company	06753	03/20/79
NT Corporation	06765	08/15/80
Pyro Energy Corporation	06769	05/07/79

LIST III.—TRANSCONTINENTAL GAS PIPELINE CORPORATION (TRANSCO) PRODUCER CONTRACTS WHICH DO CONTAIN CONTRACTUAL AUTHORIZATION FOR DELIVERY ALLOWANCES UNDER FERC ORDER NO. 94-A.—Continued

Producer name and address	Transco contract	
	Number	Date
Sanchez-O'Brien Minerals Corporation	06788	06/06/79
Shell Oil Company	06798	06/15/79
Shell Oil Company	06799	06/15/79
Sanchez-O'Brien Minerals Corporation	06812	07/11/79
NT Corporation	06822	08/29/79
Getty Oil Company	06832	08/17/79
Texas Eastern Exploration Company	06839	08/20/79
Petro-Lewis	06857	09/17/79
Texaco, Inc	06866	09/27/79
Phillips Oil Company	06867	10/01/79
Sun Exploration and Production	06919	01/01/80
Transco Exploration Company	06920	02/18/80
Pioneer Production Corporation	06923	12/03/79
Shell Onshore Partnership	06931	06/13/80
Diamond Shamrock Offshore	06933	03/13/80
Amoco Production Company	06935	03/14/80
Amoco Production Company	06936	03/14/80
Superior Oil/Oil Participant, Inc	06965	04/23/80
NT Corporation	06968	07/28/80
NT Corporation	06969	07/28/80
Kerr-McGee Corporation	61019	09/29/80
Shell Oil Company	61020	08/01/80
Sonat	61027	11/04/80
Kerr-McGee Corporation	61042	11/26/80
Pioneer Production Corporation	61049	12/15/80
Norse Petroleum, Inc	61076	02/11/81
Southern Natural Gas Company	61079	12/09/80
Amerada Hess	61118	06/14/81
Transco Exploration	61140	07/14/81
Arco Oil and Gas	61146	05/19/81
Conoco, Inc	61163	08/24/81
Petro-Lewis Funds, Inc	61171	09/01/81
Florida Exploration Company	61175	08/26/81
Texaco, Inc	61185	09/23/81
Park Pipeline Company	61186	01/01/81
Sun Operation Limited Partnership	61192	10/08/81
Sun Exploration and Production Company	61212	12/02/81
Superior Oil Company	61215	12/04/81
Texaco, Inc	61227	01/25/82
Sun Exploration and Production/David Crow Trustee	61232	02/12/82
Pennzoil Production Company	61245	03/29/82
Sun Exploration and Production/David Crow Trustee	61254	06/28/82
Felmont Oil Corporation	61257	07/14/82
Amerada Hess	61261	08/23/82
Petro-Lewis Funds	61277	03/21/83
Arco Oil and Gas Company	61367	08/27/85
Arco Oil and Gas Company	61369	10/01/85

[FR Doc. 89-16159 Filed 7-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-13-20-000]

Algonquin Gas Transmission Co.; Proposed Change in FERC Gas Tariff

July 3, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on June 27, 1989, tendered for filing to its FERC Gas Tariff, Second Revised Volume No. 1 the following tariff sheets:

Proposed to be effective November 1, 1988

Revised Twenty-third Revised Sheet No. 204

Proposed to be effective January 1, 1989

Revised Twenty-fourth Revised Sheet No. 204

Proposed to be effective February 1, 1989

Revised Twenty-fifth Revised Sheet No. 204

Proposed to be effective March 1, 1989

Revised Twenty-sixth Revised Sheet No. 204

Proposed to be effective April 1, 1989

Revised Twenty-seventh Revised Sheet No. 204

Proposed to be effective May 1, 1989

Revised Twenty-eighth Revised Sheet No. 204

Proposed to be effective June 1, 1989

Revised Twenty-ninth Revised Sheet No. 204

Proposed to be effective July 1, 1989

Thirtieth Revised Sheet No. 204

Algonquin states that it is making the instant filing to request authority to modify the Winter Requirement Quantity ("WRQ") rate as billed to Algonquin by National Fuel Gas Supply Corporation ("National"). Algonquin states that applying the new calculation method for the revised WRQs, as modified and approved by the Commission's Letter Orders dated April 7, 1989 and May 18, 1989 in Docket Nos. RP89-103-000 and 001, to its customers, produces over-collection of the WRQ charges (as billed to it by National) of $1,230.98 per month. In order to correct this discrepancy, Algonquin is requesting authority to modify National's as billed WRQ rate to the extent necessary to properly collect the WRQ charges from its customers for reimbursement to National. All as more fully set forth in Algonquin's filing.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 11, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants, parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-16154 Filed 7-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-200-000]

Pacific Gas Transmission Co.; Notice of Tariff Filing

July 3, 1989.

Take notice that on June 28, 1989, Pacific Gas Transmission Company (PGT) tendered for filing Original Volume No. 1-A to its FERC Gas Tariff.

PGT states that Original Volume No. 1-A will allow it to commence open access transportation pursuant to Section 311 of the Natural Gas Act. Original Volume No. 1-A reflects establishment of PGT's new Rate Schedules FTS-1 and ITS-1, which provide for firm and interruptible gas transportation, respectively, on PGT's system. PGT does not propose a rate change in the instant filing but will utilize for the ITS-1 rate, the rate contained in PGT's existing Rate Schedule IT-1, in effect and subject to refund in Docket Nos. RP87-62-000 and RP86-148-000. The priority for the new, interruptible transportation service under the proposed Rate Schedule ITS-1 will be provided on a first-come/first-serve basis. PGT states it will utilize the queue established by lottery approved by the Commission in Docket No. CP87-159-000 to determine the priority of new, interruptible transportation requests.

PGT requests that the Commission grant any waivers necessary so that these tariff sheets may become effective August 1, 1989. Copies of this filing have been sent to all parties who have requested interruptible transportation service as proposed by PGT in Docket No. CP87-159-000, jurisdictional customers and the Public Utilities Commission of the State of California.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211 (1985)). All such motions or protests should be filed on or before July 11, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16155 Filed 7-10-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Decisions and Orders Issued During Week of May 1 Through May 5, 1989

During the week of May 1 through May 5, 1989 the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

June 30, 1989.

Appeals

Michael G. Lloyd, 5/4/89, KFA-0275

Michael G. Lloyd filed an Appeal from a determination issued by the DOE's Oak Ridge Operations Office in which the Office withheld a doument entitled "Case Analysis and Review" in its entirety pursuant to subsection (d)(5) of the Privacy Act, which exempts from disclosure "any information compiled in reasonable anticipation of a civil action or proceeding." 5 U.S.C. § 522a(d)(5). In denying Lloyd's Appeal, the DOE determined that the document at issue was created in anticipation of civil litigation and therefore properly withheld pursuant to subsection (d)(5). In making that determination, the DOE found that the fact that the Office and Lloyd subsequently resolved the matter at issue did not strip the document of its exempt status under the Privacy Act.

The Schenectady Gazette, 5/4/89, KFA-0274

The Schenectady Gazette filed an Appeal from a determination by the DOE's Naval Reactors Program (NRP) denying the Gazette's Freedom of Information Act (FOIA) request for five documents. The NRP determined that portions of the five documents were properly withheld pursuant to Exemptions 3, 4, and 5. The appellant only challenged the portion of the determination that concerned Exemption 5. The DOE found that the portions of the documents withheld pursuant to Exemption 5 were properly withheld, because were part of the delibertative process or because they were nonsegregable factual materials. Accordingly, the Appeal was denied.

Supplemental Order

Research Fuels, Inc., Oasis Petroleum Corporation, 5/3/89, HCX-0100, KER-0013, KEZ-0095, KER-0051

The DOE issued a Decision and Order concerning three motions related to a consolidated case remanded to the Office of Hearings and Appeals (OHA) by the United States District Court for the Northern District of Texas and a Petition for Special Redress filed with OHA pursuant to the terms of an order issued by the United States District Court for the Middle District of Florida. The three motions all pertain to a Decision and Order issued by OHA in 1986, *Lucky Stores, Inc./Research Fuels, Inc.*, 14 DOE ¶82,505 (1986). Those motions are the following: 1) a motion to Strike certain portions of the 1986 Decision; 2) a Motion for Reconsideration of other portions of the 1986 Decision; and 3) a Motion for Modification of the 1986 Decision and for other Forms of Relief. The filing of the first two motions described above was precipitated by an order issued by the Texas district court vacating portions of the 1986 Decision.

In considering the Motion to Strike, the DOE recalled that the consolidated case remanded to OHA from the Texas district court was separate and distinct from the case referred to OHA by the Florida district court. Viewing the two court proceedings in this way, the DOE found that the Motion to Strike should be granted only insofar as it pertained to or affected the two actions remanded to OHA from the Texas district court. The DOE denied the motion insofar as it pertained to or affected the matter referred to the DOE from the Florida district court. The DOE explained that its decision to leave its 1986 Decision intact for the Florida court was not one made in flagrant disregard for the Texas court's Order to Vacate. Rather, it was a decision made in recognition of the Florida court's interest in the integrity of the 1986 Decision. The DOE decided that it was for the Florida court, not OHA, to determine the collateral effect, if any, of the Texas court's Order to Vacate on the litigation pending before the Florida court.

The DOE next denied in its entirety the Motion for Reconsideration. With respect to the Texas remand proceeding, DOE found that those portions of the 1986 Decision which it struck for purposes of the Texas remand cases in no way served as legal or factual predictes for the other portions of the Decision which DOE left intact. The DOE therefore found there to be no basis to "reconsider" its 1986 Decision and strike the remaining portions of that Decision.

With respect to the Motion as it pertained to the Florida litigation, the DOE observed that the reconsideration request was contingent upon the unconditional granting of the Motion to Strike. Inasmuch as the DOE denied the Motion to Strike as it pertained to the Florida litigation, the DOE determined that the Motion for Reconsideration directed toward the Florida forum must fail as well. The DOE further opined that even if the Motion for Reconsideration did not depend on the unconditional granting of the Motion to Strike, the motion could not prevail because it, like the Motion to Strike, could not be used as a procedural vehicle to deprive the Florida court of an opportunity to evaluate independently the 1986 Decision in its entirety.

The DOE also decided, *sua sponte*, to dismiss Case No. HCX-0100 which concerned the contemplated remedial phase of the proceeding underlying the 1986 Decision. DOE explained that the administrative proceeding which culminated in issuance of the 1986 Decision became moot after the Texas district court distributed the monies held in several escrow accounts under its control. OHA would have determined in the remedial phase of Case No. HCX-0100 the proper recipients of all or a portion of those escrow accounts.

Finally, the DOE dismissed the Motion for Modification and Other Forms of Relief on the basis that the motion

concerned the administrative proceeding which had been rendered moot as the result of action taken by the Texas district court.

Refund Applications

A.B. Wolle & Co., Inc., Burdette Hansen, Custer's Garage Diamond Gas & Fuel Co., 5/4/89, RF272-22282; RF272-22905; RF272-23116; RF272-23537

The DOE issued a Decision and Order denying refunds to four applicants in the crude oil Subpart V proceeding. All four applicants were retailers of petroleum products during the period August 19, 1973 through January 27, 1981. Because none of the applicants demonstrated that they were injured due to the crude oil overcharges, they were found ineligible for crude oil refunds. Accordingly, their Applications for Refund were denied.

Aminoil U.S.A. Inc./Vanguard Petroleum Corp., 5/3/89, RF139-206

The DOE issued a Supplemental Order concerning an Application for Refund filed by Vanguard Petroleum Corp. The Supplemental Order modified an error in the February 21, 1989 Decision and Order which granted the firm a refund of $900,101 in principal plus a proportionate share of the interest accrued on the Aminoil U.S.A. Inc. escrow account.

Atlantic Richfield Company/Glow's Arco Service et al., 5/3/89, RF304-1546 et al.

The DOE issued a Decision and Order concerning fifty Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants documented the volume of their ARCO purchases and were end-users or reseller/retailers requesting refunds of less than $5,000. Therefore, each applicant was presumed injured. The refunds granted in this Decision totaled $84,206.

Atlantic Richfield Company/ Montalbano Brothers et al., 5/5/89, RF304-2201 et al.

The DOE issued a Decision and Order concerning twenty-one Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants documented the volume of their ARCO purchases and were end-users or reseller/retailers requesting refunds of $5,000 or less. Therefore, each applicant was presumed injured. The refunds granted in this Decision totaled $18,120.

Boise Cascade Corp. et. al., 5/4/89, RF272-67314 et al.

The DOE issued a Decision and Order denying Motions for Reconsideration and Applications for Refund filed by Boise Cascade Corporation, Packaging Corporation of America, and Burlington Industries, Inc. Each of these firms previously had submitted Applications for Refund in both the crude oil Subpart V proceedings as well as the Surface Transporter (ST) or Rail and Water Transporter (RWT) refund proceedings conducted pursuant to the Stripper Well Settlement Agreement. For each applicant, the DOE had granted its ST or RWT claim and denied the crude oil claim. In each case, the DOE determined that the firms had irrevocably waived any rights they might have had to a crude oil refund by submitting valid ST or RWT waivers. Each firm filed a Motion for Reconsideration of those Decisions, as well as a contingent Application for Refund in the crude oil proceedings. In each of their Motions and Applications, the firms argued that the ST or RWT Waivers extended only to the actual gallons of petroleum products for which the applicant was making a claim. This argument was expressly rejected by the Temporary Emergency Court of Appeals in *Mid-America Dairymen, Inc. v. Herrington*, No. 10-79 (Temp. Emer. Ct. App. April 19, 1989). The DOE agreed with the court's determination in this regard, and therefore denied the firms' Motions and Applications. The DOE also denied a Motion for Discovery filed by a group of states regarding the Boise Cascade Application for Refund.

Crown Central Petroleum Corporation/ Beaty Oil Company, Inc. et al., 5/3/89, RF313-87 et al.

The DOE issued a Decision and Order granting Applications for Refund filed by ten purchasers of Crown refined petroleum products in the Crown Central Petroleum Corporation special refund proceeding. According to the procedures set forth in *Crown Central Petroleum Corp.*, 18 DOE ¶ 85,326 (1988), each applicant was found to be eligible for a refund based on the volume of products it purchased from Crown. The total amount of refunds approved in this Decision was $38,889.

Dorchester Gas Corp./ Christian County Gas Company, et al., 5/3/89, RF253-52 et al.

The DOE issued a Decision and Order concerning seven Applications for Refund in the Dorchester Gas Corporation refund proceeding. Each of the applicants purchased Dorchester propane from Home Petroleum Corporation. The DOE had previously determined that Home was not injured with respect to its purchases of Dorchester propane. Accordingly, the indirect purchasers were eligible for their full allocable shares. Under the small claims presumption of injury, the applicants were granted refunds, including both principal and interest, totalling $29,683.

Dorchester Gas Corp./Liquid Petroleum Corp., 5/1/89, RF253-36

The DOE issued a Decision and Order concerning an Application for Refund submitted by Liquid Petroleum Corporation (Liquid) in the Dorchester Gas Corporation special refund proceeding. Liquid adequately established that it purchased 9,117,908 gallons of normal butane from Dorchester. Liquid requested a refund greater than $5,000 and, therefore, was required to submit a detailed demonstration of injury. Liquid demonstrated that it maintained cost banks during the relevant time period greater than its allocable share of the Dorchester funds. Market prices are not available for butane prior to July 1975. Therefore, to complete Liquid's competitive disadvantage analysis, the DOE extrapolated average national market prices for butane before July 1975 by comparing *Platt's* data for propane and EIA data for butane. Based on the resulting information, the DOE determined that in less than half of the months of the consent order period, Dorchester's prices to Liquid exceeded average national market prices. Liquid was granted a refund based on the above-market gallons of butane multiplied by the volumetric. The total refund granted was $56,084.

Eastern Oil Company/Highway Transport Inc., 5/3/89, RF306-4

The DOE issued a Decision and Order granting an Application for Refund filed by Highway Transport Inc. in the Eastern Oil Company special refund proceeding. The applicant was an end-user of motor gasoline and received its full allocable share based on a presumption of injury. The total refund granted is $3,689.

Exxon Corporation/Darlington Fuel Company, Inc., 5/1/89, RF307-1098

The DOE issued a Decision and Order concerning an Application for Refund filed in the Exxon Corporation special refund proceeding. Darlington Fuel purchased directly from Exxon and was a reseller of Exxon products. Darlington received a refund based on a presumption of injury. The amount of refund granted in this Decision is $5,909.

Exxon Corporation/Howgen Transport Co., Inc., et al., 5/4/89, RF307-6200 et al.

The DOE issued a Decision and Order concerning 51 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $37,519.

Exxon Corporation/Fairland Exxon et al., 5/4/89, RF307-5384 et al.

The DOE issued a Decision and Order concerning 46 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants included in the Decision purchased directly from Exxon and was a reseller or retailer of Exxon products whose allocable share is less than $5,000, or an end-user. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $45,178.

Gulf Oil Corporation/Axselle's Gulf Service et al., 5/3/89, RF300-6138 et al.

The DOE issued a Decision and Order concerning 29 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $53,703.

Gulf Oil Corporation/Billy's Gulf Station et al., 5/1/89, RF300-82 et al.

The DOE issued a Decision and Order concerning 34 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refund granted in this Decision is $59,487.

Gulf Oil Corporation/Cochran's Gulf Service et al., 5/1/89, RF300-34 et al.

The DOE issued a Decision and Order concerning 21 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $35,005.

Gulf Oil Corporation/Dill Brothers et al., 5/5/89, RF300-7600 et al.

The DOE issued a Decision and Order concerning 28 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $44,621.

Gulf Oil Corporation/Disco County Corp. et al., 5/5/89, RF300-7777 et al.

The DOE issued a Decision and Order concerning five Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $40,896.

Gulf Oil Corporation/Dye's Gulf et al., 5/1/89, RF300-11 et al.

The DOE issued a Decision and Order concerning 10 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each applicant established that it purchased some or all of its Gulf products indirectly from a Gulf jobber. The jobbers that supplied these 10 applicants: 1) have not applied in the Gulf proceeding; 2) have not attempted to prove injury; or 3) have already received a refund in the Gulf proceeding under an injury presumption. Accordingly, the 10 applicants were treated in the same manner as applicants who purchased directly from Gulf. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $12,724.

Gulf Oil Corporation/Ellsworth Oil Company, 5/1/89, RF300-5233.

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Ellsworth Oil Company, a consignee and reseller of Gulf refined products. Ellsworth Oil Company's allocable share as a reseller is less than $5,000, and its total principal refund is less than $5,000. Therefore, it was not required to provide a detailed demonstration that it absorbed Gulf's alleged overcharges. The refund granted to Ellsworth Oil Company in this Decision and Order is $2,134.

Gulf Oil Corporation/J.P. Messina Gulf Service Station et al., 5/3/89, RF300-206 et al.

The DOE issued a Decision and Order concerning 11 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. The applications were approved using a presumption of injury. The sum of the refunds granted in this Decision, which includes both principal and interest is $26,132.

Gulf Oil Corporation/Mont-East Gas Supply, Inc., 5/1/89, RF300-10791

The DOE issued a Supplemental Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by Mont-East Gas Supply, Inc. (Case No. RF300-2847) and Langer Gas Service Co. (Case No. RF300-3156). Because both firms were operationally related during the consent order period, it is appropriate to consider them together when applying the presumptions of injury. However, both firms had already benefitted from consideration under separate presumptions of injury and received refund amounts of $953 and $6,404 ($5,000 plus interest) in this proceeding. The two firms collectively purchased 12,260,548 gallons of covered Gulf products. In the absence of a specific injury showing, this purchase volume entitles the firms to a total refund of $5,000 plus interest. Thus, the DOE rescinded the refund granted to Mont-East Gas Supply, Inc. in the amount of $953 in *Guy W. Ward, et al.* 18 DOE ¶85,217 (1989)

Gulf Oil Corporation/Petroleum Products of South Georgia, Inc., 5/1/89, RF300-5326

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Petroleum Products of South Georgia, Inc., a consignee and reseller of Gulf refined products. The applicant's allocable share as a reseller is less than $5,000, and its total principal refund is less than $5,000. Therefore, it was not required to provide a detailed demonstration that it absorbed Gulf's alleged overcharges. The refund granted to Petroleum Products in this Decision and Order is $5,450.

Gulf Oil Corporation/R. Brown Gulf, 5/1/89, RF300-10698

The DOE issued a Supplemental Order amending a refund granted on December 9, 1988 to R. Brown Gulf from the Gulf Oil Corporation special refund proceeding (*Gulf Oil Corporation/Lyle's Guld, et al.*) in order to include purchases by another service station owned by the applicant during the consent order period. The DOE granted an additional refund of $2,572 thereby bringing the applicant's total refund to $3,289.

Gulf Oil Corporation/T. L. Baker, 5/1/89, RF300-5488

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by T.L. Baker, a consignee and reseller of Gulf refined products. T.L. Baker's allocable share as a reseller is less than $5,000, and its total principal refund is less than $5,000. Therefore, it was not required to provide a detailed demonstration that it absorbed Gulf's alleged overcharges. The refund granted to T.L. Baker in this Decision and Order is $2,179.

Henry's Texaco et al., 5/4/89, RF272-445 et al.

The DOE issued a Decision and Order, denying five Applications for Refund filed in the crude oil Subpart V refund proceeding. Each applicant was either a reseller or a retailer during the period August 19, 1973 through January 27, 1981. Because none of the applicants demonstrated that it was injured due to the crude oil overcharges, each was ineligible for a crude oil refund.

Huber's, Inc., 5/5/89, RF272-23395

The DOE issued a Decision and Order denying the Application for Refund filed by Huber's, Inc., a vehicle rental firm, in the crude oil Subpart V proceeding. For the purposes of Subpart V proceedings, vehicle rental firms are considered to be retailers. Because Huber's failed to demonstrate that it was injured due to the crude oil overcharges, it was found to be ineligible for a crude oil refund. Accordingly, Huber's Application for Refund was denied.

Indian Wells Oil Company /Gates Learjet Corporation, 5/3/89, RF317-1

The DOE issued a Decision and Order concerning an Application for Refund filed by Gates Learjet Corporation (Gates) in the Indian Wells Oil Company special refund proceeding. *See Indian Wells Oil Co.*, 18 DOE ¶ 85,296 (1988). Gates was an end-user of Indian Wells natural gas liquids and natural gas liquid products. Gates was entitled to a refund equal to its allocable share as set forth in the *Indian Wells* Appendix, $5,010, plus a proportionate share of the interest that accrued in the Indian Wells escrow account. Accordingly, Gates was granted a refund of $5,468.

Marathon Petroleum Company /Rogers Oil Company, 5/3/89, RR250-5

Rogers Oil Company filed a Motion for Reconsideration of a partial denial of its refund request from a consent order fund made available by Marathon Petroleum Company. Because the DOE found that Rogers had failed to prove injury at a higher level, Rogers was granted a refund of $11,541 based on the 35 percent presumption of injury methodology. In its Motion for Reconsideration, the firm claimed that in assessing whether it had experienced a competitive disadvantage in purchasing product from Marathon, the DOE incorrectly found that the prices it paid should be compared to prices other retailers in its market area paid, rather than to refinery and terminal prices. Rogers maintained that it was a wholesaler, not a retailer of product. The DOE rejected this argument, finding that Rogers' sister firm, Diamond Services, Inc., retailed the Marathon product purchased by Rogers, and that Rogers was, therefore, in essence, a retailer of product. Accordingly, the Motion was denied.

Mobil Oil Corp. /McCall Oil and Chemical Corporation, 5/5/89, RF225-9122

The DOE issued a Decision and Order granting an Application for Refund filed by McCall Oil and Chemical Corporation in the Mobil Oil Corporation special refund proceeding. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). McCall, a retailer of home heating oil, claimed a refund on its purchases of 82,412,752 galllons of No. 2 fuel oil from Mobil. The DOE did not have all of the information required to apply a "competitive disadvantage test" to McCall's purchases from Mobil. However, after examining the firm's cost banks and the specific effects of Mobil's pricing practices on several indices of McCall's business performance, the DOE concluded that McCall was injured by its purchases from Mobil. Accordingly, McCall was granted a refund of $41,701.

Modine Manufacturing Company, 5/4/89, RF272-18968

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Modine Manufacturing Company based on Modine's purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. However, the portion of Modine's claim based on methyl ethyl ketone (MEK) was denied. The DOE determined that MEK, having never been defined as a covered product during the controls period and being too remote from crude oil to be considered a covered product, could not form a basis for a refund in the Subpart V proceeding. Modine's total gallonage figure was adjusted accordingly. Modine was an end-user of the products it claimed and was therefore presumed injured by the alleged crude oil overcharges. The amount of the refund granted in this Decision is $1,983.

Sunflower Electric Coop., Inc, et al., 5/4/89, RF272-332 et al.,

The DOE issued a Decision and Order concerning five Applications for Refund submitted in the crude oil Subpart V proceeding. Each of the applicants is an electric cooperative. The States submitted objections to the five Applications, which stated that the applicants were not eligible to receive a crude oil refund because they were not injured by crude oil overcharges. The States argued that the five applicants passed through any overcharges directly to their members. The DOE determined that the five applicants were eligible for refunds provided that they passed through the refunds received on a dollar-for-dollar basis to their members. The sum of the refunds granted in this Decision is $125,699.

Total Petroleum Inc./Dilries Oil, Inc. et al., 5/4/89, RF310-308 et al.

The DOE issued a Decision and Order concerning 11 Applications for Refund filed by purchasers of motor gasoline from Total Petroleum, Inc. The applicants sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Total. Each of the applicants was a reseller whose allocable share is less than $5,000. Under the standards established in *Total Petroleum, Inc.*, 17 DOE ¶ 85,542 (1988), the DOE granted refunds in this proceeding which total $11,089.

United Technologies Corp., 5/4/89, RF272-9183, RD272-9183

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to United Technologies Corporation (United), a conglomerate corporation specializing in the design and manufacture of high-technology products. In reaching its determination, the DOE rejected the objections to United's claim submitted by a group of States and denied the States' Motion for Discovery. Specifically, the DOE restated its position that general economic arguments which are applicable to most segments of the United States economy are insufficient to rebut the presumption that end-users outside of the petroleum industry were injured by crude oil overcharges. The DOE also determined that the States' showing of sustained growth and profitability of a particular firm does not rebut the end-user presumption. In evaluating United's claim, the DOE found that 5.2 percent of the firm's sales during the period of price controls were attributable to cost-reimbursement type contracts. The DOE determined that United could not have been injured by crude oil overcharges in its sales for which its costs were reimbursed pursuant to contractual provisions, and therefore reduced United's total refund claim by 5.2 percent. The total refund granted to United was $360,075.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	No. of applicants	Total refund
Town of Gaston et al.	RF272-17258	5/5/89	54	$75,917
Vernon O. Setzer et al	RF272-50200	5/5/89	183	20,111

Dismissals

The following submissions were dismissed:

Name and Case No.

A&A Service Center, RF272-3561
Al's Gulf, RF300-10743
Alex's Arco Service Station, RF304-8148
Amer Arco, RF304-2271
Bamford Land Company RF272-74999
Bastile and Cella Arco, RF304-3537
Beck Suppliers, Inc., RF304-7204
Benton's Exxon RF307-9141
Bill Arco, RF304-3493
Bill's Arco, RF304-5355
Bud's Arco Service, RF304-3240
Bushman's S.S., RF304-4064
Cater Gulf Service, RF300-10029
Chuck Hauber, RF304-7486
City of Cleveland Heights, RF272-69488
Claude D. Lodge, RF307-9674
Clifford M. Akey, RF272-61915
Colonial Oil Industries, Inc., RF307-8950
Daniel Shelitsky, RF304-7577
Davis County Highway Dept., RF272-37386
Downey's Arco. RF304-2647
Downtown Exxon, RF307-149
E.W. Bowker Co., Inc., RF272-65397
Eddie Mcae, RF272-65341
Friendly Kens Exxon *et al.* (See attached list), RF307-2000
Ft. Madison Community School District, RF272-60598
Hawkeye Oil Co., RF300-9415
Hillcrest Esso, RF272-8138-
Howardine Hembree, RF272-1991
Jerral Mayes, RF307-9675
Jim Atchley SS & Car Wash, RF307-5960
John Cardullo and Sons, RF300-9652
John Zekler, RF304-1921
Jordan's Humble SVC Station, RF307-8295
Joseph J. Shevlin, RF272-21441
Ken Sutherland Gas and Oil Inc. *et al.* (See attached list), RF310-4
Kenneth A. Denning, RF272-55010
Larry's, RF304-2935
Lynchburg Oil Co., Inc., RF309-1118
Millard M. Strickland, RF307-9676
Modesto Perez Gomez, RF307-8499
Northeast Utilities Service Co., RF300-10546
Pennsylvania Turnpike Commission, RF304-5193
Ray's Exxon, RF307-1057
Robb's Gulf, RF300-10313
Roger H. Brack, RF307-9673
Ronceverte Ice & Produce Co., RF304-3967
Sam's Arco, RF304-3192
Slaven's Gulf, RF300-10694
Strother's Holiday Gulf, RF300-8132
Sutton Oil Co., RF300-8991
Tahquamenon Area Schools, RF272-75308
Tennessee River Pulp & Paper Co., RF272-4758
Watson Gulf RF300-10376
Wright's Exxon Station, RF307-1829, RF307-2025

Service List

RF307-2000

Mr. Kenneth Campbell, c/o Friendly Kens Exxon, Bob Wallace Ave., Huntsville, AL 35706

RF307-2001

Mr. Brent Bousson, c/o P and S Garage, 899 Madison, Memphis, TN 38103

RF307-2002

Mr. Wade Walley, c/o Walley's Auto Parts, Box 702, Winnsboro, LA 71295

RF307-2003

Mr. S.R. Spearman, c/o Spearman Place, Rt. 3, Box 17, Gaylesville, AL 35973

RF307-2005

Mr. Stele Bledsoe, c/o Senatobia Exxon, 503 E. Main St., Senatobia, MS 38668

RF307-2008

Mr. Roland Freeman, c/o U-Pack Grocery, Box 116, Hwy 1, White Castle, LA 70788

RF307-2013

Mr. Felix Jordan, c/o Felix Jordan Exxon, 3201 S. Oakland, S. Dallas, TX 75215

RF307-2014

Ms. Linda Huntley, c/o Fruitland Grocery, Rt. 2, Box 139, Hendersonville, NC 28739

RF307-2016

Mr. Eddie Hudgin, c/o Short Stop and Gas, 3502 College Ave., Jackson, AL 36545

RF307-2017

Mr. Birl Jones, c/o Geyer Springs Exxon, 7724 Geyer Spring Rd., Little Rock, AR 72209

RF307-2019

Mr. Otto Black, c/o Blacks Exxon, 200 N. First East St., Haynesville, LA 71038

RF307-2024

Ms. Ronnie Lynn Temple, c/o Ronnies Service, 7 Fair Avenue, Winnsboro, LA 71295

RF307-2053

Mr. Joe Matthew, c/o Matthew Service Station, 3995 Raleigh, Millington, TN 38128

RF307-2054

Mr. Clifford Baker, c/o Baker's Service Station, 1302 Highland Ave., Jackson, TN 38301

RF307-2057

Mr. Wilson Miller, c/o Cameron Exxon, Box 713, Cameron, LA 70631

RF307-2058

Ms. Paulette Flowers, c/o Deltons Exxon, 1904 S. Stockton, Monahans, TX 79756

RF307-2061

Mr. Charles Reine, c/o Four Way Exxon, 6861 Hwy. 70, Memphis, TN 27836

RF307-2060

Mr. Ray Grants, c/o Grants Exxon, 1700 E. Holmer, Memphis, TN 38116

RF307-2062

Mr. Joe Gastins, c/o Gaskin's, 2801 S. Perkins, Memphis, TN 38113

RF307-2063

Mr. Leroy Cassingham, c/o C and B Exxon, 3900 Bob Wallace Ave., Huntsville, AL 35802

RF307-2065

Ms. Lanette Winson, c/o Dinglers Exxon, 3603 Westwall, Midland, NC 27836

RF307-2066

Mr. Ken Jones, c/o FAirpark Exxon, 101 N. Van Buren, Little Rock, AR 72205

RF307-2069

Mr. Jim Lipe, c/o Park Hill Exxon, Box 263, N. Little Rock, AR 72115

RF307-2070

Richard M. Bunch, c/o Carolina Exxon, 1205 Ashley River Rd., Charleston, SC 29407

RF307-2071

Mr. E.C. Hollis, c/o Fox Meadows Exxon, 2705 Mt. Moriah Rd., Memphis, TN 38115

RF307-2074

Mr. Herman Bennett, c/o Bennett Exxon, 478 Meeting St., Charleston, SC 29403

RF307-2079

Mr. Joe Champ, 4077 Tolane Ave., New Orleans, LA

RF307-2081

Mr. Raffi Mavelian, c/o Raffi's Exxon, 8022 Ferguson Rd., Dallas, TX 75228

RF307-2082

Mr. Clyde K. Cook, c/o Brookwood Exxon, 6501 S. University Ave., Little Rock, AR 72209

RF307-2092

Ms. Glenda Ashlock, c/o E. Ritter Seed Co., 300 Adamson Rd., Tree, AR 72365

RF307-2096

Mr. B.F. Childress, c/o Childress Grocery, 4451 Collierville Arlington Rd., Arlington, TN 38002

RF307-2083

Mr. Bill McDaniel, c/o Bill's Exxon, 110 Nathan, Marked Tree, AR 72365

RF307-2087

Ms. Penney Chamberlain, c/o Total Performance Gas Island, 2530 S. Wilmot, Tucson, AZ 85711

RF307-2089

Mr. Jimmy D. Moore, c/o Bryant Exxon, Box 411, Bryant, AR 72002

RF307-2090

Mr. Frederick Young, c/o AAA BEE CEE Movers, 3082 Connahbrook, Memphis, TN 38106

RF307-2091

c/o E. Ritter Lumber Co., 507 W. Second Street, Marked Tree, AR 72365

RF307-2103

Mr. Charles Hollingworth, c/o Willow Creek Exxon, 9701 N. Central Exp. Marked, Dallas, TX 75231

RF307-2106

Mr. David Proctor, c/o Proctor's Exxon, 4586 Quince, Memphis, TN 38117

RF307-2098

Mr. Fred Young, c/o ABC Moving and Storage, 3082 Connahbrooks, Memphis, TN 38106

RF307-2099

Mr. Sam Pleasant, c/o Pleasant Grocery, Rt. 3, Collerville, TN 38107

RF307-2101

Mr. Bell Forrester, c/o Murphrees city Wide Wrecker Service, 3913 Lamar Ave., Memphis, TN 38116

RF307-2107

Mr. Bill McCoy, c/o McCoy Exxon, Hwy 63 Tyronza, Tyronza, AR 72386

RF307-2108

Mr. Raymond Dorrell, c/o Cantrell Exxon, 3723 Cantrell Rd., Little Rock, AR 72202

RF307-2110

Mr. Audbrey Cross, c/o Cross & Sons Exxon, 946 S. Parkway E., Memphis, TN 38106

Attachment

RF310-4—Ken Sutherland Gas and Oil Inc.
RF310-6—Ed's Refinery Corporate
RF310-11—Wolfe Motor Co.
RF310-12—Squan Transit Co.
RF310-14—Rays Apco
RF310-16—George Young Apco Service
RF310-17—Glasgow Apco
RF310-32—Flower Petroleum
RF310-33—Mick's Apco
RF310-35—East Side Service
RF310-43—C & H Total Service
RF310-44—M 60 Total
RF310-49—Frank's Bay Service
RF310-50—Erskin Refinery Service
RF310-55—Wessos
RF310-56—Suttons Bay Total
RF310-58—Kenny's Service Station
RF310-59—Perryville C Mart
RF310-60—Frank's Total Service
RF310-62—Younge Apco
RF310-65—Brian Vickers Service Center
RF310-67—Frank Osborn Oil and Tire
RF310-69—Ed's Refinery Stations #1-24
RF310-73—East Bay
RF310-74—Wiederholt Apco Station
RF310-80—United Petroleum Corp.
RF310-135—Frank Osborn Oil & Tire
RF310-261—Pentwater Pines Golf Course
RF310-266—Atwood General Store
RF310-268—South Shore Car Wash
RF310-269—Downtown Car Wash
RF310-270—Dubois Oil Company
RF310-287—Fort Custer Off Road & Campground
RF310-288—Archies Qwik Stop
RF310-290—Jerry's Service
RF310-293—Rayburn Auto Parts, Inc.
RF310-296—Wayne Oakland Oil Company
RF310-299—Meijer, Inc

[FR Doc. 89-16175 Filed 7-10-89; 8:45am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3614-8]

Availability and Review of Proposed Enforcement Agreements; Ocean Dumping of Sewage Sludge

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and review.

SUMMARY: EPA announces the availability of six proposed judicial consent decrees and enforcement agreements (Agreements) for public review and comment in accordance with the requirements of the Ocean Dumping Ban Act of 1988.

EPA has received complete applications from the following New Jersey sewage sludge generators [1]: Bergen County Utilities Authority (BCUA), Joint Meeting of Essex and Union Counties (JMEUC), Linden Roselle Sewerage Authority (LRSA), Middlesex County Utilities Authority (MCUA), Passaic Valley Sewerage Commissioners (PVSC), and Rahway Valley Sewerage Authority (RVSA) for issuance of special permits to transport and dispose of sewage sludge under the Marine Protection, Research, and Sanctuaries Act of 1972, 33 U.S.C. 1401. In conjunction with preparing permit conditions for each applicant and making a tentative determination to issue these permits for a term ending on March 17, 1991, EPA has drafted these Agreements to ensure that the applicants aggressively pursue through completion the implementation of alternative disposal methods as required by the Ocean Dumping Ban Act. The New Jersey applicants have accepted these Agreements. EPA and the State of New Jersey have accepted their cessation schedules.

DATE: Comments must be received on or before July 26, 1989.

ADDRESSES: Send comments to: Bruce Kiselica, Chief, Ocean Dumping Task Force, EPA, Region II, 26 Federal Plaza, Room 813, New York, New York 10278-0090.

These proposed Agreements are available for public inspection at the above address.

[1] Complete applications were also received from the following New York sewage sludge generators: Nassau County Department of Public Works (NCDPW), New York City Department of Environmental Protection (NYCDEP), and Westchester County Department of Environmental Facilities (WCDEF). Their Agreements were noticed in the **Federal Register** last month.

FOR FURTHER INFORMATION CONTACT: Bruce Kiselica, Chief, Ocean Dumping Task Force, EPA, Region II, 26 Federal Plaza, Room 813, New York, New York 10278-0090, (212) 264-5693.

Public meeting sessions regarding these documents have been scheduled as follows:

July 19—Long Branch Municipal Building, Second Floor, Council Chamber, 344 Broadway, Long Branch, New Jersey.

The afternoon meeting session will commence at 1:00 PM, and the evening session will commence at 6:00 PM.

SUPPLEMENTARY INFORMATION: NCDPW's Agreement was published in the **Federal Register** on June 20, 1989 (54 FR 25902); the other New York ocean dumpers' Agreements were published on June 30, 1989 (54 FR 27704). This notice today discusses the six New Jersey ocean dumpers. The only major differences among the various Agreements are the specific interim schedules for ceasing ocean disposal and long term schedules for implementing final land based alternatives, provisions concerning special masters, and varying amounts of stipulated penalties depending on the size of the dumping operation. The applicants have developed the following plans for their sludges as part of the Agreements. BCUA proposes to dewater and chemically fix and in- or out-of-state landfill as cover on an interim basis and to incinerate on a long term basis. JMEUC proposes to out-of-state landfill on an interim basis and to incinerate on a long term basis. LRSA proposes to incinerate at an existing in-state incinerator or out-of-state landfill on an interim basis and to incinerate on a long term basis. MCUA proposes to dewater, chemically fix, and in-state landfill as cover on a long term basis. PVSC proposes to dewater and out-of-state landfill on an interim basis and to incinerate on a long term basis. RVSA proposes to dewater and out-of-state landfill on an interim basis and to incinerate at JMEUC's facility on a long term basis. The applicants propose to implement their plans by the following dates:

Applicant	Interim plan		Long-term plan	
	Date	Percent	Date	Percent
BCUA	3/17/91		1/01/96	
JMEUC	3/17/91		2/10/98	
LRSA	3/17/91		1/01/96	
MCUA	3/17/91		[2] 3/17/91	
PVSC	3/17/91		12/31/96	
RVSA	3/17/91		2/10/98	
NCDPW [3]	6/30/91	50	12/31/94	
	12/31/91	100		
NYCDEP [3]	12/31/91	20	12/31/95	>50
	6/30/92	100	6/30/98	100
WCDEF [3]	12/31/91		9/15/95	

[2] Acceptability of MCUA's long term plan is contingent upon State approval.

[3] As noted in the FEDERAL REGISTER notices published last month, the New York applicants propose to dewater and out-of-state landfill or use a private vendor on an interim basis. They are each investigating the full range of sludge management alternatives for use on a long term basis.

The proposed Agreements may be inspected, and arrangements made for copying, at the above office between 9:00 a.m. and 4:00 p.m., Monday through Friday, except federal holidays. The file supporting the related proposed permits required under the Marine Protection, Research, and Sanctuaries Act is also available for public inspection at the above address. The proposed permits were similarly available during a separate comment period, which closed on April 28, 1989.

Dated: July 6, 1989.

William J. Muszynski,

Acting Regional Administrator for Region II.

[FR Doc. 89-16362 Filed 7-10-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

July 3, 1989.

The Federal Communications Commission has submitted the following information collection requirements to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501-3520).

Copies of the submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW, Suite 140, Washington, DC 20037. Persons wishing to comment on these information collections should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785. Copies of these comments should also be sent to the Commission. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632-7513.

OMB Number: None.

Title: Amendment of the Commission's Ex Parte Rules—47 CFR Section 1.1206, Documentation required for written or oral ex parte presentations in non-restricted proceedings.

Action: Existing collection in use without an OMB control number.

Respondents: Individuals or households, state or local governments, businesses (including small businesses), federal agencies or employees, and non-profit institutions.

Frequency of Response: On occasion.

Estimated Annual Burden: 130 responses; 130 hours; 1 hour average burden per response.

Needs and Uses: In order to alert all parties in non-restricted Commission proceedings to presentations by members of the public to FCC decision-making personnel, FCC rules require that a copy of the written presentation be made available for public review and that a summary of any oral presentation be made available. Effects only "presenters" who do not serve all parties in the proceeding or are filing outside of normal comment periods established by the FCC.

OMB Number: 3060-0357.

Title: Section 63.701—Request for Designation as a Recognized Private Operating Agency.

Action: Reinstatement.

Respondents: Businesses.

Frequency of Response: On occasion.

Estimated Annual Burden: 30 responses; 150 hours; 5 hours average burden per respondent.

Needs and Uses: The information is needed to identify entities who seek governmental recognition as a Recognized Private Operating Agency (RPOA). The information will be used to ensure that RPOA's will obey the laws and treaties of the United States.

OMB Number: None.

Title: Section 74.913, Selection procedure for mutually exclusive ITFS applications.

Action: New collection.

Respondents: Non-profit institutions.

Frequency of Response: On occasion.

Estimated Annual Burden: 12 responses; 12 hours; 1 hour average burden per response.

Needs and Uses: Section 74.913(d) requires applicants tied in a comparative selection proceeding for Instructional Television Fixed Service stations to submit a statement of student enrollment at its proposed receive locations. The number of students claimed to be served must correlate to the applicant's purpose and proposed programming. The data is used by the FCC staff to determine the most qualified applicant.

Federal Communications Commission,
Donna R. Searcy,
Secretary.

[FR Doc. 89-16131 Filed 7-10-89; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: New
Title: Emergency Broadcast System Database
Abstract: This collection of informaiton is needed by FEMA to effectively manage the distribution of Federal funds to selected critical radio stations in the Emergency Broadcast System (EBS). Since funding is limited for this Presidentially required communications system, the information will be used to determine which stations will receive funds in order to keep existing operational, to enhance the survivability of the system, and to expand the number of survivable stations that comprise the backbone of the EBS. The funds will be used to purchase protection and backup equipment to ensure that the EBS will function when needed.
Type of Respondents: Businesses or other for-profit
Estimate of Total Annual Reporting and Recordkeeping Burden: 1,000
Number of Respondents: 1,000
Estimated Average Burden Hours per Response: 1
Fequency of Response: Annually

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearnace Officer, Linda Shiley, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burdan estimate or any aspect of this information collection, icluding suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Pamela Barr, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: June 30, 1989.
Gail L. Kercheval,
Acting Director, Office of Administrative Support.

[FR Doc. 89-16198 Filed 7-10-89; 8:45 am]
BILLING CODE 6718-01-M

[FEMA-834-DR]

Major Disaster and Related Determinations; Kentucky

AGENCY: Federal Emergency Management Agency.
ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Kentucky, (FEMA-834-DR), dated June 30, 1989, and related determinations.

DATED: June 30, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Program, Federal Emergency Management Agency, Washington, DC. 20472 (202) 646-3614.

Notice: Notice is hereby given that, in a letter dated June 30, 1989, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance act (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288, as amended by Pub. L. 100-707), as follows:

I have determined that the damage in certain areas of the Commonwealth of Kentucky, resulting from severe storms and flooding beginning on June 15, 1989, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93-288, as amended by Public Law 100-707. I, therefore, declare that such a major disaster exists in the Commonwealth of Kentucky.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288, as amended by Pub. L. 100-707, for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Thomas P. Credle of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Kentucky to have been affected adversely by this declared major disaster:

The counties of Bell, Clay, Floyd, Knott, Knox, and Leslie for Individual Assistance; and

The counties of Bell, Clay, Knox, and Leslie for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Robert H. Morris,
Acting Director, Federal Emergency Management Agency.

[FR Doc. 89-16169 Filed 7-10-89; 8:45 am]
BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice if hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89-777 (89 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Special Expeditions, Inc. and Wilderness Cruises, Inc., 720 Fifth Avenue, New York, New York 10019
Vessel: Sea Lion

Date July 6, 1989.
Joseph C. Polking,
Secretary.

[FR Doc. 89-16166 Filed 7-10-89; 8:45 am]
BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Disability Advisory Committee; Meeting

AGENCY: Social Security Administration, HHS.
ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), this notice announces the schedule and proposed agenda of a forthcoming meeting of the Disability Advisory Committee (the Committee).

DATE: July 24, 1989, 9:00 a.m. to 5:00 p.m.; July 25, 1989, 9:00 a.m. to 3:00 p.m.

ADDRESS: Hubert H. Humphrey Building, Humphrey Auditorium, 200 Independence Avenue SW., Washington, DC 20201.

Agenda: Approve Final Report.

The Committee may hold additional session during the evenings of July 24 and/or July 25, 1989. If the Committee decides to hold these evening sessions, the Committee will make an announcement during the regularly scheduled sessions.

FOR FURTHER INFORMATION CONTACT: Jean H. Hinckley, Executive Director, Disability Advisory Committee, P.O. Box 17064, Baltimore, Maryland 21235, (301) 965-4646.

SUPPLEMENTARY INFORMATION:

The Committee is established under and governed by the provisions of section 1114 of the Social Security Act, as amended, and the provisions of the Federal Advisory Committee Act, as amended, (Pub. L. 92-463). The Committee is chaired by Dr. John E. Affeldt.

The purposes of the Committee are to study the Social Security administrative review process (known as the "appeals process") to ensure that the process protects the rights of the claimants, produces accurate and swift decisions, and is viewed as fair and equitable; receive and consider public views on reform of the process; and make a report and recommendation to the Commissioner of Social Security.

This meeting is open to the public to the extent space is available.

A transcript of the Committee meeting is available to the public on an at-cost-of duplication basis. The transcript can be ordered from the Executive Director of the Committee. The transcript will become part of the record of these proceedings.

Dated: June 30, 1989.
Jean H. Hinckley,
Executive Director, Disability Advisory Committee.

[FR Doc. 89-16172 Filed 7-10-89; 8:45 am]
BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-89-1991; FR 2628]

Community Development Work Study Program

AGENCY: Office of Assistant Secretary for Community Planning and Development, HUD.
ACTION: Revision to Notice of Fund Availability.

SUMMARY: On June 27, 1989, HUD published a Notice of Fund Availability soliciting applications for the Community Development Work Study Program under the Secretary's Discretionary Fund.

This document revises the June 27 Notice to provide a third funding period alternative for applicants seeking funding under this program. In all respects, the two funding periods provided for in the original Notice remain effective. This document gives applicants an opportunity to apply, as well, for a funding cycle running from Spring 1990 to Spring 1992.

EFFECTIVE DATE: July 11, 1989.

FOR FURTHER INFORMATION CONTACT: James H. Turk, Technical Assistance Division, Office of Program Policy Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-6876. (This is not a toll-free number.) Application packages may be obtained immediately at the following address: Department of Housing and Urban Development, Office of Procurement and Contracts, Program Support Division, 451 Seventh Street, SW., Room 5252, Washington, DC 20410.

SUPPLEMENTARY INFORMATION: In a Notice of Fund Availability published on June 27, 1989, HUD invited institutions of higher education, either directly or through areawide planning organizations or States, to apply for grants to assist economically disadvantaged and minority students who participate in community development work study programs and who are enrolled in full-time graduate or undergraduate programs in community and economic development, community planning, or community management.

HUD's Notice indicated that an applicant could submit a proposal to fund applicants for programs that begin in the fall of 1989 (funding would support programs from September 1989 to September 1991), or a proposal to fund applicants for programs beginning in September 1990 (with funding from September 1990 to September 1992).

In light of the late notice, application period, and funding approval dates that HUD's June 27 1989 Notice provides, the Department recognizes that applicants for funding in Fall, 1989 are significantly disadvantaged. While the Department continues to offer funding for this Fall, this Notice expands the Work Study program to provide a third alternative—funding for a two-year support cycle beginning in Spring, 1990 (funding would support programs from January 1990 to January 1992).

Accordingly, applicants are invited to respond to the June 27, 1989 funding notice with applications for one or more of the funding cycles described in that notice, or for the additional funding period described in this document. Applicants may apply for two (or more) grant periods, but a separate budget breakdown of requested student participations must be submitted for each funding cycle for which an application is submitted.

Except as noted above, all application procedures for the Work Study program remain as described in the earlier publication.

Dated: July 3, 1989.
Andrey E. Scott,
General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 89-16139 Filed 7-10-89; 8:45 am]
BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; Establishment of New Notice of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (15 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to establish a new notice describing a system of records maintained by the Office of Surface Mining Reclamation and Enforcement (OSMRE). The notice is entitled "Collection Management Information System (CMIS)—Interior, OSMRE-11" and describes records on financial debts incurred by individuals due to Federal unpaid penalties or fees arising under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The notice is published in its entirety below.

As required by Section 3 of the Privacy Act of 1974, as amended (5 U.S.C. 552a(r)), the Office of Management and Budget, the Senate Committee on Governmental Affairs,

and the House Committee on Government Operations have been notified of this action.

5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. The Office of Management and Budget in its Circular A-130 requires a 60-day period to review such proposals. Therefore, written comments on this proposal can be addressed to the Chief, Division of Debt Management, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240. Comments received within 60 days of publication in the **Federal Register** will be considered. The notice shall be effective as proposed without further publication at the end of the comment period, unless comments are received which would require a contrary determination.

Oscar W. Mueller, Jr.,

Director, Office of Management Improvement.

Date: June 29, 1989.

INTERIOR/OSMRE-11

SYSTEM NAME:

Collection Management Information System (CMIS)—Interior, OSMRE-11

SYSTEM LOCATION:

The Office of Surface Mining Reclamation and Enforcement (OSMRE), Department of the Interior, Washington, DC 20240, and various OSMRE Field Offices. For specific identification and addresses of Field Offices contact the System Manager at the address given below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains related information about individuals and business entities (companies, corporation, etc.) who are cited as violators of the Surface Mining Control and Reclamation Act (SMCRA) of 1977. This information relates to type of violation cited, financial assessments, and financial resolution.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Violation information recorded against an entity;

(2) Appeal and abatement schedules; and,

(3) Financial assessment payments and resolution information.

The system contains both detail violation data and entity level summary data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are to: (a) Serve as a tool for OSMRE to track, maintain and resolve financial debt that has been imposed on individuals and companies due to acts of violations prescribed by SMCRA; (b) enable OSMRE to take appropriate action to resolve outstanding debt which may be uncollectible due to the financial status of such violators; (c) provide statistics by company, region, State, and nationwide for management purposes; (d) enable OSMRE and State Regulatory Authorities to maintain effective enforcement programs; (e) verify the status of abatement plans, payment plans, judicial appeals, financial compromises, and bankruptcy status; and, (f) forward the status and identity of outstanding violators data to the Applicant Violator System (AVS) which is matched to new permit requests.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure outside the Department of the Interior may be made to: (1) The appropriate State agency responsible for processing permit applications; (2) private business agencies for determination of net worth; (3) private collection agencies for collection of outstanding debt; (4) the U.S. Department of Justice or in a proceeding before a court or adjudicative body when: (a) The United States, the Department of the Interior, a component of the Department, or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were litigation and is compatible with the purpose for which the records were compiled; (5) a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; and, (6) a State or applicable regulatory authority official to verify that an individual/company is or is not currently liable for debt imposed upon him.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual form in file cabinets and recorded on computer magnetic media.

RETRIEVABILITY:

Data is retrievable by numerous combinations of data fields such as assigned company index number, company name, individual name, violation number, State, and amounts owed and paid.

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51 for computerized and manual records. Manual records are maintained in areas occupied by OSMRE and/or contractor personnel during working hours with buildings locked and/or guarded during nonworking hours.

RETENTION AND DISPOSAL:

Data stored on computer usable media will be retained until it is determined that the data is no longer needed or required. Manual records will be retained to serve as verification and back-up material. Automated Data Processing printout records will be disposed of periodically when superseded. Records are retained and disposed of in accordance with OSMRE Records Disposition Authority NC1-433-80-1, Item No. 302-06.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of Debt Management, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240.

NOTIFICATION PROCEDURE:

To determine whether information is maintained on you in this system, write to the System Manager. See 43 CFR 2.60 for form of request.

RECORD ACCESS PROCEDURES:

To see your records, write the System Manager. Describe as specifically as possible the records sought and mark the request "Privacy Act Request for Access." See 43 CFR 2.63 for required content of request.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the System Manager and must meet the content requirement of 43 CFR 2.71. The petition for amendment must be submitted in writing.

RECORD SOURCE CATEGORIES:

(1) OSMRE Regulation Program inpsection files,

(2) Individual, operator, and company financial reports,

(3) Individual or company Net Worth Determination Reports,

(4) Department of the Interior Solicitor files,

(5) OSMRE contractors who prepare and document investigative reports; and

(6) OSMRE mine site inspection data reports.

[FR Doc. 89-16237 Filed 7-10-89; 8:45 am]

BILLING CODE 4310-05-M

Bureau of Land Management

[CA-010-09-4212-13; CA 25406]

Realty Action: Exchange of Public and Private Lands in Placer County, California

AGENCY: Bureau of Land Management.

SUMMARY: The following described public land is being considered for exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Selected Public Land

Placer County, California

T. 15 N., R. 10 E., MDM,
Sec. 28, Lots 6, 9, MS 2339, W½NW¼S W¼, SW¼SW¼, S½SE¼SW¼;
Sec. 35, N½N½NW¼, SW¼NW¼NW¼, W½SW¼NW¼.

Aggregating 185 acres, more or less.

In exchange for the surface and mineral estate of the above land, the United States will acquire the surface and mineral estate of the following described private land from Bohemia Incorporated:

Offered Private Land

Placer County, California

T. 15 N., R. 10 E., MDM,
Sec. 16, SW¼SW¼;
Sec. 17, E½;
Sec. 21, NW¼, N½SW¼.

Aggregating 600 acres, more or less.

The private land being offered to the U.S. by Bohemia, Inc. includes property within the North Fork of the American River Canyon. Because of the unspoiled nature and spectacular scenery within the canyon, the river was designated a Wild and Scenic River by Congress in 1978. This acquisition, which includes approximately ¼-miles of river frontage, will afford added long-term protection for this invaluable resource.

The value of the properties to be exchanged are approximately equal; full equalization of values will be achieved with a payment to the U.S. by Bohemia, Inc. in an amount not to exceed 25% of the total value of the public lands that are to be transferred out of Federal ownership.

A right-of-way for ditches and canals will be reserved to the U.S. on the public lands to be transferred (43 U.S.C. 945); in addition, authorized roads, utility lines and any other authorized land uses will be identified as prior existing rights.

All necessary clearances for archaeology, rare plants and animals shall be granted prior to conveyance of title by the United States.

SUPPLEMENTARY INFORMATION: Publication of this notice in the **Federal Register** segregates the public lands from settlement, location and entry under the public land laws and the mining laws for a period of two years from the date of first publication.

FOR ADDITIONAL INFORMATION: Contact Mike Kelley, Folsom Resource Area Office, (916) 985-4474, at the address listed below.

DATE: Interested parties may submit comments to the District Manager; comments must be received on or before August (45 days, please add date), 1989.

ADDRESS: Comments should be sent to the District Manager, c/o the Folsom Resource Area Office, 63 Natoma Street, Folsom, California 95630; (916) 985-4474.

D.K. Swickard,

Area Manager.

[FR Doc. 89-16195 Filed 7-10-89; 8:45 am]

BILLING CODE 4310-40-M

[AZ 020-41-5410-10-NARC; A-22897]

Mineral, Interest Application; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Receipt of Conveyance of Mineral Interest Application.

Notice is hereby given that pursuant to Section 209 of the Act of October 21, 1976, 90 Stat. 2757, Saddlebrooke Development Company has applied to amend their application for conveyance of the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 10 S., R. 14 E.,
Sec. 23,
Sec. 26,
Sec. 27.

Containing approximately 1,100 acres.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, July 2, 1989, whichever occurs first.

Date: July 3, 1989.

Henri R. Bisson,

District Manager.

[FR Doc. 89-16194 Filed 7-10-89; 8:45 am]

BILLING CODE 4310-32-M

[NV-930-09-4212-22]

Filing of Plats of Survey; Nevada

June 30, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plats of Survey in Nevada.

EFFECTIVE DATES: Filings are effective at 10:00 a.m. on the dates shown below.

FOR FURTHER INFORMATION CONTACT: Lacel Bland, Chief, Branch of Cadastral Survey, Nevada State Office, Bureau of Land Management, 850 Harverd Way, P.O. Box 12000, Reno, Nevada 89520, 702-328-6341.

SUPPLEMENTARY INFORMATION: The Plats of Survey of lands described below will be officially filed at the Nevada State Office, Reno, Nevada, effective at 10:00 a.m. on August 24, 1989:

Mount Diablo Meridian

T. 11 N., R. 68 E.—Survey
T. 11 N., R. 69 E.—Dependent Resurvey and Survey
T. 13 N., R. 69 E.—Dependent Resurvey and Survey

All of the above listed plats were accepted on June 15, 1989.

The area surveyed within Township 11 North, Range 68 East, ranges from about 8,900 to 10,300 ft. above sea level and is mountainous.

This survey represents a portion of the subdivisional lines and a traverse of Highland Ridge, through section 1.

The soil consists of sandy clay loam and is rocky. Vegetation consists of sagebrush, buckbrush, mahogany and

native grass. There is Bristlecone pine, limber pine and aspen throughout the township.

The area is drained by Decathon Canyon, Johns Wash and Murphy Wash, which drains southerly.

Access into the area is limited to a hiking trail from Lehman Caves National Monument.

Principal users of the area are cattlemen.

There were no mineral formations of consequence noted during this survey.

The area surveyed within Township 11 North, Range, 69 East, ranges from about 7,800 to 10,300 ft. above sea level and is mountainous.

This survey represents a dependent resurvey of a portion of Mineral Survey No. 4432A and the remonumentation of a corner of Mineral Survey No. 4432B, designed to restore the corners in their true original locations according to the best available evidence, and the survey of a portion of the west boundary and a portion of the subdivisional lines.

The soil consists of sandy clay loam and is rocky. Vegetation consists of sagebrush, buckbrush, mahogany and native grass. There are Bristlecone pine, limber pine, and aspen throughout the township.

The area is drained by Lexington Creek, which drains easterly and Big Spring Wash, which drains southerly.

Access into the township is limited to a few trail roads.

Principal users of the area are cattlemen and sheepherders.

There is some mining activity located in sec. 3.

The area surveyed within Township 13 North, Range 69 East, ranges from about 6,400 to 7,650 ft. above sea level and is mostly mountainous to rolling.

This survey represents a dependent resurvey of a portion of the subdivisional lines, designed to restore the corners in their true original locations according to the best available evidence; and the survey of a portion of the subdivisional lines.

The soil is sandy clay loam and is rocky. Vegetation consists of sagebrush, buckbrush and native grass. There are stands of juniper, pinon pine, mahogany and some cottonwood throughout the township.

The area is drained by Lehman Creek and Baker Creek, which flows easterly. Access into the area is provided by State Route No. 488 and numerous improved and unimproved roads.

Principal users of the area are cattlemen.

There were no mineral formations of consequence noted during the survey. Subject to valid existing rights, the provisions of existing withdrawals and classifications, and the requirements of applicable land laws, the following described lands which are located within the Humboldt National Forest will be open at 10:00 a.m. on August 24, 1989, to such forms of disposition as may be law be made of national foret lands:

Mount Diablo Meridian

T. 11 N., R. 68 E.,
Sec. 1, Lots 3–6, 9, 10, S½NW¼, SW¼.
T. 11 N., R. 69 E.,
Sec. 3, Lots 1–14, S½NW¼.
T. 13 N., R. 69 E.,
Sec. 14, Lots 1–12;
Sec. 23, Lots 1–4, S½N½, S½.

The lands described above have been and continue to be open to mining location and mineral leasing.

Subject to valid existing rights, the provisions of existing withdrawals and classifications, and the requirements of applicable land laws, the following described public lands will be open at 10:00 a.m. on August 24, 1989, to the public land laws generally.

Mount Diablo Meridan

T. 13 N., R. 69 E.,
Sec. 3, Lots 1–4, W½E½, W½;
Sec. 24, Lots 1–12.

The lands described above have been and continue to be open to mining location and mineral leasing.

Subject to valid existing rights, the following described lands which are located within the Great Basin National Park remain closed to all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and geothermal laws:

Mount Diablo Meridian

T. 11 N., R. 68 E.,
Sec. 1, Lots 1, 2, 7, 8, 11, SE¼NE¼, E½SE¼.

The following Plats of Survey are resurveys and surveys which do not open any lands and, therefore, do not require an opening. These plats were accepted on June 15, 1989, and officially filed at the Nevada State Office, Reno, Nevada on June 29, 1989:

Mount Diablo Meridian

T. 12 N., R. 69 E.—Dependent Resurvey and Survey
T. 12 N., R. 70 E.—Dependent Resurvey and Survey

All of the surveys in this notice were executed to meet the administrative needs of the National Park Service.

All of the above listed plats are now the basic record for describing the lands for all authorized purposes. The plats will be placed in the open files of the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the plats and related field notes may be furnished to the public upon payment of the appropriate fee.

Fred Wolf,
Associate State Director, Nevada.

[FR Doc. 89–16238 Filed 7–10–89; 8:45 am]

BILLING CODE 4310-HC-M

Minerals Management Service

Development Operations Coordination Document; BP Exploration Inc.

AGENCY: Minerals Management Service.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that BP Exploration Inc. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 7597 and 9382, Blocks 43F and 58, respectively, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on June 26, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. W. Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to Section 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: June 30, 1989.

J. Rogers Pearcy,
Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89–16201 Filed 7–10–89; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Conoco Inc.

AGENCY: Minerals Management Service.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Conoco Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 7733, Block 221, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from existing onshore bases located at Cameron and Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on June 29, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certificate are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to section 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: July 3, 1989.

J. Rogers Pearcy,
Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89–16202 Filed 7–10–89; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 1, 1989. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by July 28, 1989.

Caroll D. Shull,
Chief of Registration, National Register.

ARIZONA

Maricopa County

Glendale Woman's Club Clubhouse, 7032 N. 56th Ave., Glendale, 89001003

CALIFORNIA

Orange County

Parker House, 163 S. Cypress St., Orange, 89000975

Santa Cruz County

Santa Cruz Downtown Historic District, Roughly Rincon St., Church St., Chestnut St., Walnut St., Cedar St., Laurel St., Myrtle St., and Lincoln St., Santa Cruz, 89001005

COLORADO

Boulder County

Eldora Historic District (Metal Mining and Tourist Era Resources of Boulder County MPS), Roughly Eaton Pl., 6th, Pearl, and 4th Sts., Huron Ave., 6thSt., Eldorado Ave., and 7th St., Klondyke Ave., and Tenth St., Eldora, 89000978

Gold Hill Historic District (Metal Mining and Tourist Era Resources of Boulder County MPS), Roughly bounded by North St., Pine St., Boulder St., Gold Run St., and College St., Gold Hill, 89000979

Jamestown Mercantile Building (Metal Mining and Tourist Era Resources of Boulder County MPS), Main St., Jamestown, 89000985

Little Church in the Pines (Metal Mining and Tourist Era Resources of Boulder County MPS), 414 Gold Run Rd., Salina, 89000983

Salina School (Metal Mining and Tourist Era Resources of Boulder County MPS), 536 Gold Run Rd., Salina, 89000984

Snowbound Mine, Co. Rd. 52, Gold Hill vicinity, 89000998

Sunshine School (Metal Mining and Tourist Era Resources of Boulder County MPS), 355 Co. Rd. 83, Sunshine, 89000982

Wallstreet Assay Office (Metal Mining and Tourist Era Resources of Boulder County MPS), 6352 Four Mile Canyon Dr., Wallstreet, 89000986

Ward Congregational School (Metal Mining and Tourist Era Resources of Boulder County MPS), 41 Modoc, Ward, 89000981

Ward School (Metal Mining and Tourist Era Resources of Boulder County MPS), 66 Columbia, Ward, 89000980

Cheyenne County

Cheyenne County Courthouse, 51 S. 1st St., Cheyenne Wells, 89000997

Custer County

Westcliff School, 304 4th St., Westcliffe, 89000999

Denver County

Saint Thomas Theological Seminary, 1300 S. Steele, Denver, 89001007

BEST COPY AVAILABLE

Gunnison County

Marble High School (Marble MPS), 412 Main St., Marble, 89000989

Marble Town Hall (Marble MPS), 407 Main St., Marble, 89000988

Parry, William D., House (Marble MPS), 115 Main St., Marble, 89000987

St. Paul's Church (Marble MPS), 123 State St., Marble, 89000990

Larimer County

MacGregor Ranch, 180 MacGregor Ave., Estes Park vicinity, 89001008

IDAHO

Gooding County

Hagerman State Bank, Limited, 100 S. State St., Hagerman, 89001000

Nez Perce County

JEAN (steamboat), 3620 A Snake River Ave., in Hells Gate State Park, Lewistown, 89001001

LOUISIANA

Caddo Parish

Jefferson Hotel, 907 Louisiana Ave., Shreveport, 89000977

Caldwell Parish

Oasis, The, Main St./LA 845, Clarks, 89000976

MASSACHUSETTS

Suffolk County

Massachusetts School of Art, 364 Brookline Ave., Boston, 89000974

MISSOURI

Buchanan County

Kelley and Browne Flats (St. Joseph MPS), 1208–1216 Frederick Ave., St. Joseph, 89000991

Robidoux Hill Historic District (St. Joseph MPS), Roughly bounded by Franklin St., Robidoux St., Fourth St., Louis St., and Fifth St., St. Joseph, 89000992

NEW JERSEY

Camden County

Blackwood Historic District, Roughly Church St. from E. Railroad Ave. to Indiana Ave., Blackhorse Pike, and Central Ave., Blackwood, 89000996

Middlesex County

Christ Episcopal Church, 5 Paterson St., New Brunswick, 89000994

Morris County

Cary, Stephen, House, Mountainside Rd., Mendhan vicinity, 89000995

Sussex County

High Breeze Farm, Barrett Rd. off NJ 94, Highland Lakes vicinity, 89000993

Union County

Hatfield, Deacon Andrew, House, Constitution Plaza, Mountainside, 89001004

OKLAHOMA

Tulsa County

Neasey, James Alexander, House, 1802 S. Cheyenne Ave., Tulsa, 89001006

WISCONSIN

Jefferson County

Fuermann, August, Jr., and Eliza, House, 500 S. Third St., Watertown, 89001002.

[FR Doc. 89–16184 Filed 7–10–89; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31464]

Indiana Rail Road Co.—Lease and Operation Exemption—Norfolk & Western Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 11343–11345 the lease and subsequent operation by Indiana Rail Road Company (IRRC) of 38.67 miles of rail line in Marion, Hamilton, and Tipton Counties, IN, owned by the Norfolk and Western Railway Company, subject to standard labor protective conditions.

DATES: The exemption will be effective on August 14, 1989. Petitions to stay must be filed by July 26, 1989, and petitions for reconsideration must be filed by August 7, 1989.

ADDRESSES: Send pleadings referring to Finance Docket No. 31464 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' representatives: John H. Broadly (IRRC), 21 Dupont Circle, NW., Washington, DC 20036

Thomas W. Amber, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245 [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 275–1721.]

Decided: July 3, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–16204 Filed 7–10–89; 8:45 am]

BILLING CODE 7035–01–M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation and address of principal office:
Halliburton Company
3600 Lincoln Plaza
500 North Akard Street
Dallas, Texas 75201

2. Wholly-owned subsidiaries which will participate in the operations, and state(s) of incorporation:
Wholly-owned subsidiaries of Halliburton Company:
a. Brown & Root, Inc.—Texas
i. Allied Industries, Inc.—Texas
ii. Brown & Root Development, Inc.—Texas
iii. Brown & Root Industrial Services—Delaware
iv. Brown & Root International, Inc.—Delaware
v. Brown & Root U.S.A., Inc.—Texas
(y) Southwestern Contracting Company—Texas
vi. Brown & Root Services Corporation—Delaware
vii. Enterprise Building Corporation—Florida
viii. Fargo Engineering Company—Michigan
ix. Flo-Tronics, Inc.—Texas
x. Houston Executive Air Service, Inc.—Texas
xi. Mid-Valley, Inc.—Delaware
xii. Missouri Resources Services, Inc.—Missouri
xiii. Petrochemicals Procurement, Inc.—Texas
xiv. Raintree Resource Recovery, Inc.—Texas
(z) Raintree Energy Corporation—California
b. Chemtronics, Inc.—North Carolina
c. Concourse Property Corporation—Texas
d. G & H Management Company—Delaware
e. GLM Mechanical Associates, Inc.—New York
f. Halliburton Delaware Corporation—Delaware
g. Halliburton Domestic International Sales Company—Delaware
h. Halliburton International, Inc.—Texas
i. Halliburton Logging Services, Inc.—Texas
j. Halliburton Telecommunications, Inc.—Delaware
k. Health Economics Corporation—Texas
i. Response Network, Inc.—Texas
l. Highlands Insurance Company—Texas
i. Aberdeen Insurance Company—Texas
ii. Highlands Casualty Company—Texas
iii. Highlands Underwriters Insurance Company—Texas
m. Howard Smith Screen Company—Texas
n. Jet Research Center, Inc.—Texas
o. Joe D. Hughes, Inc.—Texas
p. NUS Corporation—Delaware
i. Eqex Corporation—Delaware
ii. NUS Facilities Management Corporation—Delaware
iii. NUS International Corporation—Delaware
iv. NUS of Michigan, Inc.—Michigan
v. NUS of New York, P.C.—New York
vi. NUS Operating Services Corporation—Delaware
vii. NUS Training Corporation—Delaware
q. Otis Engineering Corporation—Delaware
i. Otis Latin-America, Inc.—Delaware
r. Overseas Marine Leasing Corporation—Delaware
s. Sierra Geophysics, Inc.—California
t. Southern California Bonding Services, Inc.—California
u. Taylor International, Inc.—Delaware
i. Mid-Valley Marine, Inc.—Delaware
ii. Taylor Diving, Inc.—Louisiana
v. Underwriters Special Risks, Inc.—Texas
i. Highlands Claims and Safety Services, Inc.—Texas
ii. Highlands Lloyds—Texas
iii. Transportation Recovery Services, Inc.—New York

B. 1. *Parent Corporation* and address of principal office:
KO–DA TRADING CO. LTD., a British Columbia Corporation, having its registered and records offices located at 1050–1185 West Georgia Street, Vancouver, British Columbia, Canada V6E 4E6.

2. Wholly-owned subsidiaries which will participate in the operations, and Province of incorporation:
a. KO–DA FISHERIES LTD., a British Columbia Corporation, having its registered and records offices located at 1050–1185 West Georgia Street, Vancouver, British Columbia, Canada V6E 4E6 (the owner of the goods to be transported).
b. KO–DA TRANSPORT LTD., a British Columbia Corporation, having its registered and records offices located at 1050–1185 West Georgia Street, Vancouver, British Columbia, Canada V6E 4E6 (the intended transporter).

Noreta R. McGee,

Secretary.

[FR Doc. 89–16203 Filed 7–10–89; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on June 14, 1989, a proposed Consent Decree in *United States* v. *Phillips Pipeline Co.*, Civil Action No. 89–409–G, was lodged with the United States District Court for the Middle District of North Carolina. The Complaint filed by the United States sought injunctive relief and the assessment of civil penalties under the Clean Air Act. The Complaint alleges that the defendant failed to install air pollution emissions control equipment that is required under the regulations promulgated by the U.S. Environmental Protection Agency pursuant to the Clean Air Act.

Under the proposed Consent Decree, the defendant will pay a civil penalty of $35,000. The defendant has now installed the required emissions control equipment.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Phillips Pipe Line Co.*, D.J. Ref. 90–5–2–1–1307.

The Proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Middle District of North Carolina, U.S. Post Office & Courthouse, 324 W. Market Street, Greensboro, North Carolina; (2) the U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE., Atlanta, Georgia; and (3) the Environmental Enforcement Section, Land & Natural Resources Division, U.S. Department of Justice, 10th and Pennsylvania Avenue NW., Washington, DC. Copies of the proposed Decree may be obtained by mail from the Environmental Enforcement Section of the Department of Justice, Land and Natural Resources Division, P.O. Box 7611, Benjamin Franklin Station, Washington, DC 20044–7611, or in person at the U.S. Department of Justice Building, Room 1517, 10th Street and Pennsylvania Avenue NW., Washington, DC.

Donald A. Carr,

Acting Assistant Attorney General, Land & Natural Resources Division.

[FR Doc. 89–16239 Filed 7–10–89; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recording/reporting requirement.

The title of recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331.

Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM./ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, D.C. 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New Collection

U.S Department of Labor; Bureau of Labor Statistics; Office of Safety, Health and Working conditions. Feasibility study of fatal occupational injuries.

Form No.	Affected public	Respondents	Frequency	Average time per response (minutes)
Fatal 1	Individuals or households	50	One-time	20
Fatal 2	All	125	do	30
Fatal 3	All, except individuals or households	25	do	30

92 total hours.

The credibility of employer-reported work injury fatality data is being questioned. Death certificate data is often cited to support this claim, yet the validity of death certificate "at work" fatalities has never been evaluated. In this study, the Texas Department of Health will validate death certificate and other fatality data source information.

Revision

Bureau of Labor Statistics

U.S. Export Product Information

1220-0113

Monthly

Form No.	Affected public	Respondents	Frequency	Average time per response
BLS 3007D	Small, Medium, Large Business Firms	1209	Monthly	16.2 minutes.

3,917 total hours.

The International Price Program indexes, one of the nation's primary economic indicators, are used as: measures of price movements in international product prices; indicators of inflationary trends in the economy; sources of information used to determine U.S. monetary, fiscal, trade, and commercial policies. They are also used to deflate the Gross National Product and the monthly merchandise trade figures.

Extension

Employment Standards Administration

Optional Use Payrool Form Under the Davis-Bacon Act

1215-1049; WH-347

Weekly

Individuals or households; State or local governments; Businesses or other for profit; Federal agencies or employees; Small businesses or organizations.

244,400 respondents; 5,500,000 total hours; ½ hour per response; 1 form.

Report is used by contractors to certify payrolls in accordance with requirements of Copeland and Davis-Bacon Acts, attesting that proper wage rates and fringe benefits were paid; reviewed by contracting agencies to verify that rates are legal and that employees are properly classified (29 CFR 3.3, 5.5(a)(3)(ii)).

Extension

Employment Standards Administration

Bona Fide Thrift or Savings Plan (29 CFR Part 547)

1215-0119

On occasion

Businesses or other for profit; Small businesses or organizations.

25 respondents; 2 total hours for reporting; 1 total hour for recordkeeping; 5 minutes per response.

Section 7(e)(3)(b) of the Fair Labor Standards permits the exclusion from an employee's regular rate of pay of payments on behalf of an employee to a "bona fide" thrift or savings plan. Regulations, 29 CFR Part 547, set forth the requirements for a bona fide thrift or savings plan.

Extension

Employment and Training Administration

Benefit Appeals

1205-0172; ETA 5130

Monthly

State or local governments.

53 respondents; 2,544 total hours; 4 hours per response; 1 form. This report is used to monitor the benefit appeals process, to evaluate compliance with the appeals performance standard and to develop plans for remedial action. The report is also needed for budgeting and for workload figures.

Exension

Bureau of Labor Statistics

U.S. Import Product Information

1220-0115

Monthly

Form No.	Affected public	Respondents	Frequency	Average time per response
BLS 3007D	Small, Medium, and Large Business Firms	1324	Monthly	18.0 minutes.

4766 total hours.

The International Price Program indexes, one of the nation's primary economic indicators, are used as: measures of price movements in international product prices; indicators of inflationary trends in the economy; sources of information used to determine U.S. monetary, fiscal, trade, and commercial policies. They are also used to deflate the Gross National Product and the monthly merchandise trade figures.

Extension

Bureau of Labor Statistics

Occupational Employment Statistics Quarterly Progress Report

1220-0068; BLS-2877a

Quarterly

State or Local Government.

212 responses, 70 hours, one form; 20 minutes per response.

The OES survey quarterly progress reports are prepared by State Employment Security Agencies and are the primary source of current management data on the status of the conduct of the Occupational Employment Statistics Survey in each State. They allow for early identification and resolution of State collection problems.

Signed at Washington, DC, this 5th day of July, 1989.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 89-16160 Filed 7-10-89; 8:45 am]

BILLING CODE 4510-24-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 21, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 21, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 26th day of June 1989.

Glenn M. Zech,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/Workers/Firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Adidas, Inc. (Company)	Warren, NJ	6/26/89	6/5/89	23,074	Shoes.
Cadic, Inc. (Workers)	Beaverton, OR	6/19/89	5/31/89	23,075	Computers.
Equitable Handbags (Workers)	New Brunswick, NJ	6/26/89	6/12/89	23,076	Ladies' Handbags.
Four Corners Drilling Co. (Workers)	Farmington, NM	6/26/89	6/9/89	23,077	Oil & Gas.
HECI Exploration Co. (Workers)	Dallas, TX	6/26/89	5/31/89	23,078	Oil & Gas.
Inman Products (Workers)	Rahway, NJ	6/26/89	5/31/89	23,079	Air Freshners.
J.L. Prescott, Co. (Workers)	Passaic, NJ	6/26/89	6/2/89	23,080	Household Cleaning Products.
J.M. Huber Corp.—Oil & Gas Div. (Company)	Houston, TX	6/26/89	6/6/89	23,081	Oil & Gas.
Leo Dress, Inc. (Workers)	New York, NY	6/26/89	2/8/89	23,082	Ladies' Dresses & Suits.
Malina, Inc. (Workers)	Providence, RI	6/26/89	6/8/89	23,083	Yarn.
N.H.R., Inc. (ILGWU)	Nicholls, GA	6/26/89	5/31/89	23,084	Childrens' Outerwear.
National Semiconductors (Company)	Danbury, CT	6/26/89	6/7/89	23,085	Semiconductors.
PMC Equipment Co., Inc. (Company)	Odessa, TX	6/26/89	6/1/89	23,086	Oil & Gas.
Parchman Oilfield Serv., Inc. (Workers)	Edinburg, TX	6/26/89	6/5/89	23,087	Oil & Gas.
Petrolite Corp., Tretolite Oilfield Chemicals Div. (Workers)	Midland, TX	6/26/89	6/7/89	23,088	Oil & Gas.
Quickie Mfg., Co. (Workers)	Cinnaminson, NJ	6/26/89	6/8/89	23,089	Brooms, Mops & Brushes.
Renaissance Eyewear (Company)	Perth Amboy, NJ	6/26/89	5/25/89	23,090	Eyeglass Frames.
St. Clair Pakwell (Workers)	Wilsonville, OR	6/26/89	5/19/89	23,091	Paper Bags.
Stacy Industries, Inc. (UTWA)	Woodridge, NJ	6/26/89	6/2/89	23,092	Fabrics.
Weymouth Art Leather, (Company)	Braintree, MA	6/26/89	6/8/89	23,093	Fabrics.
Wyoming Casing Serv., Inc.	Dickinson, ND	6/26/89	5/30/89	23,094	Oil & Gas.
Wyoming Casing Serv., Inc. (Workers)	Gillette, WY	6/26/89	5/30/89	23,095	Oil & Gas.

[FR Doc. 89-16161 Filed 7-10-89; 8:45am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (89-53)]

NASA Advisory Council (NAC), Commercial Programs Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NAC, Commercial Programs Advisory Committee.

DATE: August 15, 1989, 8:15 a.m. to 3 p.m.

ADDRESSES: American Institute of Aeronautics and Astronautics, 10th Floor, Conference Room A, 901 D Street, SW, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Stone, Office of Commercial Programs, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-8720..

SUPPLEMENTARY INFORMATION: The Commercial Programs Advisory Committee is concerned with the overall NASA program supporting the commercial development of space, both relevant policies and program scope and content. The Committee is chaired by Mr. Edward Donley and is currently composed of 17 members.

The meeting will be closed to the public from 12 noon to 3 p.m. for a discussion of the qualifications of candidates for membership. Such a discussion would invade the privacy of the candidates and other individuals involved. Since this discussion will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting be closed to the public for this period of time. Prior to the closed session, the meeting will be open to the public up to the seating capacity of the room, which is approximately 40 persons including the Committee members and other participants.

Type of Meeting

Open—except for a closed session as noted in the agenda below.

Agenda

August 15, 1989

8:15 a.m.—Welcome.
8:45 a.m.—Commercial Programs Update.
9 a.m.—Market Sector Recommendations.
12 noon—Closed Session.
3 p.m.—Adjourn.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89-16241 Filed 7-10-89; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-341]

Detroit Edison Co.; Wolverine Power Supply Cooperative, Inc.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-43, issued to the Detroit Edison Company and Wolverine Power Supply Cooperative, Inc. (the licensees), for operation of Fermi-2 located in Monroe County, Michigan.

In accordance with the licensees' application for amendment dated April 3, 1989, the amendment would revise the Technical Specifications (TS) to reflect plant operation following the first fuel reload for Fermi-2 which will be cycle 2.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By August 10, 1989, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Lawrence A. Yandell: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated April 3, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 3rd day of July.

For the Nuclear Regulatory Commission.

Lawrence A. Yandell,

Acting Director, Project Directorate III-1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-16187 Filed 7-10-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-341]

Detroit Edison Co.; Wolverine Power Supply Cooperative, Inc.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-43, issued to the Detroit Edison Company and Wolverine Power Supply Cooperative, Inc. (the licensees), for operation of Fermi-2 located in Monroe County, Michigan.

In accordance with the licensees' application for amendment dated April 3, 1989, the amendment would revise the Technical Specifications (TS) relating to the Source Range Monitors (SRM). The change would allow complete core offloading with provisions to suspend the minimum count rate requirement for the SRM channels to allow removal of the final 16 fuel assemblies. The amendment also increases the signal-to-noise ratio required for a reduced SRM minimum count rate requirement and eliminates a related TS provision which is no longer needed.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By August 10, 1989, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Lawrence A. Yandell:

petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated April 3, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 3rd day of July.

For The Nuclear Regulatory Commission.

Lawrence A. Yandell,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–16186 Filed 7–10–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-341]

Detroit Edison Co.; Wolverine Power Supply Cooperative, Inc.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–43, issued to the Detroit Edison Company and Wolverine Power Supply Cooperative, Inc. (the licensees), for operation of Fermi-2 located in Monroe County, Michigan.

In accordance with the licensees' application for amendment dated May 11, 1989, the amendment would revise the Technical Specifications to address the use of sodium pentaborate enriched with the Boron-10 isotope to meet the requirements of the anticipated transient without scram (ATWS) rule, 10 CFR 50.62, paragraph (c)(4).

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By August 10, 1989, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Lawrence A. Yandell: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated May 11, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 3rd day of July.

For the Nuclear Regulatory Commission.

Lawrence A. Yandell,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–16188 Filed 7–10–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-8857]

Everest Minerals Corp.; Final Finding of No Significant Impact Regarding Section 14 Satellite Facility Operation of Everest Minerals Corporation's Highland Project in Converse County, WY

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of final finding of no significant impact.

1. Proposed Action

The proposed administrative action is to amend Source Material License SUA–1511 authorizing Everest Minerals to operate a new satellite facility at the Highland in-situ leach uranium recovery operation located in Converse County, Wyoming.

2. Reasons for Final Finding of No Significant Impact

An environmental assessment was prepared by the staff at the U.S. Nuclear Regulatory Commission (NRC) and issued by the Commission's Uranium Recovery Field Office, Region IV. The environmental assessment performed by the Commission's staff evaluated potential impacts onsite and offsite due to radiological releases that may occur during the course of the operation. Documents used in preparing the assessment included the licensee's application dated December 30, 1985, the Final Environmental Statement for Exxon Corporation (Everest's Highland site) prepared by the Commission staff dated November 1978, and Everest's November 23, 1988 satellite amendment request documentation. Based on the review of these documents, the Commission has determined that no significant impact will result from the proposed action.

In accordance with 10 CFR Part 51.33(e), the Director, Uranium Recovery Field Office, made the determination to issue a final finding of no significant impact in the **FEDERAL REGISTER.** Concurrent with this finding, the staff will issue an amendment to Source Material License SUA–1511 authorizing operation of Everest Minerals Corporation's Section 14 satellite facility located in Converse County, Wyoming.

This finding, together with the environmental assessment setting forth the basis for the finding, is available for public inspection and copying at the Commission's Uranium Recovery Field Office located at 730 Simms Street, Golden, Colorado, and at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC.

Dated at Denver, Colorado, this 21st day of June, 1989.

For the Nuclear Regulatory Commission.

Edward F. Hawkins,

Branch Chief, Uranium Recovery Field Office, Region IV.

[FR Doc. 89–16190 Filed 7–10–89; 8:45 am]

BILLING CODE 7530-01-M

[Docket No. 50-354]

Public Service Electric & Gas Co.; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–57 issued to Public Service Electric & Gas Company (the licensee) for operation of the Hope Creek Generating Station, located in Salem County, New Jersey.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the Technical Specifications (TS) for the Hope Creek Generating Station to (1) separate the Reactor Building Filtration, Recirculation, and Ventilation System (FRVS) into two separate sections, one affecting the FRVS Recirculation Subsystem (FRVS–RS) and the other affecting the FRVS Ventilation Subsystem (FRVS–VS), (2) extend the life of the FRVS–RS absorber charcoal, (3) eliminate unnecessary surveillance tests of the FRVS, and (4) provide minor clarifications for the FRVS and Control Room Emergency Filtration System (CREFS).

The proposed action is in accordance with the licensee's application for amendment dated November 25, 1987 as supplemented by a letter dated April 17, 1989.

The Need for the Proposed Action

The proposed change to the Technical Specifications is required to (1) clarify the surveillance requirements for both FRVS and CREFS, (2) relax presently overly conservative surveillance commitments which will, in turn, significantly extend the service life of the FRVS Recirculation and Filtration subsystem charcoal without affecting the systems' capabilities or effectiveness as stated in the FSAR, and (3) permit maintenance activities in the reactor building or control room areas without dogmatically requiring a lengthy surveillance test of the FRVS or CREFS without regard for the actual impact of those maintenance activities on ventilation system efficiency.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the Technical Specifications. The proposed revision would revise the Technical Specifications Section 3/4.6.5.3 by creating separate Sections 3/4.6.5.3.1, and 3/4.6.5.3.2; rewording certain surveillance requirements and adding a footnote to those Sections; and, for Section 3/4.7.2, rewording surveillance requirement 4.7.2.c and adding a footnote to that Section. The separation of the Filtration, Recirculation, and Ventilation System into two subsystems with identical limiting conditions for operation and surveillance requirements provides the intended clarification and does not remove or relax the current requirements. The requested change of the acceptance criterion to 7.5% methyl iodine penetration for tests of the FRVS–RS charcoal while the acceptance criterion for the test of the FRVS–VS charcoal remains at 1.0% penetration corresponds to a combined iodide penetration for the two beds in series of less than 0.075%, which is within the Regulatory Guide 1.52 criterion. The requested change would require subsystem flow rate, in-place penetration, or carbon absorbent laboratory tests only upon determination that the High Efficiency

Particulate Activity (HEPA) filters or carbon absorbent could have been damaged by structural maintenance or adversely affected by chemicals, fumes or foreign materials. The amendment would further clarify that this determination shall consider the maintenance performed and/or the type, quantity, length of contact time, known effects and previous accumulation history for all contaminants which could reduce the system performance to less than that verified by the acceptance criteria of the tests.

The proposed amendment described above does not change operation of the facility and the change in the surveillance acceptance criterion is consistent with the intent of Regulatory Guide 1.52. Therefore, the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves systems located within the restricted area as defined in 10 CFR Part 20 and changes to the surveillance requirements. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Environmental Report-Operating License Stage for the Hope Creek Generating Station, dated August, 1983.

Agencies and Persons Consulted

The NRC staff consulted with the State of New Jersey. The comments received from the Bureau of Nuclear Engineering of the State of New Jersey will be addressed in the Safety Evaluation issued with the amendment.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated November 25, 1987 and a supplement dated April 17, 1989 which are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555 and at the Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

Dated at Rockville, Maryland, this 3rd day of July, 1989.

For the Nuclear Regulatory Commission.

Walter Butler,

Director, Project Directorate I-2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-16191 Filed 7-10-89; 8:45 am]

BILLING CODE 7590-01-M

Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station); Exemption

I

The Sacramento Municipal Utility District holds Facility Operating License No. DPR-54, which authorizes operation of the Rancho Seco Nuclear Generating Station. The license provides among other things, that the facility is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect. This facility is a pressurized water reactor located in Sacramento County, California.

II

Appendix A of 10 CFR Part 20 defines protection factors for respirators. Footnote d-2(c) of this Appendix states that "No allowance is to be made for the use of sorbents against radioactive gases or vapors."

By submittal dated November 17, 1988, the Sacramento Municipal Utility District (the District, or the licensee) requested an exemption to 10 CFR Part 20, Appendix A, footnote d-2(c). The licensee submitted this request in accordance with 10 CFR Part 20.103(e).

Test data and canister qualification information obtained from the canister vendor, Mine Safety Appliances Company (MSA), have been provided by the District. This data was also submitted in conjunction with similar exemption requests by Alabama Power Company for the Joseph M. Farley Nuclear Plant, Units 1 and 2 (Docket Nos. 50-348 and 50-364) and Southern California Edison Company for San Onofre Units 1, 2 and 3 (Docket Nos. 50-206, 50-361 and 50-362). The District has provided a detailed submittal responding to all NRC staff concerns relating to the request for exemption to 10 CFR Part 20, Appendix A, footnote d-2(c). The exemption would allow the use of a radio-iodine protection factor of 50 for MSA GMR-I canisters at Rancho Seco Nuclear Generating Station. Criteria and background information used for our evaluation include 10 CFR Part 20.103; 10 CFR Part 19.12; Regulatory Guide 8.15 "Acceptable Programs for Respiratory Protection"; Regulatory Guide 8.20, "Applications of Bioassay for I-125 and I-131"; NUREG/CR-3403, "Criteria and Test Methods for Certifying Air Purifying Respirator Cartridges and Canisters Against Radioiodine", and Regulatory Guide 8.8, "Information Relevant to Ensuring That Occupational Radiation Exposures at Nuclear Power Stations Will Be As Low As Is Reasonably Achievable." Our discussion and evaluation of the request for exemption follows.

Since a NIOSH/MSHA testing and certification schedule for sorbents for use for protection against radioiodine gases and vapors have not been developed, NRC staff has evaluated the District's request and verified that the licensee has demonstrated by reliable test data and adquate quality assurance measures that the material and performance characteristics of the MSA GMR-I canister can provide the proposed degree of protection (i.e., a protection factor of 50) under the anticipated conditions of use, as required by 10 CFR Part 20.103(e), for 8 hours. We considered canister efficiency and service life, and the effects of temperature, poisons, relative humidity, challenge concentration and breathing rates on canister efficiency and service life. The programmatic evaluation considered quality control/quality assurance, and radiation proctection/ALARA considerations, including task preparation and planning, on-the-job and post-task evaluations, use of engineering controls, radiological surveillance, and radiological training.

The licensee has provided reliable test information which verifies that the MSA GMR-I canister will provide a protection factor of 50 over a period of 8 hours of continuous use, provided that the total challenge of radioactive and non-radioactive iodine and other halogenated compounds does not exceed 1 ppm, and temperature does not exceed 110°F. The data provided by MSA showed the breakthrough point to be well beyond 8 hours.

Testing has been conducted under acceptable conditions of cyclic flow, and under worst cases conditions for those environmental factors affecting service life: temperature, relative humidity, and challenge concentration of CH_3I (methyliodide/methyl redioiodide), which is the most penetrating of the challenge forms. Data provided from MSA indicate that the MSA GMR-I canisters perform adequately under the accepted test conditions. These conditions—the criteria and test methods—are consistent with those derived for the canisters by the staff from NUREG/CR-3403, and are acceptable.

The licensee, through acceptance of MSA QA controls, has provided commitments that the MSA-GMR-I canisters will meet standards for quality assurance and quality control which are recognized by NIOSH, compatible with NRC staff positions, and are therefore acceptable. This includes a commitment by MSA to establish a 1% AQL (Acceptable Quality Limit) in a 5 to 10 ppm challenge concentration of CH^3I, 90% relative humidity, 110°F, 64 liters per minute (LPM) pulsed flow, for a maximum service life of 8 hours with no more than 1% of the challenge concentration penetration. Testing data referenced by the licensee demonstrated that performance (I.E., service life) of canisters at 90% relative humidity is not expected to be significantly different than performance at 100% relative humidity and is acceptable.

Coupled with the use of a full facepiece with the capability of providing a fit factor of greater than 500, to be determined by fit test, the protection factor of 50 is conservative under these conditions. Canister efficiency will be retained for the radioioine gas or vapors of interest (CH_3I, I_2, HOI) for the 8-hour period. To preclude aging, service life will be calculated from unsealing time, including periods of non-use, and the canister will not be used in the presence of organic solvents or in temperatures in excess of 110°F. Canisters will be stored in sealed humidity-barrier packaging in a cool, dry environment, and discarded after the 8-hour use period to prevent reuse. Through usage restrictions and air sampling, the licensee will preclude exposures to organic vapors and chemicals (such as decontamination components, lubricants, volatilized paint, alochols, freon) which would cause aging, poisoning or desorption of the absorbed radioiodines.

Certain limitations and precautions based on NUREG/CR-3403 guidance are necessary for utilization of the sorbent canisters. We agree with the following such limitations and usage restrictions as proposed by the licensee:

1. Protection factor equal to 50 as a maximum value.
2. The maximum permissible continuous use time is eight hours after which the canister will be discarded.
3. Canisters are not to be used in the presence of ogranic solvent vapors.
4. Canisters are to be stored in sealed, humidity barriers packaging in a cool, dry environment.[1]
5. The allowable service life for sorbent canisters is to be calculated from the time of unsealing the canister, including periods of non-exposure.
6. Canisters are to be used with a full facepiece capable of providing fit factor greater than 500.
7. Canisters are not to be used in total challenge concentrations of organic iodines and other halogenated compounds greater than 1 ppm, including nonradioactive compounds.
8. Canisters are not be used in environments where temperatures are greater than 110°F.

In addition to the limitations and usage restrictions noted above, the following additional controls will be utilized by the licensee:

1. Temperatures wil be measured prior to the beginning of work and coincidently with operations which heat the work areas to assure that temperatures do not exceed 110°F during sorbent canister use.
2. In the initial implementation of sorbent canister use, the following program verification measures will be used:

a. whole body counts for individuals using the sorbent canister for radioiodine protection will be conducted routinely (e.g. weekly and at 20 MPC-hours).

b. an investigation level for radioiodine uptakes has been established at 30 nCi.

c. Radioiodine data will be trended to detect problems.

3. Painting or the use of organic substances will be prohibited while the GMR-I canister is in use.
4. Specific plant procedures will incorporate the limitations and usage restrictions, listed as 1 through 8 above, prior to GMR-I canister use. Additionally, training of workers and radiation protection technicians in the use of GMR-I canisters for radioiodine protection will be conducted prior to canister implementation.
5. Existing respiratory protection program requirements and restrictions (e.g., physicals, fit tests, Part 20 requirements including Appendices A and B) still apply.

The primary bases for the District's request for exemption are the potentials for both work effort reduction and dose reduction. The utilization of air purifying respirators in lieu of air-supplied or self-contained apparatus, where possible, can result in person-rem reductions from 25 to 50% for several major tasks. The light weight, less cumbersome air purifying respirators (i.e., sorbent canisters) can provide increased comfort and mobility in most cases. The resultant increased worker efficiency and decreased time on-the-job will provide significant dose savings and be an effective as low as is reasonably achievable (ALARA) measure.

Other actions taken by the licensee to assure that exposures to radioiodine are ALARA are: radioiodine air sampling will be conducted before and during activities involving the use of GMR-I canisters for radioiodine protection; engineering controls such as local HEPA ventilation and the containment purge system used to reduce airborne levels to as low as practical levels; purification and degasification of the primary coolant conducted prior to refueling resulting in reduced radioiodine levels; use of area decontamination, protective coverings, and stripable paint to help control contamination levels; maintenance planning allowing for radioiodine decay times, where practical, prior to breaching primary systems. Whole body counts will be conducted routinely (e.g., weekly and at 20 MPC hours) and radioiodine data will be trended to detect problems; an investigation level for radioiodine uptakes has been established (at 30 nCi); training of workers and health physics technicians in the use and restrictions for use of GMR-I canisters for radioiodine protection will be conducted prior to their use; and procedures delineating the controls, restrictions, and requirements have been developed and will be implemented. The licensee's efforts to keep exposure

[1] Sorbent canisters will be maintained in licensee "Class A" storage as defined in ANSI N45.2.2 (i.e., 70° ± 10°F; Relative Humidity less than or equal to 40% Design, less than or equal to 70% Maximum) or an equivalent alternative after reciept on site, except for those maintained for ready issue in the respirator issue area.

ALARA are consistent with the positions in Regulatory Guide 8.8 and are acceptable.

In summary, the NRC staff's review of the licensee's proposal indicates that the actions proposed by the District can result in significant dose savings over alternative methods while still providing effective protection.

This exemption would enable the licensee to use a protection factor for air purifying radioiodine gas and vapor respirators in estimating worker exposures from radioiodine gases and vapors. The licensee has provided usage restrictions and controls which can assure an effective radioiodine protection program. The proposed criteria and test methods for verifying the effectiveness and quality of GMR-I canisters are consistent with NRC staff criteria. The licensee's proposed exemption, with the controls and limitations, meets the staff positions in the SRP, NUREG/CR-3403 and Regulatory Guide 8.8, and is acceptable. The actions proposed by the licensee are consistent with the requirements of 10 CFR Part 20.103(e), and form an acceptable basis to authorize the granting of an exemption in accordance with the provisions of 10 CFR Part 20.103(e).

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 20.501 an exemption is authorized by law and will not result in undue hazard to life or property. The Commission hereby grants an exemption from the requirements of Footnote d-2(c) of Appendix of 10 CFR Part 20.

The Commission has prepared an Environment Assessment and Finding of No Significant Impact related to this action which was published in the **Federal Register** on June 26, 1989 (54 FR 26863). The Environmental Assessment concluded that this action will not have a significant effect on the quality of the human environment, and therefore the Commission has determined not to prepare an environmental impact statement for this exemption.

For further details with respect to this action, see the licensee's request dated November 11, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California.

Dated at Rockville, Maryland, this 28th day of June 1989.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-16192 Filed 7-10-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-361 and 50-362]

Southern California Edison Co. et al.; Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 74 to Facility Operating License No. NPF-10 and Amendment No. 62 to Facility Operating License No. NPF-15, issued to Southern California Edison Company, San Diego Gas and Electric Company, the City of Riverside, California and the City of Anaheim, California (the licensees), which revised the Technical Specifications for operation of the San Onofre Nuclear Generating Station, Units 2 and 3, located in San Diego County, California.

The amendments were effective as of the date of issuance.

These amendments revised Technical Specification 3/4.8.2.1, "DC Sources," to increase the interval for the 18 month surveillance tests to at least once per refueling interval, which is defined as 24 months.

The application for amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which is set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** on February 14, 1989 (54 FR 6791). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined that an environmental impact statement will not be prepared and that issuance of the amendment will have no significant adverse effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendments dated December 29, 1988, (2) Amendment No. 74 to License No. NPF-10 and Amendment No. 62 to License No. NPF-15, (3) the Commission's related Safety Evaluation and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and the General Library, University of California, P.O. Box 19557, Irvine, California 92713. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 30th day of June 1989.

For the Nuclear Regulatory Commission.

Donald E. Hickman,

Project Manager, Project Directorate V, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-16193 Filed 7-10-89; 8:45 am]

BILLING CODE 7590-01-M

Detroit Edison Co.; Wolverine Power Supply Cooperative, Inc.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-43, issued to the Detroit Edison Company and Wolverine Power Supply Cooperative, Inc. (the licensees), for operation of Fermi-2 located in Monroe County, Michigan.

In accordance with licensees' application for amendment dated May 31, 1989, the amendment would revise the Technical Specifications to modify the Average Power Range Monitor flow biased rod block and scram limits to allow up to 100% power operation of Fermi-2 with core flow reduction of rated final feedwater temperature. Appropriate changes to the Bases are also proposed.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By August 10, 1989, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Lawrence A. Yandell: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated May 31, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 3rd day of July.

For the Nuclear Regulatory Commission.

Lawrence A. Yandell,

Acting Director, Project Directorate III-1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-16189 Filed 7-10-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE U.S. TRADE REPRESENTATIVE

[Docket No. 301-63]

Determination Under Section 304 of the Trade Act of 1974, as Amended: European Community's Policies and Practices With Respect to, Inter Alia, Production and Processing Subsidies on Oilseeds and Determination Under Section 305 To Delay Implementation of Any Action Taken Pursuant to Section 301

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of determination under section 304(a)(1)(A) of the Trade Act of 1974 (the "Trade Act") regarding United States' rights under a trade agreement affected by, *inter alia*, subsidies provided by the European Community (the "EC") to producers and processors of oilseeds and animal feed proteins and the practices resulting therefrom; and notice of determination under section 305(a)(2)(A) to delay implementation of any action to be taken under section 301.

SUMMARY: Pursuant to section 304(a)(1)(A) of the Trade Act, 19 U.S.C. 2414, as amended by section 1301 of the Omnibus Trade and Competitiveness Act of 1988, the United States Trade Representative has determined that there is reason to believe that rights of the United States under a trade agreement are being denied by, *inter alia*, the EC's production and processing subsidies on oilseeds and animal feed proteins and the practices resulting therefrom, and that the EC practices at issue are unjustifiable and unreasonable, and burden or restrict U.S. commerce, within the meaning of sections 301(a)(1)(B) and 301(b)(1), 19 U.S.C. 2411(a)(1)(B) and 19 U.S.C. 2411(b)(1), respectively. The Trade Representative also has determined that substantial progress is being made with respect to this dispute as evidenced by the fact that a panel has been established under the General Agreement on Tariffs and Trade (the GATT) to consider the issues raised by the United States, and the EC is participating in good faith in the panel's

consideration of this matter. Therefore, the Trade Representative has decided to delay implementation of any action to be taken under section 301 for the period provided in section 305(a)(2)(A), and may reconsider these determinations in light of the GATT panel's findings. The petitioner has indicated it concurs with this decision.

EFFECTIVE DATE: July 5, 1989.

FOR FURTHER INFORMATION CONTACT: Timothy Reif, Assistant General Counsel, (202) 395-6800; Marilyn Moore, Advisor to the Assistant U.S. Trade Representative for Agricultural Affairs (202) 395-5006; or Laura Anderson, Director, European Community Affairs (202) 395-3074).

SUPPLEMENTARY INFORMATION: On December 16, 1987, the American Soybean Association filed a petition under section 302 of the Trade Act, 19 U.S.C. 2412, alleging that the EC has engaged in practices affecting imports of oilseeds, particularly soybeans, that deny rights of the United States under a trade agreement, are inconsistent with a trade agreement, and are unjustifiable, unreasonable and burden or restrict United States commerce. The trade agreement at issue is the General Agreement on Tariffs and Trade (GATT). The practices complained of are, *inter alia*, subsidies provided to the EC producers of oilseeds and animal feed proteins that nullify or impair benefits accruing to the United States under the GATT as a result of zero-binding tariff concessions granted by the EC in 1962, and subsidies provided to EC processors of oilseeds that encourage purchase of EC oilseeds to the detriment of imports of oilseeds, particularly soybeans from the United States.

On January 5, 1988, the Trade Representative initiated an investigation of these practices and requested consultations with the EC, as required by section 303(a) of the Trade Act, 19 U.S.C. 2413. Consultations were held between representatives of the United States and the EC on January 26, 1988, February 19, 1988, and April 19, 1988. These consultations failed to result in a mutually satisfactory resolution of the issues. Thus, on May 4, 1988, the United States requested the GATT Council of Representatives to establish a dispute settlement panel to consider the matter. The panel was established and began its work on May 19, 1989. Briefs were submitted to the panel on June 16, 1989, and the panel held its first meeting with the parties on June 27, 1989. The work schedule established by the panel provides that further briefing and argument be completed by October, 1989.

Pursuant to 19 U.S.C. 2414, as amended by section 1301 of the Omnibus Trade and Competitiveness Act of 1988, the Trade Representative is required to determine by July 5, 1989, whether the EC's practices deny "rights to which the United States is entitled" under the GATT and whether such practices are unjustifiable or unreasonable and burden or restrict U.S. commerce. Accordingly, absent any finding by the GATT panel or Contracting Parties to the GATT, the Trade Representative has determined that there is reason to believe that United States' rights under a trade agreement are being denied by, *inter alia*, the EC's production and processing subsidies on oilseeds and animal feed proteins and the practices resulting therefrom within the meaning of section 301(a)(1)(B), 19 U.S.C. section 2411(a)(1)(B), and that the EC practices at issue are unjustifiable and unreasonable, and burden or restrict U.S. commerce, within the meaning of section 301(a)(1)(B) and 301(b)(1), 19 U.S.C. 2411(a)(1)(B) and 19 U.S.C. 2411(b)(1) respectively. Pursuant to section 304(a)(1)(B), the Trade Representative also finds that action under section 301 would be appropriate in light of the GATT panel findings.

Section 305(a)(1) provides that any action to be taken under section 301 shall be implemented within 30 days—in this case, by August 4, 1989. Section 305(a)(2) further provides that such implementation may be delayed by not more than 180 days under certain circumstances. The Trade Representative has determined that substantial progress is being made with respect to this dispute as evidenced by the fact that the EC has agreed to the establishment of a panel to consider issues raised by the United States and is participating in good faith in the panel's consideration of this matter. Therefore, the Trade Representative has decided to delay by not more than 180 days (no later than January 31, 1990) implementation of any action to be taken under section 301. Petitioner has indicated it concurs with this decision.

The Trade Representative may reconsider the decision to delay implementation at any point if it appears that substantial progress is no longer being made in relation to the dispute, and may reconsider the determination under section 304(a)(1)(A) in light of the findings of the GATT panel and Contracting Parties.

A. Jane Bradley,
Chairman, Section 301 Committee.

[FR Doc. 89-16161 Filed 7-10-89; 8:45 am]

BILLING CODE 3190-01-M

Industries Facing Subsidized Imports; Non-Ferrous Metals; Notice of Identification

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of identification of industries under section 409(b) of the U.S.-Canada Free-Trade Agreement Implementation Act of 1988.

SUMMARY: On April 6, 1989 the Non-Ferrous Metals Producers Committee, on behalf of its individual member companies, submitted a petition seeking identification of the copper, lead, and zinc industries under section 409(b) of the U.S.-Canada Free-Trade Implementation Agreement Act of 1988, Pub. L. 100-449 ("the FTA Act").

The USTR, in consultation with the Secretary of Commerce, has identified the primary copper and lead industries under section 409(b) based on a reasonable likelihood that these industries may face both increased competition from possibly subsidized Canadian imports with which they directly compete as a result of the FTA, and deterioration of their competitive position before more effective bilateral rules and disciplines relating to the use of government subsidies have been developed with respect to Canada.

DATE: The identification was made on July 5, 1989.

FOR FURTHER INFORMATION: Specific questions about the copper, lead, and zinc industries should be directed to Mr. Robert Reiley, Director, Office of Metals, Minerals, and Commodities, U.S. Department of Commerce (202) 377-0575. Questions concerning the status of any further actions taken regarding these identifications should be directed to Nancy J. Kelley, Office of the United States Trade Representative (202) 395-7305.

SUPPLEMENTARY INFORMATION: On April 6, 1989 the Non-Ferrous Metals Producers Committee (the Committee), on behalf of its individual member companies, submitted a petition seeking identification of the copper, lead, and zinc industries under section 409(b) of the U.S.-Canada Free-Trade Agreement Act of 1988. The Committee alleged that these three U.S. industries were likely to face increased competition from subsidized Canadian imports with which they directly compete as a result of the FTA, and deterioration of their competitive position before rules and disciplines relating to the use of government subsidies have been developed with respect to Canada.

After receiving the petition, the USTR consulted with the Secretary of Commerce and with other agencies pursuant to section 409(b) of the FTA Act. The USTR concluded that a reasonable likelihood exists that the primary copper and lead industries may face both increased competition from possibly subsidized Canadian imports with which they directly compete as a result of the FTA, and deterioration of their competitive position before rules and disciplines relating to the use of government subsidies have been developed with respect to Canada.

On July 5, 1989, USTR identified the copper and lead industries under section 409(b). The USTR does not possess sufficient information at this time to identify the zinc industry under the same provision. However, particularly since the production of zinc is closely related to the production of lead, the USTR will, on request of a representative entity of the zinc industry, seek comparable information relating to the zinc industry within the scope of any study of the lead industry that may be initiated as a result of this identification.

Legal Authority

Section 409(b) of the U.S.-Canada Free Trade Agreement Implementation Act of 1988, Pub. L. 100-449, allows any entity that is representative of an industry to file a petition with USTR for identification. Within 90 days of receiving the petition, USTR must decide, in consultation with the Secretary of Commerce, whether to identify the industry. A decision to identify must rest on a reasonable likelihood that an industry will face both increased competition from subsidized Canadian imports with which it directly competes as a result of the FTA, and deterioration of its competitive position before rules and disciplines relating to the use of government subsidies have been developed with respect to Canada.

Section 409(b) authorizes the gathering of information and subsequent monitoring and review of evidence related to subsidies to Canadian industries that compete with the identified U.S. industry. After identification and at the request of an identified industry, USTR will compile and make available to the industry information under section 308 of the Trade Act of 1974, as amended (formerly section 305), or recommend to the President that the International Trade Commission be requested to investigate the industry under section 332 of the Tariff Act of 1930, or take both actions. The industry may request that USTR update this information annually.

Joshua Bolten,
General Counsel.

[FR Doc. 89-16162 Filed 7-10-89; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26992; File No. SR-CBOE-89-08]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Inc., Relating to Index Hedge Exemption Pilot

Pursuant to section 19(b)(2) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice in hereby given that on June 5, 1989,[1] the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule changes described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

Note: [Deletions]; Additions—*italics*

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Rule 24.4. (a) through (c) No change.

* * * Interpretations and Policies:

.01 [For the period beginning May 24, 1988 through May 24, 1989,] Positions in broad-based index option classes traded on the Exchange held in the aggregate by a public customer (whose orders would be eligible to be placed on the book under Rule 7.4 (a)) are exempt from this position limit rule to the extent that the following procedures and criteria are met:

(a) Through (b) No change.

(c) The customer holds a net long *or short* position in common stocks of a portfolio which has been previously established *or in securities readily convertible, and additionally in the case of convertible bonds economically convertible, into common stocks which would comprise a portfolio.* The *option* hedge position must be carried in an account with an Exchange member.

(d) The stock portfolio *or its equivalent* is composed of net long *or short* positions in common stocks in at least four industry groups and contains at least twenty stocks, none of which accounts for more than fifteen percent of the value of the portfolio (hereinafter "qualified portfolio"). To remain qualified, a portfolio must at all times meet these standards notwithstanding trading activity in the stocks *or their equivalents.*

(e) Subject to the maximum number of exempt *option* contracts allowed under subpart (a) hereof, the exemption [only] applies to [short calls and long puts] *options* in broad-based index options dealt in on the Exchange [,a combination thereof or such equivalent positions as are approved in advance by the Exchange,] to the extent the underlying value of such *option* position does not exceed the unhedged value of the qualified portfolio. The unhedged value would be determined as follows: (1) the values of the net long *or short* positions for each of the stocks *or their equivalents* of the qualified portfolio are totalled; and (2) the value of (a) any [short] *opposite side of the market* calls and [long] puts in broad-based index options, (b) any [short] *opposite side of the market* positions in stock index futures, and (c) any economically equivalent *opposite side of the market* positions in stock index options or *options on stock index* futures, is subtracted from the total. In no event may exempted positions exceed 75,000 *same-side of the market option* contracts in a class of broad-based index options dealt in on the Exchange.

(f) The hedge exemption customer shall agree promptly to provide the Exchange any information requested concerning the dollar value and composition of the customer's stock portfolio *or its equivalent,* the current hedged and aggregate options positions, and any stock index futures positions.

(g) The hedge exemption customer shall agree to and any member carrying an account for the customer shall:

(1) comply with all Exchange rules and regulations.

(2) liquidate and establish options and stock positions *or its equivalent* in an orderly fashion; not initiate or liquidate positions in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes; and not initiate or liquidate a stock position *or its equivalent* with an equivalent index

[1] The Chicago Board Options Exchange filed with the Commission a proposed rule change to the extend the pilot program on April 24, 1989. The Exchange on May 15, 1989 filed with the Commission a letter to withdraw this proposal, and the Exchange on June 5, 1989 filed with the Commission this revised proposal.

option position with a view toward taking advantage of any differential in price between a group of securities and an overlying stock index option.

(3) liquidate any options prior to or contemporaneously with a decrease in the hedged value of the qualified portfolio which options would thereby be rendered excessive.

(4) promptly notify the Exchange on any material change in the stock portfolio *or its equivalent* or stock index futures positions which materially affects the unhedged value of the qualified portfolio.

(5) cause all option orders subject to this exemption on the floor to be designated "hedge".

(6) abide by prevailing exercise limits allowed pursuant to Rule 24.5, without regard to the exemption provision, except in expiring series from the last business day prior to expiration until expiration.

(h) If any member carrying an account for a hedge exemption customer with broad-based index option positions dealt in on the Exchange has reason to believe that as a result of an opening transaction, *the position telescoping provisions,*[2] *or the execution of Clearing Member Transfer Account ("CMTA") transactions*[3] *that* the customer, [would,] acting alone or in concert with others, directly or indirectly, violates this hedge *option position* exemption, [and such opening transaction occurs] then the member has violated Exchange Rule 24.4.

(i) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In this filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

[2] When an option series becomes the series with the nearest expiration date, a portion of the option contracts may need to be reduced in order to comply with the position limit requirements of Rule 24.4.

[3] An account at a member firm may exceed a position limit as the result of a transfer of a position from another member firm.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

This rule filing addresses two items. The first is to extend the pilot program which expires May 24, 1989 until the time when the proposed revisions to the pilot are approved by the Commission. At that point in time, the Exchange requests that a one-year pilot for the revised rule be implemented.

The current pilot has been minimally used, but because three customers currently have approved exemptions, the Exchange believes an extension of the pilot is necessary. During the last year, three customers applied for the exemption and all were approved. However, none of the customers used the exemption. The Exchange believes that by expanding the strategies which the exemption applies to, customers will be more willing to apply and use the exemption. In that regard, the Exchange intends to allow the following hedges pursuant to paragraph (e) of interpretation .01 to the rule:

- Long stock or its equivalent, short calls and/or long puts
- Short stock or its equivalent, long calls and/or short puts

In addition to the change of allowable strategies, a simplified application is being developed which will still provide enough data to properly determine whether an exemption is warranted. Finally, the Exchange believes that equivalent stock positions should be allowed on a case by case basis. In that regard, economically convertible bonds and other readably convertible securities may be used as the underlying basis for allowing an index hedge exemption. The surveillance staff will review each application as it has in the past and track the positions/dollar value of the instruments used to apply for a hedge.

The Exchange believes that the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder, in particular, the proposed rule change is consistent with section 6(b)(5) of the Exchange act, which provides, among other things, that the proposed rule is designed to remove impediments and to perfect the mechanism of a free and open market.

(B) Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not received any formal comments regarding the proposed or existing rule. However, numerous calls were received from customers and firms expressing their concern over the application process and limitation on hedging strategies. As a result of these calls, the Exchange has proposed the revisions to the current rule.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 1, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 29, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-16142 Filed 7-10-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26995; MSTC-88-8]

Self-Regulatory Organizations; Midwest Securities Trust Company; Order Approving a Proposed Rule Change on a Temporary Basis

June 30, 1989.

On January 4, 1989, pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), the Securities and Exchange Commission ("Commission") approved on a temporary basis a proposal by the Midwest Securities Trust Company ("MSTC") to enhance MSTC's File Transmission Service ("FTS") by allowing Depository Delivery Instructions ("DDI") [1] to be transmitted through FTS.[2] Subsequently on May 17, 1989 and June 9, 1989, MSTC provided the Commission with further information concerning its proposal. The Commission is continuing its review of this proposal and is extending MSTC's pilot program in order to obtain further operational data concerning the safety and security of this proposal. This order extends the pilot program until September 30, 1989.

The Commission finds that the proposed rule change is consistent with the requirements of section 17A of the Act as it is designed to facilitate the prompt and accurate clearance and settlement of securities transactions by allowing DDI instructions to be submitted through FTS.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-MSTC-88-8) be, and hereby is, approved on a temporary basis until September 30, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-16176 Filed 7-10-89; 8:45 am]

BILLING CODE 8010-01-M

[1] The DDI service allows firms to transmit delivery instructions to deliver securities to other MSTC participants and non-MSTC participants.

[2] See Securities Exchange Act Release No. 26418 (January 4, 1989), 54 FR 1040 (January 11, 1989). The Commission extended this temporary approval until June 30, 1989 in Securities Exchange Act Release No. 26688 (April 3, 1989) 54 FR 1430" (April 10, 1989).

[Release No. 34-26996; File No. SR-Phlx-89-36]

Self-Regulatory Organizations; Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Currency Options Trading Segments/Holidays

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 26, 1989, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange"), pursuant to Rule 19b-4, hereby proposes to adopt policies pursuant to its By-Law Article 4-4(b)(i) and Rule 101 and Commentary .01 thereunder respecting changes in foreign currency options trading hours. In this regard, the PHLX proposes to close PHLX foreign currency options markets at 1:00 P.M. Eastern Standard Time (EST) on the day before a bank holiday, except for the Friday before expiration. The PHLX intends to implement this policy on Monday, July 3, 1989, prior to the July 4th, 1989 national holiday. Additionally, when an Exchange holiday is regularly observed on a Monday the Exchange proposes, in the case of holidays observed on a Monday, *i.e.*, President's Day, Memorial Day, and Labor Day, that the PHLX foreign currency options market open on the evening of the holiday. The PHLX proposes to implement this policy effective January 1, 1990.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

This proposed rule change is designed in part to coordinate the closing of PHLX foreign currency options market on the day before a bank holiday with that of futures markets conducted on the Chicago Mercantile Exchange's ("CME") International Monetary Market ("IMM").

The reason for adopting the policy respecting opening of the evening trading segment on the night of a Monday holiday *i.e.*, President's Day, Memorial, and Labor Day is that other foreign exchange markets continue to trade during such periods. In this regard, PHLX foreign currency options participants have determined that a four day closure of trading in such instances is not responsive to the exchange rate risk protection and related hedging requirements of Far Eastern manufacturing banking and other commercial entities utilizing the PHLX foreign currency option market. The PHLX will provide foreign currency options participants and participant organizations with adequate notice of each timing change made as a result of the implementation of the proposed rule change.

The proposed rule change is based on section 6(b)(5) of the Securities Exchange Act of 1934 in that it is designed to further promote the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 1, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: June 30, 1989.

[FR Doc. 89-16141 Filed 7-10-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-17038; 813-89]

Elfun Trusts; Application

June 30, 2989

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Elfun Trusts ("Applicant").

Relevant 1940 Act Sections: Exemption requested under section 6(b) from the provisions of sections 10(a) and 15(c).

Summary of Application: Applicant seeks an order to permit more than sixty percent of its trustees to be "interested persons" as defined in section 2(a)(19) of the 1940 Act, and to exempt it from the requirement that a majority of its disinterested trustees approve any renewal of its investment advisory contract.

Filing Dates: The application was filed on April 25, 1989, and amended on June 26, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 24, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Alan M. Lewis, Esq., General Electric Investment Corporation, 3003 Summer Street, Stamford, Connecticut 06904-7900.

FOR FURTHER INFORMATION CONTACT: Regina Hamilton, Staff Attorney, at (202) 272-3024 or Stephanie Monaco, Branch Chief, at (202) 272-3030 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee. One may obtain a copy by going to the SEC's Public Reference Branch or by telephoning the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is a trust created pursuant to trust agreement dated May 27, 1935, as most recently amended on July 18, 1978. It is a diversified, open-end, management investment company, and meet the requirements of an "employees' securities company" within the meaning of section 2(a)(13) of the 1940 Act. Applicant's objective is to seek long-term growth of capital and future income. General Electric Investment Corporation ("GEIC"), a wholly-owned subsidiary of General Electric Company ("GE") and an investment adviser registered with the SEC, serves as Applicant's investment adviser.

2. Purchase of Applicant's units may be made by regular and senior members of the Elfun Society (an honorary society of GE employees) and certain of their family members. Regular members of the Elfun Society are selected from active employees of GE and its majority-owned subsidiaries; senior members are former regular members who have retired from those companies. Pursuant to an application filed on May 31, 1989 (File No. 813-90), Applicant has also applied for an order to permit purchases of units not only by Elfun Society members, but also by any persons designated from time to time by its trustees, provided their participation does not alter its status as an "employees' securities company" within the meaning of section 2(a)(13) of the Act.

3. Beginning in 1977, four additional funds, Elfun Tax-Exempt Income Fund, Elfun Income Fund, Elfun Diversified Fund and Elfun Global Fund (the "Other Funds"), were established for the benefit of GE employees and their families. In July 1986, Applicant decided, for the sake of administrative convenience, to have the same set of trustees serve both the Applicant and the Other Funds. At Applicant's request, each of its independent trustees voluntarily submitted his resignation, and the trustees of the Other Funds were elected as trustees of Applicant. Since that time, all of Applicant's trustees have been interested trustees.

4. During a routine file search in March 1989, GEIC discovered that Applicant had substituted interested trustees without having obtained exemptions under sections 10(a) and 15(c). The Other Funds had previously obtained exemptive relief from sections 10(a) and 15(c). *See* Investment Company Act Release Nos. 9879 (July 5, 1977), 13612 (Nov. 2, 1983), 16114 (Nov. 5, 1987), and 16816 (Dec. 22, 1987). Consequently, Applicant filed the application to bring its future operations into compliance with the 1940 Act. Applicant is not seeking relief under section 16(a) with respect to the substitution of interested trustees, nor has it requested, or does it now request, approval of such substitution by the SEC.

5. Applicant acknowledges that the relief requested will be prospective only. Applicant will not rely on any order granted pursuant to the application for relief during the period from July 1986 until April 25, 1989.

6. Applicant's five interested trustees are all GE officers or employees who have been assigned to the operations of GEIC. The trustees do not receive any compensation from Applicant for serving as trustees, although Applicant will be required to reimburse GEIC for the portion of the remuneration they may receive which is allocable to the time they spend on Applicant's matters in their capacity as GEIC employees. While GEIC and GE provide various services to Applicant and are reimbursed for the reasonable costs of providing such services, no element of profit is included in such charges.

7. Because more than 60% of Applicant's trustees are interested persons as defined in section 2 (a)(19) of the 1940 Act, Applicant seeks relief from section 10(a). Applicant argues that the protection of investors does not require the appointment of disinterested trustees for several reasons. First, the trustees, GEIC, and GE all have a very strong interest in assuring that Applicant is well managed. While GE is not Applicant's sponsor, Applicant offers an additional investing opportunity which is open solely to certain GE employees, former employees, and their immediate relatives. Thus, Applicant's success has a strong bearing on employee morale and satisfactory employee relations, a matter in which GE is vitally interested. Second, it is not necessary to engage outside persons as disinterested trustees to bring Applicant skills needed for its operation, given the extensive experience and knowledge of the persons who have been selected to act as Applicant's trustees. Third, Applicant has estimated that the addition of four disinterested trustees could add approximately $50,000 to annual operating expenses.

8. Because all of the trustees are interested persons of GEIC, an exemption is also requested from the requirements of section 15(c), which would require the approval by a majority of disinterested trustees of any renewal of an investment advisory contract. Since the replacement of trustees, there has been no amendment to Applicant's investment advisory contract, or any other material change in its operations.

9. Applicant asserts that the requested relief is appropriate because the investment advisory services to be furnished to Applicant will be furnished at cost. Moreover, it is highly unlikely that such a contract could be entered with any entity other than one, such as GEIC, which is uniquely related to the needs and welfare of the purchasers of Applicant's fund units. Finally, Applicant believes that GE's interest in Applicant's success is so fundamental that any risk of the retention of unsatisfactory investment advisers would seem remote. For these reasons, Applicant believes that it does not appear to be in the best interest of investors to subject its investment advisory contract to the burdensome and expensive approval and renewal requirements of section 15(c).

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-16177 Filed 7-10-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-17039; 813-90]

Elfun Trusts Et Al.; Application

June 30, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Elfun Trusts, Elfun Tax-Exempt Income Fund, Elfun Income Fund, Elfun Global Fund, and Elfun Diversified Fund (collectively, "Applicants" or "Funds").

Relevant 1940 Act Sections: Exemption requested under section 6(b) to amend previous orders issued pursuant to that section.

Summary of Application: Applicants seek to amend previous orders issued on December 2, 1943 (Investment Company Act Release No. 1936), July 5, 1977 (Investment Company Act Release No. 9879), September 20, 1978 (Investment Company Act Release No. 10414), November 2, 1983 (Investment Company Act Release No. 13612), November 5, 1987 (Investment Company Act Release No. 16114), and December 22, 1987 (Investment Company Act Release No. 16816) ("Previous Orders"). The amended order requested would expand the class of potential Fund unitholders to include not only members of the Elfun Society, but all persons designated by the Funds' trustees, provided their participation does not alter the Funds' status as "employees' securities companies" within the meaning of section 2(a)(13) of the 1940 Act.

Filing Dates: The application was filed on May 31, 1989, and amended on June 26, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 24, 1989, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Alan M. Lewis, Esq., General Electric Investment Corporation, 3003 Summer Street, Stamford, Connecticut 06904-7900.

FOR FURTHER INFORMATION CONTACT: Regina Hamilton, Staff Attorney, at (202) 272-3024 or Stephanie Monaco, Branch Chief, at (202) 272-3030 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee. One may obtain a copy by going to the SEC's Public Reference Branch or by telephoning the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Applicants are trusts created pursuant to trust agreements dated May 27, 1935, March 14, 1977, December 22, 1982, May 15, 1987, and June 1, 1987. The Funds are diversified, openend, management investment companies, and each meets the requirements of an "employees' securities company" within the meaning of section 2(a)(13) of the 1940 Act.

2. According to the Applicants, under section 2(a)(13), any employee, person on retainer, or former employee of General Electric Company ("GE") or companies affiliated with GE, and members of such employees' immediate families, would be eligible to purchase units of the Funds. Currently, however, units of the Funds are offered only to regular and senior members of the Elfun Society (an honorary society of GE employees) and certain family members. Regular members of the Elfun Society are selected from active employees of GE and its majority-owned subsidiaries; senior members are former regular members who have retired from those companies. Membership in the Elfun Society is limited to individuals in responsible positions. Selection is based upon position level of job classification and years of continuous service.

3. The Funds seek to expand the number of participants eligible to purchase Fund units. The Funds propose to eliminate the requirement that purchasers of units must be Elfun Society members, and to expand the potential class of purchasers to include all persons designated from time to time by the trustees of the Funds, provided their participation does not alter the

Funds' status under section 2(a)(13) of the 1940 Act. Although the trustees have not yet determined which additional eligible classes of purchasers they would select, they currently intend to limit eligible participants to salaried (versus hourly) employees of GE and its majority-owned subsidiaries.

4. The Funds seek to expand eligibility to make participation available to certain groups of employees who either are ineligible for Elfun Society membership, such as employees of General Electric Investment Corporation, the Funds' investment adviser, or have decided not to join. Applicants state that more participants in the Funds will result in greater assets under management, thus increasing the Funds' investment opportunities and potentially reducing their expense ratios.

5. The Funds state that the protection of investors will not be impaired by the requested change.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-16178 Filed 7-10-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17040; 811-710]

Liberty Fund, Inc.; Application

June 30, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of l940 (the "1940 Act").

Applicant: Liberty Fund, Inc. ("Applicant").

Relevant 1940 Act Section: Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

Filing Dates: The application on Form N-8F was filed on April 21, 1989, and an amendment was filed on June 23, 1989.

Hearing or Notification of Hearing. An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 24, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, c/o Neuberger & Berman Management Incorporated, 342 Madison Avenue, New York, NY 10173.

FOR FURTHER INFORMATION CONTACT: Patricia Copeland, Legal Technician, (202) 272-3009, or Brion Thompson, Branch Chief, (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant, a Maryland corporation, is registered under the 1940 Act on Form N-8A as an open-end, diversified management investment company. Applicant filed a registration statement pursuant to the Securities Act of 1933 (the "1933 Act"), which became effective on or about January 11, 1956.

2. On December 22, 1988, Applicant's Board of Directors ("Board") approved the Plan of Merger ("Merger") providing for (i) the transfer of Applicant's assets to T. Rowe Price High Yield Fund, Inc. ("High Yield") (File No. 811-4119) in exchange for shares of High Yield having an equivalent net asset value. On March 29, 1989, a majority of Applicant's shareholders approved the Merger. In connection with such shareholder vote, the Applicant solicited proxies pursuant to a proxy statement dated February 7, 1989, which was filed with the SEC and mailed to Applicant's shareholders.

3. Immediately preceding the transfer of its assets under the Merger, Applicant had 2,507,186 shares of capital stock outstanding with a par value of $1.00, total net assets of $10,012,890.80 and a per share net asset value of $3.99. On April 3, 1989, Applicant transferred its assets to High Yield, in exchange for 988,439.368 shares of capital stock of High Yield, $.01 par value per share (the "High Yield Shares"), having an aggregate net asset value of $10,012,890.80 as of the close of business on March 31, 1989. The High Yield Shares received by Applicant were distributed to Applicant's shareholders in exchange for their shares of capital stock in Applicant, which were cancelled. Applicant and High Yield each borne their own expenses incurred in connection with the Merger.

4. At the time of filing this application, Applicant had approximately $92,000 of assets which it retained to wind up its affairs. Applicant currently has outstanding liabilities consisting of accounting, legal fees, printing and operating expenses. Applicants states that none of these remaining assets will be invested in securities.

5. Applicant does not currently propose to engage in any business activities other than those related to its dissolution. Applicant has no securityholders, no debts or other liabilities, and is not a party to any litigation or administrative proceeding.

6. Applicant has filed Articles of Transfer with the Office of the State Department of Assessments and Taxation of the State of Maryland, which became effective on April 3, 1989. Applicant will file Articles of Dissolution with the State Department of Assessments and Taxation of the State of Maryland.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-16179 Filed 7-10-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted on or before August 10, 1987. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street NW., Room 200, Washington, DC 20416, Telephone: (202) 653-8538

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7340.

Title: Certified Development Company Program Annual Report Guide

Form Numbers: SBA Forms 1253 1253a, 1253b

Frequency: Annual

Description of Respondents: All Certified Development Companies

Annual Responses: 449

Annual Burden Hours: 17,960.

William Cline,

Chief, Administrative Information Branch.

[FR Doc. 89-16242 Filed 7-10-89; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-5383]

Far East Capital Corp.; Issuance of a Small Business Investment Co. License

On March 23, 1989, a notice was published in the **Federal Register** (Vol. 54, FR 12043) stating that an application has been filed by Far East Capital Corporation with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1989)) for a license as a small business investment company.

Interested parties were given until close of business April 23, 1989, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/09-5383 on June 26, 1989, to Far East Capital Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Dated: June 29, 1989.

Deputy Associate Administrator for Investment.

[FR Doc. 89-16250 Filed 7-10-89; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 09/09-5395]

Sowa Capital Corp.; Application for a Small Business Investment Co. License

An application for a license to operate a small business investment company under the provisions of section 301(d) of the Small Business Investment Act of 1958, as amended, (the Act), (15 U.S.C. 661, et. seq.) has been filed by Sowa Capital Corporation, 7282 Orangethorpe Avenue, Suite 8, Buena Park, California 90621 (Applicant), with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1989).

The Officers, Directors, and Shareholders of the Applicant are as follows:

Name	Title or relationship	Percent of shares owned
Jung-Chieh Kuo, 166-12 33rd Avenue, Flushing, New York 11358.	Board Chairman, Shareholder.	100
George Chi-Yung Hsu, 20615 E. Appaloosa Drive, Walnut, California 91789.	President, Director.	0
Shu-Hwa Kuo, 20129 Vejar Board, Walnut, California 91789.	Secretary, Treasurer, Director.	0

The Applicant, a California corporation, will begin operations with $1,000,000 of paid-in capital and paid-in surplus. The Applicant will conduct its activities principally in Southern California.

As an SBIC under section 301(d) of the Act, the Applicant has been organized and charged solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the Applicant include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the Applicant under their management, including adequate profitability and financial soundness, in accordance with the small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 30 days from the publication of this notice, submit to SBA written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

A copy of the Notice shall be published in a newspaper of general circulation in the Buena Park, California area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: June 29, 1989.

[FR Doc. 89-16251 Filed 7-10-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2359]

[Amdt. #1]

Louisiana; (and Contiguous Counties in the States of Mississippi & Texas); Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with the Notice of Amendment to the President's declaration dated June 28, 1989 to include Beauregard and Tangipahoa Parishes in the State of Louisiana, as a result of damages from severe thunderstorms and tornadoes which occurred on June 7-8, 1989.

In addition, applications for economic injury from small businesses located in the contiguous parishes of Calcasieu, Jefferson Davis, St. Tammany, and Washington may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

All other information remains the same; i.e., the termination date for physical damage is August 14, 1989 and for economic injury until the close of business on March 16, 1989.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: June 29, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-16243 Filed 7-10-89; 8:45 am]

BILLING CODE 8025-01-M

BEST COPY AVAILABLE

[Declaration of Disaster Loan Area #2354; Amdt. #5]

Louisiana (and Contiguous Counties in the States of Texas, Arkansas & Mississippi); Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with the Notice of Amendment to the President's declaration, dated June 28, 1989, to include the parishes of St. James and St. Martin in the State of Louisiana, as a result of damages from severe storms and flooding which occurred May 4 through May 27, 1989.

In addition, applications for economic injury from small businesses located in the contiguous parishes of Ascension, Assumption, Iberville, LaFourche, St. John the Baptist, and St. Mary may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on July 18, 1989, and for economic injury until the close of business on February 20, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: June 29, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-16244 Filed 7-10-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2357; Amdt. #1]

Ohio (and Contiguous Counties in the State of Indiana); Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with the Notice of Amendment to the President's declaration, dated June 26, 1989, to include the counties of Coshocton, Franklin and Licking in the State of Ohio, as a result of damages from severe storms and flooding and to establish the incident period as May 23 through June 26, 1989.

In addition, applications for economic injury from small businesses located in the contiguous counties of Delaware, Fairfield, Guernsey, Holmes, Knox, Muskingham, Perry, Pickaway, Tuscarawas and Union in the State of Ohio may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on August 11, 1989, and for economic injury until the close of business on March 12, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: June 29, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-16245 Filed 7-10-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Areas #2360]

Tennessee; Declaration of Disaster Loan Area

Rhea County and the contiguous counties of Bledsoe, Cumberland, Hamilton, Meigs, and Roane in the State of Tennessee constitute a disaster area as a result of damages from flooding which occurred from June 14 through June 19, 1989. Applications for loans for physical damage may be filed until the close of business on August 31, 1989 and for economic injury until the close of business on March 30, 1990 at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, GA 30308; or other locally announced locations.

The interest rates are:

	Percent
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Business and Non-Profit Organizations (EIDL) Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	9.125

The numbers assigned to this disaster for the State of Tennessee are 236006 for physical damage and 678000 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: June 30, 1989.

Susan Engeleiter,

Administrator.

[FR Doc. 89-16246 Filed 7-10-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2353; Amdt. #5]

Texas (and Continuous Counties in the State of Oklahoma); Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with the Notice of Amendment to the President's declaration, dated June 24, 1989, to include the counties of Baylor, Bosque, Brown, Ector, Hall, Hutchinson, Howard, Leon, Lubbock, Ochiltree, Pecos, Potter, Randall, San Augustine, Sherman, Tyler and Walker in the State of Texas, as a result of damages from severe storms, tornadoes, and flooding.

In addition, applications for economic injury from small businesses located in the contiguous counties of Andrews, Armstrong, Borden, Brazos, Brewster, Briscoe, Carson, Childress, Collingsworth, Comanche, Cottle, Crane, Crockett, Dallas, Dawson, Deaf Smith, Donley, Garza, Glasscock, Gray, Hansford, Hartley, Hemphill, Jeff Davis, Lipscomb, Lynn, Martin, Midland, Mills, Mitchell, Moore, Motley, Oldham, Reeves, Roberts, Scurry, Sterling, Terrell, Terry, Upton, Ward, White Deer and Winkler, in the State of Texas, and the continuous counties of Beaver, Cimarron, and Texas the State of Oklahoma may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on July 17, 1989, and for economic injury until the close of business on February 20, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Date: June 29, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-16247 Filed 7-10-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2353; Amdt. #6]

Texas (and Contiguous Counties in the State of Oklahoma); Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended to correct errors made in Amendment #5.

Dallam County should have been named as a contiguous county for economic injury rather than Dallas County, which was named as a primary county in the original declaration. Applications for economic injury from small businesses located in the above county may be filed until the specified date at the previously designated location.

White Deer County should be deleted from the list of contiguous counties.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on July 17, 1989, and for economic injury until the close of business on February 20, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: July 3, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-16248 Filed 7-10-89; 8:45 am]

BILLING CODE 8025-01-M

Interest Rates

The interest rate on section 7 (a) Small Business Administration direct loans (as amended by Pub. L. 97-35) and the SBA share of immediate participation loans is ten (10) percent for the fiscal quarter beginning July 1, 1989.

On a quarterly basis, the Small Business Administration also publishes an interest rate called the optional "peg" rate (13 CFR 122.8-1 (d)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the July-September quarter of 1989, this rate will be nine-and-one-eighth (9⅛).

Edwin T. Holloway,

Associate Administrator for Finance and Investment.

[FR Doc. 89-16249 Filed 7-10-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[CM-8/1291]

U.S. State Department Overseas Security Advisory Council; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on Thursday, July 27, 1989 at 8:30 a.m. at the Northland Inn, 7025 Northland Drive, Brooklynn Park, Minnesota. Pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552(c)(4), it has been determined the meeting will be closed to the public. Matters relative to privileged commercial information will be discussed. The agenda calls for the discussion of private sector physical security policies, bomb threat statistics, and security programs at sensitive U.S. Government and private sector locations overseas.

For more information contact Mrs. Marsha J. Thurman, Overseas Security Advisory Council, Department of State, Washington, DC 20522-1001, phone: 202/663-0002.

Date: June 14, 1989.

Clark Dittmer,

Director of the Diplomatic Security Service.

[FR Doc. 89-16196 Filed 7-10-89; 8:45 am]

BILLING CODE 4710-24-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-89-27]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before July 31, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. xxxx, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, D.C. 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on June 28, 1989.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Docket No.: 21882.

Petitioner: China Airlines Limited.

Sections of the FAR Affected: 14 CFR 61.77 (a) and (b) and § 63.23 (a) and (b).

Description of Relief Sought: To extend Exemption No. 4849 that allows the issuance of U.S. special purpose pilot and flight engineer certificates to petitioner's airmen, without meeting the requirement that they hold a current foreign certificate or license issued by a foreign contracting state to the Convention on International Civil Aviation. Exemption No. 4849 will expire on September 30, 1989.

Docket No.: 21987.

Petitioner: Texas Department of Public Safety.

Sections of the FAR Affected: 14 CFR 91.65(b), 91.70(b), 91.73(a), 91.79(c), 91.85(b), and 91.109(a).

Description of Relief Sought: To extend Exemption No. 4706 that allows petitioner to conduct certain law enforcement support operations on behalf of the State of Texas and Federal law enforcement agencies. Exemption No. 4706 will expire on August 27, 1989.

Docket No.: 24540.

Petitioner: Union Camp Corporation.

Regulations Affected: 14 CFR 91.45.

Description of Relief Sought: To extend Exemption No. 4468 that allows petitioner to perform ferry flights with one engine inoperative from time to

time, as the necessity arises, without the requirement to obtain a ferry permit for each flight.

Docket No.: 25864.
Petitioner: Jet Management International, Inc.
Sections of the FAR Affected: 14 CFR 25.857(b)(2).
Description of Relief Sought: To allow the Learjet 25B-170 to be approved for operation in a cargo configuration.

Docket No.: 25915.
Petitioner: National Test Pilot School.
Sections of the FAR Affected: 14 CFR 21.191(c).
Description of Relief Sought: To allow petitioner to permit the training of petitioner's flight test students as well as crew training.

Docket No.: 070CE.
Petitioner: Beech Aircraft Corporation.
Sections of the FAR Affected: 14 CFR 23.207(c).
Description of Relief Sought: To allow the stall warning margin on the Beech Model B300 to be less than 5 knots when the pitch control reaches the stop before aerodynamic stall and the stall warning to be greater than 10 knots or 15% of stalling speed with 75% maximum continuous power.

Docket No.: 071CE.
Petitioner: Beech Aircraft Corporation.
Sections of the FAR Affected: 14 CFR 23.207(c).
Description of Relief Sought: To allow the stall warning margin on the Beech Model 1900D to be less than 5 knots when the pitch control reaches the stop before aerodynamic stall and the stall warning to be greater than 10 knots or 15% of stalling speed with 75% maximum continuous power.

Docket No.: 22461.
Petitioner: Cessna Aircraft Company.
Regulations Affected: 14 CFR 45.25(b) and 45.29(b).
Description of Relief Sought/Disposition: To amend Exemption No. 3467 that allows display of: (1) at least 12-inch high registration markings, N-numbers, on the fuselage side to extend beyond the horizontal stabilizer leading edge; (2) at least 12-inch high N-numbers on the outer surface of each engine nacelle to extend forwarded of the wing trailing edge; and (3) at least 10-inch high N-numbers on the engine nacelles if displayed on the airplanes noted in the exemption. The amendment would add Cessna aircraft Models 560 and S550 to the exemption.

GRANT, June 19, 1989, Exemption No. 3467A

Docket No.: 25238.
Petitioner: Chromalloy American Corporation.
Regulations Affected: 14 CFR 145.49.
Description of Relief Sought/Disposition: To allow petitioner to continue to operate its Mexicali, Mexico, facility under its existing domestic repair station certificate.

GRANT, June 15, 1989, Exemption No. 4948A

Docket No.: 25405.
Petitioner: Peninsula Airways, Inc.
Sections of the FAR Affected: 14 CFR 43.3(a) and (g).
Description of Relief Sought/Disposition: To extend Exemption No. 4949 that allows pilots employed by petitioner to remove and/or replace aircraft cabin seats and seat belts.

GRANT, June 14, 1989, Exemption No. 4949A

Docket No.: 25858.
Petitioner: Riaz Haghpajuh.
Sections of the FAR Affected: 14 CFR 63.35.
Description of Relief Sought/Disposition: To allow petitioner to serve as a flight engineer without retaking the flight engineer written test, which expired on December 31, 1988.

DENIAL, June 20, 1989, Exemption No. 5061

Docket No.: 25914.
Petitioner: Nashville Eagle, Inc.
Sections of the FAR Affected: § 135.337(a)(2), (3), and (4) and § 135.339(c)(1).
Description of Relief Sought/Disposition: To allow petitioner to use certain instructor pilots of British Aerospace Corporation to train petitioner's initial cadre of pilots in the British Aerospace Jetstream 31 (BA-3201) type airplane without meeting all of the applicable training requirements of Subpart H of Part 135.

GRANT, June 22, 1989, Exemption No. 5062

[FR Doc. 89-16222 Filed 7-10-89; 8:45 am]
BILLING CODE 4910-13-M

[Summary Notice No. PE-89-28]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: July 31, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on July 5, 1989.

Denise Donohue Hall,
Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 25785.
Petitioner: Western Oklahoma State College.
Regulations Affected: 14 CFR 141.91(a).
Description of Relief Sought: To allow petition to offer to private pilot ground school as a regular credit course at Erick High School, Erick, Oklahoma. This site is approximately 40 miles from the petitioner's main base at Altus, Oklahoma, which exceeds the 25 nautical mile limitation required by § 141.91(a).

Docket No.: 25918.
Petitioner: AFM Corporation.
Sections of the FAR Affected: 14 CFR 91.191(a)(4) and 135.165(b).
Description of Relief Sought: To allow petitioner to operate specific aircraft in extended overwater flight with single long-range navigation systems and single high-frequency communications systems in the Western Atlantic Ocean, the Caribbean Sea, and the Gulf of Mexico.

Docket No.: 11144.
Petitioner: American Airlines.
Regulations Affected: 14 CFR 121.99 and 121.351(a).
Description of Relief Sought/Disposition: To extend Exemption No. 1332, as amended, that allows petitioner to operate its airplanes between Wilmington, NC, and St. Thomas and St. Croix, Virgin Islands, via Nassau, without maintaining two-way radio communications between the airplanes and the dispatch office subject to certain conditions.

GRANT, June 29, 1989, Exemption No. 1332I

Docket No.: 23908.
Petitioner: Piedmont Airlines.
Regulations Affected: 14 CFR 121.371(a) and 121.378.
Description of Relief Sought-Disposition: To extend Exemption No. 4811 that allows the foreign original equipment manufacturers of engine parts and aircraft components used on petitioner's Boeing 737-300 and 767-200ER aircraft to perform, outside the United States, maintenance, preventive maintenance, and alterations on such parts and components.

GRANT, June 15, 1989, Exemption No. 4811A

Docket No.: 25640.
Petitioner: Aerospatiale Helicopter Corporation.
Sections of the FAR Affected: 14 CFR 21.195(a).
Description of Relief Sought/Disposition: To allow petitioner, a foreign manufacturer's subsidiary, to apply for an experimental certificate to perform market surveys in the United States.

GRANT, June 27, 1989, Exemption No. 5063

Docket No.: 25694.
Petitioner: FlightSafety International.
Sections of the FAR Affected: 14 CFR 61.57(a)(1); 61.58(b)(2) and (c)(1); 61.65(g); 61.161(b) (2), (3), and (4); 61.163(a); 61.165(a) (1) and (2); 61.191(c); and 61.57(c)(d).
Description of Relief Sought/Disposition: To allow petitioner to use the S-76B simulator to conduct practical tests for its students in lieu of the aircraft for various training, checking, and recurrency requirements.

PARTIAL GRANT, June 29, 1989, Exemption No. 5067

Docket No.: 25746.
Petitioner: Seagull Air Service, Inc.
Sections of the FAR Affected: 14 CFR 43.3 (a) and (g).
Description of Relief Sought/Disposition: To allow pilots employed by petitioner to perform the preventive maintenance functions of removing and/or replacing the passenger seats and seat belts of aircraft used in Part 135 operations.

GRANT, June 29, 1989, Exemption No. 5066

Docket No.: 25939.
Petitioner: Central States Airlines, Inc.
Sections of the FAR Affected: 14 CFR 135.337(a)(2), (3), and (4) and 135.339(c)(1).
Description of Relief Sought/Disposition: To allow petitioner to use certain instructor pilots of British Aerospace Corporation to train petitioner's initial cadre of pilots in the British Aerospace Jetstream 31 (BA-3201) type airplane without meeting all of the applicable training requirements of Subpart H of Part 135 of the FAR.

GRANT, June 28, 1989, Exemption No. 5064

[FR Doc. 89-16223 Filed 7-10-89; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to Section 10 of Pub. L. 92-463, that a meeting will be held at the U.S. Treasury Department in Washington, DC on August 1 and August 2, 1989, of the following debt management advisory committee: Public Securities Association, U.S. Government and Federal Agencies Securities Committee.

The agenda for the Public Securities Association U.S. Government and Federal Agencies Securities Committee meeting provides for a working session on August 1 and the preparation of a written report to the Secretary of the Treasury on August 2, 1989.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Pub. L. 92-463, and vested in me by Treasury Department Order 101-05, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552b(c)(4) and (9)(A) of Title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community priot to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Pub. L. 92-463. The advice provided consists of commercial asnd financal information given and received in confidence. As such debt management advisory committee activities concern matters which fall within the exemption covered by section 552b(c)(4) of Title 5 of the United States Code for matters which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by section 552b(c)(9)(A) of Title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of section 552b of Title 5 of the United States Code.

Date: July 5, 1989.

David W. Mullins, Jr.,
Assistant Secretary (Domestic Finance).

[FR Doc. 89-16138 Filed 7-10-89; 8:45 am]
BILLING CODE 4810-25-M

Internal Revenue Service

Performance Review Board; Membership

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Members of Senior Executive Service Performance Review Board.

DATE: Performance Review Board effective July 1, 1989.

FOR FURTHER INFORMATION CONTACT: DiAnn Kiebler, HR:H:E, Room 3515, 1111 Constitution Avenue, NW, Washington, DC 20224, Telephone No. (202) 566-4633, (not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service's Senior Executive Service Performance Review Board for senior executives other than Regional Commissioners, Assistant Commissioners and executives in Inspection and the Office of the Commissioner are as follows:

Michael J. Murphy, Senior Deputy Commissioner, Chairperson
David G. Blattner, Assistant Commissioner (Examination)
Robert L Brauer, Assistant Commissioner (Employee Plans and Exempt Organizations)
Richard C. Voskuil, Regional Commissioner, Southwest Region
Cornelius J. Coleman, Regional Commissioner, North Atlantic Region
Robert T. Johnson, Assistant Commissioner (Human Resources Management and Support), Alternate
J. Robert Starkey, Regional Commissioner, Mid-Atlantic Region, Alternate

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978 (43 FR 52122).

Michael J. Murphy,
Acting Commissioner.

[FR Doc. 89-16132 Filed 7-10-89; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 131
Tuesday, July 11, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, July 13, 1989, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street NW., Washington, DC.

Agenda, Item No., and Subject

Private Radio—1—Title: Amendment of the Maritime Services Rules (Part 80) regarding the frequency selection capability of VHF maritime transmitters. Summary: The FCC will consider whether to amend Part 80 of the Commission's Rules regarding the frequency selection capability of VHF maritime transmitters.

Private Radio—2—Title: Amendment of Part 90 regarding Business Radio use of certain channels in the 150 MHz band. Summary: The Commission will consider the use of offset channels in the 150 MHz band.

Mass Media—1—Title: Applications in the Direct Broadcast Satellite (DBS) service for construction permits for new systems and for modification of construction permits for authorized systems, filed by the fifth round of DBS applicants, and petitions to deny certain of those applications. Summary: In connection with considering these applications, the Commission will consider its DBS orbital allocations policy and the merits of the petitions to deny.

Mass Media—2—Title: Amendment of Part 73 of the Rules to provide for an additional FM station class (Class C3) and to increase the maximum transmitting power for class A FM stations. Summary: The Commission will consider proposals to increase the power of Class A FM stations from 3 kW to 6 kW.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Public Affairs, telephone number (202) 632-5050.

Issued: July 6, 1989.

Federal Communications Commission.

Donna R. Searcy,
Secretary.

[FR Doc. 89-16367 Filed 7-7-89 3:09 pm]

BILLING CODE 6712-01-M

FEDERAL ELECTION COMMISISON

"FEDERAL REGISTER" NUMBER 89-16034

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, July 13, 1989, 10:00 a.m.

Meeting Open to the Public

The following item was added to the agenda for the above meeting:

FY 1989 Management Plan Revisions
FY 1989 Supplemental Appropriation

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 89-16300 Filed 7-7-89; 10:32 am]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 28152, July 5, 1989.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Friday, July 7, 1989.

CHANGES IN THE MEETING: One of the items announced for inclusion at this meeting was consideration of any agenda items carried forward from a previous meeting; the following such closed item(s) was added:

Consideration of legislation relating to banking structure. (This item was previously announced for a closed meeting on July 3, 1989.)

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: July 7, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89-16385 Filed 7-7-89; 3:52 pm]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to Federal Register on July 3, 1989.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, July 12, 1989.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Issues relating to Federal Reserve notes.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: July 7, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89-16386 Filed 7-7-89; 3:52 pm]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, July 17, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Report of the operations reviewed of the Division of Banking Supervision and Regulation.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: July 7, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89-16387 Filed 7-7-89; 3:52 pm]

BILLING CODE 6210-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-89-24]

TIME AND DATE: Wednesday, July 12, 1989 at 10:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and Complaints.
5. Inv. No. 731-TA-435 (P) (Certain Steel Pails from Mexico)—briefing and vote.

6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Kenneth R. Mason,

Secretary.

July 3, 1989.

[FR Doc. 89-16335 Filed 7-7-89; 1:22 pm]

BILLING CODE 7020-02-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Tuesday, July 18, 1989.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

4939A Marine Accident Report: Ramming of the CSX Railroad Bridge by the Cyprian Bulk Carrier PONTOKRATIS, Calumet River, Chicago, Illinois, May 6, 1988.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Bea Hardesty,

Federal Register Liaison Officer.

July 7, 1989.

[FR Doc. 89-16366 Filed 7-7-89; 3:08 pm]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 10, 17, 24, and 31, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of July 10

Monday, July 10

2:00 p.m.
Briefing of Status of Emergency Response Data System (Public Meeting)

Tuesday, July 11

10:00 a.m.
Briefing on Staff Comments on DOE Site Characterization Plan for Yucca Mountain (Public Meeting)

1:30 p.m.
Briefing on Policy Statement on Rules for Exemption from Regulatory Control (Public Meeting)

Friday, July 14

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 17—Tentative

Wednesday, July 19

2:30 p.m.
Briefing on Status of Browns Ferry-2 (Public Meeting)

4:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 24—Tentative

Wednesday, July 26

10:00 a.m.
Briefing on Integration of Policy Statements for Severe Accidents, Advanced Reactors, Safety Goals, and Standardization (Public Meeting)

2:00 p.m.
Briefing on Proposed 1989 Waste Confidence Decision (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 31—Tentative

Tuesday, August 1

10:00 a.m.
Briefing on Status of EPRI Design Requirements Document for Advanced Light Water Reactors (Public Meeting)

Thursday, August 3

2:00 p.m.
Briefing on NRC Thermal-Hydraulic Research Program (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL: (RECORDING)—(301) 492-0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

William M. Hill, Jr.,

Office of the Secretary.

July 6, 1989.

[FR Doc. 89-16356 Filed 7-7-89; 3:07 pm]

BILLING CODE 7590-01-M

Corrections

Federal Register

Vol. 54, No. 131

Tuesday, July 11, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

Correction

In the FMC notice document beginning on page 27928 in the issue of Monday, July 3, 1989, make the following corrections:

On page 27929, at the top of the first column, insert the following:

Agreement No.: 224-010940-001.

On the same page, in the same column, at the end of the document, in the file line, the document number should read "89-15575".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 26
RIN 3150-AC81

Fitness-for-Duty Programs

Correction

In rule document 89-12806 beginning on page 24468 in the issue of Wednesday, June 7, 1989, make the following corrections:

§ 26.2 [Corrected]

1. On page 24495, in the second column, in the first and second lines,"(insert date 180 days after the effective date of the final rule)" should read "December 4, 1989".

§ 26.73 [Corrected]

2. On page 24499, in the second column, in § 26.73(d), in the first and second lines, "(insert date 180 days after the effective date of the final rule)" should read "December 4, 1989".

BILLING CODE 1505-01-D

federal register

Tuesday
July 11, 1989

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, and 1918
Occupational Exposure to Lead; Statement of Reasons; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, and 1918

[Docket Nos. H-004E, F, G, H, I, and J]

Occupational Exposure to Lead

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Final rule; statement of reasons.

SUMMARY: This statement of reasons sets forth OSHA's determinations with regard to the technological and economic feasibility of meeting the permissible exposure limit (PEL) of 50 micrograms per cubic meter ($\mu g/m^3$) of air specified in the lead standard (29 CFR 1910.1025) through engineering and work practice controls in nine industry sectors. The nine industry sectors are brass and bronze ingot production (SIC 3341/3362), independent battery breaking (SIC 5093), lead chemicals (SIC 2816/2819), lead chromate pigments (SIC 2816), leaded steel (SIC 3312/3313), nonferrous foundries (SIC 3362/3369), secondary copper smelting (SIC 3341), shipbuilding and ship repair (SIC 3731), and stevedoring (SIC 4463). The determination is made in response to an order of the U.S. Court of Appeals for the District of Columbia Circuit, which remanded the record to OSHA and required OSHA to reconsider the question of feasibility for these industries.

Based upon the record, OSHA has determined that the standard is both technologically and economically feasible in eight of the nine industry sectors because exposure levels above the PEL can be controlled by available and affordable engineering and work practice controls within the time period permitted for compliance. For some operations within certain industries, it may be necessary for employers to rely on respirators for supplemental protection.

For the ninth industry sector, nonferrous foundries, OSHA has determined 50 $\mu g/m^3$ is technologically feasible. With regard to economic feasibility, because the rule could significantly contribute to the withdrawal of over one-half of small foundries and because small foundries constitute about 60 percent of the nonferrous foundries, OSHA concludes that achieving 50 $\mu g/m^3$ by means of engineering and work practice controls is economically infeasible for the nonferrous foundry industry. OSHA has not, however, examined whether achieving a PEL above 50 $\mu g/m^3$ but below 200 $\mu g/m^3$ by means of engineering and work practice controls is economically feasible.

DATES: Effective date is August 10, 1989. Compliance dates and start up dates for individual industries are set out in Table I of paragraph (e) and paragraph (r) of 29 CFR 1910.1025.

FOR FURTHER INFORMATION CONTACT: James F. Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone 202-523-8148.

SUPPLEMENTARY INFORMATION:

Contents of the Preamble

I. Background and judicial history of the lead standard.
II. Feasibility determinations.
A. Introduction to feasibility assessments.
B. Feasibility of the lead standard in each of the nine remand industry sectors.
1. Brass and bronze ingot production (SIC 3341/3362).
2. Independent battery breaking (SIC 5093).
3. Lead chemicals (SIC 2816/2819).
4. Lead chromate pigments (SIC 2816).
5. Leaded steel (SIC 3312/3313).
6. Nonferrous foundries (SIC 3362/3369).
7. Secondary copper smelting (SIC 3341).
8. Shipbuilding and ship repair (SIC 3731).
9. Stevedoring (SIC 4463).
III. Regulatory Flexibility and Environmental Impact Determinations.
IV. Authority and Signature.
V. Amendments to Standard.

References to the remand rulemaking record are made in the text of this preamble using the following abbreviations:

H-004: Lead remand rulemaking docket, which includes Dockets H-004E, H-004F, H-004G, H-004H, H-004I, and 4H-004J.

Ex.: Exhibit number in Docket H-004.

Tr.: Transcript page number for November 1987 public hearing.

App.: Appendix number or letter in Docket H-004.

Att: Attachment number or letter in docket H-004.

I. Background and Judicial History of the Lead Standard

On November 14, 1978, OSHA promulgated the lead standard (29 CFR 1910.1025), which in part limited occupational exposure to airborne concentrations of lead to 50 micrograms per cubic meter of air ($\mu g/m^3$), based on an 8-hour time-weighted average (TWA) (43 FR 52952; and 43 FR 54354, November 21, 1978). In paragraph (e)(1) of the lead standard, employers in the lead industries were required to achieve the 50 $\mu g/m^3$ PEL by means of engineering and work practice controls and various industries were given extended time to comply with that obligation.

Immediately after promulgation, the lead standard was challenged by both industry and labor in several U.S. Courts of Appeals. All cases were transferred to and consolidated in the U.S. Court of Appeals for the District of Columbia Circuit. On August 15, 1980, the United States Court of Appeals for the District of Columbia Circuit upheld the validity of OSHA's lead standard in most respects. The court found OSHA's analysis of the feasibility of the standard to be adequate and upheld the validity of the entire standard for the following industry sectors: primary lead smelting, secondary lead smelting, printing, can manufacturing, battery manufacturing, paint and coating manufacturing, ink manufacturing, wallpaper manufacturing, electronic manufacturing and grey-iron foundries. However, the court found that OSHA had failed to present substantial evidence or adequate reasons to support the feasibility of paragraph (e)(1) of the lead standard for 38 industry sectors. *United Steelworkers of America* v. *Marshall*, 647 F.2d 1189 (D.C. Cir. 1980), *cert. denied*, 453 U.S. 913 (1981).

The court did not vacate any portion of the lead standard. Rather, for the 38 industry sectors, it stayed the enforcement of paragraph (e)(1) of 29 CFR 1910.1025, which requires compliance with the PEL exclusively by means of engineering and work practice controls. The court held that these industries, however, were immediately required to meet the PEL of 50 $\mu g/m^3$ by some combination of engineering, work practice and respirator controls. The court also remanded the record to OSHA for reconsideration of the question of technological and economic feasibility for these industry sectors and gave OSHA six months in which to complete its reassessment of the feasibility issue.

In accordance with the court order, the Agency conducted an expedited rulemaking (45 FR 63476; September 24, 1980). On January 19, 1981, OSHA filed its response to the remand order in which it concluded that attainment of the 50 $\mu g/m^3$ PEL through use of engineering and work practice controls was generally feasible in an expanded list of remand industries. A Supplemental Statement of Reasons and Amendment of the Standard containing this conclusion was published on January 21, 1981 (46 FR 6134).

In response to industry petitions for reconsideration, OSHA subsequently requested and was granted a deferral of further court action pending reconsideration of its January 21, 1981 feasibility findings. Upon reconsideration, OSHA reaffirmed its conclusion that compliance with the PEL was generally feasible for most of the remand industries, either because exposure levels did not generally exceed the PEL, thus requiring minimal or no compliance actions, or because exposure levels above the PEL could be controlled by available engineering controls or work practices. A Revised Statement of Reasons containing this conclusion was published on December 11, 1981 (46 FR 60758). In this notice, OSHA stated that it could not reach a conclusion regarding feasibility on the existing record for eight specified industry sectors and that it also wished to reexamine the applicability of the lead standard for the stevedoring industry. Therefore, OSHA requested the court on December 10, 1981 to remand the record concerning these nine industry sectors for supplementary administrative proceedings (46 FR 60761).

In its December 11, 1981 Revised Statement of Reasons OSHA also amended the Lead Standard (29 CFR 1910.1025) in several important respects, one of which was to exempt employers from the requirement to implement engineering controls for employees who are exposed above the PEL for 30 days or less annually. In that same document OSHA also included a revised footnote 3 in Table I of paragraph (e)(1) of the lead standard. That footnote simply made explicit that the obligation of employers in the lead industries to use engineering and work practice controls to comply with the preexisting 200 $\mu g/m^3$ PEL was continued, until either the 100 $\mu g/m^3$ interim PEL or the final 50 $\mu g/m^3$ PEL for engineering and work practice controls became effective for a particular industry. That footnote was inadvertently omitted from succeeding publications of the Code of Federal Regulations. OSHA in this final rule corrects this typographical omission by republishing footnote 3 as it previously appeared.

On March 31, 1987, the Court of Appeals for the District of Columbia Circuit granted OSHA's request of December 10, 1981 and remanded the record to OSHA for further administrative proceedings to determine the feasibility of paragraph (e)(1) of the lead standard for the nine industry sectors listed above. The Court ordered OSHA to return the record on or before October 1, 1987.

On June 17, 1987, OSHA filed with the Court a motion requesting a 90-day extension of time in which to return to the Court the record of the nine remand industry sectors. The Court granted OSHA's unopposed motion.

After the March 31, 1987 remand, OSHA contracted with Meridian Research, Inc., a private consulting firm, to collect, develop and update data concerning the feasibility of compliance with the PEL by means of engineering and work practice controls in each of the remand industries. The Meridian preliminary report was placed into the rulemaking record on August 3, 1987 for public review and comment, and OSHA set a September 15, 1987 date for an informal public hearing (52 FR 28727; August 3, 1987). In the notice announcing the hearing OSHA requested interested parties to submit relevant data, including the last two years of air lead monitoring data on an operation-by-operation (job category-by-job category), plant-by-plant basis. OSHA also asked interested parties to address their comments to 22 specific issues and questions OSHA raised in the notice.

On August 18, 1987, OSHA received a request from the Oxide and Chemicals Committee of the Lead Industries Association (LIA), the main trade association for the lead chemicals industry, that the public hearing and deadline for receipt of written comments be deferred for at least 30 days, or in the alternative, that the deadline for receipt of written comment be extended beyond September 2, 1987.

In light of the court order granting OSHA additional time to make feasibility determinations concerning the nine industry sectors and to return the record to the court, OSHA decided to defer the public hearing and the deadline for receipt of written comments for two weeks (52 FR 32312; August 27, 1987).

Thereafter, on September 8, 1987, the American Cast Metals Association (ACMA) requested a further deferral of the hearing. According to ACMA, the additional time was needed because some important information upon which OSHA's contractor, Meridian Research, Inc., based its feasibility report was not available in the public docket soon enough for ACMA to evaluate it and to submit meaningful comments by the deadline. ACMA sought a further deferral of the dates for the hearing and the close of comments for approximately one or two months. ACMA's request for additional times was immediately supported by similar requests from the American Foundrymen's Society, the Association of Brass and Bronze Ingot Manufacturers, the American Iron and Steel Institute, and the Plumbing Manufacturing Institute.

Thereafter, and without objection from other parties to the rulemaking, OSHA extended the deadline for prehearing comment to October 16, 1987 and the date for the hearing to November 3, 1987 (52 FR 35731; September 23, 1987). OSHA received 111 submissions during the prehearing period and 10 late submissions. Twenty-seven persons, including representatives from eight of the remand industry sectors and two unions, indicated their intention to appear and testify at the hearing.

To supplement the exposure data in the record, on October 27, 1987, OSHA by letter made specific requests to 14 companies in six industry sectors for air lead monitoring data job category by job category for 1984-87 (Ex. 646). In response, 13 companies submitted the requested data, which were entered into the record.

Thereafter, on November 3, 1987 in Washington, DC, an informal public hearing was convened by Administrative Law Judge Joan Huddy Rosenzweig pursuant to notice and section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 (b)(3)). At the hearing, representatives from three industry sectors (lead chemicals, lead chromate pigments and leaded steel) testified and answered questions. Representatives from five other industries (stevedoring, brass and bronze ingot production, nonferrous foundries, independent battery breaking, and secondary copper) made appearances to question OSHA's expert witnesses and contractor, but did not present testimony or submit to questioning by OSHA or other interested parties. The hearing concluded on November 6, 1987.

During the remand hearing, certain industry participants expressed concern about the lack of recent plant visits by OSHA or its contractor, Meridian, in preparing the 1987 update of feasibility data. No plant visits had been conducted by OSHA in the remand industries for the rulemaking since 1981-82.

While OSHA considered the existing record sufficient to make a feasibility determination for each of the remand sectors, the Agency agreed that site visits and receipt of additional data would be useful. Therefore, in response to industry's expressed concern, OSHA proposed at the administrative hearing that it conduct expedited post hearing site visits on a voluntary basis in some of the remand industry sectors (Tr. 1289-90). The purpose of the site visits was to collect information on manufacturing processes, employment, exposure levels,

engineering and work practice controls, and costs and other economic data which would aid OSHA in its determinations of feasibility.

In view of OSHA's proposal for site visits and the complexity of the issues addressed at the hearing, the administrative law judge ordered that the closing date for submission of additional post hearing information and data would be January 8, 1988 and that the closing date for submission of briefs would be February 5, 1988 (Tr. 1304–05). That order was made contingent upon the court granting a deferral of its January 1, 1988 deadline for return of the record. On November 25, 1987, OSHA requested the court to extend the deadline for return of the record until July 15, 1988 to allow the Agency time to receive and evaluate more data, to conduct post hearing plant visits and produce site visit reports, and to develop and publish a final rule. The court granted the motion by its order of December 16, 1987, with the provision that OSHA file a status report with the court on or before April 4, 1988, which OSHA did. OSHA received 23 submissions during this post hearing comment period.

During January and February, 1988, OSHA conducted eight site visits in four industry segments (lead chemicals, lead chromate pigments, nonferrous foundries and secondary copper). OSHA also tried to arrange site visits in two other industry sectors, brass and bronze ingot production and leaded steel, but those industries declined to arrange visits.

The site visits were conducted according to agreements executed by OSHA and the plants visited or the relevant trade association. According to those agreements, the site visit team included OSHA staff, representatives from OSHA's contractor, Meridian, and an independent certified industrial hygienist. Also according to the site visit agreements, the name of the facility visited was kept confidential by OSHA and each plant was given the opportunity to review the site visit report for accuracy and trade secrets before the reports were placed into the docket for public comment.

The judge certified the hearing record to the Assistant Secretary on March 23, 1988.

On April 7, 1988, by **Federal Register** notice (53 FR 1151) OSHA reopened the record until May 9, 1988, for the limited purpose of receiving comments on a final set of documents OSHA placed into the docket. These documents included the eight site visit reports, the final Meridian reports and exposure monitoring data received in response to the site visits and to OSHA's October 27, 1987 request.

On April 27, 1988, ACMA requested an extension of the comment period for at least 60 days beyond the May 9 deadline because, ACMA asserted, important and complex documents were not entered into the docket by OSHA at the time the record was reopened and the May 9 deadline was insufficient to allow industry to make meaningful comments. ACMA's request was supported by other industry commenters. Thereafter, and without objection from other parties to the rulemaking, OSHA extended the deadline for public comment to May 23, 1988 (53 FR 16731). OSHA received 43 submissions while the record was reopened and two late submissions (Docket H–004J).

On July 15, 1988, OSHA filed with the court a request for an extension of the deadline from July 15, 1988 to November 30, 1988 for returning the remand record. OSHA requested an extension in part because the Agency had been unable to close the comment period on May 9, 1988 as planned and because many comments proved unexpectedly lengthy and complex. On September 7, 1988, the court granted OSHA's request and ordered that the Agency file a status report with the court no later than September 30, 1988. OSHA did so.

Thereafter, OSHA filed four other motions requesting additional time to complete its feasibility determinations and to return the record to the court. The first three of these requests for extension of time were granted without objection by the parties to this rulemaking. The Agency's final motion for a 90-day extension of time was objected to by the United Steelworkers of America. The court granted OSHA's motion on May 22, 1989.

On June 23, 1989, OSHA returned the record to the court and requested that the court approve its feasibility findings. OSHA also requested the court to remand to the Agency the record concerning the nonferrous foundry industry to examine whether achieving a PEL above 50 $\mu g/m^3$ but below 200 $\mu g/m^3$ is economically feasible for the nonferrous foundry industry.

II. Feasibility Determinations

A. Introduction to Feasibility Assessments

Feasibility in General

OSHA is obligated by the Occupational Safety and Health Act of 1970 (84 Stat. 1593; 29 U.S.C. 655, 657) and by court decisions interpreting the Act to protect workers to the extent feasible from significant risks of material impairment to health. *Industrial Union Department* v. *American Petroleum Institute*, 448 U.S. 607 (1980); *Building and Construction Trades Department, AFL–CIO* v. *Brock*, 838 F.2d 1258 (D.C. Cir. 1988); *United Steel Workers of America* v. *Marshall*, 647 F.2d 1189.

The courts have established the legal criteria for determining economic and technological feasibility. However, the Agency has considerable discretion in applying those criteria. Since OSHA's judgment on feasibility is considered a "legislative decision," the courts will give it "necessary deference."

The most exhaustive consideration of feasibility and the controlling law for this rulemaking is the "lead decision." *USWA* v. *Marshall*, 647 F.2d 1189.

Technological Feasibility

Introduction. OSHA concludes that achieving the 50 $\mu g/m^3$ PEL of paragraph (e)(1) of the lead standard (29 CFR 1910.1025) by means of engineering and work practice controls is technologically feasible in each of the nine industries for which the court in March 1987 remanded the record to OSHA to pursue further rulemaking. The determination that it is feasible to achieve the PEL of 50 $\mu g/m^3$ is based upon reducing emissions from many sources of lead emission and fugitive emissions by a combination of engineering and work practice controls.

OSHA makes this determination on the basis of conventional technologies that are commonly known, readily available, and, to some degree, currently used in the affected industries. These controls generally can reduce exposures to below the PEL in most operations in each industry.

The controls can be used individually or in combination. If one control is not sufficient, additional ones can be used. If one type of control is somewhat less effective than expected, another may be more effective. It is the interaction of various engineering controls and work practices as part of an integrated system of controls that is predicted to result in the needed overall reduction in exposure levels. OSHA does not specify which control must be implemented. Rather, OSHA allows the employer the choice best suited to the particular characteristics of the workplace.

Where feasible engineering and work practice controls cannot achieve the PEL, as in many maintenance and repair operations, intermittent short-term operations, and tasks performed in confined spaces, respirators are permitted to supplement feasible engineering and work practice controls.

For reasons set out below in the Agency's assessment of economic feasibility, OSHA has recognized the need for extended compliance times in these remand industries. No industry will be required to comply with paragraph (e)(1) of the lead standard in less than two-and-one-half years. This extended compliance time gives additional assurance that the 50 $\mu g/m^3$ level is technologically feasible.

(a) *OSHA's Approach.* In the following pages OSHA analyzes the technological feasibility of achieving the 50 $\mu g/m^3$ PEL by means of engineering and work practice controls operation by operation in each of the nine lead industries included in this remand rulemaking. In that analysis OSHA makes separate feasibility findings for each industry.

OSHA has chosen this analytical approach for several reasons. First, the court's reasoning in the lead decision and its resulting remand orders, which control this rulemaking, would seem to require a detailed and separate analysis for each of the remand industries. *USWA* v. *Marshall*, 647 F.2d at 1301. Second, where the evidence clearly suggests that in important operations achieving the PEL may be difficult, analysis of individual operations would seem to be appropriate to show the PEL can be achieved in most operations. *Id.*, at 1296–97. Third, the level of detail in the record concerning individual industries confirms the appropriateness of industry-by-industry analysis in this rulemaking. Finally, conditions in industries as diverse as shipbuilding and lead chemicals, for example, make it better to consider such industries individually rather than within a single generalized analysis.

In each of the nine remand industries OSHA sought to collect the best evidence for assessing technological feasibility. The Agency hired a contractor, Meridian, to collect data for assessing feasibility and to prepare a preliminary report. OSHA then requested relevant data in a notice of limited reopening of the lead remand rulemaking record (52 FR 28727; August 3, 1987) (Ex. 580) and repeated the request with some specificity numerous times during the public hearing (e.g., Tr. 385–86, 388–89, 392, 402–03, 1127). In addition, OSHA made written requests for exposure monitoring results to 14 specific facilities in the remand industries Ex. 646). Finally, OSHA sought to carry out site visits to facilities in six of the nine industries. After gathering the data, OSHA then proceeded as follows to assess technological feasibility.

First, OSHA briefly describes the production process, operation by operation, and the sources of lead exposure within that process and within the plant. This section also contains background information to make it easier to understand the more detailed feasibility analysis that follows.

Second, OSHA analyzes the data sets in the record for each industry to assess existing exposure levels operation by operation or job classification by job classification and, as evidence permits, correlates those exposure levels with existing engineering controls.

OSHA seeks in each industry to rely on the best evidence available in the record concerning existing and achievable exposure levels. The data sets in each industry are of wide ranging quality. As in most OSHA rulemakings, the record does not contain industrial hygiene or engineering studies that specifically evaluate the ability of particular technologies to control exposures in various operations. Instead, the evidence in the record involves general descriptions of control technologies and general exposure monitoring data, which was collected to measure workers' exposures to lead and not to evaluate the effectiveness of existing controls.

OSHA's conclusions that these technologies can achieve the PEL are supported in each remand industry by documented cases of successful implementation, technical analyses incorporating plant-specific exposure data and first-hand observation of plant operations, and expert testimony as to the effectiveness of properly applied engineering design and industrial hygiene principles. Although this data and information certainly is adequate to determine technological feasibility, it requires analysis and judgment to understand and assess the relationship between exposure levels and control technologies.

In assessing the reliability, usefulness and probative value of the data sets in the record and in determining their implications, if any, for the technological feasibility of achieving the PEL in a particular industry, OSHA also must exercise its expert judgment. With regard to the nine remand industries, OSHA feels comfortable with that judgment. OSHA evaluates the data sets in terms of widely accepted criteria. Using these criteria, OSHA discusses and characterizes each of the data sets industry by industry in an effort to identify the best available evidence of exposure levels. OSHA then relies upon the best evidence available for each industry to make its determinations.

Ideally, the best evidence would be a data set that: (1) Was composed of comprehensive raw monitoring results over the last several years, including monitoring results from tasks associated with higher exposure levels; (2) was gathered by trained personnel; (3) was part of an on-site industrial hygiene evaluation of production processes and existing controls; and (4) was from a facility with typical production processes and state-of-the-art engineering and work practice controls. Such data, accompanied by annotations describing all the relevant conditions under which the sampling was conducted, would provide a most reliable reflection of existing exposure levels and the firmest basis for determining technological feasibility.

However, in none of the nine remand industries does OSHA have data from a facility with state-of-the-art controls. In fact, OSHA has frequently found the application of industrial hygiene principles and effective engineering design to be inadequate throughout these industries. A substantial number of data sets, thus, appear to be from facilities with poor or no controls. Consequently, existing exposure levels generally are not indicative of the levels that an industry can achieve.

The next best data set would include recent and comprehensive raw monitoring results collected by trained personnel at a facility with reasonably typical production processes. It would be accompanied by annotations describing the relevant conditions under which sampling was conducted. It might be supplemented by an OSHA site visit during which observations by industrial hygienists would associate key production processes with current exposure levels and existing controls.

There are a number of these sorts of data sets available in the record, covering at least four industries (lead chemicals, lead pigments, non-ferrous foundries and secondary copper smelting). In general, these data sets enable OSHA to assess technological feasibility with considerable assurance.

A data set that included neither annotations, descriptions of existing controls, nor a site visit would be less useful. There are many such data sets in the record. Typically in this rulemaking, companies submitted data without annotations or descriptions of relevant controls. Nevertheless, where it appears from such data sets that 50 $\mu g/m^3$ already is being achieved or is close to being achieved, such data constitute evidence of technological feasibility. However, where it appears that 50 $\mu g/m^3$ is far from being achieved, it is

extremely difficult to evaluate the data because of the lack of contextual information needed to understand why this is so.

The least useful sets of monitoring data: (1) Are incomplete or dated; (2) include only summary statistics of sampling results (e.g., only ranges of results or averages, without individual monitoring results), especially if they are unaccompanied by an explanation of how they were compiled; (3) aggregate data from a number of plants rather than present data plant by plant; (4) aggregate data across job classifications or operations rather than present data operation by operation or job classification by job classification; and (5) include no contextual information concerning the conditions under which sampling was conducted, existing controls, and the like.

For example, even if a data set in some respects is of reasonably good quality, if it is composed of data aggregated from a number of plants, it is generally unreliable for determining technological feasibility. It is unreliable because, to an unknown degree, high monitoring results in one or more plants with poor controls may drastically influence the aggregate.

While OSHA seeks to quantify its assessment of technological feasibility to the extent the data will allow, the data provided by industry are rarely precise or clear enough to allow the Agency to make unassailable, statistically sophisticated determinations. Rather, where appropriate, OSHA uses simple statistical techniques and supplements these techniques with expert judgment. In the final analysis, as indicated above, OSHA has had to exercise expert judgment in interpreting and assessing these data.

Where the record evidence shows that, in one or more facilities with production processes that are reasonably typical of an industry, exposure levels already have been controlled to or below 50 $\mu g/m^3$ in most operations most of the time, that fact is the best evidence that the PEL is technologically achievable in the broader industry. Indeed, as the courts have said, if a PEL has been "virtually met in one plant * * *, [t]hat in itself can constitute substantial evidence," which would satisfy OSHA's burden of proving technological feasibility for an industry. *Id.*, at 1280.

However, even where this is so and still more generally where the record is not that definitive, OSHA does not simply, or even primarily rely upon existing exposure levels to prove technological feasibility. OSHA rests its feasibility determination for each industry in large part on the fourth part of its analysis, which is set out below and focuses on the expected reductions in existing exposure levels that can be achieved by employers implementing the sorts of additional controls recommended by OSHA.

As a result, the particular method chosen by the Agency to represent the raw exposure data in the Agency's analysis of existing exposure levels in each industry is not crucial to OSHA's feasibility determination for that industry. OSHA presents the exposure data in a variety of generally accepted ways. For example, OSHA often relies upon the geometric mean (see discussion below) to characterize the array of monitoring results in individual operations or job classifications. However, in some industries, OSHA relies upon the frequency distribution of monitoring results or the arithmetic mean (average) of those results to describe existing exposure levels.

In any event, whichever statistic OSHA uses to represent the raw exposure data for a particular industry, OSHA does not treat the fact that that statistic might show that exposures are below 50 $\mu g/m^3$ as complete proof by itself of technological feasibility. Rather, the Agency's position is that such exposure levels generally indicate that controls are in place to limit excessive employee exposure (or that exposure levels are low to begin with) and that only relatively modest further additions and improvements to controls are necessary to reduce the exposure levels of all workers consistently to or below 50 $\mu g/m^3$. OSHA also does not treat the fact that a statistic that shows exposures in a particular operation are below 50 $\mu g/m^3$ as complete proof by itself of technological feasibility because OSHA realizes that a geometric mean or any statistic below 50 $\mu g/m^3$ does not by itself guarantee that an employer will be able to achieve 50 $\mu g/m^3$ at all times under all conditions in that operation. However, based on its knowledge, experience and expertise, OSHA is confident in its assumption that the further a geometric mean is below 50 $\mu g/m^3$ the more likely that most exposure levels in that operation will be below 50 $\mu g/m^3$.

Third, OSHA describes typical existing controls operation by operation in an industry.

Fourth, OSHA recommends the implementation of various additional engineering and work practice controls for each operation in an industry to reduce employee exposure levels to or below the 50 $\mu g/m^3$ PEL. When it is able to do so, the Agency also estimates the associated reductions in exposure levels that can be anticipated from implementing such controls. OSHA quantifies the expected reductions where, as in the case of facilities to which the Agency has carried out site visits, OSHA feels reasonably confident it can numerically estimate the extent of the reductions. OSHA's recommendations and estimates are based upon analyses by experienced industrial hygienists, frequently industrial hygienists from outside the Agency who were specifically selected to perform these analyses.[1]

OSHA's main approach in this additional controls section of the preamble is to concentrate first on the operations that industry itself has identified as the most difficult to control to 50 $\mu g/m^3$. Although the Agency does not limit its analysis of additional controls to these operations, OSHA concludes that, if it can show that exposure levels can be controlled to or very near the PEL in those operations, controlling other operations to the PEL should be relatively easy. The controls OSHA recommends are not mandatory. OSHA's lead standard does not require employers to institute specific controls. OSHA intentionally drafted the standard in performance language in order to permit employers the latitude to develop the combination of engineering and work practice controls suited to

[1] In some of the operations for which the expert panel estimated reductions in exposure levels that could be anticipated from implementing recommended controls, the worker's exposure resulted from emissions coming from different independent sources or points within that operation. Estimated reductions in the worker's exposure levels are obtained by eliminating, capturing or in other ways reducing one or more of those contributing, but independent, emission sources. To obtain the overall estimated reduction in the worker's exposure level by controlling every emission source or point in the worker's particular operation or job category, the expert panel utilized the following methodology. The panel first estimated the reductions in emission to the particular operation which could be anticipated from implementing each recommended control. The panel next estimated the percentage each emission source contributed to the worker's overall TWA exposure level in that operation. The panel then arrived at an estimate of the anticipated reduction in the worker's overall exposure level from controlling the particular emission source by multiplying the estimated percentage reduction times the contribution of that emission source to the worker's overall TWA exposure. Finally, OSHA quantified the overall impact of implementing the various recommended controls for a particular operation by adding the weighted contribution of each control to determine the worker's total anticipated reduction in exposure due to controlling the independent emission sources in that operation. OSHA notes that in those situations in which the impact of the controls may be dependent upon each other, OSHA would multiply the reductions anticipated from each of the different recommended controls.

particular facilities. The list of recommended controls also is not exhaustive. OSHA fully expects that industry and its consultants will devise many additional ways to successfully control exposure levels.

The recommended controls also are not intended as a blueprint or infallible guide to be implemented in every facility in an industry. On the contrary, as a fundamental part of the Agency's recommended control strategy, OSHA urges that each plant that needs to reduce exposure levels conduct its own plant-wide industrial hygiene survey and job/task analysis to determine the particular sources of emission, their contribution to employee exposures, and the proper mix of controls needed to deal with the specific exposure problems found in that plant. OSHA also suggests that followup industrial hygiene studies be conducted to evaluate the effectiveness of whatever controls are implemented and to refine the controls in place in accordance with the results of sampling performed after the controls were implemented. Hence, in industries where OSHA finds the 50 $\mu g/m^3$ PEL to be technologically feasible, the recommended controls are simply illustrative of effective, conventional ways to achieve the PEL. As such, they provide a reasonable basis for assessing technological feasibility and for estimating costs of compliance and assessing economic feasibility.

Fifth, OSHA then makes its determination concerning the technological feasibility of achieving the 50 $\mu g/m^3$ PEL by means of engineering and work practice controls in the particular industry. In reaching this decision, OSHA summarizes and responds to an industry's main criticisms and main arguments.

For example, many representatives of industry asserted in their comments that currently available engineering and work practice controls are not capable of achieving the PEL. However, as indicated earlier, OSHA found that often these representatives did not appreciate, and in their facilities did not demonstrate a basic understanding of, the principles of industrial hygiene so necessary to assess and control employee exposures to lead. As a consequence, these industry assertions of technological infeasibility cannot be accepted at face value.

(b) *Data Analysis.* In order to make use of the exposure data in the record to assess technological feasibility, OSHA had to select statistical approaches that would best describe the data in each case. OSHA recognizes that there is no single statistic that can fully describe a set of exposure data, and the statistics one chooses depend in part upon how the data are to be used. For example, a range of exposure levels (e.g., from 8 $\mu g/m^3$ to 579 $\mu g/m^3$) provides very little useful information about typical exposure levels.

Similarly, an arithmetic mean, which is equivalent to the commonly used "average," provides little insight into the distribution of exposures and is subject to gross distortion by outlying numbers. The arithmetic mean is equal to the sum of all the sampling results divided by the number of results. The arithmetic mean is a good way to characterize a set of data where the individual data points follow a normal distribution, that is, where the distribution of points above and below the mean is symmetrical and can be charactrized by a bell-shaped curve. Then, the arithmetic mean is the same as the median (i.e., the point above and below which 50% of the sampling results fall).

The reason the arithmetic mean, which is often used in everyday life, is not the best method for representing and evaluating exposure measurements is that exposure measurements typically are asymetrically distributed and follow a log normal distribution. Where data are distributed lognormally, the arithmetic mean is always greater than the median of the sampling data. With such data, it is generally accepted that the geometric mean is the best single statistic to characterize the data set ("Occupational Exposure Sampling Strategy Manual," Leidel, *et al.*, NIOSH, 1977; Exs. 686A. pp. 12–13; 694–6, p. 2; 694–9, Comments by Company B. pp. 15, 21). (The differences between a "normal" distribution and a "lognormal" distribution are explained with clarity in that same publication, particularly in Technical Appendix M.)

With exposure data, the lower exposures are bounded by the limit of detection or zero but the higher exposures are virtually unbounded. This typically results in many exposures being relatively close to zero with a few very high measurements. Thus, the distribution typically is skewed to the low end and has a long flat "tail" on the high side. When the actual data are depicted graphically, lognormal distributions generally peak to the left of the median and have a long "tail" to the right. Atypical observations on the high side fall in the "tail" area of the lognormal distribution.

If the sampling results from a lognormal distribution are assigned their logarithmic values, they can be plotted as a normal distribution, and the exponent of their average will be the geometric mean. The geometric mean appears to give less weight to, or to discount the few high monitoring results reflected by that tail.

The geometric mean exposure of a group of lognormally distributed exposures represents the median exposure, just as the arithmetic mean represents the median exposure in a normal distribution. Consequently, the use of an arithmetic mean for samples that are lognormally distributed does not adequately describe the data. In such cases, the arithmetic mean will be higher than the median so that mean will always be higher than the "typical" exposure.

In addition to using geometric means, OSHA also looked at the frequency distribution of data points to assess the dispersion of the data. OSHA believes that the use of the frequency distribution in combination with the geometric mean provides an especially stong basis for making informed feasibility determinations. For example, in operations where the vast majority of sampling results already is below 100 $\mu g/m^3$ and the geometric mean already is at or below 50 $\mu g/m^3$, OSHA believes there is enough indication that the spread of exposure levels above 50 $\mu g/m^3$ is quite limited for the Agency to conclude that implementing a few additional controls is likely to consistently control exposure levels in those operations to below 50 $\mu g/m^3$.

When information on the record was available, OSHA quantified reductions in exposure levels that could be anticipated from implementing engineering and work practice controls recommended by the expert panel of certified industrial hygienists. As described above, in several cases the geometric mean was one of the methods used to describe worker exposure levels where raw monitoring data on an operation by operation basis were available. However, in many of those cases the exposure data were poorly characterized or not characterized at all so that OSHA was not able to determine why some measurements for the same operation were high and some were low. For example, the data from Company B in the lead chemicals industry did not provide any information on the conditions which may have existed when an monitoring result of 427 $\mu g/m^3$ was obtained for the shipper in 1986, even though all other monitoring results for that operation during that year were below 100 $\mu g/m^3$.

Because of the lack of specific information explaining why monitoring results were high or low, OSHA applied the estimated reduction in exposure levels due to implementing the

recommended controls to the geometric mean for each operation. OSHA recognizes that reductions in exposure levels will not be the same for all measurements, however, industry has not provided the necessary infomration to show how reductions will vary for the different monitoring results obtained for each operation. OSHA believes that applying the reduction to the geometric mean is a reasonable method for interpreting the data. In any event, OSHA would have reached the same adjusted geometric mean had the estimated reduction been applied to each raw monitoring result and then a new geometric mean been recalculated.

OSHA's contractor, Meridian, applied the reductions to the geometric mean in the same way by using the following methodology (e.g., Ex. 686A, p. 19). First, any reduction in exposure assigned by the expert panel of certified, experienced industrial hygienists to a specific job category or worker was applied to the geometric mean exposure for that job category or worker, and the new geometric mean was calculated. Because the panel generally assigned a range to the expected exposure reduction, the resulting geometric mean exposure was expressed as a range and as the midpoint of that range. After all specific exposure reductions were calculated, any general exposure reduction (e.g., reductions applying either to the facility or work area as a shole) was applied to each affected worker's geometric mean exposure, after which a new geometric mean was calculated.

As to OSHA's reliance on particular statistical methodologies, the Agency is assured that it could have relied on other methodologies and that, once it adjusted the data to better reflect real, underlying conditions, it would have reached the same technological feasibility determinations.

(c) *Technological Feasibility, Exposure Variability, and Enforcement.* Under section 6(b)(5) of the OSH Act, the Agency is to set standards that "to the extent feasible" best protect workers from significant risks of material impairment of health. 29 U.S.C. 655(b)(3); *American Textile Manufacturers Institute, Inc.* v. *Donovan,* 452 U.S. 490 (1981); *Industrial Union Department,* 448 U.S. at 607; *USWA* v. *Marshall,* 647 F.2d at 1169. OSHA does not believe that it can satisfy this obligation by using a lowest-common-denominator approach to protecting workers; i.e., by protecting all workers only to the extent that the most severe feasibility constraint on protecting any worker would allow. On the contrary, OSHA believes that if a minority of workers cannot be as effectively protected as the majority, that fact is not an adequate reason to forego protecting the majority to the extent feasible.

OSHA has developed this understanding of technological feasibility as a matter of policy from recent court decisions. The meaning of feasibility is most thoroughly analyzed in *USWA* v. *Marshall,* 647 F.2d at 1189, which is the law of the case for this rulemaking. That analysis is adopted and further developed in a very recent decision concerning the asbestos standard, *Bldg and Construction Trades Dept., AFL–CIO,* 838 F.2d at 1258.

Under the OSH Act, which has been interpreted by the courts to be "technology-forcing," OSHA is "not bound to the technological status quo." OSHA "at the very least, can impose a standard which only the most technologically advanced plants in an industry have been able to achieve—even if only in some of their operations some of the time. * * * OSHA can also force industry to develop and diffuse new technology. * * * So long as * * * [OSHA] presents substantial evidence that companies acting vigorously and in good faith can develop the technology, OSHA can require industry to meet PEL's never attained anywhere." *USWA* v. *Marshall,* 647 F.2d at 1264–65.

In proving technological feasibility, OSHA is not required by the courts to provide "anything like certainty. * * * [A] standard is obviously not infeasible solely because OSHA has no hard evidence to show that the standard has been met." The courts "cannot require OSHA to prove with any certainty that industry will be able to develop the necessary technology, or even to identify the single technological means by which it expects industry to meet the PEL. * * * OSHA's duty is to show that modern technology has at least conceived some industrial strategies or devices which are likely to be capable of meeting the PEL and which the industries are generally capable of adopting." *Id.,* at 1266.

With such broad authority, OSHA must bear "the initial burden of proving the general feasibility of the standard for the industry as a whole at the rulemaking stage * * *. This proof creates a presumption of general feasibility, which shifts "to the employer in later proceedings the task of overcoming OSHA's initial finding." "[S]ince the presumption of feasibility remains rebuttable, in pre-enforcement review the court would not expect OSHA to prove the standard *certainly* feasible for *all* firms at *all* times in *all* jobs" (italics in original). Rather, OSHA "would have to justify the presumption, and the attendant shift in burden, with reasonble technological * * * evidence and analysis." *Id.,* at 1270.

Describing this preliminary test of general feasibility that an OSHA standard must pass in a pre-enforcement review, the court sums up OSHA's burden of proof as follows:

> First, within the limits of the best available evidence, and subject to the court's search for substantial evidence, OSHA must prove a reasonable possibility that the typical firm will be able to develop and install engineering and work practice controls that can meet the PEL in most of its operations. OSHA can do so by pointing to technology that is either already in use or has been conceived and is reasonably capable of experimental refinement and distribution within the standard's deadlines. The effect of such proof is to establish a presumption that industry can meet the PEL without relying on respirators, a presumption which firms will have to overcome to obtain relief in any secondary inquiry into feasibility * * *. Insufficient proof of technological feasibility for a few isolated operations within an industry, or even OSHA's concession that respirators will be necessary in a few such operations, will not undermine this general presumption in favor of feasibility. Rather, in such operations firms will remain responsible for installing engineering and work practice controls to the extent feasible, and for using them to reduce lead exposure as far as these controls can do so. In any proceeding to obtain relief from an impractical standard for such operations, however, the insufficient proof or conceded lack of proof will *reduce* the strength of the presumption a firm will have to overcome in justifying its use of respirators (italics in original) * * *. Such a standard of review for feasibility, of course, in no way ensures that all companies at all times and in all jobs can meet OSHA's demands * * *. *Id.,* at 1272.

With this understanding of feasibility, two related questions arise. First, how does a certain amount of random variability in exposure levels affect an assessment that a particular PEL is technologically feasible? Second, is it appropriate for OSHA to find a PEL technologically feasible when it is understood that: (1) That finding does not mean or assure that the PEL is achievable all of the time in all operations; (2) that some random variability in exposure levels is to be anticipated; and (3) that exposure levels in a facility may on a particular day therefore be in excess of the PEL expressed as an 8-hour TWA, potentially subjecting the employer to some risk of citation?

As to the first question, OSHA recognizes that some random fluctuation of exposure levels around an average does exist. Depending upon minor

changes in operations or the environment, such as weather, process flow and employee work practices, which may not be fully controllable by the employer, on certain days exposures will be higher, and on others they will be lower than the average. Due to such random variability, employers may want to generally control exposure levels to an average somewhat below the PEL to ensure that random variations above that average will not exceed the limit.

However, not all variability is truly random or outside employers' control. For example, many high exposures are the result of identifiable and controllable causes, such as inadequate or poorly maintained engineering controls, improper work practices, or lack of oversight by qualified industrial hygienists. Many companies recognize that such exposures are not random and record information on operational and environmental conditions prevailing at the time of sampling to explain sampling results (Exs. 688a; 688c). Many companies also concentrate their hygiene efforts on the conditions associated with the highest exposures. OSHA is confident that correcting deficiencies in controls not only will broadly reduce existing exposure levels but also will substantially reduce variability.

After carefully considering the impact of truly random variability on the issue of technological feasibility in this rulemaking, OSHA has concluded that the variability that remains outside the employers' control after the employer has implemented all appropriate controls does not make compliance with the 50 $\mu g/m^3$ PEL technologically infeasible. Control techniques are readily available in most operations to keep average exposures sufficiently below the PEL to ensure that remaining variations will result in very few random exposures above the PEL.

The second question concerns the implications of such a determination of technological feasibility for enforcement. It is a fundamental principle of OSHA Act law that the Act does not impose strict liability; its purpose is preventive rather than punitive or compensatory, and the duties it imposes must therefore be achievable. See, e.g., *National Realty and Construction* v. *OSHRC,* 489 F.2d 1257 (D.C. Cir. 1973). OSHA understands that determining technological feasibility in part on the basis of statistical probabilities may mean that, while an industry generally can achieve compliance with a permissible exposure limit, some employers, in some operations, some of the time will not in fact be able to do so. At such times, these employers may be vulnerable to citation.

In fulfilling its statutory duty to protect workers, the Agency wishes to avoid unfairness to employers. Thus, in recognition of the existence of certain variables that the employer cannot completely control, such as occasional, random outliers in monitoring results, OSHA has built some flexibility into its longstanding enforcement policy to prevent citations from being issued when such events occur. This flexibility means that employers need not control average exposures to so far below the PEL that there remains only a negligible probability that an exposure measurement on any particular day will exceed the PEL.

For example, since, due to sampling and analytical error (SAE), monitoring results may not reflect "true" employee exposures, OSHA has explicitly stated that it will not issue a citation on the basis of a single OSHA sample result unless that result exceeds the PEL plus the SAE (currently determined to be 12% in the case of lead). Consequently, a citation for exceeding the 50 $\mu g/m^3$ PEL will not be issued unless the result of a lead sample is greater than 56 $\mu g/m^3$. This policy in practice may also provide some latitude for random variability.

In addition, OSHA specifically takes account of uncontrollable random variability in its enforcement policy. The OSHA Industrial Hygiene Technical Manual (p. 10–7/ IV–4), directs compliance officers to consider long-term, historical exposure patterns in reaching compliance determinations. Consequently, if a compliance officer finds an exposure over the PEL for an employee, and the employer has many measurements for that employee that are under the PEL, the compliance officer will investigate the problem. If the investigation reveals that the compliance officer's sample may not be a true representation of the employee's exposure, the compliance officer may decide to remonitor. OSHA generally will not cite for a violation of the PEL if the employer shows that the inspector's measurement is unrepresentatively high and that the employer has been taking all feasible steps to meet the PEL. (51 FR 22653–54).

OSHA has been following this approach to enforcement since its inception. In OSHA's experience, this approach has proven to be protective, fair, and efficient. It has been protective of workers. It also has been fair to employers, because it has provided reasonable certainty to employers who, after installing appropriate controls, have consistently achieved the mandated levels. Finally, the approach has been reasonably efficient in terms of the compliance officer's time.

OSHA's approach to enforcement has been upheld by the courts. In a recent decision in the United States Court of Appeals for the District of Columbia Circuit, the court explicitly addressed the interrelationship between OSHA's enforcement policy, technological feasibility, and random uncontrollable variability in exposure levels. In upholding OSHA's policy, the court said, "if OSHA is permitted to adopt a standard that some employers assuredly will not be able to meet some of the time, with the employers limited to challenging feasibility at the enforcement stage, * * * it is difficult to find legal objection in an OSHA enforcement policy that attempts to take account of particular feasibility difficulties at the pre-citation stage." *Building and Construction Trades Dept., AFL–CIO,* 838 F.2d at 1268.

Economic Feasibility

Introduction. In this section, OSHA explains its interpretation of economic feasibility and presents its general assessment of the ability of these nine remand industry sectors to finance the costs 50 $\mu g/m^3$ standard for occupational exposure to airborne lead.

The criteria for determining economic feasibility are provided in the "lead decision." There, the court said:

> "A standard is not infeasible simply because it is financially burdensome (citation omitted) or even because it threatens the survival of some companies within an industry * * * A standard is feasible if it does not threaten 'massive dislocation' * * * No matter how initially frightening the projected * * * costs of compliance appear, a court must examine those costs in relation to the financial health and profitability of the industry and the likely effect of such costs on unit consumer prices * * * [T]he practical question is whether the standard threatens the competitive stability of an industry (citation omitted) or whether * * * the standard might wreck such stability or lead to undue concentration. * * * [To demonstrate economic feasibility,] OSHA must construct a reasonable likelihood that these costs will not threaten the existence or competitive structure of an industry, even if it does portend disaster for some marginal firms." *USWA* v. *Marshall,* 647 F.2d 1189.

Thus, the fact that compliance costs could be burdensome to an industry or that some firms could go out of business because of these costs does not mean a standard is economically infeasible. The issue is not whether the standard creates economic hardship for specific firms in an industry or ev n for the

industry as a whole. For a standard to be economically infeasible the courts require more. A standard is economically infeasible when the costs imposed are so overwhelming that they create "massive dislocation" of the industry, threaten the "existence" or "competitive stability" of the industry, or lead to "undue concentration" within the industry. *USWA* v. *Marshall*, 647 F.2d 1189.

OSHA believes that it must base its determination of economic feasibility upon substantial evidence that an industry sector is not threatened with massive dislocation attributable to the cost of complying with the standard at the time compliance deadlines arrive. In order to make this judgment, projected capital or annual costs of compliance must be examined in relation to the financial health and profitability of an industry sector and the likely effect of such costs on prices. A standard is economically feasible if costs can be passed on in price increases and/or absorbed by firms, and any necessary absorption of costs will not threaten the competitive stability of the industry.

OSHA interprets economic feasibility as the ability of an industry as a whole to withstand the cost impacts of a rule, even though some firms could discontinue operations. If, for example, an industry is in a period of reconstruction or contraction due to prevailing economic conditions, the fact that a rulemaking could accelerate such trends does not in itself make the standard economically infeasible.

OSHA has found substantial evidence to support its determinations for each of the nine remand industries. While much of industry was largely unresponsive to repeated requests for plant specific financial data, an abundance of information outlining general economic trends encompassing the affected industries exists in the public record and in the public domain.

Financial and price information were submitted by some firms. OSHA used this information, in conjunction with economic data gathered by its contractor as well as data available from other public sources, to develop representative financial profiles.

Cost estimates were prepared by OSHA's contractor and were submitted to the docket for public comment during a written comment period. Also, OSHA's contractor was cross-examined during the informal public hearing. Many commenters submitted useful comments and the final cost estimates represent the combined efforts of OSHA's contractors, industry personnel and associations, and OSHA staff.

Costs and financial data were then used to develop impact ratios. These ratios provided quantitative estimates of the possible impacts of this regulation on prices and industry profitability.

Assessments of economic feasibility were not, however, based solely upon these quantitative impact estimates. In many cases, information was available which provided the Agency with a means to qualitatively assess an industry's ability to withstand the impacts of the rule. Such information included evidence of modernization and/or new construction, evidence of the ability of certain plants to shift away from lead-related products, thus avoiding compliance costs altogether, and evidence of the ability of certain plants to attain the 50 $\mu g/m^3$ PEL with limited or negligible expenditures.

Thus, quantitative estimates and qualitative information were analyzed within the context of each respective industry's market structure and current status to determine economic feasibility.

The results of this analysis led OSHA to conclude that an extended five year compliance schedule is justified for secondary copper smelting, brass and bronze ingot manufacture, and lead chemicals. A two and one-half year schedule will be in effect for stevedoring, shipbuilding and repair, independent battery breaking, leaded steel, and lead chromate pigments. For reasons detailed elsewhere in this preamble, OSHA concluded that the 50 $\mu g/m^3$ PEL is economically infeasible for the nonferrous foundry industry.

The extended compliance schedule was required in three industry sectors principally to permit modernization and construction to continue and to allow firms to phase in engineering controls. The unique cost impact related to lowering permissible exposure levels to lead by means of engineering and work practice controls is not expected to significantly alter restructuring activities which are in response to prevailing economic conditions. OSHA believes that the objectives sought by the 50 $\mu g/m^3$ standard are consistent with such restructuring in that modernization is often accomplished with production technology which inherently reduces worker exposure.

In general, with the five year extended schedule granted to the three sectors mentioned above, evidence demonstrates that most plants in these sectors will not experience undue burden as a result of this rulemaking action. Nevertheless, OSHA recognizes that this regulation could accelerate the phasing out of certain less efficient facilities and that some marginal firms could decide at least in part to discontinue operations as a result of this standard.

Thus, based on the evidence in the record and the analysis below, OSHA has determined that the 50 $\mu g/m^3$ lead standard is economically feasible for eight of the nine remand industries considered.

B. Feasibility of the Lead Standard in Each of the Nine Remand Industry Sectors

1. Brass and Bronze Ingot Production

Process Description. Brass and bronze ingot production involves refining copper-based alloy scrap, which is melted, adjusted to achieve particular alloy specifications, and poured into molds to form ingots. Most of the lead originates in the scrap, with lead added at times to bring a particular melt to desired alloy specifications (Ex. 553–4, p. 1–1). Raw materials used by brass and bronze ingot producers include a wide variety of copper-bearing scrap, such as faucets, automotive radiators, electrical cable and machinings (Ex. 574, p. 1). Typically, the lead content of the scrap varies. The lead content of the most common types of ingots produced is 5–7% (e.g., leaded red brass and semi-red brass; Ex. 574, p. 2). In some brass and bronze ingot producing facilities, no more than 20% of total tonnage is in high lead alloys (25% lead), which means that 80% of their tonnage is comprised of low-lead or unleaded alloys (Ex. 582–89, pp. 34–35).

The main operations in ingot production are scrap preparation; furnace operations, which include charging, melting, slagging (also called drossing and skimming), tapping and sometimes pouring; pouring molten metal into molds; and ingot handling.

Scrap Preparation. Scrap preparation may involve receiving, sorting, cleaning, cutting, preheating and storing copper-based scrap (Ex. 574, p. 1).

Scrap is received by truck and rail in car load quantities from scrap dealers. Scrap is received loose (e.g., tubing from radiator plants), in bulky pieces (e.g., used radiators), and in compressed blocks. Loose scrap is sorted and organized in bins according to metallic composition. Some scrap is processed to facilitate handling and charging. For example, bulky scrap (e.g., automotive radiators) may be reduced in size by briquetters or balers. Bulk quantities of borings and drilling scrap are reduced through crushers and hammermills. If pieces of scrap are too large to handle easily (e.g., ship propellers), they may be cut (Exs. 553–4, p. 1–1; 694–11, p. 9).

In some cases the scrap is also cleaned (e.g., sweated or stripped) to remove oil, paint, lead solder, or plastic wire coating (Ex. 574, p. 1). Rotary dryers also may be used to remove other unwanted contaminants (Ex. 568, p. 116). Processed scrap also may be passed through a magnetic separator to remove ferrous metals before it is fed into the furnace (Ex. 568, p. 47). If scrap is wet, because, for example, it has been stored outdoors or because it has been moistened to suppress dust, it must be preheated before being charged to the furnace.

Furnace Operation. The primary function of the furnace is to melt the scrap charged into it. Furnace operations involve the following tasks: charging, melting, slagging, tapping, sometimes pouring, and transferring molten metal.

Furnaces can be of various types. The most commonly used furnaces in ingot production are directly-fired reverbatory furnaces, which are charged with high-grade copper scrap, and rotary furnaces. OSHA understands that some ingot producers may use reverbatory furnaces primarily for refining the melt, relying on rotary furnaces to produce the particular alloy. Small crucible or electric-fired furnaces are also used sometimes (Ex. 553–4, pp. 1–1 to 1–2).

Charging is done by skip hoists, forklift trucks, or electrically powered vehicles. Reverberatory and rotary furnaces are charged from above, while in other furnaces the charge is added through a side door (Ex. 607, pp. 1–2). Where scrap is top-charged, employees perform the work on ground level, using a monorail skip hoist and tote-bin material-handling system (Ex. 568, p. 236).

Fuels are fired directly into the charged furnace to melt the scrap. When the furnace reaches melt temperature, fluxes are added to reduce impurities. These impurities combine to form slag, which rises to the surface of the melt (Ex. 607, p. 2). During slagging the furnace is rotated approximately 90 degrees so that the charging door is positioned at the side of the furnace. Slag is then skimmed off from the charging door into an uncovered slag ladle (Ex. 568, p. 236). Filled slag ladles are transported from the furnace area by forklift trucks.

When necessary, certain metals are then added to bring the melt to desired alloy specifications. A furnace grab sample of the melt is taken and analyzed to monitor metal composition before the melt is tapped (Ex. 553–4, pp. 1–1 to 1–2). When the molten alloy is ready, the molten metal may be tapped into a ladle or into a trough known as a launder, which leads to a ladle at the casting line (Ex. 568, p. 239). In some cases, the molten alloy is poured directly from the furnace into ingot molds (Ex. 553–4, p. 1–2).

Pouring and Casting. After the molten alloy is tapped and transferred to the pouring area, it is poured into ingot molds. Most facilities use automatic casting methods. For example, with a casting carousel, the operator pours the molten metal into empty molds that rotate into place under the pouring ladle (Ex. 574, p. 20). Some ingot producers do not use automatic casting but instead continue to use manual pouring, which is associated with higher lead exposures for pourers (Ex. 582–85, p. 31). Generally, the alloy is cast into sixty-pound ingots.

Ingot Handling. The ingots are cooled, separated from their molds, and mechanically stacked onto pallets that are moved by forklift truck into the product warehouse until delivery. Some facilities cool ingots using water-cooling methods (Ex. 568, p. 51).

Sources of Exposure. The main sources of lead exposure in ingot production are dust emitted during briquetting of scrap and fume emitted during charging of the furnace, tapping, slagging and pouring. A lesser source of lead exposure is dust generated during scrap preparation. OSHA believes that cross contamination from primary sources of lead emissions may also be a source of higher exposure levels elsewhere in ingot production. OSHA does not believe that ingot handling itself provides a significant source of lead exposure.

Sometimes charging may be a source of high exposure when upsets occur. For example, when scrap fed into the furnace is hung up in the tote bin as it is dumped or is caught in the throat of the charging hopper, a worker may have to climb to the charging deck to dislodge the jam. At these times, the worker may be exposed to high lead exposures from dust and fumes escaping from the charging port.

Employee Exposures—Overview. An overview of existing exposure levels reveals the following. As far back as 1979–81, nearly three-quarters (74%) of all employees in ingot production were reported by OSHA's contractor, JACA, to be exposed at levels below 50 $\mu g/m^3$ (Ex. 553–4, p. 1–3). Moreover, in three of the four plants for which JACA reported employee exposure levels, nearly two-thirds or more of all employees were exposed below 50 $\mu g/m^3$ (Ex. 583–48).

Data from recent OSHA inspections show that 55% of all exposures are below 50 $\mu g/m^3$ (Ex. 574, p. 2). These data thus corroborate JACA's findings on exposure levels in this sector.

The Data. The preceding overview and following analysis of exposure levels is based upon the best available evidence in the record. The record includes four primary data sets: data collected from ingot producers by OSHA's previous contractor, JACA (Exs. 553–4 and 583–48); data submitted by the Association of Brass and Bronze Ingot Manufacturers ("ABBIM") (Ex. 665); data from OSHA inspections (Ex. 574, p. 2); and data submitted by the National Institute for Occupational Safety and Health (NIOSH) and Radian (Exs. 567; 568; 583–16). These data sets tend to be incomplete regarding exposure data and associated control information but they do provide sufficient information to allow OSHA to assess technological feasibility.

For several reasons, the data set provided by ABBIM (Ex. 665) appears to be less useful than other data sets. The data set is upwardly biased, in part because ABBIM has only provided sampling results from operations generally considered to have higher exposure levels. Thus, for example, data are provided concerning pourers and briquetters, but no data are provided for scrap sorters or ingot handlers. Such data cannot therefore be taken as representative of exposure levels throughout the industry. In addition, sampling results from the furnace and pouring areas at Company A are mixed together as "melting and pouring operations" (Ex. 665), so OSHA cannot ascertain exposure levels in either of the individual operations.

As indicated, the ABBIM data set (Ex. 665) also is incomplete. With regard to Company B, for example, ABBIM provided data only from one undated "inspection," rather than providing, as OSHA requested, the more extensive air monitoring data that are required under the lead standard to be collected on a quarterly basis.

Finally, the ABBIM data generally are not accompanied by information concerning underlying conditions, processes or controls. ABBIM provides almost no description of associated controls operation by operation. Consequently, the ABBIM data provide little information with which to perform the operation-by-operation analysis useful for determining whether it is feasible to achieve 50 $\mu g/m^3$ in most operations most of the time. Without such information about existing controls, OSHA cannot conclude simply from high sampling results that controlling to 50 $\mu g/m^3$ is infeasible. The mere fact that in operations like pouring exposure levels are high when the operations may be uncontrolled or

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poorly controlled says little about the feasibility of controlling to 50 μg/m³. For all of these reasons, OSHA considers the data submitted by ABBIM of very limited use in determining technological feasibility.

By contrast, the JACA data (Ex. 553–4) show that by 1979–81 a number of brass and bronze ingot producers already were achieving exposure levels below 50 μg/m³ most of the time, whatever the controls being implemented. The fact that existing controls also are not adequately described operation by operation in the JACA report is much less a limiting factor than it is for the ABBIM data. Where air lead levels of 50 μg/m³ have already been achieved, it is not so critical to OSHA's determination of technolgical feasibility that the Agency know precisely which of the array of conventional controls were implemented. On the other hand, where 50 μg/m³ is not being achieved, it is crucial for purposes of determining technological feasibility that the Agency know the state of existing controls.

In addition, where 50 μg/m³ is being achieved, that fact by itself constitutes the best available evidence of technological feasibility. Only a showing that plants achieving 50 μg/m³ are not representative of the rest of the industry could refute such evidence. In this case, ABBIM and other commenters for industry have made no such allegation concerning the JACA data. On the contrary, industry representatives repeatedly cite JACA favorably, suggesting that JACA's data are indeed representative of the rest of the industry (Exs. 694–10, p. 2; 694–11, p. 3; 694–39, pp. 13–14).

Specifically concerning the JACA data (Exs. 553–4, pp. 1–2 to 1–3; 583–48), OSHA believes for a number of reasons that they are reliable and useable in determining technological feasibility in this sector. First, the JACA data were supplied by ingot producers and include sampling results as well as distributions of air lead levels across their workforces. Second, the JACA data include the years 1977 to 1981. Since then production levels have fallen and some additional controls have been implemented. Therefore, OSHA considers these data likely to be conservative estimates of current exposure levels.

The final data set was generated by OSHA inspections in 1984–87 of five brass and bronze ingot producers (Ex. 574, p. 4), a number constituting nearly one-third of all current producers. OSHA believes these data to be conservative as well, since OSHA inspectors tend to sample operations where they anticipate high exposure levels. Moreover, inspection data include results from plants OSHA inspects in response to employee complaints. Such plants tend to have relatively high air lead levels. In any event, the recent OSHA inspection data confirm OSHA's findings that 50 μg/m³ already has been and continues to be achieved in ingot production.

Looking more closely at the JACA data, in which 74% of employees are exposed below 50 μg/m³, OSHA notes the following. Nearly one-half (44%) of all employees were exposed below 30 μg/m³, the action level of the lead standard. Thus, nearly twice as many employees were exposed below 30 μg/m³ as were exposed above 50 μg/m³ (26%) (Ex. 553–4, p. 1–4).

In addition, as indicated above, in three of the four plants for which JACA reported employee exposure data nearly two-thirds or more of all employees were exposed below 50 μg/m³ (Ex. 583–48). For example, at Plant K exposure levels were below 50 μg/m³ in all operations except the baghouse, a maintenance operation. At Plant K, where 94% of the 68 employees were exposed below 50 μg/m³ in 1981, the company reported that typical 8-hour time-weighted averages ("TWAs") for foundry workers were between 30–50 μg/m³. For all other workers typical TWAs were below 30 μg/m³, except for the baghouse. Typical exposure levels in the baghouse, which OSHA considers essentially a maintenance operation, were said to be between 100–150 μg/m³, but the only actual sampling results provided for baghouse attendants indicate average TWA exposure levels of 75 μg/m³ in 1981 (Ex. 583–48, Plant K, p. 3).

Similarly, at plants M and N, 65% and 85% of employees were exposed below 50 μg/m³, respectively. At the fourth plant, Plant L, which inexplicably had higher exposure levels, 22% of employees were exposed below 50 μg/m³, and one-half of the employees were exposed between 100–150 μg/m³ (Ex. 583–48, Plant L, p. 1). For all of the brass and bronze ingot workers surveyed by JACA in 1981, fully 73% of all exposures were already below 50 μg/m³, and the combined data indicate that only 2% of employees were exposed above 150 μg/m³ and none were above 200 μg/m³ (Ex. 583–48).

A similar picture is presented by the OSHA inspection data set, which includes 20 air lead monitoring results from five ingot producers (Ex. 574, p. 2). Those data show that 55% of all monitoring results are below 50 μg/m³, and 90% are below 100 μg/m³. Only 2 results are between 100–200 μg/m³ (Ex. 574, p. 2).

Even looking at the ABBIM data (Ex. 665), OSHA notes the following. For Company C, exposure levels have significantly decreased since 1985. For example, 75% of the sampling results at Company C were below 50 μg/m³ in 1987, while only 11% and 33% were below 50 μg/m³ in 1986 and 1985, respectively (Ex. 665, p. 4). Similarly, all of the sampling results at Company C were below 100 μg/m³ in 1987, while only 55% and 58% were below 100 μg/m³ in 1986 and 1985, respectively (Ex. 665, p. 4). Viewed operation by operation, substantial reductions in exposure levels were achieved from 1985–87 in all operations at Company C for which ABBIM provided data. Monitoring results for companies A and B were considerably higher than those for Company C. Nonetheless, of the 64 combined exposure monitoring results from all three companies, only two sampling results exceeded 150 μg/m³. This fact, in conjunction with the trend in monitoring results from Company C, further confirms OSHA's understanding, based primarily on the JACA and OSHA inspection data, that at many ingot producers 50 μg/m³ already is being achieved in most of the operations and that excursions above 150 μg/m³ are rare (Exs. 553–4, p. 1–4; 574, p. 2; 583–48).

Existing Controls. OSHA has shown in the previous section that as early as 1979–81, 74% of ingot production employees were reported to be exposed below 50 μg/m³ (Ex. 553–4, p. 1–4). Recent OSHA inspection data appear to confirm this picture, with 55% of all exposure levels in all operations at inspected brass and bronze ingot plants already below 50 μg/m³ (Ex. 574, p. 2).

These exposure levels have been achieved with existing controls. JACA reported that, in 1981, brass and bronze ingot makers employed manual sorting of scrap and movement of scrap by front-end loader or truck, and that some producers used water spray in the scrapyard to suppress dust (Ex. 553–4, p. 1–3). JACA noted that the extent of the use of local exhaust ventilation on briquetting machines in this sector was not known (Ex. 553–4, p. 1–3). In 1981, facilities visited by JACA had local exhaust ventilation over the furnace tap hole, launder, or ladles; however, JACA reported that the extent to which employers in this sector were using charging hoods on their furnaces in 1981 was not known.

Based on JACA's 1981 data and on OSHA's recent inspection data, OSHA believes that most ingot producers with these controls already are controlling most of their air lead levels to below 50 μg/m³. OSHA also believes that many

producers without such controls are not achieving employee air lead levels at or below 50 μg/m³.

OSHA recognizes that both ABBIM and another commenter have asserted that a number of facilities in the industry do not now have such controls or do not have controls with sufficient volume of air flow (Exs. 582–85, pp. 20–23; 683, pp. 11–13). OSHA is aware that some brass and bronze ingot producers are not using adequate engineering controls. For example, in describing Company A (Ex. 665, p. 2), ABBIM reports that windy conditions or high humidity may cause Company A's air lead levels to fluctuate. OSHA believes that Company A is relying heavily on natural ventilation rather than engineering controls, which would not be affected by wind or humidity. OSHA believes that the reason for Company A's high readings is the lack of engineering controls. However, neither ABBIM nor any other producer in the industry has submitted data or other information to the record to document baseline control levels.

OSHA finds that most plants in this sector already are achieving air lead levels at or below 50 μg/m³ and have very few monitoring results that are above 150 μg/m³. OSHA believes that these exposure levels testify to the fact that many facilities in this sector are adequately and efficiently controlled.

A description of the current level of controls, operation by operation, follows.

Scrap Preparation. Local exhaust is being used at some plants on briquetting machines. At Company A, for example, side-draft ventilation has been installed there (Ex. 665, p. 2). Although Company A asserts without documentation that side-draft ventilation has not produced the anticipated reductions in exposure levels in this operation (Ex. 665, p. 2). briquetting is evidently not a problem operation for many brass and bronze ingot producers (Ex. 553–4, p. 1–4). For example, in facilities where employers have installed briquetting machines of the type described by NIOSH (Ex. 568, p. 177), the briquetter operators' exposure level has been reduced to an average 8-hour TWA of 38 μg/m³. In addition, some companies apparently use little radiator scrap, which results in lower exposure levels (e.g., Company C, Ex. 665).

Furnace Operations. Local exhaust is being used at some plants over furnaces, and is common on launders and ladles, and at tapping points (Ex. 553–4, pp. 1–3 to 1–6). Company C, for example, has hooding above its furnace (Ex. 665). Some hoods over the top of reverberatory furnaces are provided with automatic damper opening systems, which effectively keeps the furnace at negative pressure during charging to prevent lead fume and dust from escaping into the workplace air (Ex. 574, p. 20). A flue gas control system, consisting of a brick-lined flue that connects to steel ductwork leading to baghouses, also is used to control emissions during furnace charging and slagging. This control system provides sufficient draft to capture emissions before they can exit through the charging door. At some plants, the charging door and jamb are water cooled to minimize warpage and maintain a good seal. The water cooled charging door is remotely operated from a station where furnace burning rate can also be regulated. In addition, many plants have local exhaust over the tapping port (Exs. 574, p. 20; 553–4, p. 1–6) and have covered the launder that carries molten metal from the furnace to the ladles (Ex. 553–4, p. 1–6).

Pouring. Most ingot producers in the industry now rely upon automatic, rather than hand pouring to cast ingots (Exs. 574, p. 1; 582–85, p. 32). Where pouring is done automatically by rotating carousel, the tapping point is hooded and exhausted to the baghouse (Ex. 568, pp. 190–92).

Baghouse. Brass and bronze ingot producers have baghouses to capture the dust generated in their facilities (Ex. 553–4, p. 1–3). These baghouses, installed for purposes of air pollution control, filter exhaust air from hood systems positioned over emission sources and collect contaminated dust. Baghouse dust contains substantial amounts of lead. Baghouses can be a significant source of lead dust exposure for employees who tend them or who are responsible for recycling or disposing of dust collected by baghouses. Since this dust can contaminate an entire facility, it must be carefully handled. Many plants, like Company B, have installed screw conveyors to move the dust from the baghouses to a central location to await further disposition (Exs. 665, p. 3; 574, p. 21). This substantially reduces manual removal of dust from the baghouse, which, in turn, reduces worker exposure and the potential for spills that could contaminate the area or plant.

Additional Controls. OSHA believes, based upon JACA and OSHA inspection data, that most employee exposures in brass and bronze ingot facilities are already controlled below 50 μg/m³. OSHA therefore finds, simply on the basis of these data, that it is technologically feasible for brass and bronze ingot makers to achieve the 50 μg/m³ PEL using conventional controls. However, OSHA is also aware that certain facilities in this sector are not adequately controlled (e.g., Company A, which continues to rely on natural ventilation, and other facilities that still hand pour (Ex. 582–85, p. 31)). To aid these facilities in reducing their employee exposures, OSHA in this section describes additional controls that may be implemented to achieve the 50 μg/m³ PEL.

In addition, where necessary, OSHA recommends that ingot producers generally improve their engineering controls as indicated below and eliminate cross contamination to control employee air lead levels consistently to or below 50 μg/m³. With these improvements, OSHA anticipates that exposure levels in all production operations will be controlled to or below 50 μg/m³.

OSHA believes that for operations where most employees already are exposed below 50 μg/m³, relatively modest improvements in work practice controls, such as improved housekeeping or better preventive maintenance, will be sufficient to reduce the lead exposures of employees consistently below 50 μg/m³. Similarly, for the remaining operations where employees are exposed to air lead levels of less than 100 μg/m³, OSHA believes that a combination of limited additional and improved controls (e.g., improving the efficiency of the ventilation system) will be sufficient to control exposure levels to or below 50 μg/m³.

On the whole, the same sorts of readily available, conventional controls that have successfully reduced exposure levels to below 50 μg/m³ in many plants in this industry and in similar industries, like non-ferrous foundries and secondary copper smelters, are precisely the kinds of additional controls that OSHA recommends to other ingot producers to reduce employee air lead levels to or below 50 μg/m³.

The Agency's discussion of the reductions in air lead levels expected to be achieved by implementing recommended controls relies in part on assessments made by OSHA's contractor, Meridian. Meridian's assessments are based upon data in the record and its extensive experience and expertise in industrial hygiene. For purposes of determining technological feasibility, OSHA has also made its own analysis of additional controls and anticipated reductions in air lead levels in ingot production. OSHA's analysis is supported by the testimony of its expert witness, Fredrick W. Boelter (Ex. 607).

OSHA's discussion of additional controls and expected reductions is also

based upon OSHA's independent analysis of processes and controls in the secondary copper smelting and non-ferrous foundry industries, which are similar in many respects to ingot production. Representatives of these industries provided better data than did ingot producers, particularly concerning exposure levels and associated controls. Unlike ingot producers, representatives of both industries also arranged site visits to facilities. For these reasons, OSHA believes that some of the best evidence concerning additional controls and expected reductions in employee air lead levels among users may come from submissions and testimony about these other industries. Consequently, OSHA believes it is reasonable and entirely appropriate to rely on that evidence in assessing the technological feasibility of achieving 50 $\mu g/m^3$ by means of engineering and work practice controls in ingot production. In previous rulemakings, OSHA has relied upon evidence concerning one industry to prove feasibility in a similar industry (e.g., 51 FR 22656, DATE), and that reliance was not rejected by the courts. *Bldg and Construction Trades Dept, AFL-CIO* v. *Brock*, 838 F.2d 1258 (D.C. Cir. 1988).

The similarities between brass and bronze ingot production, secondary copper smelting and non-ferrous foundries are substantial. Ingot production is like secondary copper production in its scrap preparation and like non-ferrous foundries in its furnace and pouring operations. In addition, as discussed below, facilities in each of these pyro-metallurgical sectors have many operations and procedures in common.

Like copper smelting, ingot production involves copper-based scrap, typically containing a substantial amount of lead, as the raw material, and depends upon refining to produce the finished product. Unlike copper smelting, ingot production does not involve smelting and therefore does not entail the high exposure levels associated with blast furnaces. In addition, unlike copper smelting, the refining process in ingot production is not aimed at removing all metals, like lead, to produce increasingly pure copper. Rather, the purpose in ingot production is to remove only those contaminants that do not meet particular alloy specifications. In these aspects, ingot production, as industry concedes (Ex. 582–85, p. 5), is similar to the process used by non-ferrous foundries that produce lead-containing alloy castings. Indeed, alloy ingots are the primary raw material for the non-ferrous foundry industry. In both industries lead is present throughout the production of leaded alloys, and therefore the potential for lead exposure exists in nearly every operation, and is especially great in hot operations.

To the extent that ingot production is similar to copper smelting and non-ferrous foundries, information concerning sources of exposure, exposure levels, and controls in those industries is applicable to ingot production. The principle of control technology transfer, for example, is widely acknowledged (Ex. 568, p. 9). Many operations in different sectors of the pyro-metallurgical industry have commonalities that make them excellent candidates for such transfer. Among these similarities are: their use of heat to reduce, refine and alloy metals; their handling and preparation of feed materials; their use of furnaces; their production of metal products, slag, and by-product wastes; their use of emission controls (baghouses, ducts, etc.); and their potential for causing employee exposure to metal dust and fume (Ex. 568, p. 9).

Specifically, for example, regarding the scrapyard, where the sources of exposure, applicable controls, and lead content of the scrap in ingot production and in secondary copper smelting are similar, OSHA believes it should be as easy to control scrap preparation in ingot production as it is in secondary copper smelting. OSHA further believes that cross contamination, which is a problem in both secondary copper smelting and non-ferrous foundries, is a problem in brass and bronze ingot production as well.

The benefits of transfer of technology include the avoidance of duplication of effort in developing and testing controls, reductions in the costs of compliance, increases in the chances of achieving successful emission control, and reductions in employee exposures.

Prevention of Cross Contamination and Cross Drafts. In non-ferrous foundries two of the major sources of cross contamination are furnace operations and pouring. Furnace operations and pouring in ingot production are very similar to those in non-ferrous foundries. These operations therefore have similar potentials for cross contamination. There is, moreover, nothing in the record to suggest that the level of controls or applied industrial hygiene currently is materially different in ingot production than in non-ferrous foundries. OSHA therefore assumes that the problem of cross contamination is at least as severe in some ingot production facilities as it is in some non-ferrous foundries. This assumption is supported by evidence of high background levels and cross contamination in brass and bronze facilities at which NIOSH conducted in-depth surveys (e.g., Ex. 568, pp. 195, 200).

The Agency notes that the typical increment to exposure levels attributed to cross contamination in non-ferrous foundries is at least 20 $\mu g/m^3$. This cross contamination can be eliminated in ingot production in the same manner and to the same extent that it can be controlled in non-ferrous foundries. Consequently, OSHA hereby incorporates into this assessment of ingot production on how to control cross contamination that appears in the non-ferrous foundry section of this preamble.

OSHA wishes to emphasize two points from that analysis. First, it is vital in controlling cross contamination to contain cross drafts, which not only spread contamination from one operation to another but also compromise local exhaust ventilation, preventing exhaust hoods from operating at maximum effectiveness (Ex. 583–13. p. 7–2). Second, to remedy the problem of cross contamination, as well as other problems, OSHA believes that the first thing ingot producers must do is obtain the services of experienced industrial hygienists. These professionals can perform plant-wide industrial hygiene studies that focus on a task-by-task analysis of sources of exposure and can analyze cross drafts and cross contamination as a basis for designing cross draft barriers and other measures to eliminate them.

OSHA is confident that such studies are essential to the systematic control of air lead levels in inadequately controlled plants in this industry. Such studies are a precondition for employers instituting effective, regular programs to identify the precise sources of exposure and reasons for upset conditions in order to determine how best to reduce them to a minimum (Ex. 686A, pp. 40–41). OSHA believes, as Meridian stated in connection with non-ferrous foundries, that no control measure is as likely to produce such dramatic results in controlling air lead levels in ingot production as the relatively low-cost approach of obtaining the services of an industrial hygienist (Exs. 686A, p. 41; 689–3, p. 1).

If undertaking plant-wide hygiene surveys and preventing cross contamination are among the most important steps that can be taken to reduce exposure levels generally throughout this industry, other conventional controls that are applicable to many operations also should be implemented broadly to

reduce exposure levels. Implementation of effective conventional controls already has dramatically reduced exposure levels in various operations throughout this industry (e.g., Exs. 574. p. 70; 686D, pp. 7–8; 568, pp. 177–82). The controls recommended by OSHA include better exhaust ventilation, enclosure, isolation, automation of the production process, and better work practices (e.g., housekeeping and preventive maintenance).

Ventilation. The presence of excessive lead in the work environments of some ingot producing facilities indicates that existing engineering controls like local exhaust ventilation (LEV) and general dilution ventilation are not doing the job. Although much more quantitative and other information than industry has provided would be needed to state with any precision how great a reduction of any particular exposure level could be achieved by enhancing specific ventilation systems, OSHA believes that in many operations improved or additional ventilation can achieve major reductions in worker exposure.

Such controls have been developed, tested, and where found effective, manufactured and applied widely for many years throughout industry to control specific contaminants. Conventional controls for nearly every operation in ingot production, secondary copper smelters and foundries have been described in detail and often depicted in photographs or diagrams by industrial hygienists and engineers from the American Conference of Governmental Industrial Hygienists (e.g., Exs. 583–13, pp. 5–4 to 5–20, 5–41, 5–48 to 5–60), the American Foundrymen's Society (AFS) (Exs. 689–3; 689–4), NIOSH (Ex. 645), American National Standards Institute (ANSI) (Exs. 689–13A, 13B, 13C), and many consultants who have worked for OSHA or industry (e.g., Exs. 689–6; 689–7; 689–8; 689–9; 689–10; 689–11; 689–12). The ventilation controls applicable to ingot production are basically the same as those applicable to comparable operations in secondary copper smelting and non-ferrous foundries.

Improved or additional ventilation can achieve major reductions in air lead levels, for example, at briquetting (Exs. 568, p. 177; 574, pp. 19–20) and in furnace operations (Ex. 574, p. 20). More generally, OSHA believes that in many ingot producing facilities, as in many non-ferrous foundries, ventilation capacity often may be inadequate and may have to be increased (e.g., Exs. 689–3, p. 26; 689–4D, fig. 19). OSHA anticipates that increasing ventilation capacity to satisfy generally accepted criteria (e.g., Exs. 689–3; 689–4D, fig. 19) should result in nearly total capture of emissions by any properly designed hood.

As indicated in OSHA's discussion of non-ferrous foundries and incorporated here by reference, it is imperative that improvements to existing ventilation and newly-installed ventilation be properly designed and installed. In addition, ventilation systems must be maintained regularly to assure their effectiveness.

Enclosure and Isolation. Enclosure and isolation are two alternative methods of separating workers from air contaminants. In the case of isolation, the employee is physically separated from contaminants in the air, for example, by working in a filtered, ventilated control booth (e.g., Exs. 684D, p. 15; 689–4D, fig. 32). With enclosure, the source of the contaminant is physically contained and separated from the rest of the work environment to prevent contamination of the air (e.g.. Exs. 586–18, figs. 1, 2; 583–13, p. 4–14).

Docket entries generally describe standard enclosure techniques that are in use, or can be readily implemented in industry (e.g., blast furnace charging door enclosure, casting operation enclosure; Exs. 568, p. 54; 590, p. 22). Simple isolation techniques that have been successfully used in plants in this and other lead industries are applicable throughout this industry (e.g., providing employees with filtered, ventilated cabs for mobile equipment, fresh air islands, isolation booths for rotary furnace tapping, and control rooms; Exs. 568, p. 114; 590, p. 11; 684f, p. 13; 689–4D, p. 7–14, figs. 31, 32).

Isolating workers even for a portion of their shift can significantly reduce exposure levels. For example, a Radian study of a secondary lead smelter demonstrates that employee exposures can be reduced by 23–77% even when employees spend only a portion of the workday in an isolation booth (Ex. 583–16, p. 30). A second Radian study (Ex. 568, p. 217) reported that use of a fresh air island for a casting wheel operator in a brass and bronze ingot producing facility effectively reduced employee exposure to fumes migrating from the tapping/pouring operation. Another study, by NIOSH, investigating the effectiveness of various control technologies in secondary lead smelters, reports that workers spending even one-quarter of their time in a supplied air island would experience a 20% reduction in their 8-hour TWA exposure levels (Ex. 590, p. 40). Consequently, in ingot production supplied air islands could be installed near the furnace, for example, to reduce remaining excess exposures for operators after other controls are implemented.

Housekeeping, Work Practices, and Preventive Maintenance. Housekeeping, work practices, and preventive maintenance are essential controls whose importance frequently is not adequately recognized by employers. Failure to develop and use rigorous housekeeping, good work practices, and preventive maintenance can destroy the effectiveness of otherwise adequate engineering controls.

It is impossible to overemphasize the importance of good housekeeping and work practices (e.g., Exs. 475–32D, H–004H; 607, p. 6). Each ingot producer should thoroughly clean its entire facility, including rafters, at least annually. Moreover, to the extent that ingot producers rely upon dry sweeping, the practice should be eliminated and be replaced to the extent practicable by wet cleaning or vacuuming. Such straight-forward improvements in housekeeping as these have been estimated by Meridian to be likely to reduce worker exposures in general by 10–25% in the non-ferrous foundry industry (Ex. 686a, p. 22).

Detailed housekeeping instructions also should be prepared and adherence to them enforced by employers, with scheduling and checkoff of regular cleaning of all areas of the plant where dust can collect. If necessary, housekeeping instructions should list individual sites, pieces of equipment, parts of equipment, and obscure corners (e.g., under screw conveyors) to assure that they are cleaned regularly.

Implementing appropriate work practice controls is also vital to achieving exposure levels at or below 50 $\mu g/m^3$. Many engineering controls often can only be as effective as the associated work practices that determine how they are used and where the employee locates himself or herself relative to the controls (Ex. 607, p. 6). For example, scrap preparation for charging and charging itself should be done in a manner that minimizes the probability of jams in the throat of the charging hopper, which subject the charger needlessly to exposure to lead fumes and dust by requiring him or her to climb the charging deck to dislodge the jam (Ex. 568, p. 247).

Work practices also should be written to prescribe correct procedures for all tasks that might result in increased employee exposure. Such procedures should dictate, for example, that employees remove themselves from proximity to a source of exposure

whenever possible and, to the extent possible, isolate themselves from contaminants by standing in a fresh-air island or booth. Similarly, the storage of slag in open bins should be prohibited. Care also should be taken to assure that covers or exhaust hoods are kept on ladles filled with molten metal whenever possible (Exs. 568, p. 48; 607, p. 4).

OSHA also notes the importance of maintenance programs to assure that all systems function as cleanly and as efficiently as practicable (e.g., Ex. 689-3, p. 74, Table 8-1; and see *Safety in Metal Casting*, Des Plaines, IL, Vol. 6, 1970, p. 172). Exhaust systems lose their capacity because belts and pulleys slip, duct branches become clogged, duct couplings become loose and develop holes that leak air, filters become occluded, and fan blades become corroded or unbalanced. Thus, the effectiveness of engineering controls can be severely limited by poor maintenance.

OSHA also recommends the following controls operation by operation.

Scrap Preparation. The main source of lead exposure in scrap preparation is lead oxide that forms on scrap, which is emitted as dust when the scrap is handled. This source of dust is most difficult to control in briquetting, where scrap of varying sizes and shapes is mechanically compressed. Nonetheless, with proper engineering controls briquetting can be controlled to below 50 $\mu g/m^3$. For example, by implementing local exhaust ventilation at briquetting machines, area samples indicate that exposure levels have been reduced to between 32–43 $\mu g/m^3$. Alternatively, employers may install a briquetting machine of the type described by NIOSH, which reduced the briquetter operators' average 8-hour, TWA to 38 $\mu g/m^3$ (Ex. 568, p. 177).

In addition, to control air lead levels in the scrapyard in general, OSHA recommends the wetting of scrap before handling to suppress lead dust. JACA reported in 1982 that some brass and bronze ingot producers used water spray to reduce dust in the scrapyard and on scrap going to the briquetter (Ex. 553-4, p. 1-3). OSHA recognizes that where scrap is moistened it cannot safely be charged directly into the furnace and therefore also recommends that, prior to charging, all wet scrap be pre-heated. OSHA believes that its recommendation to preheat scrap should not pose any additional burden on ingot facilities since most scrap must be preheated because it is stored outside, exposed to weather. Where only a few of the combined controls OSHA recommends for the scrapyard were implemented in the scrapyard of a large secondary copper smelter, 60% of the exposures were below 50 $\mu g/m^3$ (Ex. 684d, p. 14).

Additional measures that could be implemented by ingot producers whose exposures in the scrapyard continue to be excessive even after scrap wetting is introduced include enclosing the scrapyard, installing a cement floor for ease of washing, and installation of effective exhaust systems in briquetters (Ex. 568, p. 177).

Furnaces. The furnaces are the primary emission source for the entire facility, particularly during such activities as charging, slagging, and tapping. Local exhaust hoods installed over all furnace openings, like tapping and charging ports, constitute the most effective control for metal fume emissions from the furnaces. These hoods are available in close-capture, fixed, mobile and telescopic forms, which can be adapted to various circumstances and multiple operations (Ex. 583-13).

The effectiveness of such controls in reducing air lead levels in furnace operations is manifested in area and breathing zone exposure data collected by NIOSH as part of an in-depth survey it carried out at an unnamed ingot plant. Both breathing zone and area sample results there uniformly indicate exposure levels well below 50 $\mu g/m^3$ (Ex. 568, p. 249, Table 13). This ingot manufacturer achieved such levels by operating the furnace at negative pressure during charging and providing local exhaust at the tapping port (Ex. 568, p. 236). The effectiveness of these controls on melting furnaces is also demonstrated by the exposure levels achieved at Company K, where air lead samples consistently are below 50 $\mu g/m^3$ (Ex. 583-48).

In addition to implementing additional controls that capture emissions at their sources, other engineering controls can be implemented in the furnace area to isolate workers from lead fume and dust. As discussed above in the subsection describing isolation of workers, devices such as isolation booths, control rooms, and fresh-air islands can provide additional means to further reduce furnace employees' exposures even if employees can spend only a portion of their time isolated from contaminants.

Pouring. Several controls are available in pouring to achieve 50 $\mu g/m^3$ where it is not now consistently being achieved. These include implementing local exhaust ventilation at the tap hole and the ladle. This technology was employed at one brass and bronze ingot plant, and employee exposure levels in the pouring area were reduced to 36 $\mu g/m^3$ (Ex. 568, p. 249). To achieve additional exposure reductions in the pouring area, local exhaust ventilation also should be implemented in the ingot cooling area, as was done at a second unnamed ingot facility (Ex. 568, pp. 217–18). Supplied air islands can be provided to ladlemen and pourers, as well, as they were in one ingot facility (Ex. 568, pp. 215–16). The combination of exhaustingthe cooling area and providing fresh air islands for the pouring area achieved exposure levels of 16–17 $\mu g/m^3$ for the pourer and 23–29 $\mu g/m^3$ for the ladleman in one ingot plant (Ex. 568, p. 208).

Baghouse and Dust Control. Control measures for baghouses and dust handling include establishing proper work practices to be followed, repairing and maintaining baghouses to eliminate leaks and ensure proper functioning of cleaning mechanisms, shielding baghouses from wind by erecting barriers, providing ventilation at dust-packaging operations, and installing an automatic dust-packaging system that uses mechanized material handling equipment such as a screw conveyor.

Repair and maintenance of the baghouse is an intermittent maintenance activity. During that activity baghouse operators traditionally use respirators to perform their duties where engineering controls are not feasible. OSHA acknowledges that in such situations respirators are needed to supplement available engineering controls to adequately protect employees.

Technological Feasibility. Based upon the above analysis of the evidence in the record and OSHA's experience and expertise, the Agency determines that achieving a PEL of 50 $\mu g/m^3$ by engineering and work practice controls is technologically feasible in the brass and bronze ingot production industry as a whole.

To sum up, OSHA has shown the following. As long ago as 1979–81, nearly three-quarters (74%) of all employees in ingot production were reported to be exposed at levels below 50 $\mu g/m^3$. Indeed, according to these industry-supplied data, nearly one-half (44%) of all employees were exposed below 30 $\mu g/m^3$. At Plant K, for example, 94% of the 68 employees were exposed below 50 $\mu g/m^3$ in 1981, and the only operation where exposure levels were above 50 $\mu g/m^3$ was the baghouse, essentially a maintenance operation. Recent OSHA inspection data confirm this general picture, with average exposure levels in all operations for the inspected plants already at, below, or not far above 50 $\mu g/m^3$ (Ex. 553-4, p. 1-4; 583-48; 574, p. 4).

These results have been achieved with existing controls, before OSHA's recommended additional controls have been implemented and before cross contamination has been controlled. With the implementation of additional controls and the control of cross contamination, OSHA anticipates that exposure levels in all operations, with the possible exception of baghouse maintenance, will be consistently controlled to or below 50 $\mu g/m^3$.

This conclusion is supported by OSHA's feasibility assessments in the other pyrometallurgical industries, secondary copper smelting and non-ferrous foundries, the relevant portions of which are hereby incorporated into this assessment. For both these industries, OSHA has determined that it is technologically feasible to achieve 50 $\mu g/m^3$ by means of engineering and work practice controls alone. OSHA is confident that the controls available to achieve the PEL in those industries are applicable, with no more than modest modifications, to those facilities in brass and bronze ingot production that still have inadequate controls.

With regard to the controls needed to achieve 50 $\mu g/m^3$ in ingot production, OSHA wishes to point out that all of its recommended controls are conventional and readily available. OSHA has not needed to exercise its statutory authority to force the development of new technology in this industry to justify the Agency's finding of feasibility.

In reaching its conclusion, OSHA does not purport to have recommended an exhaustive list of additional controls. The Agency is certain that industry will be capable of devising and fine-tuning various controls to further reduce exposure levels. Consequently, OSHA anticipates that industry will be able to consistently achieve exposure levels at or below 50 $\mu g/m^3$ in virtually every phase of production.

OSHA believes that achieving the PEL requires implementing an integrated system of controls. The basic element of that system is an industrial hygiene study. Each ingot producer is required by paragraph (e)(3) of the lead standard (29 CFR 1910.1025) to establish and implement a written compliance program that includes an in-depth job/task analysis and a plant-wide survey. This survey and analysis should be performed by an experienced industrial hygienist who shall identify sources of emission in each task and sources of cross drafts and cross contamination. Such an analysis should also recommend appropriate engineering and work practice controls to control emissions, control cross drafts and cross contamination, and generally minimize employee exposures. If, after implementing these recommendations, reductions in air lead levels deviate substantially from what was anticipated, a followup industrial hygiene survey should be conducted and necessary corrections made.

The second element in that system is the development of good, written housekeeping and work practice programs, as required by paragraph (e)(3)(ii)(F) of the lead standard (29 CFR 1910.1025), that are systematically implemented so that proper work procedures are routinely and meticulously followed. For example, wall-to-wall cleanups should be conducted at least annually.

The final element of an integrated system of controls is a preventive maintenance program to assure that all systems are maintained in clean, efficient, and effective condition.

The brass and bronze ingot production industry does not agree that a PEL of 50 $\mu g/m^3$ is achievable. Industry's disagreement is based upon six main arguments. The six main arguments are: A prior OSHA contractor and OSHA itself previously concluded that 50 $\mu g/m^3$ is not feasible; Meridian's report is incorrect, incompetent and unsupported; in any event, the evidence in the remand record does not support a determination that 50 $\mu g/m^3$ is technologically feasible; factors unique to ingot production make it impossible to consistently achieve 50 $\mu g/m^3$; technology does not exist to control exposure levels to 50 $\mu g/m^3$ in particular operations; and even if it were feasible to consistently achieve 50 $\mu g/m^3$ in newly constructed plants, that PEL cannot be achieved by retrofitting older plants.

First, industry asserts that OSHA's contractor, JACA, previously concluded that it was not technologically feasible to achieve 50 $\mu g/m^3$ without substantially rebuilding plants. Industry further asserts that in 1983 OSHA itself found 50 $\mu g/m^3$ technologically infeasible in brass and bronze ingot production (Exs. 582-85, pp. 14-17; 582-89, pp. 39-40; 680, pp. 4-6 and 10).

In response, OSHA agrees that JACA did conclude that 50 $\mu g/m^3$ was technologically infeasible without substantial rebuilding of plants. However, even if JACA were correct, this does not mean that the PEL is technologically infeasible. On the contrary, JACA's point is that the PEL is technologically feasible, but, by implication, that achieving it is likely to be expensive.

OSHA agrees with JACA that the PEL is technologically feasible but rejects the rest of JACA's conclusion as inconsistent with, and unsupported by the very data upon which it is based. JACA's own data show that nearly three-fourths of employees in ingot production already were exposed below 50 $\mu g/m^3$ by the years 1977–81 (Ex. 553-4, p. 1-4). The data further show that nearly one-half of all employees were exposed below 30 $\mu g/m^3$, which is nearly twice the percentage exposed above 50 $\mu g/m^3$. Moreover, JACA does not explain how it reached its conclusion about the supposed need for substantial rebuilding.

In fact, the focus in the JACA report is almost exclusively on economic, rather than technological feasibility. There is no industrial hygiene analysis in the report, and the report does not present substantial arguments or conduct meaningful analysis of data in support of any conclusion about technological feasibility.

In any event, the determination of feasibility is for the Agency alone to make. Industry asserts that OSHA has already made that determination, finding that 50 $\mu g/m^3$ is infeasible in this industry. Industry is incorrect. In 1983 some members of OSHA's staff did draft a document that included a finding of infeasibility for brass and bronze ingot production (Ex. 570). However, that draft never received Agency approval. In addition, the draft finding appears to have been based exclusively upon the JACA conclusion and is therefore vulnerable to the same criticisms. Furthermore, OSHA had previously informed the court that it needed more information to determine feasibility for this industry. Since then, OSHA has received considerably more information about this and similar industries, which the Agency has relied upon in this assessment of feasibility.

Second, industry argues that Meridian's report is incorrect, incompetent and unsupported by record evidence (Exs. 582-85, pp. 20-23, 31 and 37; 582-89, pp. 38-41; 664, p. 1; 680, pp. 18-19; and 683, p. 10). On the whole, OSHA rejects these criticisms and believes that Meridian did a creditable job, given time and resource constraints.

Meridian has had extensive experience and possesses very broad competence in the area of industrial hygiene, the principles of which are universally applicable to all industries. It also has broad expertise and experience in assessing factors relevant to technological feasibility. Physically, there is nothing unique about lead dust and lead fume or about brass and

bronze ingot production that would make Meridian's extensive expertise and competence in evaluating engineering and work practice controls across many industries irrelevant to this industry. The control technologies recommended here are conventional and transferrable from similar industries, and the anticipated effectiveness of these controls in reducing air lead levels also is the same across industries.

Of course, notwithstanding its experience and expertise, Meridian may have drawn some incorrect conclusions and made certain mistakes of fact. This is almost inevitable when a contractor can devote only limited time and resources to examining a complex industry and record. Such mistakes are also more likely to occur where, as here, the industry has declined to testify and subject itself to any questioning at the public hearing and has declined to arrange site visits to its plants. OSHA actively sought to set up site visits in this industry similar to those OSHA carried out in four other lead industries after the 1987 hearing, but representatives of ingot producers did not make such sites available (Ex. 690B).

OSHA concludes that Meridian's reports and its conclusions are based upon the best available evidence. Meridian's reports, including revisions to its preliminary report based upon industry comments, generally are firmly grounded in the record, and its conclusions are based on numerous sources in that record. These include data, other evidence, and comments submitted by employers, trade associations and other interested parties.

In any event, OSHA has independently assessed the record, reviewed Meridian's final report for accuracy, taken account of industry's comments on that report, and relied only in part upon the Meridian reports for the Agency's determination of technological feasibility. In contrast to Meridian, for example, the Agency has found the data submitted by ABBIM not to be useful and has placed greater emphasis on the JACA data.

Third, industry argues that the evidence in the remand record does not support a determination that 50 $\mu g/m^3$ is technologically feasible. OSHA, of course, disagrees, as this feasibility assessment would indicate. The Agency further notes that industry has failed to present data and contextual information to show that 50 $\mu g/m^3$ cannot be technologically achieved by engineering and work practice controls alone.

OSHA's statutory obligation is to make its feasibility determination based on the best available evidence in the record. OSHA has actively sought to collect and develop a full and accurate record. OSHA is persuaded that it has more than enough information and data in the record upon which to base its determination of technological feasibility.

However, OSHA recognizes that there would be substantially more useable information and data in the record had the brass and bronze ingot production industry been cooperative in developing that record. For example, since 1979 the lead industries have been required by the lead standard to conduct quarterly monitoring of all employees exposed above the PEL; that is, they have been required to regularly monitor all operations in which there might conceiveably be technological feasibility problems. Thus a wealth of exposure monitoring data exists on this topic.

Nonetheless industry representatives provided very little of that data to the record, despite frequent requests by OSHA. In fact, no ingot producer directly submitted air lead monitoring results to the record in the recent proceedings. The single industry submission of exposure data is from an industry trade association, is limited to 64 selected data points in three plants, and is unaccompanied by any substantial description of associated controls (Ex. 665). OSHA also is certain that the record in this rulemaking would be much richer had industry not declined to participate in site visits and declined to testify at the public hearing and to subject itself to cross examination by OSHA and others.

In arguing that the record does not support the feasibility of 50 $\mu g/m^3$, industry has asserted that 150 $\mu g/m^3$ is the lowest level technologically achieveable (e.g., Ex. 680, p. 9). Industry has failed to present data and information to support this position. In fact, even the sparse data it chose to provide consistently show not only that 150 $\mu g/m^3$ is achieveable but also that it already has been achieved (e.g., only two of the 64 monitoring results provided by ABBIM are above 150; nearly two-thirds are below 100 $\mu g/m^3$; Ex. 665).

OSHA therefore finds industry's argument that the evidence in the record is insufficient to prove the technological feasibility of a PEL of 50 $\mu g/m^3$ unpersuasive.

Fourth, industry argues that certain factors in ingot production, like the varying amounts of lead used in particular alloys and the variability of the weather, make it impossible to consistently achieve 50 $\mu g/m^3$ (e.g., Exs. 581–14, pp. 2, 9; 664, pp. 1–2; 665; 668D). OSHA disagrees. Such factors, as well as any variability in exposure levels that may result from them, are typical of many lead-using industries for which the feasibility of the PEL of 50 $\mu g/m^3$ already has been determined by OSHA and approved by the courts (Ex. 686D, pp. 11–12).

Variability in exposure levels above and below an average over time has long been recognized by industrial hygienists. However, as employers in other lead industries have reported, part of this apparent variability may be caused by contamination of the sampling process (e.g., Ex. 684e, p. 7).

Eliminating the factor of sample contamination, most variability in exposure levels is the result of factors that are within the control of the employer (e.g., poor work practices, inadequate housekeeping, and most upset conditions; Ex. 686D, p. 11). OSHA strongly believes that if production and engineering and work practice controls are properly and consistently carried out, the factors causing variability will be largely controlled and the range of variability will be substantially narrowed. OSHA therefore considers evidence of repeated, wide-ranging variability in exposure levels as evidence of the inadequacy of controls. That inadequacy, of course, hardly constitutes evidence of infeasibility.

However, OSHA recognizes that some variability is random and beyond the employer's control. As discussed earlier in this preamble, OSHA has determined that this random variability does not make it technologically infeasible for brass and bronze ingot producers to achieve the PEL. Moreover, as indicated above, OSHA has built some flexibility into its enforcement policy to take account of random variability.

Once the range of variability has been narrowed by effective controls, the degree of latitude for variability that is built into OSHA's determination that the PEL is feasible should prove sufficient. This latitude is implicit in OSHA's determination that in most operations ingot producers will be able to reduce exposures to levels that are reasonably below 50 $\mu g/m^3$. For example, JACA data show that as long as seven years ago nearly half of all employees already were exposed below 30 $\mu g/m^3$ (Ex. 553–4, p. 1–4).

Nonetheless, OSHA understands that from time to time peak exposures due to unforeseeable upsets or other aberrational events will exceed the latitude for variability. OSHA believes that the notion of technological feasibility adopted by the courts—capable of being achieved in most operations most of the time—takes such realities into account. OSHA further believes that the Agency's Field Operations Manual (FOM), which suggests that OSHA inspectors re-monitor exposure levels in cases where OSHA's monitoring shows results that are unusually high relative to those in the employers' exposure records, also takes account of such realities in OSHA's enforcement activities. As a result, OSHA does not believe that such excursions are relevant to this feasibility determination.

Fifth, industry argues that the technology does not exist to control exposure levels to 50 $\mu g/m^3$ in particular operations. OSHA does not agree. Industry at best has shown that certain plants, in certain operations like briquetting and baghouse maintenance are not achieving 50 $\mu g/m^3$ with existing controls. However, ingot producers have made no showing, and have scarcely argued that these plants have implemented state-of-the-art technology in these problem operations. Based upon OSHA's analysis of several, relatively advanced non-ferrous foundries with similar operations and exposure problems, OSHA is certain that no ingot producer has approached the level of technology at which no additional controls can be implemented to further reduce exposure levels.

Moreover, there is no evidence in the record to show that any plant in this industry sector has conducted the kind of in-depth industrial hygiene survey of plant conditions that OSHA considers necessary to identify sources of emissions and appropriate controls. Such a survey is necessary for implementing effective controls. It is the foundation for the kind of integrated control program that is capable of consistently achieving the 50 $\mu g/m^3$ PEL of the lead standard. Without such a survey, industry's claim that it has already done all that it can to control exposure levels simply is not credible.

In any event, OSHA has already shown that for each and every operation, with the possible exception of baghouse maintenance, at least some plants in this industry have been able to achieve exposure levels below 50 $\mu g/m^3$.

Sixth, industry argues that even if it were feasible to consistently achieve 50 $\mu g/m^3$ in newly constructed plants, that PEL cannot be achieved by retrofitting older plants (Exs. 582–85, pp. 26–27; 664, p. 5; 694–11, p. 4). Essentially, industry appears to be arguing that existing ingot plants would have to be rebuilt to achieve 50 $\mu g/m^3$. OSHA does not accept this broad assertion, for which industry has failed to present any supporting evidence. OSHA believes that the record itself demonstrates that existing plants in this sector can achieve this level without being rebuilt, as evidenced by the exposure data from industry in 1982 (Exs. 583–48; 553–4, p. 1–4).

Other record evidence also suggests that this assertion is incorrect. As the NIOSH/Radian study has shown, industry can implement many additional controls within existing plants (Ex. 568). Moreover, industry's contention that the level of baseline (existing) controls assumed by Meridian is too high (Exs. 582–85, p. 23; 664, p. 5; 694–11, p. 6) would seem to concede that much more can be done to control exposure levels within existing plants.

In fact, as previously stated, OSHA has shown that nearly 10 years ago most employees in the industry already were reported to be exposed to air lead levels below 50 $\mu g/m^3$ (Exs. 553–4, p. 1–4; 583–48). OSHA has no reason to believe that these workers were employed only in newly constructed plants. Industry makes no allegation to that effect, and JACA has given no such indication.

Finally, the breadth of industry's assertion regarding rebuilding is similar to the broad scope of industry's claim that 150 $\mu g/m^3$ is the lowest feasible level. Based upon industry's own recent data submission (Ex. 665), OSHA has shown that assertion to be incorrect, unfounded and therefore not credible. OSHA also finds not credible industry's broad assertion that rebuilding of plants generally will be required to achieve the PEL. OSHA believes it previously has shown that the PEL can be achieved most of the time in most operations without rebuilding.

Thus, for all the the above reasons, OSHA is unpersuaded by industry's arguments that the PEL cannot be achieved by means of engineering and work practice controls. Based upon its own expertise, experience and the record evidence, the Agency concludes that a PEL of 50 $\mu g/m^3$ is achieveable in the brass and bronze ingot production industry by means of engineering and work practice controls.

Industry Profile. Brass and bronze ingot producers primarily melt copper and copper-based scrap, and cast it into blocks and bars. These facilities are classified under SIC code 3341, Secondary Smelting and Refining of Nonferrous Metals.

Information submitted to the docket indicates that there are 16 ingot manufacturers active in the business today [Ex. 686d, p. 1]. Total production employment is estimated at approximately 800 [Ex. 686d, p. 1].

Recent data show ingot production increased about 4 and one-half percent between 1986 and 1987 [1987 Minerals Yearbook, Bureau of Mines, U.S. Department of Interior]. Between 1981 and 1982, production dropped 22 percent, from 239,423 short tons to 137,126 short tons, and has fluctuated between 185,000 and 217,000 short tons since that time [Ex. 574, p. 5].

The two leading types of ingots produced between 1980 and 1986 were leaded red brass and semi-red brass, with the former containing 5 to 7 percent lead; high-leaded tin brass, the third leading type of ingot shipped, contains 7 to 24 percent lead [Ex. 574, p. 2]. In 1985, these three ingot types accounted for over 74 percent of the 199,147 short tons produced by the industry [Ex. 574, p. 6].

The major market for brass and bronze ingots is the foundry industry, which uses about 70 percent of all ingots produced. In 1987, brass ingot constituted 66 percent of all copper materials consumed at U.S. foundries [Bureau of Mines, U.S. Department of the Interior]. Other users of brass and bronze ingots include brass mills, powder plants, and miscellaneous copper and copper-alloy using industries [Ex. 574, p. 7].

Over 97 percent of the copper used to make brass and bronze ingots comes from scrap [Ex. 574, p. 7]. The brass and bronze ingot industry competes with brass mills and foreign bidders for this scrap.

Comparisons have been made between quoted prices of the ingot producers' final product and that of the scrap input. Meridian collected data for the years 1967 through 1985 and reported that:

> [b]oth red brass scrap and leaded red brass ingots reached a current dollar price high in 1980. By 1985, red brass scrap prices had declined by 38 percent, while scrap red brass ingot had declined by 23 percent. * * * When prices are measured in real 1982 dollars * * *, both scrap and ingot prices show declines from 1974 peaks. However, the price differential between scrap and ingots has only varied between 37 and 47 cents per pound since 1981, despite significant changes in the prices of both scrap and ingots over the same period [Ex. 574, p. 11].

The Association of Brass and Bronze Ingot Manufacturers (ABBIM) and the Brass and Bronze Ingot Institute (BBII) commented that the actual price differential was on the order of 15 to 17 cents per pound in 1987 [Ex. 582–85, p. 23]. According to the commenters, this was because virtually all ingot is sold at a discount below the list price.

Financial information submitted to the docket by the ABBIM was obtained from

11 brass and bronze ingot manufacturers and was aggregated and averaged [Ex. 582–85. Attachment]. This information indicated financial distress. Average return on assets (ROA) for these 11 firms for the year 1986 was 0.4 percent. It was not clear from this information whether a few firms were doing very poorly or whether all firms were realizing very low rates of return.

Publicly available data from Dialog Information Services (Duns Financial Records Plus (DFRP)) provided additional information which OSHA found useful in assessing the financial status of this sector. These data included sales figures for six brass and bronze ingot producers. Two of these producers, each employing over 150 workers in SIC 3341, realized annual sales of $40 million in 1987. Another producer whose primary activities under SIC 3341 employed 40 workers and realized annual sales of $9 million in 1986. This firm had an ROA of 2.2 percent and a rate of return on sales (ROS) of 0.7 percent. For three additional firms, activities under SIC 3341 were secondary in nature. Two of these firms, each with 60 employees, realized annual sales of $10 million and $18 million, respectively, in 1987. The third, employing over 160 workers, realized annual sales of $38 million in 1987.

These sales data are inconsistent with the sales data reported by the ABBIM. The Dialog data confirm information in the public record which suggested that some brass and bronze ingot producers engage in other activities, which may take place at the same location [Ex. 574, p. 15]. For the three firms noted above for which activities classified under SIC 3341 are secondary in nature, primary activities are classified under SICs 3334 (Primary Production of Aluminum) and 3339 (Primary Metal Mills). The latest information available from Dun and Bradstreet [Industry Norms and Key Business Ratios, 1987] indicates that firms in these SIC codes realized rates of return on sales (ROS) of 4.6 percent. The ABBIM data failed to address these additional activities; thus, it is not clear whether the ABBIM average sales estimate of $6 million per facility is an estimate of total sales or sales related solely to the production of brass and bronze ingots. In either case, the average sales figure provided by the ABBIM appears to substantially underrepresent sales activity in this sector. Additionally, recent price increases (see below) indicate demand for ingots has strengthened since 1986, a year when prices of alloyed brass ingot fell over 4 and one-half percent [Ex. 661].

Based on the above discussion, OSHA's economic feasibility assessment is based on Dun and Bradstreet industry statistics. The ROS reported for SIC 3341 in 1988 was 1.7 percent. This rate was based on information obtained from 60 firms, representing about 25 percent of the total number of firms in SIC 3341.

Costs of Compliance. Compliance costs for the Brass and Bronze Ingot sector were estimated by Meridian Research in its 1987 report [Ex. 574]. These cost estimates were based on the number of emission sources found in a typical facility and the extent of controls already believed to be in place.

Comments were received regarding these cost estimates. ABBIM and BBII stated that Meridian failed to cost a travel vent for hand pouring and the make-up air required for proper functioning of ventilation systems [Ex. 582–85, p. 21]. In its August, 1987 report, Meridian estimated costs for ventilating the pouring ladle and for fresh air islands for the ladleman and pourer; costs for hand pouring were estimated to be similar. With regard to make up air, Meridian stated in its Addendum to the August, 1987 report that make up air was taken into account in the $15 per cfm unit cost [Ex. 686d, p. 13]. These commenters also asserted that Meridian failed to include costs for materials handling at the briquettor [Ex. 582–85, p. 22]. Costs for agglomerating devices (briquettors) were identified by Meridian, but OSHA believes that additional costs may be required to provide this ventilation. Accordingly, OSHA has revised the Meridian estimate of $39,000 per agglomerating device to $70,000. OSHA also adjusted Meridian's estimates to include costs for a scrap pre-heating system, supplied air islands for the furnace area, ventilation for the ingot cooling area, dust packaging controls, isolation barriers, and housekeeping costs, which include portable vacuum sweepers. These adjustments are detailed below. Additionally, OSHA adjusted downward the Meridian assumption of four furnaces per plant to two, based on information in the public record [Ex. 568, pp. 174–221].

Costs for the pre-heating of wetted scrap were estimated to be approximately $400,000 [Ex. 694–11, p. 7]. Annual costs would include annualized capital costs, assuming a twelve year useful life and a 10 percent cost of financing, of $58,720 and operating and maintenance (O&M) expenses of $40,000. Total annual costs for the pre-heating of scrap were thus estimated to be $98,720.

A supplied air island for the furnace area would require a $10,000 capital outlay. Annualized capital costs would be $1,468 and O&M expenses would be $1,000. Estimated total annual costs for this booth were thus $2,468 [Ex. 574, p. 23].

Costs for ventilating the ingot cooling area were based on the costs of an isolated cooling chamber. The cost of such a chamber with a capacity of approximately 45,000 cfm is estimated to be $50,000 [Ex. 582–81]. Annualized costs are $5,875 based on a useful life of 20 years. (The 20 year period reflects the structural nature of this control). O&M expenditures would be $5,000. Total annual costs were thus estimated to be $10,875.

Costs for isolation barriers and partitioning (which may include structural or flexible materials) to prevent cross-contamination within the facility are assumed to be $50,000. Annualized costs, computed using a 20 year useful life, will be $5,875. (Since it was anticipated that the majority of these costs would be for structural materials, a 20 year useful life was used to compute annualized capital costs). No operating cost was estimated to be required.

Additional costs for housekeeping were also estimated. An annual cleaning, which may be performed by a contractor, was estimated to cost $22,000 for a brass and bronze ingot facility [Ex. 686c, p. 32]. Costs for daily labor were estimated to be $4,235, based on one man-hour per day at $12.10, 7 days per week and 50 weeks per year.

OSHA also estimated the costs for a portable vacuum sweeper. Costs were estimated to be $3,900 each [Ex. 579, p. 29]. Annual costs, including annualized capital costs of $573 and O&M expenses, which include HEPA filter replacement, of $2,390, were estimated to be $2,963.

The cost of the industrial hygiene survey was estimated to be $1,000, based on one hygienist working for two days at $500 per day. The first day would be required for a survey of the site and the second day would be required for actual monitoring and for the evaluation of mechanical equipment. Recurring costs were not estimated to be required; thus, no annual costs were estimated.

Finally, costs for wind barriers and ventilation of dust packaging (or automation, if necessary) at the baghouse are expected to be at least $75,000 for facilities of this size [Ex. 668E]. Annual costs would be $18,510.

Commenters indicated that the baseline level of control in the brass and bronze ingot sector is lower than the baseline assumed by Meridian (50%) in its August 1987 report [Ex. 574]. Other evidence suggests that the 50 percent baseline may underestimate current compliance in this industry [Exs. 582–89, p. 35; 553–4; 583–48]. However, no information was submitted by industry that would allow OSHA to calculate a revised baseline. Thus, in calculating the average incremental costs for this sector it was assumed that 50 percent of the controls needed were already in place.

Meridian's annual cost estimate of $98,597 per plant was adjusted to include a scrap pre-heating system, two fresh air islands for furnace areas, ventilation of the ingot cooling area, dust packaging controls, isolation barriers, and housekeeping costs, which include costs for two portable vacuum sweepers. Since some plants may incur higher operating expenses in cold weather [Ex. 582–89, p. 351], an increase in average operating expenses for ventilation of 2.5 percent of capital costs has also been added. The average incremental annual cost estimate was thus $181,000 per plant.

In sum, total incremental annual costs for this industry are estimated to be approximately $2.9 million.

Economic Feasibility. Price increases required to pass through the costs of compliance were estimated by computing the ratio of costs to sales. Sales for the brass and bronze ingot industry were estimated by multiplying industry production by price.

Industry production was estimated to be about 175,000 metric tons, or 386,000,000 pounds, in 1986 [Ex. 582–85, Attachment] and the list price of leaded red brass ingot (a major industry product) was about 75 cents per pound for the same year [Ex. 574, p. 12A]. It was reported, however, that ingot is rarely sold at the list price [Ex. 582–85, p. 23]. Assuming the selling price of this product to be 10 percent below its list, yields a price of 67¢ per pound. This price was then adjusted to 87¢ per pound to reflect recent increases in ingot prices (see below). Industry sales were thus estimated to be $336 million.

Using this sales figure and the total incremental annual cost figure of $2.9 million, price increases were estimated. The cost/sales ratio indicates that average price increases of 0.9 percent will be required to pass through the costs of compliance.

Alloyed brass ingot prices increased by more than 30 percent in 1988 [Producer Price Index, Bureau of Labor Statistics, November, 1988]; production levels also increased somewhat during the same period, according to data from the Bureau of Mines. Since the users of ingot have the ability to perform alloying on site, and since some have the ability to process scrap, the ingot producers ability to raise prices is limited. (The 30 percent price increase in ingot noted above was paralleled by a 30 percent rise in the price of refined copper and a 36 percent rise in the price of copper base scrap, the input of the ingot maker).

Cost to profit ratios were also computed, and represented the impact upon profits assuming full absorption of compliance costs. Profit estimates were based on the sales figure developed above and the Dun and Bradstreet profitability estimate of 1.7 percent for SIC 3341. Total profits for brass and bronze ingot activities were thus estimated to be $5.7 million. To estimate profit impact, the tax-deductibility of compliance costs was taken into account. That is, care was taken to compute before-tax profit before subtracting annual costs. After subtracting annual costs, the appropriate average tax rate was then reapplied to determine after-tax profit net of costs. For this sector, an average tax rate of 0.34 was used. Compliance costs were found to represent 34 percent of industry profits. This impact would result in a drop in ROS 0.6 percent, from 1.7 to 1.1 percent.

However, OSHA estimates that roughly one-half of the firms in this sector are engaged in activities other than the production of brass and bronze ingots. Available data indicate that these activities are profitable (see discussion above) and firms should be able to absorb compliance costs from overall profits. Based on the average sales figure of $25 million and the ROS rates presented in the industry profile, total profits per firm were estimated to average $775,000. (This value was computed using an average of the 1.7 and 4.6 ROS rates, or 3.2 percent.) Since the average cost per plant was estimated to be $181,000, the cost to profit ratio, using the same tax considerations as described above, was 0.15. ROS would dip from 3.2 percent to 2.6 percent. Normal rates of return on sales for firms in SIC 33 range from 3 to 3.5 percent.

Annual costs as a percentage of fixed assets was also computed. Using financial data from Dun and Bradstreet (Ex. 574, p. 31), and based on an average sales figure of $21 million per plant, fixed assets for a brass and bronze ingot manufacturer were computed to be approximately $1.7 million. Since annual costs were estimated to be $181,000, annual costs as a percentage of fixed assets would be 10.6 percent. Historical data on capital expenditures were not available for brass and bronze ingot manufacturers; therefore, OSHA examined data for SIC 3341. Capital investment as a percentage of gross fixed assets for SIC 3341 averaged 11.5 percent over the fifteen year period between 1963 and 1977 and was about 8.7 percent in 1982, according to Census data.

OSHA recognizes that rates of return are modest for this sector. OSHA also recognizes that the brass and bronze ingot manufacturing industry has experienced a major contraction over the past twenty five years. Since the 1950's, thirty-two brass and bronze ingot plants have closed or have stopped producing ingot (Ex. 582–85, p. 7). This contraction reflected the long term decline in the nonferrous foundries.

It is clear, however, that demand for brass and bronze ingots will continue. This is evident from data which show, as noted above, that in 1987, 66 percent of copper materials consumed at U.S. foundries consisted of ingots (Bureau of Mines, U.S. Department of Interior). All 1,300 foundries use brass and bronze ingots as raw material. Data from the Commerce Department indicate that production of copper-based castings has increased substantially since the recession of the early 1980s and now approximates 1979 levels (1989 U.S. Industrial Outlook, U.S. Department of Commerce, p. 18–13). While OSHA estimates that some brass, bronze, and copper foundries will exit the casting market over the next five years, total casting production is expected to remain constant. Demand for ingots will shift away from foundries which cease production and shift to foundries which remain in business. Total nonferrous foundry demand for the brass and bronze ingots is expected to remain constant throughout this shift. No decline in production for any brass and bronze ingot manufacturer is expected to occur. Currently each ingot manufacturer supplies, on average, over 80 individual foundries. This large number of buyers should ameliorate the potential disruption from the consolidation in demand.

Based on the computed profit impact ratios, evidence of recent demand for ingots, and evidence that demand for ingots will continue, this analysis indicates that this sector should be able to withstand the impacts of this rule with an extended schedule of five years. The five year schedule is required due to the limited ability of firms in this sector to raise prices and to allow firms to phase in engineering controls.

OSHA concludes that the 50 $\mu g/m^3$ PEL is economically feasible for the brass and bronze ingot manufacturers. At the end of the five year period, profit impacts are not expected to be of sufficient magnitude to threaten industry existence or structure. Further, evidence of domestic demand for ingots, as indicated by recent product price rises and increases in production volume, strongly suggests that some plants will be able to expand sales and improve profitability.

2. Independent Battery Breaking

Process Description. Independent battery breakers process used batteries to recover lead for sale to secondary smelters. Although independent battery breaking facilities do not engage in secondary lead smelting operations, independent battery breakers do utilize the same battery breaking process and production technology as captive battery breakers in secondary lead smelters, an industry segment in which OSHA has found it feasible to achieve a PEL of 50 $\mu g/m^3$ by means of engineering and work practice controls. In both industry segments, batteries are broken or cracked to separate, recycle, and/or dispose of the various materials of which they are composed. Those components include hard and soft lead, lead oxide/sulfate and salts, sulfuric acid, paper or plastic cell separators, and rubber or polypropylene encasing materials (Exs. 553-7, p. 1-1; 605).

Independent battery breakers process various kinds of batteries, including automotive, junk, odd-size, damaged, small lot and sometimes large industrial batteries. On the other hand, generally captive battery breakers process only automotive batteries (Ex. 694-1, p. 2). However, Delatte Metals Company (Delatte), an independent battery breaker that recently acquired a smelter and is now classified as a secondary smelter, still handles large industrial batteries in its battery breaking facility (Ex. 687-13).

Many battery breaking operations are automated, (e.g., sawing, dumping, crushing, shredding) (Exs. 553-7, p. 1-7; 686F, p. 6). However, at some facilities, dumping the cells and loading the washed lead cells for shipment to smelters may also be performed manually. In addition, unloading automotive batteries and cutting large industrial batteries are performed manually.

In a typical battery breaking operation, employees unload batteries from trucks onto roller conveyors which carry the batteries to the cutting saw. At Ashland Metals Company (Ashland), for example, the conveyor system automatically turns batteries on their side to go through the saw. Low-speed saws (40 rpm), with blade dimensions of approximately 1 inch by 36 inches, typically are used to cut off the tops of battery cases (Ex. 583-52, p. 3). To cut batteries, Ashland, Delatte and the Battery Salvage Division of Ace Battery, Inc. (Ace) all use low-speed saws, which generate less lead oxide dust (Exs. 583-52, p. 3; 694-1, p. 11; 687-13). Battery tops may also be cut off using high-speed saws, guillotines and shears, or the whole battery may be crushed in a hammermill or shredder. Cutting batteries with high-speed saws and guillotines scatters more lead dust, so these production methods may result in greater exposure levels (Ex. 694-1, p. 11).

After passing through the saw, the battery top drops below the saw and the case, which contains the cells and other lead-bearing materials, continues on the conveyor to the dumping station (Exs. 553-7, p. 1-1; 694-1, pp. 3-4) and uses manual shakeout to dump the internal components from batteries (Ex. 687-1), while Ace and Delatte utilize automatic dumping equipment to separate the cases from the cells (Exs. 583-52, p. 1; 694-1, p. 3). An automatic dumper, also called a tumbler, consists of a stainless steel rotating drum that receives the batteries as they are discharged from the conveyor. By the action of stainless steel bars within the tumbler drum, the tumbler separates the case from the "groups" or cells, which consist of hard lead grids covered by a paste of lead oxide/sulfate. The groups drop through the slots in the tumbler and are deposited into product collection bins. Typically, front end loaders remove the groups from the dumping area for shipment to lead smelters (Exs. 553-7, p. 1-1; 583-52, p. 3; 694-1).

The empty battery cases, both tops and bottoms, are often further processed to recover additional lead oxides and polypropylene. The cases are conveyed from the tumbler or moved by a front-end loader to a crusher, called a hammermill. At this point the tops are merged with the cases for crushing. The hammermill grinds the cases and tops, while the batteries are sprayed with water (Exs. 583-52, p. 3; 694-1, p. 7).

Lead oxide/sulfate is removed from the crushed pieces by various methods. In one method, the crushed pieces are washed and lead oxides and residue from the wastewater treatment are collected and placed into the groups pile for shipment. In another method, the slurry of crushed pieces and water moves through a series of screw conveyors to settling tanks to separate the plastic and rubber from the lead oxide/sulfate. The materials are separated by gravity separation, called a sink/float process. In this process the lead-bearing materials sink to the bottom of the settling tanks and are removed by conveyors while the crushed case pieces remain afloat and are skimmed off the tank surface (Ex. 605).

Entire batteries may also be processed by crushing, which generates much less dust than sawing. One method involves feeding whole batteries into a heavy-duty hammermill. After the battery is crushed, the lead materials, plastic, rubber and acid are separated from each other by the sink/float process (Ex. 605, p. 4).

Batteries may also be crushed using an automated shredder, such as the Saturn Shredder. The operating principle of the Saturn Shredder is the high torque and low-speed revolution of two counter-rotating shafts, each equipped with stainless steel teeth, to slowly shred whole batteries into pieces. No hammering, pounding, ripping, or other high-energy breaking force is employed, as is done with the hammermill (Ex. 592); thus the Saturn shredder generates less dust than sawing or crushing in a hammermill.

Large industrial batteries, because of their size and steel casing, are manually broken. These batteries, weighing from several hundred pounds to several tons, consist of a dozen or more closed plastic cells contained in a large steel casing. First the steel casing is cut and removed with a torch, a pneumatic cutting device or a hand-held gas-powered saw. Then the lead-bearing materials are recovered from the cells (called "jars" in an industrial battery) through the processes described above or the cells can be broken by either a saw or hand axe (Exs. 553-7, p. 1-2; 605, p. 4; 687-1).

Sources of Exposure. While the data are unclear, it appears that there are at least two independent battery breaking facilities and possibly as many as 12 facilities in operation currently, with each facility having a maximum of 10 lead-exposed employees. Thus, the independent battery breaking industry and total lead-exposed workforce is very small (Exs. 694-1, pp. 1, 4).

Because of the small size of independent battery breakers, such as Ace, employees perform various tasks interchangeably and therefore all employees potentially may be exposed to lead. However, since many battery breaking operations are automated and enclosed or performed with wet controls, they do not pose high lead exposure problems (Exs. 583-52, p. 1; 694-1). JACA reported back in 1982 that ordinarily sawing and dumping

operations were already automated and enclosed, and therefore that employees are not exposed to lead while these operations are in process (Ex. 553-7, p. 1-7). In those few cases where automated processing equipment has not been enclosed, employee exposure levels may be high for employees working in close proximity to the equipment (Ex. 553-7, p. 1-7).

Generally, employee exposure problems are limited to tasks that are performed manually (Ex. 605; p. 3). In processing automotive batteries, manual tasks generally are limited to unloading used batteries as they enter the facility and to loading cleaned and wetted cells for delivery to secondary smelters (Exs. 583-52, p. 3; 694-1, p. 2-3). However, at Ashland the groups are manually dumped from the battery cases after the top is sawed off (Ex. 687-1).

Unloading batteries generally does not result in high exposure levels since most automotive batteries arrive at battery breaking facilities "wet" (i.e., still containing the sulfuric acid electrolytes). This condition can aid in reducing air lead levels associated with battery breaking. Some junk automotive batteries, such as factory rejects or drained batteries, may be received "dry" (i.e., lead-bearing grids have dried). When batteries are handled dry (e.g., manual unloading, manual dumping), the dried lead oxide/sulfate may become airborne and employee exposure may be greater (Ex. 605).

Loading the washed lead cells for delivery also does not pose exposure problems where the cells are kept wet. At Delatte even large industrial batteries are loaded and shipped wet (Ex. 687-13). In addition, at some independent battery breaking facilities manual loading has been replaced with loading by front-end loaders (Ex. 583-52, p. 3).

In processing large industrial batteries, the sources of high lead exposure are manually cutting the steel casing off of the battery and manually breaking and dumping the cells from the battery. Cutting off the tops of large industrial batteries may result in potentially high exposure levels because workers wielding cutting devices such as torches can only be separated from the lead acid and mist generated by their action by approximately three feet (Exs. 553-7, p. 1-12; 668F). Employee exposure to lead from manually breaking and processing the cells is eliminated if they are processed in the automated and enclosed automotive battery breaking equipment.

Processing of large industrial batteries and resulting lead exposure appears to be only intermittent. A task is considered to be intermittent if it is not performed every day or if it is not performed continuously throughout a shift. Both forms of intermittency are compounded in the processing of large industrial batteries. For example, a consultant for Ashland, Martha J. Guimond, of Joseph A. Guimond & Associates, Inc., stated that "the cutting of large industrial batteries [is] not done every day, but [is] scheduled as there [are] enough batteries to cut for about one to two hours" (Ex. 668F, letter dated Jan. 5, 1988). In addition, Delatte, which had the highest battery breaking capacity in 1988 when it was part of this sector, reports that it "only occasionally handles industrial batteries" (Ex. 687-13).

In addition to exposures connected to certain specific manual operations, employees may also be exposed to lead dust when movement of heavy equipment or local truck and forklift traffic causes spilled and dried lead oxide/sulfate to become airborne (Ex. 605).

Exposure Date. An overview of existing exposure levels reveals that by 1986 one independent battery breaking facility, Ashland, already was controlling exposure levels to or close to 50 $\mu g/m^3$ in all operations. The most recent data (1986) from Ashland show that the overall arithmetic average exposure was 51 $\mu g/m^3$ that one-half of the sampling results were below 50 $\mu g/m^3$, and that 83% of the results were below 56 $\mu g/m^3$. Indeed, at Ashland in 1986 no sampling result was above 63 $\mu g/m^3$.

A second independent battery breaker, Ace, also submitted some personal and area monitoring results for 1985-87. For reasons set out below, OSHA believes the Ace data have only limited use in determining technological feasibility, and the Agency relies on these data only to confirm OSHA's conclusions drawn from its analysis of the Ashland data. For example, the overall average for Ace's most recent personal monitoring results (61.7 $\mu g/m^3$) is consistent with the most recent monitoring results at Ashland.

In addition, at Delatte, which is now classified as a secondary lead smelter with a captive battery breaking operation, the president reported that previously the company had controlled exposure levels to 50 $\mu g/m^3$ and had "no trouble" meeting a PEL of 50 $\mu g/m^3$, even in industrial battery breaking (Ex. 687-13) Other captive battery breaking operations also are controlling exposures to or below 50 $\mu g/m^3$ solely by means of engineering and work practice controls (Tr. 175, 192).

The exposure data in the record include three data sets: data from Ashland, submitted by the Institute of Scrap Recycling Industries (ISRI) (Ex. 582-88, App. C; Tables 1 and 2, below); data submitted by Ace (Ex. 694-1, App. A; Table 3, below); and summary data included in the JACA report (Ex. 553-7; Table 4, below). In general, these data sets tend to be incomplete regarding monitoring results, job categories, and associated control information. However, in combination with other information in the record, the Ashland and JACA data and the submissions from Delatte, Ace, and the Battery Recycling Association (BRA) provide sufficient evidence to allow OSHA to assess the technological feasibility of achieving a PEL of 50 $\mu g/m^3$ in this industry sector.

The first data set is from Ashland (see Tables 1 and 2, below). The most recent data from Ashland shows that by 1986 exposure levels in all operations were already at or only slightly above 50 $\mu g/m^3$. The overall arithmetic average in 1986 was 51 $\mu g/m^3$, and the highest sample result was only 63 $\mu g/m^3$. Even in the battery chopping operation, for example, which involves the manual cutting of large industrial batteries and which industry maintains is the most difficult operation in which to achieve 50 $\mu g/m^3$, the average exposure level was 50 $\mu g/m^3$. Two of three employees in that operation were exposed below 50 $\mu g/m^3$, and the remaining one was only exposed to 63 $\mu g/m^3$.

TABLE 1.—EXPOSURE DATA FOR ASHLAND METALS COMPANY, 1986

Job title	8-hour TWA ($\mu g/m^3$)
Large loader/cutter	[1] 56
Large loader/chopper	[1] 48
Battery chopper	40
Do.	63
Do.	48
Rubber room (hammermill)	53
Overall average	51

[1] OSHA had to calculate 8-hour TWAs for some of the individual monitoring results. OSHA calculated the 8-hour TWAs using two assumptions: (1) That the employee was not exposed to any lead during the remainder of the shift, and (2) that the employee was exposed to the same concentration of lead during the unsampled time as during the sampled time. OSHA then took the midpoint of this range to represent the employee's full-shift exposure.

The 1986 Ashland data are significantly lower than the 1985 data. In 1985, the overall average exposure was 103 $\mu g/m^3$; only three operations had average exposures at or below 50 $\mu g/m^3$ (see Table 2, below). In addition, only 28% of the sampling results were at or

below 50 μg/m³, while 64% of the samples were below 100 μg/m³.

The improvement from 1985 to 1986 is most apparent by comparing similar operations. For example, in 1985 large industrial battery cutter/loader accounted for a majority of sample results above 200 μg/m³ and had an average exposure level of 359 μg/m³, while in 1986 the average for this operation was 52 μg/m³. OSHA notes that during 1985–86 Ashland implemented a special ventilation system and modified the cutting torch to reduce exposure levels for the industrial battery cutter (Ex. 668F). The 1986 data appear to indicate that these controls have been successful in significantly reducing the exposure levels of industrial battery cutters.

TABLE 2.— SUMMARY EXPOSURE DATA FOR ASHLAND METALS COMPANY, 1985

Job title	Avg. exp. levels (μg/m³, 8-hr. TWA)[1]
Truck unloader	78
Saw operator	110
Shakeout operator/laborer	143
Rubber room (hammermill)	69
Front end loader	38
Laborer	18
Maintenance/cleanup/equipment	8
Industrial battery cutter/loader	359
Overall average	103

[1] OSHA had to calculate 8-hour TWAs for some of the individual monitoring results. OSHA calculated the 8-hour TWAs using two assumptions: (1) That the employee was not exposed to any lead during the remainder of the shift, and (2) that the employee was exposed to the same concentration of lead during the unsampled time as during the sampled time. OSHA then took the midpoint of this range to represent the employee's full-shift exposure.

An industry consultant, Martha Guimond, argues that Ashland's 1986 data are not representative of the exposure levels of employees at this facility because production levels were greatly reduced in 1986 because the company had made a decision to cease battery breaking production. Guimond argues that the low exposure levels in most operations in 1986 are due to low production levels since the only engineering controls implemented during that time were limited to the industrial battery cutting area (Ex. 668F, p. 1).

For several reasons OSHA does not believe that lower production levels solely account for the lower exposure levels in 1986.

First, the most recent exposure data from Ace and information from Delatte and the Battery Recycling Association (BRA) indicate that low exposure levels are currently being achieved at other facilities (Exs. 583–52; 687–13; 694–1) (see discussion of data and information below).

Second, other information in the record submitted by industry appears to indicate that increased production levels are not necessarily correlated with higher exposure levels. For example, when Delatte was still an independent battery breaker, it had the highest volume of batteries per day (18,000) of any independent breaker; yet the plant had "no trouble" controlling exposure levels below 50 μg/m³ (Ex. 583–52, p. 3).

Third, most facilities respond to lower production levels by reducing the number of their employees or by operating fewer shifts. As a result it is reasonable to assume that the employees who continue to work are dealing with approximately the same sources of emissions and exposure levels as in the past. For these reasons, OSHA believes that the 1986 Ashland data are representative of current exposure levels at that facility and in the industry in general.

A second data set was submitted by the Battery Salvage Division of Ace Battery, Inc. (Ex. 694–1, App. A). For several reasons, OSHA believes that these data, which include results from both personal and area sampling, have only limited utility. First, the personal sampling data are not broken down according to job categories. Second, the most recent data, from 1987, were obtained exclusively by area sampling, which is not necessarily a good indication of employee exposure levels. Nonetheless, if, as OSHA assumes, Ace was following good industrial hygiene principles and sampling areas where air lead levels were likely to be highest, that data may have some value as a conservative indication of employee exposures. In any event, OSHA does not rely on the Ace data as an independent source of analysis but uses it only to broadly confirm Agency conclusions derived from other sources.

Like the data from Ashland, the Ace data show a reduction in exposure levels since 1985. For example, in 1985, the plant-wide average exposure level obtained from personal sampling was 247 μg/m³ with none of the personal sample results below 50 μg/m³. By 1986, that average had been reduced to 62 μg/m³, and 40% of the personal sample results were below 50 μg/m³. Similar reductions were reflected in area sampling results between 1985–87.

Other information in the record also corroborates OSHA's analysis of the Ashland data. Delatte, according to its company president, has had no difficulty controlling exposure levels to below 50 μg/m³ (Ex. 687–13). Moreover, according to Lee Norman, of BRA, generally across the industry employees performing manual unloading of batteries, operating front-end loaders to load the washed cells for shipment and monitoring the battery tipping process on the sawing conveyor all typically have exposure levels below 50 μg/m³ (Ex. 583–52, p. 3; see Table 3).

TABLE 3.—TYPICAL EXPOSURE LEVELS IN INDEPENDENT BATTERY BREAKING OPERATIONS, BATTERY RECYCLING ASSOCIATION

Job Title	Average exposure level (μg/m³ 8-hr TWA)
Truck unloaders (manual)	10–20 μg/m³
Conveyor monitor, tipper	10–20 μg/m³
Front-end loader (loading)	30–50 μg/m³
Cleanup (vacuum sweeper)	40–50 μg/m³

Source: (Ex. 583–52, p 3).

Furthermore, OSHA's expert witness Mr. Mel Cassady, who has been in 50–75% of all secondary lead smelters, testified that most captive battery breaking operations in those smelters are controlling employee exposure levels to or below 50 μg/m³ in most operations most of the time by means of engineering and work practice controls (Tr. 175, 192). Mr. Cassady also testified that there was nothing to indicate that it would be technologically more difficult to achieve 50 μg/m³ in independent battery breaking than in captive battery breaking operations (Tr. 189).

The final data set is from the 1982 JACA report (Ex. 553–7). That report does not provide any raw sampling data on air lead levels in independent battery breakers. Rather, the report provides estimated ranges of typical exposure levels in various operations when no controls are in place and estimated resulting exposure levels after controls have been implemented in those operations. The report also contains an estimate of the total number of lead-exposed employees in the industry, 140, nearly all of whom JACA believes were exposed above 50 μg/m³ (Ex. 553–7, p. 1–11). Without individual monitoring results and other information, the JACA report has only limited utility in assessing current exposure levels. Moreover, these estimates, OSHA believes, are too high, because they are predicated on the counter-factual assumption of zero controls.

Current Controls. OSHA's discussion of current exposure levels in the previous section indicates that 50 μg/m³ already is being achieved or is close to being achieved in many operations by

independent battery breaking facilities and in most operations by captive battery breaking operations in secondary lead smelters. The primary methods currently used to control air lead levels in independent battery breaking are wet controls and automation and enclosure of processing equipment. Ashland and Delatte are controlling exposure levels through a combination of wet process technology and automating and enclosing equipment, while Ace appears to have generally achieved employee exposure levels only "somewhat above * * * 50 μg/m³" primarily by the use of wet control technology (Ex. 694–1, pp. 4, 6, 7, 8).

Automation and Enclosure. In order to meet Environmental Protection Agency regulations and to increase productivity, several battery breaking facilities have chosen to replace manual operations, where there may be potentially high exposure levels and contamination of the environment, with automated and enclosed shredding and recycling equipment (Ex. 576, p. 3). When process equipment is enclosed and automated it reduces employee exposure to lead by preventing employees from coming into direct contact with lead oxide/sulfate dust generated during processing of the battery. At least by 1982, high speed saws and automated dumping operations at independent battery breakers already were ordinarily enclosed (Ex. 553–7, p. 1–7).

Automation and enclosure can have a dramatic effect on employee exposure levels by allowing employees to distance themselves from the sources of lead emissions. For example, JACA reported that when dumping (shakeout) components was performed manually and controls were not in use, exposure levels ranged from 150–500 μg/m³. However, when dumping is automated and enclosed, JACA estimates that exposure levels can be controlled to below 50 μg/m³ (Ex. 553–7, pp. 1–8, 1–12). Similarly, at Delatte, where sawing, dumping and crushing equipment are automated and enclosed, the company reports that it has no trouble controlling exposure levels to below 50 μg/m³ (Ex. 687–13).

Wet Controls. Some independent battery breakers control exposure levels throughout their facilities primarily by use of wet controls. The most common practice is either to keep the entire work area wet with water or to keep the lead oxide wet with recycled battery acid (Ex. 553–7, p. 1–7). Ace practices wet control by spraying and maintaining the wet condition of the entire battery breaking area (Ex. 694–1, p. 7). To control employee exposure levels in the battery cutting area, Ashland uses a wet system. Ashland also uses a water spray system in the hammermill to keep air lead levels low (Ex. 583–52, p. 3).

Maintenance and Housekeeping. Lead oxide/sulfate that is spilled and allowed to dry may become airborne due to agitation and vibration from front-end loaders and other local traffic or due to dry sweeping of the area. Typically, independent battery breakers clean these spills by wet sweeping, squeegeeing, and vacuuming (Exs. 553–7, p. 1–7; 583–52. p. 3).

Work Practices. Industry has not provided much specific information on what work practice controls are currently used in this industry. Ace reports that it utilizes various work practice controls to reduce employee exposure levels. For example, Ace trains employees in precision handling of materials through proper use of equipment (Ex. 694–1, p. 7). In addition, Ashland reports that it trains its employees in the appropriate work practices (Ex. 668F, letter dated June 8, 1987).

In addition to these general control methods, independent battery breakers use the following controls operation by operation.

Unloading. Unloading whole batteries from delivery trucks, even though performed manually at some facilities, is typically controlled to below 50 μg/m³ because the batteries are received wet and do not generate lead oxide/sulfate dust as they are being moved (Exs. 553–7, p. 1–8; 583–52, p. 3). Employee exposures are maintained this low in part because batteries are usually unloaded onto conveyors that feed the saw, so unloaders are separated from that potential source of cross contamination by the length of the conveyor.

Sawing/Cutting. Ashland and Ace both control exposure levels in the cutting and sawing operation by using automated low-speed saws (40 rpm) to cut off the tops of batteries (Exs. 687–1, 694–1, p. 11). Low-speed saws emit less lead dust and acid mist than high-speed saws or guillotines, and thus are associated with lower air lead levels (Ex. 605. pp. 3, 4). In 1982 JACA reported that there was a 20-fold difference in the exposure levels in cutting batteries with low-speed rather than high-speed saws even if no other controls are used. Without controls, cutting with low-speed saws typically results in air lead levels of 50–100 μg/m³ while cutting with high-speed saws generates exposure levels of 1,000–2,000 μg/m³ (Ex. 553–7, p. 1–8). Delatte also controls employee exposure levels below 50 μg/m³ in cutting and sawing in part by using low-speed saws (Ex. 687–13).

In addition to controlling employee exposure levels by automating the cutting process with low-speed saws, some independent battery breakers have further reduced exposure levels by enclosing or ventilating the low-speed saw (Exs. 553–7, p. 1–7; 605, p. 3). Ace has not enclosed or ventilated its low-speed saw and conveyor system (Ex. 694–1, p. 5).

Battery breaking facilities also control exposure levels in cutting and sawing by keeping the batteries wet. For example, Delatte keeps employee exposures low in this area by maintaining the entire process wet (Ex. 687–13). Ace also uses a water spray system in the cutting area to maintain the wet condition of the batteries (Ex. 694–1, p. 7).

Finally, Ace has controlled employee exposure levels in the battery tipping operation, which precedes sawing, by automating that operation as well. Automation of the tipping process reduces exposures to 10–20 μg/m³ (Ex. 583–52, p. 3). According to JACA, even manually tipping batteries without controls results in typical air lead levels of only 50 μg/m³ (Ex. 553–7, p. 1–8).

Dumping. Most independent battery breaking facilities control exposure levels in dumping of the lead-bearing cells from battery cases by automating and enclosing this operation. Both Ace and Delatte have automated dumping equipment, however Ace indicates that its dumping equipment is not enclosed or ventilated (Ex. 694–1, p. 5). Ashland still uses manual shakeout of cells from battery cases (Ex. 687–1).

Crushing and Separating. Independent battery breakers control employee exposure in crushing operations primarily by enclosing the crusher (hammermill) and using water spray systems to maintain the batteries wet. Ace and Ashland both control exposure levels in this operation with water spray systems. Ace's water spray system also washes off lead residue from the crushed battery cases so there is little exposure to lead when the crushed cases are loaded for shipment (Ex. 694–1, p 3).

Some independent battery breakers have replaced cutting off battery tops with crushing whole batteries in a hammermill or shredder, which has the result of reducing employee exposure levels because sources of exposure associated with tipping, cutting and dumping batteries are eliminated (Exs. 553–7, p. 1–3; 605. p. 2). Those sources of exposure can be significant when

batteries are manually tipped and dumped (Exs. 553–7, p. 1–2; 605, p. 2).

After whole batteries or battery cases are crushed, some independent battery breakers separate leaded cells and lead oxide residue from battery case pieces by a sink/float process (Ex. 605, p. 3–4). From the viewpoint of exposure control, the wet nature of this process itself is the key control. The lead-bearing materials sink to the bottom of the settling tank and are still wet when moved to collection bins or loaded onto trucks for shipment. When the groups are saturated with water, lead dust is not generated (Ex. 605, p. 4). The sink/float process also effectively reduces exposure levels in certain downstream operations because lead oxide is washed off of the battery case pieces during this process. Thus, when employees load the case pieces for shipment, they are not exposed to lead.

Loading. Some independent battery breakers have controlled exposure levels by replacing manual loading of washed cells and cases on trucks for shipment with loading by front-end loaders. Ace states that it loads the washed groups for shipment with front-end loaders because the saturated groups do not move well on conveyors (Ex. 694–1, p. 12). Where loading is done with front-end loaders, typical air lead levels are between 30–50 $\mu g/m^3$ (Ex. 583–52, p. 3).

Large Industrial Batteries. In processing large industrial batteries the steel casings are removed manually by a worker holding a gas torch or a pneumatic cutter (Ex. 553–7, p. 1–2). To reduce exposure levels during this task Ashland has implemented a ventilation system and modified the cutting torch (Ex. 668F, pp. 3–4).

Some independent battery breakers have eliminated exposures associated with manually breaking the cells with saws or hand axes by processing the cells in the facility's automotive battery breaking equipment (Ex. 553–7, p. 1–2). In addition, in order to control exposure levels generated from the lead oxide in the industrial battery cells, Delatte loads and ships the cells wet (Ex. 687–13).

Additional Controls.—Overview— With the existing controls described in the previous section, OSHA has found that one former and two current independent battery breaking facilities already have achieved 50 $\mu g/m^3$ in many operations and many captive battery breakers have achieved that level in most operations. With the additional controls recommended by OSHA implemented, the Agency anticipates that exposure levels will be controlled below 50 $\mu g/m^3$ in all operations, except perhaps the task of manually cutting the steel cases of industrial batteries.

OSHA's analysis of the record in the previous sections indicates that by 1986 Ashland had achieved air lead levels close to or below 50 $\mu g/m^3$ in almost all operations through a combination of wet process technology, automation of equipment and enclosure. Ace has achieved low exposure levels in almost all operations primarily by wet process technology and work practices. OSHA concludes from these data and information on current controls that a limited number of additional controls are needed to consistently maintain exposure levels at or below 50 $\mu g/m^3$ at these two facilities in every operation except industrial battery cutting. OSHA also notes that Delatte has achieved 50 $\mu g/m^3$ in all operations, including industrial battery breaking, with the same or similar combination of controls.

On the whole, the same sorts of readily available, conventional controls that have successfully reduced exposure levels to below 50 $\mu g/m^3$ in Delatte's facility and in many captive battery breaking operations are precisely the kinds of additional controls that OSHA recommends to other independent battery breakers to reduce employee air lead levels to below 50 $\mu g/m^3$. These engineering controls consist primarily of enclosure and automation of process equipment, improvement in ventilation systems, enclosure of conveyor systems, use of low-speed saws, use of low-energy shredders and installation of additional water spray systems.

OSHA believes that most independent battery breakers will not need to implement all of these recommended additional controls to control exposure levels below 50 $\mu g/m^3$. Some independent battery breakers should be able to consistently control exposure levels below 50 $\mu g/m^3$ solely by improving work practices and keeping the batteries and work area wet. If further additional controls are needed, independent battery breakers may be able to achieve 50 $\mu g/m^3$ by implementing simple enclosure and isolation techniques such as enclosing the cabs of mobile equipment or enclosing automated equipment.

OSHA's discussion of additional controls and expected reductions in air lead levels relies in part upon OSHA's independent analysis of processes and controls in captive battery breaking operations in secondary lead smelting, an industry sector for which the court has already found it feasible to meet a PEL of 50 $\mu g/m^3$ by means of engineering and work practice controls. For several reasons OSHA believes this reliance to be reasonable.

First, the production processes utilized by captive battery breakers are virtually identical to those in use in independent facilities and captive operations are controlling exposure levels below 50 $\mu g/m^3$ using conventional rather than "unique" technology. For example, Delatte is achieving a PEL of 50 $\mu g/m^3$ with the same production and control technology it used as an independent facility. As such, there is nothing to suggest that the control technologies employed by captive operations would not be directly applicable and transferrable to independent facilities.

Second, as Mr. Cassady points out, on the average, captive battery breaking operations and independent battery breakers are about the same size; two to five employees in captive operations and five employees in independent facilities (Tr. 190). Delatte, which was an independent battery breaker until 1988, employs approximately the same number of workers in its captive facility as does Ashland. Consequently, OSHA agrees with Mr. Cassady that there is nothing about battery breaking in an independent facility that would make it technologically more difficult to control exposure levels below 50 $\mu g/m^3$ than it is in a battery breaking operation in a secondary smelter (Tr. 189–98).

Before discussing additional controls specifically, OSHA notes that the first step any company should take to systematically reduce exposure levels is to conduct an industrial hygiene survey that includes an in-depth job/task analysis, plant-wide survey and identification of sources of emission in each task and area. For some independent battery breakers it may be clear what the exposure problems are and how those problems can be remedied. These facilities may be able, without extensive surveying, to go through a series of controls and identify the more or less easy and inexpensive controls which may be sufficient to achieve exposure levels below 50 $\mu g/m^3$. Still other facilities may need an industrial hygiene study in order to develop an integrated system of controls that will consistently control exposure levels below 50 $\mu g/m^3$.

Wet Controls. Independent battery breakers may be able to control exposure levels below 50 $\mu g/m^3$ in every operation except industrial battery cutting by implementing or improving water spray systems for all equipment and conveyor systems and utilizing other wet control techniques to maintain the wet condition of the batteries at all times. For example, Delatte states it has had no trouble

controlling exposure levels below 50 $\mu g/m^3$ because it keeps the batteries wet (Ex. 687–1). Ace, which also relies primarily on wet control technology, reported that its exposure levels were only somewhat above 50 $\mu g/m^3$ (Ex. 694–1, p. 4). In addition, Ace states that wet control technology is the most effective control system for independent battery breakers. Since batteries are already saturated with water and sulfuric acid, little additional water is necessary to maintain the wet condition of the battery (Ex. 694–1, p. 9).

In addition to installing water spray systems on all equipment, there are other simple wet control methods that independent battery breakers should implement. For example, wetting cracked or damaged batteries that have lost their electrolytes will prevent leaded plates from drying out and dispersing lead oxide into the air during unloading and loading. To the extent practicable groups should be loaded and shipped wet, as is done at Delatte (Ex. 687–13). In addition, floors and other surfaces should be kept wet to suppress dust and to prevent spilled lead oxide from drying and becoming airborne. Finally, floors and surfaces throughout the plant should be wet mopped or squeegeed as often as necessary, but not less than once per shift (Ex. 605).

Automation and Enclosure/Isolation. To the extent that wet control technology cannot reduce exposure levels below 50 $\mu g/m^3$ in all operations, automation of process equipment and enclosure of process and mobile equipment should be implemented to control exposure levels to below 50 $\mu g/m^3$. Some battery breakers who have automated and/or enclosed equipment have achieved significant reductions in exposure levels (Ex. 583–52; see discussion, above, under Current Controls).

Although automation alone may not reduce exposure levels in every operation, some battery breakers have dramatically reduced exposure levels simply by automating various processes. For example, Delatte has eliminated exposure levels associated with battery tipping by automating that process (Ex. 583–52, p. 1). In addition, General Battery Corporation (GBC), a captive battery breaker, has reduced its exposure levels by more than 50% by installing automated process equipment (Ex. 592).

Where automation alone does not sufficiently reduce employee exposure levels, automated equipment used in cutting, dumping and crushing operations should be enclosed to reduce exposure levels below 50 $\mu g/m^3$. For example, in shakeout Ashland should be able to control exposure levels below 50 $\mu g/m^3$ by replacing manual shakeout with automated, enclosed and ventilated dumping equipment. JACA reported back in 1982 this combination of controls would reduce exposure levels to below 50 $\mu g/m^3$ in dumping operations. In addition, JACA reported that enclosing high-speed saws, which had exposure levels of 1,000–2,000 $\mu g/m^3$, would reduce typical air lead levels to below 50 $\mu g/m^3$ (Ex. 553–7, p. 1–8). Enclosing low-speed saws would also result in substantial reductions.

Ace has automated but not enclosed its automotive battery processing equipment. Ace contends that it cannot enclose its equipment or conveyor because too many adjustments would be required for odd-sized batteries. However, when Delatte was an independent battery breaker, the company implemented state-of-the-art automated and enclosed equipment to process various sizes of batteries and has successfully controlled exposure levels to below 50 $\mu g/m^3$. Ace has not explained why it would be technologically infeasible for the company to implement the same sorts of automation and enclosure employed by Delatte and other battery breakers.

Finally, one of the simplest methods to isolate employees from lead emissions that should be implemented by independent battery breakers is to provide all mobile equipment operators with enclosed cabs equipped with HEPA filters and tempered air. This control technology is readily available and in use in other industries.

Ventilation. OSHA believes that in many battery breaking operations, including industrial battery cutting, implementing or improving ventilation can achieve major reductions in exposure levels. Such controls have been developed, tested and, where found effective, manufactured and applied widely for many years throughout industry to control specific contaminants. The ventilation controls applicable to captive battery breaking are the same as those applicable to independent battery breaking.

Implementing or improving ventilation can achieve major reductions in air lead levels in even the most difficult operations to control, such as industrial battery cutting. At Ashland use of a special ventilation system to push the fume away from the industrial battery cutter's breathing zone significantly reduced the operator's exposure level (Ex. 668F, p. 1). In 1986, Ashland also reported that it was working with exhaust system manufacturers to develop an exhaust system that is actually part of the industrial battery cutting torch.

As indicated in OSHA's discussion in other areas of this preamble and incorporated here by reference, it is imperative that improvements to existing ventilation and newly-installed ventilation be properly designed, installed and maintained.

Housekeeping, Work Practices and Preventive Maintenance. Housekeeping, work practices and preventive maintenance are critically important controls in independent battery breaking (Tr. 176), whose importance frequently is not adequately recognized by employers. Failure to develop and use rigorous housekeeping, good work practices and preventive maintenance can destroy the effectiveness of otherwise adequate engineering controls.

Meticulous housekeeping is essential to ensure that exposure levels are consistently controlled below 50 $\mu g/m^3$. To the extent that any independent battery breaker still relies upon dry sweeping in some operations, that practice should be eliminated and should be replaced by vacuum sweeping or wetting and squeegeeing spilled material to prevent the reentrainment of lead oxides (Exs. 553–7, p. 1–7; Ex. 694–1). Equipment should be washed down daily, as GBC does, to control exposure levels (Ex. 592). Batteries should be stored on paved platforms or yards so that the surface can be easily washed down.

Preventive maintenance of battery breaking equipment should consist of daily inspection and cleaning. Sharpening saw blades and lubricating equipment bearings regularly are all part of a proper maintenance program.

Implementing appropriate work practice controls is also vital to achieving exposure levels below 50 $\mu g/m^3$ and to reducing exposure levels for industrial battery cutters. For example, Ashland reports that industrial battery cutters must be trained to properly position gas torches in a manner so that the fume flows away from the clean air stream or the efficiency of this ventilation system will be reduced (Ex. 668F, p. 2). It also is important to train maintenance workers who must enter enclosed areas, where exposures may be high, to not enter these areas more frequently than is necessary.

Ace asserts that work practices cannot be improved because it would decrease productivity and because there would be significant resistance among employees to improving work practices.

Specifically, Ace argues that there would be resistance among employees

because of additional training and concentration required for precision handling of equipment. Also, Ace argues that the educational level of its employees is not compatible with precision training. Ace, however, provides no evidence to support its assertion that work habits cannot be changed and poor work practices cannot be corrected. OSHA considers Ace's view unacceptable, especially since it is likely to become a self-fulfilling prophecy. OSHA, along with the industrial hygiene community, believes that good work practices should be taught to workers and retaught as often as necessary. If the work practices are sensible and the company communicates to workers its seriousness in requiring that such work practices be followed, OSHA has no doubt that workers will follow them. No matter what efforts a company may make to implement effective engineering controls, if its work practices are poor those controls are likely to be rendered ineffective.

OSHA also recommends the following controls operation by operation.

Unloading. Unloading of batteries from delivery trucks can be accomplished by various methods: manually, with mobile equipment or by automation. Currently some independent battery breakers, including Ashland and Ace, manually unload batteries from delivery trucks and place them on conveyors that go to the sawing area. BRA reports that typical exposure levels for manual unloading already are below 50 $\mu g/m^3$ (Ex. 583–52, p. 3). To the extent that exposure levels may exceed 50 $\mu g/m^3$, unloading can either be automated or, as discussed above, controlled by enclosing cabs of mobile equipment used for unloading.

One method of automating unloading would be to implement an automated conveyor system. The use of conveyors rather than front-end loaders to move broken battery scrap not only would reduce lead dust, but also would increase production efficiency by requiring less manpower and allowing faster unloading of batteries (Ex. 592, p. 33). GBC has reduced exposure levels by palletizing battery unloading (Ex. 592). The palletized batteries, which can then be handled by fork-lift trucks, eliminate workers' manual contact with batteries at this stage and also eliminate exposure that results when employees handle dry batteries or accidentally drop batteries.

Cutting and Sawing. Information in the record indicates that battery breakers that are controlling exposure levels below 50 $\mu g/m^3$ in cutting and sawing utilize low-speed saws. Those independent battery breakers that might still use high-speed saws or guillotines should replace them with low-speed saws to reduce exposure levels. Where exposure levels exceed 50 $\mu g/m^3$ in the cutting area, the automated sawing equipment should also be enclosed and ventilated. This combination of controls should reduce exposure levels below 50 $\mu g/m^3$ (Ex. 553–7, p. 1–8).

Dumping. To control exposure levels below 50 $\mu g/m^3$, independent battery breakers should install automated and enclosed dumping equipment. This combination of controls should reduce exposure levels below 50 $\mu g/m^3$ (Ex. 553–7, p. 1–8). Delatte already has achieved exposure levels below 50 $\mu g/m^3$ by using such equipment (Exs. 583–52, p. 3; 667–13).

Crushing and Separating. Information in the record indicates that battery breaking facilities that are controlling exposure levels below or close to 50 $\mu g/m^3$ are using wet controls in the hammermill. Enclosing the hammermill should reduce exposure levels to consistently below 50 $\mu g/m^3$ (Ex. 553–7, p. 1–8).

To the extent that exposure levels may still exceed 50 $\mu g/m^3$, independent battery breakers might replace their saws, dumpers and hammermills with automatic shredders, such as the Saturn shredder. At least five captive battery breakers have installed Saturn shredders to process batteries (Ex. 605). The Saturn shredder is a low-energy machine that shreds batteries into pieces with two low-speed shafts with teeth. This system slowly shreds batteries into separable pieces without hammering, pounding, ripping or using any other high-energy force. Consequently, the generation of acid mist and lead particulate is low, which results in low exposure levels. If the use of a Saturn shredder does not reduce exposure levels consistently to below 50 $\mu g/m^3$, the shredder may need to be enclosed and ventilated (Tr. 179).

Where Saturn shredders are already being used by battery breakers, additional improvements can be implemented to further reduce exposure levels. For example, the capture point of the hood could be repositioned to more effectively exhaust lead dust. Enclosing the hopper more completely, moving the crushed battery scrap by conveyor rather than front-end loader, and installing a ramp or slide gate under the shredder to avoid falling and splashing emissions will also reduce exposure levels in the shredding operation (Ex. 592, p. 33).

Loading. Independent battery breakers can reduce exposure levels in loading the washed cells on trucks for shipment to secondary smelters by replacing manual loading with front-end loaders. This should reduce exposure levels, even if the cabs are not enclosed (Ex. 582–52, p. 3). Where exposure levels exceed 50 $\mu g/m^3$, the cabs of front-end loaders should be enclosed and equipped with a HEPA filter and tempered air. With such controls, typical air lead levels will be controlled to or below 50 $\mu g/m^3$ (Ex. 553–7, p. 1–8).

Large Industrial Batteries. There are several readily available controls that should be able to significantly reduce exposure levels in industrial battery cutting. These controls include using a low-speed, rather than a high-speed saw, providing local exhaust ventilation, installing supplied-air islands for the cutter, using alternative cutting methods, modifying cutting torches, using a saw, rather than a hand axe to cut the cells and limiting the amount of time an employee cuts industrial batteries (Exs. 605; 668F, pp. 3–4).

There are several ventilation systems available to capture lead dust emitted during industrial battery cutting. For example, Ashland reduced exposure levels significantly by implementing a special ventilation system in the cutting area to push fume away from the operator's breathing area (Ex. 668F, pp. 3–4). In 1986 Ashland also reported that it was working to adapt a special welding exhaust system on the cutting torch itself (Ex. 668F, pp. 3–4). For these exhaust systems to operate efficiently, it is important that employees also be trained to properly position cutting devices and themselves so as not to contaminate fresh air streams (Ex. 668F, pp. 3–4).

Other available exhaust systems include downdraft or sidedraft ventilation welding tables, portable high velocity/low volume local exhaust systems, with a turntable used as a work platform, such as that commonly used in large painting booths (Ex. 605). Another technology that has proven effective in wide industrial use is the supplied-air island. Such an island could be installed specifically for the industrial battery breaker (Ex. 605) and would reduce exposures by as much as 23–77% (Ex. 583–16, p. 30).

There are also available alternative methods for cutting off the cases of industrial batteries. These methods should reduce the amount of lead dust generated and thus reduce exposure levels. For example, there is a 20-fold decrease in typical exposure levels when high-speed saws are replaced with low-speed saws (Ex. 553–7, p. 1–8). Gas torches that create a great amount of air turbulence and thus push lead fumes into the employee's breathing zone can be replaced with cutting devices which do not produce such air turbulence (Ex. 668F, p. 4).

To the extent practicable, independent battery breakers should eliminate manual breaking of industrial battery cells with saws or hand axes and process the cells in the facility's automotive battery breaking equipment (Ex. 553–7, p. 1–2).

Technological Feasibility Conclusion. Based upon the above analysis of the evidence in the record and OSHA's experience and expertise, the Agency determines that achieving a PEL of 50 $\mu g/m^3$ by engineering and work practice controls is technologically feasible for the independent battery breaking industry as a whole. Indeed, OSHA finds it feasible in every operation, with the possible exception of the cutting of industrial batteries. Since OSHA has found the 50 $\mu g/m^3$ PEL feasible for the industry, employers will be required in the task of industrial battery cutting, as well, to implement engineering and work practice controls to control exposure levels to the PEL or to the lowest feasible level. If employers cannot achieve the 50 $\mu g/m^3$ PEL by means of engineering and work practice controls for workers performing this task, they are required to provide workers with respirators for supplemental protection.

To sum up, OSHA has shown the following: One former and two current independent battery breaking facilities already have achieved 50 $\mu g/m^3$ in many operations and many captive battery breakers have achieved that level in most operations. These results have been achieved in independent facilities with existing controls, before OSHA's recommended additional controls have been implemented. With implementation of such additional controls, the Agency anticipates that exposure levels will be consistently controlled to or below 50 $\mu g/m^3$ in all operations, except perhaps the task of manually cutting industrial batteries.

OSHA believes that for operations where most sampling results or average exposure levels already are close to or below 50 $\mu g/m^3$, relatively modest improvements in controls, such as improved housekeeping or better preventive maintenance, will be sufficient to reduce air lead levels consistently to below 50 $\mu g/m^3$. Similarly, for operations where most of the sampling results or average exposure levels are below 100 $\mu g/m^3$, OSHA believes that a combination of limited, additional and improved controls, such as extending wet control technology to all process areas, will be sufficient to control exposure levels to 50 $\mu g/m^3$.

OSHA's feasibility conclusion for the industrial battery breaking industry is supported by OSHA's previous determination that the 50 $\mu g/m^3$ PEL is feasible in captive battery breaking and by the court's upholding of that determination. *USWA* v. *Marshall*, 647 F.2d 1189. The process and control technology available and in use in captive battery breaking operations is conventional and readily applicable and transferrable to independent facilities with little, if any, modification.

Thus the controls needed to achieve 50 $\mu g/m^3$ in independent battery breaking all are conventional and readily available. OSHA has not needed to exercise its statutory authority to force the development of new technology in this industry in order to justify the Agency's finding of technological feasibility.

OSHA believes that its technological feasibility determination is conservative in at least two respects. On the one hand, as indicated above, most independent battery breakers will not need to implement all of the recommended additional controls to control exposure levels below 50 $\mu g/m^3$. Some independent battery breakers should be able to consistently control exposure levels below 50 $\mu g/m^3$ solely by improving work practices and keeping the batteries and work area wet.

On the other hand, in reaching its conclusion, OSHA does not purport to have recommended an exhaustive list of additional controls. The Agency is certain that industry will be capable of devising and fine-tuning various other controls to further reduce exposure levels. Consequently, OSHA anticipates that industry will be able to consistently achieve exposure levels at or below 50 $\mu g/m^3$ in virtually every phase of battery processing.

OSHA believes that achieving the PEL requires implementing an integrated system of controls. The basic element of that system is an industrial hygiene study. Each independent battery breaker will be required by paragraph (e)(3) of the lead standard (29 CFR 1910.1025) to establish and implement a written compliance program that includes an in-depth job/task analysis and a plant-wide survey. This survey and analysis should be performed by an experienced industrial hygienist who shall identify sources of emission in each task and sources of cross drafts and cross contamination. Such an analysis should also recommend appropriate engineering and work practice controls to control emissions, control cross drafts and cross contamination, and generally to minimize employee exposures. If, after implementing these recommendations, reductions in air lead levels deviate substantially from what was anticipated, a followup industrial hygiene survey should be conducted and necessary corrections made.

The second element in that system is the development of good, written housekeeping and work practice programs, as required by paragraph (e)(3)(ii)(F) of the lead standard, that are systematically implemented so that proper work procedures are routinely and meticulously followed. For example, equipment should be washed down daily.

The final element of an integrated system of controls is a preventive maintenance program to assure that all systems are maintained in clean and efficient condition.

The independent battery breaking industry does not agree that a PEL of 50 $\mu g/m^3$ is achievable. Industry's disagreement is based upon four main arguments. The four main arguments are: a prior OSHA contractor concluded that 50 $\mu g/m^3$ is not feasible; Ashland cannot achieve 50 $\mu g/m^3$ even though it has implemented state-of-the-art controls and further technology does not exist to control exposure levels to 50 $\mu g/m^3$; Meridian's report is incorrect, incompetent and unsupported; and the evidence in the remand record does not support a determination that 50 $\mu g/m^3$ is technologically feasible.

First, industry asserts that OSHA's contractor, JACA, previously concluded that it was not technologically feasible to achieve 50 $\mu g/m^3$ by means of engineering and work practice controls (Ex. 382–88, pp. 6–8). Industry asserts that JACA found that even after implementing additional controls exposure levels would be in excess of 50 $\mu g/m^3$ in cutting and sawing, dumping and loading with front-end loaders; and that JACA advised OSHA that respirator utilization would continue to be required to achieve 50 $\mu g/m^3$.

OSHA does not agree. JACA stated that "[a] strong case can be made for [the] technological feasibility" of achieving a PEL of 50 $\mu g/m^3$ by means of engineering and work practice controls:

> Although the precise achievable exposure levels cannot be determined in advance for any one plant, there is no known physical reason why exposure levels could not be brought into compliance with [50 $\mu g/m^3$]. (Ex. 553–7, p. 1–13)

JACA's conclusion of technological feasibility is predicated on its express findings that with controls typical air lead levels could be controlled to or below 50 $\mu g/m^3$ in almost every

operation: unloading, tipping, cutting and sawing, dumping, crushing, separating and loading (Ex. 553-7, p. 1-8). As to these operations, industry simply misunderstands JACA's report. In three other operations, grinding, paste drying and furnace, JACA did find that exposure levels would be in excess of 50 $\mu g/m^3$ even with controls. However, there is no evidence in the remand record nor any assertion by industry that independent battery breakers continue to perform these three operations.

Industry also misunderstands JACA's report when it asserts that JACA found that respirators would still be required to achieve 50 $\mu g/m^3$. While JACA did note that the industry as a whole was quite far from compliance in 1982 without regard to use of respirators, JACA did find that "numerous technological innovations are available for implementation to reduce exposure levels" (Ex. 553-7, p. 1-13). This point is especially important today because JACA's list of control technologies available to the industry did not include certain recent control technologies, such as Saturn shredders, cutting torch ventilation and wet shipment of groups.

Finally, industry also asserts that the JACA report effectively concluded that a PEL of 50 $\mu g/m^3$ was infeasible when JACA said "evidence suggests that a combination of automation/isolation, with controls on work practices (particularly housekeeping) should be able to bring exposure levels quite *close to* the PEL of 50 $\mu g/m^3$ "(emphasis added). Far from being a conclusion that 50 $\mu g/m^3$ is technologically infeasible, JACA's finding was that independent battery breakers can almost achieve 50 $\mu g/m^3$ solely by automating and enclosing equipment and implementing good work practices. OSHA agrees with JACA's finding, as far as it goes.

OSHA also believes that these controls in combination with implementation and improvements in process equipment (e.g., Saturn shredder), water spray systems and/or ventilation will bring exposure levels in this industry consistently to or below 50 $\mu g/m^3$. In addition, OSHA's believes that, with the implementation of good work practices and ventilation, the industry can bring exposure levels in industrial battery cutting close to 50 $\mu g/m^3$.

Second, industry argues that Ashland cannot achieve 50 $\mu g/m^3$ even though it has implemented state-of-the-art controls and that further technology does not exist to control exposure levels at Ashland and Ace to 50 $\mu g/m^3$ (Exs. 582-88, p. 14; 680, p. 2; 694-1, pp. 4-5, 13, 16). While OSHA concedes that, based on data submitted by Ashland, the company is not achieving 50 $\mu g/m^3$ in all operations all of the time, the Agency does not agree that Ashland has not been able, or is presently unable to achieve 50 $\mu g/m^3$. OSHA maintains that, despite the characterization of Ashland as "state-of-the-art," there are many additional controls and improvements that can be implemented there. For example, Ashland still has not replaced manual shakeout of batteries with automated and enclosed dumping equipment, a control technology that has been implemented successfully at least since 1982 (Exs. 553-7, p. 1-7; 687-1). Also, at Ashland batteries are still manually unloaded from delivery trucks. Nonetheless, OSHA has shown that at Ashland by 1986 sampling results and average exposure levels already were close to or below 50 $\mu g/m^3$ in all operations.

Ace argues that no technology exists to further reduce exposure levels at its facility. However, Ace has not enclosed any of its production equipment, another control technology that most independent battery breakers had already implemented on cutting and dumping equipment by 1982 (Ex. 553-7, p. 1-7). Like Ashland, batteries also are still manually unloaded at Ace.

Thus, the reason that Ashland and Ace are not achieving 50 $\mu g/m^3$ consistently is not because they have reached the limits of technological feasibility. Rather, it is because they have not implemented readily available, conventional controls that other battery breaking facilities have found successful in reducing exposure levels. Consequently, OSHA is unpersuaded by industry's argument that Ace and Ashland have "state-of-the-art" technology, have been unable to achieve 50 $\mu g/m^3$ and that therefore the PEL is unachievable by engineering and work practice controls.

Third, industry asserts that Meridian's report is incorrect, incompetent and unsupported by the record (Exs. 582-88, p. 16; 694-39, p. 3). On the whole, OSHA rejects these criticisms and believes that Meridian did a creditable job, particularly given the time and resource constraints under which it was operating.

Meridian has had extensive experience and possesses very broad competence in the area of industrial hygiene, the principles of which are universally applicable to all industries. It also has broad expertise and experience in assessing factors relevant to technological feasibility. Physically, there is nothing unique about lead dust or about independent battery breaking that would make Meridian's extensive expertise and competence in evaluating engineering and work practice controls across many industries irrelevant to this industry. The control technologies recommended here to achieve 50 $\mu g/m^3$ are conventional and transferrable from similar industries and from captive battery breaking, and the effectiveness of these controls in reducing air lead levels also is the same across industries.

OSHA concludes that Meridian's reports and its conclusions are based upon the best available evidence. Meridian's reports, including revisions to its preliminary report based upon industry comments, generally are firmly grounded in the record and its conclusions are based on numerous sources in that record. These include data, other evidence and comments submitted by employers, trade associations and other interested parties.

In any event, OSHA has independently assessed the record, reviewed Meridian's final report for accuracy, taken account of industry's comments on that report, and relied only in part upon the Meridian reports for the Agency's determination of technological feasibility.

Fourth, industry asserts that the evidence in the remand record does not support a determination that 50 $\mu g/m^3$ is technologically feasible. OSHA disagrees with this argument, as this feasibility assessment indicates.

OSHA's statutory obligation is to make its feasibility determination based on the best available evidence in the record. OSHA has actively sought to collect and develop a full and accurate record. OSHA is persuaded that it has more than enough information and data in the record upon which to base its determination of technological feasibility.

In arguing that the record does not support the feasibility of 50 $\mu g/m^3$, the Institute of Scrap Recycling Industries, Inc. (ISRI), asserts that 200 $\mu g/m^3$ is the lowest feasible level technologically achievable (Ex. 582-88, pp. 6, 21) and Ace asserts that a level of 100-125 $\mu g/m^3$ in five years is the lowest feasible level (Ex. 694-1, p. 10). Both ISRI and Ace have failed to present data and information to support their positions. In fact, the data supplied by ISRI for Ashland shows that, by 1986, 50 $\mu g/m^3$ already is being achieved or is close to being achieved in every operation.

OSHA therefore finds unpersuasive industry's argument that the evidence in the record is insufficient to prove the technological feasibility of a PEL of 50 $\mu g/m^3$.

Thus, for all the above reasons, OSHA is unpersuaded by industry's arguments that the PEL cannot be achieved by means of engineering and work practice controls. Based upon its own expertise, experience and the record evidence, OSHA concludes that a PEL of 50 $\mu g/m^3$ is achievable in the independent battery breaking industry by means of engineering and work practice controls, with the possible exception of large industrial battery cutting. In that operation it may be necessary for employers to rely upon respirators for supplemental protection.

Industry Profile. This sector is comprised of establishments which break down used batteries into various components, including used lead cells, polypropylene and other plastics, and sulfuric acid. Firms in the independent battery breaking sector own facilities that process batteries but do not engage in secondary lead smelting; instead, these companies sell the recovered lead to secondary smelters.

It is believed that at least three independent battery breakers are in operation today, with the total lead exposed workforce estimated at approximately 30 employees. This represents a dramatic decline from the estimated 250 independent battery breaking firms operating in 1978.

For most of the current decade, economic conditions have not been favorable for independent battery breaking. Prices of pig lead and scrap lead, while peaking in 1979, declined substantially through 1985 at which point they approached historic lows [Ex. 576, p. 5]. Additionally, many battery breaking facilities had accumulated large piles of used battery casings and disposal of this hazardous waste required substantial financial outlays [Ex. 576, p. 2]. Recently prices have risen significantly and the current price is about 37 cents per pound. In response to the increase in the price of lead, one independent battery breaker, Ashland Metals Company, which ceased operations in July 1986, has reopened under new ownership to conduct "limited operations." [Ex. 686f, p. 1]. Another indication that financial conditions for battery breakers are improving is the reported opening of a new facility [Ex. 686f, p. 2].

Secondary smelters purchase the lead product produced by the independent breaker. It is reported by the industry that the independent breaker is forced to produce its product at the price being paid by the smelter [Ex. 694-1, p. 7].

Financial information was received from one independent battery breaker [Ex. 694-1]. Rates of return on assets (ROA), equity, and net worth were presented for the years 1983 through 1987 and reflect both the recent increase in lead prices and the preceding lows; rates were negative in 1986 but positive in 1987. The ROA for this firm in 1987 was 22.06 percent, with all returns lead related. Since resuming operations, Ashland Metals is also believed to be profitable [Ex. 686f, p. 8]. No information has been submitted with regard to other independent breakers.

Costs of Compliance. The costs to be borne by an independent battery breaker have been based on the incremental costs which are estimated to be incurred by two independent breakers, Ashland Metals and Ace Battery.

Independent battery breakers may be able to control exposure levels in every operation except industrial battery cutting through the use of wet controls. Incremental costs for a water spray system were estimated to be about $14,000 (based on Means Site Work Cost Data, 1987). Annualized capital costs would be $2,054 and O&M costs would be $1,399. Total annual costs for the water system are estimated to be $3,453.

Ace Battery, however, already primarily relies on wet control technology; thus, incremental costs for improvements to this facility's wet control system were assumed to be minimal.

Ventilation costs for industrial battery cutting operations are estimated to be $17,500, based on air volume requirements of 2,500 cfm and a unit cost of $7 per cfm [Exs. 686f; 643]. Annualized capital costs would be $2,569 and O&M costs would be $1,750. The total annual cost for ventilation was $4,319. Costs were not estimated for ventilation of the industrial battery cutter for Ashland since information in the public record indicated that this facility had already implemented some ventilation at this operation and that further improvements were being investigated [Ex. 668F].

Thus, annual costs for Ashland Metals for the technology described above would be $3,453 (for water controls) while annual costs for Ace would be $4,319 (for ventilation of the industrial battery cutter).

To the extent that water control technology cannot reduce exposure levels below 50 $\mu g/m^3$ in all operations, costs for additional controls may be incurred as described below; it is unlikely, however, that either facility will require each control.

Additional costs for the Ashland facility could include costs for an automated, enclosed dumper; enclosure of the hammermill; ventilation of the low speed saw; enclosing and ventilating cabs of payloaders; and additional housekeeping.

Costs for an automatic dumper are estimated to be $57,000 [Ex. 686f, p. 7]. (It is assumed that this cost includes enclosure.) Annualized capital costs would be $8,368, based on a twelve year useful life and a 10 percent cost of capital. Operating and maintenance (O&M) expenses would be approximately 10 percent of capital costs, or $5,700. Total annual costs for this equipment are thus estimated to be $14,068.

OSHA assumes the costs of enclosing the hammermill to be $10,000. Annualized capital costs are estimated to be $1,468. O&M costs are estimated to be negligible, as this control would require little or no maintenance.

Costs for ventilation of the low speed saw were estimated to be $17,500, based on an air volume requirement of 2,500 cfm and a unit cost of $7 per cfm [Exs. 686f; 643]. Annualized capital costs would be $2,569 and O&M costs would be $1,750. The total annual cost for this system was thus estimated to be $4,319.

Costs for cab enclosures were estimated to be $5,000 per unit [Ex. 686c, pp. 32-33.] Annualized capital costs would be $734 per unit, and annual O&M expenses would be $3,600, including HEPA filter replacement. Assuming four such cabs are required for the Ashland facility, total annual costs for cab enclosures were estimated to be $17,336.

Finally, costs incurred for additional housekeeping will be $975. (This estimate assumes that one-half hour of labor per day will be required 5 days per week for 50 weeks at an hourly wage of $7.80).

Thus, total annual incremental costs for the Ashland Metals plant were estimated to range from $3,453 to $41,619.

Additional costs for the Ace Battery plant could include costs for enclosure of the automatic dumper; enclosure of the hammermill; ventilation of the low speed saw; enclosing and ventilating cabs of payloaders; and additional housekeeping.

Costs for enclosure of the hammermill, enclosing and ventilating cabs of payloaders, ventilation of the low speed saw, and additional housekeeping were computed above for the Ashland Metals facility. Annual costs for enclosure of the automatic dumper are estimated to be the same as those assumed for enclosure of the hammermill, $1,468.

Total annual costs for the Ace Battery facility were thus estimated to range from $4,319 to $29,885.

The initial costs of an industrial hygiene survey were estimated to be

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$1,000. Such a survey would require one day to survey the work area and one day to collect exposure data and to evaluate existing controls. No recurring costs would be required.

Compliance costs for the new facility reported to be opening were assumed to be negligible, as this facility will be using fully automated equipment [Ex. 686f, p. 2].

Based on evidence in the public record which indicates the existence of three independent battery breakers, total annual incremental costs for this industry were estimated to range from $7,772 to $71,504. (OSHA does not have sufficient information to suggest that there are more than three independent breakers).

Economic Feasibility. The financial data submitted by the Battery Salvage Division of Ace Battery, Inc., along with information provided to OSHA by its contractor, Meridian Research, indicate that profitability for the independent battery breakers is highly dependent upon the price of lead. Ace Battery also provided production volume data [Ex. 694–1, p. 15]. No financial information was submitted into the record regarding Ashland.

Ace battery processes approximately 1.3 million batteries per year [Ex. 694–1, p. 15]. To the recycler, these batteries represent about $2 in revenue each. Thus, revenues for this facility are estimated to have been about $2.6 million, necessitating a price increase of about 0.2 to 1.1 percent to offset the costs of compliance. Ashland was reported to have the capacity to process 10,000 batteries per day [Ex. 576]. After ceasing operations in 1986, however, it reopened under new management one year later and began limited operations [Ex. 686f], and OSHA assumes that at least 5,000 batteries are currently processed per day at this facility. Thus, price increases required for full pass-through for Ashland would be about 0.1 to 1.6 percent.

The ability to pass costs forward is reported by industry to be limited, as the independent breaker must take the price offered by the secondary smelter [Ex. 694–1, p. 7]. However, as smelter demand for lead battery plates exceeds their capacity to produce these plates themselves, strong demand may allow the independent breakers to increase prices.

Inventory and seasonal fluctuations affect battery breaking operations. A smelter with a two or three month stock of plates will not be inclined to buy plates from an independent breaker. Also, battery disposal slacks off during the summer months. Both of these situations result in the battery breaker having to periodically cut back its operations which in turn limits its ability to pass costs forward to smelters or backward to suppliers.

Though no estimates of profit levels were provided by the independent battery breakers, evidence suggests that 1987 prices allowed at least one independent breaker, Ace Battery, to realize revenues and rates of return sufficient to allow the annual costs to be absorbed [Ex. 694–1]. (It was reported that a strike at a major lead mine and smelter in Canada was probably responsible for higher prices; while this increase could be temporary, prices have not yet fallen). Based on the revenue estimates developed above, OSHA computed profit impacts based on an assumed rate of return on sales (ROS) of 5 percent. OSHA believes this rate of return to be a reasonable estimate, since return on assets for Ace was over 22 percent in 1987. This ROS would result in profits of $130,000 for both Ace and Ashland. Associated profit impacts were estimated to fall between 2.3 and 16.1 percent for Ace and 1.9 and 22.4 for Ashland. It should be noted that the tax deductibility of compliance costs was taken into account in computing profit impacts. That is, care was taken to compute before-tax profit before subtracting annual costs. After subtracting annual costs, the appropriate average tax rate (30 percent) was then reapplied to determine after-tax profit net of costs. OSHA's estimates of post-compliance ROS range from 4.2 to 4.9 percent for Ace, 3.9 to 4.9 percent for Ashland. Since Ace realized an ROA of over 22 percent in 1987, as noted above, indications are that compliance costs can be absorbed without undue burden on profitability.

OSHA does not feel that the structure of the battery breaking industry will be further disrupted by regulating independent breakers. There are now 18 secondary smelters with breaking operations (these are already required to meet the 50 microgram per cubic meter standard and are reported to be complying) as well as the 3 independent breakers documented in the record. The regional nature of the supply and demand relationship in the secondary lead industry is such that it is doubtful that many of these facilities compete directly with one another.

OSHA finds that the 50 $\mu g/m^3$ PEL is economically feasible for the Independent Battery Breaking Industry within a two and one-half year compliance period. One firm is estimated to incur no cost. For two other firms, impacts are not projected to place undue burden on profitability. Thus, this rulemaking will not disrupt the battery breaking industry in the U.S., and it may accelerate the shift to more environmentally sound technology and plant design. Also, the decision to open a new independent battery breaking facility indicates industry confidence in continued profitability.

3. Lead Chemicals—Process Description. Lead oxides are the major product produced by the lead chemical industry, accounting for approximately 85% of total industry production by weight (Ex. 575, pp. 7–9). Thus, the production of lead chemicals is largely the production of lead oxides. Lead oxides are produced exclusively by a dry process, which essentially involves the creation and collection of oxidized lead dust. Lead oxides are interacted with appropriate acids in a wet process to produce other lead chemicals like lead soaps and stabilizers.

Dry Process. Overview: The manufacturing process of lead oxide begins with the melting of pig lead in a melt pot. From the melt pot, the molten metal flows into a Barton kettle, where it is oxidized by aeration. The resulting lead oxide is then collected as dust, which can either be sold as product (high-metallic lead oxide ("HM")) or be further oxidized in other furnaces to form red lead or litharge, the main products of the industry.

a. Production of High-Metallic Lead Oxide: HM lead oxide is approximately 70% to 80% lead oxide (PbO); the balance is metallic lead. HM lead oxide is produced from elemental lead pigs and ingots, which are received at plants aboard rail cars and transported by fork lift trucks to the melt areas as needed. The lead is then fed by hoist or conveyor into a heated pot a few feet in diameter to be melted. The melt must be drossed to remove impurities on the average of once a day (Ex. 684b, p. 2). Drossing takes 5 to 15 minutes (Exs. 684b, p. 2 and 694–9, p. 23).

From the melt, molten lead flows down a trough or is pumped to an adjacent Barton kettle. To produce lead oxide, the molten lead in the Barton is agitated and exposed to an air stream created by an exhaust fan associated with a dust collector, which pulls air into the Barton. The air stream then draws the lead oxide and lead fume off from the Barton through cooling and settling chambers and cyclones into a bag-filter dust collector. The filtered air is exhausted to the outside atmosphere.

As the air stream moves from the Barton kettle through the process, lead oxide particles are collected in settling chambers, cyclone separators and bag houses. The product is then transferred by screw conveyors, bucket elevators and/or pneumatic conveying systems to storage hoppers. Thereafter, the HM oxide may be milled to produce a finer product or fed by mechanized or pneumatic material transfer systems to the calcining furnaces for further oxidation, to produce red lead or litharge.

b. Calcining: Both litharge (PbO) and red lead (Pb_3O_4) are made by heating and further oxidizing HM lead oxide in a calcining furnace. The process takes place at high temperatures, with continuous mixing for hours. In older plants, red lead and litharge are produced in "rake" furnaces, where the lead oxide is continuously turned over by rakes to oxidize it. At the end of these oxidation processes, the lead oxides are cooled and transferred by mechanized or pneumatic material transfer systems to hoppers for storage prior to milling and/or bulk loading or packaging.

c. Grinding and Blending: Some portion of lead oxides are milled or ground to size, commonly in hammermills. The entire process occurs in a closed system operated under negative pressure. The finished material is collected in bag houses and gravity fed or conveyed to hoppers for storage. Milled products stored from different batches are sometimes blended to meet product specifications. These processes and connecting conveying systems generally are mechanized.

d. Packaging and Shipping: Over 85% of all lead oxides are shipped from the producing plants in bulk by truck or rail car (See "Additional Controls," below). Another portion of the product is shipped in semi-bulk containers, like superbags and air pallets. The remaining portion is packaged for shipment in much smaller containers like drums and 20- and 50-pound paper or plastic bags.

In bulk and semi-bulk shipping, the containers are usually filled through a pipe from an overhead hopper. Smaller containers, like drums, are filled in a similar manner, except that some manual adjustment of product weight to meet customer specifications may be required at times.

The industry continues to package some of its product in bags because of customer demand for a variety of weights and package types. Some customers, for example, require that accurately-weighed contents be in plastic bags, so the bags with their contents can be thrown directly into the customers' chemical processes.

The bags are packed on bagging machines, which are fed lead oxide by gravity from overhead hoppers. The bagging operator places the valve of a bag over the machine's filling spout, and the machine fills the bag to the set cut-off weight. As the bag is being filled, the machine exhausts the displaced air from the bag. When the bag is filled, the operator removes it and places it on a scale beside the bagging machine. If the customer requires accurately-weighed contents and the bag is underweight or overweight, the operator uses a trowel and a bucket to add or remove small amounts of lead oxide. The packager then seals the bag and places it on a pallet.

Wet Processes. In wet chemical processes, lead oxide (litharge) is slurried with water and then reacted with appropriate acids to form one of numerous lead soaps and stabilizers. The manufacturing processes for these lead chemicals commonly are automated, with mechanized material transfer between hoppers and reaction tanks and remote control of the transfer, makeup, and reaction operations by operators in air-conditioned control rooms. During these processes, the product precipitates out of the reaction liquor, is separated by filtration or centrifugation, dried, and conveyed to storage hoppers. The dried product is milled and stored in hoppers again before blending, packaging, and shipping. A higher proportion of these products is shipped in non-bulk form.

Sources of Exposure. Since a lead oxide plant may produce thousands of pounds a day of fine, dust-like lead oxides and since it does not take much lead dust dispersed throughout a building to equal 50 $\mu g/m^3$, it is obvious that it is essential to prevent the escape of dust from process equipment. Although lead is present in every operation in the production of lead oxides, to the extent that the production process is entirely enclosed, mechanized and operated under negative pressure, the sources of lead exposure can be quite limited (Exs. 582–90, p. 12; 694–9, Att. 6, p. 5).

As industry sources have indicated, the production of lead oxide is highly automated. After the operator loads lead ingots into the melt kettle, the product is not handled until the product is packaged or loaded into bulk trucks (Exs. 582–90, p. 12; 694–9, Att. 6, p. 5). Consequently, except for leaks and breakdowns, there is no direct source of lead exposure for workers during that process unless they are performing periodic manual tasks that require interaction with the process (e.g., quality control sampling; Ex. 684b, p. 10). On the other hand, to the extent that portions of the production process are not fully enclosed, mechanized or operated under negative pressure, potential sources of lead emission increase. Across the industry, packaging and maintenance are generally considered the two operations that contribute most to high air lead levels (Exs. 582–90, p. 7; 694–9, Att. 2–4; Tr. 1266).

Feeding the melt pot with lead at the beginning of the production process does not appear to create substantial employee exposure to lead, in part because mechanical means are commonly used to feed the lead pigs into the melt pot and in part because the lead at this stage is still in solid form. In contrast, packaging the product at the end of the process in bags (and to a lesser extent in drums) undoubtedly contributes more than any other single operation to high employee exposure levels. At process points in between, some manual operations like drossing and product quality control sampling may also contribute to employee lead exposure.

In addition, the extensive mechanized system for transferring materials throughout the process can be a substantial source of lead exposure if it is not completely enclosed. Even where the material transfer system is completely enclosed (e.g., screw conveyors), product leaks from various points on the conveyor can be a major source of lead emission. If the source of the leak is not promptly repaired and the spilled materials promptly cleaned up, employees throughout the area can be exposed.

Aside from potential sources of exposure associated directly with production processes, employees may also be exposed to high air lead levels during maintenance, which is performed intermittently. When equipment that regularly handles large amounts of lead dust periodically has to be opened to be repaired or cleaned, the employee performing the job and others in the area may encounter air lead levels in excess of 50 $\mu g/m^3$. A very high proportion of maintenance appears to be devoted to upkeep of mechanized material transfer systems (MMTS), like bucket elevators and screw conveyors (Ex. 684c, p. 5).

As indicated, packaging is the operation that contributes most to employee exposure levels. While there may be some potential lead exposure associated with all forms of non-bulk packaging (e.g., cleaning superbags if used bags are returned), packaging in small bags generally poses the major problem.

The bagging process currently in use in the lead chemicals industry, including the handling of filled bags, involves a number of manual interventions by the

operator, all of which constitute potential sources of lead emission. For example, operators place the bag on the machine spout and remove it when the machine stops the flow of lead oxide at the desired weight. In addition, when customer specifications for product weight in the bag are precise, the operator weighs the bag and, if the weight is incorrect, manually adds or removes product to achieve the correct weight. In some cases, these tolerances can be as narrow as plus or minus 1.5 ounces for a 50-pound bag (.2%) (Tr. 1282). Furthermore, when the bag is filled, it must be closed, surface dust must be removed, and the bag must be stacked on a pallet along with other bags.

The physical attributes of lead oxide and of the bags used in packaging contribute to the exposure problems in this operation. For example, because lead oxides and many lead chemicals are sticky and may flow erratically (e.g., like flour), these substances may back up in the filling spout and then drop down unexpectedly when the operator touches the spout to attach or detach the bag. In addition, generally the bags used in this industry breathe when handled. When a bag breathes out, it emits a puff of air that may contain lead dust. Such puffs may be emitted when the bag is closed, when it is transported to and stacked on a pallet, and when other bags are stacked on top of it.

Concerning operations and exposures of workers involved in producing lead chemicals other than oxides, there is little or no information in the record of this industry. Production of these lead chemicals is largely by wet process, which tends to minimize lead emissions. However, drying, blending, and packaging of the product at the end of the process do constitute potential sources of lead exposure, as do spills of lead slurries that have been allowed to dry.

Existing Exposure Levels— The Data Sets. There are eight data sets on employee lead exposures in the record. Most of these were submitted by employers in response to a letter request from OSHA. The employer is required to collect these data and to make them available to OSHA under the lead standard (29 CFR 1910.1025(n)).

The eight data sets include data collected in 1981 by OSHA's former contractor, JACA (Exs. 553–1; 575, pp. 3–5); data from Plant A (Exs. 686E, p. 19; 688c); data from Plant B (Exs. 686E, p. 20; 684b); data from Plant C (Exs. 686E, p. 19; 684c); data from Plant X (Exs. 686E, p. 19; 688b); data from Plant M (Exs. 686E, p. 20; 688d); data from OSHA inspections (Ex. 583–4); and aggregate data from an unspecified number of plants submitted by the Oxide and Chemicals Committee of the lead industry's main trade association, the Lead Industries Association ("LIA") (Ex. 582–90, App. A).

Following the methodology for evaluating data described in the introduction to technological feasibility OSHA reviewed these eight data sets for their applicability to feasibility analysis. Of the eight, six are useable. Of these, the data submitted by Plant A, in conjunction with OSHA's 1988 site visit to that facility, constitute the most reliable evidence for assessing technological feasibility in the record.

Plant A has supplied OSHA with the most extensive set of useable data in this proceeding (Ex. 688c). The data are recent and complete for four years. The data also are effectively annotated to aid in interpretation. For example, unusually high exposure levels are typically identified by annotation, and when the causes are known they too are noted. Annotations also typically identify job tasks and work areas involved during monitoring. In addition, OSHA's site visit enables the Agency to concretely appreciate the production and control context in which these exposures have occurred, including the existing controls and production processes associated with particular exposure levels, as well as general conditions in the plant (Ex. 684a). All of this allows OSHA to effectively use the data and information made available by Plant A in making a comprehensive and well-informed assessment of technological feasibility.

For these reasons, OSHA intends to rely heavily on the record data and information made available by Plant A. OSHA believes this reliance is especially justified because technological feasibility judgments based on Plant A should be conservative for the industry as a whole. Plant A is old and not modernized. Additional, conventional engineering controls can be implemented there to reduce existing air lead levels. In addition, from the site visit it was apparent that the plant was quite dirty and that housekeeping and other work practices also can be substantially improved to further reduce air lead levels (Ex. 684a, pp. 12–13).

However, some question might be raised as to whether data and information concerning the packaging operation at Plant A can be taken as representative of the industry. Packer/blender/dryer operators (PBDs) at Plant A perform other lead-exposed operations in addition to packaging (Ex. 684a, p. 4). Nevertheless, for purposes of determining feasibility, OSHA does not consider that this fact, absent any information in the record to the contrary, makes Plant A's monitoring results for PBDs unrepresentative of packers in other plants in the industry. There are several reasons for this.

First, Plant A is not the only plant where workers who pack also perform other duties. Indeed, at Plant B, for example, there is not a category called "packer" (Ex. 684b). Workers in other named job classifications simply spend part of their time in the plant packing. Second, since Plant A appears to package a much higher proportion of its product in bags than is typical throughout the industry (see discussion below), the amount of time workers spend packaging at Plant A may actually be more, rather than less, than is typical throughout the industry. Thus, the lead exposures of Plant A's PBD operators are likely to overstate, rather than understate, exposures of operators in other plants. Finally, OSHA knows that drying and blending operations also are sources of potentially high air lead levels (see discussion of drying and blending in OSHA's technological feasibility assessment for the lead pigments industry). As a consequence, the overall lead exposure of PBDs at Plant A may also be high precisely because some of their time is allocated to drying and blending.

Consequently, OSHA's reliance on the exposure data for Plant A's PBDs as the starting point in an analysis of the feasibility of achieving 50 $\mu g/m^3$ in packaging may be conservative in that these data are likely to overstate the extent of the problem of controlling employee exposures during packaging. At worst, such reliance is unlikely to be prejudicial to the industry because it is unlikely that this approach understates the extent of the problem.

The second useable data set is from Plant B (Ex. 684b). Plant B's data also are quite extensive and recent. However, the data are not annotated to explain, where necessary, the conditions under which monitoring occurred. Thus, for example, OSHA cannot tell why in 1987 the range of 19 monitoring results for the job category of operator extends all the way from 8–579 $\mu g/m^3$, why three (259, 295, and 579 $\mu g/m^3$) of these results are unaccountably much higher than the others and why the 579 $\mu g/m^3$ result is more than three times as high as the highest of the 16 other monitoring results. Nevertheless, because OSHA gathered useful contextual information on its 1988 site visit to Plant B (Ex. 684b), OSHA finds Plant B's data set also useful for assessing technological feasibility.

The third useable data set is from Plant X (Exs. 686E, p. 19; 688e). The data in this set also are quite complete and recent. But again, the data set is not annotated to explain, where necessary, the conditions under which monitoring occurred. More importantly, the remand rulemaking record is devoid of the contextual information concerning existing controls, production processes, and general plant conditions that is so important to make sense of the data. This information is not in the record because a report of OSHA's 1987 site visit to Plant X was withdrawn from the record at the company's insistence. OSHA therefore finds the Plant X data less useful than the Plant A and Plant B data.

The fourth useable data set is from Plant M (Ex. 688d). The data provided for that plant are incomplete, especially for the three years prior to 1987. Like Plant X, no annotations to the data are provided, and OSHA's report on its site visit to the plant was removed from the record at the company's request. Moreover, Plant M uses wet and dry processes to produce lead stabilizers; it does not produce lead oxides. Generally, the data from Plant M are useable to represent the production of lead chemicals other than lead oxides. In addition, exposure data from Plant M for specific operations that are common to both oxide and non-oxide production, like packaging, are useable to represent exposure levels that are achievable throughout the industry when modernized equipment is used in such operations. The fact that the Agency cannot determine from the record precisely which among the array of conventional engineering and work practice controls are being implemented at Plant M to achieve its relatively low levels in packaging does not vitiate the reality that these levels are already being achieved there in what all concede to be among the dirtiest operations in the industry (Exs. 582–90, p. 7; 694–9, Att. 2–4; Tr. 1266–67).

The fifth useable data set is company-supplied data provided in the 1982 JACA report (Exs. 553–1; 575, pp. 3–5). OSHA concludes this report and the data in it are of only limited utility for several reasons. The data are seven years or more old. Some significant improvements to controls have been made in operations in certain plants since the time the data were collected (Ex. 585–90, pp. 12, 19). Moreover, JACA did not supply the detailed, contextual information concerning associated engineering and work practice controls, production processes and general plant conditions so important to meaningfully interpret the data. Mostly, the data and the report are useful simply to confirm the broad outlines of industry exposure patterns. For example, then as now, the highest exposure levels occur in packing, and employees who work in other operations appear to suffer higher levels of exposure due to cross contamination from lead emissions in the packaging operation and in material transfers (Ex. 684a, p. 13).

The sixth useable data set is comprised of data from OSHA inspections between June 1979 and March 1987, which is contained in OSHA's Integrated Management Information System ("IMIS"; Ex. 583–4). Because this data set may include some monitoring results from unrelated industry sectors, and because the number of total samples is small and is dispersed among a number of plants, and because little associated, contextual information is provided, OSHA finds this data set of only minimal utility. The IMIS data demonstrate that, for the plants inspected, more than 40% of all employee monitoring results were below 50 $\mu g/m^3$.

The remaining two data sets have very limited value. One, the LIA data set (Ex. 582–90, Appendix A and pp. 7–8), does not identify which plants are represented and, more importantly, is not organized according to plants. The participating plants' data for a period ranging from January 1985 to August 1987 are pooled and then divided according to five job classifications. Thus, OSHA cannot determine exposure levels operation by operation in each plant. Moreover, regarding existing controls, LIA provides nothing that can be used to establish which controls were in place when monitoring was conducted. As a result, OSHA cannot determine from the LIA submission what controls are associated with particular exposure levels.

Moreover, although LIA provides what it claims to be typical ranges of exposure data for the five job categories, the ranges do not accurately reflect much of the raw data LIA submits for these very categories. No explanation of the apparent discrepancy is provided. LIA also does not distinguish between exposure levels in new and old plants or between exposure levels in lead oxide production (dry process) and in other lead chemical production (mostly wet process). Thus, monitoring results from potentially very different plants and operations are inextricably mixed together in this data set.

In addition, based upon the data discussed below, OSHA knows that the extremely wide range of monitoring results for each job classification (e.g., packer, from 22 $\mu g/m^3$ to 2,009 $\mu g/m^3$) and the high averages for nearly all job classifications (e.g., leadman, 338 $\mu g/m^3$) reflected in this data set are not representative of the current best operations in the industry or of what can be achieved. For all the above reasons, OSHA finds the LIA data of very limited use for purposes of determining technological feasibility in this rulemaking. Fortunately, the three largest companies in the industry, which were the industry employers who were most active in the rulemaking, independently submitted data plant by plant and provided other information that are much more detailed and useful than what LIA provided.

The other data set that has very limited value is provided by Plant C. Although OSHA made a site visit to this plant and thus was able to obtain the kind of contextual information about controls and processes that is important in interpreting exposure data, the actual exposure data provided by the company are sparse (Ex. 684c). In fact, many fewer employee sampling results were submitted than are required by the lead standard. In 1987, for example, only eight personal samples are reported to have been collected for the entire plant, all on two days near the end of the year. Moreover, the data consist primarily of area samples, which are of only limited use in determining actual employee exposure levels, and include very few personal monitoring results.

In addition, the data are not broken down according to named job classifications or named operations. Plant C also does not provide notations concerning operating conditions that existed on the two days that employee sampling was carried out, despite the fact that three of the eight sampling results are as high as 737 $\mu g/m^3$, 633 $\mu g/m^3$, and 514 $\mu g/m^3$. Consequently, OSHA cannot correlate information concerning existing controls with adequate data reflecting employee exposure levels operation by operation. OSHA therefore finds Plant C's data set provides very little useful information for assessing technological feasibility.

Analyzing the Data. As indicated, the Plant A data are the most useable. Plant A submitted data for the years 1984–87 in nine job classifications: chemical operator, general laborer, oxide operator, packer/blender/dryer (PBD), sanitary worker, warehouseman, machinist, electrician, and maintenance (Ex. 688c; Table 1, below). OSHA has

combined data for electricians with data for maintenance, because electricians perform maintenance work. OSHA treats another category, machinist, as having air lead levels below 50 $\mu g/m^3$.

There are no monitoring data for machinist in 1986 and 1987, presumably because no sampling was conducted in those years due to the fact that monitoring results in 1984 and 1985 were below the action level. In any event, the available data for machinists at Plant A show air lead levels below the action level.

As of 1987, a majority of all sampling results at Plant A already are below 50 $\mu g/m^3$. In the same year, geometric mean exposure levels in six of eight job classifications also are below 50 $\mu g/m^3$, and geometric means in all eight are at or below 65 $\mu g/m^3$. Moreover, in five of the seven job classifications for which data are provided in 1987, geometric mean exposure levels are lower than they were in 1984. In addition, the average geometric mean for each job classification over the four years also are quite low; they are at or below 50 $\mu g/m^3$ in 5 of the 8 job classifications. In two of the remaining jobs the geometric mean for the four years is only 55 $\mu g/m^3$ and 59 $\mu g/m^3$. In the other, PBD, the geometric mean for the four years is 84 $\mu g/m^3$.

TABLE 1.—SUMMARY OF EXPOSURE DATA FOR PLANT A, 1984–87

Job classification [1]	Annual geometric mean exposure level [2]				Combined years [4]
	1984	1985	1986	1987	
Chemical Operator	34	30	44	35	35
Oxide Operator	38	51	95	62	59
Packer/Blender/Dryer Operator (PBD)	68	79	121	65	84
Warehouseman	22	36	40	6	25
General Laborer	47	78	95	19	55
Sanitary Worker	54	26	61	8	36
Maintenance	34	27	82	22	46
Combined Jobs [3]	42	44	80	34	49

[1] The job classification of "machinist" was not included in this table.
[2] For purposes of calculating geometric means, exposure monitoring results of 0 $\mu g/m^3$ were treated as 1 $\mu g/m^3$, which is approximately one-half the level of detectability.
[3] The geometric mean for "Combined Jobs" is the geometric mean for all observations across all job categories for that year.
[4] The geometric mean for "Combined Years" is the geometric mean for all observations across all years.

Data from Plant M confirm that by 1987 levels at or around 50 $\mu g/m^3$ already are being achieved in packaging at plants with better controls in the industry (Ex. 688d; see Table 2, below). These data further indicate that exposure levels for all other job classifications in this lead stabilizer plant also are being controlled fairly consistently to below 50 $\mu g/m^3$. For example, in both 1986 and 1987 two-thirds of all sampling results were below 50 $\mu g/m^3$. This represents a doubling of the proportion of sampling results below 50 $\mu g/m^3$ since 1984. Moreover, in 1987 geometric mean exposure levels in all job classifications were at or below 50 $\mu g/m^3$, and the geometric mean for all lead-exposed jobs was only 18 $\mu g/m^3$. In 1986, geometric mean exposure levels in all jobs except packer were below 50 $\mu g/m^3$, and the geometric mean for all lead-exposed jobs was 15 $\mu g/m^3$. In 1986, the packer had a geometric mean exposure level of 83 $\mu g/m^3$.

TABLE 2.— SUMMARY OF EXPOSURE DATA FOR PLANT M IN 1986–87

Job classification	Annual geometric mean exposure level [1]		Combined Years [2]
	1986	1987	
Production operator	18	23	20
Production foreman	5	6	6
Packer	83	50	64
Packing foreman	6	15	10
Warehouse worker	8	15	10
Maintenance	46	32	39
Combined jobs [2]	15	18	17

[1] For purposes of calculating geometric means, exposure monitoring results of 0 $\mu g/m^3$ were treated as 1 $\mu g/m^3$, which is approximately one-half the level of detectability.
[2] The geometric mean for "Combined Jobs" is the geometric mean for all observations across all job categories for that year.
[3] The geometric mean for "Combined Years" is the geometric mean for all observations across all years.

At Plant B, like Plant M, a much newer plant than Plant A, exposure levels unaccountably tend to be considerably higher than at either of the other two (Ex. 684b). Nonetheless, from 1985 through 1987, in 3 of the 4 job classifications geometric mean exposure levels are all below 100 $\mu g/m^3$. Only the job classification of operator has a geometric mean that is over 100 $\mu g/m^3$ in most years. Moreover, there is a striking trend at Plant B for all four job classifications: the geometric mean exposure levels have been reduced dramatically since 1984. On the average, exposure levels have been halved, with reductions ranging from 27% in maintenance to 80% for leadman (See Table 3, below).

TABLE 3.— SUMMARY OF EXPOSURE DATA FOR PLANT B, 1984–87

Job classification	Annual Geometric Mean Exposure Level				Combined Years [2]
	1984	1985	1986	1987	
Operator	176	119	84	103	115
Shipper	94	46	88	59	68
Maintenance	125	63	92	91	90
Leadman (Supervisor)	146	90	51	29	66
Combined Jobs [1]	144	85	77	73	90

[1] The geometric mean for "Combined Jobs" is the geometric mean for all observations across all job categories for that year.
[2] The geometric mean for "Combined Years" is the geometric mean for all observations across all years.

The most important point to make about the Plant B data is that exposure levels for operators are higher than they would otherwise be if operators performed only typical operator tasks. At Plant B operators are rotated into the packaging operation to pack out product in small bags and drums (Ex. 684b, p. 3), and packaging probably constitutes the main source of operators' lead exposure.

OSHA has reached this conclusion for the following reasons. Plant B has no separate job classification for packers. Yet the company concedes that approximately 15% of its product is packed out in bags and drums and that packaging is one of the two main sources of lead emissions in the plant (Ex. 684b, p. 9). Thus, employees not designated as packers must act as packers for a significant part of the time. The company also indicates that it rotates various employees into packaging to limit each employee's exposure to lead (e.g., Exs. 686E, p. 28; 694–9, Att. 6, p. 31). Since the company is unlikely to routinely rotate supervisors (i.e., leadmen) or maintenance workers into such a production job, packaging must be done by operators and/or shippers. Because operators usually have much higher average and geometric mean exposure levels than shippers, OSHA concludes that operators probably perform the bulk of the packaging. A substantial reduction in lead emissions from packaging, therefore, is likely to substantially reduce the exposures of all workers who pack, especially the exposures of operators, the workers with the highest lead exposures in the plant.

The final data set that OSHA wishes to discuss further is from Plant X. That plant's data reflect exposure levels that are extremely high. Monitoring results indicate that the plant frequently exceeds the applicable PEL of 200 $\mu g/m^3$. For example, the average exposure level for all lead-exposed employees was 237 $\mu g/m^3$ in 1987 (Ex. 688e).

Based upon its analysis of data, including data from Plant A, another older plant, OSHA believes that exposures in Plant X can be much more effectively controlled and concludes that the high exposure levels at Plant X can only be attributed to poor controls. OSHA, therefore, does not rely on Plant X data to determine the limits of technological feasibility. Rather, OSHA relies on the data from Plant A as indicative of what can be achieved even in old plants in the industry.

In addition to the data discussed above, OSHA also was informed by the president of the parent company of Plant C that at its three other plants the company already is achieving 50 $\mu g/m^3$ in all operations except maintenance and packaging (Ex. 684c, p. 5). In the 3 plants achieving this level, all product is shipped in bulk and no packaging is carried out. The president further informed OSHA that, after moving Plant C into a new facility, he also expects to achieve 50 $\mu g/m^3$ in all operations there, except for maintenance and packaging, since it is expected that 5% of the product will continue to be packaged in drums. The president also stated emphatically that in 5 years or less all of his employees, with the exception of maintenance workers and non-bulk packers, would have exposure levels at or below 50 $\mu g/m^3$ (Ex. 684c, pp. 1 and 5).

Thus, in 6 of the 8 plants owned by the three major companies in the industry (i.e., Plant A, Plant M, and the four facilities operated by the owner of Plant C), exposure levels either already are, or in the foreseeable future will be controlled to 50 $\mu g/m^3$ in almost all operations.

In its analysis of exposure levels, OSHA has relied to a considerable extent on the geometric mean. As indicated in the introduction to the assessment of technological feasibility, OSHA recognizes that there is no single number, or even range of numbers, that can perfectly characterize a data set. A mere range of exposure levels (e.g., from 8 $\mu g/m^3$ to 579 $\mu g/m^3$ for operator at Plant B in 1987; Ex. 684b), provides very little useful information about typical exposure levels. Similarly, the arithmetic mean, which is equivalent to the commonly used "average," provides little insight into the distribution of exposures and is subject to gross distortion by high or low numbers.

Thus, for example, at Plant A in 1987, more than 60% of the 31 sampling results for maintenance workers are below 50 $\mu g/m^3$, but the arithmetic mean is 152 $\mu g/m^3$ (Ex. 688c). This is simply because one result is 1,715. By contrast, the geometric mean is 22 $\mu g/m^3$, which more accurately reflects routine exposure levels. Consequently, OSHA believes that where data sets are lognormally distributed, as is typically the case with exposure data, the geometric mean is the best single statistic to summarize the data set. The commenter for Company B appears to agree: "The geometric mean may be the best method to analyze the lead exposure data" (Ex. 694–9, Comments by Company B, p. 15, and see p. 21).

OSHA is further assured of the reasonableness of relying upon a geometric mean by the fact that it appears to fit well with the court's definition of feasibility. *USWA* v. *Marshall*, 647 F.2d at 1272. For a PEL to be technologically feasible, the court does not require that all operations be able to achieve the PEL all of the time. Consequently, the mere existence of aberrant exposure readings does not constitute proof of infeasibility.

In using the geometric mean to characterize exposure data, the outliers that are discounted include both high and low monitoring results. Very high monitoring results can affect the mean more than low results, because on the low side monitoring results cannot fall below zero. Extremely high, atypical exposure levels often are caused by unusual events, like operation upsets and spills or monitoring problems, such as "a piece of particulate getting into the sample" (Ex. 684e, p. 7; Tr. 1176). Without knowing the cause of these extreme values, OSHA believes it is inappropriate to use the arithmetic mean. OSHA's use of the geometric mean is also supported by the opinions of some representatives of the lead industries and by Meridian (e.g., Exs. 581–4–B, p. 4; 694–6, p. 2; 686A, p. 12–13). Therefore, OSHA primarily uses the geometric mean in its feasibility analysis.

Current Controls. OSHA's discussion of current exposure levels in the previous section indicates that in 1987 with existing controls Plant A, an old plant, already had a majority of all sampling results below 50 $\mu g/m^3$ and geometric mean exposure levels in 6 of 8 job classifications below 50 $\mu g/m^3$. It also indicates that in 6 of 8 plants owned by the three major producers in the industry, which represent over 80% of all production, exposure levels already have been, or in the foreseeable future will be controlled with existing controls to or below 50 $\mu g/m^3$ most of the time in most operations.

The primary methods currently used to control air lead levels to these exposure levels are dust collection systems, ventilation, housekeeping, and replacement of packaging product in bags and drums, which requires manual intervention, with bulk and semi-bulk shipment. In addition, at least Plant A has developed reduced-dust products that should reduce exposure levels in

packaging and perhaps other operations (Ex. 684a, p. 14).

Meridian reports that in general the level of controls is considerably higher in relatively new plants than in old ones. For example, Meridian reports that in new plants housekeeping and preventive maintenance programs generally are better by a substantial margin. In addition, in relatively new plants most major pieces of equipment and packaging are ventilated and either fully or partially enclosed.

OSHA's best information on existing controls comes from its site visits to Plant A, Plant B and Plant C. OSHA believes the controls in place at all three companies are conventional in character and readily available in the marketplace. At Plant B, for example, the only relatively new plant among the three OSHA visited, prevailing engineering controls have been in place since 1974 and are therefore extremely likely to be part of common knowledge in the industry. Based upon this information, OSHA finds the following current controls in the various operations.

General Building. Both Plant A and Plant B provide general dilution ventilation with roof exhaust fans (Exs. 684a; 684b). This system is designed to provide a minimal level of air flow throughout the building and is not intended to provide control of lead contamination at specific locations. At Plant A makeup air for this system is provided by open building doors (Ex. 684a, p. 10). At Plant B the building, as well as the equipment, is maintained under negative pressure by exhaust fans, most of which are linked to the production equipment, which draws air in from surrounding areas (Ex. 684b, p. 5).

Dry Process. The primary method both for processing lead oxides and chemicals and for controlling lead emissions during production is a dust collection system. The system is designed to collect the dust product throughout the production process from most major pieces of equipment, conveyors and product packaging machines. At Plant A, for example, each major piece of equipment (e.g., Barton pots, calcining furnaces, weighing hoppers) is connected to exhaust and collection systems to draw dust through collection ducts surrounding the equipment to product collection vessels (e.g., cyclones). From the final collector, a baghouse, the air is exhausted to the outside atmosphere by an exhaust blower (Ex. 684a, pp. 10–11).

The dust collection system is in place over some equipment (e.g., Barton pots) primarily for production reasons, because it is part of the process by which lead oxide is produced from molten lead. However, since equipment connected to the system must be enclosed and ventilated for the system to work, the system simultaneously operates as a method for controlling air lead levels. In some instances (e.g., melting pot, weighing hoppers), the system is installed primarily for control reasons, to prevent traces of lead dust from escaping. The collection of product then is incidental and minor.

In addition, the process of producing lead oxide by a dust collection method is continuous and automated. No manual handling of lead-bearing materials is required after workers load pigs and ingots into the melting pots until the products are packaged or loaded for shipment. Thus, potentially high exposures associated with manual and batch processing are avoided.

a. Lead Oxide Production: Although there is relatively little information in the record on controls used in the receiving area, industry has not indicated that this operation poses an exposure problem. However, while the receiving operation does not generate lead dust directly, it may reentrain lead dust previously deposited in that work area from elsewhere. The facility at Plant B has been constructed to allow rail cars delivering lead pigs and ingots to park inside the production area near the lead oxide operation. This design reduces forklift traffic, which can reentrain and disperse dust. The pigs and ingots are unloaded on the floor near the melting pots. Plant B controls this potential for dispersing deposited dust by wet-scrubbing and vacuuming the floors daily (Ex. 684b, pp. 1–2).

Similarly, industry has not indicated that conveying lead ingots and pigs to melting pots poses any exposure problems. At Plant A, 100-pound pigs are manually loaded on open conveyors and continuously fed to the melting pots.

The melting pots at both Plant A and Plant B are at least partially enclosed and ventilated. At Plant A, the melting pots are provided with canopy hoods, which are connected to the dust collection system. The melting pots at Plant B are maintained at negative pressure, which is created by the exhaust from the dust collection system to facilitate capture of lead emissions. At Plant B, however, the enclosures around the melting pots are opened during charging (Ex. 684b, p. 8). The melting pots at Plant C are neither enclosed nor ventilated, but local side draft ventilation is provided (Ex. 684c, p. 3). Meridian reports that completely modernized plants have replaced melting pots with electric furnaces, which eliminates the need for drossing off impurities (Ex. 686E, p. 29).

For drossing the melting pots none of the site visit companies have implemented either engineering controls or automation. In addition, at Plant C there is no hood or cover on the dross pot.

To control lead emission during the transfer of molten lead from the melting pots to the Barton pots, Plant B has enclosed and ventilated the transfer troughs (Ex. 684b, p. 8). At both Plant A and Plant C the transfer troughs are open and not ventilated (Exs. 684a, p. 10; 684c, p. 3).

The Barton pots/reactors at all three site visit companies are completely enclosed and ventilated to the dust collection system. At C, however, the site visit team observed fumes escaping from the Barton pot. In addition to controlling employee exposures with point source ventilation, Plant C has an enclosed and heated control room near the furnaces (Ex. 684c, p. 3).

All three site-visited companies have fully enclosed and ventilated screw conveyors to transport the product to storage, milling and packaging. The screw conveyors at Plant A and Plant B are ventilated to the dust collection system. At Plant A, however, the site visit team observed dust emissions at the ends of conveyors, where worn out bearings had allowed lead oxide dust to spill out onto the floor (Ex. 684a, p. 10). Meridian reports that completely modernized plants have replaced screw conveyors with pneumatic conveyors to more completely control lead emissions (Sx. 686E, p. 29). Pneumatic conveyors, which use air to move materials through the conveyor, are fully enclosed and operate at negative pressure, have considerably fewer leaks and breakdowns, and require less repair and maintenance than screw conveyors and other mechanized material transfer systems.

b. Calcining Furnaces: Exposure levels at calcining furnaces at Plant A and Plant B are controlled by maintaining the furnace under negative pressure. At Plant A calcining furnaces operate at negative pressure because the flue gas from the furnace has to be exhausted to the atmosphere through baghouses.

No engineering controls have been implemented to control quality control sampling at the calcining furnaces. Plant A reports that all quality control samplers are thoroughly trained in sampling techniques.

c. Grinding and Blending: Exposure levels are controlled in grinding and blending because the grinding mills are enclosed and ventilated to the dust collection system. Thus, they also operate at negative pressure. In some plants bag dumping stations for loading blenders are also exhaust ventilated.

d. Packaging: In packaging, the most difficult exposure problem is limited to packaging the product in paper bags. To a very substantial extent lead chemical producers have eliminated this high exposure problem by switching from packaging in paper bags and drums, which requires extensive manual intervention, to bulk shipment. At Plant B, for instance, 85% of its product is bulk shipped (Ex. 684b, p. 3). At Plant C less than 5% of its product is packaged in drums, and at the company's three other plants all product is shipped exclusively in bulk. The company owning Plant C has successfully converted almost entirely to bulk shipment in part because the company has helped its customers to install bulk handling systems (Ex. 684c, pp. 2, 5).

In addition to bulk shipping a substantial portion of their product, plants also are controlling exposure levels in packaging by shipping a portion of product in semi-bulk form in superbags or supersacks, which can hold up to a few thousand pounds. Like bulk shipping, superbags do not require manual weight adjustment. To fill these containers a worker must place the clean bag opening around the fill spout and start the flow of material. At Plant A, lead emissions are controlled during filling because the connection between the bag and the fill spout is gasketed to achieve a tight seal (Ex. 684a, p. 4). In addition, the displaced air in the superbag is exhaust ventilated to the dust collection system. After the superbag is filled and sealed, it is removed from the area by a forklift truck. To control exposure levels during cleaning of reusable superbags, Plant B washes the bags in an isolated room (Ex. 684b, p. 9).

A portion of the product at the three visited companies is packaged in drums. Although this packaging method requires some manual intervention (e.g., skimming off the product from the drum), it does not have the high exposure problems associated with packaging in paper bags. During drum packaging at Plant A, the product is transferred from packaging hoppers to the drum in an enclosure that is exhaust ventilated to a bag filter. The enclosure draws air at a face velocity of 200 fpm and is open in front to allow drum placement and removal (Ex. 684a, pp. 3, 11). Drum packaging at Plant B is also enclosed and exhaust ventilated (Ex. 684b, p. 8).

Both Plant A and Plant B clean and reuse drums, an operation which poses additional exposure problems. Neither company cleans drums in an isolated room or building. Plant B, however, has targeted a program to isolate and control the cleaning of used drums as a part of its modernization project for that facility (Ex. 684b, p. 10). Currently, at Plant B dirty drums are cleaned with a high vacuum cleaning system in a reserved but open area of the plant. In the warehouse and production area at Plant A the site visit team observed drums waiting to be cleaned for reuse (Ex. 684a, p. 11). Plant A cleans the sides of drums with vacuums before replacing the lid and sealing the top of the drum. Plant C has eliminated this exposure problem by not reusing drums (Ex. 684c, p. 2).

Where packaging is done in paper bags, air lead levels are controlled by enclosing and ventilating the operation. At Plant A the enclosure is ventilated at a face velocity of 200 fpm and the scale for weighing bag contents is within the enclosure (Ex. 684a, p. 11). At Plant B, however, the filling station is only partially enclosed and the transfer between the filling and weighing stations is not exhaust ventilated. At both Plant A and Plant B the site visit team observed emissions from the paper bags during weighing, closing and placing the bags on the pallets (Exs. 684a, p. 11; 684b, p. 8). In addition, at Plant A the site visit team observed workers dusting the paper bags, scales and filling stations with hand brooms Ex. 684a, p. 12).

Among plants, there are wide variations in bagging machines and ventilation for bagging machines (Ex. 582–90, App. C). Some bagging machines allow for reversal of the rotation of the filling auger when bag weight is reached to prevent material dropping from the filling spout when the bag is removed. Other bagging machines have an exhaust line into the bag to remove displaced air as the bag is filled to prevent puffs when the bag is removed from the filling spout. Some companies have modified bagging machines to improve the precision of delivered weight in order to reduce the need for manual weight adjustment. Other companies have experimented with design and installation of small local exhaust hoods and slots around filling spouts to capture dust generated from the bagging machine.

Wet Process. In wet processing, according to Plant A representatives, wetting tanks, reactors and storage tanks do not require exhaust ventilation because the wet product does not cause exposure to lead dust or fume. Plant A stated, nonetheless, that the reactor is fully enclosed and the door is removed only for taking quality control samples. At Plant A, the site visit team observed some dry residue in the reactor area that was probably the result of quality control sampling. In the dry end of the wet process at Plant A, screw conveyors, weighing hoppers, dryers and mills are equipped with exhaust ventilation and dust collection devices (Ex. 684a, p. 11).

Maintenance and Housekeeping. To prevent reentrainment of lead dust, Plant A's production area is cleaned twice a week with a central vacuum system and mobile vacuum units. In addition, each employee is responsible for routine housekeeping in his work area. Several times per week, each employee also performs general housekeeping, which includes mopping and vacuuming the floor and other surfaces in his work station (Ex. 684a, p. 12). At Plant B, wet scrubbers and stationary vacuums are used to clean work areas (Ex. 684b, p. 9).

In addition to routine housekeeping, both Plant A and Plant B have scheduled programs for plant-wide housekeeping. Plant B now conducts an annual plant cleanup, which includes rafters, during its shutdown time (Ex. 684b, p. 9). Plant A performs biannual plant-wide cleanups, which are not, however, "rafters-to-basement" cleanups. Plant A does not have an effective regular dust pile inspection program to identify problems with equipment or maintenance that needs attention (Ex. 684a, pp. 12–13).

Additional Controls—Introduction. In the previous sections, OSHA has shown that with existing controls in 6 of the 8 plants owned by the three major producers in the industry, exposure levels already have been, or in the foreseeable future will be controlled to or below 50 $\mu g/m^3$ most of the time in most of the operations.

More specifically, OSHA has shown that at Plant A, an old plant, in 1987 a majority of all sampling results already are below 50 $\mu g/m^3$ and geometric mean exposure levels in six of eight job classifications also are below 50 $\mu g/m^3$. In the most difficult operation to control to 50 $\mu g/m^3$, PBD, the geometric mean is only 65 $\mu g/m^3$. Although the data for 1987 are somewhat lower than for previous years, geometric means for the past four years also are quite low. In 5 of 8 job classifications, the geometric mean for 5 of 8 job classifications over the four years are at or below 50 $\mu g/m^3$; in two of the remaining three they are 55 $\mu g/m^3$ and 59 $\mu g/m^3$; and none is above 84 $\mu g/m^3$ (PBD).

OSHA also has shown that at Plant M, a newer plant manufacturing lead

stabilizers, geometric mean exposure levels by 1987 had been controlled to 50 $\mu g/m^3$ or below in all job classifications.

OSHA believes that for job classifications and operations where most sampling results or geometric means already are near or below 50 $\mu g/m^3$, relatively modest improvements in controls (e.g., improved housekeeping, better preventive maintenance, installing baffles to stop cross drafts, or covering dross buckets) will be sufficient to consistently control air lead levels to below 50 $\mu g/m^3$. Similarly, for operations where most of the sampling results or geometric means already are below 100 $\mu g/m^3$, OSHA believes that a combination of limited additional and improved controls (e.g., improving the efficiency of the ventilation system), will be sufficient to control exposure levels to 50 $\mu g/m^3$.

The Agency's discussion of the reductions in air lead levels expected to be achieved by implementing recommended controls relies in part on assessments made by a panel of three certified industrial hygienists established by OSHA's contractor, Meridian (Ex. 686E, pp. 23–30 and App. A). The panel's assessments are based upon data in the record; site visits to three plants; and the members' extensive experience and expertise as industrial hygienists. Although quantification of the estimated reductions involves a substantial amount of expert judgment, OSHA believes that the panel's assessments, on the whole, are the best available evidence in the record concerning the reductions in exposure levels that reasonably can be expected from implementing recommended additional and improved controls.

OSHA, based on its own experience and expertise, therefore believes that reliance in part upon the panel and Meridian for the Agency's feasibility determination is entirely reasonable. In any event, OSHA has independently evaluated the record evidence and does not always concur with their judgments. For example, OSHA in its own analysis places greater emphasis than Meridian does on modernizing the packaging operation and replacing mechanical materials transfer conveyors with pneumatic material transfer systems. Contrary to Meridian, OSHA also has concluded from the record that, notwithstanding substantial differences between newer and older plants, the age of existing plants is not determinative of a plant's ability to achieve 50 $\mu g/m^3$. For example, as OSHA has already shown. Plant A, an older plant, is already controlling air lead levels to below 50 $\mu g/m^3$, while the relatively newer Plant B plant has not yet reduced its lead exposures to those levels.

On the whole, the same sorts of controls that have been successfully utilized to achieve exposure levels below 50 $\mu g/m^3$ at Plant A and Plant M and elsewhere are precisely the kinds of additional controls that OSHA recommends to reduce remaining excess air lead levels to or below 50 $\mu g/m^3$.

Recommended Integrated System of Controls. As discussed at greater length below in the concluding section on technological feasibility, OSHA believes that effectively controlling air lead levels involves more than piecemeal efforts at implementing individual additional controls. It involves implementing an integrated system of controls. That system is composed of three elements. The basic element is an industrial hygiene study. The second element is the development of good written housekeeping and work practice programs that are systematically implemented so that proper procedures are routinely and meticulously followed. The final element of an integrated system of controls is a preventive maintenance program to assure that all systems are maintained in clean and efficient condition.

To understand the nature of exposure problems in a plant and to design and implement effective methods to control lead emissions, OSHA believes that an effective control program would include as a first step obtaining the services of a competent industrial hygienist to perform a plant-wide industrial hygiene study. The study should focus on a task-by-task analysis of sources of lead emission in the plant and an analysis of cross drafts as potential sources of cross contamination in order to design measures to control and/or eliminate these sources.

Site visits in early 1988 to Plant A, to Plant B, to Plant C and discussions on site with industry representatives made OSHA and Meridian aware of the need for such studies. As Meridian has pointed out, at each plant the site visit team found plant personnel who were extremely knowledgeable about production-related matters but were "surprisingly uninformed about industrial hygiene" (Ex. 686E, p. 29).

At Plant C, for example, the president of the company insisted that area samples were preferable to personal samples because they are "more reliable" (Ex. 686E, p. 29). Moreover, at no visited plant was air lead monitoring being conducted by people trained in industrial hygiene, and at no visited plant had any systematic task analysis been performed to determine the contribution of various task elements to employee lead exposure.

At Plant B, company representatives reported that no industrial hygiene task analysis sampling had ever been performed at any of the company's facilities (Ex. 684b, p. 4). (This statement was subsequently partially qualified when the company stated that task analysis sampling had been performed at another, unidentified lead chemicals plant owned by the company (Ex. 694–9, Att. 6, p. 33).

Similarly, it appears that no industrial hygiene survey had been initiated at Plant A until just prior to the November 1987 public hearing in this rulemaking. Then, the company apparently consulted an industrial hygienist (IH), who reportedly recommended that the company have a job/task analysis performed. Although the company did not submit a copy of any of the IH's preliminary analyses or recommendations to the record, Plant A indicates it was undergoing a plant-wide task analysis in the spring of 1988 (Ex. 694–9, Att. 5, pp. 7–8). OSHA applauds this effort and considers it likely to be very helpful in further reducing employee exposure to lead.

OSHA believes that, to the extent feasible, each source contributing more than an insignificant amount to workers lead exposures must be controlled, because the combined effect of controlling a number of sources of limited exposure can be very significant. For example, during OSHA's visit to Plant A, one of the certified industrial hygienists on the site visit team commented that he saw "more than a hundred industrial hygiene opportunities" to reduce workers' air lead levels (Ex. 686E, p. 25). OSHA notes that if only half of those opportunities (50) were investigated and pursued and only half of that number (25) each resulted in a mere 1 $\mu g/m^3$ reduction in TWA exposure levels, then total plant-wide emissions at Plant A could be reduced by 25 $\mu g/m^3$ in any eight-hour period. OSHA does not believe that the TWAs of any workers would be reduced to the full extent of the multiple reductions. Workers who were affected to lesser degrees would have their TWAs proportionally reduced.

OSHA is confident that an industrial hygiene study is essential to systematically control air lead levels in this industry. It is a precondition for instituting an effective, regular program to identify the precise sources of exposure and reasons for upset conditions and to control them.

Meridian has stated it believes that hiring a certified industrial hygienist to perform such a full-plant survey is a "relatively low-cost approach to the problem of over exposure", which "could produce dramatic reductions in these exposures" (Ex. 686E, p. 29). OSHA agrees.

A simple example should suffice to show how useful such a survey can be. Cross contamination appears to be a problem in the lead chemicals industry (e.g., Ex. 684a, p. 13), although the extent of the problem in individual plants is unknown. It is not surprising that cross contamination is a problem since operations throughout the industry generally are in large open buildings and are not separately enclosed. Cross contamination exists where plants have failed to adequately contain lead exposures at their primary source and cross drafts disperse escaping lead fume and/or dust into other areas or throughout the plant. By implementing proper controls, cross contamination can be eliminated or at least dramatically reduced.

Cross drafts are caused by a variety of factors. Windows or doors left open, use of man-cooling fans, and reliance upon natural ventilation with seasonal variation, especially in open plants, all can create cross drafts. However, even in plants that have eliminated these obvious sources of cross drafts, cross drafts still can be produced by air transfers between hot and cold operations and imbalances in the mechanical ventilation system.

Cross drafts spread contamination from one operation to another. In addition, and less obviously, they also compromise local exhaust ventilation, preventing exhaust hoods from operating at maximum capacity. OSHA's evaluation of the complex, plant-wide problems that cross drafts create is substantiated by the American Conference of Governmental Industrial Hygienists' book, *Industrial Ventilation*, which states that "[c]ross drafts not only interfere with the proper operation of exhaust hoods, but also may disperse contaminated air from one section of the building into another and can interfere with the proper operation of process equipment" (Ex. 583–13, p. 7–2).

To control cross contamination simple steps may be effective. For example, fully enclosing and ventilating a potential source of cross contamination, like the packaging operation, will prevent the dispersion of lead. Erecting cross barriers at proper locations, eliminating windows, and using air locks for entryways not only will decrease cross contamination, but also will increase the efficiency of exhaust hoods. An industrial hygiene survey can identify the source and nature of cross contamination and can locate the proper sites to locate barriers and other controls.

OSHA's conclusion that an industrial hygiene study is needed is supported by Mr. Knowlton Caplan, a well-known engineering consultant to the lead industry. Mr. Caplan has said that engineering controls should be designed with industrial hygiene problems in mind (Ex. 582–89, Appendix).

An industrial hygiene study will indicate which controls need to be implemented in particular plants. The main controls are local exhaust ventilation, enclosure and isolation, plant design, automation built into the production process, and work practices, including housekeeping and maintenance.

Ventilation. The presence of excessive lead in the work environments of lead chemical plants indicates that existing engineering controls like local exhaust ventilation (LEV) and general ventilation are not doing the job. Much more quantitative and other information than are available in the record would be needed to state with any precision how great a reduction in any particular exposure level could be achieved by enhancing specific ventilation systems. Nonetheless, OSHA has no doubt that in many operations improved or additional ventilation can achieve major reductions in worker exposure.

Such controls have been developed, tested, and where found effective, manufactured and applied widely for many years throughout industry to control specific contaminants. Conventional controls for various operations in the lead industries have been described in detail and often depicted in photographs or diagrams by industrial hygienists and engineers from the American Conference of Governmental Industrial Hygienists (Ex. 583–13, pp. 5–34 to 5–37, 5–102, 5–105), AFS (Exs. 689–4A; 689–4F), American National Standards Institute (Exs. 689–13A, 13B, 13C). Many consultants who have worked for OSHA or industry also have recommended such controls (Exs. 689–6; 689–7; 689–8; 689–9; 689–10; 689–11; 689–12). LIA agrees that ventilation controls used in the lead chemicals industry are basically the same as those used in other industries (Ex. 582–90, p. 9). Thus, in terms of ventilation, there is nothing unique about lead chemical production.

Specifically, improved or additional ventilation can achieve major reductions in air lead levels in packaging operations throughout the lead chemicals industry. At Plant A, for example, enclosing the packaging, weighing and palletizing elements of the operation in a properly designed and maintained side-ventilated booth could dramatically reduce air lead levels (Ex. 686E, p. 24).

Enclosure and Isolation. Enclosure and isolation are two alternative methods of separating workers from air contaminants. In the case of isolation, the employee is physically separated from contaminants in the air; e.g., by working in a filtered, ventilated control booth (Ex. 689–4D, fig. 32). This method is being applied by Company C at one site visited by OSHA in the construction of their new plant (Ex. 684c, p. 6). With enclosure, the source of the contaminant is physically contained and separated from the rest of the work environment to prevent contamination of the air (e.g., Ex. 586–18, figs. 1 and 2). Sometimes, enclosures consist simply of tops installed on vessels containing molten metal (e.g., covering dross buckets; Ex. 583–16, p. 24).

Docket entries describe standard enclosure techniques that are in use in the industry or can be readily implemented (e.g., enclosing the transfer trough from the melt pot to the kettle or enclosing conveyors; Ex. 684b, p. 8). Simple isolation techniques that have been successfully used in certain plants in this and other lead industries also are applicable throughout this industry (e.g., providing employees with filtered, ventilated cabs for mobile equipment, isolation booths and control rooms; Exs. 684c, p. 6; 689–4D, p. 7–14, figs. 31, 32).

Isolating workers for even a portion of their shift can significantly reduce exposure levels. For example, a Radian study of a secondary lead smelter demonstrates that employee exposures can be reduced by 23–77% even when employees spend only a portion of the workday in an isolation booth (Ex. 583–16, p. 30). Another study, by the National Institute for Occupational Safety and Health (NIOSH), investigating the effectiveness of various control technologies in secondary lead smelters, reports that workers spending even one-quarter of their time in a supplied air island would experience a 20% reduction in their 8-hour TWA exposure levels (Ex. 590, p. 40).

Housekeeping, Work Practices, and Preventive Maintenance. Housekeeping, work practices, and preventive maintenance are critically important controls, the importance of which frequently is not adequately recognized by employers. Failure to develop and use rigorous housekeeping, good work practices, and preventive maintenance

can destroy the effectiveness of otherwise adequate engineering controls. OSHA believes that improved work practices, housekeeping, and more rigorous maintenance practices are among the principal tools for achieving compliance with the 50 μg/m³ PEL in existing lead chemical plants.

The importance of housekeeping measures in general was stressed in a report prepared by the Cadre Corporation for a secondary copper smelter (Ex. 475–32D). The Cadre report states,

> [Housekeeping] is definitely the most underrated aspect of any fume abatement program. In any industrial facility there will be some amount of particulate in the air. Sooner or later this particulate is going to settle out on the plant floor, equipment and materials. If this dust is not collected and disposed of then it will become airborne again due to building drafts, mobile machinery traffic and numerous other disturbances. The housekeeping component of the abatement plan is a vital link in the success of the project. By neglecting to properly control settled particulate any gains made by capturing fugitive emissions will be minimal.

OSHA agrees. It is impossible to overemphasize the importance of good housekeeping and work practices. Lead oxide products, which are fine dusts with average particle sizes of a few microns, are readily dispersed by air currents. A small amount of lead dispersed throughout a building's air space may raise the airborne level over the PEL. Obviously, to avoid exceeding the PEL, process operations not only must be tightly enclosed, but emissions or spills from equipment breakdowns, maintenance operations, broken bags or any other sources also must be promptly contained and cleaned up to minimize dispersion throughout the workplace.

Housekeeping in lead chemical plants needs to be improved. For example, Plant A has never had a complete rafters-to-basement cleaning (Ex. 684a, p. 12). It should have one and repeat it at least annually. Moreover, small piles of dust were observed in many places on floors at Plant A, especially under MMTS, and on other surfaces (Ex. 684a, p. 13). The housekeeping program should prevent the accumulation of such piles of dust and effectively provide for their prompt removal if they nonetheless occur. In addition, the packer was observed using a hand broom to sweep product dust off a bag and off the work station (Ex. 684a, p. 12). This practice, which contributes to the packer's own exposure to lead and may also disperse lead dust more broadly, should be discontinued. Thus, in practice Plant A's housekeeping program appears to be seriously inadequate.

Similarly, at Plant C housekeeping also was poor. The site visit team observed extensive accumulations of lead-containing dust on the floor, in gutters and on conveying and other equipment. Lead ingots were covered with oxide dust. There was no regularly scheduled program of housekeeping (Ex. 686E, p. 25).

In contrast, housekeeping at Plant B generally appeared to be considerably better than at the other two plants. The company reportedly had recently instituted a documented, scheduled program of housekeeping, including cleaning the rafters (Ex. 684b, p. 9). Nevertheless, the company apparently continued to clean used, product-contaminated drums returned by customers in the open production area. This practice, the team judged, added directly to the plant's background level of contamination and thereby to the exposures of all employees in the area (Ex. 686E, p. 27).

By implementing strict housekeeping proceedures, segregating housekeeping activities and assigning them to a trained housekeeping staff, and by effectively implmenting a regular spill detection program and periodic cleanup program, the expert industrial hygiene panel estimated that exposure levels of all production employees at Plant A could be reduced by over 60% (Ex. 686E, App. A, A–1). By implementing a similar, strict program of regular housekeeping at Plant C, the panel estimated that workers exposure to lead could be reduced by 24% (Ex. 686E, App. A, A–3). With the new rafter cleaning program at Plant B and by ceasing to accept returned, contaminated drums or by automating their cleaning or at least by fully enclosing and locally exhausting the cleaning process, the expert panel anticipated a reduction in workers' exposure at Plant B of from 23 to 35% (Ex. 686E, App. A, A–2).

In all plants in the industry detailed housekeeping instructions should be prepared and adherence to them enforced by employers, with scheduling and checkoff of regular cleaning of all areas of the plant where dust can collect. If necessary, housekeeping instructions should list individual sites, pieces of equipment, parts of equipment, and obscure corners (e.g., under conveyors) to assure that they are cleaned regularly. Where necessary, a trained housekeeping staff should be hired or perhaps housekeeping should be contracted out.

Implementing appropriate work practice controls is also vital to achieving exposure levels at or below 50 μg/m³. No matter how good engineering controls may be, they often can only be as effective as the associated work practices that determine how they are used and where the employee locates himself relative to the controls. For example, when packers at Plant A perform manual activities outside the effective capture zone of the hood, they expose themselves to lead and disperse lead dust into the air. In doing so, the local exhaust ventilation is rendered ineffective. OSHA finds this work practice unacceptable.

Work practices also should be written to prescribe correct procedures for all tasks that might result in increased employee exposure. Such procedures should dictate, for example, that an employee not use a broom to dry sweep lead dust. These procedures might also prohibit production employees who perform some maintenance tasks from doing so where they already have excess exposure to lead. Good work practice rules also should require that covers be kept on quality sampling containers. They should minimize the manual handling of bags filled with product and, when some manual handling is necessary, assure that it is performed with care. Good work practices are particularly important in packaging, for example, to minimize dust released when bags breathe and to minimize loose dust in the stacks of bags on pallets. Improved work practices are very important since much of workers' daily exposure may come from brief lapses in performing their tasks. One industry spokesperson, for example, estimated that as much as 80% of a worker's daily exposure might come from intermittent, high-exposure, short-term activity (Ex. 684b, p. 10).

OSHA also notes the importance of maintenance programs to assure that all systems function as cleanly and as efficiently as practicable. The capacity for ventilation systems to protect air quality depends not only on proper design and installation, but also on proper maintenance and availability of sufficient makeup air. Exhaust systems lose their capacity because belts and pulleys slip, duct branches become clogged, duct couplings become loose and develop holes that leak air, filters become occluded, and fan blades become corroded or unbalanced. Thus, the effectiveness of engineering controls can be severely limited by poor maintenance (Exs. 582–13, pp. 10–16; 689–3, p. 74, Table 8–1; and see *Safety in Metal Casting*, Des Plaines, IL, Vol. 6, 1970, p. 172).

Two basic principles should be applied in maintenance work. First, extreme care must be taken when doing maintenance to prevent emissions into the workplace. Second, foreseeable equipment failures that could contribute to emissions should be minimized through a preventive maintenance program.

Opening up equipment for repair may release large amounts of dust. Therefore, it is imperative to remove this dust before it permeates the workplace. Floor vacuum cleaners may not be adequate. Plant-wide vacuum systems may be required with outlets widely distributed and hoses available so that workers can clean up dust any place with minimum effort immediately after it is discovered. Maintenance workers can use the hoses as small ad hoc hoods to capture dust when they must break connections on lines, open up conveyors, etc. Work practices must be developed to cover the use of the vacuum system and workers must be trained to strictly follow correct practices. Maintenance workers should be trained, for example, to trap dust at connections they are going to break by setting up hoses before, not after the dust inside has dropped to the floor.

Preventive maintenance minimizes emissions. It is much better to shut down equipment in a controlled fashion, with lines, conveyors, vessels, etc., cooled or emptied to make it easier to open them up with minimum contamination of the workplace, than to have equipment fail while in operation. Better maintenance and better controls should reduce major housekeeping problems.

In addition to the above controls, OSHA specifically recommends additional controls operation by operation. On the whole, the same sorts of controls that have been successfully utilized to achieve exposure levels at or below 50 μg/m³ at Plant A, Plant M and elsewhere in the industry are precisely the kinds of controls that OSHA recommends here as additional controls to reduce remaining air lead levels to or below 50 μg/m³. In its operation-by-operation analysis, OSHA focuses on the two operations/job classifications that are generally regarded by industry to be the most difficult to consistently control to 50 μg/m³, packaging and maintenance (Exs. 582–90, p. 7; 684b, p. 9; 694–9, Att. 2–4; Tr. 1266).

Packaging. "Packaging" refers exclusively to filling drums and paper or plastic bags with product. Bulk shipment by railcar or truck and semi-bulk shipment in superbags and other large containers are not considered packaging by industry. Packaging is viewed by industry to constitute one of the single most difficult sources of lead to control (Exs. 582–90, p. 7; 694–9, Att. 2–4; Tr. 1266).

Within packaging, the main problem is limited to packing bags. Packing drums presents much less of an exposure problem. For example, the air in drums or bags, which initially fluidizes the product as the container is filled, slowly rises carrying dust with it as the material settles. However, with drums, the closing of the drum contains the escape of dust-laden air from the compacting solids. With bags, on the other hand, the escape of air remains a major problem for packagers. Because a bag is flexible, not rigid, any pressure applied to the bag in handling causes it to breathe and may result in the emission of a puff of dust-containing air. Typically in the industry, bags that require precise weight specifications have been manually filled, manually weight adjusted, and manually closed. When such manual intervention is required, employees may be exposed to relatively high air lead levels. Similarly, when closed bags are manually moved, workers also may be exposed to lead dust.

The problem with successfully controlling packaging needs to be put in proper perspective. First, some plants already are effectively controlling air lead levels in packaging. As shown in the previous section, by 1987 in packaging Plant M achieved a geometric mean exposure level of 50 μg/m³, while Plant A had a geometric mean exposure level of 65 μg/m³.

Second, the amount of product being bagged already is quite limited. Currently across the industry, based on OSHA's site visit observations, it appears that no more than 15% of product is packaged in bags and drums. Plant B is typical, packaging 15% of product (Ex. 684b, p. 3). Plant C is well below that average, packing less than 5% of its product in drums and nothing in bags Moreover, Plant C is the only one among four plants owned by its parent company that packages in drums or bags at all (Ex. 684c, pp. 2 and 5). By contrast, at Plant A "a substantial amount of its product," apparently more than 15%, is reported to be packaged in bags (Ex. 684a, p. 3). The LIA confirms that bulk shipping "is the principal means of shipment" in the industry (Ex. 582–90, p. 12).

Of the approximately 15% of product packaged in bags and drums across the industry, obviously only a part is packaged in bags. At Plant B, for example, only one-third of the packaged product is in bags (5%). Furthermore, in the bagged segment, apparently only some customers require precise weight specifications. OSHA therefore estimates that considerably less than 10%, and probably less than 5% of total product has to be packed in bags with precise weight specifications.

For that small proportion of product that currently continues to be packaged in bags, as well as for the portion of the product packaged in drums, OSHA recommends three methods for controlling existing lead emissions. They are: further reducing or eliminating packaging, and shipping still more product in bulk or semi-bulk form; purchasing and installing the new highly accurate packaging machines and appropriately reducing the variety of packages provided customers; or enclosing each packing and palletizing station with a side-ventilated booth (Ex. 686E, p. 24). These control methods can be employed independently or in combination to achieve employee exposure levels lower than 50 μg/m³. However, OSHA believes it is unlikely that any facility would have to implement more than one of these recommended controls to achieve this level.

OSHA's preferred method for controlling exposures associated with packaging is to encourage the lead chemical industry to further reduce the amount of product that is packaged by shifting increasingly to bulk and semi-bulk shipping. The parent company of Plant C is a leader in the industry in successfully moving in this direction, in no small part by persuading its customers to shift to bulk purchases and by helping them with the shift (Ex. 684c, p. 2). OSHA applauds this achievement. OSHA believes that other large producers in the industry can persuade more of their customers to accept bulk and semi-bulk shipment, as well. However, OSHA recognizes that there may be some portion of product that will have to continue to be packaged. For that portion, OSHA recommends that industry implement either, or a combination of the two following control methods.

The first is to mechanize and automate packaging and subsequent bag handling. For bags that do not have to be packed to precise weight specifications, conventional automatic packaging machines that fill and seal bags have been available and in use in many plants for years. Today, even for bags that require filling to precise weight specifications, automatic packaging machines are available that, according to LIA, "can easily achieve accuracies of 0.25% and sometimes even * * * 0.1% * * *." (Ex. 582–90, App. C, p. 3). This means that for a 50-pound bag, the machine can automatically fill

accurately to within 2 ounces and less and can seal, all routinely without manual intervention. Based upon industry statements regarding the weight tolerances required by some customers (e.g., Tr., p. 1282), OSHA concludes that nearly all orders can be bagged on these more accurate packaging machines. The number of bags that would still require manual weight adjustment, therefore, should be extremely small.

Consequently, if achieving precise weight specifications were the only problem in bagging, emissions associated with manual interventions could be strictly controlled or effectively eliminated by mechanization. However, customers are reported to also seek different kinds of packages (e.g., plastic bags, paper bags, 20-pound bags, 50-pound bags). This causes a problem, because no single machine can handle a wide variety of packages. The industry, of course, could satisfy all the packaging demands of customers and fully automate packaging by purchasing and installing a sufficient number of the more advanced bagging machines. The problem is not technological. The technology exists and is available. The problem is cost. Industry admits as much: "Packaging could be automated if industry had unlimited resources"(Ex. 582–90, p. 13).

In OSHA's view, "unlimited resources" are not required to resolve this problem. Industry, for example, could provide customers with a more limited variety of bags and thereby reduce the number of advanced automatic bagging machines necessary to accommodate that range.

With regard to handling the bags after they have been filled and sealed, OSHA believes that such handling can be mechanized as well. Bags can be mechanically flattened and conveyed (Tr. 1283). Mechanization of this phase of bag handling should substantially reduce worker exposure from breathing bags, because workers can be removed from proximity to these emission sources. The emissions from flattening, for example, then can be controlled by local exhaust ventilation.

The last recommended method for controlling employee exposure levels in this operation to below 50 $\mu g/m^3$, is simply to improve the capture of emissions at the existing level of production mechanization by isolating the entire operation and providing effective local exhaust ventilation. This control strategy needs to be accompanied by the implementation of strict work practices and preventive maintenance to assure that local exhaust ventilation is effective.

To be effective, this control strategy has to take account of a number of factors. Each of the manual tasks in packaging provides a potential source of lead exposure. These tasks extend all the way from placing the bag on the bagging machine, through weighing the bag contents, adjusting content weight, and sealing the bag, to cleaning the outside of the bag and then stacking it on a pallet. Each of these tasks must be effectively exhausted, and the worker must be trained to carry out each within the capture range of the ventilation and in a manner likely to minimize the amount of lead emission. Obviously, the local exhaust also must be properly designed, installed, and maintained. It also must be properly located and have sufficient capacity to handle the job.

The independent panel of expert industrial hygienists gathered by Meridian has analyzed the additional controls needed at Plant A and Plant B and has estimated the reduction in air lead levels to be expected from implementing them.

At Plant A, where the site visit team observed small plumes of lead dust generated during the performance of several manual packaging tasks and observed emissions from work done outside the ventilation enclosure (Ex. 684a, p. 11), the expert panel recommended improving work practice controls and enclosing each packaging, weighing and palletizing station within a side-ventilated booth (Ex. 686E, p. 24). With this booth, the panel estimated that exposure levels of the PBD would be reduced by approximately 43% (Ex. 686E, pp. 24 and App. A, A–1).

For Plant A, the panel further recommended that panels on ventilation ducts be maintained, to effect enclosure and maximize capture velocity, and estimated that a similar reduction of 43% in worker exposure could be expected from that simple control. However, the company has challenged the factual basis for this recommendation, saying that panels were missing only on ventilation systems that were undergoing repair or no longer in use (Ex. 694–9, Att. 5). Although the company's claim is at variance with the site visit team's observations, and OSHA believes that this potential for reduction does exist, nonetheless the Agency's feasibility determination does not take this into account.

Nonetheless, with an anticipated reduction of 43% in exposure levels associated with installation of the ventilated booth, air lead levels for the packager should be reduced to a geometric mean of 37 $\mu g/m^3$ if the geometric mean for 1987 is used as the base. (Air lead levels would be reduced to a geometric mean of 47 $\mu g/m^3$ if the four-year average geometric mean were used as the base). In addition, OSHA believes that exposure levels would be considerably further reduced if the needed improvements in work practice controls, which also have not been factored in to these calculations, are implemented as well. Workers, for example, should not toss bags onto the pallet; they should not use brooms to dust off bags or their equipment. Bags, pallets, and equipment should be regularly vacuumed. Improved housekeeping should dramatically and relatively inexpensively further reduce air lead levels at Plant A at the packaging and other operations where the site visit team observed poor housekeeping. With the implementation of all of these controls, OSHA concludes that air lead levels at Plant A can be reduced to consistently below 50 $\mu g/m^3$ in the packaging operation.

Plant B also should be able to reduce exposure levels in packaging to below 50 $\mu g/m^3$, by implementing additional controls. As indicated in the section on current exposure levels, there is no job classification at Plant B denominated "packer." Operators and shippers apparently rotate to perform packaging tasks. Thus, exposure levels for employees in both job classifications should be substantially reduced by additional controls in packaging.

At Plant B the site visit team observed small spills of lead chemicals and dusting during the manual weight adjustment of bag and drum contents and small amounts of dust coming from closed, breathing bags on the pallet when the product in them settled. To capture these and other emissions, the expert panel recommends improved ventilation of point sources and better enclosure of the packaging, weighing and palletizing operation.

From implementing these recommended additional controls, the expert panel anticipates a reduction in exposure levels for operators and shippers of 75–95% (Ex. 686E, p. 28 and App. A, A–2). With geometric mean exposure levels in 1987 of 103 $\mu g/m^3$ for operators and 59 $\mu g/m^3$ for shippers, resulting geometric mean exposure levels would be reduced to 5–26 $\mu g/m^3$ and 3–15 $\mu g/m^3$, respectively.

However, since the panel's anticipated reductions appear to be based upon the assumption that all of the relevant workers' lead exposure is derived from packaging, and since both shippers and operators perform other tasks that are likely to subject the worker to lead exposure, and in the case of operators to not insignificant lead

exposure, OSHA believes that the panel's estimates may overstate the expected reduction.

OSHA believes operators do most packaging, because under the circumstances the Agency judges the geometric mean exposure levels for shippers (e.g., 59 $\mu g/m^3$ in 1987 and 68 $\mu g/m^3$ for the four-year average geometric mean) to be too low to incorporate much time in packaging. Operators typically have exposure levels that are almost twice as high as shippers. The percentage reduction in air lead levels expected from implementing recommended additional controls in packaging can be applied only to that portion of workers' exposure attributable to packaging.

OSHA calculates the expected reduction for operators under two different assumptions. OSHA assumes that either two-thirds or three-quarters of the operators' exposure levels come from packaging. OSHA believes that both of these assumptions are reasonable, because, on the one hand, packaging is one of the two main sources of lead exposure at Plant B according to the company (Ex. 684b, p. 9) and, on the other, representatives of Plant B have indicated that, with few exceptions, operators are basically engaged in monitoring an automated process that is fully enclosed and operated under negative pressure (Exs. 532–90. p. 12 and 694–9, Att. 6, p. 20) and which therefore should not subject operators to high exposure to lead.

If two-thirds of the operators' lead exposure comes from packaging, the resulting geometric mean achieved by implementing recommended controls in packaging would range from 37 to 51 $\mu g/m^3$, with a midpoint of 44 $\mu g/m^3$. If three-quarters of the operators' lead exposure comes from packaging, the resulting geometric mean would range from 30 to 45 $\mu g/m^3$, with a midpoint of 37.5 $\mu g/m^3$. Under both assumptions, the midpoint would be below 50 $\mu g/m^3$.

OSHA wishes to emphasize that these levels would be achieved by implementing the recommended engineering controls for the packaging, weighing and palletizing operation. Further reductions in operators' air lead levels also can be expected by implementing the additional controls recommended by Meridian to reduce exposures associated with typical operators' tasks like drossing. Improving work practice controls and housekeeping in the area and throughout the plant also will reduce exposure levels.

Additional reductions in this operation also can be anticipated from conducting the plant-wide industrial hygiene survey to identify sources of lead emission task-by-task and cross winds around the plant and from implementing recommendations for methods to control them. With the realization of such multiple reductions in lead emissions, OSHA is confident that the air lead levels in the packaging operation (including weighing and palletizing) can be consistently controlled to below 50 $\mu g/m^3$ at Plant B.

OSHA has determined that exposure levels in packaging can be controlled consistently to below 50 $\mu ug/m^3$ at Plant A, an older plant that bags a higher proportion of its product than the industry average. OSHA also has determined that exposure levels can be controlled consistently to below 50 $\mu g/m^3$ at Plant B, a newer plant. A third plant, Plant M, by 1987 had already achieved a geometric mean of 50 $\mu g/m^3$. Consequently, the Agency concludes that packaging can be controlled to below 50 $\mu g/m^3$ generally throughout the lead chemicals industry.

Maintenance

According to industry representatives, the other operation that most contributes to high air lead levels among workers in plants is maintenance. Maintenance work is intermittent, highly varied, and may subject maintenance workers in certain tasks to very high exposure levels, especially when they must open up dust-filled or dust-encrusted equipment. Certain maintenance tasks are very difficult to control to 50 $\mu g/m^3$ (Ex. 582–90, p. 7); others already are controlled to below 50 $\mu g/m^3$, as evidenced by the low geometric mean exposures of maintenance employees at Plants A and M (see Tables 1 and 2, above).

A very high proportion of maintenance work is currently devoted to maintaining mechanized material transfer systems (MMTS), like bucket elevators and screw conveyors, which have many bearings, joints, and failure points that "require constant maintenance and upkeep," according to industry representatives (Ex. 684b, p. 10 and p. 9; and see Exs. 684a. p. 13 and 684c, p. 5). Maintenance workers in some plants spend fully 80% of their time repairing and maintaining MMTS (Ex. 684c. p. 5). Maintenance of these systems is reported to constitute the major exposure problem at Plant C (Ex. 684c, p. 5).

MMTS not only are potential sources of high lead exposure for maintenance workers. They also are potential sources of fugitive emissions, both when they leak and while they are being serviced or repaired (Ex. 684b, p. 10). In fact, mechanical conveyor systems like screw conveyors and bucket elevators appear to constitute a major source of workers' exposure throughout the plants (e.g., Ex. 684c, p. 5).

This major source of lead exposure for maintenance and other workers is likely to be dramatically reduced in the next few years. The decided trend in the industry is to replace MMTS with pneumatic conveyance systems. The latter require much less maintenance and are considerably less likely to leak (Exs. 684a, p. 14; 684c, p. 5). This should also significantly reduce background levels, especially in plants where they are high.

Nevertheless, OSHA recognizes that in certain maintenance tasks exposure levels may continue to exceed 50 $\mu g/m^3$. If in those operations it is not feasible to use engineering and work practice controls to reduce air lead levels to the PEL, OSHA recognizes that employers, as they traditionally have done, will continue to rely on supplementary respirator use to protect workers.

Operator. The only other job classification that might present some problems in achieving 50 $\mu g/m^3$ is operator. Operators typically engage in two quite different sorts of tasks. First, operators monitor the lead oxide production process, which is largely automated, enclosed and operated under negative pressure. Second, operators manually perform certain periodic duties that cause them to intervene in that system.

Operators, for example, dross the melt pot and take product quality control samples at several points during the production process (Ex. 582–90, p. 4). In addition, at Plant A and Plant C, operators, like other employees, perform minor maintenance. In some plants like Plant A and Plant B, operators also perform tasks like packaging that are atypical of the job classification. Leaving aside considerations of cross contamination and lead exposure attributable to atypical tasks, the nearly exclusive source of a typical operator's lead exposure is the set of tasks that involve manual intervention in the otherwise largely automated production system. Consequently, any additional controls intended to reduce operators' exposure to lead must be directed at reducing or eliminating these tasks or at more efficiently capturing the lead emissions associated with them.

As indicated earlier, operators at Plant B, in addition to performing typical operator tasks, also perform packaging, which constitutes their primary source of exposure. Controlling operators' exposure levels in packagtng to below 50 $\mu g/m^3$ will significantly reduce their

exposure levels. Properly controlling the melt pot and the tasks of drossing and quality sampling that operators perform will further reduce these levels. At Plant B, for example, the drossing task is essentially uncontrolled (Ex. 686E, p. 27). Although company representatives at Plant B concede this (Ex. 694–9, Att. 6, p. 28), they did identify improved drossing technology as one of the items the company was exploring to reduce exposure levels (Ex. 684b, p. 10), and they do plan to install drossing chutes to contain emissions during drossing. Nevertheless, the company maintains that emissions from drossing contribute insignificantly to operators' lead exposure, approximately 1.5 $\mu g/m^3$ during an eight-hour period (Ex. 694–9, Att. 6, p. 7).

OSHA disagrees with this estimate, because it appears to only consider an operator's exposure during the time drossing is being performed and does not seem to account, for example, for any lead emissions from the dross after drossing is completed. OSHA believes that with proper controls exposure levels for operators can be reduced consistently to below 50 $\mu g/m^3$, even in Plant B.

At Plant A, where the oxide operators' geometric mean exposure level in 1987 already is 62 $\mu g/m^3$ and the geometric mean for the entire 1984–87 period is also 62 $\mu g/m^3$, the task of reducing air lead levels to consistently below 50 $\mu g/m^3$, is relatively easy. With improvements in the drossing task, improvements to the hoods over the melting pots and better work practices in performing quality control sampling, OSHA has no doubt that exposure levels there can be reduced to consistently below 50 $\mu g/m^3$. Further reductions, not here accounted for, also can be expected from the implementation of additional controls elsewhere in the plant, like controlling cross contamination, that may impact on the exposure of operators to lead.

OSHA wishes to make one final, general point about additional controls. OSHA believes that it is feasible to control exposure levels to below 50 $\mu g/m^3$ for workers involved in producing lead chemicals other than oxides. Plant M represents a successful approach to controlling exposures in this segment of the industry (Ex. 688d; see Table 2, above). To the extent that problems in controlling air lead levels to 50 $\mu g/m^3$ may continue to exist in non-oxide production, OSHA determines that they can be resolved by following the recommendations OSHA made in its feasibility assessment of the lead pigments industry. The production processes for lead chemicals other than lead oxides are sufficiently similar to those used in the production of lead pigments that the controls recommended and the reductions anticipated for that industry are broadly applicable here. Conventional technology is all that is needed.

Since industry has not provided any data indicating the infeasibility of controlling exposure levels in non-oxide production to 50 $\mu g/m^3$, OSHA has not made a separate, detailed analysis of this part of the industry. OSHA concludes, however, that the recommended controls and anticipated exposure reductions for the lead chemicals and lead pigments industries in general are broadly applicable to this segment of the industry as well.

Technological Feasibility Conclusions. Based upon OSHA's independent analysis of the best available evidence in the record and OSHA's expertise and experience, the Agency determines that achieving a PEL of 50 $\mu g/m^3$ by implementing readily available engineering and work practice controls is technologically feasible for the lead chemicals industry as a whole.

Nevertheless, the Agency recognizes that it may not be possible to consistently achieve the PEL by these controls for the very limited amount of packaging that continues to require manual weight adjustment even after state-of-the-art, automated packaging machines have been installed. Since OSHA has found the 50 $\mu g/m^3$ PEL feasible for the industry, employers will be required to implement engineering and work practice controls to control exposure levels to the PEL or the lowest feasible level to protect workers engaged in this sort of packaging, as well. Where all feasible engineering and work practice controls have been implemented and employees performing these tasks are still exposed above the PEL as an 8-hour TWA, employers will be allowed to provide them with respirators for supplemental protection while they are performing such packaging.

To sum up, OSHA has shown that in six of the eight plants owned by the three major producers in the industry, exposure levels already have been, or in the foreseeable future will be controlled to or below 50 $\mu g/m^3$ most of the time in most of the operations. At Plant A, for example, an older plant, OSHA has shown that in 1987 a majority of all sampling results already are below 50 $\mu g/m^3$ and that in six of eight job classifications geometric mean exposure levels also are below 50 $\mu g/m^3$, OSHA has further shown that in the operation that generally is considered by industry to be impossible to control to 50 $\mu g/m^3$, packaging, geometric mean exposure levels in 1987 already were controlled to 50 $\mu g/m^3$ in one plant and to 65 $\mu g/m^3$ in another.

Furthermore, by implementing recommended additional controls, OSHA also has shown that air lead levels in packaging and other production processes can be reduced to consistently below 50 $\mu g/m^3$.

For all operations where the geometric mean exposure level or a majority of sampling results already is near or below 50 $\mu g/m^3$. OSHA believes that a modest improvement in controls, such as improved housekeeping, better work practices, better preventive maintenance and perhaps the addition of simple engineering controls (e.g., putting a lid on a dross pot) will assure that exposure levels are consistently controlled to or below 50 $\mu g/m^3$. OSHA also believes that, where the geometric mean exposure level or a majority of sampling results is above 50 $\mu g/m^3$ and at or below 100 $\mu g/m^3$, a relatively limited improvement in controls, like improving the efficiency of a ventilation system, will generally suffice to bring geometric mean exposure levels to or below 50 $\mu g/m^3$.

Meridian and OSHA have recommended a wide variety of additional controls, to be implemented as appropriate, to achieve the PEL. OSHA wishes to point out that all of its recommendations for achieving 50 $\mu g/m^3$ rely exclusively upon conventional and readily available controls. OSHA has not needed to exercise its statutory authority to force the development of new technology to justify its finding of feasibility in this industry. OSHA also wishes to point out that to the extent it has relied upon the concept of geometric mean, it has done so because the Agency believes it is the most accurate and convenient way to simply depict the array of monitoring results. OSHA is assured that it would have reached the same feasibility determination whether geometric means or another statistical methodology had been employed.

In determining that 50 $\mu g/m^3$ is achievable most of the time in most of the operations in the lead chemicals industry, OSHA does not purport to have recommended an exhaustive list of additional controls. The Agency is certain that industry will be capable of devising and fine tuning various controls to further reduce exposure levels. In many cases industry already knows much of what it has to do and has begun to modernize its operations. At Plant B, for example, plans exist to modernize

the packaging operations and to reduce exposure levels in drossing by installing drossing chutes. Consequently, OSHA anticipates that industry will be able to consistently achieve exposure levels at or below 50 $\mu g/m^3$ in nearly every phase of production.

OSHA believes that these levels will be attained by implementing an integrated system of controls. The basic element in that system is an industrial hygiene study. Each plant should have an experienced industrial hygienist perform an in-depth task analysis and plant-wide survey. This analysis and survey should identify sources of emission in each task and sources of cross drafts and cross contamination. Such an analysis should also recommend appropriate engineering and work practice controls to reduce emissions and minimize employee exposures. If, after implementing these recommendations, reductions in air lead levels deviate substantially from what was anticipated, a followup industrial hygiene evaluation should be conducted and necessary corrections made.

The second element in that system is the development of good written housekeeping and work practice programs that are systematically implemented so that proper procedures are routinely and meticulously followed. For example, wall-to-wall cleanings should be conducted at least annually.

The final element of an integrated system of controls is a preventive maintenance program to assure that all systems are maintained in clean and efficient condition.

Based on the site visits and other information in the record, OSHA does not believe that any company in the industry at present has thoroughly implemented an integrated system of controls. While control programs at various plants in the industry have certain strengths, key elements of an integrated system are missing, even at a plant like Plant B, which claims to be state of the art.

The lead chemicals industry does not agree that a PEL of 50 $\mu g/m^3$ is technologically feasible. Industry's disagreement is based upon seven main points. First and most generally, industry claims the 50 $\mu g/m^3$ PEL cannot be achieved "on a consistent basis" in any operation in the lead chemicals industry (e.g., Ex. 694–9, Att. 2–4). Second, industry argues that even 200 $\mu g/m^3$ cannot be achieved "on a consistent basis" in maintenance operations and 100 $\mu g/m^3$ cannot be achieved "on a consistent basis" in packaging (e.g., Ex. 694–9, Att. 2–4). Third, industry asserts the efforts of Meridian and the expert panel are based upon mistaken determinations of facts, and are unsubstantiated, biased, and methodologically defective (e.g., Ex. 694–9, Att. 1, pp. 2–3, 5–6; Att. 5, pp. 3, 6–7; and Att. 6, pp. 11, 23). Fourth, industry alleges there is insufficient information in the record to support a finding of feasibility (Exs. 582–90. pp. 20–21; 694–9, Att. 6, p. 2). Fifth, industry asserts that for a PEL to be feasible it must effectively be achievable all the time in all operations (e.g.. Ex. 694–9. Att. 5, p. 6, Att. 6, p. 32; Tr. 1276, 1278). Sixth, industry argues that use of the geometric mean is inappropriate in assessing feasibility both because compliance is judged on the basis of single-day's sampling (not on a mean of various days' TWAs) and because the geometric mean is downwardly biased. Seventh, industry argues that the Meridian addendum violates a confidentiality agreement between LIA and OSHA and therefore should be removed from the record.

First, industry asserts that 50 $\mu g/m^3$ cannot be achieved in any operation on a consistent basis. This assertion is the centerpiece of signed, sworn affidavits submitted by LIA from William J. Duffin, identified as the Environmental Manager of Anzon (Ex. 694–9, Att. 2); Benjamin Franklin McKinney, identified as the president of Oxide and Chemical Corportation (Ex. 694–9, Att. 3; and William P. Wilke, IV, identified as vice president of Hammond Lead Products, Inc (Ex. 694–9. Att. 4). Based upon the evidence in the record, OSHA does not find affiants' assertion persuasive.

OSHA has analyzed record data and information from the very plants upon which affiants base their claim of infeasibility and has concluded the PEL can be achieved by engineering and work practice controls. Affiants' position also is contradicted by an earlier statement by the president of one of affiants' companies, who said that, with the exception of maintenance and non-bulk packaging (of which his company does almost none), his company already is achieving 50 $\mu g/m^3$ at its other plants and that he expected to do so at the visited location, as well, after moving into a new facility (Ex. 684c, p. 5). Affiants' position also is not consistent with record evidence and other statements made elsewhere in this remand rulemaking by affiants and their companies. For example, although the affiant from Anzon asserts that 50 $\mu g/m^3$ is not achievable in any operation in his plant, exposure data from his plant shows that in 1987, for example, before any further improvements are made to work practice and engineering controls, a majority of monitoring results already are below 50 $\mu g/m^3$. OSHA's analysis of these data further shows that in 1987 geometric means in all operations but two also are below 50 $\mu g/m^3$. (OSHA omits supporting citations. See related discussion of confidentiality, below.)

As OSHA has previously shown, not only is the PEL of 50 $\mu g/m^3$ achievable, it already is being achieved most of the time in operations at plants owned by affiants' companies. At one of those plants, for example, 20 of 31 sampling results for maintenance workers in 1987 are below 50 $\mu g/m^3$, and their geometric mean is 22 $\mu g/m^3$. (OSHA omits supporting citations. See related discussion of confidentiality, below.)

More importantly, since the consideration of feasibility is not limited to a consideration of what an industry has already achieved, OSHA has shown that in every operation substantial, further reductions in air lead levels can be achieved by the implementation of recommended additional controls. Indeed, with a system of integrated and improved controls, OSHA has shown that 50 $\mu g/m^3$ can be achieved in all operations, with the possible exception of certain maintenance tasks.

In addition, the construction of new plants and the modernization of existing plants have major positive implications for reduced exposure levels, as Meridian has pointed out (Ex. 686E, pp. 6, 11, and 26). LIA seems to recognize these implications. Indeed, in its argument that 50 $\mu g/m^3$ is generally infeasible for the lead chemicals industry, LIA distinguishes between larger and older plants, on the one hand, and more modern plants. For the larger and older plants, LIA asserts that 50 $\mu g/m^3$ is "not feasible for virtually all production processes * * *." However, for "the most modern plants" LIA says only that "the 50 $\mu g/m^3$ PEL cannot be technologically achieved in certain processes * * *." The only two operations LIA names as examples are maintenance and packing (Ex. 582–90, p. 25). This would seem to mean that at least in the most modern plants LIA recognizes that the 50 $\mu g/m^3$ PEL is achievable in all but these "certain" operations.

In new and modernized plants, the replacement of mechanical material conveyor systems by pneumatic systems will substantially reduce exposure levels for maintenance personnel and background levels in plants. Packaging will be more automated and more products will be shipped in bulk. With so many of the major producers modernizing, bringing new plants on line, or planning or constructing new plants, the issue of high employee exposure in certain of the older plants

increasingly is becoming moot. Several of the older facilities are likely to be closed by the time the standard is applied to the lead chemicals industry. Industry criticisms of this main point are not persuasive (Ex. 694–9, Att. 6, pp. 5–9, 28).

Broad assertions by industry representatives that 50 $\mu g/m^3$ is not achievable need to be carefully scrutinized. Based upon OSHA's three site visits to lead chemical plants in 1988, for example, OSHA is certain that none of the plants examined is close to the limits of technological feasibility.

Only one of those plants, Plant B, even claims to be state of the art for oxide production (Ex. 684b, p. 11). If "state of the art" means the highest level of available technology, and especially if it implies that no substantial technological improvements can be made with available, conventional technology, as OSHA believes it does, Plant B is far from state of the art.

In the two operations likely to be the main sources of lead emission in Plant B and industry wide, for example, packaging and maintenance, there is considerable room for improvement using available technology. More sophisticated packaging machines could be purchased and installed that would substantially reduce or perhaps eliminate several manual tasks that are important sources of packers' lead exposure. Plant B itself would seem to agree with this point, since it currently has plans to modernize its packaging operation (Ex. 694–9, Att. 6, p. 32). Where practical, mechanical material conveyor systems, like bucket elevators, also could be replaced by relatively cleaner pneumatic systems.

Moreover, since Plant B has never had a certified industrial hygienist perform a plant-wide job/task analysis to identify all sources of lead exposure and their relative contributions to workers' exposure levels, OSHA does not think the company has sufficient information to reach definitive conclusions concerning the limits of feasibility even in its own plant, let alone across the industry. By contrast, companies like the one that owns Plant C, which report they already have achieved 50 $\mu g/m^3$ in most operations in most plants, have definitive experience that the 50 $\mu g/m^3$ PEL is achievable.

In responding to this first industry argument, OSHA has tried to maintain the name confidentiality of site-visited plants, in accordance with OSHA's limited confidentiality agreement with LIA (Ex. 685A). This has been made very difficult by the fact that officials from the visited plants late in the rulemaking submitted affidavits in which they identify themselves and their company by name and indicate that their company has been recently visited by OSHA in connection with this rulemaking. OSHA believes that by submitting such affidavits these companies effectively waived any right they may have had to name confidentiality. Nonetheless, the Agency in responding to affiants' assertions has continued to maintain name confidentiality. To the extent the companies may believe that name confidentiality has been compromised, OSHA maintains this is attributable solely to the companies and their submission of such affidavits, which required a response from OSHA.

Industry's second main argument is that even 200 $\mu g/m^3$ cannot be achieved on a consistent basis in maintenance operations and even 100 $\mu g/m^3$ cannot be achieved on a consistent basis in packaging (e.g., Ex. 694–9, Att. 2–4). OSHA disagrees with industry's contention.

With regard to packaging, the assertion that 100 $\mu g/m^3$ cannot be achieved in packaging is directly contradicted by Plant A's statement that 100 $\mu g/m^3$ can be achieved in that operation (Ex. 694–9, Att. 5, p. 8). It also is in conflict with Plant A's exposure data, which in 1987 show that nearly 60% of all monitoring results that the plant considered typical for PBD operators already are below 100 $\mu g/m^3$ (Ex. 686c). Similarly, at Plant M, 75% of all monitoring results in packaging in 1987 were below 100 $\mu g/m^3$ (Ex. 686d). Moreover, since packaging operations across the industry generally do not incorporate state-of-the-art technology, current exposure levels in packaging can be substantially reduced by implementing additional controls, as OSHA has demonstrated above.

With regard to maintenance, exposure data show that levels well below 200 $\mu g/m^3$ already are being achieved with considerable consistency. At Plant A, for example, in the years 1984–87 typically over 60% of monitoring results, adjusted in accordance with Plant A's annotations, were below 50 $\mu g/m^3$ (Ex. 688c). In those years, approximately three-quarters of adjusted monitoring results also typically were below 100 $\mu g/m^3$. In fact, only 4 of 111 monitoring results were over 200 $\mu g/m^3$ (Ex. 688c).

Nevertheless, as OSHA stated above, the Agency recognizes that in some maintenance operations exposure levels may continue to exceed 50 $\mu g/m^3$. If in a limited number of these maintenance operations it is not feasible to use engineering and work practice controls to reduce air lead levels, OSHA also recognizes that employers will have to continue to rely on supplementary use of respirators to protect workers, as they traditionally have done. This sort of maintenance operation is not really relevant to an assessment of technological feasibility since OSHA has consistently recognized that in certain limited maintenance operations sole reliance on engineering controls may be infeasible.

In any event, to establish technological feasibility the Agency need not prove the PEL is capable of being achieved all of the time or in all operations. Thus, for example, even if it were true that the PEL were not achievable in a single operation in many plants, that would not in itself mean the PEL was technologically infeasible for the industry.

Third, industry argues that the efforts of Meridian and the expert panel are based upon mistaken determinations of facts, and are unsubstantiated, biased, and methodologically defective (e.g., Ex. 694–9, Att. 1, pp. 2–3, 5–6, Att. 5, pp. 3, 6–7, Att. 6, pp. 11, 23). On the whole, OSHA rejects these criticisms and believes that Meridian did a creditable job within the given time and resource constraints.

Meridian has had extensive experience and possesses very broad competence in the area of industrial hygiene, the principles of which are generally applicable across industries. It also has expertise and broad experience in assessing factors relevant to technological feasibility. Physically, there is nothing unique about lead dust and lead fume or about the lead chemical industry that would make Meridian's extensive expertise and competence in evaluating engineering and work practice controls across many industries irrelevant to this industry. The control technologies recommended are conventional and transferrable from similar industries, and the anticipated effectiveness of these controls in reducing lead levels also is the same across industries (e.g., Ex. 582–90, p. 9). The expert panel established by Meridian also was composed of independent, broadly experienced, certified industrial hygienists, not themselves employees of Meridian.

Meridian s final report (Ex. 686E) and its conclusions are based on numerous sources in the record. These include data, other evidence and comments submitted by lead chemical companies, trade associations and other interested parties; site visits to three lead chemical plants, participated in by three experienced, certified industrial hygienists; and recommendations by the expert panel, two of whose members

had been on one or more of the site visits.

Of course, notwithstanding their experience and expertise, Meridian and the expert panel may have made certain mistakes of fact and drawn some incorrect conclusions. This is almost inevitable when a contractor and experts can devote only limited time and resources to examining a complex industry and voluminous record. Nevertheless, some of the specific allegations that Meridian misstated facts themselves seem incorrect. For example, Plant A states (Ex. 694–9, Att. 5, p.. 7) that Meridian was mistaken in its April 1988 final report when it said that no industrial hygiene audit or task analysis had been performed at Plant A (Ex. 686 E, p. 29). As Plant A has pointed out, its plant was audited by an industrial hygienist in October 1987, just prior to the public hearing in this rulemaking, and task sampling in one department had been completed by March 1988. However, Plant A did not report these facts on the record until its comments in late May 1988, after Meridian's April report had been submitted to the record. Moreover, task sampling had not yet been completed by the May 1988 comments (Ex. 694–9, Att. 5, pp. 7–8). Meridian's point, thus, appears to accurately reflect the evidence in the record at the time.

Similarly, Plant B criticizes Meridian s methodology for including Plant A's packer/blender/dryer operator (PBD) in its analysis of exposure data for operators. Plant B argues that this violates the job classifications and job descriptions submitted by LIA, wherein "the operator category * * * excludes packing" (Ex. 694–9, Att. 6, p. 11; and see Ex. 582–90, p. 4). OSHA believes Plant B has a point and in deference to that point does not in its own assessment treat PBDs as operators, despite the fact that PBDs' other tasks are typical operators' tasks (wet process). Nonetheless, the fundamental problem lies not in Meridian's methodology but in the fit between LIA job classifications and actual job classifications in the industry. LIA sets up five general job classifications: operator, packer, leadman, maintenance and shipper. However, several of these classifications do not exist at a number of plants (e.g., there are no leadmen at Plant A or Plant X). Moreover, some plants have classifications not included in the five (e.g., Plant A has general laborers).

More importantly, in two of the three plants OSHA visited in 1988, there is no distinct job category for packer. At Plant B, no job title includes the word "packer" (Ex. 684b). Packing there apparently is done by operators and shippers. By contrast, at Plant A one job title is PBD, which includes, but is not limited to packaging.

If data from PBD monitoring results cannot properly be analyzed as part of the exposure data for operators, as Plant B asserts, must it also be excluded from analysis of the data for packers, who typically do not perform tasks of drying and blending? OSHA does not think so. If it were excluded, the Plant A data would simply have to be discarded, since it fits no other job classification. Moreover, if OSHA could only rely on data collected from employees who exclusively do packing, the Agency would be left with no reliable data for packagers from the plants where it conducted site visits. OSHA therefore believes that Meridian's approach is a reasonable effort to make sense of data from various sources that do not all neatly fit into the typical job categories presented in good faith by industry.

Industry also claims that the expert panel's estimated reductions in exposure levels are meaningless, because they are unsubstantiated by engineering analysis. (Ex. 694–9, Att. 6, pp. 23–24, 30 and 31). OSHA disagrees. The anticipated reductions are meaningful because they are supported by the collective expert judgment of the three experienced, certified industrial hygienists who constitute the panel. OSHA is not required to support each of its estimates with substantial engineering analysis. Given OSHA's limited resources, to deny the value of expert judgment and to demand instead that OSHA conduct a "substantial engineering analysis" for each operation in an industry to prove technological feasibility would often preclude the Agency from being able to prove technological feasibility.

Furthermore, Plant B's alternative suggestion that a more meaningful estimate of the real reductions achievable in packaging could have been made if the expert panel had studied the best packaging operations and compared them with packaging operations in older facilities (Ex. 694–9, Att. 6, p. 24), is not acceptable. Plant B's suggestion would only be useful in assessing technological feasibility if the best packaging operations in the industry truly incorporated state-of-the-art technology. However, the evidence in the record does not show that any plant in the industry has a state-of-the-art packaging operation, and OSHA does not believe such an operation currently exists. Consequently, Plant B's suggestion cannot provide an estimate of the full extent of achievable reductions in exposure levels but instead would merely provide an estimate of reductions based on levels already achieved at one plant or another. However, OSHA's determination of what is technologically feasible is not confined to what has already been achieved.

Thus, OSHA concludes that Meridian's findings and conclusions generally are firmly grounded in the record and that its methodology generally represents a reasonable effort to make sense of, and use that record. In any event, OSHA has independently assessed the record, reviewed Meridian's final report for accuracy, taken account of industry's comments on that report, and relied only in part upon the Meridian report for the Agency's determination of technological feasibility.

Industry's fourth argument is that there is insufficient information in the record to support a finding of feasibility for the industry (Exs. 582–90, pp. 20–21; 694–9, Att. 6, p. 2). As indicated by the entire preceeding discussion of the record evidence in this document, OSHA disagrees. There is in the record substantial exposure data and information, including three site visit reports, concerning six of the eight plants owned by the three firms that together represent 80% of the industry's domestic production capacity. There is, as well, a final contractor's report that includes findings of facts, analyses, and specific estimates by an expert panel of anticipated reductions in exposure levels to be achieved operation-by-operation in three plants by employers' implementing recommended additional controls. OSHA believes the record evidence constitutes a firm basis for assessing technological feasibility and that the evidence supports the Agency's determination that the PEL of 50 $\mu g/m^3$ is achievable by engineering and work practice controls.

Industry's fifth argument is that for a PEL to be considered feasible it must effectively be achievable all the time in all operations (e.g., Ex. 694–9, Att. 5, p. 6, Att. 6, p. 32; Tr. 1276, 1278). Industry essentially argues that since it can be cited by OSHA for an employee's eight-hour TWA being in excess of the PEL in any operation on any single day, therefore OSHA must show an industry can achieve the PEL all of the time in all operations to prove technological feasibility.

This characterization of the issue of technological feasibility is nowhere clearer than in Plant B's closing comments in the record. There (Ex. 694–

9, Att. 6, p. 32). Plant B asserts that Meridian's statement that 50 $\mu g/m^3$ "can be achieved most of the time" in relatively new plants really means that 50 $\mu g/m^3$ is *not* feasible. Plant B explains that in enforcement "OSHA uses single samples to demonstrate compliance with the lead standard." Consequently, "*meeting the standard most of the time does not demonstrate feasibility*. Industry must meet the standard every time" (emphasis added).

This perspective is inherent, as well, in LIA's final comments (Ex. 694–9, Att. 1, p. 2). There, LIA criticizes Meridian's statement that employers can have reasonable confidence that their workers' exposure levels will not exceed 50 $\mu g/m^3$ "most of the time" as inadequate assurance. That assurance, LIA goes on to say, "does not mean that the * * * industry can achieve such exposure levels for all tasks on a continuous basis * * *. [I]ndustry is not provided [by OSHA] with the opportunity to comply with a promulgated health standard 'most of the time'."

Industry's assertions elsewhere that it is not feasible to achieve 50 $\mu g/m^3$ "on a consistent basis" (Exs. 694–9, Att. 2–4, Att. 6, pp. 19, 20) must be understood in terms of its perspective on technological feasibility. To industry, the ambiguous phrase "on a consistent basis" appears to mean all of the time, not most of the time. The former meaning alone is consonant with industry's position that, for a PEL to be considered technologically feasible, industry must be able to comply with it essentially 100% of the time.

If OSHA is correct in this understanding, then when affiants assert that "it is not feasible to achieve on a consistent basis a 50 $\mu g/m^3$ permissible exposure imit for the remaining processing areas under normal conditions" (Ex. 694–9, Att. 2–4), they mean it is not feasible to achieve 50 $\mu g/m^3$ *all of the time* in those operations under those conditions. Thus understood, OSHA can agree with industry's point without agreeing that that amounts to a proof of infeasibility.

In fact, OSHA believes that industry is confusing technological feasibility with compliance. The two are related but not the same. As the courts have said, to prove the technological feasibility of a PEL, OSHA is not required to prove that an industry can achieve the PEL in all of the operations all the time. *USWA* v. *Marshall*, 647 F.2d at 1270. Indeed, if a PEL is generally feasible across an industry, there may be an operation in which the PEL can never be achieved and in which industry's obligation is to engineer down to the lowest feasible level. Achieving that level, then, would constitute full compliance with paragraph (e)(1) of the lead standard. OSHA believes that industry's extreme interpretation of technological feasibility to mean achievable all of the time in all operations would effectively subvert OSHA's statutory mission to protect workers "to the extent feasible."

Industry's sixth argument is that use of the geometric mean is inappropriate in assessing feasibility both because compliance is judged on the basis of single-day's sampling not on a mean of various days' TWAs and because the geometric mean is downwardly biased (Ex. 694–9, Att. 5, p. 6, Att. 6, pp. 15, 21). The first part of this argument is essentially the same as industry's fifth argument and is unpersuasive for the reasons set out above and for the reasons stated in the introduction to technological feasibility in this preamble. The claim that the geometric mean is downwardly biased is based upon the fact that the geometric mean is generally lower than the arithmetic mean and the related fact that the geometric mean gives less weight to outlying monitoring results, especially, for all practical purposes, to high outlying results.

In response, OSHA notes that the geometric mean is widely accepted by the scientific community as the best single statistic to accurately represent an array of data that, like typical exposure monitoring results, is log normally distributed (Ex. 686E, pp. 16–17). The scientific validity of using the geometric mean to analyse exposure data is recognized by industry itself (e.g., Ex. 694–9, Att. 6, pp. 15, 21). The geometric mean is considered the best way to represent exposure data in part because it does give less weight to outliers. In giving less weight to outliers, the highest of which would otherwise tend to have a disproportionate effect on the mean, the geometric mean becomes lower than the arithmetic mean. Hence, the geometric mean is lower than the arithmetic mean for scientific reasons. OSHA's choice of the geometric mean as a tool of analysis is based upon its analytic power and empirical justification.

Industry's seventh argument is that the Meridian addendum violates the confidentiality agreements between LIA and OSHA and therefore should be removed from the record (Ex. 694–9, Att. 1, p. 5) LIA argues that the confidentiality agreement "clearly" states that "*the plant visits* were not designed to address the issue of economic and technical feasibility of the 50 $\mu g/m^3$ PEL * * *." (emphasis added). Rather, LIA contends, "*the plant visits* were designed specifically to gather information with respect to production processes and the application of engineering controls" (emphasis added).

In responding to LIA's argument, OSHA first notes that nothing LIA asserts is grounded in the language of the confidentiality agreement. On the contrary, the language of the confidentiality agreement provides no basis for distinguishing between addressing feasibility and gathering information with respect to production processes and the application of engineering controls. In any event, the Agency finds the meaning of LIA's point unclear and is not persuaded that a meaningful distinction exists. Even if the distinction were valid and relevant, OSHA would still reject the argument that the Agency breached the confidentiality agreement.

The issue is whether the confidentiality agreement prohibits OSHA from using any information gathered on the site visits in the Agency's final assessment of feasibility. The only provision of the confidentiality agreement dealing with feasibility conclusions is paragraph 5 (Ex. 685A). That paragraph is narrowly drawn. It says nothing about *plant visits* as such, but focuses exclusively on *plant visit reports*. The paragraph simply provides: "The plant visit *reports* will be factual in nature and will not draw any conclusions as to either the technological or economic feasibility of achieving the PEL" (emphasis added). The agreement thus prohibits OSHA from drawing technological or economic feasibility conclusions in the plant visit *reports*. In fact, OSHA did not draw feasibility conclusions in those reports. LIA does not claim it did.

The agreement does not prohibit, and cannot be read to prohibit all subsequent use of information or data gathered on the plant visits in assessing feasibility. OSHA would not have conducted site visits under such restrictive conditions, which would have rendered the visits essentially useless. These visits were made late in the rulemaking. They were not visits made prior to a proposal for purposes of introducing OSHA staffers for the first time to conditions in the relevant industry. By December 1987 and January 1988, OSHA had no need to conduct introductory visits. The Agency repeatedly made these points, both orally and in writing, to LIA and other industry representatives in the negotiations leading up to the site visits. A letter of December 4, 1987 to Robert N. Steinwurtzel, Counsel for LIA, from

Richard M. Pfeffer, Project Attorney for OSHA in this rulemaking (Ex. 700), for example, concludes as follows:

> Finally, let me reiterate that the Agency to date has not made a determination about the feasibility of implementing Section 1910.1025(e)(1) of the OSHA lead standard in the remand industries. The Agency believes the plant visits will be useful in reaching a determination * * * OSHA's general approach to making the visits, as stated by Charles Adkins [, Director of the Office of Health Standards Programs,] at the November 23 meeting, is that if we cannot use what we see, there is no point in carrying out the visits. OSHA wishes to make the best informed decision possible.

Actions by company representatives and counsel for LIA during the site visits confirm that industry anticipated that the information gathered on the plant visits would be considered as part of OSHA's final assessment of feasibility. For example, during the visits company officials discussed, and made specific statements regarding the feasibility of achieving the 50 $\mu g/m^3$ PEL in their plants. These statements are incorporated in the site visit reports (e.g., Ex. 684b, p. 11). Yet, so far as the Agency is aware, neither LIA nor the companies visited objected that their inclusion violated the confidentiality agreement. If LIA and the companies believed the site visits were not designed to "address the issue of * * * feasibility" at all, the Agency believes they would not have made such statements during the visits and, in any event, after the visits would have objected to their inclusion in the site visit reports.

Thus, the Agency is assured that the confidentiality agreement does not bar data and information gathered during the site visits from being used by OSHA in its assessment of feasibility. The Agency is further assured from the companies' and LIA's own actions that this was in fact, or in any event should have been understood by them. Thus, there is no justification for removing any document from the record on the basis of LIA's allegation of breach of confidentiality. Indeed, since the agreement does not bar OSHA from using such information, OSHA may well be under a statutory obligation to use the information where it constitutes the "best available evidence."

Consequently, OSHA is unpersuaded by industry's arguments. Based upon its own experience, expertise and the record evidence, OSHA concludes that a PEL of 50 $\mu g/m^3$ is technologically achievable by means of engineering and work practice controls in the lead chemicals industry.

Uses. Lead chemicals principally include lead oxides, lead silicates, and lead soaps. Uses include incorporation into products such as ceramics, paints, glass, plastics (mostly as stabilizers), and automotive batteries. They are also used in glazes for china and pottery.

Industry Profile. The Lead Chemicals Industry is part of SIC classification 2819, Industrial Inorganic Chemicals, and includes the production of lead oxides, lead silicates, and lead soaps, among other compounds.

There are 13 firms currently involved in the production of lead oxide and/or red lead (primary lead chemicals), 19 producers of lead chemicals other than lead oxides, and an additional 2 or 3 plants involved in the production of lead stabilizers [Ex. 686e, p. 2–4]. The Lead Industries Association (LIA) reports, however, that approximately 85 percent of the domestic production capacity of this industry is accounted for by just five producers [Ex. 582–90, p. 1], and all are primary lead chemical producers. Also, with regard to the 19 lead chemical producers mentioned above, "the amounts of lead involved are quite small in relation to the amounts involved in primary lead chemical production" [Ex. 686e, p. 4]. OSHA has therefore focused its analysis on primary lead chemicals.

Employment for the lead chemicals sector was estimated in 1982 at 700 total workers [Ex. 575, p. 2]. Information provided by the LIA indicates that there are currently 74 operators, 24 leadmen, 36 maintenance workers, 59 packers, and 10 shipping employees, or 203 total lead-exposed workers employed by the 5 LIA member firms [Ex. 582–90, p. 4].

Production data show that lead oxide production fluctuated during the period 1980 to 1985, with red lead shipments at a five year low in 1984 (12,815 short tons) and shipments of litharge at a six year high in 1985 (94,080 short tons). Combined shipments of these chemicals declined 28 percent in 1986, then increased over 13 percent in 1987 [1987 Minerals Yearbook, Bureau of Mines, U.S. Department of Interior].

In assessing price trends for lead oxide products, OSHA found the concept of unit value to be the accepted measure of value by both the industry and government agencies which collect and report data on lead chemicals. Unit value is derived as total value of product divided by total volume, expressed in cents per pound. For example, in 1987, the 80,568 metric tons (177,571,872 lbs.) of litharge and red lead shipped by U.S. producers had a total value of $72,292,620. (Litharge is estimated to constitute approximately 80 percent of the value of this combined product category and red lead is estimated to constitute the remaining 20 percent. OSHA believes, therefore, that the unit value for the combined product category is an appropriate proxy for the unit value of litharge [Ex. 575, p. 7]). Unit value for this product category was thus 40.7¢ per pound. This value must not be confused with quoted price, which is generally higher, as transactions generally do not take place at quoted price.

The LIA reported an average price for litharge in 1987 of 39¢ per pound [Ex 582–90, Appendix D, Table 3]. This value is consistent with the unit value derived above; OSHA concludes, then, that the LIA prices submitted are unit values and not price quotations. This value represents a 50 percent increase from the 1986 unit value of 26¢ per pound, according to LIA data. Unit values of battery oxide were also provided by the LIA. Unit values for this product increased from about 23¢ per pound in 1986 to about 36¢ per pound in 1987, a jump of approximately 56 percent [Ex. 582–90].

With regard to imports, the U.S. imported 24.8 million pounds of litharge in 1986. The unit value of these imports was 19¢ per pound [Ex. 582–90, Appendix D, Table 7]. In 1987, unit value of imported litharge rose to 33¢ per pound, an increase of 65 percent over the previous year's value. (In order to reduce tariffs, the value of imported shipments may be underreported.) Quantity increased over 26 percent during the same period [1987 Minerals Yearbook, Bureau of Mines, U.S. Department of Interior]. Imports of lead compounds other than oxides increased twofold from 1980 to 1985 [Ex. 575, p. 14].

Data on imports of some of the products which incorporate lead chemicals show that 27 million pounds of pigments and 9.2 million lead-acid storage batteries were imported in 1986. That same year, 2.3 million color television tubes and over 5 million pounds of paints were also imported. [Ex. 582–90, Appendix D, Tables 8–9D].

Demand for red lead is related to its use as a paint additive, its use in ceramics, and its use in storage batteries. Litharge is shipped for use in ceramics, chrome pigments, paints, rubber, and other uses. Demand for both of these chemicals in paints has decreased since the early 1980s; this use represents, however, only about 20–25 percent of red lead shipments and typically less than 10 percent of total litharge shipments [Ex. 575, pp. 10–11]. Demand for lead silicates is tied to the demand for pottery and china glazes while the demand for lead stabilizers is related to their use in plastics [Ex. 575,

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p. 12]. One industry source reports that "lead demand is stagnant, if not declining" [Ex. 582–90, p. 19]. Another claimed that the "glass and plastics markets for lead chemicals are growing quite quickly; the battery oxide market is growing slowly; and the pigments market is declining" [Ex. 686e, p. 6]. The shipments and unit value data presented above indicate strong demand for both litharge and battery oxide.

Comparable substitutes for the lead chemicals in glass, ceramics, crystal, and stabilizers do not exist. There are, however, substitutes for the lead chemicals in paints [Ex. 575, pp. 13–14].

Financial data averaged for four of the five lead chemical producers represented by the LIA showed negative return on investment and return on net worth ratios for the years 1982, 1983, 1985, and 1986 and positive rates for 1984 [Ex. 582–90, Appendix D, Tables 1 and 2].

Primary lead price data (primary lead is the major input for lead chemicals) provided in the LIA submittal were consistent with the Bureau of Mines "U.S. Producer" and "North American Primary Producer Mean" (NAPPM) price quotations for lead [1987 Minerals Yearbook, Bureau of Mines, U.S. Department of Interior]. However, according to the Bureau, the quoted price is not the actual transaction price (actual price paid) of the metal. The transaction price more closely resembles the quoted price less a discount, and approximates the London Metal Exchange (LME) value, which averaged 18.4¢ in 1986, plus a 4¢ or 5¢ per pound transportation cost. Since the U.S. quoted price averaged about 22¢ in 1986, discounts were probably small or nonexistent that year (the quoted price and the transaction price were about the same). In 1985, discounts were also small or nonexistent.

In other years, however, quoted prices have diverged from transaction prices. For example, since the price of lead on the LME averaged 27¢ for 1987, the transaction price would have approximated 32¢ (27¢ plus 5¢ transportation cost), resulting in a discount of about 4¢ per pound for the year between the actual price paid for the metal and the quoted producer prices, which averaged 36¢. In 1984, the last year for which the LIA firms were reported to be profitable, this discount was about 1¢–2¢.

The LIA reported that U.S. lead chemicals producers "have not succeeded in increasing the conversion charge to the point where such charges cover total costs" [Ex. 582–90, Appendix D, p. 3]. (Conversion charge is defined by the LIA to be the difference between the price of primary lead and the price of the industry's product). The LIA submission compared the difference between litharge unit values and quoted primary lead prices and concluded that the conversion charge had been "modest relative to total product price, and confined within a narrow range over [the years 1984 to 1987]" [Ex 582–90, Appendix D, p. 3]. OSHA believes, however, that transaction prices rather than quoted prices of primary lead should be used in computing conversion charges. If transaction prices are used, based on the above discussion, conversion charges for the profitable year of 1984 (a year in which conversion charges exceeded total costs—see LIA quote above) would have exceeded conversion charges in 1985 and 1986, both reported to be unprofitable years, by as much as 2¢ per pound. This figure represents approximately 40 percent of the conversion charges reported for 1985 and 1986. Since the difference between litharge unit values and primary lead transaction prices appeared greatest in 1987, and since no evidence in the record suggests a corresponding increase in production costs between 1984 and 1987, OSHA concludes that profitability in 1987 was greater than 1984.

Additionally, OSHA notes that unit values for domestic products increased by as much as 56 percent in 1987 (see above). At the same time, the primary lead transaction price (i.e., input price) increased only about 45 percent.

OSHA also notes that the unit value of imported litharge (adjusted up by 5¢ per pound) increased by about 58 percent. This information suggests an improvement in price the competitiveness of domestic producers in 1987.

Finally, the recent construction of two new plants in this sector [Ex. 694–9, Company B comments, p. 34] suggests that at least two firms are now profitable and/or expect to be profitable in the long run.

For these reasons, OSHA does not believe that the LIA profitability ratios for 1983 through 1986 accurately reflect the current financial condition of lead chemical producers. Instead the Dun and Bradstreet 1986 rate of return on sales for SIC 2816 of 4.9 percent was used to estimate the economic impact of the rule [Dun and Bradstreet Industry Norms, 1987].

Costs of Compliance. Costs to be incurred by the lead chemicals industry in order to achieve compliance with the 50 microgram per cubic meter standard are for additional ventilation, the implementation of improved packaging technology, and improved housekeeping. These costs will vary, however, depending on the age of the facility. Also, costs were estimated only for LIA member facilities which represent approximately 85 percent of primary lead chemicals production. The "users" of lead chemicals appear to manufacture lead chemicals as a minor part of their product lines, and there is no evidence in the record to suggest that workers employed in these operations are being exposed above the PEL of 50 micrograms per cubic meter [Ex. 686e, p. 2].

Among LIA member companies, two older plants will require additional ventilation in the melting and semi-automatic packaging areas (semi-automatic packaging refers to packaging in bags or drums with manual intervention). Costs were estimated based on the following judgements: ventilation costs will be incurred at the rate of $15 per cfm of air handling capacity for both areas, and this cost includes ductwork, additional baghouse capacity, fans, providing for makeup air, and installation; the required cfm capacity for ventilation in the melting area (melt pots, molten lead transfer system, and drossing operations) is estimated to be 4,500 and; the required cfm capacity for ventilation for semi-automatic packaging stations is estimated to be 4,000. It is estimated that there are two of each type of area per facility and each will require the appropriate system. Automated packaging units are also expected to be implemented. Since customer demand for various package sizes limits the use of automatic packaging units, it is assumed that only two such units will be implemented per facility. The capital costs of each unit are estimated to be $150,000, including bagger, palletizer, and associated ventilation [Ex. 582–17, p. 6].

Total incremental capital costs for melting area ventilation for the older plant category amount to $135,000 ($67,500 for each of two melt pots) and incremental capital costs for packaging amount to $420,000 (ventilation for two semi-automatic stations at $60,000 per ventilation system and two automated packagers at $150,000 per unit). Since many semi-automatic packaging stations already have some local ventilation in place, costs could be somewhat less than the $60,000 estimated in many cases. Annualized capital charges, based on a useful equipment life of 12 years and financing charges of 10%, will be $81,474. Operation and maintenance expenses are estimated to be 10% of capital costs and are therefore expected to be $55,500. Thus, total annual costs for this equipment are $136,974.

Costs attributable to improved housekeeping will also be incurred. Installation of a central vacuum system is estimated to cost $50,000 [Ex. 694–9, Company A response, p. 7]. Total annual costs, including annualized capital and O&M expenses, would be $12,340. Evidence in the record indicates that at least one of the two older facilities has already installed a central vacuum system [Ex. 694–9 Company A response, p. 6], and OSHA estimates that a 50 percent current compliance level estimate is reasonable. Total average incremental annual costs per plant for this equipment are thus $6,170. The cost of an annual cleaning is estimated to be $50,000 per year ($5,000 per day over ten days) [Ex. 694–9, Company A response, p. 7]. Finally, incremental costs for routine housekeeping will be incurred. OSHA estimates this cost to be $7,350 annually, based on an assumption of one and one-half person-hours of work per day, seven days per week, over 50 weeks at an average wage of approximately $14 per hour. Total incremental annual costs for housekeeping are $63,520.

In sum, total incremental annual costs for older facilities are estimated to be about $200,000.

Three relatively new plants will require similar controls in the packaging area but less extensive controls in the melting area, as only ventilation for the drossing operation is believed to be necessary for these plants. The judgments used to develop the costs for relatively new plants were the same as those used for older plants, except that the air handling capacity requirement for the melting area (where only the drossing operation requires ventilation) was 450 cfm.

As was the case for older plants, newer plants also have two of each type of area requiring ventilation. Total capital costs per facility are the sum of $120,000 for semi-automatic packaging ventilation (two systems at $60,000 each), $13,500 for drossing ventilation (two systems at $6,700 each), and $300,000 for automated packaging (two units at $150,000 each). Evidence indicates, however, that improvements in the packaging area are planned in at least one plant in this category [Ex. 684b, p. 11]; therefore, a baseline factor of 25 percent has been applied for packaging controls. Total incremental costs are thus estimated to average $328,500 per plant for this equipment. Total incremental annual costs, including annualized capital and O&M expenses, will be $81,074.

Costs for improved housekeeping will also be incurred by the three facilities in this category. These costs include $50,000 for a central vacuum system (annualized capital and O&M costs of $12,340), $7,350 for additional labor, and $50,000 for annual cleaning. Evidence in the record indicates that at least one facility has installed "large vacuum lines" [Ex. 694–9]; a baseline offset of 33 percent has been applied in computing the incremental costs of the vacuum system (i.e., the capital cost was reduced by one-third in order to account for current compliance levels). Total incremental annual costs for improved housekeeping are thus $65,618.

Total incremental annual costs for this facility category are thus estimated to average approximately $147,000 per facility.

Among a total of six modernized and new plants OSHA believes that no costs will be incurred by lead chemicals facilities which are packaging exclusively in bulk, and information in the record indicates that this is the case for three plants [Ex. 686e, p. 29]. It is reported that these plants have attained the 50 microgram per cubic meter standard in all operations [Ex. 686e, p. 34]. Two new facilities will still use semi-automatic units (packing in bags and/or drums) in response to customer demand [Ex. 694–9, company B comments, p. 34]. For these facilities, costs for the packaging area are based on an assumption of two semi-automatic packaging stations. (Evidence indicates that these new facilities will already have automated units for that portion of product suitable for automation [Ex. 686e, p. 30]). Total capital costs would be $120,000. Total incremental annual costs per facility for this equipment, which include annualized capital and O&M expenses, are estimated to be $29,616.

New plants packaging in bags will also require additional housekeeping. Incremental costs are estimated to be $2,450 per year, based on the requirement for one-half person-hour per day, seven days per week, 50 weeks per year at an average wage of about $14 per hour. (The one-half person-hour contrasts with the one and one-half person-hour estimate used for older facilities and appears justified based upon improved conditions in newer plants).

Total annual costs per facility for new plants are estimated to be $32,066. OSHA assumes that annual costs for the sixth plant in this category are similar to the $32,066 computed above for the two new plants.

Finally, isolation and barrier techniques may be required in some plants to reduce cross contamination. The necessity for these measures will depend upon the amount of manual packaging done at a particular facility and the effectiveness of other control strategies. However, the prevalence of manual packaging is low throughout the industry and the control strategies prescribed should be effective in controlling exposure levels when implemented properly as part of an integrated control system. Thus, no costs for barrier techniques have been estimated.

The costs of an industrial hygiene survey were estimated to be $1,000. The survey was estimated to require two days to complete. Though occasional reevaluation may be necessary, no recurring costs would be required.

It should be noted that to the extent that mechanical conveyance systems are replaced with pneumatic systems, housekeeping and maintenance costs will tend to be reduced. To the extent that some replacement takes place, OSHA's cost estimates will be overstated. Costs are also overestimated to the extent that producers are able to shift away from manual packaging.

Aggregate industry compliance costs are based on the existence of two older plants, three relatively new plants, four modernized plants (three of which will incur no costs), and two new plants. Total incremental annual costs are expected to be $937,000.

There are about 30 additional chemical firms which may be affected by this rulemaking but for which data were not available. OSHA believes that only limited expenditures will be incurred by these firms as each accounts for less than 1 percent of total industry volume of product [Ex. 686e, p. 2]. Since OSHA has estimated that, at most, $200,000 in annual costs will be required by any individual facility, an estimate of $2,000, or 1 percent of the cost to an older plant, provides a conservative estimate of the annual costs of compliance for each of the 30 additional firms. Total industry costs will thus increase by about $60,000 for the 30 additional chemical firms, or to $1 million for all lead chemical firms combined.

Economic Feasibility. Price increases required for full pass-through of compliance costs have been summarized in Table 4. The table lists estimated sales and compliance costs per facility. Impact ratios are also presented.

TABLE 4.—Summary of Price Impacts For Lead Chemical Producing Facilities

Type of plant	Number of facilities	Sales/[a] facility ($ thous.)	Profits/[b] facility ($ thous.)	Annual costs ($ thous.)	Ratio: costs/sales	Ratio: costs/profits [c]
Older	2	5567	273	200	0.03602	0.48514
Relatively New	3	5567	273	147	0.02635	0.35495
Modernized & New	3	5567	273	32	0.00576	0.07759
Modernized & New	3	5567	273	0	0.00000	0.00000

[a] Sales per facility were calculated to be 7.7 percent of the industry total (primary lead chemicals) of $72,292,620.
[b] Profits after taxes were based on an estimated rate of return on sales (ROS) of 0.049 [Dun & Bradstreet Industry Norms, 1987].
[c] See text for derivation. Profits impacts were determined using an average federal income tax rate of 0.34.
Source: Occupational Safety and Health Administration, Office of Regulatory Analysis.

Sales per facility were estimated to be 7.7 percent of total industry sales of primary lead chemicals. (This corresponds to a total sales figure of $61,448,727 for these firms, or 85 percent of the 1987 industry total of $72,292,620).

Price increases required for older plants to pass through the costs of this regulation appear to be about 3.6 percent while increases for relatively new plants will be about 2.6 percent and increases for modernized and new plants will be about 0.6 percent. (Three plants in the latter category will incur no costs and thus will require no price increases). Due to competition from newer, more efficient operations, it is unlikely that older facilities will be able to use full cost pass-through as a long term strategy [Ex. 686e, p. 39]. The ability of relatively new plants to increase prices will likewise depend on competition with more efficient operations. Any pass-through that does occur will also depend on the price of primary lead (the opportunity to pass costs through may arise when the price of primary lead falls and lead chemical producers realize increased margins) and the extent of foreign competition; information presented above suggests that U.S. producers are currently competitive with foreign producers. New plants would be in a better position to pass forward a larger portion of compliance costs, as required price increases are smaller and they are better able to cut production costs [Tr., pp.1301–2].

Estimated profit impacts also appear in Table 4. Profits were estimated using the 1986 Dun and Bradstreet rate of return on sales for SIC 2816 of 4.9 percent. It should be noted that the tax-deductibility of compliance costs was taken into account in computing profit impacts. That is, care was taken to compute before-tax profit before subtracting annual costs. After subtracting annual costs, the appropriate average tax rate (34 percent) was then reapplied to determine after-tax profit net of costs.

In the older and relatively new plant categories, these figures suggest that impacts will be about 49 and 35 percent of profits, respectively. (For one relatively new plant, these impacts were believed to be overstated since this plant is a lead stabilizer facility utilizing wet processes). Associated post-compliance ROS rates were estimated to be 2.5 percent for older plants and 3.2 percent for relatively new plants. OSHA recognizes that these older facilities may have difficulty in financing the costs of the standard. However, an LIA economist emphasized the need for restructuring if the industry was to remain competitive:

> * * * I think the alternatives of the lead chemical industry are pretty circumscribed here, and it is the alternative of cutting costs by building new plants and equipment, getting new efficiencies, getting new productivity, and lowering their costs [Tr., pp. 1301–1302].

Industry's recognition of the need to revitalize and replace obsolete equipment is also reflected in comments submitted by company "B" for the record, which indicate that, in addition to those firms constructing new plants, "[o]ne other company plans to modernize and modify two of its facilities" [Ex. 694–9, company B comments, p. 34]. Company "B" also reported that "Eagle-Picher recently completed a major capital project to modernize its lead oxide and lead chemical manufacturing facilities" [Ex. 694–9, company B comments, p. 2]. Additionally, testimony was presented which indicated that each of the major lead chemicals producers had already committed in excess of $2 million to engineering control programs [Tr., p. 1285].

For the modernized and new plant category, the figures suggest that profits will decline less than 8 percent for three of the six facilities in this category. Associated post-compliance ROS was estimated to be 4.5 percent for these plants. Thus, these firms should be able to finance the costs of this rulemaking without particular difficulty.

OSHA notes that three of the five LIA member firms represent over 80 percent of the collective capacity of the LIA members. Each of these firms operates at least one facility for which profit impacts should be relatively low. The owner of one of the two older plants also operates a new facility; the owner of the second older plant also owns two relatively new plants, one of which is a lead chemical (as opposed to lead oxide) facility, and exposure data indicate that this plant is close to compliance [Ex. 686E]. The third firm operates four new and modernized facilities, three of which will incur no cost. For these three firms, the most severe impact at plant level could be mitigated by absorbing compliance costs from overall profits.

Based on this analysis, the Lead Chemicals industry should be able to withstand the impacts of this regulation with an extended compliance schedule of five years. This extended period is required due to the limited ability of firms to raise prices and the substantial impacts on profitability for older and relatively new plants. The extended schedule will provide opportunities to increase production efficiency and phase in engineering controls. As modernization activities progress, exposure levels can be expected to fall, thus reducing the need for capital investments solely for the purpose of controlling employee exposure to airborne lead.

OSHA concludes that this standard as it applies to the lead chemicals industry is economically feasible with a five year compliance schedule. Over one-half of the facilities in this sector fall into the categories of modernized and new plants. At least three of these plants package exclusively in bulk [Ex. 684c, p. 5], and will incur no costs. Evidence indicates that profit impacts on the remainder of the plants in this category should not place undue burden on their profitability. As modernization continues, older and relatively new plants will either be phased out or made more efficient. Both of these responses

to prevailing economic trends will tend to reduce employee exposures and, hence, the annual costs associated with this rulemaking. Further, more efficient operations would be better able to absorb any costs of compliance. The impacts of this rulemaking should not threaten industry existence, though the phasing out of marginal, older operations could be accelerated.

4. Lead Chromate Pigments

Process Description—Overview. The principal pigment produced in this industry is lead chromate (chrome yellow), which is produced through a series of chemical reactions and physical processes. At the outset, lead nitrate and sodium chromate solutions are prepared and reacted to produce slurries and precipitate the pigment. The precipitate is then separated from the mother liquor, and washed, dried, ground, and sometimes blended with other compounds to produce particular colors. Finally, it is packaged for sale. These operations can be carried out in batch, continuous, or by a combination of the two (semi-continuous).

The specific colors obtainable with lead chromate pigments range from light yellow and greenish yellow through orange to red. Lighter shades of yellow are produced by coprecipitating lead sulfate with lead chromate. Orange/red pigments are produced by partially replacing sodium chromate with sodium molybdate to produce a mixture of lead chromate and lead molybdate. Alkaline conditions are used to produce basic lead chromate, called chrome orange. Chrome greens are blends of chrome yellow (lead chromate) and iron blues, which are non-chromium pigments.

Solution and Slurry Preparation. The first step in producing lead chromate is preparation of solutions and slurries to feed into the precipitation tanks. One of these solutions is lead nitrate, which can be made by reacting metallic lead or slurried lead oxide (litharge) with nitric acid (Ex. 684h and Tr. 1163). The other solutions, sodium chromate, sodium bichromate and sodium molybdate, can either be purchased as solutions or prepared from dry compounds.

Reaction. The second step in pigment production is the reaction of lead nitrate, sodium chromate and, depending upon the pigment to be produced, possibly other ingredients to produce lead chromate, sometimes with lead sulfate. The reactions can be conducted by a batch or continuous process. The reaction is complex and must be carefully controlled to yield the right types and sizes of crystals. The conditions under which reaction and crystallization occur, such as temperature, concentration, and length of time in the reactor, affect particle size, which in turn affects final color. The slurry of crystals produced by the reaction is then subjected to several physical operations intended to separate the crystals from the mother liquor.

Filtration and Washing. The slurry is pumped to filter presses, centrifuges, or drum filters, where the solids are separated from the liquor and washed. Only filter presses require manual handling.

Drying. After they have been filtered and washed, the wet solids are dried. However, in at least one plant, the wet solids are reslurried before being pumped into a spray dryer. Drying can be accomplished in belt dryers, spray dryers, and tray dryers. Of the three, tray drying is the only one that involves manual handling of the pigments.

Where spray dryers are used, the wet solids are reslurried and pumped into the spray dryer. The slurry is then sprayed into a hot gas stream, and the dried powder is collected for conveying to the next step in the process. In belt drying, the wet solids are automatically spread onto a conveyor belt, which passes through a drying oven. From the oven, the dried solids continue to be automatically conveyed to the next stage.

In tray drying, which is limited to batch processes, workers manually spread the wet solids onto trays and load the trays onto racks in cars. Workers then insert the cars into oven dryers. After the pigment is dry, workers remove the cars from the ovens and discharge the dry, lump pigment from the trays into interim containers for subsequent grinding, perhaps blending, and packaging (Ex. 640, pp. 1–2).

Grinding. The dry pigment is ground in pulverizing equipment, which generally is fed automatically, but in some batch processes pigment may be fed manually. Grinding is carried out to achieve certain shades to meet customer specifications.

Blending. Blending involves mixing different batches of dry pigment to meet product specifications (Ex. 582–16, Att. II, p.16; Tr. 1185). Dozens of pigment grades are produced. In the batch process, the pigments can be loaded manually or automatically into the blending equipment. Rotating or ribbon blenders are used to blend the dry pigment. In at least one plant, some blending is carried out prior to drying by adding dry pigment to the pigment slurry in a ventilated tank (Ex. 684h, p. 2).

Packaging. Most of the lead chromate pigment produced by this industry is in the form of a fine, dry powder. A limited amount of the final product may be sold as slurry or paste. The dry product is packaged in either paper bags, drums, or bulk shipping containers, such as air pallets. The majority of the product is packed on bagging machines into paper bags.

For packaging in paper bags, the pigment is automatically fed into a hopper located over the bagging machine, from which it flows by gravity to the machine below. The bagging operator places a bag on the filling spout, and the machine fills the bag to the set cut-off weight. As the bag is being filled, the machine exhausts the displaced air from the bag. When the bag is filled, the operator removes it and places it on a scale beside the bagging machine. If the bag is underweight or overweight, the operator uses a trowel and a bucket of pigment to manually add or remove small amounts of pigment to meet the tolerances, which can be as narrow as plus or minus 2 oz. for a 50-lb. bag (Tr. 1188). The operator then closes the bag by folding the bag valve into it, and stacks it on a pallet.

Cleanout. Cleanout involves opening up and reaching into and even getting inside production equipment to clean out accumulated lead pigment residues. With product changeovers, the equipment must be thoroughly cleaned before switching to a new product in order to prevent contamination of the new color by the old. The frequency or extent of cleanouts can be reduced by scheduling production in "campaigns." In campaigns, the order of production minimizes the changes in color from one product to the next by producing lighter shades first and moving progressively to production of darker shades of the same color. The need for cleanout is also eliminated or reduced by dedicating an entire production line to a single color or group of closely-related colors. In one plant, for example, one line is dedicated almost solely to production of traffic yellow, while another line is reserved for molybdate oranges (Ex. 684h, p.1).

When product changeover cleanout is required, the process vessels, conveyors, mills, dryers, product collection equipment, etc., must be manually opened up and cleaned. At Heubach, for example, cleanout includes high-pressure water cleaning of process tanks, vacuuming and washing out dryers, and vacuuming material transfer equipment, including screw conveyors and bucket elevators. Cleanout of the continuous production line at Heubach takes from 28–48 hours and is said to be carried out approximately 5 times every two months (Ex. 582–16, Att. II, p. 3).

The basic operations in pigment production can be organized batch by

batch, by continuous process, or by various combinations of the two.

Batch Process. The batch process, which accounts for between 14–20% of total industry capacity, involves production of a fixed amount of a particular pigment in one or more batches (Exs. 694–5, p. 4; 694–8A, p. 3; and 686I, p. 2; Tr. 1169). The process has two basic uses. One is to produce small amounts of pigments in a relatively simple manner. The other is to provide the flexibility to produce a wide variety of distinct products to meet varying customer demands.

The customizing can begin at the reaction stage, where precisely measured quantities of ingredients are mixed, reacted and precipitated under carefully controlled conditions to produce particular pigments. Additional modifications of the properties of the product can be effected in the grinding and blending operations.

Because a limited amount of pigment is involved in each batch, industry normally uses filter presses and tray dryers in producing the dry pigment. These operations require considerable manual manipulation and transportation of the material, making them potential sources of high exposure to lead.

After the pigment is dried and ground, it frequently is blended with different batches to meet specifications.

Continuous Process. The continuous process is used for high volume production and is characterized by a continuous and steady flow of ingredients and products through the stages of production. Generally, manual material handling between the reactor and packaging stages is eliminated or minimized. With high volume production of a particular pigment, the number of product changeover cleanouts also is reduced.

In a fully continuous reaction process, ingredients are fed into the reactor at the beginning of the process at a carefully controlled rate. The slurry from the reactor is continuously pumped to centrifuges or drum filters to separate and wash the pigment precipitate. The dewatered pigment is discharged continuously to a dryer and automatically conveyed from the dryer to a grinder. From the grinder the pigment is conveyed to hoppers for subsequent packaging. With full automation of the production line to facilitate the continuous flow, continuous filters and dryers, for example, are used instead of filter presses and tray dryers. Thus, the product is no longer manually unloaded and transferred from the filters to the dryer trays or manually dumped from dryer trays.

Batch processing may be integrated into an otherwise continuous process at various stages. For example, at Harshaw/Filtrol the pigment is precipitated in a batch reaction and is thereafter continuously processed.

One major production advantage of continuous processing is that a relatively high-quality product can be produced in high volume continuously over an extended period of time because process conditions and ingredient flows can be continuously monitored and adjusted to keep the properties of the final product within specifications. The major health and safety advantage is that, by eliminating intermediate manual handling between process stages and by minimizing the number of cleanouts, potential sources of high exposure are greatly reduced or eliminated.

Sources of Exposure. Although some level of exposure to lead may be associated with nearly every operation in lead chromate pigment production, the Dry Color Manufacturers Association (DCMA), the industry's trade association, concedes that "it is feasible to meet * * * 50 $\mu g/m^3$ * * * through the use of engineering and work practice controls in most operations." DCMA broadly identifies the problem areas in which it asserts 50 $\mu g/m^3$ cannot be achieved as drying, blending, packaging, extraordinary maintenance operations, and product changeover cleanout (Ex. 694–8A, p.2. Ex. 582–18, p. 12–13).

In drying, the major source of exposure is tray drying, which is used only in batch processes. Employees are exposed to airborne lead in tray drying from dried residues on the trays dispersed during loading the press cake and moving the cars, and from dumping pigment from the trays.

In blending, the main problem again is limited to the batch process, where employees may be exposed to high air lead levels if dry pigment is manually dumped into the blender. In continuous processing, employees also may be exposed to airborne lead above the PEL if they manually dump bags of dry, off-grade product into slurry tanks (Ex. 694–5, p. 8).

In packaging, exposure problems may occur throughout the process of packaging pigment in paper bags. Puffs of pigment may escape when the bag is being filled, removed from the filling spout, closed, placed on the pallet, and pressed down by other bags stacked upon it. Lead dust also may be spilled when manual adjustment of bag weight is required to meet strict customer weight specifications. Finally, lead dust may be dispersed if a bag of pigment is ruptured during handling.

In addition to the potential sources of exposure associated with the particular production operations listed above, employees may be exposed to other possible sources of lead dust. Generally, for example, an employee may be exposed to lead if a spill or a leak occurs somewhere in the production process, the product is dry or dries, and something causes the lead dust to become airborne. For minor spills or leaks, exposure levels ordinarily should be below 50 $\mu g/m^3$.

Maintenance and product changeover clean-out provide other potential sources of lead exposure. High exposures to lead may occur during these operations when the equipment is first opened if the residue accumulated inside is dry and becomes airborne. High exposures also may occur thereafter if cleanout is performed dry and part of the residue being removed becomes airborne.

Existing Exposure Levels. OSHA in the 1987–88 phase of this rulemaking received exposure data from only two of the five remaining companies in the industry, Heubach and Harshaw/Filtrol (HF). Their data are the most extensive and useable recent data OSHA has received. By contrast, DCMA did not provide any data to the record. Instead, without identifying its sources or explaining its methodology, DCMA simply characterizes as above or below 50 $\mu g/m^3$ unspecified air lead levels in six job categories (Ex. 582–18, p. 16).

Together, Heubach and Harshaw/Filtrol represent 88% of industry production capacity and account for approximately 69% of the lead-exposed employees in the industry (Ex. 686I, pp. 2, 12). As a result, OSHA, like Meridian, focuses its analysis of industry exposures on their data. Of the two, Heubach is by far the largest producer and employer, with more then one-half of total production and employment in the industry (Exs. 686I, pp. 2, 12; 582–16, Att. I, p. 5; and 694–5, p. 4).

In analyzing the data from Heubach and HF, OSHA notes that job classifications are not defined uniformly across the industry. Consequently, for purposes of determining feasibility, the Agency has conducted its analysis in terms of common production operations employed by a "typical" facility. This approach is consistent with the requirements of the OSH Act. *USWA* v. *Marshall*, 647 F.2d at 1272.

OSHA also is conscious of the fact that the data from Heubach and Harshaw/Filtrol may be upwardly biased in several respects. First, to the extent that air lead monitoring is performed in accordance with the

frequency requirements of the lead standard, the number of samples taken per year increases with exposure levels. According to the lead standard, if exposure levels are below 30 $\mu g/m^3$, no further monitoring is required; if exposure levels are at or above 30 $\mu g/m^3$ but at or below 50 $\mu g/m^3$, monitoring is required semi-annually; and if exposure levels are above 50 $\mu g/m^3$, quarterly monitoring is required. Thus, if everything else is equal, there will be twice as many sampling results for operations with exposure levels above 50 $\mu g/m^3$ than for operations between 30 $\mu g/m^3$ and 50 $\mu g/m^3$.

Second, at least with regard to the Heubach data, Heubach states that some very high exposure readings (e.g., 730 $\mu g/m^3$) are attributable to monitoring problems, such as "a glob of pigment" falling on the personal monitor and being taken to represent air lead levels (Tr. 1176).

Third, although most measurements for a particular job may be below 50 $\mu g/m^3$, the average for that job still may be above 50 $\mu g/m^3$ because production workers do cleanout, during which very high exposures are experienced. Characteristically for these jobs, relatively moderate sampling results obtained during routine operations are submerged in calculations of average exposure levels by a few very high results obtained during periodic clean-out work, which is like a maintenance activity.

At Heubach, in the years 1984 through 1987 for which the company provided OSHA with exposure data, 71–75% of all employees and 66% of all sampling results are at or below 50 $\mu g/m^3$ (Tr 1175; Ex. 686I, pp. 13–14). In addition, for the combined years 8 of 12 job classifications have 50% or more of their air lead samples at or below 50 $\mu g/m^3$ (Ex. 686I, p. 14; see Table 1, below). In continuous processing, which accounts for 75% of Heubach's total production and within the next year or two is expected to account for nearly all production, Heubach reports that all employees are already at or below, or at least able to achieve 50 $\mu g/m^3$, except those in packaging (e.g., chemical operator) and cleanout. In batch processing, which involves manual handling of the product at many points, Heubach also reports that all employees, except those in blending (inorganic finishing, the process operator), packaging (inorganic finishing, the unit operator) and cleanout (inorganic finishing, both the process and unit operators), already are at or below 50 $\mu g/m^3$ or at least are able to achieve 50 $\mu g/m^3$ (Tr. 1163–66 and 1168–70).

Thus, in two of the five operations in which, according to DCMA, 50 $\mu g/m^3$ cannot be achieved (Ex. 694–8A, p. 2). Heubach already is achieving that level most of the time. In maintenance, 87% of the sampling results for maintenance workers are at or below 50 $\mu g/m^3$ (see Table 1, below). Similarly, in drying, approximately 53% of all the samples are at or below 50 $\mu g/m^3$ (see Table 1, below, exposure levels for Processing—Process Operator and Ex. 640, job description).

TABLE 1.—SUMMARY OF EXPOSURE DATA FOR HEUBACH INC., 1984–87

Job classification	Number of employees	Distribution of exposure level									
		1984 (percent)		1985 (percent)		1986 (percent)		1987 [3] (percent)		Combined Years (percent)	
		<50	>50	<50	>50	<50	>50	<50	>50	<50	>50
Semi-Finished											
Chemical Operator	4	82	18	67	33	82	18	40	60	72	28
Continuous Process											
Senior Chemical Operator	5	58	42	50	50	69	31	0	100	50	50
Chemical Operator [1]	4	9	91	10	90	47	53	0	100	26	74
Process Operator	8	46	54	46	54	58	42	0	100	41	59
Manufacturing											
Senior Chemical Operator	20	95	5	100	0	94	6	81	19	93	7
Process Operator	8	92	8	93	7	94	6	80	20	91	9
Processing											
Chemical Operator	4	100	0	100	0	100	0	78	22	94	6
Unit Operator	20	67	33	83	17	86	14	56	44	75	25
Process Operator	8	31	69	76	24	71	29	35	65	53	47
Inorganic Finishing											
Process Operator [2]	6	7	93	13	88	0	100	0	100	5	95
Unit Operator [1 2]	8	28	100	19	81	8	92	6	94	8	92
Maintenance											
General Mechanic	49	93	7	90	10	83	17	82	18	87	13
Total Employment/Total Distribution	144	65	35	73	27	71	29	54	46	66	34

[1] Operator performs manual packing.
[2] Operator performs process equipment cleanout.
[3] In 1987, owing to the exiting from the industry of one of the major producers, a significant and sudden increase in production levels apparently increased exposure levels substantially above the three preceding years. With this increase in production, existing controls appear to have been disrupted or their capacity exceeded (Ex. 582–16, Att. I, pp. 3–4). Consequently, OSHA believes that 1987 is not a typical year.

At HF, geometric mean exposure levels during each of the two most recent years for which data was provided, 1986–87, were well below 50 $\mu g/m^3$ for at least 69% of the lead-exposed employees. During those same years, for an additional 14% of lead-exposed employees, the geometric means were below 64 $\mu g/m^3$ (Table 2, below; Ex. 613 B–7).

OSHA has derived these geometric means from the individual monitoring results provided by HF (Ex. 613 B–7; see Table 2, below). While these individual monitoring data cover fewer years than the data summary HF provided (Ex. 694–5), OSHA has found errors in the summary for the years 1984–87, for which HF also provided individual monitoring results. OSHA therefore does not feel it can rely on the summary.

The entire set of monitoring results includes only 46 samples taken over the years 1984–1987 and covers only five job classifications and 18 of the 36 employees identified by the company as

exposed to lead (Ex. 694–5, p. 5). OSHA understands that the reason no data were submitted for the other job classifications is because HF was under no legal obligation to monitor other employees and did not do so. Monitoring is not required for employees whose exposure levels are below the action level, 30 $\mu g/m^3$ (29 CFR 1910.1025 (d)(6)(i)). OSHA further understands that HF is complying with requirements of the lead standard for monitoring frequency and that the 18 employees for whom no monitoring data were provided were exposed below 30 $\mu g/m^3$.

Concerning the lead-exposed employees for whom data are provided, 7 of the 18 are color makers and utility workers. In 1984–87, 80% of their sampling results were at or below 50 $\mu g/m^3$. Only the 11 spray dryer operators working on production lines A, B, and C frequently had average annual exposure levels above 50 $\mu g/m^3$. HF itself has stated that the only job category with frequent lead exposures over 50 $\mu g/m^3$ is spray dryer operator (Ex. 582–17, p. 5). These operators run filters and spray dryers, clean clarification presses, dump pigment from bags into the slurry/holding tanks for blending, and fill bags on the packaging machines. Several of these tasks currently are associated with high exposure levels.

However, of the 11 spray dryer operators at HF, 5 work on line A, where the geometric mean exposure levels for 1986 and 1987 were 28 $\mu g/m^3$ and 63 $\mu g/m^3$, respectively. OSHA notes that line A is almost exclusively dedicated to the production of traffic yellow, which is low-grade, may be coarser and less dusty, and involves long runs requiring relatively few cleanouts. Lines B and C, which each have three employees, are the dustiest lines in the company. Line B produces a variety of higher quality yellow pigments of different hues and more stringent quality specifications than line A, so the operator on line B must frequently perform blending and cleanout of equipment. Line C produces a molybdate chrome orange pigment, which the company admits is dustier than the other pigments. In addition, HF has recognized that the work practices of one of the spray dryer operators on line C account for his higher exposures and contribute to higher average exposure levels on line C. Nevertheless, even on lines B and C more than 66% of total sampling results from 1984–87 were below 100 $\mu g/m^3$.

TABLE 2.—Summary of Exposure Data for Harshaw-Filtrol, 1984–87 [2]

Job classification	Geometric mean lead exposures					Combined years [3]
	No. of employees	1984	1985	1986	1987	
Colormaker	5	28	66	24	14	33.3
Utility	2	52	26	22.9	25	28.2
Laborers	3	(1)	(1)	(1)	(1)	(1)
Lab. Technician	2	(1)	(1)	(1)	(1)	(1)
Supervisors	3	(1)	(1)	(1)	(1)	(1)
Maintenance Mechanics	10	(1)	(1)	(1)	(1)	(1)
Spray Dryer Operator A (Traffic Yellow)	5	80.5	95.9	28	63.1	77.3
Spray Dryer Operator B (all yellows, with changes)	3	101.3	55.4	.....	108	86.4
Spray Dryer Operator C (Molybdate Orange)	3	198	79	50.3	192	109.2
Combined Jobs [4]	36	103.1	69	35	72.9	70.8

[1] OSHA understands that no exposure data were provided to the record for these workers because their exposure levels are below the action level (30 $\mu g/m_3$) and therefore, in accordance with paragraph (d) of the lead standard, no monitoring was conducted.
[2] Source: Ex. 613–B–7.
[3] The geometric mean for "Combined Years" is the geometric mean for all observations across all years.
[4] The geometric mean for "Combined Jobs" is the geometric mean for all observations across all job categories for that year.

At another plant for which OSHA has fragmentary exposure data, Kikuchi, it appears that as early as 1980 all operations in the plant, except packaging, already were at or below 50 $\mu g/m^3$. Even in the packaging operation, the exposure level was only 66 $\mu g/m^3$ (Ex. 476–264). Moreover, the Kikuchi plant representative indicated at the time that the exhaust system for the packager was being upgraded and that he hoped levels would soon be below 50 $\mu g/m^3$ in that operation as well (Ex. 476–264).

Kikuchi, built in 1979, is a highly automated plant with a single continuous line exclusively dedicated to the production of traffic yellow. Consequently, product-changeover cleanouts are not necessary. No dry blending is performed and all steps after the reactor stage are automated and enclosed. Under such conditions, it is clear that 50 $\mu g/m^3$ not only can be, but is being achieved in all operations, with the possible exception of packaging.

Existing Controls. OSHA's discussion of current exposure levels in the previous section indicates that 50 $\mu g/m^3$ already is being achieved most of the time with existing controls in most of the operations in the industry (See Table 1, above, Combined Years). The primary methods currently used to control air lead levels in lead pigment production are work practices and housekeeping, ventilation, and use of automated processing equipment. In addition, both Heubach and HF, which account for 88% of total industry production, have developed reduced-dust pigments that reduce the dust-generating properties of their products up to eight-fold (Ex. 684h, p. 3; Tr. 1156).

Solution and Slurry Preparation. Although OSHA has obtained relatively little information on controls used in this area, industry has conceded that 50 $\mu g/m^3$ is being achieved currently and that this operation is not a problem area (Ex. 694–8A, p. 2). Colormakers' exposure to lead in this operation is intermittent since they spend only 10 minutes in this area twice a day (Ex. 684h). HF has been able to maintain this operation at or below 50 $\mu g/m^3$ by enclosing it in a separate building, segregating the lead oxide in closed bins outside that building, automatically conveying the lead oxide and the lead nitrate slurry without manual handling, and ventilating the weigh hopper (Ex. 684h). At Heubach, which melts lead ingots in electric furnaces to react with nitric acid, employee exposures are maintained below 50 $\mu g/m^3$ during this operation (Tr. 1163).

Reaction. Industry also concedes that this is not a problem operation since at this stage the lead-bearing materials are wet. At Heubach, to control air lead levels the synthesis tanks have closed

tops and are connected to a central exhaust system (Ex. 582–16, Att. II, p. 11; Tr. 1167).

Filtration and Washing. Industry acknowledges that exposure levels in filtration and washing already are being controlled to or below 50 $\mu g/m^3$. The most effective engineering control for this operation is using continuous process equipment rather than batch process. To control air lead levels in this operation, HF and Kikuchi, for example, use drum filters and centrifuges, respectively, rather than filter presses, which require manual handling (Exs. 582–17, p. 2; 579, p. 21). This production equipment lends itself to a greater degree of enclosure and automation (Ex. 579, p. 21).

At HF, the drum filters filter and wash the pigment automatically; thus the only manual handling required is cleaning the clarification presses. At HF, the presses and trays now are wetted down before opening, scraping and dumping to prevent dried pigment residue from becoming airborne (Ex. 694–5, p. 9).

Drying. DCMA identifies drying as an operation that cannot be controlled to 50 $\mu g/m^3$ because manual loading and unloading is involved (Ex. 694–8A, p. 2). However, as OSHA has shown in the previous sections, the three largest lead pigment producers have almost completely replaced manual tray drying with belt or spray drying as part of their conversion to continuous process. Thus, manual handling in drying operations is limited to situations where pigment is being produced by the batch process, which amounts to less than 20% of total industry production (Exs. 694–5, p. 4; 694–8A, p. 3; and 686I, p. 2; Tr. 1169).

In the batch process at Heubach, where manual tray drying is used, air lead levels are controlled by locating tray dumping in a ventilated booth, which has a minimum 300 fpm face velocity (Ex. 582–16, Att. II, p. 13). A hoist system is used to raise or lower cars, providing better control of resulting exposures. A monorail system instead of manual labor is used to move and stage dryer cars. In addition, dryer cars are unloaded in a separate building area. Heubach also controls exposures by rotating employees with those doing non-lead pigment dumping in adjacent booths (Tr. 1164).

In the continuous process, exposure levels are controlled to or below 50 $\mu g/m^3$ in the drying operation because spray and belt dryers run as closed systems that are automatically fed and discharged using conveyors or other mechanical transport systems. In addition, at Heubach the enclosed belt dryers are operated at negative pressure and exhausted to a wet scrubber (Ex. 582–16, Att. II, p. 13).

Grinding. DCMA concedes that in grinding 50 $\mu g/m^3$ already is being achieved or can be achieved (Ex. 694–8A, p. 2). To control air lead levels at Heubach, pulverizing equipment is enclosed, exhausted and placed in a separate finishing area (Ex. 582–16. Att. II, p. 11). The entire finishing area, which includes grinding, blending and packaging operations, has a central exhaust system and dust collector. Heubach also has controlled employee exposures in this operation by installing separate grinding lines, each dedicated to different product groups (Ex. 582–16, Att. II, p. 2). This reduces the need for cleanout. Exposure levels in continuous processes are controlled by the pigment being automatically conveyed to and from the grinding equipment, which eliminates the need to manually load and unload the dry pigment (Ex. 582–16, Att. II, p. 3).

Blending. In blending, exposure problems are again limited to the batch process, where employees manually load dry pigment into blenders. At Heubach the blending operation is located, along with grinding and packaging operations, in a separate area of the plant. At the blending area exposure levels are controlled by local ventilation at loading stations, where the bags are slit and their contents charged into the blender (Ex. 582–16, Att. II, p. 12).

On continuous process lines, where dry, off-grade pigment is worked back in, exposure levels are controlled by ventilating the dumping stations, dumping the off-grade pigment into a slurry rather than dry pigment, and ventilating the slurry tank.

Packaging. In packaging, identified exposure problems are limited to packing the product in paper bags. To some extent pigment producers have eliminated this problem by switching to packaging pigment in bulk bags, air pallets and shipping pigment in slurry or paste form.

Where packaging is done in paper bags, air lead levels are controlled at Heubach's 7 packaging stations by using custom-designed auger packers, which minimize the need for manual weight adjustment. At the packer spout, air lead levels are controlled by point source ventilation and an exhausted catchpan, which picks up droppings from the spout. In addition, exposure levels at the check weigh scale are controlled with point source ventilation (Ex. 582–16, Att. II, p. 11).

At HF, exposure levels are controlled by dedicating each of its three production lines to a different product group, thus reducing the number of necessary cleanouts in many operations including packaging. On line A, dedicated almost exclusively to production of traffic yellow, air lead levels at the delivery tube are controlled by a circular exhaust duct with a shroud hood. On line B, in which a variety of yellow lead pigments are produced in campaigns, the packaging machine is in a hood that surrounds it on three sides and has an overhead exhaust. In addition, the weighing station is partially ventilated. On line C, which is dedicated to production of molybdate oranges, a walk-in slot hood with exhaust slots at the back of the hood encloses the bagging and weighing station (Exs. 582–17, p. 5; 694–5, p. 7).

Cleanout. The major methods currently used to reduce high exposure levels in cleanout are elimination of cleanout and reduction in its frequency.

At Kikuchi and almost completely on line A at HF, product changeover cleanouts have been eliminated by dedicating each production line to a single product, traffic yellow. HF and Heubach also are controlling exposure levels in cleanout by scheduling their production in campaigns.

Where cleanout must be done, Heubach and HF are controlling exposures in certain operations by doing wet cleaning. For example, at HF clarification presses are cleaned wet (Ex. 694–5, p. 9). At Heubach, process tanks are wet cleaned and a central vacuum system with portable wet sweepers is also used to perform cleanout.

Maintenance and Housekeeping. At HF, to prevent reentrainment of lead dust, work areas are vacuumed daily with a HEPA vacuum, certain floors are washed down and some work areas are kept wet. HF reports that a floor scrubber has been purchased to assist in removing pigment residues. In addition, personal vacuums equipped with HEPA filters are stationed at various points in the plant so employees can decontaminate their clothing before going to the lunchroom or leaving the premises.

At Heubach portable floor scrubbers are used to remove pigment residues and spills in the batch process area. For the continuous-process area, a vacuum is located at the bagger to clean up spills.

Major Process Modification or Substitution. HF and in large part Heubach have switched production from batch processing to various forms of continuous processing. From the viewpoint of exposure control, the fully continuous nature of the process itself is

the key control. Manual handling of product, where employee exposures are the greatest, has been replaced with automated and enclosed conveyors, or the operations requiring manual handling have been entirely eliminated, except for packaging.

At Kikuchi and HF, continuous processing has been combined with dedicating a production line to a single product or product group. On these lines, blending of dry pigment has been eliminated and product changeover cleanouts have been significantly reduced or eliminated. Thus, employees are not exposed to the high air lead levels customarily encountered in these operations.

In addition to converting to continuous processing, Heubach and HF are controlling exposure levels by producing a dust-reduced product, which reduces the dust-generating properties of their products by up to eight-fold (Ex. 684h, Tr. 1138, 1156, 1179). HF's dust-reduced product accounts for 25% of the company's total production, and the company is working to broaden customer acceptance of the product. In November 1987, Heubach reported that 33% of its production had been converted to the dust-reduced product and that 50% of its sales in the two months preceding the hearing had been of that product (Tr. 1139).

Finally, Heubach lists other controls which it has implemented in the batch process operations. These include exhaust hoods at all pigment dumping locations, a conveyor system for removing pigment drums, and a separate tote bin storage area. However, Heubach has not identified where in its batch operation these controls have been installed.

Additional Controls. Based upon the discussion above, OSHA has demonstrated that the operations that currently present serious problems to the industry in consistently achieving 50 $\mu g/m^3$ are packaging and clean-out, which are common to both batch and continuous processing, and to a lesser extent, dry blending, which is exclusive to batch processing.

Packaging. Generally within the industry, the packaging operation is one of the main contributors to high exposure levels for employees for whom packaging is a major portion of their job. At HF, for example, spray dryer operators average 20 minutes every hour packing bags (Ex. 684h, p. 4).

OSHA recommends four methods for controlling existing lead emissions in packaging. They are: Further reducing or eliminating packaging by shipping more product in bulk or semi-bulk form; converting product to the extent possible to dust-reduced product; where necessary, purchasing and installing the new and highly accurate packaging machines and appropriately reducing the variety of packages provided customers; or enclosing each packing and palletizing station with a side-ventilated booth (Exs. 582–16; 582–90, Appendix C, p. 3; 686I, pp. 24–25; Tr. 1139, 1156, 1283). These control methods can be employed independently or in combination to achieve employee exposure levels lower than 50 $\mu g/m^3$. However, OSHA believes it is unlikely that any facility would have to extensively implement more than one of these recommended controls to achieve this level.

OSHA's preferred method for controlling exposures associated with packaging is to encourage the lead pigments industry to further reduce the amount of product that is packaged by shifting increasingly to bulk and semi-bulk shipping. OSHA believes that large producers in the industry can persuade more of their customers to accept bulk and semi-bulk shipment. However, OSHA recognizes that there may be a substantial portion of product that will have to continue to be packaged. For that portion, OSHA recommends that industry implement any one, or a combination of the three following control methods.

The first is to fully convert all product to dust-reduced product. OSHA believes that this step alone would dramatically reduce exposure levels for packagers, and other employees, since dust-reduced products reduce dusting properties of products by up to eight-fold (Tr. 1156). Reduced-dust products, which HF is producing and to which Heubach stated it would convert all of its pigments by mid-1988 (Tr. 1139), should significantly reduce exposure levels in certain dry pigment operations, including at least blending and packaging (Tr. 1156).

The second method is to mechanize and automate packaging and subsequent bag handling. For bags that do not have to be packed to precise weight specifications, conventional automatic packaging machines that fill and seal bags have been available and in use in many plants for years. Today, even for bags that require filling to precise weight specifications, automatic packaging machines are available that "can easily achieve accuracies of 0.25% and sometimes even * * * 0.1% * * *" (Ex. 582–90, Appendix C, p. 3). This means that for a 50-pound bag, the machine can automatically and accurately fill the bag to within 2 ounces and less and can then seal the bag, all routinely and without manual intervention. Based upon industry statements regarding the weight tolerances required by some customers (Tr. 1187), OSHA concludes that nearly all orders can be bagged on these more accurate packaging machines. The number of bags that might still require manual weight adjustment, therefore, should be extremely small.

Consequently, if achieving precise weight specifications is the only problem in bagging, emissions associated with manual interventions can be strictly controlled or effectively eliminated by mechanization. However, if customers seek many different kinds of packages, this may cause a problem, because no single machine can handle a wide variety of packages. The industry, of course, could satisfy all the packaging demands of customers and fully automate packaging by purchasing and installing a sufficient number of the more advanced bagging machines.

If the cost for such automation were too high, industry could reduce costs if it provided customers with a more limited variety of bags. This would reduce the number of advanced automatic bagging machines needed. In any event, the technology exists and is available.

With regard to handling the bags after they have been filled and sealed, OSHA believes that such handling can be mechanized as well. Bags can be mechanically flattened and conveyed (Tr. 1283). Mechanization of this phase of bag handling should substantially reduce worker exposure from breathing bags, because workers can be removed from proximity to these emission sources. The emissions from flattening, for example, then can be controlled by local exhaust ventilation.

The last recommended method for controlling employee exposure levels in this operation to below 50 $\mu g/m^3$ is simply to improve the capture of emissions at the existing level of mechanization of production by isolating the entire operation and providing effective local exhaust ventilation (Ex. 686I, pp. 24–25). This control strategy needs to be accompanied by the implementation of strict work practices and preventive maintenance to assure that local exhaust ventilation is effective.

Heubach agrees that better ventilation, among other things, is needed and suggests that an increase in local exhaust around each bag packing machine and enclosure of each packaging station in its own ventilated room in and of itself would reduce bagging operators' exposures to about 100 $\mu g/m^3$ (Ex. 582–16). But it also is important that practices that disrupt effective ventilation and disperse lead

be corrected. At HF on line C, for example, a portable cooling fan, which could entrain dust generated by manual weight adjustments, was aimed to blow directly across the weighing station (Ex. 684h, p. 4).

To be effective, this control strategy has to take account of a number of factors. Each of the manual tasks in packaging provides a potential source of lead exposure. These tasks extend all the way from placing the bag on the bagging machine, through weighing the bag contents, adjusting content weight, and sealing the bag, to cleaning the outside of the bag and then stacking it on a pallet. Each of these tasks must be effectively exhausted, and the worker must be trained to carry out each task within the capture range of the ventilation and in a manner likely to minimize the amount of lead emission. Obviously, the local exhaust also must be properly designed, installed, and maintained. It also must be properly located and have sufficient capacity to handle the job.

Meridian agrees with OSHA that each of the industrial hygiene problems in packaging can be overcome by using an appropriately configured ventilation system and by avoiding certain work practices that tend to defeat ventilation (e.g., carrying pigment out of range of the ventilation in an open container or bag; not exercising care in weight adjustment, which can result in pigment being spilled; using a broom to sweep pigment away from the work station or off bags; or improperly using man-cooling fans) (Ex. 686I, pp. 24–25). Ventilation should be configured to encompass all packaging tasks, including bag filling, weighing, and manual weight adjustment (Ex. 686I, p. 24). Since these operations can be done in a relatively small space, a large side-ventilated booth could be configured to ventilate all of them. Such a booth would allow the operator to face into the booth at all times and to move from side to side while packing the bags.

This system should also include LEV slots to capture dust that escapes around the nozzle and an exhausted pan (grill) beneath and in front of the bag as it is being filled, to catch any dust which falls from the bag or the machine nozzle. The hood also should be designed to capture dust from bags on the pallet. There should be a vacuum hose for the operator to use to pick up spilled pigment.

According to Meridian, a system with the capacity of 4,000 cfm per packaging station should be sufficient to control the packers 8-hour TWA exposure to or below 50 $\mu g/m^3$ (Ex. 686I, p. 28). Such a system involves only conventional engineering technology and industrial hygiene practices (Ex. 583–13, Ex. 689–13). Numerous consultants and engineering firms are capable of providing the services necessary to implement such a system.

Several other available controls and work practices, which will be discussed at greater length below, can achieve additional further reductions in air lead levels at packaging stations and elsewhere. For example, strict implementation of improved housekeeping programs can further reduce air lead levels. In addition, Meridian's recommendation for installing automatic palletizing lines, as well as for several other controls and practices to reduce air lead levels in packaging (Ex. 686I, pp. 24–25), should be effective in at least some plants.

Cleanout. High exposure levels in product changeover cleanout can be significantly reduced by one or a combination of the following methods: completely eliminating cleanout, reducing its frequency, or improving its control.

The ideal way to handle the exposure problems associated with cleanout is to dedicate a production line to a single product and thereby eliminate the need for product changeover cleanout. HF examplifies this approach, with a line almost exclusively dedicated to traffic yellow (Ex. 684h, p. 3). The method may be applied more broadly throughout the industry if plants install more production lines with smaller capacities, each dedicated to a single product.

A second approach is to reduce the frequency of cleanout, which may involve scheduling longer runs of particular products between cleanouts to build up larger inventories between runs. It also may involve reducing the amount of product that is not produced by the campaign method. It also may be possible to achieve lower frequency by reducing the number of products produced and persuading customers to accept a more limited palette of hues and shades.

OSHA recognizes that these two approaches may not be feasible for small batch processes because of the need for frequent product changeover. For these processes, as well as for others, a third approach is available to improve the control of cleanout. This has two fundamental elements: designing new equipment so that it accumulates less residue and is easier to clean; and developing and implementing better and stricter work practices to minimize the escape of dust when equipment is first opened and thereafter during actual cleanout. New process equipment should be designed to eliminate crevices and corners from which it is difficult to remove material; one lead chemicals plant visited by OSHA reported that it already was taking this approach to facilitate housekeeping (Ex. 684b, p. 10). This design practice is also followed in the dairy, food and pharmaceutical industries. Water lines, air lines, vacuum lines, and possibly other devices should be built into the equipment to facilitate cleaning. Where possible, cleanout should be done by the mechanical action of water. Where that cannot be done, pigment residues to the extent possible should still be wetted and kept wet while cleanout is taking place. Improved work practices also may include the elimination of inappropriate tools. Thus, at HF, for example, the use of air lances, which rely upon compressed air for cleaning, should be discontinued (Ex. 686I, p. 25). If this final approach does not prove effective in reducing exposure levels to below 50 $\mu g/m^3$ in small batch processes, OSHA recognizes that employers may have to rely upon respirators for supplemental protection of employees.

Blending. In the batch process, and to a lesser degree in the continuous process, dry, finished pigments may be blended to meet product specifications. Blending in the batch process may produce high exposure levels (See Table 1, above, exposure levels for Inorganic Finishing—Process Operator and Ex. 640, job description). The best way to handle that exposure problem is, to the extent possible, to convert from batch to continuous processing. If production must remain by batch, Heubach recommends investigating the use of an automatic bag slitter and dumper to control the exposures (Ex. 582–16, Att. II, pp. 12, 17). Heubach once experimented unsuccessfully with such a unit, but has done nothing in this regard for 10 years. OSHA also recommends automating material transfers. Automatic bag slitters and automated material transfer equipment are available and have proven effective in reducing employee exposures to toxic substances such as asbestos (51 FR 22655; June 20, 1986).

In the continuous process at HF, where pigment is reblended to work in off-grade product, the company has not reported exposure levels to be a substantial problem. Meridian believes that ventilation will be sufficient to adequately control exposures if bags are opened and dumped within the capture range of the ventilation system (Ex. 686I, p. 24). This has proven effective in the manual debagging of asbestos fibers (51 FR 22655; June 20, 1986).

In addition to the specific engineering and work practice controls directed at controlling exposure levels in the particular problem operations discussed above, lead pigment plants can and should take a number of more generalized steps to reduce exposures throughout the plant.

Housekeeping, Work Practices and Preventive Maintenance. Housekeeping, work practices, and preventive maintenance are critically important controls whose importance is frequently not adequately recognized by employers. Failure to develop and use rigorous housekeeping, good work practices, and preventive maintenance can destroy the effectiveness of otherwise adequate engineering controls.

Central vacuum systems should be installed with outlets widely and conveniently located and hoses always available so that both operators and maintenance personnel can promptly clean up any spills. When about to open equipment for inspection, cleanout, or maintenance, where escape of dust is likely, workers should have a hose ready to capture escaping dust. In addition, in high dust operations such as packaging and cleanout, employees should regularly use a vacuum hose to remove loose dust from their clothing before they contaminate themselves and other employees. To adequately control such loose dust, it may not be enough to only clean dust off employees before they enter the lunchroom, which is a specific requirement of the lead standard (29 CFR 1910.1025 (i) (4)(iv)).

In accordance with paragraph (e)(3)(ii)(F), written work practice programs, including housekeeping procedures, should be developed by each employer. Housekeeping instructions should be prepared and adherence to them enforced by employers, with scheduling and checkoff of regular cleaning of all areas of the plant where dust can collect. These instructions should be appropriately detailed. If necessary, hundreds of sites, pieces of equipment, parts of equipment, obscure corners, etc., should be listed in the instructions to assure that they are cleaned regularly. Written work practices should be developed for activities that could cause dust emission or later dust generation when spilled slurry dries.

It is impossible to overemphasize the importance of housekeeping and work practices. A small amount of dust dispersed throughout a building's air space can raise airborne levels.

Nevertheless, housekeeping at the HF plant visited by OSHA was poor (Ex. 684h, pp. 5–6). Floors, windows, equipment surfaces, and walls were covered with dried pigment, the colors of which matched the pigment colors being produced in the area. OSHA believes poor housekeeping may account for much of the plant's difficulty in controlling exposures and, more specifically, may account to a considerable extent for the plant's inability to hold levels consistently below 50 $\mu g/m^3$ for spray dryer operators.

In addition to implementing good work practices for housekeeping and cleanup of spills, written work practices should be developed to cover all tasks that might result in the escape of dust into the workplace. Key tasks requiring careful adherence to appropriate rules are packaging, clean-out, blending, batch operations where the operators work with filter presses and tray dryers, and maintenance work. OSHA believes that development and enforcement of good housekeeping and work practices are absolutely essential to meet the strict PEL of the lead standard.

Ventilation. Effective engineering controls, like total enclosure, local exhaust ventilation (LEV), and general ventilation, need to be applied to emission sources to contain and capture the contaminant and thereby reduce lead exposures. Although much more quantitative information is needed to state with any precision how much reduction of particular exposure levels would be achieved by enhancement of specific ventilation systems, OSHA has no doubt that ventilation can be improved in some operations to achieve major reductions in worker exposure. Where ventilation is inadequate, cross contamination can become a serious problem.

Enclosure. Enclosures, often operated at negative pressure, are constructed around single pieces of equipment or groups of equipment. Docket entries describe use of this standard engineering control technique by Kikuchi, Heubach, and HF (Exs. 476–264; 582–16; 582–17). Sometimes, enclosure consists simply of installing tops on vessels or closing up other openings to minimize the amount of air that will be drawn through the equipment when it is connected to an exhaust system in order to maintain negative pressure in the equipment. Reaction vessels, slurry tanks, screw conveyors and elevators can be handled in the latter fashion. In other cases, box-like enclosures are constructed around the equipment.

Prevention of Cross Contamination. Cross contamination of one area with airborne contaminant from another can be prevented by isolating either area to keep a contaminant in or out or by using local exhaust ventilation at the source to capture lead emissions before they can escape into the general work environment. DuPont, the prior owner of the Heubach plant, for example, isolated the grinding, blending and packaging operations in the batch process (the so-called "finishing" operations) in a separate building. Heubach has also suggested enclosing each of seven bag packing stations in separate ventilated rooms (Ex. 582–16, Att. II. p. 11).

Major Process Modification or Substitution. There also are several available processing alternatives that will substantially reduce exposure levels, most notably conversion to continuous processing and shifting production to reduced-dust pigments.

Some batch operations can be converted to continuous processing. Others, because of the small quantity of product involved, for all practical purposes cannot. However, some of these latter may be converted to semi-continuous processing, which may offer sufficient flexibility to produce smaller amounts of pigments than can be produced economically by fully continuous processing. In any event, the conversion provides opportunities to eliminate manual handling of the product and the high exposures associated with such handling.

Thus, the high exposures associated with a batch process that employs presses, tray dryers, containers for interim storage, manual transfer of product between operations, etc. can be eliminated and the frequency of clean-outs reduced by replacing these operations with more automated and continuous operations. HF, for example, replaced batch filtration and tray drying with drum filtration and spray drying, continuous operations that do not require operators to manually load or unload product and transport it to the next operation (Ex. 476–244). HF, however, retains the flexibility in this semi-continuous process to economically produce relatively small quantities of product without the startup losses typically associated with fully continuous processing. HF's approach is one route, short of adopting Heubach's fully continuous approach, for a company to avoid the exposure problems of batch processing, while retaining some of its flexibility. Heubach, on the other hand, expects to convert all of its production to continuous processing within the next year or two (Tr. p. 1187). This would mean that within 2 years approximately 95% of total industry production will be by some form of automated continuous processing.

In addition to converting to fully or semi-continuous processing, as indicated above, leading firms in the industry also are increasingly producing a dust-reduced product, which reduces dust generated up to eight-fold (Ex. 684h, Tr. 1156). This is a potentially major development, which should substantially reduce exposure levels in operations that are performed after the conversion to dust reduced product, like packaging, and probably during cleanout of these operations.

Heubach, as stated above, expected to produce only dust-reduced products before the end of 1988. Harshaw-Filtrol's dust-reduced product currently represents 25% of production, and the company is seeking to broaden customer acceptance so it too can further expand production of dust-reduced pigments.

Technological Feasibility Conclusion. Based upon its own independent analysis of the evidence in the record and the Agency's experience and expertise, OSHA determines that achieving the PEL of 50 $\mu g/m^3$ is technologically feasible by engineering and work practice controls in the lead pigments industry as a whole. OSHA's determination is based upon the following elements.

OSHA has shown that air lead levels in most operations in the lead chromate pigments industry already are at or below 50 $\mu g/m^3$ most of the time. This assessment is supported both by industry statements and Meridian's analysis. For example, in HF's final submission to the record, the company stated that "50 $\mu g/m^3$ is generally achievable by engineering controls and work practices in areas of the manufacturing process except for the dry end of the process (the job classification designated as the 'Spray Dryer Operators' at our facility) and for maintenance or clean-out work"(Ex. 694–5, p. 34).

At the two major producers in the industry at least 69% of the lead exposed employees work in operations for which geometric mean exposures already are below 50 $\mu g/m^3$ or a majority of sampling results already are at or below 50 $\mu g/m^3$. These two plants account for approximately 88% of total production and 69% of total lead-exposed employees in the industry. In addition, in a third plant, Kikuchi, which produces only traffic yellow, as early as 1980 all operations were at or below 50 $\mu g/m^3$, with the exception of packaging. In packaging, where exposures were not far above 50 $\mu g/m^3$, Kikuchi management anticipated achieving 50 $\mu g/m^3$ in the immediate future (Ex. 476–264). Thus, for 3 of 5 plants in the industry 50 $\mu g/m^3$ is largely being achieved. The remaining 2 plants, which account for less than 10% of total industry production, chose not to participate in this rulemaking and did not submit any data to the record.

Industry has not disputed the feasibility of achieving 50 $\mu g/m^3$ in a plant or production line dedicated to traffic yellow. This is important since approximately 20 million pounds, nearly one-third of total industry production, is traffic yellow, and Kikuchi produces only one-fifth of this (Tr. 1132–33). Consequently, other plants in the industry, notably including Heubach, also must be involved in significant production of traffic yellow, which is relatively easily controlled to 50 $\mu g/m^3$.

For all operations already at or near 50 $\mu g/m^3$, OSHA believes that, if existing controls are not always adequate to routinely achieve air lead levels at or below 50 $\mu g/m^3$, a modest improvement in controls such as improved housekeeping, better work practices, better preventive maintenance and perhaps the addition of simple engineering controls will assure that exposure levels are consistently controlled to or below 50 $\mu g/m^3$. In addition, OSHA and Meridian have recommended a number of specific engineering controls, work practices, and preventive maintenance and housekeeping measures that OSHA believes will bring exposure levels down to or below 50 $\mu g/m^3$ in all other operations, as well, with the probable exceptions of cleanout and extraordinary maintenance.

At various times DCMA has claimed that 50 $\mu g/m^3$ is not technologically achievable by implementing engineering and work practice controls in a total of five production and maintenance operations. The five are drying, blending, packaging, extraordinary maintenance, and cleanout (Exs. 582–18, pp. 12–13; 694–6A, pp. 11–13). However, OSHA has demonstrated in previous sections that in two of these operations, drying and maintenance, 50 $\mu g/m^3$ already is being achieved at Heubach. With regard to the limited number of maintenance operations where 50 $\mu g/m$ cannot be achieved by means of engineering and work practice controls, which may be what DCMA refers to as "extraordinary maintenance," OSHA traditionally has recognized that such employees will have to rely on respirators for supplemental protection.

In a third operation, blending, OSHA also has shown that exposure levels at both Heubach and HF in continuous processing are not a problem.

As for packaging, OSHA has shown that nearly one-half of the employees at HF who perform packaging operations are spray dryer operators who package traffic yellow, which is the single largest-volume pigment produced in the industry. In 1986–87, the two-year average air lead level for these operators was 47 $\mu g/m^3$. In light of similar sampling results from Kikuchi, this suggests that packaging traffic yellow pigment can be relatively easily controlled to 50 $\mu g/m3$. OSHA, for example, believes that HF can bring its line A into compliance by isolating it from the two other lines if further engineering controls are still necessary.

In light of these realities, OSHA has focused its analysis on the remaining "problem operations": blending when part of a batch process, other packaging, and cleanout.

With regard to blending in batch processing, OSHA has demonstrated that Heubach is solving the associated exposure problem by effectively eliminating batch processing in a shift of all production to continuous processing (Tr. 1187). HF apparently also does little or no dry batch blending. Elsewhere, where batch processing may continue to be performed, OSHA believes that the blending operation can be largely automated by installing automatic bag slitters and dumpers and automatic material transfer conveyors (Ex. 582–16, Att. II, pp. 12, 17; and see 51 FR 22655; June 20, 1986). Alternatively, OSHA has shown that some additional blending can be performed wet, as at HF, to adequately control exposure levels (Ex. 684h, p. 2). With these modifications, OSHA believes exposure levels in blending can be controlled to or below 50 $\mu g/m^3$.

Concerning packaging in general, OSHA recognizes that this is a difficult operation to control and that effective control demands persistence in implementing strict work practices, including daily attention to proper housekeeping. Nevertheless, if industry implements the recommendations OSHA and Meridian have made for improved ventilation, work practices, and housekeeping, OSHA believes exposure levels can be brought to or close to 50 $\mu g/m^3$. With the increasing use of low-dust pigments, which reduce dust generation by 8-fold, OSHA is confident that packaging can be controlled to or below 50 $\mu g/m^3$.

Finally, product changeover cleanout is probably the most difficult operation in the industry to control. Industry's shift to production of a low-dust product should dramatically reduce exposure levels in cleanout of downstream operations. In addition, OSHA has recommended that cleanout be eliminated where possible, or that its

frequency be reduced and that the sources of exposure be better controlled while it is being done. Where it remains necessary to perform such cleanout, OSHA believes equipment must be carefully opened and cleaned. The use of compressed air for cleaning should be discontinued and employers should rely instead upon water cleaning methods and keeping the pigment wet to the extent possible, or upon alternative mechanical methods (Ex. 686I, p. 25). If these recommendations are implemented, OSHA believes that exposure levels associated with this operation will be significantly reduced, conceivably to 50 $\mu g/m^3$.

For all of the above reasons, OSHA concludes that the PEL of 50 $\mu g/m^3$ is technologically feasible for the lead chromate pigments industry as a whole.

For product changeover cleanout and for the limited amount of packaging of pigment in bags that requires manual weight adjustment, OSHA recognizes that it may not be possible to reach 50 $\mu g/m^3$ on a consistent basis. Even if this is so, OSHA points out that the resulting percent of total employees exposed above 50 $\mu g/m^3$ would be quite small. At HF, for example, less than 17% of employees would be exposed above 50 $\mu g/m^3$.

In any event, since OSHA has found the 50 $\mu g/m^3$ PEL technologically feasible for the industry as a whole, employers will be required in product changeover cleanout and packaging that requires manual weight adjustment, as well, to control exposure levels to the PEL or the lowest feasible level by means of engineering and work practice controls. Where all feasible engineering and work practice controls have been implemented and employees performing these tasks are still exposed above the PEL as an 8-hour TWA, then, so long as all other sources contributing to the 8-hour TWA have also been controlled to 50 $\mu g/m^3$ or the lowest feasible level, employers will be required to provide these workers with respirators for supplemental protection while they are performing these tasks.

Industry does not agree with OSHA's determination that the 50 $\mu g/m^3$ PEL is technologically feasible.

Although all the industry representatives in the 1987–88 phase of this rulemaking have recognized that 50 $\mu g/m^3$ either is already being achieved or can be achieved in most of the operations most of the time by implementing engineering and work practice controls, nonetheless, DCMA, Heubach and HF persist in arguing that a PEL of 50 $\mu g/m^3$ is infeasible because it cannot be achieved in a few operations like cleanout and packaging. OSHA does not have to prove that the PEL has been or can be achieved in all operations all of the time. A standard is technologically feasible if it can be achieved in most of the operations most of the time. The Agency has demonstrated that 50 $\mu g/m^3$ either has been or can be achieved in all operations except perhaps cleanout and extraordinary maintenance, which, in any event, are types of operations in which OSHA has permitted respirator use to supplement engineering controls.

DCMA also argues that OSHA cannot guarantee that its recommended additional controls will work. However, with regard to some of the operations in which DCMA contends 50 $\mu g/m^3$ cannot be achieved, OSHA has shown 50 $\mu g/m^3$ already is being achieved (i.e., drying and maintenance). Further, current exposures for some of the remaining operations are not very high at some plants (i.e., less than 100 $\mu g/m^3$) and OSHA has pointed out feasible controls that have not yet been implemented which are capable of reducing exposure levels below 50 $\mu g/m^3$. In any case, the courts have ruled that the OSH Act does not require OSHA to prove to an absolute certainty that its recommendations will result in the PEL being achieved all the time. *USWA* v. *Marshall*, 647 F.2d at 1266. On the contrary, the courts have held that OSHA can require industry to meet PELs never attained anywhere. OSHA believes it has more than satisfied its burden of proving technological feasibility for the lead chromate pigments industry.

DCMA also has argued that cleanout should not be included in the calculation of the 8-hour, time-weighted average (TWA) for purposes of determining whether an employee is exposed above the PEL. OSHA is sympathetic to the notion that cleanout in some respects is similar to maintenance. OSHA traditionally has recognized that certain maintenance operations cannot always be controlled to the PEL by work practice and engineering controls alone. In such circumstances, OSHA has also recognized that supplemental reliance upon respirators to protect workers may be necessary.

Nonetheless, OSHA cannot exclude from the calculation of TWAs an operation like cleanout, which in this industry appears to be performed by production workers. For these employees, cleanout periodically constitutes an undifferentiated portion of their 8-hour TWAs. Under such circumstances, an exclusion of cleanout activities would make interpreting company exposure data and enforcing compliance with the PEL very difficult for those employees who perform cleanout. At HF, for example, all production workers perform equipment cleanout during product changeovers and thus HF's entire workforce would qualify for such an exemption.

If it proves to be infeasible to consistently achieve 50 $\mu g/m^3$ in cleanout, industry must implement engineering and work practices to achieve the lowest level feasible in that operation. If exposures for employees who perform cleanout still exceed an 8-hour TWA of 50 $\mu g/m^3$, then, so long as all other sources contributing to the 8-hour TWA have also been controlled to 50 $\mu g/m^3$ or the lowest feasible level, employers will be required to provide these workers with respirators for supplemental protection while they are performing cleanout.

In addition, industry has criticized Meridian's estimates of reductions in exposure levels to be expected from recommended additional controls as not grounded in quantitative data. In fact, where useable quantitative data were available in the record, Meridian relied upon it. Meridian, for example, did analyze the data in the record and also participated in a recent site visit to HF. Only after that did Meridian rely upon an expert panel of certified industrial hygienists to independently assess the expected reduction in exposure levels that would result from implementing certain recommended additional controls. Based upon all these factors, Meridian concluded that exposure levels in all operations could be controlled to or below 50 $\mu g/m^3$, except for cleanout and certain maintenance operations. In any event, OSHA believes it is appropriate to rely upon expert opinion and experience if better quantitative data are not available. Reliance upon expert opinion under such circumstances is not unique to this rulemaking. OSHA has previously relied upon expert opinion and experience under similar circumstances in all of its past rulemakings.

OSHA believes Meridian has made a reasonable assessment within prevailing time and resource constraints. In any event, OSHA has not primarily relied upon Meridian's analysis or estimates. Rather, OSHA has conducted an independent analysis of the data and looked to Meridian primarily for confirmation.

Finally, HF argues, first, that work practices cannot be improved, and second, that engineering controls are not correlated with exposure levels. OSHA rejects these arguments. The principles of industrial hygiene and the exposure data from the lead pigment and other industries indicate that this is not the case. OSHA is assured that if HF conducted an industrial hygiene survey, as recommended, the company would recognize specific ways in which its work practices can be improved and in which implementing additional engineering controls would reduce exposure levels.

For example, with regard to engineering controls, HF argues that exposure levels on line A, which has relatively crude engineering controls, are lower than on lines B and C, which have better engineering controls (Ex. 694–5, p. 9). The company, therefore, suggests that better engineering controls won't necessarily further reduce exposure levels. If everything else were equal, this might be a plausible argument. However, everything else is not equal. Line A produces traffic yellow, almost exclusively. Consequently, as OSHA indicated previously, there are fewer cleanouts on that line, the nature of the product apparently causes less generation of dust, and packaging probably requires less attention to meeting narrow weight specifications.

HF has also stated that the molybdate oranges being produced on line C, which has the highest average exposure levels, is a dustier product than either of the products produced on lines A or B. In addition, HF has recognized that the work practices of one of the spray dryer operators on line C accounts for his higher exposures and contributes to higher average exposure levels on line C (Ex. 684h, p. 7). Thus, neither the facts nor the principles of industrial hygiene support HF's position.

With regard to work practices, HF provides no evidence to support its assertion that work habits cannot be changed and poor work practices cannot be corrected. OSHA considers this view unacceptable, since it it likely to become a self-fulfilling prophecy. OSHA, along with the industrial hygiene community, believes that good work practices should be taught to workers and retaught as often as necessary. If the work practices are sensible, and the company communicates to workers its seriousness about requiring that such work practices be followed, OSHA has no doubt that workers will follow them. No matter what efforts a company may make to implement effective engineering controls, if its work practices are poor those controls are likely to be rendered ineffective. Indeed, HF has made this very point with regard to one of its employees on product line C.

For all of the above reasons, OSHA concludes that the PEL of 50 $\mu g/m^3$ is technologically feasible in the lead pigments industry.

Industry Profile. Lead Pigments fall under SIC classification 2816. The principal lead chromate pigments are chrome yellow, chrome orange, molybdate chrome orange, and chrome green.

There are five domestic producers of lead chromate pigments, following the withdrawal of two manufacturers, American Cyanamid and Ciba-Geigy, from the lead chromate industry [Ex. 582–161] and the announcement of another, NJZ Colors, that it will abandon its lead chromate production activities [Ex. 694–8, p. 3].

Lead chromate production represents 100 percent of corporate sales for Kikuchi, with about 4 million pounds of capacity. Lead chromates constitute 50 percent of sales for Heubach, with about 35 million pounds of capacity, 30 percent of sales for Harshaw/Filtrol Partnership, with about 20 million pounds of capacity, and 30 percent of sales for Wayne Chemical, with about 3 million pounds of capacity [Tr., p. 1132]. No information was given for the fifth producer, NL Chemicals; it is assumed that their lead chromate capacity is relatively small [Ex. 686i, p. 3]. All firms produce lead chromates in only one facility, though Harshaw/Filtrol and NL chemicals are multi-facility corporations.

The number of workers exposed to lead in the manufacture of lead pigments was reported to be 310 by the Dry Color Manufacturers Association (DCMA) [Ex. 582–18, pp. 14–15]. This total seems consistent with the 1982 estimate of 665 workers. The 1982 estimate was based on twelve producers.

In assessing price trends for lead pigments, OSHA found the concept of unit value to be the accepted measure of value by both the industry and government agencies which collect and report data on lead pigments. Unit value is derived as total value of product divided by total volume, expressed in cents per pound. For example, in 1987, the 3,354 metric tons (7,392,216 lbs.) of chrome yellow pigment which were imported for consumption had a total value of $5,573,000 [1987 Minerals Yearbook, Bureau of Mines, U.S. Department of Interior]. Unit value for this product was thus 75.4¢ per pound. OSHA compared unit value data as described below.

Published data indicate that both the average price of primary lead and the unit value of imported chrome yellow pigment increased from 1985 to 1987 [1987 Minerals Yearbook, Bureau of Mines, U.S. Department of Interior]. (Chrome yellow represents approximately one-third of industry capacity.) Unit value of imports were 70¢ per pound in 1985, 72¢ per pound in 1986, and 75¢ per pound in 1987. Commerce Department data indicate that domestic unit values of this pigment decreased from 1985 to 1986, from 91¢ per pound to 75¢ per pound, but then increased in 1987, rising to 78¢ per pound [Current Industrial Report, Inorganic Chemicals (MA28A), Bureau of the Census, U.S. Department of Commerce]. Data submitted by Heubach show unit values decreasing over the same three year period from 84¢ to 76¢ to 75¢ per pound [Ex. 582–16].

Unit value of molybdate chrome orange declined from $1.25 per pound in 1986 to $1.16 per pound in 1987 [Current Industrial Report, Inorganic Chemicals (MA28A), Bureau of the Census, U.S. Department of Commerce].

This pigment is produced in quantities about one-quarter to one-third that of chrome yellow.

Production of lead chromate pigments dropped off about 30 percent between 1981 and 1982 but remained stable through 1985 [Ex. 579, p. 7]. No data on production levels or shipments were provided by industry commenters at the public hearing. However, it was noted that five companies currently are operating at increased production levels [Ex. 582–16; Ex. 582–17, p. 7]. Domestic shipments of chrome yellow declined 7 percent in 1986 but improved by this same percentage in 1987. Shipments of molybdate chrome orange declined 6.5 percent in 1987 [Current Industrial Report, Inorganic Chemicals (MA28A), Bureau of the Census, U.S. Department of Commerce].

Imports of chrome yellow increased over 50% from 1980 to 1985 while imports of chrome green rose from 20 tons in 1983 to over 200 tons in 1985 [Ex. 579, pp. 10–12]. Heubach, Inc. noted, however, that "at the present time, the domestic chromate and molybdate industry is a net exporter" [Ex. 582–16, response 21]. This apparent conflict was addressed by Meridian:

> Meridian's analysis * * * indicated that, as of 1985, the unit value of imports of chrome yellow had fallen to more than 20 percent below the unit value of domestic production, and that imports (especially chrome green) were increasing. * * * 1985 was also a peak year for the value of the dollar relative to foreign currencies, which tended to increase import pressure. Since 1985, however, the value of the dollar has fallen by about 30 percent * * *. This should more than eliminate the price advantage of imports, and it should generally reduce the level of import penetration. [Ex. 686i, p. 9].

The effect of the devaluation of the dollar is apparent when unit values for imports and domestic shipments of chrome yellow are compared for the years 1985 through 1987. As noted above, the unit value of imports in 1985 was 70¢ while that of domestic shipments was 91¢. In 1987, the two values were practically the same, at 75¢ for imports and 75¢–78¢ for domestic shipments. Additionally, since it is believed that imports may be undervalued to avoid tariff, foreign producers apparently no longer enjoy a price advantage. This evidence, along with the fact that U.S. producers ship over two times the metric tonnage of chrome yellow that is consumed here, supports the claim by Heubach that the U.S. chrome pigment industry is a net exporter.

Demand for these pigments is "heavily dependent on activity in the automotive industry, construction, equipment manufacturing, and the plastics industry" [Ex. 582–17, p. 7]. These industries all experienced substantial cyclical decline in the 1982 recession [Ex. 579, p. 9]. At the public hearing, Mr. William M. Arnheim of Heubach, Inc. testified that lead chromates are used primarily for road marking, which consumes nearly 20 million pounds of lead chromate yellow each year [Tr., p. 1133]. (Mr. Arnheim also noted that the "vast majority of the paints and coatings used in these applications are purchased and applied at taxpayers' expense" [Tr., p. 1134]). Other major consumer markets identified were plastics coloring (over 10 million pounds annually), paints and coatings (about 10 million pounds annually), and inks (5 to 7 million pounds annually) [Tr., pp. 1135–1137].

Acceptable substitutes for lead chromate pigments are scarce, but they do exist and are generally more expensive, up to twenty five times more costly. One producer of lead chromates reported that its customers are looking for organic substitutes [Ex. 684h]. Substitutes have been criticized on appearance and quality [Ex. 582–16]. There do not appear to be substitutes for lead chromate pigments at any cost for industrial top coatings, traffic paints, and road markers [Ex. 579, p. 10].

While Meridian reported that demand can probably be expected to erode in the long run, the information presented above does not suggest a potential decline. For one-third of this industry's product, traffic paint, demand is high [582–17]. Further, the limited availability of substitutes and the use of lead chromates in the construction and automotive industries indicate continuing demand.

Commerce Department (Bureau of the Census) data indicate that the value of shipments of organic pigments, which are also produced by Heubach and Harshaw/Filtrol and do not contain lead, increased approximately 8 percent in 1986 [1986 Annual Survey of Manufactures, Bureau of the Census, U.S. Department of Commerce]. Prices increased by 3.8 percent that year [Producer Price Index, Bureau of Labor Statistics, U.S. Department of Labor, December, 1986]. Prices for these products increased approximately 9 percent in 1988 [Producer Price Index, Bureau of Labor Statistics, U.S. Department of Labor, November, 1988].

Financial information was available from Dun & Bradstreet for SIC 2816, the industry code which covers the lead chromate pigment producers [Ex. 579, p. 18]. However, Heubach, Inc. noted that statistics for SIC 2816 are not necessarily representative of the lead chromate pigments industry, as the lead pigment producers make up only a small portion of the SIC (Mr. William M. Arnheim, representing Heubach, Inc., testified at the informal hearing that "lead chromates can hardly constitute as much as 2 percent of the pounds or dollars sold under SIC 2816" [Tr., p. 1133]). Financial information offered by Heubach noted that "for the period 1984 through 1986, rates of return on assets and net worth declined by more than 55%" [Ex. 582–16]; however, no specific rates were provided by the company. Harshaw/Filtrol provided profit data at the facility level for the years 1984 through 1987 [Ex. 694–5, p. 6]. In each of the last three years for which data were available, losses were reportedly sustained by their lead chromate operations. In 1987, losses represented 5.6 percent of lead chromate sales. Losses for 1985 and 1986 were 10.2 percent and 11.0 percent of sales, respectively.

While the Harshaw/Filtrol information suggests low or non-existent profitability, OSHA does not believe that these data provide an accurate representation of the current financial condition of this industry. Heubach's decline in profitability from 1984 through 1986 was most likely due to the overvaluation of the dollar, but, as explained above, circumstances have changed. Additionally, while Heubach reported a decline in profitability of 55 percent, no indication was given that the firm was not profitable. Harshaw/Filtrol's data also indicate poor performance, but substantial improvement is indicated for 1987. The information presented above indicates continued demand for the products of this sector and domestic product prices which are internationally competitive.

Since financial data supplied by industry were not adequate to allow OSHA to estimate current rates of profitability for the lead chromate industry, Dun and Bradstreet financial statistics were used to compute economic impacts.

Costs of Compliance. In developing its cost estimates, OSHA found that information supplied by commenters made it possible to project compliance costs for four of the five plants in the industry. Kikuchi Color & Chemical Corporation should incur no incremental costs due to this regulation [Ex. 476–264]. Detailed annual costs for two facilities Heubach, Inc. and Harshaw/Filtrol (HF), are shown in Table 3. As noted in the table, certain estimates may be overstated due to the effect of dust reduced products. This effect is addressed below.

TABLE 3.—ESTIMATED COSTS OF COMPLIANCE FOR PLANTS IN THE LEAD CHROMATE PIGMENTS INDUSTRY

	Annualized capital [a]	Annual O&M	Total annual
Heubach			
Isolation—			
Belt dryer [b]	$9,400	$0	$119,400
Exhaust—			
Belt dryer [b]	2,936	2,000	4,936
Bagging [b]	199,550	153,000	352,550
Housekeeping	1,718	14,090	15,808
Annual cleaning		50,000	50,000
Total	213,603	219,090	432,693
Harshaw-Filtrol			
Blending [b]	17,616	12,000	29,616
Bagging [b]	63,858	43,500	107,358
Isol— packaging	35,250	0	35,250
Baghouses	26,424	18,000	44,424
Housekeeping	1,145	9,970	11,115
Annual cleaning		50,000	50,000
Central vacuum	7,340	5,000	12,340
Total	$151,633	$138,470	$290,103

[a] Capital costs were annualized using a 10% financing cost and a projected useful life of 12 years. For partitioning and isolation, a useful life of 20 years was estimated.
[b] Cost estimates may not reflect dust reduced products. See text.
Source: Occupational Safety and Health Administration, Office of Regulatory Analysis.

The Heubach facility will incur costs principally for the packaging of product and additional housekeeping measures. The Heubach facility has a total of seven packaging stations. Costs for bagging were estimated based on isolation and ventilation for five semi-automatic packers and on the purchase of two fully automated packers. Costs for ventilation and isolation for these stations were estimated to be $1.2 million ($175,000 each) [Ex. 582–16]. Automatic palletizing equipment was also recommended. Evidence in the public record indicates that the cost of such a device would be $25,000 [Ex. 582–17]. Total costs for palletizing equipment for five semi-automatic packaging stations would be $125,000. Automated packers were also recommended, and OSHA assumes that two such baggers will be implemented at this facility. Costs are estimated to be $85,000 per device, including packer and palletizer.

[Ex. 582–17]. Total costs for automated baggers at this facility are thus estimated to be $170,000. Costs for housekeeping equipment were also included for this facility (three portable vacuum sweepers at $3,900 each [Ex. 686i, p. 30]. Since the company has expressed its intent to phase out batch operations within two years, no costs will be incurred for this portion of their facility [Tr., p. 1187]. Evidence in the public record also indicates that a central vacuum system is already in place in this facility [Ex. 582–16].

In addition, Heubach identified construction of a containment wall around the belt dryer as an additional control measure to reduce the exposure of the operator below the 50 $\mu g/m^3$ PEL (except during periodic leanout) [Ex. 582–16, p. 21]; in oral testimony, representatives of Heubach did not identify this as an area where employee exposures are consistently above 50 $\mu g/m^3$ [Tr., pp. 1165–1169]. It is not clear from this information whether the belt dryer is contributing to employee exposures above 50 $\mu g/m^3$; OSHA has, however, incorporated Heubach's cost estimates for this operation into its own cost estimates for this facility.

Heubach also provided cost estimates associated with reducing employee exposures to lead in the continuous centrifuge area of the plant. Heubach suggested that continuous centrifuges be partitioned from the rest of the work area; however, Heubach also noted that employees in this area are "generally below the 50 $\mu g/m^3$ PEL at this time" [Ex. 582–16, p. 19]. Because exposure levels are generally in compliance, OSHA has not included Heubach's estimated costs for this area in its own compliance cost estimates.

In the Harshaw/Filtrol facility, costs will be incurred for blending ($120,000), baghouses dedicated to separate colors ($180,000), and bagging equipment ($435,000) [Ex. 582–17]. (Costs for bagging include three local exhaust ventilation systems at $60,000 each, three automatic palletizers at $25,000 each, and three automated baggers at $60,000 each. Cost estimates for bagging systems required at the Harshaw/Filtrol facility were based on Ex. 582–17. Costs for housekeeping equipment (two portable vacuum sweepers at $3,900 each and a central vacuum system at $50,000) were also estimated. Isolation or partitioning of the packaging area could also be required, and additional capital costs would be estimated at $100,000.

The cost of regular cleaning (assumed to be done annually) was estimated to be $50,000 for the large facilities (Heubach and Harshaw/Filtrol) [Ex. 694–9].

Annualized capital costs were computed based on a projected useful life of twelve years, except in the cases of partitioning and isolation for which twenty years was used, and a ten percent financing cost. Operating and maintenance (O&M) expenses were calculated at ten percent of capital costs. O&M costs for housekeeping include HEPA filter replacement, at $2,000 per sweeper per year, and costs for additional labor, estimated to be $6,920 for the Heubach facility and $5,190 for Harshaw/Filtrol. (Incremental labor costs are based on an estimate of 2 person-hours for the Heubach facility and 1 and one-half person-hours for the Harshaw/Filtrol facility, performed at an average wage of $13.84 over fifty weeks, five days per week). Additional housekeeping will be particularly useful in removing from surfaces pigment released during the cleanout operation.

As shown in Table 3, total annual costs for the Heubach facility are estimated to be $432,693. Harshaw/Filtrol would be expected to incur annual costs of $290,103.

As noted in the table, these estimates may not reflect the effect of the dust reduced products used by these firms. Heubach testified that they expect to see "significant reductions in dust exposures during dry pigment handling operations, such as blending and packaging" [Tr., p. 1156]. In both facilities, bagging area operations accounted for a significant part of total costs. OSHA estimates that with dust reduced products the costs for bagging operations would be substantially reduced. For each of these firms, these products would most likely eliminate the need for isolation of the packaging areas resulting in an estimated reduction in annual costs of about $95,000 for Heubach and over $35,000 for Harshaw/Filtrol. Thus, annual costs would be expected to be reduced to $340,000 for Heubach and $255,000 for Harshaw/Filtrol.

The costs for these two plants were related to the types and quantity of certain pigment products and production equipment. In the absence of specific cost or process information pertaining to the remaining plants, OSHA has assigned costs based on the lead chromate capacity of these plants. Annual costs for the Heubach facility are equivalent to $12,363 per million pounds of capacity. At Harshaw/Filtrol, annual costs are equivalent to $14,505 per million pounds. Averaging these two values yields $13,434 per million pounds. The production capacities of the remaining plants are estimated to be 3 million and 1 million pounds. Annual costs for these plants are estimated to be $40,302 (Wayne Pigment) and $13,343 (NL Chemicals), respectively. (Due to economies of scale, this methodology may underestimate costs for smaller operations somewhat).

Total industry annual expenditures are expected to be about $777,000. These costs are exclusive of major process or product modification, such as converting batch processing to continuous or semi-continuous processing. Data in the public record submitted by Heubach [Ex. 582–16] indicate the magnitude of such additional costs. Heubach estimated total dryer replacement to cost $1.5 million to $2.0 million. A process conversion as completed by Harshaw/Filtrol [Ex. 476–244] would require at least $5.0 million in capital resources. Cost data were also reported regarding separate grinding lines dedicated to different product groups [Ex. 475–37]. Costs for this type of process modification were $4.3 million in 1975.

Economic Feasibility. The economic impacts of the 50 $\mu g/m^3$ lead standard on the lead chromate pigments industry are summarized in Table 4.

Lead related sales for the industry were determined by summing 1987 value of shipments of chrome yellow, chrome orange, and molybdate chrome orange, and 1984 value of shipments for chrome green (1984 was the last year for which the Census Bureau published data for chrome green). [Current Industrial Report, Inorganic Chemicals (MA28A), Bureau of the Census, U.S. Department of Commerce]. Total value of industry shipments ($58 million) were then apportioned among the five producers (four of which are expected to incur costs) on the basis of capacity, and are shown in column 1 of the Table. (NL Chemicals was assumed to account for about 1.6 percent of industry capacity). Percentages of total sales, shown in column 2, were obtained from information supplied during the public

hearing [Tr., p. 1132] and were used to compute the estimates of total corporate sales shown in column 3. Total sales for Wayne Pigment were obtained from Dialog Information Services (Duns Financial Records Plus). Lead related profits appear in column 4. For three of the firms, corporate profits were estimated and appear in column 5. Based on the discussion of financial statistics provided above, profits were computed using the Dun and Bradstreet 1986 rate of return on sales (ROS) for SIC 2816 of 4.9 percent.

TABLE 4.—SUMMARY OF ECONOMIC IMPACTS FOR THE LEAD PIGMENTS INDUSTRY

Plant	Lead related sales ($ thous.)	% of total sales	Total sales ($ thous.)	Lead related profits ($ thous.) [a]	Total profits ($ thous.) [a]	Annual costs ($ thous.)	Ratio: costs/lead related sales	Ratio: costs/lead Rel. profits [b]	Ratio: costs/total profits [b]
Heubach	32222	50	64444	1579	3158	432.69	0.01343	0.18087	0.09044
Harshaw/Filtrol	18413	30	61376	902	3007	290.10	0.01576	0.21222	0.06367
Wayne Pigment	1520	30	5065	74	248	40.30	0.02652	0.35725	0.10717
NL Chemicals	921	[c]	[c]	45	[c]	13.43	0.01459	0.19655	[c]

[a] Profits after taxes were obtained using a rate of return on sales (ROS) of 0.049 [Dun and Bradstreet Industry Norms, 1987] [Ex. 579, p. 18].
[b] See text for derivation. Profit impacts were computed using the following federal income tax schedule: Heubach, Harshaw/Filtrol, Wayne Pigment, and NL Chemical: 0.34.
[c] Not available.
Source: Occupational Safety and Health Administration, Office of Regulatory Analysis.

Estimates of annual costs appear in column 6. OSHA used conservative estimates; that is, compliance costs were not adjusted for possible reductions due to dust reduced products. Impacts in columns 7, 8, and 9 are thus overstated to this extent.

Cost to sales ratios for the five firms listed appear in column 7 of Table 4 and indicate that price increases of about 1½ percent will be required for Heubach, Harshaw/Filtrol, and NL Chemical to pass the costs of compliance through to customers. Wayne Pigment would require over a 2½ percent increase. OSHA believes that pass-through is possible for at least a portion of compliance costs.

First, as noted earlier, substitutes for these pigments are scarce and when they are available, they are expensive. The largest market for lead chromate pigments is traffic paint, a use for which, as noted above, no substitutes exist. This is also a use for which demand is high and which is produced primarily for public consumption; thus, full cost pass-through is likely, either in the form of local taxes or other revenue enhancement mechanisms such as municipal bonds [Ex. 582–17, p. 7]. Second, as demonstrated above, the price competitiveness of U.S. producers in the world market has improved due to the decline in the U.S. dollar. Import penetration, therefore, is not expected to be a major deterrent to U.S. producers increasing prices. The ability of this industry to pass through at least a portion of compliance costs was indicated by Heubach, as they noted "it is estimated that as little as 25 percent of the cost of meeting the PEL could be passed along through price increases" [Ex. 582–16].

Profit impacts appear in columns 8 and 9 of Table 4. (Information in the public record does not allow the calculation of corporate profits for NL Chemicals; therefore, profit impact on total sales has not been estimated.) It should be noted that the tax-deductibility of compliance costs was taken into account in computing profit impacts. That is, care was taken to compute before-tax profit before subtracting annual costs. After subtracting annual costs, the appropriate average tax rate (34 percent) was then reapplied to determine after-tax profit net of costs.

As shown in the table, impacts on lead related profits will range between 18.1 and 21.2 percent for all firms except Wayne, for which impacts will be about 36 percent. The ability of the firms in this industry to absorb the costs of compliance however, depends not only upon the profitability of their lead chromate operations but also on the extent to which they engage in activities other than the manufacture of lead pigments. OSHA has computed profit impact ratios with respect to total corporate profits and these figures are also presented in Table 4. Impacts on total profits range from about 6.4 percent for Harshaw/Filtrol to about 10.7 percent for Wayne.

In the case of full absorption (which OSHA believes should not be necessary), ROS for lead chromate operations could dip 0.9 percent for Heubach, from 4.9 percent to 4.0 percent, 1.0 percent for Harshaw/Filtrol, 0.9 percent for NL Chemical, and 1.8 percent for Wayne, for which ROS could drop to about 3.4 percent. Corporate ROS could dip as much as 0.6 percent, from 4.9 percent to 4.3 percent, for Wayne.

Based on this analysis, OSHA finds that the impact of this rulemaking action will not threaten industry existence or structure. OSHA's reasoning is as follows.

First, it is estimated that one of the five domestic producers, Kikuchi Color and Chemical, will incur no costs as a result of this rule. Another, NL Chemical, is a corporation in the $50 million asset size class and lead chromate production accounts for only a small proportion of total corporate sales [Ex. 579, p. 16]. It is estimated that this corporation produces less than 2 percent of total industry output. Costs of compliance are projected to be lowest for this firm, which may absorb into corporate profits all costs which cannot be passed through. Profit impact calculations for the remaining firms indicate that compliance costs can be absorbed.

Second, OSHA has shown that some cost pass through is possible, based on the large proportion of industry capacity represented by traffic paint, the unavailability of reasonably priced substitutes, and improved market conditions for U.S. producers.

Third, Heubach, with approximately one-half of total industry capacity, has announced that it will be converting exclusively to dust-reduced products. Representatives of the company testified that this product may offer up to an eight-fold reduction in the dusting level of the finished product [Tr., p. 1156]. Similarly, Harshaw/Filtrol has developed a proprietary treatment to reduce the dust-generating quality of its product [Ex. 684h, p. 3]. As consumer acceptance of dust-reduced products increases, exposures and, hence, control costs would be expected to be reduced.

As noted above OSHA's cost estimates and, hence, impacts are believed to be overstated.

Finally, OSHA observes that Heubach, Incorporated, purchased its chemical production facility in 1984 [Tr., p. 1138]. Since then, the company has invested in both process and product modification [Tr., p. 1187]. The purchase of this facility during pending regulation indicates investors' confidence in their ability to operate profitably in the pigment market.

Thus, with respect to current market structure and demand, OSHA concludes that the 50 $\mu g/m^3$ standard is economically feasible for the lead pigments industry within a 2½ year compliance schedule. All of the four producers expected to incur costs should be able to finance the costs of this rule through a combination of pass-through and absorption.

5. Leaded Steel

Process Description and Sources of Exposure—Overview. Molten steel is produced in furnaces, poured into ladles, and then cast. The casting can either be accomplished by a process known as teeming or by continuous casting. In either case, lead is first added to the product at the casting stage. Thus, unless the furnace has been charged with lead-containing scrap, or unless there is cross contamination from downstream operations, operations prior to the casting process should involve little or no lead exposure. After casting, the leaded steel is further shaped by rolling and surfaces are conditioned to customer specifications.

Furnace Operations. In the United States, steel is produced by either an electric arc furnace or a basic oxygen furnace. When the electric arc furnace is used, steel scrap is charged into the furnace, where it is melted. Iron oxide or oxygen is injected into the molten metal, which reacts to remove impurities. Flux and alloy materials are added to produce the specified molten steel. Molten steel is poured from the electric arc furnace into large ladles that transport the steel to the teeming aisle. The addition of lead to make leaded steel takes place at the teeming aisle. Currently, three leaded steel producers use electric arc furnaces.

When the basic oxygen furnace (BOF) is used, molten iron, which is produced in a blast furnace, is charged into the BOF. Oxygen is blown into the BOF through a lance to remove excess carbon. Then flux (limestone) is added, which reacts to remove impurities. The injection of oxygen into the molten metal continues until the desired degree of purification is achieved. With the addition of alloying elements, molten steel is produced. The steel is poured from the BOF into large ladles that transport the steel to the teeming aisle, where lead is added in leaded steel production. Currently, two steel manufacturers use the basic oxygen process.

Teeming. After the molten metal is tapped into the ladle, the ladle is then carried by an overhead crane to a platform, where the molten steel is poured into ingot molds, a process known as teeming. Railroad cars adjacent to the teeming platform are used to bring ingot molds to the teeming area. A typical ingot mold has a capacity of 5 to 10 tons, and a typical heat produces enough molten steel to fill 15 to 40 molds (Ex. 582–87, p. 6).

The teeming process can be done by top pouring or bottom pouring of molten steel into the ingot molds. The top pouring process aligns the ladle over each individual mold and fills the mold with a controlled stream of steel from the bottom of the ladle. The bottom pouring process involves aligning the ladle over a refractory lined cast iron funnel, which is connected to the bottom of a series of molds with refractory tubes. The steel is then teemed into the funnel with a controlled stream which fills the complete series of connected molds at the same time (Ex. 582–87, p. 6).

In the production of leaded steel, lead is added during the teeming process. During top pour teeming, workers add lead into the top of the ingot mold as molten steel is poured, either by placing bags filled with lead shot or by pneumatic injection of lead shot using a lead gun comprised of a rubber hose and long steel pipe with a nozzle (Exs. 582–87, p. 8; 620X). During bottom pour teeming, lead shot is added to the stream of molten steel poured into the centrally located funnel. The process of adding lead lasts between 5 and 60 minutes, depending upon the size of the ingot, the lead content, and the number of ingot molds being filled. The quantity of lead added to each ingot mold varies between 40 and 110 pounds (Ex. 582–87, p. 8).

In the process of adding lead to the molten steel, the temperature of which is 2685° to 2750° F, a substantial quantity of lead is volatilized. According to AISI, the amount of lead loss per ingot due to fuming ranges from 5–35 pounds (Ex. 582–87). The volatilization of lead contributes significantly to the amount of airborne lead in the plant.

Employees who work on or around the teeming platform experience high exposures to lead. They include workers who supervise the addition of lead to the ingot molds; workers who add lead to the molds with a pneumatic gun or by placing bags of lead shot into the molds; workers who operate or maintain the teeming ladle and ingot molds; workers who pour molten steel from the ladle into the ingot molds; and workers who monitor the addition of lead to ensure that the leaded steel has the appropriate metallurgical properties.

Stripping and Soaking. After the steel is solidified in the molds at the platform, which takes two to three hours, the railroad cars are moved to a stripper area where ingots are removed from the molds by giant tongs. Usually while still hot, the ingots are then charged into soaking pits, which are large, gas-fired, refractory-lined, covered furnaces used to heat the ingots up to approximately 2400° F, the temperature required for rolling steel (Ex. 582–87, p. 7).

Because of the automation in this process, there appears to be little or no lead exposure for the employees.

Rolling Operations—Primary Mills and Bar Mills. The heated ingots are then removed from the soaking pits and sent to the primary rolling mills or roughing mills to be rolled into semifinished forms of steel such as: blooms (which are roughly square in cross-section); slabs (which are rectangular); and billets (which have smaller cross-section areas than blooms but are usually much longer) (Ex. 582–87, p. 7).

Companies typically begin the rolling cycle by rolling the largest sizes of steel products first, and then continue rolling sequentially smaller sizes of products until the smallest size is rolled. The cycle then begins anew. Leaded steel is rolled according to where its size fits in the cycle. Accordingly, rolling operations only produce intermittent employee exposures to lead.

In the primary mills, ingots are rolled into blooms which are then rolled into billets. Before reaching the bar mills where billets are rolled into final product, the steel is transferred to a reheat furnace and heated to proper rolling temperature. Depending on the final product dimensions, the steel is then rolled on bar mills of various sizes, ranging from 8-inch to 24-inch mills.

Employees who are potentially exposed to airborne lead during rolling operations include workers who operate the rolling mills, workers who assist the mill operators by adjusting the rolls and mill stands, workers who gauge leaded bars during bar mill operations for the precise dimensions required, workers who transport leaded steel between mill stands, and workers who chain bars to cranes so that the bars may be moved (Ex. 582–87, p. 15).

Surface Conditioning/Finishing. Following primary rolling or bar mill operations, leaded steel may be sent through surface conditioning or finishing operations. The conditioning removes any surface defects that might affect the final product. Conditioning can be accomplished by grinding or scarfing out the defects in the rolled steel. Grinding is performed by large, high speed, automatic grinding machines or manually by spot grinding. The scarfing process, which can be done automatically or manually, involves burning off surface imperfections with an oxy-fuel torch (Ex. 582–87).

Most surface conditioning is performed on billets, most often by grinding the surface with a grinding machine. Hand scarfing is required in certain limited circumstances to satisfy customer requirements and results in high lead levels when scarfing leaded steel. To meet certain quality standards, it may be necessary to have several rolling and conditioning steps before the steel is rolled into a finished product. Employees are potentially exposed to lead when performing surface conditioning on leaded steel products.

Continuous (Strand) Casting. There are several kinds of continuous (strand) casting machines used in steel production, such as slab, billet, or bloom casters. The kind of caster relevant to leaded steel production is a bloom caster. Currently one company is using this continuous casting method instead of the traditional teeming process to produce leaded steel (Ex. 694–41, p. 12).

In continuous casters, molten steel is poured from a ladle into a tundish, which is likened to the large open portion of a funnel. The stem portion of the funnel is the mold and its cross-sectional shape determines the type of product or continuous strand the caster can produce; i.e., square to produce blooms or rectangular to produce a slab. The bloom caster used to produce leaded steel has two strands, each of which produces a continuous strand of steel having the cross-sectional geometry of a bloom. Lead is added to the molten steel in the tundish. Fume can evolve from its surface when lead is added (Ex. 694–41). The area from which fume is emitted is much larger than the open surface area of an ingot mold on a teeming platform, and if not properly ventilated, can present a major source of employee exposure to lead. The molten metal is cooled and shaped as it is moved by rollers during the forming of the strand. Each strand can be several hundred feet long. At the end of the casting process, each strand of solidified steel is cut with a torch into the desired lengths to be reheated in furnaces and sent to a primary rolling operation. After primary rolling, the cast bloom is further processed in bar rolling mills and surface conditioning areas as needed. The ends of the strand and samples of the continuously cast steel are also cut with a torch. The burning of leaded steel with a torch generates lead fume and creates another source of exposure to the operator as well as the employees nearby (Ex. 694–41, p. 15).

Other Operations—Scrap Handling and Maintenance. Other areas of exposures to lead can be found in scrap operations and in the maintenance of baghouses. In scrap operations, scrap may be cut as well as stored (e.g., cobbles are cut with torches or hydraulic cutters). Whether done indoors or outdoors, all forms of cutting or burning leaded steel result in significant lead exposures. The extent of exposure depends in part on the amount of lead in the scrap metal. Maintenance personnel are subject to intermittent but high levels of airborne lead, especially in operations such as cleaning out baghouses.

Additionally, crane and ground mobile equipment operators working in the teeming area, the furnace area, the rolling mills, and in surface conditioning areas may also be exposed to high air lead levels.

Existing Exposure Levels. There are approximately 2,000 employees working in the production of leaded steel who are exposed to lead (Tr. 935). Of these, approximately 75% are only occasionally exposed to lead above 50 $\mu g/m^3$ and generally have average exposure levels well below 50 $\mu g/m^3$ (Ex. 681, p. 16). Thus, an estimated 495 employees are routinely exposed to air lead levels exceeding 50 $\mu g/m^3$. This constitutes 25% of the lead-exposed employees in leaded steel and less than one-half of 1% of all production employees in the steel industry.

Moreover, based on the best available evidence, exposure levels can be, and in at least one plant are controlled to below 50 $\mu g/m^3$ most of the time in every operation (see discussion below of LTV data). In the operation that appears most difficult to control to 50 $\mu g/m^3$, the pouring of leaded steel, conventional controls in teeming or continuous casting appear to be capable of controlling exposures to or below 50 $\mu g/m^3$.

OSHA's analysis of the feasibility of achieving 50 $\mu g/m^3$ is based primarily on the raw exposure level data submitted to the docket by LTV, one of the five leaded steel producers and a member of the American Iron and Steel Institute (AISI), the industry trade association. For several reasons, OSHA has determined that these data (Ex. 688a) are the best available evidence of existing exposure levels and of the feasibility of achieving 50 $\mu g/m^3$.

First, all of the sampling at LTV was carried out when leaded steel was being produced. Second, LTV, alone among all leaded steel producers, supplied OSHA with individual sampling results of recent air lead monitoring, which enabled OSHA to make its own evaluation of the data. Third, again alone among all leaded steel producers, LTV supplied OSHA with annotations explaining certain sampling results, enabling OSHA to better evaluate the meaning of the raw data. Fourth, LTV's data are very current, covering 1984–1988. Fifth, since the ultimate issue in this rulemaking involves the technological feasibility of achieving a PEL of 50 $\mu g/m^3$, the strongest evidence for such feasibility is that 50 $\mu g/m^3$ already is being achieved. Sixth, an LTV representative testified that his facility is typical in size and nature of operation to the other plants that produce leaded steel (Tr. 893). Finally, as suggested above, all of the data submitted by other sources are significantly less complete, useful and useable.

For example, AISI, which submitted two overlapping sets of data to the record, failed to provide OSHA with recent, individual sampling results, a description of associated control technologies, or any explanation of potentially aberrant sampling results. Indeed, until its second submission of data late in the rulemaking, AISI's sole submission of data incorporated only ranges of exposure levels in various job categories without any indication of the frequency of various distributions (Ex. 673, p. 3). Unfortunately, it is hardly useful for OSHA to know only that among steel pourers exposures ranged from 1–1,038 $\mu g/m^3$ or that among scarfers the range was 1–784 $\mu g/m^3$. Such data do not provide an adequate picture of typical exposure levels or provide any sense of the efficacy of existing controls. Moreover, AISI's data are not organized plant by plant and therefore are not amenable to serious analysis for purposes of determining feasibility. Similarly, OSHA cannot ascertain from such submissions why a particular result at some unidentified plant was as low as 1 $\mu g/m^3$ or why another was as high as 784 $\mu g/m^3$. Thus, OSHA cannot determine if a sampling result of 1 $\mu g/m^3$ is due to the existence of sophisticated controls in a particular plant or simply represents a sample collected when leaded steel was not

being produced. OSHA cannot derive meaningful conclusions from such exposure data.

AISI's second submission of data (Ex. 694–41, p. 24) is more substantial than its first but is still of only limited use. This submission includes additional aggregate data on the frequency distribution of samples within certain ranges of exposure levels. However, the data are not broken down plant by plant; nor are the associated control measures described. As a result, OSHA still cannot determine what controls in a particular plant are associated with what exposure levels.

In addition, the job titles used in the earlier submission are absent in this submission. In each work area listed, exposure levels from many jobs apparently are mixed together (e.g., supervisors, crane operators, etc.) Consequently, OSHA also cannot ascertain the exposure levels for employees performing particular operations Thus, for example, where AISI data indicate that 47 out of the 103 samples in teeming are over 200 $\mu g/m^3$, OSHA cannot determine whether these results represent crane operators, leadmen who manually add bags of lead shot to molten steel, or other workers. Similarly, OSHA cannot ascertain how sampling results said to be within a specified range are distributed within that range. Thus, for example, where AISI data indicate that 107 samples are in the 50–99 $\mu g/m^3$ range, OSHA cannot determine whether some, many or even all may be close to 50 $\mu g/m^3$. OSHA therefore has concluded that little meaningful analysis can be made of AISI's second submission of data.

The failure to submit detailed data restricts OSHA's analysis. OSHA explicitly requested disaggregated information and data in the **Federal Register** notice announcing the 1987 hearing in this rulemaking (52 FR 28727; August 3, 1987). OSHA reiterated the request during the public hearing (Tr. 1040–42). Nevertheless, AISI and, with one exception, the industry as a whole did not provide OSHA with such data and information. Similarly, AISI declined to arrange site visits for OSHA after the November hearing.

Finally, the exposure levels summarily reported by AISI for 1986–87 are higher than exposure levels reported for 1977–81 (Exs. 489, H–004E; 553–6, p. 1–5). This is contrary to the lower levels that would be expected in recent years, because 8 to 12 years ago production levels were substantially higher and serious modernization of the steel plants had not yet begun (Ex. 578, p. 14). In this context, the Agency cannot accept at face value AISI's contentions and its incomplete, aggregated and unexplained data.

Consequently, OSHA agrees with Meridian's assessment that LTV data are the best and most detailed evidence of exposure levels in the record. The Agency therefore has relied primarily on the raw data submitted by LTV (Ex 688a).

Those data have been summarized on the record by Meridian (Ex. 686H, p. 12; see Table 2, below) and by AISI (Ex. 694–41, p. 20; see Table 1, below). OSHA has also independently analyzed the raw data. OSHA's analyses of the raw data and the two summaries all show that LTV is able to achieve exposure levels at or below 50 $\mu g/m^3$ in all, or nearly all of its operations. Although AISI has made much of an alleged distortion of the raw data in Meridian's summary, OSHA sees no significant difference in the import of the two summaries. Nonetheless, OSHA will rely upon industry's summary.

According to AISI's summary, 81% of all the sampling results are below 50 $\mu g/m^3$ (Ex. 694–41, p. 20; see Table 1, below). In addition, 86% are below the action level (30 $\mu g/m^3$), while 93% are below 100 $\mu g/m^3$. In all but one operation, the scrapyard, approximately two-thirds or more of the sampling results are below 50 $\mu g/m^3$. In the scrapyard, which AISI has not identified as a problem area for the industry (Tr. 941–42), there are only two sampling results. One is below 30 $\mu g/m^3$ and the other is between 50 $\mu g/m^3$ and 74 $\mu g/m^3$. In only two operations are any sampling results above 100 $\mu g/m^3$. In one of these two, crane operators, only two of 19 results are above 100 $\mu g/m^3$. One is 101 $\mu g/m^3$ and the other is 215 $\mu g/m^3$. However, LTV's annotation to the monitoring results indicates that the crane cab's windows were opened during pouring, when that second sample was taken (Ex. 688a).

AISI identifies three operations as problem areas for the industry—teeming, rolling and conditioning (Exs. 582–87, pp. 8–16; 681, pp. 6–15). In two of these operations, rolling and conditioning, 90% or more of the sampling results at LTV are less than 50 $\mu g/m^3$ (see table 1, below). Moreover, in these two, all results are below 100 $\mu g/m^3$ which suggests that high exposure levels have been eliminated by effective controls. In pouring, the third problem area identified by AISI, 65% of all sampling results are less than 50 $\mu g/m^3$ and only 21% are at or above 75 $\mu g/m^3$.

TABLE 1.—AISI SUBMISSION OF REVISED SUMMARY OF LTV DATA (EX. 694–41)

Work area	N	<30	30–49	50–74	75–99	>99
Scrap yard	2	1	0	1	0	0
Pouring	38	9	16	5	1	7
Rolling	47	44	0	0	3	0
Conditioning	21	17	2	2	0	0
Crane oper.	19	13	1	2	1	2
Total	127	84	19	10	5	9

TABLE 2.—MERIDIAN SUMMARY OF LTV DATA [1] (EX. 686H)

Work area	N	<30	30–50	50–75	75–100	<100
Scrap yard	2	1	1			
Pouring	14	9	2			3
Rolling	13	11			2	
Conditioning	5	3	1	1		
Crane Operator	9	5		2	1	1
Total	43	29	4	3	3	4

[1] Meridian's summary covers only 1987–88 exposure data and only data for employees working heats that were specifically labeled as leaded.

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OSHA's own analysis of LTV's 1987–88 raw monitoring data confirms the conclusions drawn from the summaries above. This is most clearly demonstrated by focusing on the entire pouring operation, which is considered to be among the most difficult to control.

The average of all monitoring results in pouring at LTV in 1987–88 is 109 $\mu g/m^3$ (see Table 3, below). However, within pouring there are five job classifications of employees who perform quite different tasks and experience different exposures to lead. These are: crane operator, pourer, moldman, metal observer, and recorder. Broken down into component job classifications, exposure levels for various categories of employees in the pouring operation look quite different from the overall average. For example, average exposures for moldman, metal observer and recorder are all below 40 $\mu g/m^3$. The crane operator's average is 60 $\mu g/m^3$. Only the average of pourers, who are generally considered to be among the employees who are exposed to the highest lead exposures, is higher than 60 $\mu g/m^3$, at 179 $\mu g/m^3$.

However, in the case of both the crane operator and the pourer these averages are greatly increased by what appear to be atypical events occurring on one particular day. For the crane operater, only one of seven monitoring results is above 67 $\mu g/m^3$. That result, 215 $\mu g/m^3$, was recorded on a day when, LTV notes, the crane cab's windows were left open during most of the sampling time. If that single result is not counted, the crane operator's average exposure level would drop from 60 $\mu g/m^3$ to 35$\mu g/m^3$. Even including this single high data point, the geometric mean exposure level for crane operators is 40 $\mu g/m^3$.

Similarly, for the pourer, 10 of 13 monitoring results are below 40 $\mu g/m^3$. The three exposure readings above 40 $\mu g/m^3$ (309, 910, and 922 $\mu g/m^3$) were all obtained on one day, apparently during one shift. Because these high levels were experienced at the same time and are atypical of most other exposure measurements obtained for this job category, OSHA assumes some unusual condition, like an upset, must have existed. If those results are not counted, the pourer's average exposure level is 20 $\mu g/m^3$. In any event, even including the three high data points, the geometric mean for pourers is 40 $\mu g/m^3$.

Looking at the LTV data for the entire pouring operation from a different perspective, 78% of all sampling results in 1987–88 from that operation are below 50 $\mu g/m^3$. In the job classification of pourer, 77% of the sampling results are below 50 $\mu g/m^3$. All other operations in the production of leaded steel are generally considered to be easier to control than pouring.

OSHA therefore concludes that air lead levels at or below 50 $\mu g/m^3$, are being achieved most of the time in all operations at LTV. This conclusion is supported by AISI's and Meridian's independent summaries of the data.

TABLE 3.—OSHA'S SUMMARY OF EXPOSURE DATA FOR POURING AT LTV, 1987–88

Job classification	No. of samples	Arithmetic mean	Geometric mean	Distribution of exposure data				
				<50	<75	<100	<200	200
Pourer	13	179	40	10 (77%)	10 (77%)	10 (77%)	10 (77%)	3 (23%)
Crane Operator	7	60	40	4 (57%)	6 (86%)	6 (86%)	6 (86%)	1 (14%)
Moldman	3	38		3 (100%)	3 (100%)	3 (100%)	3 (110%	0 (0%)
Met. Observe	3	24		3 (100%)	3 (100%)	3 (100%)	3 (100%	0 (0%)
Record	1	11		1 (100%)	1 (100%)	1 (100%)	1 (100%)	0 (0%)
Total	27	109		21 (78%)	23 (85%)	23 (85%)	23 (85%)	4 (15%)

One other producer has switched to continuous casting of leaded steel and no longer relies on teeming (Ex. 582–87, Att. A, p. 9). AISI contends that exposures in continuous casting "remain above 100 $\mu g/m^3$" (Ex. 673, p. 5). However, data submitted by AISI for that one producer contradict AISI's assertion and show that a majority of 59 sampling results for continuous casting are at or below 50 $\mu g/m^3$ and 93% of the result are at or below 100 $\mu g/m^3$ (Ex. 694–41, p. 16).

TABLE 4.—LEAD CONCENTRATION FREQUENCY DISTRIBUTION FOR CONTINUOUS CASTING, 1987–88

N	<50	<100	<200	>200
59	31 (53%)	55 (93%)	57 (97%)	2 (3%)

Source: Submitted by AISI (Ex. 694–41)

Data submitted by LTV concerning exposure levels during LTV's experiments with continuous casting also contradict AISI's contention; each of seven sampling results taken during that operation were below 50 $\mu g/m^3$. (Ex. 688a).

There are two other data sets from earlier years in the record that OSHA finds consistent with the Agency's analysis of exposure levels. These data sets were submitted by a former OSHA contractor, JACA (Ex. 553–6, p. 1–5), and the United Steelworkers (USWA) for the years from 1977–81 (Exs. 489, H–004E; 578, p. 9). Both indicate exposure levels lower than AISI's 1986–87 data.

In the case of USWA's submission involving exposure levels at Republic Steel's Buffalo plant between 1979–80, a majority of sampling results in 6 of 8 operations were even then at or below 50 $\mu g/m^3$. In one of the two operations (crane operator) with sampling results over 50 $\mu g/m^3$, there is only a single monitoring result, 61 $\mu g/m^3$. In the other operation over 50 $\mu g/m^3$ the average exposure level is 86 $\mu g/m^3$ and no result is over 200 $\mu g/m^3$ (Ex. 578, p. 9).

With regard to the JACA report, which is based on data provided by AISI for 1977–81, 44% of the sampling results at that time were below 50 $\mu g/m^3$ (Ex. 553–6, p. 1–5). However, AISI now reports that in 1986–87 only 38% of the sampling results are below 50 $\mu g/m^3$ (Ex. 694–41, p. 21). AISI offers no explanation of why worker exposure levels are rising as production is falling and the industry is modernizing. OSHA questions whether exposure levels should be increasing under such conditions. AISI's data are also inconsistent with the exposure data from LTV, which show the vast majority of exposure samples are at or below 50 $\mu g/m^3$.

Existing Controls. In leaded steel production, local and general ventilation constitute the primary method for controlling air lead levels. In addition, filtered-air work stations and cabs regularly are used. In the three work areas that AISI has identified as problem areas, teeming, rolling, and conditioning, current controls are as follows:

Teeming. Leaded steel is poured on a teeming platform where local exhaust systems of different designs capture and exhaust the lead fumes generated after lead shot is added to the molten steel (Ex. 582–87, Att. A, p. 6). Generally, each ventilation system utilizes side-draft hoods or shrouds to capture the lead fume emitted during teeming. Exposure levels at the ingot molds and feed trumpet are controlled by side-draft hoods, which are part of a mobile exhaust system that is connected to the central teeming aisle fume collection system. Air volumes moved by ventilation systems vary among the five producers; evacuation rates at the teeming hoods vary from 5,000–55,000 cfm (Ex. 582–87, Att. A, p. 6).

Teeming employees manipulate the hoods and isolation dampers to provide for the removal of lead fume when the ingot mold is being filled. Appropriate work practices are essential to reduce exposure levels, as the production employee plays an important role in controlling the fume collection system (Ex. 681, pp. 8 9).

All five producers of leaded steel use various administrative controls, which they claim has limited the number of employees exposed to lead in teeming. For example, each producer has concentrated leaded steelmaking operations into a single facility and restricted teeming of leaded steel to a single aisle, where ventilation control systems are installed (Tr. 1019, 1031; Ex. 681, p. 10). OSHA believes that this consolidation, which may have improved productivity, probably has increased exposure levels for the particular employees involved in teeming leaded steel and thereby made it more difficult to control exposure levels to or below 50 $\mu g/m^3$ for those employees.

Rolling. When ingots are heated prior to rolling, the doors to the soaking pits are opened and closed by remote control from inside an air conditioned crane cab or by operators located in air-conditioned or ventilated control pulpits. The potential for employee exposure to lead fumes is substantially decreased due to the isolation of the employee from lead fumes (Ex. 582–87, Att. A, p. 9).

Exposures in primary rolling mills are reportedly lower than in bar mills because smaller surface areas of steel are exposed to heat and because employees are stationed farther away from the product (Ex. 582–87, p. 15). Operators of the mill generally work in booths (Tr. 901). Some specific tasks must be performed outside the booths; e.g., cleanup, maintenance, and crane helper. No methods of lead dust suppression are used at the primary rolling mills at any of the five facilities, according to Middough (Ex. 582–87, Att. A, p. 10). Although Middough in broad strokes seems to dismiss the possibility of controlling lead exposures in these mills, Meridian and OSHA are not persuaded that the nature of the process necessarily precludes implementing such controls as isolation and local exhaust to deal with specific emission sources. Other controls also may be appropriate. For example, the majority of bar mills " * * * use water to cool the mill rolls and provide for the suppression of lead dust. The water is sprayed or directed at the exit end of the mill stands" (Ex. 582–87, Att. A, p. 11).

Surface Finishing/Conditioning. Surface conditioning generally is performed by semi-automated grinding and scarfing machines that house the operator in an enclosed air-conditioned cab. The dust and fumes are collected in a combination evacuation hood/drop out box, with the evacuation capacity of the hoods ranging as high as 30,000 cfm. All five facilities have grinding stations. One of the five facilities still uses an older grinding station that has an open cab (582–87, Att. A, p.13). Occasionally chipping, grinding, and scarfing are done by hand to meet customer specifications (Ex. 582–87, p. 16). These operations are likely to result in exposures over 50 $\mu g/m^3$. But crews are reported to be rotated to administratively control employee exposures (Tr. 1027).

Additional Controls. OSHA's analysis of the record in a previous section indicates that engineering and work practice controls that are currently available and in use already have achieved air lead levels in at least one plant that are at or below 50 $\mu g/m^3$ most of the time in every operation (see Tables 1 and 2, above). More generally, across the industry, 75% of the steel employees exposed to lead are only occasionally exposed above 50 $\mu g/m^3$ and generally have averages well below 50 $\mu g/m^3$ (Ex. 681, p. 16; Tr. 935). OSHA believes that these exposure data alone are sufficient to demonstrate that the industry can reasonably be expected to achieve the 50 $\mu g/m^3$ PEL most of the time during all leaded steel operations. Nevertheless, as the following discussion shows, industry has not yet exhausted all of the opportunities available for improving its existing engineering and work practice controls. This was generally acknowledged by one representative of LTV, who testified that his company has adopted a "philosophy of continuous improvement" in worker health and safety (Tr. 1027–28).

OSHA believes that for most operations in the industry few, if any, additional controls are needed. Nevertheless, in the three problem operations identified by AISI, implementation of additional controls may be necessary at certain plants to control exposure levels to or below 50 $\mu g/m^3$. Such controls are readily available.

OSHA believes that the additional engineering controls needed to achieve 50 $\mu g/m^3$ in the problem operations and in any other operation that needs some reduction in exposure levels consist primarily of improvement in existing ventilation systems, isolation and enclosure of workers, and use of remote controls. Improvements in engineering controls should be part of a system of integrated controls. Implementation of strict work practices, administrative controls and a good housekeeping program also are necessary. Proper maintenance of ventilation equipment is essential to assure the effective functioning of exhaust systems needed to achieve the intended reduction in worker exposure to lead.

Two of the simplest improvements to engineering controls are to provide all mobile equipment operators with completely enclosed cabs equipped with high efficiency particulate air (HEPA) filters and tempered air and to provide communication equipment. Communication equipment such as two-way radios should be provided to allow communication without opening cab windows; otherwise, the purpose of the ventilated enclosed cabs will be defeated. Both of these control technologies are readily available and in use in some plants in the steel industry and elsewhere (Ex. 604).

In its testimony and videotape, AISI acknowledges that some crane cabs are not enclosed and not provided with HEPA filters (Tr 965–66, 1043); Middough also observed that crane cabs in the steel industry are not ventilated or air conditioned (Ex. 582–87, p. 7). If such enclosures are accompanied by an integrated system of controls to assure that good work and maintenance practices are followed in the use of the cabs, the data confirm that enclosing cabs can substantially reduce exposure levels.

LTV's data, for example, show that one crane operator in the pouring area had an exposure of 215 $\mu g/m^3$ when the cab windows were open during most of the sampling time while another crane operator on the same shift had an exposure of 56 $\mu g/m^3$ with the cab windows closed during pouring, representing a 74% reduction in

exposure due to cab enclosure and good work practices (Ex. 688a). OSHA does not know whether this crane operator was provided with communication equipment or whether the operator had to open the window for a time to communicate. AISI testified that use of filtered-air cabs, in conjunction with good work practices and communication equipment, will reduce exposures to below 50 $\mu g/m^3$, except in unusual or emergency situations (Tr. 1047).

Employees working in the teeming, rolling, and even surface conditioning areas also can be isolated from lead dust and fumes in enclosed air-conditioned, filtered booths and pulpits. Use of a pulpit by an employee even for 25% of a shift has been shown to significantly reduce employee exposure to lead (Ex. 590, p. 40). Thus, OSHA believes that the exposure of employees who must work in close proximity to emission sources can be reduced if the employee can spend at least some time in a filtered booth or pulpit.

Improvement in the collection efficiency of existing ventilation systems can be achieved by increasing the volume of air exhausted and the capture velocity. The efficiency of the exhaust system in certain operations like teeming often can be increased simply by the installation of barriers to reduce unpredictable air currents that disrupt local ventilation. A representative of Middough testified that the construction of such barriers was possible (Tr. 983–85). OSHA is aware that, because of the safety hazards involved in the pouring of steel, employees need to be able to exit the platform quickly in an emergency (Tr. 1094–95). However, OSHA also believes that use of such barriers in a manner that does not interfere with employee egress is an approach to reduce lead exposures that merits further exploration.

Cross drafts can easily occur in steelmaking facilities, which typically are housed in very large, open-ended buildings to allow for railroad traffic. Because of the large openings in the ends of the building and the constant traffic, these facilities are vulnerable to wind currents that can disperse contaminants that are not controlled at their sources to other parts of the building. OSHA does not recommend reliance on uncontrollable natural ventilation to reduce employee exposures.

Cross drafts not only reduce the efficiency of local exhaust ventilation but they also in some cases can cause cross contamination. OSHA believes that cross contamination may be a problem in some plants in the leaded steel industry. According to recent AISI submissions, background levels are generally in the range of 6–10 $\mu g/m^3$ (Ex. 681, p. 33; Tr. 937–38), and those levels reflect ambient lead levels in the general environment. OSHA considers a background level that contributes up to 20% of a 50 $\mu g/m^3$ PEL rather high and believes it is caused by cross contamination more than by ambient environmental levels. OSHA believes that cross contamination should be minimized by controlling emissions at their source. For example, the potential for cross contamination from teeming can be minimized, where practicable, by promptly covering ingot molds filled with fuming, molten leaded steel.

Engineering controls often can only be as effective as the work practices associated with them. Therefore good work practices are crucial to control exposure levels. For example, according to Middough, the efficient operation of the teeming exhaust system requires workers to open and close dampers as necessary (Ex. 582–87, Att. A). Inappropriate work practices could reduce the effectiveness of the system, because "too many open hoods ahead of the ingot poured reduces the rate of air flow through each hood and decreases the effectiveness of the hoods located at the sources of the fumes" (Ex. 602, p. 66).

OSHA believes there is considerable room for further improvement in work practices. According to one LTV spokesperson, for example, his facility has not, and never will exhaust the potential for improving work practices (Tr. 1028–29).

Administrative controls, which are a form of work practice controls, such as dispersed scheduling of pouring leaded heats and of rolling leaded alloys, also may need to be implemented to achieve reduced exposure levels for individual workers in teeming. For example, current practice in the industry is to pour no more than an average of two leaded heats per shift, with each heat producing 15 to 40 molds (Ex. 582–87, pp. 6, 8). In instances where a large number of molds or more than two heats are to be poured on a single shift, dispersing the heats across shifts or different teeming aisles should reduce emissions and resulting exposure levels by as much as 50% in teeming. Then, for example, the geometric mean exposure level for pourers at LTV, the task in teeming with the highest exposure level, would presumably be reduced from 40 $\mu g/m^3$ to approximately 20 $\mu g/m^3$.

Good housekeeping practices and preventive maintenance also are important components of the system of integrated controls necessary to maintain exposure levels at or below 50 $\mu g/m^3$ throughout the industry. Indeed, a representative of USWA has testified that the equipment now in place, if properly maintained, could significantly reduce existing exposure levels. USWA indicates that in many cases where ventilation is in place, maintenance of the equipment is badly neglected (Tr. 1123–24).

Similarly, with regard to implementing a good housekeeping program, regularly cleaning work areas to keep surfaces as free of lead dust as is practicable, for example, will help to achieve and maintain low background levels and facilitate controlling exposure levels to or below 50 $\mu g/m^3$. Vacuums equipped with high efficiency filters can be used, for example, to clean equipment surfaces prior to maintenance (Tr. 1126).

More specifically, for each of the problem areas described by industry—teeming, rolling, and surface conditioning—OSHA has determined that the additional controls necessary to achieve exposure levels at or below 50 $\mu g/m^3$ are readily available.

Teeming. Teeming is the most difficult operation to control to or below 50 $\mu g/m^3$, according to AISI. Within the teeming process, the operation that creates the highest exposures involves the addition of lead to the molten steel being cast. Exposure levels in teeming can be controlled down to or below 50 $\mu g/m^3$ using various methods, singly or in combination. These include adding lead shot by remote control, increasing the capture velocity of existing ventilation systems and changing the point at which lead is added to the molten metal. As an alternative to effectively controlling teeming, teeming itself can be replaced by continuous casting.

As indicated previously, currently some leaded steel producers still add lead by manually dropping canvas bags of lead shot into the molten steel. This is the major source of employees' excessive exposure. Other producers rely on a remote controlled injection gun to add the lead by pneumatic or injection feed (Ex. 582–87, p. 5). OSHA is certain that adding lead by remote control significantly reduces employees' exposure, since remote controls allow workers to work farther away from the source of the lead fumes and to be stationed in ventilated enclosures.

In addition, OSHA believes that in many instances a substantial increase in the collection efficiency of existing ventilation systems can be achieved through better design and proper maintenance. Collection efficiency can be increased, for example, by increasing capture velocity.

The industry has tried a number of experiments in which fume hood design was modified in an effort to increase capture velocity. These attempts have often resulted in fires within the ductwork, caused by molten sparks being drawn into the system (Ex. 673, Att. 1, 2, 3; Tr. 968). However, industry also acknowledges that they have not investigated the potential increase in capture efficiency that might be gained by increasing air flow (cfm) through the system rather than redesign of the hoods (Tr. 969–70).

OSHA notes that industry is currently using a wide range of airflow rates in teeming hoods (5,000–55,000 cfm; see Ex. 582–87, Att. A, p. 7), and believes that at least some facilities will realize lower employee exposures to lead as a result of increasing airflow rates through the teeming hoods. To the extent concern remains about the potential for fire due to sparks from the molten metal being drawn into the ventilation system, the system can be lined with refractory material to prevent accidental ignition. These refractory liners have been successfully used elsewhere in systems subjected to high temperatures (Ex. 689–4D).

OSHA further recommends the use of additional traveling local exhaust systems, which provide ventilation through a system of interconnecting flexible exhaust hoses and multiple hoods that can be maneuvered in the teeming area. Such a system has proven effective in reducing exposures in smelters (Ex. 604).

Adding lead directly to the ladle instead of to the mold or stream of molten metal is another means to reduce exposure levels in the teeming operation. Ventilation systems are available that can be modified to effectively exhaust the ladle (Ex. 631). OSHA is aware that this method has been used successfully in Japan and Europe (Ex. 633, p. 2). AISI has implicitly acknowledged the technological feasibility of using this technology for controlling workers' exposures (Ex. 681, p. 6).

An alternative process control method is the use of continuous casting instead of teeming. Available data demonstrate that air lead levels at or below 50 $\mu g/m^3$ have been achieved most of the time in plants that use, or have experimented with continuous casting of leaded steel (Exs. 688a, 694–41, p. 16). Since continuous casting bypasses teeming, stripping, etc., and since the strand of leaded steel is cooled continuously with water spray, employees are inherently less exposed to lead fumes due to the nature of the process. For employees who are exposed when the strand is torch cut, local exhaust systems can be used to reduce employees' exposure levels.

OSHA realizes that continuous casting cannot replace teeming in all cases of leaded steel production. However, a quantity of leaded steel already is being successfully produced in the United States using this technology. OSHA agrees with Meridian's independent judgment that the additional availability of continuous casting capacity for casting leaded steel will depend upon the extent of further modernization by the steel industry, which has been shifting to the continuous casting of steel in general (Ex. 686H, p. 14).

Rolling. Exposure levels in the rolling mills can be controlled to or below 50 $\mu g/m^3$ through implementing controls such as isolation of workers, remote control technology, additional ventilation, and water spray technology. The exposure problems in rolling are due to lead fumes and dust being generated from the surfaces of the hot leaded steel as it is being rolled.

The isolation of workers can effectively control exposure levels in the rolling process because most employees do not need to be in close proximity to the rolling steel except when performing certain limited tasks such as temperature monitoring and gauging. Even these operations can be performed remotely by remote temperature sensing and automatic gauging devices, which are available on the market and would virtually eliminate the need for workers to routinely remain close to the steel furnaces or rollers. Thus, as in the soaking pits operation, remote control technology in combination with isolation of workers in ventilated enclosed workstation can certainly reduce exposure levels down to or below 50 $\mu g/m^3$.

In order to control exposures at their source, local exhaust ventilation also can be used. OSHA recognizes that ventilation systems, like other equipment, may be vulnerable to damage by cobble formation (Ex. 681, p. 13). However, OSHA believes that cobble formation does not occur in primary rolling mills and is only a rare occurrence in bar rolling mills (Tr. 1056). Moreover, since industry has managed to sustain its production systems despite cobble formation, OSHA believes industry can sustain its control systems as well. Consequently, the possibility of cobble formation cannot be used to justify a failure to implement necessary engineering controls.

Surface Conditioning. Grinding and scarfing generally can be performed with semi-automated grinders and scarfers by remote control from enclosed and ventilated workstations to reduce exposure levels to or below 50 $\mu g/m^3$ in surface conditioning. These machines are available and already in use in some plants in the industry (observed by JACA some years ago; Ex. 553–6, p.1–3; Tr. 741). The operator in the workstation directs the slab through a scarfing operation, for example, by rolling the slab through a series of automatic torches that burn away the surface imperfections. Middough has acknowledged that "the surface conditioning by semi-automated grinding machines, with properly maintained filtering and air conditioning systems, decreases the employee lead exposure" (Ex. 582–87, Att. A. p. 13). Middough also identified one facility that had an older grinding system in which the operator's cab was open (Ex. 582–87, Att. A, p. 13). OSHA believes that the operator's exposure to lead is minimal when the operator is isolated from the source of emission (Ex. 611, pp. 29–30).

With mechanization, manual operations can be minimized, significantly reducing employee exposure. In the limited number of circumstances where hand grinding or hand scarfing may be necessary, local exhaust is feasible and effective, although it may not be capable of maintaining air lead levels consistently at or below 50 $\mu g/m^3$. Where this results in employees being exposed above the PEL as an 8-hour TWA, employers will be allowed to provide employees with respirators for supplemental protection during hand grinding or hand scarfing.

Technological Feasibility Conclusion. Based upon the above analysis of the evidence in the record and OSHA's experience and expertise, the Agency determines that achieving a PEL of 50 $\mu g/m^3$ by implementing readily available engineering and work practice controls is technologically feasible for the leaded steel industry as a whole. Nevertheless, the Agency recognizes that it may not be possible to consistently achieve the PEL by these controls for the limited amount of hand scarfing and hand grinding that must be done.

Since OSHA has found the 50 $\mu g/m^3$ PEL feasible for the industry, employers will be required in hand grinding and hand scarfing, as well, to implement engineering and work practice controls to control exposures levels to the PEL or the lowest feasible level. Where all feasible engineering and work practice controls have been implemented and employees performing these tasks are still exposed above the PEL as an 8-hour

TWA, employers will be allowed to provide these workers with respirators for supplemental protection while they are performing hand grinding or hand scarfing.

Through its analysis of the record in the previous sections, OSHA has demonstrated that:

(1) At least 75% of the employees exposed to lead in the steel industry are exposed only on occasion above 50 $\mu g/m^3$ and have average exposure levels that generally are well below 50 $\mu g/m^3$ (Exs. 681, p. 16; 688a).

(2) At LTV's plant, 81% of all sampling results are below 50 $\mu g/m^3$, and 93% are below 100 $\mu g/m^3$ (see Table 1, above). In the operation in the industry that is most difficult to control, steel pouring, average exposure levels in three of the five job classifications at LTV are below 40 $\mu g/m^3$. In each of the remaining two job classifications geometric mean exposure levels are 40 $\mu g/m^3$ (Ex. 688a).

(3) With regard to teeming, rolling, and surface conditioning, the only areas in the industry identified by AISI as problems (Ex. 681, pp. 6–14), at LTV 90% of the sampling results in rolling and surface conditioning are below 50 $\mu g/m^3$ and in teeming 65% are below 50 $\mu g/m^3$ (Ex. 688a).

These results have been obtained before recommended additional controls have been implemented and before cross contamination is controlled. Consequently in most operations few, if any, additional controls are needed to bring exposure levels to or below 50 $\mu g/m^3$.

OSHA believes that, for operations where most sampling results or geometric or arithmetic mean exposure levels already are below 50 $\mu g/m^3$, relatively modest improvements in controls, such as improved housekeeping or better preventive maintenance, will be sufficient to reduce air lead levels consistently to below 50 $\mu g/m^3$. Similarly, for operations where most of the sampling results or geometric or arithmetic means are below 100 $\mu g/m^3$, OSHA believes that a combination of limited additional and improved controls (e.g., improving the efficiency of the ventilation system), will be sufficient to control exposure levels to 50 $\mu g/m^3$.

In the three areas in the industry identified by AISI as problems, where implementation of additional controls may be necessary at certain plants to control exposure levels to or below 50 $\mu g/m^3$, adequate controls are readily available.

In reaching the above conclusions, OSHA has relied in part on data provided by LTV. However, OSHA does not believe that LTV is at the limits of technological feasibility, and LTV has testified to this effect (Tr. 1028–29). OSHA believes that additional reductions in workers' exposure levels can be achieved at LTV and that these reductions are generally achievable by the rest of the industry as well.

There is no evidence in the record to show that LTV is atypical. Indeed, although AISI was aware that Meridian relied heavily on LTV's data in concluding that the PEL is technologically feasible in leaded steel, at no time has AISI asserted that LTV is unrepresentative of the industry. In addition, LTV has testified that they are typical with regard to size and nature of operations (Tr. 893). OSHA therefore believes that it is reasonable to treat LTV's data as representative of existing exposures in the industry and/or as representative of what the industry can achieve technologically. OSHA has had to rely upon the LTV data set because no other recent data organized on a plant-by-plant basis were made available.

However, even if the LTV data were not representative of the industry and even if OSHA were to accept at face value AISI's final submission of data collected from various producers as reasonably representative, according to that data more than one-third of the sampling results are below 50 $\mu g/m^3$ and more than two-thirds are below 100 $\mu g/m^3$. AISI's data also suggests that approximately 41% of the sampling results in teeming are below 100 $\mu g/m^3$, 93% of the sampling results in casting are below 100 $\mu g/m^3$, 85% of the sampling results in rolling are below 100 $\mu g/m^3$, and 73% of the sampling results in conditioning are below 100 $\mu g/m^3$ (Ex. 694–41, p. 21). Thus, in all operations with the exception of teeming, at least 73% of the monitoring samples are below 100 $\mu g/m^3$. Based on these data, OSHA would still conclude that, with the application of available controls discussed above, controlling most leaded steel operations to or below 50 $\mu g/m^3$ most of the time is technologically feasible. OSHA has already indicated that implementing a combination of limited, additional and improved controls generally will be sufficient to reduce air lead levels to or below 50 $\mu g/m^3$ in operations where most sampling results already are below 100 $\mu g/m^3$.

In concluding that the 50 $\mu g/m^3$ PEL is technologically feasible for the leaded steel industry, OSHA does not purport to have recommended an exhaustive list of additional controls. The Agency also has not needed to exercise its statutory authority to force the development of new technology to justify its finding. The Agency has relied exclusively upon conventional and readily available controls.

OSHA is certain that industry will be capable of devising and fine-tuning other conventional controls to further reduce exposure levels. Consequently, OSHA anticipates that industry will be able to consistently achieve exposure levels at or below 50 $\mu g/m^3$ in nearly every phase of production.

OSHA acknowledges that the lead standard is strict and believes that to achieve the PEL requires implementing an integrated system of controls. The basic element in that system is an industrial hygiene study. Each producer should have an experienced industrial hygienist perform an in-depth job/task analysis and a plant-wide survey. This survey and analysis should identify sources of emission in each task, sources of cross drafts or cross contamination, and appropriate sites for erecting cross contamination barriers. Such analysis should also recommend appropriate engineering and work practice controls to reduce emissions and minimize employee exposures. If, after implementing these recommendations, reductions in air lead levels deviate substantially from what was anticipated, a follow-up industrial hygiene survey should be conducted and necessary corrections made.

The second element in that system is the development of good, written housekeeping and work practice programs that are systematically implemented and enforced by employers so that proper procedures are routinely and meticulously followed. Testimony in the record indicates that housekeeping can be improved in the leaded steel industry (Tr. 1121–22).

The final element of an integrated system of controls is a preventive maintenance program to assure that all systems are maintained in clean and efficient condition.

AISI does not agree that it is technologically feasible to achieve a PEL of 50 $\mu g/m^3$ by means of engineering and work practice controls. AISI has raised a number of objections concerning the competence and conclusions of OSHA's contractor, Meridian, as well as broader objections concerning the feasibility of achieving the PEL in problem areas within the industry.

AISI's principal objections are as follows. (1) Meridian is not competent to assess technological feasibility in leaded steel, has been predisposed to finding the standard feasible, and has made numerous factual mistakes. (2) No technology exists to control exposure levels throughout the industry to or below 50 $\mu g/m^3$, and the industry already is implementing all feasible technology. (3) More specifically, continuous casting is not a realistic alternative to teeming as a method for controlling exposures to or below 50 $\mu g/m^3$, and within teeming no feasible engineering controls can reduce exposure levels to or below 50 $\mu g/m^3$. (4) OSHA also has been predisposed to find the PEL feasible regardless of the record evidence.

First, AISI has devoted an extraordinary amount of effort in its comments and at the hearing to impugning the competence and integrity of OSHA's contractor, Meridian. AISI has variously charged Meridian with a lack of necessary experience and training, repudiating its previous positions, grossly mistaken opinions, distortions of the data, and the like (Exs. 681, pp. 21–24; 694–41, pp. 4–9). On the whole, OSHA finds most of AISI's charges to be poorly founded, grossly exaggerated, or internally contradictory. In any event, OSHA has made independent evaluations of the data and evidence in reaching its conclusions and has relied on Meridian on certain limited occasions only to independently confirm OSHA's own conclusions.

Meridian has had very broad experience and possesses very broad competence in the area of industrial hygiene, the principles of which are universally applicable to all industries (Ex. 601). There is nothing unique about controlling lead dust and lead fume that would make Meridian's extensive expertise and competence in evaluating engineering and work practice controls irrelevant to the leaded steel industry. Contrary to AISI's allegations, controls that have been used in other industries generally are readily transferable to leaded steel, although some modifications may be necessary, as they would be almost anywhere, to adapt the controls to particular equipment or operations.

AISI criticizes Meridian for revising some of its conclusions in its final report. For example, AISI criticizes Meridian for its allegedly new emphasis in its final report on continuous casting as an alternative to teeming. On the other hand, elsewhere in its submissions AISI also criticizes previous findings and understandings in Meridian's preliminary assessment and in OSHA's preamble to the proposal (Ex. 582–87, pp. 11–14). AISI cannot have it both ways. Either OSHA and its contractors have to maintain their preliminary understandings and findings regardless of the evidence subsequently introduced into the record or they are entitled to revise their findings after taking the additional evidence into account.

Indeed, the latter is precisely what is contemplated by OSHA's rulemaking process. That process requires OSHA at the outset to make proposals on the basis of preliminary findings and understandings and then encourages the public and interested parties to present comments, information and data to correct and clarify the record. Thus, it is expected and entirely appropriate that the Agency and its contractors will revise their findings and understandings when newly introduced evidence in the record mandates such revisions. Courts have recognized that this is appropriate and necessary, so long as the revisions are logical outgrowths of the proposal. Such changes do not require OSHA to begin the hearing process all over again. *USWA* v. *Marshall*, 647 F.2d at 1221.

More specifically, with regard to AISI's claim that Meridian has crucially and erroneously relied upon continuous casting for its proof of feasibility, OSHA finds AISI's argument a misinterpretation of Meridian's position. Meridian does not rely heavily on continuous casting; nor does it say that continuous casting can be used everywhere in the near future to produce leaded steel (Ex. 686H, p. 14).

Many of AISI's charges that Meridian has prejudged and distorted the data are predicated upon AISI's own mischaracterization of Meridian's arguments. This is true, for example, of Meridian's argument concerning continuous casting and of its summary of the LTV data (see OSHA's discussion in the section of this preamble dealing with existing exposure levels).

Industry's second criticism is that it is not technologically feasible to achieve the PEL in the leaded steel industry. OSHA disagrees. As demonstrated previously not only is it technologically feasible to achieve the PEL in the leaded steel industry, but LTV, one of the five leaded steel producers, has already controlled exposure levels to or below 50 $\mu g/m^3$ most of the time in all, or nearly all of its operations. AISI does not allege that LTV is unrepresentative of the leaded steel industry, and OSHA is confident that LTV is reasonably representative.

Industry also asserts that it is not technologically feasible to achieve 50 $\mu g/m^3$ because industry has already done all that is feasible. However, in at least several areas AISI or its contractor have stated that additional controls could be implemented (e.g., enclosing cabs of mobile equipment and improving work practices) to further reduce exposure levels. If producers other than LTV have not controlled exposures in their facilities to achieve the PEL, it is not because they are already at the limits of technological feasibility but because they have failed to implement all feasible controls.

OSHA is not convinced by the feasibility assessment performed for industry by Middough Associates, an industry consultant (Ex. 582–87, Attachment A). In that assessment Middough concludes that leaded steel producers "could spend hundreds of millions of dollars trying to upgrade already adequate control facilities and not maintain employee lead exposure levels below 50 $\mu g/m^3$" (Ex. 582–87, Attachment A, p. 1). OSHA finds this assessment, including its conclusion, to be unpersuasive and unsubstantiated.

When questioned at the hearing about what Middough meant when it asserted 50 $\mu g/m^3$ was infeasible, the firm's representative said Middough meant it is "not possible to routinely attain that level, on a regular basis." When asked to further explain what was meant by "not possible to routinely attain that level," he responded, "There will always be excursions from that level * * *." Upon further questioning, he said there could be one or more excursions (Tr. 989–90).

OSHA accepts Middough's view that the leaded steel industry cannot achieve 50 $\mu g/m^3$ 100% of the time and that there will be some excursions above that level. However, OSHA believes that the existence of such "excursions" does not constitute evidence of technological infeasibility. Excursions can occur even as an industry controls exposure levels to 50 $\mu g/m^3$ most of the time in most of its operations.

In any event, the feasibility assessment submitted by Middough to the record lacks substantiation. In its report, Middough does not, for example, include a supporting analysis of exposure data at various plants throughout the industry. Middough also does not perform a systematic analysis, operation-by-operation and plant-by-plant, to show what existing controls are associated with current exposure levels and what additional controls could be implemented to lower those levels.

Third and more specifically, AISI contends that continuous casting is not a realistic alternative to teeming leaded steel and that it is technologically infeasible to achieve 50 $\mu g/m^3$ in teeming. With regard to continuous casting, AISI contends that this process cannot be used to cast all grades of leaded steel, that in any event 50 $\mu g/m^3$ cannot be achieved in continuous casting, that continuous casting requires extensive and extremely costly ventilation, and that adding continuous

casters capable of producing leaded steel requires specially designing and installing bloom casters that cost hundreds of millions of dollars (Ex. 694–41, p. 5).

OSHA agrees in part and disagrees in part with AISI's contention. Neither Meridian nor OSHA has asserted that adopting continuous casting could provide an immediate solution for controlling excessive exposure levels in pouring and casting leaded steel. Indeed, both Meridian and OSHA expressly state that industry's capability to use continuous casting to produce leaded steel is dependent in part upon industry's further expansion of continuous casting capacity for producing steel in general (Ex. 686H, p. 14). On the other hand, two of the five plants in the industry already have continuous casters capable of producing leaded steel. In the case of one unnamed plant, leaded steel currently is routinely being produced by this method. In the case of LTV, leaded steel has been experimentally produced by continuous casting. As OSHA has shown, when continuous casting has been utilized, whether routinely or experimentally, most sampling results have been at or below 50 $\mu g/m^3$ (Exs. 688a; 694–41, p. 16).

With regard to AISI's other assertions concerning continuous casting, while it might be true that not all grades of leaded steel can be continuously cast, AISI provides no information about which grades can and cannot be so cast or what proportion of leaded steel output they occupy. Consequently, even if AISI's claim is accurate, OSHA still cannot determine its significance. Finally, OSHA believes that the high costs associated with installing continuous casters and whatever ventilation may be needed to control exposure levels in that process are attributable to the broader modernization process the steel industry has been carrying out. Increased leaded steel production by continuous casting and the control of air lead levels in that process will have to piggyback on industry modernization, which has already been stimulated by market forces.

Concerning pouring, OSHA has already shown that at least at LTV 78% of all sampling results in that process in 1987–88 are below 50 $\mu g/m^3$. In addition, in three of the job classifications comprising pouring, average exposure levels are at or below 40 $\mu g/m^3$. In the two job classifications where the arithmetic mean is above 50 $\mu g/m^3$, the geometric mean in each case is 40 $\mu g/m^3$. In these classifications, the arithmetic mean is being driven upwards by the presence of a few atypically high exposure readings.

Lastly, AISI argues that OSHA, as well, as Meridian, was predisposed to finding feasibility regardless of record evidence (Ex. 694–41, pp. 3, 10). OSHA is under a statutory obligation to protect workers from a significant risk of material impairment to health to the extent feasible. OSHA has taken this obligation seriously and has carried out an assessment of technological feasibility based on the evidence and analyses included in the record. It is primarily due to the data that LTV submitted to the record, and not to any OSHA bias, that OSHA has concluded that it is feasible to achieve the PEL by means of engineering and work practice controls.

Consequently, OSHA is unpersuaded by industry arguments. Based upon its own expertise, experience and the record evidence, OSHA concludes that a PEL of 50 $\mu g/m^3$ is technologically feasible by means of engineering and work practice controls in the leaded steel industry.

Industry Profile. Leaded Steel is classified under SIC code 3312 and is currently manufactured at five sites by five producers, though further processing may occur at virtually any site [Ex. 583–54].

The five leaded steel producers manufactured approximately 667,000 net tons of leaded steel in 1986, accounting for 3 to 16 percent of the total net tonnage of steel manufactured at these sites [Ex. 582–87, p. 24]. About 80–85% of all leaded steel products consumed annually in this country are produced by these five integrated producers, while imports make up the balance [Ex. 582–87, p. 25]. (LTV Corporation reports that Voluntary Restraint Agreements had reduced the import market share to 21.3 percent [Ex. 694–41, Attachment 6, p. 4]).

During testimony at the informal public hearing, Mr. Terrence M. Civic of LTV Steel Company testified that

> [i]n the bar facilities throughout the industry, there are approximately 11,000 employees. Of those 11,000 employees, 18 percent have exposure to lead. Of those 18 percent with exposure to lead, 89 percent of those employees would have an occasion to be exposed to concentrations in excess of 50 micrograms per cubic meter on a time-weighted average. The percentage number of employees with average exposures that are greater than 50 micrograms per cubic meter on a time-weighted average is approximately 25 percent [Tr., p. 935].

This produces an estimate of 495 workers with average TWA exposures to lead in excess of 50 micrograms per cubic meter.

With regard to the possibility of substituting for the use of lead in steel,

> [i]n general, there is no one material or process that can be used economically to substitute for the lead in leaded steel. Any attempt to eliminate lead from steel would require metallurgical research, engineering design, retooling, and the development of substitutes for lead in specific applications [Ex. 578, p. 22].

Financial data based on the first three quarters of 1987 included data for the five individual producers of leaded steel [Ex. 686h, p. 7] and indicate improvement in the profitability of the steel industry as compared with 1986 data [Ex. 578, p. 34–35]. For company "a," data indicate an improvement in its rate of return on assets (ROA) from −0.08 to an estimated 1 percent. ROA for company "b" improved from −0.59 to an estimated 8.8 percent, while ROA for company "c" improved from −0.03 to an estimated 2.9 percent. Company "d," which was profitable in 1986, realized an improvement of ROA from 0.01 to an estimated 3.0 percent. Overall, profits of approximately $900 million were expected for the industry in 1987 as opposed to its $5.2 billion in losses the previous year. Factors which have contributed to the improved profitability of the steel industry are strengthening demand, tax benefits, firming of import prices, the ability to realize higher prices, the closing of antiquated facilities, and reduced labor costs [Ex. 686h, p. 6].

More recent data show that one firm, Copperweld, sustained a loss for the year. (Copperweld's loss was magnified by their inventory valuation method [Ex. 694–41, Attachment 7]). Also, though LTV continued its reorganization under Chapter 11 [Ex. 694–41, Attachment 6], the company's net income was approximately $500 million in 1987.

While available information reflects the difficulties being experienced in bar manufacturing [Ex. 694–41, Attachment 6, p. 4], which is the segment of the steel industry where leaded steel is produced, certain manufacturers indicated their commitment to the bar market. For example, Inland is forming a new company for its shaped products, and they feel that they can be successful in the bar and structural steel market. One hundred million dollars could be invested in these facilities [Ex. 694–41, Attachment 5]. Copperweld Steel is also optimistic, as they are "totally committed to being the top quality bar producer in the United States" [Ex. 694–41, Attachment 7]. Copperweld has established a "working relationship" with Daido Steel Co., Ltd. of Japan and the companies have signed a three year technology exchange agreement.

These attitudes reflect the trend toward the major restructuring of the steel industry in the U.S.:

> [t]he steel industry is also making substantial investments in modernization. Continuous casting, for example, can reduce operating costs by $25 to $40 per ton. Although the U.S. steel industry lags behind most other developed countries in the adoption of continuous casting, more than 26 million tons of annual continuous casting capacity were added between 1983 and 1987, and at least 3 million tons more will be added by 1990. Between 1984 and 1987, the share of production done with continuous casting increased by more than 50 percent, and over three-fifths of all steel is now produced by this method * * * For some companies, the modernization is even more pervasive. Bethlehem Steel, for example, has invested nearly $2 billion in modernization since 1981 and now has sufficient continuous casting capability to handle 70 percent of its raw steel production—up from 30 percent in 1982 * * * [Ex. 686h, p. 3].

Cost of Compliance. The two methods used to produce leaded steel are continuous casting and teeming. For each method, costs will be incurred for automated weighing and dispensing of lead shot, enclosed pulpits for operators in rolling mill, automated gauging equipment, crane cab enclosures, portable vacuums, local exhaust ventilation, and housekeeping (annual cleaning). The continuous caster will also require an enclosed pulpit for the casting/tundish area while the facilities which teem will require automated mold covering systems. Costs for remote temperature sensing equipment were assumed to be negligible. Also, costs for automated surface conditioning equipment were not estimated, since evidence in the public record indicated that such equipment is currently in use by all manufacturers [Ex. 582–87, Attachment A]. Costs for each type of facility are summarized in Tables 5 and 6.

Costs of an automated system for weighing and dipensing lead shot are estimated to be $20,000 [Ex. 686h, p. 20]. Total annual costs for this equipment will be $4,936, including $2,936 in annualized capital costs and $2,000 in operation and maintenance (O&M) expenses. (Annualized costs for all equipment were based on a twelve year useful life and a 10 percent financing cost).

Enclosed pulpits for operators in the casting/tundish and rolling mill areas will be $20,000 each [Ex. 578, p. 44, footnote]. Total annual costs, including annualized capital costs and O&M expenses (which include HEPA filter replacement), are expected to be $5,186 for each pulpit, one of which is assumed to be required in each area.

TABLE 5.—SUMMARY OF COMPLIANCE COSTS—TEEMING

Control	Annualized capital costs	Annual O&M costs	Total annual costs
Vent. improvements	$71,565	$48,750	$120,315
Local vent.—			
Rolling mill	39,636	27,000	66,636
Surface conditioning	39,636	27,000	66,636
Automated dispensing—Lead shot	2,936	2,000	4,936
Mold covering system	2,936	2,000	4,936
Enclosed pulpit—Rolling mill	2,936	2,250	5,186
Automated gauging	7,340	5,000	12,340
Crane cab enclosures (2)	11,744	8,500	20,244
Portable vacuums (3)	1,718	7,170	8,888
Labor		15,488	15,488
Annual cleaning		50,000	50,000
Totals	180,447	195,158	375,604

Source: Occupational Safety and Health Administration, Office of Regulatory Analysis.

TABLE 6.—SUMMARY OF COMPLIANCE COSTS—CONTINUOUS CASTING

Control	Annualized capital costs	Annual O&M costs	Total annual costs
Vent. improvements	$286,260	$195,000	$481,260
Local vent.—			
Rolling mill	39,636	27,000	66,636
Surface conditioning	39,636	27,000	66,636
Automated dispensing—Lead shot	2,936	2,250	5,186
Enclosed pulpit—			
Rolling mill	2,936	2,250	5,186
Casting/Tundish area	2,936	2,250	5,180
Automated gauging	7,340	5,000	12,340
Crane cab enclosures (2)	11,744	8,500	20,244
Portable vacuums (3)	1,718	7,170	8,888
Labor		15,488	15,486
Annual cleaning		50,000	50,000
Totals	395,142	341,658	736,799

Source: Occupational Safety and Health Administration, Office of Regulatory Analysis.

Costs for automated gauging equipment are estimated to be $50,000. Annualized capital costs would be $7,340 and O&M expenses would be $5,000. Total annual costs for this equipment are estimated to be $12,340.

Costs for crane cab enclosures will be $40,000 each [Ex. 686e, p. 21]. Two cab enclosures are expected to be required per facility. Total capital costs are thus $80,000. The total annual costs of $20,244 include $11,744 in annualized capital costs and $8,500 in O&M expenses, which include HEPA filter replacement.

Costs for portable vacuums to clean surfaces are estimated to be $3,900 each [Ex. 579, p. 29]. It is estimated that three such vacuums will be required. Annual costs, including annualized capital costs of $1,718 for all three units and O&M expenses of $7,170, which include HEPA filter replacement, were estimated to be $8,888. Additional labor required was assumed to be 3 person-hours per day. Costs were estimated to be $15,488 per year, based on an average wage of $14.75 and a 7 day, 50 week annual housekeeping schedule.

Ventilation costs include improvement costs for ventilation systems in the teeming and tundish areas as well as costs for local exhaust ventilation for the rolling mill (primarily in the area of the mill stands) and for occasional exposures during manual surface conditioning.

Evidence compiled during the informal public hearing indicates that the manufacturers engaged in the teeming of leaded steel have already implemented certain ventilation controls in an attempt to limit exposure to lead. These controls were described by Middough Associates [Ex. 582–87, Attachment A] and AISI [Ex. 582–87, p. 10]. OSHA recommends that the manufacturers who teem leaded steel improve local and general ventilation and ensure that these systems are properly maintained. These improvements should also include any necessary barriers to prevent disruptive air currents. Ventilation improvement costs were estimated to be 50 percent of installation costs, based on information received by AISI in response to a 1981 questionnaire [Exs. 578, pp. 38–39]. For a typical system of 65,000 cfm, ventilation improvement costs were estimated to be $487,500. Annualized capital costs would be $71,565 and O&M expenses would be $48,750. Total annual costs were thus estimated to be $120,315. The continuous casting ventilation system described by AISI in their latest submission to the docket uses 144,000 cfm to ventilate the tundish area, 120,000 cfm to ventilate the area where steel is

torch cut into bloom lengths, and 20,000 cfm for a torch cut-off station for samples. [Ex. 694–41, p. 15]. Total costs for this system were $3.9 million, according to AISI [Ex. 694–41, p. 7]. Improvement costs were estimated to be $1.95 million (one-half the cost of installing a $3.9 million system). Annualized capital costs would be $286,260. Operation and maintenance costs are expected to be $195,000 annually. Total annual costs were thus estimated to be $481,260 for this equipment.

The rolling mill and surface conditioning areas were assumed to require local exhaust ventilation systems with air handling capacities of 18,000 cfm. Applying a unit cost factor of $15/cfm, total capital costs for each system were estimated to be $270,000. Annualized capital costs would be $39,636 and O&M expenses would be $27,000. Thus, total annual costs for each system were estimated to be $66,636.

Costs for an annual cleaning were estimated to be $50,000 for each facility ($5,000 per day over 10 days) [Ex. 694–9, Company A response.]

Costs for a system to cover ingot molds by remote control were assumed to be similar to those required to implement automated dispensing of lead shot. Capital costs for this system were thus estimated to be $20,000. Annual costs would be $4,936.

Altering the process so that the lead shot is added directly to the ladle would be expected to increase ventilation costs sharply, and, therefore, would not be implemented unless absolutely necessary. (For this reason, these costs have not been included in Table 5). Additional expenditures would be required to provide exhaust ventilation for the ladle itself as well as for the associated travelling ductwork system and necessary baghouse capacity. Based on the cost requirements for the ventilation of the teeming aisle [Ex. 578], OSHA expects the additional costs for ladle ventilation to be at least $1 million. Annual costs, including annualized capital and O&M expenses, would be $246,800.

Total annual costs for those facilities teeming leaded steel are estimated to range from $375,604 to $622,404, depending upon whether a ladle ventilation system is implemented. Total annual costs for the continuous casting operation were estimated to be $736,799.

Only one of the five integrated producers is currently casting leaded steel [Ex. 582–87, Attachment A, p. 9]. OSHA computed total industry costs, and hence, impacts, based on the scenario of one continuous caster of leaded steel and four teemers. This combination produced a total annual cost range for the industry of $2.24 million to $3.23 million.

Economic Feasibility. In assessing economic feasibility for the leaded steel industry, OSHA compared the estimated costs of compliance with estimated profit and sales levels. Sales data for two of the five producers of leaded steel were provided for 1987 [Ex. 694–41, Attachments 6 and 7]. These data appear consistent with those reported by Meridian [Ex. 686h, p. 6–7]; therefore, OSHA based its analysis on the Meridian information with one exception, Company "e," though profitable in the third quarter of 1987 [Ex. 686h, p. 7], incurred a net loss for the year. This loss is reflected in Tables 7 and 8. The portion of sales attributable to the production of leaded steel has been estimated at 0.8 percent of total sales, which represents the fraction of total production tonnage that was leaded steel in 1987 [Ex. 686h, pp. 1–2].

In assessing the impacts of the costs of compliance, two sets of impact ratios had to be developed, since the leaded steel producers did not identify the continuous caster for the record. Table 7 contains ratios for each producer assuming each teems leaded steel and Table 8 contains ratios assuming each uses continuous casting.

As seen in Table 7, price increases required with respect to leaded steel products would range from about 0.3 percent to about 3.7 percent for firms "a" through "d" and could be between 25 and 41 percent for firm "e", assuming teeming is the method of casting used. Costs as a percentage of overall after-tax profits should range from 0.09 percent to 0.68 percent for firms "a" through "d" and could represent between 2.9 percent and 4.7 percent of losses for firm "e."

TABLE 7.—SUMMARY OF ECONOMIC IMPACTS FOR THE LEADED STEEL INDUSTRY—TEEMING

Company	Costs (range) ($ thous.)		Sales ($ thous.) [a]	Sales/lead rel. ($ thous.) [b]	Ratio: Costs lead rel./sales [c]		Total profits ($ thous.) [d]	Ratio: Costs total/profits [e]	
	Min.	Max.			Min.	Max.		Min.	Max.
a	376	622	14,836,000	118,688	0.00316	0.00524	219,000	0.00093	0.00188
b	376	622	7,461,066	59,689	0.00629	0.01043	482,667	0.00042	0.00085
c	376	622	4,553,866	36,431	0.01031	0.01708	137,067	0.00148	0.00300
d	376	622	2,107,443	16,860	0.02228	0.03692	60,017	0.00338	0.00684
e	376	622	191,445	1,532	0.24524	0.40639	(13,161)	−0.02854	−0.04729

[a] Overall, obtained from Ex. 686h, p. 7. Sales for firm "e" obtained from Exhibit 694–41.
[b] Lead related sales, obtained as 0.8% of overall sales.
[c] Costs divided by lead-related sales.
[d] Total profits after taxes [Ex. 686h, p. 7].
[e] See text for derivation. Profit impacts were computed using the following federal income tax schedule: firms a, b, c, d: 0.34; firm e: 0.0.
Source: Occupational Safety and Health Administration, Office of Regulatory Analysis.

TABLE 8.—SUMMARY OF ECONOMIC IMPACTS FOR THE LEADED STEEL INDUSTRY—CONTINUOUS CASTING

Company	Costs ($ thous.)	Sales ($ thous.) [a]	Sales/lead rel. ($ thous.) [b]	Ratio: costs lead rel./sales [c]	Total profits ($ thous.) [d]	Ratio: costs total/profits [e]
a	737	14,836,000	118,688	0.00621	219,000	0.00222
b	737	7,461,066	59,689	0.01234	482,667	0.00101
c	737	4,553,866	36,431	0.02022	137,067	0.00355
d	737	2,107,443	16,860	0.04370	60,017	0.00810
e	737	191,445	1,532	0.48094	(13,161)	−0.05598

[a] Overall, obtained from Ex. 686h, p. 7. Sales for firm "e" obtained from Exhibit 694–41.
[b] Lead related sales, obtained as 0.8% of overall sales.
[c] Costs divided by lead-related sales.
[d] Overall, after taxes [Ex. 686h, p. 7].
[e] See text for derivation. Profit impacts were computed using the following federal income tax schedule: firm a, b, c, d: 0.34; firm e, 0.0.
Source: Occupational Safety and Health Administration, Office of Regulatory Analysis.

Assuming that continuous casting is the manufacturing process yields price increases for firms "a" through "d" of between 0.6 and 4.4 percent while firm "e" 's prices would have to increase by 48 percent. Profit impacts would fall between 0.2 percent and 0.8 percent for firms "a" through "d" and would represent about 5.6 percent of losses for firm "e."

It should be noted that the tax-deductibility of compliance costs was taken into account in computing profit impacts. That is, care was taken to compute before-tax profit before subtracting annual costs. After subtracting annual costs, the appropriate average tax rate (either 0 or 34 percent) was then reapplied to determine after-tax profit net of costs.

These figures suggest that for most firms, a good portion of the costs of compliance could be passed through, as there is no general all-purpose substitute for leaded steel (demand for this product is estimated to be relatively inelastic) [Ex. 578, pp. 49–50] and U.S. producers are internationally competitive (see below).

The impact estimates computed above also indicate that for all firms profit impacts at the corporate level will be quite small, regardless of production scheme.

OSHA has based its calculations of profit impacts on overall profits for each firm. Though AISI noted that the profitability of steel is not uniform across all segments of the industry [Ex. 681, p. 36], no profit data specific to leaded steel operations were made available by AISI or by the leaded steel producers; however, since this product is estimated to constitute about 0.8 percent of total sales, it is clear that impacts on profits generated by leaded operations will necessarily be greater than the impacts on total profits shown in Tables 7 and 8. Information on bar and structural operations, which include the production of leaded steel, indicates that for at least three of the five producers, Copperweld, LTV, and Inland, these operations were not profitable in 1987 [Ex. 694–41, Attachments 5, 6, 7]. For Copperweld, which produces only bar steel and reported losses of $13,161,000 in 1987, annual costs, which range from $376,000 to $737,000, represent about 2.9 to 5.6 percent of losses. For Inland, which reported losses of $31,000,000 for bar and structural operations in 1987, annual costs represent about 1.2 to 2.4 percent of losses. Thus, profit impacts with respect to bar and structural operations, while greater than those profit impacts indicated above with respect to overall corporate operations, are likely to be small.

Based on this analysis, OSHA has determined that the 50 $\mu g/m^3$ standard is economically feasible for the producers of leaded steel. OSHA's reasoning is as follows.

First, impact computations indicate that the costs of compliance can be financed through the combination of pass-through and absorption. Additionally, OSHA does not believe that compliance costs are of sufficient magnitude to force manufacturers to shift away from the product. (Should one or more firms choose this alternative, market share will increase for those firms remaining, though foreign competition could be a factor.)

Second, the most costly compliance scenario, that estimated for the continuous caster, will only be required for one manufacturer.

Third, as noted above, at least two of the five producers have expressed their commitment to the bar and structural steel markets. It is unlikely that the costs associated with this regulation would affect these corporations' decisions to continue to produce leaded steel. Also, though LTV is in reorganization and its ability to invest in controls may be limited, OSHA believes that cost estimates were greatly overstated for this firm, as exposure data indicate that LTV is very close to compliance.

Finally, in assessing this industry's ability to pass on and absorb costs, OSHA took into account the recent decline in the value of the dollar against foreign currencies. Under these conditions, which enable U.S. producers to be more price competitive with foreign producers, it is not surprising to see increased demand leading to reactivation of facilities, resulting in increasing sales and profit levels. (One U.S. producer recently activated an idle facility to handle increasing overseas demand). And, while employment costs have traditionally been high, production employment has been declining due to increased efficiency and modernization efforts. This trend increases the steel industry's ability to absorb the costs of compliance.

OSHA concludes that this standard is economically feasible for the leaded steel industry with a compliance schedule of two and one-half years. As noted above, industry profitability has improved recently. The industry has expressed its intent to invest in the bar segment of the market and compliance costs are not of sufficient magnitude to alter these commitments. With regard to production efficiency, OSHA believes that the costs imposed by this regulation are negligible compared to the investment required for modernization and will not have a significant impact on this industry. The impacts of this regulation will not threaten the existence of the leaded steel industry.

6. Non-Ferrous Foundry Industry

Process Description and Sources of Exposure—Overview. Non-ferrous foundries produce castings of various sizes and complexity. Generally, the castings are produced by melting copper-based ingots, pouring the molten metal into molds, usually made of sand, allowing the metal to cool, and removing the castings, which are then cleaned and finished. The main operations are moldmaking and coremaking; furnace operations, which include charging, melting, tapping, drossing and transferring molten metal; pouring molten metal into molds; shakeout of castings from molds; cleaning and finishing of castings, which include cutting and grinding; and handling sand (Exs. 689–5; 686A, pp. 26–40; and 581–2).

Lead is added to molten copper alloys to enhance pressure tightness, lubricity, and machinability of castings (Ex. and 582–84, p. 2). Lead is added in concentrations that range at the extremes from .02–42.5% (Exs. 475–3, p. 2; and 582–84, p. 2). Three of the most common lead-containing copper alloys are leaded red brass (5% lead), valve metal (7% lead), and bearing bronze (13–22% lead), which are used to produce castings for water works, plumbing equipment, and machine bearings, respectively (Ex. 689–5).

The typical sand-mold casting process involves the following operations.

Moldmaking and Coremaking. Sand molds are used to create external shapes of castings while cores, which are placed inside of molds, are used to create internal spaces in castings.

Sand molds are formed by automatic molding machines or jolt squeezers, which press and bind together prepared sand or other materials into particular patterns. Automatic molding machines dispense and pack sand into molds

without employees coming into physical contact with sand. (Ex. 684f, p. 4). During automatic mold making at Foundry F, for example, sand falls from a hopper over the work station into the mold press. Excess sand falls approximately four feet to the floor, and then falls into a collection grate. Sand missing the grate is swept into the grate with a broom. Cores are automatically placed inside the mold (Ex. 684f, pp. 4, 11).

When jolt squeezers are used, molds are made by hand. The moldmaker drops sand into the flask from an overhead hopper, and distributes it by hand throughout the flask. The employee then uses a squeezer molding machine to press the mold shape into the sand. Employees place cores by hand at appropriate places in individual molds. After molds are formed, they must be transported to the pouring area where they are filled with molten metal. For example, at Foundry E molds are transported by a pallet system. After the moldmaker has made enough molds to fill a pallet car, the pallet car carries the molds from the squeezer to the pouring area (Ex. 684e, pp. 2–3).

Furnace Operations. The primary function of the furnace is to melt metals. Furnace operations involve the following tasks: charging, melting, tapping, drossing and transferring molten metal.

Furnaces can be of various types. The most commonly used furnaces in the non-ferrous casting industry are crucible and induction furnaces (Exs. 645, p. 5 and 689–3, p. 28). Furnaces can be fueled by gas, oil or electricity and can be tapped in a stationary position or by tilting or lifting.

The composition of the charge to the furnace determines the kind of alloy produced. To make up the charge, most melters use ingots already containing the proper ratio of metals required for casting a particular alloy (Ex. 571, p. 1). Some plants, however, formulate their own alloys, for example, by using copper scrap or "raw" lead from bars. If scrap is used, ancillary scrap handling processes, like cutting, sawing, transferring and charging scrap to a scrap heater, may be involved (Ex. 609, pp. 6–7).

Metals are charged through an opening in the top or side of the furnace. The furnace can be charged by conveyor or crane. For example, at Foundry E the furnaces, which operate 365 days a year, are charged from the top with 1,800 pounds of metal and are capable of melting 3,000 pounds of brass an hour. A charging bucket filled with metal is moved to the top of the furnace with an electric hoist, and the bottom hatch of the bucket is then opened, allowing the charge to fall into the furnace. Charging takes place 10 times per shift, 20 times per day, consuming less than a minute each time (Ex. 684e, p. 2).

When the melt is ready, the molten metal is tapped (poured) from the furnace into vessels like ladles for transportation to the pouring area. The ladles, which are pushed or controlled by employees known as hot-metal dispatchers, are transported to hand-pouring stations or automatic pouring lines on overhead monorail tracks, overhead bridge cranes, overhead monorail cranes, or forklifts (Ex. 689–4D, p. 7–14).

Impurities that float on the surface of the molten metal are called slag or dross. The dross, containing lead, is manually skimmed from the furnace and/or the ladle to remove impurities from the molten metal. It is then stored in covered or uncovered dross hoppers adjacent to the furnace on the pouring line (Exs. 684e, p. 2; 684g, p. 11).

Pouring. When the ladles or kettles containing molten metal arrive at the pouring station, the temperature of the metal is taken, and cold metal may be added if the temperature is found to be too high. At many foundries, dross is then manually skimmed from the surface of the metal. The molten alloys are poured into molds as soon as possible to provide good casting quality.

At Foundry F, the casting operation is performed on automated casting machines. Previously formed sand molds automatically rotate on a turntable to where the metal is automatically poured. The machine continually presents and then retrieves individual molds to and from the hot-pouring operation (Ex. 684f, p. 3).

Elsewhere, small castings (less than 50 pounds) may be produced in molds loaded on pallet decks. Special castings of large size or complexity may be poured in a variety of ways, using stationary floor molds, pit molds in fixed locations or molds on powered or manual roller conveyors (Ex. 581–2, Prepared Testimony of J. Guimond, pp. 8–9).

After molds are filled on the pouring deck, they are pushed or automatically moved through cooling courts to the shakeout area.

Shakeout. In the shakeout area, solidified castings are separated from sand molds. A wide variety of mechanical methods and equipment (e.g. tumbling mills), has been developed to handle various sizes and types of castings, alloys and different types of sand (Ex. 583–13, pp. 5–14 to 5–17). Some castings are removed simply by hand (e.g., from large floor molds), others are removed by automatic and enclosed equipment (Ex. 684f, p. 3).

In a typical automated shakeout operation, molds are turned over to dislodge and separate the castings and loose sand. The castings and sand drop to a vibrating conveyor which carries the casting to the sorting and cutting area and vibrates the loose sand off of the conveyor (Ex. 684f, p. 3).

Cleaning and Finishing. Before castings are finished by cutting and grinding, they are first sorted according to the subsequent finishing required. Finishing involves the removal of excess sand and metal from the casting. The removal can be accomplished by a variety of methods, like cutoff saws, grinders and buffers.

There are several sources of excess metal in the casting process. For example, the channel into which the molten metal is poured to form the casting, as well as the channels connecting various castings in a mold, create excess metal on the casting, known as gates, sprues, and risers. Some foundries design the shapes of these channels to facilitate their removal, with the result that they may be simply broken off by hand or removed by a mechanical press ("kiss-gating") and recycled to the furnace. At Company E, for example, kiss-gating techniques are used to the maximum extent possible to reduce the number of parts that must be sawed in the cutoff saw area (Ex. 684e, p 3). Company representatives state that, because of kiss-gating techniques, grinding is not usually needed for many of the small castings produced. However, foundries do not use kiss-gating for some larger or unusually shaped parts. Where kiss-gating is not used, excess metal must be removed by cutoff saws (Ex. 684e, p. 3). After removal, the surface of the casting may be finished by grinding and buffing.

Abrasive blasting, abrasive tools, cutting torches and other methods also may be used to remove finely burned-on sand and remaining excess metal from the casting. In many foundries, machine finishing such as grinding and cutoff is accomplished solely by abrasive wheels. Infrequently, a tumbling mill is used to dislodge sand by the impact of castings striking each other in a rotating drum.

Sand Handling. Some foundries recycle used sand; others do not. In foundries that do not recycle sand, sand handling consists of transporting new sand to the moldmaking and coremaking operations and disposing of used sand. In foundries that do recycle sand, sand handling involves additional steps to recondition and/or treat the used sand, to transport the reconditioned sand back to the moldmaking operation, and to mix it in proper proportions with new sand, water, and binders.

Foundries that recycle sand do so for two reasons. Recycling reduces costs and also is said to be necessary to properly condition the molds for certain castings (Exs. 689–5, pp. 155–58; 678, p. 2). With recycled sand, new sand is mixed with heat-fractured sand fines of proper sizes. The recycled sand is transported by conveyors, loaders and other sand movers from reconditioning areas to mixers and mullers for cooling and addition of new sand, binders and moisture (2–3%) to condition the sand.

If olivine sand, an expensive alternative to silica sand, is used, it is completely recycled and seldom discarded (Ex. 609, p. 12).

Sources of Exposure. The sources of high lead exposure in non-ferrous foundries are fume emitted in the furnace and pouring operations and dust generated in the cutoff saw operation. Lower levels of lead exposure are generated from fume and dust in shakeout, grinding and from any contaminated sand that is recycled and allowed to dry (Ex. 694–42, p. 5). However, Ford Meter Box has pointed out that the lead content of airborne foundry dust is 3 to 5 times higher than the lead content of recycled sand (Ex. 678, p. 2). In addition, lead exposures in many operations generally are increased by cross contamination from other operations (Exs. 571, p. 5; 694–42, p. 6).

For the vast majority of non-ferrous foundries that use preformulated alloy ingots as their basic raw material, the handling of such ingots is not a source of lead exposure. These ingots present no lead exposure problems until they are melted and processed. For those foundries that make up their own charges from scrap and/or raw lead ingots, low-level exposures may be produced. Raw lead stored in piles, bins, open containers or on pallets may be exposed to the weather, and moisture may cause oxidation, producing a powdery coating of lead oxide that can become airborne during handling In addition, if the raw lead is worked, as in cutting or sawing, lead exposures also may be generated (Ex. 609, pp. 6–7).

In the hot furnace and pouring operations, the tasks that contribute most to high exposure levels are charging, tapping, transferring, drossing (slagging), and pouring. These tasks are a source of high levels of lead fume for employees performing them and for other employees in the furnace and pouring areas. In addition, these tasks are a source of significantly increased exposure levels for employees elsewhere in the foundry who, because of proximity and/or cross drafts, are subjected to cross contamination from the furnace and pouring operations.

Once the molten alloy has been tapped from the furnace, the molten metal provides a continuing source of lead fumes while it is being transferred to the pouring area, while slagging is taking place, and even after pouring, until the melt cools sufficiently for its surface to solidify. Thus, the furnace filled with molten metal, the ladle into which the molten metal is tapped, and the mold into which the melt is poured all can provide continuing sources of lead exposure (Ex. 581–2, Prepared Testimony of J. Guimond, pp. 3, 5). In the pouring operation, employee exposures peak during the actual pouring of the mold (Ex. 581–2, p. 8). Where large molds are cast, the molds usually remain in place for some time to cool, so further exposure to lead can occur in unventilated areas.

The extent of lead emissions in these work areas also depends on the temperature of the melt, lead content of the charge, type of furnace, furnace firing rate, and, of course, upon the engineering and work practice controls employed to contain or avoid such emissions.

In shakeout, the major source of workers' exposure is the opening of molds, which causes steam, "smokes", fume and dust trapped in the molds to be emitted. This occurs because dehydration of the sand from the intense heat of the molten metal allows lead-containing dust to form and subsequently escape when the mold is broken.

During grinding and cutoff, the source of lead exposure is the lead contained in the cast alloy, which is abraded as dust during the process. The extent of workers' exposure to lead in grinding depends on the type of grinder used (e.g., snag grinder), the media of the abrasive wheel, the size and shape of the casting, the lead content of the alloy, the extent of automation, and how closely the operation is attended.

Sand that has been contaminated by lead in the pouring operation also provides a source of continuing lead exposures until the sand is properly moistened or treated to remove the contaminant. At Ford Meter Box, for example, where 80% of the sand is recycled and the recycled sand contains .2% lead, approximately 2,000 pounds of lead in 500 tons of sand are routed each day on conveyor belts to be reused (Exs. 582–81, p. 31; 663).

The accumulation of lead in the sand occurs because lead fumes are trapped in the walls of the porous sand molds and remain in the sand after shakeout (Exs. 581–2, Prepared Testimony of J. Guimond, p. 14). Exposures to lead-laden dust can occur at all points where dry, used sand is handled, for example, in the case of recycled sand, on route to the muller and after the muller wherever water-tempered sand containing lead is allowed to dry (e.g., tempered sand falls off a conveyor and collects on the floor). Thus, recycled sand also can provide a source of exposure to lead in an operation like moldmaking, which does not otherwise involve lead (Exs. 582–81, p. 31; 609, p.12; 663; 678, p. 3).

Aside from emissions from recycled, contaminated sand, the only other possible source of lead exposure in moldmaking is cross contamination from lead dust or fume emissions generated in adjacent operations (Ex. 571, p. 2). Moldmaking and coremaking do not necessarily require the use of lead or lead-containing substances in the processes. In the case of moldmaking, to the extent that new sand or substitutes can be used exclusively, there is no internal source of lead. In the case of coremaking, recycled sand is not used, and as a result there is no internal source of lead. In coremaking, there is only a single, external source of lead: cross contamination from other operations (Exs. 684f, pp. 4, 11; 694–42, p. 6).

Exposure Levels.—Overview. An overview of existing exposure levels reveals the following. Existing exposure levels, represented by geometric means, already are below 50 $\mu g/m^3$ in most operations at large non-ferrous foundries. In two foundries OSHA recently visited, for example, geometric mean exposure levels are below 50 $\mu g/m^3$ in 11 of 15 operations at one (Foundry F, Ex. 686A, p. 14) and in 6 of 11 operations at the other (Foundry E, Ex. 686A, p. 13). Unless otherwise stated, these geometric means include airborne lead from cross contamination (see discussion below). They therefore overstate exposure levels caused directly by individual operations, because sampling results include cross contamination from other operations. The problem of cross contamination appears to affect all operations and extends industry wide, even in modern plants (Exs. 582–81, 1980 Report on Feasibility, p. 3).

As OSHA demonstrates below, once the data are adjusted to factor out the effects of cross contamination, geometric mean exposure levels are at or below 50 $\mu g/m^3$ in all but three operations at Foundry E. In those operations the geometric means are not far above 50 $\mu g/m^3$. Similarly at Foundry F, adjusted exposure levels are

below 50 μg/m³ in 13 of 15 operations. In 1 of the remaining 2 operations the adjusted geometric mean is 78.7 μg/m³ (see Table A).

At Central Brass Manufacturing Company ("Central Brass"), where the company president has fashioned rough, representative averages for each operation by eliminating atypical exposure results, a further adjustment (20 μg/m³) [2] to eliminate the effects of cross contamination reveals that arithmetic average exposure levels would be at or below 50 μg/m³ in 6 of 9 operations (Ex. 581–4, Att. B–2, B–3, B–4). In 1 of the remaining 3 operations the adjusted arithmetic average would be just slightly over 50 μg/m³.[3] This confirms OSHA's understanding of exposure levels in non-ferrous foundries.

Summary data for a number of foundries supplied by a major industry trade association (Ex. 667) further confirm that in most operations geometric mean exposure levels adjusted for cross contamination already are below 50 μg/m³.

The Data. The above overview of exposure levels is based upon the best available evidence in the record. The record includes at least 13 sets of data, most of which do not provide significant, useable data. OSHA believes that for purposes of determining technological feasibility the data sets representing exposure levels in large foundries are by far the most useable, accurate and complete. In part, this is because some of these data sets are supplemented by vital contextual information gathered on OSHA site visits.

The data sets for large non-ferrous foundries were provided by Foundry E (Ex. 613b–1), Foundry F (Ex. 613b–6), Ford Meter Box (Exs. 582–81, 694–28, and 698), Central Brass (Ex. 581–4), and the American Foundrymen's Society, Inc. ("AFS," Ex. 667). These foundries provided OSHA with extensive and invaluable data, information and insights. Except for the fact that they declined to testify and answer questions at the remand hearing, they were quite cooperative. Ford Meter Box was especially forthcoming.

The best evidence is from Foundries E and F because their exposure data are supplemented by extensive information on plant conditions, processes, and controls largely gathered on recent OSHA site visits (Exs. 684e; 684f). That information enables OSHA to assess and interpret these exposure data more effectively than comparable data from other foundries, which have not chosen to provide similar contextual information as requested. The information and data from Foundries E and F further allows OSHA to better understand exposure data from other large foundries, like those represented by AFS' data. Central Brass and to a lesser extent AFS made some commendable efforts to help OSHA interpret their data.

Another group of data sets has been provided by small and medium-sized foundries. Those submitting data include Foundry G (Ex. 684G), AFS (Exs. 667 and 694–26), Foundry 1 (Ex. 613b–5), Foundry 2 (Ex. 613b–4), Prattsville (Ex. 583–14 and see Ex. 694–23), Hill Air Force Base Non-Ferrous Foundry (Exs. 582–94; 649), Aacco Foundry, Inc. (Ex. 582–7), and Federal-Mogul Corporation (Ex. 582–10). With the exception of the data from Foundry G and Hill Air Force Base, all of these data are incomplete. Further, OSHA's analyses of these sets reveals that much of the data is neither recent, well-defined by job classifications or operations, nor accompanied by information concerning underlying conditions, processes or controls.

For example, the submission from Federal-Mogul Corp. (Ex. 582–10), although reasonably complete in some respects, does not provide data operation by operation. This is because in Federal-Mogul's foundry (identified in the exhibit as Plant C), the same operators both melt and pour the alloy. In addition, exposure data for other operations such as mold making are not provided. Disaggregation of exposure data is useful and important in analyzing data for purposes of assessing technological feasibility. Lack of disaggregation effectively makes the data unuseable for comparing exposure levels in particular operations and their associated controls, if any.

The data set for small foundries provided by AFS is the best of this group. It consists of two submissions (Exs. 667; 694–26). In neither does AFS provide individual monitoring results or explanations of conditions, processes, and controls associated with particular operations. AFS also does not explain how it integrates exposure data from job classifications that vary widely across the industry into the five universal operations for which it provides data. Obviously, the way in which raw data are allocated to particular operations can influence results.

In the initial data submission, the data for each of the five operations consist of nothing more than a single number, which represents the average of arithmetic mean exposure levels in 25 foundries for that operation (Ex. 667, p. 2). In the second submission (Ex. 694–26, Attachment 1), AFS does provide the frequency distribution of monitoring results and the arithmetic and geometric means for each of the five operations, but the data still are not broken down foundry by foundry. This makes the data unreliable for assessing technological feasibility, because, to an unknown extent, high monitoring results in one or more plants with poor controls may dramatically affect the aggregate. Viewed together, these submissions are not only inadequate; they also appear to be inconsistent. For example, AFS does not explain why one job classification (centrifual casting) in the first submission is dropped in the second or why average exposure levels for furnace tending and cleaning/finishing are much higher in the second. Had AFS provided the Agency with the underlying raw data, OSHA could have independently analyzed the data. As such, OSHA does not rely on these submissions.

Another data set is from Hill Air Force Base (Ex. 582–94). Even though these data are quite complete and are supplemented by a recent OSHA site visit and even though this foundry has state-of-the-art engineering and work practice controls and consistently achieves extremely low air lead levels, OSHA does not generally rely on these data, because the Agency does not regard the foundry at Hill Air Force Base as typical. Its workforce is extremely small (only 2 workers); the level of production at the foundry is unusually low; and some processes and the alloys cast are not typical of conventional non-ferrous foundries in the private sector (Tr. 848–49, 859).

The final data set is from Foundry G. OSHA also finds it cannot treat these data as typical of the non-ferrous foundry industry (Ex. 684g). The combination of raw materials and processes at this foundry set it off from other foundries. For example, Foundry G does not rely upon preformulated alloy ingots but instead makes up its own charge, relying heavily upon scrap. In addition, castings at this foundry are produced exclusively by continuous casting for brass and bronze rods and from permanent molds for other products. Thus, Foundry G does not utilize any sand or sand substitutes for molds or cores. In addition, the data from Foundry G are not useful for determining feasibility because, as Meridian points out, Foundry G lacks certain fundamental controls and existing controls are inadequately designed (Ex. 686A, p. 40). Further, exposure levels for several job categories are lacking.

Another data set consists of inspection data from OSHA's Integrated Management Information System (IMIS) (Ex. 583–1). This data set is supplemented with often informative case files, which provide some of the contextual information needed to interpret and assess the data (Ex. 585). Gary E. Mosher, the industrial hygienist for AFS, stated that this data set appears to reflect foundries in which the lead content of metals being poured is fairly low and therefore cannot be used to represent foundries that primarily and regularly pour brass and bronze with lead contents ranging from 5–22% (Ex. 582–84, p. 5).

Assuming, only for the purposes of argument, that Mr. Mosher's assertion is correct; more than one-half (675) of the total number (1,291) of non-ferrous foundries are secondary and tertiary foundries, which primarily produce castings that are not brass, bronze or copper (Ex. 581–2, Comments of J. Mallory, p. 2). These foundries employ an estimated 38% of the industry's total lead-exposed workforce (Exs. 571, p. 13; 686A. p. 2). Therefore, even if OSHA were to agree with Mr. Mosher's assertion, at least for this large number of non-ferrous foundries and employees, the IMIS data can be treated as representative. The IMIS data shows that more than 58% of the unadjusted sampling results already are below 50 μg/m³ (Ex. 583–1). Therefore, from the IMIS data OSHA concludes at the very least that in plants such as these, where leaded alloys are poured only intermittently and total lead emissions are lower than in primary foundries (which primarily produce brass, bronze or copper castings), controlling lead emissions to consistently below 50 μg/m³ should not pose any great difficulty. In any event, since OSHA concludes that it is feasible to control air lead levels to or below 50 μg/m³ by engineering and work practice controls in primary foundries (see below), it must be feasible in secondary and tertiary foundries, as well, to control lead exposures to or below 50 μg/m³.

Of the total number of non-ferrous foundries (1,291), 736 (56%) are small, employing fewer than 20 employees (Ex. 582–84, p. 1). Of these, it is estimated that more than one-half, or 366, primarily produce castings that are not brass, bronze or copper. The remaining 370 small foundries, which primarily produce leaded alloys like brass and bronze, do have potentially high lead exposure levels in certain operations. However, it is estimated that these foundries employ only about 15% of the industry's total lead-exposed workforce (Exs. 571, p. 13; 686A, p. 2).

By contrast, large foundries that primarily produce brass and bronze castings each employ 20 or more employees and collectively account for almost one-half of lead-exposed total employment (49%) (Ex. 686a, p. 6). These large foundries are very important when considering exposure levels for the entire industry workforce. Thus, the exposure level data from these foundries, which is summarized at the beginning of this section, merit further analysis. Unless otherwise stated, the discussion of that data is in terms of geometric means.

OSHA's analysis of the large foundry data provided by AFS reveals that 64% of the unadjusted sampling results are below 50 μg/m³ and that the average geometric mean for all samples is 33.5 μg/m³ (Ex. 667). At Central Brass, more than two-thirds of the unadjusted sampling results are below 50 μg/m³ (Ex. 581–4, B–2, B–3, B–4). At Foundry E, a large facility visited by OSHA in 1988, unadjusted geometric mean exposure levels not only are below 50 μg/m³ in most of the operations, but are below 80 μg/m³ in all operations (Ex. 686A, p. 13). At Foundry F, unadjusted geometric mean exposure levels are below 50 μg/m³ in over 73% of the operations, and are below 58 μg/m³ in over 86% of the operations (Ex. 686A, p. 14). In addition, at Foundry F, in 11 of 15 operations 50% or more of sampling results are below 50 μg/m³, and in an additional two operations close to a majority of sampling results are below 50 μg/m³.

In other words, at Foundry F there are only two operations in which either a majority or close to a majority of samples are not already below 50 μg/m³. Those two operations, pouring and gate saw operator (cutoff saw), also are the only operations at that foundry that have high geometric means. Although different foundries appear to have problems in different operations (e.g., charger), only the pouring and cutoff saw operations uniformly present a problem in every data set where they appear (Exs. 686A, pp. 10, 11, 13 and 14; and 581–4–B, pp. 2–4). Therefore, OSHA concludes that the pouring and cutoff saw operations are the most difficult to control to or below 50 μg/m³ (Ex. 684F, p. 12).

In this discussion of exposure levels OSHA has relied to a considerable extent on the geometric mean to represent existing exposure levels and to provide the baseline for quantifying the reduction in exposure levels anticipated from plants implementing OSHA's recommended additional controls. OSHA has chosen to rely upon the geometric mean because, as indicated above in the introduction to the technological feasibility section of this preamble, it is widely accepted as the best statistic to characterize typical exposure data (cite NIOSH).

OSHA recognizes that there is no single number, or even range of numbers, that can perfectly characterize a data set. A mere range of exposure levels, for example, provides very little useful information about typical exposure levels (e.g., 47 to 2,893 μg/m³ for permanent mold furnace operator at Foundry G, Ex. 684g, p. 8). Similarly, the arithmetic mean, which is equivalent to the commonly used "average", provides little insight into the distribution of exposures and is subject to gross distortion by atypical events.

For example, of the 15 sampling results for permanent mold furnace operator at Foundry G, ¾ths are below 200 μg/m³ but the arithmetic mean is 345 μg/m³ (Ex. 684g, p. 10). This is because one sample is 2,893 μg/m³. By contrast, the geometric mean is 168.4 μg/m³ (Ex. 686A, p. 15), which more accurately reflects the routine distribution of exposure levels.

In addition, OSHA finds the geometric mean to be particularly appropriate as a basis for assessing technological feasibility under the court's definition of technological feasibility. The court does not require that for a PEL to be feasible industry must be able to achieve it in all operations all of the time. Rather, the court's definition of feasibility focuses on typical and routine exposure levels. *USWA* v. *Marshall*, 647 F.2d at 1270, 1272. Consequently, the mere existence of aberrant exposure levels does not constitute proof of infeasibility.

In using the geometric mean to characterize exposure data, the impact of outliers is minimized. This is necessary because there is no upper boundary on high outliers, which can be in the thousands of μg/m³ while there is a lower boundary on low outliers, the

[2] OSHA chooses 20 μg/m³ as the measure of cross contamination at Central Brass, because that figure is just below the average exposure level for coremaker in the three data sets upon which OSHA relies to determine the extent of cross contamination in this industry sector (see Table A and the discussion of OSHA's use of exposure levels for coremaker to represent cross contamination, below).

[3] A submission to the record by the National Institute for Occupational Safety and Health (NIOSH) concerning a NIOSH in-plant study at Central Brass, which arrived too late for public comment and upon which OSHA therefore does not rely, indicates that by January 1987, geometric mean exposure levels at Central Brass generally had been reduced to below 50 μg/m³ (Ex. 582–11, "Walk Through Survey Report of the Central Brass Manufacturing Company," p. 4; and see cover letter from T. Meinhardt to OSHA Docket Office). OSHA's analysis of the data from Central Brass, including the adjustment for cross contamination, thus, appears to be conservative.

limits of detection or 0 $\mu g/m^3$. As indicated in company annotations to exposure data and in company comments (e.g., Ex. 581–4, p. B–3), extremely high, atypical exposure levels often are the result of unusual events like operational upsets and spills or monitoring problems, such as "a piece of particulate getting into the sample" (sample contamination) (Ex. 684E, p. 7). OSHA's use of the geometric mean to represent typical exposure levels is also supported by industry representatives (e.g., Exs. 581–4–B, p. 4; 694–6, p. 2) and by Meridian (Ex. 686A, p. 12–13).

OSHA therefore relies primarily on the geometric mean to characterize existing exposure levels. In addition, using a single figure rather than a range of figures (e.g., a frequency distribution) to represent existing exposures facilitates quantifying reductions in air lead levels to be expected from the implementation of recommended additional controls.

Thus far, the analysis of large foundry sampling results is based upon unadjusted data that include the effects of cross contamination. OSHA is convinced that cross contamination is a very serious problem in non-ferrous foundries. This conclusion is supported by exposure data (see Table A, below), testimony of a union health scientist (Ex. 694–42, p. 4; Tr. 826, 828), one of the few documented industrial hygiene surveys in the industry (Ex. 582–81, Letter from G. Mosher to R. Walther, p. 2), and statements of industry representatives, Exs. 581–2, Testimony of J. Guimond, p. 13; 667, p. 4).

The clearest and most irrefutable evidence of cross contamination lies in the fact that coremakers, whose operation does not itself involve lead or lead-contaminated sand, consistently have exposure levels across the industry that average around 20 $\mu g/m^3$, instead of being negligible, as would be expected.

For example, at Foundry E the geometric mean exposure level for coremaker is 27 $\mu g/m^3$ (Ex. 686A, p. 13). At Foundry F the geometric mean exposure level is 16.5 $\mu g/m^3$, and more than 10% of the samples are above 50 $\mu g/m^3$ (Ex. 686A, p. 14). At the large foundries represented in the AFS data, the average geometric mean is 20.7 $\mu g/m^3$, and more than 25% of the sampling results exceed 50 $\mu g/m^3$ (Ex. 686A, p. 11). Although small foundries have not provided sufficient data to enable OSHA to estimate exposure levels for coremakers, there is every reason to believe that, with fewer controls and less-modern facilities in general, small foundries face cross contamination problems that are at least as serious (Ex. 686A, p. 41).

Consequently, OSHA considers exposure levels in coremaking to represent the increment to exposure levels generally due to cross contamination in any given plant. Although the exposure level in coremaking and the derived estimate of cross contamination varies from plant to plant, OSHA believes that using levels in coremaking to represent cross contamination is conservative. Coremaking is often separated from high sources of lead emissions like cutoff saws, furnaces and pouring. For example, at both foundries E and F coremaking is separated by at least 50 feet and/or enclosures from such operations (Exs. 684e, p. 4; 684f, p. 4). This means that cross contamination is likely to be less in coremaking than in operations closer to sources of high air lead levels (Ex. 667, p. 4).

OSHA's position that exposure levels in coremaking represent the baseline for background exposure levels in these foundries is supported by a statement by Dr. Franklin E. Mirer, an experienced, certified industrial hygienist and toxicologist, who is director of the Health and Safety Department for the United Auto Workers Union (Ex. 694–42, p. 6). Dr. Mirer reported that coremaking "does not itself generate lead emissions."

Record evidence confirms that cross contamination also is a problem in operations other than coremaking. For example, in moldmaking, where the only direct exposure to lead comes from any sand that has been recycled and remains contaminated, geometric mean exposure levels are 45.7 $\mu g/m^3$, 39.9 $\mu g/m^3$, 27.4 $\mu g/m^3$, and 35.8 $\mu g/m^3$ at Foundry E, Foundry F, AFS foundries (Table A, below), and Central Brass (Ex. 581–4), respectively. These levels, which average aproximately 38 $\mu g/m^3$, cannot simply be attributed to contaminated sand, especially since some industry representatives assert that lead-contaminated sand cannot cause exposure problems because of its moisture content (Ex. 689–3, p. 5). These levels, OSHA believes, confirm that Agency's use of exposure levels in coremaking to represent the increment attributable generally to cross contamination is conservative (Ex. 678).

In addition, industry itself has recognized cross contamination as a problem in foundries. For example, in a July 1980 report on prevailing conditions at Ford Meter Box based upon an on-site industrial hygiene survey carried out by Gary Mosher, the industrial hygienist for AFS, Mr. Mosher recognized cross contamination as a problem throughout the foundry. Otherwise praising Ford Meter Box's controls in the strongest terms—"no other brass foundry in the country * * * uses State-of-the Art technology as much or as effectively as Ford Meter Box", Mr. Mosher nonetheless goes on to say that

> Smoke tube testing done in the foundry at the same time as the air sampling indicated that there seemed to be no uniform air flow patterns in the foundry. My guess is that with the negative pressure in the foundry and air blowing in through outside doors, windows and other parts of the building, there is a great deal of turbulent air throughout the whole foundry. This turbulent air serves to mix all materials which are emitted by the various foundry processes. What this implies is that the sources are going to have to be strictly controlled to eliminate the spreading of emissions throughout the foundry (Ex. 582–81, Letter from G. Mosher to R. Walther, p. 1).

Moreover, industry consultant Joseph A. Guimond of Joesph A. Guimond & Associates, Inc., an environmental consulting firm that has specialized for the past 14 years in controlling airborne contaminants in the foundry industry, agrees that cross contamination is a major problem in the non-ferrous foundry industry. Mr. Guimond has said that cross contamination "has in some cases been the major contributor to employee overexposure based on our experience" (Exs. 581–2, Prepared Testimony of J. Guimond, p. 14; 666, p.13). Similarly, Richard A. Chandler, the president of Central Brass, states that for such operations throughout his foundry as molding, coremaking, mulling, general laborers, towmotor operators, sprue cutters, break-off and others, exposures basically are attributable to cross contamination (Ex. 581–4–B, p. 3).

OSHA's position that cross contamination is an industry-wide problem is further supported by statements by OSHA's contractor, Meridian. Meridian's description of typical non-ferrous foundries illuminates why cross contamination is such a problem. These foundries are said to be generally housed in a single building with a variety of sources of lead fume and dust that, if uncontrolled, can release lead that can be spread throughout the plant (Ex. 571, p. ES 3).

The impact on employee exposures to lead due to eliminating cross contamination can be established by a simple calculation. Taking exposure levels in the coremaking operation as indicative of the extent of cross contamination, eliminating cross contamination would reduce exposure levels in most operations at Foundries E and F and at the foundries represented by the AFS data by 27 $\mu g/m^3$, 16.5 $\mu g/m^3$ and 20.7 $\mu g/m^3$, respectively. However, in the cutoff saw and pouring operations, which are the primary sources of cross contamination, the reductions would be proportionally less (see discussion below).

As shown in Table A, this would mean that at Foundry E, for example, by controlling cross contamination only the cutoff saw operator, at 65.1 $\mu g/m^3$, the pourer, at 56.1 $\mu g/m^3$, and the worker involved in sand treatment, at 50.6 $\mu g/m^3$, would have geometric mean exposure levels above 50 $\mu g/m^3$. All other operations would have geometric means below 40 $\mu g/m^3$. At Foundry F, the picture is similar. Only gate saw operators at 113.4 $\mu g/m^3$ and pourers at 78.7 $\mu g/m^3$ would have exposure levels over 50 $\mu g/m^3$; all the other operations would have geometric means below 41 $\mu g/m^3$ (see Table A). OSHA wishes to emphasize that these levels would be achieved without the implementation of other recommended additional controls.

TABLE A

Job classification	Company E		Company F		AFS	
	Unadjusted geom. mean	Geom. mean adjusted for cross contamination	Geom. mean	Geom. mean adjusted for cross contamination	Geom. mean	Geom. mean adjusted for cross contamination
Coremaker	27	0	16.5	0	20.7	0
Muller	35.6	8.6				
Moldmaker	45.7	18.7	39.9	23.4	27.4	6.7
Melter	47.6	20.6			36.6	15.9
Furnace tender			50.9	34.4	68.8	48.1
Charger deck					153.7	133
Hot metal dispatcher			33.9	17.4		
Pourer	69.6	[1] 56.1	86.9	[1] 78.7	83.3	[1] 72.9
Shakeout	61.7	34.7			88.9	68.2
Wheelabrator/tumbleblast operator					128.3	107.6
Cutoff/gate saw operator	78.6	[1] 65.1	121.6	[1] 113.4	112.7	[1] 102.3
Grinder	21.7	0	57	40.5	18.3	0
Cleaner/pangborn opr.	47	[2] 47	46.2	29.7		
Sorter	65.3	38.3	38.5	22		
Sand treatment	77.6	50.6				
Inspector			20.6	4.1		
Electrician			44.9	28.4		
Millwright			33	16.5		
Forklift-driver			32.3	15.8		
Laborer			26	9.5	33.5	12.8
Supervisor			23.2	6.7		

[1] Because this operation is itself one of the sources of cross contamination, OSHA has only reduced exposure levels in this operation by one-half of OSHA's estimate of the increment due to cross contamination.

[2] Operation located in separate building and it is extremely unlikely this operation is affected by cross contamination from other operations, therefore OSHA has not reduced exposure levels in this operation by the estimate of the increment due to cross contamination.

Similarly, at Central Brass, adjusting for cross contamination results in exposure levels below 50 $\mu g/m^3$ in almost all of the operations. Since Central Brass did not provide data on exposure levels in coremaking, OSHA has conservatively assumed the level to be 20 $\mu g/m^3$. With that assumption, simply controlling cross contamination would bring geometric mean exposure levels to below 50 $\mu g/m^3$ in seven of nine operations at Central Brass (Ex. 581–4, B–2, B–3, B–4).[4]

Current Controls. OSHA's analysis of the record in the previous section indicates that in the non-ferrous foundry industry the majority of sampling results in nearly all the useable data sets already are at or below 50 $\mu g/m^3$ and that in nearly all operations there are geometric means already are at or below 50 $\mu g/m^3$. This is true even before adjustments are made to eliminate the effects of cross contamination. In only two operations, pouring and cutoff saw, for example, were unadjusted geometric mean exposure levels above 50 $\mu g/m^3$ at both foundries E and F. This level of control has been achieved primarily by existing local exhaust ventilation, enclosure or isolation, plant design, automation of the production process, and work practices.

OSHA's best information on existing controls comes from its site visits to foundries E, F and G and the technical literature. As to foundries E and F, OSHA believes that, although the extent of controls implemented there may exceed the industry norm, the controls are conventional in character and readily available in the marketplace (see discussion below). The fact that both of these foundries allow representatives from other foundries to visit and inspect their facilities confirms OSHA's belief that their controls are conventional (Exs. 684E, p. 7 and 684F, p. 12). As to Foundry G, which uses permanent mold and continuous casting, OSHA has concluded that it is so atypical in its production processes and raw materials that it cannot be taken to represent other foundries in the industry. Based upon the information from foundries E and F, OSHA finds the following existing controls in the various operations.

General Building. The production areas of both Foundries E and F are maintained at negative pressure to contain toxic substances in those areas. Both use mechanical, rather than natural ventilation. Foundry F has a central ventilation system, which maintains a minimal airflow throughout the building (Ex. 684f, p. 6). There are no windows in Foundry F, and the main access door is

[4] That 20 $\mu g/m^3$ is a conservative estimate for exposure levels in coremaking is confirmed by the recent survey of Central Brass performed by NIOSH (Ex. 582–11, pp. 4–5). In that survey, the geometric mean exposure level in coremaking for 1985–86 was 27.6 $\mu g/m^3$. For other operations at Central Brass, nearly all of NIOSH's unadjusted geometric means exposure levels for 1985–86 were somewhat lower than OSHA's. This again suggests OSHA is being conservative. As indicated above, OSHA does not rely on this NIOSH survey.

specially constructed to quickly and automatically raise and lower (Ex. 684f, p. 1). This minimizes cross currents and disruptions to the ventilation envelope in the foundry.

Foundry F is also computer controlled, which enables personnel in an isolated and enclosed control room to know immediately when there is any malfunction or problem in any area of the foundry (Ex. 694–25, p. 4).

Moldmaking and Coremaking. At Foundry F, moldmaking is automated, which eliminates extensive employee contact with molding sand and thereby most employee exposures arising from the operation (Ex. 684f, p. 4). Consequently, exposure levels are below 50 $\mu g/m^3$ most of the time (Ex. 684f, p. 7). At Foundry E, which produces sand molds with a jolt squeezer, exposure levels are controlled to below 50 $\mu g/m^3$ by local exhaust ventilation installed at the sides of the moldmaking station, and sand that is not trapped in the flask during the process falls into grates below (Ex. 684e, p. 4). The sand itself is conditioned with water, which suppresses most of the respirable dust. Therefore, even where molds are made by hand, exposure to lead in the absence of cross contamination is typically low (Ex. 694–12, p. 7).

Foundry F carries out coremaking in partial isolation, with coremakers separated some distance from hot operations and surrounded on 3 sides by curtains (Ex. 684f, pp. 4, 11).

Furnaces. As described above, furnace operations involve 5 tasks: Charging, melting, tapping, drossing, and transferring molten metal. Exposure levels are partly controlled at both Foundries E and F by locating the furnaces on raised platforms. The selection of a suitable furnace is another method of controlling exposure levels in these hot tasks. For example, the induction furnaces at Foundries E and F are energy efficient during melting and also have lower emission rates than either arc or reverberatory furnaces (Ex. 684e, p. 2). In addition, these furnaces are provided with top-mounted exhaust systems equipped with air flow regulators to control exposure levels by varying the amount of local exhaust ventilation during particular furnace operations.

With regard to charging, the furnace at Foundry E has no charging enclosure (Ex. 684e, p. 4). To capture the release of lead fume during charging, the amount of exhaust in the close-capture furnace system is increased four-fold. Foundry E also has installed roof fans to remove fumes and heat that escape during charging. These controls, however, are not adequate since exposure levels of the melter are often well in excess of 50 $\mu g/m^3$ (Ex. 684e, p. 5). At Foundry E the OSHA site visit team observed a considerable amount of fumes coming from the furnace during charging and on two occasions the furnace operator was forced to leap back to get out of the way of sparks and fumes emanating from the furnace after charging (Ex. 684f, p. 11).

At Foundry F, ventilation for the furnace is positioned over the charging port of the furnace (Ex. 684f, p. 6). However, charging is not provided with specific control equipment.

During tapping at Foundry F, the furnace operator is supplied with a fresh air shower of outside ambient air (Ex. 684f, p. 6). In addition, air lead levels are controlled by Hawley Trav-L-Vents that exhaust fumes during pouring of molten metal from the furnace to the portable vessels (e.g., ladles, kettles, crucibles). During the site visit to Foundry F, OSHA observed the furnace operator's breathing zone was within a few feet of the furnace opening and he was manually chipping material out of the tap hole (Ex. 684f, p. 11). At Foundry E, ladles are also equipped with Hawley Trav-L-Vent systems to capture fumes during tapping and ladle transfer (Ex. 684e, p. 6).

During drossing, which at Foundry F takes place after the molten metal is tapped into a ladle, employee exposure is controlled by two means. First, while the employee is drossing he is bathed in a stream of outside air by an air wash system. Second, the ladle or kettle itself is equipped with a Hawley Trav-L-Vent (Ex. 684f, p 10). However, when the worker is required to rake dross off the top of the kettle, emissions that normally would be captured and exhausted through the close-capture system are dispersed while the system is disconnected. At Foundry E, although the ladle is locally exhausted, the worker drossing the ladle does not have a fresh air shower nor is the slag bucket enclosed or ventilated (Ex. 684e, p. 6).

At Foundry F, exposure levels during transfers of molten metal are controlled, except during transfer to the monorail siding, by a Hawley Trav-L-Vent system mounted on the ladle (Ex. 684f, pp. 6, 10). A similar set of controls exists at Foundry E. However, the OSHA site visit team observed that when the worker pulled the ladle along the track too quickly, fumes from the ladle escaped capture by the Hawley system (Ex. 684e, p. 2). Other foundries fit transfer ladles with stainless steel or refractory hoods to contain lead fumes during the transfer process (Ex. 586–18, p. 177).

Pouring. At Foundry F, the pourer's exposure levels are controlled in several ways. The pourer, while pouring molten metal into molds on the casting machine, is provided with a fresh air shower. In addition, a portable ventilation system may continue to exhaust the kettle from which the metal is poured. The casting machine itself is ventilated by a single-slot ventilation system positioned 8 to 12 inches over it (Ex. 684f, pp. 6, 10). At Foundry E, each mold pouring station is equipped with a side draft ventilation system (Ex. 684e, p. 6).

Shakeout. At both Foundries E and F, cooling and shakeout are partially or fully enclosed and isolated. At Foundry F, in the shakeout operation the equipment is fully enclosed, exhaust-ventilated, and designed to operate unattended (Ex. 684f, p. 3). The plant has been designed to isolate the cooling court and shakeout area below the foundry floor to contain lead emissions. At Foundry E, cooling and shakeout are partially isolated under the floor and the shakeout machine is equipped with local exhaust ventilation. At Foundry E, however, the shakeout conveyor is neither covered nor ventilated (Ex. 684e, p. 6).

Cleaning and Finishing. At Foundries E and F, the methods used to control employee exposures in cleaning and finishing are basically similar, consisting of isolation, raised platforms, local exhaust ventilation, fresh air showers and replacing sawing and cutting with kiss-gating.

Cleaning and finishing operations at foundries E and F are separated from the hot operations by either distance or barriers. Foundry E has located its cleaning and finishing operations some distance from the furnace area, and these operations receive one-third of the foundry's fresh makeup air. At Foundry F, a canvas curtain separates cleaning and finishing from the furnace and pouring areas.

At foundries E and F, cleaning and finishing operations are located on platforms elevated several feet off the foundry floor (Exs. 684e, p. 4; 684f, p. 4). The elevated platforms permit the foundries to utilize gravitational force to separate the employees from the lead dust which accumulates and falls to the foundry floor during cutting and grinding. At Foundry F, the platform floor is grated to further facilitate this separation.

The first step in cleaning and finishing, separating individual castings and cutting off sprues, gates, and risers, is accomplished with abrasive saws. Both foundries E and F to some extent have replaced cutting with kiss-gating (Exs. 684c, p. 3; 684f, p. 10). From the viewpoint of exposure control, kiss-gating itself is a control. Kiss-gating removes excess metal by a mechanical press that does not generate high velocity dust. Where kiss-gating is used, often it is not necessary for the casting to be ground or polished, a process that entails additional lead exposure. In addition to switching to kiss-gating, some foundries are designing casting molds so that excess metal may be simply broken off by hand. Where these techniques are not used, excess metal must be removed from a casting by cutoff saws or other means. These cutoff saws operate at high speed and disperse leaded dust at a velocity and in a stream of air that is difficult to capture.

At Foundry F, kiss-gating is being used to the maximum extent possible to reduce cutting. Where cutting is still required (i.e., large and unusually-shaped castings), stationary cutoff saws are sometimes partially enclosed and usually equipped with ventilation over the saw and down-draft ventilation through a single slot on the saw table. In addition, the cutoff saw operator is provided with a fresh air shower to remove or dilute dust in the operator's breathing zone (Ex. 684f, p. 10). At Company E, cutoff saws are equipped with ventilation that encloses the blade of the saw. Ventilation is also supplied in the blade-slot area below the saw table and behind the cutting blade (Ex. 684e, p. 6). Elsewhere in the industry, foundries may use burning rather than abrasive cutting for certain castings. This produces higher exposure levels than cutting.

Where castings require grinding and polishing, local exhaust ventilation has been installed over the grinding surface at Foundry E. At Foundry F, grinding stations are equipped with ventilated covers and downdraft ventilation.

Sand Handling. At both foundries E and F molding sand is treated to remove large lead particles before it is used again. At Foundry E, used sand is treated for reuse and disposal in a ventilated basement area isolated from other process operations (Ex. 684e, p. 6). The sand recovery system at Foundry F is automated. Sand from the the mold machines and other areas of the plant is conveyed to the recovery area where it is put through two screening systems to remove lead and other contaminants before reuse (Ex. 684f, p. 11).

Work Practices. The major work practice control used by both foundries E and F is routine housekeeping. Neither Foundry E or F has installed a central vacuum system.

At Foundry E, twice daily a worker with a HEPA-filtered portable vacuum cleans up the dust generated throughout the foundry. Each worker also is responsible for cleaning his own work station. Nevertheless, the OSHA site visit team observed dust on floors and work surfaces at Foundry E, especially in the vicinity of moldmaking and pouring. The site visit team also observed brooms at several work stations (Ex. 684e, p. 6).

Representatives from Foundry F state that housekeeping is also performed several times a day at their foundry using shovels, brooms and mobile HEPA-filtered vacuums. In addition, the night shift maintenance crew uses a forklift-mounted vacuum system. Nevertheless, during its site visit, OSHA observed considerable dust buildup on stairs, railings, floors and work stations and observed the automated moldmaking machine operators using brooms rather than vacuums to sweep excess sand that had fallen to the floor in the vicinity of the machine (Ex. 684f, p. 12).

In addition to daily housekeeping, Foundry E vacuum cleans the entire facility, including the rafters, on an annual basis. At Foundry F, a similar complete plant cleanup has not been conducted since the summer of 1986.

Additional Controls. With the existing controls described in the previous section, OSHA has found that the majority of sampling results in the data sets upon which OSHA has relied already are at or below 50 $\mu g/m^3$ and that in nearly all operations the geometric mean already is at or below 50 $\mu g/m^3$ in one or more plants. These results were obtained without adjusting the data to eliminate the effects of cross contamination. In only two operations (pouring and cutoff saw) are unadjusted geometric mean exposure levels above 50 $\mu g/m^3$ at both foundries E and F (See Tables B and C, respectively, below). In a third operation, charging, some plants also have problems.

With the additional controls recommended by OSHA implemented and cross contamination controlled, OSHA anticipates that geometric mean exposure levels in all operations at Foundry E and in all but one operation at Foundry F will be at or below 50 $\mu g/m^3$. Indeed, OSHA expects that the geometric mean exposures in 19 of 26 job categories in these two foundries will be below 30 $\mu g/m^3$ after additional controls are implemented and cross contamination is controlled.

OSHA believes that for operations where most sampling results or the geometric means already are below 50 $\mu g/m^3$, relatively modest improvements in controls, such as improved housekeeping or better preventive maintenance (e.g., installing baffles to stop cross drafts or covering dross buckets), will be sufficient to reduce air lead levels of employees consistently below 50 $\mu g/m^3$. Similarly, for operations where most of the sampling results or geometric means are below 100 $\mu g/m^3$, OSHA believes that a combination of limited additional and improved controls (e.g., improving the efficiency of the ventilation system), will be sufficient to control exposure levels to 50 $\mu g/m^3$.

On the whole, the same sorts of controls that have been successfully utilized to achieve exposure levels at or below 50 $\mu g/m^3$ at foundries E and F and elsewhere are precisely the kinds of additional controls that OSHA recommends to reduce remaining excess air lead levels to or below 50 $\mu g/m^3$. The controls are local exhaust ventilation, enclosure and isolation, plant design, automation built into the production process, and work practices.

The Agency's discussion of the reductions of air lead levels expected to be achieved by implementing recommended controls relies in part on assessments made by a panel of three certified industrial hygienists established by OSHA's contractor, Meridian (Ex. 686A, pp. 19–25). The panel's assessments are based upon data in the record; site visits to Foundries E, F, and G; and the members' extensive experience and expertise as industrial hygienists. Although quantification of the estimated reductions involves a substantial amount of expert judgment, OSHA believes that the panel's assessment is the best available evidence in the record on the reduction in exposure levels that can be reasonably expected from implementing recommended additional and improved controls. However, while OSHA places substantial reliance upon Meridian as one among several bases for the Agency's feasibility determination, OSHA in its own analysis places greater emphasis than Meridian does on the problem of controlling cross contamination to reduce air lead levels to 50 $\mu g/m^3$ in non-ferrous foundries.

Prevention of Cross Contamination and Cross Drafts. As OSHA established in its analysis of cross contamination in the section on exposure levels, cross contamination appears to be a foundry-wide and industry-wide problem (see Table A above). For foundries that primarily produce leaded brass and bronze alloys, OSHA has conservatively

estimated that exposure levels in coremaking represent the increment to exposure levels generally due to cross contamination in each plant. From its analysis, OSHA concludes that it is technologically feasible to eliminate cross contamination.

There are two main reasons for this cross contamination. First, foundries have failed to adequately contain lead exposures at their primary source. Second, cross drafts exist, which disperse throughout the foundry the escaping lead fume and dust.

These cross drafts occur for a variety of reasons. For example, windows or doors left open, use of man-cooling fans, and reliance upon natural ventilation with seasonal variation, especially in open plants, all create cross drafts (e.g., Ex. 582–81, Letter from G. Mosher to R. Walther). Concerning the problem caused by man-cooling fans, Mr. Mosher stated in an 1980 industrial hygiene report to Ford Meter Box, "If there is one point I would like to stress * * * it is all man cooling fans in the foundry should be removed" (Ex. 582–81, Letter from G. Mosher to R Walther, p. 3). However, even in plants that have eliminated these obvious sources of cross drafts, cross drafts still can be produced by air transfers between hot and cold operations and imbalances in the mechanical ventilation system.

Not only do these cross drafts spread contamination from one operation to another, they also disturb the airflow of local exhaust ventilation, preventing exhaust hoods from operating effectively. OSHA's evaluation of the complex, plant-wide problems that cross drafts create is substantiated by the American Conference of Governmental Industrial Hygienists' book, *Industrial Ventilation*, which states that "[c]ross drafts not only interfere with the proper operation of exhaust hoods, but also may disperse contaminated air from one section of the building into another and can interfere with the proper operation of process equipment" (Ex. 583–13, p. 7–2).

OSHA assumes that air lead levels outside of plants generally are at least as low as required by the EPA, which limits ambient air lead levels to 1.5 $\mu g/m^3$, averaged over one quarter of a year (Ex. 601, p. 10). However, because this limit represents a quarterly average, there may be daily excursions to levels as high as 10 $\mu g/m^3$ (Ex. 601, p. 10). In addition, the fresh air supply may be contaminated by exhausted foundry air. Recirculating that air into the foundry will increase exposure levels in any foundry where makeup air quality is not maintained or where natural ventilation is used (Ex. 582–81, Letter from G. Mosher to R. Walther, pp. 1–2). In such cases, the makeup air supply constitutes another source of potential cross contamination, and without a filtration system workers' exposure to lead can never be lower than the concentration of lead in the supply air.

To the extent that these problems may exist at any foundry, foundries should exercise care to assure that supply air is not contaminated by greater than negligible levels of lead. Controlling this sort of contamination is very straight forward. All lead in the supply air should be removed by appropriate control methods (e.g., filtration) before delivery into the foundry.

To remedy the problem of cross contamination, as well as others, OSHA believes that the very first thing that non-ferrous foundries should do is to obtain the services of an experienced industrial hygienist to perform a foundry-wide industrial hygiene study that focuses on a task-by-task analysis of sources of exposure and analyzes cross drafts and cross contamination as a basis for designing cross draft barriers and other measures to eliminate them. Each foundry should undertake this kind of study in accordance with the requirements of paragraph (e)(3) of the lead standard (29 CFR 1910.1025), which requires employers to establish and implement written compliance programs.

OSHA is confident that such a study is essential to systematically control air lead levels in this industry. This is a precondition for employers instituting an effective, regular program to identify the precise sources of exposure and reasons for upset conditions in order to determine how best to reduce them to a minimum (Ex. 686A, pp. 40–41). The level of industrial hygiene understanding in foundries, especially at foundries F and G, is inadequate, according to Meridian. Meridian has further stated that it "can think of no control measure as likely to produce dramatic results as the relatively low-cost approach of obtaining the services of an industrial hygienist" (Ex. 686A, p. 41).

OSHA's conclusion that such a study is needed is supported by Mr. Knowlton Caplan, a well-known engineering consultant to the lead industry. Mr. Caplan has said that engineering controls should be designed with industrial hygiene problems in mind (Ex. 582–89, Appendix).

There appear to have been no recent attempts at foundries E and F to evaluate the significance of cross drafts or cross contamination on employee exposures to lead (Exs. 684e; 684f, respectively). Company representatives of Foundry F stated that there is no industrial hygienist on staff and that the company has not attempted to interpret its background sampling results (Ex. 684f, p. 13). Similarly, representatives of Foundry E stated that they do not employ an industrial hygienist, nor have they performed a recent task analysis or attempted to correlate background lead levels with employee exposure levels (Ex. 684e, p. 7). The only industrial hygiene study during the past 10 years that is documented in the remand record was carried out in 1980 at Ford Meter Box, prior to the installation of substantial additional controls at that facility. No similar industrial hygiene evaluation has been carried out since then to analyze the effectiveness of those controls.

OSHA believes that consultation with an industrial hygienist would help to resolve such problems inexpensively. Based upon its criticism of the inadequate expertise brought to bear to control exposure levels and of the poor quality of design of engineering controls recently installed in foundries, AFS might well agree with this point (Ex. 689–3, p. 1; see also Kenneth E. Robinson, "Eight Fallacies in Plant Air Handling," Exs. 689–7 and 689–13C, p. 56). Foundries appear recently to have spent considerable sums of money for engineering controls that they could have known were unsuitable and inadequate.

To control cross contamination simple steps may be effective. For example, at Foundry F, which is one of the more sophisticated foundries in the industry, the coremaking operation, which uses no lead or lead-contaminated materials, is cross contaminated. This is true despite the fact that the operation is separated from the furnace and pouring areas by some distance and by canvas curtains on three sides (Ex. 684F, p. 11). OSHA believes there are four likely factors contributing to this cross contamination. First, the operation is not enclosed on all sides. Second, the enclosure does not extend to the ceiling. Third, forklift trucks travel by the open side entraining and spreading lead dust from other operations. Fourth, a man-cooling fan, located at the edge of the open side and facing in, directs presumably contaminated air into the operation. OSHA believes that controlling these sources of cross contamination probably would require little more than completing the enclosure and providing some source of uncontaminated air.

Several other operations are much closer to these sources and therefore, everything else being equal, are likely to

suffer higher levels of cross contamination.

Erecting cross draft barriers at proper locations and assuring that windows and doors operate in a way to minimize airflow, as Foundry F has done (Ex. 684f), not only will decrease cross contamination, but also will increase the efficiency of exhaust hoods. High exposure levels in a particular work area also may be effectively contained within that area by maintaining the area under slightly higher negative pressure than surrounding areas. Once contained, emissions then must be captured. These measures will result in an appreciable reduction in air lead levels in all areas, as sources of lead extraneous to an operation are eliminated and control of sources of lead intrinsic to an operation is enhanced.

If preventing cross contamination is one of the most important steps that can be taken to reduce exposure levels generally throughout the non-ferrous foundry industry, other conventional controls that are applicable to many operations also should be implemented to broadly reduce exposure levels. Implementation of effective conventional controls already has dramatically reduced exposure levels in various operations throughout the industry (Exs. 582–11, 586–18, 583–13, 689–13 A and C, 689–3, and 689–4). These conventional controls include better ventilation, enclosure, isolation, housekeeping, and maintenance.

Ventilation. The presence of excessive lead in the work environments of non-ferrous foundries is proof that existing engineering controls like local exhaust ventilation (LEV) and general ventilation are not doing the job. Although much more quantitative and other information than industry has provided would be needed to state with any precision how great a reduction of any particular exposure level could be achieved by enhancing specific ventilation systems, OSHA has no doubt that in many operations improved or additional ventilation can achieve major reductions in worker exposure.

Such controls have been developed, tested, and where found effective, manufactured and applied widely for many years throughout industry to control specific contaminants. Conventional controls for nearly every operation in foundries have been described in detail and often depicted in photographs or diagrams by industrial hygienists and engineers from the American Conference of Governmental Industrial Hygienists (Ex. 583–13, pp. 5–4 to 5–20, 5–41, 5–48 to 5–60), AFS (Exs. 689–3; 689–4), NIOSH (Ex. 645), American National Standards Institute (Exs. 689–13A, 13B, 13C), and many consultants that have worked for OSHA or industry (Exs. 689–6; 689–7; 689–8; 689–9; 689–10; 689–11; 689–12).

Improved or additional ventilation can achieve major reductions in air lead levels at Ford Meter Box, for example, where in the furnace operation the capacity of the ventilation system fails to meet the AFS criteria for effective exhaust (Exs. 689–3, p. 26 and 689–4D, fig. 19). Specifically, at Ford Meter Box's melting rate of 1.5 tons per hour, a technical committee of AFS has recommended that ventilation at furnace openings be at least 12,500 CFM at all times. This is 25% above the 10,000 CFM currently used for charging, and dramatically above the 2,500 CFM used during melting at Foundry E (Ex. 582–81, p. 5). Based upon AFS' analysis, OSHA anticipates that increasing ventilation capacity to satisfy AFS criteria should result in nearly total capture of emissions by any appropriate hood.

At Foundry F, the ventilation system in general may be adequately designed, but it is not balanced properly. Foundry F appears to have an insufficient supply of makeup air, which means there is not enough makeup air to compensate for exhausted air. This is effectively conceded by the foundry's owner (Ex. 694–25, p. 4) and was manifest on OSHA's site visit in the fact that excessive negative pressure created by the imbalance kept doors from operating normally.

As the *Foundry Ventilation Manual*, written by a technical committee of the AFS, makes clear, this condition is prevalent throughout the industry (Ex. 689–3, pp. 67–68). From this manual it appears that ventilation systems often have been installed in foundries with little or no attention to the requirement of replenishing the exhausted air. As a result, capture velocities are likely to have been decreased and the removal of contaminants probably has been substantially reduced or even eliminated under extreme conditions of air starvation. AFS recommends that increasing the volume of makeup air to the appropriate level should improve the efficiency of exhaust ventilation by at least 5–10% (Ex. 689–3, p. 68, fig. 7–2).

Thus, it is imperative that improvements to existing ventilation and newly-installed ventilation be properly designed and installed. Many previously-installed ventilation systems, according to AFS' manual, appear to have been ineffective:

> Recognizing that the expertise required to properly design a ventilation system was not present on their staffs, foundry owners have increasingly utilized the services of engineering firms to accomplish this task. Many times such firms are not familiar with foundry processes, resulting in many ventilation systems being designed and installed which cannot provide proper control. Many designers follow commercial specifications which have no application in the industry.
>
> Without proper knowledge of specifications or data, engineering firms or equipment suppliers are seriously handicapped in providing good industrial equipment. The result is that the equipment and systems fail to provide the desired control and may not meet local, state and/or Federal codes.

(Ex. 689–3, p.1).

Improvements to ventilation systems can substantially reduce exposure levels. At Hill Air Force Base foundry, for example, a properly selected, designed, and installed control system has resulted in a decrease in air lead levels of 86% (from 50 $\mu g/m^3$ to 7 $\mu g/m^3$; Ex. 582–94). This system consists of up-draft ventilation primarily aimed at controlling fumes, the base of which is a ventilated grate and the top of which is a swiveling hood and telescopic ducts, which can accommodate various ladle sizes (Ex. 649). This system also can be operated in a down-draft mode to capture heavy lead particles, for example, in the shakeout operation.

Enclosure and Isolation. Enclosure and isolation are two alternative methods of separating workers from air contaminants. In the case of isolation, the employee is physically separated from contaminants in the air; e.g., by working in a filtered, ventilated control booth (Ex. 689–4D, fig. 32). With enclosure, the source of the contaminant is physically contained and separated from the rest of the work environment to prevent contamination of the air.

Docket entries describe standard enclosure techniques that are in use in the industry or can be readily implemented (e.g., enclosing casting operations; Ex. 590, p. 22). Simple isolation techniques that have been successfully used in certain plants in this and other lead industries are applicable throughout this industry (e.g., providing employees with filtered-air, ventilated cabs for mobile equipment, fresh air islands, isolation booths and control rooms; Ex. 689–4D, p. 7–14, figs. 31, 32).

Isolating workers even for a portion of their shift can significantly reduce exposure levels. For example, a Radian study of a secondary lead smelter demonstrates that employee exposures can be reduced by 23–77% even when employees spend only a portion of the workday in an isolation booth (Ex. 583–16, p. 30. Another study, by the National Institute for Occupational Safety and

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Health (NIOSH), investigating the effectiveness of various control technologies in secondary lead smelters, reports that workers spending even one-quarter of their time in a supplied air island would experience a 20% reduction in their 8-hour TWA exposure levels (Ex. 590, p. 40). Consequently, fresh air islands could be installed for operators near the furnace (e.g., charging) to reduce remaining excess exposures after other controls are implemented.

Housekeeping, Work Practices, and Preventive Maintenance. Housekeeping, work practices, and preventive maintenance are critically important controls whose importance frequently is not adequately recognized by employers. Failure to develop and use rigorous housekeeping, good work practices, and preventive maintenance can destroy the effectiveness of otherwise adequate engineering controls.

The importance of housekeeping measures in general was stressed in a report prepared by the Cadre Corporation for a secondary copper smelter (Ex. 475–32D, p. 58). The Cadre report states,

> [Housekeeping] is definitely the most underrated aspect of any fume abatement program. In any industrial facility there will be some amount of particulate in the air. Sooner or later this particulate is going to settle out on the plant floor, equipment and materials. If this dust is not collected and disposed of then it will become airborne again due to building drafts, mobile machinery traffic and numerous other disturbances. The housekeeping component of the abatement plan is a vital link in the success of the project. By neglecting to properly control settled particulate any gains made by capturing fugitive emissions will be minimal.

(Ex. 475–32D, H–004E, p. 58).

OSHA agrees. It is impossible to overemphasize the importance of good housekeeping and work practices. It only takes a small amount of lead dispersed throughout a building's air space to raise the airborne level over the PEL. Housekeeping in non-ferrous foundries needs to be improved.

For example, at Foundry F, which is offered by industry representatives as an exemplary operation, the last wall-to-wall cleaning was conducted more than 18 months prior to OSHA's site visit in February of 1988 (Ex. 684f, p. 12). Each non-ferrous foundry should thoroughly clean its entire facility, including rafters, at least annually (Ex. 609, pp. 15–16). At Foundry F, the site visit team also observed considerable dust buildup on stairs, railings, floors and at workstations (e.g., grinding and cutoff). Moreover, Foundry F continues to rely on dry sweeping in some operations (Ex. 684f, p. 12), which is prohibited under the lead standard except where vacuuming and other equally effective methods have been tried and found ineffective (29 CFR 1910.1025 (h)(2)(ii)). This prompted Meridian to recommend prohibition of dry sweeping and increased frequency of vacuuming and plant-wide cleaning. Meridian estimated that such straight-forward improvements in housekeeping as these could be expected to reduce worker exposures in general by 10–25% (Ex. 686a, p. 22).

Detailed housekeeping instructions should be prepared, in accordance with the requirements of paragraph (e)(3)(ii)(F) of the lead standard (29 CFR 1910.1025), and adherence to them enforced by employers, with scheduling and checkoff of regular cleaning of all areas of the plant where dust can collect. If necessary, housekeeping instructions should list individual sites, pieces of equipment, parts of equipment, and obscure corners (e.g., under conveyors) to assure that they are cleaned regularly.

Implementing appropriate work practice controls is also vital to achieving exposure levels at or below 50 $\mu g/m^3$. Engineering controls often can only be as effective as the associated work practices that determine how they are used and where the employee locates himself relative to the controls. For example, if the enclosed and ventilated crucible is moved too quickly to the molding area, fumes are removed from the capture range of the hood (Ex. 684e, p. 2). OSHA finds this work practice unacceptable. Employers should ensure that the crucible is moved in a manner that does not defeat the ventilation system (Ex. 686a, p. 20).

Work practices also should be written to prescribe correct procedures for all tasks that might result in increased employee exposure. Such procedures should dictate, for example, that an employee remove himself from proximity to a source of exposure whenever possible and, to the extent possible, isolate himself from contaminants in a fresh-air island or the like. Similarly, the dumping of dross in open bins should be prohibited. Care also should be taken to assure, whenever possible, that covers or exhaust hoods are kept on ladles and other lead-emitting vessels filled with molten metal (Ex. 586–18).

OSHA also notes the importance of maintenance programs to assure that all systems function as cleanly and as efficiently as practicable. For example, as stated in AFS' publications, (Ex. 689–3, p. 74, Table 6–1; and see *Safety in Metal Casting*, Des Plaines, IL, Vol. 6, 1970, p. 172), the needed control capacity for ventilation systems to protect air quality depends not only on proper design and installation, but also on proper maintenance and availability of sufficient makeup air. Exhaust systems lose their capacity because belts and pulleys slip, duct branches become clogged, duct couplings become loose and develop holes that leak air, filters become occluded, and fan blades become corroded or unbalanced. Thus, the effectiveness of engineering controls can be severely limited by poor maintenance.

Before discussing in detail OSHA's recommended additional controls operation by operation, a simple exercise suggests that implementing additional controls in a non-ferrous foundry to control exposure levels to or below 50 $\mu g/m^3$ is straightforward. Looking at the unadjusted data from foundries E and F, it is apparent that one or the other of the foundries already controls exposure levels to or below 50 $\mu g/m^3$ in all operations but two (pourer and cutoff/gate saw operator; see Table B, above). As a result, if Foundry E were to adopt the controls of Foundry F for operations in which Foundry F has achieved levels below 50 $\mu g/m^3$, and Foundry F were to do the same for operations in which Foundry E has achieved levels below 50 $\mu g/m^3$, geometric mean exposure levels would be below 50 $\mu g/m^3$ in all operations except pouring and cutoff.

For example, at Foundry E personal sampling results in shakeout and sand treatment are 61.7 $\mu g/m^3$ and 77 6 $\mu g/m^3$, respectively. By contrast, at Foundry F both of those operations have been enclosed and fully automated, with the result that no employee is exposed to lead in either operation (Ex. 684f, pp. 3–4).

On the other hand, for grinders at Foundry F geometric mean exposure levels are 57 $\mu g/m^3$ (see Table C), while at Foundry E they are 21.7 $\mu g/m^3$ (see Table B). In 1980, Foundry E had an arithmetic mean exposure level of approximately 90 $\mu g/m^3$ in grinding, because local exhaust ventilation was inadequate (citation omitted to protect confidentiality). Since that time, Foundry E has redesigned the dust hoods over grinders and increased capture velocity, thereby reducing exposure levels to well below 50 $\mu g/m^3$. Currently, exhaust ventilation in grinding at Foundry F appears to be inadequate. Members of the site visit team at Foundry F observed dust escaping the capture system. In addition, the site visit team observed

considerable dust buildup on stairs, railings and floors in this work area, which confirms that current ventilation is not capturing all emissions (Ex. 684f, p. 12). Using the sorts of controls Foundry E has instituted, Foundry F should have no problem achieving similar results.

Thus, a simple exchange of appropriate technology between the two foundries is likely to reduce exposure levels to or below 50 $\mu g/m^3$ in nearly all operations at both foundries. These results could be achieved even before cross contamination is effectively controlled and before any other additional controls are implemented in specific operations. In addition to the above controls, OSHA specifically recommends additional controls operation by operation.

Cutoff Saw. The cutoff saw operation is the source of some of the highest exposure levels in non-ferrous foundries and is probably the most difficult area to control to 50 $\mu g/m^3$. Indeed, although OSHA believes that significant reductions in exposure levels can be achieved, the Agency recognizes that in some plants in this single operation 50 $\mu g/m^3$ may not be consistently achievable.

Exposure levels exceed 50 $\mu g/m^3$ in the cutoff saw operation primarily because leaded dust is ejected from the saw at a high velocity. To capture this dust requires that dust hoods or enclosures be well-designed to handle various kinds of castings and local ventilation systems have adequate exhaust volume (cfm) (Exs. 583–13, pp. 5–41; 689–3, p. 62, figs. 6–7). OSHA believes that if the additional controls recommended below by the Agency and by the expert panel of certified industrial hygienists brought together by Meridian are implemented, exposure levels in the cutoff saw operation will approach 50 $\mu g/m^3$.

The cutoff saw operation, which is one of the two major sources of cross contamination in the industry, contributes substantially to total cross contamination. However, this exposure is experienced by the cutoff saw operator as direct exposure from his own operation, not as cross contamination. As a result, simply controlling cross contamination will not reduce these exposures for the operator. Controlling cross contamination will reduce the operators' exposures from the second substantial source of cross contamination, pouring, as well as from other operations. For purposes of analysis, OSHA assumes that one half of all cross contamination originates in the pouring operation. Consequently, the level of cross contamination included in the cutoff saw operators' exposure levels should be at least one-half of the total increment attributed to cross contamination.

For the cutoff saw operation at Foundry F, the expert panel recommends installing additional slots to improve down-draft ventilation and additional hoods over the blade (Ex. 686A, p. 21). The panel also recommends that both Foundries E and F use wet suppression. These controls, the panel estimates, will reduce worker exposure levels at Foundry F by 75–95% and at Foundry E by 25% (Ex. 686A, pp. 20–21). When these reductions are applied (OSHA conservatively estimates a 75% reduction at Foundry F) and after adjusting for cross contamination, OSHA anticipates that geometric mean exposure levels will be 49 $\mu g/m^3$ at Foundry E and 28 $\mu g/m^3$ at Foundry F (see Tables B and C, below).

In addition, in accordance with the manual prepared by a technical committee of AFS, OSHA also recommends installing a booth-type enclosure for the abrasive cutoff operation with a minimum of open area at the face of the enclosure where cutting should be performed (Ex. 689–3, pp. 51–52, 62). This should certainly further reduce exposure levels to the cutoff saw operator and the potential for cross contamination from this operation as well.

Pouring. Pouring is an operation in which exposure levels can be reduced below 50 $\mu g/m^3$. Before considering the installation of new controls in pouring, it is imperative that foundries perform industrial hygiene surveys to systematically assess the sources of their exposure problems and the effectiveness of current controls. OSHA believes that such surveys will confirm that there are two major problems with existing controls. The first is that in pouring and other operations the capacities of the ventilation systems in place are inadequate. Second, controls that have been installed not infrequently have proven to be inadequate because of a lack of industrial hygiene analysis prior to installation and/or failure to assess the effectiveness of such controls after installation.

For example, at Ford Meter Box's modern foundry, where the unadjusted geometric mean exposure level in pouring already is quite low (69.6 $\mu g/m^3$), the increase in production in recent years appears to have seriously taxed the capacity of the foundry's ventilation system (Ex. 582–81). Existing ventilation, including a Hawley close-capture system over the crucible and some side-draft ventilation at the pouring station, obviously is no longer adequate.

Data and comments from Ford Meter Box suggest that production has outrun ventilation capacity. These documents indicate, for example, that when the foundry first installed side-draft ventilation at pouring operations in 1980, exposure levels were reduced by at least 24%–40%. However, thereafter, as production rose by two-thirds between 1980 to 1987, exposure levels rose to above the levels that preexisted installation of these controls. This strongly suggests that production has exceeded the capacity of the system. Indeed Ford Meter Box itself admits it has exceeded the capacity of the system (Ex. 582–81, pp. 22–26, 29). Data from the first quarter of 1988 indicate that this situation has worsened (Ex. 698, p. 1).

Thus, there is obvious room for improvement in the ventilation system even before considering the installation of other controls. OSHA has no doubt that by increasing the capacity of the ventilation system, Ford Meter Box can reduce exposure levels to or below 50 $\mu g/m^3$ in pouring.

Like Ford Meter Box, Foundry F, where the geometric mean exposure level in pouring is 86.9 $\mu g/m^3$, also needs to increase the capture velocity of its local exhaust and to increase the number of ventilation slots. With this modification alone, the expert panel estimates that unadjusted exposure levels can be reduced by about 25% (Ex. 686A, p. 21).

The primary obstacle in effectively controlling exposure levels in pouring through local exhaust ventilation is that, while the molten metal is being poured, it emits fume that rises vertically into or near the breathing zone of the operator. However, exhaust ventilation cannot easily be placed directly over the mold, where it would be most effective, because that would interfere with pouring itself (but see, Ex. 649). Nevertheless, OSHA believes that substantial reduction in exposure levels can be achieved, for example, by installing the kinds of side or compensating hoods depicted in the AFS's manual, *Foundry Environmental Control* (Ex. 689–4–D, figs. 1, 13, 29). This side-draft ventilation is not positioned perpendicular to the floor beside the mold, as is conventional, but is angled so that it does reach out over the mold without interfering with pouring. Such a configuration, according to the caption beneath figure 13 in the AFS manual, would remove all fume and smoke emitted during pouring.

Foundry F is typical of the industry in its failure to take advantage of industrial hygiene expertise in assessing exposure problems, designing solutions, and

monitoring the effectiveness of newly-installed controls. For example, the foundry installed fresh air stations in the pouring operation (Ex. 684f, p. 10), without knowing in advance what all the sources of exposure were and without knowing afterwards how effective the new controls were (e.g., Ex. 689–7, p. 2).

Implementing other controls will further reduce exposure levels. For example, Foundry F should institute an annual wall-to-wall cleaning of the facility, the last one having been conducted in the summer of 1986 (Ex. 684f, p. 12). In addition, routine housekeeping also should be improved, to remove the dust observed by the OSHA site visit team in various operations throughout the plant and to maintain all surfaces as clean as practicable, as required by the lead standard (29 CFR 1910.1025(h)(1)). Controlling cross contamination will also reduce air lead levels in pouring.

The pouring operation, which is one of the two major sources of cross contamination in the industry, contributes substantially to total cross contamination. However, this exposure is experienced by the pourer as direct exposure from his own operation, not as cross contamination. As a result, simply controlling cross contamination will not reduce these exposures for the pourer. Controlling cross contamination will reduce the pourers' exposures from the second substantial source of cross contamination, the cutoff saw, as well as from other operations. For purposes of analysis, OSHA assumes that one-half of all cross contamination originates outside of pouring operation. Consequently, the level of cross contamination included in the pourers' exposure levels should be approximately one-half of the total increment attributed to cross contamination.

When the expert panel's recommended controls are implemented, the panel estimates worker exposure levels in pouring will be reduced by 32% at Foundry F (Ex. 686A, p. 21) and by 27–37% at Foundry E (Ex. 686A, p. 20). When these reductions are applied and after adjusting for cross contamination, OSHA anticipates that the range of geometric mean exposure levels will be 35–41 $\mu g/m^3$ at Foundry E and 53.5 $\mu g/m^3$ at Foundry F (see Tables B and C, below). Moreover, these estimated resulting exposure levels do not reflect all anticipated reductions (e.g., reductions anticipated from improved housekeeping, which the expert panel estimated could reduce overall exposure by 10–25% at Foundry F).

Charging. The only other operation that may require substantial controls to reach 50 $\mu g/m^3$ is furnace charger. The exposure data for workers performing this operation are quite limited and somewhat confusing. Neither Foundry E nor Foundry F have a separate job category called charger. OSHA therefore assumes charging is one of the tasks performed by employees classified in other job categories that already are or can be controlled to or below 50 $\mu g/m^3$. In foundries where charging constitutes a separate job classification, exposure levels in charging, like pouring, appear to vary directly with production levels.

There are two aspects to controlling exposure levels in charging. The first entails controlling the source of fume and dust released from the furnace during charging. Uncaptured emissions constitute a source of exposure to the charger and, via cross contamination, to workers in other operations. The second entails isolating the charger and modifying the charger's work practices to minimize resulting exposures.

With regard to the first aspect, the ventilation system must be well designed and its capacity must be adequate to capture emissions at prevailing and anticipated production levels (Ex. 689–3, p. 26). When the demands of higher production exceed the capacity of the ventilation system, large amounts of fume and dust will escape and employee exposure levels will rise.

For example, in 1980 at Ford Meter Box, when ventilation capacity was not obviously exceeded by the demands of production, exposure levels for charging ranged between 84.8 $\mu g/m^3$ and 95.8 $\mu g/m^3$. However, in 1987, with increased production, the average exposure level was 164 $\mu g/m^3$. These recent exposure levels are evidence that, with increased levels of production, the furnace operation is not adequately controlled and the charger, who works in close proximity to fume and dust, is not adequately protected.

According to Ford Meter Box, the only controls relevant to this operation are general plant ventilation, roof fans and a close capture ventilation system on the furnace. There appears to be no specific control directed at charging itself. OSHA believes that, aside from the obvious need to increase the capacity of the ventilation system at Ford Meter Box, a number of other readily available controls can be implemented to reduce exposure levels to or below 50 $\mu g/m^3$ in charging. These controls, which must be predicated upon an industrial hygiene survey to assess the foundry's particular conditions and be designed with health considerations in mind, should include enclosure of the charging port (Exs. 649; 689–3, p. 29, Fig. 3–4, p. 31, Fig. 3–6; 689–4D, Figs. 8, 10), isolation of workers on the charging deck in a fresh air pulpit (Ex. 689–4D, Fig. 32), and use of remote controls for delivering the charge to the furnace (Ex. 689–4D, Fig. 32).

OSHA believes that operations other than cutoff saw, pouring and charging either already are controlled to or below 50 $\mu g/m^3$ or are so close to that level that only the following, relatively modest improvments and/or additional controls may be needed.

Moldmaking. In moldmaking at foundries E and F, geometric mean exposure levels, unadjusted for cross contamination, already are below 50 $\mu g/m^3$. Once cross contamination is controlled, exposure levels for this operation in both foundries should be below 25 $\mu g/m^3$ (see Table B, below). The sole remaining source of lead in this operation is lead-contaminated, recycled sand. OSHA believes that more effective removal of lead from the recycled sand will further reduce exposure levels.

In addition, Meridian recommends reducing the fall distance for molding sand (e.g., flexible fall chutes), reducing drop distance for spillage, enclosing the sand dispensing operation, and providing three-sided slot ventilated enclosures to control dust from excess spillage. These combined controls recommended by Meridian are estimated by Meridian to reduce exposure levels by between 75–95%, which would maintain exposure levels well below 50 $\mu g/m^3$ in moldmaking (Ex. 686A, p. 19).

Furnaces. In addition to the controls recommended above (e.g., increase in ventilation capacity where it is too low for current levels of production), which should reduce exposure levels to or below 50 $\mu g/m^3$ in the furnace area in general and in charging specifically, limited additional controls should reduce exposure levels consistently to or below 50 $\mu g/m^3$ for employees engaged in other furnace tasks: melting, tapping, drossing, and transferring molten metal (see Tables B and C, below).

For example, by providing an exhaust hood equipped with a swiveling telescopic duct and employing push-pull ventilation (Ex. 649), Hill Air Force Base reduced exposure levels by as much as 86%, to well below 50 $\mu g/m^3$ (Ex. 582–94). The controls were successful in that small foundry in accommodating different-sized ladles as well as in controlling emissions during charging, tapping and drossing. The up-draft ventilated grates were successful in confining fumes generated from spills of molten metal or dross. At Hill, roof fans were completely eliminated and replaced with mechanical ventilation for providing sufficient make-up air. The location of the furnace was selected in a fashion that wind drafts from the access doors would not interfere with the function of the mechanical ventilation (Exs. 582–94; 649).

Alternatively to implementing controls appropriate to mobile operations, foundries can perform these operations at fixed stations with improved local exhaust (Exs. 689–4D, Fig. 24; 686A, pp. 19–22). For example, installing side-draft slot ventilation at the slag bucket is expected to reduce exposure levels to the worker performing drossing by 20–30% at Foundry E (Ex. 686A, p. 20). In addition, placing a lid on the slag bucket while tramp elements and compounds cool will further reduce exposure levels. Such control of emissions at their source will reduce exposure levels at other work stations caused by cross contamination from the furnace, as well.

Shakeout Operations. At Foundry F, the shakeout operation is automated, fully enclosed and exhausted. This has eliminated workers' exposures to lead in shakeout. OSHA supports this approach to controls as the most effective in the industry. Even at Foundry E, where partially enclosed shakeout equipment is employed, the unadjusted geometric mean exposure level already is 61.7 $\mu g/m^3$ (see Table B, below). OSHA recommends that Foundry E install a push-pull exhaust system, combining an adjustable hood mounted over an air supply (e.g., from a grate), which should reduce prevailing exposure levels by 5–25% (Ex. 686A, p. 20; and see Ex. 649)). In combination with controlling for cross contamination, these controls are anticipated to reduce exposure levels to well below 50 $\mu g/m^3$.

Finishing. Finishing consists primarily of cutting and grinding. OSHA has discussed the cutoff saw operation above. In grinding, unadjusted geometric mean exposure levels already are at 21.7 $\mu g/m^3$ at Foundry E and 57 $\mu g/m^3$ in Foundry F. OSHA has determined that increasing the capacity of exhaust systems for grinders, particularly by supplying fresh makeup air to the work stations, is the most effective way to reduce exposure levels to consistently below 50 $\mu g/m^3$ (Ex. 684e, p. 7).

Sandhandling. OSHA has determined that controlling exposure levels to or below 50 $\mu g/m^3$ in sandhandling is not a problem. At Foundry F, where sandhandling is basically automated, enclosed and locally exhausted, sandhandling is effectively controlled. At Foundry E, exposure data covering the last half of 1986 and the first quarter of 1987 indicate that controlling exposures to or below 50 $\mu g/m^3$ also should be relatively easy. The four sampling results are 37 $\mu g/m^3$, 51 $\mu g/m^3$, 59 $\mu g/m^3$ and 327 $\mu g/m^3$ (citation omitted to protect confidentiality). OSHA believes the final data point represents an aberration due either to upset conditions or sampling error (e.g., "a piece of particulate getting into the sample." Ex. 684e, p. 7). OSHA therefore concludes that exposure levels in sandhandling already are at or near 50 $\mu g/m^3$. Moreover, OSHA believes that current exposure levels in sandhandling at Foundry E are likely to be lower than 1986 monitoring results suggest, because a new baghouse was added in 1987 (Ex. 684e, p. 6).

TABLE B.—COMPANY E

Job classification	Unadjusted geometric mean	Geometric mean after recommended adjustment for cross contamination	Geometric mean after recommended additional controls are applied and after adjustment for cross contamination
Muller	35.6	8.6	[1] 8.6
Coremaker	27	—	—
Moldmaker	45.7	18.7	1.0–4.6
Melter	47.6	20.6	17.1–19.1
Pourer	69.6	[2] 56.1	35.3–41.0
Shakeout	61.7	34.7	26.0–33.0
Cutoff	78.6	[2] 65.1	48.8
Grinder	21.7	([4])	([4])
Sorter	65.3	38.3	1.9–9.6
Sand treatment	77.6	50.6	[1] 50.6
Cleaner	47.0	[3] 47	[1] 47

[1] No additional controls were recommended for this job classification by the expert panel of certified industrial hygienists.

[2] Because this operation is itself one of the sources of cross contamination, OSHA has only reduced exposure levels in this operation by one-half of OSHA's estimate of the increment due to cross contamination.

[3] Operation located in separate building and it is extremely unlikely this operation is affected by cross contamination from other operations. Therefore, OSHA has not reduced exposure levels in this operation by the estimate of the increment due to cross contamination.

[4] Negligible.

TABLE C.—COMPANY F

Job classification	Unadjusted geometric mean	Geometric mean after adjustment for cross contamination	Geometric mean after recommended additional controls are applied and after adjustment for cross contamination
Coremaker	16.5	—	—
Moldmaker	39.9	23.4	[1] 23.4
Furnace tender	50.9	34.4	[1] 34.4
Hot metal dispatcher	33.9	17.4	[1] 17.4
Pourer	86.9	[2] 78.7	[1] 53.5
Cutoff	121.6	[2] 30.4	[1] 22.2
Grinder	57	42.8	26.3
Pangborn	46.2	39.3	22.8
Sorter	38.5	22	[1] 22
Inspector	20.6	4.1	[1] 4.1
Electrician	44.9	28.4	[1] 28.4
Millwright	33	16.5	[1] 16.5
Forklift driver	32.3	15.8	[1] 15.8
Laborer	26	9.5	[1] 9.5
Supervisor	23.2	6.7	[1] 6.7

[1] No additional controls were recommended for this job classification by the expert panel of certified industrial hygienists.

[2] Because this operation is itself one of the sources of cross contamination, OSHA has only reduced exposure levels in this operation by one-half of OSHA's estimate of the increment due to cross contamination.

[3] OSHA has estimated this conservatively.

Technological Feasibility Conclusions. Based on the above analysis of the evidence in the record and OSHA's experience and expertise, the Agency determines that achieving a PEL of 50 $\mu g/m^3$ by implementing readily available engineering and work practice controls is technologically feasible in the non-ferrous foundry industry as a whole.

Nevertheless, the Agency recognizes that in some plants in the cutoff saw and pouring operations it may not be possible to consistently achieve the 50 $\mu g/m^3$ PEL by these controls. Since OSHA has found the 50 $\mu g/m^3$ PEL feasible for the industry, employers will be required in the cutoff saw and pouring operations, as well, to implement engineering and work practice controls to control exposure levels to the PEL or the lowest feasible level. Where all feasible engineering and work practice controls have been implemented and employees operating the cut off saw or performing pouring are still exposed above the 50 $\mu g/m^3$ PEL as an 8-hour TWA, employers will be required to provide these workers with respirators for supplemental protection while they are operating the cutoff saw and performing pouring.

To summarize, OSHA has shown the following. In the non-ferrous foundry industry the majority of useable sampling results already are at or below 50 $\mu g/m^3$, and in nearly all operations geometric mean exposure levels at

Foundry E or F (or both) already are at or below 50 $\mu g/m^3$. At foundries E and F a mere exchange of appropriate technology between the two foundries may be all that is necessary to bring nearly every operation at these foundries to or below 50 $\mu g/m^3$ (Exs. 684e; 684f; see Tables B and C, above). These results can be achieved even before other additional controls are implemented and before cross contamination is controlled. After additional controls recommended by OSHA are implemented and cross contamination is effectively controlled, OSHA anticipates that geometric mean exposure levels in both foundries E and F will be at or below 50 $\mu g/m^3$ in nearly all operations. Indeed, in 19 of 26 job categories in these two foundries, exposure levels are anticipated to be below 30 $\mu g/m^3$. In addition, in two other foundries, one studied by NIOSH (Ex. 582–11, Att.), upon which OSHA does not rely, and the other reported in a peer-reviewed article in the *American Industrial Hygiene Journal* (Ex. 586–18), exposure levels also appear to have been controlled to or below 50 $\mu g/m^3$.

OSHA also wishes to point out that all of its recommendations for achieving 50 $\mu g/m^3$ rely exclusively upon conventional and readily available controls. OSHA has not needed to exercise its statutory authority to force the development of new technology in this industry to justify its finding of feasibility.

Based on the foregoing OSHA believes that 50 $\mu g/m^3$ is achieveable most of the time in most of the operations in non-ferrous foundries. In reaching this conclusion, OSHA does not purport to have recommended an exhaustive list of additional controls. The Agency is certain that industry will be capable of devising and fine-tuning various controls to further reduce exposure levels. Consequently, OSHA anticipates that industry will be able to consistently achieve exposure levels at or below 50 $\mu g/m^3$ in nearly every phase of production.

OSHA acknowledges that the lead standard is strict and believes that to achieve the PEL requires implementing an integrated system of controls. The basic element in that system is an industrial hygiene study. Each foundry should have an experienced industrial hygienist perform an in-depth job/task analysis and a plant-wide survey. This survey and analysis should identify sources of emission in each task, sources of cross drafts or cross contamination, and appropriate sites for erecting cross contamination barriers. Such an analysis should also recommend appropriate engineering and work practice controls to reduce emissions and minimize employee exposures. If, after implementing these recommendations, reductions in air lead levels deviate substantially from what was anticipated, a follow-up industrial hygiene survey should be conducted and necessary corrections made.

The second element in that system is the development of good, written housekeeping and work practice programs that are systematically implemented so that proper procedures are routinely and meticulously followed. For example, wall-to-wall cleanups should be conducted at least annually.

The final element of an integrated system of controls is a preventive maintenance program to assure that all systems are maintained in clean and efficient condition.

The non-ferrous foundry industry does not agree that a PEL of 50 $\mu g/m^3$ is achieveable. Industry's disagreement is based on four main, and other secondary arguments. The four main arguments are:

Foundries E and F, which embody state-of-the-art technology, have not been able to consistently achieve 50 $\mu g/m^3$ (Exs. 582–81, letter from G. Mosher to R. Walther, p. 4, and Jacko report; 684f, pp. 12–13; 694–28, pp. 9–10); Foundries E and F, upon which OSHA has relied heavily in making this feasibility determination, are not representative of the non-ferrous foundry industry (*CITE*); OSHA's reliance on geometric means in assessing technological feasibility is inappropriate (Ex. 694–28, pp. 1–8); and the efforts of Meridian and its expert panel of certified industrial hygienists are biased, incompetent, and unsupportable (Exs. 694–26, pp. 2–8; 694–28, pp. 6–9).

First, industry argues that several foundries with state of the art technology, including Foundries E and F, have been unable to consistently achieve 50 $\mu g/m^3$. While OSHA concedes that these foundries have extensive controls and are not consistently achieving 50 $\mu g/m^3$ in all operations, the Agency does not agree that they have not been, or are unable to achieve 50 $\mu g/m^3$. OSHA also maintains that, despite the characterization of these foundries as "state-of-the-art," there are further controls and improvements that can be implemented there. For example, both foundries E and F need to improve the effectiveness of their current ventilation systems.

Nonetheless, OSHA has shown that at Foundry F geometric mean exposure levels and 50% or more of the sampling results already are at or below 50 $\mu g/m^3$ in 11 of 15 operations. At Foundry E, geometric mean exposure levels already are below 50 $\mu g/m^3$ in 6 of 11 operations. OSHA also has shown that by effectively controlling cross contamination and implementing the sorts of additional controls OSHA recommends, geometric mean exposure levels are anticipated to be reduced to or below 50 $\mu g/m^3$ in all operations at Foundry E and in all but one operation at Foundry F. In addition, in over 73% of the combined operations at these two foundries exposure levels are anticipated to be below the action level of the lead standard (30 $\mu g/m^3$).

The reason that foundries E and F are not achieving 50 $\mu g/m^3$ nearly all the time is not because they have reached the limits of technological feasibility. Rather, it is because after these foundries implemented what at the time may well have been state-of-the-art technology, they did not take steps necessary to maintain their foundries at that level.

For example, while Foundry E in 1980 may have had effective controls at then prevailing production levels, it has not since then made adequate modifications and improvements to those controls, especially including increasing its ventilation capacity to keep pace with increases in production. In addition, there is no indication in Foundry E's recent comments that it has effectively resolved certain other problems pointed out as long ago as 1980 by Mr. Mosher (citation omitted to protect confidentiality). Thus, Foundry E has not taken effective action to control cross contamination, and there is no indication in the record that it has dealt with the potentially serious problem of lead-contaminated exhaust air being recycled by external wind currents through open doors and windows back into the foundry.

Furthermore, within at least the last 8 years apparently neither Foundry E nor F has conducted the kind of industrial hygiene survey of plant conditions that OSHA considers to be the foundation of an integrated, state-of-the-art control program capable of consistently achieving the strict PEL of the lead standard. At Foundry F, for example, within 18 months of opening its new state-of-the-art plant, it decided that further controls were needed in the pouring area. Without consulting an industrial hygienist, Foundry F installed several fresh air showers to deal with the problem. Monitoring results before and after installing these showers do not indicate any noticeable reduction in air lead levels, which remain excessive (Ex. 613B–6). Nonetheless, Foundry F still has not employed an industrial hygienist to assess these results.

Consequently, OSHA is unpersuaded by industry's argument that Foundries E and F, with their "state-of-the-art" technology, have been unable to achieve 50 $\mu g/m^3$ and that therefore the PEL is unachieveable by engineering and work practice controls.

Second, industry argues that Foundries E and F are not representative of the industry, which is comprised of unique plants, many of which are small, and most of which are less well controlled than these two foundries. In response, OSHA wishes to emphasize that the fact that foundries E and F may have more controls than most other foundries does not preclude OSHA from relying upon them for purposes of making its determination about technological feasibility. On the contrary, the fact that these foundries have been able to achieve 50 $\mu g/m^3$ in so many operations through conventional methods is the best evidence of technological feasibility. So, the fact that the level of controls at Foundries E and F may be higher than elsewhere in the industry does not in itself make them unrepresentative on the issue of technological feasibility.

The ultimate determination of technological feasibility depends not upon the level of control that may be currently typical in an industry, but rather upon the level of control of which the industry is capable. Indeed, the court has stated that to prove technological feasibility OSHA need not prove that the controls needed to achieve a PEL have already been successfully implemented in any plant in the industry. OSHA need only prove a reasonable possibility that a typical firm will be able to develop and install engineering and work practice controls that can meet the PEL. *USWA* v. *Marshall*, 647 F. 2d at 1272.

Consequently, the relevant issue in this regard is only whether the diversity within the non-ferrous foundry industry somehow technologically precludes the controls implemented at Foundries E and F from being adopted and adapted by other typical plants, which may be smaller or have other distinguishing characteristics. While recognizing this diversity, OSHA believes the controls at Foundries E and F can be implemented, with appropriate adaptation, by typical foundries in the industry.

The controls used in both Foundries E and F are conventional, and as indicated above, OSHA's recommendations to further reduce exposure levels also rely exclusively upon conventional controls. These readily available controls are predicated upon widely accepted general principles of industrial hygiene. Of course, as in most industries, controls that have been implemented in one plant may have to be somewhat modified to adapt them to particular conditions in other plants. However, OSHA does not accept the proposition that there is anything so unique about the non-ferrous foundry industry or anything inherent in the relevant controls that would impede or preclude such adaptation by typical plants. Foundry E, for example, is a captive foundry that produces a wide range of castings, some in low volume. In this respect, most small foundries, which run special jobs in low volume, are similar to Foundry E.

Third, industry argues that OSHA's reliance in its technological feasibility assessment on the concept of the geometric mean is inappropriate. OSHA disagrees primarily for the reasons previously set out. Industry's main criticism of the use of the geometric mean is that showing that an industry can achieve geometric means below 50 $\mu g/m^3$ is insufficient to prove technological feasibility, unless OSHA can prove industry is capable of achieving geometric means far below 50 $\mu g/m^3$ so that industry is guaranteed that it can achieve 50 $\mu g/m^3$ all or nearly all the time.

OSHA agrees in part with this point but believes that industry has misunderstood how geometric means are being used in the Agency's feasibility determination. However, Meridian may have used the geometric mean, OSHA wishes to emphasize that, while the Agency certainly has relied upon the geometric mean to assess feasibility in non-ferrous foundries, it has not treated the fact that the industry may already be achieving a geometric mean of 50 $\mu g/m^3$ as tantamount to a proof of technological feasibility. Rather, the Agency's position is that a geometric mean of 50 $\mu g/m^3$ indicates that some controls are in place to limit excessive worker exposures or that exposure levels are low to begin with and that only relatively modest further additions and improvements to controls are necessary to consistently reduce exposure levels to or below 50 $\mu g/m^3$.

Industry further argues that if the Agency uses a geometric mean it should recalculate the geometric mean to three standard deviations from the mean to provide "a reasonable level of assurance" of compliance (Ex. 694–28, pp. 1–8). By reasonable assurance, industry means that statistically more than 998 out of every 1,000 samples would be at or below 50 $\mu g/m^3$.

However, as the courts have said, to prove the technological feasibility of a PEL, OSHA is not required to prove that an industry can achieve the PEL in all of the operations all of the time. *USWA* v. *Marshall*, 647 F. 2d at 1270. Indeed, if a PEL is generally feasible across an industry, there may still be operations in which the PEL can never be achieved and in which industry's obligation is to engineer down to the lowest feasible level. In that case, fulfilling this obligation constitutes compliance with paragraph (e)(1) of the lead standard (29 CFR 1910.1025).

For example, suppose hypothetically that exposure levels for employees in 9 of 10 operations in a particular industry can always be controlled below 50 $\mu g/m^3$. Suppose further that exposure levels for employees in the single remaining operation can never be controlled to 50 $\mu g/m^3$. Despite the fact that 50 $\mu g/m^3$ is clearly feasible in 9 of 10 operations, if all employees are sampled at the same frequency and if the same number of employees work in each operation, 10% of the sampling results will always exceed 50 $\mu g/m^3$. OSHA, nonetheless, would conclude that 50 $\mu g/m^3$ is technologically feasible for that industry, even though it is infeasible in that operation. The Agency believes that the fact that exposure levels for a minority of workers cannot be controlled as effectively as exposure levels for the majority is no reason to forego protection to the extent feasible for the majority.

Even if, for purposes of argument only, OSHA were to accept the notion that feasibility entails some statistically anticipated level of minimum assured compliance and assuming the exposure data were good enough to support such analysis, the Agency, as a matter of policy, would set that minimum considerably lower than industry suggests. OSHA believes that industry's minimum of 998 out of 1,000 samples, which is virtually all the time in all operations, is in conflict with the court's opinion that to prove technological feasibility OSHA does not have to prove the PEL can be achieved in all operations all of the time. OSHA further believes that if industry's interpretation were to prevail it would effectively subvert OSHA's statutory mission to protect workers to the extent feasible.

Moreover, again for purposes of argument only, if OSHA accepted industry's suggestion that for a PEL to be technologically feasible a geometric mean well below 50 would be required to provide the necessary assurance of compliance, the Agency would still conclude that a PEL of 50 $\mu g/m^3$ is technologically feasible in the non-ferrous foundry industry. As indicated at

the beginning of this section, OSHA anticipates that after its recommended controls are implemented at foundries E and F geometric mean exposure levels in over 95% of the combined job categories are anticipated to be well below 50 $\mu g/m^3$. In fact, over 73% are anticipated to be below 30 $\mu g/m^3$ (see Tables B and C, above).

Finally in this regard, industry argues that, instead of relying on geometric means, OSHA should eliminate what the Agency considers to be outlying data points and use arithmetic means (Ex. 694–28, p. 1). Industry seems to favor this substitution because it believes geometric means are lower than arithmetic means. OSHA cannot accept this suggestion in this rulemaking. OSHA believes industry's alternative would require OSHA to make highly subjective judgments concerning what constitutes an outlier. By contrast, the geometric mean is a statistic derived from an objective mathematical formula that results in appropriately de-emphasizing outliers and reflects typical exposure levels. The way OSHA uses geometric means in this rulemaking is widely accepted in the scientific community. Industry itself often uses geometric means in comparable ways.

Fourth, industry has devoted considerable effort in written comments and in cross examination at the hearing to impugning the competence and integrity of OSHA's contractor, Meridian, and the expert panel of certified industrial hygienists established by Meridian (e.g., Ex. 694–26, pp. 5–6, 9, 12). On the whole, OSHA rejects these criticisms and believes that Meridian did a creditable job given time and resource constraints.

Meridian has had extensive experience and possesses very broad competence in the area of industrial hygiene, the principles of which are universally applicable to all industries. It also has expertise and has broad experience in assessing factors relevant to technological feasibility. Physically, there is nothing unique about lead dust and lead fume or about non-ferrous foundries that would make Meridian's extensive expertise and competence in evaluating engineering and work practice controls across many industries irrelevant to this industry. The control technologies recommended are conventional and transferrable from similar industries, and the anticipated effectiveness of these controls in reducing air lead levels also is the same across industries.

Meridian's final report (Ex. 686A) and its conclusions are based on numerous sources in the record. These include data, other evidence, and comments submitted by foundries, unions, trade associations and other interested parties; site visits to three foundries, participated in by two experienced certified industrial hygienists; and recommendations by an expert panel of three experienced certified industrial hygienists, two of whom had been on all the site visits. The industrial hygienist on the panel who did not go on site visits had previously had extensive experience in non-ferrous foundries (Ex. 609, pp. 1–2).

Of course, notwithstanding their experience and expertise, Meridian and the expert panel may have drawn some incorrect conclusions and made certain mistakes of fact. This is almost inevitable when a contractor can devote only limited time and resources to examining a complex industry and a voluminous record. Such mistakes are more likely to occur where, as in the case of the non-ferrous foundry industry in this rulemaking, an industry declines to testify and to subject itself to any questioning at the public hearing.

Thus, OSHA concludes that Meridian's revisions and its conclusions generally are firmly grounded in the record. In any event, OSHA has independently assessed the record, reviewed Meridian's final report for accuracy, taken account of industry's comments on that report, and relied only in part upon the Meridian report for the Agency's feasibility determination.

In addition to its main criticisms, industry makes a number of other arguments, all of which the Agency has carefully considered and four of which are important enough to deal with individually. Industry argues that day-to-day variability of exposure levels within a foundry makes it impossible to achieve 50 $\mu g/m^3$, on a regular basis; that 50 cannot be achieved in foundries E and F or in other foundries without rebuilding (Exs. 582–81, p. 33; 694–25, p. 6); that recycled lead-bearing sand, which contaminates several operations, is so abrasive that equipment to permanently enclose or automatically convey it will have a short life expectancy, and that task analysis cannot be usefully performed because of low exposure levels and short exposure times.

With regard to the variability argument, OSHA recognizes that some variability in exposure levels above or below an average level does occur over time. However, much of this variability is due to factors that are identifiable and frequently within the control of the employer, such as poor work practices, inadequate housekeeping and upset conditions (Exs. 686A, p. 40; 694–42, p. 8). In addition, at least one foundry has conceded for example, that a certain percentage of sampling results that seem to suggest variability is instead the product of contamination of the sampling device by large stray lead particles (Ex. 684e, p. 7).

OSHA strongly believes that if production and engineering and work practice controls are properly and consistently carried out, the factors causing variability will be largely controlled and the range of variability will be very narrow. OSHA therefore considers evidence of repeated, wide-ranging variability in exposure levels as evidence of the inadequacy of controls. That inadequacy, of course, hardly constitutes evidence of infeasibility.

Once the range of variability has been narrowed by effective controls, the degree of latitude for variability that is built into OSHA's determination that the PEL is feasible should prove sufficient. This latitude is implicit in OSHA's conclusion that in most operations foundries will be able to reduce exposures to levels that are reasonably below 50 $\mu g/m^3$.

However, OSHA understands that from time to time peak exposures due to unforeseeable upsets or other aberrational events will exceed the latitude for variability. The Agency takes account of that possibility in its enforcement policy (FOM). As a result, OSHA does not believe that such excursions are relevant to its feasibility determination.

Second, industry argues that 50 $\mu g/m^3$ cannot be achieved in Foundries E and F or in other foundries without rebuilding (Exs. 582–81, p. 33; 694–25, p. 6). OSHA has already shown that the PEL can be achieved most of the time in most of the operations at Foundries E and F through the mere exchange of technology currently employed and without rebuilding. As to the other plants that are said to require rebuilding, industry has not presented any evidence to support that assertion. The main argument of industry in this regard seems to be that Foundries E and F have effectively implemented all the controls that can be implemented in their existing plants. OSHA has already shown this assertion to be incorrect as well. The analogous argument that most other foundries cannot do more within their existing plants is not only unsupported by documentation, but also inherently suspect given the apparently low level or poor quality of engineering controls in most small foundries (Ex. 689–3, p. 1). On the other hand, OSHA does recognize that some foundries may require extensive capital improvements if they are to achieve the PEL.

Third, industry argues that recycled lead-bearing sand, which contaminates several operations, is so abrasive that equipment to permanently enclose or automatically convey it will have a short life expectancy. Although the record is devoid of evidence concerning the life expectancy of such equipment, OSHA doubts industry's position. Covered screw conveyors are typical material handling methods for sand. Specifically, it is perfectly apparent that sand handling can be permanently enclosed and automatically conveyed since Foundry F has already done so (Ex. 684f, App. A). Foundry F says nothing regarding equipment problems arising from the abrasiveness of sand.

Consequently, OSHA is unpersuaded by industry arguments. Based upon its own expertise, experience and the record evidence, OSHA concludes that a PEL of 50 $\mu g/m^3$ is technologically feasible by means of engineering and work practice controls in the non-ferrous foundry industry.

Uses. The non-ferrous foundry industry produces a wide range of cast products for various uses. Castings may be quite small (electrical connectors weighing less than an ounce) or very large (such as an 80,000 pound ship's propeller) [Ex. 582–84, p. 1]. Other types of castings include bushings, bearings, valves, and fittings [Ex. 571, p. 8]. Castings are used extensively as components in equipment such as military hardware, electric power generation and distribution systems, mining machinery, and plumbing ware [Ex. 475–3A, p. 1] as well as in applications such as bathroom fixtures, furniture, and decorative items [Ex. 571, p. 8].

Industry Profile. Non-ferrous foundries are establishments that melt and cast non-ferrous metals. Of interest in this rulemaking are those foundries casting metal alloys which contain lead, namely copper and copper-based brass and bronze castings. (Lead is added at concentrations that range from 0.02 to 42.5 percent in 130 commercially available alloys, primarily to increase the properties of tightness, lubricity, and machinability [Ex. 475–3, p. 2; Ex. 582–84, p. 2].)

In written testimony submitted by James L. Mallory, the Executive Director of the Nonferrous Founders' Society, at the Informal Public Hearing held November 3–6, 1987 in Washington, DC [Ex. 581–2, p. 2], reference was made to the 1986 Foundry Industry Census [Ex. 658]. This census indicates that 1,291 foundries are involved in the production of brass and bronze alloys. This figure includes all foundries for which brass and bronze alloy castings are a primary activity (over 50% of production) as well as those for which such castings are a secondary or tertiary activity (less than 50% and less than 10% of production, respectively). Also included are a substantial number of "captive" foundries (those establishments where castings are produced and incorporated into another manufactured product or process at the same establishment) that may be found in SIC classifications other than 3362, such as 3432 (Plumbing Fixtures and Brass Goods), 3494 (Valve and Pipe Fittings), and 3561 (Pump and Pumping Equipment Manufacturers).

For the purposes of this rulemaking, OSHA estimates the number of foundries affected by the standard to be 1,291 based on the latest estimates submitted by the ACMA and AFS. Of these 1,291 foundries, approximately one-half, or about 616 foundries, primarily produce brass, bronze, and copper alloy castings [Ex. 581–2, testimony of J. Mallory, p. 2]. The remaining 675 foundries produce some brass, bronze, and copper castings, although their primary work is with other metals and alloys [Ex. 677]. Also, information in the 1986 foundry census indicates that about 20 percent of all foundries are exclusively captive or primarily captive [Ex. 658, p. 2]. Thus, OSHA estimates that about 258 captive operations are part of this industry sector. OSHA also estimated establishment count by size category. Three size categories were used: small plants employing 9 or fewer workers, small plants employing 10 to 19 workers, and large plants employing 20 or more workers. The number of establishments in each of these size categories is provided with respect to primary function in Table H.

Based on the latest information, there are approximately 18,585 lead-exposed workers in this sector. Total employment has been estimated to be about 23,000 [Ex. 686a, p. 2].

Non-ferrous foundries are predominantly small establishments, with the great majority of firms operating only one foundry. In 1982, the Census Bureau reported 484 firms owning 500 foundries in SIC 3362 [Ex. 571, p. 11]. Recent information indicates that 57 percent of all foundries involved in the production of brass and bronze castings employ fewer than 20 workers [Ex. 582–84, p. 1].

Value of Shipments data was compiled by Meridian in current dollars and in constant 1982 dollars for primary brass and bronze foundries (SIC 3362) [Ex. 571, p. 9]. As would be expected due to the recession of the early 1980s, both indicators showed a sharp drop of 15 to 20 percent between 1981 and 1982. Bet7een 1982 and 1985, value of shipments in current dollars increased from $702 million to $797 million while the value of shipments in constant 1982 dollars was unchanged. Weight of metal content decreased from 564 thousand short tons to 444 thousand between '81 and '82. Increases were realized in each of the next two years but a decrease from 504 thousand short tons to 470 thousand occurred between '84 and '85 [Ex. 571, p. 9]. More recently, shipments of copper castings were estimated to have increased by about 11 percent between 1986 and 1987 and by about 10 percent between 1987 and 1988 [U.S Industrial Outlook, 1989, Department of Commerce].

With regard to import competition, Meridian reported that

> . . . imports can compete with domestically produced castings in a variety of ways. Castings may be imported directly by firms using castings. Products incorporating castings, such as valves, fittings, and decorative items, may also be imported. In addition, increased imports of machinery reduce the domestic market for castings [Ex. 571, p. 10].

No data were available which would allow OSHA to develop a quantitative estimate of the degree of import penetration.

Dun & Bradstreet financial information for 1986 and 1988 provided estimates of average sales and allowed OSHA to compute rates of return on sales (ROS) for Primary Brass, Bronze, and Copper Foundries (SIC 3362) by asset size class. For those firms with less than $100,000 in total assets, the 1988 median ROS was 2.4 percent; for firms having total assets of between $100,000 and $1,000,000, the 1988 median ROS was 5.7 percent; and for firms in the over $1,000,000 asset class, the 1988 median ROS was 6.2 percent. (ROS rates for 1986 reported by Meridian research (Ex. 571, p. 14) were used to disaggregate and apportion the total ROS for the industry sector which was available for 1988.) This information suggests that most primary brass, bronze, and copper foundries were operating profitably in 1988. These data were used in conjunction with 1988 data from Dun's Market Identifiers, which provided sales by employment size class, to compute economic impacts.

Rates of return on sales for manufacturers in SIC codes other than 3362 were examined for the year 1985 and were not found to differ significantly from SIC 3362 [Ex. 686a, p. 7]. These facilities were in SICs where captive foundries most likely would be found.

Information submitted into the record provided another source of financial data. Meloon Foundries, a small facility, claimed sales of $3,000,000 and 4 percent net profit on sales, though only 20 percent of their business is lead related [Ex. 582–2]. Another small foundry, Kloppenborg Foundry and Fan Company, claimed $330,000 in total sales, a return on assets (ROA) of 5.74 percent, and a return on net worth of 6.05 percent [Ex. 582–29]. Over the last 5 years, Kloppenborg's percentage of brass-related sales has ranged from 19 percent to 24 percent. Montclair Bronze, a foundry employing 25 workers, reported lead-related sales of $490,000 and a net worth of $800,000 for 1986. Lead-related returns make up 20 percent of Montclair's total returns [Ex. 582–37]. A large operation, Ford Meter Box Company, reported a dollar value of castings for 1986 of approximately $9 million [Ex. 582–81]. All returns for this company are lead related. Foundry "D" [Ex. 667], also a large foundry with essentially all of its returns being lead related, has sales which range between $8 and $15 million annually.

Costs of Compliance. This section presents OSHA's estimate of the compliance costs that would be incurred by employers in the nonferrous foundry industry sector in order for them to achieve the permissible exposure limit of 50 micrograms of lead per cubic meter of air by engineering and work practice controls. Only those costs associated with engineering and work practice controls were considered, and no savings due to reductions in costs for respirator usage were estimated. In developing its estimate, OSHA relied on the study performed by its contractor, Meridian Research, comments submitted in response to OSHA's August 3, 1987 request for information, comments and testimony received prior to, during, and after the informal public hearing held November 3–6, 1987, and information obtained from three site visits to nonferrous foundries.

Compliance costs expected to be incurred by foundries were estimated by Meridian Research in their August, 1987 report and were dependent upon the number of sources of lead dust and fume in the facility as well as the extent of ventilation controls, if any, already in place. The incremental annualized costs were estimated separately for small and large facilities.

Prior to and during the informal public hearing, a number of comments were received from the public regarding the Meridian cost estimates. Joint comments submitted by the American Cast Metals Association (ACMA) and the Nonferrous Founders' Society (NFFS) expressed the view that Meridian understated the magnitude of the compliance costs [Ex. 582–86, p. 15]. One cause of this, they argued, was Meridian's apparent failure to include the substantial expense of a traveling vent in their $15 per cfm (cubic feet per minute) ventilation expense. The commenters also cite a submittal by Philip S. Zettler, President of Vulcan Engineering Co., a manufacturer of ventilation equipment and traveling vents, in which Mr. Zettler stated that "the cost to control lead to [the] proposed standard in small foundries would be on the magnitude of $500,000 to $700,000" [Ex. 582–34]. (The estimate made by Mr. Zettler included no baseline information, that is, the level of control that was assumed to be in place in a small foundry to begin with, though it is generally agreed that this level is quite low. Also, no information was given as to the assumed lead content of the alloys).

The ACMA–NFFS comments were also critical of Meridian's modelling of foundries. The commenters pointed out that the number of grinding and finishing stations modelled did not reasonably represent such facilities [Ex. 582–86, p. 16]. These commenters also objected to the baseline level of control used by Meridian, claiming it was too high [Ex. 582–86, pp. 16–17]. Unfortunately, no specific correction was suggested.

Chicago Faucet noted that the costs developed in the Meridian report were understated, asserting that "Meridian has totally ignored the cost or installation of make-up air" [Ex. 582–13, p. 4]. At the industry-wide level, a submission by Mr. James Mallory argued that Meridian's count of the number of foundries affected by the standard was underestimated [Ex. 581–2, p. 2].

Other evidence in the record suggests that the Meridian cost estimates may have been overstated. Dr. Franklin Mirer, a toxicologist and Certified Industrial Hygienist and director of the Health and Safety Department of the UAW, stated that the $15 per cfm estimate was unrealistic for smaller plants, and cited instead figures of $4 to $7 per cfm [Ex. 643; Tr., 829–830]. During questioning at the hearing, Dr. Mirer explained that for certain smaller facilities it might be possible to achieve the standard using only general ventilation techniques [Tr., p. 839], and that in such a case the ventilation cost would only be about $4 per cfm. Even if a small facility does need a "conventional" ventilation system, the costs are likely to be less than for a large facility due to the fact that less ductwork is required. [Ex. 643, p. 8; Tr., 839–840].

Meridian's Addendum [Ex. 686a] to their August, 1987 report reflects these commenters' concerns with regard to costs. The model foundries were adjusted to more accurately represent existing conditions in foundries. Specifically, the number of grinding and finishing stations, as well as travelling vents for ladles, were increased [Ex. 686a, p. 43]. Also, a cut-off saw was added as an emission source and ventilation requirements for furnace operations and shakeout areas were increased. With regard to the number of affected foundries industrywide, the total was increased to 1,291 to include all captive and non-captive foundries.

Also, Meridian's original estimate of the baseline level of control for small foundries was increased to reflect information which indicated that they have, on average, implemented about 30% of the controls necessary, as opposed to the 10% figure used previously [Ex. 686a, p. 44].

Meridian responded to questions concerning the types of costs included in their $15 per cfm estimate during the informal public hearing. They indicated that "[t]his was an estimate designed to cover all of the aspects of the ventilation cost, the direct ventilation, the baghouse, any things needed for makeup" [Tr., p. 442]. Existing evidence in the public record appears to support this value as a reasonable estimate for average costs per cfm for large foundries. Foundry "B" [Exhibit 667] describes a 175,000 cfm system which cost $988,755. This equates to only $5.65 per cfm (but does not include costs incurred by foundry personnel). In a submittal made by the Ford Meter Box Company [Ex. 582–81], costs of $8.67 per cfm were reported in 1981 for a mold ventilation system (about $9 in 1985). Costs higher than $15 per cfm were reported by Wisconsin Centrifugal. Average costs for systems "A", "C", "E", and "F" were about $17 per cfm in 1980, and did not include makeup air [Ex. 582–59].

Small foundries apparently have an advantage in that they require shorter runs of ductwork, as noted above. To reflect this advantage, Meridian revised their unit cost for ventilation to $7 per cfm for small foundries. Using this value produced an average incremental capital cost of compliance of $245,700 per small foundry [Ex. 686a, p. 44]. Total annual costs, including annualized capital (annualized at a 10 percent cost of capital and useful life of 12 years) and operation and maintenance expenses estimated at 10 percent of capital costs each year, would be $60,640. These costs are summarized in Table D. (Small foundries as defined by Meridian for the purposes of their analysis were those plants employing 20 or fewer workers). These are the average costs required per foundry to move from the baseline to compliance with the 50 microgram PEL. Evidence submitted into the docket indicates that this is a reasonable estimate for many small foundries, particularly those for which lead-containing castings are a secondary or minor product. For example, Meloon Foundries, Inc., a small foundry which submitted cost data, estimated that an investment of $250,000 would be required to implement fume control for existing facilities. AACCO Foundry, Inc. also submitted cost estimates [Ex. 582–58]. They quoted $2,600 as the engineering design fee for a ventilation system and $80,000 as the cost of the system itself. The size of this foundry was not discernable from the letter submitted, but it was assumed that it was a small foundry.

As noted above, the estimate for small foundries developed by Meridian applied to all foundries with fewer than 20 employees. However, information obtained from Duns Market Identifiers, which allowed OSHA to better utilize financial statistics contained in the public record, as described below, indicated that approximately 67 percent of this group actually employ fewer than 10 workers. Since information in the record indicates that exhaust air requirements could be less for very small foundries, OSHA believes that the Meridian estimate overstates compliance costs for these firms [Exs. 689–4D; 571, p. 14]; thus, OSHA has estimated costs for very small operations separately. It is estimated that very small foundries pouring primarily leaded alloys will require ventilation for three pit-type furnaces and two finishing stations while foundries of this size pouring primarily non-leaded alloys will require ventilation for one such furnace and one finishing station. Ventilation requirements would be 3,000 cfm per furnace [Ex. 689–4D, p. 7–3] and 2,000 cfm per finishing station [Ex. 686a, p. 45]. Each very small foundry is also estimated to require ventilation for one hand-pouring station, at 2,000 cfm, and one shakeout station at 6,000 cfm [Ex. 686a, p. 45]. Unit costs were estimated to be $4 per cfm. Total annual costs for ventilation, including annualized capital and O&M expense, and assuming baseline compliance to be 30%, would be $14,512 for primary brass and bronze foundries and $8,984 for foundries pouring primarily non-leaded alloys.

Costs for additional housekeeping for primary brass and bronze foundries employing 9 or fewer workers were estimated to be 50 percent of the Meridian estimate for small plants, or $829, while costs for additional housekeeping for foundries pouring primarily non-leaded alloys and employing 9 or fewer workers were estimated to be 25 percent of the Meridian estimate, or $415.

Total annual costs for these foundries would be $15,341 (foundries primarily pouring leaded alloys) and $9,399 (foundries primarily pouring non-leaded alloys).

Meridian's revised capital cost estimate for large foundries was $376,500 [Ex. 686a, p. 46]. Total annual costs would be $92,920, including annualized capital costs and operation and maintenance expenses. These costs are summarized in Table E.

For those foundries in all size categories for which leaded alloys constitute less than 10 percent of all production, lead fume and dust may be generated only occasionally. OSHA estimates that little or no cost will be incurred by such firms, since their workers should come under the 30-day exclusion rule, with 8-hour TWA exposures not exceeding the 50 $\mu g/m^3$ PEL for 30 days or more per year. (Under paragraph (e)(1) of the lead standard, any employer who can demonstrate that workers are exposed to lead in excess of 50 $\mu g/m^3$ for 30 or fewer days per year is permitted to use any combination of controls to achieve the PEL.) Second, information in the record indicates that small foundries typically have some controls in place [Ex. 686a, p. 44], and these may be all that are required to limit exposure below the PEL [Tr., p. 839]. Lastly, many of these firms may be able to phase out most or all of the lead-related portion of their business.

Comments received regarding Meridian's revised figures suggest, however, that for some foundries, potential cost impacts could be greater; variations in production processes, production levels, and lead content of castings may cause certain facilities to incur additional costs. OSHA, therefore, adjusted the final Meridian estimates to develop high end cost estimates. These high end estimates assume that all foundries employing 10 or more workers and primarily producing high lead alloy castings would need to implement each control method specified below to achieve the PEL of 50 $\mu g/m^3$.

For such foundries, OSHA doubled the number of travelling vents for ladles and increased furnace ventilation to 30,000 cfm (to allow for the provision of a roof-mounted, slotted, canopy-type hood). For large foundries (20 or more employees), OSHA increased the number of pouring lines from 2 to 3 [Ex. 694–27, p. 6] as well as doubled the pouring line ventilation. Air volume requirements for shakeout for larger foundries were adjusted from 6,000 cfm to 20,000 cfm [Ex. 689–4B] and the number of cut-off saws was increased from 1 to 2. Costs were added to the estimate for large foundries for the ventilation of two blasting machines [Ex. 694–27, p. 6]. Also, since foundries located in areas where winters are particularly harsh could incur higher annual operating costs due to the heating of make-up air, the typical O&M expense of 10 percent of capital costs was increased to 12.5 percent. The annual costs associated with these adjustments were $36,150 for smaller foundries (10–19 employees) and $91,949 for large foundries. Fresh air pulpits may be implemented in some foundries as needed to isolate employees working on the charging deck. Capital costs are estimated to be $15,000 with annual costs being $3,952, based on a useful life of 12 years and HEPA filter replacements [Ex. 686c, p. 31]. It is anticipated that smaller foundries will acquire one pulpit and large foundries will acquire two. Costs for the enclosure of cabs of mobile equipment could also be required. Costs for these enclosures were estimated to be $5,000 per unit [Ex. 686c, pp. 32–33]. Annualized capital costs would be $734 per unit, and annual O&M expenses would be $3,600, including HEPA filter replacement. Small foundries were estimated to require 2 cabs and large foundries were estimated to require 4.

OSHA estimated costs for isolation and barrier construction to prevent cross contamination. Costs for partitioning in small and large foundries are estimated to be $25,000 and $50,000, respectively. Annualized capital costs (based on a twenty year useful life) will be $2,938 for small foundries and $5,875 for large.

Labor costs incurred due to the need for additional housekeeping were added as well. This cost is expected to be $3,357 for the smaller foundries and $6,713 for large foundries. Costs for annual cleaning were estimated to be $50,000 for large foundries and $25,000 for small [Ex. 694–9].

Costs for the industrial hygiene survey are estimated to be about $500 per day. The survey would require two days, one

for planning and one for actual exposure monitoring and evaluation of mechanical systems. Thus, an initial cost of $1,000 would be incurred. (Larger foundries may require additional time, and thus, additional initial costs). Though reevaluation may be necessary, no recurring costs are anticipated.

OSHA's high end cost estimates are summarized in Tables F and G, and also assume a baseline level of control for most equipment of approximately 30 percent for small foundries and approximately 80 percent for large foundries [Exs. 571; 686a]. (This is the percentage of controls prescribed which are already estimated to be in place for these two types of foundries.) The baseline level for annual cleaning was estimated to be 25 percent [Exs. 684e; 684f; 684g]. No comment was received into the public record which suggested that these levels misrepresent current industry practice.

Adding the adjustments developed above to the previous estimates of $60,640 for small foundries and $92,920 for large foundries yields upper bound estimates of annual costs of $129,258 for small facilities and $238,008 for large.

Thus, costs for small foundries employing 10 or more employees and primarily producing non-leaded alloys were estimated to be $60,640 and costs for small foundries primarily producing leaded alloys were estimated to be $129,258. Costs for large foundries primarily producing non-leaded alloys were estimated to be $92,920 and costs for large foundries primarily producing leaded alloys were estimated to be $238,008.

To estimate total industry costs, it is assumed that 57 percent of the 1,291 affected foundries are small, employing fewer than 20 workers [Ex. 582–84]. Therefore, 736 foundries are small and 555 are large. Further, it is estimated that about 60 percent of all primary brass and bronze foundries are small [Exs. 658, p. 7; 571, p. 11]. Since 616 foundries are primary brass and bronze foundries, 370 would be small and 246 would be large. Thus, there are 370 small foundries (67 percent, or 248, of which employ fewer than 10 workers) whose primary product is brass and bronze, and 366 small foundries (245 of which employ fewer than 10 workers) producing lead containing alloys as a secondary or tertiary activity (736–370). Also, there are 246 large foundries whose primary product is brass and bronze and 309 large foundries producing lead containing alloys as a secondary or tertiary activity (555–246). Using the cost figures shown in Table H, total annual costs for small foundries were estimated to range from approximately $11.2 million to $29.2 million and total annual costs for large foundries were estimated to range from approximately $22.9 million to $87.3 million. Industrywide, total annual costs will range from $34.1 million to $116.5 million.

TABLE D.—ESTIMATED COSTS OF COMPLIANCE FOR SMALL FOUNDRIES PRODUCING CASTINGS PRIMARILY FROM NON-LEADED ALLOYS

[19 or Fewer Employees]

Emissions source or control	Annualized capital	Annual O&M	Total annual
(0–9 employees)			
Furnace	$1,233	$840	$2,073
Pouring	822	560	1,382
Shakeout	2,466	1,680	4,146
Finishing	822	560	1,382
Housekeeping		415	415
Total	5,344	4,055	9,399
(10–19 employees)			
Furnace	$16,442	$11,200	$27,642
Trav. vent	1,439	980	2,419
Pour. line	7,193	4,900	12,093
Shakeout	4,316	2,940	7,256
C-O saw	1,439	980	2,419
Grinding/finishing	4,316	2,940	7,256
Wet suppression	206	140	346
Wet sweeping	719	490	1,209
Total	36,069	24,570	60,639

Source: Occupational Safety and Health Administration, Office of Regulatory Analysis.

TABLE E.—ESTIMATED COSTS OF COMPLIANCE FOR LARGE FOUNDRIES PRODUCING CASTINGS PRIMARLY FROM NON-LEADED ALLOYS

Emissions source or control	Annualized capital	Annual O&M	Total annual
Furnace	$35,232	$24,000	$59,232
Trav. vent	1,762	1,200	2,962
Pour. line	8,808	6,000	14,808
Shakeout	2,642	1,800	4,442
C-O saw	881	600	1,481
G/F	5,285	3,600	8,885
Wet suppression	147	100	247
Wet sweeping	514	350	864
Total	55,270	37,650	92,920

Source: Occupational Safety and Health Administration, Office of Regulatory Analysis

TABLE F.—ESTIMATED COSTS OF COMPLIANCE FOR SMALL FOUNDRIES PRODUCING CASTINGS PRIMARILY FROM LEADED ALLOYS

Emissions source or control	Annualized capital	Annual O&M	Total annual
(0–9 employees)			
Furnace	$3,699	$2,520	$6,219
Pouring	822	560	1,382
Shakeout	2,466	1,680	4,146
Finishing	1,644	1,120	2,764
Housekeeping		829	829
Total	8,632	6,709	15,341
(10–19 employees)			
Furnace	$16,442	$14,000	$30,442
Trav. vent	2,877	2,450	5,327
Pour. line	7,193	6,125	13,318
Shakeout	4,316	3,675	7,991
C-O saw	1,439	1,225	2,664
Grinding/finishing	4,316	3,675	7,991
Canopy	14,386	12,250	26,636
Wet suppression	206	140	346
Wet sweeping	719	490	1,209
Labor-house-keeping	0	3,357	3,357
Cabs	1,028	5,040	6,068
Pulpits	1,541	1,563	3,104
Isolation	2,1056	0	2,056
Annual cleaning	0	18,750	18,750
Total	56,519	72,739	129,258

Source: Occupational Safety and Health Administration, Office of Regulatory Analysis.

TABLE G.—ESTIMATED COSTS OF COMPLIANCE FOR LARGE FOUNDRIES PRODUCING CASTINGS PRIMARILY FROM LEADED ALLOYS

Emissions source or control	Annualized capital	Annual O&M	Total annual
Furnace	$35,232	$30,000	$65,232
Trav. vent	3,523	3,000	6,523
Pour. line	26,424	22,500	48,924
Shakeout	8,808	7,500	16,308
C-O saw	1,762	1,500	3,262
G/F	7,046	6,000	13,046
Canopy	17,616	15,000	32,616
Wet suppression	147	100	247

TABLE G.—ESTIMATED COSTS OF COMPLIANCE FOR LARGE FOUNDRIES PRODUCING CASTINGS PRIMARILY FROM LEADED ALLOYS—Continued

Emissions source or control	Annualized capital	Annual O&M	Total annual
Wet sweeping	514	350	864
Labor-house-keeping	0	6,713	6,713
Cabs	587	2,880	3,467
Pulpits	881	1,250	2,131
Isolation	1,175	0	1,175
Annual cleaning	0	37,500	37,500
Total	103,715	134,293	238,008

Source: Occupational Safety and Health Administration, Office of Regulatory Analysis.

Economic Feasibility. Economic impacts for small and large nonferrous foundries were determined with regard to the ranges of costs presented in the previous section. Financial information was provided by Meridian Research and by commenters to the public record. In addition, OSHA relied upon publicly accessible data (Duns Market Identifiers).

Table H summarizes the economic impacts for the nonferrous foundry industry.

The first two columns of the table provide a summary of the number of establishments and exposed workers in each of the three size categories. The 18,585 exposed workers were apportioned using data on employment found in the public record [Ex. 686a, p. 6].

Column three provides estimates of lead related sales based on information available from Dun and Bradstreet's Duns Market Identifiers (1988). These publicly accessible data allowed the Agency to estimate average sales by employment size class. (No comparable data were provided by industry sources in response to OSHA's request.) The data relate to SIC 3362, Primary Brass, Bronze, and Copper Foundries, and appear in Table H for foundries primarily involved in the production of leaded alloys. Sales for foundries primarily producing non-leaded alloys were assumed to average 25 percent of primary producers' sales.

TABLE H.—Summary of Economic Impacts for the Non-Ferrous Foundry Industry

Size of plant (employment)	No.	Exposed workers	Sales/plant ($thous.)	Lead related profits/plant [a] ($thous.)	Total profits/[a] ($thous.)	Costs/plant ($thous.)		Ratio: costs/sales		Ratio: Costs/lead rel. profits [b]		Ratio: Costs/total profits [b]	
						low	high	low	high	low	high	low	high
Small (0–9)													
Primarily lead	248	1240	248	5.95	7.94		15.34		0.06186		2.19084		1.64313
Primarily non-lead	245	557	62	1.49	7.94	0.00	9.40	0.00000	0.15160	0.00000	5.36905	0.00000	1.00670
Small (10–19)													
Primarily lead	122	1830	785	44.75	59.66	60.64	129.26	0.07725	0.16466	1.15195	2.45546	0.86396	1.84159
Primarily non-lead	121	726	196	11.19	59.66	0.00	60.64	0.00000	0.30899	0.00000	4.60780	0.00000	0.8396
Large (20 or more)													
Primarily lead	246	9107	7100	440.20	586.93	92.92	238.01	0.01309	0.03352	0.13932	0.35885	0.10449	0.26764
Primarily non-lead	309	5130	1775	110.05	586.93	0.00	92.92	0.00000	0.05235	0.00000	0.55727	0.00000	0.10449

[a] Total profits after taxes were derived from sales using the following schedule of return on sales (ROS) rates: small (0–9), 2.4%; small (10–19), 5.7%; large (20 or more), 6.2%.

[b] See text for derivation. Profit impacts assume full cost absorption and were computed using the following federal income tax schedule: small (0–9), 0.15; small (10–19), 0.15; large (20 or more), 0.34.

Source: Occupational Safety and Health Administration, Office of Regulatory Analysis.

Column 4 provides lead-related profits. These figures were derived by applying the 1988 Dun and Bradstreet rate of return on sales (ROS) for SIC 3362 to the sales figures in column 3 [Ex. 571, p. 14] (see footnote "a," Table H). The 1988 industry median ROS for SIC 3362 was disaggregated and apportioned based on 1986 establishment size ROS levels (see Ex. 571, p. 14). This assumes that the relative profitability of the three size classes of foundries has remained constant from 1986 to 1988.

Column 5 provides estimates of total profits. Since leaded alloys comprise only a portion of the foundry product for a large number of facilities, another factor to be considered in assessing the ability of the firms in this industry to absorb the costs of compliance was the extent to which they pour non-leaded alloys. Producers for whom the sale of leaded castings represents a small fraction of total sales could avoid compliance costs altogether by shifting away from the production of leaded castings. If this is not an option, compliance costs could be financed by a combination of pass-through and absorption from total profits. Additionally, at least 20 percent of all affected foundries are part of larger corporations, which more easily could be able to absorb compliance costs.

In column 6, cost ranges as developed for six different size and lead production combinations are provided.

Column 7 contains estimated price increases, computed as the ratio of costs to lead related sales. Price impacts were computed assuming full cost pass-through. If total cost pass-through were possible for foundries in the smallest size category, price increases will range from 0 to 15 percent; for foundries with 10 to 19 workers, increases of 0 to 31 percent are indicated; and for large foundries, price increases of 0 to 5

percent would be required. However, due to foreign competition, full pass-through of costs is not an option for this industry, but with the falling exchange rate of the dollar, OSHA believes some pass through should be possible without losing market share. In addition, since industry reported that "[a]pproximately 10 percent of annual foundry industry output is used for national defense purposes * * *" [Ex. 582–86], OSHA believes some cost pass-through to defense contractors could also be possible.

Columns 8 and 9 provide profit impacts, computed as the ratio of annual costs to either lead-related or total profits. It should be noted that the tax deductibility of compliance costs was taken into account in computing profit impacts. That is, care was taken to compute before-tax profit before subtracting annual costs. After subtracting annual costs, the appropriate average tax rate (either 15 or 34 percent) was then reapplied to determine after-tax profit net of costs. (See footnote "b," Table H.)

The profit impacts in Table H were computed assuming compliance costs would be fully absorbed by each foundry. Profit impacts for large firms primarily producing leaded alloys will range from 10 and one-half to 35 and one-half percent while impacts on large foundries primarily producing non-leaded alloys will range from 0 to 56 percent. Impacts on total profits for small foundries will range from 0 to over 180 percent, and could exceed lead related profits by over 5 times for some small firms. This is an extreme or "worst case" estimate, since it assumes no cost pass-through possibility. Also, the example captures the effect on the average plant; plants with above average profits should remain viable. Nevertheless, the effect of the rule on small business in this industry sector is substantial.

The annual costs of compliance for the primary brass and bronze foundry industry (SIC 3362), which are estimated to be about $40–$50 million at the time the standard goes into effect, are about two times annual new capital expenditures as reported in the docket for the years 1981 to 1985 [Ex. 571, p. 34]. Existing capitalization spending, however, is concentrated among the larger more technologically advanced firms in the industry. Literally hundreds of small plants have failed to reinvest in capital improvements and as a result, continue to work obsolete machinery and processes. The reinvestment and capitalization record of such foundries has not been adequate to maintain a competitive technology base. In sum, capitalization, at least for small firms, has been chronically underfunded.

OSHA also examined economic trends in the foundry industry. It is expected that the foundry industry will continue to contract and evidence in the public record strongly suggests that this contraction is likely to occur primarily among captive operations, most of which are assumed to be small, and to a lesser extent, within the smallest size class of foundries [Exs. 658, p. 3].

Casting users have turned increasingly to purchasing castings instead of pouring their own at captive operations:

> Captive casting production will continue, but clearly at a reduced rate. Estimated at 45% of total casting production in 1984, it now probably is in the 35 to 40% range and seems likely to decline further. [Ex. 658, p. 3].

Thus, a substantial portion of the decline in establishment count will occur as a result of the continuing shift away from captive production. This shift does not necessarily reflect or presage a decline in U.S. casting production activity:

> The U.S. market for castings still is there, and in recent years casting users have turned increasingly to purchasing castings, instead of making their own. Strengthened by their successful survival tactics in recent years, domestic suppliers can take advantage of that changing situation [Ex. 658, p. 3].

This notion is supported by data reported by the Department of Commerce in its 1989 Industry Outlook. Production of copper castings, after dropping off about 20 percent between 1979 and 1981, gradually recovered during the 1980's and by 1988 was estimated to have reached the pre-recession levels of 1979 [U.S. Industrial Outlook, Department of Commerce, p. 18–13].

In addition, recent technological advances in production for foundries have increased the minimum size of a facility that can realize full economies of scale. Older technology is more labor intensive with significantly higher unit labor costs. The newer technology provides better quality castings and lower unit costs, but requires more capital investment. (OSHA believes that the new technology will also be more protective of workers' health.) In order to achieve the lower unit costs, production must occur on a larger scale. The globalization of markets in the 1980s has reinforced and accelerated this trend. The general shift to more capital intensive production inevitably results in the existence of larger and fewer foundries.

As a result of the technological change, small operations have found themselves at a competitive disadvantage. Larger foundries have been able to reduce production costs through automation and modernization. For small operations, such automation may not be practical, and further contraction in this segment of the industry is expected to occur. Thus, it is apparent that small firms will not be able to compete effectively with larger firms in the foundry industry and the costs of complying with this remand would hasten their exit.

This contraction will be accelerated if the decline in the value of the dollar is reversed and imports of castings and finished goods incorporating castings rise. (For the three month period ending June, 1989, OSHA notes that the dollar has strengthened against foreign currencies.) Additionally, the substitution of other materials for brass, bronze, and copper castings, such as aluminum or plastics, has contributed to industry contraction in general, though brass, bronze, and copper castings will continue to find a variety of uses [Ex. 571, p. 10].

The long-term decline in the nonferrous foundry industry is dramatically reflected in the establishment count. Over the last twenty-three years, the number of brass and bronze foundries in the U.S. and Canada has declined from 2,281 to 1,392 [Ex. 658, p. 3]. Historically, brass and bronze foundries have exited the market at an average rate of between 2 and 2 and one-half percent annually [Ex. 658, p. 3]; during the decline the average number of plants lost has been about 35 per year. When the period of economic adjustment and capitalization runs its course, firms remaining in this industry will be larger and more productive than their forebears, and will utilize more modern, capital intensive equipment with lower emissions of hazardous materials, including lead.

Against this background, economic feasibility was assessed as follows. Approximately 43 percent of the foundries affected by the standard are large, employing 20 or more workers. These foundries employ 77% of the exposed workforce and account for approximately 80 percent of industry shipments. Of the 555 large foundries, 309 pour primarily non-leaded alloys. Many of these plants, particularly those for which leaded alloys constitute 10 percent or less of total production volume, could simply choose to focus production on non-leaded alloys and thereby avoid the costs of compliance altogether. Many others qualify under

the 30 day exclusion in paragraph (e)(1) of the lead standard and, therefore, bear no obligation to achieve the PEL by engineering and work practice controls, with the result that no costs would be incurred. As noted above, some firms pouring only limited amounts of leaded castings may already be in compliance and will also incur no cost. Those firms choosing to continue to produce leaded alloys will benefit from increased market share and many should be able to finance annual costs from overall profits, since the cost to total profit ratio for such firms, as shown in Table H, indicated an impact of about 10 and one-half percent. Impacts on lead related profits could be as high as 56 percent for some plants in this category, though, as noted above, this estimate assumes no pass-through and no increase in market share. Post-compliance ROS on the lead-related portion of their business was calculated for these plants and found to range between about 3 and 6.3 percent, after adjusting for an increase in market share.[5] Thus, OSHA concludes that large foundries pouring primarily non-leaded castings should be able to absorb the costs of the rulemaking without experiencing undue burden.

Two hundred and forty six large foundries primarily pour leaded alloys. Based on the figures shown in Table H, effects on total profits for this segment of the industry should be no more than 27 percent and impacts on lead-related profits should be no more than 36 percent. For these plants, post-compliance ROS rates on the lead-related portion of their business were computed and found to range between 4.1 and 5.5 percent. Given the profitability of these foundries, they should be able to finance the costs of the rulemaking without undue burden.

There are estimated to be 736 small foundries (foundries employing 0–19 workers), constituting 57 percent of the establishments affected by this rulemaking. These plants employ about 23 percent of the exposed workforce and account for about 20 percent of industry shipments.

An estimated 366 of these small foundries pour primarily non-leaded alloys (i.e., secondary and tertiary foundries). Given the continuation of existing market forces, many of these secondary and tertiary operations will cease operations in coming years. In particular, OSHA expects many captive operations to cease production.

Many of the 366 plants could shift away from the production of leaded alloys or limit production in order to come under the 30-day exclusion rule. Since the capital resources used in the production of copper-based castings may also be used in the production of other nonferrous alloys, and since the foundries in this category are already involved in the production of non-leaded castings, this shift away from leaded alloys would not necessarily be accompanied by a decline in industry employment and would not necessarily lead to establishment closures. In addition, many foundries already come under the 30-day exclusion rule (those foundries for which leaded alloys constitute less than 10 percent of total sales). Other foundries which remain in operation will benefit from increased market share. After adjusting for increased sales volume, post-compliance ROS for the lead-related portion of their business was found to vary widely for these firms, from −19.6 percent to 6.7 percent. Clearly, if forced to face the costs of complying with this remand, some of these firms could choose to cease or limit production of leaded castings; others, however, should be able to finance the costs of the regulation and at the same time remain moderately profitable. OSHA estimates that a number of additional secondary and tertiary foundries will be able to finance the costs of the rule from overall profits. For those foundries which are captive operations, compliance costs could be more easily absorbed by the parent organization. Also, some foundries could provide castings critical to the national defense, and could either pass costs forward or apply for a variance. Overall, OSHA estimates that under optimistic assumptions, one-half to two-thirds of the small secondary and tertiary foundries will be able to avoid, absorb, or pass through compliance costs.

Finally, there are 370 small plants primarily producing leaded alloys. OSHA estimates that as many as one-half to two-thirds of these operations could cease production. Post-compliance ROS calculations based on lead-related profits and adjusted for market redistribution indicate rates which range between −7.3 and 0.1 percent, though these rates do not take into account cost pass-through. Some firms, however, could shift production toward non-leaded castings and thus avoid a portion of the costs of compliance. The owners of captive operations could choose to absorb costs from overall profits. In addition, some might be able to secure local support in the form of financial incentives to relocate [Ex. 684f, p. 12] and, as noted above, some could provide castings critical to the national defense.

OSHA concludes that approximately 310 to 430 of the 736 small plants currently producing leaded alloys as either a primary, secondary, or tertiary function will continue production; thus, it is estimated that 42 to 57 percent of all small foundries will cease operations.

To sum up, two-thirds to three-quarters of all firms currently involved in the production of brass, bronze, and copper castings will be able to fully comply with this regulation without experiencing undue financial harm. Moreover, 80–83 percent of the currently exposed workforce will remain employed and benefit from the increased protection afforded under the rule.

However, OSHA recognizes that many small foundries (foundries employing 19 or fewer workers) will not be able to afford all necessary controls. The cost of automation has ensured that many small firms will not be able to compete with large firms and that profit levels for many small firms will not be sufficient to bear the costs of this rule. OSHA has noted that some of these

[5] OSHA's post-regulation ROS is an approximation of the short-run production increases of foundries responding to excess demand for brass, bronze, and copper castings. The excess demand is generated by an estimate that small foundries accounting for approximately 10 percent of total industry output will cease production if the 50 $\mu g/m^3$ PEL goes into effect. (Due to the interchangeability of capital resources, it is possible that these firms will shift to the production of other types of nonferrous alloys (zinc, aluminum, etc.).) OSHA assumes that of the total number of small foundries estimated to cease production, the majority (80 percent) are foundries pouring primarily leaded castings. Using *Census of Manufactures* data, OSHA calculated that small firms with 0–9 employees account for 7 percent of production, small firms with 10–19 employees account for 13 percent of production, and large firms account for 80 percent of production. *U.S. Industrial Outlook* reports that 290,000 short tons of copper-based castings were estimated to have been produced in 1988. OSHA distributed 10 percent of 290,000 short tons across all firms expected to be in business at the time full compliance with the OSHA lead rule becomes effective. Establishment size was used as a proxy for productive capacity and it was assumed that the average firm earns a 10¢ post-tax profit per each pound of copper-based casting sold. The redistribution of excess demand is a result of the regional nature of U.S. markets for foundry products and the ability of the larger foundries in each market area to be price leaders (locally), due to their technological advantages. (See Ex. 658 for a delineation of the 96 market areas). As small firms exit the market, large firms will tend to capitalize to meet excess demand, thereby improving profitability by realizing greater economies of scale. Since larger firms are generally able to operate profitably, OSHA assumes that the necessary capital will be available. OSHA notes, however, that the effect of this capitalization on short-run post-regulatory profitabilty is not reflected in the post-regulatory rate of ROS computed in this analysis; due to data limitations, this effect has not been quantified. Clearly, the decision to expand production would only be made on the expectation of a profitable return on the investment.

small firms will exit the industry without regard to this rulemaking. However, the exit of a substantial number of these foundries could be hastened by the OSHA rule. Therefore, based on the legal criteria on economic feasibility established by the court in the lead decision, *USWA* v. *Marshall*, 647 F.2d at 1265, it is OSHA's judgment that if the rule significantly contributes to the withdrawal of over one-half of small foundries, which constitute about 60 percent of the nonferrous foundries, the Agency concludes for the nonferrous foundry industry that achieving 50 $\mu g/m^3$ by means of engineering and work practice controls is economically infeasible. OSHA has not, however, examined the economic feasibility of achieving a PEL between 50–200 $\mu g/m^3$ by means of engineering and work practice controls.

7. Secondary Copper Smelting

Process Description. Secondary copper smelting is the recovery of copper from scrap copper by scrap metal preparation, smelting, refining, and casting. The process fundamentally involves increasing refinement of the copper product by eliminating lead and other impurities. The exclusive source of lead in the industry is the scrap, which can contain up to 10% lead (Ex. 686C, p. 11). The blast furnace operation where the scrap is initially melted, is the major contributor of lead to the air.

Smelting and refining are carried out in various types of furnaces such as blast furnaces, holding furnaces, converters, Maerz (reverberatory) furnaces, and shaft furnaces, depending upon the purity of the scrap metal. The final step is casting of the refined copper metal, which contains only .08–.2% lead (Ex. 684d, p. 3), into a desired form.

Scrap Metal Preparation. Secondary copper smelters use any metallic scrap that contains useful amounts of copper, including punchings, turnings, defective or surplus goods, metallurgical residues, and worn-out or damaged articles (e.g., automobile radiators, pipe, or wire). The scrap is first cleaned and concentrated to prepare it for smelting. Feed scrap is concentrated by manual and mechanical methods such as sorting, stripping, shredding, and magnetic separation of ferrous metals. Scrap is sometimes briquetted in a hydraulic press or given pyrometallurgical pretreatment (e.g., sweating, burning off insulation, and drying in rotary kilns). The concentrated scrap is then transferred to the blast furnace by a front-end skip loader (Ex. 573, pp. 2–3).

Blast Furnace Operation. Smelting involves one or more processes, depending on the quality of the feed material. Low-grade scrap must be charged into a coke-fired blast furnace to be melted along with fluxes and coke. Impurities in the scrap are removed by the coke fuel and the gases formed during combustion. The blast furnace operates on a 24-hour-per-day basis and is shut down only for maintenance or plant-wide scheduled downtime (Ex. 475–32D, H–004E, pp. 8–10).

The charge is delivered by a front-end skip loader, which carries the charge between the scrapyard and the charge door. The guillotine-type charging door, operated by an overhead hoist, is approximately 9 by 9 feet and is located about 6 feet above the furnace's tapping hole. The driver loads the bucket with low-grade scrap and positions the vehicle in front of the charge door. A control box for the charge door is within reach. After opening the charge door, the operator moves the vehicle forward, inserting the front-end loader's bucket into the furnace shaft and unloading the concentrated scrap. After unloading, the operator backs out and closes the door. During charging, the door of the blast furnace remains open for one to five minutes (Ex. 475–32D, H–004E, pp. 8–10).

The product of the blast furnace, called black copper, contains 2–10% lead by weight and still includes slag (Ex. 684d, p. 2). The black copper is tapped on a continuous basis from the bottom of the furnace shaft through an open launder to the holding furnace, into which it is fed. From time to time, the tapping process is halted to allow maintenance of the launder tap hole (Ex. 475–32D, H–004E, pp. 8–10).

Holding Furnace. The main function of the cylindrical holding furnace is to remove impurities from the black copper. The holding furnace acts both as a storage reservoir and a vessel to separate the slag generated in the blast furnace. While no smelting occurs in this operation, enough heat is added to this oil-fired furnace to keep the contents molten (Ex. 475–32D, H–004E, p. 10).

Since copper is heavier than slag, copper occupies the bottom of the vessel and slag floats on top. The furnace can be rotated along its centerline in both clockwise and counter-clockwise directions. By rotating the furnace the slag is poured off into an open launder, where it is granulated by a water jet. This is done on a nearly continuous basis. The granulated slag is removed by front-end loader to storage areas until shipment to customers (Ex. 475–32D, H–004E, p. 10).

When enough black copper has been captured in the holding furnace, the furnace is tapped. A ladle is moved into position by an overhead, remote-controlled crane. The holding furnace is then rotated clockwise and the black copper is poured into the ladle. An operator's station is located so the employee can visually check the level of copper in the ladle and halt the tapping operation when the ladle is full. The molten black copper in the ladle is usually charged into a converter. At times when the converter is not in operation due to maintenance, the black copper can be charged in varying quantities to a Maerz (reverberatory) furnace (Ex. 475–32D, H–004E, pp. 10–11).

Converter. The function of the converter is to further refine the copper from the holding furnace. Molten black copper is charged into the converter, and silica fluxes are added to aid in the formation of slag. The process involves blowing air through the converter to drive off impurities either in the form of slag or fume. Most of the reactions involved with converter operations are exothermic. Therefore, little heat needs to be added to the vessel during the refining process (Ex. 475–32D, H–004E, p. 11).

The slag material is drawn off by rotating the cylindrical converter about its axis. Most of the slag is in the form of silicates and oxides. The slag contains about 17% copper by weight. The slag is later reused as a component in the blast furnace charge (Ex. 475–32D, H–004E, p. 11).

The product of the converter, called blister copper, is tapped and charged to either a Maerz or shaft furnace. Blister copper contains only approximately 1% lead (Ex. 684d, p. 3).

Maerz (Reverberatory) Furnace. The Maerz (reverberatory) furnace is a further stage in the refining process that produces anode-grade copper of over 99% purity. The Maerz furnace is charged with blister copper and clean, high-grade copper scrap. Dual fuel (oil and natural gas) burners supply the necessary heat to melt the charge and maintain the required temperature. Oxidation and reduction reactions occur during the approximately 24-hour cycle (Ex. 475–32D, H–004E, p. 12).

Three 5-by-5-foot charging doors are used for charging the furnace. Electrically-powered vehicles and fork-lift trucks transport the ladle for charging into the furnace. The furnace tilts along its central axis for slagging and pouring operations (Ex. 475–32D, H–004E, pp. 12–13).

During this refining process, cycle times and control procedures are based on sampling and operator experience. The slag that forms rises to the surface of the melt and is poured off into pots which are handled by fork-lift trucks.

This slag is allowed to cool and then is reused as part of the blast furnace charge material. When refining is complete, the furnace is tilted to pour the nearly pure copper into a launder system which leads to the casting wheel (Ex. 475–32D, H–004E, p. 13).

Shaft Furnace. The shaft furnace is used to melt copper that can be directly cast into anodes without further refining. Thus, it is charged only with high quality copper scrap and returned anodes (Ex. 475–32D, H–004E, p. 14).

Charging is accomplished by a conveyor/elevator that places materials into the top of the shaft furnace. When the furnace is tapped, the copper is fed into a launder system which leads to the casting wheel (Ex. 475–32D, H–004E, pp. 14–15).

Casting Wheel. A launder delivers the molten copper, which contains only .08–.2% lead (Ex. 684d, p. 3), from the Maerz and shaft furnaces to the ladle spoon at the casting wheel. There the final metal product is cast into anodes for electrolytic refining (Ex. 475–32D, H–004E, pp. 14–15).

The typical casting wheel is quite large (e.g., 43 feet in diameter), and turns and casts continuously. The castings enter a quench booth where a water spray cools and solidifies the copper. When the molds exit the quench booth, an ejection pin in the bottom of the mold forces the solidified casting to rise slightly out of the mold. A pick-up conveyor lifts the anode casting from the mold and carries it to a bosh tank, where the anode is further cooled. When five or six anodes accumulate in the tank they are removed by fork-lift truck and weighed. Then they are stacked outside the building until they are taken to the electrolytic refining building (tankhouse) (Ex. 475–32D, H–004E, p. 14).

Existing Exposure Levels. There are five air lead monitoring data sets in the record. The best by far is the data set from Company D (Ex. 684d), which is a conventional secondary copper smelter with different kinds of furnaces that use copper scrap of various grades. The data from Company D are recent, quite complete and contain some marginal notations which explain prevailing conditions at certain times when samples were obtained. Moreover, because OSHA recently made a site visit to Company D, the Agency has concrete information on production processes, work practices and engineering controls that allows it to better understand and interpret the data provided.

The other four data sets are from Smelter A (Ex. 668B), a company which OSHA will refer to as Company X (Ex. 613b–2), OSHA inspection data (Ex. 583–3), and a 1982 JACA report (Ex. 553–5). All have serious flaws that make them considerably less reliable and useful than Company D data.

The data from Smelter A were submitted by the Institute of Scrap Recycling Industries at the close of the post-comment briefing period and cover the years 1984–87. OSHA found Smelter A's data basically unuseable for the following reasons. First, the data apparently cover less than ¼th of the company's lead-exposed workforce. Second, there are large gaps in the data. For example, most of 1984 and part of 1985 are missing.

Third, no information was provided on associated work practices and engineering controls. Fourth, in a cursory manner Smelter A indicated that it had installed additional engineering controls during the period of time covered by the data, but it does not indicate specifically during what years and in which operations the engineering controls were implemented. In fact, Smelter A simply states that it added "additional capacity for baghouses, exhaust fan motors and hooding." Therefore, despite Smelter A's assertion that it spent more than $2 million between 1980–87 for these unspecified improvements in engineering controls, it is impossible for the Agency to use the exposure data to assess feasibility. Moreover, Smelter A's exposure levels inexplicably appear to have increased rather than decreased over the years. This raises questions concerning the effectiveness and extent of the engineering controls installed during this period. Finally, at least some of the data provided appear to suggest that certain operations are effectively uncontrolled, making that data useless in a feasibility assessment. For example, according to Smelter A's own table summarizing its most recent air monitoring sampling results, the average air lead levels between January–September 1987 at the reverberatory furnace, which processes copper with no more than 1% lead content, are nearly twice as high as the average exposure levels in the blast furnace area, where lead-contaminated scrap is processed (Ex. 668B).

Similarly, the data from Company X (Ex. 613b–2) are not useable for the following reasons. First, although the data were provided in response to a request for monitoring results from 1984–87, the company supplied data for only one year. Second, not only did the company fail to describe the engineering and work practice controls associated with particular operations and exposure levels, it also failed to adequately identify various employees. For example, in its monitoring data the company refers to the job category of "furnace operator" but provides no indication at which furnaces those operators work. Thus, OSHA is unable to ascertain which specific exposures are associated with the blast, holding, converter, Maerz or shaft furnaces, which is a critical distinction given the extreme variation in the lead content of the metal in the different furnaces.

The third data set, composed of 29 samples from OSHA inspections of three secondary copper smelters from 1984–87 (Ex. 583–3), is limited and fragmentary. Moreover, the kind of contextual information so useful for understanding and interpreting the data is largely lacking. For example, these data do not provide sufficient detail about job titles to allow operation-by-operation analysis of exposures and do not contain information about associated engineering and work practice controls. These data are therefore best utilized to confirm or deny analyses drawn from other data sets.

The final data set is the report prepared in 1982 by JACA (Ex. 553–5). This report deals almost exclusively with the issue of economic feasibility and devotes only two pages to an analysis of technological feasibility. In its report JACA provides no more than a paragraph or two describing existing controls. Moreover, few or no raw exposure data are provided, and the few summary numbers that are provided are gathered from 1979–81. Since both Company D and Smelter A, for example, claim to have spent large sums of money to control air lead levels in the years since JACA collected its data, more recent data are needed to reliably assess current technological feasibility.

Consequently, the Agency relies primarily on data from Company D to characterize baseline lead exposures in this industry. OSHA feels that this is a reasonable and even conservative basis for making feasibility determinations for three reasons.

First, the monitoring data from Company D indicate that operations with higher exposure levels have been monitored more frequently than those with lower levels (Ex. 684d). Although this monitoring schedule is in accordance with the requirements of the lead standard and good industrial hygiene practice, it inevitably skews reported average plant-wide exposure levels and frequency distributions toward the high side (Ex. 686C, p. 7). For example, as Meridian has pointed out, in the blast furnace area, where exposures are highest, 150 samples were taken for 14 job categories. In the casting area,

where exposures are much lower, only 69 samples were taken for nearly the same number (13) of job categories (Ex. 686C, p. 7).

In addition, based upon its site visit to Company D and Company D's own data concerning exposure levels in casting and the shaft and Maerz furnace areas, OSHA believes that cross contamination has substantially contributed to raising employee exposure levels in these operations. In the clearest example, the proportion of lead in the product in the casting operation is probably less than one-quarter of 1% (Ex. 684d, p. 3). Yet, even there, where exposures attributable to the operation itself should be low [6], fully 38% of the samples were above 50 $\mu g/m^3$, 6% were over 200 $\mu g/m^3$, and the average was approximately 63 $\mu g/m^3$.

The Cadre Corporation, an industrial engineering consultant firm, seems to agree with OSHA's position. When Cadre evaluated exposures at a secondary copper facility in 1981, it also noted that cross contamination was chiefly responsible for the lead exposures of employees working in the casting area (Ex. 475–32D, H–004E, p. 22).

Similarly, in the Maerz and shaft furnace operations, where the charge of blister copper contains only 1% lead (Ex. 684d, p. 3) and where air lead levels therefore should be controllable to or below 50 $\mu g/m^3$, exposure levels at Company D are above 50 $\mu g/m^3$ in 82% and 78% of the samples, respectively, and the averages are 97 $\mu g/m^3$ and 148.2 $\mu g/m^3$, respectively.

Because of the low lead content of the materials being processed at these stages, OSHA does not believe that the air lead levels associated with these operations should be high. Nevertheless, at Company D the percentage of sampling results below 50 $\mu g/m^3$ in the shaft and Maerz furnaces is not statistically distinguishable from the percentage of samples below 50 $\mu g/m^3$ in the blast furnace area, where the lead content of the materials is much higher. OSHA believes that these results can be explained only by cross contamination throughout the plant.

OSHA also notes that the exposure levels reflected in the OSHA inspection data for secondary copper smelters (Ex. 583–3) are considerably lower than those in the data from Company D, especially in the furnace area. This suggests that in relying upon the Company D data to characterize industry exposure levels, OSHA is being conservative.

Notwithstanding the upward bias of the data from Company D, monitoring results from this facility are at or below 50 $\mu g/m^3$ most of the time in the casting area (62%) and in the "miscellaneous" category (80%). Moreover, 84% of the samples in the casting operation and 93% of the samples in the miscellaneous classifications are below 100 $\mu g/m^3$, (Ex. 684d, Table 5; see Table 1 below).

Miscellaneous operations include laboratory technicians, the laundry, and the scrapyard. The scrapyard, which has the highest exposures of these three operations, incorporates the receiving area, the brick plant and forklift operators. In the scrapyard employee exposure levels already are quite low. The overall average for scrapyard employees is approximately 35 $\mu g/m^3$. Average exposure levels in 2 of the 3 scrapyard operations are below 27 $\mu g/m^3$ and the third is below 53 $\mu g/m^3$. In addition, 77% of the sampling results of scrapyard employees are below 50 $\mu g/m^3$, and the remainder are below 100 $\mu g/m^3$ (Ex. 684d, Table 5).

Again, even with considerable cross contamination in the plant, 59% of the sampling results of employees associated with the Maerz furnace and 56% of the sampling results of those working near the shaft furnace already are below 100 $\mu g/m^3$ (Ex. 684d, Table 5).

TABLE 1.—FREQUENCY DISTRIBUTION OF COMPANY D EXPOSURE DATA, 1984–1987 [1]

Area	Number of samples	Distribution of samples at various concentrations ($\mu g/m^3$) (percent)			
		<50	<100	<200	>200
Blast furnace	150	32(21)	61(40)	103(68)	47(31)
Casting area	69	43(62)	58(84)	65(94)	4(6)
Shaft furnace	9	2(22)	5(56)	7(78)	2(22)
Maerz furnace	27	5(18)	16(59)	25(93)	2(7)
Miscellaneous	30	24(80)	28(93)	30(100)	0
Total	285	106(37)	168(59)	230(81)	55(19)

[1] Source: Ex. 684d, Table 5.

In the three operations in which average exposure levels are above 50 $\mu g/m^3$, the blast, Maerz and shaft furnaces, an additional factor upwardly biases the data. That factor is the existence of a limited number of extremely high data points that are not representative of routine exposure levels. For example, employee exposure levels in the dirtiest operation in the plant, the copper hole at the blast furnace, range from 100 $\mu g/m^3$ to 2,400 $\mu g/m^3$ (Ex. 684d, Table 5). Of the 18 sampling results for that operation, fully two-thirds are below 337.1 $\mu g/m^3$. Only 2 samples are over 1,850 and 3 others range from 635–817 $\mu g/m^3$. Nonetheless, the arithmetic average is approximately 500 $\mu g/m^3$. OSHA believes that this average figure distorts the actual array of sampling results by effectively giving too much weight to aberrantly high sampling results. It further believes that the geometric mean more accurately portrays the array. In this case, the geometric mean is 312.1 $\mu g/m^3$, approximately two-thirds of the arithmetic mean (citations omitted to protect confidentiality).

OSHA recognizes that there is no single number or even range of numbers that can perfectly characterize a data set. A mere range of exposure levels (e.g., 100–2,400 $\mu g/m^3$ for the copper hole operator) provides very little useful information about typical exposure levels. Similarly, the arithmetic mean, which is equivalent to the commonly used "average," provides little insight into the distribution of exposures and is subject to gross distortion by extreme high or low numbers.

OSHA believes that where a data set is lognormally distributed, as in the case of Company D (Ex 686C, p 2), the geometric mean is the best single statistic to characterize the data set. (See the NIOSH publication, Leidel *et al*, *Occupational Exposure Sampling Strategy Manual* (1977).) OSHA is further assured of the reasonableness of relying upon the geometric mean by the fact that it appears to fit well with the court's definition of feasibility. The court does not require that all operations be able to achieve a particular PEL all of the time for the PEL to be feasible. Consequently, the mere existence of aberrant exposure levels does not constitute proof of infeasibility. In using the geometric mean to characterize exposure data, the extreme outliers that are discounted are especially likely to be very high, rather than low sampling results. Thus, because the geometric mean better characterizes actual exposures, OSHA relies primarily upon the geometric mean in its feasibility analysis. This issue is discussed more fully in the introductory section on technological feasibility.

Utilizing this approach, it becomes clear that, even based on existing monitoring results, only the blast furnace operation presents serious problems for controlling employee air lead levels to 50 $\mu g/m^3$. The geometric means in all other operations are below 90 $\mu g/m^3$ (Ex. 686C, Ex. 2). In the casting and miscellaneous categories, for example, the geometric means are below 50 $\mu g/m^3$, at 41.2 $\mu g/m^3$, and 27.9 $\mu g/m^3$, respectively. In the Maerz furnace, the geometric mean is only somewhat above 50 $\mu g/m^3$, at 78 $\mu g/m^3$. In the shaft furnace, the geometric mean is below 100 $\mu g/m^3$, at 88.6 $\mu g/m^3$. (Ex. 686C, Ex. 2).

In the blast furnace, where exposures are most difficult to control, the geometric mean is only somewhat above 100 $\mu g/m^3$ at 114.2 $\mu g/m^3$. In addition, of the 14 job categories included in the blast furnace classification (which includes exposure data from the holding and converter furnace areas), no less than eight have geometric means below 100 $\mu g/m^3$, and three of these are below 50 $\mu g/m^3$. Of the remaining 6, only one is above 200 $\mu g/m^3$, while three are below 120 $\mu g/m^3$. Moreover, according to Company D's own submission, one of the operations with the highest exposure levels, slag operator, is virtually uncontrolled (Exs. 684d, p. 2; 686C, Ex. 2).

Current Control Technologies. As OSHA has shown in the previous section, even the upwardly biased sampling results from Company D indicate that in at least 80% of the operations either a majority of sampling results are below 50 $\mu g/m^3$ or the geometric means are below or not far above 50 $\mu g/m^3$. In the blast furnace area, more than 20% of the operations already have geometric means below 50 $\mu g/m^3$ and more than 57% have geometric means below 100 $\mu g/m^3$ (Ex. 684d, Table 5).

To characterize existing controls in the industry, OSHA continues to rely upon information from Company D (Exs. 684d; 686C; 688a). Although industry claims that the controls in Company D are state-of-the-art and hardly typical of the rest of the industry, OSHA's site visit to Company D confirms that its controls are fundamentally conventional and readily available. Moreover, although on several occasions OSHA requested industry to provide information concerning associated engineering and work practice controls throughout the industry, industry generally failed to provide such information (Tr. 725–26). Consequently, since industry's claim that Company D has implemented more controls than the rest of the industry is essentially unsubstantiated, OSHA finds it reasonable to use Company D for these purposes.

The existing level of control at Company D has been achieved primarily through general and local exhaust ventilation and despite serious cross contamination of certain operations by the blast furnace. Existing engineering controls and work practices at Company D have not been established on the basis of industrial hygiene source identification and task analysis; that is, the company has focused on obvious emission sources rather than employee exposures (Ex. 684d, p. 17). As a consequence, management at Company D does not appear to have a firm grasp on what factors are contributing to employee exposures in each operation and which work practices and engineering controls would be appropriate to control these factors. In addition, Company D does not perform periodic (e.g., annual) wall-to-wall housecleanings (Ex. 684d, p. 17).

Current exposure levels at Company D have been achieved by means of the following controls.

General Building. Company D plant is a large open building with natural ventilation. Some ceiling fans also have been installed. Although natural ventilation and ceiling fans provide for a certain amount of dilution and air circulation, the cross drafts created by the fans and the large openings in the building can cause cross contamination (Ex. 684d, p. 15).

Scrap and Charge Preparation. The scrapyard is paved. It is washed down and cleaned by street sweepers. Scrap is also wetted to reduce the amount of lead dust emitted from handling. The briquetting plant is a shed housing the baling and briquetting machines, which compress fine materials into bricks that can be used for charging the furnaces. While the briquetting plant itself is locally exhausted, the cabs on the forklift trucks and front-end loaders operating in this area are not enclosed (Ex. 684d, pp 1, 2, 15, 17).

Blast furnace. The blast furnace is equipped with enclosures and exhaust ventilation at the charging point and the tap point of the furnace. Both the charging and tap hoods are ventilated to baghouses before being exhausted to the outside air (Ex. 684d, pp. 15, 16).

The exhaust ventilation hood, positioned directly over and around the charging point of the blast furnace, is activated when the furnace door opens. It has a design face velocity of 1,700 feet per minute. However, the effectiveness of this control is limited by "upsets," which occur when scrap is loaded improperly or an improperly selected load is charged. These upsets, which overwhelm or take place beyond the effective range of existing exhaust ventilation, can occur as often as twice a week, company personnel report (Ex. 684d, pp. 15, 16, 17).

Holding furnace. The holding furnace is equipped with exhaust ducting at the point of discharge of the molten copper. There is no ventilation at the slag hole. In addition, the launder carrying the slag discharged from the furnace is not enclosed and the slag granulating and sampling processes are not controlled (Ex. 684d, p. 16).

Converter. The charging and discharging points of the converter are equipped with exhaust hoods. The hoods are only turned on when the furnace is being charged with the ladle and when metal and slag are being discharged. These hoods are exhausted to baghouses (Ex. 684d, p. 16).

Maerz and shaft furnaces. Both the Maerz (reverberatory) and shaft furnaces are equipped with hooding and exhaust ventilation at the charging point. The hooding is exhausted to baghouses before emissions are released into the outside air (Ex. 684d, p. 16).

Casting operation. The molten copper is transferred to the casting operation via a launder that is semi-enclosed to retain heat. The steam generated during the quench is exhausted to a point outside the building (Ex. 475–32D, H–004E, p. 14).

[6] On this point, OSHA disagrees with Meridian, which did not take account of the effects of cross contamination and therefore attributed the exposure levels in casting to emission sources within that operation (Ex. 686C, p. 15).

Control rooms. There are several enclosed control rooms that are air conditioned. The blast furnace control room is a positive pressure environment using outside air. These control rooms are accessible to employees (Ex. 684d, p. 15).

Work practices. Company D reports that the scrapyard is wetted for dust control purposes, the scrap is heated before charging to drive off any moisture, and the facility is regularly vacuumed. Company D further states that it provides training, which includes instruction to employees not to stand in the area near furnace doors unless necessary (Ex. 684d, p. 17).

Additional Controls and Expected Reduction of Exposure Levels. As discussed in the section above concerning existing exposure levels, most of the sampling results for employees working in the casting and miscellaneous operations already are below 50 $\mu g/m^3$ (Ex. 686C, p. 4). In addition, most employees in the shaft and Maerz furnace areas have geometric mean exposure levels below 90 $\mu g/m^3$.

OSHA believes that for operations where most sampling results or geometric means already are below 50 $\mu g/m^3$, relatively modest improvements in work practices or engineering controls, such as improved housekeeping, will be sufficient to reduce employee air lead levels consistently below 50 $\mu g/m^3$. For operations where most of the sampling results or geometric means are below 100 $\mu g/m^3$, OSHA believes that a combination of limited additional and improved existing controls (e.g., enclosing a launder) will be sufficient to control exposure levels to 50 $\mu g/m^3$. Specifically, OSHA believes, for example, that controlling employee exposure levels to 50 $\mu g/m^3$ in the shaft and Maerz furnace areas should be quite manageable, since a primary source of exposure is extraneous to these operations (i.e., cross contamination from the blast furnace and, perhaps, other areas of the building) (Ex. 475–32D, H–004E, p. 42).

The blast furnace area is the only one in secondary copper smelting where controlling exposure levels to 50 $\mu g/m^3$ is likely to pose a serious problem. At Company D, it is clear that existing engineering and work practice controls do not effectively control exposure levels in this area (Ex. 686C, Ex. 2). Exposure data indicate that in some blast furnace operations current engineering and work practice controls are inadequate, while in others such controls appear to be nonexistent. OSHA believes that employee air lead levels can be reduced to below 50 $\mu g/m^3$ in many operations in the blast furnace, as well as in any other operations requiring additional controls, by implementing conventional and readily available industrial hygiene control techniques.

The Agency's discussion of reductions of air lead levels expected to be achieved by implementing recommended controls relies in part on assessments made by a panel of three certified industrial hygienists for OSHA's contractor, Meridian. These assessments are based upon data in the record, a site visit to Company D, and the extensive experience and expertise of the panel. Although quantification of the estimated reductions involves a substantial amount of expert judgment, OSHA believes that the panel's assessment is the best available evidence in the record on the reduction in exposure levels that can be reasonably expected from implementing recommended additional and improved controls.

OSHA, based on its own experience and expertise, therefore believes that reliance upon Meridian is entirely reasonable. OSHA in its own analysis places much greater emphasis than did Meridian on the central problems of controlling the blast furnace, cross drafts, and cross contamination to reduce air lead levels in secondary copper smelting to 50 $\mu g/m^3$. From its analysis OSHA concludes that employee exposure levels in the blast furnace can be reasonably managed and that cross contamination from the blast furnace can be virtually eliminated.

Prevention of Cross Contamination and Cross Drafts. As indicated above, the blast furnace at Company D is not being effectively controlled. Evidence in the record suggests that cross contamination from the blast furnace, and perhaps to a lesser extent from the scrapyard, currently is creating excess exposure levels in the Maerz and shaft furnace areas, among others. OSHA does not believe that the copper used in these two furnace operations, which contains no more than 1% lead (Ex. 684d, p. 3), can by itself produce such high exposure levels. OSHA believes that eliminating cross contamination is technologically feasible.

As Company D itself recognizes (site omitted to protect confidentiality), cross contamination is the source of higher air lead levels in the casting operation, as well. In casting, where the lead content of the highly refined copper is between .08–.2% (Ex. 684d, p. 3), air lead levels should be low (Ex. 475–32D, pp. 22–23). In fact, the geometric mean exposure level in casting is 41.2 $\mu g/m^3$, and 38% of the samples in casting are above 50 $\mu g/m^3$ (Ex. 686C, Ex. 2). OSHA considers exposure levels in casting to be approximately equal to the increment in exposure levels broadly caused by cross contamination. Thus, by controlling cross contamination, exposure levels in various operations and areas generally would be reduced to the extent of the geometric mean exposure level in the casting area.

OSHA conservatively determines that the appropriate increment derived from the casting area as attributable to cross contamination is approximately 37 $\mu g/m^3$. OSHA believes this is conservative because it excludes from the computation higher exposure levels relating to certain maintenance work and to the transfer and holding of the molten metal in the casting area.

After adjusting monitoring results from the shaft and Maerz furnace areas, for example, to factor out cross contamination OSHA finds geometric means of approximately 52 $\mu g/m^3$ and 41 $\mu g/m^3$, respectively, before additional controls are implemented (see Table 2 below).

TABLE 2.—1984–1987 WORKERS' EXPOSURE DATA OF COMPANY D—ADJUSTED VALUES BY USING CASTING AREA AS BACKGROUND [1]

Area	Geometric Mean w/cross contamination	Geometric Mean w/o cross contamination
Shaft Furnace	88.6	51.6
Maerz Furnace	78.0	41.0

[1] Source: Ex. 686C, Ex. 2.

There are at least two reasons for this cross contamination. First, Company D has failed to adequately control lead exposures at their primary source, the blast furnace area. Second, cross drafts exist, which drive the lead fume and dust escaping from the blast furnace throughout the plant (Ex. 475–32, pp. 19, 22–23). These cross drafts occur because Company D, which has a large open building with a very hot smelting process, relies too heavily upon natural ventilation and some ceiling fans to control exposure levels. Not only do these cross drafts spread contamination from one operation to another, but they also disrupt local exhaust ventilation, thereby preventing exhaust hoods from operating at maximum capacity. OSHA's evaluation of the complex, plant-wide problems that cross drafts create is substantiated by the American Conference of Governmental Industrial Hygienists' book, *Industrial Ventilation*, which states that "[c]ross drafts not only interfere with the proper operation of exhaust hoods, but may also disperse contaminated air from one section of the building into another and can interfere with the proper operation of process equipment * * *" (Ex. 583–13, p. 7–2).

To remedy this problem, as well as others, OSHA believes that the first thing that Company D and the industry must do is to conduct a plant-wide industrial hygiene study which focuses in part on analyzing cross drafts and cross contamination as a basis for designing cross-draft barriers and other measures to eliminate them. Erecting cross-draft barriers at proper locations not only will control cross contamination, but also will increase the efficiency of exhaust hoods. This will result in an appreciable reduction of air lead levels in all areas, as sources of lead extraneous to an operation are eliminated and as control of sources of lead intrinsic to the operation is enhanced.

OSHA is confident that such a study is essential to systematically controlling air lead levels in the industry. OSHA's determination is further supported by Dr. Knowlton Caplan, a well-known engineering consultant to the lead industry, who has said that engineering controls should be designed with industrial hygiene problems in mind (Ex. 582–89, Appendix). However, there appear to have been few or no industrial hygiene studies in this industry to help employers control the exposures of their employees.

At Company D, for example, no such study has ever been made. No industrial hygienist is employed in its abatement program. After certain controls were identified and installed in the early 1980s to abate air lead levels to 200 $\mu g/m^3$, no industrial hygiene study was carried out to analyze their effectiveness. No study was conducted concerning the problems of cross drafts and cross contamination. OSHA believes consultation with an experienced industrial hygienist could help to resolve such problems inexpensively.

Preventing cross contamination is the single most important step that can be taken to reduce exposure levels generally throughout the plant. An engineering report based on conditions in a secondary copper smelter confirms OSHA's view that the blast furnace is the major source of lead emissions. This report states that the charging door and tapping point on the blast furnace are responsible for most of the lead emissions in the facility (Ex. 475–32D, H–004E, p. 42). In addition to preventing cross contamination, other conventional controls that are applicable to many operations also should be implemented to broadly reduce exposure levels in secondary copper smelters. These include better ventilation, enclosure, isolation, housekeeping, and maintenance.

Ventilation. The presence of excessive lead in the work environments of secondary copper smelters indicates that engineering controls like total enclosure, local exhaust ventilation (LEV), and general ventilation are not doing the job. As previously stated, where ventilation is inadequate, cross contamination can become a serious problem. Although much more quantitative and other information than industry has provided would be needed to state with any precision how much reduction of particular exposure levels should be achieved by enhancing specific ventilation systems, OSHA has no doubt that in some operations improved or additional ventilation can achieve major reductions in worker exposure. For example, reductions in exposure levels can be achieved in the blast furnace area by increasing the capture efficiency of the hood over the blast furnace so that it will prevent the escape of large quantities of fume into the facility during the upsets that are reported to occur as often as twice a week (Ex. 684d, p. 16) and by providing exhaust ventilation for the launder or for ladle transfer and ladle preheating (Ex. 568, p. 12).

Enclosure and Isolation. Enclosure and isolation are two alternative methods of separating workers from air contaminants. In the case of isolation, the employee is physically separated from contaminants in the air (e.g., by working in a filtered, ventilated control booth). With enclosure, the source of the contaminant is physically contained and separated from the rest of the work environment to prevent contamination of the air (e.g., placing equipment or dirty processes within an enclosure) (Ex. 568, p. 13).

Company D reports that it has "positive-pressure control rooms [that] are available to some employees" (Ex. 684d, p. 15). However, as demonstrated by employee exposures in Company D's blast furnace area, these control rooms in practice have not been adequate to control the exposure levels of most employees (Ex. 684d, Ex. 2).

Docket entries describe standard enclosure techniques that are in use in the industry or can be readily implemented (e.g., enclosing launders to stop fumes from escaping) (Exs. 475–32D, H–004E, p. 19; 686C, p. 13). Simple isolation techniques that have been successfully used in certain plants in this industry and in plants in other lead industries also are applicable throughout this industry (e.g., providing employees with filtered, ventilated cabs for mobile equipment and fresh air islands, isolation booths and control rooms) (Ex. 686C, pp. 11–14). Isolating workers, even for a portion of their shift, can significantly reduce exposure levels (Ex. 686C, p. 14; see also Ex. 568, p. 11).

For example, a Radian study of a secondary lead smelter demonstrates that employee exposures can be reduced by 23–77% even when employees spend only a portion of the workday in an isolation booth (Ex. 583–16, Vol. 1, p. 30). Another study, by the National Institute for Occupational Safety and Health (NIOSH), investigating the effectiveness of various control technologies in secondary lead smelters, reports that workers spending even one-quarter of their time in a supplied air island would experience a 20% reduction in overall 8-hour TWA exposure (Ex. 590, p. 40). Consequently, for example, a fresh air station could be installed in various operations where needed to reduce remaining excess exposures after other controls were implemented (e.g., Ex. 686C, p. 15).

Housekeeping, Work Practices, and Preventive Maintenance. Housekeeping, work practices, and preventive maintenance are essential controls whose importance frequently is not adequately recognized by employers. Failure to develop and use rigorous housekeeping, good work practices, and preventive maintenance can destroy the effectiveness of otherwise adequate engineering controls

The importance of housekeeping was stressed in a report prepared by the Cadre Corporation for the Southwire Copper Company, a secondary copper smelter (Ex. 475–32D, H–004E, p. 58). The Cadre report states,

> [Housekeeping] is definitely the most underrated aspect of any fume abatement program. In any industrial facility there will be some amount of particulate in the air. Sooner or later this particulate is going to settle out on the plant floor, equipment and materials. If this dust is not collected and disposed of then it will become airborne again due to building drafts, mobile machinery traffic and numerous other disturbances. The housekeeping component of the abatement plan is a vital link in the success of the project. By neglecting to properly control settled particulate any gains made by capturing fugitive emissions will be minimal.
> (Ex. 475–32D, H–004E, p. 58)

OSHA agrees. It is impossible to overemphasize the importance of good housekeeping and work practices.

Nevertheless, housekeeping at the Company D plant was so inadequate

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that Meridian, based on its site visit, substantially downgraded its assessment of the current level of housekeeping in secondary copper smelters (Ex. 686C, p. 13). Prior to that site visit, Meridian had assumed that secondary copper smelters utilized good housekeeping practices (Ex. 573, p. 28). After the visit, Meridian concluded that housekeeping needs to be substantially improved for the industry to meet 50 $\mu g/m^3$ (Ex. 686C, p. 16)

To improve housekeeping, OSHA specifically recommends the following. A vacuum system should be installed in copper smelters that do not have adequate vacuuming facilities so that spillage and settled dust can be vacuumed daily from surfaces. Such a system was recommended by Dr. Caplan for Amax's secondary copper smelter at Carteret, New Jersey (Ex. 668E, p. 11). Dry sweeping, particularly in the scrapyard, should be prohibited. HEPA-filtered vacuum floor sweepers and central HEPA-filtered vacuums should be used daily to control workstation dust.

In addition, at least annually each secondary copper smelter should thoroughly clean its entire facility, including rafters. The expert panel estimates that such a cleaning would reduce exposure levels of workers throughout the facility by 10–25% (Ex. 686C, p. 19). At Company D, management stated that such a cleaning has never been undertaken (Ex. 684d, p. 17).

Detailed housekeeping instructions should be prepared and adherence to them enforced by employers, with scheduling and checkoff of regular cleaning of all areas of the plant where dust can collect. If necessary, the housekeeping instructions should list hundreds of sites, pieces of equipment, parts of equipment, obscure corners, etc., to assure that they are cleaned regularly.

In addition to implementing good work practices for housekeeping and cleanup of fines and slag, work practices should be written to prescribe correct procedures for all tasks that might result in increased employee exposure. At Company D, for example, a worker was seen standing next to the slag hole of the holding furnace, one of the highest emission sources at this smelter, when the employee's work did not require his presence there. Improved work practices would dictate that the employee remove himself from proximity to the source of exposure whenever possible and, to the extent possible, isolate himself from contaminants in a fresh-air island or the like. Company D states that it trains its employees not to stand near furnace doors, etc., when employees are not required to be there (Ex. 684d, p. 17). However, based on the site visit to Company D, it appears that management does not enforce the workpractices taught to workers during training. Better work practices that reduce the frequency of upsets during blast furnace charging could also substantially decrease exposure levels in the blast furnace and resulting cross contamination.

Mr. Melvin Cassady, OSHA's expert on smelting, has stressed the importance of maintenance programs to assure that all systems function as cleanly and as efficiently as practicable. In addition to the actions recommended above, Mr. Cassady specifically suggested the following:

1. Preventive maintenance for belt conveying systems;
2. Maintenance of clean air stations to retain their effectiveness;
3. Regular cleaning and maintenance of positive-pressure; filtered-air systems in cabs of mobile equipment;
4. Periodic checks for, and prompt repair of leaks in baghouses; and
5. Daily checks on the pressure of baghouses and prompt replacement of ruptured bags (Ex. 604, pp. 2, 4, 7, 14).

In addition to the above controls, OSHA specifically recommends additional controls operation by operation.

Blast Furnace. The blast furnace is the source of the highest lead exposure levels in secondary copper smelting and is the most difficult area to control to 50 $\mu g/m^3$.

Exposure levels within the blast furnace area exceed 50 $\mu g/m^3$ for a variety of reasons, including lack of exhaust ventilation (e.g., on the launder and during ladle transfer), inadequate ventilation (e.g., inadequate capture efficiency on the blast furnace hood), lack of isolation or enclosure (e.g., absence of fresh air islands), "upsets" that frequently occur during the charging process, and, to a lesser degree, some cross contamination from the scrapyard and reentrainment of dust from the blast furnace area itself (Ex. 686C, pp. 9, 10, 13–15).

OSHA believes that if the additional controls recommended by the expert panel of certified industrial hygienists (Ex. 686C, pp. 9–10, 13–15) and by OSHA are implemented, exposure levels within the blast furnace will be controlled to or below 50 $\mu g/m^3$ in at least 50% of the operations most of the time. These controls include installation of local exhaust ventilation at all furnace openings, improving the capture efficiency of the hood over the charging door to capture fumes generated during upsets, installation of enclosed filtered-air booths or supplied-air islands for operators having permanent stations near furnaces, use of controls to reduce emissions during the transfer of molten material (e.g., traveling hoods for ladles and hoods or enclosures for launders), and improved work practices (e.g., to reduce or eliminate exposures caused when workers unnecessarily remain near the furnace openings).

When upsets occur at the blast furnace, as occurred during OSHA's site visit to Company D, clouds of smoke and fumes may fill the entire smelter area, notwithstanding the enclosure and canopy at the charging point (Ex. 684d, p. 15). These upsets, typically occurring as often as twice a week, undoubtedly are an important cause of the high exposure levels in the blast furnace and other areas throughout the facility. Standard work procedures should be implemented to minimize or prevent upsets during charging, such as adjusting the volume and rate of feeding of the charge and better quality control over the materials included in the charge. In addition, as discussed above, the capture efficiency of the hood over the charging door must be enlarged to accommodate the few upsets that remain. During upsets, OSHA recognizes that it generally will be necessary for affected employees to wear respirators.

The cabs on mobile equipment in the blast furnace area also should be enclosed and equipped with HEPA filters. Employees in the blast furnace area should be encouraged to use the existing ventilated control room whenever possible and additionally a supplied air island should be provided for the blast furnace operator. The expert panel expects that greater use of the control room by blast furnace operators, combined with the shift to filtered makeup air, should reduce exposure levels by 5–25% (Ex. 686C, pp. 9–10).

Several other controls can reduce lead exposure levels for employees in the blast furnace area. Providing exhaust ventilation for ladle transfer, ladle preheating, and cast pot staging is expected to reduce employee exposures by an additional 9–15% (Ex. 686C, p. 20). In conjunction with expected reductions from better dust control in the scrapyard, which is expected to reduce employee exposure levels in this area by 10%, employee exposures in the blast furnace area are expected to be reduced by a total of 34–50%, according to the expert panel (Ex. 686C, p. 20).

If the panel's recommendations for the blast furnace area are implemented, 4 operations in this area, in addition to the 3 operations with geometric means already below 50 $\mu g/m^3$, will have midpoint geometric means below 50 $\mu g/m^3$, for a total of 7 of 14 operations within the blast furnace area that are below 50 $\mu g/m^3$. Two more operations also will have midpoint geometric means below 53 $\mu g/m^3$ (Ex. 686C, p. 18), for a total of 9 operations below 53 $\mu g/m^3$. An additional 3 operations will have midpoint geometric means below 70 $\mu g/m^3$. Thus, 12 of 14 operations within the blast furnace area are expected to be below 70 $\mu g/m^3$, and the other 2 operations are expected to have midpoint geometric means below 93 $\mu g/m^3$ (Ex. 686C, p. 21). Where all feasible engineering and work practice controls have been implemented and employees performing tasks in the blast furnace area like maintaining the tap hole and sample preparation are still exposed above the 50 $\mu g/m^3$ PEL as an 8-hour TWA, employers will be required to provide these workers with respirators for supplemental protection while they are performing such tasks.

OSHA recognizes that these are estimates, not precise calculations of reductions in exposure levels that can be expected with additional controls. Nonetheless, OSHA believes these estimates are important since they indicate that, even in many of the dirtiest operations, control of employee exposure levels to 50 $\mu g/m^3$ can be reasonably anticipated without major overhaul or restructuring of facilities. OSHA further believes these estimates are conservative since they are based upon a limited, rather than an exhaustive list of recommended additional controls.

When the molten metal leaves the blast furnace area it undergoes the first of several transfers between furnaces. The transfer of molten metal can be an important source of lead emissions in the blast and other furnace areas. Consequently, control of the transfer is vital, as industry engineering consultants Dr. Caplan and Cadre Corporation have recognized (Exs. 475–32D, H–004E, p. 50; 668E, p. 12). Effective control of such transfers is not routinely implemented in secondary copper smelters, as Meridian points out (Ex. 686C, p. 14). The preferred method for accomplishing such transfers is by a transfer chute called a launder, because from an industrial hygiene point of view a launder can be fully and easily enclosed, thus completely containing the lead fumes. Company D uses an uncovered launder to transfer molten metal from the blast furnace to the holding furnace. The launder has a hood only at the end transfer point into the holding furnace. Company D also relies upon ladles with no observable controls for metal transfers from the holding furnace to the converter furnace and from the converter to the shaft and Maerz furnaces. The expert panel estimates that emissions from these transfers can be reduced by 75–95% by implementing well-designed local exhaust ventilation (Ex. 686C, p. 15).

Holding Furnace. At Company D only some sources of emission in the holding furnace area are effectively controlled. Additional ventilation and enclosures are needed. For example, the slag hole is not currently equipped with an exhaust hood. The company says it did not ventilate the slag hole because of the absence of visible emissions. However, because lead fume is not always visible, and because of very high employee exposure levels at the slag hole, the company should install local exhaust ventilation at this furnace opening.

Additional controls that should be implemented to control emissions in the holding furnace area include enclosure and ventilation of the ladle or launder, which is used to transfer molten metal to the converter; local exhaust ventilation for the slag testing area; and regular clean up of lead-bearing slag from the work area. These controls are expected to reduce the exposure of the copper/slag hole operator by 40–65%, according to the expert panel (Ex. 686C, p. 14).

By more effectively controlling exposure levels in the scrapyard and eliminating cross contamination from the yard, workers' exposure levels in the holding furnace area will be further reduced by 5–10%, according to the expert panel (Ex. 686C, p. 13).

Converter. Converting is carried out at the high temperature of 2,000°F. Cracks and leaks in the furnace commonly occur due to high temperatures. Converters should be relined with firebrick regularly to keep them tight and leakproof. In Japan, for example, they are relined every 100 days (Ex. 689–1, p. 68).

Leaks of off-gases during air blowing are the principal source of emissions during converter operations. Such leaks can occur despite the fact that primary hoods collect the bulk of emissions. Secondary hoods are needed, therefore, to capture the off-gases. Secondary hooding can be accomplished either by totally enclosing the converter or installing a push/pull ventiliation system, as the secondary lead smelting industry has already done successfully (Exs. 604, p. 12; 689–1, p. 155).

In addition, where feasible, the ladles used in converter aisles should be exhausted by employing the Hawley Trav-L-Vent device, which has proven effective in controlling exposure levels in primary copper smelters and many other lead industries in the United States (Ex. 604).

Better dust control in the scrapyard will further reduce workers' exposure levels in this area by 5–10%, according to the expert panel (Ex. 686C, p. 13).

Maerz (Reverberatory) and Shaft Furnaces. As indicated above, solely with the elimination of cross contamination from the blast furnace area, the geometric mean employee exposure levels at the Maerz and shaft furnaces will be reduced to 41 $\mu g/m^3$ and 51.6 $\mu g/m^3$, respectively. These exposure levels should be achieved even before any additional controls are implemented to control sources of emission at those furnaces.

Additional controls such as covering or locally exhausting ladles or launders would further reduce workers' exposure levels by 3–5%, according to the expert panel (Ex. 686C, p. 15). Further, better dust controls in the scrapyard would reduce workers' exposures in the furnace areas by an additional 5% (Ex. 686C, p. 13). Better housekeeping would reduce exposures by another 15–25% (Ex. 686C, p 20). Thus, the total reduction anticipated by the expert panel from implementing these additional controls is 23–35%.

Cumulating the anticipated reductions from controlling cross contamination from the blast furnace and the scrapyard with the anticipated reductions from implementing additional controls in the furnacs areas, OSHA finds that of the 8 job categories listed for these furnaces, 7 will have geometric means below 49 $\mu g/m^3$. Moreover, it appears that the eighth category, shaft furnace operator, no longer exists (Ex. 686C, pp. 5, 25). In other words, average geometric mean exmployee exposure levels would range from negligible to 48.8 $\mu g/m^3$ in the Maerz furnace area and from 10.4–37.2 $\mu g/m^3$ in the shaft furnace area.

OSHA believes that increased preventive maintenance is the key to still further reducing air lead levels at the Maerz furnace, specifically by making the furnace roof tighter and more leakproof. In Japan, for example, very few cracks occur because the insides of Maerz furnace roofs are coated frequently to make them essentially leakproof (Ex. 689–1, p. 112). Appropriate silica refractory sealants are commercially available in the United States, which have been applied successfully to seal top leaks of Maerz furnaces in secondary lead smelters in this country (Ex. 604, p. 11).

As a result of implementing all the above controls, OSHA has no doubt that employee exposure levels can be consistently controlled to or below 50 μg/m³ in the Maerz and shaft furnaces.

TABLE 3.— PRESENT EXPOSURE LEVELS AND ANTICIPATED EXPOSURE LEVELS IN THE MAERZ AND SHAFT FURNACES AT COMPANY D

Job category	Geometric mean exposure (μg/m³)	Geometric mean exposure adjusted for cross contamination	Ranges of geometric mean after additional controls applied and adjustment for cross contamination
Shaft Furnace:			
General	85.3	48.3	31.4–37.2
Operator	(1) 318.2	(1)	(1)
Supervisor	53	16	10.4–12.3
Maerz Furnace:			
Operator	100.4	63.4	41.2–48.8
Assistant	88.4	51.4	33.4–39.6
Loader	21	(2)	(2)
Barco Operator	65.7	28.7	18.7–22.1
Supervisor	41.2	4.2	2.7–3.2

[1] Shaft furnace operator job category no longer exists (Ex. 686C, pp. 5, 25).
[2] Extremely low exposure levels, approximately equivalent to background levels or 0 μg/m³.

Casting Area. As previously shown, in the casting operation the molten copper is more than 99% pure. Whatever significant exposure levels have been found in this operation, therefore, generally must be due to cross contamination from the blast furnace and scrapyard (Ex. 475–32D, H–004E, pp. 19, 22–23, 42). With the elimination of cross contamination, air lead levels in the casting operation should be negligible.

Scrap and Charge Preparation. In the scrapyard and briquetting plant, the vast majority of sampling results already are below 50 μg/m³. Modest improvements in controls would further control exposure levels.

Strict control of sources of lead emission in the scrapyard is important not only to protect scrapyard employees but also to eliminate one source of cross contamination in the plant. To stop cross contamination from the scrapyard, the expert panel recommends that Company D install baffles, screens or walls to prevent dispersion of lead-bearing dust from scrap (Ex. 686C, p. 13).

To further reduce exposure levels for scrapyard employees, OSHA has determined that wet sweeping should be used instead of street sweepers. This would reduce worker exposure in this area by up to 5%, according to the expert panel (Ex. 686C, p. 9). In addition, cabs of forklift trucks and front-end loaders should be enclosed and equipped with a filtered and tempered air supply, as is common practice in secondary lead smelters (Ex. 604, pp. 2, 4). This would reduce operators' exposure levels well below 50 μg/m³. Operators should be provided with audio communication systems if their tasks require communication with other personnel.

Baghouse and Control of Cross Contamination. Baghouses can be a significant source of dust if they are not operated and maintained properly. Industry consultants, Dr. Caplan (Ex. 668E, p. 12 of enclosure) and Cadre Corporation (Ex. 475–32D, H–004E, pp. 53–54), have recognized this in recommending to secondary copper smelters that they improve dust suppression at their baghouses.

During OSHA's site visit to Company D, management representatives conceded that 3 of the 4 baghouses in the plant were not in good condition and that replacing them, along with modifying the roof, would contribute more than any other single control measure to reducing air lead levels of employees in the plant (Ex. 684d, p. 18). OSHA agrees that replacing these baghouses would significantly contribute to reducing air lead levels in the facility. Running efficient baghouses is essential not only to reducing exposures to baghouse workers, but also to maintaining an effective ventilation system and to preventing cross contamination from baghouses to the entire facility (Ex. 686C, p. 29).

To keep baghouses clean and operating efficiently the following engineering controls and work practices should be strictly implemented:

1. Baghouses should be repaired and maintained to eliminate leaks and assure proper functioning of cleaning mechanisms;
2. Baghouses should be shielded from wind by erecting barriers; and
3. Dust-packaging operations should be ventilated (Ex. 573, p. 27).

OSHA also recommends that automatic dust-packaging systems that use mechanized material handling equipment, such as screw conveyors, should be installed when plants are being modernized.

Repair and maintenance of the baghouse is an intermittent maintenance activity. In certain repair and maintenance tasks it may not be feasible to control air lead levels to 50 μg/m³ by engineering and work practice controls. Under such circumstances, OSHA recognizes that it may be necessary for workers to wear respirators for supplemental protection while performing these tasks.

Technological Feasibility. Based on the above analysis of the evidence in the record and OSHA's experience and expertise, the Agency determines that achieving a PEL of 50 μg/m³ by means of engineering and work practice controls is technologically feasible in the secondary copper smelting industry as a whole.

Nevertheless, the Agency recognizes that it may not be possible to consistently achieve the 50 μg/m³ PEL by these controls for certain employees in the blast furnace area, like those who maintain the tap hole and carry out sample preparation. Since OSHA has found the 50 μg/m³ PEL feasible for the industry, employers will be required in these tasks, as well, to implement engineering and work practice controls to control exposure levels to the PEL or the lowest feasible level. Where all feasible engineering and work practice controls have been implemented and employees performing these tasks are still exposed above the 50 μg/m³ PEL as an 8-hour TWA, employers will be required to provide these workers with respirators for supplemental protection while they perform such tasks.

To sum up, OSHA has shown the following. In 2 of 5 operations at Company D, casting and miscellaneous, both the geometric means and more than 60% of all sampling results already are at or below 50 μg/m³. In 2 more operations, the shaft and Maerz furnaces, geometric means also will be below 52 μg/m³ once cross contamination has been eliminated. These levels can be achieved even before recommended additional controls are implemented to control sources of continuing lead emission within these furnace areas. After implementation of additional controls in both furnaces, geometric mean exposure levels in all job categories but one will be reduced below 40 μg/m³. In that one job category the geometric mean will be below 49 μg/m³.

In the other operation, the blast furnace, after recommended controls are implemented, exposure levels in 9 of the 14 associated job categories will be below or just slightly above 50 μg/m³, and in 3 others levels will be below 70 μg/m³. Thus, in only 2 of 14 blast furnance categories are exposure levels expected to remain above 70 μg/m³. In operations where it is infeasible to reduce exposure levels to or below 50 μg/m³ by means of engineering and work practice controls and under many "upset" conditions, OSHA recognizes that it may be necessary for workers to wear respirators for supplementary protection.

OSHA also wishes to point out that all of its recommendations for achieving 50 μg/m³ rely exclusively upon conventional and readily available controls. OSHA has not needed to exercise its statutory authority to force the development of new technology in this industry to justify its finding of feasibility.

Based on the foregoing, OSHA believes that 50 μg/m³ is achievable most of the time in most of the operations in secondary copper smelting. In reaching this conclusion, OSHA does not purport to have recommended an exhaustive list of additional controls. The Agency is certain that industry will be capable of devising and finetuning various controls to further reduce exposure levels. Consequently, OSHA anticipates that industry will be able to consistently achieve exposure levels at or below 50 μg/m³ in nearly every phase of production.

OSHA believes that these levels will be attainable by implementing an integrated system of controls. The basic element in that system is an industrial hygiene study. Each smelter is required by paragraph (e)(3) of the lead standard (29 CFR 1910.1025) to establish and implement a written compliance plan for achieving the 50 μg/m³ PEL, which includes an in-depth job/task analysis and a plant wide survey. This survey and analysis should be performed by an experienced industrial hygienist who shall identify sources of emission in each task, sources of cross drafts and sources of cross contamination, and appropriate sites for erecting barriers to prevent cross contamination. Such an analysis should also recommend appropriate engineering and work practice controls to reduce emissions and minimize employee exposures. If, after implementing these recommendations, reductions in air lead levels deviate substantially from what was anticipated, a followup industrial hygiene evaluation should be conducted and necessary corrections made.

The second element in that system is the development of good written housekeeping and work practice programs, as required by paragraph (e)(3)(ii)(F) of the lead standard (29 CFR 1910.1025), which shall be systematically implemented so that proper procedures are routinely and meticulously followed. For example, wall-to-wall cleanings should be conducted at least annually.

The final element of an integrated system of controls is a preventive maintenance program to assure that all systems are maintained in clean and efficient condition.

The secondary copper smelting industry does not agree that a PEL of 50 μg/m³ is technologically feasible. Industry's disagreement is based on 6 main points.

First, and most generally, industry maintains there is insufficient evidence in the record to support a determination of technological feasibility. Second, industry portrays Meridian and its reports as incompetent and biased. Third, industry claims that Company D is not representative of the rest of the industry and that even the more modernized Company D has been unable, after the expenditure of millions of dollars, to consistently achieve 200 μg/m³, let alone 50 μg/m³. Fourth, industry alleges that the lead smelting industry has proven incapable of achieving 50 μg/m³, that OSHA has acknowledged that fact, and that it is more difficult to control exposure levels in copper smelting than in lead smelting. Fifth, industry states that several consultants, like JACA (Ex. 553–5) and Dr. Caplan (Ex. 668E, p. 2), as well as OSHA in a 1983 draft, previously concluded that a PEL of 50 μg/m³ is technologically infeasible in secondary copper smelting. Sixth, industry claims that NIOSH and others have recognized that an integrated system of controls, including some reliance upon respirators, is needed to achieve the PEL throughout secondary copper smelting. This, industry asserts, amounts to an acknowledgement that achieving the PEL by engineering and work practice controls alone is infeasible (Exhibits 582–89, 680, 694–39). OSHA has considered these arguments but finds them unpersuasive.

First, OSHA's statutory obligation is to make its determination on the best available evidence in the record. OSHA has actively sought to collect and develop a full and accurate record. OSHA is persuaded that it has more than enough current information and data upon which to base its feasibility determination. OSHA believes that there would be still more usable information and data in the record had industry not declined to testify at the public hearing and to subject itself to cross examination by OSHA and others. In pursuit of fully developing the record, OSHA took the unusual step of making a site visit to a secondary copper smelter after the public hearing.

Second, industry criticizes Meridian's efforts as perfunctory, preconceived, unsupportable and generally incompetent. Industry claims the site visit to Company D was "window dressing" and criticizes OSHA and Meridian for not performing air monitoring during the site visit. OSHA rejects these criticisms and believes that Meridian did a creditable job given time and resource constraints. Meridian has had extensive experience conducting industrial hygiene analyses and assessing factors relevant to feasibility. If its experience in secondary copper smelting in particular is limited, the industrial hygiene and engineering principles utilized by Meridian are applicable to all industries, and the technology referred to is both used in copper smelting and transferrable from analogous industries.

Meridian's final report (Ex. 686C) and its conclusions are based on data in the record submitted by Company D, a site visit to Company D in which two experienced and certified industrial hygienists participated, and recommendations by a panel of three experienced and certified industrial hygienists, including two who had been on the site visit.

The fact that, after analyzing additional data and participating in the site visit, Meridian confirmed its earlier conclusions does not indicate preconception or bias. Indeed, based upon evidence developed after the hearing, Meridian changed its mind

about several points and revised its methodology Meridian found, for example, that housekeeping was much worse than it had anticipated. Similarly, after analyzing the array of exposure data, Meridian utilized geometric means because this is the most accurate way to portray that data (Ex. 686C, pp. 2, 6). None of this suggests that Meridian was operating in a perfunctory or biased manner. On the contrary, Meridian invested considerable effort in assembling its expert panel of certified industrial hygienists and assuring that the expert panel would make specific recommendations for additional controls and assessments of reductions in air lead levels to be expected from implementing such controls.

Meridian's revisions and conclusions are firmly grounded in the record. In any event, OSHA has independently assessed the record, reviewed Meridian's final report for accuracy and relied only in part upon that report for its feasibility determination.

With regard to the site visit to Company D, air monitoring was not conducted during the site visit for two reasons. First, four years of exposure data current to September, 1987, had already been submitted to the record by Company D. Second, in response to industry's demand, OSHA had previously agreed in writing as a precondition for the visit not to conduct air monitoring. Consequently, conducting air sampling during the site visit was neither necessary nor permitted. OSHA also notes that OSHA and Meridian, in the company of two independent, certified industrial hygienists, toured Company D and investigated conditions there. In addition, staff at OSHA and Meridian spent numerous hours preparing for the site visit by reading an engineering report on the plant and analyzing Company D's exposure data.

Third, industry says Company D uses state-of-the-art technology that is not representative of the rest of the industry and that even after spending millions of dollars Company D cannot consistently achieve 200 $\mu g/m^3$, let alone 50 $\mu g/m^3$. Industry further alleges that some of the additional controls Meridian recommends for Company D are already in place.

In response, OSHA first notes that the controls at Company D can hardly be said to be state of the art, since so many emissions sources (launder, ladles, tapping holes, slag sampling stations, etc.) are without controls at that facility. OSHA further wishes to emphasize that the fact that Company D may have more controls in place than other smelters does not make it an inappropriate choice for determining technological feasibility in this industry. As counsel for the Institute for Scrap Recycling Industries, which represents secondary copper smelters, among others, himself has pointed out, to prove feasibility OSHA need only prove a *reasonable possibility* that a typical firm *will be able to develop and install* engineering and work practice controls that can meet the PEL in most of its operations (Ex. 680, p. 12). In this case, OSHA has gone much further than that by showing that Company D, relying entirely on currently existing conventional controls, can consistently achieve air lead levels of 50 $\mu g/m^3$.

Indeed, OSHA has shown that merely by controlling cross contamination Company D can reduce employee air lead levels to approximately 50 $\mu g/m^3$, in all areas but the blast furnace. No evidence in the record, other than unsupported industry statements, provides any basis for believing that the additional controls recommended by OSHA could not be implemented across the industry. Industry had every opportunity to submit such technological evidence to show that Company D is not typical in this sense, but has not done so.

With regard to the allegation that Company D and the industry, even after spending large amounts of money, are incapable of consistently achieving levels below 200 $\mu g/m^3$, OSHA notes that more than 80% of all samples at Company D already are under 200 $\mu g/m^3$ and 94% of all samples outside the blast furnace area are below 200 $\mu g/m^3$. OSHA recognizes that Company D has spent a considerable amount of money to modernize its plant. However, the Agency believes that in spending this money Company D neglected to base its design of additional controls on an industrial hygiene survey and neglected to engage an industrial hygienist to analyze resulting monitoring data (Ex. 684d, p. 17). Consequently, OSHA is not surprised that Company D has not achieved the anticipated reductions in employee air lead levels by implementing certain controls (Ex. 684d, pp. 17–18).

Although Company D suggests that it has relied on an engineer "with certain qualifications" to conduct and review its air monitoring (Ex. 684d, p. 3), Company D has failed to take the most basic, necessary steps to understand and correct its own problems. Company D does not know the sources and extent of exposure in each task, has done little to eliminate cross contamination, and has sought to control only those sources of lead where emissions are high enough to be visible. Only with a better understanding of its exposure problems from an industrial hygiene perspective can Company D be in a position to implement the kind of integrated system of controls that is needed to comply with the lead standard.

If it is true, as industry asserts, that a few of the many additional controls recommended by Meridian already exist in some parts of the Company D facility, those controls appear to have been largely ineffective. OSHA believes they have been ineffective because the company has failed to design or implement such controls from an industrial hygiene perspective. Without that understanding, no amount of money spent on exposure problems will adequately control employee exposure levels. Developing a compliance plan for achieving the 50 $\mu g/m^3$ PEL in accordance with the requirements of paragraph (e)(3) of the lead standard should rectify this situation.

Fourth, industry's claim that primary and secondary lead smelters have been unable to achieve 50 $\mu g/m^3$ through engineering and work practice controls, that OSHA has acknowledged this infeasibility and that secondary copper is even more difficult to control, is wrong in every respect. First, as indicated at the hearing, some secondary smelters have achieved 50 $\mu g/m^3$ (Tr, pp. 156–58). Second, primary lead smelters are under no obligation to achieve 50 $\mu g/m^3$ by engineering and work practice controls until 1991. The fact, therefore, that these smelters to date may not have done so is not evidence of their inability to do so.

Next, OSHA has never acknowledged that 50 $\mu g/m^3$ is infeasible in lead smelting. The court has held that 50 $\mu g/m^3$ is feasible in lead smelting and industry is obligated to comply with the PEL by means of engineering and work practice controls. It is incorrect to treat OSHA's Cooperative Assessment Plans (CAP) and Tripartite Agreements as tantamount to recognition by OSHA of infeasibility in lead smelters (and lead battery manufacturers). On the contrary, these agreements presume that 50 $\mu g/m^3$ is generally feasible and that industry's obligation is to use engineering and work practice controls to reduce air lead levels in all operations down to 50 $\mu g/m^3$ or, in those few operations where it is demonstrated that 50 $\mu g/m^3$ cannot be achieved, to reduce air lead levels to the lowest feasible level. In essence, the CAP and Tripartite agreements are mutually agreed-upon compliance plans for implementing engineering and work practice controls to achieve these levels.

Industry is also incorrect when it asserts that OSHA in any way recognized the infeasibility of achieving 50 $\mu g/m^3$ by engineering and work practice controls through Agency action modifying the lead standard to authorize supplemental use of respirators where it is infeasible to achieve 50 $\mu g/m^3$ through engineering and work practice controls. OSHA's standard operating procedure has been to allow the use of respirators where it is infeasible for the employer to achieve the PEL by engineering and work practice controls. Thus, OSHA has not expanded the authorized use of respirators since the lead standard was promulgated.

Finally, OSHA believes it is more difficult to control air lead levels to 50 $\mu g/m^3$ by means of engineering and work practice controls in primary and secondary lead smelters than in secondary copper smelters. Although it is true that temperatures are higher in copper than lead smelters, nevertheless, for several reasons, problems are much greater in lead smelters. In secondary copper smelters there is only one source of lead, copper scrap. The portion of lead in the copper scrap generally is below 10% and often is much lower. The purpose of copper smelting is to remove the limited number of impurities in the copper scrap to produce a nearly pure copper product. By the time that product arrives at the shaft and Maerz furnaces, the remaining lead is no more than 1% of the copper.

By contrast, the purpose of lead smelting is to produce lead. The main raw material is lead ore in primary smelters and lead scrap in secondary lead smelters. As the product is refined, it becomes purer and purer lead. Thus, in lead smelters the sources of lead are ubiquitous, and the lead content rises throughout the process. In secondary copper smelters, however, the source of lead is very limited to start with and the lead content decreases throughout the production process.

Fifth, OSHA disagrees that JACA or the Agency previously found a PEL of 50 $\mu g/m^3$ technologically infeasible in the secondary copper smelting industry. JACA's analysis focused almost exclusively upon economic, not technological feasibility (Ex. 553–5). JACA appears to have found a PEL of 50 $\mu g/m^3$ economically infeasible. On the other hand, the working draft written by OSHA staff in 1983 and based upon the JACA report and other evidence and analysis, concluded that a PEL of 50 $\mu g/m^3$ is feasible, but that for economic reasons a 5-year compliance time would have to be provided (Ex. 570). However, that draft was never published and never became Agency policy, because, as OSHA has maintained since 1981, the Agency has had insufficient information upon which to base a feasibility determination regarding secondary copper smelting. To correct that deficiency, OSHA in 1987–88 reopened the record and again initiated a full public rulemaking to collect additional current data.

OSHA's present feasibility determination is based largely upon data and information provided to the record in the 1987–88 phase of this rulemaking. OSHA has concluded that data and analysis prior to 1984 do not provide a reliable source for a current determination concerning feasibility.

Sixth, industry misconstrues both the concept of technological feasibility and the concept of an integrated system of controls. Industry incorrectly asserts that NIOSH's (and others') statement that such a system of controls, including some reliance upon respirators, is necessary to achieve air lead levels of 50 $\mu g/m^3$ throughout this industry constitutes a recognition that it is infeasible to achieve the PEL by engineering and work practice controls alone. In fact, OSHA strongly supports the need for implementing a system of integrated controls to achieve the strict PEL of the lead standard and recognizes, with NIOSH, that at times employees may have to wear respirators to control their air lead levels to 50 $\mu g/m^3$ (e.g., in certain maintenance operations).

The court has never said that for a PEL to be found feasible it must be capable of being achieved by engineering and work practice controls all of the time in all operations. Indeed the court has recognized that in the limited number of operations where it is not feasible to achieve 50 $\mu g/m^3$ exclusively by implementing work practice and engineering controls, respirators may have to be worn to provide supplemental protection to workers.

Thus, OSHA is unpersuaded by industry arguments. Based upon its own expertise, experience and the record evidence, the Agency concludes that a PEL of 50 $\mu g/m^3$ is achievable by means of engineering and work practice controls in the secondary copper smelting industry.

Uses. The largest use for copper in the United States is for wire and cable. Applications include construction, telecommunications, transportation equipment, and electrical equipment. These products accounted for 82 percent of all copper consumed in the U.S. in 1986. Copper is also fabricated into tubing used in refrigeration systems and automobile radiators. Copper alloys are widely used in the fabrication of plumbing fixtures and decorative items [Ex. 573, p. 6].

Industry Profile. Secondary copper smelters are classified under SIC code 3341. They differ from primary smelters in that secondary smelters use copper-bearing scrap exclusively as their primary raw material.

There are currently five secondary copper smelting facilities in operation in the U.S., though Cerro Copper Products Company reportedly uses high-grade scrap and generates much less lead fume than the other four producers [Ex. 686c, pp. 1–2]. The workforce exposed to lead is estimated to be 1150 workers, with 10% involved in scrap handling and sampling, 55% involved in smelting, 30% involved in anode production, and 5% involved in baghouse work and dust handling [Exs. 573, p 4; 686c, p. 1].

With regard to production data,

> [i]t is not possible to provide data on the total amount of copper produced by secondary smelters. U.S. government data on the use of scrap copper combine use data for secondary smelters with those for either brass and bronze ingot makers or primary producers. The picture is further complicated by the fact that many secondary smelters smelt or refine imported black or blister copper as well as scrap copper. In some years, the use of imported black or blister copper may be high enough at some facilities for them to be reclassified as primary refiners. As a result, separate total production data are not available for the secondary smelter industry [Ex. 573, pp. 12–15].

The Institute of Scrap Recycling Industries (ISRI), which represented four secondary copper smelters in the remand proceeding, did not submit production data for the public record.

Since 1980, total domestic consumption of copper has varied between 3.1 and 3.8 million short tons while consumption of refined copper has fluctuated between 2.1 and 3.0 million short tons [Ex. 573, p. 7].

Imports of refined copper were presented by Meridian [Ex. 573, p. 8]. Between 1980 and 1985, net imports as a percentage of U.S. refined copper consumption exceeded 14 percent in each year except 1982 (when the percentage fell to 9.7 percent). By 1986 it was estimated to be over 22 percent [Ex. 573, p. 8] but declined to about 16 percent in 1988 [U.S. Industrial Outlook, 1989, Department of Commerce].

An important aspect of the secondary copper smelting industry is its dependence on copper-based scrap as a raw material. Since 1980, the percentage of total U.S. consumption of copper derived from scrap has varied between 35.5 percent and 43.2 percent [Ex. 573, p.

10]. Competition for scrap from brass and bronze ingot makers and brass mills is limited because secondary smelters can smelt and refine lower grades of scrap [Ex. 573, p. 12]. It should be noted that the U.S is a net exporter of copper scrap and foreign competitors successfully bid for domestic scrap [Ex. 573, p. 12].

Currently, the price of copper has risen to over $1.00 per pound. Historical data in current dollars show that the price of refined copper declined steadily between 1960 and 1985 from $1.02 per pound to $.69 per pound [Ex. 573, p. 16]. At the same time, the price of No. 1 scrap also declined, from $.65 to $.40 per pound. The difference between these two prices has remained relatively stable, however, fluctuating between about $.26 and $.29. These trends are much the same when examined from the standpoint of constant (1982) dollars [Ex. 573, p. 18].

While OSHA would prefer sector or plant specific financial data, such data were not made available to the Agency by the secondary copper smelters during the informal public hearing. Public information was available, however, from Dialog Information Services (Duns Financial Records Plus) and from the Securities and Exchange Commission.

Sales data from Dialog for Chemetco and Franklin Smelting and Refining indicated annual sales of about $25 million for each plant in 1988. Sales for a third producer, Southwire, an integrated wire and cable operation, were about $550 million in 1986, according to SEC filings. No data were available for the largest plant, Nassau Recycling.

Data on profitability were also available from Dialog. Average ROS for 60 firms with primary activities classified under SIC 3341 was 1.7 percent in 1988. Of the three firms for which sales data were quoted above, only the primary activities of Franklin Smelting fall under SIC 3341. Chemetco is classified as a primary copper smelter (SIC 3331). Southwire is also a primary metals operation. According to Southwire's SEC filing, net income in 1986 was approximately 1.1 percent of sales. Dun and Bradstreet data for 1986 were available for primary metals (SIC 33). The ROS for SIC 33 was 4.6 percent in 1986 [Dun and Bradstreet Industry Norms and Key Business Ratios, 1987].

Costs of Compliance. Compliance costs will be incurred primarily for additional exhaust ventilation, isolation and enclosure, and for improved housekeeping. Costs as developed in this section, are incremental; the estimates presented were based on the costs necessary to bring a secondary smelter (Company "D") into compliance from the existing level of control.

Costs for additional exhaust ventilation equipment were estimated by Meridian and included costs for transfer operations (ventilated ladles), ventilation at slag holes, the slag testing area, the ladle preheating area, and the cast pot staging area [Ex. 686c, pp. 35–36]. Incremental capital costs for this equipment were estimated to be $525,000 for company "D" and $1,275,000 for a larger plant. OSHA assumes the cost of secondary hooding for the converter will be $75,000 (5,000 cfm at a unit cost of $15) for company "D" and $225,000 for a larger facility, which is assumed to have three convertors. Although industry commented (but did not supply data to support its contention) that the 10 percent factor used to estimate operation and maintenance (O&M) expenses underestimated such expenses [Ex. 582–89, p. 26], OSHA believes that a factor of 10 percent accurately reflects annual O&M costs, and has used this figure in many regulatory impact assessments. Total incremental ventilation costs for company "D" and the larger plant would be $600,000 and $1,500,000, respectively. Total annual costs would be the sum of annualized capital costs and operation and maintenance (O&M) expenses. Annualized capital costs for the two plants would be $88,080 and $220,200, respectively, based on a twelve year useful life and a 10 percent cost of capital. O&M expenses for each plant would be 10 percent of capital costs. Total annual costs for ventilation for company "D" and the larger plant are thus estimated to be $148,080 and $370,200, respectively.

Costs for cab enclosures, fresh air stations, enclosed booths, and housekeeping, including annual cleaning, were also estimated. Costs for cab enclosures were estimated to be $5,000 per unit [Ex. 686c, pp. 32–33]. Annualized capital costs would be $734 per unit, and annual O&M expenses would be $3,600, including HEPA filter replacement. Total annual costs for this equipment are estimated to be $21,670 for company "D" and $65,010 for the larger plant. Costs for filtered air booths and fresh air islands were estimated to be $15,000 per unit [Ex. 686c, pp. 32–33]. Annualized capital costs would be $2,202 per unit, and O&M expenses would be $1,500 annually for fresh air islands and $1,750 annually for filtered air booths. (HEPA filter replacement is estimated to cost $250 annually for filtered air booths). Company "D" was estimated to require one filtered air booth and one fresh air island. Larger smelters are estimated to require three of each item. Total annual costs for this equipment are estimated to be $7,654 for company "D" and $22,962 for larger plants.

OSHA also estimated the cost of a vacuum system. This cost was estimated to be $16,667 for company "D" and $50,000 for larger plants [Ex. 668E]. Annual costs, including annualized capital and O&M expenses, would be $6,937 and $20,810, respectively. An increase in costs due to additional housekeeping is expected. Costs for equipment for outdoor wet sweeping were estimated to be $35,000 (1 sweeper truck) for company "D" and $105,000 (3 trucks) for a larger facility [Ex. 686c, p. 32]. Costs for indoor wet sweeping equipment were estimated to be $14,000 (2 floor-scrubber vacuums) for company "D" and $42,000 for a larger facility (6 vacuums) [Ex. 686c, p. 32]. Annual costs for sweeping equipment, including annualized capital and O&M expenses, would be $12,093 for company "D" and $36,280 for a larger facility. Costs were also estimated for additional labor for housekeeping. It was estimated that $8,470 would be incurred by company "D" and $25,410 would be incurred by a larger facility. (The estimates for additional housekeeping were based on assuming an increase of two person-hours per day for company "D" and an increase of six person-hours per day in larger facilities, at an average wage of $12.10 per hour for 7 days per week over 50 weeks). Costs for the annual cleaning were estimated by Meridian to be $65,400 for company "D" and $196,200 for a larger facility [Ex. 686c, p. 32].

Costs for the regular relining of convertors were assumed to be $1,000 annually per convertor, including labor and materials. Costs for company "D" were thus estimated to be $1,000 and costs for larger smelters were estimated to be $3,000. Costs for relining the roofs of Maerz furnaces were assumed to be $1,000 annually for company "D" and $3,000 annually for a larger plant.

OSHA also estimated costs which will be incurred for dust packaging. Evidence in the public record indicated that costs to ventilate a dust packaging system in a larger smelter would be $75,000 [Ex. 668E]. Based on this figure, capital costs for company "D" were estimated to be $25,000. Total annual costs for dust packaging for a larger plant and company "D" would be $18,510 and $6,170, respectively.

Finally, OSHA estimated the costs of isolation and barriers (which may include structural or flexible materials). Company "D" was assumed to require at least $25,000 in capital while a larger facility was assumed to require $75,000.

Annualized capital costs, computed at a 10 percent financing rate and using a twenty year useful life, will be $2,938 for company "D" and $8,813 for larger plants. (Since it was anticipated that the majority of these costs would be for structural materials as opposed to flexible, a 20 year useful life was used to compute annualized capital costs. Using this methodology, costs for barriers will be understated somewhat.) O&M costs for these barriers were assumed to be negligible.

The cost of the industrial hygiene survey was estimated to be $1,000, based on one hygienist working for two days at $500 per day. The first day would be required for a survey of the site and the second day would be required for actual monitoring and for the evaluation of mechanical equipment. (The larger facility may require additional time, and thus, additional initial costs). Recurring costs were not estimated to be required; thus, no annual costs were estimated.

Costs of improved work practices to limit upsets during furnace charging are assumed to be insignificant, as it is likely that any costs associated with this recommendation would be offset by savings realized in that blockages of the furnace would no longer need to be cleared.

Total annual incremental costs for company "D" were thus estimated to be $278,588. Total annual costs for the larger facility are expected to be $759,724. The total annual industry cost is estimated to be $1.9 million, based on the existence of 5 smelters, four of which are approximately the size of company "D" and one of which is larger.

A comment was received regarding costs of compliance for a larger smelter [Ex. 582–89, pp. 27–28]. It was asserted that this facility has implemented 80,000 cfm in exhaust ventilation at one of its furnaces though, apparently, none at any of the other three. No justification was given as to why this air volume was chosen, nor was any description offered of any other control measures currently being practiced. While this submission indicated that a large smelter may be larger than reflected in the methodology used to complete this analysis, the submission also indicated a higher level of baseline control currently in place than OSHA's methodology assumed. (Only controls for agglomerators, blast furnaces, and one travelling hood were required in the industry submission).

As noted above, the incremental cost estimates were developed based largely upon information obtained pertaining to company "D." Reliable, detailed information for other plants was not made available to the Agency.

Economic Feasibility. No sales or value of shipments data were supplied by the industry during public comment periods or during the public hearing; sales for the secondary copper smelting industry were estimated using two approaches. Meridian estimated sales based on average revenue product per production worker for SIC 3341 [Exs. 573, 686c]. Total industry sales were estimated to be $390,590,550.

In a second approach, the refined copper product of the industry was estimated to be 295,650,000 pounds [Ex. 573, p. 13; Ex. 574, p. 6]. This volume of product, at $1.00 per pound, represents $295,650,000 in shipments for the secondary copper smelters.

Price increases required to pass forward the costs of compliance can be estimated by comparing total annual costs to total sales. With total annual costs of $1.9 million and total copper sales of $295,650,000, a price increase of about 0.6 percent is indicated. The average price of refined copper increased by over 30 percent between 1987 and 1988, and demand for refined copper is near historical highs [Department of Commerce, U.S. Industrial Outlook, 1989]. Over the same period, scrap prices have also risen sharply (over 30 percent). Although the required price increase represents a small portion of the recent variability in the price of copper, price increases are not likely for this sector, since the price of copper is a world price.

OSHA calculated profitability impacts based on Dun and Bradstreet statistics. Using the sales and ROS figures presented above, OSHA developed estimates of profits derived solely from the secondary smelting of copper. To estimate profit impact, the tax-deductibility of compliance costs was taken into account. That is, care was taken to compute before-tax profit before subtracting annual costs. After subtracting annual costs, the appropriate average tax rate was then reapplied to determine after-tax profit net of costs. For this sector, an average tax rate of 0.34 was used. Using the total industry sales estimate of $295,650,000 and the ROS rate of 1.7 percent for SIC 3341 yields a total profit estimate of about $5 million. Since total annual incremental costs for the sector were estimated to be $1.9 million, the cost to profit ratio would be 0.25. The associated post-compliance ROS was estimated to be 1.3 percent.

Since plant specific sales data were available from the Dialog database and SEC filings, impacts on total profits were also calculated for three firms. Total sales for Franklin Smelting were reported to be $25 million in 1988. Applying the ROS factor for SIC 3341 of 1.7 percent, total profits for this firm were calculated to be $425,000. Total profits for Southwire were $8.1 million in 1986 with an associated ROS rate of 1.1 percent, according to the company's SEC filings. Assuming that Chemetco's activities are 50 percent primary smelting and 50 percent secondary smelting, ROS was estimated to be 3.2 percent (the average of the 1.7 percent rate for SIC 3341 and the 4.6 percent rate for SIC 33). Applied against the sales figure of $25 million for this firm yields a profit estimate of $800,000.

Cost to profit ratios were then computed for these three smelters. The cost to profit ratio for Franklin Smelting was calculated to be 0.43 (with an associated post-compliance ROS of 1.0 percent), while the ratios for Southwire and Chemetco were calculated to be 0.030 (with an associated post-compliance ROS of 1.1 percent) and 0.23 (with an associated post-compliance ROS of 2.5 percent), respectively. According to its SEC filings, Southwire is a major producer of wire and cable for construction and utilities and the company believes it is in a strong competitive position with regard to both markets. The corporation has also entered into a joint venture with the Furukawa Electric Company Ltd., of Japan and the partnership is the exclusive licensee in the U.S. of a high value-added, water impervious underground cable. Evidence suggests that impacts for Cerro Copper will be minor, as they reportedly generate less lead fume than the other plants. No information was available which would permit OSHA to compute profit impacts for Nassau Recycling.

OSHA recognizes that rates of return are modest for this sector Also, while the industry is currently enjoying strong demand, this sector has been contracting for some time; there were twenty secondary smelters operating in 1965 but only five remain in operation today. Factors contributing to this decline are expanding world copper refining capacity and government subsidization of copper production among foreign competitors [*Copper*, Mineral Facts and Problems, Bureau of Mines, U.S. Department of Interior, 1985]. (Private U.S. refiners bear the brunt of cutbacks during cyclic downturns in copper demand while foreign nationalized smelters benefit from government subsidies.) Additionally, some primary smelters are currently refining copper by the electrowinning process, a process for which capital costs are roughly one-half those of conventional smelting. This

technology is expected to represent about 18 percent of domestic copper refining in 5 years, and less efficient secondary smelters may be put at a competitive disadvantage.

Nevertheless, the profit impact ratios computed above indicate that, with additional compliance time, the costs of compliance can be absorbed. Additional time is granted because of the inability of firms in this sector to raise prices and because rates of return are low. The extended schedule will provide opportunities to increase production efficiency, thereby cutting costs and improving profitability, and to phase in engineering controls.

Thus, OSHA concludes that the 50 $\mu g/m^3$ PEL is economically feasible with an extended compliance period of five years. The impact of this regulation will not threaten industry existence or structure.

8. Shipbuilding and Ship Repair

Process Description and Sources of Exposure—Overview. For purposes of this rulemaking, the shipbuilding and repair industry can be divided into two segments: (1) nuclear shipbuilding and repair, and (2) non-nuclear shipbuilding and repair. Nuclear yards, in addition to sharing the very limited exposure problems of non-nuclear yards, have other lead exposure problems that are peculiarly related to work on nuclear ships. Consequently, these segments have fundamentally different problems with regard to lead exposure.

For non-nuclear yards, employees can be exposed to lead primarily in painting and paint removal operations. As lead-free paint is being increasingly substituted for leaded paint, lead exposure in paint application is diminishing, and exposure problems are basically limited to operations involving removal of old leaded paint. This means that for 398 non-nuclear yards of the approximately 400 total shipyards (nuclear and non-nuclear combined), employing more than 60% of the total industry workers, increasingly the only employees exposed to lead are in the paint removal operation. Even for that small number of employees, lead exposure is being further reduced as the use of lead-free paint becomes more widespread and the subsequent removal of paint and repainting involves only lead-free paint. Thus, the single operation in non-nuclear yards in which lead exposures may continue for some time is becoming an operation that does not use lead. When full substitution of lead-free paint takes place, employees in these non-nuclear yards as well as those in nuclear yards performing painting and paint removal will no longer be subjected to lead exposure (Ex. 610, p. 19).

At the two nuclear yards in the industry, Newport News Shipbuilding (NNS) and General Dynamics Electric Boat Division (GD), lead-free paint is now generally or exclusively used (Ex. 582-66, p. 6). Consequently, the sources of lead exposure are essentially limited to the removal of old leaded paint and to certain operations peculiar to the construction and repair of nuclear ships. These operations relate to installing or removing lead ballast and to building and installing lead shielding panels for nuclear reactors.

In both nuclear and non-nuclear yards, shipbuilding and ship repair work is labor intensive. Many operations are performed manually to meet customer specifications (Ex. 582-66, pp. 1, 5). As ship construction proceeds and more structures are erected and joined, the work environment changes and can become more confined. Where there are lead exposures in enclosed, narrow spaces, engineering control equipment can be difficult to apply (Ex. 582-66, p. 1). Consequently, employees working in such spaces may be potentially exposed to high lead exposures.

General Ship Construction. Many of the main production processes in ship building are common to both nuclear and non nuclear yards. In both types of yards, to form the ship's hull, steel plates are first treated by automatic shotblasting machines. The steel plates are then coated by automatic spraying in booths or by airless spray guns with a primer paint to reduce corrosion. Then smaller plates are cut by an oxy-fuel torch or guillotine; larger or duplicate pieces are cut on automatic machines. The steel pieces are shaped by bending, rolling, or pressing; welded into subassemblies; and fitted together. Once the hull has been assembled, the ship is launched. Its interior (pipes, wiring, controls, equipment, rigging, etc.) are then installed at a fitting-out berth. Finally the ship is ready to undergo sea trials to determine whether mechanical or physical defects exist. Adjustments may involve the removal of components, stripping of insulation, welding, repainting, and cleaning of oil tanks and lines prior to repair (Ex. 572).

General Ship Repair. Many shipyards of both sorts combine repair, overhaul, and conversion with shipbuilding capabilities. Unscheduled or emergency repair and casualty work are relatively rare. Scheduled repairs often are in the nature of maintenance and involve cleaning and repainting the ship's hull at the time the ship is inspected. Major overhauls and conversions include changing the ship's capacity and size (e.g., placing a new and larger midships section between the bow and stern) and changing the ship's cargo-carrying characteristics or its propulsion system. Ship repair yards also engage in non-ship industrial work (e.g., repairs on oil platforms, foundry operations, carpentry work) (Ex. 572, p. 3).

Paint removal is often necessary in many types of repair work. It also can be an important step in cleaning the ship's surface prior to other operations such as welding. Traditionally, abrasive blasting has been used to remove old, deteriorating paint and to create small indentations or etchings on the ship's surface to facilitate the bonding of new paint. Other methods of paint removal are available, such as grinding, sanding, needle gunning, and chemical cleaning (Ex. 582-66, p. 10). In some repair operations, welding, cutting, and burning is done directly through the existing layer of paint. If that paint contains lead, these operations result in lead emissions (Ex. 572, p. 3). As indicated above, substitutes for leaded paints are available and widely used. Thus, exposures to lead in paint removal operations have already been or, in time, will be eliminated in ship yards as lead-free paint is substituted for the leaded paint on old ships (Exs. 582-66, p. 6; 610, pp. 19, 20).

Nuclear Ship Construction and Repair. Nuclear ship construction and repair involve special activities related to installing and removing lead ballast in nuclear submarines and other ships and to constructing and installing lead shielding for nuclear reactors (Ex. 582-66, p. 12).

Exposures to lead primarily are limited to these operations which include casting lead panels; tinning, bonding or burning on leaded structures; caulking with leaded wool; sawing, passing, and packing lead ballast; welding on or near leaded surfaces; and carbon arc gouging of canning plates during overhaul (Ex. 582-66, pp. 12-23). These processes are described in detail below.

In fitting vessels with nuclear reactors, the entire interior of the reactor compartment, as well as the interior of the hull, must be lined with lead to effectively shield personnel from radiation (Ex. 610, p. 24). Elemental lead slabs are cast and built into the primary shield tank enclosing the nuclear reactor, and secondary lead shielding is built into the bulkheads surrounding the reactor compartment. Operations involving casting of primary and secondary lead shielding are performed in fixed facilities off ship, but the reactor shield subassemblies are assembled in

final form in the vessel itself (Ex. 610, p. 25).

Casting. Lead is melted, poured and cast to form reactor shielding panels. (A description of foundry operations and their controls is discussed at length in the section of this preamble devoted to nonferrous foundries.) NNS, the largest nuclear shipyard in the United States, pours and casts lead shielding panels in a semi-automated process in a newly constructed lead shielding panel shop. In this process, elemental lead is melted and pumped into an open trough that delivers the molten lead to the casting machine to cast into shapes. After casting, the lead shielding panels are sized to exact dimensions on a computer-controlled milling machine in the panel shop (Ex. 582-66, pp. 12-13).

Burning. Tinning and bonding are collectively referred to as lead burning. Exposure to lead occurs when the heat of the burning torch causes the lead, lead dust or tinning paste (a lead-tin alloy) to fume off and become airborne (Exs. 572, p 2; 688B, pp. 1-9).

a. Tinning: Shielding panels are sized by a process of milling, chipping, grinding, and planing. Then, they are mounted onto steel frames onboard ship by tinning and bonding. Tinning is the application of a thin coat of lead-tin alloy paste to the cleaned and heated surface of the steel plate. The surface is then conditioned by heating with an oxygen-hydrogen torch to provide a thin lead film on the steel to which the lead panel is bonded. Not only does the thin lead film facilitate the bonding of the lead shield panels to steel, it also ensures the structural integrity of the bond under shock testing (Exs. 572, p. 2; 610, p. 25; 688B, pp. 1-4).

b. Bonding: The actual bonding is accomplished by depositing lead in the joint or seam between the tinned steel plates and lead panels. The bonding process is essential in that the effected adhesion of lead to steel must be able to prevent leakage of radiation and also withstand the shock that the shield may be exposed to during the operational lifetime of the vessel (Exs. 610, p. 25; 688B, p. 5).

There are two methods of bonding. In manual ladle bonding, as the name implies, molten lead (at 700 to 850 °F) is ladled by hand from a lead pot into the joint (Exs. 572, p. 2; 688B, p. 5). This process requires a specially trained team with one or two operators using oxygen-hydrogen torches in the joint and another operator ladling lead into the joint (Exs. 572, p. 2; 688B, p 5). By contrast, manual torch bonding involves manually melting lead bars with an oxy-propane torch onto lead panels to "build up" or increase the thickness of the panels to specifications (Exs. 582-66, pp. 13-14; 688B, pp. 5-6). Manual torch bonding is used in lieu of manual ladling where limited accessibility to the joints precludes the use of a lead pot and ladle. This is most often the case onboard ship (Exs. 582-66, p. 16; 688B, pp. 5-6).

Caulking. Caulking may be used in some cases instead of burning. It substitutes for tinning and bonding and involves manually forcing lead wool, lead rope, or lead strips into the joint around the shielding panel, using a pneumatic blunt-ended chisel. Caulking, because it is "cold" lead work, produces much lower levels of exposures to lead than lead burning. According to James Thorton, manager of Industrial Hygiene at NNS, either caulking or burning can be used to fill the lead joints around shielding panels. On submarines, however, because of Navy specifications, very little caulking is allowed and joints generally are burned in (Ex. 582-66, pp. 18, 19).

Lead Ballast Work—Sawing, Passing, and Packing. Navy specifications require that lead ballast be installed in the hulls of submarines (Exs. 582-66, p. 22; 688B, p. 10). The ballast is used to trim the submarine so that it floats in a level manner and to add weight to the submarine for more stability in rough weather. Because of the density of lead, lead bricks are used as permanent ballast on submarines.

The submarine hull frame is divided into compartments and bins. Lead blocks are cut offship with a bandsaw to form bricks and shims of various sizes and shapes for ballast. Then passers move the bricks and shims from the saw shop to the vessel, where they are tightly packed into the ballast bins. Lead ballast packers are responsible for installing lead in the ballast bins. The process involves hammering, fitting, and shimming the lead as required to fill the voids between the lead ballast and the hull.

All ballast operations are performed cold; no melting of lead is required. Exposure to airborne lead occurs from dispersion of surface lead oxide during handling and from lead dust during sawing (Exs. 572, p. 3; 582-66, pp. 20-23; 610, pp. 21-24). Sawing lead ballast may result in high exposures if the saws are not enclosed and ventilated.

Canning and Welding. After installation of lead ballast, steel canning plates are fitted and welded over the lead in the bins to secure the ballast in place. As in lead ballast work, when all shielding panels have been installed over the frame, steel canning plates and retainer bars also are welded over the lead panels to protect the shielding and maintain it in place. Welding of these structures may result in lead emissions, because the heat generated may be sufficient to volatilize the lead from tinned surfaces or the lead ballast or caulking adhering to the canning plates and nearby frames (Exs. 582-66, pp. 21-23; 610, pp. 21-24; 688B, pp. 11-16).

Overhaul and Carbon Arc Gouging. During overhaul, the lead in the ballast bins must be removed. The canning plate is removed by carbon-arc gouging to allow for inspection, and the ballast bricks are removed from the bins to a storage area in the drydock. For reinstallation, the lead bricks are transported to and packed into the bins, and the canning plate is replaced (Ex. 582-66, p. 21).

The removal of canning plates by carbon arc gouging may provide a significant source of lead exposure. This process involves passing a high electrical current through a copper-coated carbon rod and striking an arc on the steel surface. If the arc breaks through the canning plate to the lead below, the intense heat needed to melt the weld joint causes the lead to volatilize and fume. When the metal weld surface becomes molten steel, it is removed from the gouge path by controlled release of compressed air. This high pressure air stream also increases the dispersion of lead as well as scatters other molten metals (Exs. 610, pp. 23, 24; 688B, pp. 11-16).

A few other miscellaneous operations produce insignificant airborne levels of lead, such as the use of lead blankets as temporary shielding, the use of coated lead bricks, the sorting of scrap lead and quality control inspection of lead structures (Ex. 582-66, p. 23). In summary, across the shipbuilding industry exposures to lead occur to a limited and decreasing degree in the application and removal of leaded paint. In addition, in the nuclear segment of the industry exposures also occur in operations relating to fitting the vessel with lead shielding for the nuclear reactor and to fabricating, installing and removing lead ballast.

Existing Exposure Levels and Current Controls—Overview. Workers exposed to lead in shipbuilding can be divided into two general categories: (1) non-nuclear construction and repair, and (2) nuclear construction and repair.

In *non-nuclear construction*, exposure data in the record indicate that average lead exposures generally have been reduced to or below 50 $\mu g/m^3$ or exposure to lead has been entirely eliminated. In *non-nuclear repair*, only a small percentage of employees,

primarily in the paint removal operation, are exposed above 50 μg/m³.

The *nuclear construction and repair* segment of the industry is limited to two yards. At the larger of the two, NNS, either the majority of air lead monitoring results or average exposure levels are at or below 50 μg/m³ in 16 of 26 (62%) lead operations, according to the most recent exposure data in the record (Ex. 582–66, Table II). These 16 operations employed over 85% of NNS' lead-exposed workers, according to the most recent employment data in the record (Ex. 582–66, Table I). GD, by indicating that serious lead exposure problems are limited to three general problem areas (Ex. 688B, p. 1), confirms OSHA's understanding that most operations and the vast majority of employees in nuclear yards have average exposures at or below 50 μg/m³.

In nuclear and non-nuclear shipbuilding and repair, the primary engineering control used to reduce worker exposure levels is local exhaust ventilation. Operations that generally are exhausted include welding, casting, burning, caulking, carbon arc gouging, and sawing. Substitution of lead-free paints for leaded paints is another control measure that has eliminated lead exposures during painting and significantly contributed to reduction in exposure in paint removal. In nuclear shipbuilding, moving preassembly to fixed locations offship is a process modification which has reduced the problem of high exposures caused by assembling on board ship (Ex. 582–66, p. 13).

Non-nuclear construction and repair. Non-nuclear construction and repair yards employ 66,750 (63.7%) of the estimated 104,750 shipbuilding industry employees (Ex. 686B, pp. 2–3). In 1982, JACA reported that in non-nuclear construction and repair, average exposures above 50 μg/m³ were limited to three operations: painting (100 μg/m³), paint removal (280 μg/m³), and welding/burning (110 μg/m³) (Ex. 553–8, pp. 1–2 to 1–5). OSHA believes that since then, the increasingly widespread use of lead-free paints (Ex. 610, pp. 19 and 20) and the implementation of airless paint guns have greatly reduced or virtually eliminated lead exposure in painting in the non-nuclear sector.

Consequently, OSHA finds that in non-nuclear shipyards lead exposure above 50 μg/m³ is primarily limited to paint removal operations. Nonetheless, even where removal of paint is by means of blasting, more than 70% of monitoring results in 1984 and subsequent years are below 50 μg/m³, according to OSHA inspection data (Ex. 572, p. 15). As lead-free paints completely replace leaded paints, OSHA expects exposures above 50 μg/m³ to be virtually eliminated in non-nuclear paint removal.

OSHA notes that today the number of employees doing paint removal in the non-nuclear sector is a small part of the 66,750 employees working in that sector. Although industry has not provided OSHA with current employment data for the non-nuclear ship sector, if the 3.6% figure for the percent of employees at NNS who were doing paint removal in 1981 (Ex. 553–8, pp. 1–2 to 1–5) is typical of current employment in non-nuclear shipyards, then approximately 2,400 employees presently remove paint in this sector.

Nuclear construction and repair. Nuclear ship construction and repair is carried out in two yards employing an estimated 38,000 workers, which is 36.3% of total industry employment (Ex. 686B, pp. 2, 3). NNS employs 27,000 workers and GD approximately 11,000 (Exs. 582–66, p. 2; 686B, pp. 2, 3).

GD currently has an estimated 650 workers designated as lead workers, less than 6% of its workforce. NNS, in 1981 when its employment was higher, had 1,357 workers designated as lead workers, which would be approximately 5% of its current workforce (Ex. 582–66, Table I). Thus, GD and NNS combined appear to have approximately 2,000 lead workers, which is less than 2% of total industry employment (Ex. 686B, pp. 2–3).

Since raw data were not provided by the nuclear segment of this industry, OSHA relied on the average values and the distribution of samples below and above 50 stated in submissions by NNS and GD (Exs. 582–66; 688B). The data show that reduction in employee exposure levels has resulted from the implementation of improved engineering and work practice controls.

For most lead operations and most employees exposed to lead, exposure levels reflected in the most recent exposure data (1985–86) are close to or below 50 μg/m³ most of the time at NNS (Ex. 582–66, Table II). With regard to operations, in 16 of 26 operations at NNS, a majority of exposure readings or average exposure levels are below 50 μg/m³. In seven of these, NNS recently engineered out lead exposure by substituting lead-free paints, painting ballast bricks, using prefabricated lead wool blankets for temporary reactor shielding, or eliminating the operation. In another of these 16 operations, referred to as "miscellaneous" operations, exposure levels were below 50 μg/m³ even in 1981, and employees continue to be exposed below 50 μg/m³, according to NNS's prehearing comment (Ex. 582–66, p. 24). In addition to these 16 operations, in three other operations, 42–49% of the samples also are below 50 μg/m³ (Ex. 582–66, Table II).

Thus, utilizing NNS' 1981 employment data, the only employment data provided by NNS, the number of employees in the operations where monitoring results are at or below 50 μg/m³ for most, or close to most of the time represents over 90% of all lead-exposed workers at NNS' (Ex. 582–66, Tables I and II). Conversely, less than 10% of NNS lead exposed workers are likely to have lead exposures consistently above 50. Furthermore, some of the workers who constitute this 10% work in an operation where average exposure levels are only 66 μg/m³ (Ex. 582–66, Table 11).

This degree of control reflects a significant reduction in lead use and exposure and a substantial improvement in engineering and work practice controls achieved since the lead standard went into effect in 1979. For example, between 1981 and 1985 NNS achieved a 28% reduction in the number of operations using lead and achieved a significant reduction in exposure levels in every operation but one. Assuming that the number of employees working in each operation at NNS was the same in 1985 as in 1981, there was during that period a 27% reduction in the number of employees exposed above 50 μg/m³ (Ex. 582–66, Tables I and II).

Major reductions in employee air lead levels also have been achieved in that same period by GD through improved engineering and work practice controls (Ex. 688B). For example, in one operation identified by GD as having high employee exposure, lead boot, a tripling of the exhausted air volume, in conjunction with improvements in dust collectors and hooding, resulted in the 1979–87 period in a radical reduction of employee exposure levels from an average of 3,180 μg/m³ to 72 μg/m³ (Ex. 688B, p. 8).

In lead bonding-tinning, the installation of slotted hoods, combined with improved work practices, reduced exposure levels so that 50% of monitoring results are now below 50 μg/m³. Similarly, the installation of the so-called TB–8F–SH modern exhaust system, combined with improved work practices, reduced exposure levels in another bonding-tinning operation so that 42% of monitoring results are now below 50 μg/m³ (Ex 688B, p. 3).

GD has identified only three general areas of high lead exposure. These include construction and installation of the reactor shield, ballast installation and removal, and abrasive blasting (Ex. 688B, p. 1). Based upon NNS' data, these also appear to be among the main problem areas there as well.

Nevertheless, even in operations that are characterized by relatively high average lead exposures, like lead bonding, lead shielding, ballast work, carbon arc gouging, and blasting, exposure levels at NNS are less than 100 μg/m³ more than 70% of the time. For example, in welding and burning of leaded surfaces, which includes carbon arc gouging, an operation that NNS has asserted it cannot control to 50 μg/m³, 33% of exposure samples are below 50 μg/m³ and 66% are less than 100 μg/m³. In lead bonding done aboard ship, 75% of exposures are less than 100 μg/m³. In casting of shielding panels, 72% of exposures are less than 100 μg/m³. In the several operations involving installing and removing lead ballast, 72–100% of exposures are less than 100 μg/m³. Finally, in blasting and in painting/rust grinding, exposure levels are less than 100 μg/m³ 62 and 66% of the time, respectively (Ex. 582–66, Table II). (Unfortunately, because GD did not provide OSHA with raw data or with data indicating the number or percentage of exposure monitoring results below 100 μg/m³, the Agency cannot provide a similar analysis of GD's data.)

The primary engineering control used in shipbuilding to reduce worker exposure levels is local exhaust ventilation (Ex. 582–66, p. 4). Welding, burning, and caulking operations are reported to be locally exhausted whenever possible, coupled with the use of respirators. Substitution of non-leaded paints has eliminated lead exposures during the process of paint application and has contributed to reductions in exposure levels in some paint removal operations. Controls for abrasive blasting include type CE respirators in exterior areas, and type CE respirators in conjunction with exhaust ventilation in enclosed and confined areas. Lead work controls for mechanical cleaning of lead coated surfaces (grinding rust) include respirators outdoors and respirators with exhaust ventilation in enclosed areas (Ex. 582–66, pp. 6–20).

Additional Controls—Overview. OSHA's analysis of the record in the previous section indicates that for most operations in both nuclear and non-nuclear shipyards exposure levels already are at or below 50 μg/m³. OSHA has reached this conclusion because for most of the operations a majority of sampling results are at or below 50 μg/m³. Based upon that record and OSHA's own experience and expertise, the Agency has concluded that for such operations exposure levels can be controlled consistently to or below 50 μg/m³ with a modest modification or addition of controls, such as improving work practices, housekeeping and maintenance. The operations already at or below 50 μg/m³ most of the time include painting, chipping and grinding, casting, ship fitting, caulking, milling reactor shielding panels, passing ballast, and welding. Exposure to lead in paint removal in nuclear and non-nuclear shipyards is also expected to be eliminated with the full substitution of lead-free paints on new and old ships (Exs. 582–66; 688B).

Controlling exposures to or below 50 μg/m³ in problem operations will require implementation of an integrated system of controls. The basic element of that system is an industrial hygiene study, which is required by the lead standard to be carried out as part of the development and implementation of a written compliance program (29 CFR 1910.1025(e)(3)). The system also should include training in appropriate work practices, maximizing onshore operations (e.g., prefabrication and subassembly), better housekeeping and preventive maintenance, improved ventilation, and, under limited circumstances, the use of respirators.

Industry has emphasized the importance of work practices in controlling lead exposures, as evidenced, for example, by the special training given to "lead workers" (Exs. 688B; 582–66). Improved work practices can be readily implemented at low cost and are effective in reducing employees' exposures. For example, employees need to be trained in proper placement of portable local exhaust to maximize its efficiency. Good housekeeping and preventive maintenance measures are crucial to maintaining ventilation systems in proper working order.

An effective way to control lead exposures is to minimize the number of operations that are carried out onboard vessels. Generally speaking, operations performed onboard often are performed in confined spaces and are therefore more difficult to control. Where operations are performed in fixed locations on shore, these facilities can be more effectively equipped with ventilation systems. For those major shipyards that have not yet done so, sawing, grinding, chipping, machining, and hot work can be moved to onshore assembly shops, which can be equipped with large, effective ventilation systems.

Paint Removal. Paint removal can be accomplished by several methods: grinding, sanding, needle gunning, chemical cleaning and abrasive blasting. The kind of paint removal that causes the highest lead exposures is abrasive blasting. Technologies are available to control lead exposures in paint removal to or below 50 μg/m³. Local exhaust systems are available to exhaust grinding and sanding operations. Needle gunning, which involves use of water under high pressure, produces larger particles of lead and therefore poses less of an airborne problem (Ex. 582–66, pp. 10–11).

In abrasive blasting, two technologies are available to effectively control exposure levels. One is a portable vacuum system known as "Blast 'n' Vac." With Blast 'n' Vac, the vacuum system surrounds the blasting nozzle and exhausts the grit and paint as they are deflected from the painted surface. Grit and paint are deposited in a material recovery container, and dust is removed in a water bath dust filter. According to the manufacturer, Blast 'n' Vac has been used successfully in work on submarines. This system has the capability of bringing abrasive blasting workers' 8-hour TWA lead exposures to levels below 50 μg/m³ (Exs. 610, pp. 20–21; 572, p. 62).

The other technology is hydroblast, which involves a water spray curtain that surrounds the blast nozzle. The spray wets the grit and paint as they rebound from the surface and turns them into a slurry. Flash rust of the surface may be prevented by the addition of a water soluble antioxidant to the water or by quick drying by hot air blast. If the surface has been oxidized by the use of water, quick abrasive blasting may be performed after the lead has been removed to take off the oxidation (Ex. 572, p. 62; 610, pp. 20–21).

Another method to remove paint is by means of chemicals, which effectively eliminate lead exposures. If a blast pattern is necessary, the paint may still be removed with a chemical stripper, and after the removal, the surface then can be blasted to apply the etched pattern. As indicated, the use of these techniques, either singly or in combination, will bring exposure levels under 50 μg/m³ and still leave the surface properly conditioned for painting (Exs. 582–66, pp. 11–12; 610, p. 19).

Lead Ballast. In lead ballast work, exposures to lead occur from two sources: the release of surface lead oxide, which causes exposures during the passing and packing/unpacking of lead ballast; and the release of metallic lead particles during sawing of the ballast bricks and shims to fit into the bins. Exposures due to surface lead

oxidation can be reduced to or below 50 $\mu g/m^3$ by epoxy coating or painting the pigs (Ex. 610, p. 22). Exposures due to sawing the ballast can be reduced to or below 50 $\mu g/m^3$ by completely enclosing the bandsaw in a booth (Ex. 610, p. 22). (NNS currently has an average exposure of 66 $\mu g/m^3$ in this operation without enclosures) (Tr. 428). Alternatively, exposures can be eliminated by purchasing prefabricated ballast shims of various sizes and shapes (Ex. 610, p. 22).

In addition, a HEPA vacuum can be used to maintain all surfaces as clean as practicable in the work area, especially after sawing, which would further reduce exposure levels and help to minimize the potential for dispersion of lead dust (Ex. 610, p. 23).

These control technologies are readily available and are already applied in other industries as well as in some shipyards.

Casting. NNS reports an average exposure level of 80 $\mu g/m^3$ for casting even with the construction of a new lead shielding shop equipped with new ventilation systems (Ex. 582–66, Table II). Casting at NNS is performed automatically in the shop (Ex. 582–16, p. 13). OSHA has determined that exposures in casting can be reduced to below 50 $\mu g/m^3$ with minor modifications to existing equipment and practices. For example, reduction in exposure levels can be achieved by eliminating the open trough or chute that delivers the molten lead to the casting machine and replacing it with direct connection to the lead pump placed in the melting pot. This modification, coupled with better housekeeping and proper maintenance and improved work practices, should be able to control exposures to or below 50 $\mu g/m^3$.

Tinning and Bonding (Burning). NNS states that some tinning and bonding (average exposure result of 312 $\mu g/m^3$) is routinely performed in the submarine shop. Under such circumstances, this operation can and should be effectively controlled with appropriate exhaust ventilation. Another effective way to sharply reduce exposure levels would be to replace the hot processes of tinning and bonding with caulking, which is a cold operation performed at room temperature (Ex. 582–66, pp 18–19). Either caulking or tinning and bonding can be used to fill the lead joints around shielding panels (Ex. 582–66, p. 18). Where caulking has been used, NNS reports that average employee exposure levels are 36 $\mu g/m^3$ (Ex. 582–6, p 18).

Although the Navy apparently allows caulking to be used for most of its nuclear fleet, OSHA recognizes that the United States Navy in its contracts currently may allow very little caulking on submarines (Ex. 582–66, p. 19). If, with the implementation of the 50 $\mu g/m^3$ PEL, the Navy becomes willing to allow greater use of caulking in submarines, then, wherever possible, caulking should be substituted for burning. In any event, where tinning and bonding remain necessary, GD has emphasized the importance of proper work practices, which can minimize excessive exposures in the application of tinning paste and in subsequent work on tinned surfaces (e.g. welding) (Ex. 688b, p. 2).

Carbon Arc Gouging. OSHA recognizes that carbon arc gouging is an operation in which it is difficult to consistently control exposures to or below 50 $\mu g/m^3$. GD has acknowledged that, in conjunction with the use of local exhaust ventilation, the key to controlling exposures in this operation is through consistently good work practices (Ex. 688B, p. 13). This operation can be controlled if the worker can maintain a precise adjustment of the arc height so as not to penetrate the steel and volatilize the lead below. Then, the final cut of the weld can be performed with a grinding wheel and local exhaust ventilation (Ex. 688B, p. 13). This work practice is vital because, on occasions when breakthrough of the arc to the lead occurs, local exhaust ventilation is unlikely to be adequate to achieve the 50 $\mu g/m^3$ due to the high velocity ejection of the molten metal. Because of the complexities of carbon arc gouging and the uncertainty of alternatives, OSHA believes it may be necessary for workers doing carbon arc gouging to wear respirators for supplementary protection.

If carbon arc gouging is performed only intermittently during overhaul and if the employee who performs gouging is not exposed to lead in excess of 50 $\mu g/m^3$ for more than 30 days a year, then the employer would not be required under the lead standard to implement engineering and work practice controls in preference to respirators to achieve 50 $\mu g/m^3$. In cases where exposures are above 50 $\mu g/m^3$ for more than 30 days a year, OSHA suggests that, to the extent practicable, bolting and rivetting be used as an alternative to welding the canning plates (Ex. 610, p. 24). This would eliminate the need for future removal of plates by gouging.

Technological Feasibility Conclusion. Based upon the above analysis of the evidence in the record and OSHA's experience and expertise, the Agency determines that achieving a PEL of 50 $\mu g/m^3$ by implementing readily available engineering and work practice controls is technologically feasible for the shipbuilding and repair industry as a whole.

Nevertheless, the Agency recognizes that it may not be possible to consistently achieve the PEL by these controls in certain confined spaces when tasks like carbon arc gouging and tinning and bonding are being performed. Since OSHA has found the 50 $\mu g/m^3$ PEL feasible for the industry, employers will be required in such circumstances, as well, to implement engineering and work practice controls to control exposure levels to the PEL or the lowest feasible level. Where all feasible engineering and work practice controls have been implemented and employees are still exposed above the PEL as an 8-hour TWA, employers will be allowed to provide these workers with respirators for supplemental protection while they are performing such tasks.

Through its previous analysis of the record, OSHA has demonstrated that in both nuclear and non-nuclear shipyards, lead exposure levels for most operations already are at or below 50 $\mu g/m^3$. In many of the operations where exposure levels exceed 50 $\mu g/m^3$, improved, modified or additional engineering and work practice controls can reduce exposures to or below 50 $\mu g/m^3$. As indicated, this conclusion is based in part upon the fact that for nearly all of the operations in non-nuclear shipbuilding and repair, available exposure data indicate that average exposure levels are at or below 50 $\mu g/m^3$. It is based as well in part upon the fact that for most of the operations in nuclear shipbuilding and repair either average exposures levels are at or below 50 $\mu g/m^3$ or a majority of sampling results are at or below 50 $\mu g/m^3$. OSHA's conclusion is further predicated upon its determination that for such operations in both segments of the industry exposure levels can be controlled consistently to or below 50 $\mu g/m^3$ by maintaining existing controls or by means of modest additions or improvements to controls.

For the few problem operations, OSHA has determined that implementation of an integrated system of controls can substantially reduce exposure levels. These isolated problem operations are confined exclusively to the nuclear segment of the industry. (OSHA does not consider painting or paint removal in either the non-nuclear or nuclear segments of the industry to be a problem operation because of the availability and increasing use of lead-free paints and the availability of controls for, and alternatives to abrasive blasting during the period that leaded

paint still needs to be removed.) As indicated by the discussion in the exposure levels section, exposure levels in most of the problem operations are already less than 100 $\mu g/m^3$ more than 65% of the time. OSHA therefore concludes that, although these are the most difficult operations to control to or below 50 $\mu g/m^3$, control of these operations should not constitute an insurmountable obstacle.

OSHA wishes to emphasize that, in the nuclear segment of the industry, the very substantial reductions in exposure levels accomplished by existing controls have been achieved without any legal obligation on the part of employers to comply with 50 $\mu g/m^3$ by means of engineering and work practice controls. OSHA believes that, once the legal obligation to comply with 50 $\mu g/m^3$ comes into effect, further reductions will take place. OSHA also wishes to point out that the current level of control has been achieved by technology that is readily available and by conventional work practices. The further reductions that OSHA foresees also can be achieved by such controls. As GD has noted, the key to controlling excessive exposure levels often is likely to be appropriate work practices rather than the addition of complex and costly engineering controls (Ex. 688B, p. 4). This is especially true of operations conducted in confined spaces, where the use of engineering controls may sometimes be difficult.

In at least two cases of which OSHA is aware in the nuclear segment of the industry, control of excessive exposures in one company can be achieved by merely adopting simple techniques or practices used by the other company, like coating lead ballast materials to prevent oxidation or implementing the better work practices of the other company. In the first case, in lead ballast operations NNS has begun to paint lead ingots with an epoxy coat that prevents oxidation and therefore eliminates resulting exposures (Ex. 582–66, p. 22). OSHA is not clear whether NNS's coating of lead is limited to lead ingots or whether all lead bricks and shims also are coated. OSHA sees no reason why all ballast materials cannot be coated, including those that have recently been sawed and have newly-exposed lead surfaces. GD, at one time, did coat at least some of its lead ballast, but GD now states that it has eliminated that practice because the slippery coating created difficulty in handling the ballast. As a direct result of eliminating the practice of coating, lead exposures in ballast operations at GD have significantly increased (Ex. 688b, p. 11). Since NNS seems to have been able to cope with that problem and since OSHA is assured that non-slippery coatings are available to make coated ballast easier to handle (Ex. 610, pp. 21–22), OSHA is not persuaded by GD's assertions.

The second case involves carbon arc gouging, where current exposure levels are sometimes very high. NNS has claimed that there is no known engineering technology that can control exposure levels to 50 $\mu g/m^3$. However, nothing in NNS's submission suggests that the company has explored controlling carbon arc gouging by alternative methods. GD, on the other hand, has acknowledged that, in conjunction with local exhaust, exposure levels in this operation frequently can be controlled to 50 $\mu g/m^3$ by implementing careful work practices involving the precise adjustment of the arc height so as to prevent penetration of the steel and volatilization of the lead below the gouge (Ex. 688B, p. 13). OSHA believes this work practice can be adopted by NNS. However, because of the complexities of carbon arc gouging and the uncertainty of alternatives, OSHA acknowledges that it may be necessary for workers performing this task to wear respirators for supplementary protection.

Industry has made a number of other major objections to the feasibility of achieving 50 $\mu g/m^3$ by means of engineering and work practice controls in shipbuilding that OSHA wishes to address. These objections involve control problems in confined spaces, high exposure levels in shops where allegedly state-of-the-art engineering controls have been installed, production problems associated with controls for abrasive blasting, and contractual problems associated with caulking as an alternative to tinning and bonding.

With regard to operations in confined spaces onboard ship, industry argues that it is generally impossible to utilize engineering controls and that where engineering controls have been used, exposure levels are significantly above 50 $\mu g/m^3$. Although OSHA recognizes that there can be problems in using engineering controls in confined spaces, OSHA believes that in many confined spaces portable local exhaust systems can be used (Ex. 610, p. 23). In addition, OSHA agrees with GD's statements that proper work practices are crucial for local exhaust to be effective, because the positioning of the local exhaust largely determines its collection efficiency (Ex. 688B, p. 2). Moreover, OSHA believes that some operations done in confined spaces can be moved to fixed facilities offship, which can be more effectively equipped with ventilation systems. Finally, when individual employees have high 8-hour, time-weighted averages due to working in confined spaces, employers are authorized by paragraph (e) of the lead standard to use administrative controls to rotate employees, thus lowering the individual employee's exposures to lead. Under some circumstances where all engineering and work practice controls have been implemented and 50 $\mu g/m^3$ still has not been achieved. OSHA recognizes that employers may have to rely on respirators as supplementary protection for employees performing operations in confined spaces.

Industry also argues that, where certain operations are performed offship even when allegedly state-of-the-art engineering controls are implemented, exposure levels still have not consistently achieved 50 $\mu g/m^3$. However, NNS, the company making the objection, has not shown by its submission that it has implemented all available engineering and work practice controls in such offship facilities as its lead shielding panel shop or panel cutting shop. OSHA does not regard failure to achieve 50 $\mu g/m^3$ as proof of the infeasibility of achieving 50 $\mu g/m^3$. For example, in NNS's panel cutting shop, NNS concedes that it has not locally exhausted or enclosed the circular sawing of lead panels (Ex. 582–66, p. 14).

With respect to abrasive blasting, one method of paint removal, industry argues that exposure levels are extremely high and that additional control measures are impractical. Specifically, industry argues that the Blast 'n' Vac system is too slow and can only be used for horizontal blasting and that in hydroblasting the water may cause flash rust, which, NNS contends, would require additional dry blasting to remove. As indicated above, OSHA believes that there are many methods, which can be used either singly or in combination, to remove lead paint while effectively controlling air lead levels. For example, in at least certain circumstances blasting can be avoided entirely by the use of chemical cleaning (Ex. 582–66, p. 11). OSHA also agrees with its expert witness, Mr. Michael Larsen, who stated that antioxidants could be added to the water used in hydroblasting to prevent oxidation altogether (Ex. 610, p. 20). Finally, the fact that it may require more time to conduct an operation in a manner that adequately protects employees does not, under the OSH Act, constitute proof of infeasibility. OSHA believes that, either alone or in combination with other

methods, Blast 'n' Vac or hydroblast can be effectively used to remove leaded paint.

With regard to putative contractual problems associated with alternatives to tinning and bonding, industry agrees that caulking can be used to fill lead joints around shielding panels but argues that caulking as a substitute for burning is not always acceptable to clients like the Navy. This suggests that caulking is acceptable at times. Indeed, NNS acknowledges that caulking is acceptable to the Navy on aircraft carriers and presumably on other nuclear surface vessels and further implies that even on nuclear submarines caulking is allowed by the Navy to a limited extent as a substitute for burning [Ex. 582–66, pp. 18–19]. Moreover, the record does not show any attempt by industry to secure the Navy's approval of caulking as a substitute for burning. The record does show, on the other hand, that industry was successful in securing approval from the Navy for the use of lead-free paint, which the Navy previously had prohibited [Ex. 582–66, p. 6]. Consequently, OSHA believes contractual problems do not impose the degree of limitation on industry practice that NNS seems to suggest and that industry has at least some flexibility in this regard to select the method of production that causes the lowest airborne lead levels.

Finally, OSHA wishes to comment on the quality and method of presentation of the data supplied by this industry. First, despite the fact that OSHA requested raw air lead monitoring results, the two nuclear shipyards did not supply OSHA with individual air lead monitoring results by job category for a period of several years but, at best, submitted average air lead levels or frequency distributions.

Second, the averages appear to be arithmetic means. As a result, they have only limited reliability as indicators of air lead levels, since one or several very high monitoring results can upwardly skew the average. For example, at NNS one monitoring result for interior blaster during 1985–86 was 60,000 $\mu g/m^3$ [Ex. 582–66, Table II]. This result dramatically skewed the arithmetic mean upward.

Third, this problem is further compounded by the additional fact that averages and frequency distributions submitted by NNS and GD incorporate exposure levels for several years. As a consequence, OSHA cannot easily ascertain whether recent exposure levels show any improvement. Consequently, OSHA has had to discount certain industry data or evaluate it in conjunction with whatever other supplemental data were in the record.

Last, NNS, the company that submitted the most extensive comment to the record, claims that a PEL of 50 $\mu g/m^3$ cannot be achieved exclusively by means of engineering and work practice controls. As indicated previously, NNS's contention contradicts its own submission to the record. That submission shows that in 16 of 26 lead operations at NNS, representing over 85% of all lead-exposed workers, most, or average air lead monitoring results already are at or below 50 $\mu g/m^3$. The submission further indicates that, in three other operations, close to a majority of monitoring results already are at or below 50 $\mu g/m^3$ [Ex. 582–66, Table II]. This level of control has been achieved before taking into account OSHA's recommended additional controls, which, OSHA anticipates, will substantially reduce exposure levels in every operation where they are implemented.

Thus, for all the above reasons, OSHA is unpersuaded by industry's arguments that the PEL cannot be achieved by means of engineering and work practice controls. Based upon its own expertise, experience, and the record evidence, OSHA concludes that a PEL of 50 $\mu g/m^3$ is achievable in the shipbuilding and repair industry as a whole by means of engineering and work practice controls.

Industry Profile. Of interest in this rulemaking are those establishments engaged in any of the following activities: nuclear shipbuilding, other non-nuclear military and commercial shipbuilding, and ship repairing. Most of these establishments are classified under Standard Industrial Code 3731, though there may also be small, captive yards for which the primary activity of the owner is something other than shipbuilding and repairing and which may fall under some other SIC classification. The sizes of the shipyards and the types of vessels being built or repaired vary widely.

Census data revealed 689 shipyards in SIC 3731 as of 1982 [Ex. 572, p. 36]. Four hundred twenty of these shipyards were reported to employ fewer than 50 workers. In its Addendum to its Analysis of the Shipbuilding and Repair Industry [Ex. 686b], Meridian places the number of shipyards in business at 400 in 1986, with size distribution (by production employment) as follows: 1–20 production employees, 153 yards; 21–50, 82 yards; 51–100, 70 yards; 101–200, 41 yards; 201–1000, 43 yards; and over 1000, 11 yards [Ex. 686b, pp. 2–3].

Total shipyard employment was reported to be 139,900 in 1985 in SIC 3731 [Ex. 572, p. 4]. Total production employment (employees performing both construction and repair) as of October 1986 is estimated at 104,750 [Ex. 686b, pp 2–3], or about 75 percent of the total shipbuilding and repair employment.

OSHA estimates that approximately 24,000 workers in shipbuilding and repair are potentially exposed to airborne lead. The portion of the workforce which is potentially exposed to lead through welding, cutting, painting, and blasting activities in non-nuclear shipyards is estimated to be 22,550 [Exs. 686b, p. 2; 572, p. 70]. With regard to activities related solely to nuclear yards, another 1,529 workers are estimated to be exposed [Exs. 582–66, Table I; 688B].

On a world scale, the "commercial shipbuilding industry * * * is in the longest and worst slump of the post-World War II period" [Ex. 572, p. 30], and competition is intense. Meridian reports that Japan's 37 percent of gross tonnage on order as of 1986 leads the world, with other major competitors being West Germany, the Netherlands, South Korea, Singapore, Hong Kong, and Taiwan [Ex. 572, p. 30]. The U.S. industry has advantages in its high quality and fast turn-around; it is not, however, competitive with regard to price [Ex. 572, p. 30]. Indeed, foreign yards may actually build a vessel at less than half the price charged by a U.S. yard [Ex. 572, p. 32].

In its report, Meridian Research noted that

> [t]he industry can be divided into "first-tier" and "second-tier" shipyards. First-tier shipyards build and repair large ocean-going vessels and naval vessels. Second-tier shipyards primarily build and repair barges, tugboats, and towboats used for inland and coastal water transportation; drill rigs, supply boats, and crewboats for the offshore service industry; and fishing vessels [Ex. 572, p. 1].

Distinctions are also made between shipbuilding and ship repair yards, major shipyards, and the Active Shipbuilding Base. In general,

> a shipbuilding yard must have at least one shipbuilding position an—inclined way, a side launching platform, or a building basin—while a repair yard does not have such a position [Ex. 572, p. 36].

Major Shipyards are the largest facilities and in 1986 there were 25 such yards employing just under 102,000 total workers [Ex. 572, pp. 38–41]. A Major Repair facility may construct ships smaller than 475 feet in length. In 1986 there were 30 major repair facilities employing about 8,400 workers [Ex. 572, pp. 38, 42–44]. Major Topside Repair facilities, of which there were 38 in 1986, may construct the same size vessels as the Major Repair yards, and may also have dry-docks. Approximately 6,900 workers are employed in these facilities [Ex. 572, pp. 38, 45–48].

The Maritime Administration defines the Active Shipbuilding Base as those shipyards that are open and currently engaged in or seeking contracts for the construction of ships of 1,000 gross tons or more. There were 22 such yards in 1986 compared with 24 in 1985 and 26 in 1980. Employment for this group of yards is estimated at 72% of the total workforce in SIC 3731 [Ex. 572, p. 45]. Of these 22 yards, 19 are Major Shipbuilding yards and 3 are Major Topside Repair yards. In 1986, 9 yards were engaged in construction and/or conversion of major combat ships for the Navy, 6 yards were engaged primarily in ship construction and conversion work for the Navy's T-ship program, 3 yards were engaged in the construction of 7 commercial vessels, and 4 yards were engaged in only repair and overhaul work and non-ship construction [Ex. 572, p. 45]. There are currently only two private shipyards in the United States which construct nuclear-powered vessels.

With regard to small yards,

> [t]here are virtually no data on shipyards with fewer than 20 employees as a group. Shipyards of this size tend to be excluded from discussion—and seem almost to be excluded from verbal definitions—of the shipbuilding and repair industry * * * [Ex. 572, p. 50].

These small yards make up about one-third of the total number of yards while accounting for about 2.2 percent of total employment [Ex. 686b, pp. 2–3].

Commercial production in first-tier yards (which includes all of the yards in the Active Shipbuilding Base) has been minimal since 1980, with no new merchant vessel contracts entered into in 1985 or in 1986 [Ex. 687–3]. First-tier yards are also engaged in Naval construction, however, and this has been their strength, as substantial orders for construction and repair work were contracted for in 1986 [Ex. 572, p. 18]. In second-tier yards, production of nearly all types of power-driven vessels and barges declined markedly between 1982 and 1984 [Ex. 572, p. 18]. Repair work in second-tier yards has also declined, but stability can be found in some areas [Ex. 572, p. 24].

Regarding commercial shipbuilding demand, Meridian pointed out that

> [d]emand for commercial shipbuilding is a derived demand. It depends on several factors, which include demand for shipping services, size and capacity of available fleet, and extent of foreign competition * * *. None of these has favored U.S. commercial shipbuilding in recent years [Ex. 572, p. 24].

Worldwide overcapacity was specifically cited by Meridian as an important problem with respect to the demand for commercial shipbuilding [Ex. 572, pp. 24, 28].

Subsidies are available in the form of Construction Differential Subsidy (CDS) grants or financing guarantees (Title XI of the Merchant Marine Act of 1936 and amended in 1972). No CDS contracts were awarded in fiscal year 1985, while commitments approved in that year for financing guarantees totaled $20 million, with pending applications for $99 million more [Ex. 572, pp. 28–29].

With respect to repair work, the strongest element in the market is the Navy's ship repair and maintenance program, with commercial yards getting about one-third of this work [Ex. 572, p. 29]. The National Defense Reserve Fleet (NDRF) is also a source of repair work, with $45 to $60 million in annual work expected for the 86 ship Ready Reserve Force [Ex. 572, pp. 29–30]. Meridian points out that U.S. yards are more competitive in the world repair market than they are in construction [Ex. 572, p. 29].

Aggregated 1986 Dun & Bradstreet financial data (SIC 3731) for the industry as a whole indicate that the mean return on sales was about 1.8% [Ex. 572, p. 53]. Disaggregated data show a somewhat higher mean return on sales for small firms (under $1,000,000 in assets) and a negative mean rate of return on sales for some larger firms, though third quartile return on sales figures approached 3 percent for these firms [Ex. 572, pp. 53–54]. No establishment-specific financial data were provided during the public comment period or the public hearing for the non-nuclear shipyards. Company data on nuclear shipyards indicate average operating profits for 1986 of approximately $200,000,000 [Ex. 572, p. 56].

Costs of Compliance. The compliance costs for the Shipbuilding and Repair sector consist of costs for enclosed bandsaw booths (used during the sawing of lead pigs into ballast for nuclear submarines), HEPA vacuums, and for controlled blasting units. Required improvements for casting operations are minimal, and thus costs were assumed to be negligible. Ventilation for "hot work" (welding, burning, cutting, etc.) performed in the assembly shop or on board vessels is estimated to be currently in use, and thus no costs will be incurred for this equipment [Ex. 572, pp. 60, 64]. Additionally, no costs were assumed to be incurred in the substituting of caulking for burning, since both techniques require local ventilation. Also, no costs have been estimated for the coating of lead ballast to reduce exposures during ballast passing, as one of the two yards is currently working to develop a suitable coating [Ex. 688B] and the other is already coating a part of its lead ballast with epoxy paint [Ex. 582–66, p. 22]. Additional costs attributable to this rule are assumed to be negligible.

An enclosed bandsaw booth is estimated to cost $12,000. Annual costs include annualized capital charges of $1,762 plus operation and maintenance costs of $1,200 for a total of $2,962 [Ex. 572, pp 64–65].

The cost of a portable vacuum is estimated to be $3,900 [Ex. 579, p. 29]. Annualized capital costs would be $572, while operation and maintenance costs would be $2,390. (Annual operation and maintenance costs were estimated to be 10 percent of capital costs plus $2,000 per year for HEPA filter replacement). It is estimated that two sweepers will be required for each nuclear shipyard. Additional labor is estimated to be $4,060 annually, based on 1 person-hour per day, 7 days per week, and 50 weeks per year at an average wage of $11.60. Total annual costs for vacuum sweeping are thus estimated to be $8,840.

The cost of a vacuum-controlled blasting unit is estimated to be $5,060 per unit. Annual costs (computed using an expected useful life of five years) would amount to $1,335 in annualized capital charges only; operation and maintenance expenses are expected to be offset by the savings realized due to the environmental efficiency of the equipment. (That is, the recommended equipment eliminates considerable expense for clean-up) [Ex. 572, p. 66]. The cost of the wet blasting unit is estimated to be $360. Annual costs for this unit include $207 in annualized capital charges (using an expected useful life of two years) plus $36 in annual operation and maintenance costs for a total annual cost of $243 [Ex. 572, p. 65].

Total industry costs for controlled blasting are based on allocating the average number of controlled blasting units required per yard according to the number of potentially exposed workers per yard. Tables 1 and 2 provide a summary of the average number of blasting units required per yard, the number of yards, and the total annual costs for each of six shipyard size categories and for each of the three types of shipyards. Table 1 addresses the vacuum blast option and Table 2

addresses the wet blast option. Using this methodology, total annual costs of $11,026,110 are expected to be required for vacuum units and $8,469,738 for the wet blast units. While the wet blasting units appear less costly than the vacuum units, the wet blast units will produce a lead-contaminated solution which will need to be disposed of as a hazardous waste in accordance with EPA regulations, at additional cost to the shipyard. Also, this method of controlled blasting may oxidize the stripped surface and thus may necessitate a dry blast to remove the oxidation at additional cost [Ex. 582–66, p. 10].

In addition to the annualized capital costs of vacuum units, the annual cost amount presented in Table 1 includes costs for additional labor, as the vacuum blast system may require more time to use than conventional blasting equipment [Ex. 582–66, p. 9]. It is assumed that one additional worker will be hired for every 10 blasting units, wet or vacuum. Additional costs for these workers are based on an annual total compensation cost of $33,750. Since the environmental waste disposal problem exists for wet blast units, OSHA assumes in this analysis that industry will opt for the vacuum units. Cost estimates for these units as developed in this analysis overstate actual costs to the extent that leaded paints are being replaced with non-leaded coatings. That is, costs will decline over time as non-leaded coatings are substituted for coatings containing lead.

The total annual costs for nuclear shipyards include costs for band saw enclosures (six for each yard), HEPA vacuums, and 50 blasting units. Total annual costs for the bandsaw enclosures are estimated to be $17,772, total annual costs for vacuum sweeping were estimated at $8,840, and total annual costs for the blasting units would be $235,500. Total annual costs for each of the two nuclear yards would thus be $282,112. Total annual costs for non-nuclear yards are for vacuum blasting units only, and appear in Table 1. Cost per yard will vary, depending upon the number of blasting units that are required. Annual costs range from $4,710 for the smallest yards to $235,500 for the largest. As shown in Table 1, total annual costs for non-nuclear construction yards are estimated to be $5,284,620 and those for non-nuclear repair yards are estimated to be $5,270,490.

Total industry costs would be $11,079,334. This total includes $524,224 for the nuclear segment of the industry and $10,555,110 for non-nuclear yards.

TABLE 1.—COSTS OF VACUUM BLASTING UNITS

Shipyard size and related variables	Nuclear construction yards	Non-nuclear construction yards	Repair yards
1–20 Production workers			
Number of blasting units/yd		1	1
Total annual cost/yd		$4,710	$4,710
Number of yards		18	135
21–50 Production workers			
Number of blasting units/yd		2	2
Total annual cost/yd		$9,420	$9,420
Number of yards		33	49
51–100 Production workers			
Number of blasting units/yd		3	4
Total annual cost/yd		$14,130	$18,840
Number of yards		36	34
101–200 Production workers			
Number of blasting units/yd		5	8
Total annual cost/yd		$23,550	$37,680
Number of yards		21	20
200–1000 Production workers			
Number of blasting units/yd		17	30
Total annual cost/yd		$80,070	$141,300
Number of yards		25	18
>1000 Production workers			
Number of blasting units/yd	50	50	50
Total annual cost/yd	$235,500	$235,500	$235,500
Number of yards	2	8	1
Summed Annual Costs	$471,000	$5,284,620	$5,270,490
Total Annual Costs			$11,026,110

Source: Occupational Safety and Health Administration, Office of Regulatory Analysis. (Adapted from Ex. 686b, pp. 2–3).

TABLE 2.—COSTS OF WET BLASTING UNITS

Shipyard size and related variables	Nuclear construction yards	Non-nuclear construction yards	Repair yards
1–20 Production workers			
Number of blasting units/yd		1	1
Total annual cost/yd		$3,618	$3,618
Number of yards		18	135
21–50 Production workers			
Number of blasting units/yd		2	2
Total annual cost/yd		$7,236	$7,236
Number of yards		33	49
51–100 Production workers			
Number of blasting units/yd		3	4
Total annual cost/yd		$10,854	$14,472
Number of yards		36	34
101–200 Production workers			
Number of blasting units/yd		5	8
Total annual cost/yd		$18,090	$28,944
Number of yards		21	20

TABLE 2.—COSTS OF WET BLASTING UNITS—Continued

Shipyard size and related variables	Nuclear construction yards	Non-nuclear construction yards	Repair yards
200–1000 Production workers			
Number of blasting units/yd		17	30
Total annual cost/yd		$61,506	$108,540
Number of yards		25	18
>1000 Production workers			
Number of blasting units/yd	50	50	50
Total annual cost/yd	$180,900	$180,900	$180,900
Number of yards	2	8	1
Summed Annual Costs	$361,800	$4,059,396	$4,048,542
Total Annual Costs			$8,469,738

Source: Occupational Safety and Health Administration, Office of Regulatory Analysis. (Adapted from Ex. 686b, pp. 2–3).

Economic Feasibility. Nuclear construction yards will bear about 4 percent of the total annual costs of this regulation. These yards should be able to pass all costs through to the government. Though Mr. James R. Thornton of Newport News Shipbuilding, one of the two yards performing nuclear construction for the government, commented that its Navy contracts "are 'fixed price' and do not allow for recovery of costs in excess of the fixed or ceiling price" [Ex. 582–66, p. 1], alternatives for the Navy are limited. Even if contractural arrangements preclude the immediate pass-through of the $262,112 in annual costs borne by each yard, which would necessitate a price increase of about 0.02 percent based on sales of $1.65 billion [Ex. 572, p. 71], it does not appear that the nuclear shipyards would be adversely affected by these annual costs. Costs of this regulation would be expected to reduce the average operating profit of $200 million for these yards by about 0.13 percent.

There are 141 non-nuclear construction yards and 257 non-nuclear repair yards [Ex. 686b, p. 3]. 1986 Shipments data and profit information broken out by function and size pertaining to these yards appear in Table 3, along with costs incurred for vacuum blast units and impact ratios.

TABLE 3.—SUMMARY OF ECONOMIC IMPACTS FOR NON-NUCLEAR CONSTRUCTION AND REPAIR YARDS—VACUUM BLAST

Size class	Sales ($ thous.) [a]		Profits ($ thous.) [b]		Costs ($ thous.)		Ratio: costs/sales		Ratio: costs/profit [c]	
	C [d]	R [e]	C	R	C	R	C	R	C	R
1–20	1376	1330	71.55	69.16	4.71	4.71	0.00342	0.00354	0.05198	0.05415
21–50	3753	3538	−67.55	−63.68	9.42	9.42	0.00251	0.00266	−0.13944	−0.14792
51–100	7568	7285	−136.22	−131.13	14.13	18.84	0.00187	0.00259	−0.10373	−0.14367
101–200	14743	13932	−265.37	−250.78	23.55	37.68	0.00160	0.00270	−0.08874	−0.15025
201–1000	46564	36120	1350.36	1047.48	80.07	141.30	0.00172	0.00391	0.03914	0.06903
>1000	328176	136224	9517.10	3950.50	235.50	235.50	0.00072	0.00173	0.01633	0.03934

[a] Sales were obtained by subtracting sales of nuclear yards from total industry shipments and allocating the remaining shipments value among size classes by share of production employment. Total shipments for each size class were then divided by the total number of shipyards in each class (number of shipyards in each class appear in Tables 1 and 2).
[b] Profits for size class 1–20 were calculated using a Return on Sales (ROS) rate of .052.
Profits for classes 21–50, 51–100, and 101–200 were calculated using an ROS of −.018.
Profits for classes 201–1000 and >1000 were calculated using an ROS of .029.
Profits are after taxes. [Ex. 572, pp. 53–54].
[c] See text for derivation. Profit impacts were computed using the following federal income tax schedule: 1–20 workers: 0.21; 21–50, 51–100, and 101–200 workers: 0.0; 201–1000 and >1000 workers: 0.34.
[d] Construction yards.
[e] Repair yards.
Source: Occupational Safety and Health Administration, Office of Regulatory Analysis.

As can be seen in the table, no shipyard category has a ratio of costs to sales greater than 0.40 percent. The price increases required to pass the costs of compliance forward are small, ranging from a low of about 0.07 percent for the largest construction yards to a high of 0.40 percent for repair yards with between 201 and 1,000 production employees.

Cost pass-through, at least partially, should be possible for all yards, including those doing construction and repair work for the U.S. Navy and for those yards operating in protected or captive markets.

If the costs of compliance were to be absorbed by these firms, the impacts on profits can be estimated from the cost to profit ratio. Costs represent only about 1.6 percent of profits for construction yards with over 1,000 production employees but could increase losses over 15 percent for repair yards with between 101 and 200 production employees. It should be noted that the tax-deductibility of compliance costs was taken into account in computing profit impacts. That is, care was taken to compute before-tax profit before subtracting annual costs. After subtracting annual costs, the appropriate average tax rate (either 21 or 34 percent) was then reapplied to determine after-tax profit net of costs. Profits were calculated using an average financial statement [Ex. 572, pp. 53–54] and based on 1986 data provided by

Dun and Bradstreet. (See footnote "b," Table 3.)

More specifically, in three size categories, namely 21–50, 51–100, and 101–200 production employees, many construction and repair firms are not profitable. Should the demand for commercial shipbuilding not improve in the near future, many construction firms in these size categories may no longer be in operation at the time the standard takes effect. For those choosing to continue operations, full absorption of compliance costs could increase losses up to 14 percent. Full absorption of compliance costs could increase losses in some repair yards by as much as 15 percent.

While these profit impacts appear substantial, there are other points to consider in assessing the impacts of the rulemaking on these firms. One is that both repair yards and construction yards which perform repair in these size groups should benefit from the repair work required for the Ready Reserve Force of the U.S. Navy, as this work is required by law to be performed by U.S. shipyards [Ex. 572, pp. 29–30]. Also, a substantial amount of second-tier repair work is reported to be protected by legislation [Ex. 572, p. 77]. Second-tier repair of vessels traveling on U.S. waterways is also assured due to the fact that many of these vessels do not travel overseas [Ex. 572, p. 77]. A final consideration is that full cost absorption will reduce ROS for both categories of shipyard in these three size classes from −1.8 percent to about −2.1 percent, on average. These changes in ROS reflect the relatively low magnitude of the costs of compliance, as no yard in these three size categories is expected to incur more than $38,000 in total annual costs.

Absorbing the costs of compliance fully would impact profits for the remaining (profitable) shipyards by between 1.6 and 8.9 percent. The smallest yards would realize profit reductions of 5.2 to 5.4 percent, the largest yards could experience reductions of 1.6 to 3.9 percent, and the 201–1,000 employee category could see reductions of 3.9 to 8.9 percent. It should be noted that this latter category contains a number of major yards which are part of the Active Shipbuilding Base and demand for U.S. Navy ships will continue to provide construction work for these yards. Post-compliance ROS for the smallest yards was estimated to be 4.9 percent; for the 201–1,000 employee category, a range of 2.6 (for repair yards) to 2.9 percent (for construction yards) was estimated; and for the largest yards, a range of 2.8 (for repair yards) to 2.9 (for construction yards) was estimated.

OSHA recognizes that the shipbuilding and repair industry in this country is in a state of contraction. The number of shipyards in operation has fallen from 689 in 1982 to the current estimate of approximately 400, a decrease of 42 percent. These data, coupled with the reported worldwide shipping overcapacity, indicate that this contraction is likely to continue. The impact of the OSHA lead rulemaking should not be a significant factor in the restructuring of this industry which is occurring in response to the prevailing economic environment.

OSHA notes that the issue of availability with regard to the wet blast units was raised in the record [Ex. 686b, pp. 11–12]; though a compliance period extension might prove useful to the manufacturer(s) of the wet blast technology, OSHA does not believe that such an extension is necessary. The two and one-half year compliance schedule should allow sufficient time to expand production (as noted by one manufacturer [Ex. 686b, p. 11]).

OSHA concludes that the standard, as it applies to the Shipbuilding and Repair industry, is economically feasible in an extended compliance period of two and one-half years. Larger yards performing work for the U.S. Navy, both nuclear and non-nuclear, should have the ability to pass forward all compliance costs. Additionally, worldwide overcapacity suggests that many marginal yards employing 21–200 workers will no longer be in operation at the end of the two and one-half year compliance schedule. Many other shipyards should be able to pass forward most, if not all, of the cost increases identified in this analysis due to the existence of protected and captive markets. Combinations of cost pass-through and cost absorption will reduce the respective magnitudes of the impacts associated with each compliance scheme to levels that should not materially worsen the competitive or financial status for these yards. Finally, all yards will benefit from the two and one-half year compliance schedule, allowing additional time to raise capital and/or effect gradual price increases.

Stevedoring Process Description and Exposure Areas. Stevedoring involves loading and unloading ores to and from ships. A typical stevedoring operation takes several days or several shifts to complete. The ores are either loaded from dockside warehouses to ships or unloaded from ships directly to trucks or gondola railcars positioned along side the ship. The ores can also be stockpiled in dockside warehouses for later land transit or loading aboard ships (Exs. 475–17, H–004E, p. 1; Ex. 582–14, p. 1).

Initially lead ores are unloaded or loaded by gantry cranes or mobile cranes that use clamshell buckets to pick up the ore. During this phase of the operation, longshoremen are not present onboard the ship (Ex. 5B2–14, p. 1). As the pile is worked down, industrial front-end loaders are lowered into the hatch to pile the ore in the center of the ship to be picked up by cranes. Near the end of the job, sweepers/trimmers shovel and/or sweep the remaining ore from between the vessel ribs into the clamshell bucket to be lifted out of the hatch (Exs. 475–17, H–004E, p. 2; 577; 582–14, p. 1).

Workers are potentially exposed to lead whenever the ores being loaded or unloaded contain lead. Dockside workers (crane operators, foremen, gang workers) may be exposed to blowing dust from stockpiles, vessel operations, and spills. Employees working in the hatch (foremen, operators of cranes and front-end loaders, sweepers/trimmers) are generally subjected to higher levels of lead exposure than dockside workers because they are closer to the ore and may be working in limited spaces. (Ex. 686G, p. 3).

Exposure Levels and Controls Currently Used. In stevedoring, the most recent exposure data in the record indicate that in almost all operations exposure levels are at or below 50 $\mu g/m^3$ (Ex. 612, p. 5).

OSHA has relied primarily on current data gathered by OSHA expert witness Howard Spielman, president of Health Science Associates (HSA). These comprehensive data consist of 201 8-hour, time-weighted average (TWA) exposures determined from samples gathered in 1984–85 during five complete stevedoring lead ore transfers. The HSA data reveal that 85% of all samples are at or below 50 $\mu g/m^3$ and in 10 of 11 operations a majority of samples also are at or below 50 $\mu g/m^3$ (Exs. 612, p. 8; 686G, pp. 4, 5).

Exposures of almost all employees who worked on deck and dockside were below the action level. Specifically, 97% of those exposures were below 30 $\mu g/m^3$ while only 3 of 148 sample results exceeded 50 $\mu g/m^3$ (Ex. 612, pp. 5, 8).

For work inside the hatch where exposure levels generally are higher, in two of the three operations a majority of sample results are at or below the action level. In one of those operations, bulldozing, 68% of the sample results were at or below 50 $\mu g/m^3$ and 59% of the sample results were below the action level. These results were obtained even though none of the bulldozers had enclosed cabs (Ex. 612, pp. 3, 9).

In the HSA data, the only operation that has exposure levels consistently above 50 $\mu g/m^3$ is sweeping/trimming. Spielman reported that all sweeping/trimming to remove remaining ore was done manually with brooms, shovels and hoes (Ex. 612, p. 2). No HEPA vacuums or water spraying systems to suppress dust levels were in use; the operation was virtually uncontrolled. Exposure levels ranged from 17 to 1,348 $\mu g/m^3$, with an average of 292 $\mu g/m^3$ (Ex. 612, p. 9). OSHA notes, however, that excessively high exposures in one out of 34 work shifts upwardly skewed the overall average (Ex. 612, Att. 4, Table IX). The average for that one particular shift was 939 $\mu g/m^3$, while the average for the other shifts was only 113 $\mu g/m^3$. There was no explanation of whether any spills or any particular atmospheric condition affected the sample results of that shift.

As previously noted, engineering controls were not used during these transfers, but workers were trained in the hazards of lead exposure prior to each shift. Spielman also reported the ore was damp because it was exposed to "ocean atmospheric conditions" during transit. Those conditions, in effect, acted similarly to water spray systems used to suppress lead dust during loading and unloading. In any event, even without implementation of engineering controls, the HSA data indicate that almost all stevedoring operations are currently at or below 50 $\mu g/m^3$ (Ex. 612, pp. 8, 9).

OSHA data, collected from one site during a 1984 inspection, corroborate the HSA data. The OSHA data show that only one of seven workers (job titles not specified) was exposed over 50 $\mu g/m^3$. That employee was exposed to 67 $\mu g/m^3$ which indicates that, with just a slight improvement in controls, exposure levels for all employees should be controlled to or below 50 $\mu g/m^3$ (Ex. 577, p. 7).

The degree of control achieved recently by stevedoring companies through work practices reflects a significant reduction in lead exposures over a short period of time. For example, in 1982 ASARCO reported that exposures for all crews were uniformly above 50 $\mu g/m^3$ and often above 200 $\mu g/m^3$, even though the moisture content of the ore was 4.5% and a fogging nozzle was also used to wet down the ore before unloading and after every 6 to 8 railcars had been loaded. Average exposures were 180 $\mu g/m^3$ for foremen, 415 $\mu g/m^3$ for payloader operators and 211 $\mu g/m^3$ for sweepers/trimmers. The fact that the exposure range for sweepers/trimmers was 130 to 310 $\mu g/m^3$, significantly lower than the range reported in HSA's data during one particular shift, also supports OSHA's finding that the high levels in that shift were aberrant (Exs. 2–7, H–004S, p. 7; 577, p. 4).

OSHA notes that on the day the ASARCO data were collected holes were found in the rubber sock, a chute-like device used to reduce the amount of ore blown during discharge of ore from the clamshell bucket (Ex. 2–7, H–004S, p. 3). The empty clamshell returning to the hold also dropped ore which had adhered to the sides of the clamshell. In addition, gusty winds were present that day which, in combination with the spills from the clamshell bucket, are likely to have contributed to the high exposure levels of dockside workers, who normally would have low exposures (Ex. 2–7, H–004S, p. 3).

As stated above, very few control measures are currently employed by the stevedoring industry to reduce employee exposure to lead. Although the controls that are currently used (i.e., rubber sock and water spray) contribute to the reduction of employee exposures to lead, they are designed to reduce dust emissions in general and not specifically to reduce the lead exposures of employees handling the ore (Exs. 577, p. 24; 583–63, p. 1). Currently, work practice controls are the primary means used by stevedoring companies to reduce employee exposures to lead. Spielman reported that most shifts in the hatch are limited to less than 4 hours, employees are trained at the beginning of each shift in the hazards of lead exposure and foremen observing work in progress initiate corrective actions as appropriate (Ex. 612, pp. 3–4). Some stevedoring companies are starting to use cranes and front-end loaders with enclosed cabs to move the ore and suction trucks instead of using manual sweeping/trimming (Ex. 583–63, p. 1).

Additional Controls. OSHA's analysis of the record in the previous section indicates that in almost all operations exposure levels already are at or below 50 $\mu g/m^3$ most of the time (Exs. 577, pp. 4, 8; 612, pp. 8–9). Eighty-five percent of all sampling results are at or below 50 $\mu g/m^3$, and a majority of sampling results in 10 of 11 operations are at or below 50 $\mu g/m^3$. In addition, the vast majority of all sampling results are below the action level. Based upon that record and OSHA's own experience and expertise, the Agency has concluded that in nearly all operations exposure levels can be controlled consistently to or below 50 $\mu g/m^3$ with a modest modification or addition of controls, such as improving work practices, housekeeping, and maintenance or, in certain situations, enclosing cabs of mobile equipment. In sweeping/trimming, the only operation where exposure levels are not already at or below 50 $\mu g/m^3$ controlling exposures to or below 50 $\mu g/m^3$ will require implementation of some engineering controls (e.g., HEPA vacuums or slurry pumping systems) as well as additional work practice controls (Ex. 686G, pp. 6–7; Tr. 359, 368–69).

OSHA finds that in the stevedoring industry there are many available and simple engineering controls to further reduce employee exposure to lead, if necessary. For example, if exposures of mobile equipment operators are a problem, they can be reduced significantly by enclosing cabs and equipping them with tempered air and HEPA filters (Ex. 686G, p. 6). To ensure that operators keep the cab doors closed, a communication system, such as two-way radios, should also be provided. These control technologies have proven successful in other industries and OSHA determines that these controls can be applied to the stevedoring industry to consistently control exposure levels to or below 50 $\mu g/m^3$ (Ex. 604, p. 4).

There are other available engineering controls that can be implemented in this industry to reduce employee exposures. The exposures of employees can be reduced during loading and unloading by the use of the properly maintained rubber sock over the clamshell bucket to confine dust emissions as the ore is being discharged (Ex. 2–7, p. 5). The use of clamshell buckets to move the ore may even be replaced by automated, enclosed conveyor and chute systems which will eliminate employee exposures due to spillages from overloading the clamshell bucket (Ex. 577, p. 25). Finally, the use of two-ton superbags, otherwise known as Flexible Intermodal Bulk Containers (FIBCs), is another alternative to loading and unloading lead ore as a loose bulk cargo. FIBCs completely contain the ore, thus minimizing or eliminating the potential emission of dust. FIBCs have been used successfully in the stevedoring industry to handle other hazardous materials and have been tried with lead ore (Ex. 583–63, p. 1). OSHA determines that the use of FIBCs should largely eliminate the overexposure of workers in this industry.

In addition to engineering controls, good work practices are essential to achieve 50 $\mu g/m^3$. They also are effective and low-cost ways of reducing employee exposure to lead. For example, standing upwind of the

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discharge pile and away from the immediate vicinity of the emissions source will reduce the exposure levels of both dockside and hatch workers (Ex. 577, pp. 24–25). Frequent wetting of the ore with a fogging nozzle or other water sprayers to suppress blowing dust will further reduce employee exposures. HSA reported that the lead ore in the five transfers was damp due to ocean atmospheric conditions. The HSA data indicate that maintaining the dampness of the ore is a successful method to control employee exposures (Ex. 612, p. 1).

Exposures that result from spillages can also be reduced by appropriate work practices. By exercising greater care in crane operation so the clamshell bucket is not overloaded and by machining down the ridge of the bucket so lead ore does not adhere to the sides, spillages will be minimized, thus reducing exposure levels of employees. In the event of a spillage, immediate wetting down or vacuuming the spills will also control employee exposures (46 FR 6221, January 21, 1981; Ex. 620).

With regard to sweeping/trimming, the only operation in which exposures are generally above 50 $\mu g/m^3$, exposure levels can be reduced to or below 50 $\mu g/m^3$ through implementation of simple work practices and engineering controls which are readily available. The exposures of sweepers/trimmers can be reduced significantly by using a vacuum collection system rather than manually sweeping the remaining ore in the hatch. Instead of dry-sweeping, sweepers/trimmers can also wash down remaining material to create a slurry that can be pumped to dockside stockpiles or railroad cars (Ex. 686G, p. 7). Not only will this technique contribute to the reduction of exposure for sweepers/trimmers, but also it will reduce exposures of dockside workers by minimizing dust blowing from stockpiles (Tr. 359). In cases where manual sweeping/trimming continues to be used, providing portable ventilation systems should reduce exposure levels of these employees.

Implementation of administrative controls, which are part of work practice controls, will complement the effectiveness of engineering controls. For example, limiting the number of hours sweepers/trimmers spend in the hatch or making sure these employees stay out of the hatch until after the front-end loaders have finished their operation will greatly reduce their exposure levels (Ex. 612, pp. 2–4). According to Spielman, sweepers/trimmers worked less than 4 hours in the hatch during any one shift (Ex. 612, p. 3).

Technological Feasibility Conclusion. Based upon the above analysis of the evidence in the record and OSHA's experience and expertise, the Agency determines that achieving a PEL of 50 $\mu g/m^3$ by implementing readily available and work practice controls is technologically feasible for the stevedoring industry as a whole.

Through its analysis of the record, OSHA has demonstrated that in the stevedoring industry exposure levels for almost all operations already are at or below 50 $\mu g/m^3$. This conclusion is in part based upon the fact that for almost all operations almost all sampling results are at or below 50 $\mu g/m^3$. OSHA's conclusion is also predicated upon its determination that for those operations where exposure levels are above 50 $\mu g/m^3$, exposure levels can be controlled consistently to or below 50 $\mu g/m^3$ by modest improvements in engineering or work practice controls. These readily available controls include installing enclosed cabs on mobile equipment; supplying these cabs with filtered air, HEPA filters and communication systems; wetting down the ore and spillages; using automated conveyor and chute systems; and replacing bulk cargo handling with FIBCs (Exs. 577, pp. 24–26; 612, p. 6).

For sweeping/trimming, the only operation which is not currently at or below 50 $\mu g/m^3$, OSHA has determined that implementation of some engineering controls and improved work practices can reduce employee exposure levels consistently to or below 50 $\mu g/m^3$. For this operation, engineering controls, such as vacuum and slurry pumping systems, are readily available. Maintaining lead ores wet throughout unloading and loading and limiting the time workers are in the hatch will substantially reduce employee exposure to lead dust. When these engineering and work practice controls are properly implemented, OSHA concludes that exposure levels in all stevedoring operations should be at or below 50 $\mu g/m^3$.

Industry has raised a number of objections that OSHA wishes to address. In most of these objections industry argues that it should be exempted from paragraph (e)(1) of the lead standard (Exs. 2–7, p. 6; 475–15, H–004E, p. 5; 582–1, p. 1).

First, industry commenters argue the stevedoring industry should be exempted from paragraph (e)(1) of the lead standard, because current employee exposure levels that exceed 50 $\mu g/m^3$ are intermittent and no employee is exposed above the PEL for more than 30 days per year (Ex. 582–1, p. 1). Although, it appears on the basis of the record evidence that no employee currently is exposed above the PEL for more than 30 days per year. The Agency nonetheless must reject the request for an industry-wide exemption.

Even if no employee is currently exposed above the PEL for more than 30 days per year, these conditions may change. Demand for lead ore may increase or certain employers may choose to handle more shipments. Where employees are or become exposed above the PEL for more than 30 days in a year, OSHA is obligated to enforce the requirement of paragraph (e)(1) that the employer implement work practice and engineering controls to comply with the PEL. For that reason, among others, it would be inappropriate to grant an exemption to the industry from paragraph (e)(1).

Individual employers, and indeed all employers, may currently be entitled to the 30-day exemption in paragraph (e)(1), but that is not within the province of this rulemaking, which is examining the feasibility for the entire stevedoring industry of achieving 50 $\mu g/m^3$ by means of engineering and work practice controls. In an enforcement proceeding on a citation for failure to implement paragraph (e)(1), an individual employer may show as a complete defense that he or she is exempt from the requirements of that paragraph. If the employer qualifies for the exemption, he or she still must comply with the PEL, but may do so using any combination of controls, including respirators. Employers who can demonstrate that none of their employees are exposed above the PEL for more than 30 days per year will not be impacted by paragraph (e)(1) of the lead standard.

Second, the stevedoring industry contends that the stevedoring industry should be exempted from paragraph (e)(1) of the lead standard because it lacks the legal capacity to control exposures because the mobile equipment are not owned by the stevedoring companies (Exs. 2–5, p. 2; 475–17, H–004E, p. 1). OSHA does not regard the lack of ownership of the equipment as proof of infeasibility, since individual stevedoring companies can make appropriate contractual agreements with the owners of the equipment.

Third, industry contends that the stevedoring industry should be exempted because if it has to comply with paragraph (e)(1) of the lead standard, insurance carriers will stop insuring lead ore operations due to anticipated worker compensation claims. OSHA rejects this contention.

since the record indicates that the reason some insurance companies have terminated coverage for stevedoring employees is due to the industry's lack of compliance with the lead standard. For example, one insurance company stated explicitly by letter to a stevedoring company that it was unwilling to insure the handling of lead ore unless the stevedore took measures to control employee exposures (Ex. 2–1, H–004S, pp. 3–4).

Fourth, industry contends the stevedoring industry should be exempted from paragraph (e)(1) of the lead standard because stevedoring companies are unwilling to invest in such controls and may refuse to handle lead ores as a result (Exs. 2–1, H–004S, pp. 3–4; 582–1, p. 2; 582–5, p. 3; 582–9, p. 1). OSHA believes this is very unlikely to happen. In order to protect workers, OSHA regulates many substances, and industry nonetheless continues to handle or produce those substances. In any event, OSHA has no control over any stevedoring company's decision on whether to handle lead ores. The Agency is mandated by the Occupational Safety and Health Act of 1970 to develop and implement safety and health regulations to protect workers to the extent feasible. OSHA is not authorized to grant exemptions that effectively deny workers protection from health and safety hazards simply because an industry does not wish to expend the necessary effort to comply with a standard.

Finally, OSHA also determines that two other issues raised by industry commenters concerning the solubility of lead sulfide ores and health effects are not within the scope of the present remand rulemaking (Exs. 2–1, H–004S, pp. 5–8; 2–5, H–004S, p. 2; 475–17, H–004E; 582–5).

In conclusion, based on its analysis of the record, OSHA has determined that in the stevedoring industry it is technologically feasible to achieve the PEL exclusively by means of engineering and work practice controls.

Industry Profile. Stevedoring companies are those companies which arrange for the manpower to load or unload cargo from seagoing vessels. They are classified under SIC 4463.

The estimated number of stevedoring firms is 640, though only a minority of these firms are located in ports that handle lead shipments. Although some stevedoring companies may specialize in handling lead ores, it appears that, in any major port, there are several firms, perhaps a half dozen or more, that handle such cargo (Ex. 577, p. 19).

Total employment is estimated at 59,456 employees. This workforce has a high turnover rate, with workers entering, leaving, and re-entering the industry with relatively high frequency. Very few of these employees are involved in handling lead ore (Ex. 577, p. 2). Information indicates that about 7 shifts and a crew of 10 to 14 workers per shift are required to unload a shipment of ore (Exs. 582–5, p. 9; 612, pp. 2–4). Assuming 25 to 30 shipments per year yields a total of 2,100 to 2,500 workers potentially exposed to lead. This total represents no more than 4.2 percent of the total workforce.

The demand for stevedoring services is dependent upon the volume of material being traded. Import/export data for the period 1976–1986 tabulated by U.S. customs districts and by weight of the lead content of ore show that imports have been transported largely by rail. Total tonnage of imports was quite variable throughout the period, with no clear trend evident. Data for more recent years (1985–1986) indicate that imports by vessel have increased. With regard to exports of lead ore, vessel share has been on a long term downward trend (Ex. 577, pp. 10–15).

An examination of geographical distribution shows that waterborne imports of lead ore have been concentrated in a limited number of customs districts, notably St. Louis, Missouri, Seattle, Washington, and Houston-Galveston, Texas. Waterborne imports through these districts, however, have been erratic (Ex. 577, pp. 10–15).

Waterborne exports have most recently been handled through Seattle, Washington, New Orleans, Louisiana, and Portland, Oregon (Ex. 577, p 12).

Over the last decade, only a few ports have handled more than one or two shipments of lead ore annually.

The inability to acquire insurance has been cited by some commenters as one reason for foregoing the handling of lead bearing ores (Ex. 577, p. 16).

Financial data for SIC 4463 (Marine Cargo Handling) were obtained from Robert Morris Associates and indicate an industrywide median profit before taxes to total assets ratio of 3.1% for the latest reporting period (5/30/85 to 3/31/86). Ratios for earlier reporting periods, '83–'84 and '84–'85, were 1.8% and 5.5%, respectively (Ex. 577, p. 21). Both average net sales and average profit before taxes increased between '83–'84 and '84–'85 industrywide (by 10% and 800%) but decreased over the following period (by 12% and 50%).

Costs of Compliance. The equipment required for unloading operations involving leaded ores include a portable skid-mounted sweeper at a cost of $50,000 per unit (Ex. 577, p. 27). One unit per stevedoring firm would be required. Annualized capital costs (with an assumed useful life of twelve years and cost of capital of 10 percent) are $7,340. Operation and maintenance (O&M) expenses, estimated at 10 percent of capital plus $1,500 for filter replacement, would be $6,500.

Payloader cab enclosures and filters, estimated to cost $5,000 per vehicle, would also be required (Ex. 686c, p. 33). Two such vehicles would need to be equipped per firm (Ex. 577, p. 271. (This cost may be avoided by those firms that rent payloaders). Annualized capital costs are $734 each and O&M expenses would be $3,600 each. Total annual costs for these enclosures are thus $4,334 per enclosure.

The estimated cost of acquiring a retro-fit clamshell cover is $800 to $1,000. Lips for the clamshell can also be retro-fit at $2,500 to $3,000.

Slurrying and pumping the final amounts of ore from the hold are options that may be used in lieu of vacuum sweeping. Costs for this equipment are expected to be approximately $1,000,000. Annualized costs would be $146,800 and O&M costs will be $100,000 annually. Total annual costs for this equipment are thus $246,800.

Conveyors and chutes have been prescribed to reduce exposure during loading. Most stevedoring firms are believed to have conveyors, but not chutes. Capital costs for this item are assumed to be at most $1,000. Annual costs are expected to be negligible.

Total costs per firm were estimated based on the following expenditures: for unloading operations, the vacuum sweeping equipment would be $50,000, along with two payloader enclosures at $5,000 each, and clamshell attachments at $4,000. Total costs for this equipment would be $64,000. For loading operations, it is expected that $1,000 will be expended for the chute used in conjunction with a conveyor. Total capital costs per firm are thus $65,000.

Annual costs for the sweeper and payloader enclosures total $22,508, based on the calculations performed above. Annual costs for clamshell attachments and chutes are expected to be low, on the order of $600 (assuming a 20 year useful life). Total annual cost per firm was thus estimated to be $23,108.

Total annual industry costs are expected to be approximately $550,000 to $830,000. This figure is based on an estimate that 24 to 36 firms are unloading lead ores (6 to 9 firms at each of 4 ports [Ex. 577, p. 11] with all firms complying fully).

Should flexible intermodal bulk containers (FIBCs) be found feasible for

lead ore transport, compliance costs would be virtually eliminated.

Economic Feasibility. Based on information in the public record OSHA believes that no costs will be incurred by the stevedoring industry in response to this rulemaking action. OSHA's reasoning is as follows:

Under paragraph (e)(1) of the lead standard, any employer who can demonstrate that workers are exposed to lead in excess of 50 $\mu g/m^3$ for 30 or fewer days per year is permitted to use any combination of controls to achieve the PEL. Available data indicate that about 3 days (7 shifts) are required to unload a shipment of ore [Ex. 612, p. 2]; thus, a stevedoring firm would need to unload 10 shipments per year for its employees to be exposed in excess of the 30 day limit. Import data indicate that it is highly unlikely that any one firm is handling such an abundance of ore, since only about 30 shipments are received annually by the U.S. overall, on average, and there are apparently a number of firms which handle ore in each port [Ex. 577, pp. 11, 19]. Further, in the event that any individual firm were to find itself in a position to handle such a large amount of the lead cargo, the lead standard allows administrative controls to ensure that no employee is exposed in excess of 30 days per year. Even this strategy may not be necessary, however, as many jobs involving lead exposure apparently do not last a full shift [Ex. 612, p. 3] and the turnover rate in this industry is reported to be quite high [Ex. 577, p. 2].

OSHA therefore concludes that the stevedoring industry will incur no costs, and hence, will experience no economic impact as a result of this action.

III. Regulatory Flexibility and Environmental Impact Determinations.

Regulatory Flexibility Determination

In accordance with the Regulatory Flexibility Act (Pub. L. 96–353, 94 Stat. 1664, 5 U.S.C. 601 *et seq.*), OSHA has made an assessment of the impact of this rulemaking action on small entities. As a result of this assessment, OSHA has determined that small entities in the nonferrous foundry industry could experience substantial impact as a result of this rulemaking action. However, since the Agency has determined that achieving the 50 $\mu g/m^3$ PEL by means of engineering and work practice controls is economically infeasible for the nonferrous foundry industry, small foundries will face no adverse impact as a result of this rule.

Environmental Impacts

This rulemaking action has been reviewed in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality NEPA regulations, and the Department of Labor's NEPA compliance procedures and is not anticipated to have a significant impact on the external environment.

For the nine industries in this remand proceeding, the recommended techniques for controlling employee exposure to airborne lead principally involve the capture and containment of lead fume and dust. To comply with EPA and OSHA regulations, lead fume and dust are captured by ventilation systems or suppressed by wet methods. The effect of the 50 $\mu g/m^3$ PEL will be to increase the amount of lead currently being contained, either in the form dust ventilated to baghouse collection systems or lead-contaminated solutions. This increase was judged by OSHA to represent a small portion of all lead contaminated wastes currently being collected by any means. Thus, OSHA finds that there will be no significant environmental impact associated with this rulemaking. To the extent that lead dust is being prevented from entering ambient air and to the extent that wastes are disposed of in an environmentally acceptable manner, this regulation should provide some improvement of environmental quality.

IV. Authority

This document was prepared under the direction of Alan C. McMillan, Acting Assistant Secretary of Labor for the Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington, DC 20210.

List of Subjects in 29 CFR Part 1910

Lead, Occupational safety and health.

It is issued pursuant to sections 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593; 29 U.S.C. 655, 657), Secretary of Labor's Order No. 9–83 (48 FR 35736), 29 CFR Part 1911, and 33 U.S.C. 941. Part 1910 of Title 29, Code of Federal Regulations, is hereby amended, for the reasons set forth in the preamble, by revising Table I of paragraph (e)(1) of § 1910.1025 and paragraph (r)(7)(i)(B) of § 910.1025 and by adding paragraph (r)(7)(i)(E) of §1910.1025.

Signed at Washington, DC, this 28th day of June 1989.

Alan C. McMillan,

Acting Assistant Secretary of Labor.

V. Amendments to Standard

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for Subpart Z of Part 1910 continues to read as follows:

Authority: Secs. 6, 8 Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736) as applicable; and 29 CFR Part 1911.

Section 1910.1000 Tables Z–1, Z–2, Z–3 also issued under 5 U.S.C. 553.

Section 1910.1000 not issued under 29 CFR Part 1911, except for "Arsenic" and "Cotton Dust" listings in Table Z–1.

Section 1910.1001 also issued under Sec. 107 of Contract Work Hours and Safety Standards Act, 40 U.S.C. 333.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR Part 1911; also issued under 5 U.S.C. 553.

Sections 1910.1003 through 1910.1018 also issued under 29 U.S.C. 653.

Section 1910.1025 also issued under 29 U.S.C. 653 and 5 U.S.C. 553.

Section 1910.1028 also issued under 29 U.S.C. 653.

Section 1910.1043 also issued under 5 U.S.C. 551 *et seq.*

Sections 1910.1045 and 1910.1047 also issued under 29 U.S.C. 653.

Section 1910.1048 also issued under 29 U.S.C. 653.

Sections 1910.1200, 1910.1499 and 1910.1500 also issued under 5 U.S.C. 553.

2. Part 1910 of Title 29 of the Code of Federal Regulations is hereby amended in § 1910.1025 by revising Table I of paragraph (e)(1) and paragraph (r)(7)(i)(B) and by adding paragraph (r)(7)(i)(E) to read as follows:

§ 1910.1025 Lead.

* * * * *

(e) *Methods of compliance.*—(1) *Engineering and work practice controls.*

* * *

TABLE I—IMPLEMENTATION SCHEDULE

Industry[1]	Compliance dates		
	200 $\mu g/m^3$	100 $\mu g/m^3$	50 $\mu g/m^3$
Primary lead production	(2)	[3]June 29, 1984	[3]June 29, 1991.
Secondary lead production	(2)	[3]June 29, 1984	[3]June 29, 1986.

TABLE I—IMPLEMENTATION SCHEDULE—Continued

Industry[1]	Compliance dates		
	200 $\mu g/m^3$	100 $\mu g/m^3$	50 $\mu g/m^3$
Lead acid battery manufacture	(2)	[3]June 29, 1983	[3]June 29, 1986.
Automobile manufacture/solder grinding	(2)	N/A	[3]June 29, 1986.
Electronics, gray iron foundries, ink manufacture, paints and coatings manufacture, wall paper manufacture, can manufacture, and printing	(2)	N/A	[3]June 29, 1982.
Brass and bronze ingot manufacture, lead chemical manufacture, and secondary copper smelting	(2)	N/A	[4]5 years.
Non-ferrous foundries	(2)	N/A	N/A.
All other industries	(2)	N/A	[4]2½ years.

[1] Includes ancillary activities located on the same worksite.

[2] This date is calculated by counting, from June 29, 1981 (the date when the United States Supreme Court denied certiorari and lifted the stay on the implementation of paragraph (e)(1)), the number of years specified for the particular industry in the original lead standard for compliance with the given airborne exposure level. The denial of certiorari followed a decision of the United States Court of Appeals for the District of Columbia Circuit finding compliance with paragraph (e)(1) to be feasible for the relevant industries.

[3] On the effective date of this standard, March 1, 1979. This continues an obligation from Table Z–2 of 29 CFR 1910.1000, which had been in effect since 1971 but was deleted from the Code of Federal Regulations upon the effectiveness of this standard.

[4] Expressed as the number of years from the date on which the court lifts the stay on the implementation of paragraph (e)(1) for the particular industry.

* * * * *

(r) *Startup dates.*

* * * * *

(7)(i) * * *

(B) Employers in secondary lead smelting and refining and in lead storage battery manufacturing—1 year from the effective date.

* * * * *

(E) All other industries—1 year from the date on which the court lifts the stay on the implementation of paragraph (e)(1) for the particular industry.

[FR Doc. 89–15653 Filed 6–30–89; 2:12 pm]

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Tuesday
July 11, 1989

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 1 et al.
Federal Acquisition Regulation (FAR); Miscellaneous Amendments

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 4, 7, 8, 14, 15, 17, 19, 22, 25, 36, 37, 38, 47, 51, 52, and 53

[Federal Acquisition Circular 84-49]

RIN: 9000-AC60; 9000-AC04; 9000-AC37; 9000-AC20; 9000-AC22; 9000-AC55; 9000-AA97

Federal Acquisition Regulation (FAR); Miscellaneous Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rules.

SUMMARY: Federal Acquisition Circular (FAC) 84-49 amends the Federal Acquisition Regulation (FAR) with respect to the following: Contractor Establishment Codes; Revisions to Federal Supply Schedules; Master Solicitations; Revision of SF 1409, Abstract of Offers; OF 1419, Abstract of Offers—Construction; Extension after Performance (Options); Small Business Subcontracting Plans for Contracts with Options; English Translation of Contracts; Competition in Contracting Act—Protests; Protests to GAO; SF 1417, Pre-solicitation Notice (Construction Contract); Payment for Solicitation Documents (Construction), and Editorial Changes.

EFFECTIVE DATE: August 10, 1989.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755. Please cite FAC 84-49.

SUPPLEMENTARY INFORMATION:

A. Background

FAC 84-49, Item VI. Award of contracts for recurring and continuing service requirements are often delayed due to circumstances beyond the control of contracting offices. Examples of circumstances causing such delays are bid protests and alleged mistakes in bid. Pending resolution of these circumstances, contracting officers are forced to negotiate short extensions to existing contracts. Changes are being made to FAR 17.208, 37.111, and 52.217-8 to permit contracting offices to include an option provision which will enable the Government to require continued performance of any services within the limits and at the rates specified in the contract. The option provision could be exercised more than once, but the total extension of performance thereunder could not exceed 6 months.

FAC 84-49, Items IX and X. The interim rule in FAC 84-6, Item III, implemented requirements of sections 2713 and 2741, Pub. L. 98-369, the Competition in Contracting Act (CICA) of 1984, regarding procedures for filing protests with the General Accounting Office and the General Services Board of Contract Appeals. The interim rule also implemented Justice Department advice that the GAO "stay" provisions in 31 U.S.C. 3553 (c) and (d) and the GAO "damages" provision in 31 U.S.C. 3554(c) regarding payment of costs of filing and pursuing a protest and preparing the bid and proposal, are unconstitutional.

The interim rule in FAC 84-9 revised FAC 84-6, Item III, coverage to implement revised Justice Department advice regarding the "stay" and "damages" provisions of CICA.

The final rule also revises the clause at 52.212-13, Stop-Work Order, the clause at 52.212-14, Stop Work Order—Facilities, and the clause at 52.233-3, Protest After Award. The clause revisions are based on a public comment received recommending that language concerning equitable adjustments be revised to allow contractors 30 days to assert a right to an adjustment after the end of a period of work stoppage. The revised clause language is consistent with revisions made in FAC 84-29, Item X, "FAR Changes Clauses", which was published as a final rule in the **Federal Register** on August 12, 1987 (52 FR 30074).

B. Regulatory Flexibility Act

FAC 84-49, Items I thru VII, XI and XII. DoD, GSA, and NASA certify that the Regulatory Flexibility Act (Pub. L. 96-354) does not apply to these final rules because each revision is not a "significant revision" as defined in FAR 1.501-1; i.e., it does not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the issuing agencies.

FAC 84-49, Item VIII. DoD, GSA, and NASA certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the translation inconsistency clause is routinely used in overseas contracts when prospective vendors require a translation into a local language.

FAC 84-49, Items IX and X. A Final Regulatory Flexibility Analysis pertaining to CICA protest coverage has been prepared in accordance with the Regulatory Flexibility Act of 1980, Pub. L. 96-354, is on file in the FAR Secretariat, and will be submitted to the Chief Counsel for Advocacy, Small Business Administration.

C. Paperwork Reduction Act

FAC 84-49, Items I thru X and XII. The Paperwork Reduction Act (Pub. L. 96-511) does not apply because these final rules do not impose any reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

FAC 84-49, Item XI. The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501, et seq., under OMB Control Number 9000-0037.

D. Public Comments

FAC 84-49, Item III. On October 21, 1988, a proposed rule was published in the **Federal Register** (53 FR 41535). The comments that were received were considered by the Councils in the development of this final rule.

FAC 84-49, Item VI. On February 9, 1988, a proposed rule was published in the **Federal Register** (53 FR 3814). The comments that were received were considered by the Councils in the development of this final rule.

FAC 84-49, Item VII. On August 25, 1988, a proposed rule was published in the **Federal Register** (53 FR 32558). The comments that were received were considered by the Councils in the development of this final rule.

FAC 84-49, Item VIII. On February 26, 1988, a proposed rule was published in the **Federal Register** (53 FR 5928). The comments that were received were considered by the Councils in the development of this final rule.

FAC 84-49, Items IX and X. On January 15, 1985, Item III of Federal Acquisition Circular (FAC) 84-6 was published as an interim rule in the **Federal Register** (50 FR 2268). On June 20, 1985, FAC 84-9, which revised Item III of FAC 84-6, was published as an interim rule in the **Federal Register** (50 FR 27969). The comments that were received were considered by the Councils in the development of this final rule.

List of Subjects in 48 CFR Parts 1, 4, 7, 8, 14, 15, 17, 19, 22, 25, 36, 37, 38, 47, 51, 52, and 53

Government procurement.

Dated: July 3, 1987.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-49 is effective August 9, 1989.

Eleanor Spector,

Assistant Secretary of Defense for Procurement, DOD.

Richard H. Hopf, III,

Associate Administrator for Office of Acquisition Policy, GSA.

S. J. Evans,

Associate Administrator for Procurement, NASA.

Federal Acquisition Circular (FAC) 84-49 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Contractor Establishment Codes

FAR 15.406-2 is revised and 4.602(d), 4.603, and a provision at 52.204-4 are added for use in all solicitations in excess of $25,000 requesting offerors to identify their Contractor Establishment Codes, if available. If the apparent awardee does not identify its code, the contracting office shall obtain one as specified in the EPDS Reporting Manual.

Item II—Revisions to Federal Supply Schedules

FAR 8.401, 8.404, 8.406, and 38.201(b) are revised for editorial and clarification purposes, and 38.202 is revised to update the criteria used in establishing a Federal Supply Schedule.

Item III—Master Solicitations

FAR 14.203-3 and 15.408(d) are added to provide coverage on the use of master solicitations.

Item IV—Revision of Standard Form (SF) 1409, Abstract of Offers

FAR 14.403(a) and 53.214(f), are revised to prescribe SF 1409 and SF 1410. FAR 53.301-1409 is revised to illustrate the latest edition of SF 1409, Abstract of Offers, and 53.301-1410 is added to illustrate SF 1410, Abstract of Offers-Continuation Sheet.

Item V—Optional Form (of) 1419, Abstract of Offers—Construction

FAR 14.403(a), Subpart 36.7, 36.700, and 36.701(d) are revised, and 53.302-1419 and 53.302-1419A are added to prescribe OF 1419 and OF 1419A to make the forms more functional when recording offers from seven or more offerors and/or recording offers when the construction contract solicitation requires individual offers on 14 or more line items.

Item VI—Extension After Performance (Option)

FAR 17.208 and the clause at 52.217-8 are revised, and 37.111 is added, to permit contracting officers to include in service contracts an option provision which will enable the Government to extend performance for short periods of time.

Item VII—Small Business Subcontracting Plans for Contracts with Options

FAR 19.704(c) is amended to clarify and to specify that the subcontracting plans for contracts containing options that meet the required threshold for requiring such plans must separately address goals for both the basic contract term and each option. It also amends the clause at FAR 52.219-9, Small Business and Small Disadvantaged Business Subcontracting Plan, by inserting conforming language in the contract clause.

Item VIII—English Translation of Contracts

FAR Subpart 25.9 is revised to add language prescribing the use of the clause at FAR 52.225-14, Inconsistency Between English Version and Translation of Contract, whenever translation of a contract into a foreign language is anticipated.

Items IX and X—Competition in Contracting Act (CICA)—Protests and Protests to the General Accounting Office (GAO)

These items covert to final rule the following interim rules:

FAC 84-6, Item III, "Protests", which was published as an interim rule and request for comment in the **Federal Register** on January 15, 1985 (50 FR 2268).

FAC 84-9, which was published as an interim rule and request for comment in the **Federal Register** on June 20, 1985 (50 FR 25680) and July 9, 1985 (50 FR 27969).

In consideration of public and agency comments received in connection with the above referenced interim rules, these items revise the following contract clauses:

The clause at 52.212-13, Stop-Work Order.

The clause at 52.212-14, Stop Work Order-Facilities.

The clause at 52.233-3, Protest After Award. Item III of FAC 84-6 implemented—

Requirements of Sections 2713 and 2741, Pub. L. 98-369, the Competition in Contracting Act (CICA) of 1984, regarding procedures for filing protests with the General Accounting Office and the General Services Board of Contract Appeals, and

Justice Department advice that the GAO "stay" provisions in 31 U.S.C. 3553 (c) and (d) and the GAO "damages" provision in 31 U.S.C. 3554(c) regarding liability for the costs of filing and pursuing a protest and preparing the bid and proposal, are unconstitutional.

FAC 84-9 revised the above referenced FAC 84-6 coverage to implement revised Justice Department advice regarding the "stay" and "damages" provisions of CICA.

The clause revisions are based on a comment received recommending that language concerning equitable adjustments be revised to allow contractors 30 days to assert a right to an adjustment after the end of a period of work stoppage.

The revised clause language is consistent with revisions made in FAC 84-29, Item X, FAR Changes Clauses, which was published as a final rule in the **Federal Register** on August 12, 1987 (52 FR 30074).

Item XI—Standard Form (SF) 1417, Presolicitation Notice (Construction Contract)

FAR 53.236-1(a), 53.301-1417, and SF 1417, Pre-solicitation Notice (Construction Contact), are revised to require firms to include a telephone number in Block 17 when expressing interest in bidding on a construction project.

Item XII—Payment for Solicitation Documents (Construction)

FAR 53.236-1(a), 53.301-1417, and SF 1417, Pre-solicitation Notice (Construction Contract), are revised to substitute "check or money order" for "certified check, cashier's check or money order" in the instructions block of the form. Block 12 is revised to reflect the language used in the FAR by inserting the word "Plan" instead of "Program."

Item XIII-Editorial Changes

FAR 1.105 is revised to add an approved OMB Control Number 9000-0097 pertaining to Taxpayer Identification Number, published as an interim rule (Item I, FAC 84-40) in the **Federal Register** on October 26, 1988 (53 FR 43386).

FAR 1.201-19(b), 8.001(a)(1)(v); 19.1004; 25.406, 38.101(e), and 52.102(c)(3) are revised to reflect the agency name

change from "The Veterans Administration" to "The Department of Veterans Affairs".

FAR 7.403(b)(2), 8.401(b), 8.404–3(a), 47.105(a)(1), 51.103, 51.103(a) (1) and (2), 51.103 (b) and (c), 51.104(b)(3), Subpart 51.2, 51.200, 51.201 (a) and (c), 51.202(a) (2) and (5), 51.202(d), 51.204, 51.205, and 52.251–2 are revised to reflect current General Services Administration organizational structure.

FAR 22.608–2(f)(2) and 22.608–3(b)(2) are revised to reflect a change in an SBA designated point of contact.

FAR 52.232–25 is corrected to add subdivision (a)(3)(iv) which was inadvertently omitted in the final rule pertaining to Prompt Payment (Item I, FAC 84–45) and published as a final rule in the **Federal Register** on March 31, 1989 (54 FR 13332).

Therefore, 48 CFR Parts 1, 4, 7, 8, 14, 15, 17, 19, 22, 25, 36, 37, 38, 47, 51, 52, and 53 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 4, 7, 8, 14, 15, 17, 19, 22, 25, 36, 37, 38, 47, 51, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.105 is amended by adding in numerical order, two FAR segments and a corresponding OMB Control Number to read as follows:

1.105 OMB Approval under the Paperwork Reduction Act.

* * * * *

FAR segment	OMB control No.
* * * * *	
4.9	9000–0097
* * * * *	
52.204–3	9000–0097
* * * * *	

1.201–1 [Amended]

3. Section 1.201–1 is amended by removing in paragraph (b)(2) the words "Veterans Administration" and inserting in their place "Department of Veterans Affairs".

PART 4—ADMINISTRATIVE MATTERS

4. Section 4.602 is amended by adding paragraph (d) to read as follows:

4.602 Federal Procurement Data System.

* * * * *

(d) The contracting officer shall obtain and report a Contractor Establishment Code for each awardee from information on file or available to the contracting office, or by using the procedures at 4.603. When appropriate, offerors shall be request to identify their Contractor Establishment Code, if available. If the apparent awardee does not identify its code, the contracting office or other designated agency office shall request a code using the procedures in the FPDS Reporting Manual or in accordance with agency procedures. Requests for codes shall be made by Government offices and only for the apparent awardees.

5. Section 4.603 is added to read as follows:

4.603 Solicitation provision.

The contracting officer shall insert the provision at 52.204–4, Contractor Establishment Code, in all solicitations exceeding the small purchase limitation in Part 13 when there is a reasonable expectation that an award may be made to an offeror whose Contractor Establishment Code is not available to the contracting office but will be available to the offeror(s).

PART 7—ACQUISITION PLANNING

7.403 [Amended]

6. Section 7.403 is amended in paragraph (b)(2) by removing the words "Office of Procurement" and inserting in their place "Office of Commodity Management".

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.001 [Amended]

7. Section 8.001 is amended in paragraph (a)(1)(v) by removing the words "Veterans Administration" and inserting in their place "Department of Veterans Affairs".

8. Section 8.401 is amended by revising paragraph (b) to read as follows:

8.401 General.

* * * * *

(b) Ordering offices may request copies of schedules by completing GSA Form 457, FSS Publications Mailing List Application, and mailing it to the GSA Centralized Mailing Lists Services, 819 Taylor Street, P.O. Box 17077, Fort Worth, Texas 76102–0077. Copies of GSA Form 457 and the GSA publication titled "GSA Supply Catalog" (which includes a listing of schedules and information on the use of schedules) may also be obtained from the above address.

9. Section 8.404 is amended by redesignating existing paragraphs (a) and (b) as (b) and (c), and by adding a new paragraph (a) to read as follows:

8.404 Using schedules.

(a) The planning, solicitation, and award phases of Federal Supply Schedules comply with FAR requirements. Consequently, contracting officers need not seek further competition, synopsize the solicitation or award, determine fair and reasonable pricing, or consider small business-small purchase set-aside procedures when placing an order under a Federal Supply Schedule.

* * * * *

8.404–3 [Amended]

10. Section 8.404–3 is amended in paragraph (a) by removing in the first sentence the words "Assistant Administrator, Office of Federal Supply and Services (F)" and inserting in their place "Commissioner, Federal Supply Service (F)".

11. Section 8.406 is amended by adding a fourth and fifth sentence to read as follows:

8.406 Blanket purchase agreements.

* * * When establishing dollar limitations for BPA's established against Federal Supply Schedules pursuant to 13.204(b), the limitations apply to individual orders placed under the BPA and are those prescribed in the Maximum Order Limitation clause for the particular schedule contract. No limitation is imposed on the total BPA unless specified by agency procedures.

PART 14—SEALED BIDDING

12. Section 14.203–3 is added to read as follows:

14.203–3 Master solicitation.

(a) *Definition.* "Master solicitation," as used in this subsection, means a document containing special clauses and provisions that have been identified as essential for the acquisition of a specific type of supply or service that is acquired repetitively.

(b) *Use.* The master solicitation is provided to potential sources who are requested to retain it for continued and repetitive use. Individual solicitations shall reference the date of the current master solicitation and any changes thereto. Copies of the master solicitation shall be made available on request. Cognizant contract administration activities shall be provided a current copy of the master solicitation.

13. Section 14.403 is amended by revising paragraph (a) to read as follows:

14.403 Recording of bids.

(a) Standard Form 1409, Abstract of Offers, or Optional Form 1419, Abstract of Offers—Construction (or automated equivalent), shall be completed and certified as to its accuracy by the bid opening officer as soon after bid opening as practicable. Where bid items are too numerous to warrant complete recording of all bids, abstract entries for individual bids may be limited to item numbers and bid prices. In preparing these forms, the extra columns and SF 1410, Abstract of Offers—Continuation, and OF 1419A, Abstract of Offers—Construction, Continuation Sheet, may be used to label and record such information as the contracting activity deems necessary.

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

14. Section 15.406–2 is amended by revising paragraph (a)(3)(viii) to read as follows:

15.406–2 Part I—The Schedule.

(a) * * *

(3) * * *

(viii) Requirement for the offeror or quoter to provide its name and complete address, including street, city, county, State, and Zip Code.

* * * * *

15. Section 15.408 is amended by adding paragraph (d) to read as follows:

15.408 Issuing solicitations.

* * * * *

(d) A master solicitation may be used for negotiated acquisitions, subject to the criteria and procedures in 14.203–3.

PART 17—SPECIAL CONTRACTING METHODS

16. Section 17.208 is amended by revising paragraph (f) to read as follows:

17.208 Solicitation provision and contract clauses.

* * * * *

(f) The contracting officer shall insert a clause substantially the same as the clause at 52.217–8, Options to Extend Services, in solicitations and contracts for services when the inclusion of an option is appropriate. (See 17.200, 17.202, and 37.111.)

* * * * *

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

17. Section 19.704 is amended by adding paragraph (c) to read as follows:

19.704 Subcontracting plan requirements.

* * * * *

(c) For contracts containing options, the cumulative value of the basic contract and all options is considered in determining whether a subcontracting plan is necessary (see 19.705–2(a)). If a plan is necessary and the offeror is submitting an individual contract plan, the plan shall contain all the elements required by 19.704(a) and shall contain separate parts, one for the basic contract and one for each option.

19.1004 [Amended]

18. Section 19.1004 is amended by removing the words "Veterans Administration" and inserting in their place "Department of Veterans Affairs".

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.608–2 [Amended]

22.608–3 [Amended]

19. Section 22.608–2 is amended in paragraph (f)(2) and section 22.608–3 is amended in paragraph (b)(2) by removing in both places the words "Administrator of the SBA" and inserting in their place "SBA Regional Officer serving the geographical area in which the principal office of the small business concern is located".

PART 25—FOREIGN ACQUISITION

25.406 [Amended]

20. Section 25.406 is revised at the end of the agency listing by removing the words "Veterans Administration" and inserting in their place "Department of Veterans Affairs".

21. Subpart 25.9 is revised to read as follows:

Subpart 25.9—Additional Foreign Acquisition Clauses

Sec.
25.901 Omission of the examination of records clause.
25.902 Inconsistency between English version and translation of contract.

Subpart 25.9—Additional Foreign Acquisition Clauses

25.901 Omission of examination of records clause.

(a) *Definition.* "Foreign contractor," as used in this subpart, means a contractor or subcontractor organized or existing under the laws of a country other than the United States, its territories, or possessions.

(b) *Policy.* As required by 10 U.S.C. 2313, 41 U.S.C. 254, and 15.106–1(b)(3), the contracting officer shall consider for use in negotiated contracts with foreign contractors, whenever possible, the clause at 52.215–1, Examination of Records by Comptroller General. Omission of the clause should be approved only after the contracting agency, having considered such factors as alternate sources of supply, additional cost, and time of delivery, has made all reasonable efforts to include the clause.

(c) *Conditions for omission.* (1)(i) The contracting officer may omit the clause at 52.215–1, Examination of Records by Comptroller General, from contracts with foreign contractors—

(A) If the agency head determines, with the concurrence of the Comptroller General or a designee, the omission of the clause will serve the public interest; or

(B) If the contractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its books, documents, papers, or records available for examination, and the agency head determines, after taking into account the price and availability of the property or services from domestic sources, that omission of the clause best serves the public interest.

(ii) When a determination under subdivision (c)(1)(i)(B) of this section is the basis for omission of the clause at 52.215–1, Examination of Records by Comptroller General, the agency head shall forward a written report to the Congress explaining the reasons for the determination.

(d) *Determination and findings.* The determination and findings shall—

(1) Identify the contract and its purpose, and whether it is a contract with a foreign contractor or with a foreign government or agency thereof;

(2) Describe the efforts to include the clause;

(3) State the reasons for the contractor's refusal to include the clause;

(4) Describe the price and availability of the property or services from the United States and other sources; and

(5) Determine that it will serve the interest of the United States to omit the clause.

25.902 Inconsistency between English version and translation of contract.

The contracting officer shall insert the clause at 52.225–14, Inconsistency Between English Version and Translation of Contract, in solicitations and contracts whenever translation into another language is anticipated.

PART 36—CONSTRUCTION AND ARCHITECT–ENGINEER CONTRACTS

22. Subpart 36.7 is amended by revising the title to read as follows:

Subpart 36.7—Standard and Optional Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements

23. Section 36.700 is revised to read as follows:

36.700 Scope of subpart.

This subpart sets forth requirements for the use of standard and optional forms, prescribed in Part 53, for contracting for construction, architect-engineer services, or dismantling, demolition, or removal of improvements. These standard and optional forms are illustrated in Part 53.

24. Section 36.701 is amended by revising the section title and paragraph (d) to read as follows:

36.701 Standard and optional forms for use in contracting for construction or dismantling, demolition, or removal of improvements.

* * * * *

(d) Contracting officers may use Optional Form 1419, Abstract of Offers—Construction, and Optional Form 1419A, Abstract of Offers—Construction, Continuation Sheet, or the automated equivalents to record offers submitted in response to a sealed bid solicitation (see 14.403) and may also use them to record offers submitted in response to negotiated solicitations.

* * * * *

PART 37—SERVICE CONTRACTING

25. Section 37.111 is added to read as follows:

37.111 Extension of services.

Award of contracts for recurring and continuing service requirements are often delayed due to circumstances beyond the control of contracting offices. Examples of circumstances causing such delays are bid protests and alleged mistakes in bid. In order to avoid negotiation of short extensions to existing contracts, the contracting officer may include an option clause (see 17.208(f)) in solicitations and contracts which will enable the Government to require continued performance of any services within the limits and at the rates specified in the contract. However, these rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance thereunder shall not exceed 6 months.

PART 38—FEDERAL SUPPLY SCHEDULE CONTRACTING

38.101 [Amended]

26. Section 38.101 is amended in paragraph (e) by removing the words "Veterans Administration" and inserting in their place "Department of Veterans Affairs".

27. Section 38.201 is amended by revising in paragraph (b) the second sentence to read as follows:

38.201 Coordination requirements.

* * * * *

(b) * * * This form shall be submitted to GSA, Federal Supply Service (FSS), FCO, Washington, DC 20406, in duplicate, well in advance of solicitation preparation. * * *

28. Section 38.202 is amended by revising paragraph (a) and the introductory text of paragraph (c) and by removing in the first sentence of paragraph (c)(5) the words "per contract period" and inserting in their place "for a 1-year period", to read as follows:

38.202 Criteria.

(a) To justify establishing or continuing a Federal Supply Schedule, the annual business volume expected from a particular Federal Supply Schedule should be as follows: National scope multiple-award schedule—$1,000,000; national scope single-award schedule—$500,000; regional service schedules—$250,000.

* * * * *

(c) A special item number (SIN) should not be retained in a future multiple-award schedule when the anticipated purchases of the SIN will be less than $25,000 for a 1-year period. A new contract should not be awarded to a current supplier whose sales were less than $25,000 for the most recent 1-year period. An item (product or service) should not be retained in a future schedule when the anticipated purchases of the item will be less than $2,000 for a 1-year period. (For the purpose of these criteria, an item is defined as a product on a multiple-award schedule; or a National Stock Number (NSN) or SIN on a single-award schedule.) This policy does not apply to service contracts or to the following:

* * * * *

PART 47—TRANSPORTATION

47.105 [Amended]

29. Section 47.105 is amended in paragraph (a)(1) by removing the words "Office of Transportation" and inserting in their place "Federal Supply Service Bureau".

PART 51—USE OF GOVERNMENT SOURCES BY CONTRACTORS

51.102 [Amended]

30. Section 51.102 is amended in paragraph (c)(3) by removing in two places the words "Veterans Administration" and by inserting in both places the words "Department of Veterans Affairs".

51.103 [Amended]

31. Section 51.103 is amended in the introductory text of paragraph (a) and in paragraphs (a) (1) and (2), by removing the words "or Personal Property Rehabilitation Price Schedules"; by removing in paragraph (b) the office symbol "FFN" and inserting in its place "FCO"; and by removing in paragraph (c) the words "Office of Information Resources Management" and inserting in their place "Information Resources Management Service".

32. Section 51.104 is amended by revising paragraph (b)(3) to read as follows:

51.104 Furnishing assistance to contractors.

* * * * *

(b) * * *

(3) A completed GSA Form 3525, Application for Customer Supply Center Services and (Address Change).

33. Subpart 51.2 is amended by revising the title and by removing all references to the "interagency motor pool" and inserting in each place "interagency fleet management system (IFMS)" in the sections listed below, to read as follows:

Subpart 51.2—Contractor Use of Interagency Fleet Management System (IFMS)

51.200
51.201(a)
51.201(c)
51.202(a)
51.202(a)(2)
51.202(a)(5)
51.202(d)
51.203(a)
51.204 section title and text
51.205 clause title and text

51.202 [Amended]

34. Section 51.202 is amended in paragraph (a)(4) by removing the citation "41 CFR 101-39.602" and inserting in its place "41 CFR 101-38.301-1", and in paragraph (d) by removing "41 CFR 101-39.8" and inserting "41 CFR 101-39.4".

35. Section 51.203 is amended in the introductory text of paragraph (a) to read as follows:

51.203 Means of obtaining service.

(a) Authorized contractors shall submit requests for interagency fleet management system (IFMS) vehicles and related services in writing to the appropriate GSA regional Federal Supply Service Bureau, Attention: Regional fleet manager, except that requests for more than five vehicles shall be submitted to General Services Administration, FBF, Washington, DC 20406, and not to the regions. Each request shall include the following:

* * * * *

51.204 [Amended]

36. Section 51.204 is amended by removing the citation "41 CFR 1[illegible]-39" and inserting in its place "41 CFR 101-38".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

37. Section 52.204-4 is added to read as follows:

52.204-4 Contractor Establishment Code.

As prescribed in 4.603, insert the following provision:

Contractor Establishment Code (AUG 1989)

In the block with its name and address, the offeror should supply the Contractor Establistment Code applicable to that name and address, if known to the offerer. The number should be preceded by "CEC:" Offerors should take care to report the correct CEC and not a similar number assigned to the Offeror in a different system.

The CEC is a 9-digit code assigned to a contractor establishment that contracts with a Federal executive agency. The CEC system is a contractor identification coding system which is currently the Dun and Bradstreet Data Universal Numbering System (DUNS). The CEC system is distinct from the Federal Taxpayer Identification Number (TIN) system.

The Government will obtain a Contractor Establishment Code for any awardee that does not have or does not know its CEC.

(End of provision)

38. Section 52.212-13 is amended by removing in the title of the clause the date "(APR 1984)" and inserting in its place "(AUG 1989);" by revising paragraph (b)(2); and by removing the derivation line following "(End of clause)" to read as follows:

52.212-13 Stop-work order.

* * * * *

(b) * * *

(2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; *provided*, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal submitted at any time before final payment under this contract.

* * * * *

39. Section 52.212-14 is amended by revising the introductory text of the clause; by removing the date "(APR 1984)" and inserting in its place "(AUG 1989)"; by revising paragraph (b)(2); and by removing the derivative line following "(End of clause)" to read as follows:

52.212-14 Stop-work-order-facilities.

As prescribed in 12.505(c), insert the following clause. The "90-day" period stated in the clause may be reduced to less than 90 days.

* * * * *

(b) * * *

(2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; *provided*, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal submitted at any time before final payment under this contract.

* * * * *

40. Section 52.217-8 is revised to read as follows:

52.217-8 Option to extend services.

As prescribed in 17.208(f), insert a clause substantially the same as the following:

Option to Extent Services (AUG 1989)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extention of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within the period specified in the Schedule.

(End of clause)

41. Section 52.219-9 is amended by revising the introductory text; by removing in the title of the clause and in the Alternate I the date "(APR 1984)" and inserting in each place the date "(AUG 1989)"; and by revising the first sentence in paragraph (c) of the clause, and the first sentence in paragraph (c) of the Alternate I; and by removing the derivation lines following "(End of clause)" and following paragraph (c) of Alternate I to read as follows:

52.219-9 Small Business and Small Disadvantaged Business Subcontracting Plan.

As prescribed in 19.708(b), insert the following clause:

* * * * *

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, which separately addresses subcontracting with small business concerns and with small disadvantaged business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business concerns and with small disadvantaged business concerns with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

* * * * *

Alternate I (AUG 1989). When contracting by sealed bidding rather than by negotiation, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, which separately addresses subcontracting with small business concerns and with small disadvantaged business concerns. If the bidder is submitting an individual contract plan, the plan must separately address subcontracting with small business concerns and with small disadvantaged business concerns with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. * * *

42. Section 52.225-14 is added to read as follows:

52.225-14 Inconsistency between English version and translation of contract.

As prescribed at 25.902, insert the following clause:

Inconsistency Between English Version and Translation of Contract (Aug 1989)

In the event of inconsistency between any terms of this contract and any translation thereof into another language, the English language meaning shall control.

(End of clause)

43. Section 52.232-25 is amended by adding paragraph (a)(3)(iv) to read as follows:

52.232-25 Prompt payment.

* * * * *

(a) * * *

(3) * * *

(iv) If the contract does not require submission of an invoice for payment

date will be as specified in the contract.

* * * * *

44. Section 52.233–3 is amended by removing in the title of the clause the date "(JUN 1985)" and inserting in its place "(AUG 1989)"; and by revising paragraph (b)(2) to read as follows:

52.233–3 Protest after award.

* * * * *

(b) * * *

(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; *provided,* that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal submitted at any time before final payment under this contract.

* * * * *

52.251–2 [Amended]

45. Section 52.251–2 is amended by removing the words "interagency motor pool" and inserting in their place "interagency fleet management system" and in the first and second sentences of the clause; by inserting a colon following the word "clause" and removing the remainder of the sentence; by removing in the clause title the date "(APR 1984)" and inserting in its place "(AUG 1989)"; and by removing the derivation line following "(End of clause)".

PART 53—FORMS

46. Section 53.214 is amended by revising the section title and paragraph (f) to read as follows:

53.214 Sealed bidding (SF's 26, 30, 33, 129, 1409, 1410, and OF's 17, and 336).

* * * * *

(f) *SF 1409 (REV. 9/88), Abstract of Offers, and SF 1410 (9/88), Abstract of Offers-Continuation. SF 1409 and SF 1410 are prescribed for use in recording bids, as specified in 14.403(a).*

* * * * *

47. Section 53.236–1 is amended by revising the section title and the by removing "(1)" and "(2)" in the introductory text; by removing and reserving paragraph (c); and by adding paragraph (g) to read as follows:

53.236–1 Construction (SF's 1417, 1420, 1442, and OF's 347, 1419, and 1419A).

* * * * *

(a) *SF 1417 (REV 12/88), Pre-Solicitation Notice (Construction Contract).* * * *

* * * * *

(g) *OF 1419 (11/88), Abstract of Offers-Construction, and OF 1419A (11/88), Abstract of Offers-Construction, Continuation Sheet.* OF's 1419 and 1419A are prescribed for use in recording bids (and may be used for recording proposal evaluation information), as specified in 36.701(d).

48. Section 53.301–1409 is revised to read as follows:

53.301–1409 Standard Form 1409, Abstract of Offers.

BILLING CODE 6820–JC–M

ABSTRACT OF OFFERS	SOLICITATION NO.	OPENING DATE	PAGE OF PAGES
ISSUING OFFICE		SUPPLIES OR SERVICES *(General Description)*	

NO.	NAME OF OFFEROR	ACCEPTANCE TIME* (Days)	BUSINESS SIZE L	BUSINESS SIZE S	ITEM NO. ▶ / QUANTITY ▶ / UNIT ▶				DELIVERY TIME**	F.O.B. POINT	REMARKS
						$	$	$			

* *Indicate by an X a 60-day acceptance.*
** *Indicate by an X if offer conforms to delivery time specified in solicitation.*

I CERTIFY THAT I HAVE OPENED, READ AND RECORDED ON THIS ABSTRACT (AND CONTINUATION SHEETS, IF ANY) ALL OFFERS RECEIVED IN RESPONSE TO THE SOLICITATION.

TYPED NAME AND TITLE

SIGNATURE

DATE

NSN 7540-01-142-9844

1409-102

STANDARD FORM 1409 (Rev. 9-88)
Prescribed by GSA, FAR (48 CFR) 53.214(f)

BILLING CODE 6820-JC-C

49. Section 53.301-1410 is added to read as follows:

53.301-1410 Standard Form 1410, Abstract of Offers—Continuation.

BILLING CODE 6730-JC-M

ABSTRACT OF OFFERS—CONTINUATION

PAGE OF PAGES

NO.	ITEM NO. ►								
	QUANTITY ►								
	UNIT ►								
		$	$	$	$	$	$	$	$

50. Section 53.301-1417 is revised to read as follows:

53.301-1417 Standard Form 1417, Pre-solicitation Notice (Construction Contract).

BILLING CODE 6820-JC-M

PRE-SOLICITATION NOTICE
(Construction Contract)

1. PROJECT NO.	2. DATE OF NOTICE	3. DATE SOLICITATION DOCUMENTS AVAILABLE (Approx.)	FORM APPROVED OMB NO. 9000-0037

Public reporting burden for this collection of information is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0037), Washington, D.C. 20503.

NOTE: The project number in items 1 and 16 may be the same as the Invitation or Proposal Number.

4. OFFERS TO BE RECEIVED BY (at place specified for receipt of offers)	A. TIME A.M. P.M.	B. DATE (Month, day, year)	5. TIME FOR COMPLETION (Calendar days)

6A. ISSUING OFFICE (Name, address, and ZIP code)	7. PROJECT TITLE AND LOCATION
6B. ROOM NO. / 6C. TELEPHONE NO. (Include area code)	

INSTRUCTIONS: a. Solicitation Documents will be issued upon receipt of your affirmative response to this Pre-Solicitation Notice by the DUE DATE set forth in Item 15. b. If a charge is required under Item 8A, your affirmative response must include a check or money order in the applicable amount, made payable to Agency (shown in Item 9). Refund (when specified in Item 8B) will be made upon your return of the bid documents in good condition, without marks, notes, or mutilations, within 20 calendar days after the final date for receipt of offers. c. The Issuing Office, at its discretion, may make bid documents available to plan rooms of the Associated General Contractors, Chambers of Commerce, Dodge Reports, and other similar contractors' commercial service facilities. d. Bid guarantee is required with any bid in excess of $25,000. Bid guarantee shall be in the amount of 20 percent of the amount of the bid, or $3,000,000, whichever is less. For bid guarantee purposes, the amount of the bid is the aggregate of the Lump Sum Base Bid, all Alternates (if any), and the product(s) of each unit price (if any) multiplied by the applicable number of units shown on the Bid Form. e. NOTICE TO SMALL BUSINESS FIRMS: A program for the purpose of assisting qualified small business concerns in obtaining certain bid, payment, or performance bonds that are otherwise not obtainable is available through the Small Business Administration (SBA). For information concerning SBA's surety bond guarantee assistance, contact your SBA District Office.

8A. CHARGE FOR SOLICITATION DOCUMENTS	8B. IS THIS CHARGE REFUNDABLE?	9. MAKE CHECK PAYABLE TO:
$	☐ YES ☐ NO	

10. ESTIMATED COST RANGE OF PROJECT		11. OFFERS COVERING THE PROJECT RESTRICTED TO SMALL BUSINESS?	12. SUBCONTRACTING PLAN REQUIRED?
A. FROM	B. TO	☐ YES ☐ NO	☐ YES ☐ NO
$	$		

13. DESCRIPTION OF WORK (Physical characteristics)

(If additional space is needed use reverse)

IMPORTANT: FAILURE TO COMPLETE AND RETURN THIS PART OF THE NOTICE TO THE ISSUING OFFICE, ON OR BEFORE THE DUE DATE SHOWN IN ITEM 15, MAY RESULT IN YOUR NAME BEING REMOVED FROM OUR MAILING LIST.

14. ACTION REQUESTED (Check applicable box)		15. DUE DATE
A. I AM INTERESTED IN BIDDING ON THIS PROJECT AS A: ☐ PRIME CONTRACTOR ☐ PRINCIPAL SUBCONTRACTOR	B. I AM NOT INTERESTED IN BIDDING ON THIS PROJECT. RETAIN MY NAME ON YOUR MAILING LIST.	
NO. OF SET(S) YOU REQUIRE OF SOLICITATION DOCUMENTS	C. REMOVE MY NAME FROM YOUR MAILING LIST.	16. PROJECT NO.

17. NAME, ADDRESS (City, State, ZIP Code), AND TELEPHONE NUMBER OF FIRM

18. NAME AND TITLE OF FIRM REPRESENTATIVE	19. SIGNATURE OF REPRESENTATIVE	20. DATE SIGNED

NSN 7540-01-149-3531 EXPIRATION DATE 1-31-90
Previous edition not usable.

1417-103

STANDARD FORM 1417 (REV. 12-88)
Prescribed by GSA - FAR (48 CFR) 53.236-1(a)

BILLING CODE 6820-JC-C

53.301-1419 [Reserved].

51. Section 53.301-1419 is removed and reserved.

52. Section 53.302-1419 is added to read as follows:

53.302-1419 Optional Form 1419, Abstract of Offers—Construction.

BILLING CODE 6820-JC-M

ABSTRACT OF OFFERS - CONSTRUCTION

1. SOLICITATION NUMBER

2. DATE ISSUED

3. DATE OPENED

PAGE OF PAGES

4. ISSUING OFFICE

I CERTIFY that I have opened, read, and recorded on this abstract all offers received in response to this solicitation. ▶

NAME AND TITLE OF CERTIFYING OFFICIAL (TYPE)

SIGNATURE

DATE SIGNED

5. PROJECT TITLE

6. NUMBER OF AMENDMENTS ISSUED

8. GOVERNMENT ESTIMATE (Check A, B or C and complete D, E, and F)

	A. HIRED LABOR
	B. REASONABLE CONTRACT (Without Profit)
	C. REASONABLE CONTRACT (Including Profit)

9. OFFERS

NO. 1	NO. 2
A. OFFEROR	A. OFFEROR
B. BID SECURITY (Type and amount)	B. BID SECURITY (Type and amount)
C. AMENDMENTS ACKNOWLEDGED	C. AMENDMENTS ACKNOWLEDGED

7A. ITEM NO.	7B. DESCRIPTION OF OFFERED ITEM	7C. EST. QUANTITY	D. UNIT	E. UNIT PRICE	F. ESTIMATED AMOUNT	D. UNIT PRICE	E. ESTIMATED AMOUNT	D. UNIT PRICE	E. ESTIMATED AMOUNT

NSN 7540-01-156-0981 501419-101

NOTE: If more than two offers are received, continue on OF 1419A.

OPTIONAL FORM 1419 (11-88)
Prescribed by GSA - FAR (48 CFR) 53.236-1

BILLING CODE 6820-JC-C

BEST COPY AVAILABLE

53.302-1419A Optional Form 1419A, Abstract of Offers—Construction, Continuation Sheet.

BILLING CODE 6820-JC-M

ABSTRACT OF OFFERS - CONSTRUCTION
CONTINUATION SHEET

1. SOLICITATION NUMBER

PAGE OF PAGES

INSTRUCTIONS - Attach this form to OF 1419, Abstract of Offers - Construction, when more than 2 offers are received on a construction project. Each Continuation Sheet will accomodate 14 contract items to conform to the number of items which can be entered on the OF 1419. Use additional OF 1419's for contract items in excess of 14 and attach additional Continuation Sheets (OF 1419A) as needed.

2. PROJECT TITLE

4. OFFERS (Continued)

NO.:___	NO.:___	NO.:___	NO.:___
A. OFFEROR	A. OFFEROR	A. OFFEROR	A. OFFEROR
B. BID SECURITY (Type and Amount)	B. BID SECURITY (Type and Amount)	B. BID SECURITY (Type and Amount)	B. BID SECURITY (Type and Amount)
C. AMENDMENTS ACKNOWLEDGED	C. AMENDMENTS ACKNOWLEDGED	C. AMENDMENTS ACKNOWLEDGED	C. AMENDMENTS ACKNOWLEDGED

3. CONTRACT ITEMS

A. ITEM NO.	B. ESTIMATED QUANTITY	C. UNIT	D. UNIT PRICE	E. ESTIMATED AMOUNT	D. UNIT PRICE	E. ESTIMATED AMOUNT	D. UNIT PRICE	E. ESTIMATED AMOUNT	D. UNIT PRICE	E. ESTIMATED AMOUNT

NSN 7540-01-280-5502 501419-201 OPTIONAL FORM 1419A (11-88) Prescribed by GSA - FAR (48 CFR) 53.236-1

[FR Doc. 89-16077 Filed 7-10-89; 8:45 am]

BILLING CODE 6820-JC-C

federal register

Tuesday
July 11, 1989

Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 15, 43, and 52

Federal Acquisition Regulation (FAR); Equitable Adjustment Claims; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 15, 43, and 52

Federal Acquisition Regulation (FAR); Equitable Adjustment Claims

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a change to the Federal Acquisition Regulation (FAR) 15.804-6, 15.805-5, and 43.204(b)(5) to permit contracting officers to include the clause at FAR 52.243-6, Change Order Accounting, in construction contracts.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before September 11, 1989 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 89-54 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755. Please cite FAR Case 89-54.

SUPPLEMENTARY INFORMATION:

A. Background

A review by the Office of the Inspector General, Department of Defense, of requests for equitable adjustment submitted against construction contracts found that contractors were submitting requests far in excess of actual incurred cost. Many of these requests for adjustment were made after contract performance was substantially completed and actual costs were known. Contractors' cost representations, however, were generally based on estimates because the costs related to the change were not segregated from the costs of the unchanged portions of the contracts. The proposed rule would permit contracting officers to include a clause in construction contracts requiring that contractors separately account for changed work if the estimated cost of the change, or a series of related changes exceeds $100,000. It would also reiterate the requirement for contractors to identify all incurred costs as a part of any cost proposal submitted on a SF 1411.

B. Regulatory Flexibility Act

This proposed change does not appear to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the clause will be included in construction contracts only when deemed appropriate by the contracting officer and becomes operative only when the estimated cost of a change or series of related changes exceeds $100,000. An Initial Regulatory Flexibility Analysis (IRFA) has therefore not been prepared. Comments from small entities concerning the affected FAR sections will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 89-610 (FAR Case 89-54) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) does not require approval of the proposed revisions because there is no change in paperwork burden involved. The proposed revision to the Change Order Accounting clause policies adds nothing that is not already permitted by the FAR. Contracting officers have always been permitted to insert the Change Order Accounting Clause in construction contracts. The revision to the Table 15-2 at 15.804-6 likewise has not changed the long-standing requirement to provide cost or pricing data in order to comply with the Truth in Negotiations Act. Identification of actual costs incurred prior to submittal of a proposal as addressed by this proposed rule falls within the definition of cost or pricing data, and submittal of this information has always been required by the FAR.

List of Subjects in 48 CFR Parts 15, 43, and 52

Government procurement.

Dated: June 30, 1989.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, 48 CFR Parts 15, 43, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 15, 43, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 15—CONTRACTING BY NEGOTIATION

2. Section 15.804-6 is amended in Table 15-2 of paragraph (b)(2) by redesignating existing paragraphs 3., 4., 5., 6., and 7. as 4., 5., 6., 7., and 8., and adding a new paragraph 3.; and by revising in Table 15-2 the title of new paragraph 8.B. to read as follows:

15.804-6 Procedural requirements.

* * * * *

(b) * * *

(2) * * *

Table 15-2—Instructions for Submission of a Contract Pricing Proposal

* * * * *

3. Whenever the offeror has incurred costs for work performed before submission of proposal, those costs must be identified in the offeror's cost/price proposal.

* * * * *

8. * * *

B. Change Orders, Modifications, and Claims.

* * * * *

3. Section 15.805-5 is amended by adding paragraph (c)(4) to read as follows:

15.805-5 Field pricing support.

* * * * *

(c) * * *

(4) When the contracting officer requires a field pricing review of requests for equitable adjustments, the contracting officer should provide the information listed in 43.204(b)(5).

* * * * *

PART 43—CONTRACT MODIFICATIONS

4. Section 43.204 is amended by adding paragraph (b)(5) to read as follows:

43.204 Administration.

* * * * *

(b) * * *

(5) When the contracting officer requires a field pricing review of requests for equitable adjustment, the contracting officer shall provide a list of any significant contract events which may aid in the analysis of the request. This list should include—

(i) Date and dollar amount of contract award and/or modification;

(ii) Date of submission of initial contract proposal and dollar amount;

(iii) Date of alleged delays or disruptions;

(iv) Performance dates as scheduled at date of award and/or modification;

(v) Actual performance dates;

(vi) Date entitlement to an equitable adjustment was determined or contracting officer decision was rendered, if applicable;

(vii) Date of certification of the request for adjustment, if certification is required; and

(viii) Dates of any pertinent Government actions or other key events during contract performance which may have an impact on the contractor's request for equitable adjustment.

* * * * *

5. Section 43.205 is amended by revising paragraph (f) to read as follows:

43.205 Contract clauses.

* * * * *

(f) The contracting officer may insert a clause, substantially the same as the clause at 52.243-6, Change Order Accounting, in solicitations and contracts (1) for construction, supply, and research and development; (2) of significant technical complexity, and (3) if numerous changes are anticipated.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.243-6 [Amended]

6. Section 52.243-6 is amended in the introductory text by inserting a colon following the word "follows", and removing the remainder of the sentence.

[FR Doc. 89-16197 Filed 7-10-89; 8:45 am]

BILLING CODE 6820-JC-M

federal register

Tuesday
July 11, 1989

Part V

Department of Justice

Office of Justice Programs

Obstacles to Recovery and Return of Parentally Abducted Children; Program Announcement and Solicitation for Applications

DEPARTMENT OF JUSTICE

Office of Justice Programs

Obstacles to Recovery and Return of Parentally Abducted Children; Program Announcement and Solicitation for Application

ACTION: Program Announcement—A Study of Obstacles to Recovery and Return of Parentally Abducted Children, Notice of Issuance of a solicitation for applications.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to Title IV of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended, announces a new research program to examine obstacles encountered by custodial parents attempting to regain custody of their children abducted by a noncustodial parent. This study is required by Section 408 of the 1988 Amendments to the JJDP Act.

The main purpose of this research program is to document significant obstacles—including legal, policy, procedural, and practical—to the recovery and return of parentally abducted children and develop recommendations for eliminating them. A major product is a description of the study and a summary of the results to be used by OJJDP in preparing a report to the U.S. Congress describing such obstacles and summarizing the results of the study. This summary must be completed and submitted to OJJDP not later than September 1991, in order for OJJDP to meet the mandated reporting requirement.

This is a research effort consisting of three stages.

Stage I—Research Design: Stage I involves: (1) Reviewing related studies and other relevant literature; and (2) developing a research design for Stage II of the study. The research design should clearly articulate the problem, objectives, methodology, sampling strategy and analysis plans for assessing obstacles to legal parents' recovery of parentally abducted children.

Stage II—Data Collection: This stage of the study involves the implementation of the design developed in Stage I. This will entail the systematic collection of data and other information on intrastate, interstate, and international obstacles (legal, policy, procedural and practical) to parental recovery of children abducted by a noncustodial parent.

Stage III—Data Analysis and Preparation of Report: One major report will be developed on obstacles to parental recovery and return of children abducted by a noncustodial parent. The report will include a description of such obstacles and recommendations for ameliorating them. An executive summary shall be included.

OJJDP invites public agencies and non-profit private agencies to submit competitive applications to conduct the research outlined in this Request for Proposals (RFP).

Up to $300,000 has been allocated for the initial award. One cooperative agreement will be awarded competitively, with an initial budget period of 12 months. The initial award will provide support to complete Stage I and the implementation of a portion of Stage II. Applicants must propose and justify the amount required to complete Stages II and III. One noncompeting continuation award will be considered to complete Stage II and to conduct Stage III of the study, provided that Stage I is satisfactorily completed, and Stage II is proceeding satisfactorily, during the remaining 9 month budget period.

EFFECTIVE DATE: The deadline for receipt of applications is August 22, 1989.

FOR FURTHER INFORMATION CONTACT: Catherine P. Sanders, (202) 724-7560, OJJDP, Room 784, 633 Indiana Ave, NW., Washington, DC 20531.

SUPPLEMENTARY INFORMATION:

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I. Introduction and Background

This study addresses obstacles custodial parents encounter in attempting to recover their children abducted by a noncustodial parent. Such custodial parents need help in overcoming the obstacles they encounter in regaining rightful custody of their children. These obstacles include but are not limited to:

- Locating the child;
- State laws restricting police authority to take such a child into custody;
- Conflicting state laws regarding establishment of legal custody;
- Situations in which the other parent may have civil custody; and
- Costs associated with returning the child.

This experience is devastating, especially for the child and the legal parent. Recovery and return of such children to their legal parent is one of the most complex legal problems in our society. The obstacles such parents face are often virtually insurmountable. In some instances, legal parents attempting to recover their child abducted by the noncustodial parent discover that the abducting parent has obtained custody in another state (that has custodial provisions in conflict with those of the original State from which the child was abducted). In other instances, legal parents who have regained custodial rights do not have the necessary financial resources to cover the costs of returning the child home.

Some technical assistance and guidance is provided for parents attempting to locate and recover their children. More help is needed. This study constitutes the next step: A detailed, rigorous examination and documentation of the obstacles, in order to target remedial measures.

The Congress has directed OJJDP to undertake such a study. Section 408 of the Juvenile Justice and Delinquency Prevention Act (JJDP Act), as amended in 1988, directs the OJJDP Administrator to begin (within one year after enactment of the Act: October 1, 1988) a study * * *

> To determine the obstacles that prevent or impede individuals who have legal custody of children from recovering such children from parents who have removed such children from such individuals in violation of law.

A report on the results of this study is to be made by OJJDP to the Congress not later than November 18, 1991.

The legislative history of the JJDP Act provides guidance upon the "obstacles" to be addressed in the study. In its report on H.R. 1801, the *Juvenile Justice and Delinquency Prevention Amendments of 1988*, H. Report 100-605, 5 May, 1988, Committee on Education and Labor stated at p. 23 that the:

> Obstacles (preventing or impeding recovery) should include (but are not limited to) those that are financial and legal (e.g., intrastate, interstate, or international).

This study is expected to involve a review of the following types of information:

- The legal requirements, policies, and procedures of public and private organizations that become involved in handling parental abduction cases;
- Interstate Compacts that may eliminate interstate obstacles to the return of abducted children;
- State, custody provisions;
- The Parental Kidnapping Prevention Act (with a particular focus on the use of Unlawful Flight to Avoid Prosecution warrants);

- The Hague Convention on the Civil Aspects of International Child Abduction (and its implementation in the U.S. through the International Child Abduction Remedies Act).

In addition, the study must include examination of actual parental abduction cases. Consideration should be given to comprehensive on-site studies of selected jurisdictions—representative of problems/solutions parents, encounter/employ in attempting to regain legal custody of their children. The study should include a detailed analysis of costs custodial parents experience in recovering their children, together with recommended alternative sources of financial assistance.

Efforts should be made to identify ameliorative measures that address the range of involved agencies, for example, schools, law enforcement, courts, and human services from the standpoint of their legal requirements, policies, procedures and practices.

Finally the project should address unique problems encountered by special populations where different systems of justice are involved in the recovery and return of such abducted children. These might include Indian parents and parents in military families. Applicants should indicate those special populations they propose to address and explain how they would do so.

Related Projects. OJJDP is currently supporting five projects that are related to this study:

1. *"Investigation and Prosecution of Parental Abduction Cases"* (Grant No. 88-MC-CX-0011, 9/30/88—9/30/89, $99,989). Conducted by the National District Attorneys Association (NDAA), the purpose of this project is to address the legal, jurisdictional and administrative issues faced by prosecutors in cases of parent/family abductions.

The project consists of four stages:

State I. This stage involves legal research, including: (1) A review of relevant case law and statutes, (2) the collection and review of existing information on prosecutorial handling of parent/family abductions and related issues; and (3) a survey of prosecutors to identify effective approaches to addressing issues in the area.

Stage II. During this stage NDAA will develop a trial manual and training curriculum for prosecutors responsible for handling parent/family abduction cases.

Stage III. NDAA will provide training and technical assistance to multi-disciplinary teams in four communities during this stage.

Stage IV. NDAA will develop and disseminate materials to facilitate replication of effective approaches to investigating and prosecuting parental abduction cases.

2. *"National Study of Law Enforcement Policies and Practices Regarding Missing Children and Homeless Youth"*. (Grant No. 86-MC-CX-K036, 9/9/86-9/30/89, $927,621.) Conducted by the Research Triangle Institute (RTI) and the URSA Institute, this study is designed to improve the law enforcement response to missing children and homeless youth cases. The project's activities include a determination of the extent of the missing child and homeless youth problem as reported to law enforcement, the scope and variety of law enforcement policies and procedures that relate to missing children, and the effects of current policies and procedures on recovery of missing children. In addition, model programs will be designed and disseminated to police and other juvenile justice agencies.

As part of this project, RTI/URSA surveyed 1,060 state and local law enforcement agencies in 1987 regarding the numbers and types of missing children cases during 1986 and departmental responses. During subsequent phases, the project also involved conducting interviews with law enforcement officials in selected sites and conducting case studies of law enforcement handling of missing and homeless children.

3. *"Reunification of Missing Children"*. (Grant No. 88-MC-CX-K002, 10/1/88-9/30/91, $174,840.) OJJDP is also supporting a new effort to develop and test prototypical approaches to reunifying missing children, including parentally abducted children, with their legal parents, and developing solutions to problems parents and children encounter in this area. The University of California (UC) began this development program in October 1988. It is designed to assess existing information regarding the reunification of missing children; develop and test program models (based on research and assessment of selected programs); and develop a dissemination strategy.

4. *"National Center for Missing and Exploited Children"*. (Grant No. 86-MC-CX-K003, 11/14/85—3/31/89, $6,788,560.) During the past four years the National Center for Missing and Exploited Children (NCMEC) has been providing police, prosecutors, parents and legislators legal technical assistance with regard to parental abductions. NCMEC's products in this area include:

- Comprehensive digests of state laws relevant to child custody orders, both civil and criminal;
- A manual that is "user friendly" to parents, attorneys and police on the steps that must be taken to conform to the laws and practices associated with parental custody disputes;
- A manual on "Selected State Legislation" that includes technically accurate and instructive directions and information to assist the user in reviewing state laws on custody and how to use various resources in searching for and locating a parentally kidnapped child;
- A manual on "Parental Kidnapping" that contains a step-by-step instructional guide for parents who have experienced a family abduction, whether domestic or foreign; and
- An instructive brochure—"Just in Case You Are Using the Federal Locator Service"—that assists a searching parent in using this resource to locate a parent who may be the subject of a family abduction dispute.

5. *"Missing and Exploited Children Comprehensive Action Program"*. (Grant No. 88-MC-CX-K001, 9/30/88-9/30/91, $382,768.) The Public Administration Service is conducting this project for OJJDP. The Missing and Exploited Children Comprehensive Action Program (M-CAP) is aimed at promoting the coordination, concentration and direction of community resources to addressing the problems of missing and exploited children. A strategic planning process will be demonstrated in selected sites.

The award recipient for the Study of Obstacles to the Recovery and Return of Parentally Abducted Children will be required to coordinate its work with these five OJJDP projects.

II. Program Goals

- To identify and describe significant problems encountered by custodial parents attempting to recover their children abducted by a noncustodial parent;
- To identify programs and strategies for eliminating such obstacles; and
- To make recommendations for improving the handling of child abductions by non-custodial parents.

III. Program Strategy

A variety of agencies may be involved in the recovery and return process, including schools, police, prosecution, courts, child protection agencies and private organizations.

The role each plays in a particular parental abduction case is affected by legal requirements, agency policies,

procedures, and practices. These points should be kept in mind in relation to development of the strategy of this study.

Section 408 of the JJDP Act, and the related legislative history suggest that this study should emphasize the role of law enforcement, schools, and other human service agencies in the recovery and return of abducted children; and the *civil* process of assisting the legal parent in the recovery of the child from the abducting parent and return to the home. Furthermore, the NDAA project: "Investigation and Prosecution of Parental Abduction Cases" addresses the governmental prosecution function.

This program will be conducted in three discrete, incremental stages: (I) The research design stage, which involves the development of a research methodology for the assessment of obstacles to recovery and return of parentally abducted children; (II) the data collection stage, in which data will be collected using the methodology developed in the previous stage; and (III) the data analysis and report preparation stage, which involves the analysis of the data and the preparation of reports that summarize the results of the study and provide recommendations for ameliorating obstacles encountered by parents attempting to regain custody of their children abducted by a noncustodial parent.

All technical and subject matter portions of the program will be guided by recommendations of a project advisory committee established specifically for the program. The project advisory committee will provide comments and recommendations regarding the strategies and activities for this program. It may be necessary to change or supplement project advisory committee members for different stages of the program. However, the objective will be to select technical and subject matter experts capable of addressing issues related to each of the program stages. Thus the project advisory committee must have combined expertise in legal research in the parental abduction area, experience in the recovery of parentally abducted children, and criminal/juvenile justice research and evaluation.

The applicant must specify the necessary qualifications of the advisory board members, roles and responsibilities, anticipated tasks and level of compensation. The composition of the board must reflect an appropriate balance of skills and expertise (both programmatic and technical) and have a sufficient level of independence (i.e., no conflict of interest) to effectively advise the project. It should consist of five members to ensure an appropriate range of expertise.

Stage I: Research Design

The main objective of this stage is to review existing information related to significant obstacles encountered by custodial parents in the recovery and return of their children, and to use this information in the development of a detailed research design for the data collection and analysis/reporting stages of the study. In developing the research design, applicants are strongly encouraged to build on the information produced by the OJJDP projects described in the Introduction and Background Section. Applicants should address how this will be accomplished.

Applicants must describe how the following activities will be performed.

- Establish a project advisory committee;
- Develop a plan for preparing the research design;
- Review related literature, including materials developed by the OJJDP-supported projects identified in the Introduction and Background Section;
- Develop a research design;
- Obtain project advisory committee review of the research design; and
- Develop a dissemination strategy to inform the field of the status of the project.

Stage I Products. These research activities will result in three products:

- A plan for developing a research design that includes:

—Research objectives;
—A description of activities, including a literature review, the methodology and a time/task plan; and
—Staff assignments

- A literature review that describes and assesses existing information on legal, policy, procedural and practical barriers for custodial parents.
- A research design that specifies:

—Objectives;
—Definition of key concepts;
—A sampling strategy for examining parental abduction cases;
—A data collection plan;
—Data analysis plans;
—Anticipated reports; and
—A time/task plan for implementation.

Stage II Activities: Data Collection

The main objectives of Stage II are to: Collect information and data on the nature and extent of significant obstacles to parental recovery and return of their abducted children, and on effective programs and strategies (including laws, policies, procedures and practices) for eliminating such obstacles.

Major activities during this stage include the following:

- Preparation of a data collection plan;
- Project advisory committee review and appropriate adjustments to methodology and/or data collection plans;
- Data collection;
- Data processing; and
- Preparation of data and analysis.

The major products to be completed during this stage are:

- A data collection plan;
- Data base prepared for analysis to include all necessary documentation; and
- A dissemination strategy to inform the field of the status of the program.

Stage III Activities: Data Analysis and Preparation of Report

The main objectives of Stage III are to: analyze the data collected in the course of examining actual cases representative of the most significant obstacles encountered by legal parents in recovering their abducted children, and prepare a set of reports that will communicate the findings to a variety of audiences. A major product will be a description of the study and a summary of the results to be used by OJJDP in preparing a report for Congress.

Applicants must describe how the following activities will be undertaken:

- Preparation of a plan for report development;
- Analysis of data;
- Preparation of draft reports on analyses related to the research objectives;
- Project advisory committee review of analysis and draft reports; and
- Preparation of the final reports.

The products to be completed under this stage are:

- A plan for data analysis and preparation of reports that identifies the report to be prepared and the outline;
- Draft reports;
- The final reports; and
- A dissemination strategy to inform the field of the results of the program.

IV. Dollar Amount and Duration

Up to $300,000 has been allocated for the initial award. One grant will be awarded competitively, with an initial budget period of twelve (12) months. This research program will consist of three stages (Design; Data Collection; and Analysis and Report Writing). The initial award will provide support for Stage I and part of Stage II. One noncompeting continuation award will be considered to complete Stage II and conduct Stage III within a 21 month project period.

A noncompetitive continuation award for the additional budget period may be withheld for justifiables reasons. These include: (1) The results of Stage I and II do not justify further program activity; (2) the recipient is delinquent in submitting required reports; (3) adequate grantor agency funds are not available to support the project; (4) the recipient has failed to show satisfactory progress in achieving the objectives of the project or otherwise failed to meet the terms and conditions of the award; (5) a recipient's management practices have failed to provide adequate stewardship of grantor agency funds; (6) outstanding audit exceptions have not been cleared; and (7) any other reason that would indicate continued funding would not be in the best interest of the Government. Applicants should anticipate a September 15, 1989 start-up date.

V. Eligibility Requirements

Applications are invited from public and private agencies and organizations. Applications will be accepted from for-profit agencies as long as they agree to waive their profit fee and accept only actual allowable costs.

Applicants must demonstrate that they have prior experience in the design and conduct of studies of a similar nature; demonstrated knowledge of issues associated with legal custody of children; and demonstrated legal research experience in the juvenile justice field.

Applicants must also demonstrate that they have the financial capability, fiscal integrity and financial responsibility, including, but not limited to, an acceptable accounting system and internal controls, and compliance with grant fiscal requirements. Applicants who fail to demonstrate that they have the capability to manage this program will be ineligible for funding consideration.

VI. Application Requirements

All applicants must submit a completed Application for Federal Assistance (Standard Form 424), including a program narrative, a detailed budget, and budget narrative. All applications must include the information outlined in this section of the solicitation (Section VI) in Part IV, Program Narrative of the application (SF-424). The program narrative of the application should not exceed 35 double-spaced pages in length.

In accordance with Executive Order 12549, 28 CFR 67.510, applicants must also provide certification that they have not been debarred (voluntarily or involuntarily) from the receipt of Federal Funds. Form 4662/2, which will be supplied with the application package must be submitted with the application.

Applications that include non-competitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of $25,000.

The following information must be included in the application (SF-424) Part IV Program Narrative:

A. Organizational Capability—Applicants must demonstrate that they are eligible to compete for this grant on the basis of the eligibility criteria established in Section V of this solicitation. Applicants must concisely describe their organizational experience with respect to the eligibility criteria specified in Section V above. Applicants must demonstrate how their organizational experience and capabilities will enable them to achieve the goals and objectives of this initiative. Applicants are invited to append one example of prior work products of a similar nature to their application.

Applicants must demonstrate that their organization has or can establish fiscal controls and accounting procedures that assure Federal funds available under this agreement are disbursed and accounted for properly. Applicants who have not previously received Federal funds will be asked to submit a copy of the Office of Justice Assistance, Research and Statistics (OJARS) Accounting System and Financial Capability Questionnaire (OJARS Form 7120/1). Copies of the form will be provided in the application kit and must be prepared and submitted along with the application. Other applicants may be requested to submit this form. All questions are to be answered regardless of instructions (Section C.I.B. note). The CPA certification is required only of those applicants who have not previously received Federal funding.

B. Program Goals and Objectives—A succinct statement of your understanding of the goals and objectives of the program should be included. The application should also include a problem statement and a discussion of the potential contribution of this program to the field.

C. Program Strategy—Applicants should describe the proposed approach for achieving the goals and objectives of the program. A detailed discussion of how the activities and products of each of three stages of the program would be accomplished should be included.

D. Program Implementation Plan—Applicants should prepare a plan that outlines the major activities involved in implementing the study, describe how they will allocate available resources to implement the project, how the program will be coordinated with those OJJDP programs described in the Introduction and Background Section, and how the study will be managed.

The plan must also include an organizational chart depicting the roles and describing the responsibilities of key organizational/functional components, and a list of key personnel responsible for managing and implementing the three major stages of the project. Applicants must present detailed position descriptions, qualifications, and selection criteria for each position. This documentation and individual resumes may be submitted as appendices to the application.

E. Time-Task Plan—Applicants must develop a time-task plan for the 24-month project period, clearly identifying major milestones and products. This must include designation of organizational responsibility and a schedule for the completion of the activities and products identified in Section III. Applicants should also indicate the anticipated cost schedule per month for the entire project period.

F. Products—Applicants must concisely describe the interim and final products of each stage of the program, and must address the adequacy of the final product for meeting the statutory requirements.

G. Program Budget—Applicants shall provide two budgets: the first for a 12-month period (the period of this award); and the second for the subsequent Stages II and III of the study. Each budget must be accompanied by a detailed justification for all costs, including the basis for computation of these costs. Applications containing contract(s) must include detailed budgets for each organization's expenses. The budget should include funds for a five-person Program Advisory Committee to meet one time during the 12-month budget period, and as appropriate during the subsequent phase.

VII. Procedures and Criteria for Selection

All applications will be evaluated and rated based on the extent to which they meet the following weighted criteria. In general, all applications received will be reviewed in terms of their responsiveness to the minimum program application requirements set forth in Section VI. Applications will be evaluated by a peer review panel according to the OJJDP Competition and

Peer Review Policy, 28 CFR Part 34, Subpart B, published August 2, 1985, at 50 FR 31366–31367. The selection criteria and their point values (weights) are as follows:

1. The problem to be addressed by the project is clearly stated. This criterion includes a concise, well-justified statement of the problem. (5 points)

2. The goals and objectives of the proposed project are clearly defined. This criterion includes a succinct statement of the goals and objectives of the project as well as definitions of key terms. (10 points)

3. The project design is sound and contains program elements directly linked to the achievement of project objectives. This criterion includes appropriateness and technical adequacy of the approach to the activities and products of each stage of the program for meeting the goals and objectives. (30 points)

4. The project management structure is adequate to the successful conduct of the project. This criterion includes: (a) Adequacy and appropriateness of the project management structure and the feasibility of the time-task plan, (15 points); and (b) the qualifications of staff identified to manage and implement the program, including staff to be hired through contracts (if any). Also included is the clarity and appropriateness of position descriptions, required qualifications and selection criteria relative to the specfic functions set out in the Implementation Plan, (15 points). (Total 30 points)

5. Organizational capability is demonstrated at a level sufficient to successfully support the project. This criterion includes the extent and quality of organizational experience in the development, delivery and coordination of research programs of similar nature that have been national in scope. (15 points)

6. Budgeted costs are reasonable, allowable, and cost-effective for the activities to be undertaken. This criterion includes completeness and appropriateness of the proposed costs in relation to the proposed strategy and tasks to be accomplished. (10 points)

Applications will be evaluated by a peer review panel. The results of peer review will be relative aggregate ranking of applications in the form of "Summary of Ratings." These will ordinarily be based on numerical values assigned by individual peer reviewers. Peer review recommendations, in conjunction with the results of internal review and any necessary supplementary reviews, will assist the Administrator in considering competing applications and in selection of the application for funding. The final award decision will be made by the OJJDP Administrator.

VIII. Submission Requirements

All applicants responding to this solicitation are subject to the following requirements:

1. Organizations that plan to respond to this announcement are requested to submit a written notification of their intent to apply to OJJDP by July 20, 1989. Such notification should specify the name, address and telephone number of the organization; co-applicants, if any; and contact persons. It should be sent to: Catherine P. Sanders, OJJDP, Rm 784, 633 Indiana Ave., NW., Washington, DC 20531. This notification submission is optional and will be used to estimate the application review workload.

2. Upon request to OJJDP, the necessary forms for application will be provided, along with Department of Justice certification information.

3. Applicants must submit the original signed application (Standard Form 424) and three copies to OJJDP, including the certification that the organization has not been disbarred (Form 4662/2). Additionally, applicants must also provide a *Certification Regarding Drug-Free Workplace Requirements* which meets the requirements of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D). Form 4061/3, which will be supplied with the application information package, must be submitted with the application.

All applications must be received by mail or hand delivered to the OJJDP by 5:00 p.m. EST on August 22, 1989. Those applications sent by mail should be addressed to: Catherine Sanders, OJJDP, U.S. Department of Justice, 633 Indiana Avenue, NW., Washington, DC. 20531. Hand delivered applications must be taken to the OJJDP, Room 784, 633 Indiana Avenue, NW., Washington, DC between the hours of 8:00 a.m. and 5:00 p.m. except Saturdays, Sundays or Federal holidays.

The OJJDP will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified by letter as to the decision made regarding whether or not their submission will be recommended for funding.

IX. Civil Rights Compliance

A. All recipients of OJJDP assistance including any contractors, must comply with the non-discrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973, as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations (28 CFR Part 42, Subparts C, D, E, and G).

B. In the event a Federal or State court of Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights (OCR) of the Office of Justice Programs.

Date: July 5, 1989.

Terrence Donahue,

Acting Administrator Office of Juvenile Justice and Delinquency Prevention.

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federal register

Tuesday
July 11, 1989

Part VI

Environmental Protection Agency

40 CFR Part 302 and 355

Reporting and Liability Exemptions for Federally Permitted Releases of Hazardous Substances; Supplemental Notice to Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 302 and 355

[FRL-3613-8]

Reporting and Liability Exemptions for Federally Permitted Releases of Hazardous Substances

AGENCY: U.S. Environmental Protection Agency [EPA].

ACTION: Supplemental notice to proposed rule.

SUMMARY: On July 19, 1988, the U.S. Environmental Protection Agency (EPA) published a Notice of Proposed Rulemaking (NPRM) to define the scope of the exemption from reporting and liability for "federally permitted releases" under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. This Notice clarifies certain aspects of the proposed scope of the CERCLA exemption for releases permitted under the Clean Air Act (CAA) and solicits comments on the clarification.

DATES: Comments must be submitted on or before August 10, 1989.

ADDRESSES: *Comments:* Comments should be submitted in triplicate to: Emergency Response Division, Superfund Docket Clerk, Attention: Docket Number 101(10) FPR, Room 2427M, (OS-240), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Docket: Copies of materials relevant to this rulemaking are kept in Room 2427M, at the above address. The docket is available for inspection between 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding Federal holidays. Appointments to review the docket can be made by calling 202/382-3046. As provided in 40 CFR Part 2, a reasonable fee (the first 50 pages are free and each additional page costs $.20) may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mr. Hubert Watters, Project Officer, Response Standards and Criteria Branch, Emergency Response Division (OS-210), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 382-2463; or the RCRA/Superfund Hotline at 1-800/424-9356; in Washington, DC, 1-202/382-3000. The toll-free telephone number of the National Response Center is 1-800/424-8802; in Washington, DC, 1-202/426-2675.

SUPPLEMENTARY INFORMATION: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, establishes broad Federal authority to respond to releases or threats of releases of hazardous substances, pollutants, and contaminants. In order to alert Federal officials of potentially dangerous releases of hazardous substances, section 103 of CERCLA requires any person in charge of a vessel or facility to immediately notify the National Response Center when there has been a release of a hazardous substance from a vessel or facility in an amount equal to or greater than the "reportable quantity" (RQ) for that substance. RQs are established under CERCLA section 102 and are published in 40 CFR Part 302. Under section 107 of CERCLA, responsible parties are liable for the costs incurred in responding to releases of hazardous substances, regardless of whether the amount released equals or exceeds an RQ.

CERCLA section 103(a) exempts "federally permitted releases" from the reporting requirements for releases of hazardous substances. Similarly, section 107(j) exempts federally permitted releases from CERCLA liability. In addition, section 304(a)(2)(A) of the Emergency Planning and Community Right-to-Know Act of 1986 (also known as Title III of the Superfund Amendments and Reauthorization Act of 1986) exempts federally permitted releases from State and local emergency release notification requirements.

Section 101(10) of CERCLA defines the term "federally permitted release" by specifically enumerating certain releases subject to permits or authorizations under other Federal or State environmental laws. EPA discussed and solicited comments on possible interpretations of the CERCLA section 101(10) federally permitted release exemptions in the preamble to a proposed rule published on May 25, 1983 (48 FR 23552). On July 19, 1988 (53 FR 27268), EPA proposed a rule defining the scope of these exemptions. Today's Notice addresses the proposed exemption for one category of release: releases permitted under the Clean Air Act (CAA). Public comment is requested on this approach for determining which air releases should be reported under section 103 and for defining the scope of the exemption for federally permitted air releases under CERCLA and Title III.

CERCLA section 101(10)(H) defines "federally permitted release" to include:

> any emission into the air subject to a permit or control regulation under section 111, section 112, title I part C, title I part D, or State implementation plans submitted in accordance with section 110 of the Clean Air Act (and not disapproved by the Administrator of the Environmental Protection Agency), including any schedule or waiver granted, promulgated, or approved under these sections * * *

In the July 19, 1988 proposal (53 FR 27273-27274), EPA discussed three options for defining the scope of this exemption. Under the first option, EPA would include under the exemption only those air releases for which the constituent hazardous substances have been expressly identified on the record, reviewed during the permit or rulemaking proceeding, and subject to a specific or categorical limitation in the permit or control regulation. Option two would include as federally permitted those releases of specifically named criteria pollutants as well as constituents of the pollutant, i.e., particulate matter (including its constituents) and four other CAA criteria pollutants in compliance with a permit or regulatory standards. Releases of constituents of particulate matter that are hazardous substances would be federally permitted whether or not the specific constituent hazard substances are identified on the record. Under Option two, releases of volatile organic compounds (VOCs) that are regulated under section 109 of the CAA would not be federally permitted because they are not criteria pollutants, but rather are precursors of ozone. The third option would add to releases defined as federally permitted under Option one any "routine" emission that the permit or control regulation is designed to address.[1]

EPA is today clarifying Option one as described above. Under Option one, EPA would exempt as federally permitted under CERCLA section 101(10)(H) only those air releases in compliance with a CAA permit or control regulation that specifically identifies the hazardous substance and is specifically designed to limit or eliminate the emission of that hazardous substance. Thus, a hazardous substance constituent of released particulate matter[2] or a hazardous substance

[1] Releases of particulate matter generally would be considered federally permitted under Options two and three, as those options are described in the July 19, 1988 NPRM: releases of VOCs would generally be considered federally permitted only under Option three.

[2] Particulate matter is regulated under the National Ambient Air Quality Standards of the CAA if it has a diameter of 10 micrometers (known as "PM10") or less (40 CFR 50.6(c)). Fine particles of CERCLA hazardous substances, such as lead and other metals, may be among the constituents released in particulate matter.

constituent of VOCs would not be considered federally permitted unless it was specifically addressed and controlled under a CAA permit or regulation. Identification in the public record without specific control in a permit or regulation would be insufficient. Even if the limitation or control is designed to address particulates or VOCs as a class, these emissions would not be federally permitted.

Under Option one as clarified in today's Supplemental Notice, reporting would be required for releases of an RQ or more of a CERCLA hazardous substance, unless the direct health and environmental effects of that substance have been explicitly considered in developing the permit or control regulation for the release. Specific consideration of the health and environmental effects of the hazardous substance constituent of particulate matter or VOCs must be clearly manifested in the permit or control regulation, either through a specific limit on the hazardous substance constituent or a statement that the limitation on the criteria pollutant sufficiently controls the toxic effects of the hazardous substance constituent. Moreover, persons in charge of facilities or vessels with releases of particulate matter or VOCs that are not federally permitted would be subject to the liability provisions of CERCLA section 107.

There are several reasons for today's Supplemental Notice. First, Option one, which would exclude releases identified, reviewed, and made part of the public record for the permit, was based in part on the statutory language concerning the exemption for releases permitted under the Clean Water Act. (See CERCLA section 101(10)(B).) As noted by several commenters, however, section 101(10)(B) does not relate to air releases and the language is difficult to apply outside the context of permits issued under the Clean Water Act. For instance, under the Clean Water Act, such "identified" discharges must be subject to on-site treatment in order to qualify for the federally permitted release exemption.

Second, the July 19, 1988 preamble discussion of Option one stated that a release would be federally permitted if it was identified in the permitting record; this position was inconsistent with the proposed regulatory language. The intent of the regulatory language in the July 19, 1988 proposed rule and today's clarification of Option one is to exempt only those emissions which the permit or control is specifically designed to limit or eliminate. Thus, Option one would not, contrary to the expectations of some commenters, include releases of constituent hazardous substances in particulate matter unless those constituents are in compliance with a specific emission limit.

Third, as discussed above, the exemption for federally permitted releases applies to liability under CERCLA section 107 as well as emergency release notification under section 103 of CERCLA and section 304 of Title III. Although the impact of the rule on liability was stated in the preamble and is a significant factor in the Agency's decision concerning the breadth of the exclusions, virtually all commenters on the July 19, 1988 NPRM addressed only the impact of the options on their reporting responsibilities. Commenters did not address the large potential impact of the options on liability of responsible parties for CERCLA cleanups. Therefore, this Supplemental Notice is intended to highlight the fact that the definition of "federally permitted release" affects both notification and liability under CERCLA, and specifically solicit comments on the impacts on both notification and liability under CERCLA of the scope of the federally permitted release exemptions and today's clarification of Option one.

As stated in the July 19, 1988 proposal, the Agency is considering Option one because VOCs are regulated based on their contribution to ozone, not on the direct health effects associated with ambient concentrations of total VOCs or VOC constituents. Option one would ensure that individual VOCs are not considered federally permitted unless the health effects of those VOCs were considered in the permit or regulation development process. Similarly, EPA is aware of certain particulate matter emissions that contain large amounts of hazardous substances (e.g., lead), but for which the particulate matter emission limit was established without regard to the amount or toxicity of the constituent hazardous substances. Some of these emissions can result, and have resulted, in widespread soil contamination in the area of the facility. EPA solicits comments on whether such contamination, even though it may have resulted from releases in compliance with applicable categorical controls for particulate matter under the CAA (which are not based on the toxicity of the constituent hazardous substances), should be exempt from CERCLA notification and liability provisions.

Date: June 28, 1989

Jonathan Z. Cannon,

Acting Assistant Administrator.

[FR Doc. 89-16211 Filed 7-10-89; 8:45 am]

BILLING CODE 6560-50-M

federal register

Tuesday
July 11, 1989

Part VII

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of State Implementation Plans; Colorado

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3613-6]

Approval and Promulgation of State Implementation Plans; Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of Final Rule.

SUMMARY: The EPA gives notice that the direct final rule approving a revision to the Colorado State Implementation Plan (SIP) submitted on November 17, 1988, by the Governor of Colorado, amending Colorado Regulation No. 1 to exempt the destruction of missiles under the Intermediate-Range Nuclear Forces (INF) Treaty from meeting the opacity limits, has been withdrawn. The notice approving the SIP revision was published on May 11, 1989 (54 FR 20389). This approval is being withdrawn because notice was received by EPA that someone wished to submit adverse or critical comments. EPA will propose approval of the SIP revision in another Federal Register notice.

DATES: This action will be effective July 11, 1989.

FOR FURTHER INFORMATION CONTACT: Dale M. Wells, Air Programs Branch, Environmental Protection Agency, One Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202-2405, (303) 294-1773, (FTS) 564-1773.

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter, Sulfur oxides.

Authority: 42 U.S.C. 7401-7642)

Date: June 30, 1989.

Kerrigan G. Clough,

Acting for Regional Administrator

PART 52—[AMENDED]

1. The authority citation for Part 52 continue to read:

Authority: 42 U.S.C. 7401-7642.

§ 52.320 [Amended]

2. Section 52.320 is amended by removing paragraph (c)(48).

[FR Doc. 89-16415 Filed 7-10-89; 9:46 am]

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federal register

Tuesday
July 11, 1989

Part VIII

The President

Proclamation 5998—National Day to Commemorate the Bicentennial of Bastille Day, the French Revolution, and the Declaration of the Rights of Man and the Citizen

Executive Order 12682—Commission on Alternative Utilization of Military Facilities

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Presidential Documents

Title 3—

The President

Proclamation 5998 of July 7, 1989

National Day to Commemorate the Bicentennial of Bastille Day, the French Revolution, and the Declaration of the Rights of Man and the Citizen

By the President of the United States of America

A Proclamation

On July 14, Americans will join the people of France in celebrating the 200th anniversary of the taking of the Bastille. As we commemorate the bicentennial of the French Revolution and the Declaration of the Rights of Man and the Citizen, we celebrate the values that we share and our partnership in the quest for liberty and justice.

The United States achieved its Independence with considerable assistance from France and from individual French citizens like the Marquis de Lafayette. Lafayette and other French soldiers who came to this country to fight alongside Americans during our Revolution supported the cause of freedom and individual liberty. Bidding farewell to the Continental Congress in 1783, Lafayette exclaimed: "May this great monument, raised to Liberty, serve as a lesson to the oppressor, and an example to the oppressed! " A few years later, the significance of his words would be fully revealed.

On July 14, 1789, the people of France stormed the despised Bastille prison in Paris, marking the beginning of their own struggle against tyranny. Shortly thereafter, the National Assembly of France approved the Declaration of the Rights of Man and the Citizen. This historic document noted that "ignorance, neglect, or contempt of human rights, are the sole causes of public misfortunes" and affirmed the concept of individual liberty.

The Declaration of the Rights of Man and the Citizen was not only adopted within the same year as the Congress approved our Bill of Rights, but also contained some of the same themes, including freedom of religion, freedom of the press, security in one's property and person, and due process in courts of law. These documents proclaimed the inviolability of human rights on both sides of the Atlantic Ocean and guaranteed them for future generations.

As we celebrate the bicentennial of the French Revolution and the Declaration of the Rights of Man and the Citizen, we note with pride that our two countries remain committed to the principles of individual liberty, equality, and representative government. Two centuries ago, the great American patriot Thomas Paine observed: "The Revolutions of America and France have thrown a beam of light over the world, which reaches into man." Today, we rejoice in the fact that the bright promise of freedom not only continues to shine on both sides of the Atlantic, but also continues to grow stronger around the world.

The Congress, by House Joint Resolution 298, has designated July 14, 1989, as "National Day to Commemorate the Bastille Day Bicentennial," and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim July 14, 1989, as a National Day to Commemorate the Bicentennial of Bastille Day, the French Revolution, and the Declaration of the Rights of Man and the Citizen. I call upon the people of the United States to observe this day with appropriate ceremonies and activities, and I

urge them to renew their support for the just aspirations of all peoples who seek freedom and self-determination.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of July, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-16409
Filed 7-10-89; 9:24 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12682 of July 7, 1989

Commission on Alternative Utilization of Military Facilities

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 2819 of the Military Construction Authorization Act, 1989 (Public Law 100-456), it is hereby ordered as follows:

Section 1. (a) I hereby establish the Commission on Alternative Utilization of Military Facilities ("Commission").

(b) The Commission shall consist of a representative of the Department of Defense designated by the Secretary of Defense, a representative of the Federal Bureau of Prisons designated by the Attorney General, a representative of the National Institute on Drug Abuse designated by the Secretary of Health and Human Services, a representative of the General Services Administration designated by the Administrator of General Services, a representative of the Department of Housing and Urban Development designated by the Secretary of Housing and Urban Development, and a representative of the Office of National Drug Control Policy designated by the Director of the Office of National Drug Control Policy. The representative of the Department of Defense shall chair the Commission.

(c) The Secretary of Defense shall provide such personnel and support to the Commission as the Secretary determines is necessary to accomplish its mission.

Sec. 2. (a) Subject to subsection (b), the Secretary of Defense shall prepare and submit to the Commission reports listing active and nonactive military facilities that are underutilized in whole or in part or otherwise excess to the needs of the Department of Defense.

(b) The first such report shall be prepared and submitted as soon as possible for inclusion in the first report of the Commission. The second report shall be prepared and submitted on January 30, 1990, and succeeding reports shall be prepared and submitted every other year commencing on January 30, 1992, and continuing until January 30, 1996.

Sec. 3. (a) Subject to subsection (b), the Commission shall submit a report to the President and then to the Congress that identifies those facilities, or parts of facilities, from the list submitted by the Secretary of Defense under Section 2 that could be effectively utilized or renovated to serve as:

(1) minimum security facilities for nonviolent prisoners,

(2) drug treatment facilities for nonviolent drug abusers, and

(3) facilities to assist the homeless.

(b) The first report of the Commission shall be submitted to the President and then to the Congress by September 1, 1989. The second, and succeeding reports of the Commission, shall be submitted to the President and then to the Congress no later than September 1, 1990, and every second year through September 1, 1996.

THE WHITE HOUSE,
July 7, 1989.

George Bush

[FR Doc. 89-16431
Filed 7-10-89; 11:45 am]
Billing code 3195-01-M

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H.R. 923/Pub. L. 101-51

To redesignate the Federal hydropower generating facilities located at Dam B on the Neches River at Town Bluff, Texas, as the "Robert Douglas Willis Hydropower Project." (July 6, 1989; 103 Stat. 141; 1 page) Price: $1.00

H.J. Res. 132/Pub. L. 101-52

To designate the second Sunday in October of 1989 as "National Children's Day." (July 6, 1989; 103 Stat. 142; 2 pages) Price: $1.00

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Wednesday
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Wednesday, July 12, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 33

[Docket No. FV 89-009]

Regulations Issued Under the Export Apple and Pear Act; Proposed Increase in Exemptions for Pears Being Shipped to Certain Foreign Destinations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule exempts from the current minimum U.S. No. 2 grade and container marking requirements those export shipments of pears in less than carload lots shipped to all Western Hemisphere countries touching or lying south of the Tropic of Cancer. This includes all countries in Central America, South America, and the Caribbean but not Bermuda or the Bahama Islands. This rule also defines the term "less than carload lot" to mean a quantity of pears in packages not exceeding 50,000 pounds gross weight or 1,000 standard boxes or equivalent. These changes are designed to expand the markets for pears and to increase their fresh utilization.

EFFECTIVE DATE: August 11, 1989.

FOR FURTHER INFORMATION CONTACT: Virginia Olson, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2531-S, Washington, DC 20090-6456; telephone: (202) 475-3930.

SUPPLEMENTARY INFORMATION: This final rule is issued under authority of the Export Apple and Pear Act (7 U.S.C. 581-590), as amended, applicable to shipments of apples and pears to any foreign destination. This rule amends "Regulations Issued Under Authority of the Export Apple and Pear Act" (7 CFR Part 33).

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 100 pear handlers in Oregon, Washington and California subject to regulations issued under authority of the Export Apple and Pear Act, and approximately 1,800 pear producers in the Oregon, Washington and California area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

Exemptions from the export regulations are specified in § 33.12—*Apples and pears not subject to regulation.* Currently, quantities of apples or pears not exceeding a total of 5,000 pounds gross weight or 100 boxes of apples or pears packed in standard boxes on a single conveyance may be shipped exempt from regulations to any country. Also exempt are shipments of pears to Venezuela and Mexico in less than carload lots not exceeding one such lot to any one consignee or receiver on a single conveyance. "Less than carload lot" is defined in § 33.8 as packages not exceeding 20,000 pounds gross weight or 400 standard boxes or equivalent. Apples and pears shipped in larger quantities are subject to quality and container marking requirements and must be inspected by the Federal or Federal-State Inspection Service. Section 33.10 requires that apples grade at least U.S. No. 1 grade and pears grade U.S. No. 2 grade with specified exceptions. Also, packages of apples and pears for export must be marked as to the source of the fruit, varietal name, U.S. or state grade designation, and count of fruit in the package.

The Oregon-Washington-California Pear Bureau, which represents a substantial portion of the Northwest pear industry, unanimously recommended to change the definition of "less than carload lot", and to exempt from regulation shipments of pears in less than carload lots to any country in the Western Hemisphere which touches or lies south of the Tropic of Cancer, i.e., any country in Central America, South America, or the Caribbean, except Bermuda and the Bahama Islands. A proposed rule regarding this recommendation was issued April 12, 1989, and published in the **Federal Register** (54 FR 15216, April 17, 1989). The proposed rule provided that interested persons could file public comments through May 17, 1989. No comments were received.

The Northwest pear industry reports that during certain growing seasons pears may be affected by limb rub or frost damage. While these pears do not meet the minimum U.S. No. 2 grade requirements, they are otherwise acceptable to consumers. Pears from the Northwest which fail to meet U.S. No. 2 due to such factors as limb rub or frost damage are marketed domestically. The Northwest pear industry believes that increasing the minimum quantity exemption and extending the exemption to additional export outlets could expand markets for these pears and increase the fresh utilization of the crop. Pears which are not shipped for fresh consumption to domestic or foreign markets are disposed of in processing outlets, such as juice. Processing outlets are normally not as remunerative as fresh use outlets.

Based on information furnished by the Winter Pear Control Committee, which administers the Federal Winter Pear Marketing Order, during the 1986-87 shipping season, 9,056,641 boxes of winter pears were produced in the Northwest. Of these, 1,183,626 boxes or 13 percent were exported. Of those exported, it is estimated that about eight percent (100,175 boxes) were shipped to South America, four percent (50,913 boxes) were shipped to Mexico, two percent (24,915 boxes) were shipped to the Caribbean, and one percent (9,790 boxes) were shipped to Central America. Exports to these countries

represent approximately fifteen percent of the total exported from the U.S. or two percent of the total pears produced in the Northwest.

The industry has recommended redefining "less than carload lot" to enable exporters to ship substantially full loads of pears to foreign destinations. Under current limitations, many conveyances are travelling to destinations partially full. This action redefines "less than carload lot" for pears to mean a quantity of pears in packages not exceeding 50,000 pounds gross weight or 1,000 standard boxes or equivalent. This is an increase from the current definition (not exceeding 20,000 pounds gross weight or 400 standard boxes or equivalent). Regulations applicable to exports of apples will not be changed.

Therefore, the Department's view is that the impact of this action will be beneficial to producers and handlers because it will enable exporters to provide pears consistent with buyer preferences.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 33

Apples, Exports, Pears.

For the reasons set forth in the preamble, 7 CFR Part 33 is amended as follows:

Note: These sections will appear in the annual Code of Federal Regulations.

PART 33—EXPORT APPLES AND PEARS

1. The authority citation for 7 CFR Part 33 continues to read as follows:

Authority: Sec. 7, 48 Stat. 124; 7 U.S.C. 567.

2. Section 33.8 is revised to read as follows:

§ 33.8 Less than carload lot.

"Less than carload lot" means a quantity of apples in packages not exceeding 20,000 pounds gross weight or 400 standard boxes or equivalent, or a quantity of pears in packages not exceeding 50,000 pounds gross weight or 1,000 standard boxes or equivalent.

3. Section 33.12 is amended by revising paragraph (a) to read as follows:

§ 33.12 Apples and pears not subject to regulation.

* * * * *

(a) A quantity of apples or pears to any foreign country not exceeding a total of 5,000 pounds gross weight or 100 boxes of apples or pears packed in standard boxes on a single conveyance: *Provided,* That pears may be shipped to Western Hemisphere countries touching or lying south of the Tropic of Cancer in less than carload lots not exceeding one such lot to any one consignee or receiver on a single conveyance.

* * * * *

Dated: July 6, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-16286 Filed 7-11-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Parts 905 and 928

[Docket No. FV-89-049]

Expenses and Assessment Rates for the Marketing Orders Covering Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida, and Papayas Grown in Hawaii

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Orders Nos. 905 and 928 for the 1989-90 fiscal year for each marketing order program. These expenditures and assessment rates are needed by the administrative committees established under these orders to pay program expenses and collect assessments from handlers to pay those expenses. This action will enable these committees to perform their duties and the programs to operate.

EFFECTIVE DATES: Section 905.228 is effective for the period August 1, 1989, through July 31, 1990; and § 928.219 is effective for the period July 1, 1989, through June 30, 1990.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: (202) 475-3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order Nos. 905 (7 CFR Part 905) regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida; and 928 (7 CFR Part 928) regulating the handling of papayas grown in Hawaii. These agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 handlers of Florida oranges, grapefruit, tangerines, and tangelos, and 122 handlers of Hawaiian papayas subject to regulations under their respective orders, and approximately 13,000 orange, grapefruit, tangerine, and tangelo producers in Florida, and 344 papaya producers in Hawaii. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. A minority of the Florida citrus handlers, and the majority of the Hawaiian papaya handlers and Florida citrus and Hawaiian papaya producers may be classified as small entities.

Each marketing order administered by the U.S. Department of Agriculture (Department) requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the Department of approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs of goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each administrative committee is derived by dividing anticipated expenses by the expected shipments of the commodity (e.g., pounds, tons, boxes, cartons, bushels, etc.). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Citrus Administrative Committee (CAC) met on April 18, 1989, and unanimously recommended a 1989-90 budget with expenditures of $185,000, compared with $190,000 budgeted for 1988-89. The 1989-90 expenditures are comparable to those for 1988-89, except that CAC travel costs are expected to be substantially lower next year.

The CAC also unanimously recommended a 1989-90 assessment rate of $0.0027 per ⅘ bushel carton, compared with the 1988-89 assessment rate of $0.003. Assessment income for 1989-90 is expected to total $162,000, based on shipments of 60,000,000 cartons of fresh oranges, grapefruit, tangerines, and tangelos. Interest income is estimated at $8,000, while an estimated $15,000 will be drawn from the CAC's reserve.

The Papaya Administrative Committee (PAC) met on April 28, 1989, and unanimously recommended a 1989-90 budget with expenditures of $814,030, compared with $743,360 budgeted for 1988-89. Most expenditure items for 1989-90 are higher than those for 1988-89, reflecting for the most part inflationary price increases. Major expenditure items in the 1989-90 budget are $400,000 for advertising and promotion, including $200,000 for mainland promotion, $50,000 for Hawaii promotion, $126,280 for Japanese promotion, and $23,280 for contingencies. Research and development expenditures are projected at $60,000. The advertising, promotion, and research projects will be submitted for approval as soon as they are fully evaluated and after the budget has been approved. Most of the remaining expenditure items, totaling $354,030, are for program administration and management activities related to the advertising and promotional effort.

The PAC also unanimously recommended a 1989-90 assessment rate of $0.0085 per pound of shipped fresh papapas, compared with the 1988-89 assessment rate of $0.007 per pound. PAC income for 1989-90 is expected to amount to $904,230, with assessment income estimated at $595,000, based on shipments of 70,000,000 pounds of fresh papayas. Additional estimated income includes promotional grants of $200,000 from the Hawaii Department of Agriculture, and of $63,360 from the USDA's Foreign Agricultural Service. Other income includes $7,000 from the Japan Inspection Program, $15,000 from the Japan Trade Show, $13,470 from the University of Idaho, and $10,400 from miscellaneous sources including interest. Projected 1989-90 income over expenses ($90,200) is intended to increase the PAC's relatively low operating reserve, projected at only $26,874 on July 1, 1989.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action adds new §§ 905.228 and 928.219 and is based on the committees' recommendations and other information. A proposed rule concerning this action was published in the **Federal Register** (54 FR 25283, June 14, 1989). Comments on the proposed rule were invited from interested persons until June 26, 1989. No comments were received.

After consideration of the information and recommendations submitted by the committees and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This final rule should be expedited because the committees need to have sufficient funds to pay their expenses, which are incurred on a continuous basis. In addition, handlers are aware of these actions, which were recommended by the Committees at public meetings. Therefore, it is found that good cause exists for not postponing the effective date of these actions until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Parts 905 and 928

Marketing agreements and orders, oranges, grapefruit, tangerines, tangelos, Florida, papayas, Hawaii.

For the reasons set forth in the preamble, 7 CFR Parts 905 and 928 are amended as follows:

1. The authority citation for 7 CFR Parts 905 and 928 continues to read as follows:

Note: These sections will not appear in the Code of Federal Regulations.

Authority: Sections 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Sections 905.228 and 928.219 are added to read as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

§ 905.228 Expenses and assessment rate.

Expenses of $185,000 by the Citrus Administrative Committee are authorized, and an assessment rate of $0.0027 per ⅘ bushel carton of assessable fruit is established for the fiscal year ending July 31, 1990.

PART 928—PAPAYAS GROWN IN HAWAII

§ 928.219 Expenses and assessment rate.

Expenses of $814,030 by the Papaya Administrative Committee are authorized, and an assessment rate of $0.0085 per pound of assessable papayas is established for the fiscal year ending June 30, 1990. Unexpended funds may be carried over as a reserve.

Dated: July 7, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-16326 Filed 7-11-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Parts 921, 922, 923 and 924

[Docket No. FV-89-054]

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Order Nos. 921, 922, 923 and 924 for the 1989-90 fiscal year which began April 1, 1989. This action is needed for the marketing committees established under these orders to incur operating expenses during the 1989-90 fiscal year and to collect funds during that year to pay those expenses. This will facilitate program operations. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: April 1, 1989 through March 31, 1990 (§§ 921.228, 922.228, 923.229 and 924.229).

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC, 20090-6456; telephone: (202) 475-3862.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order Nos. 921 (7 CFR Part 921) regulating the handling of fresh peaches grown in designated counties in Washington; 922 (7 CFR Part 922) regulating the handling of apricots grown in designated counties in Washington; 923 (7 CFR Part 923) regulating the handling of sweet cherries grown in designated counties in Washington; and 924 (7 CFR Part 924) regulating the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon. These agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 65 handlers of Washington peaches, 60 handlers of Washington apricots, 85 handlers of Washington cherries, and 40 handlers of Washington-Oregon prunes subject to regulation under their respective marketing orders, and approximately 390 Washington peach producers, 190 Washington apricot producers, 1,115 Washington cherry producers, and 375 Washington-Oregon prune producers in the respective production areas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

Each marketing order administered by the U.S. Department of Agriculture (Department) requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each marketing committee and submitted to the Department for approval. The members of the marketing committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each marketing committee is derived by dividing anticipated expenses by the expected shipments of the commodity (in tons). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Stone Fruit Executive Committee (SFEC) met on April 13, 1989, and unanimously recommended 1989-90 fiscal year expenditures and assessment rates for Marketing Order Nos. 921, 922, 923, and 924. The SFEC is made up of officers of the marketing committees established under these orders.

Expenditures of $18,615 for the Washington Fresh Peach Marketing Committee and an assessment rate of $2.00 per ton of peaches shipped under M.O. 921 were recommended by the SFEC. In comparison, 1988-89 budgeted expenditures were $18,378 and the assessment rate was $1.20 per ton. On May 24, 1989, the Washington Fresh Peach Marketing Committee met and recommended decreasing the assessment rate to $1.35 per ton of peaches to reflect current crop estimates and to bring its reserve balance within the amount authorized under the marketing order. Based on anticipated shipments of 11,000 tons of peaches, assessment income is estimated at $14,850. Committee reserve funds are available to cover the anticipated $3,765 deficit for the 1989-90 fiscal year.

The SFEC recommended expenditures of $6,942 for the Washington Apricot Marketing Committee and an assessment rate of $3.00 per ton of apricots shipped under M.O. 922. In comparison, 1988-89 budgeted expenditures were $6,970 and the assessment rate was $2.00 per ton. Assessment income for the 1989-90 fiscal year is estimated at $3,000 based on a crop estimate of 1,000 tons of apricots. Committee reserve funds are available to cover the anticipated $3,942 deficit for the 1989-90 fiscal year. On May 24, 1989, the Washington Apricot Marketing Committee met and unanimously approved the budget and assessment rate recommended by the SFEC.

For Washington cherries, expenditures of $98,503 and an assessment rate of $3.00 per ton of cherries shipped under M.O. 923 were recommended by the SFEC. In comparison, 1988-89 budgeted expenditures were $97,210 and the assessment rate was $2.00 per ton. On May 25, 1989, the Washington Cherry Marketing Committee met and recommended decreasing the assessment rate to $2.00 per ton of cherries to reflect current crop estimates and to keep its reserve balance within the amount authorized under the marketing order. Based on anticipated shipments of 45,000 tons of cherries, assessment income is estimated at $90,000. Committee reserve funds are available to cover the anticipated $8,503 deficit for the 1989-90 fiscal year.

Finally, the SFEC recommended expenditures of $17,490 for the Washington-Oregon Fresh Prune Marketing Committee and an assessment rate of $2.00 per ton of prunes shipped under M.O. 924. In comparison, 1988-89 budgeted expenditures were $17,342 and the assessment rate was $1.00 per ton. On June 7, 1989, the Washington-Oregon Fresh Prune Marketing Committee met and recommended decreasing the assessment rate to $0.80 per ton of prunes to reflect current crop estimates and to bring its reserve balance within the amount authorized under the marketing order. Based on anticipated shipments of 9,000 tons of prunes, assessment income is estimated at $7,200. Committee reserve funds are available to cover the anticipated $10,290 deficit for the 1989-90 fiscal year.

The committees' 1989-90 fiscal year budgets are similar in scope and size to those approved for 1988-89. The recommended expenditures are for program administration, prune research and cherry market development.

Notice of this action was published in the June 8, 1989, issue of the **Federal Register** [54 FR 24561]. The comment period ended June 19, 1989. Comments were received from the Washington Fresh Peach Marketing Committee, the Washington Cherry Marketing Committee and the Washington-Oregon Fresh Prune Marketing Committee, in which they requested the establishment of the revised assessment rates. These comments are adopted by this final rule.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of the information, recommendations and comments submitted by the committees, and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

Approval of the levels of expenses and assessment rates for these programs should be expedited because the committees need to have sufficient funds to pay their expenses, which are incurred on a continuous basis. Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Parts 921, 922, 923 and 924

Marketing agreements and orders, Peaches, Apricots, Cherries, Prunes, Washington, Oregon.

For the reasons set forth in the preamble, 7 CFR Parts 921, 922, 923 and 924 are amended as follows:

Note: These sections will not appear in the Code of Federal Regulations.

1. The authority citation for 7 CFR Parts 921, 922, 923 and 924 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. A new § 921.228, is added to read as follows:

PART 921—FRESH PEACHES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

§ 921.228 Expenses and assessment rate.

Expenses of $18,615 by the Washington Fresh Peach Marketing Committee are authorized, and an assessment rate of $1.35 per ton of assessable peaches is established for the fiscal year ending March 31, 1990. Unexpended funds may be carried over as a reserve.

3. A new § 922.228 is added to read as follows:

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

§ 922.228 Expenses and assessment rate.

Expenses of $6,942 by the Washington Apricot Marketing Committee are authorized, and an assessment rate of $3.00 per ton is established for the fiscal year ending March 31, 1990. Unexpended funds may be carried over as a reserve.

4. A new § 923.229 is added to read as follows:

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

§ 923.229 Expenses and assessment rate.

Expenses of $98,503 by the Washington Cherry Marketing Committee are authorized, and an assessment rate of $2.00 per ton is established for the fiscal year ending March 31, 1990. Unexpended funds may be carried over as a reserve.

5. A new § 924.229 is added to read as follows:

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND IN UMATILLA COUNTY, OREGON

§ 924.229 Expenses and assessment rate.

Expenses of $17,490 by the Washington-Oregon Fresh Prune Marketing Committee are authorized, and an assessment rate of $0.80 per ton of assessable prunes is established for the fiscal year ending March 31, 1990. Unexpended funds may be carried over as a reserve.

Dated: July 6, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-16270 Filed 7-11-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 917

[Docket No. FV-89-036]

Fresh Pears, Plums, and Peaches Grown in California; Redefining Producer Representation Areas and Changing the Representation on the Peach Commodity Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes certain representation areas and producer representation on the Peach Commodity Committee (Committee). It reduces the number of representation areas from six to five by combining two areas ("f" and "e"), and assigns an additional member position to Area "d". This action is needed to provide equitable representation on the Committee based upon the proportionate quantity of peaches shipped from each representation area.

EFFECTIVE DATE: July 12, 1989.

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone 202-475-3862.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 917 (7 CFR Part 917), regulating the handling of fresh pears, plums and peaches grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

There are approximately 320 peach handlers currently regulated under Marketing Order 917 and approximately 840 peach producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers of California peaches may be classified as small entities.

The production area for California peaches is divided into six representation areas for the purpose of producer representation on the 13-member Committee. The current representation areas and Committee representation for those areas are specified in paragraphs (a) through (f) of § 917.22 as follows:

(a) South Coast District and Southern California District: one nominee.

(b) Tehachapi District and Kern District: one nominee.

(c) Tulare District: one nominee.

(d) Fresno District: eight nominees.

(e) Stanislaus District and Stockton District: one nominee.

(f) All of the production area not included in paragraphs (a) through (e) of this section: one nominee.

Paragraph (g) of § 917.35 of the order authorizes each commodity committee, with the approval of the Secretary, to change the representation of any representation area. Any such change must be based, so far as practicable, upon the proportionate quantity of peaches shipped from the respective representation area during the three preceding fiscal periods. In addition, and again so far as practicable, a member position should be assigned to any representation area from which five percent of regulated shipments have originated during such periods.

On November 17, 1988, the Committee unanimously recommended that Area "f" (the balance of the State) be combined with Area "e" (Stanislaus and Stockton Districts) and that the member position serving Area "f" be assigned to Area "d" (Fresno District). A proposed rule, published in the **Federal Register** on March 7, 1989 (54 FR 9457), incorrectly indicated that Area "f" would be combined with Area "d". That proposal provided a 30-day comment period which ended April 6, 1989. The Committee submitted a written comment on the proposal indicating that Area "f" should be combined with Area "e", not Area "d". Based on this comment, the Department issued a modified proposed rule to accurately reflect the Committee's recommendation. The modified proposal was published in the **Federal Register** on May 10, 1989 (54 FR 20141). An additional 10-day comment period, which ended May 22, 1989, was provided for the receipt of written comments concerning the modified proposed rule. No additional comments were received.

During the three year period 1986–1988, peach production totaled 41,683,000 packages. During that period, Area "d" (Fresno District), with eight members, accounted for 35,590,000 packages or 85.4 percent of the total production. Area "e", with one member, accounted for 1,008,000 packages or 2.4 percent of the total production and Area "f", also with one member, accounted for 221,000 packages or only one-half of one percent of the total production.

Basing representation for the 13-member Committee solely on the proportionate quantity of peaches shipped from each representation area would mean that every 7.69 percent of the total production shipped should be represented by one member on the Committee. On this basis, Area "d", which accounted for 85.4 percent of the total production shipped during the past three years, would be entitled to 11 positions on the Committee and the remaining two positions would be allocated among the other five production areas. Allocating positions on the Committee in this manner was considered, but the Committee concluded that it was not in the program's best interest to allocate 11 positions to Area "d" because doing so would cause the Committee to lose valuable input in deliberations from a large part of the production area. Combining the minimal production from Area "e" and Area "f" creates a representation area with an increased amount of production (approximately 2.9 percent of the total production), but not enough to justify more than one position on the Committee. This frees one member position to be allocated to Area "d" in order to increase its representation. In its recommendation, the Committee further indicated that growers from Area "f" have had limited interest in program matters in recent years and that the persons currently representing this region are no longer interested in serving on the Committee.

In recognition of these considerations, a new § 917.120 is added to provide representation that is more nearly based upon the proportionate quantity of peaches shipped from each representation area during the preceding three fiscal periods. This action, providing more equitable representation on the Committee, is warranted and will not impose any additional costs on producers or handlers.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information presented, the recommendation and the comment submitted by the Committee, and other information, it is found that this action will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). It is important that the changes in the regulations adopted pursuant to this action be in effect as soon as possible so that a committee position can be filled promptly based upon the changes made in this final rule concerning representation areas and producer representation on the Peach Commodity Committee.

Lists of Subjects in 7 CFR Part 917

Marketing agreements and order, Pears, Plums, Peaches, California.

For the reasons set forth in the preamble, 7 CFR Part 917 is amended as follows:

Note: The following section will be published in the Code of Federal Regulations.

PART 917—FRESH PEARS, PLUMS AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 917.120 is added to read as follows:

§ 917.120 Changes in nomination of Peach Commodity Committee members.

Nominations for membership on the Peach Commodity Committee shall be made by growers of peaches in the respective representation areas, as follows:

(a) South Coast District and Southern California District: one nominee.

(b) Tehachapi District and Kern District: one nominee.

(c) Tulare District: one nominee.

(d) Fresno District: nine nominees.

(e) Stanislaus District, Stockton District and all of the production area not included in paragraphs (a) through (d) of this section: one nominee.

(e) Stanislaus District, Stockton District and all of the production area not included in paragraphs (a) through (d) of this section: one nominee.

Dated: July 6, 1989.

William J. Doyle,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 89–16273 Filed 7–11–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 929

[Docket No. FV–89–033FR]

Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Amendment of Rules and Regulations; Increase in Base Quantity Reserve

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the base quantity reserve for the 1989–90 crop year from the required minimum of 2.0 percent to 7.28 percent of the total base quantities currently issued to cranberry producers, in order to update and expand base quantities for the benefit of producers. This will help to facilitate the appropriate and equitable operation of the cranberry marketing order.

EFFECTIVE DATE: August 11, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 929 (7 CFR Part 929), as amended, regulating the handling of cranberries grown in 10 states. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 30 handlers of cranberries subject to regulation under the cranberry marketing order, and approximately 950 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of cranberries may be classified as small entities.

This final rule increases the reserve base quantity from the minimum 2.0 percent required by the order to 7.28 percent, in order to update and adjust producers' base quantities for the 1989–90 crop year. This action was unanimously recommended by the Cranberry Marketing Committee (Committee) at its March 8, 1989, meeting. The Committee is the agency responsible for local administration of the cranberry marketing order.

Each year prior to May 1, the Committee considers its marketing policy for the coming season and estimates a marketable quantity of cranberries. Such quantity is the amount of cranberries deemed necessary to meet the season's total market demand and provide for an adequate carryover of cranberries to the next season. If annual cranberry production is expected to exceed the desired marketable quantity, and, if the Secretary finds, based on a recommendation of the Committee or from other available information, that limiting the quantity of cranberries that may be purchased or handled on behalf of producers would tend to effectuate the declared policy of the Act, the Secretary shall determine and establish the marketable quantity for that crop year. The marketable quantity is then apportioned among all eligible producers by applying an allotment percentage to each producer's base quantity pursuant to § 929.48 of the order. The allotment percentage is established by the Secretary and equals the marketable quantity divided by the total of all producers' base quantities.

Such base quantities are issued to producers: (a) Based on their sales during the period 1968–69 through 1973–74; (b) as a result of transfers of base quantities from other producers; or (c) as part of an annual reserve of at least 2 percent of the total base quantities. The reserve is used annually for the issuance of base quantities to new producers and adjustments in base quantities for existing producers, with 25 percent made available for new growers and 75 percent made available for adjustments for existing producers. Any unallocated portion of the 25 percent available to new producers may, at the discretion of the Committee, be prorated among eligible existing producers on an equitable basis.

On March 8, 1989, the Committee held its annual winter meeting to formulate its marketing policy for the 1989–90 crop year. It determined that implementation of § 929.49 (the establishment of a marketable quantity and annual allotment) was not warranted. However, the Committee noted that cranberry production, as in recent years, was projected to exceed the total of all current producers' allotment bases. Therefore, they recommended that additional base be issued to all qualified new and existing producers to the full amount to which each producer requested, contingent on the producer's demonstrated ability to produce and sell cranberries. The increase would make additional base quantity available to new and existing producers by increasing the 2.0 percent minimum base quantity reserve, as currently provided, to 7.28 percent. This increase would also aid in the updating of base quantities, which would be necessary for any future establishment of a marketable quantity and annual allotment.

The impact of this regulation on producers and handlers will not be significant because the change represents a relaxation of restrictions by increasing the total amount of base quantity available to producers. The increase in the amount of base quantity to be issued represents the total amount of base quantity requested by qualified new and existing producers for the 1989–90 crop year. The Committee intends to distribute base quantity reserve to approximately 25 new producers and 411 existing producers. This final rule will not alter any reporting or recordkeeping requirements currently in effect.

Notice of this action was published in the April 28, 1989, issue of the **Federal Register** (54 FR 18296). Written comments were invited from interested persons until May 30, 1989. No comments were received.

Based on the available information, the Administrator of the AMS has determined that issuance of this final rule will not have a significant economic

impact on a substantial number of small entities.

After consideration of all relevant material presented and other available information, it is found that the amendment of § 929.153(a), as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements and orders, Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and New York.

For the reasons set forth in the preamble, 7 CFR Part 929 is amended as follows:

PART 929—CRANBERRIES GROWN IN STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

1. The authority citation for 7 CFR Part 929 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 929.153 is amended by revising paragraph (a) to read as follows:

Note: This section will appear in the Code of Federal Regulations.

Subpart—Rules and Regulations

§ 929.153 Base quantity reserve.

(a) *Establishment.* An annual reserve base quantity equal to 2 percent of total base quantities is hereby established: *Provided,* That, for the 1989–90 crop year, the reserve base quantity shall be 7.28 percent.

* * * * *

Dated: July 6, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–16269 Filed 7–11–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Parts 948 and 958

[Docket No. FV–89–053]

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Orders 948 and 958 for the 1989–90 fiscal period. Authorization of these budgets will enable the Colorado Area III Potato Committee and the Idaho-Eastern Oregon Onion Committee to incur expenses that are reasonable and necessary to administer the programs. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATE: July 1, 1989, through June 30, 1990.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–2431.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Order No. 948 (7 CFR Part 948), both as amended, regulating the handling of Irish potatoes grown in Colorado, and Marketing Agreement No. 130 and Order No. 958 (7 CFR Part 958), both as amended, regulating the handling of onions grown in designated counties of Idaho and Malheur County, Oregon. The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of Colorado Area III potatoes under Marketing Order No. 948, and approximately 80 potato producers. Also, there are approximately 30 handlers of Idaho-Eastern Oregon onions under Marketing Order No. 958, and approximately 360 onion producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The budgets of expenses for the 1989–90 fiscal year were prepared by the Colorado Area III Potato Committee and the Idaho-Eastern Oregon Onion Committee (committees), the agencies responsible for local administration of the orders, and submitted to the Department of Agriculture for approval. The members of these committees are handlers and producers of Colorado potatoes and Idaho-Oregon onions. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets were formulated and discussed in public meetings. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rates recommended by the committees were derived by dividing anticipated expenses by expected shipments of potatoes and onions. Because the rates are applied to actual shipments, they must be established at rates which will produce sufficient income to pay the committees' expected expenses.

The Colorado Area III Potato Committee (potato committee) met April 13, 1989, and unanimously recommended a 1989–90 budget of $3,619, up from $3,537 last year. In Colorado, both a State and Federal marketing order operate simultaneously. The State order, however, authorizes promotion, including paid advertising, which the Federal order does not. Administrative expenses that are shared are divided so that 85 percent is paid under the State and 15 percent under the Federal order. All promotion and advertising expenses are financed under the State order. The potato committee also recommended a rate of assessment of $0.005 per hundredweight, an increase from last year's $0.002. The major increases include the manager's salary ($600), payroll taxes ($171), and manager's expenses ($100). The recommended assessment rate, when applied to projected fresh market shipments of 729,250 hundredweight, will yield $3,646 in assessment income which would be adequate to cover budgeted expenses. Projected reserve funds at the end of the 1989–90 fiscal period of $4,019 are within the order's maximum of two fiscal periods' expenses.

The Idaho-Eastern Oregon Onion Committee (onion committee) met April 18, 1989, and unanimously recommended a 1989–90 budget of $1,083,081. This compares with $1,038,500 for last year. The onion committee recommended an assessment rate of $0.09 per hundredweight, the same as last year. Substantial increases were recommended in research ($4,650), promotion ($29,266), and export programs ($16,500) as well as manager's and clerical salaries ($7,500). Partially offsetting these increases is a decrease of $20,000 in capital improvements, which was used to purchase a new computer system and office furnishings last year. The recommended assessment rate, when applied to anticipated fresh market shipments of 7,200,000 hundredweight, will yield $648,000 in assessment income. This, when combined with $30,000 in interest income and $405,081 from the reserve, would provide adequate funding for budgeted expenses. Operating reserve funds, currently at $482,280, are well within the limit of one fiscal period's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the **Federal Register** on June 8, 1989 (54 FR 24564). That document contained a proposal to add §§ 948.202 and 958.233 to authorize expenses and establish assessment rates for the Colorado Area III Potato Committee and the Idaho-Eastern Oregon Onion Committee, respectively. That rule provided that interested persons could file comments through June 19, 1989. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred, and that such expenses and the specified assessment rates to cover such expenses will tend to effectuate the declared policy of the Act.

This action should be expedited because the committees need to have sufficient funds to pay their expenses. The 1989–90 fiscal period for each program begins on July 1, 1989, and each marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes or onions handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committees at public meetings. Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Parts 948 and 958

Marketing agreements and orders, potatoes, onions, Colorado, Idaho, Oregon

For the reasons set forth in the preamble, 7 CFR Parts 948 and 958 are amended as follows:

1. The authority citation for 7 CFR Parts 948 and 958 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 948—IRISH POTATOES GROWN IN COLORADO

2. A new section 948.202 is added to read as follows:

Note: This section prescribes the annual expenses and assessment rate and will not be published in the Code of Federal Regulations.

§ 948.202 Expenses and assessment rate.

Expenses of $3,619 by the Colorado Area III Potato Committee are authorized, and an assessment rate of $0.005 per hundredweight of assessable potatoes is established for the fiscal period ending June 30, 1990. Unexpended funds may be carried over as a reserve.

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

3. A new § 958.233 is added to read as follows:

Note: This section prescribes the annual expenses and assessment rate and will not be published in the Code of Federal Regulations.

§ 958.233 Expenses and assessment rate.

Expenses of $1,083,081 by the Idaho-Eastern Oregon Onion Committee are authorized, and an assessment rate of $0.09 per hundredweight of assessable onions is established for the fiscal period ending June 30, 1990. Unexpended funds may be carried over as a reserve.

Dated: July 6, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–16271 Filed 7–11–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 955

[Docket No. FV–89–038]

RIN 0581–AA29

Vidalia Onions Grown in Georgia; Authorization of Collection of Shipment Data

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule the provisions of an interim final rule (without change) which requires handlers to provide information to the Vidalia Onion Committee (committee) on weekly fresh market onion shipments. The information is needed by the committee primarily for the purpose of collecting assessments which fund the marketing order program. In addition, the information is used to compile statistical data for use in planning and evaluating market development activities and making recommendations for production research projects.

EFFECTIVE DATE: August 11, 1989.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–5331.

SUPPLEMENTARY INFORMATION: This rule is issued under Tentative Marketing Agreement No. 955 and Interim Marketing Order No. 955 (7 CFR Part 955; 54 FR 10972) concerning Vidalia onions grown in Georgia. The tentative marketing agreement and interim order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

Thus, both statutes have small entity orientation and compatibility.

There are approximately 160 handlers and 280 producers of Vidalia onions in that portion of Georgia covered by the interim order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the Georgia Vidalia onion handlers and producers may be classified as small entities.

An interim final rule was published in the **Federal Register** on May 2, 1989 (54 FR 18648). That rule required handlers to provide the Vidalia Onion Committee (committee) with information regarding the volume of Vidalia onions received and shipped during each week of the shipping season, which runs from late April through June. It was unanimously recommended by the committee at its March 27 meeting. The interim rule provided that interested persons could file written comments through June 1, 1989. No comments were received. This action adopts the provisions of the interim final rule without change.

This rule is being issued under § 955.60 of the interim marketing order (54 FR 10977) which authorizes the committee to collect from handlers information necessary to perform its duties. As provided in the interim order, the committee is authorized to incur such expenses as are found to be reasonable to administer the program. Funds to cover these expenses are acquired by levying assessments upon handlers. For the 1989 Vidalia onion season, a budget of expenses of $150,000 has been approved, and handlers are required to pay assessments to the committee at a rate of $0.10 per 50-pound bag shipped to the fresh market.

Before the interim final rule went into effect on May 2, 1989, there was no information available which could be used by the committee to ascertain the volume of Vidalia onions shipped by individual handlers. Such information was needed by the committee for the purpose of collecting assessments, which are necessary to finance the program. Therefore, the committee recommended that the necessary information be obtained by requiring handlers to report to the committee the volume of fresh market shipments at the end of each week during the harvesting and shipping season.

The information derived from these reports is also being used by the committee in planning and evaluating market development activities and production research projects. The information will be made available to the industry on a composite basis to avoid divulging individual handlers' operations. This should aid growers and handlers in planning their individual operations and making marketing decisions during the season. Since the information collected by the committee is currently compiled and maintained by handlers, the additional reporting burden is minimal. It is estimated that it takes a handler five minutes to complete the report.

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection requirements contained in this final rule have been approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581-0160.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is found that the rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 955

Marketing agreements and orders, Vidalia onions, Georgia.

For the reasons set forth in the preamble, the interim final rule amending 7 CFR Part 955 which was published at 54 FR 18648 on May 2, 1989, is adopted as a final rule without change.

Dated: July 6, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-16272 Filed 7-11-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 989

[Docket No. FV-89-029FR]

Raisins Produced From Grapes in California; Change to the Administrative Rules and Regulations Regarding the Deletion of a 1 Percent Shrinkage Factor

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the administrative rules and regulations of the Federal marketing order for California raisins. This action eliminates a 1 percent shrinkage factor granted to handlers on reserve pool tonnage. This action also eliminates the provision for any additional allowance for shrinkage in weight for raisins held beyond the crop year of acquisition. This change was recommended by the Raisin Administrative Committee (Committee), the agency responsible for local administration of the order, because a study indicates that stored raisins no longer tend to lose weight.

EFFECTIVE DATE: August 11, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 989 (7 CFR Part 989), both as amended, regulating the handling of raisins produced from grapes grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation No. 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 23 handlers of raisins who are subject to regulation under the Federal marketing order for California raisins, and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual

receipts are less than $3,500,000. A majority of producers and a minority of handlers of California raisins may be classified as small entities.

The marketing order authorizes, for the total annual California raisin crop, the establishment of final free and reserve percentages for volume regulation purposes. Raisins in the reserve percentage category must be held by handlers in a reserve pool on handlers' premises for the account of the Committee. This rule eliminates a 1 percent shrinkage allowance for normal and natural shrinkage in weight that is applied to reserve pool tonnage held by handlers on the Saturday nearest to May 1 of each crop year. The shrinkage factor was originally designed to compensate for lost weight of stored raisins due to moisture loss. This change also eliminates any additional allowance for shrinkage in weight that might be granted by the Committee for raisins held beyond the end of the crop year of acquisition.

Raisins are usually stored outdoors on handlers' premises. Storage bins or sweatboxes are organized into rows and stacked into columns and then covered with plastic to protect them from the weather. The Committee weighs reserve pool raisins by taking an average weight of bins and multiplying that number by the number of bins in the stacks.

The order provides, pursuant to § 989.66(b)(1), that handlers are not to be held responsible for natural deterioration and shrinkage of raisins held in the reserve pool for the account of the Committee. Therefore, § 989.166(a) was put into effect on July 19, 1950 (15 FR 4580) under the authority provided in the order. Currently, § 989.166(a) provides that handlers are entitled to a shrinkage allowance so that they are granted a credit for normal and natural shrinkage in weight of 1 percent of the original natural condition weight of reserve pool raisins acquired by the handler during a crop year and held through May 1 of the same crop year. The Committee therefore deducts 1 percent of the natural condition weight of reserve pool raisins on handlers' premises which are still being held in storage on the Saturday nearest to May 1 to take into account shrinkage or loss of moisture during such storage. In practice, the handlers are thus responsible for returning 99 percent of the weight in raisins they receive into their reserve.

When the 1 percent shrinkage factor was first implemented in 1950, most of the industry used sweatboxes (approximately 175 pounds net weight) for storing raisins. The industry found at that time that sweatbox-stored raisins tended to shrink and loose moisture during extended periods of storage. Since the implementation of the 1 percent shrinkage factor, however, the vast majority of the industry has adopted the use of bins (approximately 2,000 pounds net weight) rather than sweatboxes (approximately 175 pounds net weight). The Committee has indicated that approximately 95 percent of this year's crop was delivered in bins. Additionally, the Committee recently conducted a survey which indicated that reserve pool raisins stored in bins and sweatboxes actually gain rather than lose moisture through extended storage periods. To conduct this survey, the Committee randomly weighed raisin bins and sweatboxes from different handlers' processing plants which were being transferred to other handlers' premises.

Therefore, the Committee has recommended the deletion of the 1 percent shrinkage factor and the provision to grant any allowance for shrinkage for reserves held beyond the end of the crop year.

These changes would increase payments to equity holders (growers) in the reserve pool since the 1 percent shrinkage allowance would no longer be deducted from the natural condition weight of reserve pool raisins. Therefore, producers would be likely to receive larger payments because there would be more tonnage available in the reserve pool.

Notice of this action was published in the May 2, 1989, issue of the **Federal Register** (54 FR 18664). Written comments were invited from interested persons until June 1, 1989. No comments were received.

Based on available information, the Administrator of the AMS has determined that issuance of this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendations submitted by the Committee and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

California, Grapes, Marketing agreements and orders, Raisins.

For the reasons set forth in the preamble, 7 CFR Part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 989 continues to read as follows:

Note: This section will appear in the annual Code of Federal Regulations.

Authority: Secs. 1-19, 48 Stat. 31, as amended, 7 U.S.C. 601-674.

Subpart—Administrative Rules and Regulations

2. Amend § 989.166 by removing paragraph (a); redesignating paragraphs (b)(1) and (b)(2) as (a)(1) and (a)(2), respectively; redesignating paragraphs (c)(1), (c)(2) and (c)(3) as (b)(1), (b)(2) and (b)(3), respectively; redesignating paragraphs (d) through (f) as paragraphs (c) through (e).

Dated: July 6, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-16326 Filed 7-11-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1040

[Docket No. AO-225-A39; DA-88-047]

Milk in the Southern Michigan Marketing Area; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the plant location adjustments to prices under the Southern Michigan order. The amendments were proposed by four dairy farmer cooperatives that supply about 87 percent of the market's milk.

The changes replace the current seven pricing zones with just three zones (zero, minus five cents, and minus seven cents) and increase the rate of adjustment at plants outside the zones from one cent to 2.25 cents per hundredweight per 10 miles or fraction thereof. The zone and location adjustments apply to Class I milk prices to handlers and to uniform prices to producers.

The amended order also will require a larger direct-delivery differential payment of 10 cents per hundredweight for milk delivered to pool plants in a three-county area (metropolitan Detroit). Currently, two rates are applicable in portions of two counties.

Another change will use 0.115 rather than 0.113 as the factor that is multiplied times a specified butter price to

determine the butterfat differential used for pricing milk under the order.

The amendments are based on industry proposals and the record of a public hearing held at Romulus, Michigan, on May 24, 1988. The amendments are necessary to reflect current marketing conditions and to maintain orderly marketing in the Southern Michigan marketing area. Cooperatives representing more than two-thirds of the order's producers favor issuance of the amended order.

EFFECTIVE DATE: September 1, 1989.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-4829.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:.

Notice of Hearing: Issued April 29, 1988; published May 4, 1988 (53 FR 15851).

Extension of Time for Filing Briefs: Issued July 19, 1988; published July 22, 1988 (53 FR 27609).

Recommended Decision: Issued February 21, 1989; published February 24, 1989 (54 FR 7938).

Correction to Recommended Decision: Published March 10, 1989 (54 FR 10214).

Extension of Time for Filing Exceptions: Issued March 16, 1989; published March 21, 1989 (54 FR 11545).

Final Decision: Issued June 20, 1989; published June 26, 1989 (54 FR 26768).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Southern Michigan order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Southern Michigan marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) Determination. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c (9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who participated in a referendum and who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1040

Milk marketing orders, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Southern Michigan marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

PART 1040—MILK IN THE SOUTHERN MICHIGAN MARKETING AREA

1. The authority citation for 7 CFR Part 1040 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

§ 1040.52 [Amended]

2. In § 1040.52, revise paragraph (a)(1) to read as follows:

(a) * * *

(1) Zone rates. For a plant located within the following described territory, including the cities located therein, the applicable zone rates shall be as follows:

Michigan Counties

Zone I—No Adjustments

Clinton, Genesee, Gratiot, Hillsdale, Huron, Ingham, Jackson, Lapeer, Lenawee, Livingston, Macomb, Monroe, Oakland, Saginaw, Sanilac, St. Clair, Shiawassee, Tuscola, Washtenaw and Wayne.

Bay (except Gibson, Mount Forest, Pinconning, Garfield and Fraser Townships).

Zone II—5 Cents

Allegan, Barry, Berrien, Branch, Calhoun, Cass, Eaton, Ionia, Kalamazoo, Kent, Montcalm, Muskegon, Ottawa, St. Joseph and Van Buren.

Zone III—7 Cents

Bay (all townships excluded from Zone I), Alcona, Alpena, Antrim, Arenac, Benzie, Charlevoix, Cheboygan, Clare, Crawford, Emmet, Gladwin, Grand Traverse, Isabella, Iosco, Kalkaska, Lake, Leelanau, Manistee, Mason, Missaukee, Mecosta, Midland, Montmorency, Newago, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Presque Isle, Roscommon and Wexford.

* * * * *

§ 1040.52 [Amended]

3. Amend § 1040.52(a)(2) by changing "1 cent" to "2.25 cents."

§ 1040.74 [Amended]

4. Amend § 1040.74 by changing "0.113" to "0.115".

§ 1040.75 [Amended]

5. Amend § 1040.75 by removing and reserving paragraph (a)(2) and revising paragraph (a)(3) to read as follows:

(a) * * *

(3) Shall add not less than 10 cents per hundredweight with respect to milk received from producers and cooperative associations pursuant to § 1040.9(c) at a pool plant located within the Michigan counties of Macomb, Oakland, and Wayne.

* * * * *

Signed at Washington, DC, on: July 6, 1989.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 89-16329 Filed 7-11-89; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Parts 1822, 1823, 1910, 1941, 1942, 1943, 1944, 1945, 1951, 1955, and 1965

Use of Certification Statements by the Farmers Home Administration

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to add a new requirement concerning the use of applicant certification statements. This action is necessary to comply with OMB Circular A-129, Subject: Managing Federal Credit Programs. The intended effect is to establish procedures to ensure that applicants for Federal loans are aware of debt collection methods the Federal Government can use in recovering delinquent or defaulted debt on FmHA loans.

EFFECTIVE DATE: August 11, 1989.

FOR FURTHER INFORMATION CONTACT: Norma Weetman, Chief, Management Analysis Branch, Financial and Management Analysis Staff, Farmers Home Administration, Room 4929, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250, Telephone (202) 475-3859.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be nonmajor because there will not be an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, Environmental Program. It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Intergovernmental Consultation

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Programs Affected

This program/activity is listed in the Catalog of Federal Domestic Assistance under: 10.404 Emergency Loans; 10.405 Farm Labor Housing Loans and Grants; 10.406 Farm Operating Loans; 10.407 Farm Ownership Loans; 10.410 Low Income Housing Loans; 10.411 Rural Housing Site Loans; 10.414 Resource Conservation and Development Loans; 10.415 Rural Rental Housing Loans; 10.416 Soil and Water Loans; 10.417 Very Low-Income Housing Repair Loans and Grants; 10.418 Water and Waste Disposal Systems Loans; 10.419 Watershed Protection and Flood Prevention Loans; 10.421 Indian Tribes and Tribal Corporation Loans; and 10.423 Community Facilities Loans.

Regulatory Flexibility Act

The Administrator, Farmers Home Administration, USDA, has determined that this action will not have a significant economic impact on a substantial number of small entities because it requires applicants only to read and to acknowledge a list of actions that the Government can take to collect delinquent debt.

General Information

OMB Circular A-129 requires that Federal Agencies must use Certification Statements during the loan application process to notify applicants about the Federal Government's debt collection policies. Therefore, FmHA amends its regulations to require that the County Supervisor or District Director must review a certification statement with applicants for insured loans and that the applicant must sign and date the certification statement to show that the applicant is aware of and understands the debt collection methods the Federal Government can use in recovering delinquent or defaulted debt on FmHA loans.

Discussion of Comments

A proposed rule was published in the **Federal Register** [53 FR 9318] on March 22, 1988, and invited comments for 60 days ending May 23, 1988. Two comments were received from farm organizations and one from the FmHA Single Family Housing Processing Division (SFHPD). They were concerned that (1) the actual Form FmHA 1910-11 was not published in the **Federal Register**; (2) suspension and debarment proceedings were not listed on the form; and (3) the form does not include borrower rights or available servicing options.

Form FmHA 1910-11 was not published in the **Federal Register** as a Proposed Rule, however, draft copies of the form were available upon request and FmHA did provide these copies to interested parties in response to requests for the form.

Concern also was expressed that Form FmHA 1910-11 did not include debarment and suspension as available debt collection mechanisms. Since the time these regulations were published as a Proposed Rule, the Department of Agriculture issued agency-wide regulations concerning debarment and suspension at 54 FR 4722 (January 30, 1989). As a result, debarment and suspension has been included on Form FmHA 1910-11 as a possible action that may be taken by the Federal Government if loan payments become delinquent or if the borrower defaults on the loan.

Form FmHA 1910-11 does not list borrower rights or available servicing options. These issues are addressed in other FmHA Regulations. The intent of this form is only to ensure that applicants for Federal loans are aware of debt collection methods the Federal Government can use in recovering delinquent or defaulted debt on FmHA loans.

A minor modification in FmHA instruction 1944-A is made in answer to the SFHPD request.

List of Subjects

7 CFR Part 1822

Loan programs—Housing and community development, Low and moderate income housing, Mortgages, Nonprofit organizations, Rural housing.

7 CFR Part 1823

Credit, Indians.

7 CFR Part 1910

Applications, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing, Marital status discrimination, Sex discrimination.

7 CFR Part 1941

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth.

7 CFR Part 1942

Community development, Community facilities, Loan programs—Housing and

community development, Loan security, Rural areas, Waste treatment and disposal—Domestic, Water supply—Domestic.

7 CFR Part 1943

Credit, Loan programs—Agriculture, Recreation, Water resources.

7 CFR Part 1944

Administrative practice and procedure, Aged, Farm labor housing, Grant programs—Housing and community development, Handicapped, Home improvement, Loan programs—Housing and community development, Low and moderate income housing—Rental, Migrant labor, Mobile homes, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Rural housing, Subsidies.

7 CFR Part 1945

Agriculture, Disaster assistance, Loan programs—Agriculture.

7 CFR Part 1951

Account servicing, Grant programs—Housing and community development, Reporting requirements, Rural areas.

7 CFR Part 1955

Government acquired property, Sale of government acquired property, Surplus government property.

7 CFR Part 1965

Administrative practice and procedure, Loan programs—Housing and community development, Low and moderate income housing—Rental, Mortgages, Rural areas.

Therefore, FmHA amends Chapter XVIII, Title 7, Code of Federal Regulations as follows:

PART 1822—RURAL HOUSING LOANS AND GRANTS

1. The authority citation for Part 1822 continues to read as follows:

Authority: 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart G—Rural Housing Site Loan Policies, Procedures, and Authorizations

§ 1822.271 [Amended]

2. Section 1822.271(e) is amended by adding the following entry to the list of forms after the Application Letter and Attachments and before the Evidence of Legal Authority (copy or citation of specific provisions of State statutory authority):

Form No.	Name of form or document	Total No. of copies	Signed by borrower	Number for loan docket	Copy for borrower
* * *	* * *	*	*	*	*
FmHA 1910-11	Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts.	2	2-O&C	1-O	1-C
* * *	* * *	*	*	*	*

PART 1823—ASSOCIATION LOANS AND GRANTS—COMMUNITY FACILITIES, DEVELOPMENT, CONSERVATION, UTILIZATION

3. The authority citation for Part 1823 is added to read as follows:

Authority: 7 U.S.C. 1989, 5 U.S.C. 301, 25 U.S.C. 490, 7 CFR 2.23, 7 CFR 2.70.

Subpart N—Loans to Indian Tribes and Tribal Corporations

Exhibit A—[Amended]

4. Exhibit A, section 1 is amended by adding the following phrase to the list of forms after Form AD 621 and before Form FmHA 442-12: "Form FmHA 1910-11: Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts. (O & 1C—Sign O)"

PART 1910—GENERAL

5. The authority citation for Part 1910 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Receiving and Processing Applications

§ 1910.8 [Amended]

6. Section 1910.8 is amended by adding paragraph (e) to read as follows:

§ 1910.8 Reaching an understanding.

* * * * *

(e) *Use of Form FmHA 1910-11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts."* Before loan closing, all insured Single Family Housing (502 and 504) and Farmer Program loan applicants will have Form FmHA 1910-11 reviewed with them by the County Supervisor, and all insured Multi-Family Housing loan applicants will have Form FmHA 1910-11 reviewed with them by the Loan Approval Official (District Director or State Director, as appropriate). Form FmHA 1910-11 explains collection policies that may be taken by FmHA to recover delinquent or defaulted debt on insured loans. Form FmHA 1910-11 will be signed and distributed in accordance with the Forms Manual Insert. The applicant certification statement does not constitute a notification under the Debt Collection Act or the Deficit Reduction Act.

PART 1941—OPERATING

7. The authority citation for Part 1941 continues to read as follows:

Authority: 7 U.S.C. 1989, 7 CFR 2.23, 7 CFR 2.70.

Subpart A—Operating Loan Policies, Procedures and Authorizations

8. Exhibit A is amended in item A, Applicant Interview, by adding the following entry to the list of application processing forms after Form FmHA 410-10 and before Form FmHA 431-1.

Form No.	Name	Use
* * *	* * *	*
1910-11	Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts.	(x)
* * *	* * *	*

PART 1942—ASSOCIATION

9. The authority for Part 1942 continues to read as follows:

Authority: 7 U.S.C. 1989, 16 U.S.C. 1005, 7 CFR 2.23, 7 CFR 2.70.

Subpart A—Community Facility Loans

10. Section 1942.5 is amended by revising paragraph (a)(1)(i) to read as follows:

§ 1942.5 Application review and approval.

(a) * * *

(1) * * *

(i) Requirements listed in letters of conditions will include the following unless inappropriate due to the particular type of funding or entity involved: Maximum amount of loan and/or grant which may be considered, scheduling of payments, term of loan and any deferment of principal which may be allowed, reserve requirements, compliance with section 504 of the Rehabilitation Act of 1973, number of users (members) and verification required, contributions rates and charges, interim financing, disbursement of funds, security requirements, graduation requirements, debt collection policies execution of Form FmHA 1910-11, "Application Certification, Federal Collection Policies for Consumer or Commercial Debts," organization, business operations, insurance and bonding (including applicant/borrower and contractor), construction contract documents and bidding, accounts, records, and audit reports required (including requirements of OMB Circulars A-128 and A-110), adoption of Form FmHA 1942-47, "Loan Resolution (Public Resolution)," for public bodies or Form FmHA 1942-9, "Loan Resolution (Security Agreement)," for other than public bodies, closing instructions, and other requirements.

* * * * *

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

11. The authority citation for Part 1943 continues to read as follows:

Authority: 7 U.S.C. 1989, 7 CFR 2.23, 7 CFR 2.70.

Subpart A—Insured Farm Ownership Loan Policies, Procedures and Authorizations

§ 1943.32 [Amended]

12. Section 1943.32(a) is amended by adding the following entry to the list of forms after Form FmHA 410-10 and before Form FmHA 422-1:

FmHA Form No.	Name of form	Total No. of copies	Signed by borrower [1]	Loan docket [1]	Copy for borrower [1]
* * *	* * *		*		
1910-11	Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts.	2	1-O&C	1-O	1-C
* * *	* * *		*		

[1] O=Original; C=Copy

* * * * * * *

Subpart B—Insured Soil and Water Loan Policies, Procedures and Authorizations

§ 1943.82 [Amended]

13. Section 1943.82(a) is amended by adding the following entry to the list of forms after Form FmHA 410-10 and before Form FmHA 422-1:

FmHA Form No.	Name of form	Total No. of copies	Signed by borrower [1]	Loan docket [1]	Copy for borrower [1]
* * *	* * *		*		
1910-11	Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts.	2	1-O&C	1-O	1-C
* * *	* * *		*		

[1] O=Original; C=Copy

* * * * *

PART 1944—HOUSING

14. The authority citation for Part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Section 502 Rural Housing Loan Policies, Procedures and Authorizations

15. Section 1944.26 is amended by adding a new paragraph (a)(6) to read as follows:

§ 1944.26 Application processing.

(a) * * *

(6) The County Supervisor must review with each loan applicant, and the applicant must sign Form FmHA 1910-11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts".

* * * * *

§ 1944.30 [Amended]

16. Section 1944.30(a) is amended by adding the following entry to the list of forms after Form FmHA 410-4 and before Form FmHA 1944-12:

BEST COPY AVAILABLE

FmHA Form No.	Name of form	Total of No. of copies	No. Signed by borrower	Loan docket	Copy for borrower
* * *	* * *	*	*		
1910-11	Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts.	[1] [2] 2	1	[1] 1	[2] 1
* * *	* * *	*	*		

[1] Original; [2] Copy.

* * * * * * * * * * * *

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations

§ 1944.171 [Amended]

17. Section 1944.171(d) is amended by adding the following entry to the list of forms after Form AD-625 and before Exhibit A-1:

Form No.	Name of form	Total No. of copies	Signed by borrower	No. for docket	Copy for borrower
* * *	* * *	*	*		
1910-11	Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts.	2	1	1-O	1-C
* * *	* * *	*	*		

Subpart E—Rural Rental Housing Loan Policies, Procedures and Authorizations

Exhibit A-8 [Amended]

18. Exhibit A-8 is amended by adding paragraph 15 to read as follows:

15. Form FmHA 1910-11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts."

Subpart J—Section 504 Rural Housing Loans and Grants

19. Section 1944.467 is amended by adding paragraph (a)(3) to read as follows:

§ 1944.467 Processing applications.

(a) * * *

(3) The County Supervisor must review with the applicant, and assure that the applicant signs Form FmHA 1910-11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts".

* * * * *

PART 1945—EMERGENCY

20. The authority citation for Part 1945 is added (the authorities for the subparts are removed) to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.73, 7 CFR 2.70.

Subpart D—Emergency Loan Policies, Procedures and Authorizations

21. In Exhibit A, paragraph III A 5 is amended by adding the following entry to the list of forms after Form FmHA 410-10 and before Form FmHA 431-1:

Form No.	Name	Use
* * *	* * *	*
1910-11	Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts.	X
* * *	* * *	*

PART 1951—SERVICING AND COLLECTIONS

22. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart E—Servicing of Community Program Loans and Grants

23. Section 1951.210 is amended by adding a new paragraph (f)(15) to read as follows:

§ 1951.210 Transfer of security and assumption of loans.

* * * * *

(f) * * *

(15) Form FmHA 1910-11, *"Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts."* The District Director must review Form FmHA 1910-11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts," with the applicant, and the form must be signed by the applicant.

* * * * *

§ 1951.211 [Amended]

24. In § 1951.211, the introductory text of paragraph (c) is amended by changing the reference "§ 1951.210(f) (1) through (14)" to read "§ 1951.210(f) (1) through (15)."

PART 1955—PROPERTY MANAGEMENT

25. The authority citation for Part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart C—Disposal of Inventory Property

26. Section 1955.109 is amended by adding paragraph (j) to read as follows:

§ 1955.109 Processing and closing (CONACT).

* * * * *

(j) *Form FmHA 1910-11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts."* The County Supervisor or District Director must review Form FmHA 1910-11 "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts," with the applicant, and the form must be signed by the applicant.

27. Section 1955.118 is amended by adding paragraph (k) to read as follows:

§ 1955.118 Processing cash sales or credit sales on NP terms (housing).

* * * * *

(k) *Form FmHA 1910-11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts."* The County Supervisor or District Director must review Form FmHA 1910-11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts," with the applicant, and the form must be signed by the applicant.

PART 1965—REAL PROPERTY

28. The authority citation for Part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart A—Servicing of Real Estate Security for Farmer Program Loans and Certain Note—Only Cases

29. Section 1965.27 is amended by adding paragraph (b)(21) to read as follows:

§ 1965.27 Transfer of real estate security.

* * * * *

(b) * * *

(21) Form FmHA 1910-11, *"Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts."* For all transfers, the County Supervisor must review Form FmHA 1910-11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts," with the applicant. A copy of the signed and dated form will be given to the applicant and the original placed in the loan docket.

Subpart B—Security Servicing for Multiple Housing Loans

30. Section 1965.65 is amended by adding a new paragraph (a)(9) to read as follows:

§ 1965.65 Transfer of real estate security and assumption of loans.

(a) * * *

(9) For all transfers, the District Director must review Form FmHA 1910-11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts," with the applicant. A copy of the signed and dated form will be given to the applicant and the original placed in the loan docket.

* * * * *

Dated: May 24, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 87-16255 Filed 7-11-89; 8:45 am]

BILLING CODE 3410-07-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Rel. No. SAB-82]

Staff Accounting Bulletin No. 82

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: This staff accounting bulletin expresses the staff's view regarding the accounting for transfers of nonperforming assets by financial institutions, and disclosure of the impact of financial assistance from regulators.

DATE: July 5, 1989.

FOR FURTHER INFORMATION CONTACT: Teresa Iannaconi, Office of the Chief Accountant (202-272-2130), or Robert A. Bayless, Division of Corporation Finance (202-272-2553), Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The statements in staff accounting bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Jonathan G. Katz,

Secretary.

July 5, 1989.

PART 211—[AMENDED]

Accordingly, Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 82 to the table found in Subpart B.

The staff hereby adds Section V to Topic 5 and Section N to Topic 11 of the staff accounting bulletin series. Section V of Topic 5 discusses the staff's views regarding the accounting for transfers of nonperforming assets by financial institutions, and Section N of Topic 11 discusses the staff's views regarding the disclosure of the impact of regulatory assistance received in transfers or other regulatory assisted reorganizations or combinations.

Topic 5: Miscellaneous Accounting

* * * * *

V. Certain Transfers of Nonperforming Assets

Facts: A financial institution desires to reduce its nonaccrual or reduced rate loans and other nonearning assets, including foreclosed real estate (collectively, "nonperforming assets"). Some or all of such nonperforming assets are transferred to a newly-formed entity (the "new entity"). The financial institution, as consideration for transferring the nonperforming assets, may receive (a) the cash proceeds of debt issued by the new entity to third parties, (b) a note or other redeemable instrument issued by the new entity, or (c) a combination of (a) and (b). The residual equity interests in the new entity, which carry voting rights, initially owned by the financial institution, are transferred to outsiders (for example, via distribution to the financial institution's shareholders or sale or contribution to an unrelated third party).

The financial institution typically will manage the assets for a fee, providing necessary services to liquidate the assets, but otherwise does not have the right to appoint directors or legally control the operations of the new entity.

Question 1: What factors should be considered in determining whether such transfer of nonperforming assets can be accounted for as a disposition by the financial institution?

Interpretive Response: The staff believes that determining whether nonperforming assets have been disposed of in substance requires an assessment as to whether the risks and rewards of ownership have been transferred.

SAB Topic 5-E [1] discusses some factors that the staff believes should be considered

[1] SAB Topic 5-E, "Accounting for Divestiture of a Subsidiary or Other Business Operation," addresses the accounting for the transfer of certain operations whereby there is a continuing involvement by the seller or other evidence that incidents of ownership remain with the seller.

in determining whether the risks of a business have been transferred. Consistent with the factors discussed in SAB Topic 5-E, the staff believes that the transfer described should not be accounted for as a sale or disposition if (a) the transfer of nonperforming assets to the new entity provides for recourse by the new entity to the transferor financial institution, (b) the financial institution directly or indirectly guarantees debt of the new entity in whole or in part, (c) the financial institution retains a participation in the rewards of ownership of the transferred assets, for example through a higher than normal incentive or other management fee arrangement,[2] or (d) the fair value of any material non-cash consideration received by the financial institution (for example, a note or other redeemable instrument) cannot be reasonably estimated. Additionally, the staff believes that the accounting for the transfer as a sale or disposition generally is not appropriate where the financial institution retains rewards of ownership through the holding of significant residual equity interests or where third party holders of such interests do not have a significant amount of capital at risk.

Where accounting for the transfer as a sale or disposition is not appropriate, the nonperforming assets should remain on the financial institution's balance sheet and should continue to be disclosed as nonaccrual, past due, restructured or foreclosed, as appropriate, and the debt of the new entity should be recorded by the financial institution.

Question 2: If the transaction is accounted for as a sale, at what value should the transfer be recorded by the financial institution?

Interpretive Response: The staff believes that the transfer should be recorded by the financial institution at the fair value of assets transferred (or, if more clearly evident, the fair value of assets received) and a loss recognized by the financial institution for any excess of the net carrying value [3] over the fair value.[4] Fair value is the amount that would be realizable in an outright sale to an unrelated third party for cash.[5] Statement of Financial Accounting Standards No. 15, "Accounting by Debtors and Creditors for Troubled Debt Restructurings," and Financial Reporting Release No. 28 (Section 401.09 of the Financial Reporting Codification) discuss the determination of fair value of formally or substantively repossessed collateral. The same concepts should be applied in determining fair value of the transferred assets, i.e., if an active market exists for the assets transferred, then fair value is equal to the market value. If no active market exists, but one exists for similar assets, the selling prices in that market may be helpful in estimating the fair value. If no such market price is available, a forecast of expected cash flows, discounted at a rate commensurate with the risks involved, may be used to aid in estimating the fair value. In situations where discounted cash flows are used to estimate fair value of nonperforming assets, the staff would expect that the interest rate used in such computations will be substantially higher than the cost of funds of the financial institution and appropriately reflect the risk of holding these nonperforming assets. Therefore, the fair value determined in such a way will be lower than the amount at which the assets would have been carried by the financial institution had the transfer not occurred, unless the financial institution had been required under generally accepted accounting principles to carry such assets at market value or the lower of cost or market value.

Question 3: Where the transaction may appropriately be accounted for as a sale and the financial institution receives a note receivable or other redeemable instrument from the new entity, how should such asset be disclosed pursuant to Item III C, "Risk Elements," of Industry Guide 3? What factors should be considered related to the subsequent accounting for such instruments received?

Interpretive Response: The staff believes that the financial institution may exclude the note receivable or other asset from its Risk Elements disclosures under Guide 3 provided that: (a) the receivable itself does not constitute a nonaccrual, past due, restructured, or potential problem loan that would require disclosure under Guide 3, and (b) the underlying collateral is described in sufficient detail to enable investors to understand the nature of the note receivable or other asset, if material, including the extent of any over-collateralization. The description of the collateral normally would include material information similar to that which would be provided if such assets were owned by the financial institution, including pertinent Risk Element disclosures.

The staff notes that, in situations in which the transaction is accounted for as a sale and a portion of the consideration received by the registrant is debt or another redeemable instrument, careful consideration must be given to the appropriateness of recording profits on the management fee arrangement, or interest or dividends on the instrument received, including consideration of whether it is necessary to defer such amounts or to treat such payments on a cost recovery basis. Further, if the new entity incurs losses to the point that its permanent equity based on generally accepted accounting principles is eliminated, it would ordinarily be necessary for the financial institution, at a minimum, to record further operating losses as its best estimate of the loss in realizable value of its investment.[6]

Topic 11: Miscellaneous Disclosure

* * * * *

N. Disclosures of the Impact of Assistance from Federal Financial Institution Regulatory Agencies.

Facts: An entity receives financial assistance from a federal regulatory agency in conjunction with either an acquisition of a troubled financial institution, transfer of nonperforming assets to a newly-formed entity, or other reorganization.

Question: What are the disclosure implications of the existence of regulatory assistance?

Interpretive Response: The staff believes that users of financial statements must be able to assess the impact of credit and other risks on a company following a regulatory assisted acquisition, transfer or other reorganization on a basis comparable to that disclosed by other institutions, i.e., as if the assistance did not exist. In this regard, the staff believes that the amount of regulatory assistance should be disclosed separately and should be separately identified in the statistical information furnished pursuant to Industry Guide 3, to the extent it impacts such information.[12] Further, the nature, extent and impact of such assistance needs to be fully discussed in Management's Discussion and Analysis.[3]

[FR Doc. 89-16316 Filed 7-11-89; 8:45 am]

BILLING CODE 8010-01-M

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[2] The staff recognizes that the determination of whether the financial institution retains a participation in the rewards of ownership will require an analysis of the facts and circumstances of each individual transaction. Generally, the staff believes that, in order to conclude that the financial institution has disposed of the assets in substance, the management fee arrangement should not enable the financial institution to participate to any significant extent in the potential increases in cash flows or value of the assets, and the terms of the arrangement, including provisions for discontinuance of services, must be substantially similar to management arrangements with third parties.

[3] The carrying value should be reduced by any allocable allowance for credit losses or other valuation allowances. The staff believes that the loss recognized for the excess of the net carrying value over the fair value should be considered a credit loss and thus should not be included by the financial institution as loss on disposition.

[4] The staff notes that the FASB's Emerging Issues Task Force (EITF) reached a consensus at its November 17, 1988 meeting on Issue 88-25 that the newly created "liquidating bank" should continue to report its assets and liabilities at fair values at the date of the financial statements.

[5] The FASB's Emerging Issues Task Force reached a consensus at its May 21, 1987 meeting on Issue No. 87-17, "Spin-off or other distributions of loans receivable to shareholders," that an enterprise that distributes loans to its owners should report such distribution at fair value.

[6] Typically, the financial institution's claim on the new entity is subordinate to other debt instruments and thus the financial institution will incur any losses beyond those incurred by the permanent equity holders.

[1] The staff has previously expressed its views regarding acceptable methods of compliance with this principle in the minutes of EITF Issue 88-19, and an announcement by the SEC Observer to the EITF at the February 23, 1989 meeting.

[2] Paragraph 9 of Statement of Financial Accounting Standards No. 72, "Accounting for Certain Acquisitions of Banking or Thrift Institutions," addresses the recording of regulatory assistance at the date of a purchase business combination and indicates that, "[i]f receipt of the assistance is probable and the amount is reasonably estimable, that portion of the cost of the acquired enterprise shall be assigned to such assistance." In addition, see Emerging Issues Task Force Issue 88-19 for guidance on the appropriate period in which to record certain types of regulatory assistance.

[3] See § 501.00.c., "Effects of Federal Financial Assistance Upon Operations," of the Financial Reporting Codification for further discussion of the Management's Discussion and Analysis disclosures of the effects of regulatory assistance.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Narasin, Roxarsone, and Bacitracin Methylene Disalicylate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by A.L. Laboratories, Inc. The NADA provides for using separately approved Type A medicated articles containing narasin, roxarsone, and bacitracin methylene disalicylate to make a combination Type C medicated feed for the prevention of coccidiosis, for increased rate of weight gain, and for improved feed efficiency in broiler chickens.

EFFECTIVE DATE: July 12, 1989.

FOR FURTHER INFORMATION CONTACT: Malcolm C. Thomas, Center for Veterinary Medicine (HFV-128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4317.

SUPPLEMENTARY INFORMATION: A.L. Laboratories, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed NADA 140-852, providing for combining separately approved narasin, roxarsone, and bacitracin methylene disalicylate Type A medicated articles to make a Type C medicated feed containing 54 to 72 grams of narasin per ton, 22.7 to 45.4 grams of roxarsone per ton, and 10 to 50 grams of bacitracin methylene disalicylate per ton. The feed is for use in broiler chickens for the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati,* for increased rate of weight gain and improved feed efficiency. The application is approved and the regulations in §§ 558.76(d)(3), 558.363(c)(1), and 558.530(d)(3) are amended accordingly. The basis for approval is discussed in the freedom of information summary.

Narasin, roxarsone, and bacitracin methylene disalicylate are new animal drugs used in Type A medicated articles to make Type C medicated feeds. Roxarsone is a Category II drug which, as provided in 21 CFR 558.4, requires an approved form FDA 1900 for making a Type C medicated feed from a Type A article. Therefore, an approved form FDA 1900 is required for making a Type C medicated feed containing narasin, roxarsone, and bacitracin methylene disalicylate as provided in approved NADA 140-852 and in § 558.363 as amended by this final rule.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.76 is amended by adding new paragraph (d)(3)(xiii) to read as follows:

§ 558.76 Bacitracin methylene disalicylate.

* * * * *

(d) * * *

(3) * * *

(xiii) Narasin with roxarsone as in § 558.363.

3. Section 558.363 is amended by adding new paragraph (c)(1)(v) to read as follows:

§ 558.363 Narasin.

* * * * *

(c) * * *

(1) * * *

(v) *Amount per ton.* Narasin 54 to 72 grams, roxarsone 22.7 to 45.4 grams, and bacitracin methylene disalicylate 10 to 50 grams.

(A) *Indications for use.* For prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati,* for increased rate of weight gain, and for improved feed efficiency.

(B) *Limitations.* For broiler chickens only. Feed continuously as sole ration. Withdraw 5 days before slaughter. Do not feed to laying hens. Use as sole source of organic arsenic. Drug overdose or lack of water may result in leg weakness. Do not allow adult turkeys, horses, or other equines access to narasin formulations. Ingestion of narasin by these species has been fatal. Narasin as provided by 000986, roxarsone by 017210, bacitracin methylene disalicylate by 046573 in § 510.600(c) of this chapter.

* * * * *

4. Section 558.530 is amended by adding new paragraph (d)(3)(xxiii) to read as follows:

§ 558.530 Roxarsone.

* * * * *

(d) * * *

(3) * * *

(xxiii) Narasin with bacitracin methylene disalicylate as in § 558.363.

* * * * *

Dated: July 5, 1989.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 89-16297 Filed 7-11-89; 8:45 am]

BILLING CODE 4160-01-M

PANAMA CANAL COMMISSION

35 CFR Parts 103, 117 and 135

RIN 3207-AA21

Paperwork Reduction Act; OMB approved collections of information

AGENCY: Panama Canal Commission.

ACTION: Final rule.

SUMMARY: In accordance with the requirement of the Paperwork Reduction Act of 1980 (Pub. L. 96-511), as amended, that agencies publish Office of Management and Budget (OMB) control numbers assigned to their collections of information contained in regulations, the Panama Canal Commission is amending Parts 103, 117 and 135 of Title 35, Code of Federal Regulations to reflect current OMB numbers.

EFFECTIVE DATE: July 12, 1989.

ADDRESS: Send comments to Edward H. Clarke, Information Desk Officer, Commerce and Lands Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Barbara Fuller, Assistant to the Secretary for Commission Affairs, Panama Canal Commission, telephone (202) 634-6441.

SUPPLEMENTARY INFORMATION: 44 U.S.C. Chapter 35 requires Federal agencies to obtain approval from the Office of Management and Budget before collecting information from ten or more members of the public. As evidence of such approval, agencies are required to display an OMB control number on collection of information requirements.

The Panama Canal Commission has received OMB approval, valid through August 31, 1991, for the collection of information requirements contained in Subchapter C of Chapter I, 35 CFR. The OMB control number for all collection of information requirements in Subchapter C is 3207-0001. The OMB Control Number was included in §§ 101.10, 113.4, 113.22, 113.28, 113.29, 113.42, 113.47, 113.50 and 123.4 by publication in the **Federal Register**, on May 10, 1985 (50 FR 19676). The OMB Control Number was included in §§ 101.9, 103.6, 103.8, 103.32, 103.42 and 121.45 by publication in the **Federal Register** on July 1, 1985 (50 FR 26990). We are now incorporating the OMB Control Number in §§ 103.1, 117.4, 135.1, 135.2, 135.443 and 135.484 in Subchapter C of Chapter I of 35 CFR.

The Commission has determined that this is not a major rule as defined under section 1(b) of Executive Order 12291, dated February 17, 1981. Furthermore, the Regulatory Flexibility Act is inapplicable since this regulation does not have an impact on small entities (5 U.S.C. 601-612).

List of Subjects in 35 CFR Parts 103, 117 and 135

Panama Canal, Vessels, Order of transit, Advance reservation, Booking system, Tolls, Displacement tonnage, Measurement authorities, Reporting and recordkeeping requirements.

Accordingly, 35 CFR Parts 103, 117 and 135 Subchapter C of Chapter I of Title 35, Code of Federal Regulations, are amended as set forth below.

PART 103—GENERAL PROVISIONS GOVERNING VESSELS

1. The authority citation for Part 103 continues to read as follows:

Authority: 22 U.S.C. 3811; E.O. 12215, 45 FR 36043 and 44 U.S.C. 3501.

2. Section 103.1 is amended by adding the OMB clearance language to read as follows:

§ 103.1 Regulations to be kept aboard.

* * * * *

(Approved by the Office of Management and Budget under control number 3207-0001)

PART 117—MARINE ACCIDENTS: INVESTIGATIONS; CONTROLS; RESPONSIBILITY

3. The authority citation for Part 117 continues to read as follows:

Authority: 22 U.S.C. 3791; E.O. 12215, 45 36043.

4. Section 117.4 is amended by adding the OMB clearance language to read as follows:

§ 117.4 Reports of accidents by officer in command to Board.

* * * * *

(Approved by the Office of Management and Budget under control number 3207-0001)

PART 135—RULES FOR MEASUREMENT OF VESSELS

5. The authority citation for Part 135 is revised to read as follows:

Authority: Issued under authority of the President by 22 U.S.C. 3791; E.O. 12215; 45 FR 36043

6. Section 135.1 is amended by adding the OMB clearance language to read as follows:

§ 135.1 Vessels generally to present tonnage certificate or be measured.

* * * * *

(Approved by the Office of Management and Budget under control number 3207-0001)

7. Section 135.2 is amended by adding the OMB clearance language to read as follows:

§ 135.2 Warships to present documents stating displacement tonnage.

* * * * *

(Approved by the Office of Management and Budget under control number 3207-0001)

8. Section 135.443 is amended by adding the OMB clearance language to read as follows:

§ 135.443 Substance and form of tonnage certificates; blank certificates.

* * * * *

(Approved by the Office of Management and Budget under control number 3207-0001)

9. Section 135.484 is amended by adding the OMB clearance language to read as follows:

§ 135.484 Commander of warship to exhibit vessel's displacement scale and curves.

* * * * *

(Approved by the Office of Management and Budget under control number 3207-0001)

Date: June 27, 1989.

D. P. McAuliffe

Administrator.

[FR Doc. 89-16343 Filed 7-11-89; 8:45 am]

BILLING CODE 3640-04-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-3613-5]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Suspension of rule.

SUMMARY: Effective June 30, 1989, today's action suspends § 82.11 of EPA's August 12, 1988 final rule (53 FR 30566) implementing the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol). A revised § 82.11 is proposed elsewhere in today's **Federal Register** Notice to conform with recent agreements made by The Parties to the Montreal Protocol.

DATE: This suspension is effective June 30, 1989.

ADDRESSES: Comments and other information relevant to this rulemaking are maintained in Docket A-87-20 at the Air Docket Room, Room M 1500, First Floor, Waterside Mall, 401 M Street SW., Washington, DC 20460. This docket may be inspected between 8:30 a.m. and 12:00 p.m. and 1:30 p.m. and 3:30 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: David Lee, Analyst, Regulatory and Analysis Branch, Global Change Division, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation, ANR-445, 401 M Street SW., Washington, DC 20460. (202) 475-7497.

SUPPLEMENTARY INFORMATION: Last August the Agency promulgated a final rule implementing the United States obligation under the Montreal Protocol, an international treaty that requires ratifying countries to limit their production and consumption of substances that are known to deplete stratospheric ozone. At the time of promulgation, several sections of the final rule reflected how the United States then interpreted the terms of the Montreal Protocol. Parties to the Protocol were to meet at a later date to resolve issues of interpretation.

The Parties to the Protocol met May 2-5, 1989 in Helsinki, Finland. During this meeting, the Parties, including the United States, agreed to several interpretations of terms in the Montreal Protocol that differed from the United States interpretation as reflected in its final rule. Elsewhere in today's **Federal Register** Notice are proposed amendments that reflect these recent agreements.

The proposed amendment to § 82.11 alters the conditions under which persons may obtain authorizations to convert potential production allowances to production allowances. In its current form, § 82.11 allows persons to obtain authorization to convert potential production allowances upon proof of export of controlled substances to any Party. However, under the interpretation of the relevant Protocol provision agreed to by Parties in Helsinki, authorizations to convert may only be granted upon proof of export to Parties operating under Article 5 of the Protocol ("Article 5 Parties") or upon proof of a transfer of production rights from another Party. Because the current version of § 82.11 authorizes conversions on grounds the Protocol does not, EPA is immediately staying that section of the rule to prevent the United States from violating the Protocol.

Because both EPA's rule and the Montreal Protocol go into effect July 1, the Agency must ensure that the rule is implemented in accordance with the internationally adopted interpretation of the Montreal Protocol, an interpretation by which the United States now subscribes. Delays inherent in notice and comment rulemaking on this action to suspend the existing rule would entail the risk that transactions could occur that would lead to violations of the Protocol. For that reason, EPA finds that notice and public procedure on this suspension are impracticable and contrary to the public interest.

Accordingly, § 82.11 is suspended.

Date: June 30, 1989.

William K. Reilly,

Administrator.

[FR Doc. 89-16207 Filed 7-11-89; 8:45 am]

BILLING CODE 6560-50-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1011

[Ex Parte No. 55 (Sub-No. 76)]

Delegation of Authority—Declaratory Order Proceedings

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is codifying its delegation of authority to the Director of the Office of Proceedings to issue decisions determining whether, upon petition, a declaratory order proceeding should be instituted. This action will aid in the management of the Commission's workload.

EFFECTIVE DATE: July 12, 1989.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 275-7291 (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721).

Regulatory Flexibility

This action will not have a significant impact on a substantial number of small entities.

Energy and Environment

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Since this is a final action undertaken to revise an internal, organizational matter, formal comments are unnecessary under 5 U.S.C. 553(b)(A).

List of Subjects in 49 CFR Part 1011

Administrative practice and procedure; Authority delegations (Government agencies).

Dated: June 30, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners André, Lamboley, and Phillips. Vice Chairman Simmons and Commissioner Lamboley dissented with separate expressions.

Noreta R. McGee,

Secretary.

For the reasons set forth in the preamble, Title 49, Chapter X, Part 1011 of the Code of Federal Regulations is amended as follows:

PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY

1. The authority citation for 49 CFR Part 1011 continues to read as follows:

Authority: 49 U.S.C. 10301, 10302, 10304, 10305, 10321; 31 U.S.C. 9701; 5 U.S.C. 553.

2. Section 1011.2(a)(8) is amended by removing the word "and" before § 1011.2(a)(8)(iv), removing the period at the end of § 1011.2(a)(8)(iv) and adding in its place "; and", and adding a new § 1011.2(a)(8)(v) to read as follows:

§ 1011.2 The Commission.

(a) * * *

(8) * * *

(v) Whether to institute requested declaratory order proceedings under 5 U.S.C. 554(e).

* * * * *

3. Section 1011.8(c) is amended by adding a new paragraph (6) to read as follows:

§ 1011.8 Delegations of authority by the Interstate Commerce Commission to specific bureaus and offices of the Commission.

* * * * *

(c) * * *

(6) Whether to institute requested declaratory order proceedings under 5 U.S.C. 554(e).

[FR Doc. 89-16331 Filed 7-11-89; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 54, No. 132
Wednesday, July 12, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 911

[Docket No. FV-89-046]

Limes Grown in Florida; Proposed Changes in Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes tightening minimum grade requirements currently in effect for Florida grown limes. Currently, shipments of Florida seedless limes must contain at least 60 percent U.S. No. 1 quality fruit, and the remainder must be U.S. No. 2 quality during the period February 1 through May 31 each season. Shipments and imports during the period June 1 through January 31 each season must contain at least 75 percent U.S. No. 1 quality fruit and the remainder must be at least U.S. No. 2 quality. The proposed change would increase the minimum amount of U.S. No. 1 grade fruit required in shipments of Florida grown and imported limes form 60 to 75 percent during the period February 1 through May 31, thus making the 75 percent requirement effective on a year around basis. The proposed change also would apply to imported limes. The proposed action would provide fresh markets with higher quality limes, and is designed to create and maintain consumer satisfaction while increasing sales and promoting orderly marketing conditions in the interest of both growers and consumers.

DATE: Comments must be received by September 11, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. The written comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone (202) 475-3918.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Marketing Order No. 911, both as amended (7 CFR Part 911), regulating the handling of limes grown in Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1, and has been determined to be a "non-major" rule under the criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subjects to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are an estimated 26 handlers of Florida limes subject to regulation under the marketing order for limes grown in Florida, and an estimated 20 importers who import limes into the United States. In addition, there are approximately 260 lime growers in Florida. Small agricultural growers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and agricultural services firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers, importers, and growers may be classified as small entities.

Fresh Florida lime shipments are projected at 1,500,000 bushels (55 pounds net weight) for the 1989-90 season, compared with fresh shipments of 1,492,893 bushels in 1988-89, 1,352,780 bushels in 1987-88, and 1,334,997 bushels in 1986-87. Florida limes are harvested and shipped to market every month of the year, beginning with new season shipments in April and with peak shipments during the May through October period. Florida limes compete in the marketplace primarily with Mexican grown limes imported into the United States, with such imports estimated at 2,016,775 bushels for 1989-90. California fresh lime shipments are estimated at 292,590 bushels for the 1988-89 season crop.

Section 911.344 (7 CFR 911.344) specifies continuous minimum grade and size requirements for fresh shipments of all varieties of fresh limes grown in Florida. Two different groups of limes are grown in Florida, and different grade regulations apply to each group. One group is known as seeded or true limes, and are referred to as Mexican, West Indian, and Key limes. The other group is known as seedless, large-fruited, or Persian limes, and includes the Tahiti, Bearss, and similar varieties.

This proposed rule applies to the group known as seedless, large-fruited, or Persian limes, and proposes tighter minimum grade requirements for such limes. Currently, seedless limes must grade at least U.S. Combination, Mixed Color, except for stem length, during the period February 1 through May 31 each season. Under the U.S. Combination grade at least 60 percent, by count, of the limes must be U.S. No. 1 quality fruit, and the remainder must be at least U.S. No. 2 quality. However, the current grade regulation increases the minimum amount of U.S. No. 1 quality fruit required to 75 percent during the period June 1 through January 31 each season. The proposed change would increase the minimum amount of U.S. No. 1 grade fruit required in shipments of Florida grown and imported limes from 60 to 75 percent during the period February 1 through May 31, thus making the 75 percent requirement effective on a year around basis.

The current minimum grade requirements for fresh Florida limes have been in effect on a continuous basis for several seasons. These grade requirements are designed to ensure that all fresh lime shipments are of good quality, thereby providing consumer satisfaction essential for the successful marketing of the crop. These grade requirements are intended to improve buyer confidence and increase consumption of limes, while continuing to provide the trade and consumers with an adequate supply of quality limes. Florida lime growers and handlers have found such requirements beneficial in the successful marketing of their lime crops in the past. Recent marketing research studies indicate that consumers prefer higher quality seedless limes. Moreover, a recent USDA inspection data study indicates that handlers' lime shipments are currently averaging well above 75 percent U.S. No. 1 grade fruit even though only 60 percent is required. The application of tighter grade requirements for the entire season is intended to provide fresh markets with higher quality fruit which consumers prefer on a year around basis. Providing fresh markets with the quality of fruit desired is an important aspect of creating consumer satisfaction and increasing sales opportunities. Ample supplies of higher quality limes are available to meet consumer demand.

The proposed tighter grade requirements for Florida limes were unanimously recommended by the Florida Lime Administrative Committee (committee) at its meeting of April 12, 1989. The committee works with the Department in administering the marketing agreement and order program. The committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida limes. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

Some Florida lime shipments are exempt from grade requirements. Handlers may ship up to 55 pounds of limes during any one day under a minimum quantity exemption, and may make gift shipments in individually addressed containers of up to 20 pounds of limes each. Also, limes utilized in commercial processing are not covered by the grade requirements.

This proposed action would also amend paragraph (b) of § 911.344 to update language pertaining to the United States Standards for Grades of Persian (Tahiti) Limes.

Section 8e of the Act (7 U.S.C. 608e-1) requires that whenever specified commodities, including limes, are regulated under a Federal marketing order, imports of that commodity into the United States must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity.

Lime import grade requirements are specified in § 944.209 (7 CFR 944.209) issued under Section 8e of the Act. That section provides that fresh limes imported into the United States must meet the same minimum grade and size requirements specified in § 911.344 for limes grown in Florida. Since this proposed action would change the grade requirements for Florida grown limes, the proposed changes would also apply to imported limes. However, no change to the text of § 944.209 is needed by this proposed action. An exemption provision in the lime import regulation permits persons to import up to 55 pounds of limes at one time exempt from such import requirements.

The proposals specified herein reflect the committee's and the Department's appraisal of the need to change the grade requirements applicable to domestic shipments of limes. The Department's view is that the proposed changes would not adversely impact lime growers, handlers, and importers. The application of grade requirements over the past several years have helped to assure shipments of good quality limes to fresh markets. The committee considers that the proposed tighter grade requirements for Florida limes are needed to improve grower returns. Although compliance with grade requirements affects costs to handlers and importers, these costs appear to be significantly offset when compared to the potential benefits of assuring the trade and consumers of good quality limes.

This proposed rule also would delete unnecessary language from the introductory text of § 911.344(a).

Based on the above, the Administrator of the AMS has determined that this proposed action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 911

Marketing agreements and orders, limes, Florida.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 911 be amended as follows:

PART 911—LIMES GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 911 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 911.344 is amended by revising the section heading, (a) introductory text, and paragraphs (a)(2) and (b) to read as follows:

§ 911.344 Florida lime grade and size regulation.

(a) No handler shall handle any variety of limes grown in the production area unless:

* * * * *

(2) Such limes of the group known as seedless, large-fruited, or Persian limes (including Tahiti, Bearss, and similar varieties) grade at least U.S. Combination, Mixed Color: *Provided*, that at least 75 percent, by count, of the limes in the lot meet the requirements of the U.S. No. 1 grade, and the remainder meet the requirements of the U.S. No. 2 grade; *provided further*, That stem length shall not be considered a factor of grade; *provided further*, That such limes not meeting these requirements may be handled within the production area, if they meet the minimum juice content requirement of at least 42 percent by volume specified in the United States Standards for Grades of Persian (Tahiti) Limes, if they meet the minimum size requirements specified in paragraph (a)(3) of this section, and if they are handled in containers other than those authorized in § 911.329.

* * * * *

(b) Terms relating to grade and diameter shall mean the same as defined in the United States Standards for Grades of Persian (Tahiti) Limes (7 CFR 51.1000 through 51.1016).

Dated: July 6, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-16274 Filed 7-11-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 927

[Docket No. FV-89-068]

Proposed Expenses and Assessment Rate for Marketing Order Covering Winter Pears Grown in Oregon, Washington, and California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order 927 for the 1989-90 fiscal year established for that order. The proposal is needed for the Winter Pear Control Committee (Committee) to incur operating expenses during the 1989-90 fiscal year and to collect funds during that year to pay those expenses. This would facilitate program operations. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by July 21, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during the regular business hours.

FOR FURTHER INFORMATION CONTACT: Patrick, Packnett, Marketing Order Administration Branch, Fruit and Vegetable Divison, AMS, USDA, P. O. Box. 96456, Room 2525-S, Washington, DC 20090-6456, telephone 202-475-3862.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement and Marketing Order No. 927 [7 CFR Part 927] regulating the handling of winter pears grown in Oregon, Washington, and California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business of subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility

There are approximatley 90 handlers of winter pears under this marketing order, and approximately 1,800 winter pear producers in Washington, Oregon, and California. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers of winter pears may be classified as small entities.

The winter pear marketing order, administered by the Department of Agriculture (Department), requires that the assessment rate of a particular fiscal year shall apply to all assessable pears handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The members of the Committee are handlers and producers of winter pears. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The Assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of pears (in standard boxes or equivalents). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. Recommended budgets and rates of assessment are usually acted upon by the Committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the Committee will have funds to pay its expenses.

The Budget Subcommittee, a subcommittee of the Winter Pear Control Committee, unanimously recommended proposed 1989-90 fiscal year expenditures of $3,991,464 and an assessment rate of $0.33 per standard box, or equivalent, of assessable pears shipped under M.O. 927. In comparison, 1988-89 fiscal year budgeted expenditures were $3,802,664 and the assessment rate was $0.30.

Major expenditure items this year in comparison to 1988-89 budgeted expenditures (in parentheses) are $3,440,400 ($3,112,660) for paid advertising, $79,643 ($320,191) for contingencies to cover unanticipated expenses, and $200,000 ($145,000) for research designed to improve winter pear yields and quality. The remaining expenses are primarily for program administration and are budgeted at about last year's amounts with the exception of a $24,000 increase in staff salaries.

Assessment income for the 1989-90 fiscal year is expected to total $3,784,440, based on shipments of 11,468,000 packed boxes of pears at $0.33 per standard box or equivalent. Other available funds, including $15,000 in prior year assessments, $20,000 in miscellaneous income, $82,500 in voluntary intrastate assessments, and a reserve of $89,524 carried into this fiscal year, will also be utilized to cover the proposed 1989-90 fiscal year expenditures. The Committee's reserves are within authorized limits.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approvals for the pear program need to be expedited and the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis.

The Winter Pear Control Committee plans to meet July 11, 1989, to finalize its recommendation for the proposed expenses and assessment rate for the 1989-90 fiscal year based upon a more accurate crop estimate.

List of Subjects in 7 CFR Part 927

Marketing agreements and orders, Winter pears, Oregon, Washington, and California.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 927 be amended as follows:

1. The authority citation for 7 CFR Part 927 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

1a. The heading for part 927 is revised as follows:

PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

2. New § 927.229, is added to read as follows:

§ 927.229 Expenses and assessment rate.

Expenses of $3,991,464 by the Winter Pear Control Committee are authorized, and an asessment rate of $0.33 per standard box, or equivalent, of pears is established for the fical year ending June 30, 1990. Unexpended funds from the 1989-90 fiscal year may be carried over as a reserve.

Dated: July 6, 1989

William J. Doyle,

Acting Deputy Director Fruit and Vegetable Division.

[FR Doc. 89-16275 Filed 7-11-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 947

[Docket No. FV-89-072]

Oregon-California Potatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order 947 for the 1989-90 fiscal period. Authorization of this budget would enable the Oregon-California Potato Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program would be derived from assessments on handlers.

DATES: Comments must be received by July 24, 1989.

ADDRESSES: Interested persons are invited to submit writtten comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone 202-447-5331.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 114 and Marketing Order No. 947 (7 CFR Part 947) regulating the handling of Irish potatoes grown in designated counties in Oregon and California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of Oregon-California potatoes under this marketing order, and approximately 470 potato producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The budget of expenses for the 1989-90 fiscal year was prepared by the Oregon-California Potato Committee (committee), the agency responsible for local administration of the order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of Oregon-California potatoes. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of potatotes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on June 9, 1989, and unanimously recommended a 1989-90 budget of $37,950 and an assessment rate of $0.004 per hundredweight, the same assessment rate of last year's. The proposed budget is $775 more than last year's due to increases in expenditures for committee expenses and for preparation of the annual report. The recommended assessment rate, when applied to anticipated fresh market potato shipments of 8,100,000 hundredweight, would yield $32,400 in assessment revenue which, when added to $5,550 from reserve funds, would be adequate to cover budgeted expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses. The 1989-90 fiscal period begins on July 1, 1989, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval of this program needs to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 947

Marketing agreements and orders, potatoes, Oregon and California.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 947 be amended as follows:

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIF., AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR Part 947 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 947.242 is added to read as follows:

§ 947.242 Expenses and assessment rate.

Expenses of $37,950 by the Oregon-California Potato Committee are authorized, and an assessment rate of $0.004 per hundredweight of potatoes is established for the fiscal period ending June 30, 1990. Unexpended funds may be carried over as a reserve.

Dated: July 6, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–16276 Filed 7–11–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 987

[Docket No. FV–89–069]

Proposed Expenses and Assessment Rate for Marketing Order Covering Domestic Dates Produced or Packed in Riverside County, California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order 987 for the 1989–90 crop year established for that order. The proposal is needed for the California Date Administrative Committee (Committee) to incur operating expenses during the 1989–90 crop year and to collect funds during that year to pay those expenses. This would facilitate program operations. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by August 11, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be available for public inspection in the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–475–3862.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 987 (7 CFR Part 987) regulating the handling of dates produced or packed in Riverside County, California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "nonmajor" rule under criteria contained therein.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 26 handlers of California dates regulated under this marketing order each season, and approximately 135 date producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The California date marketing order, administered by the Department of Agriculture (Department), requires that the assessment rate for a particular crop year shall apply to all assessable dates handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The members of the Committee are date handlers and producers. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of dates (in hundredweight). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses.

The Committee met on June 8, 1989, and unanimously recommended 1989–90 crop year expenditures of $361,460 and an assessment rate of $1.30 per hundredweight of assessable dates shipped under M.O. 987. In comparison, 1988–89 crop year budgeted expenditures were $394,500 and the assessment rate was $1.30 per hundredweight.

The major expenditure item this year is $325,000 for continuation of the Committee's market promotion program. The industry is faced with a serious oversupply of product dates and the Committee considers this program necessary to stimulate sales. The rest of the anticipated expenditures are for program administration and are budgeted at about last year's amounts with the exception of $5,400 budgeted for liability insurance for the Committee's officers and management.

Income for the 1989–90 season is expected to total $363,550. Such income consists of $362,050 in assessment revenue based on shipments of 27,850,000 pounds of dates and $1,500 in interest income.

The Committee also unanimously recommended that any unexpended funds or excess assessments from the 1988–89 crop year be placed in its reserve. The Committee's reserve is well within the maximum amount authorized under the order.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 987

Marketing agreements and orders, Dates, California.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 987 be amended as follows:

1. The authority citation for 7 CFR Part 987 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 987.334, is added to read as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

§ 987.334 Expenses and assessment rate.

Expenses of $361,460 by the California Date Administrative Committee are authorized, and an assessment rate of $1.30 per hundredweight of assessable dates is established for the crop year ending September 30, 1990. Unexpended funds from the 1988–89 crop year may be carried over as a reserve.

Dated: July 7, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–16327 Filed 7–11–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 989

[Docket No. FV–89–035PR]

Raisins Produced From Grapes Grown in California; Increase in Compensation Rate for Handlers' Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on increasing handlers' compensation for receiving, storing, fumigating, and handling reserve tonnage raisins acquired by handlers during a particular crop year and held for the account of the Raisin Administrative Committee (RAC) and also for reserve tonnage raisins held beyond the crop year of acquisition under the California raisin marketing order. Handlers' compensation for receiving, storing, fumigating, and handling reserve tonnage raisins would increase form $38.75 per ton to $40.00 per ton. Additional payment for receiving, storing, fumigating, and handling reserve tonnage raisins held beyond the crop year of acquisition would also be increased from $1.94 per ton to $2.00 per ton for each month of the three-month period ending November 30, and from $1.00 per ton to $1.03 per ton for each month of the next nine months. This action was recommended by the RAC, the agency responsible for local administration of the order. The proposed changes more closely reflect current industry costs.

DATES: Comments must be received by July 27, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection in the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Martha B. Ransom, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 989 (7 CFR Part 989), both as amended, regulating the handling of raisins produced from grapes grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation No. 1512–1 and has been determined to be a "non-major" rule under cirteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 23 handlers of raisins who are subject to regulation under the raisin marketing order and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of producers and a minority of handlers of California raisins may be classified as small entities.

This proposed rule invites comments on increasing handler compensation under the California raisin marketing order. This action would increase the rates at which handlers are paid for receiving, storing, fumigating, and handling reserve tonnage raisins and also for reserve tonnage raisins held by handlers beyond the crop year of acquisition for the account of the RAC. Both of these changes were recommended by the RAC.

The marketing order authorizes, for the total annual California raisin crop, the establishment of final free and reserve percentages for volume regulation purposes. Raisins in the reserve percentage category must be held by handlers in a reserve pool on handlers' premises for the account of the RAC. Currently, for example, handlers are free to market 70 percent of the Natural (sun-dried) Seedless raisins they receive and must hold 30 percent in reserve. This proposed rule would increase the compensation rate for receiving, storing, fumigating, and handling reserve tonnage raisins acquired by handlers during a particular crop year and held for the account of the RAC and for reserve tonnage raisins held by handlers beyond the crop year of acquisition for the account of the RAC. Since August 1, 1983, handlers have been compensated at a rate of $38.75 per ton for providing these services. Additional payment for reserve tonnage raisins held beyond the crop year of acquisition has been $1.94 per ton for each month of the three-month period ending November 30, and $1.00 per ton for each month of the next nine months.

The RAC conducted a survey among handlers on the cost of receiving, storing, fumigating, and handling the 1988–89 raisin reserve pool. The RAC determined that costs ranged from approximately $30.00 per ton to approximately $57.00 per ton. Therefore, the RAC recommended that the compensation rate be increased from $38.75 per ton to $40.00 per ton to more closely reflect increases in the costs for handlers to provide services on reserve pool raisins. In addition, the RAC

recommended that payment to handlers for reserve held beyond the end of the crop year be increased proportionately. Therefore, additional payment for reserve tonnage raisins held beyond the crop year of acquisition would be increased from $1.94 per ton to $2.00 per ton for each month of the three-month period ending November 30, and from $1.00 per ton to $1.03 per ton for each month of the next nine months.

Based on available information, the Administrator of the AMS has determined that issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

Interested persons are invited to submit their views and comments on this proposal. A 15-day comment period is deemed adequate because the changes, if adopted, should be in effect for the new crop year which begins on August 1.

List of Subjects in 7 CFR Part 989

California, Grapes, Marketing agreements and orders, Raisins.

For the reasons set forth in the preamble, 7 CFR Part 989 is proposed to be amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 989 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601–674.

Subpart—Schedule of Payments

2. Section 989.401 is amended by revising paragraphs (a)(1) and (b) to read as follows:

§ 989.401 Payments for services performed with respect to reserve tonnage raisins.

(a) *Payment for crop year of acquisition*—(1) *Receiving, storing, fumigating, and handling.* Each handler shall be compensated at a rate of $40.00 per ton (natural condition weight at the time of acquisition) for receiving, storing, fumigating, and handling the reserve tonnage raisins, as determined by the final reserve tonnage percentage, acquired during a particular crop year and held by the handler for the account of the Raisin Administrative Committee during all or any part of the same crop year.

(2) * * *

(b) *Additional payment for reserve tonnage raisins held beyond the crop year of acquisition.* Additional payment for reserve tonnage raisins held beyond the crop year of acquisition shall be made in accordance with this paragraph. Each handler holding such raisins for the account of the Committee on August 15 and the following September 1 shall be compensated for storing, handling and fumigating such raisins at the rate of $2.00 per ton per month, or any part thereof, for each month of the three-month period ending November 30, and $1.03 per ton per month, or any part thereof, for each month of the next nine months. Such services shall be completed so that the Committee is assured that the raisins are maintained in good condition.

* * * * *

Dated: July 6, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–16277 Filed 7–11–89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[INS Number: 1136–89]

RIN Number 1115–AB17

Appeals, Precedents, Certifications, and Motions

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule with request for comments.

SUMMARY: The Immigration and Naturalization Service proposes to clarify sections of its regulations on appeals, precedent decisions, certifications, and motions and to increase the time periods for submission of certain appeals and briefs. The purpose of the changes is to streamline the Service's review of certain decisions. The proposed changes would increase the number of complete appeals filed with any supporting briefs and make requirements easier to understand.

DATE: Comments must be received on or before August 11, 1989.

ADDRESS: Written comments should be submitted, in triplicate, to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, Room 2011, 425 I Street NW., Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Thomas W. Simmons, Chief, Administrative Appeals Unit, Immigration and Naturalization Service, 425 I Street, NW. (Vermont 400), Washington, DC 20536, (202) 376–2084.

SUPPLEMENTARY INFORMATION: The proposed rule would amend Immigration and Naturalization Service regulations on appeals and precedent decisions at 8 CFR 103.3, certifications at 8 CFR 103.4, and motions at 8 CFR 103.5. The Service believes the proposed changes would benefit the public because they would simplify the processing of appeals and certifications within the Service's jurisdiction, give the public more generous time periods to prepare certain cases for review after unfavorable decisions are made, consolidate into the regulations existing policies and procedures, and make the requirements and procedures easier for the public to understand. The Service also believes that 30 days is enough time to comment on the proposed changes since they are either procedural or editorial in nature.

Background

Review of Decisions

The immigration and nationality regulations state whether decisions under these regulations may be appealed and, if so, to which appellate body. The regulations also provide for other ways a decision may be reviewed. One way is for a case to be certified to another official for review. Another way is for a proceeding to be reopened or reconsidered as a result of a motion.

Appellate Bodies

There are two appellate bodies which consider cases under the Immigration and Nationality Act, the Board of Immigration Appeals (Board), under the Director, Executive Office for Immigration Review (EOIR), and the Administrative Appeals Unit (AAU), under the Associate Commissioner, Examinations. The Legalization Appeals Unit (LAU), a separate unit within the AAU, considers appeals provided for by the Immigration Reform and Control Act of 1986, Pub. L. 99–603. Cases under the Board's appellate jurisdiction are listed in 8 CFR 3.1(b). Cases under the Associate Commissioner's appellate jurisdiction are listed in 8 CFR 103.1(f)(2).

Discussion of Proposed Amendments

Filing AAU Appeal

Under current regulations at 8 CFR 103.3(a)(1), an AAU appeal in other than an LAU (special agricultural worker or legalization) case must be filed within 15 days of service of the decision. When the affected party desires additional time to submit a supporting brief, the request is made to the office which made the original decision. If additional time is granted, the affected party submits the brief to that office.

This procedure often delays forwarding the appeal case to the AAU. Furthermore, sometimes the brief does not arrive in the office which made the original decision before the case is sent to the AAU. In such a situation, the AAU normally writes to the affected party to request a copy of the brief.

Proposed 8 CFR 103.3(a)(2) would allow AAU appeals in other than LAU cases to be filed within 30 days of the date of the decision. The new time period would be from the date of the notice, not the date of service of the notice, because the former is far easier to determine. Requests for additional time to submit a brief would be made directly to the AAU. The AAU could allow additional time for good cause shown.

The proposed change would allow more time to submit complete appeals including any supporting briefs and expedite the movement of appeal cases to the AAU. The 30-day appeal period would be consistent with the time now allowed for LAU appeals.

Improperly Filed AAU Appeal

Under current Service procedures on non-LAU cases, an AAU appeal filed by a person not entitled to file it (for example, the beneficiary of a sixth preference petition instead of the petitioner) must be rejected. If an appeal is filed by an attorney or representative without a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G–28) entitling that person to file the appeal, the appeal is to be returned to that person for submission of such a form, if applicable.

Similarly, an untimely appeal must be rejected as improperly filed. However, if an untimely appeal meets the requirements of a motion, it is to be treated as a motion.

Proposed 8 CFR 103.3(a)(2)(ii) is based on the above existing procedures regarding improperly filed appeals. Under current procedures, any fee which the Service has accepted is to be refunded when an improperly filed appeal is rejected. The proposed regulations, on the other hand, provide that the fee would not be refunded in such a case. The Service has significant handling costs even when an appeal is rejected. Further, refund of the fee is time-consuming for the Service and is, therefore, inappropriate when a member of the public has caused the error. This is consistent with the current "fee for filing" approach.

AAU Appeal Treated as Motion When Favorable Action Taken

Existing Service operations instruction 103.5(d) and the Service's "Examinations Handbook" provide that a field office treat an appeal from denial of an application or petition which is still in that office as a motion to reopen or reconsider if favorable action is taken. Proposed 8 CFR 103.3(a)(2)(iii) would provide regulatory authority for such a procedure with respect to AAU appeals in other than LAU cases.

Under the proposal, this procedure for treating an appeal as a motion would also apply to cases other than those involving applications and petitions. The proposal provides further that, if the affected party moves to a new jurisdiction, the case must be forwarded to the official who has jurisdiction for appropriate action.

The proposal contains the additional provision allowing the official having jurisdiction over the original decision to take favorable action within 45 days of receipt of the appeal. Otherwise, under proposed 8 CFR 103.3(a)(2)(iv), the appeal is to be forwarded to the AAU for consideration. The proposed 45-day requirement is similar to the current requirement in Board and LAU cases.

AAU Review of Appeals

Current 8 CFR 103.3(b) provides for dismissal of appeals when the appellant does not specify the reasons for the appeal or the appeal is "patently frivolous." This wording is not contained in the proposed regulations because the AAU considers the merits of all appeals.

Submission of Brief in Service Certification Proceedings

At present, Service regulations at 8 CFR 103.4(a) allow 10 days from receipt of a notice of certification within which to submit a brief. (There is an exception, however, in legalization cases, where 8 CFR 245a.2(r) allows 30 days from the date of service.) Under current procedures the brief must be submitted to the official who made the initial decision. Proposed 8 CFR 103.4(a)(2) would allow 30 days from the date of a notice of certification to a Service officer for submission of a brief. The brief would be submitted directly to the officer to whom it is certified. The affected party could, however, waive the 30-day period.

The more generous time period is reasonable since cases which are certified to another official often involve unusually complex or novel questions of law or fact. The new time period would be from the date of the notice for reasons previously stated. Submission of the brief, if any, directly to the official to whom the case is certified would expedite its movement.

Service Rejection of Deficient Motion

Proposed 8 CFR 103.5(a)(4) is based on the procedure described in the "Examinations Handbook" for the Service to reject deficient motions. A motion to reopen which does not state new facts to be proved and/or is not supported by affidavits or other evidence would be rejected as deficient. A motion to reconsider which does not state reasons for reconsideration would also be rejected.

The "Examinations Handbook" provides for refund of the fee when a motion is rejected. The proposed regulations, on the other hand, provide that any fee which has been accepted would not be refunded in such a case for reasons already explained about rejection of improperly filed appeals.

Even so, within 60 days of rejection of a motion, the Service would act on a previously deficient motion which has been corrected. No fee would be required in such a case as long as the filing fee has already been paid and accepted by the Service.

Submission of Motion

Current regulations at 8 CFR 103.5(a) state a motion must be submitted to the district director in whose district the proceeding was conducted. Proposed 8 CFR 103.5(a)(1)(ii)(F) would provide for submission of a motion to the Service office maintaining the record upon which the unfavorable decision was made. This change takes into consideration the fact that regional service centers now also house files.

Proposed 8 CFR 103.5(a)(1)(ii)(A) provides that a motion be signed. Proposed 8 CFR 103.5(a)(1)(ii)(B) provides that a motion addressed to a Service officer be submitted without any copies.

Decision Which May Be Unfavorable to Affected Party

In the current regulations at 8 CFR 103.5(a), when a Service officer is the moving party, a motion must be served on the affected party. The affected party has 10 days from the date of service within which to submit a brief. Under proposed 8 CFR 103.5(a)(5)(iii), the procedure would be the same when a Service officer files a motion in a proceeding within the jurisdiction of the Board or of an immigration judge.

Under proposed 8 CFR 103.5(a)(5)(ii), when a Service decision made as a result of a Service motion may be

unfavorable to the affected party, the affected party would be allowed 30 days from the date of the motion to submit a brief. The affected party could, however, waive the 30-day period. The more generous time period is consistent with new time frames being proposed in appeal and certification cases.

Other Proposed Amendments

Proposed 8 CFR 103.3(a)(1)(iii)(B) defines affected party for purposes of this regulation. Proposed 8 CFR 103.1(f)(1)(v) changes the title of the Chief of AAU to Director.

In addition, the current regulations have been amended to explain existing requirements and procedures more clearly. The following proposed amendments would give additional information to make various current requirements and procedures more understandable to the public:

- Proposed 8 CFR 103.3(a)(1)(ii) clarifies that certain unfavorable decisions in cases other than applications and petitions may be appealed. It also states which immigration and nationality regulations list the types of cases which may be appealed to the two appellate bodies.
- Proposed 8 CFR 103.3(a)(1)(iv) explains the function of the AAU.
- Proposed 8 CFR 103.4(a)(1) refers to the authority of the Director of the newly established National Fines Office to certify cases.
- Proposed 8 CFR 103.4(a)(6) and 103.5(a)(7) provide regulatory authority for granting oral argument before the AAU regarding certification proceedings and motions.
- Proposed 8 CFR 103.5(a)(5)(i) clarifies that when a Service decision made as a result of a Service motion is favorable to the affected party, the motion and the favorable decision are to be combined in one action.
- Proposed 8 CFR 103.5(a)(6) clarifies that a field office decision made as a result of a motion may be appealed to the AAU only if the original decision was appealable.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant economic impact on a substantial number of small entities. This is not a major rule as defined in Section 1(b) of E.O. 12992, nor does this rule have Federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Aliens, Authority delegation, Organization and functions.

Accordingly, Part 103, Chapter I of Title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for Part 103 is revised to read as follows:

Authority: 5 U.S.C. 522(a); 8 U.S.C. 1101, 1103, 1160, 1201, 1255a, 1303–1304, 1455; 31 U.S.C. 9701; E.O. 12356, 3 CFR, 1982 Comp., p. 166.

2. Section 103.1 is amended by revising paragraph (f)(1)(v) to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(f) * * *

(1) * * *

(v) Director, Administrative Appeals Unit, and

* * * * *

3. Section 103.3 is amended by removing paragraphs (d) and (e), by redesignating paragraph (a)(2) as paragraph (a)(3), by adding new paragraph (a)(2), and by revising paragraphs (a)(1), (b), and (c) to read as follows:

§ 103.3 Denials, appeals, and precedent decisions.

(a) *Denials and appeals*—(1) *General*—(i) *Denial of application or petition.* When a Service officer denies an application or petition filed under § 103.2 of this part, the officer shall explain in writing the specific reasons for denial. If Form I–292 (a denial form including notification of the right of appeal) is used to notify the applicant or petitioner, the duplicate of Form I–292 constitutes the denial order.

(ii) *Appealable decisions.* Certain unfavorable decisions on applications, petitions, and other types of cases may be appealed. Decisions under the appellate jurisdiction of the Board of Immigration Appeals (Board) are listed in § 3.1(b) of this chapter. Decisions under the appellate jurisdiction of the Associate Commissioner, Examinations, are listed in § 103.1(f)(2) of this part.

(iii) *Appeal*—(A) *Jurisdiction.* When an unfavorable decision may be appealed, the official making the decision shall state the appellate jurisdiction and shall furnish the appropriate appeal form.

(B) *Meaning of affected party.* For purposes of this section and §§ 103.4 and 103.5 of this part, "affected party" (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition. An affected party may be represented by an attorney or representative in accordance with Part 292 of this chapter.

(C) *Record of proceeding.* An appeal and any cross-appeal or briefs become part of the record of proceeding.

(D) *Appeal filed by Service officer in case within jurisdiction of Board.* If an appeal is filed by a Service officer, a copy must be served on the affected party.

(iv) *Function of Administrative Appeals Unit (AAU).* The AAU is the appellate body which considers cases under the appellate jurisdiction of the Associate Commissioner, Examinations.

(2) *AAU appeals in other than special agricultural worker and legalization cases*—(i) *Filing appeal.* The affected party shall file an appeal on Form I–290B. Except as otherwise provided in this chapter, the affected party must pay the fee required by § 103.7 of this part. The affected party shall file the complete appeal including any supporting brief at the office where the unfavorable decision was made within 30 days of the date of the decision.

(ii) *Improperly filed appeal*—(A) *Rejection of appeal filed by person or entity not entitled to file it.* An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

(B) *Appeal by attorney or representative without proper Form G–28.* If an appeal is filed by an attorney or representative without a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G–28) entitling that person to file the appeal, the appeal is considered improperly filed. Such an appeal must be returned to that person for submission of such a form, if applicable. The appeal may be considered properly filed as of its original filing date if it is resubmitted with a properly executed Form G–28 entitling that person to file the appeal. In such a case, no fee is required as long as the filing fee has already been paid and accepted by the Service.

(C) *Untimely appeal.* An appeal which is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded. However, if an untimely appeal meets the requirements of a motion to reopen as described in § 103.5(a)(2) of this part or a motion to reconsider as described in § 103.5(a)(3) of this part, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

(iii) *Appeal treated as motion when favorable action taken.* The official having jurisdiction at the office where the unfavorable decision was made shall review the appeal and decide whether or not favorable action is warranted. Within 45 days of receipt of the appeal, the reviewing official may treat the appeal as a motion to reopen or reconsider and take favorable action. If the affected party moves to a new jurisdiction, the case must be forwarded to the official who has jurisdiction for appropriate action.

(iv) *Forwarding appeal to AAU.* If the reviewing official does not take favorable action within the 45 days allowed or decides favorable action is not warranted, that official shall promptly forward the appeal and the relating record of proceeding to the AAU in Washington, DC.

(v) *Brief.* The affected party may submit a brief with Form I–290B.

(vi) *Additional time to submit a brief.* The affected party may make a written request to the AAU for additional time to submit a brief. The AAU may, for good cause shown, allow the affected party additional time to submit one.

(vii) *Where to submit supporting brief if additional time is granted.* If the AAU grants additional time, the affected party shall submit the brief directly to the AAU.

(viii) *Withdrawal of appeal.* The affected party may withdraw the appeal, in writing, before a decision is made.

(ix) *Decision on appeal.* The decision must be in writing. A copy of the decision must be served on the affected party and the attorney or representative of record, if any.

* * * * *

(b) *Oral argument regarding appeal before AAU*—(1) *Request.* If the affected party desires oral argument, the affected party must explain in writing specifically why oral argument is necessary. For such a request to be considered, it must be submitted within the time allowed for meeting other requirements.

(2) *Decision about oral argument.* The Service has sole authority to grant or deny a request for oral argument. Upon approval of a request for oral argument, the AAU shall set the time, date, place, and conditions of oral argument.

(c) *Service precedent decisions.* In addition to Attorney General and Board decisions referred to in § 3.1(g) of this chapter, designated Service decisions are to serve as precedents in all proceedings involving the same issue(s). Except as these decisions may be modified or overruled by later precedent decisions, they are binding on all Service employees in the administration of the Act. Precedent decisions must be published and made available to the public as described in § 103.9(a) of this part.

4. Section 103.4 is amended by revising paragraph (a) to read as follows:

§ 103.4 Certifications.

(a) *Certification of other than special agricultural worker and legalization cases*—(1) *General.* The Commissioner or the Commissioner's delegate may direct that any case or class of cases be certified to another Service official for decision. In addition, regional commissioners, regional service center directors, district directors, officers in charge in districts 33 (Bangkok, Thailand), 35 (Mexico City, Mexico), and 37 (Rome, Italy), and the Director, National Fines Office, may certify their decisions to the appropriate appellate authority (as designated in this chapter) when the case involves an unusually complex or novel issue of law or fact.

(2) *Notice to affected party.* When a case is certified to a Service officer, the official certifying the case shall notify the affected party using a Notice of Certification (Form I–290C). The affected party may submit a brief to the officer to whom the case is certified within 30 days of the date of the notice. If the affected party does not wish to submit a brief, the affected party may waive the 30-day period.

(3) *Initial decision.* A case within the appellate jurisdiction of the Associate Commissioner, Examinations, or for which there is no appeal procedure may be certified only after an initial decision is made.

(4) *Certification to AAU.* A case described in paragraph (a)(3) of this section may be certified to the AAU.

(5) *Appeal to Board.* In a case within the Board's appellate jurisdiction, an unfavorable decision of the Service official to whom the case is certified (whether made initially or upon review) is the decision which may be appealed to the Board under § 3.1(b) of this chapter.

(6) *Other applicable provisions.* The provisions of § 103.3(a)(2)(ix) of this chapter also apply to decisions on certified cases. The provisions of § 103.3(b) also apply to requests for oral argument regarding certified cases considered by the AAU.

* * * * *

5. Section 103.5 is amended by revising paragraph (a) to read as follows:

§ 103.5 Reopening or reconsideration.

(a) *Motions to reopen or reconsider in other than special agricultural worker and legalization cases*—(1) *When filed by affected party*—(i) *General.* Except where the Board has jurisdiction and as otherwise provided in Part 242 of this chapter, when the affected party files a motion, the official who has jurisdiction over the proceeding or who made the original decision may, for proper cause shown, reopen the proceeding or reconsider the prior decision.

(ii) *Filing requirements.* A motion may be accompanied by a brief. It must be—

(A) In writing and signed by the affected party or the attorney or representative of record, if any;

(B) In triplicate if addressed to the Board, in duplicate if addressed to an immigration judge, without any copies if addressed to a Service officer;

(C) Accompanied by the fee required by § 103.7 of this part;

(D) Accompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding;

(E) Addressed to the official who has jurisdiction over the motion; and

(F) Submitted to the office maintaining the record upon which the unfavorable decision was made for forwarding to the official having jurisdiction over the motion.

(iii) *Effect of motion or subsequent application or petition.* Unless the Service directs otherwise, the filing of a motion to reopen or reconsider or of a subsequent application or petition after an unfavorable decision does not stay execution of any decision in a case or extend a previously set departure date.

(2) *Requirements for motion to reopen.* A motion to reopen must—

(i) State the new facts to be proved at the reopened proceeding; and

(ii) Be supported by affidavits or other documentary evidence.

(3) *Requirements for motion to reconsider.* A motion to reconsider must—

(i) State the reasons for reconsideration; and

(ii) Be supported by any pertinent precedent decisions.

(4) *Deficient motion in Service case*—(i) *Motion to reopen.* A Service officer considering a motion to reopen shall reject a motion as deficient and not refund any filing fee the Service has accepted when the motion does not state the new facts to be proved or when it is not supported by affidavits or other documentary evidence.

(ii) *Motion to reconsider.* A Service officer considering a motion to reconsider shall reject a motion as deficient and not refund any filing fee the Service has accepted when the motion does not state the reasons for reconsideration.

(iii) *Correction of deficient motion.* If the affected party corrects the deficiency within 60 days of rejection of a motion, the Service officer having jurisdiction shall act upon the original motion and make a decision on the merits of the case. There is no fee for correction of a deficient motion within 60 days of its rejection as long as the filing fee has already been paid and accepted by the Service.

(5) *Motion by Service officer*—(i) *Service motion with decision favorable to affected party.* When a Service officer, on his or her own motion, reopens a Service proceeding or reconsiders a Service decision in order to make a new decision favorable to the affected party, the Service officer shall combine the motion and the favorable decision in one action.

(ii) *Service motion with decision which may be unfavorable to affected party.* When a Service officer, on his or her own motion, reopens a Service proceeding or reconsiders a Service decision, and the new decision may be unfavorable to the affected party, the Service officer shall give the affected party 30 days from the date of the motion to submit a brief. The officer may extend the time period for good cause shown. If the affected party does not wish to submit a brief, the affected party may waive the 30-day period.

(iii) *Proceeding within jurisdiction of Board or immigration judge.* When a Service officer is the moving party in a proceeding within the jurisdiction of the Board or of an immigration judge, a copy of the motion must be served on the affected party. The motion and proof of service must be filed with the official having jurisdiction. The affected party has 10 days from the date of service to submit a brief. This time period may be extended as provided in §§ 3.8(c) and 3.22(b) of this chapter.

(6) *Appeal to AAU from Service decision made as a result of a motion.* A field office decision made as a result of motion may be appealed to the AAU only if the original decision was appealable to the AAU.

(7) *Other applicable provisions.* The provisions of § 103.3(a)(2)(ix) of this chapter also apply to decisions on motions. The provisions of § 103.3(b) also apply to requests for oral argument regarding motions considered by the AAU.

* * * * *

Dated: April 17, 1989.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 89-16330 Filed 7-11-89; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD13 89-07]

Regatta; Richland, Washington, West Coast Outboard Championship Hydro Races

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the City of Richland, Washington, the Coast Guard is considering adopting Special Local Regulations for the Richland, Washington, 1989 West Coast Outboard Championship Hydro Races. The temporary regulation would permit the closure of a section of the Columbia River from Mile 337 to Mile 339 between the hours of 6:00 a.m. p.d.t. and 6:00 p.m. p.d.t. on Friday, Saturday, and Sunday, August 18, 19, and 20, 1989. This proposal is designed to promote the safety of life and property on navigable waters during the event.

DATES: Comments must be received on or before August 1, 1989.

ADDRESSES: Comments should be mailed to Commander, U. S. Coast Guard Group, 6767 N. Basin Avenue, Portland, Oregon 97217. The comments and other materials referenced in this notice will be available for inspection and copying at U. S. Coast Guard Group, 6767 N. Basin Avenue, Portland, OR 97217, Mount Adams Building, Room 3210. Normal office hours are between 7:15 a.m. and 3:45 p.m.; Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: BMC F.L. Casanova, Port Management Branch, U.S. Coast Guard Marine Safety Office, 6767 N. Basin Avenue, Portland, Oregon 97217, (503) 240-9319.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice CGD13 89-07 and the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information: The drafters of this notice are BMC F. L. Casanova, Project Officer, U. S. Coast Guard Group Portland, Oregon and Lt. Deborah Schram, Project Attorney, Thirteenth Coast Guard District Legal Office.

Discussion of Proposed Regulations: During the past two years, the City of Richland, Washington has served as the host city for the West Coast Outboard Championship Hydro Races. While these past races were highly successful, they demonstrated that some refinement and modifications are both necessary and desirable. One such refinement involves the control of boat traffic around and through the race course during both the preparatory activities and the actual race. The City of Richland and the race's sponsors, the Sunfest Association and the Seattle Outboard Association are now seeking Coast Guard assistance in maintaining traffic control by closing the affected section of the Columbia River, Mile 337 to 339 in Richland, Washington between the hours of 6:00 a.m. p.d.t. and 6:00 p.m. p.d.t. on Friday, Saturday, and Sunday, August 18, 19 and 20, 1989. The Coast Guard is proposing to promulgate Special Local Regulations governing the Richland, Washington West Coast Championship Hydro Races (33 CFR 100.35).

Economic Assessment and Certification: These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. These regulations will affect a short section of the Columbia River which experiences no commercial traffic. The regulations will be in effect for only three days and two of those days are Saturday and Sunday. The Coast Guard Patrol Commander will allow any commercial traffic to transit the area between races.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Regattas and Marine Parades.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposed to amend Part 100 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35T1302 is added to read as follows:

§ 100.35T1302 Richland, Washington 1989 West Coast Outboard Championship Hydro Races

(a) *Regulated area.* By this regulation, the Coast Guard will restrict general navigation on the waters of the Columbia River from River Mile 337 to River Mile 339 in Richland, Washington between the hours of 6:00 a.m. p.d.t. and 6:00 p.m. p.d.t. on Friday, Saturday, and Sunday, August 18, 19, and 20, 1989. This restricted area includes all waters between the above mile marks and is approximately 2 miles long.

(b) *Special local regulations.* (1) Persons or vessels (other than official vessels) shall not enter or remain in the regulated area described in paragraph (a) during the hours that this regulation is in effect. The Patrol Commander is empowered to control the movement of vessels in the regulated area described in paragraph (a) and the adjoining waters during the period this regulation is in effect.

(2) Patrol of the described area will be under the direction of Commander, Coast Guard Group Portland, who will designate a Patrol Commander. The Patrol Commander will be embarked on the Coast Guard vessel on scene. The Patrol Commander is empowered to forbid vessels or persons from entering the regulated area described in paragraph (a) of this section during the hours this regulation is in effect.

(3) A succession of sharp, short signals by whistle, siren, or horn from vessels patrolling the area under the direction of the Patrol Commander shall serve as a signal to stop. Vessels or persons signaled to stop shall comply with the orders of the patrol vessels; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(c) *Effective dates:* These regulations become effective on August 18, 19, and 20, 1989, from 6:00 a.m. p.d.t. to approximately 6:00 p.m. p.d.t.

Dated: June 13, 1989.

R. E. Kramek,

Rear Admiral, U. S. Coast Guard Commander, Thirteenth Coast Guard District, DOT-U.S. Coast Guard.

[FR Doc. 89-16258 Filed 7-11-89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Region II Docket No. 96; FRL-3614-4]

Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Revisions to the State of New Jersey Implementation Plan and Attainment Designations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is today announcing its proposed approval of the New Jersey Air Quality State Implementation Plan (SIP) for particular matter. On July 1, 1987, EPA promgulated new ambient air quality standards (NAAQS) for particulate matter which are based upon the measurement of particles having an aerodynamic diameter of 10 microns or less (PM_{10}). Consequently, states are required to develop plans which provide for attainment and maintenance of the new standards. The New Jersey statewide SIP revision demonstrates that the existing SIP for total particulate (TSP) is adequate to provide for attainment and maintenance of the PM_{10} standards.

This notice also announces EPA's proposed approval of a request from the State of New Jersey to revise the air quality TSP designation for areas in the following Air Quality Control Regions (AQCRs): New Jersey-New York-Connecticut Interstate AQCR; and Metropolitan Philadelphia Interstate AQCR. Specifically, this action means that the air quality in these locations will now be designated as "unclassifiable" with respect to particulate matter.

DATE: Comments must be received by August 11, 1989.

ADDRESSES: All comments should be addressed to: William J. Muszynski, P.E., Acting Regional Administrator, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York, 10278.

Copies of the state submittal are available at the following addressed for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 26 Federal Plaza, Room 1005, New York, New York 10278.

New Jersey Department of Environmental Protection, 401 East State Street, CN-027, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Mr. William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 26 Federal Plaza, Room 1005, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION:

I. Background

In 1971, EPA promulgated primary and secondary national ambient air quality standards (NAAQS) for particulate matter, measured as "total suspended particulate matter" or "TSP." The primary standards were set at 260 $\mu g/m^3$, 24-hour average not to be exceeded more than once per year, and 75 $\mu g/m^3$, annual geometric mean. The secondary standard, also measured as TSP, was set at 150 $\mu g/m^3$, 24-hour average not to be exceeded more than once per year. In accordance with sections 108 and 109 of the Clean Air Act (CAA), EPA has reviewed and revised the health and welfare criteria upon which the primary and secondary particular matter standards were based.

In a **Federal Register** notice published on July 1, 1987 (52 FR 24634), EPA announced its final decisions regarding changes to the particular matter standards. Specifically, (1) TSP was replaced as the indicator for determining attainment of particular matter standards by a new indicator that consists of measuring only particles with an aeodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}); (2) replacing the 24-hour primary standard with a 24-hour PM_{10} standards of 150 ug/m^3 with no more than one expected exceedance per year; (3) replacing the annual primary TSP standard with a PM_{10} standard of 50 $\mu g/m^3$, expected annual arithmetic mean; and (4) replacing the secondary TSP standard with 24-hour and annual PM_{10} standards that are identical in all respects to the primary standards.

The new PM_{10} indicator was selected since it includes all the particles small enough to cause the adverse health effects associated with breating particle-

laden air. These smaller particles are detrimental to human respiratory health due to their ability to penetrate the sensitive alveolar regions of the lung.

A. Group Designations

Because PM_{10} air quality data was lacking in most areas of the country, EPA could not arbitrarily designate areas of attainment/nonattainment. EPA then developed an analysis using historical ambient TSP data and any available PM_{10} data to classify all counties in the nation into one of three groups based upon the statistical probability of not attaining the new PM_{10} standards. EPA has classified the following: (1) Areas with a probability of not attainment the PM_{10} standard of at least 95 percent as "Group I," (2) areas with a prbability of not attaining the PM_{10} standard of between 20 and 95 percent as "Group II," and (3) areas with a probability of not attaining the PM_{10} standard of less than 20 percent as "Group III." All areas are currently conducting ambient monitoring to determine whether actual ambient PM_{10} concentrations are above or below the PM_{10} NAAQS.

B. SIP Revisions

For Group I areas, a State Implementation Plan (SIP) is required with sufficient PM_{10} control strategies included to demonstrate attainment and maintenance of the standard. For Group II areas, the state must submit a "committal" SIP that supplements the existing TSP SIP with enforceable commitments. Specifically, commitments include: plans to collect and analyze PM_{10} ambient air quality data; and report violations to the EPA Region II Office. For Group III areas, existing SIP documents are adequate but the SIP revision must include provisions for the Prevention of Significant Deterioration (PSD) and PM_{10} monitoring. A full SIP revision would be required for a Group II of Group III area if a monitoring site records four exceedances of the PM_{10} 24-hour standard over a three year period or less, or if the PM_{10} annual arithmetic mean is greater than 50 $\mu g/m^3$ based on three consecutive years of data.

Each SIP for particulate matter must be revised as follows: (1) To include state ambient air quality standards for PM_{10} at least as stringent as the NAAQS; (2) to trigger preconstruction review for new or modified sources which would emit significant amounts of either PM or PM_{10} emissions; (3) to invoke the emergency episode plan to prevent PM_{10} concentrations from reaching the significant harm level of 600 $\mu g/m^3$; (4) to meet ambient PM_{10} monitoring requirements of 40 CFR Part 58; and (5) to meet the requirements of 40 CFR 53.322 and 51.323 to report actual emissions of PM_{10} (beginning with emissions for calendar year (CY) 1988) for point sources emitting 100 tons per year or more.

II. SIP Content and Review

On May 31, 1988 the State of New Jersey submitted a SIP for PM_{10} which contains the following: (1) Current particulate air quality data for the two Group II urban areas of Camden and Jersey City; (2) description of existing and proposed PM_{10} monitoring networks for the entire State; (3) air quality control of particulate matter under existing regulations and controls; (4) PSD from new sources and modifications and; (5) additional commitments for the two urban areas of Camden and Jersey City including an exceptional event study at the PJP landfill on August 23, 1985 in Jersey City. In New Jersey, EPA has designated Camden and Jersey City as Group II areas. The rest of the State is designated as Group III.

A. Monitoring

Since 1983, EPA has been assisting in and encouraging states to develop PM_{10} monitoring networks. As a result, New Jersey has PM_{10} instruments operating at 16 monitoring sites where TSP concentrations had historically been high and/or where local emission sources contribute to PM_{10} concentrations. The following sampling frequencies are being observed for the different areas in New Jersey: (1) Group II areas require for one year or its equivalent, every other day PM_{10} sampling at the site of maximum concentration with other sites on a six day sampling schedule and; (2) for Group III area, PM_{10} monitoring is in a sixth day schedule at any site.

B. Pre-Construction Review, New Source Review (NSR) and Prevention of Significant Deterioration (PSD)

New source review in TSP nonattainment areas will continue to be covered under the New Jersey Air Pollution Control Act (New Jersey Statutes Annotated (N.J.S.A.) 26:2c-1 et. seq.) (Attachment 5 of State Submittal). This provides the authority to require permits to construct, install or alter control apparatus. Also, the applicant must demonstrate, to the satisfaction of the New Jersey Department of Environmental Protection (NJDEP), that the equipment incorporates advances in the art of air pollution control developed for the kind and amount of air contaminant emitted.

NJDEP has promulgated regulations under Title 7, Chapter 27 of the New Jersey Administrative Code (N.J.A.C.), to address the control of particulate emissions from activities and source operations (see attachments 6 through 15 of the State submittal). In enforcing the state-of-the art requirement, NJDEP requires emission rates which are at least as stringent as the EPA definition of "best available control technology." N.J.A.C. 7:27-8 requires a new permit for new modified sources regardless of the magnitude of the emission increase. Therefore, an increase which may be defined as "significant" is regulated by the NSR/PSD program regardless of whether it is TSP or PM_{10}.

With respect to PSD, EPA has delegated authority to NJDEP to enforce the federal PSD program. Once TSP areas have been designated as attainment or unclassifiable, all new or modified construction at a major facility must conform to PSD review. TSP increments will continue to be used under PSD review until new PM_{10} increments are established. The emission limits which are assumed to protect the NAAQS in the Group III areas are cited in N.J.A.C. 7:27-4 and 7:27-6. Additionally, N.J.A.C. 7:27-13, "Ambient Air Quality Standards," (Attachment 13 of the State submittal) has been revised to incorporate the PM_{10} standards.

C. Regulations and Consent Orders

The State of New Jersey is maintaining all existing regulations and/or consent orders which pertain to particulate control. However, regulations and/or consent orders are revised to include PM_{10} as the new NAAQS.

D. Annual National Emissions Data System (NEDS) Emissions Data Reporting

The state of New Jersey reports actual and/or allowable emissions data for point sources emitting 100 tons/year or more of any criteria pollutant each year. This information is entered by EPA into NEDS. In February, 1989, NJDEP staff has submitted a mail survey package to facilities with allowable total particulate matter (TPM) greater than 100 tons per year (TPY). The plant operators will be required to provide to NJDEP speciated particulate emissions to quantify both TPM emissions and PM_{10} emissions. The end product of the survey (to be completed in August, 1989) will be an inventory of point source allowable and actual TPM emissions, and an inventory of point source allowable and actual

PM_{10} emissions starting with calendar year 1988.

E. Changes to State Emergency Episode Plans

The purpose of air pollution episode levels and contingency plans is to prevent air pollution from reaching the "significant harm levels" prescribed in the Code of Federal Regulations (40 CFR 51.151). The prevention and control of air pollution emergency episodes is regulated by N.J.A.C. 7:21-12 and Administrative Order Number Thirty-Eight (Attachments 12 and 23 of the State submittal).

F. Group II Areas—Camden, Camden County and Jersey City, Hudson County

Based on monitored data collected in the City of Camden since May 1, 1985 and in Jersey City since January 13, 1987, EPA has classified these two areas as Group II PM_{10} areas. Consequently, New Jersey has committed to the requirements for Group II areas as stated in the July 1, 1987 notice (52 FR 24681).

(1) PM_{10} Monitoring for New Jersey Group II and Group III Areas

The New Jersey Department of Environmental Protection (NJDEP) has committed resources for the demonstration of the attainment status of the two Group II areas and for the demonstration of maintenance of the PM_{10} NAAQS in the Group III areas in New Jersey.

The attainment status of the Camden urban area will be determined based upon an every-six-day operating schedule in accordance with 40 CFR 58.113. PM_{10} monitoring was initiated at the Morris-Delair Water Treatment Plant, Pennsauken, Camden County, on May 1, 1985. As of December 31, 1988, an arithmetic mean of 35.6 $\mu g/m^3$ was recorded for the three year period.

The attainment status of the Jersey City urban area will be based upon an every-other-day operating schedule in accordance wtih 40 CFR 58.13. PM_{10} monitoring was initiated at the Newark Avenue site, Jersey City, Hudson County on January 13, 1987. As of December 31, 1988 an arithmetic mean of 38.0 $\mu g/m^3$ was recorded at the Newark Avenue site.

(2) The Identification of Air Quality Data Affected by an Exceptional Event at the PJP Landfill on August 23, 1985

NJDEP operates an inhalable particulate (IP) sampler on the roof of the Hudson County Safety and Health Department Building on Duncan Avenue in Jersey City. During the 1985 calendar year, 57 valid samples were collected at that site. On August 23, 1985 the site's sole exceedance of the 24-hour PM_{10} standard for the year, 306 $\mu g/m^3$, was recorded. On the same day, major hazardous site mitigation activities occurred at the PJP Landfill about 0.3 miles away.

In 1977, the PJP Landfill was closed after more than twenty years of operation. However, subsurface fires that were ignited during the mid-1950's continued to smolder. Efforts to extinguish these fires began in August, 1985. The remediation efforts involved the use of an experimental fire fighting foam which was applied to the landfill surface and injected into its subsurface. This was followed by the evacuation, dousing and compaction of the landfill material. After the fire was extinguished, PM_{10} readings at the Duncan Avenue site fell to where the arithmetic mean is 43.5 $\mu g/m^3$ as of December 31, 1988.

On January 28, 1988, NJDEP submitted an exceptional event study for the PJP Landfill and requested that EPA flag the August 23, 1985 reading as an exceptional event. On February 10, 1988, EPA Region II concurred that the long-burning fire at the PJP Landfill constitutes an exceptional event as defined in EPA's "Guidelines on the Identification and Use of Air Quality Data Affected by Exceptional Events" (EPA-450/4-86-007).

(3) Air Quality Control of Particulate Matter

EPA believes existing State regulation as well as both State and Federal Motor Vehicle Emissions Control Programs are sufficient to provide for attainment and maintenance of the PM_{10} standards in the Cities of Camden and Jersey City. Also, the control measures in the existing TSP SIP will continue to be enforced. For the Group II areas of Camden and Jersey City, upon declaring attainment of the NAAQS (within 37 months of promulgation of the standard), NJDEP will cite the federally enforceable emission limits in the existing TSP SIP assumed to protect the NAAQS and establish an emissions trading baseline. Also, for the Group III areas (the rest of the State) NJDEP will site the emission limits in the existing TSP SIP assumed to protect the NAAQS.

(4) Additional commitments for the Group II Areas of Jersey City and the city of Camden

The State of New Jersey has committed to the following:

i. Analyze and verify the ambient PM_{10} air quality data and report 24-hour PM_{10} exceedances to the EPA Region II office within 45 days of each exceedance. After an equivalent monitoring period (three years), analyze air quality data and determine the long term monitoring requirement and attainment status.

ii. Within 30 days of notification of a PM_{10} exceedance or within 30 months of promulgation of the PM_{10} standard, which ever comes first, determine whether the measures in the existing Camden or Jersey City TSP SIP will assure the timely attainment and maintenance of the primary PM_{10} standards and immediately notify EPA Region II.

iii. Within 6 months after notifying EPA Region II of a PM_{10} nonattainment problem, adopt a PM_{10} control strategy that assures attainment within three years from the approval date of the PM_{10} SIP revision for the Camden and Jersey City Group II areas.

(5) Schedule of Activities

The SIP revision shall demonstrate that both daily and annual NAAQS for PM_{10} will not be exceeded. In the City of Camden and Jersey City NJDEP will or has followed the following schedule for attainment demonstration:

—May 1, 1985, PM_{10} monitoring started at the Morris-Delair Water Treatment Plant, Camden County.

—December 31, 1988, monitoring period completed at the Camden site.

—March 31, 1989, attainment status determined for the Camden site.

—January 13, 1987, PM_{10} monitoring started at the Jersey City, Newark Avenue site.

—March 30, 1990, attainment status determined for the Jersey City site.

—August 30, 1989, TSP and PM_{10} actual and allowable emissions data prepared for the Jersey City and Camden areas.

G. Group III Areas

Based on monitored TSP data and some PM_{10} data, the entire State of New Jersey, outside of the City of Camden and Jersey City, is designated as Group III for PM_{10}. As such, EPA believes that the existing TSP SIP is adequate to demonstrate attainment and maintenance of the PM_{10} standard. The State of New Jersey, in its SIP revision, has committed to the monitoring and PSD requirements for Group III areas (see sections B and C of this notice). Any Group II or Group III area which subsequently observe violations of the PM_{10} NAAQS will be treated as a newly discovered non-attainment area. Thus, the State will submit a full control strategy which demonstrates attainment of the PM_{10} standard within three years.

BEST COPY AVAILABLE

The following AQCRs and AQMAs are designated as Group III for PM_{10} by EPA.

—Parts of the New Jersey-New York-Connecticut AQCR:
  —The City of Newark
  —The City of Elizabeth
  —The City of Linden
  —The Borough of Carteret
  —The Township of Woodbridge
  —The City of Perth Amboy
—Parts of the Philadelphia AQCR (not including Camden)
—New Jersey Interstate AQCR
—Northeast Pennsylvania-Upper Delaware Valley Interstate AQCR

H. Other Administrative Requirements

As part of the public notification process, the State of New Jersey published a notice announcing the availability of the SIP revision in the New Jersey Register on July 29, 1988 and requested comments.

While EPA believes that the State did provide adequate opportunity for public comments, EPA regulations require the State to provide an opportunity for a public hearing. Therefore, the State has been notified that they must provide interested individuals an opportunity to comment and request a public hearing if they have substantial negative comments concerning the proposed approval of this SIP revision. These individuals would have to request this public hearing in writing and provide the basis to support their negative position.

In addition, EPA is providing an opportunity to submit written comments on the proposed SIP revision to the address at the beginning of this notice. All comments shall be considered before a final rulemaking action is taken on this SIP revision.

III. Designation of Areas for Air Quality Planning Purposes; Revision to Section 107 Attainment Status Designations for the State of New Jersey

A. Background

Section 107(d) of the Clean Air Act, 42 U.S.C. 7407(d), directs each state to submit to the Administrator of the EPA a list of NAAQS attainment status designations for all areas within the state. EPA received such designations from the states and promulgated them on March 3, 1978 (43 FR 8962). Pursuant to 52 FR 24682 in the July 1, 1987 **Federal Register**, states are encouraged to request the redesignation of TSP nonattainment areas to unclassifiable at the time the PM_{10} control strategy for the area is submitted. When EPA approves the control strategy as sufficient to attain and maintain the PM_{10} NAAQS, it will also approve the redesignation.

Since the State of New Jersey made revisions to the SIP for particulate matter that enable the State to protect the NAAQS for particulate matter having a nominal aerodynamic diameter of 10 microns (PM_{10}), EPA will redesignate TSP Primary or Secondary nonattainment areas in the following AQCRs to unclassifiable:

—New Jersey-New York-Connecticut Interstate AQCR:
  —Hudson County
  —The City of Newark
  —The City of Elizabeth
  —The City of Linden
  —The Borough of Carteret
  —The Township of Woodbridge
  —The City of Perth Amboy
—Metropolitan Philadelphia Interstate AQCR:
  —The City of Camden

One significant result of EPA's rulemaking is that states will no longer be required to subject major new and modified sources of particulate matter to the nonattainment requirements under Part D of the Clean Air Act. That is, because EPA is implementing the PM_{10} NAAQS in accordance with section 110 of the Clean Air Act and will not promulgate any attainment area designations (pursuant to section 107 of the Clean Air Act) for PM_{10}, the nonattainment area NSR requirements contained in paragraph (a) of section 51.165 will not apply to PM_{10}. Furthermore, in light of EPA's delegation of the TSP indicator for the NAAQS, EPA no longer requires states to implement TSP nonattainment area NSR requirements based on Part D of the Clean Air Act.

IV. Conclusion

TSP concentrations in the State of New Jersey are predominantly influenced by combustion sources and motor vehicles. Combustion sources are controlled by State regulations through NJDEP's system while the State and Federal Motor Vehicle Control programs limit motor vehicle emissions. Since a large percentage of the particles that are being controlled by these programs have emissions that are less than 10 microns, existing controls and strategies are considered adequate for controlling and maintaining the PM_{10} standard in New Jersey. Air quality has improved in Jersey City after extinguishing the subsurface fires at the PJP Landfill and PM_{10} air quality data indicates that this area as well as the City of Camden should attain and maintain the PM_{10} standards without any new regulations. EPA is soliciting public comments on this notice and on issues relevant to EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the address at the beginning of this notice.

The revisions are being processed under a procedure called "parallel processing" (47 FR 27073). If the proposed revisions are substantially changed in the areas other than those identified in this notice, EPA will publish a revised notice of proposed rulemaking. If no substantial changes are made other than those areas identified in this notice, EPA will publish a notice of final rulemaking on the revisions. The final rulemaking action by EPA will occur only after the SIP revisions have been adopted by the State of New Jersey and submitted to EPA for incorporation into the SIP.

This notice is issued as required by section 110 of the Clean Air Act, as amended. The Administrator's decision regarding the approval of this plan is based on its meeting the requirements of section 110 of the Clean Air Act, and 40 CFR Part 51. Under 5 U.S.C. Section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, particulate matter.

List of Subjects in 40 CFR Part 81

Air pollution control, National Parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7642.

Date: June 29, 1989.

William J. Muszynski,

Acting Regional Administrator, Environmental Protection Agency.

[FR Doc. 89–16348 Filed 7–11–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 60

[AD–FRL–3614–7]

Standards of Performance for New Stationary Sources; Small Industrial-Commercial-Institutional Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Change in date of public hearing and extension of public comment period.

SUMMARY: Standards of performance which would limit emissions of sulfur dioxide (SO_2), particulate matter (PM), and nitrogen oxides (NO_x) from new, modified, or reconstructed small industrial-commercial-institutional steam generating units with heat input capacities of 29 MW (100 million Btu/hour) or less, but greater than or equal to 2.9 MW (10 million Btu/hour) were proposed in the **Federal Register** on June 9, 1989 (54 FR 24792). The public hearing was scheduled for July 17, 1989, and comments were to be received on or before August 17, 1989. A request has been made to postpone the public hearing to allow more time for preparation of comments. Therefore, the public hearing has been rescheduled for August 8, 1989, and all comments must be received on or before September 8, 1989.

DATES: *Comments.* Comments must be received on or before September 8, 1989.

Public Hearing. A public hearing will be held on August 8, 1989, beginning at 10:00 a.m. Assistance will be available for persons with hearing impairments.

Request to Speak at Hearing. Persons wishing to present oral testimony must request to speak at the public hearing by August 1, 1989.

ADDRESSES: *Public Hearing.* The public hearing will be held at the EPA's Office of Administrative Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Ann Eleanor, Standards Development Branch (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5578.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Copland [(919) 541–5265] or Mr. Fred Porter [(919) 541–5251], Standards Development Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711.

Date: July 7, 1989.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 89–16347 Filed 7–11–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 82

[FRL–3575–3]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed revisions to rule.

SUMMARY: Today's notice proposes several amendments to EPA's August 12, 1988 rule (53 FR 30566) implementing the Montreal Protocol on Substances that Deplete the Ozone Layer. These amendments are needed to conform EPA's rule with recent agreements reached by the Parties to the Montreal Protocol concerning the implementation of the Protocol. The first proposed amendment implements the Parties' interpretation of "industrial rationalization", a term in the control article of the Protocol. According to the Parties' interpretation, a Party can only increase its production of controlled substances by specified amounts if there is a documented, corresponding decrease in production by another Party, or if the increase in production is exported to Parties operating under Article 5 of the Protocol (In today's notice, the Agency proposes Appendix E, "Article 5 Parties", developing countries that are Party to the Protocol and have a per capita consumption of less than .3 kg.). EPA's current rule, however, allows an increase up to the production limits for exports to *any* Party. The second proposed amendment, also based on an agreement reached by the Parties, expands the definition of exports to include used and recycled controlled substances. The Agency also proposes to grant additional allowances or credits to any person who uses controlled substances as a feedstock for other substances. The proposed amendments detail the necessary reporting and recordkeeping requirements. The current rule only grants such allowances to the person who produces and then consumes the controlled substance as a feedstock.

Finally, the Agency proposes a new record keeping requirement for producers of controlled substances. The proposal requires producers to maintain records of the date and estimated quantity of any spills or releases of controlled substances.

DATES: A public hearing on the proposed rule published today will be held on July 27, 1989, if any interested party notifies EPA before that date that it wishes to present oral testimony. To request a public hearing or to learn whether and where a public hearing will occur, call the contact person listed below. Written comments on this proposed rule must be submitted to the location listed below by August 11, 1989. If a public hearing is held, information necessary to rebut or supplement oral testimony may be submitted until August 28, 1989.

ADDRESS: Written comments should be sent to Docket No. A–87–20 (Amendments), Air Docket, Room M–1500 Waterside Mall, 401 M Street, SW., Washington, DC 20460. The docket may be inspected between 8:30 a.m. and 12:00 p.m. and between 1:30 p.m. and 3:30 p.m. on weekdays. As provided in CFR Part 2, a reasonable fee may be charged for photocopying. To expedite review, it is also requested that a duplicate copy of written comments be sent to David Lee at the address listed below.

Three of these amendments increase recordkeeping and reporting for affected persons. Persons who desire to trade rights to produce controlled substances with a Party to the Protocol for the purposes of industrial rationalization must submit a report documenting the agreement with the Party. Any person who desires to receive production and consumption allowances for the use of purchased controlled substances as feedstock must also submit a report documenting the consumption of controlled substances as well as maintain records. Finally, producers must maintain records of any spills of controlled substances that would count toward production.

FOR FURTHER INFORMATION CONTACT: David Lee, Analyst, Office of Atmospheric and Indoor Air Programs, Division of Global Change, Office of Air and Radiation (ANR–445), EPA, 401 M Street, SW., Washington, DC 20460, Telephone (202) 475–7497.

SUPPLEMENTARY INFORMATION: Last August, EPA promulgated a final rule to limit the production and consumption of certain chlorofluorocarbons (CFCs) and brominated compounds (halons) to reduce the risks of stratospheric ozone depletion. The rule requires a near-term freeze at 1986 levels of production and consumption (defined as production plus imports minus exports) of CFC–11, –12, –113, –114, and –115 based on their relative ozone depletion weights, followed by a phased reduction to 80 percent and 50 percent of 1986 levels beginning in mid-1993 and mid-1998, respectively. It also limits production and consumption of Halon 1211, 1301, and 2402 to 1986 levels beginning as early as 1992. Under specified circumstances, limited increases in production (but not consumption) above these levels would be permitted.

This rule was promulgated under section 157(b) of the Clean Air Act and constituted the United States' implementation of the Montreal Protocol, which the United States ratified on April 21, 1988. The final rule's control measures took effect when the Protocol entered into force on January 1, 1989.

The rule implements the Protocol's requirements to control production and consumption of the CFCs and halons

specified above by allocating production and consumption allowances to firms that produced and imported these chemicals in 1986, based on their 1986 levels of these activities.

Today the Agency proposes to amend several sections for this final rule. Several of these amendments are based on recent agreements concerning implementation of the Montreal Protocol reached by nations that are Parties to the Protocol at their first meeting in Helsinki, Finland, during the week of May 1.

The first amendment concerns the Parties' interpretation of Article 2 of the Montreal Protocol. Article 2 allows increases in production of both groups of controlled substances by as much as 10 percent, and 15 percent for CFCs after July 1, 1986, if that production is used to satisfy "the basic domestic needs" of developing countries or "for the purposes of industrial rationalization". Industrial rationalization is defined by the Protocol as "the transfer of all or a portion of the calculated level of production of one party to another, for the purposes of achieving economic efficiencies or responding to anticipated shortfalls in supply as a result of plant closures."

In its final rule, EPA interpreted the term "industrial rationalization" to mean trade in controlled substances between Parties. The Agency believed that the trading provisions of the Protocol created a "bubble" of controlled substance production. If one Party increased its production by 10 or 15 percent, it would have to export that production to other Parties or decrease its imports from Parties in order to comply with its consumption limits. The Party that imported the increased production would, in turn, have to decrease its own production, or export it to another Party. Since, under the Montreal Protocol, Parties' consumption limits are held constant while their production may rise somewhat, any increase in production by one Party would have to be offset by a decrease in production by another Party or Parties. Therefore, the Agency believed that exporting to Protocol Parties was tantamount to a transfer of production, and that the conditions of industrial rationalization had been met. Consequently, EPA promulgated a final rule that allowed companies to increase production up to the 10 and 15 percent limits specified in the Protocol if the exports were made to Parties.

The first meeting of the Parties was held May 2–5, 1989 in Helsinki, Finland. The Parties met in part to resolve outstanding issues related to implementation of the Montreal Protocol. At the meeting, the Parties determined that the term "industrial rationalization" means a documented transfer of production rights, requiring a Party desiring to increase its production "for the purposes of industrial rationalization" to obtain the agreement of another Party to decrease its production by the same amount. To comply with the Parties' interpretation of industrial rationalization, and to ensure internationally consistent implementation of the terms of the Montreal Protocol EPA proposes to amend its final rule to require any person seeking to increase its production for the purposes of industrial rationalization to obtain and document the agreement of another Party to offset that increase.

Specifically, EPA proposes to modify two sections of the final regulation. The Agency proposes to amend § 82.9(c) under which a person may obtain authorization to convert potential production allowances to actual production allowances, or reduce his available production allowances to the extent he provides a documented transfer of production. To document a transfer from a Party, a person must obtain a written statement from the Party's U.S. embassy that the Party agrees to reduce its production allowances by the calculated level of the production to be transferred. To document a transfer to a Party, a person must obtain a written statement from the Party's U.S. embassy acknowledging that the Party has agreed to the transfer. For transfers to a Party for the purposes of industrial rationalization, the Agency will review the transfer request and approve the transfer if the company has sufficient allowances to trade. In today's notice the Agency requests comments on whether there is a need to consider other factors such as the transfer's potential impact on the domestic economy, U.S. trade and the environmental implications. All transfer requests must include the requisite document from the embassy, the name and address of the person submitting the request and his contact, the name and address of the Party involved in the transfer and its contacts, the amount of allowable authorization to convert requested or production transferred, and the control periods to which the transfer applies.

In addition, the Agency will also amend § 82.11 to state that authorizations to convert potential production allowances will also be granted upon proof of exports to Parties operating under Article 5 of the Protocol and listed in proposed Appendix E to EPA's regulations.

The Agency also proposes Appendix E, "Article 5 Parties". The countries that are listed in Appendix E are (1) Parties to the Protocol, (2) developing countries agreed to by the Parties, and (3) are believed by the United Nations Environmental Programme (UNEP) to have an annual per capita consumption of controlled substances of less than .3 kilograms. UNEP has not received consumption figures from all Parties that are developing countries. The Agency believes that it is necessary to publish this proposed list, based on the most recent information from UNEP, for comment so that affected persons may take advantage of the provisions of the final rule that allow increased production for exports to Article 5 Parties as soon as possible. The Agency believes that this proposed list is not likely to change after UNEP has received all consumption figures from all Parties.

EPA also proposes today to expand the definition of exports to include controlled substances that are either used or recycled (§ 82.3 (h)). In the final rule published last August, EPA excluded recycled and used control substances from the definition of exports, excluded exports of such substances from the reporting requirements and precluded exporting companies from claiming additional consumption allowances under § 82.10 and authorization to convert under § 82.11 for exports of such substances. The Agency was concerned at that time that defining exports to include recycled and used controlled substances along with virgin controlled substances would risk U.S. noncompliance with the Protocol. Since the Agency's rule defines production to exclude recycled controlled substances, firms could recycle those substances without expending production and consumption allowances. However, if export is defined to include recycled substances, on exporting the recycled substances firms would receive authorization to convert potential production allowances in the amount of the recycled substances exported. Thus, as a result of exporting recycled substances for which no production and consumption allowances were expended, firms would realize a net increase in production allowances (up to the 10 or 15 percent limit on potential production allowances) and consumption allowances. They could then use these additional allowances to produce or import and sell domestically controlled substances in excess of the amount of the initial allocations authorized.

At their Helsinki meeting the Parties to the Protocol agreed that exports should be defined to include virgin and recycled or used controlled substances to facilitate recycling efforts by countries that do not have recycling facilities. The Parties' definition allows such countries to export their used controlled substances and then re-import the reprocessed or recycled controlled substance without expending consumption allowances or credits. The Parties stated that recycling is an important control option to limit the production of additional controlled substances and should be encouraged wherever possible.

The Agency proposes to amend the definition of exports to include recycled or used controlled substances in accordance with the agreement reached by the Parties in Helsinki. The Agency believes that the U.S. domestic program should be consistent with the internationally accepted definitions reached by agreement by the Parties. In this case, the expanded definition of exports benefits domestic recycling companies that intend to trade in used and recycled controlled substances.

The Agency further believes that defining exports under the U.S. rule to include recycled or used controlled substances will have no adverse effect on stratospheric ozone levels. Controlled substances produced, recycled and exported all in the same control period will not yield a net increase in consumption allowances since consumption allowances were expended and recouped in the same control period. Controlled substances produced, recycled and exported in different control periods will also not affect the ozone layer. A controlled substance eventually recycled could have been released or emitted during the control period when it was produced and when consumption allowances were expended for it. Instead, recycling results in the consumption or use (in the sense of emission) of a substance being transferred from the period it was produced to the period it was exported. Thus, the net effect on the environment would be zero since all that occurred was an inter-temporal transfer of consumption (or emissions) from one control period to another. Since the proposed change will have no adverse environmental effect, and since the Parties to the Protocol have agreed to this definition of exports, the Agency proposes to expand the definition of exports in its rule to include used or recycled controlled substances.

The Agency also proposes to amend the final rule to allow persons who consume or transform purchased controlled substances as feedstock for other substances to claim an allowance credit equal to the allowances expended for the production or importation of the transformed controlled substance (§ 82.9(e) and 82.10(c)). Currently only persons who produce and then consume the controlled substance in the production of other substances can deduct the amount of controlled substances from the allowance limits set by the final rule.

The Agency stated last August that tracking controlled substances produced and transformed by different persons would be administratively burdensome, and present verification problems for compliance or enforcement proceedings. Furthermore, the Agency could not resolve at the time whether the person who produced the controlled substance or the person who transformed the controlled substance should receive the credit. This issue was even more difficult to resolve where transformations involve controlled substances produced in another country. Last year, technical advisors to the Protocol meeting in Nairobi could not agree on which country should be granted credits in the case of transformation of feedstocks traded between countries.

At their meeting in Helsinki, the Parties resolved this issue and agreed that each Party could exclude from its production totals any manufactured controlled substance that is entirely used as feedstock. Based on this agreement, the Agency proposes to allow companies that use controlled substances as feedstock to claim allowance credits equal to the allowances that were expended to either import or produce these substances, regardless of who originally produced or imported the controlled substance.

The Agency proposes that any person that consumes as feedstocks for any substance, controlled substances it did not produce may request production and/or consumption allowances equal to the calculated level of the controlled substance used and consumed as feedstocks. To receive these allowances, a person must report the type and quantity of controlled substance transformed, the resulting product of the transformation, the quantity of the product transformed, and indicate that the product is used commercially. The person must also submit a copy of the invoice or receipt documenting the sale of the controlled substances that were transformed and such other information as may be necessary to trace the origin of the controlled substance. The Agency requires such information to verify and determine whether production and consumption allowances were expended for the domestic use of the controlled substance (For example, no allowances would have been expended for controlled substances produced before July 1, 1989.) and to verify that the controlled substance was transformed into another substance rather than destroyed. (Parties to the Protocol have not yet approved destruction technologies used to destroy controlled substances for the purposes of receiving production credit.) Such persons who do request additional consumption and production allowances must maintain dated records of the type and quantity of the controlled substance transformed, the quantity of the resulting product, and any shipping records that verify the sale of the resulting product (§ 82.13(h)).

After reviewing this information, the Agency will issue a notice granting additional consumption allowances for transformed controlled substances that were imported, or additional production and consumption allowances for transformation of controlled substances that were produced domestically. Granted allowances will equal the calculated level of the transformed controlled substance, and will only be valid for the control period in which the transformation occurred. Such allowances will entitle the holder to either produce or import additional controlled substances and may be traded to other persons.

The August 12 final rule already provides that producers of controlled substances may subtract from their production and consumption the calculated level of controlled substances produced by that company that are consumed as feedstocks. In accordance with the proposal that purchasers of controlled substances receive allowances for controlled substances that are consumed, the Agency is also proposing to allow producers of controlled substances who consume controlled substances produced by a different person to subtract that level of controlled substance from its calculated levels of production and consumption. The current wording of the record keeping and reporting requirements at § 82.13 (f)(2)(ii) and (f)(3)(i) is already broad enough to apply to all producers, whether or not the controlled substance used as feedstock was manufactured by that person. Therefore, in order to qualify for credit for the consumption of feedstocks, producers need to keep the records and make the reports required by §§ 82.13(f)(2)(ii) and 82.13(f)(3)(i) as well as proposed § 82.13(h).

Finally, the Agency proposes to add an additional recordkeeping requirement for producers of controlled substances (§ 82.13(f)(2)(vii)). In the final rule of last August, the Agency did not anticipate spills as releases or emission of controlled substances that may be excluded from the volume of produced controlled substance measured under typical accounting procedures by producers and reported to EPA. Indeed, spills could be a very sizeable emission of controlled substances to the atmosphere which may not be recorded under the current recordkeeping requirements. Although the Agency believes that there are financial incentives to minimize spills, EPA proposes that all producers maintain records of any spills or releases that occur up until shipment of the controlled substance, and that such spills be included in the measurement of production. The Agency requests comments on whether there is a need to specify within this recordkeeping requirement a "de minimis" volume of a spill below which the producers do not need to record.

Additional Information

1. Executive Order 12291

Executive Order (E.O.) 12291 requires the preparation of a regulatory impact analysis for major rules, defined by the order as those likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic industries; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of the United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

EPA determined that its August 12, 1988, final rule to protect stratospheric ozone met with the definition of a major rule, and therefore prepared a regulatory impact analysis (RIA). Since these amendments do not impose any significant burdens as defined by E.O. 12291, the RIA prepared for the final rule fulfills the executive order's requirement for these proposals.

2. Paperwork Reduction Act

Changes to the information requirements as proposed in today's notice have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1432.03) and a copy may be obtained by writing Carla Levesque, Information Policy Branch; EPA; 401 M Street SW. (PM-223); Washington, DC 20460 or by calling (202) 382-2468.

Public reporting burden for this collection of information is estimated to increase an average of 5 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Paperwork Reduction Project (2060-0170), Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

3. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-612, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of the agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b). EPA prepared an initial RFA in support of its final rule, and no additional RFA need be prepared for these amendments.

Date: June 30, 1989.

William K. Reilly,

Administrator.

PART 82—PROTECTION OF STRATOSPHERIC OZONE

For reasons set forth in the preamble, the Agency proposes to amend 40 CFR Part 82 as follows:

1. The authority citation for Part 82 continues to read as follows:

Authority: 42 U.S.C. 7157(b).

2. Section 82.3 is amended by revising paragraph (h) to read as follows:

§ 82.3 Definitions.

* * * * *

(h) "Export" means the transport of virgin, used or recycled controlled substances from inside the United States or its territories to persons outside the United States or its territories, excluding United States military bases and ships for on-board use.

* * * * *

3. Section 82.9 is amended by revising paragraph (c) and adding paragraph (e) to read as follows:

§ 82.9 Availability of production allowances in addition to baseline production allowances.

* * * * *

(c) A person may convert potential production allowances, either granted to him under paragraphs (a) and (b) of this section or obtained by him under § 82.12 (transfer of allowances), to production allowances only to the extent authorized by the Administrator under § 82.11 (Exports to Article 5 Parties) or under paragraph (c)(1) of this section. A person may obtain authorization to convert potential production allowances to production allowances by requesting issuance of a notice under § 82.11, by completing a transfer of authorization under § 82.12, or in accordance with paragraph (c)(1) of this section.

(1) A nation listed in Appendix B to this part (Parties to the Montreal Protocol) must agree to either transfer to the person at a specified time some amount of the calculated level of production that the nation is permitted under the Montreal Protocol or receive from the person at a specified time some amount of the calculated level of production that the person is permitted under this part. The person must obtain from the principal diplomatic representative in that nation's embassy in the United States a document clearly either stating that the nation agrees to reduce its allowable calculated level of production by the amount being transferred to the recipient for the control period(s) to which the transfer applies, or acknowledging that the nation has agreed to the transfer of the calculated level of production from the person. The person must submit to the Administrator a transfer request that includes a true copy of this paragraph and that sets forth the following:

(i) The identity and address of the person;

(ii) The identity of the Party;

(iii) The names and telephone numbers of contact persons for the person and for the Party;

(iv) The amount of allowable calculated level of production being transferred; and

(v) The control period(s) to which the transfer applies.

(2) After receiving a transfer request that meets the requirements of paragraph (c)(1) of this section, the Administrator will complete the following steps:

(i) Review any proposed transfer of production allowances to a Party and approve the transfer if the person holds a sufficient number of allowances to trade.

(ii) Issue the person a notice granting authorization to convert or deducting production allowances equivalent to the calculated level of production transferred, and specifying the control periods to which the transfer applies. The change in production allowances will be effective on the date that the notice is issued.

* * * * *

(e) A person who does not produce controlled substances may obtain production allowances equal to the calculated level of controlled substances produced by somebody else in the United States and that the person used and entirely consumed in the manufacture of other chemicals in accordance with the provisions of this paragraph. A request for production allowances under this section will be considered a request for consumption allowances under § 82.10(c).

(1) A person must submit a request for production allowances that includes the following:

(i) The identity and address of the person;

(ii) The name, quantity and calculated level of controlled substance used and entirely consumed in the manufacture of another chemical;

(iii) A copy of the invoice or receipt documenting the sale from the producer of the controlled substance to the person;

(iv) The name, quantity and verification of the commercial use of the resulting chemical.

(2) The Administrator will review the information and documentation submitted under paragraph (e)(1) of this section, and will assess the quantity of controlled substance that the documentation and information verifies were used and entirely consumed in the manufacture of other chemicals. The Administrator will issue the person production allowances equivalent to the calculated level of controlled substances that the Administrator determined were consumed. The grant of allowances will be effective on the date that the notice is issued.

4. Section 82.10 is amended by adding paragraph (c) to read as follows:

§ 82.10 Availability of consumption allowances in addition to baseline consumption allowances.

* * * * *

(c) A person who does not produce controlled substances may obtain consumption allowances equal to the calculated level of a controlled substance either produced in or imported into the United States by someone else that the person used and entirely consumed in the manufacture of other chemicals in accordance with the provisions of this paragraph.

(1) A person must submit a request for consumption allowances that includes the following:

(i) The identity and address of the person;

(ii) The quantity and calculated level of controlled substance used and entirely consumed in the manufacture of another chemical;

(iii) A copy of the invoice or receipt documenting the sale from the person or importer of the controlled substance to the person;

(iv) The name, quantity and verification of the commercial use of the resulting chemical.

(2) The Administrator will reveiw the information and documentation submitted under paragraph (c)(1) of this section, and will assess the quantity of controlled substance that the documentation and information verifies were used and entirely consumed in the manufacture of other chemicals. The Administrator will issue the person consumption allowances equivalent to the calculated level of controlled substances that the Administrator determined were consumed. The grant of allowances will be effective on the date that the notice is issued.

5. Section 82.11 is amended by revising the introductory text to read as follows:

§ 82.11 Exports to parties.

In accordance with the provisions of this section, any person may obtain authorization to convert potential production allowances to production allowances by exporting controlled substances to nations listed in Appendix E (Article 5 Parties). Authorization obtained under this section will be valid only during the control period in which the controlled substance departed the United States or its territories. A request for authorization under this section will be considered a request for consumption allowances under § 82.10 as well.

* * * * *

6. Section 82.13 is amended by adding paragraphs (f)(2)(vii) and (h) to read as follows:

§ 82.13 Recordkeeping and reporting requirements.

* * * * *

(f) * * *

(2) * * *

(vii) Records of the date and estimated quantity of any spills or releases of controlled substances.

* * * * *

(h) Every person who has requested additional production allowances under § 82.9(e) or consumption allowances under § 82.10(c), or producers who purchase controlled substances used or consumed as feedstock for other substances must maintain the following:

(i) Dated records of the quantity and calculated level of controlled substance used and entirely consumed in the manufacture of another chemical;

(ii) Copies of the invoices or receipts documenting the sale from the producer or importer of the controlled substance to the person;

(iii) Dated records of the names, commercial use and quantities of the resulting chemical(s); and

(iv) Dated records of shipments to purchasers of the resulting chemical(s).

7. Appendix E is added to read as follows:

Appendix E—Article 5 Parties

Egypt, Ghana, Kenya, Maldives, Mexico, Nigeria, Panama, Uganda, Jordan and Venezuela.

[FR Doc. 89-16208 Filed 7-11-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 5450 and 5460

RIN 1004-AB40

[AA-230-08-6310-02]

Award of Contract; General Sales Administration; General

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would amend provisions of the existing regulations in 43 CFR Part 5450—Award of Contract; General, and 43 CFR Part 5460—Sales Administration. The Department of the Interior has determined that it is necessary to amend existing regulations concerning timber sale contract performance bonds and payments to encourage responsible bidding at such a rate that the bidder, if awarded the contract, would be more able to perform the obligations under the contract.

DATES: Comment period expires September 11, 1989. Comments received or postmarked after this date may not be considered in the decision making process on the rulemaking.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, Department of the Interior, 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dave Estola (503) 231-6873 or Richard Bird (202) 653-8864.

SUPPLEMENTARY INFORMATION: The Federal Timber Contract Payment Modification Act of October 16, 1984 (Pub. L. 98-478) requires the Secretary of the Interior to take action to encourage responsible bidding. Bidding is considered responsible if it is at such a level that the bidder, if awarded the contract, would be able to perform the obligations required by its provisions. Further, the Act requires the Secretary to take action to reduce speculative bidding. In practice, the major action taken by the Secretary to address speculative bidding has been greater use of short-term contracts. Bids on short-term contracts reflect the current value of timber, whereas bidders on long-term contracts are more at the mercy of unanticipated unfavorable market conditions than are bidders on short-term contracts. Contracts bid since the 1984 Act are being completed on a timely basis.

Timber markets have improved with no commensurate increase in available timber, thus generating speculation. In response to this, a proposed rulemaking was published in the February 29, 1988, **Federal Register** (53 FR 6013). This rulemaking was designed to dampen speculative bidding and encourage the completion of future timber contracts by requiring an increase in the minimum performance bond for timber sale contracts having a bid ratio exceeding 1.25. The bid ratio is the quotient of the total bid price divided by the total appraised price, expressed as a decimal. The rulemaking also proposed removing the existing $500,000 cap on performance bonds and removing personal surety as a type of acceptable performance bond.

Comments on this proposed rule were received from 1 surety association, 1 surety management company, 3 forest industry associations, and 1 forest industry corporation. These comments uniformly expressed their concerns over the accuracy of bid ratios as a measure of speculative bidding and the equity of additional bonding as a means of ensuring completion of the timber sale contract. Three industry comments recommended retaining personal surety as an acceptable type of performance bond. One industry comment suggested the regulation should apply to both transaction evidence appraisals and analytical appraisals. With one exception, the comments uniformly supported the industry proposal to encourage responsible bidding on, and completion of, timber sale contracts by: (1) Requiring a first-anniversary 20 percent payment comprised of stumpage payments and/or the value of completed road construction, (2) retaining personal surety as an acceptable type of performance bond, and (3) permitting a 50 percent reduction in the performance bond when stumpage payments and/or the value of completed road construction equals or exceeds 50 percent of the contract purchase price.

The Department of the Interior has determined these comments to have merit and has incorporated them into a revised proposed rulemaking which would encourage early performance as a means of discouraging speculative bidding. In addition, personal surety would be retained as a type of acceptable performance bond. As stated before, contracts bid since 1984 are being completed in a timely manner. This has been partially due to the greater use of shorter term contracts. However, with the projection of increasing competition for timber, further measures are needed.

The elements of this new proposed rulemaking are as follows: (1) It would increase the cash deposit to one installment (10 percent of purchase price, limited to $50,000 for sales of $500,000 or more). It would hold one-half of the deposit to satisfy the final payment and release one-half of the deposit as specified in No. 4 below. (2) It would require payment of 20 percent of the total purchase price on the first anniversary of contracts 19 months in length or longer. The payment could be reduced by the value of completed road construction. (3) It would require payment of 40 percent of the total purchase price on the second anniversary of contracts 27 months in length or longer. The payment could be reduced by the value of completed road construction. (4) It would also permit a 50 percent reduction in the performance bond when 60 percent of the total purchase price has been reached through contract payments plus the value of completed road construction. In addition, at this 60 percent payment point, the aforementioned one-half of the cash deposit would be released and applied to subsequent payments.

The principal authors of the proposed rulemaking are Lyndon Werner, Division of Forestry, and David Estola, Oregon State Office, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule, and under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that it will not have a significant economic impact on a substantial number of small entities. Additionally, as required by Executive Order 12630, the Department has determined that the rulemaking would not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects

43 CFR Part 5450

Forests and forest products, Government contracts, Land Management Bureau, Public lands, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 5460

Forests and forest products, Government contracts, Land Management Bureau, Public lands.

Under the authority of section 5 of the Act of August 28, 1937 (43 U.S.C. 1181e), and the Act of July 31, 1947, as amended (30 U.S.C. 601 *et seq.*), Chapter II of Title 43 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 5450—[AMENDED]

1. The authority citation is revised to read as follows:

Authority: Sec. 5., 50 Stat. 875; 61 Stat. 681, as amended, 69 Stat. 367; 43 U.S.C. 1181e; 30 U.S.C. 601 *et seq.*

2. Section 5451.3 is revised to read as follows:

§ 5451.3 Performance bond reduction.

(a) As contract provisions are satisfactorily completed, the authorized officer may, in his discretion, reduce the amount of the required performance bond: *Provided, however,* That the amount of the performance bond shall not be reduced below the minimum required by § 5451.1 until

(1) payment of no less than 60 percent of the total purchase price has been made, or

(2) road construction required under the contract has been completed, the value of which when combined with contract payments is equal to no less than 60 percent of the total purchase price.

(b) At the request of the purchaser, when the requirements set forth in the proviso to paragraph (a) of this section have been met, the amount of the performance bond may be reduced to 10 percent of the total purchase price or the value of the uncompleted post-harvest contract requirements, whichever is greater. The amount of the performance bond shall not be reduced below 10 percent of the total purchase price until payment for all the timber sold under the terms of the contract is complete.

(c) For the purpose of this section, the value of completed road construction shall be based on the Bureau's appraisal allowance.

PART 5460—[AMENDED]

3. The authority citation is revised to read as follows:

Authority: Sec. 5., 50 Stat. 875; 61 Stat. 681, as amended; 69 Stat. 367; 43 U.S.C. 1181e; 30 U.S.C. 601 *et seq.*)

4. Section 5461.2 is amended by revising the heading and paragraph (a) to read as follows:

§ 5461.2 Required payment schedule.

* * * * *

(a)(1) For sales of less than $500,000, installment payments shall be not less than 10 percent of the total purchase price. For sales of $500,000 or more, installment payments shall be $50,000.

(2) The first installment shall be paid prior to or at the time the authorized officer signs the contract. One-half of the first installment shall be held to satisfy the final payment under the contract and one-half of the first installment shall be released and applied to subsequent contract payment when either payment of no less than 60 percent of the total purchase price has been made or completion of road construction required under the contract the value of which when combined with contract payments is no less than 60 percent of the total purchase price.

(3) The second installment shall be paid prior to the cutting or removal of the material sold. Each subsequent installment shall be due and payable without notice when the value of material cut or removed equals the sum of all payments not including the deposit: *Provided, however,* That in the case of all contracts with terms longer than 18 months, the purchaser shall be required by the first anniversary date either to pay no less than 20 percent of the total purchase price, or to complete road construction required under the contract the value of which when combined with contract payments is no less than 20 percent of the total purchase price. In the case of all contracts with a 27-month or longer term, the purchaser shall be required by the second anniversary date either to pay no less than 40 percent of the total purchase price or to complete road construction required under the contract the value of which when combined with contract payments is no less than 40 percent of the total purchase price.

(4) For the purpose of this section, the value of completed road construction shall be based on the Bureau's appraisal allowance.

* * * * *

May 25, 1989.

James M. Hughes,

Deputy Assistant Secretary of the Interior.

[FR Doc. 89-16294 Filed 7-11-89; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

Atlantic Bluefin Tuna Fishery; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rules; Notice of an additional public hearing and request for comments.

SUMMARY: A notice of public hearings to solicit public comment on the proposed changes to the regulations governing the Atlantic bluefin tuna fishery was published on June 16, 1989 (54 FR 25593). NMFS announces the scheduling of an additional public hearing. Individuals and organizations may also comment in writing.

DATES: The hearing is scheduled for 7:00 p.m. on July 28, 1989. Comments may be submitted until August 4, 1989.

ADDRESSES: The hearing will be held at the Holiday Inn in Toms River, New Jersey.

Comments should be addressed to Richard Roe, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Atlantic Bluefin Tuna Regulations."

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, 508-281-9324.

SUPPLEMENTARY INFORMATION: The two changes proposed are: (1) Whether to allow the Assistant Administrator to adjust the daily catch limit for the General category upward or downward at any time during the season as circumstances warrant and, (2) whether to prohibit the use of spotter aircraft in all but the Purse Seine category.

Additional information was provided in the notice published on June 16, 1989.

Dated: July 5, 1989.

David S. Crestin,

Acting Director, Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-16263 Filed 7-11-89; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 54, No. 132
Wednesday, July 12, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Information Collection Requirements Under OMB Review

AGENCY: Action.

ACTION: Information collection request under review.

SUMMARY: This notice sets forth certain information about an information collection proposal by ACTION, the Federal Domestic Volunteer Agency.

BACKGROUND: Under the Paperwork Reduction Act (44 U.S.C., Chapter 35), the Office of Management and Budget (OMB) reviews and acts upon proposals to collect information from the public or to impose recordkeeping requirements. ACTION has submitted the information collection proposal described below to OMB. OMB and ACTION will consider comments on the proposed collection of information and recordkeeping requirements. Copies of the proposed forms and supporting documents (requests for clearance (SF 83), supporting statement, instructions, transmittal letter, and other documents) may be obtained from the agency clearance officer.

Need and Use

Study will provide reliable data describing perceived impact of SCSPs on volunteerism, work sites, and low-income communities. Results will be used to assess program effectiveness and develop current and future policy. Respondents are Project Directors, Student Volunteers, Work Site Supervisors, Community Members, and Recipients of Services.

Number of respondents by group	Average burden minutes per response	Frequency of response	Respondents burden (in hours)
Project Directors (44)	70 Minutes	Once	51.3
Student Volunteers (80)	45 Minutes	Once	60
Work Site Supervisors (80)	40 Minutes	Once	53.3
Community Members (80)	25 Minutes	Once	33.3
Recipients of Services (64)	10 Minutes	Once	10.7

Estimated Response Burden 208.6

A.14. Reasons for Changes in Burden.

Not applicable.

A.15. Plan for Tabulation, Statistical Analysis, and Publication and Time Schedule.

The analysis plan consists primarily of frequency distributions, percentage distributions and cross-tabulations, some of which will be presented in the form of table shells. Special emphasis in the plan will be directed toward analyzing the perceived impact of SCSP on volunteers and host communities. A matrix showing the relationship of study goals of questionnaire items is presented in Appendix B. In addition, a copy of the study's draft analysis plan is provided in Appendix C.

Joseph M. Suszko,
Acting Inspector General,
July 7, 1989.

[FR Doc. 89-16355 Filed 7-11-89; 8:45 am]
BILLING CODE 6060-28-M

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

1989-1990 Marketing Year Penalty Rates for All Kinds of Tobacco Subject to Quotas

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of determination: 1989-1990 marketing year penalty rates for all kinds of tobacco subject to quotas.

SUMMARY: This notice sets forth the determination of the 1989-1990 marketing year penalty rate for excess tobacco for all kinds of tobacco subject to marketing quotas. In accordance with section 314 of the Agricultural Adjustment Act of 1938, as amended, marketing quota penalties for a kind of tobacco are assessed at the rate of seventy-five (75) percent of the average market price for that kind of tobacco for the immediately preceding marketing year.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Dennis Daniels, Agricultural Program Specialist, Tobacco and Peanuts Division, USDA-ASCS, P.O. Box 2415, Washington, DC 20013, (202) 382-0200.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512-1 and has been classified as "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises, to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loan and Purchases; 10.051, as found in the catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Section 314 of the Agricultural Adjustment Act of 1938, as amended, provides that the rate of penalty per pound for a kind of tobacco that is subject to marketing quotas shall be seventy-five (75) percent of the average market price for such tobacco for the immediately preceding marketing year. The Agricultural Statistics Board, National Agricultural Statistical Service, U.S. Department of Agriculture determines an announces annually the average market prices for each type of tobacco. The penalty rates are determined on the basis of this information.

Since the determination of the 1989-1990 marketing year rates of penalty reflects only mathematical computations which are required to be made in accordance with a statutory formula, it has been determined that no further public rulemaking is required.

Accordingly, it has been determined that the 1989-1990 marketing year rates of penalty for kinds of tobacco subject to marketing quotas are as follows:

RATE OF PENALTY (1989-1990 MARKETING YEAR)

Kinds of tobacco	Cents per pound
Flue-Cured	121
Burley	121
Fire-Cured (Types 21)	111
Fire-Cured (Types 22, 23 and 24)	165
Dark Air-Cured (Types 35 and 36)	122
Virginia Sun-Cured (Type 37)	93
Cigar-Filler and Binder (Types 42, 43, 44, 53, 54, and 55)	94

Signed at Washington, DC, on July 7, 1989.

Keith D. Bjerke,
Administrator, Agricultural, Stabilization and Conservation Service.

[FR Doc. 89-16325 Filed 7-11-89; 8:45 am]
BILLING CODE 3410-05-M

Animal and Plant Health Inspection Service

[Docket No. 89-114]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Tobacco Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the University of Kentucky to allow the field testing in the State of Kentucky of genetically engineered tobacco plants modified to express a mouse metallothionein gene. These tobacco plants will be used as a model system to investigate the possibility of lowering the concentrations of toxic metals in leaf tissue. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tobacco plants will not present a risk of introduction or dissemination of a plant pest and will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Schechtman, Biotechnologist, I Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under permit number 89-065-01.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced in the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

The University of Kentucky at Lexington, Kentucky, has submitted an application for a permit for release into the environment, to field test genetically engineered tobacco plants modified to express a mouse metallothionein gene. These tobacco plants will be used as a model system to investigate the possibility of lowering the concentrations of toxic metals in leaf tissue.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the tobacco plants under the conditions described in the University of Kentucky application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by the University of Kentucky, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS's finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A metallothionein (MT) gene from the mouse has been modified and inserted into a tobacco chromosome. In this field trial none of the introduced genes can spread to another plant, because the test plants will not be allowed to flower. In nature, genetic material contained in a chromosome can only be transferred to another sexually compatible plant by cross-pollination and fertilization.

2. Neither the MT gene itself, nor its gene product, confers on tobacco any plant pest characteristics.

3. The MT gene does not provide the transformed tobacco plants with any measurable selective advantage over nontransformed tobacco plants in their ability to be disseminated or to become established in the environment.

4. The vector used to transfer the MT gene to tobacco plants has been evaluated for its use in this specific experiment, and does not pose a plant pest risk. The vector, although derived from a DNA sequence with known plant pathogenic potential, has been disarmed; that is, the genes that are necessary for pathogenicity have been removed. The vector also has been tested and shown to be not pathogenic to a susceptible plant.

5. The vector agent, the phytopathogenic bacterium that was used to deliver the vector DNA carrying the MT gene into tobacco plant cells, was eliminated and is no longer associated with the transformed tobacco plants.

6. Horizontal movement of genetic material after insertion into the plant genome (i.e., into chromosomal DNA) has not been demonstrated. After delivering and inserting the DNA to be transferred into the tobacco genome, the vector does not survive in or on the transformed plant. No mechanism is known to exist in nature to move an inserted gene horizontally from a chromosome of a transformed plant to any other organism.

7. The field test plot will be less than 0.1 acre in size, and the test plants will be located approximately 50 meters from any other tobacco plants. Measurement of heavy metal uptake by these transgenic plants will not involve administration of any exogenous heavy metals on the test plot.

This environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1509), (3) USDA Regulations for Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines for Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 6th day of July 1989

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–16284 Filed 7–11–89; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Nursery Pest Management in the W.W. Ashe Nursery, DeSoto National Forest, Forrest County, Mississippi

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) on nursery pest management practices that will be used at the Ashe Nursery, Brooklyn, Mississippi. The Forest Service invites written comments on the scope of the analysis. In addition, the Forest Service gives notice of the environmental analysis and decisionmaking process that will occur on the proposed action so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis should be received in writing by August 7, 1989.

ADDRESS: Send written comments to Robert O. Harllee, USDA Forest Service, National Forests in Mississippi, Route 1, Box 621, Brooklyn, MS 39425.

FOR FURTHER INFORMATION CONTACT: Robert O. Harllee. Ashe Nursery Project Manager or Charles Grambling, Ashe Nursery Manager, (601) 584–8488.

SUPPLEMENTARY INFORMATION: Ashe Nursery will grow longleaf, loblolly, and slash pine seedlings for the National Forests in the Southern Coastal Plains. The first priority at Ashe is to grow quality seedlings. This means using the latest known practices that will produce seedlings that will survive and grow.

The Forest Service will conduct an environmental analysis to determine what pest management practices will be used at the Ashe Nursery, Brooklyn, Mississippi, to produce the seedlings for use on National Forest System land in portions of the Southern Coastal Plains. The management practices that will be analyzed include, but are not limited to, cover crop, seed pre-treatment, nursery seedbed preparation, sowing, seedling growth from germination to lifting, and seedling storage. In order to produce seedlings, control of unwanted vegetation, disease, insects, and other animals is necessary. The control methods that will be considered include biological, chemical, manual, and mechanical techniques.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations interested in or affected by the proposed project. This input will be used in preparation of the draft environmental impact statement. The scoping process includes:

1. Defining the scope of the analysis and nature of the decision to be made.
2. Identifying the issues and determining the significant issues for consideration and analysis within the environmental impact statement.
3. Defining the proper make up of the interdisciplinary team.
4. Identifying potential environmental, economic, and social impacts.
5. Determining potential cooperating agencies.
6. Identifying groups or individuals interested or affected by the decision.

In preparing the environmental impact statement, the Forest Service will identify and consider a range of alternative management practices. One alternative will be the no action (continuation of present pest management practices). Another alternative will be pest control without use of pesticides. Other alternatives will consider a range of methods for the control of unwanted vegetation, diseases, insects and other animals in the Ashe Nursery.

Kenneth R. Johnson, Forest Supervisor, is the responsible official.

The Forest Service invites written comments on the scope of the analysis.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by February 1990.

The comment period on the draft environmental impact statement will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register.** It is very important that those interested in the proposed action participate at that time. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft environmental impact statement, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final environmental impact statement is scheduled to be completed by August 1990.

The responsible official will consider the comments, responses, environmental consequences discussed in the environmental impact statement and applicable laws, regulations, and policies in making a decision regarding this proposal. The decision and reasons for the decision will be documented in the Record of Decision. That decision will be subject to appeal.

Date: July 5, 1989.

Ellen J. Goetz,

Acting Forest Supervisor.

[FR Doc. 89–16309 Filed 7–11–89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Survey of Income and Program Participation 1989 Panel Wave 4
Form Number: SIPP 9400, SIPP–87/9403, SIPP–9405
Agency Approval Number: 0607–0643
Type of Request: Revision of a currently approved form
Burden: 12,180 hours
Number of Respondents: 24,360
Avg Hours per Response: 30 minutes
Needs and Uses: This survey will provide statistics to estimate the effects of Executive and Legislative decisions. Data provided by SIPP are being used by economic policymakers, the Congress, state and local governments, and Federal agencies that administer social welfare or transfer payment programs such as the Department of Health and Human Services and the Department of Agriculture
Affected Public: Individuals or households
Frequency: One time only
Respondent's Obligation: Voluntary
OMB Desk Officer: Don Arbuckle 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 6, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–16285 Filed 7–11–89; 8:45 am]

BILLING CODE 3510-07-M

Bureau of Export Administration

[Docket No. 90496–9153]

Negative Determination of Foreign Availability for Side Scan Sonar Systems

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Commerce.

ACTION: Notice of foreign availability determination.

SUMMARY: Under the authority of the Export Administration Act of 1979, as amended (EAA), the Deputy Assistant Secretary for Export Administration has determined that foreign availability of side scan sonar systems, comparable to that of the claimant's denied license, controlled under ECCN 1510A of the Commodity Control List does not exist to the controlled country so as to render the denial of the license ineffective in achieving the purposes of the controls.

FOR FURTHER INFORMATION CONTACT: Toli Welihozkiy, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 377–5953.

SUPPLEMENTARY INFORMATION:

Background

The Office of Foreign Availability (OFA) of the Bureau of Export Administration is required by sections 5 (f) and (h) of the EAA to initiate and review claims of foreign availability of items controlled for national security purposes. Part 791 of the Export Administration Regulations establishes the procedures and criteria for determining foreign availability. The Secretary of Commerce or his designee is authorized by statute to determine foreign availability.

In any case in which the Secretary determines that an item of comparable quality to a U.S. item controlled for national security purposes is available-in-fact to a controlled country from a foreign source in quantities sufficient to render the control ineffective in meeting its purpose, under section 5(f)(1)(B), the Secretary must approve the validated license application for its export.

In February of 1989, OFA, upon receipt of a claimant's allegation, formally undertook a denied license assessment of side scan sonar systems.

These systems, parts and components are multilaterally controlled under ECCN 1510A of the Commodity Control List, maintained under section 5 of the Export Administration Act of 1979, as amended (EAA).

As directed by law, OFA has completed the denied license assessment of the foreign availability of the above mentioned equipment. Based upon the assessment, OFA's recommendation and the statutory criteria, the Deputy Assistant Secretary for Export Administration, pursuant to the authority of section 5(f)(1)(b) of the EAA, has determined that foreign availability of side scan sonar systems does not exist.

If the Office of Foreign Availability receives substantive new evidence affecting this foreign availability determination, the assessment will be reevaluated. Inquiries concerning the scope of this assessment may be directed to the Office of Foreign Availability.

Dated: July 7, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89–16384 Filed 7–10–89; 8:57 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold public hearings to allow for input on the Fishery Management Plan for the Bluefish Fishery (FMP).

DATES: Written comments will be accepted until August 25, 1989. See **"SUPPLEMENTARY INFORMATION"** for dates, times, and locations of the hearings.

ADDRESS: Send comments to John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901-6790.

FOR FURTHER INFORMATION CONTACT: John C. Bryson, 302-674-2331.

SUPPLEMENTARY INFORMATION: This FMP, prepared by the Council and the Atlantic States Marine Fisheries Commission (ASMFC), is intended to initiate management of the bluefish (*Pomatomus saltatrix*) fishery in the western Atlantic Ocean pursuant to the Magnuson Fishery Conservation and Management Act of 1976, as amended. The major goal of the management plan is to conserve the bluefish resource along the Atlantic coast.

The following management measures have been adopted for purposes of public hearings:

1. The commercial fishery, on a coastwide basis, would be limited to 20% of the total catch (recreational catch plus commercial landings) each year. The decision to implement commercial controls would be based on two separate indices and a two-tiered approach. If the catch in the commercial fishery were projected to equal or exceed the 20% limit during the upcoming year, then highly efficient gears (purse seines, pair trawls, and runaround gill nets) would be prohibited from use in exclusive economic zone (EEZ) waters if those gears were responsible for the increase in the commercial landings. At the same time, a state allocation system would also be implemented. Commercial landings data from the 10-year period, 1978-1987, for each state would be used to determine the average percentage of coastwide commercial landings by state. These percentages would be used to determine the amount of the coastwide quota allocated to each state. Quotas would apply to commercial landings in each state, regardless of where the bluefish were caught.

2. Anglers would be restricted to a possession limit of no more than ten bluefish or the more stringent possession limit at the state of landing, if such a limit exists. The Director, Northeast Region, NMFS, after consultation with the Councils and the ASMFC, could modify the possession limit to between three and ten bluefish per angler based on evidence of stock condition.

3. Commercial hook-and-line fishermen may take more than the possession limit if they have a commercial permit issued by the state of landing. Without a permit, fishermen using hook-and-line gear would be restricted to the possession limit. For states without a permit, a federal permit would be required. No person in the EEZ could exceed the possession limit without a federal or state commercial permit. The captain, crew, and passengers of party or charter vessels would be restricted to the possession limit if the vessel were carrying passengers for hire. A captain in possession of a commercial fishing permit could use the permit (i.e., exceed the possession limit) when no passengers were aboard.

All hearings will be tape recorded with the tapes filed as the official transcript of the hearing. The dates, times, and locations of the public hearings are scheduled as follows:

July 24, 1989, 7:00 p.m.
Department of Agriculture Building, 50 Harry S. Truman Highway, Annapolis, Maryland.
South Carolina Wildlife and Marine Resources Center, 217 Fort Johnson Road, Charleston, South Carolina.

July 25, 1989, 7:00 p.m.
Cape May County Extension Office, Dennisville Road, Cape May Court House, New Jersey.
Joslyn Hall, Carteret Community College, 3505 Arendell, Morehead City, North Carolina.

July 26, 1989, 7:00 p.m.
Cape Henlopen High School, Kings Highway, Lewes, Delaware.
North Carolina Aquarium, Airport Road, Manteo, North Carolina.

July 27, 1989, 7:00 p.m.
Wall Township Fire Hall, West Atlantic Avenue at Route 34, Wall, New Jersey.
Radisson, 700 Settlers Landing Road, Hampton, Virginia.

July 31, 1989, 7:30 p.m.
Room 190, Building D, Academic Village, State University of New York Old Westbury, Route 107, Old Westbury, New York.

August 1, 1989, 7:00 p.m.
Ramada Inn, 76 Industrial Highway, Essington, Pennsylvania.

August 1, 1989, 7:30 p.m.
Holiday Inn Riverhead, Exit 72, Long Island Expressway and Route 25, Riverhead, New York.

August 2, 1989, 7:00 p.m.
Ramada Inn, I-95 and Route 27, Mystic, Connecticut.

August 3, 1989, 7:00 p.m.
Days Inn, 815 Lafayette Boulevard, Bridgeport, Connecticut.

August 7, 1989, 7:00 p.m.
Holiday Inn West, 81 Riverside Street, Portland, Maine.
City Commission Chambers Stuart City Hall, 121 Southwest Flagler Street, Stewart, Florida.

August 8, 1989, 7:00 p.m.
Holiday Inn, 300 Woodbury Avenue, Portsmouth, New Hampshire.

August 9, 1989, 7:00 p.m.
Peabody Holiday Inn, 1 Newbury Street, Peabody, Massachusetts.

August 10, 1989, 7:00 p.m.
Sheraton Hyannis, Route 132 and Bearse's Way, Hyannis, Massachusetts.

August 11, 1989, 7:00 p.m.
Dutch Inn, Great Island Road, Galilee, Rhode Island.

Dated: July 6, 1989.

Joe P. Clem,
Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 87-16264 Filed 7-11-87; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989 Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to Procurement List 1989 a commodity to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: August 11, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On April 17, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (54 FR 15244) of proposed addition to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

No comments were received as a result of that public notice. However, during the early development stage, the current contractor claimed in a letter to the Committee that the addition of the file folder to the Procurement List would be extremely detrimental to his company. The value of the firms contract for this file folder represents approximately 10.1 percent of its total yearly sales. This is not considered to be severe adverse impact. After consideration of the material presented to it concerning capability of qualified workshops to produce the commodity at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity listed.

c. The action will result in authorizing small entities to produce the commodity procured by the Government.

Accordingly, the following commodity is hereby added to Procurement List 1989:

Folder, File
7530-FMHA Supply Item No. 38

E.R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 87-16303 Filed 7-11-89; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:30 a.m. to 5 p.m. on July 27, 1989, and from 8:30 a.m. to 11:30 a.m. on July 28, 1989. The meeting will be held at the Ramada Inn, 901 North Fairfax Street, Alexandria, Virginia 22314. The purposes of the meeting are to review military adaptability screening procedures and new computerized predictor tests. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Anita R. Lancaster, Executive Secretary, Defense Advisory Committee on Military Personnel Testing, Office of the Assistant Secretary of Defense (Force Management and Personnel), Room 2B271, The Pentagon, Washington, DC 20301-4000, telephone (202) 697-9271, no later than July 15, 1989.

July 7, 1989.

Patricia H. Means,
OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-16307 Filed 7-11-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: 31 July-1 August 1989

Time: 0800-1700 hours each day

Place: Baltimore, Maryland

Agenda: The Army Science Board Ad Hoc Subgroup on Human Dimensions in Army Safety Will conduct its next meeting at Baltimore, Maryland. The primary purpose of this meeting will be to discuss and write the findings for the study. Past, current, and planned actions will also be discussed in accordance with the Terms of Reference. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202)695-3039/7046.

Thomas E. Stalzer,
LTC(P), GS,
Executive Secretary.

[FR Doc. 89-16308 Filed 7-11-89; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Intent To Make a Noncompetitive Financial Assistance Award; American Statistical Association

AGENCY: U.S. Department of Energy.

ACTION: Notice of intent to make a noncompetitive financial assistance award.

SUMMARY: DOE announces that, pursuant to 10 CFR 600.7(b)(2)(i)(D), competition for a grant has been restricted to the American Statistical Association (ASA), a widely recognized and highly prestigious professional society established to further statistical theory in numerous fields. The ASA sponsors the Committee on Energy Statistics which has provided EIA, primarily during biannual meetings over the past seven years, with guidance in addressing key statistical, economic and technical issues faced by EIA.

Scope: This grant will provide assistance required for maintaining communication with the American Statistical Association Committee on Energy Statistics and for the conduct of five (5) specified meetings between the Committee and the Energy Information Administration (EIA).

Eligibility: There is no other entity which represents the statistical community and combines the complete objectivity and academic expertise necessary to carry out this review function. Since these committee members are selected by and under the purview of the ASA, and no other organization has the necessary knowledge of available committee members and committee structure, EIA recommends that consideration for this grant be limited to the American Statistical Association.

The term of this grant shall be from October 1, 1989 through April 30, 1991. The estimated cost of this grant is $172,728.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Witt, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-1570.

Thomas S. Keefe, Director,
Contract Operations Division "B" Office of Procurement Operations.

[FR Doc. 89-16354 Filed 7-11-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ID-2417-000, et al.]

Walter B. Gerken, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Walter B. Gerken

[Docket No. ID-2417-000]

July 3, 1989.

Take notice that on June 13, 1989, Walter B. Gerken, tendered for filing an application under section 305(b) of the Federal Power Act to hold the following interlocking postitions:

Director	Southern California Edison Company	Public Utility

Director.....	Whittaker Corporation	Supplying Electrical Equipment

Comment date: July 17, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Century Power Corporation

[Docket No. ER89-496-000]

July 3, 1989.

Take notice that on June 12, 1989, Century Power Corporation (formerly Alamito Company) tendered for filing an executed letter amendment to the 1989 Power Sales Agreement between Century and San Diego Gas & Electric Company (SDG&E). The amendment reduces the amount of power and energy sold to SDG&E by 4.5% to account for losses in transmission.

Century requests waiver of the Commission's notice of filing requirements to permit the filing to become effective as of June 1, 1989, the date that sales commenced under the Power Sales Agreement.

Comment date: July 17, 1989, in accordance with Standard Paragraph E at the end of this document.

3. Iowa Public Service Company

[Docket No. ER89-506-000]

July 3, 1989.

Take notice that Iowa Public Company on June 21, 1989, tendered for filing Supplement No. 6 to the Twin Cities Iowa-Omaha-Kansas City 345 kV Interconnection Coordinating Agreement, effective May 1, 1989. Supplement No. 6 revises the rates for power and energy in the Service Schedules under the Original Agreement and adds two new classes of power and energy called "General Purpose Energy and Term Energy".

Comment date: July 17, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Kansas City Power & Light Company

[Docket No. ER89-386-000]

July 3, 1989.

Take notice that on June 12, 1989, Kansas City Power & Light Company (KCPL) tendered an amendment to its earlier filing in this Docket.

KCPL states that the purpose of the Amendment is to provide, at the request of the Commission Staff, additional detail on the computation of present revenues supplied with the filing of April 28, 1989.

Comment date: July 17, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. New York State Electric & Gas Corporation

[Docket No. ER89-426-000]

July 3, 1989.

Take notice that New York State Electric & Gas Corporation (NYSEG) on June 19, 1989, tendered for filing pursuant to § 35.12 of the regulations under the Federal Power Act, an Amendment to the filing of a Power Authority of the State of New York (the Authority). The agreement sets forth the terms and of conditions that govern NYSEG's transmission and delivery of Expansion Power and associated energy to certain of NYSEG's industrial customers.

The Amendment was filed in response to a request for additional information concerning the basis of the transmission rate for delivery at voltages less than 34.5 Kv and for information concerning the facilities included in the cost basis of the two transmission rates filed.

NYSEG has filed a copy of this amendment with the Authority, the Public Service Commission of the State of New York, and with Expansion Power customers with which NYSEG has signed agreements.

Comment date: July 17, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Pacific Gas and Electric Company

[Docket No. ER89-515-000]

July 3, 1989.

Take notice that on June 26, 1989, Pacific Gas and Electric Company (PG&E) tendered for filing, information in support of an energy rate increase to the Southern California Cities of Anaheim, Azusa, Banning, Colton and Riverside (Cities), Rate Schedules FERC No. 102, 103, 104, 105 and 106, respectively. In Docket No. ER88-1-000, PG&E requested, and was granted, a waiver of certain filing requirements under § 35.13 for energy rate changes to these rate schedules, where the change is a recalculation of rates in accordance with a rate formula between PG&E and the Cities. PG&E is not changing capacity rates in this filing, and will not do so in 1989.

The present filing was triggered by CPUC Decision No. 87-12-039, which authorized a change in the Utility Electric Generation gas rate structure, an input to the cities energy rate formula, and is supported by the abbreviated filing materials agreed to in Docket No. ER88-1-00. PG&E has requested a waiver to allow an effective date of May 1, 1988, the effective date of CPUC Decision No. 87-12-039.

Comment date: July 18, 1989, in accordance with Standard Paragraph end of this notice.

7. American Electric Power Service Corp.

[Docket No. ER89-516-000]

July 3, 1989.

Take notice that on June 23, 1989, American Electric Power Service Corporation tendered for filing a Letter Agreement among the City of Hamilton, Ohio, Kentucky Power Company, Ohio Power Company, and American Municipal Power-Ohio, Inc. On behalf of Kentucky Power Company, Ohio Power Company, and the City of Hamilton.

The Letter Agreement provides for the temporary suspension of certain provisions as they pertain to inadvertent power flows for a 90-day period, from May 26, 1989 through August 23, 1989.

A copy of this filing has been served upon the Public Utilities Commission of Ohio.

Comment date: July 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. PacifiCorp, doing business as Pacific Power & Light and Utah Power & Light

[Docket No. ER89-510-000]

July 3, 1989.

Take notice that on June 21, 1989, PacifiCorp, doing business as Pacific Power & Light and Utah Power & Light (Company), tendered for filing, in accordance with section 35.30 of the Commission's Regulations, the Company's Revised Appendix 1 for the state of Montana and Bonneville Power Administration's (Bonneville) Determination of Average System Cost (ASC) for the state of Montana (Bonneville's Docket No. 5-A4-8802). The Revised Appendix 1 calculates the ASC for the state of Montana applicable to the exchange of power between Bonneville and the Company.

The Company requests waiver of the Commission's notice requirements to permit this rate schedule to become effective Octover 14, 1988, which it claims is the date of commencement of service.

Copies of the filing were supplied to Bonneville, the Montana Public Service Commission and Bonneville's Direct Service Industrial Customers.

Comment date: July 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Northern States Power Company (Minnesota Company)

[Docket No. ER89-519-000]

July 3, 1989.

Take notice that on June 26, 1989, Northern States Power Company (Minnesota Company) ("NSP-MN") tendered for filing Amendment No. 5, dated June 16, 1989, to the Interconnection Agreement dated November 18, 1965 among NSP-MN, Northern States Power Company (Wisconsin Company), and Wisconsin Electric Power Company.

Amendment No. 5 provides for sales of System Power by Northern States Power Company to Wisconsin Electric Power Company.

Copies of this filing have been provided to the respective parties and to the State Commissions of Minnesota, North Dakota, South Dakota, Wisconsin, and Michigan.

NSP-MN requests that the commission make the effective date of the proposed rate schedule retroactive to May 1, 1989 to coincide with the terms of the Amendment No. 5 to the Interconnection Agreement named above.

Comment date: July 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. PacifiCorp, doing business as Pacific Power & Light and Utah Power & Light

[Docket No. ER89-511-000]

July 3, 1989.

Take notice that on June 21, 1989, PacifiCorp, doing business as Pacific Power & Light and Utah Power & Light (Company), tendered for filing, in accordance with § 35.30 of the Commission's Regulations, the Company's Revised Appendix 1 for the state of Washington and Bonneville Power Administration's (Bonneville) Determination of Average System Cost (ASC) for the state of Montana (Bonneville's Docket No. 5-A2-8803). The Revised Appendix 1 calculates the ASC for the state of Montana applicable to the exchange of power between Bonneville and the Company.

The Company requests waiver of the Commission's notice requirements to permit this rate schedule to become effective Octover 14, 1988, which it claims is the date of commencement of service.

Copies of the filing were supplied to Bonneville, the Washingon Utilities and Transportation Commission and Bonneville's Direct Service Industrial Customers.

Comment date: July 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Electric Power Company

[Docket No. ER89-507-000]

July 3, 1989.

Take notice that on June 21, 1989, Wisconsin Electric Power Company ("Wisconsin Electric") tendered for filing a Firm Transmission Service Agreement with Wisconsin Power & Light Company ("WPL"). The agreement provides for firm transmission service to be rendered by Wisconsin Electric to the city of Elkhorn, Wisconsin, for a one year period. According to Wisconsin Electric, the charges for the service are identical to those found in its FERC Electric Tariff Original volume No. 1, Rate Schedule T-1.

Wisconsin Electric respectfully requests waiver of the Commission's sixty-day notice requirements in order to allow an effective date of June 16, 1989. Wisconsin Electric is authorized to state that WPL and the City of Elkhorn join in the requsted effective date.

Copies of this filing have been served on WPL, the City of Elkhorn and the Public Service Commission of Wisconsin.

Comment date: July 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

12. Southwestern Electric Power Company

[Docket No. ER89-509-000]

July 3, 1989.

Take notice that on June 21, 1989, Southwestern Electric Power Company ('SWEPCO") tendered for filing (1) Amendment No. 1 to the Electric System Interconnection Agreement, dated January 1, 1988, between SWEPCO and Cajun Electric Power Cooperative, Inc. ("Cajun") and (2) a letter agreement ("Letter Agreement"), dated May 31, 1989, between SWEPCO and Cajun. Amendment No. 1 provides that, when capacity is available, SWEPCO will transmit on behalf of Cajun up to 92 MW of Peaking Power from the Southwestern Power Administration ("SWPA") rather than the present 89 MW. The Letter Agreement provides that SWEPCO will provide as-available transmission service to Canjun from SWEPCO's point of interconnection with Gulf States Utilities Company ("GSU") across SWEPCO's system to SWEPCO's points of interconnection with SWPA and Associated Electric Cooperative, Inc.

Copies of this filing have been served upon Cajun, GSU, the Arkansas Public Service Commission, the Louisiana Public Service Commission and the Public Utility Commission of Texas.

Comment date: July 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

13. The Montana Power Company

[Docket No. ER89-508-000]

July 3, 1989.

Take notice that on June 21, 1989, Montana Power Company (MPC) tendered for filing pursuant to Section 205 of the Federal Power Act an agreement effective September 1, 1988 for the sale of firm energy to the Western Area Power Administration during the period from September 1988 through March 1989.

MPC has requested waiver of the notice provisions of § 35.3 of the Commission's regulations in order to permit the agreement to become effective on the date indicated above in accordance with its terms.

Comment date: July 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

14. Iowa Public Service Company

[Docket No. ER89-430-000]

July 3, 1989.

Take notice that on June 23, 1989, Iowa Public Service Company (IPS), tendered for filing an amended filing for its Electric Utility Service Agreement between IPS and the Municipal Electric Utility of Waverly, Iowa (Waverly) and an Interim Wheeling Letter Agreement whereby IPS will supply intermediate and peaking capacity to Waverly, as well as provide dispatch and transmission services. IPS has requested an effective date of May 1, 1989 for the initial rate, and accordingly seeks waiver of the notice requirements of the Commission's rules.

IPS states that copies of this filing were served on Waverly and the Iowa Utilities Board.

Comment date: July 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

15. Consolidated Edison Company

[Docket No. ER89-517-000]

July 3, 1989.

Take notice that on June 23, 1989, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing, as an initial rate schedule, an agreement to provide interruptible transmission service to Long Island Lighting Company (LILCO). The agreement provides for a charge of 2.4 mills per kilowatthour for transmission of power purchased from other public utilities and power generating entities.

Con Edison requests waiver of the notice requirements so that the Rate

Schedule can be made effective as of May 1, 1989.

Con Edison states that a copy of this filing has been served by mail upon LILCO.

Comment date: July 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

16. Gulf States Utilities Company

[Docket No. ER89-514-000]

July 3, 1989.

Take notice that on June 22, 1989, Gulf States Utilities Company tendered for filing (1) a Written Agreement For Transmission Service Under Section 2.6 of Service Schedule SRSTS, entered into by Gulf States Utilities Company (Gulf States), Sam Rayburn Municipal Power Agency (SRMA), Sam Rayburn Dam Electric Cooperative, Inc. (SRDEC), and Sam Rayburn G&T Electric Cooperative, Inc. (SRG&T), (2) Amendment No. 3 To Power Interconnection Agreement Between Gulf States and SRDEC, SRG&T, and SRMA, (3) Service Schedule SRSTS—Special Transmission Service (supersedes Schedule SRSTS dated February 17, 1987), entered into by Gulf States, SRDEC, SRG&T, and SRMA, (4) Service Schedule SRTS—Transmission Service (supersedes Schedule SRTS dated June 6, 1980), entered into by Gulf States, SRDEC, SRG&T, and SRMA, and (5) Power Interconnection Agreement Between Gulf States Utilities Company and Jasper Newton Electric Cooperative, Inc.

The purpose of the above agreements is to enable the connection of two SRMA hydroelectric generating units having a combined nominal rating of 6 Mw located at Town Bluff Dam on B.A. Steinhagen Lake on the Neches River ("Town Bluff Hydro Project") to the Gulf States transmission system. The parties have in place existing agreements for the connection of certain other generating capacity to the Gulf States transmission system, and the above agreements amend and modify those agreements in order to provide for the connection of the Town Bluff Hydro Project to the transmission system.

Gulf States requests an effective date for the agreements of May 26, 1989, which was the date of the first transmission of test energy from the Town Bluff Hydro Project.

Copies of the filing were served on Sam Rayburn Dam Electric Cooperative, Inc., Sam Rayburn Municipal Power Agency, Sam Rayburn G&T Electric Cooperative, Inc., Jasper Newton Electric Cooperative, Inc., and the Public Utility Commission of Texas.

Comment date: July 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

17. Hill Petroleum Company

[Docket No. QF89-249-000]

July 5, 1989.

On June 20, 1989, Hill Petroleum Company (Applicant), c/o Ronald W. Lewis, P.O. Box 5038, Houston, Texas 77262-5038, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Texas City, Texas. The facility will consist of two combustion turbine generating units and two waste heat recovery boilers equipped for supplementary firing. Steam produced by the facility will be used in the refinery process by the Applicant. The maximum net electric power production capacity of the facility will be 34,092 kW. The primary energy source will be natural gas. Installation of the facility will be on or about December, 1989.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

18. Nevada Power Company

[Docket Nos. ER89-234-000, ER89-235-000, and ER89-236-000]

July 6, 1989.

Take notice that on June 26, 1989, Nevada Power Company (Nevada) tendered for amended filing three agreements entitled respectively, Short Term Seasonal Power Agreement Between City of Boulder City (Boulder) and Nevada Power Company, Short Term Seasonal Power Agreement Between Overton Power District No. 5 (Overton) and Nevada Power Company, and Short Term Seasonal Power Agreement Between Valley Electric Association (Valley) and Nevada Power Company, hereinafter "the Agreements". The purpose of the agreements is to establish the terms and conditions for the Sale by Nevada to Boulder, Overton, and Valley of up to 30 MW per hour of capacity and energy during January, February, and March, 1989.

Nevada requests an effective date of January 1, 1989 and therefore requests waiver of the Commission's notice requirements.

Nevada states that copies of the amended filing were served upon Boulder, Overton, and Valley.

Comment date: July 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

19. Portland General Electric Company

[Docket No. ER89-513-000]

July 6, 1989.

Take notice that on June 23, 1989, Portland General Electric Company (PGE) tendered for filing an Exchange Agreement with the Chelan County Public Utility District for an exchange consisting of the receipt of summer on-peak energy by PGE and the return of such energy plus 22 percent to Chelan County Public Utility District during off-peak hours during the summer and winter, beginning July 1989 and ending February 2011. The amount escalates from 15 MW in 1989, to 25 MW in 1990, and 50 MW from 1992 through the end of the Agreement.

PGE states the reason for the proposed Exchange Agreement is to allow it to shift production into off-peak periods and better meet its peak load.

PGE requests an effective date of July 1, 1989 and therefore requests waiver of the Commission's notice requirements.

Copies of the filing has been served upon the Chelan County Public Utility District and the Oregon Public Utility Commission.

Comment date: July 21, 1989, in accordance with Standard Paragraph E at the end of this notice.

20. Arizona Public Service Company

[Docket No. ER89-520-000]

July 6, 1989.

Take notice that on June 26, 1989, Arizona Public Service Company ("APS" or "Company") tendered a Notice of Termination of the Operating Letter between Maricopa County Municipal Water Conservation District No. 1 and APS for the Banking of Arizona Power Authority Energy. A review of APS' records indicated that although the aforementioned service was intended to be superseded by identical service provided pursuant to APS FERC Rate Schedule No. 157, the Commission Acceptance of FERC Rate Schedule No. 157 did not provide for the cancellation of APS Rate Schedule No. 111. The purpose of this filing is to conform APS records to the intent of the Parties.

APS has requested an effective date of January 1, 1988 to coincide with the effective date of APS FERC Rate Schedule No. 157. APS requests waiver of any applicable Commission Rules and Regulations to allow the termination to become effective as of the aforesaid date.

Comment date: July 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

21. The Montana Power Company

[Docket No. ER89-521-000]

July 6, 1989.

Take notice that on June 26, 1989, The Montana Power Company ("Montana"), tendered for filing a revised Appendix I as required by Exhibit C for retail sales in accordance with the provisions of the Residential Purchase and Sale Agreement ("Agreement") between Montana and the Bonneville Power Administration ("BPA").

The Agreement was entered into pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, Public Law 96-501. The Agreement provides for the exchange of electric power between Montana and BPA for the benefit of Montana's residential and farm customers.

Montana requests that the rate, subject to possible modification by the FERC, have an effective date of August 29, 1988 and, therefore, requests waiver of the Commission's notice requirements.

A copy of the filling was served upon BPA.

Comment date: July 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

22. Interstate Power Company

[Docket No. ER89-524-000]

July 6, 1989.

Take notice that on June 27, 1989, Interstate Power Company (IPW) tendered for filing proposed changes in its FERC Electric Tariff, Original Volume No. 1, Rider 1W, Fuel Cost Adjustment. The proposed change will allow Interstate to include all charges incurred in the purchase of economic power in Interstate's fuel cost adjustment.

Interstate's present fuel cost adjustment computation includes only fuel and energy related costs. The proposed change will update the fuel cost adjustment clause in accordance with FERC Order No. 352 in Docket No. RM83-62-000; allowing recovery of all expenses related to power or energy purchased over a period of twelve months or less where the total cost of the purchase is less than Interstate's total avoided variable cost and the purchase is not made to maintain reserve levels.

Copies of the filing were served upon IPW's jurisdictional customers and the State Commissions of Iowa, Illinois and Minnesota.

Comment date: July 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

23. PacifiCorp, doing business as Pacific Power & Light and Utah Power & Light

[Docket No. ER89-525-000]

July 6, 1989.

Take notice that on June 29, 1989, PacifiCorp, doing business as Pacific Power & Light and Utah Power & Light (Company), tendered for filing, in accordance with 18 CFR 35.13 of the Commission's Rules and Regulations, Revision No. 15 to Exhibits A and B, to the Contract for Interconnections and Transmission Service, Contract No. 14-06-400-2437 (Transmission Agreement) dated May 16, 1962 between the Company and Western Area Power Administration (the Company's Rate Schedule FPC No. 45).

Exhibit A specifies the projected maximum integrated demand in kilowatts which the Company desires to have transmitted to its respective points of delivery. Exhibit B specifies the projected maximum integrated demand in kilowatts which Western desires to have transmitted to its respective points of delivery.

The Company respectfully requests that a waiver of the prior notice requirements of 18 CFR 35.3 be granted pursuant to 18 CFR 35.11 of the Committee's Rules and Regulations and that an effective date of January 1, 1989, be assigned, this date being consistent with the effective date of Exhibits A and B.

Copies of this filing were supplied to Western and the Wyoming Public Service Commission.

Comment date: July 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

24. Public Service Company of Indiana, Inc.

[Docket No. ER89-526-000]

July 6, 1989.

Take notice that on June 29, 1989, Public Service Company of Indiana, Inc. Tendered for filing an Interim Scheduled Power Agreement (Agreement), dated May 24, 1989, between Public Service Company of Indiana, Inc. (Service Company) and Wabash Valley Power Association, Inc. (Wabash Valley).

The Agreement provides for power to be supplied by Service Company to Wabash Valley for Wabash Valley's member systems located in Indiana Michigan Power Company's (IMP) control area as follows:

1. Power sufficient to meet Wabash Valley's load requirements in excess of the firm power supplied to Wabash Valley by IMP pursuant to the Settlement Agreement between Wabash Valley and IMP in Docket Nos. EL88-1-000 and ER88-34-000.

2. Wabash Valley is to provide its own bulk transmission service from Service Company's generating facilities to Service Company's bulk transmission interconnection points with IMP, through the use of the Service Company, Wabash Valley and Indiana Municipal Power Agency joint transmission system.

3. Wabash Valley shall arrange with IMP for transmission and distribution service from the Service Company/IMP bulk transmission interconnection points to the Wabash Valley member systems' delivery points in the IMP control area, which is part of the Settlement Agreement referred to above.

Copies of the filing were served on Wabash Valley Power Association, Inc. and the Indiana Utility Regulatory Commission.

The parties have requested a waiver of the Commission's Rules and Regulations to permit the proposed service to become effective August 1, 1989.

Comment date: July 21, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16353 Filed 7-11-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[Docket No. FE C&E 89-14; Certification Notice-40]

Filing Certification of Compliance: Coal Capability of New Electric Powerplant Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311(a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as to base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of a proposed new electric base load powerplant has filed a self certification in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company has filed a self certification:

Name	Date received	Type of facility	Megawatt capacity	Location
Panda-Rosemary Corporation, Dallas, TX.	6-28-89	Combined cycle cogen.	165	Roanoke Rapids, NC

Amendments to the FUA on May 21, 1987 (Pub. L. 100-42) altered the general prohibitions to include only new electric base load powerplants and to provide for the self certification procedure.

Issued in Washington, DC on July 5, 1989.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 89-16324 Filed 7-11-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Decisions and Orders Issued During Week of May 22 Through May 26, 1989

During the week of May 22 through May 26, 1989, the decisions and orders summarized below were issued with respect to submissions filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercial published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

July 5, 1989.

Remedial Order

Theodore M. Ragsdale, Salem Ventures, Inc., 5/25/89; HRO-0270

Theodore M. Ragsdale (Ragsdale) objected to an Amended Proposed Remedial Order (APRO) which the Economic Regulatory Administration (ERA) issued jointly to Ragsdale and Salem Ventures, Inc., on April 24, 1985. In the APRO, the ERA charged that during the period December 1979 through December 1980, Salem Ventures and Ragsdale resold crude oil at unlawful prices in violation of 10 C.F.R. § 212.186 (the layering rule). Specifically, the ERA charged that Ragsdale and Salem Ventures sold crude oil at a mark-up without providing any traditional and historical reseller services. The amount of illegal revenues obtained in these transactions totaled $365,652.

After considering the Ragsdale Statement of Objections, the DOE concluded that the APRO should be issued as a final Remedial Order. In reaching this conclusion, the DOE rejected Ragsdale's claims that § 212.186 was invalid, that the APRO was barred by the California statute of limitations and that the APRO constituted an illegal rulemaking. The DOE also found that Ragsdale and Salem Ventures engaged in illegal layering activities and that Ragsdale should be held personally liable for the violations. Finally, the DOE rejected Ragsdale's claim that personal liability should be limited, citing Ragsdale's refusal to provide information concerning either his ownership position in Salem Ventures, the identities of others alleged to be in charge of the firm's layering activites or the disbursement of the overcharge moneys. Accordingly, the DOE concluded that the APRO should be issued as a final order and directed Ragsdale to remit $365,652 plus accrued interest, to the DOE.

Refund Applications

Atlantic Richfield Company/Chuck's Arco, George L. Thalhamer, 5/26/89; FR304-1991, FR304-2051, FR304-2188

The DOE issued a Decision and Order concerning two Applications for Refund filed by Chuck's ARCO and one by George L. Thalhamer in the Atlantic Richfield Company (ARCO) special refund proceeding. As reseller/retailers claiming refunds of less than $5,000 in principal, both applicants are presumed to have been injured by ARCO's alleged overcharges. After examining the applications and supporting documentation, the DOE determined that Chuck's and Thalhamer should receive refunds of $1,478 and $1,894, respectively, representing a total of $2,595 in principal and $777 in interest.

Atlantic Richfield Company/Conservative Gas, Division of National Propane Corporation, et al., 5/24/89; RF304-1261, et al.

The DOE issued a Decision and Order concerning nineteen Applications for Refund filed by three claimants from a consent order fund made available by the Atlantic Richfield Company. Each of the firms had filed multiple applications and had elected either the $5,000 small claims or the 41% presumption of injury. The DOE determined that the election of an injury presumption applied to the total purchases made by an applicant, and, thus, consolidated all of the applications for each claimant and applied the chosen presumption to that total claim. The DOE concluded that these firms should receive refunds totalling $25,738, representing $19,810 in principal and $5,928 in accrued interest.

Atlantic Richfield Company/K.C. Sales Co., et al., 5/26/89; RF304-3068, et al.

The DOE issued a Decision and Order concerning fifty-eight Applications for Refund in the Atlantic Richfield Company special refund proceeding. All of the applicants were either end-users or reseller/retailers that applied for small claims presumption refunds. Each applicant documented the volume of its purchases from ARCO and, therefore, was presumed to have been injured and entitled to a refund. The refunds granted totalled $100,068, representing $77,205 in principal and $22,863 in interest.

Atlantic Richfield Company/Pine Grove Arco, et al, 5/24/89; RF304-1402, et al.

The DOE issued a Decision and Order concerning 11 Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. As reseller/retailers claiming refunds of less than $5,000 in principal or end-users, each applicant is presumed to have been injured by ARCO's alleged overcharges. After examining the applications and supporting documentation, the DOE determined that the firms should receive refunds totaling $25,053, representing $19,282 in principal and $5,771 in interest.

Cameron Bros. Construction Company, et al., 5/24/89; RF272-27609, et al.

The DOE issued a Decision and Order approving 15 Applications for Refund submitted in the Subpart V crude oil refund proceeding. Each applicant was an end-user of the refined products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in the Decision was $27,908.

Dayton Sand & Gravel Company, Inc., et al., 5/24/89; RF272-22285, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 19 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant demonstrated the volume of its claim either by consulting actual records or by using a reasonable estimate of its purchases. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. The sum of the refunds granted in this Decision is $73,103.

Exxon Corporation/Green Bay, et al., 5/23/89; RF307-6884, et al.

The DOE issued a Decision and Order concerning 65 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either an end-user or a reseller whose allocable share is less than $5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $52,419, including $8,064 in accrued interest.

Exxon Corporation/Morel G. Lemoine Dist., Inc., et al., 5/25/89; RF307-1723, et al.

The Office of Hearings and Appeals of the Department of Energy issued a Decision and Order granting 49 Applications for Refund in the Exxon Corporation special refund proceeding. Each Applicant sought a refund of less than $5,000, and was therefore presumed to have been injured as a result of Exxon's alleged overcharges. The sum of the refunds granted is $55,510.

Exxon Corporation/Pride Solvents and Chemical Company, Et Al., 5/23/89; RF307-751, et al.

The DOE issued a Decision and Order concerning 65 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either an end-user or a reseller whose allocable share is less than $5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $48,903, including $7,801 in accrued interest.

Getty Oil Company/Harry's Super Service, 5/25/89; RF265-107, RF265-108

Harry's Super Service filed an Application for Refund in which it sought a portion of the fund obtained by the DOE through a consent order entered into with the Getty Oil Company. Harry's documented the volume of motor gasoline and middle distillates that it purchased from Getty through the Tesoro Petroleum Corporation, a Getty jobber. Harry's refund, which was calculated based upon the procedures outlined in *Little America Refining Co./University Gas*, 14 DOE ¶85,217 (1986), totaled $10,324, representing $5,000 in principle and $5,324 in interest.

Getty Oil Company/Western Petroleum Company, 5/23/89; RF265-2558

The DOE issued a Decision and Order concerning an Application for Refund filed by Western Petroleum Company (Western), a motor gasoline reseller, in the Getty Oil Company special refund proceeding. Western submitted documentation substantiating that during the consent order period it accumulated banks of unrecovered costs that exceeded its allocable refund share for motor gasoline. In addition, the firm submitted information indicating that Western experienced a continuing decline in its historical profit margin during the period in which it purchased motor gasoline from Getty. Based on the data furnished by Western, the DOE determined that the firm was entitled to receive a refund of its full volumetric share based upon its purchases of Getty motor gasoline. The total refund approved in this Decision is $219,585, representing $106,343 in principal and $113,242 in accrued interest.

Gulf Oil Corporation/A.N. Rusche Distributing Company, 5/23/89; RF300-10813

The DOE issued a Supplemental Order amending a refund granted on April 25, 1989 to A.N. Rusche Distributing Company granted in the Gulf Oil Corporation special refund proceeding (*Gulf Oil Corporation/Irby Oil Company, et al.*) in order to include interest accrued on the principal refund amount. The addition of interest increased Rusche's refund from $46,719 to $61,319.

Gulf Oil Corporation/Almacigo Gulf Service Center, et al., 5/24/89; RF300-6713, et al.

The DOE issued a Decision and Order concerning four Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $72,555.

Gulf Oil Corporation/Brookville Chevron, Airport Gulf, 5/22/89; RF300-4780, RF300-5111

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by George A. Hartless. Because the two firms were under the common ownership of Mr. Hartless during the consent order period, the applications were consolidated for purposes of applying the presumptions of injury. The two firms collectively purchased 13,119,281 gallons of covered Gulf products, and their Applications were approved under the 40 percent presumption of injury. The refund granted in this Decision, including accrued interest, is $6,563.

Gulf Oil Corporation/Charlie's Gulf, et al., 5/26/89; RF300-46, et al.

The DOE issued a Decision and Order concerning 17 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each

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application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $28,183.

Gulf Oil Corporation; Graeber Bros., Inc., Dixie Gas, Inc., Graeber Bros., Inc., Graeber Bros., Inc. of Clarksdale, 5/22/89, RF300-7178, RF300-7226, RF300-7411, RF300-7521

The DOE issued a Decision and Order concerning four Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by Graeber Bros., Inc., Dixie Gas, Inc. and Graeber Bros., Inc. of Clarksdale. Because Mr. Lewis Graeber and Mr. James P. Graeber had a combined ownership interest of more than 50 percent in each of the three companies during the consent order period, and because their allocable shares exceed $5,000, the claims were considered together when applying the presumptions of injury. The three firms were eligible to receive a refund based upon purchases of 195,620,810 gallons of Gulf propane, after excluding volumes of propane which Dixie purchased from Gulf and resold to Graeber Bros. and Graeber Bros. of Clarksdale. The Applications were approved under the 40 percent presumption of injury. The refund granted in this Decision, including accrued interest, is $5,625.

Gule Oil Corporation/Joan J. Reynolds, 5/25/89; RF300-4122

The DOE granted an Application for Refund submitted by a motor gasoline retailer in the Gulf Oil Corporation special refund proceeding. The applicant and her spouse had operated the gasoline outlet during the consent order period but were subsequently divorced. Based upon the refund submission, the DOE determined that she was the proper recipient of the refund. The Application was approved using a presumption injury. The sum of the refund granted in this Decision, including accrued interest, is $646.

Gulf Oil Corporation/Leo Mullens, dba Kirkland's Gulf, et al., 5/23/89; RF300-224, et al.

The DOE issued a Decision and Order concerning four Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. The Applications were approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $4,317.

Gulf Oil Corporation/Martin N. Rentschler, Rentschler's Gulf, 5/22/89; RF300-2148, RF300-10727

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. One was submitted by the current owner of Rentschler's Gulf (RF300-2148) and the second by the owner of Rentschler's during the consent order period (RF300-10727). The OHA determined that the owner during the consent order period was entitled to claim and receive a refund based upon Rentschler's purchases from Gulf. Accordingly, Case No. RF300-2148 was denied while Case No. RF300-10727 was approved under the small-claims presumption of injury. The total refund granted in this Decision, including accrued interest, is $925.

Gulf Oil Corporation/Midway Gulf, et al., 5/24/89; RF300-7616, et al.

The DOE issued a Decision and Order concerning seven Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $16,540.

Gulf Oil Corporation/Nelson Oil Company, et al., 5/26/89; RF300-4986, et al.

The DOE issued a Decision and Order concerning four Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $22,687.

Gulf Oil Corporation/Newell Oil Co., Inc., 5/24/89; RF300-4868

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. The Application was approved using a presumption of injury. The total refund granted in this Decision, including accrued interest, is $14,010.

Gulf Oil Corporation/Penn Ave. Gulf, Inc., et al., 5/22/89; RF300-131, et al.

The DOE issued a Decision and Order concerning six Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $39,378.

Gulf Oil Corporation/Penn Dairies, Inc., et al., 5/24/89; RF300-7814, et al.

The DOE issued a Decision and Order concerning seven Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $37,928.

Gulf Oil Corporation/W.E. Jersey & Sons, Inc., 5/26/89; RF300-5044

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. The application was approved using a presumption of injury. The total refund granted in this Decision, including accrued interest, is $8,218.

Henderson County Highway Dept., et al., 5/22/89; RF272-19035, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 54 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant was an end-user of the products it purchased and was therefore presumed to have been injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is $136,734. The applicants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Johnny B. Smith, et al., 5/22/89; RF272-11809, et al.

The DOE issued a Decision and Order approving four Applications for Refund submitted in the Subpart V crude oil refund proceeding. Each applicant was an end-user of the refined products involved, and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in the Decision was $377.

Kansas City, Missouri, 5/24/89; RF272-29333

The DOE granted an Application for Refund filed by Kansas City, Missouri, in the crude oil special refund proceeding. Kansas City had used the refined products on which its claim was based to operate several fleets of motor vehicles and thus was an end-user of the products claimed. In addition, Kansas City documented its purchases on the basis of actual records and resonable estimating procedures. The refund granted was $22,708.

Marathon Petroleum Company/Doyle Walters Distributors, 5/26/89; RF250-2749

The DOE issued a Decision and Order concerning an Application for Refund filed by Doyle Walters Distributors in the Marathon Petroleum Company special refund proceeding. Using the small claims presumption of injury, the DOE found that Doyle was eligible for a refund of $4,398. However, another firm under common ownership with Doyle had previously received a Marathon small claims refund of $2,093. Since the maximum small claims refund that a firm, including affiliates, may receive in the Marathon refund proceeding is $5,000, the DOE granted Doyle a refund of $2,907 for a total refund in both proceedings of $5,000.

Martinique Realty Associates, et al., 5/22/89; RF272-27507, et al.

The DOE issued a Decision and Order approving 18 Applications for Refund submitted in the Subpart V crude oil refund proceeding. Each applicant was an end-user of the refined products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in the Decision was $32,227.

Midwest Continental, Inc. et al., 5/24/89; RF272-351, et al.

The DOE issued a Decision concerning six Applications for Refund filed in the DOE Subpart V crude oil refund proceeding. Each of the applicants was an end-user of the petroleum products it purchased and therefore presumed injured and eligible for a full allocable share refund. The refunds granted in this Decision totaled $25,895.

Orme Ranch, Inc., et al., 5/26/89; RF272-1671, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 22 claimants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. As an end-user, each applicant was entitled to receive a refund of its full volumetric share. The refunds granted in this Decision total $67,677.

Plaquemines Oil Sales Corp./Shell Oil Co., 5/23/89; RR305-2

The DOE issued a Decision and Order denying a Motion for Reconsideration filed by Shell Oil Co. in the Plaquemines Oil Sales Corp (POSC) special refund proceeding. In its Motion Shell contended that a prior Decision and Order denying its Application was incorrect because, as an end-user of POSC products in its offshore drilling operations, it was entitled to its full allocable share under the presumption of injury established for end-users in this proceeding. The firm also contended that in the Remedial Order issued to POSC Shell was found to have been overcharged by POSC. In addition, Shell claimed that the contract governing its purchases from POSC, the discretionary nature of those transactions and the equities of the case, were not relevant to the merits of its refund application. Finally, Shell contended that its purchasing division was ignorant of the pricing regulations.

The DOE determined that since Shell had failed to answer the questions regarding its relationship with POSC that had been raised in both the POSC implementation order and the original Decision, the firm had not demonstrated its eligibility for a refund in this proceeding. In addition, the DOE noted that the end-user presumption of injury is rebuttable, and that end-users have been required to provide additional information when the record contained sufficient evidence to rebut the presumption. Since Shell had failed to provide such information even though requested to do so, the DOE determined that the end-user presumption could not be applied in this case. The DOE also determined that the POSC remedial order finding that Shell was overcharged was not, ipso facto, evidence that Shell was injured by its purchases. The DOE also found that the discretionary nature of Shell's arrangement with POSC indicated that it was not injured. Finally, the Decision rejected Shell's claim that equitable considerations do not apply to this case and that ignorance of the regulations was a valid defense for its actions. Accordingly, the Motion for Reconsideration was denied.

Shell Oil Corporation/Aerospace Shell, et al., 5/22/89; RF315-2, et al.

The DOE issued a Decision and Order granting 150 Applications for Refund filed in the Shell Oil Corporation special refund proceeding. Each of the Applicants purchased directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $141,079, including $19,270 in accrued interest.

Shell Oil Company/Gordie's Shell Service, et al., 5/23/89; RF315-425, et al.

The DOE issued a Decision and Order granting 120 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the applicants purchased directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share, plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $117,575, including $16,060 in accrued interest.

Stahl Construction Company Smithtown Central School District, 5/23/89; FR272-14015, FR272-14016

The DOE issued a Decision and Order granting refunds to Stahl Construction Company (Stahl) and the Smithtown Central School District (Smithtown) in the Subpart V crude oil refund proceedings. Each of the applicants documented its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. The DOE found that Stahl, a paving contractor, and Smithtown, a school district, were both end-users of their relevant petroleum product purchases and therefore presumed injured. The total of the refunds approved in this Decision is $23,794.

Yale University, 5/25/89 ; RF272-22310

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to Yale University based upon its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Yale documented its purchase volumes on the basis of actual, contemporaneous records. As an end-user of the products it purchased, Yale was therefore presumed injured and was granted a total refund of $79,528.

Dismissals

The following submissions were dismissed.

Name	Case No.
Airline and Clearview Exxon	RF307-1991
Al's Thunderbird ARCO	RF304-22
Beckner's Exxon	RF307-1978
Bryant Exxon	RF307-1968
Carl's Spur	RF309-861
Carolina Springs Golf & Country Club.	RF272-75420
Consolidated Construction, Inc.	RF272-75432
Crawford County	RF272-62217
Dom and Buddy's ARCO	RF304-8767
Earhart Exxon	RF307-1992
Egano's Exxon	RF307-1973
G. A. Watson, Inc.	RF272-75431
Gentilly Woods Exxon	RF307-1990
Hogan's ARCO	RF304-3693
Howell Corp.	KRO-0690
Jack Fanning	RF272-61662
Jerry's Garage	RF307-1998
Jim's Gulf Service Station	RF300-6899
	RF300-6900
	RF300-6901
Joe Lee McClellan, Inc.	RF272-75428
Main Street Exxon	RF307-1967
Mancha Exxon	RF307-1974
Melba's Grocery	RF307-1966
Metcalf's ARCO	RF304-1980

Name	Case No.
Mike's ARCO	RF304-8613
Mr. Jerry W. Hopkins	RF304-5883
Mr. Richard Grider	RF304-7854
Norway Community Schools	RF272-64646
Parkway Market	RF307-1962
Paso Robles JT. Union H. S. District.	RF272-62248
Peak Grocery	RF307-1960
Perrine Oils	RF304-5410
Pete's Exxon	RF307-1970
Queensborough Community College.	RF272-27719
Reiroe Grocery	RF307-1961
Saddle Lor Service	RF307-1982
Sartin Exxon	RF307-1983
Shrewbkury Exxon	RF307-1993
South Caroline Law Enforcement	RF307-6805
South Main Exxon	RF307-1988
St. Thomas Aquinas High School	RF272-75437
T-bar D General Store	RF307-1989
Wells and Sons Exxon Station	RF307-1980
Westphalia Oil Company	RF310-289
Young's Exxon	RF307-1979

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decision and Orders:

Name	Case No.	Date	No of Applicants	Total Refund
Mitchel Dobson, *et 3al*	RF272-50600	5/25/89	169	$19,060
Norbert D. Bremer, *et al*	RF272-61200	5/26/89	177	18,157
Southwest Tenn, Elec. Membership, Corp., *et al*	RF272-28591	5/22/89	122	235,801

[FR Doc. 89-16322 Filed 7-11-89; 8:45 am]

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Decisions and Orders Issued During Week of May 29 Through June 2, 1989

During the week of May 29 through June 2, 1989, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

July 5, 1989.

Appeals

Gene De Fau, 6/1/89; KFA-0285

Gene De Fau filed an Appeal from a denial by the Economic Regulatory Administration (ERA) of a Request for Information which he had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that the ERA had not adequately justified its withholding of the documents at issue under Exemption 4. Accordingly, the DOE ordered the ERA to either release the documents or issue a new determination regarding its use of Exemption 4.

Knolls Action Project, 5/30/89; KFA-0283

On May 2, 1989, the Knolls Action Project (KAP), filed an Appeal from a determination issued to it on March 24, 1989, by the Department of Energy's (DOE) Office of Naval Reactors (ONR). In that determination, the ONR denied in large part the KAP request for information filed pursuant to the Freedom of Information Act (FOIA). Specifically, the ONR denied portions of the KAP request for information related to activities at the Knolls Atomic Power Laboratory (KAPL) pursuant to FOIA Exemptions 3, 4, and 5. In considering the Appeal with respect to Exemption 5, the DOE found that the determination to withhold correspondence and reports pursuant to that exemption was consistent with the FOIA and the DOE's implementing regulations. Accordingly, the DOE denied the KAP Appeal.

Omega World Travel, Inc., 5/30/89; KFA-0282

Omega World Travel, Inc. filed an Appeal from a partial denial by the Albuquerque Operations Office of the Department of Energy of a Request for Information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that the information which was initially withheld under Exemption 4 is not confidential and should be released to Omega.

Petition for Special Redress

International Drilling and Energy Corp., 6/1/89; KEG-0036

International Drilling and Energy Corporation (IDEC) filed a Petition for Special Redress with the Office of Hearings and Appeals. In the Petition, IDEC requested that approximately $1.2 million be transferred into an escrow account funded pursuant to a consent order with Petrolane-Lomita Gasoline Corporation. That sum, according to IDEC, was the amount needed to satisfy its request for a refund from the Petrolane consent order fund. Since, in another Decision and Order, the Office of Hearings and Appeals had rejected IDEC's Petrolane refund request, it found the Petition moot. Accordingly, the Petition for Special Redress was dismissed.

Refund Applications

Atlantic Richfield Company/C.R. White, Inc., et al., 5/30/89; RF304-2882, et al.

The DOE issued a Decision and Order concerning 16 Applications for Refund filed by five claimants in the Atlantic Richfield Company special refund proceeding. All applicants documented their ARCO purchases and all were resellers and retailers applying for small claims refunds. The applicants were therefore presumed to have been injured. The refunds granted in this proceeding totalled $11,096, including $2,555 in accrued interest.

Atlantic Richfield Company/Palmers ARCO Service Center, Inc., et al., 6/2/89; RF304-446, et al.

The DOE issued a Decision and Order concerning 115 Applications for Refund filed by 108 claimants in the Atlantic Richfield Company special refund proceeding. As reseller/retailers applying for small claims refunds, and end-users, these claimants were presumed to have been injured. Based upon their documented purchase volumes, the DOE concluded that these firms should receive refunds totalling $193,616, representing $149,021 in principal and $44,595 in accrued interest.

Bristol-Myers Company, 5/30/89; RF272-28462

Bristol-Myers Company filed an application for a refund in the Subpart V crude oil special refund proceeding. Bristol-Myers used the refined products on which its claim is based to heat buildings and to operate a fleet of motor vehicles and was therefore considered to be an end-user. The firm estimated the volume of its purchases on the basis of usage rates for the period for which the company has records. The refund granted was $10,000.

Crown Central Petroleum Corporation/Rex Oil Company, Inc., 5/31/89; RF313-21

The DOE issued a Decision and Order considering an application filed in the Crown Central Petroleum Corporation special refund proceeding. Rex Oil, a purchaser of Crown refined petroleum products, presented evidence that it experienced a competitive disadvantage in all of its purchases of Crown gasoline and middle distillates during the refund period. Therefore, under the procedures set forth in *Crown Central Petroleum Corp.*, 18 DOE ¶ 85,326 (1988), the firm was entitled to a full volumetric refund. The total refund approved in this Decision was $24,099, representing $20,562 in principal plus $3,537 in accrued interest.

Dorchester/MFA Oil Company, 6/1/89; RF253-56

The DOE issued a Decision and Order concerning an Application for Refund filed by MFA Oil Company (MFA) in the Dorchester Gas Corporation special refund proceeding. MFA indirectly purchased Dorchester propane through Home Petroleum Corporation (Home). Home had previously been denied a refund in the Dorchester proceedings on the basis that it had passed through any Dorchester overcharges to its customers and therefore was not injured. As a result, MFA was eligible to receive its full allocable share. MFA, as an agricultural cooperative, certified that it would pass through any refund received to its members and was therefore considered to be an end-user not required to provide a detailed demonstration of injury. The total refund, including both principal and interest, approved in this Decision is $2,592.

Exxon Corporation/Administration De Servicios Agricolas, et al., 5/30/89; RF307-6000, et al.

The DOE issued a Decision and Order concerning 50 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $33,876 ($28,666 principal plus $5,210 interest).

Exxon Corporation/Brooksburg Service Station, Inc., et al., 5/30/89; RF307-2216, et al.

The DOE issued a Decision and Order concerning 15 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either an end-user or a reseller whose allocable share was less than $5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $12,931 ($10,869 in principal and $2,062 in interest).

Exxon Corporation/Bud Hayes Auto Service & Repair, et al., 5/31/89; RF307-4940, et al.

The DOE issued a Decision and Order concerning 49 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was a retailer of Exxon products whose allocable share is less than $5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $40,372 ($33,933 principal plus $6,439 interest).

Exxon Corp./Dill's Servicenter, et al., 6/2/89; RF307-410, et al.

The Department of Energy issued a Decision and Order concerning 40 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either an end-user or a reseller whose allocable share is less than $5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $33,580, including $5,353 in accrued interest.

Exxon Corporation/M. L. Bishop Exxon, et al., 5/30/89; RF307-6072, et al.

The DOE issued a decision and Order concerning 19 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision was $17,735, including $2,828 in accrued interest.

Exxon Corporation/Thompson Oil & Gas Co., Inc., 5/30/89; RF307-3290

The DOE issued a Decision and Order concerning an Application for Refund filed by Thompson Oil & Gas Co., Inc. (Thompson), a reseller, in the Exxon Corporation special refund proceeding. Thompson's potential allocable share exceeded $5,000 and the firm elected to receive a refund of either 40 percent of its allocable share or $5,000, whichever was greater. The total refund granted in this Decision was $5,949, including $949 in accrued interest.

Florida Rock & Tank Lines, Inc. Florida Rock Industries, Inc., 5/30/89; RF272-75433 RF272-75492

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to Florida Rock and Tank Lines, Inc. (Tank Lines) and Florida Rock Industries, Inc. (FRI). Previously, Tank Lines had applied for and been granted a refund in the Surface Transporters (ST) proceeding at the same time FRI's Application for Refund filed in the crude oil proceedings was denied, on the basis that its former subsidiary, Tank Lines, filing in the ST proceeding has waived FRI's right to receive a Subpart V crude oil refund. The United States District Court for the District of Columbia reversed this aspect of the OHA decision, finding that Tank Lines had effectively qualified its ST waiver. The court ordered the OHA to consider FRI's Subpart V application on its merits, and DOE did not appeal that decision. In reviewing FRI's application, the DOE rejected objections submitted by a group of states, reiterating its long-standing position that a general showing of sustained growth and profitability of a particular firm does not rebut the end-user presumption. In addition, the DOE found the states' evidence concerning the cement industry to be irrelevant to FRI's claim because FRI was involved in the concrete industry. Accordingly, FRI was granted a refund of $25,940, while Tank Lines was granted a refund of $9,624.

Gulf Oil Corporation/Annona Gulf, 5/30/89; FR300-4707

The DOE sisued a Decision and Order concerning an Application for Refund submitted by Annona Gulf, an indirect

purchaser, in the Gulf Oil Corporation special refund proceeding. Because Annona's supplier, the direct purchaser from Gulf, filed a refund claim on the basis of the presumptions of injury adopted in Gulf, the Annona submission was approved under the same procedure as applied to direct purchasers using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $786.

Gulf Oil Corporation Fuchs Oil Company, et al., 5/30/89; RF300-5041, et al.

The DOE issued a Decision and Order concerning five Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each of the applicants is a consignee and a reseller of Gulf refined products and each application was approved utilizing appropriate presumptions of injury. The sum of the refunds granted in this Decision is $13,192.

Gulf Oil Corporation/Lillian Pitts Brenham Quick Mark Hilbert Rosenbaum DBA Brenham Quick Mart, 6/2/89; RF300-4786; RF300-10819

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Both applicants indicated that they were consignees of Gulf products during the consent order period. One of the applicants was a consignee of the Gulf Oil Corporation and the other a consignee of a Gulf jobber. Neither applicant attempted to show injury, but instead elected the 10 percent injury presumption for Gulf consignees. Therefore, each applicant will receive a refund equal to 10 percent of its allocable share (excluding interest). The sum of the refunds granted in this Decision, which includes both principal and interest, is $152.

Gulf Oil Corporation/Pigeon Cooperative Oil Co., 6/2/89; RF300-3573

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. The Applicant was an agricultural cooperative during the consent order period and certified that it would pass the refund through to its members. The refund granted in this Decision, including accrued interest, is $7,980.

Gulf Oil Corporation/Sellers Oil Company, Inc., 5/31/89; RF300-5015

The DOE issued a Decision and Order concerning an Application for Refund submitted by an indirect purchaser in the Gulf Oil Corporation special refund proceeding. Because the applicant's direct supplier had received a refund based upon a presumption of injury, the indirect purchaser's application was approved under the same procedure as direct purchasers using a presumption of injury. The total refund granted in this Decision is $1,212.

Gulf Oil Corporation/Wald Oil Company, et al., 6/2/89; RF300-10815, et al.

The DOE issued a Decision and Order concerning 14 Applications for Refund approved in *Gulf Oil Corporation/Wald Oil Company, et al.*, on May 8, 1989. The original Decision and Order erroneously lised in the total gallons and refund approved. The total gallonage approved in the May 8, 1989 Decision and Order should have been 115,790,976 gallons, and the total refunds approved $27,148. The amounts approved for each individual claimant in the May 8, 1989 Decision and Order were not incorrect, and thus were unaffected by the Supplemental Order.

Gulf Oil Corporation/Washington Gas Light Co., 6/2/89; RF300-3286

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. The Applicant was a regulated public utility during the consent order period and certified that it would pass the refund through to its customers. The refund granted in this Decision, including accrued interest, is $8,916.

Indian Wells Oil Company/Farmland Industries, Inc., 5/31/89; RF317-4

The DOE issued a Decision and Order concerning an Application for Refund filed by Farmland Industries, Inc., (Farmland) in the Indian Wells Oil Company special refund proceeding. Farmland is an agricultural cooperative, and therefore considered an end-user of Indian Wells NGLs with respect to sales to its members. The firm stated that 86% of its product sales during the consent order period were to members. Accordingly, Farmland was entitled to receive $137,735, (86 percent of its allocable share of $160,157) plus a proportionate share of the interest that accured in the escrow account. With respect to the remaining 14 percent of its allocable share that is attributable to sales to non-members ($22,422), Farmland did not attempt to prove injury as a reseller. Therefore, Farmland was granted a total refund of $151,660 ($137,735 principal and $13,925 interest).

Marathon Petroleum Company/ Peyton Petroleum Company, 6/1/89; RF250-1387

The DOE issued a Decision and Order concerning an Application for Refund filed by the Peyton Petroleum Company (Peyton), an indirect purchaser, in the Marathon Petroleum Company special refund proceeding. Peyton had purchased Marathon products from two suppliers, one of which had received a Marathon refund under a presumption of injury; the refund claim of the second was denied. Under the circumstances, Peyton was found to be eligible for a refund under the small-claims presumption of injury and granted a refund of $4,813 in principal and $1,135 in interest.

Marathon Petroleum Company/Pullman Marathon, 5/30/89; RF 250-2735

The DOE issued a Decision and Order concerning an Application for Refund filed by Pullman Marathon, an indirect purchaser, in the Marathon Petroleum Company special refund proceeding. Because Pullman's supplier had previously received a refund under a presumption of injury, Pullman was found to be eligible to receive a small claims presumption refund. The total refund approved in this Decision is $529 in principal and $123 in interest.

Mobile Crane Company, Inc., et al., 6/1/89; RF272-27703, et al.

The DOE issued a Decision and Order approving 16 Applications for Refund submitted in the Subpart V crude oil refund proceeding. Each applicant was an end-user of the refined products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in the Decision was $45,453.

Petrolane-Lomita Gasoline Co./ International Drilling & Energy Corp., 6/1/89; RF208-2

International Drilling & Energy Corporation (IDEC) filed a Motion for Reconsideration of the denial of its Application for Refund from a consent order fund made available by Petrolane-Lomita Gasoline Company. In its applications, IDEC alleged that Petrolane violated DOE allocation regulations by failing to supply it with the volume of propane that it was entitled to receive during the period August 4, 1975, through January 1981. IDEC also requested a refund based on volumes of propane that another firm, H.W. Lemens Company, was entitled to receive from Petrolane during the period August 19, 1973, through August 3, 1975. IDEC claimed that since it purchased some of Lemens' assets in 1972, it was entitled to Lemens' base period allocation of propane from Petrolane and therefore was eligible for a refund from the Petrolane fund for the alleged allocation violations. In denying the original IDEC application, the DOE found that during the earlier period IDEC had not established that it had a supplier/purchaser relationship with Petrolane and that it was not entitled to a refund for alleged violations by Petrolane pertaining to Lemens' propane allocation. The DOE further found that for the period August 4, 1975, through January 27, 1981, IDEC failed to show that it filed a contemporaneous complaint alleging the allocation violation and that it had therefore not met the standards established for receiving a refund for this type of violation. In its Motion for Reconsideration, IDEC stated that because it purchased Lemens' entire "hot-mix" business, the Lemens allocation from Petrolane was automatically transferred to IDEC. The DOE rejected this claim, stating that during the August 19, 1973, through August 3, 1975 period, IDEC purchased the propane through Lemens and that Petrolane had no way of knowing that it had any obligation to supply IDEC. Accordingly, the DOE found that Petrolane could not have committed any alleged allocation violation with respect to IDEC during that period. With respect to the latter period, the DOE found that IDEC did have a relationship with Petrolane and did file an allocation complaint. However, the DOE referred to an FEA letter stating that Petrolane may not have supplied IDEC because the latter had not paid Petrolane for the product which it had received, it was again supplied with propane. THe DOE also noted that IDEC was able to obtain significant amounts of propane from other suppliers. The DOE concluded that no colorable allocation violation claim had been made by IDEC and accordingly denied the Motion for Reconsideration.

Pride Oil Well Service Company, et al., 6/1/89; RF272-27800, et al.

The DOE issued a Decision and Order approving 24 Applications for Refund submitted in the Subpart V crude oil refund proceeding. Each applicant was an end-user of the refined products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in the Decision was $46,061.

Shell Oil Company/Camillo R. Bruni, et al., 6/1/89; RF315-2000, et al.

The DOE issued a Decision and Order granting 134 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the Applicants purchased products directly from Shell and was either an end-user or a reseller whose allocable share was less than $5,000. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $115,146 ($99,415 principal plus $15,731 interest).

Strattanville Auto Truck Center, 5/31/89; RR272-23

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed by Strattanville Auto Truck Center (Strattanville) in the Subpart V crude oil refund proceeding. As a reseller of refined petroleum products, Strattanville was required to demonstrate that it had absorbed and therefore been injured by crude oil overcharges. Strattanville did not make such a demonstration and its Application was therefore denied in a Decision and Order dated January 25, 1989. *See Henderson Oil & Butane Co.*, 18 DOE ¶ 85,533. In the Motion for Reconsideration, Strattanville asserted that it was injured by crude oil overcharges and that its original Application should have been granted. However, Strattanville again did not demonstrate that it has absorbed any crude oil overcharges, and thus its Motion for Reconsideration was denied.

Vickers Energy Crop./Oklahoma, 5/30/89; RQ1-512

The DOE issued a Decision and Order approving a second-stage refund application filed by the State of Oklahoma in the Vickers Energy Corp. special refund proceeding. Oklahoma requested permission to use $25,600 in second-stage funds to purchase Ground-Source Heat Pumps for eight State-run vocational/technical schools to be used as demonstration models. The DOE found that these purchases would benefit the public by enhancing awareness of an energy-saving technology, and would therefore provide restitutionary benefits to injured consumers of petroleum products. Accordingly, the DOE granted Oklahoma's application and allocated $25,600 ($13,282 in principal plus $12,318 in interest) in Vickers funds to the State.

Walsh & Kelly, Inc., 6/2/89; RF272-3217

The DOE issued a Decision and Order granting a refund of the crude oil overcharge funds to Walsh & Kelly, Inc. based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Walsh purchased gasoline, diesel fuel, heating oil, and liquid asphalt to produce bituminous concrete and asphalt emulsions in its plants. The DOE determined that Walsh was the end-user of the refined petroleum products that it purchased. As an end-user, Walsh was entitled to receive a refund of its full volumetric share. The refund granted in this Decision is $72,566.

Dismissals

The following submissions were dismissed.

Name	Case No.
Byron Gulf	RF300-10074
Carleton College	RF272-61138
Chinoski Oil Company	RF310-216
City of Abilene, Kansas	RF272-58343
Cowles Publishing Company	KFA-0145
Hanford Education Action League.	KFA-0257
Jackson Co. Dept of Public Works.	RF272-72547
L. C. Livingston	RF300-7914
Ozark County Gas, Inc.	HRO-0239
Stan Balzer	KFA-0286
Steve's Service Station	RF304-5890
Sunclipse, Inc.	RF272-54369
Tesoro Petroleum Corp.	RF300-9641
The Oregonian	KFA-0089
Thomason Gulf	RF300-9386
Tri-City Herald	KFA-0072
Williams Service Station	RF300-7843
Yansick's ARCO	RF304-2660 RF304-4236

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	No. of Applicants	Total Refund
Carolina Storage Corp., *et al.*	RF272-51400	5/31/89	154	$17,967
Harold Flanders, *et al.*	RF272-52400	5/31/89	158	$18,408
J.R. Martin, *et al.*	RF272-52000	5/31/89	167	$17,817
Lawrence Wilde, *et al.*	RF272-51600	5/31/89	176	$20,235
Mervin G. Hoppman, *et al.*	RF272-52200	5/31/89	152	$17,835

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BILLING CODE 6450-01-M

Western Area Power Administration, Colorado River Storage Project; Rate Order

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of a rate order—Colorado River storage project firm transmission rate.

SUMMARY: Notice is hereby given of the confirmation and approval, by the Deputy Secretary of the Department of Energy, of Rate Order No. WAPA-42 for placing an increased rate into effect on an interim basis for the firm transmission of power over the Colorado River Storage Project system by the Western Area Power Administration (Western).

The firm transmission rate consists of a charge of $21.72 per kilowatt-year. The rate will be in effect on an interim basis beginning July 1, 1989.

Rate Order No. WAPA-42 further explains the rate adjustment and discusses the principal factors leading to the decisions on the rate increase and responds to the comments and criticisms offered during the consultation and comment period.

EFFECTIVE DATE: The rate will be effective July 1, 1989.

FOR FURTHER INFORMATION CONTACT:

Mr. Lloyd Greiner, Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147, (801) 524-6372.

Mr. Robert C. Fullerton, Director, Division of Marketing and Rates, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231-1545.

Mr. Ronald K. Greenhalgh, Assistant Administrator for Washington Liaison, Western Area Power Administration, Forrestal Building, Room 8G061, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-5581.

SUPPLEMENTARY INFORMATION: By Delegation Order No. 0204-108, effective December 14, 1983 (48 FR 55664), as amended May 30, 1986 (51 FR 19744), the Secretary of Energy delegated the authority to develop long-term power and transmission rates to the Administrator of Western; the authority to confirm, approve, and place such rates in effect on an interim basis to the Under Secretary of the Department of Energy; and the authority to confirm, approve, and place in effect on a final basis, to remand or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). On October 27, 1988, the Secretary issued a notice, DOE N 1110.29, amending Delegation Order No. 0204-108 by transferring authority to place rates into effect on an interim basis from the Under Secretary of the Department of Energy to the Deputy Secretary of the Department of Energy. This order was published in the **Federal Register** on January 26, 1989 (54 FR 3841).

A consultation and comment period was initiated on December 7, 1988, with an announcement of the proposed rate adjustment published in the **Federal Register** at 53 FR 49357. The **Federal Register** notice also announced a combined public information and comment forum to be held on January 19, 1989. On December 9, 1988, letters were sent to customers and other interested parties to announce the proposed rate adjustment and the forum and to transmit copies of the **Federal Register** notice and a rate brochure dated December 1988. The combined public information and comment forum was held January 19, 1989. Written comments were accepted through February 3, 1989.

All public comments received by February 3, 1989, have been considered in the preparation of the rate order.

Rate Order No. WAPA-42 confirming and approving an increased firm transmission rate on an interim basis is issued, and the rate will be promptly submitted to the FERC for confirmation and approval on a final basis.

Issued at Washington, DC, June 28, 1989.

W. Henson Moore,

Deputy Secretary.

[Rate Order No. WAPA-42]

Order Confirming, Approving, and Placing an Increased Transmission Rate in Effect on an Interim Basis.

June 28, 1989

Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a), the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, 43 U.S.C. 372, *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Act of 1939, 43 U.S.C. 485h(c), and acts specifically applicable to the Colorado River Storage Project (CRSP), were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204-108, effective December 14, 1983 (48 FR 55664), as amended May 30, 1986 (51 FR 19744), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Under Secretary of the Department of Energy; and (3) the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). On October 27, 1988, the Secretary of Energy issued a notice, DOE N 1110.29, amending Delegation Order No. 0204-108 by transferring authority to place rates into effect on an interim basis from the Under Secretary of the Department of Energy to the Deputy Secretary of the Department of Energy. This order was published in the **Federal Register** on January 26, 1989 (54 FR 3841). This rate order is issued pursuant to the delegation to the Administrator and the Deputy Secretary and the rate adjustment procedures at 10 CFR Part 903, published at 50 FR 37835 on September 18, 1985.

Background

Public Notice and Comments

The Procedures for Public Participation in Power and Transmission Rate Adjustments, 10 CFR Part 903, have been followed by Western in the development of this firm transmission rate. The transmission rate increase represents an increase of less than 1 percent in the total CRSP revenues; therefore, it is a minor rate adjustment, as defined at 10 CFR 903.2(f)(1). The distinction between a minor or major rate adjustment is used only to determine the public procedures for the rate adjustment. The following discussion summarizes the steps Western took to assure involvement of interested parties in the rate process.

1. The **Federal Register** notice at 53 FR 49357, published on December 7, 1988, announced the proposed firm transmission rate adjustment and the combined public information and comment forum.

2. Letters were sent to customers and other interested parties on December 9, 1988, to announce the proposed rate adjustment and the combined public information and comment forum, and to transmit copies of the notice and the rate brochure entitled "Colorado River Storage Project and Participating Projects Proposed Adjustment of Transmission Rates, December 1988" (Rate Brochure).

3. A combined public information and comment forum was held on January 19, 1989, in Salt Lake City, Utah. Western explained the need for the proposed rate increase and presented the results of the transmission rate study. Customers asked clarifying questions, but no oral comments were received at the meeting.

4. Three written comments were received through the end of the consultation and comment period on February 3, 1989. In addition, one written comment was received after February 3.

Project History

The CRSP was authorized by the Colorado River Storage Project Act, Ch. 203, 70 Stat. 105, on April 11, 1956. By means of the four storage units authorized, the flow of the Colorado River is regulated in such a way that irrigation, municipal, industrial, and other water-use developments in the Upper Colorado River Basin can take place while maintaining water deliveries to the lower basin as required by the Colorado River Compact. Facilities have also been provided at the storage units for flood control, recreation, and other beneficial purposes. In order to optimize the use of the water and to obtain revenues to assist in the repayment of the irrigation developments, hydroelectric-power generation plants have been installed on 3 of the 4 storage units and on 1 of the 20 participating projects.

Transmission facilities include a high-voltage transmission grid to deliver power to certain delivery points, provide interconnections among the plants of the CRSP units and the participating project, and interconnect with other Federal systems and systems of neighboring utilities. Additional transmission facilities are being built which will improve system reliability, better manage inadvertent power flows from other systems, and accommodate increased generating capacity.

Transmission Rate Study

A transmission rate study was completed as part of the CRSP power repayment study (PRS) this year. The first 3 future years were used as the study period for calculating the transmission rate. New and existing investment in transmission facilities was identified, and annual investment costs were determined by amortizing the investment at appropriate interest rates for 50 years. Other annual costs such as operations, maintenance, and replacements (OM&R) were also estimated. Estimated annual revenues from rental of transmission facilities, exchange of hydrogenerated power for thermal-generated power (included in the transmission-rate study because the exchange is made possible by the transmission facilities), and nonfirm wheeling revenues reduced the annual expenses. Capacity commitments for use of the transmission system were projected using planned maximum operating capacity of CRSP powerplants and contractual arrangements for wheeling over the CRSP transmission system that Western has with others. The annual unit cost was derived by dividing the annual costs by the annual capacity commitments. The firm transmission rate was determined by averaging the three annual unit costs. The rate increase is needed to recover the investment in CRSP transmission facilities scheduled to become operational during the 3-year study period.

Existing and Increased Rates

The existing firm transmission rate of $15.94 per kilowatt-year (kW-year) for the use of the CRSP transmission system was placed in effect on July 1, 1986, and will expire June 30, 1989. It was based on data available as of September 1, 1985. Projections of the transmission system investments, OM&R costs, wheeling costs over other systems, and revenues from Colorado-Ute Electric Association (Colorado-Ute) and Salt River Project (SRP) exchanges of thermal generation for CRSP hydrogeneration were made for fiscal years (FY) 1986, 1987, and 1988. The estimated average annual costs were $29,241,283, and the estimated annual transmission capacity commitments were 1826.7 megawatts (MW).

In December 1988, Western prepared a firm transmission rate study. The proposed firm transmission rate of $22.35/kW-year was presented to Western's customers and other interested parties in the Rate Brochure and at a combined public information and comment forum held January 19, 1989. The Rate Brochure describes the development of the proposed rate of $22.35 per kW-year and the changes in methodology used to develop the proposed rate, compared to the existing rate of $15.94 per kW-year.

The source for all the expenses and revenues shown in the transmission rate study is the CRSP PRS. The proposed transmission rate was based on the 1987 final PRS. In response to customer comments and the completion of the 1988 final PRS, some estimates used to develop the revised proposed rate were changed. These changes are reflected in table 1, which is a revision of table 2 shown in the Rate Brochure. The calculation results in a revised proposed firm transmission rate of $21.74/kW-year. For ease of monthly billing, Western has adjusted this rate of $21.72/kW-year.

Certification of Rates

Western transmits and disposes of power and energy in a manner that encourages their most widespread use at the lowest possible rates consistent with sound business principles. The Administrator of Western has certified that this new firm transmission rate is the lowest possible rate consistent with sound business principles. The rate has been developed in accordance with administrative policies and applicable laws.

Discussion

Several changes in the proposed firm CRSP transmission rate are reflected in the revised proposed rate. These revisions resulted from changes between the 1987 final PRS and the 1988 final PRS and from Western's response to customer comments. Written comments were received from three entities during the public consultation and comment period. One entity commented after the close of the comment period. The comments of all four entities, along with the changes in the revised proposed transmission rate, are described here.

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Table 1

CRSP TRANSMISSION SYSTEM COSTS AND CAPACITY COMMITMENTS - REVISED MARCH 1989

Interest Rate (%)	1989 ($)	1990 ($)	1991 ($)
2.632	1,179,517	1,179,517	1,179,517
2.875	182,609,000	182,609,000	182,609,000
5.683	0	351,895	351,895
6.595	6,213,388	6,213,388	6,213,388
7.210	684,794	684,794	684,794
9.352	159,302,848	163,295,354	163,295,354
10.051	11,699,153	11,699,153	11,699,153
10.250	0	1,909,945	1,909,945
10.371	1,474,804	1,474,804	1,474,804
10.403	1,172,701	23,504,261	23,504,261
10.693	1,780,847	3,038,704	3,092,704
10.898	31,256,947	39,688,083	39,688,083
11.070	1,151,737	1,151,737	1,151,737
Total	398,525,736	436,800,635	436,854,635

AMORTIZATION OF INVESTMENT

Interest Rate (%)	1989 ($)	1990 ($)	1991 ($)
2.632	42,692	42,692	42,692
2.875	6,929,662	6,929,662	6,929,662
5.683	0	21,344	21,344
6.595	427,308	427,308	427,308
7.210	50,942	50,942	50,942
9.352	15,070,503	15,448,206	15,448,206
10.051	1,185,751	1,185,751	1,185,751
10.250	0	197,269	197,269
10.371	154,061	154,061	154,061
10.403	122,868	2,462,621	2,462,621
10.693	191,618	326,963	332,774
10.898	3,425,817	4,349,884	4,349,884
11.070	128,170	128,170	128,170
AMORTIZATION COSTS	27,729,391	31,724,873	31,730,684
OTHER COSTS:			
OPER. & MAINT. EXPENSE	9,597,521	9,182,252	9,812,644
REPLACEMENTS 1/	2,466,122	2,485,916	2,610,972
SUBTOTAL	12,063,643	11,668,168	12,423,616
TOTAL TRANSMISSION COSTS	39,793,034	43,393,041	44,154,300
LESS REVENUES:			
SUBSTATION RENTAL	287,000	287,000	287,000
EXCHANGE CAP. CHARGES 2/	1,050,000	1,050,000	1,050,000
NONFIRM WHEELING	326,003	326,003	326,003
SUBTOTAL	1,663,003	1,663,003	1,663,003
NET COSTS TO RECOVER	38,130,031	41,730,038	42,491,297
CAPACITY COMMITMENTS (MW)			
CRSP POWERPLANTS	1715.0	1747.0	1753.0
ESTIMATED FIRM WHEELING:			
SRP	33.0	33.0	33.0
NTUA	32.0	32.0	32.0
ICPA	14.0	14.7	15.6
TRI-STATE	20.0	20.0	20.0
LOS ALAMOS	10.0	10.0	10.0
BASIN	10.0	10.0	10.0
ROCKY MTN. G&T	10.0	10.0	10.0
MEAN	7.0	7.0	7.0
TOTAL WHEELING	136.0	136.7	137.6
TOTAL CAPACITY COMMITMENTS	1851.0	1883.7	1890.6
UNIT COST ($/KW-YEAR)	20.600	22.153	22.475
1989-1991 AVERAGE ($/kW-year)	21.74		

1/ Amortization of historical and budgeted replacements: 1975-1991.
2/ Revenues from SRP ($1.75 x 500,000 kW) and Colorado-Ute ($1.75 x 100 kW) for exchange of capacity.

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Minor Rate Adjustment

Several entities commented that a 40-percent firm transmission rate increase was significant and asked for an explanation of Western's minor rate adjustment determination. The distinction of a minor or major rate adjustment is used only to determine the type of public process for the rate adjustment. The definition of a minor or major rate adjustment was published as part of the Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR Part 903, in the **Federal Register** on September 18, 1985, at 50 FR 37835. According to these procedures, at § 903.2(f):

'Minor rate adjustment' means a rate adjustment which (1) will produce less than 1-percent change in the annual revenues of the power system or (2) is for a power system which has either annual sales normally less than 100 million kilowatthours or an installed capacity of less than 20,000 kilowatts.

The CRSP transmission system is only part of the power system for which repayment must be demonstrated. Western does not treat the transmission system as a separate power system because it was built to deliver Federal power generated by the CRSP powerplants. Third-party transmission is an additional use of the system. The transmission rate study is used only to calculate a transmission rate for this third-party wheeling service. The revenue received from that service is used as a revenue credit in the PRS prepared for the CRSP power system. It does not serve to determine the repayment status of the transmission system. Repayment is handled through the PRS. The change in revenues for the CRSP power system from the proposed firm transmission rate increase is less than 1 percent; therefore, this is a minor rate adjustment as defined by 10 CFR Part 903.

Original Investment and Additions

One customer requested an accounting of increased transmission system investments for FY 1990 that were not listed in table 3 of the Rate Brochure. Table 3 included only the investments greater than $4 million. Other investments to come on line in FY 1990 are:

Item	Amount
Dallas Creek Transmission System	$351,895
Rifle Substation, Stage 3	3,992,506
Western Colorado Capacitor Banks	1,910,015
Craig Switchyard Terminal Facilities	3,734,900
Vehicle Storage Building	445,494
Ault-Ft. St. Vrain 230-Kilovolt Transmission Line	99,427
Ault Substation Terminal	658,935
	11,193,173

The interest rate on one investment budgeted in 1988 at 8.605 percent was corrected to 10.403 percent when the investment was actually placed in service. Another investment budgeted at 10.371 percent, expected in service in 1990, was changed to 10.250 percent, the latest treasury interest rate available.

There were some minor adjustments to budgeted amounts, reflected in the revised transmission rate study. Most investment changes were investments that were not moved to plant-in-service when originally planned. Some were moved to plant-in-service in 1988, and others are estimated to be moved in 1989. These delays necessitated calculating related, additional interest during construction, which is capitalized as part of the investment. The additional amount of cumulative investment shown in the revised transmission-rate study, compared to the proposed-rate study, was $25.88 million. When these changes are amortized at the applicable interest rate for 50 years, the increase in annual expenses is $2.51 million.

Operation and Maintenance (O&M) Expense

Western's budgeted O&M expenses were prorated to transmission service based on whether the expense item was more related to transmission investment or to revenues from transmission service. With the actual 1988 expense figures available, the amounts used to prorate Western's O&M figures changed. (The 1989 budget amounts used in the final PRS were already reflected in the proposed rate of $22.35/kW-year.) The average increase in transmission system O&M over the 3-year rate period was $86,273.

Replacements

Several comments were received regarding projected replacement costs. One entity requested a discussion of the rationale of averaging replacements through 2038. Another requested an explanation of the increases in replacements and suggested Western use programmed replacements for the 3-year study period. The PRS shows those investments expected to be in place within the next 5 years and projects replacements beyond the 5-year period based on the amount of current investment in place. There have been significant increases in actual and projected investments in the CRSP transmission system since the 1985 transmission rate study.

In the proposed transmission-rate study, the replacement expense was calculated by first averaging all historical, budgeted, and projected replacements (1975–2038), by plant account, shown in the 1987 final PRS. These average replacements by plant account were then prorated to the transmission system according to the amount of investment in the PRS attributed to transmission. The prorated average replacements were then summed to yield the annual replacement expense used in the transmission study. Western averaged transmission replacement costs over the FY 1975 to 2038 period in order to help level the replacement expense over time.

As a result of comments received, Western reviewed the methodology used to calculate the annual replacement expense in the revised transmission-rate study. It was concluded that only historical and budgeted replacements would be included and future projected replacements would be eliminated in keeping with the way original investment and additions have been handled in the transmission rate study. Replacements go into the PRS with a particular interest rate (used to calculate the interest expense on any unpaid balances) and must be repaid within the service life of the replacement. For the revised proposed rate, each historical and budgeted replacement was amortized, at the appropriate interest rate, for a period equal to the service life of the replacement. These yearly expenses were then summed to give a total annual replacement expense. This change caused an average decrease of $3,336,498 in the replacement expense in the revised transmission-rate study.

Revenue Credits

Three revenue sources reduce the transmission system costs. These are facilities rental, exchange capacity charges, and nonfirm transmission service revenues. The exchange capacity charges did not change with this revision. The facilities rental revenue shown in the PRS is based on the 5-year historical average. In the 1988 final PRS (and therefore in the transmission rate study), this figure increased $1,098 each year to $287,000.

Several entities felt that nonfirm transmission revenues were underestimated in the transmission study. The proposed study assumed a 1 mill/kilowatthour (kWh) rate applied to the 5-year historical average actual kWh wheeled. In the revised transmission

rate study, Western averaged the actual revenues received for nonfirm wheeling between FY 1984 and FY 1988. This method avoids projecting a nonfirm wheeling rate. (Western plans on adopting a flexible nonfirm wheeling rate for its CRSP transmission system and at this time cannot estimate wheeling amounts at any given rate.) The average nonfirm wheeling credit of $326,003 resulted in an annual increase of nonfirm transmission revenues of $22,172.

Capacity

Several entities commented on capacity commitments listed in the Rate Brochure. Questions about capacity related to (1) 600 MW of exchange capacity from Colorado-Ute and SRP, (2) 7 MW of transmission capacity reserved for the Municipal Energy Agency of Nebraska (MEAN), (3) the decrease in capacity from the 1985 study to the 1988 study, (4) 134 NW of exchange capacity for Public Service Company of New Mexico (PNM), and (5) discrepancies in the capacity commitment amounts shown in tables 1 and 2 of the Rate Brochure.

1. Revenues from capacity exchanged with Colorado-Ute and SRP are included in the transmission study. Six hundred MW from Colorado-Ute and SRP is exchanged for CRSP generation; therefore, the exchange capacity is part of the CRSP powerplant capacity.

2. Seven MW of firm transmission capacity for MEAN, inadvertently omitted from the transmission study, has been included in the revised transmission study.

3. The 1988 transmission study did not include an estimate of nonfirm transmission capacity as did the 1985 transmission study. It is inappropriate to treat nonfirm transmission capacity the same as firm because sale of nonfirm capacity is not guaranteed. However, estimated nonfirm transmission revenue is included in the transmission study as a revenue credit.

4. Under an exchange agreement, 50 MW of transmission capacity is provided to PNM in exchange for transmission provided to Western. PNM credits Western $0.90/kW-month for transmission provided by Western and applies this credit to transmission it provides for Western. Costs associated with this use of PNM's system are paid by the power users, not transmission customers. Under another agreement for exchange transmission capacity between PNM and Western, Western's Salt Lake City Area Office pays its Boulder City Area Office for transmission from Westwing to Pinnacle Peak and exchanges transmission capacity from Westwing to Four Corners with PNM for capacity from Four Corners to Albuquerque. These costs are paid by the power users, not transmission customers. No transmission costs to deliver Federal generation are included in the firm transmission rate.

5. The CRSP powerplant capacity shown in the proposed transmission rate study calculation was different than the supporting table shown in the Rate Brochure. This was an error. The supporting table showed the correct amounts. This resulted in a decrease in CRSP powerplant operating capacity of 2 MN in 1990 and an increase in 1991 of 5 MW.

In addition, the CRSP powerplant capacity figures used in 1989 and 1990 did not include 13 MW of capacity at the Fontenelle Powerplant because the powerplant is not currently in operation. However, the transmission system capacity for that generation is in place and is, therefore, included in the revised transmission-rate study.

The net increase in capacity commitments is 20 MW in 1989, 18 MW in 1990, and 12 MW in 1991.

Environmental Evaluation

In compliance with the national Environmental Policy Act (NEPA) of 1969 and section D of the DOE Guidelines published in the **Federal Register** on December 15, 1987 (52 FR 47662), Western has followed the process described below in conducting the environmental evaluation of the rate adjustment.

Section D of the DOE Guidelines states that the level of documentation required under NEPA for rate increases of power marketing administrations depends on the size of the rate increase as it relates to the rate of inflation since the last rate increase.

The Consumer Price Index (CPI) (published by the Department of Labor) was used to estimate the rate of inflation from the date of the last rate increase to the planned rate of the new increase. The proposed rate of $22.35/kWh represented a 40.21-percent increase over the current rate. The proposed rate increase is greater than the CPI over the period from July 1, 1986, to July 1, 1989.

In a determination Memorandum issued March 13, 1989, Western made the following determination based on the proposed firm transmission rate of $22.35/kW-year:

The proposed action would have no effect on the physical environment. Socioeconomic effects would include a small increase in operating expenses for customers of CRSP transmission services. This would likely result in small increases in retail sales for the retail customers of the utilities using CRSP transmission services. Although the proposed CRSP transmission rate increase expressed as a percent would be relatively large (40.21 percent), the net economic effect to the retail consumer would likely be small due to the small portion of the total transmission requirements of current customers supplied by CRSP transmission and the small proportion of transmission service expenses to the total operating costs of customers. The new firm transmission service costs would be low compared with alternative sources. No fuel switching would occur as a result of implementing the proposed action. In an environmental assessment (EA) prepared for the previous transmission service rate adjustment in 1986, no significant environmental impacts were identified for a percentage increase larger (55.21 percent) than that now proposed. The proposed action would clearly have no significant impact on the human environment as defined by the National Environmental Policy Act of 1969 and the Council on Environmental Quality.

Therefore, Western determined that the proposed firm transmission rate did not require the preparation of an environmental assessment or an environmental impact statement. Because the revised proposed firm transmission rate is less than the proposed firm transmission rate, Western will not make any further determination.

Executive Order 12291

The DOE has determined that this is not a major rule within the meaning of the criteria of section 1(b) of Executive Order 12291. In addition, Western is exempt from sections 3, 4, and 7 of that order, and therefore, will not prepare a regulatory impact statement.

Availability of Information

Information regarding this rate adjustment, including studies, comments, and other supporting material, is available for public review in the Salt Lake City Area Office, Western Area Power Administration, 257 East 200 South, Suite 475, Salt Lake City, Utah 84111; Divsion of Marketing and Rates, Western Area Power Administration, 1627 Cole Boulevard, Golden, Colorado 80401; and the Office of Assistant Administrator for Washington Liaison, Western Area Power Administration, Room 8G061, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

Submission to FERC

The rates herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted to the FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective on July 1, 1989, Rate Schedule SP-FT3. This rate shall remain in effect on an interim basis pending FERC confirmation and approval of it or a substitute rate on a final basis for a period of 3 years, or until it is superseded.

Issued at Washington, DC, June 28, 1989.

W. Henson Moore,

Deputy Secretary.

[Rate Schedule SP-FT3 (Supersedes SP-FT2)

Western Area Power Administration; Colorado River Storage Project, Utah, Colorado, Wyoming, Arizona, New Mexico; Sechedule of Rate for Firm Transmission Service

Effective: Beginning on July 1, 1989 and ending June 30, 1992.

Available: In the area served by the Colorado River Storage Project transmission system.

Applicable: To firm transmission service customers where power and energy are supplied to the Colorado River Storage Project transmission system at points of interconnection with other systems and transmitted and delivered, less losses, to points of delivery on the Colorado River Storage Project transmission system established by contract.

Character and Conditions of Service: Transmission service for alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points of delivery established by contract.

Rate: Transmission service charge: $21.72 per kilowatt-year for each kilowatt of transmission service contracted for, payable montly at the rate of $1.81 per kilowatt-month.

Requirements for Reactive Power: Requirements for reactive power shall be as established by contract; otherwise, there shall be no entitlement to transfer of reactive kilovolt-amperes at delivery points except when such transfers may be mutually agreed upon by the contractor and the contracting officer or their authorized representatives.

Adjustments for Losses: Power and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer as established by contract.

[FR Doc. 89-16321 Filed 7-11-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180814; FRL-3612-1]

Receipt of Application for Specific Exemption To Use Oxyfluorfen; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Oregon Department of Agriculture (hereafter referred to as "Applicant") for use of the herbicide oxyfluorfen to control various weeds in grasses grown for seed in Oregon. EPA is soliciting comment before making the decision whether or not to grant this specific exemption request.

DATE: Comments must be received on or before July 27, 1989.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP-180814," should be submitted by mail to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Room. 246, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 716C, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption to permit the use of the herbicide oxyfluorfen (CAS 42874 03 3) available as Goal 1.6E. EPA Reg. No. 707-174, to control various weeds in grasses grown for seed. Information in accordance with 40 CFR Part 166 was submitted as part of this request.

Oregon has requested authorization to apply up to 30 ounces of Goal 1.6E herbicide (0.375 pounds active ingredient) per acre on 165,800 acres of grasses grown for seed.

According to the Applicant, weed control in grasses grown for seed has relied on herbicides developed for use in conjunction with thermal santitation. Increasingly stringent restrictions on the use of open field burning as a sanitation practice in grass seed production in Oregon have seriously limited the number of grass seed fields burned in recent years. The traditional herbicide does not adequately control seedling grasses in unburned situations. Without the use of oxyfluorfen, the Applicant expects a loss of $63 million in sales.

Oxyfluorfen was referred to Special Review in January 1980 because pesticide products containing oxyfluorfen as an active ingredient were shown to be contaminated with perchloroethylene (PCE), a liver carcinogen in B6C3F1 mice. The Special Review process was completed on June 23, 1982, and the decision was made to continue registration of the herbicide subject to certain restrictions (on PCE) pertaining to formulation of the product (47 FR 27118).

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice in the **Federal Register** of receipt of an application for a specific exemption proposing use of a pesticide which contains an active ingredient which has been the subject of a Special Review and is intended for a use that could pose a risk similar to the risk posed by any use of a pesticide which is or has been the subject of a Special Review (40 CFR 166.24(a)(5)).

Accordingly, interested persons may submit written views on this subject to the Field Operations Division (H7506C), at the address given above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Oregon Department of Agriculture.

Dated: June 16, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89-15892 Filed 7-11-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3614-5]

Privacy Act of 1974; Amendment of Existing System of Records

AGENCY: Environmental Protection Agency.

ACTION: Notice of amendment of Privacy Act System of Records.

SUMMARY: The Environmental Protection Agency is giving notice that it is amending a Privacy Act system of records, "Invention Reports Submitted to the Environmental Protection Agency—EPA/OGC/Grants-16." This system of records was originally published in the **Federal Register** at 50 FR 50227 (1985).

EFFECTIVE DATE: These amendments are effective July 12, 1989.

FOR FURTHER INFORMATION CONTACT: Benjamin Bochenek, Patent Counsel, Office of General Counsel, Grants, Contracts and General Law Division (LE-132G), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Telephone (202) 382-5460.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency is amending the system of records entitled "Invention Reports Submitted to the Environmental Protection Agency—EPA/OGC/Grants-16." Except as noted below, all changes are editorial in nature or reflect minor administrative revisions which have occurred since the previous publication of the system notice in the **Federal Register** on December 9, 1985 (50 FR 50227).

The portion of the system notice describing the manner in which records in the system are stored is being revised to reflect that since April, 1987, the index to the system has been maintained in a computer data base rather than in a manual card file. The manual card index continues to cover records submitted prior to that period. The records described in "Categories of Records in the System" continue to be maintained in file folders and have not been automated. In addition, the "Safeguards" section of the system notice is being amended to make it clear that the protection from unauthorized access covering records in the system also covers the computerized index. The portion of the system notice describing how records are retrieved is being revised to reflect that records indexed in the computer data base may be retrieved by patent application serial number, U.S. patent number, and by institutional contractor, grantee or party to a cooperative agreement. Lastly, the "Authority" section of this notice is being changed to reflect amendments to the Code of Federal Regulations.

These changes do not involve a new use of the information in the system of records, increase or change the categories of individuals or records covered by the system, create a potential for greater access to the system, or affect an individual's right to gain access to his or her records. Accordingly, these amendments do not require a report of an altered system under 5 U.S.C. 552a(o).

Dated: May 3, 1989.

Charles L. Grizzle,

Assistant Administrator for Administration and Resource Management.

EPA-16

System Name

Invention Reports Submitted to the Environmental Protection Agency—EPA/OGC/Grants-16.

System Location

U.S. Environmental Protection Agency, Office of General Counsel (LE-132G), General and Information Law Branch, 401 M Street, SW., Washington, DC 20460.

Categories of Individuals Covered by the System

EPA employees and employees of contractors, subcontractors, grantees and cooperative agreement recipients who have submitted invention reports to EPA.

Categories of Records in the System

Invention reports, filed patent applications, assignments, licenses, procurement requests, Government purchase orders, and other documents relevant to inventions made under EPA sponsorship.

Authority for Maintenance of the System

E.O. 9865, E.O. 10096, 35 U.S.C. Ch.18, as amended (Patent Rights in Inventions made with Federal Assistance), 37 CFR Part 501 (53 FR 39734, October 31, 1988), 37 CFR Part 401, 40 CFR Part 30, 48 CFR Parts 27 and 52.

Purposes

Records are maintained for the purpose of documenting inventions made under EPA sponsorship, including filing patent applications, determining rights to inventions, licensing inventions, and ascertaining inventorship and priority of invention.

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Uses

1. To the U.S. Department of Justice when related to litigation or anticipated litigation involving the records or the subject matter of the records, provided such disclosure is compatible with the purpose for which the records were collected.

2. To scientific personnel who possess the expertise to understand the invention and evaluate its importance to the Government and/or the public.

3. To contract patent counsel and their employees retained by the Agency for patent searching and preparation of United States and foreign patent applications and preparation of amendments or other documents related to patent applications.

4. To Government agencies whom we contact regarding possible use, interest in or ownership rights in our invention.

5. To the National Technical Information Service of the Department of Commerce for inclusion in their invention licensing program.

6. To prospective licensees or technology finders who may further make the invention available to the public through sale, use or publication.

7. To parties, such as supervisors of inventors, whom we contact to determine ownership rights, and to those parties contacting us to determine the Government's ownership.

8. To the United States and foreign Patent and Trademark Offices when we file U.S. and foreign patent applications.

9. Also see Prefatory Statement of General Routine Uses applicable to all EPA Systems of Records, 41 FR 39689 (September 15, 1976).

Polices and Practices for Storing, Retrieving, Accessing, Retaining and Disposing of Records in the System

Storage

Records are stored in individual file folders in file cabinets. An index is maintained in part on a computer data base and in part on manual cards.

Retrievability

Indexed and retrieved by inventor's name, case identification number, U.S. patent application serial number, U.S. patent number, and institutional contractor, grantee or party to a cooperative agreement.

Safeguards

Access to manual files, the card index and the automated index is limited to EPA personnel with an official need to know. During non-business hours, all files, indices, discs and the comptuer are kept in a locked room in a building with controlled access.

Retention and Disposal

The records are maintained for seventeen years after completion or termination of action on the disclosed invention, such as issuance of a patent. The records are maintained at EPA for approximately three to eight years and are then sent to a Federal Records Center for the remainder of the applicable retention period.

System Manager(s) and Addresses

Associate General Counsel, Grants, Contracts and General Law Division, (LE-132G), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Notification Procedure

Written inquiries should be directed to the System Manager. The System Manager will provide additional information or requirements if necessary.

Records Access Procedures

Same as Notification Procedure. In addition, individuals seeking access should reasonable specify the record contents being sought.

Contesting Records Procedures

Same as Notification Procedure. In addition, individuals contesting records should reasonably identify the record and specify the information being contested. The corrective action being sought and supporting justification for that action should be provided.

Records Source Categories

Records in the system are obtained from invention report submitters covered by this system, their supervisors, other persons with knowledge of the invention or expertise in the particular area of the invention, EPA Patent Counsel and EPA contractors who have searched the invention, prepared a patent application on the invention and/or otherwise performed work on patent application.

Systems Exempted From Certain Provisions of the Act.

None.

[FR Doc. 89-16350 Filed 7-11-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL ELECTION COMMISSION

[Notice 1989-10]

Filing Dates for Texas Special Election

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for Texas special election.

SUMMARY: Texas has scheduled a special election on August 12, 1989, in the 12th Congressional District to fill the seat that was held by Representative Jim Wright.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Public Information Office 999 E Street, NW., Washington, DC 20463, Telephone: (202)376-3120; Toll Free (800)424-9530.

SUPPLEMENTARY INFORMATION: Principal campaign committees of candidates who participate in the Texas Special Election must file reports according to the schedule in the following charts. Party committees and PACs that make contributions or expenditures in connection with the Special Election during the coverage dates listed in the charts must file the appropriate reports. Monthly filers, however, do not file Special Pre- and Post-Election reports.

In the event that no candidate receives a majority of the vote in the Special Election, a second Special Election will be called within 5 days after the official election results are declared. If a second Special Election is necessary, filing dates for the appropriate reports will be established.

Calendar of Reporting Dates for Texas Special Election

ALL COMMITTEES INVOLVED IN THE 8/12/89 ELECTION MUST FILE

Report	Period covered	Reg./cert. mailing date [1]	Filing date
Mid-Year [2].	Waived		
Pre-Special.	01/01/89 [3]-07/23/89.	07/28/89	07/31/89

ALL COMMITTEES INVOLVED IN THE 8/12/89 ELECTION MUST FILE—Continued

Report	Period covered	Reg./cert. mailing date [1]	Filing date
Situation 1: If One Candidate Received a Majority of Votes All Committees Must File:			
Post-Special.	07/24/89-09/01/89.	09/11/89	09/11/89
Year-End.	09/02/89-12/31/89.	01/31/90	01/31/90
Situation 2: If no candidate receives a majority of the votes a run-off election will be sheduled. Committees that participate in the special run-off election will be notified of their filing requirements in a separate notice.			

[1] Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise, they must be received by the filing date.

[2] The Mid-Year Report is waived, pursuant to Section 104.5(h)(2) of the FEC Regulations, provided the Pre-Special Election report is timely filed.

[3] Or the close of books of the last report filed (if after 1/1/89). If no previous reports filed, the date of the committee's first activity.

Dated: July 6, 1989.

Danny L. McDonald,

Chairman, Federal Election Commission.

[FR Doc. 89-16304 Filed 7-11-89; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200139-005.

Title: The Port Authority of New York and New Jersey Terminal Agreement.

Parties: The Port Authority of New York and New Jersey Sea-Terminals, Inc. (STI).

Synopsis: The Agreement provides STI with the use of three additional acres of upland storage area and reflects the additional monthly fee for the use of

the additional area. The Agreement also extends the term of the basic agreement to December 31, 1989.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89-16295 Filed 7-11-89; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010954-002.

Title: Georgia Ports Authority Terminal Agreement.

Parties:

Georgia Ports Authority
Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha
Nippon Liner Systems, Ltd. (NLS)

Synopsis: The Agreement provides for the withdrawal of Japan Lines and Yamashita-Shinnihon Steamship Co. (YSS) from Agreement No. 224-010954. It also provides for NLS to assume the operations of YSS. All other terms and conditions of the basic agreement, as amended, will remain unchanged.

Agreement No.: 224-010930-001.

Title: City of Los Angeles Terminal Agreement.

Parties:

City of Los Angeles
Stevedoring Services of America (SSA)

Synopsis: The Agreement amends the parties' nonexclusive crane assignment agreement to extend SSA's right to use the three cranes assigned until such time that the cranes are sold to SSA but in no event later than December 31, 1989. The Agreement also revises SSA's maintenance responsibility under the basic agreement.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: July 6, 1989.

[FR Doc. 89-16296 Filed 7-11-89; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public; Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate [Casualty]

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Pub. L. 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR 540):

The China Navigation Co., Ltd.
c/o Lamorte Burns & Co., Inc.
505 Thornall Street, No. 205
Edison, New Jersey 08837
Vessel: Coral Princess

Date: July 6, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-16254 Filed 7-11-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Comerica Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than July 26, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Comerica Incorporated,* Detroit, Michigan; to acquire Bloomfield Mortgage Corporation, Southfield, Michigan, and thereby engage in making, acquiring, or servicing loans or other extensions of credit for the company's account or for the account of others pursuant to § 225.25(b)(1) of the Board's Regulation Y.

2. *Business Bancorp,* San Jose, California; to acquire Provident California Business and Industrial Development Corporation, San Francisco, California, and thereby engage in the origination and servicing of loans guaranteed by the Small Business Administration, the guaranteed portion of which is sold to investors in the secondary market pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 6, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-16286 Filed 7-11-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are

set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 26, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Daniel De Lange,* Miami, Florida; to retain 24.76 percent and to acquire an additional 0.61 percent of the voting shares of Imperial Bank, Coral Gables, Florida, for a total of 25.37 percent.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Mahaska Investment Company Employee Stock Ownership Trust,* Oskaloosa, Iowa; to acquire 24.88 percent of the voting shares of Mahaska Investment Company, Oskaloosa, Iowa, and thereby indirectly acquire Mahaska State Bank, Oskaloosa, Iowa, and First National Bank of Sumner, Sumner, Iowa.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *James W. Emison,* Eden Prairie, Minnesota; to acquire an additional 8.2 percent of the voting shares of Henderson Bancorporation, Inc., Henderson, Minnesota, for a total of 26.2 percent and thereby indirectly acquire Sibley County Bank of Henderson, Henderson, Minnesota.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Jay D. Peters,* Martell, Nebraska; to acquire an additional 95.2 percent of the voting shares of Martell Financial Services, Inc., for a total of 100 percent, and thereby indirectly acquire The Martell State Bank, Martell, Nebraska.

2. *Dennis Schardt,* Deshler, Nebraska; to acquire 39.47 percent; Ronald Schardt, Deshler, Nebraska, to acquire 0.67 percent; Superior Deshler Company, Deshler, Nebraska, and VIE Company, Deshler, Nebraska, each to acquire 4.94 percent; and S&S Industries, Inc., Deshler, Nebraska, to acquire 0.65 percent of the voting shares of Gibbon Exchange Company, Gibbon, Nebraska, and thereby indirectly acquire Exchange Bank, Gibbon, Nebraska.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *E. Delbert Horton,* Dallas, Texas; to acquire 8.68 percent; and Michael B. Witcher, Windom, Texas; to acquire 8.69 percent of the voting shares of Cooper Lake Financial Corporation, Cooper, Texas, and thereby indirectly acquire First National Bank in Cooper, Cooper, Texas.

2. *Brett W. Smith,* Kerrville, Texas, to acquire 10 percent; James W. Priour, III, Ingram, Texas, to acquire 20 percent; Stanley C. Jones, Lubbock, Texas, to acquire 20 percent; and Tex Hood, Kerrville, Texas, to acquire 20 percent of the voting shares of Premier Bancshares of Texas, Inc., Kerrville, Texas, and thereby indirectly acquire Bank of Kerrville, Kerrville, Texas, and Texas National Bank of Victoria, Victoria, Texas.

Board of Governors of the Federal Reserve System, July 6, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-16287 Filed 7-11-89; 8:45 am]

BILLING CODE 6210-01-M

Firstar Corp., et al; Notice of Applications To Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 26, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Firstar Corporation,* and Firstar Corporation of Minnesota, both in Milwaukee, Wisconsin; to engage *de novo* through its subsidiary, Firstar Trust Company of Minnesota, Minneapolis, Minnesota, in trust company activities pursuant to § 225.25(b)(3) of the Board's Regulation Y.

2. *Northern Trust Corporation,* Chicago, Illinois; to engage *de novo* through its subsidiary, Northern Trust Company of New York, New York, New York, in trust company activities pursuant to § 225.25(b)(3) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *Farmers Holding Company,* Jacksonville, Illinois; to engage *de novo* through its subsidiary, Tri-County Community Development Corporation, Jacksonville, Illinois, in community development activities pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in Morgan, Scott and Cass Counties in Illinois.

Board of Governors of the Federal Reserve System, July 6, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-16288 Filed 7-11-89; 8:45 am]

BILLING CODE 6210-01-M

Lee National Banc Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are

considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 26, 1989.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Lee National Banc Corp.*, Lee, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of the Berkshires, Lee, Massachusetts.

B. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Summit Bancorporation*, Summit, New Jersey; to acquire 24.9 percent of the voting shares of Growth Financial Corp., Bernardsville, New Jersey, and thereby indirectly acquire Growth Bank, Harding Township, New Jersey.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *AgriSource Incorporated*, Rayne, Louisiana; to become a bank holding company by acquiring 89 percent of the voting shares of Bank of Southwest Louisiana, Oakdale, Louisiana.

D. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Colonial Bancshares, Inc.*, Des Peres, Missouri; to acquire 100 percent of the voting shares of Village Bank of St. Louis County, Ellisville, Missouri.

E. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Henderson Bancorporation, Inc.*, Henderson, Minnesota; to merge with Citizens, Inc., Winsted, Minnesota, and thereby indirectly acquire Citizens State Bank of Winsted, Winsted, Minnesota.

2. *Litchville State Bank Holding Company*, Litchville, North Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of Litchville State Bank, Litchville, North Dakota. *Comments on this application must be received by July 26, 1989.*

3. *Primo Financial Services, Inc.*, Apple Valley, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Hampton, Hampton, Minnesota.

F. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Universal Bancorporation, Inc.*, Aurora, Colorado; to acquire 100 percent of the voting shares of Pioneer Bancorporation, Inc., Denver, Colorado, and thereby indirectly acquire City Center National Bank, Denver, Colorado, which engages in the sale of credit-related life and accident and health insurance only that is directly related to extensions of credit by the bank.

Board of Governors of the Federal Reserve System, July 6, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-16289 Filed 7-11-89; 8:45 am]

BILLING CODE 6210-01-M

MidAmerican Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 25, 1989.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *MidAmerican Corporation*, Shawnee Mission, Kansas; to engage in general insurance agency activities pursuant to section 4(a)(2) and 4(c)(8)(D) of the Bank Holding Company Act. MidAmerican Corporation recently received approval to acquire Merchants Bancorporation, Topeka, Kansas (MidAmerican Corporation, 75 Federal Reserve Bulletin 515 (1989) (Order dated May 30, 1989)).

Board of Governors of the Federal Reserve System, July 5, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-16290 Filed 7-11-89; 8:45 am]

BILLING CODE 6210-01-M

Royal Bank of Canada, Montreal, Quebec, Canada; Proposal to Underwrite and Deal in Debt and Equity Securities to a Limited Extent

Royal Bank of Canada, Montreal, Quebec, Canada ("Royal Bank"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.23(a), of the Board's Regulation Y (12 CFR 225.23(a)), for permission for its indirect subsidiary, RBC Dominion Securities Corporation, New York, New York ("Company"), to underwrite and deal in all types of debt and equity securities to a limited extent.

Company is currently authorized to: (1) Provide advice in connection with financial transactions; (2) provide brokerage and investment advisory services to institutional customers and affiliates; (3) provide financial advice to the Canadian federal, provincial and municipal governments, such as with respect to the issuance of their securities in the United States; (4) provide discount brokerage services; (5) furnish general economic information and advice, and provide portfolio investment advice and research to institutional customers and affiliates; and (6) underwrite and deal in securities eligible to be underwritten and dealt in by U. S. member banks. 74 Federal Reserve Bulletin 334 (1988).

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." The Board has previously determined that underwriting and dealing in debt and equity securities that are not eligible to be underwritten and dealt in by member banks ("ineligible securities") are closely related and proper incidents to banking, subject to certain conditions. *J.P. Morgan & Co. Incorporated, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp and Security Pacific Corporation*, 75 Federal Reserve Bulletin 192 (1989) ("*Morgan* Order").

Royal Bank has proposed to underwrite and deal in ineligible debt and equity securities under limitations that differ from those approved by the Board in its *Morgan* Order. Generally, Royal Bank proposes that the framework of limitations established by the Board in the *Morgan* Order should not apply to its operations outside the United States. For example, under the terms of its proposal, Royal Bank, which is a foreign bank as well as a bank holding company, and its foreign offices and subsidiaries would be permitted to lend to and in support of Company. Royal Bank does not propose that any U.S. bank, branch or agency affiliate would lend or otherwise provide support to Company. Royal Bank has also made other commitments as alternatives to those approved in the *Morgan* Order.

Royal Bank has also requested additional authority for Company: (1) To underwrite and deal in ineligible debt and equity securities in amounts generating up to 10 percent of Company's gross revenues; (2) to underwrite and deal in equity securities immediately without regard to the one-year waiting period established by the Board in the *Morgan* Order; and (3) to underwrite and deal in securities representing interests in, or secured by, obligations originated or sponsored by its affiliates if such security is rated by a nationally-recognized rating agency or is issued or guaranteed by a U.S. government agency or a U.S. Government-sponsored agency. Royal Bank's commitments and application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

In publishing the proposal for comment, the Board does not take any position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act or the Glass-Steagall Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than August 1, 1989. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Board of Governors of the Federal Reserve System, July 6, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 87-16291 Filed 7-11-87; 8:45 am]

BILLING CODE 6210-01-M

GENERAL ACCOUNTING OFFICE

Proposed Framework for Establishing Federal Government Accounting Standards

AGENCY: General Accounting Office.

ACTION: Public Notice.

SUMMARY: Because of the significant interest expressed in GAOs exposure draft of the Proposed Framework for Establishing Federal Government Accounting Standards, the comment period has been extended to August 31, 1989. The original **Federal Register** notice dated June 5, 1989 (page 24039) indicated a comment period deadline of July 15, 1989.

DATES: Interested parties should provide their comments on or before August 31, 1989.

ADDRESSES: Interested parties may obtain copies of the exposure draft by writing the Director, Accounting Principles and Standards, Accounting and Financial Management Divison, General Accounting Office, Room 6023, 441 G Street NW., Washington, DC 20548. The Director, also, will receive written comments from interested parties.

FOR FURTHER INFORMATION CONTACT: Ronald Young, Director, Accounting Principles and Standards, Accounting and Financial Management Division, (202) 275-9578.

Brian P. Crowley,

Acting Assistant Comptroller General Accounting and Financial Management.

[FR Doc. 89-16352 Filed 7-11-89; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Research and Demonstration Grants Relating to Occupational Safety and Health Availability of Funds for Fiscal Year 1989 Announcement Number 923

Introduction

The Centers for Disease Control (CDC), National Institute for Occupational Safety and Health (NIOSH), announces the availability of funds in Fisca1 Year 1989 for research and demonstration project grants relating to occupational safety and health.

Authority

This program is authorized under section 20(a)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)(1)) and section 501(c) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 951). Program regulations applicable to these grants are in Part 87, "National Institute for Occupational Safety and Health Research and Demonstration Grants," of Title 42, Code of Federal Regulations.

Eligible Applicants

Eligible applicants include non-profit and for-profit organizations. Thus universities, colleges, research institutions and other public and private organizations including State and local governments and small, minority and/or woman-owned businesses are eligible for these research and demonstration grants.

Availability of Funds

There is $6,149,000 available in Fiscal Year 1989 to fund research project grants, demonstration grants, Special Emphasis Research Career Award (SERCA) grants, small grants, and Small Business Innovation Research (SBIR) grants.

For research project grants, it is expected that 27 continuation grants will be awarded totaling approximately $3.490 million and that about 12 new and competing renewal grants will be awarded totaling approximately $1.574 million and ranging from approximately $50,000 to $250,000 with the average award being approximately $140,000. For SERCA grants, it is expected that approximately $227,000 will be awarded for seven continuation grants and $259,000 for eight new grants.

For small grants, it is expected that approximately $129,000 will be awarded for six continuation grants and $270,000 for twelve new grants. For SBIR grants, it is expected that approximately $200,000 will be awarded for one phase II continuation grant and that no new phase I or II grants will be awarded. Grants are usually funded for 12 months in project periods of up to 5 years for research project and demonstration grants, 3 years for SERCA grants, and 2 years for small grants. Continuation awards within the project period are made on the basis of satisfactory progress and on the availability of funds.

Purpose

The purpose of this program is to award funds to eligible institutions or agencies to establish, discover, elucidate, or confirm information relating to occupational safety and health, including innovative methods, techniques, and approaches for dealing with occupational safety and health problems.

Program Requirements

1. Research Project Grants

A research project grant application should be intended and designed to establish, discover, develop, elucidate, or confirm information relating to occupational safety and health, including innovative methods, techniques, and approaches for dealing with occupational safety and health problems. These studies may generate information that is readily available to solve problems or contribute to a better understanding of underlying causes and mechanisms.

2. Demonstration Grants

A demonstration grant application should address, either on a pilot or full-scale basis, the technical or economic feasibility or application of: (a) A new or improved occupational safety or health procedure, method, technique, or system, or (b) an innovative method, technique, or approach for preventing occupational safety or health problems.

3. Special Emphasis Research Career Award (SERCA) Grants

The SERCA is designed to enhance the research capability of individuals in the formative stages of their careers who have demonstrated outstanding potential for contributing as independent investigators to health-related research. Candidates must have had 2 or more years of relevant post-doctoral experience prior to the submission date. The application must document accomplishments in this period that demonstrate research potential; it must also present a plan for additional experience in a productive scientific environment at domestic institutions that will foster development of a career of independent research in the area of occupational safety and health. The SERCA is not intended for untried investigators, or for productive, independent investigators with significant numbers of publications of high quality, or for persons of senior academic rank (above associate professor or tenured). Moreover, the award is not intended to substitute one source of salary support for another for an individual who is already conducting full-time research, nor is it intended to be a mechanism for providing institutional support. The application must demonstrate that the award will make a difference in and enhance the candidate's development as an independent investigator.

Candidates must indicate a commitment of at least 60 percent time (not necessarily 60 percent salary) devoted to research under the SERCA grant, although full-time is desirable. Other work in the area of occupational safety and health will enhance the candidate's qualifications but is not a substitute for this requirement. While working closely with one or more advisefs, the awardee is expected to develop capabilities in fundamental, applied, and/or clinical research in one of the areas listed under "FUNDING PRIORITIES."

At the end of the award period, evidence of independent investigative capability should be present such that the individual is better able to compete in traditional NIOSH research grant activities.

The total grant award may comprise direct costs of up to $30,000 per year and up to 8 percent additional indirect costs. Direct costs may include salary plus fringe benefits, technical assistance, equipment, supplies, consultant costs, domestic travel, publication, and other costs. If the awardee already holds a small grant on the same research topic, the amount of the SERCA may be reduced up to the amount of the small grant. Awards may be up to 3 years and will not be renewable.

4. Small Grants

A small grant application is intended to provide financial support to carry out exploratory or pilot studies, to develop or test new techniques or methods, or to analyze data previously collected. This small grant program is intended for predoctoral graduate students, post-doctoral researchers (within 3 years following completion of doctoral degree or completion of residency or public health training) and junior faculty members (no higher than assistant professor). If university policy requires that a more senior person be listed as principal investigator, the application should specify that the funds are for the use of a particular student or junior-level person and should include appropriate justification for this arrangement. Though biographical sketches are required only for the person actually doing the work, the application should indicate who would be supervising the research. Small grant applications should be identified as such on the application form.

The total small grant award may comprise direct costs of up to $15,000 per year and additional indirect costs, as appropriate. The grants may be awarded for up to 2 years and are thereafter continuable by competitive renewal as a regular research grant. Salary of the principal investigator as well as that of the junior investigator, if university policy requires a senior person to be listed as the principal investigator, will not be allowed on a small grant, though salaries can be requested for necessary support staff such as laboratory technicians, interviewers, etc.

5. Program Project Grants

NIOSH will also accept applications for program project grants, but only after discussion with the individuals listed in this announcement.

Evaluation Criteria

Applications will be evaluated by a dual review process. The primary (peer) review is based on scientific merit and significance of the project, competence of the proposed staff in relation to the type of research involved, feasibility of the project, likelihood of its producing meaningful results, appropriateness of the proposed project period, adequacy of the applicant's resources available for the project, and appropriateness of the budget request.

Demonstration grant applications will be reviewed additionally on the basis of the following criteria:

- Degree to which project objectives are clearly established, obtainable, and for which progress toward attainment can and will be measured.
- Availability, adequacy, and competence of personnel, facilities, and other resources needed to carry out the project.
- Degree to which the project can be expected to yield or demonstrate results that will be useful and desirable on a national or regional basis.
- Extent of cooperation expected from industry, unions, or other participants in the project, where applicable.

SERCA grant applications will be reviewed additionally on the basis of the following criteria:

- The review process will consider the applicant's scientific achievements, evidence of demonstrated commitment to a research career in occupational safety and health, and supportive nature of the research environment (including letter(s) of reference from advisor(s) which should accompany the application).

Small grant applications will be reviewed additionally on the basis of the following criteria:

- The review process will take into consideration the fact that the applicants do not have extensive experience with the grant process.

A secondary review will also be conducted. Factors considered in the secondary review will include:

- The results of the initial review.
- The significance of the proposed study to the research programs of NIOSH.
- National needs and program balance.
- Policy and budgetary considerations.

Funding Priorities

NIOSH program priorities, listed below, are applicable to all of the above types of grants. The conditions or examples listed under each category are selected examples, not comprehensive definitions of the category. Investigators may also apply in other areas related to occupational safety and health. Applications responding to this announcement will be reviewed by staff for their responsiveness and relevance to occupational safety and health. Assignment to NIOSH for funding consideration will be according to established referral guidelines. Potential applicants with questions concerning the acceptability of their proposed work should contact the individuals listed in this announcement under "WHERE TO OBTAIN ADDITIONAL INFORMATION."

The NIOSH Program Priorities are:

1. Occupational lung disease: Asbestosis, byssinosis, silicosis, coal workers' pneumoconiosis, lung cancer, occupational asthma.
2. Musculoskeletal injuries: Disorders of the back, trunk, upper extremity, neck, lower extremity: traumatically induced Raynaud's phenomenon.
3. Occupational cancers (other than lung): Leukemia, mesothelioma, cancers of the bladder, nose and liver.
4. Severe occupational traumatic injuries: Amputations, fractures, eye loss, and lacerations.
5. Cardiovascular diseases: Hypertension, coronary artery disease, acute myocardial infarction.
6. Disorders of reproduction: Infertility, spontaneous abortion, teratogenesis.
7. Neurotoxic disorders: Peripheral neuropathy, toxic encephalitis, psychoses, extreme personality changes (exposure-related).
8. Noise-induced loss of hearing.
9. Dermatologic conditions: dermatoses, burns (scalding), chemical burns, contusions (abrasions).
10. Psychological disorders: Neuroses, personality disorders, alcoholism, drug dependency.
11. Engineering control systems: New technology performance evaluation, preconstruction review, equipment redesign, containment of hazards at the source, fundamental dust generation mechanisms, machine guarding/avoidance methods, explosion control, removal of emissions after generation, dispersion models, monitoring and warning techniques, technology transfer.
12. Respirator research: New and innovative respiratory protective devices, techniques to predict performance, effectiveness of respirator programs, physiologic and ergonomic factors, medical surveillance strategies, psychological and motivational aspects, effectiveness of sorbents and filters, including chemical and physical properties.

E.O. 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

CFDA Number (CFDA)

The Catalog of Federal Domestic Assistance number is 13.262.

Application Submission and Deadline

Applications should be submitted on Form PHS-398 (revised 9/86) or PHS-5161-1 (Revised 3/89) for State and local government applications. Also, the PHS-398 must be accompanied by the drug-free workplace certification. Forms should be available from the institutional business offices or from: Office of Grants Inquiries, Division of Research Grants, National Institutes of Health, Westwood Building—Room 449, 5333 Westbard Avenue, Bethesda, Maryland 20892.

The original and six copies of the application must be submitted to the address below on or before the specified receipt dates in accordance with the instructions in the PHS-398 packet: Division of Research Grants, National Institutes of Health, Westwood Building—Room 240, Bethesda, Maryland 20892.

The instructions in the Form PHS-398 packet should be followed concerning deadlines for either delivering or mailing the applications. The application should be sent or delivered using the mailing label in the Form PHS-398 packet.

The proposed timetable for receiving applications and awarding grants is as follows:

Application deadline*	Primary review group meeting	Secondary review meeting	Earliest possible beginning date
New and competing renewal applications:			
February 1.	June	September	December 1
June 1	Oct./Nov.	January	April 1
October 1	Feb./Mar.	May	July 1
Exceptions: Career Development and Small Grants:			
March 1	June	September	December 1
July 1	Oct./Nov.	January	April 1
November 1.	Feb./Mar.	May	July 1

*Competing renewal deadlines are 1 month later.

BEST COPY AVAILABLE

Awards will be made based on results of the initial and secondary reviews, balance among areas of programmatic interest, emphasis area, and availability of funds.

Where To Obtain Information:

For Technical Information Contact: Roy M. Fleming, Sc.D., Associate Director for Grants, National Institute for Occupational Safety and Health, Centers for Disease Control, 1600 Clifton Road, N.E., Bldg. 1, Room 3053, Atlanta, Georgia 30333, Telephone: (404) 639-3343.

For Business Information Contact: Henry Cassell, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 E. Paces Ferry Rd., NE, Room 300, Atlanta, Georgia 30305, Telephone: (404) 842-6575.

Please refer to Announcement Number 923 when requesting information and submitting any application on the Request For Assistance.

Dated: July 5, 1989.

Larry W. Sparks,

Acting Director, National Institute for, Occupational Safety and Health.

[FR Doc. 89-16285 Filed 7-11-89; 8:45 am]

BILLING CODE 4160-19-M

National Institutes of Health

Establishment of Committees

Pursuant to the Federal Advisory Committee Act of October 6, 1972 [Pub. L. 92-463, 86 Stat. 770-776], and section 402(b)(6) of the Public Health Service Act, [42 U.S.C. Code 282(b)(6)] as amended, the Director, NIH, announces the establishment, effective August 1, 1989, of the following committees:

Biological Sciences Study Section
Immunology, Virology and Pathology Study Section
International and Cooperative Projects Study Section
Physiological Sciences Study Section

The restructuring of the Biomedical Sciences Study Section and the Clinical Sciences Study Section, (Division of Research Grants Fellowship Study Sections) resulted in the establishment of the above four committees.

The Biomedical Sciences Study Section consisted of seven subcommittees and, in restructuring, two of the subcommittees were combined as the Biomedical Sciences Study Section, three subcommittees became the newly established Biological Sciences Study Section, and one subcommittee was restructured to establish the International and Cooperative Projects Study Section.

The Clinical Sciences Study Section consisted of four subcommittees; two of the subcommittees remain as the Clinical Sciences Study Section, and the other two subcommittees were restructured to establish the Immunology, Virology and Pathology Study Section and the Physiological Sciences Study Section.

Duration of the committees is continuing unless formally determined by the Director, NIH, that termination would be in the best public interest.

Dated: July 5, 1989.

William F. Raub,

Acting Director, NIH

[FR Doc. 89-16279 Filed 7-11-89; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Alpha-Methyldopa Sesquihydrate

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of alpha-methyldopa sesquihydrate. Alpha-methldopa sesquihydrate is used in the treatment of hypertension.

Toxicology and carcinogenesis studies were conducted by administering diets containing 0, 3,100, or 6,300 ppm alpha-methyldopa sesquihydrate to groups of 50 male and 50 female rats and diets containing 0, 6,300 or 12,500 ppm alpha-methyldopa sesquihydrate were fed to groups of 50 male and 50 female mice for 103 weeks.

Under the conditions of these 2-year feed studies, there was no evidence of carcinogenic activity* of alpha-methyldopa sesquihydrate for male or female F344/N rats fed diets containing 3,100 or 6,300 ppm. There was equivocal evidence of carcinogenic activity of alpha-methyldopa sesquihydrate for male $B6C3F_1$ mice, as shown by three dosed mice having uncommon tubular cell tumors of the kidney. There was no evidence of carcinogenic activity of alpha-methyldopa sesquihydrate for female $B6C3F_1$ mice fed diets containing 6,300 or 12,500 ppm. Nonneoplastic lesions of the kidney including karyomegaly were observed in dosed female mice. Decreased incidences of several tumor types (in the adrenal gland in male rats, uterus in female rats, liver in male and female mice, and anterior pituitary gland in female mice) were considered related to alpha-methyldopa sesquihydrate exposure.

The study scientist for this bioassay is Dr. June K. Dunnick. Questions or comments about the content of this Technical Report should be directed to Dr. Dunnick at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-7936; FTS: 629-3991.

Copies of *Toxicology and Carcinogenesis Studies of Alpha-methyldopa Sesquihydrate in F344/N Rats and $B6C3F_1$* Mice (Feed Studies) (TR 348) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-3991; TS: 629-3991.

Dated: July 5, 1989.

David P. Rall,

Director.

[FR Doc. 89-16280 Filed 7-11-89; 8:45 am]

BILLING CODE 4140-01-M

*The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of evidence of carcinogenicity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); and one category for experiments that cannot be evaluated because of major flaws (" inadequate study").

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of C. I. Acid Orange 3

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of C. I. Acid Orange 3. C. I. Acid Orange 3 is a dinitrodiphenylamine derivative used exclusively as a dye in semipermanent hair coloring products.

Toxicology and carcinogenicity studies were conducted by administering to groups of 50 F344/N rats of each sex 0, 375, or 750 mg/kg C. I. Acid Orange 3 in corn oil by gavage, 5 days per week for 103 weeks. Groups of 50 male $B6C3F_1$ mice were administered 0, 125 or 250 mg/kg C. I. Acid Orange 3, and groups of 50 female $B6C3F_1$ mice were administered 0, 250 or 500 mg/kg on the same schedule.

Under the conditions of these 2-year gavage studies, there was no evidence of carcinogenic activity * of C. I. Acid

* The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence observed in each experiment: two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no

Continued

Orange 3 for male F344/N rats administered 375 mg/kg; because of a marked reduction in survival and no indication of carcinogenicity, the 750 mg/kg group was considered to be inadequate for assessment of carcinogenic activity. There was clear evidence of carcinogenic activity of C. I. Acid Orange 3 for female F344/N rats as shown by the occurrence of transitional cell carcinomas of the kidney in the 750 mg/kg group; this group had reduced survival and chemically related nonneoplastic lesions of the kidney. There was no evidence of carcinogenic activity of C. I. Acid Orange 3 for male $B6C3F_1$ mice administered 125 or 250 mg/kg or for female $B6C3F_1$ mice administered 250 or 500 mg/kg. Nonneoplastic lesions of the kidney were observed in both dose groups of both sexes of rats and mice.

Copies of *Toxicology and Carcinogenesis Studies of C. I. Acid Orange 3 in F344/N Rats and $B6C3F_1$ Mice (Gavage Studies)* (TR 335) are available without charge from the NTP Public Information Office, MD B2-04, P. O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-3991, FTS: 629-3991.

Dated: July 3, 1989.

David P. Rall,

Director.

[FR Doc. 89-16281 Filed 7-11-89; 8:45 am]

BILLING CODE 4140-01-M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Two Pentachlorophenol Technical-Grade Mixtures

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of two pentachlorophenol technical-grade mixtures. Pentachlorophenol is a biocide used primarily as a wood preservative.

Toxicology and carcinogenicity studies were conducted by administering diets containing 100 or 200 ppm technical-grade pentachlorophenol or 100, 200 or 600 ppm Dowicide EC-7 to groups of 50 male and 50 female mice. Two groups of 35 male and 35 female mice were fed control diets.

Under the conditions of these 2-year studies, there was clear evidence of carcinogenic activity* for male $B6C3F_1$ mice fed diets containing technical-grade pentachlorophenol, as shown by increased incidences of adrenal medullary and hepatocellular neoplasms. There was some evidence of carcinogenic activity for female $B6C3F_1$ mice exposed to technical-grade pentachlorophenol, as shown by increased incidences of hemangiosarcomas and hepatocellular neoplasms. There was clear evidence of carcinogenic activity for male $B6C3F_1$ mice exposed to pentachlorophenol, EC-7, as shown by increased incidences of adrenal medullary and hepatocellular neoplasms. There was clear evidence of carcinogenic activity for female $B6C3F_1$ mice exposed to pentachlorophenol, EC-7, as shown by increased incidences of adrenal medullary and hepatocellular neoplasms and hemangiosarcomas.

Chemically related increased incidences of nonneoplastic lesions in mice of each sex included hepatocellular cytomegaly, necrosis, inflammation, pigmentation, and clear cell foci and intrahepatic bile duct hyperplasia.

Copies of *Toxicology and Carcinogenesis Studies of Two Pentachlorophenol Technical-Grade Mixtures in $B6C3F_1$ Mice (Feed Studies)* (TR 349) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle, Park, NC 27709 or telephone (919) 541-3991; FTS: 629-3991.

Dated: July 5, 1989.

David P. Rall,

Director.

[FR Doc. 89-16282 Filed 7-11-89; 8:45 am]

BILLING CODE 4140-01-M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Roxarsone

This HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of roxarsone. Roxarsone is an organic arsenical widely used as a growth promoter for swine and poultry, and as a drug for treatment of swine dysentery.

Toxicology and carcinogenesis studies were conducted by administering diets containing 0, 50, or 100 ppm roxarsone to groups of 50 rats of each sex. Diets containing 0, 100, or 200 ppm were fed to groups of 50 mice of each sex.

Under the conditions of these 2-year studies, there was equivocal evidence of carcinogenic activity* of roxarsone for male F344/N rats, as indicated by a marginally increased incidence of adenomas of the exocrine pancreas. There was no evidence of carcinogenic activity for female F344/N rats fed diets containing 50 or 100 ppm roxarsone for 2 years. There was no evidence of carcinogenic activity for male or female $B6C3F_1$ mice fed diets containing 100 or 200 ppm roxarsone for 2 years.

The study scientist for this bioassay is Dr. K. Abdo. Questions or comments about the content of this Technical Report should be directed to Dr. Abdo at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-7819.

Copies of *Toxicology and Carcinogenesis Studies of Roxarsone in F344/N Rats and $B6C3F_1$* Mice (Feed Studies) (TR 345) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-3991; FTS 629-3991.

Dated: July 5, 1989.

David P. Rall

Director.

[FR Doc. 89-16283 Filed 7-11-89; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-738003

Applicant: International Animal Exchange, Inc., Ferndale, MI.

The applicant requests a permit to import one pair of captive hatched

observable effects ("no evidence"); and one category for experiments that because of major flaws cannot be evaluated ("inadequate study").

*The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence observed in each experiment: two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); and one category for experiments that because of major flaws cannot be evaluated ("inadequate study").

* The NTP uses five categories of evidence observed in each experiment: two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); and one category for experiments that because of major flaws cannot be evaluated ("inadequate study").

Darwin's rheas (*Pterocnemia pennata pennata*) from La Dehesa Centro de Aclimatacion Zoologica, Santiago, Chile, for resale to Roger Williams Park Zoo, Providence, Rhode Island, where the birds will be entered into a breeding program and used for zoological display.

PRT-736995

Applicant: National Zoological Park, Washington, DC.

The applicant requests a permit to import two male and one female giant otters (*Pteronura brasiliensis*) from the Jardin Zoologico de Brasilia, Brazil, for behavioral research and captive breeding purposes. The otters were born in captivity at the Jardin Zoologico de Brasilia.

PRT-735842

Applicant: Fred David Rich, Portland, TX.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), to be culled from the captive herd maintained by Mr. V.L. Pringle, "Huntley Glen", Bedford, Cape Province, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT-736889

Applicant: U.S. Fish & Wildlife Service, Montana Cooperative Wildlife Research Unit, Missoula, MT.

The applicant requests a permit to import the salvaged skulls of one male and one female wild yak (*Bos mutus*) and the skin and skull of one male musk deer (*Moschus sifanicus*) from the Northwest Plateau Institute of Biology Museum, Xining, People's Republic of China, for disposition in the Museum of the University of Montana where the specimens will be used for scientific research purposes.

PRT-737978

Applicant: Helen Carpenter, Jefferson, TX.

The applicant requests a permit to export and re-import two leopards (*Panthera pardus*), one jaguar (*P. onca*), three tigers (*P. tigris*), one lion (*P. leo*), one cougar (*Felis concolor*), and one baboon (*Papio anubis*) for the purpose of conservation education. In the future, the applicant will re-export and re-import these animals for the same purpose.

PRT-738037

Applicant: William E. Kratz, Hightstown, NJ.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), to be culled from the captive herd maintained by Mr. Phil van der Merwe, Victoria West, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT-736854

Applicant: University of Georgia, Museum of Nat. Hist., Athens, GA.

The applicant requests a permit to import six to ten infertile peregrine falcon (*Falco peregrinus anatum*) eggs from captive held birds for scientific research. The eggs will be imported from Saskatchewan Cooperative Falcon Project, Saskatoon, Saskatchewan, Canada.

PRT-738288

Applicant: Dr. John Faaborg, University of Missouri, Columbia, MO.

The applicant requests a permit to import blood samples taken from wild Galapagos hawks (*Buteo galapagoensis*) for the purpose of DNA sequence analysis.

PRT-738292

Applicant: James B. Gentry, Houston, TX.

The applicant requests a permit to import the short-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), to be culled from the captive herd maintained by Mr. F.W.M. Bowker, Jr., Thornkloof, Grahamstown, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT-739350

Applicant: National Marine Fisheries Service, Southwest Fisheries Center, LaJolla, CA.

The applicant requests a permit to (1) capture hawksbill sea turtles (*Eretmochelys imbricata*) in the sea by hand and hold them out of the water for short periods for the purpose of recording standard body measurements and attaching Inconel alloy identification tags; (2) restrain adult female hawksbill turtles on their nesting beaches for short periods of time for the purpose of recording standard body measurements and attaching Inconel tags; and (3) excavate nests to measure egg fertility and productivity and rescue any live hatchlings found to be trapped in the nest.

Activities will be conducted in the Hawaiian Islands, Samoa, Guam, Commonwealth of the Northern Mariana Islands, Palau and the Federated States of Micronesia.

PRT-738440

Applicant: Center for Reptile & Amphibian Propagation, Fresco, CA 93722.

The applicant requests a permit to purchase in interstate commerce three captive-bred Galapagos tortoises (*Geochelone elephantopus*) from Grant DeWitt, Dallas, Texas for propagation of the species.

PRT-738971

Applicant: Siegfried & Roy Enterprises, Las Vegas, NV.

The applicant requests a permit to import from Japan and reexport 3 male captive-born white tigers (*Panthera tigris*) born in Japan to a white tiger owned by Siegfried & Roy. The tigers will be imported and reexported several times during their lifetimes for the purpose of enhancement of the survival of the species through conservation education.

PRT-739412

Applicant: National Zoological Park, Washington, DC.

The applicant requests a permit to import two captive born female golden lion tamarins (*Leontopithecus rosalia*) from the Marwell Zoological Park, Hampshire, England. The tamarins will be exported to Brazil for release.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 a.m. to 4:15 p.m.) Room 432, 4401 N. Fairfax Drive, Arlington, VA 22203, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 3507, Arlington, Virginia 22203-3507.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Date: July 5, 1989.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 89-16351 Filed 7-11-89; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program Investment Opportunity

This is a correction to the Notice of Investment Opportunity for Jordan originally published on July 3, 1989 in the **Federal Register** (54 FR 28015, FR Doc. 89-15828). The date and time for receipts of bids has been changed and should read as follows:

Interested lenders should telex their bids to the Borrower's representative by 5:00 p.m. (EST) July 24, 1989.

Michael G. Kitay,

Assistant General Counsel, Bureau for Private Enterprise, Agency for International Development.

Date: July, 3, 1989.

[FR Doc. 89-16278 Filed 7-11-89; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-294]

Commission Decision Not To Review an Initial Determination Amending the Complaint and Notice of Investigation To Add an Allegation of Direct Patent Infringement

In the matter of certain Carrier Materials Bearing Ink Compositions to be Used in a Dry Adhesive Free Thermal Transfer Process and Signfaces made by such a Process.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 5) issued by the presiding administrative law judge (ALJ) amending the complaint and notice of investigation to add an allegation of direct patent infringement as to respondent Signtech Incorporated.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000.

FOR FURTHER INFORMATION CONTACT: Tim Yaworski, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1096.

Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202-252-1810.

SUPPLEMENTARY INFORMATION: On June 5, 1989, the presiding ALJ issued an ID granting the motion of complainant Minnesota Mining and Manufacturing Company (3M) to amend the complaint and notice of investigation in the above-captioned investigation to add an allegation of direct patent infringement as to respondent Signtech Incorporated. The ID granted 3M leave to amend the complaint per the attachment to complainant's motion to amend and amended paragraph 1 of the "Scope of Investigation" section of the notice of investigation to read as follows:

Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation by instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain carrier materials bearing ink compositions to be used in a dry adhesive-free thermal transfer process, or signfaces made by such a process, by reason of alleged direct, contributory or induced infringement of claims 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 15 or 22 of U.S. Letters Patent 4,737,224, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

The ID also amended the title of the investigation to read as follows: Certain Carrier Materials Bearing Ink Compositions To Be Used In a Dry Adhesive-Free Thermal Transfer Process And Signfaces Made By Such A Process.

No petitions for review of the ID or agency comments concerning the ID were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and section 210.53 of the Commission's Interim Rules of Practice and Procedure (53 FR 33070, Aug. 29, 1988).

By order of the Commission.

Issued: July 5, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-16336 Filed 7-11-89; 8:45 am]

BILLING CODE 7020-02-M

[Inv. No. 337-TA-289]

Certain Concealed Cabinet Hinges and Mounting Plates; Commission Decision Not To Review an Initial Determination Finding Two Respondents in Default

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 73) issued by the presiding administrative law judge (ALJ) finding two respondents in default in the above-captioned investigation.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1000.

FOR FURTHER INFORMATION CONTACT: Calvin Cobb, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1103.

Hearing impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202-252-1810.

SUPPLEMENTARY INFORMATION: Julius Blum, Inc. (Blum), a U.S. assembler of certain patented concealed hinges and mounting plates, filed a complaint with the Commission on November 23, 1988. The Commission instituted an investigation of Blum's complaint and issued a notice of investigation that was published in the **Federal Register** on December 28, 1988, 53 FR 52515.

On May 9, 1989, in response to a motion by Blum, the presiding administrative law judge (ALJ) issued an order (Order No. 40) directing two respondents, U.S. Industrial Products Corp. (USIP) and Advanced Affiliates, Inc. (Advanced), to show cause why they each should not be found in default. The order to show cause was based on failure of each respondent to respond to complainant's interrogatories, document requests, and motion to compel; their respective failures to comply with the ALJ's order compelling discovery by April 4, 1989 (Order No. 12); and the lack of willingness on the part of each to participate in the investigation.

Respondents USIP and Advanced filed a joint response to the order to show cause, offering arguments and requesting that they "be allowed to continue as a party to this action, and be provided with all copies of filings of complainant * * *"

The ALJ noted that in their joint response respondents did not show any willingness to provide the discovery long ago requested and ordered, and, on June 7, 1989, issued an initial determination (ID) (Order No. 73) finding both USIP and Advanced in default for failure to respond to discovery, and ordered that each had waived its right (i) to appear in the investigation, (ii) to contest the allegations at issue in the investigation, and (iii) to be served with documents by the parties.

This action is taken under the authority of section 337 of the Tariff Act

of 1930 (19 U.S.C. 1337) and section 210.53 of the Commission's Interim Rules of Practice and Procedure (53 Fed. Reg. 33070, Aug. 29, 1988).

By order of the Commission.

Issued: July 5, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-16337 Filed 7-11-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-293]

Certain Crystalline Cefadroxil Monohydrate

Notice is hereby given that the prehearing conference in this matter will commence at 9:00 a.m. on July 17, 1989, in Courtroom C (Room 217), U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register.**

Janet D. Saxon,

Chief Administrative Law Judge.

Issued: June 30, 1989.

[FR Doc. 89-16338 Filed 7-11-89; 8:45 am]

BILLING CODE 7020-02-M

[Inv. No. 337-TA-295]

Certain Novelty Teleidoscopes; Commission Decision Not To Review an Initial Determination Amending the Complaint and Notice of Investigation To Add Additional Responsents

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 6) issued by the presiding administration law judge (ALJ) granting the motions of complainant Homespun Imports, Inc. d/b/a Silver Deer, Ltd., to add four respondents to the above-captioned investigation. The ID amends the complaint and notice of investigation by adding New Lon Industries, Inc., Rich Trees International, Prosperity Industrial Co., and Fred Kort International, all of Taiwan.

ADDRESSES: Copies of the ID and all other nonconfidential documents field in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000.

FOR FURTHER INFORMATION CONTACT: George Thompson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1090.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission TDD terminal on 202-252-1810.

SUPPLEMENTARY INFORMATION: On June 7, 1989, the presiding ALJ issued an ID amending the complaint and notice of investigation to add the four firms as respondents. No petitions for review of the ID or government agency comments were received. These actions are taken under authority of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rule § 210.53(h).

By order of the Commission.

Issued: July 5, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-16339 Filed 7-11-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-266]

Certain Track Lighting System Components, Including Plugboxes; Commission Determinations To Review and Clarify Portions of an Initial Determination Finding of No Violation of Section 337 of the Tariff Act of 1930 and Not To Review the Remainder of the Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review and clarify portions of the presiding administrative law judge's (ALJ's) final initial determination (ID) in the above-captioned investigation finding no violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and not to review the remainder of the ID. As a result of these determinations the Commission has found that there is no violation of section 337 in the investigation.

ADDRESSES: Copies of the Commission's opinion, the nonconfidential version of the TD, and all other nonconfidential documents filed in connection with this investigation are or will be available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, 500 E Street SW., Washington, DC 20436, telephone 202-252-1090.

Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202-252-1810.

SUPPLEMENTARY INFORMATION: On May 4, 1989, the presiding ALJ issued her final ID finding no violation of section 337 in this investigation. The Commission has determined to review and clarify certain aspects of the ID's discussion of secondary meaning and likelihood of confusion with regard to the existence and infringement of complainant Cooper Industries, Inc.'s alleged common law trademark. The Commission has determined not to review any other part of the ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and section 210.56 of the Commission's Interim Rules of Practice and Procedure (53 FR 33071, Aug. 29, 1988).

This investigation was instituted by publication of a notice of investigation in the **Federal Register** on August 25, 1988 (53 FR 32478).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: July 7, 1989.

[FR Doc. 89-16340 Filed 7-11-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-434 (Preliminary)]

12-Volt Motorcycle Batteries From the Republic of Korea

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from the Republic of Korea of 12-volt motorcycle batteries, provided for in subheading 8507.10.00 of the Harmonized Tariff Schedule of the United States (previously reported under items 683.01 and 683.05 of the Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value (LTFV).

[1] The record is defined in § 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).

Background

On May 17, 1989, a petition was filed with the Commission and the Department of Commerce by Yuasa-Exide Battery Corp., Reading, PA, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of 12-volt motorcycle batteries from the Republic of Korea. Accordingly, effective May 17, 1989, the Commission instituted preliminary antidumping investigation No. 731-TA-434 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 31, 1989 (54 FR 23296). The conference was held in Washington, DC, on June 7, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 3, 1989. The views of the Commission are contained in USITC Publication 2203 (July 1989), entitled "12-Volt Motorcycle Batteries from the Republic of Korea: Determination of the Commission in Investigation No. 731-TA-434 (Preliminary Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By Order of The Commission.

Kenneth R. Mason,

Secretary.

Issued: July 6, 1989.

[FR Doc. 89-16341 Filed 7-11-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-290]

Certain Wire Electrical Discharge Machining Apparatus and Components Thereof

Notice is hereby given that the prehearing conference in this matter will commence at 9:00 a.m. on July 24, 1989, in Courtroom C (Room 217), U.S. International Trade Commission Building, 500 E St. SW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register.**

Janet D. Saxon,

Chief Administrative Law Judge.

Issued: July 3, 1989.

[FR Doc. 89-16342 Filed 7-11-89; 8:45 am]

BILLING CODE 7020-02-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person, from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 19, 1989 through June 29, 1989. The last biweekly notice was published on June 28, 1989 (54 FR 27221).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 11, 1989 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's

property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Alabama Power Company, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: March 20, 1989

Description of amendments request: The proposed amendments would change the Technical Specifications (TS) to:

1. Clarify the wording of TS 4.2.2.2.f.3. to more accurately and correctly define the grid plane regions of the core where Fxy limits are not applicable.

2. Delete Figure 3.3-1, Time Delay Curves, to correct an error (curves not used) and revise Table 3.3-4 to delete the footnote reference to the deleted Figure 3.3.-1.

3. Correct a typographical error in Table 3.3-3 for spelling of automatic.

4. Change Table 4.3-4 to correct the locations of seismic instrumentation and correct two typographical errors in the Table.

5. Revise the addressee for reporting information to the NRC per 10 CFR 50.4 in TSs 3.11.4, 6.9.1, 6.9.1.10, 6.9.1.11, and 6.9.2 as editorial changes.

6. Modify TS 3.6.4.1. Action a. to add that the provisions of TS 3.0.4 are not applicable and to add an alternate hydrogen sampling capability when one hydrogen analyzer is inoperable.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided significant hazards evaluations in Attachment 2 to its request for a license amendment. In the evaluations the licensee has concluded, with appropriate bases, that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations. We have reviewed the licensee's evaluations.

In our review we used the Commission guidance set forth in 10 CFR 50.92 which provided certain examples of no significant hazards considerations published in the **Federal Register** on March 6, 1986 (51 FR 7744). One of the examples of actions involving no significant hazards consideration, example (i), involves a purely administrative change to the TS, for example, a change to achieve consistency throughout the TS, to correct an error, or to change nomenclature.

Based on the similarity of proposed changes, 1 through 5 above, to example (i), the NRC staff concludes that these changes in the proposed amendment are not likely to involve a significant hazards consideration. For proposed change 6 above, relating to use of containment hydrogen analyzers, the licensee made the following determination:

1. The proposed change will not increase the probability or consequences of an accident previously evaluated because the proposed change does not eliminate the requirement to monitor hydrogen concentration inside containment during Modes 1 and 2. This change will allow startup of the plant with one hydrogen analyzer inoperable. Hydrogen concentration can be determined with one analyzer inoperable by use of the redundant hydrogen analyzer and by local sampling using existing approved plant post-accident sampling procedures.

2. The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change does not alter the intent of the specification. Redundant monitoring of hydrogen concentration can be performed with one hydrogen analyzer inoperable during plant startup by means of post-accident sampling procedures. Therefore, possibility of a new or different kind of accident from any previously evaluated does not exist.

3. The proposed change will not involve a reduction in a margin of safety because the proposed change does not lessen the requirements for monitoring hydrogen concentration. The proposed change allows for an alternative method for monitoring hydrogen concentration with one hydrogen analyzer inoperable during plant startup. Therefore, no reduction of margin of safety will result from this change.

We agree with the licensee's specific evaluation that the changes meet the three standards in 10 CFR 50.92. Accordingly, the Commission proposes to determine that the proposed amendment does not involve significant hazards considerations.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, P. O. Box 1369, Dothan, Alabama 36302

Attorney for licensee: Ernest L. Blake, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: April 17, 1989

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) for the Shearon Harris Nuclear Power Plant, Unit 1 (Harris or SHNPP) to permit core reload and operation with Westinghouse 17x17 VANTAGE 5 fuel assemblies. Harris is presently operating with Westinghouse 17x17 low-parasitic (LOPAR) fuel assemblies. The transition from a complete LOPAR core to a complete VANTAGE 5 core will be accomplished over three cycles. The proposed revisions to the TS support operation with each of the transition cores and all subsequent cores using only VANTAGE 5 fuel.

Design features of the VANTAGE 5 fuel include integral fuel burnable absorbers, intermediate flow mixers, reconstitutible top nozzles, axial blankets, optimized fuel rod diameter, and extended burnup capability. Changes to the TS are required due to the use of VANTAGE 5 fuel and use of the following analytical methods and assumptions:

(1) The Improved Thermal Design Procedure (ITDP);

(2) The WRB-1 and WRB-2 departure from nucleate boiling (DNB) correlations;

(3) Large break loss-of-coolant accident (LOCA) analyses using the 1981 evaluation model and the BASH model;

(4) Small break LOCA analyses using the NOTRUMP model; and

(5) $F_q(z)$ surveillance.

As a result of the above, changes to the following Technical Specifications are proposed:

(1) Core Safety Limits (TS 2.1.1, Figure 2.1-1);

(2) Reactor Coolant Flow Trip Setpoint and Allowable Values (TS 2.2.1, Table 2.2-1);

(3) Overtemperature delta T and Overpower delta T Reactor Trip Setpoint (TS 2.2.1, Table 2.2-1);

(4) DNB Correlations, DNB Ratio Limits, Power Range Neutron Flux High Rate, and F delta H Limit Uncertainties (Bases 2.1.1);

(5) Rod Drop Time (TS 3.1.3.4);

(6) Heat Flux Hot Channel Factor - $F_q(Z)$ (TS 3/4.2.2. Bases 3/4.2.2);

(7) Reactor Coolant System Flow Rate and Nuclear Enthalpy Rise Hot Channel Factor (TS 3/4.2.3);

(8) DNB Parameters (TS 3/4.2.5, Table 3.2.1, Bases 3/4.2.5); and

(9) Engineered Safety Features Actuation System Instrumenstation Trip Setpoints (TS 3/4.3.2, Table 3.3-4).

In addition, the proposed amendment would revise TS 3.1.3.5, 3.1.3.6, and 3.2.1 to replace the values of cycle-specific parameter limits with a reference to the Core Operating Limits Report (COLR), which contains the values of those limits. The COLR also has been included in the Definitions Section of the TS to note that it is the unit-specific document that provides these limits for the current operating reload cycle. As such, the Peaking Factor Limit Report, Section 6.9.1.6 of the current administrative controls, is incorporated into the COLR. Futhermore, the definition notes that the values of these cycle-specific parameter limits are to be determined in accordance with the Specification 6.9.1.6. This specification requires that the Core Operating Limits be determined for each reload cycle in accordance with the referenced NRC-approved methodology for these limits and consistent with the applicable limits of the safety analysis. Finally, this report and any mid-cycle revisions shall be provided to the NRC upon issuance. Generic Letter 88-16, dated October 4, 1988, from the NRC provided guidance to licensees on requests for removal of the values of cycle-specific parameter limits from TS. The licensee's proposed changes are in response to this Generic Letter.

This proposed amendment also includes two Cycle 2 administrative corrections: (1) the deletion of Surveillance Requirement 4.2.1.1.a.2 requiring monitoring and logging of indicated Axial Flux Difference (AFD) for a 24-hour period after the automatic computer monitoring is returned to an operable status as a result of relaxed AFD monitoring, and (2) deletion of a reference to TS 3.1.1.1 in Action 5 of TS 3.3.1 (Table 3.3-1) because it is no longer applicable. Since the two Cycle 2 corrections relate to previously approved changes, they are administrative in nature.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an Operating License for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability of consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

As required by 10 CFR 50.91(a), the licensee has provided the following no

significant hazards consideration determination:

a. The probability or consequences of an accident previously evaluated is not significantly increased.

The VANTAGE 5 reload fuel assemblies are mechanically and hydraulically compatible with the current low parasitic (LOPAR) fuel assemblies, control rods, reactor internals interfaces, the fuel handling equipment, and the refueling equipment. The VANTAGE 5 design dimensions are essentially equivalent to the current SHNPP LOPAR assembly design from an exterior assembly envelope and reactor internals interface standpoint. Also, the implementation of VANTAGE 5 fuel does not cause a significant change in the physics characteristics of the SHNPP cores beyond the normal range of variation seen from cycle to cycle. Thus, both fuel types satisfy the design basis for SHNPP as proposed for this amendment.

The proposed changes have been assessed from a core design and safety analysis standpoint. No increase in the probability of occurrence of any accident was identified, but an extensive reanalysis, as described in the Reload Transition Safety Report, was required to demonstrate compliance with the revised SHNPP Technical Specifications as proposed herein. These reanalyses applied methods which have been previously found acceptabe by the NRC. The results, which includes transition core effects, show changes in consequences of accidents previously analyzed. However, the results are all clearly within pertinent acceptance criteria and demonstrate the plant's capability to operate safely at 100 percent power.

The use of a Core Operating Limits Report follows the guidelines set forth in NRC Generic Letter 88-16, Removal of Cycle-Specific Parameter Limits from Technical Specifications. The use of this report is administrative in nature and does not impact the present analyses or future analyses since the relaxed axial offset control and rod insertion limits will continue to be calculated with approved NRC methodology.

The Cycle 2 corrections which include the elimination of Surveillance Requirement 4.2.1.1.a.2 requiring monitoring and logging of indicated AFD for a 24-hour period after the automatic computer monitoring is returned to an operable status and the deletion of a reference to LCO 3.1.1.1 in Action 5 of TS 3.3.1 are strictly administrative in nature and as such, do not significantly increase the probability or consequences of an accident previously evaluated.

Thus, it is concluded that there is not a significant increase in the consequences of an accident previously evaluated.

b. The possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis reports is not created. These proposed changes do not significantly affect the overall method and manner of SHNPP operation and can be accommodated without compromising the performance or qualification of safety-related equipment. Thus, the creation of a new accident or different kind of accident from any previously evaluated accident is not considered a possibility.

c. The margins of safety as defined in the bases of the Technical Specifications are not significantly reduced.

The analysis of the LOPAR and VANTAGE 5 fuel is based on the NRC approved Improved Thermal Design Procedure (ITDP) (WCAP-8567, "Improved Thermal Design Procedure"). The LOPAR fuel analysis uses the WRB-1 DNB correlation, while the VANTAGE 5 fuel analysis utilizes the WRB-2 DNB correlation. These DNB correlations take credit for the significant improvement in the accuracy of the critical heat flux predictions in comparison with previous DNB correlations. The WRB-2 DNB correlation also takes credit for the VANTAGE 5 fuel assembly mixing vane design. A DNBR limit of 1.17 is applicable for both the WRB-1 and WRB-2 correlations. In addition, the W-3 DNBR correlation is used where appropriate.

When appropriate, the design method employed to meet the DNB design basis is the ITDP. Uncertainties in plant operating parameters, nuclear and thermal parameters, and fuel fabrication parameters are considered statistically such that there is at least 95 percent probability at a 95 percent confidence level that the minimum DNBR will be greater than or equal to 1.17 for the limiting power rod. Plant parameter uncertainties are used to determine the plant DNBR uncertainties. These DNBR uncertainties, combined with the DNBR limit, establish a DNBR value which must be met in plant safety analyses. In addition to the above considerations, specific plant DNBR margin is included in the analyses. A part of the plant-specific margin is used to accommodate a transition core penalty due to the localized flow redistribution resulting from the VANTAGE 5 intermediate flow mixing grids and an appropriate fuel rod bow DNBR penalty. Since the parameters uncertainties are considered in determining the design DNBR value, the plant safety analyses are performed using values of input parameters without uncertainties. The change to ITDP and the use of new DNBR correlations does not involve a significant reduction in the margin of safety since the DNB design basis (i.e., that there is a 95% probability with a 95% confidence level that the hottest rod does not experience DNB) remains unchanged. In addition, the increased core hydraulic resistance due to the IFM grids results in an increase in the control rod scram time to the dashpot from 2.2 seconds to 2.7 seconds. This increase, as well as the other effects of the changes in the design, have been incorporated in the non-LOCA and LOCA transient analyses. In some cases, an increase in a parameter (such as pressure or peak clad temperature) occurs and may reduce the margin between the anaysis and the pertinent acceptance criterion. The results of the new non-LOCA analyses indicate that the ANS Condition II, III, and IV acceptance criteria as endorsed by NRC NUREG-0800 are still met. The results of the new LOCA analyses indicate that for breaks up to a double-ended severence of the reactor coolant piping, the Emergency Core Cooling System will meet the acceptance criteria of 10CFR50.46.

The use of the Core Operating Limits Report is admininstrative and does not impact existing analyses or future analyses since the relaxed axial offset control limits and rod insertion limits will continue to be determined for each cycle using NRC approved methodology. As indicated in proposed Technical Specification 6.9.1.6, these limits shall continue to be determined so that all applicable limits of the safety analyses are met.

The Cycle 2 corrections are administrative in nature and as such, do not significantly reduce the margins of safety as defined in the bases of the Technical Specifications.

Therefore, the results of the changes are clearly within all pertinent design and safety acceptance criteria using approved methods. Thus, there is no significant reduction in the margin of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: May 5, 1989

Description of amendment request: The amendment request modifies the procedure for obtaining the gross radioactivity for the reactor coolant specific activity determination. Specifically, the note on Item 1 of Technical Specification (TS) Table 4.4-4 would be deleted and the count described in Bases 3/4.4.8 would be performed in its place. This change will remove the gaseous activity determination from this gross activity determination.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an Operating License for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

As required by 10 CFR 50.91(a), the licensee has provided the following no significant hazards consideration determination:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. Deleting the detailed analysis of the RCS liquid required by the note and performing a gross beta/gamma activity determination in its place does not physically alter any safety related systems nor does it affect the way in which any safety related systems perform their functions. As such, the proposed change can not increase the probability of a previously evaluated accident.

The proposed amendment revises the method in which RCS specific activity is determined. The existing Technical Specification requires the RCS gaseous activity be determined and included in the overall RCS liquid specific activity. RCS gaseous activity would not be determined by the proposed analysis. Recent testing has demonstrated that for the purposes of the gross radioactivity determination, RCS gaseous activity is insignificant when compared to overall RCS liquid activity. Specific activity was determined using both the existing analysis and the proposed analysis. The results of these analyses were on the same order of magnitude. A degradation of fuel performance would be readily detectable by an increase in the sample's non-gaseous fission products. As such, the proposed analysis is adequate to fulfill the intent of the gross radioactivity determination required by Technical Specification Table 4.4-4, Item 1. Therefore, the proposed amendment does not significantly increase the consequences of a previously evaluated accident.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not introduce any new equipment nor does it require any existing equipment or systems to perform a different type of function than they are currently designed to perform. No Technical Specification operating limits are affected by this change. Therefore, the proposed amendment does not significantly increase the consequences of a previously evaluated accident.

3. The proposed amendment does not involve a significant reduction in a margin of safety. The intent of the gross radioactivity determination required by Technical Specification Table 4.4-4, Item 1 is to verify that RCS liquid specific activity is maintained within the specific activity limits of Technical Specification 3.4.8.b. These limits were established to maintain doses at the site boundary below 10 CFR 100 guidelines in the event of a steam generator tube rupture accident. For the purposes of this determination, RCS gaseous activity is insignificant when compared to overall RCS liquid activity. Therefore, elimination of gaseous activity determination does not affect the adequacy of the proposed analysis. This conclusion was supported by the performance of both the existing analysis and the proposed analysis on RCS liquid samples. The specific activities determined by these analyses were on the same order of magnitude. A degradation of fuel performance would be readily detectable by an increase in the sample's non-gaseous fission products. As such, the proposed analysis accomplishes the intent of the gross radioactivity determination and does not result in a significant reduction in the margin of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company, et al., Docket No. 50-324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Date of application for amendment: June 9, 1989

Description of amendment request: The amendment will change the Minimum Critical Power Ratio (MCPR) safety limit from 1.04 to 1.06. The change is necessary because a new fuel type (GE8x8NB) is being added to the core.

The amendment will also specify the fuel types located in the core for the upcoming cycle. Fuel type GE8x8NB will be added and fuel types 8x8R and P8x8R will be deleted. Fuel type GE8 will be renamed as fuel type GE8x8EB.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazard consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following analysis to support a no significant hazards consideration determination for the MCPR change:

1. The NRC accepted methodology used to derive the updated safety limit MCPR of 1.06 applies the same criteria as that used to derive the current safety limit MCPR value of 1.04. The updated safety limit MCPR value of 1.06 assures that fuel cladding protection equivalent to that provided with the safety limit MCPR value of 1.04 is maintained. Thus, the consequences of accidents previously evaluated are not significantly increased. The safety limit MCPR does not affect any physical system or equipment which could change the probability of an accident. Therefore, the proposed amendment does not involve a significant increase in the probability of an accident previously evaluated.

2. Adoption of the proposed MCPR safety limit value does not affect the function of any component or system. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The safety limit MCPR value is determined for cycle specific application of fuel types as described in NEDE-24011-P-A, "General Electrical Standard Application for Reactor Fuel," to meet Criterion 10 of 10CFR50, Appendix A. Analyses of the limiting anticipated operational occurrences for each cycle are used in conjunction with the applicable safety limit MCPR value to determine cycle specific operating limit MCPR values. Use of the 1.06 safety limit MCPR for Cycle 9 will result in equivalent fuel cladding protection as that provided with the current cycle limit of 1.04. Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations.

The Commission has also provided examples of amendments that are considered not likely to involve significant hazards considerations (see 51 FR 7744). One such example, (i) is a purely administrative change to technical specifications, for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. The part of the amendment request which lists the fuel

types for the upcoming cycle comes under this example.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. In addition, specifying the fuel types for the upcoming cycle is one example of a change not likely to involve significant hazards considerations. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: May 26, 1989

Description of amendment request: The amendment would revise paragraph 4 of attachment 2 to the Facility Operating License to clarify the requirements for conducting air-roll tests of the Transamerica Delaval, Inc. (TDI) diesel generators. Under the proposed amendment, if one diesel generator is inoperable, any demonstration of operability of the second diesel shall not be preceded or followed by air roll tests until the first diesel generator is declared operable. The amendment would also add reference to the latest date of issuance of a supplemental Safety Evaluation (July 8, 1986) relating to diesel generator maintenance and surveillance programs.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new of different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The proposed wording change to the license requirement regarding conduct of air-roll testing of the TDI-manufactured standby diesel generators does not adversely affect the design or safety function of any system or component relied upon for prevention or mitigation of previously analyzed accidents. This administrative change to a routine inspection requirement will increase the availability of a safety system for response to analyzed accidents, since a restriction is being added so that both diesels will no longer be purposely taken out of service at the same time. The change of the reference date for the NRC staff Safety Evaluation letter is purely an administrative change that has previously been reviewed and approved by the NRC staff for the Perry Nuclear Power Plant. Therefore, the proposed changes do not involve a significant increase in the probability of occurrence or consequences of any accident previously evaluated.

The proposed change to the air-roll requirement does not alter the design of any system or component which could affect plant safety or operation. Neither does the proposed change alter the safety function of the diesel generators. The diesels and their associated air systems are designed solely to mitigate plant transients, and performance (or non-performance) of an air-roll on the diesel cannot cause challenges to plant systems that would initiate any such transient. The change of the reference date for the NRC staff Safety Evaluation letter is purely an administrative change that has previously been reviewed and approved by the NRC staff for PNPP. Consequently, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The license requirement to perform an air-roll test prior to and following planned diesel operation is an augmented inspection designed to detect the unlikely occurrence of cylinder head cracking prior to and following routine maintenance/surveillance related diesel operation. The proposed change would not affect the automatic capabilities of the diesel, nor would it alter the performance of the augmented inspection unless another diesel is already inoperable. The proposed change would increase the availability of the remaining Standby Diesel Generator when another diesel is already inoperable. In this case, the availability of the remaining diesel is increased which tends to increase the plant's margin of safety. The change of the reference date for the NRC staff Safety Evaluation letter is purely an administrative change that has previously been reviewed and approved by the NRC staff for PNPP. Therefore, there is no change to the margin of safety for this administrative change.

Based on the above, the staff proposes to determine that the proposed amendment involves no significant hazards considerations.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

Commonwealth Edison Company, Docket Nos. 50-454 and 50-455, Byron Nuclear Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of application for amendments: May 24, 1989

Description of amendments request: These amendments would change Technical Specification (TS) 3/4.7.5 to utilize the seismic qualification of the deep well pumps to enable use of a deep well pump instead of an essential service water pump.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards consideration. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated; or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or

3. Involve a significant reduction in a margin of safety.

The proposed amendment involves several changes:

The first three changes are administrative. The word "each" was deleted from TS 3.7.5 and Limiting Conditions for Operations (LCO) 3.7.5 a. and c. were revised to reflect this deletion.

The fourth change changes LCO 3.7.5 Action c. to allow continued operation with an inoperable essential service water pump as long as the same train's deep well pump is operable with it's basin level verified every 2 hours to be at least 82%. The provisions of TS 3.0.4 do not apply to this Action.

The fifth change deleted LCO 3.7.5 e. and Action e. which specified surveillance for Rock River level and flow whenever the Rock River level is less than 670.6 Feet Mean Sea Level (MSL). (This same surveillance is now in the proposed LCO 3.7.5 g. and Action g.). Also, the requirement has been deleted to, within 1 hour, notify the NRC of contingency plans to ensure an adequate supply of cooling water.

The sixth change divides LCO 3.7.5 f. and its Action f. into three items, items f, g, and h. Item f, discusses actions to be taken if the National Weather Service (NWS) forecasts that the Rock River level will exceed 702.0 feet MSL. Item g discusses actions to be taken if the Rock River water level is not above 670.6 feet MSL. Item h discusses actions to be taken if the NWS issues a tornado watch for the Byron site.

The seventh change revises the Bases Section 3/4.7.5 to reflect the change made in TS 3.7.5.

The eighth change deletes Surveillance f. which had required that the deep well pumps be run immediately prior to declaring them operable.

The following analysis of the proposed changes for the evaluation of the significant hazards consideration address the eight items from above.

1. *Involve a significant increase in the probability or consequence of an accident previously evaluated.*

Changes (1), (2), and (3) and (7) are administrative in nature and do not involve a significant increase in the probability or consequence of an accident previously evaluated.

Change (4) allows two essential service water pumps, or two deep well pumps, or one essential service water pump and one deep well pump to be Operable for modes 1, 2, 3, 4. There is no significant increase in the probability or consequence of an accident previously evaluated since any of the above makeup sources are capable of providing redundant makeup to meet the Ultimate Heat Sink (UHS) design cooling capability requirements for 30 days following a LOCA on one unit with the second unit shutting down. The single failure criteria is met by providing two independent makeup sources. The 72-hour action requirement is unchanged in the event that one of the redundant makeup sources is inoperable. The basin level is increased to 82% and, a surveillance is initiated every 2 hours thereafter, if a deep well pump is the redundant operable source of makeup. The increase to 82% compensates for the lack of auto makeup and the necessity of manually starting the deep well pumps to initiate makeup. Calculations show that the basin level will be maintained above the level required in the accident analysis of the Updated Final Safety Analysis Report (UFSAR). The deep well pumps have been shown capable of being the redundant makeup supply in the UFSAR accident analysis for flood conditions and a tornado. With the addition of the seismic qualification of the deep well pumps, they meet all conditions as redundunt makeup sources to the UHS; in particular, for Rock River flow and level conditions. In the event of a seismic event with Rock River flow less than 700 cfs, both deep well pumps meet the single failure criteria in that one deep well pump has the capacity to meet the design cooling capability for the 30-day period following a LOCA on one unit with the second unit shutting down and to maintain adequate suction to the essential service water makeup pumps. LCO 3.7.5c still states "Two OPERABLE essential service water makeup pumps". Since the deep well pumps are considered the "backup" makeup sources, in the event the deep well pumps are being used for some time period as the Operable makeup source, the provisions of Specification 3.0.4 would not be applicable provided basin level of at least 82% is being verified every 2 hours. This is reasonable since all design conditions and accident analysis in the UFSAR will be provided for by two independent makeup sources whether these are the essential service water makeup pumps or deep well pumps or some combination. The change to increase basin level to at least 82% and verify it every 2 hours provides the UHS with its required supply to account for the manual initiation of deep well pump makeup to the UHS. Thus basin level is ensured per the design basis accident. Thus, for the reasons above, the change does not involve a significant increase in the probability or consequence of an accident previously evaluated.

Changes (5) and (6) are interrelated. The 670.6 feet MSL level is a level that ensures a 700 cfs flow water and is essentially an alarm setpoint that requires Rock River flow verification every 12 hours. The 664.7 feet MSL level and the 700 cfs flow limit are minimum values to ensure that there will be adequate water levels for essential makeup pump suction in the event of the postulated failure of the Oregon dam (seismic event). With both deep well pumps Operable and Rock River level less than 670.6 feet, the makeup sources would be available even if a seismic event occurred along with the postulated failure of the Oregon dam. It is only when one well water pump is inoperable that the Rock River level and flow would impact makeup capability via the essential service water makeup pump if flow is less than 7000 cfs or level is not greater than 664.7 feet MSL and the dam failed. Thus by deleting LCO 3.7.5e and Action e. and adding the same Rock River flow and level surveillance requirement to Action g., the intent of the requirement is satisfied and there involves no significant increase in the probability or consequence of an accident previously evaluated.

For change (6), LCO 3.7.5 items f, g, and h and Actions f, g, and h are changed to allow 1 hour to verify that both deep well pumps are operable. This does not involve a significant increase in the probability or consequence of an accident previously evaluated. The change allows a minimum time to verify deep well pump operability by verifying that the pump is within its surveillance schedule. The change quantifies a minimum time to verify deep well pump operability and does not involve a significant increase in the probability or consequence of an accident previously evaluated.

For change (6), neither the increase of basin level to at least 82% and the surveillance every 2 hours involves a significant increase in the probability or consequence of an accident previously evaluated. The increased basin level and surveillance rather ensure that the UHS design basis accident heat load will be met with the manual start of the deep well pumps as required and the isolation of blowdown. The time to ensure that the OWWO19A and B valves to the UHS are open under all conditions, including loss of off-site power and loss of instrument air, has been accounted for in the deep well pump capability analysis. Thus all design requirements have been met for the UHS for any accident analyses in the UFSAR.

Change (6) proposes that after the deep well pumps are verified to be operable, the provisions of 3.0.4 are not applicable. With the required level increase in the essential service water basin, the verified operability of the deep well pumps, and the seismic qualification of the deep well pumps, the deep well pumps are designed for all accident conditions assumed in the UFSAR. Therefore, the provision that 3.0.4 is not applicable does not involve a significant increase in the probability or consequence of an accident previously evaluated.

Change (6), which provides the Action to be in Hot Standby within the next 6 hours and Cold Shutdown within the following 30 hours instead of Hot

Shutdown in the 6 hours after Hot Standby, is reasonable because in both cases, Cold Shutdown is achieved within 30 hours. The change allows time to verify both deep well pumps by restoring one or both to operable status within 1 hour. This change allows subsequent action after 1 hour to shut down per the Action requirement. The same basin level exists in both the shutdown methods (TS 3.0.3 and the changed Action) to ensure the cooling capability for the UHS in the unlikely event of the design basis accident. Thus, the change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Change (6) deletes the 1 hour notification of the NRC. This change does not involve a significant increase in the probability or consequences of any accident previously evaluated. Rather, with the deep well pumps providing makeup capability to the UHS, both units would be required to shut down as required by the Action requirements if the deep well pumps become inoperable.

Change (6) requires both deep well pumps to be operable only when Rock River flow is less than 700 cfs or level is not at least 664.7 feet MSL, instead of when level is less than 670.6 feet MSL. This is consistent with the analysis on the Rock River level and flow requirements for adequate suction to the essential service water makeup pumps in the event of a design basis seismic event. The essential service water makeup pumps are operable at less than 670.6 feet MSL provided Rock River level is greater than 664.7 feet MSL and flow at least 700 cfs. In addition, LCO 3.7.5c and Action c. ensure makeup to the UHS or require a shutdown. It is for the above reasons that the change does not involve a significant increase in the probability or consequence of any accident previously evaluated.

Thus for all of change (6), there is no significant increase in the probability or consequence of any accident previously evaluated.

Change (7), which changes the Bases for LCO 3/4.7.5, is administrative and states that the deep well pumps are seismically qualified. Also, the change deletes the statement for NRC notification of procedures implemented to meet the GDC 44 for cooling systems.

Change (8) deletes a surveillance on the deep well pumps, but since there is a 31-day surveillance on the deep well pumps that verifies flow, there is no effect on the capability of the deep well pump to provide the design makeup flow to the UHS to meet the cooling capability for the design bases accident. In addition, surveillance i verifies at least 550 gpm flow.

Thus, none of the changes involve a significant increase in the probability or consequences of an accident previously evaluated.

2. *Create the possibility of a new of different kind of accident from any accident previously evaluated.*

Changes (1), (2), (3), and (7) are administrative in nature and do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Change (4) allows operation with redundant makeup sources meeting all design requirements of the FSAR accident analysis which does not create the possibility of a new or different kind of accident.

Change (4) involves a modification to the deep well system. The modification will be reviewed and a 10 CFR 50.59 safety evaluation will be performed. The modification would not increase the possibility of a new of different kind of accident from any accident previously evaluated and the 10 CFR 50.59 safety evaluation would verify this. Any means required to open the OWWO19A and/or B valves as a result of the modification is taken into account in the analysis of the deep well pump capability to meet the design accident cooling capability for the UHS.

Changes (5) and (6) do not involve the modifications to any system. Changes (5) and (6) ensure that Rock River level and flow surveillances are initiated as required, and does not create the possibility of a new or different kind of accident. Change (6) also ensures that deep well pump operability is verified, or Action is taken to shut down. This is consistent with the UFSAR accident analysis that requires the UHS cooling capability for 30 days following a LOCA on one unit and shut down on the other. This does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Change (8) deletes a surveillance requirement which covered by two other surveillance. The change does not increase the possibility of a new or different kind of accident from any accident previously evaluated.

Thus, for each of the proposed changes, there is not created the possibility of new or different kind of accident from any accident previously evaluated.

3. *Involve a significant reduction in a margin of safety.*

Change (1), (2), (3), and (7) are administrative in nature and do not affect the margin of safety.

Change (4) revises the Technical Specifications to allow the deep well pumps to be used as a makeup source to the UHS since the deep well pumps are a redundant makeup supply capable of meeting the design cooling requirements of the UHS. The requirement is to remove the heat load from a design basis LOCA on one unit and normal shutdown on the other unit. In addition, with two independent makeup sources available to meet the single failure criteria, Action 3.0.4 is not applicable. The basin level requirement of at least 82% and the basin level surveillance requirement every 2 hours ensure that the deep well pumps will be manually started to provide makeup to ensure the basin level meets the 50% level required in LCO 3.7.5a.

Changes (5) and (6) satisfy the bases of Technical Specification 3.7.5 to ensure that an adequate makeup supply to the UHS is available for the design accident. In the event of a seismic event with both deep well pumps operable, it ensures that makeup to the UHS will meet design requirements per the UFSAR. Per change (6), when Rock River level is less than 670.6 feet MSL, the Rock River flow and level will be performed every 12 hours thereafter to ensure that flow is less than 700 cfs and level is greater than 664.7 feet MSL. LCO 3.7.5c ensures that a makeup source to the UHS is operable. With Rock River level not above 700 cfs, both deep well pumps are required to be operable and the Action requirements reflect this. With change (6), all design bases for the UHS are met and in the event of its design bases accident there would be sufficient cooling capacity for 30 days.

Change (8) deletes surveillance f that is covered by two other surveillances Thus, none of the changes involves a reduction in the margin of safety.

Therefore, based on the above considerations, the staff has determined that these changes do not involve a significant hazards consideration.

Local Public Document Room location: The Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101.

Attorney to licensee: Michael Miller Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Acting Project Director: Paul C Shemanski

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: December 4, 1987, as supplemented December 7, 11 and 29, 1987, March 29 May 4 and 18, June 16, July 1, August 8 and 24, and December 15, 1988, and June 12, 1989.

Description of amendment request: The proposed amendments would add a new Technical Specification (TS) 3.7.1.6, a new Surveillance Requirement (SR) 4.7.1.6, and new Bases 3/4.7.1.6 for the steam generator (SG) power-operated relief valves (PORVs). The proposed TS will require the operability of at least three of the four installed SG PORVs, together with their associated remote manual controls and their safety-related gas supply systems, to ensure that reactor decay heat can be dissipated to the atmosphere in the event of a SG tube rupture and loss of offsite power.

The amendments are a partial response to License Conditions 2.C.(16) and 2.C.(10) of Catawba Units 1 and 2 Facility Operating Licenses NPF-35 and NPF-52, respectively.

The above License Conditions and correspondence relate to two separate concerns. The first is the SG tube rupture accident analysis which is outside the scope of this notice as it does not involve license amendments, and the second is the proposed amendments for the SG PORVs' operability. This notice only covers the second concern. The acceptability of the SG tube rupture analysis will be addressed by a separate correspondence.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (51 FR 7744). One of the examples (ii) of these actions involving no significant hazards consideration relates to a change which constitutes an additional limitation, restriction or control not presently included in the TSs. The proposed amendments are similar in nature to the example provided by the Commission in that they would add a new TS requiring the operability of at least three of the four installed SG PORVs together with their remote controls and gas supply systems and a new SR and Bases. These additions would introduce additional controls not presently in the TSs. Therefore, the proposed amendments would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Based on the above considerations, the Commission proposes to determine that the proposed amendments involve no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: March 11, 1988

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) to change Table 3.3-9, Remote Shutdown Monitoring Instrumentation.

Specifically, this change will clarify that there are two readout locations for steam generator pressure, steam generator level and auxiliary feedwater flow rate. The locations are the Auxiliary Shutdown Panels and the Auxiliary Feedwater Pump Turbine Control Panel.

These pressure, level and flow rate readouts are supplied from the same pressure, level and flow rate sensors and provide the same information to the two separate locations. Therefore, both readout locations should be listed on the Table.

Basis for proposed no significant hazards consideration determination: The Commission has provided certain examples (51 FR 7744) of actions likely to involve no significant hazards considerations. The proposed changes do not match the examples. However, the staff has reviewed the licensee's request for amendments and has determined that should this request be implemented, it would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change does not affect plant operations, but instead clarifies the current TS.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not modify the plant's configuration or operation. Nothing would be added or removed that would conceivably introduce a new or different kind of accident mechanism or initiating circumstance than those previously evaluated.

(3) Involve a significant reduction in a margin of safety. With the proposed changes, all safety criteria previously evaluated are still met, remain conservative and still maintain the same margin of safety. Accordingly, the Commission proposes to find that the changes do not involve a significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: June 9, 1989

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) to allow, on a one-time basis, inoperability of the Keowee overhead emergency electrical path for 10 days. Oconee Nuclear Station (ONS) is presently upgrading the reliability of the 230 kv switchyard by replacing Power Circuit Breakers (PCB) with improved breakers. Included in this program is PCB-9. PCB-9 is required for operability of the overhead emergency power path pursuant to TS 3.7.1(b)(2).

The replacement of PCB-9 would require the overhead emergency path to be inoperable for 10 days. The existing TS provide an allowable outage time of 72 hours for PCB-9. The proposed amendments would allow completion of the change out of PCB-9 without requiring a shutdown of all three units. Risk associated with inoperability of the overhead emergency power path for longer than 72 hours has previously been reviewed and found acceptable by the staff. Specifically, TS 3.7.8 establishes a 28 day special inoperability period for the overhead emergency power path due to Keowee Main Step-up Transformer unavailability. The following restrictions are included within TS 3.7.8:

(a) Prior to heating the reactor above 200 degrees F or prior to the restart of the shutdown reactor or within 72 hours of the loss of the Keowee Main Step-up Transformer, the 4160 volt standby buses shall be energized by a Lee gas turbine through the 100 kV circuit. The Lee gas turbine and 100 kV transmission circuit shall be electrically separate from the system grid and offsite and non-safety related loads.

(b) A Keowee hydro unit shall be connected to the underground feeder circuit and this path shall be verified

operable within 1 hour and weekly thereafter.

(c) The remaining Keowee Hydro Unit shall be available to the underground feeder circuit.

(d) Operating in this mode is restricted to periods not to exceed 28 days, and the provisions of this specification may be utilized without prior NRC approval. The U.S. NRC Regional Office, Region II, will be notified within 24 hours.

The proposed amendments will expand the scope of TS 3.7.8 on a one-time basis to allow inoperability of the overhead emergency path due to PCB-9 unavailability for 10 days.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR Part 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Each accident analysis addressed within the ONS FSAR has been examined by the licensee with respect to changes proposed within this amendment request. The design basis of the auxiliary electrical systems is to supply the required engineered safeguards loads of one unit and safe shutdown loads of the other two units and are so arranged that no single failure will jeopardize plant safety. The applicable design basis accidents (Loss of Electric Power Accidents) are addressed in FSAR Chapter 15.8.

Although changes included within this amendment request may involve an increase in the probability of previously analyzed accidents, the consequences of the accidents are within the bounds of FSAR analyses. Upon implementation of the modification, the probability of previously analyzed accidents will be reduced due to the increased fault current interrupting capability of PCB-9 concurrent with the reduced probability of a unit separation from the system grid.

As such, the probability of any Design Basis Accident will not be significantly increased by this change. Consequences of accident analyses addressed in the ONS FSAR will not be affected by this change.

Inoperability of PCB-9 is functionally equivalent to inoperability of the Keowee Main Step-up Transformer in that it renders the overhead emergency power path inoperable. Operation of ONS in accordance with these TS will not create any failure modes not bounded by previously evaluated accidents. Consequently, this change will not create the possibility of a new or different kind of accident from any kind of accident previously evaluated.

Risk associated with inoperability of the overhead emergency power path for longer than 72 hours has previously been reviewed and found acceptable by the staff with TS 3.7.8. Inoperability of PCB-9 is functionally equivalent to inoperability of the Keowee main step-up transformer. Therefore, operation of ONS in accordance with these TS will not involve a reduction in any margins of safety.

On this basis, the Commission proposes to determine that the proposed amendments involve no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Attorney for licensee: J. Michael McGarry, III, Bishop, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: June 12, 1989

Description of amendment request: The proposed amendment would revise the Technical Specifications by increasing the quarterly channel calibrations to monthly on the waste gas holdup system explosive gas monitoring system.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations (51 FR 7751). One of these examples (ii) is a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications; for example, more stringent surveillance requirement. The proposed amendment is directly related to this example in that the current channel calibration of the oxygen and hydrogen monitors is required quarterly or every three months and the licensee proposes to perform the calibration every month. The current system is being replaced with a new and more reliable system but to meet the manufacturer's recommendations, the functional and calibration testing should be performed monthly. The amendment will make the Technical Specification requirement and the vendor recommendation consistent resulting in a more stringent surveillance requirement.

Based on the above, the staff proposes to determine that the change does not involve a significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037

NRC Project Director: Frederick J. Hebdon

Pennsylvania Power and Light Company, Docket No. 50-387 Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of amendment request: April 12, 1989 as revised June 22, 1989

Description of amendment request: Proposed amendment would change the Susquehanna Steam Electric Station (SSES) Unit 1 Technical Specifications to incorporate the Commission's interim requirements as outlined in Bulletin 88-07, Supplement 1, "Power Oscillations in Boiling Water Reactors (BWRs)," and clarify the requirements of certain Actions and Surveillances.

Specifically, the licensee has requested the following changes:

(1) changes to specification 3/4.4.1.1.1 to replace the existing stability controls on two loop operations with those recommended in Bulletin 88-07, Supplement 1;

(2) changes to specification 3/4.4.1.1.2 to replace the existing stability controls on single loop operations with those specified in Bulletin 88-07, Supplement 1;

(3) changes to specification 3.4.1.4 to revise Action a to clarify the thermal power/core flow condition where an idle recirculation loop can be started; and

(4) a change to Figure 3.4.1.1.1-1 related to "Thermal Power Restrictions."

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed

amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and concurs with the following basis and conclusion provided by the licensee in its April 12, 1989 submittal.

The following three questions are addressed below for each of the proposed Technical Specification changes:

I. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

II. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

III. Does the proposed change involve a significant reduction in a margin of safety?

• Specification 3/4.4.1.1.1, Recirculation Loops - Two Loop Operation

This specification has been revised to replace the existing stability controls on the recirculation system with (at a minimum) those recommended in NRC Bulletin 88-07, Supplement 1.

I. No. The changes to the LCO provide the appropriate limits to ensure that proper actions are taken if SSES Unit 1 is operating in a region of the power/flow map where an instability is more likely to occur. The boundaries of these regions are based upon NRC approved limits for ANF methodology.

Action a is deleted as an editorial change; its purpose as a cross reference is adequately covered by the Applicability sections for the two-loop and single-loop specifications.

New Action a.1 requires when operating in Operational Condition 1 an immediate manual scram if operation in natural circulation occurs, if Region I of the new Figure "Thermal Power Restrictions" is entered, if power range monitoring instrumentation exhibits evidence of instability or if Region II of the Figure is entered and inadequate instability monitoring capability is available. These actions will ensure that the MCPR Safety Limit is not violated, so that an increase in the consequences of an accident previously evaluated will not occur.

Action a.2 requires immediate exit of Region II if entered. This is consistent with the Bulletin, and does not require an immediate scram because no indications of power oscillation have occurred. Action a.3 is provided simply to avoid entry into Specification 3.0.3 should new Surveillance 4.4.1.1.1.4 be failed. It is not appropriate for any more restrictive requirements to be applied to these alarms when the unit is operating outside Regions I and II.

New Action b reflects the current requirements associated with natural circulation operation in Operational Condition 2 and clarifies that a recirculation loop may be attempted to be returned to service during the allowed outage time. This change is an administrative clarification.

New Actions c and d incorporate actions that previously appeared as Surveillance Requirements. This transfer is proposed in order to avoid invoking Specification 3.0.3 due to the lack of a specific action if the pump discharge or bypass valves failed. These "new" actions and the associated deletion of Surveillance Requirement 4.4.1.1.1.1 are entirely administrative in nature.

New Footnote "+" was added to clarify that the LPRM upscale alarms are not required to be operable in Operational Condition 2 since an instability event is not a concern at low power levels.

Existing Surveillance 4.4.1.1.1.4 is deleted since a baseline noise level will no longer be used to detect and suppress power oscillations. The new surveillance is provided to ensure operability of the newly required LPRM upscale alarms, and frequencies of testing were chosen based on NRC approved methods for determining surveillance intervals for similar instrumentation (ref. GE NEDC 30851P-A).

Based on the above, none of the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated. The stability related changes are consistent with current NRC guidance and approved analytical methods where applicable, and the transferring of certain surveillances to actions will preclude unnecessary shutdowns due to Specification 3.0.3.

II. No. The proposed changes relating to stability use the current guidance contained in NRC Bulletin 88-07 Supplement 1, which will ensure that a new or different kind of event will not occur. They accomplish this by requiring reactor scrams in unstable regions and additional instability detection capability.

The editorial changes shifting Surveillance Requirements to Actions cannot create a new event.

III. No. See I above. The stability changes are designed to protect the margin of safety to the MCPR Safety Limit. The editorial changes improve safety margin by precluding unnecessary plant shutdowns.

• Specification 3/4.4.1.1.2, Recirculation Loops - Single Loop Operation

This specification has been revised to replace the existing stability controls on the recirculation system with (at a minimum) those recommended in NRC Bulletin 88-07, Supplement 1.

I. No. The changes to the LCO provide the appropriate limits to ensure that proper actions are taken if SSES Unit 1 is operating in a region of the power/flow map where an instability is more likely to occur. The boundaries of these regions are based upon NRC approved limits for ANF methodology.

Action a is deleted as an editorial change; its purpose as a cross reference is adequately covered by the new Actions a and b.

New Action a.1 requires an immediate manual scram when operating in Operational Condition 1 if operation in natural circulation occurs, if Region I of the new Figure "Thermal Power Restrictions" is entered, if power range monitoring instrumentation exhibits evidence of instability, or if Region II of the Figure is entered and inadequate instability monitoring capability is available. These actions will ensure that the MCPR Safety Limit is not violated, so that an increase in the consequences of an accident previously evaluated will not occur.

Action a.2 requires immediate exit of Region II if entered. This is consistent with the Bulletin, and does not require an immediate scram simply because no indications of power oscillation have occurred. This action does not allow the start of a recirculation loop to exit Region II. Action a.3 is provided simply to avoid entry into Specification 3.0.3 should new Surveillance 4.4.1.1.2.2 be failed. It is not appropriate for any more restrictive requirements to be applied to these alarms when the unit is operating outside Regions I and II.

New Action b reflects the current requirements associated with natural circulation operation in Operational Condition 2.

New Actions e and f incorporate actions that previously appeared as Surveillance Requirements. This transfer is proposed in order to avoid invoking Specification 3.0.3 due to the lack of a specific action if the pump discharge bypass valves failed. These "new" actions and the associated deletion of Surveillance Requirements 4.4.1.1.2.6 and 4.4.1.1.2.8 are entirely administrative in nature.

New Footnote "+" was added to clarify that the LPRM upscale alarms are not required to be operable in Operational Condition 2 since an instability event is not a concern at low power levels.

The revision to existing Action b is purely editorial in nature.

Existing Actions c and e and Surveillance 4.4.1.1.2.2 are deleted since a baseline noise level will no longer be used to detect and suppress power oscillation. The new actions and surveillance is provided to ensure operability of the newly required LPRM upscale alarms, and frequencies of testing were chosen based on NRC approved methods for determining surveillance intervals for similar instrumentation (ref. GE NEDC 30851P-A).

Based on the above, none of the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated. The stability related changes are consistent with current NRC guidance and approved analytical methods where applicable, and the transferring of certain surveillances to actions will preclude unnecessary shutdowns due to Specification 3.0.3.

II. No. The proposed changes relating to stability use the current guidance contained in NRC Bulletin 88-07 Supplement 1 to ensure that an unanalyzed event will not occur. They accomplish this by requiring reactor scrams in unstable regions, additional instability detection capability, and precluding a recirculation pump start during single loop

operation in a potentially unstable region of the power/flow map.

The editorial changes shifting Surveillance Requirements to Actions cannot create a new event.

III. No. See I above. The stability changes are designed to protect the margin of safety to the MCPR Safety Limit. The editorial changes improve safety margin by precluding unnecessary plant shutdowns.

• Specification 3.4.1.4, Idle Recirculation Loop Startup

Action a has been revised to clarify the thermal power/core flow condition where an idle recirculation loop can be started.

I. No. This requirement is consistent with new Action a.2 of Specification 3.4.1.1.2, Single Loop Operation, which was reviewed above. The requirement to preclude a recirculation pump start in a potentially unstable region of the power/flow map will ensure that a new or different kind of event will not occur, and is consistent with the guidance in NRC Bulletin 88-07 Supplement 1.

II. No. See I above.

III. No. See I above.

• Change to Figure 3.4.1.1.1-1

I. No. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The decay ratios used to develop the proposed changes to the Figure were calculated with NRC approved methods. None of the actions required upon entry into Region I or II are proposed to be changed from the proposal submitted in Reference 1. Therefore, the actions based upon information in the figure will still ensure that the MCPR Safety Limit is not violated. Based on the above, the proposed revision to Figure 3.4.1.1.1-1 does not involve a significant increase in the probability or consequences of an accident previously evaluate.

II. No. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The revision to the figure is consistent with NRC guidance which is specifically designed to ensure that a new event involving a reactor core instability event will not occur.

III. No. The proposed change does not involve a significant reduction in a margin of safety. This change will continue to protect, as stated in Reference 1, the margin of safety to the MCPR Safety Limit. This revision to Reference 1 ensures that the Region I and Region II boundaries which provide that protection are appropriate for U1C5 based on new information which allowed a larger region of operation. Further steps were taken to conservatively extrapolate these boundaries to rated powers, thereby providing limits which will not have to change in response to future changes in the drive flow/core flow relationship. Based on the above, the proposed revision to Figure 3.4.1.1.1-1 will not involve a reduction in a margin of safety.

Based on the above considerations, the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: Walter R. Butler

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: May 26, 1989

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to correct various administrative errors. The proposed TS changes are discussed in three groupings: (1) corrections of grammar and page headings, (2) elimination of notes which no longer apply, and (3) correction of transcription errors with respect to component designations and setpoints. There are 44 pages affected by Group 1 changes (including 12 index pages), 14 pages affected by Group 2 changes and 22 pages affected by Group 3 changes. On some pages, the licensee has proposed multiple changes (e.g., on page 3/4 7-28, the description for the location of fire hose stations is being revised from "west wall" of Reactor Enclosure to "SW Corner" of Reactor Enclosure on three elevations to more precisely designate the physical locations of the present fire hose stations).

Group 1 items include proposed TS revisions to correct grammatical errors, page headings and subheadings to improve readability. For example, on page i of the Index, a page heading of "INDEX" will be added. On page 3/4 3-11 the word valve should be plural and therefore an "s" is being added.

Group 2 items include proposed TS revisions to eliminate notes and clauses which no longer apply to Limerick Unit 1. For example, on page 3/4 6-4 of the current TS there is a note identified by a double asterisk which describes a test interval extension which expired on May 26, 1986. This note is no longer applicable and can therefore be removed.

Group 3 items include correction of transcription errors with respect to component designations and setpoints. The proposed changes will result in consistency with design documents which correctly represent the component designations and setpoints. For example, on page 3/4 3-81 the current designation HSS-51-1F014A is incorrect and will be corrected to HV-51-10F014A.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee's analysis contained in their May 26, 1989 letter states the following in response to the three NRC criteria referenced above:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes correct three types of administrative errors: 1) grammar, page headings and subheadings, 2) notes which no longer apply and 3) transcription errors with respect to component designations and setpoints. None of these changes will affect any plant hardware, plant design, safety limit settings, or plant system operation, and therefore do not modify or add any initiating parameters that would significantly increase the probability or consequences of any previously analyzed accident. Therefore, the proposed changes will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed in Item (1) above, the proposed TS changes correct errors and will provide consistency throughout the TS. The proposed changes do not affect any equipment nor do they involve any potential initiating events that would create any new or different kind of accident. As such, the plant initial conditions utilized for the design basis accident analyses remain valid. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

As discussed in (1) above, the proposed changes, which correct errors and provide consistency throughout the TS, do not affect any equipment involved in potential initiating events or safety limit settings and therefore, do not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination as to whether the proposed amendment involves a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: May 31, 1989

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to clarify the actions which must be taken when operating with the Containment Cooling Mode of the Residual Heat Removal (RHR) System in a degraded mode. Additional proposed changes improve the structure and readability of the specifications.

The changes would affect pages 115a, 116, and 127 and result in the following: (1) removal of "Subsystem" from the heading for Sections 3.5.B and 4.5.B; (2) removal of "one ESW pump" from the list of Containment Cooling Mode equipment specified in Sections 3.5.B.1, 4.5.B.1 and the corresponding Bases section, since the Emergency Service Water (ESW) System requirements are addressed by TS Sections 3.11.D and 4.11.D; (3) deletion of Specification 3.5.B.2 (and renumbering of the succeeding specifications) since the requirements relating to containment cooling would also be applied to containment spray, which negates the need for a separate specification; (4) removal of the requirements for inoperable RHR pump(s) since the requirements are already covered in Sections 3.5.A.3 and 4.5.A.3; (5) more clearly identifying the RHR Service Water (RHRSW) operability test as monthly and the flow rate test as every three months, which is consistent with similar tests performed on related systems; and (6) addition of a new specification which states that reactor operation can continue for seven days with two RHRSW pumps inoperable and adding of the corresponding surveillance test for the remaining components.

The revised wording of the specifications in Sections 3.5.B and 4.5.B would also clarify that all of the remaining components of the containment cooling subsystems shall be demonstrated operable when the RHRSW system is in a degraded condition. However, for situations involving an inoperable containment cooling subsystem (e.g., loss of an RHR pump or loss of two associated RHRSW pumps), only the redundant containment cooling subsystem needs to be demonstrated operable.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The license has evaluated the proposed amendment against the standards provided above and has made the following determination:

Operation of the James A. FitzPatrick Nuclear Power Plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92 since it would not:

a. involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes conservatively clarify the containment cooling action requirements and surveillance requirements; thus, providing greater assurances that the full complement of containment cooling capability will be available in the event of a loss-of-coolant accident. These changes are administrative in nature and do not involve modification of any existing equipment, systems, or components; nor do they relax any administrative controls or limitations imposed on existing plant equipment. Implementation of these changes will require only minor revisions to the plant's procedures to reflect the technical specification changes. No changes to the surveillance testing program are required. These proposed changes to the Technical Specifications can not alter the conclusions of the plant's accident analyses or radiological release analyses as documented in the FSAR [Final Safety Analysis Report] or the NRC staff's SER [Safety Evaluation Report].

b. create the possibility of a new or different kind of accident from any accident previously evaluated. Each of the proposed changes are purely administrative in nature. They clarify the intent of the Technical Specifications, improve the consistency within the Technical Specifications, and provide a more conservative interpretation of the containment cooling action times. They do not involve modification to any of the plant's systems, equipment, or components; nor do they place the plant in an unanalyzed configuration.

c. involve a significant reduction in the margin of safety. The changes are administrative in nature and do not reduce the post-LOCA [Loss of Coolant Accident] heat removal capability of the containment cooling mode of RHR [Residual Heat Removal System]. The proposed changes do not involve modification to any of the plant's systems, equipment, or components; nor do they affect the containment cooling subsystem's design basis, performance capability, or NPSH [Net Positive Suction Head] requirements.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: June 14, 1989

Description of amendment request: The proposed amendment would update the suppression chamber water temperature instrumentation in Table 3.2-6, "Surveillance Instrumentation," to reflect modifications installed to meet Regulatory Guide 1.97. Specifically the amendment would: (1) change the ranges of the suppression chamber temperature recorders from 50 - 350° F and the ranges of the indicators from 50 - 250° F so that each range is 30 - 230° F; (2) change the number of channels provided by design from four to two; and (3) change the minimum number of operable instrument channels from two to one. Thus, the change would reflect the upgrade from four instrument channels (with each channel consisting of a single temperature element and either an indicator in the Control Room or a recorder in the relay room) to two independent channels (with each channel connected to 16 temperature elements) consisting of one indicator and one recorder per channel. The consequence, therefore, would be to redefine and correct the meaning of the term "channel" to reflect this separation. Also, the number of channels provided by design and the minimum number of operable instrument channels specified for the suppression chamber water temperature would be consistent with

the number of channels specified in the table for the drywell pressure instruments.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards provided above and has made the following determination:

Operation of the James A. FitzPatrick Nuclear Power Plant in accordance with this proposed amendment would not involve a significant hazards consideration, as defined in 10 CFR 50.92, since the proposed changes would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated. The changes update Table 3.2-6 to accurately reflect a plant modification. The changes do not impact the plant's accident analyses as documented in the FSAR [Final Safety Analysis Report] or the NRC staff's SER [Safety Evaluation Report]. The peak temperature for these analyses are bounded by the new temperature range.

2. create the possibility of a new or different kind of accident from those previously evaluated. The suppression chamber temperature monitoring system does not perform any automatic functions. The revised temperature range provides sufficient information to the control room operators to prevent and mitigate the consequences of reactor accidents. The Technical Specification requirements for two temperature indicators and two temperature recorders are unchanged by this amendment package. The changes do not create any new failure modes; nor do they allow plant operation in an unanalyzed condition.

3. involve a significant reduction in the margin of safety. The changes do not relax any administrative controls or limitations. The changes update the suppression chamber water temperature instrumentation in accordance with Regulatory Guide 1.97. There is no change to the safety margin since the new temperature range encompasses the analytical temperatures established by the plant's safety analyses.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: June 14, 1989

Description of amendment request: The proposed amendment would correct Technical Specifications (TS) Table 3.2-6, "Surveillance Instrumentation," to indicate that the total number of reactor pressure instruments provided by plant design is three, rather than the present five indicated in the table. This change would make the table consistent with plant design and correct an error introduced in Amendment 48 which inadvertently identified the total number of recorders and indicators as the number of channels available by design.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards provided above and has made the following determination:

Operation of the James A. FitzPatrick Nuclear Power Plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change is purely administrative in nature and corrects an error introduced in Amendment 48 to the Technical Specifications. There are no changes to setpoints, safety limits, surveillance requirements, or limiting conditions for operation. The change does not impact previously evaluated accidents; nor does it affect safe plant operations.

2. create the possibility of a new or different kind of accident from those previously evaluated. The proposed change is purely administrative in nature and corrects the Technical Specifications. The change does not involve modification to any of the plant's systems, equipment, or components; nor does it allow the plant to operate in an unanalyzed condition.

3. involve a significant reduction in the margin of safety. The proposed change is purely administrative in nature. The change corrects the number of instrument channels which are available (by design) to satisfy the requirements of having two operable reactor pressure instrument channels. The change does not involve any plant modifications, nor does it affect the FSAR [Final Safety Analysis Report] information regarding reactor vessel instrumentation. The number of instrument channels associated with monitoring reactor pressure is not reduced by this proposed amendment.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: February 27, 1989 and supplemented on April 3, 1989.

Description of amendment request: Changes the Technical Specifications to add clarification and consistency to the refueling specifications with respect to reference measurements, load setpoints and travel limits which will, in turn, permit control rods to be transported in a vertical position. In addition, the minimum allowable Source Range Monitor (SRM) count rate is increased to agree with SRM requirements imposed elsewhere in the specifications.

Basis for proposed no significant hazards determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. In accordance with 10 CFR 50.92 the licensee has reviewed the proposed changes and has concluded as follows that they do not involve a significant hazards consideration:

Significant Hazards Consideration Evaluation

1. The operation of Hope Creek Generating Station (HCGS) in accordance with the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve a change to any structure, component or system that affects the probability of any accident previously evaluated in the Updated Final Safety Analysis Report (UFSAR). The consequences of all previously evaluated accidents have been analyzed and the following conclusions have been reached:

(1) The changes to TS 3.9.1.b.3 and 3.9.6 clarify the use of the main hoist as the only hoist permitted for fuel movement within the reactor pressure vessel (RPV).

(2) The change to TS 4.9.6.1.b does not allow a fuel bundle to be lifted any higher than previously permitted and adds a minimum height-hoisted tolerance to ensure that a bundle will have adequate clearance over the fuel transfer chute floor.

(3) The requested change to TS 4.9.6.1.d does raise the setpoint at which the fuel-loaded rod block is actuated, however, the setpoint remains below the redundant interlock setpoint of 550 pounds and at a value conservatively less than the weight of a fuel bundle; therefore, the basis for the fuel-loaded rod block (to ensure no control rod is removed while fuel is being handled) remains satisfied.

(4) The change to 4.9.6.2.b and 4.9.6.3.b raises, by approximately two feet, the height to which a control rod assembly can be lifted by the auxiliary hoists; however, this height remains conservatively within the analysis for a fuel handling (bundle drop) accident. Additionally, the calculated radiation dose rate (3.6 mr/hr *at* the surface of the water in the refueling cavity) from a control rod withdrawn to the amendment requested height will remain less than the calculated dose rate from a fuel bundle withdrawn to its current uptravel limit by the main hoist (7.6 mr/hr *one foot above* the surface of the water in the refueling cavity).

(5) The elimination of the fuel loaded rod block interlock for the monorail and frame-mounted auxiliary hoists does not impact an evaluated accident. The rod block is unnecessary for these two auxiliary hoists because they are specifically precluded from lifting any fuel bundle by the wording of the proposed TS 3.9.6, by procedure, and by the overload cutoff limits of TS 4.9.6.b.

(6) The revision to 4.9.2.c and its associated footnote adds conservatism by ensuring at least 3 cps on the SRMs regardless of signal-to-noise ratios.

2. The operation of Hope Creek Generating Station (HCGS) in accordance with the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

The changes proposed in the measurement point of reference and the associated dimensional revision to the uptravel limit setpoint for fuel bundles do not introduce any actual change in uptravel limits. Fuel bundles will be hoisted to the same height as the present TS permits. The change to the height to which a control rod may be lifted is within the bounds of the present UFSAR analysis for a fuel bundle lifted to its permitted limit - considering both a dropped fuel bundle accident and radiological dose rate at the refueling platform. There is no new accident consideration introduced by combining the surveillance requirements for the frame-mounted and monorail mounted auxiliary hoists since the previous TS requirements were identical for each. Eliminating the fuel-loaded rod block for these two hoists eliminates a surveillance requirement which is meaningless since the hoists are not permitted to handle fuel bundles.

The revision to 4.9.2.c and its associated footnote is more conservative, requiring the higher 3 cps SRM count rate regardles of signal-to-noise ratio.

3. The operation of Hope Creek Generating Station (HCGS) in accordance with the proposed change does not involve a significant reduction in a margin of safety.

The proposed increase in height to which a control rod may be hoisted is within the bounds of the previous analysis for a fuel bundle drop. Although the calculated radiation dose rate, at the refueling cavity water surface, from a control rod raised to the proposed uptravel limit will be somewhat greater than the dose rates corresponding to the current uptravel limit, the dose rate will remain well below the levels currently produced by a fuel bundle at its uptravel limit. The increase in the setpoint for the fuel-loaded rod block interlock for the main hoist is within the present setpoint for the redundant fuel-loaded rod block interlock setpoint. The fuel-loaded rod block interlock has no safety importance for the auxiliary hoists since they do not handle fuel bundles. The revision which increases the required minimum SRM counts adds to the margin of safety.

The staff reviewed the licensee's determination that the proposed license amendment involves no significant hazards consideration and agrees with the licensee's analysis. Accordingly, the staff proposes to determine that the proposed license amendment does not involve a significant hazards consideration.

Local Public Document Room location: Pennsville Public library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: May 22, 1989

Description of amendment request: The change to the Technical Specifications would: (1) revise Specification 4.0.3 to clarify when a missed surveillance constitutes a violation of the operability requirements of a Limiting Condition for Operation and to clarify the applicability of the action requirements and the time during which the limits apply, and (2) to clarify Specification 4.0.4 for mode changes as a consequence of action requirements.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has concluded with respect to the May 22, 1989 submittal that: (1) the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes are designed to resolve the two generic concerns previously identified and addressed by the NRC staff in Generic Letter (GL) 87-09 "Section 3.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Condition for Operation and Surveillance Requirements". The changes proposed in GL 87-09 have been determined by the staff to result in improved TS. The changes proposed for the Virgil C. Summer Nuclear Station do not affect any of the accidents previously evaluated in the safety and analysis report; (2) the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not reflect a change in plant equipment, but resolve inconsistencies and existing undue

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restrictions with the TS. The changes were determined by the NRC staff in GL 87-09 to result in improved TS. The licensee determined that the proposed changes would not induce the possibility of an accident not previously identified in the safety analysis report; (3) the proposed changes would not involve a significant reduction in a margin of safety as defined in the basis to any Technical Specification. These changes resolve inconsistencies and remove undue restrictions from the Technical Specifications.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

System Energy Resources, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: May 8, 1989

Description of amendment request: The amendment would change the Technical Specifications (TS) by changing Table 1.2, Operational Condition, and TS 3/4 9.1, Reactor Mode Switch, to allow the reactor mode switch to be placed in the refuel position for moving a single control rod with the reactor in Operational Condition 3 (hot shutdown) and Operational Condition 4 (cold shutdown). The present TS permit movement of the control rod to recouple it to its drive. The change would allow movement of a single control rod in Operational Conditions 3 and 4 for additional purposes, such as venting of the control rod drive, timing of the control rod scram and friction testing of the control rod.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of no significant hazards considerations in its request for a license amendment. The licensee's analysis of the proposed amendment against the three standards in 10 CFR 50.92 is reproduced below.

1. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

a. A single control rod can be withdrawn under control of the reactor mode switch refuel position one-rod-out interlock in Operational Conditions 3 and 4. Although this change would allow an increase in the frequency of single control rod withdrawals, the probability of previously analyzed accidents is not affected. The one-rod-out interlock associated with the refuel position of the reactor mode switch provides protection against prompt reactivity excursions. This interlock is explicitly assumed in the safety analysis for control rod removal error during refueling. A prompt reactivity excursion could potentially result in fuel failure. The one-rod-out interlock, together with the requirements for adequate SHUTDOWN MARGIN during refueling, provide protection against prompt reactivity excursions by preventing withdrawal of more than one control rod and ensuring the core remains subcritical with any one control rod withdrawn. The addition of surveillance requirements for the one-rod-out interlock will assure the interlock is operable prior to withdrawal of a control rod in Operational Conditions 3 and 4.

b. The consequences of previously analyzed accidents in Operational Conditions 3 and 4 are not affected by this proposed change. The SHUTDOWN MARGIN requirements of TS 3.1.1. require the reactor to be subcritical when all control rods are fully inserted except for the single control rod having the highest reactivity worth being fully withdrawn. The single failure proof one-rod-out interlock of the reactor mode switch refuel position permits only a single control rod to be withdrawn. The proposed change will not result in the reactor having the potential for attaining criticality in Operational Conditions 3 and 4 or affect the initial conditions assumed in any design basis accident analysis.

c. Therefore, the probability and consequences of previously analyzed accidents are not increased.

2. This change would not create the possibility of a new or different kind of accident from any previously analyzed.

a. Single control rods can be withdrawn in Operational Conditions 3 and 4 under the existing Technical Specifications to permit control rod recoupling. The proposed change would merely expand this provision to other control rod maintenance and testing activities performed in Operational Conditions 3 and 4. The withdrawal of individual control rods in Operational Conditions 3 and 4 is a mode of operation permitted by existing Technical Specifications.

b. The additional control rod maintenance and testing activities which could be performed in Operational Conditions 3 and 4 are permitted by the existing Technical Specifications in Operational Conditions 1, 2, and 5. Examples of activities which could be performed include venting of control rods following a reactor scram or control rod drive system outage, normal control rod insertion/withdrawal timing and adjustment, control rod scram time testing and control rod friction testing.

c. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. This change would not involve a significant reduction in the margin of safety.

a. The one-rod-out interlock of the reactor mode switch refuel position and the SHUTDOWN MARGIN requirement of TS 3.1.1 ensure the reactor will be maintained subcritical during single control rod withdrawals. This change will only permit one control rod to be withdrawn when shutdown.

b. Therefore, this change will not involve a significant reduction in the margin of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: Elinor G. Adensam

Tennessee Valley Authority, Docket No. 50-260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of amendment request: February 17, 1989 and June 20, 1989 (TS 266)

Description of amendment request: The proposed amendments would correct errors in the Browns Ferry Nuclear Plant, (BFN), Unit 2, Technical Specifications (TS) as follows: (1) Table 3.2.F (page 3.2/4.2-32), Instrument Number (RR-90-322A) - change the instrument number to read RM-90-306 and RR-90-360, correct typographical error in the type Indication and Range column (correct units from curies per cubic centimeter to microcuries per cubic centimeter), delete the Iodine and Particulate indications and range. (2) Notes to Table 3.2.F (pages 3.2/4.2-33) - correct typographical errors in footnote 7 (change TS 6.7.2 to 6.9.1.4 and 6.7.2 to 6.9.2) and add footnote 9 (clarifies the function of subject instrument to Noble gas only); (3) Table 4.2.F item 23 (page 3.2/4.2-55) - correct instrument number and type to read Wide Range Gaseous Effluent Radiation Monitor and recorder (RM-90-306 and RR-90-360); (4) Page 6.0-29 item 6.9.2.10 - correct the word high-range to wide-range.

Basis for proposed no significant hazards consideration determination: The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analysis, using standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

1. The proposed change does not involve a significant increase in the probability or consequence of any accident previously evaluated. The proposed changes correct typographical errors and nomenclature, provides consistency between Table 3.2.F, Notes to Table 3.2.F, and Table 4.2.F in addition to the other appropriate sections of the TS. These changes are administrative in nature and do not change any safety analysis for which BFN is licensed.

Removal of the iodine and particulate monitors from Table 3.2.F does not significantly increase the probability of an accident. BFN currently has a system installed that meets the NRC requirements of NUREG 0737 Item II.F.1, II.F.2, and Regulatory Guide 1.97. In the event of an accident, BFN has one designed release point, the vent stack. Being in compliance with the subject NRC requirements, BFN continuously samples the plant gaseous effluent for postaccident releases of radioactive iodines and particulates. The iodines and particulates are measured through laboratory analysis of particulate and carbon filters.

In addition, a recorder (RR-90-360) is being added to the TS. This provides a retrievable record of what instrument RM-90-306 was monitoring. Adding this recorder serves no safety function nor provides any input signals to any isolation functions for mitigation of any accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated. This proposed change does not change any safety related equipment, safety functions, or plant operations. This change does not create any new accident mode or release pathway of radioactive effluents to the environment.

3. The proposed amendment does not involve a significant reduction in a margin of safety. The typographical corrections will provide a more accurate identification and description for Table 3.2.F, Notes for Table 3.2.F, and Table 4.2.F which will assist the plant personnel working with this equipment.

Deletion of the iodine and particulate monitors from Table 3.2.F will not decrease the margin of safety since BFN will continue to sample and analyze the subject filters to determine any quantities of particulates and iodines that may be released. The onsite laboratory equipment, used by trained technicians in accordance with approved procedures, ensures that the analysis can be performed to support the needs of plant and offsite personnel in the event of an accident.

The addition of the recorder (RR-90-360) will only provide a means for recording gaseous effluents from the vent stack. This will also provide a chart record that is retained for historical purposes. Again this recorder does not serve any safety related or accident mitigation function.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Tennessee Valley Authority, Docket No. 50-260, Browns Ferry Nuclear Plant Unit 2, Limestone County, Alabama

Date of amendment request: April 14, 1989 as supplemented by letter dated April 14, 1989 (TS 268).

Description of amendment request: The proposed changes would add License Condition 2.C.5.(a), add a new Definition Section 1.0.NN, and revise Technical Specification (TS), Sections 6.5.1.6, 6.5.2.8 and 6.8.1 for Browns Ferry, Unit 2 (BFN2). These changes will allow BFN2 to implement a NRC approved Appendix R Safe Shutdown Program, under the controls of the BFN2 TS. These changes follow the NRC guidance provided in Generic Letter 86-10.

Basis for proposed no significant hazards consideration determination: The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

(1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. Implementation of these technical specifications (TS) provide consistency between the operating license, the Appendix R Safe Shutdown Program, and the BFN Appendix R Safe Shutdown Analysis. These proposed changes are administrative in nature and do not alter the intended function or design basis of any safety-related equipment as addressed in the BFN Final Safety Analysis Report (FSAR). Implementation of these changes ensures that the Appendix R Safe Shutdown Program is maintained in a manner consistent with NRC guidance. By maintaining this Program in accordance with the proposed TS, BFN will ensure the equipment needed to perform safe shutdown in accordance with the BFN Appendix R Safe Shutdown Analysis is properly maintained and is functional to meet the requirements of 10 CFR 50 Appendix R.

(2) The proposed amendment does not create the possibility of a new or different kind of accident from an accident previously evaluated. This is an administrative change which places controls on an approved NRC Program. These changes will not eliminate or modify any protective functions or equipment that are required for BFN to achieve and maintain reactor shutdown capabilities as required by 10 CFR 50 Appendix R. Implementation of these proposed changes will not result in an additional release pathway to the environment. In developing the BFN Appendix R Safe Shutdown Program an analysis was performed in order to identify that equipment needed to comply with 10 CFR 50 Appendix R. Implementing this Program and the proposed TS does not negate the other safety analyses or accident scenarios in which BFN was licensed for.

(3) The proposed change does not involve a significant reduction in the margin of safety. This proposed amendment is administrative and places various administrative controls on an NRC approved BFN Appendix R Safe Shutdown Program. Implementing these changes enhances the overall safety of BFN. The program identifies that equipment required by the Appendix R Safe Shutdown Analysis to shutdown the reactor in accordance with 10 CFR 50 Appendix R. In addition, it also provides testing and monitoring requirements along with compensatory measures if the subject equipment cannot fulfill its function. The proposed TS allows BFN to change the Program under the guidelines of 10 CFR 50.50 which is an approved industry practice and consistent with NRC Generic Letter 86-10. Any changes made under 10 CFR 50.59 are required to be submitted to NRC in an annual report. This process will enable NRC to independently keep abreast with any changes that may be made.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the

application for amendments involves no significant hazards considerations.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Tennessee Valley Authority, Docket No. 50-260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of amendment request: June 20, 1989 (TS 272)

Description of amendment request: The proposed changes would add a new Section 3.5/4.5.M to the Browns Ferry, Unit 2 (BFN), Technical Specifications (TS) and would revise the existing Section 3.6/4.6.F. These changes will incorporate more restrictive surveillance requirements and Limiting Conditions of Operation (LCO) to address reactor core thermal-hydraulic stability considerations as specified in NRC Bulletin 88-07, Supplement 1 [Power Oscillations in Boiling Water Reactors (BWRs) - December 30, 1988] and General Electric (GE) interim corrective actions provided to all BWR licensees in November 1988. These proposed changes define the reactor core regions of operation which are acceptable or unacceptable and provide required actions needed to exit operating in an unacceptable region. Specifically, operation in Region I and II as defined in Figure 3.5.M.1 of the proposed TS changes would be restricted.

Basis for proposed no significant hazards consideration determination: The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

(1) This change does not involve a significant increase in the probability or consequences of an accident previously evaluated. Implementation of the proposed TS change decreases the probability of core thermal-hydraulic oscillations by precluding operating conditions where instabilities have occurred at other plants. In addition, the proposed change will provide additional assurance that core oscillations that do occur will be suppressed prior to exceeding fuel integrity limits. The proposed change does not have any adverse safety effect on any affected safety system nor are the assumptions of the safety analyses affected by restricting operation to outside of Region I and II. Therefore, the proposed change reduces the probability and consequences of potential core oscillations and does not increase the probability or consequences of any other previously analyzed event.

(2) This proposed change does not create the possibility of a new or different kind of accident from any previously analyzed. Restricting operation to outside of Region I and II does not create any new failure mechanisms. Plant procedures currently preclude normal operation in those regions. Emergency entry into a restricted region is permitted to protect plant safety equipment provided that the prescribed actions (i.e., scram or exit) for the region entered are performed. Operator actions to exit Region II will be performed in compliance with all plant procedures, fuel preconditioning restrictions, and technical specifications.

(3) This change does not involve a significant reduction in a margin to safety. The proposed changes are conservative in nature and provide increased assurance that the fuel safety limit MCPR will not be violated due to core oscillations. These changes are consistent with NRC and GE guidelines. The implementation of this tech spec will actually increase this margin of safety at BFN by not allowing the plant to operate in Regions I or II. If one of these Regions are entered specific operator actions are required which will place the plant in a more conservative and safety condition than current BFN Tech Specs required.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Tennessee Valley Authority, Docket No. 50-327, Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee

Date of amendment requests: June 20, 1989 (TS 89-24)

Description of amendment requests: The Tennessee Valley Authority (TVA) proposed to modify the Sequoyah Nuclear Plant (SQN), Unit 1, Technical Specifications (TS). The proposed change is to revise Surveillance Requirement (SR) 4.6.5.1.b.2 to allow a one-time extension of the 12-month ice-weighing interval for weighing the ice baskets in the ice condenser inside containment. This extension is from December 15, 1989 until the Unit 1 Cycle 4 refueling outage, which is scheduled for April to June of 1990.

Basis for proposed no significant hazards consideration determination: TVA provided the following information in its submittal to support the proposed change:

TVA is requesting an extension of SR 4.6.5.1.b.2 to postpone weighing of ice until the Unit 1 Cycle 4 refueling outage, which is projected to began April 1, 1990. The last ice-weight surveillance performed for SQN Unit 1 was completed September 16, 1988. SR 4.6.5.1.b.2 requires that the next ice-weighing surveillance be performed within 12 months of that date (i.e., September 15, 1989). Applying the provisions of TS 4.0.2 would allow an extension of the surveillance interval by a maximum of 3 months (i.e., December 15, 1989). TVA is requesting an additional 3-1/2 month extension to allow the ice-weighing outage to be conducted coincident with the Unit 1 Cycle 4 refueling outage. This 3-1/2 month extension would provide increased plant availability (elimination of a 20- to 30-day mode 5 outage to weigh ice) and would allow for more efficient use of manpower.

SR 4.6.5.1.b.2 requires that each basket contain at least 1,200 pounds (lbs) of ice and that the average ice weight for the bay analysis and the group-row analysis not be less than 1,200 lbs per basket at a 95 percent level of confidence at the start of the surveillance interval. SQN's 1,200-lb TS limit is based on a containment analysis that assumes a 1,080-lb per basket ice weight. The 1,200-lb per basket TS limit contains a 10 percent conservative allowance for ice loss through sublimination during the interval between weighings and a 1 percent conservative allowance for ice-weighing instrument error. The TS limit thereby provides a weight-per-basket ice basket ice weight that is more than 11 percent higher than the per basket ice weight assumed for the ice condenser design.

The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

TVA has evaluated the proposed technical specification change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of SQN [Unit 1] in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously analyzed. TVA proposes to modify the SQN Unit 1 TSs to revise Surveillance Requirement 4.6.5.1.6.2 to allow a one-time extension of the 12-month ice-weighing interval. The last ice-weight surveillance was performed September 16, 1988. TVA is requesting a one-time extension to allow the next ice-weighing to be conducted during the Unit 1 Cycle 4 refueling outage that is currently scheduled to begin April 1, 1990.

The ice condenser system is provided to absorb [the] thermal energy release following a LOCA or HELB [Loss-of-Coolant Accident or High Energy Line Break] and to limit the peak pressure inside containment. The current ice condenser analysis for SQN is based on a minimum of 1,080 lbs of ice per basket. TVA's calculation shows that for the bay analysis, using the predicted sublimination rate of 18-1/2 months, all bays would have an average basket weight in excess of 1,080 lbs. TVA's calculation shows that for the group-row analysis using the predicted sublimination rate for 18-1/2 months, all group-rows would have an average basket weight above 1,080 lbs with the exception of group 3 - row 1. The predicted average basket weight in this region was 1,026 lbs, which is 5 percent low. TVA evaluated the impact of the low weight in group 3 - row 1. TVA's evaluation addressed the potential for and the effects of group 3 - row 1 melting out at a time earlier than the time assumed in SQN's FSAR containment.

Based on TVA's evaluation and the improved surveillance history of the SQN ice baskets, TVA considers the distribution of ice to be acceptable for satisfying the basic safety function of the ice condenser for the proposed one-time extension. The proposed change, therefore, does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. TVA's request for a 3-1/2 month extension of the 12-month ice-weighing interval will not result in a new or different kind of accident from that previously analyzed in SQN's FSAR. SQN's ice condenser serves to limit the peak pressure inside containment following a loss of coolant accident (LOCA) or high-energy line break (HELB). TVA has evaluated SQN's FSAR analysis in conjunction with the preliminary containment pressure analysis for SQN to show that sufficient ice would be present during the requested extension period to keep the peak containment pressure below SQN's containment design pressure of 12 psig.

(3) Involve a significant reduction in a margin of safety. The ice condenser system is provided to absorb [the] thermal energy release following a LOCA or HELB to limit the peak pressure inside containment. The current ice condenser analysis for SQN is based on a minimum of 1,080 lbs of ice per basket.

TVA's calculation shows that for the bay analysis, using the predicted sublimination rate of 18-1/2 months, all bays would have an average basket weight in excess of 1,080 lbs.

TVA's calculation shows that for the group-row analysis using the predicted sublimination rate for 18-1/2 months, all group-rows would have an average basket weight above 1,080 lbs with the exception of group 3 - row 1. The predicted average basket weight in this region was 1,026 lbs, which is 5 percent low. TVA evaluated the impact of the low weight in group 3 - row 1. TVA's evaluation addressed the potential for and the effects of a group 3 - row 1 melting out at a time earlier than the time assumed in SQN's FSAR containment analysis. TVA's evaluation shows that the conservatisms contained in SQN's current containment analysis and the results of the preliminary containment pressure analysis for SQN (i.e., "Westinghouse LOCA Mass and Energy Release Model for Containment Design - March 1979 version," WCAP-10325-P-A, May 5, 1983) provide sufficient ice in all regions of the SQN Unit 1 ice bed to keep the peak containment pressure below 12 psig, and to prevent premature burn-through of the ice bed.

Based on TVA's evaluation and the improved surveillance history of the SQN ice baskets, TVA considers the distribution of ice to be acceptable for satisfying the basic safety function of the ice condenser for the proposed one-time extension. The proposed change, therefore, does not involve a significant reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for an amendment involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendments request: April 26, 1989

Description of amendments request: These proposed amendments would clarify the reporting requirements for operation of the Overpressure Mitigating System (OMS) and delete two schedular commitments that have been implemented.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee proposes to amend the Technical Specification (TS) 15.6.9.2.C to clarify the reporting requirements for operation of the OMS by specifying that operation of either the pressurizer power operated relief valves in the low temperature overpressure protection mode or the residual heat removal system relief valves be reported to the Commission as required under the Unique Reporting Requirements of the TS. Additionally, the licensee proposes to remove two schedular commitments contained in the footnotes of two TS tables. The first schedular commitment is contained in Table 15.3.5-1 and is related to the setting limit for item 10, "Loss of Voltage." Since the associated relays have been installed as required, the footnote associated with their installation is no longer appropriate. The second schedular commitment is contained in Table 15.7.4-2 and is related to item 7.a, "Oxygen Monitor." The oxygen monitor was installed as required and the footnote is no longer appropriate. The licensee has determined that the proposed changes are strictly administrative in nature and involve no physical plant modifications and no changes in plant operations or procedures. As a result, the licensee concludes that the aforementioned changes to the TS do not involve a significant hazards consideration.

The staff has reviewed the licensee's evaluation of the proposed amendments, and agrees with the licensee's conclusion.

Furthermore, the Commission has provided guidance concerning the application of the significant hazards consideration criteria by providing examples (51 FR 7751) of actions that are considered not likely to involve a significant hazards consideration. One of the examples of actions not likely to involve significant hazards considerations is (i), a "purely administrative change to Technical Specifications...." All of the changes proposed by the licensee fall within the scope of this example. Therefore the staff proposes to determine that the proposed changes to the TS do not involve significant hazards considerations.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Arkansas Power & Light Company, Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Units 1 and 2, Pope County, Arkansas

Date of applications for amendment: April 24, 1989

Brief description of amendment: These amendments modified the ANO-1 and ANO-2 Technical Specifications to reflect planned changes in Arkansas Power and Light organization for Arkansas Nuclear One. The amendments also changed the designated members at the Plant Safety Committee (PSC) including the PSC Chairman.

Date of issuance: June 21, 1989

Effective date: June 21, 1989

Amendment Nos.: 124 and 98

Facility Operating License No. NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 17, 1989 (54 FR 21298). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 21, 1989.

No significant hazards consideration comments received: Nos. 124 and 98

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: June 23, 1987 as revised March 29, 1989. Description of amendments: The amendments add surveillance and radioactive release requirements for incinerated oil to the Radiological Environmental Technical Specifications (RETS).

Date of issuance: June 26, 1989

Effective date: June 26, 1989

Amendment Nos.: 134 and 164

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 26, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: April 8, 1988 as amended July 21, 1988.

Brief description of amendment: The amendment makes numerous administrative and editorial changes, typographical error corrections and title changes. In addition, changes to the size and composition of the Plant Operations Review Committee (PORC) have been made.

Date of issuance: June 26, 1989

Effective date: June 26, 1989

Amendment No. 22

Facility Operating License No. NPF-58. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 31, 1988 (53 FR 19832) and March 22, 1989 (54 FR 11845). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 26, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: March 3, 1982, as supplemented by letters dated August 29, 1984, March 21, 1988 and April 20, and May 4, 1989

Brief description of amendment: This amendment revises the requirements dealing with leak rate testing of the containment air lock door seals and the associated action statement when allowable leakage rate (La) is exceeded. The additional information submitted by letters dated March 21, 1988, April 20, and May 4, 1989, served as clarification showing that the provisions of 10 CFR Part 50, Appendix J are met, and in no way does this additional information invalidate the findings of the proposed no significant hazards consideration published on September 21, 1983.

Date of issuance: June 1, 1989

Effective date: June 1, 1989

Amendment No.: 126

Provisional Operating License No. DPR-20. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** September 21, 1983 (48 FR 43135). The Commission's related evaluation of the amendment is

contained in a Safety Evaluation dated June 1, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: November 28, 1988

Brief description of amendment: This amendment increases the containment leakage test pressure from 49.6 psig to 53.3 psig. In addition, surveillances 4.6.1.2.d.3 and 4.6.1.2.f, which referred to a seal system that is not used at CR-3, have been deleted.

Date of issuance: June 22, 1989

Effective date: June 22, 1989

Amendment No.: 118

Facility Operating License No. DPR-72. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 17, 1989 (54 FR 21307). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 22, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: February 3, 1989

Brief description of amendments: The amendments modified the Technical Specifications related to primary containment isolation valves

Date of issuance: June 20, 1989

Effective date: June 20, 1989

Amendment Nos.: 164 and 101

Facility Operating License Nos. DPR-57 and NPF-5. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 5, 1989 (54 FR 13765). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 20, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: August 5, 1988 as supplemented November 30, 1988, January 17 and February 28, 1989.

Brief description of amendment: This amendment modified License Condition 2.C(13) and Technical Specification Table 3.3.6-2, Item 1.b, High Power Setpoint, to allow continued operation of the facility with up to 100° F reduction from the rated feedwater temperature of 420° F during the normal fuel cycle.

Date of issuance: June 23, 1989

Effective date: June 23, 1989

Amendment No.: 37

Facility Operating License No. NPF-47. The amendment revised the Technical Specifications and license.

Date of initial notice in **Federal Register:** October 5, 1988 (53 FR 39170). The November 30, 1988, January 17 and February 28, 1989 submittals provided clarifying information and did not change the finding of the initial notice or the scope of the amendment request.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 23, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: September 22, 1988

Brief description of amendment: Revises facility Technical Specification 3.4.5a to clarify the requirement that the Control Room Air Treatment System be operable whenever reactor building integrity is required.

Date of issuance: June 19, 1989

Effective date: June 19, 1989

Amendment No.: 106

Facility Operating License No. DPR-63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** May 19, 1989 (54 FR 21311). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 19, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: January 24, 1989

Brief description of amendment: The amendment changes the Millstone Unit 3 Technical Specifications (TS), to allow Cycle 3 operation, as follows: (1) TS 3/4.2.2 "Heat Flux Hot Channel Factor - Four Loops Operating and Three Loops Operating" would be changed to eliminate the reference to fuel assembly grid locations, (2) TS 5.3.1., "Fuel Assemblies" would be changed to properly describe the Cycle 3 fuel assemblies, (3) TS 5.3.2, "Control Rod Assemblies" would be changed to allow use of silver - indium - cadmium control rods and (4) TS 6.9.1.6, "Radial Peaking Factor Limit Report" would be changed to allow submittal of the report prior to each cycle's initial criticality.

Date of issuance: June 28, 1989

Effective date: June 28, 1989

Amendment No.: 37

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 22, 1989 (54 FR 7636). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 28, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California

Date of application for amendments: February 28, 1989, as supplemented by letter dated April 27, 1989 (Reference LAR 89-01)

Brief description of amendments: The amendments revised Section 6, Administrative Controls, of the Technical Specifications to change the requirements for Plant Staff Review Committee (PSRC) membership, quorum, qualifications, and for the review and approval of procedures, tests, and experiments.

Date of issuance: June 22, 1989.

Effective date: June 22, 1989.

Amendment Nos.: 41 and 40.

Facility Operating License Nos. DPR-80 and DPR-82: Amendments changed the Technical Specifications.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18950), as superseded by notice dated May 17, 1989 (54 FR 21314). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 22, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: September 14, 1988

Brief description of amendment: This amendment revised the Unit 1 Technical Specifications to increase the minimum level of water that must be maintained in the spray pond to support operation of Unit 2.

Date of issuance: June 16, 1989

Effective date: Upon issuance of an operating license to Limerick Generating Station, Unit No. 2.

Amendment No. 25

Facility Operating License No. NPF-39. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 22, 1989 (54 FR 7640). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: January 27, 1989

Brief description of amendment: This amendment changed the Technical Specifications (TSs) to revise the effluent dose limits to a per site rather than a per unit basis.

Date of issuance: June 19, 1989

Effective date: Upon issuance of an operating license to Limerick Generating Station, Unit No. 2.

Amendment No. 26

Facility Operating License No. NPF-39. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 8, 1989 (54 FR 9922). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 19, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: April 10, 1989

Brief description of amendment: The amendment revised the Technical Specifications on the Residual Heat Removal Service Water and the Emergency Service Water Systems to reflect operation of Limerick Unit 2.

Date of issuance: June 20, 1989

Effective date: Upon issuance of an operating license to Limerick Generating Station, Unit No. 2.

Amendment No. 27

Facility Operating License No. NPF-39. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18953). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 20, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: April 10, 1989

Brief description of amendment: This amendment revised the Technical Specifications to: (1) delete the requirement that the Average Power Range Monitors be operable when the plant is in the cold shutdown condition, (2) revise the reactor coolant leakage requirements to be similar to the leakage rates in generic letter 88-01, (3) modify the table on minimum shift crew composition to permit the SRO for Unit 1 to serve the same position for Unit 2 when Unit 2 is in cold shutdown, being refueled or is defueled, (4) clarify the location of the temperature sensors used to detect leakage from the main steam lines, (5) permit snubber surveillance to be performed when a unit is operating and (6) correct an error in the test value listed for the hydrogen recombiner phase resistance to ground for the heater elements.

Date of issuance: June 20, 1989

Effective date: June 20, 1989

Amendment No. 28

Facility Operating License No. NPF-39. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18954). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 20, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: February 14, 1986

Brief description of amendment: This amendment made administrative changes to the Technical Specifications (TSs) to achieve consistency, remove outdated material, make minor text changes and correct errors.

Date of issuance: June 22, 1989

Effective date: Within 30 days of the date of issuance.

Amendment No. 29

Facility Operating License No. NPF-39. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 27, 1989 (54 FR 18176). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 22, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: March 22, 1989

Brief description of amendment: The amendment clarifies the surveillance requirements for maintaining the Emergency Core Systems and the Reactor Core Isolation Cooling System discharge piping filled.

Date of issuance: June 22, 1989

Effective date: June 22, 1989

Amendment No.: 132

Facility Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18955). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 22, 1989

No significant hazards consideration comments received: No

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: January 16, 1986

Brief description of amendment: This amendment revises the Rancho Seco License to remove the requirements for certain fire doors and dampers described in the Safety Evaluation referenced in section 2.C.(4) of the license. The issuance of this amendment is based on the re-evaluation of fire areas in the 1985 Rancho Seco Updated Fire Hazards Analysis.

Date of issuance: June 20, 1989

Effective date: June 20, 1989

Amendment No.: 111

Facility Operating License No. DPR-54: Amendment revised Section 2.C(4) of the license.

Date of initial notice in **Federal Register:** May 17, 1989 (54 FR 21315). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 20, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: January 27, 1989 (TS 88-31)

Brief description of amendments: The Amendments modify the Sequoyah Nuclear Plant (SQN), Units 1 and 2, Technical Specifications (TS). The changes implement Generic Letter (GL) 85-19 and affect the actions taken when the plant is not in compliance with the limiting condition for operation (LCO) 3.4.8, Specific Activity, for radioiodine in the reactor coolant system. The changes (1) delete the Action a for Modes 1, 2 and 3, eliminating the reporting requirement for the number of hours above the allowable dose equivalent Iodine 131 (I-131) limit, (2) delete the part of the Action a for Modes 1, 2, 3, 4 and 5 that involves the special report requirement for I-131 and add an additional requirement in TS Section 6.9, Annual Reports, to include an annual report to NRC regarding instances when the I-131 specific activity limit was exceeded; and (3) delete the discussion within the Bases Section 3/4.4.8, Specific Activity, of the reporting requirement for operation in excess of 500 hours above the dose limit in a 6-month period.

The proposal to delete the statement, in the Bases Section 3/4.4.8, of restricting plant operation in excess of 800 hours above the dose limit in a 12-month period was not acceptable because it conflicted with a statement in GL 85-19 that licensees are expected to take actions to do this. This was discussed with TVA on May 30, 1989, and TVA proposed to state in the Bases that "operation with specific activity exceeding 1.0 microcuries/gram dose equivalent I-131 but within the limits shown on Figure 3.4-1 should be limited to no more than 800 hours per year since the activity levels allowed by Figure 3.4-1 increase the 2-hour thyroid dose at the site boundary by a factor of up to 20 following a postulated steam generator tube rupture." This statement is consistent with GL 85-19 and is, therefore, acceptable. This revision to the Bases statement does not affect the TS for Sequoyah.

Effective date: June 19, 1989

Amendment Nos.: 117, 107

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 8, 1989 (54 FR 9934). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 21, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: January 12, 1987, as clarified on January 29, 1988. The January 29, 1988 clarification did not alter the basis for the proposed no significant hazards consideration finding.

Brief description of amendment: The amendment revises the Technical Specifications to add operability and post accident monitoring instrumentation installed to satisfy Regulatory Guide 1.97.

Date of issuance: June 22, 1989

Effective date: June 22, 1989

Amendment No.: 113

Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of Initial Notice in **Federal Register:** April 8, 1987 (52FR11374). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 22, 1989.

No significant hazards consideration comments received: No

Local Public Document Room Location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: March 27, 1989

Brief description of amendments: These amendments revise the Technical Specifications relating to the canal level, canal safety-related level actuation instrumentation and the emergency service water pumps.

Date of issuance: June 19, 1989

Effective date: June 19, 1989

Amendment Nos. 130 and 130

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 10, 1989 (54 FR 14403). The Commission's related evaluation of the amendment is contained in an Environmental Assessment dated June 12, 1989, and in a Safety Evaluation dated June 19, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: March 31, 1989, as supplemented June 1, 1989.

Brief description of amendment: The amendment changed some of the boundaries of, and allowed or required operations within, regions of the power-flow map with potential for thermal hydraulic stability in the regions by using the Advanced Nuclear Fuels ANNA Stability Monitoring System. The affected technical specifications are 3/4.2.6, 3/4.2.7, 3/4.2.8 and 3/4.4.1. In addition, page B 3/4 2-1 and page 6-1 are revised to correct administrative errors introduced in recent amendments.

Date of issuance: June 23, 1989

Effective date: June 23, 1989

Amendment No.: 71

Facility Operating License No. NPF-21: Amendment changed the Technical Specifications.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18963). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 23, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By August 11, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with

reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Northeast Nuclear Energy Company, Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: May 9, 1989 as supplemented June 16, 1989

Brief description of amendment: The amendment modifies the Technical Specifications (TS) as follows: (1) TS Table 3.3-6, "Radiation Monitoring for Plant Operation," is changed to allow containment purge and exhaust isolation area monitors (RE41 and RE42) to be inoperable during performance of the containment integrated leak rate test (ILRT), (2) TS Table 3.3-11, "Fire Detection Instruments," is changed to require that the fire protection instruments in the electrical penetration area (Elevation 24' 6") be operable during the ILRT and (3) TS 3.7.12.2, "Spray and/or Sprinkler Systems," and TS Table 3.7-4, "Fire Hose Stations," is changed to allow the inoperability of the containment cable penetration area sprinkler system and containment fire hose stations during the ILRT.

Date of Issuance: June 28, 1989

Effective date: June 28, 1989

Amendment No.: 38

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes. Published in **Federal Register** May 31, 1989 (54 FR 23317). The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated June 28, 1989.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

NRC Project Director: John F. Stolz

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: June 13, 1989

Brief description of amendment: The amendment revised the actuation circuitry for auxiliary feedwater to actuate on narrow-range steam generator level, deleted the high steam generator level turbine trip from actuation on wide-range level, and added a new environmentally qualified wide-range steam generator level channel on each steam generator.

Date of issuance: June 23, 1989

Effective date: This license amendment is effective the date of issuance and must be fully implemented no later than 30 days from date of issuance.

Amendment No.: 129

Provisional Operating License No. DPR-13. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment, final determination of no significant hazards consideration, and statement concerning consultation with the State of California are contained in a Safety Evaluation dated June 23, 1989.

Attorneys for licensees: Charles R. Kocher, Assistant General Counsel and James Beoletto, Esq., Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

Local Public Document Room location: General Library, University of California, Post Office Box 19557, Irvine, California 92713.

NRC Project Director: George W. Knighton

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: June 16, 1989 (TS 89-31)

Brief description of amendments: This amendment revises Specification 3.1.3.2, "Position Indication Systems - Operating," of the Sequoyah Nuclear Plant, Unit 1, Technical Specifications (TS). The change adds a footnote to Action Statement a.1 for an inoperable rod position indicator for a control rod in a shutdown bank. The footnote states that, for the remainder of the Unit 1 Cycle 4 operating cycle, Action a.1 will be superseded and the position of the non-indicating control rod will be determined by a method other than that specified in Action a.1. The provisions of Specification 3.0.4 are not applicable for Action a.1 for the remainder of the Unit 1 Cycle 4 operating cycle. The Tennessee Valley Authority (TVA) committed, in its letter dated June 16, 1989, to repair the inoperable control rod indicator during the first shutdown of Unit 1 of sufficient duration that the indicator can be repaired but no later than the Unit 1 Cycle 4 refueling outage.

The Commission determined, pursuant to 10 CFR 50.91, that this amendment should be implemented as soon as possible. The amendment would

permit TVA to continue determining the position of the control rod, in the shutdown bank with the inoperable RPI, without subjecting the thimble tubes to excessive wear. It has no adverse effect on safety and would be beneficial to overall plant safety. Excessive wear of the thimble tubes results in a degradation of the reactor coolant system pressure boundary and can create the possibility of a non-isolable leak of reactor coolant. The proposed change will reduce the likelihood of the reactor coolant boundary being compromised and should be permitted with minimum delay. Consequently, the NRC staff determined that exigent circumstances existed which justify reducing the public notice period normally provided for licensing amendments. A Public Notice that the NRC staff proposed to amend the operating license of Unit 1, by close of business on June 23, 1989, was published in the *Chattanooga News Free Press* and the *Chattanooga Times* on Wednesday, June 21, 1989.

Date of issuance: June 23, 1989

Effective date: June 23, 1989

Amendment No: 118

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** No notice was published. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 23, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland, this 5th day of July, 1989.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation

[FR Doc. 89-16183 Filed 7-11-89; 8:45 am]

BILLING CODE 7590-01-D

[Docket No. 50-206]

Southern California Edison Co., San Diego Gas and Electric Co.; San Onofre Nuclear Generating Station, Unit No. 1 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption to Southern California Edison Company, *et al.*, (the licensee), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action: By letter dated July 30, 1987, the licensee requested approval of an exemption from the technical requirements of Section III.G.3 of Appendix R to 10 CFR 50 to the extent that it requires that a fixed fire suppression system be installed in an area for which an alternate shutdown capability has been provided. Specifically, the pipe tunnel (Fire Area 1-AB-11 34) is not protected by a fixed fire suppression system.

The licensee justifies the exemption on the basis of the low combustible loading, limited access, existing fire protection and the capability to safely shut down the plant with undamaged systems that are physically and electrically independent of the fire area.

The technical requirements of section III.G.3 are not met in this area because of the lack of a fixed fire suppression system.

The principal concern with the existing fire protection in the pipe tunnel is that a fire of significant magnitude could occur which would damage redundant safe shutdown systems. However, the in-situ fire loaing is low. If all of the combustibles were totally consumed by fire, the equivalent fire severity is about nine minutes as determined from the ASTM E-119 time-temperature curve.

The combustible inventory consists of cables in trays. A fire involving this material would be characterized, initially, by slow burning, low heat generation and the production of moderate quantities of smoke. The smoke would be detected by the existing fire detection system which would transmit an alarm automatically to the control room. The fire department would be dispatched to the scene and would put out the fire using manual fire fighting equipment.

If severe damage to safe shutdown systems occurred prior to the arrival of the fire department, a capability exists to safely shut down the plant which the licensee has affirmed is physically and electrically independent of the fire area. On this basis the lack of a fixed fire suppression system is not considered safety significant.

The Need for the Proposed Action: The proposed exemption is required to allow the pipe tunnel not to have a fixed fire suppression system.

Environmental Impacts of the Proposed Action: Because the staff concludes that the licensee's alternate fire protection configuration provides an equivalent level of safety to that achieved by compliance with Appendix R (prevention of severe fires that could damage redundant safe shutdown systems), the proposed action would not involve a significant change in the probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed amendment does not otherwise affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendment does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action: Because the Commission has concluded that there are no significant environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation of San Onofre Nuclear Generating Station, Unit No. 1, dated October 1973.

Agencies and Persons Consulted: The NRC has reviewed the licensee's request that supports the proposed amendment. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated July 30, 1987 which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 1955, Irvine, California 92713.

Dated at Rockville, Maryland, this 5th day of July 1989.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-16333 Filed 7-11-89; 8:45 am]

BILLING CODE 7590-01-M

Availability of Technical Position on Postclosure Seals, Barriers and Drainage System in an Unsaturated Medium

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of NUREG-1373 "Technical Position on Postclosure Seals, Barriers and Drainage System in an Unsaturated Medium," including appendices that provide the staff disposition of comments from the public on the September 1988 draft of the technical position and the Advisory Committee on Nuclear Waste (ACNW) on the final technical position.

ADDRESSES: Copies of NUREG-1373 including the staff disposition of comments from the public on the September 1988 draft and from the ACNW on the final technical position may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy of NUREG-1373 is also available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street NW., Lower Level, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Brian E. Thomas, Project Manager, Repository Licensing and Quality Assurance Project Directorate, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301/492-0435.

SUPPLEMENTARY INFORMATION: This Technical Position (TP) is undertaken to document the Division of High-Level Waste Management (DHLWM) staff's position on the requirements for the design, testing and emplacement of postclosure seals, barriers and drainage system. The need for this Position stems from the DHLWM staff's concern about the proposed sealing concepts for water inflow and gaseous outflows as described in DOE publications. The objectives of this Position are to provide guidance regarding design considerations for seals of shafts, ramps, boreholes, and the underground facility. Adherence to this Technical Position will result in the implementation of criteria acceptable to the DHLWM staff for meeting the requirements of the Commission's regulations and will help to assure the adequacy of the information provided in support of the License Application.

On September 30, 1988 the NRC published the Notice of Availability for the draft TP and solicited public comments. As a result, sixty-six comments were received from four different parties. The NRC staff reviewed the comments and, as a result, changes and clarifications have been incorporated into the TP. Staff responses to the comments have been documented separately and included as appendices to the TP. The final position has also been reviewed by the ACNW.

Dated at Rockville, Maryland this 30 day of June 1989.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety, and Safeguards.

[FR Doc. 89-16334 Filed 7-11-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26996; File No. SR-Amex-89-15]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc. Relating to Proposed Amendments to the "Admission of Members" Section of the Exchange Rules.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], notice is hereby given that on June 26, 1989, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s (b)(1) (1982).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex, pursuant to Rule 19b-4 of the Act [2], is proposing to amend the "Admission of Members" section of the Exchange's rules to update them and to require posting of prospective member organizations, allied members and approved persons.[3]

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The "Admission of Members" section of the Exchange's Rules sets forth the Exchange's procedures for the admission of regular, associate and allied members.[4] It is being proposed that the section be expanded to also cover admission of options principal members, limited trading permit holders, and regular member organizations. This will consolidate in one location all relevant information related to the admissions process.

Paragraph 9176 is proposed to be amended to clarify that options principal member applicants and limited trading permit holders must satisfy the same requirements that apply to regular member applicants. In addition, this amendment will provide notice to regular and options principal member applicants and limited trading permit holders of existing Exchange membership standards regarding financial responsibility, broker-dealer

[2] 17 CFR 240.19b-4 (1988).

[3] Paragraphs 9175-9180 of the Amex Guide currently set forth the Exchange's membership requirements and admissions procedures.

[4] *See* Paragraphs 9176-9178 of the Amex Guide.

application, floor member sponsors, the Amex orientation seminar, initiation and processing fees, and signing the Exchange Constitution. It is also proposed that Paragraphs 9177 and 9178 be amended to clarify admission requirements for associate and allied member applicants respectively. Finally, the Exchange proposes to add new Paragraph 9179 to detail the admission requirements to which prospective member organizations must adhere.

It is also proposed that Paragraphs 9177 and 9178 regarding associate and allied members, respectively, be amended to reflect new posting procedure. The Exchange currently posts on the trading floor bulletin board for seven days the name of all prospective regular, option principal and limited trading permit holders. The revisions to Paragraphs 9177 and 9178 will conform the posting period for associate membership to this procedure and the revisions to Paragraph 9178 will establish a posting requirement for allied membership. In addition, new Paragraph 9179 will specify that posting is required for member organizations and approved persons.

(2) Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that the proposed amendments promote just and equitable principles of trade and remove impediments to a free and open market by providing accurate and up-to-date information on the admissions process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by August 2, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 30, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-16317 Filed 7-11-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26997; File No. SR-NYSE-89-11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Auxiliary Closing Procedures for "Expiration Fridays"

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1], notice is hereby given that on June 8, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1) (1982).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of a change in the cut-off time for the entry of certain market-at-the-close orders in so-called "Pilot Stocks" on "Expiration Fridays" from 3:30 p.m. to 3:00 p.m. Information as to imbalances of 50,000 shares or more, which is currently disseminated as soon as possible after 3:30 p.m., would be disseminated as soon as possible after 3:00 p.m. At 3:30 p.m., or as soon as possible thereafter, the procedure would be repeated. For any stock for which an imbalance had been previously published, a subsequent imbalance message would be disseminated indicating whether an imbalance of 50,000 shares or more exists and, if so, the size of the imbalance.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The test of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

In September 1986, the Exchange adopted auxiliary closing procedures for use on days when stock index options and options on stock index futures expire concurrently.[2] These procedures currently apply to 52 stocks (the so-called "Pilot Stocks", comprised of the 50 highest capitalized stocks included in the Standard and Poor's 500 Stock Price Index ["S&P 500"], and two component stocks of the Major Market Index ["XMI"] that are not among the S&P top 50) for all monthly expiration days. They require the entry of all market-at-the-close orders in positions relating to any strategy involving any stock index futures, stock index options, or options on stock index futures by 3:30 p.m.

[2] The Exchange has adopted these procedures pursuant to a request of the Commission staff. *See* letter from Richard G. Ketchum, Director, Division of Market Regulation, Commission to Robert J. Birnbaum, President NYSE, dated September 16, 1986.

These procedures also require the specialist to make public market-at-the-close order imbalances of 50,000 shares or more in these stocks as soon as possible after 3:30 p.m. In addition, the procedures prohibit the entry of market-at-the-close orders that do *not* offset a published imbalance.

The proposed change moves the cut-off time for the above procedures from 3:30 to 3:00 p.m., with imbalance information to be disseminated as soon as possible after 3:00 p.m. At 3:30 p.m., or as soon as possible thereafter, the procedure would be repeated. For any stock for which an imbalance had been previously published, a subsequent imbalance message would be disseminated indicating whether an imbalance of 50,000 shares or more exists and, if so, the size of the imbalance. The same order entry restrictions vis-a-vis the imbalance would apply.[3]

The purpose of the proposed rule change is to allow for more "sunshine" on market conditions for the Pilot Stocks, by moving the cut-off time for current procedures, as described above, from 3:30 to 3:00 p.m. and by requiring the publication of updated imbalances at 3:30 p.m. This extra half-hour, along with the additional imbalance information, will allow market participants more time to respond to published market-at-the-close imbalances, which should further reduce end-of-day market volatility.

(b) Statutory Basis

The basis under the Act for this proposed rule change is Section 6(b)(5),[4] which requires that rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[3] The Commission approved this proposal on an accelerated basis for the June 16, 1989 Expiration Friday only in Securities Exchange Act Release No. 26914 (June 9, 1989), 54 FR 25922.

[4] 15 U.S.C. 78f(1982).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, written comments regarding this proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE.

All submissions should refer to File No. SR-NYSE-89-11 and should be submitted by August 2, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 30, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-16318 Filed 7-11-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27092; File No. SR-Phlx-89-22]

Self-Regulatory Organization; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Preferential Allocation of Cash Index Participation Exercise Notices

On May 9, 1989, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend Phlx Rule 1009B governing Allocation of Cash Index Participation ("CIP") Exercise Notices to provide a procedure for preferred allocation of such notices.

The proposed rule changes was noticed in Securities Exchange Act Release No. 26879 (May 31, 1989), 54 FR 24453 (June 7, 1989). No comments were received on the proposed rule change.

Currently, pursuant to Phlx Rule 1009B, each member organization is required to establish fixed procedures for the allocation of CIP exercise notices assigned to a short position in CIPs in such member organization's customers' accounts. Such allocation shall be made on either a "first-in, first-out" basis, automated random selection basis that has been approved by the Phlx, or on a manual random selection basis. Further, each member organization is required to inform its customers in writing of the method it uses to allocate exercise notices to its customers' accounts, explaining its manner of operation and the consequences of that system. The Phlx proposes to amend Exchange Rule 1009B by rescinding completely the current text of the rule and replacing it with a new Rule 1009B.

Proposed new Rule 1009B provides that a holder of a short CIP position desiring to receive priority consideration in being assigned an exercise notice of a holder of a long CIP position may provide notice of such intent ("Priority Notice") on or before a time specified and made public by the Exchange and which is in accordance with the Rules of the Options Clearing Corporation ("OCC").[3] A CIP short who makes an

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1988).

[3] Priority Notices may be tendered on any day that the OCC accepts notices of exercise of the CIP cash-out privilege from CIP purchasers. Thus, Priority Notices may be tendered on a daily or quarterly basis because the OCC accepts notices of exercise of the CIP cash-out privilege on a daily and quarterly basis. *See* OCC Rules 1903 and 1904.

effective tender of a Priority Notice will receive priority consideration from the OCC in being assigned an exercise notice of a CIP long. In the event that there are greater short CIP positions for which Priority Notices are received than long CIP positions for which exercise notices are received, the OCC will allocate exercise notices on a random basis among only short CIP positions for which Priority Notices have been received. In this regard, all Priority Notices, regardless of the time of day that they are received (as long as they are received by the OCC prior to the acceptance of Priority Notice cut-off time), will be given equal priority in being considered for assignment of exercise notices. A Priority Notice is effective for only the business day on which it is tendered and accepted. Each member organization shall establish fixed procedures for the allocation of priority consideration exercise notices.

Proposed new Rule 1009B also preserves several requirements of rescinded Rule 1009B. First, allocation of notices among customers not desiring priority consideration shall be made on a "first-in, first-out" or automated random selection basis approved by the Exchange, or on a manual random selection basis. Unless otherwise specified by the member organization, the allocation procedures established by a member organization for stock options shall apply to the allocation of CIP exercise notices. Second, each member organization must obtain prior Exchange approval before instituting or changing a method of allocation. Third, each member organization shall preserve for a three-year period sufficient workpapers and other documentary materials relating to the allocation of CIP exercise notices.

The Phlx states that the proposed rule change is designed to foster cooperation and coordination among persons engaged in facilitating transactions in CIPs by providing a mechanism to reflect CIP seller preferences in CIP assignment procedures.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 and the rules and regulations thereunder. More specifically, providing CIP shorts with a means by which they will receive priority consideration from the OCC in being assigned CIP exercise notices may assist CIP investors in the performance of more proficient asset allocation and risk management strategies. In addition, preferential allocation of CIP exercise notices should serve to ensure a more uniform and efficient operation of the Phlx cash-out process.[4] Moreover, the proposed rule change will facilitate the protection of CIP investors and ensure adequate disclosure in connection with CIPs by clarifying, the case of the CIP, the "preferred assignment" language contained in the Index Participations ("IPs") Disclosure Document ("IDD").[5]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

July 6, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-16319 Filed 7-11-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17044; 812-7308]

The Mitsubishi Bank, Limited; Application

July 5, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: The Mitsubishi Bank, Limited ("Applicant").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant seeks an order exempting it from all provisions of the 1940 Act in connection with the offer and sale of its equity securities, either directly or in the form of American Depositary Shares represented by American Depositary Receipts, rights and other convertible or equity related securities (the "Securities").

Filing Date: The application was filed on May 1, 1989, and an amendment to the application was filed on June 30, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 31, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, c/o Allen L. Thomas, Esq., Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, New York 10019-6064.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300.

Applicant's Representations

1. Like other major commercial banks in Japan and the United States, Applicant, together with its consolidated subsidiaries, primarily operates as an international commercial bank receiving deposits and making commercial loans. At March 31, 1988, on a consolidated basis, approximately 51% of Applicant's total assets were represented by loans (together with advances, leasing and other receivables), and approximately 74% of its total liabilities were deposits. During the fiscal year ended March 31, 1988, income from loans accounted for approximately 54% of Applicant's total income, and interest paid on deposits represented approximate 63% of Applicant's total expenses.

2. Applicant is currently engaged in the conduct of a commercial banking business in Japan, which includes receiving deposits, making loans, discounting bills, investing in securities, conducting domestic money transfers and foreign exchange transactions and performing other related services such as safekeeping, collections and issuing guaranties, acceptances and letters of credit. At September 30, 1988, Applicant had 244 branch offices, 29 sub-branches, 11 agencies, seven wholly-owned subsidiaries, and 11 associated companies in Japan.

3. Applicant ranks as the fourth largest commercial bank in the world in terms of consolidated assets. At March 31, 1988, Applicant and its consolidated subsidiaries had worldwide assets of ¥43,311 billion ($346 billion) and worldwide deposits equivalent to ¥31,167 billion ($249 billion). Net income for the year ended March 31, 1988 was ¥121 billion ($1.0 billion) and total stockholders' equity was equivalent to ¥1,028 billion ($8.2 billion) at that date.

4. Applicant, as a Japanese commercial bank with subsidiaries, agencies and branches in the United States, is subject to a regulatory structure which is comparable to that imposed on United States banks. The Banking law (Law No. 59 of 1981, as amended) (the "Bank Law") grants authority to the Japanese Ministry of Finance (the "MOF") to supervise Japanese banks. The MOF's supervision pursuant to the Bank Law requires Applicant, among other things, to file a detailed annual report concerning its affairs. Under the Bank Law, the MOF's supervisory control extends to numerous areas. Further, all Japanese banks maintain current accounts with The Bank of Japan, the central bank of Japan, by which The Bank of Japan is entitled to supervise, examine and audit the banks.

5. As a result of its operations in the United States, Applicant is subject to the provisions of the International Banking Act of 1978, as amended (the "IBA"), and to the Bank Holding Company Act of 1956, as amended (the "BHCA"). By virtue of its ownership of The Bank of California, N.A., Applicant is a registered bank holding company under the BHCA. Applicant is also subject to the supervision, examination and regulatory authority of the banking departments of each of the seven states in which Applicant has a branch, agency or representative office.

6. Applicant wishes to be able to look to the United States equity capital markets as a source of funds. Applicant could raise equity capital in the United States in a public or private primary offering of equity securities (of any class or type which Applicant may at the time be authorized under Japanese law to issue), either directly or in the form of ADRs. Applicant also wishes to be able to establish an ADR program with a listing on a national securities exchange.

Applicant's Legal Analysis

1. Approval of the application is necessary and appropriate in the public interest, because it would advance the goals of the IBA, give Applicant access to the United States capital markets and expand investment opportunities for United States investors. Approval of the application would also be consistent with the protection of investors because the existing regulatory structure to which Applicant is subject affords sufficient protection for investors.

2. The purposes of the 1940 Act were to curb abuses frequently perpetrated by a particular type of investment vehicle. United States banks were exempted because they were already subject to an extensive regulatory structure that afforded protection to investors and because their operations did not give rise to the abuses sought to be prevented by the 1940 Act. These two basic reasons for an exemption are equally applicable here. A commercial bank such as Applicant is simply a different type of institution than an investment company. The two institutions differ in purpose, function, role in the economy and applicable regulation. Applicant is primarily engaged in the business of commercial banking, not the business of an investment company.

Applicant's Conditions

Applicant agrees to the imposition of the following conditions if the requested order is granted:

1. Any public offering in the United States of Securities will be made only pursuant to a registration statement under the Securities Act of 1933 ("1933 Act"). Any such offering will be done on the basis of disclosure documents that are appropriate and customary for such registration, and in any event at least as comprehensive as those used in public offerings of similar securities in the United States by foreign issuers.

2. Any placement in the United States of Securities under circumstances not requiring registration under the 1933 Act will meet the prevailing standards for exemption from registration under the 1933 Act. Applicant will not effect any such placement without obtaining an opinion of United States counsel that the placement is exempt from the registration requirements of the 1933 Act or the statement of the staff of the SEC that it would not recommend that the SEC take any action under the 1933 Act if such Securities are not registered. Any such placement will be done on the basis of disclosure documents that are appropriate and customary for such placement, and in any event at least as comprehensive as those used in placements of similar securities in the United States by foreign issuers.

3. In connection with any offering or placement of Securities in the United States, Applicant agrees that it will expressly submit itself to the jurisdiction of any state or federal court in the City and State of New York in respect of any action abased on such Securities. Applicant further agrees to appoint an agent located in the City and State of New York (which may be Applicant's New York branch) to accept any process which may be served in any action. Such consent to jurisdiction will be irrevocable as long as such Securities remain outstanding. Applicant agrees that, as long as such Securities remain outstanding, it will appoint a successor agent for service if the agent first appointed is discharged or is unwilling or unable to continue to serve as agent for service. Applicant will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of such Securities or otherwise in connection with such Securities.

4. Applicant will only issue Securities in the United States as long as it is supervised and examined by governmental authorities in Japan having the power of supervision of banks in that country and by state or federal authorities in the United States having the power and supervision over banks in the United States.

5. Applicant represents that it has no present intention to curtail its banking operations in Japan so that it will cease to be regulated as a bank in Japan.

6. Applicant represents that it has no present intention to curtail its banking operations in the United States so that it will cease to be regulated as a bank in the United States. If, however, such operations in the future are curtailed, so that Applicant agrees that it will continue to comply with its undertaking concerning appointment of an agent in New York City and submission to jurisdiction until such time as there shall be no holders in the United States of Securities of the Applicant issued in reliance upon any SEC order issued on the application.

7. Applicant consents to any SEC order being expressly conditioned on its compliance with the foregoing conditions and representations contained in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-16313 Filed 7-11-89; 8:45 am]

BILLING CODE 8010-01-M

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[4] The OCC has informed the Phlx that it has made the necessary technical system changes to accommodate the Phlx proposed rule change. *See* Securities Exchange Act Release No. 26679 (May 31, 1989), 54 FR 24453, 24454.

[5] *See* IDD at 7. The IDD is a special disclosure document which explains, in detail, the economic and risk characteristics of IPs (including CIPs), the mechanism of buying, selling, and exercising IPs, and the market in which IPs trade.

[6] 15 U.S.C. 78s(b)(2) (1982).

[7] 17 CFR 200.30-3(a)(12) (1988).

[Rel. No. IC-17045; File No. 811-1931]

New England Variable Annuity Fund II

July 6, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under section 8(f) of the Investment Company Act of 1940 ("the 1940 Act").

Applicant: New England Variable Annuity Fund II.

Relevant 1940 Act Sections: Order requested under section 8(f).

Summary of Application: Applicant seeks an order under section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Date: The application was filed on February 1, 1989.

Hearing or Notification of Hearing: If on hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on July 31, 1989. Request a hearing in writing, giving the nature of your interest, the reasons for the request and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 501 Boylston Street, Boston, MA 02117.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Michael V. Wible (202) 272-2190 or Acting Assistant Director Clifford E. Kirsch (202) 272-2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commerical copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicants's Representations

1. Applicant registered under the 1940 Act of August 26, 1969 as a diversified, open-end management company.

2. Applicant is a separate account of New England Mutual Life Insurance Company. ("The New England"), a Massachusetts mutual life insurance company.

3. Applicant assigned, sold, conveyed, transfered, and delivered all of its assets to New England Variable Annuity Fund I (the "Surviving Fund"), a separate account of The New England, pursuant to an Agreement and Plan of Combination dated June 10, 1987 (the "Plan"). Accumulation units of Applicant were converted into accumulation units of the Surviving Fund and a total of 1,102,213.673 accumulation units of the Surviving Fund having an aggregate value of $9,235,097.89 were issued to holders of accumlation units of Applicant pursuant to the Plan adopted on April 24, 1987 by the holders of accumulation units of Applicant.

4. Immediately preceding the combination, the Fund had 1,308,326.316 accumulation units outstanding, total net assest of $9,235,097.89 and a per unit net asset value of approximately $7.06.

5. Applicant, to the best of its knowledge, is not a party to any litigation or administrative proceedings. Applicant is not engaged, nor does it propose to engage, in any business activity other than those necessary to wind up its affairs. Applicant has no securityholders. There are no former securityholders of Applicant to whom disbursement in complete liquidation of their interests in Applicant have not been made.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-16314 Filed 7-11-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel No. IC-17046; File No. 811-5061]

Select*Protector Variable Account

July 6, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("the 1940 Act").

Applicant: Select*Protector Variable Account.

Relevant 1940 Act Sections: Order requested under section 8(f).

Summary of Application: Applicant seeks an order under section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Date: The application was filed on April 5, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on July 31, 1989. Request a hearing in writing, giving the nature of your interest, the reasons for the request and the issues you contest. Serve the Applicant with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 20 Washington Avenue, S., Minneapolis, MN 55401.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Michael V. Wible, (202) 272-2190 or Acting Assistant Director Clifford E. Kirsch, (202) 272-2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231-3282 (in Maryland (301) 253-4300)).

Applicant's Representations

1. On March 2, 1987, Applicant filed on Form S-6 a registration statement under the title of Flexible Premium Life Insurance Policies. The registration statement did not become effective, nor has any initial public offering been made.

2. Applicant represents that it has never acquired any assets. Applicant has no debts or outstanding liabilities, and is not a party to any litigation or administrative proceeding.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-16315 Filed 7-11-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24916]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

July 6, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 31, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

General Portfolios Corporation (70-7612) Energy Initiatives, Incorporated

General Portfolios Corporation ("GPC"), Mellon Bank Center, Tenth and Market Streets, Second Floor, Wilmington, Delaware 19801, and Energy Initiatives, Incorporated ("EII"), One Gatehall Drive, Gatehall Center I, Parsippany, New Jersey, 07054, each a subsidiary company of General Public Utilities Corporation, a registered holding company, have filed a post-effective amendment to their application-declaration pursuant to sections 6(a), 7, 9(a), 10, and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

By prior Commission order in this matter, EII was authorized, among other things, to acquire, through one or more Delaware limited partnerships ("Partnerships"), a 50% ownership interest in three closely held California corporations ("collectively, Energy Companies"), including two state institutions and a university (HCAR No. 24885, May 10, 1989). Each Energy Company is the lessee under a long-term lease of a natural gas-fired cogeneration facility which is a qualifying facility under the Public Utility Regulatory Policies Act of 1978.

GPC and EII now request an extension of time, until December 31, 1989, to complete the transactions previously authorized therein.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-16312 Filed 7-11-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Announcement of Additional Public Forums on Rural Transportation Issues

AGENCY: Office of the Secretary, DOT.

ACTION: Public forums announcement.

SUMMARY: A **Federal Register** Notice published July 5, 1989 [54 FR 28143] announced a series of six public forums on rural transportation issues to be held in various locations around the country. These meetings are a key component of the information gathering process leading to development of a national transportation policy. In addition to the six previously announced public forums in Moscow, Idaho; Gallup, New Mexico; Montpelier, Vermont; London, Kentucky; Sioux Falls, South Dakota; and Jackson, Mississippi; the Department will be holding two previously unannounced public forums in Morgantown, West Virginia and Augusta, Maine.

All interested parties, whether representing an organization or themselves, are invited to participate in these public forums. Oral statements will be limited to 10 minutes per individual; written statements or comments will also be accepted. Notification of your intent to participate should be received by the Chairman of the Rural America Transportation Cluster Group not later than 5 working days before the date of the hearing you will attend.

DATES: Public forums on rural transportation issues are scheduled from 8:30 a.m. to 5:00 p.m. on the following previously unannounced dates:

- August 15, 1989—Morgantown, West Virginia.
- August 17, 1989—Augusta, Maine.

ADDRESSES: The public forums will be held in the following locations:

- Agricultural Sciences Building Auditorium, Evansdale Campus, West Virginia University, Morgantown, West Virginia.
- Augusta Civic Center, Community Drive, Augusta, Maine.

FOR FURTHER INFORMATION CONTACT: These seeking further information or wishing to participate in a public forum should contact: Mr. H. Joseph Rhodes, Chairman, Rural Transportation Cluster Group, Room 3317, HPP-1, 400 Seventh Street SW., Washington, DC 20590, (202) 366-0587.

SUPPLEMENTARY INFORMATION: A top priority of the Department of Transportation during the remainder of 1989 will be to develop a comprehensive national transportation policy and accompanying implementation strategies which reflect the role of transportation in a changing national and international environment. Early next year, the Secretary of Transportation will issue a National Transportation Policy Statement that will set forth the policy guidelines and strategies for meeting the Nation's transportation needs over the next decade and into the 21st Century.

A key component of this policy development process will be to reach out to transportation users, the transportation industry, interest groups (including government agencies), transportation employees, and the Congress for their views on issues, problems, and recommended solutions. In addition to public forums, this outreach effort will involve solicitation of written comments from the public (see **Federal Register** Notice published July 3, 1989), meetings with key transportation and other organizations, site visits, and other events to obtain the views of concerned parties and individuals and to build a consensus for a national policy.

A **Federal Register** Notice published on July 5 contains further information regarding the overall national transportation policy development process and transportation issues of particular importance to Rural America.

Issued this 7th day of July, 1989, in Washington, DC.

H. Joseph Rhodes,

Chairman, Rural Transportation Cluster Group.

[FR Doc. 89-16332 Filed 7-11-89; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

[Department Circular—Public Debt Series—No. 19-89]

Treasury Notes of July 15, 1996, Series G-1996

Washington, July 6, 1989.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites

tenders for approximately $7,250,000,000 of Untied States securities, designated Treasury Notes of July 15, 1996, Series G-1996 (CUSIP No. 912827 XT 4), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent for each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated July 17, 1989, and will accrue interest from that date, payable on a semiannual basis on January 15, 1990, and each subsequent 6 months on July 15 and January 15 through the date that the principal becomes payable. They will mature July 15, 1996, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in bond-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, July 12, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, July 11, 1989, and received no later than Monday, July 17, 1989.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in § 3.5. must be made or completed on or before Monday, July 17, 1989. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, July 13, 1989. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, July 17, 1989. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 89-16365 Filed 7-7-89; 3:03 pm]

BILLING CODE 4810-40-M

BEST COPY AVAILABLE

Sunshine Act Meetings

Federal Register
Vol. 54, No. 132
Wednesday, July 12, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

UNITED STATES INSTITUTE OF PEACE

Meeting

TIME AND DATE: 4:00–7:00 p.m. Monday, July 24, 1989.

PLACE: First Floor Conference Room, 1550 M Street, NW., Washington, DC.

STATUS: Open.

PURPOSE AND AGENDA: The ninth of a monthly series of Public Workshops scheduled by the United States Institute of Peace, this event will focus on the Summer 1989 *National Interest* article by Deputy Assistant Secretary of State for Policy Planning Francis Fukuyama entitled "The End of History?" In his essay Fukuyama claims that the passing of Marxism-Leninism as an ideological force implies the victory of liberal democracy as an idea and "the growing 'Common Marketization' of international relations." While he does not suggest that this means the end of conflict in the world, Fukuyama believes that large-scale conflicts, that is, those involving states driven by "the grip of history" (i.e., by ideology), will become things of the past. We will ask a distinguished group of scholars and policymakers to comment upon and discuss Fukuyama's views. Public observance is welcomed.

CONTACT: Ms. Kimber Schraub, Telephone 202–457–1700.

Dated: July 10, 1989.

Charles Duryea Smith,

General Counsel.

[FR Doc. 89–16469 Filed 7–10–89; 2:38 pm]

BILLING CODE 3155-01-M

federal register

Wednesday
July 12, 1989

Part II

Department of Justice

Immigration and Naturalization Service

8 CFR Part 100 et al.

Temporary Disqualification From Financial Assistance, Applicant Processing for Legalization Program, and Temporary/Permanent Residence Status Adjustment for Aliens; Final Rules and Notice

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245A

[INS No. 1038-89]

RIN 1115-AA55

Temporary Disqualification of Certain Newly Legalized Aliens From Receiving Benefits From Federal Programs of Financial Assistance

AGENCY: Immigration and Naturalization Service, Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule implements section 245A(h) of the Immigration and Nationality Act ("Act"), as amended by section 201 of the Immigration Reform and Control Act of 1986, Pub. L. 99-603 ("IRCA"). Section 245A(h) provides that, with certain exceptions, aliens granted lawful temporary resident status pursuant to 245A(a) ("legalization") are not eligible for a period of five years after such grant to receive benefits from programs of financial assistance furnished under Federal law on the basis of financial need. The Attorney General is required by section 245A(h)(1)(A)(i) of the Act, to identify such programs after consultation with other appropriate heads of the various departments and agencies of government. The intended effect is to lessen the impact of legalization on benefit programs.

EFFECTIVE DATE: July 12, 1989. The compliance date of the rule will be determined by each of the administering Federal agencies for its programs, but in no event later than October 1, 1989.

FOR FURTHER INFORMATION CONTACT: Paul W. Virtue, Deputy General Counsel, Immigration and Naturalization Service, Room 7048, 425 I Street, NW., Washington, DC 20536, (202) 633-3195.

SUPPLEMENTARY INFORMATION:

Section 245A(a) of the Immigration and Nationality Act as amended by Pub. L. 99-603, 100 Stat. 3359, provides for the legalization of status of certain individuals who have been residing illegally in the United States since before January 1, 1982. Section 245A(h) of the Act provides that, with certain exceptions, aliens legalized under section 245A will be ineligible for five years for "any program of financial assistance furnished under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need, as such programs are identified by the Attorney General in consultation with other appropriate heads of the various departments and agencies of Government (but in any event including the program of aid to families with dependent children under part A of Title IV of the Social Security Act)." Section 245A(h)(2) of the Act provides that such temporary ineligibility does not apply (A) to a Cuban or Haitian entrant (as defined in paragraph (1) or (2)(A) of section 510(e) of Pub. L. 96-422, 94 Stat. 1799, as in effect on April 1, 1983), or (B) in the case of assistance (other than aid to families with dependent children) which is furnished to an alien who is an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act, Pub. L. 74-271, 49 Stat. 620). The five-year period of eligibility begins on the date an alien is granted lawful temporary resident status under section 245A(a) of the Act.

Section 245A(h) of the Act also provides that, subject to the same exceptions, aliens legalized under section 245A of the Act will be temporarily ineligible for medical assistance under a State plan approved under Title XIX of the Social Security Act (Medicaid), Pub. L. 74-271, 49 Stat. 620 (except certain emergency services and services to pregnant women or aliens who are under 18 years of age) and for benefits financed by the Food Stamp Act of 1977, as amended by Pub. L. 95-400, 92 Stat. 856 (which includes, but is not limited to, section 19 therein, the Puerto Rico Block Grant).

It is also noted that a different provision, section 210(f) of the Act, provides that, with certain exceptions, aliens granted lawful temporary resident status under section 210 of the Act (Lawful Residence for Certain Special Agricultural Workers) are temporarily ineligible for aid under a State plan approved under part A of Title IV of the Social Security Act (aid to families with dependent children), Pub. L. 74-271, 49 Stat. 620, or for Medicaid. It is further noted that section 210A(d)(6) of the Act provides in effect that an alien granted lawful temporary resident status under section 210A of the Act (Determinations of Agricultural Labor Shortages and Admission of Additional Special Agricultural Workers) shall be subject to the same ineligibility rules as aliens legalized under section 245A of the Act except that the provision in section 245A(h) relating to assistance under the Food Stamp Act of 1977, Pub. L. 95-400, 92 Stat. 856, shall not apply, and assistance furnished under the Legal Services Corporation Act, Pub. L. 88-452, 78 Stat. 508, or Title V of the Housing Act of 1949, 63 Stat. 413, shall not be construed to be financial assistance for which such additional special agricultural workers are temporarily ineligible.

No such temporary ineligibility is in effect for: (1) aliens granted the status of an alien lawfully admitted for permanent residence pursuant to section 249 of the Act (Record of Admission for Permanent Residence in the Case of Certain Aliens who Entered the United States Prior to July 1, 1924 or January 1, 1972); (2) a Cuban and Haitian entrant (as defined in paragraph (1) or (2)(A) of section 501(e) of Pub. L. 96-422, as in effect on April 1, 1983); or (3) assistance (other than aid to families with dependent children) which is furnished to an alien who is aged, blind, or disabled (as defined in section 1614(a)(1) of the Social Security Act).

In addition, State and local governments may, at their discretion, provide that aliens legalized under section 245A or 210A of the Act are ineligible for certain other programs. Section 245A(h)(1)(B) of the Act states that a State or political subdivision therein may, to the extent consistent with sections 245A(h) (1)(A), (2), and (3) of the Act, provide that such legalized aliens are ineligible for a period of five years, for the programs of financial assistance or for certain medical assistance which are furnished under the law of that State or political subdivision therein.

Criteria Used To Identify Programs

The Department of Justice, after consulting with representatives of various appropriate departments and agencies of the Federal Government has developed a list of programs of financial assistance furnished under Federal law on the basis of financial need for which newly legalized aliens are ineligible for a period of five years.

The criteria used by the Department of Justice to identify programs of financial assistance furnished under Federal law are as follows:

1. Federal financial assistance is furnished for the benefit of individuals in financial need.

(A) Financial assistance in the form of grants, wages, loans, loan guarantees, or otherwise, is furnished by the Federal Government directly, or indirectly through a State or local government or a private entity, to eligible individuals or to private suppliers of goods or services to such individuals, or is furnished to a State or local government that provides to such individuals goods or services of a kind that is offered by private suppliers.

(B) Benefits under the program are targeted to individuals in financial need. Either (i) in order to be eligible, individuals must establish that their income or wealth is below some maximum level, or, with respect to certain loan or loan guarantee programs, that they are unable to obtain financing from alternative sources, or at prevailing interest rates, or at rates that would permit the achievement of program goals, or (ii) distribution of assistance is directed, geographically or otherwise, in a way that is intended to primarily benefit persons in financial need, as evidenced by references to such intent in the authorizing legislation.

2. The financial assistance is not furnished under a Federal disaster relief program.

3. Eligibility does not require United States citizenship.

4. Assistance under the program is not expressly precluded from being construed as financial assistance by section 245A(h)(4) of the Act. This paragraph provides that assistance furnished under the following provisions of law shall not be construed to be such financial assistance:

(A) The National School Lunch Act, 60 Stat. 230.

(B) The Child Nutrition Act of 1966, Pub. L. 89-642, 86 Stat. 885.

(C) The Vocational Education Act of 1963, Pub. L. 88-210, 77 Stat. 403.

(D) Chapter 1 of the Education Consolidation and Improvement Act of 1981, Pub. L. 97-35, 95 Stat. 358.

(E) The Headstart-Follow Through Act, Pub. L. 88-452, 78 Stat. 508.

(F) The Job Training Partnership Act, Pub. L. 97-300, 96 Stat. 1322.

(G) Title IV of the Higher Education Act of 1965, Pub. L. 89-329, 79 Stat. 1219.

(H) The Public Health Service Act, 37 Stat. 309.

(I) Titles V, XVI, and XX, and parts B, D, and E of Title IV, of the Social Security Act, 49 Stat. 620 (and Titles I, X, XIV, and XVI of such Act as in effect without regard to the amendment made by section 301 of the Social Security Amendments of 1972).

Some of the programs that are listed in § 245a.5(c) of this final rule provide for Federal financial assistance to intermediate State or local government agencies or private entities. In several programs of this kind, the intermediate government agency or private entity uses the funds for many different programs of its own. Only some of these private or State or local government programs provide benefits for which aliens legalized under section 245A or 210A of the Act are, with certain exceptions, temporarily ineligible, specifically those programs having both of the following characteristics: (A) The distribution of financial assistance directly or indirectly (through intermediate public or private entities) to eligible individuals or to private suppliers of goods or services to such individuals, or the distribution to such individuals of goods or services of a kind that is offered by private suppliers, and (B) targeting to individuals in financial need.

Analysis of Comments

A Proposed Rule was published on August 24, 1987 (52 FR 31784-31786) adding 8 CFR 245a.4, which sets forth a proposed list of programs of Federal financial assistance identified by the Attorney General. Interested persons were given the opportunity to submit written comments on the Proposed Rule on or before September 23, 1987. Forty-six comments were received within that period.

Most of the commenters stated their belief that the list in the Proposed Rule was overbroad in that it included programs that were not furnished "on the basis of financial need" or were not programs of "financial assistance furnished under Federal law." Other issues raised by the comments related to the application of the ineligibility provisions to families where not all members are newly legalized aliens (the "family issue"), and whether to "grandfather in" newly legalized aliens who are currently receiving benefits under a program on the ineligible list. These concerns will be addressed in turn.

A. Financial Assistance Furnished on the Basis of Financial Need

Many commenters objected to a portion of the criterion included in the Proposed Rule for use in determining whether Federal assistance programs involve "financial assistance furnished * * * on the basis of financial need." In particular such commenters disagreed that programs should be included if benefits under the program are "targeted to individuals in financial need" in the sense that "distribution of assistance is directed, geographically or otherwise, in a way that is intended to primarily benefit persons in financial need, as evidenced by references to such intent in the authorizing legislation."

These commenters believe that only programs applying an individual means test should be covered. They believe that section 245A(h) does not contemplate disqualification of persons from programs of Federal financial assistance aimed at the development or rehabilitation of property in low-income neighborhoods. The programs at issue include the Urban Development Action Grants, Operating Assistance for Troubled Multifamily Housing Projects (Flexible Subsidy Program), and Rental Housing Rehabilitation administered by HUD.

The Department of Justice remains of the opinion that these programs are appropriately listed. The statutory language directs the Attorney General to designate programs of financial assistance furnished on the basis of financial need. Each of the three programs at issue requires the applicant (State or local government, or property owner) to show that the Federal funds will be used to benefit economically depressed areas. To the extent such funds are used to provide housing to low-income individuals, they constitute Federal financial assistance furnished on the basis of financial need. Nothing in the statutory language or the legislative history suggests that only programs using an individual means test can be programs of financial assistance furnished on the basis of financial need must use.

Our review of the legislative history of this section indicates that Congress intended to minimize two potential adverse impacts of legalization: (a) The financial burden of newly legalized aliens on U.S. taxpayers, and (b) the reduction of benefits to disadvantaged citizens and lawful permanent residents ("LPRs") under Federally funded programs because of the participation of newly legalized aliens.

The effect of making legalized aliens eligible to receive benefits under an entitlement program, i.e., an assistance program not subject to a fixed annual spending limit, would be higher program cost and hence a heavier burden on the taxpayers of this country (unless the funding for one or more other programs, which might well be more in the national interest, were reduced or eliminated). With respect to a non-entitlement program, the effect of making legalized aliens eligible would depend on whether the program's annual spending limit is reached. If not, then the effect would be the same. If, however, there is excess demand for the benefits of a non-entitlement program; if, that is, the program's annual spending limit would be exceeded should all persons meeting the minimum eligibility requirements receive the benefits for which they would be eligible if such spending limit were not in effect, then permitting legalized aliens to receive benefits would force American taxpayers and their elected representatives to choose one or a combination of three possibilities: (a) Letting some citizens and LPRs be deprived of the benefits of the program, or increasing the annual cost of the

program through (b) increasing the burden on taxpayers, or (c) reducing or eliminating one or more other, possibly more beneficial, Federal programs.

It is true that a certain portion of funds for Urban Development Action Grants is expended for projects which benefit the public at large, e.g., sewers, roads, sidewalks, parks. However, a significant percentage of the funds is directed toward providing housing for low and moderate income persons. It is this portion of the assistance which is intended to be covered by the rule. Accordingly, in the final rule the Urban Development Action Grant Program is marked with an asterisk (*) to clarify the extent to which financial assistance provided under that program is covered by the rule.

B. Program of Financial Assistance Furnished Under Federal Law

A majority of the comments were directed at the Proposed Rule's interpretation of the statutory term "program of financial assistance furnished under Federal law." The most frequent objection raised concerned the inclusion of the Legal Services Corporation on the ineligible list because, these commenters believe, legal advice and assistance received from the Legal Services Corporation cannot reasonably be classified as "financial assistance furnished under Federal law." Many of these same commenters also pointed out that, by its own enabling legislation, the Legal Services Corporation is not an agency or instrumentality of the Federal Government, as they believe the statute requires. Finally, many commenters stated their belief that to make newly legalized aliens ineligible for services provided by the Legal Services Corporation would be to effectively deny access to the courts for many low income newly legalized aliens.

The Department of Justice believes that it is irrelevant that legal services are not financial assistance. The statute provides that legalized aliens are not eligible for certain kinds of programs, namely, those involving "financial assistance furnished on the basis of Federal law * * * on the basis of financial need." Legal services provided to individuals by the Legal Services Corporation do constitute benefits from such a program. Indeed, the language of section 210A(d)(6) of the Act specifically provides that the provisions of section 245A(h), making newly legalized aliens ineligible for financial assistance furnished under Federal law, apply to an alien legalized under section 210A—

In the same manner as they apply to an alien granted lawful temporary residence under section 245A; except that, for purposes of this paragraph, assistance furnished under the Legal Services Corporation Act (42 U.S.C. 2996 *et seq.*) or under title V of the Housing Act of 1949 (42 U.S.C. 1471 *et seq.*) shall not be construed to be financial assistance described in section 245A(h)(1)(A)(i).

Applying standard rules of statutory construction, this language implies the Congress believed that assistance furnished by the Legal Services Corporation is a benefit of a "program of financial assistance furnished under Federal law" within the meaning of section 245A(h). Otherwise this language would be mere surplusage. There is no reason to believe that such benefits were regarded differently from benefits under the housing programs that this same section also excepts from the ineligibility rule and that the legislative history clearly shows were understood by the Congress to be covered by section 245A(h).

Neither is the Department of Justice persuaded by the objection that the Legal Services Corporation is not technically an agency or instrumentality of the Federal Government. Many of the recipients of Federal monies are State and local government agencies, quasi-governmental, charitable or private entities which use such funds to finance benefits to individuals in financial need. It is the Department's view that the focus of the inquiry as to whether a benefit comes from a "program of financial assistance furnished under Federal law * * * on the basis of financial need" should not be either (a) the public or private legal status of the entity that distributes the benefit to the ultimate recipient, or (b) the form the benefit to the ultimate recipient takes, whether a cash grant (or loan, loan guarantee, etc.) or goods or services, but rather that the benefit is financed with Federal funds that are targeted to those in financial need.

The Department also notes that although Legal Services Corporation is a private organization, it is described as a "quasi-official agency" in The United States Government Manual, the "official handbook of the Federal Government" (see the preface of such manual, at iii), published by the Office of the Federal Register. It is so described because it is required by statute to publish in the **Federal Register** certain information about its programs and activities.

The comment that inclusion of Legal Services Corporation on the list of programs will effectively deny access to the courts by newly legalized aliens is unfounded. Pro bono and low cost programs, not supported by Federal funds under the Legal Services Corporation, are available through local bar associations nationwide. Furthermore, although newly legalized aliens would undoubtedly benefit if they were eligible for such program during the ineligibility period, the same is true with respect to the other programs from which Congress believed it necessary to exclude them temporarily. Finally, regardless of the policy issues involved, the Department does not have the discretion to exempt legalized aliens from section 245A(h) with respect to any program covered by the statutory language unless an explicit exception is provided.

Another frequent objection to the Proposed Rule's application of "financial assistance furnished under Federal law" was the inclusion on the proposed list of employment and job training programs administered by the Department of Labor (Senior Community Service Employment Program) and the Office of Personnel Management Federal Employment for Disadvantaged Youth—Part-time (Stay-in-School) and Summer (Summer Aides) programs. The issue raised was whether wages paid for services rendered could legitimately be considered "financial assistance furnished under Federal law" since consideration was exchanged for payment. It is the position of the Department of Justice that the employment opportunities are made available through Federal funds and are filled on the basis of financial need. The inclusion of these programs on the list is consistent with the Congressional intent of preventing the displacement of citizens and lawful permanent residents from Federal programs by newly legalized aliens.

In addition, the Department of Energy has pointed out that one of the programs included on the proposed list, the Minority Honors Vocational Training Program, is limited to United States citizens. Accordingly, the program has been removed from the list.

C. The Family Issue

Another frequently expressed concern was how to administer the ineligibility provisions of the Proposed Rule to prevent the receipt of assistance by newly legalized aliens without applying the ineligibility to other members of the same family who may not be ineligible; that is, family members who are U.S. citizens or lawful permanent resident aliens. This situation is most likely to arise in the case of assistance which benefits, and is based upon, the income of all members of a household (e.g., fuel assistance payments under the Low-

income Home Energy Assistance program administered by the Department of Health and Human Services).

The Department of Justice understands the concerns raised by these comments. However, Congress did not statutorily exempt those newly legalized aliens who are members of "mixed" families from the ineligibility provisions of section 245A(h). Nor did it give the Department any authority to do so by regulation. It should also be noted that the Attorney General's statutory obligation under section 245A(h)(1)(A)(i) is only to "identify" the programs of Federal financial assistance from which newly legalized aliens are ineligible to receive benefits. The programs are actually administered by various other Federal agencies, which must comply not only with this statute and regulation, but with the programs' authorizing statutes, and the agencies' own regulations and responsibility to administer programs efficiently. Consequently, the Department suggests that these concerns be expressed to the appropriate administering agency.

D. Grandfathering Benefits

The Department has no authority to "grandfather in" newly legalized aliens who are currently receiving benefits under a program listed in this rule. Although it is possible that efficient administration of certain programs may require a limited amount of "grandfathering," this would be a decision for the agency administering such programs.

The Housing Act of 1987

Following publication of the Proposed Rule and prior to publication of this Final Rule, Congress amended section 214 of the Housing and Community Development Act of 1980, to provide:

Sec. 214(a) Notwithstanding any other provision of law, the Secretary of Housing and Urban Development may not make financial assistance available for the benefit of any alien unless that alien is a resident of the United States and is

* * * * *

(6) an alien lawfully admitted for temporary or permanent residence under section 245A of the Immigration and Nationality Act.

(b) For purposes of this section the term "financial assistance" means financial assistance made available pursuant to the United States Housing Act of 1937, section 235 or 236 of the National Housing Act, or section 101 of the Housing and Urban Development Act of 1965.

Housing and Community Development Act of 1987, Pub. L. 100–242 section 164 (1988) (codified as amended at 42 U.S.C. 1436a). The programs referred to in section 214(b) and administered by the Secretary of Housing and Urban Development have been eliminated from the list included in § 245a.5(c) of this Final Rule.

Pub. L. 100–242 also amended Title V of the Housing Act of 1949 (Farm Housing), 42 U.S.C. 1471–1490o, to provide eligibility for lawful temporary residents for certain programs administered by the Secretary of Agriculture. Section 302 provides, in pertinent part, as follows:

(a) Resident Aliens.—Section 501 of the Housing Act of 1949 is amended by adding at the end the following new subsection:

(h)(1) The Secretary may not restrict the availability of assistance under this title for any alien for whom assistance may not be restricted by the Secretary of Housing and Urban Development under section 214 of the Housing and Community Development Act of 1980.

The Title V programs which were included in the list in the Proposed Rule have been eliminated from the Final Rule.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities.

This is not a "major rule" within the meaning of section 1(b) of Executive Order 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 245a

Aliens, Temporary resident status and permanent resident status.

Accordingly, Chapter I of Title 8, Code of Federal Regulations, is amended as follows:

PART 245a—[AMENDED]

1. The authority for Part 245a continues to read as follows:

Authority: Pub. L. 99–603, 100 Stat. 3359; 8 U.S.C. 1101 note.

2. Part 245a is amended by adding the following section:

§ 245a.5 Temporary disqualification of certain newly legalized aliens from receiving benefits from programs of financial assistance furnished under federal law.

(a) Except as provided in § 245a.5(b), any alien who has obtained the status of an alien lawfully admitted for temporary residence pursuant to section 245A of the Act (Adjustment of Status of Certain Entrants Before January 1, 1982, to that of Person Admitted for Lawful Residence) or 210A of the Act (Determinations of Agricultural Labor Shortages and Admission of Additional Special Agricultural Workers) is ineligible, for a period of five years from the date such status was obtained, for benefits financed directly or indirectly, in whole or in part, through the programs identified in § 245a.5(c) of this chapter.

(b)(1) Section 245a.5(a) shall not apply to a Cuban or Haitian entrant (as defined in paragraph (1) or (2)(A) of section 501(e) of Pub. L. 96–422, as in effect on April 1, 1983), or in the case of assistance (other than aid to families with dependent children) which is furnished to an alien who is an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act).

(2) With respect to any alien who has obtained the status of an alien lawfully admitted for temporary residence pursuant to section 210A of the Act only, assistance furnished under the Legal Services Corporation Act (42 U.S.C. 2996, et seq.) or Title V of the Housing Act of 1949 (42 U.S.C. 1471 et seq.) shall not be construed to be financial assistance referred to in § 245a.5(a).

(3) Section 245a.5(a) shall not apply to benefits financed through the programs identified in § 245a.5(c), which are marked with an asterisk (*), except to the extent that such benefits:

(i) Consist of, or are financed by, financial assistance in the form of grants, wages, loan, loan guarantees, or otherwise, which is furnished by the Federal Government directly, or indirectly through a State or local government or a private entity, to eligible individuals or to private suppliers of goods or services to such individuals, or is furnished to a State or local government that provides to such individuals goods or services of a kind that is offered by private suppliers, and

(ii) Are targeted to individuals in financial need; either (A) in order to be eligible, individuals must establish that their income or wealth is below some maximum level, or, with respect to certain loan or loan guarantee programs, that they are unable to obtain financing from alternative sources, or at prevailing interest rates, or at rates that would permit the achievement of program goals, or (B) distribution of assistance is directed, geographically or otherwise, in a way that is intended to primarily benefit persons in financial need, as evidenced by references to such intent in the authorizing legislation.

(c) The programs of Federal financial assistance referred to in § 245a.5(a) are those identified in the list set forth below. The General Services Administration (GSA) Program Numbers

set forth in the right column of the program list refer to the program identification numbers used in the Catalog of Federal Domestic Assistance, published by the United States General Services Administration, as updated through December, 1986.

	GSA Program Numbers
Department of Agriculture:	
Farm Operating Loans	10.406
Farm Ownership Loans	10.407
Department of Health and Human Services:	
Assistance Payments—Maintenance Assistance (Maintenance Assistance; Emergency Assistance; State Aid; Aid to Families with Dependent Children)	13.780
Low-Income Home Energy Assistance	13.789
*Community Services Block Grant	13.792
*Community Services Block Grant—Discretionary Awards	13.793
Department of Housing and Urban Development:	
Mortgage Insurance—Housing in Older, Declining Areas (223(e))	14.123
Mortgage Insurance—Special Credit Risks (237)	14.140
Operating Assistance for Troubled Multifamily Housing Projects (Troubled Projects (Flexible Subsidy) Program)	14.164
*Community Development Block Grants/Entitlement Grants	14.218
*Community Development Block Grants/Small Cities Program (Small Cities)	14.219
Section 312 Rehabilitation Loans (312)	14.220
*Urban development action grants	14.221
*Community Development Block Grants/State's Program	14.228
Section 221(d)(3) Mortgage Insurance for Multifamily Rental Housing for Low and Moderate Income Families (Below Market Interest Rate)	14.136
Department of Labor:	
Senior Community Service Employment Program (SCSEP)	17.235
Office of Personnel Management:	
Federal Employment for Disadvantaged Youth—Part-Time (Stay-in-School Program)	27.003
Federal Employment for Disadvantaged Youth—Summer (Summer Aides)	27.004
Small Business Administration:	
Small Business Loans (7(a) Loans)	59.012
Department of Energy:	
Weatherization Assistance for Low-Income Persons	81.042
Department of Education:	
Patricia Roberts Harris Fellowships (Graduate and Professional Study; Graduate and Professional Study Opportunity Fellowships; Public Service Education Fellowships)	84.094
Legal Training for the Disadvantaged (The American Bar Association Fund for Public Education)	84.136
Allen J. Ellender Fellowship Program (Ellender Fellowship)	84.148
Legal Services Corporation:	
Payments to Legal Services Corporation	—

Dated: June 21, 1989.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 89-15789 Filed 7-11-89; 8:45 am]

BILLING CODE 4410-10-M

8 CFR Parts 100, 103, 242, 264, and 299

[INS No. 1020R-89]

RIN 1115-AA39

Applicant Processing for the Legalization Program; Conforming Amendments

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends certain regulations to conform to regulation changes published elsewhere in this issue. These provisions relate to the processing of applicants for permanent residence under the Legalization Program as authorized by the Immigration Reform and Control Act of 1986 (IRCA). The purpose of this rule is to make final the provisions set forth in the interim rule concerning changes to the regulations brought about by the Service's processing of applications for adjustment of temporary resident aliens for lawful permanent residence status.

EFFECTIVE DATE: July 12, 1989.

FOR FURTHER INFORMATION CONTACT: Terrance M. O'Reilly, Assistant Commissioner, Legalization, (202) 786-3658.

SUPPLEMENTARY INFORMATION: The Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603, enacted on November 6, 1986, provided for the legalization program. Under the first phase of the program, eligible aliens were afforded temporary resident status. This rule finalizes the interim rule that described the permanent resident application process of the legalization program, which was published at 53 FR 43984 on October 31, 1988, with request for comments. Forty-eight responses representing 71 individuals and interested organizations, were received. The Service wishes to thank the many interested parties for their useful comments regarding the October 31, 1988 regulations. All comments were reviewed and, as a result, several changes were incorporated into this final rule.

This rule changes the list of legalization offices; deletes the reference to the appellate authority concerning the application (I-695) for replacement of Form I-688 (Temporary Resident Card); makes editorial changes; and provides the display control numbers and edition dates for Form I-698, Application to Adjust Status from Temporary to Permanent Resident, Form I-699, Certificate of Satisfactory Pursuit; and Form I-803, Petition for Attorney General Recognition to Provide Course of Study for Legalization: Phase II.

Summary of the Final Rule

Section 100.4(f) is amended to provide a list of legalization offices which will accommodate applicants for permanent residence. The Service wishes to assure interested parties that it will continue to carefully consider decisions to close legalization offices. The Service will continue to strive to keep the maximum number of legalization offices open within funding constraints.

In addition to the legalization offices listed in § 100.4(f) the following Service offices will conduct interviews for permanent residence.

Eastern Region

District offices—Baltimore, MD; Boston, MA; Buffalo, NY; Philadelphia, PA; Portland, ME; and San Juan, PR; Sub-offices—Albany, NY; Charlotte Amalie, VI; Christiansted, VI; Camden, NJ; Hartford, CT; Norfolk, VA; Pittsburgh, PA; St. Albans, VT; and Syracuse, NY.

Northern Region

District offices—Anchorage, AK; Cleveland, OH; Detroit, MI; Helena, MT; Kansas City, MO; Omaha, NB; Portland, OR; Seattle, WA; and Saint Paul, MN; Sub-offices—Boise, ID; Cincinnati, OH; Indianapolis, IN; Milwaukee, WI; Salt Lake City, UT; St. Louis, MO; and Yakima, WA.

Southern Region

District offices—Atlanta, GA; and New Orleans, LA; Sub-offices—Charlotte, NC; Jacksonville, FL; Louisville, KY; Memphis, TN; Oklahoma City, OK; and Tampa, FL.

Western Region

District offices—Honolulu, HI; Sub-offices—Agana, GU; Reno, NV; and Tucson, AZ.

Section 103.1(f)(2)(xxxii) is removed as there exists no appeal from a decision on a Form I-695, Application for Replacement of Form I-688A, Employment Authorization Card, or Form I-688, Temporary Resident Card.

Section 103.1(n) provides for the approval or denial of applications for permanent residence by the district directors at both legalization and other Service offices. Comments were received expressing the concern that since personnel in other than legalization offices had little experience with the Legalization Program, sufficient training should be provided. In some instances after a legalization office is closed personnel from that office are reassigned to the office that continues to do legalization work in that locality. This provides an experienced corps of personnel to continue performing legalization work. In addition, the Service conducted on-site regional training sessions with representatives from every office that will be conducting Phase II legalization work. This training was supplemented by the respective regional legalization staffs. The Service has also prepared and distributed a Phase II procedures manual for use by field personnel.

Section 103.7(b) provides for an application fee for the filing of an I-698, Application to Adjust Status from Temporary to Permanent Resident (Under section 245A of Pub. L. 99-603). Several comments were received concerning the application fee. Numerous commentors supported the Service's decision to provide for a family cap of $240. Comments were also received stating that the fee was too high. Before setting the $80 fee and family cap of $240, the Service carefully reviewed the resource requirements for operation of the second phase of the Legalization Program. The cost of the Legalization Program is self-funding through application fees and the fee set is necessary to cover the costs of the second phase of the program.

Section 242.21(b) concerning prohibited appeals is amended by deleting the reference to § 245a.2(c)(5) since that section is deleted elsewhere in this issue of the **Federal Register**.

Section 299.1 is amended to provide for the edition dates for Forms I-698, Application to Adjust Status from Temporary to Permanent Resident (Under section 245A of Pub. L. 99-603); I-699, Certificate of Satisfactory Pursuit; and I-803, Petition for Attorney General Recognition to Provide Course of Study for Legalization: Phase II.

Section 299.5 is amended to correct an editorial error. The word "adjustment" is changed to "adjust".

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not a major rule within the definition of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The information collection requirements contained in this regulation have been cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The Office of Management and Budget control numbers for these collections are contained in 8 CFR Part 299.5.

List of Subjects

8 CFR Part 100

Administrative practice and procedure, Authority delegations (Government agencies).

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Fees, Reporting and recordkeeping requirements.

8 CFR Part 242

Deportation, apprehension, custody, hearing, and appeal.

8 CFR Part 264

Reporting and Recordkeeping requirements.

8 CFR Part 299

Forms, Reporting and recordkeeping requirements.

The interim rule published at 53 FR 43984-43986 on October 31, 1988, is adopted as final with the following changes:

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 100—STATEMENT OF ORGANIZATION

1. The authority citation for Part 100 continues to read as follows:

Authority: Sec. 103 of the Immigration and Nationality Act; 8 U.S.C. 1103.

2. Section 100.4(f) is amended by revising the list of legalization offices to read as follows:

§ 100.4 Field service.

* * * * *

(f) * * *

Legalization Offices

Eastern Region

NEW—Paterson, NJ (XPT)
NYC—Manhattan, NY (XMA)
WAS—Arlington, VA (XAR)

Northern Region

CHI—Chicago, IL (XLS), Forest Park, IL (XLI)
DEN—Denver, CO (XDE)
KS—Wichita, KS (XWI)

Southern Region

DAL—Arlington, TX (XDA), Lubbock, TX (XLU)
ELP—El Paso, TX (XEL), Albuquerque, NM (XAL)
HLG—Harlingen, TX (XHA)
HOU—Houston, TX (XHU)
MIA—(Miami) Hialeah, FL (XOP), Fort Lauderdale, FL (XWS)
SNA—Austin, TX (XAU), Corpus Christi, TX (XCO), Laredo, TX (XLR), San Antonio, TX (XSN)

Western Region

LOS—Anaheim, CA (XAH), El Monte, CA (XEM), Los Angeles, CA (XHO), Huntington Park, CA (XHP), East Los Angeles, CA (XLA), Buena Park, CA (XNK), North Long Beach, CA (XLB), Oxnard, CA (XOX), Pomona, CA (XPO), Riverside, CA (XRV), Santa Ana, CA (XSA), San Fernando, CA (XSR), Gardenia, CA (XTO), N. Hollywood, CA (XVN)
PHO—Phoenix, AZ (XPH), Las Vegas, NV (XLV)
SND—Escondido, CA (XES), San Diego, CA (XSD)
SFR—Bakersfield, CA (XBA), Fresno, CA (XFR), San Francisco, CA (XSF), Salinas, CA (XSI), San Jose, CA (XSO), Stockton, CA (XST)

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

3. The authority citation for Part 103 continues to read as follows:

Authority: 5 U.S.C. 522(a); 8 U.S.C. 1101, 1103, 1201, 1301-1305, 1351, 1443, 1454, 1455; 28 U.S.C. 1746; 7 U.S.C. 2243; 31 U.S.C. 9701; E.O. 12356, 3 CFR 1982 Comp., p. 166.

§ 103.1 [Amended]

4. Section 103.1 is amended by removing paragraph (f)(2)(xxxii).

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

5. The authority citation for Part 242 continues to read as follows:

Authority: 66 Stat. 173, 208, 214, 235; 100 Stat. 3537; 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1254, 1362.

§ 242.21 [Amended]

6. Section 242.21(b) is amended by changing the reference "§ 245a.2(c) (5), (6), or (7)" to read "§ 245a.2(c) (6) or (7)".

PART 299—IMMIGRATION FORMS

7. The authority citation for Part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR Part 2.

8. Section 299.1 is amended by revising the entries for Forms I-698, I-699, and I-803 to read as follows:

§ 299.1 Prescribed forms.

* * * * *

I-698 (08/10/88)—Application to Adjust Status from Temporary to Permanent Resident (Under section 245A of Pub. L. 99-603).

I-699 (10/20/88)—Certificate of Satisfactory Pursuit.

* * * * *

I-803 (09/27/88)—Petition for Attorney General Recognition to Provide Course of Study for Legalization: Phase II.

* * * * *

9. Section 299.5 is amended by revising the entry for Form I-698 to read as follows:

§ 299.5 Display of control numbers.

* * * * *

I-698 Application to Adjust Status from Temporary to Permanent Resident (Under section 245A of Pub. L. 99-603).....1115-0155

* * * * *

Dated: June 23, 1989.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 89-15792 Filed 7-11-89; 8:45 am]

BILLING CODE 4410-10-M

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8 CFR Parts 103 and 245

[INS No.: 1003-89]

RIN 1115-AA31

Powers and Duties of Service Officers; Availability of Service Records, Adjustment of Status to That of Person Admitted for Permanent Residence

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: On March 3, 1987, the Service published an interim rule implementing sections 117, 202, and 203 of Pub. L. 99-603, the Immigration Reform and Control Act, (IRCA), at 52 FR 6320. The interim rule was corrected on April 27, 1987 (52 FR 13827). This final rule amends certain portions of the corrected interim rule based on comments received during the comment period and in compliance with Pub. L. 100-525, the Immigration Technical Corrections Act of 1988. This final rule changes the language of the corrected interim rule to comply with language changes to IRCA contained in Pub. L. 100-525, clarifies the appeal process in Cuban-Haitian adjustment cases, clarifies the effect of the interim rule on renewed adjustment applications under Part 242 of the regulation, and adds three sections to the regulation regarding the waiver provisions of section 212(a)(19) of the Act that were made available to Cuban-Haitian Adjustment applicants by Pub. L. 100-525.

DATE: August 11, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph D. Cuddihy, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone (202) 633-5014

SUPPLEMENTARY INFORMATION: The Service received five comments to the interim rule published on March 3, 1987. In addition, on October 24, 1988, the President signed Pub. L. 100-525, "Immigration Technical Corrections Act of 1988" which amended in part, sections 117 and 202 of IRCA, the subject of the interim rule. Three commenters offered opinions concerning § 245.1(c)(1) of the interim regulation concerning the definition of which individuals are in "legal immigration status." Two commenters felt the Service was too restrictive in its interpretation and should include individuals who are not in lawful nonimmigrant status but in the United States under some other status which is condoned by the Service (e.g. voluntary departure). One commenter felt the Service was too liberal in this provision, and more people should be deemed ineligible. The Technical Corrections Act amended the statutory language upon which this section of the regulation is based from "legal status" to "lawful status." It is the Service view that the original definition of "legal immigration status" (now "lawful status") comports with Congressional intent in enactment of the provision. The Service has, therefore, made no changes to this paragraph other than this amendatory language of Pub. L. 100-525.

One commenter addressed § 245.1(c)(2) of the interim regulation stating that if an individual's nonimmigrant stay expires while an adjustment application is pending with the Service, that applicant should be able to renew his or her adjustment application before an immigration judge in proceedings under part 242 of the regulation if the adjustment application was denied by the district director. The Service agrees with this interpretation, but has added appropriate language to § 245.2(a)(5)(ii) of the regulation rather than § 245.1(c)(2) for the sake of clarity.

One commenter also expressed opposition to the amendment of § 245.1(c)(3) regarding the effect of a departure and reentry of an individual who has not maintained a legal status and to a paragraph in the Supplementary Information of the interim regulation referring to the effect of the amendment on the Stateside Criteria Program. The interim regulation as written is consistent with the statute in these areas and will not be amended. The Stateside Criteria Program has been terminated by the Department of State and is no longer an issue.

One commenter addressed issues raised in § 245.6 of the regulation, recommending that Cuban Haitian adjustment applications be renewable in subsequent deportation proceedings, rather than appealable to the Associate Commissioner, Examinations under Part 103 of the regulations. The regulation as written gives individuals whose applications have been denied adequate administrative review, and there is no need to place an extra burden on immigration judges, as suggested by this comment. In this final rule, the Service has added Cuban-Haitian Adjustment applications to the list of applications appealable to the Associate Commissioner in § 103.1, to clarify any misconception of the appellate authority.

In addition to considering the comments, the Service has also amended the interim regulation to reflect changes in language in the statute by Pub. L. 100-525 and to reflect regulations published May 1, 1987 regarding the definition of the term "resided continuously" as used in section 245A(a)(2) of the Immigration and Nationality Act, as amended.

This final rule also reflects changes to section 202(a)(2) of IRCA brought about by Pub. L. 100-525, allowing the Attorney General to waive, at his discretion, the provisions of section 212(a)(19) of the Act, and making the amendment effective as if it was included in the enactment of IRCA. New §§ 245.6 (f) and (g) are added, outlining the factors that will be considered by the district director in determining whether the Attorney General's discretion should be granted, and outlining the procedure to be followed by individuals whose applications were denied prior to enactment of Pub. L. 100-525, but who now would like to reopen their adjustment cases to allow the Service to consider a waiver request for section 212(a)(19) ineligibility as provided in Pub. L. 100-525.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant economic impact on a substantial number of small entities.

List of Subjects in 8 CFR Parts 103 and 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, Chapter I of Title 8, Parts 103 and 245 of the Code of Federal Regulations are amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for Part 103 is revised to read as follows:

Authority: 5 U.S.C. 522(a); 8 U.S.C. 1101, 1103, 1201, 1303-1304, 1443, 28 U.S.C. 1746; 31 U.S.C. 9701; E.O. 12356, 3 CFR., 1982 COMP., p. 166, 8 CFR Part 2.

2. Section 103.1 is amended by adding a new paragraph (f)(2)(xxxii) to read as follows:

§ 103.1 Delegations of Authority.

* * * * *

(f) * * *

(2) * * *

(xxxii) Application for status as permanent resident under § 245.6 of this title.

* * * * *

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR PERMANENT RESIDENCE

3. The authority citation for Part 245 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1159, 1182, 1255, 8 CFR Part 2.

4. In § 245.1, paragraphs (b)(5), (b)(6), (c)(i) introductory text, (c)(2) introductory text, (c)(2)(ii), and (c)(3) are revised to read as follows:

§ 245.1 Eligibility.

* * * * *

(b) * * *

(5) Any alien who on or after November 6, 1986 is not in lawful immigration status on the date of filing his or her application for adjustment of status, except an applicant who is an immediate relative as defined in section 201(b) or a special immigrant as defined in section 101(a)(27) (H) or (I);

(6) Any alien who files an application for adjustment of status on or after November 6, 1986, who has failed (other than through no fault of his or her own or for technical reasons) to maintain continuously a lawful status since entry into the United States, except an applicant who is an immediate relative as defined in section 201(b) of the Act or a special immigrant as defined in section 101(a)(27) (H) or (I) of the Act;

* * * * *

(c) *Definitions*—(1) *Lawful Immigration Status.* For purposes of section 245(c)(2) of the Act, the term "lawful immigration status" is limited to individuals who are:

* * * * *

(2) *No fault of the applicant or for technical reasons.* The parenthetical phrase "other than through no fault of his or her own or for technical reasons" shall be limited to:

* * * * *

(ii) A technical violation resulting from inaction of the Service (as for example, where an applicant establishes that he or she properly filed a timely request to maintain status and the Service has not yet acted on that request). An individual whose refugee or asylum status has expired through passage of time, but whose status has not been revoked, will be considered to have gone out of status for a technical reason.

* * * * *

(3) *Effect of departure.* The departure and subsequent reentry of an individual who was employed without authorization in the United States after January 1, 1977 does not erase the bar to adjustment of status in section 245(c)(2) of the Act. Similarly, the departure and subsequent reentry of an individual who has not maintained a lawful immigration status on any previous entry into the United States does not erase the bar to adjustment of status in section 245(c)(2) of the Act for any application filed on or after November 6, 1986.

* * * * *

5. In § 245.2, paragraph (a)(5)(ii) is revised to read as follows:

§ 245.2 Application.

(a) *General.*

* * * * *

(5) * * *

(ii) *Under section 245.* If the application is approved, the applicant's permanent residence shall be recorded as of the date of the order approving the adjustment of status. An application for adjustment of status as a preference or nonpreference alien shall not be approved until an immigrant visa number has been allocated by the Department of State. No appeal lies from the denial of an application by the district director, but the applicant retains the right to renew his or her application in proceedings under Part 242 of this chapter, or under Part 236 if the applicant is a parolee and meets the two conditions outlined in § 245.2(a)(i). At the time of renewal of the application, an applicant does not need to meet the statutory requirement of section 245(c) of the Act, or the regulatory requirements of § 245.1(f), if in fact those requirements were met at the time the renewed application was initially filed with the district director.

* * * * *

6. In § 245.6, paragraphs (a), (c)(2), and (d)(2) are revised, and new paragraphs (f), (g), and (h) are added to read as follows:

§ 245.6 Adjustment of status of certain Cuban and Haitian nationals under the Immigration Reform and Control Act of 1986 (Pub. L. 99-603).

(a) *Application.* Each person applying for the benefit of adjustment of status under section 202 of Pub. L. 99-603 was required to file a separate Form I-485 (Application for Lawful Permanent Residence), without fee, with the district director having jurisdiction over the applicant's place of residence. Each application was accompanied by Form I-643 (Health and Human Services Statistical Data Sheet), the results of a medical examination given in accordance with § 245.3 of this Part, and, if the applicant had reached his or her 14th birthday but was not over 79 years of age, Form G-325A and an applicant fingerprint card (Form FD 258). No application for benefits under section 202 of Pub. L. 99-603 could be initially filed after November 7, 1988.

* * * * *

(c) * * *

(2) Is eligible for an immigrant visa and otherwise admissible to the United States under section 212(a) of the Act, except for paragraphs (14), (15), (16), (17), (20), (21), (25), and (32), which do not apply; or paragraph (19) which may be waived at the discretion of the Attorney General;

* * * * *

(d) * * *

(2) *Continuously resided.* The term "continuously resided" as used in section 202 of Pub. L. 99-603 has the same meaning as the term "resided continuously" as defined in § 245a.1(c)(i) of this Part.

* * * * *

(f) *Waiver.* In accordance with Pub. L. 100-525 the provisions of paragraph 212(a)(19) of the Immigration and Nationality Act may be waived by the Attorney General in any case filed under section 202 of Pub. L. 99-603. Generally, a determination of

excludability under section 212(a)(19) will be waived for purposes of section 202 of Pub. L. 99-603 if the exclusion charge is a result of fraud or willful misrepresentation at the time of initial entry of the applicant into the United States prior to January 1, 1982, absent any other significant negative factors. Generally, a determination of excludability under paragraph (19) will not be waived for purposes of section 202 if the exclusion charge is a result of fraud or willful misrepresentation occurring in connection with an attempt to establish eligibility for permanent resident status either by a visa petition, application for an immigrant visa, or application for adjustment of status, after the initial entry into the United States, absent any significant positive factors. The district director will consider the following factors in determining whether the discretion of the Attorney General should be exercised:

(1) Number of excluding actions in which the applicant has engaged;

(2) Length of time since the excluding action;

(3) Immediate family members in the United States;

(4) Criminal record of the applicant;

(5) Exhibition of rehabilitation since the excluding action;

(6) Employment history in the United States; and

(7) Any other circumstances or situations the district director deems relevant.

(g) *Waiver in a pending case.* An individual whose application for benefits under section 202 of Pub. L. 99-603 is pending with the Service may request a waiver of section 212(a)(19) by supplementing his or her application with a letter. The letter must include the following facts:

(1) The identity of the applicant, including name, date and place of birth, and alien file number;

(2) The fact that the decision was made in accordance with section 202 of Pub. L. 99-603, and is submitted in compliance with the requirement to request a waiver of section 212(a)(19) of the Act;

(3) The circumstances which are to be waived; and

(4) A discussion of the factors upon which the decision is to be based, as listed in paragraph (f) in this section.

(h) *Motions to reopen.* An individual whose application for the benefits of section 202 of Pub. L. 99-603 was denied by the Service solely on the basis of ineligibility under section 212(a)(19) prior to the passage of Pub. L. 100-525 may file a motion to reopen the proceedings in accordance with the provisions of § 103.5 without fee. Motions to reopen applications which were properly filed under section 202 during the time period specified in the statute may be filed at any time. No separate application form for a waiver need be submitted with a motion to reopen filed in accordance with this paragraph. No separate appeal process is available if a waiver request is denied, other than to appeal denial of the request for adjustment of status. In addition to the requirements of § 103.5 of this part, these motions must contain the following:

(1) The identity of the applicant, including name, date and place of birth, and alien file number;

(2) The fact that the decision was made in accordance with section 202 of Pub. L. 99-603, and is submitted in compliance with the requirement to request a waiver of section 212(a)(19) of the Act;

(3) The circumstances which are to be waived; and

(4) A discussion of the factors upon which the decision is to be based, as listed in paragraph (f) of this section.

Dated: June 23, 1989.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 87-15788 Filed 7-11-89; 8:45 am]

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8 CFR Part 245A

[INS Number: 1022-R-89]

RIN Number 1115-AA52

Adjustment of Status for Certain Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule addresses the adjustment of status of temporary resident aliens to that of aliens lawfully admitted for permanent residence, in accordance with section 201 of the Immigration Reform and Control Act of 1986 (IRCA). The Service, as the result of the publication of this rule, finalizes the provisions affecting the adjustment of temporary resident aliens to permanent residence.

EFFECTIVE DATE: July 12, 1989.

FOR FURTHER INFORMATION CONTACT: Terrance M. O'Reilly, Assistant Commissioner, Legalization, (202) 786-3658.

SUPPLEMENTARY INFORMATION: On November 6, 1986, the President signed into law the Immigration Reform and Control Act of 1986, Pub.L. 99-603 ("IRCA"). This legislation, the most comprehensive reform of our immigration laws since the enactment of the Immigration and Nationality Act ("INA") in 1952, reflected a resolve to strengthen law enforcement to control illegal immigration. It also reflected the Nation's concerns for certain aliens who had resided illegally in the United States. The theme of this legislation was focused upon regaining control of our Nation's borders and eliminating the illegal alien problem in this country through the firm yet fair enforcement of our Nation's laws.

The Immigration and Naturalization Service took a number of steps to ensure the new legislation would be implemented effectively, efficiently and fairly. Service officials engaged in continuing dialogue with members of the public and representatives of interested organizations on how the legalization provisions of "IRCA" would be implemented.

The temporary resident phase of the Legalization Program began on May 5, 1987 and ended on May 4, 1988. The temporary resident phase of the Legalization Program was the first step for illegal aliens to become full and active members of the American society. The temporary resident phase of the program proved to be an overwhelming success with more than 1,700,000 applicants taking advantage of the opportunity to come out of the shadows.

In order to complete the process of becoming a lawful permanent resident of the United States, individuals who gained lawful temporary resident status during phase I of the Legalization Program are required to make application for such permanent resident status.

An interim rule was published in the **Federal Register** at 53 FR 43986 on October 31, 1988. Forty-eight comments, representing 71 individuals and organizations were received. These comments were reviewed and, as a result, several changes have been incorporated into this final rule. The Service appreciates the time and significant effort put forth by all concerned parties.

Summary of the Final Rule

This rule makes final the provisions found in the interim rule published at 53 FR 43986 on October 31, 1988 pertaining to the requirements for certain temporary resident aliens, who are otherwise eligible, to adjust their status to that of aliens lawfully admitted for permanent residence in the United States and the procedures to be used

during this process. Some changes made in this final rule to the interim regulations as a result of public comment caused the changing of similar regulations found in Part 245a.4 dealing with the Extended Voluntary Departure (EVD) class of temporary resident aliens. In addition, as a result of public comment, court proceedings, and the provisions of the Immigration Technical Corrections Act of 1988 (ITCA), this rule makes changes to certain other regulations not found in the interim rule.

The following summarizes the processing method that is being used by the Service for the processing of applications for permanent residence during this phase of the legalization program: The Service is utilizing a processing method that features direct mail of applications to four Regional Processing Facilities (RPFs) located at Williston, Vermont (Eastern); Lincoln, Nebraska (Northern); Dallas, Texas (Southern); and Laguna Niguel, California (Western). After preliminary processing of applications at the Regional Processing Facilities, applicants are interviewed at selected Service offices (including district offices, suboffices, and legalization offices) throughout the country. The adjustment of temporary resident aliens to permanent residence consists of five major segments: Pre-submission of applications; Regional Processing Facility processing (pre-interview); INS field and legalization office processing; Regional Processing Facility processing (post-interview); and Immigration Card Facility (ICF) processing.

In the pre-submission of applications segment the Service is distributing information and forms for the adjustment to permanent resident phase of the Legalization Program. Several commentors urged the Service to continue its public information and outreach efforts for Phase II of the Legalization Program. The Service has and will continue these efforts. The Service is confident that awareness of the Legalization Program is high. In testimony before the Subcommittee on Immigration and Refugee Affairs, Committee on the Judiciary, United States Senate, the Government Accounting Office reported that a market research study found that 92 percent of undocumented Hispanics were aware that the Legalization Program exists (over 84% of the legalization phase I applicants were Hispanic). In addition, the Service has received over 460,000 applications for permanent residence as of mid-June, 1989. The publicity and outreach campaign for Phase II is more selective since the Service knows who the temporary residents are and where they reside. This being the case, local level publicity and outreach methods are being employed along with national efforts.

In the Regional Processing Facility (RPF) processing (pre-interview) segment, all pre-interview processing tasks (e.g., data entry, fee receipting, application review, scheduling of interviews, etc.) are being performed. If during the review of the application at the Regional Processing Facility it is determined that the applicant has met all eligibility requirements (continuous residence, English language/U.S. history and government, etc.) and there was no indication of fraud in Phase I, the application may be approved. In this situation, the applicant would be notified by the RPF to appear for processing at the INS field or legalization office for an Alien Registration Receipt Card (I-551).

In the INS field and legalization office segment, applicants are interviewed as well as processed for Alien Registration Receipt Cards (I-551). The interview may include an English language/U.S. history and government examination for those applicants who wish to satisfy the standards for section 312 (requirements as to understanding the English language, history, principles and form of government of the United States) of the Immigration and Nationality Act.

In the RPF processing (post-interview) segment, appeal processing and other post-interview administrative procedures occur.

In the final segment, the Immigration Card Facility processing segment, Alien Registration Receipt Card (I-551) production is completed and the card is mailed to the address specified by the alien as his or her place of residence.

Section 245a.1(i) is amended as a result of receipt of comments that the Service should clarify in regulation what is now the policy concerning public cash assistance, by deleting the words, "or his or her immediate family members". The receipt of public cash assistance by immediate family members will not have a bearing on an applicant's eligibility for legalization.

Section 245a.1(r) is amended to include a list of qualified designated entities (QDEs) Phase II activities. Numerous comments were received concerning this definition. Several commentors suggested that the Service should consider adding QDEs in good-standing as allowable representatives under 8 CFR 292.1 for IRCA permanent resident applicants. The Immigration Reform and Control Act of 1986 (IRCA) does not provide for Qualified Designated Entity involvement in the second phase of the Legalization Program. The Service feels the certification procedures found in 8 CFR 292 should be followed by all organizations and it is not proper to single out QDEs in good-standing for blanket certification.

Section 245a.1(s) defines the term "satisfactorily pursuing" as used in section 245A(b)(1)(D)(i)(II) of the Act. Numerous comments were received on this section. Overwhelmingly, commentors supported the Service's various options an applicant could pursue in order to "satisfactorily pursue a course of study". The Service is genuinely concerned that temporary residents enter the mainstream of American society in a fair and equitable manner within the statutory framework provided by the Congress. Comments received on § 245a.1(s)(1) generally endorsed the minimum 60 hour course length. Several commentors cited that increasing the completed amount of hours to 40 adversely affected State Legalization Impact Assistance Grant (SLIAG) allotments. The Service consulted with the Department of Health and Human Services and was informed that in planning for educational requirements, State estimates for educational assistance under SLIAG should have been based on the 100 hour minimum standard that was contained in the proposed rule or the 60 hour minimum standard that was contained in the interim rule. The minimum number of attendance hours should not have been used in preparing allotment requests. Commentors also urged the Service to "grandfather" in those applicants who may have already completed 30 hours of a course thereby not requiring these applicants to complete an additional 10 hours. The Service considered this recommendation but does not concur. The interim rule which was effective at the beginning of the permanent resident phase of the Legalization Program, November 7, 1988, contained the 40 hour completion requirement. No applications were adjudicated under the 30 hour requirement found in the proposed rule. In addition, Congressional intent calls for legalization applicants to attain basic citizenship skills. The Service has considered numerous input from the public before providing for the minimum 40 hour attendance requirement and the minimum 60 hour course length. The Service considers these hourly requirements both realistic and fair.

Section 245a.1(s)(2), as a result of comments received, is amended to

define "GED" as General Educational Development. In addition, the Service was advised by one commentor that not all states use a standard "GED English Proficiency Examination". The Service therefore will include language that provides for states to use their usual GED English proficiency test. Language is also added to clarify that the high school/GED curriculum include at least 40 hours of instruction in English and U.S. history and government.

Comments received concerning § 245a.1(s)(3) brought attention to the fact that "U.S. History" was absent from the standard curriculum language. The term has been added. Also, the interim rule contained the 30 hour completion requirement in the curriculum language. This has been changed to correctly reflect the 40 hour requirement. Language is also added to provide for use of a learning institution's standard of "acadamic year".

Section 245a.1(s)(4) is amended by adding the standard curriculum language for clarification purposes.

Several comments were received concerning § 245a.1(s)(5). Commentors agreed with the deletion of the "statement of intent" language that appeared in the interim rule. Commentors urged the Service to replace the word "home" with another term as it was deemed as too restrictive. The Service agrees and will replace the word "home" with the words "individual study" to recognize that applicants may have studied at various locations. Language is also added to reflect the fact that the Service may also administer proficiency tests along with other qualified administrators. Qualified Designated Entities in good-standing may also be designated as qualified administrators and language stating this fact has also been added. One commentor asked how an applicant would know whether he or she passed the proficiency test. An applicant will receive a document that reflects the test results. A Certificate of Satisfactory Pursuit (I-699) will not be issued to such an applicant. The Service also adds the name of the proficiency test ("IRCA Test for Permanent Residency"). Finally, a point of contact is provided for those who wish to participate in testing.

Comments received on § 245a.1(u) concerned clarification of the definition of curriculum. Commentors stated that it was unclear whether these definitional standards applied to the other alternatives found in § 245a.1(s) concerning "satisfactorily pursuing". The definitional standard does apply to § 245a.1(s) (1) through (4). The proficiency test provided for in § 245a.1(s)(5) was developed to conform to these definitional standards.

New § 245a.1(v) is added to conform with the requirements of the Immigration Technical Corrections Act of 1988 (ITCA). As a result of the ITCA, section 245A(b)(1)(D)(ii) of the Immigration and Nationality Act was amended to expand the exception for certain individuals of the basic citizenship skills requirement to include developmentally disabled individuals. Section 245a.1(v) defines the term "developmentally disabled". The term's meaning is the same as found in section 102(5) of the Developmental Disabilities Assistance and Bill of Rights Act of 1987, Pub. L. 100-146, enacted on October 29, 1987. Section 245a.3(b)(4)(ii) is also amended as a result of the ITCA.

Section 245a.2(a)(2)(i) is removed as a result of the outcome of court proceedings. This provision, published in the May 1, 1987 implementing regulations, required an alien who was subject to an Order to Show Cause issued on or after November 6, 1986 and prior to May 5, 1987 and who had established prima facie eligibility for adjustment of status under section 245A(a) of the Act to file an application for adjustment during the period beginning on May 5, 1987 and ending on June 3, 1987. All cases that were denied because the applicant failed to satisfy the provision of 8 CFR 245a.2(a)(2)(i) will be reviewed to determine if the applicant is otherwise eligible for the legalization benefits sought. If the applicant is found to be otherwise eligible, the application will be reopened. The applicant will be so notified of the reopening and will be invited to report to the nearest legalization office to obtain employment authorization.

Section 245a.2(c)(5) is removed and reserved because of the deletion of § 245a.2(a)(2)(i).

Section 245a.2(d)(4) is amended as a result of comments received that the Service should bring the provisions of this section in line with the Service's operational guidelines on determining financial responsibility. The Service will not deny an application for temporary residence as a result of finding an applicant subject to section 212(a)(15) of the Act without applying the Special Rule for determination of public charge.

Section 245a.2(k)(4) is amended as a result of the comments received concerning the Service's public cash assistance policy, by deleting the words, "and his or her family". For the purposes of the Special Rule, as explained in this section, an applicant need only demonstrate a consistent employment history that shows the ability to support himself or herself.

Section 245a.3(a) is redesignated § 245a.3(a)(1) and amended for editorial purposes and new § 245a.3(a)(2) is added to address the application for adjustment from temporary to permanent resident status. Under the provisions of the Immigration Reform and Control Act of 1986, a temporary resident alien who has resided in the United States for a period of eighteen (18) months may make application for permanent resident status during the twelve-month period beginning on the day after the temporary residence period has been completed. The majority of the comments received centered around the manner of determining when an applicant was eligible to file an application for permanent residence and expressed concern that applicants would find it difficult to determine when they could apply. The Service addressed this issue in an interim rule published at 54 FR 13360, April 3, 1989. The interim rule provided for the submission of applications anytime after the grant of temporary residence but prior to the end of an applicant's twelve-month period of eligibility to apply for adjustment to permanent residence. Temporary residents are encouraged to submit their applications as soon as possible. Applications must be submitted by the end of the 30-month period from the date the application for temporary residence was approved. Language is therefore included in § 245a.3(a)(1) to reflect the fact that applicants will receive the entire 30-month period of time in which to apply from the time of the granting of the application for temporary residence.

An applicant will still be considered a temporary resident from the date of filing their temporary resident application. In this way, every applicant is provided with the statutorily guaranteed 30-month period and still receives the benefit of having the time count from the date of filing for permanent residence and for naturalization purposes. In addition, this regulatory construction is considered fair for the purposes of State Legalization Impact Assistance Grant (SLIAG) funding. The Service began accepting applications on November 7, 1988. Applications received anytime subsequent to the granting of lawful temporary residence but prior to an applicant's eligibility to apply date are being held by the Service as a convenience to the public. These applications are considered "filed" on the applicant's eligibility date.

To further provide assistance to temporary residents, the Service will mail a notice to all temporary resident aliens who have not yet filed an application for permanent residence. The notice will state that an application for permanent residence can be submitted at anytime after the date temporary residence was granted and before the date the eligibility period to file for permanent residence ends. In addition, another mailer will be sent to all temporary residents who have not submitted their application before 60 days prior to the end of their eligibility period reminding them to apply.

New § 245a.3(a)(2) is added to provide that no application for permanent residence will be denied, for failure to apply, before the end of 30 months from the date of actual approval of the temporary resident application. This provision conforms with the statute which guarantees a 30-month period from the granting of temporary residence.

Section 245a.3(b) is amended as a result of one commentor recommending that the Service should be able to accept applications mailed from outside of the United States and to reflect the change in the acceptance of applications as reflected in § 245a.3(a)(1). The Immigration Reform and Control Act of 1986 does not specifically require that an applicant must be actually in the United States at the time of filing an application. Therefore, the phrase "physically present in the United States" will be deleted from this section.

Section 245a.3(b)(1) is amended to add clarifying language relating to the filing of an application, the continuous residence and the interview requirements.

Comments received on § 245a.3(b)(2) recommended clarification of the standard used to excuse an absence or absences outside the 30/90 day rule and the officials who have the authority to excuse such absences. The Service will amend the language for clarification purposes and to include the director of the Regional Processing Facility as an official who can excuse absences. Concerning the determination of the abandonment of residence, the Service will consider the totality of an applicant's information in concluding whether the absence or totality of absences represents a meaningful interruption of continuous residence.

Section 245a.3(b)(4)(ii) is amended as a result of the comments received, as well as, the provisions of the Immigration Technical Corrections Act of 1988. Commentors urged the Service to clarify that a formal waiver application (I-690) was not required for an individual who is waived or exempted from the requirements of § 245a.3(b)(4)(i). The Service will add clarifying language. In addition, clarifying language is provided pertaining to the term "physically unable to comply". Comments were also received requesting the Service to include persons who are learning disabled. The Service will follow the intent of Congress in using the definition of "developmentally disabled". One commentor also recommended the Service qualify the exemption for an individual who was over 50 years of age and resided in the United States for 20 years to conform with Section 312 of the Immigration and Nationality Act (INA). Section 312 of the INA relates to qualifications for naturalization and exempts a "50/20" applicant from the requirement to demonstrate an understanding of the English language including the ability to read, write, and speak. Under section 312, a "50/20" applicant is not exempt from demonstrating a knowledge and understanding of the fundamentals of the history and of the principles and form of government of the United States. The Service will not implement the recommendation since this section provides an exemption from the demonstration of the basic citizenship skill requirements that equates to the "satisfactorily pursuing" criteria found in § 245a.1(s). The exemption afforded by this section to a "50/20" applicant does not, therefore, exempt the applicant from the history and government requirement of section 312 at the time of petitioning for naturalization.

Section 245a.3(b)(4)(iii)(A) is amended to address clarification concerns expressed by commentors. Language will be added to clarify that the passing of an INS authorized standardized "section 312" test will satisfy the basic citizenship skills requirement as does the INS directly administered test. The Service will accept an applicant's passing of a standardized test as of November 7, 1988 since the Service authorized the Educational Testing Service (ETS) version of the standardized test on November 4, 1988. This section is also changed to provide for the presentation of an Educational Testing Service (ETS) notice of passing test results at the time of filing an I-698, application for permanent residence, subsequent to the filing of an I-698, or at the time of interview. The Service also provides for independently verifying the test results. Concerning the manner in which the examination of an applicant's ability to read and write English is conducted, the Service will follow the guidance provided in section 312 of the Immigration and Nationality Act. Finally, several commentors supported the use of the standardized list of 100 questions. The list is reproduced at the end of this regulation.

Concerning § 245a.3(b)(4)(iii)(B) commentors requested that the Service allow for not only the presentation of an I-699, Certificate of Satisfactory Pursuit, but also for other evidence of "satisfactory pursuit", or evidence of having passed an INS authorized standardized exam after the failing of the English and/or U.S. History and Government portion of the examination conducted at the time of interview. The Service has provided for the demonstration of the basic citizenship skills requirement in various ways and certainly would not prohibit an applicant from exercising any option during the pendency of his or her application. This section will, therefore, be amended to allow for the presentation of an I-699, or any other evidence of satisfying the basic citizenship skills requirement. Several commentors expressed concern about the validity of an applicant's I-688 during the six-month retest period. The issue of I-688 validity is addressed in § 245a.3(d)(5). An applicant would receive an extension of validity of the I-688 if needed. Finally, language is added to clarify that a second interview opportunity will be afforded an applicant before his or her application is denied, the denial being based solely on the failure to pass the basic citizenship skills requirement.

Section 245a.3(b)(4)(iv) is amended by replacing the term "General Equivalency Diploma" with "General Educational Development" to conform with § 245a.1(s)(2). Commentors also suggested the Service accept "other credible documentation" in addition to a high school diploma. The Service feels that the documentation is readily available and will not include the recommended language. Language is also added which defines the Service's proficiency test as the "IRCA Test for Permanent Residency". This section is also changed to provide for the presentation of a Certificate of Satisfactory Pursuit (I-699) at the time of filing an I-698, application for permanent residence, subsequent to the filing of an I-698, or at the time of interview.

Section 245a.3(b)(5) is amended to provide for the certification process by which district directors and the Director of Outreach will certify educational programs as recognized courses of study that provide instruction in English and

U.S. History and Government. One commentor raised the possibility of a program operating within more than one INS district jurisdiction being certified by one district director while not being certified by another district director. The Service acknowledges that the possibility exists and therefore will provide for a review of a denied certification decision by the appropriate Regional Commissioner where the petitions of a local, cross-district program are approved in one district and denied in another within the same State. Minor editorial changes have also been made.

Numerous comments were received concerning § 245a.3(b)(6). Commentors urged the Service to modify the requirement of submitting notices of participation within 30 days after publication of the interim rule (October 31, 1988) or within thirty days after creation of the course of study. The Service agrees and adds language that allows for the submission of a notice of participation as soon as possible since a Form I-699, Certificate of Satisfactory Pursuit, will not be accepted until a notice of participation is on file with the Service. The Service will endeavor to review notices of participation as promptly as possible. Language is also added which clarifies that notices of participation shall be submitted by blanket certified course providers to only the district director in whose jurisdiction the program is conducted and that course providers notify the district director in writing of any change to the information contained in the notice of participation. Additionally, it was recommended that service providers receive an I-804, Certificate of Attorney General Recognition to Provide Course of Study for Legalization: Phase II, if a notice of participation is submitted that complies with INS regulations. The Service concurs and will so provide for the issuance of an I-804 certificate. Commentors were concerned that the different regional jurisdictions would encounter difficulty in verifying approved course providers located in other regions. Lists of course providers, therefore, will be disseminated to all four INS Regional Processing Facilities to address this issue. Language is also added to provide for each district director compiling and maintaining lists of recognized courses within his or her district.

Section 245a.3(b)(7) explains the fee structure for courses. Comments were received requesting clarification of the reaching of a determination of whether a fee was proper. The Service wishes to be flexible and consider the various factors that can have a bearing on the setting of course fees. To clarify the Service's position language is added which cites some factors that can be used in determining whether the fee charged is appropriate. The list is not exhaustive. The Service will also seek the assistance of various Federal, State and local entities, as the need arises (e.g., State Departments of Education) to determine the appropriateness of course fees.

Section 245a.3(b)(8) provides information on the Federal Textbooks on Citizenship. Two commentors inquired as to how textbooks would be distributed. Textbooks are distributed as provided for in section 332 of the Immigration and Nationality Act (e.g., public schools conducting courses of instruction in preparation for citizenship).

Section 245a.3(b)(9) addresses the maintenance of student records by course providers. One commentor urged to make the requirement for the maintenance of student records prospective since it was stated that many providers did not collect all of the required information. The Service feels that course providers will, in most instances, have maintained information on individuals to the extent necessary to meet the intent of this section and, therefore, will not change this section.

Section 245a.3(b)(10) addresses the issuance of the Certificate of Satisfactory Pursuit (I-699). This section is amended by redesignating paragraph (b)(10)(vii) as paragraph (b)(10)(viii) and adding a new paragraph (b)(10)(vii) to provide that a Certificate of Satisfactory Pursuit (I-699) can be accepted from a course provider who is decertified. Language is added to state that certificates will not be accepted from a school or program that has been decertified unless the applicant had enrolled in and been issued a certificate prior to the decertification, provided that no fraud was involved. One commentor suggested the Service attempt to verify course attendance via computerized data lists from State Departments of Education. The suggestion has merit and the Service will look into the requirements of establishing such a procedure. The Service cannot, however, at this time amend this section to provide for such a procedure due to the technical, legal and time elements involved.

Section 245a.3(b)(12) is amended to correct a section reference.

Section 245a.3(c) is amended for clarification purposes. Section 245a.3(c)(4) defines as an ineligible class for permanent residence those aliens who are not granted temporary residence. The statute provides for the adjustment of temporary residents to permanent residence. An alien would, therefore, have to be a temporary resident alien in order to be adjusted to permanent residence. Aliens who have their temporary residence status terminated would, therefore, be ineligible for permanent residence and new section 245a.3(c)(5) will so state.

Section 245a.3(d)(2) is amended to clarify the role of Qualified Designated Entities (QDEs) in good-standing in the certification of documents process and for editorial purposes. In addition, language is added to provide for the proper way to authenticate a certification. One commentor recommended the elaboration of what constitutes a complete application including all required documentation. Each case will dictate the extent of what documentation is required. It is not possible to address in the regulations the numerous possibilities that exist regarding documentation to support an applicant's claim to eligibility for permanent residence. The Service will only request documentation as needed to properly adjudicate cases or investigate fraud.

Section 245a.3(d)(4) is amended by deleting the term "(Pub. L. 99-603)" from the title description of the I-693 since the I-693 is now used as the medical examination form for all applicants for adjustment of status. Several commentors agreed with the language provided in the interim rule. Additional clarification was requested as to how an applicant should support that he/she previously submitted a medical examination form reflecting a serologic test for HIV. A statement of the prior submission of the medical examination form will suffice as the Service will check an applicant's file to verify the statement. Language reflecting this clarification is added. The Service is also amending this section to include the basic criteria an applicant should address when filing for a waiver of the ground of excludability under section 212(a)(6)—HIV infection.

Section 245a.3(d)(6) provides for the adjudication of an application for permanent residence based on the existing record. Numerous comments were received concerning this section. Commentors in general supported the provisions set forth in the interim rule. Concern was expressed, however, that the Service not return the I-698 application along with a request for additional action for reasons of increasing the chance of loss of the application. The Service will add

language that clarifies when an application has to be returned. An application will be returned when it is not acceptable for filing (e.g., lacks the appropriate fee or is incomplete). The application will not be returned once accepted and the need arises for additional information or documentation. In this case a notice, requesting the additional information or documentation, will be sent to the applicant. In addition, the Service will hold in abeyance the adjudication of a case on the basis of the existing record where no response has been received to the two requests for additional information and/or documentation until the end of the 30-month period beginning from the time of the granting of the application for temporary residence.

Section 245a.3(e) is amended to provide for holding in abeyance the adjudication of a case on the basis of the existing record where an applicant has failed to appear for two scheduled interviews until the end of the 30-month period beginning from the time of the granting of the application for temporary residence. The Service has provided for similar action concerning adjudication of a case on the basis of the existing record where no response has been received to two requests for additional information and/or documentation (§ 245a.3(d)(6)). The Service will not automatically schedule another interview until the applicant or the applicant's attorney or accredited representative contacts the Service and requests another interview. Commentors expressed concern over an apparent contradiction between this section and the discussion contained in the summary of the interim rule concerning the need for an interview. An application may be approved at the Regional Processing Facility. This action, however, does not relieve the need for an applicant to appear at a Service office for the purpose of being processed for an I-551 permanent residence card. The Service, therefore, uses the term "interview" to refer to both an adjudicative interview and an interview for the purposes of I-551 processing. Commentors also stated that there appears to be no flexibility in the scheduling of interviews. This is not the case. The automated scheduling system allows for the rescheduling of interviews. The Service would like to remind all interested parties, however, that scheduled interviews should be kept if possible as rescheduling introduces delay in case processing, thus prolonging an applicant's wait for the completion of permanent residence processing.

Section 245a.3(f), concerning the inapplicability of numerical limitations, is added due to the inadvertent omission of this section from the October 31, 1988 interim rule. The remaining sections of this part are redesignated accordingly.

Section 245a.3(g)(2) is amended to correct an improper reference concerning the section that contains grounds of exclusion that cannot be waived. This section is also amended to require a waiver of certain grounds of exclusion before the granting of permanent residency, where the alien was excludable at the time of temporary residency and failed to apply for a waiver in connection with his or her application for temporary residence, or becomes excludable subsequent to the date temporary residence was granted.

Concerning § 245a.3(g)(3)(ii) changes are made to conform to the provisions of the Immigration Technical Correction Act of 1988. Specifically, the public charge ground of exclusion can be waived for an applicant who is or was an aged, blind or disabled individual as defined in section 1614(a)(1) of the Social Security Act. A formal waiver application (I-690) is not required if an applicant received a waiver for the public charge ground as a result of filing a waiver application during Phase I (temporary residence).

Section 245a.3(g)(4) is amended to correct editorial errors and does not change in substance. Commentors generally agreed with the provisions of the section.

Section 245a.3(g)(4)(iii) is amended as a result of the comments received concerning the Service's public cash assistance policy, and to correct an improper reference concerning the section that contains application of the Special Rule and is further amended by deleting the words, "and his or her family". For the purposes of the Special Rule, as explained in this section, an applicant need only demonstrate a consistent employment history that shows the ability to support himself or herself.

Concerning § 245a.3(i) commentors cited an improvement in the interim rule provisions over those contained in the proposed rule. The Service wishes to reiterate its position that denials will be based on the totality of the information at the Service's disposal. In addition, the appeal mechanism provided in § 245a.3(j) affords an opportunity for administrative review of all denials.

Section 245a.3(j) provides for appeals to adverse decisions. One commentor recommended that the period for submission for appeal be lengthened to ninety days and that the denial notifications be sent registered mail. The Service has provided for more time for the submission of legalization appeals than normally provided for in § 103.3(a) for appeals of other Service denials. It is also felt that the use of certified mail is sufficient service of notification.

Section 245a.3(m) is amended to clarify that the required period for continuous residence for naturalization will begin from the date of adjustment to permanent residence.

Section 245a.3(n)(3) is amended, for clarification purposes, to reflect the intended prosecution of both the applicant and/or the individual supplying a false writing or document for use in the permanent resident application process.

Section 245a.3(n)(4) is amended to conform with the provisions of the Immigration Technical Corrections Act of 1988 concerning reports to Congress and for furnishing information at the discretion of the Attorney General in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce. Two commentors urged the Service to delete this section entirely stating that the section is neither necessary nor consistent with the statute (IRCA). Section 245A(a)(1)(c) allows the Attorney General and subsequently the Service to collect information on relatives of temporary resident applicants for the eventual use in support of visa petitions filed on their behalf. The Service also added language in the interim rule to provide for the use of legalization information for naturalization applications to assist in the verification of an applicant's claim that he or she is relieved from section 312 requirements (English and U.S. History and Government) and to verify legal resident status if needed. It is thus to the applicant's benefit for the Service to make use of information contained in granted legalization files for naturalization purposes. The Service, therefore, will not delete this section.

Section 245a.4(a)(10) is amended as a result of the comments received concerning the Service's public cash assistance policy, by deleting the words, "or his or her immediate family members". The receipt of public cash assistance by immediate family members will not have a bearing on an applicant's eligibility for legalization.

Section 245a.4(b)(4)(v) is amended as a result of the comments received concerning the Service's public cash assistance policy, to bring the provisions of this section in line with the Service's operational guidelines on determining financial responsibility. The Service will

not deny an application for temporary residence as a result of finding an applicant subject to section 212(a)(15) without applying the provisions of § 245a.4(b)(11)(iv)—the application of the Special Rule for determination of public charge.

Section 245a.4(b)(11)(iv)(C) is amended as a result of the comments received concerning the Service's public cash assistance policy, by deleting the words, "and his or her family". For the purposes of the Special Rule, as explained in this section, an applicant need only demonstrate a consistent employment history that shows the ability to support himself or herself.

Section 245a.4(c)(1) is removed to conform to the changes made in § 245a.3(a) (1) and (2) concerning the adjustment of status of temporary residents to permanent residence. This section provided for the application for adjustment from temporary to permanent resident status for the "Extended Voluntary Departure" (EVD) class of temporary resident aliens. The removal of this section allows for the regulations affecting the application process for all other classes of temporary resident aliens to also apply to the EVD class of temporary resident aliens. An EVD temporary resident alien can now also submit an application for adjustment to permanent resident status at anytime after the granting of temporary residence but on or before the end of 30 months from the date the temporary resident application was approved by the Service.

Section 245a.4(c)(2) is redesignated due to the removal of § 245a.4(c)(1).

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The Information collection requirements contained in this regulation have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. OMB control numbers for these collections are contained in 8 CFR 299.5.

List of Subjects in 8 CFR Part 245a

Aliens, Temporary resident status, Permanent resident status.

The interim rule published at 53 FR 43986–43997 on October 31, 1988, is adopted as final with the following changes:

Accordingly, Part 245a of Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 245A—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED BY PUB. L. 99–603, THE IMMIGRATION REFORM AND CONTROL ACT OF 1986, AND PUB. L. 100–204, SECTION 902

1. The authority citation for Part 245a continues to read as follows:

Authority: 8 U.S.C. 1103, 1255a, 1255a note, and 8 CFR 2.1.

2. In § 245a.1, paragraphs (i), (r) and (s) (2), (3), (4), and (5) are revised, ((s) introductory text is republished), and paragraph (v) is added to read as follows:

§ 245a.1 Definitions.

* * * * *

(i) "Public cash assistance" means income or needs-based monetary assistance to include, but not limited to, supplemental security income received by the alien through federal, state, or local programs designed to meet subsistence levels. It does not include assistance in kind, such as food stamps, public housing, or other non-cash benefits, nor does it include work-related compensation or certain types of medical assistance (Medicare, Medicaid, emergency treatment, services to pregnant women or children under 18 years of age, or treatment in the interest of public health).

* * * * *

(r) A qualified designated entity in good-standing with the Service means those designated entities whose cooperative agreements were not suspended or terminated by the Service or those whose agreements were not allowed to lapse by the Service prior to January 30, 1989 (the expiration date of the INS cooperative agreements for all designated entities), or those whose agreements were not terminated for cause by the Service subsequent to January 30, 1989.

Subsequent to January 30, 1989, and throughout the period ending on November 6, 1990, a QDE in good-standing may: (1) Serve as an authorized course provider under § 245a.3(b)(5)(i)(C) of this chapter; (2) Administer the IRCA Test for Permanent Residency (proficiency test), provided an agreement has been entered into with and authorization has been given by INS under § 245a.1(s)(5) of this chapter; and, (3) Certify as true and complete copies of original documents submitted in support of Form I-698 in the format prescribed in § 245a.3(d)(2) of this chapter.

(s) "Satisfactorily pursuing," as used in section 245A(b)(1)(D)(i)(II) of the Act, means: * * *

* * * * *

(2) An applicant presents a high school diploma or general educational development diploma (GED) from a school in the United States. A GED gained in a language other than English is acceptable only if a GED English proficiency test has been passed. (The curriculum for both the high school diploma and the GED must have included at least 40 hours of instruction in English and U.S. history and government); or

(3) An applicant has attended for a period of one academic year (or the equivalent thereof according to the standards of the learning institution), a state recognized, accredited learning institution in the United States and that institution certifies such attendance (as long as the curriculum included at least 40 hours of instruction in English and U.S. history and government); or

(4) An applicant has attended courses conducted by employers, social, community, or private groups certified (retroactively, if necessary, as long as enrollment occurred on or after May 1, 1987, and the curriculum included at least 40 hours of instruction in English and U.S. history and government) by the district director or the Director of the Outreach Program under § 245a.3(b)(5)(i)(D) of this chapter; or

(5) An applicant attests to having completed at least 40 hours of individual study in English and U.S. history and government and passes the proficiency test for legalization, called the IRCA Test for Permanent Residency, indicating that the applicant is able to read and understand minimal functional English within the context of the history and government of the United States. Such test may be given by INS, as well as, State Departments of Education (SDEs) (and their accredited educational agencies) and Qualified Designated Entities in good-standing (QDEs) upon agreement with and authorization by INS. Those SDEs and QDEs wishing to participate in this effort should write to the Director of the INS Outreach Program at 425 "I" Street, NW., Washington, DC 20536, for further information.

* * * * *

(v) The term "developmentally disabled" means the same as the term "developmental disability" defined in section 102(5) of the Developmental Disabilities Assistance and Bill of Rights Act of 1987, Pub. L. 100–146. As a convenience to the public, that definition is printed here in its entirety:

The term "developmental disability" means a severe, chronic disability of a person which:

(1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(2) Is manifested before the person attains age twenty-two;

(3) Is likely to continue indefinitely;

(4) Results in substantial functional limitations in three or more of the following areas of major life activity: (i) Self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and

(5) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

3. Section 245a.2 is amended by removing and reserving paragraphs (a)(2)(i) and (c)(5), and; by revising paragraphs (d)(4) introductory text, and (k)(4) to read as follows:

§ 245a.2 Application for temporary residence.

(a) * * *

(2) * * *

(i) [Reserved]

* * * * *

(c) * * *

(5) [Reserved]

* * * * *

(d) * * *

(4) *Proof of financial responsibility.* An applicant for adjustment of status under this part is subject to the provisions of section 212(a)(15) of the Act relating to excludability of aliens likely to become public charges. Generally, the evidence of employment submitted under paragraph (d)(3)(i) of this section will serve to demonstrate the alien's financial responsibility during the documented period(s) of employment. If the alien's period(s) of residence in the United States include significant gaps in employment or if there is reason to believe that the alien may have received public assistance while employed, the alien may be required to provide proof that he or she has not received public cash assistance. An applicant for residence who is determined likely to become a public charge and is unable to overcome this determination after application of the special rule will be denied adjustment. The burden of proof to demonstrate the inapplicability of this provision of law lies with the applicant who may provide:

* * * * *

(k) * * *

(4) *Special rule for determination of public charge.* An alien who has a consistent employment history which shows the ability to support himself or herself even though his or her income may be below the poverty level, may be admissible under paragraph (k)(2) of this section. The alien's employment history need not be continuous in that it is uninterrupted. It should be continuous in the sense that the alien shall be regularly attached to the workforce, has an income over a substantial period of the applicable time, and has demonstrated the capacity to exist on his or her income without recourse to public cash assistance. This regulation is prospective in that the Service shall determine, based on the alien's history, whether he or she is likely to become a public charge. Past acceptance of public cash assistance within a history of consistent employment will enter into this decision. The weight given in considering applicability of the public charge provisions will depend on many factors, but the length of time an applicant has received public cash assistance will constitute a significant factor.

* * * * *

4. Section 245a.3 is revised to read as follows:

§ 245a.3 Application for adjustment from temporary to permanent resident status.

(a) *Application period for permanent residence.* (1) An alien may submit an application for lawful permanent resident status, with fee, immediately subsequent to the granting of lawful temporary resident status. Any application received prior to the alien's becoming eligible for adjustment to permanent resident status will be administratively processed and held by the INS, but will not be considered filed until the beginning of the nineteenth month after the date the alien was granted temporary resident status as defined in § 245a.2(s) of this chapter. (2) No application shall be denied for failure to timely apply before the end of 30 months from the date of actual approval of the temporary resident application.

(b) *Eligibility.* Any alien who has been lawfully admitted for temporary resident status under section 245A(a) of the Act, such status not having been terminated, may apply for adjustment of status of that of an alien lawfully admitted for permanent residence if the alien:

(1) Applies for such adjustment anytime subsequent to the granting of temporary resident status but on or before the end of 30 months from the date of actual approval of the termporary resident application. The alien need not be physically present in the United States at the time of application; however, the alien must establish continuous residence in the United States in accordance with the provisions of paragraph (b)(2) of this section and must be physically present in the United States at the time of interview and/or processing for permanent resident status (ADIT processing);

(2) Establishes continuous residence in the United States since the date the alien was granted such temporary residence status. An alien shall be regarded as having resided continuously in the United States for the purpose of this part if, at the time of applying for adjustment from temporary to permanent resident status, or as of the date of eligibility for permanent residence, whichever is later, no single absence from the United States has exceeded thirty (30) days, and the aggregate of all absences has not exceeded ninety (90) days between the date of approval of the temporary resident application, Form I-687 (not the "roll-back" date) and the date the alien applied or became eligible for permanent resident status, whichever is later, unless the alien can establish that due to emergent reasons or circumstances beyond his or her control, the return to the United States could not be accomplished within the time period(s) allowed. A single absence from the United States of more than 30 days, and aggregate absences of more than 90 days during the period for which continuous residence is required for adjustment to permanent residence, shall break the continuity of such residence, unless the temporary resident can establish to the satisfaction of the district director or the Director of the Regional Processing Facility that he or she did not, in fact, abandon his or her residence in the United States during such period;

(3) Is admissible to the United States as an immigrant, except as otherwise provided in paragraph (g) of this section; and has not been convicted of any felony, or three or more misdemeanors; and

(4)(i)A) Can demonstrate that the alien meets the requirements of section 312 of the Immigration and Nationality Act, as amended (relating to minimal understanding of ordinary English and a knowledge and understanding of the

history and government of the United States); or

(B) Is satisfactorily pursuing a course of study recognized by the Attorney General to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

(ii) The requirements of paragraph (b)(4)(i) of this section must be met by each applicant. However, these requirements shall be waived without formal application for persons who, as of the date of application or the date of eligibility for permanent residence under this part, whichever date is later, are:

(A) Under 16 years of age; or

(B) 65 years of age or older; or

(C) Over 50 years of age who have resided in the United States for at least 20 years and submit evidence establishing the 20-year qualification requirement. Such evidence must be submitted pursuant to the requirements contained in Section 245a.2(d)(3) of this chapter; or

(D) Developmentally disabled as defined at § 245a.1(v) of this chapter. Such persons must submit medical evidence concerning their developmental disability; or

(E) Physically unable to comply. The physical disability must be of a nature which renders the applicant unable to acquire the four language skills of speaking, understanding, reading, and writing English in accordance with the criteria and precedence established in OI 312.1(a)(2)(iii) (Interpretations). Such persons must submit medical evidence concerning their physical disability.

(iii) (A) Literacy and basic citizenship skills may be demonstrated for purposes of complying with paragraph (b)(4)(i)(A) of this section by:

(*1*) Speaking and understanding English during the course of the interview for permanent resident status. An applicant's ability to read and write English shall be tested by excerpts from one or more parts of the Federal Textbooks on Citizenship at the elementary literacy level. The test of an applicant's knowledge and understanding of the history and form of government of the United States shall be given in the English language. The scope of the testing shall be limited to subject matter covered in the revised (1987) Federal Textbooks on Citizenship or other approved training material. The test questions shall be selected from a list of 100 standardized questions developed by the Service. In choosing the subject matter and in phrasing questions, due consideration shall be given to the extent of the applicant's education, background, age, length of residence in the United States, opportunities available and efforts made to acquire the requisite knowledge, and any other elements or factors relevant to an appraisal of the adequacy of his or her knowledge and understanding; or

(*2*) By passing a standardized section 312 test (effective retroactively as of November 7, 1988) such test being given in the English language by the Legalization Assistance Board with the Educational Testing Service (ETS) or the California State Department of Education with the Comprehensive Adult Student Assessment System (CASAS). The scope of the test is based on the 1987 edition of the Federal Textbooks on Citizenship series written at the elementary literacy level. An applicant may evidence passing of the standardized section 312 test by submitting the approved testing organization's standard notice of passing test results at the time of filing Form I-698, subsequent to filing the application but prior to the interview, or at the time of the interview. The test results may be independently verified by INS, if necessary.

(B) An applicant who fails to pass the English literacy and/or the U.S. history and government tests at the time of the interview, shall be afforded a second opportunity after six (6) months (or earlier, at the request of the applicant) to pass the tests, submit evidence of passing an INS approved section 312 standardized examination or submit evidence of fulfillment of any one of the "satisfactorily pursuing" alternatives listed at § 245a.1(s) of this chapter. The second interview shall be conducted prior to the denial of the application for permanent residence and may be based solely on the failure to pass the basic citizenship skills requirements. An applicant whose period of eligibility expires prior to the end of the six-month re-test period, shall still be accorded the entire six months within which to be re-tested.

(iv) To satisfy the English language and basic citizenship skills requirements under the "satisfactorily pursuing" standard as defined at § 245a.1(s) of this chapter the applicant must submit evidence of such satisfactory pursuit in the form of a "Certificate of Satisfactory Pursuit" (Form I-699) issued by the designated school or program official attesting to the applicant's satisfactory pursuit of the course of study as defined at § 245a.1(s) (1) and (4) of this chapter; or a high school diploma or general educational development diploma (GED) under § 245a.1(s)(2) of this chapter; or certification on letterhead stationery from a state recognized, accredited learning institution under § 245a.1(s)(3) of this chapter; or evidence of having passed the IRCA Test for Permanent Residency under § 245a.1(s)(5) of this chapter. Such applicants shall not then be required to demonstrate that they meet the requirements of § 245a.3(b)(4)(i)(A) of this chapter in order to be granted lawful permanent residence provided they are otherwise eligible. Evidence of "Satisfactory Pursuit" may be submitted at the time of filing Form I-698, subsequent to filing the application but prior to the interview, or at the time of the interview (the applicant's name and A90M number must appear on any such evidence submitted). An applicant need not necessarily be enrolled in a recognized course of study at the time of application for permanent residency.

(v) Enrollment in a recognized course of study as defined in § 245a.3(b)(5) and issuance of a "Certificate of Satisfactory Pursuit" must occur subsequent to May 1, 1987.

(5) A course of study in the English language and in the history and government of the United States shall satisfy the requirement of paragraph (b)(4)(i) of this section if the course materials for such instruction include textbooks published under the authority of section 346 of the Act, and it is

(i) Sponsored or conducted by: (A) An established public or private institution of learning recognized as such by a qualified state certifying agency; (B) An institution of learning approved to issue Forms I-20 in accordance with § 214.3 of this chapter; (C) A qualified designated entity within the meaning of section 245A(c)(2) of the Act, in good-standing with the Service; or (D) Is certified by the district director in whose jurisdiction the program is conducted, or is certified by the Director of the Outreach Program nationally.

(ii) A program seeking certification as a course of study recognized by the Attorney General under paragraph (b)(5)(i)(D) of this section shall file Form I-803, Petition for Attorney General Recognition to Provide Course of Study for Legalization: Phase II, with the Director of Outreach for national level programs or with the district director having jurisdiction over the area in which the school or program is located. In the case of local programs, a separate petition must be filed with each district director when a parent organization has schools or programs in more than one INS district. A petition must identify by name and address those schools or programs included in the petition. No fee shall be required to file Form I-803;

(A) The Director of Outreach and the district directors may approve a petition where they have determined that (*1*) a need exists for a course of study in addition to those already certified under § 245a.3(b)(5)(i) (A), (B), or (C); and/or (*2*) of this chapter the petitioner has historically provided educational services in English and U.S. history and government but is not already certified under § 245a.3(b)(5)(i) (A), (B), or (C); and (*3*) of this chapter the petitioner is otherwise qualified to provide such course of study;

(B) Upon approval of the petition the Director of Outreach and district directors shall issue a Certificate of Attorney General Recognition on Form I-804 to the petitioner. If the petition is denied, the petitioner shall be notified in writing of the decision therefor. No appeal shall lie from a denial of Form I-803, except that in such case where the petitions of a local, cross-district program are approved in one district and denied in another within the same State, the petitioner may request review of the denied petition by the appropriate Regional Commissioner. The Regional Commissioner shall then make a determination in this case;

(C) Each district director shall compile and maintain lists of programs approved under paragraph (b)(5)(i)(D) of this section within his or her jurisdiction. The Director of Outreach shall compile and maintain lists of approved national level programs.

(6) *Notice of participation.* All courses of study recognized under § 245a.3(b)(5)(i)(A) through (C) of this chapter which are already conducting or will conduct English and U.S. history and government courses for temporary residents must submit a Notice of Participation to the district director in whose jurisdiction the program is conducted. Acceptance of "Certificates of Satisfactory Pursuit" (Form I-699) shall be delayed until such time as the course provider submits the Notice of Participation, which notice shall be in the form of a letter typed on the letterhead of the cou2se provider (if available) and include the following:

(i) The name(s) of the school(s)/program(s).

(ii) The complete addresses and telephone numbers of sites where courses will be offered, and class schedules.

(iii) The complete names of persons who are in charge of conducting English and U.S. history and government courses of study.

(iv) A statement that the course of study will issue "Certificates of Satisfactory Pursuit" to temporary resident enrollees according to INS regulations.

(v) A list of designated officials of the recognized course of study authorized to sign "Certificates of Satisfactory Pursuit", and samples of their original signatures.

(vi) A statement that if a course provider charges a fee to temporary resident enrollees, the fee will not be excessive.

(vii) Evidence of recognition under 8 CFR 245a.3(b)(5)(i)(A), (B), or (C) (e.g., certification from a qualified state certifying agency; evidence of INS approval for attendance by nonimmigrant students, such as the school code number, or the INS identification number from the QDE cooperative agreement).

The course provider shall notify the district director, in writing, of any changes to the information contained in the Notice of Participation subsequent to its submission within ten (10) days of such change.

A Certificate of Attorney General Recognition to Provide Course of Study for Legalization (Phase II), Form I-804, shall be issued to course providers who have submitted a Notice of Participation in accordance with the provisions of this section by the distict director. A Notice of Participation deficient in any way shall be returned to the course provider to correct the deficiency. Upon the satisfaction of the district director that the deficiency has been corrected, the course provider shall be issued Form I-804. Each district director shall compile and maintain lists of recognized courses within his or her district.

(7) *Fee structure.* No maximum fee standard will be imposed by the Attorney General. However, if it is believed that a fee charged is excessive, this factor alone will justify non-certification of the course provider by INS as provided in § 245a.3(b)(10) and/or (12) of this section. Once fees are established, any change in fee without prior approval of the district director or the Director of Outreach may justify de-certification. In determining whether or not a fee is excessive, district directors and the Director of Outreach shall consider such factors as the means of instruction, class size, prevailing wages of instructors in the area of the program, and additional costs such as rent, materials, utilities, insurance, and taxes. District directors and the Director of Outreach may also seek the assistance of various Federal, State and local entities as the need arises (e.g., State Departments of Education) to determine the appropriateness of course fees.

(8) The Citizenship textbooks to be used by applicants for lawful permanent residence under section 245A of the Act shall be distributed by the Service to appropriate representatives of public schools. These textbooks may otherwise be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, and are also available at certain public institutions.

(9) *Maintenance of Student Records.* Course providers conducting courses of study recognized under § 245a.3(b)(5) of this chapter shall maintain for each student, for a period of three years from the student's enrollment, the following information and documents:

(i) Name (as copied exactly from the I-688A or I-688);

(ii) A-number (90 million series);

(iii) Date of enrollment;

(iv) Attendance records;

(v) Assessment records;

(vi) Photocopy of signed "Certificate of Satisfactory Pursuit" issued to the student.

(10) *Issuance of "Certificate of Satisfactory Pursuit" (I-699).* (i) Each recognized course of study shall prepare a standardized certificate that is signed by the designated official. The Certificate shall be issued to an applicant who has attended a recognized course of study for at least 40 hours of a minimum of 60-hour course as appropriate for his or her ability level, and is demonstrating progress according to the performance standards of the English and U.S. history and government course prescribed. Such standards shall conform with the provisions of § 245a.1(s) of this chapter.

(ii) The district director shall reject a certificate if it is determined that the certificate is fraudulent or was fraudulently issued.

(iii) The district director shall reject a Certificate if it is determined that the course provider is not complying with INS regulations. In the case of non-compliance, the district director will advise the course provider in writing of the specific deficiencies and give the provider thirty (30) days within which to correct such deficiencies.

(iv) District directors will accept Certificates from course providers once it is determined that the deficiencies have been satisfactorily corrected.

(v) Course providers which engage in fraudulent activities or fail to conform with INS regulations will be removed from the list of INS approved programs. INS will not accept Certificates from these providers.

(vi) Certificates may be accepted if a program is cited for deficiencies or decertified at a later date and no fraud was involved.

(vii) Certificates shall not be accepted from a course provider that has been decertified unless the alien enrolled in

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and had been issued a certificate prior to the decertification, provided that no fraud was involved.

(viii) The appropriate State agency responsbile for SLIAG funding shall be notified of all decertifications by the district director.

(11) *Designated official.* (i) The designated official is the authorized person from each recognized course of study whose signature appears on all "Certificates of Satisfactory Pursuit" issued by that course;

(ii) The designated official must be a regularly employed member of the school administration whose office is located at the school and whose compensation does not come from commissions for recruitment of foreign students;

(iii) (A) The head of the school system or school, the director of the Qualified Designated Entity, the head of a program approved by the Attorney General, or the president or owner of other institutions recognized by the Attorney General must specify a "designated official". Such designated official may not delegate this designation to any other person. Each school or institution may have up to three (3) designated officials at any one time. In a multi-campus institution, each campus may have up to three (3) designated officials at any one time;

(B) Each designated official shall have read and otherwise be familiar with the "Requirements and Guidelines for Courses of Study Recognized by the Attorney General". The signature of a designated official shall affirm the official's compliance with INS regulations;

(C) The name, title, and sample signature of each designated official for each recognized course of study shall be on file with the district director in whose jurisdiction the program is conducted.

(12) *Monitoring by INS.* (i) INS Outreach personnel in conjunction with the district director shall monitor the course providers in each district in order to:

(A) Assure that the program is a course of study recognized by the Attorney General under the provisions of § 245a.3(b)(5).

(B) Verify the existence of curriculm as defined in § 245a.1(u) on file for each level of instruction provided in English language and U.S. history and government classes.

(C) Assure that "Certificates of Satisfactory Pursuit" are being issued in accordance with § 245a.3(b)(10).

(D) Assure that records are maintained on each temporary resident enrollee in accordance with § 245a.3(b)(9).

(E) Assure that fees (if any) assessed by the course provider are in compliance in accordance with § 245a.3(b)(7).

(ii) If INS has reason to believe that the service is not being provided to the applicant, INS will issue a 24-hour minimum notice to the service provider before any site visit is conducted.

(iii) If it is determined that a course provider is not performing accordance to the standards established in either § 245a.3(b)(10) or (12) of this chapter, the district director shall institute decertification proceedings. Notice of Intent to Decertify shall be provided to the course provider. The course provider has 30 days within which to correct performance according to standards established. If after the 30 days, the district director is not satisfied that the basis for decertification has been overcome, the course provider will be decertified. The appropriate State agency shall be notified in accordance with § 245a.3(b)(10)(viii) of this chapter. A copy of the notice of decertification shall be sent to the State agency.

(13) Courses of study recognized by the Attorney General as defined at § 245a.3(b)(5) of this chapter shall provide certain standards for the selection of teachers. Since some programs may be in locations where selection of qualified staff is limited, or where budget constraints restrict options, the following list of qualities for teacher selection is provided as guidance. Teacher selections should include as many of the following qualities as possible:

(i) Specific training in Teaching English to Speakers of Other Languages (TESOL);

(ii) Experience as a classroom teacher with adults;

(iii) Cultural sensitivity and openness;

(iv) Familiarity with compentency-based education;

(v) Knowledge of curriculum and materials adaptation;

(vi) Knowledge of a second language.

(c) *Ineligible aliens.* (1) An alien who has been convicted of a felony, or three or more misdemeanors in the United States.

(2) An alien who is inadmissible to the United States as an immigrant, except as provided in § 245a.3(g)(1).

(3) An alien who was previously granted temporary resident status pursuant to section 245A(a) of the Act has not filed an application for permanent resident status under section 245A(b)(1) of the Act by the end of 30 months from the date of actual approval of the temporary resident application.

(4) An alien who was not previously granted temporary resident status under section 245A(a) of the Act.

(5) An alien whose temporary resident status has been terminated under § 245a.2(u) of this chapter.

(d) *Filing the application.* The provisions of Part 211 of this chapter relating to the documentary requirements for immigrants shall not apply to an applicant under this part.

(1) The application must be filed on Form I-698. The application will be mailed to the designated Regional Processing Facility having jurisdiction over the applicant's residence. Form I-698 must be accompanied by the correct fee and documents specified in the instructions.

(2) *Certification of documents.* The submission of original documents is not required at the time of filing Form I-698. A copy of a document submitted in support of Form I-698 filed pursuant to section 245A(b) of the Act and this part may be accepted, though unaccompanied by the original, if the copy is certified as true and complete by

(i) An attorney in the format prescribed in § 204.2(j)(1) of this chapter; or

(ii) An alien's representative in the format prescribed in § 204.2(j)(2) of this chapter; or

(iii) A qualified designated entity (QDE) in good standing as defined in § 245a.1(r) of this chapter, if the copy bears a certification by the QDE in good-standing, typed or rubber-stamped in the following language:

I certify that I have compared this copy with its original and it is a true and complete copy.

Signed: _____
Date: _____
Name: _____
QDE in good-standing representative
Name of QDE in good-standing: _____
Address of QDE in good-standing: _____
INS–QDE Cooperative Agreement Number: _____

(iv) *Authentication.* Certification of documents must be authenticated by an original signature. A facsimile signature on a rubber stamp will not be acceptable.

(v) *Original documents.* Original documents must be presented when requested by the Service. Official government records, employment or employment-related records maintained by employers, unions, or collective bargaining organizations, medical records, school records maintained by a school or school board or other records maintained by a party other than the applicant which are submitted in evidence must be certified as true and complete by such parties and must bear

their seal or signature or the signature and title of persons authorized to act in their behalf. At the discretion of the district director and/or the Regional Processing Facility director, original documents may be kept for forensic examination.

(3) A separate application (I-698) must be filed by each eligible applicant. All fees required by § 103.7(b)(1) of this chapter must be submitted in the exact amount in the form of a money order, cashier's check or certified bank check. No personal checks or currency will be accepted. Fees will not be waived or refunded under any circumstances.

(4) Applicants who filed for temporary resident status prior to December 1, 1987, are required to submit the results of a serologic test for HIV virus on Form I-693, "Medical Examination of Aliens Seeking Adjustment of Status", completed by a designated civil surgeon, unless the serologic test for HIV was performed and the results were submitted on Form I-693 when the applicant filed for temporary resident status. Applicants who did submit an I-693 reflecting a serologic test for HIV was performed prior to December 1, 1987, must submit evidence of this fact when filing the I-698 application in order to be relieved from the requirement of submitting another I-693. If such evidence is not available, applicants may note on their I-698 application their prior submission of the results of the serologic test for HIV. This information shall then be verified at the Regional Processing Facility. Applicants having to submit an I-693 pursuant to this section are not required to have a complete medical examination. All HIV-positive applicants shall be advised that a waiver of the ground of excludability under section 212(a)(6) of the Act is available and shall be provided the opportunity to apply for the waiver. To be eligible for the waiver, the applicant must establish that:

(i) The danger to the public health of the United States created by the alien's admission to the United States is minimal,

(ii) The possibility of the spread of the infection created by the alien's admission to the United States is minimal, and

(iii) There will be no cost incurred by any government agency without prior consent of that agency. Provided these criteria are met, the waiver may be granted only for humanitarian purposes, to assure family unity, or when the granting of such a waiver is in the public interest in accordance with § 245a.3(g)(2) of this chapter.

(5) If necessary, the validity of an alien's temporary resident card (I-688) will be extended in increments of one (1) year until such time as the decision on an alien's properly filed application for permanent residence becomes final.

(6) An application lacking the proper fee or incomplete in any way shall be returned to the applicant with request for the proper fee, correction, additional information, and/or documentation. Once an application has been accepted by the Service and additional information and/or documentation is required, the applicant shall be sent a notice to submit such information and/or documentation. In such case the application Form I-698 shall be retained at the RPF. If a response to this request is not received within 60 days, a second request for correction, additional information, and/or documentation shall be made. If the second request is not complied with by the end of 30 months from the date the application for temporary residence, Form I-687, was approved the application for permanent residence will be adjudicated on the basis of the existing record.

(e) *Interview.* Each applicant regardless of age, must appear at the appropriate Service office and must be fingerprinted for the purpose of issuance of Form I-551. Each applicant shall be interviewed by an immigration officer, except that the adjudicative interview may be waived for a child under 14, or when it is impractical because of the health or advanced age of the applicant. An applicant failing to appear for the scheduled interview may, for good cause, be afforded another interview. Where an applicant fails to appear for two scheduled interviews, his or her application shall be held in abeyance until the end of 30 months from the date the application for temporary residence was approved and adjudicated on the basis of the existing record.

(f) *Numerical limitations.* The numerical limitations of sections 201 and 202 of the Act do not apply to the adjustment of aliens to lawful permanent resident status under section 245A(b) of the Act.

(g) *Applicability of exclusion grounds.*—(1) *Grounds of exclusion not to be applied.* The following paragraphs of section 212(a) of the Act shall not apply to applicants for adjustment of status from temporary resident to permanent resident status: (14) workers entering without labor certification; (20) immigrants not in possession of valid entry documents; (21) visas issued without compliance of section 203; (25) illiterates; and (32) graduates of non-accredited medical schools.

(2) *Waiver of grounds of excludability.* Except as provided in paragraph (g)(3) of this section, the Service may waive any provision of section 212(a) of the Act only in the case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is otherwise in the public interest. In any case where a provision of section 212(a) of the Act has been waived in connection with an alien's application for lawful temporary resident status under section 245A(a) of the Act, no additional waiver of the same ground of excludability will be required when the alien applies for permanent resident status under section 245A(b)(1) of the Act. In the event that the alien was excludable under any provision of section 212(a) of the Act at the time of temporary residency and failed to apply for a waiver in connection with the application for temporary resident status, or becomes excludable subsequent to the date temporary residence was granted, a waiver of the ground of excludability, if available, will be required before permanent resident status may be granted.

(3) *Grounds of exclusion that may not be waived.* Notwithstanding any other provisions of the Act the following provisions of section 212(a) of the Act may not be waived by the Attorney General under paragraph (g)(2) of this section:

(i) Paragraphs (9) and (10) (criminals);

(ii) Paragraph (15) (public charge) except for an alien who is or was an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act);

(iii) Paragraph (23) (narcotics), except for a single offense of simple possession of thirty grams or less of marijuana;

(iv) Paragraphs (27) (prejudicial to the public interest), (28) (communists), and (29) (subversives);

(v) Paragraph (33) (participated in Nazi persecution).

(4) *Determination of "Likely to become a public charge" and Special Rule.* Prior to use of the special rule for determination of public charge, paragraph (g)(4)(iii) of this section, an alien must first be determined to be excludable under section 212(a)(15) of the Act. If the applicant is determined to be "likely to become a public charge," he or she may still be admissible under the terms of the Special Rule.

(i) In determining whether an alien is "likely to become a public charge" financial responsibility of the alien is to be established by examining the totality of the alien's circumstances at the time of his or her application for legalization. The existence or absence of a particular factor should never be the sole criteria for determining if an alien is likely to

become a public charge. The determination of financial responsibility should be a prospective evaluation based on the alien's age, health, income, and vocation.

(ii) The Special Rule for determination of public charge, paragraph (g)(4)(iii) of this section, is to be applied only after an initial determination that the alien is inadmissible under the provisions of section 212(a)(15) of the act.

(iii) *Special Rule.* An alien who has a consistent employment history which shows the ability to support himself or herself even though his or her income may be below the poverty level is not excludable under paragraph (g)(3)(ii) of this section. The alien's employment history need not be continuous in that it is uninterrupted. It should be continuous in the sense that the alien shall be regularly attached to the workforce, has an income over a substantial period of the applicable time, and has demonstrated the capacity to exist on his or her income without recourse to public cash assistance. The Special Rule is prospective in that the Service shall determine, based on the alien's history, whether he or she is likely to become a public charge. Past acceptance of public cash assistance within a history of consistent employment will enter into this decision. The weight given in considering applicability of the public charge provisions will depend on many factors, but the length of time an applicant has received public cash assistance will constitute a significant factor. It is not necessary to file a waiver in order to apply the Special Rule for Determination of Public Charge.

(5) *Public cash assistance and criminal history verification.* Declarations by an applicant that he or she has not been the recipient of public cash assistance and/or has not had a criminal record are subject to a verification of facts by the Service. The applicant must agree to fully cooperate in the verification process. Failure to assist the Service in verifying information necessary for proper adjudication may result in denial of the application.

(h) *Departure.* An applicant for adjustment to lawful permanent resident status under section 245A(b)(1) of the Act who was granted lawful temporary resident status under section 245A(a) of the Act, shall be permitted to return to the United States after such brief and casual trips abroad, as long as the alien reflects a continuing intention to adjust to lawful permanent resident status. However, such absences from the United States must not exceed the periods of time specified in § 245a.3(b)(2) of this chapter in order for the alien to maintain continuous residence as specified in the Act.

(i) *Decision.* The applicant shall be notified in writing of the decision, and, if the application is denied, of the reason therefor. Applications for permanent residence under this chapter will not be denied at local INS offices (districts, suboffices, and legalization offices) until the entire record of proceeding has been reviewed. An application will not be denied if the denial is based on adverse information not previously furnished to the Service by the alien without providing the alien an opportunity to rebut the adverse information and to present evidence in his or her behalf. If inconsistencies are found between information submitted with the adjustment application and information previously furnished to the Service, the applicant shall be afforded the opportunity to explain discrepancies or rebut any adverse information. A party affected under this part by an adverse decision is entitled to file an appeal on Form I-694. If an application is denied, work authorization will be granted until a final decision has been rendered on an appeal or until the end of the appeal period if no appeal is filed. An applicant whose appeal period has ended is no longer considered to be an Eligible Legalized Alien for the purposes of the administration of State Legalization Impact Assistance Grants (SLIAG) funding. An alien whose application is denied will not be required to surrender his or her temporary resident card (I-688) until such time as the appeal period has tolled, or until expiration date of the I-688, whichever date is later. After exhaustion of an appeal, an applicant who believes that the grounds for denial have been overcome may submit another application with fee, provided that the application is submitted within his or her eligibility period.

(j) *Appeal process.* An adverse decision under this part may be appealed to the Associate Commissioner, Examinations (Administrative Appeals Unit) the appellate authority designated in § 103.1(f)(2). Any appeal shall be submitted to the Regional Processing Facility with the required fee within thirty (30) days after service of the Notice of Denial in accordance with the procedures of § 103.3(a) of this chapter. An appeal received after the thirty (30) day period has tolled will not be accepted. The thirty (30) day period for submitting an appeal begins three days after the notice of denial is mailed. If a review of the Record of Proceeding (ROP) is requested by the alien or his or her legal representative and an appeal has been properly filed, an additional thirty (30) days will be allowed for this review from the time the Record of Proceeding is photocopied and mailed. A brief may be submitted with the appeal form or submitted up to thirty (30) calendar days from the date of receipt of the appeal form at the Regional Processing Facility. Briefs filed after submission of the appeal should be mailed directly to the Regional Processing Facility. For good cause shown, the time within which a brief supporting an appeal may be submitted may be extended by the Director of the Regional Processing Facility.

(k) *Motions.* The Regional Processing Facility director may reopen and reconsider any adverse decision *sua sponte.* When an appeal to the Associate Commissioner, Examinations (Administrative Appeals Unit) has been filed, the INS director of the Regional Processing Facility may issue a new decision that will grant the benefit which has been requested. The director's new decision must be served on the appealing party within forty-five (45) days of receipt of any briefs and/or new evidence, or upon expiration of the time allowed for the submission of any briefs.

(l) *Certifications.* The Regional Processing Facility director or district director may, in accordance with § 103.4 of this chapter, certify a decision to the Associate Commissioner, Examinations (Administrative Appeals Unit) when the case involves an unusually complex or novel question of law or fact. The decision on an appealed case subsequently remanded back to either the Regional Processing Facility director or the district director will be certified to the Administrative Appeals Unit.

(m) *Date of adjustment to permanent residence.* The status of an alien whose application for permanent resident status is approved shall be adjusted to that of a lawful permanent resident as of the date of filing of the application for permanent residence or the eligibility date, whichever is later. For purposes of making application to petition for naturalization, the continuous residence requirements for naturalization shall begin as of the date the alien's status is adjusted to that of a person lawfully admitted for permanent residence under this part.

(n) *Limitation on access to information and confidentiality.* (1) No person other than a sworn officer or employee of the Department of Justice or bureau of agency thereof, will be permitted to examine individual applications. For purposes of this part, any individual employed under contract by the Service to work in connection with the Legalization Program shall be considered an "employee of the Department of Justice or bureau or agency thereof".

(2) No information furnished pursuant to an application for permanent resident status under this section shall be used for any purpose except: (i) To make a determination on the application; or (ii) for the enforcement of the provisions encompassed in section 245A(c)(6) of the Act, except as provided in paragraph (n)(3) of this section.

(3) If a determination is made by the Service that the alien has, in connection with his or her application, engaged in fraud or willful misrepresentation or concealment of a material fact, knowingly provided a false writing or document in making his or her application, knowingly made a false statement or representation, or engaged in any other activity prohibited by section 245A(c)(6) of the Act, the Service shall refer the matter to the United States Attorney for prosecution of the alien and/or of any person who created or supplied a false writing or document for use in an application for adjustment of status under this part.

(4) Information contained in granted legalization files may be used by the Service at a later date to make a decision (i) On an immigrant visa petition or other status filed by the applicant under section 204(a) of the Act; (ii) On a naturalization application submitted by the applicant; (iii) For the preparation of reports to Congress under section 404 of IRCA, or; (iv) For the furnishing of information, at the discretion of the Attorney General, in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under section 8 of Title 13, Unites States Code.

(o) *Rescission.* Rescission of adjustment of status under 245a shall occur under the guidelines established in section 246 of the Act.

5. Section 245a.4 is amended by revising paragraphs (a)(10), (b)(4)(v) introductory text, (b)(11)(iv)(C), and, (c) introductory text to read as follows:

§ 245a.4 Adjustment to lawful resident status of certain nationals of countries for which extended voluntary departure has been made available.

(a) * * *

(10) "Public cash assistance" means income or need-based monetary assistance to include, but not limited to, supplemental security income received by the alien through federal, state, or local programs designed to meet subsistence levels. It does not include assistance in kind, such as food stamps, public housing, or other non-cash benefits, nor does it include work related compensation or certain types of medical assistance (Medicare, Medicaid, emergency treatment, services to pregnant women or children under 18 years of age, or treatment in the interest of public health).

* * * * *

(b) * * *

(4) * * *

(v) *Proof of financial responsibility.* An applicant for adjustment of status under this part is subject to the provisions of section 212(a)(15) of the Act relating to excludability of aliens likely to become public charges. Generally, the evidence of employment submitted under paragraph (b)(4)(iv)(A) of this section will serve to demonstrate the alien's financial responsibility during the documented period(s) of employment. If the alien's period(s) of residence in the United States include significant gaps in employment or if there is reason to believe that the alien may have received public assistance while employed, the alien may be required to provide proof that he or she has not received public cash assistance. An applicant for residence who is determined likely to become a public charge and is unable to overcome this determination after application of the Special Rule under paragraph (b)(11)(iv)(C) of this section will be denied adjustment. The burden of proof to demonstrate the inapplicability of this provision of law lies with the applicant who may provide:

* * * * *

(11) * * *

(iv) * * *

(C) An alien who has a consistent employment history which shows the ability to support himself or herself even though his or her income may be below the poverty level may be admissible under this section. The alien's employment history need not be continuous in that it is uninterrupted. It should be continuous in the sense that the alien shall be regularly attached to the workforce, has an income over a substantial period of the applicable time, and has demonstrated the capacity to exist on his or her income without recourse to public cash assistance. The Special Rule is prospective in that the Service shall determine, based on the alien's history, whether he or she is likely to become a public charge. Past acceptance of public cash assistance within a history of consistent employment will enter into this decision. The weight given in considering applicability of the public charge provisions will depend on many factors, but the length of time an applicant has received public cash assistance will constitute a significant factor. It is not necessary to file a waiver in order to apply the Special Rule for Determination of Public Charge.

* * * * *

(c) *Adjustment from temporary to permanent resident status.* The provisions of § 245a.3 of this part shall be applied to aliens adjusting to permanent residence under this part.

* * * * *

Date: June 23, 1989.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 89-15790 Filed 7-11-89; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

INS Number: 1218-89]

United States History/Government Questions and Answers for Adjustment of Status from Temporary Resident to Permanent Resident

ACTION: Notice.

SUMMARY: This notice provides a listing of the possible questions relating to the history and government of the United States that will be asked during the interview for adjustment of status from temporary to permanent resident in accordance with 8 CFR 245a.3(b)(4)(iii)(A). This notice also provides the answers to these questions to ensure a uniform basis of acceptable responses.

DATE: July 12, 1989.

FOR FURTHER INFORMATION CONTACT: Terrance M. O'Reilly, Assistant Commissioner, Legalization, (202)786-3658.

SUPPLEMENTARY INFORMATION: The scope of testing an alien's knowledge and understanding of the history and form of government of the United States at the time of interview for adjustment to permanent resident status under section 245A of the Immigration and Nationality Act, as added by section 201 of the Immigration Reform and Control Act of 1986 (IRCA), is limited to subject matter covered in the 1987 edition of the Federal Citizenship Text series. The Immigration and Naturalization Service (INS) has developed a list of 100 standardized United States history and government questions derived from the content of these texts written at the elementary literacy level for use in the examination at the time of interview in accordance with the provisions of 8 CFR 245a.3(b)(4)(iii)(A). The following list of 100 standardized United States history and government questions, as well as the answers, and being provided as a service to the public for use as a study/teaching guide.

Questions

1. What are the colors of our flag?
2. How many stars are there in our flag?
3. What color are the stars on our flag?
4. What do the stars on the flag mean?
5. How many stripes are there in the flag?
6. What color are the stripes?
7. What do the stripes on the flag mean?
8. How many states are there in the Union (United States)?
9. What is the 4th of July?
10. What is the date of Independence Day?
11. Independence from whom?
12. What country did we fight during the Revolutionary War?
13. Who was the first President of the United States?
14. Who is the President of the United States today?
15. Who is the Vice-President of the United States today?
16. Who elects the President of the United States?
17. Who becomes President of the United States if the President should die?
18. For how long do we elect the President?
19. What is the Constitution?
20. Can the Constitution be changed?
21. What do we call a change to the Constitution?
22. How many changes or amendments are there to the Constitution?
23. How many branches are there in our government?
24. What are the three branches of our government?
25. What is the legislative branch of our Government?
26. Who makes the laws in the United States?
27. What is Congress?
28. What are the duties of Congress?
29. Who elects Congress?
30. How many senator are there in Congress?
31. Can you name the two senators from your state?
32. For how long do we elect each senator?
33. How many representatives are there in Congress?
34. For how long do we elect the representatives?
35. What is the executive branch of our government?
36. What is the judiciary branch of our government?
37. What are the duties of the Supreme Court?
38. What is the supreme law of the United States?
39. What is the Bill of Rights?
40. What is the capital of your state?
41. Who is the current governor of your state?
42. Who becomes president of the United States if the President and the Vic-President should die?
43. Who is the Chief Justice of the Supreme Court?
44. Can you name the thirteen orignial states?
45. Who said, "Give me liberty or give me death"?
46. Which countries were our principal allies (friends) during World War II?
47. What is the 49th state of the Union (United States)?
48. How many terms can a President serve?
49. Who was Martin Luther King, Jr.?
50. Who is the head of your local government?
51. According to the Constitution, a person must meet certain requirements in order to be eligible to become President. Name one of these requirements.
52. Why are there 100 Senators in the Senate?
53. Who selects the Supreme Court justices?
54. How many Supreme Court justices are there?
55. Why did the Pilgrims come to America?
56. What is the head executive of a state government called?
57. What is the head executive of a city government called?
58. What holiday was celebrated for the first time by the American colonists?
59. Who was the main writer of the Declaration of Independence?
60. When was the Declaration of Independence adopted?
61. What is the basic belief of the Declaration of Indpendence?
62. What is the national anthem of the United States?
63. Who wrote the Star-Spangled Banner?
64. Where does freedom of speech come from?
65. What is the minimum voting age in the United States?
66. Who signs bills into laws?
67. What is the highest court in the United States?
68. Who was President during the Civil War?
69. What did the Emancipation Proclamation do?
70. What special group advises the President?
71. Which President is called the "Father of our country"?
72. What is the 50th state of the Union (United States)?
73. Who helped the Pilgrims in America?
74. What is the name of the ship that brought the Pilgrims to America?
75. What were the 13 original states of the U.S. called?
76. Name 3 rights or freedoms guaranteed by the Bill of Rights?
77. Who has the power to declare war?

78. Name one amendment which guarantees or addresses voting rights?
79. Which President freed the slaves?
80. In what year was the Constitution written?
81. What are the first 10 amendments to the Constitution called?
82. Name one purpose of the United Nations?
83. Where does Congress meet?
84. Whose rights are guaranteed by the Constitution and the Bill of Rights?
85. What is the introduction of the Constitution called?
86. Name one benefit of being a citizens of the United States?
87. What is the most important right granted to U.S. citizens?
88. What is the United States Capitol building?
89. What is the White House?
90. Where is the White House located?
91. What is the name of the President's official home?
92. Name one right guaranteed by the first amendment?
93. Who is the Commander in Chief of the U.S. military?
94. Which President was the first Commander in Chief of the U.S. military?
95. In what month do we vote for the President?
96. In what month is the new President inaugurated?
97. How many times may a Senator be re-elected?
98. How many times may a Congressman be re-elected?
99. What are the 2 major political parties in the U.S. today?
100. How many states are there in the United States?

Answers

1. Red, White, and Blue
2. 50
3. White
4. One for each state in the Union (United States)
5. 13
6. Red and White
7. They represent the original thirteen states
8. 50
9. Indpendence Day
10. July 4th
11. England
12. England
13. George Washington
14. George Bush
15. Dan Quayle
16. The electoral college
17. Vice-President
18. four years
19. The supreme law of the land
20. Yes
21. Amendments
22. 26
23. 3
24. Legislative, Executive, and Judiciary
25. Congress
26. Congress
27. The Senate and The House of Representatives
28. To make laws
29. The people
30. 100
31. (insert local information)
32. 6 years
33. 435
34. 2 years
35. The President, cabined, and departments under the cabinet members.
36. The Supreme Court
37. To interpret laws
38. The Constitution
39. The first 10 amendment of the Constitution
40. (Insert local information)
41. (insert local information)
42. Speaker of the House of Represntatives
43. William Rehnquist
44. Connecticut, New Hampshire, New York, New Jersey, Massachusetts, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, Rhode Island, and Maryland
45. Patrick Henry
46. United Kingdom, Canada, Australia, New Zealand, France, Russia (U.S.S.R.)
47. Alaska
48. 2
49. A civil rights leader
50. (Insert local information)
51. Must be a natural born citizen of the United States; Must be at least 35 years old by the time he/she will serve; Must have lived in the United States for at least 14 years
52. Two (2) from each state
53. Appointed by the President
54. Nine (9)
55. For religious freedom
56. Governor
57. Mayor
58. Thanksgiving
59. Thomas Jefferson
60. July 4, 1776
61. That all men are created equal
62. The Star-Spangled Bannef
63. Francis Scott Key
64. The Bill of Rights
65. Eighteen (18)
66. The President
67. The Supreme Court
68. Abraham Lincoln
69. Freed many slaves
70. The Cabinet
71. George Washington
72. Hawaii
73. The American Indians (Native Americans)
74. The Mayflower
75. Colonies
76. 1. The right of freedom of speech, press, religion, peaceable assembly and requesting change of government.
2. The right to bear arms (the right to have weapons or own a gun, though subject to certain regulations).
3. The government may not quarter, or house, soldiers in people's homes during peacetime without the people's consent.
4. The government may not search or take a person's property without a warrant.
5. A person may not be tried twice for the same crime and does not have to testify against him/herself.
6. A person charged with a crime still has some rights, such as the right to a trial and to have a lawyer.
7. The right to trial by jury in most cases.
8. Protects people against excessive or unreasonable fines or crucial and unusual punishment.
9. The people have rights other than those mentioned in the Constitution.
10. Any power not given to the federal government by the Constitution is a power of either the state or the people.
77. The Congress
78. 15th, 19th, 24th, 26th
79. Abraham Lincoln
80. 1787
81. The Bill of Rights
82. For countries to discuss and try to resolve world problems; to provide economic aid to many countries.
83. In the Capitol in Washington, DC
84. Everyone (citizens and non-citizens living in the U.S.)
85. The Preamble
86. Obtain federal government jobs; travel with a U.S. passport; petition for close relatives to come to the U.S. to live
87. The right to vote
88. The place where Congress meets
89. The President's official home
90. Washington, DC (1600 Pennsylvania Avenue, NW.)
91. The White House
92. Freedom of: speech, press, religion, peaceably assembly and, requesting change of the government
93. The President
94. George Washington
95. November
96. January
97. There is no limit
98. There is no limit
99. Democratic and Republican
100. Fifty (50)

Date: June 23, 1989.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Nationality Service.

[FR Doc. 89-15791 Filed 7-11-89; 8:45 am]

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federal register

Wednesday
July 12, 1989

Part III

Environmental Protection Agency

40 CFR Part 763

Asbestos: Manufacture, Importation, Processing, and Distribution in Commerce Prohibitions; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 763

[OPTS-62036G; FRL-3476-2]

Asbestos; Manufacture, Importation, Processing, and Distribution in Commerce Prohibitions

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is issuing this final rule under section 6 of the Toxic Substances Control Act (TSCA) to prohibit, at staged intervals, the future manufacture, importation, processing, and distribution in commerce of asbestos in almost all products, as identified in the rule. EPA is issuing this rule to reduce the unreasonable risks presented to human health by exposure to asbestos during activities involving these products. The rule requires that asbestos-containing products that are subject to the bans be labeled to promote compliance with and enforcement of the rule. The rule provides that exemptions from the rule's bans on manufacture, importation, processing, and distribution in commerce may be granted by EPA in very limited circumstances.

DATES: In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern time on July 26, 1989. The effective date of this rule is August 25, 1989, except for the information collection requirements of 40 CFR 763.173, 763.178, and 763.179. These information collection requirements have not been approved by the Office of Management and Budget (OMB) and are not effective until OMB has approved them. EPA will issue a notice in the future establishing an effective date for the information collection requirements.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street SW., Washington, DC 20460, Telephone: (202-554-1404), TDD: (202-554-0551).

SUPPLEMENTARY INFORMATION: The preamble accompanying this final rule is divided into the following Units:

I. Authority
II. TSCA Actions to Date
III. Provisions of the Rule
A. General Provisions
B. Manufacture, Importation, and Processing Bans
C. Bans on Distribution in Commerce
D. Labeling
E. Exemption Application Procedures
F. Military Exemptions
G. Recordkeeping
IV. Summary of Analysis Supporting this Final Rule
V. Regulatory Assessment
A. Health Effects and Magnitude of Exposure to Asbestos
B. Environmental Effects
C. Asbestos Substitutes
D. Economic Effects of the Rule
E. Other Options Considered
F. Summary of Individual Product Categories
VI. Other EPA Statutes
VII. Analysis under Section 9(a) of TSCA
A. Other Authorities Affecting Asbestos
B. EPA's Determination Under Section 9(a) of TSCA
VIII. Enforcement
IX. Confidentiality
X. Rulemaking Record
XI. References
XII. Regulatory Assessment Requirements
A. Executive Order 12291
B. Regulatory Flexibility Act
C. Paperwork Reduction Act

This rule prohibits the manufacture, import, processing, and distribution in commerce of certain asbestos-containing products. The rule also requires that asbestos-containing products that are subject to this rule be labeled to facilitate compliance with and enforcement of the rule.

Public reporting burden for this collection of information is estimated to average less than 2 hours annually per firm over the 3-year period reviewed for the analysis of regulatory burden. This burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This estimate of annual burden is a relatively low figure because of the small number of firms affected by the regulatory actions taken during the period reviewed for the analysis of regulatory burden. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for EPA.

I. Authority

Section 6(a) of TSCA authorizes EPA to impose certain regulatory requirements on activities involving a chemical substance or mixture if EPA finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance, or any combination of such activities, presents or will present an unreasonable risk of injury to human health or the environment. Section 6(a)(1) authorizes EPA to prohibit or limit the manufacture, processing, or distribution in commerce of substances or mixtures if EPA finds that these activities pose an unreasonable risk. Section 6(a)(2) authorizes EPA to prohibit or limit such activities for a particular use of such substances or mixtures. Section 6(a)(3) authorizes EPA to require labels for such substances or mixtures. Sections 6 and 8(a) authorize EPA to require the maintenance of records related to enforcement of EPA actions under section 6. These sections of TSCA provide EPA the authority to issue this rule.

II. TSCA Actions to Date

EPA issued an Advance Notice of Proposed Rulemaking in the **Federal Register** of October 17, 1979 (44 FR 60061), announcing its intent to explore the use of section 6 of TSCA to reduce the risk to human health posed by exposure to asbestos. EPA then issued a reporting rule under section 8(a) of TSCA in the **Federal Register** of July 30, 1982 (47 FR 33207, 40 CFR 763.60), to collect information on industrial and commercial uses of asbestos. Information collected under that rule, as well as analyses developed by EPA and other organizations, were evaluated and used to support a proposed rule, published in the **Federal Register** of January 29, 1986 (51 FR 3738).

In the proposed rule EPA found that exposure to asbestos poses an unreasonable risk to human health and discussed regulatory options for prohibiting or restricting the mining and importation of bulk asbestos and the manufacturing, importation, and processing of asbestos-containing products as means of reducing the risk. The following options were discussed in the proposed rule:

1. Two options involving bans of some products soon after promulgation of the final rule and a phase out of others over 10 years by means of a permit system for asbestos use.

2. A 2-stage ban, with the first ban, on asbestos construction products and clothing, to begin soon after promulgation of the final rule and the second ban, on friction products, to begin in 5 years, and after promulgation of the final rule, the collection of additional data on other products.

3. A 3-stage ban on all asbestos products to begin soon after the promulgation of the final rule, and 5 years and 10 years after promulgation.

Requiring labeling of asbestos-containing products was also discussed. EPA received over 200 comments in response to the proposed rule.

Prior to issuing the proposal, EPA received and granted two TSCA section 21 petitions (15 U.S.C. 2620). Under section 21 of TSCA, a person may petition EPA to initiate a proceeding for the issuance of a rule under various sections of TSCA. One petition requested the prohibition of the future use of asbestos in asbestos-cement pipe; this petition was granted in the **Federal Register** of October 18, 1979 (44 FR 60155). The other petition requested the prohibition of the future use of asbestos in motor vehicle brakes; this petition was granted in the **Federal Register** of December 18, 1984 (49 FR 49311). In granting these peititions, EPA stated that it would, as part of the rulemaking proceeding and the final rule, consider including prohibitions of the future use of asbestos in asbestos-cement pipe and in motor vehicle brakes. Both uses are prohibited by this final rule.

Pursuant to section 6(c)(2) of TSCA, EPA also provided interested parties opportunities to participate in a legislative hearing on the proposed rule in July 1986, and in extensive cross-examination of EPA personnel and contractors on factual issues relating to the rule in October 1986.

Since the end of cross-examination in October 1986, EPA has updated the data collections and regulatory analyses used to support the findings on which this rule is based. EPA believes that adequate data and analyses existed in the rulemaking record for the proposal to support the options discussed therein. The data collections and analyses were updated due to the passage of time since the publication of the proposal and in response to specific public comments that the data base supporting the proposed rule, gathered largely in 1982, was outdated.

EPA has gathered updated data relating to: (1) Asbestos consumption, (2) manufacturing, import, and processing volumes of asbestos-containing products, (3) trends in the development of non-asbestos substitutes, (4) costs of capital conversion to the production of non-asbestos products, (5) production, processing, use, and disposal practices for asbestos-containing products, and (6) occupational and non-occupational release and exposure from the manufacture, processing, installation, use, repair, removal, and disposal of asbestos-containing products. These data were derived from, among other sources, the 1987 EPA Asbestos Exposure survey, the 1987 EPA Asbestos Market survey, and 1987 Occupational Health and Safety Administration (OSHA) compliance data. EPA has also modified and updated its Asbestos Regulatory Cost Model (ARCM), Health Benefits Model, and asbestos exposure models which were used to evaluate the costs and benefits of various regulatory options. Additionally, EPA has furthered its analysis of the availability and possible hazards posed by asbestos substitutes.

These updated data and analyses were reflected in documents released for public comment in notices published in the **Federal Register** of April 1, 1988 (53 FR 10546), and May 4, 1988 (53 FR 15857). EPA received over 40 public comments in response to these notices. In addition, EPA allowed further cross-examination of EPA personnel and contractors on factual issues related to the updated analytical data base in September 1988. The materials released for public comment contain the technical basis for the actions taken in this final rule. EPA afforded the opportunity for public comment on the updated documents and for further cross-examination as an exercise of its discretion and as a means of ensuring that any remaining disputed issues of material fact in the updated data and analyses could be identified and resolved before promulgation of this final rule. EPA has reviewed the comments received and the testimony elicited and has updated the record accordingly.

Pursuant to its procedural rules at 40 CFR 750.4(b), EPA also announced to interested parties in the **Federal Register** of September 16, 1988 (53 FR 36227), the opportunity to provide EPA with reply comments relating to the rulemaking proceeding. EPA received reply comments from three commenters.

The record which serves as the basis for the actions taken in this rule consists of over 45,000 pages of analyses, comments, testimony, correspondence, and other materials. The record for this rule also incorporates by reference the extensive record developed by OSHA in its rulemaking to lower its Permissible Exposure Level (PEL) for asbestos, published in the **Federal Register** of June 20, 1986 (51 FR 22612). EPA has fully considered these materials in developing this final rule. In addition, all significant testimony or public comments made on the proposed rule, in conjunction with the legislative hearing, cross-examination hearing, or reply comments, or in response to the materials announced in the April and May 1988 **Federal Register** notices, cited above, were considered in the development of the final rule. EPA's responses to all significant comments are found either in this preamble or in a separate Response to Comments document that is available in the Public Docket (Ref. 40).

Based on the numerous detailed analyses performed by EPA in support of this rule and after careful consideration of the extensive public comments received, EPA has concluded that the continued commercial manufacture, import, processing, and distribution in commerce of the products identified in this rule poses an unreasonable risk of injury to human health under section 6 of TSCA.

III. Provisions of the Rule

A. General Provisions

Consistent with an option described in the proposal, this rule imposes a 3-stage ban on the manufacture, importation, processing, and distribution in commerce of various asbestos-containing products. The rule also contains a requirement that products subject to a manufacture, importation, and processing ban, but not yet subject to a ban on distribution in commerce, be labeled in the manner described at § 763.171. In addition, the rule includes procedures for requesting an exemption from the rule's provisions.

The effective dates of the various bans are as follows (with exceptions as noted in Unit III.B of this preamble for some asbestos friction products):

Manufacture, Import, and Processing Ban:
Stage 1—August 27, 1990
Stage 2—August 25, 1993
Stage 3—August 26, 1996
Distribution in Commerce Ban:
Stage 1—August 25, 1992
Stage 2—August 25, 1994
Stage 3—August 25, 1997

B. Manufacture, Importation, and Processing Bans

As of the dates indicated below, the manufacture, importation, and processing of all asbestos-containing products within the categories listed must cease as follows for each stage:

Stage 1: Manufacture, importation, and processing of the following products must cease by August 27, 1990:

Flooring Felt
Roofing Felt
Pipeline Wrap
Asbestos/Cement (A/C) Flat Sheet
A/C Corrugated Sheet
Vinyl/Asbestos Floor Tile
Asbestos Clothing

Stage 2: Manufacture, importation, and processing of the following products must cease by August 25, 1993:

Beater-Add Gaskets (except specialty industrial gaskets)
Sheet Gaskets (except specialty industrial gaskets)
Clutch Facings
Automatic Transmission Components
Commercial and Industrial Friction Products
Drum Brake Linings [Original Equipment Market (OEM)] [1]
Disc Brake Pads for Light- and Medium-weight Vehicles (LMV) (OEM) [1]

Stage 3: Manufacture, importation, and processing of the following products must cease by August 26, 1996:

A/C Pipe
Commercial Paper
Corrugated Paper
Rollboard
Millboard
A/C Shingle
Specialty Paper
Roof Coatings
Non-Roof Coatings
Brake Blocks
Drum Brake Linings [Aftermarket (AM)]
Disc Brake Pads, LMV (AM)
Disc Brake Pads, HV (AM)

In addition, any new asbestos-containing products for which commercial manufacture, importation, or processing is initiated after the effective date of this rule will be banned as of the effective date of Stage 1, unless EPA approves the use or product pursuant to an exemption application. In other words, if a person devises a new application for asbestos that is not covered by the product categories defined in this rule, and the person wishes to commence commercial manufacture, importation, and processing of the product after August 25, 1989, manufacture, importation, and processing of the product must cease by August 27, 1990, and distribution in commerce of the product must cease by August 25, 1992. These bans on manufacture, importation, processing, and distribution in commerce may be avoided only if a person applies to EPA for an exemption from the bans and the application is granted.

[1] These bans affect products used as original equipment in vehicles introduced in the 1994 model year. For example, if new model year products are introduced annually by a producer in October, asbestos brake products may be used in vehicles made by that producer before the introduction of model year 1994 vehicles in October 1993, but not thereafter. In addition, products manufactured, imported, or marketed for use as aftermarket replacement parts for brake systems designed to use non-asbestos brake pads and drums are banned from manufacture, importation, and processing as of August 25, 1993.

Pursuant to section 12(a)(2), EPA finds that the manufacture or processing for export of the asbestos-containing products that are subject to this rule will present an unreasonable risk of injury to human health. Therefore, the manufacture and processing of the asbestos-containing products for export is not exempted from this rule under section 12(a)(1), and is subject to this rule's bans on manufacture, processing, and distribution in commerce bans. Much of the life cycle and a significant portion of risk posed by export products occurs in the United States. The most significant source of exposure that could be quantified by EPA for this rule is primary and secondary manufacturing. During primary manufacture asbestos fibers are introduced into the production process. During secondary manufacture, an asbestos fiber-containing component is used. EPA has concluded that these activities cause significant occupational and non-occupational exposures to workers and their families, populations surrounding plant sites, and the general population. In light of the high individual risk caused by exposure to asbestos, EPA has concluded that exposures due to manufacturing or processing of these asbestos-containing products for export pose an unreasonable risk of injury to human health in the United States.

EPA has not found that asbestos-containing products imported into the United States for the sole purpose of shipment to another country pose an unreasonable risk. Therefore, such activities are not subject to this rule's bans. However, for the reasons described above, imported products that are repackaged or otherwise processed in the United States before shipment to another country are subject to the rule's bans.

The proposal would have exempted the import of small quantities of otherwise banned asbestos-containing products for personal use from the rule's bans. EPA received comments indicating that many new automobiles are imported by individuals. However, EPA is uncertain about the extent of any risk reduction that would be achieved by a ban on these activities. Therefore, the final rule's ban on importation excludes the act of bringing small quantities of articles into the United States for normal personal or business activities (not including distribution of asbestos-containing products in commerce) involving the use of a banned product either alone or as a component or part of a larger object. Similarly, the definition of import excludes activities such as the movement of automobiles with asbestos-containing products as integral parts of the auto, back and forth across the United States border during the normal course of personal or business activities. The final rule bans the import of products that are purchased or otherwise acquired outside of the United States for the sole purpose of resale.

For example, after the effective date of the ban on OEM brake pads, a 1994 or later model year automobile containing banned asbestos-containing parts cannot be purchased in Canada or another country and be transported by a person to the United States for resale. However, the rule does not ban the import by a person of such a vehicle for personal use in the United States. For purposes of enforcing this provision, EPA will consider a vehicle to be imported for personal use if the person importing the vehicle imports no more than one vehicle containing banned products every 5 years. If a person imports a vehicle more frequently, EPA will presume that the activity is subject to the rule's bans. Other activities that are excluded from the definition of import include driving across the U.S. border in a 1994 or later model year automobile containing banned products during the course of transacting business or for recreational purposes, or purchasing a used (i.e., pre-1994 model year) vehicle containing asbestos brakes in another country and transporting it into the United States.

C. Bans on Distribution in Commerce

Available evidence shows that the release of asbestos fibers occurs not only in the manufacture and processing of asbestos products, but also in their use and maintenance. EPA proposed to ban activities involving asbestos products because of this life cycle risk. The proposed ban also implicitly would have prohibited the eventual distribution of these products in commerce because persons would not be permitted to manufacture, import, or process asbestos products.

Consistent with the intent of the proposal, this final rule explicitly prohibits the distribution in commerce of asbestos products within the specified timeframe after manufacture, importation, and processing bans for the products become effective. The time periods for distribution in commerce were established to afford affected parties sufficient time to sell existing stocks and therefore limit the likely economic impact of the ban. This was done after balancing the likely risks presented by continued use of asbestos products with the economic impact of an outright ban on this activity.

As stated above, this rule bans the distribution in commerce of asbestos products after manufacture, importation, and processing bans for the products become effective. The ban on distribution in commerce for products subject to the Stage 1 manufacture, importation, and processing ban will become effective on August 25, 1992. For Stage 2 products, the ban on distribution in commerce will become effective on August 25, 1994. For Stage 3 products, the ban on distribution in commerce will become effective on August 25, 1997.

Remaining "stock-on-hand" of an affected product must be disposed of within 6 months of the effective date of the ban on distribution in commerce. Remaining stocks include all units of the product in the possession or control of the person subject to the distribution in commerce ban. Disposal must be by means that are in compliance with applicable local, State, and Federal restrictions.

The rule's distribution in commerce ban does not cover all actions taken with respect to asbestos-containing products. For purposes of the rule, the term "distribution in commerce" does not cover end use activities, for example, sale, resale, holding, or delivery, with respect to asbestos products by persons who use the product after it is manufactured, imported, or processed. For example, the term "distribution in commerce" does not include the resale of homes or motor vehicles that contain asbestos-containing parts or products or the installation of asbestos-containing brake pads in a person's automobile after the distribution in commerce of such brake pads is banned. (However, it is a violation of this rule for a person to engage in selling brake pads to anyone.) This provision also does not cover the disposal of asbestos-containing products.

EPA recognizes that some asbestos-containing products which are excluded from the ban may be very similar in form to asbestos-containing products that are banned. For example, this rule's bans do not cover the manufacture, importation, processing, and distribution in commerce of high-grade electrical paper, a product which may be similar in some cases to millboard or other asbestos paper products. Persons might try to manufacture or distribute the excluded products for uses that are banned. Such activities would violate this rule's bans because this conversion of use will be interpreted by EPA to be processing or distribution in commerce of the banned products. The definitions of processing and distribution in commerce are broad and will be interpreted by EPA to cover activities which involve the conversion of excluded asbestos-containing products in this manner.

D. Labeling

Products that are subject to a current or future ban on manufacturing, processing, import, or distribution in commerce must be labeled as follows:

Notice—This product contains *ASBESTOS*. The U.S. Environmental Protection Agency has banned the distribution in U.S. commerce of this product under section 6 of the Toxic Substances Control Act (15 U.S.C. 2605) as of (insert the effective date of ban on distribution in commerce). Distribution of this product in commerce after this date and intentionally removing or tampering with this label are *violations of Federal law*.

The purpose of this labeling requirement is to facilitate efforts by manufacturers, importers, processors, and distributors to comply with this rule's bans and EPA's efforts to enforce the rule.

Labels must be applied by manufacturers, importers, and processors to specified products produced after the dates listed below, and to all stock-on-hand of these products in their possession or control at that time. The effective dates of the labeling requirement are as follows:

Products	Date by which products must be labeled
Products banned in Stage 1	Aug. 27, 1990
Products banned in Stage 2, plus aftermarket disc and drum brake products.	Aug. 25, 1992
All other products banned in Stage 3.	Aug. 25, 1995

Therefore, a manufacturer, importer, or processor of a product banned in Stage 2 must label all stock-on-hand of the product as of August 25, 1992, as well as any further stock of that product manufactured, imported, or processed after that date. Products must be labeled at the times indicated to ensure that a substantial portion of the stock in the chain of distribution after the effective date of the manufacture, importation, or processing bans are labeled to facilitate enforcement and compliance efforts. Asbestos-containing brake pads, drum brake linings, and brake blocks must be labeled earlier than other products because of the relatively long potential shelf life of brake products and to facilitate compliance with the two-part ban of asbestos friction products.

For purposes of this labeling requirement, "stock-on-hand" means all units of the product in the possession or control of the manufacturer, importer, or processor. This includes products stored by a separate commercial entity, but still within the direction or control of the manufacturer, importer, or processor.

Manufacturers, importers, and processors must insert in the label they apply to their products the effective date of the ban on distribution in commerce for that product. Labels must be displayed prominently on product packaging, as described below. Labels must be either printed on product packaging or in the form of either a sticker or tag made of plastic, paper, metal, or another durable material and securely adhered or attached to product packaging. Labels must be securely attached so that they cannot be removed without being defaced or destroyed. They must be written in English in block letters and numerals. Text in other languages is permitted in addition to the English language text. The color of the text must contract with the background of the label. Labels must be applied in a visible location on the exterior of the immediate packaging in which a product is distributed in commerce. However, if the product packaging has no visible surfaces larger than 5 square inches, the person subject to the labeling requirement must either securely attach a tag containing the required language to the product packaging or must label the next outer container in which the smaller wrapped products are packed for storage, transport, or distribution. Labels must be applied directly onto products which are stored, shipped, or distributed in commerce without packaging or wrapping. However, if a product is otherwise properly labeled and is removed from the properly labeled packaging only when distributed to the end user, the product does not need to also be labeled directly.

Compliance with the labeling requirements of this rule does not fulfill labeling requirements established under the Federal Hazardous Substances Act (FHSA, 15 U.S.C. 1261).

E. Exemption Application Procedures

EPA believes that exemptions from the rule's bans on future manufacture, importation, processing, and distribution in commerce will fall into two different categories, those involving existing asbestos-containing products or existing uses of asbestos in products and those involving new uses of asbestos in products or new asbestos products. This rule provides two approaches to obtaining an exemption from these bans.

EPA has already determined that activities involving most asbestos-containing products present unreasonable risks of injury to human health. Therefore, procedures in the final rule for evaluating exemption

applications involving manufacture, importation, processing, and distribution in commerce of asbestos-containing products in categories identified in this rule or uses of asbestos in these products place the burden upon the applicant to show that he or she has made demonstrable good faith efforts to develop substitutes for its product and that granting the exemption will not result in an unreasonable risk of injury to human health.

EPA is uncertain about the facts and circumstances that will attend any potential exemption involving new asbestos-containing products or new uses of asbestos. In view of this uncertainty about these products or uses, EPA believes that it is appropriate to employ a different process for reviewing exemptions for new asbestos products or uses. Thus, requests for exemption for new products or uses will be treated as a petition to amend this rule pursuant to section 21 of TSCA. Such petitions should comply with the procedures of section 21 and contain, at a minimum, the type of information set forth in this final rule for exemption applications.

The remainder of this Unit discusses general exemption procedures for applications involving products identified in the rule. Exemptions for military uses are discussed in Unit III.F of this preamble.

1. *Information requirements.* This provision allows that EPA will exempt products from the rule's bans if an applicant can show that the activity described in the application will not result in an unreasonable risk of injury to human health and that the applicant has made demonstrable good faith efforts to develop substitutes that do not pose an unreasonable risk. EPA will balance the various information received in an exemption application in determining whether the applicant has met the criteria for granting an exemption. Applicants for exemptions must submit to EPA data or discussions addressing each of the following issues regarding their product:

a. Data demonstrating the exposure level over the life cycle of the product that is the subject of the application.

b. Data concerning:

i. The extent to which non-asbestos substitutes for the product that is the subject of the application fall significantly short in performance under necessary product standards or requirements, including laws or ordinances mandating product safety standards.

ii. The costs of non-asbestos substitutes relative to the costs of the asbestos-containing product and, in the case in which the product is a component of another product, the effect on the cost of the end use product of using the substitute component.

iii. The extent to which the product or use serves a high-valued use.

c. Evidence of demonstrable good faith attempts by the applicant to develop and use a non-asbestos substance or product which may be substituted for the asbestos-containing product or the asbestos in the product or use that is the subject of the application.

d. An explanation of why the continued manufacture, importation, processing, distribution in commerce, and use, as applicable, of the product will not present an unreasonable risk of injury to human health.

Exemption applications which do not contain these items of information and the other information required under § 763.173(d) will be considered incomplete and will be returned to the applicant without further action by EPA. Exemption applications that are returned as incomplete can be resubmitted with the additional required information. The resubmitted application will carry the resubmittal date as the date of receipt.

2. *Procedures for submitting exemption applications.* Exemption applications cannot be submitted for products subject to the following bans before the dates indicated, as follows:

Manufacture, Importation, and Processing

Stage 1—August 25, 1989
Stage 2—February 26, 1992
Stage 3—February 27, 1995

Distribution in Commerce

Stage 1—February 26, 1990
Stage 2—February 26, 1993
Stage 3—February 26, 1996

EPA believes that, because of the rapid development of asbestos substitutes, decisions on exemption applications made before these dates would be premature. However, EPA will consider, if appropriate, arguments made for an exemption from a ban on distribution in commerce for a product at the time and applicant submits an application for an exemption from a manufacture, importation, or processing ban.

Exemption applications must be addressed to: TSCA Document Processing Center (TS-790), Office of Toxic Substances, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, ATTN: Asbestos Exemption.

3. *EPA review and decision.* EPA's review periods for exemption applications for existing products will vary, depending on the timeliness of their submission and the adequacy of the data that is submitted. If a complete exemption application is submitted more than 1 year before the effective date of the applicable ban (or 9 months before the effective date of the ban in the case of Stage 1 manufacture, importation, and processing bans), EPA will complete its review of the application and issue its decision prior to the effective date of the ban. If EPA fails to meet this deadline, the applicant will be granted an automatic extension of up to 1 year, or until EPA decides whether to approve the application, during which the applicant can continue the activity that is the subject of the application. EPA will render its decision during the extension period.

For example, if a ban becomes effective on September 1, 1994, an exemption application for a product subject to that ban cannot be submitted to EPA before March 1, 1993. To ensure a decision by EPA on an application before the ban's effective date, the applicant must submit the application to EPA before September 1, 1993.

If an exemption application is submitted less than 1 year before the effective date of the applicable ban or after the ban, EPA will issue a decision as soon as is feasible. The submitter of this "late" application must cease the banned activity as of the effective date of the ban unless EPA grants the exemption.

For example, if a manufacture or importation ban becomes effective on September 1, 1994, and an application for a product subject to the ban is received by EPA on April 1, 1994, EPA will render its decision on the application as soon as is feasible. If EPA has not rendered a decision granting the exemption by September 1, 1994, the applicant must cease manufacture or importation of the product.

If EPA denies an exemption application before the effective date of a ban, the applicant must cease the activity as of the effective date of the ban, or within 30 days after receipt of the denial if it is issued less than 30 days before the effective date of the ban. If a denial is rendered during an extension period, the applicant must cease the banned activity within 30 days after the issuance of the denial.

For example, if the effective date of a ban is November 1, 1994, and EPA renders a denial on June 1, 1994, the activity must cease by November 1, 1994. If the effective date of the ban is July 1, 1994, and EPA renders a denial on June 15, 1994, the activity must cease by July 15, 1994. Further, if an extension period runs until December 1, 1994, and EPA issues a denial on June 1, 1994, the activity must cease by July 1, 1994.

The time frames discussed in the preceding paragraphs for EPA's review of exemption applications do not apply to applications pertaining to new uses of asbestos. Applications for new uses will be subject to the deadlines for EPA review and decision specified in section 21 of TSCA.

Upon receipt of a complete exemption application, EPA will issue a notice in the **Federal Register** announcing receipt of the application and inviting comments. EPA will consider any comments received in determining whether to grant or deny the application. EPA may request further information from the applicant to assist in determining whether the exemption application meets the rule's criteria.

When denying an application, EPA will send the applicant a copy of the denial via registered mail. This written denial is a final Agency action for purposes of judicial review.

If EPA proposes to grant an application, EPA will issue a notice in the **Federal Register** requesting comments on its proposal or the submission of supplementary information. EPA will consider any comments received when preparing its final decision. A final grant of an exemption application will be issued by **Federal Register** notice and, likewise, is a final Agency decision for purposes of judicial review. The notice will state the length of the exemption period granted by EPA. In addition, if an application is approved, EPA may notify the applicant that the labeling requirements of § 763.171 have been stayed until a later date indicated by EPA or otherwise modified in the exemption application approval.

Exemption renewal applications cannot be submitted earlier than 15 months before the end of the exemption period, unless so allowed in the notice granting the original exemption. Notices received between 15 months and 1 year before the end of the exemption period will be granted or denied before the end of the exemption period. Renewal applications received thereafter will be granted or denied by EPA as soon as is feasible. The activity that is the subject of the renewal application may not continue beyond the original exemption period unless EPA grants the renewal.

4. *Factors considered in evaluating exemption applications.* EPA has concluded that the future manufacture, importation, processing, and distribution in commerce of most asbestos-containing products results in an unreasonable risk of injury to human health. The rule seeks the elimination of these risks by banning the future use of asbestos in many products in U.S. commerce. Therefore, exemptions will be granted by EPA only in those instances where a clear showing is made by an applicant that the activity described in the exemption application meets the criteria set out in this preamble and rule. The criteria require the applicant to demonstrate that the activity described in the application will not result in an unreasonable risk of injury to human health and that the applicant has made demonstrable good faith efforts to develop substitutes that do not pose an unreasonable risk. EPA believes that these criteria are consistent with the findings in this rule, yet provide applicants an opportunity to demonstrate that they are entitled to an exemption in certain non-routine circumstances.

EPA's evaluation of exemption applications will involve a balancing of a number of factors which go into determining whether the exemption criteria have been met. These factors include the availability of suitable substitutes and the feasibility of substituting for asbestos in the product, asbestos exposure risks posed by the continued use of the asbestos product, whether the asbestos use is a high-valued use, and the efforts of the applicant to develop substitutes. EPA will grant an exemption only after carefully balancing all the factors presented in an application. The paragraphs that follow provide guidelines which EPA will follow in applying the above-stated exemption criteria in making decisions on exemption applications.

Generally, EPA does not intend to grant exemptions to applicants who are merely seeking to avoid their share of the costs imposed by the actions taken in this rule. Also, EPA does not intend to grant exemptions that would indefinitely extend the use of asbestos in products.

EPA has concluded that exposure to asbestos during the life cycles of the products that are subject to this rule poses an unreasonable risk of injury to human health. Therefore, EPA does not intend to grant exemption applications that are based solely on the rationale that relatively low levels of exposure exist, because exposure levels may be only one of several factors balanced in detemining whether the use described in an exemption application would pose an unreasonable risk. EPA has also found that suitable non-asbestos substitutes exist for most uses of asbestos. Therefore, if a non-asbestos substitute exists for a product and is in use by one or more of the producers in the market for the product, EPA does not intend to grant an exemption to one producer based on the cost or difficulty of modifying its production process or of setting up a supply system for obtaining the substitute. EPA has, in establishing the effective dates for the bans, afforded sufficient time to allow producers and distributors to develop and implement transition plans. Therefore, EPA does not intend to grant an exemption because an applicant has yet to purchase the necessary equipment, to set up systems of supply for substitutes, or to make other transition plans.

Also, EPA does not intend to grant or renew an exemption if the applicant has failed to make a tangible, documented effort to identify, develop, and use suitable non-asbestos substitutes for the product which is the subject of the exemption application.

In addition, EPA does not intend to grant an exemption merely because using a substitute is somewhat more costly in the production of a product than using asbestos. However, EPA may grant an exemption for an existing asbestos product if, in addition to other factors, a non-asbestos substitute for the product has not been developed or adapted, despite the best efforts of the requestor, or if available substitutes are unreasonably expensive to purchasers.

F. Military Exemptions

EPA and the Department of Defense will develop a Memorandum of Understanding establishing mechanisms for dealing with asbestos-containing products used for military purposes. Along with the criteria for consideration of general exemptions described in the preceding Unit, consideration will be given to the military nature of such uses and the mission of the Department of Defense. EPA and the Department of Defense will jointly develop procedures for exemptions from this rule for asbestos-containing products used for military purposes.

G. Recordkeeping

To ensure compliance with this rule, and to assist enforcement efforts, EPA is requiring under the authority of sections 6 and 8 of TSCA that all manufacturers, importers, and processors of certain asbestos-containing products keep records. Section 8(a) provides broad authority for EPA to require manufacturers, importers, and processors to keep records. Section 8(a) exempts small businesses from reporting in certain cases. However, EPA may require manufacturers, importers, and processors of a substance subject to a rule under section 6 of TSCA to maintain records. Since asbestos is

already subject to rules under section 6 and is also subject to this one, the small business exemption of section 8(a) would not apply. EPA believes that these recordkeeping requirements represent very little burden and are necessary for the enforcement of this rule.

EPA also has authority under section 6 to require recordkeeping and reporting related to the other regulatory requirements imposed by EPA under section 6. In this case, section 6 provides the authority to apply the recordkeeping requirements to distributors of asbestos-containing products who are not also manufacturers, importers, or processors of these products subject to section 8(a). EPA has used this section 6 recordkeeping and reporting authority previously in its polychlorinated biphenyl and asbestos rules promulgated under TSCA section 6 in 40 CFR Parts 761 and 763.

1. *Inventory.* As of the effective date of a ban on manufacture, importation, or processing, all manufacturers, importers, and processors of products subject to the ban must take an inventory of their stock-on-hand of the banned products. This inventory must consist of a count of the number of product units in stock, in terms of the unit measure or form in which the product is used or sold, and the location of current stock. "Stock-on-hand" covers all stock owned or controlled by the manufacturer, importer, or processor. This includes stock in a storage location owned by the person, as well as stock in storage locations owned by others if the stock remains within the direction or control of the person. Results of this inventory must be retained by the manufacturer, importer, or processor for 3 years after the effective date of the ban. The purpose of this inventory is to serve as a baseline for EPA's enforcement of the rule's bans on manufacture, importation, processing, and distribution in commerce. Inventory results will be compared by EPA inspectors with the business records maintained under § 763.178(b)(1) to determine compliance with this rule.

2. *Records.* Manufacturers, importers, and processors must maintain a copy of all labels used in compliance with § 763.171 for 3 years after the effective date of the ban on distribution in commerce to which the label applies. For example, if the label is required for a product banned from distribution in commerce as of October 1, 1992, the records regarding the label must be maintained until October 1, 1995.

Manufacturers, importers, processors, and those persons subject to bans on distribution in commerce must maintain normal business and sales records recording the dates and quantities purchased of all products subject to bans. These records must be maintained for transactions from the effective date of the manufacture, importation, or processing ban for a product until the effective date of the ban on distribution in commerce for the product. These records must be maintained for 3 years after the effective date of the ban on distribution in commerce for a product.

For example, if a manufacturer produces an asbestos-containing product that is subject to a manfacture ban that takes effect on September 1, 1993, the manufacturer must by that date, make an inventory of the stock-on-hand of the banned product as of that date. A record of the inventory must be maintained until September 1, 1996. The manufacturer must also keep records of all sales or transfers of the product between September 1, 1993, and the effective date of the ban on distribution in commerce (for purposes of this example, September 1, 1994). These records must be maintained by the manufacturer until at least September 1, 1997.

IV. Summary of Analysis Supporting This Final Rule

EPA's basis for this rule, as described in the proposal, remains largely unchanged. EPA's unreasonable risk findings under section 6 of TSCA are based on extensive data gathering, modeling, analysis, and review of public comments. EPA's findings are summarized briefly in this preamble. This preamble also addresses significant public comments raised during the course of this rulemaking. EPA has addressed other comments in a separate Response to Comments document, which is incorporated by reference in this preamble and is included in the public docket. The following documents are also contained in the public docket and serve as the primary, although not exclusive, basis for the actions taken in this rule.

1. *Regulatory Impact Analysis,* EPA, 1988. This document analyzes the costs and benefits of various options for regulating the risks of exposure to asbestos, and includes an analysis of available substitutes for asbestos-containing products, a regulatory flexibility analysis, and materials on the models and computational procedures used, survey results, health effects and studies, costs of converting capital equipment from asbestos-using processes, the producer surplus loss determination, economic impacts data and analyses, and sensitivity analyses.

2. Three documents evaluating the magnitude of potential routes of human exposure to asbestos: (a) *Asbestos Exposure Assessment,* EPA, 1988. This document analyzes the occupational exposure to asbestos and asbestos releases from manufacturing plants and commercial operations in the U.S.

(b) *Asbestos Modeling Study,* EPA, 1988. This document analyzes the ambient exposure levels resulting from the release of asbestos to the atmosphere from industrial and commerical sources.

(c) *Non-occupational Asbestos Exposure Report,* EPA, 1988. This document analyzes the level of consumer and ambient exposures to asbestos.

3. Three reports evaluating the extensive data base on human health hazards posed by asbestos: (a) *Airborne Asbestos Health Assessment Update,* EPA, 1986. This document was prepared by EPA's Office of Research and Development and was reviewed, critiqued, and updated in response to peer review comments from the Environmental Health Committee of the EPA Science Advisory Board (SAB). The SAB advises the EPA Administrator on scientific matters.

(b) *Report to the U.S. Consumer Product Safety Commission by the Chronic Hazard Advisory Panel on Asbestos,* CPSC, 1983. This document was written by a panel of seven scientists selected by CPSC from a list of nominees by the National Academy of Sciences after a nationwide solicitation.

(c) *Asbestiform Fibers: Non-occupational Health Risks,* National Academy of Sciences, Committee on Non-occupational Health Risks of Asbestiform Fibers, 1984. This document was written by an expert panel of 13 members.

4. *Health Hazard Assessment of Non-Asbestos Fibers,* EPA, 1988. This document evaluated the potential hazard posed by major non-asbestos fiber substitutes for asbestos. This document was based in part on *Recent Epidemiological Investigations on Populations Exposed to Selected Non-Asbestos Fibers,* EPA, 1988.

Other materials used in the development of this rule are cited in the text of this preamble and listed in Unit XI of this preamble.

V. Regulatory Assessment

Section 6 of TSCA authorizes EPA to promulgate a rule prohibiting or limiting the amount of a chemical substance that may be manufactured, processed, or distributed in commerce in the U.S. if

EPA finds that there is a reasonable basis to conclude that the manufacturer, processing, distribution in commerce, use, or disposal of the chemical substance, or any combination of these activities, presents or will present an unreasonable risk of injury to human health or the environment.

Section 6(c)(1) of TSCA requires EPA to consider the following factors when determining whether a chemical substance presents an unreasonable risk:

1. The effects of such substance on human health and the magnitude of the exposure of human beings to such substance.

2. The effects of such substance on the environment and the magnitude of the exposure of the environment to such substance or mixture.

3. The benefits of such substance for various uses and the availability of substitutes for such uses.

4. The reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small businesses, technological innovation, the environment, and public health.

To determine whether a risk from activities involving asbestos-containing products presents an unreasonable risk, EPA must balance the probability that harm will occur from the activities against the effects of the proposed regulatory action on the availability to society of the benefits of asbestos. EPA has considered these factors in conjunction with the extensive record gathered in the development of this rule. EPA has concluded that the continued manufacture, importation, processing, and distribution in commerce of most asbestos-containing products poses an unreasonable risk to human health. This conclusion is based on information summarized in the following paragraphs and discussed in the units that follow.

EPA has concluded that exposure to asbestos during the life cycles of many asbestos-containing products poses an unreasonable risk of injury to human health. EPA has also concluded that section 6 of TSCA is the ideal statutory authority to regulate the risks posed by asbestos exposure. This rule's pollution prevention actions under TSCA are both the preferable and the least burdensome means of controlling the exposure risks posed throughout the life cycle of asbestos-containing products. Findings supporting this conclusion include the following:

1. Exposure to asbestos causes many painful, premature deaths due to mesothelioma and lung, gastrointestinal, and other cancers, as well as asbestosis and other diseases. Risks attributable to asbestos exposure and addressed by this rule are serious and are calculated for this rule using direct evidence from numerous human epidemiological studies. Studies show that asbestos is a highly potent carcinogen and that severe health effects occur after even short-term, high-level or longer-term, low-level exposures to asbestos. Asbestos exposure is compatible with a linear, no-threshold dose-response model for lung cancer. In addition, there is no undisputed evidence of quantitative differences in potency based on fiber size or type.

For the quantitative risk assessment performed as part of this rulemaking, EPA used dose-response constants for lung cancer and mesothelioma that were the geometric means of the "best estimates" from a number of epidemiological studies. If EPA had instead used an upper bound estimate, as is normally done by the scientific community and in EPA regulatory risk assessment when only data from animal studies is available to extrapolate human health risk, predicted lung cancer deaths could increase by a factor of 10 and mesothelioma deaths could increase by a factor of 20 (Ref. 1).

2. People are frequently unknowingly exposed to asbestos and are rarely in a position to protect themselves. Asbestos is generally invisible, odorless, very durable, and highly aerodynamic. It can travel long distances and exist in the environment for extended periods. Therefore, exposure can take place long after the release of asbestos and at a distant location from the source of release.

3. Additions to the current stock of asbestos-containing products would contribute to the environmental loading of asbestos. This poses the potential for an increased risk to the general population of asbestos-related disease and an increased risk to future generations because of asbestos' longevity.

4. Asbestos fibers are released to the air at many stages of the commercial life of the products that are subject to this rule. Activities that migh lead to the release of asbestos include mining of the substance, processing asbestos fibers into products, and transport, installation, use, maintenance, repair, removal, and disposal of asbestos-containing products. EPA has found that the occupational and non-occupational exposure existing over the entire life cycles of each of the banned asbestos-containing products poses a high level of individual risk. EPA has determined that thousands of persons involved in the manufacture, processing, transport, installation, use, repair, removal, and disposal of the asbestos-containing products affected by this rule are exposed to a serious lifetime asbestos exposure risk, despite OSHA's relatively low workplace PEL. In addition, according to the EPA Asbestos Modeling Study, millions of members of the general U.S. population are exposed to elevated levels of lifetime risk due to asbestos released throughout the life cycle of asbestos-containing products. EPA believes that the exposure quantified for the analyses supporting this rule represent an understatement of actual exposure.

5. Release of asbestos fibers from many products during life cycle activities can be substantial. OSHA stated in setting its PEL of 0.2 f/cc that remaining exposures pose a serious risk because of limitations on available exposure control technologies. Even with OSHA's controls, thousands of workers involved in the manufacture and processing of asbestos-containing products are exposed to a lifetime risk of 1 in 1,000 of developing cancer. Many other exposures addressed by this rule are not affected by engineering controls required by OSHA's PEL or by other government regulation. Because asbestos is a highly potent carcinogen, the uncontrolled high peak episodic exposures that are faced by large populations pose a significant risk.

6. Because of the life cycle or "cradle-to-grave" nature of the risk posed by asbestos, attempts by OSHA, the Consumer Product Safety Commission (CPSC), and other EPA offices to regulate the continued commercial use of asbestos still leave many persons unprotected from the hazards of asbestos exposure. Technological limitations inhibit the effectiveness of existing or possible exposure control actions under non-TSCA authorities. Many routes of asbestos exposure posed by the products subject to this rule are outside the jurisdictions of regulatory authorities other than TSCA. EPA has determined that the residual exposure to asbestos that exists despite the actions taken under other authorities poses a serious health risk throughout the life cycle of many asbestos-containing products. This residual exposure can only be adequately controlled by the exposure prevention actions taken in this rule.

7. Despite the proven risks of asbestos exposure and the current or imminent existence of suitable substitutes for most uses of asbestos, asbestos continues to be used in large quantities in the U.S. in the manufacture or processing of a wide variety of commercial products. Total annual U.S.

consumption of asbestos dropped from a 1984 total of about 240,000 metric tons to less than 85,000 metric tons in 1987, according to the U.S. Department of Interior, Bureau of Mines data. This change suggests that the use of substitutes has increased markedly since the proposal. However, the 1987 consumption total indicates that significant exposure due to the commercial use of asbestos and the resultant risks would continue for the foreseeable future absent the actions taken in this rule.

Evidence supports the conclusion that substitutes already exist or will soon exist for each of the products that are subject to the rule's bans. In scheduling products for the different stages of the bans, EPA has analyzed the probable availability of non-asbestos substitutes. In the rule, the various asbestos products are scheduled to be banned at times when it is likely that suitable non-asbestos substitutes will be available. However, the rule also includes an exemption provision to account for instances in which technology might not have advanced sufficiently by the time of a ban to produce substitutes for certain specialized or limited uses of asbestos.

6. EPA has calculated that the product bans in this rule will result in the avoidance of 202 quantifiable cancer cases, if benefits are not discounted, and 148 cases, if benefits are discounted at 3 percent. The figures decrease to 164 cases, if benefits are not discounted, and 120 cases, if benefits are discounted at 3 percent, if analogous exposures are not included in the analysis. In all likelihood, the rule will result in the avoidance of a large number of other cancer cases that cannot be quantified, as well as many cases of asbestos-related diseases. Estimates of benefits resulting from the action taken in this rule are limited to mesothelioma and lung and gastrointestinal cancer-cases-avoided, and do not include cases of asbestosis and other diseases avoided and avoided costs from treating asbestos diseases, lost productivity, or other factors. EPA has estimated that the cost of this rule, for the 13-year period of the analyses performed, will be approximately $458.89 million, or $806.51 million if a 1 percent annual decline in the price of substitutes is not assumed. This cost will be spread over time and a large population so that the cost to any person is likely to be negligible. In addition, the rule's exemption provision is a qualitative factor that supports the actions taken in this rule. EPA has concluded that the quantifiable and unquantifiable benefits of the rule's staged-ban of the identified asbestos-containing products will outweigh the resultant economic consequences to consumers, producers, and users of the products.

9. EPA has determined that, within the findings required by section 6 of TSCA, only the staged-ban approach employed in this final rule will adequately control the asbestos exposure risk posed by the product categories affected by this rule. Other options either fail to address significant portions of the life cycle risk posed by products subject to the rule or are unreasonably burdensome. EPA has, therefore, concluded that the actions taken in this rule represent the least burdensome means of reducing the risk posed by exposure to asbestos during the life cycles of the products that are subject to the bans.

10. Based on the reasons summarized in this preamble, this rule bans most asbestos-containing products in the U.S. because they pose an unreasonable risk to human health. These banned products account for approximately 94 percent of U.S. asbestos consumption, based on 1985 consumption figures. The actions taken will result in a substantial reduction in the unreasonable risk caused by asbestos exposure in the U.S.

A few minor uses of asbestos and asbestos products are not included in the ban. These uses, which account for less than 6 percent of U.S. asbestos consumption based on 1985 data, do not pose an unreasonable risk, based on current knowledge. For some product categories, EPA was unable to find that the products pose an unreasonable risk because asbestos exposure is minimal over the product's life cycle relative to the exposures posed by other products. In other instances EPA currently has insufficient information about either asbestos exposure attributable to the products or the future availability of suitable substitutes to make a finding of unreasonable risk. Exposure information was considered insufficient in cases where monitoring data was largely unavailable for most major stages of a product's life cycle and too little was known about exposures during these stages to estimate exposure by analogy to those posed by other products. When no information is available for a product indicating that cost-effective substitutes exist, the estimated cost of a product ban is very high. In all of these cases, the risk reduction potential that EPA could quantitatively or qualitatively estimate as a result of possible regulatory actions could not be justified in light of the resultant costs, under the criteria of section 6 of TSCA.

Human health effects of asbestos and EPA's cancer risk extrapolation are discussed in Units V.A.1 and V.A.2 of this preamble. The extent of human exposure to asbestos and the resulting risks are discussed in Unit V.A.3 of this preamble. Asbestos substitutes are discussed in Units V.C. and V.F. of this preamble. EPA's evaluation of the viability of other regulatory options under TSCA is discussed in Unit V.E. of this preamble. EPA's evaluation of the viability of actions under authorities other than TSCA to control the risk posed by asbestos exposure is discussed in Units VI and VII of this preamble. EPA's estimates of the costs and benefits of this rule are discussed in Unit V.D. of this preamble. EPA's evaluations of the risks posed by the different categories of asbestos-containing products are summarized in Unit V.F. of this preamble.

A. Health Effects and Magnitude of Exposure To Asbestos

1. *Health effects.* The human health effects caused by exposure to asbestos are well-documented. This Unit reiterates the major health effects and the uncertainties that exist regarding this subject. More comprehensive analysis can be found in the *Airborne Asbestos Health Assessment Update* (Ref. 1), the *Report to the U.S. Consumer Product Safety Commission by the Chronic Hazard Advisory Panel on Asbestos* (Ref. 2), and *Asbestiform Fibers: Non-occupational Health Risks* (Ref. 3). Further responses to comments on this subject can be found in the Response to Comments document.

Asbestos is a chemical substance as that term is defined in section 3(2) of TSCA. It is well-recognized that asbestos is a human carcinogen and is one of the most hazardous substances to which humans are exposed in both occupational and non-occupational settings. As OSHA stated in its final rule, published in the **Federal Register** of June 20, 1986 (51 FR 22612), establishing a 0.2 fibers-per-cubic-centimeter (f/cc) PEL for asbestos, "OSHA is aware of no instance in which exposure to a toxic substance has more clearly demonstrated detrimental health effects on humans than has asbestos exposure." There is wide agreement that all types of asbestos fibers are associated with pulmonary fibrosis (asbestosis), lung cancer, and mesothelioma. Gastrointestinal cancer and other cancers at extrathoracic sites, as well as other lung disorders and diseases, have also been associated with asbestos exposure, although the consistency and magnitude of the excess risks of these

diseases are not as great as for lung cancer and mesothelioma. All of these asbestos-related diseases are life-threatening or disabling and cause substantial pain and suffering.

The conclusions reached by EPA regarding the health effects of asbestos exposure represent a widely accepted consensus of opinions of health agencies, scientific organizations, and independent experts. The major health effects of asbestos are summarized below.

a. *Lung cancer and mesothelioma.* Lung cancer has been responsible for the largest number of deaths attributable to occupational exposure to all of the principal commercial asbestos mineral types: chrysotile, amosite, crocidolite, and anthophyllite. Excess lung cancers have been documented among workers involved in asbestos mining and milling and in the manufacturing and use of a variety of asbestos products. Lung cancer risk appears to increase with both the level and duration of exposure. The latency period for the disease is generally 20 years or more after exposure. This means that lung cancer usually does not manifest itself until 20 years after the disease-initiating exposure. Most persons who develop lung cancer die within 2 years of diagnosis.

While both asbestos and cigarette smoking can separately increase risk of lung cancer, together they appear to interact synergistically to multiply lung cancer risk in humans. Commenters have suggested that smoking should be controlled to reduce the very high lung cancer risk due to combined asbestos exposure and smoking. However, even complete control of the smoking factor, if possible, would leave a substantial health risk since the asbestos-related risk of lung cancer to nonsmokers and of mesothelioma (which is apparently not affected by smoking) would remain.

Mesothelioma is a rare cancer of the lining of the lung (pleural mesothelioma) or abdominal cavity (peritoneal mesothelioma). Mesothelioma has been associated with occupational exposure to chrysotile, amosite, and crocidolite. Epidemiological studies suggest that mesothelial risk rises rapidly with time from the onset of exposure. Risk also increases with both intensity and duration of exposure. The latency period for the disease is generally between 25 and 30 years. In almost all instances, the disease is rapidly fatal, with survival times of less than 2 years after diagnosis. There is no evidence that cigarette smoking increases the risk of developing asbestos-induced mesothelioma.

Most epidemiological studies have been conducted on occupational populations exposed to high airborne concentrations of asbestos for relatively long periods of time. However, short-term occupational exposures have been shown to cause serious health effects. For example, one group of asbestos factory workers with less than 2 months of occupational exposure had a two-fold increase in lung cancer risk (Ref. 4). Also, many documented cases of mesothelioma have been linked to extremely brief exposures to relatively high concentrations of asbestos (Ref. 1).

There is also direct evidence of adverse health effects from non-occupational asbestos exposure. Increased risk of pleural abnormalities and mesothelioma have been observed in families of asbestos workers, presumably due to the dissemination of fibers in the home from contaminated work clothes. Mesotheliomas have also been documented in populations whose only identified exposure was living near asbestos mines or asbestos product factories, or shipyards with heavy asbestos use (Ref. 1).

Animal studies confirm the epidemiological findings regarding the health effects of asbestos exposure. All commercial forms of asbestos have been shown to produce lung tumors and mesothelioma in laboratory animals with no substantial differences between the form of asbestos forms in carcinogenic potency.

b. *Gastrointestinal cancer.* A number, of epidemiological studies have documented significant increases in the incidence of gastrointestinal cancer due to occupational exposure to asbestos. Gastrointestinal cancers consist largely of cancers of the esophagus, stomach, colon, and rectum. However, the magnitude of gastrointestinal cancer risk is lower than that of lung cancer or mesothelioma and no dose-response data are available.

A number of commenters argued that the evidence indicating a positive association between gastrointestinal cancer and asbestos exposure is weak and inconclusive. They indicated that unidentified facts may cause the excess gastrointestinal cancers. Commenters suggested that many of the excess cancers attributed to gastrointestinal sites may be due to misdiagnosis of peritoneal mesotheliomas. Other commenters contended that in the absence of any positive experimental evidence, the epidemiology data alone do not support the conclusion that exposure to asbestos can cause gastrointestinal cancer.

EPA recognizes that the evidence supporting an association between gastrointestinal cancer and asbestos exposure is not as strong as that which is available to support an association between asbestos exposure and lung cancer and mesothelioma. However, after weighing available information, EPA believes that there is evidence of a strong causal relationship between asbestos exposure and gastrointestinal cancer excess. This evidence includes the following: (1) A statistically significant increase in gastrointestinal cancer was found in 10 of 23 epidemiological studies. (2) A consistent relationship exists between increased gastrointestinal cancer risk and increased lung cancer risk (approximately 10 to 30 percent of the lung cancer excess). (3) It is biologically plausible that asbestos could be associated with these tumor sites, because it is conceivable that the majority of fibers inhaled are cleared from the respiratory tract and subsequently swallowed, allowing the fibers to enter the gastrointestinal tract (Ref. 5). Additionally fibers may be swallowed directly. (4) One study demonstrated some evidence of carcinogenicity in male rats fed diets containing intermediate range size chrysotile asbestos (65 percent 10 microns in length) (Ref. 6).

Further, EPA does not accept the argument that all gastrointestinal cancers identified in the epidemiology studies described above are the result of misdiagnosis. Cancers of some gastrointestinal cancer sites (e.g., stomach and pancreas) could be the result of misdiagnosis of peritoneal mesotheliomas. However, this does not account for all of the excess cancers seen at sites such as the colon or rectum. OSHA, in its final rule lowering the asbestos PEL concluded that the studies conducted to date "constitute substantial evidence of an association between asbestos exposure and a risk of incurring gastrointestinal cancer." EPA agrees with this conclusion.

c. *Cancers at other sites.* Increased risk of cancers other than mesothelioma and lung and gastrointestinal cancers have been observed in populations occupationally exposed to asbestos. An excess of laryngeal cancer in asbestos workers has been reported in a number of studies (Ref. 2). Available data, however, indicate that there may be an interaction between smoking and asbestos exposure in the etiology of laryngeal cancer. Elevated risk of kidney cancer has also been observed in two epidemiological studies (Refs. 7 and 8). In addition, an increased incidence of

ovarian cancer has been found among female workers in three studies (Refs. 9, 10, and 11). Therefore, evidence suggest an association between asbestos exposure and cancers other than lung cancer, mesothelioma, and gastrointestinal cancer. However, because of study limitations, inconsistencies among studies, and the possibility of misdiagnosis of disease, the relationship between asbestos exposure and cancer at these extrathoracic sites is not clear. Because of this uncertainty, EPA did not calculate the risk of cancers at other sites for purposes of the quantitative risk assessment for this rule.

d. *Asbestosis.* Asbestosis is a disabling fibrotic lung disease that has been associated with high levels of occupational exposure to asbestos. Clinical signs and symptoms associated with asbestosis include shortness of breath, pulmonary functional changes, basal rales, and small, mainly irregular, opacities on chest radiographs. Asbestosis can both appear and progress many years after the termination of exposure. All types of asbestos have been associated with the development of asbestosis. Epidemiological data indicate that the incidence rate increases and the disease becomes more severe with increasing dust level and duration of exposure. This has also been confirmed in animal studies via inhalation exposure. It is not clear whether an exposure threshold exists for asbestosis. However, there is no available evidence that disabling asbestosis is caused by non-occupational asbestos exposure or relatively low levels of occupational exposure. Therefore, the risk of disabling asbestosis from low levels of exposure to asbestos was not calculated for purposes of the quantitative risk assessment performed for this final rule.

e. *Effect of fiber type.* A number of commenters argued that chrysotile, the major commercial form of asbestos, is far less carcinogenic than the amphibole asbestos types (e.g., amosite and crocidolite) and thus, different carcinogenic potency values for chrysotile and amphiboles should be used for quantitative risk assessment.

For lung cancer, EPA finds the evidence supporting this argument to be inconclusive and inconsistent. Some of the lowest unit risk factors observed for lung cancer are among cohorts exposed to predominantly chrysotile asbestos (Refs. 12 and 13). However, some of the highest unit values are also from exposure to primarily chrysotile (Refs. 14 and 15). This suggests that chrysotile exposures can confer an extremely high risk of lung cancer. The cause of the observed variability in lung cancer unit risk for chrysotile in different studies is unknown, but some of the variabilities can be attributed to differences in the fiber characteristics associated with different processes, uncertainties due to small numbers in epidemiological studies, and incorrect estimates of the exposures of earlier years (Refs. 1 and 2).

For mesothelioma, EPA recognizes that peritoneal mesotheliomas have largely been associated with crocidolite exposure and that there is some epidemiological evidence suggesting that crocidolite is more potent than chrysotile in inducing pleural mesothelioma. However, definitive conclusions concerning the relative potency of various fiber types in inducing mesothelioma cannot be made on the basis of available epidemiological information. This is because: (1) Mesotheliomas are difficult to diagnose; (2) dose-response information for mesothelioma for individual fiber types is unavailable; (3) exposure data are inadequate; and (4) exposure to crocidolite fibers could be higher because they become airborne more easily than other fiber types. Further, numerous animal studies have demonstrated that chrysotile is at least as potent as amphiboles in inducing both mesothelioma and lung cancer by inhalation, as well as by injection or implantation.

Available information indicates that the combined epidemiological and animal evidence fail to establish conclusively differences in mesothelioma hazard for the various types of asbestos fibers. In view of the inconsistencies and uncertainty regarding this issue, EPA believes that it is prudent and in the public interest to consider all fiber types as having comparable carcinogenic potency in its quantitative assessment of mesothelioma risk. EPA does recognize that some evidence exists indicating that amphiboles may be more potent in inducing mesothelioma than chrysotile. However, the need for further study to resolve this issue, and the resulting delay in EPA's risk assessment for asbestos, cannot be justified given the volume of data showing the carcinogenic potency of all fiber types. Similar conclusions were reached previously by other scientific bodies and agencies (Refs. 2, 3, and 16).

f. *Effect of fiber dimension.* A number of commenters stated that while long fibers (>5 microns) are associated with biological activity, fibers less than 5 microns in length may be innocuous. According to these commenters, short fibers to not contribute to any significant risk to humans and therefore EPA should base its cancer risk estimates on only fibers longer than 5 microns in length.

Injection or implantation studies in animals indicate that longer, finer fibers of the same asbestos fiber type appear to have greater carcinogenic potential than shorter, thicker fibers (Refs. 1, 2, and 3). Results of several recent inhalation studies also indicate that long fibers (>5 microns) are more carcinogenic than short fibers (<5 microns) (Refs. 17 and 18). However, studies performed to date have not established fiber dimensional thresholds for potency.

Although animal studies have provided an indication of the qualitative relationship between fiber dimension and carcinogenic potency, they are not used for quantifying dose-response relationships for humans because EPA believes that extrapolation of data from human exposures in the workplace to human exposure in non-occupational settings is more appropriate. EPA based most of its estimates of non-occupational exposure in terms of the total mass of asbestos released to air. To estimate health risks from the non-occupational exposure, the mass measurements need to be converted to the equivalent optical fiber concentration (fibers longer than 5 microns and greater than 0.25 μm in diameter) that are used as dose measurements in workplaces for which dose-response relationship has been developed. Some data exist that relate optical fiber counts to the total mass of asbestos. The range of conversion factors between optical fiber count mass concentration is large (5 to 150 $\mu g/m^3/f/ml$) because these values vary with different environments and sampling techniques, and any average value derived from this range has a large uncertainty. Despite the uncertainties, they are the best data available for such assessments and therefore EPA believes that for the purpose of extrapolating to low mass concentration from fiber count, the approximate geometric mean, 30 $\mu g/m^3/f/ml$ is appropriate (Ref. 1). Additionally, uncertainty may be introduced in the assumption made in this assessment that the fiber size distribution is the same in both occupational and non-occupational air environments. The assumption is considered prudent in view of the fact that qualitatively, short fibers are found more predominantly than long fibers in both occupational and non-occupational settings. The same approach has been

adopted by the National Academy of Sciences (Ref. 3) and the Chronic Hazard Advisory Panel (CHAP) on Asbestos (Ref. 2) in estimating human health risk associated with low-level non-occupational exposure to asbestos.

g. *Potency values.* Commenters stated that cancer risks vary from one industry segment to another and maintained that EPA should use different potency values for different industries in its quantitative cancer risk assessment for asbestos. Most of the commenters singled out two segments of the asbestos industry, manufacturers of chrysotile friction products and A/C products made from chrysotile, in which the lung cancer risks were considerably lower than those in chrysotile textile production.

EPA has concluded that the data supporting this suggestion are not convincing because of significant methodological or statistical uncertainties in these studies. Further, when the 95 percent confidence limits on the potency factors for lung cancer are considered along with the uncertainties associated with estimates of exposures, there is considerable overlap of the unit risk estimates across industry segments and fiber types (Ref. 1). Accordingly, EPA believes that its use of a geometric mean unit risk derived from 11 studies that cover all industrial processes (with the exception of mining and milling) and that provide a dose-response relationship is reasonable. This approach recognizes that lower cancer risks may exist in some industry segments because of uncertainties in the measurement of exposure or statistical variabilities, but the potency factor for asbestos is considered to be equivalent across industry segments. In fact, a follow-up study (Ref. 24) reported a lung cancer unit risk of 0.0076 for A/C production workers who were exposed predominantly to chrysotile. This value is closer to the best estimate for the fractional increase in lung cancer, K_L, for asbestos exposure, 0.010. This study provides further support for the use of a single potency factor for all asbestos exposure scenarios.

2. *Quantitative Risk Assessment.* Risk assessment usually requires extrapolation between different routes of exposure, from animals to humans, and from test groups to the population at large. Despite uncertainties, risk assessment provides an estimate of the magnitude of risk for making decisions about controlling exposure to a hazardous substance. However, because health risk from asbestos exposure is estimated using direct evidence from a large number of epidemiological studies, the risk posed by asbestos exposure is far more certain than that posed by exposure to other hazardous substances for which only animal data and/or fewer, less conclusive human data are available.

Data from a study of U.S. insulation workers allow models to be developed for the time and age dependence of lung cancer and mesothelioma risk (Ref. 4). Thirteen other epidemiological studies demonstrate a linear dose-response relationship between cumulative occupational asbestos exposure and lung cancer. Although much less data are available regarding a dose-response relationship for mesothelioma, existing data suggest a linear response with dose and duration of exposure. To obtain dose-response estimates for current occupational and non-occupational exposures to asbestos, it is necessary to extrapolate the effects observed in occupational settings with historically high exposure to anticipated effects at low levels of exposure. This is based on a no-threshold linear extrapolation. The assumption of no-threshold low dose linearity for asbestos carcinogenicity is reasonable and well-supported because (1) cumulative dose-response relationship have been shown in several epidemiological studies over a wide range of exposure; (2) threshold dose has not been demonstrated; and (3) the concept is consistent with accepted theories of carcinogenesis.

Both the lung cancer and mesothelioma models used for this final rule have been adopted by OSHA (Ref. 16). The National Academy of Sciences (Ref. 3) also adopted a similar no-threshold model to estimate lung cancer risk to non-occupational populations from exposure to asbestos. No-threshold linear models have widespread support (Refs. 2, 3, 16, 22, and 23). The derivation and validation of the models as well as the assumptions and uncertainties involved in the model, are discussed in detail in Refs. 1, 2, and 21.

$d_{(t-10)}$ = duration of exposure from onset until 10 years (minimum latency period) before present (years).

f = intensity of exposure to fiber equivalents longer than 5 microns (f/cc).

K_L = dose response constant = 0.010. (Refs. 1 and 21)

Because mesothelioma is a very rare form of cancer in the general population, an absolute risk model is used to estimate excess mesothelioma incidence due to asbestos exposure. According to this model, the added risk of mesothelioma is proportional to the cumulative exposure to asbestos and increases in proportion to the third power of time after onset of exposure. This model incorporates a delay of 10 years for the manifestation of disease (i.e., a minimum latency period of 10 years). Four epidemiological studies provided quantitative data suitable for calculation of potency factors for mesothelioma (K_M). EPA (Ref. 1) selected an average value for K_M of 1.0×10^{-8} as the best estimate for environmental exposures. Although it was not possible to determine directly the 95 percent confidence limits on K_M, a multiplicative factor of 5 was estimated for the average value of K_M, and a multiplicative factor of 20 was estimated for its application to any unstudied exposure circumstance.

The absolute risk model for mesothelioma can be expressed as:

$$I_M(t, d, f) = K_M \cdot f[(t-10)^3 - (t-10-d)^3] \text{ for } t > 10 + d$$
$$= K_M \cdot f(t-10)^3 \text{ for } 10 + d > t > 10$$
$$= 0 \text{ for } t < 10$$

Lung cancer is best described by a relative risk model. According to this model, excess risk of lung cancer from asbestos exposure is proportional to the cumulative exposure (i.e., the duration of exposure times the intensity of exposure, in terms of fiber-year/cc) and the background risk in the absence of exposure. EPA used this model and data from 11 studies of workers exposed to asbestos in textile production, asbestos product manufacturing, and insulation application to calculate potency factors for lung cancer (K_L, the fractional increase in risk per fiber-year/cc of exposure) (Ref. 1). The geometric mean value of K_L for these studies, 0.010, was used as the best estimate for environmental asbestos exposure. The 95 percent confidence limits for this value are 0.0040 and 0.027 (multiplicative factor of 2.5) based on an analysis of variances in the 11 studies from which the K_L was calculated. The 95 percent confidence limits for K_L that might be applied in any unstudied exposure circumstances are estimated to be a multiplicative factor of approximately 10.

The relative risk model for lung cancer can be expressed as:

$$I_L = I_E [1 + K_L \cdot f \cdot d_{(t-10)}]$$

where:

I_L = age – specific lung cancer death rate with exposure to asbestos.

I_E = age – specific lung cancer death rate without exposure to asbestos.

t = time from onset of exposure until present (years).

where:

I_M (t, d, f) = mesothelioma incidence at t years from onset of exposure, from duration d, at concentration f.

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K_M = carcinogenic potency expressed as the incidence of mesothelioma per unit of exposure in fiber-years ^{3}/cc.
f = intensity of exposure to fiber equivalents longer than 5 microns (f/cc).
t = time after exposure in years.
d = duration of exposure in years. (Refs. 1 and 21)

In extrapolating rates of excess asbestos-related deaths from gastrointestinal cancer, EPA adopted the approach used by OSHA (Ref. 16) in assuming that excess gastrointestinal cancers will be equal to 10 percent of those for lung cancer in each time period. However, this approach may actually understate the rate of gastrointestinal cancers. OSHA noted that this approach could result in an underestimate, and EPA's analysis indicates that the excess gastrointestinal cancer rate could be as high as 30 percent of the lung cancer rate (Ref. 1).

There are inconsistencies in findings among different epidemiological studies with regard to excess mortality for cancers at sites other than the lung, mesothelial linings, and gastrointestinal tract (e.g., laryngeal, kidney, and ovary cancers). Also, there are uncertainties about the development of disabling asbestosis at low exposure. Therefore, EPA has not made numerical estimates of the risks for these asbestos-related diseases for purposes of this analysis. Since estimates of these diseases are not included in the overall risk estimates, EPA believes that the total health risk posed by exposure to asbestos is underestimated.

A number of commenters contended that it is inappropriate to adhere to a linear, no-threshold dose-response model for estimating lung cancer and mesothelioma risk from asbestos exposure. They cited a number of epidemiological studies which they stated show that there is a threshold below which asbestos-related disease does not occur (Refs. 12, 13, 25, and 26). EPA has reviewed these studies and found that they are all insufficient to detect a threshold at low doses (Ref. 1).

Other commenters expressed concern about the low-dose linearity assumption because the shape of the dose-response curve at extremely low doses is subject to conjecture and that the use of no threshold linear model greatly overestimates true risk. Others believe that asbestos is a non-genetic carcinogen. As discussed above, EPA has concluded that the low-dose linearity assumption is reasonable because direct evidence for linearity of carcinogenic response associated with asbestos exposure is found in several epidemiological studies over a wide range of exposure. Whether the response is linear at very low doses is not known (Ref. 1). In the discussion of the choice of mathematical procedures in carcinogen risk assessment, the White House Office of Science and Technology Policy (OSTP) stated: "When data and information are limited, however, and when such uncertainty exists regarding the mechanism of carcinogenic action, models or procedures which incorporate low-dose linearity are preferred when compatible with the limited information" (Ref. 27). EPA generally concurs with this position as reflected in EPA's Guidelines for Carcinogen Risk Assessment (51 FR 33992). Thus, given the lack of complete understanding of the mechanisms by which asbestos induces cancer, and the goal of protecting human health, EPA believes that the choice of low-dose linearity is most prudent.

3. *Magnitude of human exposure.* Exposure to asbestos is discussed in more detail in the Asbestos Exposure Assessment (Ref. 29), the Asbestos Modeling Study (Ref. 30), and the Non-occupational Asbestos Exposure Report (Ref. 31). Further responses to comments on this subject can be found in the Response to Comments document.

Most of the population of the United States is exposed to some level of airborne asbestos from asbestos-containing products. Asbestos products have been in wide use in the U.S. for decades. Although U.S. asbestos consumption has declined in recent years, thousands of tons of asbestos are still used annually in the manufacture in the U.S. of the products that are subject to this rule (Ref. 21). Fibers can be released to the air and exposure can occur at all stages of the life cycle of asbestos products, including mining, processing, and the transport, installation, use, repair, removal, and disposal of asbestos-containing products.

Once released, asbestos fibers exhibit a number of characteristics that tend to increase human exposure to them. They are ordorless and fibers of respirable size are largely invisible, presenting risk to persons who are not aware that they are being exposed. They are also extremely durable and possess aerodynamic properties that allow them to remain suspended in the air for a long time and to reenter the air readily after settling out. Asbestos, therefore, can persist for a very long time in the environment and can travel extended distances through the air. These factors increase the intensity, duration, and area of exposure and complicate attempts to control or reduce exposure.

EPA has quantified many of the life cycle exposures anticipated from the continued manufacture, importation, processing, and use of the asbestos products that are subject to this rule. EPA estimates that over 135,000 full-time equivalent (FTE) workers are exposed during the life cycles of these products to levels of asbestos carrying lifetime risks of between 7 in 10,000 and 7 in 1,000 (Ref. 29). At least 40 million consumers face a potential hazard as they install, use, repair, and dispose of these products (Ref. 31). In addition, the general population is exposed to asbestos that is released into the ambient air during all of these activities. Both consumers and members of the general population frequently incur individual lifetime risks of 1 in 1,000,000 or greater of developing cancer from these exposures (Ref. 31).

There are other exposures associated with the continued production of asbestos products that cannot be readily quantified, but which could pose a significant risk to large populations. As discussed in more detail below, many releases of asbestos from asbestos products take place intermittently and over long periods, making them difficult to measure. Because of the difficulty of obtaining accurate monitoring data for these releases, they have not been quantified for purposes of this rule's analyses, but qualitative evidence indicates that cumulatively, they are probably significant. Similarly, because it is difficult to quantify the tendency of asbestos to be resuspended in air, EPA has not quantified in its analyses the risk posed by asbestos that is repeatedly reentrained after settling out. However, some reentrainment certainly occurs, and asbestos may pose some threat years after its initial release from asbestos products. These exposures, although unquantified, have the potential to affect large numbers of people for long periods of time. Thus, in addition to the exposures quantified for this rule, they are a source of considerable concern.

a. *Occupational exposures.* Since EPA's proposed rule was issued, OSHA has promulgated new occupational exposure standards for asbestos, lowering the 8-hour Time Weighted Average (TWA) PEL from 2.0 to 0.2 f/cc (51 FR 22612). OSHA has also set an Excursion Limit (EL) of 1 f/cc as a half-hour TWA in a September 1988 amendment to the standards (53 FR 35610). The probable impact of the 0.2 f/cc PEL on workers' exposures to asbestos was discussed in the proposal. As noted both in that proposal and in OSHA's rulemaking, exposures at the new PEL still pose significant risks, as do exposure at the EL. OSHA notes that the new PEL and EL do not represent "safe" levels of asbestos exposure, but are the lowest levels that industry can feasibly achieve during current control technologies. EPA estimates that under the new PEL, approximately 135,000 FTE workers engaged in the manufacture, processing, installation, repair, and disposal of the products to be banned are exposed to levels of airborne asbestos between 0.02 f/cc and 0.2 f/cc (Ref. 29). Assuming that workers are exposed to these levels over a 45-year working lifetime, they incur individual risks of between 7 in 10,000 and 7 in 1,000 of developing cancer (51 FR 22644).

A number of commenters criticized the occupational exposure data base used to support the proposal as being outdated and incomplete. Much of that data came from the 1982 TSCA section 8(a) reporting rule (40 CFR 763.60). In response to these comments and because of the passage of time since the proposal, EPA has updated and expanded its analysis of occupational exposures, making use of available literature and data bases and conducting surveys of asbestos use and exposure levels. Materials used by EPA in the updated analysis include OSHA and Mine Safety and Health Administration (MSHA) compliance inspection reports, National Institute for Occupatioal Safety and Health (NIOSH) studies, academic and industry studies, and public comments. In 1986 and 1987, EPA conducted the Asbestos Exposure Survey and gathered exposure and release information on the manufacture of most of the major asbestos product categories from primary and secondary manufacturers of asbestos products. EPA gathered data on populations engaged in manufacturing in the 1986–87 Asbestos Market Survey.

EPA was able to obtain extensive information on occupational exposures during primary and secondary manufacturing for many product categories. Air monitoring data for primary and secondary manufacturing were available for many products from the 1986–87 EPA Exposure Survey, OSHA inspections, and numerous studies. EPA has estimated that approximately 9,300 workers in the U.S. are exposed to asbestos during the primary and secondary manufacturing of the products that are affected by this rule (Ref. 29). These exposures are listed in Table I of this Unit.

EPA also gathered information on occupational exposures from the installation, repair, and disposal of most friction and construction products, the two product groups for which exposures are likely to be highest during these life cycle stages. For the installation and removal of construction products (roofing felt and A/C pipe, sheet, and shingle), air monitoring data were available from several studies. Occupational populations (in terms of FTEs) were estimated on the basis of crew size, productivity, and total manufacture and import volumes of the products. Exposures associated with the replacement and repair of friction materials were estimated in a similar fashion. EPA estimates that 125,400 FTEs are exposed to asbestos during the installation, repair, and disposal of asbestos friction and construction products. More than 125,400 workers are actually exposed to asbestos during these processes (OSHA estimates that 556,320 persons are exposed), but many are exposed on a less than a full-time basis (Ref. 29). FTE exposures are listed in Table I of this Unit.

Very little monitoring data on occupational exposures during installation, repair, and disposal were available for the other asbestos products that are subject to this rule, and EPA's estimates therefore do not include exposures from the installation, repair, and disposal of these products. However, on the basis of the limited data that exist for these products and on the basis of data for similar products and processes, EPA believes that significant exposures during installation, repair, and disposal of these products do take place (Ref. 57). Therefore, EPA believes that its analysis underestimates exposures associated with these products. EPA conducted an analysis in order to gauge the possible impact of the absence of some occupational exposure data on calculations of the rule's benefits; the results of this analysis appear in Table II of this Unit and Table VIII of Unit V.D.

In general, when data relating to a certain type of exposure could not be obtained, EPA did not quantify that type of exposure, reflecting what EPA considers to be a reasonable approach to risk assessment. EPA finds the exposures quantified for this rule sufficient in themselves to support EPA's risk assessment conclusions for asbestos. However, EPA notes that if all exposures to asbestos from the products affected by this rule could have been quantified, the benefits calculated for this rule would probably have been significantly greater than noted in EPA's risk assessment, lending further support to EPA's unreasonable risk finding for asbestos.

Much of EPA's occupational exposure data base for this rule represents exposure that took place before OSHA's lowered PEL of 0.2 f/cc became effective in 1986. To estimate exposures taking place after the lowering of the PEL, EPA first lowered to 0.2 f/cc all data points which reported exposures above 0.2 f/cc. EPA then averaged these points with those points that were reported as lower than 0.2 f/cc for each job category in each product category. For purposes of this analysis, EPA considered it appropriate to assume that previously high exposures will probably not be lowered significantly below the PEL. OSHA determined that 0.2 f/cc, which is 10 times lower than the previous PEL, was the lowest PEL that most of the asbestos industry could feasibly achieve using work practices and engineering controls. The asbestos industry challenged OSHA's standards, arguing that a PEL of 0.5 f/cc was the lowest feasible standard, and OSHA acknowledged that some industry sectors might not be able to control exposures to 0.2 f/cc without the use of respirators. Thus, while EPA believes that it is possible that some companies are below the 0.2 f/cc PEL by some margin, it is probable that others are not and that some of these actually exceed the PEL. EPA believes that adjusting previously high exposure points to 0.2 f/cc is a reasonable means of adjusting for facilities that may be above the PEL.

In estimating the benefits of its 0.2 f/cc PEL, OSHA used somewhat different assumptions than EPA has in this rule to estimate the impact of the PEL on workplace exposure levels. OSHA's analysis adjusted all exposures in its data base that were at or above 0.2 f/cc to 0.15 f/cc in cases where OSHA assumed that engineering controls were used. In cases where OSHA assumed that respirators were used, OSHA reduced the exposures by a factor equal to the effective protection factor of the respirator. OSHA assumed that exposures below 0.2 f/cc would be reduced by 20 percent due to engineering controls. OSHA's approach assumes not only general compliance with its fiber level standards, but also that, on average, those subject to the PEL will reduce their workplace exposures significantly below the standards to ensure compliance. OSHA did not factor non-compliance into its analysis of the costs and benefits of the PEL because both costs and benefits decline in proportion to any non-compliance, leaving cost-benefit ratios for the OSHA rule unchanged.

On the other hand, EPA's assessment of the costs and benefits of this rule is affected by non-compliance with the OSHA PEL. EPA's approach assumes general compliance with the PEL, but also accommodates the possibility that some level of non-compliance with the standard exists. As is discussed further below, OSHA issued many citations for violations of the asbestos standards in the first year after they went into effect. Using OSHA's fiber level adjustment assumptions in place of EPA's to estimate the effects of this rule results in an approximately 20 percent lower estimate of cancer-cases-avoided for occupational settings. However, if a non-compliance rate of 2 percent (a relatively low rate based on non-compliance rates in other Federal health and environmental regulatory settings) is assumed in conjunction with the OSHA fiber level adjustments, the resulting estimated benefits are virtually the same as those estimated using EPA's assumption about fiber level average exposure (Ref. 21). Therefore, EPA believes that its assumptions are appropriate for purposes of calculating the benefits of this rule. In practice, given some level of non-compliance with OSHA's asbestos regulations, actual cancer cases that would have occurred as a result of that non-compliance will now be prevented by this rule's product bans.

One commenter maintained that EPA should base its analyses solely on the data collected before OSHA promulgated its asbestos standard and should not adjust the data to reflect compliance with the standard. However, EPA considers it reasonable to assume that previously high exposure levels have been reduced to some lower level as a result of OSHA's action, and as discussed above, EPA has selected the PEL as a logical approximation of this level. Other commenters contended that EPA's approximation of occupational exposures taking place after the lowering of the PEL was too high, arguing that because exposure levels vary considerably from day to day, industry keeps average exposures significantly below the PEL to guarantee constant compliance. These commenters made similar arguments during OSHA's rulemaking setting the new PEL. However, in that instance, the commenters used the variability argument to support a claim that the PEL was infeasible because average exposures could not be kept low enough to guarantee constant compliance. OSHA refuted this argument, noting that day-to-day variability can be reduced by employers and that while exposures might be above the PEL some of the time, a finding of technological feasibility does not require that employers be able to comply with a standard constantly (51 FR 22653).

Moreover, data from recent OSHA inspections do not support the assertion that current exposures are significantly below the PEL. OSHA cited employers for nearly 1,000 violations of its asbestos standards in the first year after the standards went into effect, and the violation most frequently cited was the failure of employers to institute engineering controls to maintain employee exposure at or below the PEL (Ref. 32). Personal monitoring data from recent inspections showed that 91 out of 655 establishments inspected had concentrations of airborne asbestos above the PEL, and the average concentration level for all establishments inspected was 0.29 f/cc, 45 percent higher than the PEL (Ref. 33). While respirators were in use in many of the establishments with air concentrations higher than the PEL, 20 percent of these establishments were cited for violations of respiratory protection provisions or for violations of the PEL (Ref. 49).

On a related issue, some commenters stated that EPA had ignored the effect of using best available control technology (BACT) to reduce exposures, arguing that industry-wide exposure values are "not relevant to determination of the consequences of an effective PEL and consistent use of good work practice." As is discussed more fully in Unit V.E. and in the Response to Comments document, EPA has analyzed the likely effectiveness of mandating the use of BACT and has concluded that this regulatory option would not sufficiently reduce exposures to asbestos from the products affected by this rule. For calculating the cancer-cases-avoided through regulation, EPA considers existing rather than best-case exposures to be the appropriate baseline. The evidence discussed in the preceding paragraphs indicates that many workplaces do not utilize BACT and that the adjustments EPA has made to its exposure data account for the impact of the 0.2 f/cc PEL. Where BACT is utilized, EPA's analysis has taken it into account. For instance, in its analysis of exposures during brake repair, EPA estimated that 9.6 percent of brake repair shops used BACT, and EPA calculated an average of industry-wide exposures including the relatively low exposures from this group.

On September 14, 1988 (53 FR 35610), OSHA amended its Asbestos Standards to incorporate an EL, which limits allowable short-term exposures to 1 f/cc over a half-hour period. OSHA took this action after noting that controlling episodic exposures to asbestos would lower the significant risk posed by asbestos in the workplace. However, while the EL will probably reduce workplace exposures, EPA does not believe that this reduction will be very great. EPA bases its judgment on a number of observations regarding the nature of and circumstances surrounding episodic exposures.

First, many exposures that are episodic are also unpredictable, defying attempts to control them. In industrial settings, episodic exposures are likely to be associated with unexpected events such as equipment breakdown (53 FR 35620). In the maintenance and repair sector of the construction industry, episodic exposures take place when individuals who only occasionally come into contact with asbestos materials and who may not recognize such materials disturb them accidentally or unwittingly in the course of their work (53 FR 35624). OSHA directs employers to conduct initial monitoring of employees' exposures where they "may reasonably be expected" to exceed the excursion limit. However, if peak exposures cannot reasonably be expected, they are unlikely to be either monitored for or protected against.

Second, the initial monitoring required to measure short-term, peak exposures where they are expected to occur is subject to error. To obtain accurate estimates of short-term exposures, monitoring must be conducted using the strictest sampling strategies and analytical techniques. If the proper protocol is not observed precisely, violations of the EL can go undetected (53 FR 35618 and 35619).

Third, where violations of the EL are detected and control measures are implemented, these control measures will frequently be ineffective. OSHA expects that for many of the employees exposed to predictable bursts of airborne asbestos, including workers in industry and in building maintenance and repair, respirator use will prove the only feasible means of controlling exposure (53 FR 35616 and 35624). Unfortunately, respiratory protection has not been found to be very reliable. OSHA ranked respirator use last in its recommended hierarchy of controls in its 1986 revision to the asbestos standards, observing:

> Respirators are capable of providing adequate protection only if they are properly selected for the concentrations of airborne contaminants present, properly fitted to the employee, properly and conscientiously worn by the employee, carefully maintained, and replaced when they have ceased to provide adequate protection. While theoretically it is possible for all of these conditions to be met, it is more often the case that they are not (51 FR 22692).

The drawbacks cited above are aggravated if those using the respirators are not accustomed to working with them or with asbestos. OSHA states in its amendment establishing the EL that it "is concerned about relying on respirator use to meet the EL in the maintenance and repair sector of the construction industry," where contact with asbestos is often only occasional (53 FR 35624). Finally, even if all the conditions mentioned above are met, respirators will do nothing to reduce the quantity of asbestos released into the immediate environment of respirator wearers. Thus, during the activity that generates the airborne asbestos, persons near the respirator wearer can be exposed to levels that are quite high even if they do not violate the EL; and after the activity, all persons in the area, including those who have removed their respirators, can be exposed to dust that remains airborne or that is reentrained after settling out.

Like respirators, other control measures may reduce some short-term exposures without having much impact on long-term exposures. Some control measures replace one opportunity for exposure with another. For instance, to reduce short-term exposures during brake repair, OSHA recommends that mechanics utilize either a solvent spray or a vacuum enclosure equipped with a High Efficiency Particulate and Aerosol (HEPA) filter. While both of these controls can be effective in reducing short-term exposures during the brake job, exposures can be high later if the asbestos-contaminated solvent is allowed to remain in the area to evaporate, or if care is not taken during the removal of the HEPA filter from the vacuum device (Ref. 29). Because establishments using HEPA vacuum enclosures are exempt from monitoring under the OSHA standard, high exposures during filter removal may not be detected. Again, as is the case for respirators, the effectiveness of the brake repair control measures in reducing overall exposures depends heavily on the knowledge and conscientiousness of the user. This is also true for shrouded tools, the control measure recommended by OSHA for reducing short-term exposures during the cutting of A/C pipe (53 FR 35622).

Fourth, the implementation of additional control measures will be difficult, expensive, and time-consuming for much of the regulated community, discouraging compliance with the EL. For instance, although some brake repair establishments servicing large government fleets utilize HEPA vacuum enclosures, smaller establishments repairing brakes less frequently are less likely to invest in these relatively expensive devices. Moreover, while employees in government brake repair shops are usually paid by the hour, employees in private establishments are often paid by the job, which discourages the use of time-consuming work practices and engineering controls (Ref. 50). A similar situation exists in the maintenance and repair sector of the construction industry where, as noted earlier, many smaller building firms may find it difficult to institute adequate respirator programs. In these industry sectors and others, limitations on resources and time may discourage the diligent use of control measures that is required to achieve substantial reductions in occupational exposures to asbestos. The record of compliance with OSHA's 0.2 f/cc PEL supports this projection. The provisions most frequently violated in the year after OSHA's 1986 PEL went into effect included the requirements to conduct initial and daily monitoring, to institute engineering controls, and to institute a respirator program, all of which are as important to achieving the EL as the PEL. In fact, achievement of the EL requires stricter application of these requirements than does achievement of the PEL, making uniform compliance more difficult. Moreover, the structure of the brake repair and building maintenance and repair industries, in which numerous, small businesses are the norm, will also make enforcement of the EL difficult.

In summary, attempts to reduce short-term exposures are likely to have only a limited effect in eliminating the exposure risks posed by asbestos. Peak exposures are both unpredictable and difficult to detect. Efforts to control them must rely largely on respirators and work practice controls, control measures whose effectiveness is uneven, depending upon the conscientiousness of the user. Implementation of these control measures also requires resources that employers and employees may have difficulty investing, and the record of compliance with the 0.2 f/cc PEL indicates that in many cases, the investment will not be made. For these reasons, occupational exposures will probably not be greatly lowered as a result of the EL. Although the estimates given below may slightly overestimate occupational exposures in those cases where the impact of the EL is greatest, EPA believes that any overestimate is likely to be minor overall.

The following table summarizes EPA's estimates of occupational exposures to asbestos by product category and process. This table and the other tables in this Unit present exposure levels in terms of millions of fibers breathed per year (10^6 f/yr), an index of exposure that accounts for varying breathing rates, air concentration levels, and frequencies and durations of exposure among workers, consumers, and the general population. Assuming an 8-hour workday, a 250-day work year (both conditions do not always hold in the industries below), and a breathing rate of 1.3 m^3/hr, 100×10^6 fibers/year = 0.038 f/cc. Assuming a 45-year working lifetime exposure, exposure to 100×10^6 fibers/year carries a risk of 1.29×10^{-3} (1.29 in 1,000) of developing cancer (51 FR 35610). In many cases, blank spaces in the table signify that information was not available, not that no exposure takes place. The high fiber levels and relatively low populations given for the repair and disposal of A/C shingle, A/C sheet, and roofing felt are a result of the FTE approach to the calculation of benefits (cancer-cases-avoided). In reality, per person fiber levels are lower and populations are higher. Except as noted, all exposure information presented in this Unit of the preamble dates from 1985, the most recent year for which a complete set of data was available in the Market and Exposure Surveys. In calculating the cancer-cases-avoided through the rule, however, EPA has assumed that exposed populations would decline at the same rate as production volumes.

TABLE I—OCCUPATIONAL EXPOSURES

Product	Primary manufact.		Secondary manufact.		Install.		Repair/disposal	
	Pop.	10^6 f/yr	Pop.	10^6 f/yr	Pop.	10^6 f/yr	Pop.	10^6 f/yr
Commercial paper [1]								
Rollboard [1]								

TABLE I—OCCUPATIONAL EXPOSURES—Continued

Product	Primary manufact.		Secondary manufact.		Install.		Repair/disposal	
	Pop.	10⁶ f/yr	Pop.	10⁶ f/yr	Pop.	10⁶ f/yr	Pop.	10⁶ f/yr
Millboard	12	145	448	57				
Pipeline wrap	35	134						
Beater-add gaskets [2]	235	110	1,296	57				
Roofing felt					396	439	253	296
Flooring felt [1]								
Corrugated paper [1]								
Specialty paper	2	111	149	57				
V/A floor tile [1]								
A/C pipe	286	270			933	296		
A/C flat sheet	53	478			49	723	61	2,080
A/C corrugated sheet					7	723	9	2,080
A/C shingles	11	473			323	130	225	244
Drum brake linings	1,565	385	2,719	125			86,398	376
Disc brake pads, LMV	916	390	300	146			32,568	386
Disc brake pads, HV	15	385					117	390
Brake blocks	283	377	19	127			3,935	388
Clutch facings [3]	239	406	48	166			73	125
Automatic transmission components	11	113						
Friction materials	191	398	28	195			43	120
Asbestos clothing [1]								
Sheet gaskets [2]	167	208	885	276				
Roof coatings	582	273						
Non-roof coatings	553	220						

[1] No U.S. manufacture or import.
[2] Exposures listed include a relatively small number of exposures posed during the production of specialty industrial gaskets, which are not banned by this rule.
[3] Repair and disposal figures include rebuilding only.

EPA was not able to quantify all occupational exposures to asbestos. As noted earlier, there are few data on exposures during the installation, use, repair, removal, and disposal of a number of products, although exposure is believed to take place during these processes for many of these products. Moreover, existing exposure data do not reflect the elevated levels of airborne asbestos that can result from unpredictable episodic events, such as the accidental disturbance of asbestos material by a maintenance worker.

As a means of representing part of this recognized but unmeasured exposure, EPA estimated occupational exposures associated with the installation, repair, and disposal of certain products on the basis of the limited data that exist for these products and processes and on the basis of exposure data for similar products and processes. Populations (in terms of FTEs) were estimated on the basis of production volumes and the person-hours typically required for the activity of concern. These estimates are presented in the table below, and are used as indicated in this preamble to assess the possible impact of the absence of some occupational exposure data on calculations of the rule's benefits.

TABLE II—ANALOGOUS EXPOSURE ESTIMATES

Product	Installation		Repair/Disposal	
	Population	10⁶ f/yr	Population	10⁶ f/yr
Millboard	20	57	20	57
Pipeline wrap	2,725	52	2,725	23
Beater-add gaskets [1]	53,417	57	53,417	57
Specialty paper	350	57	350	57
A/C pipe	(3)	(3)	1,458	296
Clutch facings [2]			475	395
Sheet gaskets [1]	5,741	276	5,741	276
Non-roof coatings	1,780	390		

[1] Exposures listed include a relatively small number of exposures posed during the production of specialty industrial gaskets, which are not banned by this rule.
[2] Exposures listed under Repair and Disposal here take place in addition to those listed under Repair and Disposal in Table I.
[3] See table I.

In view of the information presented in this Unit, EPA concludes that despite OSHA's recent promulgation of new, stricter standards for exposure to asbestos in the workplace, occupational exposures and risks remain unacceptably high. As noted earlier, OSHA has observed that risks at the 0.2 f/cc PEL remain significant but that feasibility constraints prevent OSHA from setting the PEL any lower. EPA's extensive data base on occupational exposures, including information collected after OSHA's 0.2 f/cc PEL became effective, indicates that individual risk remains higher than 1 in 1,000 for tens of thousands of people who work with asbestos products.

b. *Non-occupational exposures.* Outside of the work environment, most of the U.S. population is exposed to asbestos that is released during the life cycle of asbestos products. Some of these people are consumers who are exposed to asbestos as they install, use, repair, remove, and dispose of asbestos products that they have purchased, such as roofing materials and automotive brakes. Others are exposed to asbestos released into the ambient air during the

manufacture, installation, use, repair, and disposal of asbestos products. Risks from non-occupational exposure are not only incurred by very large populations but occasionally can be quite high. EPA estimates that approximately 40 million consumers and 19 million of those exposed to ambient asbestos incur risks of 1 in 1,000,000 or more of developing cancer from their exposure. Approximately 223,000 of those exposed to ambient asbestos incur lifetime risks of 1 in 10,000 or greater of developing cancer (Ref. 30).

Historically, consumer exposures to asbestos have not received as much attention as occupational exposures to asbestos, but they are a source of significant concern. While consumer exposures are not likely to be as frequent for individual consumers as occupational exposures are for workers, they are likely to be more intense than occupational exposures because consumers generally lack the exposure-reducing equipment and expertise available to protect workers. For instance, consumers replacing their brakes are not likely to use either solvent spray or a HEPA enclosure, the two pieces of equipment recommended by OSHA for use in reducing exposures to asbestos during brake repair. Consumers may in fact employ a shop or household vacuum cleaner to remove asbestos dust from brake assemblies, a technique that can lead to very high exposures because most vacuum cleaners fail to capture asbestos dust and simply force it back out into the air (Ref. 59).

Consumer exposures are also experienced by a much larger population than occupational exposures. According to two recent, independent consumer surveys, approximately 40 million consumers repair their own brakes once every 3 years, and other consumer surveys indicate that at least 840,000 consumers repair their own roofs every 4 years (Ref. 31). These figures do not include consumer populations exposed to asbestos from the installation, repair, and removal of gaskets, A/C sheet, and A/C shingle, other processing during which consumer exposures are likely, but not quantified. Populations annually exposed to asbestos during brake and roof repair are presented along with equivalent information for exposures to ambient asbestos in Table IV of this Unit. Air concentration levels were estimated from occupational data. This may result in underestimates because, as noted above, consumers are unlikely to have access to the exposure-reducing work practices and engineering controls used by workers.

The ability of asbestos to persist and to spread in the environment makes it a hazard to millions of people who may not have any direct occupational or consumer contact with asbestos products. Several tons of asbestos are released to the ambient air during mining and milling, during the manufacture of asbestos products, during brake use and repair, and during construction and demolition (Ref. 29). Additional asbestos is released from asbestos products during other parts of their life cycles. Once released, this asbestos accumulates and spreads in the environment. Air monitoring studies have demonstrated that urban areas, with their high concentrations of motor vehicles, construction, and demolition, generally have levels of airborne asbestos one or two orders of magnitude higher than rural areas. While rural background levels range between 0.01 and 0.1 $\mu g/m^3$, readings in large cities range from 1 $\mu g/m^3$ upward (Ref. 3). Thus, asbestos released during the life cycle of asbestos products is capable of elevating ambient levels of asbestos to several times the background level.

The release estimates and atmospheric modeling that EPA used to estimate ambient exposures capture at least part of the contribution of asbestos-containing products produced and used in the future to ambient levels. For this rulemaking, EPA calculated ambient exposures attributable to releases from mining and milling, the manufacture of asbestos products, brake use and repair, and construction with asbestos products. Since the proposal, these calculations have been expanded and refined to include ambient exposures from brake repair, construction, and demolition.

To estimate ambient exposures attributable to milling and product manufacturing, EPA first estimated air emissions per facility in milling and in each product category, using production volumes and the efficiency of pollution control equipment for each product category. EPA then used atmospheric dispersion modeling based on site-specific meteorological data to estimate ambient concentrations and exposed populations. Because the number of plants involved in the manufacture of asbestos products is quite large, monitoring air concentrations around each plant is impractical. The atmospheric modeling used in EPA's asbestos exposure analyses has been tested on other pollutants and has been found generally to predict their concentrations within a factor of two (Ref. 47).

As explained in the Asbestos Exposure Assessment (Ref. 29), EPA's methodology to estimate asbestos air releases from manufacturing and processing plants is presented in the March 5, 1987 draft EPA report entitled National Emission Standards for Asbestos-Background Information for Proposed Standards (Ref. 46). This document presents emission scenarios based on the only published study on the efficiency of baghouses in the asbestos industry. For each industry, three emissions scenarios were presented for baghouses operating in normal, non-failure mode: minimum, maximum, and "best estimate" emissions. These scenarios were based upon three different assumptions regarding the sensitivity of the gravimetric analytical method used in the study. For all three scenarios, TWA efficiencies were also calculated taking into account occasional baghouse failures. Time-weighted efficiencies for various asbestos product categories range from between 99.965 and 99.659 percent under the maximum emission scenario with occasional baghouse failure assumed to 99.99 percent for all products under the minimum emission scenario with no baghouse failure assumed. Under the "best estimate" emission scenario with occasional baghouse failure assumed, efficiencies range between 99.968 and 99.988.

For the maximum emission scenario with no baghouse failure assumed, a normal operating mode consisting of two efficiencies, 99.95 percent for asbestos product categories with high inlet concentrations (greater than 0.1 grain/cu ft) and 99.67 percent for product categories with low inlet concentrations (less than 0.1 grain/cu ft) was used. The asbestos product categories with high inlet concentrations, for which an efficiency of 99.95 percent was used, are asbestos-cement sheet and pipe, friction materials, and reinforced plastics. Those with low inlet concentrations, for which an efficiency of 99.67 percent was used, are paper, coatings and sealants, gaskets, and textiles. For purposes of comparison, EPA presents some results in this preamble using both the maximum emissions scenario with no baghouse failure assumed and the "best estimate" emissions scenario with occasional baghouse failure assumed. However, in many cases, EPA presents results in this preamble using only the maximum emissions scenario with no baghouse failure assumed.

EPA estimates that 122 million people are exposed to ambient asbestos

released during milling and product manufacturing. Under the maximum emission scenario with no baghouse failure assumed, a number of people would incur risks of at least 1 in 1,000 of developing cancer from a lifetime of exposure (Ref. 30). Under the "best estimate" assumption of baghouse efficiency with occasional baghouse failure assumed, many thousands of persons would incur risks of at least 1 in 10,000 of developing cancer from ambient exposure to asbestos from plant emissions.

Table III of this Unit, based on the maximum emissions scenario with no baghouse failure assumed, lists the exposure levels and populations associated with plant releases for each product category. For each category, exposure levels have been averaged over the entire population exposed. As detailed in Unit V.F and in the Asbestos Modeling Study, actual exposures are much higher for some people and lower for others, but the total populations and average exposures presented here provide a general gauge of exposure for each product category and were used to calculate the benefits (cancer-cases-avoided) of the rule.

Averaging has no effect on EPA's calculation of benefits because EPA uses a linear dose-response model to project cancer-cases-avoided. A linear dose-response model assumes that an individual's risk of developing cancer increases at a constant rate with his or her exposure to asbestos. Thus, for populations of equal size, a given increment of exposure carries the same amount of risk regardless of any differences that may exist between the populations in the magnitude of the exposures that they experience in addition to it. For example, if half of a population is exposed to an asbestos concentration of 0.19 f/cc and half is exposed to an asbestos concentration of 0.21 f/cc, the expected incidence of cancer for the entire population can be calculated by "moving," for the purposes of the analysis, 0.01 f/cc of exposure from the 0.21 f/cc population to the 0.19 f/cc population, yielding an average exposure level of 0.2 f/cc for the entire population. For populations of the same size, the 0.01 f/cc carries the same risk whether it is associated with an additional exposure of 0.2 f/cc or of 0.19 f/cc. As long as the cumulative population exposure (the sum of the products of the various exposure levels and the populations exposed to each) remains constant, it can be distributed in any way among the population without affecting the calculation of expected cancer cases. The following Table III, based on the maximum emissions scenario with no baghouse failure assumed, lists the exposure levels and populations associated with plant releases for each product category.

TABLE III—EXPOSURES TO AMBIENT ASBESTOS FROM PRIMARY AND SECONDARY MANUFACTURING

Product	Population exposed	Average exposure (10^6 f/yr)
Commercial paper	0	0
Rollboard	0	0
Millboard	5,747,875	0.0232
Pipeline wrap	4,847,937	0.0476
Beater-add gaskets [1]	37,169,666	0.0373
High-grade electrical paper	254,772	0.405
Roofing felt	0	0
Flooring felt	0	0
Corrugated paper	0	0
V/A floor tile	0	0
A/C pipe	3,313,602	0.167
A/C flat sheet	21,232,368	0.0218
A/C corrugated sheet	0	0
A/C shingle	891,143	0.00361

TABLE III—EXPOSURES TO AMBIENT ASBESTOS FROM PRIMARY AND SECONDARY MANUFACTURING—Continued

Product	Population exposed	Average exposure (10^6 f/yr)
Drum brake linings (LMV)	34,542,107	0.0575
Disc brake pads (LMV)	24,065,022	0.0214
Disc brake pads (HV)	1,704,883	0.000000827
Brake blocks	9,785,424	0.00388
Clutch facings	8,761,571	0.0027
Automatic transmission components	0	0
Friction materials	12,922,247	0.00234
Asbestos clothing	0	0
Sheet gaskets [1]	43,612,019	0.00561
Roof coatings	84,570,429	0.00233
Non-roof coatings	70,389,388	0.0000394

[1] Exposures listed include a relatively small number of exposures posed during the production of specialty industrial gaskets, which are not banned by this rule.

To calculate exposures to asbestos released into the ambient air from mining and construction sites and from brake repair facilities, EPA estimated emissions on the basis of its information on occupational exposures during mining, construction, and brake repair. Then EPA used atmospheric dispersion modelling to calculate concentration levels and exposed populations.

The following Table IV lists the exposures and populations associated with releases from construction and brake repair. The populations exposed are approximately equal to the urban population of the U.S. There are two exceptions: (1) brakes for light- and medium-weight vehicles, for which annual consumer exposures are added in, and (2) roof coatings, for which annual consumer exposures alone are counted.

TABLE IV—EXPOSURES TO AMBIENT ASBESTOS FROM CONSTRUCTION AND BRAKE REPAIR AND EXPOSURES FROM CONSUMER BRAKE AND ROOF REPAIR

Product	Process			
	Installation		Repair and disposal	
	Population	10^6 f/yr	Population	10^6 f/yr
Roofing felt	171,136,373	0.000018	171,136,373	0.0000067
A/C pipe	171,136,373	0.0000264		
A/C flat sheet	171,136,373	0.00000298	171,136,373	0.0000173
A/C corrugated sheet	171,136,373	0.00000043	171,136,373	0.0000025
A/C shingles	171,136,373	0.0000052	171,136,373	0.0000067
Drum brake linings (LMV)			163,793,774	0.0123
Disc brake pads (LMV)			179,442,394	0.00624
Disc brake pads (HV)			170,871,494	0.000000587
Brake blocks			170,871,494	0.0000171
Roof coatings	210,250	1.104		

To calculate exposures to asbestos released into the ambient air through brake use, EPA first calculated the total amount of asbestos emitted from brakes in each of 24 American cities, using studies on brake emissions and

estimates of miles traveled by vehicle type (because emissions vary by vehicle type) in each city. Second, EPA performed atmospheric dispersion modeling of these emissions to estimate concentrations in each city. Third, EPA grouped the cities together by population, obtaining average concentrations for each group. To estimate the populations exposed to each of these average concentrations nationwide, EPA added up the populations living in the U.S. cities similar in size to the cities of each group. Because none of the original 24 cities had fewer than 25,000 inhabitants and because vehicular traffic is less concentrated in rural areas than in cities, populations living in areas with fewer than 25,000 inhabitants were assumed to have no exposure to asbestos released during brake use. Finally, EPA averaged the estimated concentrations over all population groups from areas with more than 25,000 inhabitants, weighting each concentration by the population exposed to it. Using this technique, EPA estimates that 100 million people (the 1980 U.S. population living in areas of more than 25,000 people) are exposed to 8.7×10^{-4} $\mu g/m^3$ of asbestos resulting from the use of asbestos brakes (Ref. 31). The individual risk of developing cancer from a lifetime of exposure to this concentration of asbestos is estimated at approximately 1 in a million, a level which is significant given the very large population exposed. Because populations living in areas with fewer than 25,000 people (55.5 percent of the U.S. population) probably are exposed to at least some asbestos from brake use, this estimate should be considered a lower bound.

In addition to the exposures quantified above, EPA believes that other significant ambient exposures occur that cannot be easily quantified. One type of unquantified exposure results from releases of asbestos that are difficult to measure, such as the gradual weathering and disintegration of construction products used outdoors. A number of studies indicate that these releases are probably significant. Indirect evidence of weathering comes from several studies of corrosion in A/C pipe: soft, acid water has been found to dissolve A/C pipe in some instances (Ref. 64). Because rain water is likely to be both soft and acid, it is likely to be very corrosive to A/C materials.

Direct evidence of weathering supports this projection. A study of erosion in A/C shingle found visible differences in wear between areas of shingle that were exposed to the elements and areas that were protected, and inspection of the worn areas with a scanning electron microscope revealed a network of asbestos fibers on the shingle surface. In addition, concentrations of asbestos as high as 543 million fibers per liter (mfL) were found in runoff collected from roofs covered in A/C single. Ten mfL is considered abnormally high (Ref. 51). Another study detected asbestos releases from construction materials after a shingle storm; several air samples taken after a heavy rain at a school with A/C walkways and roof panels showed significantly elevated asbestos concentrations (Ref. 1). Thus, in areas where there is widespread use of A/C sheet and A/C shingle, weathering is probably an important source of ambient asbestos.

Another type of unquantified exposure results from the tendencies of asbestos to persist in the environment and to reenter the air after settling out. Both the durability and aerodynamic properties of asbestos are well documented. The extraordinary ability of asbestos to survive for long periods under a variety of different conditions is often cited as an important reason for its incorporation into a number of products, including paper products used as insulation, friction materials, asbestos cement products, packings, and gaskets. Reentrainment is supported by studies finding high airborne asbestos concentrations not only near waste piles but upwind as well as downwind of point sources (Ref. 48), a finding most likely to result from the resuspension of asbestos deposited earlier by winds blowing in the opposite direction. This evidence indicates that over time, asbestos builds up to some degree in surface waters and soils and that some of this build-up is continuously reentrained in the air. This process of build-up and reentrainment is referred to as environmental loading. Because the likelihood of reentrainment in the environment depends upon a number of factors that are difficult to measure, including the fraction of asbestos that is washed away by rainfall or buried under later soil deposits, reentrainment has not been included in EPA's atmospheric modeling. Thus, EPA has not quantified exposures attributable to environmental loading. Nonetheless, EPA is very concerned about the possible impact of this process on exposures to ambient asbestos. Given its durability, asbestos may persist in the environment for a decade or more after its original release, and environmental loading is likely to be most severe in urban areas, where large populations both create and come into contact with asbestos releases. In fact, the elevated concentrations of asbestos found by numerous studies in urban areas probably result at least in part from environmental loading. The potential longevity of the risk posed by environmental loading was a major factor in EPA's decision to eliminate that risk at its source by banning most asbestos products.

Some commenters argued that exposures to asbestos released into the ambient air by the manufacture, importation, processing, and use of asbestos-containing products are insignificant because the risks associated with such exposures are very small. However, individual risks from asbestos in the ambient air can be quite high for persons living near asbestos product plants, construction sites, or other sources of release. As noted earlier, under the maximum emission scenario with no baghouse failure assumed, a number of people would incur risks of at least 1 in 1,000 of developing cancer by living in such areas. Under the "best estimate" emissions scenario, many thousands of persons would still incur a risk of at least 1 in 10,000 from ambient exposure to asbestos from plant emissions. Moreover, while most people exposed to ambient asbestos from asbestos-containing products incur individual risks smaller than 1 in 1,000, the number of people exposed is extremely large, making the total risk a concern.

c. *Exposure from imported and exported asbestos products.* EPA has determined that significant exposure is likely from imported asbestos products. Although some exposure to U.S. populations is avoided when asbestos products are manufactured abroad and imported rather than manufactured in the U.S. (foreign exposures and resulting cancer cases are not included in the estimates for this rule), significant exposures still occur after import of the products into this country. U.S. exposures occur during transport, installation, use, maintenance, removal, and disposal of the product. As noted above, large numbers of people are exposed to asbestos during these activities and the level of exposure is often quite high.

Significant exposures also occur during the U.S. portion of the life cycle of asbestos-containing products manufactured in this country for export. These exposures occur during the mining and milling of asbestos fiber and the processing of fiber into products. Families of workers and populations living near mining and manufacturing

sites are also exposed to asbestos as a result of these activities. Therefore, as is discussed in Unit III.B of this preamble, EPA finds under section 12(a)(2) of TSCA that the manufacture or processing for export of asbestos-containing products that are subject to the rule will present an unreasonable risk of injury to human health. Therefore, the manufacture and processing of asbestos-containing products for export is not exempted from this rule under section 12(a)(1), and is subject to the rule's bans.

d. *Exposure conclusions.* In conclusion, EPA finds the intensity, scope, and potential longevity of human exposure to asbestos released during the life cycles of the products subject to this rule cause for serious concern. In spite of efforts to control exposure, asbestos is released and inhaled at all stages of the life cycles of asbestos products; extensive exposures have been quantified for workers, consumers, and the general population. EPA estimates that thousands of asbestos workers and members of the general population incur individual risks near 1 in 1,000 from exposure to asbestos released from the products subject to this rule and that millions of people incur risks near 1 in 1,000,000 from such exposure. These risks are very large. Moreover, evidence indicates that significant exposures take place that cannot be quantified. EPA is especially concerned about exposures from environmental loading, which may occur long after the initial release of asbestos from a product.

B. Environmental Effects

The unreasonable risk finding for this rule is based on the risks to human health posed by exposure to asbestos. These risks are the most readily quantifiable consequences of the commercial use of asbestos and are sufficient to support the actions taken in this rule. However, EPA is concerned about the potential environmental effects of ambient loading due to continued manufacture, importation, processing, and use of commercial asbestos products. Exposure to asbestos fibers has been clearly shown in both human and animal studies to cause severe health effects. Effects on wildlife have not been quantified for purposes of this rule. However, because asbestos fibers are extremely durable and transportable, EPA believes that continued asbestos use will leave a legacy of serious health and environmental effects due to unnaturally high concentrations of asbestos in the ambient air.

C. Asbestos Substitutes

This Unit discusses the relative availability of substitutes for asbestos in asbestos-containing products and the potential health hazards posed by such substitutes. EPA has found that suitable substitutes currently exist for most uses of asbestos. EPA believes that the benefits to society of asbestos-containing products are relatively small because of the current availability of many substitutes and the expected development of others after promulgation of this final rule.

1. *Availability of substitutes.* This subject is described in more detail in Volume III, Appendix F of the Regulatory Impact Analysis (RIA). Further responses to comments on these subjects can be found in the Response to Comments document. The availability of substitutes for the various product groupings subject to this rule are discussed in Unit V.F. of this preamble.

The following Table V lists currently-available major substitutes for asbestos-containing products that are banned by this rule and the market shares for each product category projected for the substitutes in the absence of asbestos. This breakdown does not take into account the development of new substitutes or new applications of existing substitutes since the preparation of the RIA. It also does not account for the likely development of new substitutes before the effective date of this rule's bans. EPA is aware that it may not have identified all substitutes for asbestos-containing products and that the costs of the rule may be overstated as a result.

TABLE V. —PROJECTED MARKET SHARES OF CURRENT SUBSTITUTES

Product and substitute	Approximate Substitute Market Share (percent)
Pipeline wrap:	
Mineral felt	48
Safelt (R)	32
Duraglass (R)	20
Beater-add gaskets:	
Cellulose	25
Aramid	30
Fibrous glass	20
Polytetrafluoroethylene	10
Graphite	10
Ceramic fibers	5
Sheet gaskets:	
Para-aramid	30
Fibrous glass	25
Graphite	15
Cellulose	15
Polytetrafluoroethylene	10
Ceramic	5
Roofing felt:	
Fiberglass felt	40
Modified bitumen	50
Single-ply membrane	10

TABLE V. —PROJECTED MARKET SHARES OF CURRENT SUBSTITUTES—Continued

Product and substitute	Approximate Substitute Market Share (percent)
A/C pipe:	
Polyvinylchloride (PVC)	93
Ductile iron	7
A/C flat sheet:	
Calcium silicate	76
Non-calcium silicate	4
Laboratory sheet	20
A/C corrugated sheet:	
Fiberglass reinforced plastic	48
Aluminum	32
Steel	11
Polyvinylchloride	9
A/C shingles:	
Wood	32
Vinyl	27
Asphalt	20
Aluminum	19
Tile	2
Drum brake linings:	
Non-asbestos organics	99
Semi-metallic	1
Disc brake pads (LMV and HMV):	
Semi-metallic	100
Brake blocks:	
Non-asbestos organics	99
Semi-metallic	1
Clutch facings:	
European woven	50
U.S. woven	30
Molded aramid	10
Molded fiberglass	10
Automatic transmission components:	
Cellulose	100
Other friction materials:	
Fiberglass & para-aramid	100
Millboard:	
Standard board	80
Premium board	20
Specialty paper:	
Earth and cellulose	50
Loose cellulose	50
Roof coatings:	
Cellulose	87
Polyethylene	8
Other	5
Non-roof coatings:	
Synthetic fibers	70
Clay and mineral	30

Substitutes for asbestos products are steadily being developed and accepted in the marketplace. It should be noted that a number of products that are subject to this rule's bans are no longer manufactured or imported in the U.S. In these cases, viable substitutes have apparently forced asbestos-containing products from the U.S. market. An increasing rate of availability and acceptance of substitutes is evidenced by a more rapid decrease in asbestos use in most product categories than was predicted in the RIA for the proposal. Public comments have identified new subsitutes and indicated that substitute prices have decreased substantially beyond the estimates generated in the RIA for this final rule. In addition, EPA believes that this rule will further spur

the development of substitutes, thereby increasing availability and decreasing costs.

2. *Health risk review of fibrous asbestos substitutes.* This Unit addresses the potential health risks caused by exposure to various fibers projected to replace asbestos in products banned by this rule. This subject is discussed in more detail in (1) "Review of Recent Epidemiological Investigations on Populations Exposed to Selected Non-asbestos Fibers" (Ref. 35); (2) "Durable Fiber Exposure Assessment" (Ref. 36); (3) "Durable Fiber Industry Profile and Market Outlook" (Ref. 37); and (4) "Health Hazard Assessment of Non-asbestos Fibers" (Ref. 38). Further responses to comments on this subject can be found in the Response to Comments document.

Based on available information and a public health policy regarding asbestos, EPA has more concern about the continued use and exposure to asbestos than it has for the future replacement of asbestos in the products subject to this rule with other fibrous substances. Available information about the fibrous substitutes under review for this rulemaking supports the conclusion that the fibrous substitutes appear to pose a lower human health hazard than asbestos (Ref. 38). However, due to limited data, EPA cannot quantify the risk that may be posed by fibrous asbestos substitutes. EPA believes it is prudent public health policy to regulate asbestos rather than to delay regulation until all risks of substitute products are definitively determined. This conclusion is based on a consideration of (1) Available data on the health hazards and exposures posed by asbestos and its substitutes; (2) the factors that enhance or mitigate fiber pathogenicity; (3) an understanding of the deficiencies of the data available on health hazards and exposures of substitutes; and (4) EPA's public health policy of reducing known, serious health risks.

a. *Background.* EPA, for the proposed rule, performed a review of the available hazard and exposure information on eight fibrous substances that could substitute for asbestos in "Asbestos Substitutes and Related Materials" (Ref. 39). In response to public comments received on the proposal, EPA conducted an extensive review of available information and updated its hazard and exposure assessment of fibrous asbestos substitutes (see Refs. 35, 36, 37, and 38).

Specifically, this analysis included six man-made or synthetic fibrous materials (aramid fibers, carbon fiber, ceramic fibers, fibrous glass, mineral wool, and polyolefin fibers), and two naturally-occurring fibers (attapulgite and wollastonite). These eight fibers were individually selected for review because (1) They are commercially important; (2) they are potentially the major fibrous substitutes for asbestos; (3) they represent fiber types with broadly different physical and chemical characteristics; and (4) hazard and exposure data are available. EPA chose to place its emphasis on the review of fibrous substitutes because their morphological similarity to asbestos suggested that they may induce cancer. Other non-fibrous substitutes, specifically, wood and other cellulose products, cement, and bricks, appear to pose little or no health hazard and, for this reason, their potential health effects have not been analyzed in detail for purposes of this rule.

b. *Health effects of fibrous substitutes.* EPA conducted a comprehensive review of the experimental and epidemiological hazard data for the eight fibrous substitutes (Refs. 35 and 38). Available epidemiological and toxicological data indicate that inhalation exposure to some fibrous substitutes may be associated with malignant and non-malignant diseases in humans. However, the evidence of carcinogenicity and fibrogenicity of these substitutes is more limited than for asbestos. Based on available data, EPA has concluded that, under similar experimental conditions, the fibrous substitutes are generally less biologically active and pathogenic than asbestos (Ref. 38). Unlike the fibrous substitutes, asbestos is a well-recognized, potent human carcinogen, which also causes non-malignant pulmonary effects. At this time, EPA cannot make a definitive assessment of the biological activity and pathogenicity of fibrous substitutes in comparison with asbestos because available data on the health effects of the substitutes are incomplete. EPA has not derived a carcinogenic potency for any of the fibrous asbestos substitutes suspected to pose a carcinogenic concern, because either available epidemiological data and/or animal inhalation data are inadequate to establish a quantitative exposure-response relationship or tumor response has only been observed in animals via non-physiological routes of administration, such as intraperitoneal injection (Ref. 38).

One commenter contended that a potency value could be determined for fibrous glass and mineral wool based on epidemiological data and concluded that the potency may be comparable to or exceed the potency established for asbestos. EPA has concluded that a potency value cannot be derived for fibrous glass because the epidemiological evidence for carcinogenicity of these substances is inadequate. The data cited by commenters do not show consistent elevation of lung cancer risks in exposed workers or provide sufficient information to demonstrate a dose-response relationship (Ref. 35). Further, it is not appropriate to compute potency values from the available experimental data because the inhalation studies in animals did not produce tumorigenic responses (Ref. 36). Similarly, carcinogenic potency cannot be determined for mineral wool because dose-response information is not available from existing epidemiological studies (Ref. 35) and no tumorigenic responses were found in available inhalation studies (Ref. 38).

The commenter also stated that a unit cancer risk could be developed for aramid fibers using results from an animal inhalation bioassay for ultrafine para-aramid. The commenter made use of the linearized multi-stage procedure to calculate risk. In calculating the unit cancer risk value, the commenter only considered a subset of the bioassay data (Ref. 56). Consequently, EPA does not believe that the analysis presented by the commenter adequately reflects the results of the bioassay (Ref. 56). EPA is continuing to gather additional information to evaluate potential cancer risk of respirable aramid fibrils. Additionally, EPA is assessing the appropriate model to use to extrapolate cancer risk for aramid fibrils.

Unprocessed commercial-grade para-aramid, a type of aramid fiber, is manufactured in sizes that are too large to be respirable (Ref. 36). In addition, not all types of aramid fibers are expected to produce fibrils (e.g., continuous para-aramid) (Ref. 36). The para-aramid used in the cited animal study was a highly respirable material made specifically for the study (Ref. 38). Although the commercial-grade of para-aramid is believed to have the potential to generate respirable fibers as the small fibrils peel off from the non-respirable core matrix, exposure data are too limited to determine if fibril formation poses a significant concern. Limited monitoring data (combined area samples and personal samples) indicate that exposures to para-aramid fibrils range from not detectable to a maximum of 7.5 f/cc (Refs. 36, 54, and 55). According to a commenter, during manufacture, a maximum likely 8-hour TWA of 0.1 f/cc was recorded. According to the same commenter, during production and processing of

friction materials, the maximum likely 8-hour TWA was less than 0.1 f/cc. Due to the way that the monitoring data were presented, it is difficult to determine if these data are representative of occupational exposure (Refs. 52 and 53). In addition to the limited monitoring data, exposures were only monitored at a few industrial operations which are suspected of producing respirable fibers (Ref. 52). Additionally, it is not known if these operations are representative of the industry (Ref. 53). Based on available information, EPA believes that neither commercial-grade aramid products nor fibrils formed from such products may pose major occupational, consumer, and ambient exposures. Generally, it appears that aramid fibrils tend to curl and clump together, thus reducing their tendency to become or remain airborne. Fibril formation appears to be a by-product of aramid manufacture and processing. Fibrils are not expected to become an integral component of aramid products. In contrast, asbestos becomes airborne easily and can remain airborne for long periods of time.

c. *Respirability.* A basic property which allows a fiber's potential toxicity to be expressed is its respirability, i.e., the ability to penetrate into the lower respiratory tract. Respirable fibers are generally defined as fibers with actual diameters of less than about 3.5 microns or an aerodynamic diameter of less than about 10 microns. Once in the lower respiratory tract, other factors such as fiber length and diameter, surface, and chemical properties are thought to influence biological activity (Ref. 38).

According to available information, a large percentage of the production volume of these fibrous substitutes consists of non-respirable fibers (Ref. 36). Because non-respirable fibers are unlikely to enter and penetrate the lung, such fibers pose minimal risk of inhalation toxicity. However, some portion of the production volume for many of these substitutes contains fibers of respirable size. Such fibers are of concern to EPA. However, available information indicates that fibers in the respirable size range are generally manufactured for specialty uses, such as high-temperature insulation materials, filtration media, ear defenders, spacecraft, and aircraft insulation (Ref. 36). Specialty uses may be of concern in terms of risk to individuals but do not have as great a potential for broad population exposures.

d. *Exposure of fibrous substitutes.* EPA conducted an analysis of the durable fibers industry which included information about producers, uses, and future trends of the eight fibrous substitutes (Ref. 37). EPA also developed an exposure profile of durable fibers (Ref. 36). To this end, EPA conducted a search of the literature and surveyed industry sources. This analysis focused primarily on activities and applications most likely to generate airborne fibers of respirable size. Exposure data for fibrous substitutes, although very limited, were available for all fibers except polyolefins. Most exposure data available in the literature are for fiber manufacture. Exposures during man-made and synthetic fiber production are typically less than 1.0 f/cc because processes are highly automated and often enclosed, meaning that operators are rarely in contact with the fiber (Ref. 36). Many of the packaging operations are also automated and ventilated, and the exhaust is sent to dust collection equipment (Ref. 36). Often the fiber size composition of a sample of airborne material is not noted. When fiber size distinctions have been made, respirable fibers can constitute 50 percent or more of airborne fibers. However, as noted above, airborne fibers typically measured less than 1.0 f/cc. Much of the airborne occupational exposure data available to EPA is outdated. Since many of these data were developed, the industry has become increasingly automated (Ref. 36). Therefore, current exposure levels may be lower.

Production of naturally-occurring substitute fibers presents a different exposure scenario than man-made fibers since the former are mined and milled. Mining and milling have traditionally been "dusty" operations where the use of engineering controls or personal protective equipment are difficult to integrate into the routine operations of the industry. Mining operations are labor intensive and exposures are likely; however, most mining is performed in open pits which allows for some ventilation. Milling operations use mechanical grinding and screening machines and exposure occurs to workers who run these machines. Both dust and fiber concentrations have been shown to significantly exceed OSHA's nuisance dust standards (Ref. 36). During wollastonite milling, a limited study found fiber concentrations ranging from 30 to 80 fibers/cc (Ref. 36).

While worker exposure to attapulgite and wollastonite may be high during certain mining and milling activities, available information indicates low hazard for wollastonite or short fiber attapulgite (Ref. 38). Attapulgite mined in the U.S. is of the short fiber variety (Ref. 36). The U.S. supplies over 90 percent of the world-wide demand for attapulgite (Ref. 37). Based on EPA's analysis (See Unit V.C.1 of this preamble), neither attapulgite or wollastonite are expected to be important asbestos substitutes.

Some commenters cited exposure data for various fibrous products and concluded that the exposures sometimes exceeded the asbestos PEL. These commenters were concerned that exposures may pose a significant risk. In general, production and use of respirable-size man-made fibers and mining and milling of the naturally-occurring mineral fibers, may potentially result in some exposures that exceed exposures from asbestos (Ref. 36). While the data on certain fibrous substitutes indicate that occupational exposure may range from not detectable to levels that exceed the asbestos PEL, levels in excess of the asbestos PEL alone will not lead to significant risks unless the substitutes present a health hazard of a magnitude approaching that of asbestos. As explained above, available information on the hazards of the fibrous substitutes indicate that they are less biologically active and pathogenic than asbestos.

Given the scarcity of exposure data, the numerous types of processes or activities involved, and the variable characteristics of the many fibrous materials, EPA has concluded that reliable projections cannot be made about exposures to fibrous asbestos substitutes. This is contrasted with asbestos manufacturing, processing, and use practices, about which much is known and such conclusions or reasonable projections about exposure can be made.

e. *Risk of fibrous substitutes.* Some commenters stated that EPA should perform risk analyses of the same depth for the non-asbestos substitutes as EPA performed for asbestos. Commenters also stated that EPA's substitute analysis should consider the entire life cycle of the substitute, including the risk associated with non-asbestos raw materials, by-products, contaminants, and energy production. Additionally, some commenters stated that EPA should consider other health and environmental effects in addition to cancer associated with the substitutes, including silicosis and death due to trauma.

For reasons described previously, EPA believes that the available data base on the hazards and exposure to substitute fibers is not sufficient for EPA to perform a quantitative risk analysis. While EPA adopted a life cycle approach to its risk analysis for asbestos, EPA did not include in that analysis additional risks that may result from: (1) Exposure to raw materials, byproducts, or contaminants associated with production and use of asbestos-containing products; (2) accidents; or (3) energy production and consumption required to produce asbestos products. EPA quantified, to the extent possible, only risks of cancer associated with exposure to asbestos fibers. EPA adopted a similar life cycle approach in its review of substitutes and only evaluated the potential that the fiber itself may cause cancer or non-malignant lung effects. In summary, the review approach adopted for substitutes is comparable to the approach used for asbestos and is only limited by the availability of data.

Some commenters stated that EPA could not conclude, based on available data, that substitutes pose lower risk than asbestos. EPA agrees that the data base is insufficient to quantify the risk of substitutes; however, in spite of the deficiencies of the data base, information is available to indicate that: (1) Some non-fibrous asbestos substitutes pose little or no health risk concern; (2) the inherent biological activity or pathogenicity of the substitute fibers appears to be less than asbestos; (3) a large percentage of the total production volume of fibrous substitutes is non-respirable, and thus does not pose a risk concern; and (4) the diameter size of man-made and synthetic fibers may be controlled, thus enhancing efforts to reduce the presence of contaminants or unnecessary respirable fibers in substitute products.

f. *Policy approach to asbestos and asbestos substitutes.* Regulatory decisions about asbestos which poses well-recognized, serious risks should not be delayed until the risk of all replacement materials are fully quantified. EPA believes that this is a prudent policy since: (1) Asbestos is a human carcingen and poses a serious risk to health; (2) substitute fibers appears to pose less hazard; (3) years are likely to pass before experimental toxicological data are available to quantify or adequately evaluate the possible health effects of substitutes; (4) a decade or more may pass before epidemiological data of the quality that exists for asbestos may be available to confirm any hazards of substitutes identified in experimental data; (5) evolving fiber technology and the advances within the chemical industry are likely to create new substitutes, thus making it quite difficult to ever fully analyze the risks of all possible major substitutes; and (6) risks associated with man-made and synthetic fibers appears easier to control than the risks resulting from asbestos use because fiber diameter size can be technologically controlled.

EPA will control to evaluate hazards and exposures posed by fibrous materials and will determine appropriate regulatory action to mitigate any unreasonable risks that may be identified. EPA may consider regulation of fiber diameter and length of substitute fibers if it is determined that such risk reduction action is needed. EPA recommends, that, whenever feasible, manufacturers, processors and users avoid the production and use of respirable fibers. EPA also strongly encourages manufacturers and processors of fibers to institute quality control practices that minimize if not eliminate the inadvertent production of respirable fibers.

D. Economic Effects of the Rule

EPA has prepared a *Regulatory Impact Analysis of Controls on Asbestos and Asbestos Products* (Ref. 21) which analyzes the potential economic impact of the rule. EPA's assessment of the "reasonably ascertainable economic consequences of the rule," pursuant to section 6(c)(1)(D), is summarized below. The methodologies used by EPA to estimate the costs and benefits of this rule comport with widely-accepted cost-benefit techniques. The methodologies used and the data on which costs and benefit estimates are based have been updated to reflect public comments. Further responses to comments on this subject can be found in the Response to Comments document.

1. *Estimated costs.* Estimated costs were derived using the Asbestos Regulatory Cost Model (ARCM), which is described in the RIA and which primarily used information collected during telephone surveys conducted by an EPA contractor during 1986 and 1987. EPA also used some data obtained under the TSCA section 8(a) asbestos rule to estimate costs. Some information was adjusted to reflect more current data obtained through public comments and from other sources. The sources of information are noted in the record for this rule.

The costs represent the net present value of costs incurred due to changes in asbestos production volume between the years 1987 and 2000, using a social rate of discount of 3 percent. The 13-year time period serves as a reasonable endpoint for the analysis at a point well after all the actions taken in the rule have become effective. The 3 percent rate used to discount costs (and benefits, as discussed below) is a reasonable rate set by consensus by EPA economists. This figure falls within the range of social discount rates suggested by the economics literature.

In estimating the costs of this rule, allowance is made by the economic model to estimate declines in the prices of substitutes. In practice, the cost of a product, in real terms, declines over its production as experience is gained in the manufacturing process. In addition, experience under other regulations has shown that the number of substitutes will increase as a result of product regulation. Some of the new substitutes will be of lower cost than some of the existing substitutes or they will not capture market share from the existing substitutes. Both of these effects will lower the prices of substitutes. Neither of these effects can be fully quantified. However, as the cost of substitutes decreases, the overall cost of this rule will also decrease.

The economic model does not take into account the cost reduction benefits of using substitutes which currently have lower costs than the asbestos-containing products. In other words, the analysis assumes that the price of substitutes, after being adjusted for product life and performance, is always greater than or equal to the price of the comparable asbestos-containing product. This was done to account for differences in the characteristics of asbestos and non-asbestos substitute products that cannot be captured in cost differences. For example, because asbestos-containing products have been traditionally used in these markets, a bias may exist toward the use of asbestos products rather than similarly-priced substitutes. However, this assumption overstates the costs imposed by the rule whenever the substitute actually costs less than the asbestos-containing product and there is no significant difference in product performance characteristics.

EPA attempted to gauge the possible effects of expected declines in the price of substitutes on the overall cost of the rule. The analysis of costs of the actions taken in this rule assumes that the prices of substitutes for asbestos products will decrease by 1 percent annually over the life of the 13-year period analyzed in the ARCM. However, the analysis also assumes that the cost of individual substitute products will always remain greater than or equal to the price of the comparable asbestos-containing product, for the reasons described in the preceding paragraph. EPA believes that the assumption of a limited 1 percent decline in the price of substitutes is a reasonable "best

estimate" in light of the effects of the growing markets for such products, increasing competition and production know-how in these markets, and the likely development of new, more cost-effective substitutes that have not been quantified for the ARCM.

Costs estimated in the RIA include costs to consumers and costs to producers. Consumer losses due to the rule result from increases in costs incurred for asbestos products or substitutes for asbestos products or from inferior performance of substitutes, to the extent that these latter costs could be quantified. It is estimated that consumers will incur $375.4 million in losses as a result of the actions taken in this rule, for the period of the analysis, spread across the retire consumer population.

Producer losses due to this rule would accrue when producers are forced to forego the portion of the return on their capital stock used to produce asbestos products. This occurs when the capital stock used in the production and processing of asbestos-containing products either cannot be used or cannot be used as efficiently in the production of substitute products. It is estimated that the rule will result in $83.49 million in total producer costs.

The rule will also result in some transition costs to workers who are displaced by product bans. These losses are incurred in the form of lost wages and job search costs. EPA believes that these transition costs will be relatively low compared to consumer and producer costs because of: (1) The amount of time allowed for companies to plan before the effective dates of most bans and (2) the already occurring transition to non-asbestos substitutes by many former producers of asbestos products.

The total costs of the rule were estimated first with costs discounted at 3 percent and benefits not discounted (hereafter 3 percent/0 percent) and then with both costs and benefits discounted at 3 percent (hereafter 3 percent/3 percent). The results of both analyses will be cited throughout the text of this preamble. Both analyses support the actions taken in this rule. The total estimated cost of the rule is $458.89 million. This cost will be spread over 13 years and a large population. Therefore, the impact on most persons will be negligible.

Estimated total costs of individual product bans are set forth in the following Table VI:

TABLE VI—COST OF THE RULE BY PRODUCT CATEGORY ASSUMING A 1 PERCENT ANNUAL DECLINE IN THE PRICE OF SUBSTITUTES

Product	Total cost (in $ million, discounted at 3 percent)
Asbestos/cement (A/C) sheet	2.66
A/C shingles	23.57
A/C pipe	128.03
Products not currently in U.S. production (asbestos protective clothing and vinyl/asbestos floor tile)	0
Paper products (commercial paper, rollboard, millboard, corrugated paper, and specialty paper)	3.73
Felt products (flooring and roofing felt and pipeline wrap)	8.38
Gaskets [1]	207.72
Disc and drum brake pads for original equipment market (OEM) and brake blocks	12.97
Disc and brake pads for aftermarket (AM)	12.73
Other asbestos friction products (automatic transmission components, clutch facings, and commercial and industrial friction products)	15.20
Coatings (roof coatings and non-roof coatings)	46.29

[1] Does not include specialty industrial gaskets.

EPA also analyzed the costs of the rule without the assumption about the declining price of substitutes that is described in the preceding paragraphs. Under this scenario, the total cost of the rule would rise from $458.89 million to $806.51 million. Estimated total costs of individual product bans under this scenario are set forth in the following Table VII:

TABLE VII—COST OF THE RULE BY PRODUCT CATEGORY WITHOUT THE ASSUMPTION OF A 1 PERCENT ANNUAL DECLINE IN THE PRICE OF SUBSTITUTES

Product	Total cost (in $ million, discounted at 3 percent)
Asbestos/cement (A/C) sheet	3.35
A/C shingles	34.18
A/C pipe	227.33
Products not currently in U.S. production (asbestos protective clothing and vinyl/asbestos floor tile)	0
Paper products (commercial paper, rollboard, millboard, corrugated paper, and specialty paper)	4.86
Felt products (flooring and roofing felt and pipeline wrap)	10.87
Gaskets [1]	263.01
Disc and drum brake pads for original equipment market (OEM) and brake blocks	31.68
Disc and brake pads for aftermarket (AM)	25.15
Other asbestos friction products (automatic transmission components, clutch facings, and commercial and industrial friction products)	27.92
Coatings (roof coatings and non-roof coatings)	180.56

[1] Does not include specialty industrial gaskets.

The costs in both of these analyses are likely overstated for a number of reasons. The methodology used in this analysis for dealing with a lack of information tends by design towards overestimating costs and underestimating benefits. This "cautious" approach is taken to ensure that the analysis provides a strong basis for the regulatory decision made in this rule.

A commenter stated that EPA, in the analyses used to support the proposed rule, underestimated the costs of banning the manufacture, importation, and processing of asbestos-containing products. The commenter argued that EPA overestimated the rate of development of asbestos substitutes, underestimated future asbestos consumption rates, and erred in a number of other ways, discussed in more detail in the Response to Comments document, in estimating the costs associated with the various options described in the proposed rule.

For the final rule, EPA has updated the data base used to support its analysis of the costs and benefits of the rule and has modified its analytical approach in response to comments. In addition, the decline in the rate of consumption of asbestos in the U.S. has been more rapid in recent years than was predicted in EPA's models. Total annual consumption of asbestos in the U.S. dropped from a 1984 total of 240,000 metric tons to less than 85,000 metric tons in 1987. This change suggests that the use of asbestos substitutes has increased markedly since the proposed rule was published.

EPA has adopted several conservative assumptions to ensure that the rate of substitution is not overstated in the analysis of the rule's costs. The analysis embodies a low-decline baseline consumption approach. This approach assumes that substitutes have already

been adopted for those market sectors for which substitution for asbestos was relatively uncomplicated. It also assumes a constant rate of asbestos consumption unless EPA is aware of specific instances in which substitution has been made. In addition, the analysis assumes that the price of a substitute for an asbestos product will not fall below the price of the asbestos product for which it is being substituted. Therefore, the analysis adopts a number of assumptions that likely overestimate the costs of the actions taken in this rule rather than underestimate them.

2. *Estimated benefits.* The costs described above will be offset to some extent by a number of avoided costs. While EPA did not attempt to place a value on the loss of life itself, or on associated costs such as "pain and suffering," "loss due to leisure time," or other similar factors, EPA has estimated that the actions taken in this rule will result in the avoidance of at least 202 quantifiable cases of lung and gastrointestinal cancer and mesothelioma when benefits are not discounted and at least 148 cancer cases when benefits are discounted at 3 percent from the time of exposure. These estimates assume the occupational exposure levels based on other analogous exposure scenarios discussed in Unit V.A.3 of this preamble. These estimates do not, for reasons discussed in Unit V.A of this preamble, include the number of asbestosis cases and cases of other diseases avoided. In addition, EPA did not estimate losses due to lost work days or medical care costs. Thus the benefits of the rule (costs avoided by this rule) represent prudent estimates that likely understate actual benefits. The cancer-cases-avoided by individual product category are set forth in the following Table VIII:

TABLE VIII—CANCER-CASES-AVOIDED BY PRODUCT CATEGORY ASSUMING ANALOGOUS EXPOSURE FOR SELECTED PRODUCT CATEGORIES

Product	Discount rate	
	3 percent	0 percent
Asbestos/cement (A/C) sheet	0.96	1.19
A/C shingles	0.23	0.32
A/C pipe	3.17	4.38
Products not currently in U.S. production (asbestos protective clothing and vinyl/asbestos floor tile)	0	0
Paper products (commercial paper, rollboard, millboard, corrugated paper, and specialty paper)	0.52	0.73
Felt products (flooring and roofing felt and pipeline wrap)	3.53	4.38
Gaskets [1]	32.24	42.54
Disc and drum brake pads for original equipment market (OEM) and brake blocks	14.55	19.68
Disc and brake pads for aftermarket (AM)	88.37	122.11
Other asbestos friction products (automatic transmission components, clutch facings, and commercial and industrial friction products)	1.45	1.91
Coatings (roof coatings and non-roof coatings)	2.41	3.33

[1] Does not include specialty industrial gaskets.

Analogous exposures could not be assumed for a number of exposures. Therefore, benefits are understated to the extent that these exposures are not included. For example, some exposures result when asbestos fibers are released to air due to weathering of A/C products and other products used in exterior uses.

Also, the analysis did not quantify the increased risk due to high concentration, episodic exposures to asbestos for many products. Further, additions to ambient loading caused by the activities affected by this rule and the resultant risk reduction from this rule's actions could not be adequately quantified. The effect these factors would have on the calculation of benefits is difficult to determine because of technological difficulties in quantifying the extent of these releases and the resultant exposures. However, the effect could be significant because releases via these routes are frequent and, on aggregate, broad-ranging.

EPA also analyzed the benefits that accrue due to the actions taken in this rule if the analogous exposure analysis described in Unit V.A.3 of this preamble are not assumed. In this analysis, in all instances where exposure is believed to exist, but specific exposure data are not available, EPA assumed no exposure. The figures in the following chart, therefore, understate the actual number of cancer-cases-avoided due to this rule to the extent that available monitoring data used in the exposure analysis understates actual exposure to asbestos. In this analysis, estimates of cancer-cases-avoided decrease from 202 cases to 164 cases if benefits are not discounted and from 148 cases to 120 cases if benefits are discounted at 3 percent. The cancer-cases-avoided by individual product category using this analysis are set forth in the following Table IX:

TABLE IX—CANCER-CASES-AVOIDED BY PRODUCT CATEGORY WITHOUT ANALOGOUS EXPOSURE ASSUMPTIONS

Product	Discount Rate	
	3 percent	0 percent
Asbestos/cement (A/C) sheet	0.96	1.19
A/C shingles	0.23	0.32
A/C pipe	2.25	3.11
Products not currently in U.S. production (asbestos protective clothing and vinyl/asbestos floor tile)	0	0
Paper products (commercial paper, rollboard, millboard, corrugated paper, and specialty paper)	0.43	0.60
Felt products (flooring and roofing felt and pipeline wrap)	2.62	3.25
Gaskets [1]	6.66	8.81
Disc and drum brake pads for original equipment market (OEM) and brake blocks	14.55	19.68
Disc and brake pads for aftermarket (AM)	88.37	122.11
Other asbestos friction products (automatic transmission components, clutch facings, and commercial and industrial friction products)	1.45	1.91
Coatings (roof coatings and non-roof coatings)	1.29	1.79

[1] Does not include specialty industrial gaskets.

As stated earlier, EPA decided for this rulemaking to estimate potential risk from plant emissions using an assumption of baghouse efficiency of 99.95 percent for some product categories and 99.67 percent for other product categories (the maximum emission scenario with no baghouse failure assumed). However, EPA also estimated the number of cancer-cases-avoided using the assumptions of 99.988 to 99.988 percent efficiency (the best estimate scenario with occasional baghouse failure assumed). These estimates, assuming the occupational exposure levels based on other analogous exposure scenarios discussed above, are 183 cases if benefits are not discounted and 134 cases if benefits are discounted at 3 percent. The cancer-cases-avoided by individual product category using these estimates are set forth in the following Table X:

TABLE X—CANCER-CASES-AVOIDED BY PRODUCT CATEGORY ASSUMING ANALOGOUS EXPOSURES AND ALTERNATIVE EMISSIONS CONTROL RATES

Product	Discount Rate	
	3 percent	0 percent
asbestos/cement (A/C) sheet	0.46	0.59
shingles	0.22	0.31
A/C pipe	2.10	2.90
Products not currently in U.S. production (asbestos protective clothing and vinyl/asbestos floor tile)	0	0
Paper products (commercial paper, roilboard, millboard, corrugated paper, and specialty paper)	0.18	0.25
Felt products (flooring and roofing felt and pipeline wrap)	2.20	2.72
Gaskets[1]	26.83	35.41
Disc and drum brake pads for original equipment market (OEM) and brake blocks	12.72	17.27
Disc and brake pads for aftermarket (AM)	85.38	117.98
Other asbestos friction products (automatic transmission components, clutch facings, and commercial and industrial friction products)	1.29	1.70
Coatings (roof coatings and non-roof coatings)	2.03	2.80

[1] Does not include specialty industrial gaskets.

The different assumptions about baghouse efficiency do not have a significant effect on the estimates of cancer-cases-avoided. Under both the best estimate scenario with occasional baghouse failure assumed and the maximum emission scenario with no baghouse failure assumed, EPA believes that the manufacture, importation, processing, and distribution in commerce of these products presents an unreasonable risk of injury to human health.

The rule will result in a number of other significant benefits. However, many of these benefits are either in the future and are relatively small in current terms after discounting or are difficult to quantify. For example, costs avoided include the societal cost of the resources necessary to treat asbestos-related illnesses and the productivity lost as a result of asbestos disease that will be avoided due to actions taken under this rule. EPA has not estimated these costs avoided because they would be relatively small because the types of cancers reviewed in this analysis generally result in death after relatively short periods of treatment or hospitalization. In addition, this total would be further lowered when discounted due to the fact that most asbestos-related diseases appear only after a long latency period.

Continued manufacture, importation, processing, and use of the asbestos-containing products banned by this rule would result in environmental loading of asbestos. The effect of environmental loading is discussed in more detail in Unit V.A.3 of this preamble. The actions taken under this rule will reduce the incremental increase in ambient concentrations of asbestos and thus reduce the risk of asbestos exposure faced by the general population. EPA has not attempted to quantify these benefits, due to the difficulty and probable imprecision of such an analysis. However, EPA believes that the long-term benefits derived from this incremental decrease in ambient concentrations of asbestos will result in substantial benefits because of the large populations that are affected. EPA has also concluded that these benefits can be attained through the source reduction actions taken in this rule, rather than by use of other options considered.

Further, due to the rule's bans, the substantial future costs associated with removal and disposal of asbestos-containing products that would have otherwise been produced and used will be avoided. These included higher removal, demolition, and disposal costs for asbestos products than those for non-asbestos products, as well as higher health risk expenses for asbestos products. Future removal, demolition, and disposal of asbestos construction products will likely be higher because special precautions will probably be necessary to meet OSHA, Clean Air Act (CAA), or other requirements. These costs can be substantial, but they have not been estimated for purposes of this rulemaking because estimates of the timing and frequency of building removal or renovation would be speculative.

Also, the continued use of asbestos will likely exacerbate the heavy burden on courts and workman's compensation boards that have, in recent years, been inundated with claims related to harm caused by asbestos exposure. This rule, by reducing the occurrence of asbestos-related diseases, will eventually reduce the costs related to claims arising out of illnesses and deaths caused by asbestos exposure.

Since the proposal, EPA has observed a rapid development of substitutes for asbestos-containing products. EPA believes that this rule will further stimulate technological innovation in the development of substitutes for asbestos and that this strong trend toward use and acceptance of substitutes will continue.

Different health benefits were estimated in support of the proposal than those development for the final rule. The number of cancer-cases-avoided estimated for the proposal (approximately 1,000 cases and more, depending on the regulatory option) is higher than the estimate for the final rule (202 and 148 cases if analogous exposures are assumed) for a number of reasons: (1) Several product categories are not included in this final rule estimates because they are no longer manufactured or imported in the U.S. (e.g., vinyl-asbestos floor tile). This change accounts for approximately 475 of the cancer-cases-avoided quantified in the proposal rule. (2) The production and exposure data supporting the rulemaking were updated for the final rule. U.S. asbestos consumption has decreased and substitute use had increased since the publication of the proposed rule. Therefore, the proposal's estimates of cancer-cases-avoided were higher than those for the final rule because consumption rates and resulting exposure totals were higher at the time of the proposal. (3) Updated exposure assessments were used in the health benefits model. The updated data were lower for some products than those used for the proposal, meaning that the proposal's estimates of cancer-cases-avoided were higher than those for the final rule. (4) The time frame used for estimating health benefits for the proposal was 15 years: for the final rule, the period is 13 years. Therefore, the final rule analysis covered 2 fewer years of exposure, resulting in fewer estimated health benefits. (5) Some modifications were made to the health effects model used for the final rule [e.g., minor modifications, including quantification of gastrointestinal cancer risk, and the use of a lower dose response constant for mesothelioma (using an average of the dose response constants from a number of studies, rather than the constant from one large study)] that resulted in an estimate of benefits that was approximately 20 percent lower for the final rule than for the proposal.

Several commenters stated that EPA underestimated the benefits associated with the product bans described in the proposed rule. These commenters asserted that the analysis of benefits understanted risks because it did not take into account diseases other than lung and gastrointestinal cancer and mesothelioma or exposures to families of asbestos workers, and failed to quantify factors like avoided pain and suffering and increased worker productivity. EPA agrees that the benefits of the rule may be understated, possibly to a significant extent, in the supporting analysis due to technological or other limitations. These factors, however, have been considered qualitatively in EPA's analysis.

One commenter argued that EPA significantly overestimated the benefits of the rule by overstating asbestos potency and exposure levels. The lung cancer and mesothelioma potency values used by EPA in its analysis of benefits are well-supported and are consistent with those used by OSHA in reducing its PEL to 0.2 f/cc. The potency values for lung cancer represent the mean of the results of 11 human epidemiological studies on the effects of asbestos exposure. The potency values for mesothelioma represent the mean of the results of 4 human epidemiological studies on the effects of asbestos exposure. In addition, the exposure estimates used in this analysis understate actual exposure for a number of reasons, as explained in Unit V.A.3 of this preamble. Therefore, EPA may have actually understated, not overstated, the benefits of this rule.

Some commenters argued that EPA, in the proposal, improperly failed to discount benefits to be derived from the rule, and in support documents for a final rule, only discounted benefits until the time of the exposure that results in the cancer rather than until the occurrence of the disease. Other commenters argued that EPA should not discount benefits, stating that discounting the benefit of saving human life is inappropriate methodology for this rulemaking.

This final rule provides estimated benefits both with and without discounting. Arguments can be made that estimating benefits without discounting is preferable in cases like this one where the primary benefits derived is the avoidance of human cancer cases. However, arguments also can be articulated supporting the discounting of benefits. EPA believes that if benefits in the form of cancer-cases-avoided are to be discounted, they are properly discounted to the time when risk is reduced or avoided. Since the benefit of a regulation to control a hazardous substance occurs at the time of the reduced exposure, EPA has concluded that the appropriate period over which to discount is until the time of exposure reduction. This approach was used in this case after extensive review of applicable literature and an examination of the inherent biases and features of other approaches.

3. *Small businesses.* EPA has, pursuant to section 6(c)(1)(D) of TSCA, also analyzed the economic impact of this rule on small businesses. The rule will not have a significant effect on small businesses because there are few such businesses affected by the rule and individual company producer losses are not expected to be substantial since capital equipment for the production of asbestos-containing products has little remaining useful life, is inexpensive, or can generally be converted at low cost to manufacture of alternative products. A small fraction of the manufacturers, importers, and processors subject to this rule are small producers and some could be adversely affected by the rule. In addition, a number of small governments may be affected by the ban of some asbestos products, for example A/C pipe. However, the economic impact of this rule is generally spread widely throughout the economy and any concentrated effect will not be focused on specific market sectors or on small businesses.

4. *Evaluation of the rule's economic impact.* The overall costs of this rule are significant. However, the overall benefits of the rule are also significant, although many of the benefits cannot be easily quantified.

The analysis performed to ascertain the economic consequences of the rule likely overstates the costs of the actions. However, the analysis points out several important factors: (1) The societal benefit, or "essentiality," of asbestos has decreased, and continues to do so, as asbestos consumption declines and substitutes for the mineral are developed for many applications; (2) most of the costs associated with the rule are short-term and spread over a relatively large population; (3) the continued development of price- and performance-comparable substitutes for asbestos indicates that the rule will not lead to either dramatic increases in consumer prices or decreases in the availability of products affected by this rule; and (4) the producer and consumer costs imposed by this rule are offset by the rule's benefits (e.g., cancer-cases-avoided, medical costs, and lost productivity avoided), although many of these benefits are either difficult to quantify or to express in monetary terms.

EPA, therefore, finds that, under the standards of section 6 of TSCA, the costs of the rule to be reasonable in light of the unreasonably large number of asbestos-related deaths and serious illnesses that would occur if the actions in this rule were not taken.

E. Other Options Considered

Section 6 of TSCA requires EPA to select the least burdensome means to reduce an unreasonable risk. This Unit describes EPA's evaluation of options that would reduce or eliminate the unreasonable risk to human health posed by exposure to asbestos. Further responses to comments on this subject can be found in the Response to Comments document.

The options considered include the one selected for the final rule, a staged-ban of the manufacturing, importation, processing, and distribution in commerce of a number of categories of asbestos products. EPA selected a staged-ban for this final rule rather than one of the other regulatory options discussed in the proposal or identified in comments because these other options would either fail to adequately reduce the unreasonable risk posed by asbestos exposure or impose an excessive burden. Conversely, the final rule's staged-ban approach prohibits, at different times, the manufacture, importation, processing, or distribution in commerce for uses of asbestos that pose an unreasonable risk. Timing of these bans is based largely on the availability of suitable available or anticipated non-asbestos substitutes for the banned products. Therefore, the staged-ban approach takes into account the potential economic effects of the various bans, while still eliminating the sources of the risk. Other options were discussed in the proposed rule or identified in comments, but were not selected for the reasons described below.

Under two proposed rule alternatives, some product categories would be banned soon after the effective date of the rule and the remaining product categories would be "phased down." This would be accomplished by instituting a permit system which would create limits on the U.S. mining of asbestos and the importation of asbestos and asbestos-containing products. These limits would be based on previous volumes of the affected activity and would be managed by a system of issuing permits allowing gradually declining levels of the indicated activities. The permits would be transferrable. This system would, over time, restrict the total amount of asbestos available for use in the U.S. and limit the amount used in imported products until the rule's objective of a complete phase out was achieved.

In the analysis performed for this rulemaking, EPA concluded that a permit system approach would not be the least burdensome means of reducing the unreasonable risk posed by asbestos for all the products analyzed under the rule. Most commenters who rendered an opinion on the issue opposed the permit system options. Commenters stated that the implementation of these options could create significant administrative problems for EPA and industry, particularly in the area of imported asbestos products. EPA found that implementing the proposal's permit system options for all of the product categories in the rule would result in high administrative costs. EPA also believes that a permit system involving all of the products affected by this rule would be difficult to enforce.

EPA concluded that some uses of asbestos and some product life cycle stages pose a substantially greater risk than others and that the permit systems described in the proposed rule would not necessarily control the highest risk exposures (e.g., persons that produced or used products with high levels of asbestos exposure could purchase permits). Therefore, EPA concluded that the proposed rule's permit system would not adequately control asbestos exposure for the rule's product categories.

Despite EPA's conclusion based on currently available information that a permit system approach is not viable for regulating all of the products analyzed under this rule, EPA recognizes that there are a number of inherent conceptual advantages to employing an economic incentive approach in regulating the risks posed by chemicals. Therefore, as a follow-up to EPA's review of the applicability of a permit system as a regulatory option in this rule, EPA will perform several extensive analyses of the advantages and disadvantages of using various economic incentive approaches, including marketable permit system alternatives, as possible mechanisms for reducing human health and environmental risks from chemicals. These studies will review in greater detail the viability of employing such approaches under regulatory authorities such as section 6 of TSCA.

One study will focus on economic incentive programs that could be applied under TSCA and other authorities, rather than, for example, concentrating on air-emission issues, as does the bulk of the available theoretical literature. The study will identify and evaluate criteria for determining which chemicals or chemical products would be appropriate candidates for the use of economic incentive approaches under TSCA and other authorities. Factors considered in identifying these criteria will include determining the characteristics of a chemical's market, such as its production and use, that would make the chemical a viable candidate for a permit system rather than a deposit system. The study will also examine these criteria in the context of specific candidate chemical substances.

Another study will analyze administrative problems associated with economic incentive approaches with the aim of devising methods that provide equitable and efficient regulation of these chemical substances. For example, the study will examine issues related to imports which complicate implementation and enforcement of economic incentive approaches. The study will also examine mechanisms to overcome complications caused by these factors and evaluate the type and level of assistance to EPA from other agencies (e.g., U.S. Customs Service) that would be necessary to implement and enforce an economic incentives approach.

Based on the analyses performed during this and other rulemakings, there is a continuum in the risks and benefits associated with product categories. Some product categories on the continuum have some characteristics (e.g., a large number of specialized uses or a lagging rate of substitute development) that may make the products amenable to regulation through use of a economic incentive approach based on the criteria developed in the studies described in the preceding paragraphs. Upon completion of these studies, EPA will review this rule and other rules, based on the identified criteria and on then-available information about products and markets. For example, with respect to this rule, this review could determine whether (1) any product categories not included within the rule's bans should be phased out by use of an economic incentives approach, (2) any products banned in Stage 3 for which a significant number of exemptions are likely might be more efficiently phased out via an economic incentives approach, and (3) substitute development could be more efficiently compelled by an economic incentive approach for any products that are the subject of an active exemption. EPA's review will determine whether any of these products exhibit characteristics that lead EPA to conclude that exposures could be more efficiently phased out by use of an economic incentive approach. If, after review of this or any other rule, EPA determines that an economic incentive regulatory approach is warranted for some of the categories, EPA may in the future initiate rulemaking under sections 6 and 8 of TSCA to amend such rules to implement an economic incentive approach.

Even within the stage-ban approach, EPA has considered a number of possible options for the number of stages, the number of years between the stages, and the scheduling of product bans at various stages. The final rule follows the 3-stage ban approach of the proposed rule. EPA has modified the timing of the ban from soon after promulgation and 5 and 10 years after the effective date of the final rule, as discussed in the proposed rule, to 1, 4, and 7 years, respectively, after the effective date of the final rule. This was done because of the passage of time since the proposed rule was published and because EPA's analysis of available data and comments indicates that marked advances have been made in the development of and conversion to suitable substitutes for asbestos in most product areas. The timing for the stages in the final rule are reasonable in terms of the current or anticipated availability of suitable substitutes, based on EPA's analyses. EPA rejected the option in the proposal of a limited 2-stage ban with a TSCA section 8(a) reporting requirement because that option would not sufficiently reduce the unreasonable risk posed by asbestos exposure. In addition, the final rule does not include a ban on the mining and import of bulk asbestos because not all asbestos-containing products are included within the bans on manufacture, importation, processing, and distribution in commerce. However, the risks posed by these activities are expected to decline as the demand for asbestos decreases due to the actions taken in this rule.

Also, in scheduling products for the staged-ban, EPA has analyzed the relative risks posed by the different asbestos-containing products and the probable availability of non-asbestos substitutes. In the rule, the various asbestos products are scheduled to be banned at times when it is likely that suitable non-asbestos substitutes will be available. For example, bans on asbestos-containing brakes pads and drum brake linings are divided into a Stage 2 ban on the original equipment market and a Stage 3 ban on the aftermarket because suitable substitutes might not be available for some aftermarket products until Stage 3. The final rule's approach balances the need

for a reduction in the unreasonable risk of exposure to asbestos with the economic effects of bans on manufacture, importation, processing, and distribution in commerce.

The inclusion in the final rule of a provision allowing for exemptions in limited circumstances is a means of taking into account the size and diversity of the asbestos industry. EPA realizes that, despite EPA's projections, technology might not advance sufficiently by the time of a ban to produce substitutes for a few specialized or limited uses of asbestos in some product categories. In addition, other unforseeable circumstances may occur that would make a ban on a discrete product inappropriate at the scheduled date. In these circumstances, an exemption from the rule's bans may be appropriate if an applicant can show that one is appropriate following the procedures described in Unit III.E of this preamble. However, EPA believes that granting exemptions will not be the norm. The procedures should be used only in exceptional cases and should not be viewed as a means of attempting to postpone a person's share of the economic consequences of the actions dictated by the rule.

Another option considered would involve an immediate ban of the manufacture, importation, processing, importation, and distribution in commerce of all asbestos products. Section 6 of TSCA requires that a range of factors, including the availability of substitutes and the relative costs of regulatory options, be considered in addressing the reasonable risks posed by a chemical substance. EPA rejected an immediate ban option because it would result in potentially severe economic and societal effects. An immediate ban would not account for the current unavailability of viable substitutes for some asbestos-containing products that provide significant benefit and would result in high costs in those markets. Therefore, an immediate ban would not be the least burdensome means to reduce the unreasonable risk posed by asbestos.

EPA also considered requiring asbestos-containing products to be labeled as a means of reducing the risk posed by asbestos exposure. However, EPA has determined that the risk-reduction benefits from a labeling requirement for asbestos-containing products would not be substantial. For example, many of those that would potentially be exposed to asbestos from the labeled products would not have access to the warning labels. In addition, many asbestos products are used in caustic or dynamic environments in which labels cannot survive. Commenters also argued that labels directly applied to products can inhibit product performance. For example, if gaskets were required to be labeled, those who came into contact with the product packaging could have access to the label. However, many gaskets are too small to be effectively labeled. In addition, it would be unlikely that those exposed to the product during use or removal would have access to the label because it might not survive in a hot, fluid environment. The aim of the final rule's labeling requirement is not to serve as a warning, but rather only to facilitate compliance with and enforcement of the rule. The drawbacks of labeling described above do not affect the use of labeling as a compliance and enforcement tool. The labels required by this rule are applied to product wrapping or packaging and are not intended to survive through the entire product life cycle.

Several commenters suggested the consideration of options that would require "controlled use" of asbestos rather than bans on manufacture, importation, processing, or distribution in commerce. These commenters argued that exposure to low levels of asbestos is not an unreasonable health hazard and that EPA should undertake actions in a number of areas to require exposure controls (e.g., workplace controls for brake replacement and repair) rather than enacting a product ban. Commenters also suggested that chrysotile fibers pose a lower hazard than other asbestos fiber types and that controlled-use actions would be more appropriate for chrysotile than would be source reduction actions.

Controlled-use options were rejected because they would be ineffective in reducing exposure at many points in the life cycle of asbestos products. As is discussed in Unit V.A of this preamble, EPA has found that exposure to even low levels of asbestos poses an unreasonable health hazard. In addition, some of the exposures of concern are not amenable to controls (e.g., ambient releases from asbestos friction products during use, from brake replacement and repair work performed by consumers, or from weathering of asbestos products exposed to an outdoors environment).

In other instances, controlled-use aproaches create new exposures or move exposure from one stage of the product life cycle to another. For example, even if asbestos is vented from a workplace, although workers are subject to lower exposure levels, asbestos is still released to the outside ambient air, thereby creating potential exposures for passersby and surrounding populations.

Further, many engineering controls either fail to reduce exposures to asbestos to levels that do not pose a significant risk or create workplace inefficiencies that lead them to not be used. For example, respirators are difficult to fit properly and are often uncomfortable. Poor fit and intermittent use because of discomfort lead to unprotected workers. The problems are especially prevalent in negative pressure respirators, the type most commonly used in workplaces because of their low cost (Ref. 16).

Other agencies and EPA offices have or are currently establishing asbestos exposure control requirements for the workplace. However, because of the extent and nature of the risks posed by asbestos and limitations on available technology and the jurisdictions of the regulatory entities, EPA believes that even those control standards that are based on the best available technology leave an unreasonable level of residual risk in some occupational and non-occupational settings.

Therefore, EPA has concluded that source reduction actions, like those taken in this rule, rather than controlled use approaches are necessary to reduce the unreasonable risk posed by asbestos exposure. In addition, pursuant to the discussion in Unit V.A of this preamble regarding the relative hazards posed by the various asbestos fiber types, EPA has also concluded that this rule's source reduction actions are more appropriate than controlled use approaches for products containing chrysotile fibers.

Some commenters expressed a concern that if EPA bans the manufacture, importation, or processing of some asbestos-containing products, the governments of other countries will be compelled to take similar actions, although suitable non-asbestos substitutes may not be available in those countries. The unreasonable risk finding in this rule is based on a detailed analysis of the risks posed throughout the entire life cycle in the U.S. of the future manufacture, importation, processing, distribution, use, and disposal of the specified asbestos-containing products. The findings which support this rule are not directly applicable to other countries in which factors relating to risk and cost may be significantly different.

F. Summary of Individual Product Categories

This Unit describes EPA's unreasonable risk finding for each individual category of asbestos-containing products identified for this rule. It summarizes for each individual product category available information regarding exposure, individual risk levels, the development of substitutes, the results of EPA's analysis of the costs and benefits of a ban, and other qualitative factors that were considered in EPA's unreasonable risk analysis for each category. These discussions reflect public comments received on these subjects. Further responses to comments on these subjects can be found in the Response to Comments document.

In the product category discussions below, information regarding costs, benefits, and product substitutes is derived primarily from the RIA (Ref. 21), which is discussed in Unit V.D of this preamble. Information regarding exposure levels is derived from EPA's Asbestos Exposure Assessment (Ref. 29), Asbestos Modeling Study (Ref. 30), and Non-occupational Asbestos Exposure Report (Ref. 31), which are discussed in Unit V.A.3 of this preamble.

Based on available information, EPA finds that the manufacture, importation, processing, and distribution in commerce of asbestos for use in each of the following product categories, except those discussed in Unit V.F.1 of this preamble, presents an unreasonable risk of injury to human health. The discussions of EPA's findings, below, summarize: (1) The estimated benefits of the actions taken in this rule for each product category, (2) quantifiable asbestos exposure and lifetime risk levels for the product, (3) the projected availability of product substitutes, (4) a description of qualitative factors that were considered in reaching EPA's unreasonable risk conclusion for the product, (5) the estimated costs of the actions taken, and (6) an explanation of any changes in EPA's approach to regulating the product since the proposal.

The individual risk levels quantified for the product categories that are subject to this rule are very high. An individual lifetime risk level of 10^{-3} or greater has been quantified for many persons who are exposed during the primary and secondary manufacture of most of these products. Some other phases of these products' life cycles also result in very high levels of individual risk. An individual lifetime risk level of 10^{-3} means that members of the populations exposed to this level of risk stand a 1 in 1,000 chance of developing cancer during their lifetime as a result of the exposures. EPA considers the risk levels quantified for this rule for asbestos exposures to pose a substantial concern. EPA also believes that the risk levels quantified for this rule represent an underestimate of the actual risk posed by asbestos exposure from these products. A number of exposures to asbestos and the resultant risks, for example, the risks posed by incremental increases in environmental loading caused by the continued manufacture and importation of the asbestos products banned by this rule, are believed to be significant, but could not be quantified for purposes of this rule, often because of limits in exposure monitoring technology. Despite this "cautious" approach to estimating risk, the exposure and risk that can be quantified are sufficient to make an unreasonable risk finding for purposes of this rule.

The costs and benefits cited below include assumptions regarding anticipated declines in substitute prices (discussed in Unit V.D of this preamble) and exposures estimated by analogy for recognized, but unquantifiable, exposures (discussed in Unit V.A.3 of this preamble). EPA believes that this approach presents a prudent, representative analysis of the costs and benefits of the actions taken in this rule with some reasonable adjustments made for unquantifiable exposures or market changes. However, even if these assumptions are not used, EPA has concluded that the continued manufacture, importation, and processing of the asbestos-containing products that are identified in the rule poses an unreasonable risk of injury to human health.

a. *Felt products.* This grouping consists of the flooring felt, roofing felt, and pipeline wrap product categories. All of these categories will be banned in Stage 1. The benefits (in terms of cancer-cases-avoided) of the actions taken in this rule on these product categories are set forth in the following Table XI:

TABLE XI—CANCER-CASES-AVOIDED FOR ASBESTOS FELT PRODUCTS

Product	Discount rate	
	3 percent	0 percent
Flooring felt	0 [1]	0 [1]
Roofing felt	1.21	1.51
Pipeline wrap	2.31	2.86

[1] No current U.S. manufacture or import.

Primary routes of exposure to asbestos from these products occur during primary manufacture, and product installation, repair, removal, and disposal. Quantifiable lifetime risk for these products from occupational exposure ranges from an average of 7.4×10^{-4} for secondary manufacture of flooring and roofing felt to an average of 2.5×10^{-3} for the primary manufacture of roofing felt. EPA estimates that as many as 1,652 workers may be exposed to asbestos during the installation and removal of roofing felt, incurring individual risks comparable to those for manufacturing. These exposure estimates do not take into account high peak exposure to which homeowners or others may be unknowingly subjected during removal or repair of these products. EPA determined that accurately quantifying these exposures and the resultant risks would be difficult and that sufficient other exposure and risk information is available regarding these products to make a finding of unreasonable risk.

Effective substitutes currently exist for all three of these product categories. These products are largely no longer produced in the U.S., and flooring felt is no longer imported in this country. In the proposal, flooring and roofing felt would have been subject to the Stage 1 ban and pipeline wrap would have been banned at Stage 3 or covered by the permit system. However, EPA received comments indicating that the product categories are not easily distinguishable from one another and that suitable substitutes are currently available for pipeline wrap. EPA therefore concluded that a Stage 1 is appropriate for all three product categories.

The total cost of the actions taken on these product categories are set forth in the following Table XII:

TABLE XII—COST OF THE RULE FOR ASBESTOS FELT PRODUCTS

Product	Total cost in $ million, discounted at 3 percent
Flooring felt	[1] 0
Roofing felt	7.31
Pipeline wrap	1.07

[1] No U.S. manufacture or import.

EPA has concluded that a Stage 1 ban is appropriate for these product categories for the following reasons: (1) Relatively high quantifiable exposure and individual risk levels exist for these products; (2) these products pose a high potential for ambient release during a number of life cycle stages, for example, during manufacture, installation, removal, and repair work; (3) homeowners and workers are potentially subject to uncontrolled exposures during removal and repair work; (4) the cost of taking these actions is reasonable because suitable substitutes exist for all of these products; and (5) while the quantified benefits of banning these products are relatively small, compared to other product categories banned by this rule, these products are likely both to lead to a number of serious exposures that could not be readily quantified for this rule and to contribute significantly to environmental loading.

b. *A/C sheet.* This grouping consists of the flat and corrugated A/C sheet product categories. These categories will be banned in Stage 1. These products were proposed for a Stage 1 ban. The benefits (in terms of cancer-cases-avoided) of the actions taken in this rule on these product categories are set forth in the following Table XIII:

TABLE XIII—CANCER-CASES-AVOIDED FOR A/C SHEET

Product	Discount rate	
	3 percent	0 percent
A/C flat sheet	0.85	1.05
A/C corrugated sheet	0.12	0.14

Primary routes of exposure to asbestos from these products occur during manufacture, installation, and repair. Approximately 53 workers are exposed to asbestos during primary manufacture of A/C flat sheet. EPA estimates that as many as 735 workers may be exposed to asbestos during the installation, repair, and disposal of A/C flat sheet, and that as many as 109 workers may be exposed during installation and repair of A/C corrugated sheet. Quantifiable risk posed for these products from occupational exposure is estimated to range from an average of 6.2×10^{-3} for the primary manufacture of A/C flat sheet to 6.7×10^{-3} for repair and disposal of flat and A/C corrugated sheet. Quantifiable risk from non-occupational, lifetime exposures to asbestos released during the manufacture of A/C sheet is estimated at 1×10^{-4} for approximately 4,500 people and at greater than 1×10^{-6} for over 200,000 people.

EPA believes that the exposures quantified for these product categories are understated. Ambient release of asbestos occurs due to weathering of these products during outdoor uses. Cutting, drilling, and sanding take place during secondary processing, installation, repair, and maintenance of these products and result in significant release of asbestos. Homeowners or others may be unknowingly exposed to significant levels of asbestos when they sand these products in preparation for repainting or removing them. Worker exposure estimates for this rule assume compliance with OSHA restrictions, but EPA believes, based on some public comments, that there may be some cutting of A/C products with power saws in violation of OSHA restrictions. Asbestos releases to the ambient air due to weathering of these materials during outdoor uses were not calculated and high peak exposures occurring during cutting or scraping of these products were not quantified for purposes of the rule. EPA determined that accurately quantifying these exposures and the resultant risks would be difficult and that sufficient other exposure and risk information is available regarding these products to make a finding of unreasonable risk.

Effective substitutes exist for all uses of these products. The total costs of the actions taken in this rule for these product categories are set forth in the following Table XIV:

TABLE XIV—COST OF THE RULE FOR A/C SHEET

Product	Total cost in $ million, discounted at 3 percent
A/C flat sheet	2.37
A/C corrugated sheet	0.29

EPA has concluded that a Stage 1 ban is appropriate for these product categories for the following reasons: (1) Relatively high quantifiable exposure and individual risk levels exist for these products; (2) these products pose a high potential for ambient release during a number of life cycle stages; (3) homeowners and workers are potentially subject to uncontrolled, high peak exposures during installation, repair, and removal; (4) the cost of taking these actions is reasonable because suitable substitutes exist for all of these products; and (5) while the quantified benefits of banning these products are relatively small, compared to other product categories banned by this rule, these products are likely to lead to a number of serious exposures that could not be readily quantified for this rule and to contribute significantly to environmental loading.

c. *A/C shingles.* This product category covers roof shingles and siding composed of a mixture of cement and asbestos fiber. This category will be banned in Stage 3. This product was proposed for a Stage 1 ban. The benefits (in terms of cancer-cases-avoided) of the actions taken in this rule on this product category is as follows: 0.32 cases if benefits are not discounted and 0.23 cases if benefits are discounted at 3 percent.

Currently, A/C shingles are rarely used in new building construction and are used primarily for replacement, maintenance, and historical restoration. Primary routes of exposure to asbestos from products in this category occur during manufacture, installation, repair, removal, and disposal. Quantifiable risk posed by these products from occupational exposure is estimated to range from a lower bound of 3.7×10^{-4} for installation to an average of 6.1×10^{-3} for primary manufacturing. Quantifiable risk from non-occupational, lifetime exposure to asbestos emissions released during manufacturing is estimated at 2.1×10^{-5} for approximately 1,500 people and at greater than 1.0×10^{-6} for approximately 8,600 people. EPA believes that a number of factors contributed to exposure being underestimated for this category. Ambient releases result from weathering of these products and high peak exposures potentially occur during cutting, sanding, scraping, and hammering of these products. EPA is concerned about unknowing, inadvertent high peak exposures for homeowners or others during replacement or repair of existing shingles and siding. Such exposures can result from sanding, chipping, cutting, or other activities that result in substantial fiber release. Asbestos releases to the ambient air due to weathering of these materials during outdoors uses were not calculated and high peak exposures occurring during replacement or repair of these products were not quantified for purposes of the rule. EPA determined that accurately quantifying these exposures and the resultant risks would be difficult and that sufficient other exposure and risk information is available regarding these products to make a finding of unreasonable risk.

The traditional appeal of A/C products is their durability and their ability to be fabricated. A number of non-asbestos products are available that are effective substitutes from the perspective of performance. Suitable substitutes, including wood, aluminum, and vinyl sidings and asphalt, cedar wood, and tile shingles, exist for many applications of the products in this category. However, suitable substitutes are not currently available for some products in this category. Therefore, EPA has scheduled the ban of this

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product for Stage 3 rather than Stage 1, as originally proposed, to allow for the development of cost-effective substitutes while still addressing risks in a timely manner.

The total cost of the actions taken in this rule for this product category is $23.57 million. EPA believes that this cost estimate may be overstated. This is because the cost analysis for this product category assumed that wood substitutes would capture 32 percent of the A/C shingle market if the asbestos products were banned. This assumption was made largely because wood is more physically attractive than other substitutes, although it is much more expensive and does not perform significantly better.

EPA has concluded that a Stage 3 ban is appropriate for this product category for the following reasons: (1) Relatively high quantifiable exposure and individual risk levels exist for these products; (2) these products pose a high potential for ambient release during a number of life cycle stages; (3) homeowners and workers are potentially subject to uncontrolled exposures; (4) suitable substitutes exist for many of these products and are likely to exist for others by the time of the ban; (5) the cost of taking these actions is reasonable, especially in light of the assumption made regarding the portion of the market substituted for by wood shingles in the estimate of the costs, the time provided for substititue development, and the level of ambient exposure posed by products in this category; and (6) while the quantified benefits of banning these products are relatively small, compared to other product categories banned by this rule, these products are likely to lead to a number of serious exposures that could not be readily quantified for this rule and to contribute significantly to environmental loading.

d. *Other product categories that are currently out of production.* This grouping consists of the vinyl/asbestos floor tile and asbestos clothing categories. These categories will be banned in Stage 1. These products were proposed for a Stage 1 ban.

These products are no longer produced in the U.S. and are currently imported in, at most, only small quantities. In instances in which these products are still imported, EPA is concerned about the potential for uncontrolled consumer exposure, for example, the sanding, cutting, and removal of vinyl/asbestos floor tile. The fact that these products are no longer in commerce in the U.S. indicates that effective substitutes are available. Therefore, the cost of banning these products is minimal.

EPA has concluded that a State 1 ban is appropriate for this product category for the following reasons: (1) Relatively high quantifiable individual risk levels would exist for these products were significant U.S. manufacture or importation to begin again; (2) these products pose a high potential for ambient release during a number of life cycle states; (3) homeowners and workers would be potentially subject to uncontrolled exposures were significiant U.S. manufacture or importation to begin again; (4) the cost of banning these products is negligible because there is no current signficant manufacture or import of these products and because suitable substitutes exist for them; and (5) these products are included within the ban to ensure that their U.S. manufacture, importation, processing, or import does not resume.

e. *Vehicular brakes.* This grouping includes drum brake linings, disc brake pads and brake blocks used in new and existing motor vehicles. The manufacture or import of 1994 or later model year motor vehicles containing asbestos drum brake linings or asbestos disc pads (hereafter referred to as the original equipment market, or OEM) will be banned in Stage 2. Asbestos brake friction material manufactured, imported, or processed as replacement drum brake linings or disc brake pads for light- and medium-weight (LMV) motor vehicles with brake systems designed to use non-asbestos friction material will also be banned in Stage 2. The manufacture, import, or processing of asbestos brake blocks for heavy-weight (HV) motor vehicles will be banned in Stage 3. In addition, all friction material containing asbestos manufactured, imported, or processed as replacement parts for vehicles designed to use asbestos friction material (hereafter referred to as the aftermarket, or AM) will be banned in Stage 3.

The benefits (in terms of cancer-cases-avoided) of the actions taken in this rule on these product categories are set forth in the following Table XV:

TABLE XV—CANCER-CASES-AVOIDED FOR ASBESTOS VEHICULAR BRAKES

Product	Discount Rate	
	3 percent	0 percent
Drum brake linings (OEM)	6.33	8.38
Drum brake linings (AM)	76.79	106.26
Disc brake pads, LMV (OEM)	0.75	0.99
Disc brake pads, LMV (AM)	11.56	15.85
Disc brake pads, HV (OEM & AM)	0.16	0.22

TABLE XV—CANCER-CASES-AVOIDED FOR ASBESTOS VEHICULAR BRAKES—Continued

Product	Discount Rate	
	3 percent	0 percent
Brake blocks (OEM & AM)	7.31	10.10

In the proposal, EPA discussed two approaches for regulating asbestos vehicular friction material, either banning all such material in Stage 2 or via the operation of a permit system. EPA stated that it would consider a class exemption for replacement parts under the proposal's staged-ban option.

Asbestos brake friction products are some of the most widely-used asbestos products and are a source of broadly ranging exposures to asbestos. EPA has quantified exposures to asbestos from the manufacture, installation, use, and repair of brake friction products. During the life cycle of these products, both occupational and non-occupational exposures to asbestos post a lifetime risk of cancer mortality. The population at risk from these products is larger than that at risk from any other asbestos product category for which exposure has been quantified for this rule.

Occupational exposure to asbestos from the primary and secondary manufacture of friction products is high and affects many people. The 8-hour TWA exposure level quantified for the primary manufacture of all friction products is 0.145 f/cc (Ref. 29). The lifetime risk from this exposure is estimated to be 5.0×10^{-3}, with 2,779 workers exposed. The exposure level from secondary manufacture is considerably less than from primary manufacture, because secondary manufacture of friction products does not involve cutting, grinding, and fitting of brake material. However, the TWA exposure level for secondary manufacture is still high, ranging upward from 0.446 f/cc (Ref. 29). The lifetime risk from secondary manufacture ranges from an average of 1.6×10^{-3} for drum brake linings to an average of 1.9×10^{-3} for disc brake pads, with 3,038 workers exposed. Quantifiable risk from non-occupational, lifetime exposure to asbestos released during the manufacturing of drum brakes alone is estimated at 1.0×10^{-4} for 92,008 people and greater than 1×10^{-6} for 2 million people.

Occupational expoure from the installation and repair of asbestos brake pads/linings/blocks may result in significant exposure. The 8-hour TWA exposure level for the servicing of disc and drum brake systems is estimated to average 0.05 f/cc (Ref. 29). The lifetime risk from this exposure is 1.68×10^{-3}. There are an estimated 329,000 brake repair facilities where an FTE population of 1,391,000 mechanics may be exposed to asbestos during installation and repair of asbestos brake friction products. Exposure and, thus, risk have not been quantified for the disposal of asbestos brake friction material.

EPA estimated that approximately 13 million do-it-yourself brake installation and repair jobs are done annually by consumers (Ref. 31). Exposure from consumer brake repair varies depending upon the technique used to repair the brakes, whether the repair is done in a garage or outdoors, and other factors. Release of asbestos fibers into the ambient environment resulting from the braking action of asbestos vehicular brakes contributes to the signficant risk of cancer mortality for members of the general population. EPA has quantified the non-occupational exposures from the use of three friction materials: drum brake linings, disc brake pads (LMV), and brake blocks. EPA estimates that the lifetime risk is one in one million for 101 million Americans, on average.

EPA received a large number of comments concerning exposure associated with the use of asbestos-containing brakes. Several commenters stated that there is very little risk of exposure to asbestos fibers released from brakes, because the asbestos is transformed to forsterite by the high heat generated from the use of brakes. EPA recognizes that only a small percentage of the asbestos in brakes is eventually emitted into the air. The remainder is either trapped in the brake assembly or is transformed into minerals such as forsterite by the heat of abrasion before release. However, asbestos is definitely released from brakes during brake use. The three studies of brake emissions, which EPA relied upon in developing its exposure estimates, all used electron microscopy to obtain positive mineralogical identification of the emissions' components. The studies found that between 0.017 and 0.216 percent of the material released was asbestos. Although these percentages are quite small, the total amount of asbestos released from brake use (approximately 7 tons per year) is large because the total volume of brake emissions is large.

There are devices which can control the release of asbestos during the normal replacement of brakes. These devices, the enclosed cylinder/HEPA vacuum system and the compressed air/solvent spray system, are recommended, but not required, by OSHA as means for reducing exposures below OSHA's PEL and action level (Ref. 16). The OSHA standard prohibits the use of air hoses during brake repair. Under ideal conditions these controls may significantly reduce exposure. However, controls must be used consistently to be effective and additional exposures can be created during the disposal of asbestos-contaminated solvent or during replacement of HEPA vacuum filters. If the devices are used properly and exposures are reduced to the PEL or lower, EPA believes that the residual exposure can still result in an unreasonable risk. The efficacy of controlled use as an approach to risk reduction is discussed in more detail in Units V.A. 3 and V.E. of this preamble.

Several commenters stated that EPA should not ban asbestos friction products, arguing that engineering controls can provide sufficient protection from the risks of asbestos exposure. EPA believes that while these controls, if used consistently, can reduce exposure to the OSHA PEL, EPA's analysis indicates that exposure at levels even below OSHA's 0.1 f/cc action level still pose significant risk. In computing workplace exposures, EPA assumed compliance with the OSHA standard when actual monitoring data was either unavailable or above the OSHA PEL. For example, the EPA exposure data for brake repair facilities estimate asbestos exposure at 0.05 f/cc (Ref. 29). Even at this level, which is one half the OSHA action level of 0.1 f/cc, EPA, using the risk table in the 1986 OSHA rule, calculates a lifetime risk of 1.6×10^{-3}. Given the substantial lifetime risk and EPA's concern regarding the consistent and proper use of these controls by mechanics (Ref. 50), EPA does not believe that use of controls during brake repair will sufficiently reduce risk.

Additionally, a controlled use approach as an alternative to a ban of asbestos in friction material would not reduce general population exposures to asbestos originating from brake use. In addition, these controls would not typically be available to the estimated 13 million consumers who annually perform do-it-yourself brake jobs (Ref. 31).

EPA has assessed the current availability of non-asbestos friction material for disc and drum brake system in various vehicle weight classes. This assessment can be found in Volume III of the Regulatory Impact Analysis (Ref. 21). To summarize briefly, use of non-asbestos friction materials in recently-manufactured vehicles is increasing rapidly. There is nearly complete substitution for asbestos in disc pads used in recently-manufactured motor vehicles. Almost 100 percent of disc pads for newly manufactured heavy-weight vehicles are asbestos-free. For light- and medium-weight vehicles, 85 percent of the disc pads used in new vehicles are asbestos-free. Several producers estimate that by 1990, 90 to 100 percent of the disc pads for new vehicles will be asbestos-free.

Evidence also indicates that significant progress is being made in the development of substitutes for drum brake linings used in recently-manufactured motor vehicles. As noted by some commenters, substitution for asbestos in drum brake linings and brake blocks in new model vehicles appears to be more difficult than for disc brakes in new model vehicles. However, according to some commenters, much research is ongoing and some substitutes are currently available for drum brakes in newly-manufactured vehicles. Several commenters stated that asbestos substitutes are more readily available than EPA has estimated and that full conversion to asbestos-free brakes in newly-manufactured vehicles would be feasible in the near future. Some commenters pointed to the rapid conversion to asbestos-free brake friction material in the European market as proof of the technical feasibility of banning similar products in the U.S. For example, Sweden, the Federal Republic of Germany, Switzerland, Austria, Denmark, and Norway have either banned or are phasing out the use of asbestos friction material.

Primary substitutes include semi-metallic materials for disc brakes and non-asbestos organic materials (including fiberglass, para-aramid, mineral fibers, steel wool and fibers, and resins) for drums. Opinions from commenters vary greatly concerning the availability of effective and economical substitutes for brake friction products. While some commenters stated that there are substitutes currently available for most, if not all, brake friction products, other commenters felt that substitutes would be available within 5 to 10 years of the time of the proposal for most, if not all, brake friction products. Several commenters were more pessimistic about the future availability of substitutes. Other commenters indicated that adequate asbestos-free brake blocks may be difficult to develop for new model heavy-weight vehicles because the

weight of the vehicle puts greater demands on the braking system.

While many opinions were offered in comments and elsewhere about the progress being made toward the use of asbestos-free brake friction material, EPA did not receive analytical or quantitative data from commenters documenting technical difficulties encountered regarding substitution for asbestos in brake friction material. EPA acknowledges the inherent research and development variability associated with technological innovation. As a result, EPA decided to delay the ban on asbestos disc brake pads and drum brake linings in new light- and medium-weight vehicles and in replacement disc pads and drum brake linings for light- and medium-weight vehicles with brake systems designed to use non-asbestos until Stage 2. Manufacture, import, and marketing of brake blocks for use in either new heavy-weight vehicles or as replacements will not be banned until Stage 3. These dates are within the range of time frames suggested by comments and the American Society of Mechanical Engineers (ASME) expert panel's recommendations for new vehicles (Ref. 40). Specifically, ASME stated that "* * * at the present rate of technical progress, most new passenger cars can be equipped with totally new non-asbestos frictional systems by 1991, and most light trucks and heavy trucks with S-cam brakes, by 1992. However, a few low-volume new vehicle applications may not have acceptable non-asbestos friction materials at that time. Heavy truck wedge brake blocks, medium drum brake linings and many off-road vehicle brake linings may not be developed by 1992." Comments submitted to EPA in 1986 in response to its proposal described various lead time frames that would be necessary to permit the transition to non-asbestos OEM friction materials. These schedules varied between 2 and 10 years. The most common time frame pointed to was 4 to 6 years for most friction products, with special considerations given to brake blocks and disc pads for heavy vehicles. Several commenters requested time frames in excess of 10 years be considered for these heavy vehicles. Keeping in mind that these comments were made in 1986, EPA believes that it is reasonable to assume that OEM brake friction material for light- and medium-weight vehicles and heavy-weight vehicles can be asbestos-free by the dates prescribed in the rule.

Commenters generally agreed that it is easier to develop replacement asbestos-free friction materials for use in vehicles that are intentionally designed to use such materials than it is to develop asbestos-free friction materials for use as aftermarket replacement products in vehicles currently in use that have brake systems designed to use asbestos. A number of commenters addressed the current availability and efficacy of asbestos free aftermarket replacements for vehicles designed to use asbestos friction materials. Some of these commenters maintained that substitutes are currently available for all friction material aftermarket applications. Some of the major producers of brake friction products, including aftermarket friction materials, no longer produce asbestos brake friction material. One commenter stated that asbestos replacements for heavy-weight vehicles are no longer available from reliable U.S. producers. On the other hand, some commenters stated that it would be infeasible, primarily for economic reasons, to develop effective asbestos-free substitutes for the aftermarket, while others indicated, in 1986 comments, that it would take 10 years to develop adequate aftermarket substitutes. These comments about the technical infeasibility of replacing asbestos friction material with asbestos-free friction material were not based on performance data, but rather theoretical discussions and anecdotal information. Due to the lack of analytical information, EPA cannot estimate quantitatively the rate at which asbestos-free substitution is occurring for the aftermarket products. EPA has delayed until Stage 3 the ban on aftermarket friction materials manufactured, imported, or marketed for use in brake systems designed to use asbestos. EPA believes this delay will permit time to address technological difficulties in developing aftermarket substitutes for vehicles designed to use asbestos. By the effective date of the Stage 3 ban, many of the vehicles on the road will be asbestos-free because of the Stage 2 ban and the prior manufacture of asbestos-free vehicles. EPA believes that it is important to force technology to develop asbestos-free replacements as rapidly as possible particularity in light of the fact that many commenters have pointed to the current availability of asbestos-free replacement linings/blocks and have noted rapid progress in the development of alternatives to asbestos friction materials. EPA plans to monitor the progress of substitute availability for aftermarket products, thus encouraging substitute producers and aftermarket manufacturers to report progress or technological difficulties that may necessitate modification of certain provisions of the ban.

Comments described technological replacement difficulties or economic disincentives associated with developing asbestos-free friction material replacement parts for older and antique cars or for specialty cars such as race cars. EPA will consider a class exemption for such vehicles if one is requested.

Some commenters stated that a ban on asbestos use in the aftermarket for brake systems designed for asbestos friction products will compromise the performance of braking systems designed for asbestos brakes. Some commenters went so far as to predict that there may be more deaths in vehicle accidents due to poor performance caused by premature substitution than from the health risk posed by continued use of asbestos in friction products. Several commenters stated that EPA has ignored the impact of an asbestos friction product ban on highway safety and that risks associated with substitution should have been considered as part of the rule's analysis of costs and benefits. One commenter urged EPA to confer with the National Highway Traffic Safety Administration (NHTSA) regarding possible motor vehicles safety considerations associated with use of non-asbestos friction materials in vehicular brake systems. EPA and NHTSA have met and discussed potential effects on vehicle safety if asbestos friction materials were banned (Refs. 61, 62, and 63). NHTSA has no objection to the staged ban and technical review approach adopted for this rule (Ref. 28).

Evaluation of the safety concern regarding asbestos substitution voiced by these commenters is complicated by the fact that there are no federal safety standards governing the performance of aftermarket brake friction products. While the NHTSA promulgated safety performance standards in 1968 for brakes in new vehicles, no similar standards exist for replacement parts. NHTSA received two petitions requesting that NHTSA promulgate safety standards for the aftermarket. These petitions noted the present use of inferior grade asbestos and non-asbestos friction materials and the inadvertent mismatching of aftermarket friction material to individual brake systems; the petitioners argued that there is a compelling need to establish performance standards for the aftermarket. NHTSA granted a petition requesting that NHTSA propose a standard requiring that all heavy truck brake linings be rated and marked in

accordance with the requirements of such a standard. Another petitioner requested that NHTSA establish safety standards for motor vehicle aftermarket brakes. While NHTSA denied portions of that petition, NHTSA announced its intent to keep abreast of developments by the Society of Automotive Engineers, as well as other developments in the areas of brake lining performance, the relationship to traffic safety, and the needs of the motoring public. NHTSA will continue to examine these issues as resources permit and review and adjust its position, if appropriate.

EPA believes that without safety standards for the aftermarket, commercially available aftermarket friction material may continue to be of inconsistent quality, regardless of whether asbestos or asbestos-free friction products are used. EPA also acknowledges that a ban on asbestos in the brake friction product categories may increase the uncertainty about brake performance. In light of the controversy surrounding the availability of effective substitutes for aftermarket friction products, coupled with the rapid development and current use of some asbestos-free substitutes and the lack of definitive evidence to resolve the controversy, EPA has decided to delay the ban on asbestos in aftermarket brake friction products until Stage 3 to allow sufficient time to develop adequate substitutes. In spite of the relatively low economic impact associated with an immediate ban of asbestos in the brake friction products category and the high risk associated with asbestos exposure originating from asbestos friction products, EPA believes that it is important to provide this 7-year lead time for the industry to develop and produce safe and effective asbestos-free substitutes. Such an approach is consistent with some comments received by EPA.

The ban on asbestos friction products will become effective in two stages: the OEM for cars and light trucks will be banned in Stage 2 and the OEM for heavy vehicles and the AM for all vehicles will banned in Stage 3. This sequential ban accommodates the variable rate of development noted by commenters. Some commenters proposed many more stages than EPA actually adopted in this final rule. EPA was concerned that a complicated schedule of effective dates for the bans would be burdensome without any real benefit. The 2-stage ban for asbestos brakes adopted in this rule represents time frames that are generally consistent with dates proposed by commenters. While some controversy may continue to exist over the dates when substitutes will be available for different vehicle types, EPA believes that this rule provides sufficient lead time for the development of effective non-asbestos substitute brakes.

In light of these facts and the extensive risk posed by exposure to asbestos from vehicular brakes, EPA believes that it is appropriate and necessary to ban asbestos in vehicular friction material. Nonetheless, as described above, EPA, in consultation with NHTSA, will monitor the pace of substitute development and undertake a technical review 5 years after the effective date of the rule, to ensure the availability of suitable non-asbestos aftermarket brake products. After considering all of these issues, EPA believes that this is the best approach in light of the high risk posed by asbestos, the rapid development of replacement friction materials, the current use of non-asbestos brakes in European countries, the controversy concerning substitute availability and performance, and the current consideration, by NHTSA, of aftermarket safety standards.

The total costs of the actions taken in this rule for these product categories are set forth in the following Table XVI:

TABLE XVI—COST OF THE RULE FOR ASBESTOS VEHICULAR BRAKES

Product	Total Cost (in $ million, discounted at 3 percent)
Drum brake linings (OEM)	7.13
Drum brake linings (AM)	8.79
Disc brake pads, LMV (OEM)	3.56
Disc brake pads, LMV (AM)	3.94
Disc brake pads, HV (OEM & AM)	0.33
Brake blocks (OEM & AM)	1.95

f. *Other friction products.* This grouping includes clutch facings, automatic transmission components, and the industrial and commercial friction products categories. These products will all be banned at Stage 2. The benefits (in terms of cancer-cases-avoided) of the actions taken in this rule on these product categories are set forth in the following Table XVII:

TABLE XVII—CANCER-CASES-AVOIDED FOR OTHER FRICTION PRODUCTS

Product	Discount rate	
	3 percent	0 percent
Clutch facings	1.05	1.38
Automatic transmission components	<0.01	<0.01

TABLE XVII—CANCER-CASES-AVOIDED FOR OTHER FRICTION PRODUCTS—Continued

Product	Discount rate	
	3 percent	0 percent
Industrial and commercial friction products	0.40	0.52

Primary routes of exposure to asbestos from these products occur during manufacture and repair. Quantified occupational risk posed by the manufacture and repair of these products ranges from an average of 1.46×10^{-3} for the primary manufacture of automatic transmission components to an average of 5.2×10^{-3} for the primary manufacture of friction materials. Approximately 517 workers in primary and secondary manufacture and 116 FTEs in installation, repair, and disposal are exposed to asbestos. In addition to these occupational risks, EPA has quantified significant non-occupational releases from the primary manufacturing of these three products. Monitoring data are not available for the exposure resulting from the use of these products, although EPA does believe additional exposures from clutches and industrial and commercial friction products are likely.

After assessing the current availability of substitutes and expert opinions concerning the predicted availability of substitutes, EPA believes that suitable substitutes will be available for clutch facings, automatic transmission components, and commercial and industrial friction products by the effective dates of the bans. Over the last several year, EPA has noted the increased use of non-asbestos parts for these products, and believes further development is likely.

The total cost of the actions taken in this rule for these product categories are set forth in the following Table XVIII:

TABLE XVIII—COST OF THE RULE FOR OTHER FRICTION PRODUCTS

Product	Total Cost in $ million, discounted at 3 percent
Clutch facings	12.87
Automatic transmission components	0.22
Industrial and commercial friction products	2.11

The economic impact on this ban will be limited by the fact that most major primary manufacturers of asbestos friction products also produce asbestos-

free substitute products. In fact, all of the U.S. manufacturers of asbestos-containing automatic transmission components also produce asbestos-free products. Currently, asbestos-containing automatic transmission components currently comprise only one quarter of the present market. Considering the rapid substitution in this area and relatively low cost, EPA will ban the manufacture of automatic transmission components at Stage 2.

EPA has concluded that a Stage 2 ban is appropriate for these product categories for the following reasons: (1) Relatively high quantifiable exposure and individual risk levels exist for these products; (2) these products pose a high potential for ambient release during a number of life cycle stages; (3) workers and the general population are potentially subject to uncontrolled exposures; (4) suitable substitutes exist for many of these products and are likely to exist for others by the time of the ban; and (5) the cost of taking these actions is reasonable.

g. *Gaskets.* This grouping includes most of the beater-add and sheet gasket product categories. These products, except for specialty industrial applications, will be banned in Stage 2. Specialty industrial gaskets are not banned under this rule (see discussion at Unit V.F.l.x below). The benefits (in terms of cancer-cases-avoided) of the actions taken in this rule on these product categories are set forth in the following Table XIX:

TABLE XIX—CANCER-CASES-AVOIDED FOR GASKETS [1]

Product	Discount rate	
	3 percent	0 percent
Beater-add gaskets	21.48	28.34
Sheet gaskets	10.76	14.20

[1] Does not include specialty industrial gaskets.

Gaskets are materials used to seal one compartment of a device from another in applications such as engine and exhaust manifolds. Asbestos gaskets are used mainly to seal connections and prevent leakage of fluids between solid surfaces.

Primary routes of exposure to asbestos from these products occur during manufacture, repair of machinery containing an asbestos gasket, replacement of the gasket itself, and disposal. Exposure estimates (but not cost or benefit estimates) used in this Unit reflect exposures quantified for all gasket applications, including the small specialty industrial gasket segment of the gasket market that is not banned by this rule. An estimated 2,583 workers are exposed to asbestos during primary and secondary manufacturing of asbestos gaskets. Quantifiable risk of occupational exposure to these products ranges from an average of 7.35×10^{-4} for the secondary manufacture of beater-add gaskets to an average of 3.56×10^{-3} for the secondary manufacture of sheet gaskets. Quantifiable risk from non-occupational, lifetime exposures to asbestos released during the manufacture of beater-add gaskets alone is estimated at 1×10^{-4} for approximately 47,000 people and at greater than 1×10^{-6} for approximately 6 million people. EPA believes that the exposures quantified for these products are underestimated. Exposures that occur during gasket replacement and machinery repair, including activities like scraping of gaskets or on-site fabrication of gaskets, were not quantified by EPA. EPA determined that accurately quantifying these exposures and the resultant risks would be difficult and that sufficient other exposure and risk information is available regarding these products to make a finding of unreasonable risk.

According to comments, production of asbestos-containing sheet and beater-add gaskets has dropped significantly in most applications in recent years and non-asbestos substitutes already possess a large share of both gasket markets. Also, commenters indicated that the majority of the gasket market will be asbestos-free before the end of 1989. The economic impact of this ban will be limited by the fact that significant progress has been made in the development and availability of non-asbestos substitutes for most gasket applications and that most, if not all, major primary manufacturers of asbestos gaskets also produce non-asbestos substitute products. Due to the insufficiency of available price data, these recent trends, and the resultant decreases in the costs of banning this product, are not fully taken into account in the analysis of the benefits of banning these categories. Therefore, EPA believes that the actual cost of the actions taken on these categories is less than that indicated below.

Gaskets were proposed for either a Stage 3 ban or a ban via the operation of a permit system. However, EPA has received comments indicating that the development of suitable substitutes has been more rapid than projected for most applications. EPA is also concerned that consumers and others may be subject to uncontrolled exposures during the repair and replacement of consumer applications of these products.

The total costs of the actions taken in this rule for these product categories are set forth in the following Table XX:

TABLE XX—COST OF THE RULE FOR GASKETS [1]

Product	Total Cost in $ million (discounted at 3 percent)
Beater-add gaskets	111.20
Sheet gaskets	96.52

[1] Does not include specialty industrial gaskets.

EPA has concluded that a Stage 2 ban is appropriate for these product categories (except for specialty industrial gaskets) for the following reasons: (1) Relatively high quantifiable exposure and individual risk levels exist for these products; (2) these products pose a high potential for ambient release during a number of life cycle stages; (3) homeowners and workers are potentially subject to uncontrolled exposures during removal and replacement of gaskets; (4) the overall cost calculated for taking these actions is relatively high, but is likely to be an overestimate because, according to commenters, suitable substitutes exist for many of these products and are likely to exist for others by the time of the ban; and (5) the scheduling of these products for a Stage 2 ban allows for the continued development of substitutes. Delaying the ban on these gaskets until Stage 3 or not banning the use of asbestos in these products could hurt the efforts of the large numbers of firms that have already made significant progress in developing substitutes because some substitutes are more expensive than asbestos-containing gaskets.

Specialty industrial gaskets are excluded from this rule's bans. These applications are not banned because of the high costs of a ban, due to the lack of suitable substitutes for a number of specialized industrial uses, the relatively small benefits derived from a ban, and a number of other factors described in Unit V.F.1.x.

h. *A/C pipe.* This category will be banned in Stage 3. The benefits (in terms of cancer-cases-avoided) of the actions taken in this rule on this product category are as follows: 3.17 cases if benefits are discounted at 3 percent and 4.38 cases if benefits are not discounted.

A/C pipe is a product composed of cement and asbestos fibers and used primarily to convey potable water in water mains, sewage in force main sewers, and various materials in

industrial process lines (pressure pipe applications), as well as storm drain pipes and sewer pipes (non-pressure pipe applications). Thousands of miles of A/C pipe are installed in the U.S. annually. A/C pipe comes in a wide variety of diameters, formulations, and weights designed for different applications.

Primary routes of exposure to asbestos from these products occur during manufacture and installation. A total of 286 workers is estimated to be exposed to asbestos during the primary manufacture of A/C pipe and as many as 14,944 workers may be exposed during the installation and removal of A/C pipe. Individual lifetime risks posed by these products from occupational exposure are estimated to range from 6.11×10^{-4} for installation and removal (a lower bound that assumes workers install and remove A/C pipe 16 percent of their working hours) to an average of 3×10^{-3} for primary manufacture. Individual risk from non-occupational lifetime exposure to asbestos released during manufacturing is estimated at 1×10^{-4} for approximately 30,000 people and at over 1×10^{-6} for approximately 2 million people. However, EPA believes that the exposures quantified for this category are underestimated. Worker exposures that occur due to the cutting, drilling, or machining of pipe in possible violation of OSHA requirements or general population exposure because of possible erosion of A/C pipe are not accounted for. U.S. production of A/C pipe has decreased significantly in recent years with the declines in sewer system construction and other market factors, including the growing use of non-asbestos substitute products.

Some commenters have stated that A/C pipe possesses a number of unique attributes, including lower energy requirements and friction loss, and greater durability in certain environments than the substitutes identified in the RIA, and that therefore A/C pipe should not be banned in the near term. Available evidence suggests that products are currently available as substitutes. The primary substitutes for A/C pipe are polyvinylchloride (PVC) and ductile iron pipe. There are a variety of asbestos-free concrete products, including prestressed and reinforced concrete pipes that may also be used as substitutes. All primary U.S. producers of A/C pipe also produce direct substitutes made out of non-asbestos materials. A commenter indicated that a cement/substitute-fiber composition is under development and that the substitute fiber may replace asbestos in A/C pipe, thus permitting the continued use of capital equipment currently used to produce A/C pipe. This would substantially reduce the costs and societal impact of banning A/C pipe.

Some commenters have argued that if A/C pipe is banned, pressure may be brought to replace or discontinue use of existing A/C pipe. EPA does not believe that installed A/C pipe should be replaced or that its use should be discontinued. EPA's evaluation of the risk posed by A/C pipe, and by all products subject to this rule, is of absolute risk posed over the entire life cycle of products to be produced in the future, not just risk posed by existing products during product use. EPA's primary concern, for purposes of this rule, is the risk posed by exposures during the life cycle stages of A/C pipe from manufacture through installation. Expected risks later in the product life cycle, for example those risks engendered from exposures due to eroding pipe, have not been quantified. Therefore, actions to remove or discontinue use of existing A/C pipe in response to this rule are not justified.

Other commenters argued that if A/C pipe is banned in the U.S., other countries, including those where viable substitutes for A/C pipe are not readily available, would be pressured to ban the product. EPA's unreasonable risk analysis for this rule for A/C pipe is based not only on the risk posed during the life cycle of the product in the U.S., but also on the availability of viable substitutes in the U.S. and other factors. Therefore, the fact that EPA finds in this rule that future A/C pipe production and use in the U.S. poses an unreasonable risk does not imply that a similar finding could be made outside of the U.S.

A commenter argued that PVC and ductile iron pipe as primary substitutes for A/C pipe pose greater health risks than those posed during the life cycle of A/C pipe. EPA acknowledges that the individual lifetime cancer risk associated with the production of PVC may be equivalent to that associated with the production of A/C pipe. EPA could not calculate individual lifetime cancer risk for the production of ductile iron pipe. Instead EAP could only compute population cancer risk for ductile iron pipe production because of the manner in which available risk data were presented. The population cancer risk for the production of ductile iron pipe could be comparable to the population cancer risk for production of A/C pipe. While available information permitted EPA to quantify the risks associated with the installation of A/C pipe, cancer risks from installation of ductile iron pipe or to PVC dust from installation of PVC pipe have not been identified. While individual lifetime risks have been quantified for vinyl chloride (VC) leachate in drinking water, individual lifetime risks associated with asbestos in drinking water have not been specifically quantified. While the supporting data are limited, based on a consideration of life cycle risks, EPA believes that the available evidence suggests that substitution of A/C pipe with PVC and ductile iron pipe will present lower population cancer risks.

i. *Polyvinylchloride pipe.* For the proposed rule, EPA concluded that PVC pipe does not appear to present a health hazard comparable to asbestos, although VC, the monomer used to produce PVC, is a carcinogen. EPA also concluded that while VC is a human carcinogen, it does not appear to present a greater hazard than asbestos in the workplace or ambient environment. The PVC product itself presents little risk and workplace exposures are apparently adequately controlled (Ref. 39).

EPA based this determination, for the proposed rule, on several factors including the individual lifetime cancer risk of 10^{-4} for occupational exposure due to inhalation of VC in the manufacture of PVC pipe (Ref. 39). In response to the proposal, a commenter stated that workers exposed via inhalation to VC at the OSHA's PEL of 1 ppm would have a potential individual lifetime cancer risk of 4×10^{-3}. The commenter noted that this individual lifetime cancer risk is based on EPA's Carcinogen Assessment Group's (CAG) published unit cancer risk of 2×10^{-2} $(mg/kg/day)^{-1}$ for VC based on animal inhalation data. The commenter questioned the discrepancy between the individual lifetime cancer risk estimation for VC of 4×10^{-3} and the lifetime cancer risk of 10^{-4} cited in EPA's support document for the proposed rule.

The commenter is correct that CAG has published a unit risk number for inhalation exposure to VC. This unit risk number was derived from animal inhalation data. The individual lifetime cancer risk number, 10^{-4}, cited in the support document for the proposal, was derived from epidemiological data analyzed and reported by Nicholson et al. 1982 (Ref. 39). In summary, EPA believes that the expected individual lifetime cancer risk associated with the manufacture of PVC pipe may be equivalent to the individual lifetime cancer risk posed by manufacture of A/C pipe. However, as noted in

testimony presented by a consultant for the Asbestos Institute at the 1986 legislative hearing, production of A/C pipe is significantly more labor intensive than production of PVC pipe. Even if one assumes that the lifetime cancer risk for production of A/C pipe and inhalation of VC in the manufacture of PVC pipe are comparable, the number of expected cancer cases (population risk) from production of PVC pipe will most likely be lower than the expected number of cancer cases associated with the production of an equivalent amount of A/C pipe.

EPA recognizes that VC inhalation exposure in the workplace, is the most significant exposure. Other potential exposures that could be present but are difficult to evaluate include: (1) VC leachate in drinking water, (2) VC emissions from PVC plants, and (3) inhalation of PVC dust. A commenter noted that "exposure to VC by ingestion in drinking water (via leaching from the PVC water pipe or as a contaminant in the water supply from disposal of VC/PVC waste products) also occurs." Additionally, the commenter noted that EPA should update its unit cancer risk value for ingestion given a more recent calculation by EPA's Office of Drinking Water.

EPA acknowledges the presence of detectable levels of VC in drinking water; however, the amount of VC expected to leach into drinking water from PVC pipe is considered to be minimal (Ref. 43). It is estimated that nearly all individuals (99 percent) using public water supplies are exposed to <1.0 μg/l of VC from all sources. At 1.0 μg/l, the excess lifetime cancer risk is about 6×10^{-5} (Ref. 44). Since leaching of VC from PVC drinking water pipe is estimated to be minimal, the risks associated with any increase in the amount of VC leachate in drinking water as a result of a ban of A/C pipe is also expected to be minimal.

Exposure to respirable PVC dusts and fumes may occasionally be encountered in the production of PVC or in the manufacture of PVC pipe. Exposure to PVC dust is associated with fibrotic lung changes and nonfatal lung conditions, such as bronchitis and pneumococcosis (Ref. 45).

Analogous to its analytical approach to asbestos and fibrous substitutes, EPA limited its PVC assessment to health effects directly associated with VC or PVC. Effects from exposure to other chemicals (such as solvents, byproducts, intermediates, and adhesives) involved in the manufacture, installation, use or disposal of PVC pipe were not considered. For the proposal, EPA evaluated hazard and exposure data on some other chemicals associated with pipe production and use. However, as noted by a commenter, the hazard and/or exposure data for these other chemicals are too limited to assess risk.

On the basis of available evidence, on balance, EPA believes that the population risk associated with A/C pipe life cycle exposures are likely to exceed the population risks associated with life cycle exposures to PVC pipe. A/C pipe presents risks throughout its product life cycle during manufacture, installation and repair, use and disposal because of the especially hazardous properties inherent in asbestos, the environmental persistence of asbestos fibers, and the larger populations exposed. In contrast, PVC pipe presents risks largely during the manufacturing phase of PVC pipe.

ii. *Ductile iron pipe.* For the proposed rule, EPA concluded that ductile iron pipe, as a substitute for A/C pipe, would not present a health hazard comparable to that of asbestos (Ref. 39). Based on EPA's revised analysis of lifetime exposure associated with A/C pipe, one could argue that the number of excess cancer deaths associated with the production of ductile iron pipe and A/C pipe may be similar (Ref. 42). However, the excess cancer deaths that may be attributed to ductile iron pipe may be overestimated (Ref. 42). The estimate of excess cancers was derived from epidemiological data gathered on steel and iron foundry workers who may have had more diverse and higher exposures to toxic agents. Nevertheless, even if the cancer risk associated with ductile iron foundries is similar to steel foundries, the estimate of cancer risk for ductile iron pipe is most likely an overestimate for current exposure since historical exposures upon which the risks were based were probably much greater. In contrast, ductile iron pipe is manufactured from scrap metal which is not expected to result in exposures similar in magnitude to those found in the steel and iron foundries. Given that the number of workers exposed to particular agents in particular job categories cannot be determined, a precise occupational cancer risk comparison cannot be made. In addition, available evidence suggests that risks during non-manufacturing stages of the product life cycle are greater for A/C pipe than for ductile iron pipe. Thus, EPA believes that fewer cancer cases would be expected from the substitution of ductile iron pipe for A/C pipe than from the continued manufacture, processing, and use of A/C pipe.

iii. *Regulatory approach.* The total costs of the actions taken in this rule for this product category is $128.03 million. This cost is likely an overestimate of actual cost in that it does not quantify the effect of the development of substitute fibers in cement pipe production. Use of a substitute fiber is expected to substantially reduce the costs and societal impact of banning this product.

EPA has concluded that a Stage 3 ban is appropriate for this product category for the following reasons: (1) relatively high quantifiable exposure and individual risk levels exist for these products; (2) these products pose a high potential for release of asbestos fibers during a number of life cycle stages; (3) workers and surrounding populations are potentially subject to uncontrolled exposures, especially during installation; (4) while this category was proposed for a Stage 1 ban, EPA has concluded that it is appropriate to delay the ban until Stage 3 to allow more time for further substitute development; (5) the cost of taking these actions is reasonable because performance and price suitable substitutes exist. Prior to the effective date of the Stage 3 ban, EPA will undertake a technical review to determine the availability of non-asbestos substitutes for A/C pipe. EPA believes that this is the best approach in light of the significant risk posed by asbestos; the possible risks posed by the current major substitutes, PVC and ductile iron pipe; and the development of further substitutes for A/C pipe.

i. *Coatings.* This grouping includes the roof coatings and cements and non-roofing adhesives, sealants, and coatings product categories. These products will be banned in Stage 3. The benefits (in terms of cancer-cases-avoided) of the actions taken in this rule on these product categories are set forth in the following Table XXI:

TABLE XXI—CANCER-CASES-AVOIDED FOR COATINGS

Product	Discount rate	
	3 percent	0 percent
Roof coatings	1.08	1.49
Non-roof coatings	1.33	1.84

These products are used for a wide variety of functions. Roof coatings uses include waterproofing, sealing, and repair of roofs. Non-roof coatings uses include adhesives, sealants, and coatings used in the building construction, automotive, and aerospace industries.

Primary routes of exposure to asbestos from these products occur during manufacture, installation or application, and repair. A total of 582 workers is estimated to be exposed to asbestos during primary manufacture of asbestos roof coatings, and 553 workers are exposed during the primary manufacture of asbestos non-roof coatings. Quantifiable risk posed by these products is estimated to range from 1.22×10^{-3} for the removal of roof coatings in built-up roofing (a lower bound that assumes less than full-time exposure) to an average of 3.52×10^{-3} for the primary manufacture of non-roof coatings. Quantifiable risk from non-occupational, lifetime exposures to asbestos released during the manufacture of roof coatings is estimated at 6.27×10^{-5} for approximately 1,000 people and at greater than 1×10^{-6} for approximately 450,000 people.

However, EPA has concluded that the exposure quantified for this grouping are underestimated. EPA did not quantify exposures that occur during application, maintenance, and repair, including activities like spray application of coatings and sanding or removal of existing coatings or caulking. EPA also did not quantify releases to the ambient air due to the weathering of products used in outdoor, sometimes harsh environments. Many products in this category that are used in outdoor environments eventually wear off or chip or flake, resulting in difficult to monitor ambient releases. If, as a means of representing the possible effect of underestimated exposure during installation and removal, it were assumed that as little as one-tenth of 1 percent of asbestos consumed for these uses were released over the life cycle of the products and exposure were assumed based on analogous product operations, the estimate of benefits would more than double for roof coatings (benefits would be 3.57 cases at 0 percent and 2.59 cases at 3 percent) and would increase for non-roof coatings (benefits would be 2.07 cases at 0 percent and 1.50 cases at 3 percent).

According to comments, non-asbestos substitutes possess growing shares of both coatings markets. Available evidence suggests that suitable substitutes should be available for most applications by Stage 3. One commenter, a major producer of roof coatings, indicated that it had replaced asbestos in all of its formulations. Trends toward the greater use of non-asbestos substitutes and probable decreases in the cost of substitutes are not fully taken into account in the analysis of the benefits of banning these categories because of the unavailability of substitute use information at the time the analysis was performed. Therefore, EPA believes that the actual cost of the actions taken on these categories is less than that indicated below.

Both coatings categories were proposed for either a Stage 3 ban or a ban via operation of a permit system. EPA has received comments indicating that progress has been made in the development of suitable substitutes.

The total costs of the actions taken in this rule for these product categories are set forth in the following Table XXII:

TABLE XXII—COST OF THE RULE FOR COATINGS

Product	Total cost in $ million, discounted at 3 percent
Roof coatings	45.48
Non-roof coatings	0.81

EPA has concluded that a Stage 3 ban is appropriate for these product categories for the following reasons: (1) Relatively high quantifiable exposure and individual risk levels exist for these products; (2) these products pose a high potential for ambient release during a number of life cycle stages, including ambient releases due to weathering during outdoor use; (3) homeowners and workers are potentially subject to uncontrolled exposures during product application, maintenance, and removal; (4) the cost of taking these actions is reasonable because suitable substitutes are expected to exist for all of these products by the time of the ban; and (5) while the quantified benefits of banning these products are relatively small, compared to other product categories banned by this rule, these products are likely both to lead to a number of serious exposures that could not be readily quantified for this rule and to contribute significantly to environmental loading.

j. *Paper products.* This grouping includes the commercial paper, corrugated paper, millboard, rollboard, and specialty paper product categories. These products will be banned in Stage 3. The benefits (in terms of cancer-cases-avoided) of the actions taken in this rule of these product categories are set forth in the following Table XXIII:

TABLE XXIII—CANCER-CASES-AVOIDED FOR ASBESTOS PAPER PRODUCTS

Product	Discount rate	
	3 percent	0 percent
Millboard	0.42	0.58
Specialty paper	0.10	0.14

Commercial and corrugated paper and rollboard are no longer commercially imported or produced in the U.S.

The products in these categories are used for a wide variety of functions. They are frequently very similar in form, but differ primarily by specific end use. Product uses include thermal insulation, fireproofing, and fill for a variety of applications, such as beverage and other filters. Asbestos paper products are also used as a component of other products, such as gaskets (discussed above).

Primary routes of exposure to asbestos from these products occur during manufacture, installation, repair, removal, and disposal. A total of 668 workers is estimated to be exposed to asbestos during primary and secondary manufacturing of asbestos paper products. Quantifiable risk posed by these products is estimated to range from an average of 7.35×10^{-4} for the secondary manufacturing of all paper products to an average of 1.87×10^{-3} for the primary manufacturing of millboard. There is potential for episodic, peak exposure during manufacturing activities. Respirators and strict workplace and cleaning practices must be observed to meet the existing OSHA PEL for these products. Quantifiable risk from non-occupational, lifetime exposure to asbestos released during the manufacture of millboard is estimated at 1×10^{-4} for approximately 2,256 people and at greater than 1×10^{-6} for approximately 840,000 people. EPA has concluded that the overall exposures quantified for this grouping are underestimated. EPA did not quantify exposures that occur during installation, repair, and removal, including activities like cutting, drilling, and tearing performed by hand during installation, maintenance, removal, and disposal of existing products. EPA determined that accurately quantifying these exposures and the resultant risks would be difficult and that sufficient other exposure and risk information is available regarding these products to make a finding of unreasonable risk.

According to EPA's analysis and comments, three of the five paper products in this grouping, commercial and corrugated paper and rollboard, are no longer commercially imported or

produced in the U.S. In addition, low-cost substitutes exist for products in the millboard and the specialty paper categories. Therefore, available evidence suggests that suitable substitutes should be available for most applications by the effective date of the Stage 3 ban. The total costs of the actions taken in this rule for these product categories are set forth in the following Table XXIV:

TABLE XXIV:—COST OF THE RULE FOR ASBESTOS PAPER PRODUCTS

Product	Total cost in $ million, discounted at 3 percent)
Millboard	3.73
Specialty paper	0

The paper product categories were proposed for either a Stage 3 ban or a ban via the operation of a permit system. Many of these products are no longer used in the U.S. and suitable substitutes are rapidly being developed, although the development of reasonably-priced substitutes for some specialty uses might take a number of years. EPA is also concerned that consumers may be subject to uncontrolled exposures during installation, maintenance, repair, and removal of products such as millboard. In addition, many of these paper products are very similar in form and bans would be difficult to enforce were the products in this grouping banned at different times.

EPA has concluded that a Stage 3 ban is appropriate for these product categories for the following reasons: (1) Relatively high quantifiable exposure and individual risk levels exist for these products; (2) these products pose a high potential for ambient release during a number of life cycle stages; (3) consumers and workers are potentially subject to uncontrolled exposures, especially during installation, maintenance, repair, and removal of these products; (4) the cost of taking these actions is reasonable because several of these products are no longer produced or imported in the U.S. and because suitable substitutes are expected to exist for all of these products by the time of the ban; and (5) while the quantified benefits of banning these products are relatively small, compared to other product categories banned by this rule, these products are likely both to lead to a number of serious exposures that could not be readily quantified for this rule and to contribute significantly to environmental loading.

One asbestos paper product category, high-grade electrical paper, is not included within the rule's bans (see Unit V.F.1.v). This product is not included for a number of uses of the product, thereby making the cost of a ban very high relative to other products analyzed for this rule. In addition, high-grade electrical paper is reasonably discernable from other paper products.

k. *New commercial asbestos products.* This grouping covers all new asbestos-containing products whose commercial manufacture, importation, or processing commences after the effective date of this rule. All such new uses will be banned from manufacture, importation, processing, and distribution in commerce as of Stage 1, unless EPA grants an exemption application for the product or use. In view of the following factors, EPA finds that the use of asbestos in new products whose commercial manufacture, importation, or processing is initiated after the effective date of this rule's bans poses an unreasonable risk of injury to human health: (1) The development of substitute fibers, (2) the potential for high lifetime risks related to exposure to asbestos due to the manufacture, importation, processing, and use of new asbestos products, (3) the likely escalation of environmental loading of asbestos if the manufacture, importation, processing, or distribution in commerce of new asbestos products were allowed, (4) the speculative benefits of new uses of asbestos, and (5) the absence of cost related to modification of existing capital equipment. Therefore, EPA finds that the benefits of banning new commercial asbestos products outweighs the costs of such a ban. Should a new use of asbestos be developed which meets the criteria applied to exemptions for existing asbestos products, set out in Unit III.E of this preamble and § 763.173, an exemption should be applied for and may be granted.

1. *Categories and activities not subject to this rule's ban.* This grouping includes acetylene cylinders, arc chutes, asbestos diaphragms, battery separators, high-grade electrical paper, missile liners, packings, reinforced plastic, sealant tape, specialty industrial gaskets, and textiles. These products were generally proposed for a third stage ban or a ban via the operation of a permit system. These products are exempted from the final rule's bans because, based on currently-available information, EPA has not found that they pose an unreasonable risk of injury to human health under the criteria of TSCA section 6. EPA will reconsider its decision whether to include these products within the ban if more information about them becomes available.

The following paragraphs discuss EPA's findings for the various products in this grouping.

i. *Acetylene cylinder filler.* These products are used as filler in steel cylinders used to store acetone in oxyacetylene torches. Benefits derived by banning this product would total less than one-tenth of a cancer-case-avoided. Exposures during primary manufacture are low due to the enclosed nature of the product's production process. Exposures in stages of the product's life cycle beyond primary manufacture are likely to be limited, relative to other product categories, because the product is enclosed and there is little exposure during product repair or disposal compared to other products analyzed for this rule.

EPA does not believe that a ban is appropriate for this product category for the following reasons: (1) Current substitutes are more expensive than asbestos products and little information is available on the relative performance characteristics of substitutes; therefore, reasonable cost, suitable substitutes may not be available for all applications of these products; (2) this product category accounts for only a minuscule portion of U.S. asbestos consumption (approximately 584 tons in 1985); and (3) a ban on this product category would result in only minimal benefits because asbestos exposure is limited in most life cycles stages, relative to other products analyzed for this rule.

ii. *Arc chutes.* These products are used to guide electric arcs in products including motor starter units in electric generating plants. The benefits derived from a ban on this product would total only a small fraction of a cancer-case-avoided. Although EPA has no data on exposure for products in this category, exposures in product life cycle stages beyond primary manufacture are likely to be limited, relative to other product categories, because the asbestos is bound in ceramic in the end use product.

EPA does not believe that a ban is appropriate for this product category for the following reasons: (1) Insufficient information was available regarding exposure to determine the benefits of banning this product; (2) this product category accounts for only a minuscule portion of U.S. asbestos consumption (approximately 13.5 tons in 1985).

iii. *Asbestos diaphragms.* These products are used primarily in the chlor-alkali industry in the production of chlorine, caustic soda, and other

products. Benefits derived by banning this product would total approximately three-tenths of a cancer-case-avoided. Exposure to asbestos during the life cycle of this product is limited because the product is generally fabricated on site, used saturated with solution, and disposed of while wet. Asbestos is not prone to be released into the ambient air during stages after product fabrication. Further, insufficient information exists regarding the availability of substitute products for diaphragms in existing chlorine production plants to justify a ban. The cost of modifying existing plants to accept new membrane cell technology in response to a ban on asbestos use in this product may be very high. Based on available information, the total cost of banning this product is estimated to total more than $2 billion. However, suitable substitutes now exist for asbestos diaphragms for use in more recently constructed chlorine product plants. Therefore, EPA specifically recommends that users of asbestos diaphragms use non-asbestos diaphragm cells in facilities that will accept them and in the design of new facilities.

EPA does not believe that a ban is appropriate for this product category for the following reasons: (1) Insufficient information was available to determine whether suitable product substitutes will soon be available for use in existing chlorine production facilities; (2) the cost of banning this product category would be very high; (3) this product category accounts for only a minuscule portion of U.S. asbestos consumption (less than 1,000 tons in 1985); and (4) a ban on this product category would result in only minimal benefits because asbestos exposure is limited in most life cycle stages, relative to other products analyzed for this rule.

iv. *Battery separators.* These products are used to insulate or separate the polar terminals in batteries or fuel cells, primarily in highly-specialized military and aerospace applications. The benefits derived from a ban on this product would total only a small fraction of a cancer-case-avoided. Although EPA has no date on exposure to products in this category, exposures in stages of the product's life cycle beyond primary manufacture are likely to be limited, relative to other product categories, because asbestos is enclosed during use and disposal. In addition, because most uses are highly specialized and built to government specifications, it is doubtful that substitutes will be developed or costs of a prospective ban will decrease substantially in the near future.

EPA does not believe that a ban is appropriate for this product category for the following reasons: (1) Insufficient information was available regarding product substitutes to determine the costs of banning this product, although available information indicates that the costs of a ban would be high; (2) this product category accounts for only a minuscule portion of U.S. asbestos consumption (approximately 1 ton in 1985); and (3) a ban on this product category would result in only minimal benefits because asbestos exposure is limited in most life cycle stages, relative to other products analyzed for this rule.

v. *High-grade electrical paper.* These products are used as electrical paper insulation, primarily for high-temperature, low-voltage applications such as motors, generators, transformers, and other heavy electrical apparatuses. The benefits derived from a ban on this product would total approximately 0.4 of a cancer-case-avoided. The cost of banning this product would be high because reasonably priced suitable substitutes do not exist for all applications and a number of existing substitutes are very expensive. The total cost of banning this product is estimated to total over $51 million.

EPA does not believe that a ban is appropriate for this product category for the following reasons: (1) This product category accounts for only a minuscule portion of U.S. asbestos consumption (approximately 744 tons in 1985); (2) the costs of banning this product would be very high, due to the absence of reasonably priced substitutes; and (3) a ban on this product category would result in minimal benefits.

vi. *Missile Liners.* These products are used to coat the interiors of rocket chambers, primarily in highly-specialized military and aerospace applications. Benefits derived by banning this product would total approximately four tenths of a cancer-case-avoided. EPA has no information indicating that suitable substitutes are available. The total cost of banning this product is estimated at almost $2 billion. Because most uses are highly specialized military uses, it is doubtful that substitutes will be developed and be certified for these uses or that costs of a prospective ban will decrease substantially in the near future.

EPA does not believe that a ban is appropriate for this product category for the following reasons: (1) This product category accounts for only a minuscule portion of U.S. asbestos consumption (approximately 700 tons in 1985); (2) the costs of banning this product would be very high, because most uses are highly specialized military uses; and (3) a ban on this product category would result in minimal benefits.

vii. *Packings.* Packings are used to seal fluids in devices where motion is necessary. Benefits derived from banning this product category would total less than one tenth of a cancer-case-avoided. Exposures in the product life cycle stages beyond primary and secondary manufacture are likely to be limited, relative to other product categories, because asbestos in packings is generally saturated with lubricant during packing formation and with fluid during use and removal. In addition, there are many specialized uses of asbestos packings, including advanced technology and military applications. The cost of banning this product would be relatively high on a per unit basis because suitable substitutes do not exist and are unlikely to soon be developed for a significant number of packings applications and a number of existing substitutes are very expensive. The total cost of banning this product is estimated at $0.55 million.

EPA does not believe that a ban is appropriate for this product category for the following reasons: (1) this product category accounts for only a small portion of U.S. asbestos consumption (approximately 125 tons in 1985); (2) the costs per unit of banning this product would be relatively high for the amount of benefits derived, due to the absence of substitutes of similar cost or performance characteristics for a number of applications; and (3) a ban on this product category would result in minimal benefits because asbestos exposure is limited in most life cycle stages, relative to other products analyzed for this rule.

viii. *Reinforced plastic.* These products are used primarily for electro-magnetic parts in the automotive and appliance industries and high-performance specialty plastics. Benefits derived by banning this product category would total approximately four tenths of a cancer-case-avoided. Exposures in product life cycle stages beyond primary manufacture are likely to be limited, relative to other product categories, because asbestos is encased in plastic in the end use products. In addition, the cost of banning this product would be high because suitable substitutes do not exist for a significant number of plastics applications and a number of existing substitutes are very expensive. The total cost of banning this product is estimated at almost $35 million.

EPA does not believe that a ban is appropriate for this product category for the following reasons: (1) This product category accounts for only a minuscule portion of U.S. asbestos consumption (approximately 812 tons in 1985); (2) the costs of banning this product would be high, due to the absence for a number of applications of substitutes of similar cost or performance characteristics; and (3) a ban on this product category would result in minimal benefits because asbestos exposure is limited in most life cycle stages, relative to other products analyzed for this rule.

ix. *Sealant tape.* These products are used primarily to seal windows and automotive windshields, in aerospace applications, and in the manufacture of insulated glass. Benefits derived by banning this product would total less than one tenth of a cancer-case-avoided. Exposures in the product's life cycle stages beyond primary manufacture are likely to be limited, relative to other product categories, because asbestos is contained in rubber in the end use products. In addition, the cost of banning this product would be high because suitable substitutes do not exist for a number of non-automotive applications. A number of existing substitutes are very expensive and others do not perform as well as asbestos-containing products. The total cost of banning this product is estimated at almost $35 million.

EPA does not believe that a ban is appropriate for this product category for the following reasons: (1) This product category accounts for only a minuscule portion of U.S. asbestos consumption (approximately 700 tons in 1985); (2) the total cost of banning this product would be significant because of the absence of suitable substitutes for some uses; and (3) a ban on this product category would result in minimal benefits because asbestos exposure is limited in most life cycle stages, relative to other products analyzed for this rule.

Specialty industrial gaskets. The production of most asbestos-containing gaskets is banned in Stage 2 (see Unit V.F.g). Excluded from the rule's bans are gaskets that are manufactured, imported, processed, or distributed in commerce for specialty industrial uses. This exclusion is limited to asbestos-containing gaskets that are designed for industrial uses in either (a) environments where temperatures are 750 degrees Fahrenheit or greater, or (b) corrosive environments. An industrial gasket is one designed for use in an article which is not a "consumer product" within the meaning of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2052 or for use in a "motor vehicle" or "motor vehicle equipment" within the meaning of the National Traffic and Motor Vehicle Safety Act of 1966, as amended, 15 U.S.C. 1381. A corrosive environmental is one in which the gasket is exposed to concentrated (pH less than 2), highly oxidizing mineral acids (e.g., sulfuric, nitric, or chromic acid) at temperatures above ambient. For example, gaskets used in automobiles or consumer products would not be excluded from the rule's bans, even if a particular application was designed for use in a corrosive environment or an environment of greater than 750 degrees Fahrenheit. On the other hand, gaskets used in industrial machinery would be excluded from the rule's bans if the gasket application were designed for use in a corrosive environment or in one of greater than 750 degrees Fahrenheit.

Gaskets are used to seal one compartment of a device from another in static applications. This portion of the beater-add and sheet gasket product categories is not being banned because: (1) According to commenters and the RIA, industrial applications above 750 degrees Fahrenheit and industrial uses in corrosive environments contain many specialized uses of asbestos gaskets, including advanced technology and military applications, and available information indicates that substitutes for these industrial applications are less likely to be available than for lower temperature, non-corrosive, or consumer (e.g., automotive) applications, (2) due to the nature of their applications, the potential hazards created by failure of specialty industrial gaskets might be greater than for other categories, (3) these applications account for only a small portion of the gasket product categories and a very small portion of U.S. asbestos consumption, (4) industrial applications have relatively lower overall exposure levels and smaller exposed populations than do uses with potential consumer exposures, (5) the benefits resulting from a ban of these applications (approximately 6.6 cancer cases) would be small relative to the benefits derived from including the rest of the gasket categories in the ban. The cost of banning these portions of the gasket categories would be high because available evidence indicates that suitable substitutes do not exist and are unlikely to soon be developed for a significant number of applications and a number of existing substitutes are very expensive. The total cost of banning these applications is estimated at approximately $95 million.

xi. *Textile products.* These products are primarily intermediate textile products used in end products covered by other categories banned by this rule, including friction products and gaskets. Because exposures related to the production of these products are largely eliminated by other actions taken in this rule, EPA has determined that separate action on this category to be unnecessary.

VI. Other EPA Statutes

Section 6(c) of TSCA requires that if EPA determines that a risk of injury to health or the environment could be eliminated or reduced to a sufficient extent by actions taken under another statute administered by EPA, EPA may not promulgate a rule under section 6(a) of TSCA unless EPA finds that it is in the public interest to protect against the risk by action under TSCA. EPA finds that no other law administered by EPA will eliminate or reduce to a sufficient extent the risks posed by asbestos exposure and that it is in the public interest to use TSCA.

Several EPA statutes have been used to limit asbestos exposure. On April 16, 1973, EPA used the authority of the Clean Air Act (CAA) to list asbestos as a hazardous air pollutant, establish a "no visible emission" standard for manufacturers, and ban the use of spray-applied, asbestos-containing material as insulation in buildings. EPA amended this regulation to ban asbestos-containing pipe lagging, by a rule published in the **Federal Register** of October 12, 1975 (40 FR 48292); and in 1978, extended the ban to all uses of sprayed-on asbestos by a rule published in the **Federal Register** of June 19, 1978 (43 FR 26372). The CAA rule, which was last amended on April 5, 1984 (49 FR 13658), also regulates the removal of asbestos from buildings and the disposal of wastes generated by removal. EPA proposed amendments to the rule in the **Federal Register** of January 10, 1989 (54 FR 912) to enhance and promote compliance with the current standard.

However, the CAA has limitations. The CAA does not apply directly to indoor air in the workplace or home. Consequently, some additional uses of that statute may leave many workplace or home exposures inadequately controlled.

Another EPA statute that could be used to reduce asbestos exposure is the Safe Drinking Water Act (SDWA). Under the 1986 SDWA Amendments, EPA is required to set a National Primary Drinking Water Regulation for asbestos. In the **Federal Register** of May 22, 1989, EPA proposed an SDWA maximum contaminant level goal and National Primary Drinking Water Regulation maximum contaminant level for asbestos in drinking water of 7 million asbestos fibers exceeding 10 microns in length. This regulation shortly. However, this regulation would necessarily ignore the inhalation risk posed by asbestos from sources other than drinking water and would therefore affect only a small portion of overall exposure.

An additional EPA statute that could be used to limit asbestos exposure is the Resource Conservation and Recovery Act (RCRA). Under RCRA, EPA could list asbestos as a hazardous waste and subject disposal of asbestos to general RCRA requirements designed to reduce exposure. However, such action under RCRA would only reduce exposure during the disposal of asbestos and asbestos products.

VII. Analysis Under Section 9(a) of TSCA

Under section 9(a)(1) of TSCA, EPA is required to submit a report to another Federal agency when two determinations are made. The first determination is that EPA has a reasonable basis to conclude that a chemical substance or mixture presents or will present an unreasonable risk of injury to health or the environment. The second determination is that the unreasonable risk may be prevented or reduced to a sufficient extent by action taken by another Federal agency under a Federal law not administered by EPA. Secitn 9(a)(1) provides that when the Administrator makes these two determinations, EPA must provide an opportunity to the other Federal agency to assess the risk described in the report, to interpret its own statutory authorities, and to initiate an action under the Federal laws that it administers. Section 9(a) of TSCA thus requires EPA to review other Federal authorities not administered by EPA to determine whether action under those authorities may prevent or sufficiently reduce the unreasonable risk. The following Unit summarizes past and contemplated actions by other agencies and then discusses why those agencies are not able to prevent or sufficiently reduce the unreasonable risk presented by asbestos.

A. Other Authorities Affecting Asbestos

Under the authority of the Consumer Product Safety Act (CPSA, 15 U.S.C. 2051), the Consumer Product Safety Commission (CPSC) has issued rules banning consumer patching compounds (16 CFR Part 1304) and artificial emberizing materials (16 CFR Part 1305) containing respirable asbestos. The CPSC took these actions based on findings that the use of those products in the household would result in an increased risk of cancer. Earlier, the Food and Drug Administration under the Federal Hazardous Substances Act (FHSA, 15 U.S.C. 1261) banned "general-use garments containing asbestos other than garments having a bona fide application for personal protection against thermal injury and so constructed that the asbestos fibers will not become airborne under reasonably foreseeable conditions of use" (16 CFR 1500.17). The FHSA is now administered by the CPSC.

In 1980, CPSC issued a general order requiring persons to submit information on the use of asbestos in certain consumer product categories. CPSC has also measured potential consumer exposure to asbestos from such products as asbestos millboard, asbestos paper products, and stove door gaskets. CPSC submitted those data to EPA as part of this rulemaking. On September 24, 1986 (51 FR 33911), CPSC issued labeling requirements for "household products containing intentionally added asbestos that, under any reasonable foreseeable conditions of handling and use are likely to release asbestos fibers." In 1986, in light of the EPA propose rule to ban certain asbestos products immediately and phase out others over 10 years, CPSC decided not to ban any additional consumer products containing asbestos under statutes that it administers.

OSHA began to regulate asbestos in the workplace in 1971 under the Occupational Safety and Health Act (29 U.S.C. 51, OSHAct). Since the first workplace standard setting a limit of 12 f/cc was promulgated in May 1971, the workplace standard has been periodically lowered, to 5 f/cc in 1972 and to 2 f/cc in 1976. An Emergency Temporary Standard (ETS) establishing a PEL of 0.5 f/cc was published in the **Federal Register** of November 4, 1983 (48 FR 51086), but the ETS was found invalid by a court. OSHA proposed a revised standard in the **Federal Register** of April 10, 1984 (49 FR 14116). OSHA issued a final rule on June 20, 1986 (51 FR 22612), lowering the PEL to 0.2 f/cc and establishing new work practice requirements for both general industry and the construction sector. Both asbestos industry groups and unions challenged various provisions of the new OSHA rule. On February 2, 1988, the United States Court of Appeals for the District of Columbia Circuit issued its decision in the consolidated appeals. The court upheld OSHA's finding that asbestos exposure poses a significant risk and the feasibility of the new PEL and specifically rejected the asbestos industry groups' challenges to OSHA's risk assessment. However, the court found that there was not substantial evidence supporting OSHA's: (1) Ban on the spraying of asbestos-containing products, (2) rejection of a lower PEL for certain major subgroups of industry, (3) rejection of a short-term exposure limit (STEL), and (4) rejection of certain specific provisions recommended by participants in the rulemaking (e.g. smoking control provisions, bilingual labels, and more stringent respiratory protection requirements). The court ordered OSHA to establish a STEL, to consider a lower PEL for certain industry sectors where it may be feasible, and to consider several other specific changes suggested by rulemaking participants. In response to this court decision, OSHA amended its Asbestos Standard to incorporate an Excursion Limit (EL). This amendment, which was published in the **Federal Register** of September 14, 1988 (53 FR 35610), limits short-term exposures to 1 f/cc over a half-hour period. OSHA has not either finalized or proposed any other changes in its Asbestos Standards.

The Mine Safety and Health Administration (MSHA), acting under the Mine Safety and Health Act, has adopted workplace standards designed to protect workers engaged in pit and underground mining and milling (30 CFR 71.202). The MSHA standard was last amended in 1976 and calls for a PEL of 2 f/cc.

State and local public employees are generally excluded from coverage under the OSHAct. However, under section 19 of the OSHAct, OSHA has approved State plans for 23 States and 2 territories, thus effectively extending OSHA protections to State and local public employees in these jurisdictions. EPA has promulgated a rule to establish requirements similar to those of the OSHA Asbestos Construction Standard for State and local public employees not covered under a State plan who conduct asbestos abatement work. However, other public employees, such as fire fighters, are not covered by that rule.

B. EPA's Determination Under Section 9(a) of TSCA

EPA is not required under section 9(a) to submit a report to other agencies on the asbestos risks described in this document since EPA has determined that such risks cannot be prevented or reduced to a sufficient extent taken under a Federal; law not administered by EPA. Certain activities involving asbestos present risks that fall under the

jurisdiction of a number of different Federal laws such as the OSHAct, the CPSA, and the CAA, but no one statute, other than TSCA, can adequately address all the risks posed throughout the life cycle of asbestos. Referral would result in fragmented assessment and control of risks and potentially duplicative regulatory efforts. Furthermore, even if EPA were to refer asbestos exposure risks to other agencies, taken by those other agencies would still leave a substantial residual risk, resulting in an adverse effect on public health. Only EPA under TSCA can stop the build up of asbestos in the environment. EPA's reasons for reaching these conclusion are set forth below.

1. *Interpretation of section 9(a) of TSCA.* The comprehensive nature of TSCA has long been recognized. TSCA allows regulation of a chemical substance based on all of its risks and, thereby, allows the Government to remedy the deficiencies in other statutes that can deal only with parts of the risk. (Statement of the President on signing S. 3149 Into Law, October 12, 1976, Weekly Compilation of Presidential Documents, vol. 12, No. 42, Oct. 18, 1976, at 1489; S. Rep. No. 94–698, 94th Cong. 2d Sess. at 2). The need for a total exposure, multi-media approach to chemical regulation and the dangers of a fragmented regulatory approach were recognized even during the early Congressional hearings on TSCA. See, for example, the 1973 Senate Hearings at 212–214 and the 1972 House Hearings at 65–67. No other single law provides authority to deal comprehensively with multi-media hazards.

In particular, Congress designed TSCA to deal with chemical substances for which the most appopriate remedy would be a total ban on their manufacture, importation, processing, and distribution in commerce. In this regard, Congress focused on the risk of asbestos and the dangers of fragmented regulation of asbestos during the legislative hearings. See the 1971 Senate Hearings and 1973 Hearings. Asbestos risks were described in the workplace and in over 3,000 uses that could present risks to the general population (H.R. Rep. No. 94–1341, 94th Cong., 2d Sess., at 5 (1976). Members of Congress believed it intolerable that no agency could deal comprehensively with chemical risks, including the risk from asbestos. See 1973 Senate Hearings at 319–320 (Letter from Senator Tunney to Dow Chemical Company); 1975 Senate Hearings at 131–133 (Remarks of Senator Tunney).

2. *Capability of other Federal authorities to deal with the combination of asbestos activities.* EPA's analysis of the jurisdiction over the risks presented by asbestos among a number of agencies and statutory authorities is set out below. OSHA has authority under the OSHAct to control risk presented to private sector manufacturing, construction, and service employees from workplace exposures, and may approve State plans covering State and local public employees. CPSC has authority under the CPSA and FHSA to control risk presented to consumers from consumer products. The Mine Safety and Health Administration has authority under the Mine Safety and Health Act concerning risk presented during the mining and milling of asbestos. State and local public employees in about half the States (such as fire fighters who may wear asbestos clothing) are not covered by either OSHA regulations or OSHA-approved State plans.

EPA has concluded that asbestos is appropriate for TSCA action rather than referral to other agencies. It is a substance for which there is broad exposure to populations in numerous situations—in the workplace, through long- and short-term ambient concentrations, and from consumers products. With the exception of TSCA, there is no single authority to deal with all of these multiple exposures. No one of the other potential Federal regulatory authorities, in looking at its specific part of the overall exposures, can either evaluate or deal with the totality of the risk presented. OSHA may set exposure limits for workers, but there may be venting of asbestos from the workplace into the atmosphere. EPA, under the CAA, may regulate ambient emissions, but not workplace or consumer exposures. In each case, only a fraction of the risk is controlled. Only EPA under TSCA can look across the range of asbestos use to evaluate whether exposure presents an unreasonable risk. There is no other Act that affords such authority. Further, only action under TSCA can stop the build up of asbestos in the environment.

3. *Residual risks.* Even if other Federal agencies took additional action to reduce the risk associated with asbestos during the various stages of the life cycle of asbestos products, a substantial and unreasonable residual risk would still remain.

Large populations outside of OSHA jurisdiction are at risk from exposure to asbestos. State and local public employees, such as fire fighters, are not protected by OSHA regulations in about half of the States. The general population is exposed to asbestos into the ambient air as a result of release during the manufacture, processing, use, repair, and disposal of asbestos products. As discussed more fully in Unit V.A.3 of this preamble, asbestos released into the ambient air can build up in the environment. EPA is concerned about this environmental loading.

Further, even if OSHA achieves strict compliance with its PEL of 0.2 f/cc and its new EL of 1 f/cc, a substantial and unreasonable residual risk would remain. OSHA recognized that a substantial risk remained with a PEL of 0.2 f/cc. OSHA estimated that persons exposed to this level over a working lifetime of 45 years would face a risk of 7 in 1,000 of developing cancer. However, OSHA concluded that this was the lowest exposure level that was technologically feasible in asbestos workplaces. As stated above, OSHA has been ordered to consider a lower PEL for certain general industry sectors where it may be feasible. However, technical limitations on asbestos exposure monitoring seem to limit OSHA from establishing a PEL lower than 0.1 f/cc. Indeed, the union groups that asked the court to order OSHA to adopt a lower PEL only requested a PEL of 0.1 f/cc. Workers exposed to a level of 0.1 f/cc still face a substantial risk. OSHA calculates that such workers face a risk of 3 in 1,000 of developing cancer when exposed over a 45-year working lifetime.

In addition, it is likely that the OSHA PEL of 0.2 f/cc and EL of 1 f/cc will be exceeded in many cases since it is particularly difficult to apply the PEL in the construction and service sectors. Many of the workplace exposures to asbestos occur downstream in the construction and service sectors rather than the manufacturing sector. Over 80 percent of workers exposed to asbestos are in the construction and service sectors. Employees in those sectors often do not know when they are exposed to asbestos because they do not know that they are working with asbestos products (Ref. 34). Attempts at compliance and OHSA's compliance inspections are also difficult in the construction and service sections since employees frequently do not have a fixed work site. Between July 1, 1986 and June 30, 1987, OSHA cited 534 alleged violations of the asbestos rule for general industry and 427 alleged violations of the rule for the construction sector. OSHA inspection data show that 91 of the 655 asbestos monitoring samples taken by OSHA from July 1, 1986 through April 30, 1988, had exposure values above the OSHA PEL of 0.2 f/cc. While respirators were in use in many of the establishments with air concentrations higher than the PEL, 20 percent of these establishments were cited for violations of respiratory protection guidelines or for violations of the PEL (Ref. 49). As stated earlier, OSHA amended its Asbestos Standards to incorporate an EL on September 14, 1988. EPA does not believe that the EL will have a significant effect on the significant risk posed by asbestos in the workplace. A more detailed discussion of this may be found in Unit V.A.3 of this preamble. Finally, many asbestos control measures, in particular, the use of respirators or increased workplace ventilation, only shift the asbestos exposure to another population for which no exposure controls exist. For example, if ventilation is used, substantial quantities of asbestos would be released to the ambient environment where it would continue to present a risk both to other workers and the general population.

Similarly, CPSC cannot evaluate or deal with the totality of the risk presented by asbestos. CPSC may ban or require safety standards for asbestos-containing consumer products based exclusively on risk to consumers. CPSC is unable to consider risk to other groups from releases of asbestos during the life cycle of those products. In addition, CPSC has indicated that it does not plan to enact further bans on asbestos-containing products.

After carefully analyzing other Federal authorities, EPA concludes that action under TSCA is appropriate to reduce the unreasonable risk to human health posed by asbestos. Use of other Federal authorities cannot reduce risk to a reasonable level because: (1) Even together, they cannot reduce the total volume of asbestos or asbestos products in commerce or limit the ongoing buildup of asbestos in the environment, (2) Even together, they cannot protect all of the many population groups at risk, and (3) They all have jurisdictional gaps, both individually and collectively.

VIII. Enforcement

Section 15 makes it unlawful to fail or refuse to comply with any provisions of a rule promulgated under section 6 of TSCA. Therefore, any failure to comply with this rule would be a violation of section 15. In addition, section 15 of TSCA makes it unlawful for any person to: (1) Fail or refuse to establish and maintain records as required by this rule; (2) Fail or refuse to permit access to or copying of records, as required by TSCA; (3) Fail or refuse to permit entry or inspection as required by section 11 of TSCA.

Violators may be subject to both civil and criminal liability. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 for each violation. Each day of operation in violation of this rule could constitute a separate violation. Knowing or willful violations of this rule could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment of up to 1 year. In addition, other remedies are available to EPA under sections 7 and 17 of TSCA, such as seeking an injunction to restrain violations of this rule and seizing any chemical substance or mixture manufactured or imported in violation of this rule.

Individuals, as well as corporations, could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies. In particular, EPA may proceed against individuals who report false information or cause it to be reported.

IX. Confidentiality

Section 14(a) of TSCA allows a person who submits information to EPA to assert a claim of confidentiality if release of the information would reveal trade secrets or confidential commercial or financial information. Under this rule, claims of confidentiality can be asserted only at the time information is submitted in an exemption application and only in the manner specified in § 763.179. EPA's procedures for processing and reviewing confidentiality claims are set forth at 40 CFR Part 2, Subpart B.

Any person who claims information contained in an exemption application as confidential is required to provide two copies of its application: a complete copy of the application including all information claimed as confidential and a "sanitized" copy from which all confidential information has been deleted. EPA will place the applicant's sanitized copy in the public file. EPA will also issue a notice in the **Federal Register** requesting comments on the exemption request.

Persons claiming information as confidential should do so by circling, bracketing, or underlining it and marking it "CONFIDENTIAL." EPA will disclose information subject to a claim of confidentiality only to the extent permitted by section 14 of TSCA and 40 CFR Part 2, Subpart B. If a person does not assert a claim of confidentiality for information at the time it is submitted to EPA, EPA may make the information public without further notice to that person.

In addition, persons claiming information as confidential in exemption applications must respond in detail to the substantiation questions in § 763.179(d) at the time the application is submitted to EPA. If a claim is unaccompanied by the required substantiation at the time it is submitted to EPA, the company will be notified that the unsanitized copy of the application will be placed in the public file.

EPA is committed to the public disclosure of as much nonconfidential information submitted in exemption applications as possible. Requiring up-front substantiation of confidentiality claims and continued close scrutiny of such claims through the established claim review process will ensure that as much information as possible is released. Public interest in the information in exemption applications and the need for public participation in the review of applications justifies this approach. Up-front substantiation obviates the need for follow-up substantiation by submitters resulting from EPA review or Freedom of Information Act requests and thereby facilitates public participation in the process of reviewing exemption applications.

X. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–62036). A public version of the record, without any confidential business information, is available in the TSCA Public Docket Office, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in Room NE–G004, 401 M Street, SW., Washington, DC.

This record contains information considered by EPA in developing this rule. The record includes: (1) All **Federal Register** notices, (2) relevant support documents, (3) reports, (4) memoranda and letters, and (5) hearing transcripts, responses to comments, and other documents related to this rulemaking.

XI. References

(1) USEPA, ORD, OHEA. 1986. *Airborne Asbestos Health Assessment Update.* (June 1986): 215 pp. U.S. Environmental Agency, Washington, DC.: EPA/600/8–84/003F.

(2) USCPSC. 1983. *Chronic Hazard Advisory Panel on Asbestos.* (July 1983): 160pp. U.S. Consumer Product Safety Commission, Washington, D.C.

(3) NAS, NRC. 1984. *Asbestiform Fibers: Non-occupational Health risks.* (1984): 353pp. National Academy of Sciences, National Research Council, Washington, D.C.: National Academy Press.

(4) Seidman, H., Selikoff, I.J., Hammond, E.C. 1979. "Short-term asbestos work exposure and long-term observation." *Annals of the New York Academy of Sciences.* 330:61–89.

(5) Morgan, A., Evans, R.J., Hounam, R.F., Holmes, A., Doyle, S.G. 1975. "Studies on the deposition of inhaled fibrous material in the respiratory tract of the rat and its subsequent clearance using radioactive tracer techniques. II. Deposition of the UICC standard reference samples of asbestos." *Environmental Research.* 10:196–207.

(6) USDHHS, NTP. 1985. *Toxicology and Carcinogenesis Studies of Chrysotile Asbestos in F344/N Rats—(Feed Studies).* Technical Report Series No. 295, NIH Pub No. 86–2551. (November 1985): 392pp. U.S. Department of Health and Human Services, National Toxicology Program. Research Triangle Park, North Carolina.

(7) Selikoff, I.J., Hammond, E.C., Seidman, H. 1979. "Mortality experience of insulation workers in the United States and Canada, 1943–1976." *Annals of the New York Academy of Sciences.* 330:91–116.

(8) Puntoni, R., Vercelli, M., Merlo, F., Valerio, F., and Santi, L. 1979. "Mortality among shipyard workers in Genoa, Italy." *Annals of the New York Academy of Sciences.* 330:353–377.

(9) Newhouse, M.L., Berry, G., Wagner, J.C., Turok, M.E. 1972. "A study of the mortality of female asbestos workers." *British Journal of Industrial Medicine.* 29:134–141.

(10) Wignall, B.K., Fox, A.J. 1982. "Mortality of female gas mask assemblers." *British Journal of Industrial Medicine* 39:34–38.

(11) Acheson, E.D., Gardner M.J., Pippard E.C., Grime L.P. 1982. "The mortality of two groups of women who manufactured gas masks from chrysotile and crocidolite asbestos: a 40-year follow-up." *British Journal of Industrial Medicine.* 39:344–348.

(12) Berry, G., Newhouse, M.L. 1983. "Mortality of workers manufacturing friction materials using asbestos." *British Journal of Industrial Medicine.* 40:1–7.

(13) McDonald, A.D., Fry, J.S., Woolley, A.J., McDonald, J.C. 1984. "Dust exposure and mortality in an American chrysotile asbestos friction products plant." *British Journal of Industrial Medicine.* 41:151–157.

(14) Dement, J.M., Harris, R.L., Symons, M.J., Shy, C.M. 1983. "Exposures and mortality among chrysotile asbestos workers. Part II: mortality." *American Journal of Industrial Medicine.* 4:421–433.

(15) McDonald, A.D., Fry, J.S., Woolley, A.J., McDonald, J.C. 1983. "Dust exposure and mortality in an American chrysotile textile plant." *British Journal of Industrial Medicine.* 40:361–367.

(16) USDOL, OSHA. 1986. Occupational exposure to asbestos, tremolite, anthophyllite, and actinolite; final rules. June 20, 1986. 51 FR 22612–22790. U.S. Department of Labor, Occupational Safety and Health Administration.

(17) Davis, J.M.G., Addison, J., Bolton, R., Donaldson, K., Jones, A., Smith, T. 1986. "The pathogenicity of long versus short fibre samples of amosite asbestos administered to rats by inhalation and intraperitoneal injection." *British Journal of Experimental Pathology.* 67:415–430.

(18) Davis, J.M.G., Jones A.D., Smith T. 1987. *Comparisons of the pathogenicity of long and short fibers of chrysotile asbestos in rats.* (June 1987). 60pp. Institute of Occupational Medicine, Edinburgh, U.K.

(19) USEPA. 1986. Asbestos; proposed mining and import restrictions and proposed manufacturing, importation, and processing prohibitions. January 29, 1986. 51 FR 3738–3759.

(20) Platek, S.F., Groth, D.H., Ulrich, C., Stettler, L., Finnell, M., Stoll, M. 1985. "Chronic inhalation of short asbestos fibers." *Fundamentals of Applied Toxicology.* 5:327–340.

(21) USEPA, OPTS, ETD. 1989. *Regulatory Impact Analysis of Controls on Asbestos and Asbestos Products. Final Report. Volumes I—IV.* January 19, 1989. *Addendum.* June 26, 1989.

(22) Doll, R., Peto, R. 1985. *Asbestos: Effects on the Health of Exposure to Asbestos.* (1985):63pp. London, UK: Health and Safety Commission.

(23) Doll, R. 1967. "The quantitative significance of asbestos fibres in the ambient air." In: *Advances in Aerobiology.* Birkhauser Verlag. Basel pp. 213–219.

(24) Hughes, J.M., Weill, H., Hammad, Y.Y. 1987. "Mortality of workers employed in two asbestos cement manufacturing plants." *British Journal of Industrial Medicine.* 44:161–174.

(25) Weill, H., Hughes, J., Waggenspack, C. 1979. "Influence of dose and fiber type on respiratory malignancy risk in asbestos cement manufacturing." *American Review of Respiratory Diseases.* 120:345–354.

(26) Thomas, H.F., Benjamin, I.T., Elmwood, P.C., Sweetnam, P.M. 1982. "Further follow-up study of workers from an asbestos cement factory." *British Journal of Industrial Medicine.* 39:273–276.

(27) OSTP. 1985. Chemical carcinogens: review of the science and its associated principles. 50 FR 10372–10442. Office of Science and Technology Policy, Executive Office of the President.

(28) USDOT, NHTS. 1988. Letter from Barry Felrice to John W. Melone, Director, CCD, OTS, USEPA, November 30, 1988. U.S. Department of Transportation, National Highway Traffic Safety Administration.

(29) USEPA, OPTS, ETD. 1988. *Asbestos Exposure Assessment. Revised Report.* (March 21, 1988):281pp

(30) USEPA, OPTS, EED. 1988. *Asbestos Modeling Study. Final Report.* (March 18, 1988):78pp.

(31) USEPA, OPTS, EED. 1988. *Non-occupational Asbestos Exposure. Revised Draft Report.* (September 25, 1988):86pp

(32) Item. *Occupational Health and Safety Reporter.* 1987. (September 16, 1987):622 pp.

(33) USEPA, OPTS, EED. 1988. Memorandum from Dr. Kin Wong to John Rigby, CCD, OPTS, USEPA, entitled "OSHA Compliance Data for Asbestos." August 1, 1988.

(34) USDOL, OSHA. 1988. Occupational exposure to asbestos, tremolite, anthophyllite, and actinolite; final rules; amendment. September 14, 1988. 53 FR 35610.

(35) USEPA, OPTS, EED. 1988. *Review of Recent Epidemiological Investigations on Populations Exposed to Selected Non-asbestos Fibers. Final Report.* (March 21, 1988):66pp.

(36) USEPA, OPTS, ETD. 1986. *Durable Fiber Exposure Assessment. Final Report.* (September 9, 1986):466pp

(37) USEPA, OPTS, ETD. 1986. *Durable Fiber Industry Profile and Market Outlook.* (August 27, 1986):310pp

(38) USEPA, OPTS, HERD. 1988. *Health Hazard Assessment of Non-asbestos Fibers.* (March 21, 1988):260pp

(39) USEPA, OPTS, ECAD. 1985. *Asbestos Substitutes and Related Materials.* (April 24, 1985):246pp

(40) USEPA, OPTS, ETD. 1987. *Analysis of the Feasibility of Replacing Asbestos in Automobile and Truck Brakes. Final Report.* April 15, 1987. Prepared under contract by the American Society of Mechanical Engineers.

(41) USEPA, OPTS, CCD. 1989. *Response to Public Comments Document for the Rulemaking Process Concerning Asbestos: Manufacture, Importation, Processing, and Distribution in Commerce, Prohibitions.* (June 1989).

(42) USEPA, OPTS, ECAD. Memorandum from Francine TenEyck to Lynda Priddy, CCD, OTS, USEPA, entitled "Potential lung cancer risk for ductile iron manufacture as a substitute for asbestos/cement pipe." (December 15, 1988):2pp.

(43) USEPA, ORD, WERL. 1985. *Plumbing materials and drinking water quality; Proceedings of a Seminar. Cincinnati, Ohio, May 16–17, 1984.* (February 1985):100pp. Office of Research and Development, Water Engineering Research Laboratory. EPA 600/9–85–007.

(44) USEPA, ODW, CSD. 1985. *Drinking water criteria document on vinyl chloride. Final Draft.* (January, 1985):140pp.

(45) WHO, IARC. 1979. "Vinyl chloride, polyvinyl chloride and vinyl chloride-vinyl acetate copolymers." *IARC Monographs on the Evaluation of Carcinogenic Risk of Chemicals to Humans, Vol. 19.* (February 1979):402–412. International Agency for Research on Cancer, World Health Organization.

(46) USEPA, OAQPS, ESED. 1987. *National Emission Standards for Asbestos—Background Information for Proposed Standards. Draft.* (March 5, 1987):311pp.

(47) ARAP. Lewellen, W.S., Sykes, R.I., Cerasoli, C.P., Parker, S.F. 1986. *Comparison of the 1982 Seadex dispersion data with results from a number of different models.* (February 1986):133pp. Princeton, NJ: Aeronautical Research Association of. Princeton. Prepared for Oak Ridge National Laboratory under contract 19X89611V. ARAP report no. 575.

(48) USEPA, OPTS, EED. 1984. *Exposure Assessment for Asbestos. Draft Final Report.* (January 9, 1984):282pp.

(49) USEPA, OPTS, ETD. 1988. Memorandum from Dr. Kin Wong to Debbie Ottinger, CCD, OTS, USEPA, entitled "Additional Analysis of OSHA Compliance Data." (November 2, 1988):4pp.

(50) USEPA, OPTS, CCD. 1988. Memorandum from John Rigby to the Record entitled "Meeting with Events Analysis, Inc., on Work Practices during Brake Repair." (January 22, 1988):13pp.

(51) USEPA, ORD. Millette, J.R., Boone, R., Rosenthal, M. 1980. *Asbestos in Cistern Water.* (February 1980):4pp.

(52) USEPA, OPTS, ETD. 1988. Memorandum from Cathy Fehrenbacker to Lynda Priddy, CCD, OPTS, USEPA, entitled "Monitoring Data Available on Occupational Exposure to Aramid Fibers." (October 7, 1988):2pp.

(53) USEPA, OPTS, ETD. 1988. Memorandum from Cathy Fehrenbacker to Lynda Priddy, CCD, OPTS, USEPA, entitled "Review of the Recent Data Submitted by Dupont on Aramid Fibers. (dated March 15, 1988)." (December 9, 1988):2pp.

(54) USEPA, OPTS, ETD. 1988. *Durable Fiber Exposure Assessment: Addendum.* (October 11, 1988):14pp.

(55) USEPA, OPTS, ETD. 1988. *Durable Fiber Exposure Assessment: Attachment to Addendum.* [Post] (October 11, 1988):2pp.

(56) USEPA, OPTS, EED. 1988. Memorandum from Karen Milne and Gary Grindstaff to Dr. Barbara Mandula, ECAD, OPTS, USEPA, entitled "Risk Assessment of Aramid Fibers." (June 16, 1988):2pp.

(57) ICF, Inc. 1988. Memorandum from Nora Zirps and Maravene Edelstein to Dr. Kin Wong, ETD, OPTS, USEPA, entitled "Numeric Data for Summary of Asbestos Exposure Information." (May 20, 1988):12pp.

(58) USDHHS, NIOSH. 1987c. In-depth survey report: control technology for drum brake service operations at Ohio Department of Transportation maintenance facility, Lebanon, OH. (February 1987):35pp. National Institute for Occupational Safety and Health Cincinnati, OH: NIOSH. Report No. ECTB 152–18b.

(59) USEPA, Asbestos Action Program. 1986. *Guidance for Preventing Asbestos Disease Among Auto Mechanics.* (June 1986):14pp.

(60) USEPA, OPTS, CCD. 1989. Memorandum from Deborah Ottinger to the Record entitled "Upper bound population and lower bound risk estimates—revisions." (May 31, 1989):11pp.

(61) USEPA, OPTS, CCD. 1987. Memorandum from John Rigby to the Record entitled "July 23, 1987 Meeting Between NHTSA and EPA." (September 15, 1987):3pp.

(62) USEPA, OPTS, CCD. 1988. Memorandum from John Rigby to the Record entitled "January 12, 1988 Meeting Between EPA and NHTSA." (September 9, 1988):2pp.

(63) USEPA, OPTS, CCD. 1988. Memorandum from John Rigby to the Record entitled "July 12, 1988 Meeting Between EPA and NHTSA." (September 8, 1988):3pp.

(64) USEPA, ODW. 1986. *Estimated National Occurrence and Exposure to Asbestos in Public Drinking Water Supplies.* (December 23, 1986):72pp. plus appendices.

XII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA has determined that this rule is a "Major Rule" and has prepared an RIA. The RIA estimates that this rule will cost approximately $458.89 million, or $806.51 million if a 1 percent annual decrease in the price of substitutes is not assumed. The RIA also estimates that the rule will, over the 13-year period analyzed, avoid at least 202 cancer cases, if benefits are not discounted, and 148 cancer cases, if benefits are discounted at 3 percent. If analogous exposures are not assumed, the estimates of cancer-cases-avoided are 164 cases, if benefits are not discounted, and 120 cases, if benefits are discounted at 3 percent. As is stated in Unit V.D. of this preamble, EPA believes that these costs are reasonable and that the rule is the least burdensome way of reducing the unreasonable risk posed by exposure to asbestos from the manufacture, importation, processing, use, and disposal of asbestos-containing products.

This rule was submitted to the Office of Management and Budget (OMB) for review, as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator may certify that a rule will not, if promulgated, have a significant impact on a substantial number of small entities and, therefore, does not require a regulatory flexibility analysis.

EPA has analyzed the economic impact of this final rule on small businesses. A summary of this analysis appears in the RIA and Unit V.D of this preamble. Based on the discussion in that Unit, EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The reporting and recordkeeping provisions of this final rule have been submitted to OMB for approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* These requirements are not effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register.**

Public reporting burden for this collection of information is estimated to average less than 2 hours annually per firm over the 3-year period reviewed for the analysis of regulatory burden. This burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This estimate of annual burden is a relatively low figure because of the small number of firms affected by the regulatory actions taken during the period reviewed for the analysis of regulatory burden.

Send any comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for EPA.

List of Subjects in 40 CFR Part 763

Asbestos, Environmental protection, Hazardous substances.

Dated July 6, 1989.

William K. Reilly,

Administrator.

Therefore, 40 CFR Part 763 is amended as follows.

PART 763—[AMENDED]

1. The authority citation for Part 763 is revised to read as follows:

Authority: 15 U.S.C. 2605 and 2607(c).

2. By reserving Subpart H and adding new Subpart I to read as follows:

Subpart I—Prohibition of the Manufacture, Importation, Processing, and Distribution in Commerce of Certain Asbestos-Containing Products; Labeling Requirements

Sec.
763.160 Scope.
763.163 Definitions.
763.165 Manufacture and importation prohibitions.
763.167 Processing prohibitions.
763.169 Distribution in commerce prohibitions.
763.171 Labeling requirements.
763.173 General exemptions.
763.175 Enforcement.
763.176 Inspections.
763.178 Recordkeeping.
763.179 Confidential business information claims.

Subpart I—Prohibition of the Manufacture, Importation, Processing, and Distribution in Commerce of Certain Asbestos-Containing Products; Labeling Requirements

§ 763.160 Scope.

This subpart prohibits the manufacture, importation, processing, and distribution in commerce of the asbestos-containing products identified and at the dates indicated in §§ 763.165, 763.167, and 763.169. This subpart requires that products subject to this rule's bans, but not yet subject to a ban on distribution in commerce, be labeled. This subpart also includes general exemptions and procedures for

requesting exemptions from the provisions of this subpart.

§ 763.163 Definitions.

For purposes of this subpart:

"Acetylene cylinder filler"means an asbestos-containing product which is intended for use as a filler for acetylene cylinders.

"Act" means the Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.*

"Aftermarket part" means any part offered for sale for installation in or on a motor vehicle after such vehicle has left the manufacturer's production line.

"Agency" means the United States Environmental Protection Agency.

"Arc chute" means an asbestos-containing product that acts as a chute or guidance device and is intended to guide electric arcs in applications such as motor starter units in electric generating plants.

"Asbestos" means the asbestiform varieties of: chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite-grunerite); tremolite; anthophyllite; and actinolite.

"Asbestos-cement (A/C) corrugated sheet" means an asbestos-containing product made of cement and in the form of a corrugated sheet used as a non-flat-surfaced reinforcing or insulating material. Major applications of this product include: building siding or roofing; linings for waterways; and components in cooling towers.

"Asbestos-cement (A/C) flat sheet" means an asbestos-containing product made of cement and in the form of a flat sheet used primarily as a flat-surfaced reinforcing or insulating material. Major applications of this product include: wall linings; partitions; soffit material; electrical barrier boards; bus bar run separators; reactance coil partitions; laboratory work surfaces; and components of vaults, ovens, safes, and broilers.

"Asbestos-cement (A/C) pipe and fittings" means an asbestos-containing product made of cement and intended for use as pipe or fittings for joining pipe. Major applications of this product include: pipe used for transmitting water or sewage; conduit pipe for protection of utility or telephone cable; and pipes used for air ducts.

"Asbestos-cement (A/C) shingle" means an asbestos-containing product made of cement and intended for use as a siding, roofing, or construction shingle serving the purpose of covering and insulating the surface of building walls and roofs.

"Asbestos clothing" means an asbestos-containing product designed to be worn by persons.

"Asbestos-containing product" means any product to which asbestos is deliberately added in any concentration or which contains more than 1.0 percent asbestos by weight or area.

"Asbestos diaphragm" means an asbestos-containing product that is made of paper and intended for use as a filter in the production of chlorine and other chemicals, and which acts as a mechanical barrier between the cathodic and anodic chambers of an electrolytic cell.

"Automated transmission component" means an asbestos-containing product used as a friction material in vehicular automatic transmissions.

"Battery separator" means an asbestos-containing product used as an insulator or separator between the negative and positive terminals in batteries and fuel cells.

"Beater-add gasket" means an asbestos-containing product that is made of paper intended for use as a gasket, and designed to prevent leakage of liquids, solids, or gases and to seal the space between two sections of a component in circumstances not involving rotary, reciprocating, and helical motions. Major applications of beater-add gaskets include: gaskets for internal combustion engines; carburetors; exhaust manifolds; compressors; reactors; distillation columns; and other apparatus.

"Brake block" means an asbestos-containing product intended for use as a friction material in drum brake systems for vehicles rated at 26,001 pounds gross vehicle weight rating (GVWR) or more.

"Chemical substance," has the same meaning as in section 3 of the Act.

"Clutch facing" means an asbestos-containing product intended for use as a friction material or lining in the clutch mechanisms or manual transmission vehicles.

"Commerce" has the same meaning as in section 3 of the Act.

"Commercial and industrial friction product" means an asbestos-containing product, which is either molded or woven, intended for use as a friction material in braking and gear changing components in industrial and commercial machinery and consumer appliances. Major applications of this product include: hand brakes; segments; blocks; and other components used as brake linings, rings and clutches in industrial and commercial machinery and consumer appliances.

"Commercial paper" means an asbestos-containing product which is made of paper intended for use as general insulation paper or muffler paper. Major applications of commercial papers are insulation against fire, heat transfer, and corrosion in circumstances that require a thin, but durable, barrier.

"Corrugated paper" means an asbestos-containing product made of corrugated paper, which is often cemented to a flat backing, may be laminated with foils or other materials, and has a corrugated surface. Major applications of asbestos corrugated paper include: thermal insulation for pipe coverings; block insulation; panel insulation in elevators; insulation in appliances; and insulation in low-pressure steam, hot water, and process lines.

"Customs territory of the United States" means the 50 States, Puerto Rico, and the District of Columbia.

"Disc brake pad for heavy-weight vehicles" means an asbestos-containing product intended for use as a friction material in disc brake systems for vehicles rated at 26,001 pounds gross vehicle weight rating (GVWR) or more.

"Disc brake pad for light- and medium-weight vehicles" means an asbestos-containing product intended for use as a friction material in disc brake systems for vehicles rated at less than 26,001 pounds gross vehicle weight rating (GVWR).

"Distribute in commerce" has the same meaning as in section 3 of the Act, but the term does not include actions taken with respect to an asbestos-containing product (to sell, resale, deliver, or hold) in connection with the end use of the product by persons who are users (persons who use the product for its intended purpose after it is manufactured or processed). The term also does not include distribution by manufacturers, importers, and processors, and other persons solely for purposes of disposal of an asbestos-containing product.

"Drum brake lining" means any asbestos-containing product intended for use as a friction material in drum brake systems for vehicles rated at less than 26,001 pounds gross vehicle weight rating (GVWR).

"Flooring felt" means an asbestos-containing product which is made of paper felt intended for use as an underlayer for floor coverings, or to be bonded to the underside of vinyl sheet flooring.

"Gross vehicle weight rating (GVWR)" means the value specified by the manufacturer as the maximum design loaded weight of a single vehicle.

"High-grade electrical paper" means an asbestos-containing product that is made of paper and consisting of asbestos fibers and high-temperature resistant organic binders and used in or with electrical devices for purposes of insulation or protection. Major applications of this product include insulation for high-temperature, low voltage applications such as in motors, generators, transformers, switch gears, and other heavy electrical apparatus.

"Import" means to bring into the customs territory of the United States, except for: (1) Shipment through the customs territory of the United States for export without any use, processing, or disposal within the customs territory of the United States; or (2) entering the customs territory of the United States as a component of a product during normal personal or business activities involving use of the product.

"Importer" means anyone who imports a chemical substance, including a chemical substance as part of a mixture or article, into the customs territory of the United States. "Importer" includes the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his or her behalf. The term includes as appropriate:

(1) The consignee.

(2) The importer of record.

(3) The actual owner if an actual owner's declaration and superseding bond has been filed in accordance with 19 CFR 141.20.

(4) The transferee, if the right to withdraw merchandise in a bonded warehouse has been transferred in accordance with Subpart C of 19 CFR Part 144.

"Manufacture" means to produce or manufacture in the United States.

"Manufacturer" means a person who produces or manufactures in the United States.

"Millboard" means an asbestos-containing product made of paper and similar in consistency to cardboard produced in sections rather than as a continuous sheet. Major applications of this product include: thermal protection for large circuit breakers; barriers from flame or heat; linings in floors, partitions, and fire doors; linings for stoves and heaters; gaskets; table pads; trough liners; covers for operations involving molten metal; and stove mats.

"Missile liner" means an asbestos-containing product used as a liner for coating the interior surfaces of rocket motors.

"Model year" means the manufacturer's annual production period which includes January 1 of such calendar year, provided that if the manufacturer has no annual production period, the term "model year" shall mean the calendar year.

"New uses of asbestos" means commercial uses of asbestos not identified in § 763.165 the manufacture, importation or processing of which would be initiated for the first time after August 25, 1989. The following products are also not new uses of asbestos: acetylene cylinders, arc chutes, asbestos diaphragms, battery separators, high grade electrical paper, missile liner, reinforced plastic, sealant tape, and textiles.

"Non-roof coating" means an asbestos-containing product intended for use as a coating, cement, adhesive, or sealant and not intended for use on roofs. Major applications of this product include: liquid sealants; semi-liquid glazing, caulking and patching compounds; asphalt-based compounds; epoxy adhesives; butyl rubber sealants; vehicle undercoatings; vinyl sealants; and compounds containing asbestos fibers that are used for bonding, weather proofing, sound deadening, sealing, coating; and other such applications.

"Original equipment market part" means any part installed in or on a motor vehicle in the manufacturer's production line.

"Packing" means an asbestos-containing product intended for use as a mechanical seal in circumstances involving rotary, reciprocating, and helical motions, and which are intended to restrict fluid or gas leakage between moving and stationary surfaces. Major applications of this product include: seals in pumps; seals in valves; seals in compressors; seals in mixers; seals in swing joints; and seals in hydraulic cylinders.

"Person" means any natural person, firm, company, corporation, joint-venture, partnership, sole proprietorship, association, or any other business entity; any State or political subdivision thereof, or any municipality; any interstate body and any department, agency, or instrumentality of the Federal Government.

"Pipeline wrap" means an asbestos-containing product made of paper felt intended for use in wrapping or coating pipes for insulation purposes.

"Process" has the same meaning as in section 3 of the Act.

"Processor" has the same meaning as in section 3 of the Act.

"Reinforced plastic" means an asbestos-containing product made of plastic. Major applications of this product include: electro-mechanical parts in the automotive and appliance industries; components of printing plates; and as high-performance plastics in the aerospace industry.

"Rollboard" means an asbestos-containing product made of paper that is produced in a continuous sheet, is flexible, and is rolled to achieve a desired thickness. Asbestos rollboard consists of two sheets of asbestos paper laminated together. Major applications of this product include: office partitioning; garage paneling; linings for stoves and electric switch boxes; and fire-proofing agent for security boxes, safes, and files.

"Roof coating" means an asbestos-containing product intended for use as a coating, cement, adhesive, or sealant on roofs. Major applications of this product include: waterproofing; weather resistance; sealing; repair; and surface rejuvenation.

"Roofing felt" means an asbestos-containing product that is made of paper felt intended for use on building roofs as a covering or underlayer for other roof coverings.

"Sealant tape" means an asbestos-containing product which is initially a semi-liquid mixture of butyl rubber and asbestos, but which solidifies when exposed to air, and which is intended for use as a sealing agent. Major applications of this product include: sealants for building and automotive windows, sealants for aerospace equipment components, and sealants for insulated glass.

"Sheet gasket" means either (1) an asbestos-containing product consisting of asbestos and elastomeric or other binders rolled in homogeneous sheets at some point in its manufacture and intended for use as a gasket, or (2) any asbestos-containing product made from braided or twisted rope, slit or woven tape, yarn, or other textile products intended for use as a gasket. Sheet gaskets are used to seal the space between two sections of a component and thereby prevent leakage in such applications as: exhaust, cylinder head, and intake manifolds; pipe flanges; autoclaves; vulcanizers; pressure vessels; cooling towers; turbochargers; and gear cases. This category includes flange, spiralwound, tadpole, manhole, handhole, door, and other gaskets or seals.

"Specialty industrial gaskets" means sheet or beater-add gaskets designed for industrial uses in either (1) environments where temperatures are 750 degrees Fahrenheit or greater, or (2) corrosive environments. An industrial gasket is one designed for use in an article which is not a "consumer product" within the meaning of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2052, or for use in a "motor vehicle" or "motor vehicle equipment" within the meaning of the National Traffic and Motor Vehicle Safety Act of 1966, as amended, 15 U.S.C. 1381. A corrosive environment is one in which the gasket is exposed to concentrated

(pH less than 2), highly oxidizing mineral acids (e.g., sulfuric, nitric, or chromic acid) at temperatures above ambient.

"Specialty paper" means an asbestos-containing product that is made of paper intended for use as filters for beverages or other fluids or as paper fill for cooling towers. Cooling tower fill consists of asbestos paper that is used as a cooling agent for liquids from industrial processes and air conditioning systems.

"State" has the same meaning as in section 3 of the Act.

"Stock-on-hand" means the products which are in the possession, direction, or control of a person and are intended for distribution in commerce.

"Textiles" means an asbestos-containing product such as: yarn; thread; wick; cord; braided and twisted rope; braided and woven tubing; mat; roving; cloth; slit and woven tape; lap; felt; and other bonded or non-woven fabrics.

"United States" has the same meaning as in section 3 of the Act.

"Vinyl-asbestos floor tile" means an asbestos-containing product composed of vinyl resins and used as floor tile.

§ 763.165 Manufacture and importation prohibitions.

(a) After August 27, 1990, no person shall manufacture or import the following asbestos-containing products, either for use in the United States or for export: A/C corrugated sheet, A/C flat sheet, asbestos clothing, flooring felt, pipeline wrap, roofing felt, vinyl/asbestos floor tile, and new uses of asbestos.

(b) After August 25, 1993, no person shall manufacture or import the following asbestos-containing products, either for use in the United States or for export: automatic transmission components, clutch facings, commercial and industrial asbestos friction products, and sheet and beater-add gaskets (except specialty industrial gaskets).

(c) After August 25, 1993, no person shall manufacture or import, including as part of a motor vehicle, asbestos-containing disc brake pads for light-, medium-, and heavy-weight vehicles, and drum brake linings for the following uses in the United States or for export:

(1) As original equipment in 1994 or later model year motor vehicles, or

(2) As aftermarket replacement parts in brake systems designed for use with non-asbestos replacement parts.

(d) After August 26, 1996, no person shall manufacture or import the following asbestos-containing products, either for use in the United States or for export: disc brake pads for use in light-, medium-, and heavy-weight vehicles and drum brake linings manufactured, imported, or marketed for use as aftermarket replacement parts in brake systems designed for use with asbestos-containing friction products; A/C pipe, A/C shingle, brake blocks, commercial paper, corrugated paper, millboard, non-roofing coatings, rollboard, roof coatings, and specialty paper.

(e) The import prohibitions of this subpart do not prohibit:

(1) The import into the customs territory of the United States of products imported solely for shipment outside the customs territory of the United States, unless further repackaging or processing of the product is performed in the United States; or

(2) Activities involving purchases or acquisitions of small quantities of products made outside the customs territory of the United States for personal use in the United States.

§ 763.167 Processing prohibitions.

(a) After August 27, 1990, no person shall process for any use, either in the United States or for export, any of the asbestos-containing products listed at § 763.165(a).

(b) After August 25, 1993, no person shall process for any use, either in the United States or for export, any of the asbestos-containing products listed at § 763.165 (b) and (c).

(c) After August 26, 1996, no person shall process for any use, either in the United States or for export, any of the asbestos-containing products listed at § 763.165(d).

§ 763.169 Distribution in commerce prohibitions.

(a) After August 25, 1992, no person shall distribute in commerce, either for use in the United States or for export, any of the asbestos-containing products listed at § 763.165(a).

(b) After August 25, 1994, no person shall distribute in commerce, either for use in the United States or for export, any of the asbestos-containing products listed at § 763.165 (b) and (c).

(c) After August 25, 1997, no person shall distribute in commerce, either for use in the United States or for export, any of the asbestos-containing products listed at § 763.165(d).

(d) A manufacturer, importer, processor, or any other person who is subject to a ban on distribution in commerce in paragraph (a), (b), or (c) of this section must, within 6 months of the effective date of the ban of a specific asbestos-containing product from distribution in commerce, dispose of all their remaining stock-on-hand of that product, by means that are in compliance with applicable local, State, and Federal restrictions which are current at that time.

§ 763.171 Labeling requirements.

(a) After August 27, 1990, manufacturers, importers, and processors of all asbestos-containing products that are identified in § 763.165(a) shall label the products as specified in this subpart at the time of manufacture, import, or processing. This requirement includes labeling all manufacturers', importers', and processors' stock-on-hand as of August 27, 1990.

(b) After August 25, 1992, manufacturers, importers, and processors of all asbestos-containing products that are identified in § 763.165(b) and (c), and disc brake pads for use in light-, medium-, and heavy-weight vehicles and drum brake linings manufactured, imported, or marketed for use as aftermarket replacement parts in brake systems designed for use with asbestos-containing friction products shall label the products as specified in this subpart at the time of manufacture, import, or processing. This requirement includes labeling all manufacturers', importers', and processors' stock-on-hand as of August 25, 1992.

(c) After August 25, 1995, manufacturers, importers, and processors of all asbestos-containing products that are identified in § 763.165(d), except disc brake pads for use in light-, medium-, and heavy-weight vehicles and drum brake linings manufactured, imported, or marketed for use as aftermarket replacement parts in brake systems designed for use with asbestos-containing friction products, shall label the products as specified in this subpart at the time of manufacture, import, or processing. This requirement includes labeling all manufacturers', importers', and processors' stock-on-hand as of August 25, 1995.

(d) The label shall be placed directly on the visible exterior of the wrappings and packaging in which the product is placed for sale, shipment, or storage. If the product has more than one layer of external wrapping or packaging, the label must be attached to the innermost layer adjacent to the product. If the innermost layer of product wrapping or packaging does not have a visible exterior surface larger than 5 square inches, either a tag meeting the requirements of paragraph (e) of this section must be securely attached to the product's innermost layer of product wrapping or packaging, or a label must be attached to the next outer layer of product packaging or wrapping. Any products that are distributed in

commerce to someone other than the end user, shipped, or stored without packaging or wrapping must be labeled or tagged directly on a visible exterior surface of the product as described in paragraph (e) of this section.

(e)(1) Labels must be either printed directly on product packaging or in the form of a sticker or tag made of plastic, paper, metal, or other durable substances. Labels must be attached in such a manner that they cannot be removed without defacing or destroying them. Product labels shall appear as in paragraph (e)(2) of this section and consist of block letters and numerals of color that contrasts with the background of the label or tag. Labels shall be sufficiently durable to equal or exceed the life, including storage and disposal, of the product packaging or wrapping. The size of the label or tag must be at least 15.25 cm (6 inches) on each side. If the product packaging is too small to accommodate a label of this size, the label may be reduced in size proportionately to the size of the product packaging or wrapping down to a minimum 2.5 cm (1 inch) on each side if the product wrapping or packaging has a visible exterior surface larger than 5 square inches.

(2) Products subject to this subpart shall be labeled in English as follows:

NOTICE

This product contains *ASBESTOS*. The U.S. Environmental Protection Agency has banned the distribution in U.S. commerce of this product under section 6 of the Toxic Substances Control Act (15 U.S.C. 2605) as of (insert effective date of ban on distribution in commerce). Distribution of this product in commerce after this date and intentionally removing or tampering with this label are *violations of Federal law*.

(f) No one may intentionally remove, deface, cover, or otherwise obscure or tamper with a label or sticker that has been applied in compliance with this section, except when the product is used or disposed of.

§ 763.173 General exemptions.

(a) Persons who are subject to the prohibitions imposed by §§ 763.165, 763.167, or 763.169 may file an application for an exemption. Persons whose exemption applications are approved by the Agency may manufacture, import, process, or distribute in commerce the banned product as specified in the Agency's approval of the application. No applicant for an exemption may continue the banned activity that is the subject of an exemption application after the effective date of the ban unless the Agency has granted the exemption or the applicant receives an extension under paragraph (b)(8) or (9) of this section.

(b) Application filing dates. (1) Applications for products affected by the prohibitions under §§763.165(a) and 763.167(a) may be submitted after August 25, 1989. Complete applications received after that date, but before November 27, 1989, will be either granted or denied by the Agency prior to the effective date of the ban for the product. Applications received after November 27, 1989, will be either granted or denied by EPA as soon as is feasible.

(2) Applications for products affected by the ban under § 763.169(a) may not be submitted prior to February 26, 1990. Complete applications received after that date, but before August 26, 1991, will be either granted or denied by the Agency prior to the effective date of the ban for the product. Applications received after August 26, 1991, will be either granted or denied by EPA as soon as is feasible.

(3) Applications for products affected by the ban under §§ 763.165(b) or (c) and 763.167(b) or (c) may not be submitted prior to February 26, 1992. Complete applications received after that date, but before August 25, 1992, will be either granted or denied by the Agency prior to the effective date of the ban for the product. Applications received after August 25, 1992, will be either granted or denied by EPA as soon as is feasible.

(4) Applications for products affected by the ban under § 763.169(b) or (c) may not be submitted prior to February 26, 1993. Complete applications received after that date, but before August 25, 1993, will be either granted or denied by the Agency prior to the effective date of the ban for the product. Applications received after August 25, 1993, will be either granted or denied by EPA as soon as is feasible.

(5) Applications for products affected by the ban under §§ 763.165(d) and 763.167(d) may not be submitted prior to February 27, 1995. Complete applications received after that date, but before August 25, 1995, will be either granted or denied by the Agency prior to the effective date of the ban for the product. Applications received after August 25, 1995, will be either granted or denied by EPA as soon as is feasible.

(6) Applications for products affected by the ban under § 763.169(d) may not be submitted prior to February 26, 1996. Complete applications received after that date, but before August 26, 1996, will be either granted or denied by the Agency prior to the effective date of the ban for the product. Applications received after August 26, 1996, will be either granted or denied by EPA as soon as is feasible.

(7) The agency will consider an application for an exemption from a ban under § 763.169 for a product at the same time the applicant submits an application for an exemption from a ban under § 763.165 or § 763.167 for that product. EPA will grant an exemption at that time from a ban under § 763.169 if the Agency determines it appropriate to do so.

(8) If the agency denies an application less than 30 days before the effective date of a ban for a product, the applicant can continue the activity for 30 days after receipt of the denial from the Agency.

(9) If the Agency fails to meet the deadlines stated in paragraphs (b)(1) through (6) of this section for granting or denying a complete application in instances in which the deadline is before the effective date of the ban to which the application applies, the applicant will be granted an extension of 1 year from the Agency's deadline date. During this extension period the applicant may continue the activity that is the subject of the exemption application. The Agency will either grant or deny the application during the extension period. The extension period will terminate either on the date the Agency grants the application or 30 days after the applicant receives the Agency's denial of the application. However, no extension will be granted if the Agency is scheduled to grant or deny an application at some date after the effective date of the ban, pursuant to the deadlines stated in paragraphs (b)(1) through (6) of this section.

(c) Where to file. All applications must be submitted to the following location: TSCA Document Processing Center (TS-790), Office of Toxic Substances, U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, ATTENTION: Asbestos Exemption.

(d) Content of application and criteria for decisionmaking.

(1) Content of application. Each application must contain the following:

(i) Name, address, and telephone number of the applicant.

(ii) Description of the manufacturing, import, processing, and/or distribution in commerce activity for which an exemption is requested, including a description of the asbestos-containing product to be manufactured, imported, processed, or distributed in commerce.

(iii) Identification of locations at which the exempted activity would take place.

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(iv) Length of time requested for exemption (maximum length of an exemption is 4 years).

(v) Estimated amount of asbestos to be used in the activity that is the subject of the exemption application.

(vi) Data demonstrating the exposure level over the life cycle of the product that is the subject of the application.

(vii) Data concerning:

(A) The extent to which non-asbestos substitutes for the product that is the subject of the application fall significantly short in performance under necessary product standards or requirements, including laws or ordinances mandating product safety standards.

(B) The costs of non-asbestos substitutes relative to the costs of the asbestos-containing product and, in the case in which the product is a component of another product, the effect on the cost of the end use product of using the substitute component.

(C) The extent to which the product or use serves a high-valued use.

(viii) Evidence of demonstrable good faith attempts by the applicant to develop and use a non-asbestos substance or product which may be substituted for the asbestos-containing product or the asbestos in the product or use that is the subject to the application.

(ix) Evidence, in addition to that provided in the other information required with the application, showing that the continued manufacture, importation, processing, distribution in commerce, and use, as applicable, of the product will not present an unreasonable risk of injury to human health.

(2) Criteria for decision (existing products). After considering all the information provided by an applicant under paragraphs (d)(1) and (e) of this section, and any other information available to EPA, EPA will grant an exemption from the prohibitions in §§ 763.165, 763.167, or 763.169 for an applicant's asbestos-containing product only if EPA determines both of the following:

(i) The applicant has made good faith attempts to develop and use a non-asbestos substance or product which may be substituted for the asbestos-containing product or the asbestos in the product or use, and those attempts have failed to produce a substitute or a substitute that results in a product that can be economically produced.

(ii) Continued manufacturing, processing, distribution in commerce, and use, as applicable, of the product will not present an unreasonable risk of injury to human health.

(3) Criteria for decision (new products). Requests to develop and use an asbestos substance or product will be treated as a petition pursuant to Section 21 of TSCA.

(e) The Agency reserves the right to request further information from an exemption applicant if necessary to complete the Agency's evaluation of an application.

(f) Upon receipt of a complete application, the Agency will issue a notice in the **Federal Register** announcing its receipt and invite public comments on the merits of the application.

(g) If the application does not include all of the information required in paragraph (d) of this section, the Agency will return it to the applicant as incomplete and any resubmission of the application will be considered a new application for purposes of the availability of any extension period. If the application is substantially inadequate to allow the Agency to make a reasoned judgment on any of the information required in paragraph (d) of this section and the Agency chooses to request additional information from the applicant, the Agency may also determine that an extension period provided for in paragraph (b)(7) of this section is unavailable to the applicant.

(h) When denying an application, the Agency will notify the applicant by registered mail of its decision and rationale. Whenever possible, the Agency will send this letter prior to the appropriate ban. This letter will be considered a final Agency action for purposes of judicial review. A notice announcing the Agency's denial of the application will be published in the **Federal Register**.

(i) If the Agency proposes to approve an exemption, it will issue a notice in the **Federal Register** announcing this intent and invite public comments. If, after considering any timely comments received, the Agency approves an exemption, its decision will be published in the **Federal Register**. This notice will be considered a final Agency action for purposes of judicial review.

(j) The length of an exemption period will be specified by the agency when it approves the exemption. To extend an exemption period beyond the period stipulated by EPA, applicants must submit a new application to the Agency, following the application procedures described in this section. Applications may not be submitted prior to 15 months before the expiration of the exemption period, unless stated otherwise in the notice granting the exemption. Applications received between 15 months and 1 year before the end of the exemption period will be either granted or denied by the Agency before the end of the exemption period. Applications received after the date 1 year prior to the end of the exemption period will be either granted or denied by the Agency as soon as is feasible. Applicants may not continue the activity that is the subject of the renewal application after the date of the end of the exemption period.

§ 763.175 Enforcement.

(a) Failure to comply with any provision of this subpart is a violation of section 15 of the Act (15 U.S.C. 2614).

(b) Failure or refusal to establish and maintain records, or to permit access to or copying of records as required by section 11 of the Act (15 U.S.C. 2610) is a violation of section 15 of the Act (15 U.S.C. 2614).

(c) Failure or refusal to permit entry or inspection as required by section 11 of the Act (15 U.S.C. 2610) is a violation of section 15 of the Act (15 U.S.C. 2614).

(d) Violators may be subject to the civil and criminal penalties in section 16 of the Act (15 U.S.C. 2615) for each violation.

(e) The Agency may seek to enjoin the manufacture, import, processing, or distribution in commerce of asbestos-containing products in violation of this subpart, or act to seize any asbestos-containing products manufactured, imported, processed, or distributed in commerce in violation of this subpart, or take any other actions under the authority of section 7 or 17 of the act (15 U.S.C. 2606 or 2616) that are appropriate.

§ 763.176 Inspections.

The Agency will conduct inspections under section 11 of the Act (15 U.S.C. 2610) to ensure compliance with this subpart.

§ 763.178 Recordkeeping.

(a) *Inventory.* (1) Each person who is subject to the prohibitions imposed by §§ 763.165 and 763.167 must perform an inventory of the stock-on-hand of each banned product as of the effective date of the ban for that product for the applicable activity.

(2) The inventory shall be in writing and shall include the type of product, the number of product units currently in the stock-on-hand of the person performing the inventory, and the location of the stock.

(3) Results of the inventory for a banned product must be maintained by the person for 3 years after the effective date of the § 763.165 or § 763.167 ban on the product.

(b) *Records.* (1) Each person whose activities are subject to the bans imposed by §§ 763.165, 763.167, and 763.169 for a product must, between the effective date of the § 763.165 or § 763.167 ban on the product and the § 763.169 ban on the product, keep records of all commercial transactions regarding the product, including the dates of purchases and sales and the quantities purchased or sold. These records must be maintained for 3 years after the effective date of the § 763.169 ban for the product.

(2) Each person who is subject to the requirements of § 763.171 must, for each product required to be labeled, maintain a copy of the label used in compliance with § 763.171. These records must be maintained for 3 years after the effective date of the ban on distribution in commerce for the product for which the § 763.171 requirements apply.

§ 763.179 Confidential business information claims.

(a) Applicants for exemptions under § 763.173 may assert a Confidential Business Information (CBI) claim for information in an exemption application or supplement submitted to the Agency under this subpart only if the claim is asserted in accordance with this section, and release of the information would reveal trade secrets or confidential commercial or financial information, as provided in section 14(a) of the Act. Information covered by a CBI claim will be treated in accordance with the procedures set forth in 40 CFR Part 2, Subpart B. The Agency will place all information not claimed as CBI in the manner described in this section in a public file without further notice to the applicant.

(b) Applicants may assert CBI claims only at the time they submit a completed exemption application and only in the specified manner. If no such claim accompanies the information when it is received by the Agency, the information may be made available to the public without further notice to the applicant. Submitters that claim information as business confidential must do so by writing the word "Confidential" at the top of the page on which the information appears and by underlining, circling, or placing brackets ([ ]) around the information claimed CBI.

(c) Applicants who assert a CBI claim for submitted information must provide the Agency with two copies of their exemption application. The first copy must be complete and contain all information being claimed as CBI. The second copy must contain only information not claimed as CBI. The Agency will place the second copy of the submission in a public file. Failure to furnish a second copy of the submission when information is claimed as CBI in the first copy will be considered a presumptive waiver of the claim of confidentiality. The Agency will notify the applicant by certified mail that a finding of a presumptive waiver of the claim of confidentiality has been made. The applicant has 30 days from the date of receipt of notification to submit the required second copy. Failure to submit the second copy will cause the Agency to place the first copy in a public file.

(d) Applicants must substantiate all claims of CBI at the time the applicant asserts the claim, i.e., when the exemption application or supplement is submitted, by responding to the questions in paragraph (e) of this section. Failure to provide substantiation of a claim at the time the applicant submits the application will result in a waiver of the CBI claim, and the information may be disclosed to the public without further notice to the applicant.

(e) Applicants who assert any CBI claims must substantiate all claims by providing detailed responses to the following:

(1) Is this information subject to a patent or patent application in the United States or elsewhere? If so, why is confidentiality necessary?

(2) For what period do you assert a claim of confidentiality? If the claim is to extend until a certain event or point in time, please indicate that event or time period. Explain why such information should remain confidential until such point.

(3) Has the information that you are claiming as confidential been disclosed to persons outside of your company? Will it be disclosed to such persons in the future? If so, what restrictions, if any, apply to use or further disclosure of the information?

(4) Briefly describe measures taken by your company to guard against undesired disclosure of the information you are claiming as confidential to others.

(5) Does the information claimed as confidential appear or is it referred to in advertising or promotional materials for the product or the resulting end product, safety data sheets or other similar materials for the product or the resulting end product, professional or trade publications, or any other media available to the public or to your competitors? If you answered yes, indicate where the information appears.

(6) If the Agency disclosed the information you are claiming as confidential to the public, how difficult would it be for the competitor to enter the market for your product? Consider in your answer such constraints as capital and marketing cost, specialized technical expertise, or unusual processes.

(7) Has the Agency, another Federal agency, or a Federal court made any confidentiality determination regarding this information? If so, provide copies of such determinations.

(8) How would your company's competitive position be harmed if the Agency disclosed this information? Why should such harm be considered substantial? Describe the causal relationship between the disclosure and harm.

(9) In light of section 14(b) of TSCA, if you have claimed information from a health and safety study as confidential, do you assert that disclosure of this information would disclose a process used in the manufacturing or processing of a product or information unrelated to the effects of asbestos on human health and the environment? If your answer is yes, explain.

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Part IV

Environmental Protection Agency

40 CFR Parts 22 and 142

Safe Drinking Water Act Administrative Enforcement Regulations; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 22 and 142

[FR-3494-8]

Safe Drinking Water Act Administrative Enforcement Regulations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth the procedures the Environmental Protection Agency will follow to implement section 1414(g) of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300g–3(g). This section, among other things, provides the Administrator with authority to issue compliance orders to violators of Part B (applicable to public water suppliers) or section 1445 of the SDWA (applicable to public water suppliers and underground injectors), 42 U.S.C. 300g and 300j–4, and to administratively enforce such orders. Section 1414(g) compliance orders may not take effect until after "notice and opportunity for public hearing and, in the case of a State having primary enforcement responsibility for public water systems in that State, until after the Administrator has provided the State with an opportunity to confer with the Administrator regarding the proposed order." 42 U.S.C. 300g–3(g)(2).

DATES: EPA will accept public comments on the proposed regulations until September 11, 1989, either in writing or at an informal public hearing to be held in Washington, DC on August 15, 1989. Requests to present oral testimony at the public hearing must be received on or before August 11, 1989.

ADDRESSES: Interested persons may participate in this proposed rulemaking by submitting written comments to the Comment Clerk, State Programs Division (WH–550E), Office of Drinking Water, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. All comments should be typed or printed. The public hearing will be held on August 15, 1989 beginning at 9 a.m. in Conference Room No. 13 of the Washington Information Center, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Donald M. Olson, State Programs Division, Underground Injection Control Branch (WH–550E), Office of Drinking Water, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–5558.

SUPPLEMENTARY INFORMATION: A copy of all public comments will be available for inspection and copying at Room 1143 East Tower, 401 M Street SW., Washington, DC 20460. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

I. Background

The Safe Drinking Water Act was enacted in 1974. At that time, with one exception, it contained no provisions for EPA to enforce its terms administratively. Later amendments to the SDWA did not provide such authority until June 19, 1986, when Congress added a new provision, section 1414(g).[1]

On January 20, 1987, EPA issued "PWS [Public Water Supply] and UIC Administrative Orders Issuance Guidance." This material included delegations of authority, guidance, procedures, and model formats for the benefit of EPA regional personnel charged with implementing the 1986 SDWA Amendments. Specifically, the material included "Administrative Order Issuance Procedure Guidance," governing notice and hearing procedures for compliance order issuance under sections 1414(g) (1) and (2) of the SDWA, 42 U.S.C. 300g–3(g) (1) and (2), and procedures governing penalty orders issued under section 1414(g)(3) of the SDWA, 42 U.S.C. 300g–3(g)(3), which were "set out in the form of a regulation with the expectation that in the near future EPA will notice [these procedures] in a proposed rulemaking." EPA issued this procedural guidance as "binding" and "to be used by all Regions without change." The section 1414(g)(3) guidance required use of the Agency's Consolidated Rules of Practice found at 40 CFR Part 22. EPA has used this guidance since January 20, 1987. Today, with only minor or technical changes, the Agency is proposing this guidance as a rule as authorized by section 1450 of the SDWA, 42 U.S.C. 300j–9.

II. Section-by-Section Analysis

A. Overview of Proposed Regulations

Section 1414(g)(1) of the SDWA, 42 U.S.C. 300g–3(g)(1), authorizes the EPA Administrator to issue a compliance order in any case in which the Administrator may bring a civil action under section 1414 or section 1445 of the SDWA, 42 U.S.C. 300g–3(g) or 300j–4. Section 1414(g)(2), 42 U.S.C. 300g–3(g)(2), further provides:

> An order issued under this subsection shall not take effect until after notice and opportunity for public hearing and, in the case of a State having primary enforcement responsibility for public water systems in that State, until after the Administrator has provided the State with an opportunity to confer with the Administrator regarding the proposed order. A copy of any order proposed to be issued under this subsection shall be sent to the appropriate State agency of the State involved if the State has primary enforcement responsibility for public water systems in that State. Any order issued under this subsection shall state with reasonable specificity the nature of the violation. In any case in which an order under this subsection is issued to a corporation, a copy of such order shall be issued to appropriate corporate officers.

EPA today proposes rules establishing procedures under which it will exercise the authority conferred by section 1414(g). EPA also is proposing conforming amendments to 40 CFR Part 22 (Consolidated Rules of Practice) to implement section 1414(g)(3) of the SDWA, 42 U.S.C. 300g–3(g)(3). That provision of the law, referring to administrative penalties for violation of an administrative compliance order issued under section 1414(g), states that:

> Whenever any civil penalty sought by the Administrator under this paragraph does not exceed a total of $5,000, the penalty shall be assessed by the Administrator after notice and opportunity for a hearing on the record in accordance with section 554 of title 5 of the United States Code.

EPA's Consolidated Rules of Practice, 40 CFR Part 22, establish procedures for the administrative assessment of civil penalties that conform to the requirements of section 554 of title 5 of the United States Code, the Administrative Procedure Act.

In interpreting the SDWA, the Agency has taken note of the legislative history of section 1414(g), which states:

> The Administrative order authority provides for more efficient enforcement against less significant violations and is expected to enable EPA to develop a more aggressive enforcement program * * * The purpose of adding administrative order authority is not to replace judicial enforcement, but to add a complementary enforcement mechanism.

S. Rep. No. 99–56, 99th Cong., 1st Sess. (1985) (Accompanying S. 124). The proposed rule is intended to implement the legislative intent favoring efficient and aggressive enforcement through use of section 1414(g) orders. The proposed procedures are not intended to confer any rights to persons affected by an order beyond those required by statute.

The procedures proposed for section 1414(g)(2) compliance orders provide an opportunity for informal, information-gathering, nonadjudicatory hearings prior to issuance of the orders. The orders will state the nature of the violation under section 1414(g)(1) and may specify a reasonable time for compliance. They will require compliance with existing duties under the SDWA, but will not alter those existing duties or obligations or create new obligations. The hearing and resulting compliance order will not be determinative of the underlying statutory rights and responsibilities, and therefore are not subject to pre-enforcement judicial review. Moreover, as is explained in more detail below, penalties for violation of the order and of the SDWA may be assessed only after a duly noticed adjudicatory hearing. The existence of administrative order violations and imposition of penalties will be issues to be adjudicated at the penalty hearing, which will be conducted in accordance with section 554 of the Administrative Procedure Act. EPA believes that these proposed rules are fully consistent with applicable due process requirements. See *Asbestec Construction Services Inc.* v. *EPA*, No. 87–4120 (2d Cir. June 15, 1988); 18 ELR 21029.

EPA's use of information-gathering, informal hearings for administrative compliance orders under section 1414(g)(2) is consistent with both the language and intent of the 1986 SDWA amendments. The Senate Report's explanation, later adopted by the Conference Committee, provides a strong indication that EPA should adopt informal, efficient administrative proceedings to implement its compliance order authority. The interpretation also is consistent with the opportunities for public participation and State consultation created by the statute; both requirements serve to inform the Administrator of relevant information before a compliance order becomes effective.

In contrast, section 1414(g)(3) expressly requires the Administrator to use procedures in accordance with 5 U.S.C. 554 (the section of the Administrative Procedure Act labelled "Adjudications") in assessing an administrative penalty of up to $5,000 for persons violating a section 1414(g) compliance order. Penalties in excess of $5,000 must be assessed by a civil action brought in U.S. District Court. By statute, hearings conducted by the Agency under section 1414(g)(3) will be adjudicatory in nature and afford the more formal procedures prescribed by the APA. As noted above, by this rulemaking the Agency proposes that EPA will use its already-promulgated Consolidated Rules of Practice (with some supplemental rules specific to penalty orders issued under section 1414(g)(3) of the SDWA) in pursuing administrative penalties under section 1414(g)(3).

B. Procedures for PWS Administrative Compliance Orders

1. Section 142.201: Purpose

This subsection explains the purpose of the procedures set forth in Subpart K.

2. Section 142.202: Definitions

This subsection provides only two definitions. Other terms used throughout this proposed subpart are used according to the statute or as part of common usage.

3. Section 142.203: Proposed Administrative Compliance Orders

Section 1414(g)(2) of the SDWA requires EPA to propose compliance orders and further provides that an order shall not take effect until an opportunity for a hearing and, in primacy States, opportunity for the State to confer with EPA. Under these proposed regulations the Administrator, upon finding a person or supplier of water in violation of relevant parts of Part B of the SDWA or of section 1445 of the SDWA, has the discretion to propose an administrative compliance order. The proposed rule tracks the statutory requirement that the order "state with reasonable specificity the nature of the violation," and also makes explicit the implicit authority of the Administrator to establish a reasonable compliance schedule in the order. In some cases, such as overdue reporting or failure to monitor, no schedule may be necessary. In those cases, compliance should be required at once. In a number of circumstances, however, immediate compliance will not be physically possible. In such cases, the Administrator will have the discretion to establish a reasonable time for compliance, and necessary interim steps, such as periodic reports to EPA, to allow the Agency to oversee the respondent's efforts to achieve it.

4. Section 142.204: Notice of Proposed Administrative Compliance Order

This subsection implements the SDWA's requirement to provide notice of a proposed order. The subsection requires EPA to provide notice to the alleged violator, the public and, if applicable, the PWS primacy State. These notifications are necessary to inform the public water supplier and the public of their opportunity for a hearing, and the primacy State of its right to a conference with EPA and opportunity to request a hearing.

(a) *Section 142.204(a): The Party.* This subsection requires a notice to the party by certified mail, return receipt requested. The additional procedure for corporate parties follows the statutory requirements of Section 1414(g)(2). If a party refuses service or does not claim the certified mail notice, the Agency shall provide notice by another appropriate means.

(b) *Section 142.204(b): The Public.* This subsection requires notice to the public. Because the size and type (e.g., urban or rural) of the potentially affected public vary widely, the appropriate means of providing this notice is left to the discretion of EPA. In the circumstances of each case, however, the public notification shall be reasonably calculated to provide notice to the affected public.

(c) *Section 142.204(c): The State (where applicable).* If a party is located within a PWS primacy State, the proposed regulations require EPA to provide notice to the appropriate State agency by certified mail, return receipt requested.

5. Section 142.205: Opportunity for Public Hearings; Opportunity for State Conferences

The SDWA requires "opportunity for public hearing and, in the case of a State having primary enforcement responsibility for public water systems in that State, * * * an opportunity to confer with the Administrator regarding the proposed order." section 1414(g)(2). The PWS primacy State's opportunity to confer with EPA extends only to proposed orders against public water suppliers, not UIC violators of Section 1445 of the Act.

(a) *Section 142.205(a).* This subsection provides that a public hearing shall be held upon a timely request by the party or a primacy State. The provision of these proposed rules that affords parties and primacy States a public hearing upon request reflects their direct interest in the order. All requests for hearings will be honored if they are related to the purposes specified in § 142.206(a).

In addition, the Administrator must hold a public hearing if he determines that the public has expressed "a significant interest in the convening of a public hearing within fourteen days of the date of the notice." This provision is patterned after 40 CFR 124.12, regarding

[1] The June 19, 1986 amendments also gave EPA administrative enforcement authority to address violations of the Underground Injection Control (UIC) program established under Part C of the SDWA. See section 1423(c), 42 U.S.C. 300h–2(c). Except for UIC violations of section 1445 of the Act, which are governed by section 1414(g)(2), EPA will establish regulatory procedures governing those UIC administrative enforcement authorities in a separate action.

public hearings on draft National Pollutant Discharge Elimination System (NPDES) permits. That provision states, in part, "The Director shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest * * *" 40 CFR 124.12(a)(1).

The Agency believes it is appropriate to hold public hearings without request by a party or a primacy State only if there is a significant public interest. First, the public has an interest in quick and efficient administrative enforcement, see S. Rep. 99-56 supra. These expedited procedures and the provisions of this section in particular advance that interest. Second, the requirement that a public hearing be convened without a request by a party or a primacy state only if the public has expressed a significant interest ensures that the Agency will expend its resources to conduct such hearings only when there is some assurance of public attendance and participation at such hearings. The fourteen day deadline is the minimum time EPA deemed reasonable to receive such requests.

Finally, the Administrator may also convene a public hearing on his own initiative.

(b) *Section 142.205(b).* Under this provision, the primacy State has ten days from the date of notice as described in § 141.205(c) to request a conference with EPA concerning the proposed order. The response period is shorter than that provided for a request for a public hearing because it is the Agency's intent that State conferences concerning proposed orders should typically precede any public hearing convened on a proposed order. The person alleged to be in violation therefore would have an opportunity to comment at the hearing on any information presented by a primacy State.

(c) *Section 142.205(c).* This provision provides a three-day mailing and constructive notice rule for purposes of determining how long the party, the public, or the primacy State has to respond to request a public hearing under § 141.205(a) and, in the case of a primacy State, how long the State has to respond to request a conference under § 141.205(b). In curcumstances where written notice is immediately provided in person or otherwise to the affected public, this rule will not apply.

6. Section 142.206: Conduct of Public Hearings

The Safe Drinking Water Act does not provide criteria for the conduct of public hearings under section 1414(g)(2). As noted above in the Overview of Proposed Regulations, these proposed rules provide for informal, fact-finding hearings which are by their nature nonadjudicative. The Agency is proposing streamlined procedures that focus the hearings on those elements of the findings and proposed order that materially affect the public water supplier.

(a) *Section 142.206(a).* The Administrator, or his delegatee, shall convene a public hearing pursuant to § 141.205(a), or may convene a public hearing upon his own initiative. The subjects of the hearing will be limited to the accuracy of the findings of fact in the proposed order and, if applicable, the reasonableness of the time for a party to comply with the order.

(b) *Section 142.206(b).* This section sets forth the role of the Hearing Officer, who presides over any public hearing held under section 1414(g)(2) of the Act. The Administrator or his delegatee shall appoint a Hearing Officer prior to convening a public hearing. See § 142.202(a). Because of the informal, information-gathering nature of a public hearing held under this subpart, see Overview discussion above, the Hearing Officer has broad discretion in establishing the "forms and procedures" of the hearing. Because the primary purpose of the hearing is to improve the administrator's informational basis for decision, the Hearing Officer must also "maintain a complete and accurate record of the proceedings" and maintain the record in a permanent form. Any information received by the Hearing Officer becomes part of the administrative record, which provides the factual basis for the order and the time provided for compliance. Because of this use of information gathered in the hearing, the Hearing Officer must provide the record of the hearing to the Administrator or his delegatee to serve as the basis for a compliance order.

(c) *Section 142.206(c).* This section describes what matters are relevant at a hearing under this subpart and in what manner and by whom the information may be conveyed to the Agency. There are no restrictions on who may present information at or before a hearing. Because of the potential expense and inconvenience to the public of attending a hearing, as well as for purposes of adminisitrative convenience, the Agency is proposing that relevant written testimony submitted before the date set for a public hearing will be considered by EPA as part of the administrative record. Written testimony may substitute for or supplement oral testimony. Relevant matters at a public hearing or in written testimony under this subpart are limited to the facts of the party's alleged violations of those parts of the SDWA referenced in proposed § 141.202(b) and, where applicable, the reasonableness of the time provided for compliance in a proposed section 1414(g)(2) order.

7. Section 142.207: Issuance, Amendment or Withdrawal of Administrative Compliance Order

This section provides that the Administrator, based on the administrative record, shall issue, amend or withdraw the proposed order.

(a) *Section 142.207(a).* The Administrator or his delegatee shall make his decision on the order based on relevant information in the administrative record. The administrative record includes the relevant information initially considered by EPA in preparing the proposed order and also includes all relevant information that EPA receives under proposed §§ 141.205(b) and 141.206(c), or that is otherwise received by EPA. In addition, EPA retains discretion to withdraw a proposed compliance order without the necessity for a State conference or a public hearing if there are sufficient independent grounds for withdrawal, such as new information that clearly demonstrates a lack of violation or lack of jurisdiction.

(b) *Section 142.207(b).* This section requires the Agency official issuing the compliance order to establish a date for compliance that is reasonable and is premised on the administrative record.

(c) *Section 142.207(c).* The Administrator is to withdraw, amend and issue as an order or issue as an order without material change, each proposed order "in writing and within a reasonable time." After issuance, each compliance order is to be provided to the party, the primacy State (if in a primacy State), and members of the public who participated under proposed § 141.206(c). Notification of appropriate persons under this section should occur simultaneously and immediately upon issuance of the compliance order.

8. Section 142.208 Administrative Assessment of Civil Penalty for Violation of Administrative Compliance Order

This section references 40 CFR Part 22, the Consolidated Rules of Practice, for procedures to impose an administrative penalty assessed pursuant to section 1414(g)(3)(B) of the Act for violation of a compliance order issued under section 1414(g) (1) and (2) of the Act.

C. Section 1414(g)(3) Regulations: 40 CFR 22.01 and 22.42

1. *Section 22.01(a)(9).* This provision expands the scope of the generally applicable Part 22 rules to include administrative penalty assessments conducted under section 1414(g)(3)(B) of the SDWA.

2. *Section 22.42: Supplemental Rule of Practice Governing the Administrative Assessment of Civil Penalties for Violation of Compliance Orders Issued Under Section 1414(g)(3)(B) of the Safe Drinking Water Act.* This section adds rules of practice of Part 22 that specifically govern procedures to assess civil penalties under section 1414(g)(3)(B) of the SDWA.

(a) *Section 22.42(b): Person.* The term "person" is to include "any officer, employee or agent of any corporation, company or association," in accordance with section 1401 of the SDWA, 42 U.S.C. 300f.

(b) *Section 22.42(c): Complaint Issuance.* This section enables the appropriate Agency official to issue a Complaint under the SDWA and the Consolidated Rules of Practice.

(c) *Section 22.42(d): Content of Complaint.* The content of the complaint under section 1414(g)(3) requires the recitation of the violation of the section 1414(g)(1) administrative compliance order and the recitation of the underlying violations of the SDWA.

(d) *Section 22.42(e): Scope of Hearing.* The scope of hearing clarifies that Agency actions which could have been subject to review under section 1448 of the Act, 42 U.S.C. 300j-7, may not be challenged in a section 1414(g)(3)(B) administrative forum.

III. Economic and Regulatory Impact

A. Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, an agency is required to prepare an initial regulatory flexibility analysis whenever it is required to publish a general notice of any proposed rule, unless the head of the agency certifies that the rule, if promulgated, will not have a significant impact on a substantial number of small entities. These proposed regulations require no additional reporting or other burdens by the regulated community. Therefore, the Administrator certifies that this regulation will not have a significant impact on a substantial number of small entities.

B. Executive Order 12291

Under Executive Order 12291, EPA must judge whether the proposed regulations are major and therefore subject to the requirement of a Regulatory Impact Analysis. As described above, these proposed rules do not impose additional burdens beyond those already prescribed by the SDWA Amendments of 1986. They do not have an annual effect on the economy of $100 million or more, nor do they satisfy any of the other criteria listed in section 1(b) of the Executive Order. Therefore, these proposed regulations do not constitute a major rulemaking. This proposal has been submitted to OMB for review as required by Executive Order 12291.

List of Subjects

40 CFR Part 22

Administrative practices and procedures, Appeals and administrative review.

40 CFR Part 142

Administrative practice and procedures, Monitoring, reporting and recordkeeping requirements, Water supply.

June 26, 1989.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, Title 40, Chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATICN

1. The authority citation for Part 142 continues to read as follows:

Authority: Safe Drinking Water Act (42 U.S.C. 300f *et seq.*, as amended, unless otherwise noted).

2. Subpart J is reserved and a new Subpart K is added to Part 142 to read as follows:

Subpart K—Procedures for PWS Administrative Compliance Orders

Sec
142.201 Purpose.
142.202 Definitions.
142.203 Proposed administrative compliance orders.
142.204 Notice of proposed administrative compliance orders.
142.205 Opportunity for public hearings; opportunity for State conferences.
142.206 Conduct of public hearings.
142.207 Issuance, amendment or withdrawal of administrative compliance order.
142.208 Administrative assessment of civil penalty for violation of administrative compliance order.

Subpart J—[Reserved]

Subpart K—Procedures for PWS Administrative Compliance Orders

§ 142.201 Purpose.

This part prescribes procedures for notice and opportunity for public hearings, conferences with primacy States and issuance of administrative compliance orders under section 1414(g) of the Safe Drinking Water Act, 42 U.S.C. 300g-3(g).

§ 142.202 Definitions.

(a) The term "Hearing Officer" means an Environvental Protection Agency employee who has been delegated by the Administrator the authority to preside over a public hearing held pursuant to section 1414(g)(2) of the Safe Drinking Water Act, 42 U.S.C. 300g-3(g)(2).

(b) The term "party" means any "person" or "supplier of water" as defined in section 1401 of the SDWA, 42 U.S.C. 300f, alleged to have violated any regulation implementing section 1412 of the SDWA, 42 U.S.C. 300g-1, any schedule or other requirement imposed pursuant to section 1415 or section 1416 of the SDWA, 42 U.S.C. 300g-4 and 300g-5, or section 1445 of the SDWA, 42 U.S.C. 300j-4, or any regulation implementing section 1445.

§ 142.203 Proposed administrative compliance orders.

If the Administrator finds that a party has violated a regulation, schedule, or other requirement of the SDWA referenced in § 142.202(b), the Administrator may prepare a proposed administrative compliance order that would require the party to comply with the regulation, schedule, or other requirement that is alleged to have been violated. Any such proposed administrative order shall state with reasonable specificity the nature of the violation, and may specify a reasonable time for compliance.

§ 142.204 Notice of proposed administrative compliance orders.

The Administrator simultaneously shall provide a copy of any proposed administrative compliance order to:

(a) *The party.* In any case in which the party is a corporation, the Administrator shall provide a copy of a proposed administrative compliance order to an appropriate corporate officer. The Administrator shall provide notice under this subsection by sending such a copy by certified mail, return receipt requested. If certified mail is refused or unclaimed, the Administrator shall

provide notice by another appropriate means.

(b) *The public.* The Administrator shall make publicly available each proposed administrative compliance order at the time of its proposal; and

(c) *The State.* In the case of a State with primary enforcement responsibility for public water systems pursuant to section 1413(a) of the SDWA, 42 U.S.C. 300g–2(a), the Administrator shall provide notice under this subsection by sending a copy of each proposed administrative compliance order by certified mail, return receipt requested to the appropriate State agency of the State involved.

§ 142.205 Opportunity for public hearings; opportunity for State conferences.

(a) The Administrator shall provide the party, the public and the State an opportunity for a public hearing on any proposed administrative compliance order by stating in a letter accompanying each proposed administrative compliance order (or its copy) that a public hearing shall be convened if the party or the State sends written notice of such request to the Administrator within fourteen days of the date the proposed administrative compliance order is noticed under § 142.204, or if the Administrator determines that within fourteen days of the date of notice the public has expressed a significant interest in the convening of a public hearing. Hearings will be held only for the purposes specified in § 142.206(a). All requests for hearings shall identify which of the purposes specified in § 142.206(a) is the basis for the request. The Administrator may extend the time allowed for submitting requests for good cause.

(b) In the case of a State with primary enforcement responsibility under section 1413(a) of the SDWA, the Administrator shall provide the State with an opportunity to confer regarding any proposed administrative compliance order to a public water supplier by stating in a letter accompanying each mailing of the proposed administrative compliance order sent to the State that such a conference shall be held between the State and the Administrator, if the State requests such a conference within ten days of the date the proposed administrative compliance order is noticed under § 142.204.

(c) For purposes of this subsection, notice occurs three days after the date of mailing or other means of notification, excluding Saturdays, Sundays and federal holidays.

§ 142.206 Conduct of public hearings.

(a) The purpose of the public hearing shall be to determine whether a proposed administrative order:

(1) Has correctly determined the extent and nature of a party's violation of any regulation, schedule, or other requirement of the SDWA referenced in § 142.202(b) and

(2) has provided, where appropriate, a reasonable time for the party to comply with applicable requirements of the SDWA and its implementing regulations.

(b) Prior to convening a public hearing under this subsection, the Administrator shall appoint a Hearing Officer. The Hearing Officer shall preside over any public hearing convened under this section. The Hearing Officer shall determine the form and procedures of the public hearing, and shall maintain a complete and accurate record of the proceedings in written or other permanent form. The Hearing Officer shall provide the Administrator with the record of any public hearing conducted under this subsection.

(c) The party, any member of the public, or the State may present information to the Hearing Officer at the public hearing (or to the Administrator in writing before the date set for the public hearing) relevant to whether:

(1) The party has violated the applicable regulation, schedule, or other requirement referenced in the proposed administrative compliance order;

(2) The party has violated any other applicable regulation, schedule, or other requirement of the SDWA referenced in § 142.202(b); and

(3) The proposed order, where appropriate, provides a reasonable time for the party to comply with applicable requirements of the SWDA and its implementing regulations.

§ 142.207 Issuance, amendment or withdrawal of administrative compliance order.

(a) Based on the administrative record, the Administrator shall either issue the order as proposed, amend the proposed order or withdraw the proposed order.

(b) Any order issued shall require the party to comply with any applicable regulation, schedule, or other requirement of the SDWA referenced in § 142.202 and may establish a time or date for compliance which the Administrator determines is reasonable, based on the administrative record.

(c) The Administrator shall determine within a reasonable time whether to issue, amend or withdraw the proposed order and shall promptly notify in writing the party, all members of the public participating under § 142.206(c) and the State, in the case of a State with primary enforcement authority over public water systems pursuant to section 1413(a) of th SDWA, or in the case of a State participating under § 142.206(c).

§ 142.208 Administrative assessment of civil penalty for violation of administrative compliance order.

In the event the Administrator decides to seek a penalty under the authority provided in section 1414(g)(3)(B) of the SDWA, 42 U.S.C. 300g–3(g)(3)(B), for violation of, or failure or refusal to comply with, an order, the procedures provided in 40 CFR Part 22 shall govern the assessment of such a penalty.

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION OR SUSPENSION OF PERMITS

3. The authority citation of Part 22 is revised to read as follows:

Authority: Secs. 16 and 207 of the Toxic Substances Control Act, 15 U.S.C. 2615 and 2647; and secs. 211 and 301 of the Clean Air Act, 42 U.S.C. 7545 and 7601; secs. 14 and 25 of the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136i and 136m; secs. 105 and 108 of the Marine Protection, Research and Sanctuaries Act, 33 U.S.C. 1415 and 1418; secs. 2002 and 3008 of the Solid Waste Disposal Act, 42 U.S.C. 6912 and 6928; sec. 501 of the Clean Water Act, 33 U.S.C. 1361; and, sec. 1414 of the Safe Drinking Water Act, 42 U.S.C. 300g–3.

4. The introductory text of § 22.01(a) is republished without change for the convenience of the reader and §§ 22.01(a)(9) and 22.42 are added to read as follows:

§ 22.01 Scope of these rules.

(a) These rules of practice govern all adjudicatory proceedings for:

* * * * *

(9) The assessment of any civil penalty conducted under Section 1414(g)(3)(B) of the Safe Drinking Water Act as amended (42 U.S.C. 300g–3(g)(3)(B)).

* * * * *

§ 22.42 Supplemental rules of practice governing the administrative assessment of civil penalties for violations of compliance orders issued under Part B of the Safe Drinking Water Act.

(a) *Scope of these supplemental rules.* These supplemental rules of practice shall govern, in conjunction with the preceding Consolidated Rules of Practice (40 CFR Part 22), all proceedings to assess a civil penalty under section 1414(g)(3)(B) of the Safe Drinking Water Act, 42 U.S.C. 300g–3 (g)(3)(B). Where inconsistencies exist between these supplemental rules and the Consolidated Rules, these supplemental rules shall apply.

(b) *Definition of "person."* In addition to the terms set forth in 40 CFR 22.03(a) that define "person," for purposes of this section and proceedings under section 1414(g)(3)(B) of the Safe Drinking Water Act, the term "person" shall also include any officer, employee, or agent of any corporation, company or association.

(c) *Issuance of complaint.* If the Administrator determines that a person has violated any provision of a compliance order issued under section 1414(g)(1) of the Safe Drinking Water Act, 42 U.S.C 300g–3(g)(1), he may institute a proceeding for the assessment of a civil penalty by issuing a complaint under the Act and this Part.

(d) *Content of the complaint.* A complaint for the assessment of civil penalties under this Part shall include specific reference to:

(1) Each provision of the compliance order issued under section 1414(g)(1) of the Act, 42 U.S.C. 300g3(g)(1), which is alleged to have been violated; and

(2) Each violation of a Safe Drinking Water Act regulation, schedule, or other requirement which served as the basis for the compliance order which is alleged to have been violated.

(e) *Scope of hearing.* Action of the Administrator with respect to which judicial review could have been obtained under Section 1448 of the Safe Drinking Water Act, 42 U.S.C. 300j–7, shall not be subject to review in an administrative proceeding for the assessment of a civil penalty under section 1414(g)(3)(B) of the SDWA and this Part.

* * * * *

[FR Doc. 89–15749 Filed 7–11–89; 8:45 am]

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federal register

Wednesday
July 12, 1989

Part V

Environmental Protection Agency

40 CFR Part 707
Export Notification Requirement; Proposed Change to Reporting Requirements; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 707

[OPTS-120004; FRL-3614-6]

Export Notification Requirement; Proposed Change to Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing amendments to the export notification rules at Subpart D of 40 CFR Part 707 that would change the current annual notification requirement for exporters of chemical substances and mixtures (chemicals) subject to test rules or consent orders (test rules) under section 4 of the Toxic Substances Control Act (TSCA) to a one-time export notification requirement for each exporter of such a chemical per each country of destination. EPA believes the proposed amendments would facilitate foreign governments' monitoring of chemicals by relieving the administrative burden imposed by the present annual notices received on chemicals subject to TSCA section 4 test rules and through encouraging the thoughtful review of notices regarding chemicals subject to more restrictive regulatory action. Additionally, the proposed amendments are necessary to reduce the notification burden on EPA and industry, and because under the current annual notice requirement the large volume of notices received has hampered EPA's ability to respond to requests from foreign governments for additional information on a particular chemical or export notice.

DATE: Written comments on this proposed rule must be submitted by September 11, 1989.

ADDRESS: Comments should bear the docket control number OPTS-120004 and should be submitted, in triplicate, to: TSCA Public Docket Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Room NE-G004, 401 M Street, SW., Washington, DC 20460.

All written comments on this proposed rule will be available for public inspection at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room EB-44, 401 M Street, SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA is proposing amendments to the export notification rules which would change the current recurring annual requirement of export notification to EPA for section 4 test rule chemicals to a one-time export notification requirement for each exporter of such a chemical to each country. EPA is also proposing to provide a one-time notice to each importing country for a particular section 4 test rule chemical.

I. Authority

EPA is proposing this amendment pursuant to section 12(b) of TSCA, 15 U.S.C. 2611(b).

Section 12(b) of TSCA requires that any person who exports or intends to export to a foreign country a chemical substance or mixture for which the submission of data is required under TSCA section 4 or 5(b), an order has been issued under section 5, a rule has been proposed or promulgated under section 5 or 6, or relief has been granted under section 5 or 7 to notify the Administrator of EPA of such exportation or intent to export. Upon receipt of such notification, section 12(b) of TSCA reqires EPA to furnish the government of the importing country with:

1. Notice of the availability of data received pursuant to action under section 4 or 5(b), or

2. Notice of such rule, order, action, or relief under section 5, 6, or 7.

EPA maintains a public record of all notices received and sent under section 12(b), except for information that has been claimed as confidential business information under TSCA section 14.

II. Summary of This Proposed Rule

EPA is proposing to require persons who export or who intend to export to a specific country a chemical for which notification is required under section 12(b) of TSCA by virtue of section 4 test rules to submit a one-time notice to EPA of that export for each such chemical and country. EPA is not proposing a change in the current recurring annual export notification requirements triggered by a rule, order, action, or relief under sections 5, 6, and 7 of TSCA. EPA is neither proposing any change in the required contents of the notice (40 CFR 707.67) nor any revision with regard to the time deadline for submission of an export notice to EPA, that is, within 7 days of forming an intent to export or the date of export, whichever is earlier, 40 CFR 707.65(a)(3). However, EPA is proposing to require that each exporter provide only one notification, per chemical, for each country of export after the issuance of a section 4 test rule. Currently, exporters are required to notify EPA annually of exports of chemicals subject to section 4 test rules.

EPA is also proposing to modify the process for notifying foreign governments of export of section 4 test rule chemicals by providing only one notice per section 4 test rule chemical to each importing country. The content of the information sent in the proposed one-time notification for section 4 test rule chemicals would be identical to that provided under the current annual notification scheme. Importing countries would get the same information on section 4 test rule chemicals, but only once.

EPA requests comments on this proposed amendment, particularly with regard to whether the proposed changes would provide adequate information to foreign governments about chemicals imported from the United States which are subject to test rules, as well as whether the proposed changes would offer a burden reduction for the regulated industry. The role of Non-Governmental Organizations (NGOs) in implementing the proposed amendmeants is not addressed because the export notification information that such NGOs can obtain is limited by the provisions of section 14 of TSCA.

III. Reasons for Proposing This Rule

A. Background

In the Federal Register of December 16, 1980 (45 FR 82844), EPA promulgated rules implementing section 12(b) of TSCA. Persons subject to the implementing rules are currently required to submit a written notice to EPA for the first export or intended export to a particular country in a calendar year for chemicals subject to a rule, order, action, or relief under sections 4, 5, 6, and 7 of TSCA. Upon receipt of such notification from an exporter, the implementing rules require that EPA provide the importing country with a summary of the regulatory action taken or indicate the availability of data received pursuant to action under section 4 or 5(b), or notice of a rule, order, action, or relief under section 5, 6, or 7 of TSCA.

At the time EPA promulgated the section 12(b) rule at 40 CFR Part 707, EPA did not have the practical experience it now has in estimating the impact of certain regulatory actions. At that time EPA did not believe that the rule would impose an excessive burden upon foreign governments, industry, or

EPA resources. However, recent experience has demonstrated to EPA that an increasing number of section 12(b) notices are received by EPA each year.

In 1983, EPA received 438 section 12(b) notices on 15 chemical substances; of this number, none were in response to section 4 test rules. That number increased to 524 notices on 37 substances in 1984 (31 in response to section 4 actions), 819 notices on 115 substances in 1985 (283 in response to section 4 actions), 2,056 notices on 166 substances in 1986 (1,506 in response to section 4 actions), and 2,367 notices on 282 substances in 1987 (1,703 in response to section 4 actions). Approximately 4,300 notices were received in 1988 on substances (3,350 in response to section 4 actions). EPA projected totals for 1989 are for approximately 4,700 notices (3,752 in response to section 4 actions); for 1993, the number is expected to be greater than 8,200 (6,950 in section 4 actions).

The increase in section 12(b) notices received by EPA has led to a corresponding increase in the number of notices EPA has sent to foreign governments. In 1984, EPA sent 406 notices to foreign governments. This number increased to 533 in 1985, 869 in 1986, and 1,035 in 1987. Approximately 2,100 notices were sent in 1988. EPA projections for 1989 are for over 2,300 notices to be sent to foreign governments (770 to 1,014 in response to section 4 actions). This continually increasing volume of notification has created a situation in which the effectiveness of many foreign governments' import monitoring programs may be hampered by the processing of more and more notices.

At the present time, a fourth to a half of the section 12(b) notices received by EPA from a particular company are other than first-time notices (i.e., repeat notices for subsequent annual exports to the same country). EPA anticipates that the proportion of repeat notices will grow in relation to the total number of notices received because the regulatory actions that trigger section 12(b) reporting requirements either do not sunset (e.g., section 5 or 6 rules) or remain in place for relatively long periods of time (e.g., section 4 rules). The continuous increase in section 12(b) reporting is making import monitoring more difficult for many foreign countries, is placing an increasing burden on industry, and is placing an increasing administrative burden on EPA.

EPA believes that part of this difficulty is based on the fact that a large number of notices sent to foreign governments pertain to section 12(b) reporting for TSCA section 4 test rule chemicals. In most cases, test rules are issued because EPA does not have sufficient health and safety or environmental data on a particular chemical to make a fully informed decision regarding the appropriateness of regulatory control for that chemical. These test rules may be in effect for as long as 10 years before the end of the data reimbursement period when they cease to be in effect. EPA believes that continued annual reporting under section 12(b) for these chemicals would be of only limited value to foreign governments. In most cases, there exists insufficient health or environmental data on these chemicals, such that EPA has not proposed or taken action to ban or restrict their production or use, and foreign governments are likely to take no regulatory action either in the absence of data.

Because the regulatory actions which trigger section 12(b) reporting requirements are mandated by TSCA, it is not possible for EPA to change the triggering actions. EPA believes that the most practical means of maintaining the quality of notification, of improving the scrutiny importing countries give to notices, and of reducing burden on both industry and EPA is to amend the section 12(b) reporting rules under 40 CFR Part 707 to reduce the volume of notices. The amendment that EPA believes will retain the greatest utility to foreign governments while simultaneously resulting in a decreased burden on industry and EPA, would be rescinding the current annual notice requirement for section 4 test rule chemicals and allowing persons to submit a one-time notice to EPA for a particular country for each section 4 test rule chemical.

EPA believes these amendments would maintain, if not increase, the degree of protection to human health and the environment afforded by the current notification system while reducing the reporting burden on exporters and the administrative burden on EPA. Under the current annual notice requirement, a large increase in the volume of annual notices, due primarily to a significant increase in the number of section 4 test rules promulgated by EPA, has reduced EPA's ability to respond to requests for additional information on a particular chemical or export notice. At the same time, the increasing volume of notices makes it difficult for countries which receive a large number of notices to distinguish between chemicals for which EPA has taken action to restrict based on a determination of unreasonable risk to human health or the environment, and those chemicals for which EPA has requested data but not yet made a definitive risk determination. Although EPA provides a copy of the applicable rule, including a summary of the action taken by EPA, many importing country representatives have commented anecdotally that all section 12(b) notices are considered by importing countries, particularly developing countries, to be of equal concern.

EPA believes that the purpose of the export notification requirements of section 12(b) of TSCA is to ensure that foreign governments are alerted when EPA knows that such governments are importing chemicals about which EPA has expressed some degree of concern. EPA's responsibility is both to alert the importing country, and to make information and data available to the importing government so that government can assess the risks and benefits of importing and using that chemical. While some countries may use the notices to monitor trends in imports from the United States of chemicals subject to section 12(b), EPA believes the supply of data necessary to control chemicals within the importing country would be substantially unchanged by this proposed rule as there would be little, if any, net loss or supportive data potentially useful in carrying out this function.

By decreasing the volume of notices importing countries receive on section 4 test rule chemicals for which additional data are being gathered, the proposed rule may actually increase the relative effectiveness of the notification by allowing foreign governments to focus their efforts on notices for section 5, 6, or 7 chemicals for which restrictive regulatory action has been proposed or promulgated. Internationally, the movement is toward differentiation between banned or severely restricted chemicals and chemicals for which additional data gathering is still ongoing. This proposed rule is a step in that direction.

The differentiation is commonly referred to as a system of Prior Informed Consent (PIC). The United States Government is participating in negotiations with international organizations such as the United Nations Environment Programme (UNEP) on the development of a PIC scheme. This proposed rule is consistent with the international interest in developing a system of PIC. EPA believes that by reducing the ever increasing volume of notices received on section 4 test rule chemicals, importing countries can better differentiate

between chemicals for which EPA has taken restrictive action and chemicals for which additional toxicological testing has been required.

B. Alternatives

Before proposing this rule, EPA considered a variety of other alternative regulatory approaches to reducing the burden of section 12(b) export notification and increasing its effectiveness.

1. One alternative would be to establish a new "sunrise" date for reporting under section 12(b) triggered by a final section 4 test rule. One possible sunrise date considered by EPA would be the date on which the first test data are required to be submitted under the test rule. In this event, EPA would have actual test data available when foreign governments were notified. Persons subject to the rule would still be required to submit export notices to EPA annually thereafter, the EPA would notify such foreign governments on an annual basis. Thus, importing countries would still receive a large number of notifications resulting from section 4 test rules. This new sunrise date would provide some decrease in burden on industry and EPA, but the decrease in burden in this instance would not be significant because in many cases initial section 4 test data are required to be submitted to EPA within a 1-year time frame.

EPA also considered another possible sunrise date which would require submission of a TSCA section 12(b) notice upon the receipt of adverse test data under a section 4 test rule. In this instance, notices to foreign governments would be of maximum utility, because EPA would possess actual data regarding the adverse health or environmental effects of a substance. This new sunrise date could provide a modest decrease in reporting burden to industry. However, EPA would be required to make rapid, and potentially controversial case-by-case hazard determinations on test data. These determinations would then likely need to be made formal by **Federal Register** notices annnouncing EPA's conclusions. This approach would provide a modest reduction in burden on industy but result in a many-fold increase in burden on EPA. This approach also contradicts the statutory language of TSCA section 12(b) because export notification is triggered by a requirement for the submission of data under section 4, not just adverse data. Foreign countries may find knowledge of non-adverse data as useful as adverse data.

2. Another alternative would be to establish a new "sunset" date for reporting under section 12(b) triggered by a final TSCA section 4 test rule. One possible sunset date considered by EPA would be the date on which the final test data submission is required under the test rule. At the present time, persons are subject to test rules from the time of the effective date to the end of the data reimbursement period, which may be up to five years after the final test data are required. This approach could cut as many as 6 years of reporting by industry. This approach remains attractive to EPA because it does offer a decrease in burden. However, persons subject to section 12(b) would still be required to submit annual reports until the time of the last data submission, and the value of those additional reports may not be significant over and above the one-time report that would be required by the proposed approach.

3. EPA also considered establishing a "percentage" cutoff from section 12(b) reporting triggered by section 4 test rules. In this case, if the section 4 test rule chemical was present in an exported product at a low level (e.g., 1.0 percent or 0.1 percent), export notification would not be required. While this alternative may provide exporters of mixtures containing section 4 chemicals with a modest reduction in reporting burden, EPA believes that the one-time notification for section 4 chemicals will result in a far greater reduction in reporting burden to industry and in administration to EPA.

4. A final alternative considered by EPA would be to establish a one-time notification requirement for all actions which trigger section 12(b) notification. Thus, exporters would be required to submit one notice per country for each chemical subject to a rule, order, action, or relief under section 4, 5, 6, or 7 of TSCA. Under this alternative, EPA would provide each importing country with one notice per chemical subject to section 12(b) notification. This approach would alleviate burden associated with all activities that trigger section 12(b) export notification, and would also provide a reduction in reporting burden on industry and a reduction in the administrative burden on EPA. However, this approach would reduce for all section 12(b) triggering activities the total number of notices received by foreign governments. Such a reduction could potentially hamper the ability of foreign governments to monitor imports of chemicals for which EPA has proposed or taken regulatory action on the basis that they present unreasonable risks.

EPA requests comments on the alternatives discussed above. EPA also requests that commenters alert EPA to any reasonable alternatives not considered here. Before developing the final rule, EPA will consider all comments and alternatives received with regard to this proposed rule.

IV. Economic Impact

EPA has evaluated the potential costs of this proposed amendment to persons subject to section 12(b) reporting requirements. The amendment would reduce the number of submissions sent to EPA from companies exporting chemicals subject to test rules under TSCA section 4, and would also reduce the number of notifications sent by EPA to foreign governments. These reductions would save both industry and EPA resources and will be referred to collectively as the "reduction in reporting burden."

The procedure used to estimate the reduction in 1989 reporting burden for industry is a several step process. First, an estimate of the reduction in industry submissions requires taking the estimated submissions which would still be required after promulgation of this proposed rule (2,319 to 2,906) and subtracting those values from the base line estimation of submissions under the current reporting scheme (4,667). This decrease is estimated at 1,761 to 2,348 submissions and based upon an estimated industry cost of $10 to $50 per submission, yields a 1989 industry savings of $18,000 to $117,000. The net present value of this industry savings from 1989 to 1993 is estimated at $114,000 to $759,000 using a 3 percent discount rate, and at $99,000 to $657,000 using a discount rate of 10 percent.

EPA resource savings from this proposed rule would occur because the EPA Office of Toxic Substances (OTS) would handle fewer submissions from industry and would send out fewer notifications to foreign governments. The estimated 1989 EPA savings in handling submissions would be the cost of handling a submission ($5) times the decrease in submissions (1,761 to 2,348), or $9,000 to $12,000. The estimated 1989 EPA savings for sending out fewer notices is the EPA cost per section 12(b) notification sent ($40) times the estimated decrease in notifications (770 to 1,014) or $31,000 to $41,000. Thus, by combining these estimates, the overall 1989 EPA savings that would be generated by this proposed rule are estimated at $40,000 ($9,000 + $31,000) to $53,000 ($12,000 + $41,000). The net present value of this overall EPA savings from 1989 to 1993 is estimated at $256,000 to $331,000 using a 3 percent discount rate, and at $222,000 to $287,000 using a 10 percent discount rate.

By combining the 1989 resource savings to industry ($18,000 to $117,000) with the 1989 resource savings to EPA ($40,000 to $53,000), the total 1989 reduction in reporting burden generated by this proposed rule is estimated at $58,000 to $170,000. The net present value of this total reduction in reporting burden from 1989 to 1993 is estimated at $370,000 to $1,090,000 using a 3 percent discount rate, and at $321,000 to $944,000 using a 10 percent discount rate.

Persons are directed to the record for this rulemaking at the address listed in Unit V. below for the assumptions and detailed calculations used in the economic analysis for this proposed rule. The analysis contained in the record also analyzes the economic impacts of alternatives 2 and 4 discussed in Unit III.B. of this preamble.

The 1989 industry savings is estimated at $17,000 to $85,000 for alternative 2, and $22,000 to $147,000 for alternative 4. The net present value of this industry savings from 1989 to 1993 is estimated at $174,000 to $870,000 (3 percent discount rate) and at $149,000 to $746,000 (10 percent discount rate) for alternative 2, and at $139,000 to $923,000 (3 percent discount rate) and at $121,000 to $801,000 (10 percent discount rate) for alternative 4. The 1989 EPA savings is estimated at $38,000 for alternative 2, and at $49,000 to $66,000 for alternative 4. The net present value of EPA savings from 1989 to 1993 is estimated at $384,000 (3 percent discount rate) and $328,000 (10 percent discount rate) for alternative 2, and at $309,000 to $407,000 (3 percent discount rate) and $268,000 to $354,000 (10 percent discount rate) for alternative 4.

By combining the 1989 resources savings to industry with the 1989 resource savings to EPA, the total 1989 reduction in reporting burden generated by alternative 2 is estimated at $55,000 to $123,000, and at $71,000 to $213,000 for alternative 4. The net present value of this total reduction in reporting burden from 1989 to 1993 is estimated at $558,000 to $1,254,000 (3 percent discount rate) and at $477,000 to $1,074,000 (10 percent discount rate) for alternative 2, and at $448,000 to $1,330,000 (3 percent discount rate) and $389,000 to $1,155,000 (10 percent discount rate) for alternative 4.

V. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–120004). The record includes basic information considered by EPA in developing this proposed rule. EPA will supplement the record with additional information as it is received. The record now includes the following:

1. Economic analysis of proposed amendments to 40 CFR Part 707.

2. Chemical Imports and Exports; Notification of Export. **Federal Register**, December 16, 1980. (45 FR 82844).

3. International Guidelines: Decision 14/27 of the Governing Council of the United Nations Environment Programme, *London Guidelines for the Exchange of Information on Chemicals in International Trade*, June 17, 1987; Food and Agriculture Organization of the United Nations, *International Code of Conduct on the Distribution and Use of Pesticides*, Rome, 1986; Recommendation of the Governing Council of the United Nations Environment Programme, *Concerning Information Exchange related to Export of Banned or Severely Restricted Chemicals*, April 4, 1984.

EPA will accept additional materials for inclusion in the record at any time between this proposal and designation of the complete record. EPA will identify the complete rulemaking record by the date of promulgation. A public version of this record is available in the TSCA Public Docket Office, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in Rm. NE–G004, 401 M St., SW., Washington, DC.

VI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a regulatory impact analysis. EPA has determined that this proposed rule would not be a "major" rule because it would not have an effect on the economy of $100 million or more, and would not have a significant effect on competition, costs, or prices.

This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this proposed rule would not have a significant impact on a substantial number of small businesses. This rule would decrease the reporting burden upon small businesses subject to the reporting requirements of TSCA section 12(b). This proposed rule would not add any economic burden to small businesses.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB Control Number 2070–0030.

The proposed rule would reduce the number of notices required from the public by approximately 1700 to 2300 submissions. Public reporting burden for the collection of information under 40 CFR Part 717 is estimated to average .5 to 1.5 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Total public reporting burden is expected to decrease as a result of this proposed rule by approximately 850 to 3,450 hours (1,700 submissions × .5 hours to 2,300 submissions × 1.5 hours).

Send comments regarding the burden estimate or any other aspect of this collection of information to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 707

Chemicals, Environmental protection, Exports, Hazardous substances, Imports, Recordkeeping and reporting requirements.

Dated: July 3, 1989.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Part 707 be amended as follows:

PART 707—[AMENDED]

a. The authority citation for Part 707 would continue to read as follows:

Authority: 15 U.S.C. 2611(b) and 2612.

b. By revising § 707.65(a)(2) and (c) to read as follows:

§ 707.65 Submission to agency.

(a) * * *

(2) (i) The notice when data are required under section 5(b), an order has been issued under section 5, a rule has been proposed or promulgated under section 5 or 6, or an action is pending or relief has been granted under section 5

or 7 must be for the first export or intended export to a particular country in a calendar year;

(ii) The notice when data are required under section 4 must be for the first export or intended export to a particular country;

* * * * *

(c) Notices shall be marked "Section 12(b) Notice" and sent to the TSCA Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Washington DC 20460.

c. By revising § 707.70(a) and adding an OMB control number at the end of the section to read as follows:

§ 707.70 EPA notice to foreign governments.

(a) (1) Notice by EPA to the importing country shall be sent no later than 5 working days after receipt by the TSCA Document Processing Center of the first annual notification for each regulated chemical when data are required under section 5(b), an order has been issued under section 5, a rule has been proposed or promulgated under section 5 or 6, or an action is pending or relief has been granted under section 5 or 7.

(2) Notice by EPA to the importing country shall be sent no later than 5 working days after receipt by the TSCA Document Processing Center of the first notification for each regulated chemical when data are required under section 4.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2070-0030)

[FR Doc. 89-16293 Filed 7-11-89; 8:45 am]

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To authorize the exchange of certain Federal public land in Madison County, Illinois. (July 6, 1989; 103 Stat. 144; 2 pages) Price: $1.00

H.J. Res. 276/Pub. L. 100-54
Designating September 14, 1989, as "National D.A.R.E. Day." (July 7, 1989; 103 Stat. 146; 2 pages) Price: $1.00

H.J. Res. 298/Pub. L. 100-55
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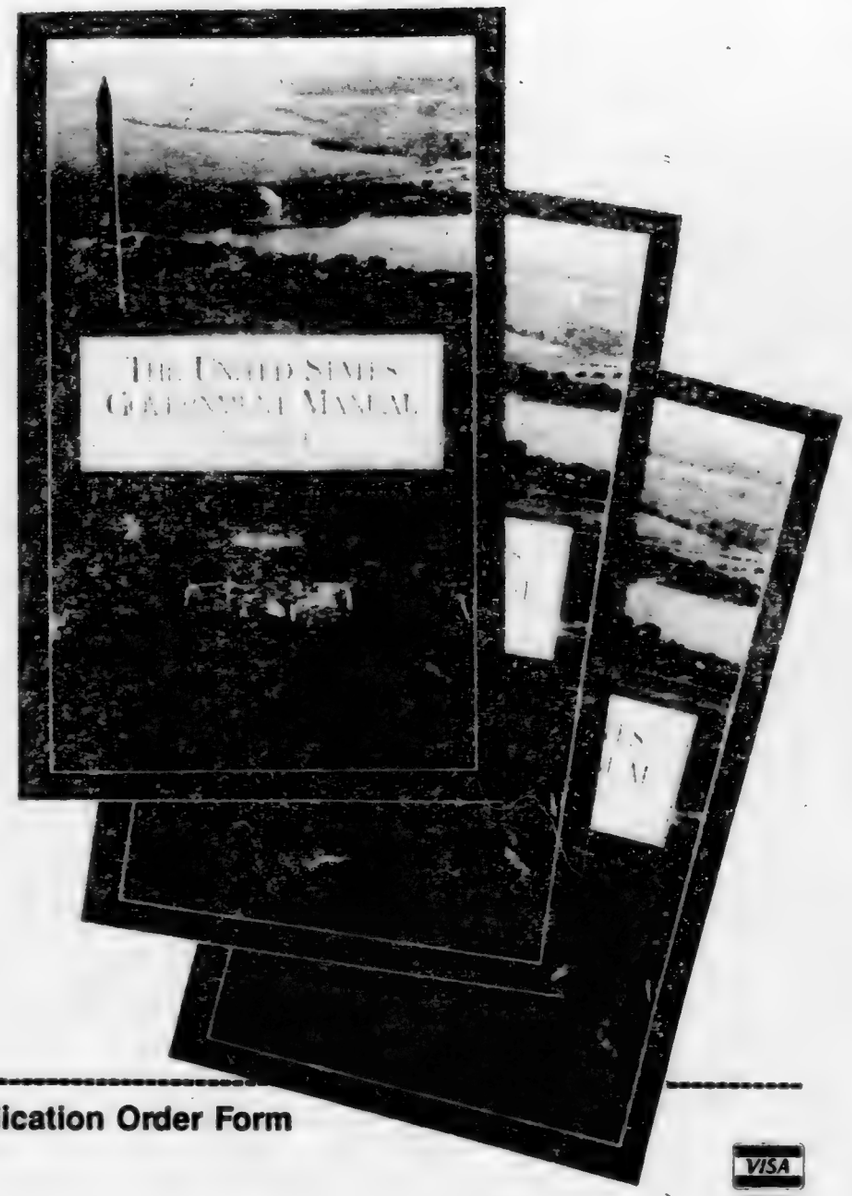

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Rules and Regulations

Federal Register
Vol. 54, No. 133
Thursday, July 13, 1989

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-119-AD; Amdt. 39-6264]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which requires ultrasonic inspection for delamination and cracking of the window belt skin doubler from the fuselage skin, and repair, if necessary. This amendment is prompted by reports of fatigue cracking in the skin in the window belt area. This condition, if not corrected, could result in rapid decompression of the airplane.

EFFECTIVE DATE: July 31, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Mudrovich, Airframe Branch, ANM-120S; telephone (206) 431-1927. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Recently, one operator reported finding extensive fatigue cracking in the window belt skin panel on a Model 737 airplane which had accumulated 43,000 flight cycles. Fatigue cracking is attributed to delamination of the doubler, which results in knife-edged holes. Failure to detect and repair cracks could lead to rapid decompression of the airplane.

The FAA has reviewed and approved Boeing Service Bulletin 737-53-1078, Revision 1, dated September 25, 1986, which describes procedures for ultrasonic inspection for delamination and cracking of the fuselage window belt skin panel, and repair procedures.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires ultrasonic inspection for cracking and delamination of the fuselage window belt skin panel, and repair, if necessary, in accordance with the service bulletin previously described.

Since it is not known how widespread this condition is, reporting requirements are included in this amendment. Based on the reports received, the FAA will determine if additional inspections are required.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

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Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, line numbers 001 through 610, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent rapid decompression of the airplane, accomplish the following:

A. Except as provided in paragraph B., below, within the next 60 days after the effective date of this AD, accomplish an ultrasonic inspection for delamination of the window belt skin doubler from the fuselage skin, in accordance with Boeing Service Bulletin 737-53-1078, Revision 1, dated September 25, 1986.

B. For aircraft on which the delamination inspection has been accomplished in accordance with Boeing Service Bulletin 737-53-1078, initial release, dated August 19, 1983, or Revision 1, dated September 25, 1986, within the last 6 years prior to the effective date of this AD, the inspections required by paragraph A., above, are not required. Report findings of those previous inspections in accordance with paragraph D., below. If delamination was detected in the previous inspection and not repaired, within 3,000

cycles after the inspection or within 60 days after the effective date of this AD, whichever occurs later, reinspect for delamination in the affected skin panel in accordance with paragraph A., above.

C. If delamination is found as a result of the inspections required by paragraph A. or B., above, prior to further flight, conduct a high frequency eddy current (HFEC) inspection for cracks of the skin around the countersunk fasteners in the area of delamination, in accordance with Boeing Model 737 NDT Manual Document D6-37239, Part 6, Subject 53-30-05. If cracks are detected, prior to further flight, repair cracking and delamination in accordance with an FAA-approved method. If no cracks are detected, prior to the accumulation of 3,000 additional landings, reinspect for delamination in the affected skin panel in accordance with paragraph A., above, and repeat the HFEC inspection for cracks. Prior to further flight, repair all delamination and any cracks detected at that time in accordance with an FAA-approved method.

D. Within 10 days after completion of any inspection required by this AD, submit a report of findings, positive or negative, to the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region. The report must include the line number of the airplane inspected, the number of cycles, and the inspection method used, in addition to the findings.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective July 31, 1989.

Issued in Seattle, Washington, on July 3, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-16443 Filed 7-12-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-179-AD; Amdt. 39-6262]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which requires inspection of the fuselage lap joints for cracks, corrosion, and/or delamination, and repair, if necessary; and modifications. This amendment is prompted by reports of cracking along the upper fastener row of certain longitudinal lap joints that incorporate a cold metal bonding process. This condition, if not corrected, could result in rapid decompression of the airplane.

EFFECTIVE DATE: August 21, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Airframe Branch, ANM-120S; telephone (206) 431-1924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 727 airplanes, which requires inspection of the fuselage lap joints for cracks, corrosion, and/or delamination; repair, if necessary; and certain modifications; was published in the **Federal Register** on January 13, 1989 (54 FR 1383). The comment period for the proposal closed on March 15, 1989.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Since issuance of the NPRM the manufacturer issued Revision 5, dated June 1, 1989, to Boeing Service Bulletin 727-53-72. This revision clarifies low frequency eddy current (LFEC) and high frequency eddy current (HFEC) procedures, defines skin thickness location, and revises and clarifies the lap joint modification. The final rule has been revised to reference Revision 5 as the appropriate service document. This change does not increase the burden on any operator, revise the aircraft affected by this, or expand the scope of the rule.

As a result of extensive investigation following an accident in Hawaii in April 1988, which involved a Model 737 series airplane, the FAA has determined that widespread, multi-site cracking was not being discovered to the degree of assurance necessary to maintain safety of the aging transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has caused the FAA to place less emphasis on repetitive inspections and more emphasis on restoration of structure. Thus, as aircraft begin to show the signs of multi-site damage and other indications of structural aging, the FAA has decided, whenever practicable, to require airplane modifications necessary to remove the source of the particular aging phenomenon. This is in lieu of the previous position of continual inspection and repair/modification on condition if cracks are found. This final rule is in consonance with that policy decision.

One commenter requested that the HFEC inspection threshold be increased from 28,000 landings to 35,000 landings. The commenter stated that, since there have been few lap joint cracks on airplanes with less than 35,000 landings, this was justification for the increase of the threshold to 35,000 landings for the HFEC inspection. The FAA disagrees. The FAA has received reports of cases of fatigue cracks on airplanes with less than 35,000 landings; therefore, the proposed threshold is appropriate.

Another commenter requested that the reference to the external visual inspection for delamination be deleted and that repair of delamination prior to further flight not be required. Further, the commenter suggested that delamination should be reinspected like minor corrosion. This comment was based upon the inability to accurately detect delamination in the lap joints of the Model 727 airplane. The disbond of the lap joint does not, by itself, result in an unsafe condition, but leads to fatigue cracking and/or corrosion. The FAA has determined that when delamination has been detected, an acceptable level of safety can be maintained either by repairing the delamination immediately, as proposed, or by monitoring for future cracking or corrosion. Therefore, the

FAA concurs with the commenter and the final rule has been revised to incorporate these comments.

Another commenter suggested that paint removal should be required only if the fastener head is not clearly visible, and that the requirement to remove the paint, if the paint is more than two layers thick, should be deleted. The FAA concurs with this comment and has deleted the reference to the number of coats of paint.

Another commenter suggested that the HFEC inspection be performed prior to oversizing holes and not after the fasteners have been installed. The FAA concurs with this comment and it has been incorporated into the final rule.

Another commenter suggested that the replacement of blind fasteners with solid protruding head fasteners within 3,000 landings should be changed to "whenever the solid countersink head fasteners are changed to solid protruding head fasteners." The commenter stated that fleet experience has not indicated that blind fasteners inspected at 2,500 landing intervals will be a problem. The commenter also stated that test data shows the NAS 1398 blind fastener installation has a life improvement of greater than 15,000 landings. The commenter submitted data that substantiated the fact that certain blind fasteners had a life-limit of 10,000 landings. The FAA concurs with the commenter's suggestion. The final rule has been changed to allow a life-limit of 10,000 landings for certain blind fasteners.

Another commenter suggested that a specific statement for an alternate means of compliance should be added to the AD for those operators who have incorporated the protruding head fastener installation in accordance with Boeing Service Bulletin 727-53-72, with no HFEC inspection of the hole. Furthermore, this commenter stated this alternate means of compliance should be satisfied by requiring a detailed external visual inspection in accordance with paragraph B. of the NPRM. The FAA concurs that requirements should be specified concerning holes that have not been eddy current inspected prior to fastener installation. The final rule has been revised to add provisions for airplanes that had protruding head rivets previously installed, without having had the rivets holes HFEC inspected prior to fastener installation; those airplanes remain subject to repetitive close visual inspections in accordance with paragraph B.1. of the final rule.

Another commenter stated that the rule should require a detailed internal visual inspection of the tear straps at 4-year/12,000-hour intervals, similar to the requirements of AD 88-22-11, Amendment 39-6059 (53 FR 44159; November 1, 1988), for the Boeing Model 737. Furthermore, the commenter believes that the Model 727 airplane did not have the phosphoric acid pre-treatment for bonding. The bonded tearstraps on the Model 727 airplanes are currently required to be ultrasonically inspected in accordance with AD 81-17-07, Amendment 39-4194. The FAA does not concur with the commenter's request. There has not been any service history to warrant this inspection on the Model 727 airplanes that did not have the phosphoric acid pre-treatment prior to bonding. Additionally, the FAA is assessing the need to mandate internal inspections and may consider further rulemaking action on this subject.

One commenter suggested that a detailed internal visual inspection of the lap joint be required at 4-year/12,000-hour intervals. The commenter stated that if cracks occur in the lower rivet row in the hidden inner sheet, they will not turn and allow a safe decompression because the outer sheet provides support against local bulging. Recent adverse service experience involving cracking along the hidden inner skin at certain locations has prompted the FAA to address this area in a separate rulemaking action.

Another commenter requested that consideration be given to requiring replacement of the lower row of rivets. The FAA is assessing the fatigue life of the reworked lap joints and may consider further rulemaking action based upon this assessment.

Another commenter suggested that a skin replacement program should be implemented if the inspection program is inadequate. The FAA does not concur that a skin replacement program is warranted. The FAA has determined that the current program of requiring reworking lap splices S-4 and S-10, in addition to frequent inspections for corrosion and cracks at the other lap splices, will assure continued airworthiness of the affected Model 727 series airplanes.

Several commenters requested that the proposed initial HFEC inspection at 1 year or 2,500 landings, be increased to 18 months or 3,000 landings. The rationale for the increased time before the initial inspection is to permit accomplishment during a scheduled "C" check. This would reduce scheduling problems. The FAA does not concur with an increase in the time prior to the HFEC inspection. The FAA has determined that the HFEC inspections should be conducted as soon as possible in order to detect cracking in a timely manner, and has received no data to justify an initial inspection later than that proposed in the NPRM.

Another commenter suggested that the HFEC inspection for cracks required by proposed paragraph A. be required only in areas where the skin is less than .056 inch thick, and that the service bulletin should be revised to identify locations of .056 inch or greater skin thickness, which are not subject to the fatigue problem associated with the knife edge condition at countersunk fasteners. The manufacturer has revised Service Bulletin 727-53-72 to identify areas of .056 inch and greater skin thickness. The FAA concurs with this comment. The final rule has been changed to require inspection for cracks of the lap splices with skin thicknesses less than .056 inch, and inspections for corrosion and delamination on all lap splices.

Another commenter requested that the initial visual inspection be required within 1 year or 2,500 landings, instead of the proposed 6 months. Since no justification was given for such an extension, the FAA does not agree with this comment.

Another commenter stated that the proposed rule requires both HFEC and LFEC inspections if corrosion is found. The commenter requested that this be clarified. The HFEC procedures are used to detect cracks and LFEC procedures are used to determine amount of material loss in areas of corrosion. The FAA considers the rule to be clear in this regard, and finds no discrepancy in the wording of the requirements relating to HFEC and LFEC inspections.

Several comments were received concerning the discussion that future rulemaking may require additional rework of the lap splices. Commenters proposed that the requirement for replacement of the upper row of countersunk rivets with oversize protruding head rivets should be delayed until the additional rework has been defined. At this time the FAA has no definite planned future action concerning replacement of the lower rows of countersunk rivets, and it is, therefore, considered inappropriate to delay the rework of the S-4 and S-10 lap joints.

Another commenter requested that the compliance time for rework of the S-4 and S-10 lap joints be staggered to require incorporation of the rework sooner on high-time airplanes, but allow more time on lower-time airplanes. The FAA concurs with this comment; however, reducing the compliance time for the high-time airplanes to less than that proposed in the NPRM would

require additional rulemaking and could not be accomplished without further opportunity for public comment. The FAA has determined that the 4-year compliance time proposed in the NPRM for high-time airplanes provides an adequate level of safety. The compliance time for airplanes with less than 45,000 cycles as of the effective date of this AD has been increased to 6 years based on the lower incidence of cracking.

Another commenter suggested that the lap splices behind the wing-to-body fairings should not have to be inspected until the airplane has accumulated 3,000 landings or 18 months after the effective date, whichever occurs first. The justification for this suggestion is that the fasteners under the fairings are protruding head rivets and the skin is not countersunk, which eliminates the fatigue problem. Also, the area under the fairing has not experienced corrosion problems. The FAA concurs in part with this comment, and has revised the final rule to permit additional time between visual inspections for the lap joints with protruding head fasteners under the fairings. The initial inspection has not been changed, however.

Comments were received concerning the use of a sliding probe instead of a pencil probe for the HFEC inspection. The commenters stated that the sliding probe is faster, thus reducing operator fatigue and permitting more reliable inspection results. Further, Boeing has revised Service Bulletin 727-53-72 and the inspection manual to describe use of the sliding probe. The FAA concurs that the use of the sliding probe is faster than the pencil probe. The final rule, by referencing the latest revision to the applicable Boeing service bulletin, permits use of the sliding probe.

Another commenter stated that requiring the LFEC inspection of the entire panel length, if visible corrosion is detected, will result in detecting very minor corrosion or false indications that will require corrective action. Furthermore, the commenter stated that its policy of opening up the joint until no more visible corrosion is detected and repairing the visible corrosion has proven to be an effective method for controlling corrosion.

The FAA agrees that the commenter's procedure may be effective in dealing with corrosion in the lap joints. However, the FAA finds that if the corrosion is not repaired immediately, it is necessary to determine severity and extent of corrosion and, if necessary, repair prior to further flight. Therefore, the proposed requirements, in this regard, are appropriate.

Another commenter requested the rule be revised so that if corrosion is detected and found not to exceed 10% of the skin thickness, it could be visually inspected at 1 year intervals. The FAA does not concur and has determined that this procedure would not provide adequate monitoring of previously detected corrosion.

One commenter requested that a terminating modification be available to eliminate the requirement of visual inspection for corrosion. The FAA concurs with this comment. The manufacturer has developed a modification to terminate the visual inspections for corrosion, and has incorporated it into Revision 5 of the applicable service bulletin. This modification consists of opening the lap splices, cleaning up any corrosion, and applying fay surface sealant, then installing appropriate fasteners. The final rule has been revised to specify this modification as terminating action for the inspections contained in the final rule for the area modified.

One commenter stated that Boeing Service Bulletin 727-53-72, Revision 4, did not specify the amount of hole oversizing permitted to remove cracks. Further, another commenter stated that the service bulletin does not contain instructions for repairing a delaminated joint. The FAA notes that Revision 5 to the service bulletin, which is now reflected in the final rule, specifies the oversizing limits and contains instructions for repair of the delaminated joints.

One commenter suggested that the detailed visual inspection proposed in the NPRM should be based upon landings instead of calendar time, since the fatigue cracking is related to pressurization cycles. The FAA does not concur. The close visual inspection is intended to detect corrosion, which is time-related, and/or fatigue cracking, which is cycle-related; therefore, the inspection was based upon the more restrictive of the two times, which is the calendar time.

One commenter suggested that if an eddy current inspection has been accomplished within the last 2 years, it should not be necessary to accomplish the close visual within the next 6 months. The FAA does not concur. The visual inspection is for the detection of corrosion and/or cracking. Therefore, the FAA finds that the commenter's recommended interval of greater than 2½ years for visual inspection allows too much time for corrosion to grow. The rule does give credit, however, for visual inspections that were conducted within the last 9 months.

One commenter asked if the area of the HFEC inspection could be reduced, based upon service history. The commenter noted that the fatigue cracking associated with the lap joints has been predominately at S-4 and S-10, where the skin thickness is less than .056 inch. The FAA concurs with this comment. The final rule has been revised to require the eddy current inspection be conducted at S-4 and S-10 only, unless corrosion or cracking is detected.

Two comments were received regarding the replacement of all upper row fasteners in a panel which contains blind fasteners. The commenters felt that they should be required to replace only the blind fasteners. The FAA concurs that only the blind fasteners need to be replaced, except in those areas where replacement is required under paragraph E. The final rule incorporates this change.

Another commenter stated that the S-14 lap joint is composed of heavy skins which are not bonded on certain Model 727 airplanes and, therefore, should not be referenced in paragraph B. of the NPRM. The FAA concurs with this comment and the final rule has been revised accordingly. Recent service problems at certain locations along the S-14 lap joint are the subject of a separate rulemaking action.

One commenter stated that Boeing Service Bulletin 727-53-72, Revision 4, which was referenced in the NPRM, states that the repair in the service bulletin may be used as a preventive modification and is optional to those detailed in the structural repair manual (SRM). Therefore, the commenter is uncertain whether the SRM repair is an acceptable preventive modification. The FAA has determined that the repairs in the SRM that deviate from the terminating action in the service bulletin are not considered to be an acceptable preventive modification. This note has been deleted from Revision 5 of the service bulletin to clarify this point.

One commenter stated that the HFEC inspection was not detailed as to what type of eddy current inspection is required. The FAA notes that Revision 5 of the applicable service bulletin clarifies this subject by defining which fastener holes are to be inspected and referencing three different HFEC inspection procedures.

Another commenter stated that there are no details on how to conduct the LFEC inspection for corrosion. Also, the commenter believed that the LFEC inspection could be used to detect corrosion on both the outer and inner skins of the lap joint. Revision 5 to the applicable service bulletin, now reflected in the final rule, has incorporated procedures for accomplishing the LFEC inspection. The LFEC inspection is used to detect corrosion on the outer skin, but not on the inner skin.

One commenter stated that future action concerning the cold bonded circumferential butt joint, doublers, and tearstrap should be combined into this rule, which affects the lap joints. The FAA does not concur with this comment. AD 81-17-07, Amendment 39-4194, was issued to require inspection of the cold bonded tearstraps. The FAA is considering additional rulemaking action to address the cold bonded circumferential butt joint and doublers; however, the FAA has determined that this action regarding the lap splices is urgent and appropriate to address an identified unsafe condition.

One commenter stated that certain panels that have a major interruption, such as a cargo door or entry door, should not have to be inspected along its entire length when a small crack or corrosion is detected. The FAA concurs that the panel ends at the cutout. The final rule has been revised to clarify this.

Another commenter stated that, according to the proposal, if an apparent crack was detected visually, but an HFEC inspection determined that there is no crack, it would be necessary to HFEC-inspect the entire panel. The commenter believes that, if the HFEC confirms there is no crack at the location of the visual indication, it should not be necessary to HFEC-inspect the rest of the panel. The FAA concurs. It is obvious that additional HFEC inspections are not required if the visual inspection is determined to be erroneous. The AD has not been revised because of this comment.

Another commenter stated that the proposed rule is unclear whether it is necessary to conduct a HFEC inspection of the three rivet rows. The FAA notes that the HFEC inspection is required for the upper rivet row only. (This is also clarified in Revision 5 to Boeing Service Bulletin 727-53-72.)

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule, with the changes previously noted. These changes will neither increase the economic burden on any operator, nor increase the scope of the AD.

There are approximately 813 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 623 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1,432 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $35,700,000.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Felxibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 727 series airplanes, listed in Boeing Service Bulletin 727-53-72, Revision 5, dated June 1, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent rapid decompression of the airplane, accomplish the following:

A. Within the next 2,500 landings or 1 year after the effective date of this AD, whichever occurs first, or prior to the accumulation of 28,000 landings, whichever occurs later, unless previously accomplished within the last 2,000 landings or 2 years; and thereafter at intervals not to exceed 4,500 landings or 3 years, whichever occurs sooner; perform a high frequency eddy current (HFEC) inspection for cracks of the skin at fuselage lap joints S-4 and S-10 where the upper skin is less than 0.056 inch thick, from body station (BS) 259 to BS 1183, in accordance with Paragraph A. of Part I of the Accomplishment Instructions in Boeing Service Bulletin 727-53-72, Revision 5, dated June 1, 1989. If any cracks are detected, prior to further flight, repair in accordance with Part III of the Accomplishment Instructions of the service bulletin.

B. 1. Within the next 6 months after the effective date of this AD, unless accomplished within the last 9 months, or prior to the accumulation of 28,000 landings, whichever occurs later; and thereafter at intervals not to exceed 15 months; perform a detailed external visual inspection for cracks and for corrosion of fuselage lap joints (including S-4 and S-10) between BS 259 and BS 1183, except for S-14 (between BS 360 and BS 1183) on those airplanes identified in the service bulletin as Group I airplanes, in accordance with Paragraphs B.1. and B.2. in Part I of the Accomplishment Instructions in Boeing Service Bulletin 727-53-72, Revision 5, dated June 1, 1989. Adequate lighting must be used for this inspection, and, if necessary, inspection aids such as a mirror and 10X glass. Inspect for small cracks, bulging skin between fasteners, blistered paint, dished or popped rivet heads, loose fasteners, and delamination. Repair cracks, corrosion, and delamination in accordance with paragraph C., below.

2. The repetitive inspections required in paragraph B.1., above, may be conducted at intervals not to exceed 30 months in lieu of the 15 month interval for lap splices that have protruding head fasteners and are located under airplane fairings. Fasteners under the edge of the fairing also may be visually inspected at 30 month intervals provided there is no evidence of cracking or corrosion of the lap joint from the edge of the fairing forward two frame stations for the leading edge of the fairing and aft two frame stations for the trailing edge of the fairing.

C. 1. If cracks, delamination, or corrosion are detected at lap splices, prior to further flight, perform a HFEC inspection for cracks in the affected lap joint along the complete panel length in accordance with paragraph A., above, except for areas under fairings as described in paragraph B.2., above. Repair cracks prior to further flight, in accordance with Part III of Boeing Service Bulletin 727-53-72, Revision 5, dated June 1, 1989. If

corrosion or delamination is found at any lap joint, repeat the HFEC inspection at intervals not to exceed 15 months or 3,000 landings, whichever occurs first; or repair the delamination prior to further flight, in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 727-53-72, Revision 5, dated June 1, 1989. Repair the corrosion in accordance with paragraph C.2., below. Where a panel is interrupted by a major cutout, such as an entry door or cargo door, the panel is considered to end at the cutout.

2. If corrosion or delamination is found, prior to further flight, conduct a low frequency eddy current (LFEC) inspection, in accordance with Part II of the Accomplishment Instructions in Boeing Service Bulletin 727-53-72, Revision 5, dated June 1, 1989, of the lap joint along the complete panel length, except for areas under fairings as described in paragraph B.2., above, to determine corrosion depth. If corrosion does not exceed 10% of the skin thickness, repeat the LFEC inspection at intervals not to exceed 2,000 landings or 6 months, whichever occurs first, until repaired in accordance with Part II, Paragraph B.2. of the Accomplishment Instructions in Boeing Service Bulletin 727-53-72, Revision 5, dated June 1, 1989. If corrosion exceeds 10% of skin thickness, prior to further flight, repair in accordance with Part II, paragraph C.1. of the Accomplishment Instructions of Boeing Service Bulletin 727-53-72, Revision 5, dated June 1, 1989.

D. To conduct the inspections required by this AD:

1. Remove the paint, using an approved chemical stripper; or

2. Ensure that the fastener head is clearly visible.

E. Modify fuselage skin lap joints at S-4 and S-10 by replacing the upper row of fasteners with protruding head fasteners, in accordance with Part IV, of the Accomplishment Instructions, of Boeing Service Bulletin 727-53-72, Revision 5, dated June 1, 1989, in accordance with the following times:

Number of landings on effective date of this AD	Modify within the next
45,000 or more	4 years.
Less than 45,000	6 years or prior to the accumulation of 28,000 landings, whichever occurs later.

Before oversizing holes, perform a HFEC inspection of the hole to assure it is crack-free. If cracking is detected, repair in accordance with the service bulletin. If the hole was not HFEC inspected prior to fastener installation, the skin must be visually inspected in accordance with paragraph B.1., above, within 1 year after the effective date of this AD, or 4 years after fastener installation, whichever occurs later, and reinspected thereafter at intervals not to exceed 15 months.

This constitutes terminating action for the repetitive HFEC inspections required by paragraphs A., above, at S-4 and S-10. The inspections in paragraph B.1. are to continue.

F. Modification in accordance with Figure 4 of the Boeing Service Bulletin 727-53-72, Revision 5, dated June 1, 1989, terminates the inspections required in paragraphs A. and B., above, for the modified area.

G. Blind fasteners installed in the lap joints are to be used as an interim repair only. The blind fasteners specified in the service bulletin have a life of 10,000 landings and all other blind fasteners have a life of 3,000 landings before they must be replaced with protruding head solid fasteners. The blind fasteners must be inspected for loose or missing fasteners after accumulating 3,000 landings since installation or 1,000 landings after the effective date of the AD, whichever occurs later, and thereafter at intervals not to exceed 2,500 landings. Blind fasteners installed prior to the effective date of this AD must be replaced prior to the threshold, mentioned above or within 3,000 landings after the effective date of this AD, whichever occurs later.

H. Within 10 days after the completion of any inspection for cracks required by this AD, report a complete description of the location and size of all cracks found, along with aircraft serial number and the number of flight cycles, to the Manager, Seattle Aircraft Certification Office, ANM-100S, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98166.

I. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

J. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective August 21, 1989.

Issued in Seattle, Washington, on July 3, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-16444 Filed 7-12-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-96-AD; Amdt. 39-6250]

Airworthiness Directives; Boeing Model 757-200 Series Airplanes Equipped With Pratt and Whitney PW2000 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive, applicable to certain Boeing Model 757-200 series airplanes, which requires replacing five tube assemblies in the oil pressure indicating system of each engine with flexible hose assemblies. This amendment is prompted by reports of preload in tube assemblies causing tube or component cracking, with resulting loss of engine oil. This condition, if not corrected, could lead to in-flight engine shutdowns and may result in damage to the engine.

EFFECTIVE DATE: July 24, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Michael K. McRae, Propulsion Branch, ANM-140S, telephone (206) 431-1972. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 757-200 series airplanes equipped with Pratt and Whitney PW2000 engines, which requires replacing five tube assemblies in the oil pressure indicating system of each engine with flexible hose assemblies, was published in the **Federal Register** on October 20, 1988 (53 FR 41187).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

The Air Transport Association (ATA) of America commenting in behalf of its operators expressed no objection to the proposed AD.

The engine manufacturer recommended that the compliance time be reduced from one year to six months in order to minimize the likelihood of additional in-flight shutdowns. After consideration of all the available information, the FAA cannot conclude that a reduction of the proposed compliance time, without prior notice and opportunity for public comment, is warranted. In developing an appropriate compliance time, the FAA considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of the modifications. Further, the proposed compliance time of one year was arrived at with operator, manufacturer, and FAA concurrence. To reduce the compliance time of the proposal would necessitate (under the provisions of the Administrative Procedure Act) reissuing the Notice, reopening the period for public comment, considering additional comments received, and eventual issuing of a final rule; the time required for that procedure may be as long as four additional months. In comparing the actual compliance date of the final rule after completing such a procedure, to the compliance date of this final rule as issued, the increment in time is minimal. In light of this, and in consideration of the amount of time that has already elapsed since the issuance of the original Notice, the FAA has determined that further delay of this final rule action is not appropriate. However, if additional data is presented that would justify a shorter compliance time, the FAA may consider further rulemaking on this issue.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 66 Boeing Model 757-200 series airplanes of the affected design in the worldwide fleet. It is estimated that 59 airplanes of U.S. registry will be affected by this AD, that it will take approximately 14.5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The required parts will be furnished to operators by the manufacturer at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $34,220.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 757-200 series airplanes through line number 164, equipped with Pratt and Whitney PW2000 engines, certificated in any category. Compliance is required within one year after the effective date of this AD, unless previously accomplished.

To prevent engine in-flight shutdown and engine damage, due to loss of engine oil resulting from cracked oil pressure indicator tube assemblies, accomplish the following:

A. Remove five oil pressure indication system tube assemblies and replace them with flexible hose assemblies, in accordance with Boeing Service Bulletin 757-79-0005, dated May 26, 1988.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective July 24, 1989.

Issued in Seattle, Washington, on June 14, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-16468 Filed 7-12-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-112-AD; Amdt. 39-6265]

Airworthiness Directives; Lockheed Aeronautical Systems Company-Georgia Model 382 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Lockheed Model 382 series airplanes, which requires a revision to the Limitations Section of the Airplane Flight Manual (AFM), a temporary reduction of fuselage operating pressure, initial and repetitive inspections for cracks, and repair, if necessary, of the pressurized fairing support structure. This amendment is prompted by a report of an explosive decompression on an airplane of similar design due to the failure of the fuselage pressurized fairing support structure. Undetected fatigue cracks could lead to structural failure and subsequent decompression of the airplane.

EFFECTIVE DATE: July 31, 1989.

ADDRESSES: The applicable service information may be obtained from Lockheed Aeronautical Systems Company-Georgia, Attn: Commercial and Customer Support, Dept. 72-05, Zone 80, 86 South Cobb Drive, Marietta, Georgia 30063. This information may be

examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Bentley, Airframe Branch, ACE-120A; telephone (404) 991-2910. Mailing address: Atlanta Aircraft Certification Office, Small Airplane Directorate, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349.

SUPPLEMENTARY INFORMATION: A USAF Model C-130 airplane recently experienced an explosive decompression due to the failure of the fuselage pressurized fairing support structure. The failure was the result of fatigue cracks in the frame at fuselage station (FS) 477 between buttock lines (BL) 20 to 61. The Lockheed Model 382 series airplanes and the USAF C-130 are similar in design with respect to this area. Undetected fatigue cracks could lead to structural failure and subsequent decompression of the airplane.

The FAA has reviewed and approved Lockheed Alert Service Bulletin A382-53-49/A82-635, Revision 1, dated May 19, 1989, which describes procedures for inspection of the pressurized fairing support structure between FS 477 to FS 517, and BL 61L to BL 61R for cracks, and repair, if necessary. This service bulletin references Lockheed-Georgia Company Outgoing Wire Message, dated April 28, 1989, which recommends temporarily reducing the cabin operating pressure until accomplishment of the initial inspection for cracks. Operating at the reduced cabin operating pressure will reduce the growth rate of any cracks which may be present.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires a revision to the AFM requiring a temporary reduction of fuselage operating pressure; initial and repetitive inspections of the pressurized fairing support structure between FS 477 and FS 517, and BL 61L to BL 61R for cracks; and repair, if necessary.

Additionally, the manufacturer is currently in the process of developing a permanent modification. This modification is expected to be available later this year. When the modification is developed and available, the FAA may consider further rulemaking action to address this subject.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Lockheed Aeronautical Systems Company-Georgia: Applies to all Model 382 series airplanes with 6300 hours or more time-in-service, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent fatigue cracking and subsequent decompression of the airplane, accomplish the following:

A. Within the next 10 hours time-in-service after the effective date of this AD:

1. Incorporate the following into the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by including a copy of this AD in the AFM.

"Aircraft cabin operating pressure is limited to 10 inches of mercury."

2. Temporarily reduce cabin operating pressure in accordance paragraph A.1. of this AD.

B. Within 45 days after the effective date of this AD, and thereafter at intervals not to exceed 3,000 hours time-in-service, inspect the pressurized fuselage fairing support structure between fuselage stations 477 and 517, and buttock lines 61L to 61R, in accordance with Lockheed Aeronautical Systems Company-Georgia Alert Service Bulletin A382-53-49/A82-635, Revision 1, dated May 19, 1989.

C. If cracks are found, prior to further flight, repair in a manner approved by the Manager, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, Atlanta, Georgia. Operators must continue to comply with the inspection requirements of paragraph B. of this AD.

D. The requirements of paragraph A., above, may be terminated following completion of the initial inspection and/or repair required by paragraphs B. and C. of this AD.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, Atlanta, Georgia.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Atlanta Aircraft Certification Office.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Lockheed Aeronautical Systems Company-Georgia, Attn: Commercial and Customer Support, Dept. 72-05, Zone 80, 86 South Cobb Drive, Marietta, Georgia 30063. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

This amendment becomes effective July 31, 1989.

Issued in Seattle, Washington, on July 3, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-16446 Filed 7-12-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-CE-05-AD; Amdt. 39-6263]

Airworthiness Directives; British Aerospace (BAe) PLC, Jetstream Model 3101 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to British Aerospace (BAe) PLC, Jetstream Model 3101 airplanes, which installs electrical circuit breakers in the 26 volt a.c. inverter output cables. The inverters are capable of fault currents in excess of the wire cable rating. Such currents will destroy the electrical cable insulation resulting in possible fire and possible loss of the airplane.

EFFECTIVE DATE: August 14, 1989.

Compliance: As prescribed in the body of the AD.

ADDRESSES: BAe Alert Service Bulletin (ASB) Jetstream 24-A-JA7672A, dated November 2, 1988, and ASB Erratum No. 1, dated December 2, 1988, applicable to this AD may be obtained from British Aerospace (BAe) PLC, Manager, Product Support, Civil Aircraft Division, Prestwick Airport, Ayrshire, KA9/2RW, Scotland, Telephone (44-292) 79888; or British Aerospace Inc., Technical Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041; Telephone (703) 435-9100. This information may also be examined at the Rules Docket, FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Ebina, Aircraft Certification Office, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium; Telephone (322) 513.38.30; or Mr. John P. Dow Sr., Project Support Section-Foreign, ACE-109, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include an AD requiring installation of electrical circuit breakers in the 26 volt a.c. inverter output cables on certain BAe Jetstream Model 3101 airplanes was published in the Federal Register on March 22, 1989 (54 FR 11739). The proposal resulted when British Aerospace became aware that the main and essential 26 volt a.c. inverters on Model 3101 airplanes are not provided with internal fuses for the protection of the output cables from excessive currents due to a ground fault. Since each inverter can deliver a ground fault current in excess of 18 amperes, an external circuit breaker is required for the protection of the output cable and adjacent airplane wiring. Consequently, BAe issued ASB Jetstream 24-A-JA7672A, dated November 2, 1988, and ASB Erratum No. 1, dated December 2, 1988, which requires installation of an electrical circuit breaker in the 26 volt a.c. inverter output cables.

The Civil Aviation Authority (CAA), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in the United Kingdom (UK), classified this ASB and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes.

On airplanes operated under UK registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the CAA-UK combined with the FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA examined the available information related to the issuance of BAe ASB Jetstream 24-A-JA7672A, dated November 2, 1988, and Erratum No. 1, dated December 2, 1988, and the mandatory classification of this ASB by the CAA-UK, and concluded that the condition addressed by BAe Alert Service Bulletin (ASB) Jetstream 24-A-JA7672A, dated November 2, 1988, and ASB Erratum No. 1, dated December 2, 1988, was an unsafe condition that may exist on other airplanes of this type certificated for operation in the United States. Accordingly, the FAA proposed an amendment to Part 39 of the FAR to include an AD on this subject.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change.

The FAA has determined that this regulation involves 96 airplanes at an approximate one-time cost of $520 for each airplane, total one-time fleet cost of $49,920.

Therefore, the cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant impact on any small entities operating these airplanes.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative; on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

British Aerospace PLC: Applies to Jetstream Model 3101 (Serial numbers 696 through 794, 796 through 799, 801 through 804, 806 through 809, 811 through 813, 815 through 817 and 820) airplanes certificated in any category. Compliance: Required within the next 75 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent fire or damage to the airplane electrical system, accomplish the following:

(a) Install a 7.5 ampere circuit breaker in accordance with British Aerospace (BAe) Mandatory Alert Service Bulletin (ASB) Jetstream 24–A–JA7672A, dated November 2, 1988, and BAe ASB Erratum No. 1, dated December 2, 1988, in the electrical power output line of:

(1) The main 26 volt a.c. inverter; and

(2) The essential 26 volt a.c. inverter.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Office, AEU–100, Europe, Africa, Middle East Office, FAA, c/o American Embassy, B–1000 Brussels, Belgium.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to British Aerospace, Inc., Technical Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041; or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on August 14, 1989.

Issued in Kansas City, Missouri, on July 3, 1989.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–16445 Filed 7–12–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–NM–211–AD; Amdt. 39–6261]

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –30, –40, and KC–10A (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises and existing airworthiness directive (AD), applicable to Model DC–10–10 and –30 series airplanes, which currently requires the inspection and modification of the Passenger Service Units (PSU) and the removal, inspection, and replacement of the PSU oxygen canisters, if necessary. That amendment was prompted by reports that the chemical oxygen generator canisters have been punctured by existing standoff brackets within the PSU. This condition, if not corrected, could lead to loss of the use of the emergency oxygen system during rapid depressurization of the airplane. This amendment revises the existing rule by expanding the applicability to include additional airplanes. This action is prompted by reports that the subject PSU's may also be installed on Model DC–10–40 and KC–10A (Military) series airplanes.

EFFECTIVE DATE: August 14, 1989.

ADDRESSES: The applicable service information may be obtained from the Jepson-Burns Corporation, 1455 Fairchild Road, Winston-Salem, North Carolina 27105–4588. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Edward S. Chalpin, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5335.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by revising AD 88–24–11, Amendment 39–6065 (53 FR 46444; November 17, 1988), applicable to Model DC–10–10 and –30 series airplanes, to expand the applicability of the existing AD to include Model DC–10–40 and KC–10A (Military) series airplanes, was published in the **Federal Register** on March 30, 1989 (54 FR 13070).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the proposal.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 100 Model DC–10–40 and KC–10A (Military) series airplanes of the affected design in the worldwide fleet. It is estimated that 80 (additional) airplanes of U.S. registry will be affected by this AD. There are approximately 88 PSU's on each airplane. It will take approximately .5 manhour per PSU to accomplish the required actions, at an average labor cost of $40 per manhour. The cost of modification parts is estimated to be $192 per PSU. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $18,656 per airplane, or $1,492,480 for the additional affected airplanes in the U.S. fleet.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39–6065 (53 FR 46444; November 17, 1988), AD 88–24–11, as follows:

McDonnell Douglas: Applies to Model DC–10–10, –30, –40, and KC–10A (Military) series airplanes, equipped with Jepson-Burns Corporation seat model FBC–20000UHDE–( ), certificated in any category. Compliance required as indicated, unless previously accomplished.

To assure proper operation of the passenger emergency oxygen system, accomplish the following:

A. For Model DC–10–10 and –30 series airplanes, within 90 days after December 22, 1988 (the effective date of Amendment 39–6055), accomplish the following:

1. Remove and inspect all 3-man oxygen generators, Scott Aviation Part Number 801386–06, within the Passenger Service Unit (PSU) of the seat. Replace, prior to further flight, any generator showing evidence of food tray latch and cotter pin contact and wear on the canister.

2. Remove existing brackets and install new bracket assemblies, Jepson-Burns Part Number 42703001, in accordance with the Implementation Instructions of Jepson-Burns Service Bulletin Number 25–20–618, dated June 10, 1987.

B. For Model DC–10–40 and KC–10A (Military) series airplanes, within 90 days after the effective date of this amendment, accomplish the following:

1. Remove and inspect all 3-man oxygen generators, Scott Aviation Part Number 801386–06, within the Passenger Service Unit (PSU) of the seat. Replace, prior to further flight, any generator showing evidence of food tray latch and cotter pin contact and wear on the canister.

2. Remove existing brackets and install new bracket assemblies, Jepson-Burns Part Number 42703001, in accordance with the Implementation Instructions of Jepson-Burns Service Bulletin Number 25–20–618, dated June 10, 1987.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Jepson-Burns Corporation, 14555 Fairchild Road, Winston-Salem, North Carolina 27105–4588. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment amends Amendment 39–6065, AD 88–24–11.

This amendment becomes effective August 14, 1989.

Issued in Seattle, Washington, on June 30, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–16447 Filed 7–12–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket Number 89–ACE–02]

Designation of Transition Area—Minden, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to designate a 700-foot transition area at Minden, Nebraska, to provide controlled airspace for aircraft executing a new approach procedure to the Pioneer Village Field, Minden, Nebraska, utilizing the Kearney Very High Frequency Omnidirectional Range Station (VOR). This action changes the airport status from VFR to IFR.

EFFECTIVE DATE: 0901 U.T.C., November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE–540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (861) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On April 19, 1989, the FAA published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Minden, Nebraska (54 FR 15778). Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking. Except for editorial changes, this amendment is the same as that proposed in the Notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates a transition area at Minden, Nebraska. To enhance airport usage, a new instrument approach procedure is being developed for the Pioneer Village Field, Minden, Nebraska, utilizing the Kearney VOR as a navigational aid. This navigational aid will offer new navigational guidance for aircraft utilizing the airport. The establishment of a new instrument approach procedure based on this navigational aid entails designation of a transition area at Minden, Nebraska, at and above 700 feet ground level, within which aircraft are provided air traffic control service. Transition areas are designed to contain IFR operations in controlled airspace during portions of the terminal operation and while transiting between the terminal and enroute environment. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under instrument flight rules (IFR) from other aircraft operating under visual flight rules (VFR). This action changes the airport status from VFR to IFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. By amending § 71.181 as follows:

Minden, NE [New]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Pioneer Village Field (Lat. 40°30'47" N., Long. 98°56'42" W.) and within 3.75 miles each side of the 166° bearing from the Pioneer Village Field extending from the 5-mile radius to 11 miles southeast of the airport.

This amendment becomes effective at 0901 U.T.C., November 16, 1989.

Issued in Kansas City, Missouri, on June 29, 1989.

Clarence E. Newbern,

Manager, Air Traffic Division.

[FR Doc. 89-16466 Filed 7-12-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ACE-20]

Revocation of Transition Area—Waukon, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to revoke the 700-foot transition area at Waukon, Iowa. The instrument approach procedure based on a navigational aid at the Waukon, Iowa, Municipal Airport has been canceled. Accordingly, there is no longer any need for a transition area at Waukon to protect this approach.

EFFECTIVE DATE: 0901 U.T.C. November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

History

On April 19, 1989, the FAA published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to revoke the transition area at Waukon, Iowa (54 FR 15775). Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) revokes the Waukon, Iowa, transition area. The instrument approach procedure for the Waukon, Iowa, Municipal Airport based on a navigational aid at this airport has been canceled. Therefore, the Waukon transition area designed to protect this approach is no longer required and is being revoked.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the FAR (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Waukon, IA [Removed]

Revoke the Waukon, Iowa, transition area.

This amendment becomes effective at 0901 U.T.C. November 16, 1989.

Issued in Kansas City, Missouri, on June 29, 1989.

Clarence E. Newbern,

Manager, Air Traffic Division.

[FR Doc. 89-16467 Filed 7-12-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 134

[T.D. 89-66]

Country of Origin Marking of Imported Fruit Juice Concentrate

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final country of origin marking guidance for containers of imported fruit juice concentrate.

SUMMARY: This document informs the public that Customs is modifying its interpretation of the application of country of origin marking law to imported fruit juice concentrate. Customs has previously published guidance on application of the marking law to imported orange juice concentrate. In recognition of the fact that accounting for all minor foreign sources on the label may make compliance with the marking law prohibitively expensive, orange juice processors have been permitted to comply with marking requirements by "major supplier marking", *i.e.*, if a processor obtained 75 percent or more of imported concentrate from a single source country, it was sufficient to disclose only that one source. Otherwise, all foreign sources were required to be disclosed. Further, processors were permitted to use statistics from a representative past importing period to determine their major supplier.

When Customs announced the effective date for extending the orange juice marking guidance to all imported fruit juice concentrates, it also proposed to eliminate major supplier marking as an acceptable compliance method and replace it with all sources marking. After careful consideration of the many public comments received in response to that proposal, Customs has concluded that all sources marking may be prohibitively expensive, and that foreign juice could be exempt from the marking requirement altogether if all sources marking is required. Therefore, Customs will continue to permit major supplier marking as an acceptable method of compliance but will now permit processors to list up to ten countries if they account for at least 75 percent of foreign concentrate used. Additionally, the sources listed on a juice container must now indicate the sources actually used in that lot, not the sources used in a representative past importing period.

EFFECTIVE DATE: This decision will be effective as to fruit juice concentrate entered, or withdrawn from warehouse for consumption, on or after November 30, 1989, if packaged in other than composite cans. If packaged in composite cans, foreign juice concentrate will be subject to this decision on March 1, 1990.

FOR FURTHER INFORMATION CONTACT: John Doyle, Office of Regulations and Rulings (202-566-5765).

SUPPLEMENTARY INFORMATION:

Background

In accordance with 19 U.S.C. 1304, and 19 CFR Part 134, Customs ensures that imported fruit juice concentrate entering the U.S. in large containers, *e.g.*, tanker cars and multi-gallon drums, is properly marked to show country of origin. However, the country of origin marking requirements set forth in this document are those pertaining to labeling that must appear on packages of concentrated or reconstituted fruit juice containing imported concentrate that reach ultimate purchases.

Orange Juice Ruling

In a ruling dated September 4, 1985 (C.S.D. 85-47), Customs held that containers of orange juice in frozen concentrated or reconstituted forms which contain foreign concentrate must be labeled to comply with the country of origin marking requirements of section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304). The ruling was based on the determination that the foreign concentrate which is imported into the U.S. and used in the production of frozen concentrated or reconstituted orange juice is not substantially transformed after undergoing further processing in the U.S. including blending with other batches of orange concentrate, addition of water, oils and essences, pasteurization of freezing, and repacking. In *National Juice Products Association* v. *United States*, 10 CFR 48, 628 F.Supp. 978 (CIT 1986), the Court of International Trade held that C.S.D. 85-47 was substantively correct. The ruling has been in effect since February 1, 1987, and containers of orange juice made with imported concentrate must now indicate the foreign sources of the concentrate.

Extension to Juices Other Than Orange Juice

By a notice published in the **Federal Register** on July 30, 1986 (51 FR 27196), Customs announced that the orange juice ruling would be extended to include all other imported fruit juice concentrate which undergoes processing in the U.S. similar to that performed on orange juice concentrate. Therefore, all frozen concentrated or reconstituted fruit juices made with foreign concentrate processed in a manner similar to that described in C.S.D. 85-47 must be marked to indicate the country of origin of the foreign concentrate. However, before announcing the effective date for extending the orange juice rule to other juices, public comments were invited for consideration.

Effective Date of Extension Announced

On June 7, 1988, Customs published two **Federal Register** notices concerning country of origin marking of fruit juice containers. The first notice (53 FR 20836) announced June 7, 1989, as the effective date for extending the orange juice ruling to other juices, *i.e.*, for requiring that containers of frozen concentrated or reconstituted fruit juice which contain imported concentrate be marked to show the country of origin of the concentrate. Major supplier marking, a method of complying with marking requirements available to orange juice processors, was made available to processors of other juices. Major supplier marking permits a processor that obtains 75 percent or more of its imported concentrate from one source country to reveal only that one foreign source. If no one foreign source accounts for at least 75 percent of imported concentrate then all source countries must be disclosed.

Proposal to Eliminate "Major Supplier Marking"

The second document published on June 7, 1988, (53 FR 20869) announced the proposed elimination of major supplier marking as a method of complying with marking requirements for all fruit juice containers, including orange juice. This proposal was prompted by concerns that major supplier marking does not provide the level of information to consumers that was contemplated by 19 U.S.C. 1304, *i.e.*, full disclosure of country of origin. Also, claims were made that pesticides banned in the U.S. are used on foreign fruit that is the source of imported concentrate. If major supplier marking for fruit juice concentrate were not allowed and all countries of origin had to be marked on juice containers, it was claimed that the Food and Drug Administration could better trace imported concentrate and consumers could better protect themselves from potential health threats. Before making any decision on this issue, public comments were invited for consideration.

June 7, 1989, Effective Date Suspended

By notice published in the **Federal Register** on June 6, 1989 (54 FR 24168), the effective date of extending marking requirements to other imported juice concentrates in addition to orange was suspended from June 7, 1989. Customs thought it was in the best interests of the public to delay providing marking guidance which might soon thereafter be modified. The public was advised that final guidance would be published in the immediate future. This document is that final guidance.

Analysis of Comments

Over 100 comments were received in response to the June 7, 1988 proposal, approximately 60% of which favored retention of major supplier marking with the remaining 40% believing that fruit juice containers should list all sources.

Major Supplier Marking

Of those favoring major supplier marking, the largest subgroup was domestic processors that use foreign concentrate. They outlined the burden that would result from doing away with major supplier marking. They contend that:

(1) All sources marking would be expensive. It would require a large initial outlay for labeling equipment and a continuing cost for everchanging labels.

(2) Inventory systems for labels and for keeping concentrates separate during storage would be unnecessary except for this rule. The physical space required for storage tanks would be enormous.

(3) Elimination of major supplier marking would effectively end use of the spot market for purchases of low-cost concentrate because the processors would not have labels ready bearing names of the spot purchase countries. The spot market, it is claimed, is beneficial to consumers because the processors make purchases at a good price and pass on the savings to consumers.

(4) Showing one or two major foreign sources fulfills the requirement of letting ultimate purchasers know they are buying a foreign product; listing all sources would simply provide a "geography lesson."

(5) All sources marking is a non-tariff trade barrier.

(6) Foreign apple juice concentrate is not a health threat.

All Sources Marking

Those favoring all sources marking were of two principle subgroups: state agricultural associations such as farm bureaus, and individuals often writing on the letterhead of a small farm or orchard. The recurring arguments raised in support of all sources marking were:

(1) Major supplier marking does not adequately serve the needs of consumers who deserve to know exact sources of the products they buy.

(2) All sources marking is necessary to protect the health of consumers.

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(3) All sources marking is necessary to fully comply with the letter and spirit of 19 U.S.C. 1304.

These groups favor flexibility in complying with all sources marking such as allowing various locations on a container to be used and they claim the technology exists to do the printing necessary.

Recommendations

Compliance Method

In considering what method of compliance may be used by those processors who will now be subject to country of origin marking for juice containers, we have examined a variety of compliance levels. On the one hand, requiring 100 percent disclosure of all sources of concentrate contained in every individual container was discussed. On the other hand, the possibility was raised by some processors that marking of fruit juice containers will be so expensive as to rise to the level of being economically prohibitive and thereby exempt the containers from marking entirely. Those articles which cannot be marked after importation except at an expense that would be economically prohibitive, unless the importer, producer, seller or shipper failed to mark the article before importation to avoid meeting the requirements of 19 U.S.C. 1304, could possibly be excepted from marking by 19 U.S.C. 1304(a)(3)(K); § 134.32(o), Customs Regulations (19 CFR 134.32(o)).

All Sources Marking v. *Major Supplier Marking*

Customs has determined not to require all sources marking on containers of juice made with imported concentrate. Juice processors, primarily those processing imported apple juice concentrate, presented arguments that requiring all sources marking would necessitate elaborate new inventory systems be developed and maintained and, in some instances, would require a large inventory of labels be kept in stock to accommodate possible blends of concentrate from various countries.

In response to arguments that all sources marking would not aid the Food and Drug Administration in its efforts to monitor for pesticides, the FDA advised Customs that their pesticide monitoring efforts are based on port of entry inspection of concentrate, not point of sale labeling.

In view of the expense created by all sources marking using current marking technology, Customs has decided to retain major supplier marking as an acceptable method of compliance for marking of imported juice concentrate. However, the definition of major supplier is being modified to permit processors to list up to ten foreign sources to account for 75 percent or more of imported concentrate. We believe from consultations with those in the juice industry that in the majority of circumstances, five or fewer sources will account for at least 75 percent of foreign concentrate present in a lot, and that in virtually all cases, ten or fewer sources will account for 75 percent of the foreign concentrate. If ten sources do not amount to 75 percent of foreign concentrate, then all foreign sources must be listed. For purposes of complying with this requirement, "lot" is defined as it is in Food and Drug Administration regulations, 21 CFR 146.3(h)(1)(i), *i.e.*, "A collection of primary containers or units of the same size, type, and style manufactured or packed under similar conditions and handled as a single unit of trade." "Manufactured or packed under similar conditions" is defined, for purposes of compliance with 19 U.S.C. 1304, as all the containers or units containing the same blend of foreign concentrates.

The listing of foreign sources must consist of the countries contributing the greatest percentages adding up to at least 75 percent. For example, processors may not skip over an "undesireable" source contributing 10 percent in order to list the next two "unobjectionable" sources contributing five percent each. However, the order within the list need not change based on ranking. For example, if a processor is blending foreign concentrates from two countries contributing 60 and 15 percent respectively, and the two countries reversed proportions, the same label could be used on both lots.

Past Importing Period v. *Present Sources*

Concerning the distinction between allowing processors to use labels that are correct based on a past importing period or requiring labels that accurately reflect the current sources of supply, we believe requiring labels to reflect the actual sources of foreign concentrate in a particular container is the only logical alternative in a marking program aimed at providing accurate information to ultimate purchasers.

Orange juice processors were permitted to use statistics from past importing periods to determine the countries to list on their current labels. Customs approved this since the supply of foreign orange juice concentrate is very steady. In regard to other juices, apple juice in particular, there is one major source of supply and sources change more frequently as compared to orange juice. Therefore, the practice of using representative past importing periods does not apply in this situation. Customs cannot approve a marking method with the potential of allowing, for extended periods of time, labeling that would reveal none of the actual sources of foreign juice in a particular container. For example, a processor's sources of supply could completely change because of drought or political unrest making a label based on past sources of supply completely inaccurate.

Processors have stated that this requirement may greatly alter their foreign concentrate-sourcing patterns. However, this is not sufficient reason to be excepted from compliance with marking laws. Processors may have to keep a more limited supply of labels on hand, or switch to adhesive labels that can be affixed prior to distribution. Customs primary concern must be to ensure compliance with the marking laws, and we believe that no further deviation from adherence to that law should be allowed.

Summary

Imported fruit juice concentrate which is imported into the U.S. and used in the production of concentrated or reconstituted fruit juice is not substantially transformed after undergoing further processing in the U.S. including blending with other batches of concentrate of the same fruit; addition of water oils, and essences; pasteurization or freezing; and repacking. Accordingly, all such imported concentrate is subject to the country of origin marking requirements of 19 U.S.C. 1304, and 19 CFR Part 134.

Processors may use "major supplier marking" in preparing labels for containers of juice made with imported concentrate. If a processor obtains 75 percent or more of the imported concentrate used in a particular lot from ten or fewer countries, only those ten or fewer countries need be revealed.

Customs believes that the means exist for processors to comply with these marking requirements. In many cases, a blank space is left on juice containers for the imprinting or affixing of everchanging information such as lot numbers and expiration dates. The metal caps used to seal either end of metal and composite cans are suitable areas for imprinting country of origin information. In this instance, Customs will not consider it a violation of § 134.46, Customs Regulations (19 CFR 134.46), for country of origin information to appear on the top or bottom of a metal or composite can that contains a U.S. address, or some other reference to a place not the origin of the concentrates, on the can itself. Customs also believes stickers are a viable alternative. We received comments that there is no room for sticker placement on small cans, and if such small cans are frozen, the stickers would drop off anyway. Assuming *arguendo* that stickers may not be ideal for some containers, Customs believes many types of containers will easily accommodate stickers. The argument presented against stickers did not convince us they are impractical; *e.g.*, they will easily fit on many glass containers and remain on through all normal handling.

There may be isolated situations where the marking of juice containers will be economically prohibitive. Customs will consider requests for such exemptions on a case by case basis. We will not, as has been requested, grant any sort of industry-wide exemption based on "worst case" scenarios.

Delay of Effective Date

In trying to balance the needs of consumers, domestic fruit growers and the importers and processors of fruit juice concentrate, it has been determined to delay slightly the effective date of the marking requirement outlined above.

By delaying the effective date until November 30, 1989, for containers other than composite cans, and to March 1, 1990, for composite cans, juice processors will be given adequate time to obtain properly labeled new containers.

Those processors that had taken steps to comply with the prior major supplier marking rule will have no difficulty complying with the modified version; any labels they had prepared to satisfy the original definition will satisfy the modified definition. While processors may not have known precisely what marking would be required, they have known since July 30, 1986, that marking would in fact be extended to all other imported juice concentrates in addition to orange. Since Customs has eased the major supplier rule and made it more likley that processors will be eligible to use major supplier instead of having to mark all foreign sources, we believe it proper to implement the modified marking requirements as expeditiously as possible. The effective dates established by this notice will permit processors to order proper labels.

Drafting Information

The principal author of this document was John E. Doyle, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

William von Raab,

Commissioner of Customs.

Approved: July 7, 1989.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 89-16364 Filed 7-12-89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 522

Animal Drugs, Feeds, and Related Products; Lenperone Hydrochloride Tablets and Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations reflecting approval of two new animal drug applications (NADA's) held by A.H. Robins Co. The NADA's provide for the use of Elanone-V (lenperone hydrochloride) Tablets and Elanone-V (lenperone hydrochloride) Injection. Elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA's at the request of the sponsor.

EFFECTIVE DATE: July 24, 1989.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of NADA's 96-508 and 97-901 held by A.H. Robins Co., 1405 Cummings Dr., P.O. Box 26609, Richmond, VA 23261. NADA 96-508 provides for the use of Elanone-V (lenperone hydrochloride) Injection in cats and dogs as a tranquilizer and as an antiemetic, and for pre- and postoperative medication. NADA 97-901 provides for use of Elanone-V (lenperone hydrochloride) Tablets for the same indications, but only in dogs. This final rule removes §§ 520.1236 and 522.1235 (21 CFR 520.1236 and 522.1235) that reflect the approvals.

List of Subjects in 21 CFR

Part 520.

Animal drugs.

Part 522.

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Veterinary Medicine, Parts 520 and 522 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 520.1236 [Removed]

2. Section 520.1236 *Lenperone tablets* is removed.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 522.1235 [Removed]

4. Section 522.1235 *Lenperone hydrochloride injection* is removed.

Dated: July 7, 1989.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 89-16422 Filed 7-12-89; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject to Certification; Nitrofurazone Ointment

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Hess & Clark, Inc., providing for the use of a nitrofurazone ointment (water soluble dressing) for the prevention or treatment of surface bacterial infections on dogs, cats, and horses.

EFFECTIVE DATE: July 13, 1989.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Hess & Clark, Inc., 7th and Orange Sts., Ashland, OH 44805, is sponsor of NADA 140-851 for use of a 0.2-percent nitrofurazone ointment (water soluble dressing) for the prevention or treatment of surface bacterial infections of wounds, burns, and cutaneous ulcers of dogs, cats, and horses. The application is approved, and 21 CFR 524.1580b(b) is revised to reflect the approval. The basis of this approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 524 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Section 524.1580b is amended by revising paragraph (b) to read as follows:

§ 524.1580b Nitrofurazone ointment.

* * * * *

(b) *Sponsor.* For use on dogs, cats, and horses see Nos. 011519, 000864, 053617, 023851, 015579, 054016, and 011801 in § 510.600(c) of this chapter. For use on dogs and horses see No. 017135 in § 510.600(c) of this chapter. For use on horses see No. 017153 in § 510.600(c) of this chapter.

* * * * *

Dated: July 6, 1989.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 89-16424 Filed 7-12-89; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lasalocid

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoffmann-LaRoche, Inc., providing for the use of a 20-percent lasalocid liquid Type A medicated article in making Type B and Type C medicated feeds for cattle and sheep.

EFFECTIVE DATE: July 13, 1989.

FOR FURTHER INFORMATION CONTACT: John R. Markus, Center for Veterinary Medicine (HFV-142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2871.

SUPPLEMENTARY INFORMATION: Hoffmann-LaRoche, Inc., Nutley, NJ 07110, is the sponsor of NADA 96-298, which currently provides for the use of dry Type A medicated articles containing 15, 20, 33.1, or 50 percent of lasalocid sodium activity in making Type B and Type C medicated cattle and sheep feeds. The firm has filed a supplemental NADA that provides for a different physical form (liquid product) of the 20-percent lasalocid Type A medicated article. The resulting medicated feeds are indicated for (1) improved feed efficiency in cattle fed in confinement for slaughter; (2) improved feed efficiency and increased rate of weight gain in cattle fed in confinement for slaughter; (3) increased rate of weight gain in pasture cattle (slaughter, stocker, feeder cattle, and dairy and beef replacement heifers); and (4) prevention of coccidiosis in sheep kept in confinement. These indications and other conditions of use are currently provided for in the existing regulation and are unaffected by the supplemental NADA. The supplement is approved, and 21 CFR 558.311 is amended to reflect the approval by adding new paragraph (b)(6) to solely provide for use of an additional Type A medicated article containing 20 percent lasalocid sodium in a new liquid formulation.

Approval of this supplement, a new liquid formulation of a Type A medicated article containing 20 percent lasalocid sodium activity, is an administrative action. This approval does not affect the safety or effectiveness data supporting the original approval, and therefore, does not require a revision of the freedom of information summary.

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.311 is amended by adding new paragraph (b)(6) to read as follows:

§ 558.311 Lasalocid.

* * * * *

(b) * * *

(6) 20 percent activity as a liquid Type A medicated article to No. 000004 for use in cattle feeds as in paragraphs (e)(1) (vi), (vii), and (ix) of this section, and for use in sheep feeds as in paragraph (e)(1)(viii) of this section.

* * * * *

Dated: July 3, 1989.

Robert C. Livingston,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 89-16358 Filed 7-12-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket Nos. H-225, 225A, 225B, 225C]

RIN 1218-0145

Occupational Exposure to Formaldehyde

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; corrections and technical amendments.

SUMMARY: This document amends the final rule on Occupational Exposure to Formaldehyde (29 CFR 1910.1048) which was published on December 4, 1987 [52 FR 46168]. This action is necessary to correct typographical errors, include some information inadvertently omitted, and to correct some inconsistencies in the preamble and regulatory text.

EFFECTIVE DATE: July 13, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION:

Background

The revised Occupational Exposure to Formaldehyde standard, which was promulgated on December 4, 1987, lowers the permissible exposure limit for formaldehyde to 1 part per million (ppm), measured as an 8-hour time-weighted average (TWA), with a short term exposure limit (STEL) of 2 ppm measured over a 15-minute period. The standard also contains provisions for employee exposure monitoring, medical surveillance, recordkeeping, regulated areas, emergency procedures, preferred methods of compliance, maintenance and selection of personal protective equipment, and hazard communication. This notice amends the standard to correct errors or inconsistencies found in the provisions for respirator selection and recordkeeping and to correct some typographical errors found in the text of the standard.

Corrections and Technical Amendments

1. *Paragraph (g), Respiratory protection:* A few typographical errors and omissions in Table 1—Minimum Requirements for Respiratory Protection Against Formaldehyde (52 FR at 46293) require a technical amendment of the final rule.

The Table 1 entry for Type C respirators must be modified. The preamble to the final rule indicates that employers must select respirators from those certified as acceptable for protection against formaldehyde by the National Institute for Occupational Safety and Health (NIOSH) (see 52 FR at 46266). As the NIOSH Certified Equipment List clearly indicates, Type C supplied air respirators approved for use in formaldehyde atmospheres must be operated in a positive pressure mode. OSHA inadvertently dropped the word "pressure" from the phrase "demand type" in describing Type C respirators in Table 1 in the final rule, thus appearing to approve the use of a negative pressure respirator operated in the demand mode. OSHA also failed to indicate that Type C supplied air respirators operated in the continuous flow mode are approved for use in formaldehyde atmospheres. The correct entry in Table 1 should read as follows: Type C supplied air respirator, pressure demand or continuous flow type, with full facepiece, hood, or helmet.

Paragraph (g)(2)(ii) of the final rule (52 FR at 46293) requires employers to make powered air purifying respirators meeting the specifications of Table 1 available to any employee who experiences difficulty wearing a negative pressure respirator to reduce exposure to formaldehyde. Table 1, however, does not list any powered air purifying respirators. To avoid confusion on this issue, OSHA is deleting the words "meeting the specifications in Table 1" from paragraph (g)(2)(ii) of the standard and substituting a requirement that any powered air purifying respirator used must provide adequate protection. This clarification is intended to remind employers substituting powered air purifying respirators for negative pressure respirators that they must consider whether the protection factor that the powered air purifying respirator supplies is adequate to protect a worker under the conditions of the exposure.

It was brought to OSHA's attention that the final rule for formaldehyde inadvertently omitted reference to chin style gas masks approved by NIOSH for use in formaldehyde atmospheres. Since this respirator will adequately protect workers exposed to formaldehyde, it should also be available for consideration in selecting a comfortable and adequately fitting respirator. Consequently, OSHA is amending Table 1 in the final rule to permit use of chin style respirators for protection against formaldehyde in atmospheres up to 100 ppm and for emergency escape.

The above described amendments are minor and not controversial. There is no need to subject these technical amendments to rulemaking or other public procedures (see 29 CFR 1911.5) and good cause is hereby found to dispense with such procedures in this instance.

2. *Paragraph (o), Recordkeeping.* In the preamble to the final rule OSHA indicated its intent to add a specific reference to 29 CFR 1910.20, the access to medical records standard, to the paragraph allowing employee access to medical records (see 52 FR at 46289). This was inadvertently omitted, and OSHA is correcting the standard to include this language in paragraph (o)(6)(iii).

3. This document also corrects several typographical errors in the final rule on Occupational Exposure to Formaldehyde that appeared in the **Federal Register** on December 4, 1987 [52 FR 46168] which has now been published in the Code of Federal Regulations as 29 CFR 1910.1048.

Authority and Signature

This document was prepared under the direction of Alan C. McMillan, Acting Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210.

This action is taken pursuant to sections 4(b), 6(b), and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1597, 1599, 29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 9-83 (48 FR 35736) and 29 CFR Part 1911.

List of Subjects in 29 CFR Part 1910

Formaldehyde, Occupational safety and health, Chemicals.

Signed at Washington, DC this 7th day of July 1989.

Alan C. McMillan,

Acting Assistant Secretary of Labor.

PART 1910—[AMENDED]

Part 1910 of Title 29 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for Subpart Z of the Part 1910 continues to read in part as follows:

Authority: Secs. 6, 8 Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders 12-71 [36 FR 8754], 8-76 [41 FR 25059], or 9-83 [48 FR 35736] as applicable; and 29 CFR Part 1911. Sec. 1910.1000 Tables Z-1, Z-2, Z-3 also issued under 5 U.S.C. 553.

* * * Sec. 1910.1048 also issued under 29 U.S.C. 653.

* * * * *

2. By revising paragraph (g)(2)(ii), Table 1 following paragraph (g)(3)(ii), and paragraph (o)(6)(iii) of § 1910.1048 to read as follows:

§ 1910.1048 Formaldehyde.

* * * * *

(g) * * *

(2) * * *

(ii) The employer shall make available a powered air-purifying respirator adequate to protect against formaldehyde exposure to any employee who experiences difficulty wearing a negative pressure respirator to reduce exposure to formaldehyde.

* * * * *

TABLE 1.—MINIMUM REQUIREMENTS FOR RESPIRATORY PROTECTION AGAINST FORMALDEHYDE

Condition of use of formaldehyde concentration (ppm)	Minimum respirator required [1]
Up to 10 ppm	Full facepiece with cartridges or canisters specifically approved for protection against formaldehyde.[2]
Up to 100 ppm	Full-face mask with chin style or chest or back mounted type industrial size canister specifically approved for protection against formaldehyde.
	Type C supplied air respirator, pressure demand or continuous flow type, with full facepiece, hood, or helmet.
Above 100 ppm or unknown (emergencies).	Self-contained breathing apparatus (SCBA) with positive pressure full facepiece.
	Combination supplied-air, full facepiece positive pressure respirator with auxiliary self-contained air supply.
Firefighting	SCBA with positive pressure in full facepiece.
Escape	SCBA in demand or pressure demand mode.
	Full-face mask with chin style or front or back mounted type industrial size canister specifically approved for protection against formaldehyde.

[1] Respirators specified for use at higher concentrations may be used at lower concentrations.

[2] A half-mask respirator with cartridges specifically approved for protection against formaldehyde can be substituted for the full face piece respirator providing that effective gas-proof goggles are provided and used in combination with the half-mask respirator.

* * * * *

(o) * * *

(6) * * *

(iii) Employee medical records required by this standard shall be provided upon request for examination and copying, to the subject employee or former employee or to anyone having the specific written consent of the subject employee or former employee in accordance with 29 CFR 1910.20 (a)–(e) and (g)–(i).

* * * * *

3. In Appendix B to § 1910.1048—Sampling Strategy and Analytical Methods for Formaldehyde, instruction 2.6.2. "The recommended sampling rate is 01. L/min." is corrected to read "The recommended sampling rate is 0.1 L/min."

4. In Appendix B to § 1910.1048—Sampling Strategy and Analytical Methods for Formaldehyde, the part of instruction 3.7.4 which reads, "24.25 = molar volume" is corrected to read "24.45 = molar volume".

5. In Appendix E to § 1910.1048—Qualitative and Quantitative Fit Testing Procedures, instruction B(2)(a)(8) (fourth sentence). "Be sure the covered * * *" is corrected to read "Be sure the covers * * *"

[FR Doc. 89-16439 Filed 7-12-89; 8:45 am]

BILLING CODE 4510-26-M

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29 CFR Parts 1910 and 1926

Occupational Exposure to Asbestos; Approval of Collection of Information Requirements

AGENCY: Occupational Safety and Health Administration; Labor.

ACTION: Final rule; approval of collection of information requirements.

SUMMARY: On June 20, 1986, OSHA published revised standards governing occupational exposure to asbestos, tremolite, anthophyllite and actinolite in general industry and construction. In these standards, OSHA reduced the 8-hour time weighted average (TWA) permissible exposure limit (PEL) to 0.2 f/cc, and established other protective provisions. This standard was legally challenged, and as a result, the Court of Appeals for the District of Columbia upheld the standard except that the court held that OSHA must reconsider several of the standard's provisions to determine if more protective regulatory provisions are available to reduce risk.

One of the issues to be reconsidered was the need for an excursion limit. In response, OSHA promulgated an excursion limit for occupational exposure to asbestos as 1 f/cc averaged over a 30-minute sampling period. A legal notification of this amendment was published on September 14, 1988, at 53 FR 35610.

The Office of Management and Budget (OMB) reviewed the collection of information requirements in the expanded asbestos standard in accordance with the Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.*, and 5 CFR Part 1320. All information requirements contained in § 1910.1001 in paragraphs (d)(2), (d)(3), (d)(5), (d)(7), (f)(2), (f)(3)(i), (j)(5), (l), and (m), and 29 CFR 1926.58 (f)(2), (f)(3), (f)(6), (h)(3)(i), (k)(3), (k)(4), (m), and (n), as they apply to the excursion limit, have now received OMB paperwork clearance under OMB clearance numbers 1218–0133 and 1218–0134. The OMB clearance expires on February 29, 1992.

EFFECTIVE DATE: July 13, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Room N3637, Washington, DC 20210; telephone (202) 523–8151.

SUPPLEMENTARY INFORMATION: On September 14, 1988, OSHA published an amendment to the asbestos standard to include an excursion limit. On December 23, 1988, OSHA requested clearance from OMB on the asbestos, tremolite, anthophyllite and actinolite excursion limit amendment (general industry and construction standards).

On February 14, 1989, OMB approved the collection information provisions for three years, the maximum period authorized by the Paperwork Reduction Act (PRA). OMB also conditioned the clearance with the requirement that when the medical surveillance and monitoring requirements are resubmitted for OMB review, that the agency also submit evidence that these provisions have been evaluated in the workplace and that such evaluation has shown, pursuant to 5 CFR 1320.4(b), that they have practical utility and are the least burdensome necessary for the proper performance of the agency's functions.

Authority and Signature

This document was prepared under the direction of Alan C. McMillan, Acting Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210.

This action is taken pursuant to sections 4(b), 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 4 of the Administrative Procedures Act, 9 U.S.C. 553(d)(3), Secretary of Labor's Order No. 9–83 (48 FR 3576) and 29 CFR Part 1911.

Signed at Washington, DC, this 7th day of July of 1989.

Alan C. McMillan,

Acting Assistant Secretary for Occupational Safety and Health.

[FR Doc. 89-16438 Filed 7-12-89; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-88-01]

Special Local Regulations; Great Lakes Annual Marine Events

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule establishes permanent special local regulations for marine events within the Ninth Coast Guard District which recur on an annual basis and which have been determined by the District Commander to require the issuance of special local regulations. This action is taken to insure the safety of life during each event, while avoiding the necessity of publishing a separate temporary regulation each year for each event.

EFFECTIVE DATES: These regulations become effective on August 14, 1989.

FOR FURTHER INFORMATION CONTACT: MST1 Scott E. Befus, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522–4420.

SUPPLEMENTARY INFORMATION: On 7 April 1989, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (54 FR 14100). Interested persons were requested to submit comments and one comment was received.

Drafting Information

The drafters of this regulation are MST1 Scott E. Befus, project officer, Office of Search and Rescue and LCDR C. V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Comments

The comment received was from the Lake Carrier's Association. It addressed the lack of specific closure times of marine events listed in Table 1. The Coast Guard sees no need to publish specific times for the same reason specific dates are not published. Exact times and dates will be published in the Local Notice to Mariners instead of being published in this final rule. Otherwise, additional rulemaking would be required for even insigificant changes to specific times and dates were they to be included in this final rule. The annual marine events covered by this rulemaking are well established, and as the rule makes clear, the event sponsor must still obtain the approval of the cognizant Group Commander every year. Group Commanders have consulted and will continue to consult with parties potentially affected by any significant changes to the nature, date, time, and location proposed by an event sponsor for any of the events covered in this rule.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. First, the regulated areas will be in effect for only a short period of time. Second, events will draw a large number of spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35

2. Section 100.901 is added to read as follows:

§ 100.901 Great Lakes annual marine events.

Permanent special local regulations are hereby established for the marine events listed in Table 1. These regulations will be effective annually, for the duration of each event, on or about the dates indicated in Table 1. Annual notice of the exact dates and times of the effective period of the regulations with respect to each event, the geographical description of each regulated area, and details concerning the nature of the event and the number of participants and type(s) of vessels involved will be published in local notices to mariners. To be placed on the mailing list for such notices, contact: Commander(oan), Ninth Coast Guard District, 1240 E. Ninth St., Cleveland, OH 44199–2060. *Sponsors of events listed in Table 1 must still submit an application each year in accordance with 33 CFR 100.15.*

(a) The Coast Guard will patrol the regatta area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander." Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum, and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(b) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(c) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(d) The Patrol Commander may restrict vessel operation within the regatta area to vessels having particular operating characteristics.

(e) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Table 1

Cleveland National Air Show

Sponsor: Cleveland National Air Show
Date: Labor Day Weekend
Location: Lake Erie and Cleveland Harbor, near Cleveland, OH

International Freedom Festival Tug of War

Sponsor: Detroit Renaissance Foundation
Date: Late June
Location: Detroit River, Hart Plaza to Windsor Riverfront, near Detroit, MI

Budweiser Thunderboat Championship

Sponsor: Spirit of Detroit Association
Date: Early June
Location: Detroit River, between Belle Isle and the U.S. shoreline, near Detroit, MI

Chicago Air and Water Show

Sponsor: Chicago Park District
Date: Mid July
Location: Lake Michigan, off North Avenue Beach, near Chicago, IL

Toledo International Grand Prix

Sponsor: City of Toledo, Toledo International Grand Prix and Greater Toledo Marketing Group
Date: Late May
Location: Maumee River, between the Cherry Street Bridge and the Anthony Wayne Bridge, near Toledo, OH

Niagara River Grand Prix

Sponsor: Niagara Inboard Boat Club
Date: Late July
Location: Niagara River, off Two Mile Creek, near Tonawanda NY

Spirit of America Offshore Grand Prix

Sponsor: Grand Isle Marina
Date: Mid August
Location: Lake Michigan, off Grand Haven, MI

Sohio Riverfest

Sponsor: Flats Riverfest Corporation
Date: Late July
Location: Cuyahoga River, Conrail Railroad Bridge at Mile 0.8 above the mouth of the river to the Eagle Avenue Bridge, near Cleveland, OH

Sandusky Bay Challenge

Sponsor: Great Lakes Offshore Powerboat Racing Association
Date: Late May
Location: Lake Erie, Sandusky Bay, near Sandusky, OH

Bay Harbor Charity Classic (formerly the National Offshore Races)

Sponsor: Harbor Yacht Sales
Date: Late August
Location: Saginaw Bay, mouth of the Saginaw River, near Saginaw, MI

Huron Water Festival

Sponsor: Huron Festivals, Inc.
Date: Mid July
Location: Huron River, Huron Inner Light and the Huron Inner East Light to the U.S. Highway 6 bridge, near Huron, OH

East River Classic

Sponsor: WNY Offshore Powerboat Association
Date: Mid August
Location: Niagara River, from the South Grand Island Bridge to the south entrance of the Niagara River Yacht Club, near Tonawanda, NY

International Freedom Festival Fireworks

Sponsor: Detroit Renaissance Foundation
Date: Late June
Location: Detroit River, between Hart Plaza and Cobo Arena, near Detroit, MI

Toledo 4th of July Fireworks

Sponsor: City of Toledo
Date: Early July
Location: Maumee River, between the Cherry and Anthony Wayne bridges, near Toledo, OH

Festival USA Fireworks

Sponsor: Superior Area Chamber of Commerce
Date: Early July
Location: Duluth Superior Harbor, off Barker's Island, near Superior, WI

Duluth Fourth Fest Fireworks

Sponsor: Office of the Mayor, Duluth, MN
Date: Early July
Location: Duluth Harbor Basin Northern Section, near Duluth, MN

Toledo Labor Day Fireworks

Sponsor: Reams Broadcasting Corporation
Date: Early September
Location: Maumee River, between the Cherry and Anthony Wayne bridges, near Toledo, OH

Grand Island Offshore Challenge

Sponsor: Champion Offshore Boat Racing Association
Date: Early September
Location: Niagara River, Tonawanda Channel, near Tonawanda, NY

Dated: June 9, 1989.

D. H. Ramsden,

Capt., U.S. Coast Guard, Acting Commander, Ninth Coast Guard District.

[FR Doc. 89-16394 Filed 7-12-89; 8:45 am]

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 90143-9144]

RIN 0651-AA35

Amendment of Patent and Trademark Rules Concerning Judicial Review of Decisions of the Board of Patent Appeals and Interferences and the Trademark Trial and Appeal Board and Other Miscellaneous Matters

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (PTO) is amending the rules of practice in patent and trademark cases, Parts 1 and 2 of Title 37, Code of Federal Regulations, relating to (1) decisions of the Board of Patent Appeals and Interferences (BPAI), (2) requests for reconsideration of decisions of the BPAI and the Trademark Trial and Appeal Board (TTAB), (3) extensions of time in proceedings after a decision by the BPAI under §§ 1.196 and 1.197, (4) practices concerning judicial review of final decisions of the BPAI and TTAB, (5) extensions of time for seeking judicial review of BPAI and TTAB decisions, and (6) miscellaneous changes in the practice before the BPAI and housekeeping amendments.

Two recent decisions of the U.S. Court of Appeals for the Federal Circuit have held that even though the BPAI includes a new ground for rejection in its decision under 37 CFR 1.196(b)(3), appellants may appeal directly to the Federal Circuit without first seeking reconsideration at the BPAI. Where judicial review is sought without requesting reconsideration, the arguments against the new ground of rejection are developed for the first time during court proceedings. The amendments require that appellants seek reconsideration of the new ground of rejection prior to appeal or commencement of a civil action.

Experience under the previous rules relating to judicial review of final board decisions indicated that the rules may have been confusing in certain respects

relating to the time in which judicial review must be sought and the manner in which extensions of time for seeking judicial review may be obtained. The rules eliminate any confusion as to when judicial review must be sought and standardize the manner of obtaining extensions of time to seek judicial review.

The rules also make clarifying and housekeeping amendments with respect to practice before the BPAI.

EFFECTIVE DATE: August 20, 1989.

FOR FURTHER INFORMATION CONTACT: Richard E. Schafer by telephone at (703) 557-4035 or by mail marked to his attention and addressed to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION:

Background

A notice of proposed rulemaking was published in the **Federal Register** at 54 FR 11009 (March 16, 1989) and at 1101 *Official Gazette* 6 (April 4, 1989). No oral hearing was held and no written comments were received.

Discussion of Specific Rules

(1) Decisions of the BPAI and Requests for Reconsideration of BPAI and TTAB Decisions

Only final decisions of the BPAI and TTAB are subject to judicial review. 35 U.S.C. 141, 145; 15 U.S.C. 1071; 28 U.S.C. 1295(a)(4) (A) and (B).

Section 1.196(b) provides that if the BPAI has knowledge of any grounds, not involved in the appeal, for rejecting any appealed claim, it may include in its decision a statement to that effect. The statement then constitutes a new rejection of the claims. The previous rules permitted appellants to treat the decision as a final decision in the case and thus immediately appealable. 37 CFR 1.196(b)(3) (1988). Therefore, when an appellant proceeded under this option, arguments against the new rejection were presented for the first time to the reviewing court.

A recent decision by the U.S. Court of Appeals for the Federal Circuit rejected the Commissioner's argument that an appellant should not be permitted to contest the BPAI's new ground for rejection because it had not requested reconsideration of that ground by the BPAI. *In re Evanega*, 829 F.2d 1110, 1113, 4 USPQ 2d 1249, 1252 (Fed. Cir. 1987). *See also In re Nielson*, 816 F.2d 1567, 1570, 2 USPQ 2d 1525, 1527 (Fed. Cir. 1987). In *Evanega*, the Commissioner urged that requiring appellants to request reconsideration, where the BPAI adopts a new ground for rejection, would provide the BPAI with an opportunity to consider appellant's arguments and correct any errors while the case was still in the PTO. This conserves judicial resources, and in any event, obtains the benefit of the BPAI's view should judicial review ultimately be sought. The court held, however, that in view of PTO regulations (37 CFR 1.196(b)(3)) which "expressly provide that the board's decision, even if based on a new ground, is a final determination and thus may be appealed without seeking reconsideration," appellant could not be required to request reconsideration by the BPAI. *Id.*

The new rule changes eliminate 37 CFR 1.196(b)(3). By removing § 1.196(b)(3), appellants no longer have the option of treating a new ground of rejection as final and immediately appealable. Appellants' options are limited to requesting remand to the examiner or requesting reconsideration by the BPAI as set forth in §§ 1.196(b)(1) and 1.196(b)(2). The preamble of § 1.196(b) has been amended to specifically recite that a new ground of rejection shall not be considered a final decision for judicial review.

Appellants still may elect further prosecution before the examiner under 37 CFR 1.196(b)(1) or request reconsideration under § 1.196(b)(2). The option of § 1.196(b)(2) requires that any request for reconsideration address the new ground of rejection and specifically state the reasons why the new ground was in error. Section 1.196(b)(2) also provides that the BPAI will reconsider the new rejection and, if necessary, render a new decision. The decision on reconsideration will be deemed to incorporate the earlier decision except for any portions of the earlier decision specifically withdrawn.

Reconsideration or remand need not be requested if appellant does not contest the new ground. Appellants may seek judicial review as to claims not subject to the new ground.

Section 1.196(a) expressly provides for remands to the examiner for further consideration. The BPAI has inherent authority, as part of its role in reviewing standards of patentability applied in the PTO, to remand applications to the examiner for further consideration. *Cf.* Manual of Patent Examining Procedure (MPEP) sections 1211 and 1212. The change merely makes express that which is inherent.

The amendments also delete the portion of former § 1.196(d) which provides (1) that any decision which includes a remand shall not be a final decision for the purposes of judicial review, and (2) that upon conclusion of the proceedings on remand the BPAI may enter an order making its decision final. Those provisions have been included as new § 1.196(e). Under this paragraph, decisions pursuant to § 1.196(b) would not be final as to the claims subject to a new rejection.

The last sentence of former § 1.196(b)(1) has been deleted and placed in new § 1.196(e).

(2) Requests for Reconsideration of BPAI and TTAB Decisions

Section 1.197(b) provides that any request for reconsideration must specifically state the points believed to have been misapprehended or overlooked in the BPAI's decision. Experience has shown that many requests for reconsideration are nothing more than reargument of appellant's position on appeal. The provision, as adopted, limits requests to the points of law or fact which appellant feels were overlooked or misapprehended by the BPAI.

The amendments also clarify the exception found in the first sentence of § 1.197(b) by including specific references to the "original decision" and the "decision on reconsideration." Some confusion had been noted with respect to the meaning of the current language.

In order to simplify calculation of times for requesting reconsideration of the decisions of the boards, §§ 1.658(b), 2.129(c), and 2.144 specify a period of one month rather than the periods expressed in days. Section 1.197(a) already specified a one-month period.

(3) Extensions of Time after a Decision by the BPAI to Take Action Under Sections 1.196 and 1.197

Appellants in patent cases may no longer use fee extensions under § 1.136(a) to extend the time for making an election under § 1.196(b) or seeking reconsideration under § 1.197. Under previous rules appellants could request reconsideration of a BPAI decision up to five months after a decision or file a response to a new ground of rejection up to six months after the decision. This inordinately delayed final disposition of appeals. Section 1.136(a) provides that fee extensions are not available to file responses to a BPAI decision pursuant to §§ 1.196, 1.197 or § 1.304. One month is deemed to be ample time to submit a request for reconsideration. Note that Fed. R. Civ. P. 59 provides 10 days and Fed. R. App. P. 40 provides 14 days for similar requests. Extensions under § 1.136(b) will be available to extend the time to file a response under §§ 1.196 and 1.197. Section 1.304(a) exclusively governs extensions of time to file a notice of appeal to the U.S Court of

Appeals for the Federal Circuit or to commence a civil action. See further discussion below.

Section 1.136(a) specifically refers to § 1.136(b) for extensions of time to file responses under §§ 1.196 and 1.197 and refers to § 1.304 for extensions of time to initiate judicial review. Sections 1.196(f) and 1.197(b) correlatively reference § 1.136(b) for extensions of time.

Fee extensions are not available to extend the time for electing further prosecution before the examiner under § 1.196(b)(1). Where an appellant elects further prosecution before the examiner, fee extensions under § 1.136(a) remain available to respond to the primary examiner's Office actions.

(4) Time for Seeking Judicial Review of Decisions of the BPAI and TTAB

Under previous rules, judicial review of final decisions of the BPAI or TTAB had to be sought within sixty days of the decision or thirty days after a decision on reconsideration. However, where a decision on reconsideration was, in effect, a new decision, it was not always clear whether the time for appeal was thirty or sixty days. Sections 1.304(a) and 2.146(d)(1) provide a two-month period to appeal from either the date of the decision or the decision on a timely filed request for reconsideration.

Some problems have been noted with respect to the time for seeking judicial review in days. Miscalculations of the statutory sixty-day time period have resulted in filing untimely requests for judicial review. In order to simplify calculation of the time for seeking judicial review, §§ 1.304(a) and 2.145(d)(1) specify two months. The two-month period meets the sixty-day requirement of 35 U.S.C. 142, 145 and 146 and 15 U.S.C 1071(a)(2) and (b)(1) except for time periods which include February 28. In order to comply with the sixty-day requirement, §§ 1.304(b) and 2.145(d)(2) provide that an additional day shall be added to any two-month period for initiating judicial review which includes February 28. Appeals will always be timely if the judicial review is initiated within two months of the final decision.

Previously, the rules did not specify a time period for filing a cross-appeal or cross-action in *inter partes* cases. The absence of such a time period made it difficult for parties and their attorneys to make appropriate plans for judicial review. For example, in an interference where there has been a split judgment, one of the parties may be satisfied with the judgment but may desire to appeal the adverse judgment only if an appeal is noted by the other party. Where the appeal is filed on the last possible day, a cross-appeal is precluded. Sections 1.304(a) and 2.145(d)(1) specify that the time for filing a cross-appeal or commencing a cross-action expires (1) fourteen days after service of the notice of appeal or the summons and complaint or (2) two months after the decision to be reviewed, whichever is later.

Similarly, no provision for filing a cross-action was provided where an appellee elects to have further proceedings conducted in the district court pursuant to 35 U.S.C. 146 or 15 U.S.C. 1071(a)(1). Section 1.304(c) and 2.145(d)(3) provide that the time for filing a cross-action expires 14 days after service of the summons and complaint. The district court will determine whether any cross-action was timely filed since neither the complaint nor cross-action is filed in the PTO.

(5) Extensions of Time to Seek Judicial Review

In the past, standards for granting requests for extensions of time to take an appeal or commence a civil action varied depending upon which board was involved and upon the particular type proceeding before the board. For example, extensions relating to patent applications could be obtained by paying the appropriate fee under § 1.136(a). However, in reexamination proceedings or when judicial review was sought from a decision of the TTAB, the requester must demonstrate sufficient cause under § 1.550(c) or § 2.145(d)(1). The rules standardize the manner in which an extension of time to initiate judicial review may be obtained. The PTO has adopted a standard which is similar to the standard used in the Federal courts for granting extensions. Under the rules the Commissioner may extend the time (1) for good cause if requested before the expiration of the time provided for initiating judicial review or (2) upon a showing of excusable neglect in failing to initiate judicial review if requested after the expiration of the time period. This standard will be applicable in both trademark and patent proceedings (§§ 1.304(a) and 2.145(e)) once the "last" decision, i.e., either the decision (in circumstances where no timely reconsideration is sought) or the decision on reconsideration, of either board has been entered. In patent cases, extensions of time under §§ 1.136(b) and 1.550(c) and fee extensions under 37 CFR 1.136(a) are no longer available to extend the time for the purpose of judicial review once a decision or a decision on reconsideration has been entered. Section 1.304(a) states that the provisions of §§ 1.136 and 1.550(c) are not available to extend the time to initiate judicial review. Sections 1.136(a), 1.136(b), 1.191(d), 1.550(c), 1.645(a) and (b) refer to § 1.304 for extensions of time for seeking judicial review after a decision has been entered. Section 1.645(a) has been amended by (1) adding the introductory phrase "Except to extend the time for filing a notice of appeal to the U.S. Court of Appeals for the Federal Circuit or for commencing a civil action," to the first sentence and (2) deleting the references to filing a notice of appeal or commencing a civil action in the second sentence.

In view of the amendments to §§ 1.197 and 1.304, relating to extensions of time to seek reconsideration or initiate judicial review, § 1.191(d) does not refer to §§ 1.196 and 1.197.

(6) Miscellaneous Amendments

In the past, appellants could use fee extensions to delay the time for requesting an oral hearing at the BPAI. This delayed final disposition of the appeal and causes administrative problems and duplication of effort due to the transfer of the appeal to the hearing docket. Section 1.191(d) no longer refers to § 1.194. Fee extensions are no longer available to extend the time for requesting an oral hearing. Extensions under § 1.136(b) are available to extend the time to request an oral hearing.

Section 1.191(b) has been rewritten as one sentence without any change in substance.

Some confusion has resulted as to who has jurisdiction over a patent application after a notice of appeal to the BPAI has been filed. Problems arose, for example, as to the appropriate PTO official to decide certain petitions and other matters after an appeal has been filed. MPEP section 1210 indicates that jurisdiction over the application normally passes at one of five possible times listed therein. Section 1.191 includes a new section (e) which provides that jurisdiction transfer to the BPAI when the application or reexamination file including all briefs and examiner's answers is transmitted to the BPAI. Thus, jurisdiction transfers to the BPAI when all written submissions by the applicant and the examiner have been entered and the application papers have been forwarded to the BPAI.

New § 1.191(e) also includes a provision that the Commissioner, prior to the time the BPAI renders its decision, may *sua sponte* order that an application be remanded to the examiner for further consideration. This provision merely makes explicit the inherent authority of the Commissioner to direct and supervise the examination of patent applications.

Under previous rules there was some confusion as to when "termination of proceedings" occurs. Section 1.197(c) provides that proceedings are "terminated" when the Federal Circuit's mandate is received by the PTO or after the time for appeal from the judgment of the district court in a civil action under 35 U.S.C. 145 has expired. The language "In such cases," in the second sentence of former § 1.197(c) has been eliminated since it was superfluous and may have been confusing.

The rules delete the phrase "that he or she elects" and substitutes "electing" therefor in §§ 1.304(c) and 2.145(c)(3), as amended. The amendment merely changes wording without any change in substance.

Section 1.196(b) changes the verb "make" to "makes" to conform the verb to the singular subject of the sentence.

Sections 1.301, 1.303, 2.145(a)(2) and 2.145(c)(3) no longer refer to transmittal of the certified list and certified copies of the notice of election to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141 or 15 U.S.C. 1071(a)(1). These procedures are required by applicable statutes or Court Rules and are unnecessary in the PTO's regulations.

Sections 1.304(a), 1.304(c), 2.145(c)(3) and 2.145(d)(1) include a statement that the certificate of mailing provisions of § 1.8 are *not* applicable. No substantive change is involved since the inapplicability of § 1.8 is already stated in § 1.8(a)(2)(viii) and (ix).

Sections 1.304(b) and 2.145(d)(2) recite "Federal holiday in the District of Columbia" rather than "legal holiday." These changes merely conform the language of these sections with the language of 35 U.S.C. 21(b) and 37 CFR 1.7.

Section 2.145(c)(2) and (3) include changes in wording without any change in substance.

Other Considerations

These rules will not have a significant impact on the quality of the human environment or the conservation of energy resources.

The rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96-354), Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 350 et seq.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration that the rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96-354). The rule change requiring appellants to request reconsideration under the specific circumstances set forth is not expected to result in an increase of fees charged by attorneys and agents to entities, including small entities, since the rule change is intended to eliminate erroneous grounds for rejection prior to appeal and in some instances is expected to eliminate the need for appeal.

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect to the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The PTO has also determined that this notice has no Federalism implications affecting the relationship between the national government and the states as outlined in Executive Order 12612.

The rule change will not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., since no record keeping or reporting requirements within the coverage of the Act are placed upon the public.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

For the reasons given in the preamble and pursuant to the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, Parts 1 and 2 of Title 37 of the Code of Federal Regulations are amended as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.136 is revised to read as follows:

§ 1.136 Filing of timely responses with petition and fee for extension of time and extensions of time for cause.

(a) If an applicant is required to respond within a nonstatutory or shortened statutory time period, applicant may respond up to four months after the time period set if a petition for an extension of time and the fee set in § 1.17 are filed prior to or with the response, unless (1) applicant is notified otherwise in an Office action, (2) the application is involved in an interference declared pursuant to § 1.611 or (3) the response is to a decision by the Board of Patent Appeals and Interferences pursuant to §§ 1.196, 1.197 or 1.304. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for purposes of determining the period of extension and the corresponding amount of the fee. The expiration of the time period is determined by the amount of the fee paid. In no case may an applicant respond later than the maximum time period set by statute, or be granted an extension of time under paragraph (b) of this section when the provisions of this paragraph are available. See § 1.136(b) for extensions of time relating to proceedings pursuant to § 1.196 or § 1.197, § 1.304 for extension of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action, § 1.645 for extension of time in interference proceedings and § 1.550(c) for extension of time in reexamination proceedings.

(b) When a response with petition and fee for extension of time cannot be filed pursuant to paragraph (a) of this section, the time for response will be extended only for sufficient cause, and for a reasonable time specified. Any request for such extension must be filed on or before the day on which action by the applicant is due, but in no case will the mere filing of the request affect any extension. In no case can any extension carry the date on which response to an Office action is due beyond the maximum time period set by statute or be granted when the provisions of paragraph (a) of this section are available. See § 1.304 for extension of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action, § 1.645 for extension of time in interference proceedings and § 1.550(c) for extension of time in reexamination proceedings.

3. Section 1.191 is amended by revising paragraphs (b) and (d) and adding paragraph (e) to read as follows:

§ 1.191 Appeal to Board of Patent Appeals and Interferences.

* * * * *

(b) The appeal in an application or reexamination proceeding must identify the rejected claim or claims appealed, and must be signed by the applicant, patent owner or duly authorized attorney or agent.

* * * * *

(d) The time periods set forth in §§ 1.191 through 1.193 are subject to the provisions of § 1.136 for patent applications or § 1.550(c) for reexamination proceedings. See § 1.304(a) for extensions of time for filing a notice of appeal to the U.S. Court of Appeals for the Federal Circuit or for commencing a civil action.

(e) Jurisdiction over the application or patent under reexamination passes to the Board of Patent Appeals and Interferences upon transmittal of the file, including all briefs and examiner's answers, to the Board. Prior to the entry of a decision on the appeal, the Commissioner may sua sponte order the application remanded to the examiner.

4. Section 1.196 is amended by revising paragraphs (a), (b) and (d) and adding new paragraphs (e) and (f) to read as follows:

§ 1.196 Decision by the Board of Patent Appeals and Interferences.

(a) The Board of Patent Appeals and Interferences, in its decision, may affirm or reverse the decision of the examiner in whole or in part on the grounds and on the claims specified by the examiner or remand the application to the examiner for further consideration. The affirmance of the rejection of a claim on any of the grounds specified constitutes a general affirmance of the decision of the examiner on that claim, except as to any ground specifically reversed.

(b) Should the Board of Patent Appeals and Interferences have knowledge of any grounds not involved in the appeal for rejecting any appealed claim, it may include in the decision a statement to that effect with its reasons for so holding, which statement shall constitute a new rejection of the claims. A new rejection shall not be considered final for the purpose of judicial review. When the Board of Patent Appeals and Interferences makes a new rejection of an appealed claim, the appellant may exercise either of the following two options with respect to the new ground:

(1) The appellant may submit an appropriate amendment of the claims so rejected or a showing of facts, or both, and have the matter reconsidered by the examiner in which event the application will be remanded to the examiner. The statement shall be binding upon the examiner unless an amendment or showing of facts not previously of record be made which, in the opinion of the examiner, overcomes the new ground for rejection stated in the decision. Should the examiner again reject the application the applicant may again appeal to the Board of Patent Appeals and Interferences.

(2) The appellant may have the case reconsidered under § 1.197(b) by the Board of Patent Appeals and Interferences upon the same record. The request for reconsideration shall address the new ground for rejection and state with particularity the points believed to have been misapprehended or overlooked in rendering the decision and also state all other grounds upon which reconsideration is sought. Where request for such reconsideration is made the Board of Patent Appeals and Interferences shall reconsider the new ground for rejection and, if necessary, render a new decision which shall include all grounds upon which a patent is refused. The decision on reconsideration is deemed to incorporate the earlier decision, except for those portions specifically withdrawn on reconsideration, and is final for the purpose of judicial review.

* * * * *

(d) Although the Board of Patent Appeals and Interferences normally will confine its decision to a review of rejections made by the examiner, should it have knowledge of any grounds for rejecting any allowed claim it may include in its decision a recommended rejection of the claim and remand the case to the examiner. In such event, the Board shall set a period, not less than one month, within which the appellant may submit to the examiner an appropriate amendment, a showing of facts or reasons, or both, in order to avoid the grounds set forth in the recommendation of the Board of Patent Appeals and Interferences. The examiner shall be bound by the recommendation and shall enter and maintain the recommended rejection unless an amendment or showing of facts not previously of record is filed which, in the opinion of the examiner, overcomes the recommended rejection. Should the examiner make the recommended rejection final the applicant may again appeal to the Board of Patent Appeals and Interferences.

(e) Whenever a decision of the Board of Patent Appeals and Interferences includes or allows a remand, that decision shall not be considered a final decision. When appropriate, upon conclusion of proceedings on remand before the examiner, the Board of Patent Appeals and Interferences may enter an order otherwise making its decision final.

(f) See § 1.136(b) for extensions of time to take action under this section.

5. Section 1.197 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1.197 Action following decision.

* * * * *

(b) A single request for reconsideration or modification of the decision may be made if filed within one month from the date of the original decision, unless the original decision is so modified by the decision on reconsideration as to become, in effect, a new decision, and the Board of Patent Appeals and Interferences so states. The request for reconsideration shall state with particularity the points believed to have been misapprehended or overlooked in rendering the decision and also state all other grounds upon which reconsideration is sought. See 37 CFR 1.136(b) for extensions of time for seeking reconsideration.

(c) Termination of proceedings. Proceedings are considered terminated by the dismissal of an appeal or the failure to timely file an appeal to the court or a civil action (§ 1.304) except: (1) Where claims stand allowed in an application or (2) where the nature of the decision requires further action by the examiner. The date of termination of proceedings is the date on which the appeal is dismissed or the date on which the time for appeal to the court or review by civil action (§ 1.304) expires. If an appeal to the court or a civil action has been filed, proceedings are considered terminated when the appeal or civil action is terminated. An appeal to the U.S. Court of Appeals for the Federal Circuit is terminated when the mandate is received by the Office. A civil action is terminated when the time to appeal the judgment expires.

6. Section 1.301 is revised to read as follows:

§ 1.301 Appeal to U.S. Court of Appeals for the Federal Circuit.

Any applicant or any owner of a patent involved in a reexamination proceeding dissatisfied with the decision of the Board of Patent Appeals and Interferences, and any party to an interference dissatisfied with the decision of the Board of Patent Appeals and Interferences, may appeal to the U.S. Court of Appeals for the Federal Circuit. The appellant must take the following steps in such an appeal: (a) In the Patent and Trademark Office file a written notice of appeal directed to the Commissioner (see §§ 1.302 and 1.304); and (b) in the Court, file a copy of the notice of appeal and pay the fee for appeal, as provided by the rules of the Court.

7. Section 1.303 is amended by revising paragraph (c) to read as follows:

§ 1.303 Civil action under 35 U.S.C. 145, 146, 306.

* * * * *

(c) If any adverse party to an appeal taken to the U.S. Court of Appeals for the Federal Circuit by a defeated party in an interference proceeding files notice with the Commissioner within twenty days after the filing of the defeated party's notice of appeal to the court (§ 1.302), that he or she elects to have all further proceedings conducted as provided in 35 U.S.C. 146. The notice of election must be served as provided in § 1.646.

8. Section 1.304 is revised to read as follows:

§ 1.304 Time for appeal or civil action.

(a) The time for filing the notice of appeal to the U.S. Court of Appeals for the Federal Circuit (§ 1.302) or for commencing a civil action (§ 1.303) is two months from the date of the decision of the Board of Patent Appeals and Interferences. If a request for reconsideration or modification of the decision is filed within the time provided under § 1.197(b) or § 1.658, the time for filing an appeal or commencing a civil action shall expire two months after action on the request. In interferences, the time for filing a cross-appeal or cross-action expires (1) 14 days after service of the notice of appeal or the summons and complaint or (2) two months after the date of decision of the Board of Patent Appeals and Interferences, whichever is later. The time periods set forth in this section are not subject to the provisions of §§ 1.136, 1.550(c) or § 1.645 (a) or (b). The Commissioner may extend the time for filing an appeal or commencing a civil action (3) for good cause shown if requested in writing before the expiration of the period for filing an appeal or commencing a civil action, or (4) upon written request after the expiration of the period for filing an appeal or commencing a civil action upon a showing that the failure to act was the result of excusable neglect. The certificate of mailing practice of § 1.8 is not available for filing a notice of appeal or cross-appeal. See § 1.8(a)(2)(ix).

(b) The times specified in this section in days are calendar days. The times specified herein in months are calendar months except that one day shall be added to any two-month period which includes February 28. If the last day of the time specified for appeal or commencing a civil action falls on a Saturday, Sunday or Federal holiday in the District of Columbia, the time is extended to the next day which is neither a Saturday, Sunday nor a Federal holiday.

(c) If a defeated party to an interference has taken an appeal to the U.S. Court of Appeals for the Federal Circuit and an adverse party has filed notice under 35 U.S.C. 141 electing to have all further proceedings conducted under 35 U.S.C. 146 (§ 1.303(c)), the time for filing a civil action thereafter is specified in 35 U.S.C. 141. The time for filing a cross-action expires 14 days after service of the summons and complaint. The certificate of mailing practice of § 1.8 is not available for filing a notice of appeal or cross-appeal. See § 1.8(a)(2)(viii).

9. Section 1.550 is amended by revising paragraph (c) to read as follows:

§ 1.550 Conduct of reexamination proceedings.

* * * * *

(c) The time for taking any action by a patent owner in a reexamination proceeding will be extended only for sufficient cause, and for a reasonable time specified. Any request for such extension must be filed on or before the day on which action by the patent owner is due, but in no case will the mere filing of the request effect any extension. See § 1.304(a) for extensions of time for filing a notice of appeal to the U.S. Court of Appeals for the Federal Circuit or for commencing a civil action.

* * * * *

10. Section 1.645 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.645 Extension of time, late papers, stay of proceedings.

(a) Except to extend the time for filing a notice of appeal to the U.S. Court of Appeals for the Federal Circuit or for commencing a civil action, a party may file a motion (§ 1.635) seeking an extension of time to take action in an interference. See § 1.304(a) for extensions of time for filing a notice of appeal to the U.S. Court of Appeals for the Federal Circuit or for commencing a civil action. The motion shall be filed within sufficient time to actually reach the examiner-in-chief before expiration of the time for taking action. A moving party should not assume that the motion will be granted even if there is no objection by any other party. The motion will be denied unless the moving party shows good cause why an extension should be granted. The press of other business arising after an examiner-in-chief sets a time for taking action will not normally constitute good cause. A motion seeking additional time to take testimony because a party has not been able to procure the testimony of a witness shall set forth the name of the witness, any steps taken to procure the testimony of the witness, the dates on which the steps were taken, and the facts expected to be proven through the witness.

(b) Any paper belatedly filed, will not be considered except upon motion (§ 1.635) which shows sufficient cause why the paper was not timely filed. See § 1.304(a) for exclusive procedures relating to belated filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit or belated commencement of a civil action.

* * * * *

11. Section 1.658 is amended by revising paragraph (b) to read as follows:

§ 1.658 Final decision.

* * * * *

(b) Any request for reconsideration of a decision under paragraph (a) of this section shall be filed within one month after the date of the decision. The request for reconsideration shall specify with particularity the points believed to have been misapprehended or overlooked in rendering the decision. Any reply to a request for reconsideration shall be filed within 14 days of the date of service of the request for reconsideration. Where reasonably possible, service of the request for reconsideration shall be such that delivery is accomplished by hand or "Express Mail." The Board shall enter a decision on the request for reconsideration. If the Board shall be of the opinion that the decision on the request for reconsideration significantly modifies its original decision under paragraph (a) of this section, the Board may designate the decision on the request for reconsideration as a new decision.

* * * * *

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

12. The authority citation for 37 CFR Part 2 continues to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

13. Section 2.129 is amended by revising paragraph (c) to read as follows:

§ 2.129 Oral argument; reconsideration.

* * * * *

(c) Any request for rehearing or reconsideration or modification of a decision issued after final hearing must be filed within one month from the date of the decision. A brief in response must be filed within fifteen days from the date of service of the request. The times specified may be extended by order of the Trademark Trial and Appeal Board on motion for good cause.

14. Section 2.144 is revised to read as follows:

§ 2.144 Reconsideration of decision on ex parte appeal.

Any request for rehearing or reconsideration, or modification of the decision, must be filed within one month from the date of the decision. Such time may be extended by the Trademark Trial and Appeal Board upon a showing of sufficient cause.

15. Section 2.145 is amended by revising paragraphs (a), (c)(2), (c)(3), (d)(1), (d)(2), and (d)(3) and adding new paragraph (e) to read as follows:

§ 2.145 Appeal to court and civil action.

(a) Appeal to U.S. Court of Appeals for the Federal Circuit. An applicant for registration, or any party to an interference, opposition, or cancellation proceeding or any party to an application to register as a concurrent user, hereinafter referred to as inter partes proceedings, who is dissatisfied with the decision of the Trademark Trial and Appeal Board and any registrant who has filed an affidavit or declaration under section 8 of the Act or who has filed an application for renewal and is dissatisfied with the decision of the Commissioner (§§ 2.165, 2.184), may appeal to the U.S. Court of Appeals for the Federal Circuit. The appellant must take the following steps in such an appeal:

(1) In the Patent and Trademark Office give written notice of appeal to the Commissioner (see paragraphs (b) and (d) of this section);

(2) In the court, file a copy of the notice of appeal and pay the fee for appeal, as provided by the rules of the Court.

* * * * *

(c) * * *

(2) Any applicant or registrant in an ex parte case who takes an appeal to the U.S. Court of Appeals for the Federal Circuit waives any right to proceed under section 21(b) of the Act.

(3) Any adverse party to an appeal taken to the U.S. Court of Appeals for the Federal Circuit by a defeated party in an inter partes proceeding may file a notice with the Commissioner within twenty days after the filing of the defeated party's notice of appeal to the court (paragraph (b) of this section), electing to have all further proceedings conducted as provided in section 21(b) of the Act. The notice of election must be served as provided in § 2.119. The certificate of mailing practice of § 1.8 is not available for filing a notice of election. See § 1.8(a)(2)(viii).

(d) Time for appeal or civil action. (1) The time for filing the notice of appeal to the U.S. Court of Appeals for the Federal Circuit (paragraph (b) of this section), or for commencing a civil action (paragraph (c) of this section), is two months from the date of the decision of the Trademark Trial and Appeal Board or the Commissioner, as the case may be. If a request for rehearing or reconsideration or modification of the decision is filed within the time specified in §§ 2.127(b), 2.129(c) or § 2.144, or within any extension of time granted thereunder, the time for filing an appeal or commencing a civil action shall expire two months after action on the request. In inter partes cases, the time for filing a cross-action or a notice of a cross-appeal expires (i) 14 days after service of the notice of appeal or the summons and complaint or (ii) two months from the date of the decision of the Trademark Trial and Appeal Board or the Commissioner, whichever is later. The certificate of mailing practice of § 1.8 is not available for filing a notice of appeal or cross-appeal. See § 1.8(a)(2)(ix).

(2) The times specified in this section in days are calendar days. The times specified herein in months are calendar months except that one day shall be added to any two-month period which includes February 28. If the last day of time specified for an appeal, or commencing a civil action falls on a Saturday, Sunday or Federal holiday in the District of Columbia, the time is extended to the next day which is neither a Saturday, Sunday nor a Federal holiday.

(3) If a party to an inter partes proceeding has taken an appeal to the U.S. Court of Appeals for the Federal Circuit and an adverse party has filed notice under section 21(a)(1) of the Act electing to have all further proceedings conducted under section 21(b) of the Act, the time for filing a civil action thereafter is specified in section 21(a)(1) of the Act. The time for filing a cross-action expires 14 days after service of the summons and complaint.

(e) Extensions of time to commence judicial review. The Commissioner may extend the time for filing an appeal or commencing a civil action (1) for good cause shown if requested in writing before the expiration of the period for filing an appeal or commencing a civil action, or (2) upon written request after the expiration of the period for filing an appeal or commencing a civil action upon a showing that the failure to act was the result of excusable neglect.

Date: June 21, 1989.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 89-16390 Filed 7-12-89; 8:45 am]

BILLING CODE 3510-16-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3613-7]

Approval and Promulgation of State Implementation Plans; South Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of final rule.

SUMMARY: The EPA gives notice that the direct final rule approving the Committal State Implementation Plan (SIP) for the Rapid City, South Dakota area, submitted by the State on July 12, 1988, has been withdrawn. The notice approving the Committal SIP was published on May 15, 1989 (54 FR 20845). This approval is being withdrawn because notice was received by EPA that a party wished to submit adverse or critical comments. EPA will propose approval of the Committal SIP in another **Federal Register** notice.

Therefore, the amendment to 40 CFR Part 52 (adding a new § 52.2181) which appeared at 54 FR 20845, May 15, 1989, which was to become effective on July 14, 1989, is withdrawn.

EFFECTIVE DATE: This action will be effective on July 13, 1989.

FOR FURTHER INFORMATION CONTACT: Jeff Houk, Air Programs Branch, Environmental Protection Agency, One Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202-2405, (303) 293-1759, (FTS) 564-1759.

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter, Sulfur oxides.

Authority: 42 U.S.C. 7401-7642.

Date: June 30, 1989.

Kerrigan G. Clough,

Acting Regional Administrator.

[FR Doc. 89-16410 Filed 7-12-89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[FRL-3614-1]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: In a May 31, 1988, (53 FR 19806), notice of proposed rulemaking, USEPA proposed to disapprove a site-specific revision to the Wisconsin State Implementation Plan (SIP) for ozone. This revision would constitute a permanent relaxation from Wisconsin's reasonably available control technology (RACT) requirements for volatile organic compound (VOC) emissions from a miscellaneous metal parts and products dip coating line at the Gehl Company (Gehl). This facility is located in West Bend, Washington County, Wisconsin.

In today's Final Rulemaking, USEPA is disapproving this SIP revision because the State has not demonstrated that the revision will not jeopardize attainment or maintenance of the ozone standard in Washington County and in nonattainment areas in Southeastern Wisconsin.

EFFECTIVE DATE: This final rulemaking becomes effective August 14, 1989.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (Please telephone Uylaine E. McMahan, at (312) 886-6031, before visiting the Region V office.) U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6031.

SUPPLEMENTARY INFORMATION:

Background

On November 8, 1986, the Wisconsin Department of Natural Resources (WDNR) submitted as a proposed revision to the State's ozone SIP a site-specific RACT determination for a miscellaneous metal parts and products dip coating line. This line is located at the Gehl facility in Washington County, Wisconsin.

Washington County, Wisconsin, is designated attainment for ozone under section 107 of the Act, 42 U.S.C. 7407. See 40 CFR 81.350. However, recent air quality data for this County show exceedances and a violation of the ozone standard. Further, Wisconsin took credit for the RACT-level VOC emission limitations that it now seeks to relax in its demonstration of attainment for the SIP for the designated ozone nonattainment areas in Southeastern Wisconsin that the State submitted to satisfy Part D of the Act, 42 U.S.C. 7501 *et seq.* USEPA relied on that demonstration in approving the State's Part D plan for those areas. In a May 26, 1988, letter USEPA notified the Governor of Wisconsin that the SIP for Washington County, inter alia, was substantially inadequate to achieve the ozone standard.

Under the existing federally approved SIP for Wisconsin, Gehl's metal parts and products dip coating line is subject to the requirements contained in Natural Resources (NR) section 154.13(4)(m)3, Wisconsin Administrative Code, which limits the VOC content of the coating used to not more than 4.8 pounds per gallon of coating, excluding water, by December 31, 1982, and 3.5 pounds per gallon of coating, excluding water, by December 31, 1985. USEPA approved these rules on January 11, 1980 (45 FR 2319), and June 21, 1982 (47 FR 26822).

WDNR reported that Gehl's spray booths are meeting the 3.5 pounds of VOC per gallon of coating, excluding water, limit. An air-dried coating is applied in the dip tank which presently meets the interim limitation of 4.8 pounds of VOC per gallon of coating, excluding water, but does not meet the final limitation of 3.5 pounds of VOC per gallon of coating, excluding water. Gehl has maintained that it is not technically and economically feasible to meet the final limitation for the dip tank. It has requested an alternative limitation for the dip tank coating of 4.8 pounds of VOC per gallon of coating, excluding water.

WDNR's submittal discusses the technical and economic feasibility of six types of compliant coating, the economic feasibility of add-on control, and the effect of the relaxation on attainment and maintenance of the ozone national ambient air quality standards (NAAQS). WDNR's analysis is discussed in USEPA's technical support document dated March 30, 1987. This document is available in the Region V Office noted above.

In a May 31, 1988, **Federal Register** (53 FR 19806) notice, USEPA proposed to disapprove this revision to Wisconsin's ozone SIP, primarily because the State has not demonstrated that the revision will not jeopardize attainment or maintenance of the ozone standard in Washington County and in the non-attainment areas in Southeastern Wisconsin.

Comments on this notice of proposed rulemaking were received from Gehl and from the WDNR. These comments and USEPA's response are provided below.

Gehl's June 27, 1988, Comments

Comment 1. The Increase In VOC Emissions Above RACT Is Negligible. If USEPA approved the variance, the "additional emissions" resulting from the variance would be 4.32 tons of VOC per year (TPY). (See, WDNR Memo of August 14, 1987.) This amount is negligible by any measure.

The WDNR's most recent Reasonable Further Progress (RFP) Report for the year 1986, issued January 1988, indicates that 61,147 TPY of VOCs were emitted in the Southeast Wisconsin Ozone nonattainment area in the year 1986. The 4.32 TPY excess above RACT (if transfer efficiency of Gehl's dip tank is not considered) proposed by Gehl would be 0.007 percent of the total VOCs emitted. Similarly, for 1987, non-RACT stationary sources reported 3,947 tons.

USEPA's Response. USEPA does not consider any increase in VOC emissions to be "negligible". The same argument could be made for the majority of individual sources in the 61,147 TPY inventory; and, thus, if relaxations were approved on this basis, significant reductions in the Southeastern Wisconsin ozone levels would not occur.

Comment 2. Granting the Revision Results in Fewer, Not Greater, VOC Emissions. The only alternative to using 4.8 paint (pounds of VOC per gallon of coating, excluding water) in the dip tank, which would allow Gehl to continue operations in West Bend, is to increase its spray booth operations, because lower VOC paint cannot be used in dip tank operations. Tests at the Gehl Company, witnessed by the WDNR, showed that the spraying process has a transfer efficiency of 21.6 percent when using 3.5 paint (pounds of VOC per gallon of coating, excluding water). The transfer efficiency for the dip tank, however, is 87.6 percent with 4.8 paint.

The result of the lower transfer efficiency for spraying is that increasing spraying with 3.5 paints would actually

result in increased VOC emissions of 11.0 TPY. Since increased spraying with 3.5 paint is allowable, denying the variance would be counterproductive.

USEPA's Response. Because USEPA generally does not place restrictions on production in approving VOC RACT limitations, an increase in the allowable emission rate (from 3.5 pounds of VOC per gallon of coating, excluding water to 4.8 pounds of VOC per gallon coating, excluding water) represents an increase in allowable emissions. Obviously, in such a situation it is possible for actual emissions to increase, based on the actual amount of coating used. Although the commentor states that granting the revision will result in fewer emissions, this has not been demonstrated to be the case. First, Gehl has provided no support for its claim that the transfer efficiency of its dip tank is 87.6 percent. In addition, it has not been demonstrated that switching to spray painting is the only feasible alternative to using paint in the dip tank with a VOC content of 4.8 pounds of VOC per gallon of coating, excluding water.

Comment 3. USEPA's Concern that Granting the Variance May Impact Upon the Timely Attainment of the SIP is Totally Unfounded.

The stated basis for denying the SIP revision was that the State had failed to show that the SIP for Washington County and nonattainment areas will still assure timely attainment and maintenance, despite the relaxation requested. In the USEPA's technical support document of March 30, 1987, the USEPA noted:

> For this reason, the State must demonstrate that any SIP relaxation in Washington County, along with the ozone precursor emissions from the other counties in the demonstration areas, does not contribute significantly to the downwind ozone standard violation in Southeastern Wisconsin. WDNR could do this by updating the growth margin contained in the 1982 ozone SIP and showing that the emissions from the dip tank above the SIP-allowable, can be offset using the updated growth margin.

As noted above, the "excess emission" resulting from the variance is a mere 4.32 TPY. Yet, at the same time, the RFP report for 1986 demonstrates that Wisconsin is substantially ahead of its ozone plan. In fact, the report indicates that Wisconsin is 2,668 tons ahead of its target levels for 1986 (the last year for which data is available). It is totally inconceivable that, given the progress made to date, the additional 4.32 TPY will have any impact upon the State's ability to remain on or ahead of its SIP target for ozone.

USEPA's Response. The March 30, 1987, technical support document provided an evaluation of one possible means of demonstrating that the revision will not jeopardize attainment or maintenance of the ozone standard. On May 26, 1988, USEPA Notified the Governor of Wisconsin that the SIP for this area was substantially inadequate to achieve the ozone standard. Therefore, a demonstration based on the growth margin contained in Wisconsin's 1982 plan is no longer adequate.

Comment 4. Gehl has Demonstrated Compliance with the Terms of the Proposed Variance to date. Under the terms of the proposed variance, Gehl would be only allowed to utilize the dip tank, provided that VOC emissions not exceed 4.8 pounds per gallon; and the total emissions from the facility were limited to 12.88 TPY. Thus far, Gehl has remained in compliance with this requirement.

USEPA's Response. The fact that Gehl is in compliance with the terms of the variance has no bearing on whether the revision can be approved.

Comment 5. Other Alternatives Remain Technically and Economically Unfeasible. In its March 30, 1987, technical support document, the USEPA questioned the technical and economic feasibility of alternatives. The WDNR and Gehl responded with additional information, copies of which were forwarded to USEPA on October 15, 1987. Given the statements made in USEPA's May 31, 1988, proposed decision, we understand the disapproval was not based upon a failure to show technical and economic infeasibility. Nevertheless, Gehl Company wishes to assure the USEPA that in fact, other options remain technically and economically infeasible.

USEPA's Response. USEPA does not agree that other alternatives are technically or economically infeasible (as discussed in the March 30, 1987, technical support document). However, the proposed disapproval was not based on failure to make such a demonstration, because RACT regulations were not required by USEPA in Washington County as a part of Wisconsin's 1979/1982 Milwaukee ozone SIP. Therefore, the only demonstration required is that the revision will not jeopardize attainment or maintenance of the ozone standard.

II. WDNR's June 28, 1988, Comments

Comment 1. Emissions from painting operations at the Gehl Company were included in the 1980 base year for Wisconsin's 1982 SIP revision. The SIP projected that at RACT in 1987 (assuming 1980 annual throughput), the dip tank emissions would be reduced to 9.3 tons; and the paint reducer solvent would be reduced to 2.99 tons. The SIP also included a 10 percent growth accommodation between 1980 and 1987. Thus, if allocated on a per source basis, the Gehl 1987 dip tank and reducer solvent emissions would be $(9.3+2.99\times1.1)$ or 13.52 TPY. Since the variance limits these emissions to 12.8 tons, the variance limits are, in fact, less than the SIP incorporated demonstration of attainment limit.

USEPA's Response. Wisconsin's comment that the variance emission limit, 12.8 tons of VOC per year from the dip tank and reducer solvent emissions, is below the SIP's projected with-growth emission rate, 13.52 tons of VOC per year, is misleading. Wisconsin has been using the assumed 10 percent source growth to accommodate other new source growth. If the assumed growth is allocated to Gehl Company, then double growth (Gehl Company and unspecified new sources) may be allowed.

Comment 2. The FY 1986 RFP report which Wisconsin submitted to USEPA on December 23, 1987, showed that Wisconsin is ahead of the schedule predicted in the 1982 plan in reducing ozone precursor emissions.

USEPA's Response. Although Wisconsin is technically "ahead" of the projected emission reduction on the RFP curve, monitored 1987 and 1988 ozone concentrations indicate that adequate progress towards ozone attainment is not being made. USEPA has issued a post-1987 SIP call. On May 26, 1988, Valdas V. Adamkus of the USEPA notified Governor Tommy G. Thompson that the Wisconsin SIP is substantially inadequate to achieve the NAAQS for ozone in Kenosha County, Kewaunee County, Manitowoc County, Ozaukee County, Racine County, Sheboygan County, Walworth County, Washington County, and Waukesha County.

Comment 3. WDNR fails to see how USEPA can conclude that excess VOC emissions of 4.32 TPY might jeopardize attainment or maintenance of the ozone standard.

USEPA's Response. In light of 1987 and 1988 monitored ozone concentrations in this area, USEPA will not accept any de minimis impact arguments, particularly when new source growth and other SIP variances have been allowed under Wisconsin's SIP.

Comment 4. Sources of this size are not even required to apply RACT controls in many areas of the Nation.

USEPA's Response. Wisconsin chose to require RACT for sources of this size in Washington County as one element in its demonstration of attainment of the ozone standard in Southeastern Wisconsin.

Comment 5. The Gehl Company is located in West Bend. For this facility to influence the Slinger, Horicon and Fond du Lac monitors, the winds must be from 50 degrees northeast, 95 degrees east, and 150 degrees southeast, respectively. A summary of the ozone data measured at these three stations and concurrent wind observations show that only the Fond du Lac monitor would appear to be potentially influenced by VOC emissions from the Gehl Company.

USEPA's Response. The State of Wisconsin is incorrectly concentrating on impacts at the Slinger, Horicon and Fond du Lac monitoring sites, while ignoring other monitoring sites, as well as other nonmonitored locations. As noted in Wisconsin's 1982 ozone SIP submission, Gehl Company and other Washington County emissions (as well as those from the rest of the Milwaukee demonstration area) can affect air quality in areas with currently monitored ozone standard violations, such as Ozaukee County. The State's conclusions in its comments would not be the same if the air quality from Ozaukee, Milwaukee, Manitowoc, Sheboygan, Kewaunee and other downwind Counties were considered.

USEPA is disapproving this SIP revision because the State has not demonstrated that the VOC emissions from Gehl will not jeopardize attainment or maintenance of the ozone standard in Washington County or other nonattainment areas in Wisconsin.

Miscellaneous

Under section 307(b)(1) of the Act, 42 U.S.C. 7607, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 11, 1989. This action may not be challenged later in the proceedings to enforce its requirements. (See 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbon, Ozone, Carbon monoxide, Intergovernmental offices.

Authority: 42 U.S.C. 7401–7642.

Date: June 28, 1989.

Valdas V. Adamkus,

Regional Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart YY—Wisconsin

Title 40 of Code of the Federal Regulations, Chapter 1, Part 52, is amended as follow:

1. The authority citation for Part 52 continues to reads as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2585 is added to read as follows:

§ 52.2585 Control strategy: Ozone.

(a) Disapproval—On November 6, 1986, the Wisconsin Department of Natural Resources submitted as a proposed revision to the State's ozone State Implementation Plan a site-specific reasonably available control technology determination for a miscellaneous metal parts and products dip coating line. This line is located at the Gehl facility in Washington County, Wisconsin. In a May 31, 1988 (53 FR 19806), notice of proposed rulemaking, United States Environmental Protection Agency proposed to disapprove this site-specific revision to the Wisconsin State Implementation Plan for ozone.

[FR Doc. 89–16406 Filed 7–12–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 271

[FRL–3615–1]

Indiana: Final Authorization of State; Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Indiana has applied for final authorization of a revision to its hazardous waste program under the Resource Conservation and Recovery Act of 1976 as amended (hereinafter "RCRA" or the "ACT"). The Environmental Protection Agency (EPA) has reviewed Indiana's application and has reached a decision, subject to public review and comment, that Indiana's hazardous waste program revision satisfies all the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to Indiana to operate its expanded program, subject to authority retained by EPA under the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter "HSWA").

DATES: Final authorization for Indiana's application shall be effective September 11, 1989, unless EPA publishes a prior **Federal Register** action withdrawing this final rule. All comments on Indiana's Final authorization must be received by 4:30 p.m. on August 14, 1989.

ADDRESSES: Copies of Indiana's program revision application are available from 8:30 a.m., to 4:30 p.m., at the following addresses for inspection and copying: Indiana Department of Environmental Management, Hazardous Waste Management Branch, 105 South Meridian Street, Indianapolis, Indiana 46206. Contact: Michael Dalton, (317) 232–8884; U.S. EPA Headquarters Library, PM211A, 401 M Street, SW., Washington, DC 20460, Phone: (202) 382–5926; U.S. EPA Region V, Waste Management Division, Office of RCRA, 230 South Dearborn Street, Chicago, Illinois 60604, Contact: George Woods (312) 886–6134. Written comments should be sent to George Woods, Indiana Regulatory Specialist, U.S. EPA Region V, Waste Management Division, Office of RCRA, 230 South Dearborn Street, 5HR–JCK–13, Chicago, Illinois 60604, (312) 886–6134 [FTS 8–886–6134].

FOR FURTHER INFORMATION CONTACT: George Woods, Indiana Regulatory Specialist, U.S. Environmental Protection Agency, Region V, Waste Management Division, Office of RCRA, Program Management Branch, Regulatory Development Section, 5HR–JCK–13, 230 South Dearborn, Chicago, Illinois 60604, (312) 886–6134 [FTS 886–6134].

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is at least equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 allow States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. A State exercising this latter option receives "interim authorization" for the HSWA requirements under Section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later applies for final authorization for the HSWA requirements.

In accordance with 40 CFR 271.21(a), revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 124, 260–268 and 270.

B. Indiana

Indiana initially received final authorization for its base RCRA program on January 31, 1986, (51 FR 3953–3954, January 31, 1986). Indiana received authorization for revisions to its program on December 31, 1986, (51 FR 39752–39754, October 31, 1986), and on January 19, 1988, (53 FR 128–129, January 5, 1988). On January 12, 1988, Indiana submitted a revision application seeking authorization for a revision to its program for the Closure, post closure, and financial responsibility: Settlement Agreement Requirements promulgated May 2, 1986.

EPA has reviewed Indiana's application and has made a final decision, subject to public review and comment, that Indiana's hazardous waste management program revision does reflect the State's equivalency with the Federal program and satisfy all the requirements necessary to qualify for final authorization. Consequently, EPA is granting final authorization to Indiana for its additional program revisions. The public may submit written comments on EPA's immediate final decision up until August 14, 1989. Copies of Indiana's application for this program revision are available for inspection at the locations indicated in the "ADDRESSES" section of this notice.

Approval of Indiana's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either (1) a withdrawal of this immediate final rule or (2) a notice containing a response to the comment which either affirms that the immediate final decision takes effect or reverses the decision.

Indiana will be authorized to carry out, in lieu of the Federal program, those provisions of the State's program which are analogous to the following provisions of the Federal program:

Federal requirement	State regulations
Closure, Post closure, and Financial Responsibility Settlement Agreement, May 2, 1986, 51 FR 16443–16459.	320 IAC 4.1–1–6; 320 IAC 4.1–1–1–7; 320 IAC 4.1–21–1 through 320 IAC 4.1–21–10; 320 IAC 4.1–22–1 through 320 IAC 4.1–22–3; 320 IAC 4.1–22–5 through 320 IAC 4.1–22–9; 320 IAC 4.1–22–12 through 320 IAC 4.1–22–19; 320 IAC 4.1–22–22; 320 IAC 4.1–22–24; 320 IAC 4.1–22–27; 320 IAC 4.1–22–31 through 320 IAC 4.1–22–32; 320 IAC 4.1–24–6; 320 IAC 4.1–34–5; 320 IAC 4.1–36–3; 320 IAC 4.1–38–3; 320 IAC 4.1–46–1 through 320 IAC 4.1–46–10; 320 IAC 4.1–47–2 through 320 IAC 4.1–47–6; 320 IAC 4.1–47–8; and 320 IAC 4.1–49–6

EPA shall administer any RCRA hazardous waste permits, or portions of permits, that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of Indiana's authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization. EPA has previously suspended issuance of permits for other provisions on January 31, 1986, and on January 19, 1988, the effective dates of Indiana's final authorizations for the RCRA base program and for the RCRA Cluster I revision.

Indiana is not authorized to operate the Federal program on Indian lands. This authority remains with EPA unless provided otherwise in a future statute or regulation.

C. Effect of HSWA on Indiana's Authorization

Prior to the Hazardous and Solid Waste Amendments to RCRA, a State with final authorization administered its hazardous waste program instead of, or entirely in lieu of, the Federal program. Except for enforcement provisions not applicable here, EPA no longer directly applied the Federal requirements in the authorized State and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent, Federal requirements were promulgated or enacted, the State was obligated to obtain equivalent authority within specified time frames. New Federal requirements usually did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under the amended section 3006(g) of RCRA, 42 U.S.C. 6926(g), new HSWA requirements and prohibitions take effect in authorized States at the same time they take effect in non-authorized States. EPA carries out those requirements and prohibitions directly in authorized and non-authorized States, including the issuance of full or partial HSWA permits, until EPA grants the State authorization to do so. States must still, at one point, adopt HSWA-related provisions as State law to retain final authorization. In the interim, the HSWA provisions apply in authorized States.

As a result of the HSWA, there is a dual State/Federal regulatory program in Indiana. To the extent HSWA does not affect the authorized State program, the State program will operate in lieu of the Federal program. To the extent HSWA-related requirements are in effect, EPA will administer and enforce those HSWA requirements in Indiana until the State is authorized for them. Among other things, this will entail the issuance of Federal RCRA permits for those HSWA requirements for which the State is not yet authorized, in addition to the State permits. Any State requirement that EPA has reviewed, approved, and determined to be more stringent than a HSWA provision also remains in effect; thus the universe of the more stringent provisions in HSWA and the approved State program defines the applicable Subtitle C requirements in Indiana.

Indiana is not being authorized now for any requirement implementing HSWA. Once EPA authorizes Indiana to carry out a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision or prohibition. Until that time, the State may assist EPA's implementation of the HSWA under a Cooperative Agreement.

EPA has published a **Federal Register** notice that explains in detail the HSWA and its affect on authorized States (50 FR 28702–28755, July 15, 1985).

D. Decision

I conclude that Indiana's application for this program revision meets all the statutory and regulatory requirements established by RCRA. Accordingly, EPA grants Indiana final authorization to operate its hazardous waste program as revised. Indiana now has responsibility

for permitting treatment, storage, and disposal facilities within its borders and carrying out the other aspects of the RCRA program. This responsibility is subject to the limitations of this program revision application and previously approved authorities. Indiana also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

E. Codification

EPA codifies authorized State programs in Part 272 of 40 CFR. The purpose of codification is to provide notice to the public of the scope of the authorized program in each State. Codification of the Indiana program will be completed at a later date.

Compliance With Executive Order 12291: The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act: Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Indiana's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Paperwork Reduction Act: Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926 and 6974(b).

Dated: May 9, 1989.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 89–16420 Filed 7–12–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–611; RM–6494]

Radio Broadcasting Services; Rockland, ME

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 277B to Rockland, Maine, and modifies the license for Station WMCM–FM, Channel 277B1, to specify operation on Channel 277B. This action is taken in response to a petition filed by Passamaquoddy Broadcasting, Inc., licensee of Station WMCM–FM. Canadian concurrence has been obtained for the allotment of Channel 277B at Rockland. The coordinates for Channel 277B are 44–07–34 and 69–08–19. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 21, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–611, adopted June 15, 1989, and released July 5, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Maine is amended by removing Channel 277B1 and adding Channel 277B at Rockland.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–16371 Filed 7–12–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–506; RM–6446]

Radio Broadcasting Services; Martin, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of the South Dakota State Board of Directors for Educational Television, allots Channel 273C1 to Martin, South Dakota, as the community's first local FM service. Channel 273C1 can be allotted to Martin in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 43–10–30 and West Longitude 101–44–12. With this action, this proceeding is terminated.

DATES: Effective August 21, 1989. The window period for filing applications will open on August 22, 1989, and close on September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–506, adopted June 16, 1989, and released July 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments, is amended for South Dakota, by adding the following entry, Martin, Channel 273C1.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-16373 Filed 7-12-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-196; RM-6212, RM-6451, RM-6452]

Radio Broadcasting Services; Haltom City, Greenville and Weatherford, TX

AGENCY: Federal Communications Commission

ACTION: Final rule.

SUMMARY: This document allots Channel 227C2 to Haltom City, Texas, as that community's first local FM service, at the request of Bluebonnet Radio Broadcasters, Inc., A site restriction of 8.8 kilometers (5.5 miles) north of the community is required. The coordinates are 32-52-38 and 97-14-05. This action also denies counterproposals filed by First Greenville Corp., for Greenville and Weatherford, Texas (RM-6451) and Crest Communications Company for Weatherford, Texas (RM-6452). With this action, this proceeding is terminated.

DATES: Effective August 21, 1989; The window period for filing applications will open on August 22, 1989, and close on September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-196, adopted June 16, 1989, and released July 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73.

Radio broadcasting.

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Texas, by adding Haltom City, Channel 227C2.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-16374 Filed 7-12-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-324; RM-6368]

Radio Broadcasting Services; Fort Bridger, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 257A to Fort Bridger, Wyoming, as that community's first local FM service, at the request of Jim Dunker. *See* 53 FR 27182, July 19, 1988. The channel allotment can be made in compliance with the Commission's minimum distance separation requirements, at coordinates 41-19-06 and 110-22-54. With this action, this proceeding is terminated.

DATES: Effective August 21, 1989; The window period for filing applications will open on August 22, 1989, and close on September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-324, adopted June 15, 1989, and released July 6, 1989. The full text of this Commission's decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Wyoming, by adding Fort Bridger, Channel 257A.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-16375 Filed 7-12-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-319; RM-6247]

Radio Broadcasting Services; Opelika, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 244A to Opelika, Alabama, as that community's first local FM service, in response to a petition filed by Ronald H. Livengood. See 53 FR 26612, July 14, 1988. Coordinates used for Channel 244A at Opelika are 32-38-11 and 85-20-44. With this action, the proceeding is terminated.

EFFECTIVE DATES: Effective August 21, 1989. The window period for filing applications on Channel 244A at Opelika, Alabama, will open on August 22, 1989, and close on September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530, regarding the allotment. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-319, adopted June 16, 1989, and released July 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Alabama, by adding Opelika, Channel 244A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-16369 Filed 7-12-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-495; RM-6421]

Radio Broadcasting Services; Montauk, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Nanette Markunas, allots Channel 235A to Montauk, New York, as the community's second local FM service. Channel 235A can be allotted to Montauk in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.9 kilometers (3.1 miles) southwest to avoid a short-spacing to Station WOCB(FM), Channel 235B, West Yarmouth, Massachusetts. The coordinates for this allotment are North Latitude 41-01-00 and West Longitude 72-00-00. Canadian concurrence has been received since Montauk is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

EFFECTIVE DATES: Effective August 21, 1989. The window period for filing applications will open on August 22, 1989, and close on September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-495, adopted June 15, 1989, and released July 5, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments, is amended for Montauk, New York, by adding Channel 235A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-16372 Filed 7-12-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 90493-9141]

RIN 0648-AC15

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement a partial approval of Amendment 3 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP) and to remove inconsistencies that have developed in implementing Amendment 2. This rule (1) prohibits the use of drift gill nets for Gulf migratory group king and Spanish mackerel and for Atlantic migratory group Spanish mackerel, (2) states more clearly the scope of each management measure, (3) clearly differentiates between commercial and recreational fisheries, (4) makes minor changes that are necessary to reflect the previous implementation of Amendment 2 to the FMP, and (5) clarifies or corrects minor ambiguities, inconsistencies, and errors in the regulations. The intended effects of this rule are to prevent the adverse impacts on the users of traditional gill net and hook-and-line gear where, under necessary quota restrictions on overfished stocks, the use of drift gill nets would contribute to early closures of the commercial fisheries, such closures being the likely result of allowing the introduction of drift gill nets into the commercial fisheries for overfished stocks of king and Spanish mackerel; and to clarify the regulations.

EFFECTIVE DATE: August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-893-3722.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the FMP, prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR Part 642, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Amendment 3 to the FMP, as submitted by the Councils, proposed to: (1) Prohibit the use of purse seines for the Atlantic migratory group of king mackerel; (2) prohibit the use of drift gill nets for all coastal migratory pelagic species; (3) prohibit the use of run-around gill nets for the Atlantic migratory group of king mackerel; (4) add an objective to minimize waste and bycatch in the fishery; (5) update the habitat section of the FMP; and (6) evaluate the effects of the FMP on vessel and crew safety. Background and analysis of these measures were included in the proposed rule (54 FR 14256, April 10, 1989) and are not repeated here.

Based upon the most recent assessment of the mackerel stocks and comments received during Secretarial review of the amendment and the proposed rule, Amendment 3 has been partially approved. Specifically, NOAA has approved a prohibition on the use of drift gill nets in fisheries for Gulf group king mackerel and Gulf and Atlantic groups of Spanish mackerel. These three groups are overfished, necessitating restrictive quotas to protect and rebuild these stocks. Resulting commercial quotas have been so low that existing users with traditional gears (hook-and-line and run-around gill nets) already take the entire quota. Under these circumstances, NOAA agrees with the Councils that it would be unfair to allow the introduction of drift gill nets (a gear presently not used in commercial fisheries for these three groups) in an already stressed industry. Further, the fishing potential of drift gill nets is such that quota overruns could occur before closures could be effected, thus conservation purposes would not be served. This prohibition is approved with the proviso that the Councils will reconsider the use of this gear when the stocks recover and the other gear types

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cannot take the entire quota. NOAA has also approved the updated habitat section of the FMP, as well as the vessel safety considerations.

Disapproved measures are those that would prohibit the use of nets for harvesting Atlantic group king mackerel and other coastal pelagic species and the addition of a new objective. Disapproval was based upon insufficient justification for the proposed actions, and non-compliance with the Magnuson Act and other applicable law as discussed below. The disapproved measures are severable and do not disrupt the continuity of the approved portions of the amendment.

Comments and Responses

Seventy-one submissions were received reflecting the comments of 201 people. Sixty submissions supporting the proposed rule were received from constituents, primarily of the recreational sector, including 35 form letters and two petitions bearing 119 and seven signatures, respectively. A state marine resource department and a state fisheries commission also provided supporting comments. Eleven submissions opposing the proposed rule were received, primarily from the commercial sector. Non-supportive comments were also contained in a letter from a federal agency and in a minority report signed by four members of the South Atlantic and three members of the Gulf of Mexico Fishery Management Councils. Comments are addressed in three categories that follow:

Prohibition of Nets

Comments. Opposition to the net prohibitions outlined in the proposed rule focused on the appropriateness of eliminating net gears from the commercial fishery for Atlantic group king mackerel. Collectively, opponents contended that removal of net gears from this fishery (1) is inconsistent with the best scientific information available (national standard 2) because the 1989 Stock Assessment Report concluded that the Atlantic group of king mackerel is not overfished; (2) is unjustified where the commercial quota proposed for the 1989/90 fishing year is sufficiently high to forestall an early closure; (3) is inconsistent with national standard 1 because historical landings show the hook-and-line sector alone cannot take the commercial quota proposed, thereby preventing optimum yield (OY) from the resource; (4) unfairly removes net fishermen from competition for an available resource, contrary to national standard 4; (5) amounts to a reallocation of the available resource among commercial fishermen, which is unrelated to conservation objectives, also contrary to national standard 4; (6) amounts to an unwarranted regulation against efficiency, thereby depriving the public of less expensive fishery products, in opposition to national standard 5; (7) ignores reasonable regulatory alternatives that would allow efficient net gears to continue to operate in the fishery consistent with the objectives of the current management regime; and (8) eliminates variation in methods of harvesting Atlantic group king mackerel and selectively inflicts an inordinate economic burden on affected net fishermen, fish houses, and coastal communities reliant on the resource, contrary to national standards 6 and 7. With respect to the drift gill net prohibition in general, commentors suggested it was inappropriate to extend that prohibition to other coastal migratory species that are not overfished and to prevent the retention of such species in other drift net fisheries in implementing a drift net prohibition, a provision which they regarded as wasteful.

Response. NOAA agrees with the comments received in opposition to the net prohibitions proposed for the Atlantic group king mackerel commercial fishery. The prohibition of net gears (drift and run-around gill nets, and purse seines) from the Atlantic group king mackerel fishery is not justified. As reflected in Amendment 3, the prohibition on the use of drift gill nets, purse seines, and run-around gill nets in the Atlantic group king mackerel fishery was proposed primarily because it appeared that the group was overfished and, under necessary quota reductions, the continued use of these net gears would negatively impact traditional hook-and-line participants by contributing to early closure of the commercial fishery. Subsequent to the formal submission of Amendment 3, the 1989 Stock Assessment Panel determined that the Atlantic migratory group of king mackerel is not overfished. Therefore, this part of the supporting rationale is no longer supported by the best and most recent scientific information available. With respect to the remaining part of the rationale, the Councils' proposed increase in TAC for the 1989/90 fishing year supports a commercial quota that appears sufficient to allow harvest by both hook-and-line and net fishermen without an early closure. Last year's estimated total commercial harvest is well below the proposed allocation for 1989/90 fishing year. Absent the unusual environmental conditions that contributed to last year's heavy commercial catch early in the season, catch returned to normal levels this past April. Thus, continued use of net gear would not negatively impact traditional hook-and-line participants this year. Further, dedicating the commercial quota to the hook-and-line sector almost assures that the total commercial quota will not be harvested, since landings show the hook-and-line fishery has historically been unable to take the amount of fish allotted to the commercial sector. Under the FMP, the TAC from which allocations and quotas are derived represents the annual specification of OY. Therefore, this is inconsistent with national standard 1 and the FMP in that it would prevent achievement of OY. Prohibiting net fishermen from taking what would otherwise be surplus fish is also unfair and inequitable as measured against national standard 4. Therefore, NOAA has determined that approval of this ban on net fishing would not comply with the provisions of the Magnuson Act. Selective restrictions, instead of an outright prohibition on the entire net fishery appear feasible and would be justifiable on the record developed by the Councils. Such an action would allow the hook-and-line and net fishermen to coexist. Such measures, if timely submitted, could very well be implemented prior to the commencement of the 1990/91 fishing year. Therefore, NOAA suggests that the Councils consider this course of action. A prohibition against all types of net fishing for Atlantic king mackerel is not supported by the current record.

As noted above, NOAA approves the prohibition of drift gill nets from the fisheries for Gulf migratory group king mackerel and Gulf and Atlantic groups of Spanish mackerel. Rationale for the prohibitions is essentially the same as that supporting the prohibition of purse seines from these same overfished resources as approved in Amendment 2 (54 FR 23836, June 25, 1987). The approved net prohibitions will not lead to any substantive losses necessitating action under E.O. 12630 because drift gill nets are not known to operate in the three overfished mackerel fisheries. In this regard, it is significant that the public comment on the proposed rule included no criticism by any affected persons of the elimination of this gear in these three fisheries. In implementing the drift net prohibition for these groups, NOAA has maintained the provision that prevents other drift net fisheries from retaining incidentally caught king and Spanish mackerel because that provision is necessary for the enforceability of the approved measure.

New FMP Objective

Comment. The opposition recommended rejection of the newly proposed FMP objective because of its inconsistency with national standard 5. They believed that this new objective to minimize waste would unfairly elevate market value of landed fish while removing efficient gears from the fishery.

Response. NOAA disapproved the addition of the new objective, not because of disagreement with the concept of eliminating waste and bycatch in the fishery, but because of the Councils' characterization of economic waste in the objective. The amendment describes the differences between ex-vessel values of catches by hook-and-line and net gears as economic waste, implying that the price differential is related solely to quality differences. However, the price differential also may be related to short-term supply fluctuations. In that regard, the implicit assumption that lower ex-vessel prices translate into economic losses is incorrect. Such notion disregards the concept of consumer surplus and the difference between total revenue and producer surplus. In other words, the way the objective deals with economic waste could lead toward inefficient methods of production, which would be inconsistent with national standard 5 of the Magnuson Act.

Other Concerns

Comments. Proponents of the broad prohibition of drift gill nets proposed in the amendment cited numerous other concerns with this gear as generally supportive of the measure, including localized overfishing; negative impacts on endangered and threatened sea turtles; waste of incidental catch; bycatch of recreational fishes; disruption of migration, schooling, and spawning behavior; ghost fishing; habitat damage; displacement of traditional fishermen and gear; navigation hazard; gear conflict; impact on ex-vessel price; and lower quality of net caught fish.

Response. As acknowledged in Amendment 3, many of these concerns over the use of drift gill nets are the subject of data which are either limited, nonexistent, or conflicting. NOAA concurs with the Councils' interpretation and therefore concludes that the prohibition of net gear based solely on these concerns, singularly or collectively, is not justified, particularly when alternatives for the reasonable regulation of the gear could resolve many of these concerns.

Changes From the Proposed Rule

For the reasons indicated above, (1) prohibitions on the use of purse seines (§§ 642.7(e) and 642.24(b)) and on the use of run-around gill nets (§§ 642.7(y) and 642.24(a)(4)) to fish for Atlantic migratory group king mackerel are not included in this final rule, (2) the allowance of 0.4 million pounds of Atlantic migratory group king mackerel that may be harvested by purse seines (§ 642.21(a)(2)) is retained, and (3) the prohibition on the use of drift gill nets (§ 642.24(a)(3)) is revised so that it applies only to Gulf migratory group king mackerel and to the Gulf and Atlantic migratory groups of Spanish mackerel.

Classification

The Secretary of Commerce determined that the approved portion of Amendment 3 is necessary for the conservation and management of the coastal migratory pelagic resources and that it is consistent with the Magnuson Act and other applicable law.

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This rule is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Councils prepared a regulatory impact review for Amendment 3. A summary of the economic effects was included in the proposed rule. Those effects are significantly mitigated by partial disapproval of Amendment 3.

An initial regulatory flexibility analysis—part of the Councils' regulatory impact review—concluded that the proposed rule, if adopted, would have significant effects on small entities. However, in disapproving parts of Amendment 3, those effects have been substantially reduced. Indeed, because drift gill nets have not been used in the fishery for Gulf migratory group of king mackerel and are not known to be used in the Spanish mackerel fisheries, the General Counsel of the Department of Commerce has certified to the Small Business Administration that the rule implementing the partial approval will not have a significant economic impact on a substantial number of small entities. As a result, a final regulatory flexibility analysis was not prepared.

The Councils determined that the proposed rule for implementing Amendment 3 would be implemented in a manner that was consistent to the maximum extent practicable with the approved coastal zone management programs of North Carolina, South Carolina, Florida, Alabama, Mississippi, and Louisiana (Georgia and Texas do not have approved coastal zone management programs) and submitted their determination for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. North Carolina, South Carolina, Florida, and Louisiana agreed with their determination. Alabama and Mississippi did not comment within the statutory time period and, therefore, consistency is automatically implied. All measures implemented by this final rule were encompassed within Amendment 3 as submitted. Therefore, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator) finds the determination of consistency remains applicable.

The Councils prepared an environmental assessment (EA) for Amendment 3 and, based on the EA, the Assistant Administrator concluded that there will be no significant adverse impact on the human environment as a result of this rule.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing.

Dated: July 7, 1989.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 642 is amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for Part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 642.1, paragraph (b) is revised to read as follows:

§ 642.1 Purpose and scope.

* * * * *

(b) This part governs conservation and management of coastal migratory pelagic fish off the Atlantic coastal States south of the Virginia/North Carolina border and off the Gulf of Mexico coastal States.

3. In § 642.2, the definition for *Commercial fisherman* is removed; in the definition for *Charter vessel crew*, the word "captain" is revised to read "operator"; in the definition for *Regional Director*, the semicolon after the ZIP code is removed and a comma is added in its place; in the definition for *Species*, the words "refers to" are removed and the word "means" is added in their place; the definition for *Charter vessel* is revised; and new definitions for *Commercial fishery, Drift gill net, Gill net, Recreational fishery*, and *Run-around gill net* are added in alphabetical order to read as follows:

§ 642.2 Definitions.

* * * * *

Charter vessel (includes a headboat) means a vessel whose operator is licensed by the U.S. Coast Guard to carry paying passengers and whose passengers fish for a fee. A charter vessel with a permit to fish on a commercial allocation for king or Spanish mackerel is under charter when it carries a passenger who fishes for a fee, or when there are more than three persons aboard including operator and crew.

* * * * *

Commercial fishery means the harvesting of king or Spanish mackerel by a person fishing under the annual vessel permit specified in § 642.4(a)(1).

* * * * *

Drift gill net means a gill net having a float line that is more than 1,000 yards in length; or any gill net having a float line that is 1,000 yards or less in length, other than a run-around gill net, that, when used, drifts in the water, that is, is not anchored at both ends, whether or not it is attached to a vessel.

* * * * *

Gill net means a wall of netting, suspended vertically in the water by floats along the top and weights along the bottom, that entangles the head, gills, or other body parts of fish that attempt to pass through the meshes.

* * * * *

Recreational fishery means the harvesting of king or Spanish mackerel by a person fishing under a bag limit.

* * * * *

Run-around gill net means a gill net with a float line 1,000 yards or less in length that, when used, encloses an area of water.

* * * * *

4. In § 642.4, in paragraph (a)(1), the word "which" before "fishes" is revised to read "that" and the phrase "in the EEZ" is added after the word "mackerel"; in paragraph (a)(3) the word "which" before fishes is revised to read "that" and the phrase "in the EEZ" is added after the word "fish"; in paragraphs (b)(3) and (c), the words "or his designee" after "Regional Director" are removed; and in paragraph (a)(2), the second sentence is revised to read as follows:

§ 642.4 Permits and fees.

(a) * * *

(2) * * * A charter vessel in the EEZ must adhere to the applicable bag limit while under charter.

* * * * *

5. In § 642.5, in paragraph (a)(2), a comma is added after the word "fish" and the words "as defined" are removed; and paragraphs (a) introductory text, (b) introductory text, (c) introductory text, and (e) are revised to read as follows:

§ 642.5 Recordkeeping and reporting.

(a) *Commercial vessel owners and operators.* An owner or operator of a fishing vessel that fishes for or lands coastal migratory pelagic fish for sale, trade, or barter in or from the EEZ or adjoining State waters, or whose vessel is issued a permit under § 642.4(a)(1), and who is selected to report, must provide the following information regarding any fishing trip to the Science and Research Director:

* * * * *

(b) *Charter vessel owners and operators.* An owner or operator of a charter vessel that fishes for or lands coastal migratory pelagic fish in or from the EEZ or adjoining State waters, or whose vessel is issued a permit under § 642.4(a)(3), and who is selected to report, must maintain a daily fishing record on forms provided by the Science and Research Director. These forms must be submitted to the Science and Research Director weekly and must provide the following information:

* * * * *

(c) *Dealers and processors.* A person who receives coastal migratory pelagic fish, or parts thereof, by way of purchase, barter, trade, or sale from a fishing vessel or person that fishes for or lands such fish, or parts thereof, in or from the EEZ or adjoining State waters, and who is selected to report, must provide the following information to the Science and Research Director at monthly intervals, or more frequently if requested, and on forms provided by the Science and Research Director:

* * * * *

(e) *Availability of fish for inspection.* An owner or operator of a commercial, charter, or recreational vessel or a dealer or processor shall make any coastal migratory pelagic fish, or parts thereof, available, upon request, for inspection by the Science and Research Director for the collection of additional information or by an authorized officer.

6. In § 642.6, paragraph (a) is revised to read as follows:

§ 642.6 Vessel identification.

(a) *Official number.* A vessel engaged in fishing for king or Spanish mackerel under a commercial allocation and the permit specified in § 642.4(a)(1) must display its official number—

(1) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from an enforcement vessel or aircraft;

(2) In block arabic numerals in contrasting color to the background;

(3) At least 18 inches in height for fishing vessels over 65 feet in length and at least 10 inches in height for all other vessels; and

(4) Permanently affixed to or painted on the vessel.

* * * * *

7. In § 642.7, in paragraph (k), a comma is added after the phrase "under a commercial allocation" and the reference and word "§ 642.24(c) and" are added between the word "in" and the reference "§ 642.28(c)(2)"; in paragraph (m), a comma is added after the phrase "under a commercial allocation"; in paragraph (n), after the reference to "§ 642.28", the comma and the phrase "except as provided for under § 642.21 (a) and (c)" are removed; in paragraph (v), the word "which" is revised to read "that"; paragraphs (g), (j), (q), and (r) are revised; and new paragraph (x) is added to read as follows:

§ 642.7 Prohibitions.

* * * * *

(g) Falsify or fail to report information, as specified in §§ 642.4 and 642.5.

* * * * *

(j) Purchase, sell, barter, trade, or accept in trade king or Spanish mackerel harvested in the EEZ from a specific migratory group or zone for the remainder of the appropriate fishing year, specified in § 642.20, after the allocation or quota for that migratory group or zone, as specified in § 642.21 (a) or (c), has been reached and closure has been invoked, as specified in

§ 642.22(a). (This prohibition does not apply to trade in king or Spanish mackerel harvested, landed, and bartered, traded, or sold prior to the closure and held in cold storage by dealers and processors.)

* * * * *

(q) Possess or land Spanish mackerel or cobia without the head and fins intact, as specified in § 642.23(c).

(r) Land, consume at sea, sell or possess, in or from the EEZ, king or Spanish mackerel harvested under a recreational allocation set forth in § 642.21 (b) or (d) after the bag limit for that recreational allocation has been reduced to zero under § 642.22(b).

* * * * *

(x) Fish with a drift gill net for king mackerel from the Gulf migratory group or for Spanish mackerel from the Gulf or Atlantic migratory group or possess any king or Spanish mackerel aboard a vessel with a drift gill net aboard, as specified in § 642.24(a)(3).

8. In § 642.21, a new paragraph (c)(3) is added to read as follows:

§ 642.21 Allocations and quotas.

* * * * *

(c) * * *

(3) A fish is counted against the commercial allocation when it is first sold.

* * * * *

9. In § 642.22, the heading, the second sentence of paragraph (a), and paragraph (b) are revised to read as follows:

§ 642.22 Closures and bag limit reductions.

(a) * * * The notice of closure for an allocation or quota specified under § 642.21 (a) or (c) will also provide that the purchase, barter, trade, and sale of king or Spanish mackerel taken in the EEZ from the closed area after the closure is prohibited for the remainder of that fishing year. * * *

(b) The Secretary, after consulting with the Councils and by publication of a notice in the **Federal Register**, will reduce to zero the bag limit for the king or Spanish mackerel recreational fishery in the EEZ for a particular migratory group when the allocation under § 642.21 (b) or (d) for that migratory group has been reached or is projected to be reached and when that group is overfished. After such reduction, a king or Spanish mackerel caught in the EEZ from that group must be returned immediately to the sea, and possession of king or Spanish mackerel of that group in or from the EEZ on board a vessel in the recreational fishery is prohibited.

10. In § 642.23, in paragraph (a)(1), the word "or" between the words "recreational" and "commercial" is revised to read "and"; in paragraph (a)(2), the phrase "in the commercial fishery" is added between the words "allowed" and "equal"; and paragraph (c) is revised to read as follows:

§ 642.23 Size restrictions.

* * * * *

(c) *Head and fins intact.* A Spanish mackerel or cobia possessed in the EEZ must have its head and fins intact and a Spanish mackerel or cobia taken from the EEZ must have its head and fins intact through landing.

11. In § 642.24, in the first sentence of paragraphs (a) (1) and (2) the word "allowable" is added after the word "minimum" and the phrase "in the EEZ" is added after the word "fish"; new paragraph (a)(3) is added; and paragraph (d) is revised to read as follows:

§ 642.24 Vessel, gear equipment limitations.

* * * * *

(a) * * *

(3) *Drift gill nets.* The use of a drift gill net to fish in the EEZ for king mackerel from the Gulf migratory group or for Spanish mackerel from the Gulf or Atlantic migratory group is prohibited. A vessel in the EEZ or having fished in the EEZ with a drift gill net aboard may not possess any Spanish mackerel. A vessel in the EEZ within the boundaries specified in § 642.29(a) or having fished in the EEZ within such boundaries may not possess any king mackerel.

* * * * *

(d) *Purse seine incidental catch allowance.* A vessel with a purse seine aboard will not be considered as fishing for king mackerel or Spanish mackerel in violation of the prohibition of purse seines under paragraph (b) of this section, or, in the case of king mackerel from the Atlantic migratory group, in violation of a closure effected in accordance with § 642.22(a), provided the catch of king mackerel does not exceed one percent or the catch of Spanish mackerel does not exceed ten percent of the catch of all fish aboard the vessel. Incidental catch shall be calculated by both number and weight of fish. Neither calculation may exceed the allowable percentage. Incidentally caught king or Spanish mackerel are counted toward the allocations and quotas provided for under § 642.21 (a) or (c) and are subject to the prohibition of sale under § 642.22(a).

12. In § 642.28, in paragraph (a) introductory text, the word "incidental" is added between the words "seine" and "catch".

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Proposed Rules

Federal Register
Vol. 54, No. 133
Thursday, July 13, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 88-176]

Apricots, Nectarines, Peaches, and Plums From Chile

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Fruits and Vegetables regulations to relieve restrictions on the importation of stonefruit (apricots, nectarines, peaches, and plums) from Chile. Our proposed rule would allow these fruits to be imported under multiple safeguards, including inspection in Chile, but without mandatory treatment. These safeguards would ensure that the fruits could be imported without significant risk of introducing insect pests into the United States.

EFFECTIVE DATES: Consideration will be given only to comments received on or before September 11, 1989.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Helene R. Wright, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 88-176. Comments received may be inspected at USDA, 14th and Independence Avenue, SW, Room 1141-South Building, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Cooper, Senior Operations Officer, Port Operations, PPQ, APHIS, USDA, Room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8645.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 (the regulations) prohibit or restrict the importation of fruits and vegetables into the United States because of the risk that the fruits or vegetables could introduce insect pests that could damage domestic plants.

Apricots, nectarines, peaches, and plums (referred to below as stonefruit) from Chile present a risk of introducing various insect pests, including *Proeulia* spp., *Leptoglossus chilensis, Megalometis chilensis, Naupactus xanthographus, Listroderes subcinctus,* and *Conoderus rufangulus.* These pests do not normally feed on stonefruit, but may be present in shipments of stonefruit as "hitchhiking" pests.

Under § 319.56-2m, these fruits may be imported from Chile only after they have undergone an approved methyl bromide treatment to destroy insects known to attack them or to be associated with them as hitchhikers.

Section 319.56(c) allows the Deputy Administrator for Plant Protection and Quarantine Programs to publish administrative instructions making the restrictions in § 319.56 *et seq.* less stringent, whenever he finds that pest risk conditions make it safe to make the restrictions less stringent.

We are proposing administrative instructions modifying the regulations concerning the importation of stonefruit from Chile. The administrative instructions prescribe multiple safeguards, including inspections in Chile. We believe that stonefruit imported under the conditions prescribed in the proposed administrative instructions would not present a significant risk of introducing insect pests into the United States. The specific requirements contained in the proposed administrative instructions are discussed below.

Preclearance in Chile

We are proposing to require that stonefruit imported from Chile must generally be cleared in Chile prior to export to the United States, with certain exceptions discussed below. Clearance for export to the United States would involve inspection, safeguards, treatments, or other procedures required by the regulations. Clearance activities would be performed under the direction of Animal and Plant Health Inspection Service (APHIS) inspectors in Chile, and would include inspections by APHIS inspectors, or by inspectors of the national plant protection service of Chile in the presence of APHIS inspectors. These activities, to determine the eligibility of the fruit for shipment to the United States, would be called preclearance to distinguish them from similar inspections, treatments, and other procedures performed by APHIS inspectors at ports of arrival in the United States. We are proposing preclearance to minimize the risk that the fruit will arrive in the United States contaminated with pests that could harm domestic plants. The proposed details of how the preclearance program would be conducted are discussed later in this supplementary information.

Inspection in the United States

With few exceptions, we anticipate the fruit imported under this proposed rule would be "precleared" in Chile prior to shipment into the United States. However, we propose to allow inspection of the fruit at a port of arrival in the United States, in lieu of preclearance, if the Administrator determines that such port of arrival inspection is appropriate and can be accomplished without increasing the risk of introducing insect pests into the United States. The following conditions would apply to inspections performed at the port of arrival:

(1) The Administrator must determine that an emergency situation exists, and that mutual benefit will be derived from allowing an exception to normal procedures;

(2) The Administrator must determine that inspection can be accomplished at the port of arrival without increasing the risk of introducing insect pests into the United States;

(3) The entire shipment of apricots, nectarines, peaches, or plums must be offloaded and moved, under the supervision of an APHIS inspector, to an enclosed warehouse, where inspection and treatment facilities are available;

(4) The Administrator must determine that a sufficient number of inspectors are available at the port of arrival to perform the services required; and

(5) The method of sampling and inspection would be the same as in preclearance inspections.

These conditions would ensure that inspections could be conducted at the port of arrival in a manner that would prevent the escape of insects, prevent pilferage of the fruit, and ensure that insect pests that may be present on or with the fruit are discovered.

Trust Fund Agreement

Except as explained above for inspections in the United States, we are proposing that the plant protection service of Chile (Servicio Agricola Y Ganadero, referred to below as SAG) enter into a trust fund agreement with APHIS before stonefruit from Chile could be precleared for import into the United States.

The trust fund agreement would require SAG to pay in advance all estimated costs to be incurred by APHIS in providing preclearance services during a shipping season. These costs would include administrative expenses incurred in conducting preclearance, as well as all salaries (including overtime and the federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in providing these services. SAG would be required to deposit a certified or cashier's check to APHIS for the amount of these costs for the entire shipping season, as estimated by APHIS based on projected shipment volumes and cost figures from previous inspections. The agreement would further require that, if the deposit does not meet the actual costs incurred by APHIS, SAG would deposit with APHIS a certified or cashier's check for the amount of the known remaining costs, as determined by APHIS, before completion of the inspections. The agreement would also specify that unanticipated end-of-season costs must be paid upon demand, and that further service will be withheld until payment is made. If the amount SAG pays during a shipping season exceeds the total costs incurred by APHIS in providing preclearance services, the difference would be refunded to SAG by APHIS at the end of the shipping season.

Requiring payment of costs in advance is necessary to help defray the costs to APHIS of providing inspection services in Chile.

Responsibilities of Servicio Agricola Y Ganadero

SAG would be responsible for ensuring that certain conditions for importation of the fruit are met before the fruit is presented for inspection prior to being shipped to the United States. These conditions, which are discussed below, are intended to ensure that fruit presented to APHIS for preclearance inspection has a very low rate of rejection because of insect pests.

SAG would be responsible for ensuring that:

(1) Stonefruit are presented to APHIS inspectors in their shipping containers at the inspection site for preclearance inspection. This requirement is necessary to ensure that the fruit qualifies for shipment to the United States.

(2) Stonefruit presented for inspection are identified in the shipping documents accompanying each lot of fruit with the packing shed where they were processed and the orchard where they were grown, and this identity is maintained until the fruit arrives in the United States. This requirement would enable us to identify the sources of any pests discovered during inspection.

(3) Facilities for preclearance inspections are provided in Chile at an inspection site acceptable to APHIS. This requirement is necessary to ensure that APHIS inspectors have adequate inspection facilities in which to perform the required services.

Preclearance Inspection

We propose to allow fruit in any inspection unit to be shipped to the United States only if that inspection unit passes an inspection in which inspectors examine, fruit by fruit, an established statistical sample drawn from the inspection unit. An inspection unit would consist of a minimum of 5,000 cartons for maritime shipments, or 350 cartons for air shipments, and may represent multiple grower lots from different packing sheds. The sample size for each inspection unit would be calculated to identify units infested at a level of 3 percent or more with a confidence level of 95 percent. This sampling method would ensure a high degree of probability that any insect pests in the inspection unit would be discovered by APHIS inspectors.

If the inspectors find evidence of any insect pest referred to in proposed paragraph (f) of § 319.56-2s, and an authorized treatment is available, we propose to allow the fruit to be shipped to the United States only after all the fruit in the infested inspection unit is treated in Chile for that pest with an authorized treatment listed in the Plant Protection and Quarantine Treatment Manual. However, if the entire inspection unit is not treated in this manner, or if a plant pest is found for which no authorized treatment is available, the inspectors would reject the entire inspection unit for shipment to the United States.

Stonefruit precleared for shipment to the United States would not be inspected again in the United States, except as necessary to ensure that the fruit has been precleared, or for occasional monitoring purposes.

Termination of Preclearance Programs

If this proposal is adopted, the Administrator would terminate preclearance inspections for a fruit and require fumigation as an entry condition for that fruit if the rates of rejection of inspection units for that kind of fruit exceed 20 percent, as specified in proposed paragraph (e) of § 319.56-2s. Inspections would be terminated if more than 20 percent of inspection units of a fruit were rejected in any 14 consecutive days of inspections. A 20 percent rejection rate would indicate that conditions for shipment of apricots, nectarines, peaches, or plums are not being met. The rejection rate would be calculated over 14 days of inspections because enough inspection units would be inspected during this period to constitute a reliable statistical sample. Apricots, nectarines, peaches, and plums would each be separately evaluated regarding their infestation rates, and termination of preclearance inspections for one of these articles would not terminate preclearance inspections for the other articles. Terminating preclearance inspections for an article would allow that article to enter the United States only after fumigation, for the remainder of that shipping season. This action would ensure that fruits with an unacceptable risk of introducing insect pests are not allowed into the United States unless properly treated to destroy pests.

If preclearance inspection is terminated for an article, precleared fruit of that type in transit from Chile to the United States at the time of termination would be spot-checked by APHIS inspectors upon arrival in the United States for evidence of insect pests.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-

based enterprises in domestic or export markets.

Based on interest expressed in importing stonefruit from Chile, we anticipate that the annual average of approximately 60,000 metric tons of stonefruit imported from Chile would increase by a small percentage if this rule is adopted. The average import figure of 60,000 metric tons was derived by averaging the weight of stonefruit from Chile imported over the past several years, because the total weight of stonefruit imported from Chile varies greatly from year to year (often by 20 percent or more) due to harvest conditions, market prices, and other factors. By comparison, stonefruit production in the United States was approximately 1,411,000 metric tons in 1986, the most recent year for which complete statistics are available.

Although there are many small business entities in the United States that grow, pack, or sell stonefruit, we do not believe this proposed rule would have a significant economic impact on them because the volume of Chilean fruit expected to be imported is relatively low and the Chilean fruit would compete equally in the market place with U.S.-produced stonefruit. Importers of Chilean stonefruit would probably realizes a small savings for each unit of stonefruit imported, because the cost of importing unfumigated stonefruit under the preclearance program is expected to be slightly less than the cost of importing fumigated stonefruit. This may result in a slight decrease in the price of imported Chilean stonefruit, which would be beneficial to the U.S. consumer. Importers of Chilean stonefruit also import a variety of other fruits and vegetables, and importations of the Chilean stonefruit would constitute a small portion of their total importations.

This rule would cause some loss of income to U.S. fumigation companies that fumigate imported Chilean stonefruit. Currently, fumigation of imported Chilean stonefruit is performed by a few large companies with many other sources of business, such as fumigation of other articles and fumigation of homes and buildings. The loss of income due to reduction in the amount of Chilean stonefruit fumigated each year would be a very small percentage of the total income of each of these companies.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

Agricultural commodities, Fruit, Imports, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, we propose to amend 7 CFR Part 319 as follows:

1. The authority citation for Part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 319.56-2m [Amended]

2. In § 319.56–2m, paragraph (a)(2) would be removed, and paragraph (a)(1) would be redesignated as (a).

3. Also, in § 319.56–2m, in the heading, introductory text, and paragraphs (c) and (e), the term "apricots, grapes, nectarines, peaches, and plums" would be revised to read "grapes" each time it appears.

4. In "Subpart-Fruits and Vegetables", a new section, § 319.56–2s, would be added to read as follows:

§ 319.56–2s Administrative instructions governing the entry of apricots, nectarines, peaches, and plums from Chile.

(a) *Importations allowed.* Pursuant to § 319.56(c), the Administrator has determined that apricots, nectarines, peaches, and plums may be imported into the United States from Chile in accordance with this section and other applicable provisions of this subpart.

(b) *Trust fund agreement.* Except as provided in paragraph (g) of this section, apricots, nectarines, peaches, and plums may be imported only if the plant protection service of Chile (Servicio Agricola Y Ganadero, referred to in this section as SAG) has entered into a trust fund agreement with the Animal and Plant Health Inspection Service (APHIS) for that shipping season. This agreement requires SAG to pay in advance all estimated costs incurred by APHIS in providing the preclearance prescribed in paragraph (d) of this section for that shipping season. These costs will include administrative expenses incurred in conducting the preclearance services; and all salaries (including overtime and the federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in providing these services. The agreement requires SAG to deposit a certified or cashier's check with APHIS for the amount of these costs for the entire shipping season, as estimated by APHIS based on projected shipment volumes and cost figures from previous inspections. The agreement further requires that, if the deposit is not sufficient to meet all costs incurred by APHIS, SAG must deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before the inspections will be completed. The agreement also requires that, in the event of unexpected end-of-season costs, SAG must deposit with APHIS a certified cashier's check sufficient to meet such costs as estimated by APHIS, before any further preclearance services will be provided. If the amount SAG deposits during a shipping season exceeds the total cost incurred by APHIS in providing preclearance services, the difference will be returned to SAG by APHIS at the end of the shipping season.

(c) *Responsibilities of Servicio Agricola Y Ganadero.* SAG will ensure that:

(1) Apricots, nectarines, peaches, or plums are presented to APHIS inspectors for preclearance in their shipping containers at the shipping site as prescribed in paragraph (d) of this section.

(2) Apricots, nectarines, peaches, and plums presented for inspection are identified in the shipping documents accompanying each load of fruit with the packing shed where they were processed and with the orchards where they were produced; and this identity is maintained until the apricots, nectarines, peaches, or plums arrive in the United States.

(3) Facilities for the inspections prescribed in paragraph (d) of this section are provided in Chile at an inspection site acceptable to APHIS.

(d) *Preclearance inspection.* Preclearance inspection will be conducted in Chile under the direction of APHIS inspectors. An inspection unit will consist of a lot or shipment from which a statistical sample is drawn and examined. An inspection unit must consist of a minimum of 5,000 cartons for maritime shipments, or 350 cartons for air shipments, and may represent multiple grower lots from different packing sheds. Apricots, nectarines, peaches, or plums in any inspection unit may be shipped to the United States only if the inspection unit passes inspection as follows:

(1) Inspectors will examine, fruit by fruit, the contents of the cartons selected for a biometrically designed statistical sample established for each inspection unit. The sample will be selected using a computer program provided by APHIS that will designate which cartons to inspect in each inspection unit to ensure that units infested at level of 3 percent or more will be identified with a confidence level of 95 percent.

(i) If the inspectors find evidence of any plant pest for which a treatment authorized in the Plant Protection and Quarantine Treatment Manual is available, fruit in the inspection unit will remain eligible for shipment to the United States if the entire inspection unit is treated for the pest in Chile. However, if the entire inspection unit is not treated in this manner, or if a plant pest is found for which no treatment authorized in the Plant Protection and Quarantine Treatment Manual is available, the entire inspection unit will not be eligible for shipment to the United States.

(ii) Apricots, nectarines, peaches, and plums precleared for shipment to the United States as prescribed in this paragraph will not be inspected again in the United States except as necessary to ensure that the fruit has been precleared and for occasional monitoring purposes.

(e) *Terminaltion of preclearance programs.* Shipments of apricots, nectarines, peaches, and plums will be individually evaluated regarding the rates of infestation of inspection units of these articles presented for preclearance. The inspection program for an article will be terminated when inspections determine that the rate of infestation of inspection units of the articles by pests listed in paragraph (f) of this section exceeds 20 percent calculated on any consecutive 14 days of actual inspections (not counting days on which inspections are not conducted). Termination of the inspection program for an article will require mandatory treatment of shipments of the article from Chile for the remainder of that shipping season. If a preclearance inspection program is terminated with Chile, precleared fruit in transit to the United States at the time of termination will be spot-checked by APHIS inspectors upon arrival in the United States for evidence of plant pests referred to in paragraph (f) of this section.

(f) *Plant pests; authorized treatments.* (1) Apricots, nectarines, peaches, or plums from Chile may be imported into the United States only if they are found free of the following pests or, if an authorized treatment is available, they are treated for the pest under the supervision of an APHIS inspector: *Proeulia spp., Leptoglossus chilensis, Megalometis chilensis, Naupactus xanthographus, Listroderes subcinctus,* and *Conoderus rufangulus,* and other insect pests that the Administration has determined do not exist, or are not widespread, in the United States.

(2) Authorized treatments are listed in the Plant Protection and Quarantine Treatment Manual. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see § 300.1 of this chapter, "Materials incorporated by reference."

(g) *Inspection in the United States.* Notwithstanding provisions to the contrary in paragraph (c) and (d) of this section, the Administrator may, in emergency or extraordinary situations, allow apricots, nectarines, peaches, or plums imported under this section to be inspected at a port of arrival in the United States, in lieu of a preclearance inspection, under the following conditions:

(1) The Administrator is satisified that a unique situation exists which justifies a limited exception to mandatory preclearance;

(2) The Administrator has determined that inspection and/or treatment can be accomplished at the intended port of arrival without increasing the risk of introducing insect pests into the United States;

(3) The entire shipment of apricots, nectarines, peaches, or plums must be offloaded and moved, under the supervision of APHIS inspectors, to an enclosed warehouse, where inspection and treatment facilities are available.

(4) The Administrator must determine that a sufficient number of inspectors are available at the port of arrival to perform the services required.

(5) The method of sampling and inspection will be the same as prescribed in paragraph (d) of this section for preclearance inspections.

Done in Washington, DC, this 7th day of July 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–16434 Filed 7–12–89; 8:45 am]

BILLING CODE 3410-34-M

Farmers Home Administration

7 CFR Parts 1864, 1956, and 1965

Debt Settlement

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its debt settlement regulations. This action is taken to include debt settlement of all Housing Loans and to limit adjustment offers to 5 years except for Rural Housing (RH) loans. This action is intended to reduce the volume of settlements submitted to the Administrator and further implement the intent of the Food Security Act of 1985 and the Agricultural Credit Act of 1987.

EFFECTIVE DATE: Comments must be submitted on or before September 11, 1989.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, USDA, Room 6348, South Agricultural Building, 14th and Independence Avenue SW., Washington, DC 20250. All written comments will be available for public inspection during regular working hours at the above address. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit any comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 22053.

FOR FURTHER INFORMATION CONTACT: Thomas Baden, Senior Loan Officer, Farm Real Estate and Production Division, FmHA, Room 5437, South Building, Washington, DC 20250, Telephone (202) 475–4008.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor, because there will not be an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse action on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-

based enterprises in domestic or export markets.

The major changes are: (1) All security property must be disposed of prior to debt settlement; (2) If a borrower wishes to offer FmHA the present market value of security, the value must be included in the initial amount, these funds will not be included as part of a compromise or adjustment offer; (3) Deletes the requirement that debts be due and payable prior to debt settlement for Farmer Programs loans; (4) How to process cancellation of loan accounts discharged or partially discharged in bankruptcy.

These changes will remove Part 1864 of Chapter XVIII, Title 7 of the CFR and incorporate all provisions of debt settlement of Housing loans into Subpart B of Part 1956. This incorporation will necessitate amendments to several Parts of Chapter XVIII, Title 7, Code of Federal Regulations. These amendments will consist of conforming changes and cross references in numerous FmHA loan making and loan servicing regulations. These changes will be addressed in the final rule publication, but are not included in this proposed rule since these changes are only administrative in nature.

FmHA Instruction 1965–A has been amended to provide that the payment of income tax resulting from a capital gain from a cash sale is not authorized.

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), Mr. Neal Sox Johnson, Acting Administrator of the Farmers Home Administration, has determined that this action will not have a significant economic impact on a substantial numbered of small entities.

Intergovernmental Consultation

1. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans, Farm Operating Loans, and Farm Ownership Loans are excluded with the exception of nonfarm enterprise activity from the scope of Executive Order 12372 which requires intergovernmental consultation with State and locan officials.

2. The Soil and Water Loans Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance under numbers:

10.404 Emergency Loans
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Very Low and Low Income Housing Loans
10.411 Rural Housing Site Loans
10.415 Rural Rental Housing Loans
10.416 Soil and Water Loans
10.417 Very Low-Income Housing Repair Loans and Grants

Rural Housing Site Loans (10.411) and Soil and Water Loans (10.416) are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. The other programs are excluded from intergovernmental consultation.

This document has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not needed.

List of Subjects

7 CFR Part 1956

Accounting, Loan programs—Agriculture, Rural areas.

7 CFR Part 1965

Foreclosure, Loan programs—Agricultural, Rural areas.

Therefore, as proposed, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1864—DEBT SETTLEMENT

1. The authority citation for Part 1864 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 31 U.S.C. 3711; 7 CFR 2.23; 7 CFR 2.70.

2. Part 1864 is removed and reserved.

PART 1956—DEBT SETTLEMENT

3. The authority citation for Part 1956 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 31 U.S.C. 3711; 7 CFR 2.23; 7 CFR 2.70.

4. Subpart B of Part 1956 is revised to read as follows:

PART 1956—DEBT SETTLEMENT

Subpart B—Debt Settlement—Farmer Programs and Housing

Sec.
1956.51 Purpose.
1956.52–1956.53 [Reserved]
1956.54 Definitions.
1956.55–1956.56 [Reserved]
1956.57 General provisions.
1956.58 Approval or rejection.
1956.59–1956.65 [Reserved]
1956.66 Compromise and adjustment of nonjudgment debts owed FmHA which the debtor is unable to pay.
1956.67 Debts which the debtor is able to pay in full but refuses to do so.
1956.68 Compromise or adjustment without debtor's signature.
1956.69 [Reserved]
1956.70 Cancellation.
1956.71–1956.74 [Reserved]
1956.75 Chargeoff.
1956.76–1956.84 [Reserved]
1956.85 Payments and receipts.
1956.86–1956.95 [Reserved]
1956.96 Delinquent adjustment agreements.
1956.97 [Reserved]
1956.98 Disposition of promissory notes.
1956.99 Exception authority.
1956.100 OMB control number.

Subpart B—Debt Settlement—Farmer Programs and Housing

§ 1956.51 Purpose.

This subpart delegates authority and prescribes policies and procedures for settlement of debts owed the United States for Farmers Home Administration (FmHA) Farmer Programs and Housing programs. Settlement of claims against third party converters and settlement of Non-Program (NP) loans, Economic Opportunity (EO) loans, and housing loans, is authorized under the Federal Claims Collection Standards, 4 CFR Parts 101–105.

§ 1956.52–1956.53 [Reserved]

§ 1956.54 Definitions.

(a) *Adjustment.* The reduction of a debt or claim conditioned upon completion of payment of the adjusted amount at a specific future time or times, with or without the payment of any consideration when the adjustment offer is approved. An adjustment is not a final settlement until all payments under the adjustment agreement(s) have been made.

(b) *Cancellation.* The final discharge of a debt without any payment on it.

(c) *Chargeoff.* The writing off of a debt and termination of collection activity without release of personal liability.

(d) *Compromise.* The satisfaction of a debt or claim by the acceptance of a lump-sum payment of less than the total amount owed on the date or claim.

(e) *Debtor.* The borrower of funds under any of the FmHA programs. This includes co-signors, guarantors and persons or entities that initially obtained or assumed a loan.

(f) *Farmer Program loans.* Farm Ownership (FO), Operating (OL), Soil and Water (SW), Economic Emergency (EE), Emergency (EM), Recreation (RL), Special Livestock (SL), Softwood Timber (ST) loans, and/or Rural Housing Loans for farm services buildings (RHF).

(g) *Amount of debt.* The outstanding balance of the amount loaned including principal and interest plus any outstanding advances, including interest, made by the Government on behalf of the borrower.

(h) *Servicing office.* The FmHA office that is responsible for the account.

(i) *Settlement.* The compromise, adjustment, cancellation, or chargeoff of a debt owed to FmHA. The term "settlement" is used for convenience in referring to compromise, adjustment, cancellation, or chargeoff actions, individually or collectively.

(j) *Housing programs.* All programs and claims arising under programs administered by FmHA under Title V of the Housing Act of 1949.

(k) *United States Attorney.* An attorney for the United States Department of Justice.

§§ 1956.55–1956.56 [Reserved]

§ 1956.57 General provisions.

(a) *Application of policies.* All debtors are entitled to impartial treatment and uniform consideration under this subpart. Accordingly, FmHA personnel charged with any responsibility in connection with debt settlement will adhere strictly to the authorizations, requirements, and limitations in this subpart, and will not substitute individual feelings or sympathies in connection with any settlement.

(b) *Collection efforts.* When debtors are contacted in an effort to collect, the employee in charge of the account will obtain from them essential information concerning their financial condition. This should include where applicable, but not limited to, obtaining Form FmHA 1910–5, "Request for Verification of Employment," debtors providing expense verification, verify farm program benefits (ASCS payments), and examining county records to determine what other assets the debtor has or recently disposed of. Also, where a spouse is not a co-debtor the spouse's income will be considered in determining family living expenses. If it appears that a debtor will not be able to pay in full and the indebtedness is eligible for settlement under this subpart, action should be taken, if possible, to avoid unnecessary litigation to enforce collection. If the debt is eligible for settlement, the debt settlement authorities of FmHA should be explained and the privileges thereof extended to the debtor. The information obtained from the debtor should be documented on Form FmHA 1956–1, "Application for Settlement of Indebtedness."

Settlement of claims against recipients of grant funds for reasons such as the use of funds for improper purposes may also be considered under this subpart.

(c) *Negotiating a settlement.* District Directors and County Supervisors cannot approve debt settlement actions; therefore, they will make no statements to a debtor concerning the action that may be taken upon a debtor's application. In negotiating a settlement, all of the factors which are pertinent to determining ability to pay will be discussed to assist the debtor in arriving at the proper type and terms of a settlement. The present and future repayment ability of a debtor, the factors mentioned in this subpart, and any other pertinent information will be the basis of determining whether the debt should be collected in full, compromised, adjusted, canceled, or charged off. It is impossible in cases eligible for debt settlement to forecast accurately the debtor's future repayment ability over a long period of time; consequently, the period of time during which payments on settlement offers are to be made should not exceed five years. Debtors have the right to make voluntary settlement offers in any amount should they elect to do so. Settlement offers will not be approved in any case unless there is reasonable assurance that the debtor will be able to make the payments as they become due.

(d) *Disposition of property.* Security may be retained by the debtor only under the conditions specified in § 1956.66 of this subpart.

(e) *Proceeds from the disposal of security prior to approval of a debt settlement offer.* A borrower is not required to have disposed of the security prior to application for debt settlement for a loan to be settled. However, if a borrower has disposed of security prior to applying for debt settlement, proceeds from the disposed security must first be applied on the debtors account, irrespective of an application for debt settlement unless the conditions specified in § 1956.66 of this subpart are met.

(f) *County Committee review.* The County Committee will review all debt settlement actions for Farmer Programs debtors and recommend for approval or rejection, except for the cancellation of those debts discharged in bankruptcy where there is no remaining security. The proposed debt settlement will be reviewed for approval or rejection and no settlement shall be approved if it is more favorable to the debtor than recommended by the County Committee, except as provided for in § 1956.58(e) of this subpart. The County Committee will not review proposed debt settlement action for Housing loans.

(g) *Settlement when legal or investigative action has been taken recommended, or is contemplated.*

(1) Debts cannot be settled:

(i) If the matter has been referred either to the Office of the Inspector General (OIG) under § 1962.49(a) of Part 1962, Subpart A of this chapter or to OGC because of suspected criminal violation, or criminal prosecution is pending because of an illegal acts(s) committed by the debtor in connection with the debt or the security for that debt, the procedure outlined in paragraph (g)(3) of this section will be followed, unless, the OIG has declined to investigate the matter or, OGC has advised otherwise, or, the case is in the hands of the United States Attorney.

(ii) If a request for referral to the United States Attorney to institute a civil action to protect the interest of the Government has been made by FmHA.

(iii) Except as provided in paragraph (g)(3) of this section, if the case has been referred to the United States Attorney and is not closed.

(2) If a debtor's account is involved in a fiscal irregularity investigation in which final action has not been taken or the account shows evidence that a shortage may exist and an investigation will be requested, the account will not be approved for settlement.

(3) When a claim has been referred to, or a judgment has been obtained by, the United States Attorney, and the debtor requests settlement, the employee in charge of the account will explain to the debtor that the United States Attorney has exclusive jurisdiction over the claim or judgment, that FmHA has no authority to agree to a settlement offer when the United States Attorney's file is not closed, and that if the debtor wishes to make a compromise or adjustment offer when the United States Attorney's file is not closed, it will be submitted with any related payment directly to the United States Attorney for a decision on the settlement offer.

(h) *Advice from the OGC.* State Directors will obtain, when necessary, advice from the OGC in handling proposed debt settlement actions which involve legal problems.

(i) *Settlement of claims against estates.* Settlement of a claim against an estate under the provisions of this subpart will be based on the recovery that may reasonably be expected, taking

into consideration such items as the security, costs of administration, allowances of minor children and surviving spouse, allowable funeral expenses, and dower and courtesy rights, and specific encumbrances on the property having priority over claims of the Government.

(j) *Joint debtors.* Settlements may not be approved for one joint debtor unless approved for all debtors. "Joint debtors" includes all parties (individuals, partnerships, joint operators, cooperatives, corporations estates) who are legally liable for payment of the debt.

(1) Separate and individual adjustment offers from joint debtors must be accepted and processed only as a joint offer. Joint debtors must be advised that all debtors will remain liable for the balance of the debt until all payments due under the joint offer have been made.

(2) A separate Form FmHA 19056–1 will be completed by each debtor, unless the debtors are members of the same family and all necessary financial information on each debtor can be shown clearly on a single application. Separate applications will be sent to the State Office as a unit.

(3) If one debtor applies for compromise, adjustment, or cancellation, or if the debt is to be charged off, and the other debtor(s) is deceased or has received a discharge of the debt in bankruptcy, or the whereabouts of the other debtor(s) is unknown, or it is impossible or impracticable to obtain the signature of the other debtor(s), Form FmHA1956–1 or Form FmHA 1956–2 (for housing loans) "Cancellation or Charge off of FmHA Indebtedness" will be prepared by showing at the top of the form the name of the debtor requesting settlement, followed by the name of the other debtor.

For example, "John Doe, joint debtor with Bill Doe, deceased," "John Doe, joint debtor with Sam Doe, discharged in bankruptcy," "John Doe, joint debtor with Mary Doe, impossible or impracticable to obtain signature," as appropriate. In addition to the information concerning settlement of the debt by the applicant, information which justifies settlement of the debt as to the debtor(s) not joining in the application will be shown on Form FmHA 1956–1 or 1956–2 for (housing loans).

(k) *Adjustment of debts when debtors are in bankruptcy.* FmHA personnel do not have the authority to accept or reject a reorganization plan on behalf of the United States for debtors filing under Chapter 11, Chapter 12, or Chapter 13 when the plan calls for part of the FmHA debt to be forgiven.

(1) Plans submitted by debtors under Chapters 11, 12, and 13 must be sent by the County Supervisor to the State Director who will refer them to the United States Attorney through the Regional Attorney. When the plan calls for the adjustment of a debt to FmHA, the State Director will provide the Regional Attorney with a recommendation on acceptance or rejection of the plan.

(2) The U.S. Attorney will advise the FmHA State Director through the Regional Attorney as to approval or rejection of the debtor's reorganization plan. Upon notification of an approval, the State Director will notify the Finance Office by memorandum of the terms and conditions of the bankruptcy reorganization plan including any adjustment of the debtor's debt. Adjustment will be processed in accordance with Subpart A of 1951 of this chapter.

(1) *Settlement where debtor owes more than one type of FmHA Loan.* It is not the policy to settle any loan indebtedness of a debtor who is also indebted on another FmHA loan and who will continue as an active borrower, except Single Family Housing (SFH) in cases in which unusual circumstances exist such as where the borrower is unable to pay in full because he/she has ceased farming but still needs the dwelling, or because his/her income is limited due to age or a permanent health problem. In such cases, the facts will be fully documented in Part VIII of Form FmHA 1956–1.

§ 1956.58 Approval or rejection.

All debt settlement cases will be submitted for review in accordance with Exhibit A of this subpart (available in any FmHA office).

(a) *Approval authority.* Subject to this subpart, the compromise, adjustment, cancellation, or chargeoff of debts will be approved or rejected:

(1) Except as provided in paragraph (a)(2) of this section, by the State Director when the outstanding balance of the indebtedness involved in the settlement less the amount of a compromise or adjustment offer is less than $250,000 (including principal, interest, and other charges).

(2) The State Director may approve the cancellation of debts discharged in a Chapter 7 bankruptcy in accordance with § 1956.70(b)(3) of this subpart regardless of the amount of the outstanding indebtedness.

(3) By the Administrator or designee when the outstanding balance of the indebtedness involved in the settlement less the amount of a compromise or adjustment offer is $250,000 or more (including principal, interest, and other charges).

(b) *Approval processing.* The State Director will:

(1) Execute and send the original approved Form FmHA 1956–1 or Form FmHA 1956–2 for housing to the Finance Office.

(2) Notify debtors in writing of approval of the settlement of their indebtedness in the following cases:

(i) All compromise and adjustment offers. The following will also be done:

(A) The specific amount and terms of the offer will be stated.

(B) The accounts settled will be identified by reference to the accounts shown on Form FmHA 1956–1.

(ii) Cancellations under § 1956.70(a) or § 1956.70(c) of this subpart.

(3) Not be required to notify debtors of approval of the settlement of their indebtedness when debts are charged off under § 1956.75 or canceled under § 1956.70(b).

(c) *Requesting additional information.* When rejection appears to be necessary either because of lack of information or because the amount of a compromise or adjustment offer is inadequate, the State Director may request the employee in charge of the account to obtain the additional information or make an effort to obtain an acceptable offer, as the circumstances justify. Notice of rejection of an offer will be withheld in such cases until sufficient time, normally not to exceed 30 days, has elapsed to enable the debtor to present further information or new offer. All settlement offers will be handled promptly.

(d) *Rejection processing.* The State Director will:

(1) Insert the reasons for rejection on the form.

(2) Execute and retain the original form in the State Office.

(3) Return case files and copies of the form to the employee in charge of the account.

(4) Request the Finance Office to return any adjustment or compromise payment held by the Finance Office to the borrower, in care of the employee in charge of the account.

(5) Return any adjustment or compromise payment held by the State Office to the borrower, in care of the employee in charge of the account.

(6) Notify the debtor in writing of the reasons for the rejection in the following cases:

(i) All compromise and adjustment offers.

(ii) Cancellations under § 1956.70(a) of this subpart.

(e) *Appeal rights.* A debtor whose debt settlement offer is rejected may appeal the rejection under Subpart B of Part 1900 of this chapter. In cases where the adverse decision maker is the County Committee, the County Supervisor will advise the debtor of appeal rights. If the debtor exercises his/her right to a meeting, the County Committee must meet with the debtor. If the meeting does not result in a resolution, the debtor may exercise his/her right to a hearing. If the National Appeals Staff reverses the adverse County Committee decision, the case will be forwarded to the appropriate debt settlement approval official for consideration of approval.

§§ 1956.59–1956.65 [Reserved]

§ 1956.66 Compromise and adjustment of nonjudgment debts which the debor is unable to pay.

Nonjudgment debts which the debtor is unable to pay may be compromised or adjusted in accordance with applicable provisions of this section, and the debtor may retain the security property. Application will be made on Form FmHA 1956–1 by the debtor; or if the debtor is unable to act, by the guardian, executor, or other party having legal authority to do so. The debtor will be released from liability upon successful completion of the terms of the approved compromise or adjustment offer by delivering the note(s) to the debtor stamped "Satisfied by compromise or adjustment."

(a) *Farmer programs debts.* The debt or any extension thereof on which compromise or adjustment is requested *does not* have to be due and payable under the terms of the note or other instrument, or because of acceleration by written notice prior to the date of application. Offers may be considered and approved subject to payment of the lump sum upon notice of approval to the debtor. Nonjudgment farmer programs debts may be compromised or adjusted in accordance with the following conditions:

(1) Compromise offers must be at least equal to the value of the security for the debt (including any crop security) less any prior lien amounts; plus any additional amount the debtor is able to immediately pay.

(2) Where the debtor is able to pay an amount in excess of the lump sum compromise offer, an adjustment offer must call for a lump sum payment as set out in paragraph (a)(1) of this section; plus any additional amount the Agency determines the borrower is able to pay over a period of time not to exceed 5 years.

(3) The acceptability of a compromise or adjustment offer will be arrived at by determining and evaluating:

(i) Statement of indebtedness owed on any prior liens. Statements will be reatined in the debtor's file.

(ii) Value of existing security as determined by a current appraisal made or obtained by the Agency. The appraisal will be retained in the debtor's file.

(iii) Debtor's total present income and probable sources, amount and stability of income over the next 5 years. Old age pensions, other public assistance, and veteran's disability pensions will not be considered as sources of funds or making compromise and adjustment offers.

(iv) Amount of debtor's debts and the priority of debt repayment from income.

(v) Amount of debtor's farm or business operation and living expenses necessary to continue the operation, if applicable.

(vi) Age and health when the debtor is largely depending on income from an occupation where manual labor is required.

(vii) Size of debtor's family, their ages and health.

(viii) Value of debtor's assets in relation to debts and liens of third parties. Reasonable equity in a modest nonsecurity homestead occupoed by the debtor will not be considered as available for settlement. Nonsecurity property in excess of minimum family living needs which is not exempt from levy and execution should be considered in determining the debtor's ability to pay.

(b) *Housing debts (both single-family and multi-family).* Offers may be considered and approved subject to payment of lump sum upon notice of approval of offer of the debtor. Nonjudgment housing debts may be compromised or adjusted when all of the following conditions are met:

(1) The entire debt is due and payable under the terms of the note or other instrument or because of acceleration by written notice prior to the date of the application for settlement.

(2) Compromise offers must be at least equal to the value of the security as determined by the Agency, less any prior liens, plus any additional amount the Agency determines the debtor is able to immediately pay based on information provided on Form FmHA 1956–1.

(3) Where the debtor is able to pay an amount in excess of the lump sum payment as set out in paragraph (b)(2) of this section; plus any additional amount the Agency determines the borrower is able to pay from financial resources over a period of time not to exceed 5 years.

§ 1956.67 Debts which the debtor is able to pay in full but refuses to do so.

Debts which the debtor may have the ability to pay in full has refused to do so may be compromised or adjusted in the following situations on Form FmHA 1956–1:

(a) When the full amount cannot be collected because of the refusal of the debtor to pay the debt in full and the OGC advises that the Government is unable to enforce collection in full within 2 years by enforced collection proceedings, the debt may be compromised. In determining inability to collect, the following factors will be considered:

(1) Availability of assets or income which may be realized by enforced collection proceedings, considering the applicable exemptions available to the debtor under State and Federal law.

(2) Inheritance prospects within 5 years.

(3) Likelihood of debtor obtaining nonexempt property or income within 5 years, out of which there could be collected a substantially larger sum than the amount of the present offer.

(4) Uncertainty as to price the security or other property will bring at forced sale.

(b) The debt may be compromised or adjusted when the OGC has advised in writing that:

(1) There is a real doubt concerning the Government's ability to prove its case in court for the full amount of the debt, and

(2) The amount offered represents a reasonable settlement considering:

(i) The probability of prevailing on the legal issues invovled.

(ii) The probability of proving facts to establish full or partial recovery, with due regard to the availability of witnesses and other pertinent factors.

(iii) The probable amount of court costs and attorney's fees which may be assessed against the Government if it is unsuccessful in litigation.

(c) When the cost of collecting the debt does ot justify enforced collection of the full amount, the amount accepted in compromise or adjustment may reflect an appropriate discount for administrative and litigation costs of collection. Such discount wil not exceed $2,000 unless the OGC advises that in the particular case a larger discount is appropriate. The cost of collecting may be a substantial factor in settling small debts but normally will not carry greet weight in settling large debts.

§ 1956.68 Compromise or adjustment without debtor's signature.

Debts of a living debtor may be compromised or adjusted if it is impossible or impracticable to obtain a signed application and all other requirements of this section applicable to compromise or adjustment with a signed application have been met Form FmHA 1956–1 will show:

(a) The sources from which the information was obtained.

(b) That a current effort was made to obtain the debtor's signature and the date(s) of such effort.

(c) The specific reasons why it was impossible or impracticable to obtain the signature of the debtor and, if the debtor refused to sign, the reason(s) given.

§ 1956.69 [Reserved]

§ 1956.70 Cancellation.

Nonjudgment debts may be canceled in the following instances:

(a) *With application.* The debt or any extension thereof on Farmer Programs debts *do not* have to be due and payable under the terms of the note or other instrument, or because of acceleration by written notice prior to the date of application. Debts due the FmHA may be canceled upon application of the debtor, or if a debtor is unable to act, upon application of a guardian, executor, or administrator, subject to the following conditions:

(1) The FmHA employee in charge of the account furnishes a report and favorable recommendation concerning the cancellation.

(2) There is no known security for the debt and the debtor has no other assets from which the debt could be collected.

(3) The debtor is unable to pay any part of the debt and has no reasonable prospect of being able to do so.

(b) *Without application.* Debts due the FmHA may be canceled upon a report and the favorable recommendation of the employee in charge of the account in the following instances;

(1) *Deceased debtors.* The following conditions must exist:

(i) There is no known security; and

(ii) An administrator or executor has not been appointed to settle the debtor's estate and the financial condition of the estate has been investigated and it has been established that there is no reasonable prospect of recovery; or

(iii) An administrator or executor has been appointed to settle the estate of the debtor; and

(A) A final settlement has been made and confirmed by the probate court and the Government's claim was recognized properly and the Government has received all funds it was entitled to, or

(B) A final settlement has not been made and confirmed by the probate court but there are no assets in the estate from which there is any reasonable prospect of recovery, or

(C) Regardless of whether a final settlement has been made, there were assets in the estate from which recovery might have been effected but such assets have been disposed of or lost in a manner which the OGC advises will preclude any reasonable prospect of recovery by the Government.

(2) *Disappeared debtors.* The debt may be canceled without application where the debtor has no known assets or future debt-paying ability, has disappeared and cannot be found without undue expense, and there is no existing security for the debt. Reasonable efforts will be made to locate the debtor. These efforts will generally include contacts, either in person or in writing, with postmasters, motor vehicle licensing and title authorities, telephone directories, city directories, utility companies, State and local governmental agencies, other Federal agencies, employees, friends, and credit agency skip locate reports, known relatives, neighbors and County Committee members. Also, the debtor's loan file should be reviewed carefully for possible leads that may be of assistance in locating the debtor. The efforts made to locate the debtor, including the names and dates of contacts, and the information furnished by each person, will be fully documentad in the appropriate space on Form FmHA 1956–1 or Form FmHA 1956–2 for housing loans.

(3) *Debtors discharged in bankruptcy.* If there is no security for the debt, debts discharged in bankruptcy shall be canceled by the use of Form FmHA 1956–1, or Form FmHA 1956–2 for housing loans, with attachments as below. No attempt will be made to obtain the debtor's signature and County Committee review is unnecessary. If the debtor has executed a new promise to pay prior to discharge and has otherwise accomplished a valid reaffirmation of the debt in accordance with advice from OGC, the debt is not discharged.

(i) Chapter 7 Bankruptcy cases will be documented with a copy of the "Discharge of Debtor" order(s) by the court for all obligors.

(ii) For debts indentified as being part of an unsecured claim under Chapter 11, the cancellation will be documented with a copy of the organization plan, copy of the order by the court confirming the plan, and an opinion by OGC that the confirming order has discharged the obligor(s) of liability to that part of the debt.

(iii) For debts identified as being part of an unsecured claim under Chapters 12 or 13, the cancellation will be documented with a copy of the reorganization plan and confirmation order, as above, a copy of the order completing the plan and closing the case, and an opinion by the OGC that the completion order has discharged the obligor(s) of liability to that portion of the debt.

(c) *Signature of debtor cannot be obtained.* Debts of a living debtor may be canceled if it is impossible or impracticable to obtain a signed application and the requirements in subsection (a) of this section concerning cancellation with application have been met or if the debt has been discharged in bankruptcy and there is no security. Form FmHA 1956–1 will state:

(1) The sources of information obtained.

(2) That a current effort was made to obtain the debtor's application and the date of such effort.

(3) The specific reasons why it was impossible or impracticable to obtain the signature of the debtor and, if the debtor refused to sign, the reason(s) given.

§§ 1956.71–1956.74 [Reserved]

§ 1956.75 Chargeoff.

(a) *Judgment debts.* Subject to the provisions of § 1956.57(g)(3), judgment debts may be charged off by use of Form FmHA 1956–1 or Form FmHA 1956–2 for housing upon a report and favorable recommendation of the employee in charge of the account provided:

(1) The United States Attorney's file is closed, and

(2) The requirements of § 1956.70(b)(2) have been met, *or* two years have elapsed since any collections were made on the judgment and the debtor(s) has no equity in property on which the judgment is a lien or on which it can presently be made a lien.

(b) *Nonjudgment debts.* Debts which cannot be settled under other sections of this subpart may be charged off using Form FmHA 1956–1 or Form FmHA 1956–2 for housing loans without the debtor's signature subject to the following provisions:

(1) When the principal balance is $2,000 or less and efforts to collect have been unsuccessful or it is apparent that further collection efforts would be ineffectual or uneconomical,

(2) When the OGC advises in writing that the claim is legally without merit,

(3) Even though FmHA considers the claim to be valid, when efforts to induce voluntary payments are unsuccessful and the OGC advises in writing that evidence necessary to prove the claim in court cannot be produced, or

(4) When the employee in charge of the account recommends the chargeoff and has made the following determinations on the basis of information in FmHA's official files or from other informed reliable sources:

(i) That the debtor is:

(A) Unable to pay any part of the debt and has no apparent future debt repayment ability as specified in § 1956.66(a); or

(B) Able to pay part or all of the debt but is unwilling to do so, it is clear that the Government cannot enforce collection of a significant amount from assets or income, and an opinion is received from OGC to that effect; and

(ii) There is no security for the debt.

§§ 1956.76–1956.84 [Reserved]

§ 1956.85 Payments and receipts.

(a) *Servicing office handling.*

(1) An application with which the debtor offers a lump-sum payment in compromise, or with which the debtor offers an initial payment on an adjustment offer, will be accompanied by the payments required at the time such application is filed in the servicing office.

(2) Except as provided in paragraph (a)(3) of this section, payments offered by debtors in settlement of debts will be deposited and transmitted as required in Subpart B, C and K of Part 1951 of this chapter.

(3) Checks or check transmittal letter containing restrictive notations such as "Settlement in full" or "Payment in full," or in those exceptional instances when the debtor refuses to sign the Form FmHA 1956–1 in connection with a compromise offer, will be forwarded to the State Office where they will be retained until approval or rejection of the offer. The use of restrictive notations will be discouraged to the fullest extent possible.

(b) *Finance Office handling.*

(1) All payments evidenced by Form FmHA 451–2, "Schedule of Remittances," on Form FmHA 1944–9, "Multiple Family Housing Certification and Payment Transmittal," bearing the legend "Compromise Offer—FmHA" or "Adjustment Offer—FmHA," will be held in the Deposits Fund Account by the Finance Office until notification is received from the State Office of the approval or rejection of the offer. In cases of approved offers, remittances will be applied in accordance with established policies, beginning with the oldest loan included in the settlement, except that when the request for settlement includes loans made from different revolving funds the Finance Office will prorate the amount received, on the basis of the total principal balance due the respective revolving funds. Upon notification of a rejection of a debtor's offer and receipt of a request from the State Director for a refund, the Finance Office will refund to the debtor, in care of the employee in charge of the account, the amount held in the Deposits Fund Account representing a rejected compromise or adjustment offer.

(2) When a debtor's adjustment offer is approved, the accounts involved will not be adjusted in the records of the Finance Office until all payments have been made. Form FmHA 1956–1 will be held in a suspense file pending payment of the full amount of the approved offer. The original Form FmHA 1956–1 in approved cases will be retained in the Finance Office.

§§ 1956.86–1956.95 [Reserved]

§ 1956.96 Delinquent adjustment agreements.

(a) *Servicing office handling.* The employee in charge of the account should notify debtors in advance of the due dates of payments on debt settlement agreements. The employee in charge of the account should promptly contact debtors who are delinquent on debt settlement payments and find out their reasons for not making payments when due, and their plans for completing their agreements. Delinquencies of 30 days or more will be reported to the State Director along with other pertinent information and the recommendation of the employee in charge of the account regarding the further handling of the case.

(b) *State Office handling.*

(1) In those instances in which the debtor is delinquent under the terms of the debt settlement agreement and is likely to be financially unable to meet the terms of the debt settlement agreement, consideration should be given by the State Director to voiding the existing agreement and processing a different type of settlement more consistent with the debtor's repayment ability, provided the facts in the case justify such action. This settlement will be processed in accordance with procedure for a new agreement.

(2) The State Director may extend, for ninety days, the time for making the payments when the circumstances of the case justify an extension. Extensions for a greater period of time may be made by the State Director upon the recommendation of the County Committee (for Farmer Programs loans) and the employee in charge of the account. A decision not to extend the time for making payments is not appealable.

(3) When an adjustment agreement is voided, the State Director will notify the debtor giving the reasons in writing, with a copy to the Finance Office and to the employee in charge of the account. Upon receipt, the Finance Office will return the original Form FmHA 1956–1 to the State Office. The voiding of an adjustment offer is not appealable.

(c) *Disposition of payments.* If an agreement is voided, any payments received shall be retained as payments on the debt owed at the time of the compromise or adjustment offer.

§ 1956.97 [Reserved]

§ 1956.98 Disposition of promissory notes.

(a) Notes evidencing debts settled by completed adjustments, completed compromise with or without signature, or canceled with signature will be returned to the debtor or to the debtor's legal representative. The original and copies of the notes will be stamped "Satisfied by Approved Compromise", "Satisfied by Approved Cancellation" or "Satisfied by Completed Adjustment Offer". In such cases, the security instrument(s) will be released of record in the usual manner.

(b) Notes evidencing debts canceled without application will be placed in the debtor's case folder and disposed of pursuant to FmHA Instruction 2033–A (available in any FmHA office). However, if the debtor requests the notes, they may be stamped "Satisfied By Approved Cancellation" and returned.

(c) Notes evidencing charged off debts will be retained in the servicing office and will not be stamped or returned to the debtor. They will be destroyed six years after charged off pursuant to Exhibit C, Page 2 of FmHA Instruction 2033–A (available in any FmHA office).

§ 1956.99 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The Administrator will exercise this authority only at the request of the State Director and on the recommendation of the appropriate program Assistant

Administrator. Requests for exceptions must be made in writing by the State Director and supported with documentation to explain the adverse effect on the the Government's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted. Any settlement actions approved by the Administrator under this section will be documented on Form FmHA 1956-1 and returned to the State Office for submission to the Finance Office.

§ 1956.100 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575-0118.

PART 1965—REAL PROPERTY

5. The authority citation for Part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70

Subpart A—Servicing of Real Estate Security for Farmer Programs Loans and Certain Note—Only Cases

6. § 1965.13(f)(2) is revised to read as follows:

§ 1965.13 Consent by partial release or otherwise to sale, exchange or other disposition of a portion of or interest in security, except leases.

* * * * *

(f) * * *

(2) The borrower may use a portion of any proceeds to pay customary incidental costs appropriate to the transaction and reasonable in amount which the borrower cannot arrange to pay from personal funds or cannot have the purchaser pay. The costs may, for example include real estate taxes which must be paid to consummate the transaction; cost of title examination, surveys, abstracts, title insurance, reasonable attorney's fees, real estate broker's commissions and judgment liens. In any State in which it is necessary to obtain the insured note from the lender to present to the recorder before a release of a portion of the land from the mortgage, the borrower must pay any cost for postage and insurance of the note while in transit. The County Supervisor will advise the borrower when requesting a partial release that the borrower must pay the cost. If the borrower is unable to pay the costs from personal funds, they may be deducted from the sale proceeds. The amount of the charge will be based on the statement of actual cost furnished by the payee.

Dated: May 9, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89-16399 Filed 7-12-89; 8:45 am]

BILLING CODE 3410-07-M

Animal and Plant Health Inspection Service

9 CFR Part 54

[Docket No. 89-079]

Animals Destroyed Because of Scrapie

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking; response to comments.

SUMMARY: We are responding to comments received on whether to discontinue the Scrapie Eradication Program (the Program) and remove the regulations for animals destroyed because of scrapie. After reviewing the comments, we have decided to continue the current program until revisions of the program or alternate programs have been considered. We are publishing this notice to inform the public that we are not discontinuing the program at this time.

FOR FURTHER INFORMATION CONTACT: Chester A. Gipson, Senior Staff Veterinarian, Sheep, Goat, Equine, Poultry, and Miscellaneous Diseases Staff, VS, APHIS, USDA, Room 770, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7679.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on November 2, 1988 (Docket No. 88-131, 53 FR 44200-44202), we solicited comments on whether to remove the regulations in 9 CFR Part 54, which provide for payment of indemnities for animals destroyed because of scrapie, and to discontinue the existing Scrapie Eradication Program (the program), due to its ineffectiveness in eliminating the disease. We took this action based upon the recommendations of an expert panel made at the Scrapie Research Review Meeting, May 10-11, 1988.

We solicited comments for 60 days. At the request of interested persons, in a notice published in the **Federal Register** on December 22, 1988 (Docket No. 88-199, 53 FR 51563), we extended the comment period for an additional 60-day period so that industry associations and interested members of the public would have an opportunity to address the issues and formulate recommendations. Comments that were postmarked or received on or before March 6, 1989, were considered.

We received many thoughtful and informed comments from interested members of the public. The comments were submitted by State and Federal government officials, industry associations, sheep producers, breeders, farmers, veterinarians, and other individuals who raise sheep. All comments have been carefully considered. In light of these comments, we have reviewed the regulatory options available to us, and have determined not to discontinue the present program until development of a revised and improved scrapie program has been fully explored.

Of the 145 comments we received, 134 stated that the program should either be continued as is or enhanced, or that it should be continued pending development of a revised program. Eleven favored discontinuing the program, as recommended to us by the panel, because of its ineffectiveness in eliminating or controlling scrapie at considerable expense.

Many of the commenters opposed to discontinuing the program supported strengthening the existing program, and stated that total flock depopulation is necessary to eradicate the disease and that increased indemnities should be paid.

Other commenters stated that a more effective program must be developed with eradication of scrapie as its goal. These commenters urged that we continue the current program until a new program is developed and implemented.

In reviewing the comments, we found that many commenters, regardless of their affiliation, shared common concerns about the disease. Among the concerns expressed was the significance of the economic loss from scrapie due to the limited availability of foreign markets and due to indemnity ceilings that are less than the market value of destroyed animals. Other concerns expressed were the disease risk to cattle and other animals, implied by a suggested relationship of the disease to bovine spongiform encephalopathy, and a suggested human health risk through consumption of meat from diseased sheep and goats, due to a theorized relationship between scrapie and human central nervous system diseases.

Many commenters raised some or all of the following points as issues that should be addressed in developing an effective scrapie program:

1. The Need for Research in the Areas of Disease Transmission, Diagnosis, Detection, and Prevention

Scrapie is known to be infectious; however, one of the problems in controlling the spread of scrapie is the lack of sufficient scientific data on how the disease is transmitted. It has been known to pass laterally through ingestion of contaminated placental tissues, and some believe its spread is related to flock management procedures.

There is some evidence to indicate that certain breeds of sheep and goats do not commonly become infected with scrapie. Some commenters urged that the genetic implications of these findings be explored.

Scrapie can only be tentatively diagnosed clinically, based upon observation of signs in live sheep. Detection requires careful observation of animals by flock owners and veterinarians. However, because of the long incubation period of the disease (lasting several years), early detection is not likely and many other animals may be exposed to the disease before the signs become evident. Positive diagnosis and confirmation of the disease can only be done by laboratory examination of brain tissue after death of the animal. At present there is no known treatment or preventive vaccination for the disease.

2. The Need for Education and Information

Related to the need for research cited by the commenters is the need for education. Many commenters stated that they were not aware of the disease until it affected their animals or animals belonging to someone they knew, and that they were uninformed about the clinical signs of the disease. Industry members need to be informed about the disease and have current information regarding means of controlling its spread. They should also be kept apprised of proper methods of disposing of diseased animals. Current information and recordkeeping on the disease status of flocks could contribute to controlling spread of the disease by limiting the movement of the animals.

3. The Need for Uniformity

Under the present program, there are variations in the way each state implements its regulations concerning scrapie. As a result, states use different control mechanisms, quarantine and surveillance procedures, and animal identification and reporting requirements.

4. The Need for Permanent Animal Identification

Some commenters expressed concern regarding the possibility for fraud and abuse of the indemnity program through the failure to permanently identify animals believed to have the disease or to identify the animals to a scrapie-exposed flock. Currently, animals may be sold from a flock in which scrapie exists but its presence has not been confirmed or detected, and introduce the disease into another flock. Without current flock records and a means of permanently identifying individual animals to the flock, Federal and State officials often have difficulty establishing flocks of origin or sources of infection. A purchaser has no means of determining whether the animal he or she is buying presents a scrapie risk.

5. Need for Fair Indemnity

Many commenters suggested that the current indemnity ceiling of $300 per animal is often less then fair market value and does not promote the goal of eradication.

6. Need for Industry Support and Program Monitoring

A number of commenters suggested that any scrapie control or eradication program that APHIS may develop would require the support of breed associations, producers, and Federal and State officials to be successful. Uniform support would promote a cooperative effort to achieve program goals.

7. Need for Continuing Dialogue Among the Various Factions of the Sheep Industry and Federal and State Regulatory Officials

As our understanding of this problematic disease improves, there is a need to share information and to work cooperatively toward achieving program goals.

We are considering the regulatory option of conducting a negotiated rulemaking in order to develop a program which meets animal health needs, industry needs, and State and Federal governmental needs. Negotiated rulemaking is a process involving participation by industry representatives and other interested persons in the development of a rule. Its objective is to achieve consensus among contending segments of the affected public through the expression and resolution of competing interests and needs. If it is determined to proceed with the negotiated rulemaking, we will publish a document in the **Federal Register** announcing our intent to conduct negotiated rulemaking. We are not requesting additional comments at this time concerning the Scrapie Eradication Program.

Done in Washington, DC, this 7th day of July 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-16433 Filed 7-12-89; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-94-AD]

Airworthiness Directives; Airbus Industrie Model A300, A310, and A300-600 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to Airbus Industrie Model A300, A310, and A300-600 series airplanes, which would require repetitive inspections of the nose landing gear (NLG) barrel for cracks, and repair, if necessary; and would require eventual modification of the NLG barrel, which terminates the need for the repetitive inspections. This proposal is prompted by results of the manufacturer's fatigue testing, which revealed cracks in the lower area of the NLG barrel. This condition, if not corrected, could lead to collapse of the nose landing gear.

EFFECTIVE DATES: Comments must be received no later than August 28, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-94-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue, Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on wich the following statement is made: "Comments to Docket Number 89-NM-94-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on Airbus Industrie Models A300, A310, and A300-600 series airplanes. Results of the manufacturer's fatigue testing have revealed cracks in the lower area of the nose landing gear (NLG) barrel. The test results also revealed that some parts are life-limited to 26,000 landings. This condition, if not corrected, could lead to collapse of the NLG.

Airbus Industrie has issued the following service bulletins which describe procedures for repetitive inspections of the nose landing gear for cracks, and repair, if necessary.

Model	Service bulletin numbers and issue dates
A300	A300-32-388, Revision 1, dated January 24, 1989
A310	A310-32-2040, dated July 15, 1988
A300-600	A300-32-6023, dated July 15, 1988

Note: The above-listed service bulletins reference Messier-Hispano-Bugatti (MHB) Service Bulletin No. 470-32-641 for additional inspection instructions.

The DGAC has classified the above service bulletins as mandatory, and has issued French AD 88-143-088(B) addressing this subject.

Airbus Industrie has also issued the following service bulletins which describe procedures for modification of the NLG barrel. Accomplishment of the modifications described in these service bulletins terminates the need for the repetitive inspections called for in the above service bulletins.

Model	Service bulletin number
A300	A300-32-389, dated October 15, 1988
A310	A310-32-2041, dated October 15, 1988
A300-600	A300-32-6024, dated October 15, 1988

Note: The above-referenced service bulletins reference MHB Service Bulletin 470-32-642 for specific modification procedures.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive inspections of the nose landing gear barrel, and repair, if necessary, in accordance with the service bulletins previously mentioned.

Additionally, this action proposes to require modification of the NLG within 18 months after the initial inspection. The degree of assurance necessary as to the adequacy of inspections needed to maintain the safety of the transport airplane fleet, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has caused the FAA to place less emphasis on repetitive inspections and more emphasis on design improvements and material replacement. Thus, in lieu of its previous position of continual inspection, the FAA has decided to require, whenever practicable, airplane modifications necessary remove the source of the problem addressed. The proposed modification requirements of this action are in consonance with that policy decision.

It is estimated that 90 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required inspections, and that the average labor cost would be $40 per manhour. It would require approximately 11 manhours to accomplish the modification at an average labor charge of $40 per manhour and $2,500 parts cost per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $282,600.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Airbus Model A300, A310, and A300-600 series airplanes are operated by small entities. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300, A310, and A300-600 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent collapse of the nose landing gear, accomplish the following:

A. Perform an ultrasonic inspection of the nose landing gear barrel, in accordance with Airbus Industrie (AI) Service Bulletins A300-32-388, Revision 1, dated January 24, 1989 (for Model A300 series airplanes), A310-32-2040, dated July 15, 1988 (for Model A310 series airplanes), or A300-32-6023, dated July 15, 1988 (for Model A300-600 series airplanes), as follows:

1. For airplanes with nose landing gears having less than 11,500 cycles accumulated as of the effective date of this AD, perform the inspection prior to the accumulation of 12,000 cycles.

2. For airplanes with nose landing gears having 11,500 or more cylces accumulated as of the effective date of this AD, perform the inspection within 500 cycles or 3 months after the effective date of this AD, whichever occurs first.

B. If no ultrasonic echo is observed, or the echo amplitude is lower than or equal to ten percent (10%) of ultrasonic generator screen height, repeat the inspection required by paragraph A., above, at intervals not to exceed 1,250 cycles.

C. If an echo amplitude higher than ten percent (10%) and below eighty percent (80%) of ultrasonic generator screen height is observed during the inspections required by paragraphs A. and B., above, prior to further flight, perform a visual inspection to determine if the crack is visible, in accordance with Airbus Industrie Service Bulletin A300-32-388, A310-32-2040, or A300-32-6023, as appropriate.

Note: The above-listed Airbus service bulletins reference Messier-Hispano-Bugatti (MHB) Service Bulletin No. 470-32-641 for additional inspection instructions.

1. If no crack is visible from the outside of the barrel, repeat the visual inspection prior to each flight. Replace the nose landing gear barrel within 100 cycles after discovery of the first echo, in accordance with Airbus Industrie Service Bulletin A300-32-389 (for Model A300 series airplanes), A310-32-2041 (for Model A310 series airplanes), or A300-32-6024 (for Model A300-600 series aiplanes), each dated October 15, 1988, as appropriate. (Reference: MHB Service Bulletin 470-32-642.)

2. If a crack is visible from the outside of the barrel, replace the nose landing gear barrel prior to further flight, in accordance with Airbus Industrie Service Bulletin A300-32-389, A310-32-2041, or A300-32-6024, as appropriate. (Reference: MHB Service Bulletin 470-32-642.)

3. After replacement is accomplished, the repetitive inspections required by paragraph A. and B., above, may be discontinued.

D. If an echo amplitude equal to or higher than eighty percent (80%) of ultrasonic generator screen height is observed during the inspections required by paragraphs A. and B., above, prior to further flight, perform a visual inspection to determine if the crack is visible, in accordance with Airbus Industrie Service Bulletin A300-32-388, A310-32-2040, or A300-32-6023, as appropriate. (Reference: MHB Service Bulletin 470-32-641).

1. If no crack is visible from the outside of the barrel, one ferry flight for return to the main base is allowed before the barrel must be replaced.

2. If a crack is visible from the outside of the barrel, the barrel must be replaced prior to further flight, in accordance with Airbus Industrie Service Bulletin A300-32-389, A310-32-2041, or A300-32-6024, as appropriate. (Reference: MHB Service Bulletin 470-32-642.)

3. After replacement is accomplished, the repetitive inspections required by paragraph A. and B., above, may be discontinued.

E. Within 18 months after the initial inspection for cracks, modify the nose landing gear barrel in accordance with Airbus Industrie Bulletin A300-32-389, A310-32-2041, or A300-32-6024, as appropriate. (Reference: MHB Service Bulletin 470-32-642.)

F. The inspections required by paragraphs A. and B., above may be terminated following modification of the nose landing gear barrel in accordance with Airbus Industrie Bulletin A300-32-389, A310-32-2041, or A300-32-6024, as appropriate. (Reference: MHB Service Bulletin 470-32-642.)

G. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manger, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

H. Special Flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 28, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-16449 Filed 7-12-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-102-AD]

Airworthiness Directives; Boeing Model 767 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 767 airplanes, which would require replacement of both spoiler wheel command units. This proposal is prompted by reports that a potential failure mode exists, which could cause uncommanded deployment of three flight spoilers on one wing to their full up position. This condition, if not corrected, could result in a sudden large rolling moment and, after recovery by the pilot, diminished roll capability and a significant loss of lift.

DATE: Comments must be received no later than August 29, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-102-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Henry A. Jenkins, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1947. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on

the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to the Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-102-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The FAA has been advised by Boeing Commercial Airplanes, the manufacturer of Model 767 series airplanes, that a potential failure mode has been identified in the spoiler wheel command unit, which would occur as a result of separation of the input gear from the input shaft. Although no occurrences of this problem in service have been reported, this failure could cause uncommanded deployment of three flight spoilers on one wing to their full up position. This condition, if not corrected, could result in a sudden large rolling moment and, after recovery by the pilot, diminished roll capability and a significant loss of lift.

The FAA has reviewed and approved Boeing Service Bulletin 767-27-0085, dated October 20, 1988, which describes replacement of both spoiler wheel command units with improved units, and test and adjustment of the units after replacement.

Since this condition may exist or develop on other airplanes of the same type design, an AD is proposed which would require replacement of the spoiler wheel command units in accordance with the service bulletin previously described.

There are approximately 243 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 101 airplanes of U.S. registry would be affected by this AD, that it would take approximately five manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $20,200. The parts required by the proposed AD may be furnished or fabricated from operator's existing stock or purchased directly from industry sources. Therefore, parts cost is estimated to be negligible.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Boeing: Applies to Model 767 series airplanes, line numbers 1 through 243, certificated in any category. Compliance is required within the next 24 months after the effective date of this AD, unless already accomplished.

To prevent uncommanded extension of three flight spoilers on one wing, due to failure of a spoiler wheel command unit, accomplish the following:

A. Replace both spoiler wheel command units, in accordance with Boeing Service Bulletin 767-27-0085, dated October 20, 1988.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may by used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received copies of the service bulletin cited herein may obtain copies upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 30, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-16450 Filed 7-12-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-103-AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes equipped with Pratt and Whitney engines, which would require removal of two unused engine throttle control cable fairleads. This action is prompted by an FAA certification cable inspection test in which it was discovered that, under simulated elevator cable system proof load, there was enough cable slack for the elevator cable to hang up on the throttle fairlead at left buttock line (LBL) 14 and body station (BS) 310. This condition, if not corrected, could lead to the elevator control cables binding on the engine throttle control cable fairleads, which could result in the inability of the pilot to safely control the airplane.

DATES: Comments must be received no later than September 1, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-103-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM-120S; telephone (206) 431-1919. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to the Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-103-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

During an FAA certification cable inspection test of a Boeing Model 757 series airplane equipped with Pratt and Whitney engines, it was discovered that, under simulated elevator cable system proof load, enough cable slack developed to hang-up the elevator cable on the throttle fairlead at left buttock line (LBL) 14 and body station (BS) 310. This condition, if not corrected could result in the inability of the pilot to safely control the airplane.

The FAA has reviewed and approved Boeing Service Bulletin 757-76-0006, dated March 16, 1989, which describes procedures for removal of the two unused engine throttle control cable fairleads. Removal of the fairleads will effectively eliminate the possibility of either elevator control cable binding on these fairleads.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require removal of the two unused engine throttle control cable fairleads in accordance with the service bulletin previously described.

There are approximately 85 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 78 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,240.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes equipped with Pratt and Whitney engines, listed in Boeing Service Bulletin 757-76-0006, dated March 16, 1989, certificated in any category. Compliance required within the next 12 months after the effective date of this AD, unless previously accomplished.

To prevent the elevator control cables binding on the engine throttle control cable fairleads, accomplish the following:

A. Remove two engine throttle control cable fairleads in accordance with Boeing Service Bulletin 757-76-0006, dated March 16, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may by used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

BEST COPY AVAILABLE

Issued in Seattle, Washington, on July 3, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-16451 Filed 7-12-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-ANE-19]

Airworthiness Directives; Teledyne Continental Motors (TCM) Model TSIO-520-UB Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt an Airworthiness Directive (AD) that would require repetitive inspections of the turbocharger inlet assembly on certain TCM Model TSIO-520-UB engines. The proposed AD is needed to detect possible cracking of the turbocharger inlet assembly which could result in the introduction of hot exhaust gases into the engine compartment with the possibility of engine compartment fire.

DATES: Comments must be received on or before September 1, 1989.

ADDRESSES: Comments on the proposal may be mailed in duplicate to Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 89-ANE-19, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311 of the Regional Rules Docket at the above address. Comments must be marked: Docket No. 89-ANE-19.

Comments may be inspected at the above location in Room 311 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Aerospace Engineer, Propulsion Branch, ACE-140A, Atlanta Aircraft Certification Office, Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; telephone (404) 991-3810.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the agency before any final action is taken on the proposed rule. The proposal contained in this notice may be changed in light of comments.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 89-ANE-19. The postcard will be date/time stamped and returned to the commenter.

There have been service difficulty reports (SDR) of cracking of the turbocharger inlet assembly on certain TCM Model TSIO-520-UB engines which could introduce hot exhaust gases into the engine compartment. This problem was addressed in Beechcraft Service Communique No. 70, dated October 28, 1983, in which 100 hour inspection intervals are recommended. TCM introduced a replacement (cast) part in 1985 to replace the original (welded) part. SDR's since that time indicate that the original part is still in service and the rate of cracking may be increasing due to repairs, aging, and installation errors. There were 7 SDR's from 1981 thru 1984 with an additional 12 reports from 1985 thru 1988. Since this condition is likely to exist or develop on other engines of the same type design, the proposed AD would require repetitive inspections of the turbocharger inlet assembly and replacement when necessary on certain TCM Model TSIO-520-UB engines.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this proposed regulation involves 452 engines and the approximate cost would be $160.00 (4 hours) per engine per inspection. If replacement is necessary, the list price of the replacement part (P/N 646795) is $3138.00 and there would be an additional $240.00 labor (6 hours) to complete the installation. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, and Aviation safety.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

Telodyne Continental Motors (TCM): Applies to TCM Model TSIO-520-UB engines, serial numbers 515000 thru 515999 and 527000 thru 527070, and to all remanufactured and overhauled engines of this model, regardless of serial number, which are equipped with part number (P/N) 642668 turbocharger inlet assembly.

Compliance is required at the next 100 hour inspection or annual inspection, or within 100 flight hours, whichever occurs first after the effective date of this AD, and thereafter at intervals not to exceed 100 flight hours.

To prevent possible cracking of the turbocharger inlet assembly which could result in engine compartment fire, accomplish the following:

(a) Visually inspect turbocharger inlet assembly P/N 642668 for cracks especially in the weld joints just above the turbine inlet temperature boss. If a crack is found, replace P/N 642668 with P/N 646795 turbocharger inlet assembly, prior to further flight.

(b) Make appropriate log book entry showing compliance with this AD.

Notes: (1) Beechcraft Aircraft Corporation Service Communique No. 70, dated October 28, 1983, refers to this subject.

(2) When determining the P/N assembly installed in order to comply with this AD, a distinguishing feature of the P/N 642668 turbocharger inlet assembly is 4 ribs (approximately 0.25 inches in height, 0.1 inches in width, and 2.1 inches in length) on the top of the turbocharger mating flange.

(3) If P/N 642668 is not installed, no action is required.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, Atlanta Aircraft Certification Office, Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349, may approve an equivalent means of compliance or an adjustment of the compliance schedule specified in this AD which provides an equivalent level of safety.

Issued in Burlington, Massachusetts, on June 28, 1989.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 89-16452 Filed 7-12-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Oklahoma Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: OSMRE is announcing receipt of revisions pertaining to two previously proposed amendments to the Oklahoma permanent regulatory program (hereinafter, the "Oklahoma program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). To facilitate the processing of the amendments, OSMRE combined the two amendments into a single amendment. In the amendment, Oklahoma proposes revisions to its regulations pertaining to the general provisions; permanent regulatory program; restriction on financial interests of State employees; exemption for coal extraction incident to government financed highway or other construction; areas designated unsuitable for mining; requirements for coal exploration; requirements for permits, permit processing, revisions, renewals, or sale of permit rights; administrative and judicial review; permit applications; small operator assistance; bond and insurance requirements; permanent program performance standards; inspections and enforcement; civil penalties; and training, examination, and certification of blasters. Oklahoma also proposes to add a new section to its regulations pertaining to individual civil penalties. The amendment is intended to revise the Oklahoma program to be consistent with the corresponding Federal standards.

This notice sets forth the times and locations that the Oklahoma program and the proposed amendment to the program are available for public inspection, and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4:00 p.m., c.d.t., August 14, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. James H. Moncrief at the address listed below.

Copies of the Oklahoma program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSMRE's Tulsa Field Office.

Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 550, Tulsa, OK 74135, Telephone: (918) 581-6430

Oklahoma Department of Mines, 4040 North Lincoln, Oklahoma City, OK 73105, Telephone: (405) 521-3859.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, telephone (918) 581-6430, at the address listed in "**ADDRESSES.**"

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. General background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Oklahoma program, can be found in the January 19, 1981, **Federal Register** (46 FR 4910). Subsequent actions concerning the Oklahoma program and program amendments can be found at 30 CFR 936.15.

II. Proposed Amendment

By letter dated May 18, 1988, (administrative record No. OK-843), Oklahoma submitted a proposed amendment to its program under SMCRA. Oklahoma submitted the proposed amendment in response to a July 15, 1985, letter (administrative record No. OK-681) and a June 9, 1987, letter (administrative Record No. OK-811) that OSMRE sent in accordance with 30 CFR 732.17 (d) through (f). The regulations that Oklahoma proposes to amend are: Parts 700, General; 701, Permanent Regulatory Program; 705, Restriction on Financial Interest of State Employees; 707, Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction; 761, Areas Designated Unsuitable by the Act; 762, Criteria for Designating Areas as Unsuitable for Surface Coal Mining Operations; 764, Processes for Designating Areas Unsuitable for Surface Coal Mining Operations; 772, Requirements for Coal Exploration; 773, Requirements for Permits and Permit Processing; 774, Revision, Renewal, and Transfer, Assignment, or Sale of Permit Rights; 775, Administrative and Judicial Review; 777, General Content Requirements for Permit Applications; 778, Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information; 779, Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources; 780, Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operations Plan; 783, Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources; 784, Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operations Plan; 785, Requirements for Permits for Special Categories of Mining; 795, Small Operator Assistance; 800, Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations; 810, Permanent Program Performance Standards—General Provisions; 815, Permanent Performance Standards—Coal Exploration; 816, Permanent Program Performance Standards—Surface Mining; 817, Permanent Program Performance Standards—Underground Mining Activities; 819, Special Permanent Program Performance Standards—Auger Mining; 823, Special Permanent Program Performance Standards—Operations on

Prime Farmland; 824, Special Permanent Program Performance Standards—Mountaintop Removal; 827, Special Permanent Program Performance Standards—Coal Preparation Plants Not Located Within the Permit Area of a Mine; 828, Special Permanent Program Performance Standards—In Situ Processing; 842, State Inspections; 843, State Enforcement; 845, Civil Penalties; and 850, Training, Examination, and Certification of Blasters.

OSMRE published a notice in the June 28, 1988, **Federal Register** (53 FR 24321) announcing receipt of the May 18, 1988 amendment and inviting public comment on the adequacy of the proposed amendment. The public comment period ended July 28, 1988.

In a letter dated October 6, 1988, (administrative record No. OK-873), OSMRE notified Oklahoma, pursuant to 30 CFR 732.17(f)(1), of additional changes necessary to make the Oklahoma program no less effective than the Federal regulations. By letter dated November 14, 1988, (administrative record No. OK-866) Oklahoma responded by asking OSMRE to formally consider a previously submitted informal amendment package dated September 16, 1988 (administrative record No. OK-862). The amendment package submitted by the November 14, 1988, letter contains proposed regulation changes to Parts 773, Requirements for Permits and Permit Processing; 706, Restriction on Financial Interests of State Employees; 780, Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operations Plan; 800, Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations. This amendment also adds Part 846, Individual Civil Penalties. OSMRE published a notice in the January 9, 1989, **Federal Register** (54 FR 634) announcing receipt of the November 14, 1988 amendment and inviting public comment on the adequacy of the proposed amendment. The public comment period ended February 8, 1989. To facilitate the processing of the May 18 and November 14, 1988 amendments, OSMRE combined the two amendments into a single amendment.

During its review of the proposed amendment, OSMRE identified concerns relating to: jurisdiction, definitions, mining plans, Federal lands, lands unsuitable, exploration, permit requirements, permit revisions, applicant ownership and control, reclamation and operations plans, special categories of mining, self-bonding; performance standards for surface mining, performance standards for underground mining, prime farmland, preparation plants, inspections, civil penalties, and AMLR fees. OSMRE notified ODM of the concerns during a March 3, 1989, meeting (administrative record No. OK-887). In a letter dated June 22, 1989 (administrative record No. OK-888), Oklahoma responded to these concerns by submitting a revised proposed amendment package.

Public Comment Procedures

OSMRE is reopening the comment period on the proposed Oklahoma program amendment to provide the public an opportunity to reconsider the adequacy of the amendment in light of the additional materials submitted on June 22, 1989. In accordance with the provisions of 30 CFR 732.17(h), OSMRE is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Oklahoma program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

List of Subjects in 30 CFR Part 936

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: June 28, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 89-16382 Filed 7-12-89; 8:45 am]

BILLING CODE 4310-05-M

PANAMA CANAL COMMISSION

35 CFR Parts 103 and 133

Requirements of Transiting Vessels and Their Measurement

AGENCY: Panama Canal Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Panama Canal Commission proposes to amend its regulations set out in Title 35, Parts 103 and 133: (1) To more accurately reflect treaty-mandated changes concerning authority over transiting vessels; (2) to require new pilot shelter platforms, and (3) to clearly identify those officials who are authorized to measure and certify the tonnage of vessels. These latter two changes are being made respectively to provide shelter from weather for pilots aboard transiting vessels and for clarification.

DATE: Comments must be received by August 14, 1989.

ADDRESS: Comments should be sent to Secretary, Panama Canal Commission, 2000 L Street NW., Suite 550, Washington, DC 20036-4996, or Panama Canal Commission, Office of General Counsel, APO Miami, FL 34011-5000.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Secretary, Panama Canal Commission, 2000 L Street NW., Suite 550, Washington, DC 20036-4996, Telephone: (202) 643-6441, or John L. Haines, Jr., General Counsel, Panama Canal Commission, telephone in Balboa Heights, Republic of Panama, (011)-507-52-7511.

SUPPLEMENTARY INFORMATION: The Panama Canal Commission proposes a change which would revise § 103.7 concerning the temporary holding of vessels for the purpose of investigation into a marine accident. Inasmuch as the agency's legal authority to hold vessels was abolished by the Panama Canal Treaty of 1977 and its related agreements, reference to holding a vessel is being removed; however, a vessel may still be denied transit until its tenderness, trim, list, draft, cargo, hull, machinery and equipment have been put into such condition as to make the vessel safe for its transit through the Panama Canal.

Secondly, the Commission is proposing to change § 103.19, by revising paragraphs (a) and (d) and adding two new paragraphs with the aim of requiring vessels whose extreme beam is 24.40 meters (80 feet) or more to provide shelter platforms for pilots on the bridge wings of these medium-size and large vessels. The purpose of the proposed platforms is to provide pilots shelter from the elements and enhance safety. The shelters shall be in place and ready for use no later than six months from the effective date of publication of the final rule in the **Federal Register**.

The last of the proposed changes corrects section 133.32 to specify that measurements of Canal tonnage may be taken and associated certificates may be issued by the United States Coast Guard, as well as Canal admeasurers and certain properly designated officials abroad.

These proposed rules are not major rules for the purposes of Executive Order 12291 of February 17, 1981. In accordance with the Regulatory Flexibility Act (5 U.S.C. 650(b)), it is

hereby certified that these proposed rules will not have a significant impact on small business entities.

Lists of Subjects

35 CFR Part 103

Vessels, General provisions.

35 CFR Part 133

Tolls for use of Canal.

For the reasons set forth in the preamble, the Panama Canal Commission proposes to amend 35 CFR Parts 103 and 133 as follows:

PART 103—GENERAL PROVISIONS GOVERNING VESSELS

1. The authority citation for Part 103 continues to read as follows:

Authority: 22 U.S.C. 3811, E.O. 12215, 45 F.R. 30043, and 44 U.S.C. 3501.

2. Section 103.7 is revised to read as follows:

§ 103.7 Authority to deny transit.

A vessel's transit may be denied until, in the opinion of the Canal authorities, its tenderness, trim, list, draft, cargo, hull, machinery, and equipment have been put into such condition as will make the vessel safe for her passage through the Canal. No claim shall be allowed or considered because of any such delay.

3. Section 103.19 is amended by revising the heading and paragraphs (a) and (d) and by adding new paragraphs (e) and (f) to read as follows:

§ 103.19 Requirement for pilot shelter platforms.

(a) Any vessel that, in accordance with Panama Canal operation standards, is required to have three or more pilots aboard, shall provide suitable pilot shelter platforms for the assisting pilots. The purpose for the pilot platforms is to provide shelters from sun and rain for pilots working near the bow or the stern of a vessel and to provide adequate visibility around the locks in order to reduce the danger of damage. In general, this bow/stern pilot shelter platform is required of all ships of 190.5 meters (625 feet) or more in length and a beam of 30.5 meters (100 feet) or greater, but may also be required of certain smaller ships that the Marine Director or his designated representative determine require three or more pilots. Those vessels requiring shelters shall provide them for use no later than six months from the effective date of the final rule.

* * * * *

(d) In addition to the pilot shelter platforms required by paragraph (a) of this section for assisting pilots, all vessels whose extreme beam is 24.4 meters (80 feet) or more, are required to provide bridge wing shelter platforms for the protection of control pilots. The following is a sketch of a bridge wing shelter platform that is acceptable to the Panama Canal Commission.

BILLING CODE 3640-04-M

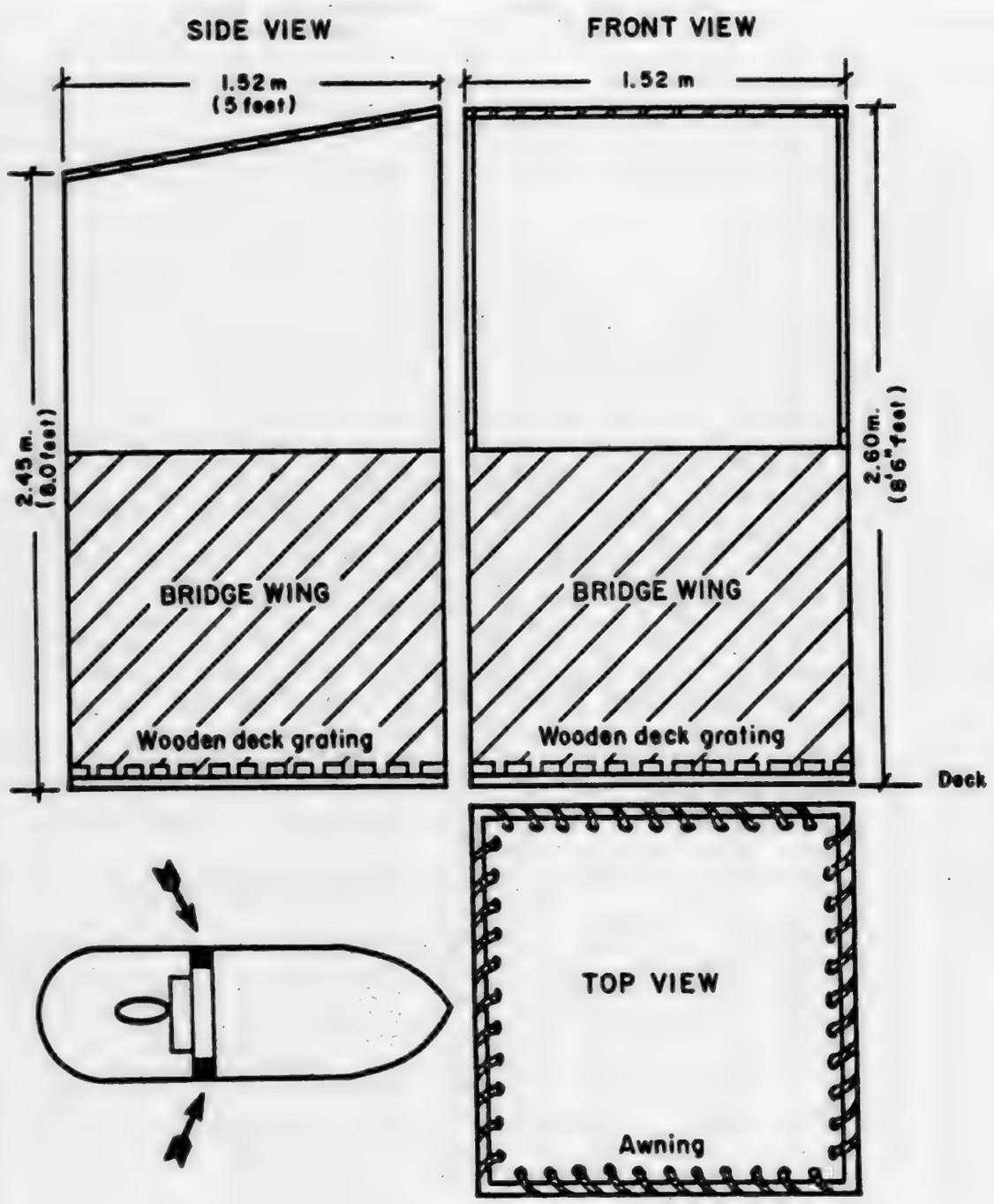

BILLING CODE 3610-04-C

(e) The purpose of the bridge wing platform is to provide shelter for pilots from sun and rain, while allowing maximum visibility around the locks. On vessels that have a raised conning station at the edge of the bridge wing more than 30 centimeters (1 foot) above the deck level, the height of the awning should be raised accordingly. Awnings are to extend at least 1.52 meters (5 feet) inboard from the outboard edge of the bridge wing. Similarly, their fore-and-aft dimension is to be at least 1.52 meters (5 feet), extending aft from the forward part of the bridge wing. If ship control equipment (engine, rudder or thruster controls, etc.) are located on the bridge wings, these shelter platforms must also extend at least one foot beyond such equipment but must not extend beyond the outboard edge of the bridge wing.

(f) The awning indicated in the sketches in paragraphs (b) and (d) of this section are to be made of suitable material to provide shelter from sun and rain. The decks of the pilot shelter platforms are to be made of wood or other material with a non-skid surface.

PART 133—TOLLS FOR USE OF CANAL

4. The authority citation for Part 133 continues to read as follows:

Authority: Issued under authority of the President by 22 U.S.C. 3791; E.O. 12215, 45 FR 36043.

5. Section 133.32 is revised to read as follows:

§ 133.32 Measurement of vessels; making and correction of measurement; plans and copies.

Measurement may be made and the required certificate issued by the admeasurers of the Canal, by the United States Coast Guard, and by certain other officials worldwide as designated by the Director of Admeasurement of the Panama Canal Commission. Each transiting vessel should be provided with a full set of plans and a copy of the measurements which were made at the time of issue of its national tonnage certificate, as well as the tonnage certificate itself. The Canal authorities shall have the right to check and correct any measurement made or certificate issued elsewhere.

Dated: July 16, 1989.

D.P. McAuliffe,

Administrator, Panama Canal Commission.

[FR Doc. 89-16464 Filed 7-12-89; 8:45 am]

BILLING CODE 3640-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-502; RM-6449]

Radio Broadcasting Services; Winnebago, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; withdrawal.

SUMMARY: The Commission dismisses the request of Gary L. Violet to substitute Channel 289C2 for Channel 289A at Winnebago, Nebraska, and modify his construction permit for Station WSUX to specify the higher powered channel. Petitioner failed to restate his intention to apply for Channel 289C2, if allotted to Winnebago. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-502, adopted June 16, 1989, and released July 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-16377 Filed 7-12-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-297; RM-6698]

Radio Broadcasting Services; Hatteras, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule

SUMMARY: The Commission requests comments on a petition by Pamlico Sound Company, Inc. seeking the substitution of Channel 246C1 for Channel 248C2 at Hatteras, North Carolina, and the modification of its construction permit for a new station on Channel 248C2 accordingly. Channel 246C1 can be allotted to Hatteras in compliance with the Commission's minimum distance separation requirements and can be used at the site specified in its outstanding construction permit. The coordinates for this allotment are North Latitude 35-15-42 and West Longitude 75-33-20. In accordance with § 1.420(g) of the Commission's Rules, competing expressions of interest in use of the channel at Hatteras will not be accepted and we will not require the petitioner to demonstrate the availability of an additional equivalent class of channel for use by such parties.

DATES: Comments must be filed on or before August 28, 1989, and reply comments on or before September 12, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard J. Hayes, Jr., Esq., 1359 Black Meadow Road, Greenwood Plantation, Spotsylvania, Virginia 22553 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-297, adopted June 15, 1989, and released July 5, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-16379 Filed 7-12-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-302, RM-6664]

Radio Broadcasting Services; Beaver Springs, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Susan A. Bernstein seeking the allotment of Channel 291A to Beaver Springs, Pennsylvania, as its first local FM service. Petitioner is requested to furnish additional information to determine whether Beaver Springs is a "community" for allotment purposes. Channel 291A can be allotted to Beaver Springs in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.2 kilometers (3.2 miles) south to avoid a short-spacing to Station WZKZ, Corning, New York, and to Station WHLM, Bloomsburg, Pennsylvania. The coordinates for this allotment are North Latitude 40-42-04 and West Longitude 77-13-34. Canadian concurrence is required since Beaver Springs is located within 320 kilometers of the U.S.-Canadian border.

DATES: Comments must be filed on or before August 28, 1989, and reply comments on or before September 12, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Susan A. Bernstein, 14 Spruce Street, Selingsgrove, Pennsylvania 17870 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-302, adopted June 15, 1989, and released July 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-16380 Filed 7-12-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-303, RM-6661]

Television Broadcasting Services; Arcade, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Robert Bennett seeking the allotment of UHF TV Channel 62 to Arcade, New York, as the community's first local television service. Channel 62— can be allotted to Arcade in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.2 kilometers (9.5 miles) east to avoid a short-spacing to a construction permit for Channel 48+ at Corning, New York, and to unused Channel 55 at Niagara Falls, Ontario, Canada. Canadian concurrence is required since Arcade is located within 400 kilometers (250 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before August 28, 1989, and reply comments on or before September 12, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert Bennett, P.O. Box 525, Buffalo, New York 14215 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-303, adopted June 15, 1989, and released July 6, 1989. The full text of the Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to the proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-16378 Filed 7-12-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-296, RM-6635]

Television Broadcasting Services; Springville, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Michael A. Williams proposing the allotment of Channel 67+ to Springville, New York, as the community's first local television service. Channel 67+ can be allotted to Springville in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.8 kilometers (5.5 miles) south to avoid a short-spacing to Channel 60, St. Catherines, Ontario, Canada, and to the proposed allotment of Channel 62 to Arcade, NY. The coordinates for this allotment are North Latitude 42-26-02 and West Longitude 78-38-06. Canadian concurrence is required since Springville is located within 250 miles of the U.S.-Canadian border.

DATES: Comments must be filed on or before August 28, 1989, and reply comments on or before September 12, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Michael A. Williams, 65 Monroe Street, Buffalo, New York 14206 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-296, adopted June 15, 1989, and released July 5, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-16381 Filed 7-12-89; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 54, No. 133
Thursday, July 13, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

July 7, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Revision

Agricultural Stabilization and Conservation Service

7 CFR 1425, 770, 1421, and 1427-Cooperative Marketing Association CCC–846, 846–1, 847, 847 (Amd 1), Cotton G4, 719, 846–2 Cotton G, CCC–848, 847A.

Recordkeeping; On occasion; Annually.

Farms; Non-profit institutions; 3,576 responses; 18,338 hours; not applicable under 3504(h).

James L. Goff (202) 447–5396.

Agricultural Marketing Service

Almonds Grown in California: Marketing Order 981.

None.

Annually.

Businesses or other for-profit; 13,277 responses; 6,235 hours; not applicable under 3504(h).

Virginia Olson (202) 475–3930.

Donald E. Hulcher,
Acting Departmental Clearance Officer.

[FR Doc. 89–16397 Filed 7–12–89; 8:45 am]

BILLING CODE 3410–01–M

Food and Nutrition Service

Child Care Food Program; National Average Payment Rates, Day Care Home Food Service Payment Rates and Administrative Reimbursement Rates for Sponsors of Day Care Homes for the Period July 1, 1989–June 30, 1990

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the annual adjustments to the national average payment rates for meals served in child care, outside-school-hours care and adult day care centers, the food service payment rates for meals served in day care homes, and the administrative reimbursement rates for sponsors of day care homes to reflect changes in the Consumer Price Index. Further adjustments are made to these rates to reflect the higher costs of providing meals in the States of Alaska and Hawaii. The adjustments contained in this notice are required by the statutes and regulations governing the Child Care Food Program (CCFP).

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie, Branch Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302, (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This notice has been reviewed under Executive Order 12291, and has been classified as not major because it does not meet any of the three criteria identified under the Executive Order. The action announced in the notice will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions, and will not have significant adverse effects on competition, employment, investment, productivity, innnovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

Definitions

The terms used in this notice shall have the meanings ascribed to them in the regulations governing the CCFP (7 CFR Part 226).

Background

Pursuant to sections 4, 11 and 17 of the National School Lunch Act (42 U.S.C. 1753, 1759a and 1766), section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) and §§ 226.4, 226.12 and 226.13 of the regulations governing the CCFP (7 CFR Part 226), notice is hereby given of the new payment rates for participating institutions. These rates shall be in effect during the period July 1, 1989–June 30, 1990.

As provided for under the National School Lunch Act and the Child Nutrition Act of 1966, all rates in the CCFP must be prescribed annually on

July 1 to reflect changes in the Consumer Price Index for the most recent 12-month period. In accordance with this mandate, the Department last published the adjusted national average payment rates for centers, the food service payment rates for day care homes and the administrative reimbursement rates for sponsors of day care homes on July 6, 1988 (for the period July 1, 1988–June 30, 1989).

The Department wishes to point out that the national average payment rates for centers also apply to those adult day care centers made eligible for CCFP cash and commodity assistance by section 401 of the Older Americans Act Amendments of 1987 (Pub. L. 100–175) which amended section 17 of the National School Lunch Act (42 U.S.C. 1766).

The Department also reminds the public that Pub. L. 99–661 amended section 4(b) of the Child Nutrition Act of 1966 to require 3 cents per meal in supplementary funding to be added each year to the annually adjusted reimbursement rates for each breakfast served under the program, effective October 1, 1986. Subsequently, Pub. L. 100–345 amended section 4(b) to increase by an additional 3 cents, to a total of 6 cents per meal, the supplementary funding for each program breakfast, effective July 1, 1989. Thus, this year and in future years, after computation of the annual rate adjustment, a total of 6 cents will be added to the rounded per meal rates of reimbursement. The increases in breakfast reimbursement are intended to assist states in improving the nutritional quality of breakfasts served.

All States Except Alaska and Hawaii

Meals Served in Centers—Per Meal Rates in Dollars or Fractions Thereof

Breakfasts:	
Paid	.1750
Free	.8600
Reduced	.5600
Lunches and Suppers:	
Paid	[1].1475
Free	[1]1.5325
Reduced	1.1325
Supplements:	
Paid	.0375
Free	.4200
Reduced	.2100

Meals Served in Day Care Homes—Per Meal Rates in Dollars or Fractions Thereof

Breakfasts	.7275
Lunches and Suppers	1.3125
Supplements	.3900

Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates in Dollars

Initial 50 day care homes	$58
Next 150 day care homes	44
Next 800 day care homes	34
Additional day care homes	30

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the Federal Register.

Pursuant to section 12(f) of the NSLA (42 U.S.C. 1760(f)), the Department adjusts the payment rates for participating institutions in the States of Alaska and Hawaii. The new payment rates for Alaska are as follows:

Alaska—Meals Served in Centers—Per Meal Rates in Dollars or Fractions Thereof

Breakfasts:	
Paid	.2475
Free	1.3550
Reduced	1.0850
Lunches and Suppers:	
Paid	[2].2375
Free	[1] 2.4800
Reduced	[2] 2.0900
Supplements:	
Paid	.0625
Free	.8600
Reduced	.3400

Alaska—Meals Served in Day Care Homes—Per Meal Rates in Dollars or Fractions Thereof

Breakfasts	1.1425
Lunches and Suppers	2.1250
Supplements	.6325

Alaska—Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates in Dollars

Initial 50 day care homes	94
Next 150 day care homes	71
Next 800 day care homes	56
Additional day care homes	49

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the Federal Register.

The new payment rates for Hawaii are as follows:

Hawaii—Meals Served in Centers—Per Meal Rates in Dollars or Fractions Thereof

Breakfasts:	
Paid	.1960
Free	.9650
Reduced	.6950
Lunches and Suppers:	
Paid	[1].1725
Free	[1] 1.7025
Reduced	[1] 1.3925
Supplements:	
Paid	.0450
Free	.4925
Reduced	.2450

Hawaii—Meals Served in Day Care Homes—Per Meal Rates in Dollars and Fractions Thereof

Breakfast	.8425
Lunches and Suppers	1.5350
Supplements	.4575

Hawaii—Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates in Dollars

Initial 50 day care homes	66
Next 150 day care homes	52
Next 800 day care homes	40
Additional day care homes	35

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the Federal Register.

The changes in the national average payment rates and the food service payment rates for day care homes reflect a 4.71 percent increase during the 12-month period May 1988 to May 1989 (from 121.0 in May 1988 to 126.7 in May 1989) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The changes in the administrative reimbursement rates for sponsoring organizations of day care homes reflect a 5.4 percent increase during the 12-month period May 1988 to May 1989 (from 117.5 in May 1988 to 123.8 in May 1989) in the series for all items of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

The total amount of payments available to each State agency for distribution to institutions participating in the program is based on the rates contained in this notice.

Authority: Sections 4(b)(2), 11(a), 17(c) and 17(f)(3)(B) of the National School Lunch Act, as amended, (42 U.S.C. 1753, 1759(a), and 1766) and section 4(b)(1)(B) of the Child Nutrition Act of 1966 as amended, (42 U.S.C.1773b).

George A. Braley,
Acting Administrator.

Date: July 7, 1989.

[FR Doc. 89–16425 Filed 7–12–89; 8:45 am]

BILLING CODE 3410–30–M

National School Lunch, Special Milk, and School Breakfast Programs; National Average Payments/Maximum Reimbursement Rates

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the annual adjustments to: (1) The "national average payments," the amount of money the Federal Government provides States for lunches and breakfasts served to children participating in the National School Lunch and School Breakfast Programs; (2) the "maximum reimbursement rates," the maximum per lunch rate from Federal funds that a State can provide a school food authority for lunches served to children participating in the school lunch program; and (3) the rate of reimbursement for a half-pint of milk served to nonneedy children in a school or institution which participates in the Special Milk Program for Children. The payments and rates are prescribed on an annual basis each July. The annual payments and rates adjustments for the school lunch and school breakfast programs reflect changes in the food away from home series of the Consumer Price Index for All Urban Consumers. The annual rate adjustment for milk reflects changes in the Producer Price Index for Fresh Processed Milk. These payments and rates are in effect from July 1, 1989 through June 30, 1990.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302, (703) 756-3620.

SUPPLEMENTARY INFORMATION: This Notice has been reviewed under Executive Order 12291 and has been classified not major. This Notice will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These programs are listed in the Catalog of Federal Domestic Assistance under No. 10.553, No. 10.555 and No. 10.556 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This Notice imposes no new reporting or recordkeeping provisions that are subject to OMB review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612) and thus is exempt from the provisions of that Act.

Definitions

The terms used in this Notice shall have the meanings ascribed to them in the regulations governing the National School Milk Program (7 CFR Part 210), the regulations for the Special Milk Program (7 CFR Part 215), the regulations for School Breakfast Program (7 CFR Part 220) and the regulations for Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools (7 CFR Part 245).

Background

Special Milk Program for Children—Pursuant to section 3 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1772), the Department announces the rate of reimbursement for a half-pint of milk served to nonneedy childen in a school or institution which participates in the Special Milk Program for Children. This rate is adjusted annually to reflect changes in the Producer Price Index for Fresh Processed Milk, published by the Bureau of Labor Statistics of the Department of Labor.

For the period July 1, 1989 to June 30, 1990, the rate of reimbursement for a half-pint of milk served to a nonneedy child in a school or institution which participates in the Special Milk Program is 10.25 cents. This reflects an increase of 5.7 percent in the Producer Price Index for Fresh Processed Milk from May 1988 to May 1989.

As a reminder, schools or institutions with pricing programs which elect to serve milk free to eligible children continue to receive the average cost of a half-pint of milk (the total cost of all milk purchased during the claim period divided by the total number of purchased half-pints) for each half-pint served to an eligible child.

National School Lunch and School Breakfast Programs—Pursuant to section 11 of the National School Lunch Act, as amended (42 U.S.C. 1759a) and section 4 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1773), the Department annually announces the adjustments to the National Average Payment Factors, and to the maximum Federal reimbursement rates for meals served to children participating in the National School Lunch Program. Adjustments are prescribed each July 1, based on changes in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

Lunch Payment Factors—Section 4 of the National School Lunch Act (42 U.S.C. 1753) provides general cash for food assistance payments to States to assist schools in purchasing food. There are two section 4 National Average Payment Factors (NAPFs) for lunches served under the National School Lunch Program. The lower payment factor applies to lunches served in school food authorities in which less than 60 percent of the lunches served in the school lunch program during the second preceding school year were served free or at a reduced price. The higher payment factor applies to lunches served in school food authorities in which 60 percent or more of the lunches served during the second preceding school year were served free or at a reduced-price.

To supplement these section 4 payments, section 11 of the National School Lunch Act provides special cash assistance payments to aid schools in providing free and reduced-price lunches. The section 11 NAPF for each reduced-price lunch served is set at 40 cents less than the factor for each free lunch.

As authorized under section 8 and 11 of the National School Lunch Act, maximum reimbursement rates for each type of lunch are prescribed by the Department in this Notice. These maximum rates ensure equitable disbursement of Federal funds to school food authorities.

Breakfast Payment Factors—Section 4 of the Child Nutrition Act of 1966, as amended, establishes National Average Payment Factors for free, reduced-price and paid breakfasts served under the School Breakfast Program and additional payments for schools determined to be in "severe need" because they serve a high percentage of needy children. The Department reminds the public that Pub. L. 99-661 amended section 4(b) of the Child Nutrition Act of 1966 to require three cents per meal in supplementary funding to be added each year to the annually adjusted reimbursement rates for each breakfast served under the program, effective October 1, 1986. Subsequently, Pub. L. 100-435 amended section 4(b) to increase by an additional three cents, to a total of six cents per meal, the supplementary funding for each program breakfast, effective July 1, 1989. Thus, this year and in future years, after computation of the annual rate adjustment, a total of 6 cents will be added to the rounded per meal rates of reimbursement. The increases in breakfast reimbursement are intended to assist states in improving the nutritional quality of breakfast served.

Revised Payments

The following specific section 4 and section 11 National Average Payment Factors and maximum reimbursement rates are in effect through June 30, 1990. Due to a higher cost of living, the average payments and maximum reimbursements for Alaska and Hawaii are higher than those for all other States. The Virgin Islands, Puerto Rico and the Pacific Territories use the figures specified for the contiguous States.

National School Lunch Program Payments

Section 4 National Average Payment Factors—In school food authorities which served less than 60 percent free and reduced-price lunches in School Year 1987-88, the payments are: Contiguous States—14.75 cents, maximum rate 22.75 cents; Alaska—23.75 cents, maximum rate 35.50 cents; Hawaii—17.25 cents, maximum rate 26.25 cents.

In school food authorities which served 60 percent or more free and reduced-price lunches in School Year 1987-88, payments are: Contiguous States—16.75 cents, maximum rate 22.75 cents; Alaska—25.75 cents, maximum rate 35.50 cents; Hawaii—19.25 cents, maximum rate 26.25 cents.

Section 11 National Average Payment Factors—Contiguous States—free lunch 138.50 cents, reduced-price lunch 98.50 cents; Alaska—free lunch 224.25 cents, reduced-price lunch 184.25 cents; Hawaii—free lunch 162.00 cents, reduced-price lunch 122.00 cents.

School Breakfast Program Payments

For schools "not in severe need" the payments are: Contiguous States—free breakfast 86.00 cents, reduced-price breakfast 56.00 cents, paid breakfast 17.50 cents; Alaska—free breakfast 135.50 cents, reduced-price breakfast 105.50 cents, paid breakfast 24.75 cents; Hawaii—free breakfast 99.50 cents, reduced-price breakfast 69.50 cents, paid breakfast 19.50 cents.

For schools in "severe need" the payments are: Contiguous States—free breakfast 102.00 cents, reduced-price breakfast 72.00 cents, paid breakfast 17.50 cents; Alaska—free breakfast 161.50 cents, reduced-price breakfast 131.50 cents, paid breakfast 24.75 cents; Hawaii—free breakfast 118.25 cents, reduced-price breakfast 88.25 cents, paid breakfast 19.50 cents.

Payment Chart

The following chart illustrates: the lunch National Average Payment Factors with the sections 4 and 11 already combined to indicate the per meal amount; the maximum lunch reimbursement rates; the breakfast National Average Payment Factors including "severe need" schools; and the milk reimbursement rate. All amounts are expressed in dollars or fractions thereof. The payment factors and reimbursement rates used for the Virgin Islands, Puerto Rico and the Pacific Territories are those specified for the contiguous states.

SCHOOL PROGRAMS—MEAL AND MILK PAYMENTS TO STATES AND SCHOOL FOOD AUTHORITIES, EFFECTIVE FROM JULY 1, 1989–JUNE 30, 1990

National School Lunch Program*	Less than 60 percent	60 percent or more	Maximum rate
Contiguous states			
Paid	$.1475	$.1675	$.2275
Reduced-Price	1.1325	1.1525	1.3025
Free	1.5325	1.5525	1.7025
Alaska			
Paid	.2375	.2575	.3550
Reduced-Price	2.0800	2.1000	2.3450
Free	2.4800	2.5000	2.7450
Hawaii			
Paid	.1725	.1925	.2625
Reduced-Price	1.3925	1.4125	1.5875
Free	1.7925	1.8125	1.9875

School Breakfast Program	Non-severe need	Severe need
Contiguous states		
Paid	.1750	.1750
Reduced-Price	.5600	.7200
Free	.8600	1.0200
Alaska		
Paid	.2475	.2475
Reduced-Price	1.0550	1.3150
Free	1.3550	1.6150
Hawaii		
Paid	.1950	.1950
Reduced-Price	.6950	.8825
Free	.9950	1.1825

Special Milk Program	All milk	Paid milk	Free milk
Pricing programs without free option	10.25	N/A	N/A
Pricing programs with free option	N/A	10.25	Average cost ½ pint milk
Nonpricing programs	10.25	N/A	N/A

*Payments listed for Free & Reduced-Price Lunches include both section 4.

Authority: Sec. 4, 8, and 11 of the National School Lunch Act, as amended, (42 U.S.C. 1753, 1757, 1759(a)) and sections 3 and 4(b) of the Child Nutrition Act, as amended, (42 U.S.C. 1772 and 42 U.S.C. 1773).

George A. Braley,

Acting Administrator.

Date: July 7, 1989.

[FR Doc. 89-16426 Filed 7-12-89; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted an expedited review request to OMB for clearance of the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration

Title: Phase III—Research Prototype Reaction (US&FCS Promotional Materials)

Form Numbers: Agency—ITA-4105P, OMB —0625-

Type of Request: New collection—expedited review requested

Burden: 45 respondents; 15 reporting hours

Average Hours per Response: 20 minutes

Needs and Uses: This collection supports the International Trade Administration's (ITA's) export awareness promotion campaign to rectify General Accounting Office (GAO) criticisms of Commerce programs. It will determine the relative strengths and weaknesses of previous U.S. and Foreign Commercial Service (US&FCS) promotional material. The campaign will focus on increasing participation of small and medium-sized U.S. firms in trade missions, trade fairs, catalog and video catalog exhibitions, "Matchmaker," trade delegations, *Commercial News USA* magazine, seminars, and special events. Companies participating in the market research campaign will review promotional materials developed by an advertising agency and evaluate if the final products motivate exporting among small to medium-sized firms

Affected Public: Businesses or other for profit; small businesses or organizations

Frequency: Other: one-time only

Respondent's Obligation: Voluntary

OMB Desk Officer: Donald Arbuckle, 395-7340.

The interview questions are printed below. A copy of the complete clearance package can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Rom 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: July 7, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

Phase III—Research Prototype Reaction

This report is authorized by law (15 U.S.C. 1512 *et seq.*). While you are not required to respond, your cooperation is needed to enable us to assess reactions to newly developed prototype promotional packages.

Public reporting burden for this collection of information is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Reports Clearance Officer, International Trade Administration, Room 4001, U.S. Department of Commerce, Washington, DC 20230 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0625-), Washington, DC 20503.

You have recently been part of discussions regarding the promotion of the U.S. Department of Commerce Export Services. You also should have received an envelope from them asking you to leave it unopened until you received a call from us. Please open that envelope now.

Please look at all the material.

1. What is your overall reaction?
2. Now, please look at the individual pieces and give me your reaction.
3. How do these pieces compare with previous pieces you've received?
4. How would you rate each piece; excellent; very good; poor; why?
5. What if anything do you like/dislike about each piece?
6. What is particularly appealing; unappealing; why?
7. Does anything in the pieces entice you to: export more; find out more; sign up for an event?
8. Based on the discussion you had previously, how does this material measure up to your expectations?
9. Any other comments/ suggestions you might like to make?

[FR Doc. 89-16462 Filed 7-12-89; 8:45 am]

BILLING CODE 3510-CW-M

Bureau of Export Administration

Subcommittee on Export Administration of the President's Export Council; Partially Closed Meeting

A (partially closed) meeting of the President's Export Council Subcommittee on Export Administration will be held Friday, August 18, 1989, 9:00 a.m. to 3:00 p.m., U.S. Department of Commerce, Herbert Hoover Building, Room 4830, 14th and Constitution Avenue NW., Washington, DC.

The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations, and of controlling trade for national security and foreign policy reasons.

Open Session: 9:00-11:45 a.m. Briefings by Commerce officials on matter relating to export control. Selected reports by Committee chairpersons.

Executive Sessions: 1:30-3:00 p.m. Discussion of matters properly classified under Executive Order 12356 pertaining to the control of exports for national security, foreign policy or short supply reasons under the Export Administration Amendments Act of 1979, as amended. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on October 27, 1987, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Subcommittee, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC.

For further information, contact Betty Ferrell, (202) 377-2583.

Date: July 10, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-16463 Filed 7-12-89; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-331-602]

Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order in Accordance With Decision Upon Remand: Certain Fresh Cut Flowers From Ecuador

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On December 27, 1988, the United States Court of International Trade (the Court) ordered the Department of Commerce (Commerce) to correct certain computational errors in its final antidumping duty determination on certain fresh cut flowers from Ecuador. *Floral Trade Council of Davis, California* v. *United States*, Slip. Op. 88-170. Commerce filed the required remand results with the Court on February 3, 1989. On March 22, 1989, the Court entered a final judgment affirming Commerce's remand results.

In accordance with the Court's order, Commerce will direct the U.S. Customs Service to continue to suspend liquidation of all entries of the subject merchandise produced by Eden Flowers, which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, but to now require a cash deposit for each entry in an amount equal to the estimated dumping margins as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: July 13, 1989.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp or Mary Jenkins, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-3965 or 377-1756.

SUPPLEMENTARY INFORMATION:

Background

On January 20, 1987, Commerce published its final antidumping determination of certain fresh cut flowers from Ecuador (52 FR 2128). On April 17, 1987, petitioners filed a lawsuit challenging various portions of the final determination. Petitioners alleged that Commerce's determination was unlawful, in part, because it contained certain computational errors that created an artificially low dumping margin of 19.00 percent for Eden Flowers.

On December 27, 1988, the Court remanded the final determination to Commerce for correction of these errors and for a redetermination of the dumping margin, if necessary. *Floral Trade Council of Davis, California,* v. *United States*, Slip. Op. 88-170. On February 3, 1989, Commerce issued remand results that amended the final determination on certain fresh cut flowers from Ecuador. Based on its recalculation of Eden Flower's constructed value, Commerce determined Eden Flower's dumping margin to be 23.50 percent. On March 22, 1989, the Court entered a final judgment affirming Commerce's remand results.

Suspension of Liquidation

In accordance with the Court's order of March 22, 1989, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of certain fresh cut flowers from Ecuador produced by Eden Flowers, which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. However, U.S. Customs Service shall now require a cash deposit equal to the estimated weighted-average margin calculated in our redetermination. This suspension of liquidation for Eden Flowers will remain in effect until further notice. The current suspension of liquidation for other manufacturers, sellers or exporters of certain fresh cut flowers from Ecuador shall continue to remain in effect until further notice. As stated in our original final determination and antidumping duty order, Flores Equinocciales will continue to be excluded from this determination of sales at less than fair value.

The increased weighted-average margin for Eden Flowers and the current weighted-average margins for other manufacturers, sellers and exporters are as follows:

Manufacturers/sellers/exporters	Weighted average margin percentage
Florisol	9.37
Flores Equinocciales	0.45 (*de minimis*)
Inverflora	2.56
Terraflore	2.56
Eden Flowers	23.50
All others	5.89

Article VI.5 of the General Agreement on Tariffs and Trade provides that "[n]o producer * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Tariff Act of 1930, as amended. Since dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit for that amount. Accordingly, we will subtract the 1.01 *ad valorem* percentage export subsidy rate from the dumping margin for duty deposit purposes (as determined in the January 13, 1987 *Final Affirmative Countervailing Duty Determination on Certain Fresh Cut Flowers from Ecuador*, 52 FR 1361).

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

June 29, 1989.

[FR Doc. 89-16359 Filed 7-12-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-201-601]

Certain Fresh Cut Flowers From Mexico; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests by the petitioner and eight respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on certain fresh cut flowers from Mexico. The review covers eight producers and/or exporters of this merchandise during the period November 3, 1986 through March 31, 1988. The review indicates the existence of dumping margins for certain firms during the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated difference between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 13, 1989.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Melissa Skinner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-4733.

SUPPLEMENTARY INFORMATION:

Background

On April 23, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 13491) the antidumping duty order on certain fresh cut flowers from Mexico. The Floral Trade Council ("the Petitioner") and eight respondents requested that we conduct an administrative review in accordance with § 353.53a(a) of the Commerce Regulations (1988). We published a notice of initiation on May 23, 1988 (53 FR 18324). The Department has now conducted the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988.

All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of certain fresh cut flowers from Mexico. During the review period such merchandise was classifiable under item 192.2110 (pompom chrysanthemums), item 192.2120 (standard chrysanthemums) and item 192.2130 (standard carnations) of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS item 0603.10.7010 (pompom chrysanthemums), item 0603.10.7020 (standard chrysanthemums) and item 0603.10.7030 (standard carnations). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive. The review covers eight producers and/or exporters of certain fresh cut flowers from Mexico to the United States and the period November 3, 1986 through March 31, 1988.

United States Price

For purposes of our preliminary determination, we used purchase price when sales were made to unrelated purchasers in the United States prior to date of importation, as provided in section 772(b) of the Act, and exporter's sales price when sales were made to unrelated purchasers in the United States after the date of importation, as provided in section 772(c).

Purchase price was calculated based on the f.o.b., Mexico City, packed price to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight and foreign brokerage and handling. Exporter's sale price was calculated based on the price to the first unrelated customer in the United States. Deductions were made, where appropriate, for foreign inland freight, brokerage and handling, U.S. inland freight, commissions, indirect selling expenses and credit expenses.

All United States prices were weight-averaged on a monthly basis in order to account for the perishability of the product. Unlike non-perishable products, sellers cannot withhold their flowers from the market until they can obtain a desired price. Rather, they either accept whatever return they can obtain on certain sales or destroy the merchandise. We believe that averaging United States prices over a relatively short period of time contributes to a fairer and more representative measure of fair value. Accordingly, we have continued to calculate a monthly United States price, as was done in the fair value investigation leading to the antidumping duty order.

Foreign Market Value

For six out of the eight companies reviewed, the foreign market value for the review period of November 3, 1986 to March 31, 1988, was calculated based on monthly weighted-average home market prices. Since the Mexican economy was determined to be hyperinflationary during the review period, foreign market values were adjusted for inflation for the remaining two companies which did not have sufficient home market or third country sales. The adjustment was based on a weighted-average of monthly constructed values which were discounted for inflation back to the beginning of the review period. This "base" constructed value was then "inflated" up to the month during which the U.S. sale was made.

In accordance with section 773(a) of the Act, we calculated foreign market value based, where applicable, on packed prices to unrelated purchasers in the home market. We made deductions, where appropriate, for inland freight. For U.S. purchase price comparisons, we made an adjustment for differences in credit expenses incurred on United States and home market sales pursuant to § 353.56 of the new antidumping regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.56). When comparing foreign market value to exporter's sales price we made deductions, where appropriate, for indirect selling expenses as an offset to such expenses incurred on U.S. sales, and for commissions and credit expenses.

Constructed Value

For Rancho Alisitos and Las Flores de Mexico foreign market value was based on constructed value because there were insufficient home market and no third country sales. The constructed values were based on information provided by respondents.

The constructed values for these companies were calculated as described in the Foreign Market Value section. Where general, selling and administrative expenses ("GS&A") were less than 10 percent, we used the statutory minimum of 10 percent of the cost of manufacture ("COM"). In all cases, we used the statutory minimum of eight percent of COM plus GSA for profit.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist for the period November 3, 1986 through March 31, 1988:

Manufacturer/exporter	Margin (percent)
Florex	14.78
Las Flores de Mexico	25.41
Rancho Alisitos	9.99
Rancho Daisy	0.00
Rancho Mision el Descanso	1.93
Rancho del Pacifico	0.00
Tzitzic Tareta	9.95
Visaflor	1.39

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication.

Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, as provided by Section 751(a)(1) of the Act, a cash deposit of estimated antidumping duties based on the above margins shall be required on shipments of certain fresh cut flowers from Mexico by the companies under review.

For any future entries of this merchandise from a new producer and/or exporter, not covered in this review or in the original investigation, whose first shipments occurred after March 31, 1988, and who is unrelated to the reviewed firms or any firm which was subject to the original investigation, a cash deposit of 25.41 percent shall be required.

These deposit requirements are effective for all shipments of certain fresh cut flowers from Mexico entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the new antidumping regulations.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

Date: July 6, 1989.

[FR Doc. 89-16360 Filed 7-12-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-810]

Postponement of Preliminary Antidumping Duty Determination: Mechanical Transfer Presses From Japan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the petitioners in this investigation to postpone the preliminary determination, as permitted in section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), (19 U.S.C. 1673b(c)(1)(A)). Based on this request, we are postponing our preliminary determination as to whether sales of mechanical transfer presses from Japan have occurred at less than fair value until not later than August 10, 1989.

EFFECTIVE DATE: July 13, 1989.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, James P. Maeder, Jr. or V. Irene Darzenta at (202) 377-3965, 377-4929 or 377-0186, respectively, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTAL INFORMATION: On June 12, 1989, we published a notice of postponement (54 FR 24827) of the preliminary determination in the antidumping duty investigation to determine whether mechanical transfer presses from Japan are being, or are likely to be, sold in the United States at less than fair value. The notice stated that we would issue our preliminary determination by July 21, 1989.

On July 3, 1989, counsel for the petitioners requested that the Department postpone the preliminary determination an additional 20 days, i.e., until not later than 210 days after the date of receipt of the petition, in accordance with section 733(c)(1)(A) of the Act. Accordingly, we are postponing the date of the preliminary determination until not later than August 10, 1989. The U.S. International Trade Commission is being advised of this postponement in accordance with section 733(f) of the Act.

This notice is published pursuant to section 733(c)(2) of the Act.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

July 6, 1989.

[FR Doc. 89-16361 Filed 7-12-89; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

[Docket No. 90528-9128]

RIN 0693-AA69

Proposed Revision of Federal Information Processing Standard (FIPS) 146, GOSIP

AGENCY: National Institute of Standards and Technolgy (NIST), Commerce.

ACTION: Request for comments.

SUMMARY: A revision to Federal Information Processing Standard (FIPS) 146 adopting the Government Open Systems Interconnection Profile (GOSIP) is proposed for Federal agency use. Version 1 of GOSIP, adopted as FIPS 146, provided Open Systems Interconnection protocols for electronic mail and file transfer functions. The proposed revision incorporates Version 2 of GOSIP which provides protocols for the following additional functions:

a. The Virtual Terminal Service (TELNET and Forms profiles);

b. The Office Document Architecture;

c. The Integrated Services Digital Network;

d. The End System-Intermediate System protocol; and, as user options,

e. The Connectionless Transport Service; and

f. The Connection Oriented Network Service.

Version 2 of GOSIP is based on agreements reached by vendors and user of computer networks participating in this National Institute of Standards and Technology (NIST) Workshop for Implementors of Open Systems Interconnection.

Prior to the submission of this proposed revision to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

This proposed revision contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section, GOSIP, which references protocols for the open systems environment. Only the announcement section of the standard is provided in this notice. Interested parties may obtain a copy of GOSIP from the Standards Processing Coordinator (ADP), National Institute of Standards and Technology, Technology Building, Room B-64, Gaithersburg, MD 20899, telephone (301) 975-2816.

DATE: Comments on this proposed revision may be received on or before October 11, 1989.

ADDRESS: Written comments concerning the revision should be sent to: Director, National Computer Systems Laboratory, ATTN: Revision of FIPS 146, Technology Building, Room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Gerard F. Mulvenna, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-3631.

Raymond G. Kammer,

Acting Director.

Date: July 6, 1989.

Federal Information Processing Standards Publication 146-1

Announcing the Standard for Government Open Systems Interconnection Profile (GOSIP)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Pub. L. 100-235.

Name of Standard. Government Open Systems Interconnection Profile (GOSIP).

Category of Standard. Hardware and Software Standards, Computer Network Protocols.

Explanation. This Federal Information Processing Standard adopts the Government Open Systems Interconnection Profile (GOSIP). GOSIP defines a common set of data communication protocols which enable systems developed by different vendors to interoperate and enable the users of different applications on these systems to exchange information. These Open Systems Interconnection (OSI) protocols were developed by international standards organizations, primarily the International Organization for Standardization (ISO) and the Consultative Committee on International Telephone and Telegraph (CCITT). GOSIP is based on agreements reached by vendors and users of computer networks participating in the National Institute of Standards and Technology (NIST) Workshop for Implementors of Open Systems Interconnection.

Approving Authority. Secretary of Commerce.

Maintenance Agency. U.S. Department of Commerce, National Institute of Standards and Technology, National Computer Systems Laboratory.

Cross Index

a. NBS Special Publication 500-162, Stable Implementation Agreements for Open Systems Interconnection Protocols, Version 2, Edition 1, NIST Workshop for Implementors of Open Systems Interconnection, December 1988.

Related Documents. Related documents are listed in the Reference Section of the GOSIP document.

Objectives. The primary objectives of this standard are:

—To achieve interconnection and interoperability of computers and systems that are acquired from different manufacturers in an open systems environment;
—To reduce the costs of computer network systems by increasing alternative sources of supply;
—To facilitate the use of advanced technology by the Federal Government;
—To stimulate the development of commercial products compatible with Open Systems Interconnection (OSI) standards.

Specifications. GOSIP (affixed).

Applicability. GOSIP shall be used by Federal Government agencies when acquiring computer network products and services and communications systems or services that provide equivalent functionality to the protocols defined in the GOSIP documents. Version 1 of GOSIP supports the Message Handling Systems and File Transfer, Access and Management applications. Version 1 of GOSIP also supports interconnection of the following network technologies: CCITT Recommendation X.25; Carrier Sense Multiple Access with Collision Detection (IEEE 802.3); Token Bus (IEEE 802.4); and Token Ring (IEEE 802.5). Version 2 of GOSIP contains the following functionality not included in Version 1.

a. The Virtual Terminal Service (TELNET and Forms profiles);
b. The Office Document Architecture;
c. The Integrated Services Digital Network;
d. The End System-Intermediate System protocol; and, as user options,
e. The Connectionless Transport Service; and
f. The Connection Oriented Network Service.

Additional applications and network technologies will be added to later versions of the GOSIP document.

Implementation. Version 1 of GOSIP was effective February 15, 1989. For a period of 18 months after that date, agencies are permitted to acquire alternative protocols which provide equivalent functionality to the protocols defined in Version 1. After August 15, 1990, Version 1 of GOSIP must be cited in solicitations and contracts for the acquisition of new network products and services providing the functionality defined in Version 1.

Version 2 of GOSIP will be effective on the day that it is announced in the **Federal Register** following approval by the Secretary, and does not change the implementation schedule established for the protocols defined in Version 1. For a period of 18 months following the effective date for Version 2, agencies are permitted to acquire alternative protocols which provide equivalent functionality to the protocols defined in Version 2. Eighteen (18) months after the effective date of Version 2 of GOSIP, the protocols in Version 2 must be cited in solicitations and contracts when the systems to be acquired provide equivalent functionality to the protocols defined in the GOSIP document. Because the Connectionless Transport Service and the Connection Oriented Network Service in Version 2 of GOSIP are optional services for use under restricted conditions, the mandatory compliance date does not apply to those protocols.

OSI protocols providing additional functionality will be added to new versions of GOSIP as implementation specifications for these protocols are developed by the NIST Workshop for Implementors of OSI.

For the indefinite future, agencies will be permitted to buy network products in addition to those specified in GOSIP and its successor documents. Such products may include other nonproprietary protocols, proprietary protocols, and features and options of OSI protocols which are not included in GOSIP.

The National Institute of Standards and Technology is developing a program to accredit testing organizations for specific tests or types of tests for computer products and services. Information on these tests and test procedures will be made available in the future. Until the tests and test procedures are available, government agencies acquiring networks and services in accordance with this standard may wish to require testing for conformance, interoperation, and performance. The tests to be administered and the testing organization are at the discretion of the agency Acquisition Authority. Guidance on testing for GOSIP specifications is contained in Section 2 of the GOSIP document.

Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waiver only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each decision, with procurement sensitive or classified portions clearly indentified, shall be sent to: National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, Room B-154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement documentation and retained by the agency.

Special Information. The appendices to the GOSIP specification describe advanced requirements for which adequate profiles have not yet been developed. Federal government priorities for meeting these requirements and the expected dates that work on these priorities will be completed are also provided. As these work items are addressed and completed by the NIST Workshop for Implementors of OSI, addenda will be inserted into the GOSIP document.

Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication 146-1 (FIPSPUB146-1), and title. Specify microfiche if desired. Payment may be made by check, money order, or NTIS deposit account.

[FR Doc. 89-16417 Filed 7-12-89; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration Marine Mammals; Permit Modification: Dr. Thomas F. Albert (P282A)

Modification No. 2 to Permit No. 519

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216) and § 220.24 of the regulations on endangered species (50 CFR Parts 217-222), Scientific Research Permit No. 519 issued to the Dr. Thomas F. Albert, Department of Conservation and Environmental Protection, North Slope Borough, P.O. Box 69, Barrow, Alaska 99723, on August 23, 1985 (59 FR 35286) and as modified on January 11, 1989 (54 FR 1758), is further modified in the following manner:

Section A.1.a is deleted and replaced by:

"1. Specimen materials may be collected from the following number of dead beached/stranded or subsistence-harvested animals:

a. 171 bowhead whales (*Balaena mysticetus*)

Special Condition B. 3 is Changed and B.6 is Added:

B.3 The Holder shall submit an annual report by December 31 each year the Permit is valid summarizing activities conducted thereunder. The report should include the numbers and types of specimens collected and the analyses done; and to whom they were distributed.

B.6 The Holder shall report any stranded cetacean sampled under this permit which was not taken and accounted for as part of the Alaska Native subsistence harvest to the Coordinator, Alaska Marine Mammal Stranding Network, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802 (tel 907/586-7510). The report should indicate the date of discovery, species, sex, length, condition, apparent cause of death, and geographic location of each stranded animal.

This modification becomes effective upon publication in the **Federal Register**.

Documents pertaining to the Permit and all modifications are available for review in the following Offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., Room 7324, Silver Spring, Maryland 20910

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Bldg., Juneau, Alaska 99802

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

Date: July 6, 1989.

[FR Doc. 89-16460 Filed 7-12-89; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in the Socialist Republic of Romania

July 7, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: July 7, 1989.

FOR FURTHER INFORMATION CONTACT: Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agriculture Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and the Socialist Republic of Romania agreed to increase the current limit for Category 315.

A description of the textile and apparel Categories in terms of HTS numbers is available in the Correlation: Textile and Apparel categories with the Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 49344, published on December 7, 1988.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

July 7, 1989.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 2, 1988, by the

Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Romania and exported during the period which began on January 1, 1989 and extends through December 31, 1989.

Effective on July 7, 1989, the directive of December 2, 1988 is being amended to increase to 1,442,283 square meters [1] the limit for cotton textile products in Category 315.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-16461 Filed 7-12-89; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after December 31, 1988.

DEPARTMENT OF DEFENSE

Defense Acquisition Regulatory Council; Meetings

AGENCY: Department of Defense (DoD), National Aeronautics and Space Administration (NASA).

ACTION: Notice of meetings.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council will travel to St. Louis, Missouri, and Boston, Massachusetts, during the week of November 6, 1989. The Council will conduct joint Government/Industry meetings at both locations and will discuss significant Federal Acquisition Regulation and DoD Federal Acquisition Regulation Supplement issues of mutual interest. The Council tentatively plans presentations on the following topics: Cost Principles, Current Legislation, and Consultant Conflict of Interest. Panel discussions will also be conducted on issues involving Small and Small Disadvantaged Business, Payment/Pricing/Finance, and Integrity/Ethics/Drugs. The Council will be available for questions on these issues or other DAR cases.

DATE: November 6, 1989 and November 8, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council (202) 697-7266.

SUPPLEMENTARY INFORMATION: The Defense Contract Administration Services Region, (DCASR) St. Louis will host the DAR Council's meeting on Monday, November 6, 1989, from 8:00 am to 4:00 pm, at the St. Louis Airport Mariott Hotel, I-70 at Lambert International Airport, St. Louis, Missouri 63134 (Telephone (314) 423-9700). Telephone number for reservations is 1-800-228-9290. Registration is $25 and registration deadline is October 4, 1989. Checks should be made payable to DAR COUNCIL SEMINAR and mailed to DCASR ST. LOUIS, ATTN: DCASR STL-A, 1222 SPRUCE STREET, ST. LOUIS, MO 63103-2811. Point of contact is Mr. Lucki Latimer. His telephone number is (314) 331-5083 (AUTOVON: 8-555-5083).

The Defense Contract Administration Services Region, Boston will host the DAR Council's meeting on Wednesday, November 8, 1989, from 8:00 am until 4:00 pm, at the Boston Park Plaza and Towers Hotel, 50 Park Plaza at Arlington Street, Boston, Massachusetts 02117 (Telephone: (617) 426-2000). Telephone number for reservations is 1-800-225-2008. Registration fee is $30 and registration deadline is October 4, 1989. Checks should be made payable to DCASR BOSTON SPECIAL ACCOUNT and mailed to DCASR BOSTON, BARNES BUILDING, ATTN: DCASR BOS-LR/DAVID HORTON, 495 SUMMER STREET, BOSTON, MA 02210-2184. Point of contact is Mr. David Horton. His telephone number is (617) 451-4230 (AUTOVON: 8-955-4230).

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

[FR Doc. 89-16388 Filed 7-12-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Intent (NOI) To Prepare a Programmatic Environmental Impact Statement for Development of the Proposed Advanced Launch System

The United States Air Force plans to prepare a Programmatic Environmental Impact Statement (EIS) for development of the proposed Advanced Launch System (ALS). ALS is a space launch system proposed jointly by the Air Force and NASA to fill the expected need for less expensive, expendable launch vehicles (rockets) in the late 1990s through 2025. It is proposed that ALS would attain a launch rate of 6 to 10 per year at one launch site in 1998. This would increase to a maximum of up to 25 launches per year per launch site by 2010. Two launch sites are expected to be required to fulfill the proposed future launch requirements. Two existing and potential launch sites are being evaluated to determine their ability to support ALS: Cape Canaveral Air Force Station/Kennedy Space Center, Florida and Vandenberg Air Force Base, California.

ALS is proposed to be the primary means of placing large satellites (60,000 to 190,000 pounds) into equatorial and polar orbits in the future. The expected launch requirements for ALS include the capacity to lift from 100,000 to 150,000 pounds to equatorial orbit and approximately 80,000 pounds to near polar orbit. Future modification of the launch vehicle configuration under evaluation could provide a payload lift capacity of approximately 220,000 pounds to low earth orbit.

The Programmatic EIS will analyze the environmental consequences of development of the ALS, including those of proceeding with the proposed preliminary demonstration and evaluation of the system. The decision as to whether or not to proceed with ALS into a demonstration/validation phase is currently scheduled to occur in April 1990. The focus of the Programmatic EIS will be to evaluate the relevant environmental issues associated with all government plans and actions regarding development of ALS. This phase of the ALS program is proposed to occur at three separate test sites; NASA Stennis Space Flight Center in Mississippi, NASA Marshall Space Flight Center in Alabama, and Edwards Air Force Base in California. It is proposed that the use and/or upgrading of existing facilities there would be required. Analysis of the site-specific impacts of ALS testing at these locations will be included in the Programmatic EIS. The deployment of the ALS in a test mode would require the construction or renovation of approximately four launch pads, industrial facilities, and additional infrastructure. This EIS will evaluate cumulative effects of demonstration/validation, full-scale development and deployment of ALS insofar as the effects can be identified at this time. The Programmatic EIS will be prepared in accordance with the National Environmental Policy Act (NEPA), the President's Council on Environmental Quality (CEQ) Regulations, and Air Force Regulation (AFR) 19-2.

NASA is a cooperating agency on this Programmatic EIS. Site-specific environmental analysis associated with full-scale development and deployment of ALS would be addressed by separate environmental documentation under NEPA and the foregoing regulations.

The Air Force will hold a public scoping meeting to solicit inputs on significant environmental issues associated with the development of ALS concepts. Because of the national scope of this program, the meeting will be conducted in Washington, D.C. Time, date and exact location of this meeting will be announced in the local media at a later date. In addition to the scoping meeting, written inputs to the scoping process are solicited. Comments in response to this NOI or as part of the scoping process are requested in writing within 30 calendar days from publication of this notice in the **Federal Register.**

Questions concerning the proposed action or the NEPA process for the action, comments on this NOI, or written inputs to the scoping meeting or scoping process should be mailed to: Captain Hector Malave, Department of the Air Force, HQ Space Systems Division/DEV, P.O. Box 92960, Los Angeles, CA 90009-2960.

Telephone inquiries should be directed to Captain Malave at (213) 643-0935.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-16457 Filed 7-12-89; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

United States Army, Armament, Munitions and Chemical Command; Armament Research, Development and Engineering Center

SUMMARY: Notice is hereby given that, in accordance with OFPP Policy Letter 84-1, Appendix III, 4 April 1984, the U.S. Army intends to establish a Federally Funded Research and Development Center (FFRDC) for a long term research program to advance the state-of-the-art in areas of electromechanics and hypervelocity testing and applicable to future weapon systems.

(Program Requirements:) This program will include basic research, analysis, design, fabrication, experimentation and training in these and related areas. The electromechanics area will include but not be limited to compact pulse power supplies, advanced electric launchers and related materials research. Hypervelocity testing research will include but not be limited to compatible launch package design and interface, impact characterization, test planning, instrumentation, impact testing, data reduction/analysis and related materials research. An FFRDC is an activity that is operated, managed and/or administered by either a university or consortium of universities, other nonprofit organization or industrial firm, as an autonomous organization or as an identifiable separate operating unit of a parent organization.

ADDRESS: Send inquiries to Commander, U.S. Army AMCCOM, ATTN: AMSMC-POW-D(D), Robert Wisser, Picatinny Arsenal, New Jersey 07806-5000.

FOR FURTHER INFORMATION CONTACT: Robert Wiser, Contract Specialist, Research, Development and Engineering Center on (201) 724-4674.

Kenneth L. Denton,

Department of the Army, Alternate Liaison Officer with the Federal Register.

[FR Doc. 89-16401 Filed 7-12-89; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: 3-4 August 1989.

Time of Meeting: 0630-1630 hours.

Place: Washington, DC.

Agenda: The Army Science Board's Effectiveness Review of the Harry Diamond Laboratories will meet for the purpose of gathering data, and the drafting of a report for the conduct of the effectiveness review. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at 202-695-3039 or 695-7046.

Thomas E. Stalzer,

LTC(P), GS, Executive Secretary.

[FR Doc. 89-16427 Filed 7-12-89; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 10-11 August 1989.

Time of Meeting: 0900-1700 hours.

Place: Fort Sheridan, Illinois.

Agenda: The Army Science Board Subgroup on Toxic and Hazardous Waste Management will conduct its next meeting with emphasis on evaluation of the Army's program for environmental restoration and hazardous waste minimization. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-16428 Filed 7-12-89; 8:45 am]

BILLING CODE 3710-08-M

Military Traffic Management Command; Military/Industrial Mobile Homes Symposium; Open Meeting

Announcement is made of meeting of the Military/Industry Mobile Homes Symposium. This meeting will be held on 13 July 1989 at Headquarters, Military Traffic Management Command, 5611 Columbia Pike, Falls Church, Virginia, and will convene at 0930 hours and adjourn at approximately 1600 hours.

Proposed Agenda: The purpose of the symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to the Personal Property Traffic Management Regulation, DOD 4500.34R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MTPP-M, at telephone number 756-1600, between 0800-1530 hours. Topics to be discussed should be received on or before 3 July 1989.

Dated: June 26, 1989.

Joseph R. Marotta,

Colonel, GS, Director of Personal Property.

Kenneth L. Denton,

Department of the Army, Alternate Liaison Officer, With the Federal Register.

[FR Doc. 89-16559 Filed 7-12-89; 8:45 am]

BILLING CODE 3710-08-M

Conduct of Employees; Waiver

AGENCY: Office of the Secretary, Dept. of the Army, DOD.

ACTION: Conduct of employees; Waiver.

Section 207(f), Title 18, United States Code authorizes the Secretary of the Army to waive the post-employment prohibitions of subsections (a) and (b)(i) of section 207, Title 18, United States Code to permit a former employee with outstanding scientific or technological qualifications to make appearances before, or communications to, the Army in connection with a particular matter which requires such qualifications, where it has been demonstrated that such a waiver would serve the national interest.

BEST COPY AVAILABLE

It has been established to my satisfaction that Dr. John W. Holaday, former Chief of the Neuropharmacology Branch, Department of Medical Neurosciences at the Walter Reed Army Institute of Research (WRAIR), has an outstanding and unique combination of scientific and technological qualifications with respect to neuropharmacology. Dr. Holaday is now the Scientific Director of Medicis, a Washington based pharmaceutical company. I am satisfied that it will serve the national interest to allow Dr. Holaday to collaborate with his former scientific colleagues at WRAIR on projects concerning neuropharmacology, while he is employed by Medicis. I am further satisfied that the neuropharmacological collaboration is in a scientific field and requires the qualifications stated.

While employed by WRAIR, Dr. Holaday was personally and substantially involved in the setting up of a cooperative research and development agreement (CRDA) between WRAIR and Medicis. As an employee of Medicis, Dr. Holaday does not have direct duties in representing Medicis to WRAIR or in implementing or modifying the CRDA. However, it has been established to my satisfaction that a waiver is necessary because Dr. Holaday's collaboration would be on so continuous and comprehensive a basis that procedures to completely isolate Dr. Holaday from matters concerning Medicis would be burdensome and impractical.

While collaborating with his former colleagues at WRAIR, Dr. Holaday will not act as an employee of WRAIR or have the authority to direct research or commit Army resources.

I have, therefore, waived the post-employment prohibitions of subsections (a) and (b)(i) of section 207, Title 18, United States Code (in consultation with the Director of the Office of Government Ethics) with respect to contact by Dr. Holaday with officials of WRAIR concerning the CRDA, on behalf of Medicis.

John O. Marsh, Jr.,

Secretary of the Army.

[FR Doc. 89-16400 Filed 7-12-89; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Conduct of Employees; Waiver Pursuant to Section 602(c) of the Department of Energy Organization Act

Section 602(a) of the Department of Energy (DOE) Organization Act (Pub. L. 95-91, hereinafter referred to as the "Act") prohibits a "supervisory employee" (defined in section 601(a) of the Act) of the Department from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any "energy concern" (defined in section 601(b) of the Act).

Section 602(c) of the Act authorizes the Secretary of Energy to waive the requirements of section 602(a) in cases of exceptional hardship or where the interest is a pension, insurance, or other similarly vested interest.

Mr. Leo P. Duffy has been appointed to the position of Special Assistant for Coordination of DOE Defense Waste Management in the Office of the Secretary. As a result of his past employment by Westinghouse Electric Corporation, Mr. Duffy has vested interests in the Westinghouse Pension Plan, the Westinghouse Executive Pension Plan, the Westinghouse Executive Pre-retirement Income Plan, the Westinghouse Deferred Arrangement for Incentive Compensation Awards, and the Westinghouse Personal Investment Plan. Mr. Duffy's interests in these plans have been determined to be energy concern interests for purposes of section 602(a).

It has been established to my satisfaction that requiring Mr. Duffy to divest his interests in the above benefits plans of Westinghouse Electric Corporation would impose an exceptional hardship on him and that each such interest is a vested pension interest, or a similarly vested interest, within the meaning of section 602(c) of the Act. Accordingly, I have granted Mr. Duffy a waiver of the divestiture requirements of section 602(a) of the Act, for the duration of his employment with the Department, with respect to his interests in the Westinghouse Pension Plan, the Westinghouse Executive Pension Plan, the Westinghouse Executive Pre-retirement Income Plan, and the Westinghouse Deferred Arrangement for Incentive Compensation Awards.

Mr. Duffy has agreed to transfer his interest in the Westinghouse Personal Investment Plan to another investment option in order to divest of this interest in the corporation. I have, therefore, granted Mr. Duffy a waiver of the divestiture requirements of section 602(a) of the Act with respect to this interest until October 1, 1989, the earliest date on which this transfer may be made effective.

In accordance with subsection (b) of section 606 of the Department of Energy Organization Act, Mr. Duffy will be directed not to participate for a period of one year since commencing service in the Department in any Department proceeding for which he had direct responsibility, or in which he participated personally and substantially, within the previous five years while in the employment of Westinghouse Electric Corporation.

Date: July 5, 1989.

James D. Watkins,

Admiral, U.S. Navy (Retired), Secretary of Energy.

[FR Doc. 89-16458 Filed 7-12-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. RP86-168-000, et al.]

Columbia Gas Transmission Corp., et al.; Offer of Settlement

July 3, 1989.

In the matter of Columbia Gas Transmission Corporation, Docket Nos. RP86-168-000, *et al.*, RP86-15-000, *et al.*, RP87-55-000, *et al.*, RP88-43-000, *et al.*, RP88-56-000, *et al.*, RP88-119-000, RP88-187-000, *et al.*, RP88-207-000, *et al.*, RP89-116-000, CP83-452-034, RP89-181-000, TA81-1-21-000, *et al.*, TA81-1-21-022, TA82-1-21-001, TA82-1-21-024, TA82-1-21-027, TA87-4-21-000, TA87-4-21-002, TA87-5-21-000, *et al.*, TA88-2-21-000, TA89-1-21-000, TC79-127, TC86-21-000, TQ86-1-21-000, TQ88-2-21-000, TQ89-1-21-000, TQ89-2-21-000, TQ89-3-21-000, TQ89-4-21-000, TM89-2-21-000, TM89-3-21-000, TM89-4-21-000, (not consolidated).

Columbia Gulf Transmission Company, Docket Nos. RP86-167-000, *et al.*, RP86-14-000, *et al.*, RP89-94-000, *et al.*, (not consolidated).

Interstate Natural Gas Pipeline Rate Design, Docket No. PL89-2-000, *et al.*

Take notice that on June 29, 1989, Columbia Gas Transmission Corporation, (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company, (Columbia Gulf), 3805 West Alabama Avenue, Houston, Texas, 77027, filed an Offer of Settlement in the captioned proceedings. The Offer of Settlement would resolve the above-referenced proceedings and provides for certificate and abandonment authorizations pursuant to sections (7)b and 7(c) of the Natural Gas Act, which are generally described as follows, all as more fully set forth in the Offer of Settlement which is on file with the Commission and open to public inspection:

(1) Article IV of the Settlement provides for revised contractual entitlement levels, including authority for abandonment of service above the initial Annual Entitlement Nomination (AEN) levels established under the Settlement. The revised levels are described in sections A(1) and A(2) of the Stipulation and are set forth in Appendix IV-1 of the Stipulation.

(2) Article IV of the Stipulation includes tariff provisions governing AENs in accordance with the Settlement, including establishment of entitlements, Columbia's gas supply obligation during the contract year, the customers' base-period requirements for seasonal curtailment purposes and winter season AENs.

(3) Article IV further provides for customer renomination of AENs. Under that provision, Columbia would have pregranted abandonment authorization for decreases of AENs to reflect customer renominations. Furthermore, Columbia would have pregranted certificate authorization for nominated increases in AENs within "offset levels" or above such "offset levels", provided that no facilities are required and that adequate committed gas supply is available. The Settlement would also provide pregranted authority for adjustments in contract demand (DC) to maintain the applicable AEN to CD ratio, in accordance with the procedures established in the *pro forma* tariff sheets contained in Appendix IV-2 of the Stipulation.

(4) The Settlement provides certificate authority for Columbia to perform a no-fee exchange of gas with Texas Gas Transmission Corporation and for Columbia to sell capacity in certain pipelines to Cincinnati Gas & Electric Company, as more fully described in section A(3)(a) of Article IV of the Stipulation.

(5) The Settlement provides authority for the transfer of Commonwealth Gas Pipeline Corporation's (Commonwealth's) entitlements from Columbia and Columbia Gulf to Commonwealth's customers, as described in Article IV, section A(3)(c)(i) of the Stipulation, and for the abandonment of service by Columbia and Columbia Gulf to Commonwealth.

(6) The Settlement provides authority for Columbia to implement Maximum Daily Delivery Obligations (MDDOs) as described in Article I, section G and the tariff provisions set forth in Appendix I-5 of the Stipulation.

(7) Article V of the Settlement provides authority for Columbia to implement a deficiency-based Gas Inventory Charge (GIC) applicable to service under the CDS Rate Schedule, or to implement any revisions to the GIC approved by the Commission in the future pursuant to Article V, section I (1) and (2) of the Stipulation. As described in Article V of the Stipulation, an initial unit rate of 35 cents is proposed. The GIC charges would be used to fund Inventory Costs as defined in the Stipulation, and would not be used to fund Gas Costs which are recoverable through Columbia's PGA. The GIC charge would be collected only if total purchases by all CDS customers fall below 75 percent of the aggregate AEN level on an annual basis, or 8 percent of the aggregate AEN level during the summer. CDS customers with individual purchase deficiencies below these threshold levels based on their individual AENs would be charged the GIC unit rate for their share of the system purchase deficiency below the applicable threshold levels.

The GIC provision is subject to a "Comparability Test" under which gas cost components of Columbia's rates are compared with gas cost components of five other pipelines. If Columbia's cost under this test exceeds that of the other pipelines, Columbia would be precluded from collecting GIC revenues for that year or from using GIC revenues to pay inventory costs attributable to that year. The GIC also contains a "true-up" mechanism, under which Columbia may retain GIC revenues for five years to fund Inventory Costs. At the end of the five-year period, Columbia must refund any unutilized GIC revenues.

(8) Article VI of the Settlement provides authority for Columbia to provide Firm Contract Storage Service under the FSS Rate Schedule as contained in Appendix VI-1 of the Stipulation. Specifically, Columbia would provide an initial storage capacity of 60 MMDth commencing November 1, 1989, increasing to 79.5 MMDth for delivery in the Contract Year commencing November 1, 1992, and each Contract Year thereafter.

(9) Article VI of the Settlement further provides authority for Columbia to sell 120 MMDth of storage gas inventory to storage service customers as their initial storage service quantities in accordance with Article VI, section H of the Stipulation. The proposed sales volumes would become the initial 120 MMDth of storage inventory for such customers, and would create the space in storage necessary to provide the contract storage service. Commencing April 1, 1991, FSS customers would have the right to tender third-party gas for injection into storage or to purchase gas from Columbia for injection into storage.

(10) The Settlement provides authority for Columbia to provide limited term "back-up" sales service in connection with the transitions necessary to provide the Firm Storage Service, together with pregraned abandonment authority therefor, as described in Article VI, section H of the Stipulation.

(11) The Settlement provides authority for the assignment and utilization of capacity in Columbia and Columbia Gulf in accordance with Article VII of the Stipulation. Effective November 1, 1989, Columbia would permanently assign to customers listed in the Stipulation 864,584 Dth per day of firm capacity on the Columbia Gulf mainline. Moreover, Columbia would assign 15,000 Dth per day of firm capacity to Access Energy Corporation, the first shipper in Columbia Gulf's first-come, first-served queue, in satisfaction of Access Energy's November 1, 1985 request for transportation service of 226,500 Dth per day. Any capacity made available in the Columbia Gulf mainline in the future would be allocated on a first-come, first-served basis.

Article VII of the Settlement provides rights for Columbia's wholesale customers to utilize their firm transportation rights on Columbia and Columbia Gulf to transport gas for system supply or for end-users, and to assign their capacity to end-users on their systems. Under the Settlement, any of the 864,584 Dth of capacity rights which are abandoned in the future would revert to Columbia but would be made available on a first-come, first-served basis if not needed by Columbia for its system supply.

(12) The Settlement provides authority for Columbia to provide a standby service under the CDS Rate Schedule, as described in Article VIII and as set forth in the *pro forma* tariff sheets contained in Appendix IV-3 of the Stipulation. Under that provision, Columbia's customers may utilize up to 50 percent of their CD (daily entitlements) and up to 50 percent of their AEN (annual entitlements) for firm transportation. Available sales volumes would be reduced on any day to the extent that a customer transports gas under the standby service.

(13) The Settlement provides authority for Columbia to implement Authorized Overrun Service under the AOS Rate Schedule, as described in Article IX and as set forth in Appendix IX-1 of the Stipulation. That rate schedule would apply to takes in excess of a customer's annual AEN level or to takes in excess of the Winter Season portion of its AEN level.

14) The Settlement provides authority for Columbia's customers to utilize Columbia's firm transportation rights (FTR) in its upstream pipelines other than Columbia Gulf, in accordance with the provisions of Article X, of the Stipulation. Under section (A) of Article

X, Columbia would assign FTR in order of priority to firm transportation customers of Columbia, interruptible transportation customers of Columbia, and all others. All assignments would be subject to receipt of requisite certificate and abandonment authority from the Commission, and the assignee would be solely responsible to the upstream pipeline for all obligations under the assigned contract. Prior to any further reductions in contract demand with upstream pipelines, Columbia would notify its customers and convert such volumes to firm transportation and assign such rights if customers request such capacity.

Section X (B) of the Settlement further provides authority for Columbia to utilize FTR which it has on any upstream pipeline other than Columbia Gulf, including transportation capacity available to Columbia under a standby service, to provide interruptible transportation service on behalf of others when such capacity is not needed by Columbia for its system supply. The available capacity would be allocated among all existing customers on the basis of requests made within five days after notice, and on a first-come, first-served basis therafter.

15) The settlement provides authority for the modifications to the SGS Rate Schedule and abandonment or cancellation of the G, SGES and IS Rate Schedules as set forth in Article XII of the Stipulation, and the change in service from the CDS Rate Schedule to the SGS Rate Schedule by the customes identified in Appendix IV-1 of the Stipulation.

Columbia states that it will expeditiously make a copy of the Offer of Settlement available to any person desiring to comment on the certificate and abandonment authorizations sought.

Any persons desiring to file comments regarding the certificate and abandonment authorizations sought in connection with the Offer of Settlement should, on or before July 19, 1989, file such comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 602(f)), together with a motion to intervene in accordance with the requirements of the 385.214 and the Regulations under the Natural Gas Act (18 CFR § 157.10).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-16153 Filed 7-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2772-002 Massachusetts]

Linweave, Inc.; Availability of Environmental Assessment

June 26, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Gill Mill, A Wheel, Hydroelectric Project located on the Holyoke Canal System, on the Connecticut River, in Holyoke, Hampden County, Massachusetts, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, N.E., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16149 Filed 7-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP73-329-014 et al.]

Chattanooga Gas Co. et al., Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Chattanooga Gas Company

[Docket No. CP73-329-014]

July 3, 1989.

Take notice that on June 16, 1989, Chattanooga Gas Company (Chattanooga), 811 Broad Street, Chattanooga, Tennessee 37402, filed in Docket No. CP73-329-014 an application, as supplemented June 26, 1989, to amend a certificate issued in Docket No. CP73-329 to perform a limited-term firm and interruptible liquefied natural gas (LNG) service for East Tennessee Natural Gas Company (East Tennessee) for the 1989-90 winter season, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Chattanooga states that on July 6, 1977, the Commission issued Chattanooga a permanent certificate in Docket No. CP73-329 to provide sales of LNG to East Tennessee of 23,000 Mcf of natural gas per day and a total volume of 500,000 Mcf. Chattanooga now proposes to amend that certificate to provide an interruptible and firm sales service of LNG for East Tennessee for the months of November 1989 through March 1990. Chattanooga indicates that under the terms of a May 22, 1989, limited term winter service contract it would deliver on a firm basis 200,000 Mcf during the November 1989 to March 1990 winter term and deliver volumes requested by East Tennessee up to 13,000 Mcf per day. Chattanooga also indicated it would sell at its sole discretion supplemental winter service of 300,000 Mcf as requested by East Tennessee for the same winter period, and up to 10,000 Mcf per day.

Chattanooga proposes to charge $5.0946 per dt equivalent of natural gas for the firm sales and $4.5910 per dt equivalent of natural gas for the supplemental winter service.

Comment date: July 24, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Midwestern Gas Transmission Company

[Docket No. CP88-696-003]

July 3, 1989.

Take notice that on June 16, 1989, Midwestern Gas Transmission Company (Midwestern), P.O. Box 2511, Houston, Texas 77252-2511, filed in Docket No. CP88-696-003 a petition to amend the order issued December 19, 1988, as amended, in Docket No. CP88-696-000 pursuant to section 7(c) of the Natural Gas Act so as to authorize the extension of time for the transportation of natural gas on behalf of Loutex Energy, Inc. (Loutex), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Midwestern proposes to continue to transport up to 120,000 dt equivalent of natural gas per day for Loutex on an interruptible basis under the order issued in Docket No. CP88-696-000 issued December 19, 1988. Midwestern, it is said, would receive such gas at the United States-Canadian border at Emerson, Manitoba, and redeliver gas to Loutex at Midwestern's interconnection with ANR Pipeline Company near Marshfield, Wisconsin.

For this transportation service, Midwestern represents that it would charge Loutex a transportation rate as set forth in Midwestern's Rate Schedule IT-2.

Midwestern avers that the transportation agreement would remain in force for a primary term of two years from the date of initial deliveries, and year to year thereafter unless and until terminated by either party giving proper notice.

Comment date: July 24, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1675-000]

July 3, 1989.

Take notice that on June 22, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1675-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation service for Oxy USA, Inc. (Oxy), a shipper and producer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

Panhandle requests authorization to transport, on an interruptible basis, up to a maximum of 50,000 dt equivalent of natural gas per day for Oxy pursuant to a transportation agreement dated April 28, 1989. Panhandle states that it would receive the gas from various existing points of receipt located in Colorado, Illinois, Kansas, Michigan, Oklahoma and Texas and redeliver the gas, less fuel and unaccounted for line loss, to Natural Gas Pipe Line Company in Clark County, Kansas. Panhandle indicates that the total volume of gas to be transported for Oxy on a peak day would be 50,000 dt; on an average day would be 50,000 dt; and on an annual basis would be 18,250,000 dt.

Panhandle states that it commenced the transportation of natural gas for Oxy on May 4, 1989, at Docket No. ST89-3867-000 for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations. Panhandle indicates that it proposes no new facilities in order to provide this transportation service.

Comment date: August 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Transwestern Pipeline Company

[Docket No. CP89-1694-000]

July 3, 1989.

Take notice that on June 28, 1989, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-1694-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Exxon Corporation (Exxon), a natural gas producer, under the blanket certificate issued in Docket No. CP88-133-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transwestern states that pursuant to a transportation agreement dated May 5, 1989, under its Rate Schedule ITS-1, it proposes to transport up to 25,000 MMBtu per day equivalent of natural gas for Exxon. Transwestern states that it would transport the gas from receipt points as shown in Exhibit "A" of the transportation agreement and would deliver the gas to delivery points shown in Exhibit "B" of the agreement.

Transwestern advises that service under § 284.223(a) commenced May 17, 1989, as reported in Docket No. ST89-3675 (filed May 30, 1989). Transwestern further advises that it would transport 18,750 MMBtu on an average day and 9,125,000 MMBtu annually.

Comment date: August 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-1697-000]

July 3, 1989.

Take notice that on June 28, 1989, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89-1697-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Citizens Gas Supply Company (Citizens) under Transco's blanket certificate issued in Docket No. CP88-328-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco states that pursuant to a service agreement dated May 1, 1989, it proposes to receive up to 30,000 dt equivalent of natural gas per day of additional volumes if Transco has satisfied any pending requests for service under Rate Schedule IT, from Citizens at specified receipt points located in Offshore Louisiana and Texas and Onshore Texas and redeliver the gas at specified redelivery points located in Onshore Louisiana and Texas. Transco states that the peak day and average day volumes would be 30,000 dt equivalent of natural gas and that the annual volumes would be 10,950,000 dt equivalent of natural gas. It is indicated that on May 11, 1989, Transco initiated a 120-day transportation service for Citizens under § 284.223(a) as reported in Docket No. ST89-3744-000.

Transco further states that no facilities need be constructed to implement the service. Transco states that the service would continue until terminated on 30 days written notice. Transco proposes to charge rates and abide by the terms and conditions of its Rate Schedule IT.

Comment date: August 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. El Paso Natural Gas Company

[Docket No. CP89-1702-000]

July 3, 1989.

Take notice that on June 28, 1989, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP89-1702-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Grace Petroleum Corporation (Grace), under the blanket certificate issued in Docket No. CP88-433-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso states that pursuant to a transportation service agreement dated February 24, 1989, under its Rate Schedule T-1, it proposes to transport up to 103,000 MMBtu per day equivalent of natural gas for Grace. El Paso states that it would transport the gas from any receipt point on its system, as provided in Exhibit "A" of the transportation agreement, and would deliver the gas to delivery points on the borderline between the States of Arizona and California, as shown in Exhibit "B" of the agreement.

El Paso advises that service under § 284.223(a) commenced May 1, 1989, as reported in Docket No. ST89-3674. El Paso further advises that it would transport 103,000 MMBtu on an average day and 37,595,000 MMBtu annually.

Comment date: August 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. El Paso Natural Gas Company

[Docket No. CP89 1703-000]

July 3, 1989.

Take notice that on June 28, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP89-1703-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Exxon Corporation (Exxon), under El Paso's blanket certificate issued in Docket No. CP88-433-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso requests authorization to transport, on an interruptible basis, up to a maximum of 79,125 MMBtu of natural gas per day for Exxon from any point of receipt located on El Paso's system to delivery points located in Arizona, California, Oklahoma, Texas and Colorado. El Paso anticipates transporting 31,650 MMBtu on an average day and an annual volume of 11,552,250 MMBtu.

El Paso states that the transportation of natural gas for Exxon commenced May 1, 1989, as reported in Docket No. ST89-3518-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to El Paso in Docket No. CP88-433-000.

Comment date: August 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. ANR Pipeline Company

[Docket No. CP89-1704-000]

July 3, 1989.

Take notice that on June 28, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1704-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Tymco Oil Company (Tymco), a marketer, under the blanket certificate issued in Docket No. CP88-532-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

ANR states that pursuant to a transportation agreement dated April 10, 1989, under its Rate Schedule ITS, it proposes to transport up to 7,500 dekatherms (dt) per day equivalent of natural gas for Tymco. ANR states that it would transport the gas from receipt points in Fremont County, Wyoming, as shown in Exhibit "A" of the transportation agreement, and would deliver the gas for the account of Tymco at an interconnection with Colorado Interstate Gas Company in Fremont County, Wyoming, as shown in Exhibit "B" of the agreement.

ANR advises that service under Section 284.223(a) commenced May 5, 1989, as reported in Docket No. ST89-3879-000. ANR further advises that it would transport 7,500 dt on an average day and 2,737,500 dt annually.

Comment date: August 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. ANR Pipeline Company

[Docket No. CP89-1706-000]

July 3, 1989.

Take notice that on June 28, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1706-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for PSI, Inc. (PSI), a marketer, under the blanket certificate issued in Docket No. CP88-532-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

ANR states that pursuant to a transportation agreement dated April 19, 1989, under its Rate Schedule ITS, it proposes to transport up to 10,000 dekatherms (dt) per day equivalent of natural gas for PSI. ANR states that it would transport the gas from receipt points in Kansas, Louisiana, Oklahoma and Texas, and the offshore Louisiana and Texas gathering areas, as shown in Exhibit "A" of the transportation agreement, and would deliver the gas for the account of PSI in Tennessee, as shown in Exhibit "B" of the agreement.

ANR advises that service under § 284.223(a) commenced May 4, 1989, as reported in Docket No. ST89-3805-000. ANR further advises that it would transport 10,000 dt on an average day and 3,650,000 dt annually.

Comment date: August 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. ANR Pipeline Company

[Docket No. CP89-1711-000]

July 3, 1989.

Take notice that on June 28, 1989, ANR Pipeline Company (ANR) 500 Renaissance Center, Detroit, Michigan 48243 filed in Docket No. CP89-1711-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of General Motors Corp. (GM), under the authorization issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR would perform the proposed interruptible transportation service for GM, an industrial end user of gas, pursuant to a transportation agreement dated March 6, 1989. The term of the transportation agreement is for a initial period of 120 days and thereafter until March 31, 1990, and shall continue in effect month-to-month thereafter unless terminated upon 30 days prior written notice. ANR proposes to transport on a peak day up to 22,125 dekatherm; on an average day up to 22,125 dekatherm; and on an annual basis 8,075,625 dekatherm of natural gas for GM. ANR states that it would receive the gas at ANR's existing points of receipt located in the states of Kansas, Louisiana, Oklahoma and Texas and the Offshore Texas and Louisiana gathering ares and redeliver the gas of the account of GM at existing interconnections located in the state of Illinois. It is alleged that GM would pay ANR the effective rate contained in ANR's rate schedule ITS. ANR avers that construction of facilities would not be required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's regulations. ANR commenced such self-implementing service on May 1, 1989, as reported in Docket No. ST89-3728-000.

Comment date: August 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Natural Gas Pipeline Company of America

[Docket No. CP89-1692-000]

July 3, 1989.

Take notice that on June 28, 1989, Natural Gas pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-1692-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Marathon Oil Company (Marathon), a producer, under the blanket certificate issued in Docket No. CP86-582-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation service agreement dated March 30, 1989, under its Rate Schedule ITS, it proposes to transport up to 85,000 MMBtu per day equivalent of natural gas for Marathon. Natural states that it would transport the gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS) from receipt points in Oklahoma and New Mexico, as shown in Exhibit "A" of the transportation agreement, and would deliver the gas to delivery points in Nebraska and Illinois, as shown in Exhibit "B" of the agreement.

Natural advises that service under § 284.223(a) commenced May 1, 1989, as reported in Docket No. ST89-4019-000. Natural further advises that it would transport 9,000 MMBtu on an average day and 3,285,000 MMBtu annually.

Comment date: August 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-1696-000]

July 3, 1989.

Take notice that on June 28, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89-1696-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Tenngasco Corporation (Tenngasco), under the blanket certificate issued in Docket No. CP88-328-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transco states that pursuant to a service agreement dated June 15, 1988, under its Rate Schedule IT, it proposes to transport up to 500,000 dekatherms (dt) per day equivalent of natural gas for Tenngasco. Transco states that it would transport the gas from receipt points located offshore Louisiana, offshore Texas, in Louisiana, Mississippi and Texas, and would deliver the gas at delivery points in Mississippi, onshore Louisiana, and onshore and offshore Texas.

Transco advises that service under § 284.223(a) commenced May 1, 1989, as reported in Docket No. ST89-3742-000. Transco further advises that it would transport 10,000 dt on an average day and 3,650,000 dt annually.

Comment date: August 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Questar Pipeline Company

[Docket No. CP89-1685-000

July 3, 1989.

Take notice that on June 26, 1989, Questar Pipeline Company (Questar Pipeline) 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP89-1685-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas on an interruptible basis for Duncan Oil, Inc. (Duncan) under the blanket certificate issued in Docket No. CP88-650-000 pursuant to section 7 of the Natural Gas Act, all or more fully set forth in the request on file with the Commission and open to public inspection.

Questar Pipeline states that pursuant to a Transportation Agreement dated April 13, 1989 under its Rate Schedule T-2, it proposes to transport up to 1,000 MMBtu per day of natural gas for Duncan from various receipt points on Questar Pipeline's system to an interconnection with Northwest Pipeline Corporation, who is a subsequent transporter of natural gas for Duncan.

Questar Pipeline also states that the maximum day, average day, and annual transportation 1,000 MMBtu, 600 MMBtu, and 219,000 MMBtu, respectively.

Questar Pipeline further states it commenced service on May 1, 1989, as reported in Docket No. ST89-3753-000.

Comment date: August 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Southern Natural Gas Company

[Docket No. CP89-1690-000]

July 3, 1989.

Take notice that on June 27, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP89-1690-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Heartland Gas Marketing, Inc. (Heartland), a marketer of natural gas, under Southern's blanket certificate issued in Docket No. CP88-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposes to transport, on an interruptible basis, up to 5,000 MMBtu equivalent of natural gas on a peak day, 5,000 MMBtu equivalent on an average day, and 1,825,000 MMBtu equivalent on an annual basis for Heartland. It is stated that Southern would receive the gas at existing points on Southern's system in Louisiana, offshore Louisiana, Texas, offshore Texas, Mississippi, and Alabama. It is stated that Southern would deliver equivalent volumes at various existing points on Southern's system in Georgia. It is asserted that Southern would utilize existing facilities and that no construction of additional facilities would be required. It is explained that the transportation service commenced May 1, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-3532.

Comment date: August 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Southern Natural Gas Company

[Docket No. CP89-1691-000]

July 3, 1989.

Take notice that on June 27, 1989, Southern Natural Gas Company (Southern) P.O. Box 2563, Birmingham, Alabama 35303-2563, filed in Docket No. CP89-1691-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Oxy USA, Inc. (Oxy) under the authorization issued in Docket No. CP88-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern would perform the proposed transportation service for Oxy, a producer of natural gas, pursuant to a service agreement dated April 24, 1989, under Southern's Rate Schedule IT. It is stated that the term of the service agreement is for a primary term ending May 31, 1989, with successive terms of one thereafter unless cancelled by either party. Southern proposes to transport on a peak day up to 7,600 Mcf; on an average day 7,600 Mcf; and on an annual basis 2,774,000 Mcf of natural gas for Oxy. Southern proposes to receive the gas from a receipt point in Matagorda Island Block 686 on a firm basis and various receipt points in offshore Texas, offshore Louisiana, Texas, Louisiana, Mississippi, and Alabama on a interruptible basis for delivery to Northern Natural Gas Company in Refugio County, Texas. Southern asserts that no new facilities are required to implement the proposed service.

Southern states that it would perform such transportation service for Oxy pursuant to its Rate Schedule IT. It is further stated that Southern may agree from time to time to discount the rate charged Oxy for transportation services in accordance with the provisions of Rate Schedule IT. It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Regulations. Southern commenced such self-implementing service on May 1, 1989, as reported in Docket No. ST89-3531-000.

Comment date: August 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89-1687-000]

July 3, 1989.

Take notice that on June 26, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-1687-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon certain facilities, located in Texas County, Oklahoma, under Northern's blanket certificate issued in Docket No. CP82-410-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Northern states that it requests authority to abandon in place approximately 5,210 feet of 6-inch pipeline and ground appurtenances including: (1) 2-inch blow off valve with closure; (2) 4-inch blow off valve; and (3) sales tap for Guymon Chemical Engineering Company (Guymon Chemical) through Southern Union Gas Company.

Northern states that the sales tap for Guymon Chemical was originally placed in service in 1967 and construction of the sales point was authorized by the Commission on February 6, 1967, in Northern's application at Docket No. CP67-139. Initially, the sales tap was utilized as a delivery point to Northern's Peoples Division (Peoples) to serve their industrial customer, Guymon Chemical. Northern indicates that pursuant to Northern's application at Docket No. CP72-224, Order issued December 26, 1972, Peoples sold and transferred all distribution system properties and services in the rural areas of Beaver, Ellis, Harper, Texas and Woodward counties in Oklahoma to Southern Union. Northern further indicates that the above referenced sales tap for the industrial user, Guymon Chemical, was one of the properties transferred.

Northern states that the 5,210 feet of 6-inch pipeline was placed in service in 1944 as a portion of the approximately 4 mile Jackson #1 gathering line. Northern further states that this section of line would no longer be used and has deteriorated to the point where the line needs major repairs. Also, Northern indicates that the industrial end user, Guymon Chemical, is no longer in business. Northern states that it has determined that the line is not needed to serve current or future customers.

Comment date: August 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. Great Lakes Gas Transmission Company

[Docket No. CP89-1681-000]

July 3, 1989.

Take notice that on June 23, 1989, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP89-1681-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Great Lakes to transport natural gas, on an interruptible basis, for the account of Western Gas Marketing U.S.A. Ltd. (WGM), until August 31, 1993, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Great Lakes states that WGM has requested two services from Great Lakes. In the first, Great Lakes indicates that it would transport up to 250,000 Mcf per day for the account of WGM, from a point on the International Border between the United States and Canada, at Emerson, Manitoba (Emerson Receipt Point), where the facilities of Great Lakes interconnect with the facilities of TransCanada PipeLines Limited (TransCanada), to (1) an existing point of interconnection between the facilities of Great Lakes and TransCanada located at a point on the International Border at Sault Ste. Marie, Michigan (Sault Ste. Marie Delivery Point), and (2) an existing point of interconnection between the facilities of Great Lakes and Michigan Consolidated Gas Company (MichCon), located at Belle River Mills, Michigan (Belle River Mills Delivery Point).

In the second service, Great Lakes states that it would, during the summer period (April 1st to October 31), transport up to 30,000 Mcf per day from the Emerson Receipt Point to the Belle River Mills Delivery Point. Great Lakes further states that MichCon would store such volumes for WGM. Great Lakes indicates that during the winter period (November 1 to March 31), it would receive the storage volumes from MichCon at the Belle River Mills Delivery Point and deliver an equivalent quantity of volumes for the account of WGM at the Sault Ste. Marie Delivery Point.

Great Lakes states that WGM and Great Lakes have entered into two transportation service agreements, each dated June 1, 1989 (Agreement No. 1 and Agreement No. 2), which implement these arrangements. Great Lakes further states that these Agreements provide for a term ending August 31, 1993.

Great Lakes indicates that both Agreements provide for a rate for the transportation service to the Belle River Mills Delivery Point which is equal to the 100% load factor rate as determined from the demand and commodity components utilized in Rate Schedule T-4 of Great Lakes FERC Gas Tariff, under which volumes are also transported from the Emerson Receipt Point to Great Lakes' Eastern Zone.

Great Lake asserts that Agreement No. 1 provides for a rate for the transportation service to the Sault Ste. Marie Delivery Point which is equal to the 100% load factor rate as determined from the demand and commodity components utilized in the transportation component of existing Rate Schedule CQ-2 of Great Lakes' FERC Gas Tariff, under which volumes of gas are also transported from the Emerson Receipt Point to Great Lakes' Central Zone. It is stated that no new facilities would be required to provide either of the services.

Great Lakes states that WGM or its sales customers have entered into the contractual arrangements with MichCon for the transportation of volumes from Bell River Mills to points of interconnection between the facilities of MichCon and the end users who will purchase the subject volumes from WGM; and WGM has entered into the contractual arrangements with MichCon related to the storage of volumes. Great Lakes further states that WGM has entered into arrangements with various end users in Michigan and in Canada (near Sault Ste. Marie, Ontario), for the sale of the subject volumes.

Comment date: August 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

18. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-1646-000]

July 3, 1989.

Take notice that on June 16, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89-1646-000 an application, as supplemented June 21, 1989, pursuant to section 7(b) of the Natural Gas Act requesting an order permitting and approving abandonment of certain sales service to Columbia Gas Transmission Corporation (Columbia), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In such application, Transco states that it entered into two service agreements with Columbia, the first dated September 19, 1966 and the second dated September 1, 1967, providing for the sale for resale of a maximum daily quantity of 23,900 Mcf of natural gas per day under Transco's Rate Schedule CD-3 and 2,500 Mcf per day under Transco Rate Schedule OG-3, respectively. Transco further states that both of these service agreements expired by their own terms prior to the proposed retroactive date requested herein. It is averred that the Commission originally authorized such service to Columbia by orders issued in Docket Nos. CP66-233-000, 37 FPC 959 (1967), and CP66-187-000, 35 FPC 462 (1966).

Transco states that effective as of April 1, 1989, Columbia has fully converted its firm sales service from Transco to firm transportation service under Transco's Rate Schedule FT pursuant to the Commission's Regulations implementing the Commission's Order No. 500. Thus, Transco requests that the abandonment of Columbia's firm sales service entitlement under Transco's Rate Schedules CD-3 and OG-3 be effective as of April 1, 1989.

Comment date: July 24, 1989, in accordance with Standard Paragraph F at the end of this notice.

19. Trunkline Gas Company

[Docket No. CP89-1628-000]

July 5, 1989.

Take notice that on June 14, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP89-1628-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of pipeline facilities, offshore Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Trunkline requests authority to construct and operate 20.03 miles of 24 inch pipeline loop extending from South Timbalier Block 72 to South Timbalier Block 175 at an estimated cost of $15,246,830. Trunkline proposes to finance the project from funds on hand and short term bank borrowing.

Trunkline states that the new facilities will provide capacity which is needed to transport gas on its Terrebonne System. Trunkline states that it has connected and is negotiating to connect reserves from 25 blocks in the South Timbalier and Ewing Bank areas of the Gulf of Mexico. Trunkline further states that presently, reserves discovered in ten of the 25 blocks have been estimated at 270 Bcf proved/probable with an additional 115 Bcf of reserves estimated as potential. Trunkline states that without the proposed facilities, shippers will be unable to obtain transportation via Trunkline and the producers will be deprived of a market for their gas.

Comment date: July 26, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

20. Nora Transmission Company

[Docket No. CP88-28-003]

July 5, 1989.

Take notice that on June 20, 1989, Nora Transmission Company (Nora), Post Office Box 1388, Ashland, Kentucky 41105-1388, filed in Docket No. CP88-28-003 an application, as supplemented June 27, 1989, pursuant to section 7(c) of the Natural Gas Act, to amend its existing certificate of public convenience and necessity issued in Docket No. CP88-28-000 to authorize Nora to transport in interstate commerce an additional 10,000 dt equivalent of natural gas per day, on an interruptible basis, for Equitable Resources Exploration, a division of Equitable Resources Energy Company (EREX), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that in order to facilitate EREX's interruptible sales of Kentucky-produced gas to East Tennessee Natural Gas Company (East Tennessee), Nora proposes to increase its interruptible transportation service on behalf of EREX, under Rate Schedule ITS-1, by 10,000 dt equivalent of natural gas per day, for a total of up to 25,000 dt equivalent of natural gas per day, as provided by a transportation agreement dated April 1, 1989, between Nora and EREX. Nora proposes no change in the rate to be charged for this interruptible service.

Nora states that it would accept these additional volumes at the existing point of interconnection of Nora's facilities with the facilities of Kentucky West Virginia Gas Company and deliver these quantities to East Tennessee at the existing point of interconnection of Nora's facilities with the facilities of East Tennessee near Nora, Virginia. Nora indicates that no new facilities are needed to provide the proposed increase in interruptible transportation service. It is also indicated that Nora anticipates that the proposed service would commence by November 1, 1989.

Nora proposes no other changes to the authorized service.

Comment date: July 26, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

21. ANR Pipeline Company

[Docket No. CP89-1710-000]

Take notice that on June 28, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1710-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR proposes to transport gas on an interruptible basis for Panhandle Trading Company (Panhandle), a marketer. ANR explains that service commenced May 6, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-3609. ANR further explains that the peak day quantity would be 75,000 dekatherms, the average daily quantity would be 75,000 dekatherms, and that the annual quantity would be 27,375,000 dekatherms. ANR explains that it would receive natural gas at three existing Louisiana interconnections and redeliver the gas at an existing Paulding County, Ohio, interconnection.

Comment date: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

22. ANR Pipeline Company

[Docket No. CP89-1708-000]

July 5, 1989.

Take notice that on June 28, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan

48243, filed in Docket No. CP89-1708-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR proposes to transport gas on an interruptible basis for Unicorp Energy, Inc. (Unicorp), a marketer. ANR explains that service commenced May 1, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-3729. ANR further explains that the peak day quantity would be 100,000 dekatherms, the average daily quantity would be 100,000 dekatherms, and that the annual quantity would be 36,500,000 dekatherms. ANR explains that it would receive natural gas at the various existing interconnections listed in Exhibit A and redeliver the gas at existing interconnections in Indiana.

Comment date: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

23. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1713-000]

July 5, 1989.

Take notice that on June 29, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1713-000 a request pursuant to §§ 157.216(b) and 157.205 of the Regulations under the Natural Gas Act for permission and approval to abandon sales service and related facilities provided to Wil-Ka-Way Farms, Inc. (Wil-Ka-Way), a farm tap certificated in Docket No. CP81-489-000, under the certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request with the Commission and open to public inspection.

Panhandle states that by letter dated May 1, 1989, Wil-Ka-Way has formally confirmed that it no longer desires sales service from Panhandle and consents to Commission approval of abandonment of the farm tap facilities.

Comment date: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

24. ANR Pipeline Company

[Docket No. CP89-1705-000]

July 5, 1989.

Take notice that on June 28, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1705-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas on an interruptible basis for Coastal Gas Marketing Company (Coastal) under the blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Act, all or more fully set forth in the request on file with the Commission and open to public inspection.

ANR states that pursuant to a Transportation Agreement dated October 28, 1988, it proposes to transport up to 100,000 MMbtu per day of natural gas for Coastal. ANR states it would receive the gas at ANR's existing points of receipt located in the offshore Texas gathering area and redeliver the gas for the account of Coastal at existing interconnections located in the Offshore Texas gathering area.

ANR also states that the maximum day, average day, and annual transportation volumes would be 100,000 MMbtu, 100,000 MMbtu and 36,500,000 MMbtu, respectively.

ANR further states it commenced this service on May 1, 1989, as reported in Docket No. ST89-3722-000.

Comment date: August 21, 1989, in accordance with Standard paragraph G at the end of this notice.

25. Questar Pipeline Company

[Docket No. CP89-1701-000]

July 5, 1989.

Take notice that on June 28, 1989, Questar Pipeline Company (Questar Pipeline), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP89-1701-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide interruptible transportation service for Stauffer-Wyoming Pipeline Company (Stauffer-Wyoming), under Questar Pipeline's blanket certificate issued by the Commission in Docket No. CP88-650-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

Questar Pipeline states that pursuant to a transportation agreement dated April 4, 1989, under its Rate Schedule T-2, it intends to transport up to 7,000 MMBtu per day equivalent of natural gas for Stauffer-Wyoming from various receipt points, listed as Appendix A, on Questar Pipeline's system and deliver to an interconnection with Northwest Pipeline Corporation, who is a subsequent transporter of natural gas for Stauffer-Wyoming.

Questar Pipeline further states that the estimated average daily and annual quantities are 2,000 MMBtu and 730,000 MMBtu equivalent of natural gas, respectively. Service commenced on May 1, 1989, as reported in Docket No. ST89-4017-000 for a 120-day period, pursuant to § 284.223(a)(1) of the Commission's Regulations, it is stated.

Comment date: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

26. Northern Natural Gas Company, Division of Enron Corporation

[Docket No. CP89-1538-000]

July 5, 1989.

Take notice that on May 30, 1989, Northern Natural Gas Company, Division of Enron Corporation (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89-1538-000 a request, as supplemented June 30, 1989, pursuant to §§ 157.7 and 175.14 of the Commission's Regulations under the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 2.0 miles of 30-inch line and related facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Northern is requesting authorization to construct pipeline and related facilities, looping a portion of Northern's East Leg pipeline which crosses the Mississippi River, from approximately 20 miles east of Epworth, Iowa, to a point approximately 3 miles west of Galena, Illinois. Northern states that such line is required in order to provide security and reliability in meeting its service obligations and maintaining deliveries of certificated volumes to eleven existing firm sales and transportation customers and approximately six interruptible customers served by Northern's East Leg. The firm customers' total peak requirements are 302,047 Mcf per day, it is stated. Northern states that the proposed line would be "valved off" at each end where it would connect with Northern's existing line; Northern therefore requests authorization to operate the new line only during periods of outage, repairs, testing, or maintenance of the existing line. Northern estimates the proposed project to cost $6.0 million. Northern proposes to finance this proposal with internally generated funds.

Comment date: July 26, 1989, in accordance with Standard Paragraph F at the end of this notice.

27. Panhandle Eastern Pipeline Company

[Docket No. CP89-1700-000]

July 6, 1989.

Take notice that on June 29, 1989, Panhandle Eastern Pipeline Company (Panhandle), 5400 Westheimer Court, Houston, Texas, 77251-1642, filed in Docket No. CP89-1700-000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act, to establish an additional delivery point to its existing sales service contract for Michigan Gas Storage Company (Storage Company), under Panhandles's blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle indicates that the additional delivery point would not affect the certificated entitlement of Storage Company's LS-1 contract, since the aggregate volumes delivered on a single day will not exceed 35,000 Mcf.

Comment date: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

28. Transcontinental Gas Pipe Line Corporation

[Docket No. CP88-328-002]

July 6, 1989.

Take notice that on June 27, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP88-328-002 a petition to amend the order issuing a certificate of public convenience and necessity pursuant to Section 7 of the Natural Gas Act in Docket No. CP88328-000, by authorizing Transco and the holders of firm transportation capacity on its system to sell, trade or reassign those rights and sell, trade or reassign Transco's firm transportation and exchange capacity rights on other interstate pipelines to each other or to third parties in an unregulated secondary market, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Specifically, Transco seeks authority necessary to permit Transco and the holders of firm transportation capacity rights on its system to sell, trade or reassign those rights, and to sell, trade or reassign Transco's firm transportation and exchange capacity rights on other interstate pipelines, to each other or to third parties in an unregulated secondary market. Transco also seeks additional authorizations which would become necessary if Transco's proposals in its currently pending rate case in Docket No. RP87-7-000 are accepted. Transco states that such other authority would be (i) that Transco be permitted to terminate its current Rate Schedule IT and all other interruptible transportation services that it performs under its FERC Gas Tariff and abandon service thereunder (Transco believes that this is necessary because all transportation service would be provided by Transco under firm transportation agreements or by reassignment in an unregulated secondary market), and (ii) that Transco be authorized to maintain its current CD and G/OG sales service by providing such service on an unbundled basis pursuant to Rate Schedule FT for the pricing of the transportation component and reference to the purchased gas adjustment mechanism or any subsequently authorized gas inventory charge for pricing of the gas commodity.

Transco further requests that the Commission consolidate this petition with the ongoing proceeding in Docket No. RP87-7-000 in order that the issues raised by this petition may be considered and addressed in conjunction with the Docket No. RP87-7-000 proposal upon which this petition is said to be a necessary component. Transco states that the rate design and terms of service which Transco has proposed in Docket No. RP87-7-000 are closely intertwined with the secondary market proposal authorization which is sought by this filing.

Transco proposes that essentially all current capacity on the system used to render pipeline merchant service would be assigned to the existing customers. Transco proposes to define the rights FT shippers hold so as to ensure that firm transportation entitlements provide service to the customer that is comparable regardless of the customer's choice of marketers to provide its gas supply. To accomplish this, it is necessary to provide enhanced firm capacity entitlements that include access to Transco's entire production area and to Transco's upstream firm transportation and exchange rights on third party pipelines traditionally used by Transco to purchase specific gas supplies for firm sales service.

As to capacity rights, Transco states it would allocate firm capacity rights on its traditional mainline to firm sales and transportation customers consistent with Transco's existing contractual service obligations. This would be accomplished by converting any remaining traditional firm sales entitlements of customers to firm transportation entitlements. These new FT customers, and any existing FT customers by virtue of prior contract conversions or the reallocation of firm sales or transportation mainline capacity (these new and existing FT customers are referred to collectively as FT conversion customers) would have full daily contract capacity rights on Transco's mainline transmission system commencing at Compressor Station 65. Existing firm transportation customers under Transco's four certificated long haul X Rate Schedules (X-11, 42, 52 and 56) would retain their existing contractual entitlements to capacity and Transco would retain firm capacity on its mainline system needed to render service under Rate Schedules PS and ACQ, or any successor services.

Transco would be allocated a percentage of the capacity upstream of Station 65 in order to provide service under existing Rate Schedules PS and ACQ and for certificated long-haul firm transportation, and to provide for fuel and for the operational flexibility to respond on short notice to changes in flow patterns on its system. When that capacity is not necessary for such purposes, Transco would offer such capacity for sale in the unregulated secondary market. Transco would include rights under certain firm transportation and exchange agreements with upstream pipelines in the allocation process. In effect, Transco states it proposes to treat its rights on upstream pipelines as an extension of its own system.

With regard to delivery points, Transco states that each FT conversion customer would have firm transportation service rights to receive gas at that customer's traditional delivery points with Transco. With regard to receipt points, Transco proposes that all gas supply and third-party pipeline interconnect receipt points on Transco's pipeline system would be available to FT conversion customers under Rate Schedule FT.

Transco states it has proposed in Docket No. RP87-7-000 to establish conditions and rates for regulated firm transportation service on its system which would permit the creation of an unregulated secondary market in such transportation rights. Transco is herein proposing first to convert its system to unbundled firm transportation service by allocating capacity to Transco's historic firm customers consistent with Transco's existing contractual obligations. Transco asserts that this allocation of firm capacity in combination with Transco's proposed

rate design and tariff changes in the Docket No. RP87-7-000 proceeding would create the conditions necessary and sufficient for the operation of the unregulated secondary market.

Transco states that the agreements governing the sale or assignment of capacity rights in the proposed unregulated market would be the product of negotiation between the buyers and sellers in that market. Transco states it would not be a party to those agreements, except to the extent that Transco itself is either a buyer or a seller in the unregulated market. Transco asserts it would conduct business with the FT customers under the Rate Schedule FT and would look to the FT customer as the party responsible for the payment of any and all charges associated with the use of the capacity under that rate schedule and for compliance with the other terms and conditions of Transco's tariff.

Comment date: July 27, 1989 in accordance with Standard Paragraph F at the end of the notice.

29. East Tennessee Natural Gas Company

[Docket No. CP89-1674-000]

July 6, 1989.

Take notice that on June 22, 1989, East Tennessee Natural Gas Company (Applicant), P.O. Box 10245, Knoxville, Tennessee 37939-0245, filed in Docket No. CP89-1674-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 0.48 mile of 22-inch pipeline loop across the Second Creek Embayment of Old Hickory Lake in Trousdale County, Tennessee, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the proposed pipeline loop is to protect the integrity of its system and to permit it to maintain service in the event of failure of its existing single line which was originally installed in 1950. Applicant states that the proposed loop will not increase the throughput and will have a negligible impact on the capacity of Applicant's system.

Applicant estimates the cost of the proposed facilities to be $1,368,000. Applicant proposes to finance the project with funds on hand, or from internally generated funds.

Comment date: July 27, 1989, in accordance with Standard Paragraph F at the end of this notice.

30. Transwestern Pipeline Company

[Docket No. CP89-1695-000]

July 6, 1989.

Take notice that on June 28, 1989, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-1695-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas on behalf of Dolphin Energy, Inc. (Dolphin), a marketer of natural gas, under Transwestern's blanket certificate issued in Docket No. CP88-133-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transwestern proposes to transport up to 100,000 MMBtu of natural gas equivalent per day on an interruptible basis on behalf of Dolphin pursuant to a transportation agreement dated May 12, 1989, between Transwestern and Dolphin. Transwestern would receive the gas at various existing points of receipt on its system in Texas, Oklahoma and New Mexico and deliver equivalent volumes at various existing delivery points in Texas.

Transwestern states that the estimated daily and annual quantities would be 75,000 MMBtu and 36,500,000 MMBtu, respectively. Service under § 284.223(a) commenced on May 19, 1989, as reported in Docket No. ST89-3882-000.

Comment date: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

31. ANR Pipeline Company

[Docket No. CP89-1707-000]

July 6, 1989

Take notice that on June 28, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1707-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Xebec Gas Company (Xebec), a marketer, under ANR's blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR states that the transportation service would be provided pursuant to a transportation agreement wherein ANR proposes to transport up to 2,000 dekatherms (dt) per day equivalent of natural gas on an interruptible basis for Xebec. ANR further states that the estimated daily and estimated annual volumes of natural gas that would be transported would be 2,000 dt and 730,000 dt, respectively.

ANR indicates that it would receive the natural gas at ANR's existing points of receipt located in the states of Kansas, Louisiana, Texas and Oklahoma and the Offshore Texas and Louisiana gathering areas and would redeliver the natural gas for the account of Xebec at existing interconnections located in the state of Wisconsin.

ANR states that it commenced the transportation of natural gas for Xebec on May 1, 1989, as reported in Docket No. ST89-3725-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)).

Comment date: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

32. Tennessee Gas Pipeline Company

[Docket No. CP89-1712-000]

July 6, 1989.

Take notice that on June 29, 1989, Tennessee Gas Pipeline Company (Tennessee), 1010 Milam, Houston, Texas 77002, filed in Docket No. CP89-1712-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Meth Corporation (Meth), a marketer of natural gas, under Tennessee's blanket certificate, issued in Docket No. CP87-115-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee proposes to transport, on an interruptible basis, up to 200,000 dt equivalent of natural gas on a peak day, 200,000 dt equivalent on an average day and 73,000,000 dt equivalent on an annual basis. It is stated that Tennessee would receive the gas for Meth's account at designated points on Tennessee's system in Louisiana, offshore Louisiana and Alabama, and would deliver equivalent volumes at designated points on Tennessee's system in various states. It is asserted that the transportation service would be effected using existing facilities and would require no construction of additional facilities. It is explained that the service commenced May 18, 1989, under the self-implementing authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-3929.

Comment date: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

33. ANR Pipeline Company

[Docket No. CP89-1709-000]

July 6, 1989.

Take notice that on June 28, 1989, ANR Pipeline Company (ANR) 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1709-000 an application pursuant to §§ 157.205 and 284.223 (18 CFR 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act for authorization to provide interruptible transportation service for Fuel Services Group (FSG), a marketer of gas, pursuant to ANR's blanket transportation certificate issued July 25, 1988, in Docket No. CP88-532-000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR states it will receive the gas at various supply sources in the offshore areas of Louisiana and Texas and the states of Oklahoma and Louisiana, and deliver the gas for the account of FSG at various points in Brown County, Wisconsin.

ANR proposes to transport up to 4,000 dt of gas on a peak and average day and approximately 1,460,000 dt of gas annually. ANR states the transportation commenced on May 1, 1989, pursuant to the 120-day automatic authorization under § 284.223 of the Commission's Regulations under the terms of a transportation agreement dated April 7, 1989. ANR notified the Commission of the transportation service in Docket No. ST89-3726-000.

Comment date: August 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

34. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89-1714-000]

July 6, 1989.

Take notice that on June 29, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-1714-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of PSI, Inc. (PSI), a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP86-435-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport, on an interruptible basis, up to 100,000 MMBtu equivalent of natural gas on a peak day, 75,000 MMBtu equivalent on an average day, and 36,500,000 MMBtu equivalent on an annual basis for PSI. It is stated that Northern would receive the gas for PSI's account at designated points on Northern's system and would deliver equivalent volumes at designated points on Northern's system. It is asserted that the service would be effected using existing facilities and would require no construction of additional facilities. It is explained that the transportation service commenced May 12, 1989, under the self-implementing authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-3707.

Comment date: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

35. Natural Gas Pipeline Company of America

[Docket No. CP89-1715-000]

July 6, 1989.

Take notice that on June 29, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148 filed in Docket No. CP89-1715-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Union Pacific Resources Company (Union), a producer of natural gas, under Natural's blanket certificate issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural proposes to transport on a firm basis up to 25,000 MMBtu, plus any additional volumes accepted pursuant to the overrun provision of Natural's Rate Schedule FTS, on behalf of Union pursuant to a gas transportation agreement dated April 21, 1989, between Natural and Union. Natural would receive the gas at an existing point of receipt on its system in Oklahoma and redeliver equivalent volumes, less fuel and lost and unaccounted for volumes, at an existing delivery point in New Mexico.

Natural further states that the estimated average daily and annual quantities would be 25,000 MMBtu and 36,500,000 MMBtu, respectively. Service under § 284.223(a) commenced on April 28, 1989, as reported in Docket No. ST89-4048-000, it is stated.

Comment date: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

36. Tennessee Gas Pipeline Company

[Docket No. CP89-1723-000]

July 6, 1989.

Take notice that on June 30, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-1723-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Philbro Distributor Corporation (Philbro), a marketer, under the blanket certificate issued in Docket No. CP87-115-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated May 12, 1989, as amended, under its Rate Schedule IT, it proposes to transport up to 500,000 dekatherms (dt) per day equivalent of natural gas for Philbro. Tennessee states that it would transport the gas for Philbro from receipt points located offshore Louisiana and Texas, and in the states of Louisiana, Texas, Massachusetts, Mississippi, Pennsylvania, West Virginia, Alabama, New Jersey, Tennessee, New York, Ohio, Kentucky, Connecticut, and Arkansas, and deliver such gas to points of delivery in the states of Louisiana, Texas, Massachusetts, New York, Mississippi, Alabama, West Virginia, New Hampshire, Pennsylvania, New Jersey, Connecticut, Tennessee, Ohio, Kentucky, and Arkansas. Tennessee further states that the ultimate points of delivery are located in the states of Alabama, Connecticut, Florida, Illinois, Indiana, Louisiana, Massachusetts, Michigan, Mississippi, New Jersey, New York, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia.

Tennessee advises that service under § 284.223(a) commenced June 1, 1989, as reported in Docket No. ST89-4018-000 (filed June 28, 1989). Tennessee further advises that it would transport 500,000 dt on an average day and 182,500,000 dt annually.

Comment date: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

37. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89-1725-000]

July 6, 1989.

Take notice that on June 30, 1989, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-1725-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Cabot Energy Marketing Cooperation (Cabot), a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport, on an interruptible basis up to 200,000 MMBtu per day for Cabot. Northern states that construction of facilities would not be required to provide the proposed service.

Northern further states that the average day and annual transportation volumes would be approximately 150,000 MMBtu and 73,000,000 MMBtu, respectively.

Northern advises that service under § 284.223(a) commenced May 24, 1989, as reported in Docket No. ST89-3900.

Comment date: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16380 Filed 7-12-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3615-3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202 382-2740).

DATE: Comments must be submitted on or before August 14, 1989.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Verification of Test Parameters and Parts List for Light Duty Vehicles and Light Duty Trucks. (EPA ICR #167.03). This is a renewal of a previously approved collection.

Abstract: In order to enforce compliance with the emission standards, under the emission recall program, EPA tests in-use vehicles using Federal Test Procedures (FTP). The FTP specify parameters and a parts list that vary with manufacturer and model. Therefore, EPA needs to verify with manufacturers that the specified parameters and parts list are current for, and appropriate to, the vehicles to be tested.

Burden Statement: The public reporting burden for this collection of information is estimated to average 2 hours per response. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information.

Respondents: Motor vehicle manufacturers.

Estimated No. of Respondents: 11.

Estimated Total Annual Burden on Respondents: 120 hours.

Send comments regarding the burden estimate, or any other aspect of these information collections, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460.

and

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20530.

OMB Responses to Agency PRA Clearance Requests

EPA ICR #1498; Phases 1 and 2 of Pesticide Registration Process—Federal Insecticide, Fungicide, and Rodenticide Act, as Amended. Section 4: Reregistration; was approved 05/31/89; OMB #2070-0102; expires 09/30/90.

EPA ICR #1170.03; Collection of Emergency Economic and Regulatory Support Data: Request for Generic Clearance; was approved 06/07/89; OMB #2070-0034; expires 06/30/92.

EPA ICR #0568.05; Toxic Substances Control Act (TSCA) Section 8(A) Preliminary Assessment Information Rule (PAIR); was approved 06/07/89; OMB #2070-0054; expires 06/30/92.

Date: June 28, 1989.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 89-16418 Filed 7-12-89; 8:45 am]

BILLING CODE 6560-50-M

(FRL-3616-4)

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review. It also announces our request for emergency processing under 5 CFR 1320.18. EPA believes that emergency review and approval is appropriate because: the information in the ICR is essential to Agency's mission; it can only be obtained through the Department of Energy's (DOE) Commercial Buildings Energy Consumption Survey (CBECS); and it must be cleared by OMB by July 14, 1989, if EPA is to participate in the CBECS.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740).

DATE: EPA requests that OMB act on the ICR by July 14, 1989.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: EPA's Asbestos-Related Supplement to the Department of Energy's Commercial Buildings Energy Consumption Survey (ICR #1502).

Abstract: The Department of Energy's Energy Information Administration, at the request of EPA, has agreed to add supplemental questons on asbestos to their triennial Commercial Buildings Energy Consumption Survey. Building owners and operators will provide EPA with summer, 1989 data on the presence and abatement of asbestos in commercial buildings. EPA will use this information in its Asbestos in Buildings program.

Case for Emergency Clearance: EPA considers the acquisition of information on asbestos in commercial buildings essential to its mission to protect human health and the environment. Asbestos is a known human carcinogen and its presence in public buildings represents a potential health hazard. Without the information from this survey, EPA will be seriously hampered in its efforts to assess the risks from exposure to asbestos in commercial buildings, and may be unable to satisfactorily fulfill a promise to report its assessment to Congress.

The DOE's CBECS is the only nationwide, periodically updated (every three years) source of building characteristic data. The CBECS is well-designed, tried and tested, and has cleared OMB. It therefore offers EPA a unique opportunity to obtain reliable information on asbestos that can be extrapolated to commercial buildings nationally. EPA plans to add to the CBECS five simple yes or no questions on the presence and abatement of asbestos in public hearings.

If EPA were to ask these questions independently, we would have to develop our own survey instrument and methodology, and repeat many of the questions on the CBECS. A second survey would be inefficient and costly, and would result in needless duplication of effort by both EPA and the public. In fact, the costs of conducting our own survey on the scale of the CBECS would likely be prohibitive.

To join the DOE survey, however, we must act quickly. EPA has recently learned that DOE will begin to train personnel to administer the CBECS on July 14, 1989, and that we must have OMB clearance by that date if survey personnel are to incorporate our questions into the base questionnaire. Hence, our request for emergency processing and approval by July 14.

Burden Statement: The public reporting burden for this collection of information is estimated to average 6 minutes per response. This estimate includes time for hearing instructions and questions, and answering yes or no.

Respondents: Building Owners and Operators.

Estimated No. of Respondents: 5600.

Estimated Total Annual Burden on Respondents: 560 hours.

Send comments regarding the burden estimate or any other aspect of this collection to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20530

Dated: July 11, 1989.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

David Schwarz,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 89-16534 Filed 7-12-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-834-DR]

Amendment to Notice of a Major Disaster Declaration; Kentucky

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Kentucky (FEMA-834-DR), dated June 30, 1989, and related determinations.

DATED: July 6, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: Notice is hereby given that the incident period for this disaster is closed effective July 5, 1989.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-16437 Filed 7-12-89; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

[Docket No. 89-14]

Credit Practices of the North Europe-U.S. Atlantic Conference and the North Europe-USA Rate Agreement; Order To Show Cause

The North Europe-U.S. Atlantic Conference ("NEAC") includes within its published tariff, at Rule 7(a), Volume A, Rules and Commodity Index, NEAC Tariff-FMC No. 15, provisions for the payment of collect freight charges.[1]

[1] The North Europe-USA Rate Agreement ("NEUSA") has filed Agreement No. 202-011242 with the Commission. Unless prevented from being effective, the NEUSA agreement is scheduled to become effective July 16, 1989 and will replace the NEAC agreement (No. 202-010637). NEAC will be

Continued

These provisions generally require that all collect charges, including all monies advanced and any charges for demurrage and detention, shall be paid to the carrier before the cargo is released from the port of discharge for delivery, subsequent movement or for on-carriage to the delivery point. However, an exception is provided for specified shippers as follows: (a) all NEAC members may extend credit up to 14 days to shippers of wine and spirits "following receipt of Carrier's invoice by Shipper,"; [2] and, (b) three carriers,[3] under independent action, also may extend credit for up to 14 days to shippers of chocolate confectionary in temperature-controlled containers from ports in the Hamburg-Bordeaux Range following receipt of carrier's invoice by shipper.[4]

Section 10(b) of the Shipping Act of 1984 ("1984 Act" or "Act"), 46 U.S.C. app. sec. 1709, provides, in pertinent part, that:

(b) No common carrier, either alone or in conjunction with any other person, directly or indirectly may—

* * * * *

(6) except for service contracts, engage in any unfair or unjustly discriminatory practice in the matter of—

(A) rates;

(B) cargo classifications;

(C) cargo space accommodations or other facilities, due regard being had for the proper loading of the vessel and the available tonnage;

(D) the loading and landing of freight; or

(E) the adjustment and settlement of claims;

* * * * *

(11) except for service contracts, make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever;

(12) subject any particular person, locality or description of traffic to an unreasonable refusal to deal or any undue or unreasonable prejudice or disadvantage in any respect whatsoever;

* * * * *

It would appear that Rule 7(a) of the above-identified NEAC Tariff, by providing credit privileges to certain shippers to the exclusion of other shippers, constitutes the giving of undue or unreasonable preference and advantage to one class of shippers or description of traffic, and, in so doing, subjects other classes of shippers or descriptions of traffic to undue or unreasonable prejudice or disadvantage in violation of sections 10(b) (11) and (12) of the 1984 Act. For these same reasons, Rule 7(a) may also constitute an unfair or unjustly discriminatory practice as contemplated by section 10(b)(6) of the 1984 Act. Furthermore, NEAC may have violated section 10(b) (12) of the 1984 Act by unreasonably refusing to deal with other shippers seeking credit privileges.

Now therefore, It Is Ordered That pursuant to section 11 of the 1984 Act, 46 U.S.C. app. sec. 1710, NEAC and its members show cause why Rule 7(a), relating to extension of credit privileges to certain shippers, found in Volume A, Rules and Commodity Index, NEAC Tariff FMC No. 15, and the use, implementation and operations under such rule, should not be found to be in violation of sections 10(b)(6), 10(b)(11), and/or 10(b)(12) of the 1984 Act as unreasonably preferential, prejudicial, disadvantageous or discriminatory, in any respect whatsoever, and whether NEAC or its members violated section 10(b)(12) of the Act by refusing to deal with shippers, other than those specifically provided for in Rule 7(a), which may have sought credit privileges afforded only to certain shippers under Rule 7(a) and, if found to be in violation, why the violative provisions of this rule should not be stricken from the tariff;

It is further ordered That should it be determined that NEAC and its members have operated in violation of sections 10(b)(6), 10(b)(11) or 10(b)(12) of the Act, the matter may, pursuant to section 13 of the 1984 Act, be referred to an Administrative Law Judge for an appropriate proceeding to determine whether penalties should be assessed and, if so, the level of such penalties;

It is further ordered That this proceeding is limited to the submission of affidavits of fact and memoranda of law;

It is further ordered That any person having an interest and desiring to intervene in this proceeding shall file a petition for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 C.F.R. 502.72. Such petition shall be filed no later than August 24, 1989 for intervenors in support of the NEAC tariff and no later than September 25, 1989 for intervenors in opposition thereto.

It is further ordered That NEAC and NEUSA and member carriers of NEAC and NEUSA are named respondents in this proceeding. Affidavits of fact and memoranda of law shall be filed by Respondents and any intervenors in support of the NEAC tariff provisions at issue, no later than August 24, 1989;

It is further ordered That the Commission's Bureau of Hearing Counsel be made a party to this proceeding;

It is further ordered That reply affidavits and memoranda of law shall be filed by the Bureau of Hearing Counsel and any intervenors in opposition to the NEAC tariff provisions at issue, no later than September 25, 1989;

It is further ordered That rebuttal affidavits and memoranda of law, if any, shall be filed by Respondents and intervenors in support no later than October 9, 1989;

It is further ordered That:

(a) Should any party believe that an evidentiary hearing is required, that party must submit a request for such hearing together with a staement setting forth in detail the facts to be proved, the relevance of those facts to the issues in this proceeding, a description of the evidence which would be adduced, and why such evidence cannot be submitted by affidavit;

(b) Should any party believe that an oral argument is required, that party must submit a request specifying the reasons therefore and why argument by memorandum is inadequate to present the party's case; and

(c) Any such request for evidentiary hearing or oral argument shall be filed no later than October 19, 1989;

It is further ordered That notice of this Order to Show Cause be published in the **Federal Register**, and that a copy thereof be served upon Respondents;

It is further ordered That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal maritime Commission, Washington, DC 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on parties of record;

It is further ordered That pursuant to Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61, the final decision of the Commission shall be issued by February 19, 1990.

By the Commission.

Joseph C. Polking,

Secretary.

BILLING CODE 6730-01-M

disbanded and its agreement canceled when the NEUSA rate agreement becomes effective. The membership of NEUSA is the same as that of NEAC, with the addition of Incotrans BV. It is the Commission's understanding that NEUSA initially will adopt the NEAC tariff, including the credit provisions which the Order addresses. Accordingly, as appropriate, even when not specifically mentioned in this Order, any references to NEAC or its members shall be deemed to include NEUSA or its members, respectively.

[2] Presumably a carrier's invoice is presented by the time cargo is tendered.

[3] Sea Land Service, Inc., Nedlloyd Lijnen and Atlantic Container Line-Gulf Container Line.

[4] See Appendix A for full text of Rule 7(a).

APPENDIX A

NORTH EUROPE - U.S. ATLANTIC CONFERENCE OCEAN AND INTERMODAL FREIGHT TARIFF - FMC NO 15	ORIG/REV.	PAGE
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FROM/TO : SEE RULE 1	Original	52
VOLUME A : RULES AND COMMODITY INDEX	EFFECTIVE DATE	
	January 31st 1989	
	CORRECTION NO.	66

RULE NO. TARIFF RULES AND REGULATIONS

7. PAYMENT OF FREIGHT

(a) COLLECT FREIGHT

Except as otherwise expressly provided, all rates, charges and other remuneration ("compensation") payable to Carriers for services pursuant to this Tariff shall be prepaid unless arrangements for collect payment are made. All arrangements for collect payment shall be subject to the following conditions:

(1) All compensation payable to Carriers on a collect basis, and all monies advanced by Carriers for the account of the cargo ("advance charges", Rule 27) shall be due and payable at the time cargo is tendered at Port of Discharge or Bill of Lading Port if other than Port of Discharge, for delivery or subsequent movement, or for on-carriage to delivery point.

(2) Carriers will not release (i) cargo shipped for delivery at U.S. Ports whether or not a subsequent movement by Route-coding Service or any other means is arranged, or (ii) through shipments for on-carriage from Port of Discharge or Bill of Lading Port, if other than Port of Discharge, unless and until, all collect compensation and all advance charges due and payable have been received by Carriers or their agents and contractors.

(3) Where cargo and Carrier containers in which it is loaded and Carrier undercarriage on which such containers have been placed, are held by Carriers beyond applicable Free-Time Periods stated in this Tariff owing to non-receipt of collect compensation and advance charges which are due and payable, all Demurrage and Detention Charges stated in this Tariff shall apply and all such charges which have accrued shall also be paid to Carriers before cargo is released as provided in Sub-Paragraph (2), above.

APPLICABLE TO WINES AND SPIRITS ONLY
Valid thru 31st July 1989 (C)

Carriers may extend credit facilities to the Shipper for payment of applicable rates and charges in this Tariff from the first working day, following receipt of Carrier's invoice by Shipper, or its designated payment agent, to the 14th day thereafter or, if that days is not a working day, to the first working day thereafter. Invoices shall be promptly rendered by Carriers and paid within said credit period.

(Continued on next page)

Received: Tue Jan:31 11:10:36 :AM 1989 .DXIDC-A (DXI· F-80/80-A3846001-3100)

NORTH EUROPE - U.S. ATLANTIC CONFERENCE OCEAN AND INTERMODAL FREIGHT TARIFF - FMC NO 15	ORIG/REV.	PAGE
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	October 1st, 1988	
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RULE NO. TARIFF RULES AND REGULATIONS

7. PAYMENT OF FREIGHT (Continued)

(a) COLLECT FREIGHT (Concluded)

APPLICABLE TO CHOCOLATE CONFECTIONERY IN TEMPERATURE CONTROLLED CONTAINERS FROM PORTS IN HAMBURG - BORDEAUX RANGE

FOR THE ACCOUNT OF SEALAND SERVICE INC, NEDLLOYD, AND ACL/GCL

Carriers may extend credit facilities to the Shipper for payment of applicable rates and charges in this Tariff from the first working day, following receipt of Carrier's invoice by Shipper, or its designated payment agent, to the 15th day thereafter or, if that day is not a working day, to the first working day thereafter. Invoices shall be promptly rendered by Carrier and paid within said credit period.

* * *

FOR EXPLANATION OF ABBREVIATIONS, REFERENCE MARKS AND SYMBOLS, SEE PAGES 6-10.

Received: 08/31/88 11:20:36 OXIDCO! (OXI: 80-FE605049-2400-3100)

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

July 6, 1989.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340).

Final approval under OMB delegated authority of the extension, with minor revision, of the following report:

Report title: Weekly Report of Foreign Branch Liabilities to, and Custody Holdings for, U.S. Addressees
Agency form number: FR 2077
OMB Docket number: 7100-0176
Frequency: Weekly
Reporters: Foreign branches of U.S. banks
Annual reporting hours: 699
Estimated average time per response: 13 minutes (37 minutes for respondents completing both items, 7 minutes for respondents completing item 1 only)
Estimated number of respondents: 62 (12 respondents completing both items on the form, 50 respondents completing item 1 only)

Small businesses are not affected.

General Description of Report

This information collection is voluntary [12 U.S.C. 248(a)(2)] and is given confidential treatment [5 U.S.C. 552b(4)].

This report collects weekly data from a sample of foreign branches of U.S. banks on certain types of dollar-denominated time deposits and certificates of deposit. These data are essential in calculating the money aggregate M3. The two proposed revisions will (1) increase the minimum dollar levels in two existing reporting criteria and (2) create a third criteria.

Board of Governors of the Federal Reserve System, July 6, 1989.

William W. Wiles,
Secretary of the Board.

[FR Doc. 89-16416 Filed 7-12-89; 8:45 am]

BILLING CODE 6210-01-M

Ace Gas, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Co.

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 28, 1989.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Ace Gas, Inc.*, Deshler, Nebraska; to become a bank holding company by acquiring 49.33 percent of the voting shares of Gibbon Exchange Company, Gibbon, Nebraska, and thereby indirectly acquire Exchange Bank, Gibbon, Nebraska, which engages in the sale of credit-related life and accident and health insurance only that is directly related to extensions of credit by the bank.

In connection with this application, Applicant also proposes to acquire Deshler Insurance Agency, Deshler, Nebraska, and thereby engage in the sale of general lines of insurance within a 10-mile radius of Deshler, Nebraska, a community having a population of less than 5,000 pursuant to § 225.25 (b)(8)(iii)(A) of the Board's Regualtion Y.

Board of Governors of the Federal Reserve System, July 7, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89-16411 Filed 7-12-89; 8:45 am]

BILLING CODE 6210-01-M

First Midwest Bancorp, Inc.; Notice of Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such

as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regrarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 28, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Midwest Bancorp, Inc.*, Naperville, Illinois, to engage *de novo* through its subsidiary, First Midwest Asset Mangement Co., Joliet, Illinois, in providing investment advisory services pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 7, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-16412 Filed 7-12-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and section 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 27, 1989.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. **James M. Tate**, Abilene, Texas, to acquire 10.18 percent; and Harold L. Smith, Abilene, Texas, to acquire 7.96 percent of the voting shares of Security Shares, Inc., Abilene, Texas, and thereby indirectly acquire Security State Bank, Abilene, Texas.

Board of Governors of the Federal Reserve System, July 7, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-16414 Filed 7-12-89; 8:45 am]

BILLING CODE 6210-01-M

Withee Bank Shares, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 2, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Withee Bank Shares*, Withee, Wisconsin; to become a bank holding company by acquiring at least 90 percent of the voting shares of State Bank of Withee, Withee, Wisconsin.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Lubbock National Bancshares, Inc.*, Lubbock, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Lubbock National Bank, Lubbock, Texas.

c. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Maket Street, San Francisco, California 94105:

1. *BankAmerica Corporation*, San Francisco, California; to acquire 100 percent of the voting shares of Bank of America State Bank, Concord, California, a *de novo* bank.

Board of Governors of the Federal Reserve System, July 7, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-16413 Filed 7-12-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

A.H. Robins Co.; Withdrawal of Approval of New Animal Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of two new animal drug applications (NADA's) held by A.H. Robins Co. The NADA's provide for the use of lenperone hydrochloride tablets or injection. The firm requested the withdrawal of approval. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations to remove those portions of the regulations reflecting the approvals.

EFFECTIVE DATE: July 24, 1989.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: A.H. Robins Co., 1405 Cummings Dr., P.O. Box 26609, Richmond, VA 23261, is the sponsor of NADA's 96-508 and 97-901, which were approved May 5, 1981. NADA 96-508 provides for use of Elanone-V (lenperone hydrochloride) Injection in cats and dogs as a tranquilizer and as an antiemetic, and for pre- and postoperative medication. NADA 97-901 provides for use of Elanone-V (lenperone hydrochloride) Tablets for the same indications, but only in dogs.

In letters dated December 21, 1988, the sponsor requested the withdrawal of approval of the NADA's because the products are no longer being marketed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the

Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA's 96-508 and 97-901 and all supplements thereto is hereby withdrawn, effective July 24, 1989.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing 21 CFR 520.1236 and 522.1235.

Dated: July 7, 1989.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 89-16423 Filed 7-12-89; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Health Education Assistance Loan Program; Maximum Interest Rates for Quarter Ending September 30, 1989

Section 727 of the Public Health Service Act (42 U.S.C. 294) authorizes the Secretary of Health and Human Services to establish a Federal program of student loan insurance for graduate students in health professions schools.

A. Section 60.13(a)(4) of the program's implementing regulations (42 CFR Part 60, previously 45 CFR Part 126) provides that the Secretary will announce the interest rate in effect on a quarterly basis.

The Secretary announces that for the period ending September 30, 1989, three interest rates are in effect for loans executed through the Health Education Assistance Loan (HEAL) program.

1. For loans made before January 27, 1981, the variable interest rate is 12¼ percent. Using the regulatory formula (45 CFR 126.13(a) (2) and (3)) in effect prior to January 27, 1981, the Secretary would normally compute the variable rate for this quarter by finding the sum of the fixed annual rate (7 percent) and a variable component calculated by subtracting 3.50 percent from the average bond equivalent rate of 91-day U.S. Treasury bills for the preceding calendar quarter (8.73 percent), and rounding the result (12.23 percent) upward to the nearest ⅛ percent (12¼ percent). However, the regulatory formula also provides that the annual rate of the variable interest rate for a 3-month period shall be reduced to the highest one-eighth of 1 percent which would result in an average annual rate in excess of 12 percent for the 12-month period concluded by those 3 months. Because the average rate of the 4 quarters ending September 30, 1989, is not in excess of 12 percent, there is no necessity for reducing the interest rate. For the previous 3 quarters the variable interest at the annual rate was as follows: 10¾ percent for the quarter ending December 31, 1988; 11⅛ percent for the quarter ending March 31, 1989; and 12⅜ percent for the quarter ending June 30, 1989.

2. For variable rate loans executed during the period of January 27, 1981 through October 21, 1985, the interest rate is 12¼ percent. Using the regulatory formula (42 CFR 60.13 (a)(3)) in effect for that time period, the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (8.73 percent); adding 3.50 percent (12.23 percent); and rounding that figure to the next higher one-eighth of 1 percent (12¼ percent).

3. For fixed rate loans executed during the period of July 1, 1989 through September 30, 1989, and for variable rate loans executed on or after October 22, 1985, the interest rate is 11¾ percent. The Health Professions Training Assistance Act of 1985 (Pub. L. 99-129), enacted October 22, 1985, amended the formula for calculating the interest rate by changing 3.5 percent to 3 percent. Using the regulatory formula (42 CFR 60.13(a)(2)), the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (8.73 percent); adding 3.0 percent (11.73 percent) and rounding that figure to the next higher one-eighth of 1 percent (11¾ percent).

(Catalog of Federal Domestic Assistance No. 13.108, Health Education Assistance Loans)

Dated: July 7, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-16421 Filed 7-12-89; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-150-09-4830-11]

National Public Lands Advisory Council—Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the National Public Lands Advisory Council.

SUMMARY: Notice is hereby given that the National Public Lands Advisory Council will meet August 11 and 12, 1989, at the Red Lion Inn—Jantzen Beach, 909 N. Hayden Island Drive, Portland, Oregon. The meeting hours will be 8:00 a.m. to 5:00 p.m., on Friday, the 11th, and 8:00 a.m. to 12:00 p.m. on Saturday, the 12th. On Thursday, August 10, Council members will participate in a field tour of BLM-managed lands in western Oregon. The proposed agenda for the meeting is:

Friday, August 11: Morning: Address by Bureau of Land Management Director; the State view of public land management in Oregon; Presentations on Forest Management issues; Meeting of Council subcommittees (Energy and Minerals, Lands, and Renewable Resources).

Afternoon: Public Statement Period; Implementation of Recreation 2000 Initiative; Presentation on Land Information System (LIS) accomplishments; Meeting of Council subcommittees.

Saturday, August 12: Morning: Council old and new business, to include Department responses to previous Council resolutions; Final meetings of Council subcommittees; Report from subcommittees to full Council and consideration of Council resolutions.

All meetings of the Council will be open to the public. Opportunity will be given for members of the public to make oral statements to the Council, beginning at 1:00 p.m. on Friday, August 11. Speakers should address specific national public lands issues on the meeting agenda and are encouraged to submit a copy of their written testimony prior to oral delivery. Please send written comments by August 4 to the Bureau of Land Management's Oregon State Office at the address listed below. Depending on the number of people who wish to address the Council, it may be necessary to limit the length of oral presentations.

DATES: August 11 and 12—Council Meeting. August 11—Public Statements.

ADDRESS: Copies of public statements should be mailed by August 4 to: Director, Oregon State Office (912), Bureau of Land Management, Post Office Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Karen Slater, Washington, DC Office, BLM, telephone (202) 343-5101; or Ed Ciliberti, Oregon State Office, BLM, telephone (503) 231-6277.

SUPPLEMENTARY INFORMATION: The Council advises the Secretary of the Interior through the Director, Bureau of Land Management, regarding policies and programs of a national scope

BEST COPY AVAILABLE

related to public lands and resources under the jurisdiction of BLM.

Cy Jamison,
Director.
July 6, 1989.
[FR Doc. 89-16403 Filed 7-12-89; 8:45 am]
BILLING CODE 4310-84-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-290]

Certain Wire Electrical Discharge Machining Apparatus and Components Thereof

Notice is hereby given that the prehearing conference in this matter will be at 9:00 on July 31, 1989, in Courtroom C (Room 217) U.S. International Trade Commission Building, 500 E St. SW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register.**

Issued: July 5, 1989.

Janet D. Saxon,
Chief Administrative Law Judge.
[FR Doc. 89-16391 Filed 7-12-89; 8:45 am]
BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Antitrust Division

Bus Emissions Technology Cooperative Industry Project of Southwest Research Institute

Notice is hereby given that, on June 12, 1989, pursuant to Section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of a party to its group research project regarding "Bus Emissions Technology Cooperative Industry Project." The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the SwRI advised that the Texas Transit Association (effective May 22, 1989) has become a party to the group research project.

No other changes have been made in either the membership or planned activity of the group research project.

On September 27, 1988, SwRI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on October 21, 1988, 53 FR 41425.

Joseph H. Widmar,
Director of Operations, Antitrust Division.
[FR Doc. 89-16430 Filed 7-12-89; 8:45 am]
BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Museum Advisory Panel; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Utilization of Museum Resources Section) to the National Council on the Arts will be held on August 15-17, 1989, from 9:15 a.m.-5:30 p.m. in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

July 5, 1989.

Yvonne M. Sabine,
Director, Council and Panel Operations, National Endowment for the Arts.
[FR Doc. 89-16399 Filed 7-12-89; 8:45 am]
BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 30-16055; ASLBP No. 89-592-02-CivP]

Advanced Medical Systems, Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding.

Advanced Medical Systems, Inc.

[Byproduct Material License No. 34-19069-01; E.A. 85-60]

This Board is being designated pursuant to the request of the Licensee for an enforcement hearing regarding an Order issued by the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operational Support, dated May 30, 1989, entitled "Order Imposing Civil Monetary Penalties".

The Board is comprised of the following administrative judges:

Administrative Judge Robert M. Lazo, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Administrative Judge Harry Foreman, 1564 Burton Avenue, St. Paul, Minnesota 55108

Administrative Judge Ernest E. Hill, 210 Montego Drive, Danville, California 94526

Issued at Bethesda, Maryland, this 6th day of July, 1989.

Robert M. Lazo,
Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.
[FR Doc. 89-16357 Filed 7-12-89; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-341]

Detroit Edison Co.; Wolverine Power Supply Cooperative, Inc.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-43, issued to the Detroit Edison Company and Wolverine Power Supply Cooperative, Inc., (the licensees), for operation of Fermi-2 located in Monroe County, Michigan.

In accordance with the licensees' application for amendment dated April 3, 1989, the amendment would revise the Technical Specifications (TS) to reflect modifications to the Automatic Depressurization System (ADS). Modifications are being made to the ADS to bring the system into conformance with TMI Action Plan (NUREG-0737), Item II.K.3.18.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By August 14, 1989, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first per-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Lawrence A. Yandell: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated April 3, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 7th day of July.

For the Nuclear Regulatory Commission.

Lawrence A. Yandell,
Acting Director, Project Directorate III-1, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.
[FR Doc. 89-16435 Filed 7-12-89; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-413 and 50-414]

Duke Power Co., et al.; Environmental Assessment and Finding of No Significant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Duke Power Company, et al., (the licensee) for the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

Environmental Assessment

Identification of Proposed Action: The proposed amendments would add operability and surveillance requirements for radioactive liquid effluent monitoring instrumentation for the turbine building sump. These requirements would provide a radioactive liquid waste sampling and analysis program for the demineralized sump water and its surveillance by radiation monitor EMF-31 before discharge into the Low Pressure Service Water System.

The Radwaste Treatment System (capacity 16,000 to 18,000 gallons per day) will remain the primary treatment system for processing highly contaminated wastes. The licensee proposes to install portable equipment to demineralize the larger volumes of slightly radioactive wastewater, 72,000 gallons per day or more, which can result from primary-to-secondary leaks in the steam generators. The turbine building sump also receives wastewater with very low levels of radioactivity from other sources such as floor drains and the auxiliary building drain sump. The treated wastewater would be discharged through radiation monitor

EMF-31 into the effluent from the Low Pressure Service Water System.

The Need for the Proposed Action: Primary to secondary leaks can develop through repairable defects in the steam generators and into the normally non-radioactive secondary side. Such leaks would be repaired as they occur, but require continued unit operation with leakage until the leak can be fully identified and characterized. When these leaks occur, the turbine building sump can become radioactively contaminated. The quality and quantity of this water may not be amendable to treatment in the Radwaste Treatment System because of the high volume or by the Conventional Waste Water Treatment System because of its inability to remove contaminants.

Therefore, the licensee plans to install portable equipment to process the slightly radioactive water. The proposed Technical Specifications would add operability and surveillance requirements for the processing equipment and instrumentation.

Environmental Impacts of the Proposed Action: The decision of whether the wastewater would be routed to the Radwaste Treatment System, the Conventional Wastewater Treatment System or the Low Pressure Service Water System would depend on the level of activity, anticipated volumes of sump effluent, anticipated volumes of liquid waste requiring processing through radwaste, and the need to process normal nonradioactive wastes.

Technical Specification 3/4.11.1, Table 4.11-1, already identifies the Conventional Wastewater Treatment System as a radioactive release point. All releases through this system and the Low Pressure Service Water System will be made in accordance with the Technical Specifications and will not result in unacceptable concentrations of radioactive effluents released offsite. Neither will there be any increased risk to public health and safety.

The proposed amendments will not have any impact on the environment that has not already been reviewed and approved. Furthermore, they will not affect the current accident analysis assumptions and will not cause an increase in radiological or non-radiological plant effluents, or occupational exposures, over what was previously considered.

Accordingly, Commission findings in the Final Environmental Statement Related to Operation of Catawba Nuclear Station, Units 1 and 2, dated January 1983 (NUREG-0921) regarding radiological and non-radiological releases from the plant during normal operation or after accidents are not adversely altered by this action.

Alternative to the Proposed Action: Since we have concluded that the environmental effects of the proposed action are negligible, any alternatives with equal or greater environmental impact need not be evaluated.

The principal alternative would be to deny the requested amendments. That alternative, in effect, is the same as the "no action" alternative. That alternative would reduce environmental impacts of plant operation but would result in increased personnel radiation exposure during plant life.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statement dated January 1983 (NUREG-0921) related to this facility.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request of June 12, 1987, as supplemented July 9, 1987, January 8, 1988, and May 3, 1989. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact: The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based upon this environmental assessment, we conclude that the proposed action will not have a significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the request for amendments dated June 12, 1987, and its supplements dated July 9, 1987, January 8, 1988, and May 3, 1989; and the Final Environmental Statement related to operation of Catawba Nuclear Station, Units 1 and 2 (NUREG-0921) dated January 1983, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Dated at Rockville, Maryland, this 7th day of July, 1989.

For the Nuclear Regulatory Commission.

Lawrence P. Crocker,

Acting Director, Project Directorate II-3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-16436 Filed 7-12-89; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Sick Pay and Miscellaneous Payments Report
(2) *Form(s) submitted:* BA-10
(3) *OMB Number:* New collection
(4) *Expiration date of current OBM clearance:* Three years from date of OMB approval
(5) *Type of request:* New collection
(6) *Frequency of response:* Annually
(7) *Respondents:* Businesses or other for-profit, Small businesses or organizations
(8) *Estimated annual number of respondents:* ———
(9) *Total annual responses:* 150
(10) *Average time per response:* 92 hours
(11) *Total annual reporting hours:* 138
(12) *Collection description:* The Railroad Retirement Solvency Act of 1983 added a new subsection 1(h)(8) to the RRA which expanded the definition of compensation for purposes of computing the tier 1 portion of an annuity to include sickness payments and certain other payments other than sick pay which are considered compensation within the meaning of section 1(h)(8). The collection obtains the sick pay and other types of payments considered compensation within the meaning of section 1(h)(8).

Additional Information or Comments

Copies of the proposed forms and supporting documents can be obtained from Ronald Ritter, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Ronald Ritter, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Justin Kopca (202-395-7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Ronald Ritter,

Acting Director of Information Resources Management.

[FR Doc. 89-16429 Filed 7-12-89; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27001; File No. PHLX 89-31]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Margin Requirements

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 26, 1989 the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of

The Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange"), pursuant to Rule 19b-4, hereby proposes to amend its Rule 722 (c)(B)(i) as follows: The text of the proposed rule change appears below. Underlining indicates additions.

(B) Subject to the exceptions set forth in subparagraphs (D) through (H) of paragraph (c)(2), the margin on any put or call issued, guaranteed or carried "short" in a customer's account shall be:

(i) In the case of puts and calls listed or traded on a registered national securities exchange or association and issued by a registered clearing corporation 100% of the current market value of the option plus the percentage of the current market value of the underlying security, foreign currency or index specified in colum II of sub-section (B)(i) below.

Notwithstanding the margin required below, the minimum margin on any put or call issued, guaranteed or carried "short" in a customer's account may be reduced by any "out-of-the-money-amount" (as defined in this subparagraph (B)(i) below), but shall not be less than 100% of the current market value of the option plus the percentage of the current market value of the underlying security or index specified in column III of sub-section (B)(i) below.

Underlying product index I	Initial and/or maintenance margin required (percent) II	Minimum margin required (percent) III	Underlying component value IV
(1) Stock	20	10	The equivalent number of shares at current market prices.
(2) Industry index	20	10	The product of the current index group and the applicable index multiplier.
(3) Broad Index	15	10	The product of the current index index group and the applicable index multiplier
(4) Foreign Currencies [1]:			
(a) Australian dollar	4	¾	
(b) British pounds	4	¾	
(c) Canadian dollars	1	½	
(d) German marks	4	¾	
(e) European Currency Unit	4	¾	
(f) French franc	4	¾	
(g) Japanese yen	4	¾	
(h) Swiss franc	4	¾	

[1] The product of units per foreign currency contract and the closing spot price.

The Exchange has established and filed with the Securities and Exchange Commission margin monitoring procedures which are uniform with all other options self-regulatory organizations. The Exchange may increase or decrease the margin requirements for options on stock, industry index stock groups and broad index stock groups specified in columns II and III of sub-section (b)(i) above through a rule filing made pursuant to section 19(b)(3)(A) of the Act, provided the margin changes are within the parameters established by such procedures. The Exchange or its designee, shall have authority for determining changes to options margin levels in accordance with the parameters. Any modifications to the Exchange's margin monitoring procedures shall be filed with the Securities and Exchange Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

This proposed rule change authorizes the Exchange to change options margin requirements pursuant to a rule filing under section 19(b)(3)(A) of the Act, provided such changes are based upon uniform margin monitoring procedures filed with the Securities and Exchange Commission by the options self-regulatory organizations. The monitoring procedures are designed to ensure that prudent margin levels are maintained and to provide the options self-regulatory organizations the ability to modify margin on a timely basis using a consistent methodology. The procedures primarily rely upon statistical analysis conducted on a quarterly basis. Specifically, this analysis involves the computation of frequency distributions for seven (7) business day percentage price movements of the underlying instruments for the most recent five and one-half month period to determine the degree of coverage the current margin levels provided. This is an established methodology for determining the adequacy of options margin levels. In addition, margin levels are monitored

daily through the calculations of implied volatilities for all underlying securities and broad-based indices.

The Exchange believes that the proposed rule change is consistent with the provisions of the Securities Exchange Act of 1934 and, in particular, section 6(b) thereof, in that the rule change is designed to insure options margin levels which provide a reasonable amount of financial protection to the securities industry and do not permit the excessive use of credit for the purchase or carrying of securities.

B. Self-Regulatory Organizations Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approved such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 3, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 6, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-16392 Filed 7-12-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27005; File No. SR-Phlx-89-43]

Self-Regulatory Organizations; Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc.; Relating to Postponement of the Effectiveness of the CIP Fee Schedule

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 3, 1989, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. (the "PHLX" or the "Exchange"), pursuant to Rule 19b-4 of the Securities Exchange Act of 1934 (the "Act"), hereby submits this proposed rule change postponing the effectiveness of the schedule of fees applicable to the trading of Cash Index Participations ("CIPs") from the date of this filing until September 1, 1989. Accordingly, no CIP transaction value, transaction, or brokerage assessment charge will be imposed by the Exchange on any member during the period.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statment of the Purpose of, and Statutory Basis for the Proposed Rule Change

On May 1, 1989, the PHLX filed SR-PHLX-89-08 with the Commission which established a schedule of CIP fees. Thereafter, the PHLX filed SR-PHLX-89-29 which postponed the effectiveness of these fees until June 30, 1989. The current proposal will postpone the effectiveness of that fee schedule until September 1, 1989.

The proposed rule change is consistent with section 6(b)(4) of the Act, in that it provides for no CIP fees being imposed on any member during a promotional period which introduces a competitive new product.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or approapriate in the public interest, for the protection of investors, or othewise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change thatare filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 3, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 7, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-16455 Filed 7-12-89; 8:45 am]

BILLING CODE 8010-01-M

[File No. 500-1]

Shogun Oil, Ltd.; Order of Suspension of Trading

July 10, 1989.

It appears to the Securities and Exchange Commission that there is a lack of adequate current information concerning the securities of Shogun Oil, Ltd. ("Shogun") and that questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things, Shogun's financial statements, financial condition, assets and business operations. The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Shogun.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the common stock of Shogun, over-the-counter or otherwise, is suspended for the period from 9:30 a.m. (EDT), July 10, 1989 through 11:59 p.m. (EDT) on July 19, 1989.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-16456 Filed 7-12-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 88-041]

Port Access Routes; Approaches to Chesapeake Bay, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of study results.

SUMMARY: This notice publishes the results of a Port Access Route Study to evaluate the need for vessel routing measures in the Approaches to Chesapeake Bay, VA. The Report of Study concluded that the Southern Approach part of the traffic separation scheme (TSS) should be reconfigured to incorporate a proposed deep-water route for inbound and outbound vessel traffic. The existing Precautionary Area and Eastern Approach should remain the same.

FOR FURTHER INFORMATION CONTACT: John R. Walters, Project Officer, Fifth Coast Guard District at (804) 398-6230 or Margie G. Hegy, Project Manager, Coast Guard Headquarters at (202) 267-0415.

SUPPLEMENTARY INFORMATION: The Report of Study upon which this notice is based, is available for inspection and copying at the Marine Safety Council, U.S. Coast Guard Headquarters, Room 3600, 2100 Second Street, SW., Washington, DC 20593-0001 or at the Fifth Coast Guard District office, Room 509, 431 Crawford Street, Portsmouth, VA 23704-5004 between the hours of 8:00 a.m. and 3:30 p.m., Monday through Friday, except holidays.

Regulatory History

The Traffic Separation Scheme in the Approaches to Chesapeake Bay was established on December 1, 1969, and adopted by the International Maritime Organization (IMO) on October 12, 1971. It consisted of three parts: Part I, Precautionary Area; Part II, Eastern Approach; and Part III, Southern Approach.

As required by the 1978 amendments to the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1223(c), the Coast Guard initiated a port access route study on April 18, 1979 (44 FR 22543) to evaluate potential traffic density, traffic patterns, waterway use conflicts, and the need for safe access routes in the Chesapeake Bay Entrance area. The Notice of Study Results was published on July 22, 1982, at 47 FR 31766. That study concluded that the existing TSS in the approaches to the Chesapeake Bay was adequate for the foreseeable future.

The completion of the U.S. Army Corps of Engineers (COE) dredging project in the Thimble Shoal Channel necessitated suspension of the Southern Approach lanes of the TSS. After dredging, the Thimble Shoal Channel accommodates vessels with drafts exceeding the water depths in the Southern Approach lanes. On June 3, 1988, the Coast Guard notified IMO that the Southern Approach lanes would be suspended effective October 15, 1988, and that a Port Access Route Study would be opened. Mariners were notified of this suspension in Local Notice to Mariners No. 29/88 dated July 19, 1988, and by Notice to Mariners No. 31 dated July 30, 1988. A system of safe water buoys now directs vessels to naturally occurring deeper water in the vicinity until an amended traffic separation scheme is implemented.

A Port Access Route Study was opened on July 12, 1988 (53 FR 26282). Conducted by the Fifth Coast Guard District in Portsmouth, VA, the study was opened to evaluate the need for vessel routing measures in the approaches to Chesapeake Bay. The area studied encompassed the approaches to the Chesapeake Bay, including the TSS.

The Study

The study, performed in accordance with the PWSA (33 U.S.C. 1223(c)(3), involved contacts with other Federal agencies, state government officials, and representatives of a wide variety of interests in the area. Interested parties were asked to submit their comments by October 11, 1988. Comments were also solicited through the Local Notice to Mariners. In addition, comments were specifically solicited from 165 companies/marine interests.

Uses of the Area

The entrance to Chesapeake Bay controls access to two of the largest U.S. ports, Hampton Roads and Baltimore. The ports handle all types of commodities in break bulk, container, bulk liquid and solid form. Hampton Roads is the only port in the nation which permits the importation of spent nuclear fuel rods for reprocessing. Both ports are coal export centers and in 1984, 69% of the U.S. coal exports transited the Chesapeake Bay entrance.

The waters in the study area are used for both commercial and government navigation as well as military exercises and training activities. The Navy Firing Range at Dam Neck conducts beginning and advanced training on various sized large bore rifled guns. U.S. Army anti-aircraft training is also conducted within the study area. The largest naval base in the world, U.S. Naval Base, Norfolk, is

in this area. Additionally, recreational and commercial fishing is extensive because of the proximity of the Gulf Stream.

U.S. Army Corps of Engineers (COE) Dredging Projects

Over the last decade, coal has been carried in larger vessels that require deeper water to navigate safely. These deep-draft vessels (drafts over 45') may be restricted in their ability to maneuver and may require more sea area to navigate safely. In order to stay competitive with other coal exporting countries, the U.S. has undertaken several dredging and channel improvement projects in the Chesapeake Bay and Hampton Roads area to accommodate larger colliers.

Between Cape Henry and Baltimore, eight channels (Cape Henry, York Spit, Rappahannock Shoal, Craighill, Brewerton, Craighill Entrance, Fort McHenry and Curtis Bay) will be deepened to 50 feet below mean low water. This project is scheduled to be complete in 1990.

The Water Resources Development Act of 1986, Pub. L. 99-662 dated November 17, 1986, authorized the deepening of the Thimble Shoal, Newport News, Craney Island Reach, Norfolk Harbor Reach and the Entrance Reach Channels to a depth of 55 feet below mean low water. Thimble Shoal Channel provides the only means of entrance and departure for deep-draft vessels calling on Hampton Roads and ports along the James River. Thimble Shoal Channel will connect deep water at the entrance to Hampton Roads with deep water at the entrance to Chesapeake Bay. Phase I (deepening of the outbound lane of the Thimble Shoal, Newport News and Norfolk Harbor Reach Channels to 50 feet) was completed on October 15, 1988.

The COE also plans to dredge an "Atlantic Ocean Channel" connecting deep water at the entrance to Chesapeake Bay with deep water in the Atlantic Ocean. As currently planned, the Atlantic Ocean Channel, in the vicinity of the Southern Approach lanes, will be completed in 1992. The 1300' wide channel will be constructed in two phases: Phase I will dredge a 650' wide, 60+' deep outbound lane; and Phase II will dredge a 650' wide, 60+' deep inbound lane.

Study Data

Vessel traffic density data for the study area was obtained from the U.S. Army Corps of Engineers *Waterborne Commerce of the United States* for the Baltimore and Norfolk Districts, and from the Maryland Port Administration, Virginia Pilot Association, U.S. Navy and the Hampton Roads Maritime Association.

The study also considered historical data obtained from the National Weather Service on weather conditions, including wind and tidal information, wave climate of the Atlantic Ocean Channel and vicinity, and seasonal conditions. The Coast Guard also reviewed environmental studies of the area conducted by the COE.

Public Comments

Seven letters acknowledged receipt of the study notice but had no comments. Six letters were received with comments or suggestions pertaining to the temporary buoy system, the proposed Atlantic Ocean Channel, and the Southern Approach lanes. The following issues were addressed in the comments:

Two commenters recommended retaining the Eastern Approach to the TSS.

Two commenters discussed use of the Atlantic Ocean Channel when Phase I (dredging of the outbound lane to 60+') is completed.

Two commenters felt there was a continuing need for a southern approach.

Two commenters addressed the proximity of the Dam Neck Firing Zone to the Southern Approach lanes. Commander, Naval Base Norfolk, stated that he will work with the COE to relocate the boundary of the firing range.

One commenter recommended installation of a RACON on the first inbound eastern and southern approach TSS buoys.

Findings and Conclusions

1. The number and size of vessels calling on Chesapeake Bay ports is expected to increase as the dredging and port improvement projects are completed.

2. There is a need for a deep-water route for vessels with drafts greater than 45'.

3. There is a continuing need for the Southern Approach vessel traffic lanes, but the present configuration is not adequate.

4. There is a continuing need for the Precautionary Area and Eastern Approach parts of the TSS and the present configuration is adequate.

5. A system of safe water buoys directing vessels to naturally occurring deeper waters will meet the needs of vessels normally using the Southern Approach lanes until a new configuration is implemented.

Recommendation

The Study recommended that the Coast Guard widen and lengthen the Southern Approach of the TSS to incorporate the proposed 1300' wide Atlantic Ocean Channel as a deep-water route. It is anticipated that the Coast Guard will initiate rulemaking and seek IMO approval to reconfigure the Southern Approach as recommended.

Dated: July 7, 1989.

R.T. Nelson,

Rear Admiral, U.S. Coast Guard Chief, Office of Navigation Safety & Waterway Services.

[FR Doc. 87-16395 Filed 7-12-89; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Flight Service Station at Rochester Municipal Airport, Rochester, Minnesota

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of closing.

SUMMARY: Notice is hereby given that on April 19, 1989, the Flight Service Station (FSS) at Rochester, Minnesota, was closed. Services to the aviation public in the Rochester flight plan area, formerly provided by Rochester FSS, are being provided by the automated flight service station (AFSS) at Princeton, Minnesota. This information will be reflected in the FAA organization statement the next time it is reissued.

[Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.]

June 16, 1989.

Timothy P. Forte,

Regional Administrator, Great Lakes Region.

[FR Doc. 89-16453 Filed 7-12-89; 8:45 am]

BILLING CODE 4910-13-M

Flight Standards District Office at San Jose, CA; Relocation

Notice is hereby given that on or about June 29, 1989, the Flight Standards District Office at 1387 Airport Blvd, San Jose, California 95111 will be relocating to San Jose Jet Center, 1250 Aviation, Bldg A, (second floor), San Jose, California 95110. Services to the general public will continue to be provided by this office without interruption. This information will be reflected in the FAA Organization Statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Hawthorne, CA, on June 22, 1989.

Jerold M. Chavkin,

Regional Administrator, Western-Pacific Region.

[FR Doc. 89-16454 Filed 7-12-89; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

School Bus Safety Measures

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of most effective school bus safety measures.

SUMMARY: In May 1989, as required by the Surface Transportation and Uniform Relocation Assistance Act of 1987, the National Academy of Sciences (NAS) issued a report on school bus safety, including safety of passengers and those boarding or exiting the vehicles. That report confirmed the high level of safety provided by the Nation's school bus fleet, and also suggested measures which could further improve the safety of school buses.

The law also requires the Secretary of Transportation to review the findings of the NAS report and to determine which safety measures are most effective in protecting the safety of schoolchildren while boarding, leaving, and riding in school buses. This notice identifies those measures. NHTSA has reviewed the recommendations in the NAS report and agrees that all have the potential for reducing the risk of death or injury to bus users. However, not all of the recommendations have the same potential for overall safety improvement. In determining which measures are "most effective," NHTSA considered the magnitude of the particular problem that each countermeasure was designed to correct, as well as that measure's effectiveness in reducing the problem.

Replacing pre-1977 school buses is considered to be a "most effective" measure, because of the higher level of crashworthiness provided by NHTSA's 1977 school bus standards and the improved mirror systems and other crash avoidance measures typically provided on newer school buses. Prohibiting standees on school buses is also considered a "most effective" measure. While primarily a crashworthiness measure to ensure that the crash protection capabilities of the school bus are effective, prohibiting standees also provides the driver with an unobstructed view both throughout the bus and in the school bus loading zone.

Studies have shown that the greatest risk to children occurs not while riding the bus, but rather while boarding and exiting the bus. Therefore, NHTSA considers the recommendations which address the safety of children in loading zones to have a significant safety potential, and considers them to be among the "most effective" measures. These include: Equipping new buses with stop signal arms and cross-view mirrors, and recommendations implementing student crossing programs, pedestrian safety education programs, and school bus driver training programs. Other measures, primarily those which are designed to improve safety among occupants of school buses, would probably not be as effective, because the safety risk is already low.

FOR FURTHER INFORMATION CONTACT: Adele Derby, Associate Administrator for Plans and Policy, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-2550.

SUPPLEMENTARY INFORMATION:

Background

Each school day, over 25 million children travel to and from school, athletic events, and field trips on roughly 390,000 school buses operated by school districts and their private contractors. Despite the catastrophic church bus crash that occurred in May 1988 in Carrollton, Kentucky in which 27 people died, school bus transportation remains one of the safest forms of transportation. Even though school buses transport many more passengers per trip, the rate of occupant fatalities per mile driven for school buses is about one fourth the rate for passenger cars. School buses clearly afford school children an extremely effective and safe means of transportation, and one which is safer than any other motor vehicle system.

Each year, however, there are crashes involving school buses, which result in injuries and, occasionally, fatalities to school children. While most school bus-involved crashes are minor, the possibility of a more serious crash or catastrophic incident still remains. Every year, 10 children on average are killed in large school buses (buses with a gross vehicle weight rating greater than 10,000 pounds, which make up 80 to 85 percent of the nation's school bus fleet), and another 2 children are killed while riding in other vehicles used as school buses. However, children are at much greater risk of being killed while boarding or leaving school buses or at bus stops than they are while on board. Nearly 40 children are killed each year in loading zones.

The continuing public concern for school bus safety, including discussions on whether seat belts should be required, led to a provision in the Surface Transportation Uniform Relocation Assistance Act of 1987 directing the Secretary of Transportation to enter into appropriate arrangements with the National Academy of Sciences (NAS) to conduct a comprehensive study of the principal causes of fatalities and injuries to schoolchildren riding in schoolbuses and of the use of seatbelts in schoolbuses and other measures that may improve the safety of schoolbus transportation. NAS issued its report in May 1989. That report contained a list of recommended safety measures determined to be most effective in protecting the safety of schoolchildren while boarding, leaving, and riding in schoolbuses. The Act also required the Secretary to review the findings of the NAS report for the purpose of determining those safety measures that are the most effective in protecting the safety of schoolchildren while boarding, leaving, and riding in schoolbuses.

NHTSA has reviewed the recommendations from the NAS report and agrees that all have the potential for reducing fatalities and injuries to users of school buses. All of the NAS recommendations are therefore endorsed by the agency. However, all of the recommendations do not have equal safety potential. In determining which measures are potentially "most effective," NHTSA considered the magnitude of the particular problem that each measure was designed to correct, as well as that measure's effectiveness in reducing that problem. Because NHTSA does not have the authority or responsibility to implement all of the NAS recommendations, the agency had to consider the effectiveness with which the states could implement recommended school bus safety measures in its determination of those that are potentially "most effective." Finally, for those recommendations which apply to the schoolbus, a number of statutory factors, such as costs and benefits, practicability and feasibility, must be considered before NHTSA can initiate rulemaking changes or additions.

Replacing pre-1977 school buses is considered to be a "most effective" measure, because of the higher level of crashworthiness provided by NHTSA's 1977 school bus standards and the improved mirror systems and other crash avoidance measures typically

provided on newer school buses. Prohibiting standees on school buses is also considered a "most effective" measure. While primarily a crashworthiness measure to ensure that the crash protection capabilities of the school bus are effective, prohibiting standees also provides the driver with an unobstructed view both throughout the bus and in the school bus loading zone.

Studies have shown that the greatest risk to children occurs not while riding the bus, but rather while boarding and exiting. Therefore, NHTSA believes that recommendations which address the fatalities and injuries that occur in bus loading zones have a significant safety potential, given the greater risk to children while boarding and leaving the bus and at school bus loading zones. These are considered to be among the "most effective" measures. Other measures, primarily those which are designed to improve safety among occupants of school buses, would probably not be as effective, because the safety risk is already low.

Most Effective Programs

The conclusions and recommendations in the National Academy of Sciences' report, "Improving School Bus Safety," were prefaced with the statement:

> School bus transportation is already quite safe, but several steps can be taken to make it even safer. These steps involve modifying some federal standards, applying or upgrading several safety measures the worth of which has already been sufficiently demonstrated, and developing and evaluating promising new products and programs.

NHTSA considers the following NAS recommendations to be potentially the "most effective" in protecting the safety of school children while boarding, leaving, and riding in school buses. Some of these recommendations are aimed at the Federal government while others require action at the state or local level. Only the first two recommendations address fatalities and injuries that occur while riding in the school bus. The remainder address the safety of children in school bus loading zones.

• *Replacing Pre-1977 School Buses*

NAS recommended that school buses manufactured before April 1, 1977 (the date when several school bus safety standards went into effect that substantially upgraded the crashworthiness of school buses) be replaced as rapidly as possible. The post-standard buses have been shown to provide significantly higher levels of occupant protection in real-world crashes.

Replacing pre-1977 school buses may be potentially one of the most effective school bus safety measures identified in the report. Effective April 1, 1977, three new federal motor vehicle safety standards (FMVSS) became effective and three other standards were upgraded. In addition, Federal requirements for school bus mirrors became effective in February, 1977. As a result, post-1977 school buses have: (1) Increased roof strength; (2) stronger joints between body panels; (3) high-backed, well-padded, stronger seats; (4) fuel system protection devices; (5) improved emergency exits; (6) "cross view" mirrors; and (7) improved hydraulic brakes. All of these contribute to the ability of post-1977 buses to offer higher levels of safety, from both crashworthiness and crash avoidance perspectives. As such, NHTSA believes this recommendation has a high potential for protecting children in loading zones as well as inside the bus. The rapid replacement of pre-1977 school buses was also a recommendation of the National Transportation Safety Board in its report on the Carrollton, Kentucky crash.

NAS also recommended that organizations operating pre-1977 buses should be informed that these buses do not meet current standards for newly manufactured buses and that the organizations should (a) rigorously maintain these older buses and (b) provide safety instruction for all passengers. NHTSA concurs with these recommendations but has no authority over private groups which operate older buses. The agency will communicate with State Directors of Pupil Transportation Safety and recommend that they inform all potential buyers of pre-1977 school buses of the need for continued maintenance of these buses and for adequate safety instruction.

• *Standees*

NAS urged states to prohibit the operation of a school bus unless all passengers are seated. If the crash protection measures mandated by federal safety standards are to be effective, it is essential that passengers be properly seated. Passengers who are standing on a school bus are unable to take full advantage of the many safety benefits that currently provide protection for school children.

NHTSA agrees that standees present a major safety problem to state and local pupil transportation systems. Many jurisdictions permit significant numbers of standees on their buses due in part to the high cost of purchasing additional buses and in part to inadequate scheduling of school bus routes. NHTSA has long promoted the elimination of standees on school buses. This issue will be addressed in the revised Highway Safety Program Guidelines on Pupil Transportation Safety. In addition, NHTSA will continue to work with the states to encourage them to eliminate this potential safety hazard.

• *Cross View Mirrors.* Under the provisions of FMVSS No. 111, "Rearview Mirrors", new school buses must be equipped with a series of mirrors which allow the driver to see the area immediately in front of and along both sides of the bus. NAS recommended that NHTSA determine if this standard can be modified to give the driver a better view of the areas in front of and beside the bus.

As noted in the NAS report, there are still instances where younger children are struck by their own bus. There may be opportunities to improve the bus driver's field of view beyond the levels specified in FMVSS No. 111, which could help avert some of those incidents. For example, many states and school districts purchase buses equipped with two cross-view mirrors, even though FMVSS No. 111 requires only one, for better visibility of the area in front of the vehicle.

NHTSA will initiate rulemaking this year on FMVSS No. 111, to assess the need for additional or improved mirrors, as well as to clarify terminology. NHTSA is also reviewing various other mechanisms and devices that detect children around the bus. One such example is a crossing control arm that forces children to cross in front of the bus at a safer distance, so that they stay within the field of vision of the driver.

• *Stop Signal Arms.* NAS recommended that NHTSA require installation of stop signal arms on all new school buses and that states and local school districts consider retrofitting older buses with stop signal arms. Stop signs with flashing red lights that extend from the left side of the bus when passengers are boarding or leaving the bus are one of several devices on buses that instruct drivers of other vehicles to stop their vehicles while pupils are crossing streets and highways in school bus loading zones.

Motorists who fail to stop for school buses loading or discharging passengers are responsible for a large proportion of pedestrian school bus casualties. As a result, the revised Highway Safety Program Guideline #17, Pupil Transportation Safety, which will be published for comment in the **Federal Register** in the near future, will be updated to address this issue. In it, NHTSA will encourage states to enact legislation which sets uniform school bus stopping procedures and to implement regularly scheduled public information campaigns to ensure that motorists fully understand these procedures.

Stop signal arms are currently required as standard equipment on new school buses in 28 states. NHTSA is planning to initiate rulemaking which would propose to mandate such devices on all buses. Prior to the initiation of this rulemaking, NHTSA is evaluating and comparing the effectiveness of a variety of measures, such as stop signal arms and strobe lights, which can alert drivers to the presence of children in school bus loading zones.

• *School Crossing Programs.* NAS recommended that states field test programs in which pupils are escorted across the street or highway at bus stops by the school bus driver or an adult monitor. School bus pedestrian issues begin with crossing the street to the bus stop, continue to waiting at the bus stop, boarding and unloading of the school bus, and end after the student has returned across the street. Three to four times as many school bus pedestrians are killed in this sequence than are school bus passengers. This particular problem will be discussed in the revised Highway Safety Program Guidelines. A new section will emphasize the importance of: (1) Safe walking practices to and from bus stops; (2) how and where to wait safely for the bus; and (3) how to board and leave the bus.

• *Pedestrian Safety Education.* NAS stressed the importance of pedestrian safety education and recommended that NHTSA assist states and local school districts in their efforts to provide instruction in pedestrian safety. NHTSA agrees that Pedestrian Safety Education is an extremely important aspect of overall school bus safety. While the NAS recommendation addresses only the issue of children walking to and from school, NHTSA believes that the use of bicycles to and from school should be included. The revised Highway Safety Program Guidelines on Pupil Transportation Safety will include a new section that specifically addresses children walking and bicycling to and from school.

• *School Bus Route and Stops.* NAS recommended that states and local school districts review their bus routes annually and ensure that they are safely planned and followed as intended. NHTSA concurs with this recommendation and will address this issue in the revised Highway Safety Program Guidelines on Pupil Transportation Safety. This document will strongly address the importance of regular planning and review of routes for safety hazards and encourages states and local school districts to establish loading and unloading areas off the main traveled part of highways whenever possible. In addition, NHTSA believes that proper routing of school buses could reduce or eliminate the standee problem identified above.

• *School Bus Driver Training.* NAS recommended that states establish minimum criteria for school bus driver training, to ensure the safety of children inside and outside the bus, and that drivers receive this training before transporting children. In 1974, NHTSA published model School Bus Driver and School Bus Driver Supervisor's Training courses. These two courses were pilot tested and made available to all state and local pupil transportation officials. In 1976, section 406 funds were made available to all states to conduct school bus driver training, and by 1983, a total of $33 million was expended. Yet, a number of states do not require specialized driver training to drive a school bus. The importance of school bus driver training will be reinforced in the revised Highway Safety Program Guidelines on Pupil Transportation Safety. In addition, NHTSA staff regularly encourage State Pupil Transportation Safety Directors to improve their driver training programs.

The Commercial Motor Vehicle Safety Act of 1986 (Title XII of Pub. L. 99-570) stipulates that by April 1992, all drivers must pass both written and driving skills tests in order to operate commercial motor vehicles which are greater than 26,000 pounds GVWR, seat more than 15 passengers, or carry hazardous materials. Those drivers operating school buses which have a seating capacity of more than 15 passengers are covered by this law and will have to obtain commercial driver's licenses from their states. NHTSA will work with states to assist them in providing school bus driver training programs. This will help school bus drivers meet these new requirements which ensure that they have the minimum skills and knowledge levels needed to safely operate vehicles used to transport children to and from school and school-related activities.

Effective Programs

In addition to the "most effective" measures discussed above, the following NAS recommendations are also considered to be effective in protecting the safety of school children while riding in school buses:

• *Emergency Evacuation Drills.* The NAS recommendation on Emergency Exits encourages states and local school districts to initiate school bus evacuation drills at least twice each year. In the fall of 1988, the NHTSA Administrator wrote to each State Pupil Transportation Safety Director to stress the importance of these drills and their dramatic lifesaving potential in emergency situations. The revised Highway Safety Program Guidelines on Pupil Transportation Safety will recommend that each student participate in at least one supervised emergency evacuation drill each school semester.

• *Emergency Exits.* NAS recommended that NHTSA reconsider the minimum number of emergency exits required on school buses and that NHTSA prohibit the installation of seats that obstruct emergency exit doors. FMVSS No. 217, "Bus Window Retention and Release," establishes minimum requirements for emergency exits, window and door retention and release mechanisms, and markings. Its requirements with respect to the number and types of emergency exits is the subject of an advance notice of proposed rulemaking published on November 4, 1988 (53 FR 44623).

• *Flammability of Interior Materials.* NAS recommended that NHTSA upgrade Federal standards, if and when new energy-absorbing, fire retardant materials become available for little added cost. Although post-crash fires in school buses are rare, fires due to electrical or mechanical failures are not uncommon. No matter how they occur, fires in buses can be catastrophic, as was the Carrollton, Kentucky crash. NHTSA published an advanced notice of proposed rulemaking on November 4, 1988 (53 FR 44627) to consider whether to upgrade the performance requirements of FMVSS No. 302, "Flammability of Interior Materials," and has issued a contract to the National Institute of Standards and Technology to develop information for issuing new flammability test procedures and test criteria.

• *Structural Integrity.* NAS recommended that NHTSA continue research to improve side-impact protection and make body components less hazardous. Two of the school bus safety standards that went into effect in 1977, FMVSS No. 220, "School Bus Rollover Protection" and FMVSS No. 221, "School Bus Body Joint Strength," have enhanced the safety of school buses in crashes. Additional efforts to improve the structural performance of school buses are underway. Research and rulemaking activities are underway to include maintenance access panels in the requirements of FMVSS No. 221. An advanced notice of proposed rulemaking

was published on June 19, 1987 (52 FR 23314). In addition, improved FMVSS No. 221 test procedures, which could result in increased floor joint strength and body panel strength, particularly at critical points along the side and corners of the bus, are being considered. Increased and/or expanded protection of the fuel system is also the subject of an advanced notice of proposed rulemaking on FMVSS No. 301, "Fuel System Integrity," published on March 30, 1989 (54 FR 13082).

• *Seat Back Height.* NAS recommended that NHTSA revise its standards to raise the minimum height of school bus seat backs from 20 to 24 inches in order to provide added crash protection, particularly to the head. Two states, Illinois and New York, currently buy buses with seats that have higher backs than required by FMVSS No. 222, "School Bus Seating and Crash Protection."

Higher seat backs would provide a larger padded surface for occupant protection, but might impede access to emergency exits in some situations, which might also reduce the seating capacity of the bus. In addition, higher seat backs might result in the inability of the driver to monitor student behavior. NHTSA will seek additional information concerning the benefits and operational aspects of higher seat backs prior to initiating rulemaking on this subject.

• *Reflective Markings on School Buses.* NAS recommended that NHTSA consider using reflective materials to make buses more visible and reduce nighttime accidents, and that NHTSA determine if minimum standards for these materials are warranted. Since, according to the NAS report, more serious school bus crashes tend to occur disproportionately at night on high-speed roads, it appears reasonable to increase the conspicuity of the buses at night. As part of its work in truck conspicuity, NHTSA will assess the uses of reflective materials on school buses.

• *School Bus Accident Data.* NAS recommended that NHTSA work with states and other parties to upgrade and standardize state collected school bus accident data. The data should be used to define why and how children are being injured and to evaluate the effectiveness of school bus safety programs and devices. NHTSA agrees that evaluation of school bus safety programs is hampered by the lack of accurate and meaningful data on school bus crashes. Currently only three states are able to provide full occupancy crash data. Most states provide only the number of injuries. Many do not differentiate between vehicles that are used as school buses and retired school buses that are used for non-school activities.

NHTSA will work with the states to improve and standardize their school bus accident data. In addition, NHTSA will begin publishing an annual report entitled "A Summary of Available School Bus Statistics" this summer. This document will utilize data from a number of sources such as state accident files, the Fatal Accident Reporting System (FARS) and the National Accident Sampling System (NASS). It should provide valuable insight into the pupil transportation crash experience.

Issued on: July 7, 1989.

Jeffrey R. Miller,

Acting Administrator.

[FR Doc. 89-16407 Filed 7-7-89; 5:04 pm]

BILLING CODE 4910-59-M

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA, in conjunction with the International Regulations Committee (INTEREC) of the Hazardous Materials Advisory Council, will conduct a public meeting to exchange views on proposals that will be considered at the 1st session of the Subcommittee of Experts on the Transport of Dangerous Goods of the United Nations Committee of Experts on the Transport of Dangerous Goods.

DATE: July 25, 1989, 9:30 a.m.

ADDRESS: Room 6332, Nassif Building, 400 Seventh Street SW., Washington, DC, 20590.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Transportation, Department of Transportation, Washington, DC, 20590; (202) 366-0656.

SUPPLEMENTARY INFORMATION: This meeting will discuss items that will be presented at the 1st session of the Subcommittee of Experts on the Transport of Dangerous Goods to be held from July 31 to August 11, 1989. The new Subcommittee of Experts on the Transport of Dangerous Goods will consider all issues previously considered by the Group of Experts on Explosives and the Group of Rapporteurs on the Transport of Dangerous Goods. Particular topics to be covered include: (1) Classification and grouping criteria for gases (Class 2); (2) adoption of a new Class 4.4 for energetic substances; and (3) the definition and packaging for infectious substances (Class 6.2).

Issued in Washington, DC on July 7, 1989.

Elaine E. Joost,

Deputy Director, Office of Hazardous Materials Transportation.

[FR Doc. 89-16306 Filed 7-12-89; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Fiscal Service

Bureau of the Public Debt

Privacy Act of 1974; Routine Uses

AGENCY: Fiscal Service, Bureau of the Public Debt, Treasury.

ACTION: Notice of a new routine use for the systems of records: Treasury/BPD.002—United States Savings-Type Securities and Treasury/BPD.003—United States Securities (other than Savings-Type Securities).

SUMMARY: The purpose of this document is to give notice under the provisions of the Privacy Act of 1974, as amended, that the Bureau of the Public Debt proposes to add a new routine use by amendment to two of its systems of records: Treasury/BPD.002—United States Savings-Type Securities and Treasury/BPD.003—United States Securities (other than Savings-Type Securities), both last published on March 1, 1988 at 53 FR 6252.

DATE: The proposed new routine use for each system of records will become effective without further notice on August 14, 1989, unless comments dictate otherwise.

ADDRESS: Send any comments to Volney M. Taylor, Information Officer, Bureau of the Public Debt, E Street Building, Room 553, Washington, DC 20239-0001. Copies of all written comments will be available for public inspection and copying at the Department of the Treasury Library, Room 5030, Main Treasury Building, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Volney M. Taylor, Information Officer (202) 376-4307.

SUPPLEMENTARY INFORMATION: The Bureau of the Public Debt has decided that it will expand its ongoing efforts to regain contact with investors with whom it may have lost contact. These

are investors whose payments or whose correspondence advising of matured but unredeemed securities may have been returned to the Bureau. The Bureau has determined that as a way to regain contact it may undertake a matching program with other federal agencies that offer letter forwarding services. These letter forwarding services require that the Bureau furnish information on the investors with whom it has lost contact to the other Federal agency. That Federal agency would match that information against its data base, which contains address information. If a match is achieved, the Federal agency would send a letter supplied by the Bureau to the agency's current address of record for that individual. Under this service, the Bureau would not receive address information from the other Federal agency. By using such a service, the Bureau would be able to notify investors with whom the Bureau has lost contact that: (1) They should contact the Bureau to obtain these returned payments, or (2) they should redeem their matured securities or contact the Bureau if they have lost those securities.

Once this routine use is in effect, the Bureau would enter into written agreements with these agencies before any disclosures of information are made. Although these matches are excluded from the coverage of The Computer Matching and Privacy Protection Act of 1988, the Bureau will comply with all other applicable provisions of the Privacy Act.

Treasury/BPD.002 System Name

United States Savings-Type Securities—Treasury/BPD.

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses

Description of the change: Remove the "and" following the semicolon at the end of item (14), remove the period at the end of item (15), substitute a semicolon at the end of item 15, and add the following new routine use:

* * * * *

(16) To disclose through computer matching, information on individuals, with whom the Bureau of the Public Debt has lost contact, to other Federal agencies for the purpose of utilizing letter forwarding services to advise these individuals that they should contact the Bureau about returned payments and/or matured unredeemed securities.

Treasury/BPD.003 System Name

United States Securities (Other than Savings-Type Securities)—Treasury/BPD.

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses

Description of the change: Remove the "and" following the semicolon at the end of item (14), remove the period at the end of item (15), substitute a semicolon at the end of item 15, and add the following new routine use:

* * * * *

(16) To disclose through computer matching, information on individuals, with whom the Bureau of the Public Debt has lost contact, to other Federal agencies for the purpose of utilizing their letter forwarding services to advise these individuals that they should contact the Bureau about returned payments and/or matured unredeemed securities.

Date: July 5, 1989.

David M. Nummy,

Acting Assistant Secretary of the Treasury (Management).

[FR Doc. 89-16393 Filed 07-12-89; 8:45 am]

BILLING CODE 4810-40-M

Fiscal Service

[4-00236]

Surety Companies Acceptable on Federal Bonds Liquidation; American Mutual Liability Insurance Co.

American Mutual Liability Insurance Company, a Massachusetts Corporation, formerly held a Certificate of Authority as an acceptable surety on Federal Bonds and was last listed as such at 52 FR 24605, July 1, 1987. The Company's authority was terminated by the Department of the Treasury effective April 29, 1988. Notice of the termination was published in the **Federal Register** of May 6, 1988, on page 16337.

On March 9, 1989, upon a petition by the Insurance Commissioner of the State of Massachusetts, the Massachusetts Superior Judicial Court issued an Order of Liquidation with respect to American Mutual Liability Insurance Company. Mr. Roger Singer, the Insurance Commissioner, was appointed as the Liquidator of American Mutual Liability Insurance Company. All persons having claims against American Mutual Liability Insurance Company must file their claims by March 9, 1990, or be barred from sharing in the distribution of assets.

All claims must be filed in writing and shall set forth the amount of the claim, the facts upon which the claim is based, any priorities asserted, and any other pertinent facts to substantiate the claim. It is recommended that claimants asserting priority status under 31 USC 3713 who have not yet filed their claim should do so, in writing, to: Commercial Litigation Branch, Civil Division, Department of Justice, P.O. Box 875, Ben Franklin Station, Washington, DC 20044-0875. Attn: Ms. Sandra P. Spooner, Deputy Director.

The above office will be consolidating any and all claims against American Mutual Liability Insurance Company, on behalf of the United States Government. Any questions concerning filing of claims may be directed to Ms. Spooner at (202 or FTS 724-7194).

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20027, Telephone 202-287-3921.

Dated: July 5, 1989.

Mitchell A. Levine,

Assistant Commissioner, Comptroller Financial Management Service.

[FR Doc. 89-16363 Filed 7-12-89; 8:45 am]

BILLING CODE 4810-35-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Japanese Restrictions on Telecommunications Trade; Resolution of Section 1377 Proceeding

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of termination of proceedings concerning certain Japanese restrictions on telecommunications trade.

SUMMARY: On April 28, 1989, the USTR determined pursuant to section 1377 of the Omnibus Trade and Competitiveness Act of 1988 that certain practices of Japan with respect to third party radio and cellular phone products and services were not in compliance with Japan's commitments under the Market Oriented Sector Specific (MOSS) Agreements on telecommunications. As a result of discussions with the Government of Japan, an agreement was reached under which Japan committed to adopt a number of specific changes in its telecommunications policy and regulations in both the cellular telephone and third party radio markets. These measures resolve the specific matters raised in the April 28 determination, such that no action now will be taken under section 301 of the Trade Act of 1974, as amended, with respect to these matters.

EFFECTIVE DATE: The proceedings were terminated effective July 6, 1989.

FOR FURTHER INFORMATION: Questions about this decision should be directed to Ms. Holly Hammonds, Associate General Counsel (202) 395-7306, Office of the United States Trade Representative.

SUPPLEMENTARY INFORMATION: Following the April 28 determination that acts, policies or practices of Japan were not in compliance with the MOSS agreements, and pursuant to section 304(b)(1)(A) of the Trade Act of 1974, as amended, the Office of the USTR conducted a public hearing on May 24 to determine appropriate action to be taken under section 304(a)(1)(B) of that Act. On May 26, 1989, the Acting USTR determined under section 305(a)(2)(ii) of that Act that it was necessary to delay the implementation of such action.

Consultations with the Government of Japan were held from June 19 until June 28, 1989, which led to an agreement resolving the specific issues raised by the USTR in her determination under section 1377. As a result, no action against Japan now is required.

USTR, in conjunction with other agencies, will continue to analyze information on U.S.-Japan trade in telecommunications goods and services in the context of the next Section 1377 annual review and in connection with other opportunities to remedy restrictions on market access. The May 8, 1989 **Federal Register** notice announcing the April 28 USTR determination, for example, cited other matters of concern in the telecommunications area which will be pursued with Japan.

Legal Authority

Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 requires the USTR annually to review each trade agreement concerning telecommunications products or services, and in each review to determine whether a foreign country is:

(1) Not in compliance with the terms of the agreement; or

(2) Otherwise denying, "within the context of the terms of' the agreement, mutually advantageous market opportunities.

On April 25, 1989, a notice was published in the **Federal Register** (54 FR 19624) announcing the USTR affirmative determination against Japanese telecommunications products and services under section 1377.

An affirmative determination under section 1377 must be treated as an affirmative determination of a violation of a trade agreement under section 304(a)(1) of the Trade Act of 1974, as amended.

Joshua Bolten,

General Counsel.

[FR Doc. 89-16404 Filed 7-12-89; 8:45 am]

BILLING CODE 3190-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 133
Thursday, July 13, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, July 18, 1989, 10:00 a.m.

PLACE: 999 E. Street, NW., Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employees.

DATE AND TIME: Thursday, July 20, 1989, 10:00 a.m.

PLACE: 999 E. Street, NW., Washington, DC (Nineth Floor)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Draft Advisory Opinion 1989-10
Gene Karp on behalf of Senator DeConcini's 1988 Campaign.
ADP Project Status Report
Status of Presidential Audits
Position Description—Inspector General
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 89-16585 Filed 7-11-89; 3:13 p.m.]

BILLING CODE 6715-01-M

FEDERAL ENERGY REGULATORY COMMISSION

Meeting

July 10, 1989.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-4109), 5 U.S.C. 552b:

DATE AND TIME: July 12, 1989, 8:30 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Closed.

MATTER TO BE CONSIDERED: Docket No. RP88-68-000, *et al.*, Transcontinental Gas Pipe Line Corporation.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 357-8400.

The following Commissioners voted that agency business requires the holding of a closed meeting on less than the seven days' notice required by the Government in the Sunshine Act:

Chairman Hesse
Commissioner Stalon
Commissioner Trabandt
Commissioner Moler
Commissioner Langdon

Lois D. Cashell,

Secretary.

[FR Doc. 89-16597 Filed 7-11-89; 3:48 pm]

BILLING CODE 6717-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, July 19, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 11, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-16596 Filed 7-11-89; 3:49 pm]

BILLING CODE 6210-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Meeting

TIME AND DATE: 9:30 a.m., Thursday, July 20, 1989.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, D.C. 20456.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Commentary.
3. Central Liquidity Facility Report and Review of CLF Lending Rate.
4. Insurance Fund Report.
5. Proposed Standard Amendment to Article XIX, Section 8, Federal Credit Union Bylaws—Indemnification.
6. Final Rule: Section 701.32, Nonmember and Public Unit Accounts; and Proposed Rule: Section 701.32, Low Income Designation.
7. Final Interpretive Ruling and Policy Statement 89-1—Chartering and Field of Membership Policy.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, July 20, 1989.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, D.C. 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meetings.
2. Administrative Action under Section 120 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
3. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
4. NCUA's FY 90 and FY 91 Budgets and Proposed Amendments. Closed pursuant to exemptions (2) and (9)(B).
5. Personnel Actions. Closed pursuant to exemption (2).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 89-16578 Filed 7-11-89; 2:24 pm]

BILLING CODE 7535-01-M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of Directors

TIME AND DATE: 9:30 a.m. (closed portion), 10:45 a.m. (open portion), Friday, July 28, 1989.

PLACE: Offices of the Corporation, fourth floor Board Room, 1615 M Street, NW, Washington, DC

STATUS: The first part of the meeting from 9:30 a.m. to 10:45 a.m. will be closed to the public. The open portion of

the meeting will commence at 10:45 a.m. (approximately).

MATTERS TO BE CONSIDERED: (Closed to the public 9:30 a.m. to 10:45 a.m.):

1. Finance Project in Southeast Asian Country.
2. Finance Project in Caribbean Country.
3. Insurance Project in Caribbean Country.
4. Proposed Budget for FY 1991 and Proposed Amendments to Budget for FYT 1990.
5. U.S. Effects Standards.
6. Claims Report.
7. Finance and Insurance Reports.
8. President's Report.

FURTHER MATTERS TO BE CONSIDERED: (Open to the public 10:45 a.m.)

1. Approval of the Minutes of the Previous Board Meeting.
2. Determination of Countries and Areas Qualifying as Developing Countries and Areas for OPIC Programs.
3. Personnel Action.
4. Treasurer's Report.
5. Reconfirmation of Furture Meetings of the Board.

CONTACT PERSON FOR INFORMATION: Information with regard to the meeting may be obtained from the Secretary of the Corporation, on (202) 457-7079.

Peggy A. Kole,
OPIC Corporate Secretary.
July 10, 1989.

[FR Doc. 89-16560 Filed 7-11-89; 12:59 pm]
BILLING CODE 3210-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of July 17, 1989.

A closed meeting will be held on Wednesday, July 19, 1989, at 2:30 p.m. An open meeting will be held on Thursday, July 20, 1989, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Wednesday, July 19, 1989, at 2:30 p.m., will be:

Institution of injunctive actions.
Settlement of injunctive action.
Formal order of investigation.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Opinions.

The subject matter of the open meeting scheduled for Thursday, July 20, 1989, at 10:00 a.m., will be:

1. Consideration of whether to propose amendments to Rule 15c2-11, 17 CFR 240.15c2-11, under the Securities Exchange Act of 1934. The proposed amendments would require a broker-dealer commencing quotations: (1) to have a copy of any trading suspension order (or the companion Commission release) respecting the security issued within the preceding twelve months, and to review the required information in its records in light of such order; and (2) to obtain recent reports filed on Form 8-K by the issuer of the security. The proposed amendments also pertain to the information to be obtained regarding new reporting issuers, the period of retention of the required information, and the form to be furnished to the interdealer quotation system. For further information, please contact Michael T. Dorsey at (202) 272-2848.
2. Consideration of whether to issue a release proposing amendments to the New Capital Rule. Under the proposed Securities Exchange Act Rule 15c3-1 would be amended to raise the minimum net capital required of registered broker-dealers and to standardize the deductions that broker-dealers incur in arriving at net capital for their equity securities positions. Furthermore, the amendments would establish a haircut for zero coupon bonds and relieve certain aggregate indebtedness charges. For further information, please contact David I. A. Abramovitz at (202) 272-2398.
3. Consideration of whether to adopt Rule 32a-3 under the Investment Company Act of 1940. Rule 32a-3 would expand the time period during which certain registered management investment companies must select an independent public accountant. For further information, please contact C. Christopher Sprague at (202) 272-7779.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Karen Burgess at (202) 272-2000.

Jonathan G. Katz,
Secretary.
July 11, 1989.

[FR Doc. 89-16599 Filed 7-11-89; 3:56 pm]
BILLING CODE 8010-01-M

UNITED STATES PAROLE COMMISSION

Pursuant to the Government in the Sunshine Act
(Pub. L. 94-409) [5 U.S.C. 552b]

DATE AND TIME: Wednesday, July 19, 1989, 9:00 a.m. to 1:00 p.m.

PLACE: 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Appeals to the Commission of approximately 7 cases decided by the National Commissioners pursuant to a reference under 28 C.F.R. 2.27. These are all cases originally heard by examiner panels wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey Kostbar, Case Analyst, National Appeals Board, United States Parole Commission, (301) 492-5968.

Dated: July 11, 1989.

Michael A. Stover,
General Counsel, U.S. Parole Commission.

[FR Doc. 89-16589 Filed 7-11-89; 3:33 am]
BILLING CODE 4410-01-M

UNITED STATES PAROLE COMMISSION

Pursuant to the Government in the Sunshine Act
(Pub. L. 94-409) (5 U.S.C. 552b)

DATE AND TIME: Wednesday July 19, 1989 1:00 p.m., Eastern Standard Time.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Open-Meeting.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of previous Commission meeting.
2. Reports from the Chairman, Vice Chairman, Commissioners, Legal, Case Operations, and Administrative Sections.
3. Discussion of ways to reduce violation of parole.
4. Consideration of transferring responsibility for the District of Puerto Rico from the Northeast Region to the Southeast Region.
5. Consideration of the Fiscal Year 1991 (FY 91) Budget.
6. Adoption of form for waiver of right to Special Transferee Hearing for prisoners transferred to United States under Transfer Treaties.

AGENCY CONTACT: Linda Wines Marble, Director, Case Operations and Program Development, United States Parole Commission (301) 492-5952.

Michael A. Stover,
General Counsel, U.S. Parole Commission.
July 11, 1989.

[FR Doc. 89-16590 Filed 7-11-89; 3:33 pm]
BILLING CODE 4410-01-M

federal register

Thursday
July 13, 1989

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Frameworks for Early Season Migratory Bird Hunting; Proposed Rule; Supplemental

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting; Proposed Frameworks for Early Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The Fish and Wildlife Service (hereinafter the Service) is proposing to establish the 1989–90 early-season hunting regulations for certain migratory game birds. The Service prescribes frameworks or outer limits for dates and times when hunting may occur and the number of birds that may be taken and possessed in early seasons. These frameworks are necessary to allow State selections of final seasons and limits and to allow recreational harvest at levels compatible with population and habitat conditions. As additional information relevant to duck production becomes available, it may be necessary to further restrict seasons proposed herein if conditions warrant.

DATES: The comment period for the proposed early-season frameworks will end on July 23, 1989. The comment period for late-season proposals will close on August 28, 1989. A Public Hearing on Late-Season Regulations will be held August 3, 1989, starting at 9 a.m.

ADDRESSES: Comments should be mailed to Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Room 634–Arlington Square, Washington, DC 20240. The August 3 Public Hearing will be held in the Board Room of the American Institute of Architects Building, 1735 New York Avenue (corner of 18th and E Streets, NW.), Washington, DC. Notice of intention to participate in this hearing should be sent in writing to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Room 634–Arlington Square, Washington, DC 20240.

Comments received on this supplemental proposed rulemaking will be available for public inspection during normal business hours in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Byron K. Williams, Acting Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Room 634–Arlington Square, Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION: The annual process for developing migratory game bird hunting regulations deals with regulations for early and late seasons. Early seasons include those which may open before October 1, while late seasons may open about October 1 or later. Regulations are developed independently for early and late seasons. The early-seasons regulations cover mourning, white-winged and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; and common snipe; sea ducks in the Atlantic Flyway; September teal; experimental September duck seasons in identified States; experimental and special September Canada goose seasons in portions of identified States; sandhill cranes in the Central and Pacific Flyways; doves in Hawaii; migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; and some extended falconry seasons. Late seasons include the general waterfowl seasons; coots; moorhens and gallinules; and common snipe in the Pacific Flyway; and extended falconry seasons.

Certain general procedures are followed in developing regulations for the early and late seasons. Initial regulatory proposals are announced in a **Federal Register** document published in March and opened to public comment. These proposals are supplemented as necessary with additional **Federal Register** documents. Following review of comments received and after public hearings, the Service further develops and publishes proposed frameworks for times of seasons, season lengths, shooting hours, daily bag and possession limits, and other regulatory elements. After consideration of additional public comments, the Service publishes final frameworks in the **Federal Register**. Using these frameworks, State conservation agencies then select hunting season dates and options. Upon receipt of State selections, the Service publishes a final rule in the **Federal Register**, amending Subpart K of 50 CFR Part 20, to establish specific seasons, bag limits and other regulations. The regulations become effective upon publication. States may prescribe more restrictive seasons than those provided in the final frameworks.

The regulations schedule for this year is as follows. On March 27, 1989, the Service published for public comment in the **Federal Register** (54 FR 12534) a proposal to amend 50 CFR Part 20, with comment periods ending as noted earlier.

On June 6, 1989, the Service published for public comment a second document (54 FR 24290) which provided supplemental proposals for early- and late-season migratory bird hunting regulations frameworks, with comment periods ending July 23, 1989, for early-season proposals, and August 28, 1989, for late-season proposals.

This document is the third in a series of proposed, supplemental and final rulemaking documents for migratory bird hunting regulations and deals specifically with supplemental proposed frameworks for early-season migratory bird hunting regulations. It will lead to final frameworks from which States may select season dates, shooting hours and daily bag and possession limits for the 1989–90 season. All pertinent comments on the March 27 proposals received through June 22, 1989, have been considered in developing this document. In addition, new proposals for certain early-season regulations are provided for public comment. Comment periods on this third document are specified above under DATES. Final regulatory frameworks for migratory game bird hunting seasons for Alaska, Puerto Rico, and the Virgin Islands, and early seasons in other areas of the United States are scheduled for publication in the **Federal Register** on or about August 9, 1989.

On June 22, 1989, a public hearing was held in Washington, DC, as announced in the **Federal Register** of March 27 (54 FR 12534), June 6 (54 FR 24290), and June 9 (54 FR 24762), 1989, to review the status of mourning, white-winged and white-tipped doves, band-tailed pigeons, rails, common moorhens, purple gallinules, woodcock, common snipe, sandhill cranes, and preliminary waterfowl information. Proposed hunting regulations were discussed for these species and for migratory game birds in Alaska, Puerto Rico and the Virgin Islands; experimental duck seasons in September in identified States; experimental September Canada goose hunting seasons in portions of identified States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons.

This supplemental proposed rulemaking consolidates further changes in the original framework proposals published on March 27, 1989, in the **Federal Register** (54 FR 12534).

The regulations for early waterfowl hunting seasons proposed in this document are based on the most current information available about the status of waterfowl populations and habitat conditions on the breeding grounds. The drought that has plagued the prairies and parklands of Canada and the United States through most of the 1980s continued into 1988. It is affecting not only breeding areas but also migration and wintering areas. Although many areas received greater rainfall than in past years, there was little runoff, pond numbers remained low and nesting cover was scarce.

Presentations at Public Hearing

A number of reports were given on the status of various migratory bird species for which early hunting seasons are being proposed. These are briefly reviewed as a matter of public information and to facilitate the Service's response to public comments received during the public hearing on June 22 and in correspondence. Unless otherwise noted, persons making the presentations are Service employees.

Mr. Brad Bortner, Woodcock Specialist, reported on the 1989 status of American woodcock. The report included harvest information gathered over the last 24 years and breeding population information (singing-ground survey) collected since 1968. The two surveys are cooperatively run by the U.S. Fish and Wildlife Service, Canadian Wildlife Service, and 39 State and Provincial wildlife agencies. The most significant findings were from the recently conducted singing-ground survey. This survey of woodcock breeding populations in the United States and Canada indicated minor decreases in woodcock in both the Eastern Region (Atlantic Flyway) and the Central Region (Mississippi Flyway and a portion of the Central Flyway) since 1988. These changes were not statistically significant. The Eastern Region population has declined 34.1 percent since 1968. The Central Region breeding population has decreased 18.9 percent since 1968. However, neither population shows any significant trend for the last 5 years.

Mr. David Dolton, Mourning Dove Specialist, presented the status of the 1989 mourning dove population. The report included information gathered over the last 24 years. Trends were calculated for the most recent 2 and 10-year intervals and for the entire 24-year period. Between 1988 and 1989, the number of doves heard per call-count route showed no significant change in the 3 management units. Estimates indicated significant downward trends in the Western Unit for the 10 and 24-year periods. No significant trend was found in the Eastern Unit for either timeframe. In the Central Unit, a downward trend was indicated for the most recent 10 years, but no trend was found over the 24-year period. Trends for doves seen at the unit level over the 24-year period agreed with trends for doves heard.

Mr. Ronnie R. George, Texas Parks and Wildlife Department, presented information on the status of white-winged and white-tipped doves in texas. Results of the 1989 whitewing call-count survey indicate a nesting population of about 375,000 birds in the Lower Rio Grande Valley. This represents 9 percent decline from 1988 and the index is 27 percent below the long-term average. Approximately 79 percent of the population was nesting in native brush habitat where a 1 percent increase was noted. Of the 21 percent of the population nesting in citrus groves, there was a 35 percent decrease in 1989. In the Upper South Texas region, 3 major colonies exhibited a 3 percent decline from last year. In West Texas (near Presidio), the small population of whitewings maintains a stable status.

For white-tipped doves, the call-count index indicated a 6 percent decline from 1988, but it is still considered to be a healthy population.

Mr. Roy Tomlinson, Southwest Dove Coordinator, presented a report on the status of white-winged doves in Arizona. In response to whitewing population declines in the 1970's, the Arizona Game and Fish Department instituted a series of restrictive regulations that have been in effect for nearly 10 years. Whitewing populations have since remained relatively stable at a reduced level. In 1988, the whitewing harvest of about 100,000 birds was 11 percent below that in 1987 and remained 45 percent below the 1978–87 average harvest. The 1989 call-count survey in Arizona indicated a 15 percent increase from 1988.

Mr. Tomlinson also discussed the status of band-tailed pigeons. The Four-Corners Population that breeds in mountainous conifer habitat of Arizona, Utah, Colorado, and New Mexico, has remained stable for the past 20–25 years. Hunting pressure is light and the combined harvest for the 4-State area is less than 5,000 birds annually.

The Pacific Coast Population distributed throughout British Columbia, Washington, Oregon, Nevada, and California, appears to be experiencing severe problems of unknown origin. Population surveys in Oregon and Washington indicate a significant long-term downward trend and the 1988 harvest for the four States and one Province indicate a 70 percent decline from the preceding 15 year average. Steps are being taken to determine the cause for the decline.

Mr. Skip Ladd, Central Flyway Representative, reported on the status of sandhill cranes. The Mid-continent Population may still be increasing. Preliminary estimates for 1989, uncorrected for visibility, indicated a spring population of about 409,000, the highest count since the current survey technique was initiated in 1978. Approximately 5,100 hunters harvested about 12,300 cranes in 8 Central Flyway States in the 1988–89 season, which represents no significant change in harvest from the previous year. The harvest in Canada was about 7,000 and harvests in Alaska and Mexico combined are believed to be less than 4,000. Collectively, total harvests of mid-continent sandhill cranes are within guidelines established for this population.

The Rocky Mountain Population of greater sandhill cranes was estimated to number about 19,100 in March of 1988, a figure not significantly different from that of 1985, the last time that adequate survey conditions prevailed, and is within the objective range of 18,000–22,000. The adjusted survey figure for 1989 is not yet available but the count, unadjusted for observer visibility bias and proportion of lesser sandhills present, is nearly identical to that of 1988. Special limited hunting seasons were held during the 1988–89 season in New Mexico, Wyoming, and Arizona, where, collectively, the harvest of Rocky Mountain sandhill cranes was approximately 450, down from about 1,100 in 1987–88. The reduction in harvest is likely the result of poor production of greater sandhill cranes due to drought in breeding areas. Based on this reduced production over the past several years, the allowable retrieved harvest of Rocky Mountain sandhill cranes for 1989–90 seasons will be reduced to 800, compared to 1,300 allowed in 1988–89.

Mr. James Bartonek, Pacific Flyway Representative, described the status of six populations of Alaska-nesting geese that have been of general concern because of their reduced numbers. The endangered Aleutian Canada geese, cackling Canada geese, and the Pacific Flyway Population of white-fronted geese are tending upward; whereas Pacific brant are stable, the spring index for emperor geese indicates a decrease in the population, the winter index of dusky Canada geese is low, as it was last year, and with little prospect for improved production. Information on forecasted fall flights of these populations will be provided during meetings in July and August pertaining to the late-season regulations-setting process.

BEST COPY AVAILABLE

Comments Received at Public Hearing

Six individuals presented statements at the public hearing on proposed early-season regulations and one other submitted a written statement to be included as part of the hearing transcript. The oral comments are summarized below.

Mr. Ronnie R. George, representing the Central Flyway Council and the Texas Parks and Wildlife Department, made comments about the 1989–90 hunting season regulations as follows:

1. September Teal Season—This season should be regarded as an integral part of the fall duck season, since its purpose was to allow maximization of sport hunting when other populations of heavily harvested species were depressed. Suspension of the early teal season in 1988 resulted in reduced hunter interest in waterfowl seasons, reduced waterfowl habitat enhancement programs on private lands, increased disease problems for wintering waterfowl including the loss of 10–15 thousand birds due to cholera, and no subsequent increase in teal numbers. After 19 years of operational seasons, the teal season has proven its worth, and should be reinstated under appropriate modifications to meet current needs.

2. Shooting Hours—A return to one-half hour before sunrise openings is recommended. The use of shooting hours to control harvest is inappropriate. Shooting hours are basic regulations which prescribe the appropriate time to hunt.

3. Special Texas White-winged Dove Hunt—Modification of the daily bag limit during the 4-day Special White-winged Dove hunt is recommended. Specifically, north and west of Del Rio in the Special Hunt Area, the bag limit would be 10 mourning, white-winged and white-tipped doves in the aggregate, no more than 2 of which could be white-tipped doves; south and east of Del Rio in the Special Hunt Area, the bag limit would be 10 doves in the aggregate, no more than 5 of which could be mourning doves and 2 of which could be white-tipped doves.

4. Middle Rio Grande Valley, New Mexico, Experimental Sandhill Crane Hunt—Continuation of this hunt in New Mexico is recommended.

5. Deming-Hatch, New Mexico, Sandhill Crane Hunt—Continuation of this southwest New Mexico crane hunt is recommended for the second year of a 3-year experimental program.

6. Texas Sandhill Crane Hunting Zone—Sandhill cranes have expanded their winter range eastward in north-central Texas and an estimated 15–20 thousand sandhill cranes now winter outside the legal crane hunting zone where they cause locally heavy damage to winter wheat. Expansion of the sandhill crane hunting zone in Texas eastward to Interstate Highway 35W is recommended. This measure would reduce crop depredation complaints and increase hunting opportunities.

7. Adoption of a limited experimental sandhill crane hunting season in Utah is recommended.

8. Adoption of proposed basic regulations for webless and waterfowl species not addressed by Recommendation Nos. 1–7 is recommended.

Mr. Lauren Schaaf, representing the Kentucky Department of Fish and Wildlife Resources, commented about the September wood duck season in Kentucky. He referred to the stepped-up banding effort in the State and expressed hope that these band recovery data will show lower mortality attributed to hunting. He indicated that an increased number of wood duck boxes have been installed in recent years and the State has continued to maintain long-term production surveys. Further, he stated that this season is very popular among hunters and he urged the Service to continue the September wood duck season.

Mr. William Goudy expressed concern about the February 28 framework closing date for woodcock hunting, particularly in Tennessee. In that State, the hunting season is split, with the second segment held in February, a time when woodcock are beginning both to nest in Tennessee and to migrate to more nothern breeding grounds. He feels that the practice of hunting northward migrating woodcock in February is morally and ethically wrong. Mr. Goudy recommended that the Service review the issue of February woodcock hunting and also restrict the use of the split season option to prevent hunting of birds moving north to nest.

Mr. John M. Anderson, representing the National Audubon Society, recommended continuation of restrictive regulations initiated in 1987 for mourning doves in the Western Management Unit. He also expressed concern about an apparent decline in mourning doves in the States of Iowa, Missouri and Arkansas, and encouraged research efforts to further study mourning doves in that area. He noted that white-winged dove regulations in Texas are complicated and research efforts in that area should continue, but that the proposed hunting regulations for south Texas appear to be reasonable. Regarding sandhill cranes, he noted that populations appear to be healthy and harvest levels are within management guidelines. He commented there is no valid reason to change regulations for Mid-Continent Sandhill Cranes in 1989, and there is no apparent reason to oppose the proposal to expand the area open to sandhill crane hunting in Texas. He stated that regulations for seasons on Rocky Mountain Sandhill Cranes appear to be reasonable. Concerning woodcock, he suggested that present regulations are appropriate and strongly recommended against establishment of any additional zones in the Eastern Management Unit while populations are low. He also strongly encouraged an in-depth review of the effect of February hunting of woodcock on nesting and population status. He recommended that no liberlizations be allowed in the early wood duck seasons.

Mr. John C. Kovarik, a Maryland hunting guide, expressed his concern about the recent declines in duck populations and his philosophy of stewardship responsibility toward lands, water, habitat and wildlife. He believed that restrictive measures taken during recent years were reasonable and necessary; however, he faulted the Service for attributing the reason for the change in the opening shooting hour in 1988 solely to aid in duck identification rather than to lower the harvest. He believed that the Service lost credibility with hunters by this action. He said that the proposed sea duck season and limits were both generous and appreciated. He believed the Service would restrict this season should circumstances warrant.

Mr. Charles Kelley, representing the Alabama Department of Conservation and Natural Resources, requested that Barbour County be included in the south zone for mourning dove hunting. He also stated that February woodcock hunting was halted in Alabama because some woodcock were nesting in February.

Mr. Robert L. Miles, submitted a letter on behalf of the Northeast Association of Fish and Wildlife Resources Agencies, expressing the unanimous concern of the agencies regarding the decline of Eastern Region woodcock populations. The Association urges the prompt final approval and funding of the American Woodcock Management Plan and the implementation of a woodcock hunting permit or stamp. The Association also requested that the hunting regulations for southern wintering areas need to be carefully monitored and thoroughly evaluated. The Service was also urged to work cooperatively with the appropriate committees of the International Association of Fish and Wildlife Agencies in formulating a strategy to benefit eastern woodcock.

Written Comments Received

The preliminary proposed rulemaking which appeared in the **Federal Register** dated March 27, 1989, (54 FR 12534), opened the public comment period for early-season migratory game bird hunting regulations. As of June 22, 1989, the Service had received 54 comments, 49 of these specifically addressed early-season related issues. Several of these were previously addressed in the supplemental proposed rulemaking which appeared in the **Federal Register** dated June 6, 1989, (54 FR 24290). These early-season comments are summarized below and numbered in the order used in the March 27, 1989, **Federal Register**. Only the numbered items pertaining to early-season written comments are included.

1. Shooting Hours

The Atlantic, Central, and Pacific Flyway Councils and the Lower Region Regulations Committee of the Mississippi Flyway Council, the States of Alaska, Arizona, California, Colorado, Minnesota, Missouri, New York, North Dakota, South Carolina and Tennessee, the California Waterfowl Association, a regional representative of the National Rifle Association, a State Chairmen of Duck's Unlimited, 3 local sportsmen's organizations, and 11 individuals, opposed sunrise shooting hours as proposed in the March 27, 1989, **Federal Register** (54 FR 12539) for waterfowl and other migratory game birds for the 1989–90 hunting season. Some of the arguments against the proposed regulations included:

a. Shooting hours are basic regulations which dictate the time to hunt and should not be used to regulate harvest.

b. The change to sunrise shooting complicates regulations and will likely increase violations.

c. Sunrise shooting will shift the harvest away from species such as wood ducks to other species of concern, i.e., mallards and pintails.

d. The pre-sunrise period is an aesthetic and traditional part of waterfowling.

e. Sunrise shooting will erode hunter participation and decrease funds for habitat acquisition.

f. Restrictive shooting hours were unnecessary to achieve desired reductions in harvest.

Wisconsin and 1 individual supported sunrise shooting hours. The Service proposes in this document to provide one-half hour before sunrise shooting for early-season migratory game birds.

5. Sea Ducks

A sportsmen's organization supported the proposal for the 107-day season and for a bag limit of 7 sea ducks.

6. September Teal Season

The Central Flyway Council and the Lower Region Regulations Committee of the Mississippi Flyway Council recommended that September teal seasons be reinstated. If necessary, these seasons could be restricted to reflect a depressed population status. They suggested that the teal season has been in effect for many years and was originally conceived during a period of relatively low duck populations, as now exists. The Colorado Division of Wildlife also recommended reinstatement of September teal seasons with necessary adjustments, citing the relatively low harvest rates of blue-winged teal compared to mallards and the relatively better population status of blue-winged teal since 1981 compared to other species. The Wisconsin Department of Natural Resources supported continued suspension of September teal seasons.

8. September Duck Seasons

Tennessee supported the proposal to continue the Experimental September Duck Seasons.

14. Frameworks for Geese and Brant in the Conterminous United States—Outside Dates, Season Length and Bag Limits

The Pacific Flyway Council requests that the special September Canada goose season in Wyoming be modified as follows: the 60 permits for 2 geese per season and 75 permits for 1 goose per season in two areas allowed in 1988 be increased to 160 permits for 2 geese per season for allocation among three areas in 1989.

16. Sandhill Cranes

The Central Flyway Council recommended continuation of regular seasons in the Central Flyway without change, except to permit an expansion of the area open to hunting in northcentral Texas as described in item 16 *Sandhill Cranes—Central Flyway—Regular Seasons*, published in the March 27, 1989, **Federal Register** (at 54 FR 12540–12541). The Service proposes in this rule to permit this expansion of the area open to hunting in Texas.

17. Coots

The California Department of Fish and Game (April 24, 1989) requested that frameworks for coot seasons in the Pacific Flyway be separate from those for ducks. The purpose of this change would be to maintain hunter interest during the period of restrictive duck regulations. Anticipated harvest would not be expected to exceed that occurring prior to restrictions on duck seasons. Besides providing additional opportunities to hunters, there would be benefits toward sustaining various management programs.

20. Common Snipe

The California Department of Fish and Game (April 24, 1989) requested that frameworks for common snipe seasons in the Pacific Flyway be separate from those for ducks. The purpose of this change would be to maintain hunter interest during the period of restrictive duck regulations. Anticipated harvest would not be expected to exceed that occurring prior to restrictions on duck seasons. Besides providing additional opportunities to hunters, there would be benefits toward sustaining various management programs.

23. Mourning Doves

In a letter received June 21, 1989, Tennessee requested that the daily bag limit for mourning doves in the Eastern Management Unit be increased from 12 to 18 birds.

24. White-Winged and White-Tipped Doves

In the March 27, 1989, **Federal Register** (at 54 FR 12542), the Services reviewed a request from the Texas Parks and Wildlife Department for an experimental dove bag limit for its 4-day special season for white-winged doves; an aggregate daily bag limit of 12 white-winged, mourning, and white-tipped doves, no more than 2 of which could be white-tipped doves, would be permitted. The proposal was endorsed by the Central Flyway Council at their March meeting.

In a letter dated May 2, 1989, and discussed in the June 6, 1989, **Federal Register** (54 FR 24292), Texas recommended that the original proposal be modified to limit the aggregate bag limit to 10 doves per day as follows: northwest of Del Rio, 10 doves, no more than 2 of which could be white-tipped doves; southwest of Del Rio, 10 doves, no more than 5 of which could be mourning doves and 2 of which could be white-tipped doves. The Texas proposal includes a program to monitor the effects of the bag limit change if permitted.

At the June 22, 1989, public hearing, the Central Flyway Council endorsed the modified Texas proposal. The Service, after considering information on the status of mourning and white-

winged doves in Texas and the likely effect of this experimental limit, proposes to permit this bag limit experiment.

25. Migratory Bird Hunting Seasons in Alaska

The Alaska Department of Fish and Game expressed concern about taking disproportionately greater reductions in pintail harvest opportunities then elsewhere but did not ask for a change in those limits. It urged continuation of opening shooting time one-half hour before sunrise for all migratory bird hunting seasons in Alaska. The Service has proposed (54 FR 12534) that the beginning time be changed to sunrise. Alaska argued that the change would have little impact on harvest, it would elevate hunter dissatisfaction, and the effectiveness of the change could not be measured. To justify their position, Alaska reiterated arguments presented previously by the Pacific Flyway Council, specifically:

a. While seasons and limits were generous, early migrations and freezeup resulted in harvest and hunting opportunity much less than that for other States.

b. Because of disproportionate cuts in pintail harvest opportunities, a reduction in shooting hours would give false impressions regarding the expected reductions in harvests of this species as a result of this restriction.

c. Hunters may compensate for this change by increasing harvest after sunrise, therefore, nullifying anticipated reductions in harvest.

d. There is no "refuging" of ducks in Alaska which in some other areas makes the earlier opening time more important for harvest.

e. As much as 75 percent of the duck harvest is in coastal areas where tidal cycles are sometimes more influential on bird movements than daylight.

f. Civil Twilight is longer at higher than lower latitudes.

g. Opportunities for hunting other species of migratory game birds would be unnecessarily restricted.

A regional spokesman for the National Rifle Association also expressed opposition to the sunrise shooting time in Alaska.

27. Falconry

The Service received letters from 5 falconry organizations and 3 individuals expressing their support for both the extended falconry seasons and the proposal to simplify the bag and possession limits. One of these organizations also requested a clarification of the proposal to limit the number of segments allowed during the falconry extended seasons. The proposal is to limit the number of segments to no more than 3 for each extended falconry season. The proposed rule under item 27 in this document should clarify the original proposal.

Public Comment Invited

Based on the results of migratory game bird studies now in progress and having due consideration for any data or views submitted by interested parties, the possible amendments resulting from this supplemental rulemaking will specify open seasons, shooting hours and bag and possession limits for designated migratory game birds in the United States.

The Service intends that adopted final rules be as responsive as possible to all concerned interests and therefore desires to obtain for consideration the comments and suggestions of the public, other concerned governmental agencies and private interests of these proposals. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time which the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: the need, on the one hand, to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms, and, on the other hand, the unavailability before mid-June of specific, reliable data on this year's status of some waterfowl, and migratory shore and upland game bird populations. Therefore, the Service believes that to allow comment periods past the dates specified earlier is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Room 634-Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's office in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

All relevant comments on these early-season proposals received no later than July 23, 1989, and on late-season proposals received by August 28, 1989, will be considered. The Service will attempt to acknowledge received comments, but substantive response to individual comments may not be provided.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75-54)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). The "Final Supplemental Environmental Impact Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds" was completed and filed with the Environmental Protection Agency on June 9, 1988, and a Notice of Availability was published in the June 16, 1988, **Federal Register** (53 FR 22582). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES.**

Endangered Species Act Consideration

On June 22, 1989, the Office of Endangered Species and Habitat Conservation gave a biological opinion that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats.

Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats.

The Service's biological opinion resulting from its consultation under Section 7 is considered a public document and is available for inspection in the Office of Endangered Species and Habitat Conservation and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 634, Arlington Square, 4401 North Fairfax Drive, Arlington, VA.

Regulatory Flexibility Act, Executive Order 12291 and the Paperwork Reduction Act

In the **Federal Register** dated March 27, 1989 (54 FR 12534), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 634, Arlington Square, Department of the Interior, Washington, DC 20240. As noted in the early **Federal Register** publication, the Service plans to issue its Memorandum of Law for migratory bird hunting regulations at the same time the first of the annual hunting rules is completed. These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act.

Authorship

The primary author of this proposed rulemaking is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Byron K. Williams, Acting Chief.

List of Subject in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1988-89 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 701-708h); the Fish and Wildlife Improvement Act of 1978 (92 Stat. 3112; 16 U.S.C. 712); and the Alaska Game Act of 1925 (43 Stat. 739, as amended, 54 Stat. 1103-04).

Proposed Regulations Frameworks for 1989-90 Early Hunting Seasons on Certain Migratory Birds

Pursuant to the Migratory Bird Treaty Act, the Secretary of the Interior has approved proposed frameworks which prescribe season lengths, bag limits, shooting hours, and outside dates within which States may select seasons for mourning, white-winged and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; American woodcock; common snipe; experimental September duck seasons in identified States; seas ducks in the Atlantic Flyway; September Canada goose seasons in portions of identifed States; sandhill cranes in the Central and Pacific Flyways; extended falconry seasons; and migratory birds in Alaska, Puerto Rico and the Virgin Islands.

Notice

Any State desiring its hunting seasons for mourning doves, white-winged doves, white-tipped doves, band-tailed pigeons, woodcock, common snipe, common moorhens and purple gallinules, sandhill cranes or extended falconry seasons to open in September must make its selection no later than August 9, 1989. States desiring these seasons to open after September 30 may make their selections at the time they select regular waterfowl seasons. Season selections for the seven States offered experimental September waterfowl seasons and Wyoming's special Canada goose season must also be made by August 9, 1989.

Atlantic Flyway coastal States desiring their seasons on sea ducks in certain defined areas to open in September must make their selection no later than August 9, 1989. Those desiring this season to open after September may make their selections when they select their regular waterfowl seasons.

Outside Dates: All dates noted are inclusive.

Shooting Hours: Between 1/2 hour before sunrise and sunset daily for all species except as noted below. The hours noted here and elsewhere also apply to hawking (taking by falconry).

Mourning Doves

Outside Dates: Between September 1, 1989, and January 15, 1990, except as otherwise provided, States may select hunting seasons and bag limits as follows:

Eastern Management Unit

(All States east of the Mississippi River and Louisiana)

Hunting Seasons, and Daily Bag and Possession Limits: Not more than 70 days with bag and possession limits of 12 and 24, respectively, *or*

Not more than 60 days with bag and possession limits of 15 and 30, respectively.

Hunting seasons may be split into not more than 3 periods under either option.

Zoning: Alabama, Georgia, Louisiana and *Mississippi,* may elect to zone their States as follows:

A. Two zones per State having the following descriptions or division lines:

Alabama: South Zone: Mobile, Baldwin, Escambia, Covington, Coffee, Geneva, Dale, Houston and Henry Counties. North Zone: Remainder of the State.

Georgia: North Zone: That portion of the State lying north of a line running west to east along U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County, thence east along the southern border of Wilcox County to the Ocmulgee River, thence north along the Ocmulgee River to Highway 280, thence east along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River to the Ocmulgee River; thence southwesterly along the Ocmulgee River to the western border of Jeff Davis County; thence south along the western border of Jeff Davis County; thence east along the southern border of Jeff Davis and Appling Counties; thence north along the eastern border of Appling County to the Altamaha River; thence east to the eastern border of Tattnall County; thence north along the eastern border of Tattnal County; thence north along the western border of Evans to Candler County; thence east along the northern border of Evans to Bulloch County; thence north along the western border of Bulloch County to Highway 301; thence northeast along Highway 301 to the South Carolina line. South Zone: Remainder of the State.

Louisiana—Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interstate Highway 10 from Slidell to the Mississippi State line.

Mississippi—U.S. Highway 84.

B. Within each zone, these States may select hunting seasons of not more than 70 days (or 60 under the alternative) which may be split into not more than 3 periods.

C. The hunting seasons in the South Zones of Alabama, Georgia, Louisiana and Mississippi may commence no earlier than September 20, 1989.

D. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit

(Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas and Wyoming)

Hunting Seasons and Daily Bag and Possession Limits: Not more than 70 days with bag and possession limits of 12 and 24, respectively, *or*

Not more than 60 days with bag and possession limits of 15 and 30, respectively.

Hunting seasons may be split into not more than 3 periods under either option.

Texas Zoning: As an alternative to the basic frameworks, Texas may select hunting seasons for each of 3 zones described below.

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Interstate Highway 20; northeast along Interstate Highway 20 to Interstate Highway 30 at Fort Worth; northeast along Interstate Highway 30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. 90 to San Antonio; then east on Interstate 10 to Orange, Texas.

Special White-Winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. Highway 90 to Uvalde, south on U.S. Highway 83 to State Highway 44; east along State Highway 44 to State Highway 16 at Freer; south along State Highway 16 to State Highway 285 at Hebbronville; east along State Highway 285 to FM 1017; southeast along FM 1017 to State Highway 186 at Linn; east along State Highway 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Central Zone—That portion of the State lying between the North and South Zones. Hunting seasons in these zones are subject to the following conditions:

A. The hunting season may be split into not more than 2 periods, except that, in that portion of Texas where the special 4-day white-winged dove season is allowed, a limited mourning dove season may be held concurrently with the white-winged dove season and with shooting hours coinciding with those for white-winged doves (see white-winged dove frameworks).

B. Each zone may have a season of not more than 70 days (or 60 under the alternative). The North and Central zones may select a season between September 1, 1989 and January 25, 1990; the South zone between September 20, 1989 and January 25, 1990.

C. Except during the special 4-day white-winged dove season in the South Zone, each zone may have an aggregate daily bag limit of 12 doves (or 15 under the alternative), no more than 2 of which may be white-winged doves and no more than 2 of which may be white-tipped doves. The possession limit is double the daily bag limit.

D. Regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Western Management Unit

(Arizona, California, Idaho, Nevada, Oregon, Utah and Washington)

Hunting Seasons, and Daily Bag and Possession Limits:

Idaho, Nevada, Oregon, Utah and Washington—Not more than 30 consecutive days between September 1, 1989 and January 15, 1990. Bag and possession limits, 10/20 mourning doves (in Nevada, the daily bag and possession limits of mourning and white-winged dove may not exceed 10/20, respectively, singly or in the aggregate).

Arizona and California—Not more than 60 days to be split between two periods, September 1–15, 1989, and November 1, 1989–January 15, 1990. Bag and possession limits: in Arizona the daily bag limit is 10 mourning and white-winged doves in the aggregate of which no more than 6 may be white-winged doves. The possession limit is 20 mourning and white-winged doves in the aggregate of which no more than 12 may be white-winged doves. In California the bag and possession limits for mourning and white-winged doves are 10 and 20, singly or in the aggregate.

White-Winged Doves

Outside Dates: Arizona, California, Nevada, New Mexico, and *Texas* (except as shown below) may select hunting seasons between September 1 and December 31, 1989. *Florida* may select its hunting season between September 1, 1989 and January 15, 1990.

Arizona may select a hunting season of not more than 30 consecutive days running concurrently with the first segment of the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, no more than 6 of which may be white-winged doves, and a possession limit twice the daily bag limit after the opening day. In the *Nevada* counties of Clark and Nye, and in the *California* counties of Imperial, Riverside and San Bernardino, the aggregate daily bag and possession limits of mourning and white-winged doves may not exceed 10 and 20, respectively, and run concurrently with the season on mourning doves.

New Mexico may select a hunting season with daily bag and possession limits not to exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected) white-winged and mourning doves, respectively, singly or in the aggregate of the 2 species. Dates, limits, and hours are to conform with those for mourning doves.

Texas may select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone. In that portion of the special area *north and west of Del Rio*, the daily bag limit may not exceed 10 white-winged, and mourning, and white-tipped doves in the aggregate, of which no more than 2 may be white-tipped doves; the possession limit may not exceed 20 doves in the aggregate, of which no more than 4 may be white-tipped doves. In that portion of the special area *south and east of Del Rio*, the daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves; the possession limit may not exceed 20 doves in the aggregate, of which no more than 10 may be mourning doves and 4 may be white-tipped doves.

and

In addition, *Texas* may also select a white-winged dove season of not more than 70 days (or 60 under the alternative for mourning doves) to be held between September 1, 1989, and January 25, 1990, and coinciding with the mourning dove season. The daily bag limit may not exceed 12 white-winged, mourning and white-tipped doves (or 15 under the alternative) in the aggregate, of which not more than 2 may be white-winged doves and not more than 2 may be white-tipped doves. The possession limit may not exceed 24 white-winged, mourning and white-tipped doves (or 30 under the alternative) in the aggregate, of which not more than 4 may be white-winged doves and not more than 4 may be white-tipped doves.

Florida may select a white-winged dove season of not more than 70 days (or 60 under the alternative for mourning doves) to be held between September 1, 1989, and January 15, 1990, and coinciding with the mourning dove season. The aggregate daily bag and possession limits of mourning and white-winged doves may not exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected); however, for either option, the bag and possession limits of white-winged doves may not exceed 4 and 8, respectively.

Band-Tailed Pigeons

Pacific Coast States and Nevada: California, Oregon, Washington and the Nevada counties of Carson City, Douglas, Lyon, Washoe, Humboldt, Pershing, Churchill, Mineral and Storey.

Outside Dates: Between September 15, 1989, and January 1, 1990.

Hunting Seasons, and Daily Bag and Possession Limits: Not more than 16 consecutive days, with a bag and possession limit of 4.

Zoning: California may select hunting seasons of 16 consecutive days in each of the following two zones:

1. In the counties of Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama and Trinity; and

2. The remainder of the State.

Four-Corners States: Arizona, Colorado, New Mexico and Utah.

Outside Dates: Between September 1 and November 30, 1989.

Hunting Seasons, and Daily Bag and Possession Limits: Not more than 30 consecutive days, with bag and possession limits of 5 and 10, respectively.

Areas: These seasons shall be open only in the areas delineated by the respective States in their hunting regulations.

Zoning: New Mexico may be divided into North and South Zones along a line following U.S. Highway 60 from the Arizona State line east to Interstate Highway 25 at Socorro and south along Interstate Highway 25 from Socorro to the Texas State line. Hunting seasons not to exceed 20 consecutive days may be selected between September 1 and November 30, 1989, in the North Zone and October 1 and November 30, 1989, in the South Zone.

Rails

(Clapper, King, Sora and Virginia)

Outside Dates: States included herein may select seasons between September 1, 1989, and January 20, 1990, on clapper, king, sora and Virginia rails as follows:

Hunting Seasons: The season may not exceed 70 days. Any State may split its season into two segments.

Clapper and King Rails

Daily Bag and Possession Limits:

In *Rhode Island, Connecticut, New Jersey, Delaware,* and *Maryland,* 10 and 20 respectively, singly or in the aggregate of these two species.

In *Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina,* and *Virginia,* 15 and 30, respectively, singly or in the aggregate of the two species.

Sora and Virginia Rails

Daily Bag and Possession Limits:

In the Atlantic, Mississippi and Central [1] Flyways and portions of Colorado, Montana, New Mexico and Wyoming in the Pacific Flyway [2] 25 daily and 25 in possession, singly or in the aggregate of the two species.

Hunting Seasons, and Daily Bag and Possession Limits: Seasons may not exceed 107 days in the Atlantic, Mississippi and Central Flyways and 93 days in Pacific Flyway portions of Montana, Wyoming, Colorado and New Mexico. In the remainder of the Pacific Flyway the season shall coincide with the duck seasons. Seasons may be split into two segments. Bag and possession limits are 8 and 16, respectively.

American Woodcock

Outside Dates: States in the Atlantic Flyway may select hunting seasons between October 1, 1989, and January 31, 1990. States in the Central and Mississippi Flyways may select hunting seasons between September 1, 1989, and February 28, 1990.

Hunting Seasons, and Daily Bag and Possession Limits: In the Atlantic Flyway, seasons may not exceed 45 days, with bag and possession limits of 3 and 6, respectively; in the Central and Mississippi Flyways, seasons may not exceed 65 days, with bag and possession limits of 5 and 10, respectively. Seasons may be split into two segments.

Zoning: New Jersey may select seasons by north and south zones divided by State Highway 70. The season in each zone may not exceed 35 days.

Common Snipe

Outside Dates: Between September 1, 1989, and February 28, 1990. In *Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland* and *Virginia* the season must end no later than January 31.

Common Moorhens and Purple Gallinules

Outside Dates: September 1, 1989, through January 20, 1990, in the Atlantic and Mississippi Flyways and September 1, 1989, through January 21, 1990, in the Central Flyway. States in the Pacific Flyway must select their hunting seasons to coincide with their duck seasons.

Hunting Seasons, and Daily Bag and Possession Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi and Central Flyways; in the Pacific Flyway, seasons must be the same as the duck seasons. Seasons may be split into two segments. Bag and possession limits are 15 and 30 common moorhens and purple gallinules, singly or in the aggregate of the two species, respectively; except the daily bag and possession limits in the Pacific Flyway may not exceed 25 coots and common moorhens, singly or in the aggregate of the two species.

Sandhill Cranes

Regular Seasons in the Central Flyway:

Seasons not to exceed 58 days between September 1, 1989, and February 28, 1990, may be selected in the following States: *Colorado* (the Central Flyway portion except the San Luis Valley); *Kansas; Montana* (the Central Flyway portion except that area south of I–90 and west of the Bighorn River); *North Dakota* (west of U.S. 281); *South Dakota;* and *Wyoming* (in the counties of Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte and Weston).

For the remainder of the flyway, seasons not to exceed 93 days between September 1, 1989 and February 28, 1990, may be selected in the following States: *New Mexico* (the counties of Chaves, Curry, DeBaca, Eddy, Lea, Quay and Roosevelt); *Oklahoma* (that portion west of I–35); and *Texas* (that portion west of a line from Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to I–35 at Austin; I–35 to I–35W; I–35W to the Texas-Oklahoma boundary).

Bag and Possession Limits: 3 and 6, respectively.

Permits: Each person participating in the regular sandhill crane seasons must obtain and have in his possession while hunting a valid Federal sandhill crane hunting permit.

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[1] The Central Flyway is defined as follows: Colorado (east of the Continental Divide), Kansas, Montana (east of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nebraska, New Mexico (east of the Continental Divide but outside the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas and Wyoming (east of the Continental Divide).

[2] The Pacific Flyway is defined as follows: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington; those portions of Colorado and Wyoming lying west of the Continental Divide; New Mexico west of the Continental Divide plus the entire Jicarilla Apache Indian Reservation; and in Montana, the counties of Hill, Chouteau, Cascade, Meagher and Park, and all counties west thereof.

Special Seasons in the Central and Pacific Flyways:

Arizona, Colorado, Idaho, Montana, New Mexico, Utah and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population (as described in a management plan approved March 22, 1982 (revised July 28, 1987), by the Central and Pacific Flyway Councils) subject to the following conditions:

1. Outside dates are September 1–November 30, 1989 except September 1, 1989–January 31, 1990, in the Hatch-Deming Area (Zone) in New Mexico (Sierra, Luna, and Dona Ana Counties).

2. Season(s) in any State or zone may not exceed 30 days.

3. Daily bag limits may not exceed 3 and season limits may not exceed 9.

4. Participants must have in their possession while hunting a valid permit issued by the appropriate State.

5. Numbers of permits, areas open and season dates, protection plans for other species, and other provisions of seasons are consistent with the management plan and approved by the Central and Pacific Flyway Councils.

6. All hunts except those in Arizona and Wyoming will be experimental.

Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)

Outside Dates: Between September 15, 1989, and January 20, 1990.

Hunting Seasons, and Daily Bag and Possession Limits: Not to exceed 107 days, with bag and possession limits of 7 and 14, respectively, singly or in the aggregate of these species.

Bag and Possession Limits During Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may set, in addition to the limits applying to other ducks during the regular duck season, a daily limit of 7 and a possession limit of 14 scoter, eider and oldsquaw ducks, singly or in the aggregate of these species.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in *Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut* and *New York;* in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island and emergent vegetation in *New Jersey, South Carolina,* and *Georgia;* and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island and emergent vegetation in *Delaware, Maryland, North Carolina* and *Virginia;* and provided that any such areas have been described, delineated and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks and they must be included in the regular duck season daily bag and possession limits.

Special September Wood Duck Seasons

Florida: An experimental 5-consecutive-day wood duck season may be selected in September. The daily bag limit will be 3 wood ducks and the possession limit will be double the daily bag limit.

Tennessee and Kentucky: Experimental 5-consecutive-day wood duck seasons may be selected in September. The daily bag limit will be 2 wood ducks and the possession limit will be double the daily bag limit.

Special Early-September Canada Goose Seasons

Experimental Canada goose seasons of up to 10 consecutive days may be selected in September by *Michigan, Illinois, North Carolina,* and *Minnesota* subject to the following conditions:

1. Outside dates for the season are September 1–10, 1989.

2. The daily bag and possession limits will be no more than 5 and 10 Canada geese, respectively. In North Carolina, hunting will be by State permit to take not more than 2 Canada geese daily and 4 in possession.

3. Areas open to the hunting of Canada geese are as follows:

Michigan:

Lower Peninsula—all areas except the Shiawassee River, Allegan, Lapeer and Muskegon State Game Areas (SGA), the Shiawassee National Wildlife Refuge, that portion of the Maple River SGA east of State Road, that portion of the Pointe Mouillee SGA south of the Huron River, Muskegon County Wastewater Area, and the Fish Point and Nayanquing Point Wildlife Areas.

Upper Peninsula—that area bounded by a line beginning at the Michigan/Wisconsin border in Green Bay and extending north through the center of Little Bay De Noc and the center of White Fish River to U.S. Highway 2, east along U.S. Highway 2 to Interstate Highway 75, north along Interstate Highway 75 to State Highway 28, west along State Highway 28 to State Highway 221, then north along State Highway 221 to Brimley, then north to the Michigan/Ontario border.

Illinois: McHenry, Lake, Kane, DuPage, Cook, Kendall, Grundy, Will, and Kankakee Counties.

North Carolina: That portion of the State west of Interstate 95; see State hunting regulations for area descriptions.

Minnesota:

Twin Cities Metropolitan Zone—all or portions of Anoka, Washington, Ramsey, Hennepin, Carver, Scott and Dakota Counties.

Fergus Falls/Alexandria Zone—all or portions of Pope, Douglas, Otter Tail, Wilkin, and Grant Counties.

Southwest Border Zone—all or portions of Martin and Jackson Counties.

4. Areas open to hunting must be described, delineated and designated as such in each State's hunting regulations.

Wyoming may select a September season for Canada geese subject to the following conditions:

1. The season must be concurrent with the September Sandhill crane season.

2. Outside dates for the season(s) are September 1–22, 1989.

3. Hunting will be by State permit.

4. No more than 160 permits, in total, may be issued for the Salt River (Star Valley) and Bear River Areas in Lincoln County and the Eden-Farson Agricultural Project Area in Sweetwater and Sublette Counties, combined.

5. Each permittee may take no more than 2 geese per season.

Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special seasons shall not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1, 1989 and March 10, 1990.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR 21.29(k). Regular season bag and possession limits do not apply to falconry.

Note: Total season length for all hunting methods combined shall not exceed 107 days for any species or group of species in one geographical area. The extension of this framework to include the period from September 1 to March 10, and the option to split the extended falconry season into a maximum of 3 segments are considered tentative, and will be evaluated, in cooperation with States offering such extensions, after a period of several years.

Proposed Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Alaska, 1989–1990

Outside Dates: Between September 1, 1989, and January 26, 1990, Alaska may select seasons on waterfowl, snipe, cranes, and tundra swans subject to the following limitations:

Shooting hours: One-half hour before sunrise to sunset daily.

Hunting seasons:

Ducks, geese and brant—107 consecutive days for ducks, geese, and brant in each of the following: North Zone (State Game Management Unit 11–13 and 17–26); Gulf Coast Zone (State Game Management Units 5–7, 9, 14–16, and 10—Unimak Island only); Southeast Zone (State Game Management Units 1–4); Pribilof and Aleutian Islands Zone (State Game Management Unit 10—except Unimak Island); Kodiak Zone (State Game Management Unit 8). The season may be split without penalty in the Kodiak Zone. *Exceptions:* The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. Throughout the State there is no open hunting season for Aleutian Canada geese, cackling Canada geese and emperor geese.

Snipe and sandhill cranes—An open season should be concurrent with the duck season.

Daily Bag and Possession Limits:

Ducks—Except as noted, a basic daily bag limit of 5 and a possession of 15 ducks. Daily bag and possession limits in the North Zone are 8 and 24, and in the Gulf Zone they are 6 and 18, respectively. The basic limits may not include more than 2 pintails daily and 6 pintails in possession. There is no open season on canvasback. In addition to the basic limit, there is a daily bag limit of 15 and a possession limit of 30 scoter, eider, oldsquaw, harlequin, and common and red-breasted mergansers, singly or in the aggregate of these species.

Geese—A basic daily bag limit of 6 and a possession limit of 12, of which not more than 4 daily and 8 in possession may be greater white-fronted or Canada geese, singly or in the aggregate of these species.

Brant—A daily bag limit of 2 and a possession limit of 4.

Common Snipe—A daily bag limit of 8 and a possession limit of 16.

Sandhill cranes—A daily bag limit of 3 and a possession limit of 6.

Tundra swans—In Game Management Unit 22 an experimental open season for tundra swans may be selected subject to the following conditions:

1. No more than 300 permits may be issued, authorizing each permittee to take 1 tundra swan.

2. The season must be concurrent with the duck season.

3. The appropriate State agency must issue permits, obtain harvest and hunter participation data, and report the results of this hunt to the Service by June 1, 1990.

Proposed Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Puerto Rico, 1989–90

Shooting hours: Between one-half hour before sunrise and sunset daily.

Doves and Pigeons:

Outside Dates: Puerto Rico may select hunting seasons between September 1, 1989, and January 15, 1990, as follows:

Hunting Seasons: Not more than 60 days for Zenaida, mourning, and white-winged doves, and scaly-naped pigeons.

Daily Bag and Possession Limits: Not to exceed 10 doves of the species named herein, singly or in the aggregate, and not to exceed scaly-naped pigeons.

Closed Areas:

Municipality of Culebra and Desecheo Island—closed under Commonwealth regulations.

Mona Island—closed in order to protect the reduced population of white-crowned pigeon (*Columba leucocephala*), known locally as "Paloma cabeciblanca."

El Verde Closure Area—consisting of those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) all lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture on 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one kilometer from the juncture of Routes 186 and 956 south of Km 6 on Route 186; (4) all lands within Km 14 on the west and the Carribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public. The purpose of this closure is to afford protection to the Puerto Rican parrot (*Amazona vittata*) presently listed as an endangered under the Endangered Species Act of 1973.

Cidra Municipality and Adjacent Areas consisting of all Cidra Municipality and portions of Aguas Buenas, Caguas, Cayer, and Comerio Municipalities as encompassed within the following boundary beginning on Highway 172 as it leaves the Municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality, and westerly, northerly, and easterly along the Cidra Municipality boundary to the point of beginning. The purpose of this closure is to protect the Plain pigeon (*Columba inornata wetmorei*), locally known as "Paloma Sabanera," which is present in the above locale in small numbers and is presently listed as an endangered species under the Endangered Species Act of 1973.

Ducks, Coots, Moorhens, Gallinules and Snipe

Outside Dates: Between November 5, 1989, and February 28, 1990, Puerto Rico may select hunting seasons as follows:

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag and Possession Limits:

Ducks—Not to exceed 3 daily and 6 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); the White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocynga bicolor*), and the masked duck (*Oxyura dominica*), which are protected by the Commonwealth of Puerto Rico.

Common moorhens—Not to exceed 6 daily and 12 in possession; the season is closed on purple gallinules (*Porphyrula martinica*).

Common snipe—Not to exceed 6 daily and 12 in possession.

Coots—There is no open season on coots, i.e. common coots (*Fulica americana*) and Caribbean coots (*Fulica caribaea*).

Closed Areas: No open season for ducks, common moorhens, and common snipe is prescribed in the Municipality of Culebra and on Desecheo Island.

Proposed Frameworks for Selecting Open Season Dates for Hunting Birds in the Virgin Islands, 1989–90

Shooting Hours: Between one-half hour before sunrise and sunset daily.

Doves and Pigeons

Outside Dates: The Virgin Islands may select hunting seasons between September 1, 1989 and January 15, 1990, as follows:

Hunting Seasons: Not more than 60 days for Zenaida doves and scaly-naped pigeons throughout the Virgin Islands.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves and 5 scaly-naped pigeons.

Closed Seasons: No open season is prescribed for ground or quail doves, or other pigeons in the Virgin Islands.

Local Names for Certain Birds.

Zenaida dove (*Zenaida aurita*)—mountain dove.

Bridled quail dove (*Geotrygon mystacea*)—Barbary dove, partridge (protected).

Common Ground dove (*Columba passerina*)—stone dove, tobacco, dove rola, tortolita (protected).

Scaly-naped (*Columba squamosa*)—red-necked pigeon, scaled pigeon.

Ducks

Outside Dates: Between December 1, 1989, and January 31, 1990, the Virgin Islands may select a duck hunting season as follows:

Hunting Seasons: Not more than 55 consecutive days may be selected for hunting ducks.

Daily Bag and Possession Limits: Not to exceed 3 daily and 6 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); the White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyura dominica*).

Date: July 5, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–16302 Filed 7–2–89; 8:45 am]

BILLING CODE 4310–55–M

federal register

Thursday
July 13, 1989

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Species; American Burying Beetle, Shale Barren Rock Cress, and Osterhout Milk-Vetch, et al.; Final Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN-1018-AB23

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the American Burying Beetle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines the American burying beetle (*Nicrophorus americanus*) to be an endangered species under the authority of the Endangered Species Act of 1973 (Act), as amended. Once widely distributed throughout eastern North America, this species has disappeared from most of its former range. Two known populations currently exist, one in eastern Oklahoma and the other on an island off the coast of New England. Despite extensive efforts to locate additional populations, only two specimens have been found elsewhere in more than ten years. The cause of the species' decline is unknown. Critical habitat is not being determined. This action implements Federal protection provided by the Act for the American burying beetle.

DATE: The effective date of this rule is August 14, 1989.

ADDRESS: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts, 02158.

FOR FURTHER INFORMATION CONTACT: Anne Hecht at the above address or by telephone (617/965-5100 or FTS 829-9316).

SUPPLEMENTARY INFORMATION

Background

Nicrophorus americanus, described by Olivier in 1790 (Perkins 1980), is a member of the family Silphidae, the carrion beetles. Generally known as the American burying beetle, this species has also been referred to as the giant carrion beetle (Wells et al. 1983). The American burying beetle is the largest member of its genus in North America, measuring 25–36 mm (1.0–1.4 inches) in length. Distinguishable by its large size, the American burying beetle is also identifiable by a large orange-red pronotal disk. This, the orange antennal club, red frons, and two pairs of scalloped red spots on the elytra (wing covers) contrast sharply with a black background (Wells et al. 1983).

Investigations to date indicate that the biology of the American burying beetle is similar to that of other species of the genus, except that the carrion selected for breeding purposes tends to be larger (Kozol et al. 1987). Schweitzer and Master (1987) based the following description of the American burying beetle's life history on Kozol's paper and their own observations:

> Beetles of both sexes are attracted to appropriate carrion at night, generally soon after dark. Apparently males and females fight among themselves until one pair (usually the largest male and female) remains on the carcass. These individuals then bury it, often before dawn of the first morning. The carrion may then be moved laterally for some distance (often over a meter) underground. Eventually, a chamber is constructed. Eggs are laid on the carrion and at least one, usually both, parents remain with the eggs and subsequent larvae. Larvae cannot survive without parental care. They emerge as adults in about 48–56 days and the parents and young then disperse. Occasionally, individuals may succeed in rearing two broods of young. As far as is known, the young, which emerge in July and August, do not reproduce until the following June or July. Adults overwinter, probably singly in the soil. Adults feed on carrion and apparently also capture and consume live insects.
>
> Apparently, any kind of vertebrate carrion between about 50 and 200 grams is acceptable * * *. Brood sizes varied between 8 and 23 teneral adults eclosed.

Once widely distributed throughout eastern North America, this species has disappeared from most of its historic range. Historical records include 32 states, the District of Columbia, and 3 Canadian provinces encompassing the area from Nova Scotia and Quebec, south to Florida and west to Minnesota, South Dakota, Nebraska, Oklahoma, and Texas (Wells et al. 1983, Schweitzer and Master 1987). Two extant populations are known, one on a New England island and the other in eastern Oklahoma.

The New England island population was estimated at 520 beetles (850 beetles at the high end of the 95% confidence interval) in 1986 (Kozol et al. 1987). All but one capture occurred on a portion of the island where much of the land is owned by a State agency or by private conservation organizations.

The existence of the eastern Oklahoma population was recently brought to the attention of the U.S. Fish and Wildlife Service (Service). This population is known from collections at blacklight of one specimen in 1979, one specimen of unknown date sometime between 1979 and 1987, seven specimens in 1987, and one specimen in 1988. Several circumstances, including the sporadic pattern of these collections at a blacklight that has reportedly been operated for more than 5000 hours since 1976 and the fact that at least five other species of *Nicrophorus* are regularly collected at this site, suggest that the size and stability of this population may be a matter of concern (pers. comm. Pat Mehlhop, Oklahoma Natural Heritage Inventory, 1988).

In the early 1980's, an incident involving collection of a single American burying beetle occurred about 40 miles north of the site of the Oklahoma population described above. Nightly blacklighting conducted during one week each summer over an eight year period yielded only the one specimen at this locale (pers. comm. D. Davis, Smithsonian Institution, 1988). It is unclear whether there is a relationship between this specimen and the other Oklahoma collections.

A single specimen was captured and released at a second site in New England in 1985. Extensive efforts using both carrion baits and blacklights resulted in the capture of over 7000 *Nicrophorus* species at this location in 1986, but failed to retrap this species (Schweitzer and Master 1987).

Anderson (1982) speculated that the natural habitat of the species is mature climax forest, but the fact that there is no forest on the island where the beetle is found today casts serious doubt on this thesis. Habitat occupied by the known population includes maritime shrub thickets, coastal moraine grassland, and pastureland. There is agreement that availability of significant humus and top soil suitable for burying of carrion is an essential habitat requirement of the American burying beetle (Schweitzer and Master 1987).

Davis (1980) detailed the decline in the number of American burying beetle specimens in collections and solicited information on the locations of existing populations. Anderson (1982) found a pattern of increasing localization in capture records. The *IUCN Red Data Book* (Wells *et al.* 1983) described this species as having experienced "one of the most disastrous declines of an insect's range ever to be recorded," and stated that the Service should be encouraged to list it as an endangered species. In 1980, the Service included *Nicrophorus americanus* in a status review of insects in major public collections (Perkins 1980). The American burying beetle was recognized as a Category 2 candidate for listing in the Service's May 22, 1984 (49 FR 21670) invertebrate review notice. Category 2 taxa are those for which existing information indicates the possible appropriateness of proposing listing under the Endangered Species Act (Act), but for which sufficient biological information is not presently available to support a proposed rule.

In 1987, the Eastern Regional Office of The Nature Conservancy compiled the results of a range-wide status survey for the American burying beetle. Since 1960, this once ubiquitous species has been collected only in Ontario, Kentucky, Arkansas, Michigan, Oklahoma, Nebraska (pers. comm. Brett Ratcliffe, Nebraska State Museum, 1988) and in two New England states. Moreover, failure of extensive efforts in 1986 to recapture American burying beetles at the sites of most recent captures in Arkansas and Michigan suggests a continuing constriction of the species' range. Significant efforts in 1986 and 1987 to locate American burying beetles on another New England island, where a 1985 capture was reported, were unsuccessful. Other recent unsuccessful capture efforts were conducted in northwestern Pennsylvania, New Jersey, New York (Long Island), Tennessee, western North Carolina, Torreya State Park in Florida, and on mainland areas in New England. The abundance of the species in collections (including student collections) with capture dates prior to 1950 and the ease of capture at blacklight and pitfall traps experienced at the site of the known extant island population confirm that these unsuccessful efforts to locate American burying beetles are indicative of their decline throughout most of their former range.

Summary of Comments and Recommendations

In the October 11, 1988 proposed rule, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Copies of the proposed rule were mailed to appropriate State resource agencies, county governments, Federal agencies, scientific organizations, and other interested parties, with a request for comments. Notices inviting public comment were published in newspapers of general circulation in all areas where American burying beetles have been captured during the last ten years and in several other areas with less recent capture records. Ten written comments were received; all supported the proposed rule. No new information was received.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the American burying beetle (*Nicrophorus americanus*) are as follows:

A. The Present or Threatened Destruction, Modification or Curtailment of its Habitat or Range

As described above, the American burying beetle has almost entirely vanished from its former range. It is possible that future search efforts may result in discovery of another extant population. However, the extent of the species' decline suggests that any newly discovered populations are also vulnerable to whatever factors have caused their disappearance elsewhere.

Anderson (1982) believed that, as with a similarly large European *Nicrophorus* species, the decline of the American burying beetle was due to the destruction of "primary" or virgin forest, which he speculated was the essential habitat of the species. This hypothesis is refuted by the fact that many records document collections of the species in various locations more than a century after destruction of the primary forest. Furthermore, the site of the known New England population supports no forests. It is possible that loss of some obscure habitat component has contributed to the beetle's disappearance, but habitat generally similar to that of the known population is not rare (Schweitzer and Master 1987).

B. Over-Utilization for Commercial, Recreational, Scientific, or Educational Purposes

Collection has not been a factor in the present decline of this once ubiquitous species (Schweitzer and Master 1987). However, ease of trapping could make remaining populations vulnerable to over-collection if their locations were to become well known.

C. Disease or Predation

Predation has probably not been a factor in this species' decline, but introduction of a non-native, species-specific pathogen could explain the fact that this species has disappeared while several other species of the same genus (for example, *N. orbicollis* and *N. tomentosus*) with similar habits continue to thrive (pers. comm. Andrea Kozol, Boston University, 1988). Such a hypothesis is also consistent with the location of the two remaining populations: one on an island and the other on the edge of the species' historic range. No studies addressing this theory have been undertaken to date.

D. The Inadequacy of Existing Regulatory Mechanisms

This species has no legal protection in any State where it is known or suspected to exist. Localized regulations requiring that electronic bug-zappers in the vicinity of the known population be equipped with grids small enough to exclude American burying beetles would remove the potential for take described under E, below. Lack of understanding of the causes of the species' decline precludes recommendation of other regulations for protection of the species at this time. It is possible that future studies of the species will show a need for such regulations.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

A low reproductive rate (compared with other insects) limits the ability of this species to rebound from any period of elevated mortality.

Use of electronic bug-zappers in the vicinity of American burying beetles could result in take of this species. Other *Nicrophorus* species have been killed by zappers and American burying beetles are attracted to identical light sources (pers. comm. Michelle P. Scott, Boston University, 1987). Since *Nicrophorus* males are involved in brood-rearing, this sex (which is selectively killed by zappers in most insect groups) is not functionally surplus.

Some speculation has focused on the possible role of the pesticide DDT in the decline of the American burying beetle. Some support for this hypothesis is furnished by reports that the site of the known island population, unlike most other New England islands and many mainland areas, was never extensively sprayed for mosquito or gypsy moth suppression. However, most other recent records of the species are from farming areas where DDT would likely have been used prior to its banning. Further, if DDT contamination of the beetle's food supply had occurred, it is hard to explain why other carrion-feeding members of the genus were not similarly affected (Schweitzer and Master 1987).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the

preferred action is to list the American burying beetle as endangered. Endangered status is warranted by the decline in the species' range from more than a third of the continental United States and parts of southeastern Canada to only two verified populations. Failure of 1986 efforts to relocate the species in Arkansas and Michigan suggests that whatever caused the decline of the species was still at work at least as recently as the mid 1970's. While it is not improbable that other remnant populations will be discovered in the future, it is likely that those populations remain vulnerable to the factors that have caused the general decline of the species. Further, there is no known way to reverse any decline that might occur in the known populations.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. This determination is based on the premise that such a designation would not be beneficial to the species (50 CFR 424.12). As discussed under "Factor B" above, ease of trapping could make the American burying beetle vulnerable to collectors who might be attracted to the locale of the known populations by the publication of maps and other specific location information. No benefit from critical habitat designation has been identified that outweighs the threat of collection.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and local governments and private agencies, groups and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and prohibitions against taking and harm are discussed, in part, below.

The Act requires development and implementation of recovery plans for listed species. Because the causes of the decline of the American burying beetle are unknown, it is probable that initial recovery activities will focus on research to determine those causes. Later actions may include efforts to reestablish the species in suitable locations in its former range.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The Service has not identified any ongoing or proposed projects with Federal involvement that could affect this species.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general trade prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered or threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

Requests for copies of the regulations on take of endangered and threatened species and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Washington, DC, 20038 (202/343-4955).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Anderson, R.S. 1982. On the decreasing abundance of *Nicrophorus americanus* Olivier (Coleoptera:Silphidae) in eastern North America. Coleopt. Bull. 36(2):362–365.

Davis, L.R. 1980. Notes on beetle distributions with a discussion of *Nicrophorus americanus* Olivier and its abundance in collections. (Coleoptera:Scarabeidae, Lampyridae and Silphidae). Coleopt. Bull. 34(2):245–251.

Kozol, A.J., M.P. Scott, and J.F.A. Traniello. 1987. Distribution and natural history of the American burying beetle *(Nicrophorus americanus)*. Unpublished report for the Eastern Heritage Task Force of The Nature Conservancy.

Perkins, P.D.P. 1980. North American insect status review. Contract 14-16-0009-79-052 final report to USDI Office of Endangered Species.

Schweitzer, D.F., and L.L. Master. 1987. *Nicrophorus americanus* (American burying beetle): results of a global status survey. Report for Region 5 of the U.S. Fish and Wildlife Service.

Wells, S.M., R.M. Pyle, and N.M. Collins. 1983. The IUCN red data book. IUCN, Gland, Switzerland. pp 379–381.

Author

The primary author of this rule is Anne Hecht of the Service's Regional Office in Newton Corner, Massachusetts (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825 (16 U.S.C. 1531 et seq.); Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under INSECTS, to the list of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
INSECTS							
*	*	*	*	*	*	*	
Beetle, American burying (=Giant carrion beetle).	*Nicrophorus americanus.*	U.S.A. (eastern States south to FL, west to SD and TX), eastern Canada.	NA	E	351	NA	NA

Dated: June 12, 1989.

Susan Recce Lamson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-16344 Filed 7-12-89; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 17

RIN 1018-AB23

Endangered and Threatened Wildlife and Plants; "Arabis Serotina" (Shale Barren Rock Cress) Determined to be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a plant, *Arabis serotina* (shale barren rock cress) to be an endangered species. It is found only in western Virginia and eastern West Virginia. Presently, 26 populations, totaling fewer than 1,000 reproductive individuals, are known. Many populations are adversely affected by deer browsing, construction and maintenance of roads and railroads, and livestock grazing. Several populations occur on Federal lands in the Monongahela and George Washington National Forests. This listing implements the protection provided by the Endangered Species Act of 1973, as amended, for *Arabis serotina*. Critical habitat has not been determined.

EFFECTIVE DATE: August 14, 1989.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Ecological Services Field Office, Suite 322, 315 S. Allen Street, State College, Pennsylvania 16801.

FOR FURTHER INFORMATION CONTACT: Sharon W. Morgan, Fish and Wildlife Biologist (see ADDRESSES section) (814/234-4090).

SUPPLEMENTARY INFORMATION:

Background

Shale barren rock cress (*Arabis serotina* Steele), a member of the mustard family, is one of several plant species endemic to dry, exposed, mid-Appalachian habitats known as shale barrens (Keener 1983). These unique shale slopes of Paleozoic age are found in the Ridge and Valley Section of the Appalachian Mountains from Pennsylvania south to Virginia and West Virginia. Usually surrounded by deciduous forest woodlands, shale barrens are isolated islands of habitat characterized by steep southern exposures (generally greater than 20 degree slopes), relatively sparse vegetative cover, high temperatures and low moisture in the summer, and are usually undercut by a stream at the base (Keener 1983). Eighteen endemic plant taxa are recorded from the shale barrens, including *Arabis serotina* and three other Federal candidate plant species (*Allium Oxyphilum, Taenidia montana, Trifolium virginicum)* (Keener 1983).

This species is biennial, with populations usually consisting of two age-classes: young, nonreproductive individuals present in basal rosette form; and second-year plants that are potentially reproductive individuals present in the form of erect, flowering plants lacking a basal rosette of leaves. Another component of populations is the seed bank, consisting of dormant, ungerminated seeds found either at the ground surface or buried in the soil. *A. serotina* may not be a strict biennial, meaning that rosettes may persist longer than one year, resulting in a delay of flowering and fruiting beyond the second year. Plants typically grow to a height of 30 to 60 cm. (one to two feet), with a spreading, compound inflorescence of many tiny whitish flowers, each approximately two to three mm. long (one-eighth inch).

Originally described by Edward Steele in 1911, the species has been confused with the morphologically similar *Arabis laevigata* (Muhl.) Poir var. *burkii* Porter. Hopkins (1937) reduced *Arabis serotina* to synonymy under *Arabis laevigata* var. *burkii*. Both taxa occur on shale barrens, although the latter is not an endemic. Weiboldt (1987a, 1987b) has shown that *Arabis serotina* is distinguished from *Arabis laevigata* var. *burkii* by several key characteristics. *A. serotina* is taller with wider and more-branched inflorescences, and has smaller flowers and more narrowly winged seeds than *A. laevigata* var. *burkii*. There are also considerable differences between the flowering periods of the two taxa. All varieties of *A. laevigata*, including var. *burkii*, bloom in April and May and set seed before *Arabis serotina* begins to bloom in late June or early July. *Arabis serotina* continues to bloom into September (Wieboldt 1987b).

Arabis serotina is presently known from only 26 populations in five Virginia counties (Allegheny, Augusta, Bath, Highland and Rockbridge) and three West Virginia counties (Greenbrier, Hardy and Pendleton). An additional 1934 record from Shenandoah County, Virginia has not been relocated and is considered historic. The species has never been documented to be more widespread, and the reported distribution in seven West Virginia counties (Strausbaugh and Core 1978) was based on collections of *A. laevigata* var. *burkii* (Bartgis 1985). The species' highly restricted range appears to be a result of biogeographic events and not due to recent land-use changes or the lack of suitable habitat elsewhere. During 1983–85, a survey of 70 shale barrens in eight West Virginia counties resulted in only a few new populations (Bartgis 1985). Searches of 15–20 barrens in the range of *A. serotina* in Virginia revealed few additional populations (Mr. Lipford, Virginia Natural Heritage Program, pers. comm. 1988).

In both Virginia and West Virginia, all populations occur on Brallier Formation

shales on south- to southwest-facing slopes at elevations of 1300 to 2500 feet. Most of the known populations occur partially or completely in the George Washington and Monongahela National Forests.

Populations are fairly small at all 26 locations. Since plants in the rosette stage are inconspicuous and easily overlooked, most population counts refer to only flowering and/or fruiting plants. Approximately 130 reproductive plants were found at the 13 Virginia sites in 1987 (M. Lipford, pers. comm. 1987) and only about 700 reproductive individuals comprised the 13 West Virginia populations in 1985 (Bartgis in press). Although a few additional populations may be located in the future, the typically small population sizes suggest that the total number of individuals will remain small. In both states, most populations are moderately to severely browsed by deer. Rangewide, sites have been affected to some degree by road or railroad construction, small flood-control proejcts, and grazing by livestock.

The U.S. Fish and Wildlife Service (Service) recognized *Arabis serotina* as a Category 2 candidate for listing in the Supplement to Review of Plant Taxa for Listing as Endangered or Threatened Species published in the Federal Register on November 28, 1983 (48 FR 53641). Category 2 comprises those taxa for which listing is possibly appropriate but for which existing information is insufficient to support a proposed rule. The updated notice of review for plant taxa published on September 27, 1988 again included *Arabis serotina* in Category 2.

In 1985, the Service contracted with The Nature Conservancy's Eastern Regional Office to conduct status survey work on *Arabis serotina* and other Federal candidate species. Those reports (Bartgis 1985, Rawinski and Cassin 1986) documented a high degree of threat at most *Arabis serotina* sites and recommended immediate listing by the Service. This listing implements the protection provided by the Endangered Species Act of 1973 (16 U.S.C. *et seq.*) as amended, for *Arabis serotina*.

Summary of Comments and Recommendations

In the November 17, 1988 proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the Covington Virginian, the Daily News Leader (Staunton), the Pendleton Times, the Inter-Mountain and the Moorefield Examiner from November 22, 1988 through December 4, 1988. Ten comments were received, including letters from one Federal agency, one State agency, three colleges or universities, and five conservation organizations or individuals. Eight commentors supported listing, one acknowledged receipt of the proposal and the final commenter requested additional information. In addition, two of the commentors suggested that critical habitat be listed. The Service's reasons for not determining critical habitat for this species are stated below.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Arabis serotina* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Arabis serotina* Steele (shale barren rock cress) are as follows:

A. The Present or Threatened Destruction, Modification or Curtailment of Its Habitat or Range

In West Virginia, five of the shale barrens supporting known populations of *Arabis serotina* have been partially destroyed by road construction and a sixth was affected by a small flood-control dam which degraded the habitat available for the species (Bartgis in press). In Virginia, three shale barrens supporting known *Arabis serotina* populations were partially destroyed by road construction, two were damaged by railroad construction, and one is crossed by a hiking trail (T. Wieboldt, Virginia Polytechnic Institute, pers. comm. 1987). The extent of the impacts of all these projects upon the *Arabis serotina* populations is unknown. Two of the West Virginia populations have been grazed by sheep or goats in the past. While no longer grazed by livestock, presently both sites have little vegetation, marked erosional features, and very few *Arabis serotina* individuals (Bartgis in press).

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

Arabis serotina is not known to be used for any commercial or recreational purpose. Because of its rarity, it may be subject to collection by botanists and curiosity seekers. Since most populations consist of 20 or fewer individuals, collection or vandalism at those sites could eliminate populations.

C. Disease or Predation

The larvae of the butterfly Olympia marble (*Euchloe olympia*) have been reported to feed on *Arabis serotina* (Clench and Opler 1983), but the report is believed erroneous. Timing of larval emergence suggests that they feed on *A. laevigata* var. *burkii* (Bartgis in press). White-tailed deer (*Odocoileus virginianus*) are known to heavily browse *Arabis serotina* populations.

As in many northeastern states, deer populations are increasing in both Virginia and West Virginia, resulting in greater browsing pressure on many herbaceous plants. In West Virginia, eight of eleven *A. serotina* populations surveyed in 1985 had been browsed by deer resulting in partial or complete loss of 15 percent to 70 percent (average 30 percent) of the inflorescences in those populations. For example, in an unusually large population of 124 plants only 47 plants successfully set seed (Bartgis in press). At three Virginia populations with only one or two reproductive individuals each, all were browsed in 1987 (M. Lipford pers. comm. 1987). Since the plant is a biennial inhabiting a stressful environment, such a significant loss of propagules in any given year could lead to lower reproductive success. As the median reproductive population size observed in West Virginia during 1985 was 17 plants, and in Virginia during 1987 was seven plants, any minor decreases in reproductive potential through grazing or other means could completely eliminate populations.

D. Inadequacy of Existing Regulatory Mechanisms

Arabis serotina is not currently protected by any state or local laws or regulations. Four populations in West Virginia and seven in Virginia occur in established National Forest Special Interest Areas (U.S. Dept. of Agriculture 1986a, 1986b). These areas are managed by the Forest Service to protect the habitat and species present. Some of these populations extend onto adjacent private land. Special Interest Areas (SIA) are not permanent designations and may be revoked by the administrating national forest. Although the SIA designation prevents habitat alteration, it does not provide protection from threats such as deer predation that may adversely affect these populations.

One West Virginia population occurs on a shale barren leased by The Nature Conservancy (TNC), and that organization is also securing voluntary protection of at least two additional populations. These voluntary agreements have no binding legal status. The ten populations on private land are not protected by any laws or regulations.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Shale barren communities are relatively long-term features of the landscape, but may gradually be replaced by woodlands through succession (Keener 1983). However this process is slow and is unlikely to affect more than a very few *Arabis serotina* populations in the near future.

A. serotina is the most sporadic and rarest of the shale barren endemics (Wieboldt *in* Rawinski and Cassin 1986) and recent surveys show that populations have declined in the past few years. In addition to predation by deer, populations have been adversely affected by severe droughts in 1987 and 1988. One Virginia shale barren supported 100 reproductive individuals in 1985, but in 1987 only nine were found. Another Virginia shale barren showed three individuals in 1984 but none was found in 1987 (M. Lipford, pers. comm. 1987). At one West Virginia barren which had 136 reproductive individuals in 1985, only 12 plants set fruit in 1987 (Bartgis in press).

Many biennial species typically exhibit fluctuations in population numbers from year to year; however, repeated loss of reproductive individuals several seasons in succession poses a serious threat to long-term survival of species. Low population numbers combined with continually decreasing contributions to the seed bank result in the species being particularly vulnerable to any natural or human-caused stresses. No attempt has been made to assess the size of the seed bank at any population. If present trends continue, the future of smaller populations will be highly uncertain.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the species in determining to make this final rule. Based on this evaluation, the preferred action is to list *Arabis serotina* as endangered. Habitat degradation and loss of reproduction through grazing pose severe problems to the continued existence of the species. Although 26 populations are known, 15 of these populations number 20 or fewer individuals, making the species particularly vulnerable to any threats. In addition, most of the available shale barren habitat for this species has been inventoried, making it unlikely that many new populations will be found.

Critical Habitat

Section 4(a) 3 of the Act requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for *Arabis serotina*. Very small population sizes make this species particularly vulnerable to any vandalism or collecting. Since the plant occurs in unique, easily-identified habitats, publication of critical habitat maps may result in vandalism and collection by curosity seekers. The Act prohibits taking of plants only in cases of (1) Removal and reduction to possession on lands under Federal jurisdiction, or malicious damage or destruction on such lands; (2) removal, cutting, digging up, or damaging or destroying plants in knowing violation of any State law or regulation, including State criminal trespass law. The Forest Service, The Nature Conservancy and landowners of major populations on private land have been informed of population locations and the importance of protecting the species' habitat. Listing will result in habitat protection through the recovery process and section 7 consultations. Therefore, it would not be prudent to determine critical habitat for *Arabis serotina*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The U.S. Department of Agriculture, Forest Service partially or completely owns sixteen of the known *Arabis serotina* populations. Activities in these areas that may affect the species would require section 7 consultation.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. With respect to *Arabis serotina*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for listed plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal Lands and the removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Washington, DC 20038-7329 (202/343-4955).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Bartgis, R. 1985. Status surveys in West Virginia—Results and analysis of investigations of *Allium oxphilum*, *Arabis serotina*, *Ptilimnium fluviatile*, and *Trifolium stoloniferum*. Unpublished report. West Virginia Field Office, The Nature Conservancy.

Bartgis, R. Inpress. Distribution and status of *Arabis serotina* (Brassicaceae) in West Virginia. Proc. W.V. Acad. Sci.

Clench, H.K., and P. Opler. 1983. Studies on Nearctic Euchloe. Part 8. Distribution, ecology, and variation of *Euchloe olympia* (Pieridae) populations. Ann. Carnegie Mus. 52:41–54.

Hopkins, M. 1937. *Arabis* in eastern and central North America. Rhodora 39:63–98, 106–164, 155–186.

Keener, C. 1983. Distribution and biohistory of the endemic flora of the mid-Appalachian shale barrens. Bot. Rev. 49:65–115.

Rawinski, T., and J. Cassin. 1986. Final status survey for 32 plants. The Nature Conservancy unpublished report submitted to U.S. Fish and Wildlife Service, Newton Corner, Massachusetts.

Strausbaugh, P.D., and E.C. Core. 1978. Flora of West Virginia. 2nd edition. Seneca Books, Grantsville.

Steele, E.S. 1911. New and noteworthy plants from the eastern United States. Contr. U.S. Natl. Herb. 13:359–374.

U.S. Dept. of Agriculture. 1986a. Land and Resource Management Plan for the George Washington National Forest. U.S. Govt. Printing Office, Washington, D.C.

U.S. Dept. of Agriculture. 1986b. Land and Resource Management Plan for the Monongahela National Forest. U.S. Govt. Printing Office, Washington, D.C.

Wieboldt, T. 1987a. The shale barren endemic, *Arabis serotina* (Brassicaceae). (Abstract). Va. Acad. Sci. 37(2):86.

Wieboldt, T. 1987b. The shale barren endemic, *Arabis serotina* (Brassicaceae). Sida 12(2):381–389.

Author

The primary author of this rule is Sharon W. Morgan (see ADDRESSES section) using substantial information provided by Rodney L. Bartgis, West Virginia Department of Natural Resources.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation of Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825 (16 U.S.C. 1531 et seq.); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.12(h) for plants by adding the following, in alphabetical order under the Family Brassicaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species: Scientific name	Species: Common name	Historic Range	Status	When listed	Critical habitat	Special rules
Brassicaceae—Mustard Family						
*	*	*	*	*		
Arabis serotina	Shale barren rock cress	U.S.A. (VA, WV)	E	352	NA	NA
*	*	*	*	*		

Dated: June 12, 1989

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–16345 Filed 7–12–89; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018–AB18

Endangered and Threatened Wildlife and Plants; Final Rule to Determine Astragalus osterhoutii and Penstemon penlandii to be Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has determined two plants, *Astragalus osterhoutii* (Osterhout milk-vetch) and *Penstemon penlandii* (Penland beardtongue), to be endangered species under the Endangered Species Act of 1973, as amended. Both species are endemic to Middle Park in Grand County, Colorado, where they grow on shale badlands. Penland beardtongue is only known within 2 miles of the type locality. The Osterhout milk-vetch occurs in scattered populations over a 15-mile range. Both species occur largely on Federal land administered by the Bureau of Land Management, with smaller occurrences on State and private land. The Osterhout milk-vetch would be impacted directly by dam construction and inundation, and secondarily by recreational uses and development around the proposed Muddy Creek Reservoir. The single Penland beardtongue area is a fragile habitat vulnerable to off-road vehicle damage. The determination that *Astragalus osterhoutii* and *Penstemon penlandii* are endangered species will provide them protection under the authority of the Endangered Species Act of 1973, as amended.

EFFECTIVE DATE: August 14, 1989.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the State Supervisor's Office, Fish and Wildlife Enhancement, 730 Simms Street, Room 290, Golden, Colorado 80401 and at the Western Colorado Fish and Wildlife Enhancement Office, 529 25½ Road, Suite B–113, Grand Junction, Colorado 81505.

FOR FURTHER INFORMATION CONTACT: John Anderson at the Grand Junction address above (303/243–2778 or FTS 322–0351).

SUPPLEMENTARY INFORMATION:

Background

Astragalus osterhoutii and *Penstemon penlandii* are herbaceous perennial wildflowers endemic to Middle Park, a

sagebrush basin in north-central Colorado. They are restricted to badlands of Upper Cretaceous Niobrara and Pierre Shale and of Tertiary (Miocene Troublesome Formation) siltstone sediments at 2,250–2,350 meters (7,450–7,700 feet) elevation within 6 miles to the north and east of the town of Kremmling. *Astragalus osterhoutii* Jones was described in 1923 by Marcus Jones (1923) from material collected by George Osterhout, an early Colorado botanist. Osterhout first collected it in fruit July 17, 1905 (specimen 3036), and in flower June 9, 1906 (specimen 3235) at "Sulphur Springs" (holotype) and "about 4 miles below Sulphur Springs, Grand County" (cotype). The holotype (at the Pomona College Herbarium, Rancho Santa Ana Botanic Garden, California) is a combination of material from these two specimens. The type locality had been interpreted to be near the town of Hot Sulphur Springs, which is 17 miles east of Kremmling (Barneby 1964, Peterson et al. 1981); but, despite several searches, the Osterhout milk-vetch has never been found in this area. However, the population recently located along Troublesome Creek is adjacent to Sulphur Gulch, which contains a Sulphur Spring (about 6 miles northeast of Kremmling), and this is likely the type locality (Rupert Barneby, New York Botancial Garden, *in litt.*, 1987).

Until the 1980's, *A. osterhoutii* was collected only five times and from two additional localities: a small population 1 mile northeast of Kremmling and the largest population along Muddy Creek 6 miles north of Kremmling. These populations were discovered by Beath in 1939 and 1940 respectively (Peterson *et al.* 1981). The population along Muddy Creek was further delineated during the preparation of the status report (Peterson *et al.* 1981) and the Rock Creek/Muddy Creek Reservoir Draft Environmental Impact Statement (Grah and Neese 1987). Occurrences along Pass Creek and Red Dirt Creek near Hinman Reservoir, a few miles west of Muddy Creek, were also discovered during inventories for the Draft Environmental Impact Statement (Grah and Neese 1987). During graduate studies at the University of Colorado, Jeff Karron located two sites, 1 mile and 5 miles northeast of Kremmling, the latter along Troublesome Creek. These sites probably represent Beath's 1939 locality and Osterhout's original "Sulphur Springs" locality in the Sulphur Gulch/Troublesome Creek vicinity, respectively. In the summer of 1988, the author found a small colony of about 500 plants of *A. osterhoutii* on a shale hill along the north side of the Colorado River 3 miles east of Troublesome Creek.

There are an estimated 25,000 to 50,000 Osterhout milk-vetch plants, approximately 90 percent of the total for the species, in the vicinity of Muddy Creek. The remaining 10 percent of the species occurs on the eastern and western extremities of the range at Troublesome and Red Dirt Creek (a tributary of Muddy Creek), respectively.

Penstemon penlandii Weber was independently discovered in the summer of 1986 by David Johnson of Western Resource Development Company (Weber 1986) and the author while on visits to the Osterhout milk-vetch Troublesome Creek site located by Karron. While the Osterhout milk-vetch is found only along one gulch here, the Penland beardtongue population of approximately 5,000 plants extends over the whole series of badlands between Troublesome Creek and Sulphur Gulch, which are approximately 1½ miles long and ½ mile wide. In the summer of 1988, the author located a small colony of 500 plants along Troublesome Creek 2 miles north of the type locality. This is the only known area for the Penland beardtongue.

A. osterhoutii and *P. penlandii* are both disjunct from their nearest relatives, which occur approximately 150 miles away in southwestern Wyoming and northwestern Colorado: *A. grayi* and *A. nelsonianus* (Barneby 1964), and *P. caryonioruum* (Weber 1980) and *P. gibbensii* (personal observation), respectively. These species may be remnants of a previous extension of northern species southward during glacial or pluvial periods. As such, they can provide clues to past floristic migrations and are scientifically valuable in the study of biogeography. *A. osterhoutii* has also been the subject of evolutionary studies comparing rare and common species of *Astragalus* (Karron 1987a). Their adaptation to specific geologic habitats makes them good scientific subjects for such studies.

A. osterhoutii is a tall rush-like plant with linear leaflets and several bright green stems up to 100 centimeters (40 inches) tall. There are 12–25 large white flowers, 2.4 centimeters (1.0 inch) long, per inflorescence (flowering stalk), and stipitate pendulous pods, 4.5 centimeters (1.8 inches) long. *P. penlandii* is a short plant with linear leaves and several clumped, pubescent stems up to 25 centimeters (10.0 inches) tall. There are 5–15 bright bicolored flowers with blue lobes and a violet throat, 1.2–1.5 centimeters (0.5–0.6 inch) long, per inflorescence; the fruits are small brown capsules. Both species are characterized by clusters of showy flowers relative to the size of the plant.

The largest population of the Osterhout milk-vetch occurs on shale benches along Muddy Creek, the site of the proposed Muddy Creek Reservoir. While the lower edges of this population would be inundated by the proposed reservoir, there would be additional impacts to the remainder of the population from associated development and recreational use of the reservoir and the surrounding benches (U.S. Forest Service and U.S. Bureau of Land Management 1986). Changes in vegetative composition, particularly an increase in big sagebrush density due to past grazing history, may have resulted in a decrease in the size and/or density of Osterhout milk-vetch populations. The Troublesome Creek/Sulphur Gulch badlands, the habitat of both the Osterhout milk-vetch and Penland beardtongue, are a fragile habitat susceptible to damage from off-road vehicle use. Approximately two-thirds of the large Osterhout milk-vetch population along Muddy Creek is on Federal land administered by the Bureau of Land Management (Bureau); the remaining one-third is mostly on private land, with two colonies on State land (although the edges of other Osterhout milk-vetch colonies may be within State highway rights-of-way). The small occurrences up Pass Creek and Red Dirt Creek near Hinman Reservoir are on private land. The small site 1 mile northeast of Kremmling is on Bureau land, and the Troublesome Creek/Sulphur Gulch populations of Osterhout milk-vetch and Penland beardtongue are on Bureau land and private land.

Federal action involving *A. osterhoutii* began with section 12 of the Endangered Species Act (Act) of 1973 (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice of its acceptance of this report as a petition within the context of section 4(c)(2), now section 4(b)(3)(A), of the Act and of its intention thereby to review the status of those plants. *A. osterhoutii* was included as "endangered" in the July 1, 1975, petition. On December 15, 1980 (45 FR 82485), and September 27, 1985 (50 FR 39526), the Service published updated notices reviewing the native plants being considered for classification as threatened or endangered. *A. osterhoutii* was included in these notices as a category 2 species.

Category 2 comprises taxa for which the Service possesses information indicating that proposing to list them as endangered or threatened species is possibly appropriate, but for which conclusive data on biological vulnerability and threat(s) are not currently available to support listing. The present proposal is based on biological data from Peterson et al. (1981), Karron (1987a), and Grah and Neese (1987).

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary of the Interior to make findings on certain petitions within 1 year of their receipt. Section 2(b)(1) of the Act's amendments of 1982 further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. Because the 1975 Smithsonian report was accepted as a petition, all the taxa contained in the notice, including *A. osterhoutii*, were treated as being newly petitioned on October 13, 1982. On October 13, 1983, October 12, 1984, October 11, 1985, October 10, 1986, and October 9, 1987, the Service made successive 1-year findings that the petition to list *A. osterhoutii* was warranted, but precluded by other listing actions of higher priority. The Service published a proposed rule to list *A. osterhoutii* and *P. penlandii* as endangered species on July 5, 1988 (53 FR 25181), constituting the next 1-year finding that would have been required on or before October 9, 1988.

Because it was discovered in 1986, after the last notice of review for plants was published in the **Federal Register** in 1985, there has been no previous Federal action involving *P. penlandii*.

Summary of Comments and Recommendations

In the July 5, 1988, proposed rule (53 FR 25181) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State and Federal agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices that invited public comments were published in the *Middle Park Times* on August 4, 11, 18, and 25, 1988, and in the *Rocky Mountain News* on September 1 and 2, 1988. A public hearing was requested by the Grand County Board of Commissioners (County) on August 5, 1988, and by the Colorado River Water Conservation District (Water District) on August 12, 1988. The Service extended the initial comment period to October 24, 1988 (53 FR 37009), to accommodate the requested public hearing which was held on October 13, 1988, in Kremmling, Colorado. Newspaper notices announcing the public hearing and the extension of the comment period were published in the *Middle Park Times* on October 6, 1988, and in the *Rocky Mountain News* on October 6 and 7, 1988. At the hearing a Service botanist read a prepared statement and showed slides of the plants and their habitat. Individuals in the audience were then given the opportunity to present their oral comments. Following the comments there was a question and answer period. Six people attended the public hearing and three presented oral comments. Eleven written comments also were received in response to the proposed rule. The three oral comments were from parties who also submitted written comments and raised similar issues.

Seven written comments in support were received, including the State, conservation groups, and professional botanists; three written comments in opposition were received from a local (county) government and a local water district; and one written comment was neutral. Two oral comments in opposition to the listing were received from a local water district and a local (county) government, and one supporting comment was received from a professional botanist. Written and oral comments of similar content are grouped into a number of general issues. These issues and the Service's response to each are discussed below.

Issue 1: The Water District and the County stated that the estimated population size of Osterhout milk-vetch along Muddy Creek was 100,000 plants and that the plant covered 50 percent more acres in 1987 than in 1985. Therefore, the impacts of the Muddy Creek Reservoir were less than indicated in the Service's proposed rule which states 25,000 plants and uses the 1985 acreage figure.

Response: The 100,000 figure was used in a preliminary Biological Assessment (U.S. Forest Service 1987), but the final Biological Assessment (U.S. Bureau of Land Management 1989) and the Supplemental Draft Environmental Impact Statement (U.S. Forest Service and Bureau of Land Management 1988) use a figure of 50,000 plants. The estimate of 25,000 plants is the result of personal observations by a Service botanist in July 1986, August 1987, and July 1988. All of these figures are based on ocular estimates of the same plant populations, but by different observers. The higher figures are based on extrapolations of an estimated average density over the total acreage, rather than an actual census. Extrapolations are usually high estimates because plants are not evenly distributed in nature, due to such things as micro-habitat differences or limited seed dispersal. The Service believes that the degree or level of impact should be determined based on the low end of population fluctuations, which represents its base population number.

The range of *A. osterhoutii* does not appear to be expanding and is still confined to a small part of Middle Park. It should also be understood that during flood stages an additional, undetermined number of plants would be inundated. Moreover, besides the direct impacts, another 80 acres of habitat could be impacted by recreational activities and development.

Issue 2: The Water District and the County stated that existing Bureau of Land Management regulations and the Conservation Plan proposed in the (now) Final Biological Assessment (U.S. Bureau of Land Management 1989) are sufficient to minimize impacts to *A. osterhoutii*.

Response: Unless *A. osterhoutii* is listed there would be no legal requirement for the Bureau to make the Conservation Plan or any other measures permit conditions of the project. The Final Biological Assessment (U.S. Bureau of Land Management 1989) specifically states that protection would only be required by the Bureau if Osterhout milk-vetch is listed, which supports the need for listing. The Service believes that the Conservation Plan by itself may be insufficient to protect the species, and that protection of additional plant sites is necessary. Moreover, the habitat manipulation techniques in the Conservation Plan are experimental and their success uncertain. And finally, if the species is not listed there is no law requiring the Bureau to protect the species and administer its recovery if the Conservation Plan falls short of its goal or if future activities are planned that could affect the species.

Issue 3: The Water District stated that "* * * the best scientific and commercial data currently available does not justify * * * endangered status [for *Astragalus osterhoutii*]."

Response: Professional botanists who have worked on the species, including a Service botanist, a graduate student whose dissertation included the species, professional botanists with the State and conservation groups, and consultants on the Muddy Creek Reservoir, think that existing biological data support endangered status. Their data and conclusions are included in this rulemaking. A pre-proposal letter from a consultant stated: "Both species are highly vulnerable to extinction by virtue of extremely limited distribution habitat, and population numbers * * *" (Elizabeth Neese, independent consultant, *in litt.*, 1988). Also, their fragile habitat is highly susceptible to surface disturbance. The Osterhout milk-vetch was a candidate for listing as threatened or endangered (1980) before the Muddy Creek Dam was proposed (1985).

Issue 4: The Water District stated that listing would not further elevate awareness of the plant's status and promote conservation efforts.

Response: The fact that the plants and their habitats have already received consideration in the environmental impact statement and biological assessment has already contributed to an awareness of them among parties involved in that project. However, other interested parties such as the World Conservation Centre are notified once a species is listed. Increasing awareness is only one reason for listing.

Issue 5: The Water District stated that there is not a serious present threat to the Penland beardtongue.

Response: Off-road vehicle use and mineral exploration are definite threats to the species. Off-road vehicle damage and mineral exploration have occurred in the area, and both are a threat to the species' fragile habitat.

Issue 6: The County stated that private lands around the reservoir are zoned at the least intensive county zoning designation, Forestry and Open.

Response: The Forest and Open zoning does require 20–60 percent open space in developments, but still allows lodges and cabins to be built. Therefore, surface disturbance of the habitat would still be possible.

Issue 7: The County stated that both species occur in the Pass Creek, Red Dirt Creek, and Troublesome Creek areas.

Response: All inventories by consultants and the Service through the 1988 field season have shown Penland beardtongue to be limited to just the Troublesome Creek area. The Service has not received any data documenting occurrences of Penland beardtongue at these other sites.

Issue 8: The County stated that only marginal habitat at the lower edges of the population would be damaged by inundation and bench sloughing.

Response: The plant density is naturally lower at the edge of an occurrence on the sideslopes of draws than at its center on the top of a bench. However, because of the plant's rarity and limited range, the edges of the occurrences are still important to its survival. They represent the potential expansion and enlargement of an occurrence. Also, bench sloughing around the reservoir would "eat" into the benches and hence the center of the occurrences where the highest densities of plants exist.

Issue 9: The County stated that past and present grazing impacts on the species may have been greater than the effect of a reservoir on a fringe of the population.

Response: Past grazing, particularly historically high numbers around the turn of the century, have significantly altered the pristine ecological condition of Middle Park. Because the plants grow best in open ecological settings with little vegetative competition, and past overgrazing has caused an increase in big sagebrush density, it is possible that the two plants were more common in the pristine habitat. Studies with habitat manipulation of sagebrush stands have been proposed in the Conservation Plan to test this hypothesis. If it is correct, then this is another factor endangering the plants above and beyond the reservoir and its secondary impacts. Current levels of grazing, which are much lower than historic levels, are probably not further endangering the plants.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Astragalus osterhoutii* and *Penstemon penlandii* should be classified as endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Astragalus osterhoutii* Jones (Osterhout milk-vetch) and *Penstemon penlandii* Weber (Penland beardtongue) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

A. osterhoutii and *P. penlandii* are both naturally rare species. *A. osterhoutii* has only one major population along Muddy Creek, with small scattered outlying colonies up to a distance of 6 miles away. *P. penlandii* is known only from one area, with two occurrences 2 miles apart along Troublesome Creek/Sulphur Gulch (which is also the eastern most area for *A. osterhoutii*). The badlands on which an estimated 5,000 individuals of *P. penlandii* occur are currently vulnerable to modification from off-road vehicle use because of their fragile soils, steep topography, and arid environment. There are dirt roads running through the badlands which provide easy access for off-road vehicle use. Off-road vehicle damage and mineral exploration have occurred on the area. The resulting modification of the habitat could result in a curtailment of the range for Penland beardtongue.

The major population of *A. osterhoutii* along Muddy Creek has an estimated 25,000 to 50,000 plants (personal observation; represents about 90 percent of the total for the species) on 132 acres and is threatened by the proposed Muddy Creek Reservoir. With construction of the high dam proposal at 7,485 feet elevation, 18 acres or 14 percent of the Muddy Creek population would be inundated. An alternative lower dam proposal at 7,475 feet would inundate 10 acres or 8 percent of the population (Bio/West 1988). Also, during flood stages there would be a short term rise of 8 to 10 feet in the reservoir level which would inundate an undetermined number of additional plants. Additional direct losses from reservoir construction could result from the raised water table through perennial soil saturation, and from surface disturbance due to construction activities such as road building, creation of borrow pits, and heavy equipment movement (Grah and Neese 1987). While direct inundation and bench sloughing would destroy habitat at the lower edges of the population, significant secondary impacts to the benches around the reservoir and along Alkali Slough and Pass Creek could occur with the building of recreation facilities and increased use of the area by people and off-road vehicles. The presence of the reservoir would likely stimulate private development within the plant's range near the reservoir. These potential secondary impacts would be the same for either dam height and could cause destruction, modification, or curtailment of Osterhout milk-vetch habitat or range.

Depending upon the degree of future recreational usage, secondary impacts from the Muddy Creek Reservoir may be even greater to the Osterhout milk-vetch than direct impacts from reservoir construction (Grah and Neese 1987). In addition to the direct impacts mentioned above, 80 acres, or 60 percent of the habitat of *A. osterhoutii*, could be threatened by secondary impacts from

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recreational activities associated with the Muddy Creek Reservoir proposal (Bio/West 1988). Proposed mitigation plans to offset direct and secondary impacts of the reservoir construction and recreation include management of the habitat remaining around the reservoir to minimize effects to the milk-vetch; fencing the habitat and designing public recreational facilities to minimize the impact on the species; protection of off-site populations; land exchanges; a monitoring program with possible habitat manipulation; and plant surveys for avoidance of the milk-vetch during construction.

Mining claims exist along Muddy Creek where the Osterhout milk-vetch occurs. Also, the density of *A. osterhoutii* has been observed to be lower in big sagebrush stands than in the adjacent open benchlands where it normally grows. It may be that the past grazing history has caused an increase in big sagebrush cover with a resultant canopy closure and modification of Osterhout milk-vetch habitat with loss of individuals through lowered densities of populations.

B. Overutilization for Commercial, Recreational, Scientific, or Education Purposes.

Taking for these purposes has not been documented. However, both plants have showy flowers and grow in accessible areas, thus both are vulnerable to collecting and vandalism.

C. Disease or Predation

No threats are known.

D. The Inadequacy of Existing Regulatory Mechanisms

There are no existing Federal or State laws which protect *A. osterhoutii* and *P. penlandii*. The Act would provide protection and encourage active management through the "Available Conservation Measures" discussed below.

E. Other Natural or Manmade Factors Affecting its Continued Existence

A. osterhoutii is an obligate outcrossing species (Karron 1989) that requires primarily ground-nesting bumble bees for pollination (Karron 1987b). Thus, its pollinators, as well as the plants themselves, could be impacted by surface disturbance. Also, a sufficiently large population size must be maintained to support pollination by outcrossing. Genetic studies by Karron *et al* (1988) using starch gel electrophoresis show that *A. osterhoutii* is already genetically depauperate, probably due to small population size. The studies also show that genetic differences exist between the Muddy Creek population and those east of Kremmling, emphasizing the need for protection of both sites.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Astragalus osterhoutii* and *Penstemon penlandii* as endangered. Both are restricted endemics occurring on a limited habitat, and with only one major population each. *A. osterhoutii* would be impacted directly by construction of the proposed Muddy Creek Reservoir, and secondarily by recreational uses and development around the reservoir. *P. penlandii* is vulnerable to off-road vehicle damage to its fragile habitat. There presently exists no opportunity for protection under existing legislation (State and Federal). For reasons given below, it is not considered prudent to propose designation of critical habitat.

Critical Habitat

Section 4(a)(3) of the Act requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for these species at this time because no benefit to the species can be identified that would outweigh the potential threat of vandalism or collection, which might increase if detailed critical habitat maps are published. Such maps would identify areas on public and private land, thereby making it more difficult for Federal enforcement agencies to protect the species. As discussed under Factor B in the "Summary of Factors Affecting the Species," both plants have showy flowers and grow in accessible areas, thus both are vulnerable to collecting and vandalism. Federal involvement in the areas where the plants occur can be identified without the designation of critical habitat. All involved parties and landowners will be notified of the location and importance of protecting these species' habitat, and such protection will be addressed through the recovery process and through section 7 procedures. Therefore, it would not be prudent to determine critical habitat for *A. osterhoutii* and *P. penlandii* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

A. osterhoutii and *P. penlandii* occur primarily on Federal land administered by the Bureau. The Bureau's involvement could include section 7 consultation on the proposed Muddy Creek Reservoir, monitoring the impacts of off-road vehicle use, and studying the effects of grazing systems on vegetative composition. The Army Corps of Engineers would also be involved in any section 7 consultation for the reservoir because of the need for a 404 permit. On both Federal and private land, the Service expects that listing would elevate the awareness of these plants' status and foster efforts aimed toward their conservation.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered species set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale these species in interstate or foreign commerce, or to remove and reduce to possession these species from areas under Federal jurisdiction. In addition, for listed plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. With regard to *A. osterhoutii* and *P. penlandii*, it is anticipated that few, if any, trade permits would ever be sought or issued because these species are not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Washington, DC 20038-7329 (703/358-2093).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited here is available upon request from Fish and Wildlife Enhancement Offices in Golden, Colorado (303/236-2675 or FTS 776-2675) or Grand Junction, Colorado (303/243-2778 or FTS 322-0351, see **ADDRESSES** above).

Author

The primary author of this final rule is John L. Anderson, botanist, U.S. Fish and Wildlife Service, Grand Junction, Colorado (303/243-2778; FTS 322-0351, see **ADDRESSES** above).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411; Pub. L. 100-478, 102 Stat. 2306; Pub. L. 100-653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the families Fabaceae and Scrophulariaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species						
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Fabaceae—Pea family						
Astragalus osterhoutii	Osterhout milk-vetch	U.S.A. (CO)	E	353	NA	NA
Scrophulariaceae—Snapdragon family						
Penstemon penlandii	Penland beardtongue	U.S.A. (CO)	E	353	NA	NA

Dated: June 12, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-16346 Filed 7-12-89; 8:45 am]

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federal register

Thursday
July 13, 1989

Part IV

Federal Emergency Management Agency

Federal Insurance Administration

Mandatory Purchase of Flood Insurance; Guidelines; Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Insurance Administration

Mandatory Purchase of Flood Insurance; Guidelines

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Issuance of guidelines.

SUMMARY: These Guidelines pertain to the mandatory flood insurance purchase requirements contained in sections 102(a) and 102(b) of the Flood Disaster Protection Act of 1973, as amended, (codified as sections 4012a(a) and 4012a(b) of 42 USC), (Pub. L. 93–234, 87 Stat. 975), December 31, 1973, and reflect experience gained by the Federal Insurance Administration (FIA) in its administration of the National Flood Insurance Program over the past twenty years following the enactment of the National Flood Insurance Act of 1968, as amended. (Pub. L. 90–448, 82 Stat. 572, 42 U.S.C. 4001–4128.) They revise and replace Guidelines previously published in the **Federal Register** on July 17, 1974, at pages 26186–93; as revised on February 17, 1978, at pages 7142–48; on March 22, 1978, at page 11862; and on July 21, 1980, at pages 48711 and 48712.

EFFECTIVE DATE: July 13, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Rose, Jr., Executive Assistant to the Federal Insurance Administrator, Federal Emergency Management Agency, Federal Insurance Administration, Washington, DC 20472, (202) 646–2780.

SUPPLEMENTARY INFORMATION: The implementation of the statutory mandatory flood insurance purchase requirements of the 1973 Act cited above is the responsibility of Federal Agencies and Federal Instrumentalities and does not rest upon the Federal Insurance Administration (FIA). However, section 205(b) of the 1973 Act (42 U.S.C. 4128(b)) provides that Federal Agencies and Federal Instrumentalities shall, in cooperation with the Director of the Federal Emergency Management Agency, issue appropriate rules and regulations to govern the carrying out of the Agencies' and Instrumentalities' responsibilities under the 1973 Act.

Pursuant to this mandate for cooperation, during the period in which FIA was a part of the United States Department of Housing and Urban Development, FIA issued Guidelines designed to provide such guidance concerning the insurance purchase requirements as might be helpful in promoting greater uniformity and understanding of the requirements among Federal Agencies, Federal Instrumentalities, private lending institutions, and their trade associations, and the public. Over the past ten years numerous questions of interpretation have arisen which have been discussed at many productive meetings between FIA and representatives of Federal Instrumentalities and Agencies. While FIA's Guidelines are not binding upon these groups, FIA was encouraged by the Federal Financial Institutions Examination Council to update the earlier G' delines, and the Council members, who have reviewed interim drafts of these Guidelines and offered valuable suggestions, have agreed to disseminate this final edition. FIA wishes to express its deep appreciation for the assistance and suggestions received not only from the Council, but from others within the Agencies and Instrumentalities involved in the mandatory flood insurance purchase requirements. In publishing these Guidelines FIA invites continuing dialogue with all interested parties.

Contents

The Guidelines are intended to provide guidance to Federal Agencies, Federal Financial Regulatory Agencies (defined by statute as Federal Instrumentalities), lenders, borrowers and the general public. They are divided into six sections, A through F, as follows:

Section A, an introduction describing the National Flood Insurance Program, and through a tracing of its legislative history providing the events and rational which led to the enactment of the mandatory flood insurance purchase requirement.

1. Statutory authority for the National Flood Insurance Program (NFIP).
2. Background history and brief description of the NFIP.
3. Status of studies and maps for the NFIP as of January 1, 1989.
4. Letters of Map Amendment and Letters of Map Revision.

Section B, describing the legislative background and the provisions of the Mandatory Flood Insurance Purchase Requirements of the 1973 Act, and listing six fundamental facts necessary for an understanding of the requirements.

1. Background and legislative history of the Flood Disaster Protection Act of 1973.
2. Basic description of Mandatory Flood Insurance Purchase Requirements.
3. Six basic components of the 1973 Act.

Section C, describing the application of the 1973 Act to Federal Officers and Agencies.

1. Federal Agencies defined.
2. Application of the 1973 Act to Federal Officers and Agencies in communities participating in the NFIP.
3. Effect of Letters of Map Amendment and Letters of Map Revision on the flood insurance purchase requirement.
4. What is "Financial Assistance" under the 1973 Act?
5. How much flood insurance is available?
6. How much flood insurance must be purchased?
7. Mandatory Flood Insurance Purchase Requirements as determiend by the Small Business Administration.
8. Restrictions on Federal Financial Assistance by Federal Officers and Agencies in non participating communities

Section D, describing the application of the 1973 Act to Federal Instrumentalities and private lenders subject to their jurisdiction.

1. Application of the 1973 Act to Federal Instrumentalities and to private lenders
(a) Federal Instrumentalities defined
(b) Legislative purposes and specific mandate
(c) How much flood insurance must be purchased, for how long, and to what transactions does the purchase requirement apply?
2. Coastal Barrier Resources Act (COBRA)
3. Effect of Letters of Map Amendment and Letters of Map Revision
4. Application of 1973 Act upon conventional loans in non participating communities
(a) What is a conventional loan?
(b) Authority for lenders to make conventional loans in special flood hazard areas of non participating communities
(c) Notification requirements and Notice Form

Section E, consisting of Guidelines to an Interpretation of the 1973 Act, with 9 subsections discussing:

1. Standards by which lenders Are judged
(a) Significance of the location of the structure
(b) Examination of the map
(c) The "Good Faith Standard"
(d) The Lender's reliance upon assistance
(e) Who must make determinations?
(f) What is determined?
(g) How to record that a determination was made
(h) The ultimate responsibility of the lender
2. Should the amount of insurance required reflect the value of the land?
(a) The 1973 Act refers to buildings and mobile homes
(b) What the NFIP Policy covers
(c) What if the loan is secured only by land upon which there are no structures?
(d) What if a detached garage of a residential property, to which 10% of the principal structure's insurance is applicable, is in the special flood hazard area, while the principal structure is outside and what is the status of a tool shed or shack similarly located?
3. What is the impact of the flood insurance purchase requirement if improvements on the real property are of nominal value, and the purpose of the loan transaction is primarily to facilitate the purchase of land for subsequent development?
(a) Status of surplus buildings of nominal value on land purchased for development
(b) What if there is a structure in a special flood hazard area which is being used for residential or commercial purposes on land whose value alone would be sufficient to secure the loan without regard to the value of the building?
(c) NFIP deductibles and definition of structure
(d) Buildings in the course of construction
4. Unavailability of flood insurance for specific buildings in communities participating in the NFIP
(a) Coastal Barrier Resources Act (COBRA)
(b) Section 1316 of the 1973 Act and buildings in violation of State or local laws
(c) Section 1316, as applicable to Federal Officers and Agencies
(d) NFIP underwriting restrictions in eligibility or availability of flood insurance
5. Applicability of the 1973 Act to purchase of mortgages by lenders
6. Acceptance of private flood insurance policies and "Write Your Own Policies"
7. Lenders' remedies in the event of prior failure to require flood insurance
8. Home Equity Loans under the 1973 Act
9. Federal Financial Institutions Council Interagency examination procedures and examiner checklist for compliance

Section F describing requirements of the 1973 Act as to Condominiums

1. Insurance/Property repair responsibilities of Condominium Associations
2. Lenders' Interest
3. Nature of condominium ownership/lenders exposure
4. Peril of flood
5. Changes in the market place
6. NFIP coverage—satisfying lender requirements
7. Residential coverage—unit owner
8. Residential coverage—Condominium Association
9. Condominium Master Policy (CMP) under the NFIP
10. Non-residential coverage—Condominiums
11. Coverage options
(a) Individual Dwelling Policy
(b) General Property Policy
(c) Condominium Master Policy

An index follows these sections

A. Introduction

1. Statutory Authority for the National Insurance Program

The National Flood Insurance Program (NFIP) became effective on January 28, 1969, (33 FR 17804) and was authorized by the National Flood Insurance Act of 1968, (Title XIII of the Housing and Urban Development Act of 1968, as amended, Public Law 90–448, 82 Stat 476, 48 U.S.C. 4001–4128). The position of Federal Insurance Administrator was authorized by the Urban Property Protection and Reinsurance Act of 1968, (Title XI of the Housing and Urban Development Act of 1968, and the Federal Insurance Administration was established under the Housing and Urban Development Act of 1968 as part of the United States Department of Housing and Urban Development (HUD). The Secretary of HUD delegated to the Federal Insurance Administrator the responsibility for administering the NFIP.

Subsequently, on June 19, 1978, President Carter forwarded to the Congress Reorganization Plan No. 3 of the 1978 (43 FR 41493) (which had the effect of a Federal statute). This Plan, in addition to creating the Federal Emergency Management Agency (FEMA), transferred the functions authorized and described in the National Flood Insurance Act of 1968 and the position of Federal Insurance Administrator to FEMA. The organization of FEMA was further defined in Executive Order 12127, dated March 31, 1979 (44 FR 19367) and Executive Order 12148, dated June 20, 1979. On April 1, 1979, in a notice published in 44 FR 20962, and later codified at 44 CFR 2.64, the Director of FEMA delegated responsibility for the administration of the NFIP to the Federal Insurance Administrator of the Federal Insurance Adminstration (FIA), which had become a Directorate within FEMA.

2. Background History and Brief Description of the National Flood Insurance Program

Between 70 and 80 percent of all natural disasters in the United States involve flooding, and from its earliest days the Federal government has been involved with the peril of flooding. Through re-channeling, or through dams and levees, restricting the flow of waters, as well as through the development of hydroelectric power and irrigation, the Federal government has attempted to ameliorate the effects of flooding. But in spite of all these actions, vast sums of money have had to be expended through the response mechanism of Federal Disaster Assistance.

In 1968 the Congress embarked upon a new course of action and focused upon ways in which flood damage could be avoided or reduced by making the public aware of its potential exposure to flooding and by providing, through the authorization of a Federal flood insurance program, an incentive to encourage communities to adopt floodplain management ordinance that would mitigate the effects of flooding upon new construction. Taking note of the fact that insurance coverage against the peril of flooding was virtually unavailable in the private sector, the Congress enacted the National Flood Insurance Act of 1968, and authorized the National Flood Insurance Program, which represented a new approach to assisting the victims of flooding by providing an opportunity for property owners to purchase from the Federal government insurance protection for structures and contents exposed to the peril of flooding.

Because the availability of government flood insurance without hazard mitigation would only have increased the potential for flood damage by encouraging unwise construction, FIA was directed under the 1968 Act to conduct studies throughout the United States to determine in each community the location of areas of special flood hazard and to issue Flood Hazard Boundary Maps (FHBM) and Flood Insurance Rate Maps (FIRM) showing the location of these areas and to notify each community of such identification. Eligibility for the purchase of flood insurance was made available only to those individuals or corporations whose insurable property is located within a community that has agreed with the Federal government to adopt ordinances that will mitigate the impact of future flooding. The most significant of these required ordinances are those which, for example, condition the issuance of building permits for new residential construction in areas of special flood hazard upon the requirement that the building be constructed so that the lowest floor will be located above the base flood elevation, if that figure is provided on a Flood Insurance Rate Map issued by FIA.

Participating communities that fail to adequately enforce their flood plain management ordinances may be placed on probation if they do not take corrective actions within a specified time period. NFIP policyholders in that community will be notified of the pending probation and that their policies may become subject to a surcharge on their flood insurance premiums. If a community which has been placed on probation fails to bring its floodplain management program into compliance with the NFIP requirements, it may be suspended from the NFIP, a step which would terminate its status as a participating community. In that event NFIP policies would not be renewed for property owners in that community and no new policies would be issued. Experience shows that the probation process leads to compliance and, as of January 1989, only three communities have had to be suspended for lack of compliance. However, communities are routinely suspended for failure to adopt or amend their floodplain management ordinances to incorporate new flood hazard information or revisions of NFIP regulations. Experience shows that within a very short time most of these communities become participating again.

3. Status of Studies and Maps for the National Flood Insurance Program as of January, 1989

Some 18,642 communities have been identified as flood prone through the publication of a flood map by FIA. The total number of communities participating in the NFIP is 17,797, including some 1,851 communities for which no special flood hazards have been identified and for which no map has been published. Property owners within these participating communities are eligible to purchase flood insurance to protect buildings located anywhere within such communities, both inside and outside of special flood hazard areas (subject to restrictions of the Coastal Barrier Resources Act, discussed below). Some 2,700 communities which have been mapped do not presently participate, and property owners in those communities are not eligible to purchase flood insurance.

While these figures constantly change, as a benchmark it may be useful to record the fact that as of January, 1989, of the 17,797 participating communities, 16,537 are in the Regular Program. Their property owners, therefore, are eligible to purchase the maximum amounts of insurance coverage available under the Program.

Presently, only 1,260 participating communities remain in the Emergency Program phase, where only limited amounts of insurance are available. Flood risk studies currently underway in these communities are scheduled for completion before September 30, 1991. Upon their completion, Flood Insurance Rate Maps will be issued and will replace the Flood Hazard Boundary Maps currently in effect for each of these communities. At that time, these communities will, also, be eligible for conversion to the Regular Program phase and eligibility for higher amounts of insurance coverage.

Special flood hazard areas are determined with reference to the "100-year" flood standard, which is the national standard on which NFIP regulations are based. It is also the standard adopted by virtually every federal agency and most state agencies for the administartion of their floodplain management programs. The 100-year flood, also referred to as a base flood, is defined as the flood having a 1 percent probability of being equalled or exceeded in any given year. The risk of experiencing a flood of this magnitude increases with the length of time considered.

Of special interest to lenders is the fact that within the special flood hazard area there is a 26 percent chance (about 1 in 4) of experiencing such a flood over a typical 30 year mortgage period. By contrast, during the term of a 30 year mortgage, there is only a 1 percent chance of suffering a fire loss.

But, while necessary for applying floodplain management requirements and establishing uniform flood insurance rates, the term 100-year flood can be misleading. Although it represents the long term average recurrence interval for a flood of this magnitude, such floods may be experienced in any given year. There have been numerous instances since the NFIP was established where communities have sustained two, and even three, 100-year or greater floods within a several year period. A notable example took place in the 1970s when within 5 years after experiencing Tropical Storm Agnes in 1972, Pennsylvania was batterd by another 100 year flood, demonstrating the value of the standard as a tool for measuring exposure to a 100 year flood, but not for predicting its timing. The 100-year flood might be more properly termed the "one percent annual chance flood", which represents its true probability of being equalled or exceeded in any year.

Special flood hazard areas include only those areas which are in the 100-year floodplan. The delineation of areas subject to such inundation is determined by FEMA through engineering studies. Special flood hazard areas are usually refined into Zones A, AO, AH, AE, A99, VO, VE, or V. (Older maps utilize numbered A Zones, eg. A1, A2, A30, and numbered V Zones, eg. V1, V2, V30 in lieu of the newer AE and VE Zones, respectively. (New maps use fewer zone designations for purposes of simplicity). The term special flood hazard area does not include areas outside the 100-year floodplain, which are referred to as moderate to minimal risk and are designated Zone X. (Older maps differentiate the X Zone into Zones B and C, which represent moderate and minimal flood risks, respectively). Areas for which no flood hazard evaluation has been made by FEMA are designated as Zone D.)

4. Letters of Map Amendment or Map Revision Removing Properties From Special Flood Hazard Areas

Situations occasionally arise in which a piece of real property is shown on a flood map as being in a special flood hazard area even though the property is, in fact, above the 100 year flood level. This happens because flood insurance maps cannot reflect every rise in terrain and there will be instances where there will be "natural islands" of high ground in the special flood hazard area that were inadvertently included in the special flood hazard areas. Nevertheless, until the map has been changed, lenders are bound by the information shown on FIA maps and cannot validly make a determination on their own that is inconsistent with the map.

Fortunately, there is a very workable mechanism for resolving such problems. FIA has created an efficient procedure by which a property owner can submit elevation materials in support of a request for a Letter of Map Amendment (LOMA) removing the property from the special flood hazard area. Such a process involves only the property owner and the FIA and does not require that the community become involved.

A related but different situation is presented when a property owner, whose land is within a special flood hazard area below the 100 year flood level, grades and fills the site to raise the level of the land above the 100 year flood level. This situation differs from the one above because in the previous situation the natural level of the land at the time that the map was issued was above the 100 year flood level and no artificial improvement was needed to accomplish that level. In cases where physical changes have had to be made to raise the level of the property above the base flood elevation, FIA will not issue a letter of map amendment. However, with the concurrence of the community FIA will issue a Letter of Map Revision (LOMR) which, for the purposes of the property owner will accomplish the same purpose. A LOMR can also be used to correct a mistake made in the original analysis or when conditions have changes as in the case of the construction or removal of a dam or other flood control structure.

The request must be made by, or concurred in, by the community because changes in land level that result from grading and the placing of fill on the property may have an impact upon other property owners. The submission of a request for a letter of map revision from the community evidences that the change in land level has been reviewed by the community and been found to be compatible with the community's planning. Letters of map revision may also be granted in situations where channels have been dug or reservoirs built to reduce base flood elevations and where levees or floodwalls have been constructed to protect areas. (It should be noted that in floodways of special flood hazard areas, which include the channel of a river and the adjacent flood-plain that must be reserved in an obstructed condition, the placing of fill or other development is not allowed if it will result in increased flood levels.)

A seemingly related, but different, situation is presented when a property owner, whose land is at a level below the 100 year flood level, i.e. the base flood elevation, in a special flood hazard area, builds an elevated building, supported by walls or pilings, whose lowest floor is above the 100 year flood level. In this situation there is no basis for the issuance of either a letter of map amendment or map revision. The building is still in the designated special flood hazard area and its foundation can come into direct contract with flood waters. However, the elevation of the building will be reflected in the lower insurance rate and premium that such elevation will have made possible.

Only the Federal Insurance Administration can amend an official map to remove or add a particular property location from a designated SFHA by a Letter of Map Amendment, or revise a map by a Letter of Map Revision to change the special flood hazard area or revise the elevations on a map.

B. The Mandatory Flood Insurance Purchase Requirement

1. Background and Legislative History of the Flood Disaster Protection Act of 1973

From 1968 until the adoption of the Flood Disaster Protection Act of 1973, the purchase of flood insurance was voluntary. Unfortunately, despite the availability of the insurance, after major flooding disasters in 1972 it became evident that relatively few flood victims had purchased flood insurance. From the standpoint of the Federal government the question has been not whether the Federal government would be called upon to provide relief to those who suffered from flooding, but, rather, through what mechanism would Federal funds be made available. Therefore, the failure of the public to avail itself of the benefits of flood insurance as an alternative to the disaster assistance approach became a matter of concern to the Congress.

This concern was expressed by the Congress in the findings contained in sections 2(a) (2), (3), (4) and (5) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4002), which noted "the availability of Federal loans, grants, guaranties, insurance, and other forms of financial assistance are often determining factors in the utilization of land and the location and construction of public and private industrial, commercial and residential facilities" and that "property acquired or constructed with grants or other Federal assistance may be exposed to risk of loss through floods, thus frustrating the purpose of which such assistance was extended" and that "the Nation cannot afford the tragic losses of life caused annually by flood occurrences, nor the increasing losses of property suffered by flood victims, most of whom are still inadequately compensated despite the provision of costly disaster relief".

The Congress defined its purpose in section 2(b)(4) of the 1973 Act as being to "require the purchase of flood insurance by property owners who are being assisted by Federal programs or by Federally supervised, regulated, or insured agencies or institutions in the acquisition or improvement of land or facilities located or to be located in identified areas having special flood hazards".

2. Basic Description of Mandatory Flood Insurance Purchase Requirements, as Contained in the Flood Disaster Protection Act of 1973

Since March 2, 1974, the Flood Disaster Protection Act of 1973, hereinafter the "1983 Act", has required the purchase of flood insurance as a condition of receiving any form of Federal or Federally related financial assistance from any Federal officer or agency for acquisition or construction purposea with respect to any building or mobile home located in any area that has been identified by the Director of the Federal Emergency Management Agency as a special flood hazard area, within any community participating in the National Flood Insurance Program. (Recent terminology adopted by the Department of Housing and Urban Development and regulatory changes in the language of the National Flood Insurance Program's Standard Flood Insurance Policy refer to "mobile homes" as "manufactured homes.")

The act also requires Federal Financial Regulatory Agencies (Federal Instrumentalities) to direct lenders subject to their regulatory jurisdiction to require borrowers, whose security consists of buildings or mobile homes located in a special flood hazard area in a participating community, to purchase flood insurance. Contents coverage is not required unless, as specified in the statute, there is any "personel property securing the loan".

3. Six Fundamental Components of the 1973 Act

In assessing the impact of the 1973 Act and gaining an understanding of its provisions, the six most important factors to keep in mind are:

(a) Although the intent of the statute is to require the purchase of flood insurance by borrowers in special flood hazard areas, the directives and prohibitions contained in the 1973 Act apply only to Federal officers and agencies, and to Federal Instrumentalities that are required by the statute to issue implementing rules. The 1973 Act, by itself, does not require or prohibit action on the part of communities, owners of improved real property, or lending institutions.

(b) The directives and prohibitions of the 1973 Act require implementing rules only as to transactions that involve improved real estate located in special flood hazard areas designated by FEMA on its Flood Hazard Boundary Maps and Flood Insurance Rate Maps. Improved real estate for purposes of the act, is property on which there is already standing, or in the course of construction, a walled and roofed building insurable under an NFIP flood insurance policy.

(c) Inasmuch as the NFIP does not insure land and provides coverage only for buildings, the fact that part of the borrower's real property may be located in a special flood hazard area does not require that flood insurance be purchased for a building located on that real property unless some portion of the building itself, and not just a portion or portions of the real property, is located in a special flood hazard area.

(d) Because the NFIP and its flood insurance policies are not available in communities that are not participating in the NFIP, the mandatory flood insurance purchase requirement applies only with respect to property located in special flood hazard areas in communities participating in the NFIP.

(e) As to properties located outside the special flood hazard areas, and whose Zone designations are B, C, X, or D, the 1973 Act does not apply and, therefore, there is no mandatory flood insurance purchase requirement.

(f) Lenders are free to consider requiring flood insurance in a participating community on the basis of their own business judgment, even if the building that is the security for a loan is located outside of a special flood hazard area.

While the mandatory flood insurance purchase requirement applies only to properties located in special flood hazard areas of participating communities, it is important to remember that flood insurance is available throughout participating communities. This is especially significant in light of the fact that, historically, the NFIP's loss ratio

indicates that one-third of claims paid have actually been outside of special flood hazard areas. Areas where lenders and property owners may wish to exercise additional caution include, but are not limited to, areas subject to flooding due to stormwater, areas where the NFIP has used approximate methods to map flood hazard areas, and the more remote areas where no flood hazard areas have been designated by FEMA. To facilitate the purchase of flood insurance outside of special flood hazard areas, in January, 1989, the NFIP began offering a low cost "preferred risk" policy for structures located in Zones B, C, and X.

Some properties in a participating community may be ineligible for flood insurance because of statutory restrictions or underwriting rules of the NFIP. The consequences of the unavailability of flood insurance in such instances will be discussed further along.

C. Application of the 1973 Act to Federal Officers and Agencies

1. Federal Agencies Defined.

Federal Agencies are defined in section 3(a)(2) of the 1973 Act, 42 U.S.C. 4003(a)(2), as "any department, agency, corporation, or other entity or instrumentality of the executive branch of the Federal Government, and includes the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation".

2. Application of the 1973 Act in Communities that are participating in the National Flood Insurance Program.

The first application of the mandatory flood insurance purchase provision of the 1973 Act is contained in section 102(a), 42 U.S.C. 4012a(a), which addresses the responsibility of Federal officers and agencies in approving financial assistance for acquisition or construction purposes for use in any special flood hazard area in communities that are participating in the NFIP. A community participates in the NFIP by entering into an agreement with the FIA to adopt and enforce ordiances which are designed to reduce the vulnerability of property in that community to the peril of flooding. In return for that participation, most owners of residential and commercial property in that community become eligible to purchase flood insurance for their buildings from the NFIP. If the community is participating in the NFIP, that participation makes flood insurance available to the property owners in that community and Federal officers and agencies are authorized to provide financial assistance in that community.

But, under section 102(a) of the 1973 Act, Federal officers and agencies are prohibited from providing financial assistance unless the property to which that financial assistance is applicable is protected by flood insurance (if the particular property is eligible for flood insurance under the rules of the NFIP) and must, therefore, require the purchase of flood insurance as a condition of making such financial assistance available. The term "property" to which the mandatory flood insurance purchase requirement applies is described as "the building or mobile home and any personal property to which such financial assistance relates". The flood insurance must remain in force "during the anticipated economic life of the project" and the insurance coverage must be "in an amount that is at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available under the National Flood Insurance Act of 1968, whichever is less." (But note that when the amount of flood insurance that can be purchased was raised by the Congress in 1977, a statutory cap on the amount that must be purchased was established by the Congress.)

3. Effect of Letters of Map Amendment and Map Revision Upon Purchase Requirement

Questions are frequently asked concerning buildings that are located on ground that is shown as being in a special flood hazard area, but that is actually above the 100 year flood level. As noted above, under Section A 4., there are procedures under which a Letter of Map Amendment or a Letter of Map Revision can be obtained which will take the particular portion of real property and the improvements thereon out of the special flood hazard area. However, it is important to keep in mind that until a property owner has received a Letter of Map Amendment or a Letter of Map Revision, removing the improved real property from the special flood hazard area, Federal agencies (as well as lenders regulated by Federal Instrumentalities) must rely only upon flood hazard boundary maps and flood insurance rate maps.

Thus, if a building is shown as being in a special flood hazard area, the purchase requirements of the 1973 Act apply. When the property owner obtains a Letter of Map Amendment of Letter or Map Revision, he may submit the letter to the Federal agency and the Federal Agency may release the property owner from the obligation to purchase flood insurance. However, even though a Federal Agency is not required to compel the purchase of flood insurance with respect to improved real property that is subject to a letter of map amendment or map revision, the Agency has the discretionary right to continue to require flood insurance if the Agency chooses to do so. It must also be kept in mind that when a property owner with property below the 100 year flood level builds an elevated building whose lowest floor is above the 100 year flood level, there is no basis for the issuance of either a letter of map amendment or map revision and the flood insurance purchase requirement continues to apply. The reason for requiring the insurance is that the foundation on which the house is elevated is still below the base flood elevation in the special flood hazard area where it remains exposed to the action of floodwaters.

4. What is "Financial Assistance"?

Federal "financial assistance" and "federal financial assistance" for acquisition or construction purposes are defined in sections 3 (a)(3) and (4) of the 1973 Act. (42 U.S.C. 4003), "Financial assistance" is defined as any "loan, grant, guaranty, insurance, payment, rebate, subsidy, disaster assistance loan or grant," or any other form of "direct or indirect Federal assistance, other than general or special revenue sharing or formula grants made to States." and similar forms of direct and indirect assistance from Federal agencies, such as Federal Housing Administration or Veterans Administration loans, insurance or guaranties.

Federal "financial assistance for acquisition or construction purposes" is defined as "any form of financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair, or improvement of any publicly or privately owned building or mobile home, whether or not the building is enhanced, and for any machinery, equipment, fixtures, and furnishings contained or to be contained therein, and shall include the purchase or subsidization of mortgages or mortgage loans."

Federal Agencies, such as the Federal Housing Administration, the Veterans Administration and the Small Business Administration and the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC), the latter two having been specifically included in the definition contained in section 3(a)(2) of the 1973 Act, are forbidden by the Act from approving any financial assistance in the form of a loan or guaranty of a loan in the case of a building to which such financial assistance relates which is located in a special flood hazard area unless flood insurance has been purchased to protect that building against the peril of flooding, thereby protecting the interests of the Federal entity against the consequences of flood damage to the property.

The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation of the Department of Housing and Urban Development have interpreted the term financial assistance to include their purchase of mortgage loans from lending institutions and include in their definition of hazard insurance, the peril of flood. It should be noted that the servicing guidelines of FNMA and FHLMC require that the current servicer of loans sold to those agencies assume responsibility for flood insurance renewals. The term Federal financial assistance includes loans, grants, guarantees and similar forms of direct and indirect assistance from Federal agencies such as HUD, the Federal Housing Administration (FHA) and the SBA.

The 1973 Act applies and thus restricts flood related Federal financial assistance pursuant to the Disaster Relief Act of 1974. However, the current definition of financial assistance contained in section 3(a)(4) of the 1973 Act does not apply to and, therefore, does not restrict assistance for disasters that are not related to flooding.

5. How Much Flood Insurance is Available?

The amounts of flood insurance currently available under the NFIP are as follows:

	Emergency Program	Regular Program Maximum insurance available	[1] Maximum amount of insurance Required by 1973 Act, as Amended in 1977
Building Coverage:			
Single-family dwelling	$35,000	$185,000	$70,000
Other residential	100,000	250,000	200,000
Non-residential	100,000	200,000	200,000
Small Business	100,000	250,000	200,000
Contents Coverage (per unit):			
Residential	10,000	60,000	20,000
Non-Residential	100,000	200,000	200,000
Small Business	100,000	300,000	200,000

(Higher limits of basic coverage are available under the Emergency Program in Hawaii, Alaska, U.S. Virgin Islands, and Guam.)

[1] Federal instrumentalities, as well as lenders, while not required by statute, may choose to require insurance above this amount on the basis of their evaluation of the risk to which the property is exposed.

6. How much Flood Insurance Must be Purchased?

In addressing the question of how much insurance must be purchased, section 102(a) of the 1973 Act prohibits the providing of financial assistance "unless the building or mobile home and any personal property to which such financial assistance relates is, during the anticipated economic or useful life of the project, covered by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less; *Provided,* That if the financial assistance provided is in the form of a loan or an insurance or guaranty of a loan, the amount of flood insurance required need not exceed the outstanding principal balance of the loan and need not be required beyond the term of the loan".

However, on October 12, 1977 the requirement that insurance be purchased to "the maximum limit of coverage made available" under the 1968 Act was revised and made subject to a statutory cap by section 1306(b)(6) of the National Flood Insurance Act of 1968, (42 U.S.C. 4013(b)(6)), which states:

> * * * the Flood insurance purchase requirements of Section 102 of the Flood Disaster Protection Act of 1973 do not apply to the additional flood insurance limits made available in excess of twice the limits made available under paragraph 1306(b)(1).

Section 1306(b)(1) authorizes the Federal Insurance Administration to make available under the lower limits of the Emergency Program $35,000 of coverage for any single family dwelling and $100,000 for any residential structure containing more than one dwelling unit. (In the States of Alaska and Hawaii and in the Virgin Islands and Guam the figures are $50,000 and $150,000). Section 1306(b)(1) makes available $100,000 for commercial structures. Thus the maximum cap on the mandatory flood insurance purchase requirements provided by section 1306(b)(6) is two times these amounts, namely, $70,000 for single family dwellings, and $200,00 for other structures.

7. Are the Amounts of Flood Insurance That Must Be Purchased Always the Same, Regardless of Which Federal Agency or Instrumentality Is Responsible for Enforcing the Flood Insurance Purchase Requirement?

In the exercise of its statutory responsibilities the Small Business Administration has made an interpretation of the statutory provisions cited above and requires insurance up to the value of a property, or the maximum amount of insurance that can be purchased, whichever is less, regardless of the actual amount of the loan. In this way the borrower becomes more fully protected against the peril of flooding. While the Act does not require insurance to value, a practice normal in property insurance, neither does it prohibit it, and SBA has used its authority to align the treatment of flood insurance with the standard treatment of other hazard insurance.

The basic amounts of insurance required by statute are discussed above in Section C 5. of these guidelines. Some of the Federal agencies, however, such as the Federal National Mortgage Association (FNMA), have adopted different requirements to protect their interests. The FNMA requires, "the amount of flood insurance to be equal to the lesser of 100% of the insurable value of the (condominium) facilities or the

maximum coverage available under the appropriate National Flood Insurance Administration program * * *." Thus, for a lender to be absolutely sure that it is complying with the specific requirements of the Federal agency that regulates, supervises or insures that institution, it should carefully review the requirements of such agencies or Instrumentalities and not rely solely on these guidelines.

In those cases where the amount of the loan or the insurable value of the property exceeds the statutorily required amount of flood insurance, it would seem to be a wise business practice to encourage the purchase of enough flood insurance to protect the interests of both the mortgagor and the mortgagee, to the extent that such interests can be protected, by the coverages under the NFIP.

8. Restriction on Federal Financial Assistance by Federal Officers and Agencies in Communities that are not participating in the National Flood Insurance Program

Section 202(a) of the 1973 Act (42 U.S.C. 4106(a)) addresses the responsibility of Federal officers and agencies with respect to federal financial assistance in areas of special flood hazard of communities that are not participating in the National Flood Insurance Program and in which flood insurance is not available. In order to prevent the Federal government from being financially exposed to potential loss as a result of flood damage to uninsured buildings located in areas of special flood hazard, Federal officers and agencies are specifically prohibited by section 202(a) from providing financial assistance for acquisition or construction purposes, for use in areas of special flood hazard if the community is not participating in the NFIP.

Section 202(a), read by itself, has a very broad scope, for its prohibition refers to any assistance for acquisition or construction purposes that would be used in any special flood hazard area. However, read in conjunction with the definition of financial assistance contained in paragraph (4) of section 3 of the 1973 Act, as discussed above, it becomes clear that section 202(a) limits financial assistance to "financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair, or improvement of any publicly or privately owned building or mobile home, and for any machinery, equipment, fixtures, and furnishings contained or to be contained therein".

Thus, for example, section 202(a) does not prevent financial assistance for the construction of roads and bridges in special flood hazard areas of non participating communities. But it does prohibit assistance for constructing any building. This prohibition applies even if the building would not have been eligible for flood insurance had it been located in a participating community, as in the case of a building that is partially underground and used as a pumping station in a sewer system. The prohibition against providing financial assistance in non participating communities, therefore, is based not so much upon the fact that the protection of NFIP flood insurance is not available in non participating communities as it is to the fact that the community has not agreed to mitigate the hazard of flooding through floodplain management.

D. Application of the 1973 Act to Federal Instrumentalities and to Private Lenders Who are Subject to Their Jurisdiction

Of special significance to Federal Instrumentalities and the lenders regulated by, or whose deposits are insured by, the Instrumentalities is the second area to which the 1973 Act applies in sections 102(b) and 202(b), which address conventional loans by such lenders, as distinguished from Federal financial assistance.

1. In Communities That are Participating in the National Flood Insurance Program and Where Federal Flood Insurance can Therefore be Made Available

(a) Instrumentalities Defined

The term "Federal Instrumentality" is defined in section 3(a)(5) of the 1973 Act (42 U.S.C. 4003(a)(5)), as the "Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, and the National Credit Union Administration."

(b) Legislative Purpose and Specific Mandate

The purpose behind these Sections is seen in the Congressional finding in section 2(a)(4) of the 1973 Act that "Federal Instrumentalities insure or otherwise provide financial protection to banking and credit institutions whose assets include a substantial number of mortgage loans and other indebtedness secured by property exposed to loss and damage from floods and mudslides". As noted above, the Act does not, by itself, require or prohibit activities on the part of lenders. Section 102(b) of the Act (42 U.S.C. 4012a(b)) directs the Federal Instrumentalities to adopt regulations requiring lenders subject to their jurisdiction to compel borrowers to purchase flood insurance protecting any "improved real estate or mobile home" located in a special flood hazard area in a community that is eligible for the purchase of National Flood Insurance, if the building, mobile home, and any personal property securing such loan, is to be the security for the loan. (The requirement only applies if the particular property is eligible for flood insurance under the rules of the NFIP.)

(c) How Much Insurance Must be Purchased and for How Long Must it be in Force, and to What Transactions Does the Requirement Apply?

The Act requires that "the building or mobile home and any personal property securing the loan" be covered "for the term of the loan by flood insurance in an amount at least equal to the outstanding principal balance of the loan, or to the maximum limit of coverage made available with respect to the particular type of property under the Act, whichever is less". However, as noted above, on October 12, 1977, the requirement that insurance be purchased to "the maximum limit of coverage made available" under the 1968 Act was revised by section 1306(b)(6) of the National Flood Insurance Act of 1968, (42 U.S.C. 4013(b)(6)), and made subject to a statutory cap of twice the limits made available under paragraph 1306(b)(1).

The specfiic language of the Act describes very broadly the transactions that come within the purchase provisions and includes instances in which lenders "make, increase, extend, or renew any loan secured by improved real property or a mobile home located or to be located" in a special flood hazard area of a community "in which flood insurance has been made available under the National Flood Insurance Act of 1968". This also includes such transactions as second mortgages and home equity loans.

Note: In all of these instances, lenders should be aware that, subject to available policy limits, they have the discretion to require higher amounts of coverage than required by law if they consider it necessary to protect the full amount of their interests, as well as those of the borrowers.

2. In Portions of Participating Communities That Have Been Designated by the Department of the Interior as Undeveloped Areas Under The Coastal Barrier Resources Act (COBRA)

While ordinarily almost any building in a community that is participating in the NFIP is eligible for flood insurance, there is one significant situation in which Congress has chosen to deny residents of a participating community eligibility for flood insurance. The Coastal Barrier Resources Act (COBRA), Pub. L. 97-348, was adopted by Congress in October of 1982 to amend the National Flood Insurance Act of 1968, as amended, by adding section 1321 (42 U.S.C. 4028). Section 1321 prohibits the NFIP from providing flood insurance protection for structures built or substantially improved after October 1, 1983, in any of the areas designated by the Department of the Interior as an undeveloped coastal barrier.

Buildings already located in the designated areas and walled or roofed prior to October 1, 1983 remain eligible for coverage. If a building built in a designated area prior to October 1, 1983 sustains major damage as a result of a fire, hurricane or other causes, the restored structure would not be eligible for flood insurance coverage. Major damage is considered to be damage in an amount of 50% or more of the structure's pre-damage fair market value. Similarly, improvements to a structure built prior to October 1, 1983, on a designated undeveloped coastal barrier area which total 50% or more of the structure's pre-improvement fair market value would eliminate the structure's eligibility for coverage under the NFIP. Only the undeveloped coastal barrier portion of each community is affected by COBRA's insurance limitation. The remainder of the participating community remains eligible under the NFIP for flood insurance coverage for new and existing construction.

The Department of the Interior was assigned the task of determining which of the coastal areas were undeveloped coastal barriers and of submitting a list to the Congress. The final Congressional designation included 187 undeveloped portions of 134 coastal communities. Additional areas are currently under consideration for inclusion in the Coastal Barrier Resources System. The question as to whether any requirements are placed upon lenders who wish to make conventional loans with respect to uninsurable property on an undeveloped coastal barrier in a special flood hazard area of a participating community is specifically answered by section 1321 of the 1968 Act, (42 U.S.C. 4028). That section provides:

> A federally insured financial institution may make loans secured by structures which are not eligible for flood insurance under this title by reason of subsection (a).

Thus, while lenders would still have to notify borrowers that the property was in a special flood hazard area, as required by Section 1364 of the 1968 Act, the unavailability of flood insurance does not prevent the making of the conventional loan. However, the lender would be well advised to assess the flood risk at the site and make a decision on granting the loan based on that assessment.

3. In Communities That are Participating in the NFIP—Property Subject to Letters of Map Amendment or Map Revision

As noted above, there are procedures under which a Letter of Map Amendment or a Letter of Map Revision can be obtained which will take the particular portion of real property, and the improvements thereon, out of the special flood hazard area. However, it is important to keep in mind that until a property owner has received a Letter of Map Amendment or Letter of Map Revision, the lender must rely upon flood hazard boundary and flood insurance rate maps. If a particular piece of property is shown as being in a special flood hazard area, the lender is bound by the information and must apply the insurance purchase requirements of the 1973 Act in accordance with the map.

However, even though a lender is not required to compel the purchase of flood insurance with respect to improved real property that is subject to a letter of map amendment or map revision, the lender has the discretionary right to continue to require floor insurance if the lender chooses to do so. When a property owner with property below the 100 year flood level builds an elevated building whose lowest floor is above the 100 year flood level, there is no basis for the insurance of either a letter of map amendment or map revision and the flood insurance purchase requirement continues to apply, because the foundations supporting the elevated building in the special flood hazard area is still below the base flood elevation where it is exposed to the action of the water. However, premium levels may reflect reduced exposure to damage.

4. In Communities That are not Participating in the National Flood Insurance Program

It is important to note that while Federal officers and agencies are still prohibited by section 202 (a) of the 1973 Act, (42 U.S.C. 4106(a)) from providing financial assistance with respect to improved real property in areas of flood hazard in communities that are not participating in the NFIP and in which the sale of National Flood Insurance is not authorized, the making of conventional loans in such communities by private lenders became permissible in 1977.

(a) What is a Conventional Loan?

A conventional loan is a loan by a private lender, as distinguished from a loan by a Federal government agency, that is not secured, insured or guaranteed by a Federal government agency. Such a loan, even when made by a lender that is regulated by or has its deposits insured by a Federal Financial Regulatory Agency (Federal Instrumentality), remains a conventional loan because the loan itself is not secured, insured or guaranteed by a Federal government agency.

(b) Authority for Lenders to Make Conventional Loans in Special Flood Hazard Areas of Non Participating Communities.

An amendment to the 1973 Act (frequently referred to as "The Eagleton Amendment" contained in the Housing and Community Development Act of 1977 (Pub. L. 95-128), deleted from the Act its original section 202(b) (42 U.S.C. 4106(b)) requirement that Federal Instrumentalities issue regulations prohibiting lenders from making conventional loans with respect to property in non participating communities. The original prohibition was replaced by a new section 202(b) which substituted in its place a notification requirement. Consequently, lenders regulated by, or whose deposits are insured by Federal Instrumentalities may make conventional loans secured by mortgages on improved real property and mobile homes in areas of special flood hazard in communities that are not participating in the NFIP. They may do so notwithstanding the fact that such property is not eligible for the purchase of National Flood Insurance, and, thus, the mandatory flood insurance purchase requirement does not apply with respect to such loans. However, lenders should carefully evaluate the underwriting risk involved in making such loans.

(c) Requirements for Notification to the Borrower if Improved Real Property That is the Security for the Loan is in a Special Flood Hazard Area

The notice requirements, by their specific language, apply only when improved real property is the security for a loan. The requirements do not apply to unsecured loans, or to loans secured by improved real property that is not located in a special flood hazard area. While the Housing and Community Development Act of 1977 removed the prohibition against making conventional loans in non participating communities, the "notice" provision, which is the current section 202(b) of the Flood Disaster Protection Act of 1973, requires the Instrumentalities to compel lenders to notify borrowers as to whether Federal Disaster Relief will be available to the property in the event of a disaster caused by flood. For the convenience of lenders, FIA has drafted a notice form, FEMA Form 81-2.

BILLING CODE 6718-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

SUGGESTED LENDER'S NOTICE

SATISFIES NOTICE REQUIREMENTS OF THE NATIONAL FLOOD INSURANCE ACT OF 1968, AS AMENDED, AND THE FLOOD DISASTER PROTECTION ACT OF 1973

NOTICE TO BORROWER OF PROPERTY IN SPECIAL FLOOD HAZARD AREA

Notice is given to _____ that the
(Borrower)
improved real estate or mobile home described in the attached instrument is or will be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area. This area is delineated on _____'s Flood
(Community Name)
Insurance Rate Map (FIRM) or, if the FIRM is unavailable, on the Flood Hazard Boundary Map (FHBM0. This area has a 1% chance of being flooded within any given year. The risk of exceeding the 1% chance increases with time periods longer than one year. For example, during the life of a 30-year mortgage, a structure located in a special flood hazard area has a 26% chance of being flooded.

NOTICE TO BORROWER ABOUT FEDERAL FLOOD DISASTER ASSISTANCE

(Lender Check One)

☐ Notice in Participating Communities

The improved real estate or mobile home securing your loan is or will be located in a community which is now participating in the National Flood Insurance Program. In the event your property is damaged by flooding in a Federally declared disaster, Federal disaster relief may be available. However, such relief will be unavailable if your community is not participating in the National Flood Insurance Program at the time such assistance would be approved, *(assuming your community has been identified as flood-prone for at least one year).* This assistance usually in the form of a loan with a favorable interest rate, may be available for damages incurred in excess of your flood insurance.

☐ Notice in Nonparticipating Communities

The improved real estate or mobile home securing your loan is or will be located in a community which is not participating in the National Flood Insurance Program. This means that you are not eligible for Federal flood insurance. In the event your property is damaged by flooding in a Federally declared disaster, Federal disaster relief will be unavailable, *(assuming your community has been identified as flood-prone for at least one year).* Federal flood disaster relief will be available only if your community is participating in the National Flood Insurance Program at the time such assistance would be approved.

_____
(Bank Official's Name)

_____ _____
(Borrower's Name) *(Date)*

FEMA FORM 81-2 (11/79)

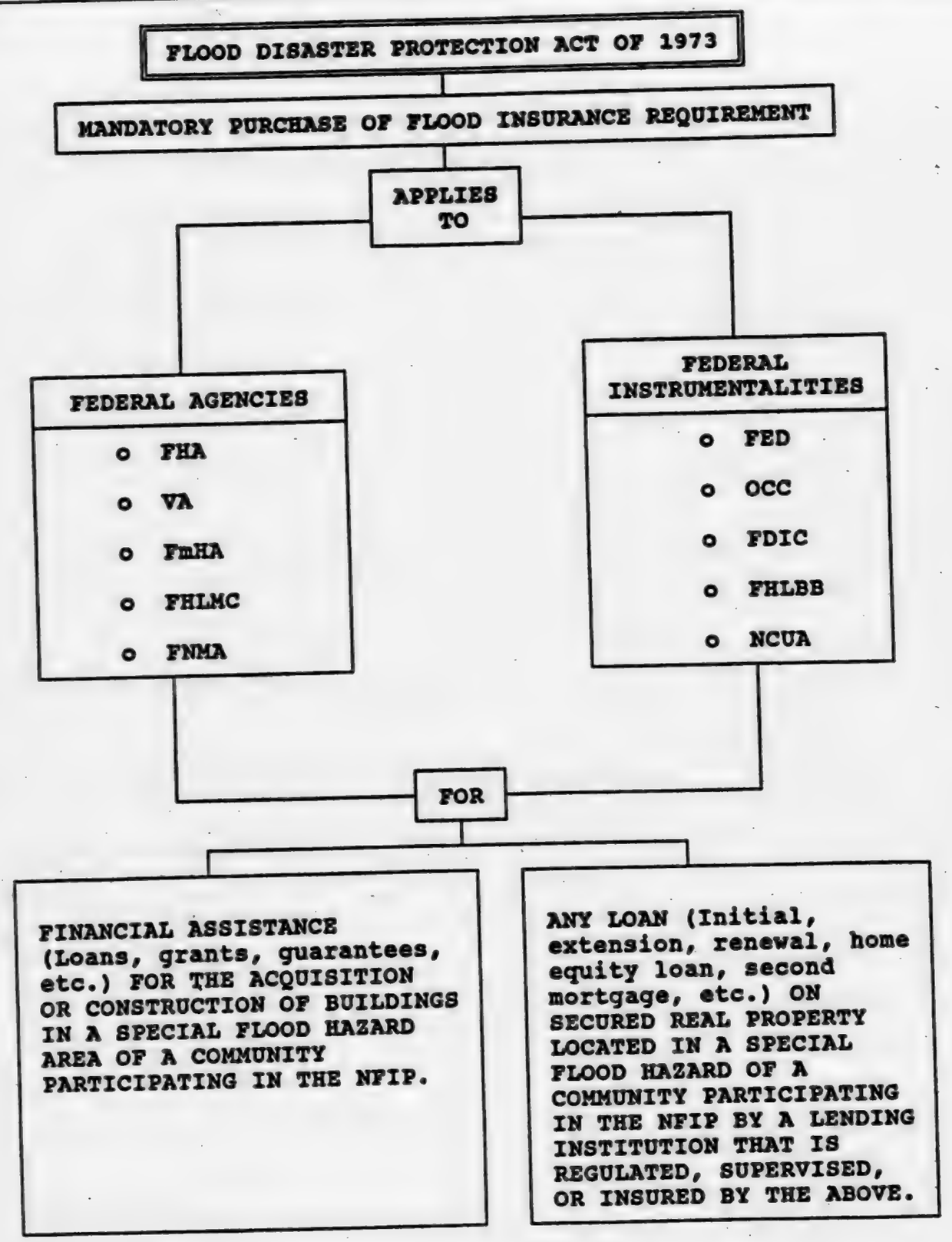

BILLING CODE 6718-01-C

An additional requirement, mandated by section 1364 of the National Flood Insurance Act of 1968, as amended, (42 U.S.C. 4104a), directs the Instrumentalities to compel lenders to notify the purchaser or lessee of the improved real property or mobile home in writing of the special flood hazard to which the property is exposed or obtain satisfactory assurances that the seller or lessor has so notified the purchaser or lessee. These notifications are to be made "a reasonable period in advance of the signing of the purchase agreement, lease, or other documents involved in the transaction". Consistent with the recommendation by the Federal Financial Institutions Examination Council, FIA believes that the "reasonable time" requirement is satisfied if the notices are provided ten days before the closing, or at the time of commitment if this occurs less than ten days before the closing.

E. Guidelines to an Interpretation of the 1973 Act

The paragraphs above constitute a descriptive analysis of the provisions of the 1973 Act. What follows is an analysis of some of the issues that have arisen under the Act based upon the experience that the Federal Insurance Administration has gathered over the past twenty years and the discussions we have had with representatives of Federal agencies and Instrumentalities. The views expressed below represent our best effort toward providing guidance and we welcome the views of other Federal agencies and the Federal Instrumentalities on these subjects.

1. What is the Standard by Which a Lender Should Be Judged in Considering its Determination as to Whether a Structure Is or Is Not in an Area of Special Flood Hazard?

(a) Significance of the Location of the Structure

As pointed out above, the mandatory flood insurance purchase requirements of the 1973 Act apply only where improved real property, i.e., a structure, is located in a special flood hazard area in a community that is participating in the National Flood Insurance Program. Such a structure must be insurable under the NFIP, and under NFIP rules an insurable "structure" means any walled and roofed improvement predominately above ground). Even though a portion of real property on which a structure is located may lie within an area of special flood hazard, the purchase and notice requirements of the 1973 Act do not apply unless the structure itself, or some part of the structure is in the special flood hazard area. Prudence may suggest the wisdom of the lender's choosing as a matter of its own discretion to require the purchase of flood insurance where the distance from the structure to the edge of the special flood hazard area is minimal, but such a decision is not compelled by the 1973 Act.

(b) Examination of the Map

In order to determine whether a structure is located in an area of special flood hazard it is necessary to examine the location of the structure in relationship to the areas of special flood hazard shown on Flood Hazard Boundary Maps or Flood Insurance Rate Maps. However, despite FEMA's efforts to make the maps as useful as possible, the descriptions of special flood hazard areas contained in some maps may, in some instances, not be clear enough to permit lenders to decide with certainty and precision whether or not property which is the security for a loan or which is the subject of financial assistance is located in such an area. It is for this reason that FEMA has recommended a "Good Faith Standard".

(c) The "Good Faith Standard"

As in its earlier editions of these Guidelines, FIA recommends that for the purposes of the 1973 Act, a lender's decision, made in the exercise of due diligence and good faith as to the location of a property which is the subject of a loan on such a map, be considered final and sufficient to comply with the 1973 Act. In such instances, it FIA's view that where a good faith finding has been made by a lender or its agent, acting pursuant to the requirements of the 1973 Act, that the property is outside the special flood hazard area, such finding as to the location of the property should be considered final with respect to such property regardless of any change of ownership of the property or status of the loan. In FIA's view, under the 1973 Act, subsequent revision of the map would not necessitate the making of a new determination or require the lender to go back and compel the borrower to purchase flood insurance, even if the new map clearly showed the structure to be in a special flood hazard area. However, prudence might suggest the desirability of so doing.

However, if there should be any subsequent making, increasing, extension, or renewal of a loan with respect to which the property is subject, in FIA's view, the original finding should remain final only if the map upon which the original finding was based was still in effect and unrevised as to the property in question. Thus, if a map was subsequently revised, any subsequent making, increasing, extension, or renewal of the loan should take into account the new map, and a new determination should be made at that time as to whether flood insurance must be required for the subsequent transaction.

(d) Lenders' Reliance Upon Assistance

Lenders may reasonably seek assistance from firms or individuals, including map determination service organizations, that have demonstrated their knowledge concerning flood maps, and reasonable reliance upon such guidance in the making of a lender's determination should, for most practical purposes, be regarded as consistent with due diligence and good faith. In many instances Community officials and appraisers may be a helpful and knowledgeable resource. FIA does not believe that there would be reason for objection to having the costs passed on to borrowers if permitted by the loan contract and applicable State and Federal law.

(e) Who Must Make Determinations?

An insurance company, insurance agent or appraiser is under no statutory or regulatory duty to make determinations as to whether a structure is exempt from the flood insurance purchase requirement and any "determination" made by them does not alter the regulatory responsibility of the lender to make such determinations. Circumstances could be contemplated in which an insurance company, insurance agent or appraiser might have expertise that a lender would find helpful and persuasive, but whatever determination is made remains the full responsibility of the lender.

(f) What is Determined?

The determinations referred to above address only the question as to whether the location of a particular structure is within the area on a map which is designated by the Federal Insurance Administrator as being a special flood hazard area (SFHA), which is the area inundated by a flood having a one percent chance of annual occurrence (Zones A, AE, A1–A–30, AH, AO, V, VE, V1–30). Any question concerning the correctness of the map or whether the exact location of the structure in the special flood hazard area should have been designated by the FIA as being in a SFHA is totally beyond the authority of the lender.

Only the Federal Insurance Administration can amend an official

map to remove or add a particular property location from a designated SFHA by a Letter of Map Amendment, or revise a map by a Letter of Map Revision to change the special flood hazard area or revise the elevations on a map.

(g) How to Record that a Determination was Made?

FEMA Forms 81-3 and 81-2 were developed by FIA to help lenders notify borrowers of their status under the NFIP maps and to enable them to notify borrowers of any changes in NFIP maps which may have altered the boundaries of special flood hazard areas in such a way as to cause a borrower's structure to no longer be located in an area of special flood hazard. These notices create a record showing that the lender has made a determination or a redetermination as to the status of the borrower's structure and when placed in the files of the lender demonstrate to examiners of Federal Instrumentalities that there is a proper basis for a borrower to have been required to purchase flood insurance, or permitted not to purchase, or to drop a flood insurance policy after a map revision. Additionally, many lenders, as well as the Federal agencies, such as FNMA, Freddie Mac, FMHA, HUD and VA, use the Uniform Residential Appraisal Report form which contains, amongst other things, questions on the location of a property relative to flood hazard areas. When a determination is made that a structure is not in a special flood hazard area, evidence should be recorded showing, at the least, the map panel used, the date and number of the map, the name of the community, the zone in which the property is located, and the address of the structure. A photocopy of the official map, marked to show the location of the property would provide a convenient record.

BILLING CODE 6718-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

CERTIFICATION OF REDETERMINATION OF A PROPERTY'S LOCATION RELATIVE TO SPECIAL FLOOD HAZARD AREAS

TO: _____ Date: _____
(NAME OF GRANTEE, BORROWER, INSURED)

RE: (Loan) (Transaction) No: _____

RE: Flood Insurance Policy No. _____

This will certify that, as of this date, authorized personnel of this institution have examined the latest (Flood Hazard Boundary Map/Flood Insurance Rate Map) now in effect for _____ (NAME OF COMMUNITY, COUNTY, STATE) effective _____ (DATE) and have determined that the property which is the subject of the above-referenced loan/transaction is not located in a special flood hazard area as represented on the above-referenced, revised map.

Flood insurance had been required as a condition for the loan/transaction in question because the property was shown as located in a special flood hazard area on _____ (NAME OF COMMUNITY)'s Flood Hazard Boundary Map/Flood Insurance Rate Map effective _____ (DATE) at the time the loan/transaction was processed.

This institution now deems _____ (NAME OF GRANTEE, BORROWER, INSURED) waived from maintaining flood insurance coverage, on the basis of the Federal Insurance Administration's latest map now in effect for _____ (COMMUNITY'S NAME, _____ COUNTY, STATE) effective _____ (DATE) which in our judgment excludes the property in question from an identified special flood hazard area.

Address of Institution:

Institution: _____

By: _____
(Authorized Signature)

Federal Agency _____

By: _____
(Authorized Signature)

FEMA FORM 81-3 (11/79)

CONTROL NO. 593-213

U.S. GOVERNMENT PRINTING OFFICE : 1984 O - 458-454

(h) The Ultimate Responsibility of the Lender

But, in all these situations the lender, using such evidence as is reasonable, must take the responsibility for making determinations and redeterminations, regardless of whether the lender actually makes the determination or hires someone else to do it. Because it is the lender that requires the purchase of flood insurance, only the lender can make a determination or a redetermination, and only the signature of a representative or duly authorized agent of the lender on Form 81–2 and 81–3 can make the form take on any significance in terms of establishing the status of the improved real property and providing the lender with a record of the determination or redetermination.

2. Should the Amount of Insurance Required Reflect the Value of Land?

(a) The 1973 Act Refers to Buildings and Mobile Homes

Section 102(a) of the 1973 Act conditions the granting of financial assistance by Federal officers and agencies upon there being flood insurance coverage with respect to "the building or mobile home and any personal property to which such financial assistance relates" in an amount at least equal to "its development cost (less estimated land cost)". Thus this section of the statute clearly expresses the intent of Congress that the amount of insurance be related only to the cost of the building and not include the cost of the land.

Section 102(b) describes the flood insurance purchase requirement for lenders making conventional loans in terms of "improved real estate or a mobile home located or to be located" in a special flood hazard area and uses the language similar to that in section 102(a), conditioning the making of a loan in a participating community upon there being flood insurance covering "the building or mobile home and any personal property securing such loan".

This reference to "buildings and mobile homes" is consistent with the fact that the National Flood Insurance Program insures only buildings, including manufactured homes (mobile homes), and does not insure land. Thus improved real estate, as used in section 102(b) of the 1973 Act means land with a building on it and the mandatory flood insurance purchase requirement applies only to the buildings and manufactured homes which constitute the improvements on the land.

(b) What the NFIP Policy Covers

Moreover, it should be kept in mind that the NFIP policy does not provide insurance coverage for losses in excess of the value of a structure. The determination of whether the loss will be paid on the basis of replacement value or actual cash value depends upon whether the residence is primary, and whether the insured has purchased insurance of up to at least 80% of the replacement cost of the structure. Under the NFIP policy, "replacement value" means that the coverage is intended to include the full cost of repair or replacement without deduction for depreciation. The term "actual cash value" means that the coverage is intended to include repair or replacement less depreciation. A dwelling which is the principal residence of an insured may be insured for its replacement cost value, but secondary residences, condominium units in vertical high rise buildings and commercial buildings may be insured only for their actual cash value.

In light of the above, in requiring the purchase of flood insurance the lender should first calculate the amount of the loan, or the maximum amount of insurance available under the National Flood Insurance Program, whichever is less. Having developed that figure, the lender may, depending upon its view of the flood risk, take into account the statutory "cap" of section 1306(b)(6), which, for example, limits the mandatory purchase to $70,000 for single family residential structures. Then, the value of the land should be subtracted from the overall value of the property in reaching a determination as to the value of the improved property, ie, the structure, that is to be insured. This is especially significant in cases where the proposed loan clearly exceeds the value of the insurable buildings. In instances where the lender does not take into account separate valuations of land, which is not insurable under the NFIP, and improvements, which are insurable, the insured may, unfortunately, be paying for coverage that is in excess of the amount that the NFIP will pay in the event of a loss. In FIA's view, lenders should avoid creating such a situation.

(c) What If the Loan Is Secured Only by Land Upon Which There Are No Structures?

If a lender makes a loan which does not give the lender a lien on any land upon which there is a building, i.e., improved real property, no flood insurance purchase requirement applies. Thus, if a lender can separate his loan so as to become the holder of a mortgage that is secured by land alone, no flood insurance purchase requirement applies because the NFIP does not insure land, and the 1973 Act does not address mortgages secured by land alone.

(d) What If a Detached Garage of a Residential Property, to Which 10% of the Principal Structure's Insurance Is Applicable, Is In the Special Flood Hazard Area, While the Principal Structure Is Outside of the Special Flood Hazard Area?

Flood insurance on the principal structure would not be required because of its location outside the special flood hazard area. But if the detached garage is part of the security for the loan, flood insurance on the garage would be required and could be purchased through a separate policy on the General Property Form, covering just the garage. However, if the value of the principal structure is sufficient to serve as security for the loan, the requirement would not apply if the lender was willing to delete the garage from the description of improved real property securing the loan. In agreeing to do this, a prudent lender would consider the value of the garage and the likely degree of its exposure to damage in the event of flooding, as well as whether the close proximity of the house to the special flood hazard area raised questions as to the safety of the house, itself. If, instead of a detached garage in the special flood hazard area, there was a tool shed or similar shack with no foundation and not attached to the land, such property would not be insurable under the NFIP. Being more in the nature of personalty as opposed to realty, it would not be part of the security for the loan, and no flood insurance would be required.

3. What is the Impact of the Insurance Purchase Requirement if Improvements on the Real Property are of Nominal Value, and the Purpose of the Loan Transaction is to Facilitate the Purchase of Land for Subsequent Development?

(a) Surplus Buildings of Nominal Value on Land Purchased for Development

Instances arise when real estate is purchased for the purpose of development and the presence of a structure on the land is not a factor in the purchase of the land. In fact, in many situations, the developer's plan may call for the structure to be demolished as soon as development occurs. But, because the 1973 Act speaks of "improved real estate" in triggering the mandatory flood insurance purchase requirement, questions are frequently asked as to whether flood insurance must be required in such situations. It is FIA's view that the answers to such questions should be approached through a view of the purposes for which the purchase requirements of the 1973 Act were adopted, namely to protect lenders and the Federal resources against potential losses resulting from unsecured loans, and to protect unwary borrowers against financial losses resulting from uninsured buildings.

In these situations the acquisition of the building is not the primary purpose behind the purchase of the land, and frequently the structure is not intended to remain in place when the property is developed. If the value of the building was less than the NFIP $500 deductible, clearly there would be no requirement for the purchase of flood insurance. But, even if the value exceeded $500, given the fact that the transaction involves primarily land, this would be an appropriate situation for wording the mortgage so as specifically exclude such a building as part of the security for the loan. In this kind of situation where the structure is not being used for residential or commercial purposes and where there is no intent to improve it or use it for such purposes, and where the loan is adequately secured without including the building, in FIA's view, the flood insurance purchase requirement would not apply.

(b) What If There Is a Structure In a Special Flood Hazard Area Which Is Being Used for Residential or Commercial Purposes on Land Whose Value Alone Would be Sufficient to Secure the Loan Without Regard to the Value of the Building?

The 1973 Act does not give a lender the option of enabling the borrower to avoid the purchase of flood insurance, even though the land may be so valuable that it would provide more than adequate security for the amount of the loan, without taking into account the value of the building on the land. If the land has a building upon it, and the lender has a security interest in that building, the Act requires the lender to require the purchase of flood insurance to protect its security interest. In so doing, the lender is also protecting the government's interests by preserving the assets of agencies which insure the lender's deposits.

(c) NFIP Deductibles and Definition of Structure

It should be kept in mind that the NFIP has a minimum $500 deductible, which means that if the actual cash value of a structure, taking into account depreciation, did not exceed $500, the structure would for practical purposes be uninsurable because there could never be any claim payment in the event of flood damage. It should also be kept in mind that the NFIP insures only walled and roofed structures which are principally above ground and are permanently affixed to sites. Also eligible are silos and grain storage buildings, and buildings in the course of construction, i.e. under construction, but before they have become walled and roofed. Buildings are walled and roofed when they have two or more rigid external walls in place and are roofed and adequately anchored so that they will resist flotation, collapse and lateral movement. The Flood Insurance Manual lists as ineligible for insurance coverage gazebos, pavilions, pole barns, pumping stations, and storage tanks, and thus, the presence of such structures would not give rise to any question as to the purchase of flood insurance.

(d) Buildings in the Course of Construction

However, when a structure is to be built which when completed will be a walled and roofed structure that will be eligible for coverage, flood insurance must be purchased. Therefore, where a development loan is made for the purpose of constructing insurable improvements on land, flood insurance coverage must be purchased to keep pace with the new construction. The only practical way of implementing the flood insurance coverage is to require the purchase of the policy at the time that the development loan is made and requiring that the policy be purchased to cover the eventual value of the property to be constructed.

Since October 1, 1986, buildings that are in the course of construction but have yet to be walled and roofed are eligible for flood insurance, subject to certain underwriting restrictions. The 1986 regulations and policy changes resolved a prior problem which arose out of the fact the lenders had to require the purchase of flood insurance policies that could not provide any coverage until a future date when the building would be considered to be walled and roofed. This significant change recognizes the flood peril faced by a builder during the process of construction and brings the NFIP more into conformity with the practices of fire insurers by providing insurance coverage that begins during the period of time when construction is taking place. Unless defined stages of development can be identified, the most practical way of implementing the flood coverage may be to require the purchase of the policy at the time that the development loan is made and funds are disbursed.

For new construction in Regular Program communities, where elevation certificates are required, the certificate and the premium will be based upon an elevation figure derived from construction drawings. However, the policy will not be renewed until a new certificate based upon actual construction has been submitted. In any event, the point of the 1986 change is that coverage under the policy becomes available immediately when the construction starts and is not delayed until the building has reached a roofed and walled condition.

4. What are the Consequences if a Structure is Located in a Community That is Participating in the National Flood Insurance Program, but Flood Insurance is not Available With Respect to That Particular Structure?

It is the view of FIA that in using the words "the sale of flood insurance has been made available" the Congress meant the mandatory flood insurance purchase requirement of section 102(b) to address the situation where FIA, through the NFIP, offers to sell a flood insurance policy to the owner of the particular structure that is the subject of the transaction. Where the Federal government has chosen to limit the availability of flood insurance in a participating community, the inability of the property owner to purchase flood insurance does not require a lender to refrain from making a conventional loan with respect to that property.

(a) Coastal Barrier Resources Act

There are several reasons why flood insurance might not be available to a particular structure. One of the most significant is the Coastal Barrier Resources Act (COBRA), Pub. L. 97–348, mentioned above, which was adopted by Congress in October of 1982 to reduce or restrict Federal government actions that were believed to be encouraging the development of certain coastal barrier areas, including both islands and mainland property, that are currently undeveloped. While COBRA does not prevent private financing and development, it limits financial assistance by Federal agencies on undeveloped coastal barriers, except for enumerated situations such as assistance for emergency actions essential to the saving of lives and the protection of property and the public health and safety. Such emergency assistance would not include disaster assistance and government loans.

BEST COPY AVAILABLE

(b) Section 1316 of the 1973 Act and Buildings in Violation of State or Local Laws

Another statutory provision which prohibits the sale of flood insurance as to particular properties is section 1316 of the 1968 Act (42 U.S.C. 4023) which prohibts the sale of new flood insurance for any property which the Director finds "has been declared by a duly constituted State or local zoning authority, or other authorized public body, to be in violation of State or local laws, regulations, or ordinances which are intended to discourage or otherwise restrict land development or occupany in flood-prone areas."

Questions have arisen as to whether a conventional loan can be made when the building is located in a special flood hazard area of a community that is participating in the NFIP, but where the particular building is not eligible for flood insurance protection because it has been declared to the in violation of local floodplain management building codes. Under section 102(b) of the 1973 Act, which makes the flood insurance purchase requirement applicable to properties to which flood insurance has been made available, the making of a conventional loan would not be prohibited with respect to a building cited under section 1316 of the 1968 Act. Nevertheless, compliance with the provision notifying the borrower that the building is in a special flood hazard area would be especially important. It is important that Federal Instrumentalities and lenders subject to their jurisdiction be aware that properties which come under the provisions of section 1316 of the 1968 Act because of violations which relate to protection against flooding will, in most cases, be highly susceptible to flood damages, and are a far greater risk to the lender than structures that are compliant with floodplain management ordinances.

(c) Section 136, as Applicable to Federal Officers and Agencies

Questions have arisen as to the applicability of section 1316 to section 102(a), which applies to the approval of financial assistance by Federal officers and agencies. Federal officers and agencies should make their own determinations as to whether they should approve financial assistance with respect to a building that the community has declared to be in violation of local ordinances designed to reduce the peril of flood damage to such building. And in coastal barrier areas they must consider the restrictions placed on Federal assistance by COBRA.

(d) NFIP Underwriting Restrictions on Eligibility for Flood Insurance

In addition to COBRA and section 1316 of the 1968 Act, there are policy provisions and underwriting rules of the Standard Flood Insurance Policy sold under the NFIP which preclude certain properties from eligibility for coverage. For example, structures built over water cannot be insured under the Program, nor can boat houses. The NFIP coverages also contain restrictions on insurance coverage, such as the protions of homes consisting of finished basements where only enumerated and limited coverage is available.

5. The Applicability of the 1973 Act to the Purchase of Mortgages by Lenders

Among the Federal Instrumentalities two different views have been expressed on the subject of the appliciability of the Act to transactions involving the purchase of mortgages by lenders. The Federal Home Loan Bank Board has taken a position which is similar to that expressed by the Federal Insurance Administration in FIA Guidelines dated 1978, and has interpreted the Act as including not only the origination of mortgage loans, but also the purchase of mortgage loan portfolios in the secondary market and participations thereof. Thus, under this view purchased mortage loans secured by improved property in a SFHA must be covered by flood insurance, where applicable, unless the original loan was made pursuant to a formal loan commitment issued prior to March 2, 1974.

On the other hand, the Federal Deposit Insurance Corporation, the Federal Reserve Board and the Comptroller of the Currency have interpreted the Act to apply only to the origination of mortgage loans and not the purchase of mortgage loans in the secondary market. Lenders should, therefore, follow the interpretations of the particular Federal Instrumentality to whose examinations they are subject for authoritative guidance. In FIA's view, the term "where applicable", as used in connection with the position that the statute does apply to the purchase of mortgages, means that such a requirement pertains only to mortgage loans involving improved real property in areas of special flood hazard in communities participating in the National Flood Insurance Program, and in which flood insurance is thereby available through the NFIP.

6. Acceptance of Private Flood Insurance Policies To Meet Statutory Requirement and the Acceptance of NFIP "Write Your Own Policies"

FIA would welcome the availability of adequate flood insurance from the private insurance market. Had adequate and assured flood insurance protection been available through the private insurance market in 1968, the NFIP might not have been necessary. To give the public the benefits of the marketing and servicing expertise of the private insurance industry, FIA has since 1983 been making flood insurance available through the NFIP "Write Your Own" Program (WYO) which enables the public to purchase the same NFIP coverage from private companies that have agreed to enter into agreements with FIA. The coverage, eligibility and premiums are the same on WYO policies as in the case of policies that are issued directly by the FIA through its servicing company. The FIA has guaranteed that in the event that any WYO company is required by State regulatory authorities to cease writing insurance and is unable to pay flood insurance claims under any WYO policy, FIA will assume all obligations for the payment of covered claims under that policy. Thus, lenders and insureds should not hesitate to accept NFIP policies written either directly by FIA or through a WYO company.

In the event of a submission of a flood insurance policy that is not issued by the NFIP through FIA or a WYO company, FIA believes that the following criteria should be met with respect to any flood insurance policy submitted to a lending institution or a Federal agency in purported satisfaction of the insurance purchase requirements of the 1973 Act.

(a) The insurer should be licensed to do business in the jurisdiction where the property is located, by the Insurance Department of that jurisdiction, except as indicated in (b) below.

(b) In the case of a non-residential commercial property insured pursuant to a policy of difference in conditions, multiple peril, all risk, or other blanket coverage, it should be sufficient if the insurer is recognized, or not disapproved, as a surplus lines insurer by the Insurance Department of the jurisdiction where the property is located.

(c) The flood insurance policy issued by the insurer should include an endorsement which requires that the insurer give 30 days written notice of cancellation or non-renewal to the insured with respect to the flood insurance coverage and that to be effective such notice must be mailed to both the insured and the lender or Federal agency and must include information as to the availability of flood insurance coverage under the NFIP.

(d) The policy should guarantee that the flood insurance coverage, considering both deductibles and exclusions or conditions offered by the insurer, is at least as broad as the coverage by the NFIP policies.

(e) Lenders should satisfy themselves that a mortgage interest clause similar to that contained in NFIP policies is contained in the policy.

In the opinion of the FIA, an insurance policy that meets all of the above criteria meets the insurance purchase requirements of section 102 of the 1973 Act. To the extent that the policy differs from the FIA policy, the differences should be carefully examined before consideration is given to acceptance of the policy as sufficient protection under the 1973 Act.

7. Lenders' Remedies in the Event of Prior Failure to Require Flood Insurance

The history of the NFIP since the enactment of the 1973 Act indicates that lenders have not consistently required the purchase and renewal of flood insurance policies as required by regulations issued by Federal Instrumentalities pursuant to the 1973 Act. Questions arise as to what steps are available for lenders whose attention has been directed to the situation at a later time. The issue has been raised to FIA with growing frequency that because of the rapid turnover of the servicing of mortgages, some loan originators may be paying little or no attention to the flood insurance purchase requirement because the servicing is sold so quickly.

This could result in no flood coverage being written to protect the interests of either the mortgagor or the mortgagee. It also means that any subsequent servicer of that loan would be provided with no basis upon which it can know that the property is located in the floodplain and therefore maintain the flood insurance coverage. Also when a flood insurance policy is written in conjunction with a closing, FIA fears that subsequent servicers may not be notifying the insurance agent who originally wrote that policy of the change in mortgagee (or servicer) to enable renewal and/or cancellation notices to be sent to the proper party (lender) servicing the loan. Thus, in the case where the insurance payments were not escrowed, the mortgage servicer would have no way of knowing whether or not the borrower continued to renew the policy or allowed it to lapse.

Lenders selling mortgages in the secondary market to FNMA, FHLMA or GNMA, (Federal Agencies under the 1973 Act) should be aware that those Agencies will be requiring that the security for such mortgages in special flood hazard areas be protected by flood insurance. The remedies available to the lenders will vary depending upon the language in the loan agreements. Most mortgages require that the borrower obtain and maintain hazard insurance. This provision was originally developed with a view to fire insurance at a time when flood insurance was not available. But in light of the fact that flood insurance under the NFIP has been offered for twenty years, the term "hazard insurance" should be broad enough to include flood insurance. On the basis of discussions FIA has had with Federal Instrumentalities and the U.S. Department of Housing and Urban Development, it is FEMA's view that if the loan agreement is specific in requiring hazard insurance, that provision, especially when coupled with the regulatory obligation upon the lender to require the borrower to purchase flood insurance, gives the lender ample authority to require the borrower to purchase flood insurance, even at a date subsequent to the date on which the loan was initiated. On the basis of these same discussions, FEMA believes that if the borrower refused to purchase flood insurace, the bank would be justified in purchasing the insurance for the borrower and charging the borrower for the cost. In the case of loans that are being paid off through escrow agreements, this process would be greatly facilitated. For new construction in Regular Program communities, NFIP rules require the submission of an elevation certificate with the application, and that certificate is in FEMA's view a cost of the procurement of flood insurance.

FIA's same discussions lead FEMA to conclude that where appraisal procedures include an analysis as to whether the improved real estate is in a special flood hazard area, the costs attributable to that process would be proper expenses in connection with the costs of appraisal. FIA is in the course of exploring the feasibility of a forced placement capability for flood insurance to facilitate the prompt procurement of flood insurance when there is doubt that flood insurance has been purchased or kept in force by the borrower.

8. Home Equity Loans Under the 1973 Act

The currently popular Home Equity Loans are clearly secured loans of the kind covered under the 1973 Act and trigger the flood insurance purchase requirement. The simplest way in which a lender could protect its interests and comply with the purchase requirements would be to consider that when the bank has filed its lien, based on the signing of the Home Equity Loan agreement, the purchase of insurance becomes mandatory to the amount of the loan authority (subject to the limit on insurance available and the insurance requirement cap) if the improved real property is located in a special flood hazard area of a participating community. This procedure would be similar in concept to the way in which many mortgage lenders have typically handled their property insurance requirements for building construction loans prior to the existence of an actual insurable building.

However, the difficulty with this solution lies in the fact that the Home Equity Loan is more like an approved line of credit to be utilized in the future. A borrower could argue that so long as the lender has not paid out any money, there is no flood exposure and consequently no flood insurance purchase requirement. But to impose the requirement each time that a borrower drew a check on his loan authority might be administratively difficult. An alternative, therefore, might be for the lender to examine its books each calendar year, and when a loan has actually been made under the Home Equity loan authority, require flood insurance to protect that loan on the basis of the information at year end. The Lender would then require updates each year to take into account additional loans actually made during the preceding year. While this would create a time lag in the procurement of flood insurance, it would seem to tie the requirement directly into the use of the funds. It is the view of FIA that such flexibility of compliance options would be reasonable, considering that the statute may not have been enacted with the Home Equity Loan concept in mind. In any event, the Federal Instrumentalities have the final responsibility for determing how Home Equity Loans shall be handled under the 1973 Act.

9. Federal Financial Institutions Examination Council Interagency Examination Procedures and Examiner Checklist for Compliance With the Mandatory Flood Insurance Purchase Requirements of the Flood Disaster Protection of 1973

Examination Objectives

1. To determine whether an institution has established an effective system for ascertaining whether property that secures a loan requires flood insurance.

2. To determine whether the institution provides the required flood insurance disclosures.

3. To determine whether the institution maintains sufficient records to evidence compliance with the flood insurance requirements of its supervisory agency.

Examination Procedures

1. Determine whether any of the communities in the institution's trade area have designated special flood hazard areas, and whether or not any of the communities are participating in the National Flood Insurance Program.

2. Review the institution's policies, both written and informal, and internal controls concerning flood insurance, particularly, the method used by the institution to make the flood hazard determination. Interview the appropriate personnel to ascertain that these policies are implemented in the prescribed manner.

3. Obtain and review copies of the following:

a. All records and other information, i.e. flood maps and appraisal forms, used to determine whether improved real estate or mobile homes are located in the special flood hazard areas. Check these records to determine whether they are up-to-date. If the institution uses flood maps, verify that the instituion has a flood map for each community in the trade area.

b. Written notices (forms) that inform borrowers that the property securing a loan is in a special flood hazard area and whether or not federal disaster relief assistance will be available if the property is damaged by flooding (refer to sample notices).

c. Written acknowledgements from borrowers indicating their understanding that the property securing the loan is or will be located in a special flood hazard area and that they have received the notice regarding the availability of federal disaster relief assistance.

4. Review an adequate sample of loan files to ascertain:

a. That the institution's stated method of determining whether loans secured by improved real estate or a manufactured home are located in a special flood hazard area is followed in practice;

b. That the institution requires flood insurance for covered loan related property located in a special flood hazard area of a community that participates in the National Flood Insurance Program;

c. That the institution does not make covered loans located in a special flood hazard area if the community does not participate in the National Flood Insurance Program and the loan is insured or guaranteed by an agency of the Federal government, such as the Federal Housing Administration, the Veterans Administration, and the Small Business Administration;

d. That sufficient flood insurance coverage is provided when flood insurance is required; and

e. That proper notifications are furnished to borrowers, as well as written acknowledgements are received from borrowers, within the required time limits.

f. That lapsed policies are renewed where applicable.

5. Determine whether the institution has taken steps to correct violations regarding flood insurance which may have been cited in previous examinations.

Examination Checklist

1. Does the institution offer or extend consumer or business loans (purchase or nonpurchase) [1] that are secured by improved real property or manufactured homes as defined in the provisions of the National Flood Insurance Program, and if yes, does a review of loan records indicate that covered loans are offered or extended in communities with officially designated special flood hazard areas which refer to an official Federal Emergency Management Agency eligibility list? If yes, complete the following sections:

Methods of Flood Hazard Determination:

2. Does the review of records indicate the use of a satisfactory method of making flood hazard determinations? ..... Yes No
3. Is a proper method used by branch and subsidiary offices? ..... Yes No
4. If the institution makes the flood determination (and does not have this function performed by an outside agent through a contract), are all current flood maps maintained for all communities in the institution's trade area ..... Yes No
5. Does the institution ensure that flood insurance is obtained where appropriate? ... Yes No
6. Indicate the method(s) used to make special flood hazard area determinations.

Consumer Notification Procedures:

7. Does a review of forms and procedures indicate that proper written notices are provided in connection with covered loans? ..... Yes No
8. If the institution does not provide such notification, does it obtain satisfactory written assurances from a seller or lessor that the borrower has been properly notified of the fact that the property is located in a special flood hazard area prior to the execution of the agreement ..... Yes No
9. Are notifications provided within the required time limit? ..... Yes No
10. Prior to closing, does the institution obtain a satisfactory written acknowledgement from the borrower that the improved property or manufactured home securing the loan is or will be located in a special flood hazard area? ..... Yes No
11. Indicate the method(s) of notification used.

Sufficiency of Coverage:

12. Does a review of files (or procedures) indicate that a sufficient amount of flood insurance coverage is required of loans granted within communities in:
    a. the Emergency Program ..... Yes No
    b. the Regular Program ..... Yes No
13. Does a review of files (or procedures) indicate that insurance policies are renewed annually? (Refer to workpapers from past examinations and list applicable customer names.) ..... Yes No

Non Participating Communities:

14. If the institution grants federally related loans (such as Federal Housing Administration, Veterans Administration, and Small Business Administration loans) does it refrain from granting such loans when the property securing the loan is or will be located in a special flood hazard area of a non-participating community? ..... Yes No
15. Are proper notices of the unavailability of Federal Disaster relief assistance (conventional loans only) given to borrower whose property is located in a special flood hazard area of a non-participating community? ..... Yes No

[1] The Federal Deposit Insurance Corporation, the Federal Reserve Board, and the Comptroller of the Currency interpret the term financial assistance to include only the origination of mortgage loans and not the purchase of loans.

F. The Requirements of the 1973 Act as to Condominiums

1. Insurance/Property Repair Responsibility of Condominium Associations

Condominium Associations, by both State law and association by-laws, typically have the responsibility to purchase and maintain adequate insurance on their buildings and common areas of those buildings. In addition, they also have the responsibility to make repairs to all commonly owned property, regardless of whether or not there is adequate insurance to cover damage to the property.

However, it must also be kept in mind that typically, it is the condominium association unit owners who actually own property. In almost all situations the condominium association itself does not own the property, but is only the governing body for the condominium and contractually responsible for representing and protecting the unit owners' undivided interests in the common areas. The "condominium" in the aggregate sense, therefore, would be the collection of property rights comprising all individual units and common elements.

From an insurance point of view the representative capacity of the condominium association gives it the insurable interest in common areas, and even gives it the right to purchase coverage on individual units as a means of protecting the entire condominium community. It is only in that sense that the association might be thought of as having a quasi ownership interest.

In the past, Associations have traditionally fulfilled their insurance responsibility by purchasing some form of master "Difference in Conditions" policy. Because of the unique nature of condominium ownership, these policies have provided protection for the structural portion of the buildings, usually including most of the internal portions of the individual units as well. Individual policies were also available from the private insurance industry, but typically provided coverage for the unit owner and only for things unique to him, such as his contents and physical surface changes made by him to the internal portion of his unit, such as new wall, floor or ceiling coverings, all of which was of little interest to the lender as their mortgagee interests were considered protected by the Association's master policy.

2. Lenders Interest

The interests of individual lenders in the mortgages they have provided on individual units have typically been satisfied by obtaining evidence of the existence of these master insurance policies, even though the Associations, unlike the unit owners, normally do not have mortgages. Such insurance by Associations has proven a convenience to lenders since, in essence, full hazard insurance coverage is provided through one policy, alleviating the need to deal with a separate policy for each individual unit's mortgage.

3. Nature of Condominium Ownership/Lenders Exposure

The concept of condominium ownership shapes not only the nature of the borrower's exposure to insurable risk, but also the kind of property interest that the lender receives as security for the loan. While the owner of a unit in a condominium building, especially in the case of a townhouse, may appear to have the same kind of property interest as the owner of a separately owned detached house, there is, in fact, a vast difference between their interests. In its simplest terms, the owners of a condominium unit does not have exclusive ownership of the walls, floor and roof of his residence or of the land upon which it rests. His exclusive property interest is limited to the space within the walls, floor and roof. Although he typically retains the exclusive right to occupy and sell this unit, all of his other interests in the common areas of the condominium are shared in common with the owners of the other units owned by the members of the condominium association.

There are various kinds of structures, involving condominium ownership. A condominium building may be a vertical, multiple story unit building (often called a "high rise"), a townhouse or row house or, infrequently, a single unit building. The ownership interest of a purchaser of a unit usually includes (1) the airspace in the individual unit; (2) certain property attached to the building but within the unfinished perimeter walls, floor and ceiling of the unit; and (3) an undivided interest with all other unit owners in the common elements.

The items attached to the building within the perimeter walls, floor and ceiling, are often referred to as "improvements and betterments" or "additions and betterments", which include floor, wall and ceiling coverings, cabinets, wallpaper, paneling, fixtures, built in appliances, partition walls, tubs, toilets, sinks, counter areas, etc. If a flood damages one or more units in a condominium building, and the individual unit owner of a damaged unit sustains damge to the improvements and betterments within this unit, he is not entitled to financial assistance from his fellow unit owners as to such property and must look to his own insurance protection.

But unlike the owner of a detached individually owned non-condominium home, he is not primarily responsible for repairing the common elements in which he has an undivided interest, such as building walls, roofs, floors, stairways, lobbies, lawns, parking lots, sidewalks, and recreational facilities. Because of the multiplicity of these ownership interests, a condominium association is typically the corporate entity responsible for the operation, maintenance and repair of a condominium. Its membership is made up of the condominium unit owners, all of whom collectively have an obligation to each other to maintain and repair the commonly owned property. This specific obligation is customarily authorized and spelled out in the by-laws of an association and is included in the condominium unit owner's contract agreement which requires each unit owner to pay a proportionate share of the amount of money needed to perform maintenance and repair, as well as other administrative and operating expenses, including the building up of reserves. They are usually collected monthly in order to provide a dependable source of operating funds for the association. The by-laws and unit owner's agreement will also confer upon the Board of Directors of an association the authority, following loss or damage to the common elements, to levy special assessments, as necessary, to provide for the repair or reconstruction of loss or damage to the common elements. Thus, the funds for repair and/or reconstruction can be

obtained from the association's own funds and from the proceeds from claims filed against insurance policies and/or assessments levied against the individual unit owners.

4. Peril of Flood

Traditionally, the peril of flood was covered in the Difference in Conditions policies mentioned earlier. Associations that wished even more complete protection against the peril of flood than these policies offered, i.e., coverage for the deductible, would also purchase a policy under the NFIP for each building in the floodplain. The motivation for such purchases stems from the fact that Associations have the responsibility to purchase insurance in general to protect their property. Thus, it was not driven by lender's insurance requirements placed on individual unit owners. However, those requirements were nonetheless able to be satisfied by that broad policy coverage purchased by the Association.

As a result of this, few individual flood insurance policies were purchased under the NFIP covering the individual mortgages issued by lenders for units involving condominium ownership in buildings located in flood hazard areas, as such coverage was evidently deemed by lenders to be unnecessary and possibly duplicative.

5. Changes In The Market Place

In the mid 1980's, conditions in the property insurance market changed, however, resulting in insurance companies either not continuing to offer such broad based coverage at all or continuing to offer such coverage, only on a much more limited basis and virtually without any protection from the peril of flood. At that time Associations, insurance agents, and lenders began to bring the issue to the attention of the Federal Insurance Administration. This brought focus on the flood insurance available from the FIA, as more and more the NFIP became virtually the only flood insurance available for most types of residential property.

6. NFIP Coverage—Satisfying Lender Requirements

In one sense, in a manner similar to that followed in the private insurance sector, the NFIP has provided two different policies, one for individual unit owners, regardless of the type of configuration employed for their units, and another for the Associations. Unlike the private insurance sector, however, the insurance policies of the NFIP can only be issued as authorized by the National Flood Insurance Act of 1968, as amended, and, consequently NFIP policies are required to have various limitations and differences that distinguish them from insurance policies provided by the private insurance sector. Most significantly, NFIP insurance policies are limited as to the amount of coverage that they can provide for individual unit owners as well as for the Association. Again, as differentiated from the insurance coverage provided by the private sector, the NFIP's unit owner policy provides coverage for the unit owner's interest in the common areas of all buildings "owned" by the Association, as well as for the internal portion of his own unit.

7. Residential Coverage—Unit Owner

Regardless of the type of building a residential condominium unit may be located in, the NFIP considers the unit to be a single family dwelling (except for the limitation of its value to actual cash value rather than replacement value). The unit owner can purchase in his own name a flood insurance policy on his unit within a building involving condominium ownership. In addition, if the unit owner has not already insured that same unit, the condominium association may separately insure a particular unit in the name of the owner of record, specifying the unit number and the name of the association, as their interests may appear. This would provide the same kind of coverage as could be purchased individually by the unit owner. Such a policy will cover the improvements and betterments the unit owner has made within that unit. It will also respond to assessments levied upon the residential unit owner by his condominium association for flood damages which occur in the building in which the unit owner resides as well as the structural and or common elements of other buildings owned by the condominium association for the repair of which he may be subject to assessment. However, because the NFIP policy does not cover lawns, parking lots, sidewalks and other improvements away from the building, the portion of any assessment attributable to damage to such items would not be covered under an NFIP policy.

Insurance policies covering an individual residential unit are available in amounts up to the limits of coverage, and at the rates available, for a "single family" dwelling, regardless of the type of building in which the unit is located. But it must be noted that only those residential condominium units that are separate structures or are located in a townhouse or rowhouse configuration are eligible for replacement cost coverage.

However, coverage is available to owners of units in other types of buildings, including high rise condominium buildings, on an actual cash value basis. Building coverage under a unit owners policy applies first to his or her individually owned building improvements and betterments and, then, to the damage to the building's overall common elements, which are the unit owner's responsibility and for which he or she is subject to assessment. The unit owner's policy described above will cover the owner's personal contents, such as furniture, but only if separate contents coverage is purchased by the unit owner.

8. Residential Coverage—Condominium Association

However, inasmuch as the unit owners collectively have the responsibility of repairing the common elements, the condominium association has been the traditional logical entity to be the purchaser of flood insurance. By insuring the overall condominium structure, the Association can reduce the likelihood that it will have to assess unit owners for funds with which to make repairs. A condominium association may, in addition to purchasing policies on each individual unit, purchase insurance coverage on a residential building containing five or more units under a separate General Property Form. The policy will cover building common elements as well as the building elements (improvements and betterments) within all units in the building.

The reason that condominium associations had to purchase the General Property Form and supplement it with separate policies on the individual units is that the statute governing the NFIP limits the amount of coverage available on multi-unit residential buildings to only $250,000, without regard to the size, value or type of ownership involved. This has posed a problem because such an amount is in most cases NOT sufficient to meet the collective, individual, and statutory flood insurance requirements with respect to all the mortgages for all the units located in a specific building.

For this reason, FIA has encouraged lenders to treat the flood insurance requirement on individual mortgages for individual units in buildings involving condominium ownership in the same way as they would for single family detached properties, and to require that flood coverage be purchased to protect their interests in those mortgages by having unit owners, or the Association, purchase individual unit owners

Dwelling Policies. When this practice is followed, there should be every reason to believe that the mandatory flood insurance purchase requirement for lenders has been satisfied.

9. Condominium Master Policy (CMP) Under the NFIP

Beginning in early 1989, FIA made available to Condominium Associations, only, a Master Policy that provides flood insurance coverage on each residential condominium building separately, on one form, in much the same way that the private sector does for other hazards, without imposing the burden of purchasing individual policies for each unit. Initially this policy is being made available only for such buildings with three or more floors and five or more units. In addition to these benefits, the cost of such a policy will in most cases be significantly less expensive than the cost of multiple individual policies, while at the same time providing even more coverage, at the lower price.

The rationale for making the Condominium Master Policy available at a lower cost is that by offering a more attractive and comprehensive policy, the NFIP will be in a position to issue more policies that will be in amounts reflecting the total value of the insured properties rather than issuing policies which cover only a fraction of the total value of the properties. In insurance terminology this is referred to as realizing "more insurance to value". This should prove to be a great advantage to lenders, Associations, unit owners and insurance agents as it will provide more complete flood insurance protection for less cost. In short, in a greatly simplified fashion it will assist the unit owners and their mortgage lenders in meeting the mandatory flood insurance purchase requirements. Mortgage lenders should realize, however, that it would be impractical to expect that every mortgagee with an interest in one or more units in such buildings will be able to be listed as such on the CMP. Associations that purchase this policy in most cases do not have a mortgage on the property, and therefore would have no reason to list mortgagees on such policies. Other property insurance policies purchased by associations in the private sector to protect such buildings against other perils, typically, do not list mortgagees for the above reason, as well as because of the practical aspects of the difficulty the insurers would have in keeping current with the names and addresses of all such mortgagees. Thus, the protection that exists for the interests of the mortgagees on their mortgages in condominium buildings under Master Policies purchased in the private sector has always had to consist of the fiduciary responsibility that is placed on the association's Board of Directors, in the By-Laws of the associations for insuring the property and maintaining the property in a proper state of repair.

10. Non-Residential Coverage—Condominiums

Individual units in multi-unit *non* residential condominium buildings are treated differently by the NFIP. The commonly owned structural elements of such buildings, together with any community owned contents for that building, may *not* be insured by the individual unit owners. They may, however, be insured in the name of the association. Owners of nonresidential units may purchase individual contents coverage in their own name for their own contents.

11. Coverage Options—For Lenders

(a) *Individual Dwelling Policies.* A lender can require the borrower to purchase and maintain an individual Dwelling Policy for the appropriate amount, as discussed previously.

(b) *General Property Policy.* A lender might accept evidence of a General Property Policy purchased by the association. However, as mentioned previously, the coverage limits available under this policy are only $250,000, and that amount is the total for the entire building. It is therefore unlikely that this will be sufficient insurance to cover all mortgages in the building. Even though such an amount might appear to be sufficient to cover an individual mortgage, its actual ability to provide protection with respect to that mortgage will have to be significantly reduced at the time of loss, as any benefits arising out of that coverage will be shared with all of the other unit owners in that building, regardless of whether or not they have a mortgage.

Note: Lenders should be cautioned that they should not accept evidence of this policy as automatically fulfilling their statutory requirement, without further reviewing the policy's details as to the amount of coverage being provided each unit in that building.

(c) *Condominium Master Policy.* A lender could accept evidence of this policy being purchased by the association to meet the lenders regulatory requirement. The lender should be careful to assure that the amount of coverage purchased will be sufficient to meet its regulatory requirements. It will be easier for this to be the case because this policy is a compilation of individual Dwelling policies. Therefore, because the coverage limits available under the Condominium Master Policy are $185,000 times the number of units, the association may purchase up to that amount. The simplest way for a lender to be certain that the coverage on such a policy is sufficient is for the lender to divide the coverage purchased by the number of units in the building. If the resulting amount is at least $70,000, and the value of the average unit is at least that amount, then the total coverage purchased under that policy is probably sufficient to meet the lender's basic requirements, on the basis of the statutory cap of $70,000.[2]

If sufficient amounts of Flood Insurance are purchased by the Association under option (c), this might be the best option for a lender to consider, as it will be the one most likely to fulfill the mandatory Flood Insurance Purchase Requirements. Since it is likely that it will be handled administratively by the association in the same manner as in the case of their other forms of property insurance, it should assure a higher likelihood that the Association will renew the policy.

[2] In this connection it should be noted that $70,000 is the maximum amount of insurance required for single family residential dwellings by section 1308(b)(6) of the 1968 Act (section 1413(b)(6) of Title 42 U.S.C.), which on October 12, 1977, modified the language of Section 102 of the original 1973 Act, which defined the purchase requirement as being "at least equal to the outstanding principal balance of the loan or the maximum limit of coverage made available with respect to this particular type of property under the [1968] Act, whichever is less."

NATIONAL FLOOD INSURANCE PROGRAM—APPLICATION TO CONDOMINIUMS

Ownership			Insurable Interest		Flood Coverage Available	
Property/Location	Unit owner	Association	Unit owner	Association	Unit owner	Association
Within unit:						
Air space	Y	N	N	N	N	N
Wall, floor and ceiling coverings, improvements and betterments.	Y	N	Y	N	Y [5]	Y [6]
Common structural elements	N	Y	Y [5]	Y	Y [5]	Y [6]
Contents	Y	N [1]	Y	N [1]	Y	N [7]
Outside unit:						
Common structural elements of all buildings owned by association.	Y [2]	Y [3]	Y	Y	Y [5]	Y
Common areas (non-structural)	Y [2]	Y [3]	N [4]	N [4]	N [4]	N [4]
Common contents	Y [2]	Y [3]	Y	Y	Y	Y

[1] Except when contents of unit are commonly owned.
[2] The unit owner owns a proportional share of the total common elements.
[3] Ownership divided proportionally amongst all unit owners.
[4] NFIP covers only buildings and their contents.
[5] The Dwelling Policy covers both the unit owner's insurable interest in structural elements of the unit as well as those for all the common structural elements of the NFIP insured buildings. This policy may be purchased by either the unit owner or the association. Associations may, in certain cases, also purchase a Condominium Master Policy, which gives similar coverage of both units and common elements.
[6] Only the association may purchase a General Property Policy. It covers all common structural elements of the building, including those within a unit, to the extent that adequate amounts of coverage have been purchased. This would include the improvements and betterments within the units.
[7] Except when the association owns the contents in a unit as common property. For more detailed information on the condominium concept see the four examples and descriptive exhibits which follow.

BILLING CODE 6718-01-M

Example 1

FLOOD INSURANCE COVERAGE/COSTS FOR CONDOMINIUMS IN MULTI-STORY BUILDINGS

CURRENT INDIVIDUAL DWELLING POLICIES VERSUS NEW CONDOMINIUM MASTER POLICY

(Regular Program, Pre-FIRM Construction, Zone A)

		CURRENT DWELLING POLICY (Actual)	NEW CONDOMINIUM MASTER POLICY (Estimates)
• AMT. OF COVERAGE/UNIT	$70,000	$70,000	$70,000
• NO. OF UNITS	100		
• AMT. OF COVERAGE/BLDG.	$7 MILLION	$7 MILLION	$7 MILLION
• RATES		$.55/.17	$.55/.17
D.P.—Single Family		400 × $ .55 = $220	1,150 × $ .55 = $ 633
C.M.P.—Other Residential/ Single Family		300 × $ .17 = 51	68,850 × $ .17 = $11,705
• PREMIUM—UNIT/BLDG.		$271	$12,338
• EXPENSE CONSTANT		$45/UNIT	$ 45/ BLDG.
• TOTAL PREMIUM/UNIT		$ 316	$12,383
• NO. OF UNITS		X 100	N/A
• TOTAL PREMIUM/BLDG.		$ 31,600	$12,383
• DEDUCTIBLE—UNIT/BLDG.		$500/UNIT × 100 = $ 50,000	$ 500

• NET SAVINGS/BENEFIT TO THE ASSOCIATION	• ANNUAL PREMIUM	$19,217
	• LOWER DEDUCTIBLE / INCREASED COVERAGE AT NO ADDITIONAL COST	$ 49,500
	• BOARD FIDUCIARY RESPONSIBILITY MET	
• NET BENEFIT TO THE PRODUCER/WYO COMPANY	• ONE APPLICATION FORM • ONE POLICY • ONE DECLARATIONS PAGE • ONE SET OF NOTICES	

Example 2

FLOOD INSURANCE COVERAGE/COSTS FOR CONDOMINIUMS IN MULTI-STORY BUILDINGS

CURRENT INDIVIDUAL DWELLING POLICIES VERSUS NEW CONDOMINIUM MASTER POLICY

(Regular Program, Post-FIRM Construction, Zones AI-30, Lowest Floor At BFE)

		CURRENT DWELLING POLICY (Actual)	NEW CONDOMINIUM MASTER POLICY (Estimates)
• AMT. OF COVERAGE/UNIT	$70,000	$70,000	$70,000
• NO. OF UNITS	100		
• AMT. OF COVERAGE/BLDG.	$7 MILLION	$7 MILLION	$7 MILLION
• RATES		$.30/.06	$.35/.06
D.P.—Single Family		400 × $ .30 = $120	1,150 × $ .35 = $ 403
C.M.P.—Other Residential/ Single Family		300 × $ .06 = 18	68,850 × $ .06 = $ 4,131
• PREMIUM—UNIT/BLDG.		$138	$ 4,534
• EXPENSE CONSTANT		$45/UNIT	$ 45/ BLDG.
• TOTAL PREMIUM/UNIT		$ 183	$ 4,579
• NO. OF UNITS		X 100	N/A
• TOTAL PREMIUM/BLDG.		$ 18,300	$ 4,579
• DEDUCTIBLE—UNIT/BLDG.		$500/UNIT × 100 = $ 50,000	$ 500

• NET SAVINGS/BENEFIT TO THE ASSOCIATION	• ANNUAL PREMIUM	$13,721
	• LOWER DEDUCTIBLE / INCREASED COVERAGE AT NO ADDITIONAL COST	$ 49,500
	• BOARD FIDUCIARY RESPONSIBILITY MET	
• NET BENEFIT TO THE PRODUCER/WYO COMPANY	• ONE APPLICATION FORM • ONE POLICY • ONE DECLARATIONS PAGE • ONE SET OF NOTICES	

Example 3

FLOOD INSURANCE COVERAGE/COSTS FOR CONDOMINIUMS IN MULTI-STORY BUILDINGS

CURRENT INDIVIDUAL DWELLING POLICIES VERSUS NEW CONDOMINIUM MASTER POLICY

(Regular Program, Post-FIRM Construction, Zone AO-AH, No Basement, Without Certification)

		CURRENT DWELLING POLICY (Actual)	NEW CONDOMINIUM MASTER POLICY (Estimates)
• AMT. OF COVERAGE/UNIT	$70,000	$70,000	$70,000
• NO. OF UNITS	100		
• AMT. OF COVERAGE/BLDG.	$7 MILLION	$7 MILLION	$7 MILLION
• RATES		$.55/.17	$.65/.17
D.P.—Single Family		400 × $ .55 = $220	1,150 × $ .65 = $ 748
C.M.P.—Other Residential/ Single Family		300 × $ .17 = 51	68,850 × $ .17 = $11,705
• PREMIUM—UNIT/BLDG.		$271	$12,453
• EXPENSE CONSTANT		$45/UNIT	$ 45/ BLDG.
• TOTAL PREMIUM/UNIT		$ 316	$12,498
• NO. OF UNITS		X 100	N/A
• TOTAL PREMIUM/BLDG.		$ 31,600	$12,498
• DEDUCTIBLE—UNIT/BLDG.		$500/UNIT × 100 = $ 50,000	$ 500

• NET SAVINGS/BENEFIT TO THE ASSOCIATION	• ANNUAL PREMIUM	$19,102
	• LOWER DEDUCTIBLE/ INCREASED COVERAGE AT NO ADDITIONAL COST	$49,500
	• BOARD FIDUCIARY RESPONSIBILITY MET	
• NET BENEFIT TO THE PRODUCER/WYO COMPANY	• ONE APPLICATION FORM • ONE POLICY • ONE DECLARATIONS PAGE • ONE SET OF NOTICES	

Example 4

FLOOD INSURANCE COVERAGE/COSTS FOR CONDOMINIUMS IN MULTI-STORY BUILDINGS

CURRENT INDIVIDUAL DWELLING POLICIES VERSUS NEW CONDOMINIUM MASTER POLICY

(Regular Program, Post-FIRM Construction, Zones AO-AH, No Basement, With Certification)

		CURRENT DWELLING POLICY (Actual)	NEW CONDOMINIUM MASTER POLICY (Estimates)
• AMT. OF COVERAGE/UNIT	$70,000	$70,000	$70,000
• NO. OF UNITS	100		
• AMT. OF COVERAGE/BLDG.	$7 MILLION	$7 MILLION	$7 MILLION
• RATES		$.17/.06	$.17/.06
D.P.—Single Family		400 × $ .17 = $ 68	1,150 × $ .17 = $ 195
C.M.P.—Other Residential/ Single Family		300 × $ .06 = 18	68,850 × $ .06 = $ 4,131
• PREMIUM—UNIT/BLDG.		$ 86	$ 4,326
• EXPENSE CONSTANT		$45/UNIT	$ 45/ BLDG.
• TOTAL PREMIUM/UNIT		$ 131	$ 4,371
• NO. OF UNITS		X 100	N/A
• TOTAL PREMIUM/BLDG.		$ 13,100	$ 4,371
• DEDUCTIBLE—UNIT/BLDG.		$500/UNIT × 100 = $ 50,000	$ 500

• NET SAVINGS/BENEFIT TO THE ASSOCIATION	• ANNUAL PREMIUM	$8,729
	• LOWER DEDUCTIBLE / INCREASED COVERAGE AT NO ADDITIONAL COST	$49,500
	• BOARD FIDUCIARY RESPONSIBILITY MET	
• NET BENEFIT TO THE PRODUCER/WYO COMPANY	• ONE APPLICATION FORM • ONE POLICY • ONE DECLARATIONS PAGE • ONE SET OF NOTICES	

FEDERAL EMERGENCY MANAGEMENT AGENCY

FEDERAL INSURANCE ADMINISTRATION

NATIONAL FLOOD INSURANCE PROGRAM
CONDOMINIUM MASTER POLICY

INDIVIDUAL FEATURES

POLICY IN EFFECT :	o AS OF JANUARY 1, 1989
INSURED:	o ASSOCIATION ONLY
BUILDINGS ELIGIBLE:	o 3 OR MORE FLOORS / 5 OR MORE UNITS
PROPERTY COVERED:	o ALL COMMON STRUCTURAL BUILDING ELEMENTS o INTERNAL UNIT ELEMENTS - WALL, FLOOR, CEILING COVERINGS - IMPROVEMENTS & BETTERMENTS
ASSESSMENT COVERAGE:	o YES *
COVERAGE LIMITS:	o $185,000 X NO. OF UNITS IN BLDG. OR ACTUAL CASH VALUE OF BLDG. (WHICHEVER IS LESS)
COVERAGE TYPE:	o ACTUAL CASH VALUE
DEDUCTIBLE:	o $500 PER BUILDING (NOT UNIT)
EXPENSE CONSTANT:	o $45 PER BUILDING (NOT UNIT)
RATES:	o LOWER THAN WITH OTHER NFIP POLICIES o USED DIFFERENTLY - RESULTS IN LOWER PREMIUM
PREMIUM:	o SIGNIFICANTLY LOWER - UP TO 60% PLUS
MINIMUM COVERAGE REQUIREMENT?	o INSURANCE TO VALUE STRONGLY URGED

* So long as the following assessment criteria are met.
1) Other bldgs. of association covered by General Prop. policy.
2) Association flood coverage must be NFIP coverage.
3) Coverage amount must be ACV or maximum available, whichever is less.

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Date: June 28, 1989.

Harold T. Duryee,

Federal Insurance Administrator.

[FR Doc. 89-16200 Filed 7-12-89; 8:45 am]

BILLING CODE 6718-01-M

federal register

Thursday
July 13, 1989

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Temporary Suspension of Transponder With Altitude Encoding Equipment Requirement Below the Chicago, IL, Terminal Control Area; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 25957; Special Federal Aviation Regulation (SFAR) No. 56]

Temporary Suspension of Transponder With Altitude Encoding Equipment Requirement Below the Chicago, IL, Terminal Control Area

AGENCY: Federal Aviation Administration (FAA), Department of Transportation, (DOT).

ACTION: Final rule.

SUMMARY: This action suspends portions of the requirements of the Federal Aviation Regulations, which require the use of transponder and altitude reporting equipment below and outside the Terminal Control Area (TCA) at Chicago, IL. This action is intended to accommodate the transition through that area of a large number of non-transponder-equipped aircraft traveling to and from the annual convention of the Experimental Aircraft Association at Oshkosh, WI, and will not compromise the safety of aircraft operations in the affected area.

DATES:

Effective date: July 23, 1989.

Expiration date: August 6, 1989.

FOR FURTHER INFORMATION CONTACT: A. Wayne Pierce, Air Traffic Rules Branch, ATO-230 Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-8783

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the number of this SFAR. Persons interested in being placed on a mailing list for future rules should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Background

Each year the Experimental Aircraft Association (EAA) holds its national convention at Oshkosh, WI; this year the dates of the convention are July 31 through August 3. During these conventions unusually large numbers of aircraft operate into and out of Oshkosh. The FAA estimates that the number of aircraft participating will be on the order of 15,000 or more. Many of those aircraft will be traveling through or near the Chicago area enroute to or from the convention.

The FAA works with the EAA in a number of ways to provide for the safety of all participants and non-participants. During the period of the convention, the FAA establishes a temporary air traffic control "tower" using both radio and visual signals to control traffic and works with the EAA to establish procedures for aircraft arrival and departure at the convention. Despite the extraordinary number of aircraft which travel to this convention and participate in it each year, the convention has an excellent safety record.

On June 21, 1988, the FAA published a final rule expanding the requirements for the use of transponders with altitude encoding capability (Mode C) within 30 nautical miles of TCA primary airports, commonly referred to as the "veil." O'Hare International Airport in Chicago is an example of a TCA primary airport. Those requirements became effective on July 1, 1989.

The Need for Regulation

Many of the aircraft which participate in the EAA convention are of a type which are excluded from the requirements of the Mode C rule because those aircraft do not have an electrical system necessary to support the Mode C equipment. Many others are not excluded and would be required to carry the Mode C equipment for operations within 30 miles of O'Hare Airport unless otherwise authorized by ATC under the provisions of the rule. The FAA is prepared to accommodate the number of requests which will occur on a routine basis, as well as the unusual number of requests expected during the period immediately after the effective date of the rule on July 1. However, the FAA estimates that if each non-equipped aircraft bound to or from the EAA convention and traveling through the Chicago area were to request an authorization, the number of requests would be more than could be processed. Further, the FAA believes that, generally those aircraft which circumnavigate the TCA and 30-mile veil will not create a condition of compressed traffic. However, where the number of aircraft involved is as great as that expected for the EAA convention, and if the non-equipped aircraft covered by the regulation are required to circumnavigate the veil, the possibility of such congestion would be increased to a level which the FAA has determined would decrease the operational efficiency of the air traffic system in the Chicago area. In addition, many of the aircraft proceeding to Oshkosh are experimental, home-built, or antique aircraft which are not normally operated in long cross-country flights. Many such aircraft, while passing east of Chicago on the way to and from Oshkosh, would be required to operate over Lake Michigan up to 20 miles from the shore.

On the basis of the above, I find that these conditions constitute a situation requiring immediate action by the agency in order to maintain efficiency in the operation of aircraft in the Chicago area and avoid unnecessary compression of traffic during the periods of convention arrivals and departures.

The Rule

This rule suspends applicability of the requirement to carry a Mode C transponder when operating below 3,000 feet MSL between 10.5 nautical miles and 30 nautical miles from O'Hare Airport. The suspension of these requirements is only for the period of July 23, 1989 until August 6, 1989.

Effective Date of Final Rule

Because of the pending arrival in Oshkosh of large numbers of aircraft beginning in late July, immediate action is required to maintain the efficiency of flight operations in the Chicago area at an acceptable level. For this reason, and because the condition will begin to occur on July 26, I find that the notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. For the same reason, I find that good cause exists for making this rule effective less than 30 days after issuance.

Economic Assessment

The FAA has determined that this action is not a "major rule" under Executive Order 12291 and is not considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). The immediate nature of the action required does not permit the prior completion of a full regulatory evaluation. The rule has no identifiable costs. Benefits of the rule will be the most efficient routing of a large number of aircraft through the Chicago area during the July 23–August 6 period and a mitigation of the potential impact on ATC resources resulting from the Oshkosh convention. These benefits are not practically quantifiable, however. Because the action is a nonsignificant rulemaking and is temporary, a further regulatory evaluation will not be performed.

Federalism Determination

The amendment set forth herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 91

Aviation safety, Visual flight rules, ATC transponder and altitude reporting equipment and use.

The Special Federal Aviation Regulation

For the reasons set forth above, the Federal Aviation Administration is amending 14 CFR Part 91 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 (as amended by Pub. L. 100-223), 1422 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; Pub. L. 100-202; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. By adding Special Federal Aviation Regulation No. 56 to read as follows:

Special Federal Aviation Regulation (SFAR) No. 56—Temporary Suspension of Transponder With Altitude Encoding Equipment Requirement Below the Chicago, IL, Terminal Control Area

During the effective dates of this SFAR and in the airspace area described herein below, the requirements of § 91.24(b)(2) of the FAR are suspended.

(a) Airspace area. That airspace below 3,000 feet MSL between 10.5 nautical miles and 30 nautical miles from Chicago O'Hare International Airport, excluding airspace within the TCA.

(b) Effective dates. The provisions of this SFAR become effective at 12:01 a.m. local time, on July 23, 1989 and terminate at 11:59 p.m., local time, on August 6, 1989.

Expiration. This special rule expires at 11:59 p.m., local time, on August 6, 1989.

Issued in Washington, DC, July 7, 1989.

James B. Busey,

Administrator.

[FR Doc. 89-16432 Filed 7-10-89; 12:56 pm]

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

In the List of Public Laws printed in the **Federal Register** on July 12, 1989, Public Laws 101–53, 101–54, and 101–55 were incorrectly printed as Public Laws 100–53, 100–54, and 100–55, respectively. They should read as follows:

H.R. 2119/Pub. L. 101–53

To authorize the exchange of certain Federal public land in Madison County, Illinois. (July 6, 1989; 103 Stat. 144; 2 pages) Price: $1.00

H.J. Res. 276/Pub. L. 101–54

Designating September 14, 1989, as "National D.A.R.E. Day." (July 7, 1989; 103 Stat. 146; 2 pages) Price: $1.00

H.J. Res. 298/Pub. L. 101–55

Designating July 14, 1989, as "National Day To Commemorate the Bastille Day Bicentennial." (July 7, 1989; 103 Stat. 148; 1 page) Price: $1.00

Last List July 11, 1989

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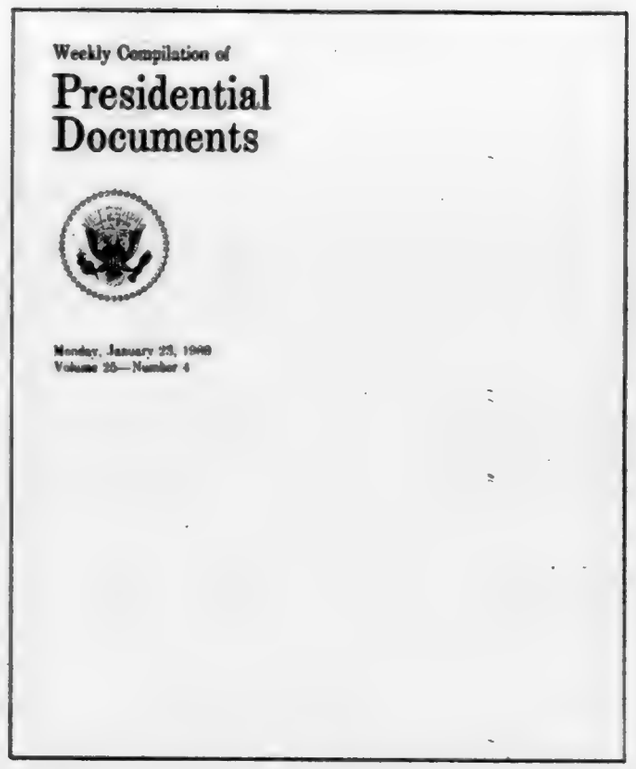

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federal register

Friday
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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 674]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 674 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 380,000 cartons during the period July 16 through July 22, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 674 (§ 910.974) is effective for the period July 16 through July 22, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1988-89. The Committee met publicly on July 11, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and, in a 9-2 vote, recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that overall demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.974 is revised to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.974 Lemon Regulation 674.

The quantity of lemons grown in California and Arizona which may be handled during the period July 16, 1989, through July 22, 1989, is established at 380,000 cartons.

Dated: July 12, 1989.

Charles R. Brader,
Director, Fruit and Vegetable Division.

[FR Doc. 89-16694 Filed 7-13-89; 8:45 am]
BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 5

[Notice No. 686; Ref: Notice Nos. 558, 668, 676]

Label Disclosure for Brandy and Whisky Treated With Wood

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Extension of use-up period for ATF Ruling 87-5.

SUMMARY: In order to provide sufficient time for completion of the rulemaking proceeding involving label disclosure for brandy and whisky treated with wood, 27 CFR 5.39(c), ATF is extending the use-up period for compliance with ATF Rul. 87-3 from July 31, 1989 to July 31, 1990 or, until the date that the final Treasury decision becomes effective, whichever occurs first.

DATE: Existing certificates of label approval for brandies which do not meet the requirements of ATF Rul. 87-3 will expire at midnight July 31, 1990 or, upon the date that the final Treasury decision becomes effective, whichever occurs first. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On May 24, 1988, ATF published Notice No. 658 in the **Federal Register** (53 FR 18574) proposing to amend the regulations in 27 CFR Part 5 concerning the wording, and placement, of the disclosure statement for brandy and whisky treated with wood.

The Bureau also solicited comments on a petition it received, filed jointly by the Federation des Exportateurs de Vins et Spirituex (FEVS) and the National Association of Beverage Importers, Inc. (NABI), concerning the usage and label disclosure for brandy treated with an infusion of oak chips, i.e., the Boise method. This petition was supported by several U.S. brandy producers.

The comment period for Notice No. 658, initially scheduled to close on August 22, 1988, was extended until November 22, 1988 (Notice No. 668, August 16, 1988· 53 FR 30848). It was subsequently extended again until January 6, 1989, with the publication of Notice No. 676 (November 22, 1988; 53 FR 47224). Notice No. 668 also extended the use-up period for compliance with ATF Rul. 87-3, A.T.F. Q.B. 1987-3, 12 (and corresponding Industry Circular 87-6, dated September 4, 1987) from December 31, 1988 to July 31, 1989. This ruling clarified the applicability of current regulations regarding label disclosure for brandy treated with wood.

In response to Notice Nos. 658, 668, and 676, the Bureau received 20 comments. Subsequent to its analysis of the comments, the Bureau has contacted, among others, the petitioners and the French Government, requesting additional information regarding the Boise method. At this time, the Bureau has not received all of the requested information.

Consequently, so as not to place an undue burden on the industry, and in order to provide the Bureau with sufficient time to complete the rulemaking proceeding, ATF is extending the use-up period for compliance with ATF Rul. 87-3, and corresponding Industry Circular 87-6, from July 31, 1989 to July 31, 1990 or, until the date that the final Treasury decision becomes effective, whichever occurs first.

Drafting Information

The author of this document is Coordinator James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, and Packaging and containers.

Authority and Issuance

This notice is issued under the authority in 27 U.S.C. 205.

Signed: July 10, 1989.

Stephen E. Higgins,

Director.

[FR Doc. 89-16535 Filed 7-13-89; 8:45 am]

BILLING CODE 4810-31-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2610

Payment of Premiums; Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Interim rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Payment of Premiums, which was published on July 10, 1989 (54 FR 28944). Appendix B to the regulation contains a table setting forth the interest rates that are required by statute to be used in valuing a plan's vested benefits for purposes of determining the amount of the premium due to the PBGC. This amendment adds to that table the interest rate applicable to plan years beginning in July 1989.

EFFECTIVE DATE: July 14, 1989.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Senior Counsel, Office of the General Counsel (Code 22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone 202-778-8823 (202-778-8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Section 9331 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, amended section 4006 of the Employee Retirement Income Security Act of 1974 ("ERISA") to establish a two-part premium structure for single-employer plans, *i.e.*, a flat rate per capita assessment and a variable rate assessment based on a plan's unfunded vested benefits, effective for plan years beginning on or after January 1, 1988. Under amended ERISA section 4006(a)(3)(E)(iii)(II), the interest rate used in valuing a plan's vested benefits for purposes of determining the amount of the plan's unfunded vested benefits must equal 80% of the annual yield on 30-year Treasury securities for the month preceding the month in which the plan year begins.

The Pension Benefit Guaranty Corporation's (the "PBGC's") final regulation on Payment of Premiums (54 FR 28944 (July 10, 1989)) implements these new premium rules. Under § 2610.23(b)(1) of the regulation, the interest rate for valuing vested benefits is determined by reference to the annual yield for 30-year Treasury constant maturities as reported in Federal Reserve Statistical Release G.13 and H.15. The required interest rate for a given "premium payment year" (the plan year for which the premium is being paid) is 80% of this rate for the calendar month preceding the calendar month in which the premium payment year begins. As a convenience, the PBGC established an Appendix B to the regulation setting forth the required interest rates for premium payment years beginning in January 1988 and thereafter. This amendment to Appendix B adds the interest rate for premium payments years beginning in July 1989.

With the publication of the final premium regulation, the PBGC is changing the schedule for updating Appendix B. Hereafter, that appendix will be updated every three months, concurrently with Appendix A to the regulation (interest rates for late premium payments), which will be updated every quarter whether or not the interest rate changes. Thus, on October 13 (the last business day before October 15, which falls on a Sunday), the PBGC will publish the Appendix A interest rate applicable for the October-December 1989 quarter and the Appendix B interest rates for premium payment years beginning in August, September and October 1989.

Appendix B to the regulation does not prescribe the required interest rates for valuing vested benefits. These rates are prescribed by section 4006(a)(3)(E)(iii)(II) of ERISA and § 2610.23(b)(1) of the regulation. The purpose of Appendix B is merely to collect and to republish these rates in a convenient place. Thus, the interest rates in Appendix B are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. See 5 U.S.C. 553(b). For these same reasons, the PBGC also finds that good cause exists for making these amendments effective immediately. See 5 U.S.C. 553(d)(3).

The PBGC has determined that this amendment is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 2610

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, Appendix B to Part 2610 of Chapter XXVI of Title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2610—PAYMENT OF PREMIUMS

1. The authority citation for Part 2610 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307, as amended by sec. 9331, Pub. L. 100-203, 101 Stat. 1330.

2. Appendix B to Part 2610 is amended by adding to the table of interest rates therein a new entry for premium payment years beginning in July 1989 and by adding the entry for premium payment years beginning in June 1989 which was originally published on June 15, 1989 (54 FR 25447) and mistakenly omitted from the July 10, 1989, revision of Part 2610 to read as follows. The explanatory text is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2610—Interest Rates for Valuing Vested Benefits

The following table lists the required interest rates to be used in valuing a plan's vested benefits under § 2610.23(b) and in calculating a plan's adjusted, vested benefits under § 2610.23(c)(1):

For premium payment years beginning in—	Required interest rate [1]
* * * * *	
June 1989	7.06
July 1989	6.62

[1] The required interest rate listed above is equal to 80% of the annual yield for 30-year Treasury constant maturities, as reported in Federal Reserve Statistical Release G.13 and H.15, for the calendar month preceding the calendar month in which the premium payment year begins.

Issued in Washington, DC, on this 11th day of July, 1989.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 89-16546 Filed 7-13-89; 8:45 am]

BILLING CODE 7708-01-M

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29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning August 1, 1989. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The Pension Benefit Guaranty Corporation adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after August 1, 1989, and will remain in effect until the PBGC issues new interest rates and factors.

EFFECTIVE DATE: August 1, 1989.

FOR FURTHER INFORMATION CONTACT: John Foster, Attorney, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006, 202-778-8824 (202-778-8859 for TTY and TDD only). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR Part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). The recent amendments to Title IV made by the Pension Protection Act ("PPA"), a part of the Omnibus Budget Reconciliation Act of 1987, increase the amount of plan benefits for which an employer is responsible upon plan termination. These new termination rules apply to plan terminations with respect to which the 60-day advance notice to affected parties (the notice of intent to terminate) is issued after December 17, 1987. (For more detail, see the PBGC's Notice of Revised Termination Rules, 53 FR 1905 (January 22, 1988).) However, the PPA does not change the Title IV valuation rules.

Under amended ERISA section 4041(c), all plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", i.e., all benefits provided under the plan as of the plan termination date, using the formulas set forth in Part 2619. Plans terminating in a standard termination may, for purposes of the notice given to the PBGC, use these formulas to value benefit liabilities, although this is not required. (Such plans may value benefit liabilities that are payable as annuities on the basis of a qualifying bid obtained from an insurer.)

Plans that terminate on or after January 1, 1986 (the effective date of the Single-Employer Pension Plan Amendments Act of 1986) and issued notices of intent to terminate prior to December 18, 1987, or against which the PBGC instituted involuntary termination proceedings before that date, shall continue to be responsible for benefit commitments under the plan and to value guaranteed benefits and/or benefit commitments.

Appendix B in Part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since June 1, 1989 (54 FR 20838 (May 15, 1989)). This amendment adds to Appendix B a new

set of interest rates and factors for valuing benefits in plans that terminate on or after August 1, 1989, which set reflects a decrease of ¼ percent in the immediate interest rate to 7½ percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after August 1, 1989, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, Part 2619 of Chapter XXVI, Title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for Part 2619 is revised to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362, as amended by secs. 9312–13, Pub. L. 100–203, 101 Stat. 1330.

Appendix B—[Amended]

2. Rate Set 78 of Appendix B is revised and Rate Set 79 of Appendix B is added to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates and Quantities Used To Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "Gy" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1, and n_2 are defined in § 2619.45.

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred Annuities				
	On or after	Before		k_1	k_2	k_3	n_1	n_2
•	•	•	•	•	•	•	•	
78	6–1–89	8–1–89	7.75	1.0700	1.0575	1.0400	7	8
79	8–1–89		7.50	1.0075	1.0550	1.0400	7	8

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 89–16547 Filed 7–13–89; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSMRE is announcing the approval of an amendment to the Pennsylvania permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment provides Pennsylvania's Department of Environmental Resources (DER) with the authority to regulate coal preparation plants and other related coal mining activities not previously covered by the Pennsylvania program. The amendment revises the State program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: July 14, 1989.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Third Floor, Suite 3C, Harrisburg Transportation Center, 4th and Market Streets, Harrisburg, Pennsylvania 17101; Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Pennsylvania Program

The Secretary of the Interior conditionally approved the Pennsylvania program on July 31, 1982. Information on the background of the Pennsylvania program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the July 30, 1982, **Federal Register** (47 FR 33050). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Submission of Amendment

By letter dated December 5, 1988 (Administrative Record No. PA 720), DER submitted a proposed amendment to modify the following rules of the Pennsylvania program, at Title 25 Pennsylvania Code: Sections 86.1, 86.12, 88.1, 88.381, and 89.5. The proposed changes will expand regulatory coverage to include coal preparation activities not previously regulated under the approved program. The changes are briefly described below:

(1) Amendments to 25 PA Code §§ 86.1, 88.1, and 89.5 add a definition for "coal preparation activity."

(2) Amendment to 25 PA Code § 86.1 revises the definition of "coal mining activity" to include the term "coal preparation activities."

(3) Amendment to 25 PA Code § 86.12 adds provisions to allow for the continued operation of newly regulated coal preparation activities beyond the effective date of this amendment.

(4) Amendment to 25 PA Code § 86.1 grants valid existing rights (VER) to those coal preparation facilities and their associated haul roads which were lawfully in existence on or before July 6, 1984 and were not previously regulated under the Pennsylvania program.

(5) Amendment to 25 PA Code § 88.381 references coal preparation activities in rules governing coal processsing facilities in the anthracite region.

OSMRE published a notice in the **Federal Register** on January 27, 1989, announcing receipt of the proposed program amendment and, in the same notice, opened the public comment period and provided opportunity for a public hearing on its substantive adequacy (54 FR 4046). The public comment period ended February 27, 1989. No public comments were received. There was no request for a public hearing and the hearing scheduled for February 21, 1989, was not held.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17 are the Director's findings concerning the proposed amendment to the Pennsylvania program. Revisions which are not discussed below contain language similar to the corresponding Federal rules, or concern nonsubstantive wording changes and do not adversely affect other aspects of the program.

(1) The term "coal preparation activity" is added and defined at §§ 86.1, 88.1 and 89.5 of the Pennsylvania Code. The new definition of coal preparation activity includes all operations where coal is subjected to chemical or physical processing or cleaning, concentrating or other processing or preparation. Other activities conducted in support of coal preparation activity are regulated as coal preparation activity. These activities include, but are not limited to, the following: Private roads appurtenant to coal preparation activity; loading facilities; storage and stockpile facilities; shops and other buildings; water treatment and storage facilities; settling basins; and equipment and material storage areas. The definition of coal preparation activity proposed by Pennsylvania is substantively the same as the Federal definitions for "coal preparation" and "coal preparation plant" found at 30 CFR 701.5 and is deemed no less effective than the Federal regulations.

(2) The term "coal mining activity" found at 25 PA Code § 86.1 is amended to include coal preparation activities. The substantive effect of adding the term coal preparation activities to the definition of coal mining activities is to cause coal preparation activities to be subject to the permitting and performace standards of the approved State program. In essence, the same coal preparation activities and facilities regulated under the Federal rules are regulated by Pennsylvania's proposed definition. Therefore, the Director finds the revised definition of coal mining activity is no less effective than the Federal counterparts at 30 CFR 701.5.

(3) The amendment will for the first time result in the regulation of facilities which physically process coal. These newly regulated coal preparation facilities must be authorized by a coal mining activity permit. Under proposed program revisions at 25 PA Code § 86.12, such facilities may continue to operate if the operator submits a timely and complete permit application on which the DER has not yet rendered a decision and the operation is operated in conformity with applicable performance standards. These criteria for continued operation are the same as those in 30 CFR 785.21(e). The Director, therefore finds the provisions at 25 PA Code § 86.12 no less effective than the Federal regulations.

(4) The term valid existing rights (VER) found at 25 PA Code § 86.1, which applies to all coal mining activity, is revised to set a limiting date of July 6, 1984, for previously unregulated coal preparation activities and their associated haul roads. Subparagraph (iii) of the definition states that VER applies to coal preparation activities and their associated haul roads, which were not subject to the requirements of Chapters 86–90 prior to the effective date of this subsection, were in existence on or before July 6, 1984, and were operating in compliance with applicable laws prior to that date. July 6, 1984, is the date on which the District Court ruled that facilities which in any way leach, chemically process, or physically process coal should be regulated as coal preparation plants even if they do not separate coal from its impurities *In Re: Permanent Surface Mining Regulation Litigation (II)*, Civil Action No. 79–1144 (D.D.C. 1984). The proposed amendment clarifies that the date of July 6, 1984, only pertains to coal preparation facilities and associated haul roads not previously covered under the approved program and that all other coal mining activities are subject to a limiting date of August 3, 1977. Furthermore, the July 6, 1984, date set forth in the proposed amendment is identical to the date upon which Federal rules at 30 CFR 827.13 subjected previously unregulated coal preparation plants to the permanent program regulations of SMCRA and is consistent with the timing of the District Court's decision. The Director, therefore finds that the revised definition of VER is no less effective than the Federal regulations.

(5) The general requirements for anthracite coal processing facilities found at 25 PA Code § 88.381 are revised to replace existing references to coal processing plants, facilities, and activities with the proposed term "coal preparation activity." The Director finds these proposed changes provide clarity and consistency in the types of activities regulated and are no less effective than 30 CFR Part 820.

IV. Disposition of Comments

Pursuant to Section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Pennsylvania program. Comments were also solicited from Pennsylvania's Historical and Museum Commission (PHMC). No substantial comments were received from the Federal agencies, but one comment was received from the PHMC.

The PHMC objected to the date for establishing VER for coal preparation facilities not previously regulated under the Pennsylvania program. Instead of the July 6, 1984, date proposed in the amendment, PHMC felt that August 3, 1977, the date when SMCRA was enacted, was more appropriate.

Federal rules at 30 CFR 785.21 governing such facilities set July 6, 1984, as the date for establishing VER. This date coincides with the District Court for the District of Columbia's July 6, 1984, ruling in *In Re: Permanent Surface Mining Regulation Litigation (II)*, No. 79–1144 (D.D.C. 1984). In the discussion of 30 CFR 785.21 rulemaking (52 FR 17728, May 11, 1987), the reasoning for selecting the date is discussed in detail. OSMRE stated that although it has jurisdiction to cover facilities operating prior to July 6, 1984, it would be inequitable to do so. Prior to the District Court's decision, operators of such facilities could have reasonably believed that the program did not apply to them during their period of operation and they could have made their business decisions upon reliance of

those beliefs. The Commission's comment is not accepted because the date in the proposed Pennsylvania amendment for establishing VER for previously unregulated coal preparation facilities is the same as the date established in the Federal rules.

V. Director's Decision

For the reasons discussed in the finding above, the Director is approving the amendment as submitted to OSMRE on December 5, 1988.

The Federal rules at 30 CFR Part 938 codifying decisions concerning the Pennsylvania program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs to the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action, OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 938

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Carl C. Close,

Assistant Director, Eastern Field Operations.

Date: July 6, 1989.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 938—PENNSYLVANIA

1. The authority citations for Part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 938.10 the addresses and telephone numbers of the Office of Surface Mining are revised to read as follows:

§ 938.10 State regulatory program approval.

* * * * *

Office of Surface Mining Reclamation and Enforcement, Third Floor, Suite 3C, Harrisburg Transportation Center, 4th and Market Streets, Harrisburg, Pennsylvania 17101; Telephone: (717) 782–4036.

Office of Surface Mining Reclamation and Enforcement, Room 5131, 1100 "L" Street, NW., Washington, DC 20240; Telephone: (202) 343–5492.

3. In § 938.15, paragraph (p) is added to read as follows:

§ 938.15 Approval of regulatory program amendments.

* * * * *

(p) The following amendment pertaining to the regulation of coal preparation plants submitted to OSMRE on December 5, 1988: is approved effective July 14, 1989. Title 25 of the Pennsylvania Code §§ 86.1, 86.12, 88.1, 88.381 and 89.5.

[FR Doc. 89–16521 Filed 7–13–89; 8:45 am]

BILLING CODE 4310-05-M

POSTAL SERVICE

39 CFR Parts 221, 222, 223, 224, 225, 226, 227, 228, 229

Revision of Committee Structure and Other Organizational Changes

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule reflects the changed names and organizational structure of the top management committees of the Postal Service. It reflects the new name of the Associate Postmaster General (Systems) and the establishment of the new position of Associate Postmaster General (International). It also makes numerous other organizational and editorial changes.

EFFECTIVE DATE: July 14, 1989.

FOR FURTHER INFORMATION CONTACT: Ellen A. Meredith, (202) 268–4188.

List of Subjects in 39 CFR Parts 221, 222, 223, 224, 225, 226, 227, 228, 229

Organization and functions (Government agencies), Authority delegations (Governmt agencies), Postal Service.

Accordingly, Title 39 CFR, is amended as follows:

PART 221—GENERAL PRINCIPLES OF ORGANIZATION

1. The authority citation for Part 221 is revised to read as follows:

Authority: 39 U.S.C. 201, 202, 203, 204, 401(2), 402, 403, 404.

2. Section 221.5 is revised to read as follows:

§ 221.5 Associate Postmasters General.

(a) The Associate Postmasters General are appointed and can be removed by the Postmaster General.

(b) The Associate Postmasters General are required to perform all tasks as assigned by the Postmaster General.

3. In § 221.6, the introductory text of paragraph (a), and paragraphs (c) and (d) are revised to read as follows:

§ 221.6 Groups and Departments.

(a) Postal Service Headquarters is divided into five major groups: Operations Support, Finance, Human Resources, Marketing and Communications, and Administrative Services. Each group is headed by a Senior Assistant Postmaster General (SAPMG). The SAPMG for Finance reports directly to the Postmaster General. The SAPMG for Operations Support reports directly to the Deputy Postmaster General. The SAPMGs for Human Resources, Marketing and Communications, and Administrative Services report directly to the Associate Postmaster General (Systems). The SAPMGs are responsible for the following activities within their assigned areas:

* * * * *

(c) Certain other Headquarters units report directly to the Postmaster General. These include the Inspection Service Department, headed by the Chief Postal Inspector; the Law Department, headed by the General Counsel, and the Planning Department, headed by an Assistant Postmaster General. The Executive Assistant to the Postmaster General also reports to the Postmaster General.

(d)(1) The Senior Management Committee establishes Postal Service direction and policy, initiates and monitors key programs, prioritizes resource utilization, and serves as the review and approval body for all major plans, programs, and projects. It fosters cross-functional cooperation and develops the strategic plans for the Postal Service.

(2) The Senior Management Committee is made up of the following: The Postmaster General, the Deputy Postmaster General, Associate Postmasters General, the Senior Assistant Postmasters General, General Counsel, Chief Postal Inspector, Assistant Postmaster General, Planning (Secretariat), Assistant Postmaster General, Communications (Observer), Assistant Postmaster General, Government Relations (Observer), Executive Assistant to the Postmaster General (Observer), Secretary to the Board of Governors (Observer), Field Executive (Rotational Basis).

§ 221.7 [Amended]

4. In § 221.7(c)(1), remove "large independent post offices headed by postmasters,".

5. In § 221.7(c)(2), remove "operations" and insert in its place "activities"; remove "and regions"; and remove "independent post offices" and insert in its place "associate offices".

6. In § 221.7(c)(3), remove "operations" and insert in its place "activities"; and remove "regions" and insert in its place "field divisions".

7. In § 221.7(c)(4), remove "operations" and insert in its place "activities"; and remove "regions" and insert in its place "field divisions"

8. Remove § 221.7(c)(5).

PART 222—DELEGATIONS OF AUTHORITY

9. The authority citation for Part 222 continues to read as follows:

Authority: 39 U.S.C. 203, 204, 401(2), 402, 403, 404, 409.

10. The first sentence of § 222.1(e) is revised to read as follows:

§ 222.1 Authority for delegation.

* * * * *

(e) The Associate Postmasters General; the SAPMGs; the Chief Postal Inspector; the General Counsel; the Assistant Postmaster General, Planning; and the Executive Assistant to the Postmaster General, act for the Postmaster General on assigned matters.

* * *

§ 222.4 [Amended]

11. In § 222.4(a)(1), remove the word "departments" and insert in its place the word "functions".

12. In § 222.5, revise paragraphs (a)(2), (a)(3), and (a)(4), and paragraph (c) to read as follows:

§ 222.5 Authority to approve personnel actions and administer oaths of office for employment.

(a) * * *

* * * * *

(2) Chief Postal Inspector;

(3) Regional Chief Postal Inspectors;

(4) Postal Inspectors-in-Charge;

* * * * *

(c) *Transfers of accountability.* In addition to other personnel authorized under this section, associate office coordinators at field divisions and management sectional centers may administer oaths of office for employment at any post office in conjunction with transfers of accountability of postmasters.

§ 222.5 [Amended]

13. In § 222.5(a)(7), remove the word "placement" and insert in its place the word "replacements".

§ 222.6 [Amended]

14. In § 222.6, revise paragraph (c)(3) to read as follows:

* * * * *

(c) * * *

(3) *Recruitments for Job Training Programs.* Oaths of office to prospective Job Training Programs enrollees.

§ 222.7 [Amended]

15. In § 222.7(a)(1), remove "*The Chief Inspector*" and insert in its place "*The Chief Postal Inspector*".

16. In § 222.7(a)(3), remove "and Planning".

17. In § 222.7(c)(1), in the introductory text, remove "Signature Card" and insert in its place "Signature/Designation Card"; and remove "disbursing".

18. In § 222.7(c)(1)(i), remove "he will sign vouchers" and insert in its place "vouchers will be signed".

19. In § 222.7(c)(2), remove "and Planning".

20. In § 222.7(c)(3), remove "The Chief Inspector" and insert in its place "The Chief Postal Inspector"; and remove "and Planning".

§ 222.8 [Amended]

21. In § 222.8(a)(1), remove "The Chief Inspector" and insert in its place "The Chief Postal Inspector".

22. In § 222.8(a)(3), remove "and Planning, or designee, or his designee" and insert in its place ", or designee".

23. Revise the heading and introductory text of § 222.8(c)(1) to read as follows:

* * * * *

(c) *Designating certifying officers.*—(1) *Regional Chief Postal Inspectors and Postal Inspectors-in-Charge.* Regional Chief Postal Inspectors and Postal Inspectors-in-Charge are designated certifying officers, as limited by the Chief Postal Inspector. They are authorized to designate certifying officers for obligations incurred by the Postal Inspection Service. They will complete SF 210 in duplicate to show:

* * * * *

24. In § 222.8(c)(1)(i), remove "Inspection Service" and insert in its place "Postal Inspection Service".

25. In § 222.8(c)(1)(iv), remove "Regional Chief Inspectors" and insert in its place "Regional Chief Postal Inspectors"; and remove "Inspectors-in-Charge" and insert in its place "Postal Inspectors-in-Charge".

26. In § 222.8(c)(3), remove "Regional Chief Inspector" and insert in its place "Regional Chief Postal Inspector"; and remove "Inspectors-in-Charge" and insert in its place "Postal Inspectors-in-Charge".

§ 222.9 [Amended]

27. In the heading of § 222.9 and in the introductory text of § 222.9(a), remove "and Planning".

28. In § 222.9(b), remove "and Planning".

PART 223—RELATIONSHIPS AND CHANNELS OF COMMUNICATION

29. The authority citation for Part 223 continues to read as follows:

Authority: 39 U.S.C. 203, 204, 401(2), 402, 403, 404.

§ 223.1 [Amended]

30. Paragraphs (a) and (c) of § 223.1 are revised to read as follows:

(a) *Between Headquarters and Regions.* Each Headquarters group, department, and office shall provide guidance and policy interpretation to regional officials in its area of responsibility.

* * * * *

(c) *Between Field Divisions and MSCs.* Field division general managers/postmasters and staffs shall provide

guidance and direction to their respective MSC managers/postmasters.

* * * * *

§ 223.2 [Amended]

31. In § 223.2, the heading of paragraph (b) and paragraphs (b)(1) and (b)(2), and paragraphs (c)(1) and (c)(3) are revised to read as follows:

* * * * *

(b) *Regional Offices and Field Installations.* * * *

(1) Associate office postmasters, to and from their MSC Manager/Postmaster.

(2) MSC Managers/Postmasters, to and from their Field Division General Manager/Postmaster.

* * * * *

(c) * * *

(1) The Information Resource Management Department provides the necessary directives to the PDCs. The Law Department shall maintain direct contact on matters relating to professional and policy guidance on claims.

* * * * *

(3) Other postal installations and PDCs may communicate directly on routine accounting matters.

PART 224—ORGANIZATIONS REPORTING DIRECTLY TO THE POSTMASTER GENERAL

32. The heading of Part 224 is revised to read as set forth above.

33. The authority citation for Part 224 continues to read as follows:

Authority: 39 U.S.C. 203, 204, 401(2), 402, 403, 404, 409.

34. Section 224.1 is removed; § 224.2 is redesignated § 224.1; paragraph (b) of redesignated § 224.1 is removed; paragraph (c) of redesignated § 224.1 is redesignated paragraph (b); paragraph (d) of redesignated § 224.1 is redesignated paragraph (c); redesignated paragraph (c)(6) is revised; new paragraphs (d) and (f) are added; and the heading and paragraph (a) of redesignated § 224.1 are revised to read as follows:

§ 224.1 Finance Group.

(a) *General.* The Finance Group is headed by a Senior Assistant Postmaster General (SAPMG). The group consists of three departments, each headed by an Assistant Postmaster General, and the Office of the Treasurer and the USPS Records Officer. The SAPMG, Finance, participates in the planning and budget process, and reviews and evaluates the budget requests of each region for the areas under control of the Finance Group.

(b) [Redesignated from (c)]

(c) [Redesignated from (d)]

* * * * *

(6) Directing the formulation and presentation of a national budget to the Senior Management Committee, Board of Governors, Office of Management and Budget, and Congress.

(d) *Special Projects Department.* The Special Projects Department is responsible for:

(1) Assisting senior management in formulating policy and direction on complex issues.

(2) Directing special studies identified by senior management for use in senior management deliberations.

(3) Monitoring specifically designed issues on behalf of senior management and providing staff analysis of these issues as they change over time.

(4) Providing leadership responsibility on behalf of senior management for special projects and organizational initiatives.

(5) Participating in senior management meetings as appropriate.

* * * * *

(f) *Records Officer.* The Records Officer has responsibility for the retention, security, and privacy of Postal Service records; authorizes their preservation and disclosure; and orders their disposal by destruction or transfer.

35. New § 224.5 is added to read as follows:

§ 224.5 Planning Department

The Planning Department is responsible for:

(a) Forecasting trends and developments, both external and internal, which may have an impact on the Postal Service environment.

(b) Assisting departments in developing plans in accordance with goals and objectives set by the Postmaster General and the Board of Governors.

(c) Establishing and maintaining the planning calendar.

(d) Coordinating the strategic planning process.

(e) Assisting in the development of comprehensive and effective plans.

(f) Identifying and evaluating economic, political, social, technical, and market trends and events.

(g) Developing a projection of long-range business targets as a basis for setting goals and objectives.

(h) Formulating alternative business strategies.

(i) Conducting special economic studies.

PART 225—ORGANIZATIONS REPORTING DIRECTLY TO THE DEPUTY POSTMASTER GENERAL

36. The heading of Part 225 is revised to read as set forth above.

37. The authority citation for Part 225 continues to read as follows:

Authority: 39 U.S.C. 203, 204, 401(2), 402, 403, 404, 409.

38. Section 225.1 is removed; § 225.2 is redesignated § 225.1 and revised to read as follows:

§ 225.1 Operations Support Group.

The Operations Support Group is headed by an SAPMG. The group consists of three departments, each reporting to the SAPMG.

(a) *Delivery, Distribution, and Transportation Department.* The Delivery, Distribution, and Transportation Department is responsible for:

(1) Developing and implementing national policies, procedures, and short- and long-range operational plans for the collection, distribution, transportation, and delivery of all classes of domestic, international, and military mail.

(2) Developing and implementing national policies, procedures, and short- and long-range operational plans for field retail operations.

(3) Establishing and controlling national (inter-regional) distribution and transportation networks.

(4) Establishing requirements and managing the acquisition and deployment of mail transport equipment.

(5) Developing procurement policies for the transportation of mail.

(6) Managing the development of policies and procedures to ensure the optimum use and benefits of automated equipment.

(b) *Operations Systems and Performance Department.* The Operations Systems and Performance Department is responsible for:

(1) Defining, operating, and maintaining the major operating performance management systems.

(2) Setting goals, analyzing trends, and assessing performance in key operations areas.

(3) Identifying and resolving operating problems.

(4) Developing operating management systems, computer models, and new methods for distribution and delivery.

(5) Directing the acquisition, deployment, maintenance, and disposal of postal vehicles.

(6) Directing the maintenance and improvement of address information and related systems.

(c) *Engineering and Technical Support Department.* The Engineering and Technical Support Department is responsible for:

(1) Planning and approving all operating requirements and standards for mechanized and automated facilities.

(2) Establishing national policy and programs for the maintenance of facilities and mail processing, customer services, and delivery services related mechanization.

(3) Maintaining a technical and field support capacity for new and modified equipment and providing for the overhaul of major mail processing equipment.

(d) The Regional Postmasters General report to the Deputy Postmaster General.

PART 226—GROUPS AND DEPARTMENTS REPORTING TO THE ASSOCIATE POSTMASTERS GENERAL

39. The heading of Part 226 is revised to read as set forth above.

40. The authority citation for Part 226 continues to read as follows:

Authority: 39 U.S.C. 203, 204, 401(2), 402, 403, 404, 409.

41. Section 226.1 is revised to read as follows:

§ 226.1 The Associate Postmaster General (Systems).

The Associate Postmaster General (Systems) is responsible for managing groups, headed by an SAPMG, and departments which make up the support functions of the Postal Service.

42. Section § 226.2(d) is redesignated § 226.2(e); § 226.4(b) is redesignated § 226.2(d); and § 226.2(a) is revised to read as follows:

§ 226.2 Administrative Services Group.

(a) *General.* The Administrative Services Group consists of three departments headed by an Assistant Postmaster General and one department headed by the Judicial Officer.

(b) * * *

(c) * * *

(d) [Redesignated from § 226.4(b)]

(e) [Redesignated from § 226.2(d)]

43. Section 226.3(a) is revised, and § 226.3(c)(4) is added to read as follows:

§ 226.3 Human Resources Group.

(a) *General.* The Human Resources Group consists of three departments, each reporting to the SAPMG.

* * * * *

(c) * * *

(4) Administering programs to improve the quality of working life in the Postal Service.

* * * * *

44. Section 226.4 is removed; § 226.5 is redesignated § 226.4; paragraph (d) of redesignated § 226.4 is removed; paragraph (e) of redesignated § 226.4 is designated paragraph (d) and revised; paragraphs (e) and (f) are added; and paragraph (a) of redesignated § 226.4 is revised to read as follows:

§ 226.4 Marketing and Communications Group.

(a) *General.* The Marketing and Communications Group is headed by an SAPMG. The group consists of three departments, each reporting to the SAPMG.

* * * * *

(d) *Philatelic and Retail Services Department.* The Philatelic and Retail Services Department is responsible for:

(1) Designing, manufacturing, and distributing postage stamps and stationery items.

(2) Establishing and implementing philatelic marketing programs.

(3) Managing mail order services for philatelic products.

(4) Managing special programs to promote philately and philatelic products and services.

(5) Establishing policy, business strategy, and procedures for the retail sale of postal services, products, and postage and the acceptance of mail at retail outlets.

(e) *Technology Resource Department.* The Technology Resource Department is headed by the Consumer Advocate who reports to the Associate Postmaster General, and is responsible for:

(1) Developing long-term technology development plans to meet changing technological trends and developments.

(2) Managing research and development directed to the application of new concepts to Postal Service functions.

(3) Monitoring the technological interaction between the Postal Service and the outside environment. Responding to customer inquiries and complaints regarding postal products and services.

(f) *Consumer Affairs Department.* The Consumer Affairs Department is headed by the Consumer Advocate who reports to the Associate Postmaster General (Systems), and is responsible for:

(1) Responding to customer inquiries and complaints regarding postal products and services.

(2) Developing, with the Communications Department, programs to inform the public on mailing programs, procedures, and policies.

(3) Tracking service problems and identifying trends to resolve operating programs.

45. Section 226.5 is added to read as follows:

§ 226.5 Associate Postmaster General (International).

(a) *General.* The Associate Postmaster General (International) is responsible for directing activities designed to increase international postal business, and for the relationship with foreign postal administrations.

(b) *International Postal Affairs Department.* The International Postal Affairs Department reports to the Associate Postmaster General (International) and is responsible for:

(1) Representing the United States in the Universal Postal Union (UPU) and the Postal Union of the Americas and Spain (PUAS).

(2) Providing liaison with all foreign postal administrations.

(3) Negotiating bilateral and multilateral postal treaties and agreements with foreign governments.

(4) Providing policy guidance on all aspects of international postal affairs.

PART 227—HEADQUARTERS RELATED FIELD UNITS

46. The heading of Part 227 is revised to read as set forth above.

47. The authority citation for Part 227 continues to read as follows:

Authority: 39 U.S.C. 401, 402, 403, 404.

§ 227.1 [Amended]

48. In § 227.1, remove "Administrative Support Facilities" and insert in its place "Headquarters Related Field Units".

§ 227.2 [Amended]

49. In § 227.2(a), remove the second sentence.

50. Sections 227.3, 227.4, 227.5 and 227.6 are revised, and new §§ 227.7, 227.8, 227.9, 227.10 and 227.11 are added to read as follows:

§ 227.3 Procurement and Supply Department.

(a) *Materiel Distribution Centers.* There are two materiel distribution centers, one at Somerville, New Jersey, and one at Topeka, Kansas. Materiel Distribution Centers are responsible for:

(1) Procuring, storing, and issuing basic supplies for use in all postal facilities.

(2) Arranging for the transportation of supplies to facilities.

(b) *Mail Equipment Shop.* The Mail Equipment Shop, located in Washington, DC, is responsible for:

(1) Manufacturing mail bags, sacks, and pouches.

(2) Manufacturing locks and keys.

(3) Manufacturing hardware items used for mail security and for customer service lobby equipment.

§ 227.4 Engineering and Technical Support Department.

(a) *Maintenance Technical Support Center (MTSC).* The Maintenance Technical Support Center, located in Norman, OK, is responsible for:

(1) Developing policies, programs, methods, and standards for the maintenance of mail processing equipment.

(2) Issuing guidelines to field managers on building systems and mail processing equipment maintenance procedures.

(b) *Engineering and Development Center.* The Engineering and Development Center, located in Merrifield, Virginia, is responsible for:

(1) Providing engineering and near-term development support for letter mail equipment, packaged mail equipment, delivery and retail equipment, and associated systems and software.

(2) Directing near-term development and modifications to equipment and components to increase efficiency, reliability, and to improve safety.

(3) Conducting tests to evaluate new equipment for Postal service use; performing failure analyses on equipment and components.

(4) Providing applied engineering to customize commercial technology and equipment for postal use.

§ 227.5 Employee Relations Department.

National Test Administration Center (NTAC). The National Test Administration Center, located in Alexandria, VA, is responsible for:

(a) Receipt and processing of requests to give examinations.

(b) Preparing and distributing registers of eligible applicants and notices of ratings.

§ 227.6 Training and Development Department.

(a) *Technical Training Center.* The Technical Training Center, located in Norman, OK, is responsible for:

(1) Developing training materials for craft employees in maintenance and related crafts.

(2) Performing training for technical employees.

(b) *William F. Bolger Management Academy.* The William F. Bolger Management Academy, located in Potomac, MD, is responsible for:

(1) Developing training materials for supervisors, postmasters, and other managerial employees.

(2) Performing training for managerial employees.

§ 226.7 Information Resource Management Department.

(a) *National Information Systems Support Center.* The National Information Systems Support Center, located in Raleigh, NC, is responsible for:

(1) Designing new large-scale automated systems and writing the supporting program code.

(2) Managing the nationwide voice and data communications system.

(b) *Postal Data Centers.* The Postal Data Centers, located in Minneapolis, MN, New York, NY, St. Louis, MO, San Mateo, CA, and Wilkes-Barre, PA, are responsible for:

(1) Systems analysis, computer programming, and other systems development activities.

(2) Accounting, accounts payable, payroll, money order disbursing, claims and loss settlement, and other financial services.

(3) Data processing and related computer services.

§ 227.8 Operations Systems and Performance Department.

Address Information Center. The Address Information Center, located in Memphis, TN, is responsible for:

(a) Developing policies for and providing technical guidance and computer support to field address Information Systems units and field Computerized Forwarding System units.

(b) Providing nationwide service and technical guidance for postal customers requiring support related to address information systems.

§ 227.9 General Counsel.

Regional Counsels. The Regional Counsels are responsible for providing legal representation services within a regional geographic area, including representation before the Board of Contract Appeals, liaison with U.S. Attorneys on contract, real estate, and tort litigation, as well as personnel related matters, such as labor/management relations, Equal Employment Opportunity, Merit Systems Protection Board, National Labor Relations Board, and district court actions.

§ 227.10 Controller Department.

International Accounts Center. The International Accounts Center, located in New York, NY, is responsible for reviewing, approving, settling, and auditing international mail handling and transportation accounts for contracts and agreements entered into by the Postal service.

§ 227.11 Philatelic and Retail Services Department.

(a) *Philatelic Units.* The Philatelic Sales Division, located in Merrifield, VA, is a large mail and telephone order sales operation for stamps and other philatelic products; it is supported by an order fulfillment unit in Kansas City, MO, which is responsible for the filling and shipping of domestic and international mail orders for philatelic products.

(b) *Stamped Envelope Unit.* The Stamped Envelope Unit, located in Williamsburg, PA, processes, distributes, and certifies billing or postmaster accountability for direct orders of all stamped envelope products marketed by the Postal service.

PART 228—SERVICE CENTERS

51. The authority citation for Part 228 continues to read as follows:

Authority: 39 U.S.C. 401, 402, 403, 404.

52. Sections 228.2 through 228.5 are revised, and new §§ 228.6 and 228.7 are added to read as follows:

§ 228.2 Engineering and Technical Support Department—Maintenance Overhaul and Technical Service Centers (MOTSC).

Maintenance Overhaul and Technical Service Centers are responsible for:

(a) Refurbishing mail processing equipment such as letter sorting machines, facer cancellers, and related equipment.

(b) Providing technical advice and guidance to field maintenance employees on procedures and practices to follow.

§ 228.3 Delivery, Distribution, and Transportation Department—Transportation Management Service Centers (TMSC).

Transportation Management Service Centers are responsible for:

(a) Procuring mail transportation services between mail processing centers.

(b) Controlling the inventory of empty mail equipment.

(c) Coordinating the movement of mail between mail processing centers, bulk mail centers (BMCs), management sectional centers (MSCs), and field divisions.

§ 228.4 Facilities Department—Facilities Service Centers.

Facilities Service Centers are responsible for:

(a) Developing functional design specifications for new or altered facilities.

(b) Investigating and evaluating sites for proposed postal facilities.

(c) Purchasing, leasing, disposing of, and managing real estate and facilities.

(d) Contracting for the design and construction of facilities.

§ 228.5 Procurement and Supply Department—Procurement and Materiel Management Service Centers.

Procurement and Materiel Management Service Centers are responsible for:

(a) Contracting for supplies, services, and equipment.

(b) Maintaining systems for inventorying equipment and supplies.

§ 228.6 Rates and Classification Department.

Rates and Classification Service Centers are responsible for:

(a) Managing, for a geographic area, the rates and classification activities related to rates schedules, mail classification, and statistical systems, including guiding and monitoring bulk mail acceptance, mailing requirements, data collection programs in divisions, and providing classification rulings.

(b) Providing decisions on authorizations and rulings that enable customers to exercise mailing privileges for various classes of mail and service.

§ 228.7 Human Resources Group.

Human Resources Service Centers are responsible for:

(a) Processing personnel actions and maintaining personnel records for the regional office and the service centers.

(b) Implementing the Human Resources Information System (HRIS) in the field and training all users.

(c) Providing administrative support, technical guidance, and case processing for Equal Employment Opportunity (EEO), Merit Systems Protection Board (MSPB), and nonbargaining appeals.

(d) Overseeing all safety and health programs and issues, and responding to incidents or inquiries involving industrial hygiene.

(e) Coordinating the scheduling of all arbitration cases with arbitrators, union representatives, and field employees.

PART 229—FIELD ORGANIZATIONS

53. The heading of Part 229 is revised to read as set forth above.

54. The authority citation for Part 229 continues to read as follows:

Authority: 39 U.S.C. 401, 402, 403, 404.

§ 229.1 [Amended]

55. In § 229.1(a), the heading is removed and "*General*" is inserted in its place.

56. In § 229.1(b), the heading is removed and *"Functional Units"* is inserted in its place.

57. In § 229.2, remove the heading and insert "Field Divisions" in its place; remove paragraph (b); redesignate paragraph (c) as paragraph (b); remove the heading of redesignated paragraph (b) and insert *"Functional Units"* in its place; remove "and compliance" in redesignated paragraph (b)(1) and insert "compliance, and statistical programs" in its place; remove "plant and equipment engineering; and bulk mail center operations" in redesignated paragraph (b)(2) and insert "and plant and equipment engineering" in its place; in redesignated paragraph (b)(3), remove "primarily" and "data collection."; also in redesignated paragraph (b)(3), remove "delivery and retail programs" and insert "delivery services programs" in its place; remove "technical sales support" in redesignated paragraph (b)(4) and insert "technical sales support, retail marketing" in its place; in redesignated paragraph (b)(5), remove "recruitment" and "benefits" and insert "development" and "staffing", respectively, in their places; and revise paragraph (a) and redesignated paragraph (b)(7) to read as follows:

§ 229.2 Field Divisions.

(a) *General.* The field divisions are responsible for the day-to-day management of all operations and facilities within a geographic area. Each field division is headed by a Field Division General Manager/Postmaster who reports to the Regional Postmaster General.

(b) [Redesignated and amended]

* * * * *

(7) Field Operations is responsible for the management and evaluation of grade 24 and below associate offices that report to the host division. This includes the development of operating budgets and disbursement of funds; investigation and correction of operational, service, budget, productivity and efficiency problems; and providing technical assistance.

58. Sections 229.3 and 229.4 are revised to read as follows:

§ 229.3 Management Sectional Centers (MSCs).

(a) *General.* Each Management Sectional Center is headed by an MSC Manager/Postmaster who reports to a Field Division General Manager/Postmaster.

(b) *Functional Units.* Each Management Sectional Center is organized into six functions: Finance, City Operations, Operations Services, Marketing, Human Resources, and Field Operations, as follows:

(1) Finance is responsible for the operation of all management information systems, accounting and budget, timekeeping, financial analysis, statistical programs, procurement and office services, auditing, and compliance.

(2) City Operations is responsible for all mail processing within the MSC facility including stations and branches and air mail operations; plant and equipment engineering; fleet operations; vehicle operations and maintenance.

(3) Operations Services is responsible for providing staff support to the operations function. The primary functions in operations services include quality control, logistics, address information systems, delivery services, and industrial engineering.

(4) Marketing plans and implements Postal Service marketing strategies, account management, technical sales support, retail marketing, merchandising and sales information systems. It provides marketing data to operations and other functional areas on customer demand, and recommends locations of retail facilities, hours of operation, collection boxes, and similar retail and delivery programs.

(5) Human Resources is responsible for labor relations, EEO complaint processing, employment and development, training, compensation and staffing, affirmative action, and safety and health.

(6) Field Operations is responsible for the management and evaluation of associate offices that report to the Management Sectional Center. This includes the development of operating budgets and disbursement of funds; investigation and correction of operational, service, budget, productivity and efficiency problems; and providing technical assistance. Larger associate offices report to the MSC Manager/Postmaster as follows:

(i) MSC V—Associate Office, level 22 and above.

(ii) MSC IV—Associate Office, level 21 and above.

(iii) MSC III—Associate Office, level 20 and above.

§ 229.4 Other Field Organizations.

(a) *Bulk Mail Centers (BMCs).* Bulk Mail Centers serve a specific geographic area and are headed by a manager who reports to the Field Division General Manager/Postmaster. BMCs are responsible for processing certain types of second- and third-class mail in bulk form and parcel post mail, normally in bulk or piece form.

(b) *Associate Offices.* Associate offices are headed by a postmaster who

reports to a Director, Field Operations, in an MSC or a field division. Associate offices are responsible for the receipt, delivery, and dispatch of all classes of mail for geographic areas normally encompassing the boundaries of a city or town.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 89-16461 Filed 7-13-89; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-3615-5]

Ocean Dumping: Designation of Site—Gulf of Mexico, Mississippi River Gulf Outlet Canal, Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates an existing dredged material disposal site located in the Gulf of Mexico near the Mississippi River Gulf Outlet (MRGO) Canal for the continued disposal of dredged material removed from the MRGO. This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of this material. This final site designation is for an indefinite period of time and is subject to monitoring to insure that unacceptable adverse environmental impacts do not occur.

DATE: This designation shall become effective on August 14, 1989.

ADDRESSES: Norm Thomas, Chief, Federal Activities Branch (6E-F), U.S. EPA, 1445 Ross Avenue, Dallas, Texas 75202-2733.

Information supporting this designation is available for public inspection at the following locations:

1445 Ross Avenue, 9th Floor, Dallas, Texas 75202.

Corps of Engineers, New Orleans District, Foot of Prytania Street, Room 296, New Orleans, Louisiana 70160.

FOR FURTHER INFORMATION CONTACT: Norm Thomas, 214/655-2260 or FTS/255-2260.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*). That list established the MRGO site for the disposal of material dredged from the MRGO. In January 1980, the interim status of the MRGO site was extended indefinitely.

B. EIS Development

Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* ("NEPA"), requires that Federal agencies prepare Environmental Impact Statements (EISs) on proposals for major Federal actions significantly affecting the quality of the human environment. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations such as this (39 FR 16186, May 7, 1974).

EPA and the New Orleans District Corps of Engineers (COE) jointly prepared a Draft Environmental Impact Statement entitled "Environmental Impact Statement (EIS) for the Mississippi River Gulf Outlet Ocean Dredged Material Disposal Site Designation." On January 19, 1989, a notice of availability of the Draft EIS for public review and comment was published in the **Federal Register**. The public comment period on the Draft EIS closed on March 6, 1989. Three comment letters were received on the Draft EIS. EPA and the COE responded to these comments in the Final EIS. On May 26, 1989, a notice of availability of the Final EIS for public review and comment was published in the **Federal Register**. The public comment period on the Final EIS closed on June 26, 1989. No comment letters were received on the Final EIS.

The action discussed in the EIS is designation for continuing use of an ocean disposal site for dredged material. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal. The appropriateness of ocean disposal is determined on a case-by-case basis. Prior to each use the Corps will comply with 40 CFR Part 227 by providing EPA a letter containing all the necessary information.

The EIS discussed the need for the action and examined ocean disposal sites and alternatives to the proposed action. Land based disposal alternatives were examined in a previously published EIS and the analysis was updated in the Draft and Final EISs based on information from the COE. A land disposal area does exist about 25 miles west of the disposal site. However, use of this upland site for material which has traditionally been dumped at sea would quickly decrease the lifetime of the site. Additionally, because of the distance involved, the cost would increase considerably. Accordingly, this alternative was not considered feasible. Marsh creation and beach nourishment with MRGO material were also evaluated. Because of increased transportation costs, these alternatives were also determined not practicable.

Four ocean disposal alternatives—two shallow water areas (including the proposed site), a mid-shelf area and a deepwater area—were evaluated. Use of the mid-shelf and deepwater sites would involve: (1) Increased transportation costs without any corresponding environmental benefits; (2) the removal of sediments from the nearshore environment making them unavailable for movement and deposition by longshore currents; and (3) increased safety hazards resulting from transporting dredged material greater distances through areas of active oil and gas development. Because of these reasons, the mid-shelf area and the deepwater area were eliminated from further consideration. An alternate shallow-water site located immediately north of the existing site was also evaluated. However, no environmental benefits would be gained by its selection.

In accordance with the requirements of the Endangered Species Act, EPA and the COE have completed a biological assessment. The COE has coordinated a no adverse effect determination with the National Marine Fisheries Service (NMFS) and NMFS has concurred with this determination. EPA has also coordinated with the State of Louisiana concerning the Coastal Zone Management Act. The State of Louisiana has concurred with EPA's determination that final designation of the MRGO disposal site is consistent, to the maximum extent practicable, with the Louisiana Coastal Resources Program.

The EIS evaluated the suitability of ocean disposal areas for final designation and is based on a disposal site environmental study. The study and final designation process are being

conducted in accordance with the Act, the Ocean Dumping Regulations and other applicable Federal environmental legislation. This final rulemaking notice serves the same purpose as the Record of Decision required under regulations promulgated by the Council on Environmental Quality for agencies subject to NEPA.

C. Site Designation

On February 17, 1989 (54 FR 7211), EPA proposed designation of the MRGO disposal site for the continuing disposal of dredged materials from the MRGO. The public comment period on this proposed action closed on April 3, 1989. One comment letter from the Department of the Interior (DOI) was received. DOI indicated that the disposal site is located on portions of at least five oil and gas leases and that special care should be exercised during dumping operations to insure that no adverse effects on existing oil and gas facilities result. DOI also stated that oil barging operations are conducted nearby and shoaling associated with disposal of dredged material could result in accidental groundings and oil spills. Based on past experience, EPA and the COE do not anticipate that dredged material disposal will unduly interfere with mineral development activities. However, contractors will be notified of the existing oil and gas facilities. Also, in order to avoid barge groundings, the material will be spread as evenly as possible so that bottom elevations are not increased by more than 0.5 feet.

The southern side of the existing site is located about twelve miles north of the Plaquemines Parish mainland. The northwest end of the site is about 2.2 miles from the Breton Islands to the northwest and 2.3 miles from the Grand Gossier Islands to the northeast. The site extends approximately sixteen miles offshore. Water depths at the site range from 20 to 40 feet. The coordinates of the site are as follows: 29°32′ 35″ N., 89°12′38″ W.; 29°29′21″ N., 89°08′00″ W.; 29°24′51″ N., 88°59′23″ W.; 29°24′28″ N., 88°59′39″ W.; 29°28′59″ N., 89°08′19″ W.; 29°32′15″ N., 89°12′57″ W.; thence to the point of beginning.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, further use of the site may be terminated or limitations placed on the use of the site to reduce the impacts to acceptable levels. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations; § 228.6 lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

EPA has determined, based on information presented in the Draft and Final EISs that the existing site is acceptable under the five general criteria. The Continental Shelf location is not feasible and no environmental benefit would be obtained by selecting such a site. Historical use of the existing site has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment. The characteristics of the proposed site are reviewed below in terms of the eleven specific factors.

1. *Geographical position, depth of water, bottom topography and distance from coast.* (40 CFR 228.6(a)(1).)

Geographical position, average water depth, and distance from the coast for the disposal site are given above. Bottom topography gently slopes to the southeast (8.0 feet per mile).

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.* (40 CFR 228.6(a)(2).)

The northern Gulf of Mexico is a breeding, spawning, nursery and feeding area for shrimp, menhaden and bottomfish. Migration of fish and shellfish through the area is heaviest during spring and fall. The MRGO ocean disposal site represents a small area of the total range of the fisheries resource.

3. *Location in relation to beaches and other amenity areas.* (40 CFR 228.6(a)(3).)

The MRGO ocean disposal site is about 2.2 miles from the nearest beaches on the barrier islands. These beaches are sparsely used because they are small and accessible only by boat. The turbidity plume would be diluted to ambient levels well before reaching these beaches.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the wastes, if any.* (40 CFR 228.6(a)(4).)

The dredged material to be disposed is from the adjacent area of the MRGO and consists of various mixtures of sand, silt and clay. Sediment grain size generally increases in the offshore direction, with sands being predominant throughout the disposal site. Approximately three million cubic yards of material are disposed of in the site annually. The material is removed with a hopper dredge and released in the disposal site. The material is not packaged in anyway. The Corps of Engineers would likely be the only user of the site.

5. *Feasibility of surveillance and monitoring.* (40 CFR 228.6(a)(5).)

Surveillance is possible by shore-based radar, aircraft, or day-use boats. No surveillance is currently performed by the U.S. Coast Guard. Monitoring would be facilitated by the fact that the disposal site is near shore, in shallow waters, and has baseline data available. The primary purpose of monitoring is to determine whether disposal at the site is significantly affecting areas outside the disposal area and to detect any unacceptable adverse effects occurring in or around the site. Based on historic data, an intense monitoring program is not warranted. However, in order to provide adequate warning of environmental harm, EPA will develop a monitoring plan in coordination with the COE. The plan would concentrate on periodic depth soundings and sediment and water quality testing.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.* (40 CFR 228.6(a)(6).)

Mixing processes, current characteristics, and sediment transport in the nearshore region off Breton Islands are influenced by tidal currents, winds, and storms. Chemical and physical parameters generally indicate a fairly homogenous water column in the area. Density stratification can occur seasonally with fresher water from the Mississippi River on the surface. In the summer, bottom waters on the Louisiana shelf are occasionally oxygen depleted, which causes mass mortalities of benthic organisms. During a site study in December 1980 and June 1981, waters were supersaturated with oxygen at all depths. During June 1981, waters were nearly saturated or supersaturated with oxygen down to about twenty-one feet. Velocities of 3 to 4 knots may occur during storm events. It appears that the predominant current near the west side of the barrier islands in Breton Sound is toward the north. Data on currents along the Gulf side are lacking.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* (40 CFR 228.6(a)(7).)

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Dredged materials from the construction and maintenance of the MRGO have been disposed of at the site since 1958, and no significant adverse impacts have resulted. Previous disposals have caused minor effects, such as temporary increases in suspended sediment concentrations, temporary turbidity, sediment mounding, smothering of some benthic organisms, release of nutrients, possible minor releases of trace metals, and a temporary change in sediment grain size.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean.* (40 CFR 228.6(a)(8).)

In the vicinity of the disposal site the majority of shipping traffic is confined to the MRGO. Dredging facilitates shipping; periodic use of the disposal site has some potential for interfering with ship movement in the MRGO during dredging and disposal operations.

Nearshore areas contain a productive "high-use" fishing ground for a number of commercial and recreational species. The MRGO site represents a very small portion of the total nearshore fishing grounds in the Deltaic Plain. Adverse impacts from disposal would be temporary and minor. Interferences with fishing may occur if any shoals are created by dredged material disposal, since this could cause groundings of shrimp boats within disposal site boundaries. If the material is spread evenly, it will raise bottom elevations within the site by 0.5 feet, which should not result in vessel groundings.

The nearest oyster lease is in the Jack Bay estuarine area about 15 miles southwest of the site. Designation of the disposal site would not impact this or any other lease areas. Desalination areas do not occur in the vicinity of the disposal site. The site is located within the Breton National Wildlife Refuge, which is a major wintering area for redhead ducks. There has been no apparent impact to the refuge from use of the disposal site.

Petroleum and mineral-extracting activities occur offshore within 3.5 miles of the site and are not impacted by use of the site. Also there are pipelines that occur throughout the area that have not been impacted by the deposition of dredged material. Intermittent dumping does not interfere with the exploration or production phases of resource development, or with other legitimate uses of the ocean.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.* (40 CFR 228.6(a)(9).)

Water column concentrations of trace metals and chlorinated hydrocarbons (CHC) were below EPA's water quality criteria during the 1980–1981 study. Concentrations in sediment were strongly related to grain size, with highest levels in silts and clays within Breton Sound. Concentrations of heavy metals and CHC's were comparable inside and outside the disposal site for similar sediment types.

Nutrient concentrations, turbidity, and suspended solids, are controlled in large part by Mississippi River discharge, and are generally low in the summer/fall and increase in the winter/spring.

The benthos at the site was found to exhibit a patchy distribution, spatially and temporally and was dominated by polychaete worms, lancelet worms, and the little surf clam. Several of the dominant organisms, inside and outside the site, were well adapted to the transitional area between Breton Sound and the shallow shelf east of the islands. There was a high variance between dominant species inside and outside of the site. No effects of previous dredged material disposal on benthic organisms could be identified at the disposal site and the macrofauna were characteristic of shallow areas offshore from the eastern Mississippi delta. Although there was a minor accumulation of mercury in oysters exposed to disposal site sediment, oysters do not occur in the disposal area.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site.* (40 CFR 228.6(a)(10).)

Past disposal of dredged material at the existing site has not resulted in the development or recruitment of nuisance species. Considering the similarity of the dredged material with the existing sediments, it is not expected that continued disposal of dredged material will result in the development of such species.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.* (40 CFR 228.6 (a)(11).)

There are no known features of historical or cultural significance on the barrier islands to either side of the site. No known shipwrecks are located within site boundaries.

E. Action

Based on the completed EIS process and available data, EPA concludes that the Mississippi River Gulf Outlet ocean dredged material disposal site may appropriately be designated for use. The existing site is compatible with the general criteria and specific factors used for site evaluation. The designation of the MRGO site as an approved ocean dumping site is being published as final rulemaking.

While the Corps does not administratively issue itself a permit, the requirements that must be met before dredged material derived from Federal projects can be discharged into ocean waters are the same as where a permit would be required. EPA has the authority to approve or to disapprove or to propose conditions upon dredged material permits for ocean dumping.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Final Rule does not contain any information collection requirements subject to the Office of Management and Budget review under the paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: June 30, 1989.

Joseph D. Winkle,

Acting Regional Administrator of Region 6.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by removing from paragraph (a)(3) under "Dredged Material Sites" the entry for Mississippi River Gulf Outlet, Louisiana-Breton Sound and Bar Channel and adding paragraph (b)(75) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(75) Mississippi River Gulf Outlet, Louisiana—Region 6 Location: 29°32'35" N., 89°12'38" W.; 29°29'21" N., 89°08'00" W.; 29°24'32" N., 88°59'23" W.; 29°24'28" N., 88°59'39" W.; 29°28'59" N., 89°08'19" W.; 29° 32'15" N., 89°12'57" W.; thence to the point of beginning.

Size: 6.03 square nautical miles.
Depth: Ranges from 20–40 feet.
Primary Use: Dredged material.
Period of Use: Continuing use.
Restriction: Disposal shall be limited to dredged material from the vicinity of Mississippi River Gulf Outlet.

[FR Doc. 89–16538 Filed 7–13–89; 8:45 am]

BILLING CODE 6560–50–M

[OPTS—46020; FRL-3616-1]

40 CFR Parts 796 and 797

Toxic Substances Control Act Test Guidelines; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: EPA is issuing this technical amendment to correct three of the test guidelines promulgated under the Toxic Substances Control Act (TSCA). Because these guidelines are not enforceable until they are imposed as a test standard in a specific test rule, these amendments are made without public comment. EPA is correcting the concentrations of dimethyl formamide or acetone carriers that should not be exceeded during the test and the test temperature for bluegill, fathead minnows and rainbow trout in § 797.1400. In § 796.2750 EPA is correcting the solid/solution ratio for a test chemical in sediment or soil. In § 796.3400 EPA is adding the number "10" which was inadvertently omitted at the time the test guidelines were promulgated.

DATES: These technical amendments are effective July 14, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office, Office of Toxic Substances, Environmental Protection Agency, Room EB–44, 401 M Street SW., Washington, DC 20460. Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 27, 1985 (50 FR 39252), EPA issued as a final regulation test guidelines that were previously available through the National Technical Information Service (NTIS). These guidelines are used in the testing of chemicals under section 4 of TSCA. The guidelines, which are codified at 40 CFR Parts 796 and 797, were amended in the **Federal Register** of May 20, 1987 (52 FR 19056).

This document is correcting § 796.2750(b)(1)(vii)(A), sediment and soil adsorption isotherm, to change the phrase "solid/solution ratio not exceeding 1/10", so that the phrase reads "solid/solution ratio equal to or greater than 1/10".

Section 796.3400, inherent biodegradability is being corrected by revising paragraph (b)(2)(i)(B)(*3*)(*ii*) to add the number "10" prior to the phrase "percent cation exchange capacity", which was inadvertently omitted at the time the test guidelines were promulgated in the **Federal Register.**

In § 797.1400, the fish acute toxicity test, paragraph (d)(2)(vi)(B) is being corrected to change the concentration of dimethyl formamide or acetone carriers from "5/o mg/l" to "5.0 mg/l".

In § 797.1400, the fish acute toxicity test, paragraph (d)(3)(iii) is being corrected to change the sentence "The test temperature shall be 22 °C for rainbow trout.", so that the sentence reads "The test temperature shall be 22 °C for bluegill and fathead minnows and 12 °C for rainbow trout." Since these amendments revise §§ 796.2750(b)(1)(vii)(A), 796.3400(b)(2)(i)(B) (*3*)(*ii*), 797.1400(d)(2)(vii)(B), and 797.1400(d)(3)(iii), the amended paragraphs are shown in their entirety in this document. This is done solely for the convenience of the user. There are no additional changes being made to these guidelines.

Lists of Subjects in 40 CFR Parts 796 and 797

Chemical fate, Chemicals, Environmental protection, Environmental effects, Hazardous substances, Laboratories, Testing.

Dated: June 29, 1989.

Charles L. Elkins,

Director, Office of Toxic Substances.

Therefore, 40 CFR Parts 796 and 797 are amended as set forth below:

PART 796—[AMENDED]

1. In Part 796:

a. The authority citation for Part 796 continues to read as follows:

Authority: 15 U.S.C. 2603.

b. In § 796.2750 by revising paragraph (b)(1)(vii)(A) to read as follows:

§ 796.2750 Sediment and soil adsorption isotherm.

* * * * *

(b) * * *

(1) * * *

(vii) * * *

(A) Equilibrate one solution containing a known concentration of the test chemical with the sediment or soil in a solid/solution ratio equal to or greater than 1/10 and preferably equal to or greater than 1/5. It is important that the concentration of the test chemical in the equilibrating solution (*1*) does not exceed one-half of its solubility and (*2*) should be 10 ppm or less at the end of the equilibration period.

* * * * *

c. In § 796.3400 by revising paragraph (b)(2)(i)(B)(*3*)(*ii*) to read as follows:

§ 796.3400 Inherent biodegradability in soil.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(B) * * *

(*3*) * * *

(*ii*) Spodosol: pH between 4.0 and 5.0 organic C content between 1.5 and 3.5 percent clay content < 10 percent cation exchange capacity < 10 mval.

* * * * *

PART 797—[AMENDED]

2. In Part 797

a. The authority citation for Part 797 continues to read as follows:

Authority: 15 U.S.C. 2603.

b. In § 797.1400 by revising paragraphs (d)(2)(vii)(B) and (d)(3)(iii) to read as follows:

§ 797.1400 Fish acute toxicity test.

* * * * *

(d) * * *

(2) * * *

(vii) * * *

(B) Triethylene glycol and dimethyl formamide are the prefered carriers, but acetone may also be used. The concentration of triethylene glycol in the test solution should not exceed 80 mg/l. The concentration of dimethyl formamide or acetone in the test solution should not exceed 5.0 mg/l.

(3) * * *

(iii) *Temperature.* The test temperature shall be 22 °C for bluegill and fathead minnow and 12 °C for rainbow trout. Excursions from the test temperature shall be no greater than ±2

°C. The temperature shall be measured at least hourly in one test chamber.

* * * * *

[FR Doc. 89-16537 Filed 7-13-89; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 302-1

"Last Move Home" for Senior Executive Service (SES) Career Appointees Upon Separation From Federal Service for Retirement

AGENCY: Federal Supply Service, GSA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim regulation implements legislation authorizing limited relocation allowances for a "last move home" under certain conditions for eligible Senior Executive Service (SES) career appointees to the place where they will reside upon separation for retirement.

DATES: Effective date: September 22, 1988.

Applicability date: The provisions of this regulation apply to eligible SES career appointees who are separated from Federal service on or after September 22, 1988, for purposes of retirement.

Expiration date: This regulation expires April 1, 1991, unless sooner canceled or superseded.

Comments or recommendations concerning this regulation are due on or before August 28, 1989.

ADDRESSES: Comments may be mailed to the General Services Administration, Federal Supply Service, Travel and Transportation Regulations Staff (FBR), Washington, DC 20406.

FOR FURTHER INFORMATION CONTACT: Raymond F. Price, Jr. or Bonnie Seybold, Travel and Transportation Regulations Staff (FBR), Washington, DC 20406, telephone FTS 557-1253 or commercial (703) 557-1253.

SUPPLEMENTARY INFORMATION: The provisions of this regulation are authorized by section 629 of the Treasury, Postal Service and General Government Appropriations Act, fiscal year 1989, Pub. L. 100-440 (102 Stat. 1758), September 22, 1988, as amended by section 3 of the Federal Employees Leave Sharing Act of 1988, Pub. L. 100-566 (102 Stat. 2845), October 31, 1988. This legislation amended 5 U.S.C. 5724(a) to allow, under certain specified conditions, reimbursement of travel, transportation, and household goods moving expenses for eligible SES career appointees upon separation from Government service to the place where the individual will reside upon retirement. The place of retirement may be located in the United States or its territories and possessions, the Commonwealth of Puerto Rico, or the former Canal Zone area.

Section 629 of Pub. L. 100-440 states that these amendments shall be carried out by agencies by the use of funds appropriated or otherwise available for the administrative expenses of each of such respective agencies. The amendments do not authorize the appropriation of funds in amounts exceeding the sums otherwise authorized to be appropriated for such agencies.

The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 302-1

Government employees, Travel, Travel allowances, Travel and transportation expenses, Transfers, Relocation allowances and entitlements.

For the reasons set out in the preamble, Title 41, Chapter 302 of the Code of Federal Regulations, is amended as set forth below.

PART 302-1—[AMENDED]

1. The authority citation for Part 302-1 continues to read as follows:

Authority: 5 U.S.C. 5721-5734; 20 U.S.C. 905(a); E.O. 11609, July 22, 1971 (36 FR 13747).

2. Part 302-1 is amended by designating the existing §§ 302-1.1 through 302-1.14 as Subpart A and adding a new Subpart B to consist of §§ 302-1.100 through 302-1.107 to read as follows:

Subpart A—New Appointees and Transferred Employees

* * * * *

Subpart B—SES Career Appointees Upon Separation for Retirement

Sec.
302-1.100 Applicability.
302-1.101 Eligibility criteria.
302-1.102 Agency authorization or approval.
302-1.103 Allowable expenses.
302-1.104 Expenses not allowable.
302-1.105 Origin and destination.
302-1.106 Time limits for beginning travel and transportation.
302-1.107 Use of funds.

Subpart B—SES Career Appointees Upon Separation for Retirement

§ 302-1.100 Applicability.

(a) *Individuals covered.* This regulation is applicable to career appointees in Senior Executive Service positions, defined as follows.

(1) "Career appointee" as defined in 5 U.S.C. 3132(a)(4) means an individual in a Senior Executive Service (SES) position whose appointment to the position or previous appointment to another SES position was based on approval by the Office of Personnel Management (OPM) of the executive qualifications of such individual.

(2) "Senior Executive Service position" as defined in 5 U.S.C. 3132(a)(2) means any position in an executive agency, except a Government corporation and the General Accounting Office (see other exclusions in 5 U.S.C. 3132(a) (1) and (2)), which is in GS-16, 17, or 18 of the General Schedule or in level IV or V of the Executive Schedule, or an equivalent position that is not required to be filled by an appointment by the President by and with the advice and consent of the Senate, and is a position which includes one or more of the duties listed in 5 U.S.C. 3132(a)(2).

(b) *Exclusions.* The provisions of this regulation are not applicable to individuals whose appointment in the SES is a limited term, limited emergency, or noncareer appointment. (See 5 U.S.C. 3132(a) (5), (6), and (7) for definitions of excluded types of appointment.)

§ 302-1.101 Eligibility criteria.

An SES career appointee, as defined in § 302-1.100, is eligible, upon separation from Federal service, for those travel and transportation allowances specified in § 302-1.103 of this regulation, if such individual meets the following criteria:

(a) Has been transferred or reassigned geographically in the interest of the Government and at Government expense from one official station to another for permanent duty as a career appointee in the SES at any time during or after the 5-year period immediately preceding the date of eligibility to receive an annuity for optional retirement under section 8336 (a), (b), (c), (e), (f) and (j) of subchapter III (Civil Service Retirement System (CSRS)) of chapter 83 or under section 8412 of subchapter II of chapter 84 (Federal Employees Retirement System (FERS)) of title 5, U.S.C.;

(b) Is separated from Federal service on or after September 22, 1988;

(c) Is eligible to receive an annuity upon such separation under the provisions of subchapter III (CSRS) of chapter 83 or chapter 84 (FERS) of title 5, U.S.C.; and

(d) Has not previously received or been authorized "last move home" benefits upon separation from Federal service for retirement.

§ 302-1.102 Agency authorization or approval.

A career appointee who is eligible for moving expenses under this regulation shall submit a request to the designated agency official for authorization or approval of the moving expenses stating tentative moving dates and origin and destination locations of the planned move. Such requests shall be submitted in a format and timeframe as prescribed by agency policy and procedures. Eligible career appointees who have already moved to their retirement residence by the date of this regulation may submit such requests for agency approval after the fact.

§ 302-1.103 Allowable expenses.

When the head of the agency concerned, or his/her designee, authorizes or approves, the travel and transportation expenses specified in this paragraph shall be paid for those individuals who are eligible for such expenses under § 302-1.101 of this regulation. The specified expenses may be paid or reimbursed to the same extent as provided in the applicable provisions of the Federal Travel Regulation (FTR) referenced below. Allowable expenses and provisions of the FTR which apply are as follows:

(a) Travel expenses including per diem under 41 CFR 302-2.1 for the individual.

(b) Transportation expenses under 41 CFR 302-2.2(a), but not per diem, for the individual's immediate family.

(c) Mileage allowance under 41 CFR 302-2.3, to the extent travel is performed by privately owned automobile.

(d) Transportation and temporary storage of household goods under 41 CFR Part 302-8 not to exceed 18,000 pounds net weight.

§ 302-1.104 Expenses not allowable.

Items of expense not listed in § 302-1.103 which generally are authorized for reimbursement in the case of transferred employees; (e.g., per diem for family, cost of househunting trip, subsistence while occupying temporary quarters, miscellaneous expense allowance, residence sale and purchase expenses, leasebreaking expenses, and relocation services) are not authorized for separated SES career appointees upon retirement.

§ 302-1.105 Origin and destination.

(a) The expenses listed in § 302-1.103 may be paid from the official station where separation of the career appointee occurs to the place where the individual has elected to reside within the United States or its territories or possessions, the Commonwealth of Puerto Rico, or the former Canal Zone area (i.e., areas and installations in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements, as described in section 3(a) of the Panama Canal Act of 1979); or, if the individual dies before the travel, transportation and moving is completed, expenses may be paid to the place within the areas listed above where the immediate family elects to reside even if different than the place elected by the separated career appointee.

(b) Travel and transportation expenses may be paid from an alternate origin or more than one origin provided the cost does not exceed the cost that the Government would have paid if all travel and transportation had originated at the official station from which the individual was separated to the place where the individual, or the immediate family, will reside.

(c) Expenses authorized by this regulation may not be paid for a move within the same general or metropolitan area in which the official station or residence was located at the time of the career appointee's separation. These provisions contemplate a move to a different geographical area.

§ 302-1.106 Time limits for beginning travel and transportation.

All travel, including that for the separated career appointee, and transportation, including that for household goods, allowed under this regulation, shall be accomplished within 6 months of the date of separation, or other reasonable period of time as determined by the agency concerned, but in no case later than 2 years from the effective date of the career appointee's separation from service.

§ 302-1.107 Use of funds.

Transportation expenses should be paid through the use of U.S. Government Transportation Requests and U.S. Government Bills of Lading to the maximum extent possible to minimize travel and transportation costs and the need for individuals to use personal funds. However, individuals who have been authorized or approved to make their own moving arrangements may be reimbursed for their actual transportation expenses not to exceed applicable coach air fares for transportation of the individual and immediate family, or the applicable allowances under the commuted rate schedule for moving and storage of the household goods.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 89-16402 Filed 7-13-89; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 442, 447, 483, 488, 489, and 498

[BPO-642-F]

RIN 0938-AE33

Medicare and Medicaid Programs; Requirements for Long-Term Care Facilities: Delay in Effective Date of Regulations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule; notice of delay in effective date.

SUMMARY: This rule changes the effective date of regulations issued in the **Federal Register** on February 2, 1989 that contain new and revised requirements for long-term care facilities (skilled nursing facilities, intermediate care facilities, and, effective October 1, 1990, nursing facilities) that participate in the Medicare and Medicaid programs. The effective date of August 1, 1989 is changed to January 1, 1990.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Samuel W. Kidder, (301) 966-4620.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 1989, we published in the **Federal Register** (54 FR 5316) final regulations with a comment period which specified new and revised requirements that long-term care

facilities (skilled nursing facilities (SNFs) under Medicare, and SNFs, intermediate care facilities (ICFs), and, effective October 1, 1990, nursing facilities (NFs) under Medicaid) must meet in order to receive Federal funds for the care of residents who are Medicare beneficiaries or Medicaid recipients. We issued the regulations following a notice of proposed rulemaking (NPRM) to refocus the requirements for participation in both programs to actual facility performance in meeting residents' needs in a safe and healthful environment. The previous set of requirements had focused on the capacity of the facility to provide appropriate care. In addition, we needed to simplify Federal enforcement procedures by using a single set of requirements that apply to all activities common to SNFs, ICFs, and NFs.

Many of the requirements in the February 2 regulations included detailed, self-implementing provisions of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) (Pub. L. 100-203). OBRA '87 was enacted after we issued the NPRM for the final regulations. An effective date of August 1, 1989 was specified for the regulations, except for those requirements that could not be justified under current statutory authority or the notice and comment process that we undertook. As to these requirements, they are to be effective on October 1, 1990, as specified in OBRA '87.

The revision of the nursing home regulations was the most extensive set of Federal regulatory changes in this area of the health care industry in 15 years. Because of these major revisions, we have had to significantly rewrite the survey guidelines for conducting inspections of nursing homes, and we have had to conduct extensive training of individuals who will conduct the inspections to determine facility compliance with Federal requirements. We have worked extensively with consumers, nursing home industry representatives, and State survey agencies to develop the survey guidelines and procedures for enforcing these requirements. Federal survey and certification staff have already conducted training sessions with State survey staff on the new requirements. We believe that the State surveyors are prepared to begin initial surveys as of the August 1 effective date. However, HCFA, along with the States, consumer group advocates, and nursing home industry representatives, are concerned that the timeframe between publication of the requirements (February 2) and the effective date (August 1) has not proven to be sufficient to allow the surveyors to absorb and fully comprehend such indepth information to make the critical compliance decisions. Our major concern is for effective implementation of the requirements in view of the breadth of the new requirements and the number of facilities affected. Currently, there are approximately 4,000 surveyors who inspect over 50,000 health care facilities in the country, 15,000 of which are long-term care facilities that may be certified or recertified under the new requirements. We want to ensure that the new requirements are applied as consistently and uniformly as possible among the facilities. We believe that implementation of the requirements without additional training of surveyors beyond the training we have already provided may give rise to problems of inconsistent application of the requirements.

Delay in Effective Date of Regulations

We believe it would be beneficial to all affected parties, including beneficiaries and recipients, to delay the effective date of the regulations until January 1, 1990. This delay will allow opportunity for further improvement of the survey skills and allow facilities additional lead time to become more familiar with these requirements and to make needed changes. In the long run, we believe the delay will enhance the quality of care provided to residents of the facilities and our ability to accurately measure that quality uniformly among participating facilities.

Therefore, we are changing the effective date of the February 2 regulations to January 1, 1990. Those parts of the regulations that are to be effective on October 1, 1990, are unaffected by this change.

We received and are continuing to evaluate more than 800 public comments received as a result of the February 2 regulations. We intend to respond to these comments and make any necessary changes to the regulations in a separate document as part of a process which includes preparing the regulations for the provisions of OBRA '87 relating to long-term care facilities that were not self-implementing. In the interim, the February 2 requirements will be in effect, as of January 1, 1990.

Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for a final rule that meets one of the E.O. criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Since this final regulation only delays the effective date of the regulations published on February 2, 1989 from August 1, 1989 to January 1, 1990, there is no effect other than a delay in implementing the new requirements that long-term care facilities will have to meet in order to participate in the Medicare and Medicaid programs. Except for this delay in the effective date, the impact of the requirements of participation for long-term care facilities is expected to be the same as that which was discussed in the regulatory impact statement of the February 2 rule. Therefore, this final regulation is not a major rule under E.O. 12291, and an initial regulatory impact analysis is not required.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all long-term nursing facilities are treated as small entities.

This final regulation will only delay the effective date of those regulations that were published February 2, 1989. While this delay may be viewed as having a significant effect on a substantial number of small entities, we believe it would be unreasonable to conclude that this regulation would produce any other effect than to postpone the effective date for those regulations. The overall effect on long-term care facilities is still expected to remain the same as that which was discussed in the regulatory impact statement of the February 2 rule. For this reason, we have determined, and the Secretary certifies that this regulation will not have a significant impact on a substantial number of small entities.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

We are not preparing a rural impact statement because we have determined, and the Secretary certifies that this final regulation will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 442

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 447

Accounting, Administrative practice and procedure, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR Part 483

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 488

Health facilities, Survey and certification, Forms and guidelines.

42 CFR Part 489

Health facilities, Medicare.

42 CFR Part 498

Administrative practice and procedure, Appeals, Medicare practitioners, providers and suppliers.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance; and Program No. 13.774, Medical Assistance Program)

Dated: June 30, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Approved: July 10, 1989.

Louis W. Sullivan,

Secretary.

[FR Doc. 89-16636 Filed 7-12-89; 11:06 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-30; RM-6115]

Radio Broadcasting Services; Pueblo, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 296C2 for Channel 296A at Pueblo, Colorado, and modifies the Class A license of Rainbow Communications of Pueblo, Inc. for Station KCSJ-FM, as requested, to specify operation on the higher class channel, thereby providing that community with an additional wide coverage area FM service. See 53 FR 5284, February 23, 1988. Coordinates used for Channel 296C2 at Pueblo are 38-16-22 and 104-40-48. With this action, the proceeding is terminated.

EFFECTIVE DATE: August 24, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-30, adopted June 21, 1989, and released July 10, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Colorado, is amended by amending the entry for Pueblo, by deleting Channel 296A and adding Channel 296C2.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-16473 Filed 7-13-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-545; RM-6458]

Radio Broadcasting Services; Elko, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Elko Broadcasting, Inc., substitutes Channel 229C2 for Channel 228A at Elko, Nevada, and modifies its license for Station KLKO accordingly. Channel 229C2 can be allotted to Elko in compliance with the Commission's minimum distance separation requirements and can be used at Station KLKO's present transmitter site. The coordinates for this allotment are North Latitude 40-50-37 and West Longitude 115-44-58. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 24, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-545, adopted June 21, 1989, and released July 10, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments is amended by amending the entry for Elko, Nevada, by removing Channel 228A and adding Channel 229C2.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-16474 Filed 7-13-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-418; RM-6402]

Radio Broadcasting Services; Hawley, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Jerry C. Paparelli, allots Channel 287A to Hawley, Pennsylvania, as the community's first local FM service. Channel 287A can be allotted to Hawley in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.0 kilometers (2.5 miles) north to avoid a short-spacing to the pending application of Station WDAS-FM, Channel 287B1, Philadelphia, Pennsylvania. Canadian concurrence has been received. With this action, this proceeding is terminated.

DATES: Effective August 24, 1989. The window period for filing applications will open on August 25, 1989, and close on September 25, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-418, adopted June 21, 1989, and released July 10, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Pennsylvania is amended by adding the following entry: Hawley, Channel 287A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-16475 Filed 7-13-89; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 503, 505 and 552

[Acquisition Circular AC-89-2]

General Services Administration Acquisition Regulation; Procurement Integrity

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary rule with request for comments.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5 (APD 2800.12A), is temporarily amended to add sections 503.104, 503.104-4, 503.104-5, 503.104-9, 503.104-10, 503.104-11, and 503.104-12 to subpart 503.1 in order to implement and supplement the Federal Acquisition Regulation (FAR) requirements on procurement integrity; to revise section 505.303-70 and 505.403 to provide for use of a caution notice on any proprietary or source selection information provided to Members of Congress; and to add sections 552.203-8, 552.203-10 and 552.203-71 to provide the text of provisions and clauses related to procurement integrity to be included in solicitations and contracts for the acquisition of leasehold interests in real property. The intended effect is to implement and supplement the FAR as amended by FAC 84-47 and to provide uniform procedures for contracting under the regulatory system.

DATES: *Effective date:* July 16, 1989.

Expiration date: July 15, 1990.

Comment date: Comments should be submitted to the Office of GSA Acquisition Policy and Regulations at the address shown below on or before September 12, 1989 to be considered in the final rule.

ADDRESS: Comments should be addressed to Ms. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations (VP), 18th and F Streets NW., Room 4026, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Edward McAndrew, Office of GSA Acquisition Policy and Regulations (202) 566-1224.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Regulation (FAR) was amended by Federal Acquisition Circular (FAC) 84-47 to implement section 6 of the Office of Federal Procurement Policy (OFPP) Act Amendments of 1988 (Pub. L. 100-679), which amended the OFPP Act by adding section 27 (41 U.S.C. 423). Section 27 of the Act prohibits certain activities by competing contractors and Government procurement officials during the conduct of a Federal agency procurement. GSA is temporarily revising the GSAR as necessary to conform to the FAR as amended by FAC 84-47.

B. Determination To Issue a Temporary Regulation

A determination has been made to issue the regulation in GSAR AC-89-2 as a temporary rule. This action is necessary to revise the GSAR to bring it in line with the FAR as amended by FAC 84-47 and to implement Pub. L. 100-679 for acquisitions of leasehold interests in real property. However, pursuant to Pub. L. 98-577 and FAR 1.501, public comments are solicited and will be considered in formulating a final rule.

C. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule.

D. Regulatory Flexibility Act

This temporary rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because it implements the FAR by providing agency procedures for implementing the procurement integrity provisions at FAR Subpart 3.1. In addition, the temporary rule supplements the FAR by codifying provisions and clauses for use in contracts for the acquisition of leasehold interests in real property. Therefore, an Initial Regulatory Flexibility Analysis has not been prepared. Comments are invited from small business and other interested parties.

E. Paperwork Reduction Act

This temporary rule contains information collection requirements which implement the provisions of Pub. L. 100-679, the Office of Federal Procurement Policy Act Amendments of 1988, that require contractors to certify, prior to execution of each contract, modification or extension in excess of $100,000, with respect to conduct prohibited by the Act in contracts for the acquisition of leasehold interests in real property. Because the FAR does not apply to acquisitions for leasehold interests in real property, a Certificate of Procurement Integrity substantially the same as the FAR Certificate of

Procurement Integrity is provided for use in such acquisitions in this temporary rule. A request for approval of this information collection is being submitted to the Office of Management and Budget (OMB) as the information collection requirements in this temporary rule are within the meaning of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq. *Annual reporting burden:* The annual reporting burden is estimated as follows:

Respondents, *800*; responses per respondent, *1*; total annual responses; *800*; per response, *5 minutes*; and total response burden; *66.7 hours*. *Annual recordkeeping burden*: The annual recordkeeping burden with respect to incorporating the training requirement into training programs is estimated as follows: Respondents, *800*; responses per respondent, *1*; total annual responses, *800*; hours per response, *2*; and total response burden, *1600*. The information collection approval request has been submitted to OMB for expedited review pursuant to 5 CFR 1320.18. Public comments concerning the request should be submitted to OMB, Mr. Bruce McConnell, GSA Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

List of Subjects 48 CFR Parts 503, 505 and 552

Government procurement.

1. The authority citation for 48 CFR Parts 503, 505 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. 48 CFR Parts 503, 505 and 552 are amended by the following Acquisition Circular:

General Services Administration Acquisition Regulation Acquisition Circular AC-89-2

To: All GSA Contracting Activities.
Subject: Procurement Integrity—OFPP Act Amendments of 1988.

1. *Purpose.* This Acquisition Circular temporarily amends the General Services Administration Acquisition Regulation (GSAR), Chapter 5 (APD 2800.12A), to implement and supplement the Federal Acquisition Regulation (FAR) as amended by FAC 84-47.

2. *Background.* The Federal Acquisition Regulation was amended by FAC 84-47 to implement section 6 of the Office of Federal Procurement Policy (OFPP) Act Amendments of 1988, which amended the OFPP Act by adding section 27 (41 U.S.C. 423). The Act prohibits certain activities by competing contractors and Government procurement officials during the conduct of a Federal agency procurement. In general, these prohibited activities involve soliciting or discussing post-Government employment, offering or accepting a gratuity, or soliciting or disclosing proprietary or source selection information. The Act also contains certification and disclosure provisions for both contractors and Government officials, imposes post-employment restrictions on Government officials and employees, and provides for criminal, civil, administrative, and contractual penalties for violations of the Act. This Acquisition Circular amends the GSAR as necessary to conform to the FAR as amended by FAC 84-47.

3. *Effective date.* July 16, 1989.

4. *Expiration date.* This Circular expires July 15, 1990, unless canceled earlier.

5. *Reference to regulation.* Subpart 503.1, section 505.303-70 and 505.402, and subpart 552.2 of the GSAR.

6. *Explanation of changes.*

PART 503—[AMENDED]

a. Subpart 503.1 is amended by adding sections 503.104, 503.104-4, 503.104-5, 503.104-9, 503.104-10, 503.104-11 and 503.104-12 to read as follows:

503.104 Procurement integrity.

503.104-4 Definitions.

"Derivative document" means a copy of a document defined as proprietary or source selection information by FAR 3.104-4 (j) and (k) and any document or copy of a document that contains references to, directly cites or paraphrases proprietary or source selection information.

503.104-5 Disclosure of proprietary and source selection information.

(a) The contracting officer or any other individual who prepares, makes or controls proprietary and source selection information, including derivative documents, shall—

(1) Ensure documents are marked as prescribed in FAR 3.104-4 (j) and (k) and 3.104-5(b).

(2) Provide physical security for documents in the office environment during and after duty hours.

(3) Ensure security of interoffice mailing of documents by using opaque envelopes, "double wrapping" with more than one envelope and sealing of envelopes.

(4) Maintain strict control over oral communications regarding the acquisition.

(b) Individuals responsible for preparing derivative documents are responsible for marking such documents in accordance with FAR 3.104-5(b).

(c) The GSA Form 3611, Cover Page for Source Selection Information and the GSA Form 3612, Cover Page for Proprietary Information, may be used to mark documents as required by FAR 3.104-5 (a) and (b).

(d) (1) The following classes of persons are authorized access to proprietary and source selection information to the extent necessary to accomplish their requisite duties and responsibilities with respect to a particular procurement:

(i) Requirements generators, including client agency representatives, program and technical experts involved in the development of statements of work, specifications or similar documents.

(ii) Contracting personnel acting in support of the contracting officer.

(iii) Secretarial, clerical and administrative personnel of the contracting activity directly involved in the procurement.

(iv) Supervisors in the contracting officer's chain of command.

(v) Attorneys in the Office of General Counsel and Regional Counsel's Office.

(vi) Contract auditors in the Office of Inspector General and Regional Inspector General's Offices.

(vii) Engineers and other technical support personnel who provide support to the contracting officer.

(viii) Small Business Technical Advisors.

(ix) Small Business Administration (SBA) personnel responsible for reviewing determinations not to set-aside acquisitions, determining the small business status of offerors under FAR 19.302, processing applications for Certificates of Competency under FAR 19.6, reviewing subcontracting plans, or awarding contracts under the 8(a) program.

(x) Department of Labor (DOL) personnel responsible for making eligibility determinations under the Walsh-Healey Public Contracts Act or for processing preaward EEO clearances under FAR 22.805.

(xi) Personnel in the Credit and Finance Branch, Region 6, and other personnel who provide support to the contracting officer in making contractor responsibility determinations.

(xii) Contract clearance personnel.

(2) The Associate Administrator for Acquisition Policy has authority to authorize additional classes of persons access to proprietary or source selection information.

(3) The contracting officer may authorize persons access to proprietary or source selection information when such access is necessary to the conduct of the procurement and to the extent

that the person has a "bona fide need to know." Access must be limited to only that information needed by the person to perform his/her responsibilities.

(4) The classes of persons in (d)(1) may be incorporated by reference in contract files. A record, by name and function, of other persons authorized access to proprietary or source selection information must be made by the contracting officer in the contract file.

(5) In accordance with FAR 3.104-5(j), the following caution notice must be prominently displayed on any document that releases proprietary or source selection information:

This document, or portions thereof, contains proprietary or source selection information related to the conduct of a Federal agency procurement, the disclosure of which is restricted by section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423). The unauthorized disclosure of such information may subject both the discloser and recipient of the information to contractual, civil, and/or criminal penalties as provided by law.

(6) For requests from an individual Member of Congress see 505.403.

503.104-9 Certification requirements.

(a) If the contracting officer certifies that he/she has no information concerning a violation or possible violation of the statutory prohibitions, the certification must be included in the contract file. No other distribution is required.

(b) If the certification by the contracting officer contains information on a violation or possible violation of the statutory prohibitions, the procedures at FAR 3.104-11 and 503.104-11 must be followed.

503.104-10 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 552.203-71, Prohibited Conduct, in solicitations for the acquisition of leasehold interests in real property expected to exceed $25,000.

(b) The contracting officer shall insert the provision at 552.203-8, Requirement for Certificate of Procurement Integrity, in solicitations for the acquisition of leasehold interests in real property expected to exceed $100,000.

(c) The contracting officer shall insert a clause substantially the same as the clause at 552.203-10, Remedies for Illegal or Improper Activity, in solicitations and contracts for the acquisition of leasehold interests in real property expected to exceed $25,000.

503.104-11 Processing possible violations.

(a) (1) The contracting officer's determination that a reported violation or possible violation of the statutory prohibitions has no impact on the pending award or selection of a source must be submitted, along with supporting documentation, to the HCA or SES designee for review and approval of the determination before award of a contract.

(2) The contracting officer's determination that a reported violation or possible violation of the statutory prohibitions has an impact on the pending award or selection of a source must be referred along with all related information available to the HCA, who will:

(i) Refer the matter immediately to the Inspector General.

(ii) Determine the action to be taken on the procurement in accordance with FAR 3.104-11(c).

(b) The HCA acts as the agency head's designee with respect to actions taken under the FAR clause at 52.203-10, Remedies for Illegal or Improper Activity, or the clause at 552.203-10.

503.104-12 Ethics program training requirements.

(a) Except as provided in paragraph (b) of this section, the contracting officer is not responsible for ensuring that another agency's employee(s), who may function as a procurement official on behalf of that agency in interacting with GSA personnel, has executed the Procurement Integrity Certification pursuant to FAR 3.104-12. Such interaction may occur in the requirements determination process and the development of specifications or statements of work.

(b) Where a non-Government person or another agency's employee(s) act on behalf of GSA, e.g. serves on a Source Selection Board, the contracting officer is responsible for obtaining the GSA Procurement Integrity Certification from non-GSA or non-Government persons involved in the selection of a source in a GSA procurement.

PART 505—[AMENDED]

b. Section 505.303-70 is amended by revising paragraph (b) to revise subparagraph (2) and to delete subparagraph (4), and by deleting paragraph (c) to read as follows:

505.303-70 Notification of proposed substantial awards and awards involving Congressional interest.

* * * * *

(b) *Notification procedures.*

* * * * *

(2) Except for submittals hand delivered to S, the submittal must be made by facimile transmission and, in the case of proposed 8(a) awards, on GSA Form 2677, Minority Contract Fact Sheet. Except for contracts awarded under urgent and compelling circumstances, notification to S of an award must be made on the same day that the award is made and 24 hours before telephonic notice (if applicable) is provided to the contractor. If the timeframe for notification to S cannot be met, the Contracting Director must notify S by telephone.

* * * * *

c. Section 505.403 is revised to read as follows:

505.403 Requests from Members of Congress.

When responding to a Congressional inquiry would result in disclosure of classified material, confidential business information, proprietary or source selection information as defined in FAR 3.104-4 or information prejudicial to a competitive acquisition, the contracting officials shall consult with assigned legal counsel, refer the proposed reply to the head of the contracting activity (HCA), include the caution notice prescribed in 503.104-5(c)(5) in the response and inform the Office of Congressional Affairs of the action taken.

PART 552—[AMENDED]

d. Sections 552.203-8, 552.203-10 and 552.203-71 are added to read as follows:

552.203-8 Requirement for certificate of procurement integrity.

As prescribed in 503.104-10(b), insert the following provision:

Requirement For Certificate of Procurement Integrity (July 1989)

(a) *Definitions.* The definitions at FAR 3.104-4 are hereby incorporated in this provision.

(b) *Certifications.* The officer or employee responsible for the offer submitted in response to this solicitation shall submit the following certification to the Contracting Officer within the time period specified by the Contracting Officer when requesting the certificate. The Contracting Officer will request the successful offeror to submit the certificate before awarding a lease contract exceeding $100,000.

CERTIFICATE OF PROCUREMENT INTEGRITY

(1) I, [*Name of certifier*], am the officer or employee responsible for the preparation of this offer and hereby certify that to the best of my knowledge and belief, with the exception of any information described in this certificate, I have no information concerning a violation or possible violation of subsections 27 (a), (b), (c) or (e) of the Office of Federal Procurement Policy Act* (41 U.S.C. 423) (hereinafter referred to as "the Act"), as implemented in the FAR, occurring during the conduct of this procurement (*solicitation number*).

(2) As required by subsection 27(d)(1)(B) of the Act, I further certify that each officer, employee, agent, representative, and consultant of [*Name of offeror*] who has participated personally and substantially in the preparation or submission of this offer has certified that he or she is familiar with, and will comply with, the requirements of subsection 27(a) of the Act, as implemented in the FAR, and will report immediately to me any information concerning a violation or possible violation of the Act, as implemented in the FAR pertaining to this acquisition.

(3) Violations or possible violations: (Continue on plain bond paper if necessary and label Certificate of Procurement Integrity (Continuation Sheet)), ENTER "NONE" IF NONE EXISTS

_____

_____

_____

_____

(Signature of officer or employee responsible for offer) Date

_____

(Typed name of officer or employee responsible for offer)

*Section 27 became effective on July 16, 1989.

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

(c) Pursuant to FAR 3.104-9(d), the offeror may be requested to execute additional certifications at the request of the Government.

(d) Failure of an offeror to submit the certification required by FAR 3.104-9(b) or any additional certifications pursuant to FAR 3.104-9(d) shall render the offeror ineligible for lease award.

(e) A certification containing a disclosure of a violation or possible violation will not necessarily result in the withholding of award under this solicitation. However, the Government, after the evaluation of the disclosure, may cancel the acquisition or take any other appropriate actions in the interest of the Government, such as disqualification of the offeror.

(f) In making the certification in paragraph (b) of this provision, the offeror may rely upon the certification of an officer, employee, agent, representative, or consultant that such person is in compliance with the requirements of subsections 27 (a), (b), (c), or (e) of the Office of Federal Procurement Policy Act (41 U.S.C. 423), as implemented in the FAR unless the offeror knows, or should have known, of reasons to the contrary. The offeror may rely upon periodic certifications obtained at least annually, supplemented with periodic training programs. These certifications shall be maintained for a period of 6 years from the date of execution.

(g) The certification in paragraph (b) of this provision is a material representation of fact upon which reliance will be placed in awarding a contract.

(End of Provision)

552.203-10 Remedies for illegal or improper activity.

As prescribed in 503.104-10(c), insert the following clause:

Remedies for Illegal or Improper Activity (July 1989)

(a) If the agency head or designee determines that there was a violation of subsection 27(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 423) as implemented in the Federal Acquisition Regulation, the Government, at its election, may—

(1) Reduce the monthly rental under this lease by 5 percent of the amount of the rental for each month of the remaining term of the lease, including any option periods, and recover 5 percent of the rental already paid;

(2) Reduce payments for alterations not included in monthly rental payments by 5 percent of the amount of the alterations agreement; or

(3) Reduce the payments for violations by a Lessor's subcontractor by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was placed.

(b) Prior to making a determination as set forth above, the agency head or designee shall provide to the Lessor a written notice of the action being considered and the basis therefor. The Lessor shall have a period determined by the agency head or designee, but not less than 30 calendar days after receipt of such notice, to submit in person, in writing, or through a representative, information and argument in opposition to the proposed reduction. The agency head or designee may, upon good cause shown, determine to deduct less than the above amounts from payments.

(c) The rights and remedies of the Goverment specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this lease.

(End of Clause)

552.203-71 Prohibited conduct.

As prescribed in 503.104-10(a), insert the following provisions:

Prohibited Conduct (July 1989)

(a) *Prohibited conduct.* The Office of Federal Procurement Policy Act (41 U.S.C. 423) provides that during the conduct of any Federal agency procurement of property or services, no offeror or prospective offeror or officer, employee, representative, agent, or consultant of any offeror or prospective offeror shall knowingly—

(1) Make, directly or indirectly, any offer or promise of future employment or business opportunity to, or engage, directly or indirectly, in any discussion of future employment or business opportunity with, any official of the agency who is personally and substantially involved in a procurement for which the offeror is, or is reasonably likely to become, a competitor for or recipient of a contract or subcontract under such procurement;

(2) Offer, give, or promise to offer or give, directly or indirectly, any money, gratuity, or other thing of value to any official of the agency who is personally and substantially involved in a procurement for which the offeror is or is reasonably likely to become, a competitor for or recipient of a contract or subcontract under such procurement; or

(3) Solicit or obtain, directly or indirectly, from any officer or employee of the agency, prior to the award of a contract any proprietary or source selection information as defined in FAR 3.104-4.

(b) *Penalties.* Civil penalties for violation of these prohibitions are up to $100,000 for an individual or $1,000,000 for an offeror or prospective offeror other than an individual. Criminal penalties are up to 5 years imprisonment and/or a fine in accordance with Title 18, U.S.C.

(End of Provision)

e. Sections 553.370-3611 and 553.370-3612 are added to illustrate the GSA Form 3611, Cover Page Source Selection Information, and the GSA Form 3612, Cover Page Proprietary Information.

Note: GSA Forms 3611 and 3612 are made a part of the GSAR loose-leaf edition. Copies may be obtained from the Director of the Office of GSA Acquisition Policy and Regulations (VP), 18th and F Streets NW., Washington, DC 20405. Forms 3611 and 3612 will not appear in the Code of Federal Regulations.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

BILLING CODE 6820-61-M

Cover Page

Source Selection Information

See FAR 3.104

This document contains source selection information related to the conduct of a Federal agency procurement, the disclosure of which is restricted by Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423). The unauthorized disclosure of such information may subject both the discloser and recipient of the information to contractual, civil, and/or criminal penalties as provided by law.

General Services Administration GSA Form 3611 (7-89)

Cover Page

Proprietary Information

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General Services Administration GSA Form 3612 (7-89)

[FR Doc. 89-16557 Filed 7-13-89; 8:45 am]
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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB23

Endangered and Threatened Wildlife and Plants; Threatened Status for Phyllitis scolopendrium var. americana (American hart's-tongue fern)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines American hart's-tongue fern to be a threatened species under authority of the Endangered Species Act of 1973, as amended (Act). This rare fern is known from only two sites in Alabama, one in Tennessee, four in Michigan, nine in New York, and from a limited area in southern Ontario, Canada. It is threatened throughout most of its range by trampling, habitat alteration, or destruction by lumbering, residential development, and quarrying. This action will implement the protection of the Act for American hart's-tongue fern.

EFFECTIVE DATE: August 14, 1989.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Currie at the above address (704/259-0321 or FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

Phyllitis scolopendrium (L.) Newman variety *americana* Fernald (American hart's-tongue fern) has evergreen, strap-shaped fronds that are 5 to 17 inches long (12 to 42 cm), ¾ to 1¾ inches wide 2 to 4.5 cm) and are auriculate (lobed) at their base. The green petiole portion of the frond is 1 to 5 inches long (3 to 12 cm) and has cinnamon-colored scales on its surface. The sori (groups of spore-producing reproductive structures called sporangia) are linear in shape and occur on the underside of the blade portion of the frond. The fronds arise in a cluster from a short, creeping rhizome which is covered with cinnamon-colored scales (Evans 1981, Lellinger 1985). Ferns recognized as belonging to the species *Phyllitis scolopendrium* (then referred to as *Scolopendrium vulgare*) were first discovered in the United States in 1807 when Pursh found the species growing in central New York (Maxon 1900).

Phyllitis scolopendrium, described by Linneus in 1753, is common in the British Isles and is rare to frequent in Europe (Love 1954, Small 1938). In 1849, Gattinger discovered the species in Roane County, Tennessee (Maxon 1900); and in 1857, Hincks found it in Grey County, Ontario, Canada (Soper 1954). In 1953 Hall and Hagenah discovered the species growing in Chippewa County, Michigan (Hagenah 1953). Osterlund, Batchelder, and Short discovered it in Jackson County, Alabama, in 1979 (Batchelder 1979, Short 1979). Fernald described the taxon *Phyllitis scolopendrium* var. *americana* in 1935. He distinguished it from the European variety on the basis of several distinct morphological features. These features include smaller fronds, fewer and shorter indusia (coverings over the sori), the presence of elongate tips on the frond's veinlets, and the distance of the veinlets from the edge of the frond (Fernald 1935).

Britton (1953) determined that, in addition to the morphological characters described by Fernald, the North American representatives of *Phyllitis scolopendrium* differed from the European plants cytologically in having 144 rather than 72 chromosomes. Lellinger (1985) also notes that *Phyllitis scolopendrium* var. *scolopendrium* is much more easily cultivated than is *Phyllitis scolopendrium* var. *americana*. Love and Love (1973) included the American hart's-tongue fern within their concept of *Phyllitis japonica* Kom. and designated it ssp. *americana* (Fern.) Love and Love. Some authors (e.g., Kartesz and Kartesz, 1980) include the genus *Phyllitis* within *Asplenium*. Neither of these treatments has been widely accepted in the United States. Lellinger's 1985 treatment that maintains the genus *Phyllitis* and includes American hart's-tongue fern in the European rather than the Japanese species is followed here.

In North America *Phyllitis scolopendrium* var. *americana* is usually found growing on or at least in close association with dolomitic limestone (limestone high in magnesium). This extremely rare fern is currently known from only seven counties in the Canadian Province of Ontario, two counties in New York, two counties in Michigan, two counties in Alabama, and one county in Tennessee. In the northern part of its range it usually occurs on or adjacent to limestone outcrops. The southern populations are only found within limestone pits that trap cold air, have high humidity, and are well shaded. At all known locations, American hart's-tongue fern appears to require high humidity, shaded conditions, a moist substrate, and the presence of dolomitic limestone.

In the 181 years that have elapsed since first being discovered in North America, American hart's-tongue fern has remained an extremely rare taxon that is found in small, widely disjunct groups of populations. Concern for the continued existence of this species has long been voiced by those interested in the preservation of the flora of the United States. This concern is demonstrated by early articles such as Benedict's 1925 "Saving the Hart's Tongue," House's 1934 "Saving the Scolopendrium Fern," and Faust's 1960 "Survival of Hart's-tongue Fern in Central New York." *Phyllitis scolopendrium* var. *americana* remains vulnerable to extinction throughout most of its range. A description of the status of the species in each North American State or province in which it occurs is provided below:

Alabama. There are two known populations of American hart's-tongue fern in Alabama. Both populations were discovered by cavers associated with the Huntsville Grotto of the National Speleological Society (Batchelder 1979, Evans 1982). One population occurs in a Jackson County sinkhole that is on lands managed as a national wildlife refuge by the Service. Short (1979) observed 20 plants present when he first visited the site. Evans (1981) found that the population had dwindled to nine plants by July 1981. Evans further states that this population appears, for undetermined reasons, to be in static or declining condition. The other population is in Morgan County in the privately owned pit entrance to a limestone cave. This population is located about 25 miles (40 km) southwest of the Jackson County population (Short 1980). Evans (1981) reports that this is a vigourous, healthy, reproducing population, which in 1981 supported 97 plants (26 fertile adults, 13 subadults, and 58 juveniles).

Tennessee. Tennessee has two records of American hart's-tongue fern. The first of these was discovered in the entrance to a Roane County cave by Gattinger in 1849. Despite repeated searches for the plant at this site since the early 1900s, it has not been seen again and is considered to be extirpated from the area (Maxon 1900, Shaver 1954, Evans 1981). The only extant Tennessee population is in Marion County and was discovered by Cheatham in 1879 (Williamson 1879, Evans 1981). Originally supporting about 200 plants, this population has contained only about 17 plants in the recent past (Evans 1981). Early concern about the decline of this population led Graves in 1929 to scatter American hart's-tongue fern spores at the site. The spores were obtained from a plant collected in Ontario, Canada (McGilliard 1936). There appears to be no method of distinguishing Tennessee from Canadian representatives of this taxon; therefore, it is impossible to know the origin of the few plants that survive there. From 1982 to the present time, the site has been leased by The Nature Conservancy for the express purpose of protecting this species.

Michigan. The Michigan Natural Features Inventory recognizes four extant populations of American hart's-tongue fern (Sue Crispin, Michigan Natural Features Inventory, personal communication, 1986). All of these sites are in Mackinac County. Plants at one additional site in Chippewa County have not been observed since 1983, and the species may have been extirpated from the county. Of the four remaining populations, two are owned by the Michigan Nature Association. Both of the association's populations are healthy and support several hundred plants each. One population of approximately 64 plants is on land managed by the U.S. Forest Service (Hiawatha National Forest) (Henson 1978). To protect this population, the Forest Service rerouted a trail which was proposed for the area (Voss *in litt.*). The last population is on privately owned, unprotected land in fairly close proximity to the two populations owned by the Michigan Nature Association (Crispin, personal communication, 1986; Nepstad 1981; Futyma 1980; Hagenah 1953 and 1956).

New York. The plight of *Phyllitis scolopendrium* var. *americana* in New York has been carefully documented since the early 1900s (Hunter 1922; Faust 1960; Cinquemani *et al.* 1988). The delineation of individual populations provided here is that used by the New York Natural Heritage Program (Clemants *in litt.*). Their identification of populations is based primarily upon Faust (1960) and Hunter (1922).

The fern is known from a limited area within Madison and Onandaga Counties. Thirteen populations are currently recognized by the program; 3 of these are in Madison County, and 10 are or were in Onandaga County.

Four of the 10 Onandaga County populations are believed to be extirpated. Three of these were destroyed by quarrying operations between 1924 and 1935 and one by undetermined means soon after 1959. Four populations are small and vulnerable and in 1988 contained 4, 11, 88, and 271 individuals, respectively (Cinquemani *in litt.*). The remaining two populations are the largest in New York and indeed are the largest populations in the United States. These two populations are located in a State park, and in 1988 they contained a combined total of 2,657 individuals (Cinquemani *in litt.*).

Madison County supports three populations. Two of these, containing 48 and 54 plants respectively, are on unprotected privately owned lands. The third, which contained 346 plants in 1988, is within a State park (Cinquemani *in litt.*). About half of the plants that were originally in the park were destroyed before 1980 by trail construction and subsequent erosion.

Canada. Phyllitis scolopendrium var. *americana* is listed as a rare species in the Atlas of the Rare Vascular Plants of Ontario. Although locally abundant in the center of its range in Grey County, it was included in the Atlas "* * * because most of its world population occurs in the Province. On a continental basis, this is a very small area and all of the peripheral populations in the United States are at risk" (Dickson and White 1983). Adjacent southern Bruce County also supports healthy populations of the taxon. Much smaller and more isolated populations occur in Peel, Halton, Dufferin, and Simcoe Counties (Soper 1954, Britton *in litt.*). A population located near Niagara Falls in Welland County may have been extirpated by human activities or may have disappeared for other reasons (Hinds *in litt.*). Soper (1954) states that this population may have been transplanted to the site in the late 1800s. No plants have been observed there since 1925 (Dickson and White 1983).

Fernald (1970) includes New Brunswick in his description of the range of American hart's-tongue fern. However, Hinds (*in litt.*) states that the material collected in New Brunswick is the European variety and that the species is not believed to be native to the Province.

Phyllitis scolopendrium var. *americana* is threatened throughout most of its range by trampling, alteration, or destruction of its habitat by timber removal, quarrying, and residential or other development (Evans 1981, Nepstad 1981). Britton (*in litt.*) states that the most significant threats to the Canadian populations are "* * * lumbering or development of the escarpment lands e.g. quarries, ski slopes, country estates, etc." on which it occurs.

Federal government actions on this species began with section 12 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice (40 FR 27823) that formally accepted the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act. By accepting this report as a petition, the Service also acknowledged its intention to review the status of those plant taxa named within the report. *Phyllitis scolopendrium* var. *americana* was included in the Smithsonian report and the July 1, 1975, notice of review. On June 16, 1976, the Service published a proposed rule (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of the Act; *Phyllitis scolopendrium* var. *americana* was included in this proposal.

The 1978 amendments to the Act required that all proposals over 2 years old be withdrawn. On December 10, 1979 (44 FR 70796), the Service published a notice withdrawing plants proposed on June 16, 1976. *Phyllitis scolopendrium* var. *americana* was included as a category 2 species in the revised notice of review for native plants published on December 15, 1980 (45 FR 82480). Category 2 species are those for which the Service has information that indicates that proposing to list them as endangered or threatened may be appropriate but for which substantial data on biological vulnerability and threats are not currently known or on file to support the preparation of rules. This species was also included in category 2 when the notice of review for native plants was again revised in 1983 (48 FR 53640) and in 1985 (50 FR 39526). The Service funded surveys to determine the Alabama, Tennessee, and Michigan status of *Phyllitis scolopendrium* var. *americana* in 1930, and final reports for these surveys were accepted by the Service in 1981. Additional information on the status of the species throughout its range and on threats to its continued existence have now been obtained by the Service.

All plants included in the comprehensive plant notices are treated as under petition. Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the

case for *Phyllitis scolopendrium* var. *americana* because of the acceptance of the 1975 Smithsonian report as a petition. In 1983, 1984, 1985, 1986, and 1987, the Service found that the petitioned listing of *Phyllitis scolopendrium* var. *americana* was warranted but precluded by other listing actions of a higher priority and that additional data on vulnerability and threats was still being gathered.

On September 12, 1988, the Service published (53 FR 35210) a proposal to list American hart's-tongue fern as a threatened species. That proposal constituted the final 1-year finding as required by the 1982 amendments to the Endangered Species Act. The proposal provided information on the species' biology, status, and threats, and the potential implications of listing. The proposal also solicited comments on the status, distribution, and threats to the species.

Summary of Comments and Recommendations

In the September 12, 1988, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in *The Daily Sentinel* (Jackson County, Alabama), *The Decatur Daily* (Morgan County, Alabama), *The St. Ignace News* (Mackinac County, Michigan), *The Oneida Daily Dispatch* (Madison County, New York), *The Herald-Journal* (Onondaga County, New York), and *The Jasper Journal* (Marion County, Tennessee).

Seventeen comments were received in response to the proposed rule. All comments provided additional information on the status or distribution of the species and/or expressed support for the addition of American hart's-tongue fern to the Federal list of endangered and threatened species. Two commenters suggested that because of the vulnerability of the United States populations to extirpation, the species should be listed as endangered rather than threatened. The States of Michigan and Tennessee expressed support for the addition of the species to the Federal list. The State of New York previously expressed support for this action, and it is anticipated that the State of Alabama will cooperate in the protection of the species when it is added to the Federal list. No Federal activities were identified that would be affected by the addition of American hart's-tongue fern to the Federal list.

The new information provided in response to the proposed rule has been incorporated into this final rule where appropriate. The Service concurs with the conclusion that *Phyllitis scolopendrium* var. *americana* merits protection under the Act. The Service has evaluated the available information on the range-wide status of, and threats to, this species and believes that threatened status is appropriate.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Phyllitis scolopendrium* var. *americana* should be classified as a threatened species. Procedures found at Section 4(a)(1) of the Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Phyllitis scolopendrium* (L.) Newman var. *americana* Fernald (American hart's-tongue fern) (Syn. *Phyllitis japonica* Kom. ssp. *americana* Love and Love) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* American hart's-tongue fern is threatened throughout most of its range by trampling, habitat alteration, or destruction by timber removal, quarrying or residential development. The southern populations are especially vulnerable to extirpation by inadvertent trampling because of their small size and the steep precarious nature of their habitat. Short (1979) reports that between October 21, 1978, and November 24, 1978, one of the 20 plants that occurred at the Jackson County, Alabama, site was destroyed by someone who had apparently slid off the main trail and onto the plant. Evans (1981) reports that in July 1981 only nine plants remained at this location. Quarrying operations destroyed three of New York's populations and remain a threat to at least one of the remaining New York sites and two of the southern sites (Clemants *in litt.*, Evans 1981). Timber removal at most of the sites would be expected to raise light levels and lower humidity levels to the detriment of the species. Alterations associated with residential or other development would, in most cases, either directly destroy the plants present or result in environmental changes that would make the sites unsuitable for American hart's-tongue fern. As previously stated, lumbering, quarrying, or other types of development are considered to be the most significant threats to the Ontario populations of the species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is limited commercial trade in *Phyllitis scolopendrium* var. *americana*. The material currently in trade is believed to be of cultivated origin and not obtained from the wild populations. The original source of this material was one of the New York populations destroyed in the early 1900s by quarry operations (S. Clemants, New York Natural Heritage Program, personal communication, 1988). Most of the populations in New York, Michigan, Alabama, and Tennessee are much too small to support any collecting for scientific purposes, for fern enthusiasts, or for other reasons. Inappropriate collecting remains a threat to these populations (Nepstad 1981). The larger Ontario populations have withstood, apparently without ill effects, low levels of collecting for some time (Pryer *in litt.*).

C. *Disease or predation.* Disease and predation are not known to be factors affecting the continued existence of the species at this time.

D. *The inadequacy of existing regulatory mechanisms.* *Phyllitis scolopendrium* var. *americana* is listed as endangered under Michigan's Endangered Species Act and Tennessee's Rare Plant Protection and Conservation Act. In Michigan, taking is prohibited on all public and private lands; in Tennessee, taking is only restricted when the permission of the landowner or manager has not been obtained. In New York the species is protected under the Protected Native Plants Law, which states that removal of the fern without the landowner's permission is a violation of the law and subjects the violator to a $25 fine. In Alabama the species does not receive any protection by the State.

Addition of the species to the Federal list of endangered and threatened species provides additional protection from taking. Protection from inappropriate commercial trade (utilizing plants of wild origin rather than cultivated material) will also be provided.

E. *Other natural or manmade factors affecting its continued existence.* Because of climatic changes, the southern populations of the species are restricted to extremely rare sites with physical environments that duplicate the conditions under which the northern populations grow. During the glacial period, the species may have been more widespread in southern limestone areas; but as the climate has warmed, it has become restricted to a few sites in or near caves (Evans 1982).

Crispin (personal communication 1986) reports that in 1985 an infestation of leaf miners destroyed the leaves on the trees above one of the Michigan sites. The loss of shade that resulted from this alteration of the canopy desiccated many of the ferns growing on the forest floor. Insect infestations that temporarily remove the leaves of the canopy or result in long-term damage to the trees found there remain a threat to the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Phyllitis scolopendrium* var. *americana* as a threatened species. Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate any habitat of a species, which is considered to be critical habitat, at the time the species is determined to be endangered or threatened. Most populations of this species are small, and loss of even a few individuals to activities such as collection for scientific purposes could extirpate the species from some locations. Publication of critical habitat descriptions and maps would increase the vulnerability of the species without significantly increasing protection. The owners and managers of all the known populations of *Phyllitis scolopendrium* var. *americana* have been made aware of the plant's location and of the importance of protecting the plant and its habitat. No additional benefits would result from a determination of critical habitat. Therefore, the Service concludes that it is not prudent to designate critical habitat for *Phyllitis scolopendrium* var. *americana*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protecton, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. All but two of the known populations of *Phyllitis scolopendrium* var. *americana* are on privately owned or State-owned land. One Alabama population is on land managed as a national wildlife refuge by the U.S. Fish and Wildlife Service, and one of the Michigan populations is on lands managed by the U.S. Forest Service. There are no known current or planned Federal activities that may affect this species.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisidiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. The 1988 amendments (Pub. L. 100-478) to the Act protect listed plants from malicious damage or destruction on Federal lands. In addition these amendments prohibit removal, cutting, digging up, damaging, or destroying these plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since *Phyllitis scolopendrium* var. *americana* is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Central Station, Washington, DC 20038-7329, (202/343-4955).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Batchelder, E. 1979. The hart's-tongue discovery. Huntsville Grotto News. 20(6):49-50.

Benedict, R.C. 1925. Saving the hart's-tongue. Amer. Fern Jour. 15(4):124-125.

Britton, D.M. 1953. Chromosome studies in ferns. Amer. Jour. Bot. 40:575-583.

Cinquemani, D.M., M.E. Faust, and D.J. Leopold. 1988. Periodic censuses (1916-1986) of *Phyllitis scolopendrium* (L.) Newman var. *americana* Fernald in central New York State. Amer. Fern. Jour. 78(2):37-43

Dickson, H.L. and D.J. White. 1983. Aspleniaceae—*Phyllitis scolopendrium* (L.) Newman var. *americana* Fernald in Argus, G.W., and D.J. White. (eds.) Atlas of the rare plants of Ontario. Nat. Mus. Nat. Sci. Ottawa.

Evans, A.M. 1981. Status report on *Phyllitis scolopendrium* (L.) Newm. var. *americana* Fern. Unpublished report to USFWS, Southeast Region.

Evans, A.M. 1982. The hart's-tongue fern—an endangered plant in cave entrances. In National Cave Management Symposia proceedings 1978 and 1980. Pygmy Dwarf Press, Oregon City, Oregon. 234 pp.

Faust, M.E. 1980. Survival of hart's-tongue fern in central New York. Amer. Fern Jour. 50:55-62.

Fernald, M.L. 1935. Critical plants of the Upper Great Lakes Region of Ontario and Michigan. Rhodora, 37(438):197-222, 238-

282, 272–301, 324–341. (Desc. on pages 220–221.)
Fernald, M.L. 1970. Gray's manual of botany. Eighth ed. D. Van Nostrand Co., New York.
Futyma, R.P. 1980. The distribution and ecology of *Phyllitis scolopendrium* in Michigan. Amer. Fern. Jour. 70(3):81–87.
Hagenah, D.J. 1953. Rare hart's-tongue fern found in Michigan. Cranbrook Inst. Sci. News Letter. 23(1):2–5.
Hagenah, D.J. 1956. More hart's-tongue in Michigan. Amer. Fern Jour. 46:70–74.
Henson, Don. 1978. Survey and mapping of hart's-tongue fern in 1,000-acre area of Hiawatha National Forest. Unpublished report. USDA, Forest Service. 14 pp.
House, H.D. 1934. Saving the scolopendrium fern. Amer. Fern Jour. 24(3):65–71.
Hunter, M. 1922. The present status of scolopendrium in New York State. Amer. Jour. Bot. 9(1):28–36.
Kartesz, John T., and R. Kartesz. 1980. A synonymized checklist of the vascular flora of the United States, Canada, and Greenland. Volume II. The Biota of North America. University of North Carolina Press. Chapel Hill. 498 pp.
Lellinger, D.B. 1985. A field manual of the ferns and fern-allies of the United States and Canada. Smithsonian Institution Press, Washington, DC 389 pp.
Löve, Askell. 1954. Cytotaxonomical remarks on some American species of circumpolar taxa. *Svensk. Bot. Tidskr.* 48(1):211–232.
Löve, A., and D. Löve. 1973. Cytotaxonomy of the boreal taxa of *Phyllitis*. Acta Botanica Academiae Scientarum Hungaricae. 19:201–206.
Maxon, W.R. 1900. On the occurrence of the hart's-tongue in America. Fernwort Papers. Pp. 30–40.
McGilliard, E. 1936. The hart's-tongue in Tennessee 1878–1935. Amer. Fern Jour. 26(4):113–122.
Nepstad, D.L. 1981. *Phyllitis scolopendrium* var. *americana* Fernald. Unpublished status report to USFWS, Northcentral region.
Shaver, Jesse M. 1954. Ferns of the eastern central states with special reference to Tennessee. Dover Publications. 1970 reprint of the 1954 edition.
Short, J.W. 1979. *Phyllitis scolopendrium* newly discovered in Alabama. Amer. Fern Jour. 69(2):47–48.
Short, J.W. 1980. A Second Alabama locality for the hart's-tongue. Amer. Fern Jour. 70(4):137.
Small, J.K. 1938. Ferns of the Southeastern States. Hafner Publishing Co., New York (1964 Facsimile edition).
Soper, J.H. 1954. The hart's-tongue fern in Ontario. Amer. Fern Jour. 44(4):129–147.
Williamson, John. 1879. *Scolopendrium vulgare* discovered in Tennessee. Bull. Torr. Bot. Club. 6(57):347–348.

Author

The primary author of this final rule is Mr. Robert R. Currie, Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 672–0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under Aspleniaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	*
Aspleniaceae—Spleenwort family:						
Phyllitis scolopendrium var. *americana* (=*Phyllitis japonica* ssp. *americana*).	American hart's-tongue fern	U.S.A. (AL, MI, NY, TN), Canada (ON)	T	354	NA	NA
*	*	*	*	*	*	*

Dated: June 12, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–16573 Filed 7–13–89; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 90111–9110]

RIN 0648–AC49

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; effective date of a collection of information requirement and notice of OMB control number.

SUMMARY: NOAA announces approval by the Office of Management and Budget (OMB) of the collection of information requirement which may apply to persons engaged in commercial fishing in a regulatory area subject to quota management who land their catches in another regulatory area open to fishing. This rule establishes an effective date for the collection of information requirement and publishes the applicable OMB control number.

EFFECTIVE DATE: July 13, 1989.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Northwest Region, NMFS) at 206–526–6140, or Rodney R. McInnis (Southwest Region, NMFS) at 213–514–6199.

SUPPLEMENTARY INFORMATION: The final rule implementing Amendment 9 to the Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California Commencing in 1978 was published on May 4, 1989 at 54 FR 19185 and codified at 50 CFR Part 661. In this final rule, NOAA announced delayed effectiveness of the following sections of the implementing regulations, pending OMB approval.

The regulations at 50 CFR 661.4(b) and 661.20(a)(1)(iii) and Appendix section II.B.12 provide that reporting requirements may be imposed on commercial fishermen as necessary to ensure timely and accurate assessment of catches in regulatory areas subject to quota management. Specifically, persons engaged in commercial fishing in a regulatory area subject to quota management who land their catches in

another regulatory area open prior to leaving the first regulatory area. The regulatory areas subject to these reporting requirements, the contents of the radio reports, and the entities receiving the reports will be specified annually during the preseason process of establishing and adjusting management measures.

The reporting requirements implemented by 50 CFR 661.4(b) and 661.20(a)(1)(iii) and Appendix section II.B.12 constitute a collection of information requirement subject to the Paperwork Reduction Act (PRA). However, pursuant to the PRA, the collection of information requirement is not effective before OMB approval of the requirement.

OMB approved the collection-of-information requirement on April 31, 1989, under OMB control number 0648.0222. Accordingly, 50 CFR 661.4(b) and 661.20(a)(1)(iii) and Appendix section II.B.12 are effective as of July 13, 1989.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping.

Dated: July 7, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 89–16459 Filed 7–13–89; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 134
Friday, July 14, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Part 764

Uranium Mill Tailings; Annotation of Land Records

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) today is issuing a proposed rule under section 109 of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901, et seq.; hereinafter, the "UMTRCA") for the purpose of clarifying the obligation of certain States to annotate local land records so as to ensure that future purchases of remediated properties will be notified of the extent of work performed on their properties.

DATES: Comments should be submitted by August 28, 1989. Comments received on or before the above date will be considered in the decision-making process on the final rule.

Pursuant to section 501 of the Department of Energy Organization Act, the Department will provide an opportunity for oral presentation of views, data and arguments. Interested persons may request a public hearing by August 28, 1989. If any requests for a public hearing are received by that date, the Department will conduct a public hearing on September 15, 1989 at 9:00 a.m. in Room 1E-245, 1000 Independence Ave., SW., Washington, DC. If no requests for a hearing are received, the hearing will be cancelled. The Department will attempt to give adequate advance public notice of any cancellation.

ADDRESSES: Comments should be sent to: Joelene Garcia, Uranium Mill Tailings Project Office, U.S. Department of Energy, 5301 Central Avenue, NE., S. 1700, Albuquerque, New Mexico 87108.

Comments will be available for public review at the above address during regular business hours 9:00 a.m.-4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: L.C. Brazley, Office of Nuclear Energy, NE-22, U.S. Department of Energy, Washington, DC 20545.

Steven R. Miller, Office of General Counsel, GC-11, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585.

SUPPLEMENTARY INFORMATION:

Background

The Uranium Mill Tailings Radiation Control Act of 1978, Pub. L. 95-604, 42 U.S.C. 7901, et seq. (hereinafter, "the UMTRCA"), authorizes the Secretary of Energy, in cooperation with affected States, Indian Tribes, and site owners, to provide a program of assessment and remedial action at designated "processing sites." The purpose of the remedial action is to stabilize and control the tailings and other residual radioactive materials located on the inactive uranium processing sites in a safe and environmentally sound manner and to minimize or eliminate potential health hazards. The term "processing site" as used in the UMTRCA ecompasses both the inactive uranium milling sites where uranium was produced for sale to the United States, and other private properties in the vicinity which are contaminated with material from the site ("vicinity properties").

The Department is conducting remedial action at 24 designated processing sites located in 10 States and the vicinity properties associated with those 24 sites, and at the vicinity properties associated with the inactive Edgemont, South Dakota uranium mill, currently owned by the Tennessee Valley Authority. The remedial action is being conducted in accordance with the Environmental Protection Agency's (EPA) "Standards for Remedial Actions at Inactive Uranium Processing Sites," 40 CFR 192, dated January 5, 1983. The EPA standards recognize that in unique situations residual radioactive materials may be allowed to remain on vicinity properties. These situations are described in 40 CFR 192.21-22.

At the conclusion of remedial action at each processing site, DOE will send a letter certifying that a single vicinity property or group of properties have been cleaned up in accordance with EPA's standards to the participating State and the owner of record. A copy of a remedial action completion report will be enclosed with DOE's letter of certification to the participating state agency.

Upon receipt of a letter of certification for a vicinity property or group of properties associated with a processing site, the State will be required to take appropriate action to ensure that the land record for each vicinity propety at which remedial action is conducted is annotated as required by section 104(d) of the UMTRCA, 42 U.S.C. 7914(d). This will occur not later than 6 months after a letter of certification for a vicinity property has been sent to the State, or one year after the effective date of this rule, whichever is later.

Overview of the Proposed Rule

This proposed rule interprets and delineates the UMTRCA requirement for the annotation of land records by States in which inactive uranium milling sites and "vicinity properties" (hereinafter, "processing sites") are located. This requirement is set forth in section 104(d) of the UMTRCA (42 U.S.C. 7914(d)), and applies to residual radioactive material, as that term is defined in section 101(7) of the UMTRCA (42 U.S.C. 7911(7)). Today's proposed rule is intended to ensure that future purchasers of remediated properties will be notified of:

(1) The nature and extent of radioactive materials removed from the property;

(2) The date such work was performed; and

(3) The condition of the property following remedial actions.

Annotations of land records will be required for sites certified as having met EPA standards, 40 CFR 192, under the UMTRCA for the following site specific conditions:

(1) The vicinity property has been remediated in its entirety and all verification measurements fall below EPA standards.

(2) The vicinity property has been remediated; however, residual radioactive material remains as permitted under 40 CFR 192.21-22.

(3) The vicinity property has undergone remedial action and residual radioactive material has been removed in accordance with EPA's standards. However, radioactive materials other than residual radioactive materials derived from the inactive mill site remain on the property.

Effect of the Proposed Rule

The effect of this proposed rule will be that the land records of all properties that were at one time the subject of remedial action by DOE under the UMTRCA will be annotated as required by the UMTRCA. The specific procedures by which land records will be annotated will be drafted by each State and submitted to the DOE for review and approval.

Invitation to Comment and Notice of Public Hearing

Interested persons are invited to submit written comments and recommendations to the address set forth at the beginning of this document. All comments or recommendations received on or before August 28, 1989 will be considered before the issuance of the final rule.

All comments submitted in response to this proposed rule will be available for public inspection, during and after the comment period in Room S. 1700, 5301 Central Avenue, NE., Albuquerque, New Mexico 87108 between the hours of 9:00 a.m. and 4:00 p.m., Monday to Friday. Procedural rules for the hearing will be announced at the commencement of the hearing.

Procedural Matters

A. Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291.

They are not classified as major because they do not meet the criteria for major regulations established in that Order.

B. Regulatory Flexibility Act Certification

The regulations will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act of 1980

There are no information collection requirements in the proposed rules.

D. Federalism

The principal impacts of this rule will be the annotation of land records where residual radioactive materials were located and where remedial action took place as mandated by 42 U.S.C. 7901 of the UMTRCA. The rule is unlikely to have a substantial direct effect on the States, Tribes, the relationship between the States, Tribes and Federal Government or distribution of power and responsibilities among various levels of Government.

E. National Environmental Policy Act

The proposed rule will have no significant environmental impacts or create adverse effects upon the quality of the human environment.

List of Subjects in 10 CFR Part 764

Nuclear materials; Uranium mill tailings; Residual radioactive materials.

In consideration of the foregoing, Part 764 of 10 CFR Chapter III is proposed to be added as set forth below.

Issued in Washington, DC, July 11, 1989.

John Baublitz,

Acting Director, Office of Remedial Action and Waste Technology.

Part 764 is proposed to be added to 10 CFR Chapter III to read as follows:

PART 764—ANNOTATION OF LAND RECORDS

Sec.
764.1 Scope.
764.2 Purpose.
764.3 Definitions.
764.4 Annotation of land records.

Authority: The Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*); Energy Reorganization Act of 1974 (42 U.S.C. 5801 *et seq.*); Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); Uranium Mill Tailings Radiation Control Act (Pub. L. 95-604, 92 Stat 3021; 42 U.S.C. 7901 *et seq.*).

§ 764.1 Scope.

This part applies only to residual radioactive material that is being cleaned up by the U.S. Department of Energy (DOE) at 24 inactive "processing sites," including radioactively contaminated "vicinity properties," under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA), 42 U.S.C. 7901 *et seq.*. This part does not apply to other radioactive substances being cleaned up by DOE on other properties and under other authorities of law, or to byproduct material located on active uranium milling sites that are not the subject of remedial action by the DOE under the UMTRCA.

§ 764.2 Purpose.

The purpose of this part is to clarify the obligation of States in which "processing sites" are located to annotated local land records so as to ensure that future purchasers of properties at which DOE undertook remedial action under UMTRCA will be notified as to the nature and extent of residual radioactive materials removed from the site property, including notice of the date when such action took place and the condition of the property after the remedial action. This rule interprets and delineates the UMTRCA requirement for the annotation of land records by participating States, set forth in section 104(d) of the UMTRCA (42 U.S.C. 7914(d)). The requirement applies to residual radioactive material, as that term is defined in section 101(7) of the UMTRCA (42 U.S.C. 7911(7)).

§ 764.3 Definitions.

Processing Site means: Any site, including the mill, containing residual radioactive materials at which all or substantially all of the uranium was produced for sale to any Federal agency prior to January 1, 1971 under a contract with any Federal agency, except in the case of a site at or near Slick Rock, Colorado, unless—

(1) Such site was owned or controlled as of January 1, 1978, or is thereafter owned or controlled, by any Federal agency; or

(2) A license (issued by the U.S. Nuclear Regulatory Commission or its predecessor agency under the Atomic Energy Act of 1954, or by a State as permitted under section 274 of such Act) for the production at such site of any uranium or thorium product derived from ores is in effect on January 1, 1978, or is issued or renewed after such date; and

(3) Any other real property or improvement thereon which is in the vicinity of such site, and is determined by the Secretary, in consultation with the U.S. Nuclear Regulatory Commission, to be contaminated with residual radioactive materials derived from such site.

(4) Any ownership or control of an area by a Federal agency which is acquired pursuant to a cooperative agreement under the UMTRCA shall not be treated as ownership or control by such agency for purposes of paragraph (1) of this definition. A license for the production of any uranium product from residual radioactive materials shall not be treated as a license for production from ores within the meaning of paragraph (2) of this definition, if such production is in accordance with section 108(b) of the UMTRCA.

Residual Radioactive Material means: (1) Waste (which the Secretary determines to be radioactive) in the form of tailings resulting from the processing of ores for the extraction of uranium and other valuable constituents of the ores; or (2) other waste (which the Secretary determines to be radioactive) at a processing site which relates to such processing, including any residual stock of unprocessed ores or low-grade materials.

Secretary means: The Secretary of Energy.

UMTRCA means: The Uranium Mill Tailings Radiation Control Act of 1978, Pub. L. 95-604, 42 U.S.C. 7901 *et seq.*

Vicinity Property means: That portion of a processing site defined in paragraph (3) of the definition of processing site.

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§ 764.4 Annotation of land records.

(a) Not later than 6 months after the State in which a processing site is located receives a letter of certification from the Secretary that a vicinity property near the processing site has met the U.S. Environmental Protection Agency's (EPA) standards contained in 40 CFR Part 192, or one year after the effective date of this rule, whichever is later, the State must submit to the local land use authority a record of the type, location, and quantity of residual radioactive material removed from the processing site. The State must identify the type, location, and extent of contamination and quantity of the residual radioactive material to the best of its knowledge and in accordance with available records.

(b) The State in which a processing site is located must take appropriate actions to assure that the following occurs:

(1) In accordance with state law, a notation must be made on the deed of each processing site (including the deeds of individual vicinity properties) from which residual radioactive material is removed, or some other instrument which is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that:

(i) The land originally contained residual radioactive material;

(ii) DOE has certified that the land now meets EPA's "Standards for Remedial Actions at Inactive Uranium Processing Sites," 40 CFR Part 192, under one of the following conditions:

(A) The vicinity property has been remediated in its entirety and all verification measurements fall below EPA standards.

(B) The vicinity property has been remediated; however, residual radioactive material remains as permitted under 40 CFR 192.21–22.

(C) The vicinity property has undergone remedial action and residual radioactive material has been removed in accordance with EPA's standards. However, radioactive materials other than residual radioactive materials derived from the inactive mill site remain on the property.

(iii) The survey plat and record of the type, location, and quantity of residual radioactive material removed have been filed with the local authority;

(2) The State provides to the local government one summary sheet including:

(i) The current "condition" of the property as described in paragraph (b)(1)(ii) of this section:

(ii) The nature and extent of residual radioactive material removed from the property, as described in the Secretary's letter of certification and accompanying completion report, a copy of which shall be retained at the State's document repository, and

(iii) The dates during which remedial actions were performed.

(c) The State shall furnish a copy of the appropriate summary sheet referred to in paragraph (b)(2) of this section to any prospective purchaser before entering into a contract, option, or other arrangement to sell or otherwise dispose of a processing site, of which the State is the owner.

[FR Doc. 89-16572 Filed 7-13-89; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R-0671]

Equal Credit Opportunity; Business Credit

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing to revise Regulation B to implement amendments to the Equal Credit Opportunity Act. The amendments, enacted on October 25, 1988, require creditors to give written notice to business credit applicants of their right to a written statement of reasons for credit denials or other adverse action. The law also requires creditors to maintain records used in evaluating credit applications.

The proposed revisions to Regulation B would implement the statutory amendments and define coverage. Coverage of business credit applications generally would depend on the applicant's gross revenues: an application would be subject to the amendments if it involves a business applicant with gross revenues of $500,000 or less, except in the case of an application for trade credit and similar types of credit. The latter applications and applications from businesses with gross revenues greater than $500,000 would remain subject to modified rules currently provided by § 202.3(d) of Regulation B, although certain revisions to that section are also being proposed by the Board at this time.

The Board will adopt a final rule following a 60-day comment period, after review of the comments received. The Board contemplates issuing a final rule by late October 1989, with an effective date of January 1, 1990. Until then, the existing rules of Regulation B continue in effect.

DATE: Comments must be received on or before September 15, 1989.

ADDRESSES: Comments should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to the Mail Services courtyard entrance on 20th Street, between C Street and Constitution Avenue NW., Washington, DC, between 8:45 a.m. and 5:15 p.m. weekdays. Comments should include a reference to Docket No. R-0671. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: In the Division of Consumer and Community Affairs, at (202) 452-2412 or 452-3867: Adrienne Hurt, Senior Attorney, or Jane Ahrens, Staff Attorney; for the hearing impaired *only*, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) Background

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691–1691f, makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of sex, marital status, race, color, national origin, religion, age (provided the applicant has the capacity to contract), because all or part of an applicant's income derives from any public assistance, or because an applicant has in good faith exercised any right under the Consumer Credit Protection Act. The ECOA also provides that a credit applicant has the right to obtain a written statement of reasons for a denial of credit. The ECOA is implemented by the Board's Regulation B, 12 CFR Part 202. A staff commentary to the regulation, 12 CFR Part 202 Supp. I, applies and interprets the requirements of Regulation B.

Pursuant to authority granted under section 703(a) of the ECOA, 12 U.S.C. 1691b(a), the Board has previously provided limited exceptions, set forth in § 202.3 of Regulation B, from certain of the regulation's requirements for the following types of credit: Credit extensions involving public utility services; credit extensions subject to regulation under the Securities Exchange Act; credit payable in four or fewer installments, in which no credit card is used and no finance charge is imposed ("incidental credit"); extensions of credit to federal and state governments; and extensions of credit primarily for business, commercial or agricultural purposes ("business credit").

The current exceptions for business credit relate to the following areas: Written notification of credit denials, record retention, marital status inquiries, and supplying information to third parties about accounts held jointly by married persons. Business credit transactions remain subject to all other provisions of Regulation B (which includes for example, rules that make it unlawful for a creditor automatically to require loan guarantees from a nonapplicant spouse).

The Women's Business Ownership Act amendments to the ECOA

For a number of years, members of Congress and others have expressed concern that the business credit exceptions under Regulation B do not provide business credit applicants, particularly small-business owners, with adequate rights under the ECOA. On October 25, 1988, the ECOA was amended by the Women's Business Ownership Act of 1988, Pub. L. No. 100-533, 102 Stat. 2689. These amendments to the ECOA require creditors to (1) give business credit applicants written notice of the right to obtain reasons for a credit denial and (2) retain records on business credit applications for at least one year, pursuant to the Federal Reserve Board's implementing regulation.

The statutory provision governing the Board's rulewriting authority also was amended to provide that any exemption from the requirement of the act or implementing regulation issued by the Board will end after five years. The Board may extend an exemption for an additional five-year period if the Board makes an express finding that an extension is appropriate.

(2) The Proposed Revisions to Regulation B

The Board proposes to revise Regulation B to implement the ECOA amendments regarding notice of credit denials and record retention; define the business credit applications to which the revised rules will apply; and revise the regulatory provisions that will govern all other business credit transactions.

General Coverage

The legislative history makes clear that the primary intent of the statutory amendments is to provide small-business owners, particularly women entrepreneurs, the same ECOA rights that are afforded to consumer credit borrowers. There is evidence of congressional intent that the amendments should not apply to applications by large corporations or to certain types of business credit (such as applications for trade credit and credit incident to factoring arrangements). *See* House Committee on Small Business, Selected Documents Pertaining to the Women's Business Ownership Act of 1988, 100th Cong. 2d Sess. (Comm. Print).

There is, however, no commonly accepted definition of a small business. The Board therefore considered various tests for determining coverage for purposes of the ECOA and Regulation B—for example, the asset size of the business entity, and the number of employees of the business entity. In many instances, however, the correlation between "small" and some of these characteristics depends on the nature of the business, industry dominance, and other factors. The Board also considered using the size of the loan transaction, but transaction size does not differentiate between small- and large-business credit applicants. Wanting to provide a simple test for determining coverage of transactions by Regulation B, the Board ultimately decided to propose a cutoff based on gross revenues.

Applications from businesses that had gross revenues of $500,000 or less in the preceding fiscal year would be subject to regulatory provisions implementing the statutory amendments on notice of credit denials and record retention. (A creditor would be permitted to rely on the applicant's assertions about the revenue size of the business). Applications to start a business would be included in this category. Applications for trade credit, credit incident to factoring arrangements, and similar types of credit—as Well as credit applications from businesses with revenues exceeding $500,000—would continue to be subject to the modified rules for notification and record retention set forth in § 202.3(d)(3) of Regulation B, discussed later in this notice.

The $500,000 cutoff which the Board is proposing would provide coverage for credit applications involving some 70 percent of the businesses operating today. The Board believes that this test would ensure ECOA rights for most small businesses and at the same time not cover very large corporate entities. In seeking an appropriate dollar cutoff to delineate a small-business entity, for purposes of the ECOA and Regulation B, the Board looked to other legislation for guidance. The dollar test being proposed—$500,000 in gross revenues—corresponds to the test that was used to establish an exemption for small businesses under the minimum wage legislation recently passed by both the Senate and the House of Representatives. *See* Amendments to the Fair Labor Standards Act, H.R. 2, 100th Cong. 2d Sess. (1989)(subsequently vetoed by the President).

Notice of the Right to Reasons for a Credit Denial

The statutory amendments require creditors to inform business loan applicants, in writing, of the right to a written statement of the reasons for a denial of their loan applications. Under the Board's proposal, creditors would follow the notification rules in § 202.9(a)(3) of Regulation B, a new provision governing credit applications from businesses with $500,000 or less in gross revenues. Applications from businesses with revenues exceeding that amount would be governed by § 202.3(d) of the regulation, discussed below.

The proposed rules applicable to business credit closely parallel the rules that govern nonbusiness credit. Creditors that follow the present Regulation B rules governing nonbusiness credit will be in full compliance with the act and regulation. The Board's proposal does, however, contain one or two provisions that would offer creditors some flexibility and facilitate compliance.

Under the proposed rule, creditors would continue to be allowed to notify business credit applicants of a credit decision orally or in writing. (Nonbusiness credit applicants must be notified in writing when credit is denied or other adverse action is taken.) Notice of the credit decision would be given in accordance with the timing requirements of § 202.9(a)(1) of the regulation—typically within 30 days of receiving a "completed" application. Under § 202.2(f), an application is deemed to be "completed" when the creditor has received all the information it regularly obtains and considers in evaluating applications for credit (including any information requested from the applicant). If credit negotiations involve a series of counteroffers, the notice requirements of § 202.9 of the regulation would not be triggered by each counteroffer. *See* Regulation B, § 202.9(a)(1)(iv) and the accompanying official staff commentary.

The Board proposes to allow creditors to satisfy the requirement of providing a written notice of the right to a statement of reasons for a credit denial in one of two ways. First, the creditor could give the notice to all business applicants at the time of application provided the notice is given in a form the applicant

may retain. Notice could be given on a separate piece of paper or included on any documentation provided to the applicant. For example, the notice could be printed on an application form or financial statement. The disclosure should be noticeable, but there are no special requirements regarding location, type size, or type face.

Alternatively, the creditor could follow the rule used for nonbusiness credit and give notice of the right to a statement of reasons after a credit denial or other adverse action is taken. And of course, as in the case of nonbusiness credit, the creditor may provide the specific reasons for a credit denial, instead of merely giving notice of the right.

Whether a notice is provided at the time of application or when adverse action is taken, the notification must contain all the information required under § 202.9(a)(2) of Regulation B, except that—as noted above—creditors would be permitted to give the statement of the action taken (for example, that a line of credit or a loan has been denied) orally or in writing. The information required includes the name and address of the creditor; a statement of the provisions of section 701(a) of the ECOA (the "ECOA notice"); and the name and address of the federal agency that administers compliance with respect to the creditor.

Appendix C to Regulation B contains sample notification forms. The Board is proposing to add two notices—proposed forms C–7 and C–8—for use in connection with applications for business credit. Form C–7 is a sample notice of a statement of reasons for a credit denial. The reasons for a credit denial contained in form C–7 are illustrative only. Form C–8 is a sample disclosure of the right to a statement of reasons of the type that would be given at the time of application.

A creditor may design its own notification forms or use all or a portion of the forms contained in the appendix. Proper use of the forms will satisfy the requirements of § 202.9(a)(2)(i) and proposed § 202.9(a)(3), respectively, for applications for business credit.

Oral Notification for Telephone Applications

An oral or written request for an extension of credit, if made in accordance with procedures established by a creditor for the type of credit requested, is considered an application under § 202.2(f) of Regulation B. The Board recognizes that creditors that accept telephone applications might find it difficult to comply with the written notification requirements. Proposed § 202.9(a)(3) of the regulation therefore provides that when an application for business credit is made by telephone, compliance with the notification requirements would be satisfied by an oral disclosure of the applicant's right to a statement of reasons for a denial of credit. In this instance, the additional information otherwise required on a written notification need not be recited. For example, a creditor does not have to give an oral disclosure of the ECOA notice specified in § 202.9(b)(1) of the regulation.

A request for an advance under an existing line of credit is not considered an "application" for credit and therefore does not trigger the notification requirements of the regulation. *See* Regulation B, § 202.2(f) and accompanying commentary; *see also* § 202.2(c)(2). Inquiries from potential applicants seeking only credit information also are not covered by the notification requirements. Such inquiries are, however, subject to § 202.5(a) of Regulation B, which bars creditors from discouraging prospective applicants, on a prohibited basis, from making or pursuing an application.

Retention of Records Used to Evaluate Applications

Regulation B generally requires creditors to retain records for a 25-month period that starts when the creditor notifies an applicant of the action taken on an application for credit. The purpose of record retention is to evidence compliance with or enforce any action under the ECOA by preserving records that may disclose patterns of lending policies or practices, to help support or refute allegations of discrimination. A 25-month period was established by the regulation because an aggrieved applicant has two years in which to file a lawsuit alleging violations of the ECOA.

The statutory amendments to the ECOA require that creditors retain records on business credit applications for not less than one year, though the Board has the discretion to set a longer period for record retention. The Board is proposing that records for applications involving businesses with gross revenues of $500,000 or less be retained for 25 months, the same time period required for the retention of nonbusiness credit records. As in the case of notification, the Board would like to provide as much uniformity between business and nonbusiness credit rules as possible. The Board believes that doing so would facilitate creditor compliance by eliminating confusion that might result from having different rules for business and nonbusiness credit. The Board invites comment on whether requiring records to be retained for 25 months, instead of 12 months, would impose a significant incremental burden.

The rules governing record retention are contained in § 202.12 of Regulation B. Creditors are required to retain the original or a copy of any application document and other written or recorded data used in evaluating an application. (A "copy" includes carbon copies, photocopies, microfilm copies, copies produced by a computerized system, or copies produced by any other accurate retrieval system.) Typically, such data might include financial statements, tax returns, and business plans. The creditor must also retain a copy of any statement of reasons for a credit denial provided to an applicant. Any documents that are returned to the applicant upon the applicant's request need not be retained.

Regulation B does not require creditors to use written application forms to satisfy the record retention requirements of the regulation. In situations where no formal written application is used, or where there is little documentation concerning an application because a creditor is dealing with a customer of long standing or for some other reasons, the documentation necessary for record retention would be minimal.

Where a creditor provides a notice of rights, a creditor may evidence compliance in various ways. The creditor need not retain acknowledged copies of the actual notice of rights given to each individual applicant. A creditor could evidence compliance by having a sample copy of the type of notice provided to applicants and demonstrating that there are procedures in place to ensure that notices are being provided.

Notification and Record Retention Requirements for Applications by Businesses With Gross Revenues in Excess of $500,000, and Applications for Trade and Similar Credit

The proposed rules for notification and record retention discussed above would govern credit applications by businesses with gross revenues of $500,000 or less. Credit applications by businesses with gross revenues exceeding $500,000, and applications for trade credit, credit incident to factoring and similar credit (regardless of the applicant's revenues) would be subject to modified rules contained in § 202.3(d) of Regulation B. (Trade credit and credit extensions incident to factoring arrangements, typically involve the financing of inventory, equipment or accounts receivable. Some of these transactions may involve numerous oral, instant-credit decisions made on a daily, or even hourly, basis under the credit relationship, and the legislative record indicates congressional intent that these transactions should not be subject to the new statutorily mandated provisions.)

The Board is proposing certain revisions to the rules in § 202.3(d) to simplify their application for both applicants and creditors, and to make it easier for creditors to comply by providing more uniformity among the various timing requirements for notice and record retention. Under the current regulation, a creditor must notify a business credit applicant of a credit denial, orally or in writing, within a reasonable time after receiving a completed application. (Notice provided in accordance with the timing requirements of § 202.9(a)(1) of Regulation B is deemed "reasonable" in all instances.) The applicant currently has the right to a written statement of the specific reasons for a credit denial, but must submit a written request within 30 days of a denial in order to obtain the reasons. Under the proposed revisions, applicants would have up to 60 days after a denial (as in nonbusiness credit) to request written reasons for the denial.

The current regulation requires creditors to retain records for 90 days after taking action on a business credit application. If during this time an applicant makes a written request to have records kept, the creditor must retain the records for 25 months. As in the case of the reasons for a credit denial, however, the creditor need not inform the applicant of the right to make the request. Under the proposed revisions to § 202.3(d), if the creditor receives a written request for a statement of reasons, the creditor would be required both to give the reasons and also to retain records for a 25-month period. Thus, rejected applicants would not need to make two distinct requests regarding the credit decision. Absent a request, a creditor would not have to retain records beyond the 60-day period in which a request might be received.

Elimination of Current Business Credit Exception Concerning Marital Status Inquiries

The ECOA prohibits creditors from discriminating on the basis of marital status in any aspect of a credit transaction. Section 202.5(d)(1) of Regulation B generally prohibits creditors from asking about marital status when an applicant applies individually for unsecured credit. Currently, however, individuals applying for business credit may be asked about their marital status whether the credit is to be secured or unsecured, under an exception provided by § 202.3(d)(2)(i).

The Board proposes to eliminate that exception. As a result, inquiries about a business credit applicant's marital status would now be governed by the rules that apply to nonbusiness credit. Inquiries about marital status would be permissible only if an applicant applies for secured credit, applies jointly for credit, resides in a community property state, or relies on property located in such a state as a basis for repaying a debt. See *generally* Regulation B, § 202.5(d)(1) and accompanying commentary.

Elimination of Exception Regarding Reporting Credit Information to Third Parties

The Board proposes to delete from § 202.3(d) the exception from § 202.10, the regulatory provision that governs the reporting of credit histories on joint accounts held by spouses. Under § 202.10, a creditor that furnishes credit information to third parties (for example, to a credit bureau or another creditor) must reflect the participation of both spouses on any account held jointly by married persons, even if one spouse is merely an authorized user on the account. This provision is intended to ensure that married women are able to develop credit histories in their own names so that in the event of widowhood or divorce, for example, they are not left without a credit history. The Board believes this provision has no applicability in the context of business credit accounts because any credit history reported about such an account pertains to the business entity and not to the individuals owning the business. The Board therefore believes that providing an exception from this provision is unnecessary, and proposes to eliminate the exception.

Exceptions for Nonbusiness Credit

The ECOA amendments of 1988 were enacted to modify the business credit exceptions, and no specific mention is made in the legislative record of other nonbusiness credit transactions. The modifications relating to the Board's rulewriting authority, however, also affect the other existing exceptions in § 202.3 (a)–(c) and (e) of Regulation B—for public-utilities credit, securities credit, incidental credit and credit to governmental agencies. Like the exceptions for business credit, the exceptions for these types of transactions will be subject to review every five years. The exceptions exist primarily because the extensions of credit to which they relate generally are incidental to some other service being provided, or because they are subject to regulation by another governmental entity. The nonbusiness exceptions have been republished in this notice. The Board invites specific comment on the appropriateness of retaining these exceptions.

(3) Comments Requested

Interested persons are invited to submit written comments on the proposed amendments and other matters addressed in this notice. Comments must be received by September 15, 1989. After the close of the comment period, based upon its analysis of the comments received, the Board will publish in the **Federal Register** its notice of final action. The Board contemplates issuing a final rule by late October 1989, with an effective date of January 1, 1990. Until then, the existing rules of Regulation B continue in effect.

(4) Economic Impact Statement

The Board's Division of Research and Statistics has prepared an economic impact statement on the proposed revisions to Regulation B. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–3245.

List of Subjects in 12 CFR Part 202

Banks, Banking, Civil rights, Consumer protection, Credit, Federal Reserve System, Marital status discrimination, Minority Groups, Penalties, Sex discrimination, Women.

(5) Text of Proposed Revisions.

Certain conventions have been used to highlight the proposed revisions. New language is shown inside arrows, while language that would be removed is set off with brackets. Pursuant to authority granted in 15 U.S.C. 1691b of the ECOA, the Board proposes to amend Regulation B (12 CFR Part 202) as follows:

1. The authority citation for Part 202 is revised to read as follows:

Authority: 15 U.S.C. 1691–1691f.

2. Section 202.3(a) through (c) and (e) are being republished. Section 202.3 is further amended by removing paragraph (d)(2), adding a new paragraph (d)(2), and revising paragraph (d)(3) to read as follows:

§ 202.3 Limited exceptions for certain classes of transactions.

(a) *Public-utilities credit.*—(1) *Definition.* Public-utilities credit refers to extensions of credit that involve

public-utility services provided through pipe, wire, or other connected facilities, or radio or similar transmission (including extensions of such facilities), if the charges for service, delayed payment, and any discount for prompt payment are filed with or regulated by a government unit.

(2) *Exceptions.* The following provisions of this regulation do not apply to public-utilities credit:

(i) Section 202.5(d)(1) concerning information about marital status;

(ii) Section 202.10 relating to furnishing of credit information; and

(iii) Section 202.12(b) relating to record retention.

(b) *Securities credit.*—(1) *Definition.* Securities credit refers to extensions of credit subject to regulation under section 7 of the Securities Exchange Act of 1934 or extensions of credit by a broker or dealer subject to regulation as a broker or dealer under the Securities Exchange Act of 1934.

(2) *Exceptions.* The following provisions of this regulation do not apply to securities credit:

(i) Section 202.5(c) concerning information about a spouse or former spouse;

(ii) Section 202.5(d)(1) concerning information about marital status:

(iii) Section 202.5(d)(3) concerning information about the sex of an applicant;

(iv) Section 202.7(b) relating to designation of name, but only to the extent necessary to prevent violation of rules regarding an account in which a broker or dealer has an interest, or rules necessitating the aggregation of accounts of spouses for the purpose of determining controlling interests, beneficial interests, beneficial ownership, or purchase limitations and restrictions;

(v) Section 202.7(c) relating to action concerning open-end accounts, but only to the extent the action taken is on the basis of a change of name or marital status:

(vi) Section 207.7(d) relating to the signature of a spouse or other person;

(vii) Section 202.10 relating to furnishing of credit information; and

(viii) Section 202.12(b) relating to record retention.

(c) *Incidental credit.*—(1) *Definition.* Incidental credit refers to extensions of consumer credit other than credit of the types described in paragraphs (a) and (b) of this section—

(i) That are not made pursuant to the terms of a credit card account;

(ii) That are not subject to a finance charge (as defined in Regulation Z, 12 CFR 226.4); and

(iii) That are not payable by agreement in more than four installments.

(2) *Exceptions.* The following provisions of this regulation do not apply to incidental credit:

(i) Section 202.5(c) concerning information about a spouse or former spouse;

(ii) Section 202.5(d)(1) concerning information about marital status:

(iii) Section 202.5(d)(2) concerning information about income derived from alimony, child support, or separate maintenance payments;

(iv) Section 202.5(d)(3) concerning information about the sex of an applicant, but only to the extent necessary for medical records or similar purposes;

(v) Section 202.7(d) relating to the signature of a spouse or other person;

(vi) Section 202.9 relating to notifications;

(vii) Section 202.10 relating to furnishing of credit information; and

(viii) Section 202.12(b) relating to record retention.

(d) *Business credit*—(1) *Definition.* Business credit refers to extensions of credit primarily for business or commercial (including agricultural) purposes, but excluding extensions of credit of the types described in paragraphs (a) and (b) of this section.

[(2) *Exceptions.* The following provisions of this regulation do not apply to business credit:

(i) Section 202.5(d)(1) concerning information about marital status; and

(ii) Section 202.10 relating to furnishing of credit information.]

►(2) *Application from business with gross revenues of $500,000 or less.* An application from a business that had, in the preceding fiscal year, gross revenues of $500,000 or less (except an application for an extension of trade credit, credit incident to a factoring agreement, or other similar types of credit) is subject to all the provisions of this regulation. (See § 202.9(a)(3) for rule regarding notification.)◄

(3) [*Modified requirements.*]

► *Application from business with gross revenues in excess of $500,000; extension of trade or similar credit.* An application from a business that had gross revenues in excess of $500,000 in its preceding fiscal year, or an application for an extension of trade credit, credit incident to a factoring agreement, or other similar types of credit, is subject to all the provisions of this regulation, except that §§ 202.9 and 202.12◄ [The following provisions of this regulation] apply [to business credit] as specified below:

(i) ►Notification under◄ § 202.9 (a), (b), and (c) [relating to notifications]: the creditor shall notify the applicant, orally or in writing, of action taken or of incompleteness. When credit is denied or when other adverse action is taken, the creditor [is required to] ►shall◄ provide a written statement of the reasons and the ECOA notice specified in § 202.9(b) if the applicant makes a written request for the reasons within [30] ►60◄ days of that notification[; and] ►.◄

(ii) ►Record retention under◄ § 202.12(b) [relating to record retention.] ►: the◄ [The] creditor shall retain records of an application [as provided] ►for the 25-month period specified◄ in § 202.12(b) if the applicant [,within 90 days after being notified of action taken or of incompleteness, requests in writing that records be retained.] ►has requested in writing the reasons for adverse action (as provided in paragraph (d)(3)(i) of this section) or if, within 60 days after being notified of action taken or of incompleteness, the applicant requests in writing that records be retained.◄

(e) *Government credit*—(1) *Definition.* Government credit refers to extensions of credit made to governments or governmental subdivisions, agencies, or instrumentalities.

(2) *Applicability of regulation.* Except for § 202.4, the general rule prohibiting discrimination on a prohibited basis, the requirements of this regulation do not apply to government credit.

3. Section 202.9 is amended by adding paragraph (a)(3) to read as follows:

§ 202.9 Notifications.

(a) *Notification of action taken, ECOA notice, and statement of specific reasons.*

* * * * *

►(3) *Notification rule—application from business with gross revenues of $500,000 or less.* A creditor shall provide the notification required by this section to a business credit applicant with gross revenues of $500,000 or less in the preceding fiscal year (except in the case of an application for trade credit, credit incident to factoring arrangements, or other similar types of credit). The notification given to a business credit applicant when adverse action is taken shall be provided in accordance with paragraph (a)(2) of this section, except that the statement of action taken may be given orally or in writing. A creditor may disclose an applicant's right to a statement of reasons and other information required by paragraph (a)(2) of this section at the time of application, instead of when adverse action is taken, provided the disclosure is in a form that the applicant may retain. For an application made by telephone, the requirements of this section are satisfied by oral notification of action taken and of the applicant's right to a statement of reasons for adverse action.◄

* * * * *

4. Appendix C is amended by revising the first and last paragraph of the introduction, and by adding sample Forms C-7 and C-8 to read as follows:

Appendix C—Sample Notification Forms

This appendix contains [six] ►eight◄ sample notification forms. Forms C-1 through C-4 are intended for use in notifying an applicant that adverse action has been taken on an application or account under §§ 202.9(a) (1) and (2)(i) of this regulation. Form C-5 is a notice of disclosure of the right to request specific reasons for adverse action under §§ 202.9(a) (1) and (2)(ii). Form C-6 is designed for use in notifying an applicant, under § 202.9(c)(2), that an application is incomplete. ►Forms C-7 and C-8 are intended for use in connection with applications for business credit under § 202.9(a)(3).◄

* * * * *

A creditor may design its own notification forms or use all or a portion of the forms contained in this appendix. Proper use of Forms C-1 through C-4 will satisfy the requirements of § 202.9(a)(2)(i). Proper use of Forms C-5 and C-6 constitutes full compliance with §§ 202.9(a)(2)(ii) and 202.9(c)(2), respectively. ►Proper use of Forms C-7 and C-8 will satisfy the requirements of §§ 202.9(a)(2)(i) and (3), respectively, for applications for business credit.◄

* * * * *

►Form C-7—Sample Notice of Action Taken and Statement of Reasons (Business Credit)

Creditor's name

Creditor's address

Date

Dear Applicant:

Thank you for applying to us for credit. We have given your request careful consideration, and regret that we are unable to extend credit to you at this time for the following reasons:

Value or type of collateral not sufficient
Lack of established earnings record
Slow or past due in trade or loan payments
Lack of managerial experience

Sincerely,

Notice

The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).

Form C-8—Sample Disclosure of Right to Request Specific Reasons for Credit Denial Given at Time of Application (Business Credit)

Creditor's name

Creditor's address

If your application for business credit is denied, you have the right to a written statement of the specific reasons for the denial. To obtain the statement, please contact [name, address and telephone number of the person or office from which the statement of reasons can be obtained] within 60 days from the date you are notified of our decision. We will send you a written statement of reasons for the denial within 30 days of receiving your request.

Notice

The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).◄

By order of the Board of Governors of the Federal Reserve System, dated July 10, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-16511 Filed 7-13-89; 8:45 am]

BILLING CODE 6210-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 250 and 259

[Release No. 35-24923; File No. S7-2-89]

Request for Comments on Certain Issues Arising Under the Public Utility Holding Company Act of 1935 Relating to Non-Utility Diversification by Intrastate Public-Utility Holding Companies.

AGENCY: Securities and Exchange Commission.

ACTION: Extension of comment period.

SUMMARY: The Securities and Exchange Commission today announced that it has further extended from July 14, 1989, until August 15, 1989, the date by which comments on Public Utility Holding Company Act Release No. 24815 (February 7, 1989) [54 FR 6701, February 14, 1989] must be submitted.

DATE: Comments must be received on or before August 15, 1989.

ADDRESS: Persons wishing to express their views should submit comments in triplicate addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street NW., Mail Stop 6-9, Washington, DC 20549. Reference should be made to File No. S7-2-89. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: William C. Weeden or Sidney L. Cimmet (202) 272-7676, Office of Public Utility Regulation, Division of Investment Management, Securities and Exchange Commission, 450 5th Street NW., Mail Stop 7-1, Washington, DC 20549.

By the Commission.

July 10, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-16548 Filed 7-13-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 685]

RIN 1512-AA07

Mt. Veeder, CA; Viticultural Area Designations

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF), is considering the establishment of a viticultural area located near the western boundary of Napa County, California, in the most southerly portion of the Mayacamas mountains which separate Napa Valley and Sonoma Valley to be known as Mt. Veeder. Mt. Veeder is the most prominent peak in the area at 2,677 feet elevation. This proposal is the result of a petition submitted by Mr. Robert E. Craig, President of Napa Valley Estate Vineyards and Winery. ATF believes that the establishment of viticultural areas and the subsequent use of

viticultural area names as appellations of origin in wine labeling and advertising will help consumes identify the wines they may purchase. The establishement of viticultural areas also allows wineries to specify further the origin of wines they offer for sale to the public.

DATE: Written comments must be received by August 28, 1989.

ADDRESS: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385 (Notice No. 685). Copies of the petition, the proposed regulations, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF Reading Room, Disclosure Branch, Room 4406, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tabacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226, (202) 566–7626.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin. Section 4.25a(e)(1), Title 27, CFR defines an American viticultural area as a delimited grape-growing region which has been delineated in Subpart C of Part 9.

Section 4.25a(e)(2), Title 27, CFR, outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguished the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map(s) with the proposed boundaries prominently marked.

Petition

AFT has received a petition proposing a viticultural area near the western boundary of Napa County, California, in the most southerly portion of the Mayacamas Mountains which separate Napa Valley and Sonoma Valley. The proposal was submitted by Mr. Robert E. Craig, President, Napa Valley Estate Vineyards and Winery. The proposed viticultural area is approximately 24 square miles or approximately 15,000 acres and is located in Napa County, California. There are five bonded wineries in the proposed viticultural area with approximately 850 acres of grapes. The proposed viticultural area is to be known as Mt. Veeder.

1. Evidence That The Name Of The Area Is Locally Or Nationally Known

A. *Name derivation.* Mt. Veeder is the most prominent peak in the area at 2,677 feet elevation. The mountain and viticultural area are named for Reverend Peter V. Veeder, who arrived in Napa in the mid–1850's and became pastor of the Napa Presbyterian Church in 1859. The exact date his name was first applied to the peak is uncertain, although the *Napa Daily Register* used thc name in an article on July 11, 1879.

Although the petitioner has petitioned for the name Mt. Veeder–Napa Valley, ATF is only proposing the name "Mt. Veeder" since the evidence submitted with the petition does not support the inclusion of "Napa Valley." In fact, the petition suggests that this area has been viewed as a distinct district from the Napa Valley and the Sonoma Valley. Although "Napa Valley" is not being included in the proposed name, a reference to Napa Valley may be used in addition to Mt. Veeder if not less than 85 percent of the volume of the wine is derived from grapes grown in the proposed Mt. Veeder area. This would be permitted under 27 CFR 4.25(e)(4) which deals with overlap viticultural area appellations. For example, wine could be labeled "Mt Veeder, Napa Valley," or "Mt. Veeder–Napa Valley."

Mt. Veeder Vineyards is one of five wineries currently located in the proposed viticultural area. If the name Mt. Veeder is adopted, then the use of Mt. Veeder in a brand name is governed by 27 CFR 4.39(1) on brand names of geographical significance.

B. Local and national renown. According to the petition, Mt. Veeder received initial local and regional recognition for the healthful climate of the area. Articles on both the healthfulness and the beauty of the Mt. Veeder area were a regular occurrence in Napa Valley newspapers during the 1880s and 1890s. A measure of Mt. Veeder's significance as a resort site is shown in a long article in the *San Francisco Chronicle* of July 16, 1886, which listed Mt. Veeder as one of the prominent resorts of the area.

While the area surrounding Mt. Veeder has been locally recognized as a distinct district between Napa Valley and Sonoma Valley since the 1870's, it appears from the petition that the mountain's name was not widely used in reference to this area until later. During the period 1860 to around 1930, a substantial portion of the region east of the Napa/Sonoma County boundary was often referred to as the "Napa Redwoods." Mt. Veeder and the Napa Redwoods often appeared together in newspaper articles written during this period. According to the petition however, in the early 20th century, Mt. Veeder gained acceptance locally as the unofficial name for the region and in the early 1940's the term "Napa Redwoods" ceased to appear in newspaper articles.

2. Historical Or Current Evidence That The Boundaries Of The Proposed Viticultural Area As Specified In The Petition. The petitioner submitted three 1:24,000 scale U.S.G.S. maps which are the largest scale maps that describe the area. The boundaries of the proposed Mt. Veeder viticultural area coincide in a general manner with those of a region once known as the "Napa Redwoods". The petitioner claims that "Napa Redwoods" substantially ceased to be used as a term for the region in the 1940s and was supplanted by "Mt. Veeder." Public comments on whether this area is known as "Napa Redwoods" or is better known as "Napa Redwoods" than "Mt. Veeder" would be particularly useful to ATF.

The petitioner asserts that important to boundary considerations on a historical basis is that, in virtually all newspaper accounts during this era (1870's & 1880's), the proposed Mt. Veeder viticultural area was recognized as a distinct subdistrict to Napa Valley, separate from surrounding areas such as Browns Valley, Napa and Yountville.

3. Evidence Relating To The Geographic Features (Climate, Soil, Elevation, Physical Features, Etc.) Which Distinguish Viticultural Features Of The Proposed Area From Surrounding Areas.

A. Climatic overview Mt. Veeder. The climate of the proposed Mt. Veeder viticultural area is characterized by cool, moist winters and warm, dry summers. Throughout the year in virtually all climatic zones, a natural temperature inversion develops at night, as cold, heavy air settles and warm, lighter air rises. Because of its elevated location, the minimum temperature in the Mt. Veeder region would be warmer than that on the valley floor or adjacent to San Francisco Bay both summer and winter. This inversion limits frost during the winter and keeps the region relatively frost-free during the spring, when vineyard bud push, flowering and crop "set" takes place. Rainfall increases with elevation, ranging from about 25 inches at lower elevation to over 65 inches at higher elevations in the northern part of the area. The elevated terrain of the Mt. Veeder region is a factor. The region receives more rainfall than the land east, south and north of it due to the terrain forcing the moist air masses of winter storms upward as they move inland along a southeasterly path from the coast, causing condensation. As Mt. Veeder is the highest point along the Mayacamas Mountains for several miles, the effect is very pronounced in the region. Rainfall averaged 49 inches a year over a 25 year period at a location near the center of the Mt. Veeder area, compared to an average rainfall of 25 to 35 inches (depending on location) in Napa Valley, Sonoma Valley and the Los Carneros. Conversely, mean annual temperatures decrease with elevation, but the seasonal range and temperature extremes are less at lower elevation. This is due to the moderating effect of cooling breezes from San Pablo Bay plus the periodic fog and low clouds at lower elevations.

The pattern of changing climatic conditions with increasing elevation is reflected in a variety of plant communities throughout the proposed viticultural area. At lower elevations, the vegetation is mostly open grassland with scattered oaks. With increasing elevation and precipitation, the plant cover changes to a dense shrub or mixed shrub-oak-madrone-plant community at intermediate elevations and then to a cover of redwood and douglas fir with some madrone, oaks and laurels at higher elevations or in more humid, north facing slopes along creeks at intermediate levels.

B. Soils of the Mt. Veeder Appellation Area. The proposed Mt. Veeder viticultural area encompasses the eastern slopes of the Mayacamas Mountains west of Napa. The area is roughly triangular in shape, extending southeastward from its apex at Bald Mountain to the rolling hills north of the Carneros District. Elevations generally range from approximately 2,200 feet at its northern apex to 400 feet in the southern end. Mt. Veeder, located in Napa County, is the highest peak in the proposed viticultural area with an elevation of 2,677 feet.

According to the petitioner, the soils of the proposed Mt. Veeder viticultural area are representative of residual upland soils developed from the weathering of underlying bedrock. Textures range from loams and clay loams to gravelly or stony sandy loams, loams and clay loams. Some soils are deep and permeable while others are shallow with slowly permeable bedrock. Soil reaction varies from neutral or slightly acid to moderately or strongly acid. Color ranges from light gray or pale brown to grayish brown, brown and dark brown, or dark reddish brown and dark reddish brown, depending on the type of parent material and the amount of organic matter present.

The wide ranges of soil characteristics of the upland soils of the proposed viticultural area were recognized by the Soil Conservation Service in their 1978 "Soil Survey of Napa County, California." In their mapping and classification of the upland soils, they recognized seventeen soil series, 31 soil types of phases, and one miscellaneous land type. Grapes are currently grown on 9 of these soils which are moderately deep or deep and have 4 to 7 inches or 6 to 10 inches of available water holding capacity (AWC), respectively.

The moderate depth to bedrock (generally 30 to 60 inches) of the grape producing upland soils of the proposed Mt. Veeder viticultural area limits the depth and size of the soil reservoir for rooting, plant nutrients, and available soil moisture. Additionally, not all of the 25 to 65 inches of winter rainfall is effective as much of it runs off, especially on steeper slopes. This loss of runoff waters and the lower AWC of the soils results in limited soil moisture in the late summer and fall months.

The alluvial soils in the Napa Valley, by nature of their mode of formation, types of parent material and physiographic position, are distinctively different, both genetically and morphologically, from the residual upland soils of the proposed Mt. Veeder viticultural area. The diversity of parent material and the wide range of soil characteristics was recognized by the Soil Conservation Service in their mapping and classification of the soils of Napa County. In the Napa Valley they recognized 10 soil series. None of these valley soils are found on upland slopes in the proposed Mt. Veeder viticultural area.

The county line between Sonoma County and Napa County is the drainage divide between the watersheds of Sonoma Creek and the Napa River. There is a sharp contrast between soils and vegetation on the southwest facing slopes in Sonoma County and northeast facing slopes in Napa County where the proposed Mt. Veeder viticultural area is located. This difference in soils and vegetation is partially due to the microclimate aspect differences between the warmer, more arid southwest facing slopes and the cooler, more humid northeast facing slopes. The warmer, southwest slopes have a greater loss of soil moisture which is reflected in the formation of shallow soils and a less humid shrub or brush type of vegetation. According to the petition, there are also significant differences in the geology between the Sonoma County and Napa County sides of the Mayacamas. The rocks on the southwest slopes in Sonoma County are entirely volcanic in origin (Sonoma Volcanics). On these southwest slopes there are broad, extensive areas of volcanic rockland and large acreages of the shallow, gravelly, cobbly or rocky soils of the Goulding and Toome series. There are no Goulding or Toomes soils in the proposed Mt. Veeder viticultural area and rockland is very rare. In comparison, the geology of the Mayacamas in Napa County is a combination of both volcanic rocks (Sonoma Volcanics) and sedimentary rocks. The soils have developed from sandstones and shales which are absent on the southwest slopes of the Mayacamas in Sonoma County. The petitioner contends there are distinct and significant differences in soils, geology, vegetation and climate between the southewestern slopes and the eastern slopes of the Mayacamas which support the justification of the proposed Mt. Veeder viticultural area.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this notice of proposed rulemaking because the proposal, if promulgated as a final rule, is not expected (1) to have secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C.

605(b)) that the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

It has been determined that this proposed rulemaking is not classified as a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual, Federal, State, or local government agencies or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

Public Participation—Written Comments

ATF requests comments from all interested persons concerning this proposed viticultural area. The document proposes possible boundaries for the area named "Mt. Veeder." However, comments concerning other possible boundaries or names for this proposed viticultural area will be given full consideration.

Comments received on or before the closing date will be carefully considered. Comments received after the date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date. ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be include in the comments. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on the proposed regulations should submit his or her request, in writing to the Director within the 45-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority and Issuance

27 CFR Part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9—[AMENDED]

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of contents in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.123 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

§ 9.123 Mt. Veeder

Par. 3. Subpart C is amended by adding § 9.123 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.123 Mt. Veeder.

(a) *Name.* The name of the viticultural area described in this section is "Mt. Veeder."

(b) *Approved Maps.* The appropriate maps for determining the boundaries of the "Mt. Veeder" viticultural area are three U.S.G.S. Quadrangle (7.5 Minute Series) maps. They are titled:

(1) Napa, California (1951 (Photorevised (1980))

(2) Rutherford, California (1951 (Photorevised 1968))

(3) Sonoma, California (1951 (Photorevised (1980))

(c) *Boundaries.* (1) Beginning at Bald Mountain, elevation 2,275, on the common boundary between Napa County and Sonoma Country in Township 7 North, Range 6 West, Mount Diablo Base and Meridian on the Rutherford, Calif. U.S.G.S. map;

(2) Thence south along common boundary between Napa County and Sonoma County to unnamed peak, elevation 1,135 feet on the Sonoma, Calif. U.S.G.S. map;

(3) Thence continuing south along the ridge line approximately ½ mile to unnamed peak, elevation 948 feet;

(4) Thence due east in a straight line approximately 3/10 mile to the 400 foot contour;

(5) Thence following the 400 foot contour line north around Carneros Valley and then to the west of Congress Valley and Browns Valley on the Napa, Calif. U.S.G.S. map;

(6) Thence paralleling Redwood Road to its intersection with the line dividing Range 5 West and Range 4 West, east of the unnamed 837 foot peak;

(7) Thence north along the line dividing Range 5 West and Range 4 West approximately 4/10 mile to the 400 foot contour;

(8) Thence briefly southeast, then northwest along the 400 foot contour to the point where that contour intersects the northern border of Section 10, Township 6 North, Range 5 West immediately adjacent to Dry Creek on the Rutherford, Calif. U.S.G.S. map;

(9) Thence northwesterly along Dry Creek to the tributary stream that joins at elevation 760 feet;

(10) Thence northwest along the tributary and the northern fork of that tributary that joins at elevation 900 feet to its source;

(11) Thence following a straight line west-southwest approximately 3/10 mile to the peak of Bald Mountain, elevation 2,275, the starting point.

Signed: July 3, 1989.

Stephen E. Higgins,

Director.

[FR Doc. 89-16536 Filed 7-13-89 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Kansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSMRE is announcing receipt of a proposed amendment to the Kansas permanent regulatory program (hereinafter, the "Kansas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to general requirements, definitions, permit applications, public hearings, civil penalties, permit review, bonding procedures, performance standards, underground mining, small operator assistance, lands unsuitable, blaster certification, employee financial interests, and inspection and enforcement. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, incorporate the additional flexibility afforded by the revised Federal regulations, and improve operational efficiency.

This notice sets forth the times and locations that the Kansas program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarded the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., c.d.t. August 14, 1989. If requested, a public hearing on the proposed amendment will be held on August 8, 1989. Requests to present oral testimony at the hearing must be received by 4:00 p.m., c.d.t. on July 31, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. William J. Kovacic at the address listed below.

Copies of the Kansas program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSMRE's Kansas City Field Office.

Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, MO 64106, Telephone: (816) 374-6405.

Kansas Department of Health and Environment, Surface Mining Section, 1501 South Joplin, P.O. Box 1418, Pittsburg, KS 66762, Telephone: (316) 231-8615.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, (816) 374-6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Kansas Program

On January 21, 1981, the Secretary of Interior conditionally approved the Kansas program. General background information on the Kansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Kansas program, can be found in the January 21, 1981, **Federal Register** (46 FR 5892). Subsequent actions concerning Kansas' program and program amendments can be found at 30 CFR 916.12, 916.15, and 916.16.

II. Proposed Amendment

By letter dated June 29, 1989, (Administrative Record No. KS-436) Kansas submitted a proposed amendment to its program pursuant to SMCRA. Kansas submitted the proposed amendment (1) in response to an October 21, 1988, letter that OSMRE sent in accordance with 30 CFR 732.17(c) requiring certain provisions of the State program to be updated for consistency with the Federal regulations through July 1, 1988, and to satisfy anticipated deficiencies in the State program through July 1, 1989, and (2) at the States own initiative to improve its program.

The regulations that Kansas proposes to amend are: Kansas Administrative Regulations (KAR) 47-1-1, Title; KAR 47-1-3, Communication; KAR 47-1-4, Sessions; KAR 47-1-8, Petitions to Initiate Rulemaking; KAR 47-1-9, Notice of Citizen Suits; KAR 47-1-10, General Notice Requirement; KAR 47-1-11, Permittee Preparation and Submission of Reports; KAR 47-2-14, Complete and Accurate Application Defined; KAR 47-2-21, Employee Defined; KAR 47-2-53, Regulatory Authority or State Regulatory Authority Defined; KAR 47-2-67, Surety Bond Defined; KAR 47-2-75, Definitions-Adoption by Reference; KAR 47-3-1, Application for Mining Permit; KAR 47-3-2, Application for Mining Permit-Adoption by Reference; KAR 47-3-3a, Application for Mining Permit-Maps; KAR 47-3-42, Application for Mining Permit-Adoption by Reference; KAR 47-4-14, Public Hearing-Incorporation by Reference of K.S.A. 77-501 *et seq.*; KAR 47-4-15, Administrative Hearings, Discovery, Incorporation by Reference; KAR 47-4-16, Interim Orders for Temporary Relief; KAR 47-4-17, Administrative Hearings, Award of Costs and Expenses; KAR 47-5-5a, Civil Penalties-Adoption by Reference; KAR 47-5-16, Civil Penalties-Final Assessment and Payment; KAR 47-6-1, Permit Review; KAR 47-6-2, Permit Revision; KAR 47-6-3, Permit Renewals-Adoption by Reference; KAR 47-6-4, Permit Transfers, Assignments, and Sales-Adoption by Reference; KAR 47-6-6, Permit Conditions-Adoption by Reference; KAR 47-8-9, Bonding Procedures-Adoption by Reference; KAR 47-8-11, Use of Forfeited Bond Funds; KAR 47-9-1, Performance Standards-Adoption by Reference; KAR 47-9-2, Revegetation; KAR 47-9-4, Interim Program Performance Standards-Adoption by Reference; KAR 47-10-1, Underground Mining-Adoption by Reference; KAR 47-11-8, Small Operator Assistance Program-Adoption by Reference; KAR 47-12-4, Lands Unsuitable for Surface Mining-Adoption by Reference; KAR 47-13-4, Training and Certification of Blasters-Adoption by Reference; KAR 47-13-5, Responsibilities of Operators and Blasters-in-Charge; KAR 47-13-6, Training Program; KAR 47-14-7, Employee Financial Interest-Adoption by Reference; KAR 47-15-1a, Inspection and Enforcement-Adoption by Reference; KAR 47-15-3, Lack of Information and Inability to Comply; KAR 47-15-4, Injunctive Relief; KAR 47-15-7, State Inspections; KAR 47-15-8, Citizen's Request for State Inspections; KAR 47-15-15, Service of Notices of Violation and Cessation Orders; and KAR 47-15-17, Maintenance of Permit Areas.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kansas program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Kansas City Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4:00 p.m., c.d.t. July 31, 1989. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard.

Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the OSMRE office listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the administrative record.

List of Subjects in 30 CFR Part 916

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: July 6, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 89-16520 Filed 7-13-89; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF THE TREASURY

Office of International Investment

31 CFR Part 800

Regulations Pertaining to Mergers, Acquisitions, and Takeovers by Foreign Persons

AGENCY: Department of the Treasury.

ACTION: Notice of proposed rulemaking and request for public comments.

SUMMARY: The purpose of these proposed regulations is to implement section 721 of Title VII of the Defense Production Act of 1950, as amended by section 5021 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418), relating to mergers, acquisitions, and takeovers of U.S. persons by or with foreign persons. Section 721 provides that the President shall direct the issuance of implementing regulations. By Executive Order 12661 of December 27, 1988, 54 FR 779, the President delegated that authority to the Chairman of the Committee on Foreign Investment in the United States ("the Committee"), in consultation with other members of the Committee. The Chairman of the Committee, pursuant to Executive Order 11858 of May 7, 1975, 40 FR 20263, as amended by Executive Order 12188, January 2, 1980, 45 FR 989, January 2, 1980, and by Executive Order 12661, 54 FR 779, January 9, 1989, is the Secretary of the Treasury. In implementation of Executive Order 12661, the Treasury Department is proposing these Regulations Pertaining to Mergers, Acquisitions, and Takeovers by Foreign Persons.

DATE: Comments by: September 12, 1989.

ADDRESS: Comments should be addressed in writing and in triplicate to Stephen J. Canner, Director, Office of International Investment, Room 5100, Department of the Treasury, 15th Street and Pennsylvania Ave., NW., Washington, DC 20220.

All comments submitted will be available for public inspection during the hours that the Treasury Library is open to the public. The Treasury library is located in Room 5030, 1500 Pennsylvania Ave., NW., Washington, DC 20220. Appointments must be made to view the comments. Persons wishing to read the comments submitted should contact the Office of International Investment at (202) 566-2386.

FOR FURTHER INFORMATION CONTACT: Marilyn L. Muench, Deputy Assistant General Counsel, Department of the Treasury, 15th Street and Pennsylvania Ave., NW., Washington, DC 20220, (202) 566-8401.

SUPPLEMENTARY INFORMATION: Section 709 of the Defense Production Act exempts the functions exercised under that Act from the operation of the Administrative Procedure Act, but requires that any regulations issued under the authority of the Act be accompanied by a statement that industry representatives were consulted in the formulation of the regulations. Pursuant to that provision, the Committee has consulted with a number of such representatives, and has given consideration to their views and recommendations in drafting these regulations. Therefore, the Committee is not required to publish these regulations in proposed form. However, given the complexity of the subject area covered by the regulations, the Committee elected to do so as a means of soliciting public comment. These regulations will next be published in final form.

Additional Comment Information

Treasury requests comments from all interested persons concerning these proposed regulations. Comments may take the form of proposed regulatory language, narrative discussion, hypothetical case situations, or any other appropriate format. All oral comments must be reduced to writing and submitted to Treasury in order to be considered. All comments received before the closing date will be carefully considered. Comments received after the closing date will be considered, if possible. The Treasury Department will not recognize any materials or comments, including the name of any person submitting comments, as confidential. Any material not intended to be disclosed to the public should not be included in comments.

Executive Order 12291

These proposed regulations, if adopted as final regulations, are not subject to the requirements of Executive Order 12291 because they relate to a foreign and military affairs function of the United States.

Paperwork Reduction Act

The collections of information provided for in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1505-XXXX), Washington, DC 20503, with copies to the Office of International Investment at the address noted above.

The collections of information provided for in this proposed regulation are in §§ 800.402 and 800.505. This information is required by the Committee on Foreign Investment in the United States to assist it in determining whether to investigate mergers, acquisitions, and takeovers of persons engaged in interstate commerce in the United States by or with foreign persons for possible threats to the national security, as required by section 721 of the Defense Production Act. This information will be used to determine the extent and nature of foreign control, as well as the national security implications of the transactions at issue. The likely respondents are individuals and businesses.

Estimated total annual reporting burden: 5425 hours.

Estimated average annual burden per respondent: This varies, depending on individual circumstances, with an estimated average of 35 hours.

Estimated number of respondents: 155.

Estimated annual frequency of responses: 1.

Regulatory Flexibility Act

These regulations implement section 721 of the Defense Production Act of 1950 (50 U.S.C. 2158) ("DPA"). Section 709 of the DPA (50 U.S.C. App. 2159) provides that the regulations issued under it are not subject to the rulemaking requirements of the Administrative Procedure Act (5 U.S.C. 553). Moreover, notice and public procedure are not required pursuant to 5 U.S.C. 553(a)(1). Accordingly, and although these regulations are being issued in proposed form for public comment, these regulations, which implement the Defense Production Act, are not subject to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

I. Background

The Statute

Section 721 of the Defense Production Act of 1950, 50 U.S.C. App. 2158 *et seq.*, reads as follows:

(a) Investigations. The President or the President's designee may make an investigation to determine the effects on national security of mergers, acquisitions, and takeovers proposed or pending on or after the date of enactment of this section by or with foreign persons which could result in foreign control of persons engaged in interstate commerce in the United States. If it is determined that an investigation should be undertaken, it shall commence no later than 30 days after receipt by the President or the President's designee of written notification of the proposed or pending merger, acquisition, or takeover as prescribed by regulations promulgated pursuant to this section. Such investigation shall be completed no later than 45 days after such determination.

(b) Confidentiality of information. Any information or documentary material filed with the President or the President's designee pursuant to this section shall be exempt from disclosure under section 552 of title 5, United States Code, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this subsection shall be construed to prevent disclosure to either House of Congress or to any duly authorized committee or subcommittee of the Congress.

(c) Action by the President. Subject to subsection (d), the President may take such action for such time as the President considers appropriate to suspend or prohibit any acquisition, merger, or takeover, of a person engaged in interstate commerce in the United States proposed or pending on or after the date of enactment of this section by or with foreign persons so that such control will not threaten to impair the national security. The President shall announce the decision to take action pursuant to this subsection not later than 15 days after the investigation described in subsection (a) is completed. The President may direct the Attorney General to seek appropriate relief, including divestment relief, in the district courts of the United States in order to implement and enforce this section.

(d) Findings of the President. The President may exercise the authority conferred by subsection (c) only if the President finds that—

(1) there is credible evidence that leads the President to believe that the foreign interest exercising control might take action that threatens to impair the national security, and

(2) provisions of law, other than this section and the International Emergency Economic Powers Act (50 U.S.C. 1701-1706), do not in the President's judgment provide adequate and appropriate authority for the President to protect the national security in the matter before the President.

The provisions of subsection (d) of this section shall not be subject to judicial review.

(e) Factors to be considered. For the purposes of this section, the President or the President's designee may, taking into account the requirements of national security, consider among other factors—

(1) domestic production needed for projected national defense requirements,

(2) the capability and capacity of domestic industries to meet national defense requirements, including the availability of human resources, products, technology, materials, and other supplies and services, and

(3) the control of domestic industries and commercial activity by foreign citizens as it affects the capability and capacity of the United States to meet the requirements of national security.

(f) Report to the Congress. If the President determines to take action under subsection (c), the President shall immediately transmit to the Secretary of the Senate and the Clerk of the House of Representatives a written report of the action which the President intends to take, including a detailed explanation of the findings made under subsection (d).

(g) Regulations. The President shall direct the issuance of regulations to carry out this section. Such regulations shall, to the extent possible, minimize paperwork burdens and shall to the extent possible coordinate reporting requirements under this section with reporting requirements under any other provision of Federal law.

(h) Effect on other law. Nothing in this section shall be construed to alter or affect any existing power, process, regulation, investigation, enforcement measure, or review provided by any other provision of law.

On August 23, 1988, President Ronald Reagan signed into law the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100-418, 102 Stat. 1107. Section 5021 of that statute added a new section, section 721 (hereinafter referred to as "Section 721"), to the Defense Production Act of 1950, 50 U.S.C. App. 2061 et seq., relating to the President's authority to review certain mergers, acquisitions, and takeovers.

Section 721 provides that the President may suspend or prohibit any merger, acquisition, or takeover of persons engaged in interstate commerce by or with foreign persons which would result in foreign control, where such control threatens to impair the national security. Before the President may exercise this authority, he must find that (1) there is credible evidence that leads him to believe that the foreign interest exercising control might take action that threatens to impair the national security, and (2) provisions of law, other than the International Emergency Economic Powers Act (50 U.S.C. 1701-1706) and section 721, do not in the President's judgment provide adequate and appropriate authority for the President to protect the national security. Section 721 empowers the President to exercise these authorities with respect to transactions that were concluded on or after the date of enactment, i.e., August 23, 1988. Thus, any transaction which was completed prior to that date is not subject to section 721.

Section 721 also sets out certain procedural steps for reviewing transactions that may be subject to Presidental action. The statute creates a two-stage review and investigation process for transactions subject to section 721. The review of "notice" phase of this two-stage process must be completed within 30 days. If there is a decision not to follow up the notice phase with an investigation, action under section 721 with respect to the proposed transaction will be concluded, and the Committee must advise the President of that decision. If, however, an investigation is undertaken, it must be completed within 45 days. In the case of each transaction for which there has been a completed investigation, the President must take a determination no later than 15 days after the completion of the investigation as to whether and how he should exercise his powers to suspend, prohibit, or take other appropriate action with respect to the transaction.

Legislative History

The principal legislative history of section 721 is found in the Conference Report for Pub. L. 100-418 (H. Rep. 100-576, 100th Cong. 2d Sess. (1988), pp. 924-928) (hereinafter referred to as the "Conference Report"). The discussion below of various individual sections of the proposed regulations incorporates materials from the Conference Report. This discussion focuses on two areas of general significance for the regulations—national security and foreign investment—that are dealt with in the Conference Report.

The focus of the statute is on transactions that could harm the national security. Although neither the Conference Report nor the statute defines national security, the conferees explain that it is to be interpreted broadly and without limitation to particular industries. They further note that the term is not meant to imply any limitation on the term "national defense" as used elsewhere in the Defense Production Act (Conference Report at 926–927). Although broad, this term is nevertheless narrower than the language in the predecessor House bill, which referred to "national security and essential commerce." See H.R. 3, 100th Cong., 1st Sess. Sec. 905, 133 Cong. Rec. 2642, 2739 (1987).

In line with the guidance in the Conference Report, the proposed regulations do not attempt to define "national security." Nonetheless, the intent of the regulations is to indicate that notice, while voluntary, clearly appropriate when, for example, a company is being acquired that provides products or key technologies essential to the U.S. defense industrial base. However, the regulations are not intended to suggest that notice should be submitted in cases where the entire output of a company to be acquired consists of products and/or services that clearly have no special relation to national security, e.g., toys and games; food products; hotels and restaurants; or legal services. Persons contemplating transactions involving entities that operate in areas that do not appear reasonably related to the national security are invited to seek guidance from the Staff Chairman of the Committee before submitting notice under these regulations.

With respect to foreign investment, the regulations endeavor to incorporate the Conference Report's view that section 721 is not intended to raise obstacles to foreign investment. this point is made explicitly at p. 926 of the Conference Report ("The Conferees in no way intend to impose barriers to foreign investment"). In line with this guidance, and consistent with the long history of U.S. openness to foreign investment, the Committee intends to implement the statute only insofar as necessary to protect the national security.

At another point, the conferees state that they do not intend the legislation to abrogate existing obligations of the United States under treaties, including Treaties of Friendship, Commerce and Navigation. (Conference Report at 927.) Those treaties contain national treatment provisions under which the United States is obligated to extend foreign parties treatment no less favorable than that accorded domestic parties, but is permitted to institute measures to protect U.S. national security. The Committee intends to implement section 721 and the regulations in a manner fully consistent with the international obligations of the United States.

II. Discussion of Proposed Regulations

Overview

The proposed regulations create an essentially voluntary system of notice by the parties to an acquisition, but also allow for notice by agencies that are members of the Committee. Transactions that are covered by these regulations include both proposed transactions which could result in foreign control of a U.S. person, and completed transactions which do result in such control. The focus is on the acquisition and control of on-going, sustainable businesses in the United States. "Control," a key concept in these regulations, is defined in functional rather than mechanical terms.

The regulations spell out the obligations of parties giving notice to the Committee. These include the provision of certain specified types of information (§ 800.402), as well as the obligation to keep the Committee apprised of material changes or developments in a notified transaction (§§ 800.402(g) and 800.702). The Committee may reject notices that do not comply with the regulations. Once a transaction has been properly notified, the Committee has up to thirty days to determine whether an investigation is necessary. If an investigation is deemed necessary, the Committee will notify the parties accordingly, and has up to forty-five days to complete the investigation. During this time, the Committee may request additional information and meet with the parties regarding the notified transaction. Parties may request withdrawal of their notices at any time prior to an announcement by the President of his decision under section 721; the Committee will normally grant such requests.

With respect to transactions that have been notified, the President may exercise his powers under section 721 at any time within the statutory periods, whether or not the transactions have been completed. In the particular case where a notified transaction is completed prior to the expiration of the statutory periods, the President may nonetheless take divestment or other appropriate action. Acquisitions subject to section 721 that are not notified, either by one of the parties or by an agency, remain indefinitely subject to divestment or other appropriate action by the President.

Subpart A: General

Subpart A sets out rules of general applicability. Section 800.103 provides that section 721 only applies to acquisitions, mergers, or takeovers of U.S. persons which were proposed or pending after the date of enactment. Section 721 was enacted on August 23, 1988, when the Omnibus Trade and Competitiveness Act of 1988 became law. Therefore, only transactions which were proposed or pending after August 23, 1988 fall within section 721. Thus, transactions that were proposed before August 23, 1988, but were not completed until after that date (and were thus "pending after August 23"), would fall within the statute. Conversely, transactions that were completed prior to August 23, 1988, would not fall within the statute.

Section 800.104 makes clear that a transaction entered into for the purpose of avoiding section 721 shall be disregarded, and the Act and these regulations shall be applied to the substance of the transaction.

Subpart B: Definitions

Section 800.201. Section 721 applies as a threshold matter to mergers, acquisitions, and takeovers, by or with foreign persons, of persons engaged in interstate commerce in the United States. The regulations use the term "acquisition" as a form of shorthand to refer generally to mergers, acquisitions and takeovers. "Acquisition" is defined to include acquisitions of a business, including the acquisitions of certain plants and equipment. This formulation recognizes that an acquisition of a business may occur through the acquisition of assets. However, it is intended to exclude asset acquisitions that do not result in the acquisition and control of an ongoing, sustainable business, such as would occur in a transaction involving an ordinary sale and purchase of equipment.

The proposed regulations treat a proxy solicitation as a "takeover," and cover proxy solicitations that could result in foreign control of a U.S. person. Currently, the regulations permit notice when proxies are solicited. Other options are possible. The regulations might provide for only limited Committee review of proxy contests at the solicitation stage. Another option would be to review proxy contests only at such time as the election of a board of directors for which the proxies were solicited results in foreign control of the company. Still another option might be to draw a distinction among the types of proxies that are being solicited, based upon whether the proxy is, or could be, irrevocable. The Committee would appreciate the public's views as to whether any of these options, or any other option, is preferable to the approach adopted in the regulations.

The Committee would also appreciate public views on two specific points: (1) The likelihood in the future that proxy solicitations will be used as a vehicle for foreign persons to obtain control over U.S. persons, and (2) the likelihood that any such control—if obtained—could be used in ways that could threaten the national security. With respect to the second point, the Committee particularly seeks views as to whether corporate law and other rules (on, e.g., director's responsibilities, shareholders rights, disclosure obligations in proxy statements) might restrict a controlling foreign interest's ability to take actions adverse to the national security.

Section 800.206. This section defines the term "entity" very broadly to reflect the usage of that term in the legislative history. The Conference Report uses the term to convey any on-going, sustainable business, including a corporation, partnership, a division of a corporation, or an unincorporated entity. (See Conference Report at 926.)

Sections 800.210 and 800.211. Section 721 covers acquisitions of "U.S. persons" where the acquiring party is a "foreign person." Under § 800.210, a "U.S. person" includes any entity but only to the extent of its business activities in interstate commerce in the United States, regardless of its form of organization or who actually controls it. Thus, a branch in the United States of a foreign entity is a U.S. person for the purpose of these regulations. However, an entity which does not have a branch office, subsidiary, or fixed place of business in the United States is not a "U.S. person" if its activities in interstate commerce are limited to sales to an unaffiliated company in the United States.

"Foreign person" is defined at § 800.211 in terms of the potential for functional control by a foreign interest, rather than in terms of a more mechanical test such as place of incorporation. As a result, an acquiring entity might be both a U.S. person and a foreign person under these regulations (i.e., if it does business in interstate commerce in the United States but is actually controlled by a foreign interest), in which case it would fall within section 721. On the other hand, it may be neither a U.S. person nor a foreign person under the regulations (i.e., if it does not do business in interstate commerce in the United States and is controlled by a U.S. person), in which case it would fall outside the statute.

Section 800.213. A key issue in section 721 is whether a foreign person could "control" a U.S. person as a result of any transaction proposed or pending after the date of enactment. As set forth in § 800.213, the test for control focuses on the power, whether or not exercised, to formulate, determine, direct, or decide important matters relating to the entity. Thus, if the foreign person will or could control the U.S. person, the transaction falls within section 721. By "could control," the regulations do not mean a remote, eventual possibility of control, as might exist when a foreign institutional investor acquires stock in a U.S. corporation solely for investment purposes. Rather, those words are meant to convey a situation where control could be exercised by virtue of significant stock ownership, contractual arrangements, or other means. Thus, a foreign person could control a U.S. company if, for example, it acquired a dominant minority of stock in that company, and met the requirements set out in § 800.213, even if the board of directors of the company were comprised entirely of U.S. nationals.

Control is relevant at two points under section 721. First, section 721 provides that the President or his designee may investigate a transaction which could result in foreign control of persons engaged in interstate commerce in the United States. Second, control is relevant under section 721 when the President exercises his authority under that section to suspend, prohibit, or take other appropriate action with respect to a transaction that has been the subject of an investigation. Section 721(c) provides that the President may take such action so that "foreign control will not threaten to impair the national security." Furthermore, section 721(d) provides that the President cannot take action unless he finds, inter alia, that there is credible evidence that the foreign interest exercising control might take action that threatens to impair the national security.

Sections 800.214 and 800.215. Sections 800.214 and 800.215 define the terms "parent" and "affiliate," respectively, by virtue of mechanical tests, for the purposes of facilitating identification of those entities when giving notice pursuant to § 800.402. Thus, a parent is a person entitled to hold 50 percent or more of the outstanding voting securities of an entity; or, in the case of an entity that has no voting securities, holds or will hold 50 percent or more of the profits, or has or will have the right in the event of a dissolution to 50 percent or more of the assets of an entity. An affiliate of an entity is any other entity in the chain of ownership between a parent and that entity.

Section 800.220. This section defines the concept "solely for the purposes of investment" in terms of the absence of an intent on the part of an acquiring party to participate in basic business decisions of the party to be acquired. This concept is incorporated in § 800.302, which describes transactions that are not acquisitions under section 721. Under paragraph (d) of that section, a purchase of voting securities by a foreign person "solely for the purposes of investment" is not a transaction subject to section 721 if it results in the ownership of ten percent or less of the outstanding voting securities of the U.S. person. However, if an investor subsequently changes his intent or takes steps inconsistent with a passive investment purpose, the acquisition falls within section 721. Section 800.302(d) also provides guidance for institutional investors purchasing voting securities solely for investment purposes.

The Committee would appreciate public comments concerning (1) the feasibility of the intent component of the standard pertaining to individual investors, which looks to an investor's intent when acquiring the securities, and (2) the advisability of a 10 percent threshold, as opposed, for example, to a higher or lesser threshold. Specifically, the Committee would be interested in public views on the extent to which investors acquire less than 10 percent of the outstanding voting securities of a company for the purposes of acquiring control.

Section 800.221. This section identifies the parties to an acquisition for purposes of giving notice. Paragraph (e), for parties to a proxy contest, has been left incomplete pending final resolution of how proxy contests will be covered under the regulations. (See the discussion under § 800.201.)

Subpart C: Coverage

Section 800.301. Subpart C identifies five categories of transactions that are subject to section 721. These categories are meant to be illustrative rather than exhaustive. They include completed transactions which either did or could result in foreign control of a U.S. person, such as when a foreign interest acquires a U.S. company but retains U.S. nationals on the board of directors; tender offers under which a foreign person offers to purchase all or a substantial portion of the shares of a

U.S. person; proposed or completed acquisitions by foreign-controlled companies in the United States of U.S.-controlled companies in the United States; acquisitions of businesses; and joint ventures which could result in a foreign person gaining control over a business of a U.S. person.

Section 721 is silent on the question of joint ventures, as is the Conference Report. The predecessor bill to section 721 in the House (H.R. 3, 100th Cong., 2d Sess. Sec. 905, 133 Cong. Rec. 2842, 2739 (1987)) would have explicitly included joint ventures, while the Senate version had no such reference. As § 800.301(b)(4) makes clear, joint ventures may be considered an acquisition for the purposes of these regulations, if the joint venture involves the acquisition of a business.

Section 721 applies to acquisitions of persons engaged in interstate commerce in the United States. Since "greenfield" investments are not on-going businesses and therefore not "persons engaged in interstate commerce," they are not subject to section 721. *See* § 800.301(4), example 3. Moreover, it is important to note that foreign acquisitions of U.S.-controlled businesses operating entirely outside the United States are not within section 721.

Section 800.302. The section identifies several categories of transactions that are not considered to be "acquisitions" for the purposes of section 721 and are therefore not covered under these regulations. One category in this section is the acquisition of assets that do not involve the control of a person. Since the acquisition of such assets — with nothing more — does not involve control of a "person," it falls outside section 721. However, as specified in § 800.201(b), the acquisition of assets may be an acquisition for the purposes of section 721 when the assets consist of production or research and development facilities, *and* the acquiring party will make substantial use of the technology or personnel of the U.S. person whose assets it acquires. (See § 800.201(b).)

As provided in paragraph (d), the term "acquisition" also does not include acquisitions made solely for the purpose of investment when the acquisitions would result in a foreign person's holding ten percent or less of the outstanding voting securities of a U.S. person. As mentioned earlier, under § 800.220 an acquisition is solely for the purpose of investment if the acquiring party has no intention of participating in basic business decisions of the issuer, including those outlined in the definition of control at § 800.213. Similarly, "acquisition" does not include a purchase made by a bank, trust company, insurance company, pension fund, mutual fund, finance company or brokerage company in the ordinary course of business for its own account, provided that a significant portion of that business does not consist of the acquisition of entities.

Finally, these proposed regulations do not apply to acquisitions of securities that do not result in control. Thus, acquisitions of stock as a result of stock splits, or by a securities underwriter in the course of its business, or by an insurance company pursuant to its insurance contract, are not considered "acquisitions" under these regulations. Similarly, an acquisition of convertible voting securities that does not involve control is not an acquisition for purposes of section 721. If, however, the acquiring party subsequently converts those securities into stock that entitles its holder to vote for directors, such conversion may constitute an acquisition under section 721. The Committee invites public comment on the advisability of this distinction.

Subpart D: Notice

Section 800.401. This section establishes a voluntary system of notice. If a proposed transaction consists of an acquisition in which a foreign person controls or could control a U.S. person, then the transaction falls within section 721, and either party to the transaction — even if the proposed acquisition is "hostile" — may submit notice of the transaction in accordance with the procedures in § 800.401. Once such notice is given, the Committee may also request information from the non-notifying party. Although the regulations create a voluntary notice scheme, it is important to note that if a transaction comes under section 721 and neither party, nor a Committee agency, submits notice to the Committee, it remains indefinitely subject to divestment should the President subsequently make the required findings as described in § 800.601(b).

Notice will only be accepted from parties. (Parties to an acquisition are defined in § 800.221.) Therefore, notice from third parties, such as shareholders, would not constitute notice under these regulations. However, any person, including non-parties, may informally contact the Committee regarding a particular transaction. Since such informal contacts would not constitute notice, they would not commence the running of the thirty-day notice period under section 721.

In addition to notice from the parties to a transaction, these regulations also provide for notice by an agency that is a member of the Committee. (See § 800.401(b).) Normally, the Staff Chairman will contact parties to a transaction about which the Committee has learned through its own efforts, if the Chairman believes that the transaction may be subject to section 721. Since these regulations create a voluntary notice system, parties that are contacted by the Staff Chairman are free to decide whether to give notice. An example of when agency notice may be given is where the Committee has ascertained that the parties to a transaction which appears to raise national security concerns do not intend to give notice.

Section 800.402. This section describes the information that must be submitted in order to constitute sufficient notice under section 721. Paragraph (h) provides that the Staff Chairman retains the right to reject voluntary notices that do not comply with the section. As provided in paragraph (g), parties are required to advise the Committee of any developments that are material to the Committee's review of the proposed transaction. The Committee has the right to reject any notice at any time if, after the notice has been submitted, there is a material change in the transaction that has been notified. The Committee would view such a material change as giving rise to a new transaction that may warrant a separate notice to the Committee.

Section 800.403. This section provides that the 30-day period following notice from parties is deemed to begin on the first calendar day following receipt of notice by the Committee Staff Chairman. This beginning date applies to voluntary notice as well as to agency notice. Parties to a transaction that is notified by a Committee agency will in most cases have already had informal contacts with the Committee and will therefore have been made aware of an agency's intention to notify.

Since the statute requires the Committee to conduct its work within fixed time periods, these regulations adopt the principle that time periods end on business days. Therefore, if the thirtieth day of the notice period is not a business day, the notice period will be extended to the next business day. However, there may be cases where the Committee will be able to determine before the thirtieth day that a transaction does not warrant an investigation. In such cases, it can advise the parties of its determination before the end of the notice period.

Subpart E: Committee Procedures: Review and Investigation

Sections 800.501–800.504. Subpart E sets forth Committee procedures for conducting its initial 30-day review and 45-day investigation. As provided in § 800.501, the Committee may examine three questions: (1) Is there an acquisition which could result in foreign control of a U.S. person? (2) Is there credible evidence to support a belief that such foreign control could threaten to impair the national security? and (3) Are no other provisions of law adequate to protect the national security? If the Committee's initial review leads it to believe that no national security concerns are raised by the transaction, the Committee will conclude its action under section 721, and the Staff Chairman will notify the parties accordingly. In such cases, no investigation will be undertaken, and no further action is available under section 721.

If, on the other hand, the Committee's initial review leads it to believe an investigation is warranted, the Committee will begin an investigation of the transaction no later than 30 days after the date the review period began. The Committee may ask the parties to provide additional information, and may schedule meetings for the parties to discuss the transaction with the Committee. This investigation period shall end no later than 45 days after it commences. Upon completing the investigation, the Committee shall make a recommendation to the President, unless the Committee is unable to reach a unanimous decision, in which case it will submit a report to the President that sets forth the differing views.

Section 800.505. This section provides that parties to a transaction may request that their notice be withdrawn at any time prior to an announcement by the President of his decision with respect to the matter. Such requests will ordinarily be granted. An agency may also withdraw a notice it has given concerning a transaction. Paragraph (c) makes clear that notice shall be considered not to have been made where a notice is withdrawn or rejected. Any notice made with respect to any subsequent acquisition among parties shall be deemed a new notice for purpose of the regulations.

Subpart F: Presidential Action

Section 800.601. Subpart F concerns the standards and nature of Presidential action under section 721. Section 800.601(a) reiterates the statutory time frame and requirements for Presidential action. As provided in § 800.601(c), Presidential action may include divestment with respect to a concluded transaction, as well as other appropriate relief. Section 800.601(d) makes clear that all authority available to the President under section 721(c), including divestment authority, remains available indefinitely, at the discretion of the President, for all acquisitions concluded after August 23, 1988, except for those which the Committee has decided not to investigate or with respect to which the President has determined not to exercise his authority. This authority extends to transactions that have not been the subject of a voluntary or agency notice. However, as provided in paragraph (d), divestment remains available for non-notified transactions only if the purpose for which divestment is sought is based on circumstances existing at the time the transaction was concluded.

The President's authority includes the ability to obtain divestment relief before the completion of a Committee review or investigation where a proposed acquisition is or may be completed after notice has been given, but before the close of the 15-day period for Presidential action. This is in line with guidance provided in the Conference Report, which recognizes that acquisitions can be completed so quickly that the President needs a broad range of remedies to respond appropriately to different circumstances, including attempts to circumvent the purposes of section 721. (See Conference Report at 927.)

Paragraph (e) provides for Committee action in the event parties to an acquisition have submitted false or misleading information, or have omitted material information. In such cases, the Committee can reopen the investigation, revise its recommendation to the President, and accept a new or resubmitted agency notification. Moreover, the President may take appropriate temporary action, and revise actions earlier taken.

Subpart G: Confidentiality

Subpart G provides guidelines with respect to the provision and handling of information.

Section 800.701. This section makes clear that the parties to a notified transaction are obligated to provide the Committee with information that will enable it to conduct a full review and/or investigation of the proposed transaction. This section incorporates a reference to the Defense Production Act (50 U.S.C. App. 2155(a)) to highlight the authorities available to the Committee for obtaining information.

Section 800.702. Subsection 800.702(a) reiterates the comprehensive confidentiality provision in section 721(h). To highlight the importance of maintaining the confidentiality of materials submitted under section 721, paragraph (b) reiterates the penalty provision of the Defense Production Act for willful disclosures of information or documentary material provided under these regulations.

Drafting Information

The principal author of this document is the Office of the Assistant General Counsel (International Affairs). However, personnel from other offices at the Treasury Department and from other agencies that are members of the Committee participated extensively in its development.

List of Subjects in 31 CFR Part 800

Foreign Investments in the United States; Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, a new Chapter VIII, Office of International Investment, Department of the Treasury, is proposed to be added to Title 31 of the Code of Federal Regulations, consisting of Part 800, as set forth below.

CHAPTER VIII—OFFICE OF INTERNATIONAL INVESTMENT, DEPARTMENT OF THE TREASURY

PART 800—REGULATIONS PERTAINING TO MERGERS, ACQUISITIONS, AND TAKEOVERS BY FOREIGN PERSONS

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Authority: Section 721 of Pub. L. 100–418, 102 Stat. 1107, to be codified at 50 U.S.C. App. 2170; section 705 of the Defense Production Act of 1950, codified at 50 U.S.C. App. 2155; E.O. 12861, 54 FR 779 (January 9, 1989).

Subpart A—General

§ 800.101 Scope.

The regulations in this part implement Section 721 of Title VII of the Defense Production Act of 1950, hereinafter referred to as "Section 721" (see § 800.203 of this part). The definitions in this part are applicable to Section 721 and these regulations. The principal purpose of Section 721 is to authorize the President to suspend or prohibit any merger, acquisition, or takeover, by or with a foreign person, of a person engaged in interstate commerce in the United States when, in the President's view, the foreign interest exercising control over that person might take action that threatens to impair the national security. In addition, Section 721 authorizes the President to seek divestment or other appropriate relief in the case of concluded transactions.

§ 800.102 Effect on other laws.

Nothing in this part shall be construed to alter or affect any existing power, process, regulation, investigation, enforcement measure, or review provided by any other provision of law.

§ 800.103 Prior acquisitions.

Section 721 and the regulations in this part apply to acquisitions concluded on or after the effective date, including acquisitions concluded prior to issuance of these regulations. Section 721 and the regulations in this part do not apply to acquisitions concluded prior to the effective date.

§ 800.104 Transactions or devices for avoidance.

Any transaction(s) or other device(s) entered into or employed for the purpose of avoiding Section 721 shall be disregarded, and Section 721 and these rules shall be applied to the substance of the transaction(s).

Example. Corporation A is organized under the laws of a foreign state and is wholly owned and controlled by a foreign national. With a view towards avoiding possible application of Section 721, Corporation A transfers money to a U.S. citizen, who, pursuant to informal arrangements with Corporation A and on its behalf, purchases all the shares in Corporation X, a corporation which is organized under the laws of a state of the United States, and which engages in business activities in the United States. That transaction is subject to Section 721.

Subpart B—Definitions

§ 800.201 Acquisition.

The term "acquisition" is used within these regulations to refer collectively to an acquisition, merger, or takeover. It includes, without limitation:

(a) The acquisition of a person by:

(1) The purchase of its voting securities, or

(2) The conversion of its convertible voting securities,

(3) The acquisition of its convertible voting securities if that involves the acquisition of control.

(b) The acquisition of a business, including any acquisition of production or research and development facilities previously operated as part of a business of a U.S. person if there will likely be a substantial use of:

(1) The technology of that U.S. person or,

(2) Personnel previously employed by that U.S. person.

(c) A consolidation.

Example (relating to subparagraph (b)). Corporation A, organized under the laws of a foreign state and wholly owned and controlled by a foreign national, acquires, from separate United States nationals, (a) products held in inventory, (b) land, and (c) machinery for export. Corporation A has not acquired a business and has not made an acquisition within the meaning of these regulations.

§ 800.202 Effective date.

The term "effective date" means August 23, 1988, the date Section 721 became effective.

§ 800.203 Section 721.

The term "Section 721" means Section 721 of Title VII of the Defense Production Act of 1950, 50 U.S.C. App. 2061 *et seq.*, 64 Stat. 798, which section was added by section 5021 of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418, 102 Stat. 1107.

§ 800.204 Committee.

The term "Committee" means the Committee on Foreign Investment in the United States, as established in Executive Order No. 11858, 40 FR 20263, as amended by Executive Order 12188, January 2, 1980, 45 FR 989, January 2, 1980, and by Executive Order 12661, 54 FR 779, January 9, 1989.

§ 800.205 Person.

The term "person" means any individual or entity.

§ 800.206 Entity.

The term "entity" means any branch, partnership, associated group, association, estate, trust, corporation, division of a corporation, business enterprise, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government sponsored agency).

§ 800.207 United States.

The term "United States" means the United States of America, the States of the United States, the District of Columbia, and any commonwealth, territory, dependency, or possession of the United States, and includes the outer Continental Shelf, as defined in Section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331 (a)). For purposes of these regulations and their examples, an entity organized under the laws of the United States of America, one of the States, or a commonwealth, territory, dependency or possession of the United States, is an entity organized "in the United States."

§ 800.208 United States national.

The term "United States national" or "U.S. national" means a citizen of the United States or an individual person who, though not a citizen of the United States, owes permanent allegiance to the United States.

§ 800.209 Foreign national.

The term "foreign national" means any individual other than a United States national.

§ 800.210 U.S. person.

The term "U.S. person" or "United States person" means any entity but only to the extent of its business activities in interstate commerce in the United States, irrespective of the nationality of the individuals which control it.

Example 1. Corporation A is organized under the laws of a foreign state and is wholly owned and controlled by a foreign national. It engages in business activities in a state of the U.S. through a branch office or subsidiary. That branch office or subsidiary of Corporation A is an "entity" and a "U.S. person."

Example 2. Same facts as in the first sentence of Example 1. Corporation A, however, does not have a branch office, subsidiary or fixed place of business in the United States. It exports and licenses technology to an unaffiliated company in the United States. Corporation A is not a "U.S. person."

§ 800.211 Foreign person.

The term "foreign person" means:

(a) Any foreign national or

(b) Any entity over which control is or could be exercised by a foreign interest.

Example 1. Corporation A is organized under the laws of a foreign state and is engaged in business outside the United States. All its shares are held by Corporation X, which controls Corporation A. Corporation X is organized in the United States, and is wholly owned and controlled by U.S. nationals. Corporation A, though organized and operating outside the U.S., is not a "foreign person."

Example 2. Same facts as in the first two sentences of Example 1, except that Country A through governmental intervenors exercises full decision-making power over Corporation A, including the decisions described in § 800.213(a) through (e). There is a foreign interest which is exercising control over Corporation A, which is a "foreign person."

Example 3. Same facts as in the first two sentences of Example 1, except that Corporation A is owned and controlled by a foreign national and, through a branch, engages in business in the United States. Corporation A and/or its branch is a "foreign person" should Corporation A make an acquisition. Its branch business in the United States is a "U.S. person" which may be the subject of an acquisition.

§ 800.212 Foreign interest.

The term "foreign interest" means any foreign person, including a foreign government.

§ 800.213 Control.

The term "control" means the power, direct or indirect, whether or not exercised, and whether or not exercised or exercisable through the ownership of a majority or a dominant minority of the total outstanding voting securities of an issuer, or by proxy voting, contractual arrangements or other means, to formulate, determine, direct or decide matters affecting the entity; in particular, but without limitation, to formulate, determine, direct, take, reach or cause decisions regarding:

(a) The sale, lease, mortgage, pledge or other transfer of any or all of the principal assets of the entity, whether or not in the ordinary course of business;

(b) The dissolution of the entity;

(c) The closing and/or relocation of the production or research and development facilities of the entity;

(d) The termination or non-fulfillment of contracts of the entity; or

(e) The amendment of the Articles of Incorporation or constituent agreement of the entity with respect to the matters described at (a) through (d) above.

§ 800.214 Parent.

The term "parent," as used in §§ 800.302 and 800.402, means a person who or which, directly or indirectly:

(a) Holds or will hold the ownership of 50 percent or more of the outstanding voting securities of an entity; or

(b) In case of an entity that has no outstanding voting securities, holds or will hold the right to 50 percent or more of the profits of the entity, or has or will have the right in the event of the dissolution of 50 percent or more of the assets of the entity.

Example. Corporation P owns 50 percent of the voting securities of Corporations R and S. Corporation R owns 40 percent of the voting securities of Corporation X, and Corporation S owns 50 percent of the voting securities of Corporation Y. Corporation P is a parent of Corporations R, S and Y, but not of Corporation X. Corporation S is a parent of Corporation Y because it holds 50 percent of the voting securities of Corporation Y.

§ 800.215 Affiliate.

An "affiliate" of an entity, as that term is used in §§ 800.219 and 800.402, is any other entity in the chain of ownership between a parent and that entity.

Example. Same facts as the Example under "parent." Under this definition, Corporation S is an affiliate of Corporation Y. (An entity can be both an affiliate and a parent.) Corporation R is not an affiliate of Corporation S or Y because it is not in the chain of ownership between Corporation P and Corporation Y. Coroporation X is also not an affiliate of Corporation Y.

§ 800.216 Hold.

The terms "hold(s)" and "holding" mean beneficial ownership, whether direct or indirect, through fiduciaries, agents, or other means.

§ 800.217 Voting securities.

The term "voting securities" means any securities which at present or upon conversion entitle the owner or holder thereof to vote for the election of directors of the issuer, or, with respect to unincorporated entities, individuals exercising similar functions.

§ 800.218 Convertible voting security.

The term "convertible voting security" means a voting security which currently does not entitle its owner or holder to vote for directors of any entity. See §§ 800.201 and 800.302(c).

§ 800.219 Conversion.

The term "conversion" means the exercise of a right inherent in the ownership or holding of particular voting securities to exchange such securities for securities which currently entitle the owner or holder to vote for directors of the issuer or for any affiliate of the issuer.

§ 800.220 Solely for the purpose of investment.

(a) Voting securities are held or acquired "solely for the purpose of investment" if the person holding or acquiring such voting securities has no intention of participating in the formulation, determination or direction of the basic business decisions of the issuer, including those at § 800.213 (a) through (e).

(b) Voting securities are not held solely for the purpose of investment if the person holding or acquiring such voting securities:

(1) Possesses or develops any purpose other than investment, or

(2) Takes any action inconsistent with acquiring or holding such securities solely for the purpose of investment.

§ 800.221 A party or parties to an acquisition.

The terms "party to an acquisition" and "parties to an acquisition" mean:

(a) In the case of an acquisition of a person by the purchase of its voting securities, the person acquiring the voting securities, and the person issuing those voting securities;

(b) In the case of a merger, the surviving person, and the person which loses its separate pre-merger identity;

(c) In the case of an acquisition of an entity or a business of an entity, the person acquiring that entity or business, and the person selling that entity or business.

(d) In the case of a consolidation, the entities being consolidated, and the new consolidated entity;

(e) In the case of a proxy solicitation (to be determined).

Subpart C—Coverage

§ 800.301 Transactions that are acquisitions under Section 721.

(a) Section 721 applies to acquisitions:

(1) Proposed or pending on or after the effective date.

(2) By or with foreign persons.

(3) Which could result in foreign control of persons engaged in interstate commerce in the United States.

(b) Transactions that are acquisitions under Section 721 include, without limitation:

(1) Proposed or completed acquisitions by or with foreign persons which could or did result in foreign control of a U.S. person, irrespective of the actual arrangements for control planned or in place for that particular acquisition.

Example 1. Corporation A, a foreign person, proposes to purchase all the shares in Corporation X, which is organized in the United States and engages in business in the United States.

Under the applicable statutory law, Corporation A will have the right to elect directors and other primary officers of Corporation X, and those directors will have the right to reach decisions about the closing and relocation of particular production facilities, and the termination of contracts. They also will have the right to propose (for approval by Corporation A as a shareholder) the dissolution of Corporation X and the sale of its principal assets.

For purposes of Section 721, the proposed acquisition of Corporation X by Corporation A could result in control of a U.S. person (Corporation X) by a foreign person (Corporation A).

Example 2. Same facts as in Example 1, except that Corporation A plans to retain the existing directors of Corporation X, all of whom are U.S. nationals.

Although, under these plans, Corporation A may not in fact exercise control over Corporation X (because the directors as U.S. nationals may exercise that control), the acquisition of Corporation X by Corporation A still would result in foreign control over a U.S. person for purposes of Section 721.

(2) A proposed acquisition by or with a foreign person, which could result in foreign control of a U.S. person, including, without limitation, an offer to purchase all or a substantial portion of the securities of a U.S. person.

Example. Corporation A, a foreign person, makes an offer to purchase all the shares in Corporation X, a U.S. person. That acquisition is "proposed" and subject to Section 721.

(3) Proposed or completed acquisitions even by entities organized in the United States, if those entities are "foreign persons," and if those acquisitions could or did result in a new foreign interest controlling the U.S. person to be acquired.

Example 1. Corporation X is organized and operates in the United States. Its shares are held by a foreign person. While Corporation X is a "U.S. person," it is also a "foreign person" within the meaning of Section 721, because control over it is or could be exercised by a foreign person. Its acquisition of a U.S. person is subject to Section 721 because that acquisition could result in control by Corporation X (a "foreign person") of a U.S. person.

Example 2. Same facts as Example 1, except that Corporation Y, a foreign person, seeks to acquire Corporation X from its existing shareholder. That proposed acquisition is subject to Section 721 because it could result in control of Corporation X (in this context a "U.S. person") by a new foreign person (Corporation Y).

(4) Proposed or completed acquisitions by or with foreign persons which involve acquisitions of businesses and could or did result in foreign control of businesses located in the United States.

Example 1. Corporation A, a foreign person, proposes to buy a branch office business in the United States of Corporation X, which is a foreign person. For purposes of these regulations, the branch office business of Corporation X is a United States person to the extent of its business activities in the U.S., and the proposed acquisition of the business in question is subject to section 721.

Example 2. Corporation A, a foreign person, buys a branch office business located entirely outside the United States of Corporation Y, which is incorporated in the United States. The branch office business of Corporation Y is not deemed to be a United States person, and the acquisition is not subject to Section 721.

Example 3. Corporation A, a foreign person, makes a start-up or "greenfield" investment in the United States. That investment involves such activities as separately arranging for the financing of and the construction of a plant to make a new product, buying supplies and inputs, hiring personnel, and purchasing the necessary technology. The investment may involve the acquisition of shares in a newly incorporated subsidiary. Corporation A will not have acquired the "business" of a U.S. person, and its greenfield investment is not subject to Section 721.

(5) Joint ventures where a United States person and a foreign person enter into contractual or other similar arrangments, including agreements on the establishment of a new entity, in circumstances such that a foreign interest would gain control over a business of a U.S. person.

Example 1. Corporation A, a foreign person, and Corporation X, a United States corporation, form a separate corporation, JV Corp., to which Corporation X contributes an identifiable business in the United States. There is no foreign interest which does or could exercise control over Corporation X. Under the Articles of Agreement of JV Corp., Corporation A through its shareholding in JV Corp. may elect a majority of the Board of Directors of JV Corp. The formation of JV Corp. could result in foreign control of a U.S. person and is an acquisition subject to Section 721.

Example 2. Same facts as Example 1, except that, under the Articles of JV Corp., or pursuant to contractual arrangments between Corporations A an X, all decisions by JV Corp. identified under § 800.213 (a) through (e) may be made only by Corporation X or subject to its veto. The formation of JV Corp. is not an acquisition subject to Section 721.

§ 800.302 Transactions that are not acquisitions under Section 721.

The following transactions are not considered acquisitions for purposes of Section 721:

(a) An acquisition of voting securities pursuant to a stock split or pro rata stock dividend.

(b) An acquisition in which the parent of the entity making the acquisition is the same as the parent of the entity being acquired.

Example. Corporation A, a foreign person, merges its two wholly-owned U.S. subsidiaries S1 and S2, and in addition creates a new U.S. subsidiary, S3. S3 then buys a business from S4, another wholly-owned U.S. subsidiary of Corporation A. These acquisitions are not subject to Section 721.

(c) An acquisition of convertible voting securities which does not involve control.

Example. Corporation A, a foreign person, buys debentures, options and warrants of Corporation X, a U.S. person. By their terms, the debentures are convertible into common stock, and the options and warrants can be exchanged for common stock. The acquisition of those debentures, options and warrants is not subject to Section 721 so long as it does not involve control. The conversion of those debentures into common stock, or the exchange of those options and warrants for common stock, may be an acquisition for purposes of Section 721. See § 800.201.

(d) A purchase of voting securities or comparable interests in a United States person solely for purposes of investment, as defined in § 800.220, if, as a result of the acquisition,

(1) The foreign person would hold ten percent or less of the outstanding voting securities of the U.S. person, regardless of the dollar value of the voting securities so acquired or held, or

(2) The purchase is made directly by a bank, trust company, insurance company, investment company, pension fund, mutual fund, finance company or brokerage company in the ordinary course of business for its own account, provided that a significant portion of that business does not involve the acquisition of entities.

Example 1. In an open market purchase solely for the purpose of investment, Corporation A, a foreign person, acquires 7 percent of the voting securities of Corporation X, which is incorporated under the laws of the United States and is widely held by U.S. nationals. The acquisition of those securities is not subject to Section 721.

Example 2. Same facts as Example 1 except Corporation A is an investment company which makes only portfolio investments. It purchases 14 percent of the voting securities of Corporation X for its own account, solely for the purpose of investment. The acquisition of those securities is not subject to Section 721.

Example 3. Same facts as Example 2 except that a significant portion of the business of Corporation A is acquiring control over corporations. Its purchase of 14 percent of the shares of Corporation X is subject to section 721.

(e) An acquisition of assets in the United States that do not constitute a business in the United States. See sections 800.201 and 800.301(b)(4).

Example 1. Corporation A, a foreign person, acquires, from separate United States nationals, (a) products held in inventory, (b) land, and (c) machinery for export. Corporation A has not acquired a "business" within the meaning of Section 721.

Example 2. Corporation X produces armored personnel carriers in the United States. Corporation A, a foreign person, seeks to acquire the annual production of those carriers from Corporation X under a long-term contract. Neither the proposed acquisition of those carriers, nor the actual acquisition, is subject to Section 721.

Example 3. Same facts as Example 2, except that Corporation X, a U.S. person, has developed important technology in connection with the production of armored personnel carriers. Corporation A seeks to negotiate an agreement under which it would be licensed to manufacture using that technology. Neither the proposed acquisition of technology pursuant to that license agreement, nor the actual acquisition, is subject to Section 721.

Example 4. Same facts as Example 2, except that Corporation A enters into a contractual arrangement to acquire the entire armored personnel carrier business of Corporation X, including production facilities, customer lists, technology and staff. This acquisition is subject to Section 721. See § 800.201.

(f) An acquisition of voting securities by a person acting as a securities underwriter, in the ordinary course of business, and in the process of underwriting.

(g) An acquisition pursuant to a condition in a contract of insurance relating to fidelity, surety, or casualty obligations if the contract was made by an insurer in the ordinary course of business.

Subpart D—Notice

§ 800.401 Procedures for notice.

(a) A party or the parties to an acquisition subject to Section 721 may submit "voluntary notice" to the Committee of the proposed or completed acquisition by sending ten copies of the information set out in § 800.402 to the Staff Chairman of the Committee on Foreign Investment in the United States, Office of International Investment, Room 5100, Department of the Treasury, 15th Street and Pennsylvania Ave., NW., Washington, DC 20220.

(b) Any member of the Committee may submit "agency notice" of a proposed or completed acquisition to the Committee through its Chairman if that member has reason to believe, based on facts then available, that the acquisition is subject to Section 721 and may have adverse impacts on the national security.

(c) No communications other than those described in paragraphs (a) and (b) of this section shall constitute notice for purposes of Section 721.

§ 800.402 Contents of voluntary notice.

(a) If the parties to an acquisition jointly submit voluntary notice, they shall provide in detail the information set out in this section. If fewer than all the parties to an acquisition submit voluntary notice, each notifying party shall provide such information with respect to itself and, to the extent known or reasonably available to it, with respect to each non-notifying party.

(b) A voluntary notice submitted pursuant to Section 800.401(a) shall describe:

(1) The transaction in question, including:

(i) The nature of the transaction, *e.g.*, whether the acquisition is by merger, consolidation, the purchase of voting securities, or otherwise;

(ii) The name, United States address (if any), and headquarters address of the foreign person making the acquisition;

(iii) The name and address of the U.S. person being acquired;

(iv) The name, address and nationality of the parent, if any, of the foreign person making the acquisition, and of each affiliate of that person;

(v) The name, address and nationality of the persons or interests which will exercise control over the U.S. person being acquired, and the manner by which such control will be exercised; and

(vi) The expected date for concluding the transaction, or the date it was concluded.

(2) The assets of the U.S. person being acquired (to be described only for an acquisition of an entity structured as an acquisition of assets or a business).

(3) With respect to the U.S. person being acquired, and any entity of which it is a parent that is also being acquired.

(i) The business activities of each of them, as, for example, set forth in annual reports, and the product lines of each;

(ii) The location within the United States of the facilities of each of them, which are manufacturing products or producing services described in paragraph (b)(3)(v) of this section, and the Corporate and Government Entity Code (CAGE Code), if any;

(iii) The identification numbers given each specific contract with a military service of the United States or the Department of Defense;

(iv) Each contract (identified by number) with any agency of the Government of the United States involving any information, technology or data, which is classified under Executive Order 12356 of April 2, 1982; and

(v) Any products or services (including research and development) of each of them with respect to which:

(A) It is a supplier, direct or indirect, to any of the military services of the United States or the Department of Defense; or

(B) It has technology which has or could have military applications.

(4) The business or businesses of the foreign person making the acquisition, and of its parent and any affiliates, as described, for example, in annual reports.

(5) The plans of the foreign person for the U.S. person with respect to:

(i) Reducing, eliminating or selling research and development or facilities,

(ii) Changing product quality,

(iii) Shutting down, moving offshore, or relocating facilities within the United States, or

(iv) Consolidating or selling product lines or technology,

for defense-related goods or services or for goods and services otherwise affecting national security.

(c) The voluntary notice shall also indicate whether the U.S. person being acquired exports:

(1) Products or technical data under validated licenses or technical data under General License GTDR pursuant to the U.S. Export Administration Regulations (15 CFR Parts 768 through 799); if applicable, the relevant Commodity Control List number shall be provided and the technical data shall be described; and

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(2) Defense articles and defense services under the International Traffic in Arms Regulations (22 CFR Subchapter M).

(d) The voluntary notice shall list any filings with or reports to agencies of the United States Government which have been or will be made in respect of the acquisition prior to its closing indicating the agencies concerned, the nature of the filing or report, the date by which it was or will be filed, and a contact point within the agency.

Example. Corporation A, a foreign person, intends to acquire Corporation X, which is wholly owned and controlled by a U.S. national, and which has a Facility Security Clearance under the Department of Defense Industrial Security Program. See Department of Defense, "Industrial Security Regulation," DOD 5220.22–R, and "Industrial Security Manual for Safeguarding Classified Information," DOD 5220.22–M. Corporation X accordingly files a revised Form DD 441s, and enters into discussions with the Defense Investigative Service about effectively insulating its facilities from the foreign interest.

Subparagraph (d) requires that certain specific information about these steps be reported to the Committee in a voluntary notice.

(e) In the case of a joint venture subject to Section 721, information for the voluntary notice shall be prepared on the assumption that the foreign person which is party to the joint venture has made an acquisition of the business or businesses that the U.S. person which is a party to the joint venture is contributing or transferring to the joint venture. In addition, the voluntary notice shall describe the name and address of the joint venture or other corporation.

(f) Persons filing a voluntary notice shall, in respect of the foreign person making the acquisition, and its parent and affiliates, and the U.S. person being acquired, and each entity of which it is a parent, append to the voluntary notice (except to the extent that the information is provided in one or more consolidated reports filed with the Committee) the most recent annual reports of each such entity.

(g) Persons filing a voluntary notice shall promptly advise the Staff Chairman of any material changes in plans or information provided to the Committee. See also § 800.701(a).

(h) The Staff Chairman retains the right to reject voluntary notices not complying with this Section. The Committee has the right to reject any such notice at any time if, after the notice has been submitted, there is a material change in the transaction as to which notification has been made.

§ 800.403 Beginning of thirty day review period.

(a) Following notice under Section 721, a thirty day period for review of the acquisition shall be deemed to commence on the next calendar day after voluntary notice (see § 800.401(a)) or agency notice (see § 800.401(b)) is received by the Staff Chairman of the Committee. Such review shall end no later than the thirtieth day after it has commenced, or if the thirtieth day is not a business day, no later than the next business day after the thirtieth day.

(b) The Staff Chairmn of the Committee shall send written advice of an agency notice to the parties to an acquisition within two business days after its receipt by the Staff Chairman.

Subpart E—Committee Procedures: Review and Investigation

§ 800.501 General.

Committee review or investigation (if it has been determined that an investigation shall be conducted) shall examine, as appropriate, whether:

(a) The acquisition is by or with a foreign person and could result in foreign control of a U.S. person or persons engaged in interstate commerce in the United States;

(b) There is credible evidence to support a belief that the foreign interest exercising control of the U.S. person to be acquired might take action that threatens to impair the national security; and

(c) Provisions of law, other than Section 721 and the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), provide adequate and appropriate authority to protect the national security.

§ 800.502 Determination not to investigate.

(a) If the Committee determines, during the review period described in § 800.403, not to undertake an investigation, such determination shall conclude action under Section 721.

(b) The Staff Chairman of the Committee shall promptly advise the parties to an acquisition of a determination not to investigate.

§ 800.503 Commencement of investigation.

(a) If it is determined that an investigation should be undertaken, such investigation shall commence no later than the end of the thirty-day period described in § 800.403.

(b) The Staff Chairman of the Committee shall send written advice to the parties to an acquisition of the commencement of an investigation.

§ 800.504 Completion or termination of investigation and report to the President.

(a) The Committee shall complete its investigation no later than the forty-fifth day after the date the investigation commences, or, if the forty-fifth day is not a business day, no later than the next business day after the forty-fifth day.

(b) Upon completion or termination of any investigation, the Committee shall report to the President and present a recommendation. Any such report shall include information relevant to subparagraphs (d) (1) and (2) of Section 721. If the Committee is unable to reach a unanimous recommendation, the Chairman shall submit a report of the Committee to the President setting forth the differing views and presenting the issues for decision.

§ 800.505 Withdrawal of notice.

(a) A party to an acquisition which has submitted notice under § 800.401(a), or, if more than one such party has submitted notice, the parties to an acquisition, may request in writing that such notice(s) be withdrawn at any time prior to an announcement by the President of his decision as described in § 800.601. Such request shall be directed to the Staff Chairman of the Committee and shall state the reasons why the request is being made. Such requests will ordinarily be granted, except as determined by the Committee. A written notification of the decision on the request to withdraw notice shall be promptly sent to the requester(s).

(b) Any withdrawal of an agency notice in writing by the agency which submitted it shall be effective on its receipt by the Staff Chairman, who shall promptly send notice of the withdrawal to the parties to an acquisition.

(c) In any case where a request to withdraw notice is granted under paragraph (a) of this section, or where the withdrawal is effective under paragraph (b) of this section, or where notice has been rejected under § 800.402(h), such notice shall be considered not to have been made for purposes of § 800.401. Section 800.702 shall nevertheless apply with respect to information or documentary material filed with the Committee. With respect to any subsequent acquisition among the parties that is within this Part, notice made in accordance with § 800.401 shall be deemed a new notice for purposes of these regulations, including § 800.601.

Subpart F—Presidential Action

§ 800.601 Statutory time frame, standards for Presidential action, and permissible actions under Section 721.

(a) The President shall announce his decision to take action pursuant to Section 721 no later than the fifteenth day after an investigation is completed, or, if the fifteenth day is not a business day, no later than the next business day following the fifteenth day.

(b) The President may exercise the authority conferred by Section 721(c) if the President makes the findings required by Section 721(d), namely, that:

(1) There is credible evidence that leads the President to believe that the foreign interest exercising control might take action that threatens to impair the national security, and

(2) Provisions of law, other than Section 721 and the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), do not in the President's judgment provide adequate and appropriate authority for the President to protect the national security in the matter before the President.

The President's findings under Section 721(d) shall not be subject to judicial review.

(c) Under Section 721 (c) and (d), the President:

(1) Is empowered to take such action for such time as the President considers appropriate to suspend or prohibit any acquisition subject to Section 721 that is the subject of a recommendation or recommendations by the Committee; and

(2) Is empowered to direct the Attorney General to seek appropriate relief, including divestment relief, in the district courts of the United States in order to implement and enforce Section 721.

(d) All authority available to the President under Section 721(c), including divestment authority, shall remain available at the discretion of the President in respect of acquisitions which have been concluded at any time on or after the effective date, but only if the purpose for which divestment or other appropriate relief is sought is based on facts, conditions, or circumstances existing at the time the transaction was concluded. Such divestment shall not remain available if:

(1) The Committee has previously determined under § 800.502 not to undertake an investigation of the acquisition when proposed, pending, or completed; or

(2) The President has previously determined not to exercise his authority under Section 721 with respect to that acquisition.

(e) In any case where the parties to an acquisition submitted false or misleading information to the Committee, or omitted material information, in addition to such other penalties as may be provided by law,

(1) The Committee retains the right to reopen its review or investigation of the transaction, and to revise any recommendation or recommendations submitted to the President;

(2) Any Committee member may submit or resubmit "agency notification" under § 800.401, to begain anew the process of review and investigation; and/or

(3) The President may take such action for such time as the President deems appropriate in respect of the acquisition, and may revise actions earlier taken.

(f) Divestment or other relief under Section 721 shall not be available with respect to transactions that were concluded prior to the effective date.

Subpart G—Provision and Handling of Information

§ 800.701 Obligation of parties to provide information.

(a) Parties to a transaction which is notified under Subpart D shall provide information to the Staff Chairman of the Committee that will enable the Committee to conduct a full review and/or investigation of the proposed transaction, and shall promptly advise the Staff Chairman of any material changes in plans or information provided to the Committee. See, generally, 50 U.S.C. App. 2155(a) for authorities available to the Committee for obtaining information.

(b) Documentary materials or information required or requested to be submitted under this part shall be submitted in English or, if the original document is in a foreign language, in certified English translation, at the request of the Committee.

§ 800.702 Confidentiality.

(a) Section 721(h) provides that any information or documentary material filed with the Committee pursuant to these regulations shall be exempt from disclosure under section 552 of title 5, United States Code, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in section 721 shall be construed to prevent disclosure to either House of Congress or to any duly authorized committee or subcommittee of the Congress.

(b) The provisions of 50 U.S.C. App. 2155(e) relating to fines and imprisonment shall apply in respect of disclosure of information or documentary material filed with the Committee under these regulations.

Date: July 5, 1989.

Charles H. Dallara,

Assistant Secretary (International Affairs).

[FR Doc. 89–16512 Filed 7–11–89; 2:42 pm]

BILLING CODE 4810-25-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–306, RM–5671]

Radio Broadcasting Services; Elko, Nevada

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Holiday Broadcasting Company of Elko, seeking the substitution of Channel 237C for Channel 237A at Elko, Nevada, and the modification of its license for Station KRJC accordingly. Channel 237C can be allotted to Elko in compliance with the Commission's minimum distance separation requirements and can be used at the station's present transmitter site. The coordinates for this allotment are North Latitude 40–54–35 and West Longitude 115–49–05. In accordance with 1.420(g) of the Commission's Rules, competing expressions of interest in use of the channel at Elko will not be accepted.

DATES: Comments must be filed on or before August 31, 1989, and reply comments on or before September 15, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Alan D. Hague, Executive Vice President, Holiday Broadcasting Company of Elko, c/o Carlson Communications International, P.O. Box 7040, Salt Lake City, Utah 84107 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–306, adopted June 21, 1989, and released July 10, 1989. The full text of this Commission decision is available for inspection and copying during

normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-16476 Filed 7-13-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-308, Rm-6691]

Radio Broadcasting Services; Neenah-Menasha and Rhinelander, Wisconsin

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Evangel Ministries, Inc., licensee of Station WEMI(FM), Channel 261A, Neenah-Menasha, Wisconsin, proposing the substitution of Channel 26 1C2 for Channel 261A at Neenah-Menasha and the modification of its license to specify the higher class channel. In order to accomplish the co-channel upgrade at Neenah-Menasha the proposal requires the substitution of Channel 261C1 for Channel 262C1 at Rhinelander, Wisconsin and modification of the license of Station WRHN(FM). Channel 262C2 can be allotted in compliance with the Commission's minimum separation requirements at Station WEMI(FM)'s current transmitter site. The coordinates are 44-15-17 and 88-26-13. In addition, since the Rhinelander is located within 320 kilometers of the U.S.-Canadian border, the proposal requires concurrence of the Canadian government. Neenah-Meenasha could receive its first wide coverage area FM service.

DATES: Comments must be filed on or before August 31, 1989, and reply comments on or before September 15, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Dennis P. Corbett, Esquire, Leventhal, Senter & Lerman, 2000 K Street, NW., Suite 600, Washington, DC 20006-1809 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-308, adopted June 21, 1989, and released July 10, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-16477 Filed 7-13-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-307, RM-6301]

Television Broadcasting Services; Ceres and Modesto, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Bet Nahrain, Inc., seeking the reallotment of UHF television Channel *23 from Modesto to Ceres, California, as that community's first local television broadcast service, for the presentation of noncommercial educational programming. Reference coordinates for this proposal are 37-35-24 and 120-157-06.

Although this proposal falls within the parameters of certain markets for which the Commission has imposed a "freeze" on TV allotments, or applications therefor, a waiver may be appropriate in this instance since Ceres is further removed from the affected markets than the current allotment at Modesto, and proposes continued use of the channel for noncommercial educational purposes.

DATES: Comments must be filed on or before August 31, 1989, and reply comments on or before September 15, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Bet Nahrain, Inc., Attn: Dr. Sargon Dadesho, P.O. Box 4116, Modesto, CA 95352.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-307, adopated June 21, 1989, and released July 10, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is

no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-16478 Filed 7-13-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF ENERGY

48 CFR Parts 917 and 935

Acquisition Regulation

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) proposes to amend the Department of Energy's Acquisition Regulation (DEAR) to provide for the issuance of broad agency announcements for the acquisition of research as permitted by the Competition in Contracting Act of 1984 (CICA) (Pub. L. 98-369) and the Federal Aquisition Regulation (FAR) 6.102(d)(2), and FAR 35.016. The amendments being proposed today implement policies and procedures concerning the solicitation, evaluation, and selection of basic and applied research proposals by DOE through the use of broad agency announcements. These amendments will be included in the DEAR as a new section 936.016.

DATE: Written comments on this proposed rule must be received by September 12, 1989.

ADDRESS: Comments should be addressed to: Edward Simpson, Procurement Policy Division (MA-421), Office of the Deputy Assistant Secretary for Procurement and Assistance Management, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Edward Simpson, Procurement Policy Division (MA-421), Office of the Deputy Assistant Secretary for Procurement and Assistance Management, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-8246.

Christopher T. Smith, Office of the Assistant General Counsel for Procurement and Finance (GC-34), U.S. Department of Energy, Washington, DC 20585, (202) 586-1526.

SUPPLEMENTARY INFORMATION:

I. Background
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I. Background

In estabishing a standard of full and open competition, CICA recognized the use of a general announcement of an agency's research interest in conjunction with a peer or scientific review of proposals as a competitive procedure for the aquisition of research (41 U.S.C. 259(b)(2)). The Federal Acquisition Regulation (FAR) originally implemented this portion of CICA in FAR 6.102(d)(2). However, specific procedures were not detailed in CICA or in the FAR. DOE, in following the requirements of CICA and the FAR, developed a broad agency announcement and published in the **Federal Register** on April 15, 1985, and annually thereafter. That announcement, proposals resulting therefrom, and subsequent awards have produced a historical base of experience which indicates that the process is workable. Further, a final rule was published it in the **Federal Register** on July 20, 1988 (53 FR 27460) which establishes, in the Federal Acquisition Regulation at FAR 35.016, general procedures (in addition to those previously set forth in FAR 6.102(d)(2)) for the use of broad agency announcements. The DOE proposes to amend the DEAR to supplement the FAR and implement DOE's policies, procedures, and requirements for the use of Research Opportunity Announcements (ROAs) as the specific form of broad agency announcements to be used by DOE.

DOE has concluded that specific regulatory coverage of the broad agency announcement mechanism is needed to allow for procedural distinctions between this type of competitive procedure and those other forms of competitive solicitations (such as Program Research Development Announcements (PRDAs) and Program Opportunity Notices (PONs)) through which DOE can contract for its research needs.

The amendments being proposed today would add a new section 935.016, Research Opportunity Announcements. The proposed section sets forth the requirements for the synopsis and content of announcements, proposal preparation instructions, proposal evaluation criteria and procedures, and the selection and award of contracts for basic and applied research using the broad agency announcement solicitation mechanism.

The ROA solicitation process has several procedural characteristics which differ significantly from more customary solicitation approaches. Firstly, after approval to use the ROA and its subsequent synopsis and issuance, the evaluation process is controlled primarily by the cognizant DOE program office as opposed to a cognizant contracting activity. This was deemed necessary (1) to allow for the timely evaluation and selection of proposals; and (2) to not overburden the local contracting activities by having to commit resources to unpredictable evaluation/selection cycles resulting from potentially sporadic proposal submissions. However, contracting personnel remain involved in the pre-solicitation phase and in the establishment of administrative controls. This involvement, when taken in conjunction with applicable acquisition regulations and other controlling guidance, establishes the needed checks and balances in the procedure to provide for the objective and fair treatment of proposals.

Secondly, DOE's implementation of the ROA procedure contains two significant limitations. Contrary to the authorization in FAR 35.016(a) to use the broad agency announcement to acquire not only basic and applied research, but also that part of development not related to the development of a specific system or hardware, DOE will use its ROA to acquire only basic and applied research. This limitation is considered prudent because DOE currently has at its disposal other viable means by which to support, fund, and acquire development related to its mission. In addition, the ROA shall not be used to solicit proposals from, or award contracts to, the specific entities which operate Government-owned or -controlled establishments, such as DOE's management and operating contractors, Federally Funded Research and Development Centers (FFRDCs) chartered by other agencies, or similar establishments.

An innovative feature of the ROA solicitation is its publication in the **Federal Register**, rather than its

publication as a discrete solicitation document. This feature is anticipated to produce both manpower and dollar savings by eliminating (1) the need to maintain mailing lists, (2) the publication of large numbers of individual solicitations, and (3) expensive mailing costs, yet all the while maintaining adequate public availability and exposure of the solicitation.

The ROA provides a solicitation vehicle through which DOE can encourage and stimulate the submission of proposals to conduct basic and applied research in support of its mission- and program-level objectives and goals. In this regard, DOE will define its broad mission and program needs in terms of potential areas of research and potential problem areas in relation to those specific objectives, and will solicit diverse and dissimilar solutions to those needs from a broad universe of potential offerors. It is expected that offerors will bring their own unique and specialized qualifications and capabilities to bear on concepts and ideas which advance scientific and technological research related directly to DOE's mission- and program-level objectives.

Although this approach may appear duplicative of the objectives of other solicitation mechanisms available to DOE to support its research initiatives, several key distinctions exist. The most significant of these distinctions is the ROA's use of scientific and/or peer reviewers for the evaluation of proposals. ROAs also do not have the common cutoff dates (other than the solicitation open period) found in more traditional solicitation processes. Further, ROAs do not require the establishment of a competitive range, or the submission of best and final offers. The ROA provides DOE with a structured, streamlined, and flexible approach to solicit research proposals in support of its mission and program needs.

As a result of the implementation of the ROA as a solicitation mechanism within DOE, an amendment to DEAR Subpart 917.73 is needed to clarify the use of PRDAs as a solicitation form. The current DEAR coverage prescribes the use of PRDAs under certain circumstances (see DEAR 917.7301). These circumstances when read in light of the proposed objectives and uses of the ROA may be interpreted similarly, thereby causing conflict in the determination as to which solicitation mechanism may be more appropriate under apparently like situations. In order to distinguish the two solicitation forms, DEAR 917.7301 is being amended to change the scope of the PRDA for use in acquiring research and development in support of a specific project area within an energy program, while the ROA will be used to acquire research in support of broad mission- and program-level objectives.

In preparing the proposed rule, DOE considered whether there was a continued need for the Notice of Program Interest (NOPI), as authorized by DEAR Subpart 915.5. The NOPI is a method by which DOE disseminates information on broad technical problem areas relevant to its mission for the purpose of stimulating the submission of unsolicited proposals. The NOPI is not considered a competitive solicitation and any unsolicited proposals selected for support must be justified in accordance with FAR Part 6 and DEAR Part 906. It was determined that the NOPI still serves a useful purpose within DOE. The NOPI provides DOE program offices with a mechanism by which to encourage the submission, and ultimate support, of certain research initiatives, when the ROA method is considered to be inefficient and ineffective because the total dollars targeted for contractually supported research are limited, the administrative burden associated with establishing an ROA is not warranted, or the scope of the program research agenda is more focused.

II. Procedural Requirements

A. Review Under Executive Order 12291

This Executive order, entitled "Federal Regulation," requires that certain regulations be reviewed by the Office of Management and Budget (OMB) prior to their promulgation. The Office of Management and Budget (OMB) has decided that agency implementations of the Competition in Contracting Act of 1984, Pub. L. 98-369, warrant review. Accordingly, this rule was submitted to OMB for review in accordance with Executive Order 12291 and OMB Bulletin 85-7. OMB has completed its review and approved publication.

B. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this proposed rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.* (1976)), or the Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and the DOE Guidelines (40 CFR Part 1021), and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

E. Review Under Executive Order 12612

Executive Order 12612 requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power and responsibilities among the various levels of government. If there are sufficient substantial direct effects, then the Executive order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's proposed rule, when finalized, will implement and supplement certain policy and procedural requirements established in the Competition in Contracting Act and in the Federal Acquisition Regulations relating to the use of broad agency announcements. States which contract with DOE will be subject to this rule. However, DOE has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of the States.

III. Public Comments

Interested persons are invited to participate by submitting data, views, or arguments with respect to the proposed DEAR amendments set forth in this notice. Three copies of written comments should be submitted to the address indicated in the "ADDRESS" section of this notice. All written comments received by September 12, 1989, will be carefully assessed and fully considered prior to publication of the proposed amendment as a final rule.

DOE has considered that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule should not have a substantial impact on the nation's economy or large numbers of individuals or businesses. Therefore, pursuant to Pub. L. 95-91, the DOE Organization Act, and the Administrative Procedure Act (5 U.S.C. 553), the Department does not plan to hold a public hearing on this proposed rule.

List of Subjects

48 CFR Part 917

Special contracting methods.

48 CFR Part 935

Research and development.

For the reasons set out in the preamble, Parts 917 and 935 of Title 48 of the Code of Federal Regulations are proposed to be amended as set forth below.

Berton J. Roth,

Deputy Assistant Secretary for Procurement and Assistance Management.

The regulations in 48 CFR Chapter 9 are proposed to be amended as set forth below:

PART 917—[AMENDED]

1. The authority citation for Parts 917 and 935 would continue to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

917.7301 [Amended]

2. Section 917.7301 is amended by revising paragraph 917.7301-(c)(1) to read as follows:

(c) * * *

(1) Research and development is required in support of a specific project area within an energy program with the objective of advancing the general scientific and technological base, and this objective is best achieved through:

(i) A diversity of possible approaches, within the current state of the art, available for solving the problems;

(ii) The involvement of a broad spectrum of organizations in seeking out solutions to the problems posed;

(iii) The application of the unique qualifications or specialized capabilities of many individual proposers which will enable them to perform portions of the research project (without necessarily possessing the qualifications to perform the entire project) so that the overall support may be broken into segments which cannot be ascertained in advance; and,

(iv) The fostering of new and creative solutions.

* * * * *

PART 935—[AMENDED]

3. Part 935 is proposed to be amended by adding a new subpart 935.016, Research Opportunity Announcements, to read as follows:

Subpart 935.016—Research Opportunity Announcements

Sec.
935.016-1 Scope.
935.016-2 Applicability.
935.016-3 Definitions.
935.016-4 Issuance of research opportunity announcements.
935.016-5 Content of proposal submissions.
935.016-6 Receipt and handling of proposals and late proposal submission.
935.016-7 Evaluation of proposals.
935.016-8 Selection of proposals.
935.016-9 Responsibilities of the cognizant contracting activity.

Subpart 935.016—Research Opportunity Announcements

935.016-1 Scope.

(a) This section sets forth the policies and procedures for contracting for research through the use of broad agency announcements as authorized by the Competition in Contracting Act of 1984 (CICA) (41 U.S.C. 259(b)(2)) and Federal Acquisition Regulation (FAR) 6.102(d)(2). Within DOE, broad agency announcements will be designated as Research Opportunity Announcements (ROAs).

(b) Research Opportunity Announcements are a form of competitive solicitation under which DOE's broad mission- and program-level research objectives are defined; proposals which offer meritorious approaches to those objectives are requested from all offerors capable of satisfying the Government's needs; those proposals are evaluated by scientific or peer review against stated specific evaluation criteria; and selection of proposals for possible contract award is based upon that evaluation, the importance of the research to the program objectives, and the funds availability.

935.016-2 Applicability.

(a) This section applies to all DOE Headquarters and field program organizations which, by virtue of their statutorily mandated mission or other such authority as may exist, support energy or energy-related research activities through contractual relationships.

(1) The ROA may be used as a competitive solicitation procedure through which DOE acquires basic and applied research in support of its broad mission- and program-level research objectives, and these objectives may be best achieved through relationships where contractors pursue diverse and dissimilar solutions and approaches to scientific and technological areas related to DOE's missions and programs.

(2) The ROA shall not be used as a solicitation method when one or more of the following conditions exist:

(i) In accordance with the Federal Grant and Cooperative Agreement Act, Pub. L. 97-258, the principal purpose of the relationship will be assistance;

(ii) The purpose of the research is to accelerate the demonstration of the technical, operational, economic, and commercial feasibility and environmental acceptability of particular energy technologies, systems, subsystems, and components that would appropriately be acquired by Program Opportunity Notices (PONs) in accordance with 917.72;

(iii) The research is required in support of a specific project area within an energy program which appropriately would be acquired by Program Research and Development Announcements (PRDAs) in accordance with 917.73;

(iv) The research requirements can be sufficiently defined to allow the use of contracting by negotiation in accordance with Federal Acquisition Regulation (FAR) Part 15;

(v) The purpose of the research is the acquisition of goods and services related to the development of a specific system or hardware acquisition; or,

(vi) Any funds to be obligated to a resulting contract will be used to conduct or support a conference or training activity.

(b) Limitations:

(1) The use of broad agency announcements for the acquistion of that part of development not related to the development of a specific system or hardware is authorized by FAR 35.016(a). Notwithstanding that authorization, ROAs shall be used within DOE only to acquire basic and applied research.

(2) Proposals shall not be solicited from and contracts shall not be awarded to any specific entity which operates a Government-owned or -controlled research, development, special production, or testing establishment, such as DOE's management and operating contractor facilities, Federally Funded Research and Development Centers chartered by other agencies, or other such entities.

§ 935.016-3 Definitions.

"Awarding Contracting Activity", for purposes of this section, means any DOE Contracting Activity assigned to negotiate, award, and administer a resultant contract, and otherwise perform related post-selection acquisition functions.

"Cognizant Contracting Activity" and "Contracting Activity", for purposes of this section, mean the DOE Contracting Activity assigned to perform all acquisition functions from the initiation of the ROA requirement through completion of the selection process. The Cognizant Contracting Activity ("contracting Activity") shall be that DOE Contracting Activity which is anticipated to be the primary and predominant Awarding Contracting Activity for the negotiation, award, and administration of resultant contracts. However, the intitial assignment of a Contracting Activity as the "Cognizant Contracting Activity" for the ROA does not preclude the designation of additional Contracting Activities as Awarding Contracting Activities after the selection decision.

"Cognizant DOE Program Office", "DOE Program Office", and "Program Office" mean the Headquarters or field office element with direct responsibility for issuance of the ROA and the subsequent evaluation and selection of proposals.

"Objective review" means a thorough, consistent and independent examination and evaluation of a proposal by three or more persons knowledgeable in the field of endeavor for which support is requested; such review is conducted to provide facts and advice to the selection official based upon the evaluation critera established in the ROA.

"Peer reviewer" means a professional individual not employed by the Government, who has expertise in the same or related scientific or technical field as the research area set forth in the proposal and is recognized in the scientific or technical community, selected to conduct an objective review of a research proposal.

"Scientific reviewer" means a professional Government employee, who has expertise in the same or related scientific or technical field as the research area set forth in the proposal, selected to conduct an objective review of a research proposal.

"Selection Official" means the Senior Program Official or designee having the authority to select for award those proposals received in response to an ROA which were determined to be meritorious in relation to the evaluation criteria and the program policy factors set forth in the ROA.

"Senior Program Official", for purposes of this section, means, in addition to those individuals listed in § 902.100, Managers of DOE Operations Offices, and Directors of DOE Energy Technology Centers.

§ 935.016-4 Issuance of research opportunity announcements.

(a) In order to maintain a comprehensive and well-integrated research program, the cognizant DOE program office shall be responsible for issuance of the ROA and the subsequent evaluation and selection of proposals.

(b) Each ROA shall consist of the following:

(1) An ROA identification number and the statutory and/or regulatory authority for the issuance of the ROA;

(2) The title of the ROA;

(3) A description of the program objectives and a statement of the intended uses by DOE of the results of the research;

(4) A summary of the research agenda or potential areas for research initiatives, including any areas requiring additional research or any other information which identifies research areas in which contracts may be awarded;

(5) The period of time during which proposals will be accepted from offerors for evaluation and other information concerning the consideration and disposition of late proposals;

(6) The total amount of money available or estimated to be available for potential contract awards;

(7) The name and address of the DOE program office responsible for issuance of the ROA;

(8) The address for receipt of proposals;

(9) The name of the DOE official within the program office to serve as a point of contract for (i) additional information, (ii) the list of specific proposal forms to be used by the offeror in submitting a proposal, and (iii) the address where those forms may be obtained;

(10) All business, technical, and/or cost evaluation (including any requirement for cost participation by the offeror) criteria, including any additional criteria to those set forth in this subpart, the relative imprtance of the evaluation criteria, and other appropriate proposal preparation instructions;

(11) The factors to be considered in determining the importance of any proposed research to the program objectives;

(12) A statement that DOE is under no obligation to reimburse the offeror for any costs associated with the preparation or submission of proposals;

(13) A statement that DOE reserves the right to fund, in while or in part, any, all or none of the proposals submitted.

(14) A statement that DOE is not required to return to the offeror a proposal which is not selected;

(15) A statement that each proposal will be objectively reviewed on its own merit against the evaluation criteria stated in the ROA using scientific and/or peer reviewers, and that selection of a proposal will be made in consideration of that evaluation, the importance of the proposed research to the program objectives, and funds availability;

(16) A statement that DOE is not obligated to award a contract to an offeror merely because the offeror's proposal was accepted by DOE for evaluation.

(c) The Senior Program Official of the cognizant DOE program office shall determine in writing, after consultation with the responsible Contracting Officer at the cognizant Contracting Activity, that the use of a ROA is both necessary and appropriate as a solicitation instrument in meeting program objectives. This determination shall be made prior to the issuance of the ROA, and shall be based upon facts and explanations which address the conditions stated in 935.016-1 (a) and (b) of this section, and any other pertinent information.

(d) Prior to the synopsis and issuance of the ROA, a confidential evaluation plan based directly on the criteria to be used in evaluating proposals shall be developed.

(e) Any reviews, approvals, and concurrences of the ROA required prior to its issuance will be consistent with procedures established by the cognizant Contracting Activity for solicitations of similar dollar value and complexity.

(f) Each ROA issued will provide for a proposal submission period of at least ninety (90) days but not greater than one year. ROAs may be reissued by the program office at any time after the original ROA proposal submission period has elapsed, subject to the same requirements of this subpart as a new ROA.

(g) The full text of the ROA will be published in the **Federal Register**. Prior to the publication of the ROA, the Contracting Officer will announce the pending availability of the ROA in the *Commerce Business Daily* in accordance with FAR 35.016(c). Information concerning the availability of the ROA may also be published in scientific, technical, or engineering publications.

935.016-5 Content of proposal submissions.

Each ROA shall require that a proposal (whether a new proposal or a proposal for the continuation of research previously funded by DOE as a contract) will be submitted by the offeror in the quantities specified in the ROA to the place designated in the ROA as the place for receipt of proposals. Each proposal will contain three distinct sections which, at a minimum, provided the following information:

(a) Section I: Offeror Information:

(1) Name and address of the offeror;

(2) The ROA solicitation number;

(3) The date of submission of the proposal and the offer acceptance period;

(4) The names and addresses of any other Federal, State, or local government agency, or any other public or private entity who has in the past, or is currently, or may in the future, provide funds for the same or similar research activities of the offeror;

(5) A proposal cover sheet signed by an individual authorized to contractually obligate the offeror.

(b) Section II: Technical Proposal:

(1) A detailed description of the proposed research, including the objectives of the research, the methodology and approaches for accomplishing those objectives, the anticipated results of the research, and a schedule depicting key research milestones with a description of the milestones and the relationship of the proposed research to the program objectives and evaluation criteria stated in the ROA. This description should also include (i) a listing and a discussion of any previous or on-going research performed by the offeror in areas related to those contemplated by the ROA, and (ii) a discussion of how the intended results of the research will achieve the use intended by DOE;

(2) Résumés for the proposed principal investigator(s) or other key individuals addressing the qualifications, experience, and capabilities of these individuals;

(3) A description of the facilities and other resources of the offeror which will be used by the offeror in performance of the proposed research;

(4) A description of any facilities and other non-monetary resources requested to be furnhised by the Government for use by the offeror in performance of the proposed research; and,

(5) A description of the scope and methods of management support and controls of the offeror applicable to the proposed research.

(c) Section III: Cost Proposal:

(1) A fully executed Standard Form (SF) 1411;

(2) Any supporting cost exhibits as may be required by the ROA.

935.016-6 Receipt and handling of proposals and late proposal submission.

(a) The cognizant DOE program office, with the concurrence of the responsible Contracting Officer, shall establish formal administrative procedures for accountability, control of receipt and distribution, evaluation, and disposition of proposals received in response to an ROA to insure that proposal information, in whole or in part, is properly safeguarded from unauthorized disclosure or use. These administrative procedures shall be consistent with the policies and procedures set forth in FAR 3.104, 15. 411, and 15.413, and in 915.413 and Subpart 927.70.

(b) The Senior Program Official for the cognizant program office shall be responsible for ensuring that the procedures concerning unauthorized disclosure or use of proposal information are consistently complied with by the evaluators assigned to the ROA.

(c) Proposals submitted and received for evaluation subsequent to the close of the proposal submission period will be considered in accordance with FAR 15.412.

935.016-7 Evaluation of proposals.

(a) The Senior Program Official for the cognizant DOE program office shall, by written delegation, appoint an individual within that program office to be responsible for the conduct and administration of the proposal evaluation process. This individual shall:

(1) Serve as the primary point of contact on all matters concerning the ROA;

(2) Develop a confidential evaluation plan based directly upon the evaluation criteria set forth in the ROA;

(3) Ensure that an initial review of proposals is conducted in accordance with paragraph (c) of this section;

(4) Select the scientific and/or peer reviewers and administer the evaluation of each proposal;

(5) Prepare a consolidated report of the evaluation findings for each proposal and other needs information to be included in and for use as an advisory report to the Selection Official; and

(6) Perform other administrative duties (e.g., conduct debriefings, notify offerors) as may be necessary to facilitate the evaluation process.

(b) The evaluation of each proposal shall begin upon its receipt, or as soon as possible thereafter.

(c) All proposals will undergo an initial review to determine (1) the responsiveness and completeness of the proposal to the requirements of the ROA, including the appropriateness of the research to the intended uses by DOE, and (2) the relevance of the proposed effort to the broad areas of research contemplated by the ROA. If, after completion of the initial review, a proposal is determined not to meet the requirements stated in paragraphs (c) (1) and (2) of this subsection, the offeror shall be promptly notified that its proposal has been eliminated from any further evaluation under the ROA and the general basis for such a determination.

(d) Proposals which survive the initial review will be objectively reviewed by at least three scientific and/or peer reviewers. The composition of the group may be any mix of scientific and peer reviewers except that individuals may not be used as reviewers if those individuals perform or are likely to perform any of the following duties:

(1) Encouraging or directing the submission of a proposal on behalf of any offeror for the instant requirement;

(2) Providing technical assistance to any offeror;

(3) Making selection recommendations concerning a proposal; or,

(4) Serving as the Contracting Officer, the Contracting Officer's Technical Representative, or otherwise monitoring or evaluating the offeror's performance under the program.

In instances where the cognizant program office has established a procedure for the review of financial assistance applications using an approved merit review system (See 10 CFR Part 600), the types of review groups allowed by 10 CFR 600.16(d) may be used for purposes of satisfying the requirements for scientific and/or peer review under this subpart, subject to any other requirements stated herein.

(e) Proposals will be evaluated against the criteria set forth in the ROA to determine, at a minimum, the following:

(1) The overall scientific and technical merit of the proposal including the merit and value of related research performed by the offeror under previous or existing contracts or other arrangements;

(2) The appropriateness of the proposed method or approach;

(3) The qualifications, capabilities, experience, and demonstrated past performance of the offeror, principal investigator, and/or key personnel;

(4) The adequacy of the offeror's facilities and resources; and,

(5) The realism of the proposed costs.

(f) Proposals received in response to the ROA should not be evaluated against each other since they are not submitted in accordance with a common statement of work. Competitive range determinations shall not be made, and best and final offers shall not be requested.

(g) During the evaluation process, only the individual designated in paragraph (a) of this section may communicate with an offeror and only for purposes of clarification of that offeror's proposal. Communication may be accomplished either in writing or orally, provided that, in instances where oral communications occur, a written record of such communication is maintained.

(h) A new proposal which provides for the continuation of research previously funded by DOE as a contract awarded as a result of either a previously issued ROA or an unsolicited proposal may be evaluated and considered for selection and award under the instant ROA, provided that: (1) The proposed research is within the specified areas of research contemplated by ROA; (2) the proposal is received during the open period of the ROA; and, (3) the proposal is fully responsive to the requirements of the ROA.

(i) A new unsolicited proposal not specifically submitted in response to the ROA may be evaluated and considered for selection and award under the instant ROA, provided that: (1) The conditions stated in paragraph (h)(1) and (h)(2) of this section are met; and, (2) the offeror, after written notification from the Program Office that the unsolicited proposal falls within the scope of the ROA, expressly states, in writing, that the unsolicited proposal is now to be considered a submission under the instant ROA; and, (3) the offeror is otherwise able to provide, within the open period of the ROA, any additional information required by the ROA to allow for an evaluation of that offeror's proposal.

(j) For each proposal, a consolidated written report shall be prepared and shall include all reviewer findings. The report shall contain sufficient detail to indicate that the proposal was evaluated fairly and objectively against the evaluation criteria. This report shall be submitted to the Selection Official as an advisory report to be used in selecting proposals. It shall not contain any recommendations as to whether the individual proposal should be selected for award.

935.016-8 Selection of proposals.

(a) The Selection Official shall determine, in consideration of the evaluation findings, the importance of the proposed research to the program objectives, and funds availability, whether a specific proposal warrants selection for negotiation and award of a contract. The decision of the Selection Official shall be documented in writing and shall address, at a minimum, the following:

(1) The scientific and technical merit of the proposal in relation to the ROA evaluation criteria;

(2) The qualifications, capabilities, and experience of the proposed personnel; technical approach; facilities; and where applicable, cost participation by the offeror (or any combination of the above);

(3) The importance of the proposed research to the program objectives;

(4) Which areas of the proposal, whether in whole or in part, have been selected for funding, and the amount of that funding; and,

(5) Assurances that any other requirements which are imposed by statute, regulation, or internal directives relating to the specific research activities and which are properly the responsibility of the Program Office have been satisfied.

(b) Absent extenuating circumstances, selection decisions regarding any individual proposal should be made within three (3) months after receipt of the proposal. Proposals which have been evaluated may be accumulated to allow for a consolidated selection decision so long as not more than three (3) months has passed since the receipt of any of the proposals so accumulated.

(c) The cognizant DOE program official shall notify successful and unsuccessful offerors of any selection/non-selection decisions. These notices shall be made in writing promptly after the decision is made, and shall, at a minimum, state in general terms, the basis for the determination. In the case of notices to successful offerors, the notices shall state (1) general information regarding the subsequent activities of the process leading to contract negotiation and award and a point of contact in the cognizant contracting activity, (2) that the proposal has been selected subject to negotiation and execution of satisfactory contract, (3) that DOE assumes no obligation, financial or otherwise, until such time as a contract is executed, and (4) that the offeror shall not begin performance of the effort, or any part thereof, until such time as a contract has been awarded. Notices to unsuccessful offerors shall contain information regarding the right to a debriefing in accordance with 915.1003, and shall state that revisions to the unsuccessful proposal will not be considered under the instant ROA.

(d) The program office shall, with the advice of the cognizant Contracting Activity, conduct any requested debriefings and document the proceedings in accordance with FAR 15.1003.

(e) Upon completion of a selection decision, the program office shall furnish the following information to the awarding Contracting Activity(ies):

(1) A completed Procurement Request (DOE F 4200.33);

(2) The complete original proposal;

(3) A statement of work representing the effort to be funded and any reporting requirements relating thereto;

(4) The original selection decision document;

(5) The findings of the evaluation team;

(6) Copies of any correspondence relating to the ROA;

(7) Any recommendations regarding property to be either furnished by the Government or purchased by the contractor with Government funds as a direct charge to the contract;

(8) Indicate whether restricted data or other classified information is likely to be used or developed in performance of the effort, and specify such classification and security requirement determinations, as may be appropriate;

(9) A technical evaluation of the proposed costs to determine the realism of the type and extent of labor and materials proposed;

(10) Any other determinations or approvals that may be required by law, regulation, or Departmental directives relating to the specific research activities and which are properly the responsibility of the Program Office; and

(11) Any additional information that may assist the cognizant Contracting Activity in the negotiation, award, and administration of the contract.

935.016-9 Responsibilities of the awarding contracting activity.

Upon receipt of the Procurement Request and the other information specified in 935.016-8(e), the awarding Contracting Activity shall:

(a) Advise the selected offeror that the Government contemplates entering into negotiations; the type of contract contemplated to be awarded; and the estimated award date, scope of the effort, and performance/delivery schedule;

(b) Send the selected offeror a draft contract, if necessary including modifications contemplated in the offeror's statement of work, and request agreement or identification of any exceptions;

(c) Request the selected offeror to complete and/or update and return the SF 1411 (with supporting documents), the offeror representations and certifications, and other appropriate forms, as needed;

(d) Conduct negotiations in accordance with FAR subparts 15.8 and 15.9 and Subparts 915.8 and 915.9, as applicable;

(e) Award a contract with reasonable promptness to the successful offeror; and,

(f) Comply with FAR Subparts 4.6 and 5.3 on contract reporting and synopses of contract awards, to the extent required by those subparts.

[FR Doc. 89-16571 Filed 7-13-89; 8:45 am]
BILLING CODE 6450-01-M

Notices

Federal Register
Vol. 54, No. 134
Friday, July 14, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Deep Creek Timber Sale, Fishlake National Forest, Wayne County, Utah

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) for the proposed Deep Creek timber sale on the east side of Thousand Lake Mountain. The area is located approximately eleven air miles northeast of Loa, Utah. The EIS will also consider amending the Forest Plan to consider changing Management Prescription 7A from clearcutting in Engelmann spruce and subalpine fir to an unevenaged management system in these timber types.

The proposed timber harvest and road construction is included in the Forest's Land and Resource Management Plan, but is within the western boundary of the Lookout Peak Roadless Area, Number 08321 that was managed for uses other than wilderness by the Utah Wilderness Act. The management activities would be administered by the Loa Ranger District of the Fishlake National Forest in Wayne County, Utah.

Scoping, data collection, and analysis have been in progress for about a year. Future scoping will consist of notification by newspaper and letter, and possible field review of the site. Scoping to date has indicated considerable interest in possible environmental effects of the timber sale. Forest Supervisor J. Kent Taylor has decided to prepare an environmental impact statement. The issues that tentatively have been identified include effects on soils and watershed, specifically the effects on water quality of Deep Creek, effects on wildlife, effects on threatened and endangered species, effects on visual resources including those of Capitol Reef National Park, effects of developing this previously unroaded area, economic effects on local communities of forgoing the use of this timber resource, and the effects on the proposed Great Western Trail in the vicinity of the sale area.

This EIS will tier to the Fishlake National Forest Land and Resource Management Plan (June 1986) which provides overall guidance (Goals, Objectives, Standards and Guidelines and Management Area direction) in achieving the desired future condition for this area. The purpose and goal for the proposed action is to achieve the desired future condition of the area, protect the forest resources and provide a sustained timber yield.

The Forest Service is seeking information and comments from Federal, State and local agencies, organizations and individuals who may be interested in or affected by the proposed actions. This input will be used in preparing the Draft EIS.

DATE: Comments concerning the proposed action and scope of the analysis must be received by August 15, 1989.

ADDRESS: Submit written comments to: Forest Supervisor, Fishlake National Forest, 115 East 900 North, Richfield, Utah 84701, Attention: Allen Henningson.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Allen Henningson, Forester, Phone (801) 896-4491.

SUPPLEMENTARY INFORMATION: Management activities under consideration would occur in an area encompassing approximately 300 acres of National Forest System lands on the Loa Ranger District, Wayne County, State of Utah.

The Forest Plan provides the overall guidance for management activities in the potentially affected area through its Goals, Objectives, Standards and Guidelines, and Management Area direction. The current Management Prescription for the potentially affected area involves the following:

Management Area 7A—Wood-Fiber Production and Utilization

Desired Future Conditions: Management emphasis is on wood-fiber production and utilization of large round-wood of a size and quality suitable for sawtimber. The harvest method by forest cover type is clearcutting in aspen and Engelmann spruce-subalpine fir and shelterwood in ponderosa pine and mixed conifers.

The area generally will have a mosaic of fully stocked stands that follow natural patterns and avoid straight lines and geometric shapes. Management activities are not evident or remain visually subordinate along forest arterial and collector roads and primary trails. In other portions of the area, management activities may dominate in foreground and middleground of viewing areas, but harmonize and blend with the natural setting.

Roaded-natural recreation opportunities are provided along forest arterial and collector roads. Semi-primitive motorized recreation opportunities are provided on those local roads and trails that remain open. Semi-primitive nonmotorized opportunities are provided on those that are closed.

Current research and/or experience indicates that an uneven aged management system for Engelmann spruce and subalpine fir would permit natural regeneration of the stand within five years and substantially reduce environmental impacts from timber harvest. Thus the Forest will consider amending the Forest Land and Resource Management Plan to reflect this thinking as part of the environmental analysis.

A reasonable range of alternatives will be considered. One of these will be the "No Action" alternative where no timber harvest or road construction will occur. However, current management will continue which includes grazing (including maintenance of an existing fence and other improvements), firewood collection, Christmas tree harvesting, and dispersed recreation. Other alternatives will examine timber harvest methods and intensities and various road building patterns to achieve management goals. The harvest methods proposed for the area is patch clearcutting (two to five acres in size) or group selection, and the construction of about a mile of road.

The Forest Service will analyze and document the direct, indirect and cumulative effects of the alternatives. This will include an analysis of the effects of the alternatives on the roadless character of the affected area.

The EIS will also include site specific mitigation measures.

Public participation is important during the analysis. Comments received during earlier scoping will be incorporated in the draft EIS. However, Federal, State and local agencies, potential users of the area, and other individuals or organizations who may be interested in or affected by the decision are welcome and invited to participate in this extended scoping by submitting new or additional comments by August 15, 1989.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register.** It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

The Draft Environmental Impact Statement (DEIS) is expected to be available for public review in November 1989. After a 45 day public comment period the comments received will be analyzed and considered by the Forest Service in preparing the Final Environmental Impact Statement (FEIS). The FEIS is scheduled to be completed about March 1990. In the FEIS, the Forest Service will respond to comments received. The Forest Supervisor, who is the responsible official, will make a decision regarding this proposal, considering the comments and responses, environmental consequences discussed in the FEIS and applicable laws, regulations and policies. The decision and reasons for the decision will be documented in a Record of Decision.

J. Kent Taylor, Forest Supervisor, Fishlake National Forest, is the responsible official.

Date: July 6, 1989.

J. Kent Taylor,
Forest Supervisor.

[FR Doc. 89-16487 Filed 7-13-89; 8:45 am]

BILLING CODE 3410-11-M

Elkhead Creek/Slater Creek Vegetation Management

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement for a proposal to harvest timber, treat aspen, develop recreation opportunities, construct and/or relocate roads, and manage vehicle use in the Elkhead Creek/Slater Creek Area on the Bears Ears Ranger District, Routt National Forest, Routt County, Colorado. The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of analysis must be received by August 15, 1989.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Allan Green, District Ranger, Bears Ears Ranger District, Routt National Forest, 356 Ranney Street, Craig, Colorado 81625.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Allan Green, District Ranger, Bears Ears Ranger District.

SUPPLEMENTARY INFORMATION: The Routt National Forest Land and Resource Management Plan was completed in November 1983. The management direction in the Plan called for further study of how and when to manage vegetation in the Elkhead Creek/Slater Creek Area.

In preparing the environmental impact statement, the Forest Service will identify and consider a range of alternatives. One of these will be using a commercial timber sale. Other alternatives will consider alternative intensities for treating commercial forest land. Alternative methods for treating aspen will be considered.

Allan Green, District Ranger, Bears Ears Ranger District, Routt National Forest, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The District Ranger has prepared a preliminary scoping document and has scheduled a field trip and an open-house on August 1, 1989. The field trip will leave Hayden, Colorado, from the junction of U.S. 40 and Forest Road 150 at 10:00 a.m. The open house will run from 5:00 to 7:00 p.m. at the American Legion Hall, located on South Third Street across from Hayden Town Park. The preliminary scoping document is available upon request at the Bears Ears District Office.

The draft environmental impact statement (EIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by December 1989. At that time EPA will publish a notice of availability of the Draft EIS in the **Federal Register.**

The comment period on the draft environmental impact statement will be 60 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register.** It is very important that those interested in the management of the Elkhead Creek/Slater Creek Area participate at that time. To be the most helpful, comments on the DIES should be as specific as possible and may address the adequacy of the statement

or the merits of the alternatives discussed (see The Council of Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review on the proposal so that it is meaningful and alerts an agency to the reviewers' positions and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final EIS is scheduled to be completed by May 1990. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to review under 36 CFR 217.6.

Date: July 5, 1989.

Allan Green,

District Ranger.

[FR Doc. 89-16486 Filed 7-13-89; 8:45 am]

BILLING CODE 3410-11-M

Stanislaus National Forest, CA; Exemption

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal.

SUMMARY: The Forest Service is exempting from appeals its decision to harvest trees currently being killed by severe drought and bark beetle infestation and its decision to rehabilitiate the affected areas located on, and adjacent to, North Mountain on the Stanislaus National Forest.

There are currently higher than normal levels of three mortality occurring throughout the Stanislaus National Forest as a result of three consecutive, and four of the last five years, of below normal precipitation. This drought condition has caused a high degree of stress within the trees which reduces their natural defense mechanisms and weakens them to the extent that they are now predisposed to attack by bark and engraver beetles. Trees subject to insect attack not only act as hosts for the insects which move on to healthy trees, but deteriorate very rapidly. For these reasons it is necessary to remove the affected timber as quickly as possible.

Due to the lack of roads in the harvest area, removal of the dead and dying timber will be by helicopter. The hauling distance for the 80% of the timber volume located in the North Mountain area will be greater than one mile. This longer than normal hauling distance means higher than normal harvesting costs and any further deterioration of the timber would make the proposed sale economically infeasible. For this reason it is necessary to remove the dead and dying timber as soon as possible after completion of the environmental analysis.

Pursuant to 36 CFR Part 217.4(a)(11), it is my decision to exempt from appeals the decision covering the harvest and restoration of the North Mountain, Cherry, Granite, Meyer, Bear, Rush Creek and Sawmill areas. The Forest Supervisor has determined through analysis that there is good cause to expedite this project in order to protect the remaining trees from insect attack, to rehabilitate the National Forest lands and to recover the dead and dying timber resulting from the ongoing drought and insect attack.

The environmental document under preparation will address the effects of the proposed action on the environment, will document public involvement, and will address the issues raised by the public.

EFFECTIVE DATE: This decision will be effective July 14, 1989.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to George A. Cadzow, Timber Appeals Coordinator, Timber Management Staff, Pacific Southwest Region, Forest Service, USDA, 630 Sansome Street, San Francisco, CA 94111 at (415) 556-2185, or Blaine L. Cornell, Forest Supervisor, Stanislaus National Forest, 19777 Greenley Road, Sonora, CA 95370 at (209) 532-3671.

SUPPLEMENTARY INFORMATION: The catastrophic damage presently occurring on North Mountain and on adjacent areas covers some 13,000 acres of National Forest land on the Stanislaus National Forest in the North Mountain, Cherry, Granite, Meyer, Bear, Rush Creek and Sawmill resource compartment areas. The environmental analysis for this proposal will be documented in the North Mountain Helicopter Salvage environmental document. On June 15, 1989 the Supervisor of the Stanislaus National Forest published a notice in local newspapers of the Forest's intent to prepare an environmental document addressing the proposals to rehabilitate the land and to salvage dead and dying timber. Pursuant to 40 CFR 1501.7, scoping was conducted by the Forest to determine the issues to be addressed in the environmental analysis. Additional scoping will be conducted as necessary prior to completing the environmental analysis on the North Mountain Helicopter Salvage Sale. The Forest is expected to complete the environmental documentation by July 14, 1989. The environmental document and related maps will be available for public review at the Groveland Ranger Station, Star Route 75G, Groveland, CA 95321, and at the Stanislaus National Forest Supervisor's Office, 19777 Greenley Road, Sonora, CA 95370.

Analysis indicates that about 10 million board feet (MMBF) valued at about $500,000 is currently being killed by the combined effects of drought and bark beetle attack. Complete loss of this timber could result in an estimated loss of about $125,000 to Tuolumne, Alpine, Calaveras and Mariposa Counties in National Forest Receipts. Rehabilitation and restoration measures will be necessary for watershed protection, erosion prevention and fuels reduction.

Delays for any reason could jeopardize chances of accomplishing recovery and rehabilitation of the damaged resources during this field season. These delays would result in volume and value losses, and increase the chances of wildfires occurring due to the large additional quantity of standing and down fuels.

Date: June 28, 1989.

Raymond G. Weinmann,

Acting Deputy Regional Forester.

[FR Doc. 89-15665 Filed 7-13-89; 8:45 am]

BILLING CODE 3410-11-M

Loon Mountain Ski Area Expansion; White Mountain National Forest, Grafton County, New Hampshire

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplement to the draft Environmental Impact Statement (DEIS).

SUMMARY: The Forest Service will prepare a Supplement to the DEIS (EPA No. 890025) for Loom Mountain Recreation Corporation's proposed expansion of their special use permit on the Pemigewasset Ranger District, White Mountain National Forest, Grafton County, New Hampshire. This Supplement is in response to comments received on the DEIS which was issued February 10, 1989, (54 FR 6448).

DATE: The Supplement will be available for public comment on or about October 13, 1989. There will be a 45-day Comment period.

ADDRESS: Submit written comments to Michael B. Hathaway, Forest Supervisor, White Mountain National Forest, Laconia, New Hampshire, 03247.

Review of Comments to the DEIS: The public may inspect comments received on this proposed ski area expansion in the Forest Supervisor's Office in Laconia, NH, weekdays between the hours of 8:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Dain Maddox, EIS Coordinator, White Mountain National Forest, P.O. Box 638, Laconia, NH 03247, phone (414) 291-3305

SUPPLEMENTARY INFORMATION: The DEIS was issued February 10, 1989, **Federal Register** Volume 54, page 6448). The Supplement to the DEIS is being prepared in response to agency and public comments concerning the following: The agreement between Loon Mountain Recreation Corporation and the Town of Lincoln regarding water withdrawals from Loon Pond; the status of Lincoln's sewage treatment facilities; "emergency pumping" from the East Branch of the Pemigewasset River into Loon Pond and Loon Pond Reservior; potential impacts from increased traffic; and additional mitigation information.

Our objective in issuing this Supplement is to inform the public about these events and give them an opportunity to make additional comments in response to this information. These comments, together with comments previously submitted in response to the DEIS, will be assessed and considered in the Final Environmental Impact Statement (FEIS).

The DEIS included three alternatives (No Action, Limited Development, and Proposed Action) and 17 possible mitigation measures. Other alternatives and mitigation measures may be considered as a result of this Supplement.

The Supplement will be distributed to the public in early fall of 1989. We will hold public informational meetings during the comment period. Meeting dates and locations will be announced in the local media and the **Federal Register.**

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of Supplement to the DEIS must structure their participation in the environmental review of the proposals so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also environmental objections that could be raised at the DEIS stage of Supplement to the DEIS, but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the Supplement to the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the Supplement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The FEIS is schedule to be completed by March 1990. I will consider the comments, responses, and environmental consequences discussed in the FEIS: and applicable laws, regulations, and policies in making a decision regarding Loom Mountain Corporation's proposal. I will document my decision and reasons for the decision in the Record of Decision. The decision will be subject to appeal under 36 CFR 217.

Date: July 3, 1989.

Michael B. Hathaway,

Forest Supervisor

[FR Doc. 89-16516 Filed 7-13-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

MCTL Implementation Technical Advisory Committee; Partially Closed Meeting

Federal Register citation of previous announcement: 51 FR 26704 July 7, 1989.

Previously announced time of meeting: 10:30 a.m. July 26, 1989. Changes in the meeting: 9:00 a.m., July 26, 1989, the Herbert C. Hoover Building, Room 1617-F, 14th Street and Constitution Avenue, NW., Washington, DC.

Date: July 10, 1989.

Betty A. Ferrell,

Director, Technical Support Staff, Office of Technology & Policy Analysis.

[FR Doc. 89-16480 Filed 7-13-89; 8:45 am]

BILLING CODE 3510-DT-M

National Institute of Standards and Technology

[Docket No. 71012-9155]

National Voluntary Laboratory Accreditation Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: Under the National Voluntary Laboratory Accreditation Program (NVLAP), the National Institute of Standards and Technology (NIST) announces the establishment of an accreditation program for laboratories that perform analyses for asbestos content in samples of airborne particulates collected following asbestos abatement projects. Establishment of the program is pursuant to section 206d of the Asbestos Hazard Emergency Response Act (AHERA) of October 1986. The program provides accreditation for laboratories analyzing airborne asbestos samples by means of transmission electron microscopy (TEM), in accordance with protocols specified by the U.S. Environmental Protection Agency (EPA).

EFFECTIVE DATES: The evaluation of an initial group of applicant laboratories, for airborne asbestos analyses, will commence on or about October 1, 1989. Laboratories wishing to be accredited in the first group must submit an application form and pay all required fees by September 1, 1989. Laboratories whose applications are received after that date will be considered on a when-received basis. The fee is partially refundable if the laboratory's

application is withdrawn before its evaluation begins.

ADDRESSES: Laboratories may obtain applications for accreditation for airborne asbestos analyses by call (301) 975-4016 or writing to: Manager, NVLAP, Building 411/A124, National Institute of Standards and Technology, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: John L. Donaldson, Manager, National Voluntary Laboratory Accreditation Program, National Institute of Standards and Technology, Building 411/A124, Gaithersburg, MD 20899, (301) 975-4016.

SUPPLEMENTARY INFORMATION:

Background

This notice is issued in accordance with the NVLAP Procedures (15 CFR Part 7). Establishment of this program is pursuant to the requirements of Pub. L. 99-519, the Asbestos Hazard Emergency Response Act (AHERA) of October 1986, for: (1) Inspection of schools for asbestos containing materials, (2) air monitoring following asbestos abatements, and (3) accreditation of laboratories that perform analysis of bulk and/or airborne materials for asbestos content.

A **Federal Register** notice (52 FR 39977-39978) October 26, 1987 announced establishment of an accreditation program for laboratories that perform bulk and airborne analysis of asbestos. A **Federal Register** Notice (53 FR 53048-53049) announced a Public Workshop which was held on March 28, 1989 at which the technical criteria and procedures for the airborne asbestos program were presented and reviewed.

Bulk Asbestos Testing

NIST accredits laboratories that meet NVLAP criteria for determining the asbestos content of building materials by polarized light microscopy (PLM).

Airborne Asbestos Testing

NVLAP will accredit laboratories which demonstrate their competence to perform airborne asbestos testing in accordance with protocols specified by EPA. Competence will be determined through quality assurance (proficiency) testing and on-site laboratory assessments performed by technical experts. Laboratories must meet all NVLAP criteria and requirements in order to become accredited.

NIST accreditation will be granted to laboratories that meet NVLAP criteria for measuring asbestos in airborne particulate samples, from post-abatement clearance testing, by transmission electron microscopy (TEM). Quality assurance (proficiency) testing will require demonstrated laboratory competence for detection at or near ambient levels of asbestos. However, levels may be higher in some cases to simulate ambient levels where abatement is incomplete (approximately 0.04 fibers per cubic centimeter).

Technical Requirements for the Accreditation Process

Specific requirements and criteria address quality systems, staff, facilities and equipment, calibrations, test methods and procedures, manuals, records, and test reports. Laboratory competence will be determined through: (1) On-site assessments (systems audit) of the laboratory by peer assessors, (2) evaluation of analysts background, competence, and experience, (3) review of the technical documentation, and (4) quality assurance (proficiency) testing through analysis of representative samples containing asbestiform and non-asbestiform fibers in accordance with designated procedures.

Laboratories which apply for accreditation and pay all necessary fees will be required to meet proficiency testing (quality assurance testing) requirements and on-site assessment requirements before initial accreditation and will be required to meet on-going proficiency testing requirements and periodic reassessments to retain accreditation.

Raymond G. Kammer,
Acting Director.

Date: July 11, 1989.

[FR Doc. 89-16561 Filed 7-13-89; 8:45 am]

BILLING CODE 3510-13-M

COMMITTEE FOR THE PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to Procurement List 1989 a commodity to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: August 14, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On April 17, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (54 FR 15244) of proposed addition to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018)..

No comments were received concerning the proposed addition to the Procurement List. After consideration of the material presented to its concerning capability of qualified workshops to produce the commodity at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity listed.

c. The action will result in authorizing small entities to produce the commodity procured by the Government.

Accordingly, the following commodity is hereby added to Procurement List 1989:

Enamel, Alkyd
8010-00-948-7388

Beverly L. Milkman,
Executive Director.

[FR Doc. 89-16576 Filed 7-13-89; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1989; Proposed Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed deletions from procurement list.

SUMMARY: The Committee has received proposals to delete from Procurement List 1989 a commodity produced and a service provided by workshops for the blind and other severely handicapped.

Comments: Comments must be received on or before August 14, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2). Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions. It is proposed to delete the following commodity and service from Procurement List 1989, which was published November 15, 1988 (53 FR 46018):

Commodity

Food Packet, Survival, Aircraft, Life Raft, Individual
8970-01-028-0406

Service

Assembly, Food Packet Assault Ration (8970-01-225-6504)

Beverly L. Milkman,
Executive Director.

[FR Doc. 89-16577 Filed 7-13-89; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Follow on Forces Attack (FOFA)

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on Follow on Forces Attack (FOFA) will meet in closed session on September 6-7, 1989 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will continue to review, in detail, classified material associated with conventional military capabilities in NATO to include special targeting requirements.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Linda M. Bynum,
Alternate OSD Federal Register Liaison Officer, Departmentof Defense.

July 10, 1989.

[FR Doc. 89-16483 Filed 7-13-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Assistant Secretary of the Army (Civil Works): Request for Nominations to the Inland Waterways Users Board

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: Section 302 of Pub. L. (Pub. L.) 99-662 established the Inland Waterways Users Board. The Board is an independent Federal advisory committee. Its eleven members are appointed by the Secretary of the Army. This notice is to solicit nominations for six appointments or reappointments to two-year terms that will begin January 1, 1990. This notice is also to solicit nominations for one additional appointment for a vacancy on the Board resulting from a member resignation whose remaining term is to expire December 31, 1990. The appointment for this vacancy will be for the remainder of the term.

EFFECTIVE DATE: July 15, 1989.

ADDRESS: Office of the Assistant Secretary of the Army (Civil Works), Department of the Army, Washington, DC 20314-1000. Attention: Inland Waterways Users Board Nominations Committee.

FOR FURTHER INFORMATION CONTACT: Dr. G. Edward Dickey; 202-272-0126.

SUPPLEMENTARY INFORMATION: The selection, service, and appointment of board members are covered by provisions of section 302 of Pub. L. 99-662. The substance of those provisions is as follows: *Selection.* Members are to be selected from the spectrum of commercial carriers and shippers using the inland and intracoastal waterways, to represent geographical regions, and to be representative of waterway commerce as determined by commodity ton-miles statistics. *Service.* The Board is required to meet at least semi-annually to develop and make recommendations to the Secretary of the Army on waterway construction and rehabilitation priorities and spending levels for commercial navigation improvements, and report its recommendations annually to the Secretary and Congress. *Appointment.* The operation of the Board and appointment of its members are subject to the Federal Advisory Committee Act (Pub. L. 92-463 as amended) and Departmental implementing regulations. Members serve without compensation but their expenses due to Board activities are reimbursable.

The considerations specified in section 302 for the selection of the Board members, and certain terms used therein, have been interpreted, supplemented, or otherwise clarified as follows: *Carriers and Shippers.* The law uses the terms "primary users and shippers." Primary users has been interpreted to mean the providers of transportation services on inland waterways such as barge or towboat operators. Shippers has been interpreted to mean the purchasers of such services for the movement of commodities they own or control. Individuals are appointed to the Board, but they must be either a carrier or shipper, or represent a firm that is a carrier or shipper. For that purpose a trade or regional association is neither a shipper or primary user. *Geographical Representation.* The law specifies "various" regions. For the purpose of selecting Board members, the waterways subjected to fuel taxes and described in the Pub. L. 95-502 as amended have been aggregated into six regions. They are (1) the Upper Mississippi River and its tributaries above the mouth of the Ohio; (2) the Lower Mississippi River and its tributaries below the mouth of the Ohio and above Baton Rouge; (3) The Ohio River and its tributaries; (4) The Gulf Intracoastal Waterway in Louisiana and Texas; (5) The Gulf Intracoastal Waterway east of New Orleans and assocaited fuel-taxed waterways including the Tennessee-Tombigbee, plus the Atlantic Intracoastal Waterway below Norfolk; and (6) the Columbia-Snake River System and Upper Willamette. The intent is that each region shall be represented by at least one board member, with that representation determined by the residence and principal place of business of the individual. *Commodity Representation.* Waterway commerce has been aggregated into six commodity categories based on "inland" ton-miles shown in *Waterborne Commerce of the United States.* In rank order they are (1) Farm and Food Products; (2) Coal and Coke; (3) Petroleum Crude and Products; (4) Minerals, Ores, and Primary Metals and Mineral Products; (5) Chemicals and Allied Products; and (6) All other. A consideration in the selection of Board members will be that the commodities carried or shipped by those individuals or their firms will be reasonably representative of the above commodity categories.

Reflecting the preceding selection criteria, the present representation by Board members is as follows:

Members whose terms expire December 31, 1989, include three shipper representatives representing the Ohio River, Upper Mississippi and Lower Mississippi regions, and coal (2), and

grain and coal, respectively; three carrier representatives representing the East Gulf and Ohio River (2) regions, and coal and ores, coal and chemicals, and coal and grain, respectively.

Members whose terms expire December 31, 1990, include three shipper representatives representing the Ohio River and Upper Mississippi regions, coal, and chemicals and petroleum, and grain, respectively; one carrier representative representing the Ohio River, and coal and ores. Additionally, the carrier representative representing the Columbia River region, and grain and other commodities whose term also expires December 31, 1990, has resigned, thus, creating a vacancy on the Board.

Nominations to fill the vacancy representing the Columbia River, or to replace other members whose terms will expire in 1989, may be made by individuals, firms or associations. Nominations should state the region to be represented and whether the nominee is to represent carriers or shippers. Information should be provided on the nominee's personal qualifications and the commercial operations of the carrier and/or shipper that the nominee is associated with. The latter information should show the actual or estimated ton-miles of commodities carried or shipped on inland waterways in a recent year (or years) using the waterway regions and commodity categories previously listed.

Nominations, received in response to the **Federal Register** notice published July 26, 1988, have been retained. Those nominees, including the individuals subsequently appointed to the Board and whose terms expire in 1989, will be given consideration for appointment or reappointment. Renomination is not required but may be desirable.

Deadline for Nominations: All nominations must be received at the address shown above no later than August 15, 1989.

Wilbur T. Gregory, Jr.

Colonel, Corps of Engineers, Executive, Civil Works.

[FR Doc. 89-16566 Filed 7-13-89; 8:45 am]

BILLING CODE 3710-92-M

Board of Visitors, United States Military Academy; Open Meeting

In accordance with section 10(a)(20) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following meeting.

Name of Committee: Board of Visitors, United States Military Academy.

Dates of Meeting: 10-12 August 1989.

Place of Meeting: West Point, New York.

Start Time of Meeting: 9:00 a.m., 10 August 1989.

Proposed Agenda: Briefings on: Summary Honor Reviews; Bicentennial 2002 Master Plan; Leader Development; Project Enrichment; OSHA Review; Women's Issues at West Point; USMA Graduates in Reserve/National Guard; Academy Environmental Issues; CEO's—Academy Graduates; Middle States Accreditation.

All proceedings are open.

For further information contact: Lieutenant Colonel Robert M. Currey, United States Military Academy, West Point, NY 10996-5000, (914) 938-4200.

For the Chairman of the Board of Visitors:

Robert M. Currey

LTC, GS, Executive Secretary, USMA Board of Visitors.

[FR Doc. 89-16567 Filed 7-13-89; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent To prepare a Draft Environmental Impact Statement for the Levisa Fork Basin

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Huntington District currently has underway a study of potential flood damage reduction alternatives for Levisa Fork Basin of the Big Sandy River Drainage as authorized by Section 202 of the Energy and Water Development Appropriation Act of 1981 (Pub. L. 96-367). The possibility of significant environmental impacts to the aquatic and terrestrial ecosystem, as the result of implementation of these potential flood damage reduction alternatives, necessitates the preparation of a Draft Environmental Impact Statement (DEIS). Consequently, the Huntington District Engineer has directed the preparation of a Draft Environmental Impact Statement (DEIS) on the Levisa Fork Basin.

FOR FURTHER INFORMATION CONTRACT: Questions regarding the proposed action and DEIS should be addressed to: Mr. Thomas J. O'Neil, CEORH-PD-R, Phone: (304) 529-5712 Mr. James B. Twohig, CEROH-PD-S, Phone: (304) 529-5644 Planning Division Huntington District Corps of Engineers 502 Eighth Street Huntington, West Virginia 25701-2070.

SUPPLEMENTARY INFORMATION: 1. As of the date of this notice, all flood damage reduction alternatives to be recommended for implementation by the Huntington District are not known.

2. Study efforts when compete will be documented in a General Planning Memorandum (GPM), a supplement to a General Plan as directed and authorized by section 202 of Pub. L. 96-367. The study addresses only those flooding problems along the mainstem Levisa Fork from Louisa, Kentucky, to the downstream city limits of Grundy, Virginia, (approximately 100 stream miles excluding Fishtrap Lake) and along the mainstem Russell Fork from its confluence with Levisa Fork to and including Haysi, Virginia (approximately 31 stream miles). Study alternatives being considered include an assessment of the following: A dam on the mainstem Russell Fork; floodwalls and/or levees at major community centers along the mainstem Levisa and Russell Forks; floodproofing and floodplain evacuation in all study areas not otherwise afforded protection by the previously mentioned structural features.

These study efforts were discussed at great length at numerous public meetings and workshops with concerned basin residents during the period June 1984—September 1986. Meetings were conducted at most Levisa Fork communities where potential floodwall/levee projects were being considered and in the vicinity of the potential Haysi Lake project area. These meetings were being conducted as formulation study efforts progressed to optimize the potential mix of structural and non-structural alternatives in an effort to develop the most cost effective, environmentally and socially acceptable implementable basin plan. Initial alternatives evaluated consisted of eleven floodwall/levee projects along the Levisa and Russell Forks on the mainstem Russell Fork with three levels of flood control performance capabilities, and floodproofing/floodplain evacuation measures for both residential and nonresidential structures in each of the five counties within the study area limits. The tentatively selected plan, designated as the Haysi 6 Plan, consists of the following components:

- Haysi Lake Project with 6 inches of net flood control storage,
- Allen, Kentucky, Floodwall/Levee Local Protection Project (LPP),
- Floodproofing and Floodplain Evacuation Measures.

3. a. A draft GPM containing a summary of investigations with specific recommendations is scheduled for completion by mid to late 1990 with a final report to be completed by late 1990 or early 1991. This schedule is largely dependent upon identifying non-Federal sponsors as cost-sharing partners for the recommended plan components. Public involvement will continue throughout this final phase of the study. Federal, state, and local agencies as well as other affected and concerned organizations will be apprised of any scheduled meetings.

b. Several potentially significant impacts have been identified. Studies have been conducted and are presently underway to assess and qualify the significance of each. Potentially significant impacts include: (1) Impacts on the present aquatic and terrestrial resources; (2) tailwater impacts; (3) changes in life style and traditional value; (4) stream flow management; (5) cultural resource. Any significant impact developed during the study will be analyzed and presented in the DEIS.

c. The DEIS will be developed under the guidance, requirements, and format in 40 CFR 1502.10. Consultation shall be conducted with the U.S. Fish and Wildlife Service and the Environmental Protection Agency during the DEIS process, pursuant to the requirements of the Fish and Wildlife Coordination Act 16 U.S.C. 661 *et seq.* (Pub. L. 85-624), the Endangered Species Act 16 U.S.C. 1531 *et seq.* (Pub. L. 93-205) and the Heritage Conservation and Recreation Service and State Historical Preservation Act of 1966 (80 Stat. 915) (Pub. L. 89-655), and the Preservation of Historic and Archeological Data (88 Stat. 174) (Pub. L. 93-291) and EO 11593. In addition, other interest groups or organizations will be included.

4. A public scoping meeting will be conducted in the proximity of the potential Haysi Lake Project Area in the summer, 1989. No additional public scoping meetings are anticipated during DEIS development.

5. It is anticipated that the DEIS will be made available for public review in Fiscal Year 1990.

Date: July 5, 1989.

Wayne D. Reynolds,

Major, Corps of Engineers, Acting District Engineer.

[FR Doc. 89-16568 Filed 7-13-89; 8:45 am]

BILLING CODE 3710-GN-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2735-012 California]

Pacific Gas and Electric Co.; Availability of Environmental Assessment

July 6, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for amendment of license for the Helms Pumped Storage Project on Helms Creek, within the North Fork Kings River Basin in Fresno County, California. The staff of OHL's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed amendment.

In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed amendment and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16494 Filed 7-13-89; 8:45 am]

BILLING CODE 6717-01-M

Marathon Oil Co., et al., Applications for Certificates and Amendment of Certificates [1]

[Docket No. G-11842-000, et al.]

July 7, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before July 26, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-11542-000, E, C, June 13, 1989	Marathon Oil Co., P.O. Box 3128, Houston, TX 77253.	United Gas Pipe Line Co., Cotton Valley Field, Webster Parish, Louisiana.	Acreage acquired Dec. 1, 1987 from Tenneco Oil Co.
CI78-1133-001, C, June 15, 1989	Union Exploration Partners, Ltd., P.O. Box 7600, Los Angeles, CA 90051.	Texas Eastern Transmission Corp., West Cameron Block 279, Offshore Louisiana.	Application to add depths pursuant to a contract amendment dated Nov. 30, 1988.
CI89-456-000, E, June 13, 1989	Onyx Energy Co., P.O. Box 2880, Dallas, TX 75221.	El Paso Natural Gas Co., Snyder Plant, Scurry County, Texas.	Acreage acquired Oct. 1, 1988 from Amoco Production Co.
CI89-458-000, E, June 16, 1989	Sonat Exploration Co., P.O. Box 1513, Houston, TX 77251-1513.	Arkla Energy Resources, a division of Arkla, Inc., Bethany Field, Panola County, Texas.	Acreage acquired June 16, 1988 from SMK Energy Corp., SMK Resource Co., Michael H. Neufeld and W.L. Sudderth.
CI89-466-000, F, June 21, 1989	Mesa Operating Limited Partnership, P.O. Box 2009, Amarillo, TX 79189.	ANR Pipeline Co., Laverne Field, Beaver County, Oklahoma.	Acreage acquired Feb. 1, 1988 from Oneok Exploration Co.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Assignment of acreage; E—Succession; F—Partial Succession.

[FR Doc. 89-16495 Filed 7-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-18142-004, et al.]

Oryx Energy Co., et al.; Applications for Termination or Amendment of Certificates [1]

July 7, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to terminate or amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before July 26, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-18142-004, D, June 30, 1989	Oryx Energy Co., P.O. Box 2880, Dallas Texas 75221.	Transwestern Pipeline Co., various fields, Texas and Beaver Counties, Oklahoma.	Assigned June 7, 1989 to VVWF Oil Inc.
CI62-1251-013, D, June 19, 1989	Oryx Energy Co	Arkla Energy Resources, a division of Arkla, Inc. Kinta, et al., fields, Haskell, et al., counties, Oklahoma.	Assigned Mar. 29, 1989 to Exxon Corporation.
CI62-1251-014, D, June 19, 1989	do	Arkla Energy Resources, a division of Arkla, Inc. Red Oak, et al., fields, Latiore, et al., counties, Oklahoma.	Do.
CI67-1349-000. D, June 19, 1989	Texaco Inc., P.O. Box 52332, Houston, Texas 77052.	Columbia Gas Transmission Corp., Little Pecan Lake Field, Cameron Parish, Louisiana.	Assigned Nov. 4, 1989 to Energy Properties Inc.
CI79-262-001. D, June 21, 1989	Tenneco Oil Co., General Partner, Tenneco Exploration, Ltd., P.O. Box 2511, Houston, Texas 77001.	Tenneco Oil Co., Eugene Island, Block 348 Area, Offshore Louisiana.	Assigned July 15, 1986 to Plumb Offshore Inc.
CI79-263-002, D, July 21, 1989	Tenneco Oil Co., P.O. Box 2511, Houston, Texas 77001.	Tennessee Gas Pipeline Co., Eugene Island, 348 Area, Offshore Louisiana.	Do.
CI89-454-000, (G-10685), D, June 9, 1989.	Union Pacific Resources Co., P.O. Box 7, Forth Worth, Texas 76101.	Williams Natural Gas Co., Eureka Field, Grant County, Oklahoma.	Assigned Sept. 17, 1984 to Vernon E. Faulconer.
CI89-462-000, (CI75-747), D, June 21, 1989.	Tenneco Oil Co	Tennessee Gas Pipeline Co., Eugene Island, 342 & 343 Area, Offshore Louisiana.	Assigned July 15, 1986 to Plumb Offshore Inc.
CI89-463-000 (CI75-748) D, June 21, 1989.	Tenneco Exploration, Ltd., P.O. Box 2511, Houston, Texas 77001.	Tenneco Oil Co., Eugene Island, 342 & 343 Area, Offshore Louisiana.	Do.
CI89-464-000 (CI64-32) D, June 21, 1989.	Tenneco Oil Co., general partner, Tenneco Exploration, Ltd.	Tennessee Gas Pipeline Co., Eugene Island, 342 & 343 Area, Offshore Louisiana.	Do.
CI89-470-000, (CI68-651) D, June 26, 1989.	Union Pacific Resources Co	El Paso Natural Co., Gomez Field, Pecos County, Texas.	Assigned May 2, 1989 to Swift Energy Company.
CI89-471-000, (CI73-479), D, June 26, 1989.	do	do	Do.
CI89-472-000, (CI73-211), D, June 26, 1989.	do	El Paso Natural Co., Sand Dune South Field, Eddy County, New Mexico.	Do.
CI89-473-000, (CI77-709), D, June 26, 1989.	do	Mississippi River Transmission Corp., Holly Field, DeSoto Parish, Louisiana.	Do.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Assignment of acreage; E—Succession; F—Partial Succession.

[FR Doc. 89-16496 Filed 7-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. FA85-71-002]

Central Illinois Public Service Co.; Notice of Filing

July 7, 1989.

Take notice that on May 24, 1989, Central Illinois Public Service Company (CIPSCO) submitted for filing a refund report pursuant to the Commission Opinion Nos. 309 and 309-A issued August 1, 1988 and April 11, 1989, respectively.

CIPSCO's refund report included tabulations of refunds and applicable interest, billing determinations utilized in the computation of refunds for each full requirements rural electric cooperative, a summary of all refunds, and workpapers underlying the interest calculations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.114). All such motions or protests should be filed on or before July 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16497 Filed 7-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES89-29-000]

Citizens Utilities Co.; Application

July 7, 1989.

Take notice that on June 30, 1989, Citizens Utilities Company (Applicant) filed an application with the Federal Energy Regulatory Commission pursuant to section 204 of the Federal Power Act, relating to the issuance of up to $50,000,000 principal amount of Mortgage Bonds and/or Notes and/or Debentures ("New Debt Securities"), with a minimum maturity of maturities of nine months and a maximum maturity or maturities of 40 years, requesting an order (a) exempting the issuance of New Debt Securities from compliance with competitive bidding requirements and (b) authorizing the issuance and sale of New Debt Securities.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, and 385.114). All such motions or protests should be filed on or before July 20, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16498 Filed 7-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-5-21-000 (PGA89-3)]

Columbia Gas Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

July 7, 1989.

Take notice that Columbia Gas Transmission Corporation (Columbia) on June 30, 1989, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective August 1, 1989:

One hundred and thirty-sixth Revised Sheet No. 16
Twenty-fourth Revised Sheet No. 16A2
Fortieth Revised Sheet No. 64A

Columbia states that the sales rates set forth on One Hundred and thirty-sixth Revised Sheet No. 16 reflect an overall increase of 12.12¢ per Dth in the Commodity rate, and increases of $.291 per Dth in the Demand-1 rate and 2.00¢ per Dth in the Demand-2 rate. In addition, the transportation rates set forth on Twenty-fourth Revised Sheet No. 16A2 reflect an increase in the Fuel Charge component of .33¢ per Dth.

The purpose of the subject tariff sheets is to reflect the following:

(1) A Current Purchased Gas Cost Adjustement Applicable to Sales Rate Schedules;

(2) A continuation of certain surcharges which were accepted by the Commission on April 27, 1989 to be effective during the 12-month period of May 1, 1989 through April 30, 1990; and

(3) A Transportation Fuel Charge Adjustment.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16499 Filed 7-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-23-000]

Eastern Shore Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

July 7, 1989.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on June 30, 1989 certain revised tariff sheets included in the filing. Such sheets are proposed to be effective August 1, 1989.

ESNG states that such tariff sheets are being filed pursuant to § 154.308 of the Commission's regulations and Section 21 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect changes in ESNG's jurisdictional rates. The sales rates set forth thereon reflect a decrease of $0.0009 per dt in the Commodity Charge; an increase of $1.3850 per dt in the Demand Charge 1; and an increase of $0.0220 per dt in the Demand Charge 2, all as measured against ESNG's previously scheduled PGA filing in Docket No. TA89-2-23-000 as filed on March 31, 1989. The current purchased gas cost adjustment has been developed using a quarterly projection of gas supply and purchase requirements and the latest applicable pipeline supplier rates on file with the Commission. ESNG further states that its projected cost of gas on the Transco system assumes continued implementation of the Stipulation and Agreement (S&A) filed by Transco with the Commission on April 3, 1989 in Docket Nos. RP88-68-000; RP87-7-000, et. al. Such S&A significantly alters the traditional Buyer-Seller relationship ESNG has with Transco as more fully described in the filing. Should Commission action alter the S&A as proposed in any way ESNG may find it necessary to amend or re-file its quarterly PGA.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16500 Filed 7-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT88-12-002]

El Paso Natural Gas Co.; Proposed Changes in FERC Gas Tariff Pursuant to Order No. 497

July 7, 1989.

Take notice that on June 30, 1989, El Paso Natural Gas Company, tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1-A:

BEST COPY AVAILABLE

Second Revised Sheet No. 240
First Revised Sheet No. 242
Second Revised Sheet Nos. 248 and 251
First Revised Sheet No. 253
Second Revised Sheet No. 254

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed by July 25, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16501 Filed 7-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-4-34-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

July 7, 1989.

Take notice that on June 30, 1989, Florida Gas Transmission Company (FGT) tendered for filing the following tariff sheets to its FERC Gas Tariff, to be effective August 1, 1989.

FERC Gas Tariff, First Revised Volume No. 1

Sixth Revised 37th Revised Sheet No. 8

FERC Gas Tariff, Original Volume No. 2

Fifth Revised 59th Revised Sheet No. 128

The above-referenced tariff sheets are being filed in accordance with § 154.308 of the Commission's Regulations and pursuant to section 15 (Purchased Gas Adjustment Clause) of FGT's FERC Gas Tariff, First Revised Volume No. 1 to reflect an increase in FGT's jurisdictional rates due to an increase in its average cost of gas purchased from that reflected in its Annual PGA filing, Docket No. TA89-1-34-001 effective May 1, 1989.

FGT states that the effect of the purchased gas cost increase being filed represents an increase of .436 cents/therm for Rate Schedules G and I and .13 cents/Mcf for Rate Schedule T-3 as measured against FGT's Annual PGA filing in Docket No. TA89-1-34-001 effective May 1, 1989.

FGT states that copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 2 and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16502 Filed 7-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-48-000]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

July 7, 1989.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on June 30, 1989, tendered for filing with the Federal Energy Regulatory Commission (Commission) a quarterly PGA filing, which includes Fourteenth Revised Sheet No. 41 to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective August 1, 1989. The revised tariff sheet reflects no change in the average cost of purchased gas resulting in a Weighted Average Cost of Gas of $1.7219.

Kentucky West states that, effective August 1, 1989, pursuant to its obligations under various gas purchase contracts, it has specified a total price of $1.7362 per dth, inclusive of all taxes and any other production-related cost add-ons that it would pay under these contracts.

Kentucky West states that, by its filing, or any request or statement made therein, it does not waive any rights to collect amounts, nor the right to collect carrying charges applicable thereto, to which it is entitled pursuant to the mandate of the United States Court of Appeals for the Fifth Circuit issued on March 6, 1986, in *Kentucky West Virginia Gas Co.* v. *FERC*, 780 F.2d 1231 (5th Cir. 1986), or to which it becomes entitled pursuant to any other judicial and/or administrative decisions.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with § 385.211 and 385.214 of the Commission's Rules of Practice and Procedure and 385.214). All such motions or protests should be filed on or before July 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,

Secretary.

[FR Doc. 89-16503 Filed 7-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT88-4-003]

Mid Louisiana Gas Co.; Proposed Changes in FERC Gas Tariff Pursuant to Order No. 497

July 7, 1989.

Take notice that on June 30, 1989, Mid Louisiana Gas Company, tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, First Revised Volume No. 1:

First Revised Sheet, Nos. 261, 26m and 26t, Superseding Revised Substitute Original Sheet No. 261 and Substitute Original Sheet Nos. 26m and 26t.

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed by July 25, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16504 Filed 7-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT88-37-002]

MIGC, Inc.; Proposed Changes in FERC Gas Tariff Pursuant to Order No. 497

July 7, 1989.

Take notice that on June 30, 1989, MIGC, Inc. tendered the following tariff sheets for filing in the capitioned docket pursuant to Order No. 497 and section 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1:

Third Revised Sheet No. 310, Superseding Substitute Second Revised Sheet No. 310

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed by July 25, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16505 Filed 7-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-570-000, et al.]

Mobile Bay Pipeline Projects; Technical Conference

July 7, 1989.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of technical conference.

SUMMARY: On August 1, 1988, the Federal Energy Regulatory Commission issued a *Notice of Deadline For 1989-1990 Certification of Mobile Bay Construction Applications*, in Docket No. CP88-570-000 (Notice of Deadline). In response to this Notice of Deadline the Commission has on file 14 applications to construct and operate pipeline facilities in the Mobile Bay area. On May 24, 1989, staff convened an informal technical conference, where a number of parties indicated that private settlement negotiations were ongoing. Staff indicated that a future conference would be convened to assess the progress of such negotiations. This notice identifies the date and time for the next Technical Conference.

DATE: The Technical Conference will be held on July 28, 1989, at 10:00 am.

ADDRESS: The Conference will be held at: Federal Energy Regulatory Commission, Hearing Room (to be posted), 825 North Capitol Street, NE., Washington, DC 20426.

Each Mobile Bay Project sponsor is requested to participate and should file, by July 24, 1989, the name of the person who will make the presentation with: The Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: William C. Lansinger, Jr., Pipeline Certificate and Projects Branch, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-5782.

SUPPLEMENTARY INFORMATION: This notice relates to staff's continuing efforts to analyze the pending applications to construct and operate pipeline facilities in the Mobile Bay area. This notice includes topics which the staff would like participants to address, and an agenda for the conference.

Topics for Discussion

a. What is the status of settlement discussions among the parties? Identify the parties to the discussions, the substance of the discussions and when the Commission can expect the parties to file a proposed settlement?

b. What is the most efficient and productive approach, other than data requests, to secure all gas supply information necessary to authorize any of the proposed projects?

c. Have any new contracts, precedent agreements or letters of intent been signed which would provide for attachment of gas supplies to a specific project?

d. Have any new contracts, precedent agreements or letters of intent been signed which would provide for transportation on a specific project?

Conference Details

This conference will be held on July 28, 1989, at 10:00 am at the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426. Participants should provide the Secretary of the Commission with the name of the individual who will speak at the conference by July 24, 1989. Each project sponsor will be allotted 10 minutes for presentations and should address the above topics first, and follow with any additional comments. As shown on the attached draft agenda, there will be an opportunity for further comments as time permits. Written comments may also be submitted.

Lois D. Cashell,

Secretary.

Mobile Bay Projects Technical Conference Agenda, July 28, 1989-10:00 am

A. Staff Presentation.
B. Comments by Project Sponsors.
  1. Response to staff's specific topics.
  2. Other Comments.
C. Comments by Others.
  1. Response to staff's specific topics.
  2. Other Comments.
D. Additional Comment Opportunity.
  1. Other Comments.

[FR Doc. 89-16493 Filed 7-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-49-006]

National Fuel Gas Supply Corp.; Filing of Motion To Place Into Effect Revised Tariff Sheets

July 7, 1989.

Take notice that on June 30, 1989, National Fuel Gas Supply Corporation ("National") submitted for filing, pursuant to Section 4(e) of the Natural Gas Act, as amended, § 154.67 of the Regulations of the Federal Energy Regulatory Commission ("Commission") thereunder, a motion to place the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, into effect as of July 1, 1989, subject to refund:

Substitute Eighteenth Revised Sheet No. 4
Substitute Second Revised Sheet No. 9
Substitute Fourth Revised Sheet No. 28
Substitute First Revised Sheet No. 31-33
Substitute Original Sheet Nos. 33-A through 33-C
Substitute First Revised Sheet Nos. 112-113
Substitute Original Sheet Nos. 114-118

Through the motion, National also seeks to place into effect the following sheets to its FERC Gas Tariff, First Revised Volume No. 2, as of July 1, 1989, subject to refund.

Substitute Second Revised Sheet No. 67
Substitute Fifth Revised Sheet No. 281
Second Substitute Seventh Revised Sheet No. 302
Substitute Original Sheet No. 302-A
Second Substitute Fifth Revised Sheet No. 321

Second Substitute Fifth Revised Sheet No. 341
Second Substitute Fourth Revised Sheet No. 538
Substitute Second Revised Sheet No. 558
Substitute Original Sheet No. 558-A
Substitute First Revised Sheet No. 640
Substitute First Revised Sheet No. 667
Substitute Second Revised Sheet No. 690

National states that copies of National's filing were served on National's jurisdictional customers and on the interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16506 Filed 7-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT88-11-004]

Northwest Pipeline Corp.; Proposed Changes in FERC Gas Tariff Pursuant to Order No. 497

July 7, 1989.

Take notice that on June 29, 1989, Northwest Pipeline Corporation tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and section 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original No. 1-A:

Second Revised Sheet No. 423-A
First Revised Sheet Nos. 428, 433 and 436

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed by July 25, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16508 Filed 7-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-55-001]

Questar Pipeline Co.; Rate Change

July 7, 1989.

Take notice that on June 30, 1989, Questar Pipeline Company tendered for filing and acceptance Substitute Twenty-first Revised Sheet No. 12 to its FERC Gas Tariff, First Revised Volume No. 1, to be effective June 1, 1989.

Questar Pipeline states that the purpose of this filing is to comply with the Commission letter order dated May 31, 1989, in the subject docket.

Questar Pipeline further states that Substitute Twenty-first Revised Sheet No. 12 shows a commodity base cost of purchased gas as adjusted of $2.38401/Dth and the demand base cost of purchased gas as adjusted is $0.00767/Mcf. There is no change in the surcharge adjustment.

Questar Pipeline states that it has provided a copy of the filing to its sales customer and state public service commissions.

Questar Pipeline has pending a request for rehearing in Docket No. RP89-120. Should the Commission grant Questar Pipeline's request, Questar Pipeline has requested that Alternate Substitute Twenty-first Revised Sheet No. 12 be made effective June 1, 1989.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR §§ 385.214, 385.211 (1988)]. All such protests should be filed on or before July 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16506 Filed 7-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-7-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 7, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on July 3, 1989 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Third Revised Sheet Nos. 56-59
Fourth Revised Sheet No. 60
Fourth Revised Sheet No. 61
Fourth Revised Sheet No. 62.
Fourth Revised Sheet No. 63
Second Revised Sheet No. 483A
Second Revised Sheet No. 483B

The purpose of this filing is to track modifications made by Southern Natural Gas Company (Southern) on May 18, 1989 in Docket No. RP89-174-000 to the take-or-pay surcharges previously authorized in Southern's Docket Nos. RP88-96-000 and RP88-210-000. The tariff sheets filed by Southern on May 18, restate the previously authorized fixed and volumetric take-or-pay surcharges in accordance with the provisions of Southern's Stipulation and Agreement in Docket No. RP83-58, *et al.*, approved by the Commission on March 23, 1989. Texas Eastern is required, by Commission orders issued July 15, 1988 in Docket No. RP88-192-000 and August 24, 1988 in Docket No. RP88-223-000, to track changes in the take-or-pay surcharges in Southern's Docket Nos. RP88-96 and RP88-210, respectively, within 15 days of the issuance of an order in either of Southern's dockets. Southern's filing in Docket No. RP89-174-000 restating the take-or-pay surcharges authorized in Southern's Docket Nos. RP88-96 and RP88-210 was accepted by the Commission in an order issued June 16, 1989.

Pursuant to the terms of Southern's Stipulation and Agreement, Southern is entitled to recover from its customers a percentage of up to $790 million in buy-out and buy-down costs incurred through March 31, 1989. Pursuant to the allocation methodology proposed by Southern, Southern will bill and recover from Texas Eastern an aggregate principal amount of $17,479,601 by means of a monthly charge of $368,620, which includes amortization interest for a 60 month period beginning May 1, 1989. This represents a reduction from the total monthly charge of $563,001 currently being recovered by Texas Eastern under the separate Docket Nos. RP88-192 and RP88-223.

The tariff sheets proposed for filing herewith are being revised solely to track the take-or pay charges as a result of Southern's Docket No, RP89-174. Sheet Nos. 60 through 63 set forth the principal amount plus the allocation factor for carrying costs that each customer will be required to pay in order to recover Southern's take-or-pay charges billed to Texas Eastern in Southern's Docket No. RP89-174. Workpapers setting forth Texas Eastern's determination of the allocation factor for the monthly principal amount (which includes a predetermined carrying charge) and a breakdown of the monthly principal amounts (which includes a predetermined carrying charge) each Texas Eastern customer will be required to pay as set forth under Appendix A of the filing.

In tracking Southern's methodology, Texas Eastern has given recognition to purchases by Texas Eastern's Rate Schedule SGS customers under Rate Schedule I in the determination of the base and deficiency periods to the extent these customers did not request Rate Schedule I gas in lieu of Rate Schedule SGS gas, but were given the benefit of the lower I rate. This methodology is consistent with the methodology used and approved by the Commission in Texas Eastern's previous filings.

If at any time Southern is permitted by Commission order to change its take-or-pay procedures and/or the amounts to be recovered pursuant thereto, Texas Eastern will likewise change its take-or-pay procedures and/or the amounts to be recovered pursuant thereto. In addition, Texas Eastern expressly agrees to refund to its customers all refunds received from Southern in the above proceedings.

The proposed effective date of the above tariff sheets is May 1, 1989, coinciding with the effective date of Southern's revised tariff sheets.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16509 Filed 7-13-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3615-6]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed July 3, 1989 through July 7, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890182, Draft, FHW, OK, East 71st Street South Reconstruction, South Lewis Avenue to South Memorial Drive, Funding, City and County of Tulsa, OK, Due: August 28, 1989, Contact: Bruce Lind (405) 231-4624.

EIS No. 890183, Draft, EPA, TX, MXG, Brazos Island Harbor Entrance Channel Ocean Dredged Material Disposal Site Designation, Gulf of Mexico, TX, Due: August 28, 1989, Contact: Norm Thomas (214) 655-2260.

EIS No. 890184, Draft, EPA, TX, MXG, Port Mansfield Entrance Channel Ocean Dredged Material Disposal Site Designation, Gulf of Mexico, TX, Due: August 28, 1989, Contact: Norm Thomas (214) 655-2260.

EIS No. 890185, Draft, EPA, TX, MXG, Matagorda Ship Channel Ocean Dredged Material Disposal Site, Designation, Gulf of Mexico, TX, Due: August 28, 1989, Contact: Norm Thomas (214) 655-2260.

EIS No. 890186, Final, AFS, OR, WA, Pacific Northwest Region Western Spruce Budworm Management Plan, Implementation, WA or OR, Due: August 14, 1989, Contact: Dennis Weber (503) 326-2727.

EIS No. 890187, Final, BLM, ID, Jacks Creek Wilderness Study Areas, Wilderness Designation, Owyhee County, ID, Due: August 14, 1989, Contact: David Brunner (208) 334-1582.

EIS No. 890188, Final, BLM, NV, Caliente Resource Area, Wilderness Study Areas, Designation, Clark and Lincoln Counties, NV, Due: August 14, 1989, Contact: Frank Maxwell, (702) 646-8800.

EIS No. 890189, Draft, DOE, PRO, Clean Coal Technology Program, Continuation, Due: August 28, 1989, Contact: Allyn Hemenway (202) 586-7162.

Amended Notices

EIS No. 890090, DSuppl, DOE, NM, Waste Isolation Pilot Plant Construction, Updated Geological and Hydrological Information, Eddy County, NM, Due: July 11, 1989, Contact: W. John Arthur III (505) 889-3038.
Published FR 4-21-89—Review period extended.

EIS No. 890110, Draft, AFS, CA, Alder Timber Sale Management Plan, Implementation, Middle Deer Creek Management Area, Almanor Ranger District Lassen National Forest, Tehama County, CA, Due: July 31, 1989, Contact: Laurence Crabtree (916) 258-2141.
Published FR 5-5-89—Review period extended.

EIS No. 890111, Draft, AFS, CA, Polk Timber Sale Management Plan, Implementation, Lower Mill Creek, Middle Deer Creek and Lower Deer Creek Management Areas, Almanor Ranger District, Lassen National Forest, Tehama County, CA, Due: July 31, 1989, Contact: Laurence Crabtree (916) 258-2141.
Published FR 5-5-89—Review period extended.

Dated: July 11, 1989.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 89-16560 Filed 7-13-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3615-7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 26, 1989 through June 30, 1989 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 1989 (54 FR 15006).

Draft EISs

ERP No. DS-IBR-J05016-UT, Rating LO, Diamond Fork Power System Project, Original Plan Reduction, Bonneville Unit, Central Utah Project,

Approval and Funding, Utah and Wasatch Counties, UT.

Summary: EPA has no objections to the proposed changes in this document.

ERP No. D-IBR-J05073-CO, Rating EC2, Uncompahgre Valley Reclamation Project, AB Lateral Hydropower Facility Construction and Operation, Leasing, Delta and Montrose Counties, CO.

Summary: EPA has some remaining concerns regarding how project modified flows may affect water quality in upstream segment of the Uncompahgre River. Also, Alternative C, the sponsor preferred plan requiring modification of the Gunnison Tunnel, needs further discussion to substantiate tunnel enlargement.

ERP No. D-UMT-C54006-NJ, Rating LO, Boonton Line/Montclair Branch Rail Lines Corridor Improvements, Funding, Hudson, Morris, Sussex, Essex and Passaic Counties, NJ.

Summary: EPA feels the proposed railway extension in Montclair, New Jersy will not have any significant environmental impacts. Accordingly, EPA does not have any objections to its implementation.

Final EISs

ERP No. F-AFS-K65118-CA, Grider Fire Recovery Project, 1987 August thru October Grider/Lake Fire Resource Management Plan, Klamath National Forest, Siskiyou County, CA.

Summary: EPA expressed its continuing concerns that salvage activities could adversely affect water quality and related beneficial uses such as the protection of anadromous fishery habitat. EPA also recommended that Forest Service consult with the U.S. Fish and Wildlife Service regarding the protection of spotted owl habitat, since steps have begun to officially list the spotted owl as a threatened species.

Dated: July 11, 1989.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 89-16570 Filed 7-13-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3615-4]

Privacy Act of 1974, Systems of Records

AGENCY: Environmental Protection Agency.

ACTION: Privacy Act of 1974, notification of deletion of two systems of records.

SUMMARY: The Environmental Protection Agency is terminating "Professional Expertise Registry" and "Office of the Comptroller Career Development Plans". These two systems of records are no longer in use.

DATE: Effective July 14, 1989.

FOR FURTHER INFORMATION CONTACT: "Professional Expertise Registry" records: Donald J. Sadowsky, Office of Toxic Substances (TS-793), U.S. Environmental Protection Agency, Washington, DC 20460, telephone (202) 382-3536.

"Office of the Comptroller Career Development Plans" records: Arlene Bragg, Office of the Comptroller (PM-225), U.S. Environmental Protection Agency, Washington, DC 20460, telephone (202) 475-9674.

SUPPLEMENTARY INFORMATION: On June 21, 1979, the Agency published in the **Federal Register** (44 FR 36240) a notice of the system of records "Professional Expertise Registry". On July 31, 1986, the Agency published in the **Federal Register** (51 FR 27454) a notice of the system of records "Office of the Comptroller Career Development Plans". This notice deletes these systems of records.

Dated: July 3, 1989.

Charles L. Grizzle,

Assistant Administrator for Administration and Resources Management.

[FR Doc. 89-16541 Filed 7-13-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59871; FRL-3616-2]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 6 such PMN(s) and provides a summary of each.

DATES: Close of Review Periods:

Y 89-140, July 9, 1989.

Y 89-141, July 10, 1989.

Y 89-142, 89-143, 89-144, 89-145, July 17, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room EB-44, 401 M Street SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 89-140

Importer. Confidential.

Chemical. (G) Copolymer of butadiene and methacrtlic monomers.

Use/Import. (G) Binder for printing products. Import range: Confidential.

Y 89-141

Manufacturer. Confidential.

Chemical. (G) Alkyd resin.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

Y 89-142

Manufacturer. Henkel Corporation, Emery Group.

Chemical. (S) Aliphatic dibasic acid polymers with 1,4-butanediolad 2-ethylhexanol.

Y 89-143

Manufacturer. Confidential.

Chemical. (G) Acrylic polyol.

Use/Production. (S) Component of urethane ans melamine coating. Prod. range: 21,500-43,000 kg/yr.

Y 89-144

Importer. Confidential.

Chemical. (G) Modified polypropylene.

Use/Import. (G) Binder used in packing. Import range: Confidential.

Y 89-145

Manufacturer. Confidential.

Chemical. (G) Modified polypropylene.

Use/Production. (G) Used in coatings applied by industrial manufacturers. Prod. range: Confidential.

Date: July 6, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-16543 Filed 7-13-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59272; RRL-3616-3]

Toxic and Hazardous Substances; Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substance Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of 2 application(s) for exemption, provides a summary, and requests comments on the appropriateness of granting this exemption.

DATES: Written comments by:

T 89-17, July 22, 1989.

T 89-18, July 27, 1989.

ADDRESS: Written comments, identified by the document control number "[OPTS-59272]" and the specific TME number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street SW., Room L-100, Washington, DC 20460 (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room EB-44, 401 M Street SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer of the TME received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 89-17

Close of Review Period. August 5, 1989.

Manufacturer. Confidential.

Chemical. (G) Crosslinked starch hydrolized acrylonitrile copolymer.

Use/Import. (G) Oil fracturing fluid thickening agent. Prod. range: 250,000 kg/yr.

T 89-18

Close of Review Period. August 10, 1989.

Manufacturer. Confidential.

Chemical. (G) Rosin, polymer with substituted phenols, formaldehyde, pentaerythritol and metal hydroxide.

Use/Import. (G) Ink resin. Prod. range: Confidential. Prod. range: 250,000 kg/yr.

Date: July 6, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-16542 Filed 7-13-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-615-8]

Sole Source Aquifer Designation for the Vinalhaven Island Aquifer System, Maine

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In response to a petition from the State of Maine, notice is hereby given that the Regional Administrator, Region I, of the U.S. Environmental Protection Agency (EPA) has determined that the Vinalhaven Island Aquifer System satisfies all determination criteria for designation as a sole source aquifer, pursuant to section 1424(e) of the Safe Drinking Water Act. The following findings were made in accordance with the designation criteria: Vinalhaven Island Aquifer System is the principal source of drinking water for the residents of Vinalhaven Island; there are no viable alternative sources of sufficient supply; the boundaries of the designated area and project review area have been reviewed and approved by EPA; and, if contamination were to occur, it would pose a significant public health hazard and a serious financial burden to the State of Maine. As a result of this action, all federal financially assisted projects proposed for construction or modification to take place on Vinalhaven Island will be subject to EPA review to minimize the risk of ground water contamination from these projects.

DATES: This determination shall be promulgated for purposes of judicial review at 1:00 p.m. Eastern time two weeks after the date of publication in the **Federal Register**.

ADDRESSES: The data upon which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region I, JFK Federal Building, Water Management Division, WGP 2113, Boston, MA 02203. The designation petition submitted may also be inspected at the Maine State Planning Office in Augusta, Maine.

FOR FURTHER INFORMATION CONTACT: Robert E. Mendoza, Chief of the Ground Water Management Section, EPA Region I, JFK Federal Building, WGP-2113, Boston, MA 02203, 617-565-3600.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1424(e) of the Safe Drinking Water Act (42 U.S.C.) 300f, 300h-3(e), Pub. L. 93-523) states:

> If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register**. After the publication of any such notice, no commitment for federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

On June 3, 1988, EPA received a petition from the State of Maine requesting the designation of the Vinalhaven Island Aquifer System as a sole source aquifer. EPA determined that the petition fully satisfied the Completeness Determination Checklist. A public meeting was then scheduled and held on March 6, 1989 on Vinalhaven Island, Maine, in accordance with all applicable notification and procedural requirements. A one month comment period followed the meeting.

II. Basis for Determination

Among the factors considered by the Regional Administrator as part of the detailed review and technical verification process for designating an area under section 1424(e) were:

1. The Vinalhaven Aquifer System is a interconnected bedrock aquifer which the population draws for their fresh water needs. It serves as the principal source of drinking water to all residents within the service area.

2. There exists no reasonable alternative drinking water source or combination of sources of sufficient quantity to supply the designated service area.

3. EPA has found that the State of Maine has appropriately delineated the boundaries of the aquifer recharge area, project designation area and project review area.

4. Although the quality of the Island's ground water is considered adequate, it is vulnerable to contamination due to the Island's geological characteristics and possible land use activities. Because of this, contaminants can be rapidly introduced into the aquifer system from many sources with minimal assimilation. Since the aquifer serves as the principal source of drinking water for the residents, a serious contamination incident could pose a significant public health hazard.

III. Description of the Vinalhaven Island Aquifer System Designated Area and Project Review Area

The Vinalhaven Island is a 20 square miles ocean island located in the mid-coastal region of Maine, approximately 10 miles east of Rockport, the nearest mainland town. The aquifer system is comprised of a interconnected bedrock aquifer. The island's bedrock consists predominately of granite, gabbro, diorite and pelite of Devonian age. The Island has relief of 216 feet, with a irregular topographic profile.

The designated area is defined as the surface area above the aquifer system and its recharge area. For the Vinalhaven Island Aquifer System the boundary of the designated area coincides with the boundary of the watershed basin. The watershed boundary is the surface water divide based on topography, which corresponds to the ground water divide. The designated area, project review area and service area are conterminous, encompassing all of the Island.

IV. Information Utilized in Determination

The information utilized in this determination includes: the petition submitted to EPA Region I by the State of Maine and letters of support received. This information is available to the public and may be inspected at the address listed above.

V. Project Review

EPA Region I is working with the federal agencies most likely to provide financial assistance to projects in the project review area. Interagency procedures and Memoranda of Understanding have been developed through which EPA will be notified of proposed commitments by federal agencies to projects which could contaminate the Vinalhaven Island Aquifer System. EPA will evaluate such projects and, where necessary, conduct an in-depth review, including soliciting public comments when appropriate. Should the Regional Administrator determine that a project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health, no commitment for federal financial assistance may be entered into. However, a commitment for federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to ensure that it will not contaminate the aquifer. Included in the review of any federal financially assisted project will be the coordination with state and local agencies and the project's developers. Their comments will be given full consideration and EPA's reviw will attempt to complement and support state and local ground water protection measures. Although the project review process cannot be delegated, EPA will rely to the maximum extent possible on any existing or future state and/or local control measures to protect the quality of ground water in the Vinalhaven Island Aquifer System.

VI. Summary and Discussion of Public Comments

During the public meeting, a request for an extension of the public comment period was made. It was extended an additional two weeks and expired on April 6, 1989. One comment raised the concern that the State of Maine, serving as the petitioner should have contacted the Island's municipal officials earlier in the process. This concern was conveyed to the appropriate state agency. Letters in support of designation were submitted to EPA.

Paul Keough,

Regional Administrator.

Date: May 31, 1989.

[FR Doc. 89-16544 Filed 7-13-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Pulmonary-Allergy Drugs Advisory Committee

Date, time, and place. July 31 and August 1, 1989, 8:30 a.m., Wilson Hall Auditorium, National Institutes of Health, Bldg. 1, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, July 31, 1989, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; open public hearing, August 1, 1989, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; Isaac F. Roubein, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4095.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of pulmonary disease and diseases with allergenic and/or immunologic mechanisms.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 15, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On July 31, 1989, the committee will discuss promethazine. On August 1, 1989, the committee will discuss a status report on surfactant replacement therapy and the guidelines for the evaluation of bronchodilator drugs.

The agency issued a proposal in the **Federal Register** to allow over-the-counter (OTC) marketing of promethazine in cough-cold products. Comments have been received on this proposal concerning the advisability of switching the marketing of such products containing promethazine from a prescription basis to an OTC basis. The agency wishes to discuss this issue in an open public meeting of the advisory committee.

The committee's discussion and conclusions regarding promethazine hydrochloride will be considered by the agency both in: (1) Reviewing the current marketing status and labeling of cough-cold drug products containing promethazine hydrochloride and (2) preparing a final monograph on OTC cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products. Such a monograph is being developed as part of the OTC drug review. The tentative final monograph (proposed rule) for these products was published in the **Federal Register** of August 12, 1988 (53 FR 30522). The agency is not aware of any OTC marketing of any combination product containing promethazine hydrochloride. Manufacturers of prescription promethazine products have voluntarily agreed to withhold OTC marketing at this time.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: July 10, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-16702 Filed 7-12-89; 2:14 pm]

BILLING CODE 4160-01-M

Public Health Service

Health Resources and Services Administration; Native Hawaiian Health Care Act of 1988; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority of June 14, 1989, from the Assistant Secretary for Health to the Administrator, Health Resources and Services Administration, the Administrator has redelegated all of the authorities delegated to him under the Native Hawaiian Health Care Act of 1988, as amended hereafter, to the Director, Bureau of Health Care Delivery and Assistance. Excluded was the authority to issue regulations and to submit reports to the Congress.

Redelegation

These authorities may be redelegated.

Effective Date

This delegation became effective on July 6, 1989.

John H. Kelso,

Acting Administrator

Date: July 6, 1989.

[FR Doc. 89-16515 Filed 7-13-89; 8:45 am]

BILLING CODE 4160-15-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Pub. L. 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on June 30, 1989.

(Call Reports Clearance Officer on (301) 965-4149 for copies of package)

1. Pain Instrument Development Studies—New—The information collected by these forms will be used by the Social Security Administration to develop and refine final information collection forms which will be used

whenever a claimant for disability benefits alleges pain in connection with his or her disability. The affected public will consist of the State Disability Determination Services agencies who review this information, and the individuals who are selected to participate in this study.

Number of Respondents: 1955
Frequency of Response: 1
Average Burden Per Response: 1 hour 13 minutes
Estimated Annual Burden: 2,387 hours

2. Disability Hearing Officer's Report of Disability Hearing —0960-0440—The information collected on the form SSA-1205 is used by the Social Security Administration to provide disability hearing officers with a structured guide for conducting reconsideration evidentiary hearings. The form assists disability hearing officers to review all pertinent issues, avoid repetition, and to prepare a disability decision. The SSA-1205 serves as a record of what occurred at the hearing. The respondents are disability hearings officers in the State Disability Determination Services.

Number of Respondents: 25,315
Frequency of Response: 1
Average Burden Per Response: 30 minutes
Estimated Annual Burden: 12,658 hours

3. Notice Regarding Substitution of Party Upon Death of Claimant-Reconsideration of Disability Cessation—0960-0351—The information collected on the form SSA-770 is used by the Social Security Administration to obtain information from substitute parties regarding their intention to pursue hearings for deceased claimants who had requested reconsideration of disability cessation, but died before the reconsideration determinations were completed.

Number of Respondents: 1,601
Frequency of Response: 1
Average Burden Per Response: 4 minutes
Estimated Annual Burden: 107 hours

4. Agreement, To Sell Property—0960-0127—The information collected on the form SSA-8060 is used by the Social Security Administration to document an agreement that an individual or couple will receive conditional Supplemental Security Income Payments if the individual or couple will dispose of excess nonliquid resources and repay the conditional payments. The respondents are applicants for and recipients of Supplemental Security Income payments.

Number of Respondents: 20,000
Frequency of Response: 1
Average Burden Per Response: 10 minutes
Estimated Annual Burden: 3,333 hours

OMB Desk Officer: Justin Kopca.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: July 10, 1989.

Ron Compston,
Social Security Administration Reports Clearance Officer.

[FR Doc. 89-16527 Filed 7-13-89; 8:45 am]

BILLING CODE 4190-11-M

Supplemental Security Income Program Demonstration Project; Permanent Housing for the Homeless

AGENCY: Social Security Administration, HHS.

ACTION: Notice.

SUMMARY: The Secretary plans to demonstrate through a model program entitled "Permanent Housing for the Homeless" of the Mental Health Law Project (MHLP) the effectiveness of using pooled retroactive Social Security disability insurance (DI) and Supplemental Security Income (SSI) benefits, along with funds from State and local governments and private sources, to provide stable, permanent housing for certain DI and SSI recipients described below. This notice announces that the Secretary of Health and Human Services (the Secretary) will study the effect of using these collective funds to meet the shelter needs of the participants under the authority of section 1110(b) of the Social Security Act (the Act). Under this demonstration project, the Secretary will suspend certain existing SSI income and resources counting rules as they relate to the receipt of shelter and other in-kind items provided to participants in the project. These participants are mentally disabled SSI recipients in the State of New York who were class members in the court case, *Bowen* v. *City of New York*, which is described more specifically below. Existing rules will be suspended only where their application to the receipt of shelter and other in-kind items by participants as the result of their participation in the project will affect the SSI eligibility or payment amount of participants. We are publishing this notice to comply with the notification requirement at 20 CFR Part 416, section 250(e).

EFFECTIVE DATES: This demonstration project is for the period July 14, 1989 to July 14, 1992.

FOR FURTHER INFORMATION CONTACT: Jane Pasco, 3-N-3 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-9829.

SUPPLEMENTARY INFORMATION:

Background

The MHLP is a national, nonprofit, public-interest organization advocating for the mentally disabled. In 1983, a class action law suit was brought against the Secretary by the City of New York and other plaintiffs challenging the denial of disability benefits to a class of individuals residing in New York who had, within a specified time period, been denied disability benefits or whose benefits were terminated. The District Court ordered the Secretary to reopen the decisions denying or terminating benefits and to redetermine eligibility. *City of New York, et al.* v. *Heckler*, 578 F. Supp. 1109 (E.D.N.Y. 1984). The decision of the District Court was eventually affirmed by the United States Supreme Court. *Bowen, et al.* v. *City of New York, et al.* 476 U.S. 467 (1986). As a result, the Secretary is redetermining the eligibility of class members for DI and SSI benefits. Certain class members determined eligible will now receive significant retroactive DI/SSI benefits.

MHLP conducted a statewide outreach effort in New York to locate class members. During the outreach effort, MHLP learned that many class members are homeless or housed in substandard conditions and that their single most important priority is safe, affordable, and permanent housing. Later, in response to this recognized critical need, MHLP developed a model program to generate permanent, supportive housing for these individuals which the Secretary believes will assist in promoting the objectives of the SSI program. The program offers class members a unique opportunity to invest their retroactive Social Security and SSI disability benefits to obtain decent housing.

The program offers three housing assistance options in return for the contribution of the lump-sum retroactive DI/SSI benefits to the Permanent Housing for the Homeless program. One option, rental assistance, permits class members to pay a certain percentage of current DI/SSI benefits for rent each month with the lump-sum contribution used to make up the difference. The second option, upgrading of existing rental housing, permits the MHLP to negotiate a contract with a landlord for necessary renovation using the class member's lump-sum contribution. The third option gives the class member a lifetime right to occupy certain housing in exchange for the lump-sum retroactive benefits along with a specified monthly housing fee.

The MHLP will administer the program. Retroactive DI/SSI benefits paid to class members by the Social Security Administration (SSA) will be voluntarily contributed by class members to MHLP and pooled with funds from State and local governments and private investments to build, renovate, and lease housing throughout New York State. The MHLP expects to finance housing for at least 300 class members. In addition to housing, the MHLP, in conjunction with local mental health and social services agencies, will arrange for provision of health, support, and vocational services.

Supplemental Security Income Program Demonstration Project; Permanent Housing for the Homeless

Section 1110(b) of the Act authorizes the Secretary to develop and conduct experimental, pilot, and demonstration projects to promote the objectives or improve the administration of the SSI program. These projects are intended to explore the advantages of altering certain requirements, conditions, or limitations that apply to SSI applicants and recipients. This section also authorizes the Secretary to waive certain provisions of the Act as is necessary to conduct these experiments and demonstration projects.

The Secretary will study the effectiveness of using pooled retroactive Social Security and SSI disability benefits along with other funds throught the Permanent Housing for the Homeless program demonstration project under the authority of section 1110(b) of the Act. As such, SSA will suspend certain existing SSI income and resources counting rules as they relate to the receipt of shelter and other in-kind income provided by the program to participants. These participants are mentally disabled SSI recipients in the State of New York and who were also class members in *Bowen* v. *City of New York*. While not all of the housing options provides shelter which would normally be counted as income, other types of in-kind income may be received by the participants utilizing these housing options.

The Secretary will suspend certain SSI income and resources counting rules only in cases where failure to so suspend will adversely affect the SSI eligibility or payment amount of the participant. Specifically, retroactive DI/SSI benefits will not be considered resources under section 1611 (a)(1)(B) and 1611 (a)(2)(B) of the Act whill these funds are held by the MHLP for use in providing housing. Any housing subsidy or other in-kind income in the form of support and maintenance provided by the program to the participant using the participant's funds will not be considered income under section 1612(a)(2)(A) of the Act. Also, any interest paid by the MHLP on funds which it also has held will not be considered income under section 1612(a)(2)(F) of the Act.

If an SSI recipient terminates his or her contract with the MHLP and some or all of the retroactive DI/SSI benefits are returned, the benefits will not count as income in the month of receipt under section 1612(a)(2) of the Act, and will be subject to the resources exclusion that applies to retroactive DI/SSI benefits under section 1613(a)(7) of the Act. Specifically, retroactive benefits returned to and received by the participant prior to October 1, 1989, will be excluded from countable resources for 9 months beginning with the month following the month of receipt. Retroactive benefits returned to and received by the participant after September 30, 1989, will be excluded for 6 months beginning with the month following the month of receipt.

The recipient's consent for participating in this demonstration project is needed to satisfy a requirement in section 1110(b) of the Act. Consequently, a recipient's consent providing that the recipient's participation is voluntary and that he or she can revoke participation must be obtained in order for him or her to be eligible under the provisions of this project.

Under this demonstration project, the MHLP will be required to provide periodic status reports to SSA. Projects carried out under section 1110(b) of the Act must be reported in the Secretary's Annual Report to Congress.

The objectives of SSA participating in this demonstration project are to:

- Assist certain mentally disabled SSI recipients in the State of New York who were class members in *Bowen* v. *City of New York* in meeting their shelter needs, thereby fulfilling one of the purposes of the SSI program as it relates to these individuals; and
- Permit class members who are homeless or are living in marginal housing to use their retroactive DI/SSI benefits to obtain permanent housing and supportive services without affecting their SSI eligibility or payment amount, thereby enabling them to function as autonomously and productively as possible; and
- Evaluate this type of arrangement on behalf of SSI applicants/recipients.

Statutory Provisions Waived

The Secretary waives, for the duration of an individual's participation in the MHLP demonstration project that occurs within the time period shown under "Effective Dates" of this notice, certain SSI income and resources counting rules only where participation in the MHLP project otherwise could affect the eligibility or payment amount of an SSI recipient. The specific statutory provisions waived are those described in the section *Supplemental Security Income Program Demonstration Project; Permanent Housing for the Homeless.*

(Catalog of Federal Domestic Assistance Program Nos. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.805 Social Security—Survivor's Insurance; 13.807 Supplemental Security Income)

Dated: July 6, 1989.

Dorcas R. Hardy,
Commissioner of Social Security.

[FR Doc. 89-16528 Filed 7-13-89; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commission

[Docket No. N-89-1917; FR-2606]

Unutilized and Underutilized Federal Buildings and Real Property Determined To Be Suitable for Use for Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: July 14, 1989.

ADDRESS: For further information, contact Morris Bourne, Department of Housing and Urban Development, Room 9140, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-9075; TDD number for the hearing- and speech-impaired (202) 426-0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized and underutilized Federal buildings and real property determined by HUD to be suitable for use for facilities to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable this week.

Date: July 6, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 89-16600 Filed 7-13-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-09-4332-01-2410; FES 89-17]

Availability of Final Environmental Impact Statement; Caliente Final Wilderness Studies

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of the Caliente Final Wilderness Environmental Impact Statement.

SUMMARY: The Caliente Final Wilderness Environmental Impact Statement assesses the environmental consequences of managing five wilderness study areas as wilderness or non-wilderness. The alternatives assessed include: (1) An "All Wilderness Alternative" for each wilderness study area; (2) a "No Wilderness Alternative" for each wilderness study area; (3) a "Partial Wilderness Alternative" for each wilderness study area; and (4) a "Partial Wilderness/Wilderness Accent Alternative" for each wilderness study area.

The names of the wilderness study areas, their total acreage and the acreage recommended suitable and nonsuitable under the Proposed Action are as follows:

South Pahroc Range—28,600 acres; 28,395 suitable; 205 nonsuitable.

Clover Mountains—84,935 acres; 84,165 suitable; 770 nonsuitable.

Meadow Valley Range—165,744 acres; 97,180 suitable, 68,564 nonsuitable.

Mormon Mountains—162,887 acres; 123,130 suitable; 39,757 nonsuitable.

Delamar Mountains—126,257 acres; 126,257 nonsuitable.

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior and the President to Congress. The final decision on wilderness designation rests with Congress.

In any case, no final decision on these proposals can be made by the Secretary during the 30 days following the filing of this EIS. This complies with the Council on Environmental Quality Regulations, 40 CFR 1506.10b(2).

SUPPLEMENTARY INFORMATION: Copies of the environmental impact statement may be obtained from the District Manager, Bureau of Land Management, Las Vegas District Office, 4765 W. Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126, or Telephone (702) 646-8800.

Copies are also available for inspection at the following locations:

Bureau of Land Management, Office of Public Affairs, Interior Building, 18th and C Streets, NW., Washington, DC 20240.

Bureau of Land Management, Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520.

Bureau of Land Management, Caliente Resource Area Office, P.O. Box 237, Caliente, Nevada 89008.

FOR FURTHER INFORMATION CONTACT:

Bob Taylor, District Wilderness Coordinator, Bureau of Land Management, Las Vegas District Office, 4765 W. Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126, (702) 646-8800.

or

Dave Wolf, Nevada BLM Wilderness Coordinator, Bureau of Land Management, Nevada State Office, 850 Harvard Way, P.O. Box 1200, Reno, Nevada 85520, (702) 328-6281.

John Farrell,

Acting Director, Office of Environmental Project Review.

Date: July 7, 1989.

[FR Doc. 89-16306 Filed 7-13-89; 8:45 am]

BILLING CODE 4310-HC-M

[ID-010-09-4332-01-2410; FES 89-16]

Availability of Final Environmental Impact Statement; Jacks Creek Final Wilderness Studies

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of the Jacks Creek Wilderness Final Environmental Impact Statement.

SUMMARY: The Jacks Creek Wilderness Final Environmental Impact Statement assesses the environmental consequences of managing seven wilderness study areas as wilderness or non-wilderness. The alternatives assessed include: (1) An "All Wilderness Alternative" for each wilderness study area; (2) a "No Wilderness Alternative" for each wilderness study area; (3) a "Partial Wilderness Alternative" for three wilderness study areas; (4) an "All Manageable Wilderness Alternative" for four wilderness study areas; (5) a "Minimum Resource Conflict Alternative" for two wilderness study areas; (6) and a "Rim to Rim Wilderness Alternative" for two wilderness study areas.

The names of the wilderness study areas, their total acreage and the acreage recommended suitable and nonsuitable under the Proposed Action are as follows:

Little Jacks Creek—58,040 acres; 34,000 suitable, (including 1,030 non-WSA acres); 25,070 non suitable.

Duncan Creek—10,005 acres; 9,400 suitable (including 640 acres state land); 1,245 nonsuitable.

Big Jacks Creek—54,833 acres; 44,525 suitable; 10,308 nonsuitable.

Pole Creek—24,509 acres; 24,509 nonsuitable.

Sheep Creek West—11,680 acres; 11,680 suitable.

Sheep Creek East—5,050 acres; 5,050 nonsuitable.

Upper Deep Creek—11,510 acres; 11,510 nonsuitable.

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior and the President to Congress. The final decision on wilderness designation rests with Congress.

In any case, no final decision on these proposals can be made by the Secretary during the 30 days following the filing of this EIS. This complies with the Council on Environmental Quality Regulations. 40 CFR 1506.10b(2).

SUPPLEMENTARY INFORMATION: Copies of the environmental impact statement may be obtained from the District Manager, Bureau of Land Management, Boise District Office, 3948 Development Avenue, Boise, Idaho 83705.

Copies are also available for inspection at the following locations:

Bureau of Land Management, Office of Public Affairs, Interior Building, 18th and C Streets, NW., Washington, DC 20240.

Bureau of Land Management, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706.

FOR FURTHER INFORMATION CONTACT:

George Nelson, Wilderness Program Leader, Bureau of Land Management, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, (208) 334-1616.

John Farrell,

Acting Director, Office of Environmental Project Review.

Date: July 7, 1989.

[FR Doc. 89-16305 Filed 7-13-89; 8:45 am]

BILLING CODE 4310-GG-M

[NM-010-4111-02]

Albuquerque District, New Mexico; District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Albuquerque District Advisory Council meeting.

SUMMARY: The BLM Albuquerque District Advisory Council will meet August 9-10, 1989 in the Farmington Resource Area Office located at 1235 La Plata Highway in Farmington, New Mexico. The meeting will begin at 10:00 a.m. on Wednesday, the 9th with a short field trip to the Lee Acres landfill beginning at about 3:30 p.m.

Topics on Wednesday's agenda will include the role of the Council, the San Antonio Mountain prescribed fire, the Val Verde pipeline, the BLM existing roads policy, the Ovilla Verde Recreation Area, and updates on other current issues.

On Thursday, August 10th, the Council will meet at the BLM office in Farmington at 8:00 a.m. and proceed on a tour of the coal/methane gas development area, returning to the office by 2:00 p.m.

The public is invited to attend all or part of the meeting, but transportation on the field trips will not be provided.

Persons wishing to address the Council should contact Alan Hoffmeister, Public Affairs Specialist, 435 Montano NE, Albuquerque, NM 87107, (505) 761-4513.

Robert T. Dale,

District Manager.

[FR Doc. 89-16488 Filed 7-13-89; 8:45 am]

BILLING CODE 4310-FB-M

[ID-060-09-4410-11]

Coeur d'Alene District; District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: District Advisory Council meeting.

SUMMARY: Notice is hereby given, in accordance with Pub. L. 92-463, that a meeting of the Coeur d'Alene District Advisory Council will be held on Monday and Tuesday, August 28 and 29, 1989. The meeting will begin at 8:30 a.m. on August 28, 1989 and will be held at the BLM Coeur d'Alene District Office, 1808 North Third Street, Coeur d'Alene, Idaho.

The agenda items are: election of officers, briefing and field trip concerning the Lower Coeur d'Alene River mine waste study, and an update on the Land Tenure Adjustment Management Framework Plan Amendment.

The meeting is open to the public. Interested persons may make oral statements to the Council between 11:30 and noon on August 29, 1989, or file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, Coeur d'Alene District Office, 1808 North Third Street, Coeur d'Alene, Idaho 83814 by August 24, 1989.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction during regular business hours (7:45 a.m. to 4:30 p.m.) within 30 days after the meeting.

Date: July 6, 1989.

John B. O'Brien III,

Acting District Manager.

[FR Doc. 89-16489 Filed 7-13-89; 8:45 am]

BILLING CODE 4310-GG-M

Nevada; Las Vegas District Advisory Council

ACTION: Las Vegas District Advisory Council meeting.

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Bureau of Land Management Las Vegas District Advisory Council will be held August 3, 1989.

The meeting will be held in the Conference Room of the Bureau of Land Management Law Vegas District Office, 4765 West Vegas Drive, Las Vegas, Nevada, and will begin at 9:00 a.m.

The meeting agenda will include the following:

1. Introduction of Council Members to the Las Vegas District Management Team.
2. Update of the Desert Tortoise Plan: Review of the Rangewide Plan, Categorization of Tortoise Areas, Role of the District Advisory Council/Tortoise Coordination Committee.
3. Discussion of Current Issues: Apex Withdrawal Legislation, L.A. Department of Water and Power Land Exchange Proposal, North Las Vegas Land Sale Proposal.
4. Public Comment.

The meeting of the Las Vegas District Advisory Council is open to the public.

Persons wishing to make oral statements to the Council should contact the District Manager, Bureau of Land Management, Las Vegas District Office, P.O. Box 26569, Las Vegas, Nevada 89126 by July 28, 1989. The District Manager may establish a per-person time limit for oral statements to the Council.

Summary minutes of the meeting will be maintained in the Bureau of Land Management Las Vegas District Office.

Date: June 29, 1989.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 89-16517 Filed 7-13-89; 8:45 am]

BILLING CODE 4310-HC-M

[OR-050-4410-10; GP9-279]

Prineville District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that a meeting of the Prineville District Advisory Council will be held on August 15, 1989. The meeting will begin at 10:00 AM in the conference room of the Bureau of Land Management Office located at 185 East Fourth Street, Prineville, Oregon 97754. The agenda will include the following items: (1) Discussion of the Record of Decision for the Brothers/LaPine Resource Management Plan; (2) progress on the development of the Deschutes and John Day River Management Plans; and (3) implementation of the Omnibus Wild and Scenic River legislation within the Prineville District.

The meeting is open to the public. Anyone wishing to attend and/or make written or oral comments to the Board is requested to contact the District Manager at the above address prior to August 8, 1989.

Summary minutes of the meeting will be available for review and reproduction within 30 days following the meeting.

Dated: July 6, 1989

James L. Hancock,

District Manager.

[FR Doc. 89-16490 Filed 7-13-89; 8:45 am]

BILLING CODE 4310-33-M

[OR-060-09-6310-12: GP9-264]

Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with Section 309 of the Federal Land Policy and Management Act of 1976 that a field trip meeting of the Salem District Advisory Council will commence at 8 a.m., Friday, August 18, at the Bureau of Land Management Salem District Office at 1717 Fabry Road SE., Salem, Oregon.

The tour of the Nestucca River of the Salem District's Yamhill and Tillamook Resource Areas will cover Areas of Critical Environmental Concern (ACECs), wild and scenic river eligibility studies, Oregon Scenic Waterways, the Nestucca and Elk Creek fisheries enhancement programs, law enforcement, Coastal Oregon Productivity Enhancement (COPE) studies, and timber management activities.

The tour is open to the public. Interested persons must provide their own transportation. Individuals may make oral statements to the Council or file written statements for the Council's consideration. Anyone desiring to make an oral statement must notify the District Manager, Bureau of Land Management, 1717 Fabry Road SE., Salem, Oregon 97306, by the end of the business day on Tuesday, August 15, 1989. A time limit may be established by the District Manager.

FOR FURTHER INFORMATION CONTACT: Van W. Manning, BLM Salem District Office, 1717 Fabry Road SE., Salem, Oregon 97306 (Telephone 503/399-5646).

Van W. Manning,

District Manager.

[FR Doc. 89-16491 Filed 7-13-89; 8:45 am]

BILLING CODE 4310-33-M

[NV020-4320-02]

Winnemucca District Advisory Council Meeting

SUMMARY: Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Winnemucca District Advisory Council will be held on Thursday, August 17, 1989. The meeting will be from 10:00 a.m. to 3:00 p.m. in the conference room of the Bureau of Land Management Office at 705 3. 4th Street, Winnemucca, Nevada 89445.

The agenda for the meeting will include:

1. Organization of the Council and Election of officers.

2. Update of district programs and major issues.

The meeting is open to the public. Interested persons may make oral statements to the council at 2:00 p.m. or file written statements for the councils consideration. Anyone wishing to make an oral statement must notify the District Manager by August 15, 1989. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the Council meeting will be maintained in the District Office and will be available for public inspection (during regular business hours) within 30 days following the meeting.

Ron Wenker,

District Manager.

Dated: July 5, 1989.

[FR Doc. 89-16529 Filed 7-13-89; 8:45 am]

BILLING CODE 4310-HC-M

[CA-940-09-5410-10-ZBAN; CACA 25072]

Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregation.

SUMMARY: The private lands described in this notice, aggregating 160.00 acres, are segregated and made unavailable for filings under the public land laws, including the mining laws, to determine their suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Managment Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

FOR FURTHER INFORMATION CONTACT: Judy Bowers, California State Office, Federal Office Building, 2800 Cottage Way, Room-2841, Sacramento, California 95825, (916) 978-4920.

Serial No.-CACA 25072

T. 4 N., R. 15W., San Bernardino Meridian
Sec. 9, SE¼SE¼;
Sec. 10, NW¼SW¼;
Sec. 16, N½NE¼.

County—Los Angeles.

Minerals Reservation—All minerals.

Upon publication of this Notice of Segregation in the **Federal Register** as provided in 43 CFR 2720.1-1(b), the mineral interest owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segragative effect of the application shall terminate by publication of an opening order in the **Federal Register** specifing the date and time of opening; upon issuance of a patent or other document to such mineral interests; or two years from the date of publication of this notice, whichever occurs first.

Dated: July 3, 1989.

Nancy J. Alex,

Chief, Lands Section Branch of Adjudication and Records.

[FR Doc. 89-16518 Filed 7-13-89; 8:45 am]

BILLING CODE 4310-40-M

[CO-932-09-4212-24; C-38487, C-44263, C-46589, C-46594]

Conveyance of Lands; Reconveyance of Lands; Opening of Reconveyed Lands; Eagle, Garfield, Grand and Jackson Counties, Colorado

July 6, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of land exchange conveyance documents and opening.

SUMMARY: This action informs the public and interested State and local officials of the conveyance of 1,344.05 acres of public lands out of Federal ownership, the reconveyance of 1,347.05 acres of land into Federal ownership, and the opening of the 1,347.05 acres of reconveyed lands to operation of the appropriate public land laws. These exchanges enabled private parties to obtain title to lands that were needed by them for use with contiguous lands they owned, and enabled the United States to obtain title to lands containing high multiple resource values. These actions were based on equal values of the properties exchanged, or payment of cash equalization where there were differences in the estimated fair market value between the government and non-government lands. The public interest was well served by completion of these exchanges.

FOR FURTHER INFORMATION CONTACT: Andrew J. Senti, Bureau of Land Management, Colorado State Office 303 236-1752.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the completion of exchanges of land between the United States and private parties.

1. The Bureau of Land Management issued exchange conveyance documents to the parties listed below for the following described land under Section 206 of the Act of October 21, 1976 (43 U.S.C. 1716):

Sixth Principal Meridian, Colorado

To: Joan L. Savage
T. 7 S., R. 94 W.,
Sec. 17, lot 4, SW¼NW¼, and W½SW¼;
T. 7 S., R. 95 W.,
Sec. 25, lots 13 and 14;
Sec. 35, S½S½;
Sec. 36, lots 3, 4, 13, 14, 15, and 16.
627.46 acres
To: Michael D. Hoffman
T. 5 S., R. 85 W.,
Sec. 2, lots 7 and 8;
Sec. 11, lot 1.
57.48 acres
To: Douglas K. Powers
T. 1 S., R. 78 W.,
Sec. 17, lots 1, 2, 4, 6, 8, 11, 12, 13, 14, 16, 17, 18, 20, 21, NE¼NE¼, N½SE¼NE¼, SE¼SE¼NE¼, and N½SW¼SE¼NE¼.
147.69 acres.
To: Harvey T. Stitt, Herman Walsky, and David W. Farrand
T. 8 N., R. 80 W.,
Sec. 6, lot 3;
Sec. 7, lots 2, 3, and NE¼NW¼.
T. 9 N., R. 80 W.,
Sec. 28, SW¼SW¼;
Sec. 31, S½SE¼;
Sec. 32, W½W½NE¼, SW¼NW¼, and SW¼SW¼.
T. 8 N., R. 81 W.,
Sec. 2, SE¼SE¼;
Sec. 12, SE¼NE¼ and NE¼SE¼.
511.42 acres.

2. In exchange for these private lands, the United States obtained title to the following described lands from the parties listed below:

Sixth Principal Meridian, Colorado

a. From: Joan L. Savage
T. 7 S., R. 94 W.,
Sec. 1, S½SW¼ and S½SW¼SE¼;
Sec. 11, lots 3, 4, S½NW¼, and SW¼;
Sec. 12, lots 3, 4, and S½NW¼;
Sec. 15, SW¼SW¼.
610.22 acres.
b. From: Michael D. Hoffman
T. 4 S., R. 85 W., portions of Tracts 42 and 43 North of Interstate Highway 70.
T. 5 S., R. 85 W., portions of Tracts 45A, 47, 50 and 52 North of Interstate Highway 70.
69.04 acres.
c. From: Douglas K. Powers
T. 7 S., R. 87 W.
Sec. 32, metes and bounds parcel within lots 9 and 17;
Sec. 33, metes and bounds parcel within lots 7 and 8.
22.98 acres.
d. From: Harvey T. Stitt, Herman Walsky and David W. Farrand
T. 8 N., R. 80 W.,
Sec. 2, All, except a 13.91 acre parcel for State Highway 14.
624.81 acres.

3. At 10:00 a.m. on August 18, 1989, all the land described in paragraph 2, will be opened to operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10:00 a.m. on August 18, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing. No mineral rights were conveyed to the United States with the lands described in 2b and 2d.

4. At 10:00 a.m. on August 18, 1989, the lands in paragraph 2a and 2c will be open to applications and offers under the mineral leasing laws.

5. At 10:00 a.m. on August 18, 1989, the land described in paragraph 2a and 2c will be opened to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. section 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for determination in local courts.

Robert S. Schmidt,

Chief, Branch of Realty Programs.

[FR Doc. 89-16492 Filed 7-13-89; 8:45 am]

BILLING CODE 4310-JB-M

[ID-050-09-4212-14; IDI-20397]

Competitive Sale of Public Lands in Blaine County, Idaho

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action.

SUMMARY: The land has been examined, and through the development of land use decisions based upon public input, it has been determined that the sale of this parcel is consistent with section 203(a) of the Federal Land Policy and Management Act of 1976. The lands will be offered at no less than the appraised fair market value.

Parcel	Legal description	Acreage	Fair market value
I-20397	T. 1 N., R. 22 E., B.M. Sec. 27: SW4SW4	40	$1,600

When patented, the land will be subject to the following reservations:

A right-of-way for ditches and canals constructed by the United States under the authority of the Act of August 30, 1890, (20 Stat. 291); 43 U.S.C. 945). Oil and gas, and geothermal reserved to the United States.

The lands are hereby segregated from appropriation under the public land laws, including the mining laws, as provided by 43 CFR 2711.1-2(d).

DATE: The sale offering will be on Friday, September 15, 1989 at 10:00 a.m. If no qualified bids are received at this offering, the parcel will be made available each Friday, excepting holidays, until December 31, 1989, at which time the sale will be cancelled.

ADDRESS: Sale will be held at the Bureau of Land Management, Shoshone District Office, 400 West F Street, Shoshone, Idaho 83352.

Sale Procedures: Only sealed bids will be accepted. The bid must be sealed in an envelope with the date and the serial number of the parcel being bid upon in the lower left-hand corner on the front of the envelope.

Bid must be received in this office no later than 10:00 a.m. on September 15, 1989. If two or more valid bids are equal and are the high bid, a supplemental oral bid in a minimum of $50.00 increments will be held to determine the successful bidder. Any participants who submitted a valid bid in the sealed bidding may participate in the oral bidding. A valid bid will constittue an application to purchase that portion of the mineral estate of no known value. A thirty percent (30%) deposit of the bid price (nor appraised price) must accompany each bid as well as a separate and additional $50.00 to process the mineral purchase application. Fees must be paid by certified check, money order, bank draft or cashier's cashier's check only.

Federal law requires that bidders be a U.S. citizen 18 years of age or older, or, in the case of a corporation, subject to the laws of any State of the U.S. Proof of citizenship shall accompany the bid. The remainder of the full price bid shall be paid within 180 days of the date of the sale. Failure to pay the full price within the 180 days shall disqualify the

apparent high bidder and cause the bid deposit to be forfeited to the BLM.

SUPPLEMENTAL INFORMATION: Contact the Monument Resource Area Manager or Realty Specialist at the District Office, or phone at (208) 886-2206.

For a period of 45 days from the date of this Notice, interested parties may submit comments to the District Manager regarding the proposed action.

Comments will be evaluated and the proposed action may be vacated, modified or affirmed. In the absence of any objections, this realty action will become the final decision of the Department.

Date: July 7, 1989.

K Lynn Bennett,

Shoshone District Manager.

[FR Doc. 89-16519 Filed 7-13-89; 8:45 am]

BILLING CODE 4310-GG-M

[UT-060-4410-08]

Resource Management Plan; San Juan Resource Area, UT

AGENCY: Bureau of Land Management, Moab, Interior.

ACTION: Notice of availability of proposed resource management plan.

SUMMARY: The proposed resource management plan (RMP) for the San Juan Resource Area, Moab District, Utah is available for distribution to the public, Federal, state and local agencies, and Indian tribes. The RMP will guide management of the public lands and resources in the San Juan Resource Area, Bureau of Land Management (BLM).

The proposed RMP would provide comprehensive management for public lands and resources on 1.8 million acres of public land in San Juan County, Utah. It would designate ten Areas of Critical Environmental Concern (ACECs). The special management designations are summarized in the accompanying table.

A 30-day protest period on the proposed RMP will commence with publication of Notice of Availability in the **Federal Register**. The RMP will be implemented after publication of a separate Record of Decision and Final RMP.

FOR FURTHER INFORMATION CONTACT: Ed Scherick, San Juan Resource Area Manager, BLM, Box 7, Monticello, Utah 84535; (801) 587-2141.

SUPPLEMENTAL INFORMATION: The proposed resource management plan (PRMP) was first issued in September 1987 as the proposed RMP and final environmental impact statement (EIS). Because of the complexity of issues and the agency's concern for adequate public involvement an additional comment period was allowed on the 1987 document. Some changes were made to the PRMP as a result of the additional comment period. These changes were made to improve clarity of the document and BLM management intentions of lands. None of the changes would result in a change to the impact analysis in the EIS or require new analysis.

This action is announced pursuant to section 202(a) of the Federal Land Policy and Management Act of 1976, and 43 CFR Part 1610. The proposed RMP is subject to protest from any adversely affected party who participated in the planning process. Protests must be made in accordance with the provisions of 43 CFR 1610.5-2. Protests must be received by the Director of the BLM, 18th and C Streets, NW., Washington, DC 20240, within 30 days after the date of publication of Notice of Availability for the proposed Resources Management Plan.

James M. Parker,

State Director.

SAN JUAN PROPOSED RMP ACECs

Name of ACEC	Public land acres	Critical value protected	Summary of special conditions on surface use
Akali Ridge	35,890	Cultural resources	Cultural properties protected from surface use; ORV use limited to existing routes.
Bridger Jack Mesa	5,290	Relict plant communities	No surface occupancy; no grazing; closed to ORV use.
Butler Wash	13,870	Scenic values	No surface occupancy, exception may apply; mineral entry with approved plan; closed to ORVC use.
Cedar Mesa	323,760		
Grand Gulch Special Emphasis Area	49,130		
Valley of the Gods Special Emphasis Area	36,800		
Primitive Recreation Opportunity Areas	21,120	Cultural resources, scenic and natural values	Cultural properties protected from surface use; ORV use limited to designaged routes. Grand Gulch: closed to leasing; segregated from mineral entry; closed to ORV use. Valley of the Gods: no surface occupancy, exception may apply; mineral entry with approved plan; ORV use limited to designated routes. Primitive Recreation: no surface occupancy; segregated from mineral entry; closed to ORV use.
Dark Canyon	62,040	Scenic and natural values	Closed to leasing; segregated from mineral entry; no grazing except Fable Valley; closed to ORV use.
Hovenweep	1,500		
Cajon Pond Special Emphasis Area	10		
Visual Emphasis Zone	880	Cultural resources, waterfowl habitat	Cultural properties protected from surface use; ORV use limited to designated routes. In special emphasis areas: no surface occupancy; grazing use limited and seasonal conditions on surface use (Cajon Pond)
Indian Creek	13,100	Scenic values	No surface occupancy; exception may apply; mineral entry with approved plan; closed to ORV use.
Lavender Mesa	640	Relict plant communities	No surface occupancy; no grazing; closed to ORV use.
Scenic Highway Corridor	78,390	Scenic values	No surface occupancy; exception may apply; mineral entry with approved plan; ORV use limited to existing routes.
Shay Canyon	1,770		

SAN JUAN PROPOSED RMP ACECs—Continued

Name of ACEC	Public land acres	Critical value protected	Summary of special conditions on surface use
Upper Indian Creek Special Emphasis Area	200	Cultural resources, riparian habitat	Cultural properties protected from surface use; ORV use limited to designated routes. In special emphasis area: managed to enhance riparian/aquatic and fishery habitats.

[FR Doc. 89-16513 Filed 7-13-89; 8:45 am]

BILLING CODE 4310-DQ-M

Fish & Wildlife Service

Intent To Prepare a Programmatic Environmental Impact Statement on the Administration and Management of the Pittman-Robertson Federal Aid in Wildlife Restoration Program and the Dingell-Johnson Federal Aid in Sport Fish Restoration Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary for the preparation of an Environmental Impact Statement for the Federal Aid in Wildlife Restoration Program and the Federal Aid in Sport Fish Restoration Program as amended by the Deficit Reduction Act of 1984. The area involved includes all 50 States, 5 Territories and the District of Columbia. Public meetings will be held in the vicinity of Service headquarters in Washington, DC and, if appropriate or requested, in the 7 Service Regional Offices. Further notice will be provided in the **Federal Register** and by separate notification on the location and time of public meetings. This notice is being furnished as required by the National Environmental Policy Act regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comment and participation in this scoping process are solicited.

DATES: Written comments should be received no later than September 12, 1989.

In addition to the Washington, DC area, public meetings may be held in the proximity of one or more of the following Service Regional Offices:

Denver, Colorado, Anchorage, Alaska, Atlanta, Georgia, Minneapolis, Minnesota, Portland, Oregon, Albuquerque, New Mexico, Boston, Massachusetts.

ADDRESS: Comments should be addressed to: Director, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Phillip Agee, Wildlife Biologist, U.S. Fish and Wildlife Service, Division of Federal Aid, Mail Stop 322 ARLSQ, 18th & C Streets, NW., Washington, DC 20240, Telephone: 703/358-2156.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service proposes to prepare an Environmental Impact Statement which will update and supersede the document entitled "Environmental Statement—Operation of the Federal Aid in Sport Fish and Wildlife Restoration Program" which was published in 1978. The analysis of environmental impacts will consider actions to be carried out by the 50 States, Guam, Puerto Rico, the Virgin Islands, the Northern Mariana Islands, American Samoa and the District of Columbia, with funding assistance by the Pittman-Robertson Federal Aid in Wildlife Restoration Act (Pub. L. 75-415 (50 Stat. 917)) or the Dingell-Johnson Federal Aid in Sport Fish Restoration Act (Pub. L. 81-681 (64 Stat. 430) as amended (16 U.S.C. 777-777k)). The existing regulations for implementing these Acts are found in 50 CFR Part 80.

Federal funds utilized in this program are derived from excise taxes and fees which are levied on products employed in hunting, fishing, shooting and boating. The resulting revenue is allocated annually among the States in conformance with statutory formulae based on geographic areas and numbers of licensed hunters and fishermen and among the Territories and insular possessions listed above based on prescribed percentage shares.

A State may propose specific activities within prescribed categories (land acquisition, development, research, surveys and inventories, hunter education, boating facilities, etc.). If the Service, acting on behalf of the Secretary, finds the proposal to be substantial in character and design, the State may proceed with accomplishing the activity, using non-Federal funds. The State may then claim reimbursement of up to 75 percent of these outlays—territories and insular possessions may claim up to 100 percent—from the grant allocation.

The States use of funds from these two assistance programs during fiscal years 1985, 1986 and 1987 are summarized as follows:

Activity	Funds ($1000) and percent of total expended			
	Pittman-Robertson	Percent	Dingell-Johnson	Percent
Hunter education	$23,242	9		
Land acquisition	15,891	6	3,483	2
Development	30,185	11	31,065	20
Surveys and inventories	45,940	17	50,899	36
Research	26,230	11	82,139	24
Technical guidance	9,773	4	6,725	5
Operation and maintenance	87,240	33	10,508	5
Planning	3,221	1	2,544	2
Administration	22,698	8	9,524	6

It is not possible to specify with certainty the actions that will characterize this program in years ahead since the States are the primary determinants in the selection of these actions. For this Environmental Impact Statement, anticipated activities will be based on the expectations of a panel of State officials and on records from recent years but with modifications to accommodate any known trends and legislative redirections.

The environmental impacts produced by these programs are believed to be primarily beneficial. Such impacts include the maintenance of lands in a more or less natural state, the restoration and maintenance of fish and wildlife species and providing for a sustained program of public recreation and education. However, the execution of these programs may result in other impacts, such as altering certain habitats and animal populations, flooding or burning certain vegetation areas and affecting changes in local economic activity by altering the status or availability of fish and wildlife.

Many of the fish and wildlife species given management attention under this program are subjected to harvest by hunters, fishermen and trappers. Such harvests, if properly conceived and carried out, are considered legitimate and biologically defensible parts of fish and wildlife management. However, this activity is a State responsibility performed upon action by the State's policy-making body. Hence, hunting and fishing are not program activities and will not be addressed in this Environmental Impact Statement.

Since their inception in 1937 and 1950, the Wildlife Restoration and Sport Fish Restoration Acts, respectively, have been primary forces in the recovery of numerous wildlife and fish species. During early years, managers focused almost exclusively on species of interest to hunters and fishermen. While this was consistent with the sources of funds and the demands of the public initially, this focus has broadened somewhat.

The States currently direct all of their Dingell-Johnson funds (as required by the Dingell-Johnson Act) and roughly 80 percent of their Pittman-Robertson funds to harvested species. There may be a need for even greater attention to: (1) The management of non-harvested species, (2) the education of the public regarding natural systems, and (3) the facilitation of a broad-spectrum program of related public recreation with greater attention to the needs of urban and suburban areas. This Environmental Impact Statement will consider alternatives formulated to evaluate the environmental consequences of pursuing such emphases. Under the present laws, changes deemed necessary would probably be accomplished through a more stringent interpretation of "substantiality in character and design" or by revision of the Secretary's Rules and Regulations. The following draft alternatives will be examined for possible refinement or revision during the scoping process.

Alternative #1 Federal requirements would mandate that at least 50 percent of each year's Pittman-Robertson funds expended by the State would be on waterfowl habitat or in pursuit of the North American Waterfowl Management Plan and at least 50 percent of each year's Dingell-Johnson funds expended by the State would be on the protection, maintenance and improvement of aquatic habitats, including water quality.

Alternative #2 At least 50 percent of each year's Pittman-Robertson funds would be expended on restoring and enhancing terrestrial ecosystems without reference to hunted/non-hunted status. At least 50 percent of each year's Dingell-Johnson funds would be expended on restoring and enhancing aquatic ecosystems without reference to sport fisheries.

Alternative #3 All projects funded would be required to be free of practices considered offensive to significant portions of the public (e.g., marsh burning, the use of fish toxicants, the use of herbicides or insecticides, research resulting in death or stress on animals, etc.).

Alternative #4 By 1995, all States would be required to have in place a comprehensive plan or other systematic process for setting work priorities consistent with human needs and the status of the resource base. Thereafter, all requirements and prohibitions on activities would be repealed and the Federal role would be limited to allocating funds and, monitoring compliance with Federal statutes.

Through the scoping process, the Service will seek public input on the following:

1. New or revised alternatives to be considered.
2. Impacts to be evaluated for each of the alternatives considered.
3. Comments (favorable or unfavorable) on the Pittman-Robertson or Dingell-Johnson program in its present configuration.
4. Comments on the adequacy or inadequacy of present funding levels.
5. If funding levels are inadequate, proposals for source(s) of additional funds.

The public is encouraged to participate in this process by providing their views on the administration and management of this program and by providing options or alternatives to be considered and evaluated in the programmatic Environmental Impact Statement.

The environmental review of this program will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4331, *et seq.*), National Environmental Policy Act regulations (40 CFR Parts 1500–1508), other appropriate Federal laws and regulations, and Service procedures for compliance with those regulations.

We estimate the Draft Environmental Impact Statement will be made available to the public by October 31, 1990.

Date: July 5, 1989.

Richard N. Smith,

Acting Director.

[FR Doc. 89–16479 Filed 7–13–89; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31491]

Burlington Northern Railroad Co.—Trackage Rights Exemption—the Atchison, Topeka and Santa Fe Railway Co.

The Atchison, Topeka and Santa Fe Railway Company has agreed to grant overhead trackage rights to Burlington Northern Railroad Company between milepost 552.33, at Amarillo (East Tower), and milepost 676.51, at Lubbock, a distance of 124.2 miles, in Potter, Randall, Swisher, Plainview, and Lubbock Counties, TX. The trackage rights became effective on June 27, 1989.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Steven A. Brigance, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights— BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: July 7, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–16441 Filed 7–13–89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–1 (Sub-No. 208X)]

Chicago and North Western Transportation Co.—Abandonment Exemption—Dallas, Boone and Greene Counties, IA

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 9.0-mile line of railroad between milepost 275.5 near Perry, IA, and milepost 286.5 near Rippey, IA, in Dallas, Boone, and Greene Counties, IA

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on August 13, 1989, (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by July 24, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by August 3, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Robert T. Opal, Chicago and North Western Transportation Company, One North Western Center, Chicago, IL 60606.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by July 19, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Acting Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 7, 1989.

By the Commission, Jane F. MacKall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–16442 Filed 7–13–89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31489]

Consolidated Rail Corp.—Trackage Rights Exemption—CSX Transportation, Inc.

CSX Transportation, Inc., has agreed to grant overhead trackage rights to Consolidated Rail Corporation: (a) Between milepost 176.5 at or near Terre Haute, IN, and milepost 181.98 at or near Spring Hill, IN, and "head and tail room" on the main track to enter and exit through the crossover at milepost 182.02, a distance of approximately 5.48 miles; and (b) between the point of connection with the main line at milepost 181.98, and the point of connection with the Chinook Coal Mine track at Riley, IN, a distance of approximately 6.77 miles. The total distance of the trackage rights is approximately 12.25 miles. The trackage rights were to become effective on or after June 26, 1989.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Comments must be filed with the Commission and served on: John J. Paylor, Consolidated Rail Corporation, 1138 Six Penn Center Plaza, Philadelphia, PA 19103–2959, and C.M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: July 6, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–16440 Filed 7–13–89; 8:45 am]

BILLING CODE 7035-01-M

[Docket Nos. AB–1; Sub-No. 226X and AB-284; Sub-No. 2X]

Chicago and North Western Transportation Co.—Abandonment Exemption—in Blackhawk County, IA and Iowa Northern Railway Co.—Abandonment and Discontinuance of Trackage Rights Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the Federal Register on December 22, 1987 (52 FR 48440–48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

10903, *et seq.*, the abandonment by Chicago and North Western Transportation Company (C&NW) of a 1-mile line of railroad, the discontinuance by Iowa Northern Railway Company (INRC) of trackage rights operations over an 0.8-mile segment of the CNW line, and the abandonment by INRC of a 0.9-mile line of railroad all located in Waterloo, Blackhawk County, IA, subject to standard labor protective conditions.

DATES: This exemption will be effective on July 19, 1989.

ADDRESSES: Send pleadings referring to Docket Nos. AB-1 No. 226X) and AB-284 (Sub-No. 2X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioners' representatives:
Myles L. Tobin, One North Western Center, Chicago, IL 60606.
T. Scott Bannister, 1300 Des Moines Building, 6th and Locust, Des Moines, IA 50309.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. (TDD for hearing impaired (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call or pick up in person from: Dynamic Concepts, Inc, Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289-4537/4539. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

Decided: July 7, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Commissioner Andre was absent and did not participate in the disposition of this proceeding.

Noreta R. McGee,

Secretary.

[FR Doc. 89-16562 Filed 7-13-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/ MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Bureau of Labor Statistics
Manual for Developing Local Area Unemployment Statistics,
1220-0017, BLS 3040, LAUS-2, LAUS-3
Monthly and Annually
State Governments
67,680 responses; 137,249 hours; 3 forms

Local Area Unemployment Statistics are used as indicators of local economic conditions, as a mechanism to qualify areas for various economic assistance, and as an allocator for existing job training and economic assistance program funding.

Extension

Employment Standards Administration
Employment Information Forms
1215-0001; WH-3
On occasion
Individuals or households
34,000 respondents; 11,333 total hours; 20 min. per response; 2 forms.

Forms WH-2 and WH-3(SP) are used to obtain information (i.e. complaints) from individuals about alleged violations of the various laws enforced by the Wage-Hour Division. It is also used as a screening device to determine whether the Division has jurisdiction in hankling alleged violations.

Extension

Employment and Training Administration
Job Corps Placement and Assistance Record
1205-0035; ETA 678
On occasion
State or local governments; Businesses or other for-profit;
Non-profit institutions
60,000 respondents; 43,800 total hours; 44 minutes; 1 form

This information is used in evaluating overall program effectiveness. It provides placement agencies with basic information regarding terminated corpsmembers and provides the Department of Labor with information on the status of corpsmembers subsequent to termination from the program.

Signed at Washington, DC, this 10th day of July, 1989.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 89-16522 Filed 7-13-89; 8:45 am]

BILLING CODE 4510-24-M

Commission on Workforce Quality and Labor Market Efficiency; Meeting

The Commission on Workforce Quality and Labor Market Efficiency was established under the provisions of the Federal Advisory Committee Act to increase the excellence of the American workforce.

A meeting of the Commission on Workforce Quality and Labor Market Efficiency will be held on August 1, 1989, commencing at 1:00 p.m., at the National Alliance of Business, 1201 New York Avenue, NW., 7th Floor, Washington, DC. This meeting is open to the public; ample seating is available.

The purpose of the meeting is to review the final report. For additional information, contact: Laurie J. Bassi, Deputy Director, Commission on Workforce Quality and Labor Market Efficiency, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C-2313, Washington, DC 20210, telephone (202) 523-6836.

Individuals or organizations wishing to submit written statements to the Commission should send 40 copies to the address given above. Papers will be accepted and included in the record of the meeting if received on or before July 26, 1989.

On September 1, 1989, and thereafter, official records of the meeting will be available for public inspection at: U.S. Department of Labor, 200 Constitution Avenue, NW., Room C-2313, Washington, DC.

Signed at Washington, DC, this 11th day of July 1989.

Elizabeth Dole,

Secretary of Labor.

[FR Doc. 89-16523 Filed 7-13-89; 8:45 am]

BILLING CODE 4510-23-M

Employment and Training Administration

Pool Well Servicing Co; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In the matter of TA-W-21,302, Keene, North Dakota, TA-W-21,302A, All other locations in North Dakota, TA-W-21,302B, All locations in Colorado, TA-W-21,302C, All locations in Wyoming, TA-W-21,302D, All locations in Utah.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 9, 1988 applicable to all workers of Pool Well Servicing Company, Keene, North Dakota.

Based on new information from the company, additional workers were separated from Pool Well Servicing Company in other locations of North Dakota and in the States of Colorado, Wyoming and Utah. The notice for Pool Well Servicing Company, therefore, is amended by including all locations inthe above mentioned States.

The amended notice applicable to TA-W-21,302 is issued as follows:

All workers of Pool Well Servicing Company, Keene, North Dakota and in all other locations of North Dakota and in all locations in the States of Colorado, Wyoming, and Utah who became totally or partially separated from employment on or after October 1, 1985 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 27th day of June 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-16524 Filed 7-13-89; 8:45 am]

BILLING CODE 4510-30-M

Viking Drilling Fluids; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of TA-W-21,495, Littleton, Colorado, TA-W-21,495A, All other locations in Colorado, TA-W-21,495B, All locations in North Dakota, TA-W-21,495C, All locations in Wyoming, TA-W-21,495D, All locations in Nebraska, TA-W-21,495E, All locations in Washington.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 20, 1988 applicable to all workers of Viking Drilling Fluids, Littleton, Colorado.

Based on new information from the company, additional workers were separated from Viking Drilling Fluids in other locations of Colorado and in the States of North Dakota, Wyoming, Nebraska and Washington. The notice for Viking Drilling Fluids, therefore, is amended by including all locations in the above mentioned States.

The amended notice applicable to TA-W-21,495 is issued as follows:

All workers of Viking Drilling Fluids, Littleton, Colorado, and in all other locations of Colorado and in all locations in the States of North Dakota, Wyoming, Nebraska and Washington who became totally or partially separated from employment on or after January 1, 1988 and before January 31, 1988 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 27th day of June 1989.

Stephen A. Wander,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-16525 Filed 7-13-89; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-89-7-M]

Domtar Industries, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Domtar Industries, Inc., P.O. Box 10, Lydia, Louisiana 70569 has filed a petition to modify the application of 30 CFR 57.22304(b) (approved equipment) (II-A mines) to its Cote Blanche Mine (I.D. No. 16-00358) located in St. Mary Parish, Louisiana. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that while cutting or drilling is in progress, equipment not approved by MSHA should remain at least 100 feet from the face or bench being mined.

2. The steepness of the incline tunnel presents a set of hazards that do not exist in normal operations. If the mining equipment used in this project, weighing up to 10 tons, were to malfunction and "run away" down the slope, serious damage or injury could result. Therefore, the most positive, practical and readily available safeguard would be to position some device behind the drill to stop it, if the power failed and the brakes were overcome.

3. As an alternate method, petitioner proposes to locate a Cat 988 front end loader close enough to the drill to stop it quickly (closer than 100 feet) and substantial enough to handle a 10 ton mass moving downhill.

4. In support of this request, petitioner proposes to:

(a) Select an area for the incline known, by experience, to be "gas-free";

(b) Move the non-permissible Cat into position, crossways in the drift. This presents the rubber tires to the drill;

(c) Turn off the machine, disconnecting the battery and preventing any spark potential;

(d) Allow the Cat to sit for 30 minutes, bringing the engine and exhaust to a point where they are no more than warm to the touch; and

(e) Start the drill.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson

BEST COPY AVAILABLE

Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 14, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director Office of Standards, Regulations and Variances.

Date: June 29, 1989.

[FR Doc. 89-16526 Filed 7-13-89; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL COMMISSION TO PREVENT INFANT MORTALITY

Meeting

AGENCY: National Commission to Prevent Infant Mortality.

ACTION: Notice of meeting.

SUMMARY: In accordance with Pub. L. 99-660, notice is hereby given of a meeting of the National Commission to Prevent Infant Mortality. The purpose of the meeting is to discuss the workplan of the Commission. A press conference will be held immediately following the Commission meeting at 11:00 AM for the release of a Commission publication entitled "HOME VISITING: OPENING DOORS FOR AMERICA'S PREGNANT WOMEN AND CHILDREN".

DATE: July 18, 1989.

TIME: 8:30 a.m.-11:00 a.m.

ADDRESS: The Russell Senate Office Bldg., Rm. 385, 1st Street & Constitution Ave., NE., Washington, DC 20510.

FOR FURTHER INFORMATION CONTACT: Betty Plamer at 202-472-1364.

Rae K. Grad,

Executive Director.

[FR Doc. 89-16575 Filed 7-13-89; 8:45 am]

BILLING CODE 6820-SK-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities; Meeting

July 5, 1989.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, DC on August 10-11, 1989.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out her functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions on August 10-11, 1989, will not be open to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated January 15, 1978.

The agenda for the sessions on August 10, 1989, will be as follows:

Committee Meetings

8:30-9:30 a.m.	Coffee for Council Members—Room 527 (Open to the Public)
9:30-10:30 a.m.	Committee Meetings—Policy Discussion Education Programs—Room M-14 Fellowship Programs—Room 316-2 General Programs—Room 415 Research Programs/Preservation Grants—Room 315 State Programs/Challenge Grants—Room M-07
10:30 a.m. until Adjourned	Consideration of specific applications (Closed to the Public for the reasons stated above)

The morning session on August 11, 1989 will convene at 9:00 a.m., in the 1st Floor Council Room, M-09, and will be open to the public. The agenda for the morning session will be as follows:

(Coffee for Staff and Council members attending the meeting will be served from 8:30-9:00 a.m.)

Minutes of the Previous Meeting

Reports

A. Introductory Remarks
B. Introduction of New Staff
C. Contracts Awarded in the Previous Quarter
D. Application Report, Matching Report and Status of Fiscal Year 1989 Funds
E. Status of Fiscal Year 1990 Appropriation Request
F. Reauthorization
G. Committee Reports on Policy and General Matters
   1. Education Programs
   2. Fellowship Programs
   3. General Programs
   4. Preservation Grants
   5. State Programs
   6. Challenge Grants
   7. Jefferson Lecture
   8. Research Programs

The remainder of the proposed meeting will be given to the consideration of future budget requests and specific applications (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, Washington, DC 20506, or call area code (202) 786-0322.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 89-16514 Filed 7-13-89; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing in San Bernardino, California; Railroad Accident

In connection with the investigation of the derailment of Southern Pacific Transportation Co. Freight Train, May 12, 1989, and subsequent Calnev Petroleum Pipeline Rupture, May 25, 1989, at San Bernardino, California, the National Transportation Safety Board will convene a public hearing at 9:00 a.m. (local time), on Monday, August 28, 1989, in the San Bernardino Hilton Hotel, 285 East Hospitality Lane, San Bernardino, California 92408. For more information contact Ted Lopatkiewicz, Office of Government and Public Affairs, National Transportation Safety Board, 800 Independence Avenue, SW., Washington, DC 20594, telephone (202) 382-6605.

Bea Hardesty,

Federal Register Liaison Officer.

July 10, 1989.

[FR Doc. 89-16510 Filed 7-13-89; 8:45 am]

BILLING CODE 1533-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-443-OL and 50-444-OL; Offsite Emergency Planning]

Public Service Company of New Hampshire, et al. [Seabrook Station, Units 1 and 2); Reconstitution of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has reconstituted the Atomic Safety and Licensing Appeal Board for that portion of the offsite emergency planning phase of this operating license proceeding concerned with the New Hampshire Radiological Emergency Response Plan. As reconstituted, this Appeal Board will consist of the following members: G. Paul Bollwerk III, Chairman; Alan S. Rosenthal; Howard A. Wilber.

Dated: July 10, 1989.

Barbara A. Tompkins,

Secretary to the Appeal Board.

[FR Doc. 89-16470 Filed 7-13-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 270-322]

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, DC 20549.

Revision

Rule 144A

Notice is hereby given that pursaunt to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted for OMB approval revised Rule 144A which would provide a safe harbor exemption from the registration requirements of the Securities Act of 1933 for resale of securities of specified qualified institutional investors. The proposed Rule is not a form but would cause reductions in the number of Forms S-1, S-2, S-3, S-4, S-11, S-18, F-1, F-2, F-3, F-4, 10-K, 10-Q, 8-K, 20-F and 6-K filed with the Commission.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Commisson's rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549-6004, and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235-0065), Room 3208, New Executive Office Building, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

July 10, 1989.

[FR Doc. 89-16551 Filed 7-13-89; 8:45 am]

BILLING CODE 8010-01-M

[File No. 270-112]

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, DC 20549.

Revision

Form 144

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted for OMB approval revised amendments to Rule 144 (17 CFR 230.144), which would alter the manner in which the holding period for restricted securities is calculated. The revised amendments should reduce the number of filings on Form 144, which is a notification of resale of securities without registration in reliance on Rule 144. With respect to Form 144, approximately 34,816 respondents are effected at an estimated annual burden of two hours per response. The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of the Commission's rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Commission's rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-6004 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235-0101), Room 3208, New Executive Office Building, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

July 10, 1989.

[FR Doc. 89-16549 Filed 7-13-89; 8:45 am]

BILLING CODE 8010-01-M

[New, Form F-7, File No. 270-331 et. al.]

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth Fogash (202) 272-2142.

Upon written request copy available from: Securities and Exchange

Commission, Public Reference Branch, Washington, DC 20549–1002.

In the matter of New, Form F–7, File No. 270–331, New, Form F–8, File No. 270–332, New, Form F–9, File No. 270–333, New, Form F–10, File No. 270–334, New, Form 40–F, File No. 270–335, New, Form F–X, File No. 270–336, New, Form T–5, File No. 270–337, New, Sch. 14D–1F, File No. 270–338, New, Sch. 14D–9F, File No. 270–339, New, Sch. 13E–4F, File No. 270–340.

Notice is hereby given pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), that the Securities and Exchange Commission ("Commission") has submitted for OMB approval new forms and schedules under the Securities Act of 1933 (1933 Act), the Securities Exchange Act of 1934 (1934 Act), and the Trust Indenture Act of 1939, to be adopted as part of the Commission's multijurisdictional disclosure system. The proposed forms and schedules are as follows:

Paperwork project No.	
3235–040G	Form F–7, registration of securities offered upon the exercise of rights granted to existing security holders of the registrant, (1933 Act),
3235–040H	Form F–8, registration of securities to be issued in an exchange offer, (1933 Act),
3235–040I	Form F–9, registration of investment grade non-convertible debt or preferred securities, (1933 Act),
3235–040J	Form F–10, general registration of securities, (1933 Act),
3235–040K	Form F–X, appointment of agent for service of process, (1933 Act),
3235–040L	Form 40–F, registration and reporting form, (1934 Act)
3235–040M	Schedules 14D–1F, third party tender offer form, (1934 Act)
3235–040N	14D–9F, tender offer target response form, (1934 Act)
3235–040P	13E–4F, issuer tender offer form, (1934 Act), and
3235–040Q	Form T–5, application form for exemption filed pursuant to Rule 4d–1 under the Trust Indenture Act of 1939.

The staff estimates that up to 100 Canadian companies may avail themselves of the new forms and schedules per year at an estimated average burden of two hours per response per form or schedule. The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–6004 and Gary Waxman, Clearance Officer, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

July 10, 1989.

[FR Doc. 89–16550 Filed 7–13–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27010; File No. SR–BSE–89–3]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Boston Stock Exchange, Inc. Relating to Amendments to the Fee Schedules for Floor Related Charges

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 23, 1989, the Boston Stock Exchange, Incorporated ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

The BSE, pursuant to Rule 19b–4 of the Act, has submitted this proposed rule change, effective July 1, 1989, to amend certain fixed and variable fee schedules in order to address a disparity that exists between fixed revenues and fixed expenses by reducing transaction fees for floor members, unbundling the monthly floor post fee into its component parts and passing through Quotron expenses to the member firms. The Exchange proposes to amend the aforementioned floor related charges as indicated in the chart below.

BOSTON STOCK EXCHANGE FLOOR FEES

	Fee Rate	
	Current	Proposed
Variable transaction fees:		
1—Round and odd lot trades:		
Round lot rate	$1.25	
Odd lot rate	.25	
Round & Odd lots		$.75
2—Its fees, rate per outbound share	$.005	$.003
Fixed fees:		
1—Post fees:		
Post fee	$500	
Occupancy (per post)		$400
Technology fee (per BEACON terminal)		
Specialist		200
Floor Broker		50
Members' Dues		133
2—Quotron expense 100% pass-through of all Quotron related costs		

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the BSE included statements concerning the purpose of and statutory basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the place specified in Item IV below. The Exchange has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The BSE has proposed to amend certain fixed and variable fees to reduce fees for floor members and to encourage members to direct additional order flow to the BSE.

(b) The basis for the proposed change is Section 6(b)(4) of the Act because the proposal facilitates the equitable allocation of reasonable fees among floor Exchange members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were solicited from the Fee Committee and the Executive Committee of the Board of Governors. No comments were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because of the foregoing rule change establishes or changes fees imposed by the Exchange it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to the File No. SR–BSE–89–3 and should be submitted by August 4, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: July 10, 1989.

[FR Doc. 89–16553 Filed 7–13–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27009; File No. SR–PHLX–89–38]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Clocking of Transaction Tickets

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 26, 1989, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act,[1] hereby proposes to adopt an equity floor procedure advice with respect to the clocking of transaction tickets. The text of the advice is proposed as follows:

[1] 17 CFR 240.19b–4 (1988).

E–5 Clocked Tickets

Floor Brokers are responsible for recording the time of receipt on the front of the ticket for each order received on the floor and the time of execution on the reverse side of the ticket for each order they are representing in the crowd at the time of execution.

Specialists are responsible for recording the time of execution on the reverse side of the ticket for each order executed off their book.

Fine Schedule (Violations compound daily only when they occur within one year of each other.)

1st Occurrence, $50.00
2nd Occurrence, $100.00
3rd Occurrence, $200.00
4th and Thereafter Occurrence—Sanction is Discretionary with Business Conduct Committee.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the rule change is to set out automatic sanctions for violation by floor brokers and specialists of their existing obligation to time stamp order memoranda and transaction tickets. This proposed rule change was approved by the Exchange's Floor Procedure Committee at its May 25, 1989 meeting and recommended for approval and authority to file as a rule change to the Board of Governors at their regular meeting on June 21, 1989. This is part of an on-going effort started earlier this year to develop a minor disciplinary infraction program to expedite the handling of routine, minor infractions on the Phlx equity floor similar to that of the Floor Procedure Advices in place with respect to the options and foreign currency options floors at the Phlx.

The proposed rule change is based on section 6(b)(5) of the Act in that it is designed to further promote the

mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to file number SR-Phlx-89-38 and should be submitted by August 4, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: July 10, 1989.

[FR Doc. 89-16554 Filed 7-13-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27006; File Nos. SR-GSCC-89-04; SR-GSCC-89-05; SR-GSCC-89-06; SR-GSCC-8907]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes By The Government Securities Clearing Corporation Regarding Its Proposed Netting System

I. Introduction and Summary

The Government Securities Clearing Corporation ("GSCC") has filed, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] proposed rule changes regarding the following matters: membership standards (SR-GSCC-89-04); clearing fund and loss allocation rules (SR-GSCC-89-05); insolvency and ceasing to act rules (SR-GSCC-89-06); and netting system and securities and money settlement rules (SR-GSCC-89-07).[2] The Commission published notice of the proposals in the **Federal Register**.[3] GSCC subsequently amended its proposals.[4] No comments were received regarding these proposals. This Order approves the proposed rule changes.

On December 16, 1987, GSCC filed an application for registration as a clearing agency to provide comparison, clearance and settlement services for members in government and agency securities. On May 24, 1988, the Commission temporarily approved GSCC's application for registration as a clearing agency under Section 17A of the Act,[5] and authorized GSCC to provide trade comparison services to its members in order to assist those members in settling, among themselves and outside GSCC facilities, delivery and payment obligations arising from trades GSCC reported to its members as compared.[6] The proposals under consideration today would authorize GSCC to complete the basic core of its services, establish membership and access restrictions for its netting and settlement systems, and implement a system of safeguards designed to limit foreseeable financial exposure to GSCC and its members that is inherent to the operation of a netting by novation settlement system.[7]

II. Description

A. GSCC's Proposed Netting Service

GSCC proposes to establish a netting and settlement system ("netting system") for member trades in U.S. Treasury and agency securities for settlement of compared trades submitted by GSCC netting members on a next-day basis in same-day funds. To implement this sytem, GSCC proposes to add three new rules, which will set forth operational requirements for the system and the respective rights and obligations of GSCC and its members.[8] New GSCC Rule 11 generally prescribes the netting process, including the calculation of net positions, the allocation of deliver and receive obligations and the novation of obligations. New GSCC Rule 12 contains procedures for the settlement of net positions with GSCC through designated clearing banks. New GSCC Rule 13 contains procedures for the calculation and payment of funds-only obligations arising out of the netting process.

1. Trades Eligible for Netting

Only eligible trades will enter the GSCC netting system. A trade is eligible

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[1] 15 U.S.C. 78s(b)(1) (1981).

[2] GSCC filed GSCC-89-04 on April 27, 1989; GSCC-89-05 and GSCC-89-06 on May 5, 1989; and GSCC-89-07 on May 12, 1989.

[3] For GSCC-89-04, *see* Securities Exchange Act Release No. 26816 (May 12, 1989), 54 FR 21702. For GSCC-89-05, *see* Securities Exchange Act Release No. 26820 (May 15, 1989), 54 FR 21705. For GSCC-89-06, *see* Securities Exchange Act Release No. 26819 (May 15, 1989), 54 FR 21704. For GSCC-89-07, *see* Securities Exchange Act Release No. 26817 (May 12, 1989), 54 FR 21701.

[4] GSCC amended its proposed rule filings on the following dates: June 28, 1989, GSCC-89-04 (proposed Rules 2 & 15, establishing voluntary termination procedures for participants, and making other technical and conforming changes), GSCC-89-05 (proposed Rule 4, clarifying the calculation of a netting member's required fund deposit; elaborating on the conditions that will require the placement of a member on surveillance status; establishing the loss allocation procedures, and proposing other technical and conforming changes), GSCC-89-06 (proposed Rules 18 & 20, setting forth technical and conforming changes regarding the netting system); June 29, 1989, GSCC-89-05 (proposed Rule 4, making changes in order to conform the rule with prior rule amendments); June 29, 1989, GSCC-89-05 (proposed Rules 1 & 4, proposing a new margin factor schedule, *see infra*, at 23).

[5] 15 U.S.C. 78q-1 (1981).

[6] Securities Exchange Act Release No. 25740 (May 31, 1988), 53 FR 19639 ("GSCC Temporary Registration Order").

[7] Netting by novation is the process of replacing a contract between two parties by interposing a third party as an intermediary creditor/debtor between the two parties. The original contractual obligation is satisfied and discharged, and replaced by contracts between the third party and each of the original parties. As applied to GSCC's netting system, this means that after the day's trades are netted, the system will substitute GSCC as the buyer to every seller and the seller to every buyer.

[8] The proposals also will add or modify several definitions that appear in GSCC Rule 1.

for entry into the netting system if it meets all of the following requirements:

(1) The trade data has been compared by GSCC and listed on a comparison report made available to GSCC netting members,

(2) Netting of the trade will occur on or before its contractual settlement date,

(3) Both parties to the trade are netting members [9] ("members"), and

(4) The security is an eligible security [10] for netting purposes.

Netting members must submit each eligible trade for comparison and netting.

2. The Netting Process

GSCC will net member trades, for each eligible security with a separate CUSIP number,[11] by adding together the par amount of each purchase of that security and the par amount of each sale of that security by a member, resulting in a net long position, if purchases exceed sales; a net short position, if sales exceed purchases; and a net flat position, if purchases equal sales. Once GSCC has calculated each member's delivery obligations on a CUSIP-number by CUSIP-number basis, GSCC will match all net long and short positions of members on a CUSIP-number by CUSIP-number basis into sets of receive and deliver instructions. Because there may not always be a net long and short position of equal size, the matching process may result in the creation of more than one receive or deliver obligation for each security with a separate CUSIP number.

On the morning after trade date, members will receive a Funds-Only Settlement Report, a Netted Trade Summary Report and an Open Receive/Deliver Orders Report. The Funds-Only Settlement Report will show the trade adjustment [12] for settling positions, any marks-to-the-market owed for failed positions, [13] and adjustments for coupon, [14] margin, [15] and redemption payments.[16] The Netted Trade Summary Report will inform members what trades entered the netting system and what the resulting net is, including open positions, and provide them with deliver and receive instructions. The Open Receive/Deliver Orders Report will reflect the novation of the trades [17] and the substitution of GSCC as the contra-party to all open netted positions.[18]

3. Settlement of Securities and Money Obligations

a. *Settlement of Funds-Only Obligations.* GSCC's proposed rules will require each member to pay any money obligations, known as "funds-only obligations," reflecting trade adjustments for settling positions, marks-to-the-market for any fail positions and adjustments necessary to account for interest and redemption payments. Under GSCC's proposed rules, a netting member must pay GSCC its funds-only settlement obligations, through the funds wire transfer service maintained by the Federal Reserve Banks ("Fed Funds"), by the later of 10:00 a.m. (e.s.t.) on the business day the payment is due or within two hours after GSCC issues to the member a report detailing the member's payment obligation. A netting member entitled to collect a funds-only settlement amount will receive Fed Funds by the later of 11:00 a.m. (e.s.t.) on the business day when such payment is due or three hours after the report listing such obligation is made available to the member. GSCC is required to pay such amount whether or not it collects payments owing from any other member. GSCC expects to make the reports available at or before 7:00 a.m. (e.s.t.) each day.

If a netting member fails to pay a funds-only settlement amount in a timely manner, GSCC may apply to payment of the unpaid balance: (1) All or a portion of any monies owing by GSCC to the member, and (2) all or a portion of the member's clearing fund deposit or other collateral. The member will be liable to GSCC for costs for any borrowing until the unpaid balance is paid. In addition, GSCC's Board of Directors ("Board") may discipline (*e.g.*, censure or fine) the member, if the Board determines that the failure to pay was done without good cause.[19]

b. *Settlement of Delivery Obligations.* Settlement of securities obligations in GSCC's netting system is designed to operate in harmony with current methods for safekeeping and transferring Government securities. U.S. Treasury securities (bonds, bills, notes and STRIPS [20]) and several U.S. Government agency securities are issued exclusively in book-entry form and are recorded in accounts at Federal Reserve Banks and member depository institutions. These securities can be transferred between member depository institutions (free or against payment) through the wire transfer service operated by Federal Reserve Banks ("Fedwire"). Thus, GSCC has decided that settlement of net obligations between GSCC and its members in GSCC's system will occur through the movement of securities and funds over the Fedwire.

Consistent with industry practice in the government securities market, settlement of net delivery obligations

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[9] A netting member is a GSCC participant who is a member of both the comparison and netting systems.

[10] An eligible netting security is a security that GSCC has designated as eligible for netting. Initially, GSCC will designate certain Treasury notes as eligible netting securities. Subsequently, GSCC expects to make eligible U.S. Treasury bonds and bills, and securities issued by agencies of the U.S. Government. In addition, following various system enhancements (*see infra*, section IV.B.3), GSCC also expects to make eligible when-issued trades and Separate Trading of Registered Interest and Principal of Securities ("STRIPS"), which are separate interests in the interest payments and principal on designated U.S. Treasury long-term bonds and notes.

[11] "CUSIP" is an acronym for the Committee on Uniform Securities Identification Procedures. The CUSIP numbering system was developed by a committee of the American Bankers Association bearing the same name and was created to identify specific securities issues. Each eligible netting security issue has its own separate CUSIP number that GSCC uses in its netting system to group trades for the net.

[12] The trade adjustment is the dollar difference between the contract value and the system value of the securities that comprise a net settlement position on settlement date. *See infra*, section IV.B.3, for a description of system value.

[13] *See infra*, section II.A.4.

[14] The coupon adjustment reflects interest payments a member either owes or is entitled to receive for securities that comprise a fail net settlement position that remains unsettled over an interest payment date.

[15] The margin adjustment reflects money due to or owed by GSCC with regard to the cash portion of a member's clearing fund deposit or cash collateral deposited by the member with GSCC or a third party custodian acting on behalf of GSCC.

[16] The redemption adjustment reflects the difference between the system value and maturity value for securities that comprise a fail net settlement position that remains unsettled over a maturity date.

[17] Novation will occur at the time GSCC makes reports available to GSCC members. Upon novation each member's receive and deliver obligations will be from or to GSCC. The reports will be available when GSCC has completed its processing cycle for the preparation of such reports and has released such reports to GSCC's data output facility, generally between 4 a.m. (Eastern Standard Time ["e.s.t."]) and 7 a.m. (e.s.t.) on the morning after trade date.

[18] During the course of its netting program and for GSCC's use only, GSCC will allocate each member's net delivery obligation to another member's obligation to receive securities. The allocation process will permit GSCC to issue precise instructions to its members and its clearing agent bank concerning the delivery and receipt of securities that the clearing agent bank will receive later in the day during the delivery and payment process. Under GSCC's rules, the allocation process does not modify GSCC' obligation to deliver or receive securities to a netting member or alter the novation of trades that comprise the net settlement position.

[19] GSCC proposed Rule 12 defines "good cause" in this context to mean a casual event or occurrence that the GSCC Board, in its sole discretion, determines was beyond the reasonable control of the netting member. Depending upon the specific circumstances, this may include an extended failure of Fedwire or the inability to gain access to Fedwire by a depository institution acting on behalf of a netting member or GSCC.

between each member and GSCC will be made over Fedwire on the day after trade date. Because GSCC is not, and does not plan to become, a depository institution eligible for direct access to Fedwire facilities, GSCC will obtain access to Fedwire indirectly through designated clearing agent banks acting on its behalf. Members that do not have direct access to Fedwire also will use clearing agent banks to hold their book-entry securities and to effect Fedwire deliveries and payments on their behalf. Settlement will be accomplished through GSCC's designated clearing agent bank, against payment of GSCC's assigned system value for the securities that constitute the net settlement position.[21] Once reports are made available, each member must provide settlement instructions to its clearing agent bank promptly. The member's clearing agent bank will then complete settlement with GSCC's designated clearing agent bank through the simultaneous payment or receipt in Federal Funds at the system value for the eligible netting securities. GSCC will not be obligated to deliver securities to a net long member until GSCC receives from a net short member securities with the same CUSIP number that are at least equal in quantity to the net long position and that have not been allocated for delivery to another member.[22]

GSCC may require netting members to pay or reimburse GSCC for certain financing and other costs that GSCC incurs in operating the netting system. If GSCC is unable to redeliver securities (that GSCC received from a netting member with a net short position) to a netting member with a net long position (*e.g.*, because the securities were delivered to GSCC too late in the day to be redelivered), GSCC may require netting members (*pro rata* based on netting member use of GSCC services) to reimburse GSCC for any costs GSCC incurs as a result of holding the position overnight. GSCC's Board, however, may require a netting member to pay all costs related to financing securities held by GSCC overnight if the Board determines that the member, without good cause, frequently delivered securities to GSCC within time frames that prevented GSCC from redelivering those securities (*e.g.*, within the last few minutes of the day).[23] In addition, GSCC may require a netting member to pay all costs incurred by GSCC where the member has a net long position and fails to take delivery without good cause.[24] Finally, GSCC may require a member to pay all costs for the delivery of securities not at the appropriate system value or securities that have not been designated to be delivered to GSCC.

4. Fails to Deliver and Buy-ins

A net settlement position that does not settle on settlement date will become a fail ("fail net settlement position"). The fail net settlement position will be reported daily to the appropriate member in a fail report until the position is settled. Except in the case of an insolvent member,[25] fail net settlement positions will not be netted with any other deliver or receive obligations; rather, GSCC will maintain the fail net settlement position until its actual settlement.[26]

GSCC will mark-to-the-market fail net settlement positions[27] and will include the mark-to-the-market amount[28] in computing the funds-only payment obligations of netting members (other than inter-dealer brokers).[29] GSCC will mark fail net settlement positions on a daily basis, using that day's system value.[30] GSCC will have the discretion, however, not to collect a mark-to-the-market for a fail net settlement position where the eligible netting securities have been delivered to GSCC but could not be delivered to another member (*i.e.*, GSCC is holding the securities overnight).[31]

GSCC's netting system design assumes netting members will complete their delivery obligations on a timely basis. GSCC's proposed rules anticipate, however, that circumstances may prevent members from completing their delivery obligations on a timely basis and that a member who is entitled to receive securities might seek to compel delivery from GSCC through delivery of a buy-in notice not sooner than 30 calendar days after such member has failed to receive the securities.[32] Because GSCC will not maintain an inventory of eligible securities (indeed, GSCC's system is designed to avoid any such positions), GSCC's proposed rules authorize GSCC to allocate any buy-in notices it receives from a member ("submitting member") to a netting member (or members) who has failed to deliver securities to GSCC. Generally, GSCC will allocate the buy-in notice to the netting member or members ("allocated member") with an open net short position in that CUSIP number equal to or greater in size than the buy-in position that remains unsettled for the longest period of time. Under GSCC's proposed rules, the failure of the allocated member to deliver the securities that are subject to a buy-in notice will not obligate GSCC to execute the buy-in notice (*i.e.*, buy securities to satisfy the delivery obligation); the submitting member must buy-in securities. If the submitting member buys securities in accordance with its notice, the submitting member must report its purchase to GSCC and, if requested, document the price it paid for those securities. Thereafter, GSCC will charge the allocated member for the price of the securities and will terminate both the submitting member's and the allocated member's obligations to GSCC with respect to the subject securities.

5. Special Provisions for Inter-Dealer Brokers

The netting system and GSCC proposed rules will allow inter-dealer brokers[33] the choice to exclude, in writing, a trade from the netting system if the trade would result in a net settlement position other than zero for the inter-dealer broker.[34] The notice must be submitted to GSCC no less than two business days prior to the execution of such trade or trades. Even so, in order to encourage inter-dealer brokers to leave trades within GSCC's netting system (including trades that may cause an inter-dealer broker not to have a zero net position), GSCC's proposed rules provide that inter-dealer brokers will not be obligated until the actual settlement of a net settlement position to pay to GSCC or receive from GSCC the net transaction adjustment payment,[35] the net fail mark adjustment payment,[36] and the coupon adjustment payment.[37] Under GSCC's shareholder's agreement and proposed rules, GSCC netting members are obligated to reimburse GSCC, *pro rata*, based upon usage for GSCC's financing and other costs.

6. Facilities for Delivery of Securities and Payment of Funds

Netting members will be required to maintain arrangements with a clearing agent bank to settle their net settlement obligations. A member must notify GSCC, at least ten business days prior to becoming a netting member, which clearing agent bank(s) it has designated to act on its behalf to receive and deliver eligible netting securities. Any subsequent change in the designation also must be made at least ten business days in advance. Clearing agent bank designation is subject to GSCC's determination that the clearing agent bank will: (1) Have and maintain Fedwire access, (2) have and maintain the operational capability to interact satisfactorily with GSCC's clearing bank(s), and (3) agree to act on behalf of the netting member in accordance with proposed GSCC Rule 12.[38] A member with direct access to Fedwire may act as its own clearing agent bank.

GSCC will maintain arrangements with several clearing agent banks to obtain access to Fedwire and complete settlement of member's net settlement obligations. Those arrangements will be governed by a Uniform Clearing Agent Bank Agreement, which GSCC will execute with its clearing agent banks. Under that agreement, the clearing agent bank will deliver and receive securities and funds into and out of an account maintained for GSCC according to settlement instructions issued by GSCC. The agreement also obligates the clearing agent bank to guarantee tender of delivery of securities pursuant to GSCC's delivery instructions within two minutes after securities have been delivered to GSCC's account. The agreement also provides an undertaking by the clearing agent bank to lend GSCC funds to finance GSCC's intra-day securities delivery and related payment obligations, as necessary, and to make overnight demand loans to GSCC to finance securities the clearing agent bank received on GSCC's behalf that could not be delivered to a GSCC member before Fedwire closed. As collateral for such loans, GSCC will grant the clearing agent bank a security interest in the securities and proceeds with respect to which each loan is made.[39] The agreement limits the clearing agent bank's liability for errors, acts and omissions in good faith not due to the clearing agent bank's gross negligence or willful misconduct.

B. Financial Safeguards

GSCC's proposed netting service presents credit and liquidity exposure to GSCC and other members utilizing the system. GSCC will implement a wide array of safeguards, including specific financial and operational standards for access to the netting system and clearing fund contribution requirements. In addition, GSCC will monitor the financial condition of its netting members and will have authority to restrict member access to the netting system.

1. Membership Standards for Access to Netting

Under the proposed rules, GSCC will establish a new category of membership for persons using the netting service.[40] GSCC will require that an applicant for access to the netting service be an existing GSCC member who has used GSCC comparison service for at least six months prior to applying for access to the netting service.[41] An applicant for

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[21] Settlement of netted positions will be based on the system value of the eligible netting securities. The system value is the product of the amount in dollars equal to the par value of each eligible netting security in the position multiplied by its system price plus any interest that has accrued. The system price is determined for each eligible netting security with a separate CUSIP number and is a uniform price, expressed in dollars per unit of par value, not including accrued interest, based on current market information. Initially, GSCC will calculate the system price as the average price of the trades for the day in each separate CUSIP number security, taking into account the volume of trades at different times during the trading day. In calculating the system price, GSCC may exclude trades executed at prices that are far away from the price of most trades in that CUSIP number security on the particular trading day.

[22] *See supra* note 18 for a description of GSCC's system for allocating deliveries. GSCC may accept a partial delivery of eligible netting securities from a member with a net short position. GSCC will do so only upon the consent of a netting member with a net long position with a like amount of such securities. If a partial delivery is accepted, the remaining undelivered securities will constitute a fail net settlement position.

[23] *See supra* note 19 for GSCC's proposed definition of "good cause."

[24] *Id.*

[25] *See infra* section II.B.4 for discussion regarding insolvent members.

[26] GSCC's netting system differs from a continuous net settlement ("CNS") system, whereby each member's net position is recalculated daily, using current net open positions and previous days' fails.

[27] GSCC will mark each fail net settlement position by determining the dollar difference between the fail net settlement position's system value on the current day and its system value on the immediately previous business day. GSCC will calculate the mark each business day in this manner until the fail net settlement position settles.

[28] GSCC will match or "pair-off" members' net long fail positions and net short fail positions, similar to what is done today by government securities brokers and dealers. Once GSCC has calculated each member's receive and deliver obligations on a CUSIP-number by CUSIP-number basis, GSCC will then look at each member's fail positions and that day's receive and deliver obligations to see if any fails may off-set each other or if that day's receive or deliver obligations may be paired-off with previously failed positions. GSCC will issue a paired-off report to its members and extinguish a member's obligation to deliver or receive such securities.

[29] Under proposed GSCC Rule 1, in order to qualify as an inter-dealer broker, the firm must limit its business *exclusively* to acting as a broker on behalf of other netting members or persons who could qualify as eligible netting members (*i.e.*, persons who are government securities dealers). GSCC's Board may, at any time, review the qualifications of an inter-dealer broker. An inter-dealer broker is a broker that arranges trades among primary and some aspiring primary dealers. In some cases an inter-dealer broker also may trade with dealers.

[30] *See infra*, section IV.B.3.

[31] This situation may arise when securities are delivered to GSCC by a member just before the close of the Fedwire and GSCC can not redeliver the securities prior to the Fedwire closing.

[32] Under industry custom, a purchaser who has failed to receive securities from a seller for 30 calendar days following settlement day, may send the seller notice of its intention to close out the position by buying-in securities. If the seller has not yet delivered securities because it is waiting for delivery from another party, the seller may retransmit this buy-in notice to that party. *See* Public Securities Association Guidelines as published in "Government Securities Newsletter" (December 21, 1987).

[33] *See supra* note 29.

[34] This provision is included to cover instances, for example, where one of the two dealers involved in the trade is not a netting member and the inter-dealer broker's position, if left in the netting system, would not net down to zero.

[35] The net transaction adjustment payment is the net difference between the amounts a member is entitled to collect from or deliver to GSCC.

[36] The net fail mark adjustment payment is the net difference between the dollar amount of all fail mark adjustment payments a member is entitled to collect from or deliver to GSCC on a particular business day. The fail mark adjustment payment is the absolute value of the dollar difference between the system value of a fail net settlement position on the current business day and the system value of such fail net settlement position on the immediately previous business day.

[37] *See supra* note 14.

[38] GSCC proposed Rule 12 sets forth a netting member's securities settlement procedures and obligations.

[39] Under GSCC proposed Rule 4, each member will grant to GSCC a first priority perfected security interest in all assets and property placed by a member in the possession of GSCC (or its agents acting on its behalf), including all securities and cash on deposit with GSCC in satisfaction of a netting member's required fund deposit or additional fund deposit as security for any and all of its obligations and liabilities. GSCC is entitled to its rights as a pledgee under common law and as a secured party under Articles 8 and 9 of the New York Uniform Commercial Code with respect to such collateral. GSCC maintains a lien on securities that have been delivered to it by the selling side of each trade until it receives payment via Fedwire from the buying side. After GSCC receives payment, it releases the securities to the receiving member.

[40] GSCC's proposal will establish new membership categories to designate those members using only the comparison service ("comparison-only members.") members that only provide clearing agent bank services ("clearing agent bank members") and members that are eligible to use the comparison and netting services ("netting members"). A clearing agent bank member may become a netting member if it participates in the netting system on its own behalf or on behalf of a non-member who would be eligible to become a comparison-only member. Under these circumstances, GSCC will consider the clearing agent bank member a netting member for purposes of netting and settling any transactions submitted by the clearing agent bank and will expect it to satisfy the requirements applicable to any other bank applicant seeking access to the netting system.

[41] Under GSCC's proposed rules a person may become a comparison-only member if: (1) It is a government securities broker or dealer in compliance with either Section 15, 15 U.S.C. 780 (1981), or Section 15C, 15 U.S.C. 780-5 (supp. 1989) of the Act, or (2) it is a clearing agent bank who is obligated to GSCC on behalf of a non-member, or (3) it demonstrates to GSCC's Board that its business and capabilities would allow it to materially benefit from direct access to GSCC's services.

access to the netting service must comply with the operational and financial standards set forth in proposed Rule 15. Under this rule, an applicant must possess sufficient personnel and physical facilities to handle transactions, communicate with GSCC and fulfill its commitments to GSCC. The applicant also must not be subject to a statutory disqualification [42] or an order of similar effect issued by a federal or state banking authority.[43]

An applicant for access to the netting service must meet the following financial requirements as of the end of the calendar month prior to the effective date of its membership:

(1) An applicant who is registered with the Commission as a broker or a dealer pursuant to Section 15 of the Act (other than an inter-dealer broker) [44] must have a net worth of at least $50 million and excess net capital of at least $10 million;

(2) An applicant who is registered as a government securities broker or government securities dealer pursuant to Section 15C of the Act (other than an inter-dealer broker) must have a net worth of at least $50 million and excess liquid capital of at least $10 million;

(3) An applicant that is a bank chartered under federal or State law must have a level of equity capital of at least $250 million; and

(4) Any other type of entity must meet minimum capital requirements as determined by GSCC on an individual basis.

An application for membership in the netting system will be reviewed by the Membership and Standards Committee of the Board ("Committee"). This Committee will make a recommendation to the Board based on a questionnaire and the financial reports and information submitted by the applicant to GSCC. If the Committee issues a recommendation that the Board deny the application, GSCC will furnish the applicant with a concise written statement setting forth the specific grounds for the denial. The applicant may request a hearing before the Board, which is responsible for determining whether to approve or disapprove the application.

Once an applicant becomes a netting member, it must remain in compliance with the relevant qualifications or standards for admission to such membership. A failure to meet such standards will prompt a review by the Board of the financial condition and operational capacity of the member.[45]

If the Board finds that a member has ceased to maintain the relevant standards established by proposed Rule 15, GSCC will notify the member and specify a time period within which the member must comply with such standards. If the member fails to comply within the specified time period, the Board will determine whether its membership should continue and, if so, under what conditions.

2. Clearing Fund

a. *Required Clearing Fund Contributions.* GSCC's proposed Rule 4, "Clearing Fund and Loss Allocation", authorizes GSCC to establish a clearing fund and to collect clearing fund contributions from its netting members (except inter-dealer brokers). GSCC will calculate a member's clearing fund contribution requirement based upon the risk to GSCC resulting from the member's daily settlement activities. GSCC will require netting members, except inter-dealer brokers, to maintain a minimum clearing fund deposit of $100,000 in cash. This deposit must be made by the close of business on the business day immediately prior to the business day on which they become netting members.[46]

Inter-dealer brokers will not be required to make clearing fund contributions to GSCC. Instead, the shareholder's agreement and GSCC's rules require each inter-dealer broker to submit a collateral deposit of $100,000 in cash and an additional deposit of $1.5 million in U.S. Treasury securities or letters of credit issued in favor of GSCC.[47]

GSCC will calculate daily each netting member's clearing fund contribution requirement and determine whether the netting member's deposit exceeds its required clearing fund contribution. Although complex, the formula measures a netting member's payment and delivery and receive obligations due later in the day against the netting member's average payment and delivery and receive obligations during the previous 20 business days. Accordingly, the formula contains two components—payment obligations and securities net settlement obligations—and each of those components in turn contains two subcomponents—one subcomponent measures the netting member's average obligations during the previous 20 business days and the second subcomponent reflects the netting member's obligations to be settled later that day. In general, GSCC uses the largest figure as each member's clearing fund requirement to address the risk posed by the member's activities. A full discussion of the clearing fund calculation follows.

The first component ("funds-only settlement") measures all of the netting member's funds-only settlement obligations to GSCC. This includes, among other things, securities clearing differences, transactions adjustment payments, coupon adjustment payments and marks-to-the market. The first subcomponent ("weighted rolling average") [48] is equal to 125% of the absolute value of the netting member's [49] average funds-only settlement obligation for the previous 20 business days. The second subcomponent ("anticipated funds-only settlement obligation") is the netting member's funds-only settlement obligation due at 10 AM (EST) that day. If the second subcomponent (the netting member's anticipated funds-only settlement obligation) exceeds the first subcomponent (the netting member's weighted rolling average) by 25% or more, GSCC will use the second subcomponent (the anticipated funds-only settlement obligation) as the funds-only settlement component in the clearing fund deposit calculation.

The second component ("securities settlement") measures the netting member's securities settlement obligations to GSCC. This includes the absolute value of the total dollar amount of the netting member's daily net settlement (delivery and receive) obligation in each security issue eligible for GSCC's netting system, grouped by product and within each product, by maturity ranges. It also is composed of two subcomponents. The first subcomponent ("weighted rolling average securities settlement") is the average absolute value of the total dollar amount of the netting member's securities settlement position in each security issue (deliver and receive) during the previous 20 business days in each maturity range within each product group. GSCC will not net securities positions within maturity ranges or product groups. GSCC will then multiply the weighted rolling average securities settlement times a margin factor (described below) to obtain the total figure for the first subcomponent.

GSCC has established a margin factor for each maturity range within each product group. That factor is a percentage, which is generally designed to measure the potential volatility of prices in that maturity range, among other things, based on GSCC's review of average daily government securities price volatility data for the period encompassing the first quarter of 1988 through the first quarter of 1989. In addition, on June 30, 1989, GSCC amended the proposed rule change (SR-GSCC-89-5) to specify the current margin factors, as follows:

MARGIN FACTORS FOR BILLS, NOTES AND THE 30-YEAR BOND

Time to maturity	Percentage factor
1 day through 3 months	0.040
3 months plus 1 day through 6 months	0.080
6 months plus 1 day through 1 year	0.125
1 year plus 1 day through 2 years	0.250
2 years plus 1 day through 4 years	0.500
4 years plus 1 day through 5 years	0.625
5 years plus 1 day through 7 years	0.750
7 years plus 1 day through 10 years	0.935
10 years plus 1 day through 30 years	1.450

GSCC's proposed rules authorize GSCC to change, among other things, the margin factor for any maturity range, to change the maturity ranges, and to use a revised factor after 10 days notice to netting members.[50]

The second subcomponent ("current securities settlement position") is the absolute value of the total dollar amount of the netting member's position in each security issue that is due to settle later that day. GSCC will multiply the absolute value of the total dollar amount of the anticipated net securities settlement position in each maturity range within each product group by the same margin factors as applied to the weighted rolling average securities settlement subcomponent. GSCC will use the current securities settlement position if the total absolute dollar value of current securities settlement positions exceeds, by 25% or more, the total absolute dollar value of the netting member's weighted rolling average net settlement positions.

In addition, a separate further calculation of a netting member's clearing fund contribution requirement will compare the sum of the funds-only settlement component and the securities settlement component, as determined above, to the result if the anticipated funds-only settlement obligation subcomponent and the current securities settlement position subcomponent were used to calculate the required clearing fund contribution. If the netting member's payment and delivery obligations resulting from trades in the netting system for settlement later in the day are substantially greater than the netting member's average settlement activity during the previous 20 business days (*i.e.*, the sum of the anticipated funds-only settlement obligation subcomponent and the current securities settlement position subcomponent is more than 125% of the sum of the funds-only settlement component and the securities settlement component as calculated above), the netting member's clearing fund requirement will be based on the netting member's current settlement and payment obligations (*i.e.*, the sum of the anticipated funds-only settlement obligation subcomponent and the current securities settlement position subcomponent).[51]

Having calculated each netting member's clearing fund contribution requirement,[52] GSCC then will determine whether the netting member's clearing fund requirement exceeds its current deposit.[53] GSCC's rules specify

[42] *See* section 3(a)(39) of the Act. 15 U.S.C. 78c(a)(39) (1981).

[43] In addition, an applicant to the netting membership must continue to meet the standards for becoming a comparison-only member. Such standards establish that a person may be disqualified from admission into the comparison-only membership if the Board of GSCC has reasonable grounds to believe that the applicant (or any person associated with the applicant): (1) Is subject to special or closer than normal surveillance by its designated examining authority, regulatory agency or self-regulatory organization ("SRO"); (2) is subject to an action or condition which would subject the applicant, if already a member, to be placed on surveillance status by GSCC; (3) has misstated or omitted a material fact in connection with its application to become a member; (4) has violated any of the laws or rules regulating the securities markets or, within the ten years preceding the filing of the application, has been convicted of certain enumerated felonies or misdemeanors; (5) has been permanently enjoined or prohibited through an administrative or judicial order from participating in the securities markets or has been expelled or suspended from a national securities association, exchange, SRO or clearance and settlement corporation.

[44] Applicants who demonstrate to the Board's satisfaction that they limit their business to acting exclusively as brokers on behalf of persons that potentially meet the standards for netting membership will be exempt from these capital requirements. Such inter-dealer brokers, however, must each deposit with GSCC $1.5 million to collateralize their potential liabilities.

[45] The Board also may institute such a review whenever a member violates any GSCC rule or procedure or any agreement with GSCC, fails to satisfy in a timely manner any obligation to GSCC, or incurs a material change in control or financial condition. Moreover, the Board may institute a review of a member upon the occurrence of an event which, in the Board's judgment, adversely affects the investing public, the clearance and settlement process, GSCC, members, or creditors.

[46] *See* GSCC proposed Rule 4, sections 2 and 9, "Clearing Fund and Loss Allocation" and "Required Fund Deposit and Timing of Payment of Required Fund Deposit."

[47] As discussed *infra*, at section II.B.6, GSCC will use the collateral deposits from inter-dealer brokers and other clearing fund contributions to satisfy losses GSCC incurs. The shareholder's agreement, however, limits inter-dealer brokers' required contributions to $1.5 million. *See* GSCC proposed Rule 4 section 8, "Clearing Fund and Loss Allocation. Allocation of Loss or Liability Incurred by the Corporation" and *infra*, at section II.B.5, "Loss Allocation and Pro-Rata Assessments."

[48] GSCC's proposed rules authorize GSCC to place greater weight on more recent days within the 20 business days. Initially, GSCC will use a weighting factor of one for each day but plans to monitor the 20 day average to determine if and what

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type of weighting factor is necessary to better reflect the risk to GSCC with regard to funds-only settlements.

[49] The absolute value is used to reflect the fact that GSCC is at risk both when it is owed funds by a member and when it has paid out funds to a member that are required to be returned when settlement of the trade to which the funds movement is related is made.

[50] As amended on June 29, 1989, GSCC's proposed rules would authorize GSCC's Board of Directors to increase one or more percentages comprising the margin factor upon a determination that such an increase is appropriate in view of market experience and conditions. The amended rules also would authorize GSCC to decrease one or more percentages comprising the margin factor upon submission and review of a proposed rule change pursuant to section 9(b)(2) of the Act. The amended proposed rules also would authorize the Board to waive the requirement that members must receive 10 days notice before the effective date of a change in margin factors if the Board determines market conditions warrant such action.

[51] In other words, for example, even if the anticipated funds-only settlement obligation subcomponent only was 15% greater than the weighted rolling average subcomponent (and, therefore, normally the weighted rolling average would be used in computing the funds-only settlement component), but the current securities settlement position subcomponent substantially exceeded the weighted rolling average securities settlement subcomponent (*e.g.*, 45%) such that the sum of anticipated funds-only settlement subcomponent and the current net securities settlement subcomponent would exceed by 125% the contribution otherwise required, than the anticipated funds-only settlement subcomponent (rather than the weighted rolling average subcomponent) will be used to calculate the funds-only settlement component.

[52] GSCC's proposed rules provide GSCC with the discretion to require members, excluding inter-dealer broker members, who are placed on surveillance status to make and maintain an additional deposit to the clearing fund of up to 200% of its highest single business day's required clearing fund deposit during the most recent 20 business days, or such higher amount as the Board may deem necessary for the protection of GSCC and its members.

[53] A netting member's clearing fund deposit may exceed its required contribution. Within five business days after the end of each calendar month, GSCC will make available to each netting member a clearing fund detail report that lists the form and dollar value of such member's deposits to the clearing fund and the amount of the member's required fund deposit and the amount of any additional fund deposit requirement. If GSCC determines at the end of any calendar quarter that the amount deposited in the clearing fund is in excess of its required fund deposit, GSCC shall, within 15 business days after such determination, notify the member of its excess clearing fund contribution. Upon the member's request, GSCC will return the excess, unless returning the excess would produce the result that letters of credit would constitute more than 70% of the member's fund deposit. If the member has an outstanding payment obligation to GSCC, however, GSCC may elect not to return the excess. GSCC also may retain the excess if it determines that the member's anticipated funds-only settlement amounts or net

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a wide range of time frames within which a netting member must satisfy a deficient deposit, depending on the amount of the deficiency and whether GSCC has placed the netting member on surveillance status. If the deficiency exceeds 25% of the netting member's current deposit, the netting member must increase its deposit to eliminate the deficiency by the close of business on the day after GSCC notifies the netting member of the deficiency. If the deficiency is more than 10%, but less than 25% of the netting member's current deposit, the netting member must increase its deposit, to eliminate the deficiency, by the close on the third business day after GSCC notifies the netting member of the deficiency. Finally, if the netting member has been placed on surveillance status, any deficiency must be cured by the close of business on the same day GSCC notifies the netting member of a deficiency.

b. *Assets That May be Deposited to Meet Clearing Fund Requirements and Use of Clearing Fund Assets.* The proposal allows each member to meet its clearing fund contribution through deposits of a combination of cash, securities, and letters of credit. Each netting member must deposit a minimum cash contribution of the greater of $100,000 or 10% of the total amount of the required clearing fund deposit, up to a maximum of $500,000.[54] To satisfy the remainder of the required clearing fund contribution, each member may deposit U.S. Treasury securities (bonds, bills and notes) with dates to maturity of less than one year.[55] Each member also may deposit irrevocable letters of credit from an issuer acceptable to GSCC,[56] payable to the order of GSCC to meet the remainder of the required clearing fund deposit. Letters of credit, however, may not comprise more than 70% of a netting member's clearing fund requirement.[57]

GSCC will value member deposits of securities daily, based on their current market value, as determined by GSCC's system price. Any interest on these securities GSCC receives will be credited to the member's cash deposits to the clearing fund, unless the member has defaulted on its payment obligations to GSCC. In such cases, GSCC may liquidate the securities and apply the proceeds and the interest to satisfy the member's obligations to GSCC.

GSCC's proposed rules will limit the use of the clearing fund to satisfying GSCC's losses or liabilities arising from the failure of a netting member to satisfy an obligation to GSCC or any other loss or liability GSCC incurs incident to GSCC's clearance and settlement activities. GSCC's proposed rules authorize GSCC to use clearing fund deposits as a source of collateral to meet its temporary financing needs,[58] including, among other things, financing funds-only payment defaults and GSCC's overnight inventory resulting from end-of-day deliveries that could not be turned-around.[59]

If a GSCC loss or liability is allocated to a member pursuant to proposed Rule 4, section 8 (Allocation of Loss or Liability Incurred by the Corporation), GSCC may apply the portion of that member's deposit to the clearing fund necessary to satisfy the allocation. GSCC may use any cash, draw against any letters of credit, and liquidate any securities deposited by the member in the clearing fund. If the defaulting member's clearing fund contribution is insufficient to satisfy the loss, GSCC may use the remainder of the clearing fund (which is comprised of the other members' clearing fund contributions) as collateral for a loan to satisfy the loss or may use it directly to satisfy the loss.

3. Monitoring of Member's Financial Condition

As discussed above, members must remain in compliance with GSCC's financial and operational membership standards. GSCC will require its members to submit certain financial reports.[60] In addition, GSCC through NSCC's surveillance department, has developed a number of analytical reports which will allow GSCC to monitor members' possession and dollar exposure to GSCC. GSCC will perform daily surveillance based on its own records of the member's activity to obtain a snapshot of the member's financial position. For example, GSCC aggregates the member's positions to determine the member's total exposure, before and after netting, and compares its exposure with its prior exposures to determine whether its current total exposure is consistent with its past exposure or is significantly higher, thus indicating potentially increased risks. GSCC also will monitor changes in the mix of a member's securities portfolio as well as its trade adjustment payments and will compare those changes to its prior securities portfolio and prior trade adjustment payments for significant increases that may indicate potentially increased risks to GSCC. Moreover, GSCC monitors a member's fails by size age and the net dollar amount of those fails to determine if the fails pose a risk to the system. Further, GSCC has established informal relationships with other clearing agencies, SROs, and appropriate banking regulatory authorities, through its relationship with NSCC, in order to obtain relevant financial information concerning its members.

settlement positions over the next 90 calendar days reasonably may be expected to be materially different than during the prior 90 calendar days, or if the member is on surveillance status.

[54] GSCC proposed Rule 4, section 2(a)(ii).

[55] The proposal authorizes GSCC's Board to designate other issues of securities as acceptable collateral to satisfy a member clearing fund obligations and to establish a haircut for valuation purposes. GSCC will file such proposals to expand the list of eligible securities and the associated haircuts with the Commission as proposed rule changes under section 19(b)(2) of the Act.

[56] GSCC has established standards for letters of credit issuers that are essentially the same as the National Securities Clearing Corporation's ("NSCC") standards. Like NSCC, GSCC has established qualification standards which potential letters of credit issuers must meet; standard lettess of credit agreements between GSCC and the potential issuer; standard letters of credit forms setting forth the terms of each letter of credit; limits on the total amount of funds represented by letters of credit which NSCC will accept from any one issuer, and standards for the expiration or revocation of letters of credit. GSCC also will establish a list of approved banks and trust companies that GSCC will accept as letters of credit issuers.

[57] GSCC will deduct 1% from the stated value of letters of credit in calculating the current value of clearing fund deposits. In addition, GSCC only will accept letters of credit from issuers that meet its financial standards.

[58] As amended on June 29, 1989, GSCC will allocate, *pro rata*, the amount of any pledge, loan or use of clearing fund assets outstanding for more than thirty days according to the allocation scheme in GSCC proposed Rule 4, section 8.

[59] Cash in the clearing fund may be partially or wholly invested in securities issued or guaranteed as to principal or interest by the U.S., or U.S. agencies or instrumentalities, repurchase agreements relating to such securities, or certificates of deposit or accounts in banks insured by the Federal Deposit Insurance Corporation, or otherwise pursuant to the investment policy adopted by GSCC. Investment income from cash deposits will accrue to GSCC, until and unless the Board permits payments of such investment income to netting members. Upon such a determination, investment income from cash deposits, if any, less an amount to compensate GSCC for its handling costs, will be paid to members no less frequently than quarterly. Any securities, repurchase agreements, cash deposits, or other instruments involving the investment of cash deposits, and any securities or letters of credit pledged or deposited by any member to secure an open account indebtedness to the clearing fund, may be pledged by GSCC as security for loans made to it.

[60] *See*, GSCC proposed Rule 2, section 4.

GSCC has developed mandatory[61] and non-mandatory[62] factors to determine the circumstances under which GSCC may place a member on surveillance. Once GSCC has determined to place a member on surveillance, GSCC may impose certain restrictions. These restrictions include, among others, the ability to restrict a member's access to netting, for certain products or for all netting services, if upon review of the member's financial position GSCC believes that such restrictions are necessary to protect GSCC and its members. GSCC may require a member on surveillance, other than inter-dealer brokers, to make additional clearing fund deposits of up to 200% of its required clearing fund contribution.

4. Authority to Restrict Access to Netting, Ceasing To Act for Members and Member Insolvencies

The proposal authorizes GSCC to act for a member under certain enumerated circumstances [63] and requires GSCC to cease to act for a member who is insolvent.[64] Under proposed Rule 18, GSCC may cease to provide any member with any service provided by GSCC or cease to act for any member with respect to a particular transaction, or transactions, or with respect to all of a member's transactions.[65] Proposed Rule 18 also provides that members will be notified of GSCC's decision to cease to act for them, and of their right to appeal such a decision.

When GSCC ceases to act for a member, GSCC's rules require GSCC to notify the member promptly of its decision to cease to act and provide the member with a statement of the grounds for its decision and notice of the member's right to request a hearing, pursuant to GSCC Rule 37. If the member so requests, GSCC must hold a hearing as promptly as possible. GSCC will promptly prepare a written report of any action taken pursuant to proposed GSCC Rule 18 and will file the report as part of GSCC's records and with the Commission.

GSCC will notify all members promptly that it has ceased to act for a member.[66] This notice will identify the transaction or transactions concerned and will state how the transaction(s) will be affected and what steps GSCC will take in view of its ceasing to act. When GSCC has ceased to act for a member with respect to a particular transaction or transactions, or with respect to all transactions, it will decline to accept or process data from that member, or from other members with regard to that particular transaction or transactions, or any transactions with which the member is a party, unless the Board determines otherwise in order to promote an orderly settlement process.

Generally, GSCC will take the following actions with respect to an insolvent member. GSCC will delete all trade data it receives from the insolvent member with regard to transactions to

[61] The mandatory factors which require GSCC to place a member, including an inter-dealer broker, under surveillance are as follows. GSCC will examine each member's capital position and place a member under surveillance status if any element of a member's capital position falls below that which would be required in Rule 15 if it were applying to become a netting member. GSCC will place a broker, dealer, government securities broker or government securities dealer on surveillance status if it incurs a net loss for (1) the prior calendar month equal to 15% or more of its excess net capital or excess liquid capital, calculated as of the last day of the immediately preceding calendar month period, (2) the prior two-calendar month period equal to 25% or more of its excess net capital or excess liquid capital, calculated as of the last day of the next prior calendar month, or (3) the prior three-calendar month period equal to 30% or more of its excess net capital or excess liquid capital, calculated as of the last day of the immediately preceding calendar month.

GSCC also will place a member on surveillance: (1) If the member temporarily experiences either an inability to meet its money settlement obligations to GSCC in a timely fashion or another significant cash flow problem; (2) if the member temporarily experiences an inability to meet its securities settlement obligations in a timely fashion; (3) if the member experiences a significant reorganization or change in control or management of the member that, in the judgment of the Board, is likely to impair the member's ability to meet its money settlement obligations or securities settlement obligations to GSCC; (4) or if the member has been placed on a special surveillance status by another self-regulatory organization ("SRO").

[62] The non-mandatory factors which GSCC uses to determine whether to place a member on surveillance status are as follows: (1) If the member temporarily experiences a significant operational problem; (2) if any member's daily funds-only settlement amount or net settlement position is significantly disproportionate to its usual activity, in light of current industry conditions; (3) if it is a depository institution which incurs a loss for any of the prior three fiscal quarters; (4) if GSCC receives a notification from a member's designated examining authority or appropriate regulatory agency of a pending administrative action regarding, or investigation of, the member that could call into question the member's ability to meet its obligations to the corporation; (5) if it experiences any condition that could materially affect its financial or operational capability so as to potentially increase GSCC's exposure to loss or liability.

[63] The Board may cease to act for a member if, in its sole discretion, it has reasonable grounds to believe that ceasing to act is appropriate either for the protection of itself or other members to facilitate the orderly and continuous performance of GSCC's services. Proposed Rule 18 also states that GSCC may cease to act for a member if the Board determines that the member: (1) Has failed to perform any of its obligations to GSCC arising under these rules or under the procedures or has materially violated any rule, procedure, or agreement with GSCC; (2) has failed to make any required payment or deposit provided for in the rules or procedures, including any fee, fine, or other charge to GSCC in a timely manner; (3) is no longer in compliance with any provision of the admission standards provided in proposed Rule 15 that would be applicable to it, if it were an applicant for membership, or the continuance standards provided in proposed Rule 15 applicable to it. Further, the Board may cease to act for a member if it has determined that it has reasonable grounds to believe that: (1) The member, or any associated person, has been responsible for fraudulent or dishonest conduct or breach of fiduciary duty or has made a material misstatement or omitted to state a material fact in any statement to GSCC or to any officer or employee of GSCC in connection with its application to become a member, or thereafter, in connection with any transaction processed or service furnished by GSCC; or (2) the member is currently experiencing, or is approaching significant financial or operational difficulty or otherwise will be unable to meet its obligations to GSCC. In determining whether to cease to act for a member, the Board may determine that adequate cause for ceasing to act does not exist, that such standards, as applied to a member or associated person, are unduly or disproportionately severe; or that the conduct of the member or associated person has been such as not to make it against the interests of GSCC, other members, or the public for GSCC to continue to act for such member, and thus, may allow such member access to GSCC services either unconditionally or on an appropriate temporary or other conditional basis.

[64] GSCC's proposed Rule 20 specifies five events that would require GSCC to treat such a member as if it were insolvent: (1) Receipt of notification of insolvency renders a member insolvent, unless it posts an appropriate guarantee; (2) The member is determined to be insolvent by the Board, or by any Designated Examining Authority or Appropriate Regulatory Agency with jurisdiction over such member or any SRO; (3) If the member is a member of the Securities Investor Protection Corporation, and a court finds that it meets any one of the conditions for insolvency set forth in the Securities Investor Protection Act of 1970 (15 U.S.C. § 78aaa *et seq.* (1981)); (4) If the member receives a decree or order by a court adjudging the member as bankrupt or insolvent; approving a petition seeking reorganization, liquidation, or dissolution under the Bankruptcy Code or any other applicable federal or state law; appointing a receiver, liquidator, or trustee for the member, or ordering the winding up or liquidation of its affairs; (5) If the member files a petition seeking reorganization or relief under the Bankruptcy Code or other federal or state law, or consents to the filing of such a bankruptcy petition, or to the appointment of a receiver, liquidator, or trustee, or makes an assignment for the benefit of its creditors, or if it admits in writing that it is unable to pay its debts.

[65] For example, GSCC has stated that it generally expects to use its ability to exclude a particular transaction from netting when a participant has attempted to submit non-GSCC-eligible trades for settlement, (*e.g.*, the redelivery of securities to satisfy a repurchase agreement or to satisfy a securities delivery obligation resulting from the exercise of an option agreement). GSCC generally expects to use its authority to cease to act for a particular transaction to remove a trade from netting in the event a member, whose business is being closed-out and who only is permitted to submit trades through GSCC to become "flat" (*i.e.*, purchasing securities to eliminate short positions and selling securities to eliminate long positions) submits trades which are made for other purposes.

[66] After GSCC has ceased to act for a member, GSCC will nevertheless retain the same rights and remedies with respect to any monies or securities due from the member, or any liability incurred as the result of such member's action, or on behalf of the member, as though GSCC had not ceased to act for it.

which it is a party that have not been reported by GSCC as compared from the comparison system; and GSCC will exclude from netting any trades made by the insolvent member which have been reported as compared, but which have not been reported by GSCC as included in a net settlement position, unless the Board determines that these trades should be included in order to promote an orderly settlement process. All long and short net settlement positions of the insolvent member, outstanding at the time of insolvency, will be closed out by establishing a final net settlement position for each security that will be equal to the net of all outstanding deliver and receive obligations of the insolvent member in each security, including those that arise from net settlement positions that have failed to settle on their scheduled settlement date, and by buying-in or selling out the securities deliverable by or to the insolvent member in order to close out the final net settlement position established for each security. GSCC will complete the close out procedure within 30 calendar days after GSCC has given its members notice that it will treat the member as an insolvent member, unless the Board determines that the immediate close out of positions in a security may be disadvantageous to GSCC or may promote a disorderly market in that security, in which case GSCC must obtain Commission approval to suspend the operation of the close-out provision for more than 30 days.[67]

If GSCC incurs a loss or liability as a result of closing out an insolvent member's final net settlement positions, the loss or liability will be allocated as provided in GSCC Rule 4. If GSCC makes a profit as a result of closing-out an insolvent member's final net settlement positions, this profit will be credited to the insolvent member, or his appointed legal representative.

5. Loss Allocation and Assessment Provisions

GSCC will employ a variety of loss allocation schemes depending on the source and the amount of the loss or liability it incurs. As discussed below, GSCC's loss allocation methods vary according to the nature of the event giving rise to the loss.

If GSCC incurs a loss or liability resulting from one or more netting members' failure to fulfill their obligations to GSCC, GSCC will look to those members' clearing fund deposits and other collateral held by GSCC to satisfy the loss. If the value of the defaulting members' deposits and other collateral is insufficient to satisfy the loss, GSCC will allocate the remaining amount of the loss ("Remaining Loss") among the netting members in accordance with proposed GSCC Rule 4, section 8.

In allocating any Remaining Loss, GSCC will determine the amount of the Remaining Loss attributable to direct transactions[68] and the amount of the Remaining Loss attributable to brokered transactions.[69] The Remaining Loss attributable to direct transactions will be allocated to the netting members (except for inter-dealer brokers) that had trading activity with the defaulting member for settlement on the day of default,[70] on a *pro rata* basis, based on the dollar value of such trading activity of each netting member with the defaulting member.

The Remaining Loss attributable to brokered transactions will be allocated in the following manner. GSCC will allocate to inter-dealer brokers, as a group, 10% of such Remaining Loss, regardless of the level of activity each inter-dealer broker had with the defaulting member for settlement on the day of default. This allocation, however, is subject to a $1.6 million per broker, per calendar year, cap. The balance of such Remaining Loss will be allocated among other netting members on a *pro rata* basis according to the dollar value of each members' trading activity through inter-dealer brokers for settlement on the day of default with the defaulting member.

Where a netting member defaults on a required allocation assessment or where GSCC suffers a loss arising out of events unrelated to a member failure, GSCC will employ a separate allocation procedure. To satisfy such a loss, GSCC first will apply 25% of its retained earnings, or such greater percentage thereof as the Board determines to be appropriate, to satisfy the loss. If such amount is insufficient to satisfy the loss, GSCC will apply up to $50,000 from each netting member's required cash deposit (or, in the case of an inter-dealer broker, the cash deposit required to be maintained by such broker with GSCC) equally among all netting members. If the loss still remains unsatisfied, GSCC will apply the remainder of each netting member's required clearing fund deposit (or, in the case of an inter-dealer broker, of the collateral deposit, including securities and letters of credit maintained by such broker with GSCC) on a *pro rata* basis in accordance with the average daily level of such deposits or collateral over the prior 12 calendar months.[71]

[67] *See* Letter to Ester Saverson, Jr., Branch Chief, Division of Market Regulation, SEC, from Jeffrey F. Ingber, Associate General Counsel, GSCC, dated June 29, 1989, amending GSCC proposed Rule 20, section 4(c).

[68] A direct transaction is a transaction submitted to GSCC for settlement by the parties to the trade.

[69] A brokered transaction is a transaction which an inter-dealer broker has submitted to GSCC for comparison and/or settlement that involves both a netting member (or eligible applicant) on the buy side and a netting member (or eligible applicant) on the sell side regardless of whether or not such netting members have submitted data that compares with the data submitted by such inter-dealer broker.

[70] The term "activity for settlement on the day of default" used above will mean trading activity with a defaulting member transacted by a netting member on the business day immediately prior to the business day on which the failure of the defaulting member to fulfill its obligations to GSCC occurred, except that, if the level of trading activity of netting members with a defaulting member for settlement on the day of default, measured by the dollar value of securities traded, is less than the dollar value amount of the securities of the defaulting member that are liquidated pursuant to GSCC's close-out procedures, "activity for settlement on the day of default" will mean trading activity with a defaulting member transacted on that number of business days immediately prior to the business day on which the failure of the defaulting member to fulfill its obligations to GSCC occurred such that the dollar value amount of such trading activity is equal to or greater than the dollar value amount of such liquidated securities.

[71] To illustrate how GSCC's loss allocation provisions operate, assume that GSCC suffered a $10,500,000 loss or liability as a result of a member's insolvency. Assume also that the member had $500,000 on deposit in GSCC's clearing fund and the member had no other assets that were available to meet its obligations to GSCC. GSCC will apply the members' clearing fund deposit to satisfy a portion of the loss. GSCC will allocate the remaining $10,000,000 loss not covered by the defaulting member's assets, including the member's clearing fund deposit and other collateral at GSCC in the following manner. Assuming that the loss resulted entirely from brokered transactions, the inter-dealer brokers, as a group, would be responsible for 10% or $1,000,000 of the loss. If there were only two inter-dealer broker netting members, and even if only one of the two had trading activity with the insolvent member for settlement on the day of default, each inter-dealer broker would be equally responsible for the portion of the loss allocated to the inter-dealer brokers and would pay $500,000 to GSCC.

The remaining $9,000,000 loss will be allocated among the non-inter-dealer broker netting members who traded with the insolvent member based on their level of activity with the insolvent member. Assume that member *Y*, with a clearing fund deposit of $6,400,000, was the *contra* party to half the trades and that member *Z*, with a clearing fund deposit of $2,500,000, was the *contra* party to the other half of the trades. Each member will owe GSCC $4,500,000. Assuming that each member will satisfy its obligation out of its clearing fund deposit, *Z* will still owe GSCC $2,000,000. If *Z* refuses to pay or is unable to pay, GSCC will cease to act for *Z*, will treat *Z* as if it elected to terminate its membership and sue *Z* to recover the $2,000,000.

GSCC will allocate the $2,000,000 loss resulting from *Z*'s allocation default by first applying 25% of its existing retained earnings (or a greater percentage, as the Board may decide) toward such loss. Assuming that GSCC has $400,000 of existing retained earnings and applies 25% of such earnings

Continued

6. Member Liability for Loss Allocations

GSCC's proposed rules provide that the entire amount of a netting member's required fund deposit may be used to satisfy the amount of any loss allocated to any such member. If such amount is not sufficient to satisfy the full amount of any such loss allocation, GSCC's rules provide that such member must promptly deliver the amount necessary to eliminate any such deficiency. A netting member (other than an inter-dealer broker, whose liability is capped at $1.6 million per calendar year) who actively traded with the defaulting member for settlement on the day of default is liable for the full amount of its allocated portion of GSCC's losses. A member who had no trading activity with the defaulting member for settlement on the day of default, however, may limit its liability for the losses allocated to it by GSCC to the amount of its required fund deposit by electing to withdraw from GSCC in a timely manner.

Once GSCC has notified a netting member that a loss has been allocated to such member, and that the amount of such member's required fund deposit is not sufficient to cover such allocation, such member must deliver to GSCC by the close of the next business day, or, if the Board so determines, by the close of the business day of issuance of such notification, the amount necessary to eliminate such deficiency. With respect to an allocation arising from a loss where the netting member had no trading activity with the defaulting member for settlement on the day of default, a member may avoid further liability for such an allocation by providing GSCC, by the close of business on the business day on which its payment is due, a written notice of the member's election to terminate its membership in GSCC.[72]

GSCC's proposed rules permit it to impose sanctions against members who fail to act in accordance with the allocation rules. If a member fails to deliver funds or fails to notify GSCC of its intent to terminate its membership, GSCC will cease to act on behalf of such member pursuant to proposed Rule 18 and may take appropriate action, including initiating legal action to recover any funds owed or imposing disciplinary action against the member pursuant to GSCC Rule 48. Moreover, a member that elects to terminate its membership will not be eligible to re-apply to become a comparison-only member or a netting member of GSCC unless it pays GSCC the amount previously allocated to it plus interest on such amount at the Federal Funds rate plus one percent, calculated from the date on which the loss was incurred until the date of payment.

In the event GSCC suffers a loss resulting in an assessment to members, GSCC will promptly notify the Commission of the amount of such loss and the reasons for the loss. If GSCC later recovers all or part of the loss, such amount shall be credited or paid to the members against whom the loss was charged in proportion to the amounts they paid, regardless of whether they are still members of GSCC.

7. Ceasing to be a Member

If a netting member, including an inter-dealer broker, notifies GSCC of its intention to terminate its membership in GSCC, the member's deposits to the clearing fund in the form of cash and securities will be returned to it within 30 calendar days and its deposits in the form of letters of credit will be returned within 90 calendar days, unless the member has an outstanding unpaid obligation to GSCC or an open net settlement position. The termination of membership will not affect any outstanding obligation of a member to GSCC.

III. GSCC's Rationale for the Proposed Rule Changes

GSCC believes that the proposal is consistent with the purposes and requirements of Section 17A of the Act. Specifically, GSCC believes that its netting system will promote the prompt and accurate settlement of government securities by reducing money payment and securities receive and delivery obligations of compared trades among GSCC members. In addition, GSCC states that netting will substantially reduce the number of Fedwire payment and securities movements by GSCC members. Moreover, the proposed system would reduce costs and promote the efficient utilization of the market's resources by facilitating the timely collection and processing of data.

GSCC also believes that the netting process and the associated financial and operational safeguards provide GSCC with the capacity to safeguard securities and funds in its custody or control or for which it has responsibility. GSCC also believes that the proposal would help ensure an orderly clearance and settlement process by providing the level of surveillance necessary to ensure that members adhere to its rules and by pointing out any financial or operational problems among its members that could create an unreasonable risk for the rest of the membership. In addition, GSCC stated that the marks-to-the-market and the clearing fund provide additional safeguards that minimize the risk to market participants and promote stability in the government securities market. GSCC notes that the proposed system would enable it to keep track, on a daily basis, of each net position that fails to settle and would assist its members' efforts to assess their position within the government securities market by automatically revaluing a member's net fail positions each business day to a price that is current as of the end of the prior business day. Finally, GSCC notes that it does not believe that the proposed rule changes will have an impact on, or impose a burden on competition.

IV. Discussion

Sections 17A(3) (A) and (F) of the Act require that a clearing agency be so organized and that its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions for which it is responsible and to safeguard securities and funds in its custody or control or for which it is responsible. GSCC's netting system provides an effective means to reduce member's settlement obligations, thereby, offering a significant reduction in risk to the market place. GSCC also has designed a number of safeguards, including marks-to-the-market, securities against payment through the Fedwire, the clearing fund, and a required deposit by inter-deale2 brokers, that are designed to reduce the risk associated with netting and settlement to GSCC and its members.

A. Prompt and Accurate Clearance and Settlement

Section 17A(b)(3)(F) requires that a clearing agency be so organized and that its rules be designed to promote the prompt and accurate clearance and

to cover the loss, GSCC will still have a $1,900,000 loss outstanding. GSCC then will apply up to $50,000 of each remaining netting member's required cash deposit equally among all such members. Assuming that there are a total of ten remaining netting members, GSCC will collect $500,000 from such members. To satisfy the remaining $1,400,000 loss, GSCC will look to the aggregate deposits of all netting members, including inter-dealer brokers, *pro rata*, based on the average daily level of each member's deposits over the prior twelve calendar months.

[72] After a member terminates its membership, or if the member fails to take any action, GSCC will make an additional assessment against the remaining netting members on a *pro rata* basis, according to the size of the initial assessment, to cover the amount not paid by the netting member who terminated its GSCC membership. After the loss has been satisfied, if the amount of funds deposited to fulfill any remaining netting member's clearing fund requirement is insufficient, GSCC will request the member to deposit the appropriate amount with GSCC.

settlement of securities transactions for which it is responsible. As discussed below, the Commission believes that GSCC meets the requirements of section 17A(b)(3)(F).

The market for government securities is the largest by dollar volume in the U.S. Outstanding U.S. Treasury Securities issues exceeded $1.8 trillion, with the daily average trading volume in excess of $100 billion by the end of 1988. The size and value of the trading in government securities creates potential exposure for market participants if a delivery of securities is late or if the Fedwire is temporarily non-operational. Thus, providing effective means to reduce government securities participants' settlement obligations may offer significant reductions in risks to the marketplace.

The benefits of GSCC's centralized, automated netting facilities in the government securities market will include reduction of both counterparty credit risk [73] and increased efficiency and cost savings, benefits already enjoyed by broker-dealers and banks in the corporate, municipal and mortgage-backed securities markets. First, trade netting will reduce delivery and payment obligations for dealers. Testing of GSCC's netting system indicates that both the size and number of delivery and payment obligations will be reduced by up to 90%.[74] Thus neeting will reduce both exposure and settlement costs for GSCC members. Second, GSCC's facilities will reduce member exposure to the risk that the party it trades with will be unable to settle that transaction. GSCC will interpose itself between parties to a trade and guarantee settlement. If a member fails to satisfy a settlement obligation, GSCC's mechanisms, including marks-to-the-market of fail positions, clearing fund deposits, and insolvency procedures, will reduce the likelihood of loss to its counter-parties and GSCC. Finally, the netting system will reduce daylight over-drafts on Fedwire and the risk that the failure of one institution to settle may cause losses or the failure of other institutions. The staff of the Board of Governors of the Federal Reserve System ("FRB"), in a recent proposal, estimated that GSCC would directly reduce book-entry overdrafts of government securities over Fedwire by about 5%.[75] The proposal also stated that GSCC would provide other risk control advantages to market participants, and indirectly to the FRB.[76]

The Commission believes GSCC has the capacity to operate a central netting service for government securities. First, GSCC's facilities manager, NSCC, has operated a netting system for corporate securities since the 1970s that accounts for approximately 90% of the number and dollar value of all trades executed on national securities exchanges and in over-the-counter markets. Although the dollar value of daily transactions in government securities is substantially greater, NSCC's experience in operating a netting system by novation is nonetheless invaluable to the smooth operation of GSCC's netting system.

Because of the volume of daily trading activity, the short settlement time frame and the importance of the government securities market, GSCC must be able to perform both its comparison and netting system accurately and on a timely basis even during severe market conditions. GSCC has represented to the Commisson that it will be able to operate its entire trade processing system accurately and within time frames established by GSCC during current and reasonably anticipated future average daily and peak volume processing days.[77]

GSCC expects that the comparison and netting process will require only several hours and will be completed during the early morning hours. Accordingly, the Commission believes GSCC will have sufficient flexibility to handle brief interruptions or delays without compromising smooth and efficient settlement during the day.

GSCC recently completed arrangements for, and tested the operational capability of, a back-up facility in the event a power failure or disaster prevented GSCC's operations at its main facility. GSCC has contracted with Security Pacific National Trust Co. ("Security Pacific") to provide GSCC with an off-site computer backup facility in the event of a disaster at GSCC's main facility. The agreement provides that Security Pacific's backup computer facility will become available within two hours of notification of a disaster, and Security Pacific will provide the facility on a continuous basis until GSCC's main facility can resume operations.

GSCC's payment and delivery functions will be assigned to banks with an established history and reputation for providing clearing and payment services to government securities brokers and dealers, many of whom will be GSCC netting members. Those banks will operate in accordance with GSCC's instructions, which GSCC will generate during the netting process before the business day begins.[78]

The Commission believes, after examination of GSCC's agreement with its clearing agent banks, and with the knowledge of those banks' experience with government securities clearing and payment services, that GSCC has the capacity to handle its payment and receipt obligations, arising out of the netting process.

B. Safeguarding Funds and Securities

Section 17A(b)(3)(A) of the Act requires that the rules of a clearing agency be designed to, among other things, assure the safeguarding of securities and funds which are in its custody or control. Clearing agencies must assess the risks to the clearing agency and its participants and develop a scheme to satisfy those risks on a uniform, non-discriminatory basis. GSCC has devised a variety of ways to reduce the risk to itself and its participants, including membership standards, member monitoring, the authority to restrict a member's access to netting, the clearing fund and the loss allocation scheme.

1. Participation Standards

In the Order granting GSCC temporary registration as a clearing agency, the Commission temporarily exempted GSCC from section 17A(b)(3)(B) and 17A(b)(4)(B), on the basis of GSCC's representation that it would "develop appropriate member financial and operational standards in the near future, before it expand[ed] its range of services, and, in any event, before it offer[ed] trade accounting or

[73] "Counterparty credit risk" is the risk to one party to a trade that the other party to the trade will default on its payment or delivery obligations.

[74] Netting may not reduce a member's delivery or receipt obligation to a single Fedwire movement. The Fedwire $50 million cap on each Fedwire securities movement may require more than one Fedwire delivery to satisfy a large net obligation. The reduction of the number of Fedwire movements, however, still will be substantial despite the cap.

[75] *See* Proposals for Modifying the Payments System Risk Reduction Policy Proposal, Staff of the Federal Reserve System, May 1989 ("Federal Reserve Staff Proposals").

[76] The other risk control advantages stated are:

(1) Controlling and reducing resettlement credit risks, especially through the broker's market, and

(2) Accelerating and strengthening the "pair-off" process to eliminate one of several obstacles to earlier releases of securities transfers. *Id.* at 29.

[77] *See* GSCC Temporary Registration Order, *supra* note 6, at n. 33.

[78] GSCC's relationship with the clearing agent banks is somewhat analogous to NSCC's relationship with DTC. NSCC maintains an account at DTC and issues instructions to DTC to move securities from and to the DTC accounts of NSCC and NSCC's clearing members. NSCC then delivers securities out of its account and into the DTC account of NSCC participants with net long positions. NSCC, however, does not rely on DTC to settle funds-only obligations; rather those obligations are settled directly through NSCC.

netting services." [79] The Commission believes that GSCC's participant standards should be based on the anticipated credit risk associated with clearing agency admission. In the GSCC Temporary Registration Order, the Commission recognized that minimum capital requirements may not adequately cover such credit risk and encouraged GSCC to use its experience as guidance in establishing financial responsiblity standards for membership.[80]

GSCC has developed operational and financial responsibility standards based on its experience as a clearing agency engaging in comparison-only activities over the past year. GSCC's capital requirements are substantially higher than the minimum capital requirements for government securities brokers and dealers established by the Treasury Department.[81] GSCC believes that these membership standards for broker, dealer, and bank applicants are fair and appropriate in light of the risk posed by a member of GSCC.

The Commission believes that GSCC has established reasonable financial and operational requirements for the admission of brokers, dealers and bank applicants. The Commission recognizes that GSCC only has one year's experience as a clearing agency and that the experience GSCC will gain from the netting of Government securities will provide GSCC with the further experience to more appropriately evaluate the credit risk associated with clearing agency admission.

Thus, the Commission expects GSCC to review its financial and operational standards in light of the experience it gains from netting, prior to the Commission's consideration of GSCC's full registration (*i.e.*, before May 24, 1991, the expiration date of the Order temporarily approving GSCC's application for registration as a clearing agency.[82]

2. Member Monitoring

The Commission believes that it is important that GSCC carefully monitor each member's activities, financial condition and compliance with GSCC's rules, consistent with GSCC's obligations under section 19(g) of the Act.[83] GSCC should pay close attention daily to each member's settlement position, the number of aging fails each member is responsible for, and the changes in the mix of each member's securities portfolio, particularly when a member changes its aggregate portfolio to assume a more risky position. GSCC's rules have established adequate early warning requirements to inform it when a member is beginning to have difficulties, but GSCC should develop further sources of information to verify a member's financial and operational capabilities. For this reason, the Commission believes that GSCC must coordinate closely with other SROs, the Commission, and relevant bank regulatory authorities concerning the financial and operational capabilities of its members.[84]

Section 17A(b)(3)(A) of the Act requires that the rules of a clearing agency be designed to, among other things, assure the safeguarding of securities and funds which are in its custody or control. Clearing agencies must assess the risks to the clearing agency and its participants and develop a scheme to satisfy those risks on a uniform, non-discriminatory basis. GSCC has devised a variety of ways to reduce the risk to itself and its participants, including membership standards, member monitoring, the authority to restrict a member's access to netting, the clearing fund and the loss allocation scheme.[85]

3. System Price and Mark-to-the-Market

GSCC proposes to collect and pay marks-to-the-market from or to netting members with fail net settlement positions based on the par weighted average price of member trades for those securities during the day. The Commission believes that GSCC's use of a par weighted average price during falling or rising intra-day markets could weaken GSCC's marking-to-the-market of failed net open positions and expose GSCC to unnecessary risk. Specifically, the Commission is concerned that the par weighted average price may not accurately reflect the end of the day value of securities positions where substantial intra-day price volatility has occurred. Because government securities transactions are not time-stamped and dealers and brokers do not report their end-of-day trade prices, there is currently no completely reliable method to determine an accurate closing price. In order to address this concern, GSCC has represented that it will compare the prices established for seven Treasury securities of varying maturities [86] through its par weighted average system with prices from other sources, including price made available by the Federal Reserve, inter-dealer brokers and other public sources.[87]

GSCC has represented that in establishing a system price, GSCC will compare its par weighted average price with other available prices and if, in GSCC's judgment it would be prudent to do so, it will use another price as the system price. GSCC will provide the Commission with a monthly report comparing the par weighted average price with available end-of-day prices. The Commission believes that GSCC's proposed procedures provide an appropriate means to determine the marking price, at least on an interim basis. The Commission, however will revisit with GSCC the issue of possible changes to its marking of prices after reviewing the data provided.

GSCC's proposed rules provide that it may not mark-to-the-market a fail long position where the securities have been delivered to GSCC but are held overnight because GSCC's clearing agent bank could not redeliver them before the Fedwire closed. This situation will arise when a member makes a late-day Fedwire delivery. GSCC will be at risk that the value of the securities it holds overnight will decrease, exposing GSCC to risk of loss if the receiving member defaults before delivery the next morning. The Commission is concerned about whether this marking exception may expose GSCC to an unnecessary financial risk. In this connection, the Commission notes that

[79] GSCC Temporary Registration Order, *supra* note 6.

[80] *Id.*

[81] *See* 17 CFR 400.1 through 402.2d, 52 FR 27910 (July 24, 1987). *See also* 17 CFR 240.15c3–1.

[82] The Commission is continuing GSCC's exemption from sections 17A(b)(3)(B) and 17A(b)(4)(B) of the Act. GSCC rules do not specifically enumerate other clearing agencies, investment companies and insurance companies within its categories for membership and do not have appropriate standards for these categories and members. GSCC has represented that it will amend its rules prior to full registration of GSCC (*i.e.*, May 24, 1991, the expiration date of the GSCC Temporary Registration Order) in order to provide explicitly for the admission of all statutorily enumerated categories of members into the comparison-only and netting systems. In addition, GSCC has agreed to develop appropriate operational and financial standards for other registered clearing agencies, investment companies and insurance companies if any seek to join GSCC. *See* GSCC Temporary Registration Order, *supra* note 6.

[83] Section 19(g) of the Act requires a clearing agency to comply with and to enforce compliance by members of its own rules.

[84] *Cf.* Interim Report of the Working Group on Financial Markets, Appendix D, May 1988.

[85] Thus, the Commission believes that GSCC's netting and settlement system and the rules thereof are designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

[86] The securities are: one-year Treasury Bill, two-year, four-year, five-year, seven-year and ten-year Treasury Notes, and the 30-year Treasury Bond. *See* Letter to Ester Saverson, Jr., Branch Chief, Division of Market Regulation, SEC, from Jeffrey F. Ingber, Associate General Counsel, GSCC, dated June 29, 1989.

[87] *Id.*

GSCC's rules provide GSCC with the authority to fine a member who regularly effects deliveries which can not be redelivered prior to Fedwire closure. In addition, GSCC has represented that it will provide the Commission with a monthly report stating: (1) Each occurrence of an overnight "box" position experienced by GSCC's clearing agent bank, (2) the member(s) involved, (3) what, if any, action GSCC's Board takes, and (4) the amount of GSCC financing as a result of the late delivery.[88] After GSCC compiles and reviews the data, the Commission expects that GSCC will examine methods of reducing their overnight risk exposure, including the collection of a mark.

4. Clearing Fund Requirements

The Act does not require clearing agencies to establish and maintain clearing funds; however, the Standards Release counsels that "it is appropriate for a clearing agency to establish by rule an appropriate level of clearing fund contributions based, among other things, on its assessment of the risks to which it is subject."[89] Clearing funds may provide, among other things, a defense against financial loss due to participant defaults; a ready source of liquid funds in that event; and a vehicle to facilitate risk mutualization among participants. The Commission believes that it is essential that a clearing agency have a liquid source of funds available to meet its liquidity needs independent of its loss allocation rules.[90] GSCC's major source of liquidity is its clearing fund.[91]

GSCC plans to use its clearing fund as source of immediate liquidity, to meet its temporary financing needs[92] by pledging its required member deposits at one of two banks with which it has an agreement to provide such financing.[93] The Commission believes that it is vital that GSCC continue to maintain sufficient sources of credit to obtain immediate financing to meet its liquidity needs and to continue evaluating its credit needs to ensure that it has sufficient sources of temporary financing to meet such needs.

GSCC's clearing fund formula has been properly constructed to serve as a mechanism for GSCC to measure the risk profile of its members' securities settlement obligations for yesterday's trades, standing alone, and against the backdrop of a member's settlement obligations for the previous month. Initially, GSCC will use a schedule of margin factors for use in calculating clearing fund contribution requirements.[94] GSCC believes, based on its review of average daily government securities price volatility data from the period from the first quarter of 1988 through the first quarter of 1989, that the margin factors contained in its proposed schedule, which reflect calculation of the mean of the price volatility data plus two standard deviations, cover approximately 95% of the historical one-day market movements in each such security and, thus, that the schedule is a prudent and appropriate one.[95]

While the Commission believes that GSCC's proposed schedule is satisfactory for the start-up of netting, the Commission believes that GSCC should develop the ability to assess, on an automated, daily basis, historical and potential price movements and the implications that those price movements could have for the risk profile of GSCC members. In the event of a member default or insolvency, GSCC will be obligated to close-out and buy-in securities at prices that may bear no relation to yesterday's prices. In this connection, because of the potential financial exposure associated with such liquidations, an insufficient margin factor could result in significant losses to GSCC, particularly if a GSCC member determines to concentrate its trading activity in a limited range of maturities or on the same side of the market. Accordingly, GSCC should be in a position to continuously review the adequacy of its margin schedule.

In this connection, GSCC has undertaken that it will not make eligible for netting, and will not net through the Netting System, U.S. agency securities, STRIPS, and U.S. Treasury Bonds (other than the 30-year Treasury Bond), until it has provided the Commission staff with a design plan and schedule for the implementation of an automated system for the assessment, based on maturity ranges, of price volatility that satisfactorily takes into account historical and implied volatility.

GSCC has taken the additional step of imposing a 1% haircut on letters of credit which members submit to meet their clearing fund requirements to ensure that in the aggregate the clearing fund will be sufficient to meet its needs and to account for possible delays in drawing down on letters of credit. The Commission believes that imposing the 1% haircut is a prudent step because it will ensure that GSCC will have the full amount it requires after GSCC pays the costs of pledging the letters of credit and offsets the financing costs which banks will impose on GSCC because the funds provided pursuant to the letters of credit which GSCC received from its members are not immediately available.

5. Loss Allocation

The Commission notes that the Act does not require a clearing agency to mutualize the risk of loss among its members. Although some clearing agencies registered with the Commission, such as NSCC, [96] employ some form of risk mutualization for netting by novation systems, others, such as the Participants Trust Corporation, have a more limited system of risk mutualization.[97] The Commission believes that while risk mutualization has certain benefits, including the provision of liquidity from within the clearing agency environment that otherwise must be provided by outside sources, full risk mutualization is not required. The Commission will examine each clearing agency's risk management system, including its clearing fund formula and the amount, if any, of risk mutualization, to determine whether its risk management procedures are appropriately tailored to the markets served by the clearing agency and otherwise satisfy the requirements of the Act. The Commission has examined GSCC's risk management system and believes that it is an acceptable method of allocating losses among its participants and appropriately balances the statutory goals of promoting prompt and accurate clearance and settlement (by encouraging broker participation in central clearing facilities) and equitable allocation of dues, fees, and other charges.

In this connection, GSCC's proposal provides for differential treatment between broker and dealer netting members and inter-dealer brokers, with regard to particular aspects of the netting system. For example, the proposal excludes inter-dealer brokers from having to pay marks-to-the market on net fail positions. The proposal also limits an inter-dealer broker's liability to GSCC at $1.6 million per calendar year. In addition, inter-dealer brokers are exempt from the clearing fund contribution requirements; instead, inter-dealer brokers must deposit $1.6 million in collateral with GSCC.[98] The Commission believes that clearing agencies can treat different categories of members differently provided that any different treatment contained in the scheme of financial and operational safeguards is rationally related to the risks posed to the clearing agency by each class of participants.

GSCC treats inter-dealer brokers differently than it treats brokers and dealers because inter-dealer brokers present less potential risk to GSCC and its members than brokers and dealers. Inter-dealer brokers act exclusively as agents for others through systems intended to ensure that all transactions are offset. Thus, the extremely large number of transactions in which inter-dealer brokers participate as parties do not reflect the settlement risks they pose to GSCC. In recognition of this fact, GSCC members collectively decided to set up a separate financial scheme for inter-dealer brokers that provided for allocation of losses based on the fact that inter-dealer brokers act exclusively as agents for others. Therefore, the Commission believes that the special treatment of inter-dealer brokers as a membership category is fair and appropriate in light of the whole scheme GSCC employs to minimize the risk to itself and its members.

V. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule changes are consistent with the Act and, in particular, section 17A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes (GSCC-88-04; GSCC-89-05; GSCC-89-06; and GSCC-89-07) be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 7, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-16552 Filed 7-13-89; 8:45 am]

BILLING CODE 8010-01-M

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[88] GSCC may request confidential treatment of the information contained in this report.

[89] *See* Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 ("Standards Release").

[90] *See also* Federal Reserve Staff Proposals, *supra* note 75, which states that clearing agencies should have an independent source of liquidity to meet its needs and not rely solely on reversals to shift the loss to its members.

[91] The collateral which it holds as a result of late deliveries also could be used to provide liquidity, but the amount of this collateral in many cases will be too small to meet potential losses from participant defaults.

[92] An example of a situation when GSCC may need to obtain temporary financing would occur if a member failed to make his 10:00 a.m. (e.s.t.) funds-only settlement obligation to GSCC, yet GSCC was required to pay out those funds as part of GSCC's 11:00 a.m. (e.s.t.) settlement with its members. GSCC would need to obtain temporary financing by 11:[illegible] a.m. (e.s.t.) to pay its members until GSCC was able to recover the funds from the defaulting member or through the use of its loss allocation procedures.

[93] GSCC currently maintains these agreements with the Security Pacific Bank and the Bank of New York.

[94] As discussed above, GSCC has amended its proposed rules to authorize GSCC to revise the margin factors to address changing market conditions.

[95] *See* Letter to Ester Saverson, Jr., *supra* note 88.

[96] *See* Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167.

[97] *See* Securities Exchange Act Release No. 26671 (March 28, 1989), 54 FR 13286.

[98] GSCC's proposed Rule 4, section 7 requires inter-dealer brokers participating in the netting system to deposit and maintain a cash deposit of $100,000 and an additional open account indebtedness of $1.5 million secured by either eligible treasury securities or irrevocable letters of credit.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

July 10, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Carlisle Companies, Inc.
Common Stock, $1 Par Value (File No. 7-4675)
Longview Fibre Co.
Common Stock, $7.50 Par Value (File No. 7-4676)
SPI Pharmaceuticals, Inc.
Common Stock, $0.01 Par Value (File No. 7-4677)
Allstate Municipal Premium Income Trust
Common Stock, $0.01 Par Value (File No. 7-4678)
MFS Multimarket Total Return Trust
Shares of Beneficial Interest (File No. 7-4679)
Nuveen Performance Plus Municipal Fund, Inc.
Common Stock, $0.01Par Value (File No. 7-4680)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 31, 1989, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-16555 Filed 7-13-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-17058; File No. 812-7034]

UNUM Life Insurance Co. et al.; Application for Exemption

Date: July 7, 1989.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: UNUM Life Insurance Company ("UNUM"), TSAVA Separate Account (the "Variable Investment Division") and UNUM Sales Corp. ("UNUM Sales").

Relevant 1940 Act Sections: Exemption requested under Section 6(c) of the 1940 Act from sections 26(a)(2)(C) and 27(c)(2) thereof.

Summary of Application: Applicants seek an order to permit the deduction of mortality and expense risk charges under certain group variable annuity contracts (the "Contracts").

Filing Date: The application was filed on April 24, 1989, and amended on June 28, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the Commission by 5:30 p.m., on August 1, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o Joan Sarles Lee, Esquire,

UNUM Life Insurance Company, 2211 Congress Street, Portland, Maine 04122. Copies to Gary O. Cohen, Esquire, Freedman, Levy, Kroll & Simonds, 1050 Connecticut Avenue NW., Suite 825, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Nancy M. Rappa, (202) 272-2622, or Acting Assistant Director Clifford E. Kirsch, (202) 272-2061 (Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the Public Reference Branch in person or the Commission's commercial copier which may be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. UNUM is a stock life insurance company organized under the laws of Maine. The Variable Investment Division is a unit investment trust and has filed with the Commission a registration statement with respect to the Contracts on Form N-4 under the 1940 Act and the Securities Act of 1933 (the "1933 Act"). The Variable Investment Division invests exclusively in shares of the Dreyfus Life and Annuity Index Fund, Inc. (the "Fund"). The Fund will be offered to insurance company separate accounts of both affiliated and unaffiliated insurance companies to fund variable life insurance and variable annuity contracts. The Fund is managed by Wells Fargo Investment Advisers, a registered investment adviser under the Investment Advisers Act of 1940.

2. UNUM Sales, a subsidiary of UNUM, is the principal underwriter and distributor of the Contracts. UNUM Sales will distribute the Contracts through representatives who are licensed to sell securities, insurance products and variable annuities. The Contracts will be offered continuously. UNUM Sales, a broker-dealer registered under the Securities Exchange Act of 1934, is a member of the National Association of Securities Dealers, Inc.

3. The Contracts will be available to employers who offer their employees a retirement program that qualifies for tax benefits under section 403(b) of the Internal Revenue Code of 1986 and regulations thereof (the "Code").

4. The Contracts provide for a Death Benefit for a Participant who dies during the Accumulation Period and before the end of the calendar year in which the Participant turns age 70½. The Death Benefit permits beneficiaries to receive the greater of the following amounts: (a) The sum of all Contributions made under the Contract, less any net withdrawal amounts, amounts converted to an annuity or outstanding loan (including principal and due and accrued interest) or (b) the Participant's account balance less any outstanding loan (including principal and due and accrued interest.) If the Participant's age is greater than 70½ years at death, his/her Beneficiary will be paid the Net Withdrawal Amount as specified in the Contract.

5. UNUM deducts an Annual Administration Charge of $25.00 per year (or the balance of the Participant's account if less) from each Participant's account balance on the last business day of the month in which a participation anniversary occurs. This Annual Administration Charge is imposed only during the accumulation period. UNUM does not anticipate a profit from the Annual Administration Charge and such charge is guaranteed not to increase.

6. No sales charge will be deducted from contributions under the Contracts when initially received. Under the Contracts, during the accumulation period UNUM charges a Contingent Deferred Sales Charge (CDSC) on all total or partial withdrawals of a Participant's account balance unless the withdrawal is on account of one of the following events: (a) The Participant has attained age 59½; (b) the Participant has incurred a disability for which he/she is receiving Social Security payments; (c) the Participant has died; or (d) the Participant has terminated employment with the Contractholder. The CDSC reimburses UNUM for part or all of its expenses related to distribution of the Contracts, including compensation to dealers and the cost of sales materials. Amounts subject to the CDSC are charged in accordance with the following schedule:

Participation year	CDSC percent
1 to 6	5
7	4
8	3
9	2
10	1
11 and later	0

A Participant will receive participation year credits if: (a) On the effective date of the Contract, the Participant is also a participant under another UNUM or UNUM Pension and Insurance Corporation section 403(b) contract; (b) such other contract has a withdrawal charge schedule that declines to zero based on the number of participation years or the number of years such other contract has been effective; and (c) a contribution on behalf of the Participant is made to the Contract during the 12 month period beginning on the effective date of the Contract.

7. UNUM assumes an expense risk in that the actual expenses incurred by UNUM in issuing and administering the Contracts may exceed the amount estimated. UNUM assumes a mortality risk in that UNUM's actuarial estimate of mortality rates during the Annuity Period, as guaranteed in the Contract, may prove erroneous and Annuitant may live longer than expected. By making this contractual guarantee, UNUM assures that neither an Annuitant's own longevity nor an improvement in life expectancy generally will have an adverse effect under the Contracts. In addition, UNUM bears the mortality risk that it guarantees to pay a Death Benefit that may be higher than the Paticipant's account balance upon the death of the Participant prior to the annuity period.

8. The compensate it for assuming mortality and expense risks, UNUM will deduct from the net assets of the Variable Investment Division a daily charge in an amount equal to 1.2% on an annual basis. This charge is assessed both during the Accumulation Period and the Annuity Period. The 1.2% cumulative charge consists of .25% for the expense risk and .95% for the mortality risk. The relative proportion of these charges, consistent with industry practice, is estimated and, therefore, may change, based on UNUM's experience in administering the Contracts. However, the total cumulative charge may not be altered.

9. Applicants request exemptive relief from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the assessment and deduction of the mortality and expense risk charge with respect to the Contracts.

10. Applicants represent that the level of the mortality and expense risk charge imposed is both within the range of industry practice for comparable annuity contracts and reasonable in relation to the risks described in the application. Applicants state that this representation is based upon their analysis of publicly available informatioon regarding comparable contracts of other companies, taking into consideration the particular annuity features of the comparable contracts. Such factors includes: death benefit guarantees, annuity purchase rate guarantees, other contract charges, the frequency of charges, the administration services performed by the companies with respect to the contracts, the distribution methods, the market for the contract and the tax status of the contracts. Applicants represent that they will maintain at their home office and make available to the Commission a memorandum setting forth in detail the comparable variable annuity products analyzed and the methodology, and results of, Applicant's comparative review so long as there are Contracts outstanding.

11. The CDSC may be insufficient to cover all costs relating to the distribution of the Contracts. Applicants acknowledge that if the revenues generated by the CDSC are insufficient to cover UNUM's actual costs related to the distribution of the Contracts, such costs will be paid from UNUM's General Account assets, which may include any ultimate profit derived from the mortality and expense risk charge. In such circumstances, a portion of the mortality and expense risk charge may be viewed as providing for a portion of the costs relating to distribution of the Contracts.

12. Notwithstanding the foregoing, UNUM has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Contractholders and Participants as well as the Variable Investment Division. The bases for UNUM's conclusion are set forth in a memorandum which will be maintained by UNUM at its home office and will be available to the Commission. Moreover, UNUM represents that the Variable Investment Division will invest only in an underlying mutual fund that undertakes, in the event it should adopt any plan under Rule 12b-1 under the 1940 Act to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of Section 2(a)(19 of the 1940 Act.

Applicants' Legal Conclusion

Applicants submit that their requests for exemption are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act and that an order of the Commission should, therefore, be granted. Accordingly, Applicants request an exemption pursuant to Section 6(c) of the 1940 Act from Sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to permit the assessment and deduction of the mortality and expense risk charge, described above, with respect to the Contracts.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-16556 Filed 7-13-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[RS&I-Ap-No. 1011]

Burlington Northern Railroad Co.; Reconsideration; Public Hearing

The Burlington Northern Railroad Company has petitioned the Federal Railroad Administration (FRA) for reconsideration of its petition seeking relief from the requirements of § 236.307 of the Rules, Standards and Instructions (49 CFR Part 236) to the extent that the carrier not be required to install indication locking for the Flashing Yellow aspect (Approach Medium) at 120 colorlight type approach signals. This proceeding is identified as FRA Rules, Standards and Instructions Application No. 1011.

The FRA has issued a public notice seeking comments of interested parties and conducted a field investigation in this matter. After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly a public hearing is hereby set for 10 a.m. on August 30, 1989, in the West Meeting Room of the Minot Municipal Auditorium located at 420 Third Avenue SW. in Minot, North Dakota.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on July 10, 1989.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89-16484 Filed 7-13-89; 8:45 am]

BILLING CODE 4910-06-M

[BS-Ap-No-2836]

Consolidated Rail Corp. and Public Hearing

The Illinois Central Railroad Company and Consolidated Rail Corporation have petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed conversion of the manual interlocking at Effingham, Illinois to automatic operation. This proceeding is identified as FRA Block Signal Application Number 2836.

The FRA has issued a public notice seeking comments of interested parties and conducted a field investigation in this matter. After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly a public hearing is hereby set for 10 a.m. on August 23, 1989, in Room D of the Holiday Inn located at 1600 West Fayette Road in Effingham, Illinois.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on July 10, 1989.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89-16485 Filed 7-13-89; 8:45 am]

BILLING CODE 4910-06-M

BEST COPY AVAILABLE

Maritime Administration

[Docket No. S-653]

Waterman Steamship Corp.; Amended Application for Privilege Call Service on Trade Routes 10 and 13

Waterman Steamship Corporation (Waterman) has requested an amendment to the **Federal Register** Notice dated July 10, 1989 (54 FR 28857) to correct errors, namely; (1) Waterman's letter in paragraph 1, line 1 should be June 30, 1989, instead of June 29, 1989; (2) "out gross revenues" in paragraph 3, line 13 should read "outbound gross revenues" and (3) the "Outbound total" of Trade Routes 10 and 13 in the table should read 1,035,647 tons versus 10,035,647 tons.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies))

By Order of Maritme Subsidy Board.

Date: July 11, 1989.

Joel C. Richard,

Assistant Secretary.

[FR Doc. 89-16563 Filed 7-13-89; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Treasury Borrowing Advisory Committee of the Public Securities Association; Renewal of Charter

Announces the renewal of the charter for the Treasury Borrowing Advisory Committee of the Pubic Securities Association, formerly known as Government and Federal Agencies Securities Committee of the Public Securities Association advisory committee, for a period of two years, in accordance with the Federal Advisory Committee Act (Pub. L. 92-463).

The Secretary of the Treasury has determined that the renewal of this committee is necessary and in the public interest. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

The purpose of the committee is to provide informed advice as representatives of the financial community to the Secretary of the Treasury and Treasury staff, upon the Secretary of the Treasury's request, in carrying out Federal financing and in the management of the public debt.

The scope of the activity of the committee is to consider commercial and financial information relevant to its objectives and to consult with and advise the Secretary of the Treasury and Treasury staff with respect to debt management operations, and to make reports and recommendations.

Meetings and closed to the public because the topics of discussions pertain to information exempt from disclosure under subsection 552b(c)(4) and (c)(9)(A)(i) of Title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

The advice provided consists of commercial and financial information given and received in confidence. As such, debt management advisory committee activities concern matters which fall within the exception covered by subsection 552b(c)(4) of Title 5 of the United States Code for matters which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although Treasury's final announcement of financing plans may not reflect the recommendation provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities markets. Thus, these meetings also fall within the exemption covered by subsection 552b(c)(9)(A)(i) of Title of the United States Code.

Membership consists of twenty to twenty-five members who are experts in Government securities markets, involved in a senior position in debt markets as investor, investment advisor, banker or as a dealer, bank or non-bank in debt securities and are appointed by the Public Securities Association from its association membership. Members must be highly competent, experienced and actively involved in financial markets. Effort is made to get regional representation so that committee views are a reasonable proxy for nationwide views. As far as possible, balance between bank and non-bank dealers is sought. From time to time, members are added or deleted to reflect changing responsibilities and to provide for a rotation of membership in areas where more than one qualified candidate may be available.

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463) the Department of the Treasury has renewed the charter of the Treasury Borrowing Advisory Committee of the Public Securities Association and approved the following membership:

Donald B. Riefler, Chairman, Sources & Uses of Funds Committee, Morgan Guaranty Trust Company, New York, NY 10015

Jon S. Corzine, Partner, Goldman Sach & Co., New York NY 10004

Daniel S. Ahearn, Senior Vice President, Wellington Management Company, Boston, MA 02109

Louis Betanzos, Executive Vice President, National Bank of Detroit, Detroit, MI 48226

James S. Brickley, Chief Investment Officer, Boatmen's National Bank of St. Louis, St. Louis, MO 63101

Richard S. Davis, Managing Director, The First Boston Corporation, New York, NY 10055

Raphael de la Gueronniere, Director of Fixed Income, Paine Webber Incorporated, New York, NY 10019

John B. Ford, Chariman of the Board, Aubrey G. Lanston & Co., Inc., New York, NY 10005

Stephen C. Francis, Managing Director, Fischer, Francis, Trees & Watts, Inc., New York, NY 10022

Richard S. Fuld, Jr., Vice Chairman, Shearson Lehman Hutton, Inc., World Financial Center, New York, NY 10295

George H. Grimm, Executive Vice President and Managing Director, Westac Pollack & Company, New York, NY 10038

David A. Jones, Chairman & President, Citicorp Securities Markets, Inc., New York, NY 10268

John J. Mack, Managing Director, Morgan Stanley & Company, Inc., New York, NY 10020

Daniel T. Napoli, Chairman and GEO, Government Securities Department, Merrill Lynch & Co., Inc., New York, NY 10281

Ralph F. Peters, Chairman of the Executive Committee, Discount Corporation, New York, NY 10005

Allan Rogers, Managing Director, Bankers Trust Company, New York, NY 10015

H. Jack Runnion, Jr., Senior Executive Vice President, Wachovia Bank & Trust Company, N.A., Winston-Salem, NC 27101

Morgan B. Stark, Managing Director, Chemical Bank, Global Securities & Foreign Exchange, New York, NY 10172

John R. Vella, Executive Vice President, Bank of America, NT & SA, San Francisco, CA 94104.

David M. Nummy,

Acting Assistant Secretary of the Treasury (Management).

Effective Date: July 15, 1989.

[FR Doc. 89-16531 Filed 7-13-89; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

[Delegation Order No. 67 (Rev. 19)]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The specific authorization to sign the name of, or on behalf of, Fred T. Goldberg, Jr., Commissioner of Internal Revenue. The text of the Delegation Order appears below.

EFFECTIVE DATE: July 5, 1989.

FOR FURTHER INFORMATION CONTACT: Melva E. Scruggs, PFR:P:I, Room 3524, 1111 Constitution Avenue NW., Washington, DC 20224, (202) 566-4273 (Not a Toll-Free Telephone Call)

Order No. 67 (Rev. 19)

Effective date: July 5, 1989.

Signing the Commissioner's Name or on His Behalf:

Effective 9:00 a.m., July 5, 1989, all outstanding authorizations to sign the name of, or on behalf of, Michael J. Murphy, Acting Commissioner of Internal Revenue, are hereby amended to authorize the signing of the name of, or on behalf of, Fred T. Goldberg, Jr., Commissioner of Internal Revenue.

Delegation Order No. 67 (Rev. 18) effective March 4, 1989, is superseded.

Approved:

Fred T. Goldberg, Jr.,

Commissioner.

Date: July 5, 1989.

[FR Doc. 89-16558 Filed 7-13-89; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 134
Friday, July 14, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE (NCLIS)

White House Conference Advisory Committee

DATE AND TIME: August 3, 1989.

PLACE: The Embassy Suites Hotel, Delegate Room, 1250 22nd Street NW., Washington, DC 20037.

STATUS: August 3, 1989, 9:00 a.m.–3:30 p.m., Open.

MATTERS TO BE DISCUSSED: White House Conference on Library and Information Services Conference II Advisory Committee Subcommittee Reports

—WHCLIS II Resources
—WHCLIS II Structure Committee
—Preconference Activities Committee
—Public Relations And Awareness Committee
—Public And Private Sector Liaisons Committee

Status Report on Administrative Items
Review of Formula for Funding States.

Special provisions will be made for handicapped individuals by contacting John W. A. Parsons (1 202) 254–3100, no later than one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: John W. A. Parsons, NCLIS Staff, 1111 18th Street NW., Suite 310, Washington, DC 20036, (1 202) 254–3100.

Dated: July 11, 1989.

John W. A. Parsons,

Staff Assistant for the White House Conference.

[FR Doc. 89–16644 Filed 7–12–89; 10:01 am]

BILLING CODE 7527-01-M

Corrections

Federal Register
Vol. 54, No. 134
Friday, July 14, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-060-09-4212-14, WYW-101839]

Realty Action; Direct Sale of Public Land in Johnson County, Wyoming

Correction

In notice document 89-14937 beginning on page 26433 in the issue of Friday, June 23, 1989, make the following corrections:

1. On page 26433, in the table, in the second column, the entry should read "T. 41 N., R. 79 W., 6th P.M. Section 5: SW¼SW¼".

2. On the same page, in the same table, in the fourth column, the entry should read "1,400.00.

3. On the same page, in the third column, in the last paragraph, in the fifth line "17091" should read "1701".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-AGL-3]

Establishment of Transition Area; Chetek, WI

Correction

In rule document 89-14900 appearing on page 26373 in the issue of Friday, June 23, 1989 make the following correction:

On page 26373, in the first column, under **SUPPLEMENTARY INFORMATION**, in the first paragraph, in the sixth line, "Cheteck" should read "Chetek".

BILLING CODE 1505-01-D

DEPARTMENT OF TREASURY

Fiscal Service

[Dept. Circ. 570, 1988-Rev., Supp. No. 18]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; Industrial Indemnity Co., et al.

Correction

In notice document 89-14882 appearing on page 26462 in the issue of Friday, June 23, 1989, make the following correction:

On page 26462, under Department of the Treasury, in the table, under "Company name", the fourth entry should read "North River Insurance Co."

BILLING CODE 1505-01-D

federal register

Friday
July 14, 1989

Part II

Environmental Protection Agency

40 CFR Part 300

National Priorities List for Uncontrolled Hazardous Waste Sites—Update #9; Federal Facility Sites; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-3615-2]

National Priorities List for Uncontrolled Hazardous Waste Sites: Update #9—Federal Facility Sites

AGENCY: Environmental Protection Agency

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency ("EPA") is proposing the ninth update to the National Priorities List ("NPL"). This update proposes to add 52 sites to the Federal facilities section of the NPL. These sites are located on facilities that currently are owned or operated by the Federal government. In this update, EPA also proposes to expand one Federal facility site that is on the final NPL. The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan ("NCP"), which was promulgated on July 16, 1982, pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") and Executive Order 12316. CERCLA was amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA). CERCLA requires that the NCP include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States, and that the list be revised at least annually. The NPL, initially promulgated on September 8, 1983 (48 FR 40658), constitutes this list.

These sites are being proposed because they meet the listing requirements of the NPL. This notice provides the public with an opportunity to comment on placing these sites on the NPL.

This proposed rule brings the number of proposed NPL sites to 335, 74 of them in the Federal section; 889 are on the final NPL, 41 of them in the Federal section. Final and proposed sites now total 1,224.

DATES: Comments must be submitted on or before September 12, 1989.

ADDRESSES: Comments may be mailed to Larry Reed, Acting Director, Hazardous Site Evaluation Division (Attn: NPL Staff), Office of Emergency and Remedial Response (OS-230), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Addresses for the Headquarters and Regional dockets are provided below. For further details on what these dockets contain, see the Public Comment Section, Section I, of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

Tina Maragousis, Headquarters, U.S. EPA CERCLA Docket Office, Waterside Mall, 401 M Street, SW., Washington, DC 20460, 202/382-3046.

Evo Cunha, Region 1, U.S. EPA Waste Management Records Center, HES-CAN 6, John F. Kennedy Federal Bldg., Boston, MA 02203, 617/573-5729.

U.S. EPA, Region 2, Document Control Center, Superfund Docket, 26 Federal Plaza, 7th Floor, Room 740, New York, NY 10278, Latchmin Serrano 212/264-5540, Ophelia Brown 212/264-1154.

Diane McCreary, Region 3, U.S. EPA Library, 5th Floor, 841 Chestnut Bldg., 9th & Chestnut Streets, Philadelphia, PA 19107, 215/597-0580.

Gayle Alston, Region 4, U.S. EPA Library, Room G-6, 345 Courtland Street, NE., Atlanta, GA 30365, 404/347-4216.

Cathy Freeman, Region 5, U.S. EPA 5HSM-12, 230 South Dearborn Street, Chicago, IL 60604, 312/886-6214.

Deborah Vaughn-Wright, Region 6, U.S. EPA, 1445 Ross Avenue, Mail Code 6H-MA, Dallas, TX 75202-2733, 214/655-6740.

Brenda Ward, Region 7, U.S. EPA Library, 726 Minnesota Avenue, Kansas City, KS 66101, 913/236-2828.

Dolores Eddy, Region 8, U.S. EPA Library, 999 18th Street, Suite 500, Denver, CO 80202-2405, 303/293-1444.

Linda Sunnen, Region 9, U.S. EPA Library, 6th Floor, 215 Fremont Street, San Francisco, CA 94105, 415/974-8082.

David Bennett, Region 10, U.S. EPA, 9th Floor, Mail Stop HW-093, 1200 6th Avenue, Seattle, WA 98101, 206/442-2103.

FOR FURTHER INFORMATION CONTACT: Martha Otto, Hazardous Site Evaluation Division, Office of Emergency and Remedial Response (OS-230), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or the RCRA/Superfund Hotline at (800) 424-9346 (or 382-3000 in the Washington, DC, metropolitan area).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Purpose and Implementation of the NPL
III. Statutory Requirements and Listing Policies
IV. Contents of Proposed NPL Update #9
V. Regulatory Impact Analysis
VI. Regulatory Flexibility Act Analysis

I. Introduction

Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.* ("CERCLA" or "the Act"), in response to the dangers of uncontrolled hazardous waste sites. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Pub. L. No. 99-499, stat. 1613 *et seq.* To implement CERCLA, the Environmental Protection Agency ("EPA" or the "Agency") promulgated the revised National Oil and Hazardous Substances Contingency Plan ("NCP"), 40 CFR Part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP, further revised by EPA on September 16, 1985 (50 FR 37624), and November 20, 1985 (50 FR 47912), sets forth the guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants. On December 21, 1988 (53 FR 51394), EPA proposed further revisions to the NCP in response to SARA.

Section 105(a)(8)(A) of CERCLA, as amended by SARA, requires that the NCP include criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, take into account the potential urgency of such action for the purpose of taking removal action. Removal action involves cleanup or other actions that are taken in response to emergency conditions or on a short-term or temporary basis (CERCLA section 101(23)). Remedial action tends to be long-term in nature and involves response actions that are consistent with a permanent remedy for a release (CERCLA section 101(24)). Criteria for determining priorities for possible remedial actions financed by the Trust Fund established under CERCLA are included in the Hazard Ranking System ("HRS"), which EPA promulgated as Appendix A of the NCP, (47 FR 31219, July 16, 1982). On December 23, 1988 (53 FR 51962), EPA proposed revisions to the HRS in response to SARA. EPA intends to issue the revised HRS as soon as possible. However, until the proposed revisions have been subject to public comment and put into effect, EPA will continue to propose and promulgate sites using the current HRS, in accordance with CERCLA section 105(c)(1) and Congressional intent, as explained on March 31, 1989 (54 FR 13299).

Section 105(a)(8)(B) of CERCLA, as amended, requires that the statutory criteria provided by the HRS be used to prepare a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is Appendix B of the NCP, is the National Priorities List ("NPL"). Section 105(a)(8)(B) also requires that the NPL be revised at least annually. A site can undergo CERCLA-financed remedial action only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.66(c)(2) and 300.68(a).

An original NPL of 406 sites was promulgated on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on March 31, 1989 (54 FR 13296). The Agency also has published a number of proposed rulemakings to add sites to the NPL, most recently Update #8 on May 5, 1989 (54 FR 19526).

EPA may delete sites from the NPL where no further response is appropriate, as explained in the NCP at 40 CFR 300.66(c)(7). To date, the Agency has deleted 27 sites from the final NPL, most recently on May 31, 1989 (54 FR 23212), when Voortman Farm, Upper Saucon Township, Pennsylvania, was deleted.

This notice proposes to add 52 sites to the Federal facilities section of the NPL, bringing the number of proposed sites to 335, 74 of them in the Federal section. The final NPL contains 889 sites, 41 of them in the Federal section, for a total of 115 Federal sites. Final and proposed sites total 1,224.

The NPL includes sites at which there are or have been releases or threatened releases of hazardous substances, pollutants, or contaminants. The discussion below may refer to "releases or threatened releases" simply as "releases," "facilities," or "sites."

Public Comment Period

This **Federal Register** notice opens the formal 60 day comment period for NPL Update #9. Comments may be mailed to Larry Reed, Acting Director, Hazardous Site Evaluation Division (Attn: NPL staff), Office of Emergency and Remedial Response (OS-230), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The Headquarters and Regional public dockets for the NPL (see **ADDRESSES** portion of this notice) contain documents relating to the scoring of these proposed sites. The dockets are available for viewing, by appointment only, after the appearance of this notice. The hours of operation for the Headquarters docket are from 9:00 a.m. to 4:00 p.m., Monday through Friday excluding Federal holidays. Please contact individual Regional dockets for hours.

The Headquarters docket for NPL Update #9 contains HRS score sheets for each proposed site, a Documentation Record for each site describing the information used to compute the score, a list of documents referenced in the Documentation Record, and pertinent information for any site affected by statutory requirements and listing policies.

Each Regional docket includes all information available in the Headquarters docket for sites in that Region, as well as the actual reference documents, which contain the data that EPA relied upon in calculating or evaluating the HRS scores for sites in that Region. These reference documents are available only in the Regional dockets. They may be viewed, by appointment only, in the appropriate Regional Docket or Superfund Branch Office. Requests for copies may be directed to the appropriate Regional Docket or Superfund Branch.

An informal written request, rather than a formal request, should be the ordinary procedure for obtaining copies of any of these documents.

EPA considers all comments received during the formal comment period. During the comment period, comments are available to the public only in the Headquarters docket. A complete set of comments pertaining to sites in a particular EPA Region will be available for viewing in the Regional docket approximately one week after the formal comment period closes. Comments received after the comment period closes will be available in the Headquarters docket and in the appropriate Regional Office docket on an "as received" basis. An informal written request, rather than a formal request, should be the ordinary procedure for obtaining copies of any comments. After considering the relevant comments received during the comment period, EPA will add to the NPL all proposed sites that meet EPA's requirements. In past NPL rulemakings, EPA has considered, to the extent practicable, comments received after the close of the comment period. EPA will attempt to do so in this rulemaking as well.

Early Comments

In certain instances, interested parties have written to EPA concerning sites that were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if they still consider them appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to formal proposal generally will not be included in the docket.

Comments Lacking Specificity

EPA anticipates that some comments will consist of or include additional studies or supporting documentation, e.g., hydrogeology reports, lab data, and previous site studies. Where commenters do not indicate what specific scoring issues the supporting documentation addresses, or what they want EPA to evaluate in the supporting documentation, EPA can only attempt to respond to such documents as best it can. Any commenter submitting additional documentation should indicate what specific points in that documentation EPA is to consider. As the U.S. Court of Appeals for the District of Columbia Circuit noted in *Northside Sanitary Landfill* v. *Thomas and EPA*, 849 F. 2d 1516, 1520 (D.C. Cir. 1988), *cert. denied*, ___U.S.___(March 20, 1989), during notice-and-comment rulemaking a commenter must explain with some specificity how any documents submitted are relevant to issues in the rulemaking.

Availability of Information

EPA has published a statement describing what background information (resulting from the initial investigation of potential CERCLA sites) the Agency discloses in response to Freedom of Information Act requests (52 FR 5578, February 25, 1987).

II. Purpose and Implementation of the NPL

The primary purpose of the NPL is stated in the legislative history of CERCLA (Report of the Committee on Environment and Public Works, Senate Report No. 96-848, 96th Cong., 2d Sess. 60 (1980)):

> The priority lists serve primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign liability to any person. Subsequent government action in the form of remedial actions or enforcement actions will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to serve as an informational

and management tool. The initial identification of a site for the NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. The NPL also serves to notify the public of sites that EPA believes warrant further investigation.

Federal facility sites are eligible for the NPL pursuant to the NCP at 40 CFR 300.66(c)(2). However, section 111(e)(3) of CERCLA, as amended by SARA, limits the expenditure of CERCLA monies at Federally-owned facilities. Federal facility sites also are subject to the requirements of CERCLA section 120, added by SARA.

Implementation

There are three mechanisms for placing sites on the NPL. The principal mechanism is the application of the HRS. The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to cause human health or safety problems, or ecological or environmental damage. The HRS score is calculated by estimating risks presented in three potential "pathways" of human or environmental exposure: ground water, surface water, and air. Within each pathway of exposure, the HRS considers three categories of factors "that are designed to encompass most aspects of the likelihood of exposure to a hazardous substance through a release and the magnitude or degree of harm from such exposure": (1) Factors that indicate the presence or likelihood of a release to the environment; (2) factors that indicate the nature and quantity of the substances presenting the potential threat; and (3) factors that indicate the human or environmental "targets" potentially at risk from the site. Factors within each of these three categories are assigned a numerical value according to a set scale. Once numerical values are computed for each factor, the HRS uses mathematical formulas that reflect the relative importance and interrelationships of the various factors to arrive at a final site score on a scale of 0 to 100. The resultant HRS score represents an estimate of the relative "probability and magnitude of harm to the human population or sensitive environment from exposure to hazardous substances as a result of the contamination of ground water, surface water, or air" (47 FR 31180, July 16, 1982). Those sites that score 28.50 or greater on the HRS are eligible for the NPL.

Under the second mechanism for adding sites to the NPL, each State may designate a single site as its top priority, regardless of the HRS score. This mechanism is provided by section 105(a)(8)(B) of CERCLA, as amended, which requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State as representing the greatest danger to public health, welfare, or the environment among known facilities in the State.

The third mechanism for listing, included in the NCP at 40 CFR 300.66(b)(4) (50 FR 37624, September 16, 1985), has been used only in rare instances. It allows certain sites with HRS scores below 28.50 to be eligible for the NPL if all of the following occur:

- The Agency for Toxic Substances and Disease Registry of the U.S. Department of Health and Human Services has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

All sites in this update are being proposed for the NPL based on HRS scores.

Federal agencies have the primary responsibility under CERCLA section 120(c) for identifying Federal facility sites. In conjunction with EPA Regional Offices, the Federal agencies perform investigations, sampling, monitoring, and scoring of sites. Regional Offices then conduct a quality control review of the candidate sites. EPA Headquarters conducts further quality assurance audits to ensure accuracy and consistency among the various offices participating in the scoring. The Agency then proposes the sites that meet one of the three criteria for listing (and EPA's listing policies) and solicits public comments on the proposal. Based on these comments and further review by EPA, the Agency determines final scores and lists those sites that still qualify for the final NPL.

III. Statutory Requirements and Listing Policies

CERCLA restricts EPA's authority to respond to certain categories of releases of hazardous substances, pollutants, or contaminants by expressly excluding some substances from the definition of a release. In addition, CERCLA section 105(a)(8)(B) directs EPA to list priority sites "among" the known releases or threatened releases of hazardous substances, pollutants, or contaminants, and section 105(a)(8)(A) directs EPA to consider certain enumerated and "other appropriate" factors in doing so. Thus, as a matter of policy, EPA has the discretion not to use CERCLA to respond to certain types of releases. For example, EPA has chosen not to list sites that result from contamination associated with facilities licensed by the Nuclear Regulatory Commission (NRC), on the grounds that the NRC has the authority and expertise to clean up releases from those facilities (48 FR 40661, September 8, 1983).

Sites proposed for the NPL in this update meet current eligibility requirements and listing policies. The NPL policies and requirements relevant to these Federal facility sites are discussed below.

Releases From Federal Facility Sites

On June 10, 1986 (51 FR 21054), the Agency announced a decision on components of a policy for the listing or the deferral from listing on the NPL of several categories of non-Federal sites subject to the Resource Conservation and Recovery Act (RCRA) Subtitle C corrective action authorities. The policy was intended to reflect RCRA's broadened corrective action authorities as a result of the Hazardous and Solid Waste Amendments of 1984 (HSWA). In announcing the RCRA policy, the Agency reserved for a later date the question of whether this or another policy would be applied to Federal facility sites that included one or more RCRA hazardous waste management units, and thus are subject to RCRA Subtitle C corrective action authorities.

On March 13, 1989 (54 FR 10520), the Agency announced a decision on components of a policy for placing on the NPL those sites located on Federally-owned or -operated facilities that meet the NPL eligibility requirements (e.g., an HRS score of 28.50 or greater) set out in the NCP, even if the Federal facility also is subject to the corrective action authorities of RCRA Subtitle C. Cleanup, if appropriate, could then be effected at those sites under either CERCLA or RCRA. The Agency's statement of this policy, and the rationale, are fully discussed at 54 FR 10520 (March 13, 1989).

The Agency believes that placing on the NPL Federal facility sites with or without RCRA-regulated hazardous waste management units is consistent with the intent of section 120 of SARA and will serve the purposes originally intended by the NCP at 40 CFR 300.66(e)(2)—to advise the public of the status of Federal government cleanup efforts (50 FR 47931, November 20, 1985). In addition, listing will help other Federal agencies set priorities and focus cleanup efforts on those sites presenting the most serious problems.

Thus, the June 10, 1986, RCRA deferral policy (51 FR 21057), applicable to private sites, will not be applied to Federal facility sites.

Releases of Special Study Wastes

Sections 105(g) and 125 of CERCLA, as amended by SARA, require additional information before sites involving RCRA "special study wastes" can be proposed for the NPL (until revisions to the HRS are effected). Section 105(g) applies to sites that (1) were not on or proposed for the NPL as of October 17, 1986, and (2) contain sufficient quantities of special study wastes as defined under RCRA sections 3001(b)(2) [drilling fluids], 3001(b)(3)(A)(ii) [mining wastes], and 3001(b)(3)(A)(iii) [cement kiln dust]. Before these sites can be added to the NPL, SARA requires that the following information be considered:

- The extent to which the HRS score for the facility is affected by the presence of the special study waste at or released from the facility.
- Available information as to the quantity, toxicity and concentration of hazardous substances that are constituents of any special study waste at or released from the facility; the extent of or potential for release of such hazardous constituents; the exposure or potential exposure to human population and the environment, and the degree of hazard to human health or the environment posed by the release of such hazardous constituents at the facility.

Two sites in this proposed NPL update—the Feed Materials Production Center (USDOE), in Fernald, Ohio and Monticello Mill Tailings (USDOE) in Monticello, Utah—contain CERCLA section 105(g) special study wastes, specifically mining wastes. The Agency has prepared addenda for these two sites that evaluate the information called for in section 105(g). These addenda indicate that the special study wastes at the sites present a threat to human health and the environment, and that both sites should be proposed to the NPL. The addenda are available for review in the public docket.

Section 125 of CERCLA, as amended, addresses special study wastes described in RCRA section 3001(b)(3)(A)(i) [fly ash and related wastes]. No sites in this rule are subject to the provisions of section 125.

Releases From Mining Sites

The Agency's position is that mining wastes may be hazardous substances, pollutants, or contaminants under CERCLA and, therefore, mining waste sites are eligible for the NPL. This position was affirmed in 1985 by the United States Court of Appeals for the District of Columbia Circuit (*Eagle-Picher Industries, Inc. v. EPA*, 759 F. 2d 922 (D.C. Cir 1985)).

The Agency's policy, prior to listing mining sites, is to consider whether they might be addressed satisfactorily using State-share monies from the Abandoned Mine Land Reclamation (AMLR) Fund under the response authorities of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). One noncoal mining site being proposed in this update, Feed Materials Production Center (USDOE) in Fernald, Ohio, does not meet the SMCRA eligibility criteria because it was active after the August 7, 1977, SMCRA enactment date. The other noncoal mining site being proposed, Monticello Mill Tailings (USDOE) in Monticello, Utah, potentially is eligible for SMCRA funds. However, available information suggests that the site will not be addressed under SMCRA in the foreseeable future. Thus, this site is being proposed for placement on the NPL, consistent with EPA policy. (See 54 FR 10512, 10514–10516 (March 13, 1989) and 54 FR 13300–13301, 13302 (March 31, 1989).) Information supporting EPA's position regarding the Monticello Mill Tailings (USDOE) site is available in the docket.

IV. Contents of Proposed NPL Update #9

Federal facility sites are placed in a separate section of the NPL. For this update, the Agency is proposing 52 Federal facility sites (Table 1), bringing the total number of such proposed sites to 74. Currently, 41 Federal facility sites are on the final NPL.

In addition to proposing new sites, EPA also is proposing to expand one final Federal facility site. Mather Air Force Base (AC&W Disposal Site), Sacramento, California, was placed on the final NPL on July 22, 1987 (52 FR 27620). Since then, EPA has determined that additional areas of the base are responsible for further contamination of the aquifer, and may be responsible for contamination off base. Consequently, EPA proposes to expand the original site and requests comment on the expanded site. The site would be renamed "Mather Air Force Base." EPA discussed the basis for site expansions in a final rule concerning Federal facility sites (54 FR 10512, March 13, 1989).

Each proposed site is placed by score in a group corresponding to groups of 50 sites presented within the final NPL. For example, a site in Group 8 of the proposed Federal facility update has a score that falls within the range of scores covered by the eighth group of 50 sites on the final NPL. The NPL is arranged by HRS score and is presented in groups of 50 to emphasize that minor differences in scores do not necessarily represent significantly different levels of risk.

In the past, each site entry was accompanied by one or more notations reflecting the status of response and cleanup activities at the site at the time this list was prepared. EPA now intends to acknowledge response activities conducted by potentially responsible parties with Federal or State oversight in a report, which will be available later this year. In the interim, information on activities at the new proposed sites is available upon request to the appropriate Regional Office.

V. Regulatory Impact Analysis

The costs of cleanup actions that may be taken at sites are not directly attributable to proposal to the NPL, as explained below. Therefore, the Agency has determined that this rulemaking is not a "major" regulation under Executive Order No. 12291. EPA has conducted a preliminary analysis of the economic implications of today's proposal to add new sites. EPA believes that the kinds of economic effects associated with this revision are generally similar to those identified in the regulatory impact analysis (RIA) prepared in 1982 for revisions to the NCP pursuant to section 105 of CERCLA (47 FR 31180, July 16, 1982) and the economic analysis prepared when amendments to the NCP were proposed (50 FR 5882, February 12, 1985). The Agency believes that the anticipated economic effects related to proposing the addition of these sites to the NPL can be characterized in terms of the conclusions of the earlier RIA and the most recent economic analysis. This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order No. 12291.

Costs

EPA has determined that this proposed rulemaking is not a "major" regulation under Executive Order No. 12291 because inclusion of a site on the NPL does not itself impose any costs. It does not establish that EPA necessarily will undertake remedial action, nor does it require any action by a private party

or determine its liability for site response costs. Costs that arise out of site responses result from site by-site decisions about what actions to take, not directly from the act of listing itself.

Benefits

The benefits associated with today's proposed amendment to add sites to the NPL are increased health and environmental protection as a result of increased public awareness of potential hazards.

As a result of the additional CERCLA remedies, there will be lower human exposure to high-risk chemicals, and higher-quality surface water, ground water, soil, and air. These benefits are expected to be significant, although difficult to estimate in advance of completing the Remedial Investigation/Feasibility Study at these particular sites. Associated with the costs of remedial actions are significant potential benefits and cost offsets. The distributional costs of carrying out remedies at sites on the NPL have corresponding "benefits" in that funds expended for a response generate employment, directly or indirectly (through purchased materials).

VI. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 requires EPA to review the effect of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small governmental jurisdictions, and nonprofit organizations.

While proposed modifications to the NPL are considered revisions to the NCP, they are not typical regulatory changes since the revisions do not automatically impose costs. Proposing sites for the NPL does not in itself require any action by any party (e.g., contractors operating government-owned facilities), nor does it determine the liability of any party for the cost of cleanup at the site. Further, because today's proposed rule involves Federally-owned or -operated facilities, the number of small entities that could be affected by this proposal will be limited.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Jonathan Z. Cannon,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

Date: July 6, 1989.

PART 300—[AMENDED]

It is proposed to amend 40 CFR Part 300 as follows:

1. The authority citation for Part 300 continues to read as follows:

Authority: 42 U.S.C. 9605; 42 U.S.C. 9620; 33 U.S.C. 1321(c)(2), E.O. 11735, 38 FR 21243; E.O. 12580, 52 FR 2943.

Appendix B to Part 300—National Priorities List (By Rank) [Amended]

2. It is proposed to add the following sites by Group to the Federal Section of the National Priorities List, Appendix B of Part 300.

TABLE 1—NATIONAL PRIORITIES LIST, FEDERAL FACILITY SITES, PROPOSED UPDATE 9 (BY GROUP) JULY 1989

NPL Gr[1]	St	Site Name	City/County
2	ID	Mountain Home Air Force Base	Mountain Home.
2	OH	Feed Materials Prod Cent (USDOE)	Fernald.
2	WA	Bangor Naval Submarine Base	Silverdale.
3	WA	Bonneville Power Adm Ross (USDOE)	Vancouver.
4	ID	Idaho National Engin Lab (USDOE)	Idaho Falls.
4	TN	Oak Ridge Reservation (USDOE)	Oak Ridge.
5	CA	Treasure Island Nav Sta-Hun Pt An	San Francisco.
5	AK	Eielson Air Force Base	Fairbanks N Star Bor.
5	SC	Savannah River Site (USDOE)	Aiken.
6	AK	Standard Steel & Met Sal Yd (USDOT)	Anchorage.
6	MA	Otis Air Nat Guard/Camp Edwards	Falmouth.
6	AK	Elmendorf Air Force Base	Greater Anchorage Bo.
6	GA	Marine Corps Logistics Base	Albany.
7	CO	Air Force Plant PJKS	Waterton.
7	NJ	Picatinny Arsenal	Rockaway Township.
7	AK	Fort Wainwright	Fairbanks N Star Bor.
7	FL	Homestead Air Force Base	Homestead.
7	FL	Pensacola Naval Air Station	Pensacola.
8	CA	Fort Ord	Marina.
8	MA	Fort Devens	Fort Devens.
9	NY	Brookhaven National Lab (USDOE)	Upton.
9	TX	Longhorn Army Ammunition Plant	Karnack.
9	NJ	Federal Aviation Admin Tech Cent	Atlantic County.
9	NH	Pease Air Force Base	Portsmouth/Newington.
9	WY	F.E. Warren Air Force Base	Cheyenne.
10	AZ	Luke Air Force Base	Glendale.
10	AZ	Williams Air Force Base	Chandler.
10	CA	Barstow Marine Corps Logist Base	Barstow.
10	PA	Tobyhanna Army Depot	Tobyhanna.
10	NY	Seneca Army Depot	Romulus.
11	UT	Monticello Mill Tailings (USDOE)	Monticello.
12	MA	Fort Devens-Sudbury Training Ann	Middlesex County.
12	WA	Fort Lewis Logistics Center	Tillicum.
12	OH	Mound Plant (USDOE)	Miamisburg.
12	RI	Davisville Naval Constr Batt Cent	North Kingstown.
12	ME	Loring Air Force Base	Limestone.
13	CA	Camp Pendleton Marine Corps Base	San Diego County.
13	KS	Fort Riley	Junction City
14	CA	Edwards Air Force Base	Kern County.

TABLE 1—NATIONAL PRIORITIES LIST, FEDERAL FACILITY SITES, PROPOSED UPDATE 9 (BY GROUP) JULY 1989—Continued

NPL Gr[1]	St	Site Name	City/County
14	CA	George Air Force Base	Victorville.
14	RI	Newport Naval Educat/Training Cen	Newport.
14	FL	Jacksonville Naval Air Station	Jacksonville.
15	FL	Cecil Field Naval Air Station	Jacksonville.
15	CA	March Air Force Base	Riverside.
15	CA	Lawrence Livermore Lab-300 (USDOE)	Livermore.
15	CA	Tracy Defense Depot	Tracy.
16	MN	Naval Industrial Reserve Ordnance	Fridley.
16	MO	Weldon Spring Form Army Ord Works	St. Charles County.
16	NY	Plattsburgh Air Force Base	Plattsburgh.
17	IA	Iowa Army Ammunition Plant	Middletown.
17	CA	Travis Air Force Base	Solano County.
17	HI	Schofield Barracks	Oahu.

Number of Federal Facility Sites Proposed for Listing: 52

[1] Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL

[FR Doc. 89-16419 Filed 7-13-89; 8:45 am]

BILLING CODE 6560-50-M

federal register

Friday
July 14, 1989

Part III

Department of the Interior

Minerals Management Service

Outer Continental Shelf, Western Gulf of Mexico, Oil and Gas Lease Sale 122; Notice

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf
Western Gulf of Mexico
Oil and Gas Lease Sale 122
(August 1989)

Correction: On Thursday July 6, 1989, at 54 FR 28513 the Notice of Sale for proposed Western Gulf of Mexico Outer Continental Shelf Oil and Gas Lease Sale was published in the Federal Register. The following corrections should be made:

Correction #1: Paragraphs 11(a) and (b) on page 28514 listing the leasing maps should be corrected. The Notice lists a South Texas Set for $5, and an East Texas Set for $7. These are now combined into a single set of maps which sells for $18.

Correction #2: Paragraph 11(c) on page 28514 should be corrected to reflect the following updated revision dates:

NG 14 - 6 Port Isabel (revised 4/27/89)
NG 15 - 2 Garden Banks (revised 10/19/81)
NG 15 - 4 Alaminos Canyon (revised 4/27/89)
NG 15 - 8 (No Name) (revised 4/27/89)

Correction #3: Paragraph 12 (d) on page 28515 which lists Federal acreage under lease is amended to correct the following errors:

The listing of blocks for the High Island area should end with the block number A-165. Blocks A-414 to A-596 should be listed under the heading High Island, South Addition, and

The following block number was repeated and the second listing of that block should be deleted from the list:

Map Area	Block Number
East Breaks	112

Correction #4: Paragraph 13, Lease Terms and Stipulations, Stipulation No. 2--Protection of Topographic Features contains a table on page 28516 in which the listing of banks and water depths

should be corrected to read as follows (Footnotes remain unchanged):

Bank Name	No Activity Zone Defined by Isobath (meters)
Shelf Edge Banks	
West Flower Garden Bank[1] (defined by 1/4 1/4 1/4 system)	100
East Flower Garden Bank[1] (defined by 1/4 1/4 1/4 system)	100
MacNeil Bank	82
29 Fathom Bank	64
Rankin Bank	85
Geyer Bank	85
Elvers Bank	85
Bright Bank[5]	85
McGrail Bank[5]	85
Rezak Bank[5]	85
Sidner Bank	85
Parker Bank	85
Stetson Bank	62
Applebaum Bank	85

Bank Name	No Activity Zone Defined by Isobath (meters)
Low Relief Banks[2]	
Mysterious Bank	74,76,78,80,84 (see leasing map)
Coffee Lump	Various (see leasing map)
Blackfish Ridge	70
Big Dunn Bar	65
Small Dunn Bar	65
32 Fathom Bank	52
Claypile Bank[3]	50
South Texas Banks[4]	
Dream Bank	78,82
Southern Bank	80
Hospital Bank	70
North Hospital Bank	68
Aransas Bank	70
South Baker Bank	70
Baker Bank	70

Correction #5: Paragraph 13, Lease Terms and Stipulations, Stipulation No. 3--Military Warning Areas, section [a] on page 28516:

The clause in the first sentence which reads, "..to any persons of to any property of any person or persons who are agents,.." should be corrected to read, "..to any persons or to any property of any person or persons who are agents,.."

Correction #6: Paragraph 14 (g) Gulf Ocean Incineration Site on page 28517 contains a table in which the map name Garden Breaks should be corrected to Garden Banks.

Carolita Kallaur

Associate Director for Offshore Minerals Management
Carolita Kallaur

JUL 11 1989
Date

[FR Doc. 89-16545 Filed 7-13-89; 8:45 am]
BILLING CODE 4310-MR-C

federal register

Friday
July 14, 1989

Part IV

Department of the Interior

Minerals Management Service

5-Year Outer Continental Shelf Oil and Gas Leasing Program for Fall 1991 to Fall 1996; Notices

Intent To Prepare an Environmental Impact Statement for the Proposed 5-Year Outer Continental Shelf Oil and Gas Leasing Program for Fall 1991 to Fall 1996

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior's Minerals Management Service (MMS) intends to prepare an Environmental Impact Statement (EIS) regarding a proposed new 5-Year Outer Continental Shelf (OCS) oil and gas leasing program for the period fall 1991 to fall 1996. The draft EIS is currently scheduled for release in late 1990.

Section 18 of the OCS Lands Act requires the Department of the Interior to prepare and maintain an oil and gas leasing program consisting of a schedule of proposed lease sales indicating, as precisely as possible, the size, timing, and location of leasing activity which he determines will best meet national energy needs for the 5-year period following the approval of the program. Alternatives to the proposed leasing comments from States, local governments, the oil and gas industry, Federal Agencies, and other interested individuals and groups to assist the Department of the Interior in the preparation of a 5-Year OCS Oil and Gas Leasing Program to cover the period fall 1991 to fall 1996 also appears in today's **Federal Register**. Information was requested on the characteristics of the OCS planning areas, environmental sensitivity, and the ranking of OCS areas both by oil and gas potential and by interest in exploration and development.

Pursuant to 40 CFR 1501.7, this Notice initiates the scoping process for the EIS. The Department of the Interior hereby solicits information from Federal, State, and local agencies and the public regarding alternatives and issues which should be evaluated in the EIS. Respondents are requested to focus their comments on the significant environmental issues attendant to OCS oil and gas leasing and development and on alternative leasing schedules and presale processes which should be evaluated in the EIS. The opportunity for during the drafting of the new 5-year leasing program will also be taken into consideration during the preparation of the EIS. In addition, the final EIS will incorporate comments received following public review of the draft EIS.

DATES: Scoping comments should be received by August 28, 1989.

ADDRESS: Scoping comments should be submitted to Debra Purvis, Minerals Management Service, Mail Stop 644, 381 Elden Street, Herndon, Virginia 22070. Hand deliveries to the Department of the Interior may be made to Room 2525, 18th and C Streets NW., Washington, DC 20240. Envelopes or packages should be marked "Scoping comments on the Proposed 5-Year Leasing Program EIS."

FOR FURTHER INFORMATION CONTACT: Debra Purvis, Branch of Environmental Evaluation, MMS, at (703) 787-1666.

Barry A. Williamson,

Director, Minerals Management Service.

Date: July 10, 1989.

[FR Doc. 89-16532 Filed 7-13-89; 8:45 am]

BILLING CODE 4310-MR-M

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Notice of Request for Comments on the Development of a New 5-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program

SUMMARY: Section 18 of the OCS Lands Act (hereafter, the Act) requires the Department of the Interior to solicit suggestions from Federal Agencies, coastal States, and others during the preparation of a new 5-Year OCS Oil and Gas Leasing Program. The current leasing program, approved in July 1987, schedules lease sales through June 1992. The Minerals Management Service (MMS) intends to prepare a new program for the period fall 1991 to fall 1996.

The program preparation effort is expected to take over 2 years to complete. Approval of the new program in fall 1991 will help provide a smooth transition from the existing program to the new one.

Statutorily required steps in the program development process following this initial Notice include the development of a draft proposed program, a proposed program, a proposed final program, and a final program. An Environmental Impact Statement will also be prepared, and the initiation of that process is announced in a companion Notice. The draft proposed program is currently scheduled to be issued in March 1990, following consideration of the report related to the Presidential Task Force on OCS Sales 91 (Northern California), 95 (Southern California), and 116--Part II (Eastern Gulf of Mexico).

DATES: Comments and information must be received within 45 days from the publication of this Notice.

ADDRESS: Comments and information should be mailed to: Deputy Associate Director for Offshore Leasing, Minerals Management Service (MS-641), Room 4230, 18th and C Streets, NW., Washington, DC. 20240. Hand deliveries to the Department of the Interior may be made at 18th and C Streets, NW., Room 2525, Washington, DC. Envelopes or packages should be marked "Comments for Development of the New 5-Year OCS Oil and Gas Leasing Program." If any privileged or proprietary information which the respondent wishes to be treated as confidential is attached to comments, the envelope should be marked, "Contains Confidential Information." As required by section 18(c)(1) of the Act, any suggestions from the executive of any affected local government in an affected State shall be first submitted to the Governor of such State.

FOR FURTHER INFORMATION CONTACT: For information on the development of a new 5-year leasing program, telephone contact may be made with Paul R. Stang, Chief, Branch of Program Development and Planning, at (202) 343-1072. For copies of base maps referred to below or documents and maps describing the 1987 program, telephone orders can be placed to (202) 343-1072.

SUPPLEMENTARY INFORMATION: Comments are requested from States, local governments, the oil and gas industry, Federal Agencies, and other interested individuals and groups to assist the Department of the Interior in the preparation of a 5-Year OCS Oil and Gas Leasing Program to cover the period fall 1991 to fall 1996.

The OCS leasing program enables the Federal Government, affected States, industry, and other interested parties to plan for the steps leading to OCS oil and gas lease sales. A decision on whether to proceed with a specific sale on the schedule will be made only after all the applicable requirements of the Act, the National Environmental Policy Act of 1969, and other applicable statutes have been met.

The program preparation process will follow all the procedural steps set out in section 18 of the Act, including the development of a draft proposed program, a proposed program, a proposed final program, and a final program. The purpose of this Notice is to solicit comments early in the program preparation process pursuant to section 18(c)(1) of the Act.

A draft proposed program will be prepared based on consideration of the factors specified by section 18 (these factors are indicated below). The draft proposed program will display planning milestones and will refer to sales by name and number. For the decision on the draft proposed program, a number of options will be developed which will include a range of schedules varying the timing or location of proposed offshore lease sales.

The Department of the Interior is considering new approaches to conduct the OCS oil and gas leasing program so as to reduce conflict as well as obtain a proper balance between the economic benefits and environmental risks. A part of the program development effort will be the reassessment of the current approach of focusing on promising acreage, the reexamination of past approaches such as tract selection, and the search for new initiatives. Other policy options to be examined will cover such topics as the determination of which areas should be available for leasing, the frequency and timing of lease sales, different treatment for different OCS areas, and potential expansion of the planning horizon beyond 5 years.

BEST COPY AVAILABLE

As part of the decision process, your comments will be considered along with the analysis required by section 18 of the Act. The report of the Task Force which President Bush has appointed to review and resolve environmental concerns over impacts of OCS Lease Sales 91 and 95 offshore California and Sale 116, Part II offshore Florida will also be considered in formulating the 5-year program. The Task Force, composed of representatives from the Departments of the Interior, Energy, and Commerce (the National Oceanic and Atmospheric Administration), the Environmental Protection Agency, and the Office of Management and Budget, with scientific support from the National Academy of Sciences, is to present its report to the President by January 1, 1990. Separate opportunities to comment have been provided by the Task Force.

Respondents should be aware that the following concepts will be considered in the development of the 5-year program:

1. Both quantitative and qualitative information will be considered in meeting the requirements of section 18(a) of the Act; and

2. Leasing activities under the program should assure receipt of fair market value for the lands leased (this is a statutory requirement of section 18(a)(4) of the Act).

The list of planning areas in Table 1 is open to comment. These areas will be subject to analysis under sectioh 18 and will be considered as candidates for the draft proposed program. Lease sales are scheduled in 20 of these planning areas in the current 5-year leasing program.

Precise marine boundaries between the United States and nearby or adjacent nations have not been determined in all cases. The maritime boundaries and limits depicted in the attached maps, as well as divisions between planning areas where shown, are for planning purposes only. These limits shall not affect or prejudice in any manner the position of the United States with respect to the nature or extent of the internal waters or of sovereign rights or jurisdiction for any purpose whatsoever.

Information Requested

--All Parties

Comments are solicited as follows: Information and comments submitted at this stage should be general or conceptual in nature and relevant to determining the appropriate overall size, timing, and location of sales to be considered in the leasing program (i.e., the configuration of planning area boundaries, the frequency of sales in a planning area, and the presale process which determines sale size and location--including any suggestions for new approaches, as indicated above).

As noted above, the Department is required by section 18(a) of the Act to consider a number of factors in formulating a 5-year leasing program. We would like to have information and your suggestions relevant to the requirements of section 18(a), including your suggestions or criteria of nationwide application that would be useful in shaping the new 5-year program. The following list provides an indication of the kind of information which would be most useful in conducting the section 18(a) analysis. Please note that not all factors may be relevant to all parties wishing to comment.

(1) Information on national energy needs for the period relevant to the new program; on the economic, social, and environmental values of the renewable and nonrenewable resources contained in the OCS; and on the potential impact of oil and gas exploration on other resource values of the OCS and the marine, coastal, and human environments.

(2) Existing information concerning geographical, geological, and ecological characteristics of the regions (planning areas) of the OCS and nearshore environments.

(3) Suggested methods and information for analyzing the sharing of developmental benefits and environmental risks among the various regions (planning areas) and ways to determine what constitutes an equitable sharing.

(4) Information concerning other uses of the sea and seabed, including fisheries, navigation, existing or proposed sealanes, potential sites of deepwater ports, and other anticipated uses of OCS resources and space.

(5) Methods and information for assessing relative environmental sensitivity and marine productivity of the different planning areas of the OCS.

(6) Relevant environmental and predictive information pertinent to offshore and coastal areas potentially affected by OCS development.

(7) The location of planning areas with respect to, and the relative needs of, regional and national energy markets.

We would also like to have information on the availability of transportation networks to bring oil and gas supplies to demand areas both on a current and projected basis.

Parties requesting the inclusion of one or more portions of the OCS in the new oil and gas leasing program should also indicate where leasing need not be pursued.

Parties requesting the exclusion of one or more portions of the OCS in the new oil and gas leasing program should also indicate where leasing should be permitted.

Information and criteria which support comments are also requested to assist the Department in its deliberations.

--Governors of Coastal States

The Governors of affected States are also being requested concurrently by letter to identify State laws, goals, and policies relevant for the Department's consideration.

--Oil and Gas Industry

Oil and gas industry respondents are requested to provide information which could be used to identify the areas most likely to contain oil and natural gas accumulations of sufficient size and number to warrant leasing, exploration, and commercial development activities under current and foreseeable technological and economic conditions. It should be emphasized that this information will be considered along with comments on possible environmental effects and the results of various environmental and other cost and economic analyses to determine the size, timing, and location of areas which may be offered for leasing in the 5-year program. All information requested should be based on estimates of resources expected to be unleased as of fall 1991.

Specifically, for each of the 26 whole planning areas identified in Table 1, below, companies are asked to provide the following information:

1) Delineate those areas within each planning area most likely to have high, moderate, low, and unknown potential for possible oil and natural gas accumulations. These rankings should be relative to the individual planning area. The delineations should be as specific as possible, given the information available at this early stage of the 5-year program development process. It would be helpful if respondents used standard base maps, which can be requested from the "Further Information Contact" listed above.

2) Rank each planning area from 1 to 26 by order of interest in leasing, exploration and development. If this ranking would change by considering only the acreage available for leasing in the 1987 program, please provide such a revised ranking and explain the rationale for the change.

3) Indicate whether your company considers each planning area to be oil-prone, gas-prone, both, or unknown.

4) Indicate the desired interval between sales, if more than one sale is deemed desirable for the area during the new program.

5) If only one sale in a planning area is deemed desirable, indicate whether the planning area should be offered early or late in the proposed program schedule.

6) Indicate whether your company agrees or disagrees with the ranking of potential in Table 2, below. Table 2 shows a preliminary ranking of OCS planning areas, based on undiscovered, unleased risked mean barrels of oil equivalent, as estimated by MMS.

Confidential treatment of privileged or proprietary information is authorized under section 18(g) of the Act. In order that only privileged or proprietary information be treated as confidential, it should be submitted as an attachment to the other comments which a respondent submits. An attachment to a response containing privileged or proprietary information will, upon request, be treated as confidential from the time of receipt by MMS until 5 years after final approval of the next leasing program. However, summaries of such information submitted to MMS, the names of respondents submitting it, and comments not containing such information will not be treated as confidential information. As noted above, if any privileged or proprietary information which the respondent wishes to be treated as confidential is attached to comments, the envelope should be marked, "Contains Confidential Information."

Suggestions are also requested for possible revisions in the planning area boundaries described earlier in this Notice with reasons for any such revisions.

Barry Williamson

Barry A. Williamson
Director, Minerals Management Service

JUL 10 1989
Date

Table 1

North Atlantic, Mid-Atlantic, South Atlantic, Straits of Florida, Eastern Gulf of Mexico, Central Gulf of Mexico, Western Gulf of Mexico, Southern California, Central California, Northern California, Washington-Oregon, Gulf of Alaska, Kodiak, Cook Inlet, Shumagin, Aleutian Arc, North Aleutian Basin, St. George Basin, Bowers Basin, Aleutian Basin, Navarin Basin, St. Matthew-Hall, Norton Basin, Hope Basin, Chukchi Sea, Beaufort Sea.

Table 2

Planning Area	MMS Estimates of Risked Mean Unleased Economically Recoverable Oil and Gas Resources as of 1/1/87 (Billions of Barrels of Oil Equivalent)
Central Gulf of Mexico	7.38
Western Gulf of Mexico	5.20
Southern California	1.36
Chukchi Sea	0.59
Central California	0.58
Northern California	0.52
Mid-Atlantic	0.43
Eastern Gulf of Mexico	0.30
South Atlantic	0.23
North Atlantic	0.22
Washington-Oregon	0.14
Beaufort Sea	0.12
Straits of Florida	0.08
Gulf of Alaska	0.04
Navarin Basin	0.03
St. George Basin	0.01
North Aleutian Basin	0.01
Kodiak	0.01
Cook Inlet	*
Norton Basin	*
Hope Basin	*
St. Matthew-Hall	*
Aleutian Arc	*
Bowers Basin	*
Aleutian Basin	*
Shumagin	*

* Negligible

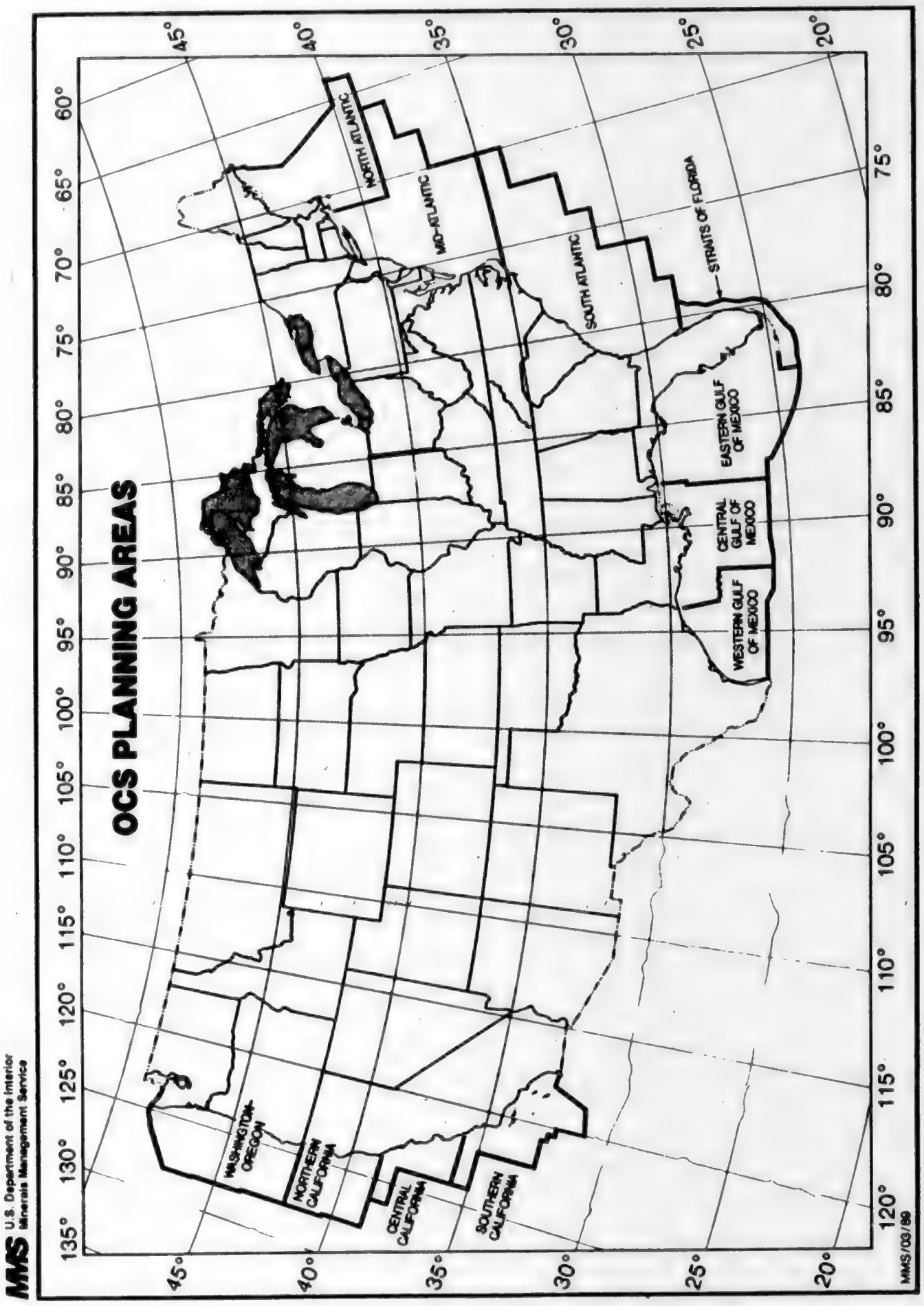
OCS PLANNING AREAS
MMS U.S. Department of the Interior Minerals Management Service
NORTH ATLANTIC
MID-ATLANTIC
SOUTH ATLANTIC
STRAITS OF FLORIDA
EASTERN GULF OF MEXICO
CENTRAL GULF OF MEXICO
WESTERN GULF OF MEXICO
WASHINGTON-OREGON
NORTHERN CALIFORNIA
CENTRAL CALIFORNIA
SOUTHERN CALIFORNIA
MMS/03/89

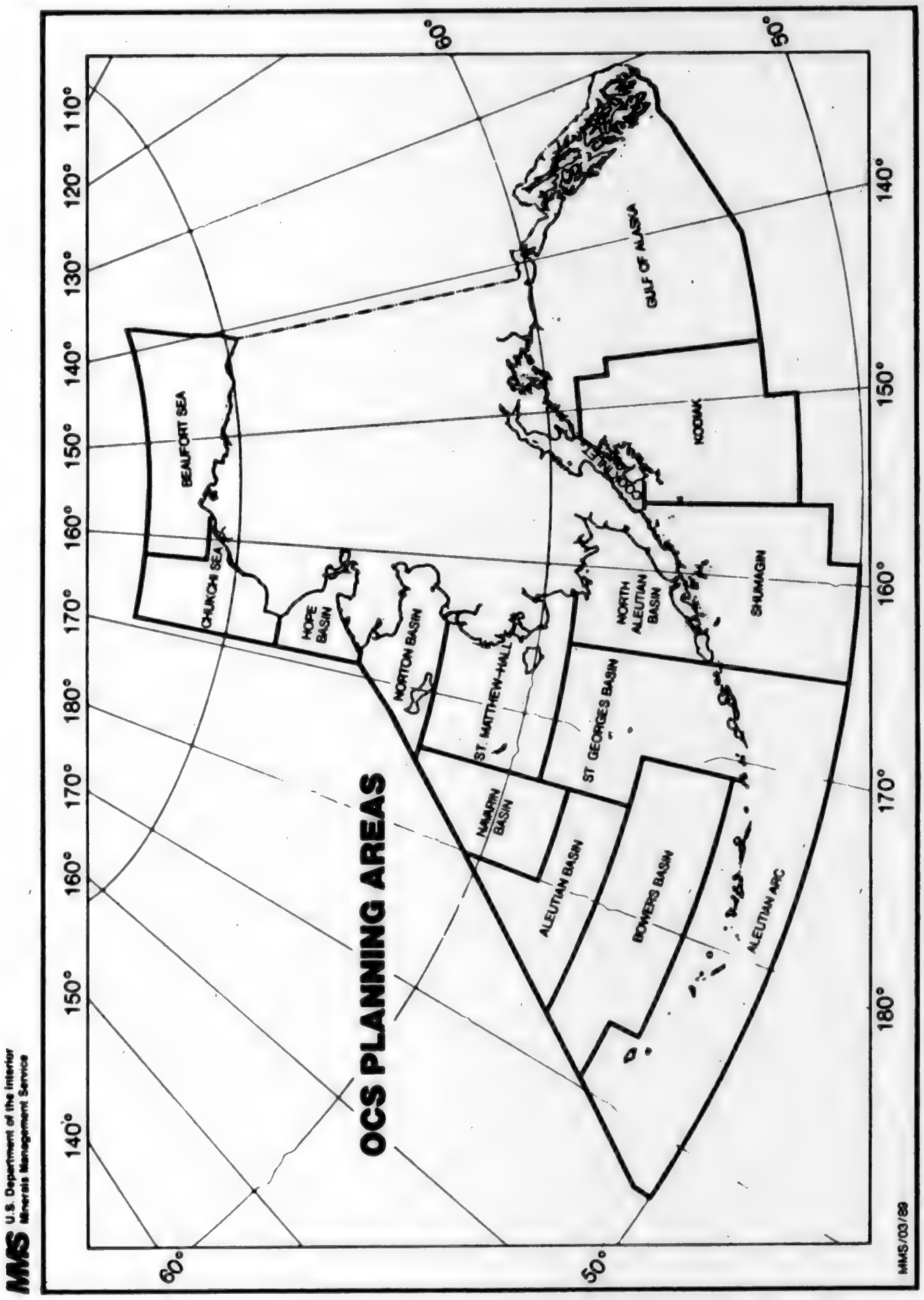

[FR Doc. 89-16533 Filed 7-13-89; 8:45 am]

BILLING CODE 4310-MR-C

federal register

Friday
July 14, 1989

Part V

Department of Housing and Urban Development

Public Housing Child Care Demonstration Program; Notice of Fund Availability, Fiscal Year 1989

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-89-1943; FR-2467]

Public Housing Child Care Demonstration Program Notice of Fund Availability, Fiscal Year 1989

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of fund availability.

SUMMARY: HUD is announcing the availability of $5 million for fiscal year 1989 for the Public Housing Child Care Demonstration Program under amended Section 222 of the Housing and Urban Rural Recovery Act of 1983 (Pub. L. 98-181, approved November 30, 1983). The demonstration is intended to provide grants to nonprofit organizations to: (1) Assist in establishing child care facilities so that the parents or guardians of preschool or school-aged children may seek, retain or train for employment; and (2) determine the extend to which the availability of such child care services facilitates the employability of the parents or guardians of children residing in public housing. This Notice also implements Section 1002 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988). Section 1002 provides that the child care facilities under this demonstration program may be established not only in lower income housing projects (as provided by Section 117 of the Housing and Community Develolpment Act of 1987), but also in facilities located near such projects.

DATES: Submissions must be received in the Department of Housing and Urban Development, Office of Procurement and Contracts, Room 5256, 451 Seventh Street, SW., Washington, DC 20410 by 5:15 p.m., Eastern Standard Time, on August 28, 1989; or postmarked no later than August 28, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter or Annette Hancock, Office of Procurement and Contracts, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5256, Washington, DC 20410, telephone (202) 755-5585. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this Notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2577-0110. Public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Develolpment, Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Background

Congress authorized the Public Housing Child Care Demonstration program (PHCC) under Section 222 of the Housing and Urban-Rural Recovery Act of 1983 (HURRA). The purpose of the demonstration is to determine the feasibility of using public housing projects, and facilities near such projects, to provide child care services for lower income families that reside in public housing.

On February 5, 1988, President Reagan signed the Housing and Community Development Act of 1987 ("the 1987 Act") (Pub. L. 100-242). Section 117 of the 1987 Act amended the HURRA to provide that grants could be awarded to nonprofit organizations for the purpose of operating child care programs that enable the parents or guardians of young children to be employed or to receive employment training. The primary objective of the demonstration is to determine whether the availability of accessible child care will enable public housing residents to obtain or retain jobs, or to enroll in training that might lead to employment.

The Department published a notice of fund availability (NOFA) on August 17, 1988 (53 FR 31256) to implement the 1987 legislative amendments, and to announce the availability of $5 million for the PHCC demonstration program in fiscal year 1988.

1988 McKinney Amendment

"In or near a lower income housing project"

Under the Housing and Community Development Act of 1987, one of the statutory requirements for receiving PHCC assistance was that the proposed child care facility had to be located in a lower income housing project. The term "lower income housing project" was defined in the August 10, 1987 NOFA to mean housing developed, acquired, or assisted by a public housing agency (PHA) under the U.S. Housing Act of 1937 (other than Section 8 housing). The Department construed this definition to include housing developed, acquired or assisted by an Indian housing authority (IHA).

On November 7, 1988 Congress amended the requirement that the child care facility had to be located in a lower income housing project. Section 1002 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628) (1988 McKinney Act) provides that the child care facility may be located "in or near" a public housing project. As a result, nonprofit organizations may now apply to receive grant funds to opeate a child care facility under this demonstration either on the premises of a public housing project, or near such a project.

HUD is construing "near" to mean that the proposed child care facility must be within a reasonable walking distance to the project, based upon its distance from the project and the types of thoroughfares that must be crossed. As part of its submission to HUD, applicants are required to certify that the proposed facility is within a reasonable walking distance to the project.

If a nonprofit organization seeks to establish an offsite child care center, it will need to located a PHA that is willing to provide the facility. Section 11.2(c)(3)(i) of this NOFA requires the nonprofit entity to include in its grant application evidence that the PHA has, or will be able to, assume control of the proposed offsite premises. This evidence can include copies of the negotiated lease, an option to lease, or a resolution from the lessor's board of directors indicating that the facility will be available to the PHA for use as a child care facility.

While PHAs may use their operating subsidies to provide the offsite child care facilities under this demonstration, a number of PHAs may find that they are financially constrained from exploring this option. Therefore, PHAs with limited operating budgets may choose to enter into lease-back arrangements with nonprofit applicants that already own a facility, or enter into a lease with a third party at nominal or no cost.

Note: Applicants that intend to use grant funds to renovate a building owned by a primarily religious organization are advised that certain First Amendment requirements not contained in this NOFA may be incorporated into the grant agreement executed with HUD.

Resident Management Corporations and Resident Councils; Grant Selection Procedures

The development and operation of child care facilities in or near public housing projects requires the active involvement and commitment of public housing residents and their organizations. The Department encourages PHAs to make Resident Management Corporations (RMCs) and Resident Councils (RCs) full partners in this effort. An RMC or RC under this NOFA must comply with the requirements of 24 CFR Part 964 (as amended on September 7, 1988, see 53 FR 34676). However, to facilitate the development and operation of child care facilities in public housing projects, RCs may manage such facilities notwithstanding the otherwise applicable requirements of 24 CFR Part 964. To emphasize the importance that the Department attaches to full RMC/RC participation in the development and operation of child care facilities, HUD is awarding points in the selection process (under Section 10 of this NOFA) to applicants that are RMCs or RCs.

This rating criteria will not, however, be applied to applicants that seek to establish child care facilities to serve Indian housing projects. IHAs are not covered by the Department's existing tenant participation and management regulations (24 CFR Part 964) and, hence, would be competitively disadvantaged by this rating criterion. Until HUD promulgates final regulations on Indian tenant participation, either through an amendment to Part 964 or as part of the Indian Consolidated Rule under Part 905, the selection process under this demonstration program will be as follows:

All grant applicants will be reviewed to determine threshold eligibility under Section 9.1. HUD will then evaluate each application on the basis of the selective rating factors at Section 10 and assign the appropriate scores. Applicants that want to establish a child care facility to serve a public housing project will be evaluated on all seven elements listed at Section 10 (including the RMC/RC participation rating element), and will be ranked based upon their total selective rating score. Applicants that will serve an Indian housing project will be rated on six elements, but *not* on the RMC/RC participation element, and will be separately ranked based upon their total selective rating score.

HUD may then use its discretion under Section 9.4 of this NOFA to ensure an equitable distribution of grant funds among both pools of top-rated applicants—those that will serve public housing and Indian housing projects. In exercising its discretion under this section, HUD shall take into account the overall ratio of PHAs to IHAs; the ratio of fundable applications submitted by nonprofit organizations serving public and Indian housing projects; and the extent of available grant funds under this demonstration.

The Department may also exercise its discretion under § 9.5 to substitute one or more highly rated applications if the top-rated applications under the selection criteria do not ensure equitable geographical distribution among urban and rural areas, and among nonprofit organizations providing child care services to lower income housing projects of varying sizes.

Lead Based Paint Guidelines

The requirements of the Lead-Based Paint Poisoning Prevention Act, as amended, (42 U.S.C. 4821-4846) and implementing regulations at 24 CFR Part 35 shall apply to this demonstration program as follows:

1. Post-1978 Buildings

A child care facility that is to be located in a building that was constructed or substantially rehabilitated after January 1, 1978 does not trigger lead based paint requirements. Either the PHA (for onsite facilities) or the nonprofit (for offsite child care facilities) must certify that the building in which the child care facility is to be located was constructed or substantially rehabilitated after January 1, 1978.

2. Pre-1978 Buildings

A child care facility that is to be located in a building that was constructed or substantially rehabilitated prior to 1978 must have all applicable surfaces tested for the presence of lead-based paint (lead content of greater than or equal to 1 mg/cm^2). Testing is to be performed in accordance with the requirements of 24 CFR Part 965 (this would not include the periodic inspection requirement under § 965.704). If lead-based paint is detected, abatement procedures under 24 CFR 35.24 (as revised on June 6, 1988; 53 FR 20790) must be undertaken. A certification must be provided by the PHA (for onsite child care facilities) or the nonprofit (for offsite facilities) that the building in which the child care facility is to be located will be tested for lead-based paint and, if found, abatement procedures will be undertaken as required by 24 CFR 35.24 before the facilities are used for child care.

Grant funds under this demonstration may be used for lead-based paint testing that is undertaken after the execution of the grant agreement with HUD. Grant funds may *not* be used for lead-based paint abatement. Should lead-based paint abatement be required, grantees that intend to operate off-site child care facilities are advised to seek State, local and private funding for this purpose. Grantees that intend to operate a child care facility within a lower income housing project may request funding from the PHA (Comprehensive Improvement Assistance Program). Each such request will be evaluated by the PHA and HUD on a case-by-case basis.

Because of the prohibitive costs associated with lead based paint abatement, and the fact that abatement activities are not eligible program costs, PHAs are advised to locate child care facilities in newer buildings that have less likelihood of containing lead based paint.

Program Guidelines

This NOFA provides nonprofit organizations with guidelines for the preparation of a grant application under the PHCC demonstration. As an aid to the reader, the following table of contents specifies the various provisions of the NOFA:

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Section 15. Other Findings

1. Definitions

Applicable surface means all intact and nonintact interior and exterior painted surfaces of a residential structure (including a child care facility established under this NOFA.

Lower income housing project means lower income housing and all necessary appurtenances developed, acquired, or assisted by a public or Indian housing agency under the United States Housing Act of 1937 (other than under section 8). A project encompasses those buildings identified in the Annual Contributions Contract (ACC) that is executed between HUD and the PHA or IHA.

Minor renovations means labor, materials, tools, and other costs related to the child care facility for the reconfiguration of space, installation of bathrooms, kitchens, renovations necessary to achieve compliance with physical accessibility standards for the handicapped, or required to meet State or local licensing and building code standards, painting and lighting. Minor renovation does *not* include the costs associated with lead-based paint abatement. Minor renovation also does not include the costs associated with landscaping, unless it is necessary for the security or safety of an outdoor play area.

Nonprofit organization means a secular or religious organization, no part of the net earnings of which may inure to the benefit of any member, founder, contributor, or individual. The organization must:

(a) Have a voluntary board;

(b)(1) Have an accounting system that is, or will be, operated in accordance with governmental accounting and financial reporting standards; or

(2) Designate an entity that will maintain a functioning accounting system for the organization in accordance with governmental accounting and financial reporting standards; and

(c) Practice nondiscrimination in the provision of assistance under the Public Housing Child Care Demonstration program in accordance with the authorities at section 14.1 of this NOFA.

Nonroutine maintenance means work items that ordinarily would be performed on a regular basis in the course of upkeep of a property, but have become substantial in scope because they have been put off, and that involve expenditures that would otherwise materially distort the level trend of maintenance expenses. Replacement of equipment and materials rendered unsatisfactory because of normal wear and tear by items of substantially the same kind does qualify, but reconstruction, substantial improvement in the quality or kind of original equipment and materials, or remodeling that alters the nature or type of housing units does not qualify.

Obligated means that the nonprofit grantee has placed orders, awarded contracts, received services or entered similar transaction that require payment from the grant amount.

Operating expenses means expenses that a grantee incurs for planning and development costs, administration, leasing, maintenance, minor or routine repairs, security, utilities, furnishings, equipment, insurance, and staff salaries.

Residual value of improvements means the appraised value of the improvements for continued use, as determined by an independent appraiser at the time the facility is discontinued for use as a child care center.

2. Applicants

2.1 *Eligibility.* Any nonprofit organization is eligible to receive a grant under this Demonstration. A PHA, IHA, Indian tribe, or other governmental entity that seeks to obtain grant funds under this demonstration must first establish a separate nonprofit entity that meets the requirements of Section 1 (*see* definition of "nonprofit organization").

The Department encourages applications from community-based, nonprofit organizations that have proven experience in providing child care or other related services to lower income families. HUD particularly encourages public housing resident associations and resident management corporations (RMCs) with similar experience to submit applications under this program. To facilitate the development and operation of child care programs in public housing projects, RCs may be applicants and manage such programs notwithstanding the otherwise applicable requirements of 24 CFR Part 964 (as amended on September 7, 1988, 53 FR 34676). Under Section 10 of this NOFA, additional points will be awarded to applicants that are RMCs or RCs. (This rating element does not apply to applicants seeking to establish a child care facility to serve an Indian housing project.)

An RMC or RC under this demonstration may act *either* as an agent for the sponsoring PHA, or as the nonprofit grantee receiving grant funds from HUD, but it may not act in both capacities simultaneously.

Moreover, an RMC or RC acting on behalf of a PHA may not assume certain PHA responsibilities specified in this NOFA, including lead-based paint inspection and abatement for onsite child care facilities. The PHA must assume this function.

2.2 *Minority applicants.* HUD encourages the full participation of minority nonprofit organizations in this demonstration program.

2.3 *Multiple applications.* An eligible nonprofit organization may submit multiple applications under this demonstration, so long as each application requests funding to establish a child care facility for a different lower income housing project (*see* the definition of "lower income housing project" under Section 1 of NOFA).

2.4 *Previously approved applicants.* Nonprofit applicants that have been approved to receive a child care demonstration grant under a previous funding round are not eligible to receive a grant for the same project under this NOFA.

3. Grant Amounts

3.1 *Maximum grant amount.* To ensure that grants are provided to the largest number of nonprofit organizations practicable, the maximum grant amount is $100,000. The Department has discretion to determine the amount of any grant award.

3.2 *Start-up capital.* In making grant award determinations, HUD will give preference to those applicants that: (a) Intend to use grant amounts as start-up capital; (b) demonstrate a high level of non-HUD funding during the demonstration phase; and (c) have a strategy for achieving 100 percent non-HUD funding following the expiration of the grant award. In this manner, the child care programs that are established under this demonstration may continue to operate without further HUD funding.

3.3 *Non-HUD Funding.* Other sources of funding that applicants should explore include: HHS Title XX; Department of Agriculture funding for meals; Job Training Partnership Act funds; State and local funding; grants from nonprofit social service agencies; and public housing agency funds, as well as the support of private, voluntary and religious organizations.

4. Use of Grant Funds

4.1 *Eligible activities.* Grant funds may be used for operating expenses and minor renovation of the child care facilities. HUD recommends that applicants use the grant award for start-up or one-time costs. While the Department discourages the use of grant funds for salaries, it will consider such applications if: (a) The program is of unusual merit; (b) the applicant demonstrates that there is no other source of funding available to pay these costs in the initial grant year; and (c) the applicant identifies additional sources of funds to pay for salaries in subsequent years. If major renovations are needed, they must be undertaken with other sources of funding. The guarantee of these funding sources and the timeliness of completion of the work must be demonstrated in order for the application to be approved.

5. Eligible Facilities

A proposed facility under this demonstration program must:

(a) Be located in or near (i.e. within a reasonable walking distance to) a lower income housing project;

(b) Be large enough to accommodate the proposed number of children;

(c) Meet all State and local standards and requirements for child care facilities (including total square footage per child, adequate kitchen and bathroom facilities, accessibility for the handicapped, security, staff qualifications and licenses, etc.); and

(d) not be located in a PHA: (1) with outstanding findings of noncompliance with civil rights statutes, Executive Orders or regulations as a result of formal administrative proceedings, unless the PHA is implementing a HUD-approved plan or compliance agreement designed to correct the area(s) of noncompliance; or (2) that is in violation of the compliance agreement.

Applications for "Family-based" child care facilities—i.e., facilities to be operated by a nonprofit organization using the homes of one or more residents of a project—may be considered for processing if they meet all of the eligibility requirements set out in this NOFA, especially day care provider qualifications, and the ability of the facility to meet State and local licensing standards.

6. Staffing Guidelines

Applicants must demonstrate that the proposed child care facility will provide staff in sufficient numbers, and with adequate training, to meet applicable State and local standards. In making its grant award determinations, HUD will consider under Section 9.1(e)(2) whether the applicant, to the extent practicable, has designed the child care program to employ in part-time positions elderly individuals residing in the project. Additional rating points will be awarded under Section 10(b) to applicants that have designed the child care program so as to employ public housing tenants residing in the project.

7. Responsibilities of Grantees

All nonprofit organizations receiving grants under this demonstration must:

7.1 *Enrollment restrictions.* Ensure that the child care center targets its enrollment to the children of lower income families residing in public housing for as long as the PHA provides the facilities (preference may be given to single parents). Non-PHA residents may enroll their children in the facility *only* if there are available openings in the child care facility, and there is no demand for those openings by PHA residents. Moreover, when filling vacancies, the nonprofit grantee is required to give preference to any lower income housing project residents whose names are placed on a waiting list;

7.2 *Notify tenants of child care services.* Undertake affirmative measures to inform lower income families that reside in the project to be served by the child care facility of the existence and fee structure of the child care facility;

7.3 *Recordkeeping.*

(a) *Budget.* Maintain accurate records of the child care facility's operation, expenditures, and revenues, and submit these records for review by HUD or the PHA, upon request;

(b) *Income and employment status of parents and guardians.* Maintain accurate records concerning the names and addresses of all participating parents and guardians for submission to HUD. In addition, maintain accurate income and employment status records on all non-PHA resident parents and guardians. Such information shall be collected upon admission of a child to the facility, and updated thereafter on an annual basis for submission to HUD. PHAs are required to provide HUD with income and employment status information for PHA resident parents and guardians in accordance with section 8.5 of this NOFA.

(c) *Race, ethnicity and gender data.* Maintain accurate records on the race, ethnicity and gender of: (1) Non-PHA resident parents (or guardians) and their children that apply for admission to, as well as those that participate in, the program; and (2) the children of PHA residents that apply for, and those that participate in, the child care program.

(d) *Participating children.* Maintain accurate records on the children participating in the program, including their age, school grade level, and any physical or emotional handicaps. These records shall be submitted to HUD or the PHA upon request;

(e) *Annual performance report.* Provide HUD with an annual performance report on the obligation and expenditure of funds for the eligible activities described in Section 4.1 of this Notice, together with data concerning the level of non-HUD funding received during the grant year. The annual performance report must also provide HUD with the racial, ethnic and gender data required under Section 7.3(c). The report must be submitted by the end of the fiscal year for which grant amounts are made available; and

(f) *Periodic reports.* Submit periodic reports to HUD on the operation of the child care facility, as requested.

7.4 *Insurance.* Maintain general liability insurance with a minimum limit of $500,000 per occurrence, and workers' compensation, in compliance with State statutes.

7.5 *Child care fees.* In order to generate income, the child care facility may charge reasonable fees for services, which may be based upon a sliding fee scale that corresponds to the family's income. The child care facility may also charge reduced fees for public housing residents.

7.6 *Compliance.* Ensure compliance with all the requirements specified in this NOFA.

8. Responsibilities of the PHA

All PHAs that participate under this Demonstration must:

8.1 *Provide suitable facilities.* Provide suitable space for the child care facility either in or near the lower income housing project.

8.2 *Identify participants and resident employees.* Assist the grantee

in identifying and selecting public housing participants and potential resident employees;

8.3 *Submit Form HUD-50058.* Provide HUD with Form HUD-50058 for each public housing resident parent and guardian participating in the demonstration program, if such form has not previously been submitted.

8.4 *Annual Contributions Contract (ACC) project number.* For child care facilities that are to be located within a lower income housing project, provide HUD with the ACC project number for the building in which the facility is to be located;

8.5 *Utilities.* Provide utility services to the facility, if the child care facility is located within the project and if such services were being provided by the PHA to the facility before implementation of the demonstration program;

8.6 *Miscellaneous assistance.* Provide other assistance to the grantee as needed, and as agreed upon by the PHA and the grantee (e.g., assist the grantee in seeking non-HUD funding or in preparing reports for submission to HUD). While PHAs are *not* required to provide funds to grantees under this demonstration, they may elect to do so; and

8.7 *Nondiscrimination.* Comply with the civil rights authorities listed at Section 14.1 of this NOFA.

9. Review and Approval Process

9.1 *Threshold criteria.* Applications will first be reviewed to determine threshold eligibility. Applications that do not meet the following threshold criteria will be disqualified from further processing:

(a) The applicant must be a nonprofit organization (*see* definition at Section 1 of this NOFA);

(b) The child care facility must be located in or near (i.e., within a reasonable walking distance to) a lower income housing project. The nonprofit applicant is required to certify that the offsite facility is within a reasonable walking distance to the project based upon its distance from the project and the types of thoroughfares that must be crossed;

(c) The child care program must be designed to target its enrollment to the children of lower income facilities residing in public housing, as long as the sponsoring PHA provides the facility;

(d) The child care services program must be designed to either serve preschool children during the day, school children after school, or both, in order to permit the parents or guardians of such children to obtain, retain, or train for employment;

(e) The child care services program must be designed, to the extent practicable, to: (1) Involve the participation of the parents of children in the program; and (2) employ in part-time positions elderly individuals residing in the project;

(f) At the time the application is submitted under this demonstration, there must *not* be a child care services program in operation for the project;

(g) The application must provide assurances from the PHA that it will provide suitable facilities in the project for the child care facility. In the case of offsite child care facilities, the PHA must provide evidence that it has, or will be able to, assume control of the proposed premises (*see* Section 11.2(c)(3)(i) of this NOFA);

(h) The participating PHA must certify that it is in compliance with the civil rights authorities listed under Section 14.1 of this NOFA; and

(i) The applicant must comply with all applicable State and local laws, regulations, and ordinances.

9.2 *Additional information.* Applications that meet these threshold eligibility requirements will also be reviewed for completeness. HUD reserves the right to request additional information from applicants in order to ensure completeness. If additional information is requested, it must be submitted to HUD by the specified date. If the applicant has not submitted the information by the due date, the application will be considered incomplete and disqualified from further processing.

9.3 *Ranking.* After HUD has determined that an application meets the threshold criteria specified under Section 9.1 of this NOFA, it will evaluate an applicant's qualifications on the basis of the selective rating factors listed at Section 10 and will assign the appropriate scores. Applicants that want to establish a child care facility to serve a public housing project will be evaluated on all seven elements listed at Section 10 (including the RMC/RC participation rating element at paragraph (e)), and will be ranked based upon their total selective rating score. Applicants that will serve an Indian housing project will be rated on six elements, but *not* on the RMC/RC participation element at paragraph (e), and will be separately ranked based upon their total selective rating score.

9.4 *PHA/IHA Distribution.* HUD may exercise its discretion under this paragraph to ensure an equitable distribution of grant funds among the top-rated applicants serving both public housing and Indian housing projects. In exercising its discretion under this section, HUD may take into account the overall ratio of PHAs to IHAs, the ratio of fundable applications submitted by nonprofit organizations serving public and Indian housing projects; and the extent of available grant funds under this demonstration.

9.5 *Geographical Distribution.* In accordance with section 117 of the Housing and Community Development Act of 1987, HUD may substitute one or more highly rated applications if the top rated applications under the selection criteria do not ensure equitable geographical distribution among urban and rural areas, and among nonprofit organizations providing child care services in lower income housing projects of varying sizes.

10. Selective Rating Factors

The Department will evaluate a grant application under this demonstration based upon the following selective rating factors. Applicants may receive up to the maximum number of points identified for each of these factors. Failure to address a factor will result in an applicant's receiving no points for that element.

(a) The extent of demonstrated need for a child care services program, as reflected by: (1) The number of preschool and school-aged children residing in the lower income housing project; (2) the adequacy, affordability, and availability of other child care programs; and (3) the number of residents in the lower income housing project that require the services of a child care facility in order to obtain, train, or retain employment. (Maximum: 20 points)

(b) The extent to which the child care facility will offer a broad or innovative range of services that exceed basic custodial care. These services could include providing a curriculum designed to promote the personal development of the children using the facility; establishing operating hours responsive to the needs of working parents; providing opportunities for parental involvement; and employing in the child care facility public housing tenants residing in the project. (Maximum: 20 points)

(c) The applicant's ability to implement the proposed facility, as demonstrated by its previous child care (or related) experience, particularly experience with children residing in lower income projects (public housing resident associations, resident councils, and resident management corporations with similar experience are especially encouraged to apply); employment of a director with appropriate training and experience; and development of a strategy to employ and train a qualified staff, including elderly public housing residents; (Maximum: 15 points)

(d) The applicant's ability to mobilize public and private resources during the demonstration phase, as reflected by the use of HUD grant amounts as start-up capital to supplement funds from other sources (including in-kind commitments) during the period covered by the HUD grant. This would also include the extent to which the PHA provides financial or in-kind support to promote the objectives of the demonstration, including fund-raising assistance, job training or other self-sufficiency programs for public housing residents. (Maximum: 15 points).

(e) The applicant's ability to demonstrate that it is either the RMC or RC for the project to be served by the child care program. [This rating factor applies only to facilities to serve a public, but not an Indian, housing project]. (Maximum: 10 points).

(f) The applicant's ability to sustain the facility beyond the demonstration phase. This would include having a realistic strategy for achieving 100 percent non-HUD funding upon the expiration of the HUD grant. (Maximum: 10 points).

(g) The applicant's ability to become operational within a reasonable period of time during the demonstration phase. (Maximum: 10 points)

11. Application

11.1 *Submission.* Nonprofit organizations interested in operating a child care facility in accordance with the requirements of this NOFA should submit an original plus two copies of the application materials discussed below, as follows:

(a) Page dimensions should be 8½"x11";

(b) Each page in the application package should be numbered;

(c) A table of contents must be included at the front of the package;

(d) *each* of the application requirements must be addressed (or documentation provided) in the order indicated in Section 11.2, and clearly identified with the item number to which it responds. (For example, evidence of nonprofit status would appear as the second item in the applicant's package, identified as "11.2(a)(2)").

The original of the application materials should be forwarded to Robert Carpenter, Office of Procurement and Contracts, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5256, Washington, DC 20410. The submission must be received in Room 5256 by 5:15 p.m., Eastern Standard Time, on August 28, 1989; or postmarked no later than August 28, 1989. Applications recieved or postmarked after this date, or applications that fail to address all of the application requirements set out below, will be disqualified from receiving a grant award and returned. (See section 11.3 of this NOFA).

One copy of the application materials must also be concurrently sent to the HUD Regional Office (Attention: Regional Public Housing Director or, for child care facilities to serve an Indian housing project, to the Director of the Office of Indian Programs), and to the HUD Field Office with jurisdiction over the sponsoring PHA or IHA.

11.2 *Application requirements.* The application must contain the following information, in the order presented below:

(a) *Narrative content.*

(1) The applicant's name, address, telephone number and the name of a responsible contact person;

(2) Evidence of the applicant's nonprofit status. This evidence must include photocopies of the nonprofit organization's bylaws and articles of incorporation, or proof of IRS nonprofit tax status under Section 501(c)(3)).

(3) A description of the nonprofit organization, including the names and titles of the members of its governing board, its strategy for employing and training a qualified staff, qualifications of the proposed facility director; the anticipated number of employees that will be working on a part- or fulltime basis (and whether any of these employees are expected to be elderly residents, or otherwise residents of, the designated project); the anticipated number of volunteers (if any); its ability to implement and manage the proposed child care program, including its prior experience in providing child care or other related services to lower income families, a statement as to whether the applicant is a community-based, nonprofit organization (such as a public housing resident association, Resident Council (RC) or Resident Management Corporation (RMC));

(4) A description of the applicant's proposed method of targeting its enrollment to the children of lower income families residing in public housing, and of informing residents of the availability of such child care services;

(5) A description of the proposed facility, including: its location on-or offsite; the public housing project to be served by the facility; the need for the child care facility, including whether there is any other child care program in operation for the project, the anticipated number and age range of the children to be served; the anticipated number of residents that may require the services of a child care facility in order to obtain, train or retain employment; the curriculum and types of services to be provided; and the anticipated fee structure for payment of child care services (including sliding or adjusted fee scale and in-kind services);

(6) A statement concerning the need and proposed use of the HUD grant funds (see discussion at Section 4 of this NOFA); the length of the grant term; a proposed budget for the grant period identifying the child care facility's projected revenues and expenses. *HUD funds should be reported separately from other funding sources.* Projected expenses must include: (1) Both one-time start-up expenses, and (2) on-going operational expenses;

(7) A statement of the grantee's efforts to obtain additional funding from non-HUD sources, including Title XX, USDA meals programs, State and local governments, the private sector, etc.; a description of any commitments obtained from social service providers and volunteer agencies to provide resources to meet the immediate needs of the children to be served by the facility and their parents. Possible services to be provided include training and employment assistance, diagnostic services, and volunteer aides. In addition to the narrative discription, the applicant should include copies of letters of commitment it has received from these agencies;

(8) A statement of how the nonprofit applicant intends to continue operation of the child care facility following expiration of the HUD grant. If the applicant proposes to use grant funds for salaries during the first year of operation, information on how this activity will be funded on an ongoing basis must be specifically provided;

(9) The projected opening date for the child care facility, and a description of any plans for its minor or major renovation. The applicant must provide a timetable for completing major renovations, indicating the source of its funding, and a timetable for meeting the projected opening date;

(b) *Certifications from the nonprofit applicant.* The nonprofit applicant must certify that the proposed child care facility will:

(1) Serve preschool children during the day, school children after school, or both, in order to permit the parents or guardians of such children to obtain, retain or train for employment;

(2) Be designed, to the extent practicable, to involve the participation

of the parents and guardians of children that reside in the project and that use the facility; and to employ on a full- or part-time basis elderly residents of the project;

(3) In its recruitment and selection of staff, require a declaration from all prospective employees that lists all pending and prior criminal arrests, and any charges related to child abuse, and their disposition, and all felony convictions and current criminal charges. The declaration may exclude traffic fines of $50.00 or less, any offense (other than an offense related to child abuse, child sexual abuse, or a violent felony) committed before the prospective employee's 18th birthday which was adjudicated in a juvenile court or under a youth offender law, and any conviction set aside under the Federal Youth and Corrections Act or similar State authority; and

(4) Comply with the requirements of Title VIII of the Civil Rights Act of 1968, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 and Executive Order 11063—Equal Opportunity in Housing.

(5) Provide a drug free workplace in accordance with the Drug Free Workplace Act of 1988. (*See* sample certification at the appendix to this NOFA).

(6) In the case of offsite child care facilities, that: (i) The premises conform to the lead based paint requirements specified at section 14.2 of this NOFA, or that the nonprofit will complete such measures before the opening of the child care facility; and (ii) the facilities are located within a reasonable walking distance to the project to be served, based upon its distance from the project and the types of throughfares to be crossed;

(7) Inform residents of the lower income housing project to be served of the availability of the child care facility;

(8) Comply with all applicable State and local laws, regulations and ordinances;

(9) Comply with all of the requirements specified in this NOFA

(c) *Resolution from the PHA Board.* The sponsoring PHA must submit a resolution from its board of directors indicating:

(1) The ACC project number for the project to be served by the child care facility;

(2) Its agreement to provide suitable space for the child care facility in the designated lower income housing project. In the case of offsite child care facilities, the public housing agency must provide evidence that it has, or will be able to, assume control of the proposed premises. This evidence can include copies of the negotiated lease, an option to lease, or a resolution from the lessor's board of directors indicating that the facility will be available to the PHA for use as a child care center;

(3) In the case of child care facililities located in the project, that the premises conform to the lead-based paint requirements specified at section 14.2 of this NOFA, or that the PHA will complete such measures before the opening of the child care facility;

(4) A certification as to whether the proposed child care facility will be located in a special flood hazard area, and if so, an agreement by the PHA to ensure that the necessary flood insurance is obtained;

(5) A certification that there is no child care facility in existence for the designated lower income housing project prior to the receipt of grant funds under this demonstration;

(6) Its agreement to provide the nonprofit grantee with the information required under Section 8.4 of this NOFA concerning potential public housing participants in the designated lower income housing project, and on potential resident employees;

(7) If applicable, a statement that a resident management corporation or resident council is acting on the PHA's behalf, and evidence of the authority delegated by the PHA to the RMC or RC;

(8) A statement indicating whether there are any outstanding findings of noncompliance with civil rights statutes, Executive Orders or regulations, as provided under Section 5(d) of this NOFA; and

(9) A statement by the PHA that it will comply with the nondiscrimination requirements under Section 14.1 of this NOFA.

(10) Its agreement to comply with the Federal requirements specified in Section 14 of this NOFA;

11.3 *Late Applications, modification and withdrawal of applications.*

(a) Any application received at the office designated in this NOFA after the exact date and time specified for receipt will not be considered unless it is received before award is made and:

(1) It was mailed on or before 12:00 midnight of the application deadline date. In such cases, applicants must use registered, certified, or U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, to substantiate the date of mailing. The only evidence to establish the date of mailing is the label or postmark on the wrapper, or on the original receipt from the U.S. Postal Service. (The term "postmark" means a printed, stamped, or otherwise place impression that is readily identifiable without further action as having been supplied and affixed by the U.S. Postal Service). If neither shows a legible date, and the application is received after the date specified, the application shall be deemed to have been mailed late. Private metered postmarks (such as those from Federal Express or other courier companies) *shall not* be acceptable proof of the date of mailing; or

(2) It was the only application received.

(b) Hand-delivered applications must be received in the designated office by the application deadline date and time (documentation is the notation on the application wrapper of the time and date received by the designated office).

(c) Any modification of an application is subject to the same conditions as in paragraphs (a) and (b).

(d) Notwithstanding the above, a late modification of an application that already has been selected for funding and which makes its terms more favorable to HUD will be considered at any time it is received and may be accepted.

(e) Applications may be withdrawn by written notice or telegram (including mailgram) received at any time prior to award. Applications may be withdrawn in person by an applicant or by the applicant's authorized representative, provided his or her identity is made known and the representative signs a receipt for the application prior to award.

12. Environmental Review

HUD will assess the environmental effects of each application in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and applicable related environmental authorities, and HUD's implementing regulations at 24 CFR Part 50. Any application that HUD determines to require an Environmental Impact Statement (EIS) in accordance with 24 CFR Part 50, Subpart E will not be eligible for assistance under this NOFA. As a result of its environmental review, HUD may find that it cannot approve an application unless adequate measures are taken to mitigate environmental impacts. HUD will consider any anticipated time delays in the selection process.

13 Grant Administration

13.1 *Disbursement of grant funds.* Except for funds necessary to finance start-up costs associated with initial staffing, minor renovation, and similar approved expenditures that may precede licensing, no grant funds may be disbursed until the grantee submits to HUD a photocopy of the appropriate license to operate the proposed child care facility. Furthermore, as a condition to the disbursement of PHCC grant funds, HUD reserves the right to inspect the facility to ensure compliance with the requirements of this NOFA, and the grant agreement.

13.2 *Grant ogreement.* The grant will be made by means of a grant agreement executed by HUD and the grantee. No funds may be disbursed under this demonstration program until a grant agreement is executed.

13.3 *Responsibility for grant administration.* Grantees are responsible for ensuring that public housing child care demonstration grants are administered in accordance with the requirements of this NOFA and other applicable laws.

13.4 *Deadline for obligation of grant amounts.* Grant funds under this demonstration must be obligated within one year of the date on which grant amounts are awarded to the grantee by HUD. It is not necessary that all work related to the child care facility be completed within this one-year period.

13.5 *Method of payment.* Grantees shall be advanced periodic grant amounts under this demonstration by the submission of a properly signed original and two (2) copies of Standard Form 270, Request for Advance or Reimbursement. Payments will be made through the Department of Treasury's Automated Clearing House (ACH), which will automatically deposit approved funds into the grantee's bank account. Grant funds will *not* be disbursed by lump sum payment.

13.6 *Termination and reallocation of grant funds.*

(a) HUD may deobligate, or take other similar action to recover, amounts awarded under this demonstration under the following circumstances:

(1) Grant amounts designated for use as operating costs may be deobligated if the proposed child care facility operations are not begun within a reasonable time following selection, or if the grantee fails to obligate funds in accordance with Section 13.4 of this NOFA;

(2) If, as a result of an audit, HUD determines that a grantee has expended funds for uses that are ineligible under this demonstration. HUD may require such funds to be returned by the grantee, or may offset ineligible expenditures against subsequent disbursements to which the grantee is entitled; and

(3) The grant agreement will set forth in detail other circumstances under which funds may be deobligated or returned, and other sanctions imposed.

(b) Upon the deobligation or adjustment of grant funds, HUD may:

(1) Readvertise the availability of funds that have been deobligated or adjusted under this section in a notice of fund availability; or

(2) Reconsider applications that were submitted in response to the most recently published notice of fund availability, and select applications for funding with deobligated or returned funds. Such selections will be made in accordance with the requirements of Section 9.3 of this NOFA.

14. Applicability of Other Federal Requirements

Use of public housing child care demonstration grant amounts requires compliance with the following additional requirements:

14.1 *Nondiscrimination.* The requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3600–20 (Fair Housing Act) and implementing regulations issued at Subchapter A of Title 24 of the Code of Federal Regulations, as amended by 54 FR 3232 (published January 23, 1989); Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1; Section 504 and implementing regulations at 24 CFR Part 8; and Executive Order 11063 and implementing regulations at 24 CFR Part 107; and all applicable State nondiscrimination statutes.

14.2 *Lead-based paint.* The requirements of the Lead-Based Paint Poisoning Prevention Act, as amended (42 U.S.C. 4821–4846) and implementing regulations at 24 CFR Part 35 shall apply as follow:

1. Post-1978 Buildings

A child care facility that is to be located in a building that was constructed or substantially rehabilitated after January 1, 1978 does not trigger lead based paint requirements. Either the PHA (for onsite facilities) or the nonprofit (for offsite child care facilities) must certify that the building in which the child care facility is to be located was constructed or substantially rehabilitated after January 1, 1978.

2. Pre-1978 Buildings

A child care facility that is to be located in a building that was constructed or substantially rehabilitated *prior to* 1978 must have all applicable surfaces tested for the presence of lead-based paint (lead content of greater than or equal to 1 mg/cm²). Testing is to be performed in accordance with the requirements of 24 CFR Part 965 (this would not include the periodic inspection requirement under § 965.704). If lead-based paint is detected, abatement procedures under 24 CFR 35.24 (as revised on June 6, 1988; 53 FR 20790) must be undertaken. A certification must be provided by the PHA (for onsite child care facilities) or the nonprofit (for offset facilities) that the building in which the child care facility is to be located will be tested for lead-based paint and, if found, abatement procedures will be undertaken as required by 24 CFR 35.24 before the facilities are used for child care.

Grant funds under this demonstration may be used for lead-based paint testing that is undertaken after the execution of the grant agreement with HUD. Grant funds may *not* be used for lead-based paint abatement. Should lead-based paint abatement be required, grantees that intend to operate offsite child care facilities are advised to seek State, local and private funding for this purpose. Grantees that intend to operate a child care facility within a lower income housing project may request funding from the PHA (Comprehensive Improvement Assistance Program—comprehensive or lead-based paint modernization (for FY 90)). Each such request will be evaluated by the PHA and HUD on a case-by-case basis.

Because of the prohibitive costs associated with lead based paint abatement, and the fact that abatement activities are not eligible program costs, PHAs are advised to locate their child care facilities in newer buildings that have less likelihood of containing lead based paint.

14.3 *OMB Circulars.* The requirements of OMB Circular Nos. A–110 concerning Uniform administrative requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Nonprofit organizations), and A–122 concerning Cost Principals applicable to Institutions of Higher Education, Hospitals and other Nonprofit organizations). (Copies of these circulars can be obtained from EOP Publications Office, 725 17th Street, NW., Suite 220, Washington, DC 20503);

14.4 *Use of debarred, suspended or ineligible contractors.* The provisions of 24 CFR Part 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status; and

14.5 *Coastal Barriers.* In accordance with the Coastal Barrier Resources Act, 16 U.S.C. 3501, no financial assistance under this NOFA may be made available within the Coastal Barrier Resources System.

14.6 *Flood insurance.* A proposed child care site to be renovated with funds under this NOFA may not be located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless (1)(i) the community in which the area is situated is participating in the National Flood Insurance Program and is in compliance with the regulations thereunder (44 CFR Parts 59 through 79); or (ii) less than a year has passed since FEMA notification regarding such hazards, and; (2) the grantee will ensure that flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 *et seq.*)

14.7 *National Environmental Policy Act.* The provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321), and applicable related environmental authorities at 24 CFR Part 50.4, and HUD's implementing regulations at 24 CFR Part 50.

14.8 *Drug Free Workplace Act of 1988.* Each grantee is required to certify that it will maintain a drug-free workplace in accordance with the requirements of 54 FR 4946 (published January 31, 1989; effective March 18, 1989). (For the convenience of the applicant, the required certification is provided in the Appendix to this NOFA.)

14.9 *Prevailing Wage Rates.* For child care facilities to be located in a project covered by a contract pursuant to the U.S. Housing Act of 1937 (including projects covered by an ACC contract executed between HUD and the PHA), the following prevailing wage rates must be paid:

(a) for laborers and mechanics employed in the development of the project (*i.e.*, other than routine and non-routine maintenance), the wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trades;

(b) for architects, technical engineers, draftsmen and technicians employed in the development of the project, the HUD-determined prevailing wage rate;

(c) for laborers and mechanics employed in the operation of the project, the HUD-determined prevailing wage rate. For purposes of this provision, operation activities include both routine and non-routine maintenance related to the project. (*See* the definition of "non-routine maintenance" at Section 1 of this NOFA).

14.10 *Indian Preference.* (Applicable to Indian Housing Authorities only.) The provisions of section 7(b) of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450e) which requires to the greatest extent feasible that preference and opportunities for training and employment be given to Indians and that preference in the award of subcontracts and subgrants be given to Indian Organizations and Indian Owned Economic Enterprises.

15. Other Findings

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the General Counsel, Rules Docket Clerk, at the above address.

The collection of information requirements contained in this Notice have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980 and have been assigned OMB control number *2577-0110.* Certain sections of this NOFA have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

TABULATION OF ANNUAL REPORTING BURDEN, PROPOSED RULE—PUBLIC HOUSING CHILD CARE DEMONSTRATION PROGRAM

Description of information collection	Section of NOFA affected	Number of respondents	Numbers of responses per respondents	Total annual responses	Hours per response	Total hours
Requirement that grantees maintain accurate records of the child care facilities operation.	7-3(a)-(d)	65 (Grtees)	Once/as needed	65	192 × 4 = 768	49,920
Requirement that grantees provide HUD with Annual performance report.	7-3(e)	65 (Grtees)	Annually	65	48	3,120
Requires that grantees submit periodic reports to HUD on the operation of the child care facility.	7-3(f)	65 (Grtees)	Once/as needed	65	64	4,160
Requires PHA to provide HUD with Form HUD-50058 for each public housing resident participating in the PHCCD.	8-5	65 (Grtees) × 10 (Participants) = 650	Once	650	0.16 (10 mins.)	104
PHCCD program Application Requirements	11-2 and 14.2	300 (Appltn)	1	300	100	30,000
Requires grantee to certify that it will maintain a drug-free workplace.	14.8 and Appendix.	65 (Grtees)	1	65	1	65
Total Annual Reporting Burden						87,369

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that the provisions of this Notice do not have "federalism implications" within the meaning of the Order. The establishment of child care facilities in certain public housing projects, as provided by this Notice, will not have a substantial direct effect on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government.

The General Counsel, as the Designated Official for Executive Order 12606, *the Family,* has determined that the provisions of this Notice might have the potential for significant impact on family formation, maintenance, and general well-being within the meaning of the Order. The Notice makes available $5 million for the development of child care facilities in and near lower income housing projects. More accessible child care services will enable the parents or guardians of children residing in public housing to seek, retain or train for employment. As such, the demonstration will sustain the family as a cohesive unit by promoting self-sufficiency.

Authority: Sec. 222 of the Housing and Urban-Rural Recovery Act of 1983, (12 U.S.C. 1701z-6 note); and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d).

Dated: July 7, 1989

Thomas Sherman,

Acting General Deputy Assistant Secretary for Public and Indian Housing.

Appendix—Drug-Free Workplace Certification

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one or more of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of performance (street address, city, county, state, zip code):

_____

_____

_____

[FR Doc. 89-16574 Filed 7-13-89; 8:45 am]

BILLING CODE 4210-33-M

federal register

Friday
July 14, 1989

Part VI

Department of Education

Adult Education for the Homeless Program; Invitation for Application for New Awards To Be Made in Fiscal Year (FY) 1990; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.192]

Adult Education for the Homeless Program; Invitation for Application for New Awards To Be Made in Fiscal Year (FY) 1990

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: To provide assistance to enable State educational agencies to plan and implement, either directly or through contracts or subgrants, a program of literacy training and basic skills remediation for adult homeless individuals within their States.

Deadline for Transmittal of Applications: August 14, 1989.

Deadline for Intergovernmental Review: October 13, 1989.

Available Funds: $7,094,000.

Estimated Range of Awards: $75,000–$500,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 35.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Eligible Applicants: State educational agencies in the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), Part 81 (General Education Provisions Act—Enforcement), and Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and (b) When effective after adoption in final form, the regulations for this program in 34 CFR Part 441, as proposed on April 12, 1989 (54 FR 14751).

It is the policy of the Department of Education not to solicit applications before the publication of final regulations. However, in this case it is essential to solicit applications on the basis of the notice of proposed rulemaking (NPRM) for this program, as published in the **Federal Register** on April 12, 1989 (54 FR 14751), so that the States can implement their assistance programs for homeless adults before the coldest part of the year.

Further, the Secretary has not received any substantive comments on Part 441 of the NPRM which applies to the Adult Education for the Homeless program, and does not anticipate making any substantive changes in this part of the final regulations. However, if any substantive changes are made in the final regulations for this program, applicants will be given an opportunity to revise or resubmit their applications.

Priority: The Secretary is particularly interested in applications that meet the following invitational priority.

The Secretary invites applications from States that propose a program of education for homeless adults that is targeted to a homeless population sharing common characteristics (such as homeless single parents, homeless alcoholic men, or homeless victims of spousal abuse).

However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Other Information: Programs must include (a) systematic outreach activities; and (b) coordination with existing resources such as community-based organizations, VISTA recipients, the adult basic education program and its recipients, and nonprofit literacy-action organizations.

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

The Secretary assigns the 15 points reserved in 34 CFR 441.20(d) as follows: 5 points to the Selection Criterion (a)—Program Factors—in 34 CFR 441.21(a) for a total of 30 points for that criterion; 5 points to the Selection Criterion (b) —Extent of Need for the Project—in 34 CFR 441.21(b) for a total of 20 points for that criterion; and 5 points to the Selection Criterion (f) —Evaluation Plan—in 34 CFR 441.21(f) for a total of 15 points for that criterion.

(a) *Program factors.* (30 points) The Secretary reviews each application to determine the extent to which—

(1) The program design is tailored to the literacy and basic skills needs of the specific homeless population being served (for example, designs to address the particular needs of single parent heads of households, substance abusers, or the chronically mentally ill);

(2) Cooperative relationships with other service agencies will provide an integrated package of support services to address the most pressing needs of the target group at, or through, the project site. Support services must be designed to bring members of the target group to a state of readiness for instructional services or to enhance the effectiveness of instructional services. Examples of appropriate support services to be provided and funded through cooperative relationships include, but are not limited to—

(i) Assistance with food and shelter;

(ii) Alcohol and drug abuse counseling;

(iii) Individual and group mental health counseling;

(iv) Health care;

(v) Child care;

(vi) Case management;

(vii) Job skills training;

(viii) Employment training and work experience programs; and

(ix) Job placement;

(3) The SEA's application provides for individualized instruction, especially the use of individualized instructional plans or individual education plans that are developed jointly by the student and the teacher and reflect student goals;

(4) The program's activities include outreach services, especially interpersonal contacts at locations where homeless persons are known to gather, and outreach efforts through cooperative relations with local agencies that provide services to the homeless; and

(5) Instructional services will be readily accessible to students, especially the provision of instructional services at a shelter or transitional housing site.

(b) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs in section 702 of the Stewart B. McKinney Homeless Assistance Act (Act), including consideration of—

(1)(i) An estimate of the number of homeless persons expected to be served and the number of homeless adults to be served within each participating school district of the State;

(ii) For the purposes of the count in paragraph (b)(1)(i), an eligible homeless adult is an individual who has attained 16 years of age or who is beyond the age of compulsory attendance under the applicable State law; who does not have a high school diploma, a GED, or the basic education skills to obtain full-time meaningful employment; and who meets the definition of "homeless or homeless individual" in section 103 of the Act;

(2) How the numbers in paragraph (b)(1) were determined;

(3) The extent to which the target population of homeless to be served in the project needs and can benefit from literacy training and basic skills remediation;

(4) The need of that population for educational services, including their readiness for instructional services and how readiness was assessed; and

(5) How the project would meet the literacy and basic skills needs of the specific target group to be served.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The establishment of written, measurable goals and objectives for the project that are based on the project's overall mission;

(2) The extent to which the program is coordinated with existing resources such as community-based organizations, VISTA recipients, adult basic education program recipients, nonprofit literacy-action organizations, and existing organizations providing shelter to the homeless;

(3) The extent to which the management plan is effective and ensures proper and efficient administration of the project;

(4) How the applicant will ensure that project participants otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(5) If applicable, the plan for the local application process and the criteria for evaluating local applications submitted by eligible applicants for contracts or subgrants.

(d) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of key personnel the State plans to use on the project, including—

(i) The qualifications of the State coordinator/project director;

(ii) The qualifications of each of the other key personnel to be used by the SEA in the project;

(iii) The time that each person referred to in paragraphs (d)(1)(i) and (ii) will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (d)(1)(i) and (ii), the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience in providing services to homeless populations;

(iii) Experience and training in project management; and

(iv) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) The budget is presented in enough detail for determining paragraphs (e)(1) and (2).

(f) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Objectively, and to the extent possible, quantifiably measure the success, both of the program and of the participants, in achieving established goals and objectives;

(2) Contain provisions that allow for frequent feedback from evaluation data provided by participants, teachers, and community groups in order to improve the effectiveness of the program; and

(3) Include a description of the types of instructional materials the applicant plans to make available and the methods for making the materials available.

Additional Factor: In addition to the above selection criteria, the Secretary may consider whether funding a particular application would improve the geographical distribution of projects funded under this program. (Approved by the Office of Management and Budget under OMB Control No. 1830–0506, expires on September, 1990)

Intergovernmental Review of Federal Programs: The Adult Education for the Homeless Program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on November 18, 1987, pages 44338–44340. In States that have not established a process or chosen a program for review, State, areawide, regional and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372–CFDA #84.192, U.S. Department of Education, Room 4161, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC Time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. *Do not send applications to the above address.*

Instructions for Transmittal of Applications: (a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.192, Washington, DC 20202–4725.

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC Time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.192, Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

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(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed postcard containing the CFDA number: 84.192, and title of this program: Adult Education for the Homeless Program.

(3) The applicant must indicate on the envelope and—if not provide by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted.

Application Instructions and Forms: This notice has two appendices:

Appendix A is divided into three parts, plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials: Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424(B)).

Certification regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form GCS–008) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS–009) and instructions.

Note: ED Form GCS–009 is intended for the use of primary participants and should not be tranmitted to the Department).

Certification Regarding Drug-Free Workplace Requirements: Grantees Other Than Individuals (ED 80–0004).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and certifications must each have an *original signature*. No grant may be awarded unless a completed application form has been received.

Appendix B contains questions and answers to assist potential applicants.

For Information Contact: Sarah Newcomb, Program Services Branch, Division of Adult Education, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 4423, Mary Switzer Building), Washington, DC 20202–7320. Telephone (202) 732–2390—or—Paul R. Geib, Jr., Special Programs Branch, Division of National Programs, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 4512, Mary Switzer Building), Washington, DC 20202–7242. Telephone (202) 732–2364.

Program Authority: 42 U.S.C. 11421.

Dated: July 12, 1989.

D. Kay Wright,

Acting Assistant Secretary, Office of Vocational and Adult Education.

BILLING CODE 4000-01-M

PART III

Estimated Number of Homeless Adults Expected to be Served

For making estimates required for Tables 1 and 2 of this part, an Eligible Homeless Adult is an individual who has attained 16 years of age or who is beyond the age of compulsory attendance under the applicable State law; who does not have a high school diploma, a GED, or the basic education skills to obtain full time meaningful employment; and who meets the definition of "homeless or homeless individual" in section 103 of the Stewart B. McKinney Homeless Assistance Act (P.L. 100-77).

Note in the space below the source of data used in making estimates for Tables 1 and 2 of this part (for example, State's Comprehensive Homeless Assistance Plan (CHAP), shelter bed counts, surveys of providers of services to homeless adults conducted specifically for the purpose of establishing this program):

Instructions for Table 1: Enter the estimated number of homeless adults expected to be served by each participating site in Table 1 below. Add more lines, if needed.

TABLE 1	
Estimated Number of Homeless Adults Expected to be Served in the States	
SITE	NUMBER
1.	
2.	
3.	
4.	
5.	
6.	
TOTAL EXPECTED TO BE SERVED IN THE STATE	

PART III

Estimated Number of Homeless Adults Expected to be Served in Participating School Districts

Instructions for Table 2: Enter the estimated number of homeless adults expected to be served in each participating school district in Table 2 below.

TABLE 2

Estimated Number of Homeless Adults Expected to be Served in Each Participating School District

District	Number
TOTAL EXPECTED TO BE SERVED	

APPENDIX A

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:
U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 1 9 2
TITLE: Adult Education for the Homeless Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (Cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date | Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV. 4-88)
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a – 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7 Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

	(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.		$	$	$	$
9.					
10.					
11.					
12. TOTALS (sum of lines 8 and 11)		$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Nonfederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 - 19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges:

22. Indirect Charges:

23. Remarks

SF 424A (4-88) Page 2
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Part II—Budget Information

Instructions for the SF-424A

General Instructions

This form is designed so that application can be made for funds from any one of the grant programs funded by the U.S. Department of Education. For the Adult Education for the Homeless Program (CFDA No. 84.192), Section A, B, and C should provide the budget for the entire project period (up to 18 months).

(Note: Sections D and E need not be completed to apply for this program).

All applications should contain a breakdown by the object class categories shown in Section B, Lines 6a through 6j, except those identified later in the instructions as not applying to the Adult Education for the Homeless Program.

Section A. Budget Summary

Line 1, Columns (a) through (g)—Enter on Line 1 the catalog program title in Column (a) and the catalog program number in Column (b). Leave Columns (c) and (d) blank. Enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the entire project period.

Section B. Budget Categories

Lines 6a through 6i—Fill in the total requirements for Federal funds by object class categories for the entire project period.

Line 6a—Personnel: Show salaries and wages to be paid to personnel employed in the project. Fees and expenses for consultants must be included in Line 6f.

Line 6b—Fringe Benefits: Include contributions for Social Security, employee insurance, pension plans, etc. Leave blank if fringe benefits to personnel are treated as part of the indirect cost rate.

Line 6c—Travel: Indicate the amount requested for travel of employee and transportation for program participants if required.

Line 6d—Equipment: Indicate the cost of tangible, nonexpendable, personal property which has a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

Line 6e—Supplies: Include the cost of consumable supplies to be used in this project. These should be items which cost less than $5000 per unit with a useful life of less than one year.

Line 6f—Contractual: Show the amount to be used for: (a) Procurement contracts (except those which belong on other lines such as supplies and equipment listed above); and/or (b) sub-grants or payments for consultants and secondary recipient organizations such as affiliates, cooperating institutions, delegate agencies, etc. Categories of expenditure in sub-grants or contracts should be shown for each sub-grantee in the budget narrative (section F).

Line 6g—Construction: Construction expenses are not allowable under the Adult Education for the Homeless Program.

Line 6h—Other: Indicate all direct costs not clearly covered by lines 6a through 6g. Note that stipends are not allowable costs under the Adult Education for the Homeless Program.

Line 6i—Total Direct Charges: Show total of Lines 6a through 6h.

Line 6j—Show the amount of indirect cost to be charged to the project. Applicants should note that indirect costs are limited to 8 percent of the Federal share of total direct costs. However, a State or local government (as defined in 34 CFR 80.3) may claim a negotiated indirect cost rate (34 CFR 75.562).

Line 6k—Enter the total of the amounts on Lines 6i and 6j.

Section C. Non-Federal Resources

Line 8—Enter any amounts of non-Federal resources that will be used on the grant, if any were entered on Line 1(f). In-kind contributions are not required under the Adult Education for the Homeless Program.

Column (a)—Enter the catalog program title.

Column (b)—Enter the contribution to be made by the applicant.

Column (d)—Enter the amount of cash and in-kind contributions (if any) to be made from all other sources.

Column (e)—Enter totals of columns (b), and (d).

Section F. Other Budget Information

Prepare a detailed Budget Narrative that explains, justifies, and/or clarifies the budget figures shown in Sections A, B, and C. Be sure to report objective categories of expenditures in each sub-grantee (or contractor) providing literacy and basic skills training to homeless adults and report the amount retained by the State for State administrative costs. An SEA or an eligible recipient may use no more than the amount of funds from its award that is necessary and reasonable for the proper and efficient administration of projects, services, and activities under the Adult Education for the Homeless Program.

Instructions For Part III—Application Narrative

Before preparing the Application Narrative an applicant should read carefully the description of the program, the program statute, the information regarding the priority, and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of the proposed project;
2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package; and
3. Include any other pertinent information that might assist the Secretary in reviewing the application.
4. Include the charts designated at Table 1 and Table 2 below.

BILLING CODE 4000-01-M

PART III

Estimated Population of Homeless Adults

For making estimates required for Table 1 and 2 of this Section, an Eligible Homeless Adult is an individual who has attained 16 years of age or who is beyond the age of compulsory attendance under the applicable State law; who does not have a high school diploma, a GED, or the basic education skills to obtain full time meaningful employment; and who meets the definition of "homeless or homeless individual" in section 103 of the Stewart B. McKinney Homeless Assistance Act (P.L. 100-77). Note the source of data used in making estimates for Table 1 and 2 of this section here (for example, State's Comprehensive Homeless Assistance Plan (CHAP), shelter bed counts, surveys of providers of services to homeless adults conducted specifically for the purpose of establishing this program):

Instructions for Table 1: Enter the estimated number of homeless adults to be served by each site in Table 1 below. Add more lines, if needed.

TABLE 1	
Estimated Number of Homeless Adults to be Served	
SITE	NUMBER
1.	
2.	
3.	
4.	
5.	
6.	
TOTAL TO BE SERVED	

PART III

Statewide Population of Homeless Adults

Instructions for Table 2: Enter the estimated number of homeless adults to be served in each school district in Table 2 below.

TABLE 2	
Estimated Number of Homeless Adults in Each School District	
District	Number
STATE TOTAL	

BILLING CODE 4000-01-C

Instructions for Estimated Public Reporting Burden

Under the terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection information is estimated to average 12 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1830-0506, Washington, DC 20503.

(Information Collection Approved under OMB control number 1830-0506, Expiration date: September, 1990)

BILLING CODE 4000-01-M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85. Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202-4725, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name | PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature | Date

ED Form GCS-008, (REV.12/88)

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion–Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

ED Form GCS-008, (REV. 12/88)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name | PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature | Date

ED Form GCS-009, (REV. 12/88)

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

ED Form GCS-009, (REV. 12/88)

Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;
(2) The grantee's policy of maintaining a drug-free workplace;
(3) Any available drug counseling, rehabilitation, and employee assistance programs; and
(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and
(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination; or
(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Organization Name _____ PR/Award Number or Project Name _____

Name and Title of Authorized Representative _____

Signature _____ Date _____

ED 80-0004

BILLING CODE 4000-01-C

Appendix B

Potential applicants frequently direct questions to officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants the Department has assembled the following most commonly asked questions.

Q. Can we get an extension of the deadline?

A. No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the **Federal Register** and apply to all applications. Waivers for individual applications *cannot* be granted, regardless of the circumstances.

Q. We just missed the deadline for the XXX competition. May we submit under another competition?

A. Yes; however, the likelihood of success is not good. A properly prepared application must meet the specifications of the competition to which it is submitted.

Q. Will you help us prepare our application?

A. We are happy to provide general program information. Clearly, it would not be appropriate for staff to participate in the actual writing of an application; but we can respond to specific questions about application requirements, evaluation criteria, and the priorities. Applicants should understand that this previous contact is not required, nor will it in any way influence the success of an application.

Q. How long should an application be?

A. The Department of Education is making a concerted effort to reduce the volume of paperwork in discretionary program applications. The scope and complexity of projects is too variable to establish firm limits on length. Your application should provide enough information to allow the review panel to evaluate the significance of the project against the criteria of the competition. We recommend that you address all of the selection criteria in an "Application Narrative" of no more than thirty pages in length. Supporting documentation may be included in appendices to the Application Narrative. Some examples:

(1) Staff qualifications. These should be brief. They should include the person's title and role in the proposed project and contain only information about his or her qualification that are relevant to the proposed project. Qualifications of consultants should be provided and be similarly brief. Staff résumés may be inserted in a clearly marked appendix.

(2) Assurance of participation of an agency other than the applicant if such participation is critical to the project.

(3) Copies of evaluation instruments proposed to be used in the project in instances where such instruments are not in general use.

Q. How should my application be organized?

A. The application narrative should be organized to follow the exact sequence of the components in the selection criteria contained in this notice. A table of contents and a one-page abstract summarizing the objectives, activities, project participants, and expected outcomes of the proposed project generally enhance the review of the application.

Q. How do I provide an assurance?

A. Except for SF-424B, "Assurances—Non-Contruction Programs," simply state in writing that you are meeting a prescribed requirement.

Q. How many copies of the application should I submit and must they be bound?

A. Current Government-wide policy is that only an original and two copies need be submitted. However, an original and four copies will be greatly appreciated. The binding of applications is optional. At least one copy should be left unbound to facilitate any necessary reproduction. Applicants should not use foldouts, photographs, audio-visuals, or other materials that are hard-to-duplicate.

Q. When will I find out if I'm going to be funded?

A. You can expect to receive notification within 3 to 4 months of the application closing date, depending on the number of applications received and the number of competitions with closing dates at about the same time.

Q. Once my application has been reviewed by the review panel, can you tell me the outcome?

A. No. Every year we are called by a number of applicants who have legitimate reasons for needing to know the outcome of the review prior to official notification. Some applicants need to make job decisions, some need to notify a local school district, etc. Regardless of the reason, because final funding decisions have not been made at that point, we cannot share information about the review with anyone.

Q. Can I obtain copies of reviewers' comments?

A. Upon written request, copies of reviewers' comments will be mailed to unsuccessful applicants.

Q. Will my application be returned if I am not funded?

A. We no longer return original copies of unsuccessful applications. Thus, applicants should retain at least one copy of the application.

Q. If my application receives high scores from the reviewers, does that mean that I will receive funding?

A. Not necessarily. It is often the case that the number of applications scored highly by the reviewers exceeds the dollars available for funding projects under a particular competition. The order of selection, which is based on the scores of all the applications and other relevant factors, determines the applications that can be funded.

Q. What happens during negotiations?

A. During negotiations technical and budget issues may be raised. These are issues that have been identified during panel and staff reviews that require clarification. Sometimes issues are stated as "conditions." These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions may also be raised about the proposed budget. Generally, these issues are raised because there is inadequate justification or explanation of a particular budget item, or because the budget item seems unimportant to the successful completion of the project. If you are asked to make changes that you feel could seriously affect the project's success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all negotiation issues have been resolved.

Q. Where can copies of the **Federal Register**, program regulations, and Federal statutes be obtained?

A. Copies of these materials can usually be found at your local library. If not, they can be obtained from the Government Printing Office by writing to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 783-3238. When requesting copies of regulations or statutes, it is helpful to use the specific name, public law number, or part number. The material referenced in this notice should be referred to as follows:

(1) Title VII, Subtitle A, Section 702, Stewart B. McKinney Homeless Assistance Act of 1987, Pub. L. 100-77.

(2) Title VII, Subtitle A, Section 701, Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. 100-628.

(3) Title VI, Part A, Section 6001, Augustus B. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amentments of 1988, Pub. L. 100-297.

(4) When effective after adoption in final form, 34 CFR Part 441 (Adult Education for the Homeless Program). Applicants should prepare their applications based upon the Notice of Proposed Rulemaking which appeared in the **Federal Register** on April 12, 1989. You may contact Program Officers, Paul R. Geib, or Sarah Newcomb at the address provided in this Notice if you need a copy of these proposed regulations.

(5) Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 79, 80, 81, and 85.

[FR Doc. 89-16652 Filed 7-13-89; 8:45 am]

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Rules and Regulations

Federal Register
Vol. 54, No. 135
Monday, July 17, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

RIN 1115-AB05

8 CFR Parts 103 and 210a

[INS No. 1201-89]

Powers and Duties of Service Officers; Availability of Service Records; Admission or Adjustment of Status of Replenishment Agricultural Workers

AGENCY: Immigration and Naturalization Service; Justice.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule adds a new Part 210a of 8 CFR, to conform with section 210A of the Immigration and Nationality Act, established by the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603, and makes related conforming amendments to the existing Part 103 of 8 CFR. This rule sets forth the criteria and procedures to be used to admit or adjust the status of replenishment agricultural workers (RAW) for temporary residence, should there be a determination that RAW workers are required, and to address the rights and obligations of aliens admitted or adjusted under this section. This rule is necessary to ensure that there is a sufficient supply of labor to harvest perishable crops in the United States.

EFFECTIVE DATE: This interim rule is effective July 17, 1989. Comments must be received on or before August 16, 1989.

ADDRESSES: Written comments should be mailed in triplicate to the Deputy Assistant Commissioner, Special Agricultural Worker Programs, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, or delivered to Room 5250 at the same address.

FOR FURTHER INFORMATION CONTACT: Aaron Bodin, Deputy Assistant Commissioner, Special Agricultural Worker Programs (SAW), 202-786-3658.

SUPPLEMENTARY INFORMATION: In section 210 of the Immigration and Nationality Act, added by section 302 of the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603, Congress provided for the expansion of the legally available workforce by giving resident status to foreign field workers in perishable crops. These "Special Agricultural Workers" (SAWs) are not required to remain in agricultural work upon acquiring lawful status. To replenish the supply of labor for perishable crops, should SAWs abandon this work, section 210A of the Act provides resident status to additional foreign workers if a shortage of seasonal agricultural workers is determined by the Secretary of Agriculture and the Secretary of Labor. Unlike SAWs, these "replenishment agricultural workers" (RAWs) are obligated to perform seasonal agricultural services in each of the first three years after having been accorded temporary residence. RAWs who fulfill this condition may be given the status of permanent resident. A RAW who fails to perform the requisite seasonal agricultural services is deportable. RAWs who desire to become citizens of the United States are obligated to perform seasonal agricultural services in each of two additional years.

Section 210A(c) of the Act directs the Attorney General to provide for the admission or adjustment of aliens to lawful temporary resident status to meet the projected shortage, if any, of workers to perform seasonal agricultural services, as determined by the Departments of Agriculture and Labor.

History of This Regulation

On August 15, 1988, a notice of availability for public comment of a preliminary working draft of regulations to implement section 210A(c) was published in the **Federal Register** at 53 FR 30685. The many comments received from farmworker and grower representatives, members of Congress and others helped the Service to refine its views and many of the suggestions were adopted in drafting the proposed rule.

On March 3, 1989, the proposed rule was published in the **Federal Register** at 54 FR 9054. The comment period expired on April 3, 1989. Thirty three comments were received, representing the views of a much larger number of employer and farmworker advocacy organizations, state and federal government agencies, members of Congress, and individuals. The Service believes that the widest range of opinions has been expressed and greatly appreciates these comments. Each has been considered and many commentors will see the effects of their comments on this rule. Due to the number of changes that have occurred since publication of the proposed rule, the Service has opted to issue this regulation as an interim rule, with request for comments. This will enable the Service to take action to implement the RAW program while affording concerned persons an opportunity to comment on changes which have been incorporated into this rule since the proposed rule was published.

To aid the reader in fully appreciating how the RAW program will work, we will discuss the program generally, and then by specific areas which elicited the major comments regarding the proposed rule.

Determination of Need for Additional Workers

The number of aliens admitted or adjusted each fiscal year under the provisions of section 210A(c), which is referred to as the "shortage number", is determined jointly by the Secretaries of Labor and Agriculture with the Bureau of the Census from data collected during the prior fiscal year. If the determination is made that there will be no shortage of workers in any year, no RAW shall be admitted or adjusted in that year unless the Emergency Procedure for Increase in Shortage Number at section 210A(a)(7) is implemented.

Basic Characteristics of the Program

It is important to understand the nature of this program and to differentiate the RAW program from the recently concluded legalization programs also authorized by the Immigration Reform and Control Act of 1986. With regard to the sections 210 (SAW) and 245A (Legalization) programs, Congress delineated precise standards, entitlement and benefits for applicants. Also specifically provided by the SAW Program statute, were procedures for administering the

programs, including an administrative appeals process and strict confidentiality of applicant's records. These provisions were not included in section 210A.

Section 210A of the Act merely states that the Service must adjust or admit the number of replenishment agricultural workers determined by the Secretaries of Agriculture and Labor. It does not stipulate when the Service must begin to admit or adjust replenishment workers, who is eligible, how the selection and petition process is to be conducted, how the programs are to be administered or what protections must be accorded applicants.

The Service has developed in these regulations a program to admit or adjust aliens most likely to perform the required work in seasonal agricultural services. This rule is balanced by concerns for fairness and equity and is responsive to commentor's suggestions.

Definition of "Agricultural Employment"

The definition of "Agricultural Employment" has been changed from that contained in the proposed rule. The definition in the proposed rule was an attempt by the Service to simplify the Department of Labor definition of "Agricultural Labor and Services", as used in the H-2A program. For purposes of consistency, and to minimize confusion, that language has been deleted and in its place the Service has referenced the Department of Labor definition in its entirety, as set forth at 29 CFR 655.100(c)(1). However, to help registrants, the simplified definition is presented in the information which accompanies registration cards, for illustrative purposes only.

Single Registration for the Duration of the RAW Program

The proposed rule described a procedure to be employed for the admission or adjustment of RAWs only during fiscal year 1990, if required. Several commentors stated that the Service should promulgate a consistent standard for the duration of the RAW program to avoid confusion. The Service has adopted this recommendation.

Outreach and Advertising of the Program

Several commentors expressed concerns that the RAW program would be ignored or that eligible aliens might not become aware of the benefits of participation if the Service did not mount a large scale public relations campaign. Other commentors stated that the Service should again make use of community outreach organizations, or Qualified Designated Entities (QDEs), as it had during the SAW and Legalization programs. The Service has modified the rule to include participation of qualified designated entities (QDEs). QDEs in good standing may amend their agreements with the Service and will be able to provide assistance and disseminate information to the public concerning the RAW program. The rule also permits these QDEs to certify copies of original documents submitted to the Service as part of the petitioning process. QDEs would also serve as the sole point for distribution of registration cards to aliens who reside outside of the United States.

Bilingual Forms

Some commentors expressed concern that the response to a call for registration by eligible aliens might be lowered if registration forms were not published in languages other than English. The Service is persuaded by these comments and will produce the instructions accompanying the registration card and petition form for status as a RAW in a combination English and Spanish format. All forms will remain in English, although instructions will be in English and Spanish.

Eligibility Criteria and Priority Consideration

Minimum age—Most commentors supported the proposal that RAWs be at least 18 years of age by October 1, 1989. Some suggested, however, that this restriction discriminates against many otherwise qualified, able and willing young workers and could preclude the unification of farmworking families here. The Service acknowledges the validity of these arguments and the humanitarian concern behind them but believes that there are more compelling reasons to maintain this minimum age standard. Some states have laws restricting the exposure of minors to certain substances used in the performance of seasonal agricultural services and prohibiting minors from operating certain farm machinery. There are many jobs that would satisfy the RAW work requirement which would not expose minors to these risks, however, such employment may not always be available. The Service is concerned that to avoid deportation for failure to perform the 90 days of required work, some minors may feel compelled to leave school and/or to take these jobs which could be injurious to their health.

The Service will not change the requirement that aliens must be eighteen years of age or older to be invited to petition for RAW status. However, aliens who are not yet, but, who will become eighteen years old during the period beginning October 1, 1989, and ending October 1, 1992, may register but will not be invited to petition for temporary resident status until they have reached their eighteenth birthday.

Qualifying work standard—Most commentors supported the eligibility requirement of a minimum of 20 man-days of prior agricultural employment in the United States between May 1, 1985, and November 30, 1988. There was some dissent on the requirement that qualifying work must have been in the United States with reference to a colloquy between Senators Gramm and Simpson. This colloquy emphasized that RAW status would be available to any alien without preference or discrimination with respect to national origin. The Service recognizes that this requirement would yield a larger number of eligible aliens from certain nations due to recent patterns of immigration. We note, however, that applications under the SAW program, which required at least 90 days of prior employment in seasonal agricultural services in the United States, were received from nationals of almost every country in the world. The Service believes that this requirement will yield a population of eligible aliens more likely to fulfill the work requirement because of their familiarity with agricultural standards and practices in this country and that it is not inconsistent with the policy agreed to in the colloquy. It will be retained.

Disqualification for illegal entry after November 6, 1986—Most commentors, for a variety of reasons, urged the Service not to disqualify aliens who entered the United States illegally subsequent to the enactment of IRCA on November 6, 1986. A majority of them recommended November 30, 1988 as the disqualification date, to coincide with the end of the period in which qualifying work for RAW status could be performed and the beginning of full enforcement of employer sanctions in perishable agriculture. The latter date, it was argued, would make available many more otherwise qualified farmworkers. The disqualification date for illegal entry to the United States has been changed to November 30, 1988.

Ineligibility of aliens in H-2A status—Several commentors representing agricultural employers urged that the RAW program should not disrupt the H-2A program. Congress attempted to make the pre-IRCA H-2 program more usable to agricultural employers by enacting the H-2A program in IRCA. The Service believes it would be contrary to the intent of Congress if the RAW program were to conflict with the operation of the H-2A program. This rule provides a solution similar to that adopted in the SAW program. Aliens in H-2A status on the date of filing their petition for RAW status will, if their petition is approved, be given temporary resident status effective the date the H-2A status expires. So that the requisite number of aliens will be admitted or adjusted during the fiscal year as required by statute, aliens whose H-2A status continues into the next fiscal year will be granted temporary resident status as of the last week day of the current fiscal year. Similarly, temporary employment will not be authorized for these petitioners until their H-2A status expires.

Priority consideration—Many commentors recommended that one class of aliens or another within the eligible population be given priority in selection. The classes described were generally the classes identified in the proposed rule, although the recommended order of priority varied considerably. There was near unanimous approval, however, of preference for otherwise qualified aliens who are the immediate relatives of IRCA legalized aliens. In this connection, one commentor pointed out that, unless the Service imposed a reasonable cutoff date on when a marriage creating a family relationship to an IRCA legalized alien may have occurred, there could be a "wave of holy matrimony" to gain preference in selection. This rule gives preference for selection, within each priority class, to spouses and unmarried sons and daughters of IRCA legalized aliens. The rule further provides that to be qualifying any marriage or adoption creating the claimed family relationship must have occurred on or before November 30, 1988.

Priority issues—The differences between the variable registration standards of the proposed rule have shaped the discussion of priority consideration in the comments received. There are two issues: (1) Whether or not priority should be given to eligible aliens whose qualifying employment was in seasonal agricultural services; and (2) whether or not priority should be given to eligible aliens who are residing in the United States.

With respect to the nature of qualifying employment, although there were some comments favoring a priority for experience in seasonal agricultural services, most commentors, including organizations representing employers of seasonal agricultural workers, recommended against this priority. Since the purpose of the RAW program is to provide a seasonal agricultural workforce, the views of employers of this workforce are especially important with respect to qualifying experience for RAW status. This rule does not provide for priority in selection based on the type of prior agricultural work experience.

There were numerous comments on the issue of whether registration should be limited to aliens in the United States. Comments by farmworker advocates that it would be better to legalize the status of workers already here before importing additional workers from overseas, are particularly persuasive. The Service also believes that this policy would support the policy of promoting family unity by legalizing the status of qualified family members already here. Moreover, such a limitation would simplify administration and public understanding of the program. The only alternative to a requirement of U.S. residence under the statute is to allow registration and subsequent petition from aliens anywhere in the world. From the experience of the Service and the Department of State in the SAW program, many fraudulent SAW applications were proffered by aliens abroad. The service believes that any eligible alien should have an opportunity to register. It is, however, also mindful of an overriding requirement of the statute that a number of aliens equal to the shortage number be admitted or adjusted during the fiscal year. The Service is, therefore, concerned that the time required for the Department of State to contact and interview possibly large numbers of ineligible aliens abroad would jeopardize the administration of the RAW program. Therefore, to expand the registrant pool to include those aliens outside the United States who are most likely to be eligible, overseas registration will be allowed but only through QDEs. This restriction would avoid a possibly confusing and time consuming worldwide program. Priority in selection will be given to aliens in the United States.

Timing of Registration

The proposed rule provided for a registration to be held only if a shortage number is announced or a formal earlier estimate is received from the Departments of Agriculture and Labor as to the probable size of a shortage number, including a reasonable margin for a possible emergency increase. The Service was concerned about raising the expectations of aliens which be frustrated if there were no shortage number and was reluctant to commit resources to gear up for a registration process in the absence of a shortage number.

Commentors from the Congress and the agricultural industry felt strongly that a registration be conducted as early as June 1, 1989 to allow the Service to begin admitting or adjusting RAWs shortly after October 1, 1989.

On June 16, 1989, the Departments of Agriculture and Labor provided a joint letter to the Service which advised of the need for 50,000 potential RAWs to be available to be adjusted or admitted and urged that this number should be available for possible fall 1989 shortages. The letter stated that reports of shortages in California, the anticipated growth in the seasonal agricultural industry, reports of seasonal agricultural workers leaving agricultural employment and the absence of indications that the availability of domestic farmworkers would increase, all indicated that RAWs would be needed. The Service will, therefore, conduct a registration during the period beginning September 1, 1989 and ending October 31, 1989. Upon announcement of a shortage number, the Service will randomly select up to 20 percent of the shortage number from the existing pool of registrants. These registrants will be invited to petition under an expedited procedure which provides temporary employment authorization prior to adjudication of the petition. If no shortage number is announced by the Secretaries, registrants will not be invited to petition. However, the Service will retain registration cards for potential future selection and invitation to petition.

The Service appreciates the cooperation of the Departments of Agriculture and Labor in providing information indicating the need for a registration prior to the announcement of a shortage number.

Registration of Denied SAW Applicants

Many persons commented on the proposed first use of aliens whose SAW application had been denied by the Service as a source of RAWs. The comments were split between those who approved of this policy and those who believed that persons who filed SAW applications only to obtain work authorization, should not be favored over aliens who, in good faith and often on the advice of counsel, did not file because they knew that they were not qualified. Some commentors who approved of using denied SAWs advocated the inclusion in this category

of aliens who had filed skeletal applications pursuant to court order. The Service finds merit in the question of equity raised by commentors who opposed priority consideration for denied SAWs and believes that a further question of equity would occur because not all SAW applications will have been adjudicated by the registration period. This rule, therefore, provides no special consideration for denied SAW applicants. Denied SAWs meeting the RAW eligibility standard may, of course, register.

Registration Fee

Many commentors were critical of the restrictive requirements for accepting registration cards and the policy of the proposed rule that the Service would not respond to status inquiries. The Service has made concessions in response to some of these comments and will have a toll-free inquiry service. Because of this and improvements in the initial processing of all registration cards and the random selection methodology to support the information system, start-up costs have surpassed initial estimates. Because of this, the Service has found it necessary to place a ten dollar ($10.00) fee on registration. However, to balance this, and to not increase the overall cost to a selected alien, the Service has reduced the petition fee from the proposed $185.00 to one hundred and seventy-five dollars ($175.00). The registration fee of ten dollars ($10.00) must be paid at the time the registration card (Form I-807) is returned to the Service. The Service is providing a pre-addressed envelope to make this easier.

Receipt and Sorting of Registration Forms

The proposed rule contained provisions for receipt and handling of registration cards and the consequences of the Service receiving unusable cards. Many commentors urged the Service to accept registration cards no matter how filed, issue a receipt to every alien submitting a registration card, and return unusable cards to aliens with an explanation of any deficiencies and opportunity for correction and resubmission. The Service appreciates these comments and recognizes the concerns of aliens who have registered or are awaiting word on selection or further information on their petitions. Having evaluated each of the comments received, the Service believes that were it to accede to commentors requests for handling of registration cards, the random selection process would become invalidated. Moreover, as the registration period for the RAW program will be sixty (60) days long, the Service would have to commit a great deal of resources to just processing the mail that would be generated by these concessions.

The Service's policy with regard to the filing, receipt and initial processing of registration cards (Form I-807) will not change with regard to the manner of filing which will be accepted. Registration cards will not be accepted by any means other than by regular mail, nor at any other location or address than the one specified in instructions accompanying these forms. Forms submitted by any means requiring any form of written acknowledgement will not be processed. Registration forms may not be submitted in person. Only one registration card per person will be permitted. Persons who submit multiple registration cards will not be considered for selection.

However, following the processing of the required fee for registration, a fee receipt will be mailed to the address provided by the alien on the registration card. In addition to the fee receipt, this document will provide information helpful to the alien including how to notify the Service of a change of address and how to use the new toll-free telephone inquiry system.

With regard to commentor requests that illegible or incomplete registration cards be returned to aliens for correction and resubmission, Service policy will not change. Service and contractor personnel will make every effort at using registration cards as submitted. Commentors, in general, failed to realize that a registration period must be necessarily brief and that the integrity of the random selection process to be used to select aliens to be invited to petition requires a definitive end to the time allowed for submission and receipt of registration cards. The Service believes that if aliens and their representatives read the bilingual instructions and complete the relatively simple registration card carefully, there will be little question of whether a card can be interpreted by the Service, or need for returning incomplete or illegible cards to aliens. The responsibility to submit a properly completed, legible registration card on time with the correct fee is the responsibility of each alien or his or her representative. The Service will not delay registration or compromise the integrity of the random selection process to follow up on such errors.

Registration cards received on time at the Service's central processing location will be sorted according to priority class listed in § 210a.2(b). Within each class, these cards will be again sorted according to family preference for aliens claiming immediate family relationship to an alien legalized under IRCA. Those registrants in the first priority tier and within the pool claiming family relationship to an IRCA legalized alien will be used first in the random selection process.

Inquiry System

The proposed rule indicated that the Service would not respond to inquiries on either the registration or petition processes. Many commentors strongly believed that the Service should respond to these inquiries. To address this concern, the Service will provide a toll free telephonic inquiry capability for the RAW program. Aliens who have mailed registration cards according to the instructions provided with the card will be able to call this toll free system, from anywhere in the country, from any touch tone telephone. Using this system, a caller will receive information as to whether a registration card was received, whether the alien was selected to be invited to petition, if the alien was selected to petition, and if a petition package has been sent to the alien. After the completed petition package is returned to the Service, callers can verify whether an interview has been scheduled.

In addition, the Service plans to expand this service to include the voice reporting of changes in address, in conjunction with the present policy of requiring the submission of a change of address Form (I-697A) and notifying the post office of a forwarding address.

The Service is attempting in the registration process to be as helpful and as fair to registrants as possible. To go further, such as to provide an appellate procedure and other enhancements, would work against the basic purpose of the program, which is to select a given number of people in a specified period of time to meet potential labor shortages. It is important to keep in mind that, the RAW program does not carry with it the same entitlement as the Legalization and SAW programs. The purpose of the statute is fulfilled when the specific number of eligible aliens are admitted or adjusted.

Random Selection of Persons Invited to Petition

Although commentors did not mention the random selection process, we would like the public to know how it will work. The selection process shall proceed in two stages: (1) The Service will establish registers of potentially eligible aliens who will be sorted into classes for priority consideration. Registrants within the first priority class, claiming family preference, will be randomly selected in a number equal to the shortage number. If this number is insufficient, then registrants in the first priority class, not claiming family preference, will be randomly selected until the shortage number is met. If this number is not sufficient to meet the shortage number, the same procedure will be followed for the second priority class until the shortage number is reached. (2) Selected registrants will be invited to file petitions for temporary residence as a RAW. During the petition process, eligibility will be determined and the admission or adjustment of the alien accomplished.

The names of aliens in excess of the initial shortage number requirements will be retained for possible random selection later in FY 1990, or in subsequent years. Excess cards will be retained until the end of FY 1993. Beyond this time, these registration cards will be destroyed.

Filing of Petition for RAW Status

The proposed rule envisioned that registered aliens who were selected to petition for RAW status would bring their completed application package, together with the required fee and all supporting documentation, to a Service office at the time of their scheduled interview. Commentors did not address this area of the proposed rule; however, internal staff comments and deliberation on the logistics of the RAW program have led the Service to a finding that the RAW program will operate more efficiently and cost-effectively if the return of petitions were made to a central location. An exception is made for the expedited petition process referenced above.

Selected registrants will receive a petition package containing all forms and instructions necessary to complete the petition process. The Service will also include a pre-addressed return envelope to be used by the petitioner to return the petition, fee and supporting materials to a central location specified in the instructions and on the enclosed return envelope. Because of government-wide restrictions concerning the use of government franked mail for return purposes, petitioners must affix the proper postage to the return envelope.

After receipt at the central location, the petition package will be reviewed for completeness and returned to the alien, without processing, if any deficiencies are found. Once a properly completed package is received by the Service, the fee will be processed and a fee receipt sent to the petitioner. The fee receipt will also authorize employment until the date of the interview. An interview will be scheduled according to the petitioner's zip code and a schedule notice will b= mailed to the petitioner.

Burden of Proof

The proposed rule provided that petitioners must submit documentary proof of qualifying work experience in the form of government records, a variety of employer or union records, payroll records or income tax returns. The proposed rule also specifically stated that affidavits cannot be used to establish the performance of qualifying work.

Most industry commentors urged that aliens should be able to submit affidavits because of the difficulty aliens would have in obtaining documents. Many of these commentors also suggested that the Service not require documents, but approve applicants on the basis of credibility, as determined by specially trained officers at the time of interview. They cited the paucity of valid employment documentation in agriculture and the potential for fraud and victimization of farmworkers by unscrupulous employers and vendors should documents be required. They further suggested that the oral credibility determination should be made first, with an opportunity for non-credible petitioners to submit documentation to rebut a notice of intent to deny.

The Service has adopted the suggestion that documents not be required but encourages aliens to bring to the interview documents which would enhance their credibility with respect to the performance of qualifying work. By not requiring documents to establish performance of qualifying employment, the adjudication of petitions will be expedited.

Petitioners who are not able to establish eligibility or the performance of qualifying work at the interview will have 30 days to rebut an intent to deny with documentary proof, including affidavits. To establish the performance of qualifying work, only affidavits from employers will be considered. Absent credible proof, or after 30 days, the petition would be denied.

The Service may attempt to verify any evidence submitted during the petition process that it deems necessary. This ability is inherent on the Service's authority to make determinations regarding qualifications and to render a decision on any application or petition filed.

Reopening and Reconsideration of Decisions

Though not contained in the proposed rule, the Service is concerned that in some cases temporary resident status could be gained through the use of fraud or willful misrepresentation. The Service's position is that the temporary resident status improperly gained was *void ab initio*, or never held. Further, the Service believes that the intent of the Congress would be undermined by allowing temporary status improperly held to be retained, and that this would be unfair to other aliens who complied with the requirements. Therefore, the rule contains a provision which empowers the Service to reopen *sua sponte*, reconsider, and render a new decision on any proceeding under part 210a. This decision may reverse a prior favorable decision when fraud during the registration or petition processes is determined. If the decision of the Service, after reconsideration, is to deny a petition or application, the petitioner will be accorded the same denial and appeal due process protections provided petitioners whose applications or petitions are denied.

Appeal Process

The proposed rule did not contain a provision for administrative appeal of denied petitions. Many commentors urged the Service to provide such due process to petitioners. The Service is persuaded and will accord denied petitioners an administrative appeal through the Director of the Regional Processing Facility (RPF) to the Legalization Appeal Unit (LAU). The fee ($50.00) and Form I-694 used for the previous two IRCA programs will be retained for use during the RAW program.

Confidentiality

The proposed rule contained a provision which extended confidentiality to RAW records unless the alien had committed fraud or made a willful misrepresentation of a material fact in connection with the registration and petition processes or if the Service developed information that the alien had entered the country illegally after the November 6, 1986 cutoff date stated in the proposal. Many commentors took issue with the exception of information developed concerning illegal entry and others felt strongly that RAW files should be accorded the same grant of strict confidentiality that was provided by statute in the SAW and Legalization programs.

The Service wishes to point out that the statute governing the two

legalization programs contained a clear and unequivocal confidentiality provision which precluded use of information contained in these files from being used for any purpose but to make a determination with respect to the application and to prosecute persons who committed fraud or made willful misrepresentation of material facts in connection with those application processes. There is no similar provision in section 210A of the Act. In the absence of a statutory grant of confidentiality, the Service developed its own version of the more restrictive standard that appeared in sections 210 and 245A.

After reviewing all comments received concerning this issue, the Service has modified the confidentiality provision in the interim rule to prohibit the use of information contained in RAW records for deportation unless: Fraud is discovered during the registration or petition processes; an alien has failed to maintain status as a RAW; or a person is the subject of an outstanding arrest warrant.

Requirement to Perform Seasonal Agricultural Services

The proposed rule states that, upon approval of a petition, the alien will be granted work authorization for 18 months. Several commentors urged the Service to verify the performance of requisite seasonal agricultural services every year for three years. While the Service understands the concerns presented, annual verification does not warrant the costs of the increased workload on the Service and the increased traffic through Service offices.

The Service believes that verification of the first year's work, plus knowledge that verifying the next two year's work will occur prior to adjustment to permanent residence status, combined with the knowledge that failure to perform the required work leads to deportation, should be enough motivation for an RAW to comply with the statutory work requirement. This provision will not be changed.

Many commentors pointed out that the proposed rule made permissive the issuance of a subpoena by a district director to obtain employment records which had been refused an alien by an employer. These commentors urged that subpoena issuance be made mandatory, consistent with existing regulations at 8 CFR Part 210. This rule makes the issuance of a subpoena to obtain employment records denied to an alien mandatory. However, a district director will not issue a subpoena until all of the prerequisite conditions have been met, including the requirement that the alien must have made reasonable efforts to obtain these required documents. This authority will be used to assist temporary resident RAWs in establishing performance of the required seasonal agricultural services each year, but will not be used to compel the production of employment records for petitioners.

Because section 210A of the Act is silent on provisions for waiver of the required work in seasonal agricultural services, the proposed rule similarly contained no language addressing this issue. Several commentors suggested that the Service should include provisions in the final rule that provided for waiver of the requirement in selected situations which were beyond the control of the RAW. The Service has found legislative history that would support such a waiver and has included in the interim rule a provision designed to provide a remedy to aliens who are injured or otherwise disabled after the date they are adjusted to temporary residence.

The proposed rule provided no appeal from a Service determination that a RAW alien was deportable for failure to perform the required work in seasonal agricultural services. Many commentors felt that the Service must provide full due process to these RAWs. The Service believes that due process protections are afforded an alien through the deportation process. When a Service officer determines that a RAW has failed to perform the work required to maintain status, an Order to Show Cause is issued and the alien is entitled to a hearing in the ensuing deportation proceeding.

Conforming Regulation Changes

8 CFR Part 103 establishes the authority of Service officers designated to administer and make determinations with regard to applications and petitions filed pursuant to the Act and 8 CFR. In addition, this part provides authorities for the processing of appeals and waivers, and for the reopening or reconsideration of any application or petition filed under these same authorities. The addition to 8 CFR of a new Part 210a necessitates conforming changes in Part 103.

Other Issues

The Service intends, at the interview, to provide approved RAWs with information on the dates and locations of the various seasonal agricultural activities in the United States. It will refer RAWs to state job service offices for placement assistance. All state agencies cooperate in the interstate clearance system of the United States Employment Service and through this system RAWs may be directed to areas of greatest need.

The Service reiterates its advice in the proposed rule that it is in the interest of agricultural employers to remain in contact with undocumented former workers so that they may contact these workers with necessary information in the event that the Service announces a registration.

The Service also wishes to again note here that it is important for employers to understand that SAWs and RAWs are legal resident aliens and are to be treated as such for tax purposes. They should not be confused with nonimmigrant temporary workers admitted under the H-2A program.

Several commentors stated that INS should be able to sanction employers for noncompliance with the statutory requirement that employers provide a certificate of employment in seasonal agricultural services to RAWs. There is no authority for the Service to penalize such employers; however, when it believes that an employer has failed to meet this statutory obligation, the Service will provide evidence of non-compliance to the Department of Labor, which has such statutory authority.

Commentors also stated that the Service should include in the final rule regulations for certain provisions of section 210A regarding transportation assistance to migrant workers and provisions of the Migrant and Seasonal Agricultural Worker Protection Act (MSAWPA). These provisions are not within the jurisdiction of the Service but are within the purview of the Secretary of Labor, and are addressed in Department of Labor regulations at 29 CFR Part 502.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with Executive Order 12612.

The information collection requirements contained in this rule have been cleared by Office of Management and Budget under the provisions of the Paperwork Reduction Act.

List of Subjects

8 CFR Part 103

Aliens, Delegations of Authority, Fees, Availability of Service Records.

8 CFR Part 210a

Aliens, Temporary resident status, Reporting and recordkeeping requirements, Permanent resident status.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for Part 103 is revised to read as follows:

Authority: 5 U.S.C. 522(a); 8 U.S.C. 1101, 1103, 1201, 1301–1304, 1443; 28 U.S.C. 1746; 7 U.S.C. 2243; 31 U.S.C. 9701; E.O. 12356, 3 CFR, 1982 Comp., p. 166; 8 CFR Part 2.

2. In § 103.1, paragraphs (f)(2) (xxxi), (xxxii) and (t) are revised, and paragraphs (f)(2)(xxxiii) and (n)(4) are added to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(f) * * *

(2) * * *

(xxxi) Application for waiver of grounds of excludability under Parts 210, 210a, and 245a of this title;

(xxxii) Application for status as permanent resident under § 245.6 of this title; and

(xxxiii) Petition for temporary or permanent resident status as a Replenishment Agricultural Worker (RAW) under Part 210a of this title.

* * * * *

(n) * * *

(4) Petitions and waivers filed incident to section 210A of the Act shall be approved by the district director having jurisdiction of the office where a petition or waiver is filed, when an alien meets the requirements of Part 210a of this title. District directors shall deny petitions and waivers incident to section 210A of the Act where the alien fails to meet the requirements of Part 210a of this title.

* * * * *

(t) *Regional Processing Facility Directors.* Under the direction of their respective regional commissioners, regional processing facility directors have program, administrative and supervisory responsibility for all personnel assigned to their facilities. Regional processing facility directors are delegated the authority and responsibility to approve or deny applications or petitions for adjustment of status and for waivers of grounds of excludability or other regulatory requirements under sections 210, 210A, and 245A of the Act.

* * * * *

3. In § 103.2, a new paragraph (d) is added to read as follows:

§ 103.2 Applications, petitions, and other documents.

* * * * *

(d) *Filing of petitions for adjustment of status under section 210A of the Act, as amended.* (1) The filing of a petition for temporary resident status as a Replenishment Agricultural Worker, and waivers incident to such filing, under section 210A of the Act must conform to the provisions of Part 210a of this title.

(2) A petition for adjustment to temporary resident status pursuant to section 210A of the Act shall be accepted only by the Service, or by personnel employed under contract to the Service, who are under Service supervision, and are specifically designated responsibility for the initial processing of petitions and waivers. Only Service officers may make decisions with respect to the granting or denial of petitions and waivers filed under section 210A of the Act and Part 210a of this title.

(3) Petitions and waivers filed with the Service pursuant to Part 210a of this title shall not be considered as complete until accepted for adjudication by and until the appropriate fee has been paid to the Immigration and Naturalization Service.

4. In § 103.3, a new paragraph (a)(3) is added to read as follows:

§ 103.3 Denials, appeals, and precedent decisions.

(a) * * *

(3) *Denials and appeal of Replenishment Agricultural Worker petitions and waivers and termination of lawful temporary resident status under section 210A.* (i) Whenever a petition for Replenishment Agricultural Worker status, or a request for a waiver incident to such filing, is denied in accordance with the provisions of Part 210a of this title, the alien shall be given written notice setting forth the specific reasons for the denial or termination on Form I-692, Notice of Denial. Form I-692 shall also contain advice to the alien that he or she may appeal the decision and that such appeal must be taken within thirty (30) days after service of the notification of decision accompanied by any additional new evidence, and a supporting brief is desired. The Form I-692 shall additionally provide a notice to the alien that if he or she fails to file an appeal from the decision, the Form I-692 shall serve as a final notice of ineligibility.

(ii) Form I-694, Notice of Appeal, in triplicate, shall be used to file the appeal, and must be accompanied by the appropriate fee. Form I-694 shall be furnished with the notice of denial at the time of service on the alien.

(iii) Upon receipt of an appeal, the administrative record will be forwarded to the Administrative Appeals Unit as provided by § 103.1(f)(2) of this part for review and decision. The decision on the appeal shall be in writing, and if the appeal is dismissed, shall include a final notice of ineligibility. A copy of the decision shall be served upon the petitioner and his or her attorney or representative of record. No further administrative appeal shall lie from this decision, nor may the petition be filed or reopened before an immigration judge or the Board of Immigration Appeals du2ing exclusion or deportation proceedings.

(iv) Any appeal which is filed that: fails to state the reason for the appeal; is filed solely on the basis of a denial for failure to file the petition for adjustment of status under Part 210a of this title in a timely manner; or is patently frivolous, will be summarily dismissed. An appeal received after the thirty (30) day period has tolled will not be accepted for processing.

* * * * *

5. In § 103.5, a new paragraph (c) is added to read as follows:

§ 103.5 Reopening or reconsideration.

* * * * *

(c) *Motions to reopen or reconsider decisions on replenishment agricultural worker petitions.* (1) The director of a regional proceeding facility may *sua sponte* reopen any proceeding under Part 210a of this title which is within his or her jurisdiction and may render a new decision. This decision may reverse a prior favorable decision when it is determined that there was fraud during the registration or petition processes and the petitioner was not entitled to the status granted. The petitioner must be given an opportunity to offer evidence in support of the petition and in opposition to the grounds for reopening the petition before a new decision is rendered.

(2) The Associate Commissioner, Examinations or the Chief of the Administrative Appeals Unit may *sua sponte* reopen any proceeding conducted by that unit under Part 210a of this title and reconsider any decision rendered in such proceeding.

(3) Motions to reopen a proceeding or reconsider a decision under Part 210a of this title shall not be considered.

6. In § 103.7, paragaph (b)(1) is amended by revising the entry for Forms I-690 and I-694, and by adding the following forms in numerical sequence to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *
(1) * * *

Form I–690. For filing application for waiver for ground of excludability under section 212(a) of the Act as amended, in conjunction with the application under section 210 or 245A of the Act, or a petition under § 210A. A fee of thirty-five dollars ($35.00) is to be remitted in the form of a cashier's check, certified bank check or money order.

Form I–694. For appealing the denial of application under section 210 or 245A of the Act, or a petition under § 210A. A fee of fifty dollars ($50.00) is to be remitted in the form of a cashier's check, certified bank check or money order.

* * * * *

Form I–805. For filing a petition for status as a temporary resident under § 210A. A fee of one hundred and seventy-five dollars ($175.00) for each petition, is to be remitted in the form of a cashier's check, certified bank check or money order at the time of filing with the Immigration and Naturalization Service.

Form I–807. For filing a request for consideration as a replenishment agricultural worker (RAW) during an announced period of registration under 8 CFR 210a.3. A fee of ten dollars ($10.00) is to be remitted in the form of a cashier's check, certified bank check or money order at the time of mailing to the Immigration and Naturalization Service.

* * * * *

7. A new Part 210a is added to read as follows:

PART 210a—REPLENISHMENT AGRICULTURAL WORKERS

Sec.
210a.1 Definition of terms used in this part.
210a.2 Eligibility and priority consideration.
210a.3 Registration process.
210a.4 Admissibility.
210a.5 Petition for temporary resident status.
210a.6 Evidence.
210a.7 Decision and appeal.
210a.8 Status, benefits and obligations.
210a.9 Adjustment to permanent resident status.

Authority: 8 U.S.C. 1103; 8 CFR Part 2.

§ 210a.1 Definition of terms used in this part.

(a) *Act.* The Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, Pub. L. 99–603.

(b) *ADIT.* Alien Documentation, Identification and Telecommunications card, Form I–69. Used to collect key data concerning an alien. When processed together with an alien's photographs, fingerprints and signature, this form becomes the source document for generation of Form I–551 Alien Registration Receipt Card.

(c) *Agricultural employment.* The term "agricultural employment" has the meaning of "agricultural labor and services" as defined by the Department of Labor at 20 CFR 655.100(c)(1).

(d) *Application under IRCA.* The term "application under IRCA" means an application filed by any alien with the Immigration and Naturalization Service under sections 245a (Legalization) and 210 (Special Agricultural Worker) of the Immigration and Nationality Act and section 202 (Cuban/Haitian adjustees) of the Immigration Reform and Control Act of 1986 (IRCA) which has been approved.

(e) *Man-day.* The term "man-day" is used to quantify work performed for the purpose of establishing eligibility under § 210a.2(a)(1)(iii) of this part and means the performance during any day of not less than one (1) hour of agricultural employment or seasonal agricultural services for wages paid or any day in which piece rate work was performed. Work for more than one employer in a single day shall be counted as no more than one man-day for purposes of this part.

(f) *Public cash assistance.* Public cash assistance means income or needs-based monetary assistance, to include but not limited to supplemental security income, received by the alien or his or her immediate family members through Federal, state or local programs designed to meet subsistence levels. It does not include assistance in kind, such as food stamps, public housing, or other non-cash benefits, nor does it include work-related compensation or certain types of medical assistance (Medicare, Medicaid, emergency treatment, services to pregnant women or children under 18 years of age, or treatment in the interest of public health).

(g) *Qualified Designated Entity (QDE).* Qualified designated entity or QDE means those entities designated pursuant to sections 210 and 245A of the Act, whose cooperative agreements were not suspended or terminated by the Service or those whose agreements were not allowed to lapse by the Service prior to January 30, 1989 (the expiration date of the INS cooperative agreements for all designated entities), or those whose agreements were not terminated for cause by the Service subsequent to January 30, 1989. A QDE must have amended its agreement with the Service to include such participation in the RAW program as is sanctioned in these regulations.

(h) *Regional Processing Facility (RPF).* Service offices established in each of the four Service regions to process or adjudicate applications for adjustment of status under sections 210, 210A, 245A(a) or 245A(b)(1) of the Act.

(i) *Replenishment Agricultural Worker (RAW).* Any individual granted temporary resident status or permanent resident status under section 210A(c) of the Act.

(j) *Seasonal Agricultural Services.* Defined in section 210(h) of the Act as the performance of field work related to planting, cultivating, cultural practices, growing and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined by the Secretary of Agriculture. Regulations further defining these terms can be found at 7 CFR Part 1d.

(k) *Secretaries.* The term "Secretaries" means the Secretaries of Labor and Agriculture.

(l) *Shortage number.* The number, if any, of replenishment agricultural workers to be adjusted or admitted to the United States during a fiscal year as determined by the Departments of Labor and Agriculture under the provisions of section 210A (a) and (b) of the Act. The numerical limitations of sections 201 and 202 of the Act do not apply to the admission or adjustment of aliens for lawful temporary or permanent resident status under section 210A(c) of the Act.

(m) *Special Agricultural Worker (SAW).* Any individual granted temporary or permanent resident status under section 210(a) of the Act.

(n) *Work-day.* The term "work-day" quantifies the work required of RAWs in order to maintain temporary resident status as described in § 210a.8(b) of this part and means a calendar day during which at least four (4) hours of work in seasonal agricultural services is performed.

Note.—The term "work-day" is used here in lieu of the statutory term "man-day" to conform with its usage in Department of Labor regulations at 29 CFR Part 502 and to distinguish between the term "man-day" as defined elsewhere in this section.

§ 210a.2 Eligibility and priority consideration.

(a) *Eligibility.* (1) An alien eligible for status as an alien lawfully admitted for temporary residence under section 210A(c) of the Act is one who:

(i) Is eighteen (18) years of age or older;

(ii) Is admissible to the United States as an immigrant, or if inadmissible, has had the grounds of excludability waived in accordance with the provisions of § 210a.4(d) of this part;

(iii) Has performed at least 20 man-days of employment in agricultural work in the United States during any 12 consecutive months during the period beginning May 1, 1985 and ending on November 30, 1988; and

(iv) Certifies that he or she is able and intends to perform seasonal agricultural services as required under § 210a.8(b) of this part.

(2) An alien who entered the United States illegally after November 30, 1988, is not eligible for RAW status.

(b) *Priority consideration.* General registration is limited to aliens who meet the eligibility criteria as provided at § 210a.2(a) of this part. Registrants will be selected at random and invited to petition in accordance with the following priority classes in descending order (i.e.; if there are sufficient numbers of registrants to meet a shortage number in the higher priority class, registrants in the lower priority class will not be considered for selection, but, will be held for possible future selection):

(1) Aliens, in the United States, who have performed at least 20 man-days of employment in agricultural work in the United States during any 12 consecutive months during the period beginning May 1, 1985 and ending on November 30, 1988, and who meet all the eligibility criteria provided at § 210a.2(a).

(2) Aliens, outside the United States, who have performed at least 20 man-days of employment in agricultural work in the United States during any 12 consecutive months during the period beginning May 1, 1985 and ending on November 30, 1988, and who meet all the eligibility criteria provided at § 210a.2(a).

(c) *Family preference.* (1) Within each of the two (2) registration priority classes, preference in selection will be given to the qualified spouses and unmarried sons or daughters (18 years of age or older) of aliens who have filed an application under IRCA which have been approved. Any marriage or adoption which created the claimed family relationship must have occurred on or before November 30, 1988.

(2) Registrants will be sorted into the two (2) priority classes and within each class, into family preference and non-preference groups.

§ 210a.3 Registration process.

(a) *General.* The general registration is intended to provide an adequate number of persons to satisfy shortage number requirements for several years. Registration cards which are excess to the current year's shortage number requirement will be retained for potential future selection. Aliens who are not yet eighteen (18) years of age but who will become eighteen (18) during the period October 1, 1989, through October 1, 1992, may register. These registrants will not be invited to petition for temporary resident status as a RAW until they have turned eighteen (18) years of age.

(b) *Registration period.* The Service will conduct a general registration period beginning on September 1, 1989, and ending on October 31, 1989.

(c) *Obtaining registration Form (I–807).* Registration cards (Form I–807) will be available from all Service district, legalization and sub-offices. Registration forms will also be available from participating QDEs.

(d) *Filing of registration Form (I–807).* (1) Aliens must mail their registration card only to the address provided in the instructions accompanying the registration card and pre-printed on the registration card. All registration cards shall be submitted by regular domestic or international surface or airmail to the address provided on the registration card.

(2) A separate registration form must be filed by each eligible registrant. Only one registration form per registrant will be permitted. Aliens who file more than one registration card will not be considered.

(e) *Filing of registration fee.* The required registration fee of ten dollars ($10.00) shall be submitted to the Service in the envelope provided with the registration card. All fees for registration shall be paid in United States funds in the form of a money order, cashier's check, or bank check made payable to the Immigration and Naturalization Service. No personal checks or currency will be accepted. Each registration card must be accompanied by a separate fee. Group payment of registration fees is not permitted. Registration fees will not be waived or refunded under any circumstances.

(f) *Appeal.* No appeal shall lie from failure to be registered, to be placed in a priority class, or to be given family preference.

(g) *No benefit for registration.* Neither employment authorization nor any other benefit shall derive from filing a registration form, being placed in a registry pool, or being invited to petition for RAW status.

(h) *Invitation to petition.* (1) After completion of the registration period registrants will be invited to petition for temporary residence as a RAW, up to the shortage number, if a shortage number has been announced.

(2) Invitations to submit a petition and necessary materials will be mailed to registrants who are eighteen (18) years of age or older in the order of their random selection from the registration pool, beginning with registrants selected at random from the group claiming family relationship to IRCA legalized aliens in the first registration priority class. The invitation process will continue through priority classes, in order, with successive random selection of registrants until the shortage number for that year is reached.

(3) If a shortage number is announced before the conclusion of the registration period, the Service will select at random up to twenty (20) percent of the shortage number from the existing pool of registrants, in the priority order provided at § 210a.2(b). These registrants will be invited to petition according to the expedited interview and petition processing procedure provided at § 210a.5(i) of this part.

(4) Registrants in excess of the current shortage number will be retained for future random selection and invitation to petition for temporary resident status as a RAW.

§ 210a.4 Admissibility.

(a) *General.* An alien seeking temporary resident status as a replenishment agricultural worker must be admissible to the United States as an immigrant. This means that the alien must not be excludable under the provisions of section 212(a) of the Act. However, section 210A(e) of the Act provides that certain grounds of excludability are not applicable, that certain grounds may be waived, and that other grounds cannot be waived.

(b) *Grounds of exclusion not to be applied.* The following paragraphs of section 212(a) of the Act shall not apply to petitioners for temporary resident status: (14), workers entering without Labor Certification; (20), immigrants not in possession of a valid entry document; (21), visas issued without compliance with section 203; (25), illiterates; and (32), graduates of non-accredited medical schools.

(c) *Special rule for determination of public charge.* Section 212(a)(15) of the Act shall not apply to an alien who demonstrates a history of employment in the United States evidencing self-support without reliance on public cash assistance. Consideration of the use of the special rule for determination of public charge will occur only after a determination is made that a petitioner appears to be subject to the provisions of section 212a(15) of the Act. The alien will not be considered to be reliant on public cash assistance received by an immediate family member unless the alien's sole means of support was

incident to the eligibility for cash assistance by the family member.

(d) *Waiver of grounds for exclusion.* (1) Except as provided in paragraph (e) of this section, the Service may waive any other provision of section 212(a) of the Act only in the case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is in the public interest. When an application for waiver of grounds of excludability is filed jointly with a petition for temporary residence under this part, it shall be accepted for adjudication at the regional processing facility. If an alien is determined to be excludable on grounds which may be waived as set forth in this paragraph, during the petition interview, then he or she shall be advised of the procedures for applying for a waiver of grounds of excludability. If an application for waiver of grounds of excludability is filed at the time of the initial petition interview, it shall be accepted at the interview office and adjudicated under the designated authority of the district director where filed. If an application for waiver of grounds of excludability is filed subsequent to the initial petition interview, it shall be filed with and adjudicated by the Service processing facility with jurisdiction over the alien's place of residence, unless otherwise directed by the Service. District directors and directors of Service regional processing centers are delegated authority to adjudicate applications for waivers of grounds of excludability.

(2) Applications for grounds of excludability are filed on Form I-690. All applications for waivers of grounds of excludability must be accompanied by the correct fee in the exact amount. All fees for applications must be in the form of a money order, cashier's check, or bank check. No personal checks or currency will be accepted. Fees will not be waived or refunded under any circumstances.

(3) The applicant will be notified of the decision on their application for waiver in writing and, if denied, the reason therefore. The applicant may appeal the decision within thirty (30) days after the service of the notice pursuant to the provisions of § 103.3(a)(3) of this chapter.

(e) *Grounds of exclusion that may not be waived.* The following provisions of section 212(a) of the Act may not be waived:

(1) Paragraphs (9) and (10) (relating to criminals);

(2) Paragraph (23) (relating to narcotics), except for a single offense of simple possession of thirty grams or less of marijuana;

(3) Paragraphs (27), (28), and (29) (relating to national security and members of certain organizations);

(4) Paragraph (33) (relating to those who assisted in the Nazi persecutions).

(f) *Exchange visitors.* An alien who was at any time a nonimmigrant exchange visitor (as defined in section 101(a)(15)(J) of the Act), must establish that he or she was not subject to the two-year foreign residence requirement of section 212(e) of the Act or has fulfilled that requirement or has received a waiver of such requirement. Requests for waiver of this requirement must be filed with the District Director having jurisdiction over the alien's place of residence and must be approved by the Service prior to the petition interview.

§ 210a.5 Petition for temporary resident status.

(a) *General.* Registrants who have been selected pursuant to § 210a.3 of this part will be invited to petition for temporary resident status as a RAW. To address the variety of circumstances which might be expected to occur during the RAW program, there are two different processing plans for the return of completed petition packages. Qualified Designated Entities (QDEs) are authorized to assist petitioners with the preparation of their petitions and will be advised of determinations on such petitions.

(b) Registrants who are invited to petition and will be sent petition materials consisting of:

(1) Instructions in English and Spanish for completing all required forms;

(2) Petition for Temporary Resident Status as a Replenishment Agricultural Worker (RAW) Section 210A of the Immigration and Nationality Act, Form I-805;

(3) Change of Address Card for Replenishment Agricultural Workers (RAW), Form I-697A;

(4) Fingerprint card, Form FD-258;

(5) Medical Examination of Aliens Seeking Adjustment of Status (Pub. L. 99-603), Form I-693; and

(6) ADIT photo instruction sheet.

(c) *Changes to petitioner's address.* (1) The petition package will be mailed to the address supplied on the registration form. If a registrant changes address prior to an invitation to petition, it is his or her responsibility to notify the Service of a change of address and to file a notice of a change of address with the postal service so that the petition package may be forwarded to the current address.

(2) If a petition package is returned as undeliverable by the postal service because of an insufficient address or because the registrant has moved and left no forwarding address, he or she will lose the opportunity to petition and will be placed back into the appropriate registration pool. If a registrant is selected a second time and the petition package is again returned as undeliverable, the registrant will be disqualified from further consideration.

(d) *Return of completed petition package.* (1) Except as otherwise provided in paragraph (i) of this section, petitioners must complete the Form I-805 petition according to the instructions supplied and return the petition, together with the appropriate fee, fingerprint card, 1 ADIT photograph and any waiver(s) of ground(s) of excludability that the petitioner wishes to file, to the Service in the envelope provided with the petition form.

(2) Following the receipt and initial processing of a petition meeting the requirements for completeness, as provided in paragraph (d)(1) of this section, the petitioner will be sent a fee receipt. The fee receipt will provide temporary work authorization until the date of the scheduled interview, except that aliens in H-2A nonimmigrant status will not be granted temporary work authorization until their H-2A status expires.

(e) *Filing of fee.* The required fee of one hundred and seventy five dollars ($175.00) shall be submitted at the time the petition is returned to the Service, except as provided in paragraph (i) of this section. All fees for petitions shall be in the form of a money order, cashier's check, or bank check made payable to the Immigration and Naturalization Service. No personal checks or currency will be accepted. Fees will not be refunded under any circumstances.

(f) *Late filing.* Except as otherwise provided in paragraph (i) of this section, invited registrants will have sixty (60) days to complete the petition package and return it to the Service as provided in paragraph (d)(1) of this section. Petitions returned to the Service after sixty (60) days will be returned to the registrant unprocessed. Registrants who fail to return petitions on time will lose their chance at petitioning and will be placed back into the appropriate priority class. If a registrant is selected again and fails to respond a second time, that registrant will be disqualified from further consideration.

(g) *Interview.* Except as otherwise provided in paragraph (i) of this section, registrants will be invited to appear for an interview at an INS office or U.S. consulate for the purpose of petitioning for admission or adjustment to temporary resident status under this part. At that time, the petitioner must submit proof of identity and age, two ADIT photographs, proof of family relationship to an IRCA legalized alien (if claimed), and the results of the medical examination on Form I-693. The immigration or consular officer shall judge the sufficiency of the documents submitted. Additional documentation may be required, including the filing of additional requests for waiver of a ground(s) of exclusion, to establish eligibility under this part.

(h) *Inability to establish IRCA family relationship.* Where a petitioner is unable to substantiate a claim to family preference and fraud has not been established, the petitioner will lose his or her present chance at petitioning and will be placed into the priority class of qualifying aliens not claiming a priority based on family relationship. In this case, the petition will be held in abeyance until such time as the petitioner may again be selected at random and invited to petition. Temporary employment authorization obtained incident to the original petition will be terminated. Fees will not be refunded; however, if the alien is subsequently selected from the non-family pool of registrants, the fee for the filing of a second petition will be waived.

(i) *Expedited interview and petition filing.* If the Service determines that exigent circumstances exist, the procedures in paragraphs (d), (e), (f) and (g) of this section relating to filing a completed petition with the Service, complying with deadlines for return of completed petitions, and appearing for interviews may be superseded, for a specified limited number of petitioners, by the following procedure:

(1) The Service will mail a petition package to the address supplied on the registration form, accompanied by a cover letter which directs the petitioner to appear for an interview immediately at any Service office listed on an attachment to the letter. The petitioner must appear with the cover letter, completed I-805 petition, two ADIT photographs, correct fee, proof of identity, age, and proof of family relationship to an IRCA legalized alien, if claimed at registration.

(2) On appearing at a listed Service office and after acceptance of the correct fee, the petitioner will be interviewed to determine identity, age, claimed preference based on a family relationship to an IRCA legalized alien, and performance of qualifying employment. A petitioner who appears eligible will be granted six (6) months employment authorization on Form I-688A, to allow time for return of the completed petition package to the Service and a final determination of eligibility for temporary resident status as a RAW. Temporary employment authorization obtained incident to this paragraph may be extended, renewed or reissued at the discretion of the district director. Petitioners who are in H-2A status on the filing date of their petition will not be granted employment authorization until the expiration of their H-2A status.

(3) The petitioner must complete the remainder of the required documents according to the instructions supplied in the cover letter and return the fingerprint card, 1 ADIT photograph, any waiver(s) of ground(s) of excludability required, and the results of the required medical examination on Form I-693, to the Service in the envelope provided with the petition package within sixty (60) days from the date of issuance of temporary employment authorization on Form I-688A. The Service will remind the petitioner of this responsibility and the deadline for compliance with these requirements, in writing, at the time of the initial interview.

(4) After the initial processing of a petition which meets the requirements for completeness set forth in this section, the petitioner will be provided a fee receipt. Until the fee receipt is obtained by the petitioner, the temporary work authorization provided on Form I-688A will serve as evidence that a fee was paid.

(5) If all required documentation and evidence is provided to the Service within the sixty (60) day period beginning with the date of the issuance of temporary work authorization, the petitioner will be informed in writing of the Service's decision regarding the petition. If the petition is approved, the petitioner will be instructed to return to a Service office to exchange Form I-688A for a Temporary Resident Card (Form I-688). If the petition is denied, the petitioner will be informed in writing of his or her appeal rights and procedures to be followed in accordance with § 210a.7(g).

(6) Petitioners who fail to return requested documentation within the sixty (60) days allowed will be issued a Notice of Intent to Deny for failure to pursue their petition for temporary residence. This notice will specify what additional evidence is required to prevent denial of the petition. Petitioners will be granted thirty (30) days to return the required evidence to the Service. If the petitioner fails to meet his or her burden of proof by the end of this thirty (30) day period, the petition will be denied.

§ 210a.6 Evidence.

(a) *Proof of eligibility*—(1) *General.* Except as otherwise provided in § 210a.5(i), the completed petition form (I-805), correct fee, completed fingerprint card, and one photograph meeting Service specifications, must be mailed to the Service's central location to be considered properly filed. Proof of identity and age, proof of claimed family relationship to an IRCA legalized alien, results of the required medical examination (Form I-693) and two photographs shall be provided to the Service at the time of the petition interview. Documentation of claimed qualifying employment may also be presented at this time.

(2) *Burden of proof.* An alien seeking admission or adjustment of status under this part has the burden of proof in establishing each of the eligibility requirements set forth in § 210a.2(a), the basis for placement in a priority class as provided in § 210a.2(b), and family relationship as provided in § 210a.2(c), if claimed on the registration form.

(b) *Proof of identity and age.* (1) The petitioner may establish identity and age by submitting the following documents:

(i) Passport;

(ii) Birth certificate;

(iii) Any national identity document from the alien's country of origin bearing a photograph and/or fingerprint (e.g. "cedula", "cartilla", "carte d'identite", etc.);

(iv) Driver's license or similar document issued by the state, if it contains a photograph;

(v) Baptismal record or marriage certificate;

(vi) Affidavits; or,

(vii) Such other documentation which may establish the identity and age of the petitioner.

(2) *Assumed names.* (i) In cases where a petitioner claims to have met any of the eligibility criteria under an assumed name, the petitioner has the burden of proving that the petitioner was, in fact, the person who used that name. The petitioner's true identity is established pursuant to the requirements of paragraph (b)(1) of this section. The assumed name must appear in documents provided by the petitioner to establish eligibility. To meet the requirements of this paragraph, documentation must be submitted to prove that the assumed name was, in fact, used by the petitioner.

(ii) *Proof of common identity.* The most persuasive proof of common identity is a document issued in the assumed name which identifies the petitioner by photograph, fingerprint or detailed physical description. Other evidence which will be considered are affidavit(s) by a person or persons other than the petitioner, made under oath, which identify the affiant by name and address, state the affiant's relationship to the petitioner and the basis of the affiant's knowledge of the petitioner's use of the assumed name. Affidavits accompanied by a photograph which have been identified by the affiant as the individual known to affiant under the assumed name in question will carry greater weight.

(c) *Evidence of family relationship.* (1) *Spouse of legalized alien.* If the petitioner is the spouse of a legalized alien, then a certificate of marriage between the petitioner and legalized alien is required. If either the husband or wife was married before, then documents must be submitted to show that all previous marriages were legally ended (e.g., divorce decree, death certificate).

(2) *Unmarried son or daughter of a legalized alien.* (i) If the legalized alien is the mother, then the birth certificate of the unmarried son or daughter showing the name of the mother is required.

(ii) If the legalized alien is the father, a certificate of marriage of the parents and the unmarried son or daughter's birth certificate showing the names of the parents must be provided.

(iii) If the legalized alien is the stepparent, the unmarried son or daughter's birth certificate showing the names of both natural parents, the marriage certificate of the parent to the stepparent, and proof of legal termination of their prior marriages must be provided.

(iv) If the unmarried son or daughter was born out of wedlock, and the father is the legalized alien, the parent/child relationship must be established by providing the unmarried son or daughter's birth certificate showing the father's name, and evidence that he supported the child.

(v) If the unmarried son or daughter is the adoptive child of a legalized alien, a certified copy of the adoption decree, the legal custody decree if the custody of the unmarried son or daughter was obtained before adoption, and a statement showing the dates and places the unmarried son or daughter and adoptive parent lived together must be submitted.

(3) *Documents not available.* If the documents listed in this section are not available, the following evidence may be submitted. The Service may require a statement from the appropriate authority certifying that the needed document is not available (blood test may be required):

(i) *Church record.* A certificate under the seal of the church of baptism, dedication, or comparable rite showing the date and place of the child's birth, date of the religious ceremony, and the names of the child's parents;

(ii) *School record.* A letter from the authorities of the first school attended showing the date of admission to the school, the child's date and place of birth, and the names and places of birth of the parents, if shown in the school records;

(iii) *Census record.* State or federal census record showing the name, place of birth, and date of birth or the age of the person listed;

(iv) *Affidavits.* Written statements sworn to or affirmed by two persons who were living at the time who have personal knowledge of the event the petitioner is trying to prove. The affidavit must include the affiant's full name, address, date and place of birth, and his or her relationship to the petitioner, if any; full information concerning the event; and complete details concerning how the person acquired knowledge of the event.

(d) *Employment documentation.* Documents which may be submitted to establish performance of qualifying employment include: government employment records; records maintained by agricultural producers, farm labor contractors, collective bargaining organizations and other groups or organizations which maintain records of employment; worker identification issued by employers or collective bargaining organizations; union membership cards or other union records such as dues receipts; other records of the applicant's involvement with organizations providing services to farm workers; work records such as pay stubs, piece work receipts, W-2 forms; certification of filing income tax returns on IRS Form 6166; state verification of the filing of state income tax returns; or affidavits from employers.

(e) *Documents*—(1) *Original documents.* Original documents must be presented wherever possible, except the following: Official government records; employment or employment related records maintained by employers, unions or collective bargaining organizations; medical records; school records maintained by a school or school board; or other records maintained by a party other than the applicant. Copies or records maintained by parties other than the petitioner which are presented in evidence must be certified as true and complete by such parties and must bear their seal or signature or the signature and title of persons authorized to act in their behalf. If at the time of the interview the return of original documents is desired by the petitioner, then they must be accompanied by notarized copies or copies certified true and complete by a qualified designated entity or by the petitioner's attorney or accredited representative in the format prescribed at 8 CFR 204.2(j) (1) or (2).

(2) At the discretion of the district director, original documents, even if accompanied by certified copies, may be temporarily retained for forensic examination by the Service. Original documents will be retained only for the period of time necessary to determine their authenticity. Documents will be returned to petitioners at a Service office whenever possible and will be returned by mail at the option of the petitioner.

(3) *Documents in a foreign language.* Documents in a language other than English must be accompanied by a summary translation into English. A summary translation is a condensation or abstract of the document's text but includes all pertinent facts. The translator must certify that the translation is accurate and that he or she is competent to translate from the language in which the original document is written.

(f) *Medical examination.* A petitioner under this part must be examined by a designated civil surgeon at no expense to the government. The medical report setting forth the findings concerning the mental and physical condition of the applicant shall be incorporated into the record on Form I-693, Medical Examination of Aliens Seeking Adjustment of Status. This form will be sent to the petitioner with the petition package. The results of the medical examination on Form I-693 must be submitted at the time of the interview, except as provided in § 210a.5(i). Any petitioner certified under paragraphs (1), (2), (3), (4), or (5) of section 212(a) of the Act may appeal to a Board of Medical Officers of the U.S. Public Health Service as provided in section 24 of the Act and Part 235 of this chapter.

(g) *Confidentiality of information.* Information furnished pursuant to registration or petitioning under this part will not be used to deport or prosecute any person unless fraud is discovered during the registration or petition processes, an alien has failed to maintain status as a RAW, or a person

is the subject of an outstanding arrest warrant.

§ 210a.7 Decision and appeal.

(a) *General.* Based on all information provided with the petition, at the interview, or as otherwise provided in § 210a.5(i), a district director or the director of a regional processing facility may decide to approve, continue, or deny a petition for adjustment to temporary resident status as a RAW.

(b) *Approval.* If the petitioner has submitted a complete petition, has been interviewed, has established his or her admissibility and eligibility, and record check(s) initiated by the Service are returned without adverse information concerning the petitioner, the petition shall be approved by the Service. The petitioner will be issued Form I-688, Temporary Resident Card, valid for a period of 18 months from the filing date of the petition. This card may be renewed, extended or reissued for the remainder of the three year period of temporary residence upon a finding by the Service that the alien has completed the first required 90 man-days of employment in seasonal agricultural services as provided in § 210a.8 of this part.

(c) *Continuance—General.* Except as provided in § 210a.5(i), a petitioner who has provided all required evidence to meet the burden of proof but in whose case the Service has not completed required record checks or other processing, may be granted a six (6) months period of employment authorization on Form I-688A (Employment Authorization Card). This card may be renewed, extended or reissued at the discretion of the district director. Petitioners who are in H-2A nonimmigrant status on the filing date of their petition will not be granted work authorization until the expiration of their H-2A status.

(d) *Notice of Intent to Deny.* The Service shall issue a Notice of Intent to Deny where a petitioner has been interviewed and found not eligible, fails to meet the standard for the priority class from which he or she was selected, or is the subject of adverse information that would render the petitioner ineligible. This notice is a statement by the Service that specifies the basis for the intended denial of the petition and what additional evidence is required to prevent denial of the petition. Petitioners will be granted thirty (30) days, without additional work authorization, to return to the Service with the required evidence. If the petitioner fails to meet the burden of proof by the end of this thirty (30) day period, the petition will be denied.

(e) *Denial.* When a petition for temporary resident status as a RAW is denied, the alien will be given written notice setting forth the specific reasons for the denial on Form I-692. Form I-692 shall also contain advice to the petitioner that he or she may appeal the decision and that such appeal must be taken within thirty (30) days after service of the notification of the decision accompanied by any additional new evidence, and a copy of a supporting brief if desired. The Form I-692 shall additionally provide a notice to the alien that if he or she fails to file an appeal from the decision, the Form I-692 will serve as a final notice of ineligibility.

(f) *Reopening or reconsideration of decisions.* The director of a regional processing facility may *sua sponte* reopen any proceeding under this part within his or her jurisdiction, and may render a new decision. This decision may reverse a prior favorable decision when it is determined that there is evidence of fraud during the registration or petition processes, and the petitioner was not entitled to the status granted. If the decision of the director, after reconsideration, is to deny the petition, the petitioner shall be accorded the due process provisions contained in paragraphs (d), (e) and (g) of this section related to the notice of intent to deny, denial and appeal processes.

(g) *Appeal process.* Denial of a petition for status as a RAW and denial of an application for waiver of grounds of excludability may be appealed to the Associate Commissioner, Examinations (Administrative Appeals Unit). Any appeal, with the required fee of fifty dollars ($50.00), shall be filed with the Regional Processing Facility within thirty (30) days after service of the Notice of Denial in accordance with the procedures of 8 CFR 103.3(a)(3). The thirty (30) day period includes any time required for service or receipt by mail.

(h) *Date of adjustment.* (1) The status of an alien whose petition for temporary resident status is approved by the Service shall be adjusted to that of a lawful temporary resident as of the filing date. The filing date is the date on which the fee for filing the petition was accepted by the Service.

(2) An exception to paragraph (h)(1) of this section occurs if an alien is in H-2A nonimmigrant status as of the filing date of their petition. Such petitioners will be adjusted to temporary resident status as of the date H-2A status expires, or on the last week day of the current fiscal year, whichever occurs earlier.

(i) *Fraud or willful misrepresentation.* If fraud or willful misrepresentation of a material fact is found in the petition process, the petition will be denied. If, during the petition process, the fraud or willful misrepresentation of a material fact is determined to have occurred during the registration phase of this program, the petition will be denied. If the petitioner is in the United States, he or she will be subject to deportation under section 241 of the Act and/or referral to the United States Attorney for possible prosecution.

(j) In the case of a petition which was denied for failure of the petitioner to meet the priority class standard from which he or she was selected, absent a finding of fraud, the petitioner will be placed into the next lower priority class for which he or she appears eligible. If selected again, a new petition may be required; however, the petition fee will be waived.

§ 210a.8 Status, benefits and obligations.

(a) *Employment and travel authorization.* (1) An alien whose petition for temporary residence has been approved under section 210A(c) of the Act has the right to reside in the United States, to travel abroad (including commuting from a residence abroad), and to accept employment in the United States in the same manner as an alien lawfully admitted for permanent residence. Employment and travel abroad will be authorized on Temporary Resident Card (Form I-688).

(2) An alien who has been granted temporary work authorization incident to a continuance during the petition interview process will be issued an Employment Authorization Card (Form I-688A) for the duration of the approved period of employment. Travel outside the United States is authorized by Form I-688A.

(b) *Obligation to perform seasonal agricultural services.* (1) An alien who has obtained temporary resident status as a replenishment agricultural worker must establish to the Service as set forth in this section that he or she has performed ninety (90) work-days of seasonal agricultural services in each of three successive twelve (12) month periods following the date the alien's status was adjusted, unless the required number of work days has been adjusted pursuant to paragraph (c) of this section.

(2) An alien granted lawful permanent residence on the basis of temporary residence under section 210A(c) of the Act may not be naturalized as a citizen of the United States under any provision in Title III of the Act unless the alien has performed ninety (90) work-days of seasonal agricultural services in each of two (2) additional years beyond the three (3) twelve (12) month periods

required by paragraph (b)(1) of this section.

(3) A replenishment agricultural worker who fails to establish to the Service that he or she has fulfilled the requirements of section 210A(d)(5)(A) of the Act to perform seasonal agricultural services in any one of the twelve (12) month periods shall be subject to deportation proceedings under section 241(a)(20) of the Act.

(c) *Adjustment of required work-days.* The number of work-days of required employment in seasonal agricultural services specified in this part is subject to adjustment by the Department of Labor and the Department of Agriculture under section 210A(a)(8) of the Act. The Secretaries will make a determination in this regard and will publish a notice of any such adjustment in the **Federal Register**.

(d) *Proof of performance of seasonal agricultural services.* (1) The burden is on the RAW temporary resident or permanent resident to collect, maintain and have available for inspection evidence that he or she has performed the requisite number of work-days of seasonal agricultural services for each year as described in this section.

(2) Such evidence may consist of certificates provided to employees by employers as required in section 210A(b)(2) of the Act and under Department of Labor regulations located at 29 CFR 502.13, or the same type of documentation as may be submitted under section 210(b)(3) of the Act.

(3) Aliens are required to establish performance of required work-days in seasonal agricultural services annually for each of the three 12 month periods of temporary residence.

(e) *Waiver of requirement to perform work.* Where an alien is unable to perform the 90 work days of seasonal agricultural services required by the Act and this part, because of extraordinary, unusual, and unique circumstances such as a disabling injury, disease or condition which is beyond an alien's control, the Service may waive this requirement.

(f) *Securing RAW employment records.* (1) When a RAW temporary resident or permanent resident alleges that an employer refuses to provide him or her with records relating to his or her employment and the petitioner has reason to believe such records exist, the Service shall attempt to secure such records.

(2) Prior to any attempt by the Service to secure the employment records, the following conditions must be met: the alien must be in approved temporary resident status as a Replenishment Agricultural Worker; the alien must have made reasonable attempts to secure the documentation from the employer; the alien's testimony must support credibly his or her claim; the Service must determine that temporary resident status is in jeopardy in the absence of employer records.

(3) Provided each of the conditions in paragraph (f)(2) of this section have been met, and after unsuccessful attempts by the Service for voluntary compliance, district directors shall issue a subpoena in accordance with 8 CFR 287.4, in such cases where the employer or farm labor contractor refuses to release the needed employment records.

(g) *Reissuance of Temporary Resident Card (Form I-688).* (1) Upon a finding by the Service that the 90 work-days in seasonal agricultural services required during the first twelve (12) month period have been completed, a second Temporary Resident Card (Form I-688) shall be issued and will be valid through the end of the required thirty-six (36) month period of temporary residence.

(2) Form I-688 shall not be issued, reissued or extended and shall lose its validity if the temporary resident status of the alien has been terminated as provided in paragraph (i) of this section.

(h) *Ineligibility for immigration benefits.* An alien who is admitted for or whose status is adjusted to that of a lawful temporary resident under section 210A(c) of the Act is not entitled to submit a petition pursuant to section 203(a)(2) of the Act or receive any other benefit or consideration accorded under the Act to aliens lawfully admitted for lawful permanent residence, except as provided in paragraph (a) of this section.

(i) *Termination of temporary resident status.* (1) Upon a finding by the Service that an alien is deportable under sections 235, 236, 237 or 241 of the Act as amended, to include failure to meet the work-day requirement of section 210A(d)(5)(A) of the Act, the Service shall issue an Order to Show Cause and place the alien in deportation proceedings. Temporary resident status as a replenishment agricultural worker shall be terminated upon a finding by an Immigration Judge that an alien is deportable.

(2) *Retention of Form I-688.* The alien shall be entitled to retain his or her I-688 Temporary Resident Card while deportation proceedings are pending and until a determination is made by an Immigration Judge that the alien is deportable. This card shall be reissued or extended as required during the period of time that the deportation proceedings are pending.

(3) *Surrender of Form I-688.* An alien whose status as a temporary resident has been terminated as a consequence of an order of deportation by an immigration judge shall, upon demand, promptly surrender Form I-688, Temporary Resident Card, to the district director having jurisdiction over the alien's place of residence, or, in the case of a commuter, employment.

§ 210a.9 Adjustment to permanent resident status.

The status of an alien lawfully admitted to the United States for temporary residence as a RAW shall be adjusted to that of an alien lawfully admitted to the United States for permanent residence only after performance of the required work-days in seasonal agricultural services has been verified by the Service. However, once adjustment of status has been approved by the Service, the effective date of permanent residence shall be as of the end of the three (3) year period that began on the date the alien was granted such temporary resident status.

Dated: July 6, 1989.

James L. Buck,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 89-16601 Filed 7-14-89; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-ACE-16]

Alteration of Transition Area—Colby, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to alter the transition area description at Colby, Kansas. The Colby, Kansas, Municipal Airport has been renamed Shalz Field. Accordingly, the transition area description is being altered to reflect this name change.

EFFECTIVE DATE: 0901 u.t.c., November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

The Rule

The purpose of this amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR 71.181) is to alter the transition area description at Colby, Kansas. The Colby, Kansas, Municipal Airport has been renamed Shalz Field. Accordingly, alteration of the Colby, Kansas, transition area description is necessary to reflect this name change. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

Since this action is a minor technical amendment in which the public would not be particularly interested, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the FAR (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. By amending § 71.181 as follows:

Colby, KS [Revised]

That airspace extending upward from 700 feet above the surface within a 5.5-mile radius of Shalz Field (lat. 39°25'30" N., long. 101°02'40" W.), and within 3 miles each side of the 017° bearing from Shalz Field extending from the 5.5-mile radius area to 8 miles north of the airport.

This amendment becomes effective at 0901 U.t.c., November 16, 1989.

Issued in Kansas City, Missouri, on June 23, 1989.

William Behan,

Acting Manager, Air Traffic Division.

[FR Doc. 89-16671 Filed 7-14-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-ACE-19]

Alteration of Transition Area—McPherson, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to alter the McPherson, Kansas, transition area by deleting therefrom the 1,200-foot transition area designation. Since the Kansas transition area already provides for that airspace, it is redundant to repeat it in the McPherson, Kansas, transition area description.

EFFECTIVE DATE: 0901 U.t.c., November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

The Rule

The purpose of this amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR 71.181) is to alter the transition area at McPherson, Kansas. This transition area presently includes a 1,200-foot airspace description. Since the Kansas transition area already provides for that airspace, it is unnecessary to have it reiterated in the McPherson, Kansas, transition area designation. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989. Accordingly, action is taken herein to make this deletion.

Since this action eliminates a redundancy, does not require charting changes, and decreases the size of the transition area, it is an amendment in which the public would not be particularly interested. Therefore, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the FAR (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS.

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

McPherson, KS [Revised]

That airspace extending upward from 700 feet above the surface within a 7-mile radius of McPherson Airport (lat. 38°21'19" N., long. 97°41'29" W.)

This amendment becomes effective at 0901 U.t.c. November 16, 1989.

Issued in Kansas City, Missouri, on June 23, 1989.

William Behan,

Acting Manager, Air Traffic Division.

[FR Doc. 89-16670 Filed 7-14-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-ACE-20]

Alteration of Transition Area—Newton, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the transition area description at Newton, Kansas. The Newton, Kansas, Municipal Airport has been renamed the Newton-City-County Airport. Accordingly, the transition area

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description is being altered to reflect this name change.

EFFECTIVE DATE: 0901 u.t.c. November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

The Rule

The purpose of this amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR 71.181) is to alter the transition area description at Newton, Kansas. The Newton, Kansas, Municipal Airport has been renamed the Newton-City-County Airport. Accordingly, alteration of the Newton transition area description is necessary to reflect this name change. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1988.

Since this action is a minor technical amendment in which the public would not be particularly interested, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the FAR (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.18 [Amended]

2. By amending § 71.181 as follows:

Newton, KS [Revised]

That airspace extending upward from 700 ft. above the surface within an 8.5-mile radius of Newton-City-County Airport (lat. 38°03'20" N., long. 97°16'35" W.).

This amendment becomes effective at 0901 u.t.c. November 16, 1989.

Issued in Kansas City, Missouri, on June 23, 1989.

James H. Snow,

Acting Manager, Air Traffic Division.

[FR Doc. 89-16669 Filed 7-14-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-ACE-01]

Alteration of Transition Area—Sheldon, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the 700-foot transition area at Sheldon, Iowa, to provide additional controlled airspace for aircraft executing a new approach procedure to Runway 33 at the Sheldon, Iowa, Municipal Airport utilizing the Sheldon VOR/DME.

EFFECTIVE DATE: 0901 u.t.c., November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

History

On April 19, 1989, the FAA published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Sheldon, Iowa (54 FR 15778). Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the transition area at Sheldon, Iowa. To enhance airport usage, Runway 33 at the Sheldon, Iowa, Municipal Airport is being provided with additional controlled airspace for aircraft executing a new instrument approach procedure utilizing the Sheldon VOR/DME (DDL). The establishment of this instrument approach procedure based on this navigational aid entails alteration of the transition area at Sheldon, Iowa, at or above 700 feet above the ground within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under instrument flight rules (IFR) from aircraft operating under visual flight rules (VFR).

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the FAR (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Sheldon, IA [Revised]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Sheldon Municipal Airport (Lat. 43°12'37" N., Long. 95°50'04" W.); and within 3 miles each side of the 165° bearing from the airport extending from the 5-mile radius to 8 miles southeast of the airport; and within 3 miles each side of the 160° bearing from the airport extending from the 5-mile radius to 8.5 miles southeast of the airport.

This amendment becomes effective at 0901 u.t.c. November 16, 1989.

Issued in Kansas City, Missouri, on June 23, 1989.

Elizabeth S. Wallis,

Acting Manager, Air Traffic Division.

[FR Doc. 89-16667 Filed 7-14-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-ACE-21]

Alteration of Transition Area—St. Francis, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the transition area description at St. Francis, Kansas. This transition area description incorrectly lists the airport name as Cheyenne Municipal Airport. The correct airport name is Cheyenne County Municipal Airport. Accordingly, the transition area description is being altered to reflect the correct name of the airport.

EFFECTIVE DATE: 0901 u.t.c., November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

The Rule

The purpose of this amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR 71.181) is to alter the transition area description at St. Francis, Kansas. The Cheyenne County Municipal Airport, St. Francis, Kansas, is incorrectly referred to in the transition area description as the Cheyenne Municipal Airport. Accordingly, alteration of the St. Francis transition area description is necessary to reflect the correct name of the airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

Since this action is a minor technical amendment in which the public would not be particularly interested, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the FAR (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

St. Francis, KS [Revised]

That airspace extending upward from 700 feet above the surface within a 5.5-mile radius of the Cheyenne County Municipal Airport, St. Francis, KS (lat. 39°45'39" N., long. 101°47'47" W.), and within 3 miles each side of the 143° bearing from the St. Francis NDB (lat. 39°43'37" N., long. 101°45'56" W.) extending from the 5.5-mile radius area to 8.5 miles southeast of the NDB facility.

This amendment becomes effective at 0901 u.t.c., November 16, 1989.

Issued in Kansas City, Missouri, on June 23, 1989.

James H. Snow,

Acting Manager, Air Traffic Division.

[FR Doc. 89-16672 Filed 7-14-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-ACE-19]

Revocation of Transition Area—Ida Grove, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to revoke the 700-foot transition area at Ida Grove, Iowa. The nondirectional radio beacon (NDB) at the Ida Grove, Iowa, airport has been removed, thereby canceling the instrument approach procedure based on this navigational aid. Accordingly, the transition area is no longer required.

EFFECTIVE DATE: 0901 u.t.c., November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

History

On April 19, 1989, the FAA published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to revoke the transition area at Ida Grove, Iowa (54 FR 15774). Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) revokes the Ida Grove, Iowa, transition area. The NDB at the Ida Grove, Iowa, Municipal Airport has been removed. That action, in turn, canceled the instrument approach procedure predicated on this navigational aid. Accordingly, the Ida Grove, Iowa, transition area is no longer required and is hereby revoked.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the FAR (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Ida Grove, IA [Amended]

Revoke the Ida Grove, Iowa, transition area.

This amendment becomes effective at 0901 u.t.c., November 16, 1989.

Issued in Kansas City, Missouri, on June 23, 1989.

James H. Snow,

Acting Manager, Air Traffic Division.

[FR Doc. 89-16668 Filed 7-14-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 91

[Docket No. 25530; Amendment No. 91-204]

Cockpit Voice Recorders (CVR) and Flight Recorders; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Correction of Amendment number.

SUMMARY: This Notice corrects the Amendment Number previously published in the **Federal Register**, July 7, 1989, (54 FR 28769). Please change the Amendment from 91-205 to read 91-204.

FOR FURTHER INFORMATION CONTACT: Mike Smith, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; Telephone (202) 267-9684.

Michael Triplett,

Program Management Staff.

[FR Doc. 89-16584 Filed 7-14-89; 8:45 am]

BILLING CODE 4910-13-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR Part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of August 1989.

EFFECTIVE DATE: August 1, 1989.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; 202-778-8820 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (*See* 5 U.S.C. 533 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans, Pensions.

In consideration of the foregoing, Part 2676 of Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for Part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

* * * * *

(c) *Interest rates.*

For valuation dates occurring in the month—	The values of i_t are—															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_n
*		*		*		*			*		*			*		
August 1989	.08675	.08625	.08375	.08	.07625	.01725	.07125	.07125	.07125	.07125	.065	.065	.065	.065	.065	.05875

Issued at Washington, DC, on this 11th day of July 1989

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation

[FR Doc. 89-16701 Filed 7-14-89; 8:45 am]

BILLING CODE 7708-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

(FRL-3614-9)

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Reasonably Available Control Technology for Two Pratt & Whitney Facilities; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects an error in the numbering of an addition to 40 CFR § 52.370(c) which was published in the **Federal Register** on May 30, 1989 (54 FR 22890).

FOR FURTHER INFORMATION CONTACT: David B. Conroy, (617) 565-3252; FTS 835-3252.

Dated: June 30, 1989.

Paul G. Keough,

Acting Regional Administrator, Region I.

The following correction is made to the amendment to 40 CFR § 52.370(c) that appeared on page 22892 in the issue of May 30, 1989.

1. On page 22892, in the middle of column two, the designation (c)(50) is correctly designated as (c)(51) both places it appears.

[FR Doc. 89-16579 Filed 7-14-89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[FRL-3578-1]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On June 15, 1982, the state of Kansas adopted regulations revising portions of its new source permitting regulations. These regulations were adopted to satisfy conditions placed on the state's Part D plan revision (46 FR 20164, April 3, 1981). EPA approved most of these regulations on January 12, 1984 (49 FR 1491), but deferred action on the regulatory changes related to the definition of source due to pending litigation. Because the litigation issues have now been resolved, and because the state has demonstrated that it did not rely on the "dual source" definition in its attainment demonstration, EPA is today taking action to approve these rules that were related to the definition of source.

DATE: This action will become effective on September 15, 1989, unless notice is received within 30 days of publication that adverse or critical comments will be submitted. Such notice may be submitted to Wayne Kaiser at the EPA office listed below. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Documents relevant to this submittal are available for public inspection during normal business hours at: the Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; Kansas Department of Health and Environment, Bureau of Air Quality and Radiation Control, Forbes Field, Topeka, Kansas 66620; and Environmental Protection Agency, Public Information Reference Unit, Room 2922, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Wayne A. Kaiser at (913) 236-2893; (FTS 757-2893).

SUPPLEMENTARY INFORMATION: On October 9, 1981, the state of Kansas submitted draft regulations to revise portions of the new source permitting regulations. Final regulations were adopted and submitted to EPA on June 15, 1982. These regulations were adopted to satisfy conditions placed on the state's Part D plan revision (46 FR 20164, April 3, 1981). EPA approved most of the revised new source regulations on January 12, 1984 (49 FR 1491), but deferred action on the regulatory changes related to the definition of source due to pending litigation as discussed below. The Kansas regulatory revisions for which action was deferred earlier and which are the subject of this rulemaking are: Regulations K.A.R. 28-19-16, 28-19-16a(d), 28 19-16b, 28-19-16c, 28-19-16f, 28-19-16h, and 28-19-16i. Regulations K.A.R. 28-19-16a(o) and 28-19-16a(v) are deleted.

The Kansas definition of "Installation" was revised by deleting the old definition at 28-19-16a(o) and adding the term to Regulation 28-19-16a(d). Because the terms "Building," "Structure," "Facility," or "Installation" were used in the definition of "Stationary Source" in Regulation 28-19-16a(x), the effect was to alter the Kansas source definition for new source review (NSR) in nonattainment areas. Because the litigation issues have now been resolved, as discussed below, EPA is today taking action to approve the aforementioned state regulations.

On October 14, 1981, the EPA revised the NSR regulations in 40 CFR Part 51 to give states the option of adopting the "plantwide" definition of stationary source in nonattainment areas (see 46 FR 50766). This definition provides that only physical or operational changes that result in a significant net increase in emissions at the entire plant require a major source NSR permit. For example, if a plant increased emissions at one piece of process equipment but reduced emissions by the same amount at another piece of process equipment at the plant, then there would be no net increase in emissions at the plant and therefore no "modification" to the "source." The plantwide definition is in contrast to the so-called "dual" definition [or a definitional structure like that in the 1979 offset ruling (44 FR 3274), which has much the same effect as the dual definition]; under the dual definition, the emissions from each physical or operational change are gauged without regard to reductions elsewhere at the plant.

In the October 1981 **Federal Register** notice, EPA set forth its rationale for allowing use of the plantwide definition (46 FR 50766-69). In its view, allowing use of the plantwide definition was a reasonable accommodation of the conflicting goals of Part D of the Clean Air Act (Act); on the one hand, reasonable further progress (RFP) and timely attainment of national ambient air quality standards (NAAQS), and on the other, maximum state flexibility and economic growth. The EPA recognized that use of the plantwide definition would bring fewer plant modifications into the nonattainment permitting process, but emphasized that this generally would not interfere with RFP and timely attainment primarily because the states under the demands of Part D eventually would have adequate state implementation plans (SIP) in place. For instance, EPA stated:

> Since demonstration of attainment and maintenance of the NAAQS continues to be required, deletion of the dual definition increases state flexibility without interfering with timely attainment of the ambient standards and so is consistent with Part D [46 F.R. 50767 col. 2].

The EPA added that in any event the use of a dual definition, by bringing more plant modifications through the NSR process or subjecting them to the construction ban (40 CFR 52.24), may discourage replacement of older, dirtier processes and hence retard not only

economic growth, but also progress toward clean air. The EPA also pointed out that under the plantwide definition new equipment would still be subjected to any applicable new source performance standard and that wholly new plants, as well as any modifications that resulted in a significant net emissions increase, would still be subject to NSR. Thus, EPA saw no significant disadvantage in the plantwide definition from the environmental standpoint, which would outweigh the advantages from the standpoints of state flexibility and economic growth.

As a result, EPA determined that a state wishing to adopt a plantwide definition generally has complete discretion to do so, with one restriction on that discretion. If a state had specifically projected emission reductions from its NSR program as a result of a dual or similar definition and had relied on those reductions in an attainment strategy that EPA later approved, then the state needed to revise its attainment strategy as necessary to accommodate reduced NSR permitting under the plantwide definition (46 FR 50767 col. 2, 50769 col. 1).

In 1984, the Supreme Court upheld EPA's action as a reasonable accommodation of the conflicting purposes of Part D of the Act, and hence well within EPA's broad discretion. *Chevron, U.S.A., Inc.* v. *NRDC. Inc.*, 104 S.Ct. 2778. Specifically, the Court agreed that the plantwide definition is fully consistent with the Act's goal of maximizing state flexibility and allowing reasonable economic growth. Likewise, the Court recognized that EPA had advanced a reasonable explanation for its conclusion that the plantwide definition serves the Act's environmental objectives as well (see 104 S.Ct. at 2792). EPA has not received any empirical information since the 1981 rulemaking that would require a departure from the basic reasoning in support of the plantwide definition.

On July 2, 1986, the state of Kansas submitted a SIP revision that would substitute a plantwide definition of source for the existing dual definition in the state's nonattainment NSR program. The EPA previously approved the Part D SIP for the relevant nonattainment area on the basis of an attainment demonstration. The state has certified, by letter dated April 12, 1989, that it did not rely on any reduction from the operation of the existing NSR program in that demonstration, and EPA's examination of the demonstration confirms that it did not. Therefore, EPA hereby fully approves the switch to a plantwide definition inasmuch as it satisfies the only restriction EPA placed on such changes.

Final Action: EPA is approving revisions to the state of Kansas new source permitting regulations in K.A.R. 28-19-16 *et seq.* related to the definition of source.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action, will be effective September 15,1989 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective September 15, 1989.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709). The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the U.S. Court of Appeals for the appropriate circuit by September 15, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Sulfur dioxides.

Note: Incorporation by reference of the State Implementation Plan for the state of Kansas was approved by the Director of the Federal Register on July 1, 1982.

Date: May 22, 1989.

Morris Kay,

Regional Administrator.

40 CFR Part 52, Subpart R, is amended as follows:

PART 52—[AMENDED]

Subpart R—Kansas

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.870 is amended by adding paragraph (c)(25) to read as follows:

§ 52.870 Identification of plan.

* * * * *

(c) * * *

(25) Revised regulation K.A.R. 28-19-16 pertaining to new source permit requirements were submitted by the Secretary of the Kansas Department of Health and Environment on June 15, 1982.

(i) Incorporation by reference.

(A) Revised regulations K.A.R. 28-19-16, 28-19-16a(d), 28-19-16b, 28-19-16c, 28 19-16f, 28-19 16h, and 28-19-16i effective May 1, 1982. Regulations K.A.R. 28-19-16a(o) and 28-19-16a(v) are deleted effective May 1, 1982.

(ii) Additional material.

(A) Letter from the state of Kansas Department of Health and Environment, dated April 12, 1989, confirming that the state did not rely on the "dual source" definition in its attainment demonstration.

[FR Doc. 89-16680 Filed 7-14-89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[FRL-3601-5]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving amended Iowa Chapter 22, Control Pollution, subrule 22.1(2)"d" pertaining to exemptions to the state's air permit requirements. The state's revision requires that certain equipment used for removing fungicide from seed grain have permits to construct or modify. This rule revision strengthens the state's permit requirements in its State Implementation Plan (SIP).

DATE: This rulemaking is effective September 15, 1989 unless someone notifies EPA by August 16, 1989 that they wish to provide adverse or critical comments on this rulemaking. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at:

Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101

Iowa Department of Natural Resources, 900 East Grand, Des Moines, Iowa 50319

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert J. Chanslor at (913) 236-2893 (FTS 757-2893).

SUPPLEMENTARY INFORMATION: The seed grain industry in Iowa coats seed grain with a fungicide to retard rot, mold, and mildew on seed. After a period of time seed may not be sold for planting purposes. This results in many tons of treated seed which must be disposed of annually. It has been found that livestock feeding operations can heat treated or coated grain and remove enough of the particular fungicide so that it is safe for livestock feed. This grain heating or roasting process produces emissions of volatilized fungicide and particulate matter.

Chapter 22, Controlling Pollution, contains requirements for permits for new or existing stationary sources. Subrule 22.1(2)"d" exempts equipment used on farms and ranches for agricultural purposes, other than anaerobic lagoons from the permit requirements. In order to provide a legal basis for controlling emissions from the grain roasting process, the IDNR revised the exemption in subrule 22.1(2)"d" such that large commercial operations which roast grain to remove fungicide are no longer exempt from the state's permit requirements. Such operations and equipment are now subject to the state's permit requirements in Chapter 22.

After proper public notification, hearings were held on June 8, 15, and 22, 1988. The notification and hearings satisfy the requirements of 40 CFR 51.102. The state's revised rule is consistent with 40 CFR 51.104(c), and the submittal is consistent with 40 CFR 51.104(d). The final state rule was published in the Iowa Administrative Bulletin on August 10, 1988, and became effective September 14, 1988. The state submitted the revised rule to EPA on September 13, 1988.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective September 15, 1989 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn and two subsequent notices will be published prior to the effective date. One notice will withdraw final action and another will begin a new rulemaking by announcing a proposal of action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective September 15, 1989.

ACTION: EPA approves Iowa's revised subrule 22.1(2)"d."

The state reported that the public provided no comments on its proposed rule. Thus, EPA believes this rulemaking is noncontroversial. EPA is using the direct-to-final procedure for this action.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The Office of Management and Budget has exempted this rulemaking from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), I certify that this rulemaking does not have a significant impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the U.S. Court of Appeals for the appropriate circuit by September 15, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Particulate matter, and Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Iowa was approved by the Director of the Federal Register on July 1, 1982.

Date: June 5, 1989.

Morris Kay,

Regional Administrator.

PART 52—[AMENDED]

40 CFR Part 52, Subpart Q, is amended as follows:

Subpart Q—Iowa

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.820 is amended by adding paragraph (c)(48) to read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

(48) Revised Chapter 22, subrule 22.1(2)"d" exemptions from permit requirements were submitted on September 13, 1988, by the Iowa Department of Natural Resources. The revision clarifies permit exemptions for certain grain roasting equipment.

(i) Incorporation by reference:

(A) Amendment to Chapter 22, "Controlling Pollution," Iowa Administrative Code, subrule 22.1(2)"d", effective September 14, 1988.

[FR Doc. 89-16683 Filed 7-14-89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[FRL-3616-8]

Approval and Promulgation of Air Quality Implementation Plans; Louisiana State Implementation Plan for PM_{10} Standard; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA is correcting an error in the regulatory text that was published in the **Federal Register** on June 15, 1989, (54 FR 25451). That notice approved the Louisiana State Implementation Plan (SIP) for the PM_{10} standard in a direct, final action.

FOR FURTHER INFORMATION CONTACT: Barbara Durso, (214) 655-7214 or FTS 255-7214.

SUPPLEMENTARY INFORMATION: EPA is correcting an error of omission in the regulatory text that was published on June 15, 1989, at 54 FR 25451, second column. EPA inadvertently failed to submit for publication certain regulatory text concerning incorporation by reference of the Louisiana SIP. Specifically, the Agency failed to submit

the language for 40 CFR 52.970(c)(50)(i)(B), which would add to the incorporation by reference of the Louisiana State Implementation Plan for PM_{10} a letter dated May 22, 1989, from Mike D. McDaniel, Louisiana Department of Environmental Quality, to William B. Hathaway, U.S. Environmental Protection Agency. This letter affirmed the State's intent when adopting certain revisions to the Louisiana Administrative Code at LAC:33:III:111.

Date: July 10, 1989.

Robert E. Layton Jr.,

Regional Administrator.

Identification of Document

Subpart T—Louisiana

40 CFR Part 52, Subpart T, is corrected as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.970 is amended by adding paragraph (c)(50)(i)(B) to read as follows:

§ 52.970 Identification of Plan

* * * * *

(c) * * *

(50) * * *

(i) * * *

(B) A letter dated May 22, 1989, from Mike D. McDaniel, Louisiana Department of Environmental Quality, to William B. Hathaway, U.S. Environmental Protection Agency.

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[FR Doc. 89–16681 Filed 7–14–89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 70355–7127]

Atlantic Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment and closure.

SUMMARY: NOAA issues this notice to increase the Harpoon boat category quota of giant Atlantic bluefin tuna from 60 short tons (st) (54.4 mt) to 75 st (68 mt), close the season for vessels permitted in this category, and decrease the inseason adjustment amount from 104 st (94.3 mt) to 89 st (80.7 mt). Closure of this segment of the fishery is necessary because the annual quota, plus the inseason adjustment amount, for this category will be attained by the effective date. The intent of this action is to prevent overharvest of the quota established for this segment of the fishery.

EFFECTIVE DATE: 0001 hours local time July 14, 1989.

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, 508–281–9324.

SUPPLEMENTARY INFORMATION: Final regulations governing the Atlantic bluefin tuna fishery were published on October 25, 1985 (50 FR 43396). Paragraph 285.22(g) of Title 50 provides that the Assistant Administrator for Fisheries, NOAA (Assistant Administrator) may allocate during the fishing season any portion of the inseason adjustment amount (104 st) (94.3 mt) to any segment of the fishery after considering several factors, such as the likelihood of closure—as is the case in this action—based on catches to date. The information obtained from the catch from this category is of limited use for biological sampling and monitoring the status of the stock. For this reason, the inseason adjustment amount allocated to the category has been limited to 15 st (13.6 mt) for each year since 1984.

An allocation of 15 st (13.6 mt) from the inseason adjustment amount would leave 89 st (80.7 mt) available for allocation to other gear segments. Unlike the previous year, no allocation will be necessary to account for overages from the incidental longline fishery. Based on current landings data for all gear categories in the Atlantic bluefin tuna fishery, the 89 st (80.7 mt) remaining in the inseason adjustment amount should be sufficient to provide for potential shortages in other gear segments.

The Assistant Administrator has determined that a 15 st (13.6 mt) allocation to the Harpoon Boat category is appropriate and, therefore, increases the Harpoon Boat quota in 50 CFR 285.22(b) from 60 st (54.4 mt) to 75 st (68 mt) and decreases the inseason adjustment amount in 50 CFR 285.22(g) from 104 st (93.4 mt) to 89 st (80.7 mt).

Section 285.22(b) of the regulations (50 CFR Part 285) provides for an annual quota of 60 st (54.4 mt) of giant Atlantic bluefin tuna to be harvested from the Regulatory Area by vessels permitted in the Harpoon boat category. The quota has been increased to 75 st (68 mt) through this inseason adjustment action. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) is authorized under 50 CFR 285.20(b)(1) to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the total catch of Atlantic bluefin tuna will equal any quota under § 285.22. The Assistant Administrator is further authorized under § 285.20(b)(1) to prohibit the fishing for, or retention of, Atlantic bluefin tuna by the type of vessel subject to the quotas. The Assistant Administrator has determined, based on the reported catch and the catch rate, that the annual quota of Atlantic bluefin tuna for those vessels holding Federal fishing permits for the Harpoon Boat category will be attained by the effective date of this notice. Fishing for, and retention of, any Atlantic bluefin tuna by these vessels must cease at 0001 local time on July 14, 1989.

Other Matters

Notice of this action will be mailed to all Atlantic bluefin tuna dealers and vessel owners holding a valid vessel permit for this fishery. This action is taken under the authority of 50 CFR 285.20 and 285.22(g), and is taken in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

(16 U.S.C. 971 *et seq.*)

Dated: July 11, 1989.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–16677 Filed 7–12–89; 1:02 pm]

BILLING CODE 3510-22-M

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50 CFR Part 299

[Docket No. 90651–9151]

U.S. Nationals Fishing in Soviet Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Interim final rule and Request for Comments Concerning U.S. Nationals Fishing in Soviet Fisheries.

SUMMARY: NOAA issues an interim final rule that specifies the procedures for U.S. nationals to conduct fishing operations for fishery resources over which the Union of Soviet Socialist Republics (U.S.S.R.) exercises sovereign rights or fishery management authority, makes it a violation of U.S. law for U.S. nationals fishing in Soviet fisheries to fish without a permit, to violate the permit, or to violate the laws or regulations of the U.S.S.R., and requests comments on this interim final rule.

DATES: Effective July 17, 1989, except for § 299.3(a) which contains a collection-of-information requirement which is being submitted to the Office of Management and Budget (OMB). Notice of the effective date for § 299.3(a) will be published in the **Federal Register** on approval of the information collection by OMB. Comments on the interim final rule must be received by September 15, 1989.

ADDRESSES: Send comments to the Operations Support and Analysis Division, F/CM1, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

Comments regarding the estimate of the paperwork burden or any other aspect of the collection of information under § 299.3(a), including suggestions for reducing the burden should be sent to the above address; and to the Office of Information and Regulatory Affairs, (Attn: Paperwork Reduction Project—0648–XXXX), Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Alfred J. Bilik at (301) 427–2337 or telex 467856 US COMM FISH CI; or Dean Swanson at (301) 427–2276.

SUPPLEMENTARY INFORMATION: The United States and the U.S.S.R. concluded the Agreement Between the United States and the U.S.S.R. on Mutual Fisheries Relations (Agreement) that, among other things, allows U.S. nationals access to conduct permitted fishery operations for allocations of surplus stocks in the zone extending up to 200 nautical miles off the coast of the U.S.S.R. known as the Soviet economic zone (EZ). The U.S.S.R. will determine the total allowable catch in the Soviet EZ for each stock, the harvesting capacity of its own fishing vessels with regard to the stock, and the portion of the total allowable catch for the stock that is surplus. The U.S.S.R. may then allocate a portion of that surplus to U.S. nationals and vessels.

The United States does not recognize Soviet claims east of the U.S.-Russia Convention line of 1867. Industry agreements with Soviet fishermen notwithstanding, U.S. vessels fishing east of the convention line are subject to the applicable provisions of U.S. fisheries laws and regulations, including the governing regulations implementing fishery management plans. Fishing under the Magnuson Act includes the catching, taking or harvesting of fish and any activities in preparation for or in support of the catching, taking or harvesting of fish. Questions concerning the activities which may be authorized east of the convention line should be referred to the NOAA Fisheries contact individuals referenced above.

The United States has agreed that it will take appropriate measures, consistent with its national law, to ensure that its nationals and vessels conduct fishery operations within the Soviet EZ consistent with the national laws and regulations of the U.S.S.R.; refrain from fishing beyond the U.S. Exclusive Economic Zone for fishery resources over which the U.S.S.R., consistent with international law, has sovereign rights or management authority, except as authorized by the Agreement; and comply with the provisions of permits issued pursuant to the Agreement and the applicable laws of the U.S.S.R.

The United States has agreed that its nationals and vessels will be subject to the relevant laws and regulations of the U.S.S.R. when the U.S. nationals and vessels are engaged in fishing in the Soviet EZ. The United States has also agreed that its nationals and vessels will be subject to the relevant laws and regulations of the U.S.S.R. pertaining to fishery resource management when engaged in fishing outside the Soviet EZ for fishery resources of the continental shelf of the U.S.S.R., or beyond any exclusive economic zone or its equivalent for anadromous species that originate in the waters of the U.S.S.R.

The United States has agreed, consistent with its national law, that it will take appropriate measures to ensure that its nationals and vessels refrain from harassing, hunting, capturing, or killing any marine mammal within the Soviet EZ, or attempting such actions, except as may be provided for by an international agreement to which both the United States and the U.S.S.R. are parties, or in accordance with specific authorization and controls established; by the U.S.S.R.

The United States has consented to, and, to the extent allowable under U.S. law, will assist and facilitate boardings and inspections of its vessels by duly authorized officers of the U.S.S.R. for compliance with the relevant laws and regulations of the U.S.S.R. If, upon boarding and inspection of a vessel by a duly authorized officer, such law or regulation is found to have been violated, the United States will not object to appropriate enforcement action undertaken pursuant to the laws of the U.S.S.R., including seizure and arrest of the vessel and the individuals on board. The U.S.S.R. will impose appropriate penalties, in accordance with the laws of the U.S.S.R., for violations of the relevant laws or regulations of the U.S.S.R. In the case of arrest and seizure of a vessel of the United States, the United States will be notified through diplomatic channels of the facts and actions taken. The U.S.S.R. will release vessels of the United States and their crews promptly, subject to the posting of reasonable bond or other security. The penalty for violation of a limitation or restriction on the fishing operations of the nationals or vessels of the United States will be limited to appropriate fines, penalties, forfeitures, or revocation or suspension of fishing privileges.

The United States has agreed to take appropriate steps to ensure that observers of the U.S.S.R. are permitted to board, upon request, vessels operating in the Soviet EZ pursuant to the Agreement, and that the U.S.S.R. will be reimbursed for the costs incurred in the utilization of its observers, consistent with the laws and regulations of the U.S.S.R. and on the basis of reciprocity. Such observers must be accorded the courtesies and accommodations provided to ship's officers while on board such vessels, and the operators and crews of such vessels must cooperate with observers in the conduct of their official duties.

The Agreement specifies the procedures for application for, and issuance of, annual permits authorizing vessels of the United States to engage in fishing for fishery resources over which the U.S.S.R. exercises sovereign rights or fishery management authority.

Pursuant to this Agreement, and consistent with national law, NOAA issues this interim final rule imposing a number of requirements and prohibitions on U.S. nationals and vessels desiring to engage in fishing operations for fishery resources over which the U.S.S.R. exercises sovereign rights or fishery management authority, including fishing in the Soviet EZ, fishing for fishery resources of the continental shelf of the U.S.S.R., and fishing beyond any exclusive economic zone or its equivalent for anadromous species that originate in the waters of the U.S.S.R.

Classification

This rule is authorized under the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1822(a)(4)(A), which authorizes the Secretary of State in cooperation with the Secretary of Commerce to enter into reciprocal fishing agreements, and 16 U.S.C. 1855(g), which authorizes the Secretary of Commerce to promulgate regulations necessary to carry out the provisions of the Magnuson Act.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule will not have a significant impact on the human environment. NMFS has prepared an environmental assessment (EA) on the rule. The finding of the EA was that no significant impact on the human environment will occur as a result of this rule and that no environmental impact statement was required. The EA is available upon request. (See **ADDRESSES**.) This action is exempt from the provisions of Executive Order 12291 under section 1(a)(2) because these regulations are issued with respect to a foreign affairs function of the United States.

This action is not subject to section 553 of the Adminsitrative Procedure Act (APA) because the implementation of this rule is a foreign affairs function under 5 U.S.C. 553(a)(1). The Assistant Administrator is soliciting public comments on this rule, and will consider them to the extent discretion exists to modify the regulations consistent with national law and the Agreement. Because neither the APA nor any other statute requires public notice and opportunity to comment upon this rule, the Regulatory Flexibility Act does not apply to it and no regulatory flexibility analysis has been prepared.

This rule contains a collection-of-information requirement at § 299.3(a) subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*). A request to collect this information has been submitted to the Office of Management and Budget for approval. Public reporting burden for this collection is estimated to average 0.5 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Operations Support and Analysis Division, NMFS, and to OMB (see **ADDRESSES**).

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612. Neither does this rule directly affect the coastal zone of any state with an approved coastal zone management program.

List of Subjects in 50 CFR Part 299

Fisheries, Foreign fishing, Union of Soviet Socialist Republics, U.S.-U.S.S.R. Agreement.

Dated: July 12, 1989.

James W. Brennan,

Assistant Administrator For Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, Subchapter K consisting of Part 299 is added to Chapter II of Title 50 of the Code of Federal Regulations as set forth below:

SUBCHAPTER K—U.S. NATIONALS FISHING IN FOREIGN ECONOMIC ZONES

PART 299—U.S. NATIONALS FISHING IN SOVIET FISHERIES

299.1 Purpose.
299.2 Definitions.
299.3 Procedures.
299.4 Requirements.
299.5 Prohibited acts.
299.6 Penalties.

Authority: 16 U.S.C. 1801 *et seq.*

§ 299.1 Purpose.

This section regulates U.S. nationals fishing in Soviet fisheries and implements the Agreement between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics on Mutual Fisheries Relations, signed May 31, 1988.

§ 299.2 Definitions.

(a) The term "Agreement" means the Agreement Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics on Mutual Fisheries Relations, signed May 31, 1988.

(b) The term "Assistant Administrator" means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration (NOAA) or a designee.

(c) The term "fishery resource" means any fish, any stock of fish, any species of fish, and any habitat of fish.

(d) The terms "fishing" or "to fish" mean any activity which does, is intended to, or can reasonably be expected to result in catching or removing from the water fishery resources. Fishing also includes the acts of scouting, processing, and support.

(e) The term "fishing vessel" means any boat, ship, or other craft that is used for, equipped to be used for, or of a type normally used for, fishing.

(f) The term "Magnuson Act" means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

(g) The term "national of the United States" or "U.S. national" means any person subject to the jurisdiction of the United States, including, but not limited to, a citizen or resident of the United States, or a person employed on a vessel of the United States. In the case of a corporation, partnership or other non-natural person, this includes, but is not limited to, any entity that is the owner of a vessel of the United States.

(h) The term "operator," with respect to any vessel, means the master or other individual on board and in charge of that vessel.

(i) The term "owner," with respect to any vessel, means any person who owns that vessel or any charterer, whether bareboat, time, or voyage, and any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel.

(j) The term "person" means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, or local government, or any entity of such government.

(k) The term "processing" means any operation by a vessel to receive fish from a fishing vessel and/or the preparation of fish, including but not limited to cleaning, cooking, canning, smoking, salting, drying, or freezing, either on the vessel's behalf or to assist another vessel.

(l) The term "relevant laws and regulations of the U.S.S.R." means those Soviet laws and regulations that concern fishing for fishery resources over which the U.S.S.R. exercises sovereign rights or fishery management authority.

(m) The term "scouting" means any operation by a vessel exploring [on behalf of the vessel or another vessel] for the presence of fish by any means which do not involve the catching of fish.

(n) The terms "Soviet" and "U.S.S.R." mean the Union of Soviet Socialist Republics, its government, or any organ or entity of its government.

(o) The term "Soviet continental shelf" and the phrase "continental shelf of the U.S.S.R." means the seabed and subsoil of the submarine areas over which, consistent with international law, the U.S.S.R. exercises sovereign rights.

(p) The terms "Soviet Economic Zone" and "Soviet EZ" mean a zone of waters off the coast of the U.S.S.R. beyond and adjacent to the Soviet territorial sea extending a distance of up to 200 nautical miles from the baseline from which the territorial sea is measured, within which, consistent with international law, the U.S.S.R. has sovereign rights over the fishery resources.

(q) The term "Soviet fisheries" and the phrase "fishery resources over which the U.S.S.R. exercises sovereign rights or fishery management authority" mean fishery resources within the Soviet EZ, fishery resources of the Soviet continental shelf, and anadromous species that originate in the waters of the U.S.S.R., whether found in the Soviet EZ or beyond any exclusive economic zone or its equivalent.

(r) The term "support" means any operation by a vessel assisting fishing by another vessel, including—

(1) Transferring or transporting fish or fish products, or

(2) Supplying a fishing vessel with water, fuel, provisions, fishing equipment, fish processing equipment, or other supplies.

(s) The term "vessel of the United States," "U.S. vessel," "fishing vessel of the United States," or "U.S. fishing vessel," as the context requires, means a vessel or a fishing vessel that is documented or numbered under the laws of the United States or of any State, or otherwise subject to the jurisdiction of the United States.

§ 299.3 Procedures.

(a) Application for, and issuance of, annual permits. U.S. nationals and vessels should obtain the information required for making application for permits and copies of Soviet laws and regulations from, and submit completed applications to, the Assistant Administrator for Fisheries, NOAA, 1335 East-West Highway, Silver Spring, Maryland 20910. The Department of State will submit the completed applications to the competent authorities of the U.S.S.R. for each fishing vessel of the United States that wishes to engage in fishing pursuant to the Agreement. The competent authorities of the U.S.S.R. will review each application, determine whether to issue a permit, what conditions and restrictions related to fishery management and conservation may be needed, and what fee will be required. The competent authorities of the U.S.S.R. will inform the U.S. Fisheries Attache in Moscow of such determinations, who will then inform the Assistant Administrator and the Department of State. The Department of State, after consultations with the Assistant Administrator, will then notify the competent authorities of the U.S.S.R. of its acceptance or rejection of the conditions and restrictions and, in the case of a rejection, of its objections. Upon acceptance of the conditions and restrictions by the Department of State, and after the payment of all fees, the competent authorities of the U.S.S.R. will approve the applications and issue a permit for each fishing vessel that has submitted an application, which will thereupon be authorized to fish in accordance with the Agreement and the terms and conditions set forth in the permit. Permits will be issued for a specific vessel and are not transferable. In the event the Department of State notifies the competent authorities of the U.S.S.R. of objections to a decision not to issue a permit, or to specific conditions and restrictions, the two governments may consult with respect to these issues and the Department of State may submit a revised application.

(b) *Port calls.* U.S. fishing vessels which have been issued permits pursuant to the Agreement are authorized to enter the ports of Murmansk, Korf, Oktyabrski, and Provideniya in the U.S.S.R. to purchase bait, to replenish ship's stores or fresh water, to obtain bunkers, to provide rest for or make changes in their crews, to obtain repairs and other services normally provided in these ports, and, as necessary, to receive permits. Authorized vessels en route to one of the designated ports to receive a permit will be treated as non-fishing vessels, so long as such vessels observe the provisions of the Agreement. All such entries are subject to the applicable laws and regulations of the U.S.S.R. U.S. nationals making port calls in the U.S.S.R. or entering the territory of the U.S.S.R. must comply with the laws and regulations of the U.S.S.R. applicable to persons within the territorial jurisdiction of the U.S.S.R. Entry of U.S. fishing vessels to ports of the U.S.S.R. will be permitted subject to notice to INFLOT, forwarded by the vessel's agent or owner using Telex, teletype, or telegram so as to be received 4 days in advance of the port entry. Information concerning communication procedures may be obtained from the Fisheries Attache, Embassy of the U.S.S.R., 1609 Decatur Street, Washington, DC 20011.

(c) *Visas.* Multiple entry visas valid for 6 months for entry into the ports specified in paragraph (b) of this section may be obtained by submitting crew lists to the Fisheries Attache, Embassy of the U.S.S.R., at the address listed in paragraph (b) of this section. The crew list must be submitted at least 14 days prior to the first entry of the vessel into a port of the U.S.S.R. An amended (supplemental) crew list may be submitted subsequent to the departure of a vessel from a U.S. port, subject to these provisions, provided that any visa issued thereunder will be valid only for 6 months from the date of issuance of the original crew list visa. Notification of entry to a port of the U.S.S.R. pursuant to paragraph (b) of this section must specify if shore leave is requested under such multiple entry visa.

(d) *Emergency medical treatment.* In cases where a U.S. seaman is evacuated from his vessel to the U.S.S.R. for emergency medical treatment, authorities of the United States will ensure that the seaman departs from the U.S.S.R. within 14 days after release from the hospital.

(e) *Exchange of crews.* The exchange of crews of U.S. fishing vessels in a port in the U.S.S.R. specified above in paragraph (b) of this section will be permitted subject to submission to the Embassy of the U.S.S.R., Washington, DC, at the address listed in paragraph (b) of this section, of applications for individual transit visas and crewman visas for replacement crewmen. Applications must be submitted 14 days in advance of the arrival of the crewmen at a port of the U.S.S.R. and must indicate the names, dates, and places of birth, the purpose of the visit, the vessel to which assigned, and the modes and dates of arrival of all replacement crewmen. Individual passports or seamen's documents must accompany each application. Subject to its national laws and regulations, the Embassy of the U.S.S.R. will affix transit and crewman visas to each passport or seaman's document before it is returned. In addition to the above requirements, the Fisheries Attache, Embassy of the U.S.S.R., Washington, DC, must receive, 14 days in advance of arrival, the name of the vessel and date of its expected arrival, a list of names, dates and places of birth for those crewmen who will be admitted to a port of the U.S.S.R., and the dates and manner of their departure from the port of the U.S.S.R.

(f) *Research vessels.* Special provisions will be made as necessary regarding the entry into ports of the United States or the U.S.S.R. of research vessels of the two countries which are engaged in a mutually agreed research program in accordance with the Agreement. Requests for entries of such research vessels should be forwarded to the competent authorities of the relevant government through diplomatic channels.

(g) *Soviet-imposed sanctions.* (1) The U.S.S.R. will impose appropriate fines, penalties, or forfeitures in accordance with its laws, for violations of its relevant laws or regulations.

(2) In the case of arrest and seizure of a U.S. vessel by Soviet authorities, notification will be given promptly through diplomatic channels informing

the United States of the facts and actions taken.

(3) The U.S.S.R. will release U.S. vessels and their crews promptly, subject to the posting of reasonable bond or other security.

(4) The sanctions for violation of a limitation or restriction on fishing operations will be limited to appropriate fines, penalties, forfeitures, or revocation or suspension of fishing privileges.

§ 299.4 Requirements.

(a) *Compliance with permit requirements.* (1) U.S. nationals and vessels must obtain a permit from the U.S.S.R. in order to fish for fishery resources over which the U.S.S.R. exercises sovereign rights or fishery management authority.

(2) U.S. nationals and vessels fishing for fishery resources over which the U.S.S.R. exercises sovereign rights or fishery management authority must comply with all provisions, conditions, and restrictions of any applicable permit.

(b) *Compliance with Soviet law.* U.S. nationals and vessels fishing for fishery resources over which the U.S.S.R. exercises sovereign rights or fishery management authority must comply with the relevant laws and regulations of the U.S.S.R.

(c) *Protection of marine mammals.* U.S. nationals and vessels fishing for fishery resources over which the U.S.S.R. exercises sovereign rights or fishery management authority must refrain from harassing, hunting, capturing, or killing any marine mammal within the Soviet EZ, and attempting to do so, except as may be provided for by an international agreement to which both the United States and the U.S.S.R. are parties, or in accordance with specific authorization and controls established by the U.S.S.R. Provided, however, that the provisions of the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.*, also shall apply to any person or vessel subject to the jurisdiction of the United States while in the Soviet EZ, and it shall not be a defense to any violation of the Marine Mammal Protection Act that the person or vessel was acting in accordance with any permit or authorization issued by the U.S.S.R.

(d) *Cooperation with enforcement procedures.* (1) The operator of, or any person aboard, any U.S. vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer of the U.S.S.R. to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record, and catch for purposes of enforcing the relevant laws and regulations of the U.S.S.R.

(2) The operator of any U.S. vessel must comply with directions issued by authorized officers of the U.S.S.R. in connection with the seizure of the vessel for violation of the relevant laws or regulations of the U.S.S.R.

(3) U.S. nationals and vessels must pay fines and penalties and comply with forfeiture sanctions imposed by the U.S.S.R. for violations of the relevant laws and regulations of the U.S.S.R.

(4) The operator of, and any person aboard, any U.S. vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer of the United States to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record, and catch for purposes of enforcing the Magnuson Act and this part.

(e) *Compliance with observer requirements.* The owner of, operator of, and any person aboard, any U.S. vessel fishing in the Soviet EZ to which a Soviet observer is assigned must—

(1) Allow and facilitate, on request, boarding of a U.S. vessel by the observer;

(2) Provide to the observer, at no cost to the observer or the U.S.S.R., the courtesies and accommodations provided to ship's officers;

(3) Cooperate with the observer in the conduct of his or her official duties; and

(4) Reimburse the U.S.S.R. for the costs of providing an observer aboard the vessel.

§ 299.5 Prohibited acts.

It shall be unlawful for any U.S. national:

(a) To fish for Soviet fisheries without obtaining a permit from the U.S.S.R.;

(b) While fishing for Soviet fisheries, to violate the provisions, conditions, and restrictions of applicable permits;

(c) To violate the relevant laws and regulations of the U.S.S.R.;

(d) To harass, hunt, capture, or kill any marine mammal within the Soviet EZ, or to attempt to do so, except as provided in § 299.4(c);

(e) To fail to comply immediately with enforcement and boarding procedures specified in § 299.4(d);

(f) To refuse to allow an authorized officer of the U.S.S.R. to board and inspect a vessel subject to this part for purposes of conducting any search, inspection, or seizure in connection with the enforcement of the relevant laws and regulations of the U.S.S.R.;

(g) To assault, resist, oppose, impede, intimidate, threaten, or interfere with, any authorized officer of the U.S.S.R. in the conduct of any search, inspection, seizure, or arrest in connection with enforcement of the relevant laws and regulations of the U.S.S.R.;

(h) To fail to pay fines or penalties or comply with forfeitures imposed for a violation of the relevant laws and regulations of the U.S.S.R.;

(i) While fishing in the Soviet EZ, to refuse to allow a Soviet observer to board a vessel subject to this part;

(j) To fail to provide to a Soviet observer on board a vessel fishing in the Soviet EZ the courtesies and accommodations provided to ship's officers;

(k) To assault, resist, oppose, impede, intimidate, threaten, interfere with, or fail to cooperate with a Soviet observer placed aboard a vessel subject to this part;

(l) To fail to reimburse the U.S.S.R. for the costs incurred in the utilization of a Soviet observer;

(m) To refuse to allow an authorized officer of the United States to board and inspect a vessel subject to this part for purposes of conducting any search, inspection, or seizure in connection with the enforcement of the Magnuson Act or this part;

(n) To assault, resist, oppose, impede, intimidate, threaten, or interfere with, any authorized officer of the United States in the conduct of any search, inspection, seizure, or arrest in connection with enforcement of the Magnuson Act or this part;

(o) To resist a lawful arrest for any act prohibition under the Magnuson Act or this part;

(p) To interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person has committed any act prohibited by the Magnuson Act or this part; or

(q) To possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, or export, any fish or parts thereof taken or retained in violation of the relevant laws and regulations of the U.S.S.R. the Magnuson Act, or this part.

§ 299.6 Penalties.

In addition to any fine, penalty, or forfeiture imposed by the U.S.S.R., nationals and vessels of the United States violating the prohibitions of § 299.5 are subject to the fines, penalties, and forfeitures and the adjudicative procedures provided in the Magnuson Act, 16 U.S.C. 1858, 1860, 1861, and any other applicable laws and regulations of the United States.

[FR Doc. 89-16078 Filed 7-14-89; 8:45 am]

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Proposed Rules

Federal Register

Vol. 54, No. 135

Monday, July 17, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1930 and 1944

Congregate Housing

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding congregate housing under its section 515 rural rental housing program. This action is necessary to provide the public and FmHA personnel with expanded and clearer instructions on congregate housing. The intended effect is to make our regulations more responsive and to further the prudent development of congregate housing in rural America.

DATE: Comments must be submitted on or before September 15, 1989.

ADDRESSES: Submit written comments in *duplicate* to the Chief, Directive and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this publication will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Eileen Nowlin, Senior Realty Specialist, Multi-Family Housing Processing Division, Farmers Home Administration, USDA, Room 5349—South Agriculture Building, Washington, DC 20250, telephone (202) 382-1608.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rulemaking action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291 and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers, individual industries, Federal, State or local Government agencies, or geographic regions. Furthermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States enterprises to compete with foreign based enterprises in domestic or import markets. This action is not expected to substantially affect budget outlay or affect more than one Agency or be controversial. The net result is to provide better service to rural communities.

Background/Discussion

Congregate housing is a unique form of Multiple Family Housing. It should not be confused with or be considered an expansion of an elderly housing project. Congregate housing consists of private apartments and central dining facilities in which services are provided to tenants to enable them to remain independent. Tenants must not require the supervision or additional services provided by an intermediate health care facility.

Although current FmHA regulations contain instructions on making congregate housing loans, additional and more concise guidance is essential to improve program delivery and to aid in the development of successful congregate housing. The major highlights of the proposed revisions include:

Subpart E of Part 1944

—Arranges all instructions pertaining to congregate housing in specific areas. Differentiates between congregate housing and group homes.

—Provides additional design criteria for congregate housing and group homes.

—Describes support services necessary for congregate housing and group homes; lists specific information that must be provided to FmHA on each service component.

—Provides that developers without actual experience or training in the development and management of congregate housing consult with persons or entities experienced with same.

—Expands the information required in market studies for congregate housing.

—Contains Exhibit E which provides further guidance to applicants on the type of information needed at the preapplication stage.

Exhibit J of Subpart C of Part 1930 is added and:

—Details the management requirements of congregate housing and group homes.

—Provides that developers without actual experience or training in the development and management of congregate housing consult with persons or entities experienced with same.

—Provides further guidance on eligible tenants. Distinguishes between tenants who need the services to remain independent and tenants who do not need, but desire services to remain independent.

—Stipulates that tenants who need services to remain independent must agree to use and pay for such services as a condition of occupancy.

—Permits borrowers to maintain separate waiting lists for tenants who need services to remain independent and those who do not need, but desire services to remain independent.

At the current time, the aforementioned regulations contain guidance on congregate housing and group homes. As mentioned, all information on congregate housing and group homes will be contained in specific locations rather than dispersed sporadically throughout the regulation. References changes and the removal of existing guidance on congregate and group housing are not contained in this rulemaking document. The proposed instruction and exhibits to be published in the **Federal Register** are included in this rulemaking document.

Programs Affected

These programs/activities are listed in the Catalog of Federal Domestic Assistance under Numbers 10.415, Rural Rental Housing Loans and 10.427, Rural Rental Assistance Payments.

Intergovernmental Consultation

For the reasons set forth in the Final Rule related Notice(s) to 7 CFR Part 3015, Subpart V, programs 10.415 Rural Rental Housing Loans and 10.427—Rural Rental Assistance Payments are subject to Executive Order 12372 which requires

intergovernmental consultation with State and local officials.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1949, Pub. L. 91–90, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program.

List of Subjects

7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant programs—Housing and community development, Loan programs—Housing and community development, Low and moderate income housing—Rental, Reporting requirements.

7 CFR Part 1944

Administrative practice and procedure, Aged, Handicapped, Loan programs—Housing and community development, Low and moderate income housing—Rental, Mortgages, Nonprofit organizations, Rent subsidies, Rural housing.

Therefore, as proposed, Chapter XVIII, Title 7, Code of Federal Regulations, is amended as follows:

PART 1930—GENERAL

1. The authority citation for Part 1930 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

2. In Exhibit B, paragraph II is amended by removing paragraph designations, revising the definition of "Congregate Housing" and adding alphabetically the definitions of "Group Home," "Service Agreement," and "Service Plan," to read as follows:

Exhibit B—Multiple Housing Management Handbook

II Definitions

* * * * *

Congregate Housing. Residential housing consisting of private apartments and central dining facilities in which services are provided to tenants to enable them to remain independent. Tenants must not require the supervision or additional services provided by an intermediate health care facility.

* * * * *

Group Home. Housing that is occupied by elderly, handicapped or disabled tenants sharing living space within a rental unit in which a resident assistant may be required. A group home is generally designed as a single household dwelling but can also be a multi-unit structure.

* * * * *

Service Agreement. A written agreement between the borrower and the congregate or group home service provider detailing the specific service to be provided, the cost of the service and the length of time the service will be provided.

Service Plan. A written plan describing how services will be provided to congregate housing or a group home project. At a minimum, the plan must specify the services to be provided, the frequency of the services, who will provide the services, how tenants will be advised of the availability of services, and the staff needed to provide the services.

* * * * *

3. Exhibit J is added to read as follows:

Exhibit J of Subpart C—Management of Congregate Housing and Group Homes

I Purpose

This exhibit prescribes additional requirements for the management of congregate housing and group homes. It applies in addition to other requirements in this subpart.

II Definitions

Congregate housing. Residential housing consisting of private apartments and central dining facilities in which services are provided to tenants to enable them to remain independent. Tenants must not require the supervision or additional services provided by an intermediate health care facility.

Group Home. Housing that is occupied by elderly, handicapped or disabled tenants sharing living space within a rental unit in which a resident assistant may be required. A group home is generally designed as a single household dwelling but can also be a multi-unit structure.

Service Agreement. A written agreement between the borrower and the congregate or group home service provider detailing the specific service to be provided, the cost of the service and the length of time the service will be provided.

Service Plan. A written plan describing how services will be provided to congregate housing or a group home project. At a minimum, the plan must specify the services to be provided, the frequency of the services, who will provide the services, how tenants will be advised of the availability of services, and the staff needed to provide the services.

III Rent Subsidy Opportunities

Congregate housing and group homes are subject to the provisions of paragraph IV of Exhibit B of this subpart. Subsidy discussed in that paragraph cannot be used to pay for services in congregate housing and group homes.

IV Management Operations

Borrowers must comply with paragraph V of Exhibit B of this subpart in managing congregate housing and group homes. In addition, borrowers must submit a service plan that explains how services will be provided.

A *Borrower's experience.* Borrowers and management agents must outline their experience and plans for providing congregate and group home services when completing the management questionnaire in either Exhibit B–4 or B–5 of this subpart. Borrowers who are not experienced with congregate housing/group homes must obtain assistance from organizations or individuals experienced with congregate issues in developing management and servicing plans. The service provider's experience and ability to furnish the services must be documented.

B *Service plans.* Congregate housing/group home borrowers must submit a service plan that fully details how each service will be provided. At a minimum, the plan must specify the services to be provided, the frequency of the services, who will provide the services and the staff needed to provide the services. See Exhibit E of Subpart E of Part 1944 for guidance on the issues that should be included in the plan. The service plan will be an addendum to the management plan when appropriate, or subject to the signature and authorization requirements of the management plan when the service provider is not the borrower or management agent.

C *Service agreements.* Borrowers must submit a service agreement for each service they do not provide directly. The agreement must stipulate the specific service to be provided, the cost of the service and the length of time the service will be provided The service agreement will be an addendum to the management agreement when appropriate, or subject to the signature and authorization requirements of the management agreement when the service provider is not the borrower or management agent. Service agreements must be effective for at least 1 year after the project becomes operational.

V Renting Procedure

In addition to meeting the conditions of paragraph VI of Exhibit B of this subpart, borrowers must meet the following conditions.

A *Eligible tenants.* 1 Tenants must meet the general provisions of paragraph VI B of Exhibit B of this subpart and be eligible to occupy elderly housing as defined in paragraph VI B 1 h (2) of Exhibit B of this subpart. Borrowers must be careful to ensure that all tenants, especially those who need the services to remain independent, can live independently in the project with the scope of services offered.

2 Tenants who need the services to remain independent may have a physical limitation that would make them ineligible tenants in a typical elderly RRH project. Tenants who need the services to remain independent must agree to use them as a condition of occupancy in the project.

B *Tenant selection.* Borrowers must meet the provisions of paragraph VI E of Exhibit B of this subpart. In congregate housing and group homes, a further critical dimension is added for the selection and placement of tenants. This involves determining the ability of a tenant to sustain independence with the support services provided. Borrowers should be further guided by the following in selecting tenants for congregate housing and group homes:

1 *Congregate housing.* a *Tenant mix.* Most tenants living in congregate housing will be people who can live independently who will be able to extend their independence by using services available at the project. Some tenants may need services to enable them to remain independent. Borrowers must establish, in writing, a plan for ensuring an appropriate mix of tenants. The plan should establish a maximum percentage of tenants who need services to remain independent. We suggest that 15 to 30 percent of the tenants should need the services to remain independent. As existing tenants age, the percentage may increase. FmHA must concur with the proposed plan.

b *Determining ability to be independent.* (1) An evaluation of the ability of tenants to sustain independence with the support services provided by the project must be made. This evaluation must be made by a qualified tenant selection committee, which includes a professional medical member, and presented to project management for concurrence. A tenant's likelihood of sustaining independence as a result of living in congregate housing should be verified by one of the following methods:

(A) Certification by a physician or an agency responsible for support services as to a person's ability to remain independent with assistance from services.

(B) By the use of any objective guide, such as Exhibits B 10 and B 10A of this subpart.

(2) When a determination is made concerning a tenant's need for services, he/she will be notified and placed on an appropriate waiting list and the tenant file and/or lease will be documented accordingly.

c *Waiting lists.* To sustain a balanced mix of tenants, management may maintain a separate waiting list for fully independent tenants and tenants who need services to remain independent. Management may choose tenants in order to assure a balanced project as described in paragraph V B 1 (a) of this exhibit. Selection of new tenants should be based on the predetermined tenant mix ratio. If necessary to maintain a balanced project, fully independent tenants may be chosen over tenants who need services or vice versa. The other provisions contained in paragraph VI E of Exhibit B of this subpart concerning waiting lists are applicable.

2 *Group homes.* A group home may limit occupancy to eligible developmentally disabled, elderly or handicapped people. This limitation will be outlined in the borrower's management plan. The following will apply to group homes:

a Tenants of group homes cannot be required to be a part of an ongoing training or rehabilitation program sponsored by the applicant or other organization.

b Prospective tenants may be selected from the local, regional and/or state-wide market area, with priority preference in that order.

C *Determining per unit rental rates for group living arrangements.* A "unit" in a group home consists of the space occupied by a specific tenant household. It may be a traditional apartment unit, a bedroom or a portion of a bedroom. Rents are determined as follows:

1 When all units are of equal size, divide operational costs equally.

2 When all units are not of equal size, determine the size of each unit and divide operational costs accordingly.

a The size of traditional units is their square footage.

b The size of nontraditional units is the bedroom or portion of bedroom occupied by the household and portion of the common area to be used by all potential units in nontraditional units.

3 A unit occupied by a resident assistant is not considered a revenue producing unit and would be excluded from the rent determination.

VI Verification and Certification of Tenant Income, Ability to Live Independently and/or Employment

The provisions of paragraph VII of Exhibit B of this subpart apply. In addition to recertifying income, management must reassess the ability of each tenant to remain independent with the services provided by the project.

VII Lease Agreements

In addition to the conditions contained in paragraph VIII of Exhibit B of this subpart, the following should be addressed:

A *Tenants who need services to remain independent.* If a tenant needs services to remain independent, the lease must contain the following clause:

I agree that I need the following services in order for me to live independently in this congregate housing project. (List necessary services.) I understand that I must pay a monthly charge of $_____ for the services and that this payment will be separate from my monthly rent payment.

B *Inability to remain independent.* The following clause should be included in leases for all congregate housing tenants:

"If management determines that I have become physically or mentally unable to live independently in my apartment with the services provided, I will voluntarily move from this congregate housing project. I understand that management will periodically reassess my ability to live independently, applying the same criteria that was used to determine my initial eligibility for residency. I further agree to use and pay for services as a condition of continued occupancy if management determines that I cannot live independently without them. If I am determined to need services but cannot afford them, I will voluntarily move from this project."

C *Services provided to others than tenants of FmHA financed congregate housing.* If the meal facility serves others than the tenants of the project, the applicant must obtain a lease from the service provider and require payment sufficient to cover the annual operating expenses, debt services and reserve account attributable to the leased portion of the project. Tenants of the congregate housing must have priority in receiving the services. When the facilities are provided with loan funds, the following conditions must be met:

1 The services to be provided and the fees to be charged (if any) must be fully documented in the service plan, if provided by the applicant, or in the service plan and lease agreement if the services will be provided by others. Any lease agreement must be approved by the State Director or the loan approving official and contain the following statement:

2 "This agreement will not be effective until approved by the State Director of the Farmers Home Administration, U.S. Department of Agriculture, or the State Director's delegated representative."

VIII Rent Collection

The provisions of paragraph IX of Exhibit B of this subpart will apply for services as well as rent. Tenants must pay charges for the services as documented in their lease. The payment for rent or services may be made separately or combined.

IX Borrower Project Budgets

Borrowers must separate the revenue and expenses of project operations from the service component. Forms FmHA 1930–6, "Monthly Report," 1930–7, "Statement of Budget and Cash Flow," and 1930–8, "Year End Report and Analysis for Fiscal Year Ending _____," must reflect project operations only.

X Accounting and Reporting Requirements and Financial Management Analysis

Borrowers must maintain separate financial records for the operation and maintenance of the project and the service component. Funds allocated to the operation and maintenance of the project cannot be used to supplement the cost of services. Detailed financial reports on the service component will not be required unless specifically requested by FmHA, but the project audit or verification of accounts must allocate revenue and expense between project operations and the service component.

XI Termination of Tenancy and Eviction

To ensure that congregate housing remains residential and noninstitutional in nature, borrowers must explain clearly to applicants that:

A As a condition of occupancy, tenants must agree to vacate the project when they can no longer remain independent even

though they are assisted with necessary services.

B When tenants can no longer remain independent without using the services, they must agree to use and pay for necessary services.

PART 1944—HOUSING

4. The authority citation for Part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

5. In § 1944.205, paragraphs (d) and (l) are revised, paragraph (ee) is redesignated as paragraph (gg), and paragraphs (ee) and (ff) are added to read as follows:

§ 1944.205 Definitions.

* * * * *

(d) *Congregate Housing.* Residential housing consisting of private apartments and central dining facilities in which services are provided to tenants to enable them to remain independent. Tenants must not require the supervision or additional services provided by an intermediate health care facility.

* * * * *

(l) *Group Home.* Housing that is occupied by elderly, handicapped or disabled tenants sharing living space within a rental unit in which a resident assistant may be required. A group home is generally designed as a single household dwelling but can also be a multi-unit structure.

* * * * *

(ee) *Service agreement.* A written agreement between the borrower and the congregate or group home service provider detailing the specific service to be provided, the cost of the service and the length of time the service will be provided.

(ff) *Service plan.* A written plan describing how services will be provided to congregate housing or a group home project. At a minimum, the plan must specify the services to be provided, the frequency of the services, who will provide the services, how tenants will be advised of the availability of services, and the staff needed to provide the services.

* * * * *

6. Section 1944.244 is added to read as follows:

§ 1944.224 Supplemental requirements for congregate housing and group homes.

This section includes additional provisions that apply to the making of loans for congregate housing and group homes. It applies in addition to all other applicable requirements contained elsewhere in this subpart. Congregate housing and group homes are types of section 515 rural rental housing that require a broader commitment from applicants to ensure that needed and desired services will be provided to prospective tenants. The concept may not be desired or feasible in all market areas. Congregate housing is unique and has many components. It is not merely an elderly housing project with services. It must be designed and managed to meet the needs of aging tenants. The management of congregate housing requires supervision of support services and more interaction and oversight of tenants. We strongly recommend that applicants who have not dealt with this type of housing obtain assistance from organizations or individuals who have experience in planning and designing congregate housing.

(a) *Congregate housing.* Congregate housing will create an environment that will enable fully independent individuals to maintain their independence longer by making available nutritious meals and other services. Congregate housing will also help people who need some services to extend an independent lifestyle.

(1) *Eligible tenants.* Eligible tenants are described in § 1944.205(h) of this subpart and paragraph V A of Exhibit J of Subpart C of Part 1930 of this chapter. Tenants who need the services to remain independent must agree to use them as a condition of occupancy in the project. Fully independent tenants who do not want to participate in the services should be encouraged to explore the availability of housing offered by noncongregate elderly projects.

(2) *Design criteria.* Applicants must pay particular attention to the layout of the structure and the effect of design elements on project management and ongoing operations. Applicants should engage the services of an architect experienced in congregate design. The initial planning of congregate housing should include input on design considerations from project management to prevent the potential long-term affects of poorly conceived design on operations. Congregate housing must be planned and developed in accordance with Subparts A and C of Part 1924 of this chapter. In addition, it must meet the following design criteria:

(i) Applicants must pay particular attention to the site requirements contained in § 1944.215(p) of this subpart. Congregate housing should be located as close to services and shopping as possible. Transportation must be made available to tenants of congregate housing, but the availability of transportation is not to be used as a substitute for good site location.

(ii) Facilities needed to accommodate the services described in § 1944.224(a)(4) of this section must be designed in accordance with acceptable practices. Specific design guidelines are provided in Chapter 1 of Guide 2 of Subpart A of Part 1924 of this chapter. These facilities may be larger than necessary to meet the tenants' requirements if they are needed in the community and other sources of funds are available to pay a pro rata share of the cost.

(iii) The decreasing physical and mental capabilities of the tenants must be considered in the design. The walkways and corridors between living units and the support service facilities must be safe, comfortable and minimal in length. Handrails that comply with the Uniform Federal Accessibility Standards must be provided on at least one side of all public corridors.

(iv) Areas used by the tenants will be separated as much as possible from areas needed for delivery of food and supplies and other building services. Interior spaces and finish materials must be residential in character and designed to help prevent tenants from becoming disoriented within the building(s).

(v) Emergency lighting must be provided in every public space, corridor, stairway, elevator and other means of egress.

(vi) The entrances to all living units must be on a route accessible to the physically handicapped. Living units accessible only via exterior steps or interior stairs will not be acceptable.

(vii) The size of rooms and spaces in the living units must be comparable to units provided in other housing for the elderly. Kitchen facilities must be provided in all living units and include, as a minimum, a cooktop, oven, sink, refrigerator and a food preparation surface.

(viii) The bathroom and one bedroom in each living unit, and any public toilet rooms, must be furnished with an emergency call system that is appropriate for the size and management of the housing facility.

(3) *Management of congregate projects.* Applicants must meet the provisions of Exhibit J of Subpart C of Part 1930 of this chapter in managing congregate housing. In addition to the elements of managing a typical rural rental housing project, congregate housing requires increased management experience and skills. Delivery of services, oversight of tenants and the decisionmaking process of tenant selection adds a unique dimension to prudent management. The success or failure of a project will rely heavily upon management effectiveness and delivery of services. Applicants who are not experienced with congregate housing must seek assistance from organizations or individuals experienced with congregate issues in developing the management and servicing plans. A separate plan detailing the delivery of services must be submitted with the preapplication. Applicants must also submit separate budgets for operation and maintenance of the project and services.

(4) *Support services.* Exhibit E of this Subpart must be addressed in planning services. Adequate services must be offered to extend the independence of tenants and be reasonably priced to ensure affordability by very low- and low-income tenants. A wide variety of services may be offered; however, in most cases the following services should be provided:

(i) *Meals.* Since some tenants will depend on the meal service as their only sustenance, at least one cooked meal a day, 7 days a week, must be provided. There may be cases where the meal provider does not furnish meals on a daily basis. On days the meal provider does not furnish meals, an alternate source must provide meals to tenants who are not inclined to prepare their own meals. The following conditions apply to meals:

(A) To ensure that the meals are wholesome and meet the needs of individual tenants, a professionally trained dietitian or nutritionist must be involved in planning the menus.

(B) The feasibility of sustained meal service may be dependent on the number of people who elect to pay for it. Tenants who choose to live in a congregate facility should be expected to participate in the meal program; therefore, applicants should solicit tenant participation in the meal service if the economic feasibility of the service depends on user charges.

(C) If the entity that operates the service is eligible to accept food stamps under the regulations of the Food and Nutrition Service (FNS) of the United States Department of Agriculture (USDA), the entity must be authorized by FNS to accept food stamps from tenants for the purchase of meals.

(ii) *Transportation.* Transportation must be provided to the project on a fixed schedule based on tenant needs. Applicants are encouraged to work with public and private transportation sources to develop a dependable and economical method for providing this service. If these sources cannot provide adequate transportation, the applicant must develop a project-sponsored transportation system.

(iii) *Housekeeping.* Housekeeping services must be provided to tenants who require assistance in keeping their units clean. Light housekeeping tasks, such as dusting, vacuuming, floor washing, bathroom cleaning and laundry for bedding, generally should be provided on a weekly basis. Heavier tasks, such as oven cleaning, window cleaning and drapery cleaning, should be provided periodically.

(iv) *Personal services.* Limited nonmedical personal services must be made available to tenants who need them to remain independent. Personal services can include such items as assistance with personal hygiene, nutrition counseling and general health screening. Space may be included in the project for a small beauty shop and health screening area. Applicants should consider contracting for personal services to assure their continued and dependable availability to tenants.

(v) *Recreation/social.* Recreational and social activities should be offered to tenants to encourage interest in a variety of areas. Areas such as hobby and craft classes, special dinners and wellness and exercise classes could be considered.

(5) *Service providers.* Services must be offered at a cost that can be afforded by very low-, low- and moderate-income tenants. Applicants should explore as many service providers as possible to ensure services at the most reasonable cost. Applicants should also research alternate service providers since the original provider may be unable to furnish services in the future. Documentation concerning alternate services must be submitted as part of the preapplication package. Alternate sources should be documented even if the applicant plans to use onsite personnel for services. The availability of services from alternate sources can enhance a proposal's feasibility since long-term services are crucial to the success of congregate housing.

(6) *General service requirements.* Applicants must provide a plan which addresses the long-term availability of assistance from the service providers. As a part of the preapplication, applicants must provide a letter of commitment from each service provider detailing its ability and willingness to provide services. This letter must identify the type, scope, cost, term and any licensing requirements of services that will be provided to the project. As a part of the final application, applicants must provide a service agreement detailing the same information. Service agreements must be effective for at least 1 year after the project becomes operational. Applicants should refer to paragraph IV of Exhibit J of Subpart C of Part 1930 for further guidance.

(7) *Services provided to people who are not tenants of FmHA financed congregate housing.* If the meal facility serves people who are not tenants of the project, the applicant must obtain a lease from the service provider and require payment sufficient to cover the annual operating expenses, debt service and reserve account attributable to the leased portion of the project. Applicants should refer to paragraph VII C of Exhibit J of Subpart C of Part 1930 of this chapter for further guidance.

(b) *Group homes.* Group homes will provide housing in a residential environment for individuals capable of caring for themselves in the basic functions of everyday living. Group homes may be designed for elderly, disabled or other handicapped tenants as defined in § 1944.205 of this subpart. Appropriate common areas and facilities should be included to encourage participation by the tenants under the direction of a staff person in sharing the meal preparation, housekeeping, social and recreational activities within the home. It is not the goal of group homes to provide housing for tenants requiring constant supervision and/or medical attention. The following conditions are applicable to group homes:

(1) A group home is generally designed as a single household dwelling; however, it can also be a small multi-unit structure. Group homes must also meet the following design criteria:

(i) Specific design guidelines are provided in Chapter 1 of Guide 2 of Subpart A of Part 1924 of this chapter.

(ii) The potential decreasing physical and mental capabilities of tenants must be considered in the design.

(iii) Interior spaces and finish materials must be residential in character.

(iv) Emergency lighting must be provided in every corridor, stairway and other means of egress.

(v) The entrances to all living units must be on a route accessible to the physically handicapped.

(2) In some cases, the cost of services may be included as part of the rent; if so, tenants may be paying more than 30 percent of their adjusted income towards shelter cost. Since group home tenants generally have fewer expenses than typical RRH tenants, they may be able to afford more than 30 percent of adjusted income for shelter cost. This

should be considered when assessing the market for a group home.

(3) Prospective tenants must be medically evaluated to determine their ability to sustain independence in a group home. Applicants should be guided by paragraph V A of Exhibit J of Subpart C of Part 1930 of this chapter.

(4) A group home may limit occupancy to a specific group of tenants. For example, a group home may limit occupancy to eligible elderly tenants, developmentally disabled people, or mentally impaired tenants. Refer to Exhibit J of Subpart C of Part 1930 of this chapter for additional information.

(5) A group home may be associated with another organization, such as a workshop for the developmentally disabled. However, it must be a separate entity and able to function without being dependent on another organization.

(6) Applicants must show that adequate support services needed by the tenants will be available on a continuous long range basis. Support services can be provided by the project or by a State or local public agency. A nonprofit organization with an established ongoing service program also may be deemed capable of providing support services.

(7) Food stamps must be accepted from tenants as part of their contribution for meals in accordance with § 1944.224 (a)(4)(i)(C).

(8) Tenants who need services to remain independent should agree to use them as a condition of occupancy in the group home.

(9) Instructions on how to determine the per unit rental rates for group homes are stipulated in Exhibit J of Subpart C of this chapter.

(c) *Market studies for congregate housing and group homes.* In addition to the requirements of Exhibit A-7 of this subpart, the following are applicable to market studies for congregate housing and group homes:

(1) The market study must address the need for housing with services. Local agencies on aging and other groups familiar with the elderly can be a valuable source of information on the needs and wants of elderly people in the market area. Applicants should also consider conducting a mail-out survey to age and income qualified elderly people. Responses to the survey will help in determining many of the specific needs and desires of potential tenants and will enable the applicant to more readily assess if the concept of congregate housing would be accepted by potential tenants in the market area.

(2) An expanded market area may be considered only when the additional communities are part of the trade area and are so rural that they cannot support development of a congregate facility. If an expanded market area is proposed, the market study must establish conclusively that the community will be able to draw enough tenants to ensure feasibility of the project. The market study must clearly identify the expanded area and contain separate information on the additional communities. If used, mail-out surveys must clearly address the probability of respondents relocating to the proposed site.

(d) Congregate housing and group homes must meet all applicable Federal, State and local laws, statutes, codes and/or ordinances pertaining to these types of housing and the services provided.

7. Exhibit E of Subpart E is added to read as follows:

Exhibit E of Subpart E—Support Services for Congregate Housing and Group Homes.

I Purpose

This exhibit prescribes support services for congregate housing and group homes.

II General

The success of congregate housing and group homes will depend on the quality and affordability of the service component. Congregate housing applicants should explore the feasibility of providing services individually to ensure affordability by very low-income tenants. If feasible, fully independent tenants who do not require services to live independently should be given the option of choosing the services they want and can afford.

III Existing Community Services and Requirements

Applicants should check local service agencies to determine what services are already available in the community. Services can often be provided more inexpensively through local service agencies or other groups which assist in providing services to eligible recipients. In many communities there are established volunteer groups that may be willing to provide volunteer assistance to congregate housing tenants. Volunteer groups with a history of assisting elderly people may be able to supplement the delivery of services and help keep the costs affordable. Applicants should explore the availability of volunteers from the Retired Senior Volunteer Program (RSVP), local church groups and other community organizations. If volunteer groups are used, an alternative method of service delivery should be addressed in case the availability of volunteers ceases in the future. Applicants must also verify State and local licensing and certification requirements and include relevant information in the preapplication.

IV Service Agreements

Applicants must submit a service agreement(s) for services that are not provided by personnel employed by the project. In addition, applicants must submit a separate budget for services and describe the method by which tenants will be billed for services. Employees of congregate housing facilities who perform tasks for the management of the building and assist in providing services to tenants should have their salaries prorated between the project's operation and maintenance budget and the services budget.

V Services for Congregate Housing

The following services must be made available to tenants of congregate housing projects:

A *Meals.* At least one nutritious meal a day, 7 days a week, must be provided in accordance with § 1944.224 (e)(i). The following information concerning the meal service must be included with the preapplication:

1 A proposed breakdown of costs for the meal service. The breakdown should include the cost of food, personnel and utilities needed to prepare and serve the meals. Information concerning the proposed staffing should be included.

2 The cost to the tenant. Will tenants pay by the meal or be charged a monthly rate?

3 A statement concerning the frequency of meals, including the number of meals to be served per week.

4 Information concerning how the meals will be served (i.e., waiter style, buffet, tray service).

5 The proposed source of funding (i.e., meals offered by a local agency with tenant contribution; supplied or contracted for by owner with charge to tenant).

6 Any licensing requirement necessary for the service.

B *Transportation.* Adequate transportation must be provided to shopping, medical and other services to meet the needs of the tenants. Applicants are encouraged to locate congregate housing facilities so that tenants can use public services. In many cases, service is available and the applicant can arrange for the project to be included in the schedule established by the provider. The following information concerning the transportation service must be included with the preapplication:

1 A proposed breakdown of costs for the transportation service. The applicant should address the following costs: vehicle p: chase or lease payment; personnel to operate the vehicle; fuel; maintenance; and insurance.

2 The cost to the tenant. Will tenants pay for each trip or will they be charged a monthly rate?

3 A typical proposed schedule.

4 The proposed source of funding (i.e., transportation offered by a local agency with tenant contribution; vehicle leased or purchased by applicant with charge to tenant).

C *Housekeeping.* Housekeeping services must be offered to assist congregate tenants with household tasks. The applicant must address the following concerning the housekeeping service:

1 A proposed cost breakdown for the service which includes the cost of labor and supplies. If the service will be contracted, what will be the cost?

2 The type of tasks that will be offered (i.e., light housekeeping, laundry, shampooing carpeting). What is the planned frequency of the tasks?

3 The cost to the tenant.

4 The proposed source of funding (i.e., housekeeping offered by a local agency with tenant contribution; supplied or contracted for by applicant with charge to tenant).

D *Personal services.* Personal services can include such items as assistance with personal hygiene, nutrition counseling and general health screening (blood pressure checks, etc.). The following information concerning the personal services must be submitted with the preapplication:

1 The type of tasks that will be provided and information concerning who will perform the tasks.

2 The cost to the tenant.

3 The proposed source of funding (i.e., personal services offered by a local agency with tenant contribution; volunteer health services; contracted for by applicant with charge to tenant).

4 Any licensing requirement necessary for the services.

E *Recreational/social.* Recreational and social activities should be offered to tenants to encourage interest in a variety of areas. The following areas could be considered: hobby and craft classes; dinners for holidays, birthdays, etc.; educational lectures; wellness and exercise programs; and a library. The applicant should encourage recreational/social activities which cause interaction between tenants, the project and the community. The following information concerning the recreational/social service must be included with the preapplication:

1 The types and frequency of recreational/social activities that will be offered.

2 The cost to the tenant.

3 The proposed source of funding (i.e., recreational/social activities offered by a local agency with tenant contribution; supplied or contracted for by applicant with charge to the tenant).

VI Services for Group Homes

The following services must be made available to tenants of a group home:

A *Meals.* At least three nutritious meals a day, 7 days a week, must be provided if tenants are not capable of preparing their meals. If meals are provided, the budget may include only the cost of food if tenants assist a staff person in preparing meals. Tenants in some group homes may be able to prepare meals on their own with supervision from project personnel. In these cases, applicants must ensure that the tenants will be preparing nutritious meals.

B *Transportation.* Applicants must submit information on the transportation service as detailed in paragraph V B of this exhibit.

C *Housekeeping.* Applicants must provide a narrative explaining how housekeeping will be accomplished. In many cases, group home tenants assist with housekeeping chores with little expense being borne by the project. Applicants should detail expenses that will be part of the service budget.

D *Personal services.* A higher percentage of tenants in a group may require personal services. Applicants must detail the services to be offered and the cost to tenants.

E *Recreational/social.* In most cases, there will be little expense for recreational/social opportunities in a group home. Applicants should explain what will be offered to the tenants and the projected cost to tenants.

Dated: June 9, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89-16634 Filed 7-14-89; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-ANE-01]

Proposed Amendment To Control Zone, Lebanon, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the description of the Lebanon, New Hampshire Control Zone so as to provide protected airspace for instrument flight rules aircraft executing a new Instrument Landing System (ILS) Standard Instrument Approach Procedure (SIAP) to Runway 18 at the Lebanon Municipal Airport, Lebanon, New Hampshire.

DATE: Comments must be received no later than August 15, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, Docket No. 89-ANE-01, Attention: Rules Docket Clerk, 12 New England Executive Park, Burlington, MA 01803.

Docket may be examined in the Federal Aviation Administration, ANE-7, 12 New England Executive Park, Burlington, MA 01803.

An informal docket may also be examined during normal business hours at the: Federal Aviation Administration/ANE-530, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 304.

FOR FURTHER INFORMATION CONTACT: Charles Taylor, Airspace Specialist, ANE-530, Federal Aviation Administration, Air Traffic Division, 12 New England Executive Park, Burlington, Massachusetts, 01803, Telephone, (617) 273-2428.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Anyone wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ANE-01." The postcard will be date/time stamped and returned to the originator. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, ANE-7, 12 New England Executive Park, Burlington, MA 01803, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-300, 800 Independence Avenue SW., Washington, DC 20591 or by calling (202) 267-2441. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to section 171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Lebanon,

New Hampshire Control Zone so as to provide protected airspace for instrument flight-rules aircraft executing a new Instrument Landing System (ILS) Standard Instrument Approach Procedures to Runway 18 at Lebanon Municipal Airport, Lebanon, New Hampshire. Section 171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Lebanon, NH [Revised]

Within a 5-mile radius of the center, (latitude 43°37'35" N., longitude 72°18'17" W.), of the Lebanon Municipal Airport, Lebanon, N.H; within 4 miles each side of the DV OM 351 (True) bearing extending from the 5 miles radius zone to 9.5 miles northeast of the DV OM. Within 3 miles each side of the Hanover NDB 231 and 051 bearings, extending from the 5-mile radius zone to 8.5 miles northeast of the NDB; within 2 miles either side of the centerline of Runway 18 extended 5.5 miles from the end of the runway; within 2 miles either side of the White River NDB 060 bearing extending from the 5-mile radius zone to 7.5 miles from the end of Runway 07.

Issued in Burlington, Massachusetts on June 27, 1989.

James I. Lucas,

Manager, Air Traffic Division.

[FR Doc. 89-16673 Filed 7-14-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 89-ACE-12]

Proposed Alteration of Jet Route J-233

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposed to alter the description of Jet Route J-233 by extending that route from St. Louis, MO, to Vulcan, AL. The proposed jet route would provide aircraft with a route to descend without encountering opposite-direction traffic. This action would improve the flow of traffic into terminal areas and reduce controller workload.

DATES: Comments must be received on or before August 28, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ACE-500, Docket No. 89-ACE-12, Federal Aviaton Administration, 601 East 12th Street, Federal Building, Kansas City, MO 64106.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the propsal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ACE-12." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Indpendence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to extend J-233 from St. Louis, MO, to Vulcan, AL. This proposal would reduce congestion and inter-Air Route Traffic Control Center (ARTCC) coordination for climbing and descending traffic between those terminal areas. This action would improve traffic flow in that area and reduce controller workload. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-233 [Amended]

By removing the words "to St. Louis." and by substituting the words "St. Louis; INT St. Louis 148°T(143°M) and Vulcan, AL, 335°T(333°M) radials; to Vulcan."

Issued in Washington, DC, on July 5, 1989

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-16604 Filed 7-14-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 89-ASO-16]

Proposed Alteration of Jet Route J-213; West Virginia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Jet Route J-213, located in the vicinity of Beckley, WV, by extending that route from Beckley to Louisville, KY, via a south dogleg. The ARMEL standard terminal arrival (STAR) which began at Beckley for transition into several terminal areas would be cancelled. The extension of J-213 would improve the flow of traffic into several terminal areas and would reduce controller workload.

DATES: Comments must be received on or before August 28, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO-500, Docket No. 89-ASO-16, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASO-16." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the description of Jet Route J-213 located in the vicinity of Beckley, WV, by extending that route from Beckley to Louisville, KY. The ARMEL STAR was established from Beckley as a transition route to several east coast airports. The ARMEL STAR would be cancelled and would be replaced by two STAR's using Beckley as the initial starting point. Extending J-213 via a south dogleg would provide an established route in an area where aircraft are usually vectored. This action would reduce controller workload. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial

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number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J–213 [Amended]

By removing the words "to Beckley," and by substituting the words "Beckley; INT Beckley 264°T(270°M) and Louisville, KY, 101°T(100°M) radials; to Louisville."

Issued in Washington, DC, on July 5, 1989.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 89–16665 Filed 7–14–89; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 703

Rule on Informal Dispute Settlement Procedures

AGENCY: Federal Trade Commission.

ACTION: Extension of time for public comment on Advance Notice of Proposed Rulemaking.

SUMMARY: The Federal Trade Commission has granted all interested parties a 60-day extension, until September 15, 1989, of the time for filing public comments on an Advance Notice of Proposed Rulemaking for possible amendments to its rule governing informal dispute settlement procedures (16 CFR Part 703). The Advance Notice, published on May 16, 1989 (54 FR 21070), had provided a 60-day period for submitting written comments ending on July 17, 1989. In addition, the Commission has denied a request for an additional 30-day extension for possible rebuttal on the grounds that such a request was premature.

DATES: Written comments will now be accepted until September 15, 1989.

ADDRESS: Written comments and suggestions should be marked "Rule 703 Review" and sent to the Division of Marketing Practices, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:
Carole I. Danielson, Division of Marketing Practices, Federal Trade Commission, Washington, DC 20580, (202) 326–3115
or
Steven Toporoff, Division of Marketing Practices, Federal Trade Commission, Washington, DC 20580, (202) 326–3135

SUPPLEMENTARY INFORMATION: On May 26, 1988, the Attorneys General for the States of Minnesota, California, Connecticut, Florida and New York filed a joint request for an extension of the public comment period on the review of the Commission's Rule Governing Informal Dispute Settlement Procedures, 16 CFR Part 703 ("Rule 703"). In an Advance Notice of Proposed Rulemaking ("ANPR") published on May 16, 1989, the Commission had requested written public comment on whether Rule 703 should remain unchanged, or whether it should be amended (54 FR 21070). The comment period was to have ended on July 17, 1989.

The Attorneys General state that because the revision of Rule 703 could affect the rights of consumers in all states, many states will wish to submit a collective comment on the issues now being raised. The Attorneys General request an extension of 60 days beyond July 17 for submission of their comments in order to notify the individual states, collect responsive information and present the information in a collective answer.

The Attorneys General also request an additional period of not less than thirty days to review and respond to any economic or cost data or factual statements which may be submitted by the petitioners, by an informal dispute settlement mechanism, or by any agent of these parties.

Having considered the request, the complexity of the issues raised by the ANPR, and the desirability of obtaining comments from all interested parties that fully reflect their individual or combined views and experience, the Commission has determined that a 60-day extension of time should be granted to all who wish to comment. Accordingly, the Commission has extended the deadline for filing public comments on the ANPR to September 15, 1989.

The Commission has denied the request of the Attorneys General for an additional rebuttal period to review and respond to certain information which may be submitted during the comment period. This process is only at the ANPR level, which is intended to be an informal procedure, laying out a series of questions to assist the Commission in determining whether to initiate a proceeding to consider amendments to Rule 703 and, if so, what amendments should be considered. If the Commission issues a Notice of Proposed Rulemaking, such Notice would be published in the **Federal Register** and there would be ample opportunity at that time for additional comments and, if appropriate, rebuttal periods. Therefore, the Commission has determined that it would be premature to grant an extension of time to commentors for rebuttal at this stage of the proceeding.[1]

By direction of the Commission, Commissioners Azcuenaga and Strenio dissenting.

Donald S. Clark,

Secretary.

[FR Doc. 89–16798 Filed 7–14–89; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 625 and 645

[FHWA Docket No. 86–13, Notice 3]

RIN 2125–AC 32

Design Standards for Highways; Reference Material; Roadside Design Guide

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking

SUMMARY: The American Association of State Highway and Transportation Officials (AASHTO) has approved and published a document entitled "Roadside Design Guide" which superseded its 1977 "Guide for Selecting, Locating and Designing Traffic Barriers." The FHWA is proposing to replace references to the latter document in 23 CFR Parts 625 and 645 with references to the 1989 "Roadside Design Guide." Further, the FHWA is soliciting comments on whether the "Roadside Design Guide" should be adopted in whole or in part or modified in any way for application to Federal-aid highway projects.

[1] Commissioners Azcuenaga and Strenion agree that the Commission should grant a 60-day extension of the public comment period. However, they dissent from the Commission majority decision to deny the request for a 30-day rebuttal period.

DATE: Comments on the contents and/or application of the "Roadside Design Guide" to Federal-aid Highway Projects must be received on or before October 25, 1989.

ADDRESS: Submit written, signed comments to FHWA Docket No. 86–13, Notice No. 3, Federal Highway Administration HCC–10, Room 4232, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination between 8:30 a.m. and 3:30 p.m. e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Powers, Office of Engineering, (202) 366–1320, or Mr. Michael J. Laska, Office of the Chief Counsel, (202) 366–1383, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The American Association of State Highway and Transportation Officials (AASHTO) has published a document entitled "Roadside Design Guide" which was prepared by the AASHTO Task Force for Roadside Safety. The initiation of this activity was announced on January 12, 1987, at 52 FR 1200 (Docket 86–13, Notice No. 1) and was followed by a status report on February 9, 1988, at 53 FR 3757 (Docket No. 86–13, Notice No. 2). The Roadside Design Guide was approved by the AASHTO Executive Committee in October 1988 and published in March 1989.

The Roadside Design Guide contains state-of-the-practice information on virtually all aspects of roadside safety design including clear zones, topographic and drainage features, sign and luminaire supports, roadside and median traffic barriers, bridge railings, crash cushions and work zone applications of these features. Also included is a section on a cost-effectiveness evaluation procedure developed for use with a microcomputer.

The Roadside Design Guide is not intended to be a policy document or standard as evidenced by its inclusion in 23 CFR as a guide or reference document. However, it can properly be used by a highway agency to develop appropriate policies and standards.

The FHWA, through this notice of proposed rulemaking, is requesting comments on any of the material presented in the "Roadside Design Guide," as well as the effect such information is likely to have on the Federal-aid highway program. Based on a comprehensive analysis of an internal FHWA review and the comments received in response to this notice, the FHWA may develop guidelines for the application of the "Roadside Design Guide" for use on Federal-aid projects. If the "Roadside Design Guide" contains material not acceptable to the FHWA, such material will be noted and excluded at the time it is cited in 23 CFR Parts 625 and 645.

A limited distribution of the Roadside Design Guide has been made by AASHTO to its member agencies and by FHWA to its field offices. Additional copies should be ordered through AASHTO at the following address:

American Association of State Highway and Transportation Officials, 444 North Capitol Street, NW., Suite 225, Washington, DC 20001

The cost is $35.00 per copy, plus a $3.50 postage and handling charge. A copy of the Guide is also available for inspection in the FHWA Public Docket, Room 4232 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Regulatory Evaluation and Impact

The FHWA has determined that this proposed amendment does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. This determination was based on the facts that the Roadside Design Guide is an update and consolidation of earlier publications and generally reflects state-of-the-practice in roadside safety design, and is cited for use as a reference document, not a policy document or design standard.

Regulatory Flexibility Act and Federalism Assessment

Based on the discussions above and under the criteria of the Regulatory Flexibility Act (Pub. L. 96–354), the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. The FHWA has carefully considered the federalism implications of this action in light of the principles, criteria, and requirements of the President's Executive Order on Federalism, E.O. 12612, October 26, 1987. The FHWA has determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Parts 625 and 645

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Utilities.

In consideration of the foregoing, the FHWA is proposing to amend Chapter I of Title 23, Code of Federal Regulations, Parts 625 and 645 as set forth below:

Issued on: July 10, 1989.

R. D. Morgan,

Executive Director.

The FHWA proposes to amend 23 CFR Parts 625 and 645 as follows:

PART 625—DESIGN STANDARDS FOR HIGHWAYS

1. The authority citation for Part 625 continues to read as follows:

Authority: 23 U.S.C. 109, 315, and 402; 49 CFR 1.48(b).

2. In § 625.5, paragraph (a)(3) is revised to read as follows:

§ 625.5 Guides and References.

* * * * *

(a) * * *

(3) Roadside Design Guide, AASHTO 1989.[3]

PART 645—UTILITIES

Subpart B—Accommodation of Utilities

3. The authority citation of Part 645 continues to read as follows:

Authority: 23 U.S.C. 109, 111, 116, 123 and 315; 23 CFR 1.23 and 1.27; 49 CFR 1.48(b); and E.O. 11990, 42 FR 26961 (May 24, 1977).

§ 645.207 Definitions.

4. In § 645.207, the definition of "clear recovery area" in paragraph (b) is amended by removing reference to the AASHTO "Guide for Selecting, Locating and Designing Traffic Barriers," 1977 and inserting in its place the reference "Roadside Design Guide," 1989.

5. In § 645.211, the introductory paragraph is amended by revising the first three sentences to read as follows:

§ 645.211 State highway agency accommodation policies.

The FHWA shall use the AASHTO publication, "A Guide for Accommodating Utilities Within Highway Right-of-Way," 1981, and should use the AASHTO "Roadside Design Guide," 1989, to assist in the evaluation of adequacy of State highway agency utility accommodation policies. (The Guide for Accommodating Utilities is incorporated by reference and is on file at the Office of the Federal Register in Washington, DC. It is available for inspection from the FHWA Washington Headquarters and all FHWA Division and Regional Offices as prescribed in 49 CFR Part 7, Appendix D. * * *).

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[FR Doc. 89-16582 Filed 7-14-89; 8:45 am]

BILLING CODE 4910-22-M

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49 CFR Part 390

[FHWA Docket No. MC-89-6]

RIN 2125-AC28

Federal Motor Carrier Safety Regulations; General; Motor Vehicle Marking

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The FHWA is requesting comments on possible revisions to the current requirements contained in 49 CFR 390.21, Marking of Motor Vehicles. Three areas are being considered for possible revision: (1) The applicability of the marking requirements to all commerical motor vehicles operated in interstate commerce, (2) postcard type registration of motor carriers, and (3) the treatment of rental vehicles. The FHWA is considering these issues to ensure that motor vehicles are safely maintained, equipped, loaded and operated. The third area of concern is also being considered in response to a request for interpretation filed by the Truck Rental and Leasing Association (TRALA).

DATE: Comments must be received on or before September 15, 1989.

ADDRESS: Submit written, signed comments to FHWA Docket No. MC-89-6, Room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk (either 1.2Mb or 360Kb density) in a format that is compatible with Word Perfect or WordStar word processing programs. Such commenters should identify the word processing program used in the preparation of the comments. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m. e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards, (202) 366-2981, or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 366-1350, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: A final rule, published in the **Federal Register** on May 19, 1988 (53 FR 18042, Docket No. MC-114), and effective on November 15, 1988, amended Part 390 of the Federal Motor Carrier Safety Regulations (FMCSRs) by adding a new § 390.21, Marking of motor vehicles. The new rule generally requires every self-propelled commercial motor vehicle operated by a private motor carrier of property in interstate motor carrier of migrant workers to be marked with specific information. The required marking must be located on both sides of the self-propelled vehicle and consist of the motor carrier's name or trade name, the city or community and State [name abbreviated] in which the carrier maintains its principal place of business, or in which the vehicle is customarily based, and the motor carrier identification number, if issued by the FHWA, preceded by the letters "USDOT." The statory authority for the promulgation of this rule is 49 U.S.C. 3104. Accordingly, the FHWA limited the application of this marking requirement to private motor carriers of property and motor carriers of migrant workers expressly covered by this section.

Applicability of the Marking Requirement to All Vehicles Subject to the FMCSRs

The Interstate Commerce Commission (ICC) regulates the marking of commercial motor vehicles operated by another segment of the motor carrier industry. That segment is comprised of 2 groups of for-hire motor carriers, namely, common and contract motor carriers of property or passengers.

The preamble to the final rule issued on May 19, 1988, which established the marking requirement stated:

> There is a segment of the motor carrier industry that neither the DOT nor the ICC has the authority to regulate insofar as vehicle identification and marking is concerned. That segment is known as "exempt carriers." "Exempt carriers" are for-hire motor carriers that have been exempted from economic regulation. This group of for-hire motor carriers is currently subject to Federal safety regulations, but will not be required to mark their vehicles.

Generally, the "exempt carrier" segment is comprised of (1) for-hire motor carriers who transport commodities (e.g., fresh fruits or vegetables) in interstate commerce that are exempt from the economic regulations of the ICC; (2) for-hire motor carriers transporting the U.S. mail in interstate commerce under contract to the United States Postal Service; (3) for-hire motor carriers of passengers transporting school children or school personnel in interstate commerce when such transportation is at the direction and/or under the control of a public school system; (4) for-hire motor carriers of property engaged in the emergency towing of disabled vehicles from the point of disablement to another location in interstate commerce; and (5) for-hire motor carriers of property operating wholly within ICC designated commercial zones.

The FHWA believes that having these groups of motor carriers exempt from any type of marking requirement is a problem. A substantial number of commercial motor vehicles would continue to be operated on public highways with little or no information visible to the general public to identify the operator of a specific vehicle.

The Motor Carrier Safety Act of 1984 (MCSA of 1984) (49 U.S.C. app. 2501-2520 (Supp. II 1984)) authorizes the FHWA to establish a minimum vehicle marking requirement for all commercial motor vehicles, as defined in the MCSA of 1984, if such a requirement will assist in ensuring that commercial motor vehicles are safely maintained, equipped, loaded, and operated. The FHWA believes that a marking requirement for all commercial motor vehicles operated in interstate commerce will assist in ensuring that those vehicles are safely maintained, equipped, loaded, and operated.

The FHWA is interested in receiving comments on a proposal to extend the marking requirements to all self-propelled commercial motor vehicles subject to the Federal Motor Carrier Safety Regulations (FMCSRs). The FHWA is also interested in what effect such requirements would have on foreign motor carriers.

To implement such a new provision, the FHWA would add to the motor carriers now covered under § 390.21, all for-hire motor carriers (including those currently exempt from the ICC's marking requirements) of property and passengers. Should any motor carrier subject to the FMCSRs be exempt from the marking requirements? The FHWA is particularly interested in comments regarding the burden, if any, such a requirement would place on those carriers not currently subject to the FHWA's marking requirements. We believe that the costs associated with an extension of the vehicle marking requirement will be minimal, especially for those motor carriers already required to mark their vehicles (i.e., ICC authorized carriers and private motor carriers transporting hazardous materials).

The FHWA could allow ICC authorized motor carriers to comply with the marking requirements of § 390.21 through the display of their ICC (MC) number. The FHWA's Motor Carrier Census File contains both the ICC number and the FHWA census number (DOT identification number) for each for-hire motor carrier which is required by the ICC to display its identification number. The FHWA believes that it should require the ICC authorized motor carriers to appropriately mark their self-propelled commercial motor vehicles because State enforcement personnel will then be able to enforce the marking requirements if it is part of the FMCSRs and their State safety regulations. We believe that compliance with such a vehicle marking requirement will enhance overall compliance with applicable safety regulations, and will make noncomplying motor carriers more accountable for their noncompliance.

The FHWA believes that with the adoption of a requirement that all commercial motor vehicles operating in interstate commerce be marked with either a DOT identification number or, in the case of ICC authorized carriers, an MC number, the need for individual State mandated motor carrier identification numbers may be duplicative of, or even detract from the Federal requirement. Thus, the FHWA recognizes that Federalism will be an issue in this proposal, and invites public comment on that issue.

The FHWA has long been a proponent of and supported uniformity within the motor carrier industry. The agency has led the way with the advent of the Motor Carrier Safety Assistance Program (MCSAP) and the Commercial Driver License (CDL) program. It is hoped that, in the final analysis, the various States and other government agencies would recognize the DOT identification number as a universal number to be used nationwide as a single motor carrier identifier for a variety of purposes (e.g., International Registration Program (IRP), fuel tax, highway use taxes). The universal use of a single identification number has the potential for saving both the States and the motor carrier industry substantial sums of monies as well as simplifying the motor carrier identification process which could lead to other efficiencies and savings. The FHWA is interested in receiving comments from the various States, other government agencies, and the motor carrier industry, generally, concerning the concept of utilizing a single identification number on a national basis. Motor carriers subject to the ICC requirements should include, in their comments, data regarding the possible remarking of their vehicles with a single identification number (the DOT identification number). The FHWA is also interested in receiving comments on the appropriate size, shape, location and color of the marking from all motor carriers, regardless of type of operation.

Postcard Type Registration

The FHWA's marking requirement was, in part, promulgated to identify the motor carrier population that is subject to the FMCSRs and to assist in maintaining a current, up-to-date census file of all those motor carriers. As required by 49 CFR 385.21, Motor carrier identification report, each motor carrier of property and each for-hire motor carrier of passengers, who operates one or more commercial motor vehicles in interstate commerce, must make a onetime filing with the FHWA on a Form MCS-150. Temporarily, Form MCS-137 is being used in lieu of the Form MCS-150. The FHWA is requesting comments on the adequacy of a one-time filing to properly maintain such a census file. The FHWA is considering the possible use of a postcard type form for annual census purposes. Such a postcard type form would, it is envisioned, replace the Forms MCS-137 and MCS-150 and be filed annually by each motor carrier subject to the FMCSRs. To minimize the paperwork burden, the form would be preprinted with current information, including the carrier identification number, and mailed to the business entities of record on the census each year in late December for return by January 31 of the following year. Additional postcard forms would be made readily available at convenient locations or upon request for new entities or as needed by existing carriers. The following information would be reported and or corrected:

1. Motor carrier's name and U.S. DOT identification number.
2. Motor carrier's principal place of business address and mailing address, if different.
3. Motor carrier's telephone number.
4. Name of the person completing the form.
5. As of December 31, 19__, were you still operating as motor carrier in interstate commerce? (Yes) (No)
6. Do you transport hazardous materials? (Yes) (No)
7. Principal commodity transported?

During the reporting year:

8. Number of straight trucks (over 10,000 pounds GVWR) operated.
9. Number of truck-tractors operated.
10. Number of semi-trailers or full trailers operated.
11. Number of buses (designed to transport 16 or more persons, including the driver) operated.
12. Total number of miles operated in the United States. Bus____ Truck____.

The FHWA is interested in receiving comments from all interested parties concerning the concept of an annual postcard type filing by all motor carriers subject to the FMCSRs and the concurrent discontinuance of Forms MCS-137 and MCS-150. The FHWA is also seeking suggestions on how such a filing should be structured.

Marking of Rental Vehicles

The TRALA has requested that the FHWA amend the marking requirements found at 49 CFR 390.21 and thereby eliminate certain costly operational problems associated with the short-term rental of commercial motor vehicles to private and for-hire motor carriers. The TRALA states:

> The nature of the truck rental industry makes the vehicle marking rules for short term commercial rental vehicles impractical for a variety of reasons. Trucks and tractors that are available for rental to motor carriers are, in fact, rented as frequently as 50-150 times per year. Because of this frequency, any vehicle marking would have to be under the control of the truck rental company. To place the responsibility of vehicle marking on the customer could result in damage or disfigurement to the vehicle. Additionally if the responsibility is placed on the customer, there will be many inadvertent violations of the regulations due to misunderstanding or confusion on the part of the customer . . . Nearly 15% of the companies that rent vehicles for short term use do not own or operate any trucks of their own. Because [they believe] they are not motor carriers, it is unlikely that they would have a census identification number

In view of the above, the TRALA proposes amending the marking rule as follows:

a. That upon application by a truck rental company, the DOT will issue a census identification number to the company provided it certifies to the DOT that it will display its census number and its own vehicle identification on the side of the vehicle and, it will, upon request of the DOT, provide the identity of any rental customer given the vehicle number and the time and date of a reported driving infraction.

b. That the display of the rental company's own census identification number and vehicle identification number will satisfy the vehicle marking requirements of any motor carriers using rental vehicles in interstate commerce.

[c]. Because the rules do not apply to 'the occasional transportation of personal property by individuals not for compensation nor in the furtherance of a commercial enterprise,' we propose that the rules relating to the marking of Motor Vehicles specifically exclude those vehicles, available for rent by the public, that are primarily dedicated to just such transportation.

The TRALA also proposes that the FHWA require the renting motor carrier's name, address, and DOT identification number be placed on the rental agreement and that rental agreement be carried on the vehicle during the full term of the rental agreement. Further, it proposes that the rental company display conspicuously, on the rental agreement, the following statement: "THIS LESSOR COOPERATES WITH FEDERAL, STATE AND LOCAL LAW ENFORCEMENT OFFICIALS NATIONWIDE TO PROVIDE THE IDENTITY OF CUSTOMERS WHO OPERATE [THIS RENTAL] VEHICLE."

The TRALA contends regulatory uniformity, motor carrier and vehicle identification, and driver identification will be enhanced if its proposal is acted upon affirmatively. The FHWA believes that the TRALA proposal warrants careful consideration.

The FHWA envisions that if the proposed TRALA amendment is adopted, § 390.21 would be modified in a manner similar to that requested by the TRALA. In order for a motor carrier to take advantage of the provision for a rental vehicle and be exempted from placing its name, principal place of business, and DOT identification number on the sides of the self-propelled vehicle, the following conditions would need to be met:

(1) The rental company's (lessor's) name, place of business, and DOT identification number would have to be on both sides of the self-propelled motor vehicle as required by § 390.21.

(2) The motor carrier's (lessee's) name, principal place of business, and DOT identification number, if issued to the carrier, would have to be contained in legible form on the vehicle's rental agreement, and such agreement would be carried on board the vehicle during the full term of the rental agreement.

(3) The rental company would agree to provide the DOT or its designee (State or local enforcement officials), upon request, the identity of any rental customer who has rented a self-propelled commercial motor vehicle from the lessor, provided the DOT or its designee could provide the vehicle number(s), time, and place the vehicle was seen. The lease agreement would indicate, in a conspicuous manner, that the rental company cooperates with Federal, State and local enforcement officials in identifying the lessee of the motor vehicle.

If any of these conditions were not met, the motor carrier could not make use of this provision. If an enforcement official stopped the rental vehicle and any of the requirements were not met, the lessee motor carrier would be in violation of § 390.21. If a rental vehicle were stopped and it did not contain the required motor carrier marking on the vehicle or on the rental agreement, it is possible that the enforcement official would issue a citation for a violation of the marking requirement or any vehicle defect to the lessor since that would be the only identification information available.

The FHWA is seeking comments on this TRALA proposal from interested parties, especially State law enforcement officials charged with the responsibility of enforcing commercial motor carrier safety regulations. The FHWA is especially interested in receiving responses to the following questions; however, commenters need not limit their responses to just these questions and issues.

1. Authorized for-hire motor carriers that have entered into lease arrangements have been, and currently are, required to identify the leased equipment with the name, or trade name, of the motor carrier and MC number under whose authority the vehicle is being operated (49 CFR Part 1058). Has this requirement resulted in damage to the leased commercial motor vehicles?

2. What damage has occurred to date to vehicles which were rented for short time periods and marked as currently required? Are there methods to repeatedly mark vehicles without damaging each vehicle? If so, what are the costs involved?

3. What economic and/or paperwork burdens are being placed on the motor carrier industry if the marking requirements remain unchanged? What burdens would be placed on the industry if the marking requirements are amended as proposed by the TRALA?

4. What impact would the proposed TRALA amendment have upon the ability of State enforcement officials to accurately identify the motor carrier actually operating the rental motor vehicle?

5. If the proposed TRALA amendment is subsequently adopted, should it be limited only to those emergency situations where a motor carrier is supplementing its motor vehicle fleet? If so, should that period of time be limited to 5 days, 10 days, 15 days, 30 days, or some other period?

6. How many vehicle rentals each year could take advantage of the proposed TRALA amendment? Please provide these estimates for each of the time periods set forth in question number 5.

7. Could the amendment proposed by the TRALA be adequately enforced by State enforcement officials?

8. Is there a way, such as requiring rental companies to cover their DOT identification number when renting to noncommercial entities, to clearly indicate to the State enforcement officials that a particular vehicle is engaged in a noncommercial movement?

9. If adopted, should the proposed TRALA amendment be limited to specific operations of the lessee and/or specific types of leasing companies?

10. What experience, if any, have State enforcement officials had with obtaining information from rental companies regarding motor carriers that rented commercial motor vehicles from those companies? Have the rental companies been able to adequately identify the motor carrier and its exact geographic location?

11. What should the penalty be for any violation of the commercial motor vehicle marking requirements?

List of Subjects in 49 CFR Part 390

Highway safety, Highway and roads, Marking requirements, Motor carriers, Motor vehicle safety.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: July 6, 1989.

Eugene R. McCormick,

Deputy Administrator.

[FR Doc. 89-16563 Filed 7-14-89; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 86-1; Notice 3]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petitions for rulemaking.

SUMMARY: This notice denies petitions for rulemaking filed by Peterson Manufacturing Company, and from the Truck Safety Equipment Institute. The petitions asked for an amendment of the Federal motor vehicle safety standard on replacement motor vehicle lighting equipment to require that such equipment be marked with the SAE lighting code. The agency terminated rulemaking on this subject in 1987, and no new arguments were advanced by the petitioners. In the 21-year history of the lighting standard NHTSA is not aware of a single instance in which product marking to identify either the manufacturer or the function of the device would have helped its enforcement efforts. The petitions are denied.

FOR FURTHER INFORMATION CONTACT: Kevin Cavey, Office of Rulemaking, NHTSA (202-366-5271).

SUPPLEMENTARY INFORMATION: On May 12, 1987, the agency published in the **Federal Register** a notice of termination of rulemaking (52 FR 17791) with respect to a proposed amendment to Standard No. 108 published on January 24, 1986 (51 FR 3227). The 1986 NPRM implemented the grant of a petition for rulemaking submitted by Peterson Manufacturing Company in 1982, and proposed that replacement lighting equipment be marked and identified as to function, in a manner similar to that of SAE Recommended Practice J759 MAY83 *Lighting Identification Code.* The notice also proposed that the previously optional form of certification for such equipment, a DOT mark, be the required method of certification.

After due consideration of the comments, the agency announced its termination of rulemaking, primarily because implementation of the proposal would impose significant cost increases on some manufacturers without a resulting safety benefit.

Two petitions for "reconsideration" of the denial were received, one from Peterson Manufacturing Company, and one from the Truck Safety Equipment Institute (TSEI). The agency's regulation on petitions for reconsideration (49 CFR 553.35) applies to rulemaking actions that result in final rules, but no provision is made for appeals or reconsideration of agency action resulting in termination of rulemaking. Accordingly, these petitions were treated as *de novo* petitions for rulemaking.

Comments expressing disagreement with the agency's decision were also received from Dominion Automotive Industries and Federal Mogul Corporation. Peterson argued that cost increases would be attributable only to mandatory certification, as all domestic manufacturers were already using the SAE Code, and that it had amended its petition in 1984 to withdraw its request for mandatory DOT marking. It also remarked that it seemed fundamental that a product required to comply with a Federal safety standard should be identified so that its manufacturer is known. It therefore requested continuation of the rulemaking in accordance with its 1984 amended petition, but with an updated version of the SAE Code, J759 OCT85. TSEI joined Peterson in recommending deletion of the mandatory and cost-adding DOT certification. It also argued that most products are already marked with the SAE Code, and that product marking is universal in the European Community, Japan, and Canada, and that its requirement in Standard No. 108 would add no burden. The comments received from Dominion Automotive Industries and Federal Mogul Corporation were similar.

The agency has reviewed these comments. The safety need for product marking is not clearly demonstrated. When NHTSA first considered product marking, it was in the context of enhancing enforcement of Standard No. 108 against offshore manufacturers of lighting equipment. However, NHTSA's Office of Enforcement has concluded that there has been no case in the 21-year history of Standard No. 108 where marking to identify either the manufacturer or the function of lighting equipment would have assisted enforcement of the standard. Pursuant to 49 CFR 552.8, the technical review has been concluded, and it has been determined that there is no reasonable possibility that the order requested in the petition would be issued at the conclusion of the appropriate proceeding. Therefore the petitions by Peterson and TSEI are denied.

(15 U.S.C. 1392, 1407; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: July 12, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-16648 Filed 7-14-89; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearing on Proposed Endangered Status for Salpingostylis Coelestina (Bartram's Ixia)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule: notice of public hearing.

SUMMARY: The Service gives notice that a public hearing will be held on the proposal to list *Salpingostylis coelestina* (Bartram's ixia), a plant native to northeastern Florida, as an endangered species pursuant to the Endangered Species Act of 1973 (Act), as amended. The hearing will allow all interested parties to orally submit comments on this proposal.

DATES: The public hearing will be held from 7:00 p.m. to 9:00 p.m. on August 3, 1989, in Neptune Beach, Florida. The comment period on the proposal, scheduled to close August 17, 1989, remains unchanged.

ADDRESSES: The public hearing will be held at the Beaches Branch Library, 600 Third Street, Neptune Beach, Florida. Written comments and materials concerning the proposal should be sent directly to the Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: David J. Wesley, Field Supervisor, at the above address (telephone: 904/791-2580 or FTS 946-2580).

SUPPLEMENTARY INFORMATION:

Background

Salpingostylis coelestina (Bartram's ixia) is a grassy-leafed, perennial herb belonging to the iris family (Iridaceae). *Salpingostylis coelestina* is about 30 centimeters (1 foot) tall. The flowers are 5 centimeters across, with six violet petals. The species occurs only in northeastern Florida, in Baker, Bradford,

Clay, Duval, St. Johns, and Union Counties. The species is threatened by habitat loss due to residential land development, by habitat alteration due to the planting of dense stands of pine for pulpwood, and by suppression of naturally-occurring fires that formerly maintained open, grassy understory vegetation beneath the pines. *Salpingostylis coelestina* was proposed for listing as an endangered species, with no critical habitat, in the **Federal Register** of May 19, 1989 (54 FR 21632).

Section 4(b)(5)(E) of the Endangered Species Act of 1973, as amended, requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. On June 30, 1989, the Service received a written request for a public hearing from Mr. Armond R. Tomassetti, vice president of Rayland Company, Inc., a subsidiary of ITT Rayonier. On July 3, the Service received written requests from Mr. W.D. Ericksen, Director, Forest Resources Southeast, RTOC Limited Partnership (ITT Rayonier Inc. Southeast Forest Resources), and from Mr. William E. Durham, General Manager, Southwood Properties (a division of St. Joe Paper Company).

The Service has scheduled this public hearing for August 3, 1989, from 7:00 p.m. to 9:00 p.m. in the conference room of the Beaches Branch Library on highway A1A (Third Street) three blocks south of its junction with U.S. Highway 90 (Atlantic Boulevard), in Neptune Beach, Florida. Those parties wishing to make statements for the record should bring a copy of their statements to present to the Service at the Start of the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. There are, however, no limits to the length of written comments or materials presented at the hearing or mailed to the Service. The comment period for this proposal closes on August 17, 1989. Written comments should be submitted to the Service office in the **ADDRESSES** section.

Author

The primary author of this notice is David Martin, Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216 (904/791-2580 or FTS 946-2580).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*, Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411; Pub. L. 99-625, 100 Stat. 3500; Pub. L. 100-478, 102 Stat. 2306, unless otherwise noted).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

David B. Allen,

Acting Regional Director.

Dated: July 11, 1989.

[FR Doc. 89-16646 Filed 7-14-89; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 90649-9149]

RIN 0648-AC40

Atlantic Bluefin Tuna Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to change the time frame during which the daily catch rate for giant Atlantic bluefin tuna in the General category may be adjusted, and to prohibit the use of spotter aircraft as an aid to fishing for Atlantic bluefin tuna in all but the Purse seine category. For the past several years the General category quota has not been taken. Allowing an adjustment of the daily catch rate from the beginning of the fishing season should provide for full use of the quota. Banning the use of spotter aircraft should maintain the traditional nature of the Harpoon Boat category and prevent the catch from being concentrated among fewer vessels.

DATE: Comments on this proposed rule must be received on or before August 7, 1989.

ADDRESSES: Comments on the proposed rule should be sent to Richard Roe, Regional Director, National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Atlantic Bluefin Tuna Regulations."

FOR FURTHER INFORMATION CONTACT: Kathi Rodrigues, Atlantic Bluefin Tuna Policy Analyst, Plan Administration Branch, NMFS Northeast Regional Office, 508-281-9324.

SUPPLEMENTARY INFORMATION: The regulations that govern the Atlantic bluefin tuna fishery at 50 CFR Part 285 provide at § 285.24(a), that the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), on or about September 1, may adjust the daily catch limit for the General category to a maximum of three giant Atlantic bluefin tuna (ABT) per day per vessel.

This provision was first implemented in 1984 (49 FR 29796, July 24, 1984). At that time, the availability of ABT to fishermen was much higher than it has been the last 3 years. An objective of the ABT regulations is to provide an opportunity to fish for ABT to as many participants in the fishery as possible. To foster this objective, the catch limit was set at one ABT per day per vessel for the General category. A multiple catch limit would have resulted in an early attainment of the quota and closure of the fishery due to the relatively greater availability of ABT and the ability of a small number of experienced and successful participants in the fishery to catch large numbers of these fish. The September 1 date was chosen because most of the occasional participants in the fishery would have finished their fishing for the season by that date. After September 1, there was no compelling reason to keep the daily catch limit at one ABT per day if a sufficient portion of the quota remained.

The circumstances of the fishery have changed dramatically since the daily catch limit was first implemented. In 1988, only a little over one-half of the quota for the General category was harvested. NOAA has concluded that the daily catch limit was a factor in not harvesting the quota. Since the purpose of the catch limit is to allow for the maximum use of the quota while ensuring that the season remains open from June to October, a more flexible approach to adjusting the daily catch limit seems appropriate. This rule would remove the reference to the September 1 date in the regulation, and allow the Assistant Administrator to adjust the daily catch limit upward or downward at any time during the season as circumstances warrant.

In 1988, NMFS received a petition from a number of harpoon fishermen to ban the use of spotter aircraft in all but the Purse Seine category. (Banning the use of spotter aircraft in the Purse Seine category would essentially prevent the harvest of the quota for that category.) A meeting was held with representatives of the harpoon fishermen to explore the issue. They complained that the proliferation of spotter aircraft, particularly in the Harpoon Boat category, was changing the traditional nature of the fishery. On March 31, 1988, NMFS published a notice (53 FR 10415) soliciting comments on the petition.

Many comments were received, the majority of which supported the ban. A meeting was also held with a number of spotter pilots who presented information in rebuttal to the information provided by the harpoon fishermen.

The Harpoon Boat category was established in 1980 based upon information supplied by a small number of harpoon fishermen. They presented evidence that supported the conclusion that there was a small traditional fishery that should be segregated from the General category. The harpoon fishery could only be pursued under optimal weather and sea conditions since one had to be able to see the fish to make an accurate strike with a harpoon. The fact that there are a limited number of days during the season that permit the fish to be harvested by this technique supports a multiple daily catch allowance. Applying the General category daily catch limit could severely hamper the ability of traditional harpooners to take even the small quota that was set aside for the Harpoon Boat category.

After a review of all the information presented on this issue, NMFS believes that it is in the best interests of the fishery to prohibit the use of spotter aircraft to aid in the harvest of ABT, except in the Purse Seine category. NMFS believes that the growing use of these aircraft changes the traditional nature of both the Harpoon Boat and General categories since optimal weather and sea conditions are less important for harpooners fishing with the aid of aircraft. The use of these aircraft, together with the large increase of vessels permitted in the Harpoon Boat category, has greatly accelerated the rate at which their quota is caught. NOAA believes that a number of boats are attracted to this category because of the lack of a daily catch limit and the possibility of enhancing their catch through the use of an airplane.

NMFS is also concerned that the use of aircraft will concentrate the catch among fewer vessels. Information provided to NMFS indicates that roughly 80 percent of the 1988 catch in the Harpoon Boat category was harvested by the 4% of the vessels in the category assisted by aircraft.

In addition to fewer individuals catching most of the fish, an increased catch rate may cause a premature closure of the fishery, precluding many others a reasonable opportunity to fish. There is also concern that the increased pressure represented by the use of these aircraft will cause the fish to sound, thereby decreasing opportunity for their capture by traditional methods.

The use of spotter aircraft also poses safety concerns. NMFS has an obligation to manage this fishery through regulations that do not jeopardize the safety of participants. This concern is currently reflected in the requirement that only a vessel that is capable of traveling to and from the fishing grounds under its own power is eligible for a permit. To allow otherwise, given the value of these fish and the distance of the fishing grounds from shore, could induce someone to take an unreasonable risk. The use of a spotter aircraft allegedly attracts other vessels. This could prove dangerous if several vessels converge in the area. The experience that gave rise to the requirement that vessels had to stay 100 yards (91.4 m) or more from the corkline of a purse seine net fishing for ABT provides ample evidence of the risk to vessel and personal safety represented by several boats attempting to harvest the same fish.

Consequently, NMFS believes that a ban on the use of spotter airplanes is necessary to ameliorate the problems cited above.

Classification

The Northeast Regional Office is preparing an environmental assessment for this rule. You may obtain a copy of the environmental assessment from the address listed above. The Under Secretary for Oceans and Atmosphere, NOAA (Under Secretary) has determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The proposed action will not have a cumulative effect on the economy of $100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse effects on competition, employment, investment, productivity, innovation, or competitiveness of U.S. based enterprises are anticipated.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposal to ban the use of aircraft to assist ABT fishing operations will not affect a substantial number of entities because only about ten of the estimated 10,000 vessels in the fleet use aircraft at the present time. Therefore, approximately ten pilots will be affected as well. These pilots generally derive the bulk of their employment from the swordfish, menhaden, and bluefin tuna purse seine fisheries. Because the use of aircraft in the bluefin tuna handgear fisheries is a new development, the degree of investment has not been such that a substantial economic impact would result. However, it does appear that the introduction of spotter aircraft may have a significant impact on the traditional fishermen who are being displaced. Furthermore, the purpose of the proposed change in the daily catch limit time frame is to relieve a regulatory restriction on the participants in the General category to allow full use of the quota. Removing the reference date for a decision to adjust the daily catch limit will allow the Assisant Administrator to set the daily catch limit to reflect the availability of the fish during a fishing season. As a result, a regulatory flexibility analysis was not prepared.

The Under Secretary determined that this proposed rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: July 11, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 285 is proposed to be amended as follows:

PART 285—ATLANTIC TUNA FISHERIES

1. The authority citation for Part 285 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*

2. Section 285.24 is amended by revising paragraph (a) to read as follows:

§ 285.24 Catch limits.

(a) From June 1, vessels permitted in the General category under § 285.21(b) may catch only one giant Atlantic bluefin tuna per day per vessel. The Assistant Administrator may adjust the daily catch rate limit to a maximum of three giant Atlantic bluefin tuna per day per vessel based on a review of dealer reports, daily landing trends, availability of the species on the fishing grounds, and any other relevant factors, to provide for maximum utilization of the quota. The Assistant Administrator will publish a notice in the **Federal Register** of any adjustment in the allowable daily catch limit made under this paragraph. Operators of vessels permitted in the General category may

possess giant Atlantic bluefin tuna in an amount not to exceed a single day's catch as allowed by the daily catch limit in effect at that time.

* * * * *

3. Section 285.31 is amended by adding a new paragraph (a)(30) to read as follows:

§ 285.31 Prohibitions.

(a) * * *

(30) Use an aircraft as an aid to fish for Atlantic bluefin tuna, unless a valid permit for the Purse Seine category has been issued to the vessel.

* * * * *

[FR Doc. 89-16639 Filed 7-14-89; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 54, No. 135
Monday, July 17, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Science and Education Competitive Research Grants Office Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the Cooperative State Research Service announces the following meeting:

Name: Science and Education Competitive Research Grants Office Advisory Committee

Date: August 29, 1989

Time: 9:00 a.m. to 5:00 p.m.

Place: U.S. Department of Agriculture, Room 338-C, Aerospace Building, 901 D Street, SW., Washington, DC 20250

Type of Meeting: Open to the public. Persons may participate in the meeting as the time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

Purpose: To advise the Secretary of Agriculture with respect to the research to be supported, priorities to be adopted and emphasized, and the procedures to be followed in implementing those programs of research grants to be awarded competitively.

Contract Persons for Agenda and More Information: Dr. William D. Carlson, Associate Administrator, Office of Grants and Programs Systems, Cooperative State Research Service, U.S. Department of Agriculture, Room 324-A Administration Building, Washington, DC 20250, Telephone 202-475-5720.

Done at Washington, DC this 30th day of June, 1989.

John Patrick Jordan,

Administrator.

[FR Doc. 89-16676 Filed 7-14-89; 8:45 am]

BILLING CODE 3410-09-M

Soil Conservation Service

Eloy Watershed, AZ

AGENCY: Soil Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Procedures (190-GM Part 410); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Eloy Watershed, Pinal County, Arizona.

FOR FURTHER INFORMATION CONTACT: Charles R. Adams, State Conservationist, Soil Conservation Service, 201 East Indianola Ave., Suite 200, Phoenix, AZ 85012, telephone (602) 241-2248.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Charles R. Adams, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project. The project concerns a plan to conserve groundwater. The planned works of improvement include reorganization of inadequate irrigation systems, measuring devices, field turnouts, and accelerated technical assistance for irrigation water management.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Barton E. Ambrose, Assistant State Conservationist for Programs.

No administrative action or implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

"(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)"

Charles R. Adams,

State Conservationist.

Date: June 29, 1989.

[FR Doc. 89-16586 Filed 7-14-89; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-805]

Final Determination of Sales at Less Than Fair Value; Martial Arts Uniforms From Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that martial arts uniforms from Taiwan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of martial arts uniforms from Taiwan as described in the "Suspension of Liquidation" section of this notice. The ITC will determine, within 45 days of the publication of this notice, whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

EFFECTIVE DATE: July 17, 1989.

FOR FURTHER INFORMATION CONTACT: Mary Martin or Mary S. Clapp, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW. Washington, DC 20230; telephone: (202) 377-2830 or 377-3965, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that martial arts uniforms from Taiwan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930,

as amended, 19 U.S.C. 1673d(a) (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Subsequent to our April 24, 1989, affirmative preliminary determination (54 FR 18562, May 1, 1989), the following events have occurred. In letters dated May 22, 1989, the Department advised the respondents, Taiwan Hsin Sheng Industrial Co. (Hsin Sheng) and Kuang Fong Industrial Co., Ltd. (Kuang Fong), that we continued to find significant deficiencies in their submissions, and that we, therefore, would use the best information otherwise available in accordance with section 776(c) of the Act, 19 U.S.C. 1677e(c), for purposes of our final determination. The petitioner requested a public hearing and submitted a case brief on May 19, 1989. On May 31, 1989, the Department held a public hearing. No comments were submitted by Kuang Fong. Comments submitted by Hsin Sheng were untimely and were, therefore, returned pursuant to § 353.38(a) of the Commerce Department regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.38(a)).

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS) as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS item numbers. The HTS item numbers are provided for convenience and U.S. Customs Service purposes. Because the U.S. Customs Service advised us that the HTS subheadings for these articles as set forth in our preliminary determination were incomplete, we have amended our listing to conform to the HTS subheadings for these products as designated by the U.S. Customs Service. The ITC concurs with these changes. The written description remains dispositive.

The products covered by this investigation include the following articles: martial arts uniforms for men, boys, women, girls and infants. The uniforms consist of tops, pants and belts and are imported from Taiwan separately or as ensembles. They are made of cotton or of man-made fibers, either ornamented or not ornamented. They are suitable for wearing while practicing all forms of martial arts, including but not limited to: Judo, Karate, Kung Fu, Tae Kwon Do, Ninja, Ninjutsu, Hakama, Tai Chi, Jujitsu and Hapkido. The products covered by this investigation are currently provided for under the following revised listing of HTS subheadings: 6203.22.1000, 6203.23.0060, 6203.23.0090, 6203.29.2030, 6203.29.2060, 6204.22.1000, 6204.23.0040, 6204.23.0060, 6204.29.2020, 6204.29.2050, 6203.42.4015, 6203.42.4045, 6203.43.4010, 6203.43.4020, 6203.49.2010, 6203.49.2030, 6204.62.4020, 6204.62.4050, 6204.63.3510, 6204.63.3530, 6204.69.2510, 6204.69.2530, 6209.20.3000, 6209.20.5035, 6209.20.5045, 6209.20.5050, 6209.30.2000, 6209.30.3020, 6209.30.3030, 6209.30.3040, 6209.90.2000, 6209.90.3020, 6209.90.3030, 6209.90.3040, 6211.32.0060, 6211.32.0080, 6211.33.0040, 6211.33.0060, 6211.42.0050, 6211.42.0080, 6211.43.0060, 6211.43.0090, 6217.10.0010, and 6217.10.0030.

Period of Investigation

The period of investigation (POI) was June 1, 1988, through November 30, 1988.

Fair Value Comparisons

To determine whether sales of martial arts uniforms from Taiwan to the United States were made at less than fair value, we compared the United States price to the foreign market value. Because the respondents failed to provide adequate responses to the Department's questionnaire, we used the best information otherwise available for determining the estimated dumping margins in this determination pursuant to section 776(c) of the Act, 19 U.S.C. 1677e(c). In this case, the best information otherwise available was the information contained in the petition.

As detailed below, substantial omissions and deficiencies in both respondents' responses precluded any reasonable price-to-price comparisons. Neither respondent provided an adequate product concordance, nor any cost information pertaining to adjustments for differences in merchandise. Furthermore, Hsin Sheng did not provide warranty or guarantee expenses, although it admitted shipping "free goods" to replace defective goods. In addition, Hsin Sheng's credit expenses were reported incorrectly. Kuang Fong failed to provide credit expenses and packing costs.

United States Price

United States price was based on the United States price information provided in the petition.

Foreign Market Value

Foreign market value was based on home market prices provided in the petition.

Verification

Because of the substantial omissions and deficiencies contained in both respondents' responses, verification was not conducted.

Interested Party Comments

Comment 1

Petitioner alleges that the Department's final determination should be based on a dumping margin higher than the 8.50 percent best information available rate used in the preliminary determination. Petitioner argues that:

1. The period of investigation did not address the time when the most serious dumping occurred;

2. Department statistics indicated that the actual export prices to the U.S. of products covered by TSUSA item numbers 384.5000 and 381.6300 were lower than the estimates in the petition; and

3. The third country selling price and the constructed value approaches yielded dumping margins greater than the 8.50 percent used in the preliminary determination.

DOC Position

We have determined that it is appropriate to continue using the 8.50 percent rate used for the preliminary determination as the best information otherwise available for the final determination. This rate is the one petitioner used in its petition as the basis for its less than fair value allegation.

With respect to petitioner's first point, the Department followed its normal practice of using a six-month POI which ended with the month in which the petition was filed. This definition of the POI is in accordance with § 353.42(b)(1) of the Department's regulations. The fact that more significant less than fair value sales may have occurred one or two years earlier is not relevant to our investigation because we base our determinations on current data. Therefore, since no evidence was presented indicating that the POI was unrepresentative due to a lack of sales activity, we have followed our normal practice.

With respect to petitioner's second point, we do not consider it appropriate to base the BIA dumping margin on the Department's statistics. Our position is based on the fact that the statistics on which petitioner relies are derived in part from entry documents submitted by importers to the U.S. Customs Service. In this case the petitioner has made certain allegations that Hsin Sheng has not accurately reported the prices of its goods on invoices which were filed with the U.S. Customs Service for duty assessment purposes. Hsin Sheng has also indicated to the Department that prices it lists on invoices, which are submitted to the U.S. Customs Service, may differ from the actual prices charged for such merchandise. This matter has been referred to the U.S. Customs Service for appropriate action. Because the U.S. Customs data are aggregated by product category, questionable data from one exporter throws into question the aggregate product statistics compiled by U.S. Customs. Under these circumstances, the Department does not find that this alternative presents us with the best information available upon which to make margin calculations.

Finally, with respect to petitioner's third point, we did not use these alternative approaches in view of our preference for the use of home market prices in accordance with section 773(a)(1) of the Act, 19 U.S.C. 1677b(a)(1) and § 353.46 of the Department's regulations. Accordingly, we have based our BIA rate on the estimate of the home market price given in the petition.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of martial arts uniforms from Taiwan that are entered or withdrawn from warehouse for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of martial arts uniforms from Taiwan exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Hsin Sheng	8.50
Kuang Fong	8.50
All Others	8.50

ITC Notification

In accordance with section 735(d) of the Act, 19 U.S.C. 1673d(d), we have notified the ITC of our determination. In addition, pursuant to section 735(c)(1) of the Act, 19 U.S.C. 1673d(c)(1), we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that material injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on martial arts uniforms from Taiwan entered, or withdrawn from warehouse, for consumption, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act, 19 U.S.C. 1673d(d).

July 10, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-16699 Filed 7-14-89; 8:45 am]

BILLING CODE 3510-DS-M

University of Wisconsin; Decision for Duty-Free Entry of Scientific Instrument; Correction

In FR Doc. 89-15778 at page 28458 in the **Federal Register** of July 6, 1989, Docket Number: 89-159R2 appearing in the last paragraph of column 3 should read Docket Number: 87-159R2.

Leonard E. Mallas,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 89-16700 Filed 7-14-89; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of Coverage of Export Licensing Requirements for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the People's Republic of China

July 12, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs exending coverage of export licensing requirements.

EFFECTIVE DATE: August 1, 1989.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Coverage of the current export licensing system between the Governments of the United States and the People's Republic of China is being extended to include merged Categories 330/630 and part-Categories 863-S and 863-O, produced or manufactured in China and exported from China on and after August 1, 1989.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 49 FR 7264, published on February 28, 1984; and 52 FR 28741, published on August 3, 1987.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 12, 1989.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on February 23, 1984, as further amended on July 29, 1987, by the Chairman, Committee for the Implementation of Textile Agreements. You were directed to prohibit entry and withdrawal from warehouse for consumption in the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile

products, produced or manufactured in the People's Republic of China for which the Government of the People's Republic of China has not issued an appropriate export license.

Effective on August 1, 1989, the directive of February 23, 1984 is amended further to include cotton and man-made fiber textile products in merged Categories 330/630 and silk blend and other vegetable fiber textile products in part-Categories 863-S [1] and 863-O [2], produced or manufactured in China and exported from China on and after August 1, 1989.

Shipments entered or withdrawn from warehouse on or after August 1, 1989 and exported on and after August 1, 1989 which are not accompanied by an appropriate export license shall be denied entry and a visa waiver must be obtained.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-16698 Filed 7-14-89; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mauritius

July 12, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: July 19, 1989.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: *Authority.* Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain cotton and man-made fiber textile products are being increased variously, for carryover and swing.

[1] In Category 863-S, only HTS number 6307.10.2015.

[2] In Category 863-O, all HTS numbers except 6307.10.2015 in Category 863-S.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 49584, published on December 8, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 12, 1989.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on September 20, 1988 by the Chairman, Committee for the Implementation of Textile Agreement. This directive concerns imports into the United States of certain cotton and man-made fiber textiles and textile products, produced or manufactured in Mauritius and exported during the twelve-month period which began on October 1, 1988 and extends through September 30, 1989.

Effective on July 19, 1989, the directive of Sept. 20, 1988 is amended to include the following adjusted limits, as provided under the terms of the current bilateral agreement between the Governments of the United States and Mauritius:

Category	Adjusted 12 mo limit [1]
340/640	419,880 dozen.
340-Y/640-Y [1]	259,575 dozen.
347/348	510,857 dozen.
331	165,334 dozen pair.

[1] In Categories 340-Y/640, only tariff numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050, and 6205.20.2060 in Category 340-Y; and 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060 in Category 640-Y.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-16696 Filed 7-14-89; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

July 12, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 19, 1989.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-8791. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: *Authority.* Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories in Group II are being adjusted, variously, for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 49345, published on December 7, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 12, 1989.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 2, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and

exported during the period which began on January 1, 1989 and extends through December 31, 1989.

Effective on July 19, 1989, the directive of December 2, 1988 is amended to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement of November 18, 1982, as amended and extended:

Category levels in group II	Adjusted 12-mo. limit [1]
301	223,403 kilograms.
611	1,161,418 square meters.
619/620	9,337,744 square meters.
633/634/635	1,618,481 dozen of which not more than 1,051,316 dozen shall be in Categories 633/634 and not more than 801,437 dozen shall be in Category 635.
642	699,877 dozen.
644	1,553,344 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-16697 Filed 7-14-89; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Membership of the Commission's Performance Review Board

AGENCY: Commodity Futures Trading Commission.

ACTION: Membership Change of Performance Review Board.

SUMMARY: In accordance with the Office of Personnel Management guidance under the Civil Service Reform Act, notice is hereby given that the following employees will serve as members of the Commission's Performance Review Board.

Chairperson: Donald L. Tendick, Acting Executive Director. Members: Andrea Corcoran, Director, Division of Trading and Markets; Dennis Klejna, Director, Division of Enforcement; Joanne Medero, General Counsel.

DATE: This action was effective July 10, 1989.

ADDRESS: Commodity Futures Trading Commission, Office of Personnel, Room 202, 2033 K Street NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Stacy L. Dean, Director, Office of Personnel, Commodity Futures Trading Commission, Room 202, 2033 K Street NW., Washington, DC 20581, (202) 254-3275.

SUPPLEMENTARY INFORMATION: This action which changes the membership of the Board supersedes the previously published Federal Register Notice in Vol. 54, No. 97, page 22003, Monday, May 22, 1989, as corrected in Vol. 54, No. 111, page 24935, Monday, June 12, 1989.

Issued in Washington, DC, on July 11, 1989.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 89-16635 Filed 7-14-89; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

June 21, 1989.

The USAF Scientific Advisory Board Human Systems Division Advisory Group will meet on 2-3 August 1989 from 8:00 AM to 5:00 PM at Williams AFB, AZ.

The purpose of meeting is to review scientific basis/strategy of the ACME program, the science base supporting the development of low-level flight simulators and their training effectiveness, the state-of-the-art in part tasks trainers, and the development status of helmet-mounted displays. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-16687 Filed 7-14-89; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before August 16, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: July 12, 1989.

Carlos U. Rice,

Director, for Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: REVISION

Title: Application for Grants and Contracts Under the Veterans Education Outreach Program (VEOP)

Frequency: Annually
Affected Public: Non-profit organizations
Reporting Burden:
Responses: 600
Burden Hours: 1800
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This application is used to award grant funds to institutions of higher education under the Veterans Education Program. IHE's apply for funds to provide special services to Veterans.

[FR Doc. 89-16651 Filed 7-14-89; 8:45 am]

BILLING CODE 4000-01-M

Cancellation of Meeting

AGENCY: National Advisory Council on Indian Education.

ACTION: Cancellation of Meeting.

SUMMARY: Notice is hereby given of the cancellation of the meeting of the Executive Committee of the National Advisory Council on Indian Education on July 17-18, 1989, in La Jolla, California, as published in the **Federal Register** on July 10, 1989, in Vol. 54, No. 130 at page 28632.

Date: July 13, 1989.

Signed at Washington, DC.

Jo Jo Hunt,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 89-16839 Filed 7-14-89; 8:45 am]

BILLING CODE 4000-01-M

Office of Postsecondary Education

Availability of Amendments to the 1988-89 National Defense and Perkins (National Direct) Student Loan Program Directory of Designated Low-Income Schools

AGENCY: Department of Education.

ACTION: Notice of availability of amendments to the 1988-89 National Defense and Perkins (National Direct) Student Loan Program Directory of low-income schools.

SUMMARY: Institutions and borrowers participating in the National Defense, National Direct and Perkins Loan Programs and other interested persons are advised that they may obtain information regarding the amendments to the 1988-89 National Defense and Perkins (National Direct) Student Loan Program Directory of Designated Low-Income Schools (Directory). The amendments identify changes in the list of schools that qualify borrowers for teacher cancellation benefits under each of the loan programs.

DATE: The amendments to the Directory are currently available.

ADDRESS: Information concerning specific schools listed in the amendments to the Directory may be obtained from Ronald W. Allen, Campus-Based Programs Branch, Division of Program Operations and Systems, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 4651, ROB-3), Washington, DC 20202-5453. Telephone (202) 732-3730.

FOR FURTHER INFORMATION CONTACT: The amendments to the Directory are available at (1) each institution of higher education participating in the Perkins Loan Program (2) each of the fifty-seven (57) State and Territory Departments of Education, and (3) each of the major Perkins Loan billing services, and (4) the U.S. Department of Education.

SUPPLEMENTARY INFORMATION: The Secretary of Education published a notice in the **Federal Register** on November 21, 1988 (53 FR 46920) that the 1988-89 National Defense and Perkins (National Direct) Student Loan Program Directory was available. The Secretary has revised the Directory due to the opening and closing of schools, school name changes, and the need for other corrections. These revisions are included in the amendments to the Directory.

The procedures for selecting the schools that qualify borrowers for cancellation benefits are described in the National Defense, National Direct and Perkins Loan Program regulations at 34 CFR 674.53 and 674.54. The Secretary has determined that for the 1988-89 academic year full-time teaching in the schools set forth in the amendments to the Directory and the Directory qualifies a borrower for cancellation.

The Secretary is providing the amendments to the Directory to each institution participating in the Perkins Loan Program. Borrowers and other interested parties may check with their lending institutions, the appropriate State Department of Education, regional offices of the Department of Education, or the Office of Student Financial Assistance of the Department of Education concerning the identity of qualifying schools for the 1988-89 academic year.

The Office of Student Financial Assistance will retain, on a permanent basis, copies of past, current, and future amendments and the Directories.

(Catalog of Federal Domestic Assistance Number 84.037; National Defense/Direct and Perkins Student Loan Cancellations)

Dated: July 11, 1989.

James B. Williams,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 89-16603 Filed 7-14-89; 8:45 am]

BILLING CODE 4000-01-M

Office of Migrant Education

"Chapter 1" Migrant Education Coordination Program for State Educational Agencies; Funding Priorities

AGENCY: Departmennt of Education.

ACTION: Notice of Proposed Funding Priorities.

SUMMARY: The Secretary of Education proposes funding priorities for fiscal year 1990 for the Chapter 1—Migrant Education coordination Program for State Educational Agencies (SEAs). Section 1203 of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 (ESEA), authorizes the Secretary to award grants or contracts to SEAs (in consultation with and with the approval of the States) for activities to improve interstate and intrastate coordination of migrant education programs and projects. This notice of proposed funding priorities is based on consultations with State Directors of Migrant Education concerning priorities for grants. Except for Priority 1, which is required by statute (section 1203(a)(3)), the funding priorities proposed in this notice would implement the process of consultation and approval required by section 1203(a)(1) of ESEA. To ensure effective use of program funds, the Secretary proposes to select from among these program priorities to fund the areas of greatest need for fiscal year 1990. A separate competition will be held for each priority selected.

DATE: Comments must be received on or before August 16, 1989.

ADDRESS: All comments concerning these proposed funding priorities should be addressed to Dr. John F. Staehle, Director, Office of Migrant Education, Office of Elementary and Secondary Education, U.S. Departmentr of Education, 400 Maryland Avenue, SW., (Room 2145, FOB #6) Washington, DC 20202-6135).

FOR FURTHER INFORMATION CONTACT: Dustin W. Wilson, Jr., Office of Migrant Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 2145, FOB #6), Washington, DC 20202-6135. Telephone: (202) 732-4760.

SUPPLEMENTARY INFORMATION: The purpose of this program is to provide Federal financial assistance to SEAs for projects designed to improve the interstate and intrastate coordination of educational and related services to migratory children and their families. The project or projects addressing the final priorities established, whether support of the project or projects is by grant, cooperative agreement, or contract, must reflect and illustrate the establishment or improvement of interstate and intrastate coordination activities that will be useful in improving services for migratory children. Priorities are proposed for projects designed to: (1) Develop a national system for secondary education credit exchange and accrual; (2) continue the same kinds of coordination services currently provided to migrant education programs and projects located in each of the three migrant streams; (3) identify and facilitate innovative coordination activities between local projects; (4) coordinate and improve educational opportunities and achievement through preschool programs; (5) coordinate and improve parental involvement; (6) coordinate and improve educational opportunties in summer programs; and (7) increase and improve the multi-district and multi-state identification of currently migratory children.

Proposed Priorities

In accordance with the Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.105(c)(3), the Secretary proposes to give absolute preference to applications for grants or cooperative agreements that respond to the final priorities.

Priority 1 is required by statue and may be funded by grant or contract. The publication of the other proposed priorities in this notice neither binds the Department of Education to fund projects in any or all of these areas nor prevents it from funding these projects by contract. Moreover, the publication of these priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements. The final priorities will be selected based on the response to this notice, available funds, and other departmental considerations. Final priorities will be announced in the **Federal Register**.

Priority 1.—Establishing a National Program For a System of Credit Exchange and Accrual

Under this priority, as required by statute, the Department will fund a project to develop and establish a national program of credit exchange and accrual to help currently migratory students meet high school graduation requirements and receive their high school diplomas.

The project would build upon the existing Migrant student Record Transfer System (MSRTS) and findings from recent studies on secondary education for migratory students, and would take into account the varying SEA and local educational agency (LEA) regulations and policies concerning credit accrual, credit transfer, and graduation requirements.

Priority 2.—Coordinating Special Assistance Services to Migrant Education Programs and Projects

Under this priority, the Department proposes to make awards to three SEAs, one from each migrant stream, to: (1) carry out activities designed specifically to facilitate the continuity of educational programs provided across several school districts to the same migratory children; and (2) arrange for the coordinated provision of technical assistance services needed by migant education programs and projects throughout the migrant stream. No less than one third of the funds awarded under these SEA coordination projects can be used for either (1) or (2).

Since sections 1436(d) and 1456 of ESEA, as amended, place specific statutory responsibilities for the provision of technical assistance to all Chapter 1 programs and projects on the Chapter 1 Technical Assistance Centers (TACs) and the Rural Technical Assistance Centers (R-TACs), the actual technical assistance services under these SEA coordination awards must be provided through subcontracts with the TACs or R-TACs.

The technical assistance services to be procured from the TACs and R-TACs under these SEA coordination awards must be for services "above and beyond" those available to Chapter 1 migrant education programs and projects under the general operations of the TACs and the R-TACs.

In terms of coordinating the provision of technical assistance services to migrant education programs and projects, each SEA receiving an award under this priority would be required to: (i) Determine the technical assistance needs of migrant education programs and projects in the migrant stream; (ii) negotiate and administer subcontracts with one or more of the TACs and R-TACs to provide appropriate technical assistance services of the types, amounts, duration, and timing necessary to meet the identified needs of the client migrant education programs and projects; and (iii) monitor the services provided by the TACs and R-TACs and the satisfaction of SEAs and LEAs with those services.

Priority 3.—Identifying, Enhancing, and Facilitating Coordination Activities to Achieve Improved Delivery of Services to Currently Migratory Children

Under this priority, the Department proposes to fund one or more projects to examine the need for, or if necessary establish, demonstration projects of innovative methods to be used by staff at the local operating agency project level to improve the coordination services across school district and State boundaries. The project or projects would document: (1) Exemplary techniques for achieving effective coordination of instruction and support services for currently migratory children; and (2) the project effectiveness, costs, and cost-effectiveness of providing these services.

Priority 4—Improving Coordination of Educational Programs and Opportunities for Preschool Migratory Children

Under this priority, the Department would fund a coordination project to: (1) Identify problems and issues concerning the coordination among States or areas of each State of programs and services for currently migratory preschool children; (2) locate and describe programs that effectively serve those preschool children and their families; (3) organize workshops to develop training materials and procedures; and (4) disseminate information that will improve coordination among States and agencies serving preschool migratory children. The project may also examine the impact that section 1202 of Chapter 1 of the ESEA, which places greater emphasis on services to currently migratory preschool children, has upon existing State and local migrant education projects and practices.

Priority 5—Improving Coordination of Educational Opportunities for Migratory Children Through Parental Involvement

Under this priority, the Department would select an SEA to operate a project that would improve educational opportunities of migratory children through a greater interstate or intrastate

involvement of their families with State and local agencies. The project would: (1) Examine parental involvement in current State migrant education programs; (2) identify exemplary practices; (3) develop training materials based upon effective practices to be disseminated to State and local personnel involved in the education of migratory children; and (4) organize workshops to offer training in techniques for improving the coordination of parental activities.

Priority 6—Improving Coordination of Educational Programs and Opportunities for Migratory Children in Summer Programs

Under this priority, the Department would fund a project that would focus on identifying issues related to coordinating migrant education summer programs with regular school programs, and improving communications between sending and receiving States in which migratory children enroll in summer programs. The project would: (1) Examine the varieties of summer migrant programs in terms of their duration, costs, intensity, and methods of instruction; (2) analyze the short- and long-term effects selected summer migrant education programs have upon continued schooling and graduation from high school; (3) organize workshops to develop training materials to facilitate improved coordination among SEAs and LEAs serving the same children in receiving and sending schools; and (4) analyze the additional costs of serving migratory children in various types of summer programs compared to costs of serving those children in regulatory school programs.

Priority 7—Improving Coordination of the Quantity and Quality of Interstate and Intrastate Identification and Recruitment of Currently Migratory Children

Under this priority, the Department proposes to fund a project that would build upon previous identification and recruitment (I&R) studies, MSRYS data, and ongoing practices in I&R. The project would be designed for the purpose of more rapidly identifying migrant families as they move from school district to school district. Presently, States and their operating agencies use different types of notification systems to inform potential receiving school districts that new migrant families will either be arriving or that they may have already arrived in the receiving school districts. Identifying and assessing the different notification systems used would be the major task of this project. Following assessment of the systems, recommendations will be made to the SEAs and the Department concerning which system or systems work best and which are the ones most easily replicated. Criteria to assess the efficacy of the notification systems should include: (a) Frequency of identification and recruitment of previously unidentified currently interstate migratory children in the receiving State; and (b) the number of currently migratory children that each notification system enables to be enrolled in two or more school districts during a 12-month period.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to these proposed priorities will be available for public inspection, during and after the comment period, in Room 2145, Federal Office Building #6, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Program Authority: 20 U.S.C. 2783.

(Catalog of Federal Domestic Assistance No. 84.144—Chapter 1—Migrant Education Coordination Program for State Educational Agencies (formerly Migrant Education—Interstate and Intrastate Coordination Program))

Dated: June 21, 1989.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 89-16602 Filed 7-14-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Determination To Establish Secretarial Panel for the Evaluation of Epidemiologic Research Activities of the Department of Energy

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), I hereby certify that establishment of the Secretarial Panel for the Evaluation of Epidemiologic Research Activities of the Department of Energy (SPEERA) is necessary and in the public interest in connection with the performance of duties imposed on the Department of Energy (DOE) by law. This determination follows consultation with the Committee Management Secretariat of the General Services Administration, pursuant to 41 CFR Subpart 101-6.10.

The purpose of the Panel will be to provide to the Secretary of Energy, an independent evaluation of the DOE's epidemiology program and the appropriateness, effectiveness, and overall quality of DOE's epidemiologic research activities.

The Panel will be composed of distinguished individuals with expertise in the areas of public health, occupational health, epidemiology, research standards, ethical and legal aspects of research, organized labor, and other areas as necessary to obtain a fairly balanced membership on the Panel.

Further information regarding this Advisory Committee may be obtained from Elinor C. Donnelly (202-586-3448).

Issued in Washington, DC, on: July 12, 1989.

Howard H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 89-16695 Filed 7-14-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TQ89-3-48-000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

July 10, 1989.

Take notice that ANR Pipeline Company ("ANR"), on June 30, 1989, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet to be effective August 1, 1989.

Second Revised Twenty-First Revised Sheet No. 18

ANR states that the purpose of the instant filing is to implement ANR's quarterly PGA rate adjustment pursuant to section 15 of the General Terms and Conditions of ANR's Tariff.

Second Revised Twenty-First Revised Sheet No. 18 reflects a 4.30¢ per dekatherm ("dth") decrease in the gas cost component of the commodity rate of ANR's CD-1/MC-1 Rate Schedules, a decrease of $0.002 in the monthly D-1 demand rate and an increase of .09¢ in the D-2 demand rate applicable to the CD-1/MC-1 Rate Schedules. The instant filing further reflects a decrease in ANR's one-part rate applicable to Rate Schedule SGS-1 of 3.83¢ per dth.

ANR states that copies of the filing were served upon all of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.214 and § 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16626 Filed 7-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-63-000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 10, 1989.

Take notice that on June 30, 1989, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Sixteenth Revised Sheet No. 47
Sixteenth Revised Sheet No. 48
Second Revised Sheet No. 51
Second Revised Sheet No. 92a

Carnegie states that pursuant to the Purchased Gas Adjustment in Article 22 of its FERC Gas Tariff, it proposes to adjust its rates effective September 1, 1989, to reflect a $.0086 per Dth decrease in the commodity components of its LVWS, LVIS and CDS Rate Schedules. There is no change in the demand component of Carnegie's rates. Carnegie also proposes to implement a $.0160 surcharge to the commodity components of its sales rates in order to recover the $311,829 balance accrued (as of April 30, 1989) in its current deferred subaccount.

Carnegie's filing indicates that its actual costs of purchased gas exceeded the projected costs by more than three percent during the second test interval established at 18 CFR 154.306. Carnegie explains that this discrepancy resulted because of a rate increase implemented by Carnegie's pipeline supplier—Texas Eastern Transmission Corporation. Carnegie requests authority to recover, through the surcharge mechanism, the amount that exceeded 103 percent of the projections.

Carnegie also proposes to revise Sheet No. 51 of its tariff to clarify that the calculation used to determine the D-2 charge for Carnegie's LVWS rate schedule includes a load factor computation. On a related matter, Carnegie requests waiver of the Commission order of May 31, 1989, in Carnegie Docket No. TQ89-4-63-000, to the extent that Carnegie is required credit of 231,000 Dth to its current deferral subaccounts. Carnegie explains that the 231,000 Dth figure is derived by calculating the LVWS rate schedule billing determinants without reference to the load factor computation discussed above. As an alternative to waiver at this time, Carnegie requests that the Commission defer requiring Carnegie to credit the difference until after the Commission has acted on rehearing of this matter in Docket No. TQ89-4-63-000.

In addition, Carnegie proposes to switch from "LIFO" to a "rolling weighted average inventory costing" method of storage accounting. This charge is reflected in proposed Second Revised Sheet No. 92a, which is included in Carnegie's filing.

Carnegie also requests limited waiver of the Commission's December 1, 1988 order in Carnegie Docket No. RP88-127-001 and TQ88-1-63-000, *et al.* to the extent that Carnegie is required to include demand charges in its pricing of storage inventory. As explained in more detail in the filing, Carnegie requests waiver of the demand charge requirement until the Commission acts on the settlement now pending in Docket No. RP88-131-000.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16609 Filed 7-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-202-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 10, 1989.

On June 30, 1989, CNG Transmission Corporation ("CNG") submitted for filing as part of its FERC GAS Tariff Original Volume No. 1, the following tariff sheets:

First Revised Sheet No. 1
Ninth Revised Sheet No. 31
  Superseding Substitute Eighth Revised Sheet No. 31
Fifth Revised Sheet No. 32
  Superseding Substitute Fourth Revised Sheet No. 32
First Revised Sheet No. 93
  Superseding Original Sheet No. 93
Original Sheet Nos. 94 through 99

These tariff sheets are being issued to implement CNG's new Rate Schedule GSS-II which was approved by the Commission's APEC Order issued June 7, 1989, in Docket No. CP87-5-002, *et al.* (*Texas Eastern Transmission Corporation*, Docket No. CP87-5-003, *et al.*, 47 FERC ¶ 61,341).

CNG has requested that this filing become effective as of July 1, 1989.

CNG states that copies of the filing were served upon all of its Volume No. 1 customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules and Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests shall be filed on or before July 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16610 Filed 7-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-232-001, RP87-47-004, MT88-5-002

Phillips Gas Pipeline Co.; Filing Revised Tariff Sheets

July 10, 1989.

Take notice that on June 30, 1989, Phillips Gas Pipeline Company ("PGPL") tendered for filing pursuant to Part 154 and to Section 250.16(d)(2) of the Federal Energy Regulatory Commission's ("Commission") regulations and pursuant to the Commission's orders at Docket Nos. RP88-232-000 and RP87-47-001 revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1.

PGPL states that the tendered Fourth Revised Sheet No. 6 reflects its reduced transportation rates and charges approved by the Commission effective January 1, 1989 in the settlement at Docket No. RP88-232-000.

PGPL states that the tendered First Revised Sheet Nos. 11 and 18 reflect its understanding of the underdelivery penalty under PGPL's Rate Schedules FT-1 and IT-1 as approved by the Commission at Docket RP87-47-001. PGPL has requested an effective date of July 31, 1989 for First Revised Sheet Nos. 11 and 18.

PGPL states that the tendered revised tariff sheet Nos. 4A, 4B, 4C, 4D and 38 update its "Standards of Conduct" for changes in personnel facility addresses and telephone numbers with a requested effective date of July 31, 1989.

PGPL states that the tendered revised tariff sheet Nos. 2, 4, 7, 8A, 10, 14, 17, 36, 46, 54, 55 and 55A provide current names, addresses and telephone numbers and correct typographical errors with a requested effective date of July 31, 1989.

Copies of the filing were served upon the company's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16611 Filed 7-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-22-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 10, 1989.

Take notice that CNG Transmission Corporation ("CNG"), on June 30, 1989, pursuant to Section 4 of the Natural Gas Act, Part 154.309 of the Commission's regulations (18 CFR Part 154.309) and Section 12 of the General Terms and Conditions of CNG's tariff, filed the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

Ninth Revised Sheet No. 31
First Revised Sheet No. 150
Original Sheet No. 159-A
Original Sheet No. 159-B
First Revised Sheet No. 160
Alternate First Revised Sheet No. 150
Alternate Original Sheet No. 159-A
Alternate Original Sheet No. 159-B
Alternate First Revised Sheet No. 160.

The filing constitutes CNG's annual PGA to become effective on September 1, 1989.

Copies of the filing were served upon CNG's sales customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All motions or protests should be filed on or before July 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16613 Filed 7-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-24-000]

Equitrans, Inc.; Proposed Changes in FERC Gas Tarif

July 10, 1989.

Take notice that Equitrans, Inc. (Equitrans) on June 30, 1989, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective September 1, 1989:

Ninth Revised Sheet No. 10
Eighth Revised Sheet No. 14
Third Revised Sheet No. 34
First Revised Sheet No. 177C

Equitrans states that the filing is made pursuant to § 154.305 of the Commission's regulations and is in conformity to the provisions of Order 483, as amended.

Equitrans states that the change in rates results from the application of its Purchased Gas Cost Adjustment provisions in section 19 of its General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 1.

The sales rates set forth on Rate Schedule PLS reflect an overall increase of $.0227 per dekatherm (Dth) in the Commodity Rate. The current purchased gas adjustment to Rate Schedules PLS is an increase of $.2273 per Dth and the Surcharge Adjustment is a decrease of $.2046 per Dth. This change results in a current estimated average cost of gas in this filing of $2.2755 per Dth and a Total Commodity Charge of $2.5087 per Dth, including GRI and ACA.

The current adjustment to D(1) Purchased Gas Costs for Rate Schedule PLS reflects an increase of $.0246 per Dth. The Surcharge Adjustment is a decrease of $.1046 per Dth. These changes result in an overall D(2) demand cost of $2.8044 per Dth.

The current adjustment to D(2) Purchased Gas Costs for Rate Schedule PLS reflects an decrease of $.0016 per Dth. The Surcharge Adjustment is a decrease of $.0004 per Dth. These changes result in an overall D(2) demand cost of $.0688 per Dth.

The current purchased gas adjustment to Rate Schedule GS-1 is a decrease of $1.3524 per Dth. The Surcharge Adjustment is a decrease of $.3344 per Dth. This change results in a current estimated average cost of gas in this filing of $2.9794 per Dth and a Total Commodity Charge of $2.8477 per Dth, including GRI and ACA.

The current purchased gas adjustment to Rate Schedule ISS is an increase of $.2265 per Dth. This change results in a current estimated weighted average cost of gas in this filing of $2.2755 per Dth, a Total Maximum Rate for sales of $2.8761 per Dth, including GRI and ACA, and a Total Minimum Rate for sales of $2.4860 per Dth, including GRI and ACA.

Equitrans also proposes to track standby charges as billed to Equitrans as approved by the Commission in *Texas Eastern Transmission Corporation* Docket No. RP85-177, *et al.* Equitrans states that said proposed tariff sheet First Revised Sheet No. 177C is in accordance with the Commission's decision in *CNG Transmission Corp.*, 45 FERC 61,361 (1988) and *Carnegie Natural Gas Company*, Docket No. TQ89-4-63-000.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commission and upon each party on the service list of Docket CP88-676-000.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection. All such motions or protests should be filed on or before July 31, 1989.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16614 Filed 7-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-44-003]

Florida Gas Transmission Co.; Tariff Filing

July 10, 1989.

Take notice that Florida Gas Transmission Company (FGT) on June 30, 1989, tendered for filing with the Federal Energy Regulatory Commission (Commission) Substitute Sheet No. 57R of FGT's First Revised Volume No. 1, to be effective June 1, 1989.

The above referenced tariff sheet is being filed to comply with the directive of the OPPR-Gas Pipeline Rate Adjustments Branch in a letter to FGT dated June 16, 1989 in Docket No. RP89-44-001. In such letter, FGT was required to file revised tariff language addressing interest in refunds. The instant tariff sheet has been amended to include such language.

FGT states that a copy of its filing has been served under the rate schedules affected by this filing and the interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211 (1988). All such protests should be filed on or before July 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16605 Filed 7-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-11-51-000]

Great Lakes Gas Transmission Co.; Proposed Changes in F.E.R.C. Gas Tariff Purchased Gas Adjustment Clause Provisions

July 10, 1989.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on June 30, 1989 tendered for filing Twenty-Third Revised Sheet Nos. 57(i) and 57(ii), and Tenth Revised Sheet No. 57(v) to Great Lakes Gas Transmission Company's FERC Gas Tariff, First Revised Volume No. 1.

The above tariff sheets reflected revised PGA rates for the months of August, September and October 1, 1989 pursuant to the quarterly PGA filing requirements of § 154.304(a)(2) of the Commission's Regulations. Great Lakes submits that the subject tariff sheets reflect the latest estimated gas cost as provided to Great Lakes by its sole supplier of natural gas, TransCanada PipeLines Limited ("TransCanada"). These pricing arrangements were the result of contract renegotiation between each of Great Lakes' resale customers and the supplier.

Great Lakes requested the above tariff sheets become effective August 1, 1989.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room

Lois D. Cashell,

Secretary.

[FR Doc. 89-16606 Filed 7-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-7-5-000]

Midwestern Gas Transmission Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

July 10, 1989.

Take notice that on June 30, 1989, Midwestern Gas Transmission Company (Midwestern) filed Thirty-Ninth Revised Sheet No. 6 to Original Volume No. 1 of its FERC Gas Tariff, to be effective August 1, 1989.

Midwestern states that the current Purchased Gas Cost Rate Adjustments reflected on Thirty-Ninth Revised Sheet No. 6 consist of a 10.49 cents per dekatherm adjustment applicable to the gas component of Midwestern's sales rates, and a 10 cents per dekatherm adjustment applicable to the Demand D-1 component.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers on its Northern System and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a petition to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the

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Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16622 Filed 7-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-47-000]

MIGC, Inc.; Proposed Purchased Gas Adjustment Rate Change

July 10, 1989

Take notice that on June 30, 1989, MIGC, Inc. (MIGC) tendered for filing Fifty-Third Revised Sheet No. 32 to its FERC Gas Tariff Original Volume No. 1. MIGC states that the purpose of this proposed tariff change is to submit its fourth quarterly purchased gas cost adjustment (PGA) filing pursuant to the Commission's revised PGA regulations and the revised PGA provisions of MIGC's tariff, as approved in Docket No. RP88-143-000. The revised tariff sheet is proposed to become effective August 1, 1989.

Fifty-Third Revised Sheet No. 32 included in the filing reflects a quarterly PGA increase of $.0045 per MMBtu. MIGC states that the proposed quarterly PGA increase of $.0045 reflects a current adjustment of $.0045 per MMBtu to be effective August 1, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before July 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for the public.

Louis D. Cashell,

Acting Secretary.

[FR Doc. 89-16615 Filed 7-14-89; 8:45 pm]

BILLING CODE 6717-01-M

[Docket No. RP89-49-005]

National Fuel Gas Supply Corp.; Compliance of Filing

July 10, 1989.

Take notice that on June 30, 1989, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, in compliance with the Commission's Letter Order issued June 20, 1989, the following tariff sheets:

First Revised Volume No. 1

Substitute Fifty Revised Sheet No. 1
Substitute Second Revised Sheet No. 1-A
Second Revised Sheet No. 14
First Revised Sheet No. 64

First Revised Volume No. 2

Fourth Revised Sheet No. 282
Substitute Seventh Revised Sheet No. 302
Substitute Fifth Revised Sheet No. 321
Substitute Fifth Revised Sheet No. 341
Substitute Fourth Revised Sheet No. 538

The compliance filing reflects the cancellation of the T-2 Rate Schedule, the elimination of the variable costs included in the minimum bill provision of the X Rate Schedules, and the effect on rate base of the deferred taxes related to company owned production property.

Copies of National's filing were served on National's jurisdictional customers and on the interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1988)]. All such protests should be filed on or before July 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16616 Filed 7-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-5-000]

Mid Louisana Gas Co.; Compliance of Filing

July 10, 1989.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on July 3, 1989, tendered for filing as part of First Revised Volume No. 1 of its FERC Gas Tariff the following Tariff Sheet to become effective September 1, 1989:

Sixty-Ninth Revised Sheet No. 3a

Superseding

Sixty-Eight Revised Sheet No. 3a

Mid Louisiana states that the purpose of the filing of Sixty-Ninth Revised Sheet No. 3a is to reflect a $.0760 per MCF increase in its current cost of gas and a positive surcharge of $.0820 per MCF.

This filing is being made in accordance with section 19 of Mid Louisiana's FERC Gas Tariff. Copies of this filing have been mailed to Mid Louisiana's Jurisdictional Customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene of Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 of the and 1.10). All such motions or protests should be filed on or before July 31, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16625 Filed 7-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-42-003]

Pacific Offshore Pipeline Co.; Compliance Filing of Proposed Change in FERC Gas Tariff Rate

July 10, 1989.

Take notice that Pacific Offshore Pipeline Company ("POPCO") on June 23, 1989, tendered for filing the following proposed charge to its FERC Gas Tariff, Original Volume No. 1, to be effective May 24, 1989:

Fourth Revised Sheet No. 5
Second Revised Sheet No. 6
First Revised Sheet No. 39(a)

POPCO states that the Tariff sheet has been filed in compliance with Ordering Paragraph C of the Commission's Order issued May 24, 1989 in Docket Nos. RP88-42-000 and RP88-42-002 (47 FERC 61,255). POPCO is filing for a reduction in its rate charged to its sole customer, Southern California Gas Company, under Rate Schedule G-1.

Copies of the filing were served on POPCO's suppliers, customer, and the interstate State Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1988)]. All such protests should be filed on or before July 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16619 Filed 7-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-201-000]

Questar Pipeline Co.; Proposed Changes in FERC Gas Tariff

July 10, 1989.

Take notice that on June 30, 1989, Questar Pipeline Company tendered for filing the following tariff sheets to revise Original Volume No. 1 of its FERC Gas Tariff:

Twenty-second Revised Sheet No. 12
Alternate Twenty-second Revised Sheet No. 12
Third Revised Sheet No. 12-A
First Revised Sheet No. 17-C
Original Sheet No. 17-D
Original Sheet No. 17-E

Questar Pipeline states that these tariff sheets are being filed to implement the direct billing and recovery of certain take-or-pay buyout-buydown costs assigned and billed to it by Northwest Pipeline Corporation (Northwest) pursuant to Northwest's filing in Docket No. RP89-137-000. Questar Pipeline states that the fixed-charge buyout/buydown obligation assigned to it by Northwest is $3,112,468, and proposes to recover this amount and applicable carrying charges by a fixed monthly charge applicable to sales service provided to Mountain Fuel Supply Company under Questar Pipeline's Schedule CD-1. Questar Pipeline has requested that the filing be made effective July 1, 1989.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motion or protests should be filed on or before July 17, 1989. Protests will be considered by the commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16627 Field 7-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-203-000]

Southern Natural Gas Co.; Proposed Changes to FERC Gas Tariff

July 10, 1989.

Take notice that on June 30, 1989, Southern Natural Gas Company (Southern) tendered for filing the following revised sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1, with proposed effective dates of August 1, 1989:

Seventh Revised Sheet No. 8B
Original Sheet No. 8B.1
Second Revised Sheet No. 11H.1
Original Sheet No. 11H.2
Second Revised Sheet No. 15A.1
Original Sheet No. 15A.2
Second Revised Sheet No. 26A.1
Original Sheet No. 26A.2

The proposed tariff sheets implement revised penalties for purchases by Southern's OCD and OCDL customers in excess of D-2 nominations. For all authorized purchases in excess of D-2 nominations, Southern proposes to charge its applicable AO rate. For unauthorized purchases in excess of D-2 nominations, Southern proposes to charge its applicable AO rate plus $5.00 per 1,000 cubic feet for all volumes taken in excess of 100% and up to 104% of D-2 nominations and $10.00 per 1,000 cubic feet for all volumes taken in excess of 104% of D-2 nominations.

Copies of Southern's filing were served upon all of Southern's jurisdictional purchasers, shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (Sections 385.214, 385.211). All such motions or protests should be filed on or before July 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16612 Filed 7-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-58-000]

Texas Gas Pipe Line Corp.; Notice of Proposed Changes in FERC Gas Tariff

July 10, 1989.

Take notice that on June 30, 1989, Texas Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 (Tariff), the below listed tariff sheet to be effective August 1, 1989.

Twenty-Sixth Revised Sheet No. 4a

TGPL states that the purpose of the instant filing is to reflect rate adjustments pursuant to section 12 of the General Terms and Conditions of TGPL's Tariff (Purchased Gas Cost Adjustments). Specifically, Twenty-Sixth Revised Sheet No. 4a reflects a 0.66¢/Mcf net increase in the purchase gas rate to 176.64¢/Mcf yielding a proposed total rate of 206.11¢/Mcf (at 14.65 psia).

Copies of the filing were served upon TGPL's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16628 Filed 7-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-3-18-000]

Texas Gas Transmission Corp.; Tariff Filing

July 10, 1989.

Take notice that on June 30, 1989, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Second Revised Sheet No. 14D
Second Revised Sheet No. 14E
Second Revised Sheet No. 14F
Second Revised Sheet No. 14G

Texas Gas states that this filing is made to reflect the allocation of Tennessee Gas Pipeline Company's revised take-or-pay demand surcharge during the six-month amortization period July 1 through December 31, 1989 to Texas Gas's downstream customers. The filing complies with a September 7, 1988 order in this docket which allows Texas Gas to track any modifications which the Commission may approve. Texas Gas reserves the right to revise the filing as necessary to reflect any modifications made by the Commission or as required by any appellate court. The proposed effective date of the tariff sheets listed above is August 1, 1989.

Copies of this filing have been served upon Texas Gas' jurisdictional and nonjurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 2.11 and 2.14 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16607 Filed 7-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-16-000]

Texas Gas Transmission Corp. Proposed Changes in FERC Gas Tariff

July 10, 1989.

Take notice that on June 30, 1989 Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Eighteenth Revised Sheet No. 10
Eighteenth Revised Sheet No. 10A

Texas Gas states that these tariff sheets reflect changes in purchased gas costs pursuant to the Quarterly Rate Adjustment provision of the Purchased Gas Adjustment clause of Texas Gas's FERC Gas Tariff and are proposed to be effective August 1, 1989. Texas Gas further states that the proposed tariff sheets reflect a commodity rate increase of $.1280 per MMBtu, a D-1 demand rate increase of $.01 per MMBtu, and a D-2 demand rate increase of $.0007 per MMBtu from the rates set forth in the quarterly PGA filed March 31, 1989 (Docket No. TQ89-2-18).

Copies of the filing were served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Secs. 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16623 Filed 7-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 10, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on June 30, 1989 tendered for filing as a part of its FERC Gas Tariff, six copies each of the following tariff sheets:

Fifth Revised Volume No. 1

Substitute Fifteenth Revised Sheet No. 50
Substitute Eleventh Revised Sheet No. 50A
Substitute Eleventh Revised Sheet No. 50B
Substitute Eleventh Revised Sheet No. 50C
Substitute Eleventh Revised Sheet No. 50D
Substitute Eleventh Revised Sheet No. 51
Substitute Seventh Revised Sheet No. 51A
Substitute Seventh Revised Sheet No. 51B
Substitute Seventh Revised Sheet No. 51C
Substitute Seventh Revised Sheet No. 51D

Original Volume No. 2

Substitute Thirty-fifth Revised Sheet No. 235
Substitute Twenty-seventh Revised Sheet No. 241
Substitute Thirty-fifth Revised Sheet No. 322

Texas Eastern states that the above tariff sheets are being issued pursuant to section 23, Purchased Gas Cost Adjustment, and section 27, Electric Power Cost (EPC) Adjustment, contained in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff. Texas Eastern states that the changes proposed consist of:

(1) Small PGA increases of $.008/dth in the Demand-1 component of Texas Eastern's sales rates and $.0014/dth in the Demand-2 component and a decrease of $.0206/dth in the commodity component pursuant to Section 23 of Texas Eastern's tariff based upon a reduced total projected cost of gas purchased from producers and pipeline suppliers.

(2) Changes in rates for sales and transportation services pursuant to Section 27 of Texas Eastern's tariff to reflect the projected annual electric power cost incurred in the operation of transmission compressor stations with electric motor prime movers for the 12 months beginning August 1, 1989 and to reflect the EPC surcharge which is designed to clear the latest balance in the Deferred EPC account as of April 30, 1989.

Texas Eastern states that this filing constitutes Texas Eastern's regular quarterly filing to be effective August 1, 1989 pursuant to the Commission's regulations governing PGA filings as promulgated by its Order No. 483. In compliance with § 154.308(b)(2) of the Commission's Regulations, a report containing detailed computations which clearly show the derivation of the current adjustment to be applied to Texas Eastern's effective rates is attached and enclosed in 9-track computer tape format as prescribed by FERC Form No. 542-PGA (Revised) for formal filing with the Commission.

Texas Eastern states that this filing also constitutes Texas Eastern's semiannual tracking of changes in electric power costs pursuant to section 27 of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff.

Texas Eastern states that the gas quantity determinants used in this Quarterly PGA filing are based upon a telephone market survey by Texas Eastern of its major customers, which was conducted at the end of June, 1989.

In this survey Texas Eastern requested projections by the customers of their purchases from Texas Eastern for the three-month period, August 1, 1989-October 31, 1989. To the extent a customer provided Texas Eastern a volume-specific projection, Texas Eastern has utilized that volume. In the event the customers provided a volume range, Texas Eastern has utilized a volume projection between the high and low volume provided by the customer.

The proposed effective date of the above tariff sheets is August 1, 1989.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16624 Filed 7-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-99-002]

Transwestern Pipeline Company; Proposed Changes in FERC Gas Tariff

July 10, 1989.

Take notice that Transwestern Pipeline Company (Transwestern) on June 30, 1989 tendered for as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Effective July 1, 1989

4th Revised Sheet No. 48
Original Sheet No. 83
Original Sheet No. 84
Original Sheet No. 85
Original Sheet No. 86
Original Sheet No. 86A

Effective October 1, 1989

2nd Revised Sheet No. 7
1st Revised Sheet No. 13
1st Revised Sheet No. 16
1st Revised Sheet No. 19
4th Revised Sheet No. 20A
4th Revised Sheet No. 22

The above listed tariff sheets are being filed to comply with the Commission's order issued May 11, 1988 in Docket No. CP88-99-000 (Order). In its Order of May 11, 1988, the Commission issued to Transwestern a Certificate of Public Convenience and Necessity authorizing it to institute a gas inventory charge (GIC) subject to various conditions. On June 30, 1989 Transwestern notifed the Commission that it would accept the GIC Certificate as conditioned. The above listed tariff sheets have been filed to comply with the conditions in the Commission's Order.

Transwestern, herein, respectfully requests that the Commission grant any and all waivers of its rules, regulations and orders as may be necessary so as to permit the above listed tariff sheets to become effective on the dates requested.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1988)]. All such protests should be filed on or before July 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16608 Filed 7-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-30-000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

July 10, 1989.

Take notice that Trunkline Gas Company (Trunkline) on June 30, 1989, tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1:

Seventy-First Revised Sheet No. 3-A

The proposed effective date of this revised tariff sheet is September 1, 1989.

Trunkline states that the revised tariff sheet reflects a commodity rate increase of 12.91¢ per Dt. This increase includes:

(1) a 10.27¢ per Dt increase in the projected purchased gas cost component; and

(2) a 2.64¢ per Dt increase in the surcharge to recover the Current Deferred Account Balance at April 30, 1989 and related carrying charges.

Trunkline further states that it is also submitting an alternate revised tariff sheet. Trunkline has filed an offer of settlement in Docket No. RP88-180-000 which was certified by the Presiding Administrative Law Judge on June 22, 1989. Article II of the Stipulation and Agreement calls for Trunkline to submit to the Commission at its request implementation of certain revised interim tariff sheets by June 29, 1989. Upon Commission approval of these, subject to certain express conditions, those tariff sheets are to become effective July 1, 1989. In the event of the issuance of a Commission order approving those tariff sheets in conformity with Article II of the Stipulation and Agreement before September 1, 1989, the proposed effective date of this tariff filing, it would be appropriate to use the alternate tariff sheet. It is being submitted solely for those purposes. Accordingly, Trunkline submitted for filing six (6) copies of the following alternate revised sheet to its FERC Gas Tariff, Original Volume No. 1, which reflects the Docket No. RP88-180-000 settlement:

Alternate Seventy-First Revised Sheet No. 3-A

The proposed effective date of the alternate revised tariff sheet is September 1, 1989.

Trunkline states that this filing is made in accordance with Section 154.305 (Annual PGA filing) of the Commission's Regulations and pursuant to Section 18 (Purchase Gas Adjustment Clause) of Trunkline's FERC Gas Tariff, Original Volume No. 1 to reflect the changes in Trunkline's jurisdictional rates effective September 1, 1989.

Trunkline states that copies of its filing have been served on all affected jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available

for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16616 Filed 7-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-160-006]

Trunkline Gas Co.; Interim Settlement Rate Compliance Filing

July 10, 1989.

Take notice that Trunkline Gas Company (Trunkline) on 1989, tendered for filing revised tariff sheets to its FERC Gas Tariff Original, Volume No. 1 as listed in the filing.

Trunkline states that this filing is in compliance with the Stipulation and Agreement dated March 21, 1989, as amended June 12, 1989 and certified to the Commission on June 22, 1989.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1988)]. All such protests should be filed on or before July 18, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16621 Filed 7-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-160-002]

Trunkline Gas Co.; Compliance Filing

July 10, 1989.

Take notice that Trunkline Gas Company (Trunkline) on June 30, 1989, tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1:

First Substitute Sixty-Ninth Revised Sheet No. 3-A

In addition, Trunkline filed a detailed explanation of its seasonal rate proposal and demand cost allocation with supporting workpapers.

Trunkline states that this filing is in compliance with Ordering Paragraphs (C) and (D) of the Commission's Order dated May 31, 1989.

Trunkline further states that copies of its filing have been served on all parties, jurisdictional customers and appropriate state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1988)]. All such protests should be filed on or before July 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16620 Filed 7-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-43-000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 10, 1989.

Take notice that Williams Natural Gas Company (WNG) on June 30, 1989 tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Revised Thirteenth Revised Sheet No. 6

First Revised Twelfth Revised Sheet No. 7

A magnetic tape is also being filed in compliance with FERC Form No. 542-PGA.

WNG states that pursuant to the Purchased Gas Adjustment in Article 21 of its FERC Gas Tariff, it proposes to increase its rates effective August 1, 1989, to reflect a $.0281 per Dth increase in the Cumulative Adjustment, a $.0002 per Dth increase in transportation fuel rates and a $.0005 per Dth increase in gathering fuel rates.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC. 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16617 Filed 6-14-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3617-1]

Sole Source Aquifer Designation for the North Haven Island Aquifer System, Maine

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In response to a petition from the State of Maine, notice is hereby given that the Regional Administrator, Region I, of the U.S. Environmental Protection Agency (EPA) has determined that the North Haven Island Aquifer System satisfies all determination criteria for designation as a sole source aquifer, pursuant to section 1424(e) of the Safe Drinking Water Act. The following findings were made in accordance with the designation criteria: North Haven Island Aquifer System is the principal source of drinking water for the residents of North Haven Island; there are no vialbe alternative sources of sufficient supply; the boundaries of the designated area and project review area have been reviewed and approved by EPA; and, if contamination were to occur, it would pose a significant public health hazard and a serious financial burden to the State of Maine. As a result of this action, all federal financially assisted projects proposed for construction or modification to take place on North Haven Island will be subject to EPA review to minimize the risk of ground water contamination from these projects.

DATES: This determination shall be promulgated for purposes of judicial review at 1:00 p.m. Eastern time two weeks after the date of publication in the **Federal Register.**

ADDRESSES: The data upon which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region I, JFK Federal Building, Water Management Division, WGP 2113, Boston, MA 02203. The designation petition submitted may also be inspected at the Maine State Planning Office in Augusta, Maine.

FOR FURTHER INFORMATION CONTACT: Robert E. Mendoza, Chief of the Ground Water Management Section, EPA Region I, JFK Federal Building, WGP-2113, Boston, MA 02203, 617-565-3600.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1424(e) of the Safe Drinking Water Act (42 U.S.C.) 300f, 300f-3(e), Pub. L. 93-523) states:

> If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register.** After the publication of any such notice, no commitment for federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

On June 3, 1988, EPA received a petition from the State of Maine requesting the designation of the North Haven Island Aquifer System as a sole source aquifer. EPA determined that the petition fully satisfied the Completeness Determination Checklist. A public meeting was then scheduled and held on March 7, 1989, on North Haven Island, Maine, in accordance with all applicable notification and procedural requriements. A one month comment period followed the meeting.

II. Basis for Determination

Among the factors considered by the Regional Administrator as part of the detailed review and technical verification process for designating an area under Section 1424(e) were:

(1) Whether the aquifer is the sole or principal source of drinking water for the defined aquifer service area, and that the volume of water from an alternative source is insufficient to replace the petitioned aquifer; (2) whether contamination of the aquifer would cause significant hazard to public health; and (3) whether the boundaries of the aquifer, its recharge area and streamflow source area, the project designation area, and the project review area are appropriate. On the basis of technical information available to EPA at this time, the Regional Administrator has made the following findings in favor of designating the North Haven Island Aquifer System as a sole source aquifer:

1. The North Haven Island Aquifer System is the principal source (directly or indirectly through recharge to surface water) of drinking water to all of the residents within the service area.

2. There exists no reasonable alternative drinking water source or combination of sources of sufficient quantity to supply the designated service area.

3. EPA has found that the State of Maine has appropriately delineated the boundaries of the aquifer recharge area, project designation area and project review area.

4. Although the quality of the Island's ground water is considered adequate, it is vulnerable to contamination due to the Island's geological characteristics and possible landuse activities. Because of this, contaminants can be rapidly introduced into the aquifer system from many sources with minimal assimilation.

Since the aquifer serves as the principal source of drinking water for the residents, a serious contamination incident could pose a significant public health hazard.

III. Description of the North Haven Island Aquifer System, Designated Area and Project Review Area

The North Haven Island Aquifer System is a 10.5 square mile ocean island located in the mid-coastal region of Maine, approximately 10 miles east of Rockport, the nearest mainland town. The aquifer system is comprised of an inter-connected bedrock aquifer. The aquifer material consists of basaltic volcanics known as the North Haven Formation. The Island has relief of 155 feet, with an irregular topographic profile. Some of the residents are served directly by ground water. In addition, a pond on the island serves as the public drinking water supply. This pond is hydrologically connected to the island's aquifer system and a majority of the pond's water supply is derived from ground water. The aquifer is, therefore, the principal source of drinking water for the island.

For the North Haven Island Aquifer System the boundary of the designated area coincides with the boundary of the watershed basin. The watershed boundary is the surface water divide based on topography, which corresponds to the ground water divide. The designated area, project review area and service area are conterminous, encompassing all of North Haven Island.

IV. Information Utilized in Determination

The information utilized in this determination includes: the petition submitted to EPA Region I by the State of Maine; a letter of support reflecting public comment. This information is available to the public and may be inspected at the address listed above.

V. Project Review

EPA Region I is working with the federal agencies most likely to provide financial assistance to projects in the project review area. Interagency procedures and Memoranda of Understanding have been developed through which EPA will be notified of proposed commitments by federal agencies to projects which could contaminate the North Haven Island Aquifer System. EPA will evaluate such projects and, where necessary, conduct an in-depth review, including soliciting public comments when appropriate. Should the Regional Administrator determine that a project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health, no commitment for federal financial assistance may be entered into. However, a commitment for federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to ensure that it will not contaminate the aquifer.

Included in the review of any federal financially assisted project will be the coordination with state and local agencies and the project's developers. Their comments will be given full consideration and EPA's review will attempt to complement and support state and local ground water protection measures. Although the project review process cannot be delegated, EPA will rely to the maximum extent possible on any existing or future state and/or local control measures to protect the quality of ground water in the North Haven Island Aquifer System.

VI. Summary and Discussion of Public Comments

No comments were received by EPA that opposes the SSA proposal. One letter of support was received. Comment during the public meeting focused upon how designation can afford additional protection of the Island's water resources.

Dated: June 21, 1989.

Paul G. Keough,

Acting Regional Administrator.

[FR Doc. 89-16680 Filed 7-14-89; 8:45 am]

BILLING CODE 8560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 and/or § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-200265

Title: Gulf Services, Inc. Shareholders Agreement

Parties:

Cavalair Corporation (Machinery Rentals, Inc. and Biehl and Company)

Cooper/T. Smith Stevedoring Company, Inc. (T. Smith & Sons, Inc.)

I.T.O. Corporation

Kerr Steamship Co., Inc.

Strachan Shipping Company

Filing Party: John P. Meade, Esq., O'Connor and Hannan, 1919 Pennsylvania Avenue NW., Suite 800, Washington, DC 20006-3483

Synopsis: The proposed Agrement authorizes the parties, each of which owns 20% of the shares of Gulf Services, Inc., to: (1) Establish rates, charges and competitive practices; (2) publish marine terminal tariffs; (3) enter into agreements concerning marine terminal facilities/services, marine terminal conference agreements, and/or stevedoring agreements; (4) own and/or lease and operate cranes, lift machines, trucks and other equipment; and (5) operate (pursuant to lease, assignment, purchase or asset acquisition) any marine terminal facilities and operations within the Port of Lake Charles or which are owned by any public port commission on the Mississippi River.

By order of the Federal Maritime Commission.

Dated: July 11, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-16630 Filed 7-14-89; 8:45 am]

BILLING CODE 6730-01-M

Filing and Effective Date of Agreement

The Federal Maritime Commission hereby gives notice that on July 6, 1989, the following agreement was filed with the Commission pursuant to section 5, Shipping Act of 1984, and was deemed effective that date to the extent it constitutes an assessment agreement as described in paragraph (d) of section 5, Shipping Act of 1984.

Agreement No.: 224-000083-004

Title: Master Contract Assessment Agreement

Parties

New York Shipping Association, Inc.

Carriers Container Council, Inc.

Boston Shipping Association, Inc.

International Longshoremen's Association, AFL-CIO

Atlantic Coast District, ILA, AFL/CIO

South Atlantic & Gulf Coast District, ILA AFL-CIO

South Atlantic Employers Negotiating Committee Southeast Florida Employers Association

Council of North Atlantic Shipping Associations

Synopsis: The Agreement provides for an extension of the contract term to November 30, 1990. It also provides for changes in certain work rules as well as a $0.45 per hour increase in the contribution to fringe benefit plans. The Agreement establishes a committee to study various issues including wages, hours, shift systems and fringe benefit contributions. The Agreement will become effective when local contracts are agreed to in each port or port district but not earlier than October 1, 1989.

By Order of the Federal Maritime Commission.

Dated: July 11, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-16229 Filed 7-14-89; 8:45 am]

BILLING CODE 6730-01-M

Cancellation of Inactive Domestic Offshore Tariffs

By notice served May 25, 1989 and published in the **Federal Register** on June 1, 1989, the Federal Maritime Commission notified 71 carriers of its intent to cancel their individual tariffs 30 days thereafter, in the absence of showing of good cause why such tariffs should not be canceled.

The notice was served on the 71 carriers by certified mail on May 25, 1989; and 22 carriers replied to the Notice requesting that their tariffs remain active. Accordingly, the tariffs of the 22 carriers listed in Attachment A that responded to the notice will be retained in the Commission's active files.

It is misleading to the public, potentially unfair to competing carriers, and an unreasonable administrative burden on the Commission's staff for inactive tariffs to remain on file. Accordingly, the tariffs of the 49 carriers listed in Attachment B to this notice that failed to respond to the May 25, 1989 notice will be canceled. It should be noted that certain information items on the attached lists may not apply to a particular carrier and are, therefore, designated not applicable (NA).

Now, therefore it is ordered, That the tariffs of the 49 carriers listed on Attachment B be canceled.

It is futher ordered, That a copy of this Notice be sent by certified mail to the last known address of the carriers listed in the attachments to this order.

It is further ordered, That this Notice be published in the **Federal Register.**

This Notice is issued pursuant to the authority delegated to the Director, Bureau of Domestic Regulation by Section 9.04 of Commission Order No. 1 (Revised), dated November 12, 1981.

Bryant L. VanBrakle,

Deputy Director, Bureau of Domestic Regulation.

Attachment A—Federal Maritime Commission Bureau of Domestic Regulation Office of Carrier Tariffs and Service Contract Operations

Carriers That Responded to the Notice of Intent To Cancel Inactive Tariffs

Acronym: Aalco Forwarding, Inc.
DBA Name: NA
Person Type: Household Goods Carrier
Street: 10983 Granada Lane
City: Overland Park
State: KS 66211
Country: United States of America
License No.: NA
Name No.: 007393

Acronym: Bekins International Lines, Inc.
DBA Name: NA
Person Type: Household Goods Carrier
Street: 320 Pine Avenue, Suite 800
City: Long Beach
State: CA 90801
Country: United States of America
License No.: NA
Name No.: 000358

Acronym: Burlington Northern Worldwide, Inc.
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 1420 E. Rochelle Blvd., Suite 200
City: Irving
State: TX 75039
Country: United States of America
License No.: NA
Name No.: 008213

Acronym: Caribbean Pacific Lines, Inc.
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 16807 So. Central Avenue
City: Carson
State: CA 90745
Country: United States of America
License No.: NA
Name No.: 002853

Acronym: Clipper Group Company
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 5716 West Manchester Avenue
City: Los Angeles
State: CA 90045
Country: United States of America
License No.: NA
Name No.: 007439

Acronym: F.W. Myers & Co., Inc.
DBA Name: Myers Maritime Division
Person Type: Ocean Common Carrier (Vessel Operating) Non-Vessel-Operating Common Carrier
Street: C/O The Myers Group 149-09 183rd Street, Second Floor
City: Jamaica
State: NY 11413
Country: United States of America
License No.: NA
Name No.: 005984

Acronym: Four Stars Forwarding
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 26046
City: San Diego
State: CA 92126
Country: United States of America
License No.: NA
Name No.: 007825

Acronym: G.F.C. Enterprises, Inc.
DBA Name: G.F.C Intermodal Container Line
Person Type: Non-Vessel-Operating Common Carrier
Street: 304 Barr Avenue
City: Woodmere
State: NY 11598
Country: United States of America
License No.: NA
Name No.: 008204

Acronym: Interstate International Inc.
DBA Name: NA
Person Type: Ocean Freight Forwarder (Independent) Household Goods Carrier Non-Vessel-Operating Common Carrier
Street: 5801 Rolling Road
City: Springfield
State: VA 22152
Country: United States of America
License No.: 2924
Name No.: 006461

Acronym: Island Express
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: G.P.O. Box 3433
City: San Juan
State: PR 00936
Country: United States of America
License No.: NA
Name No.: 006840

Acronym: Jilly Worldwide
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 814 6th Street
City: West Babylon
State: NY 11704
Country: United States of America
License No.: NA
Name No.: 007453

Acronym: P.R. Caribbean Consolidators, Inc.
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 13401
City: Santurce
State: PR 00908
Country: United States of America
License No.: NA
Name No.: 006851

Acronym: PB Marine Transport, Inc.
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: La Ceramica Industrial Park Calle Rosarito EF-1, P.O. Box 4837
City: Carolina
State: PR 00628
Country: United States of America
License No.: NA
Name No.: 007131

Acronym: Power Consultants International, Inc.
DBA Name: P.C.I.
Person Type: Non-Vessel-Operating Common Carrier
Street: 222 Grand Avenue
City: Englewood
State: NJ 07631
Country: United States of America
License No.: NA
Name No.: 007115

Acronym: Puerto Rico Freight System, Inc.
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 9061
City: Santurce
State: PR 00905
Country: United States of America
License No.: NA
Name No.: 006313

Acronym: Quality Transportation Company
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: Darlington Building, Suite 403 1007 Munoz Rivera Avenue
City: Rio Piedras
State: PR 00925
Country: United States of America
License No.: NA
Name No.: 006343

Acronym: San Lorenzo Express Corporation
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 2556 W. Fullerton Avenue
City: Chicago
State: IL 60647
Country: United States of America
License No.: NA
Name No.: 001069

Acronym: Trans-Caribbean Moving & Shipping Inc.
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 4466 Park Avenue
City: Bronx
State: NY 10457
Country: United States of America
License No.: NA
Name No.: 002233

Acronym: Transcaribe Freight Corp
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: Metropolitan Ind. Park Max St. Bldg. 3, 65th Infantry, K.M.13.1
City: Carolina
State: PR 00630
Country: United States of America
License No.: NA
Name No.: 000573

Acronym: Unicold Corporation
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 3140 Ualena Street
City: Honolulu
State: HI 96819

Country: United States of America
License No.: NA
Name No.: 008162

Acronym: V.I. Package Express
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: G.P.O. Box 3433
City: San Juan
State: PR 00936
Country: United States of America
License No.: NA
Name No.: 000002

Acronym: Valley Freight Systems, Inc.
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 925 Market Street
City: Patterson
State: NY 07513
Country: United States of America
License No.: NA
Name No.: 006701

Acronym: Agro Steamship Line, Inc.
DBA Name: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 555 N.E. 15th Street Suite PH B
City: Miami
State: FL 33142
Country: United States of America
License No.: NA.
Name No.: 006619

Acronym: Alaskan & Hawaiian Transport, Inc.
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 7123 S. 188th Street
City: Kent
State: WA 98032
Country: United States of America
License No.: NA
Name No.: 006886

Acronym: American Caribbean Transport, Inc.
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 3399
City: Humble
State: TX 77347
Country: United States of America
License No.: NA
Name No.: 006991

Acronym: Andrews Forwarders, Inc.
DBA Name: NA.
Person Type: Household Goods Carrier
Street: P.O. Box 1609
City: Norfolk
State: NE 70011
Country: United States of America
License No.: NA
Name No.: 008208

Acronym: Aquatran, Inc.
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 1801 Kingwood Drive
City: Kingwood
State: TX 77339
Country: United States of America
License No.: NA
Name No.: 000266

Acronym: Caribbean Best Services, Inc.
DBA Name: CBS
Person Type: Non-Vessel-Operating Common Carrier
Street: G.P.O. Box 4611
City: San Juan
State: PR 00936
Country: United States of America
License No.: NA.
Name No.: 000703

Acronym: Cooperativa Camioneros De Arrastre Del Muelle
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: Gildita Street—Building #5 La Ceramica Industrial Park
City: Carolina
State: PR 00628
Country: United States of America
License No.: NA
Name No.: 006827

Acronym: Crescent City Marine Ways & Dry Dock Co., Inc
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: Suite 1480 700 N.E. Multnomah St.
City: Portland
State: OR 97232
Country: United States of America
License No.: NA
Name No.: 000839

Acronym: Damco International Transportation & Dist Inc
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 168–01 Rockaway Boulevard, Suite 203–204
City: Jamaica
State: NY 11430
Country: United States of America
License No.: NA
Name No.: 008458

Acronym: Davidson Forwarding Company
DBA Name: NA
Person Type: Ocean Freight Forwarder (Independent) Household Goods Carrier
Street: 6600 Frankford Avenue
City: Baltimore
State: MD 21206
Country: United States of America
License No.: 1086
Name No.: 000919

Acronym: Diamond Freight Consolidators, Inc.
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 8432 N.W. 66th Street
City: Miami
State: FL 33166
Country: United States of America
License No.: NA
Name No.: 006756

Acronym: E & C Trucking Corporation of New Jersey
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 98 Poiner Street
City: Newark
State: NJ 07114
Country: United States of America
License No.: NA
Name No.: 006836

Acronym: Express Marine Transportation Company, Inc.
DBA Name: NA
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 699 N.W. 41ST
City: Seattle
State: WA 98107
Country: United States of America
License No.: NA
Name No.: 006829

Acronym: Florida International Forwarders, Inc.
DBA Name: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 8725 N.W. 18th Terrace
City: Miami
State: FL 33172
Country: United States of America
License No.: NA
Name No.: 007299

Acronym: Foreign Trade Export Packing Co.
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier Ocean Freight Forwarder (Independent)
Street: 1350 Lathrop St
City: Houston
State: TX 77020
Country: United States of America
License No.: 1344
Name No.: 004620

Acronym: Four Winds Forwarding, Inc
DBA Name: NA
Person Type: Household Goods Carrier
Street: 4275 Campus Point Court
City: San Diego
State: CA 92138
Country: United States of America
License No.: NA
Name No.: 000428

Acronym: Gieno-Hutchinson Incorporated
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier

Street: 13737 Artesia Blvd. Suite 204
City: Cerritos
State: CA 90701
Country: United States of America
License No.: NA
Name No.: 006832

Acronym: Gunilla Express, Inc.
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 7318 N.W. 79th Terrace
City: Miami
State: FL 33166
Country: United States of America
License No.: NA
Name No.: 005895

Acronym: Hawaii American Shipping Company
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 218
City: Saugus
State: CA 91350
Country: United States of America
License No.: NA
Name No.: 002597

Acronym: Hoyer (USA) Inc.
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 136 Central Ave.
City: Clark
State: NY 07066
Country: United States of America
License No.: NA
Name No.: 006889

Acronym: IML Freight, Inc.
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 30277
City: Salt Lake
State: UT 84125
Country: United States of America
License No.: NA
Name No.: 008206

Acronym: Island Shipping Lines, Ltd.
DBA Name: NA
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 1026 Cabras Highway, Suite 110
City: Piti
State: GU 96925
Country: United States of America
License No.: NA
Name No.: 006084

Acronym: J. J. Systems
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: Quintas De H–55
City: Dorado
State: PR 00646
Country: United States of America
License No.: NA
Name No.: 006841

Acronym: Jupiter Steamship Corp.
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 1080
City: San Juan
State: PR 00902
Country: United States of America
License No.: NA
Name No.: 006842

Acronym: Kwik Serv Foods, Inc.
DBA Name: C & H Foods Co.
Person Type: Non-Vessel-Operating Common Carrier
Street: 9821 California Avenue
City: South Gate
State: CA 90280
Country: United States of America
License No.: NA
Name No.: 006845

Acronym: La Flor De Mayo Express, Inc.
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier; Ocean Freight Forwarder (Independent)
Street: 311 Bruckner Blvd.
City: Bronx
State: NY 10454
Country: United States of America
License No.: 2662
Name No.: 001585

Acronym: Lawton Overseas, Inc.
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 809 West Street
City: Union City
State: NJ 07087
Country: United States of America
License No.: NA
Name No.: 006846

Acronym: Linea Marlago, S.A.
DBA Name: Linea Marlago
Person Type: Ocean Common Carrier (Vessel Operating)
Street: Av. Francisco De Miranda, Chacaito, Edif, Easo, Piso 4, OFIC 4–E, Apartado 60794
City: Carracas 1060
State:
Country: Venezuela
License No.: NA
Name No.: 005923

Acronym: Lyon Worldwide Shipping, Inc.
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 4167
City: Bellevue
State: WA 98009
Country: United States of America
License No.: NA
Name No.: 006742

Acronym: Mobel International, Inc.
DBA Name: NA
Person Type: Household Goods Carrier
Street: 2165 5th Avenue South
City: St. Petersburg
State: FL 33733
Country: United States of America
License No.: NA
Name No.: 008203

Acronym: N.T. Cargo Service
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 1390 E. Burnett Street, Suite E
City: Signal Hill
State: CA 90806
Country: United States of America
License No.: NA
Name No.: 007076

Acronym: Nymarc Trading Corporation
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: Fortaleza 353, No. 3–B
City: San Juan
State: PR 00901
Country: United States of America
License No.: NA
Name No.: 006848

Acronym: P.R. Container Line Inc
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 2500 83rd St.
City: North Bergen
State: NJ 07047
Country: United States of America
License No.: NA
Name No.: 006852

Acronym: Pan American Express, Inc.
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 2612 W. Division Street
City: Chicago
State: IL 60622
Country: United States of America
License No.: NA
Name No.: 000965

Acronym: Polynesia Line, Ltd.
DBA Name: NA
Person Type: Ocean Common Carrier (Vessel Operating)
Street: C/O Interocean Steamship Corporation 465 California Street
City: San Francisco
State: CA 94104
Country: United States of America
License No.: NA
Name No.: 001026

Acronym: Priority Transport, Inc.
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 152–32 B Rockaway Blvd.
City: Jamaica
State: NY 11430
Country: United States of America
License No.: NA
Name No.: 006888

Acronym: Puerto Rico Express Freight, Inc.
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 6622
City: Hackensack
State: NJ 08818
Country: United States of America
License No.: NA
Name No.: 006855

Acronym: Puerto Rico Express, Inc.
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 4099, Garden Station
City: Bayanion
State: PR 00620
Country: United States of America
License No.: NA
Name No.: 002599

Acronym: S.D.C. Ocean Line, Inc.
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 6040 N.W. 84th Avenue
City: Miami
State: FL 33166
Country: United States of America
License No.: NA
Name No.: 006859

Acronym: Sam's Vans, Inc.
DBA Name: NA
Person Type: Households Goods Carrier
Street: 1948 Marina Blvd.
City: San Leandro
State: CA 94577
Country: United States of America
License No.: NA
Name No.: 008216

Acronym: San Juan Freight Forwarders, Inc.
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 3386
City: Carolina
State: PR 00630
Country: United States of America
License No.: NA
Name No.: 001068

Acronym: Sea Trailers Express, Inc.
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 4715 N.W. 72nd Avenue
City: Miami
State: FL 33166
Country: United States of America
License No.: NA
Name No.: 007824

Acronym: Seaway Express Corporation
DBA Name: NA
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 7814 Eighth Avenue South
City: Seattle
State: WA 98108
Country: United States of America
License No.: NA
Name No.: 001123

Acronym: T.A.R.R. Transportation, Inc.
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 13914
City: Santurce Station
State: PR 00908
Country: United States of America
License No.: NA
Name No.: 007799

Acronym: Tagship Sales International, Inc.
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 350627
City: Fort Lauderdale
State: FL 33335
Country: United States of America
License No.: NA
Name No.: 006371

Acronym: Unico Shipping Company
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 2724 N.W. 72 Avenue
City: Miama
State: FL 33122
Country: United States of America
License No.: NA
Name No.: 007281

Acronym: Viking Freight System, Inc.
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 411 East Plumeria Drive, Suite 100
City: San Jose
State: CA 95134
Country: United States of America
License No.: NA
Name No.: 000018

Acronym: Waterborne Marine Services
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 40175
Minillas Station
City: San Juan
State: PR 00940
Country: United States of America
License No.: NA
Name No.: 002598

Acronym: Westpac Freight
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 1031 98th Avenue
City: Oakland
State: CA 94603
Country: United States of America
License No.: NA
Name No.: 000102

[FR Doc. 89-16659 Filed 7-14-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bankers Trust New York Corp. New York, New York; Proposal To Engage in Placement as Agent of All Types of Securities

Bankers Trust New York Corporation, New York, New York, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.23(a), of the Board's Regulation Y (12 CFR 225.23(a)), for permission for its subsidiary Bankers Trust Securities Corporation, New York, New York ("BTSC"), to engage in the placement, as an agent for issues, of all types of securities.

BTSC is currently authorized to underwrite and deal in, to a limited extent, certain securities. *See* J.P. Morgan & Co. Incorporated, The Chase Manhattan Corporation, Bankers Trust New York Corporation Citicorp and Security Pacific Corporation, 75 Federal Reserve Bulletin 192 (1989) ("J.P. Morgan et al."); Chemical New York Corporation, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp, Manufacturers Hanover Corporation and Security Pacific Corporation, 73 Federal Reserve Bulletin 731 (1987); Citicorp, J.P. Morgan and Co. Incorporated and Bankers Trust New York Corporation, 73 Federal Reserve Bulletin 473 (1987); and 12 CFR 225.25(b)(16). In addition, BTSC has received approval to provide investment advisory and securities brokerage services on a combined basis to institutional customers. Bankers Trust New York Corporation, 74 Federal Reserve Bulletin 695 (1988).

Bankers Trust has applied to engage in the placement, as agent for issuers, of all types of securities within the following limitations: (i) BTSC will act only as agent, without recourse, solely upon the order and for the account of clients, or as "riskless principal", and will not assume any credit or market risk with respect to the securities privately placed; (ii) BTSC will remain a broker-dealer registered with the Securities and Exchange Commission and subject to the registration, record-keeping, reporting and other fiduciary standards of the Securities Exchange Act of 1934, as amended, and of the National Association of Securities Dealers, Inc.; (iii) BTSC will comply with the provisions of the Securities Act with respect to each private placement of securities; (iv BTSC will place securities only with a limited number of financially sophisticated institutions and individuals, and will not offer securities to the general public or make any

general solicitation or advertisement of the securities it privately places, including with respect to registered securities (BTSC will not angage in "best efforts" underwiring as part of the proposed activities); and (b) BTSC will not purchase or repurchase for its own account any securities privately placed by the Company or inventory (whether overnight or otherwise) unsold portions of an issue, however BTSC may engage in riskless principal transactions not involving a foreign affiliate of BTSC, and, pursuant to the exercise of authority to underwrite or deal in debt securities, may subsequently purchase such securities in the secondary market.

BTSC and its affiliates will also abide by the conditions numbered 5–11, 14, 16–19, 23, 24, 26 and 27 contained in the J. P. Morgan et al. Order, as if references in such conditions to securities underwritten or distributed and to underwriting and distribution were referenced to securities privately placed and to private placement, as the context may require.

The Board has not previously determined that the proposed activities are permissible under section 4(c)(8) of the Bank Holding Company Act. Section 4(c)(8) of the Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto."

Bankers Trust contends that the proposed activities are closely related to banking because banks have provided such services for many years and because they provide such operationally and functionally similar services that they are particularly well equipped to do so.

In determining whether an activity is a proper incident to banking, the Board must consider whether the proposal may "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Bankers Trust maintains that approval of the application can be expected to increase the competitiveness of BTSC in meeting the financing requirements of issuers, and promote the efficiency of the financing markets. Bankers Trust also contends that the proposed services would enhance convenience to customers and the efficiency of BTSC when added to BTSC's other securities activities.

Bankers Trust contents that the proposed activities would not result in adverse effects as the potential conflicts of interest that might be said to arise are no different from those arising from banks' existing securities activites, which have not resulted in any evidence of abuse, and are no different from potential conflicts of interest facing investment banking firms. Bankers Trust also states that any adverse effects are adequately addressed by the above proposed limitations as well as by the anti-fraud prohibitions of the Securities Act and the Securities Exchange Act of 1934, the NASD Rules of Fair Practice, the anti-tying provisions of the banking and antitrust laws, ERISA, and sections 23A and 23B of the Federal Reserve Act.

Bankers Trust contents that the proposed activities do not raise an issue under section 20 of the Glass-Steagall Act (12 U.S.C. 377), relying on *Securities Industry Ass'n* v. *Board of Governors*, 807 F.2d 1052 (D.C. Cir. 1986), *cert. denied*, 107 S.Ct 3228 (1987). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, such as Bankers Trust Company, with a firm that is "engaged principally" in the "underwriting, public sale of distribution" of securities.

Any request for a hearing on this application must comply with section 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors of the Federal Reserve Bank of New York.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than August 7, 1989.

Board of Governors of the Federal Reserve System, July 11, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89-16643 Filed 7-14-89; 8:45 am]

BILLING CODE 6210-01-M

Bryan Bancorp of Georgia, Inc., et al.; Formation of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 4, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303.

1. *Bryan Bancorp of Georgia, Inc.*, Richmond Hill, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Bryan Bank & Trust, Richmond Hill, Georgia, a *de novo* bank. Comments on this application must be received by July 31, 1989.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Salin Bancshares of North Central Indiana, Inc.*, Indianapolis, Indiana; to merge with Logansport Bancorp, Inc., Indianapolis, Indiana, and thereby indirectly acquire The Farmers & Merchants State Bank, Logansport, Indiana.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *FDH Bancshares, Inc.*, Little Rock, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Fordyce, Fordyce, Arkansas, and Citizens First State Bank, Arkadelphia, Arkansas.

2. *Progressive Financial Services, Inc. Employee Stock Ownership Trust*, McKenzie, Tennessee; to become a bank holding company by acquiring an additional 8.71 percent of the voting shares of Progessive Financial Services, Inc., McKenzie, Tennessee, for a total of 32.81 percent, and thereby indirectly

acquire McKenzie Banking Company, McKenzie, Tennessee. Bank engages in the sale, as agent, of credit related insurance sold in connection with extensions of credit made by Bank. Comments on this application must be received by July 31, 1989.

3. *Union Planters Corporation*, Memphis, Tennessee; to acquire 100 percent of the voting shares of Citizens Bank and Trust Company, Wartburg, Tennessee.

Board of Governors of the Federal Reserve System, July 11, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-16640 Filed 7-14-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and section 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 31, 1989.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First State Bank of Covington Employee Stock Ownership Trust*, Covington, Tennessee; to increase its ownership in FSB, Inc., Covington, Tennessee, to 19.81 percent as the result of a stock redemption and thereby indirectly acquire First State Bank of Covington, Covington, Tennessee.

Board of Governors of the Federal Reserve System, July 11, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-16641 Filed 7-14-89; 8:45 am]

BILLING CODE 6210-01-M

The Hongkong and Shanghai Banking Corp., Hong Kong et al.; Application To Provide Securities Brokerage and Investment Advisory Services on a Combined Basis, Act as a Futures Commission Merchant, and Provide Certain Financial Advisory Services

The Hongkong and Shanghai Banking Corporation, Hong Kong; Kellett N.V., Curacao, The Netherlands Antilles; and HSBC Holdings B.V., Amsterdam, The Netherlands ("Applicants"), have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (the "Act") and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for prior approval to engage: (1) Through James Capel Incorporated, New York, New York ("JCI"), an indirect wholly-owned subsidiary of Applicants, in providing securities brokerage and investment advisory services on a combined basis, acting as a futures commission merchant ("FCM") with respect to certain futures contracts and options on such contracts, providing investment advice as an FCM or commodity trading advisor, and providing certain financial advisory services, and (2) through Wardley Incorporated, New York, New York ("Wardley"), an indirect wholly-owned subsidiary of Applicants, in providing certain financial advisory services.

Specifically, Applicants have requested approval to engage in the following activities through JCI:

(a) Providing securites brokerage services, related securities credit activities pursuant to the Board's Regulation T, and incidental activities such as offering custodial services, individual retirement accounts, and cash management services;

(b) Providing research and investment advisory services to institutional customers;

(c) Acting as an FCM for nonaffiliated persons in the execution and clearance on major commodity exchanges of futures contracts and options on futures contracts for bullion, foreign exchange, government securities, certificates of deposit, and other money market instruments that a bank may buy or sell in the cash market for its own account;

(d) Providing investment advice, including counsel, publications, written analyses, and reports, as an FCM or as a commodity trading adviser registered with the Commodity Futures Trading Commission, with respect to the purchase and sale of futures contracts and options on futures contracts for the commodities and instruments referred to in paragraph (c) above;

(e) Acting as an FCM in the execution and clearance, on major U.S. and non-U.S. commodity exchanges, of futures contracts on stock, bond, and other indexes and options on such futures contracts;

(f) Providing the advisory services described in paragraph (d) above with respect to the futures contracts on indexes and options on such contracts described in paragraph (e);

(g) Furnishing general economic information and advice, general economic statistical forecasting services, and industry studies;

(h) Providing financial advice to state and local governments, such as with respect to the issuance of their securities;

(i) Providing advice regarding the structuring of and arranging for loan syndications, interest rate swaps, interest rate caps, and similar transactions;

(j) Providing advice in connection with financing transactions;

(k) Providing valuation services;

(l) Providing advice in connection with mergers, acquisitions, and divestitures;

(m) Rendering fairness opinions in connection with merger, acquisition, and similar transactions; and

(n) Conducting feasibility studies.

Applicants also have requested approval to engage in the activities described in paragraphs (g) through (n) through Wardley.

Securities brokerage services are permissible activities pursuant to § 225.25(b)(15) of Regulation Y, 12 CFR 225.25(b)(15). Investment advisory services are permissible activities pursuant to § 225.25(b)(4) of Regulation Y, 12 CFR 225.25(b)(4). In addition, the Board has determined by Order that the combined offering of investment advice with securities brokerage services to institutional customers is a permissible nonbanking activity. See, e.g., Canadian Imperial Bank of Commerce, 74 Federal Reserve Bulletin 571 (1988); The Royal Bank of Canada, 74 Federal Reserve Bulletin 334 (1988); The Bank of Nova Scotia, 74 Federal Reserve Bulletin 249 (1988); National Westminster Bank PLC, 72 Federal Reserve Bulletin 584 (1986).

The activities described in paragraphs (c) and (d) are permissible nonbanking activities pursuant to subsections 225.25(b) (18) and (19) of Regulation Y, 12 C.F.R. 225.25(b)(18) and (19). In addition, the Board has previously determined by Order that, subject to certain limitations, the FCM activities described in paragraphs (e) and (f) are closely related to banking and permissible for bank holding companies. Northern Trust Corporation, 74 Federal Reserve Bulletin 333 (1988); Citicorp, 73 Federal Reserve Bulletin 220 (1987); J.P. Morgan & Co., Incorporated, 71 Federal Reserve Bulletin 251 (1985).

The activities described in paragraphs (g) and (h) are permissible nonbanking activities pursuant to subsections 225.25(b)(4) (iv) and (v) of Regulation Y, 12 C.F.R. 225.25(b)(4)(iv) and (v). In addition, the Board has previously determined by Order that, subject to certain limitations, the remaining financial advisory activities are closely related to banking and permissible for bank holding companies. See, e.g., Canadian Imperial Bank of Commerce, 74 Federal Reserve Bulletin 571 (1988); Sun Trust Banks, Inc., 74 Federal Reserve Bulletin 256 (1988); Sovran Financial Corporation, 73 Federal Reserve Bulletin 744 (1987); Signet Banking Corporation, 74 Federal Reserve Bulletin 59 (1987).

While the Board has previously determined by Order or regulation that all of the activities listed above are permissible under the Act, the Board has never determined the permissibility of the proposed combination of activities of JCI.

Section 4(c)(8) of the Act provides that a bank holding company may, with prior Board approval, engage directly or indirectly in any activities "which the Board after due notice and opportunity for hearing has determined [by order or regulation] to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984).

In determining whether an activity meets the second, or proper incident to banking, test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competiton, conflicts of interests, or unsound banking practices."

Applicants contend that the proposed combination of activities for JCI can be expected to produce benefits to the public that outweigh possible conflicts of interest, unsound banking practices, or other adverse effects. Applicants argue that the provision of the proposed activities on a combined basis by JCI would result, through the sharing of facilities, equipment, and personnel, in operational and managerial efficiencies that would enable JCI to compete more effectively with resulting public benefits such as more competitive prices and services. In addition, Applicants contend that the availability of all of the proposed services from one source would result in added convenience and efficiencies for customers.

Applicants further argue that brokerage and investment advisory services, FCM activities, and financial advisory services are distinct activities such that offering them through one company would not create any conflicts or adverse effects. Applicants have committed that they would conduct the proposed activities subject to the limitations that the Board has imposed in previous Orders approving such activities. Applicants also contend that the possibility of adverse effects such as conflicts of interest is mitigated due to the existence of other laws and regulations that regulate the proposed activities.

Interested persons are requested to express their views in writing on whether consummation of the proposal can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

In publishing the proposal for comment, the Board does not take any position on issues raised by the proposal under the Act. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the Act.

Any views or requests for a hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than August 17, 1989. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions for fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, July 11, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-16642 Filed 7-14-89; 8:45 am]

BILLING CODE 6210-01-M

Mercantile Bancorporation, Inc., et al., Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party

commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 28, 1989.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Mercantile Bancorporation, Inc.*, St. Louis, Missouri; to engage *de novo* in community development activities pursuant to § 225.25(b)(6) of the Board's Regulation Y.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Scandinavian Bank Group, PLC*, London, England; to engage *de novo* through its subsidiary, Scandinavian American Securities, Inc., New York, New York, in securities brokerage services, related securities credit activities, and incidental activities pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 10, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-16593 Filed 7-14-89; 8:45 am]

BILLING CODE 6210-01-M

Plainview Holding Co.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than July 28, 1989.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Plainview Holding Company*, Plainview, Nebraska; to acquire 100 percent of the voting shares of Farmers National Bank, Pilger, Nebraska, and to merge with Deshler State Company, Deshler, Nebraska, and thereby indirectly acquire Nebraska Security Bank, Deshler, Nebraska. Farmers National Bank engages in general insurance directly. Nebraska Security Bank engages in the sale of credit-related insurance (life, accident, and health) and crop hail and crop multi-peril insurance, and has a depositors' hospitalization plan. Both banks are located in communities with populations of less than 5,000.

Board of Governors of the Federal Reserve System, July 10, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-16594 Filed 7-14-89; 8:45 am]

BILLING CODE 6210-01-M

Stearns Financial Services, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Co.

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 28, 1989.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Stearns Financial Services, Inc.*, Albany, Minnesota; to become a bank holding company by acquiring 80 percent of Stearns Agency, Inc., Albany, Minnesota, and thereby indirectly acquire Stearns County National Bank of Albany, Albany, Minnesota; 100 percent of the voting shares of Financial Services of Evansville, Inc., Evansville, Minnesota, and thereby indirectly acquire Farmers State Bank of Evansville, Evansville, Minnesota; 84.13 percent of the voting shares of Security State Bank of Holdingford, Holdingford, Minnesota; and 94.56 percent of the voting shares of Farmers State Bank of Upsala, Upsala, Minnesota.

In connection with this application, Applicant also proposes to acquire Stearns Agency, Inc., Albany, Minnesota, (doing business as Stearns County Insurance); Financial Services of Evansville, Inc., Evansville, Minnesota (doing business as Farmers State Agency); and Security Insurance Agency, Holdingford, Minnesota, and thereby engage in general insurance sales pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y. These activities will be conducted in Albany, Evansville, and Holdingford, Minnesota.

Board of Governors of the Federal Reserve System, July 10, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-16595 Filed 7-14-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individuals cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 062689 AND 070789

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
KKR Associates, Maxwell Communication Corp., PLC, Macmillian Book Clubs, Inc	89-1886	06/26/89
American Express Company, Bernard L. Schwartz, Loral Corporation, Opus Acquisition Corporation	89-1905	06/26/89
Cherokee Resources Incorporated, Mobil Corporation, Mobil Oil Exploration & Producing Southeast Inc	89-2005	06/26/89
Exxon Corporation, Mobil Corporation, Mobil Producing Texas & New Mexico Inc	89-2013	06/26/89
Las Colinas Investment Properties Limited Partnership, Southland Financial Corporation, Southland Financial Corporation	89-1942	06/27/89
The Marcade Group Inc., Morton Brown, Above the Belt, Inc	89-1944	06/27/89
The Marcade Group Inc., Irwin Kaplan, Above the Belt, Inc	89-1945	06/27/89
Grand Metropolitan Public Limited Company, De La Salle Institute, Mont La Salle Vineyards	89-1845	06/28/89
International Minerals & Chemical Corporation, The Wellcome Trust, Coopers Animal Health (Holdings) Ltd	89-1855	06/28/89
Shearson Lehman Hutton Merchant Banking Portfolio Pt LP, Bernard L. Schwartz, Opus Acquisition Corporation	89-1904	06/28/89
Steven J. Simmons, Cantel Corporation, Cantel Cable Television Company of Kentucky	89-1920	06/28/89
Triton Group Ltd., Fuqua Industries, Inc., Fuqua Industries, Inc	89-1959	06/28/89
Gerald W. Schwartz, The Trust Created Under the Dayton Superior Corp. Agmnt., The Dayton Superior Corporation	89-1978	06/28/89
Barclays PLC, Fine Homes International L.P., Fine Homes International L.P.	89-2010	06/28/89
Sabre North Atlantic International Corp., TW Services, Inc., TW Services, Inc	89-2050	06/28/89
Coniston North Atlantic International Corp., TW Services, Inc., TW Services, Inc	89-2051	06/28/89
Sabre Associates of New Jersey, L.P., TW Services, Inc., TW Services, Inc	89-2052	06/28/89
Coniston Institutional Investors, TW Services, Inc., TW Services, Inc	89-2053	06/28/89
Coniston Partners, TW Services, Inc., TW Services, Inc	89-2054	06/28/89
Jason Incorporated, Canadian Pacific Limited, Braden Division	89-2060	06/28/89
Regent International Hotels Limited, Regent International Hotels (California) Limited, Regent International Hotels (California) Limited	89-1872	06/29/89
FS Champ Associates, Stride Rite Corporation, Stride Rite Corporation	89-1980	06/29/89
Sun Company, Inc., Eaton Corporation, Eaton Credit Corporation	89-1989	06/29/89
Carlisle Companies Incorporated, Edward J. Sydor, National Friction Products Corp	89-2022	06/29/89
Ronald I. Dozoretz, M.D., Comprehensive Care Corporation, Comprehensive Care Corporation	89-1921	06/30/89
Quantum Chemical Corporation, Petrolane Partners, L.P., Petrolane Partners, L.P	89-1932	06/30/89
Quantum Chemical Corporation, Panhandle Eastern Corporation, Petrolane Incorporated	89-1933	06/30/89
CS First Boston, Inc., Petrolane Partners, L.P., Petrolane Partners, L.P	89-1936	06/30/89
CS First Boston, Inc., Panhandle Eastern Corporation, Petrolane Incorporated	89-1937	06/30/89
New World Development Company Limited, Ramada Inc., Ramada Inc	89-1948	06/30/89
LADD Furniture, Inc., Maytag Corporation, Gunlocke Company and the BJC Company	89-1951	06/30/89
ADC Telecommunications, Inc., PI Parent Corporation, Kentrox Industries, Inc	89-1967	06/30/89
Equitable Life Assurance Society of the United States, Aetna Life and Casualty Company, Aetna Life Insurance Company	89-2014	06/30/89
General Electric Company, United Meridan Corporation, Ensource Inc. and Enline Inc	89-2021	06/30/89
808006 Ontario Limited, Tenneco Inc., Tenneco Automotive a Division of Tennessee Gas	89-2036	06/30/89
Matra S.A., Banner Industries, Inc., Fairchild Industries, Inc	89-2056	06/30/89
Merrill Lynch & Co., Inc., Mr. Barry I. Gerstein, Centennial Textiles, Inc	89-2070	06/30/89
Mauna Loa Macadamia Partners, L.P., Buyco, Inc., Mauna Loa Orchards, L.P	89-2071	06/30/89
James B. Lindsey, Jr., Cal-Pepsi, Inc., Cal-Pepsi, Inc	89-2096	06/30/89
PepsiCo, Inc., Cal-Pepsi, Inc., Cal-Pepsi, Inc	89-2097	06/30/89
James B. Lindsey, Sr., Cal-Pepsi, Inc., Cal-Pepsi, Inc	89-2104	06/30/89
Republic Engineered Steels, Inc., ESOP, LTV Steel Company, Inc., LTV Steel Company, Inc	89-2112	06/30/89
The Valspar Corporation, The McCloskey Corporation, The McCloskey Corporation	89-1913	07/03/89
Cookson Group PLC, Donald W. McDanel Trust, McDanel Refractory Company	89-1947	07/03/89
Masco Industries, Inc., Tryion Corporation, Tryion Corporation	89-1982	07/03/89
Southmark Corporation, The Mutual Life Insurance Company of New York, General Mortgage Service Company	89-2075	07/03/89
Automated Security (Holdings) PLC, ASHA-GKB Corporation, a newly formed corporation, ASHA-GKB Corporation, a newly formed corporation	89-1966	07/05/89
Welsh, Carson, Anderson & Stowe V, HCA—Hospital Corporation of America, HCA Management Company, Inc	89-2059	07/05/89
Kotobuki Fudosan Ltd., The Coca-Cola Company, Belmont Springs Water Co., Inc	89-2090	07/05/89
Rockwood Holding Company, Household International, Inc., Albion Industries, Inc	89-2091	07/05/89
John Lewis and Associates, L.P., Thomas M. Willingham, II, Interstate Distributors, Inc	89-1929	07/06/89
Charles C.K. Yeung, Farah Incorporated, Generra Sportswear Company, Inc	89-1961	07/06/89
E. Claiborne Robins, c/o A.H. Robins Co., Inc., American Home Products Corporation, American Home Products Corporation	89-2039	07/06/89
GB-Inno-BM S.A., Scotty's, Inc., Scotty's, Inc	89-2055	07/06/89
American Home Products Corporation, A.H. Robins Company, Incorporated, A.H. Robins Company, Incorporated	89-2061	07/06/89
E. Claiborne Robins, Jr., American Home Products Corporation, American Home Products Corporation	89-2066	07/06/89
Loews Corporation, Kaneb Services, Inc., Kaneb Services, Inc	89-1946	07/07/89
Banner Industries, Inc., Clarcor Inc., Clarcor Inc	89-2029	07/07/89
Bessemer Securities Corporation, Core-Mark International Inc., Core-Mark International Inc	89-2063	07/07/89
J.H. Whitney & Co., Prime Computer, Inc., Prime Computer, Inc	89-2117	07/07/89
American Express Company, Prime Computer, Inc., Prime Computer, Inc	89-2122	07/07/89

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89-16692 Filed 7-14-89; 8:45 am]

BILLING CODE 6750-01-M

[File No. 892-3170]

Robert Lewis Wilks, d/b/a Barber Funeral Home; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Springfield, Tenn. funeral home director from doing business as a funeral service provider, or from having any business relationship with any entity selling or offering to sell funeral goods or services to the public.

DATE: Comments must be received on or before September 15, 1989.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Lydia Parnes or Mamie Kresses, FTC/H-238, Washington, DC 20580. (202) 326-3126 or 326-2070.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order(s) to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Agreement Containing Order To Cease and Desist

The Agreement herein, by and between Robert Lewis Wilks, individually and doing business as Barber Funeral Home, hereinafter sometimes referred to as "respondent," and by respondent's attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

(1) Robert Lewis Wilks is a resident of the State of Tennessee, with his current residence at the Robertson County Jail, 500 Willow Street, Springfield, Tennessee.

(2) Respondent has been served with a copy of the Complaint issued by the Federal Trade Commission charging him with violations of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45 (1980).

(3) Respondent admits all the jurisdictional facts set forth in the Commission's Complaint in this proceeding.

(4) Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this Agreement.

(5) This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it will be placed on the public record for a period of (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify the respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

(6) This Agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the Complaint.

(7) This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondent: (a) Issue its decision containing the following Order to Cease and Desist in disposition of the proceeding, and (b) make information public in respect thereto. When so entered, the Order to Cease and Desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to Order to respondent's address as stated in this Agreement shall constitute service. Respondent waives any right it may have to any other manner of service. The Complaint may be used in construing the terms of the Order not defined therein, and no agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

(8) Respondent has read the Complaint and the Order contemplated hereby and understands that once the Order has been issued, he may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

Part I

It is ordered that respondent Robert Lewis Wilks, directly or through any corporation, subsidiary, division or other device, shall forthwith cease and desist from transacting business as a funeral service provider or having any employment, consultancy, or business affiliation with any person or entity that sells or offers to sell funeral goods or services to the public.

Part II

It is Further ordered that for a period of ten (10) years from the date of service of this Order or the date of respondent's release from incarceration, should he be convicted of any crimes charged in the indictments presented by the State of Tennessee, whichever occurs later, respondent shall promptly notify the Commission of any change of name, residence, business address, occupation, place of business, or place of employment. Respondent's notification shall be made by submitting a report in writing, by certified mail, to the Federal Trade Commission, Bureau of Consumer Protection, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580, or to such other address as the Commission or its designated staff shall by written notice require.

The expiration of this notice provision shall not affect any other provision of this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Robert Lewis Wilks ("Wilks"). Wilks was sole proprietor and director of the Barber Funeral Home in Springfield, Tennessee from July 1986 through November 1986. In his capacity as a funeral director, Wilks sold funeral goods and services to customers in Tennessee and Kentucky.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint charges Wilks, individually and doing business as Barber Funeral Home, with making misrepresentations to consumers, directly or by implication, about his providing the funeral goods and services selected and paid for by his customers. Paragraphs Five and Six allege that Wilks, in numerous instances, buried the bodies of deceased persons without the caskets or burial vaults that his customers selected and purchased. Paragraph Seven alleges that Wilks, in numerous instances, desecrated the bodies and graves of deceased persons by such actions as dumping trash into the caskets or graves.

Part I of the proposed consent order would prohibit Wilks from doing business as a funeral director or from having any business affiliation with any person or other entity that offers or sells funeral goods or services to the public. Part II would require Wilks to report any change in his address or employment to the Commission for a period of ten years from the date of service of this order or the date of his release from incarceration, whichever occurs later, if he is convicted of any crimes charged in the indictments presented by the State of Tennessee.

The purpose of this analysis is to facilitate public comment on the proposed order; it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify their terms in any way.

Donald S. Clark,

Secretary.

[FR Doc. 89-16505 Filed 7-14-89; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to approve new information collections General Services Administration Acquisition Regulations Part 552.228-72, Performance Bond, and 552.228-73, Performance and Payment Bonds. An offeror awarded a service contract may be required to submit a performance bond to protect the Government's interests. Use of the GSA Form 3604 will resolve problems encountered when service contracts contain option provisions to extend the period of performance.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th, NW., Washington, DC 20405.

Annual Reporting Burden: Firms responding, 1,100; responses, 1 per year; average hours per response, .25; burden hours, 275.

For Further Information Contact: Ida M. Ustad, 202-566-1224

Copy of Proposal: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), Room 3014, GS Bldg., Washington, DC 20405, or by telephoning 202-535-7691.

Dated: July 3, 1989.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 89-16654 Filed 7-14-89; 8:45 am]

BILLING CODE 6820-61-M

Agency Information Collection Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to approve a new information collection, titled Packing List. A uniquely numbered Government commercial credit card has been authorized for making payment for orders under $25,000 placed against certain receipts of orders placed orally. Additional information not normally included in packing lists is required.

AGENCY: Office of GSA Acquisition Policy and Regulations (V), GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th, NW., Washington, DC 20405.

Annual Reporting Burden: Firms responding, 3,000; responses, 48.4 per year; average hours per response, .0167; burden hours, 2,425

For Further Information Contact: Ida M. Ustad, 202-566-1224

Copy of Proposal: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), Room 3014, GS Bldg., Washington, DC 20405, or by telephone 202-535-7691.

Dated: July 3, 1989.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 89-16655 Filed 7-14-89; 8:45 am]

BILLING CODE 6820-61-M

National User Panel on Writing Pads

Notice is hereby given of a National Meeting of the Federal Supply Service WRITING PADS USER PANEL. The meeting will be held on Tuesday, July 25, 1989, 9:00 a.m. to completion on that date (approximately 4:00 p.m.), in room 704, Crystal mall Building #4, 1941 Jefferson Davis Highway, Crystal City, Arlington, Virginia.

The meeting will be devoted to a discussion of the quality of the various Writing Pads procured by the Federal Supply Service for redistribution to using agencies.

The meeting will be open to representatives of Government Agencies, The National Industry for the Blind and interested commercial suppliers of the subject pads.

Charles Helick

Assistant Commissioner for Quality and Contract Administration.

Dated: July 10, 1989.

[FR Doc. 89-16668 Filed 7-14-89; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0040]

Sulfamethazine; National Center for Toxicological Research Technical Reports; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of two final technical reports on sulfamethazine from its National Center for Toxicological Research (NCTR). The reports are entitled "Chronic Toxicity and Carcinogenesis Study on Sulfamethazine in B6C3F1 Mice" and "Chronic Toxicity and Carcinogenesis Study on Sulfamethazine in Fischer 344 Rats." The final technical reports supersede two draft technical reports FDA previously made available.

ADDRESSES: Written requests for single copies of the NCTR final technical reports "Chronic Toxicity and Carcinogenesis Study on Sulfamethazine in B6C3F1 Mice," dated April 1989, and "Chronic Toxicity and Carcinogenesis Study on Sulfamethazine in Fischer 344 Rats," dated May 1989, should be submitted to the Industry Information Staff (HFV-12), Center for Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist the staff in processing your requests. The final technical reports are available for public examination in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m., to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Norris Alderson, Center for Veterinary Medicine (HFV-500), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6510.

SUPPLEMENTARY INFORMATION: FDA has received and is making available two final technical reports of two chronic toxicity studies conducted by NCTR on sulfamethazine. In the studies, sulfamethazine was fed over a 24-month period to mice (one study) and rats (second study) to determine the toxicity and carcinogenicity of sulfamethazine. The final technical reports supersede two draft versions of NCTR technical reports FDA had previously made avaialble. (See 53 FR 9492; March 23, 1988 (notice of availability of draft technical report on the mouse study), and 53 FR 17850; May 18, 1988 (notice of availability of draft technical report on the rat study).) The draft reports stated that they should not be considered final until after a peer review of the pathology data was completed. The final technical reports being made available by this notice reflect changes to the pathology data base in each study as recommended during the peer review, which was conducted by NCTR pathologists in cooperation with the National Toxicology Program's Pathology Working Group.

Dated: July 11, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-16703 Filed 7-14-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

June 27, 1989.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Indian Canyon Band of Coastanoan/Mutsun, Indians of California, c/o Ms. Ann Marie Sayers, P.O. Box 28, Hollister, California 95024-0028 has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The letter petition was received by the Bureau of Indian Affairs on June 9, 1989, and was signed by the Chairman of the group.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d)(formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the Bureau of Indian Affairs' files. Such submissions will be provided to the petitioner upon receipt by the Bureau. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined by appointment in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Mail Stop 4627-MIB, 18th and C Streets NW., Washington, DC 20240, Phone: (202) 343-3592.

Hazel E. Elbert,

Acting Deputy to the Assistance Secretary, Indian Affairs (Operations)

[FR Doc. 89-16690 Filed 7-14-89; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[UT-940-09-4212-11; U-0141112]

Terminiation of Recreation and Public Purpose Classification; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates Recreation and Public Purpose Classification affecting 2.5 acres in Rich County, Utah.

EFFECTIVE DATE: July 17, 1989.

FOR FURTHER INFORMATION CONTACT: Mikes Barnes, BLM Utah State Office, 324 South State Street, Suite 301, Salt Lake City, Utah 84111-2303, (801) 539-4119.

By virtue of the authority vested in the Secretary of the Interior by the Recreation and Public Purpose Act of June 14, 1926, as amended; 43 U.S.C. 869-4, it is ordered as follows:

1. Pursuant to 43 CFR 2091.7-1(b)(1) and the authority delegated to me by BLM Manual section 1203 (48 FR 85), classification decision U-0141112 dated March 8, 1968, which classified 2.5 acres of public land as suitable for recreation and public purposes is hereby revoked insofar as it affects the following described lands:

Salt Lake Meridian

T. 9N., R. 7 E.,
Sec. 4, NW¼SW¼SW¼SW¼.

The area described contains 2.5 acres located in Rich County.

2. At 9:00 a.m. on July 17, 1989, the lands described in paragraph one shall be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable laws. All valid applications received at or prior to 9:00 a.m. on the effective date stated above shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing.

3. At 9:00 a.m. on July 17, 1989, the lands described in paragraph one will be opened to location and entry under the United States mining laws subject to valid existing rights. Appropriation of any of the lands described in paragraph one of this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no right against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Ted D. Stephenson,

Chief, Branch of Lands and Mineral Operations.

[FR Doc. 89-16647 Filed 7-14-89; 8:45am]

BILLING CODE 4310-DQ-M

[MT-921-08-4120-11; NDM 78336]

Coal Exploration License Application; North Dakota

AGENCY: Bureau of Land Management, Montana State Office.

ACTION: Notice of invitation.

Coal Exploration License Application NDM 78336

Members of the public are hereby invited to participate with The Coteau Properties Company in a program for the exploration of coal deposits owned by the United States of America in the following described lands located in Mercer County, North Dakota:

5th Principal Meridian, North Dakota

T. 145 N., R. 87 W.,
Sec. 2: Lot 3, SE¼NW¼;
Sec. 6: SE¼.
T. 144 N., R. 88 W.,
Sec. 2: Lots 3, 4, S½NW¼.
T. 145 N., R. 88 W.,
Sec. 2: Lot 1, SE¼NE¼.
461.98 acres, Mercer County.

Any party electing to participate in this exploration program shall notify, in writing, both the State Director, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107; and The Coteau Properties Company, 2000 Schafer Street, P.O. Box 5500, Bismarck, North Dakota 58502-5500. Such written notice must refer to serial number NDM 78336 and be received no later than 30 calendar days after publication of this Notice in the **Federal Register** or 10 calendar days after the last publication of the Notice in the Beulah Beacon, whichever is later. This Notice will be published once a week for 2 consecutive weeks.

The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. Copies of the exploration plan as submitted by The Coteau Properties Company may be examined during normal business hours at the Bureau of Land Management, Montana State Office, Granite Tower Building, 222 North 32nd Street, Billings, Montana.

Robert W. Faithful, IV,

Associate State Director.

Date: July 7, 1989.

[FR Doc. 89-16587 Filed 7-14-89; 8:45 pm]

BILLING CODE 4310-DM-M

Meeting on Title Claims Resolution for Public Lands in Monroe County, MI

Time and Date: 7:00 p.m., Wednesday, July 19, 1989.

Place: Monroe High School, 901 Herr Road, Monroe, Michigan.

Status: This meeting is open to the public.

Matters To Be Considered: Explanation of the proposed procedures to resolve title claims against certain public domain lands located in Monroe County, Michigan; pursuant to section 3 of the Michigan Public Lands Improvement Act of 1988 (102 Stat. 2711).

Contact Person For More Information: Duane Marti, Realty Specialist, Telephone number: 414-291-4429.

Leon R. Kabat,

Acting District Manager.

[FR Doc. 89-16645 Filed 7-14-89; 8:45 am]

BILLING CODE 4310-GJ-M

[CO-920-89-4111-15; COC46775]

Colorado; Proposed Reinstatement

Notice is hereby given that a petition for reinstatement of oil and gas lease COC46775 for lands in Moffat and Routt Counties, Colorado, was timely filed and was accompanied by all the required rentals and royalties accruing from March 1, 1989, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the estimated cost of this **Federal Register** notice.

Having met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920, as amended, (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective March 1, 1989, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 236-1772.

Janet M. Budzilek,

Chief Fluid Minerals Adjudication Section.

[FR Doc. 89-16588 Filed 7-14-89; 8:45 am]

BILLING CODE 4310-JB-M

[NM-943-07-4111-15; OK NM 31970]

Proposed Reinstatement of Terminated Oil and Gas Lease; Oklahoma

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of 43 CFR 3108.2-3, Robert G. Anderson petitioned for reinstatement of oil and gas lease OK NM 31970, covering the following described lands located in Roger Mills County, Oklahoma:

T. 14 N., R. 25 W., IM.
Sec. 22: S½NE¼;
Sec. 23: S½NW¼.
Containing 160.00 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $5.00 per acre per year and royalties shall be at the rate of 16⅔ percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, November 1, 1988.

Date: July 6, 1989.

Dolores L. Vigil,

Acting Chief, Adjudication Section.

[FR Doc. 89-16657 Filed 7-14-89; 8:45 am]

BILLING CODE 4310-FB-M

[CO-030-09-4333-10-6372]

Draft Dolores River Corridor Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Review and Comment Period for Draft Dolores River Corridor Management Plan.

SUMMARY: Notice is hereby given that the Bureau of Land Management is accepting comments until August 18, 1989 on a draft multi-resource activity

BEST COPY AVAILABLE

plan which prescribes management for the Dolores River Special Recreation Management Area (SRMA) in southwest Colorado.

SUPPLEMENTARY INFORMATION: The Montrose District, Bureau of Land Management, has prepared a draft activity plan designed to direct management of approximately 106 miles of the Dolores River corridor between Cahone, Colorado and the Montrose District boudary, approximately eight miles downstream from the San Miguel River confluence. The draft plan addresses recreational, wildlife, riparian, and cultural resources and provides guidelines for visitor use within the planning area. Key issues include river corridor carrying capacities, commercial use allocation, reduction of wildlife/recreation use conflicts, and visitor education provisions. Copies of the document are available for public review at the following locations:

Montrose District, BLM, 2465 South Townsend, Montrose, CO 81401, (303) 249-7791

San Juan Resource Area, BLM, Federal Building, 701 Camino del Rio, Durango, Colorado 81301, (303) 247-4082

Colorado State Office, BLM, 2850 Youngfield, Lakewood, Colorado 80215, (303) 236-1756.

Comments on the draft plan will be accepted until August 18, 1989. Submit comments in writing to Tom Christensen at San Juan Resource Area, BLM (see address above).

Dated: July 7, 1989.

Kenneth D. Herman,

Acting District Manager.

[FR Doc. 89-16656 Filed 7-14-89; 8:45 am]

BILLING CODE 4310-JB-M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's Information Collection Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service and OMB, Paperwork Reduction Project (1018-0014), Washington, DC 20503, telephone 202-395-7340.

Title: Application for National Wildlife Refuge Use

OMB Approval No: 1018-0014

Abstract: The permitting of economic and public uses on lands of the National Wildlife Refuge System is authorized by the National Wildlife Refuge System Administration Act and the Refuge Recreation Act and implemented in regulations in 50 CFR Subchapter C. The information collected on the application form is necessary to issue permits for otherwise prohibited activities on wildlife refuges. Such information is necessary to identify and contact applicants and determine eligibility for permit issuance.

Service Form number: 3-2001

Frequency: On occasion

Description of Respondents: Individuals and households, farms, small businesses or organizations, non-profit institutions, businesses or other for profit

Estimated Completion Time: The reporting burden is estimated to be 6 minutes per response

Annual Responses: 256,842

Annual Burden Hours: 25,684.

Service Information Collection Clearance Officer: James E. Pinkerton, 703-358-1943, 224 Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240.

Date: June 22, 1989.

Rollin D. Sparrowe,

Acting Assistant Director—Refuges and Wildlife.

[FR Doc. 89-16689 Filed 7-14-89; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Secretary of the Interior's Standards for Historic Vessel Preservation Projects with Guidelines for Applying the Standards

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Notice is given of the intent to publish uniform standards to be applied to preservation projects involving historic vessels. Drafts are available for public review and comment before final publication.

The standards set forth supplement the *Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* and together with the accompanying guidelines are intended to recognize the unique problems of historic preservation in a maritime context. These standards and guidelines are not regulatory and do not set or interpret agency policy. They are intended to provide technical advice about historic preservation activities and methods.

DATE: Written comments must be delivered or mailed by September 15, 1989.

ADDRESS: Requests for drafts and written comments should be sent to: National Maritime Initiative, History Division (418), National Park Service, P.O. Box 37127, Washington, DC 20013-7127.

FOR FURTHER INFORMATION CONTACT: James P. Delgado, Maritime Historian, History Division (418), National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013-7127, 202-343-9528.

SUPPLEMENTARY INFORMATION: Congress requested in the fiscal year 1985 National Park Service appropriation that the Service in "cooperation with the National Trust for Historic Preservation and the maritime preservation community * * * conduct a survey of historic maritime resources, including those of the Service; recommend standards and priorities for the preservation of those resources; and recommend the appropriate Federal and private sector roles in addressing those priorities." (CONGRESSIONAL RECORD, October 10, 1984, p. 11922.)

— The Secretary of the Interior has general authority to prepare Standards and Guidelines under sections 101 (f), (g), and (h), and section 110 of the National Historic Preservation Act of 1966.

Drafting Information

The document was developed and adapted by Michael Naab, Project Manager at San Francisco Maritime National Historical Park. A working committee of five maritime preservation professionals, Don Birkholz, Jr., preservation consultant, Tri-Coastal Marine, Inc.; Maynard Bray, private maritime consultant; Norman Brouwer, curator of ships, South Street Seaport; Dana Hewson, shipyard director, Mystic Seaport; and Walter Rybka, preservation consultant, Tri-Coastal Marine; extensively reviewed the various drafts. Others participating in the review were Roger Allen, Peter Neill, Anne Witty, Marcia Myers, David Gillespie, Clare Adams, Merrill Hesch, and Michael Lynch. Within the Service, Glennie Wall, Steve Hyman, Steve Hastings, H. T. McGrath, Ron Oakes, James Delgado, Kevin Foster, Edwin Bearss, Randall Biallas, Gary Hume, Beth Savage, D. Patterson Tiller, Lawrence Aten, and Carol Shull reviewed the document.

Date: July 3, 1989.

John M. Morehead,

Acting Director of the National Park Service.

[FR Doc. 89-16675 Filed 7-14-89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 290 (Sub-No. 4)]

Railroad Cost Recovery Procedures-Productivity Adjustment

AGENCY: Interstate Commerce Commission.

ACTION: Notice.

SUMMARY: The Commission is proposing to adopt a 1987 value for productivity change and incorporate that value, along with previously calculated data, into a six-year (1982-1987) averaging period. Estimated productivity growth for 1987 is 1.100. The six-year (1982-1987) average productivity growth is 1.031. The productivity adjustment was adopted in Ex Parte No. 290 (Sub No. 4), *Railroad Cost Recovery Procedures-Productivity Adjustment.* 5 ICC 2d 434. That decision observed that data for additional years would be added as it became available. The productivity adjustment is used to adjust the quarterly Rail Cost Adjustment Factor for productivity improvements.

DATES: Notices of intent to file comments are due July 24, 1989. Comments are due August 14, 1989. Replies are due 15 days thereafter.

FOR FURTHER INFORMATION CONTACT: William T. Bono (202) 275-7354, Robert C. Hasek (202) 275-0938, TDD for hearing impaired (202) 275-1721.

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call or pick-up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 289-4357/4359. Assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., Room 2229 at Commission Headquarters.

This action will not significantly affect either the quality of the human environment or energy conservation. It will not have a significant impact on a substantial number of small entities.

Dated: July 7, 1989

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Commissioner Lamboley commented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 89-16710-7-14-89; 8:45 am]

BILLING CODE 7035-01-M

LOWER MISSISSIPPI DELTA DEVELOPMENT COMMISSION

Change of Schedule for Meeting and Announcement of Arkansas Public Hearing

Background

The Lower Mississippi Delta Development Commission was created by Pub. L. 100-460, signed on October 1, 1988. The purpose of the Commission is to identify and study the economic development, infrastructure, employment, transportation, resource development, education, health care, housing, and recreation needs of the Lower Mississippi Delta region by seeking and encouraging the participation of interested citizens, public officials, groups, agencies, and others in developing a 10-year plan that makes recommendations and establishes priorities to alleviate the needs identified. The Commission will make its report to Congress, the President, and the Governors of Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee no later than May 14, 1990.

This notice announces a change in schedule for a regular business meeting. It also announces the Arkansas public hearing.

Meeting

Previously scheduled for:

Time: 5:00 p.m., July 13, 1989

Place: Sikeston Inn, I-55 and U.S. 62, Sikeston, MO 63801

Status: Open meeting

Moved to:

Time: 4:30 p.m., July 25, 1989

Place: Phillips County Community College, Campus Drive, Helena, Arkansas, 72042

Status: Open meeting

Public Hearing

Time: 8:30 a.m. to 6:00 p.m., July 26, 1989

Place: Phillips County Community College, Campus Drive, Helena, Arkansas, 72042

Status: Public oral and written testimony encouraged

Contact: Ann Sartwell, Telephone (901) 753-1400.

Wilbur F. Hawkins,

Executive Director.

[FR Doc. 89-16638 Filed 7-14-89; 8:45 am]

BILLING CODE 6820-SN-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (89-54)]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Communications and Information Systems Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Communications and Information Systems Subcommittee.

DATES: July 26, 1989, 8:30 a.m. to 5 p.m., and July 27, 1989, 8:30 a.m. to 12:30 p.m.

ADDRESSES: Capital Gallery, East Wing, Room 235, 600 Maryland Avenue, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Mr. Ray J. Arnold, Code EC, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1510).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long-range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Communications and Information Systems Subcommittee provides technical support to the Committee and will conduct ad hoc studies and assessments. The Committee is chaired by Dr. Robert T. Filep and is composed of 7 members. The meeting will be closed Thursday, July 27, from 8:30 a.m. to 12:30 p.m., to discuss and evaluate qualifications of candidates being considered for membership. Such discussions would invade the privacy of the individuals involved. Since the session will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting will be closed to the public for this period of time. The meeting will be open to the public up to the capacity

of the room (approximately 12 people including members of the Subcommittee). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Type of Meeting: Open—except for a closed session as noted in the agenda below.

Agenda:

Wednesday, July 26

8:30 a.m.—Welcome/Introduction of New Chairman.
8:45 a.m.—Opening Remarks/Review Agenda.
9 a.m.—Advanced Communications Technology Satellite (ACTS).
10:15 a.m.—NASA/Industry Initiative.
10:30 a.m.—Communications Program Center Reviews.
11:30 a.m.—NASA Research Announcement (NRA): Satellite Communications Applications Research Program.
1:30 p.m.—Space Applications Board (SAB) Report.
2:30 p.m.—Information Systems Strategic Planning (ISSP) Project.
4 p.m.—Networking Strategic Plan.
4:30 p.m.—NASA Research Announcement (NRA): Information Systems.
5 p.m.—Adjourn.

Thursday, July 27

8:30 a.m.—Closed Session.
12:30 p.m.—Adjourn.

July 10, 1989.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89-16640 Filed 7-14-89; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMUNICATIONS SYSTEM

Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee; Meeting

A meeting of the Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee will be held Friday, August 18, 1989. The meeting will be held at the MITRE Corporation, 7525 Colshire Drive, McLean, VA. Registration will begin at 8:30 a.m. and the meeting will start at 9 a.m. The agenda is as follows:

A. Opening remarks.
B. Administrative remarks.
C. Briefings on industry and Government activities.

Due to the requirement to discuss classified information, in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense. Any person desiring information about the meeting may telephone (202) 692-9274 or write the Manager, National Communications System, Washington, DC 20305-2010.

Terrence N. Danner,

Captain, USN, Assistant Manager, NCS Joint Secretariat.

[FR Doc. 89-16679 Filed 7-14-89; 8:45 am]

BILLING CODE 3610-05-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Performance Review Board

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: This notice announces membership in the National Endowment for the Humanities' Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Timothy G. Connelly, Director of Personnel, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 4314(c) the National Endowment for the Humanities (NEH) hereby revises the notice of membership published in the **Federal Register** on October 1,1986 by extending the current membership of the NEH SES Performance Review Board to March 31, 1990, so that the appointment cycle can be adjusted to a more administratively feasible timeframe.

The members of the Performance Review Board are: (1) Thomas Kingston, Assistant Chairman for Programs—Board Chairman; (2) Susan Metts, Assistant Chairman for Administration—Member; (3) Stephen Cherrington, Director, Office of Planning and Budget—Member; Richard Ekman, Director, Division of Research Programs—Alternate member, and Donald Gibson, Director, Division of General Programs—Alternate member.

Lynne Cheney,

Chairperson.

[FR Doc. 89-16693 Filed 7-14-89; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 45 Part 670 of the Code of Federal Regulations.

DATES: Interested parties are invited to submit written data, comments, or view with respect to these permit applications by August 18, 1989. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357-7934.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain mammals and certain geographic areas as requiring special protection. The regulations establish such a permit system and designate Specially Protected Areas and Sites of Special Scientific Interest. The regulations may be found at Title 45, Part 670 of the Code of Federal Regulations. Copies are available from the National Science Foundation.

The purpose of the regulations is to conserve and protect the mammals, birds, and plants of Antarctica and the ecosystem upon which they depend. To that end, unless the following activities are specifically authorized by permit, it is unlawful:

- To take any mammal or bird native to Antarctica (note that "take" means "to remove, harass, molest, harm, pursue, hunt, shoot, wound, kill, trap, capture, restrain, or tag" any native mammal or bird or to attempt to engage in such conduct)
- To collect any plant native to Antarctica in specially protected areas
- To enter any Specially Protected Area or certain Sites of Special Scientific Interest
- To import into or export from the United States any mammal or bird native to Antarctica or any plant collected in a Specially Protected Area
- To introduce to Antarctica any non-indigenous plant or animal.

The Antarctic Conservation Act of 1978 mandates civil and criminal penalties for noncompliance with the regulations.

All mammals and birds normally found in Antarctica, excluding whales regulated by the International Whaling Commission, are designated as native mammals or native birds. Activities involving these mammals or birds require a permit. Areas of outstanding ecological interest are designated as Specially Protected Areas. No one may enter these areas or collect any native plants in these areas without a permit. Areas of unique scientific value that need protection from interference are designated as Sites of Special Scientific Interest. Entry into certain of these areas without a permit is prohibited.

The permit system is described in the regulations. To obtain a permit, each applicant must provide the scientific names and numbers of native mammals or birds to be taken, including age, size, sex, and condition (e.g., pregnant or nursing) or the scientific names and numbers of native plants to be collected in a Specially Protected Area. Each applicant must include a complete description of the location, the time period, and the manner of taking or collecting specimens. If the specimens are to be imported into the United States, the applicant must also indicate the ultimate disposition of the materials.

Permits for taking or collecting mammals, birds, or plants will be issued by the Director of the National Science Foundation or his designated representative. Each permit will be evaluated in terms of the objectives of the Antarctic Conservation Act, that is, the conservation and protection of antarctic flora and fauna and the antarctic ecosystem. Permits issued under these regulations (or copies of them) must be held in the possession of those authorized to engage in a permitted action. The permits must be displayed upon request to any person responsible for enforcing the regulations.

Anyone who knowingly commits an act prohibited by the Antarctic Conservation Act of 1978 is liable to a civil penalty of up to $10,000 for each violation. If the violation was committed without knowledge of the regulations, the fine will not exceed $5,000. Criminal penalties for willful violation of the regulations may involve a fine of up to $10,000 and/or imprisonment for not more than 1 year.

The Antarctic Conservation Act of 1978 does not supersede the Marine Mammal Protection Act, the Endangered Species Act, or the Migratory Bird Treaty Act. Permit applications involving native mammals or native birds covered by these acts will be forwarded by NSF to the agencies that administer them. If a proposed activity involves approval under more than one law, then the activity must satisfy the conditions of all applicable laws or a permit cannot be granted. Even if a permit is approved by other appropriate agencies, the Director of the National Science Foundation still must decide whether to issue a permit according to the requirements of the Antarctic Conservation Act of 1978.

The applications received by the National Science Foundation are as follows:

1. Applicant

J. Ward Testa
Institute of Marine Science
University of Alaska
Fairbanks, Alaska 99775

A. Activity for Which Permit Requested

Taking; import into U.S.A. The applicant is conducting a study of dispersal and diving behavior of seals. Seals will be instrumented and tracked using satellite telemetry. The applicant requests permission to capture, tag, and release up to 2000 Weddell seals (adult) and up to 1500 Weddell seals (pup). In addition, the applicant may approach up to 50 each of Leopard, Crabeater, Ross, Elephant, and Kerguelen fur seals in the course of the work with Weddell seals.

B. Location

McMurdo Sound, Ross Sea, Antarctica

C. Dates

October 1989—February 1992

2. Applicant

Zoe A. Eppley and Albert F. Bennett
Ecology and Evolutionary Biology
University of California
Irvine, California 92717

A. Activity for Which Permit Requested

Taking, import into U.S.A., export from U.S.A., enter specially protected area, introduce non-indigenous species into Antarctica. The applicants are conducting a study of physiological adaptation of Antarctic birds to cold. They request permission to take the following specimens: South Polar Skua, 15; Southern Black-backed Gull, 15; Sheathbill, 75 eggs, 5 adults; Blue-eyed Shag, 5; Southern Giant Fulmar, 5; Wilson's Storm Petrel, 5; Adelie Penguin, 5; Antarctic Tern, 5; Brown Skua, 5. The applicants request permission to enter Litchfield Island Specially Protected Area for work on Brown Skuas. The applicants will import all specimens taken to the U.S.A. At the conclusion of the studies, skeletal materials will be donated to the Los Angeles County Museum of Natural History. The applicants further request permission to import into Antarctica for comparative studies, 4 taxidermic mounts (copper cast of body covered with bird's skin and plumage) of each of the following: Larus dominicanus, Catharacta Maccormiki, Larus occidentalis.

B. Location

South Shetland Islands, Antarctica Peninsula and nearby areas; Palmer Station, Antarctica

C. Dates

November 1989–June 1990

3. Applicant

William R. Fraser, Point Reyes Bird Observatory, 4990 Shoreline Highway, Stinson Beach, California 94970

A. Activity for Which Permit Requested

Taking; enter specially protected area. The applicant requests permission to enter Litchfield Island specially protected area to census penguins and other seabirds breeding at the site. The applicant is conducting a study of the impacts on birds of the fuel oil spill of January 1989 from the *Bahia Paraiso.*

B. Location

Litchfield Island, Arthur Harbor, Antarctic Peninsula

C. Dates

November 1989–March 1990

4. Applicant

Arthur L. DeVries, 4524 Burrill Hall, University of Illinois, Urbana, Illinois 61801

A. Activity for Which Permit Requested

Introduction of a non-indigenous species into Antarctica. The applicant is conducting a study of the role of blood glycopeptide antifreezes in preventing freezing of body fluids of antarctic fishes. The applicant requests permission to introduce up to 20 specimens of the fish Notothenia angustata into Antarctica. The specimens will be kept in a closed sea water aquarium and will not be released into Antarctic waters.

B. Location

McMurdo Station, Antarctica

C. Dates

October 1989–January 1990

5. Applicant

Gerald L. Kooyman, Scripps Institution of Oceanography, University of California, San Diego, La Jolla, California 92093

A. Activity for Which Permit Requested

Taking, import into U.S.A., enter specially protected area. The applicant is conducting a study of the physiology of diving in Emperor Penguins, and requests permission to take the following specimens: Emperor penguins, 70 adults, 50 chicks—capture, attach instrumentation, release. After completion of the studies, the birds will be recaptured and the instruments removed. The applicants also request permission to salvage dead specimens of Emperor penguins—5 adults, 5 chicks, 20 eggs.

B. Location

Cape Washington, Cape Roget, McMurdo Sound, Antarctica

C. Dates

October 1989–May 1990

6. Applicant

W. Zehnder and Jim Claus, Society Expeditions Cruises, Inc., 3131 Elliott Avenue, Suite 700, Seattle, Washington 98121

A. Activity for Which Permit Requested

Taking. The applicant requests permission to salvage dead specimens (i.e., penguin wing or flipper, seal skull or bird beak) on an opportunity basis. Specimens would be used for educational purposes during discussions and lectures to cruise ship passengers.

B. Location

Antarctic Peninsula and offshore islands

C. Dates

November 1989–March 1991

7. Applicant

Mark D. Osadjan, Department of Physiology and Biophysics, University of Illinois, Urbana, Illinois 61801

A. Activity for Which Permit Requested

Introduction of a non-indigenous species into Antarctica. The objective of the project is to isolate and sequence the antifreeze peptide (AFP) genes from Austrolycicthys brachycephalus and Rhigophila dearborni. To accomplish this, the DNA from each fish will be isolated, cut into fragments, and packaged into lambda phage. E. coli is used as a host for amplication of the phage. The gene libraries will provide information to help more completely understand the production, regulation, structure, and function of these peptides. The applicant requests permission to transport to McMurdo Station, Antarctica a supply of E. coli (bacteria) and lambda phage (virus) for the 1989–1990 season.

The actual use of the E. coli and lambda bacteriophage will be under sterile, non-contaminating laboratory conditions. All waste and glassware will be autoclaved, as dictated by proper molecular biology laboratory technique, before disposal. The genomic libraries will be hand-carried back to the University of Illinois.

B. Location

Ekland Biology Laboratory, McMurdo Station, Antarctica

C. Dates

August 22, 1989 to February 1, 1990.

Charles E. Myers,

Permit Office.

[FR Doc. 89-16592 Filed 7-14-89; 8:45 am]

BILLING CODE 7555-01-M

Task Force on Women, Minorities and the Handicapped in Science and Technology; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Task Force on August 9, 1989.

Meeting

Name: Task Force on Women, Minorities and the Handicapped in Science and Technology.

Date: August 9, 1989.

Time: 9 a.m. to 3 p.m.

Place: National Aeronautics and Space Administration, Federal Office Building No. 6, 400 Maryland Avenue, SW., Room 6104, Washington, DC 20546

Task of Meeting: Open.

Purpose: Discussion (1) dissemination of the task force interim report; (2) progress on data collection by agencies; and (3) status of each agency's plans for implementation of the task force interim report.

Summary Minutes: Sue Kemnitzer, Executive Director, 330 C Street NW., (202) 245-7477.

June 27, 1989.

Sue Kemnitzer,

Executive Director.

[FR Doc. 89-16658 Filed 7-14-89; 8:45 am]

BILLING CODE 7555-01-M

Presidential Young Investigator Awards For the Nation's Most Outstanding and Promising Young Science and Engineering Faculty

The National Science Foundation (NSF) announces the competition for Presidential Young Investigator (PYI) Awards to be made in late March, 1990.

The awards are established to achieve the following objectives:

- To attract and retain the Nation's most outstanding and promising young scientists and engineers to an academic career of research and teaching so they may help to meet the need for highly qualified scientists and engineers.
- To help develop improved links and cooperation between industry and universities.

A maximum of 200 new Presidential Young Investigator Awards will be made in this competition. Awards will be made for up to five years based on the annual determination of satisfactory performance and subject to the availability of funds.

Eligibility

Any U.S. institution that awards a baccalaureate, master's or doctoral degree in a field supported by the Foundation is eligible to participate in this program. Only the department chairperson or analogous administrative official at the institution may nominate its faculty members for the awards.

Nominees must be U.S. citizens or permanent residents as of October 2, 1989. To be eligible, nominees must have a tenure-track or tenured faculty position at their nominating institution or receive an appointment to such a position to begin on or before October 1, 1990. Nominees must have begun their first tenure-track position at any college or university after April 30, 1988 and must have a Ph.D. degree, or equivalent, awarded or to be awarded after January 1, 1984.

Since PYI awards must be used to fund research activities, which normally will involve undergraduate and graduate students from the nominating institution, PYI nominees must have a clearly demonstrated ability to conduct a research program. Awardees may conduct research in any branch of science or engineering normally supported by the NSF. Particular emphasis in the selection of awardees will be given to those fields where there are substantial needs for faculty development.

NSF normally will not support clinical research such as biomedical research with disease-related goals, including work on the etiology, diagnosis, or treatment of physical or mental disease, abnormality, or malfunction in human beings or animals. Animal models of such conditions, or the development or testing of drugs or other procedures for their treatment also generally are not eligible for support. NSF does not normally support pilot plant efforts, research requiring security classification, the development of products for commercial marketing, or market research for a particular product or invention.

The PYI awards are intended to encourage the development of our future academic leaders, both in teaching and research. Presidential Young Investigators are expected to carry a normal teaching load relative to non-PYI faculty at the nominating institution.

The PYI awards are tenable only in tenure-track or tenured positions at eligible institutions. Presidential Young Investigators who transfer to an ineligible institution at any time prior to or during the period of their grants must resign their awards.

Support and Commitments

The minimum Presidential Young Investigator Award will consist of an annual base grant of $25,000 from NSF, to be used to support the research activities of the awardee. Furthermore, in accordance with the program goals of leveraging Federal funds and fostering industry-university cooperation, the Foundation will provide up to $37,500 of additional funds per year on a dollar-for-dollar matching basis to contributions from industrial sources, resulting in total annual support of up to $100,000.

Institutions are also expected to make a significant commitment to the support of their awardees, including arranging for the industrial support and guaranteeing full academic-year salary for the awardee. None of the Presidential Young Investigator funds, whether provided by the Foundation or by industry, may be used to underwrite academic-year salaries of the awardees. However, up to ten percent of the Foundation funds may be used to defray administrative expenses in lieu of indirect costs.

Application Procedures

Nominations from an institution must originate from department chairperson or analogous administrative official. Each nomination submission must include:

- The Nomination Form provided in the PYI Program Guidelines. (The five-page form contains the Cover Sheet, Nominator's Narrative Statement, Nominee's Research and Teaching Qualifications, Nominee's Research Plan, and Support and Commitments.)
- A complete curriculum vitae, which provides additional information not covered in the Nomination Form, including a list of research grants awarded and bibliography of publications.
- The Supplementary Nominee Information Form.
- Recommendations from three referees who are familiar with the research and teaching interests and capability of the nominee. Referees must not be from the nominating institution. The referees are to return the Reference Forms directly to the NSF in the accompanying pre-addressed #10 envelopes.

Five (5) copies of the Nomination Form and the nominee's curriculum vitae, and one copy of the Supplementary Nominee Information Form must be submitted, postmarked no later than October 2, 1989.

Since review of PYI nominations take place shortly after the closing date for nominations, NSF cannot assure the inclusion in the review process of any reference letters which arrive at NSF after the deadline for nominations.

Evaluation and Selection

Selection will be based on an evaluation of the nominee's ability and potential as a researcher and teacher for contributing to the future vitality of the Nation's scientific and engineering effort. The evaluation criteria include:

- Nominee's competence in science or engineering—as evidenced by the nominee's most outstanding achievements to date, particularly as attested to by the quality of research and publications, teaching accomplishments, educational background, and the letters of recommendation.
- Nominee's potential for continued professional growth as a research scientist or engineer—as evidenced by the quality of the nominee's research plan, the currency and significance of the research in the expressed field, the appropriateness of the research to his/her academic setting and its probable impact upon the institution's research environment.
- Nominee's potential for significant development as a teacher and academic leader in the training of future scientists and/or engineers—as evidenced by the nominee's commitment to an academic career, the narrative statements describing the nominee's qualifications for this award with regard to their bearing on the nominee's development as an academic leader and the nominee's potential impact on the institution in its teaching mission.

Other factors, such as national needs, infrastructure needs of the field, representation of women and minorities, geographical and institutional balance, will also be considered after the technical merits of the nominations have been ascertained.

The selection of individuals to receive Presidential Young Investigator Awards will be made by the National Science Foundation with the advice of panels of outstanding scientists and engineers.

After an awardee has been selected, the employing institution will be asked to prepare a first-year budget request in support of the awardee's research activities. The budget should show both the amount requested from the Foundation and the sources and amounts of industrial support. This information will be used in determining the amount of the award and other terms and conditions. Except as otherwise provided in this announcement, the terms and conditions, as well as the expected institution commitment, will be analogous to those stated in the publication, NSF 83-57 (March 1989)—Grants for Research and Education in Science and Engineering. Similar submissions will be required annually for each successive year of support under this program.

The FY 1990 PYI awardees will be announced in late March 1990 and have until June 1, 1990 to accept the offers from NSF. They will be expected to begin their research activities under this program by October 2, 1990, or sooner if they wish.

Inquiries

Inquiries regarding the awards may be addressed to the Presidential Young Investigator Awards, National Science Foundation, Washington, DC 20550, or telephoned inquiries to (202) 357-9466.

Chor Weng Tan,

Progam Director, PYI.

July 11, 1989.

[FR Doc. 89-16604 Filed 7-14-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 30-30816; License No. 08-28277-01 EA 89-27]

Christian E. Chinwuba, M.D.; Order Imposing Civil Monetary Penalty

I

Christian E. Chinwuba, M.D., Southwest Imaging Lab, Washington, DC ("licensee") is the holder of License No. 08-28277-01 ("license") issued by the Nuclear Regulatory Commission ("Commission" or "NRC") which authorizes the medical use of byproduct material by the licensee in accordance with the conditions specified therein. The license was issued on December 8, 1988 and is due to expire on December 31, 1993.

II

An NRC safety inspection of the licensee's activities under the license was conducted on January 26, 1989. During the inspection, the NRC staff determined that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated April 5, 1989. The Notice states the nature of the violations, the provisions of the Nuclear Regulatory Commission's requirements that the licensee had violated, and the civil penalty amount for the violations. A response, dated May 12, 1989, to the Notice of Violation and Proposed Imposition of Civil Penalty, was received from the licensee.

III

Upon consideration of the answer received, the statements of fact, explanations, and argument for remission or mitigation of the proposed civil penalty contained therein, the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support has determined, as set forth in the Appendix to this Order, that the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered that:*

The licensee pay a civil penalty in the amount of Two Hundred Fifty Dollars ($250) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The licensee may, within thirty days of the date of this order, request a hearing. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission: ATTN: Document Control Desk, Washington, DC 20555. A copy of the hearing request shall also be sent to the Assistant General Counsel for Hearings and Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Regional Administrator, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above; and

(b) Whether, on the basis of the violations set forth in the Appendix, this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 7th day of July 1989.

Hugh L. Thompson, Jr.,

Deputy Executive Director of Nuclear Materials Safety, Safeguards and Operations Support.

Appendix—Evaluation and Conclusion

On April 5, 1989 a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations of a license issued to Christian E. Chinwuba, M.D., Southwest Imaging Center. The license responded to the Notice on May 12, 1989, admitting Violations A, B, C, and E in total, stating "No Denial" in response to Violation D, and denying Violation F in total. The licensee also requested further mitigation of the civil penalty. The NRC's evaluation and conclusion regarding the licensee's response are as follows:

I. Restatement of Violations

A. 10 CFR 35.21(b)(2) requires that the Radiation Safety Officer shall establish, collect in one binder or file, and implement written policy and procedures for the operation of the radiation safety program.

Contrary to the above, as of January 26, 1989, the Radiation Safety Officer had not collected in one binder or file nor implemented written policy and procedures for the operation of the radiation safety program. A specific example is that the Radiation Safety Officer failed to establish and implement action levels for performing dose calibrator constancy checks as required by the dose calibrator calibration procedures referenced in the licensee's letter dated October 31, 1988, which is listed as a basis of the license by License Condition 13.

B. 10 CFR 19.12 requires, in part, that all individuals working in a restricted area be instructed in the applicable provisions of the Commission's regulations and licenses.

Contrary to the above, as of January 26, 1989, the technologist working in the Nuclear Medicine Area, a restricted area, had not been instructed in the provisions of the regulations or the license.

C. 10 CFR 35.59(d) requires that records of leak test results contain the model number, and serial number, if assigned, of each source tested, the identity of each source radionuclide and its estimated activity, the measured activity of each test sample expressed in microcuries, a description of the method used to measure each test sample, and date of the test, and the signature of the Radiation Safety Officer. A licensee shall retain such leakage test records for five years.

Contrary to the above, as of January 26, 1989, the record of the results of barium-133 leak tests performed on November 22, 1988 did not contain the signature of the Radiation Safety Officer and there was no record of the cesium-137 leak test results.

D. 10 CFR 35.50(b)(2) requires that the accuracy of the dose calibrator be determined at installation and annually thereafter. 10 CFR 35.50(b)(3) requires that the linearity of the dose calibrator be determined at installation and quarterly thereafter.

Contrary to the above, as of January 12, 1989, the dose calibrator had been installed, but accuracy and linearity had not been determined. Specifically, initial testing of the dose calibrator on January 4-6, 1989 indicated an equipment malfunction in that accuracy and linearity testing revealed errors in excess of 10 percent, and repeat testing of the dose calibrator was not completed before initiation of a patient study on January 12, 1989.

E. 10 CFR 35.51(c) requires that each survey instrument be checked for proper operation with the dedicated check source each day of use.

Contrary to the above, as of January 12, 1989, a survey meter was used to perform required surveys without having been checked with a dedicated check source prior to use, since the licensee did not possess, nor did the instrument contain, a dedicated check source.

F. 10 CFR 35.220 requires, in part, that licensees authorized to use byproduct material for imaging and localization studies possess a portable radiation measurement survey instrument capable of measuring dose rates over the range 1 millirem per hour to 1000 millirem per hour.

Contrary to the above, on January 12, 1989, the licensee, who was authorized for imaging and localization studies, did not possess a portable radiation measurement survey instrument capable of measuring dose rates over the range 1 millirem per hour to 1000 millirem per hour.

These violations have been categorized in the aggregate as a Severity Level III problem (Supplements IV and VI).

II. Summary of License Response and NRC Evaluation

A. Summary of Licensee Response Stating "No Denial" of Violation D

The licensee states that the tests on the dose calibrator had been carried out, but were being independently checked and verified and that the patient study was performed on the basis that "a cursory review of the test results . . . appeared fairly within allowable limits." The licensee also states that he was not sure that the equipment was functioning normally.

NRC Evaluation. The requirement to perform a test is not fulfilled until the test data is fully analyzed and a final result is obtained. This did not occur until January 13, 1989, when the final results of the dose calibrator accuracy and linearity tests indicated equipment malfunction, causing the licensee to discontinue patient studies. The violation occurred on January 12, 1989 as stated in the Notice because, on that date, the dose calibrator had been installed and was used by the licensee to calibrate a patient does before the testing for accuracy and linearity was completed.

B. Summary of License Response Concerning Denial of Violation F

The licensee asserts that at the time of the inspection, (January 26, 1989), the NRC was aware that he possessed a Victoreen portable survey instrument which was being recalibrated in California.

NRC Evaluation. 10 CFR 35.220 requires the licensee to have in its possession a portable radiation measurement survey instrument capable of measuring dose rates over the range of 1 millirem per hour to 1000 millirem per hour. At the time of the violation, the licensee owned such an instrument; however, the instrument was not in the licensee's possession. Rather, as the licensee states, this instrument was away in California for the purpose of being recalibrated. The violation occurred on January 12, 1989 as stated in the Notice because, on that date, the licensee administered a dose to a patient and at the time, he had in his possession only a loaner survey instrument which was not capable of measuring dose rates over the range of 1 millirem per hour to 1000 millirem per hour.

C. Summary of Licensee Response Requesting Further Mitigation of the Civil Penalty

The licensee, in his response, requests mitigation of the civil penalty because; (1) The violations were not willful, but stemmed from difficulty encountered by both he and his consultant in interpreting the new NRC regulations; (2) his corrective actions were extensive and sincere; (3) he has no prior enforcement history; and (4) he has incurred financial losses in implementing the corrective actions.

NRC Evaluation. While the existence of a willful violation may result in an increase in the severity level and consequent escalation of a civil penalty, the fact that a violation was not willful does not form a basis for mitigation of a civil penalty. Furthermore, rather than providing a basis for mitigation, the fact that neither the licensee nor his consultants understood the regulatory requirements and responsibilities associated with the license is additional evidence of an increased need for stronger management oversight and control of the program to ensure that licensed activities are carried out in conformance with license conditions and regulatory requirements.

The NRC recognizes and agrees with the licensee's response that his corrective actions were both prompt and extensive. On that basis, the NRC has already mitigated the base civil penalty by 50% in accordance with the enforcement policy. Full mitigation based on this factor alone is both inappropriate and not in accordance with the established enforcement criteria set forth in 10 CFR Part 2, Appendix C.

The NRC disagrees that the absence of any enforcement history regarding the licensee's facility provides a basis for further mitigation of the civil penalty. The enforcement policy provides for escalation of a civil penalty for a licensee with a poor enforcement history and conversely, for mitigation of a penalty for a licensee with a good enforcement history. However, since this was the first inspection of the licensee's facility, there is no enforcement history and there is no basis for either escalation or mitigation of the civil penalty.

Finally, the incursion of financial losses as a result of corrective actions to achieve regulatory compliance provides no basis for mitigation of civil penalty. The cost of achieving and maintaining regulatory compliance is an operating cost borne by the licensee.

Accordingly, the licensee has not provided a basis for mitigation of the civil penalty.

III. NRC Conclusion

The licensee did not provide a sufficient basis for withdrawal of Violation D or F, or for any additionial mitigation of the amount of the civil penalty. Therefore, the NRC concludes that a civil penalty of $250 should be imposed.

[FR Doc. 89-16662 Filed 7-14-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-294]

Michigan State University Triga Nuclear Reactor; Order Authorizing Dismantling of Facility and Disposition of Component Parts

By application dated January 20, 1989, as supplemented on May 4, 1989, the Michigan State University (licensee) requested authorization to dismantle the TRIGA Nuclear Reactor, Facility License No. R-114, located in East Lansing, Michigan and to dispose of the component parts, in accordance with the plan submitted as part of the application. A "Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License" was published in the **Federal Register** on March 2, 1989 (54 FR 8853). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Nuclear Regulatory Commission (the Commission) has reviewed the application in accordance with the provisions of the Commission's rules and regulations and has found that the dismantling and disposal of component parts in accordance with the licensee's dismantling plan will be in accordance with the regulations in 10 CFR Chapter I, and will not be inimical to the common defense and security or to the health and safety of the public. The basis of these findings is set forth in the concurrently issued Safety Evaluation by the Office of Nuclear Reactor Regulation.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact, dated June 30, 1989, for the proposed action. Based on that Assessment, the Commission has determined that the proposed action will not result in any significant environmental impact and that an environmental impact statement need not be prepared.

Accordingly, the licensee is hereby ordered to dismantle the reactor facility and dispose of the component parts in accordance with its dismantling plan and the Commission's rules and regulations.

After completion of the dismantling and disposal, the licensee will submit a report on the radiation survey it will perform to confirm that radiation and surface contamination levels in the facility area satisfy the values specified in the dismantling plan and in the Commission's guidance. Following an inspection by representatives of the Commission to verify the radiation and contamination levels in the facility, consideration will be given to issuance of a further order terminating Facility License No. R-114.

For further details with respect to this action, see: (1) The licensee's application for authorization to dismantle the facility and dispose of component parts, dated January 20, 1989, as supplemented on May 4, 1989, (2) the Commission's related Safety Evaluation:

and (3) the Environmental Assessment and Finding of No Significant Impact. These items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC. Copies of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 11th day of July 1989.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V, and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-16663 Filed 7-14-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-275 and 50-323]

Pacific Gas and Electric Co.; Issuance of Amendments to Facility Operating Licenses

The United States Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 42 and 41 to Facility Operating Licenses Nos. DPR-80 and DPR-82, issued to the Pacific Gas and Electric Company (the licensee), which revised the Technical Specifications (TS) for operation of the Diablo Canyon Power Plant, Unit Nos. 1 and 2, located in San Luis Obispo County, California. The amendments are effective as of the date of issuance.

The amendments change the Technical Specifications by revising the surveillance test frequency of the turbine stop valves, the governor valves and the intercept valves associated with the turbine overspeed protection.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings, as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 18, 1988 (53 FR 17806). No request for hearing or petition to intervene was filed following this notice.

Also in connection with this action, the Commission prepared an Environmental Assessment and Finding of No Significant Impact which was published in the **Federal Register** on May 4, 1989 at 54 FR 19263.

For further details with respect to this action, see: (1) The application for amendments dated January 22, 1988, as supplemented by letter dated May 15, 1989, (2) Amendments Nos. 42 and 41 to Licenses Nos. DPR-80 and DPR-82, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 10th day of July 1989.

For the Nuclear Regulatory Commission.

Harry Rood,

Senior Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-16661 Filed 7-14-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-353]

Limerick Generating Station, Unit No. 2; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission), has issued Facility Operating License No. NPF-84 to the Philadelphia Electric Company, (the licensee) which authorizes operation of the Limerick Generating Station, Unit No. 2 (the facility), by Philadelphia Electric Company at reactor core power levels not in excess of 165 megawatts thermal in accordance with the provision of the License, the Technical Specifications and the Environmental Protection Plan.

The Limerick Generating Station, Unit No. 2, is a boiling water nuclear reactor located on the licensee's site in Montgomery and Chester Counties, Pennsylvania on the banks of the Schuylkill River approximately 1.7 miles southeast of the city limits of Pottstown, Pennsylvania and 21 miles northwest of the city limits of Philadelphia, Pennsylvania.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the License. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on August 21, 1981 (46 FR 42557-42558).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption included in this license will have no significant impact on the environment (54 FR 15851) and (54 FR 24607).

For further details in respect to this action, see: (1) Facility Operating License NPF-84 complete with Technical Specifications and the Environmental Protection Plan; (2) the final report of the Advisory Committee on Reactor Safeguards, dated May 11, 1989; (3) the Commission's Safety Evaluation Report, dated August 1983 (NUREG-0991), Supplements 1 through 8; (4) the Final Safety Analysis Report and Amendments thereto; (5) the Environmental Report and supplements thereto; (6) the Final Environmental Statement dated April 1984 (NUREG-0974); (7) the Atomic Safety and Licensing Board Decision, LBP-85-25, dated July 22, 1985 and (8) the Commission's Order dated July 7, 1989.

These items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania, 19464. A copy of Facility Operating License NPF-84 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II. Copies of the Safety Evaluation Report and its Supplements 1 through 8 (NUREG-0991) and the Final Environmental Statement (NUREG-0974) may be purchased through the U.S. Government Printing Office by calling (202) 275-2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Rockville, Maryland, this 10th day of July 1989.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I-2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-16660 Filed 7-14-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Implementation of the Accelerated Tariff Elimination Provision in the United States; Canada Free-Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of articles under consideration for negotiations with the Canadian Government for accelerated tariff elimination.

SUMMARY: Section 201(b) of the United States—Canada Free-Trade Agreement Implementation Act of 1988 ("FTA Implementation Act") grants the President, subject to the consultation and layover requirements of section 103 of that Act, the authority to proclaim any accelerated schedule for duty elimination that may be agreed to by the United States and Canada under FTA Article 401(5). This notice is intended to inform the public of those articles that may be the subject of negotiations between the United States and Canada for accelerated tariff elimination.

Additional Information: Further information on this subject may be found in the **Federal Register** notice of January 23, 1989, Volume 54, Number 13, at pages 3175 and 3176. A list of abbreviated descriptions of the articles provided for in the tariff chapters, headings, and subheadings listed in Annexes I and II below, can be obtained by contacting Frances Birdsall at the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22061, telephone (703) 487-4650. Inquiries regarding this notice or other aspects of the implementation of accelerated tariff elimination under the FTA should be directed to the Office of North American Affairs, Office of the U.S. Trade Representative, Room 501, 600 17th Street, NW., Washington, DC 20506, telephone (202) 395-5663.

Request for Comments

Comments supporting or opposing accelerated U.S. or Canadian duty elimination on articles provided for in the tariff chapters, headings, and subheadings listed in Annex I or Annex II will be accepted until August 18, 1989. Comments should be type-written and submitted in eight copies to Rick Ruzicka, Director for Canadian Affairs, Office of North American Affairs, Office of the United States Trade Representative, Room 501, 600 17th Street, NW., Washington, DC 20506. All submissions must specify the United States and/or Canadian tariff chapter, heading or subheading to which the comments refer, and must include the name, address and telephone number of the person, firm or organization making the comments.

Advice of the International Trade Commission

The International Trade Commission is being furnished with the list of articles published in this notice for the purpose of securing from the Commission its judgment as to the probable economic effect of acceleration of elimination of United States duties on industries producing like or directly competitive articles and on consumers.

Articles That May Be Considered in Negotiations

Except as noted, all articles provided for in the chapters, headings, and subheadings of the Harmonized Tariff Schedule of the United States that are listed in Annex I to this notice, and in the chapters, headings, and subheadings of the Customs Tariff of Canada that are listed in Annex II, may be subject to negotiations with Canada for accelerated duty elimination. These lists include all articles for which acceleration of tariff elimination has been requested in petitions submitted either to the Government of the United States or to the Government of Canada.

Charles E. Roh, Jr.,

Acting Assistant U.S. Trade Representative for North American Affairs.

BILLING CODE 3190-01-M

Annex I

Chapters, Headings, and Subheadings in the Harmonized Tariff

Schedule of the United States

0102.90	0708.10	1104.19.00	1516.20	1702.50.00	2009.80.60	2710.00
0104.20.00	0708.20	1104.21.00	1516.10.00	1702.60.00	2009.90	2804.10.00
0201.10.00	0708.90.15	1104.22.00	1517.10.00	1702.90	2103.10.00	2804.21.00
0201.20	0709.51.00	1104.23.00	1517.90	1703.10	2103.20	2804.29.00
0201.30	0710.10.00	1104.29.00	1518.00	1703.90	2103.30	2804.30.00
0202.10.00	0710.21	1104.30.00	1519.19	1704.10.00	2103.90	2804.40.00
0202.20	0710.80.20	1105.10.00	1521.90	1704.90	2104.10.00	2805.21.00
0202.30	0710.80.70	1105.20.00	1602.10.00	1805.00.00	2104.20.00	2805.22
0203.12	0710.80.95	1106.10.00	1602.20	1806.10	2105.00.00	2805.30.00
0203.19	0710.90.90	1106.30	1602.31.00	1806.20	2106.10.00	2811.19
0203.22	0711.90.40	1107.10.00	1602.39.00	1806.31.00	2106.90	2811.22
0203.29	0712.30	1107.20.00	1602.41	1806.32	2201.10.00	2811.29
0204.10.00	0811.20.20	1108.11.00	1602.42	1806.90.00	2202.10.00	2812.10
0204.21.00	0811.90.35	1108.12.00	1602.49	1901.10.00	2202.90.10	2821.10.00
0204.22	0811.90.60	1108.13.00	1602.50.90	1901.20.00	2202.90.20	2825.90.10
0204.23	1001.10.00	1108.20.00	1602.90	1901.90	2202.90.90	2826.19.00
0204.30.00	1001.90	1109.00	1603.00	1902.11	2204.10.00	2827.10.00
0204.41.00	1003.00	1202.10.00	1604.12.20	1902.19	2204.21	2827.31.00
0204.42	1005.90.20	1202.20.00	1604.13	1902.20.00	2204.29	2827.39.50
0204.43	1006.10.00	1204.00.00	1604.19.40	1902.30.00	2204.30	2827.60
0208.90	1006.20	1205.00.00	1604.19.50	1902.40.00	2205.10	2828.10.00
0209.00.00	1006.30	1207.20.00	1604.19.80	1903.00	2205.90	2833.29
0304.10	1006.40.00	1208.10.00	1604.20	1904.10.00	2206.00	2835.10.00
0304.20	1007.00.00	1208.90.00	1605.10	1904.90.00	2207.10	2835.22.00
0305.30	1008.30.00	1501.00.00	1605.20	1905.90	2207.20.00	2835.23.00
0305.41.00	1101.00.00	1503.00.00	1605.30	2001.10.00	2208.10	2835.24.00
0305.61	1102.10.00	1506.00.00	1605.90.05	2003.10.00	2208.20	2835.29
0305.69.40	1102.20.00	1507.10.00	1605.90.10	2004.10.00	2208.50.00	2835.31.00
0306.14	1102.30.00	1507.90	1605.90.20	2004.90	2208.90	2835.39
0306.24	1102.90	1512.11.00	1701.11	2005.20.00	2209.00.00	2836.20.00
0407.00.00	1103.11.00	1512.19.00	1701.12.00	2007.99	2304.00.00	2836.99
0408.91.00	1103.12.00	1512.21.00	1701.91	2008.70.00	2306.20.00	2839.11.00
0408.99.00	1103.13.00	1512.29.00	1701.99.00	2008.92	2306.40.00	2839.19.00
0409.00.00	1103.14.00	1514.10	1702.10.00	2008.99	2526.20.00	2841.60.00
0410.00.00	1103.19.00	1514.90	1702.20	2009.20.20	2607.00.00	2843.21.00
0603.90.00	1104.11.00	1515.11.00	1702.30	2009.50.00	2608.00.00	2843.29.00
0701.10.00	1104.12.00	1515.19.00	1702.40.00	2009.60.00	2709.00	2843.90.00

2847.00.00	2912.11.00	2926.90	3214.90	3702.41.00	3904.10.00	3920.73.00
2850.00.50	2912.19	2929.10	3215.11.00	3702.42.00	3904.21.00	3920.92.00
2851.00.00	2914.11	2929.90	3215.19.00	3702.52.00	3904.22.00	3920.99
2901.10	2914.12.00	2930.30.00	3215.90	3702.92.00	3904.30.00	3921 [a]
2901.29	2914.19.00	2930.90	3301.29	3703.10	3904.40.00	3921.13
2902.50.00	2914.49	2931.00	3301.30	3703.20	3904.90.50	3921.19.00
2902.60.00	2914.50	2932.29	3302.10	3707.10.00	3905.11.00	3921.90
2902.90	2915.21.00	2932.90	3302.90	3707.90	3905.19.00	3922.10.00
2903.11.00	2915.22.00	2933.29.45	3303.00	3802.90.20	3905.20.00	3923.10.00
2903.12.00	2915.24.00	2933.29.50	3304.10.00	3802.90.50	3905.90	3923.21.00
2903.13.00	2915.31.00	2933.39	3304.20.00	3804.00	3906.10.00	3923.29.00
2903.14.00	2915.32.00	2933.59	3304.30.00	3806.10.00	3906.90	3923.30.00
2903.15.00	2915.39	2933.69.00	3304.91.00	3806.30.00	3907.20.00	3923.40.00
2903.19	2915.90	2933.71.00	3304.99.00	3808.10	3907.60.00	3923.50.00
2903.21.00	2916.12	2933.90	3305.10.00	3808.20.10	3908.10.00	3923.90.00
2903.22.00	2916.19.50	2934.20	3305.20.00	3808.20.30	3908.90.00	3924.10
2903.23.00	2916.32	2934.90	3305.30.00	3808.20.50	3909.10.00	3924.90
2903.30.15	2916.39	2935.00	3305.90.00	3808.30.50	3909.40.00	3925.10.00
2903.30.20	2917.12	2936.24.00	3307.10	3808.40.50	3909.50	3925.90.00
2903.40.00	2917.19	2936.27.00	3307.20.00	3808.90	3910.00.00	3926.10.00
2903.59	2917.39	2936.29	3307.30	3809.91.00	3911.10.00	3926.30.50
2905.11	2918.14.00	2936.90.00	3307.41.00	3809.99.50	3911.90	3926.90
2905.12.00	2918.15	2939.30.00	3307.49.00	3810.90.	3912.31.00	4006.90
2905.13.00	2918.19.10	2940.00.00	3307.90.00	3811.11	3912.39.00	4008.11
2905.14.00	2918.19.20	2941.90	3401.11.50	3811.19.00	3913.10.00	4008.19
2905.16.00	2918.19.30	2942.00	3401.19.00	3811.21.00	3913.90	4008.21.00
2905.17.00	2918.19.60	3002.90.10	3401.20.00	3811.29.00	3914.00.00	4008.29.00
2905.19.00	2918.19.90	3003.39	3402.11	3811.90.00	3916.20.00	4009.40.00
2905.31.00	2918.29	3003.90.00	3402.12	3812.10	3916.90	4009.50.00
2905.32.00	2919.00	3004.10	3402.13	3812.20	3917.10	4010.10
2905.42.00	2920.90	3004.20.00	3402.19	3812.30	3917.21.00	4011.91.50
2905.43.00	2921.12.00	3004.39.00	3402.20	3814.00	3917.22.00	4013.90.50
2905.44.00	2921.19	3004.40.00	3402.90	3815.90	3917.23.00	4014.10.00
2905.50	2921.29.00	3004.90	3403.19	3819.00.00	3917.29.00	4014.90
2907.11.00	2921.30	3005.10	3405.20.00	3823.20.00	3918.10	4016.93.00
2907.13.00	2921.44	3005.90	3405.30.00	3823.60.00	3918.90	4016.99
2907.19	2921.51	3006.10.00	3405.40.00	3823.90	3919.10	4017.00.00
2907.29	2922.11.00	3006.30	3405.90.00	3901.10.00	3919.90	4104.10.20
2908.10	2922.12.00	3204.17	3505.10.00	3901.20.00	3920.10.00	4104.21.00
2909.19	2922.13.00	3206.49.10	3506.91.00	3902.10.00	3920.20.00	4104.22.00
2909.20.00	2922.29	3207.10.00	3506.99.00	3902.30.00	3920.30.00	4104.29.50
2909.30	2922.49	3208.20.00	3603.00	3902.90.00	3920.41.00	4104.31.50
2909.49	2922.50	3208.90.00	3606.90	3903.19.00	3920.42	4104.39.50
2909.60	2923.20.00	3209.90.00	3701.20.00	3903.20.00	3920.51	4201.00
2910.10.00	2924.29	3212.90.00	3702.20.00	3903.30.00	3920.62.00	4202.11.00
2911.00.00	2925.19	3214.10.00	3702.32.00	3903.90	3920.63	4202.12

4202.19.00	4810.39	5205.14	5209.49.00	5506.10.00	5607.30	6109.10.00
4202.21	4810.99.00	5205.15	5210.31	5506.90.00	5609.00	6109.90.10
4202.22	4811.31	5205.21.00	5211.41.00	5507.00.00	5703.20	6110.30
4202.29.00	4811.39	5205.22.00	5211.49.00	5508.10.00	58 [b]	6114.30.30
4202.31	4811.40.00	5205.23.00	53 [b]	5508.20.00	5801.10.00	6116.93.20
4202.32	4811.90	5205.24.00	5306.10.00	5509.11.00	5801.22.00	6201.92.20
4202.39.00	4816.20.00	5205.25.00	5306.20.00	5509.12.00	5801.24.00	6201.93
4202.91.00	4817.10.00	5205.31.00	5307.10.00	5509.21.00	5801.25.00	6202.11.00
4202.92	4818.10.00	5205.32.00	5307.20.00	5509.22.00	5801.26.00	6202.92.20
4202.99.00	4818.20.00	5205.33.00	5308.90.00	5509.31.00	5801.32.00	6203.11
4203.10.40	4818.30.00	5205.34.00	54 [b]	5509.32.00	5801.34.00	6203.12.20
4203.29	4818.40	5205.35.00	5401.10.00	5509.41.00	5801.35.00	6203.19.10
4203.30.00	4818.50.00	5205.41.00	5401.20.00	5509.42.00	5801.36.00	6203.19.20
4205.00	4818.90.00	5205.42.00	5402.10	5509.51	5802.30.00	6203.42.40
4407.10.00	4819.10.00	5205.43.00	5402.20	5509.52.00	5804.21.00	6204.62.40
4409.10	4819.20.00	5205.44.00	5402.31	5509.53.00	5806.10.10	6205.20
4411.11.00	4819.40.00	5205.45.00	5402.32	5509.59.00	5806.10.30	6205.30
4411.19	4819.50	5206.11.00	5402.33	5509.61.00	5806.20.00	6206.40.30
4411.21.00	4820.50.00	5206.12.00	5402.39	5509.62.00	5806.31.00	6210.40
4411.29	4820.90.00	5206.13.00	5402.41.00	5509.69	5806.32	6211.33.00
4412.12.10	4821.10	5206.14.00	5402.42.00	5509.91.00	5808.10	6211.43.00
4415.20.80	4821.90	5206.15.00	5402.43.00	5509.92.00	5808.90.00	6215.10.00
4417.00.80	4823.19.00	5206.21.00	5402.49.00	5509.99	5810.91.00	6215.20.00
4418.20.00	4823.20	5206.22.00	5402.51.00	5510.11.00	59 [b]	6215.90.00
4418.90	4823.51.00	5206.23.00	5402.52.00	5510.12.00	5902.10.00	6216.00.48
4421.90.60	4823.59	5206.24.00	5402.59.00	5510.20.00	5902.20.00	6217.10.00
4421.90.90	4823.60.00	5206.25.00	5402.61.00	5510.30.00	5903.20	6302.31
4504.90	4823.90.20	5206.31.00	5402.62.00	5510.90	5903.90	6302.39.00
4602.10	4823.90.60	5206.32.00	5402.69.00	5511.10.00	5905.00	6302.53.00
4602.30	4823.90.65	5206.33.00	5403.20	5511.20.00	5911.10	6302.60.00
4602.52	4823.90.70	5206.34.00	5404.90.00	5511.30.00	5911.90.00	6302.92.00
4602.53	4823.90.80	5206.35.00	5407.10.00	5514.31.00	60 [b]	6303.91.00
4802.60	4823.90.85	5206.41.00	5407.41.00	5514.33.00	6002.10	6303.92.00
4803.00	4908.90.00	5206.42.00	5407.52	5514.39.00	6002.20	6303.99.00
4804.31	4909.00	5206.43.00	5407.60	5515.13	6002.30	6304.19
4804.39	4911.99	5206.44.00	5407.72.00	5515.22	6002.42.00	6305.20.00
4805.10.00	51 [b]	5206.45.00	5407.73	5515.92	6002.43.00	6306.12.00
4805.40.00	5111 [c]	5207.10.00	5407.82.00	5516.13.00	6002.92.00	6307.10
4805.60	5112 [c]	5207.90.00	5407.93	5516.31	6002.93.00	6307.90
4805.80	52 [b]	5208.11	5408.34	5516.32	6102.10.00	6401.91.00
4808.10.00	5204.11.00	5208.13.00	55 [b]	5516.33	6102.30.20	6401.99
4809.20	5204.19.00	5208.22	5502.00.00	5516.34	6103.11.00	6402.19
4810.11.90	5204.20.00	5208.29	5503.10.00	5601.30.00	6103.12	6402.91
4810.12.00	5205.11	5209.11.00	5503.90.00	5603.00	6103.19	6403.19
4810.21.00	5205.12	5209.21.00	5504.10.00	5607.10.00	6103.43.15	6404.11
4810.29.00	5205.13	5209.41	5505.20.00	5607.29.00	6105.20.20	6404.19

6406.20.00	7106.92.00	7211.29	7306.60.10	7403.12.00	7606.11	8205.40.00
6406.91.00	7113.11	7215.90	7306.60.50	7403.13.00	7606.12	8205.59
6406.99	7113.19	7216.10.00	7307 [m]	7403.19.00	7606.91	8205.70.00
6504.00	7113.20	7216.21.00	7307.11.00	7403.21.00	7606.92	8207.30
6506.10	7114.11.10	7216.22.00	7307.19	7403.22.00	7607.11	8207.40
6506.99.00	7114.11.20	7216.31.00	7307.29.00	7403.23.00	7607.19	8207.50
6602.00.00	7114.11.30	7216.32.00	7307.91.50	7403.29.00	7607.20	8208.90.60
6804.21.00	7114.11.40	7216.33.00	7308 [n]	7405.00	7608.10.00	8211.91
6804.22	7114.11.45	7216.40.00	7308.90	7407.10	7608.20.00	8211.93.00
6805.10.00	7114.11.50	7216.50.00	7311.00.00	7407.21	7609.00.00	8211.94
6805.20.00	7114.11.60	7216.90.00	7312.10.05	7407.22.50	7610.10.00	8212.10.00
6805.30	7114.20.00	7217.12.30	7312.10.10	7407.29.50	7610.90.00	8212.20.00
6806.10.00	7115.10.00	7217.12.50	7312.10.20	7409.11	7612.90	8213.00
6807.10.00	7115.90.50	7217.22.10	7312.10.30	7409.19	7613.00.00	8214.10.00
6807.90.00	7117.11.00	7218.90.00	7312.10.50	7409.21.00	7614.10	8215.10.00
6809.11.00	7117.19	7219 [g]	7312.10.60	7409.29.00	7614.90	8215.20.00
6903.20.00	7117.90	7219.21.00	7312.10.70	7409.31	7615.10	8215.91
6903.90.00	7208 [d]	7219.22.00	7312.10.90	7409.90	7616.10	8215.99
6907.10.00	7208.11.00	7219.31.00	7314.20.00	7410.12.00	7616.90.00	8301.10.60
6907.90.00	7208.12.00	7219.90.00	7315.11.00	7411 [o]	7801.10.00	8301.10.80
6908.10	7208.13	7220 [h]	7315.19.00	7411.10	7801.91.00	8301.10.90
6908.90.00	7208.14	7220.90.00	7315.82	7411.29	7801.99	8301.20.00
6910.10.00	7208.21	7224.90.00	7317.00	7412.10.00	7901.11.00	8301.30.00
6911.10	7208.22	7225 [i]	7318.14	7412.20.00	7901.12	8301.40
6911.90.00	7208.23	7225.10.00	7318.15	7416.00.00	7901.20.00	8301.60.00
6912.00	7208.24	7225.30	7318.16.00	7419.10.00	7907.90	8301.70.00
6913.10	7208.31.00	7225.40	7318.21.00	7419.91.00	8003.00.00	8302.10
6913.90	7208.32.00	7226 [j]	7318.23.00	7419.99	8007.00	8302.42
6914.10.00	7208.33	7226.10	7318.24.00	7505.11	8104.11.00	8302.49
7007.11.00	7208.34	7226.91	7318.29.00	7505.12	8104.19.00	8302.60
7007.21	7208.35	7302.30.00	7320.10.00	7505.21	8104.30.00	8305.10.00
7010.90	7208.41.00	7302.40.00	7320.20	7505.22	8104.90.00	8308.10.00
7011.10	7208.42.00	7302.90.00	7320.90	7506.10	8108.90	8308.90
7013.21	7208.43.00	7304 [k]	7321.11	7506.20	8112.11	8309.10.00
7013.29	7208.44.00	7304.10.10	7321.83.00	7507.11.00	8112.19.00	8309.90.00
7013.31	7208.45.00	7304.31	7322.90.00	7507.12.00	8202.91	8310.00.00
7013.32	7208.90.00	7304.39.00	7323.91	7507.20.00	8203.10	8311.30
7013.39	7209 [e]	7304.41.00	7323.93.00	7603.10.00	8203.20	8402.12.00
7013.91	7209.31.00	7306 [l]	7323.94.00	7603.20.00	8203.30.00	8402.90.00
7013.99	7210 [f]	7306.10.10	7325.99	7604.10	8203.40	8404.10.00
7019.10.10	7210.90	7306.20.10	7326.19	7604.21.00	8204.11.00	8404.20.00
7019.10.20	7211.11.00	7306.20.20	7326.90	7604.29	8204.12.00	8404.90.00
7019.20	7211.12.00	7306.20.60	7401.10.00	7605.11.00	8204.20.00	8409.91.91
7019.32.00	7211.19	7306.30	7401.20.00	7605.19.00	8205.10.00	8409.91.99
7019.90	7211.21.00	7306.40	7402.00.00	7605.21.00	8205.20	8412.31.00
7106.91	7211.22.00	7306.50	7403.11.00	7605.29.00	8205.30	8412.39.00

8412.90	8431.49 10	8501.32	8512.90	8524.22	8536.49.00	8606.30.00
8413.19.00	8433.11.00	8501.33	8514.10.00	8524.23	8536.50.00	8606.91.00
8413.20.00	8450.11.00	8501.34	8514 20.00	8524.90	8536.69.00	8606.92.00
8413.30	8451.21.00	8501.40	8514.30.00	8525.10	8536.90.00	8606.99.00
8413.60.00	8451.90.00	8501.51	8514.40.00	8525.20	8537.10.00	8607.11.00
8413.70	8458.99	8501.52	8514.90.00	8525.30.00	8537.20.00	8607.12.00
8413.91	8460.21.00	8501.53	8515.11.00	8526.10.00	8538.10.00	8607.19
8414.10.00	8460.40.00	8501.61.00	8515.19.00	8526.91.00	8538.90.00	8607.30
8414.59	8460.90.00	8501.62.00	8515.21.00	8526.92.00	8539.10.00	8607.91.00
8414.80	8462.29.00	8501.63.00	8515.29.00	8527.11	8539.21	8607.99
8414.90	8465.93.00	8501.64.00	8515.31.00	8527.31	8539.22	8608.00.00
8415.10.00	8466.93	8503.00	8515.39.00	8527.32.00	8539.29	8701.30
8418.50.00	8472.10.00	8504.10.00	8515.80.00	8527.39.00	8539.31.00	8701.90
8418.61.00	8472.90	8504.21.00	8515.90	8527.90	8539.39.00	8703.21.00
8418.69.00	8473.10.00	8504.23.00	8516.10.00	8528.10	8539.40	8705.40.00
8418.99.00	8473.40	8504.31	8516.29.00	8529.10	8539.90.00	8705.90.00
8419.50.00	8477.30.00	8504.40.00	8516.40.40	8529.90	8540.11.00	8707.10.00
8419.81.90	8477.80.00	8504.90.00	8516.60	8531.10.00	8540.20	8707.90
8419.89	8477.90.00	8505.11.00	8516.71.00	8531.20.00	8540.30.00	8708.10.00
8419.90	8479.89	8506.11.00	8516.72.00	8531.80.00	8540.41	8708.21.00
8421.21.00	8479.90	8506.12.00	8516.79.00	8531.90.00	8540.42.00	8708.29.00
8421.23.00	8481.10.00	8506.13.00	8516.80.80	8532.10.00	8540.49.00	8708.31
8421.29.00	8481.30	8506.19.00	8516.90.60	8532.21.00	8541.60.00	8708.39
8421.31.00	8481.40.00	8506.20.00	8517.30.15	8532.22.00	8543.20 00	8708.40
8421.99.00	8481.80	8506.90.00	8517.30.25	8532.23.00	8543.80	8708.50
8422.19.00	8481.90	8507.10.00	8517.40	8532.24.00	8543.90	8708.60
8422.30	8482.10	8507.20.00	8517.81.00	8532.25.00	8544.11.00	8708.70
8422.90.05	8482.20.00	8507.30.00	8517.82.00	8532.29.00	8544.19.00	8708.80
8424.20	8482.30.00	8507.40.00	8517.90	8532.30.00	8544.20.00	8708.91
8424.30	8482.40.00	8507.80.00	8518.10.00	8532.90.00	8544.30.00	8708.92
8424.81	8482.50.00	8507.90	8518.21.00	8533.10.00	8544.41.00	8708.93
8424.89.00	8482.91.00	8508.10.00	8518.22.00	8533.21.00	8544.49.00	8708.94
8425.31.00	8482.99	8508.20.00	8518.29.00	8533.29.00	8544.51	8708.99
8425.41.00	8483.10	8508.80.00	8518.30	8533.31.00	8544.59	8712.00
8425.42.00	8483.30	8509.10.00	8518.40	8533.39.00	8544.60	8714.99
8426.49.00	8483.40	8509.20.00	8518.50.00	8533.40.00	8544.70.00	8716.31.00
8428.10.00	8483.60	8509.40.00	8518.90	8533.90.00	8545.90	8716.39.00
8428.20.00	8483.90.10	8509.80.00	8522.90.40	8534.00.00	8546.90.00	8716.40.00
8428.39.00	8483.90.20	8509.90.20	8522.90.90	8535.10.00	8547.20.00	8716.80
8428.90.00	8483.90.30	8509.90.30	8523.11.00	8535.21.00	8547.90 00	8716.90.50
8429.20.00	8483.90.50	8511.10.00	8523.12.00	8535.29.00	8548.00.00	8903.10.00
8429.51.10	8483.90.80	8511.20.00	8523.13.00	8535.30.00	8602.10.00	8903.91.00
8430.49.80	8485.90.00	8511.30.00	8523.20.00	8535.40.00	8604.00.00	8903.92.00
8431.31.00	8501.10	8511.90	8523.90.00	8535.90.00	8605.00.00	8903.99
8431.39.00	8501.20	8512.20	8524.10.00	8536.10.00	8606.10.00	8905.90
8431.42.00	8501.31	8512.40	8524.21	8536.41.00	8606.20.00	9002.11.40

9003.11.00	9105.11	9503.49.00
9003.19.00	9105.19	9503.50.00
9003.90.00	9105.21	9503.60.00
9004.90.00	9105.29	9503.70
9007.29	9105.91	9503.80
9007.92.00	9105.99	9503.90
9009.12.00	9107.00	9504.10.00
9009.90.00	9113.20	9504.90
9010.20.10	9113.90	9505.10
9010.20.30	9202.90.20	9505.90
9010.20.40	9202.90.40	9506.29.00
9010.20.50	9207.10.00	9506.91.00
9010.20.60	9207.90.00	9506.99.20
9010.30.00	9306.21.00	9506.99.50
9010.90	9306.29.00	9506.99.60
9013.80.60	9306.30	9507.30
9013.90.40	9401.10	9602.00.10
9014.80	9401.20.00	9603.21.00
9015.80.60	9401.30	9603.90.80
9017.30	9401.40	9606.21
9017.80.00	9401.61	9606.22.00
9017.90.00	9401.69	9606.29
9018.49.80	9401.71.00	9607.19.00
9018.90.70	9401.80	9608.10.00
9019.20.00	9401.90	9608.39.00
9025.11	9402.10.00	9608.40
9025.19.00	9403.20.00	9608.60.00
9026.10	9403.30	9608.99
9026.20	9403.40	9609.20
9026.80	9403.50	9612.10
9026.90	9403.60	9616.10.00
9027.80.80	9403.70	9616.20.00
9028.30.00	9403.90	9617.00.10
9030.31.00	9405.40	9617.00.30
9030.39.00	9405.60	9617.00.60
9030.40.00	9405.91.60	9618.00.00
9030.90	9405.92.00	
9031.20.00	9405.99	
9031.40.00	9501.00	
9031.80.00	9502.10	
9031.90	9502.91.00	
9032.10.00	9502.99	
9032.20.00	9503.10.00	
9032.81.00	9503.20.00	
9032.89	9503.30	
9032.90	9503.41	

Annex II

Chapters, Headings, and Subheadings in the

Customs Tariff of Canada

0102.90	0811.20.00	1109.00.00	1605.10.00	1905.90	2208.20.00	2835.31.00
0104.20	0811.90	1208.10	1605.30	2001.10.00	2208.50.00	2835.39.00
0201.10.00	1001.10.00	1208.90	1605.90.10	2003.10.00	2208.90	2836.20.00
0201.20.00	1001.90.00	1501.00.00	1605.90.94	2004.10.00	2209.00.00	2836.30.00
0201.30.00	1003.00.00	1503.00.00	1701.11	2004.90	2309.10.00	2836.50.00
0202.10.00	1005.90.10	1506.00.00	1701.12.00	2005.20.00	2526.20	2836.99.00
0202.20.00	1006.30.00	1507.10.00	1701.91.00	2007.99	2709.00	2839.11.00
0202.30.00	1006.40.00	1507.90	1701.99.00	2008.70	2710.00	2839.19.00
0204.10.00	1007.00.00	1512.11	1702.10.00	2008.92	2712.90	2841.60.00
0204.21.00	1008.30	1512.19	1702.30.00	2008.99	2713.20.00	2843.21.00
0204.22	1101.00.00	1512.21.00	1702.40.00	2009.20	2804.10.00	2843.29.00
0204.23	1102.10.00	1512.29.00	1702.60.00	2009.50.00	2804.21.00	2843.90.00
0204.30.00	1102.20.00	1514.10.00	1702.90	2009.60	2804.29.00	2847.00.00
0204.41.00	1102.30.00	1514.90.00	1703.10	2009.70.10	2804.30.00	2850.00
0204.42	1102.90.00	1515.11.00	1703.90	2009.80.19	2804.40.00	2851.00.00
0204.43	1103.11.00	1515.19.00	1704.10.00	2009.90	2804.70.00	2901.10
0209.00	1103.12.00	1516.10.00	1704.90	2103.10.00	2805.21.00	2901.29.00
0306.14.00	1103.13	1516.20.00	1805.00.00	2103.20.00	2805.22.00	2902.50.00
0306.24.00	1103.19	1517.10.00	1806.10.00	2103.30.20	2805.30.00	2902.60.00
0407.00.00	1104.11.00	1517.90	1806.20	2103.90	2809.20.00	2902.90.00
0408.91.00	1104.12.00	1518.00	1806.31.00	2104.10.00	2811.19	2903.11.00
0408.99.00	1104.19.00	1519.19.00	1806.32.00	2104.20.00	2811.22.00	2903.12.00
0409.00.00	1104.21.00	1520.90.00	1806.90.00	2105.00.00	2811.29.90	2903.13.00
0410.00.00	1104.22.00	1521.90.10	1901.10	2106.10.00	2812.10	2903.14.00
0603.90.90	1104.23.00	1602.10.00	1901.20	2106.90	2821.10.00	2903.15.00
0701.10.00	1104.29.00	1602.20	1901.90	2202.10.00	2826.19.00	2903.19.00
0701.90.00	1104.30.00	1602.31	1902.11.00	2202.90.00	2827.10.00	2903.21.00
0708.10	1105.10.00	1602.39	1902.19	2204.10.00	2827.31.00	2903.22.00
0708.20.99	1105.20.00	1602.41	1902.20.00	2204.21.00	2827.39.00	2903.23.00
0708.90	1106.10	1602.42	1902.30	2204.29	2827.60.00	2903.30
0709.51	1106.30.00	1602.49	1902.40	2204.30	2833.29.00	2903.40.00
0710.10.00	1107.10	1602.90	1904.10.00	2205.10	2835.10.00	2903.59.00
0710.21.00	1107.20	1603.00	1904.90	2205.90	2835.22.00	2905.11.00
0710.80.20	1108.11.00	1604.12	1905.10	2206.00	2835.23.00	2905.12.00
0710.80.50	1108.12.00	1604.13.10	1905.20.00	2207.10	2835.24.00	2905.13.00
0711.90.00	1108.13.00	1604 19	1905.30	2207.20	2835.26.00	2905.14.00
0712.30	1108.20.00	1604 20	1905.40	2208.10.00	2835.29.00	2905.16 00

2905.17.00	2921.12.00	3004.40.90	3402.13.00	3812.20	3916.90.90	4008.21
2905.19.00	2921.19.00	3004.90	3402.19.00	3812.30	3917.10	4008.29.00
2905.31.00	2921.29.00	3005.10	3402.20	3814.00.00	3917.21.00	4009.40.00
2905.32.00	2921.30.00	3005.90.10	3402.90.00	3815.90.00	3917.22.00	4009.50.00
2905.42.00	2921.44.00	3005.90.20	3403.19	3819.00.00	3917.23.00	4010.10.00
2905.43.00	2921.51.00	3005.90.30	3404.90.99	3823.20.00	3917.29.00	4011.91
2905.44.00	2922.11.00	3005.90.91	3405.20.00	3823.60.00	3918.10	4013.90
2905.50.00	2922.12.00	3005.90.92	3405.30.00	3823.90	3918.90	4014.10.00
2907.11.00	2922.13.00	3006.30	3405.40.00	3901.10.00	3919.10	4014.90.00
2907.13.00	2922.29.00	3204.17	3405.90.00	3901.20.00	3919.90.99	4016.93.00
2907.19.00	2922.49.00	3206.49.10	3505.10.	3902.10.00	3920.10.00	4016.99.00
2907.29.00	2922.50.00	3207.10.00	3506.91	3902.30.00	3920.20.00	4017.00
2908.10.00	2923.20.00	3208.20.00	3506.99.00	3902.90.00	3920.30.00	4104.10
2909.19.00	2924.29.00	3208.90.00	3603.00.00	3903.19	3920.41.00	4104.21.00
2909.30.00	2925.19.00	3209.90.00	3606.90.00	3903.20.90	3920.42.00	4104.22.00
2909.49.00	2926.90.90	3212.90.00	3701.20.00	3903.30	3920.51.00	4104.29
2909.60.00	2929.10.00	3214.10.00	3702.20.00	3903.90.00	3920.62.00	4104.31
2910.10.00	2929.90.00	3214.90.00	3702.32	3904.10.00	3920.63.00	4104.39
2911.00.00	2930.30.00	3215.11.00	3702.41.00	3904.21.00	3920.73.00	4201.00
2912.11.00	2930.90.00	3215.19.00	3702.42.00	3904.22.00	3920.92.00	4202.11.00
2912.19	2931.00	3215.90.00	3702.52	3904.30.00	3920.99.00	4202.12.00
2914.11.00	2932.29.00	3301.29	3702.55.00	3904.40.00	3921 [e]	4202.19.00
2914.12.00	2932.90.00	3301.30.00	3702.92	3904.90.00	3921.13.00	4202.21.00
2914.19.00	2933.29.00	3302.10.00	3702.94.90	3905.11.00	3921.19	4202.22.00
2914.49.00	2933.39.00	3302.90.00	3703.10.00	3905.19.00	3921.90	4202.29.00
2914.50.00	2933.59.00	3303.00.00	3703.20.00	3905.20.00	3922.10.00	4202.31.00
2915.21.00	2933.69.00	3304.10.00	3704.00	3905.90.00	3923.10.00	4202.32.00
2915.22.00	2933.71.00	3304.20.00	3707.10.00	3906.10.00	3923.21.00	4202.39.00
2915.24.00	2933.90.00	3304.30.00	3707.90.00	3906.90.00	3923.29.00	4202.91
2915.31.00	2934.20.00	3304.91.00	3802.90	3907.20	3923.30	4202.92
2915.32.00	2934.90.90	3304.99.00	3804.00.00	3907.60.00	3923.40.00	4202.99
2915.39.00	2935.00.00	3305.10.00	3806.30.00	3908.10	3923.50	4203.10.00
2915.90.00	2936.24.00	3305.20.00	3808.10	3908.90.00	3923.90.00	4203.29
2916.12	2936.27.00	3305.30.00	3808.20	3909.10.10	3924.10	4203.30.00
2916.19.00	2936.29.00	3305.90.00	3808.30	3909.40	3924.90	4205.00.00
2916.32.00	2936.90	3307.10.00	3808.40	3909.50	3925.10.00	4407.10
2916.39.00	2939.30.00	3307.20.00	3808.90	3910.00.00	3925.90.00	4411.11.00
2917.12.00	2940.00.00	3307.30.00	3809.91	3911.10.00	3926.10.00	4411.19.00
2917.19.00	2941.90.00	3307.41.00	3809.99.00	3911.90.00	3926.90.10	4411.21.00
2917.39.00	2942.00.00	3307.49.00	3810.90.00	3912.31.00	3926.90.30	4411.29.00
2918.14.00	3002.90	3307.90.00	3811.11.00	3912.39	3926.90.40	4412.12
2918.15	3003.39.99	3401.11.90	3811.19.00	3913.10.00	3926.90.90	4415.20.00
2918.19	3003.90.99	3401.19.00	3811.21.00	3913.90.00	4005.20.00	4417.00.19
2918.29.00	3004.10.00	3401.20.90	3811.29.00	3914.00	4006.90.00	4417.00.90
2919.00	3004.20.00	3402.11.00	3811.90.00	3915.30.00	4008.11.00	4418.20.00
2920.90	3004.39	3402.12.00	3812.10.00	3916.20.00	4008.19.00	4418 90

4421.90.90
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BILLING CODE 3190-01-C

Footnotes

[a] Coated textile fabric for use as outer covering for manufacture of upholstered furniture.

[b] Fabrics for use as outer coverings in the manufacture of upholstered furniture.

[c] Entire tariff line.

[d] Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, hot-rolled, non-clad, plated or coated for use in the manufacture of pressure vessels or heat exchangers.

[e] Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, cold-rolled (cold reduced), non-clad, plated or coated for use in the manufacture of pressure vessels or heat exchangers.

[f] Flat-rolled products of iron or non-alloy steel of a width of 600 mm or more, clad, plated or coated for manufacture of pressure vessels or heat exchangers.

[g] Flat-rolled products of stainless steel for manufacture, repair or replacement of pressure vessels or heat exchangers.

[h] Flat-rolled products of stainless steel, of a width of 600 mm for the manufacture of pressure vessels or heat exchangers.

[i] Flat-rolled products of alloy steel, other than stainless steel, of a width of 600 mm or more for the manufacture of pressure vessels or heat exchangers.

[j] Flat-rolled products of alloy steel, other than stainless steel, of a width of less than 600 mm for the manufacture of pressure vessels or heat exchangers.

[k] Seamless tubes, pipes and hollow profiles, seamless, of iron (other than cast iron) or steel for manufacture of heat exchangers, and seamless carbon steel pipe to 6" in outside diameter and seamless carbon steel (SA–179) and stainless steel (SA–213) tubing from ⅝" to 2" outside diameter for heat exchangers.

[l] Welded carbon steel pipe to 6" in outside diameter and welded carbon steel (SA–214) and stainless steel (SA–249) tubing of ⅝" to 2" outside diameter for heat exchangers.

[m] Tube or pipe fittings (for example couplings, elbows, sleeves), of iron or steel for heat exchangers.

[n] Steel roofing and siding being roll-formed panels made from flat rolled steel sheet.

[o] Copper tubes and pipes for heat exchangers.

[FR Doc. 89–16598 Filed 7–14–89; 8:45 am]

BILLING CODE 3190-01-M

POSTAL RATE COMMISSION

[Docket No. A89–10; Order No. 830]

Fineview, New York 13640 (David E. Brown, Petitioner); Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued July 10, 1989.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice Chairman; John W. Crutcher; W.H. "Trey" LeBlanc, III; Patti Birge Tyson.

Docket Number: A89–10

Name of Affected Post Office: Fineview, New York

Name(s) of Petitioner(s): David E. Brown

Type of Determination: Consolidation

Date of Filing of Appeal Papers: June 30, 1989

Categories of Issues Apparently Raised: 1. Whether the Postal Service's actions have been in accordance with the procedure required by law [39 U.S.C. 404(b)(1)].

Other legal issues may be disclosed by the record when it is filed, or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference nay such memoranda previously filed.

The Commission Orders

(A) The record in this appeal shall be filed on or before July 17, 1989.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

June 30, 1989	Filing of Petition.
July 10, 1989	Notice and Order of Filing of Appeal.
July 25, 1989	Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)].
Aug. 4, 1989	Petitioner's Participant Statement or Initial Brief [*see* 39 CFR 3001.115(a) and (b)].
Aug. 24, 1989	Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].
Sept. 8, 1989	Petitioner's Reply Brief should Petitioner choose to file one [*see* 39 CFR 3001.115(d)].
Sept. 15, 1989	Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].
Oct. 29, 1989	Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 89–16666 Filed 7–14–89; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 270–315]

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549.

Revision Regulation S

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval revised Regulation S which provides clarification of the extraterritorial application of the registration requirements of the Securities Act of 1933. The revised proposed Regulation is not a form and would be assigned one burden hour for administrative purposes.

Direct general comment to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Commission's rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–6004, and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235–0357), Room 3208, New Executive Office Building, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

July 11, 1989.

[FR Doc. 89–16633 Filed 7–14–89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 7, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 46382

Date Filed: July 5, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 2, 1989.

Description: Application of Bahamasair Holdings Ltd. pursuant to Section 402 of the Act and Subpart Q of the Rules of Practice applies for an amendment of the foreign air carrier permit so as to authorize it to engage in foreign air transportation of passengers, mail and property between any point or points in the Commonwealth of the Bahamas and the new coterminal point of Philadelphia, Pennsylvania, to be served through Philadelphia International Airport.

Docket No. 46331

Date Filed: July 6, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 3, 1989.

Description: Amendment No. 1 to Application of American Airlines, Inc. request amendment of its certificate of public convenience and necessity for Route 137 so as to authorize in addition to air service between Chicago and Warsaw—air service between Chicago and Budapest, Hungary, either nonstop or via intermediate points.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89–16581 Filed 7–14–89; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE–89–29]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: August 7, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on July 10, 1989.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 23392

Petitioner: Beaver Aviation

Sections of the FAR Affected: 14 CFR 141.91(a)

Description of Relief Sought: To extend Exemption No. 3682 that allows petitioner to conduct training at a satellite base in Venice, Florida. The satellite base is not a wholly-owned subsidiary and is more than 25 nautical miles from the main base of operations.

Docket No.: 25940

Petitioner: Charles N. Saulisberry

Regulations Affected: 14 CFR 43.3 (a) and (g)

Description of Relief Sought: To allow petitioner to perform the preventive maintenance function of removing and replacing the passenger seats in an aircraft used in Part 135 operations.

Docket No.: 25946

Petitioner: Northwest Airlines, Inc.

Sections of the FAR Affected: 14 CFR 121.471(a)(4) and Part 121, Subpart Q

Description of Relief Sought: To allow certain scheduled domestic and international flights of petitioner to operate in accordance with Subpart R—Flight Time Limitations: Flag Air Carriers.

Docket No.: 25939

Petitioner: Central States Airlines, Inc.

Regulations Affected: 14 CFR 135.337(a)(2), (3), and (4) and 135.339(c)(1)

Description of Relief Sought/Disposition: To allow petitioner to use certain instructor pilots of British Aerospace Corporation to train petitioner's initial cadre of pilots in the British Aerospace Jetstream 31 (BA–3201) type airplane without meeting all of the applicable training requirements of Subpart H of Part 135.

Grant, June 28, 1989, Exemption No. 5064

[FR Doc. 89–16674 Filed 7–14–89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

Treatment of Interest Charges in the Customs Value of Imported Merchandise

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Statement of clarificaton.

SUMMARY: Questions have been raised concerning the implementation of the Committee on Customs Valuation of the General Agreement on Tariffs and Trade (GATT) decision that interest charges relating to the purchase of imported goods are not to be included in the customs value of the goods. This document serves as clarification of Customs position on the treatment of interest charges in an effort to adhere to the international agreement.

Background

On April 26, 1984, the Committee on Customs Valuation of the General Agreement on Tariffs and Trade adopted a decision concerning the treatment of interest charges in the customs value or imported merchandise. The decision is attached as Annex A. Under the decision, the interest charges are not part of the price actually paid or payable for the merchandise if certain criteria are met.

Specifically, the decision states that interest charges under a financing arrangement entered into by the buyer and relating to the purchase of the imported goods shall not be regarded as part of the customs value provided the following conditions are met:

(a) The charges are distinguished from the price actually paid or payable for the goods;

(b) The financing arrangement was made in writing;

(c) Where required, the buyer can demonstrate that

—Such goods are actually sold at the price actually paid or payable, *and*

—The claimed rate of interest does not exceed the level for such transactions prevailing in the country where, and at the time when the financing was provided. (emphasis added)

Customs implemented the GATT decision by publication of T.D. 85-111 in the **Federal Register** on July 8, 1985 (50 FR 27886), effective April 25, 1985. In the T.D. Customs stated that

Inquiries regarding the criteria in "C" shall be considered satisfied, *inter alia*, if the claimed charges for interest and principal are consistent with those usually reflected in sales of identical or similar merchandise. If the claimed amount of interest is inconsistent with that usually reflected in sales of identical or similar merchandise, or is inconsistent when compared to the level for such transaction prevailing in the country where, and at the time when the financing was provided, only that amount which is consistent shall be allowed as non-dutiable, the excess being disallowed.

It has been brought to Customs attention that this language only discusses the acceptability of the interest rate but does not discuss what is meant by the term "interest" or what is needed to demonstrate that the goods are actually sold at the price declared as the price actually paid or payable.

Statement of Clarification

Customs interprets the term "interest" to encompass only *bona fide* interest charges, not simply the notion of interest arising out of delayed payment. *Bona fide* interest charges are those payments that are carried on the importer' books as interest expenses in conformance with generally accepted accounting principles.

To demonstrate that the goods undergoing appraisement are actually sold at the price declared as the price actually paid or payable, the buyer must be able to prove, if requested, that the price actually paid or payable for identical or similar goods sold without a financing arrangement closely approximates the price paid or payable for the goods being appraised. If the buyer fails to meet this test, no authority exists for distinguishing the alleged interest payments from the price actually paid or payable for the merchandise. This does not relieve the buyer's burden to demonstrate the validity of the interest rate under criteria "C" as required by the GATT decision.

This clarification shall be effective October 16, 1989.

Dated: June 28, 1989.

Attachment.

R. Rosettie,

Deputy Assistant Commissioner, Commerical Operations.

(Annex A was originally published in the **Federal Register** on July 8, 1985, 50 FR 27886)

Annex A—General Agreement on Tariffs and Trade

Committee on Customs Valuation

Decision on the Treatment of Interest Charges in the Customs Value of Imported Goods

Adopted by the Committee on April 26, 1984

The Parties of the Agreement on Implementation of Article VII of the GATT agree as follows:

Charges for interest under a financing arrangement entered into by the buyer and relating to the purchase of imported goods shall not be regarded as part of the customs value provided that:

(a) The charges are distinguished from the price actually paid or payable for the goods;

(b) The financing arrangement was made in writing;

(c) Where required, the buyer can demonstrate that

—Such goods are actually sold at the price declared as the price actually paid or payable, and

—The claimed rate of interest does not exceed the level for such transactions prevailing in the country where, and at the time when the finance was provided.

This Decision shall apply regardless of whether the finance is provided by the seller, a bank or another natural or legal person. It shall also apply, if appropriate, where goods are valued under a method other than the transaction value.

Each party shall notify the Committee of the date from which it will apply the Decision.

Robert P. Schaffer,

Acting Commissioner on Customs.

Approved June 20, 1985.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 89-16580 Filed 7-14-89; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 135
Monday, July 17, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 54 F.R. 28552.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., July 17, 1989.

CHANGES IN THE AGENDA: The Commodity Futures Trading Commission has added to the agenda a Policy Statement concerning Swap Transactions to the open meeting scheduled for 10:00 a.m., July 17, 1989.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-16746 Filed 7-13-89; 10:08 am]

BILLING CODE 6351-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:10 p.m. on Tuesday, July 11, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider: (1) Reports of the Director, Office of Corprorate Audits and Internal Investigations; (2) administrative enforcement proceedings; (3) a personnel matter; (4) matters relating to the possible closing of certain insured banks; and (5) a matter concerning the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Ms. Judith A. Walter, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington DC.

Dated: July 12, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-16735 Filed 7-14-89; 4:21 pm]

BILLING CODE 6714-01-M

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: July 10, 1989, 54 FR 28861.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: July 12, 1989, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers and Companies have been added as Item CAG-55 to the Agenda of 7/12/89:

Item No.	*Docket No. and Company*
CAG-55	RP84-94-000, RP85-66-000 and CP86-720-000, Trailblazer Pipeline Company. RP85-39-000, Wyoming Interstate Company, Ltd. RP85-60-000, Overthrust Pipeline Company.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16806 Filed 7-13-89; 3:49 pm]

BILLING CODE 6717-02-M

federal register

Monday
July 17, 1989

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 14

Implementation of Equal Access to Justice Act; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 14

[Docket No. 25958; NPRM 89-19]

RIN 2120-AD17

Implementation of Equal Access to Justice Act

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration (FAA) is publishing this proposed regulation to implement the Equal Access to Justice Act (Pub. L. 96-481, 94 Stat. 2325), as amended (Pub. L. 99-80, 99 Stat. 183) (EAJA). The Act, which took effect on October 1, 1981, provides for the award of attorney fees and other expenses to parties who prevail over the Federal Government in certain administrative and court proceedings under section 554 of the Administrative Procedure Act (APA). It requires agencies conducting proceedings under section 554 to establish uniform procedures for making awards.

These proposed regulations will set uniform procedures under the EAJA for any adversary adjudications conducted pursuant to section 554 by the FAA.

DATES: Comments must be received on or before August 16, 1989.

ADDRESSES: Comments on this proposed rulemaking may be delivered or mailed in triplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 25958, 800 Independence Avenue, SW., Room 915G, Washington, DC 20591. Comments submitted on the final rule must be marked: Docket No. 25958. Comments may be inspected in Room 915G between 8:30 a.m. and 5:00 p.m. on weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Allan H. Horowitz, Manager Enforcement Policy Branch (AGC-260), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, (202)267-3137.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25958." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedures.

History

The Equal Access to Justice Act (EAJA), authority for this rule, was enacted by the 96th Congress (Pub. L. 96-481, 94 Stat, 2325, 5 U.S.C. 504 *et seq.*) and amended by the 99th Congress (Pub. L. 99-80, 99 Stat. 183). It provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to administrative proceedings before government agencies and who prevail over the government. These proceedings are conducted under section 554 of the Administrative Procedure Act (APA). Eligible prevailing parties are entitled to awards of attorney fees and other expenses, unless the adjudicative officer or judge of the proceeding finds that the position of the United States is substantially justified or that special circumstances make an award unjust

Under the EAJA, eligible parties include individuals with a net worth of not more than $2 million; sole owners of unincorporated businesses, partnerships, corporations, associations, or organizations with a net worth of not more than $7 million and not more than 500 employees; and tax-exempt charitable, educational or religious associations as defined by the Agricultural Marketing Act with not more than 500 employees regardless of net worth. The Act directs agencies to establish uniform procedures for the submission and consideration of fee and expense applications. Section 554 of the APA applies in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing.

In response to the EAJA, the Administrative Conference of the United States (ACUS) published model EAJA regulations on which it requested comments (46 FR 15895). After considering all comments submitted, ACUS published final model EAJA regulations on June 25, 1981 (46 FR 32900). A slightly different set of model EAJA regulations was published by the Department of Justice (DOJ) on April 13, 1982 (47 FR 15774). The FAA has patterned its EAJA regulations after the ACUS and DOJ model rules (which served as the model for the EAJA regulations of the Department of Transportation and the National Transportation Safety Board [48 FR 1068 and 46 FR 48208 respectively]).

The FAA is adopting EAJA regulations at this time because it is now, for the first time, conducting proceedings to which the EAJA applies. On August 31, 1988, the FAA implemented the provisions of section 204(g) of the Airport and Airway Safety and Capacity Expansion Act of 1987 (Pub. L. 100-223) by issuing the Rules of Practice for FAA Civil Penalty Actions (53 FR 34646; September 7, 1988). Such regulations provide the procedural framework for the FAA to assess civil penalties (not to exceed $50,000) for violations arising under the Federal Aviation Act of 1958, as amended (49 U.S.C. 1471 *et seq.*), or a rule, regulation, or order issued thereunder, after written notice and a finding of violation by an FAA Decisionmaker. These regulations, which were enacted to provide for effective enforcement of the FAA's safety regulations, enable the FAA to conduct proceedings of the type covered by section 554 of the APA. The FAA's EAJA regulations apply only to those proceedings required to be brought pursuant to the FAA's "Civil Penalty

Assessment Demonstration Program," as codified in 14 CFR 13.201(a)(1).

In the FAA's disposition of comments received following the publication of the procedural regulations on September 7, 1988 (54 FR 11914), the FAA addressed the concerns of four commenters that the regulations did not provide procedures for the award of attorney fees and other expenses under EAJA. At that time, the FAA stated that it would undertake a separate rulemaking project to prescribe the procedures governing EAJA awards. Prior to the implementation of the above-referenced regulations, the FAA did not conduct adversary adjudications to which EAJA applied.

Economic Summary

The rule sets out procedures which eligible prevailing parties must follow to apply for and receive EAJA awards. The rule will facilitate filing applications for EAJA awards and, consequently, reduce costs to the applicant. Since this rule does not impose any costs on applicants, the impact of the rule is minimal and no full Regulatory Evaluation is necessary.

Trade Impact Assessment

The rule will have no impact on international trade. The subject of the rule is unrelated to the manufacture or distribution of aviation-related products and services either by United States-based manufacturers and air carriers or foreign-based manufacturers and air carriers.

Regulatory Impact Determination

Additionally, the rule will not have a significant economic impact on the operating costs of those small entities filing applications for EAJA awards with the FAA. There may be some small benefit to small entities by facilitating filing for awards, but this will not be substantial. Therefore, the rule is not expected to have a significant economic impact, positive or negative. Accordingly, a regulatory flexibility analysis is not required.

Federalism Impact

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

To the extent that this proposal will have an economic effect on airmen, it will only be a minimal positive one since it will facilitate the filing for EAJA awards. Therefore, the FAA has determined that this proposal involves a proposed regulation which is not major under Executive Order 12291 or significant under the DeOartment of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). For this same reason, it is certified that under the criteria of the Regulatory Flexibility Act the proposed rule, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of entities. Because of the absence of any costs attendant with the proposal, the FAA has determined that the expected impact of the proposed regulations is so minimal that they do not warrant a full regulatory evaluation.

List of Subjects in 14 CFR Part 14

Equal access to justice, Lawyers.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to add Part 14 of the Federal Aviation Regulations (14 CFR Part 14) to read as follows:

PART 14—RULES IMPLEMENTING THE EQUAL ACCESS TO JUSTICE ACT OF 1980

Subpart A—General Provisions

Sec.
14.1 Purpose of these rules.
14.2 Proceedings covered.
14.3 Eligibility of applicants.
14.4 Standards for awards.
14.5 Allowable fees and expenses.

Subpart B—Information Required From Applicants

14.10 Contents of application.
14.11 Net worth exhibit.
14.12 Documentation of fees and expenses.

Subpart C—Procedures for Considering Applications

14.20 When an application may be filed.
14.21 Filing and service of documents.
14.22 Answer to application.
14.23 Reply.
14.24 Comments by other parties.
14.25 Settlement.
14.26 Further proceedings.
14.27 Decision.
14.28 Review by FAA Decisionmaker.
14.29 Judicial review.
14.30 Payment of award.

Authority: Equal Access to Justice Act (Pub. L. 96-481, 94 Stat. 2325) as amended (Pub. L. 99-80, 99 Stat. 183) (5 U.S.C. 504(c)(1)).

Subpart A—General Provisions

§ 14.1 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (the Act), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (adversary adjudications) before the Federal Aviation Administration (FAA). An eligible party may receive an award when it prevails over the FAA, unless the agency's position in the proceeding was substantially justified or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the FAA Decisionmaker will use to make them. As used hereinafter, the term "agency" applies to the FAA.

§ 14.2 Proceedings covered.

(a) The Act applies to certain adversary adjudications conducted by the FAA. These are adjudications under 5 U.S.C. 554 in which the position of the FAA is represented by an attorney or other representative who enters an appearance and participates in the proceeding. This subpart applies to proceedings in which a civil penalty action was initiated by the FAA after September 7, 1988, pursuant to 14 CFR 13.201(a)(1).

(b) The Act further applies to any FAA action or failure to act which is the basis for an adversary adjudication, as herein defined.

(c) The FAA Decisionmaker may also designate a proceeding not listed in paragraph (b) of this section as an adversary adjudication for purposes of the Act by so stating in an order initiating the proceeding or designating the matter for hearing. The FAA Decisionmaker's failure to designate a proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the Act; whether the procedure is covered will then be an issue for resolution in proceedings on the application.

(d) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

(e) Fees and other expenses may not be awarded to a party for any portion of the adversary adjudication in which such party has unreasonably protracted the proceedings.

§ 14.3 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the adversary adjudication for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in this subpart and in subpart B.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $2 million at the time the adversary adjudication was initiated;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees at the time the adversary adjudication was initiated;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees at the time the adversary adjudication was initiated; and

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees at the time the adversary adjudication was initiated; and

(5) Any other partnership, corporation, association, or public or private organization with a net worth of not more than $7 million and not more than 500 employees at the time the adversary adjudication was initiated.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(d) An applicant who owns an unincorporated business will be considered an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interest.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other inte2est of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless the administrative law judge determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the administrative law judge may determine that financial relationships of the applicant, other than those described in this paragraph, constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 14.4 Standards for awards.

(a) A prevailing applicant may receive an award for attorney fees and other expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the agency over which the applicant has prevailed was substantially justified. Whether or not the position of the FAA was substantially justified shall be determined on the basis of the record (including the record with respect to the action or failure to act by the agency upon which the civil action is based) which was made in the civil action for which fees and other expenses are sought. The burden of proof that an award should not be made to an eligible prevailing applicant is on the agency counsel, who may avoid an award by showing that the agency's position was reasonable in law and fact.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

§ 14.5 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant.

(b) No award for the fee of an attorney or agent under these rules may exceed $75 per hour. No award to compensate an ex0ert witness may exceed the highest rate at which the agency pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent, or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the administrative law judge shall consider the following:

(1) If the attorney, agent, or witness is in private practice, his or her customary fee for similar services, or if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant.

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, engineering report, test, project, or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

(e) Fees may be awarded only for work performed after designation of a proceeding.

Subpart B—Information Required From Applicants

§ 14.10 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of the agency in the proceeding that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates) at the time the adversary adjudication was initiated. However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)), or in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant wishes this agency to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney for the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

(f) If the applicant is a partnership, corporation, association, organization, or sole owner of an unincorporated business, the application shall state that the applicant did not have more than 500 employees at the time the adversary adjudication was initiated, giving the number of its employees and describing briefly the type and purpose of its organization or business.

§ 14.11 Net worth exhibit.

(a) Each applicant except a qualified tax-exempt organization or cooperative association must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates when the proceeding was initiated. If any individual, corporation, or other entity directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or if the applicant directly or indirectly owns or controls a majority of the voting shares or other interest of any corporation or other entity, the exhibit must include a showing of the net worth of all such affiliates or of the applicant including the affiliates. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The administrative law judge may require an applicant to file additional information to determine the eligibility for an award.

(b) The net worth exhibit shall describe any transfers of assets from, or obligations incurred by, the applicant or any affiliate, occurring in the one-year period prior to the date on which the proceeding was initiated, that reduced the net worth of the applicant and its affiliates below the applicable net worth transactions, the applicant shall so state.

(c) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the administrative law judge in a sealed envelop labeled "Confidential Financial Information," accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(1)–(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on counsel representing the agency against which the applicant seeks an award, but need not be served on any other party to the proceeding. If the administrative law judge finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the FAA's established procedures under the Freedom of Information Act as implemented by 49 CFR 7, Appendix C of the FAA's rules.

§ 14.12 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceedings by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The administrative law judge may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

Subpart C—Procedures for Considering Applications

§ 14.20 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding, but in no case later than 30 days after the FAA Decisionmaker's final disposition of the proceeding.

(b) If review or reconsideration is sought or taken of a decision to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(c) For purposes of this rule, final disposition means the later of:

(1) The date on which an unappealed initial decision becomes administratively final;

(2) Issuance of an order disposing of any petitions for reconsideration of the FAA Decisionmaker's Final order in the proceeding;

(3) If no petition for reconsideration is filed, the last date on which such a petition could have been filed; or

(4) Issuance of a final order or any other final resolution of a proceeding, such as a settlement or voluntary dismissal, which is not subject to a petition for reconsideration.

§ 14.21 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 14.11(b) for confidential financial information.

§ 14.22 Answer to application.

(a) Within 30 days after service of an application, counsel representing the agency against which an award is sought may file an answer to the application. Unless agency counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award requested.

(b) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the administrative law judge upon request by agency counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested

and identify the facts relied on in support of agency counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 14.26.

§ 14.23 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 14.26.

§ 14.24 Comments by other parties.

Any party to a proceeding other than the applicant and agency counsel may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the administrative law judge determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 14.25 Settlement.

The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded. If a prevailing party and agency counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 14.26 Further proceedings.

(a) Ordinarily the determination of an award will be made on the basis of the written record; however, on request of either the applicant or agency counsel, or on his or her own initiative, the administrative law judge assigned to the matter may order further proceedings, such as an informal conference, oral argument, additional written submissions, or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application and shall be conducted as promptly as possible.

(b) A request that the administrative law judge order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 14.27 Decision.

The administrative law judge shall issue an initial decision on the application within 60 days after completion of proceedings on the application. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the agency's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust.

§ 14.28 Review by FAA Decisionmaker.

Either the applicant or the FAA counsel may seek review of the initial decision on the fee application in accordance with Subpart G of Part 13 of the Federal Aviation Regulations, specifically 14 CFR 13.233. Additionally, the FAA Decisionmaker may decide to review the decision on its own initiative. If neither the applicant nor the agency counsel seeks review within 30 days after the decision is issued, it shall become final. Whether to review a decision is a matter within the discretion of the FAA Decisionmaker. If review is taken, the FAA Decisionmaker will issue a final decision on the application or remand the application to the administrative law judge who issued the initial fee award determination for further proceedings.

§ 14.29 Judicial review.

If an applicant is dissatisfied with a determination of fees and other expenses made under this subsection, pursuant 5 U.S.C. 504(c)(2), that applicant may, within thirty (30) days after the determination is made, appeal the determination to the court of the United States having jurisdiction to review the merits of the underlying decision of the FAA adversary adjudication. The court's determination on any appeal heard under this paragraph shall be based solely on the factual record made before the FAA. The court may modify the determination of fees and other expenses only if the court finds that the failure to make an award of fees and other expenses, or the calculation of the amount of the award, was unsupported by substantial evidence.

§ 14.30 Payment of award.

An applicant seeking payment of an award shall submit to the disbursing official of the FAA a copy of the FAA Decisionmaker's final decision granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. Applications for award grants in cases involving the FAA shall be sent to: The Office of Accounting and Audit, AAA-1, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. The agency will pay the amount awarded to the applicant within 60 days, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

Issued in Washington, DC, on July 10, 1989.

Gregory S. Walden,

Chief Counsel.

[FR Doc. 89-16591 Filed 7-14-89; 8:45 am]

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federal register

Monday
July 17, 1989

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 47 and 52

Federal Acquisition Regulation (FAR); Tailgate Delivery; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 47 and 52

Federal Acquisition Regulation (FAR); Tailgate Delivery

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering revising the Federal Acquisition Regulation (FAR) to provide an exception for heavy or bulky freight to a requirement in FAR 47.303-6 and the contract clause at FAR 52.247-34, F.o.b. Destination, that supplies be delivered to the truck's tailgate.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before September 15, 1989 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to:

General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4041, Washington, DC 20405.

Please cite FAR Case 89-56 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755. Please cite FAR Case 89-56.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed change results from problems associated with enforcement of FAR 47.303-6 and the clause at 52.247-34, coupled with a recognition of the following factors:

It is unrealistic to expect a truck driver to be able to move heavy or bulky freight to the truck's tailgate.

If the consignee has the personnel and equipment needed to remove heavy or bulky freight from the truck's tailgate, the same personnel and equipment may be used to remove the heavy or bulky freight from the inside of the truck.

If the consignee does not have such equipment and/or personnel, the contracting officer should require the contractor to perform the necessary delivery services by using the clause at 52.247-35, F.o.b. Destination, within Consignee's Premises.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the proposed change will not impose any new requirements on business, large or small. It is anticipated that business would view this change favorably because it would eliminate the need for them to make special handling and delivery arrangements with motor carriers when delivering heavy or bulky freight under Government contracts containing the clause at FAR 52.247-34, F.o.b. Destination. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR sections will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 89-610 (FAR Case 89-56) in correspondence pertaining to Tailgate Delivery.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et. seq.

List of Subjects in 48 CFR Parts 47 and 52

Government procurement.

Dated: July 7, 1989.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, 48 CFR Parts 47 and 52 are amended as set forth below:

1. The authority citations for 48 CFR Parts 47 and 52 continue to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 47—TRANSPORTATION

2. Section 47.303-6 is amended by revising in paragraph (a)(2), the fourth and fifth sentences to read as follows:

47.303-6 F.o.b. destination.

(a) * * *

(2) * * * If motor carrier (including "piggyback") is used, supplies shall be delivered to truck tailgate at the unloading platform of the consignee, except when the supplies delivered meet the requirements of Item 568 of the National Motor Freight Classification for "heavy or bulky freight." When supplies meeting the requirements of the referenced Item 568 are delivered, unloading (including movement to the tailgate) shall be performed by the consignee, with assistance from the truck driver, if requested. If the contractor uses rail carrier or freight forwarder for less than carload shipments, the contractor shall ensure that the carrier will furnish tailgate delivery when required, if transfer to truck is required to complete delivery to consignee.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.247-34 is amended in the introductory text by inserting a colon following the word "clause" and removing the remainder of the paragraph; by removing in the title of the clause the date "(APR 1984)" and inserting in its place "(JUL 1989)"; by revising in paragraph (a)(2), the fourth and fifth sentences; and by removing both derivation lines following "(End of clause)" to read as follows:

52.247-34 F.o.b. destination.

* * * * *

(a) * * *

(2) * * * If motor carrier (including "piggyback") is used, supplies shall be delivered to truck tailgate at the unloading platform of the consignee, except when the supplies delivered meet the requirements of Item 568 of the National Motor Freight Classification for "heavy or bulky freight." When supplies meeting the requirements of the referenced Item 568 are delivered, unloading (including movement to the tailgate) shall be performed by the consignee, with assistance from the truck driver, if requested. If the contractor uses rail carrier or freight forwarder for less than carload shipments, the contractor shall ensure that the carrier will furnish tailgate delivery, when required, if transfer to truck is required to complete delivery to consignee.

* * * * *

[FR Doc. 87-16653 Filed 7-14-87; 8:45 am]

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federal register

Monday
July 17, 1989

Part IV

Environmental Protection Agency

Final NPEDS General Permit for Petroleum Fuel Contaminated Ground/Storm Waters in the State of Florida

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3616-7; NPDES No. FLG040001]

Final NPDES General Permit for Petroleum Fuel Contaminated Ground/Storm Waters in the State of Florida

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final National Pollutant Discharge Elimination System (NPDES) General Permit.

SUMMARY: The Regional Administrator of Region IV is today issuing a final National Pollutant Discharge Elimination System (NPDES) General Permit No. FLG040001 to facilities within the political boundary of the State of Florida. This NPDES general permit establishes effluent limitations, prohibitions, reporting requirements and other conditions on facilities which discharge treated groundwater and/or stormwater incidental to the groundwater cleanup operation which have been contaminated by automotive gasoline, aviation and/or diesel fuels. This final general permit authorizes discharges from facilities currently located in and discharging to surface waters, or to tributaries/conveyances thereof, within the political boundary of the State of Florida, and any new treatment facility placed in operation during the term of the permit. Issuance of this final permit will allow cleanup actions at contaminated sites to begin without the delays of individual NPDES permit issuance procedures. This general permit will potentially cover more than 2000 sites.

DATES: This permit shall be effective on July 17, 1989 at 1:00 p.m. Eastern Daylight Savings Time. Notification of coverage by the general permit will be by certified mail from the Director, Water Management Division, EPA, Region IV. This method of notification will be applicable to both new dischargers and existing dischargers that submit notices of intent for general permit coverage. Existing dischargers must also request that current individual permits be revoked upon notification of coverage by the general permit. The date for coverage under the general permit will be the date the applicant receives the assigned NPDES number under the general permit.

In accordance with 40 CFR 23.2, the Region hereby specifies that this permit shall be considered the final agency action for purposes of judicial review at 1:00 p.m. Eastern Daylight Savings Time on the date of this notice. In order to assist Region IV to correct any typographical errors, incorrect cross references, and similar administrative errors, comments of a nonsubstantive nature on the final permit be submitted on or before August 28, 1989.

The administrative record, including application, final permit, fact sheet, public notice, comments received, and additional information are available by writing the EPA, Region IV, or for review and copying at 345 Courtland Street NE., 3rd Floor, Atlanta, Georgia 30365, between the hours of 8:15 a.m. and 4:30 p.m., Monday through Friday. Copies will be provided at a minimal charge per page. Additional information concerning the permit may be obtained at the address and during the hours noted above from Ms. Dianne Brown, Public Notice Coordinator, (404) 347-3004.

ADDRESS: Notifications required under this permit should be sent to: Director, Water Management Division, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, George 30365.

Request For Coverage: Written notification of intent to be covered by the general permit shall be provided as described in the permit, Part II.F. Request for coverage must contain evidence that the operation has been approved for Initial Remedial Actions (IRA), or has obtained a Site Rehabilitation Initiation Order and an approved Remedial Action Plan (RAP) from the State of Florida Department of Environmental Regulation.

FOR FURTHER INFORMATION CONTACT: Roosevelt Childress, Chief, South Areas NPDES Permits Unit, or Larry Cole, Environmental Engineer, Facilities Performance Branch, Water Management Division, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365, (404) 347-3012.

SUPPLEMENTARY INFORMATION:

I. Introduction

On August 25, 1988, EPA Region IV published a notice of the draft general permit (53 FR 32442) that is being issued in final form today. The Region received materials from fourteen (14) commenters on the proposed permit, plus a request for an extension of the public comment period. On October 25, 1988 (53 FR 43035), the public comment period was extended until November 15, 1988. All the public comments received during this period are included in the administrative record and were considered by Region IV in the formulation of a final determination of the conditions of today's final permit. The Region published a detailed fact sheet with the draft permit in 53 FR 32442. The Region is incorporating by reference that fact sheet and supplementary information as part of the final fact sheet for today's final permit. The discussions presented in these sections should be consulted in reviewing the applicability and scope of the final permit conditions.

II. Other Legal Requirements

A. Executive Order 12291

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12291 pursuant to Section 8[b] of that order.

B. Paperwork Reduction Act

EPA has reviewed the requirements imposed on the regulated facilities in this final general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements of this permit have already been approved by the Office of Management and Budget in submissions made for the NPDES permit program under the provisions of the Clean Water Act (hereafter, "the Act").

C. State Certification Requirements

Section 301(b)(1)(c) of the Act requires that NPDES permits contain conditions which ensure compliance with applicable state water quality standards or limitations. Under Section 401(a)(1) of the Act, EPA may not issue a NPDES permit until the state in which the discharge will originate grants or waives certification to ensure compliance with appropriate requirements of the Act and state law. EPA requested certification of the permit on August 11, 1988. On June 14, 1989, the Florida Department of Environmental Regulation waived certification of the general permit.

D. Effective Date

The final NPDES general permit issued today is effective on July 17, 1989, and upon written notification of coverage from the Permit Issuing Authority.

E. Regulatory Flexibility Act

After review of the facts presented in this document, I hereby certify, pursuant to the provisions of 5 U.S.C. 605(b), that this general NPDES permit will not have a significant impact on a substantial number of small entities. Moreover, the permit reduces a significant burden on regulated sources.

Lee A. DeHihns III,
Acting Regional Administrator, Region IV.

Summary of Comments

Appendix A—Public Comments

Public notice of the draft permit was published at 53 FR 32442 (August 25, 1988). The comment period was scheduled to close on September 25, 1988. Region IV received a request from the Florida Petroleum Council for an extension of public comment period, since the proposed draft raised issues of potentially significant concern to the petroleum industry. The comment period was noticed at 53 FR 43035 (October 25, 1988) and extended until the close of business on November 15, 1988. Significant comments presented during the public comment periods were considered in the formulation of a final decision regarding the proposed permit.

The following parties responded with written comments on the general permit: Total Petroleum Inc., Kerr-McGee Corporation, Hopping Boyd Green & Sams, Florida Petroleum Council, Chevron U.S.A. Inc., Shell Oil Company Professor Richard L. Williamson, Jr., Florida Petroleum Marketers Association, Hunton & Williams, Florida Department of Environmental Regulation (FDER), Kaiser Engineers, Conoco Inc., and the American Petroleum Institute.

(1) *Comment:* Several industry commenters stated that the Region has failed to consider adequately the factors necessary to establish technology—based effluent limitations for benzene, lead, and napthalene. They mentioned that there are no promulgated effluent guidelines applicable for these point sources, therefore, this permit must necessarily establish technology based effluent limitations on a site-by-site basis [40 CFR 125.3(c)(2)]. Consequently, the Region must consider, inter alia, the "engineering aspects of the application of various types of control techniques and the cost of achieving such effluent reductions." They stated that treating benzene contaminated groundwater to 1.0 μg/1 on a consistent basis would require optimal conditions to be met, and also mentioned that long term treatment could amount to $1,000,000 or more per site. In some cases it may be a technical impossibility to treat hydrocarbon contaminated groundwater to trace levels in the aquifer, even if the most advanced technology currently available is used.

Response: The Region agrees that optimal conditions for complying with the proposed benzene limit may not be available at every site. Each operator must consider which factors may prevent compliance with the proposed limits before applying for coverage under the general permit. Other factors, such as iron and manganese levels above 5.0 mg/1 in the influent require polishing steps before using carbon absorption as a cleanup alternative. However, on individual permit requests, previous facilities were designed to meet a benzene limit of 1.0 μg/1 by applying engineering techniques to keep the influent to the airstripper at low concentrations before treatment occurred. Some facilities were using infiltration galleries and were in operation before applying for an NPDES permit and were consistently meeting the 1.0 μg/1 effluent limitation for benzene from their treatment facilities prior to requesting a discharge permit to surface waters. If enormous costs could be verified after hydrogeologic consideration due to a long term cleanup project, an individual permit might seem more appropriate; however, Chapter 17-70 of the State Underground Petroleum Environmental Response Program does provide flexibility with regard to costs and time frame after a minimum of one year or less if data exist to verify that the cleanup remedial action is complete.

The State of Florida would have the responsibility to make a determination as to whether the remedial action operations would be deemed complete based on concentrations found in the groundwater and consider the technical feasibility of other proven groundwater techniques to further reduce contaminant levels at the site. Therefore, compliance with the proposed limits of the general permit does not infer high cleanup costs, since FDER would verify whether a remediation plan is complete based on individual site data received from the operator. Even though airstripping independently does very little for removal of leaded compounds in gasoline, airstripping plus other treatment processes combined do reduce the lead levels enough to meet the permit limit. Considering the amount of hydrocarbons recovered in the mobile free floating phase and the high adsorption potential of organic leading compounds onto the soils, treatment to comply with the lead limit has not raised concern at other facilities with individual permits. The technology being used, even though not a lead removal technology, is able to reduce the levels of leaded compounds.

(2) *Comment:* Several commenters mentioned that the proposed limitations for benzene, lead and naphthalene are more stringent than necessary to meet applicable water quality standards. The commenters mentioned that outside of the mixing zone, Florida has established a general water quality criteria for lead of 50.0 μg/l [FAC 17-3.061(2)(i)], yet the Region proposed to establish end-of-pipe effluent limitations at the point of discharge of 30.0 μg/l, apparently assuming that all discharges will be to Class I Waters-Potable Water Supplies [FAC 17-3.091(16)] and that the drinking water intake pipe will be adjacent to the effluent discharge, a specifically prohibited practice [FAC 17-4.244(1)(d)]. It was stated that the Florida Petroleum Council 1986 report entitled "Benzene in Florida Groundwater" demonstrated that drinking water containing less than 25 μg/l of benzene would not contribute to leukemia. Commenters also mentioned that 5.0 μg/l is the U.S. EPA drinking water standard and that the Florida Department of Environmental Regulation is proposing to set the benzene limit equal to EPA's standard.

Response: The effluent limitations are technology-based and applied at the end-of-pipe; therefore, a mixing zone is not granted under this general permit. On previous individual permit requests for cleanups of this type, the limits were applied at the end-of-pipe. Zones of mixing are granted on a case-by-case basis by FDER and will be considered in individual permit issuances. The State of Florida had considered raising their standard to 5.0 μg/l (MCL) for benzene in the drinking water, but these proposed limits have not been finalized. The 1.0 μg/l limit for benzene has been proven to be technologically achievable, and is coincidentally between the 10^{-5} and 10^{-6} risk levels of 6.6 μg/l and 0.66 μg/l for increase in cancer over a lifetime (EPA 440/5-80-018); therefore, a revision upward is not justified. Also, as discussed in response to Comment (1), the level of influent concentrations by petroleum contamination to the treatment system should be controlled by the operator, i.e., segregating the more concentrated contaminated groundwaters for product reclamation or off-site disposal.

(3) *Comment:* Several commenters stated that the Region's proposed toxicity limitations are both procedurally and substantively infirm and should be used for information screening purposes only. They mentioned the proposed toxicity limitation is more stringent than required under applicable Florida water quality standards and that the subject State regulation provides that the maximum concentration of wastes in the mixing zone shall not exceed the amount lethal to 50% of the test

organisms in 96 hours (96 hr LC_{50}) for a species significant to the indigenous aquatic community [FAC 17-4.244(4)(a)]. They mentioned the Region purports to equate the "effluent with the 'mixing zone' and three appropriate test species with a species significant to the indigenous aquatic community", an approach at odds with the Florida Department of Environmental Regulation. It was also mentioned that while this may be Agency policy, no substitute can exist for the exercise of informed decision making. CF NRDC v. EPA, No. 80-1607 (D.C. Cir. 1988) slip op. at 64-65.

Response: The "Whole Effluent Toxicity Testing Policy for Florida", dated May 5, 1988, was developed by EPA, Region IV, for use in writing NPDES permits in Florida. Our requirements, procedures and methods do not have to correspond with those required by the FDER.

After consideration of comments received regarding the toxicity requirement, the language in this permit has been revised to allow additional confirmatory testing if the toxicity tests fail. These additional toxicity tests will be used to determine if coverage by the general permit should continue or if an individual permit will be required. Failure of the tests does not constitute a permit violation. The use of non-indigenous species for standard laboratory toxicity is consistent with EPA's Technical Support Document and the final report of the Bioassay Task Force Report of August 1985, by the FDER. This report recommended that "standard stock monocultures of known health and sensitivity must be used in testing." In interpreting the meaning of the use of organisms significant to the indigenous aquatic community, this has been interpreted by FDER as meaning "any recognized organisms can be used for bioassay testing as long as that organism is known to be sensitive to toxic substances that can be expected to impact the indigenous community", (page 6, Final Report—Bioassay Task Force). With regard to allowance of a mixing zone under Florida's standards, these discharges do not have approved mixing zones. In the absence of a mixing zone, the least stringent rule [17-4.244(4)], which prohibits wastes at the point of discharge from exceeding the 96 hour LC_{50} (LC_{50} < 100%), applies at the end-of-pipe (page 5, Final Report of the Bioassay Task Force).

(4) *Comment:* Some commenters stated that EPA lacks the authority to require development of a Best Management Practices (BMP) Plan. The Clean Water Act (CWA) empowers EPA to include such requirements in an NPDES permit only if it has published industry-specific BMP regulations and, even then, only after making certain specified regulatory determinations. Since EPA has yet to promulgate requirements applicable to these discharges, it is without the statutory authority to impose them in the general permit. In *NRDC* v. *EPA*, industry petitioners, including API challenged EPA's authority under sections 125.100 and 125.103 to include BMPs in NPDES permits on a case-by-case basis under section 402(a)(1). In a *Settlement Agreement* dated June 7, 1982, the parties agreed that the BMP issue was not ripe for adjudication because EPA had suspended the effectiveness of its BMP regulations pending further review, and the BMP issue was dismissed on the ripeness ground on August 6, 1982. Pursuant to the *Settlement Agreement*, the industry petitioners reserve the right to challenge any new BMP regulations which may be promulgated. Many of the same concerns would be addressed in the applicable Site Remedial Action Plan.

Response: Section 402(a)(2) of the Act and the implementing regulations at 40 CFR 122.43(a) authorize EPA to require Best Management Practices Plans in NPDES permits. *Decision of the General Counsel*, No. 72, Issue VI. The permit requires that the BMP plan be prepared in conjunction with the Site Remedial Action Plan.

(5) *Comment:* An industry commenter stated that the separate authorization to combine contaminated groundwater pumped to above-ground storage tanks with contaminated groundwater from the sites recovery well should be deleted.

Response: The Region did not intend to construe this as a separate permit requirement, but could be included in the notification stages when the facility will be combining discharges. This would give the Region an accurate account of facilities that would actually be using these treatment processes to treat the storage tank bottom waters. This can be handled in the Notice of Intent (NOI) which is required by EPA for the permittee to be covered under the general permit.

(6) *Comment:* Several commenters mentioned that as long as the permittee is meeting the effluent limits, the one-time analysis of the effluent for priority pollutants appears to be unnecessary.

Response: This one-time scan was incorporated into the general permit to check the treatment facilities' performance near the start of operation for the reduction of other priority pollutants which are also discharged. It is the Region's view that if the treatment efficiency is adequate in the initial cleanup operations, the effluent quality in the later stages of cleanup operations should not deteriorate as the cleanup operations progress and the groundwater quality is restored.

(7) *Comment:* One commenter stated that since these are technology based limits, if an "upset" occurs, it necessarily follows that it should be possible to raise that defense to any permit violation. They recommended deleting the water-quality qualifier which appears to limit unnecessarily the availability of the upset defense in this setting.

Response: The Region agrees that this statement should not be included and it has been deleted in the final issuance of the general permit.

(8) *Comment:* One commenter stated that it was unnecessary for general permittees to receive permission from EPA to deactivate coverage under the general permit.

Response: The language in the permit has been clarified to state that EPA will inactivate coverage by the general permit after review of site closure documentation.

(9) *Comment:* One commenter stated that the 30 μg/l effluent limit imposed for lead would not necessarily in all circumstances protect human health. The EPA 440/5-80-057 Ambient Water Criteria document for lead is obsolete, since EPA Headquarters has proposed a new drinking water standard for lead which contains an impressive array of health information of 5.0 μg/l (53 FR 31565, August 18, 1988). Past practice for Florida is to keep the water quality criteria for lead well below the federal standard; therefore, anticipation can be made that the State will lower their standards. If the State of Florida imposes this 5.0 μg/l for lead, this would be measured outside the mixing zone after dilution has been taken into account. For example, with a dilution of 5:1, the effluent could have a concentration of 30 μg/l and still not exceed the new water quality standard.

The general permit should be more stringent than individual permits based on reasonable worst case, yet, nowhere is the general permit discharge limited to those with substantial low flow or to conditions where there are ambient background levels of lead. This would result in the instream concentration of 5.0 μg/l to be exceeded. The lead limit of 30.0 μg/l will not protect freshwater organisms. The current documents include values that would protect organisms themselves. For some substances, including lead, the value for the protection of aquatic organisms could be more stringent than human health, particularly in streams with very low hardness (7.7 μg/l at a hardness of 200 μg/l). The effluent limit will not be protective of aquatic organisms in streams with low flows and/or high background levels. It was recommended that a one-time priority pollutant scan be used to ensure the treated water did not contain any toxic pollutants. Also, that a more frequent sampling be imposed in the permit if a failure does occur during toxicity testing to determine if the limit is being maintained using a larger data base and this permit violation would trigger applying for an individual NPDES permit.

Response: This general permit was not written to consider existing or proposed drinking water standards by any regulatory agency. The testing requirement for lead is currently being required by the State of Florida for the groundwater at sites which do not satisfy the "no further action" or "monitoring only" alternative. With regard to toxicity testing, the Region has revised the toxicity testing requirement based on significant comments received on the draft general permit. The Regional toxicity testing requirements still supports the use of organisms significant to the indigenous aquatic community as mentioned in the response to Comment (3); however, additional tests will be required to support continuance or revocation of coverage under the general permit. Part II, Section G. does provide exclusion of coverage under the general permit, if a permittee proposes a discharge to receiving waters that are classified as "Special Protection, Outstanding Florida Waters." A priority pollutant scan is included into Part I B. of the general permit.

(10) *Comment:* One commenter recommended a reduction from the three to two species for use in toxicity tests. Also, language should be included in the permit to clarify that these operations must also meet the approval of Florida prior to receipt of NPDES general permit coverage.

Response: The recommendation for a reduction from the proposed three (3) species for toxicity testing to the two (2) species was incorporated into the conditions of the final permit. Language was included into the notification stages of the final permit to indicate that these facilities must also obtain approval from the State of Florida prior to attaining coverage under the NPDES general permit.

(11) *Comment:* One commenter recommended that the proposed limits for a pH range of 6.0-8.5 should be dropped since the limits are unrealistic for Florida and natural groundwater often measures in the 4.0-6.0 range for pH.

Response: On previous individual permits issued the pH range of 6.0-8.5 was required and actual operating data indicate that some facilities are operating within this range; therefore, deletion of this pH range is not justified.

III. Other Changes to Final Permit

After review of the proposed permit, Region IV incorporated other changes into the final permit that are part of today's final issued permit.

(1) In Part I, Section D, the schedule of compliance was changed to reflect operational level attainment dates for permittees with revoked individual permits and new dischargers.

(2) In Part II, Section A.2, revised language was incorporated into the permit for penalties for violations of permit conditions, in accordance with the Water Quality Act of 1987.

(3) In Part II, Section F, language was included to allow coverage under the general permit for permittees during initial cleanup operations when Initial Remedial Actions (IRA) have been approved by Florida Department of Environmental Regulation, or if a Site Rehabilitation Initiation Order has been approved.

(4) In Part IV of the Best Management Practices (BMP) plan, language was added to insure that the plan is maintained at the facility and made available upon request from the Permit Issuing Authority.

Appendix B—General Permit To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended (33 U.S.C. 1251 et seq.; the "Act"),

Discharges of treated groundwater and stormwater incidental to groundwater cleanup operations which are contaminated with gasoline or aviation fuel are authorized to discharge to waters of the United States within the State of Florida in accordance with effluent limitations, monitoring requirements and other conditions set forth herein. The permit consists of Part I, Part II, Part III, Part IV, and Part V.

This permit shall become effective at 1:00 p.m. Eastern Daylight Savings Time, on Monday, July 17, 1989.

This permit and the authorization to discharge shall expire at midnight, Eastern Daylight Savings Time, on July 16, 1994.

John T. Marlar,

Chief, Facilities Performance Branch, for Bruce R. Barrett, Director, Water Management Division Region IV.

Part I

A. Effluent Limitations and Monitoring Requirements: Existing Sources and New Dischargers

1. During the period beginning on the effective date of the permit and lasting through the term of this permit, the permittee is authorized to discharge treated groundwater and stormwater that has been contaminated by *Automotive Gasoline*. It is anticipated that these contaminated waters will be treated by air stripping, followed by activated carbon adsorption, if necessary, or equivalent treatment to meet the following effluent limitations.

Such discharges shall be limited and monitored by the permittee as specified below:

Effluent characteristic	Discharge limitations		Monitoring requirements	
	Daily average	Daily maximum	Measurement frequency	Sample type
Flow, MGD	Report	Report	Continuous	Flowmeter.
Benzene, μg/l		1.0	1/month	Grab.
*Total Lead, μ/1		30.0	1/month	Grab.

The effluent (100%) shall not be lethal to more than 50% of appropriate fish and invertebrate test organisms in 48 hour static toxicity tests (48-hr. LC_{50}). Failure to demonstrate compliance with the acute toxicity requirement may result in coverage under this permit being revoked, (see Part V-2).

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The pH shall not be less than 6.0 standard units nor greater than 8.5 standard units and shall be monitored once every month by grab sample, or continuously with a recorder, at the discretion of the permittee (See item I.B. 4).

There shall be no discharge of floating solids or visible foam in other than trace amounts.

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s): nearest accessible point after final treatment but prior to actual discharge or mixing with the receiving waters.

*Monitoring for this parameter is required only when contamination results from leaded fuel.

A. Effluent Limitations and Monitoring Requirements: Existing Sources and New Dischargers

2. During the period beginning on the effective date of the permit and lasting through the term of this permit, the permittee is authorized to discharge treated groundwater and stormwater that has been contaminated by *Aviation Gasoline, Jet Fuel* or *Diesel*. It is anticipated that these contaminated waters will be treated by air stripping, followed by activated carbon adsorption if necessary or equivalent treatment to meet the foregoing effluent limitations.

Such discharges shall be limited and monitored by the permittee as specified below:

Effluent characteristic	Discharge limitations		Monitoring requirements	
	Daily average	Daily maximum	Measurement frequency	Sample type
Flow, MGD	Report	Report	Continuous	Flowmeter.
Benzene, µg/1		1.0	1/month	Grab.
Naphthalene, µg/1		100.0	1/month	Grab.
*Total Lead, µg/1		30.0	1/month	Grab.

The effluent (100%) shall not be lethal to more than 50% of appropriate fish and invertebrate test organisms in 48 hour static toxicity tests (48-hr. LC_{50}). Failure to demonstrate compliance with the acute toxicity requirement may result in coverage under this permit being revoked, (see Part V-2).

The pH shall not be less than 6.0 standard units nor greater than 8.5 standard units and shall be monitored once every month by grab sample, or continuously with a recorder, at the discretion of the permittee (See item I.B. 4).

There shall be no discharge of floating solids or visible foam in other than trace amounts.

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s): nearest accessible point after final treatment but prior to actual discharge or mixing with the receiving waters.

*Monitoring for this parameter is required only when contamination results from leaded fuel.

B. Other Requirements

1. Any more frequent effluent discharge monitoring required by the Florida Department of Environmental Regulation (FDER) for the parameters limited in this permit, or different parameters, shall be reported to the Permit Issuing Authority in accordance with the requirements of Part III-A of this permit.

2. Effluent limitations for combining contaminated groundwater pumped to above-ground storage tanks, with contaminated groundwater from the sites recovery wells.

a. The permittee shall notify FDER of any intent to combine contaminated groundwater pumped to above-ground storage tanks with contaminated groundwater from the recovery well. Approval of this combined effluent discharge by FDER will constitute approval for coverage by this general permit.

3. Within 60 days of the effective date of this permit or startup of discharge the permittee shall also submit the results of the following analyses. These analyses shall be performed on a representative sample of the groundwater effluent discharge, taken after final treatment. Required analyses (one time only):

a. EPA Method 625—Acid and base/neutral extractable organics.

b. EPA Method 624—Purgeable Organics.

If the analyses required in the above Part B-3 reveal other toxic pollutants or subsequent biomonitoring test shows lethality (less t han 50% survival of test organisms in 100% effluent), this General Permit may be terminated and an individual permit issued.

4. If the pH is monitored continuously, the pH values shall not deviate outside the required range more than 7 hours and 26 minutes in any calendar month and no individual excursion shall exceed 60 minutes. An "excursion" is an unintentional and temporary incident in which the pH value of discharge wastewater exceeds the range set forth in the permit.

C. Test Procedures

In performing the analysis for the dissolved constituents in the surface water and groundwater, the permittee shall use the guidelines recommended and described in Sections 17-70.008(9)[a-e] of the petroleum contamination site cleanup criteria rule for the State of Florida.

a. If the petroleum contamination is from a petroleum fuel in which the source of contamination has not been identified, the groundwater shall be analyzed (using the recommended methods) for the following parameters as described in Section 17.70.008(9)[d] of the State Underground Petroleum Environmental Response Program:

(1) Lead (EPA Method 239.2 or Standard Method 304)
(2) Priority Pollutant Volatile Organics (EPA Method 624)
(3) Priority Pollutant Extractable Organics (EPA Method 625)
(4) Non-Priority Pollutant Organics (with GC/MS Peaks greater than 10 ppb) (EPA Methods 624 & 625)

D. Schedule of the Compliance

1. The permittee shall achieve compliance with the effluent limitations specified for discharges in accordance with the following schedule:

Permittees with Revoked Individual Permits Operational Level Attained, Upon Receipt of Notification of Coverage

New Dischargers: Operational Level Attained, Upon Commencement of Discharge

2. No later than 14 calendar days after any date identified in the above

schedule of compliance the permittee shall submit either a report of progress or, in the case of specific actions being required by identified dates, a written notice of compliance or noncompliance. In the latter case, the notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirement.

Part II—Standard Conditions for NPDES Permits

Section A. General Conditions

1. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

2. Penalties for Violations of Permit Conditions

Any person who violates a permit condition is subject to a civil penalty not to exceed $25,000 per day of such violation. Any person who willfully violates permit conditions is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both. Any person who negligently violates permit conditions is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

3. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

4. Permit Modification

After notice and opportunity for a hearing, this permit may be modified, terminated or revoked for cause including, but not limited to, the following:

a. Violation of any terms or conditions of this permit;

b. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;

c. A change in any conditions that requires either temporary interruption or elimination of the permitted discharge; or

d. Information newly acquired by the Agency indicating the discharge poses a threat to human health or welfare.

It the permittee believes that any past or planned activity would be cause for modification or revocation and reissuance under 40 CFR 122.62, the permittee must report such information to the Permit Issuing Authority. The submittal of a new application may be required of the permittee. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

5. Toxic Pollutants

Notwithstanding Paragraph A-4, above, if a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under Section 307(a) of the Act for a toxic pollutant which is present in the discharge and such standard or prohibition is more stringent than any limitation for such pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition and the permittee so notified.

The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

6. Civil and Criminal Liability

Except as provided in permit conditions on "Bypassing" Section B, Paragraph B-3, nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance.

7. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.

8. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by Section 510 of the Act.

9. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

10. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

11. Duty to Provide Information

The permittee shall furnish to the Permit Issuing Authority, within a reasonable time, any information which the Permit Issuing Authority may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Permit Issuing Authority upon request, copies of records required to be kept by this permit.

Section B. Operation and Maintenance of Pollution Controls

1. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

2. Need to Halt or Reduce not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the condition of the permit.

3. Bypass of Treatment Facilities

a. Definitions:

(1) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility, which is

not a designed or established operating mode for the facility.

(2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. Bypass not exceeding limitations.

The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Paragraphs c. and d. of this section.

c. Notice.

(1) *Anticipated bypass.* If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass; including an evaluation of the anticipated quality and effect of the bypass.

(2) *Unanticipated bypass.* The permittee shall submit notice of an unanticipated bypass as required in Section D, Paragraph D–4 (24-hour notice).

d. Prohibition of bypass.

(1) Bypass is prohibited and the Permit Issuing Authority may take enforcement action against a permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe and extensive property damage;

(b) There were no feasible alternatives to the bypass, such as maintenance of sufficient reserve holding capacity, the use of auxiliary treatment facilities, retention of untreated wastes, waste hauling, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(c) The permittee submitted notices as required under Paragraph b. of this section.

(2) The Permit Issuing Authority may, within its authority, approve an anticipated bypass, after considering its adverse effects, if the Permit Issuing Authority determines that it will meet the three conditions listed above in Paragraph d.(1) of this section.

4. Upsets

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation. An upset constitutes an affirmative defense to an action brought for non-compliance with such technology based permit limitation if the requirements of 40 CFR 122.41(n)(3) are met.

5. Removed Substances

This permit does not authorize discharge of solids, sludge, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters to waters of the United States unless specifically limited in Part 1.

Section C. Monitoring and Records

1. Representative Sampling

Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. All samples shall be taken at the monitoring points specified in this permit and, unless otherwise specified, before the effluent joins or is diluted by any other wastestream, body of water, or substance. Monitoring points shall not be changed without notification to and the approval of the Permit Issuing Authority.

2. Flow Measurements

Appropriate flow measurement devices and methods consistent with accepted scientific practices shall be selected and used to insure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated and maintained to insure that the accuracy of the measurements are consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of less than ±10% from the true discharge rates throughout the range of expected discharge volumes. Guidance in selection, installation, calibration and operation of acceptable flow measurement devices can be obtained from the following references:

a. "A Guide of Methods and Standards for the Measurement of Water Flow", U.S. Department of Commerce, National Bureau of Standards, NBS Special Publication 421, May 1975, 97 pp. (Available from the U.S. Government Printing Office, Washington, DC 20402. Order by SD catalog No. C13.10:421.)

b. "Water Measurement Manual", U.S. Department of Interior, Bureau of Reclamation, Second Edition, Revised Reprint, 1974, 327 pp. (Available from the U.S. Government Printing Office, Washington, DC 20402. Order by catalog No. 127.19/2:W29/2, Stock No. S/N 24003–0027.)

c. "Flow Measurement in Open Channels and Closed Conduits", U.S. Department of Commerce, National Bureau of Standards, NBS Special Publication 484, October 1977, 982 pp. (Available in paper copy or microfiche from National Technical Information Service (NTIS), Springfield, VA 22151. Order by NTIS No. PB–273 535/5ST.)

d. "NPDES Compliance Flow Measurement Manual", U.S. Environmental Protection Agency, Office of Water Enforcement, Publication MCD–77, September 1981, 135 pp. (Available from the General Services Administration (8BRC), Centralized Mailing Lists Services, Building 41, Denver Federal Center, Denver, CO 80225.)

3. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

4. Penalties for Tampering

The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 2 years per violation, or by both.

5. Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by the Permit Issuing Authority at any time.

6. Record Contents

Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individual(s) who performed the sampling or measurements;

c. The date(s) analyses were performed;

d. The individual(s) who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

7. Inspection and Entry

The permittee shall allow the Permit Issuing Authority, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

c. Inspect at reasonable time any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

Section D. Reporting Requirements

1. Change in Discharge

The permittee shall give notice to the Permit Issuing Authority as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source; or

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Section D, Paragraph D–10(a).

2. Anticipated Noncompliance

The permittee shall give advance notice to the Permit Issuing Authority of any planned change in the permitted facility or activity which may result in noncompliance with permit requirements. Any maintenance of facilities, which might necessitate unavoidable interruption of operation and degradation of effluent quality, shall be scheduled during noncritical water quality periods and carried out in a manner approved by the Permit Issuing Authority.

3. Transfer of Ownership or Control

A permit may be automatically transferred to another party if:

a. The permittee notifies the Permit Issuing Authority of the proposed transfer at least 30 days in advance of the proposed transfer date;

b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

c. The Permit Issuing Authority does not notify the existing permittee of his or her intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph b.

4. Monitoring Reports

See Part III of this permit.

5. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report (DMR). Such increased frequency shall also be indicated.

6. Averaging of Measurements

Calculations for limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Permit Issuing Authority in the permit.

7. Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date. Any reports of noncompliance shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirement.

8. Twenty-Four Hour Reporting

The permittee shall orally report any noncompliance which may endanger health or the environment, within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause, the period of noncompliance, including exact dates and times; and if the noncompliance has not been corrected, the anticipated time it is expected to continue, and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The Permit Issuing Authority may verbally waive the written report, on a case-by-case basis, when the oral report is made.

The following violations shall be included in the 24 hour report when they might endanger health or the environment:

a. An unanticipated bypass which exceeds any effluent limitation in the permit.

b. Any upset which exceeds any effluent limitation in the permit.

9. Other Noncompliance

The permittee shall report in narrative form all instances of noncompliance not previously reported under Section D, Paragraphs D–2, D–4, D–7, and D–8 at the time monitoring reports are submitted. The reports shall contain the information listed in Paragraph D–8.

10. Changes in Discharges of Toxic Substances

The permittee shall notify the Permit Issuing Authority as soon as it knows or has reason to believe:

a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic substance(s) (listed at 40 CFR 122, Appendix D, Table II and III) which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(1) One hundred micrograms per liter (100 μg/l); or

(2) Two hundred micrograms per liter (200 μg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 μg/l) for 2, 4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony.

b. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant (listed at 40 CFR 122, Appendix D, Table II and III) which is not limited in the permit, if that

discharge will exceed the highest of the following "notification levels":

(1) Five hundred micrograms per liter (500 μg/l); or

(2) One milligram per liter (1 mg/l) for antimony.

11. Signatory Requirements

All applications, reports, or information submitted to the Permit Issuing Authority shall be signed and certified.

a. All permit applications shall be signed as follows:

(1) For a corporation: by a responsible corporate officer. For the purpose of this Section, a responsible corporate officer means: (1) a president, secretary, treasurer or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy— or decision-making functions for the corporation, or (2) the manager of one or more manufacturing production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.

b. All reports required by the permit and other information requested by the Permit Issuing Authority shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described above;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and

(3) The written authorization is submitted to the Permit Issuing Authority.

c. Certification. Any person signing a document under paragraphs (a) or (b) of this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under the direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

12. Availability of Reports

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Permit Issuing Authority. As required by the Act, permit applications, permits and effluent data shall not be considered confidential.

13. Penalties for Falsification of Reports

The Clean Water Act provides that any person who knowingly makes any false statements, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 2 years per violation, or by both.

Section E. Definitions

1. Permit Issuing Authority

The Regional Administrator of EPA Region IV or his designee, unless at some time in the future the State receives the authority to administer the NPDES program and assumes jurisdiction over the permit; at which time, the Director of the State program receiving authorization becomes the issuing authority.

2. Act

"Act" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act) Pub. L. 92-500, as amended by Pub. L. 95-217, Pub. L. 95-576 and Pub. L. 100-4, 33 U.S.C. 1251 et seq.

3. Concentration Measurements

a. The "average monthly concentration", is the sum of the concentrations of all daily discharges sampled and/or measured during a calendar month on which daily discharges are sampled and measured, divided by the number of daily discharges sampled and/or measured during such month (arithmetic mean of the daily concentration values). The daily concentration value is equal to the concentration of a composite sample or in the case of grab samples is the arithmetic mean (weighted by flow value) of all the samples collected during the calendar day.

b. The "maximum daily concentration" is the concentration of a pollutant discharge during a calendar day. It is identified as "Daily Maximum" under "Other Limits" in Part I of the permit and the highest such value recorded during the reporting period is reported under the "Maximum" column under "Quality" on the DMR.

4. Other Measurements

a. The effluent flow expressed as MGD is the 24 hour average flow averaged monthly. It is the arithmetic mean of the total daily flows recorded during the calendar month. Where monitoring requirements for flow are specified in Part I of the permit the flow rate values are reported in the "Average" column under "Quantity" on the DMR.

b. An "instantaneous flow measurement" is a measure of flow taken at the time of sampling, when both the sample and flow will be representative of the total discharge.

c. Where monitoring requirements for pH or dissolved oxygen are specified in Part I of the permit, the values are generally reported in the "Quality or Concentration" column on the DMR.

5. Types of Samples

a. Grab Sample: A "grab sample" is a single influent or effluent portion which is not a composite sample. The sample(s) shall be collected at the period(s) most representative of the total discharge.

6. Calendar Day

A calendar day is defined as the period from midnight of one day until midnight of the next day. However, for purposes of this permit, any consecutive 24-hour period that reasonably represents the calendar day may be used for sampling.

7. Hazardous Substance

A hazardous substance means any substance designated under 40 CFR Part 116 pursuant to Section 311 of the Clean Water Act.

8. Toxic Pollutant

A toxic pollutant is any pollutant listed as toxic under Section 307(a)(1) of the Clean Water Act.

Section F. Application Requirements

a. For expired individual NPDES permits, dischargers desiring coverage under NPDES General Permit Number FLGO40001 are required to submit a notice of intent (NOI) to be covered by the general permit to the Permit Issuing Authority. The NOI shall include: (1) The name and address of the operation, (2) the applicable individual NPDES number(s), (3) the identification of any new discharge location not contained in the expired permit, (4) evidence that the operation has been approved for Initial Remediation Actions (IRA), or has obtained a Site Rehabilitation Initiation Order and an approved Remedial Action Plan (RAP) from the FDER, in accordance with Florida Administrative Codes (FAC) 17-70.006, 17-70.008 and 17-70.010, respectively, (5) a map showing the facility and discharge location (in latitude and longitude), and (6) the name of the receiving water. Operators having several individual permits are encouraged to consolidate requests for coverage into one NOI for all individual permits. The previous submission of the proper forms in the renewal application does not relieve the permittee desiring coverage under the general permit of the requirement to file a NOI.

b. Dischargers having valid individual NPDES permits that desire coverage under the general permit are required to file a NOI to the Permit Issuing Authority within at least 30 days prior to expiration of their current permit(s). The notice shall contain the same information specified in paragraph (a) above. Permittees desiring to retain their individual permit are required to submit the appropriate application forms at least 180 days before expiration of their individual permit.

c. Dischargers who have not previously obtained a valid individual NPDES permit will be required to submit the same information specified in paragraph (a) above, except items (2) and (3). The application for coverage under the general permit must be made at least forty-five (45) days before the discharge is to commence.

d. Notification of coverage will be given by the Permit Issuing Authority by certified mail to the permittee.

e. Coverage by this general permit shall become effective on the date of notification of coverage by the Permit Issuing Authority.

f. Coverage by this general permit shall expire on July 16, 1994.

Section G. Additional General Permit Conditions

1. The Permit Issuing Authority may require any person authorized by this permit to apply for and obtain an individual NPDES permit when:

a. The discharge(s) is a significant contributor of pollution;

b. The discharger is not in compliance with the conditions of this permit;

c. A change has occurred in the availability of the demonstrated technology of practices for the control or abatement of pollutants applicable to the point sources;

d. Effluent limitation guidelines are promulgated for point sources covered by this permit;

e. A Water Quality Management Plan containing requirements applicable to such point source is approved; or

f. The point source(s) covered by this permit no longer:

(1) Involve the same or substantially similar types of operations;

(2) Discharge the same types of wastes;

(3) Require the same effluent limitations or operating conditions;

(4) Require the same or similar monitoring; and

(5) In the opinion of the Regional Administrator, are more appropriately controlled under an individual permit than under a general permit.

The Regional Administrator may require any operator authorized by this permit to apply for an indiviual NPDES permit only if the operator has been notified in writing that a permit application is required.

2. Any operator authorized by this permit may request to be excluded from the coverage of this general permit by applying for an individual permit. The operator shall submit an application together with the reasons supporting the request to the Regional Administrator.

3. When an individual NPDES permit is issued to an operator otherwise subject to this general permit, the applicability of this permit to the owner or operator is automatically terminated on the effective date of the individual permit.

4. A source excluded from coverage under this general permit solely because it already has an individual permit may request that its individual permit be revoked, and that it be covered by this general permit. Upon revocation of the individual permit, this general permit shall apply to the source.

5. A petroleum contamination recovery operation may be excluded from this general permit if it proposes discharges to receiving waters that are classified as "Special Protection, Outstanding Florida Waters" as set forth by FAC 17-3.043.

6. The permittee shall notify the Permit Issuing Authority within 30 days after the permanent termination of discharge from their facility. This letter shall include the necessary Site Rehabilitation Completion Order (SRCO) from Florida Bureau of Waste Cleanup which constitutes final action on the State level for completion of cleanup activities at the affected site. After review of the SRCO, EPA will inactivate coverage of the general NPDES permit for the facility.

Part III—Other Requirements

A. Reporting of Monitoring Results

Monitoring results obtained during the previous calendar quarter shall be summarized for each month (each quarter if monitoring frequency is quarterly) and must be reported on a Discharge Monitoring Report Form (EPA No. 3320-1), postmarked no later than the 28th day of the month following the completed calendar quarter. (For example data for January-March shall be submitted by April 28.) Duplicate signed copies of these, and all other reports required by Section D of Part II, Reporting Requirements, shall be submitted to the Permit Issuing Authority and the State at the following addresses:

Environmental Protection Agency,
Region IV, Facilities Performance Branch, Water Management Division, 345 Courtland Street NE., Atlanta, GA 30365

Florida Dept. of Environmental Regulation, Local District Office Address

B. Reopener Clause

This permit shall be modified, or alternatively revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved under Sections 301(b)(2) (C) and (D), 304(b)(2) and 307(a)(2) of the Clean Water Act, if the effluent standard of limitation so issued or approved:

1. Contains different conditions or is otherwise more stringent than any condition in the permit; or

2. Controls any pollutant not limited in the permit.

The permit as modified or reissued under this paragraph shall also contain any other requirements of the Act then applicable.

Part IV—Best Management Practices and Conditions

Section A. General Conditions

1. BMP Plan

Preparation of a Best Management Practices (BMP) Plan shall be prepared in conjunction with development of the Remedial Action Plan required by Florida Department of Environmental Regulation (See Part II.F.c.). The permittee shall maintain the BMP plan at the facility and shall make the plan available to the permit issuing authority upon request. The "NPDES Guidance Document" can be used as a reference which contains technical information on BMPs and the elements of the BMP program. The permittee shall develop and implement a BMP plan which prevents, or minimizes the potential for, the release of pollutants from ancillary activities, including material storage areas; plant site runnoff; in-plant transfer, process and material handling areas; loading and unloading operations, and sludge and waste disposal areas, to the waters of the United States through plant site runoff; spillage or leaks; sludge or waste disposal; or drainage from raw material storage. The term pollutants refers to any substance listed as toxic under Section 307(a)(1) of the Clean Water Act, oil, as defined in Section 311(a)(1) of the Act, and substance listed as hazardous under Section 311 of the Act. Copies of the "NPDES Guidance Document" may be obtained by submitting written requests to: Director, Waste Management Division, Region IV, Atlanta, GA 30365.

Part V—Biomonitoring Program

In accordance with Part 1 of this permit, the permittee shall initiate the series of tests described below within 30 days of coverage or commencement of discharge from outfall(s) 001.

1. If the effluent is discharged to a *freshwater stream*, the permittee shall conduct 48-hour static toxicity tests on two appropriate test species (EPA/600/4-85/013, Table 1). The test organisms used shall include one fish and one invertebrate test species (Recommend: A Daphnidae species and the fathead minnow (*Pimephales promelas*). If the effluent is discharged to a *saltwater stream*, the permittee shall conduct 48-hour static toxicity tests using the Mysid shrimp (Mysidopsis bahia) and the inland silverside (Menidia beryllina) or any other species approved by EPA. Tests shall be conducted once every month for a period of three months following the initiation of the tests and once every year thereafter for the duration of the permit using samples of 100% final effluent. Such tests will be conducted on one grab sample of 100% final effluent. Results of all tests conducted with any species shall be reported according to EPA/600/4-85/013, Section 13, Report Preparation and Data Utilization, and shall be submitted to EPA with the quarterly discharge monitoring report.

2. If lethality (less than 50% survival of tests organisms in 100% effluent) is demonstrated in either of the above test(s), another 48-hr static test using the same specie(s) and the same methodology shall be conducted within two weeks. If the additional test(s) indicates toxicity, coverage under the general permit may be revoked by the Permit Issuing Authority upon issuance of an individual permit.

3. All test organisms, procedures and quality assurance criteria used shall be in accordance with *Methods for Measuring the Acute Toxicity of Effluent to Freshwater and Marine Organisms*, EPA-600/4-85-013. A standard reference toxicant quality assurance test shall be conducted concurrently with each set of toxicity tests and its results submitted with the quarterly discharge monitoring report.

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federal register

Monday
July 17, 1989

Part V

Environmental Protection Agency

40 CFR Part 141
National Primary Drinking Water Regulations: Analytical Techniques; Coliform Bacteria; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[FR 3555-8]

National Primary Drinking Water Regulations: Analytical Techniques; Coliform Bacteria

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action amends the National Primary Drinking Water Regulations (NPDWRs) promulgated pursuant to section 1412 of the Safe Drinking Water Act (SDWA) to specify an additional analytical method to enumerate total coliforms for the purpose of determining compliance with the current maximum contaminant levels (MCLs) for coliform bacteria in 40 CFR 141.14. Only approved analytical techniques may be used for determining compliance with MCLs. The two methods currently approved in 40 CFR 141.21 are: (1) The Multiple-Tube Fermentation (MTF) technique, and (2) the Membrane Filter (MF) technique. The third alternate procedure which EPA is approving today is the Minimal Medium ONPG–MUG test.

EPA requested comment on whether it should approve the Autoanalysis Colilert test (henceforth called the Minimal Medium ONPG–MUG test, or MMO–MUG test, a more specific generic name) for determining compliance with the current MCLs for total coliforms on May 6, 1988 (53 FR 16352). The Agency has determined that the proposed technique is substantially equivalent in both precision and accuracy to the techniques already approved.

EFFECTIVE DATE: The rule is effective 30 days from publication. In accordance with 40 CFR 23.7, this regulation shall be considered final Agency action for the purposes of judicial review at 1 p.m. Eastern Standard Time on July 31, 1989. The incorporation by reference of the publication listed in the regulation is approved by the Director of the Federal Register as of August 16, 1989.

ADDRESSES: The public comments and supporting documents cited in the reference section of this notice are available for review at EPA's Drinking Water Docket, 401 M Street SW., Washington, DC 20460. For access to Docket material, call (202) 382-3027 between 9 a.m. and 3:30 p.m. for an appointment.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline, telephone (800) 426-4791 or (202) 382-5533 for callers in the Washington, DC area and Alaska. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 8:30 a.m. to 4:00 p.m. Eastern time.

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I. Summary of Today's Action

Today's action makes available an additional analytical method for determining compliance with the current MCLs for total coliform bacteria in 40 CFR 141.14. This method is the MMO–MUG test. With the promulgation of this method, three analytical procedures for total coliform analysis are available: the Membrane Filter technique, the Multiple-Tube Fermentation technique, and the MMO–MUG test. Any of these tests may be used to analyze drinking water samples for the estimation or enumeration of coliform bacteria to determine compliance with the current MCLs for this group of organisms.

II. Statutory Authority and Regulatory Background

A. Statutory Authority

The SDWA requires EPA to promulgate NPDWRs which include MCLs or treatment techniques (section 1412). NPDWRs also contain "criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels, including quality control and testing procedures to ensure compliance with such levels" (section 1401(1)(D)). In addition, section 1445(a) of the Act authorizes the Administrator to require monitoring to assist in determining whether persons are in compliance with the Act. EPA's promulgation of analytical techniques is authorized under these sections of the Act. EPA has promulgated analytical techniques for all currently regulated drinking water contaminants; persons must use one of the approved analytical techniques for determining compliance with the MCLs (see 40 CFR 141.21–30).

B. Regulatory Background

On May 6, 1988, as part of the Notice of Availability on proposed changes to the NPDWR for total coliforms, EPA requested comment on whether it should approve the MMO–MUG test (called by its commercial name, the Autoanalysis Colilert System in that notice) as a third procedure to determine the presence or absence of total coliforms under the revised total coliform rule. Due to the significant number of individuals who expressed interest in using the MMO–MUG test as soon as possible (rather than waiting for the effective date of the revised coliform rule), and because of its simplicity and possible lower costs, EPA also requested comment on whether it should approve the five-tube MMO–MUG test to determine the mean density of total coliform bacteria in drinking water for determining compliance with the current MCLs for these organisms (53 FR 16348). This notice pertains only to testing for compliance with the current MCLs. Use of this test to determine compliance with the revised coliform rule, to be published shortly, will be addressed when EPA promulgates that rule.

The test described in the Notice of Availability was a five-t5be quantification method. The test was validated as a ten-tube test by an extensive field evaluation co-sponsored by EPA and the American Water Works Association Research Foundation, which explicitly followed the protocol of the EPA Environmental Monitoring Systems Laboratory (EMSL) for certification of alternative analytical methods (1). These data on the national field evaluation were recently published (2), and are also available in the docket for the proposed changes to the current coliform rule. Other recently published information describing the MMO–MUG test are cited in Section VI below (3,4). EMSL has determined that statistical analyses confirm that the five- and ten-tube test results are comparable. Based on the validation data and EMSL's evaluation, the Agency has concluded that this method is equivalent to currently approved methods in terms of precision and accuracy. Furthermore, the false positive rate, as determined by reaction in brilliant green lactose bile broth, is 13% for both the MMO–MUG test and the currently approved MTF test. The false positive rate for the currently approved MF technique is approximately 22%. Since it is a new method and consequently has not been tested with the whole range of drinking water available in the United States, EPA encourages laboratories to perform parallel testing between the MMO–MUG test and other EPA-approved procedures for enumerating total coliform bacteria for at least several months to assess the effectiveness of the MMO–MUG test for the specific water type being analyzed and to assess the impact on numbers of positive tests of the techniques. To enable and enhance collection and evaluation of comparative data from the increasing number of tests available, EPA strongly recommends that laboratories identify which test(s) they use on the data form for each sample analyzed. It is important to note that EPA has not yet determined whether this test is fully satisfacto2y for assessing water other than drinking water.

The MMO–MUG system is based on the ability of total coliform bacteria to produce the enzyme beta-galactosidase which hydrolyzes o-nitrophenyl-beta-d-galactopyranoside (ONPG) present in the chemically defined medium to form a yellow color. The formulation of the test medium poorly supports the growth of non-coliform microorganisms; the target coliform microorganisms produce the yellow color within 24 hours. The test procedure consists of aseptically adding 10 ml of the water sample to each of five tubes containing a measured amount of MMO–MUG test medium, capping the tubes, mixing vigorously by inversion, incubating at 35–37 °C for 24 hours, and observing for a yellow color. If the color is so light a yellow that a definitive reading cannot be made, the tubes are re-incubated at 35–37 °C up to, but not more than, four additional hours. Deepening of the yellow color indicates the presence of total coliforms.

Total coliform bacteria are a heterogeneous group of organisms, the definition of which is based on their ability to produce acid and gas from lactose, although a number of strains may produce no gas. Taxonomists who work with this group of bacteria use a range of physiological and biochemical tests, but do not deal with absolutes, because a certain percentage of strains recovered from nature will vary from the established norm. Therefore, methodology based on different enzymatic reactions may occasionally detect different organisms, but, if in actual field studies the percentage of coliforms detected by a new method falls within acceptable limits of comparability with an established method, EPA believes the new test can also be deemed acceptable without challenging current definitions. This being so, EPA does not believe that a new definition for coliform bacteria is required.

An additional enzyme, beta-glucuronidase, is produced by *Escherichia coli* and forms a fluorescent substance when it hydro-4-methylumbelliferyl-beta-D-glucuronide (MUG) present in the MMO–MUG medium, allowing for detection of this baceterium (2). However, studies to evaluate the efficacy of the MMO–MUG test for detection of *E. coli* are still underway. Thus EPA's promulgation of the MMO–MUG test for estimating the mean density of total coliforms should not be construed as an EPA endorsement of the effectiveness of this test for detection of *E. coli* at this point.

Ingredients per liter for the MMO–MUG test medium (2,5) are listed below:

$(NH_2)_4SO_4$, 5g
$Mn(SO_4)_2$, 50mg
$ZnSO_4$, 50mg
$MgSO_4$, 100mg
NaCl, 10g
$CaCl_2$, 50mg
KH_2PO_4, 900mg
Na_2HPO_4, 6.2g
Na_2SO_3, 40mg
amphotericin B, 1mg
ortho-nitrophenyl-beta-D-galactopyranoside (ONPG), 500mg
4-methylumbelliferyl-beta-D-glucuronide (MUG), 75mg
Solanium, 500mg

This list of ingredients is given for information purposes only; as with other media, EPA does not encourage preparation of the MMO–MUG medium by individual users because of quality assurance problems. The MMO–MUG medium can be purchased commercially in a prepackaged form, or in bulk to be dispensed as needed. Laboratories making their own MMO–MUG medium should ascertain that it is prepared with rigid quality assurance measures to ensure that results are comparable to those obtained with the commercially available media.

The interim total coliform rule defines two maximum contaminant levels (MCLs)—a "single sample violation" and a monthly average. Both MCLs are defined according to the analytical procedure used. Under this final rule, when a laboratory uses the MMO–MUG test, the MCLs are identical to those prescribed in 40 CFR 141.14(b)(1) for the five-tube fermentation tube (MTF) method and 10-ml standard portions.

III. Comments and Responses

As noted earlier, in the May 6, 1988, notice, EPA requested comment on whether it should approve the Autoanalysis Colilert System (MMO–MUG test) as a five-tube quantification method for analyzing samples to determine compliance with the current total coliform bacteria MCLs and to determine compliance with the proposed revised total coliform MCL as a qualitative test. EPA received many comments addressing this issue, the great majority supporting EPA approval. In today's notice, the Agency will only summarize and respond to those comments specific to the use of the MMO–MUG test to determine compliance with the current total coliform bacteria MCLs. EPA will identify and respond to comments on the use of the MMO–MUG test to determine compliance with the revised coliform rule when it promulgates that rule. If a comment pertained to both rules, or if the Agency could not determine which rule the comment referred to, EPA has identified and responded to the comment in this notice, and will address it in the forthcoming revised rule, as well.

A. Favorable Comments

Fifteen commenters specifically endorsed use of the MMO–MUG test. The commenters found the procedure reliable, accurate, rapid, and easy to use. They liked the additional flexibility that another alternate method would provide, and pointed out the advantage of having a procedure available for detection of coliforms that would not be affected by the presence of large numbers of heterotrophic bacteria. Some thought that use of the procedure would save time in transport of samples and would reduce laboratory cost. One commenter not only stated that the MMO–MUG test should be approved as an additional method to determine MCL compliance, but also believed that it would be of assistance in identifying "trouble spots," i.e., as a quick, simple method for coliform detection in a distribution system heavily contaminated with heterotrophic bacteria.

B. Recommended Modifications

Six of the commenters who approved the new test had suggestions or recommended limitations concerning its use.

1. Limitations Suggested

One commenter was opposed to the use of the MMO–MUG test for analysis of compliance samples by uncertified laboratories, claiming it would result in under-reporting or erroneous reporting, and have a negative effect on small laboratories dependent upon water testing for their livelihood. If these laboratories were to close for lack of

funds, suppliers would need to spend more money for transportation of samples. This commenter recommended that only State personnel, or State-recommended personnel, be allowed to use the test. Another commenter questioned whether EPA intends to require laboratories to be certified for performance of the test.

Some commenters thought that the test should be available for smaller systems and for on-site testing. Another commenter, did not consider the test to be appropriate for use in analyzing non-disinfected water, because the method would provide no indication of the number of heterotrophic bacteria present.

Under 40 CFR 141.28, a public water system must use a laboratory approved by the State (a "certified laboratory") to analyze most regulated drinking water contaminants, including total coliforms. The State certification requirement should not negatively affect small laboratories that are already certified for total coliform analyses using the currently approved methods. EPA's regulations require that all compliance analyses be conducted by laboratories approved by the State, and it is not EPA's intention that unapproved laboratories or other analysts be permitted to run the MMO–MUG test. Because the MMO–MUG is so similar to the EPA-approved Multiple Tube Fermentation Technique, EPA is merely encouraging States to allow *certified* laboratories to use the MMO–MUG test without specific initial certification. EPA is planning to develop and publish specific certification criteria for the MMO–MUG test for future use in on-site evaluations of laboratories. For the purposes of today's rule, EPA still requires that all coliform analyses be conducted in laboratories approved by the State, but the Agency is not specifying specific certification criteria for the MMO–MUG test.

Regarding the use of this test for enumerating total coliforms in undisinfected drinking water because of its inability to signal the presence of high levels of heterotrophic bacteria, the test was not designed for that purpose; the test is simply designed to detect and enumerate coliforms. If enumeration of heterotrophic bacteria is desirable, standard analytical procedures are available.

2. Comments on Procedures for the MMO–MUG Test

One commenter supported the MMO–MUG test, but stated that the sample volume should be 100 ml, rather than 50 ml.

As described in the May 6, 1988, notice (53 FR 16352), EPA has reviewed data which demonstrate that the MMO–MUG procedure, when used as a five-tube test (with 10-ml sample portions in each tube), gives results that are comparable to those achieved when using the EPA-approved five-tube MTF procedure. Thus, for consistency with the EPA-approved MTF procedure, EPA is approving the use of the five-tube MMO–MUG test, which uses a total of 50 ml of water sample. As stated above, the Agency is in the process of revising the total coliform rule; one of the proposed provisions would require systems to use a 100-ml water sample, regardless of analytical method used. Thus, EPA will probably replace the requirement to use a 50-ml water sample for the MMO–MUG test, as approved in today's rule, with a requirement to use 100 ml (in a ten-tube test or a single bottle) beginning on the effective date of the revised rule, i.e., 18 months after promulgation.

3. Other Comments

Other commenters who supported use of the MMO–MUG test suggested that it be tentatively approved until it could be compared with other tests in a greater variety of situations, and then re-evaluated after four years. Another commenter supported use of the test, but thought that EPA should not refer to the test by its trade name (i.e., Autoanalysis Colilert System).

EPA believes that existing data support approval of the MMO–MUG test at this time; however, EPA agrees that comparison studies are useful. Thus, as mentioned above, the Agency encourages laboratories to conduct multi-month studies comparing the MMO–MUG test to previously approved EPA methods to insure that results are comparable for the specific water being tested before relying completely on the new test. Water suppliers should keep in mind that, although the MMO–MUG technique is equivalent to currently approved techniques, changes in the number of positive tests could affect compliance determinations. The Agency also agrees that the test approved today should be referred to by a generic name rather than a trade name. Accordingly, EPA now refers to this method as the MMO–MUG test.

C. Comments Opposed to the MMO–MUG Test

One commenter opposed the MMO–MUG test because the medium was expensive and only available from one source. A second commenter found the test cumbersome as currently packaged as well as expensive. A third did not like the test, believing that the test does not quantify coliforms, even though it was easy to use and gave rapid results. Still another commenter believed that the availability of the test to smaller facilities would create difficulty in tracking the results of laboratory tests.

The Agency has reviewed the costs associated with the MMO–MUG test and determined that it generally does not cost more than the current approved methods, and that, in fact, in some settings it may prove less expensive when time and labor costs are considered. Commenters provided no data which demonstrate that this conclusion is invalid. Of course, laboratories using the existing approved methods to evaluate samples are free to continue using them if they find them less costly or otherwise preferable.

EPA also has reviewed the problem of MMO–MUG medium availability. The producer of this medium has assured the medium's developer and EPA of its availability, dependent upon demand (6, 7, 8, 9). Although the medium currently can be obtained only from a single source, there are precedents for approval of media containing an ingredient available from a single source (6). The ingredients for MMO–MUG medium are all readily available commercially with the single exception of the dispersing agent, Solanium. The producer lists this ingredient as available on its current price list (7) and has stated its intention to fulfill public need (8, 9). In addition, the public listing of ingredients makes it more likely that other manufacturers will produce the same product or slightly modified versions of the product, so that equivalent media would no longer be available from only one source.

EPA does not believe the test, as currently packaged, is more cumbersome to use than other approved tests. In fact, EPA believes that the test may be significantly less cumbersome. The five-tube test approved today is designed to estimate the coliforms present in a sample by the Most Probable Number procedure. Therefore, the MMO–MUG test is a suitable method for estimating total coliform bacteria in water samples to determine compliance with the current MCLs for total coliform bacteria.

The requirement to use a certified laboratory for performance of the MMO–MUG test should prevent any increase in difficulty of tracking test results since such laboratories are accustomed to recordkeeping required for compliance purposes.

IV. Regulation Assessment Requirements

A. Executive Order 12291

Executive Order 12291 requires EPA to judge whether a regulation is "major" and, if so, to prepare a regulatory impact analysis. EPA has determined that this regulation will not have an economic effect of $100 million or more, cause a significant increase in cost or prices, or cause any of the averse effects described in the Executive Order, and, therefore, is not a major rule. This regulation simply specifies an additional analytical technique which can be used by laboratories to enumerate coliform bacteria. Laboratories may use the new method or continue using one of the previously approved methods. Therefore, there will not be any adverse economic impacts. This rule may, in fact, reduce costs because it approves a method that is simpler than existing approved methods.

This notice was submitted to OMB for its review under the Executive Order.

B. Regulatory Flexibility Act

This amendment is consistent with the objectives of the Regulatory Flexibility Act (5 U.S.C. 602 et seq.) because it will not have a significant economic impact on a substantial number of small entities. This rule gives laboratories, including small laboratories, the latitude to use an alternate method for total coliform analysis, if they wish. As noted earlier, this method costs no more to perform than methods already approved and may, in fact, cost less.

C. Paperwork Reduction Act

This rule contains no requests for information and, therefore, is not covered by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

V. Effective Date

This rule is issued under SDWA sections 1401, 1412, and 1445. Although section 1412(b) provides that the National Primary Drinking Water Regulations (as defined in section 1401) take effect 18 months after their promulgation, under section 1445 there is no such limitation for monitoring, reporting, and recordkeeping regulations which may be used to assist in determining compliance. To allow the monitoring methods to be used 30 days after promulgation, EPA is promulgating these regulations under section 1445. Effective 18 months after promulgation, the analytical methods will also be deemed to be promulgated under sections 1401 and 1412.

VI. References and Public Docket

The following items are included in the public docket together with other correspondence and information. The public docket is available for review in Washington, DC, at the address listed at the beginning of this notice.

- Technical reviews of the MMO–MUG test.
- Memorandum recommending approval of the MMO–MUG test (Colilert system) from the Director, Environmental Monitoring Systems Laboratory in Cincinnati to the Director, Office of Drinking Water.
- Description of the proposed analytical technique and performance data.
- Public comments.

List of Subjects in 40 CFR Part 141

National Primary Drinking Water Regulations; Total coliforms; Incorporation by reference.

William K. Reilly,

Administrator.

Dated: July 10, 1989.

References

(1) Covert, T.C. 1985. USEPA's Method Equivalency Program for Drinking Water Samples. USEPA, Cincinnati.

(2) Edberg, S.C., Allen, M.J., Smith, D.B., and the National Collaborative Study. 1988. National Field Evaluation of a Defined Substrate Method for the Simultaneous Enumeration of Total Coliforms and *Escherichia coli* from Drinking Water: Comparison with the Standard Multiple Tube Fermentation Method. Appl. Environ. Microbiol. 54:1595–1601.

(3) Edberg, S.C., Allen, M.J., and Smith, D.B. 1988. Rapid, Specific, Defined Substrate Technology for the Simultaneous Detection of Total Coliforms and *Escherichia coli*. Toxicity Assessment: An International Journal 3:565–580.

(4) Edberg, S.C., Ludwig, F., and Smith, D.B. 1989. Rapid, Simultaneous Detection and Enumeration of Total Coliforms and *Escherichia coli* by the Colilert System: A Technology Transfer. Final Report, American Water Works Association Research Foundation, in press.

(5) Edberg, S.C., Allen, M.J., Smith, D.B., and the National Collaborative Study. 1988. ERRATUM. Appl. Environ. Microbiol. 54:3197.

(6) Letter, 10/28/88. Stephen C. Edberg, Yale University, Department of Laboratory Medicine, to Joseph Cotruvo, Office of Drinking Water, U.S. Environmental Protection Agency.

(7) Price List, Drinking Water Testing. Colilert Components and Peripherals. Solanium, Catalogue Numbers RC 306 and RC 307. Access Analytical Systems, Bradford, CT.

(8) Letter, 1/13/87. Sandra Stratman, Access Analytical Systems, Bradford, CT, to Robert Bordner, U.S. Environmental Protection Agency, Cincinnati, OH.

(9) Letter, 10/6/88. Sandra Stratman, Access Analytical Systems, Bradford, CT, to Alfred DuFour, U.S. Environmental Protection Agency, Cincinnati, OH.

For the reasons set out in the preamble, Part 141 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for Part 141 continues to read as follows:

Authority: 42 U.S.C. 300g–1, 300g–3, 300g–6, 300j–4, and 300j–9.

2. Section 141.14 is amended by adding a new paragraph (b)(3) to read as follows:

§ 141.14 Maximum microbiological contaminant levels.

* * * * *

(b) * * *

(3) When the Minimal Medium ONPG–MUG test described in § 141.21(a) of this part is used, coliform bacteria shall not be present at levels exceeding those specified in paragraph (b)(1) (i)–(iii) of this section.

* * * * *

3. Section 141.21 is amended by adding the following text to the end of paragraph (a):

§ 141.21 Microbiological contaminant sampling and analytical requirements.

(a) * * * Total coliform analyses may also be conducted by the Minimal Media ONPG–MUG (MMO–MUG) test described in Edberg, et al. (1988) except that 10 ml of water sample must be added to each of the five tubes. Analyses must be conducted in accordance with the analytical recommendations set forth in "National Field Evaluation of a Defined Substrate Method for the Simultaneous Enumeration of Total Coliforms and *Escherichia coli* from Drinking Water: Comparison with the Standard Multiple Tube Fermentation Method," Stephen C. Edberg, Martin J. Allen, Darwell B.

Smith, and the National Collaborative Study, Applied and Environmental Microbiology, 54:1595–1601, June 1988 (amended under Erratum, Applied and Environmental Microbiology, 54:3197, December 1988). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the American Water Works Association Research Foundation, 6666 West Quincy Avenue, Denver, CO 80235 (telephone 303–794–7711). Copies may be inspected at EPA's Drinking Water Docket, 401 M Street, SW., Washington, DC 20460, or at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC.

* * * * *

[FR Doc. 89–16091 Filed 7–14–89; 8:45 am]
BILLING CODE 6560–50–M

federal register

Monday
July 17, 1989

Part VI

Department of the Interior

National Park Service

36 CFR Part 13
Alaska Region; Notice of Public Hearings

DEPARTMENT OF THE INTERIOR

36 CFR Part 13

Alaska Region

AGENCY: National Park Service, Interior.

ACTION: Notice of public hearings.

SUMMARY: In the **Federal Register** of Friday, June 9, 1989, Vol. 54, No. 110, pages 24852, 24853, and 24854, the National Park Service proposed a Federal regulation that will prohibit the hunting of wolves in national preserves in Alaska on the same day in which a hunter is airborne was published. The public hearings will provide the opportunity to receive oral and written comments on the proposed regulation. The public hearing dates follow in **SUPPLEMENTARY INFORMATION.**

DATES: See **SUPPLEMENTARY INFORMATION.**

ADDRESSES: See **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Lou Waller, 2525 Gambell St., Anchorage, AK 99503-2892, phone (907) 257-2646.

SUPPLEMENTARY INFORMATION:

Date	Time	Location
1. 07/18	7 p.m	National Park Service Regional Office, 2525 Gambell St., Anchorage, Room 300.
2. 07/19	7 p.m	King Salmon, NPS Office.
3. 07/19	7 p.m	Wasilla City Council Chamber, Heaning Ave.
4. 07/20	7 p.m	Chignik Community Hall.
5. 07/20	7 p.m	McGrath, Captain Snow Bldg. Assembly Rm.
6. 07/21	7 p.m	Fairbanks North Star Public Library, Cowls St.
7. 07/24	7 p.m	Glennallen School.
8. 07/24	7 p.m	Eagle Public Library.
9. 07/25	7 p.m	Kenai City Council Chambers.
10. 07/26	7 p.m	Settles, National Park Service Office.
11. 07/26	7 p.m	Iliamna FAA Community Service Bldg.
12. 07/27	8pm	Yakutat High School.
13. 07/28	7 p.m	Kotzebue, National Park Service Visitor Center.
14. 07/28	8pm	Juneau, Centennial Hall.
15. 07/31	7 p.m	Nome Northwest Campus College.
16. 08/03	7 p.m	Washington, DC, George Mason University, Professional Center, Arlington Campus, 3401 North Fairfax Dr.

David B. Ames,

Acting Regional Director, Alaska Region.

[FR Doc. 89-16875 Filed 7-14-89 12:27 pm]

BILLING CODE 4310-70-MBILLING CODE 4310-70-M

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Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan.1, 1988 to Dec.31, 1988. The CFR volume issued January 1, 1988, should be retained.

[3] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1988. The CFR volume issued January 1, 1987, should be retained.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[7] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 455

[Amdt. No. 1; Doc. No. 7062S]

Macadamia Nut Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Macadamia Nut Crop Insurance Regulations (7 CFR Part 455), effective for the 1989 and succeeding crop years, to clarify the reference to reinsured companies in the Good Faith Reliance on Misrepresentation provisions. The intended effect of this rule is to clarify a reference to reinsured companies in the provisions of good faith reliance on misrepresentation; provisions to make clear that the reinsured companies make determinations for their policies.

EFFECTIVE DATE: July 18, 1989.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is January 1, 1993.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC amends the Macadamia Nut Crop Insurance Regulations (7 CFR Part 455) to clarify the reference to reinsured companies in the good faith reliance on misrepresentation section. The Good Faith Reliance on Misrepresentation provisions provide relief in those cases where an agent or employee of FCIC or a reinsured company misrepresented material facts of the insurance program, took an erroneous action, or gave erroneous advice and the insured relied thereon in good faith.

FCIC, uses two systems of delivery of the program, one is direct sale through an Agency Sales and Service Contract, and the other through policies sold under a Reinsurance Agreement. FCIC exercises jurisdiction over Agency Sales and Service contractors and their agents and FCIC employees, therefore, good faith reliance determinations in these instances are appropriate.

However, FCIC does not make for reinsured companies, determinations arising from good faith reliance matters. The reinsured companies make good faith reliance determinations in connection with their policies.

Since this rule is only for the purposes of clarification of the rule and does not change the effect of the regulations, good cause is shown for publishing this rule without the opportunity for public notice and comment.

List of Subjects in 7 CFR Part 455

Crop insurance; Macadamia nut.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the Macadamia Nut Crop Insurance Regulations (7 CFR Part 455), to be effective for the 1989 and succeeding crop years, as follows:

PART 455—[AMENDED]

1. The authority citation for 7 CFR Part 455 is revised to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR 455.5 is amended by revising the last sentence to read as follows:

§ 455.5 Good faith reliance on misrepresentation.

* * * * *

Request for relief under this section must be submitted to the Corporation or to the Reinsured Company, whichever is applicable, in writing.

Done in Washington, DC, on June 22, 1989.

David W. Gabriel,
Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-16707 Filed 7-17-89; 8:45 am]

BILLING CODE 3410-08-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-203-AD; Amdt. 39-6269]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 737 series airplanes through line number 1581 with a second observer's seat installed, which requires installation of a placard, inspection of the second observer's seat for missing fasteners that may have been omitted during installation, and repair, if necessary. This amendment is prompted by reports of two missing fasteners that were inadvertently omitted on some airplanes during the installation of the second observer's seat, and are required to secure that seat to the forward lavatory. This condition, if not corrected, could result in failure of the attaching hardware to provide adequate strength for the lavatory mounted second observer's seat, when occupied.

EFFECTIVE DATE: August 24, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Transport Airplane Directorate, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Pliny Brestel, Airframe Branch, ANM-120S; telephone (206) 431-1931. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires installation of a placard, inspection of the second observer's seat for missing fasteners, and repair, if necessary, was published in the **Federal Register** on March 1, 1989 (54 FR 8548). The comment period ended April 24, 1989.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One operator commented that the airline had already instituted a program to inspect all seats.

The Air Transport Association (ATA) of America commented that one of its members advised that the Boeing Service Letter 737-SL-25-41, dated October 14, 1988, did not contain adequate instructions for fastener installation when the corresponding holes were not previously drilled. Since issuance of the NPRM Boeing Service Letter 737-SL-25-41-A, dated April 20, 1989, has been issued to add the pertinent instructions. The FAA has reviewed and approved the revision and has determined that compliance may also be made with the A revision. The final rule has been changed to include this later revision as a service information source. This change does not increase the economic burden on any operator, nor does it increase the scope of the rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule, with the change previously noted.

There are approximately 1,554 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 722 airplanes of U.S. registry will be affected by this AD, that it will take approximately two manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The placard may be manufactured locally and the cost is expected to be negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $57,760.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to all Model 737 series airplanes through line number 1581, equipped with a second observer's seat, certificated in any category, compliance required as indicated, unless previously accomplished.

To ensure structural integrity of the second observer's seat, accomplish the following:

A. Within 30 days after the effective date of this AD, install a placard above the second observer's seat, stating: "NO OCCUPANCY." This placard may be removed once the terminating action of paragraph B., below, has been accomplished.

B. Within 6 months after the effective date of this AD, inspect the second observer's seat installation for missing fasteners, in accordance with Boeing Service Letter 737-SL-25-41, dated October 14, 1988, or Boeing Service Letter 737-SL-25-41-A, dated April 20, 1989. If fasteners are found to be missing, repair prior to further flight, in accordance with the service letter.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Transport Airplane Directorate, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective August 24, 1989.

Issued in Seattle, Washington, on July 10, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-16740 Filed 7-17-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-100-AD; Amdt. 39-6267]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires ultrasonic and visual inspections for cracks and corrosion, and overhaul, if necessary, of the wing landing gear beam outboard end fittings. This amendment is prompted by reports of a fracture of a left wing landing gear beam outboard end fitting on one airplane. This condition, if not corrected, could result in separation of the outboard end of the landing gear beam with possible damage to adjacent control cables or hydraulic lines in the area of the landing gear beam.

EFFECTIVE DATE: August 22, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Transport Airplane Directorate Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM-120S; telephone (206) 431-1919. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires inspection and overhaul, if necessary, of the wing landing gear beam outboard end fittings on certain Boeing Model 747 series airplanes, was published as a Supplemental Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on March 17, 1989 (54 FR 11228). The comment period for the proposal closed on April 12, 1989.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America, on behalf of its members, expressed no objections to the proposed rule.

The manufacturer recommended that if corrosion is found, the ultrasonic inspections required by paragraph A. should be repeated at intervals not to exceed 6 months, and rework, in accordance with Boeing Service Bulletin 747-57-2244, Revision 1, dated July 28, 1988, should be accomplished within 12 months. The FAA has considered the manufacturer's recommendation and has determined that if no cracks are detected, the rework for corrosion may be delayed up to 12 months, provided the inspection for cracks is accomplished at intervals not to exceed 6 months. This procedure will provide an acceptable level of safety, and also provide adequate time for the operators to schedule the rework. A new paragraph has been added to reflect this change.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator, nor will it increase the scope of the AD.

There are approximately 628 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 192 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $76,800.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, listed in Boeing Service Bulletin 747-57-2244, Revision 1, dated July 28, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of a wing landing gear beam outboard end fitting with possible damage to control cables or hydraulic lines in the area of the landing gear beam, accomplish the following:

A. Prior to the accumulation of 30,000 flight hours, or 8 years in service, whichever occurs first, or within the next 14 months after the effective date of this AD, whichever occurs later, visually inspect around the fitting lug bushings at the wing landing gear beam outboard end fittings for corrosion, and ultrasonically inspect the wing landing gear beam outboard end fittings for cracks, in accordance with Boeing Service Bulletin 747-57-2244, Revision 1, dated July 28, 1988.

B. If no cracking or corrosion is found, repeat the inspections required by paragraph A., above, at intervals not to exceed 18 months.

C. If cracking is found, prior to further flight, remove the wing landing gear beam outboard fitting, and rework in accordance with Boeing Service Bulletin 747-57-2244, Revision 1, dated July 28, 1988.

D. If only corrosion is found, rework in accordance with Boeing Service Bulletin 747-57-2244, Revision 1, dated July 28, 1988, within the next 12 months. The ultrasonic

inspections for cracks required by paragraph A., above, must be accomplished at intervals not to exceed 6 months until rework is accomplished.

E. Terminating action for the inspections required by paragraphs A. and B., above, consists of rework of the wing landing gear beam outboard fittings in accordance with Boeing Service Bulletin 747-57-2244, Revision 1, dated July 28, 1988.

F. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Transport Airplane Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Transport Airplane Office.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Transport Airplane Directorate, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective August 22, 1989.

Issued in Seattle, Washington, on July 7, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-16739 Filed 7-17-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 25955; Amdt. No. 1404]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard Instrument, Incorporation by reference. Issued in Washington, DC on July 7, 1989.

Robert L. Goodrich,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective September 21, 1989*

Lanai City, HI—Lanai, VOR or TACAN RWY 3, Amdt. 4

* * * *Effective August 24, 1989*

Macomb, IL—Macomb Muni, VOR/DME-A, Amdt. 6
Lebanon, NH—Lebanon Muni, LOC RWY 7, Orig., CANCELLED
Lebanon, NH—Lebanon Muni, ILS RWY 7, Amdt. 4, CANCELLED
Charlotte, NC—Charlotte/Douglas Intl, LOC BC RWY 23, Amdt. 6
Charlotte, NC—Charlotte/Douglas Intl, ILS RWY 5, Amdt. 34
Charlotte, NC—Charlotte/Douglas Intl, ILS RWY 18R, Amdt. 6
Charlotte, NC—Charlotte/Douglas Intl, ILS RWY 36L, Amdt. 12
Charlotte, NC—Charlotte/Douglas Intl, ILS RWY 36R, Amdt. 4
Rhinelander, WI—Rhinelander-Oneida County, VOR RWY 5, Amdt. 10
Rhinelander, WI—Rhinelander-Oneida County, VOR RWY 9, Amdt. 3
Rhinelander, WI—Rhinelander-Oneida County, VOR RWY 27, Amdt. 3
Rhinelander, WI—Rhinelander-Oneida County, VOR/DME RWY 23, Amdt. 8
Rhinelander, WI—Rhinelander-Oneida County, ILS RWY 9, Amdt. 4

* * * *Effective June 30, 1989*

Jacksonville, FL—Craig Muni, ILS RWY 32, Amdt. 1

* * * *Effective June 29, 1989*

Mount Vernon, OH—Knox County, RNAV RWY 10, Amdt. 1

[FR Doc. 89-16741 Filed 7-17-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 90129-9131]

RIN 0694-AA04

Decontrol of Certain Personal Computers; ECCN 1565A of the Commodity Control List

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: The Bureau of Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls.

This rule amends the validated license controls on certain personal computers described in ECCN 1565A of the CCL. This action is in accordance with a determination of foreign availability under section 5(f) of the Export Administration Act of 1979, as amended. Notice of the foreign availability determination is published in the NOTICES section of this **Federal Register.** As a result of this finding, certain personal computers (those having characteristics set forth in the Supplementary Information section of this document), will now require a validated license for export only to destinations in Country Groups Q, S, W, Y and Z, the People's Republic of China, and Afghanistan for national security reasons. A validated license for national security reasons is not required for exports to all other destinations.

DATE: This rule is effective July 18, 1989. Comments must be received by August 17, 1989.

ADDRESSES: Written comments (six copies) should be sent to: Vincent Greenwald, Office of Technology and Policy Analysis, Bureau of Export Administration, P.O. Box 273, U.S. Department of Commerce, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Raj Dheer, Computer Systems Technical Center, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-2279.

SUPPLEMENTARY INFORMATION:

Background

This rule amends the validated license controls on certain personal computers described in ECCN 1565A of the CCL. This action is in accordance with a finding of foreign availability under section 5(f) of the Export Administration Act of 1979, as amended. As a result of this finding, a validated license is not needed for export to Country Groups T and V (except the People's Republic of China and Afghanistan) of microprocessor-based personal computers shipped as complete systems with all of the following characteristics:

(1) A "total processing data rate" not exceeding 68 million bits per second;

(2) A "total internal storage available to the user" not exceeding 39 million bits;

(3) A word length of not more than 16 bits (systems with 16-bit external word length and not more than a 32-bit internal architecture are regarded as 16-bit systems for purposes of this restriction);

(4) A maximum CPU to memory bandwidth of less than 160 Mbits/s;

(5) A CPU bus architecture that does not support multiple bus masters; and

(6) The systems do not include controlled "related equipment" other than input/output control unit/disk drive combinations having all of the following characteristics—

(a) A "total transfer rate" not exceeding 10.3 Mbit/s;

(b) A total connected "net capacity" not exceeding 140 MByte; and

(c) A "total access rate" not exceeding 80 accesses per second with a maximum "access rate" of 40 accesses per second per drive.

This decontrol does not affect microprocessor based personal computers that are:

1. Ruggedized above a commercial/office environment;

2. Highly portable computers (those that can be battery powered or other self-contained form of power); or

3. Stand-alone graphics workstations with characteristics equalling or exceeding the parameters in ECCN 1565A Advisory Note 9(a)(7)(i) and (iv). For the purposes of this decontrol, personal computers are defined as microprocessor based computers that are:

1. Designed and advertised by the manufacturer for personal, home or business use; and

2. Are normally sold through retail establishments.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694-0005. As a result of this rule, a reduction of paperwork burden on the public is anticipated. Affected OMB controlled collection actions include 0694-000, 0694-007, and 0694-0010.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations.

The period for submission of comments will close August 17, 1989. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views. The Department is particularly interested in receiving comments on the removal of export controls in accordance with section 5(f)(8) of the Export Administration Act of 1979, as amended, "Removal of Controls on Less Sophisticated Goods or Technology."

All non-confidential public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 4886, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the *Code of Federal Regulations*. Information about the inspection and copying of records may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377-2593.

The Department will accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The information for which confidential treatment is requested should be submitted on sheets of paper separate from any non-confidential information submitted. The top of each page should be marked with the term "CONFIDENTIAL BUSINESS INFORMATION." The Bureau of Export Administration will either accept the submission in confidence or, if the submission fails to meet the standards for confidential treatment, will return it. A non-confidential summary must accompany each submission of confidential information. The summary will be made available for public inspection.

Information accepted by the Bureau of Export Administration as privileged under subsections (b) (3) or (4) of the Freedom of Information Act (5 U.S.C., Section 552(b) (3) and (4)) will be kept confidential and will not be available for public inspection, except according to law.

List of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 730-799) are amended as follows:

PART 799—[AMENDED]

1. The authority citation for Part 799 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 99-64 of July 12, 1985, and by Pub. L. 100-418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

2. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1565A is amended by revising the *Validated License Required* paragraph to read as follows:

1565A Electronic computers, "related equipment," equipment or systems containing electronic computers; and specially designed components and accessories.

* * * * *

Validated License Required: Country Groups QSTVWYZ. A validated license is not required for export to Country Groups T and V, except the People's Republic of China and Afghanistan, of microprocessor-based personal computers shipped as complete systems with *all* of the following characteristics:

(a) A "total processing data rate" not exceeding 68 million bits per second;

(b) A "total internal storage available to the user" not exceeding 39 million bits;

(c) A word length of not more than 16 bits (systems with 16-bit external word length and not more than a 32-bit internal architecture are regarded as 16-bit systems for purposes of this restriction);

(d) A maximum CPU to memory bandwidth of less than 160 Mbit/s;

(e) A CPU bus architecture that does not support multiple bus masters; and

(f) The systems do not include controlled "related equipment" other than input/output control unit/disk drive combinations having all of the following characteristics—

(1) A "total transfer rate" not exceeding 10.3 Mbit/s;

(2) A total connected "net capacity" not exceeding 140 MByte; and

(3) A "total access rate" not exceeding 80 accesses per second with a maximum "access rate" of 40 accesses per second per drive.

Note: The decontrol does not affect microprocessor based personal computers that are:

(a) Ruggedized above a commercial/office environment;

(b) Highly portable computers (those that can be battery powered or other self contained form of power); or

(c) Stand-alone graphic workstations with characteristics equalling or exceeding the parameters in ECCN 1565A Advisory Note 9(a)(7) (i) and (iv).

Note: For the purposes of this decontrol, personal computers are defined as microprocessor based computers that are:

(a) Designed and advertised by the manufacturer for personal, home or business use; and

(b) Are normally sold through retail establishments.

* * * * *

Dated: July 13, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-16841 Filed 7-17-89; 8:45 am]

BILLING CODE 3510-DT-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-27017, International Series Release No. 105; File No. S7-11-88]

RIN: 3235-AD27

Registration Requirements for Foreign Broker-Dealers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting proposed Rule 15a-6, which provides exemptions from broker-dealer registration for foreign entities engaged in certain activities involving U.S. investors and securities markets. The final rule incorporates the proposed interpretive statement that the Commission issued for comment when proposing the rule. In another release also issued today, the Commission is soliciting further comment on the concept of recognition of foreign securities regulation as a substitute for U.S. registration of foreign broker-dealers.

EFFECTIVE DATE: August 15, 1989.

FOR FURTHER INFORMATION CONTACT: Robert L.D. Colby, Chief Counsel, (202) 272-2844, or John Polanin, Jr., Special Counsel, (202) 272-2848, Division of Market Regulation, or Thomas S. Harman, Chief Counsel, (202) 272-2030, Division of Investment Management (regarding investment adviser registration requirements discussed in Part IV), Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The Commission is adopting proposed Rule 15a-6 to provide conditional exemptions from broker-dealer registration for foreign broker-dealers that engage in certain activities involving U.S. investors and securities markets. These activities include (i) "nondirect" contacts by foreign broker-dealers with U.S. investors and markets, through execution of unsolicited securities transactions, and provision of research to certain U.S. institutional investors; and (ii) "direct" contacts, involving the execution of transactions through a registered broker-dealer intermediary with or for certain U.S. institutional investors, and without this intermediary with or for registered broker-dealers, banks acting in a broker or dealer capacity, certain international organizations, foreign persons temporarily present in the United States, U.S. citizens resident abroad, and foreign branches and agencies of U.S. persons. The Commission's goals in adopting Rule 15a-6 at this time are (i) to facilitate access to foreign markets by U.S. institutional investors through foreign broker-dealers and the research that they provide, consistent with maintaining the safeguards afforded by broker-dealer registration; and (ii) to provide clear guidance to foreign broker-dealers seeking to operate in compliance with U.S. broker-dealer registration requirements.

In addition, the Commission is withdrawing the interpretive statement that it proposed together with Rule 15a-6. The final rule ("Rule") includes exemptions incorporating many of the positions originally set forth in the proposed interpretive statement. The Commission has included in this release a discussion of the purposes and scope of broker-dealer regulation and the general principles of U.S. registration for international broker-dealers, in order to emphasize the importance that the Commission attaches to broker-dealer registration and regulation in the international context.

Finally, the Commission has issued a separate release discussing the concept of an exemption from broker-dealer registration based on recognition of foreign regulation. Many commenters addressing the proposed rule favored this approach, but the Commission believes that the numerous complex issues raised by this approach require further exploration before any action is taken on the concept. To clarify the application of U.S. broker-dealer registration requirements to the cross-border activities of foreign broker-dealers, the Commission is adopting the Rule now, while soliciting more detailed comments on the parameters of the concept of an exemption from broker-dealer registration based on recognition of foreign securities regulation.

II. Introduction

Rule 15a-6 is based on the Commission's recognition of the fact that the pace of internationalization in securities markets around the world continues to accelerate.[1] As the Commission noted when it published Rule 15a-6 for comment,[2] multinational offerings of securities have become frequent,[3] and linkages are developing between secondary markets [4] and

[1] In its recent *Policy Statement on Regulation of International Securities Markets*, the Commission outlined its views on the appropriate regulatory response to this development, which it broadly described as facilitating efficient and honest markets where investors and issuers can seek the greatest return on investment and the lowest cost of capital, without regard for national boundaries. Securities Act Release No. 6807 (Nov. 14, 1988), 53 FR 46963.

[2] Securities Exchange Act Release No. 25601 (June 14, 1988), 53 FR 23645, 23646 ("Release 34-25601").

[3] *See Internationalization of the Securities Markets*, Report of the Staff of the U.S. Securities and Exchange Commission to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Energy and Commerce (July 27, 1987) ("Report on Internationalization") at III-43 to III-53.

[4] Since 1985, the Commission has approved several linkages between U.S. and foreign exchanges, including the link between the Montreal Stock Exchange and the Boston Stock Exchange, and the links between the Toronto Stock Exchange and the American and Midwest Stock Exchanges, respectively. *See* Report on Internationalization at V-49 to V-57. Presently, only the Montreal Stock

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clearing systems.[5] The desire of investors to trade in financial markets around the world is increasing steadily, and many major institutional investors, particularly investment companies, insurance companies, pension funds, and large commercial banks, are active on an international basis.[6]

As interest in foreign securities has grown, the geographical reach of intermediaries based in national markets has expanded greatly. Many U.S. and foreign broker-dealers are developing an international securities business, establishing offices throughout the world.[7] According to statistics compiled by the Commission's Office of Economic Analysis, 179 registered U.S. broker-dealers were affiliated with foreign broker-dealers or foreign banks as of 1987. In contrast, in 1973 there were approximately twenty-eight non-Canadian U.S. broker-dealers with foreign parents.[8] As of 1988, there were approximately fifty members of the New York Stock Exchange in which foreign entities had an ownership interest. In 1973, there were four.[9]

The Commission responded to this international expansion in broker-dealer activities by publishing Release 34-25801. This release had two purposes. First, as discussed at greater length below, the Commission sought to make known the existing U.S. requirements for registration of foreign broker-dealers. Second, the Commission sought to facilitate investment by U.S. institutional investors in foreign securities markets by proposing a rule that would increase access to foreign broker-dealers, consistent with the investor safeguards afforded by broker-dealer regulation. The Commission recognized that foreign broker-dealers can provide valuable market experience, trade execution, and research services to U.S. institutions interested in entering overseas markets.

Release 34-25801 comprised an interpretive statement and a proposed rule. The interpretive statement was a summary of the staff's current positions regarding broker-dealer registration by foreign entities. Proposed Rule 15a-6, developed from past interpretive, no-action, and exemptive positions, would have exempted from the broker-dealer registration requirements of section 15(a) of the Securities Exchange Act of 1934 ("Exchange Act")[10] foreign broker-dealers that engaged in securities transactions with certain non-U.S. persons or with specified U.S. institutional investors under limited conditions.

Subsequently, members of the Committee on Federal Regulation of Securities of the Section of Business Law of the American Bar Association ("ABA") submitted a comment letter suggesting an expanded version of proposed Rule 15a-6, which generally reflected the substance of the interpretive statement. The ABA suggested that an expanded rule, among other things, would "spell out clearly in one place the ground rules to which foreign broker-dealers are subject" and be "more consistent with orderly development of the law in this area."[11]

Believing that expansion of proposed Rule 15a-6 to include additional portions of the interpretive statement deserved "serious consideration," the Commission solicited comment on an expanded rule.[12]

The Commission received thirty-two comment letters in response to proposed Rule 15a-6 and the interpretive statement.[13] The commenters generally supported the Commission's goal of facilitating access to foreign markets by U.S. institutional investors, consistent with the purposes underlying broker-dealer registration. Commenters also generally supported expansion of the proposed rule to include the substance of the interpretive statement.

III. Broker-Dealer Regulation

A. Purposes and Scope of Broker-Dealer Regulation

In the context of adopting exemptions from the U.S. broker-dealer regulatory scheme, the Commission believes that it is important to reiterate the fundamental significance of broker-dealer registration within the structure of U.S. securities market regulation. Because of the broker-dealer's role as an intermediary between customers and the securities markets, broker-dealers have been required to register with the Commission since 1935,[14] and they were registered with numerous states before enactment of the Exchange Act in 1934.[15] The definitions in the Exchange Act of the

Exchange/Boston Stock Exchange linkage is in operation. In addition, the Commission has approved a pilot program developed by the National Association of Securities Dealers, Inc. ("NASD") and the International Stock Exchange of the United Kingdom and the Republic of Ireland, Ltd. ("ISE"), linking the NASD's automated quotations system ("NASDAQ") and the ISE's electronic quotation system ("SEAQ"). Securities Exchange Act Release No. 23156 (Apr. 21, 1986), 51 FR 15969. The pilot program has been extended to October 2, 1989. Securities Exchange Act Release No. 24979 (Oct. 2, 1987), 51 FR 37664. The Commission also has approved a pilot program providing for an exchange of quotations between NASDAQ and the Stock Exchange of Singapore. Securities Exchange Act Release No. 25457 (Mar. 14, 1988), 53 FR 9156.

[5] *E.g.*, Letter from Jonathan Kallman, Assistant Director, Division of Market Regulation, SEC, to Karen L. Saperstein, Esq., Associate General Counsel, International Securities Clearing Corporation ("ISCC") (Sept. 20, 1988) (ISCC linkage with Japan Securities Clearing Corporation).

[6] Greenwich Associates, *Institutional Investors 1989*, 9-12, 72-87.

[7] One commentator recently estimated that approximately thirty broker-dealers will possess the integrated back-office trading and management information systems necessary to execute and clear securities transactions on a global basis by the year 2000. Kraus, *Growth Predicted in Global Traders*, American Banker, Mar. 20, 1989, at 14.

[8] New York Stock Exchange Advisory Committee on International Capital Markets, *Recommendations Regarding Foreign Access to the U.S. Securities Markets* (July 1973), Appendix B.

[9] *Id.* at 12.

[10] 15 U.S.C. 78*o*(a).

[11] Letter from John M. Liftin, Esq., Committee on Federal Regulation of Securities, Section of Business Law, ABA, to Jonathan G. Katz, Secretary, SEC (Sept. 14, 1988).

[12] Securities Exchange Act Release No. 26136 (Sept. 30, 1988), 53 FR 36967 ("Release 34-26136").

[13] A detailed comment summary has been prepared and placed in the Commission's public files, together with all comment letters received. *See* File No. S7-11-88.

[14] As originally enacted, the Exchange Act dealt primarily with exchange regulation, and section 15 of the Exchange Act authorized the Commission to provide, by rule, for registration of brokers or dealers that were not already exchange members. After the Commission initially adopted rules requiring registration of over-the-counter broker-dealers, Congress in 1936 amended section 15 to codify the Commission's rules on broker-dealer registration. *See* L. Loss, *Fundamentals of Securities Regulation* 409-10 (1988) and the concept release also issued today, *infra* note 34.

[15] *See generally* L. Loss & E. Cowett, *Blue Sky Law* 26-30 (1958).

terms "broker"[16] and "dealer"[17] and the registration requirements of section 15(a) of the Exchange Act[18] were drawn broadly by Congress to encompass a wide range of activities involving investors and securities markets.[19] Section 15(a) of the Exchange Act generally requires that any broker or dealer using the mails or any means or instrumentality of interstate commerce (referred to as the jurisdictional means)[20] to induce or effect transactions in securities[21] must register as a broker-dealer with the Commission.

Registered broker-dealers are subject to a panoply of U.S. regulations and supervisory structures intended to protect investors and the securities markets.[22] Registered broker-dealers must be members of a self-regulatory organization ("SRO")[23] and the Securities Investor Protection Corporation ("SIPC").[24] They are subject to statutory disqualification standards and the Commission's disciplinary authority,[25] which are designed to prevent persons with an adverse disciplinary history from becoming, or becoming associated with, registered broker-dealers. They also are required by the Commission's net capital regulations[26] to maintain sufficient capital to operate safely. In addition, they are required to maintain adequate competency levels, by satisfying SRO qualification requirements.[27]

Further, registered broker-dealers are under extensive recordkeeping and reporting obligations,[28] fiduciary duties[29] and special antifraud rules,[30] and the Commission's broad enforcement authority over broker-dealers.[31] That authority, in turn, helps assure that broker-dealers are complying with the statutory and regulatory provisions governing the U.S. securities industry.[32] Moreover, the

[16] Section 3(a)(4) of the Exchange Act defines "broker" as "any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank." 15 U.S.C. 78c(a)(4). The term "bank," however, is limited by section 3(a)(6) of the Exchange Act, 15 U.S.C. 78c(a)(6), to banks directly regulated by U.S. state or federal bank regulators, and thus foreign banks that act as brokers or dealers within the jurisdiction of the United States are subject to U.S. broker-dealer registration requirements. *See* Release 34-25801, 53 FR at 23645 n.1. To the extent, however, that a foreign bank establishes a branch or agency in the United States that is supervised and examined by a federal or state banking authority and otherwise meets the requirements of section 3(a)(6), the Commission would consider this branch or agency to be a "bank" for purposes of sections 3(a)(4) and 3(a)(5) of the Exchange Act.

The Commission believes that the determination whether any particular financial institution meets the requirements of section 3(a)(6) is the responsibility of the financial institution and its counsel. *Cf.* Securities Act Release No. 6661 (Sept. 23, 1986), 51 FR 34460 ("Release 33-6661") (determination as to whether branch or agency of foreign bank falls within the definition of "bank" under section 3(a)(2) of Securities Act of 1933 ("Securities Act"), 15 U.S.C. 77c(a)(2), is responsibility of issuers and their counsel). The Commission notes, however, that section 4(d) of the International Banking Act, 12 U.S.C. 3102(d), expressly prohibits agencies of foreign banks established under federal law from receiving deposits or exercising fiduciary powers, criteria necessary for qualification as a bank under section 3(a)(6)(C). *See Conference of State Bank Supervisors* v. *Conover*, 715 F.2d 604 (D.C. Cir. 1983), *cert. denied*, 466 U.S. 927 (1984) (federally-chartered agencies of foreign banks prohibited from receiving deposits from foreign, as well as domestic, sources). It also should be noted that the definition of bank under section 3(a)(6) of the Exchange Act differs somewhat from the definition of bank under section 3(a)(2) of the Securities Act, particularly with respect to exercising fiduciary powers and receiving deposits. As discussed *infra* note 168, the Securities Act definition is applicable in determining whether U.S. branches and agencies of foreign banks qualify as U.S. institutional investors under the Rule.

[17] Section 3(a)(5) of the Exchange Act, 15 U.S.C. 78c(a)(5), defines "dealer" as "any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, or any person insofar as he buys and sells securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business." Although by its terms this definition is broad, it has been interpreted to exclude various activities not within the intent of the definition, such as buying and selling for investment. *See, e.g.*, Letter from Robert L.D. Colby, Chief Counsel, Division of Market Regulation, SEC, to Elizabeth J. Tolmach, Esq., Caplin & Drysdale (Apr. 2, 1987) (United Savings Association of Texas) (no-action position on government securities dealer registration). In addition, the registration requirements of section 15(a) of the Exchange Act exclude from registration additional categories of persons, such as intrastate broker-dealers. *Cf.* Douglas & Bates, *Some Effects of the Securities Act Upon Investment Banking*, 1 U. Chi. L. Rev. 283, 302 n.88 (1934); Douglas & Bates, *The Federal Securities Act of 1933*, 43 Yale L.J. 171, 206 n.169 (1933) ("rule of reason" should apply to similarly broad "dealer" definition in section 2(12) of Securities Act, 15 U.S.C. 77b(12)).

[18] *See supra* note 10.

[19] For instance, if a U.S. issuer sells its securities in the United States through its own employees, the activities of these employees may require broker-dealer registration. This is also true for foreign issuers using their employees to sell securities within the United States. However, the Commission has adopted Rule 3a4-1, 17 CFR 240.3a4-1, which provides a safe-harbor exemption from broker-dealer registration for an issuer's personnel selling the issuer's securities under certain circumstances. *See* Securities Exchange Act Release No. 22172 (June 27, 1985), 50 FR 27940.

[20] Specifically, section 15(a)(1), 15 U.S.C. 78*o*(a)(1), refers to "use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) * * *." Given the broad definition of "interstate commerce" in section 3(a)(17) of the Exchange Act, 15 U.S.C. 78c(a)(17), which includes "trade, commerce, transportation, or communication * * * between any foreign country and any State," virtually any transaction-oriented contact between a foreign broker-dealer and the U.S. securities markets or a U.S. investor in the United States involves interstate commerce and could provide the jurisdictional basis for broker-dealer registration.

[21] Section 15(a) does not require registration for transactions in exempted securities, which are defined in section 3(a)(12) of the Exchange Act, 15 U.S.C. 78c(a)(12), commercial paper, bankers' acceptances, and commercial bills, 15 U.S.C. 78*o*(a)(1). The Canadian Bankers' Association asked the Commission to clarify that the U.S. broker-dealer registration requirements do not apply to transactions in U.S. commercial paper by Canadian banks in the U.S. market. Commercial paper, bankers' acceptances, and commercial bills are not defined in the Exchange Act. Nonetheless, the Commission notes that the definition of "security" in section 3(a)(10) of the Exchange Act, 15 U.S.C. 78c(a)(10), generally is understood to exclude instruments exempt from registration under section 3(a)(3) of the Securities Act, 15 U.S.C. 77c(a)(3), by virtue of their classification as commercial paper. *See* Securities Exchange Act Release No. 4412 (Sept. 20, 1961) [1957-61 Transfer Binder], Fed. Sec. L. Rep. (CCH) ¶ 2045 (factors identifying exempted commercial paper under section 3(a)(3) of Securities Act); *Sanders* v. *John Nuveen & Co.*, 463 F.2d 1075 (7th Cir.), *cert. denied*, 409 U.S. 1009 (1972) (applying same factors under section 3(a)(10) of Exchange Act).

[22] Many of the statutory and regulatory provisions cited below as applicable to registered broker-dealers actually are applicable by their terms to other unregistered broker-dealers. *E.g.*, sections 15(b)(4) and 15(b)(6) of the Exchange Act, 15 U.S.C. 78*o*(b)(4) and 78*o*(b)(6); Rules 15c3-1, 15c3-3, 17a-3, 17a-4, and 17a-5, 17 CFR 240.15c3-1, 15c3-3, 17a-3, 17a-4, and 17a-5. Nevertheless, the staff would not recommend that the Commission take enforcement action against foreign broker-dealers for want of compliance with those provisions, with the exception of sections 15(b)(4) and 15(b)(6), if the foreign broker-dealers were exempt from broker-dealer registration under the Rule.

[23] Section 15(b)(8) of the Exchange Act, 15 U.S.C. 78*o*(b)(8).

[24] Section 3(a)(2) of the Securities Investor Protection Act of 1970, 15 U.S.C. 78ccc(a)(2).

[25] *See* sections 3(a)(39), 15(b)(4), and 15(b)(6) of the Exchange Act, 15 U.S.C. 78c(a)(39), 78*o*(b)(4), and 78*o*(b)(6).

[26] *See* Rule 15c3-1, 17 CFR 240.15c3-1.

[27] *E.g.*, NASD Schedules to By-Laws, Schedule C, *NASD Manual* (CCH) ¶¶1782-91. *See* section 15(b)(7) of the Exchange Act, 15 U.S.C. 78*o*(b)(7).

[28] *E.g.*, Rules 17a-3 (recordkeeping), 17a-4 (record preservation), and 17a-5 (reporting), 17 CFR 240.17a-3, 17a-4, and 17a-5. In addition, for nonresident registered broker-dealers the Commission has adopted Rule 17a-7, which establishes requirements for U.S. maintenance of records by these broker-dealers. 17 CFR 240.17a-7. *See also* NASD Schedules to By-Laws, Schedule C (VIII), *NASD Manual* (CCH) ¶1790.

[29] *See Hanly V. SEC*, 415 F.2d 589, 596 (2d Cir. 1969) ("A securities dealer occupies a special relationship to a buyer of securities in that by his position he implicitly represents he has an adequate basis for the opinions he renders").

[30] *E.g.*, section 15(c) of the Exchange Act, 15 U.S.C. 78*o*(c), and the rules thereunder, *e.g.*, Rule 15c1-2, 17 CFR 240.15c1-2.

[31] *See* sections 15(c) and 21 of the Exchange Act, 15 U.S.C. 78*o*(c) and 78u.

[32] *E.g.*, Rule 14b-1, 17 CFR 240.14b-1 (prompt forwarding of proxy information to beneficial owners of securities); Rule 17a-8, 17 CFR 240.17a-8 (financial recordkeeping and reporting of currency and foreign transactions); Rule 17a-13, 17 CFR

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Commission's financial supervision of entities participating in the interdependent network of securities professionals contributes to the financial soundness of this nation's securities markets.

These considerations remain important regardless of whether a broker-dealer's activities involve contacts with individual or institutional investors. When Congress authorized and subsequently required the Commission to register broker-dealers, Congress did not condition the requirement for registration on the type of investor involved. In 1975, Congress amended section 15(a) to extend the broker-dealer registration requirements to all broker-dealers trading exclusively on a national securities exchange or in municipal securities.[33] Moreover, as noted in the concept release issued today,[34] Congress recently reaffirmed the importance of regulating securities professionals who operated in a largely institutional market by enacting the Government Securities Act of 1986.[35] Congress enacted this legislation to remedy serious problems, including a depositors' run on savings and loan associations and savings banks that resulted in the temporary closing of seventy-one of those financial institutions, that had developed in a primarily institutional market due in part to inadequate regulation of the professional intermediaries in that market.[36]

Accordingly, after reviewing the comments, the Commission is proceeding cautiously by adopting the limited exemptions incorporated in the Rule. As discussed previously, however, the Commission is seeking comment in the Concept Release on a conceptual approach that might increase the ability of U.S. institutional investors to deal with foreign broker-dealers in a manner that is consistent with the protection of those investors and with the Exchange Act.

B. General Principles of U.S. Registration for International Broker-Dealers

Before discussing the exemptions in the Rule, it is useful to review the general principles governing U.S. registration of brokers and dealers engaging in international activities.[37] The definitions of "broker" [38] and "dealer" [39] do not refer to nationality, and the scope of these definitions includes both domestic and foreign persons [40] performing the activities described therein. Consequently, any use of the U.S. jurisdictional means to engage in these activities could trigger the broker-dealer registration requirements of section 15(a).[41]

1. Broker-Dealer Operations

As a policy matter, the Commission now uses a territorial approach in applying the broker-dealer registration requirements to the international operations of broker-dealers.[42] Under this approach, all broker-dealers physically operating within the United States that effect, induce, or attempt to induce any securities transactions would be required to register as broker-dealers with the Commission, even if these activities were directed only to foreign investors outside the United States. Conversely, as explained in the interpretive statement in Release 34-25801, U.S. entities would not be required to register if they conducted their sales activities entirely outside the United States.[43]

240.17a-13 (quarterly security counts); Rule 17f-1, 17 CFR 240.17f-1 (reports and inquiries concerning missing, lost, counterfeit, or stolen securities); Rule 17f-2, 17CFR 240.17f-2 (fingerprinting of securities industry personnel).

[33] Securities Act Amendments of 1975, Pub. L. No. 94-29, § 11, 89 Stat. 97, 121 (1975).

[34] Securities Exchange Act Release No. 27018 (July 11, 1989) ("Concept Release").

[35] Pub. L. No. 99-571, 100 Stat. 3208 (1986).

[36] *See* S. Rep. No. 99-420, 99th Cong., 2d Sess. 6-10 (1986).

[37] These principles similarly would apply to registration of government securities brokers or government securities dealers under section 15C of the Exchange Act, 15 U.S.C. 78o-5, and to registration of municipal securities dealers under section 15B of the Exchange Act, 15 U.S.C. 78o-4. Neither these principles nor the Rule, however, necessarily reflect the requirements of any state securities laws, which may apply to the activities of foreign broker-dealers within the jurisdiction of those states. Foreign broker-dealers exempt from registration by virtue of compliance with the Rule still could be subject to the registration requirements established by state securities laws, since the Commission has no authority to grant exemptions from those requirements.

[38] *See* note 16 *supra*.

[39] *See* note 17 *supra*.

[40] Section 3(a)(9) of the Exchange Act, 15 U.S.C. 78c(a)(9), defines "person" as a "natural person, company, government, or political subdivision, agency, or instrumentality of a government," again without reference to nationality.

[41] *See supra* note 20 and accompanying text. Apart from concerns about broker-dealer registration, foreign broker-dealers should be careful that any offers or sales of securities comply with the registration provisions of the Securities Act, when applicable. *See* Securities Act Releases No. 4708 (July 9, 1964), 29 FR 9828 ("Release 33-4708"), and No. 6779 (June 10, 1988), 53 FR 22661 ("Release 33-6779").

A potential limitation on the broad application of section 15(a) may be found in section 30(b) of the Exchange Act, which excludes from the application of the Exchange Act or the rules thereunder any person "transact[ing] a business in securities without the jurisdiction of the United States," in the absence of Commission rules explicitly applying those provisions to these persons. 15 U.S.C. 78dd(b). While no rules have been adopted, the exemption provided by section 30(b) has been held unavailable if transactions occur in a U.S. securities market. *Roth v. Fund of Funds, Ltd.*, 405 F.2d 421 (2d Cir. 1968), *cert. denied*, 394 U.S. 975, *reh. denied*, 395 U.S. 941 (1969); *Schoenbaum v. Firstbrook*, 405 F.2d 200, 206 (2d Cir.), *rev'd in part on other grounds*, 405 F.2d 215 (2d Cir. 1968) (en banc), *cert. denied sub nom. Manley v. Schoenbaum*, 395 U.S. 906 (1969); *Selzer v. The Bank of Bermuda, Ltd.*, 385 F. Supp. 415 (S.D.N.Y. 1974); *In the Matter of I.O.S., Ltd. (S.A.)*, [1971-72 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶78,637 (Mar. 14, 1972); if offers and sales are made abroad to U.S. persons or in the United States to facilitate sales of securities abroad, *SEC v. United Financial Group, Inc.*, 474 F.2d 354 (9th Cir. 1973); *Traves v. Anthes Imperial Ltd.*, 473 F.2d 515 (8th Cir. 1973); *Leasco Data Processing Equipment Corp. v. Maxwell*, 468 F.2d 1326, 1336 n.6 (2d Cir. 1972); *Bersch v. Drexel Firestone, Inc.*, 389 F. Supp. 446, 453-59 (S.D.N.Y. 1974), *aff'd in part and rev'd in part*, 519 F.2d 974 (2d Cir. 1975), *cert. denied sub nom. Bersch v. Arthur Andersen & Co.*, 423 U.S. 1018 (1975); or if the United States is used as a base for securities fraud perpetrated on foreigners, *Arthur Lipper Corp. v. SEC*, 547 F.2d 171 (2d Cir. 1976), *reh. denied*, 551 F.2d 915 (2d Cir. 1977), *cert. denied*, 434 U.S. 1009 (1978).

[42] Proposed Regulation S also follows a territorial approach. *see* Release 33-6779, 53 FR at 22665-66. This territorial approach is different from the limited nationality approach taken in Release 33-4708, which stated that, to avoid being subject to the registration requirements of the Securities Act, an offering must be "made under circumstances reasonably designed to preclude distribution or redistribution of the securities within, *or to nationals of*, the United States." 29 FR at 9829 (emphasis added).

[43] *See* Release 34-25801, 53 FR at 23646 n.9 and accompanying text. After the effective date of the Rule, the staff will withdraw two prior inconsistent no-action positions regarding arrangements under which sales or related activities involving exclusively foreign persons emanated from within this country. Letter from Amy Natterson Kroll,

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In their comment letters, the College Retirement Equities Fund ("CREF"), Westpac Banking Corporation, and Debevoise & Plimpton argued that section 30(b) should exempt from Commission regulation foreign broker-dealers operating exclusively outside this country and contacting U.S. institutional investors in the United States from outside this country. They asserted that reading section 30(b) to protect only foreign broker-dealers not using the U.S. jurisdictional means to effect, induce, or attempt to induce any transactions in securities with or for U.S. persons would render the section meaningless, on the grounds that foreign broker-dealers avoiding this use of the U.S. jurisdictional means would not be subject to the requirements of section 15(a) in the first place.

The Commission's position on the application of section 30(b) historically has been, and continues to be, that the phrase "without the jurisdiction of the United States" in that section does not refer to the territorial limits of this country. *See, e.g.*, Securities and Exchange Commission, *Brief Amicus Curiae on Rehearing by the Full Court, Schoenbaum v. Firstbrook* (2d Cir. 1968) at 23. Moreover, even if section 30(b) were read to incorporate a territorial approach, the Commission does not believe that section 30(b) would exempt from broker-dealer registration the activities suggested by the commenters. In particular, directed selling efforts to U.S. investors in the United States hardly could be considered activities not traversing the U.S. territorial limits. A broker-dealer operating outside the physical boundaries of the United States, but using the U.S. mails, wires, or telephone lines to trade securities with U.S. persons located in this country, would not be, in the words of section 30(b), "transact[ing] a business in securities without the jurisdiction of the United States."

Also, the Commission uses an entity approach with respect to registered broker-dealers. Under this approach, if a foreign broker-dealer physically operates a branch in the United States, and thus becomes subject to U.S. registration requirements, the registration requirements and the regulatory system governing U.S. broker-dealers would apply to the entire foreign broker-dealer entity. If the foreign broker-dealer establishes an affiliate in the United States, however, only the affiliate must be registered as a broker-dealer; the foreign broker-dealer parent would not be required to register.[44] Under this arrangement, absent exemptions, only the registered U.S. affiliate would be authorized to trade with any person in the United States or perform securities functions on behalf of those customers, such as effecting trades, extending credit, maintaining records and issuing confirmations, and receiving, delivering, and safeguarding funds and securities.[45]

Some commenters questioned whether, under these principles, a registered broker-dealer's personnel who are stationed outside the United States with a foreign broker-dealer may contact U.S. and foreign persons located in the United States on behalf of the registered broker-dealer, provided that these personnel are U.S.-registered and subject to U.S. regulatory supervision.[46] Assuming these persons were subject to the registered broker-dealer's supervision and control [47] and satisfied all U.S. SRO qualification standards,[48] the Commission believes that it is consistent with these principles for a registered broker-dealer's registered representative stationed outside the United States with a foreign broker-dealer to contact persons in the United States from within or without this country on behalf of the registered broker-dealer.

2. U.S. Investors

In addition to requiring broker-dealer operations physically located within the United States to register, the Commission's territorial approach generally would require broker-dealer registration by foreign broker-dealers that, from outside the United States, induce or attempt to induce trades by any person in the United States.[49] The Commission would not require registration, however, of foreign broker-dealers dealing from abroad with foreign persons domiciled abroad but temporarily present in this country.[50]

If foreign broker-dealers are effecting trades outside the United States with or for individual U.S. citizens resident abroad, but have no other contacts within the jurisdiction of the United States, the Commission generally would not expect these foreign broker-dealers to register. Most U.S. citizens residing abroad typically would not expect, in choosing to deal with foreign broker-dealers, that these foreign broker-dealers would be subject to U.S. registration requirements. Nor would foreign broker-dealers soliciting U.S. citizens resident abroad normally expect that they would be covered by U.S. broker-dealer requirements, since they generally would not be directing their sales efforts toward groups of U.S. nationals. To make clear that registration is not required of foreign broker-dealers dealing with U.S. persons resident abroad, including branches and agencies of U.S. persons located abroad, the Commission has included in the Rule a specific exemption for these foreign broker-dealers, as discussed in greater detail below. The Commission historically has taken the view, however, that foreign broker-dealers specifically targeting identifiable groups of U.S. persons resident abroad, *e.g.*, U.S. military and embassy personnel, could be subject to U.S. broker-dealer registration requirements.[51] This position is reflected in the exemption.

3. Solicitation

The proposed interpretive statement explained that if a transaction with a person in the United States is solicited, the broker-dealer effecting the transaction must be registered.[52] Although the requirements of section 15(a) do not distinguish between solicited and unsolicited transactions, the Commission does not believe, as a policy matter, that registration is necessary if U.S. investors have sought out foreign broker-dealers outside the United States and initiated transactions in foreign securities markets entirely of their own accord. In that event, U.S. investors would have taken the initiative to trade outside the United States with foreign broker-dealers that are not conducting activities within this country. Consequently, the U.S. investors would have little reason to expect these foreign broker-dealers to be subject to U.S. broker-dealer requirements. Moreover, requiring a foreign broker-dealer to register as a broker-dealer with the Commission because of unsolicited trades with U.S. persons could cause that foreign broker-dealer to refuse to deal with U.S. persons under any circumstances.

As noted in the proposed interpretive statement,[53] however, the Commission generally views "solicitation," in the context of broker-dealer regulation,[54] as including any affirmative effort by a broker or dealer intended to induce transactional business for the broker-dealer or its affiliates.[55] Solicitation

Attorney, Division of Market Regulation, SEC, to Kevin McMahon, Esq., Jones, Grey & Bayley, P.S. (Aug. 1, 1986) (Barons Mortgage Association); Letter from Lynne G. Masters, Attorney, Office of Chief Counsel, Division of Market Regulation, SEC, to Chester J. Jachimiec, Esq., Winstead, McGuire, Sechrest & Minick (Aug. 3, 1987) (States Petroleum, Inc.). The withdrawal of these no-action positions was discussed when the interpretive statement was proposed, but no comments were received. *See* Release 34-25801, 53 FR at 23650 n.48.

[44] Similarly, only the affiliate's personnel must be licensed appropriately by the NASD or another SRO. *See* sections 3(a)(18) and 15(c)(8) of the Exchange Act, 15 U.S.C. 78c(a)(18) and 78o(c)(8).

[45] *See* note 169 *infra* regarding whether a registered broker-dealer would be permitted to function as an introducing broker to an unregistered foreign broker-dealer.

[46] The Securities Industry Association ("SIA") and Merrill Lynch & Co., Inc. The SIA inquired concerning contacts originating from outside the United States, while Merrill Lynch addressed contacts originating inside this country also.

[47] Section 15(b)(4)(E) of the Exchange Act, 15 U.S.C. 78o(b)(4)(E), imposes a reasonable supervision standard, and section 20(a) of the Exchange Act, 15 U.S.C. 78t(a), establishes both controlling person liability and a good faith defense.

[48] *See* text accompanying note 27 *supra*.

[49] *See* proposed interpretive statement, Release 34-25801, 53 FR at 23649-51.

[50] The Rule incorporates an exemption for foreign broker-dealers engaging in securities activities with these persons. *See* Part IV.B. *infra*.

[51] *See* Release 34-4708 (a public offering of securities specifically directed toward U.S. citizens abroad, such as military personnel, would be regarded as subject to Securities Act registration); *SEC v. Sramerican Securities, Ltd.*, Litigation Release No. 6937 (June 17, 1975) (charging, among other things, violation of section 15(a) regarding solicitation of securities transactions from American citizens stationed in Southeast Asia, for execution primarily on U.S. exchanges and over-the-counter markets). *See also* Release 33-6779, 53 FR at 22670 n.108 ("offerings specifically targeted at identifiable groups of U.S. citizens resident abroad" would not be eligible for safe-harbor exemption from Securities Act registration under Rule 903 of proposed Regulation S). By "targeting," the Commission means selling efforts intentionally directed toward identifiable groups of U.S. citizens resident abroad.

[52] *See* Release 34-25801, 53 FR at 23646; *see also* Report on Internationalization at V-42.

[53] Release 34-25801, 53 FR at 23650.

[54] Section 15(a)(1) of the Exchange Act requires registration of brokers and dealers that effect securities transactions or "induce *or attempt to induce* the purchase or sale of, any security." 15 U.S.C. 78o(a)(1) (emphasis added). If a foreign broker-dealer's securities activities brought it within the definitions of "broker" or "dealer" in section 3(a) (4) or (5), using the U.S. jurisdictional means to solicit trades from U.S. customers would be sufficient to trigger the registration requirements of section 15(a).

[55] The Report on Internationalization said that "[k]ey to the issue of solicitation is whether the

Continued

includes efforts to induce a single transaction or to develop an ongoing securities business relationship. Conduct deemed to be solicitation includes telephone calls from a broker-dealer to a customer encouraging use of the broker-dealer to effect transactions, as well as advertising one's function as a broker or a market maker in newspapers or periodicals of general circulation in the United States or on any radio or television station whose broadcasting is directed into the United States. Similarly, conducting investment seminars for U.S. investors, whether or not the seminars are hosted by a registered U.S. broker-dealer, would constitute solicitation.[56] A broker-dealer also would solicit customers by, among other things, recommending the purchase or sale of particular securities, with the anticipation that the customer will execute the recommended trade through the broker-dealer.

Thirteen commenters argued that this definition of solicitation should be narrowed.[57] In particular, Fidelity Investments did not think that visits to this country by an unregistered foreign broker-dealer "to introduce itself as being available to execute trades" or "to explain regulatory changes occurring in its own jurisdiction" should be deemed solicitation, based on Fidelity's assumption that these activities would not constitute inducements to effect trades through the foreign broker-dealer.[58] The other comments supported broader latitude with respect to the distribution of research by foreign broker-dealers to U.S. institutional investors and with respect to the distribution in this country by foreign exchanges of foreign market makers' quotations, both of which the proposed interpretive statement treated as solicitation.[59]

The Commission generally believes that a narrow construction of solicitation would be inconsistent with the express language of section 15(a)(1), which refers to both inducing or attempting to induce the purchase or sale of securities,[60] and would be unwarranted in the context of the domestic application of U.S. broker-dealer registration requirements. As a matter of policy, however, the Commission has created a conditional exemption in the Rule to permit expanded U.S. distribution of foreign broker-dealers' research reports to major U.S. institutions, which is discussed below.

In addition, the Commission believes that expanded third-party distribution of foreign broker-dealers' quotations in this country without registration should be allowed on an interpretive basis.[61] As the proposed interpretive statement explained,[62] the dissemination in the United States of a broker-dealer's quotes for a security typically would be a form of solicitation. The staff nonetheless has given assurances that enforcement action would not be recommended for lack of broker-dealer registration with respect to the collective distribution by organized foreign exchanges of foreign market makers' quotes, in the absence of other inducements to trade on the part of these market makers.[63] Several commenters discussed an exemption in the Rule for the collective distribution of foreign broker-dealers' quotations. The ABA suggested exempting from registration foreign broker-dealers that acted as market makers and provided their names, addresses, telephone numbers, and quotes as part of the collective distribution by a "recognized foreign securities market" of foreign market makers' quotes.[64] Members of the Securities Law Committee of the Chicago Bar Association ("CBA") concurred. Sullivan & Cromwell maintained that the fact-specific nature of these arrangements rendered them more suitable for resolution by the staff through no-action or interpretive procedures. The Public Securities Association ("PSA") suggested that, if a foreign broker-dealer participated in a third-party quotation system "principally directed at foreign persons," dissemination of its quotations to U.S. institutional investors should not be considered solicitation of those investors, provided that the foreign broker-dealer did not engage in other activities in the United States requiring broker-dealer registration.[65]

At the present time, the Commission generally would permit the U.S. distribution of foreign broker-dealers' quotations by third-party systems, *e.g.*, systems operated by foreign marketplaces or by private vendors, that distributed these quotations primarily in foreign countries. The Commission recognizes that access to foreign market makers' quotations is of considerable interest to registered broker-dealers and institutional investors, who seek timely information on foreign market conditions.[66] The Commission's position, however, would apply only to third-party systems that did not allow securities transactions to be executed between the foreign broker-dealer and persons in the United States through the systems. In addition, foreign broker-dealers whose quotes were distributed through the systems would not be allowed to initiate contacts with U.S. persons, beyond those exempted under the Rule, without registration or further exemptive rulemaking. The Commission believes that questions regarding the future development of third-party quotation systems with internal execution capabilities designed, for example, to facilitate cross-border trading in securities while the domestic markets for those securities are closed, should be addressed under present

foreign broker-dealer's contacts with U.S. markets reasonably may be viewed as attempting to induce an investor's purchase or sale of a security." Report on Internationalization at V-42. *See also* Letter from David Romanski, Attorney, Division of Market Regulation, SEC, to Hugh Seymour, Hoare & Govett, Ltd. (Sept. 28, 1973), discussed in Release 34-25801, 53 FR at 23646 n.12 and accompanying text.

[56] *See* Hoare & Govett letter, *supra* note 55.

[57] Fidelity Investments, Madrid Stock Exchange, Dechert Price & Rhoads, Ross & Hardies, CREF, Stikeman, Elliott, Continental Bank, Association of German Banks, Toronto Stock Exchange, the SIA, the ABA, the Committee on International Banking, Securities, and Financial Transactions of the International Law and Practice Section of the New York State Bar Association ("NYSBA"), and Sullivan & Cromwell.

[58] Letter from John I. Fitzgerald, Vice President and General Counsel, Fideltiy Investments, to Jonathan G. Katz, Secretary, SEC (Sept. 13, 1988), at 3. Several other commenters agreed. *See* Part IV.B. *infra*.

[59] *See* Release 34-25801, 53 FR at 23650-51.

[60] *See supra* note 54.

[61] *See* Part IV.B. *infra*. The Commission also has created an exemption in the direct contact provisions of the Rule to permit associated persons of foreign broker-dealers to make visits to U.S. institutional investors under limited conditions. The Rule does not permit foreign associated persons to conduct any other activities within this country, unless those activities would not require broker-dealer registration.

[62] Release 34-25801, 53 FR at 23651.

[63] *See* Release 34-25801, 53 FR at 23647 nn.21-27 and accompanying text. The staff's no-action assurances also extended to the execution of trades resulting from these quotes.

[64] Letter from Liftin to Katz, *supra* note 11, at 4. The ABA did not offer any specific criteria for defining a "recognized foreign securities market," which it defined as a foreign securities market determined by the Commission (or the staff, pursuant to delegated authority) to be entitled to this treatment.

[65] Letter from Frances R. Bermanzohn, Senior Vice President and General Counsel, PSA, to Jonathan G. Katz, Secretary, SEC (Oct. 28, 1988), at 9.

[66] The Commission would have reservations, however, about certain specialized quotation systems, which might constitute a more powerful inducement to effect trades because of the nature of the proposed transactions. For example, a foreign broker-dealer whose quotations were displayed in a system that disseminated quotes only for large block trades might well be deemed to have engaged in solicitation requiring broker-dealer registration, as opposed to a foreign broker-dealer whose quotes were displayed in a system that disseminated the quotes of numerous foreign dealers or market makers in the same security.

circumstances by the staff on a case-by-case basis or by the Commission in further rulemaking proceedings. The Commission also believes that the *direct* dissemination of a foreign market maker's quotations to U.S. investors, such as through a private quote system controlled by a foreign broker-dealer, would not be appropriate without registration, because the dissemination of these quotations would be a direct, exclusive inducement to trade with that foreign broker-dealer.

4. Registered Broker-Dealers

Some commenters asked the Commission to confirm that foreign broker-dealers would not become subject to the registration requirements of section 15(a) by using the U.S. jurisdictional means to deal only with registered broker-dealers.[67] The staff already has taken no-action positions on broker-dealer registration with respect to foreign broker-dealers engaging in securities transactions with registered broker-dealers and with banks acting in a broker or dealer capacity (including acting as municipal or governmental securites dealers).[68] The Commission has codified this position as an exemption in the Rule,[69] so that transactions by foreign broker-dealers with registered broker-dealers acting as principal or agent, or with banks acting in a broker or dealer capacity, need not take place within the framework established by the proposed rule.[70]

IV. Rule 15a-6 and Concept Release

A. Overview

The Commission's response to the issues raised by the comments on the interpretive statement and proposed Rule 15a-6 is threefold. First, the Commission is adopting exemptions allowing *nondirect* contacts between foreign broker-dealers and U.S. investors. Second, the Commission is adopting exemptions allowing *direct* contacts between foreign broker-dealers and certain U.S. investors through intermediaries, and between foreign broker-dealers and certain other persons directly. Third, the Commission is seeking comment in the Concept Release on a conceptual approach based on recognition of foreign regulation as a substitute in part for U.S. broker-dealer registration.

1. Rule 15a-6

The first two prongs of this approach are incorporated in the Rule, which the Commission has decided to adopt in an expanded format substantially as published in Release 34-26136. The Rule thus incorporates much of the proposed interpretive statement to realize the benefits of codification identified by many commenters.[71] As adopted, the Rule contains exemptions from broker-dealer registration for nondirect contacts through unsolicited transactions and the distribution of research reports, and it allows for direct contacts with certain U.S. institutional investors through intermediaries and with certain other defined classes of persons without intermediaries.

2. Recognition of Foreign Securities Regulation

The third prong of the Commission's approach is represented by the Concept Release on recognition of foreign securities regulation also issued today. In the proposed interpretive statement, the Commission noted that the development of comprehensive broker-dealer regulation in foreign nations suggested that agreements with foreign securities authorities as to some form of recognition of foreign broker-dealer regulation might be possible in the future. Under this conceptual approach, a country could recognize regulation of a foreign broker-dealer by the latter's home country as a substitute, to some extent, for its own domestic regulation. The Commission pointed out, however, that this approach "could raise the possibility of reduced U.S. investor protection, unless the foreign jurisdiction had a broker-dealer regulatory system that was comparable and compatible with that of the United States, this system was comprehensively enforced, and ready cooperation in surveillance and enforcement matters between the United States and the foreign jurisdiction was the norm." [72] In light of these factors, the Commission stated that it was weighing whether some degree of mutual recognition of international broker-dealers might be possible in the future.

Seventeen commenters favored some form of mutual recognition.[73] Several of these commenters advocated permitting a foreign broker-dealer to deal directly with U.S. institutional investors after the Commission made a formal determination that its home country's broker-dealer regulatory regime was adequate,[74] particularly if there were a satisfactory information-sharing and mutual cooperation agreement between U.S. and foreign regulators.[75]

The comments indicate great interest by U.S. institutional investors and foreign market professionals and securities authorities in an exemption from broker-dealer registration based on recognition of foreign regulation. The many complex issues inherent in this approach require careful deliberation by the Commission and foreign securities authorities before the parameters of this exemption could be defined sufficiently to realize the desired goals of increased access to foreign markets by U.S. institutional investors, and more efficient regulation of the cross-border activities of foreign broker-dealers, without resulting in reduced protection for U.S. investors and securities markets. Therefore, the Commission has decided to adopt the Rule at the present time, in light of the increasing cross-border activities of foreign broker-dealers and the need for clarification of the application of the U.S. broker-dealer registration requirements to these activities, while also soliciting specific comment on a conceptual approach based on recognition of foreign securities regulation.

3. Withdrawal of Proposed Interpretive Statement

In view of its other actions, the Commission considers it unnecessary to publish separately a final interpretive statement. The Rule as adopted includes exemptions incorporating many of the positions originally set forth in the proposed interpretive statement, and this release specifically discusses

[67] The Institute of International Bankers, the ABA, the PSA, the SIA, Securitiy Pacific Corporation, and Sullivan & Cromwell.

[68] Letter from John Polanin, Jr., Attorney, Office of Chief Counsel, Division of Market Regulation, SEC, to Robert L. Tortoriello, Esq., Cleary, Gottlieb, Steen & Hamilton (July 7, 1988) (National Westminster Bank PLC); Letter from Robert L.D. Colby, Chief Counsel, Division of Market Regulation, SEC, to Robert L. Tortoriello, Esq., Cleary, Gottlieb, Steen & Hamilton (Apr. 1, 1988) (Security Pacific Corporation).

[69] *See* Part IV.B *infra*.

[70] *See* Release 34-25801, 53 FR at 23653-54.

[71] *See supra* notes 11-13 and accompanying text.

[72] Release 34-25801, 53 FR at 23652.

[73] Andras Research Capital Inc., Bank of America, Brown Brothers Harriman, Fidelity Investments, National Companies and Securities Commission (Australia) ("NCSC"), Ross & Hardies, CREF, Stikeman, Elliott, Westpac Banking Corporation, The Toronto Stock Exchange, the Institute of International Bankers, the SIA, James Capel & Co., Debevoise & Plimpton, the Vancouver Stock Exchange, the NYSBA, and The Montreal Exchange.

[74] Westpac Banking Corporation, the Institute of International Bankers, James Capel, and Debevoise & Plimpton.

[75] The SIA advocated that the Commission require participating foreign regulators to accord U.S. broker-dealers "national treatment," *i.e.*, treatment similar to that accorded to domestic broker-dealers in the foreign country.

others, especially in connection with the general principles stated above. To avoid confusion, the Commission is withdrawing the proposed interpretive statement, but the staff's interpretive and no-action letters and the Commission exemptions cited therein will remain valid until expressly modified or withdrawn. In addition, the Commission wishes to confirm that the staff's guidance will continue to remain available regarding both the application of the Rule and the general application of the U.S. broker-dealer registration requirements to the activities of foreign broker-dealers.[76]

B. Rule 15a–6

The Commission is adopting proposed Rule 15a–6 under section 15(a)(2) of the Exchange Act [77] to provide conditional exemptions from broker-dealer registration for foreign broker-dealers that do not initiate direct contacts with U.S. persons, that solicit or effect transactions by certain U.S. institutional investors through registered broker-dealers, or that solicit or effect securities transactions by certain other persons.

1. Structure of the Rule

As previously noted, the Commission is adopting Rule 15a–6 in an expanded format similar to that published in Release 34–26136. A majority of commenters that addressed the issue supported expansion of the proposed exemptive rule to include the substance of the interpretive statement,[78] and the Commission concurs with those comments suggesting that an expanded rule would be understood more easily, especially by foreigners unfamiliar with the Commission interpretive practices. Therefore, Rule 15a–6 as adopted incorporates many of the positions articulated in the interpretive statement, although it differs in some respects from the expanded rule published in Release 34–26136. For ease of reference, the Rule has been organized into nondirect contacts, direct contacts, and trading with or for specified persons.

Rule 15a–6(a) exempts only foreign brokers or dealers, which are defined in paragraph (b)(3) to mean persons not resident in the United States that are not offices or branches of, or natural persons associated with, registered broker-dealers, and whose securities activities would fall within the definitions of "broker" or "dealer" in sections 3(a)(4) or 3(a)(5) of the Exchange Act, respectively.[79] The definition in paragraph (b)(3) expressly includes any U.S. person engaged in business as a broker or dealer entirely outside the United States. This definition also includes foreign banks to the extent that they operate from outside the United States, but not their U.S. branches or agencies.[80]

The proposed rule would have exempted foreign broker-dealers only from section 15(a). The expanded rule also would have exempted foreign broker-dealers required to register as municipal securities dealers by section 15B(a)(1) of the Exchange Act,[81] and several commenters believed that foreign broker-dealers required to register as government securities brokers or dealers by section 15C(a)(1) of the Exchange Act[82] should be included as well.[83] Pursuant to section 15B(a)(4) of the Exchange Act,[84] the Commission has made the exemptions in the Rule applicable to foreign broker-dealers engaging in municipal securities activities involving U.S. investors, although the Commission believes that these activities are not likely to be extensive. In addition, the Commission will recommend to the Department of the Treasury that the latter exercise its authority under section 15C(a)(4) of the Exchange Act [85] to provide similar exemptions to foreign broker-dealers engaging in government securities activities involving U.S. investors.

As proposed, Rule 15a–6(a) was phrased as a conditional exemption from the broker-dealer registration requirements of section 15(a).[86] The expanded rule stated instead that a qualifying broker-dealer "is not subject to" these registration requirements.[87] Several commenters objected that an exemption implied that the exempted activities required registration absent the exemption.[88] The Commission has determined to adopt Rule 15a–6 as an exemption, rather than as an exclusion from registration. In the Commission's view, many of the activities covered by provisions of the Rule plainly would require registration, absent an exemption. To keep the rule as simple as possible, the Commission is adopting all the provisions of the Rule as exemptions from registration, pursuant to sections 15(a)(2) and 15B(a)(4) of the Exchange Act.[89]

Several commenters argued that failure to comply with the proposed rule in one instance should not affect the availability of the exemptions under the proposed rule in other cases.[90] The justifications proffered by these commenters were the desire to avoid attaching "unduly severe consequences" to "isolated, inadvertent violations" [91]

[76] Questions on this subject should be addressed to the Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth St. NW., Mail Stop 5–1, Washington, DC 20549, (202) 272–2848.

[77] 15 U.S.C. 78o(a)(2).

[78] Of the thirteen commenters who addressed the question of whether the substance of the interpretive statement should be included in the proposed rule, eleven supported expansion of the rule: Continental Illinois National Bank and Trust Company of Chicago, the PSA, The Toronto Stock Exchange, the Institute of International Bankers, Chase Manhattan Government Securities, the SIA, Security Pacific Corporation, Salomon Brothers Inc., Sullivan & Cromwell, Merrill Lynch, and the CBA. The NYSBA, while not commenting explicitly on expansion of the proposed rule, suggested that interpretive statement be "converted into an interpretive rule" to provide foreign broker-dealers "a clearer basis" on which to evaluate the application of U.S. law to their activities. Letter from Lauren D. Rachlin, Chairman, NYSBA, to Jonathan G. Katz, Secretary, SEC (Nov. 7, 1988), at 5. The Institute of International Bankers suggested that the Commission retain the proposed interpretive statement for discussion of matters not specifically addressed by the ABA's formulation of the proposed rule. The SIA, Security Pacific, Salomon Brothers, and Merrill Lynch believed that the Commission should make clear that future requests for interpretive guidance still would be considered after the adoption of the Rule. Only the PSA (which preferred the ABA's approach if the Commission adopted the Rule) and The Montreal Exchange argued against an expanded rule, believing that codification of interpretive positions on foreign broker-dealer registration would impair the staff's ability to exercise its judgment on this subject in a flexible manner.

[79] *Supra* notes 16–17. *See also* note 19 *supra* regarding Rule 3a4–1, 17 CFR 240.3a4–1.

[80] The Institute of International Bankers contended that U.S.-regulated branches or agencies of foreign banks should be excluded from broker-dealer registration in the same way as domestic banks, by virtue of section 3(a)(6) of the Exchange Act, 15 U.S.C. 78c(a)(6). As explained in note 16 *supra*, the Commission has taken the position that the status of these branches and agencies under section 3(a)(6) is fact-specific, and U.S. branches or agencies of foreign banks that fall within the definition of bank under section 3(a)(2) of the Securities Act will be treated as U.S. institutional investors under the Rule. *See also* note 166 *infra*.

[81] 15 U.S.C. 78o–4(a)(1).

[82] 15 U.S.C. 78o–5(a)(1).

[83] The ABA, the PSA, and the CBA.

[84] 15 U.S.C. 78o–4(a)(4).

[85] 15 U.S.C. 78o–5(a)(4).

[86] *See supra* note 10.

[87] Release 34–26136, 53 FR at 38968.

[88] The ABA, Sullivan & Cromwell, the PSA, and Continental Bank.

[89] *See* notes 77 and 84 *supra*. Section (a) of the proposed rule also stated that the rule applied to any foreign broker-dealer "subject to the registration requirements of paragraph (1) of section 15(a) of the Act, because it induces or attempts to induce the purchase or sale of any security by a U.S. person." Release 34–25801, 53 FR at 23655. This language has been deleted from the Rule, because it merely restated the language of section 15(a)(1), 15 U.S.C. 78o(a)(1). The exemption under Rule 15a–6 is necessary only if the registration requirements of section 15(a) are triggered. As stated in Part IV.A. above, the staff's guidance will continue to be available on this issue.

[90] The PSA, Security Pacific Corporation, and Sullivan & Cromwell.

[91] Letter from Dan C. Aardal, Assistant General Counsel, Security Pacific Corporation, to Jonathan G. Katz, Secretary, SEC (Oct. 31, 1988).

and the belief that enforcement considerations did not prohibit a transactional approach, since remedies are available to both the Commission and private investors on a transactional basis.[92]

In the Commission's view, failure to comply with the conditions of one exemption in the Rule regarding certain activities would not prevent reliance on the same or other exemptions in the Rule with respect to other activities. Also the Commission is modifying the position expressed in the proposed interpretive statement that a foreign broker-dealer's obligation to register, once incurred, "continues until the foreign broker-dealer completely ceases to do business with or for [U.S.] investors" whom it has solicited and with or for whom it has effected securities transactions.[93] With respect to the Commission's exercise of its enforcement authority under section 15(a), the Commission would view a violation of U.S. registration requirements by a foreign broker-dealer as an ongoing violation until the foreign broker-dealer completely ceased to conduct U.S. securities activities that were not exempt under the Rule, or that required registration under the general principles discussed earlier in this release. Of course, the foreign broker-dealer would remain liable for its violative conduct, even after it ceased all nonexempt U.S. securities activities. Further, if a foreign broker-dealer repeatedly engaged in nonexempt U.S. securities activities intermittently with exempt U.S. activities, this course of conduct could support the conclusion that the foreign broker-dealer was in violation of section 15(a) during the entire course of its U.S. activities.[94]

2. Nondirect Contacts

a. *Unsolicited Transactions.* As discussed previously, the Commission believes that registration should not be required when a foreign broker-dealer effects an unsolicited trade for a U.S. investor. Accordingly, paragraph (a)(1) of the Rule exempts from registration a foreign broker-dealer to the extent that it "effects transactions in securities with or for persons that have not been solicited by the foreign broker or dealer." This paragraph codifies part of the proposed interpretive statement [95] and generally has been taken from paragraph (a)(2) of the expanded rule published in Release 34–26136.[96]

The expanded rule did not define the concept of solicitation, and neither does the Rule as adopted. The Commission's general views on meaning of the term "solicitation" have been discussed previously. Taking into account the expansive, fact-specific, and variable nature of this concept, the Commission believes that the question of solicitation is best addressed by the staff on a case-by-case basis, consistent with the principles elucidated in this release.

b. *Provision of Research to U.S. Persons.* As noted in the interpretive statement,[97] the provision of research to investors also may constitute solicitation by a broker or dealer. Broker-dealers often provide research to customers on a nonfee basis, with the expectation that the customer eventually will trade through the broker-dealer. They may provide research to acquaint potential customers with their existence, to maintain customer goodwill, or to inform customers of their knowledge of specific companies or markets, so that these customers will be encouraged to use their execution services for that company or those markets. In each instance, the basic purpose of providing the nonfee research is to generate transactional business for the broker-dealer. In the Commission's view, the deliberate transmission of information, opinions, or recommendations to investors in the United States, whether directed at individuals or groups, could result in the conclusion that the foreign broker-dealer has solicited those investors.

Consistent with earlier staff no-action positions,[98] however, the proposed interpretive statement took the position that the provision to U.S. persons of research reports prepared by a foreign broker-dealer would not require broker-dealer registration by that foreign broker-dealer, if the research reports were distributed to U.S. persons by an affiliated U.S. broker-dealer, if that affiliated broker-dealer prominently stated on the research report that it had accepted responsibility for its content, if the research report prominently indicated that any U.S. persons receiving the research and wishing to effect transactions in any security discussed therein should do so with the U.S. affiliate, not the foreign broker-dealer, and if transactions with U.S. persons in any securities identified in the research actually were effected only with or through the U.S. affiliate, not the

U.S.C. 78c(a)(48), includes a broker-dealer "required to register" pursuant to section 15(a). Also included are brokers and dealers registered or required to register pursuant to section 15B, 15 U.S.C. 78o–4, and, with respect to the definition of "member" in section 3(a)(3), 15 U.S.C. 78c(a)(3), and sections 6 and 15A regarding national securities exchanges and registered securities associations, respectively, 15 U.S.C. 78f and 78o–3, those entities and government securities brokers and government securities dealers registered or required to register pursuant to section 15C(a)(1)(A), 15 U.S.C. 78o–5(a)(1)(A).

It should be noted also that a foreign broker-dealer dealing with U.S. investors in violation of the broker-dealer registration requirements potentially would be exposed to customers' rescission actions brought under section 29(b) of the Exchange Act, 15 U.S.C. 78cc(b). *See, e.g., Regional Properties, Inc. v. Financial & Real Estate Consulting Co.*, 678 F.2d 552, 558 (5th Cir. 1982), *aff'd on other grounds*, 752 F.2d 178 (5th Cir. 1985) (later appeal); *Eastside Church of Christ v. National Plan, Inc.*, 391 F.2d 357 (5th Cir.), *cert. denied*, 393 U.S. 913 (1968) (allowing investors to rescind transactions with unregistered broker-dealer). *See also* Gruenbaum & Steinberg, *Section 29(b) of the Securities Exchange Act of 1934: A Viable Remedy Awakened*, 48 Geo. Wash. L. Rev. 1 (1979). The right of rescission under section 29(b), 15 U.S.C. 78cc(b), ordinarily would be invoked by private parties, and the Commission believes that it would not be appropriate to make a general statement on the availability of that right in the context of adopting the Rule.

Of course, the broker-dealer's securities activities would continue to be subject to the antifraud provisions of the federal securities laws, *e.g.*, section 17(a) of the Securities Act, 15 U.S.C. 77q(a), and sections 10(b) and 15(c) of the Exchange Act, 15 U.S.C. 78j(b) and 78o(c), and the rules thereunder, *e.g.*, Rules 10b–5 and 15c1–2, 17 CFR 240.10b–5 and 240.15c1–2, irrespective of the firm's lack of registration. The extraterritorial application of the antifraud provisions of the federal securities laws was discussed in the proposed interpretive statement. Release 34–25801, 53 FR at 23649 n.39. *See also* note 41 *supra*. The Commission continues to believe that the antifraud provisions should be interpreted broadly to restrain securities fraud affecting the United States. *See Consolidated Gold Fields PLC v. Minorco, S.A.*, 871 F.2d 252 (2d Cir. 1989).

[92] *See* Release 34–25801, 53 FR at 23650–51.

[93] The expanded rule differs from the expanded rule in two ways. The expanded rule referred to "execution" of transactions, but "effects" is consistent with the express language of section 15(a)(1) of the Exchange Act, 15 U.S.C. 78o(a)(1). Also, the expanded rule referred to solicitation of "customers" without defining them, but "persons" is preferable because of its definition in section 3(a)(9) of the Exchange Act. *See* note 40 *supra*.

[94] *See* Release No. 25810, 53 FR at 23650–51.

[95] *See* Release 34–25801, 53 FR at 23646–48.

[96] The commenters did not elaborate or mention explicitly section 29(b) of the Exchange Act, 15 U.S.C. 78cc(b). *See* note 94 *infra*.

[97] Release 34–25801, 53 FR at 23651.

[98] If a foreign broker-dealer deals with U.S. investors in violation of the broker-dealer registration requirements, it would be subject to Commission enforcement action under section 15(a) of the Exchange Act, *supra* note 10. Indeed, one commenter, even while recommending changes to proposed Rule 15a–16, exhorted the Commission, "after spending extensive efforts in developing a concise codification of interpretative and exemptive positions which will inure to the benefit of all broker-dealers, domestic and foreign, [to] be prepared to demand appropriate compliance with the registration requirements of the 1934 Act with respect to entities engaging in activity which requires registration and which is outside of the exemptions provided by proposed Rule 15a–16." Letter from Donald N. Gershuny, Merrill Lynch & Co., Inc., to Jonathan G. Katz, Secretary, SEC (Oct. 31, 1988).

The foreign broker-dealer also still would be subject to the Commission's broker-dealer rules, because the definition of "registered broker or dealer" in section 3(a)(48) of the Exchange Act, 15

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foreign broker-dealer.[99] This position was incorporated into paragraph (a)(3) of the expanded rule in Release 34-26136, although the requirement for affiliation between the registered broker-dealer and the foreign broker-dealer was deleted.

Some commenters criticized this position on research as too restrictive.[100] For example, Fidelity Investments claimed that, while the research that it receives from foreign broker-dealers is "voluminous," it plays "only a very small part" in the final investment decisions made by its fund managers.[101] The Madrid Stock Exchange argued that research distributed free of charge in the United States by foreign broker-dealers to U.S. institutional investors "on a routine basis, for information purposes" should not be deemed solicitation of brokerage business.[102] CREF agreed that any other position would impede the flow of foreign research to U.S. institutional investors.

Dechert Price & Rhoads, on behalf of five Spanish broker-dealers, argued that provision of research to existing U.S. institutional clients should not be deemed solicitation, even if trades were effected for those clients as a result.[103] These foreign broker-dealers believed that it would be difficult for them to screen out transactions from U.S. institutional investors that have received their research. They maintained that it would be too costly for smaller foreign broker-dealers to establish U.S. affiliates to be responsible for and distribute their research and effect any resulting trades, and that larger foreign broker-dealers thus would have a competitive advantage. The Association of German Banks also objected to the requirement that the U.S. affiliate prominently state that it had accepted responsibility for a research report prepared by a foreign broker-dealer. The SIA, while not objecting to the proposed interpretive position on research itself, suggested that foreign broker-dealers should be allowed to send research directly to U.S. institutional investors, as long as U.S. affiliates accepted responsibility for the research and effected any resulting trades.[104]

In publishing the proposed rule and interpretive statement, the Commission was motivated, in part, by the desire of U.S. institutional investors for access to foreign markets through foreign broker-dealers and the research that they provide.[105] Accordingly, the Rule takes into account the comments on the important role of research in facilitating access to these markets. The Commission does not wish to restrict major U.S. investors' ability to obtain research reports of foreign origin if adequate regulatory safeguards are present.

Paragraph (a)(2) of the Rule therefore provides an exemption from registration for foreign broker-dealers that furnish research reports[106] directly or indirectly[107] to major U.S. institutional investors[108] under certain conditions. The research report must not recommend the use of the foreign broker-dealer to effect trades in any security,[109] and the foreign broker-dealer must not initiate follow-up contact with the major U.S. institutional investors receiving the research, or otherwise induce or attempt to induce the purchase or sale of any security by those major U.S. institutional investors.[110] If these conditions are met, the foreign broker-dealer may effect trades in the securities discussed in the research or other securities at the request of major U.S. institutional investors receiving the report. Under these conditions, the Commission believes that direct distribution would be consistent with the free flow of information across national boundaries without raising substantial investor protection concerns.

If, however, the foreign broker-dealer already had a relationship with a registered broker-dealer that facilitated compliance with the direct contact exemption in the Rule, the Rule would require all trades resulting from the provision of research to be effected through that registered broker-dealer pursuant to the provisions of that exemption. If the foreign broker-dealer had entered into this prior relationship, the procedures for identifying trades from major U.S. institutional investors and routing them through the registered broker-dealer largely would have been established. Thus, the benefits of a registered broker-dealer's intermediation in effecting trades would be provided without imposing substantial additional costs.

Although this exemption is limited to major U.S. institutional investors, the Rule's research exemption is broader than either the proposed interpretive statement or the expanded rule in that a registered broker-dealer would not be required to take responsibility for the content of the report.[111] In addressing the responsibilities of the U.S. affiliate under paragraph (a) of the proposed rule, some commenters maintained that the registered broker-dealer's performance of supervisory responsibilities would result in little additional protection, at least with respect to substantial institutional investors.[112]

By its terms, the exemption in paragraph (a)(2) of the Rule is available only with respect to research provided to major U.S. institutional investors. Therefore, the Commission has decided to retain the narrower position regarding the distribution of research expressed in Release 34-25801 with respect to other investors.[113] Under this position, the Commission would not require broker-dealer registration by a foreign broker-dealer whose research reports were distributed[114] to U.S. persons by a registered broker-dealer,[115] if that broker-dealer prominently stated on the research report that it had accepted responsibility for its content,[116] if the research report prominently indicated that any U.S. persons receiving the research and wishing to effect any transactions in any security discussed in the report should do so with the registered broker-dealer, not the foreign broker-dealer, and if transactions with U.S. recipients of the report in any securities identified in the research actually were effected only with or through the registered broker-dealer, not the foreign broker-dealer. This position is consistent with the Commission's goal of facilitating the flow of information and capital across national boundaries.[117]

The Commission wishes to emphasize, however, that neither the exemption nor this position regarding research is applicable with respect to "soft-dollar" arrangements between foreign broker-dealers and U.S. persons.[118] As discussed in the proposed interpretive statement,[119] in many cases research is provided to customers with the express or implied understanding that the customers will pay for it by directing trades to the broker-dealer that result in an agreed-upon level of commission dollars.[120] These "soft-dollar" research arrangements are used widely by broker-dealers both in the United States and abroad.[121] If a foreign broker-dealer provided research to a U.S. investor pursuant to an express or implied understanding that the investor would direct a given amount of commission income to the foreign broker-dealer, the Commission would consider the foreign broker-dealer to have induced purchases and sales of securities, irrespective of whether the trades received from the investor related to the particular research that had been provided. Accordingly, both the exemption for research in paragraph (a)(2) and the position retained from Release 34-25801 set forth above would be inapplicable.[122]

c. Investment Adviser Registration. Finally, it is important to emphasize that foreign broker-dealers must consider separately other registration requirements contained in the U.S. securities laws. Specifically, in the proposed interpretive statement, the Commission noted that if a branch or affiliate of a foreign entity in the United States disseminated research information, registration as an investment adviser might be required under section 203 of the Investment Advisers Act of 1940 ("Advisers Act").[123] Several commenters requested clarification on this point, one expressing concern that a previous no-action position taken by the Division of Investment Management[124] might not apply in light of the direct communications between foreign broker-dealers and certain U.S. institutional investors that could take place under the proposed rule if adopted. A foreign broker-dealer providing research to U.S. persons generally would be an investment adviser within the meaning of the Advisers Act. The staff takes the position that the broker-dealer exclusion in section 202(a)(11)(C) of the Advisers Acts[125]—for broker-dealers who provide investment advice that is solely incidental to their brokerage business and who receive no special compensation for such advice—is available only to registered broker-dealers.

The Division of Investment Management, however, generally would expect to respond favorably to no-action requests regarding registration under the Advisers Act by foreign brokers and dealers who meet the conditions of paragraph (a)(2), (a)(3), or (a)(4) of the Rule if their activities are limited to those described in section 202(a)(11)(C)[126]—that is, if they provide investment advice solely incidental to their brokerage business and receive no special compensation for it. In the future, the Commission may consider whether to propose and adopt an exemptive rule under the Advisers Act for foreign broker-dealers providing the types of services covered by the Rule.

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[99] Article III, section 35(d)(2) of the NASD Rules of Fair Practice requires that all "[a]dvertisements and sales literature shall contain the name of the [NASD] member, [and of] the person or firm preparing the material, if other than the member" and that "[s]tatistical tables, charts, graphs or other illustrations used by members * * * should disclose the source of the information if not prepared by the member." *NASD Manual* (CCH) ¶ 2195 at 2177-78. Under section 35(a)(1), "advertisement" means any "material published, or designed for use in" various public print and electronic media. *Id.* at 2174. Under section 35(a)(2), "sales literature" specifically includes "research reports, market letters, performance reports or summaries, [and] seminar texts. * * *" *Id.* Rule 472.40(7) of the New York Stock Exchange ("NYSE") requires that communications with the public that are "not prepared under the direct supervision of the [NYSE] member organization or its correspondent [NYSE] member organization should show the person (by name and appropriate title) or outside organization which prepared the material." *NYSE Guide* (CCH) ¶ 2472.40(7) at 4027. Under Rule 472.10(1), a "communication" includes "market letters [and] research reports * * *." *Id.* at ¶ 2472.10(1). The Commission would not view an activity that merely complied with these requirements, in itself, as solicitation by a foreign broker-dealer.

[100] *See* note 13 *supra*.

[101] Letter from Fitzgerald to Katz, *supra* note 58, at 3.

[102] Letter from Enrique Benito Rodriquez, Chairman, Madrid Stock Exchange, to Jonathan G. Katz, Secretary, SEC (Oct. 21, 1988), at 2.

[103] CREF also said that communications between a foreign broker-dealer and a U.S. investor after the investor had opened its account with the foreign broker-dealer on the investor's own initiative should not be deemed solicitation. The Toronto and Vancouver Stock Exchanges agreed. The Commission believes, however, that the existence of these communications could support the conclusion that the foreign broker-dealer was engaged in the securities business within the jurisdiction of the United States, by virtue of having regular customers, and thus was subject to U.S. broker-dealer registration requirements.

[104] While expressing general agreement with the discussion of research in the proposed interpretive statement, Sullivan & Cromwell concurred with the SIA on this point, as did the NYSBA and the ABA, although the ABA did not suggest imposition of the execution condition explicitly.

[105] Release 34-25801, 53 FR at 23648.

[106] Paragraph (a)(2) of the Rule would not distinguish between research reports provided in written or electronic form.

[107] As adopted, paragraph (a)(2) is broader than the proposed interpretive statement in that, like the expanded rule, it permits the distribution of foreign research in this country directly by a foreign broker-dealer.

[108] Paragraph (b)(4) of the Rule defines "major U.S. institutional investor" as a U.S. institutional investor with assets, or assets under management, in excess of $100 million, or a registered investment adviser with assets under management in excess of $100 million. Paragraph (b)(7) of the Rule defines "U.S. institutional investor" as a registered investment company, bank, savings and loan association, insurance company, business development company, small business investment company, or employee benefit plan defined in Rule 501(a)(1) of Regulation D under the Securities Act, 17 CFR 230.501(a)(1), a private business development company defined in Rule 501(a)(2), 17 CFR 230.501(a)(2), an organization described in section 501(c)(3) of the Internal Revenue Code, as defined in Rule 501(a)(3), 17 CFR 230.501(a)(3), or a trust defined in Rule 501(a)(7), 17 CFR 230.501(a)(7). To determine the total assets of an investment company under the Rule, a registered investment company may include the assets of any family of investment companies of which it is a part, and the term "family of investment companies" is defined in paragraph (b)(1) of the Rule.

[109] The Commission would not consider disclosure in the research report that the foreign broker-dealer is a market maker in a security discussed in the report to violate this requirement.

[110] If a foreign broker-dealer wished to initiate direct contact with U.S. persons, it could do so using the direct contact exemption in paragraph (a)(3) of the Rule, and the conditions imposed by that exemption, including the participation of a registered broker-dealer intermediary, would address the investor protection concerns raised by those contacts.

[111] Of course, if a foreign broker-dealer, for its own business reasons, chose to distribute its research in the United States through a registered broker-dealer, affiliated or not, the SRO rules discussed in note 99 *supra* would require disclosure of the identity of the preparer of the research.

[112] *E.g.*, Association of German Banks.

[113] *See supra* notes 98-99 and accompanying text.

[114] The Commission would not require registration by a foreign broker-dealer whose research reports were included in a broadly-distributed electronic database to which U.S. persons who were not major U.S. institutional investors had access, provided that (i) a registered broker-dealer accepted responsibility for the research and for its inclusion in the database, (ii) the registered broker-dealer prominently stated on the research report (as displayed in the database) that it had accepted responsibility for its content, and (iii) the research report prominently indicated that any U.S. persons accessing the report and wishing to effect any transactions in the securities discussed in the report should do so with the registered broker-dealer, not the foreign broker-dealer. This position would not limit the research exemption in paragraph (a)(2) of the Rule for research distributed directly to major U.S. institutional investors, whether in written or electronic form.

[115] The requirement for affiliation between the foreign broker-dealer and the registered broker-dealer through ownership or control has been deleted here as in the Rule.

[116] As noted above, commenters expressed concern over the ability of the registered broker-dealer to accept responsibility for research prepared by the foreign broker-dealer. The Commission believes that a registered broker-dealer would meet its responsibility under the Rule if it took reasonable steps to satisfy itself regarding the key statements in the research. In cases where there are no indications that the content of the research is suspect, this responsibility can be fulfilled by reviewing the research in question and comparing it with other public information readily available regarding the issuer, to make certain that neither the facts nor the analysis appear inconsistent with outstanding information regarding the issuer.

[117] *See supra* note 1.

[118] Paragraph (a)(2)(iv) of the exemption so provides.

[119] Release 34-25801, 53 FR at 23651.

[120] *See* Release 34-25801, 53 FR at 23646 n.16 and accompanying text.

[121] For example, the Securities and Investments Board ("SIB") notes in a recent discussion paper that soft-dollar arrangements in the United Kingdom have increased significantly at a time when the level of brokerage commissions generally has decreased. SIB, *Soft Commission Arrangements in the Securities Markets* (February 1989).

[122] CREF explicitly stated that its position against deeming research to be solicitation did not apply to "soft-dollar" arrangements.

[123] 15 U.S.C. 80b-3. *See* Release 34-25801, 53 FR at 23651 n.58.

[124] *Citicorp* (pub. avail. Sept. 14, 1988).

[125] 15 U.S.C. 80b-2(a)(11)(C).

[126] *Id.*

3. Direct Contacts

a. Transactions with U.S. Institutional Investors and Major U.S. Institutional Investors. Paragraph (a)(3) of the Rule provides an exemption from broker-dealer registration for a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security by a U.S. institutional investor or a major U.S. institutional investor,[127] provided that any resulting transactions are effected through a registered broker-dealer and certain conditions are met by the foreign broker-dealer, foreign associated persons, and the registered broker-dealer. As described in the proposed interpretive statement,[128] many foreign broker dealers have established registered broker-dealer affiliates in the United States that are fully qualified to deal with U.S. investors and trade in U.S. securities. Nonetheless, these foreign broker-dealers may prefer to deal with institutional investors in the United States from their overseas trading desks, where their dealer operations are based. In addition, because overseas trading desks often are principal sources of current information on foreign market conditions and foreign securities, many U.S. institutions want direct contact with overseas traders. Foreign broker-dealers themselves often are not willing to register as broker-dealers directly with the Commission, however, because registration would require the entire firm to comply with U.S. broker-dealer requirements.[129]

The no-action request granted to Chase Capital Markets US [130] allowed foreign trading operations to receive calls from U.S. institutional investors without the foreign broker-dealers registering with the Commission. Under the terms of that letter, foreign broker-dealers could be put in touch with U.S. institutional investors by a registered broker-dealer affiliate, with a U.S.-qualified representative participating in telephone conversations, effecting any resulting transactions, and taking full responsibility for the trades. Like an earlier Commission exemption letter,[131] the letter to Chase Capital Markets US provided that the foreign broker-dealer would assist the Commission in the conduct of investigations by furnishing information concerning its contacts with U.S. investors and trading records relating to the execution of U.S. investors' orders by the firm. Both letters also indicated that the foreign broker-dealers would endeavor, directly or indirectly, to obtain the consent of foreign customers to the release of any information sought by the Commission.

In the Commission's view, it is desirable to broaden U.S. investors' access to foreign sources of information through structures that maintain fundamental investor protections. Accordingly, the Commission supports allowing direct contact between foreign broker-dealers and U.S. institutional investors, subject to requirements concerning these contacts and the execution of orders.[132] The Rule as adopted allows a foreign broker-dealer to contact U.S. institutional investors if an associated person of a registered broker-dealer participates in each of these contacts. The Rule also allows a foreign broker-dealer to contact major U.S. institutional investors without the participation of an associated person of a registered broker-dealer in any of these contacts. In each case, any resulting transactions must be effected through an intermediary registered broker-dealer,[133] which need not be affiliated with the foreign broker-dealer through ownership or control. The Commission believes that these versions of the intermediary concept used in the Chase Capital Markets US letter and set forth in the proposed rule and the expanded rule greatly increase the utility of the exemption in paragraph (a)(3) of the Rule, the operation of which is described more fully below.[134]

(1) Comments on U.S. broker-dealer requirement. As proposed, Rule 15a–6 would have provided an exemption from broker-dealer registration for foreign broker-dealers that effected trades with certain U.S. institutional investors through a registered broker-dealer.[135] The foreign broker-dealer's personnel involved in contacts with U.S. institutional investors would have been subject to certain requirements, and the registered broker-dealer would have been responsible for supervising the contact and any resulting trades. If a trade was agreed upon, the rule would have required the registered broker-dealer to effect the trade on behalf of the investor, taking full responsibility for all aspects of the trade. In proposing Rule 15a–6, the Commission stated that requiring the intermediation of a registered broker-dealer would maintain important regulatory safeguards. The registered broker-dealer's responsibility for effecting all trades, combined with its recordkeeping and reporting duties pursuant to section 17 of the Exchange Act [136] and the rules thereunder,[137] "would facilitate Commission review of this trading and also subject this trading to the U.S. broker-dealer's supervisory responsibility." [138]

Fifteen commenters argued that the Commission should not require the participation of a registered broker-dealer affiliate in transactions with major institutional investors.[139] In particular, commenters asserted that U.S. institutions meeting the $100 million asset test in the proposed rule should be able to be solicited by foreign broker-dealers and then transact business directly with those broker-dealers, because requiring the intermediation of a registered broker-dealer would increase costs, impede the flow of foreign research to U.S. institutions, and reduce the ability of these institutions to invest in foreign markets in which local broker-dealers had not established registered U.S. affiliates.[140] Other commenters maintained that the Commission should grant an exemption from the registration requirements of section 15(a) to foreign broker-dealers

[127] *See infra* notes 156–69 and accompanying text; *see also* note 108 *supra*.

[128] Release 34–25801, 53 FR at 23651.

[129] *See supra* notes 44–45 and accompanying text.

[130] Letter from Amy Natterson Kroll, Attorney, Office of Chief Counsel, Division of Market Regulation, SEC, to Frank C. Puleo, Esq., Milbank, Tweed, Hadley & McCloy (July 28, 1987).

[131] *See* Letter from Jonathan Katz, Secretary, SEC, to Marcia MacHarg, Esq., Debevoise & Plimpton (Aug. 13, 1986) (Vickers da Costa Securities Inc./Citicorp), *infra* note 205 and accompanying text.

[132] *See* Release 34–25801, 53 FR at 23652.

[133] It would be permissible for more than one registered broker-dealer to serve as intermediary between U.S. institutional investors, major U.S. institutional investors, and a foreign broker-dealer seeking to comply with the Rule.

[134] The Division of Investment Management generally would expect to respond favorably to no-action requests regarding registration as an investment adviser from foreign broker-dealers complying with the provisions of paragraph (a)(3) of the Rule. *See supra* notes 123–26 and accompanying text.

[135] Release 34–25801 did not make clear, however, whether the registered broker-dealer was required to be affiliated with the foreign broker-dealer. *See* note 142 *infra*.

[136] 15 U.S.C. 78q.

[137] *See* note 28 *supra*.

[138] Release 34–25801, 53 FR at 23654.

[139] Andras Research Capital, Brown Brothers Harriman, Fidelity Investments, Madrid Stock Exchange, Ross & Hardies, CREF, Dechert Price & Rhoads, Association of German Banks, Westpac Banking Corporation, Toronto Stock Exchange, Institute of International Bankers, Chase Manhattan Government Securities, the ABA, The Canadian Bankers' Association, and The Montreal Exchange.

[140] For example, the Toronto Stock Exchange believed that the costs of establishing a registered U.S. broker-dealer affiliate would be significant. In addition, the PSA and Chase Manhattan Government Securities argued that requiring the participation of a U.S. affiliate would be excessively burdensome where the only contact with U.S. investors related to transactions in U.S. government securities.

that deal only with institutional investors, on the grounds that these investors can fend for themselves in the international securities markets.[141] As discussed below in Part IV.B., however, the Commission believes that not all the regulatory concerns raised by such an exemption would be alleviated by the institutional nature or size of these investors.

The Commission had requested comment on whether the nature of the relationship between the foreign broker-dealer and the registered broker-dealer "should involve a specified degree of ownership or control." [142] Three commenters replied that no affiliate relationship should be required between the foreign broker-dealer and the intermediary registered broker-dealer.[143] These commenters generally argued that the use of any registered broker-dealer to perform the duties set forth in the proposed rule would provide sufficient investor protection and would lower the costs of compliance with the rule by smaller foreign broker-dealers. Finally, one commenter suggested that nonresident registered broker-dealers be permitted to perform the duties assigned to the registered broker-dealer by the proposed rule, regardless of their location or affiliation with the foreign broker-dealer.[144]

Nine commenters argued that the responsibilities imposed on the registered broker-dealer affiliate by the proposed rule should be reduced in some fashion.[145] The comments stated that the registered broker-dealer's supervisory responsibilities regarding the activities of the foreign broker-dealer should be relaxed, because the registered broker-dealer's lack of information and control regarding the foreign broker-dealer's activities and relative lack of expertise in foreign securities and markets would hinder the performance of its supervisory duties. In particular, one commenter said that the foreign broker-dealer alone should be responsible for all requirements concerning confirmation and extension of credit in connection with securities transactions, "and correspondingly liable in case of failure." [146] Another commenter emphasized the protection afforded by other provisions in the proposed rule and the registered broker-dealer's difficulty in supervising foreign personnel operating independently in different time zones.[147]

Other commenters took a slightly different approach, suggesting that the registered broker-dealer be allowed to delegate certain functions, but not liability for performing them, to the foreign broker-dealer. Thus, these commenters would allow the registered broker-dealer to assume liability for the acts and omissions of the foreign broker-dealer, rather than actually performing the functions assigned to the registered broker-dealer by the proposed rule. They also opposed requiring the registered broker-dealer to maintain all books and records for U.S. institutional investors' accounts, claiming that the requirement in the rule for the foreign broker-dealer to provide the Commission, upon request, with information or documents within its possession, custody, or control would be an adequate substitute.

The Commission has determined to continue to require the intermediation of a registered broker-dealer,[148] to address concerns regarding financial responsibility and the effective enforcement of U.S. securities laws. The Rule does not require, however, any affiliation between the foreign broker-dealer and the registered broker-dealer through ownership or control. This position, together with the conditional eligibility of nonresident registered broker-dealers to serve as intermediary under the Rule,[149] should reduce greatly the costs incurred by a foreign broker-dealer in establishing a relationship with a registered broker-dealer to comply with the conditions of the direct contact exemption. Accordingly, the Commission does not believe that it is appropriate to allow the registered broker-dealer to delegate the performance of its duties under the Rule to the foreign broker-dealer, with the exception of physically executing foreign securities trades in foreign markets or on foreign exchanges,[150] and merely retain responsibility for errors or omissions in their performance. With respect to the recordkeeping requirements in the Rule, however, the Commission notes that it might be more efficient and less costly for the registered broker-dealer to handle data processing in a centralized fashion. As long as the registered broker-dealer has physical possession of all records required by the Rule, employing a third party, such as the foreign broker-dealer, to process these records mechanically would be permissible.

The Commission believes that the concerns expressed by commenters over the proposed rule's imposition on the registered broker-dealer of supervisory responsibility concerning transactions under paragraph (a)(3) between the foreign broker-dealer and U.S. institutional investors or major U.S. institutional investors are, to some extent, valid. Accordingly, the Commission would no longer take the position that the Rule requires the registered broker-dealer to implement procedures to obtain positive assurance that the foreign broker-dealer is operating in accordance with U.S. requirements.[151] The Commission believes, however, that the registered broker-dealer, in effecting trades arranged by the foreign broker-dealer, has a responsibility to review these trades for indications of possible violations of the federal securities laws. The registered broker-dealer's intermediation in these trades is intended to help protect U.S. investors and securities markets. The registered broker-dealer would have an obligation, as it has for all customer accounts, to review any Rule 15a–6 account for indications of potential problems.[152]

[141] *E.g.*, the SIA.

[142] Release 34–25801, 53 FR at 23653 n.68.

[143] Institute of International Bankers, Sullivan & Cromwell, and Dwight D. Quayle, Esq., of Ropes & Gray.

[144] Quayle.

[145] Fidelity Investments, the NCSC, the PSA, Westpac Banking Corporation, the SIA, Debevoise & Plimpton, Security Pacific, Sullivan & Cromwell, and Merrill Lynch.

[146] Letter from Dennis H. Greenwald, Chairman, Federal Regulation Committee, SIA, to Jonathan G. Katz, Secretary, SEC (Oct. 31, 1988), at 11.

[147] Security Pacific.

[148] The Rule draws on the definition of "U.S. broker or dealer" in the expanded rule. Paragraph (b)(5) of the Rule defines the term "registered broker or dealer" to include persons registered with the Commission under sections 15(b), 15B(a)(2), or 15C(a)(2) of the Exchange Act, 15 U.S.C. 78o(b), 78o–4(a)(2), or 78o–5(a)(2), respectively.

[149] The Rule permits a nonresident registered broker-dealer to serve as intermediary under the Rule, provided that the nonresident broker-dealer complies with Rule 17a–7(a), 17 CFR 240.17a–7(a). *See* Part IV.B. *infra*.

[150] *See infra* note 185 and accompanying text.

[151] Release 34–25801, 53 FR at 23654.

[152] In particular, SRO rules impose specific supervisory duties on SRO members regarding customers' accounts. *E.g.*, Article III, Section 27, NASD Rules of Fair Practice, *NASD Manual* (CCH) ¶2177 at 2109 ("Each member shall review the activities of each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities or abuses. * * *"); NYSE Rule 342.16, *NYSE Guide* (CCH) ¶2342 at 3587 ("Duties of supervisors of registered representatives should ordinarily include at least review of correspondence of registered representatives, transactions, and customer accounts."); NYSE Rule 405, *NYSE Guide* (CCH) ¶2405 at 3896 ("Every member organization is required * * * to * * * (1) Use due diligence to learn the essential facts relative to every customer, every order, [and] every cash or margin account * * * accepted or carried by such organization. (2) Supervise diligently all accounts handled by registered representatives of the organization.")

Moreover, if the registered broker-dealer ignores indications of irregularity that should alert the registered broker-dealer to the likelihood that the foreign broker-dealer is taking advantage of U.S. customers or otherwise violating U.S. securities laws, and the registered broker-dealer nevertheless continues to effect questionable transactions on behalf of the foreign broker-dealer or its customers, the registered broker-dealer's role in the trades may give rise to possible violations of the federal securities laws.[153]

Finally, Rule 15a–6 as adopted does not allow banks to serve as the intermediary in transactions between U.S. institutional investors or major U.S. institutional investors and foreign broker-dealers. Despite the views expressed by several banks,[154] the Commission does not believe that it would be appropriate to permit any unregistered entity to perform this function, since this entity would not be subject to the Commission's extensive statutory authority to regulate, examine, and discipline registered broker-dealers.[155]

(2) Comments on U.S. institutional investor classifications. Proposed Rule 15a–6 would have allowed unregistered foreign broker-dealers to contact certain classes of U.S. institutional investors, which were limited to U.S. persons described in Rule 501(a) (1), (2), or (3) of Regulation D under the Securities Act[156] that, with the exception of registered broker-dealers, had total assets in excess of $100 million. These investors included domestic banks, savings and loan associations, brokers or dealers registered under section 15(b) of the Exchange Act,[157] insurance companies, registered investment companies, small business investment companies, employee benefit plans, private business development companies, and certain section 501(c)(3) organizations under the Internal Revenue Code.[158] Registered investment advisers were included as U.S. institutional investors within the rule if they had in excess of $100 million in assets under management. Further, if a registered investment company itself did not have total assets in excess of $100 million, it qualified as a U.S. institutional investor if it was part of a family of investment companies (as defined in the rule) that had total assets in excess of $100 million.

The expanded rule allowed direct contact with specified institutional investors, using the structure set out in the Chase Capital Markets U.S. letter.[159] Under the expanded rule, a foreign broker-dealer either could contact these institutional investors with the participation of an associated person supervised by a U.S. registered broker-dealer, or could contact major institutional investors directly. Similar conditions applied to both alternatives.

Six commenters opined that the definition of U.S. institutional investor should be expanded to include all accredited investors under Regulation D, regardless of assets.[160] In particular, the claim was made that persons qualifying as accredited investors under Regulation D, but with less than $100 million in assets, possessed adequate sophistication and judgment in financial matters to deal directly with foreign broker-dealers, consistent with their ability to make investment decisions without the disclosure afforded by the registration requirements of the Securities Act. It was averred that an asset test did not necessarily correlate with the degree of sophistication required to deal with unregistered foreign broker-dealers. Other commenters expressed a somewhat narrower view, asserting that the definition of U.S. institutional investor should be limited to institutional accredited investors.[161]

Alternatively, some commenters proposed other asset tests for major institutional investors, ranging from $1 million to 25 million in assets.[162] Another commenter suggested that, after a one-year trial period, the Commission consider broadening the definition of major U.S. institutional investor to include more institutions.[163] Finally, two commenters specifically said that the definition of U.S. institutional investor should include U.S. branches or agencies of foreign banks.[164]

As discussed in the Concept Release, the Commission recognizes that substantial institutional investors often have greater financial sophistication than individual investors. At the same time, the Commission does not believe that sophistication is in all circumstances an effective substitute for broker-dealer regulation. For example, systemic safeguards flowing from broker-dealer registration, such as financial responsibility requirements, are benefits that can be assured more effectively through governmental regulation.[165]

After considering the comments, the Commission has decided to retain the proposed rule's $100 million asset test for foreign broker-dealers contacting major U.S. institutional investors without an associated person of a registered broker-dealer participating in the contact.[166] As the Commission

[153] *Cf. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, Securities Exchange Act Release No. 19070 (Sept. 21, 1982), 26 SEC Docket 254 (continued execution of orders placed by investment adviser with discretion over account may subject broker-dealer to aiding and abetting liability, if broker-dealer has knowledge of improprieties in adviser's handling of account and adviser commits primary violation of securities laws).

[154] The Canadian Bankers' Association, the Institute of International Bankers, and the Bank of America expressed the view that domestic banks should be permitted to serve as the U.S. intermediary for affiliated foreign broker-dealers. They claimed that, although U.S. banks are not registered with the Commission and thus, as pointed out by the ABA, are not subject to the Commission's regulatory, supervisory, or disciplinary authority, supervision by banking regulatory authorities would be an adequate substitute for Commission regulation.

[155] As explained below, however, the Commission has decided to include banks acting in a broker or dealer capacity (including acting as a municipal or government securities broker or dealer) in the category of persons with or for whom a foreign broker-dealer could effect, induce, or attempt to induce transactions and still qualify for an exemption from registration under the Rule.

[156] 17 CFR 230.501(a) (1), (2), or (3).

[157] 15 U.S.C. 78*o*(b).

[158] 26 U.S.C 501(c)(3).

[159] *Supra* note 130.

[160] CREF, Continental Bank, the PSA, Westpac Banking Corporation, Chase Manhattan Government Securities, and Debevoise & Plimpton.

[161] The ABA, Sullivan & Cromwell, and Merrill Lynch. Continental Bank urged the Commission to adopt this approach if the Rule was not made applicable to all accredited investors.

[162] Security Pacific, the Institute of International Bankers, and the Toronto Stock Exchange.

[163] The NYSBA.

[164] The Institute of International Bankers and the NYSBA. In proposing Rule 15a–6, the Commission noted that accredited institutional investors under Regulation D included only domestic banks. Release 34–25801, 53 FR at 23654. *But see* note 168 *infra*.

[165] Similarly, in proposing Rule 144A, which would provide a safe-harbor exemption from the registration requirements of the Securities Act for resales of securities to institutional investors, the Commission sought to define a limited class of institutional investors that it could be "confident * * * have extensive experience" in the market. Securities Act Release No. 6806 (Oct. 25, 1988), 53 FR 44016, 44028 ("Release 33–6806"). The Commission proposed to permit only a subset of institutions, those with over $100 million in assets, to resell securities free of resale restrictions. Release 33–6806, 53 FR at 44027–29. All comments received on proposed Rule 144A, together with a comment summary, are publicly available in File No. S7–23–88.

[166] Some commenters on proposed Rule 144A, *supra* note 165, suggested that the rule, if adopted, permit only those institutions with over $100 million in investment securities to resell securities free of resale restrictions. The staff is giving this suggestion serious consideration, in addition to considering other changes to the definition in Rule 144A of institutional investor including the scope of the term "family of investment companies that also appears in the Rule. If the Commission incorporates these changes into Rule 144A, then the Commission also will consider whether to incorporate similar standards into Rule 15a–6.

stated in proposing the rule, the asset test was based on the view that "direct U.S. oversight of the competence and conduct of foreign sales personnel may be of less significance where they are soliciting only U.S. institutional investors with high levels of assets," and the $100 million asset level was intended "to increase the likelihood that the institution or its investment advisers have prior experience in foreign markets that provides insight into the reliability and reputation" of foreign broker-dealers.[167]

Currently, the Commission continues to believe that institutions with this level of assets are more likely to have the skills and experience to assess independently the integrity and competence of the foreign broker-dealers providing this access. Moreover, these larger institutions have greater ability to demand information demonstrating the financial position of the foreign broker-dealer.

Accordingly, the Rule allows foreign broker-dealers to contact U.S. institutional investors with the participation of a U.S. associated person, and to contact independently U.S. institutional investors with over $100 million in assets or assets under management. The Rule thus adds the $100 million asset test to the U.S. institutional investor definition for certain purposes.[168]

The Commission notes that the expanded rule deleted the language in the proposed rule that included the following in the definition of U.S. institutional investor: institutions organized or incorporated under the laws of the United States, its territories or possessions, or any state or the District of Columbia; institutions organized or incorporated under the laws of any foreign jurisdiction but conducting business principally in the United States; and branches of foreign entities located in the United States or its territories or possessions. The Commission has deleted these references from the Rule as unnecessary, because these entities already are included in the definition without regard to nationality. Accordingly, the use of the procedures specified in the exemptions under the Rule, in lieu of broker-dealer registration, would be required of foreign broker-dealers that solicited the permanent U.S. branches or agencies of any foreign entities.[169] This position is consistent with the general principles discussed above regarding foreign persons present in this country on other than a temporary basis.

(3) Operation. Paragraph (a)(3)(i) of the Rule sets forth the conditions to be met by a foreign broker-dealer wishing to engage in direct contacts with U.S. institutional investors or major U.S. institutional investors without registration. Paragraph (a)(3)(i)(A) requires the foreign broker-dealer to effect these transactions through a registered broker-dealer, as discussed below. Under paragraph (a)(3)(i)(B), the foreign broker-dealer must provide the Commission, upon request or pursuant to agreements reached between any "foreign securities authority"[170] and the Commission or the U.S. government, with any information or documents within the possession, custody, or control of the foreign broker-dealer, any testimony of foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the Commission requests and that relates to transactions under the direct contact exemption under paragraph (a)(3) of the Rule. Unlike the proposed rule, however, these requirements are subject to an exception for information, documents, testimony, or assistance withheld in compliance with foreign blocking statutes or secrecy laws.

If, after the foreign broker-dealer has exercised its best efforts to provide this information, documents, testimony, or assistance, which specifically includes requesting the appropriate foreign governmental body and, if legally necessary, its customers (with respect to customer information) to permit the foreign broker or dealer to provide the requested information, documents, testimony, or assistance to the Commission, the foreign broker-dealer is prohibited by applicable foreign law or regulations from satisfying the Commission's request, then it would continue to qualify for the exemption under paragraph (a)(3). Under paragraph (c), however, the Commission, after notice and opportunity for hearing, may withdraw the direct contact exemption under paragraph (a)(3) of the Rule with respect to the subsequent activities of the foreign broker-dealer, or class thereof, whose home country's law or regulations have prohibited the foreign broker-dealer from responding to the Commission's requests for information, documents, testimony, or assistance under paragraph (a)(3)(i)(B).

Several commenters suggested that the Commission not require foreign broker-dealers to comply with the requirements in paragraph (a)(3)(i)(B) to the extent that doing so actually would result in a violation of foreign blocking statutes, secrecy laws, or legal requirements to obtain the consent of foreign customers.[171] The Commission agrees with the commenters that automatic removal of a foreign broker-dealer from the Rule's protections would be inappropriate. Nevertheless, given the importance of the Commission's access to information, documents, testimony, and assistance concerning foreign broker-dealers' exempted activities for the Commission's enforcement of the U.S. securities laws, the Commission believes that foreign broker-dealers should be given strong incentives to use their best efforts to provide requested information, documents, testimony, and assistance to the Commission, including consulting with the foreign securities authority or other appropriate governmental body administering any relevant foreign law or regulations restricting compliance.

[167] Release 34–25801, 53 FR at 23654.

[168] *See supra* note 108 and accompanying text regarding U.S. distribution of foreign research; *see infra* notes 178–80 and accompanying text regarding U.S. visits by foreign associated persons. The Rule also includes certain trusts recognized under Rule 501(a)(7), 17 CFR 230.501(a)(7), within the definition of U.S. institutional investor. In addition, when proposing Rule 15a–6, the Commission said that U.S. branches or agencies of foreign banks could not qualify as U.S. institutional investors, because Regulation D treated only domestic banks as accredited investors. *See supra* note 164. Rule 501(a)(1), 17 CFR 230.501(a)(1), refers to banks defined in section 3(a)(2) of the Securities Act, which generally means "any national bank, or any banking institution organized under the laws of any State, Territory, or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or territorial banking commission or similar official." 15 U.S.C. 77c(a)(2). In Release 33–6661, *supra* note 16, the Commission decided that U.S. branches or agencies of foreign banks subject to an appropriate level of U.S. banking regulation would be deemed "banks" for purposes of section 3(a)(2). A recent staff letter confirmed that U.S. branches and agencies of foreign banks satisfying the standards of Release No. 6661, so that their securities would be exempt from Securities Act registration by virtue of section 3(a)(2), are treated as accredited investors under Rule 501(a)(1). Letter from Richard K. Wulff, Chief, Office of Small Business Policy, Division of Corporation Finance, SEC, to Lawrence R. Uhlick, Esq., Institute of International Bankers (Jan. 4, 1989). Therefore, these U.S. branches and agencies of foreign banks are included in the definition of U.S. institutional investor in the Rule.

[169] *See supra* note 168 regarding U.S. branches and agencies of foreign banks.

[170] New section 3(a)(50) of the Exchange Act, 15 U.S.C. 78c(a)(50), defines this term to mean "any foreign government, or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters." *See* Insider Trading and Securities Fraud Enforcement Act of 1988, Pub. L. No. 101–704, section 6(a), 102 Stat. 4677, 4681.

[171] Quayle, Union Bank of Switzerland, the Institute of International Bankers, the PSA, the SIA, James Capel, the ABA, Security Pacific, the NYSBA, and Sullivan & Cromwell.

Therefore, the Commission has retained these requirements in paragraph (a)(3), subject to an exception for information, documents, testimony, or assistance that the foreign broker-dealer has used its best efforts to provide, but has been prohibited from making available by foreign laws or regulations.[172] Moreover, the Commission would have the ability under paragraph (c) to remove the exemption for a foreign broker-dealer or class of foreign broker-dealers in circumstances where the Commission believes that its inability to obtain information, documents, testimony, or assistance because of foreign blocking statutes or secrecy laws raises serious investor protection or enforcement concerns. Under paragraph (c), the exemption under paragraph (a)(3) can be withdrawn only prospectively, and only by Commission order after notice and hearing, to which the usual procedural rights would attach.[173] In addition, Commission withdrawal of the exemption is discretionary, not mandatory, and it would be subject to the same review as other Commission orders.[174]

The requirements in paragraph (a)(3)(i)(B) of the Rule apply only to transactions effected under the provisions of paragraph (a)(3). As proposed by the Commission, these requirements would have applied to any transactions of a foreign broker-dealer with a U.S. institutional investor or the registered broker-dealer through which they were effected. The limitation in the Rule was suggested by several commenters.[175] The Commission does not wish to impose unnecessary burdens on foreign broker-dealers seeking to claim this exemption, and the Commission believes that it will be able to obtain the information necessary to carry out its enforcement responsibilities, with respect to a foreign broker-dealer's activities outside the Rule, through cooperation with foreign securities authorities.[176]

Paragraph (a)(3)(ii) of the Rule imposes requirements on foreign associated persons of the foreign broker-dealer. Paragraph (b)(2) of the Rule defines "foreign associated person" to mean any natural person resident outside the United States who is an associated person, as defined in section 3(a)(18) of the Exchange Act,[177] of a foreign broker-dealer, and who participates in the solicitation of a U.S. institutional investor or a major U.S. institutional investor under paragraph (a)(3) of the Rule. The Commission has adopted this definition from paragraph (b)(3) of the proposed rule, with the addition of the phrase "under paragraph (a)(3) of this rule" for clarification.

Paragraph (a)(3)(ii)(A) of the Rule requires foreign associated persons of the foreign broker-dealer effecting transactions with U.S. institutional investors or major U.S. institutional investors to conduct all their securities activities from outside the United States,[178] with one exception. This exception allows a foreign associated person to conduct visits to U.S. institutional investors and major U.S. institutional investors within the United States, provided that the foreign associated person is accompanied on these visits by an associated person of a registered broker-dealer that accepts responsibility [179] for the foreign associated person's communications with these investors, and that transactions in any securities discussed by the foreign associated person are effected only through that registered broker-dealer pursuant to the provisions of paragraph (a)(3), not by the foreign broker-dealer. This exception has been added to the proposed rule in response to several comments that foreign associated persons should be allowed to visit U.S. institutions in this country, to create and sustain business relationships with these investors.[180] The proposed rule prohibited any U.S. activities by foreign associated persons, but the Commission believes that, where a registered broker-dealer is present and acts as an intermediary in the execution of orders, visits to these investors should be permitted.

Paragraph (a)(3)(ii)(B) of the Rule requires that foreign associated persons not be subject to a statutory disqualification specified in section 3(a)(39) of the Exchange Act,[181] or any substantially equivalent foreign (i) expulsion or suspension from membership, (ii) bar or suspension from association, (iii) denial of trading privileges, (iv) order denying, suspending, or revoking registration or barring or suspending association, or (v) finding with respect to causing any such effective foreign suspension, expulsion, or order; not have been convicted of any foreign offense, enjoined from any foreign act, conduct, or practice, or found to have committed any foreign act substantially equivalent to any of those listed in section 15(b)(4) (B), (C), (D), or (E) of the Exchange Act; [182] and not have been found to have made or caused to be made any false foreign statement or omission substantially equivalent to any of those listed in section 3(a)(39)(E) of the Exchange Act.[183] This language is a more complete description of the applicable disciplinary disqualifications cited in paragraph (a)(1)(ii) of the proposed rule and paragraph (b)(2)(ii) of the expanded rule, both of which referred to violations of substantially equivalent foreign statutes or regulations.[184]

Finally, paragraph (a)(3)(iii) of the Rule requires the use of a registered broker-dealer as an intermediary in effecting trades between U.S. institutional investors or major U.S. institutional investors and the foreign broker-dealer as a condition for this exemption. Paragraph (a)(3)(iii)(A) first requires that transactions with these investors be effected through the

[172] If the Commission requested testimony of a foreign associated person who no longer was associated with the foreign broker-dealer, or who terminated association with the foreign broker-dealer after the Commission made its request, the Commission would consider the foreign broker-dealer to have complied with the Rule if it then used its best efforts to assist the Commission in taking the evidence of those persons.

[173] *See* 5 U.S.C. 554.

[174] *See* 5 U.S.C. 701–706.

[175] The Bank of America, Quayle, the PSA, the SIA, the ABA, Security Pacific, and Sullivan & Cromwell.

[176] *See* note 170 *supra*.

[177] 15 U.S.C. 78c(a)(18).

[178] Paragraph (b)(6) of the Rule defines the term "United States" to mean the United States of America, including the states and any territories and other areas subject to its jurisdiction. This definition has been adopted from paragraph (c)(6) of the expanded rule, and the term is not defined in the Exchange Act or the rules thereunder. Section 3(a)(16) of the Exchange Act, however, already defines "State" to mean "any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States." 15 U.S.C. 78c(a)(16).

[179] The Commission would expect the associated person to be familiar with the foreign broker-dealer's research reports discussed during these visits, to conduct a prior review of any written materials to be distributed during the visits, along with summaries or outlines of the foreign associated person's oral presentation, and to know whether the foreign associated person's statements were consistent with the foreign broker-dealer's current recommendations. In general, the Commission's expectations regarding the responsibility imposed on the registered broker-dealer and discharged through its associated person during these visits would be the same as those regarding the responsibility of a registered broker-dealer in connection with the distribution of research to U.S. institutional investors. *See supra* note 116.

[180] Quayle, the PSA, Chase Manhattan Government Securities, the ABA, the SIA, Security Pacific, the NYSBA, Sullivan & Cromwell, and Merrill Lynch.

[181] 15 U.S.C. 78c(a) (39).

[182] 15 U.S.C. 78o(b)(4) (B), (C), (D), or (E).

[183] 15 U.S.C. 78c(a)(39)(E).

[184] *See* proposed International Securities Enforcement Cooperation Act of 1989, H.R. 1396, 101st Cong., 1st Sess., 135 Cong. Rec. 790 (1989), sections 3 and 4.

registered broker-dealer. This means that the registered broker-dealer must handle all aspects of these transactions except the negotiation of their terms,[185] which may occur between the investors and the foreign broker-dealer (through its foreign associated persons).

Paragraph (a)(3)(iii)(A) requires the registered broker-dealer through which transactions with these investors are effected to be responsible for carrying out specified functions, so as to make the performance of these functions subject to direct Commission oversight. The registered broker-dealer must issue all required confirmations [186] and account statements to the investors. These documents are significant points of contact between the investor and the broker-dealer, and they provide important information. Also, as between the foreign broker-dealer and the registered broker-dealer, the latter is required to extend or arrange for the extension of any credit to these investors in connection with the purchase of securities.[187] In addition, the registered broker-dealer is responsible for maintaining required books and records relating to the transactions conducted under paragraph (a)(3) of the Rule, including those required by Rules 17a–3 and 17a–4,[188] which facilitates Commission supervision and investigation of these transactions.[189] As adopted, the functions required of the registered broker-dealer in paragraph (a)(3)(iii)(A) are taken from the proposed rule, with some exceptions.[190]

Paragraph (a)(4)(iii)(B) of the Rule requires the registered broker-dealer to participate through an associated person in all oral communications between foreign associated persons and U.S. institutional investors. By virtue of this participation, the registered broker-dealer would become responsible for the content of these communications, and the Commission's statements regarding the nature and discharge of similar responsibilities regarding the distribution of research and U.S. visits by foreign associated persons would apply.[191]

The requirement in paragraph (a)(4)(iii)(C) of the Rule for the registered broker-dealer to obtain from the foreign broker-dealer, for each foreign associated person, the information specified in Rule 17a–3(a)(12),[192] including sanctions imposed by foreign securities authorities, exchanges, or associations (including without limitation those described in paragraph (a)(3)(ii)(B) of the Rule), also has been drawn from the proposed rule. In addition, paragraph (a)(3)(iii)(D) of the Rule requires the registered broker-dealer to obtain from the foreign broker-dealer and each foreign associated person written consent to service of process for any civil action brought by or proceeding before the Commission or any SRO, as defined in section 3(a)(26) of the Exchange Act,[193] stating that process may be served on the registered broker-dealer as provided on that broker-dealer's current Form BD. This language follows the text of the proposed rule. Some commenters argued that both the information provision and consent requirements as proposed were overbroad and would restrict use of the Rule,[194] but the Commission does not believe that it is desirable to draw the requirement to consent to service of process more narrowly to relate only to transactions effected in reliance on the Rule's intermediary exemption.

Further, paragraph (a)(3)(iii)(E) of the Rule requires the registered broker-dealer to maintain a written record of the information and consents required by paragraphs (a)(3)(iii) (C) and (D),[195] and all records in connection with trading activities of U.S. institutional investors or major U.S. institutional investors involving the foreign broker-dealer conducted under paragraph (a)(3) of the Rule, in an office of the registered broker-dealer located in the United States (thus, with respect to nonresident U.S. broker-dealers, pursuant to Rule 17a–7(a)) [196] and make these records available to the Commission upon request. This language follows the proposed rule, with the exception of the reference to nonresident registered broker-dealers. One commenter suggested that these broker-dealers should be allowed to serve as intermediary registered broker-dealers under the Rule,[197] and the Commission agrees, as stated above. The Commission attaches considerable importance, however, to preserving its access to records relating to activities conducted under paragraph (a)(3). These records will enable the Commission to carry out its enforcement responsibilities and exercise its supervision over the registered broker-dealer intermediary. This intermediary, therefore, whether resident or nonresident, must maintain all the records called for by the Rule in an office within the territorial limits of the United States.[198]

[185] Of course, the rules of foreign securities exchanges and over-the-counter markets may require the foreign broker-dealer, as a member or market maker, to perform the actual physical execution of transactions in foreign securities listed on those exchanges or traded in those markets. The Rule would permit the foreign broker-dealer to perform this function.

[186] *See* Rule 10b–10, 17 CFR 240.10b–10. The confirmation requirements imposed by Rule 10b–10 are a significant antifraud measure.

[187] The extensive U.S. regulation of these functions is intended to protect both U.S. investors and securities markets. *See, e.g.*, sections 7(c) and 11(d) of the Exchange Act, 17 U.S.C. 78g(c) and 78k(d), and the rules and regulations thereunder, *e.g.*, Regulation T, 17 CFR 220.1–220.18, and Rule 11d1–2, 17 CFR 240.11d1–2.

[188] 17 CFR 240.17a–3 and 17a–4. *But see* note 150 *supra* and accompanying text concerning delegation of data processing functions to the foreign broker-dealer.

[189] Of course, because the registered broker-dealer would "book" Rule 15a–6 trades as its own, it would be required to comply with the provisions of Rule 15c3–1, 17 CFR 240.15c3–1, the Commission's net capital rule, with respect to these transactions, and it would be responsible for receiving, delivering, and safeguarding funds and securities on behalf of the investors pursuant to Rule 15c3–3, 17 CFR 240.15c3–3. Merrill Lynch believed that it should be permissible for foreign custodian banks to handle the clearance and settlement of foreign securities transactions by the investors under the Rule. The Commission notes that Rule 15c3–3(c)(4), 17 CFR 240.15c3–3(c)(4), already permits the use of designated foreign control locations deemed satisfactory by the Commission for purposes of compliance with that rule. Sullivan & Cromwell spoke without elaboration of a registered broker-dealer that "introduced" its U.S. customers to a foreign broker-dealer. If this term signified the presence of an introducing-clearing relationship, where the foreign broker-dealer held U.S. customers' funds and securities, registration of the foreign broker-dealer would be required. *See* Part III.B. *supra*.

[190] Like paragraph (b)(3) of the expanded rule, the Rule deletes as unnecessary the express requirement that the registered broker-dealer effect transactions "with or for" the U.S. institutional investor or the major U.S. institutional investor. As explained above, paragraph (a)(4)(i)(A) of the Rule already requires the foreign broker-dealer to effect transactions "through" the registered broker-dealer. The phrase "as between the foreign broker or dealer and the registered broker or dealer" in paragraph (a)(3)(iii)(A)(*3*) concerning extension of credit, found in paragraph (b)(3)(i)(B) of the expanded rule, has been added for clarification.

[191] *See supra* notes 116 and 179. This requirement for "participation" under the Rule would be satisfied if the associated person of the registered broker-dealer was present, either physically or telephonically, during these oral communications, and was able to take part in them as they occurred.

[192] 17 CFR 240.17a–3(a)(12). Rule 17a–3(a) also requires that this information be kept current. 17 CFR 240.17a–3(a).

[193] 15 U.S.C. 78c(a)(26).

[194] The SIA, the ABA, Security Pacific, and Sullivan & Cromwell.

[195] The Commission notes that SROs exercising their authority to inspect their members performing the intermediary function under the Rule should examine the records of the information and the consents required by the Rule. The Commission would encourage these SROs to consider whether it would be more efficient for them to adopt specific rules requiring those members to file these records with the SROs soon after obtaining the required information and consents.

[196] 17 CFR 240.17a–7(a).

[197] Quayle.

[198] Nonresident registered broker-dealers still could maintain other records outside the United

Continued

b. Transactions with Certain Persons. Paragraph (a)(4) of the Rule provides an exemption for a second type of direct contact by broker-dealers. It exempts foreign broker-dealers that effect any transactions in securities with or for, or induce or attempt to induce the purchase or sale of any securities by, the following defined classes of persons.[199]

(1) Registered broker-dealers and banks. Paragraph (a)(4)(i) includes registered brokers or dealers, whether acting as principal for their own account or as agent for others. This exemption was in paragraph (a)(1)(iii) of the expanded rule. Commenters argued that, while the proposed interpretive statement said that a foreign broker-dealer could purchase U.S. securities from a registered broker-dealer for resale to foreign investors without registering with the Commission,[200] it created a misimpression by not also stating that foreign broker-dealers could sell securities to registered broker-dealers without registration[201] In response, the Commission expressly has exempted trades of foreign broker-dealers with registered broker-dealers and with banks acting in a broker or dealer capacity.[202] The Commission notes that the staff has taken no-action positions regarding foreign broker-dealers effecting transactions with or for both registered broker-dealers and banks acting in a broker or dealer capacity as permitted by U.S statutory and regulatory provisions,[203] and it has reflected this position in the Rule.

The Commission does not intend this exemption to permit the foreign broker-dealer to act as a dealer in the United States through an affiliated registered broker-dealer.[204] The Commission recognizes that dealers in foreign markets may transmit securities positions to U.S. broker-dealer affiliates after the foreign markets close, so that the U.S. affiliates can continue trading those securities. If, however, the foreign broker-dealer controlled the registered broker-dealer's day-to-day market making activities by explicit restrictions on the U.S. broker-dealer's ability to execute orders against the foreign broker-dealer's positions or to take independent positions, the foreign broker-dealer could be considered a dealer subject to U.S. broker-dealer registration requirements.[205]

(2) International organizations. Paragraph (a)(4)(ii) of the Rule exempts foreign broker-dealers that deal with certain international organizations, regardless of their location or whether the U.S. jurisdictional means are implicated. They include the African Development Bank, the Asian Development Bank, the Inter-American Development Bank, the International Bank for Reconstruction and Development, the International Monetary Fund, the United Nations, and their agencies, affiliates, and pension funds. These are the same international organizations specified in proposed Regulation S,[206] together with their pension funds, as suggested by several commenters.[207]

(3) Foreign persons temporarily present in the United States. Paragraph (a)(4)(iii) of the Rule includes any foreign person temporarily present in the United States, with whom the foreign broker-dealer had a bona fide, pre-existing relationship before the foreign person entered the United States. This paragraph codifies part of the proposed interpretive statement,[208] and is taken from paragraph (a)(1)(v) of the expanded rule, with one exception. The phrase "before the foreign person entered the United States" has been added to clarify the nature of the relationship. The Commission is of the view that a foreign broker-dealer that solicits or engages in securities transactions with or for these persons while they are temporarily present in this country need not register with the Commission.[209]

One commenter asked the Commission to define U.S. residency for purposes of compliance with this and other exemptions in the Rule.[210] The Commission does not believe that it would be appropriate to establish a separate standard of residency for the purpose of claiming this exemption different from those generally established under state or federal law.[211] As stated in Release 34-25801, questions regarding the temporary nature of a person's presence in this country would be fact-specific.[212] The Commission would take the position, however, that a foreign person not otherwise deemed a resident of the United States under applicable law would be presumed to be temporarily present in this country for the purpose of paragraph (a)(3) of the Rule. This presumption, of course, would be subject to rebuttal in light all of the facts and circumstances surrounding that

States, provided that the conditions of Rule 17a-7(b) were met. *See* 17 CFR 240.17a-7(b).

[199] The Division of Investment Management generally would expect to respond favorably to no-action requests regarding registration as an investment adviser from foreign broker-dealers complying with the provisions of paragraph (a)(4) of the Rule. *See supra* notes 123-28 and accompanying text.

[200] Release 34-25801, 53 FR at 23646.

[201] The Institute of International Bankers, the ABA, the SIA, Security Pacific, and Sullivan & Cromwell.

[202] The exemption allows foreign broker-dealers to effect transactions with or for certain banks or registered broker-dealers; direct contact by the foreign broker-dealers with the U.S. customers of the registered broker-dealers or banks, however, would not be covered by this exemption.

[203] Security Pacific Corporation and National Westminster Bank letters, *supra* note 68.

[204] *See* note 205 *infra*.

[205] *See, e.g.*, the Vickers da Costa/Citicorp order, *supra* note 131, which exempted several related foreign broker-dealers from U.S. broker-dealer registration requirements. Because of Glass-Steagall Act restrictions applicable to the U.S. affiliate, *see* 12 U.S.C. 24 and 378, the foreign broker-dealers agreed to provide the U.S. affiliate with standing orders to buy and sell the securities in which the U.S. affiliate previously had acted as a market maker. Thus, the U.S. affiliate's quote in NASDAQ always would reflect a previously entered firm order from the foreign broker-dealers. The U.S. affiliate's activities would be limited to executing, on a riskless principal basis, any orders received from U.S. customers against these orders. This arrangement was approved by the Comptroller of the Currency. Letter from Judith A. Walter, Senior Deputy Comptroller, to Ellis E. Bradford, Vice President, Citibank, N.A. (June 13, 1986).

In its exemptive order, the Commission allowed the foreign broker-dealers to buy and sell simultaneously on a continuing basis through the U.S. affiliate without registering in the United States as broker-dealers. However, the Commission imposed a number of limitations to provide additional regulatory safeguards. The foreign broker-dealers' control over the price and size of their standing orders was limited in order to give the U.S. affiliate some discretion in its trading activities. The U.S. affiliate also agreed to satisfy additional net capital requirements intended to increase its ability to meet its settlement obligations upon failure of the foreign broker-dealers. In addition, the parent of the broker-dealers represented that information regarding the trading activities of the foreign broker-dealers would be made available to the Commission in connection with any investigation, and that it would attempt to obtain customer consent to release of information concerning their trading, if requested. Finally, the parent agreed that it would be designated as the foreign broker-dealers' agent for service of process in any proceeding or other action involving the foreign broker-dealers. The foreign broker-dealers also limited their securities activities in the United States to those enumerated in the letter, and the parent represented that the foreign broker-dealers would not engage in any securities business with U.S. citizens.

[206] Release 33-6779, 53 FR at 22677.

[207] The SIA, the ABA, and Sullivan & Cromwell.

[208] Release 34-25801, 53 FR at 23649. *See also* Security Pacific and National Westminster Bank letters, *supra* note 68.

[209] This position is consistent with the proposal of the American Law Institute that a nonresident broker-dealer that "does business with * * * a non-national of the United States who is present as a nonresident within the United States and was previously a customer or client" should not be subject to U.S. broker-dealer jurisdiction. *ALI Federal Securities Code* § 1905(b)(2)(B) (1980). Professor Loss, the reporter for the Code, uses the example of a "Canadian broker who uses the telephone to service a customer who is vacationing in Florida." *Id.* at Comment 9.

[210] The NYSBA.

[211] *See generally, e.g.*, section 911 of the Internal Revenue Code, 26 U.S.C. 911, which provides certain exclusions from the gross income of U.S. citizens resident abroad.

[212] 53 FR at 23649.

foreign person's presence in the United States.

(4) Foreign agencies or branches of U.S. persons. The proposed rule and the expanded rule both provided an exemption for foreign broker-dealers effecting or soliciting transactions by agencies or branches of U.S. persons, which were located outside the United States and were operated for valid business reasons. The Commission has retained this exemption in the Rule to clarify that foreign broker-dealers that deal outside the United States with branches and agencies having an established location outside the United States do not need to register with the Commission, provided that the transactions occur outside the United States.

Commenters suggested that the presence of a valid business purpose was unnecessary in the broker-dealer context.[213] The Commission agrees. The Rule's exemption for unsolicited trades reflects the view that U.S. persons seeking out unregistered foreign broker-dealers outside the U.S. cannot expect the protection of U.S. broker-dealer standards. The Commission believes that this rationale applies equally to U.S. branches and agencies established overseas that choose to deal with unregistered foreign broker-dealers.[214]

(5) Nonresident U.S. citizens. Finally, paragraph (a)(4)(v) of the Rule includes U.S. citizens resident outside the United States, provided that the foreign broker-dealer does not direct its selling efforts toward identifiable groups of U.S. citizens resident abroad.[215] Like the exemption regarding foreign branches and agencies of U.S. persons, all transactions must occur outside the United States. As discussed above in Part III.B., neither U.S. citizens resident abroad nor foreign broker-dealers normally would expect that the U.S. broker-dealer registration requirements would be triggered by non-U.S. securities transactions between them.

V. Conclusion

The Commission believes that the conditional exemptions in Rule 15a-6 for foreign broker-dealers engaging in certain activities involving U.S. investors and securities markets will reduce the costs and increase the efficiency of international securities transactions as well as facilitate the international flow of information. The differing procedures in the Rule for nondirect and direct contacts by foreign broker-dealers with U.S. investors also will facilitate the access of U.S. investors to foreign securities markets through those foreign broker-dealers and the research that they provide, consistent with the regulatory safeguards afforded by broker-dealer registration. In light of the importance that the Commission attaches to broker-dealer registration and regulation in the international context, the Commission believes that the exemptions in Rule 15a-6 are in the public interest and consistent with the protection of U.S. investors.

VI. Effects on Competition and Regulatory Flexibility Act Certification

Section 23(a)(2) of the Exchange Act[216] requires that the Commission, when adopting rules under the Exchange Act, consider the anticompetitive effects of those rules, if any, and balance any anticompetitive impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission believes that adoption of the Rule will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act, especially since the Rule provides exemptions for eligible foreign broker-dealers from the broker-dealer registration requirements under the Exchange Act.

Pursuant to section 3(b) of the Regulatory Flexibility Act,[217] when the Commission proposed Rule 15a-6 Chairman Ruder certified that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.[218] The Commission did not receive any comments on the Chairman's certification.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

VII. Statutory Basis and Text of Amendments

The Commission hereby amends Part 240 of Chapter II of Title 17 of the Code of Federal Regulations as follows:

[213] The SIA, the ABA, and Sullivan & Cromwell.

[214] The Commission has deleted the exemption in the proposed rule that referred to affiliates or subsidiaries of U.S. persons that were located outside this country and organized or incorporated under the laws of any foreign jurisdiction. The Commission has decided that this exemption is unnecessary, since these entities should not properly be regarded as U.S. persons.

[215] *See supra* note 51 and accompanying text.

[216] 15 U.S.C. 78w(a)(2).

[217] 5 U.S.C. 603(b).

[218] Release 34-25801, 53 FR at 23655.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citation:

Authority: Sec. 23, 48 Stat. 901, as amended (15 U.S.C. 78w) * * * § 240.15a-6, also issued under secs. 3, 10, 15, and 17, 15 U.S.C. 78c, 78j, 78o, and 78q;

* * * * *

2. By adding § 240.15a-6 after the undesignated heading as follows:

Registration of Brokers and Dealers

§ 240.15a-6 Exemption of certain foreign brokers or dealers.

(a) A foreign broker or dealer shall be exempt from the registration requirements of sections 15(a)(1) or 15B(a)(1) of the Act to the extent that the foreign broker or dealer:

(1) Effects transactions in securities with or for persons that have not been solicited by the foreign broker or dealer; or

(2) Furnishes research reports to major U.S. institutional investors, and effects transactions in the securities discussed in the research reports with or for those major U.S. institutional investors, provided that:

(i) The research reports do not recommend the use of the foreign broker or dealer to effect trades in any security;

(ii) The foreign broker or dealer does not initiate contact with those major U.S. institutional investors to follow up on the research reports, and does not otherwise induce or attempt to induce the purchase or sale of any security by those major U.S. institutional investors;

(iii) If the foreign broker or dealer has a relationship with a registered broker or dealer that satisfies the requirements of paragraph (a)(3) of this section, any transactions with the foreign broker or dealer in securities discussed in the research reports are effected only through that registered broker or dealer, pursuant to the provisions of paragraph (a)(3) of this section; and

(iv) The foreign broker or dealer does not provide research to U.S. persons pursuant to any express or implied understanding that those U.S. persons will direct commission income to the foreign broker or dealer; or

(3) Induces or attempts to induce the purchase or sale of any security by a U.S. institutional investor or a major U.S. institutional investor, provided that:

(i) The foreign broker or dealer:

(A) Effects any resulting transactions with or for the U.S. institutional investor or the major U.S. institutional investor through a registered broker or dealer in

the manner described by paragraph (a)(3)(iii) of this section; and

(B) Provides the Commission (upon request or pursuant to agreements reached between any foreign securities authority, including any foreign government, as specified in section 3(a)(50) of the Act, and the Commission or the U.S. Government) with any information or documents within the possession, custody, or control of the foreign broker or dealer, any testimony of foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the Commission requests and that relates to transactions under paragraph (a)(3) of this section, except that if, after the foreign broker or dealer has exercised its best efforts to provide the information, documents, testimony, or assistance, including requesting the appropriate governmental body and, if legally necessary, its customers (with respect to customer information) to permit the foreign broker or dealer to provide the information, documents, testimony, or assistance to the Commission, the foreign broker or dealer is prohibited from providing this information, documents, testimony, or assistance by applicable foreign law or regulations, then this paragraph (a)(3)(i)(B) shall not apply and the foreign broker or dealer will be subject to paragraph (c) of this section;

(ii) The foreign associated person of the foreign broker or dealer effecting transactions with the U.S. institutional investor or the major U.S. institutional investor:

(A) Conducts all securities activities from outside the U.S., except that the foreign associated persons may conduct visits to U.S. institutional investors and major U.S. institutional investors within the United States, provided that:

(*1*) The foreign associated person is accompanied on these visits by an associated person of a registered broker or dealer that accepts responsibility for the foreign associated person's communications with the U.S. institutional investor or the major U.S institutional investor; and

(*2*) Transactions in any securities discussed during the visit by the foreign associated person are effected only through the registered broker or dealer, pursuant to paragraph (a)(3) of this section; and

(B) Is determined by the registered broker or dealer to:

(*1*) Not be subject to a statutory disqualification specified in section 3(a)(39) of the Act, or any substantially equivalent foreign

(*i*) Expulsion or suspension from membership,

(*ii*) Bar or suspension from association,

(*iii*) Denial of trading privileges,

(*iv*) Order denying, suspending, or revoking registration or barring or suspending association, or

(*v*) Finding with respect to causing any such effective foreign suspension, expulsion, or order;

(*2*) Not to have been convicted of any foreign offense, enjoined from any foreign act, conduct, or practice, or found to have committed any foreign act substantially equivalent to any of those listed in sections 15(b)(4) (B), (C), (D), or (E) of the Act; and

(*3*) Not to have been found to have made or caused to be made any false foreign statement or omission substantially equivalent to any of those listed in section 3(a)(39)(E) of the Act; and

(iii) The registered broker or dealer through which the transaction with the U.S. institutional investor or the major U.S. institutional investor is effected:

(A) Is responsible for:

(*1*) Effecting the transactions conducted under paragraph (a)(3) of this section, other than negotiating their terms;

(*2*) Issuing all required confirmations and statements to the U.S. institutional investor or the major U.S. institutional investor;

(*3*) As between the foreign broker or dealer and the registered broker or dealer, extending or arranging for the extension of any credit to the U.S. institutional investor or the major U.S. institutional investor in connection with the transactions;

(*4*) Maintaining required books and records relating to the transactions, including those required by Rules 17a–3 and 17a–4 under the Act (17 CFR 2410.17a–3 and l7a–4);

(*5*) Complying with Rule 15c3–1 under the Act (17 CFR 240.15c3–1) with respect to the transactions; and

(*6*) Receiving, delivering, and safeguarding funds and securities in connection with the transactions on behalf of the U.S. institutional investor or the major U.S. institutional investor in compliance with Rule 15c3–3 under the Act (17 CFR 240.15c3–3);

(B) Participates through an associated person in all oral communications between the foreign associated person and the U.S. institutional investor, other than a major U.S. institutional investor;

(C) Has obtained from the foreign broker or dealer, with respect to each foreign associated person, the types of information specified in Rule l7a–3(a)(12) under the Act (17 CFR 240.17a–3(a)(12)), provided that the information required by paragraph (a)(12)(d) of that Rule shall include sanctions imposed by foreign securities authorities, exchanges, or associations, including without limitation those described in paragraph (a)(3)(ii)(B) of this section;

(D) Has obtained from the foreign broker or dealer and each foreign associated person written consent to service of process for any civil action brought by or proceeding before the Commission or a self-regulatory organization (as defined in section 3(a)(26) of the Act), providing that process may be served on them by service on the registered broker or dealer in the manner set forth on the registered broker's or dealer's current Form BD; and

(E) Maintains a written record of the information and consents required by paragraphs (a)(3)(iii) (C) and (D) of this section, and all records in connection with trading activities of the U.S. institutional investor or the major U.S. institutional investor involving the foreign broker or dealer conducted under paragraph (a)(3) of this section, in an office of the registered broker or dealer located in the United States (with respect to nonresident registered brokers or dealers, pursuant to Rule 17a–7(a) under the Act (17 CFR 240.17a–7(a))), and makes these records available to the Commission upon request; or

(4) Effects transactions in securities with or for, or induces or attempts to induce the purchase or sale of any security by:

(i) A registered broker or dealer, whether the registered broker or dealer is acting as principal for its own account or as agent for others, or a bank acting in a broker or dealer capacity as permitted by U.S. law;

(ii) The African Development Bank, the Asian Development Bank, the Inter-American Development Bank, the International Bank for Reconstruction and Development, the International Monetary Fund, the United Nations, and their agencies, affiliates, and pension funds;

(iii) A foreign person temporarily present in the United States, with whom the foreign broker or dealer had a bona fide, pre-existing relationship before the foreign person entered the United States;

(iv) Any agency or branch of a U.S. person permanently located outside the United States, provided that the transactions occur outside the United States; or

(v) U.S. citizens resident outside the United States, provided that the transactions occur outside the United States, and that the foreign broker or dealer does not direct its selling efforts toward identifiable groups of U.S. citizens resident abroad.

(b) When used in this rule,

(1) The term "family of investment companies" shall mean:

(i) Except for insurance company separate accounts, any two or more separately registered investment companies under the Investment Company Act of 1940 that share the same investment adviser or principal underwriter and hold themselves out to investors as related companies for purposes of investment and investor services; and

(ii) With respect to insurance company separate accounts, any two or more separately registered separate accounts under the Investment Company Act of 1940 that share the same investment adviser or principal underwriter and function under operational or accounting or control systems that are substantially similar.

(2) The term "foreign associated person" shall mean any natural person domiciled outside the United States who is an associated person, as defined in section 3(a)(18) of the Act, of the foreign broker or dealer, and who participates in the solicitation of a U.S. institutional investor or a major U.S. institutional investor under paragraph (a)(3) of this section.

(3) The term "foreign broker or dealer" shall mean any non-U.S. resident person (including any U.S. person engaged in business as a broker or dealer entirely outside the United States, except as otherwise permitted by this rule) that is not an office or branch of, or a natural person associated with, a registered broker or dealer, whose securities activities, if conducted in the United States, would be described by the definition of "broker" or "dealer" in sections 3(a)(4) or 3(a)(5) of the Act.

(4) The term "major U.S. institutional investor" shall mean a person that is:

(i) A U.S. institutional investor that has, or has under management, total assets in excess of $100 million; provided, however, that for purposes of determining the total assets of an investment company under this rule, the investment company may include the assets of any family of investment companies of which it is a part; or

(ii) An investment adviser registered with the Commission under section 203 of the Investment Advisers Act of 1940 that has total assets under management in excess of $100 million.

(5) The term "registered broker or dealer" shall mean a person that is registered with the Commission under sections 15(b), 15B(a)(2), or 15C(a)(2) of the Act.

(6) The term "United States" shall mean the United States of America, including the States and any territories and other areas subject to its jurisdiction.

(7) The term "U.S. institutional investor" shall mean a person that is:

(i) An investment company registered with the Commission under section 8 of the Investment Company Act of 1940; or

(ii) A bank, savings and loan association, insurance company, business development company, small business investment company, or employee benefit plan defined in Rule 501(a)(1) of Regulation D under the Securities Act of 1933 (17 CFR 230.501(a)(1)); a private business development company defined in Rule 501(a)(2) (17 CFR 230.501(a)(2)); an organization described in section 501(c)(3) of the Internal Revenue Code, as defined in Rule 501(a)(3) (17 CFR 230.501(a)(3)); or a trust defined in Rule 501(a)(7) (17 CFR 230.501(a)(7)).

(c) The Commission, by order after notice and opportunity for hearing, may withdraw the exemption provided in paragraph (a)(3) of this section with respect to the subsequent activities of a foreign broker or dealer or class of foreign brokers or dealers conducted from a foreign country, if the Commission finds that the laws or regulations of that foreign country have prohibited the foreign broker or dealer, or one of a class of foreign brokers or dealers, from providing, in response to a request from the Commission, information or documents within its possession, custody, or control, testimony of foreign associated persons, or assistance in taking the evidence of other persons, wherever located, related to activities exempted by paragraph (a)(3) of this section.

By the Commission.

Jonathan G. Katz,

Secretary.

July 11, 1989.

[FR Doc. 89–16725 Filed 7–17–89; 8:45 am]

BILLING CODE 8010-01-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Exchange-Visitor Program; Extension of Stay—Exchange Visitors From the People's Republic of China

AGENCY: United States Information Agency.

ACTION: Temporary rule.

SUMMARY: This notice amends the regulations found at 22 CFR 514.23, General limitations of stay, to permit the extension of the authorized duration of stay for one year for exchange visitors from the People's Republic of China who entered the United States on or before June 6, 1989, and whose authorized period of stay will expire before June 6, 1990. This action is taken in consonance with the current foreign policy of the United States as evidenced by the White House of June 5.

EFFECTIVE DATES: This temporary rule is effective from June 6, 1989, and shall remain in effect until June 6, 1990.

ADDRESS: Merry Lymn, Assistant General Counsel, Office of the General Counsel, Room 700, United States Information Agency, 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Merry Lymn, Assistant General Counsel, Office of the General Counsel, Room 700, United States Information Agency, 301 4th Street SW., Washington, DC 20547, (202) 485–8829.

SUPPLEMENTARY INFORMATION: In furtherance of the foreign policy, the Agency amends the prescribed duration of stay in 22 CFR 514.23 to permit a one-year extension for exchange visitors from the People's Republic of China whose authorized period of stay will expire before June 6, 1990.

This modification of the rule will enable exchange visitors from the People's Republic of China to maintain their current J-visa status by applying to the Immigration and Naturalization Service for an extension. It does not apply to exchange visitors from the People's Republic of China arriving in the United States after June 6, 1989. Changes of category or program objective will not be permitted for exchange visitors whose stay is extended under this rule.

Program sponsors may issue a new IAP–66 form to exchange visitors from the People's Republic of China to permit the one-year extension of the J–1 status in accordance with this temporary rule.

This action is taken without regard to the notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. 553, as it comes within the exception at 5 U.S.C. 553(a)(1), a "foreign affairs function of the United States." Further, because of the immediacy of the problem of exchange visitors from the People's Republic of China whose authorized stay will expire momentarily, notice and public comment thereon are impracticable and unnecessary.

Findings and Conclusions

For the reasons stated above, the Agency finds that the maximum period of stay prescribed in 22 CFR 514.23 for exchange visitors from the People's Republic of China who entered the United States on or before June 6, 1989, and whose authorized stay will expire before June 6, 1990, should be extended for one year.

This decision does not significantly affect the quality of the human environment and is not a major or regulatory action under the Energy Conservation Act of 1975.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of the United States-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (42 U.S.C. 3501–3520) and have been assigned OMB Control Number 3116–0009.

List of Subjects in 22 CFR Part 514

Cultural Exchange Programs, Reporting and recordkeeping requirements.

Accordingly, 22 CFR Part 514 is amended as follows:

PART 514—[AMENDED]

1. The authority citation for 22 CFR Part 514 continues to read:

Authority: U.S. Information and Educational Exchange Act of 1948, as amended, Pub. L. 80–402, as amended (22 U.S.C. 1431–1442); Mutual Educational and Cultural Exchange Act of 1961, as amended, Pub. L. 87–256, 75 Stat. 527, 534, 535 (8 U.S.C. 1101, 1104, 1182, 1258 and 22 U.S.C. 2451–2460); Pub. L. 97–241, 96 Stat. 1291; 66 Stat. 166, 182, 184, 204 (8 U.S.C. 1101(a)(15)(j), 1182(e), 1182(j), 1258); Pub. L. 91–225, 84 Stat. 116, 117 (8 U.S.C. 1101, 1102); Pub. L. 97–116, 95 Stat. 1611, 1612, 1613 (8 U.S.C. 1101, 1182); Reorg. Plan No. 2 of 1977; E.O. 12048 of March 27, 1978; USIA Delegation Order No. 85–5 (50 FR 27393).

2. Section 514.23 is amended by adding the following sentence to the end of the introductory text of paragraph (a):

§ 514.23 General limitations of stay.

* * * Except that for all exchange visitors from the People's Republic of China who entered the United States on or before June 6, 1989 and whose authorized stay will expire before June 6, 1990, the prescribed period is extended an additional year.

* * * * *

Dated: July 13, 1989.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 89–16856 Filed 7–14–89; 11:15 am]

BILLING CODE 8230-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–89–50]

Special Local Regulations for Marine Events; Defenders' Day Celebration; Patapsco River, Fort McHenry, Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.515.

SUMMARY: This notice implements 33 CFR 100.515 for the Defenders' Day Celebration held annually for the past twenty years. The regulations in 33 CFR 100.515 are needed to control vessel traffic in the immediate vicinity of this event. The regulations restrict vessel traffic in the area for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATE: The regulations in 33 CFR 100.515 are effective from 5:30 p.m. to 9:30 p.m., September 10, 1989.

FOR FURTHER INFORMATION CONTACT: Billy J. Stephenson, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Mayor's Office of the City of Baltimore is sponsoring this celebration, which will consist of a fireworks display launched from a barge anchored in the Patapsco River approximately 180 yards south of Fort McHenry Channel Range Front Light. A portion of the river will be closed to waterborne traffic for a brief period during this fireworks display. Traffic should not be severely disrupted.

Date: June 20, 1989.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 89–16720 Filed 7–17–89; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 05–89–17]

Special Local Regulations for Marine Events; Defenders' Day Celebration; Patapsco River, Fort McHenry, Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Permanent special local regulations are adopted for the Defenders' Day Celebration held annually on the Patapsco River in the vicinity of Fort McHenry, Baltimore, Maryland. These regulations restrict vessel navigation in the regulated area during the event. Notice of the precise date and times these regulations are effective will be published in the Local Notice to Mariners and by **Federal Register** Notice. These special local regulations are considered necessary to control vessel traffic and to provide for safety of life and property on the navigable waters in the immediate vicinity of this event.

EFFECTIVE DATE: This rule is effective July 18, 1989.

Compliance with these regulations will be required on different dates and times. The Fifth Coast Guard District Commander will publish notices in the Local Notice to Mariners and **Federal Register** announcing the date and times when these regulations are in effect.

FOR FURTHER INFORMATION CONTACT: Billy J. Stephenson, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, (804) 398–6204.

SUPPLEMENTARY INFORMATION: The Coast Guard published a notice of proposed rulemaking concerning these regulations in the **Federal Register** on April 12, 1989 (54 FR 14663). Interested persons were requested to submit comments. No comments were received, however an error was discovered in § 100.515(b)(2)(ii). The requirement stated in this paragraph should have been limited to persons on board vessels displaying the Coast Guard ensign, as in § 100.515(b)(2)(i). Several editorial changes also have been made in § 100.515(c).

Drafting Information

The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Comments and Final Rule

No comments were received in response to the notice of proposed rulemaking. The area covered is the same as that covered by the special local regulations issued for the Fourth of July Celebration held on July 4, 1988. The Defenders' Day Celebration has been held annually for the past twenty years, but has not been regulated before. The celebration includes a fireworks display launched from a barge anchored in the Patapsco River approximately 180 yards south of Fort McHenry Channel Range Front Light. A portion of the river will be closed to waterbone traffic during the display.

Economic Assessment and Certification

These regulations are not considered to be major under Executive Order 12291 on Federal Regulation nor significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this rule is expected to be minimal, the Coast Guard certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Impact

This final rule has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and has been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new § 100.515 is added to read as follows:

§ 100.515 Patapsco River, Baltimore, Maryland.

(a) *Definitions.* (1) *Regulated area.* The waters of the Patapsco River bounded by the arc of a circle with a radius of 1,000 feet and with its center located at latitude 39°15'44.5" North, longitude 76°34'40.0" West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Group Baltimore.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) the operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Any spectator vessel may anchor outside the regulated area specified in paragraph (a)(1) of these regulations but may not block a navigable channel.

(c) *Effective Period.* The Commander, Fifth Coast Guard District will publish a Notice in the **Federal Register** and in the Fifth Coast Guard District Local Notice to Mariners announcing the date and times this section is in effect.

Dated: June 20, 1989.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 89–16721 Filed 7–17–89; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD1 89–026]

Great Kennebec River Whatever Race, Gardiner, ME

AGENCY: Coast Guard; DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent special local regulations for the Great Kennebec River Whatever Race. The event, sponsored each year by the Kennebec Valley Chamber of Commerce, is a marine parade to celebrate the cleanup of the Kennebec River. During the one day event, the regulations will place operating restrictions on watercraft operating on the Kennebec River between Augusta and Gardiner, Maine. Public notice of the exact dates of the regatta will be published each year in a **Federal Register** Notice and in the Coast Guard Local Notice to Mariners.

DATES: These regulations are effective at 6:00 a.m. on July 2, 1989 and terminate at 6:00 p.m. on July 2, 1989 and will be in effect each year thereafter during the same time period on the first Sunday of July or as published in a **Federal Register** Notice and the Coast Guard Local Notice to Mariners.

FOR FURTHER INFORMATION CONTACT: Captain Ronald L. Blake, (617) 223–8310.

SUPPLEMENTARY INFORMATION: On May 5, 1989, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** (54 FR 19410) for this regulation. Interested parties were requested to submit comments and no comments were received. Accordingly, no changes are being made to the regulations as proposed. These regulations are being made effective in less than 30 days from the date of publication as there was not sufficient time in advance of the event to provide for a delayed effective date.

Drafting Information

The drafters of these regulations are Lt. L. Brown, project officer, First Coast Guard District Boating Affairs Branch and Lt. J.B. Gately, project attorney, First Coast Guard District Legal Office.

Discussion of Regulations

The Great Kennebec River Whatever Race is a marine parade sponsored by the Kennebec Valley Chamber of Commerce and is held annually to celebrate the cleanup of the Kennebec River. Approximately 3,000 people and 250 unpowered watercraft of all description are expected to participate along with some 100 spectator craft. The only requirement placed by the sponsor on participants is that all entries be unpowered: traditionally the event attracts a great number of homemade rafts of unique design. The race will start at the U.S. Route 201-202 bridge in Augusta, Maine and finish at the Maine Route 128 bridge connecting Randolph and Gardiner, Maine. The event will be patrolled by the Coast Guard, Coast Guard Auxiliary, state and local law enforcement organizations, and sponsor provided patrol craft. The regulations will serve to restrict the operating speed of vessels in the race area and require race participants (those persons on unregistered and undocumented vessels) to wear Coast Guard approved personal flotation devices.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

These proposed regulations are considered to be nonmajor under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The event will draw a number of spectators and participants into the area which will aid the local economy. The effective period of regulation is short and the only adverse impact to uninterested and commercial vessels is that navigation on the regulated area (approximately five (5) miles of the river) will be reduced to five (5) mph or "NO WAKE" speed, whichever is less. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (Water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new § 100.108 is added to read as follows:

§ 100.108 Great Kennebec River Whatever Race.

(a) *Regulated Area.* That portion of the Kennebec River, extending bank to bank, between the Maine Route 128 bridge (at latitude 44-14 North, longitude 69-46-15 West connecting Randolph and Gardiner, Maine) to the U.S. Route 201-202 bridge (at latitude 44-18-43 North, longitude 69-46-26 West in Augusta, Maine).

(b) *Special Local Regulations.* The following requirements will be placed on vessels operating within the regulated area during the effective period of regulation:

(1) All persons on board any vessel which does not possess a valid state registration or federal documentation shall at all times wear a Coast Guard approved Type I, II, or III personal flotation device (lifejacket).

(2) Spectator and/or transiting vessels shall not exceed five (5) mph or "NO WAKE" speed, whichever is slower.

(3) All vessels shall exercise extreme caution when operating near parade participants and shall be alert for disabled craft and persons possibly falling overboard.

(4) All vessel operators shall immediately follow any instruction given by Coast Guard patrol personnel.

(5) Coast Guard Auxiliarists will be patrolling the regatta to advise participants, spectators, and transiting vessels of the content of these regulations.

(6) For any violations of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any persons in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel, if he or she is actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

(c) *Effective Dates.* These regulations are effective at 6:00 a.m. on July 2, 1989 and terminate at 6:00 p.m. on July 2, 1989 and will be in effect each year thereafter during the same time period on the first Sunday of July or as published in a **Federal Register** Notice and the Coast Guard Local Notice to Mariners.

Dated: June 27, 1989.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 89-16722 Filed 7-17-89; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD1 89-027]

Ray Catena Mercedes Benz Offshore Grand Prix, Manasquan, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: The Coast Guard is establishing permanent special local regulations for the Ray Catena Mercedes Benz Offshore Grand Prix. The event, sponsored each year by the New Jersey Offshore Powerboat Racing Association, is an Indy 500 type power boat race held on the coastal Atlantic waters between Spring Lake, NJ and Seaside Heights, NJ. The regulations will place restrictions on vessels operating in the Manasquan Inlet area during the effective period of regulation. Within the regulated area there will be a race course, a spectator area, and a transiting lane for those vessels wishing to exit Manasquan Inlet. Public notice of the exact dates of the regatta will be published each year in a **Federal Register** Notice and in the Coast Guard Local Notice to Mariners.

DATES: These regulations are effective at 9:00 a.m. on July 11, 1989 and terminate at 3:00 p.m. on July 11, 1989 and will be in effect each year thereafter during the same time period on the second Tuesday of July or as published in a **Federal Register** Notice and the Coast Guard Local Notice to Mariners.

FOR FURTHER INFORMATION CONTACT: Captain Ronald L. Blake, (617) 223-8310.

SUPPLEMENTARY INFORMATION: On 27 April 1989 the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for this regulation. Interested parties were requested to submit comments and no comments were received. Accordingly, no changes are being made to the regulation as proposed. These regulations are being made effective in less than 30 days from the date of publication as there was not sufficient time in advance of the event to provide for a delayed effective date.

Drafting Information: The drafters of this notice are Capt. R.L. Blake, project officer, First Coast Guard District Boating Safety Division, and Lt. J.B. Gately, project attorney, First Coast Guard District Legal Division.

Discussion of Regulations: The Ray Catena Mercedes Benz Offshore Grand Prix is a high speed Indy 500 type power boat race around a rectangular course. The race course is situated on the coastal waters of the Atlantic Ocean extending from Spring Lake, NJ to Seaside Heights, NJ. Sponsor provided patrol craft will mark the spectator area which will be established from Manasquan Inlet northward for one half (½) mile. Vessels exiting Manasquan Inlet and wishing to transit the area will be directed to proceed north along the shore until clear of (north of) the regulated area. No vessels will be allowed to exit Manasquan Inlet in a southerly direction during the effective period of regulation. The regulated area will be patrolled by the U.S. Coast Guard, the Coast Guard Auxiliary, state and local law enforcement agencies, and the sponsor.

Federalism Assessment: This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification: These proposed regulations are considered to be nonmajor under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The event will draw a number of spectators and participants into the area which will aid the local economy. The effective period of regulation is short and the only adverse impact to uninterested and commercial vessels is that southerly navigation upon exit from Manasquan Inlet will not be allowed. Those vessels will have to endure the minor inconvenience of a northward detour before heading south. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations: In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new § 100.109 is added to read as follows:

§ 100.109 Ray Catena Mercedes Benz Offshore Grand Prix, Manasquan, NJ.

(a) Regulated Area. The regulated area is the coastal Atlantic waters of New Jersey between the towns of Spring Lake and Seaside Heights. Specifically, the boundaries of the regulated are:

(1) Northerly: An east to west line at latitude 40-10-00 North.

(2) Southerly: An east to west line at latitude 39-55-00 North.

(3) Easterly: A line drawn parallel to, and one and one-half (1½) miles seaward from, the New Jersey coast between the north and south boundaries of the regulated area.

(4) Westerly: The New Jersey shoreline between the north and south boundaries of the regulated area.

(b) Special Local Regulations. The following regulations will be in effect:

(1) The regulated area will be closed to all traffic except participants, patrol craft, and those vessels authorized by the sponsor. The Coast Guard patrol commander may, at his discretion, allow vessels to enter the regulated area between races. Transiting and spectating vessels are exempted from this requirement as follows:

(i) Transiting Vessels. Vessels exiting Manasquan Inlet may transit the regulated area in a northerly direction only: navigation in any other direction is prohibited. Coast Guard patrol vessels will be present to direct transiting vessels to proceed north within one-quarter (¼) mile of the shore until clear of the regulated area in the vicinity of Spring Lake, NJ.

(ii) Spectating Vessels. The spectator fleet will be held behind (west of) a line running parallel to, and one-quarter (¼) mile from, the coast between the tip of the Manasquan Inlet north jetty and a point approximately one-half mile north of the jetty. The sponsor shall provide readily identifiable banners to mark the spectator area. Vessels will not be allowed to observe the race from any other area.

(2) No vessel shall proceed at a speed greater than six (6) knots while in Manasquan Inlet during the effective period of regulation.

(3) Should race participants find themselves within the spectator fleet at any time during the event, they shall immediately reduce speed, come "off plane," and not return to racing speed until clear of spectator vessels.

(4) All persons and vessels shall comply with the instructions of U.S. Coast Guard personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(5) Any violations of these regulations, by either the sponsor or participants, shall be sufficient grounds for the Coast Guard patrol commander to terminate the event.

(6) For any violations of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any persons in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel, if the owner is actually onboard.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

(c) Effective Dates. These regulations are effective at 9:00 a.m. on July 11, 1989 and terminate at 3:00 p.m. on July 11, 1989 and will be in effect each year thereafter during the same time period on the second Tuesday of July or as published in a **Federal Register** Notice and the Coast Guard Local Notice to Mariners.

Dated: June 27, 1989.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 89-16723 Filed 7-17-89; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD1 89-058]

Windjammer Days, Boothbay Harbor, ME

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: The Coast Guard is establishing permanent special local regulations for the Windjammer Days sail parade. The display of classic schooners, without auxiliary power, is sponsored by the Boothbay Harbor Region Chamber of Commerce. An

aerial demonstration and fireworks will also be part of the celebration. The regulations will be in effect from July 11 to 12, 1989 and will place operating restrictions on watercraft operating in the vicinity of the parading sail vessels, fireworks, and an aerial display. The regulations are constructed such that free navigation is restricted only while each of the events is taking place. These regulations are needed to provide for the safety of life on the navigable waters of the United States.

DATES: These regulations are effective at 2:00 p.m. on July 11, 1989 and terminate at 10:00 p.m. on July 12, 1989 and will be in effect each year thereafter during the same time period commencing on the second Tuesday of July or as published in a **Federal Register** Notice and the Coast Guard Local Notice to Mariners.

FOR FURTHER INFORMATION CONTACT: Captain Ronald L. Blake, (617) 223-8310.

SUPPLEMENTARY INFORMATION: On May 22, 1989 the Coast Guard published a notice of proposed rulemaking in the **Federal Register** (54 FR 21982) for this regulation. Interested parties were requested to submit comments and no comments were received. Accordingly, no changes are being made to the regulation as proposed. These regulations are being made effective in less than 30 days from the date of publication as there was not sufficient time in advance of the event to provide for a delayed effective date.

Drafting Information: The drafters of this notice are Capt. R.L. Blake, project officer, First Coast Guard District Boating Safety Division, and Lt. J.B. Gately, project attorney, First Coast Guard District Legal Division.

Discussion of Regulations: The Windjammer Days is a sail parade of classic schooners which are restricted in their ability to maneuver since none of the yachts are equipped with auxiliary power. The vessels will be parading under sail from the Tumbler Island area to the Boothbay Inner Harbor. The regulations will require all vessels to maintain a separation of 100 yards or more from the parading vessels to ensure that parade participants have ample maneuvering room. The 100 yard stand-off area will move with the parading vessels; once the last sailing vessel has passed, spectating and transiting vessels will be allowed unrestricted navigational freedom. In conjunction with the parade, there will be aircraft acrobatic stunts and fireworks and no vessels will be permitted to enter the waters under the aerial display or around the fireworks barge.

Federalism Assessment: This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification: These proposed regulations are considered to be nonmajor under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The event will draw a number of spectators and participants into the area which will aid the local economy. Navigation will be restricted intermittently within the regulated area during the effective period of regulation and all vessels, commercial and recreational, will have access to all portions of Boothbay Harbor and the Atlantic Ocean with minimal inconvenience and little delay. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations: In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new section 100.107 is added to read as follows:

§ 100.107 Windjammer Days, Boothbay Harbor, Maine

(a) Regulated Area. The Boothbay Harbor entrance and harbor channel extending from the Tumbler's Island Buoy #8 area to Boothbay Inner Harbor. Specifically, the regulated area is enclosed as follows: a line drawn due east from the southwest (43-50-10 North; 069-38-20 West to the Spruce Point Shore; thence following the shore north along Spruce Point and around the Boothbay Harbor to Railway Point (43-50-54 North; 069-38-20 West); thence extending seaward in a southerly direction back to the southwest boundary of the regulated area.

(b) Special Local Regulations.

(1) Between the hours of 2:30 p.m. and 4:00 p.m. on July 11, 1989 an aircraft aerobatic demonstration will take place in the southern portion of the regulated area. All transiting and spectating vessels shall remain clear of the waters below the flight area. Coast Guard vessels will be present to direct marine traffic and to establish exact spectator boundaries.

(2) When operating within the regulated area during the sail parade, all vessels with the exception of official regatta patrol vessels, shall maintain a separation of at least 100 yards from the parade participants. The 100 yard area will move with each vessel in the parade as they transit to Boothbay Inner Harbor.

(3) Between the hours of 8:00 p.m. and 10:30 p.m. on July 12, 1989, a fireworks barge will be anchored southwest of McFarland Island in approximate location 43-50-35 North; 38-30-00 West. All vessels must maintain a clearance of 300 yards from the barge or as directed by Coast Guard patrol vessels.

(4) All vessels shall exercise extreme caution when operating in the regulated area.

(5) Coast Guard Auxiliarists will be patrolling the regatta to advise participants, spectators, and transiting vessels the content of these regulations.

(c) Effective Dates. These regulations become effective at 2:00 p.m. on July 11, 1989 and terminate at 10:00 p.m. on July 12, 1989 and will be in effect each year thereafter during the same time period commencing on the second Tuesday of July or as published in a **Federal Register** Notice and the Coast Guard Local Notice to Mariners.

Dated: June 27, 1989.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 89-16724 Filed 7-17-89; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD 5-89-43]

Drawbridge Operation Regulations: Elizabeth River-Eastern Branch, Norfolk, VA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment revokes the regulations for the Campostella (U.S. 460) drawbridge across the Eastern Branch of the Elizabeth River, mile 1.8, at Norfolk, because the bascule bridge has been removed. A notice of proposed rulemaking has not been issued for this regulation because removal of the bridge eliminates all need for regulation.

EFFECTIVE DATE: August 17, 1989.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704, (804) 398-6222.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Linda L. Gilliam, Project Officer, and LCDR Robin K. Kutz, Project Attorney.

This action has no economic consequences. It merely revokes regulations for a bascule bridge that no longer exists. Consequently, this action is not considered major under Executive Order 12291 on Federal Regulation nor significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Since there is no economic impact, a full regulatory evaluation is unnecessary. Because no notice of proposed rulemaking is required under 5 U.S.C. 553, this action is exempt from the Regulatory Flexibility Act (5 U.S.C. 605(b)). Nevertheless, the Coast Guard certifies that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations is amended to read as follows:

PART 117—DRAWBRIDGE REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33. U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

§ 117.1007 [Amended]

2. In § 117.1007, paragraph (a) is removed and paragraphs (b) and (c) are redesignated as paragraphs (a) and (b) respectively.

Dated: July 3, 1989.

P.A. Welling,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 89-16719 Filed 7-17-89; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF EDUCATION

34 CFR Part 222

RIN 1810-AA52

Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Impact Aid maintenance and operations program (Pub. L. 81-874). These amendments are needed to implement changes in eligibility determinations for certain local educational agencies (LEAs) that apply for assistance under section 2 of this program, and to make technical amendments to existing regulations governing the Impact Aid program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**. The changes made by these regulations will affect Impact Aid payments beginning with payments made from the fiscal year 1989 appropriations.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Hansen, Director, Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue SW., Room 2107, Washington, DC 20202-6272. Telephone: (202) 732-3637.

SUPPLEMENTARY INFORMATION: On February 24, 1988, the Secretary published a notice of proposed rulemaking (NPRM) for the Impact Aid program in the **Federal Register** (53 FR 5565). The NPRM was published contemporaneously with new final regulations governing the Impact Aid maintenance and operations assistance program (53 FR 5552). Those final regulations were preceded by an NPRM published in the **Federal Register** on May 1, 1987, 52 FR 16144 (May 1 NPRM).

The May 1 NPRM contained a provision in § 222.102(b)(1) stating that an LEA that was formed by the consolidation of school districts could establish eligibility under section 2 of Pub. L. 81-874, 20 U.S.C. 237 (section 2), on the basis of a former school district only if that former district contained some section 2-eligible Federal property at the time of consolidation. The basis for this requirement is the legislative history of the statute, which indicates that one of the purposes for allowing LEAs formed by the consolidation of school districts to qualify for section 2 eligibility and entitlement on the basis of former school districts is to avoid discouraging consolidation. If a former school district had no Federal property before consolidation, little—if any—disincentive is created by requiring the consolidated district to qualify as a whole.

The May 1 NPRM did not indicate that this requirement was a change from current policy. However, the Department subsequently discovered that the requirement would be a change from a practice under which some applicants were granted eligibility on the basis of a former school district that did not contain section 2-eligible Federal property at the time of consolidation but in which Federal property was acquired after consolidation. Therefore, although not required to do so as a matter of law, the Secretary republished this provision as a part of the February 24, 1988, NPRM to provide further opportunity for public comment.

There are no differences between this provision as published in the NPRM and these final regulations. Because the provision was also published erroneously as a final regulation on February 24, 1988 (53 FR 5552, 5558), it is not republished here.

The Secretary has determined not to issue as a final regulation the additional provision published in the February 24, 1988, NPRM that proposed the use of a proximity standard in selecting comparable properties to establish an estimated current assessed value for Federal property under section 2. The Department has since determined that such a standard would be difficult to apply and could unduly restrict the program in its selection of the properties most comparable to the Federal property.

These final regulations also make certain technical amendments to the existing section 2 regulations published in final on February 24, 1988, and to the regulations implementing changes made to Pub. L. 81-874 by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Pub. L. 100-297, which were published in the **Federal Register** on October 4, 1988 (53 FR 39019).

Public Comment

In the NPRM, the Secretary invited comments on the proposed regulations.

The Secretary did not receive any comments. The Secretary has made no changes in the provision regarding consolidated districts, which is made final in these regulations.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 533, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. Because the changes made in these regulations since publication of the NPRM are merely minor editorial and technical revisions, however, public comment could have no effect. Therefore, the Secretary has determined that publication of a proposed rule for these amendments is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order (EO) 12291. They are not classified as major because they do not meet the criteria for major regulations established in that order.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

List of Subjects in 34 CFR Part 222

Education, Education of the handicapped, Elementary and secondary education, Federally affected areas, Grant program—education, Public housing.

Dated: July 6, 1989.

(Catalog of Federal Domestic Assistance No. 84-041, School Assistance in Federally Affected Areas—Maintenance and Operations)

Lauro F. Cavazos,

Secretary of Education.

The Secretary amends Part 222 of Title 34 of the Code of Federal Regulations as follows:

PART 222—ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITIES AND ARRANGEMENTS FOR EDUCATION OF CHILDREN WHERE LOCAL EDUCATIONAL AGENCIES CANNOT PROVIDE SUITABLE FREE PUBLIC EDUCATION

1. The authority citation for Part 222 continues to read as follows:

Authority: 20 U.S.C. 236-241-1 and 242-244, unless otherwise noted.

§ 222.3 [Amended]

2. In § 222.3, the definition of "Applicant" is amended by removing the comma at the end of the sentence, and the definition of "Current Expenditures" is amended by removing the parenthetical "(20 U.S.C. 3801-3876)", and adding, in its place, "(20 U.S.C. 2701-2976)".

§ 222.99 [Amended]

3. Section 222.99(b)(3)(ii)(B) is amended by removing the word "total" in both places that it appears in the phrase "total assessed value of real property in the same tax classification as the Federal property and the total assessed value of all real property * * *", and adding, in its place, the word "average".

[FR Doc. 89-16772 Filed 7-17-89; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3617-2]

Approval of the District of Columbia's Stack Height Declarations; EPA Docket No. AM018DC

AGENCY: Environmental Protection Agency (EPA).

ACTION: Approval of SIP declaration.

SUMMARY: EPA is approving a declaration by the District of Columbia that the recent revisions to EPA's stack height regulations do not require revisions to any emission limitations in the State Implementation Plan (SIP). The intent of this action is to formally document that the District has satisfied part of its obligation under Section 406 of the Clean Air Act (CAA). This action announces the results of the District's review of all existing potential sources. The remaining obligations under Section 406 are covered by another notice.

EFFECTIVE DATE: August 17, 1989.

ADDRESSES: Copies of the submittal are available for public inspection during normal business hours at the following locations.

U.S. Environmental Protection Agency, Region III, Air Management Division, 841 Chestnut Building, Philadelphia, PA 19107, ATTN: Ed Cobbs (3AM13).

Dr. Joseph K. Nwude, Chief, Air Quality, Control Branch, Environmental Control Division, 5010 Overlook Ave., SW., Washington, DC 20032.

FOR FURTHER INFORMATION CONTACT: Mr. Denis Lohman at the EPA Region III address above or call (215) 597-8375.

SUPPLEMENTARY INFORMATION: On November 18, 1987, (52 FR 44151), EPA published a Notice of Proposed Rulemaking (NPR) for the District of Columbia. The NPR documented the District's review of sources that were potentially affected by the revised Federal stack height regulations. The District concluded that none of the sources were affected by the amended regulations. A detailed District analysis was provided in the NPR and will not be restated here.

The EPA's stack height regulations were challenged in *NRDC* v. *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the DC Circuit issued its decision affirming the regulations in large part, but remanding three provisions to the EPA for reconsideration.

These are:

1. Grandfathering pre-October 11, 1983 within-formula stack height increases from demonstration requirements (40 CFR 51.100(kk)(2));

2. Dispersion credit for sources originally designed and constructed with merged or multiflue stacks (40 CFR 51.100(hh)(2)(ii)(A)); and

3. Grandfather pre-1979 use of the refined H+1.5L formula (40 CFR 51.100 (ii)(2)).

EPA has examined the District's review of sources and determined that none of the sources are affected by any of the remanded issues.

Conclusion: As discussed in the summary, the District has satisfied part of its obligation under section 406 of the CAA, by reviewing sources to determine compliance with the July 8, 1985, GEP stack height regulation. The District has also addressed its obligations under Section 406 to adopt and submit State Implementation Plan revisions for complying with 40 CFR 51.116 and 51.164. The District's regulations intended to review sources constructed, reconstructed or modified subsequent to December 31, 1970 are covered in another Notice.

EPA has reviewed the District's submission and finds that the documentation adequately supports its position. Therefore, EPA is approving the District's declaration that no revisions to emission limitations for existing sources are required under EPA's final stack height regulations or the terms of the District's SIP adopting these stack height regulations.

The Office of Management and Budget has exempted this action from the requirements of Section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 15, 1989. This action may not be challenged later in proceedings to enforce its requirements (see Section 307 (b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Sulfur dioxide, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7642

Date: June 26, 1989.

Edwin B. Erickson,

Regional Administrator.

[FR Doc. 89-16682 Filed 7-17-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[DA 89-722]

Amendment of Part 2 of the Commission's Rules to Revise Footnotes G27 and G30 as Requested by the National Telecommunications and Information Administration

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this action the Commission is amending § 2.106, 47 CFR Part 2 by revising Government footnotes G27 and G30. This revision will better reflect the intent and practice of limiting the fixed and mobile services in the 225.0-328.6 and 335.4-399.9 MHz bands to the military services. Non-Government entities are not affected by the revised footnotes.

EFFECTIVE DATE: July 18, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Damon C. Ladson, Frequency Allocations Branch, Office of Engineering and Technology, (202) 653-8106.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, DA 89-722, adopted June 19, 1989, and released July 7, 1989.

The full text of the Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary Of Order

List of Subjects Affected in 47 CFR Part 2

Radio.

1. At the request of the National Telecommunications and Information Administration, the Commission is amending § 2.106, 47 CFR Part 2, by revising Government footnotes G27 and G30 to better reflect the intent and practice of limiting the fixed and mobil services in the 225.0-328.6 and 335.4-399.9 MHz bands to the military services. The affected bands are exclusive Government allocations for fixed and mobile services. There are no non-Government entities affected by the revised footnotes.

Federal Communications Commission.

Thomas P. Stanley,

Chief Engineer.

Part 2 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 4, 302, 303, 307, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 302, 303, 307, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended by removing footnote G30 and adding footnote G27 to column 4 for the 225-328.6 and 335.4-399.9 MHz bands and substituting the amended text for footnotes G27 and G30 to the list of footnotes at the end of the table as follows:

§ 2.106 Table of frequency allocations.

United States Table	Government Allocation (MHz) (4)
* * *	* * *
225.0-328.6	FIXED. MOBILE. 501 592 642 644 G27 G100
* * *	* * *
335.4-399.9	FIXED. MOBILE. G27 G100
* * *	* * *

Government (G) Footnotes

* * * * *

G27—In the bands 225-328.6, 335.4-399.9, and 1350-1400 MHz, the fixed and mobile services are limited to the military services.

* * * * *

G30—In the bands 138-144, 148-149.9, 150.05-150.8, 1427-1429, and 1429-1435 MHz, the fixed and mobile services are limited primarily to operations by the military services.

* * * * *

[FR Doc. 89-16471 Filed 7-17-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-575; RM-6405]

Radio Broadcasting Services; Englewood, OH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of LC Communications, allots Channel 233A to Englewood, Ohio, as the community's first local FM service. Channel 233A can be allotted to Englewood in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.6 kilometers (2.2 miles) north to avoid a short-spacing to Stations WLAP-FM, Channel 233C1, Lexington, Kentucky, and WOFX, Channel 235B, Fairfield, Ohio. The coordinates for this allotment are North Latitude 39-54-34 and West Longitude 84-17-37. Canadian concurrence has been received since Englewood is located within 320 kilometers of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective August 28, 1989. The window period for filing applications will open on August 29, 1989, and close on September 28, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-575, adopted June 26, 1989, and released July 12, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230),

BEST COPY AVAILABLE

1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for Part 73 continues to read as follows:

PART 73—[AMENDED]

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments is amended by adding the following entry, Englewood, Ohio, Channel 233A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-16712 Filed 7-17-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-541; RM-6472]

Radio Broadcasting Services; Grinnell, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Blair Broadcasting Corporation, substitutes Channel 294C2 for Channel 294A at Grinnell, Iowa, and modifies its construction permit for Station KICL-FM to specify operation on the higher powered channel. Channel 294C2 can be allotted to Grinnell with a site restriction of 8.1 kilometers (5.1 miles) northeast to avoid a short-spacing to the Channel 295C2 allotment at Osceola, Iowa, and the outstanding construction permit of Station KJJC for the Osceola allotment. The coordinates for this allotment are North Latitude 41-47-59 and West Longtide 92-39-29. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 28, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-541, adopted June 21, 1989, and released July 12, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments, is amended for Grinnell, Iowa, by adding Channel 294C2 and removing Channel 294A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-16711 Filed 7-17-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-369; RM-6282, RM-6453, RM-6580]

Radio Broadcasting Services; Mt. Morris and Savanna, Illinois, Belle Plaine, Maquoketa, Webster City, and Winterset, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of Carroll County Communications, Inc., *See* 53 FR 29927, August 9, 1988, this document substitutes Channel 262B1 for Channel 261A at Savanna, Illinois, modifies its license for Station WCCI(FM) to specify operation on the higher powered channel, substitutes Channel 239A for Channel 263A at Mt. Morris, Illinois, and modifies accordingly the construction permit (BPH-870819NE) of Mason Broadcasting Company for Station WRMA(FM). In addition, the Commission substitutes Channel 239C2 for Channel 240A at Webster City, Iowa, and modifies its license for Station KQWC(FM) to specify operation on the higher powered channel, substitutes Channel 238A for Channel 239A at Belle Plaine, Iowa, and substitutes Channel 258A for Channel 239A at Winterset, Iowa. Channel 262B1 can be allotted to Savanna, Illinois, with a site restriction 4.8 kilometers (3 miles) west of the city to meet spacing requirements to Station WLOO(FM), Channel 262B, Chicago, Illinois. Channel 239A can be allotted to Mt. Morris at Mason's construction permit site in compliance with the minimum distance separation requirements. The coordinates for Savanna at the restricted site are North Latitude 42-07-49 and West Longitude 90-09-05. The coordinates for Mt. Morris are North Latitude 42-04-14 and West Longitude 89-27-04. Channel 239C2 can be allotted to Webster City, Iowa, in compliance with the minimum distance separation requirements with a site restriction of 4.7 kilometers (2.9 miles) west to avoid a short-spacing to Station KIFG, Channel 237A, Iowa Falls, Iowa. Channel 238A can be allotted to Belle Plaine in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.3 kilometers (1.4 miles) east to avoid a short spacing to Station KGGO, Channel 235C, Des Moines, Iowa. Channel 258A can be allotted to Winterset in compliance with the Commission's minimum distance separation requirement. The coordinates for Channel 239C2 at Webster City are North Latitude 42-27-20 and West Longitude 93-52-35. The coordinates for Channel 238A at Belle Plaine are North Latitude 41-54-15 and West Longitude 92-15-02. The coordinates for Channel 258A at Winterset are North Latitude 41-19-54 and West Longitude 94-00-54. In addition, the petition filed by Maquoketa Broadcasting Co., is denied. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 28, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-369, adopted June 18, 1989, and released July 12, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended in the entry for Savanna, Illinois, by removing Channel 261A and adding Channel 262B1, in the entry for Mt. Morris, Illinois, by removing Channel 263A and adding Channel 239A, in the entry for Webster City, Iowa, by removing Channel 240A and adding Channel 239C2, in the entry for Belle Plaine, Iowa, by removing Channel 239A and adding Channel 238A, and in the entry for Winterset, Iowa, by removing Channel 239A and adding Channel 258A.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-16713 Filed 7-17-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 74

[DA 89-756]

Editorial Amendments to the Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends 47 CFR 74.502 and 74.561 regarding radio frequencies to correct minor errors in that text.

EFFECTIVE DATE: July 18, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rita McDonald, Policy and Rules Division, Mass Media Bureau (202) 254-3394.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 74

Radio broadcasting.

Oversight of the Commission's Rules; Order

Adopted: June 30, 1989.

Released: July 12, 1989.

By the Chief, Mass Media Bureau:

1. By this Order, the Commission amends its Rules to correct oversights that occurred as a result of previous amendments made to Part 74 relating to aural broadcast auxiliary station rules. In the *Second Report and Order in Gen. Docket 82-334*, 50 FR 48599 (Nov. 26, 1985), the Commission amended, inter alia, § 74.561 relating to frequency tolerances for transmitters using bands 17.7-19.7 GHz and 31.0 to 31.3 GHz, and § 74.502 concerning frequency bands. In doing so, a footnote was inadvertently deleted from § 74.502. Additionally, the text of paragraph (a) in § 74.561, which specified the frequency tolerance applicable to the use of other bands for aural broadcast STL and intercity relay stations, was incorrectly deleted and paragraph (a) reserved. (Subsequently, in *Report and Order in MM Docket No. 85-36*, 102 FCC 2d 940 (1985), the designation of paragraph (a) in § 74.561 as reserved was removed). This Order amends the rules by reinserting the deleted footnote from § 74.502 and by specifying a frequency tolerance of 0.005 percent which previously appeared in § 74.561 of the rules for the frequency band 944-952 MHz. It also makes several editorial amendments to § 74.561, such as expressing the frequency band in MHz as opposed to GHz.

2. Because this Order corrects errors which currently appear in the Rules and thus is not intended to make any substantive changes which impose additional burdens or remove provisions relied upon by licensees or the public, we conclude for the reasons set forth above, that this revision will serve the public interest. Because it raises no issue upon which comment would serve a useful purpose, we conclude that compliance with the notice, comment, and effective date provisions, generally applicable to rule makings under the Administrative Procedure Act, as well as the requirements of the Regulatory Flexibility Act, is unnecessary here.

3. This amendment is implemented by authority delegated by the Commission to the Chief, Mass Media Bureau, under §§ 0.61 and 0.283 of the Commission's Rules.

4. Accordingly, *It is ordered*, That pursuant to §§ 4, 5, and 303 of the Communications Act of 1934, as amended, and §§ 0.61 and 0.283 of the Commission's Rules, §§ 74.502 and 74.561 of the FCC Rules and Regulations are hereby amended as set forth below, effective upon publication in the **Federal Register**.

5. For further information on this *Order*, contact Rita S. McDonald, (202) 632-5414, Mass Media Bureau.

Federal Communications Commission.

Alex D. Felker,

Chief, Mass Media Bureau.

Amendatory Text

47 CFR Part 74 is amended as follows:

PART 74—[AMENDED]

1. The authority citation for Part 74 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. Paragraph (a) of § 74.502 is amended by adding a footnote designator 1 after "944-952 MHz" and a footnote 1 to read as follows:

§ 74.502 Frequency assignment.

(a) * * *

Note: In addition to this band, stations in Puerto Rico may continue to be authorized on 942.5, 943.0, 943.5, 944.0 MHz in the band 942-944 MHz on a primary basis to stations and services operating in accordance with the Table of Frequency Allocations.

* * * * *

3. Section 74.561 is revised to read as follows:

§ 74.561 Frequency tolerance.

In the bands above 944 MHz, the operating frequency of the transmitter shall be maintained in accordance with the following table:

Frequency band (MHz)	Tolerance as percentage of assigned frequency
944 to 952[1]	0.005
17,700 to 19,700	0.003
31,000 to 31,300	0.03

[FR Doc. 89-16714 Filed 7-17-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 809, 810, 814, 816, 828, 852, and 870

RIN: 2900-AE04

Acquisition Regulation: Packaging Requirements; Estimated Quantities

AGENCY: Department of Veterans Affairs.

ACTION: Final Regulations.

SUMMARY: The Veterans Administration (VA) is amending the Veterans Affairs Acquisition Regulation (VAAR) to clarify VA's right to repackage shipments at the contractor's cost should noncompliance with packaging requirements occur, and to allow contractors to bid for the National Cemetery System's annual monument requirements at less than 75 percent of the annual estimated quantity. These amendments will enhance competition and increase supply sources which should lower costs. This regulation also contains certain technical amendments to correct erroneous references, reflect new organizational titles and Department of Veterans Affairs

nomenclature, correct erroneous terminology, and delete duplicative coverage already provided for in the Federal Acquisition Regulation (FAR).

EFFECTIVE DATE: July 7, 1989.

FOR FURTHER INFORMATION CONTACT: Mildred C. Shields, Acquisition Policy Staff (93), Office of Acquisition and Materiel Management, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3784.

SUPPLEMENTARY INFORMATION: The VA is revising two clauses in VAAR 852.210-76 and 852.216-70.

The clause at 852.210-76 is revised to clarify VA's right to either reject or repackage shipments that do not comply with specified packaging requirements and charge the contractor for the actual cost of the repackaging.

A new paragraph is added to the estimated quantities clause at 852.216-70 to allow bids from contractors for less than 75 percent of the National Cemetery System's annual requirements for monuments.

On June 27, 1988, there was published in the **Federal Register** a notice of proposed rulemaking (53 FR 24106). One comment was received about VA's rights to repackage shipments at the contractor's cost. The commenter believed that the proposed regulation would be overturned and declared illegal by any court because "the contractor has the right to receive a default notice and be given an opportunity to cure any problem." The contractor referred to the Uniform Commercial Code, which does not apply to Federal contracts. The clause found at 852.210-76, Noncompliance with Packaging, Packing, and/or Marking Requirements, reserves VA's right to repackage shipments and charge the contractor the actual cost. However, the contractor has the right, under the Contract Disputes Act of 1978 (41 U.S.C. 601-613), to submit a claim. The act establishes procedures and requirements for asserting and resolving claims by or against contractors arising under or relating to a contract subject to the act. The default clause would not apply to the situation referenced by the commentor. Therefore, the proposed regulation is adopted as final without change.

Executive Order 12291

Pursuant to the memorandum from the Director, Office of Management and Budget, to the Administrator, Office of Information and Regulatory Affairs, dated December 13, 1984, this final rule is exempt from sections 3 and 4 of Executive Order 12291.

Regulatory Flexibility Act (RFA)

Because this proposed regulation does not come within the term "rule" as defined in the RFA (5 U.S.C. 601(2)), it is not subject to the requirements of that act. In any case, this change will not have a significant impact on a substantial number of small entities because the provisions are primarily clarifications of existing procedures which will not significantly impact the private sector.

Paperwork Reduction Act

This proposed regulation requires no additional information collection or recordkeeping requirement upon the public.

List of Subjects in 48 CFR Parts 809, 814, 816, 828, 852 and 870

Government procurement.

Approved: July 7, 1989

Edward J. Derwinski,

Secretary.

48 CFR Parts 809, 810, 814, 816, 828, 852 and 870 are amended as follows:

PARTS 809, 810, 814, 816, 828, 852, 870—[AMENDED]

1. The authority citation for Parts 809, 810, 814, 816, 828, 852 and 870 continues to read as follows:

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

809.206, 809.270, 809.404, 809.405, 810.007, 814.406, 816.7001, 828.7101, 852.233-2, 870.112 [Amended]

2. a. In sections 809.206, 809.405, 810.006, 810.007, 814.406, 816.7001, 828.7101, 852.233-2, and 870.112 remove the words "Director, Office of Procurement and Supply" wherever they appear, and insert in their place, the words "Deputy Assistant Secretary for Acquisition and Materiel Management".

b. In sections 809.206, 809.270, 809.404, 809.405, and 816.7001, remove the words "Office of Procurement and Supply" wherever they appear, and insert in their place, the words "Office of Acquisition and Materiel Management".

809.106-1 [Amended]

3. In 809.106-1(b), remove the words "the VA" and insert in their place, the word, "VA".

4. Section 809.106-1 is amended by revising the last sentence in paragraph (c) to read as follows:

809.106-1 Conditions for preaward surveys.

* * * * *

(c) * * * On-site evaluation will be made at least annually and recorded on VA Form 10-2079, Inspection Report of Bakery.

809.206 [Amended]

5. In 809.206, in paragraphs (b) and (b)(3), remove the words "the VA" wherever they appear and insert in their place, the word "VA".

810.006 [Amended]

6. In 810.006, in paragraph (c)(3), remove the words "The VA" and insert in their place, the word "VA", and in paragraph (c)(8), remove the words "the VA" and insert in their place, the word "VA".

7. Section 809.006 is amended by revising paragraph (e)(1) to read as follows:

810.006 Using specifications and standards.

* * * * *

(e) * * *

(1) All binding or rebinding of books, magazines, pamphlets, newspapers, slip cases and boxes will be procured in accordance with Government Printing Office (GPO) specifications and will be procured from the servicing GPO Regional Printing Procurement Office or, when appropriate, from commercial sources as prescribed in Subpart 808.8.

* * * * *

810.007 [Amended]

8. In 810.007(a)(1), remove the word "station," and insert in its place, the word "facility.", and in 810.007(a)(2) remove the words "the VA" and insert in their place, the word "VA".

814.201 [Amended]

9. In 814.201(c) remove the words "the VA" and insert in their place, the word "VA", and in 814.201(f)(3) remove the words "the VA's" and insert in their place, the word "VA's".

10. Section 814.201 is amended by revising paragraph (b) to read as follows:

814.201 Preparation of invitations for bids.

* * * * *

(b) Invitations for construction contracts will bear the applicable IFB number and project number, if assigned.

* * * * *

814.407-1 [Removed]

11. Section 814.407-1 is removed.

§ 814.407-71 [Amended]

12. In 814.407-71(a) remove the word "Administrator" and insert in its place, the word "Secretary", and in 814.407-71(b) remove the word "station", and insert in its place, the word "facility".

814.408 [Amended]

13. In 814.408 (a) and (b) remove the words "the VA" and insert in their place, the word "VA".

816.102 [Amended]

14. In 816.102(c) remove the words "the VA" and insert in their place, the word "VA".

15. Section 816.102 is amended by revising paragraph (b) to read as follows:

816.102 Policies.

* * * * *

(b) Contracts of the type specified in paragraph (a)(3) of this section which include an economic price adjustment provision other than those contracts awarded by the National Cemetery System for monuments or those contracts that contain the clause for service contracts (FAR 22.1006(c)) require the prior approval of the Deputy Assistant Secretary for Acquisition and Materiel Management (90). The request for approval shall clearly set forth the need for the provision.

* * * * *

16. Section 828.106-6 is added to read as follows:

828.106-6 Furnishing information.

The head of the contracting activity as defined in 802.100 shall be the agency designee referenced in FAR 28.106-6(c) to furnish copies of payment bonds to requestors except for contracts awarded by the Office of Facilities. For those contracts, Office of Facilities contracting officers shall be the Department designee.

17. Section 852.210-76 is amended by revising the clause to read as follows:

852.210-76 Noncompliance with packaging, packing, and/or marking requirements.

* * * * *

Failure to comply with the packaging, packing, and/or marking requirements indicated herein, or incorporated herein by reference, may result in rejection of the merchandise and request for replacement or repackaging, repacking, and/or marking. The Government reserves the right, without obtaining authority from the contractor, to perform the required repackaging, repacking, and/or marking services and charge the contractor at the actual cost to the Government for the same or have the required repackaging, repacking, and/or marking services performed commercially under Government order charge the contractor at the invoice rate. In connection with any discount offered, time will be computed from the date of completion of such repackaging, repacking, and/or marking services.

(End of Clause)

18. Section 852.216-70 is amended by adding paragraph (e) to read as follows:

852.216-70 Estimated quantities for requirements contracts.

* * * * *

(e) The following clause will be used for National Cemetery System contracts for monuments:

Estimated Quantities

(July 1989)

As it is impossible to determine the exact quantities that will be required during the contract term, each bidder whose bid is accepted wholly or in part will be required to deliver all articles that may be ordered during the contract term, except as he or she otherwise indicates in his or her bid and except as otherwise provided herein. Bids will be considered if made with the proviso that the total quantities delivered shall not exceed a certain specified quantity. The fact that quantities are estimated shall not relieve the contractor from filling all orders placed under this contract to the extent of his or her obligation. Also, the Department of Veterans Affairs shall not be relieved of its obligation to order from the contractor all articles that may, in the judgment of the ordering officer, be needed except that in the public exigency procurement may be made without regard to this contract.

(End of Clause)

870.112 [Amended]

19. In § 870.112, paragraph (b) is amended by removing the words "Data Management and Telecommunications", and adding in their place, the words "Information Systems and Telecommunications".

[FR Doc. 89-16637 Filed 7-17-89; 8:45 am]

BILLING CODE 3820-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 204 and 640

[Docket No. 90516-9116]

Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; policy statement and notice of OMB control number.

SUMMARY: NOAA announces a change in policy regarding the issuance of numbers and color codes for the identification of traps, buoys, and vessels in the exclusive economic zone (EEZ) in the spiny lobster fishery of the Gulf of Mexico and South Atlantic. Henceforth, NOAA will issue a number and color code for the identification of traps, buoys, and vessels in the spiny lobster fishery in the EEZ to a person who is unable to obtain a spiny lobster permit number and color code issued by Florida. The intended effect of this policy is to avoid denying access to the spiny lobster trap fishery in the EEZ to any such person. This rule also informs the public of the approval by the Office of Management and Budget (OMB) of the information collection request (ICR) necessary to effect this policy and publishes the OMB control number for that ICR.

EFFECTIVE DATE: July 18, 1989.

ADDRESS: Forms for applying for Federally issued identification numbers and color codes for the spiny lobster fishery in the EEZ may be obtained from and completed forms should be sent to Michael E. Justen, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-893-3722.

SUPPLEMENTARY INFORMATION: The spiny lobster fishery is managed under the Fishery Management Plan for Spiny Lobster in the Gulf of Mexico and South Atlantic (FMP), as amended, prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR Part 640 under the Magnuson Fishery Conservation and Management Act (Magnuson Act). The regulations require that traps, buoys, and vessels engaged in the spiny lobster trap fishery in the EEZ be identified by a number and color code issued by the Regional Director, Southeast Region, NMFS, or through Florida's identification system (§ 640.6(a)). In the preamble to the proposed rule to implement the FMP (47 FR 10880, March 12, 1982), NOAA recognized that a color code and number assigned to a vessel in the spiny lobster fishery by Florida was adequate to meet the FMP's requirements. NOAA announced that the Regional Director would issue necessary identifiers to a non-Florida-licensed vessel fishing in the EEZ, that is, a vessel not required to obtain a permit number and color code through Florida's identification system. That announced policy was in keeping with the FMP's stated desire to keep Federal costs to a minimum, avoid unnecessary duplication, and minimize burdens on fishermen in implementing the Federal identification measure. Further, that policy, in practice, did not deny any participant access to the fishery in the EEZ.

Florida recently enacted a three-year moratorium on the issuance of new spiny lobster trap licenses, thus limiting the number of participants in the spiny

lobster fishery in State waters. As a consequence, NOAA's past policy regarding issuance of Federally issued numbers and color codes could theoretically deny access to the spiny lobster trap fishery in the EEZ to Florida-based vessels unable to obtain State identifiers. Under the Magnuson Act, implementation of a system that limits entry to a fishery in the EEZ requires that the Secretary of Commerce and Councils take into account specified factors in a deliberative rulemaking process (16 U.S.C. 1853(b)(6)). Such a system is presently beyond the scope and intent of the FMP and may not be created by rule or administrative practice in the spiny lobster fishery in the EEZ.

To avoid the inadvertent potential for a limited entry system in the EEZ, the Regional Director will issue an identification number and color code for the spiny lobster trap fishery in the EEZ to an applicant who is not able to obtain a number and color code issued by Florida. A permit number and color code issued by Florida and valid in Florida's waters remains valid for use as an identifier in the EEZ. However, a Federally issued number and color code is valid only in the EEZ.

The proposed rule to implement the FMP (47 FR 10880, March 12, 1982) contained a requirement that an application for a Federal number and color code must be submitted to the Regional Director by a vessel owner or operator on a form available from the Regional Director and that an application must be submitted to the Regional Director 45 days prior to the date on which the applicant desires receipt of the number and color code. No public comments were received on this aspect of the proposed rule and it was adopted as a final rule, contained in § 640.6(b). Because of the aforementioned NOAA policy, applications for Federal numbers and color codes were not expected. Accordingly, OMB approval of the ICR for applications was not requested at that time. Subsequently, the Councils submitted and NOAA approved Amendment 1 to the FMP. One of the measures in Amendment 1 is a requirement for an annual vessel permit to engage in the commercial spiny lobster fishery in the EEZ. The permit system included application for and issuance of Federal numbers and color codes for identification of traps, buoys, and vessels in the permitted fishery. OMB approved the ICR of the permit system and issued OMB control number 0648-0205. The requirement for a Federal permit to engage in the commercial spiny lobster fishery has not been implemented because of incompatibilities between Florida and Federal management regimes. However, that part of the ICR addressing application for and issuance of a Federal number and color code is now implemented and the OMB control number applies.

Classification

This action is authorized by 50 CFR 204 and 640, and complies with E.O. 12291.

Pursuant to section 553 (b)(A) and (d)(2) of the Administrative Procedure Act (APA), notice and opportunity for public comment and the 30-day delay in effective date of this policy statement are not required because it is an interpretative rule and a general statement of policy. Relating to the Notice of OMB Control Number, the Assistant Administrator finds that because the notice of OMB Control Number portion of this rule is strictly a ministerial action required pursuant to the Paperwork Reduction Act, it is unnecessary to provide notice and opportunity for comment upon, or to delay for 30 days, the effective date of the notice of OMB control number, under the provisions of section 553 (b)(B) and (d)(3) of the APA. Because notice and opportunity for comment are not required by the APA or any other statute, the Regulatory Flexibility Act does not apply to this notice.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 204

Reporting and recordkeeping requirements.

James W. Brennan,
Assistant Administrator for Fisheries, National Marine Fisheries Service.

Dated: July 12, 1989.

For reasons set forth in the preamble, 50 CFR Part 204 is amended as follows:

PART 204—OMB CONTROL NUMBERS FOR NOAA INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 204 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520 (1982).

§ 204.1 [Amended]

2. In § 204.1(b), the table is amended by adding in the left hand column, in numerical order, "§ 640.6(b)" and adding in the right hand column, in a corresponding position "0205".

[FR Doc. 89-16731 Filed 7-17-89; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 663

[Docket No. 81130-8265]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of fishing restrictions.

SUMMARY: NOAA issues this notice modifying restrictions on fishing in 1989 for sablefish taken with nontrawl gear off the coasts of Washington, Oregon, and California. These actions are authorized under regulations implementing the Fishery Management Plan for the Groundfish Fishery off Washington, Oregon, and California, and are necessary to avoid exceeding the nontrawl sablefish quota and to accommodate small nontrawl fisheries that operate later in the year. These actions are intended to lower fishing rates, allow small but unavoidable catches to be landed, and avoid or reduce the probability of a fishery closure before the end of the year. This action supersedes fishing restrictions imposed on April 26, 1989, for sablefish caught with nontrawl gear.

DATES: Effective date: 0001 hours (Pacific Daylight Time) July 17, 1989, until modified, superseded, or rescinded. Comments will be accepted through August 2, 1989.

ADDRESSES: Submit comments on these actions to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140, Rodney R. McInnis at 213-514-6199, or the Pacific Fishery Management Council at 503-221-6352.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish Fishery off Washington, Oregon, and California (FMP) and implementing regulations at 50 CFR 663.22(a) allow the Secretary of Commerce (Secretary) to reduce fishing levels, consistent with the objectives and priorities of the FMP, to prevent or reduce biological stress in any species or species complex. When landing rates have been projected to reach an acceptable biological catch (ABC) estimate or quota before the end of the year, trip limits have been recommended by the Pacific Fishery Management Council (Council) and imposed by the Secretary to prevent or reduce biological stress while minimizing disruption of traditional fisheries. To achieve these objectives, the management measures have also been designed to extend the fishery as long as possible throughout the year, and to allow catches taken unavoidably while fishing for other species (incidental catches) to be landed to minimize the waste of fish that otherwise must be discarded once a quota is reached. By slowing the fishery and avoiding a premature fishery closure that must occur when a quota is reached, the discarding of incidental catches is minimized and the likelihood of biological stress from fishing above the optimum yield (OY) quota is lessened.

Pursuant to a recommendation of the Council, NOAA Fisheries announced in January 1989 that a trip limit of 100 pounds would be imposed on the date necessary to avoid reaching the nontrawl allocation for sablefish in 1989 (54 FR 299; January 5, 1989). Also announced was that the size and trip limit on sablefish smaller than 22 inches would be removed at the same time as the 100 pound trip limit was imposed. The Council confirmed these recommendations at its April 1989 meeting and determined that the date of implementation of the 100 pound trip limit should occur when the Council's Groundfish Management Team (GMT) determines that approximately 200 metric tons (mt) of the nontrawl allocation remains. This decision also was announced in the **Federal Register** (54 FR 18658; May 2, 1989). Public comments were requested after publication of both **Federal Register** notices. No comments were received relevant to this issue.

The best available scientific information, based on observed and expected rates of landings, indicates that the nontrawl landings of sablefish through June 17, 1989, were 2,758 mt. The GMT projects that 4,381 mt of the 4,581 mt quota for nontrawl gear will be taken by July 17, 1989. Accordingly, this action modifies the fishing restrictions imposed January 1, 1989 (54 FR 299; January 5, 1989) and April 26, 1989 (54 FR 18658; May 2, 1989) for sablefish caught with nontrawl gear off the coasts of Washington, Oregon, and California. Based upon the GMT's determinations, a 100 pound trip limit for sablefish caught by nontrawl gear will become effective on July 17, 1989.

The purpose of the 100 pound trip limit is to eliminate target fishing for sablefish with nontrawl gear, therefore drastically slowing the fishery while enabling small nontrawl fisheries that operate later in the year to continue landing small and often unavoidable catches of sablefish. The 100 pound trip limit will apply to sablefish of any size caught with nontrawl gear. Therefore, the revised trip limit replaces the current trip limit of 1,500 pounds or three percent of all sablefish on board (whichever is greater) for sablefish smaller than 22 inches (total length). The new 100 pound trip limit for sablefish caught with nontrawl gear, in conjunction with the management measures imposed earlier in the year (at 54 FR 299 and 54 FR 18658), is part of a management regime designed to prevent biological stress, avoid exceeding gear quotas, minimize discards, and provide for equitable use of the sablefish resource by the trawl and nontrawl fleets.

If the nontrawl quota of 4,581 mt is reached before the end of the year, all further nontrawl landings of sablefish will be prohibited for the rest of the year. If the 11,000 mt OY quota for sablefish is reached before the end of the year, all further landings of sablefish by all gear types will be prohibited for the remainder of 1989.

Only the provisions announced in paragraph 4(b) at 54 FR 18658 (May 2, 1989) are changed. All other provisions for sablefish caught with nontrawl gear announced in that notice, including the provision for inseason adjustments and the application of this limit to other fisheries, remain in effect.

Secretarial Action: Pursuant to 663.22(a)(3), the Secretary herein adjusts the management measures for sablefish at 50 CFR 663.27(b)(3) and at 54 FR 18658 (May 2, 1989) by replacing paragraph 4(b) with the following:

(b) Nontrawl gear.

(i) No more than 100 pounds (round weight or round weight equivalent) of sablefish caught with nontrawl gear may be taken and retained, possessed, or landed per vessel per fishing trip.

Classification

The determination to impose these fishing restrictions is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours until the end of the comment period.

An Environmental Impact Statement (EIS) was prepared for the FMP in 1982 in accordance with the National Environmental Policy Act (NEPA). The alternative and environmental impacts of this Notice of Fishing Restrictions are not significantly different than those considered in the EIS for the FMP. Therefore this action is categorically excluded from the NEPA requirements to prepare an Environmental Assessment in accordance with paragraph 5a(3) of the NOAA Directives Manual 02-10, because the alternatives and their impacts have not changed significantly.

These actions are taken under the authority of 50 CFR 663.22 and 663.23, and are in compliance with Executive Order 12291. The actions are not subject to the Regulatory Flexibility Act because there is no notice and comment period preceding the effective date of this notice, and the actions do not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Section 663.23 states that any notice issued under this section will not be effective until 30 days after publication in the **Federal Register**, unless the Secretary finds and publishes with the notice good cause for an earlier effective date. If unrestricted, catches unquestionably will exceed the nontrawl allocation and probably the OY for sablefish in 1989. Prompt action to limit these fishing rates is necessary to protect the sablefish resource and alleviate the necessity for fishery closures before the end of 1989. Delay in implementation of this action would result in an accelerated rate of landings by fishermen anticipating more restrictive limits. If landings are substantially increased, the projections made by the GMT will not be valid and the nontrawl allocation will be reached if not exceeded. As a result, nontrawl fishermen operating later in the year will be forced to discard their unavoidable catches of sablefish. If the nontrawl allocation is exceeded, the trawl allocation is lowered by the same amount, disrupting the equitable distribution of the resource intended by the Council. Failure to take action by the projected implementation date is likely to result in early achievement of OY, early closure of both nontrawl and trawl sablefish fisheries, and thus increased discards of the unavoidable catch of sablefish taken while fishing for other species. Consequently, further delay of these actions is impracticable and contrary to the public interest, and for good cause these actions are taken in final form effective July 17, 1989.

The public has had opportunity to comment on these management measures. The public participated in the Groundfish Select Group, GMT, Groundfish Advisory Subpanel, and Council meetings in November 1988, and March and April 1989 that generated the management actions endorsed by the

Council and the Secretary. Public comments were requested, and none relevant to this action were received, following publication of the **Federal Register** notices at 54 FR 299 (January 5, 1989) and 54 FR 18658 (May 2, 1989).

List of Subjects in 50 CFR Part 663

Administrative practice and procedures, Fisheries, Fishing.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 12, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management.

[FR Doc. 89-16737 Filed 7-17-89; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 136
Tuesday, July 18, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 50, 60, 70, 72 and 150

RIN 3150-AD21

Preserving the Free Flow of Information to the Commission

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing a revision to its rules governing the conduct of all Commission licensees and license applicants. The proposed rule would require licensees and license applicants to ensure that neither they, nor their contractors or subcontractors, impose conditions in settlement agreements under section 210 of the Energy Reorganization Act, or in other agreements affecting employment, that would prohibit, restrict, or otherwise discourage an employee from providing the Commission with information on potential safety violations. This proposed rule is necessary to prohibit the use of provisions which would inhibit the free flow of safety information to the Commission in agreements related to employment.

DATES: The comment period expires September 18, 1989. Comments received after this date will be considered if it is practical to do so, but assurance of consideration is given only for comments filed on or before that date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Service Branch. Deliver comments to One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 5:15 p.m. weekdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Lower Level, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stuart A. Treby, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492-1636.

SUPPLEMENTARY INFORMATION: Section 210 of the Energy Reorganization Act of 1974, as amended, was added as a new section to that Act in 1978 (Pub. L. 95-601). Section 210 offers protection to employees of a Commission licensee, or of a contractor or a subcontractor of a Commission licensee or applicant. The protection afforded is to those who believe they have been fired or discriminated against as a result of the fact that, among other things, they have testified or given evidence on potential safety violations, or brought suit under section 210 of the Energy Reorganization Act. Employees who have been discriminated against for raising safety issues have the right to file complaints with the Department of Labor for the purpose of obtaining a remedy for the personal harm caused by the discrimination. Following the filing of a complaint, the Department of Labor performs an investigation. If either the employee or the employer is not satisfied with the outcome of the investigation, a hearing can be held before an Administrative Law Judge, with review by the Secretary of Labor. The Secretary of Labor can issue an order for the employee to be rehired, or otherwise compensated if the employee's case is justified.

In many cases, the employee and the employer reach settlement of the issues raised in the Department of Labor proceeding before completion of the formal process and a finding by the Secretary of Labor. In general the Commission supports settlements as they provide remedies to employees without the need for litigation. However, a recent case has brought to the Commission's attention the potential for settlement agreements negotiated under section 210 to impose restrictions upon the freedom of employees or former employees protected by section 210 to testify or participate in NRC licensing and regulatory proceedings, as amended, or to otherwise provide information on potential safety violations to the Commission or the NRC staff. See *Texas Utilities Electric Co.*, Comanche Peak Steam Electric Station (Units 1 and 2), CLI-88-12, 28 NRC 605 (1988); *Texas Utilities Electric Co.*, Comanche Peak Steam Electric Station (Units 1 and 2), CLI-89-06, _____ NRC _____ (1989)).

The Commission believes that a section 210 settlement agreement, or any other agreement affecting employment, which restricts the freedom of an employee or a former employee who is subject to its provisions, to freely and fully communicate with the Nuclear Regulatory Commission about nuclear safety matters is incompatible with the objectives of that section. These provisions would have a chilling effect on communications about nuclear safety matters, and would restrict, impede, or frustrate full and candid disclosure to the Nuclear Regulatory Commission about nuclear safety matters. Any such agreement under which a person contracts to withhold safety-significant information or testimony from the Nuclear Regulatory Commission could itself be a threat to safety and therefore jeopardize the execution of the Agency's overall statutory duties.

Accordingly, the Commission is proposing to amend its regulations to require licensees and license applicants to ensure that neither they, nor their contractors or subcontractors, impose conditions in settlement agreements under section 210 of the Energy Reorganization Act, or in other agreements affecting employment, that would prohibit, restrict, or otherwise discourage an employee from providing the Commission with information on potential safety violations. The proposed rule would also require licensees and license applicants to establish procedures to ensure that their contractors and subcontractors are informed of the prohibition, that they are notified of any complaints of discrimination by an employee of a contractor or subcontractor for providing such information related to work performed for the licensee or license applicant, and to require review by the licensee or license applicant of any settlement agreements related to any employee complaints of such discrimination by a contractor or subcontractor related to work performed for the licensee or license applicant.

The proposed rule would only apply to agreements that relate to the compensation, terms conditions, and privileges of employment, including section 210 settlement agreements, and not to agreements in general. The

proposed rule applies to all provisions which might discourage an employee from providing safety information to the Commission, to Commission adjudicatory boards, or to the NRC staff.

In addition to comments in general on the proposed rule, the Commission would specifically request comments on the following issues—

1. Should the rule prohibit all restrictions on providing information to the Commission, or should limitations on an individual appearing before a Commission adjudicatory board (e.g., requiring an individual to resist a subpoena) be permissible as long as other avenues for providing information to the Commission are available?

2. Should the rule impose an additional requirement that licensees and license applicants must ensure that all agreements affecting employment, including those of their contractors or subcontractors, contain a provision stating that the agreement in no way restricts the employee from providing safety information to the Commission?

Finally, the Commission would emphasize that it will not hesitate to take immediate action against a licensee who does not comply with these regulations when effective, notwithstanding the pendency of a Section 210 matter before the Department of Labor.

Separate Views of Commissioner Roberts

I continue to question the need to impose such broad restrictions on employers' options in negotiating settlement agreements with their employees. Agreements which do not foreclose a whistleblower's freedom to bring safety information to the Commission are legally permissible in my view. Therefore, I see no public health and safety justification for a rule that would prohibit the bargaining away of *any* avenues of access to the NRC. Such a rule will tend to promote unnecessary litigation before both NRC and DOL. Moreover, I believe the proposed rule constitutes government interference in the contractual relations between licensees and their contractors that is not needed to assure adequate protection of public health and safety or of whistleblowers' freedom to bring their safety concerns to the NRC.

Should a majority approve issuance of the proposed rule I request that my views be included for comment also.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule falls within the scope of the actions described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Regulatory Analysis

The proposed rule requires Commission licensees or license applicants to ensure that they, or their contractors or subcontractors, do not enter into agreements affecting employment that restrict employees from providing information to the Commission on potential safety violations, and to develop procedures to implement this requirement. The objectives of the proposed rule are to ensure that such agreements do not restrict the free flow of safety information to the Commission and that the intent of section 210 of the Energy Reorganization Act is not frustrated. The Commission believes that the clearest and most effective method of achieving these objectives, and avoiding potential uncertainty and conflict regarding the interpretation of specific provisions, is to prohibit provisions in these agreements that in any way restrict the flow of information to the Commission, the Commission's adjudicatory boards, or the NRC staff. The alternative of imposing an additional requirement on licensees and license applicants to require any agreement affecting employment to include a provision stating that the agreement in no way restricts the employee from providing information to the Commission was rejected as unnecessary to achieve the objectives of the rule. The rule, as proposed, will not impose any substantial costs on licensees or license applicants.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Although the proposed rule would apply to a wide range of Commission licensees of varying size, the proposed rule requires Commission licensees or license applicants to ensure that, they or their contractors, do not enter into agreements with employees that restrict employees from providing information to the Commission on potential safety violations and to prepare procedures to implement this requirement. The Commission believes that this will not impose a significant economic impact on Commission licensees who would be considered "small entities."

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and, therefore, that a backfit analysis is not required for this proposed rule because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 30

Byproduct material, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Government contracts, Hazardous materials—transportation, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 50

Antitrust, Classified information, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 60

High-level waste, Nuclear power plants and reactors, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 70

Hazardous materials—transportation, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

10 CFR Part 150

Hazardous materials—transportation, Intergovernmental relations, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is proposing to adopt the following amendments to 10 CFR Parts 30, 40, 50, 60, 70, 72 and 150.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for Part 30 is revised to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.61 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 30.3, 30.7(g), 30.34 (b), (c) and (f), 30.41 (a) and (c), and 30.53 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 30.6, 30.9, 30.36, 30.51, 30.52, 30.55, and 30.56 (b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 30.7, paragraph (g) is added to read as follows:

§ 30.7 Employee protection.

* * * * *

(g)(1) Each licensee and applicant for a Commission license shall assure that neither they nor their contractors or subcontractors impose, as a condition of any agreement affecting the compensation, terms, conditions and privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to Section 210 of the Energy Reorganization Act of 1974, any provision which would prohibit, restrict, or otherwise discourage, an employee from voluntarily providing to any person within the Commission information about possible violations of requirements imposed under the Atomic Energy Act or the Energy Reorganization Act, and NRC regulations, orders, and licenses.

(2) Each licensee and license applicant shall, within sixty days of the effective date of this regulation, adopt appropriate procedures to:

(i) Assure that its contractors and subcontractors are informed of the requirements of paragraph (g)(1) of this section;

(ii) Assure that it is informed by its contractors and subcontractors of each complaint, related to work performed for the licensee or license applicant, filed by an employee against the contractor or subcontractor pursuant to Section 210 of the Energy Reorganization Act relating to discrimination for protected activities as described in this section; and

(iii) Provide for prior review by the licensee or license applicant of settlement agreements negotiated under section 210 of the Energy Reorganization Act of 1974 by its contractors and subcontractors, to assure that such agreements contain no provisions of the type described in paragraph (g)(1) of this section.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

3. The authority citation for Part 40 is revised to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 40.3, 40.7(g), 40.25(d)(1)–(3), 40.35 (a)–(d) and (f), 40.41 (b) and (c), 40.46, 40.51 (a) and (c), and 40.63 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 40.5, 40.9, 40.25 (c), (d)(3), and (4), 40.26(c)(2), 40.35(e), 40.42, 40.61, 40.62, 40.64, and 40.65 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. In § 40.7, paragraph (g) is added to read as follows:

§ 40.7 Employee protection.

* * * * *

(g)(1) Each licensee and applicant for a Commission license shall assure that neither they nor their contractors or subcontractors impose, as a condition of any agreement affecting the compensation, terms, conditions and privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 210 of the Energy Reorganization Act of 1974, any provision which would prohibit, restrict, or otherwise discourage, an employee from voluntarily providing to any person within the Commission information about possible violations of requirements imposed under the Atomic Energy Act of the Energy Reorganization Act, and NRC regulations, orders, and licenses.

(2) Each licensee or license applicant shall, within sixty days of the effective date of this regulation, adopt appropriate procedures to:

(i) Assure that its contractors and subcontractors are informed of the requirements of paragraph (g)(1) of this section;

(ii) Assure that it is informed by its contractors and subcontractors of each complaint, related to work performed for the licensee or license applicant, filed by an employee against the contractor or subcontractor pursuant to section 210 of the Energy Reorganization Act relating to discrimination for protected activities as described in this section; and

(iii) Provide for prior review by the licensee or license applicant of settlement agreements negotiated under section 210 of the Energy Reorganization Act of 1974 by its contractors and subcontractors, to assure that such agreements contain no provisions of the type described in paragraph (g)(1) of this section.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

5. The authority citation for Part 50 is revised to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13 and 50.54(dd) also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C.

5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80 through 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237.

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.7(f), 50.46 (a) and (b), and 50.54(c) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.7(a), 50.10(a)–(c), 50.34 (a) and (e), 50.44(a)–(c), 50.46 (a) and (b), 50.47(b), 50.48 (a), (c), (d), and (e), 50.49(a), 50.54 (a), (i), (i)(1), (l)–(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a (a), (c)–(e), (g), and (h), 50.59(c), 50.60(a), 50.62(c), 50.64(b), and 50.80 (a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.49 (d), (h), and (j), 50.54 (w), (z), (bb), (cc), and (dd). 50.55(e), 50.59(b), 50.61(b), 50.62(b), 50.70(a), 50.71 (a)–(c) and (e), 50.72(a), 50.73 (a) and (b), 50.74, 50.78, and 50.90 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

6. In § 50.7, paragraph (f) is added to read as follows:

§ 50.7 Employee protection.

* * * * *

(f)(1) Each licensee and applicant for a Commission license shall assure that neither they nor their contractors or subcontractors impose, as a condition of any agreement affecting the compensation, terms, conditions and privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 210 of the Energy Reorganization Act of 1974, any provision which would prohibit, restrict, or otherwise discourage, an employee from voluntarily providing to any person within the Commission information about possible violations of requirements imposed under the Atomic Energy Act of the Energy Reorganization Act, and NRC regulations, orders, and licenses.

(2) Each licensee or license applicant shall, within sixty days of the effective date of this regulation, adopt procedures to:

(i) Assure that its contractors and subcontractors are informed of the requirements of paragraph (f)(1) of this section;

(ii) Assure that it is informed by its contractors and subcontractors of each complaint, related to work performed for the licensee or license applicant, filed by an employee against the contractor or subcontractor pursuant to section 210 of the Energy Reorganization Act relating to discrimination for protected activities as described in this section; and

(iii) Provide for prior review by the licensee or license applicant of settlement agreements negotiated under section 210 of the Energy Reorganization Act of 1974 by its contractors and subcontractors, to assure that such agreements contain no provisions of the type described in paragraph (f)(1) of this section.

PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

7. The authority citation for Part 60 is revised to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); sec. 121, Pub. L. 97–425, 96 Stat. 2228 (42 U.S.C. 10141).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 60.9(f), 60.10, 60.71 to 60.75 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

8. In § 60.9, paragraph (f) is added to read as follows:

§ 60.9 Employee protection

* * * * *

(f)(1) Each licensee and applicant for a Commission license shall assure that neither they nor their contractors or subcontractors impose, as a condition of any agreement affecting the compensation, terms, conditions and privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 210 of the Energy Reorganization Act of 1974, any provision which would prohibit, restrict, or otherwise discourage, an employee from voluntarily providing to any person within the Commission information about possible violations of requirements imposed under the Atomic Energy Act or the Energy Reorganization Act, and NRC regulations, orders, and licenses.

(2) Each licensee or license applicant shall, within sixty days of the effective date of this regulation, adopt appropriate procedures to:

(i) Assure that its contractors and subcontractors are informed of the requirements of paragraph (f)(1) of this section;

(ii) Assure that it is informed by its contractors and subcontractors of each complaint, related to work performed for the licensee or license applicant, filed by an employee against the contractor or subcontractor pursuant to Section 210 of the Energy Reorganization Act relating to discrimination for protected activities as described in this section; and

(iii) Provide for prior review by the licensee or license applicant of settlement agreements negotiated under section 210 of the Energy Reorganization Act of 1974 by its contractors and subcontractors, to assure that such agreements contain no provisions of the type described in paragraph (f)(1) of this section.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

9. The authority citation for Part 70 is revised to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 70.3, 70.7(g), 70.19(c), 70.21(c), 70.22 (a), (b), (d)–(k), 70.24 (a) and (b), 70.32 (a) (3), (5), (6), (d), and (i), 70.36, 70.39 (b) and (c), 70.41(a), 70.42 (a) and (c), 70.56, 70.57 (b), (c), and (d), 70.58 (a)–(g)(3) and (h)–(j) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 70.7, 70.20a (a) and (d), 70.20b (c) and (e), 70.21(c), 70.24(b), 70.32 (a)(6), (c), (d), (e), and (g), 70.36, 70.51 (c)–(g), 70.56, 70.57 (b) and (d), and 70.58 (a)–(g)(3) and (h)–(j) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 70.5, 70.9, 70.20b (d) and (e), 70.38, 70.51 (b) and (i), 70.52, 70.53, 70.54, 70.55, 70.58(g)(4), (k), and (l), 70.59, and 70.60 (b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

10. In § 70.7, paragraph (g) is added to read as follows:

§ 70.7 Employee protection.

* * * * *

(g)(1) Each licensee and applicant for a Commission license shall assure that neither they nor their contractors or subcontractors impose, as a condition of any agreement affecting the compensation, terms, conditions and privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to Section 210 of the Energy Reorganization Act of 1974, any provision which would prohibit, restrict, or otherwise discourage, an employee from voluntarily providing to any person within the Commission information about possible violations of requirements imposed under the Atomic Energy Act or the Energy Reorganization Act, and NRC regulations, orders, and licenses.

(2) Each licensee or license applicant shall, within sixty days of the effective date of this regulation, adopt appropriate procedures to:

(i) Assure that its contractors and subcontractors are informed of the requirements of paragraph (g)(1) of this section;

(ii) Assure that it is informed by its contractors and subcontractors of each complaint, related to work performed for a licensee or license applicant, filed by an employee against the contractor or subcontractor pursuant to Section 210 of the Energy Reorganization Act relating to discrimination from protected activities as described in this section; and

(iii) Provide for prior review by the licensee or license applicant of settlement agreements negotiated under section 210 of the Energy Reorganization Act of 1974 by its contractors and subcontractors, to assure that such agreements contain no provisions of the type described in paragraph (g)(1) of this section.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

11. The authority citation for Part 72 is revised to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); Secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 72.6, 72.10(f), 72.22, 72.24, 72.26, 72.28(d), 72.30, 72.32, 7244(a), (b)(1), (4), (5), (c), (d)(1), (2), (e), (f), 72.48(a), 72.50(a), 72.52(b), 72.72(b), (c), 72.74(a), (b), 72.76, 72.78, 72.104, 72.106 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.140(b), (c), 72.146, 72.154, 72.156, 72.160, 72.166, 72.168, 72.170, 72.172, 72.176, 72.180, 72.184, 72.186 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 72.10(a), (e), 72.22, 72.24, 72.26, 72.28, 72.30, 72.32, 72.44(a), (b)(1), (4), (5), (c), (d)(1), (2), (e), (f), 72.48(a), 72.50(a), 72.52(b), 72.90(a)–(d), 72.92, 72.94, 72.98, 72.100, 72.102(c), (d), (f), 72.104, 72.106, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.140(b), (c), 72.142, 72.144, 72.146, 72.148, 72.150, 72.152, 72.154, 72.156, 72.158, 72.160, 72.162, 72.164, 72.166, 72.168, 72.170, 72.172, 72.176, 72.180, 72.182, 72.184, 72.186, 72.190, 72.192, 72.194 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 72.10(e), 72.11, 72.16, 72.22, 72.24, 72.26, 72.28, 72.30, 72.32, 72.44(b)(3), (c)(5), (d)(3), (e), (f), 72.48(b), (c), 72.50(b), 72.54(a), (b), (c), 72.56, 72.70, 72.72, 72.74(a), (b), 72.76(a), 72.78(a), 72.80, 72.82, 72.92(b), 72.94(b), 72.140 (b), (c), 72.144(a), 72.146, 72.148, 72.150, 72.152, 72.154 (a), (b), 72.156, 72.160, 72.162, 72.168, 72.170, 72.172, 72.174, 72.176, 72.180, 72.184, 72.186, 72.192 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

12. In § 72.10, paragraph (f) is added to read as follows:

§ 72.10 Employee protection

* * * * *

(f)(1) Each licensee and applicant for a Commission license shall assure that neither they nor their contractors or subcontractors impose, as a condition of any agreement affecting the compensation, terms, conditions and privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to Section 210 of the Energy Reorganization Act of 1974, any provision which would prohibit, restrict, or otherwise discourage, an employee from voluntarily providing to any person within the Commission information about possible violations of requirements imposed under the Atomic Energy Act or the Energy Reorganization Act, and NRC regulations, orders, and licenses.

(2) Each licensee or license applicant shall, within sixty days of the effective date of this regulation, adopt appropriate procedures to:

(i) Assure that its contractors and subcontractors are informed of the requirements of paragraph (f)(1) of this section;

(ii) Assure that it is informed by its contractors and subcontractors of each complaint, related to work performed for the licensee or license applicant, filed by an employee against the contractor or subcontractor pursuant to Section 210 of the Energy Reorganization Act relating to discrimination for protected activities as described in this section; and

(iii) Provide for prior review by the licensee or license applicant of settlement agreements negotiated under section 210 of the Energy Reorganization Act of 1974 by its contractors and subcontractors, to assure that such agreements contain no provisions of the type described in paragraph (f)(1) of this section.

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

13. The authority citation for Part 150 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273): §§ 150.20(b)(2)–(4) and 150.21 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); § 150.14 is issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 150.16–150.19 and 150.20(b)(1) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

14. In § 150.20, the introductory text of paragraph (b) is revised to read as follows:

§ 150.20 Recognition of agreement state licenses

* * * * *

(b) Notwithstanding any provision to the contrary in any specific license issued by an Agreement State to a person engaging in activities in a non-Agreement State or in offshore waters under the general licenses provided in this section, the general licenses provided in this section are subject to the provisions of §§ 30.7(a) through (f), 30.9, 30.14(d) and §§ 30.34, 30.41, and 30.51 to 30.63, inclusive, of Part 30 of this chapter; § 40.7(a) through (f), § 40.9, and §§ 40.41, 40.51, 40.61, 40.63 inclusive, §§ 40.71 and 40.81 of Part 40 of this

chapter; and § 70.7 (a) through (f), § 70.9, and §§ 70.32, 70.42, 70.51 to 70.56, inclusive, §§ 70.60 to 70.62, inclusive, and § 70.7 of Part 70 of this chapter; and to the provisions of Parts 19, 20 and 71 and Subpart B of Part 34 of this chapter. In addition, any person engaging in activities in non-Agreement States or in offshore waters under the general licenses provided in this section:

* * * * *

Dated at Rockville, MD, this 12th day of July, 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89-16792 Filed 7-17-89; 8:45 am]

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DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 32

[Docket No. 89-7]

National Bank Lending Limits

AGENCY: Office of the Comptroller of the Currency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (the "OCC") is proposing to amend a temporary rule (the "Temporary Rule"), which revised the OCC's regulation concerning national bank lending limits with respect to the treatment of loan commitments. In issuing the Temporary Rule, the OCC emphasized in the preamble that it would provide relief for national banks that have experienced a decline in their capital, and hence, in their lending limits, after entering into loan commitments. Nonetheless, the substantive provisions of the Temporary Rule were applicable to *all* national banks.

In response to comments received which objected to the impact of the Temporary Rule on banks that have not experienced a capital decline, the OCC is proposing to amend the Temporary Rule. This amendment is intended to revise and clarify the effect of the rule on the loan commitments of national banks that have not experienced a decline in capital, by restoring some flexibility to banks in managing their loan commitments relative to their lending limits.

Although the Temporary Rule was effective when it was published, on June 24, 1988, this amendment proposes a modified transition period. As part of this transition period, the OCC proposes not to take administrative action to enforce the Temporary Rule against banks until the effective date of a final rule. However, this amendment does not propose any change to the effective date of the Temporary Rule or to the retroactive validation of loan commitments made prior to the effective date of the Temporary Rule, that were within a bank's lending limit when made. During this modified transition period, the OCC expects all national banks to become familiar with the Temporary Rule and its revisions and to amend their lending practices as necessary.

DATE: Comments must be received by September 18, 1989.

ADDRESSES: Comments should be directed to: Docket No. 89-7, Communications Division, Fifth Floor, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219; Attn: Jackie England. Comments will be available for public inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: Ellen C. Starr or Deborah Katz, Attorneys, Legal Advisory Services Division, (202) 447-1880; or Jon A. Nagy or William C. Kerr, National Bank Examiners, Supervision Policy/Research Division (202) 447-1164.

SUPPLEMENTARY INFORMATION

Drafting Information

The principal drafters of this document were Ellen C. Starr, Attorney, Legal Advisory Services Division, and William C. Kerr, National Bank Examiner, Supervision Policy/Research Division.

Background

National banks are subject to a statutory limitation on the "total loans and extensions of credit * * * to a person outstanding at one time." 12 U.S.C. section 84. Section 84 defines "loans and extensions of credit" as including "all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person * * *." 12 U.S.C. section 84(b)(1). In addition, the term "loans and extensions of credit" includes, "to the extent specified by the Comptroller of the Currency,* * * any liability of a national banking association to advance funds to or on behalf of a person pursuant to a contractual commitment." *Id.*

Exercising the authority of section 84(b)(1), and the more general regulatory authority provided at 12 U.S.C. section 84(d)(1), the OCC issued a regulation on national bank lending limits. *See* 12 CFR Part 32 (1988). At Part 32, the OCC generally restated the statutory definition of "loans and extensions of credit," and included within that definition a "contractual commitment to advance funds." *See* 12 CFR 32.2(a). A "contractual commitment to advance funds" was separately defined, and excluded "undisbursed loan funds and loan commitments not yet drawn upon" which were not otherwise the equivalent of a contractual commitment to advance funds as defined in the regulation. *Id.* at § 32.2(d). Thus, prior to the Temporary Rule, a loan commitment that was not the equivalent of a "contractual commitment to advance funds" was not considered a loan or extension of credit, such that a national bank's lending limit was applicable to it, until funds were actually disbursed under the commitment.

The OCC adopted this definition of a "contractual commitment to advance funds" largely in response to comments which advocated that loan commitments and undisbursed loan funds should not be subject to the lending limit until the funds were disbursed. *See* 52 FR 15844 (April 12, 1983). Nonetheless, the OCC expressed some concern that banks might not monitor commitments to ensure that they were properly managed. 52 FR at 15845. For example, the OCC noted that there was no legal prohibition against a national bank's entering into a loan commitment with a borrower which, alone or in combination with other obligations of that borrower, would exceed the bank's lending limit if funded. *Id.* Further, the OCC noted that the opportunity to generate fee income or the desire to retain a large borrower as a customer may create an incentive for a bank to provide a loan commitment in excess of its lending limit, where the bank speculated that its future capital levels would increase or that it would be able to sell any overline to another bank at the time of funding the commitment. *Id.*

Unfortunately, a number of banks experienced problems under the definition of a "contractual commitment to advance funds" established by Part 32. These problems involved not only the question of *which* loan commitments constituted "contractual commitments to advance funds," and thus "loans and extensions of credit," subject to the limitations of section 84, but also *when*, a bank's lending limit was applied to such a loan commitment, to determine its legality under section 84.

Section 84 does not expressly address when a bank's lending limit is applied to a loan or extension of credit, to determine its legality. However, the OCC has consistently interpreted an early Supreme Court case as establishing the principle that the lending limit is applied on the day that the loan is made. *See Corsicana National Bank* v. *Johnson*. 51 U.S. 68, 86, (1919). Thereafter, a loan which was within the bank's lending limit on the date it was made would not become a violation of § 84 even if subsequent changes in circumstances, *e.g.*, a reduction in the bank's lending limit, caused the loan to become nonconforming. The OCC also applied this principle to a loan commitment; as a result, a bank's lending limit was applied to a loan commitment only on the day, and then only to the extent, that funds were disbursed under the commitment.

This treatment of loan commitments resulted in a dilemma for a bank which entered into a loan commitment within its lending limit when made, but in excess of its lending limit at the time of funding because of an intervening reduction in the bank's capital. If the bank funded the loan in excess of its lending limit, it would violate section 84, perhaps exposing its directors to personal liability. Alternatively, if the bank did not fund the loan, in compliance with section 84, it could breach a legally binding loan commitment, thereby risking liability to its customer. The bank's dilemma was particularly acute when it was not able to sell a simultaneous participation to another lender at the time of funding the commitment. The OCC issued the Temporary Rule to provide relief for banks facing this dilemma, and to enable banks to avoid this dilemma when considering future loan commitments. *See* 53 FR 23752 (June 24, 1988).

Provisions of the Temporary Rule

In issuing the Temporary Rule, the OCC determined that it was equitable and convenient "to allow the lending limit to be applied on the date a binding, written commitment within the bank's limit is made, *i.e.*, to treat such an 'underline' commitment as a lawful 'loan and extension of credit' even if the bank's capital declines prior to funding that commitment." *Id.* Thus, "if the *total* of the proposed commitment *and* all other loans and commitments to a borrower are within the bank's lending limit at the time the commitment is made, the commitment is deemed a 'loan' and its legality under the lending limit is determined as of that time." *Id.* at 23753. In discussing "underline" commitments, the Preamble to the Temporary Rule concluded that "[o]nce a commitment is treated as a loan, it *must* be included by the bank in computing its lending limit for all subsequent loans to the borrower." *Id.* (Emphasis added.) The effect of the Temporary Rule, then, was to allow a bank to fully fund a loan commitment that was within the bank's lending limit when made, even if the bank's lending limit subsequently declined.

The Temporary Rule also addressed "overline" loan commitments, *i.e.*, those loan commitments which would exceed the bank's lending limit if funded when made. *Id.* The OCC stated that such commitments would still be permitted, because they would not be treated as "loans and extensions of credit" until funded. Thus, "if a bank has made a binding, written loan commitment to one borrower that, in combination with all other outstanding loans and commitments to that borrower, is in excess of its lending limit on the day of the commitment, the commitment is not a loan on that date.* * *" *Id.* In that event, "the lending limit must be calculated and applied on the date funds are advanced, even if capital subsequently is reduced." *Id.* A bank entering into such an "overline" loan commitment would violate section 84 if it subsequently funded the overline commitment in an amount which, alone or in combination with all other loans and extensions of credit outstanding to the borrower at the time of funding, exceeded the bank's lending limit. *Id.*

Even in issuing the Temporary Rule, however, the OCC cautioned that "[w]hen a bank is requested to enter into an outstanding binding commitment which may exceed its lending limit now or in the future, prudent banking practice would dictate that the bank take precautions to permit escape from such a dilemma." *Id.* at 23752. As an example, the OCC suggested including "a protective clause in the commitment which would release the bank from its obligation if funding the commitment would result in an overline." *Id.*

The Temporary Rule achieved its substantive purpose through an amendment to the definition of a "contractual commitment to advance funds." The Temporary Rule deleted that portion of the definition of a "contractual commitment to advance funds" which excluded "undisbursed loan funds and loan commitments not yet drawn upon" which were not otherwise the equivalent of a contractual commitment to advance funds. In its place, the Temporary Rule added in part: "A binding, written commitment to lend is a 'contractual commitment to advance funds' under this part if it and all other outstanding loans (including other binding commitments) to the borrower are within the bank's lending limit on the date of the commitment." *Id.* at 23753-54.

In order to provide the swiftest relief, the Temporary Rule was made effective on publication, *i.e.*, on June 24, 1988. *Id.* at 23752. In addition, the Temporary Rule was made retroactive, to permit "a bank to honor all legally binding commitments which were made in good faith prior to the effective date of the amendment and were within the bank's lending limit when made, even if the *advances* would cause the bank to exceed its present lending limit if they were treated as loans." *Id.* at 23753. The Preamble specifically stated, however, that the Temporary Rule would not "retroactively validate *advances* that were made prior to the effective date of the new rule and that exceeded the lending limit at that time." *Id.*

Summary of Comments Received on the Temporary Rule; Agency Action

Although the Temporary Rule was made effective on publication, the OCC requested comment on it, providing a 90-day comment period which ended on September 22, 1988. *Id.* at 23752. During the comment period, the OCC received only 13 comment letters from national banks and one trade association. Of these letters, only one opposed the intent of the Temporary Rule contending that it encouraged the perpetuation of poor management practices. This commenter suggested that banks make use of protective clauses in loan commitments. As an alternative, if the OCC chose to issue the Temporary Rule as a final rule, this commenter argued that all loan commitments should be treated consistently, *i.e.*, that an "overline" commitment should be treated as an illegal loan on the day it was entered into, rather than on the day it was funded.

The remaining 12 comment letters supported the intent of the Temporary Rule and expressed appreciation to the OCC for responding to the dilemma imposed upon banks which had experienced, or might experience, an unexpected decline in capital. Some commenters offered minor suggestions for amending the Temporary Rule. Most notable however, were four comments that addressed the effect of the Temporary Rule on banks which had not experienced a decline in capital; each of these comments objected to a perceived negative impact of the Temporary Rule on "healthy" banks. These comments are discussed below.

Three commenters suggested that the Temporary Rule be expanded, to apply to binding oral commitments in addition to binding written loan commitments. The OCC has considered this suggestion, but has chosen to retain the present scope of the Temporary Rule, which applies to binding *written* loan commitments only. Although the OCC recognizes that in some states, some oral commitments to lend may in fact be binding, the binding nature of these commitments is often determined only through litigation. With the Temporary Rule, the OCC has for the first time offered a bank a method of protecting itself and its outstanding loan commitments from a subsequent decline in the bank's capital. As a matter of prudent banking practice and for ease of monitoring compliance with section 84's lending limit, the OCC is requiring banks which would take advantage of the protection provided by the Temporary Rule to enter into binding written commitments to lend, rather than oral commitments, even where that oral loan commitment may be supported by bank documentation.

One commenter requested that any final rule be clarified to permit renewals of loan commitments, including unfunded commitments, that were within the bank's legal lending limit when made, even though the commitment may be greater than the lending limit at the time of its renewal. In response to this comment, the OCC has considered the effect of the Temporary Rule on renewals of loan commitments generally, whether funded or unfunded.

The OCC has previously recognized that the renewal of an existing outstanding loan is not an advance of funds for the purposes of section 84. Thus, the OCC has allowed a bank to renew an outstanding loan, even where the bank's lending limit has declined such that a new loan, if made as of the date of the renewal, would have resulted in a violation of the bank's lending limit. The renewal of a loan which is in excess of the bank's presently applicable lending limit, but which was legal when made, does not constitute a violation of section 84; rather, the loan is considered "nonconforming." As an integral part of the renewal of a loan in excess of the bank's presently applicable lending limit, however, the OCC has consistently required that the bank make every effort to bring the loan into conformance with its lending limit through the sale of participations or other loan restructuring prior to renewing the loan.

In that the Temporary Rule deems a loan commitment which is within a bank's lending limit when made to be a loan, a question was raised about the treatment of a renewal of an unfunded or partially funded loan commitment which was within the bank's lending limit when made but which would exceed the bank's lending limit if entered into on the date of renewal. An argument may be made that an underline loan commitment should be treated as a loan in all respects, allowing for a renewal of the commitment even after the bank's capital has declined. However, the OCC views the expiration of an unfunded or partially funded loan commitment, or any restructuring of the commitment, as an opportunity for a bank to bring that loan commitment into conformance with the bank's then-applicable lending limit.

Thus, where a bank has entered into and funded or partially funded a loan commitment which was within the bank's lending limit when made, and the bank's lending limit subsequently declines, the bank may renew that portion of the loan commitment which has been funded, as though the loan commitment were a term loan. Alternatively, the bank may enter into a new loan commitment, which, with all other outstanding obligations of the borrower, is within its new lower lending limit. As a loan commitment within the bank's lending limit when made, this commitment would be construed as a loan, which subsequently may be fully funded, even if the bank's capital and lending limit should again decline. The OCC has determined that an unfunded loan commitment, or the unfunded portion of any loan commitment, which would exceed the bank's lending limit if made on the date of renewal, may not be renewed.

If a bank renews an unfunded loan commitment, which renewal is in excess of its legal lending limit when made, the renewal will be construed as an overline commitment, not subject to the protections of the Temporary Rule. Such a renewal does not of itself constitute a violation of Section 84, however; the bank will violate Section 84 only when funds provided pursuant to an overline commitment exceed the bank's lending limit. If the bank renews the funded portion of a partially funded loan commitment which was within the bank's lending limit when made, but which now exceeds the bank's lending limit, the loan will be considered "nonconforming" to the extent that funds disbursed prior to the date of the renewal exceed the bank's lending limit as of the date of the renewal. If the bank advances additional funds, however, the bank will exceed its lending limit, and hence, violate Section 84.

Another commenter, while agreeing with the intent of the Temporary Rule, suggested that the OCC take action less formally, either through an interpretive ruling or through an internal advisory letter to national bank examiners. However, as the Temporary Rule amended the OCC's definition of a "contractual commitment to advance funds" stated at 12 CFR § 32.2(d), the OCC has determined that a regulation is the appropriate mechanism by which to implement the intention of the Temporary Rule. Further, issuing the Temporary Rule as a regulation is consistent with the OCC's continuing effort to consolidate its existing regulations and interpretive rulings on national bank lending limits into one comprehensive regulation.

As noted above, four comments addressed the effect of the Temporary Rule on a bank which had not experienced a decline in capital. Three of these comments, each from a national bank, specifically objected to the Temporary Rule, generally protesting that it restricted the flexibility of banks in managing their loan commitments relative to their lending limits. One national bank commenter stated that the Temporary Rule imposed "new and burdensome constraints on the ability of all national banks to manage their relationships with substantial borrowers." It is in response to these comments that the OCC is proposing a revision of the Temporary Rule.

Each of the three comment letters which specifically objected to the effect of the Temporary Rule on the lending practices of banks which had not experienced a decline in capital did so for the same reason, which may be described with an example. Thus, assume that a national bank has a lending limit of $10,000,000.00. The bank has one loan, in the amount of $5,000,000.00, outstanding to Borrower. At Borrower's request, the bank enters into a legally binding written commitment with Borrower for an additional $5,000,000.00, to be funded at a later date. After entering into the loan commitment, but before it is funded, Borrower requests a short term loan, of $10,000.00, from the bank. Prior to the Temporary Rule, the bank would have been allowed to extend the short term credit requested without exceeding its lending limit. Under the Temporary Rule, however, the $5,000,000.00 loan commitment must be counted as a loan when made, because as of that date it was within the bank's lending limit. By entering into the commitment, the bank has reached its lending limit, and may not extend the additional short term credit Borrower requested without violating Section 84.

The example above demonstrates that, as a result of the Temporary Rule, healthy banks may not make some extensions of credit which they could have made prior to the Temporary Rule. Thus, the Temporary Rule has been seen as placing an additional and unnecessary burden on healthy banks. In response to these objections, the OCC is proposing to amend the Temporary Rule.

The proposed amendment is intended to allow a bank which has entered into a loan commitment with a borrower, which was within the bank's lending limit when made, to extend additional credit to that borrower, which when aggregated with all other funds *actually disbursed* to the borrower, does not exceed the bank's lending limit. In proposing this revision, the OCC has recognized that most banks do carefully and effectively monitor funds actually disbursed to a borrower, thereby avoiding a violation of Section 84, even though the nominal amount of credit available to that borrower, through loans or loan commitments, exceeds the bank's lending limit.

Summary of the Proposed Revision of the Temporary Rule, With Examples

Three of the commenters objecting to the impact of the Temporary Rule on banks which had not experienced a decline in capital proposed an alternative to the Temporary Rule's treatment of loan commitments. These commenters suggested that a bank not be *required* to consider a loan commitment which was within the bank's lending limit when made as a loan, which, when combined with all other outstanding obligations of the borrower *must* be within the bank's lending limit. Rather, these commenters proposed that the bank be allowed to make an election, choosing whether a loan commitment which is within the bank's lending limit when made should be treated as a loan as of the day it is entered into or as of the day it is funded.

Although the OCC considered that alternative, the OCC has rejected it in favor of this proposed revision. In rejecting the suggestion offered by the commenters, the OCC considered that a bank may not be in the best position, at the time of entering into an underline loan commitment, to determine whether that commitment should be treated as a loan or as an overline commitment. Such a decision may better be made after the loan commitment has been entered into, if and when the bank is called upon to make an additional extension of credit which, when aggregated with the total amount to be advanced under the loan commitment, would cause the bank to exceed its lending limit to the borrower. At that point, the bank may more accurately assess its potential increases or decreases in capital, to determine the prudence of extending the later-requested credit.

To achieve the flexibility desired, the OCC is proposing a method by which "underline" loan commitments, *i.e.*, those loan commitments which, with all other outstanding obligations of the borrower, are within the bank's lending limit when made, will qualify for the protection provided by the Temporary Rule. An "overline" loan commitment, *i.e.*, a loan commitment which, with all other outstanding obligations of the borrower, exceeds the bank's lending limit on the date it is entered into, will not qualify for the protection of the Temporary Rule. However, some underline commitments, which qualified for the protection of the Temporary Rule when made, may subsequently be disqualified.

An underline commitment will be disqualified from the protection of the Temporary Rule if, after entering into the underline commitment, the bank makes an additional loan or an extension of credit to the borrower, which exceeds the bank's lending limit when combined with the nominal amount of any underline loan commitments and all other loans outstanding to the borrower. Note that, as an overline commitment is not considered a loan or an extension of credit until it is funded, merely entering into an overline commitment subsequent to a qualifying underline commitment to lend will not, of itself, disqualify an earlier qualifying commitment to lend. Advances of funds under an overline commitment may result in the disqualification of an underline commitment to lend, however.

Once an underline commitment has been disqualified, it will be treated as if it had been an overline commitment. Thus, a disqualified loan commitment may be funded only to the extent that any advance under the commitment, combined with all other obligations outstanding to the borrower, does not exceed the bank's lending limit on the date of funding. Disqualification of a loan commitment may also result in a violation of Section 84, where the funds disbursed under the loan commitment, when combined with all other outstanding obligations of the borrower and the amount of the disqualifying credit, exceed the bank's lending limit on the date of the disqualifying credit.

Although a bank does not violate Section 84 when it fully funds a qualified underline loan commitment in excess of the bank's lending limit on the date of funding, funding the loan commitment may nonetheless result in total obligations outstanding to a borrower in excess of the bank's lending limit. This excess credit is "nonconforming" for the purposes of Section 84, and must be taken into account prior to any subsequent loans which the bank would make to the borrower. In other words, to the extent that a bank has nonconforming loans outstanding to a borrower, the bank may not make additional extensions of credit to that borrower. The requirement that a bank consider its nonconforming loans prior to extending any additional credit to a borrower is not new with this proposed revision of the Temporary Rule, nor was it imposed by the Temporary Rule.

The examples below illustrate (1) the disqualification of an underline commitment, and (2) a nonconforming, but not illegal, loan commitment.

Example I: This example illustrates the disqualification of an underline loan commitment. Assume that a national bank has a lending limit of $10,000,000.00. On June 1, 1988, the bank has one loan, in the amount of $5,000,000.00, outstanding to Borrower. On July 1, 1988, at Borrower's request, the bank enters into a legally binding written loan commitment with Borrower for an additional $5,000,000.00, to be funded at a later date. As this loan commitment, when combined with all other outstanding obligations of Borrower to the bank, is within the bank's lending limit when it is made, it qualifies for the protection of the Temporary Rule. Unless it is disqualified, this loan commitment may be fully funded, notwithstanding a subsequent decline in the bank's lending limit.

On August 1, 1988, after entering into the loan commitment, but before it is funded, Borrower requests an additional loan of $1,000,000.00 from the bank; this loan is not related to the qualifying loan commitment. Once the bank makes this loan, the total outstanding obligations of the Borrower, including the amount of the unfunded loan commitment, exceed the bank's lending limit. Under the Temporary Rule, as published and made effective June 24, 1988, the bank would have violated section 84 on making this $1,000,000.00 loan to Borrower. Under the proposed revision of the Temporary Rule, however, the bank would not violate section 84. Rather, in making the

$1,000,000.00 loan, the bank has effectively elected to disqualify its July 1, 1988, loan commitment. As a disqualified underline commitment, the loan commitment may subsequently be funded only to the extent of the bank's lending limit on the date of funding. Thus, if Borrower later seeks to have the loan commitment funded, the bank may provide only $4,000,000.00 without violating section 84. Of course, the bank may attempt to sell participations for the remaining $1,000,000.00 of the loan commitment.

Note that if Borrower had requested a second loan commitment of $1,000,000.00 on August 1, 1988, rather than a loan, the July 1, 1988, loan commitment would not have been disqualified. The proposed revision provides that a qualifying loan commitment may only be disqualified by a subsequent loan or extension of credit which would cause the bank to exceed its lending limit when combined with any underline commitments to lend and all other outstanding obligations of the borrower. A loan commitment of $1,000,000.00, entered into on August 1, 1988, would have been an overline commitment. Since an overline commitment is not considered a loan or an extension of credit until it is funded, the overline commitment could not have triggered the disqualification of the July 1, 1988, loan commitment.

Example II: This example illustrates the consideration that must be given to a nonconforming loan, in excess of the bank's lending limit as a result of the bank having fully funded a qualifying loan commitment, after the bank has experienced a decline in its capital, and hence, its lending limit. Assume that a national bank has a lending limit of $10,000,000.00. On June 1, 1988, the bank has one loan, in the amount of $5,000,000.00, outstanding to Borrower. On July 1, 1988, at Borrower's request, the bank enters into a legally binding written loan commitment with Borrower for an additional $5,000,000.00, to be funded at a later date. As this loan commitment, when combined with all other outstanding obligations of Borrower to the bank, is within the bank's lending limit when it is made, it qualifies for the protection of the Temporary Rule. Unless it is disqualified, this loan commitment may be fully funded, notwithstanding a subsequent decline in the bank's lending limit.

On October 1, 1988, Borrower requests that the bank fully fund its July 1, 1988, loan commitment. By this time, the bank's lending limit has declined to $7,000,000.00. As the loan commitment was within the bank's lending limit when made, and has not subsequently been disqualified from the protection of the Temporary Rule, the bank may fully fund this loan commitment without violating section 84. However, when the bank fully funds that commitment, it will have total extensions of credit outstanding to Borrower of $10,000,000.00, exceeding its lending limit by $3,000,000.00.

On November 1, 1988, Borrower requests a short term loan of $500,000.00 from the bank. As the bank has exceeded its lending limit to Borrower, and has nonconforming extensions of credit outstanding to Borrower, the bank may not make this loan without violating section 84.

On learning of the bank's inability to extend this credit to Borrower, Borrower notes that on November 15, 1988, it will repay the first of five $1,000,000.00 installments of principal on its $5,000,000.00 loan. Borrower further notes that its present outstanding obligations, at $10,000,000.00, do not result in a violation of section 84. Thus, Borrower asks whether, on receiving that $1,000,000.00 payment, the bank may then make the requested $500,000.00 available to Borrower, for total outstanding credit to Borrower of $9,500,000.00.

Notwithstanding a reduction in Borrower's outstanding obligations, to an amount less than the $10,000,000.00 which the bank has extended to Borrower without violating section 84, the bank may not make the requested $500,000.00 available to Borrower. Even though Borrower will reduce its total outstanding obligations to the bank, the reduction will not bring the total within or below the bank's lending limit on that day. Thus, the bank's total obligations outstanding to Borrower are still nonconforming for the purposes of section 84 and the bank may not make additional extensions of credit to Borrower at this time.

Proposed Revisions to the Temporary Rule

In order to achieve the results intended by this revision, the proposal would amend the definition of a "contractual commitment to advance funds," at 12 CFR 32.2(d), to include a "qualifying commitment to lend." The revision would also add a definition of a "qualifying commitment to lend" to the definitions provided by Part 32. The definition of a "qualifying commitment to lend" notes that all written legally binding loan commitments, which, when combined with all other outstanding obligations of the borrower, are within the bank's lending limit when made, are qualifying commitments to lend. The definition then describes the disqualification of an underline loan commitment. The specific language of the proposed definitional amendments to § 32.2 is fully set forth below.

In addition to the substantive revision of the Temporary Rule, the OCC is proposing a modified transition period, during which the OCC will not take administrative action to enforce the Temporary Rule against national banks. The provision for a transition period will not change the effective date of the Temporary Rule, or its validation, for the purposes of the Temporary Rule, of all legally binding commitments which were made in good faith prior to the effective date of the Temporary Rule, and which were within the bank's lending limit when made.

The OCC proposes that the transition period extend from the date the Temporary Rule became effective, on June 24, 1988, until 60 days after the date the Temporary Rule is made a final rule. This transition period recognizes that many banks may not have fully understood the requirements of the Temporary Rule, and its applicability to all national banks. The OCC intends that national banks use the transition period to become familiar with the provisions of the Temporary Rule, and any revisions of the Temporary Rule, and amend their lending practices as necessary. As the transition rule incorporates a policy of limited administrative forbearance, it is addressed in a new, separate section of Part 32, at § 32.9. The proposed language of this rule is also set forth below.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that this notice of proposed rulemaking, if adopted as a final rule, will not have a significant economic impact on a substantial number of small banks.

Executive Order 12291

The OCC has determined that this proposed rule is not classified as a "major rule," and therefore does not require a regulatory impact analysis.

List of Subjects in 12 CFR Part 32

National banks, Lending limit, Loan commitments.

Authority and Issuance

For the reasons set forth in the preamble, Title 12, Chapter I, Part 32 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 32—LENDING LIMIT

1. The authority citation for Part 32—LENDING LIMIT continues to read as follows:

Authority: 12 U.S.C. 84 and 12 U.S.C. 93a.

2. Section 32.2, paragraph (d), is revised, and a new paragraph (f) is added, to read as follows:

§ 32.2 Definitions.

* * * * *

(d) "Contractual commitment to advance funds" means (1) an obligation to make payments (directly or indirectly) to a third party contingent upon default by the bank's customer in the performance of an obligation under the terms of that customer's contract with the third party or upon some other stated condition, (2) an obligation to guarantee or stand as a surety for the benefit of a third party, or (3) a qualifying commitment to lend (as defined at paragraph (f) of this section). The term includes, but is not limited to, standby letters of credit (as defined in paragraph (e) of this section), guarantees, puts or other similar arrangements. For the purposes of this part, undisbursed loan funds and loan commitments not yet drawn upon which are not "qualifying commitments to lend," or which are not otherwise equivalent to a contractual commitment to advance funds as defined herein are not considered a "contractual commitment to advance funds." This definition also does not include commercial letters of credit and similar instruments where the issuing bank expects the beneficiary to draw upon the issuer, which do not "guarantee" payment of a money obligation, and which do not provide for payment in the event of default of the account party.

* * * * *

(f) "Qualifying commitment to lend" means a binding written commitment to lend which, when combined with all other outstanding loans (including other binding commitments) to the borrower, is within the bank's lending limit on the date of the commitment and which has not been disqualified. A qualifying commitment to lend will be disqualified by any loan or extension of credit made subsequent to the date of the qualifying commitment, which, when combined with all other outstanding loans (including other binding commitments) attributable to the borrower, would cause the total to exceed the bank's lending limit on the date of the loan or extension of credit. In determining whether the issuance of a commitment to lend would be within a bank's lending limit on the date of the commitment, the bank may deduct from the amount of the commitment the aggregate amount of legally binding written loan participations in that commitment by other financially responsible persons or institutions.

3. A new § 32.9, is added to read as follows:

§ 32.9 Modified transition period.

Where it is established to the satisfaction of the Comptroller of the Currency that a bank has exceeded its lending limit as the result of an unintentional misapplication of the definition of a "contractual commitment to advance funds," as amended by the Temporary Rule on National Bank Lending Limits, 53 FR 23752 (June 24, 1988), the Comptroller of the Currency will not take administrative enforcement action against the bank, its officers, directors, or employees for a violation of 12 U.S.C. § 84. This policy will apply to loans and extensions of credit made from the date the Temporary Rule on National Bank Lending Limits became effective, June 24, 1988, until [insert 60 days after the effective date of the final rule].

Date: July 11, 1989.

Robert L. Clarke,

Comptroller of the Currency.

[Fr Doc. 89-16704 Filed 07-17-89; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-101-AD]

Airworthiness Directives; Aerospatiale Model ATR42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to Aerospatiale Model ATR42 series airplanes, which currently prohibits use of the autopilot when operating in icing conditions. That action was prompted by an incident in which a Model ATR42 airplane operating in icing conditions (believed to have been freezing rain) experienced roll excursions and autopilot disconnect. This condition, if not corrected, could result in loss of control of the airplane. This action would require installation of vortex generators on the upper wing surface as a terminating action to the prohibition of use of the autopilot when operating in icing conditions.

DATE: Comments must be received no later than September 8, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-101-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Aerospatiale, 216 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. McCracken, Standardization Branch, ANM-113; telephone (206) 431-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-101-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On April 7, 1989, the FAA issued AD 89-09-05, Amendment 39-6197 (54 FR 15730; April 19, 1989), to prohibit use of the autopilot on Aerospatiale Model ATR42 series airplanes when operating in icing conditions. That action was prompted by an incident in which an Aerospatiale Model ATR42 airplane operating in icing conditions (believed to have been freezing rain) experienced roll excursions and autopilot disconnect. This condition, if not corrected, could result in loss of control of the airplane.

Since issuance of that AD, flight testing and analysis have demonstrated that installation of vortex generators on the upper surface of the Model ATR42 airplane wing significantly improves the effectiveness of the ailerons, which reduces the severity of the roll upset that can occur with asymmetric ice accumulations resulting from icing conditions, such as freezing rain.

Aerospatiale has issued Service Bulletin ATR42-57-0018, dated May 3, 1989, which describes procedures for installation of vortex generators on the upper surface of the wing.

This airplane model is manufactured in France and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would revise AD 89-09-05 to require installation of vortex generators, in accordance with the service bulletin previously described, as terminating action to the prohibition of use of the autopilot in icing conditions.

The FAA has determined that long term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections or special operating procedures. Long term special operating procedures may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual special procedures, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The proposed modification requirement is in consonance with that policy decision.

It is estimated that 43 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The necessary modification parts would be provided by the manufacturer at no charge to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,880.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39:

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39-6197 (54 FR 15730; April 19, 1989), AD 89-09-05, as follows:

Aerospatiale: Applies to Model ATR42 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To minimize the potential hazards associated with operating in icing conditions including freezing rain, accomplish the following:

A. Within 10 hours time-in-service after May 3, 1989 (the effective date of Amendment 39-6197), incorporate the following into the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by including a copy of this AD in the AFM.

When operating in icing conditions, as defined in the AFM, or when freezing rain is forecast or reported, use of the autopilot is prohibited.

Warning

Prolonged operation in freezing rain should be avoided. Ice accretion due to freezing rain may result in asymmetric wing lift and associated increased aileron forces necessary to maintain coordinated flight. Whenever the aircraft exhibits buffet onset, uncommanded roll, or unusual control wheel forces, immediately reduce angle-of-attack and avoid excessive maneuvering.

B. Within 60 days after the effective date of this amendment, install vortex generators, in accordance with Aerospatiale Service Bulletin ATR42-57-0018, dated May 3, 1989. This action constitutes terminating action for the AFM prohibition required in paragraph A., above, regarding use of the autopilot when operating in icing conditions, and the limitation may be removed from the AFM.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 216 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on July 10, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-16744 Filed 7-17-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-106-AD]

Airworthiness Directives; Boeing Model 737-400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to Boeing Model 737-400 series airplanes, which would require repetitive inspections for chafing between the number two engine throttle cable and an adjacent right wing front spar bracket. This proposal is prompted by one report of a throttle cable failure and additional reports of a significant number of the cables inspected and found to be worn or frayed, on Boeing 737-300 series airplanes. In this area, the Model 737-400 is similar to the Model 737-300. This condition, if not corrected, could result in throttle cable separations and subsequent loss of engine throttle control.

DATE: Comments must be received no later than September 8, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-106-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98166. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen S. Bray, Propulsion Branch, ANM-140S; telephone (206) 431-1969. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-106-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

One operator of a Boeing Model 737-300 series airplane reported a separation of the number two engine throttle cable after 4,215 flight hours. This report prompted Boeing to conduct a survey of control cable wear on Model 737-200 and 737-300 airplanes. During the course of this survey, several incidents of wear on the number two throttle cable were found on Boeing Model 737-300 airplanes. Sixteen operators responded to the Boeing survey with the inspection results on 96 airplanes. Twenty of the 96 airplanes, were reported to have number two engine throttle cable wear, and 9 cables were within acceptable wear limits. The remaining 76 airplanes showed no cable wear, although 11 airplanes were reported as showing evidence of contact/wear on the adjacent right wing front spar bracket. The FAA has recently issued AD 89-13-05, Amendment 39-6240 (54 FR 26021; June 21, 1989), to require inspection of Model 737-300 series airplanes.

Based on the similarity of the number two throttle cable systems on the Boeing Model 737-300 and 737-400, the FAA has determined that chafing between the number two throttle cable and adjacent right wing front spar bracket (Station 124) could also develop on the Model 737-400 airplane. This chafing is caused by air flow between the right leading edge flaps and front spar which produces a harmonic disturbance that excites the number two engine throttle cable. This condition, if not corrected, could eventually result in throttle cable separation and subsequent loss of throttle control.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection for chafing between the number two engine throttle cable and adjacent right wing front spar bracket every 1,000 hours, and replacement of the cable, if necessary. Boeing Commercial Airplanes is preparing a service bulletin which will contain a structural design change to the number two engine throttle cable system. If this service bulletin is approved and available subsequent to the issuance of this NPRM, the FAA may consider referencing it in the final rule as an approved method of compliance. Further, the FAA may consider further rulemaking action to require a terminating modification after one has been developed and approved.

There are approximately 50 Model 737-400 series airplanes of the affected design in the worldwide fleet. It is estimated that 18 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,440.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator,

BEST COPY AVAILABLE

the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 737-400 series airplanes, equipped with CFM International CFM56-3 series engines, certificated in any category. Compliance required as indicated, unless previously accomplished.

To minimize the potential for cable separation due to the number two engine throttle cable chafing against the right wing front spar bracket, accomplish the following:

A. Prior to the accumulation of 300 flight hours after the effective date of this AD, unless previously accomplished within the last 700 flight hours, and thereafter at intervals not to exceed 1,000 flight hours, gain access to the fuel shut-off cable pulley bracket near the right wing front spar Station 124 and inspect the number two engine throttle cable for wear. Replace the cable, before further flight, if cable wear exceeds acceptable wear limits specified in Section 20-20-31 of the Model 737 Maintenance Manual.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on July 10, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-16743 Filed 7-17-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-113-AD]

Airworthiness Directives; SAAB-Scania Model SF-340A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain SAAB-Scania Model SF-340A series airplanes, which would require inspection of the AC generators for modification status, and replacement of the AC generators, if necessary. This proposal is prompted by numerous reports of AC generator bearing failure. This condition, if not corrected, could result in the loss of ice protection for the engine inlet; and, when combined with the loss of the other AC generator output, could result in the loss of ice protection for both engine inlets, windshield, pitot systems, alpha systems, and propellers.

DATE: Comments must be received no later than September 8, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-113-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from SAAB-Scania AB, Product Support, S-581.88 Linkoping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 89-NM-113-AD." The postcard will be date/time stamped and returned to the commenter.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority of Sweden, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on SAAB Model SF-340A series airplanes. There have been numerous reports of failure of the AC generators due to inadequate anti-drive end bearing support. This condition, if not corrected, could result in loss of ice protection for the one engine inlet; and when combined with the loss of the other AC generator output [engine or generator system failure], could result in the loss of ice protection for both engine inlets, windshields, pitot systems, alpha systems, and propellers.

SAAB-Scania has issued Service Bulletin SF340-24-016, dated May 12, 1989, which describes procedures for replacement of AC generator, P/N 31342-001, with an AC generator with the same part number but modified to "Mod D" status (indicated by an "X" stamped in the D Modification Status block on the modification status label). The "Mod D" AC generator contains bearings and bearing support improvements that have been installed in accordance with Lucas Aerospace Power Equipment Corp (LAPEC) Service Bulletin 31342-07, dated January 19, 1989. The LFV has classified the service bulletin as mandatory, and has issued Swedish Airworthiness Directive No. 1-033 addressing this subject.

This airplane model is manufactured in Sweden and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require inspection of AC generators, P/N 31342-001, for modification status and replacement, if necessary, in accordance with the service bulletin previously described.

It is estimated that 79 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $9,480.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

SAAB-Scania: Applies to Model SF-340A series airplanes, certificated in any category. Compliance is required within 30 days after the effective date of this AD, unless previously accomplished.

To prevent the loss of certain ice protection systems due to AC generator failures, accomplish the following:

A. Inspect the AC generators, P/N 31342-001, for the modification status.

1. If the modification status blocks are X-stamped in the D (or later) modification status block, no further action is required.

2. If the modification status blocks are X-stamped in the A, B, or C modification status block, prior to further flight, replace the AC generator with one X-stamped in the D (or later) modification status block, in accordance with SAAB Service Bulletin SF340-24-016, dated May 12, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB-Scania AB, Product Support, S-581.88 Linkoping, Sweden. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on July 10, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-16742 Filed 7-17-89; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33-6838; File No. S7-9-88; International Series Release No. 103]

RIN 3235-AD23

Offshore Offers and Sales

AGENCY: Securities and Exchange Commission.

ACTION: Revised proposed regulation and request for comment.

SUMMARY: The Commission is published for comment a revised proposed Regulation intended to clarify the extraterritorial application of the registration provisions of the Securities Act of 1933.

DATE: Comments should be received on or before September 12, 1989.

ADDRESS: All communications on this matter should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments should refer to File No. S7-9-88. All comments will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Sara Hanks, Anita Klein or Madison Barker, (202) 272-3246, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

On June 10, 1988, the Commission published for comment Regulation S,[1] which was intended to clarify the extraterritorial application of the registration requirements of the Securities Act of 1933 (the "Securities Act").[2] The Regulation contained both a general statement (the "General Statement"), providing that the registration requirements do not apply to offers and sales that occur outside the United States, and two non-exclusive safe harbors from those requirements for specified offers and sales.

After reviewing the comments received,[3] which supported the

[1] Securities Act Release No. 6779 (June 10, 1988) [53 FR 22861] (the "Proposing Release").

[2] 15 U.S.C. 77a *et seq.*

[3] Ninety-five comment letters on the Proposing Release were received. Those letters and a

Continued

Regulation's rationale but suggested changes to increase the utility of the Regulation, the Commission today is publishing a revised Regulation S for comment. The General Statement remains unchanged, and the proposed Regulation continues to include two safe harbors: one for issuers, securities professionals involved in the distribution process and their affiliates (the "issuer safe harbor") and the other for resales by all other persons (the "resale safe harbor").

As in the original proposal, the safe harbors would impose two general conditions. First, any offer or sale of securities must be made in an "offshore transaction." As reproposed, that definition would be broadened to cover sales on designated organized foreign securities markets. Second, "directed selling efforts" could not be made in the United States. The definition of "directed selling efforts" has been modified to emphasize that the prohibition relates only to activities that are intended, or that could reasonably be expected, to result in general preconditioning of the U.S. market.

Several significant changes have been made to the terms and conditions that must be satisfied under the safe harbors to assure that U.S. registration requirements do not apply. While the issuer safe harbor still would distinguish among three categories of issuers, the first category, which imposes no restrictions other than the two general conditions, would be broadened to include offerings by an expanded group of foreign issuers. As revised, the first category would extend to offerings by foreign issuers targeted at their home country markets and offerings by foreign issuers with no substantial U.S. market interest, whether or not the issuer had a continuous reporting obligation under the Securities Exchange Act of 1934 (the "Exchange Act").[4] In addition, the scope of the term "substantial U.S. market interest" in an issuer's securities would be narrowed to cover only equity securities for which the United States was a significant market and debt securities held in large amounts by a significant number of U.S. persons.

The second issuer safe harbor category, which originally was applicable to all reporting issuers in the proposed Regulation, has been extended in the reproposal to apply to offerings of debt securities of foreign issuers where there was a substantial U.S. market interest in the issuer's debt securities. The restricted period applicable to this safe harbor, during which offers and sales in the United States and to U.S. persons would be prohibited, has been shortened from 90 to 40 days. In addition, the Regulation as revised would no longer proscribe the deposit of securities in exchange for American depositary receipts ("ADRs") during a restricted period, but rather would focus on whether ADRs being sold to U.S. residents were traceable to the securities being offered and sold offshore.

The third issuer safe harbor category would be available to all issuers but would be of use primarily for offerings of non-reporting U.S. issuers and equity offerings of non-reporting foreign issuers with substantial U.S. market interest for the class of securities offered that would not qualify for the other two issuer safe harbor categories. This category would impose more restrictive procedures designed to guard against flowback of securities to the United States. As with the second category, the restricted period for debt securities has been reduced to 40 days.

The resale safe harbor also has been modified to distinguish between dealers and persons receiving selling concession, fees or other remuneration, and all other persons. As revised, the resale safe harbor would impose restrictions on resale beyond the general conditions only where the securities were sold by a dealer or other person receiving a selling concession, fee or other remuneration. Any security could be resold on an established foreign securities exchange or designated organized foreign securities market, if a selling dealer (or person receiving a selling commission, fee or other remuneration) or person acting on his behalf did not know that the buyer was a U.S. person.

The definition of "U.S. person" has been modified due to reconsideration of the Commission's decision to reverse the *Baer Securities* no-action letter.[5] The revised proposed definition of U.S. person would not include any discretionary custodial account or similar account held by a dealer or other professional fiduciary located in the United States if the beneficial owner was not a U.S. person. Any offer or sale to such person in reliance on the Regulation, however, would still be required to be made outside the United States to fall within the safe harbors of Regulation S.

II. Discussion of Revised Proposed Regulation S

A. General Statement

The General Statement,[6] which remains unchanged from the version initially proposed, would include a list of the considerations to be used in determining whether an offer or sale occurs outside the United States.[7] While various commenters criticized different aspects of the specified considerations, no clear consensus on any particular point was reflected. Because the list of factors was included in the original Regulation to provide assistance to persons relying on the General Statement to demonstrate an offer or sale was an offshore transaction, it has been retained in the revised Regulation. The Commission requests comment as to whether the entire list of relevent considerations should be deleted from the General Statement.

B. General Conditions

Under both the proposed Regulation and the revised version proposed today, two general conditions would apply to all offers and sales made in reliance on the Regulation.[8] Those conditions are a prohibition against "directed selling efforts" in the United States[9] and a requirement that the offer and sale of the securities be made in an "offshore transaction."[10]

1. "Directed Selling Efforts"

The prohibition against directed selling efforts in the United States have been modified in the revised proposed Regulation. The language of the definition[11] has been revised to conform to the explanation in the Proposing Release and preclude an overly broad interpretation that an isolated, limited contact with the United States would result in a loss of the safe harbor for the entire offering.[12] As revised, the definition of "directed selling efforts" includes only those activities that could reasonably be expected, or are intended, to condition the market with respect to the securities being offered in reliance upon the Regulation. As outlined in the Proposing Release, continuation of activities such as routine product advertising and routine corporate

summary of the comments are available for public inspection and copying in File No. S7-9-88 at the Commission's Public Reference Room in Washington, DC.

[4] 15 U.S.C. 78a *et seq.*

[5] *Bear Securities Corporation* (Oct. 12, 1979).

[6] Proposed Rule 901.

[7] Proposed Rule 901(b).

[8] *See* proposed Rule 904.

[9] Proposed Rule 904(b).

[10] Proposed Rule 904(a).

[11] Proposed rule 902(b).

[12] Such a contact could constitute an offer in the United States, however, which would preclude reliance on Regulation S for that specific transaction.

communications. (*e.g.*, press releases regarding the financial results of the issuer or the occurrence of material events with respect to the issuer, provided no reference is made to the offering of securities) generally would not be deemed to be "directed selling efforts" within the meaning of Regulation S.[13]

As an example of "directed selling efforts," the Proposing Release cited "placing of advertisments * * * in publications with a general circulation in the United States, which discuss the offering or are otherwise intended to condition the market for the securities purportedly being offered abroad * * *"[14] Commenters requested further explanation of this prohibition.

Publications with a general circulation in the United States, as defined in the revised Regulation,[15] would include all publications printed in the United States primarily for distribution in the United States, and all publications printed outside the United States that, on average during the preceding twelve months, either have a circulation in the United States of 15,000 copies or more per issue,[16] or have 50 percent or more of their circulation in the United States. Generally, foreign publications meeting such definition are produced as a separate edition for the United States. In such cases where the affiliated non-U.S. edition does not itself meet the definition, only the U.S. edition would be considered a publication of general circulation in the United States. An advertisment would not be deemed a directed selling effort in the United States if publication of the advertisment was required by foreign law, and contained no more information than legally required. The number of copies circulated per issue was set at 15,000 for purposes of the definition of "publications with a general circulation in the United States" by reference to the circulation figures for publications that are likely to contain advertisments that could precondition the U.S. market. Comment is solicited regarding whether that number is an appropriate indicator of general circulation in the United States and, if not, whether the number should be raised (*e.g.*, to 20,000) or lowered (*e.g.*, to 10,000). Commenters are also requested to address whether the percentage level set is appropriate, or should be higher (*e.g.*, 60 or 75 percent) or lower (*e.g.*, 35 or 40 percent), and whether a rolling twelve-month average is appropriate.

Some commenters expressed concern that the prohibition on directed selling efforts would interfere with offshore offerings of interests in real estate located in the United States. The "directed selling efforts" definition is not intended to preclude investigation of investment opportunities. Bona fide site visits to real estate, plants, or other facilities located in the United States and tours thereof conducted in the United States for a prospective investor by an issuer or persons acting on its behalf would not be directed selling efforts if the issuer had extended an offer of securities outside the United States to the prospective investor prior to the time of the visit or tour in the United States.

Several commenters expressed concern that, given the prohibition against directed selling efforts, U.S. broker-dealers would be unable to rely upon the Regulation if they initiated sales communications to non-U.S. persons from the United States. The Regulation's prohibition against directed selling efforts made in the United States is not intended to preclude such activities.

As noted in the Proposing Release,[17] the concept of directed selling efforts is not coextensive with activities constituting "solicitation," as that term is used in considering the need for registration as broker-dealer under the Exchange Act. In a recent Release regarding the applicability of U.S. broker-dealer registration requirements to foreign entities, and adopting Exchange Act Rule 15a-6,[18] the concept of solicitation was defined by the Commission as "including any affirmative effort by a broker or dealer intended to induce transaction business for the broker-dealer or its affiliates."[19] Among the examples of solicitation noted in that Release were efforts to induce a single transaction, telephone calls from a broker-dealer to a customer encouraging use of the broker-dealer to effect transactions, and transmission of information, opinions, or recommendations to particular investors in the United States, whether directed at individuals or groups. While activities directed at a single customer or prospective investor may be offers for purposes of Regulation S or solicitation for purposes of Rule 15a-6, because of their limited effect, they would not generally constitute prohibited directed selling efforts. Nonetheless, while solicitation encompasses a broader range of activities than directed selling efforts, some activities would constitute both. For example, the transmission by participants of information, opinions or recommendations to groups of investors in the United States with respect to securities being offered under the Regulation would be both directed selling efforts and offers for purposes of Regulation S and solicitation for purposes of Rule 15a-6.

Commenters stated that the dissemination in the United States of a broker-dealer's quotations for a security being offered and sold in reliance on the Regulation technically could violate the prohibition against directed selling efforts.[20] Questions regarding this aspect of "directed selling efforts" typically would be decided on an individual interpretive basis. At the present time, however, U.S. distribution of foreign broker-dealers' quotations by third-party systems, *e.g.*, systems operated by foreign marketplaces or by private vendors, that distributed such quotations primarily in foreign countries would not be deemed directed selling efforts or an offer, provided that: (i) Those systems did not enable securities transactions to be executed between foreign broker-dealers and persons in the United States through the systems; and (ii) the issuer, distributors, foreign broker-dealers and other participants in the systems did not initiate contracts with U.S. persons or persons within the United States, beyond those contracts exempted under Rule 15a-6. The direct dissemination of a foreign market maker's quotations to U.S. persons or persons within the United States, such as through a private quotation system controlled by a foreign broker-dealer, would, consistent with Rule 15a-6, be viewed as both an offer and a directed selling effort given the direct, exclusive inducement to purchase the securities.

[13] 53 FR at 22667. *See also* Securities Act Release Nos. 3844 (Oct. 4, 1957) [22 FR 8359] and 5009 (Oct. 7, 1969) [34 FR 16870]. However, where a company did not have a history of disseminating routine corporate communications or product advertising and disseminated such information shortly before or during an offshore offering, the activities might constitute directed selling efforts.

[14] 53 FR at 22667.

[15] *See* Proposed Rule 902(i).

[16] *The Financial Times* and *The Economist* are examples of foreign publications meeting this description.

[17] 53 FR at 22667, n. 84.

[18] 17 CFR 240.15a-6.

[19] Exchange Act Release No., 34-27017 (July 11, 1989).

[20] The Commission notes, however, that in the context of the broker-dealer registration requirements, Section 15(a)(1) of the Exchange Act [15 U.S.C. 78o(a)(1)], the staff has given assurances that enforcement action for failure to register would not be recommended when, absent such registration, there has been a collective distribution by organized foreign exchanges of foreign market makers' quotations. *See* Exchange Act Release No. 25801 (June 14, 1988) [53 FR at 23647 nn. 21-27 and accompanying text].

2. "Offshore Transaction"

As revised, the proposed definition of offshore transaction[21] has been expanded to encompass transactions executed on or through the facilities of a designated organized foreign securities market.[22] To qualify for that designation, a market would have to be organized under foreign law, have an established operating history, and be subject to oversight by a governmental or self-regulatory body to which securities transactions are reported on a regular basis.[23] Specific foreign markets that would meet the requirements of the definition are not individually identified in the definition.[24] Determination of "designated organized foreign securities market" status would be made on a case-by-case basis by the Division of Corporation Finance through the interpretive letter process. The designation process would not be used for established foreign securities exchanges.

While commenters responding to the request for comment endorsed the extension of "offshore transaction" to non-exchange markets, little specific suggestion was provided on the definition or the mechanism for implementation. Comment is specifically requested as to the sufficiency and appropriateness of the factors in the proposed definition of "designated organized foreign securities market" and the proposed implementation procedures. Comment is also solicited regarding whether the following characteristics also should be considered in making determinations regarding status as a designated organized foreign securities market: (i) A system for the quotation of securities; (ii) a clearance and settlement system; and (iii) oversight standards set by an existing body of law by the jurisdiction or organization.

The prohibition against pre-arranging with buyers in the United States transactions taking place on or through the facilities of a foreign securities exchange has been modified in the revised definition. As originally proposed, the seller had a duty of investigation. As revised, the prohibition would extend only to cases in which the seller (or a person acting on the seller's behalf) knew that the transaction was pre-arranged.

The proposed definition of "offshore transaction" required, for non-exchange transactions, that the buyer be outside the United States at the time the buy order was originated and that execution and delivery take place outside the United States. The definition would be modified to protect a seller that reasonably believed that the buyer was outside the United States at that time and that execution and delivery took place overseas.

C. Issuer Safe Harbor

The issuer safe harbor [25] would apply to issuers, securities professionals involved in the distribution process pursuant to contract, and their affiliates.[26] The proposed issuer safe harbor distinguished among three classes of securities, based on nationality and reporting status of the issuer and the degree of U.S. market interest in the issuer's securities. Varying procedural safeguards were imposed on the categories to ensure that the securities offered would come to rest offshore. The first issuer safe harbor category, with no procedural restrictions other than the offshore transaction requirement and directed selling efforts prohibition, would have been available under the original proposal for offerings of securities by non-reporting foreign issuers with no substantial U.S. market interest in any class of their securities. The second safe harbor category would have been available for offerings of securities by reporting issuers. The third safe harbor category, with the most procedural restrictions, would have been available for all issuers offering securities, including non-reporting U.S. issuers and non-reporting foreign issuers with substantial U.S. market interest.

The revised proposed issuer safe harbor would continue to distinguish among three categories of securities offerings, based on nationality and reporting status of the issuer and the degree of U.S. market interest in the issuer's securities. The scope of each of the three issuer safe harbor categories, however, would be changed substantially in the revised proposed safe harbor. Under the reproposal, the first category would extend to offers and sales of securities by all foreign issuers with no substantial U.S. market interest, regardless of their reporting status, and overseas domestic offerings by foreign issuers.[27] The revised second category would include securities offered and sold by reporting issuers and debt securities offered and sold by foreign issuers regardless of their reporting status.[28] The residual third issuer safe harbor category would be available for all issuers offering securities, including non-reporting U.S. issuers and non-reporting foreign issuers offering equity securities with a substantial U.S. market interest.[29] Appendix A is a chart showing which issuer safe harbor category would be available for any given Regulation S offering by the issuer, a distributor or an affiliate. Reference should be made to the text of the proposed Regulation for a full understanding.

1. Category 1: Foreign Issuers With No Substantial U.S. Market Interest: Overseas Domestic Offerings

Recognizing that securities issued by foreign issuers generally are likely to flow back to their major or home market, the Commission is now proposing that offers and sales of securities of foreign issuers for which the United States is not a primary market be subject to fewer restrictions than originally proposed. Three major revisions to the first of the issuer safe harbor categories have been made to implement that determination: the definition of the term "substantial U.S. market interest" has been narrowed, the first category has been extended to offerings by reporting as well as non-reporting foreign issuers with no substantial U.S. market interest, and "overseas domestic offerings" have been added to the first category.

a. *Revision to "Substantial U.S. Market Interest".* The definition of "substantial U.S. market interest" [30] has been revised [31] with respect to a class of a foreign issuer's equity securities so that, to qualify for the first category, the issuer must establish at the commencement of the offering that either: (i) More than 50 percent of all recorded trading in that class of securities in the issuer's prior fiscal year took place on or through the facilities of a single established foreign securities exchange or designated organized foreign securities market;[32] or (ii) less than 20 percent of recorded trading in that class of securities in the issuer's prior fiscal year took place on or through the facilities of securities exchanges and inter-dealer quotation systems [33] in the United States and the U.S. markets [34] in the aggregate did not constitute the single largest market for such securities. Listing on a U.S. exchange, quotation on NASDAQ and sponsorship of an American depositary receipt ("ADR") facility would no longer determine U.S. market interest in an issuer's equity securities.

With respect to debt securities, substantial U.S. market interest would exist under the revised definition unless the issuer could establish at the commencement of the offering either that its debt securities [35] were held of record by fewer than 300 U.S. persons, or that less than $1 billion principal amount of its debt securities was held of record by U.S. persons. In response to public comment, the threshold principal amount held by U.S. persons has been raised from $100 million in the proposed definition to $1 billion in the reproposed definition. This revision should alleviate the expressed concern that the lower amount was too small a figure, without consideration of any other factor, to be a good indicator of market interest. The Commission requests comment on whether a lower threshold (*e.g.*, $500 million) would provide a more appropriate test of substantial market interest, whether the threshold should be higher (*e.g.*, $2 billion), and whether the percentage of the issuer's outstanding debt securities held by U.S. persons should be considered. Issuers that had more than $1 billion of debt securities held in the United States would be able to rely on the existence of only a limited number of investors in the United States to demonstrate lack of substantial U.S. market interest for their debt securities. The addition of the number-of-holders test would minimize inequitable treatment of larger debt issuers.

Issuers of excluding issuers with substantial U.S. market interest in any class of their securities, as initially proposed, the revised first category of the issuer safe harbor would exclude foreign issuers of equity securities only if such market interest existed in the specific class of equity securities being offered and would exclude debt issuers only if there were substantial U.S. market interest in their debt securities. U.S. market interest in an issuer's debt would not be viewed as implying market interest in an issuer's equity and vice versa. Different factors are considered by investors in purchasing fixed income securities than in purchasing participating equity interests. Moreover, there is little empirical evidence that the investor base is necessarily the same for both types of securities.

b. *Extension to Foreign Reporting Issuers.* Rather than applying only to non-reporting foreign issuers with no substantial U.S. market interest as originally proposed, the first category with no substantial U.S. market interest, including reporting issuers. As noted above, the potential for flowback depends on the location of the primary market for the securities, and is unaffected by the reporting status of the issuer. Moreover, exclusion of reporting foreign issuers from this category could unfairly disadvantage foreign issuers that choose to subject themselves to U.S. reporting requirements.

c. *Addition of "Overseas Domestic Offering".* The third major revision to the first issuer safe harbor category is addition of "overseas domestic offerings" of foreign issuers.[36] Such offerings would be included in this category whether or not there was substantial U.S. market interest in the foreign issuer's securities. Several commenters suggested that offerings of securities by foreign issuers targeted to a particular foreign jurisdiction be subject to less restrictive safe harbor conditions than multijurisdictional offerings by foreign issuers. Consistent with the territorial approach of Regulation S, the primacy of the law governing an issuer's home market should be recognized when an offering of securities is closely targeted to the market. The principle of comity and the reasonable expectations of participants support reliance upon the disclosure requirements of the issuer's home market in those circumstances. To prevent an indirect distribution in the United States, however, as with all other categories of issuers, directed selling efforts in the United States would be prohibited and the offer and sale would have to be made offshore.

Under the proposal, "overseas domestic offering" would be defined to mean "an offering of securities by a foreign issuer directed to citizens or residents of the issuer's national jurisdiction of incorporation or organization or, if the issuer is a foreign government, to citizens or residents of the jurisdiction governed by the issuer, and made in accordance with customary local practices and documentation."[37] Of particular importance is the requirement that such offering be "directed" at the domestic market. Where the foreign issuer or distributor knew or was reckless in not knowing that a substantial portion of the offering would be immediately resold outside the domestic market, such an offering would not be "directed" at that market and the safe harbor would be unavailable in that situation.

2. Category 2: Reporting Issuers; Foreign Issuers' Debt

a. Addition of Foreign Issuer Debt. As originally proposed, the second issuer safe harbor category applied to securities offerings of all foreign and domestic reporting issuers. As discussed above, securities of foreign reporting issuers with no substantial U.S. market interest have been moved to the revised first category. The second category [38] has been expanded so that it would apply to offerings of debt securities of any foreign issuer, whether or not the issuer had continuous reporting obligations under the Exchange Act. The inclusion of debt of non-reporting foreign issuers in this category reflects the view that offering restrictions applicable to the category provide adequate protection against an indirect U.S. distribution because of the institutional nature of the market and the trading characteristics of

[21] Proposed Rule 902(g).

[22] As with transactions "on or through the facilities of an established foreign securities exchange," designated organized foreign securities market transactions would include all transactions reported to such a market.

[23] *See* Proposed Rule 902(e).

[24] The Eurobond market, as regulated by the Association of International Bond Dealers, and the Unlisted Securities Market operated by the International Stock Exchange of Great Britain and the Republic of Ireland are two existing foreign securities markets that would meet the proposed definition of "designated organized foreign securities market."

[25] Proposed Rule 905.

[26] The original proposal defined the term "distributor" to mean any underwriter, prospective underwriter, dealer, or other person participating, pursuant to a contractual arrangement, in the distribution of securities sold in reliance on the Regulation. Clarification was requested regarding when a distributor would cease to be treated as a distributor under the Regulation. Distributors would remain distributors under the Regulation for the duration of the distribution and the subsequent restricted period (which includes all offers and sales by a distributor holding an unsold allotment or subscription).

[27] *See* proposed Rule 905(a).

[28] *See* proposed Rule 905(b).

[29] *See* proposed Rule 905(c).

[30] Proposed Rule 902(*l*).

[31] Citing the difficulty of determining the extent of holdings and the amount of trading in the United States, a significant number of commenters concluded that many foreign issuers would be unjustifiably forced to assume that they had a "substantial U.S. market interest."

[32] *See supra* text accompanying nn. 22–24.

[33] "Inter-dealer quotation system" would mean any system of general circulation to brokers or dealers which regularly disseminates quotations of identified brokers or dealers, as defined in Exchange Act Rule 15c–11(e)(2) [17 CFR 240.15c2–11(e)(2)].

[34] These markets would include the U.S. stock exchanges, the National Association of Securities Dealers Automated Quotation System ("NASDAQ"), and bid and asked questions in the current "pink sheets" of the National Quotation Bureau, Inc. To the extent an inter-dealer quotation system did not record all trading in a security, an issuer would take into account only the amount of trading that was recorded to the extent it is publicly available.

[35] Unlike measurement for equity securities, which would be by class, substantial U.S. market interest in debt would be measured by reference to all outstanding classes of debt securities. The all-encompassing measurement for debt would be appropriate because issuers may create different classes of debt with relative ease.

[36] Proposed Rule 905(a)(2).

[37] Proposed Rule 902(h).

[38] Proposed Rule 905(b).

debt. Moreover, because debt is usually issued in separate classes, debt securities can be tracked more easily if there are resales directed into the United States.

b. Reduction in Length of Restricted Period. In addition to the modifications in scope, the transactional and offering restrictions applicable to the second issuer safe harbor category have been amended. The restricted period applicable to securities in this category, during which offers and sale could not be made in the United States or to U.S. persons, would be reduced from 90 days to 40 days.[39] Commenters advocated this change, stating that it parallels the 40-day period in section 4(3) of the Act,[40] and that the shorter period is sufficient to protect against use of an offshore offering to make an indirect offering into the United States.

The Commission initially solicited comment on requiring a 40-day restricted period only for securities of issuers such as foreign governments and large issuers with a worldwide market following.[41] The modification made in the revised proposed Rule is not limited to such issuers in light of the experience recounted by commenters that all offerings tend to come to rest within 40 days. Comment is requested as to whether the securities of any group of issuers in the second category should be subject to a 90-day or longer period rather than a 40-day restricted period.

c. Treatment of ADR Programs. The analysis and treatment of sales of ADRs during a restricted period has been changed. Under the Regulation as originally proposed, deposit of securities into an ADR facility would have been absolutely precluded for the length of the restricted period applicable to securities in the second and third issuer safe harbor categories. The revised analysis would focus on the sale by a depositary of ADRs representing securities of the class distributed. Such sales would be permitted if (1) the ADRs represented securities acquired by the depositary prior to the distribution, or (2) the depositary determined by examination of the certificate or other evidence that the security to be deposited was not subject to a restricted period and was neither borrowed nor deposited with the intention that it be replaced with securities subject to the restricted period. Whether any sales could be made during the restricted period would depend in part on what steps the issuer of deposited securities would be willing or able to take to identify the securities it distributed.[42] Issuance of ADRs in exchange for underlying securities and withdrawal of deposited securities by ADR holders would not be precluded by the safe harbor provisions.

A single method of identifying the securities in question is not specified because a particular method may not be consistent with applicable rules in all countries. Examples of possible methods of identifying securities newly distributed, some of which were noted by commenters, would include the underlining of dates, the use of different colors for the certificates, the use of legends, the use of selected certificate numbers and the coding of securities by the transfer agent. Unlike the proposed Regulation, the revision does not contain any reference ot the treatment of sales of ADRs during a restricted period. Comment is requested as to whether the treatment of such ADR sales discussed above should be reflected in the Regulation.

d. Changes to Confirmation Requirement. As originally proposed, the Regulation would have required that distributors and dealers purchasing from distributors receive confirmations binding them to restrictions on offers and sales.[43] Commenters noted that the requirement that the confirmations be binding would raise difficult legal interpretative issues, and the Regulation as revised [44] would require only that the confirmation note the applicable restrictions. In addition, the rule has been revised to refer to delivery rather than receipt.[45]

e. Changes to Offering Restrictions. The definition of "offering restrictions" [46] would require that offering materials and documents include a statement to the effect that the securities have not been registered and may not be offered or sold in the United States or to U.S. persons (other than a distributor) within the restricted period absent registration or an exemption.[47] A provision has been added that would allow the statement to appear in abbreviated form on prospectus cover pages and in advertisements or press releases.[48] Since the underwriting section of the prospectus would still be required to include the full statement, a summary statement on the cover page would be adequate to serve as notice of the restrictions. The brief nature of advertisements and press releases would justify the condensed form of the statement while still providing the necessary notice of restrictions.

3. Category 3: Non-Reporting U.S. Issuers; Equity Offerings by Non-Reporting Foreign Issuers With Substantial U.S. Market Interest

As reproposed, the third category [49] remains the residual category. It would, however, generally be used only for offerings by non-reporting U.S. issuers and for equity offerings by non-reporting foreign issuers with substantial U.S. market interest. The restricted periods that would apply to securities offerings within this category would vary, as in the proposed rule, depending upon whether debt or equity were offered. The restricted period of 90 days for debt securities of non-reporting U.S. issuers has been reduced to 40 days.[50] The one-year restricted period for equity securities would be retained.[51] The revisions to the confirmation requirement [52] and the definition of "offering restrictions" [53] discussed above in connection with the second safe harbor category would also apply to this category.

The original proposal would have required that each subsequent purchaser of equity securities enter into an agreement that it would resell the securities only in accordance with the Regulation, or pursuant to registration or an exemption therefrom. Under the revised proposal, only a purchaser that bought from a distributor would be required to enter into such an agreement. Issuers would continue to be required, however, to refuse to register any transfer of the securities not made in accordance with the provisions of the Regulation.

D. Resale Safe Harbor

Under the original resale safe harbor, resales could have been made by either of two methods.[54] First, resales could have been made in the same manner that such securities could have been offered and sold pursuant to the issuer safe harbor, except that offering restrictions would not have applied (although purchasers would have been required to receive confirmations with the resale restrictions outlined). Under the second method, resale of securities encompassed by the first and second issuer safe harbor categories could have been made on or through the facilities of an established foreign securities exchange so long as the seller did not know that any counter-party was a U.S. person.

As reproposed, the resale safe harbor [55] would distinguish between two types of sellers: (1) dealers and persons receiving a selling concession, fee or other remuneration in respect of the securities offered or sold;[56] and (2) all other persons.[57] Persons receiving selling concessions, fees or other remuneration would be included in the same category as dealers so that securities professionals not encompassed by the definition in Section 2(12) of the Securities Act,[58] including subunderwriters, would be treated the same as dealers.

Persons who are not dealers and do not receive a selling concession, fee or other remuneration would be able to resell any securities with no restrictions other than the general conditions that the offer and sale be made offshore and without directed selling efforts.[59]

Resales by dealers and persons receiving selling concessions, fees or other remuneration also would be subject to the general conditions. If the securities resold were of a type within the second or third issuer safe harbor categories and the resale were made within any applicable restricted period, the seller or any person acting on his behalf could not knowingly offer or sell to a U.S. person. If the purchaser of the securities were a dealer or person receiving a selling concession, fee or other remuneration, the seller would in addition be required to deliver a confirmation or other notice of the applicable restrictions to the purchaser. Paralleling the issuer safe harbor, the confirmation requirement in the resale safe harbor has been revised to delete the requirement that it must be binding on the recipient and to require delivery rather than receipt.

To alleviate concerns of the commenters, the revised resale safe harbor would relieve persons who are not securities professionals from the requirement to deliver notices. The revised resale safe harbor also would permit resales of any securities on established foreign securities exchanges and designated organized foreign securities markets. The original proposal would have limited such resales to securities in the first and second issuer safe harbor categories. Although the safe harbor would no longer specifically refer to resales on established foreign securities exchanges, such resales (and resales on designated organized foreign securities markets) would be allowed. With respect to dealer resales on such foreign exchanges or markets in the revised safe harbor, notice delivery would be required only if the seller or other person acting on its behalf knew that the purchaser were a dealer or person receiving a selling concession, fee or other remuneration.

E. Definition of "U.S. Person"

The definition of "U.S. person" [60] has been changed in a number of respects in the revised Regulation. Unlike the original proposal, an entity organized under foreign law by a U.S. institution principally for the purpose of its investing in securities not registered under the Securities Act would not be treated as a U.S. person. A U.S. institutional investor should be able to choose to establish an entity outside the United States, and should not expect the registration provisions to apply to purchases made by that foreign entity. Treating such entities as U.S. persons would not be in accordance with comity and the reasonable expectations of the parties.[61]

In a reversal of the position taken in the *Baer Securities Corporation* letter,[62] the originally proposed definition of U.S. person would have included any discretionary or similar account held by a dealer or other fiduciary located in the United States, regardless of whether the beneficial owner of such account was a U.S. person. Citing competitive disadvantages and loss of efficiency for U.S. money managers, commenters vigorously opposed the proposed reversal, and urged that U.S. fiduciaries be treated as non-U.S. persons when acting with discretion for a non-U.S. person. A number of the commenters disagreed with the view, expressed in the Proposing Release, that concerns regarding competitiveness abroad would be adequately addressed by the safe harbor exemption from registration for certain institutional resales proposed in Rule 144A.[63]

The Commission is proposing to except from the conceptual framework of Regulation S U.S. professional fiduciaries acting for foreign investors,[64] in light of the serious competitive disadvantages that might be faced by U.S. professional fiduciaries, particularly by smaller U.S. advisers, even if proposed Rule 144A were adopted. Thus, under the revised proposal, U..S professional fiduciaries acting with discretion would be deemed U.S. persons for purposes of Regulation S only when they were acting for U.S. persons. Any offer or sale to a U.S. professional fiduciary acting for a foreign investor in reliance on the Regulation, however, would still be required to be made outside the United States.

Certain multinational organizations were specifically excluded from the proposed definition of "U.S. persons." Commenters on this aspect of the

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[39] Proposed Rule 905(b)(2).

[40] 15 U.S.C. 77d(3)

[41] 53 FR at 22870.

[42] This would conform to current practice. Several commenters stated that, in their experience, issuers have assisted depositaries in identification of securities not involved in the distribution, at least in the case of sponsored ADR facilities. Those commenters further related that the current practice is to close ADR facilities when securities cannot be so identified.

[43] Commenters suggested that the confirmation requirement be modified in light of the movement towards paperless markets. Both the proposed definition and the revised proposed definition, by use of the phrasing "confirmation or other notice," would accommodate paperless transactions. The "other notice" could include a notice given on screen rather than on paper or a notice given on the telephone, provided that the seller kept written records of notices given.

[44] Proposed Rule 905(b)(3).

[45] As revised, the confirmation requirement would no longer be considered part of the offering restrictions, due to liability considerations. *See infra* Section II.G.

[46] Proposed Rule 902(f).

[47] The addition of "(other than a distributor)" to the requirement of a statement has been made in the revised proposed definition to clarify that the reference to the prohibition on sales in the United States or to U.S. persons was not intended to preclude U.S. persons from participating as underwriters or selling dealers.

[48] Proposed Rule 902(f)(2).

[49] Proposed Rule 905(c).

[50] Proposed Rule 905(c)(2).

[51] Proposed Rule 905(c)(3).

[52] Proposed Rule 905(c).

[53] Proposed Rule 902(f).

[54] Several commenters on the proposed Regulation stated that the resale safe harbor might be interpreted as somehow altering the availability of Sections 4(1) and 4(3) of the Securities Act for the resale of securities. Neither the proposed Regulation nor the revised proposed Regulation is intended to affect the availability of the exemptions contained in those Sections.

[55] Proposed Rule 906.

[56] Proposed Rule 906(a).

[57] Proposed Rule 906(b).

[58] 15 U.S.C. 77b(12).

[59] Like the original proposal, the revised Regulation provides that a directed selling effort by a person other than the seller or any person acting on his behalf would not affect the seller's ability to rely on the resale safe harbor.

[60] Proposed Rule 902(m).

[61] The proposed definition of "U.S. person" would have excluded foreign branches and agencies of U.S. persons engaged in banking or insurance that are established outside the United States, substantively regulated in their countries of establishment, operated for valid business purposes, and not formed principally for investing in securities not registered under the Securities Act. A number of commenters recommended that this exclusion be extended to entities outside the banking and insurance industries. The Commission is not proposing such an extension because, outside the regulated industries, the concept of an "agency" or "branch" does not have an established meaning.

[62] *See supra* n. 5.

[63] *See* Securities Act Release No. 6839 (July 11, 1989) (reproposing Rule 144A); Securities Act Release No. 6806 (Oct. 25, 1988) [53 FR 44016] (proposing Rule 144A).

[64] *See* proposed Rule 902(m)(1).

proposed definition generally favored exclusion of such organizations, but also believed that the same treatment should be afforded to other entities. The definition has been revised to exclude from the definition of U.S. person the International Monetary Fund, the United Nations, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, and the African Development Bank and all similar multinational entities.[65] The staff interpretive letter process will be available for future questions regarding exclusion for specific multinational organizations. In response to commenters' recommendations and consistent with Exchange Act Rule 15a-6, [66] pension plans of such multinational organizations are also excluded from the revised proposed definition of U.S. person. Comment is solicited regarding whether use of the phrase "pension plans" is sufficient to exclude all existing retirement funds of such entities.

F. Continuous Offerings

Commenters on the Proposing Release raised strong objection to the timing of commencement of the restricted period in the case of continuous offerings of securities such as medium-term notes that are offered on a daily basis. They concluded that the proposed Regulation would impose an indefinite restricted period because such a distribution is never completed. Among the commenter's suggestions for resolution of this issue was a recommendation that separate tranches of medium-term note offerings be treated as separate offerings with distinct restricted periods.

In order to grant relief from the effective preclusion of such sales to U.S. persons, in the case of certain offerings of debt securities issued in clearly distinct and identifiable tranches or issues, the 40-day restricted period would commence upon completion of the distribution of that tranche or issue, as certified by the lead managing underwriter or person performing similar functions.[67] At the end of the restricted period, the issuer would be free to offer another tranche. In such cases, no integration of the tranches or issues would be required.

G. Safe Harbor Protections

A violation of a term or condition of an issuer safe harbor would have one of two results: Either the safe harbor would be lost by all persons for all offers and sales made in the offering, or the safe harbor would be lost only by the person failing to comply with the term or condition for the securities offered or sold in the non-complying transaction. As the Proposing Release stated, no one could rely upon the issuer safe harbor provisions of the Regulation if directed selling efforts were made in the United States by the issuer, a distributor, or an affiliate of either.[68] Thus, directed selling efforts by one distributor would eliminate the safe harbor protection of the Regulation for the issuer, all other distributors, and all affiliates of both for all securities offered and sold. Failure on the part of an issuer, distributor, or affiliate to comply with the offering restrictions likewise would result in the safe harbor not being available to all persons for offers and sales of securities in the offering.[69]

In contrast, if a particular offer or sale was not made in an offshore transaction, the safe harbor protection from a Section 5 violation would not be available to the offeror or seller who did not comply, but the safe harbor would still be available to any complying issuer, distributor, or affiliate. For failures to meet offshore transaction requirements, each offer and sale would be examined separately and a non-complying offer or sale would not eliminate the safe harbor protection for other offers and sales. Thus, if 10,000 shares were sold in the United States and 3,000,000 shares were sold in offshore transactions, the safe harbor protection would be lost only with respect to the 10,000 shares and only for the person that made the U.S. sales. Similarly, with respect to compliance with the prohibition against selling to U.S. persons during the restricted period, consistent with the original proposal,[70] the failure of the issuer, a distributor, or an affiliate of either to comply would not destroy the safe harbor protection for other offers and sales by that participant or any of the offers and sales of another participant. For example, a sale of 100 shares of stock of a non-reporting domestic issuer made by a participant to a U.S. person 5 days into the restricted period without the benefit of an exemption or registration would result in loss of the safe harbor only for that participant and only with respect to those 100 shares.

Because of its transactional and ongoing nature, the requirement that a confirmation or other notice be given has been moved out of the category of offering restrictions, into the transactional obligations mandated during the restricted period.[71] Thus, failure to comply with the notice requirement would not affect the availability of the safe harbor offering as a whole, and would affect only the non-complying sale.

Preliminary Note 2, which remains unchanged from the proposed Regulation, would state that the Regulation is not available to any transaction or series of transactions that, although in technical compliance with the rules, is part of a plan or scheme to evade the registration provisions of the Securities Act. Thus, a participant in a distribution, regardless of whether it literally took all steps required for reliance upon the protection of the Regulation, would lose the protection of the Regulation if it had knowledge or was reckless in not knowing that a person to whom it sold securities in reliance upon the Regulation would not comply with the requirements. Clearly, if an underwriter were told by a dealer to whom it intended to sell securities in reliance upon the Regulation that the dealer had a customer in New York waiting for the securities, that underwriter should not be able to rely upon the protection of the Regulation in connection with its sale to that dealer, even if the underwriter complied with all the Regulation's requirements. The same could be true if the underwriter knew or was reckless in not knowing that the dealer to whom it intended to sell had consistently sold to U.S. residents in violation of resale restrictions in other offerings made pursuant to the safe harbor provisions of the Regulation. If, on the other hand, an underwiter sold to a dealer and the dealer sold to a customer in the United States, and the underwriter did not know and was not reckless in failing to know that the non-conforming sale would occur, the underwriter would not lose the protection of the Regulation.

H. Interaction With U.S. Tax Law

The proposed Regulation would affect certain regulations of the Internal Revenue Service which impose sanctions on issuers of otherwise "registration-required" obligations in bearer form unless such obligations are issued pursuant to "arrangements reasonably designed" to ensure sales to persons who are not "U.S. persons." The regulations that prescribe procedures to be followed in the issuance, sale, and delivery of such obligations in order to satisfy the "arrangements reasonably designed" test are based in part upon applicable securities laws. The effect of the proposed Regulation on the tax law and regulations has been extensively reviewed with the Department of the Treasury and the Internal Revenue Service. The Commission has been advised that the Department and the Service intend to publish, in proposed form, a revised regulation concerning the procedures for issuing foreign-targeted bearer debt obligations. The revised regulation will reflect the requirements of proposed Regulation S, but with two significant differences. First, the tax regulations will use the definition of "United States person" set forth in Section 7701(a)(30) of the Internal Revenue Code,[72] which includes citizens as well as residents of the United States. Second, the tax regulations generally will require a certificate stating that, as of the last day of the restricted period, the beneficial owner of the debt security is not a U.S. person.[73]

I. Other

References to Securities Act Release 4708 [74] in other rules under the Securities Act would be revised to make reference to Regulation S upon its adoption.

III. Request For Comments

Any interested persons wishing to submit written comments on revised proposed Regulation S, as well as other matters that might have an impact on the proposal, are requested to do so.

IV. Cost-Benefit Analysis

As in the Proposing Release, the Commission invites commenters to provide views and data as to the costs and benefits associated with the proposed revised Regulation intended to clarify the extraterritorial effect of the registration provisions of the Securities Act. It appears to the Commission that, while there may be some additional costs to issuers, distributors or other sellers associated with structuring a transaction in accordance with the requirements of a safe harbor or the General Statement, such costs may be outweighed by the savings of the costs of registration and the benefit derived from assurance that registration need not be undertaken. In addition, the Commission believes that the proposed streamlined method to assure that the securities come to rest outside the United States would also reduce costs. The Regulation, as reproposed, would further alleviate costs in comparison to the originally proposed Regulation in view of the changes made to the issuer safe harbor, including the fact that more issuers would be eligible to take advantage of the issuer safe harbor categorizes with fewer procedural restrictions. In addition, the liberalization of the resale provisions under the reproposed Regulation should result in further cost reductions to persons relying on that safe harbor.

V. Summary of Initial Regulatory Flexibility Analysis

An Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 has been prepared concerning the proposed Regulation. The analysis notes that the proposed Regulation is intended to clarify the extraterritorial application of the registration provisions of the Securities Act.

The proposed Regulation will not result in any significant increase in reporting, recordkeeping or compliance requirements. No alternatives to the proposed Regulation consistent with its objectives were found. Alternatives such as establishment of differing compliance or reporting requirements based on the size of the issuer alone were rejected as inconsistent with the goals of the Securities Act. Clarification, consolidation or simplification of compliance and reporting requirements for small entities under the Regulation was also rejected as an alternative since the Regulation is itself clarification and simplification and additional simplification would not be consistent with the statutory mandate. Small entities, like any other issuers, are entitled to the benefits of the guidance provided by the General Statement and the safe harbors.

A copy of the analysis may be obtained by contacting Sara Hanks, Office of International Corporate Finance, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

VI. Paperwork Reduction

OMB Number: 3235-0357. Expires: July 31, 1991. Estimated average burden hours per response.—1.0.

List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, securities.

VII. Text of Proposals

In accordance with the foregoing Title 17, Chapter II, Part 230 of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 is amended by adding the following citations: (Citations before * * * indicate general rulemaking authority).

Authority: Sec. 19, 48 Stat 815, as amended, 15 U.S.C. 77s * * * Section 230.901-906 also issued under Sections 2, 15 U.S.C. 77b, and 4, 15 U.S.C. 77d.

* * * * *

2. By adding new Regulation S consisting of Preliminary Notes and §§ 230.901 through 230.906, to read as follows:

Regulation S—Rules Governing Offers and Sales Made Outside the United States Without Registration Under the Securities Act of 1933.

Preliminary Notes
§ 230.901 General statement.
§ 230.902 Definitions.
§ 230.903 Offers and sales deemed outside the United States.
§ 230.904 General conditions to be met.
§ 230.905 Offers or sales by the issuer, affiliates of the issuer, distributors, and affiliates of distributors: conditions relating to specific securities.
§ 230.906 Resales.

Preliminary Notes

1. The following rules relate solely to the application of section 5 of the Securities Act of 1933 (the "Act") [15 U.S.C. 77e] and not to antifraud or other provisions of the federal securities laws.

2. In view of the objective of these rules and the policies underlying the Act, Regulation S is not available with respect to any transaction or series of transactions that, although in technical compliance with these rules, is part of a plan or scheme to evade the registration provisions of the Act. In such cases, registration under the Act is required.

3. Nothing in these rules obviates the need for any issuer or any other person to comply with the securities registration or broker-dealer registration requirements of the Securities Exchange Act (the "Exchange Act") whenever such requirements are applicable.

4. Nothing in these rules obviates the need to comply with any applicable state law relating to the offer and sale of securities.

5. Attempted compliance with any rule in Regulation S does not act as an exclusive election; a person making an offer or sale of securities may also claim the availability of any other applicable exemption from the registration requirements of the Act.

6. Regulation S is available only for offers and sales of securities outside the United States. Securities acquired overseas, whether or not pursuant to Regulation S, may be resold in the United States only if they are

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[65] Proposed Rule 902(m)(4).

[66] *See supra* n. 18.

[67] Proposed Rule 902(k).

[68] 53 FR at 22869. In contrast, the directed selling efforts of any person would result only in loss of the safe harbor protection for resales by that person.

[69] *Id.*

[70] 53 FR at 22871.

[71] *See* proposed Rules 905(b)(3) and 905(c)(4).

[72] 26 U.S.C. 7701(a)(30).

[73] An exception will be provided for certain foreign currency obligations.

[74] Securities Act Release No. 4708 (July 9, 1964) [29 FR 9828].

registered under the Act or an exemption from registration is available.

§ 230.901 General statement.

(a) For the purposes only of Section 5 of the Act [15 U.S.C. 77e], the terms "offer," "offer to sell," "offer for sale," "sale," and "offer to buy" shall be deemed to include offers and sales that occur within the United States and shall be deemed not to include offers and sales that occur outside the United States.

(b) In determining whether an offer or sale occurs outside the United States, relevant considerations are:

(1) The locus of the constituent elements of the offer or sale, considering factors such as (i) whether the offer is directed only to persons outside the United States; (ii) whether the buyer is outside the United States at the time the buy order is originated; (iii) whether execution, payment and delivery take place outside the United States; and (iv) whether the sale is executed on or through the facilities of an established foreign securities exchange or a designated organized foreign securities market;

(2) The absence of any directed selling efforts in the United States;

(3) The likelihood of the securities coming to rest outside the United States, considering (i) the nationality of the issuer; (ii) the extent of the issuer's business presence in the United States; (iii) the type of securities being offered or sold; (iv) the absence of a substantial U.S. market interest for the same class of securities of the issuer, if equity, or any debt securities of the issuer, if debt; and (v) the terms of the transaction, including the use of any contractual or other restrictions on resale of the securities into the United States and to U.S. persons; and

(4) The justified expectations of the parties to the transaction concerning the applicability of the registration provisions of the Act.

(c) The provisions of this Regulation S shall not apply to offers and sales of securities issued by investment companies registered or required to be registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 *et seq.*].

§ 230.902. Definitions.

As used in Regulation S, the following terms shall have the meanings indicated.

(a) *Designated Organized Foreign Securities Market.* "Designated organized foreign securities market" means any market for trading of securities that:

(1) Is organized under foreign law;

(2) Has an established operating history;

(3) Is subject to oversight by a governmental or self-regulatory body to which securities transactions are reported on a regular basis; and

(4) Is designated by the Division of Corporation Finance.

(b) *Directed Selling Efforts.* (1) The term "directed selling efforts" means any activity undertaken by the issuer, a distributor, a seller, an affiliate of any of the foregoing, or any person acting on behalf of any of the foregoing, for the purpose of, or that could reasonably be expected to have the effect of, conditioning the market in the United States for any of the securities being offered in reliance on this Regulation S. Such activity includes the placing of an advertisement in a publication with a general circulation in the United States that refers to the offering of securities being made in reliance upon this Regulation S.

(2) Notwithstanding paragraph (1) of this section, the placing of an advertisement required to be published under foreign law, which contains no more information than legally required, shall not be deemed to constitute "directed selling efforts" for purposes of this rule.

(c) *Distributor.* "Distributor" means any underwriter, prospective underwriter, dealer, or other person who participates, pursuant to a contractual arrangement, in the distribution of the securities offered or sold in reliance on this Regulation S.

(d) *Domestic Issuer.* "Domestic issuer" means any issuer other than a foreign issuer.

(e) *Foreign Issuer.* "Foreign issuer" means any issuer that is: (1) The government of any foreign country or of any political subdivision of a foreign country; (2) a national of any foreign jurisdiction; or (3) a corporation or other organization incorporated or organized under the laws of any foreign jurisdiction; *Provided, however,* that such issuer shall not be deemed a foreign issuer if: (i) more than 50 percent of the outstanding voting securities of such issuer is held of record, either directly or through voting trust certificates or depository receipts, by persons for whom a U.S. address appears on the records of the issuer, its transfer agent, voting trustee or depository; and (ii) any of the following factors are present: (A) the majority of the executive officers or directors of the issuer are U.S. citizens or residents; (B) more than 50 percent of the assets of the issuer are located in the United States; or (C) the business of the issuer is administered principally in the United States.

(f) *Offering Restrictions.* "Offering restrictions" means:

(1) Each distributor agrees in writing that all offers and sales of the securities during the restricted period shall be made only (i) in accordance with the provisions of § 230.903; (ii) pursuant to registration of the securities under the Act; or (iii) pursuant to an available exemption from the registration requirements of the Act; and

(2) Any offering materials and documents used in connection with offers and sales of the securities during the restricted period specified in § 230.905 (b) or (c), as applicable, shall include statements to the effect that the securities have not been registered under the Act and may not be offered or sold in the United States or to U.S. persons (other than a distributor) within the restricted period unless: (i) The Securities are registered under the Act; or (ii) an exemption from the registration requirements of the Act is available. Such statements shall appear:

(A) On the cover or inside cover page of any prospectus or offering circular used in connection with the offer or sale of the securities;

(B) In the underwriting section of any prospectus or offering circular used in connection with the offer or sale of the securities; and

(C) In any press release or advertisement made or issued by the issuer, any distributor, an affiliate of any of the foregoing, or any person acting on behalf of any of the foregoing. Such statements may appear in summary form on prospectus cover pages and in press releases and advertisements.

(g) *Offshore Transaction.* An offer or sale of securities is an "offshore transaction" if:

(1) The offer is not made to a person in the United States; and

(2) Either: (i) The seller reasonably believes that the buyer is outside the United States at the time the buy order is originated, and execution and delivery take place outside the United States; or (ii) the transaction is executed on or through the facilities of an established foreign securities exchange or a designated organized foreign securities market, and neither the seller nor any person acting on its behalf knows that the transaction has been pre-arranged with a buyer in the United States.

(h) *Overseas Domestic Offering.* "Overseas domestic offering" means an offering of securities by a foreign issuer directed either to citizens or residents of the issuer's jurisdiction of incorporation or organization or, if the issuer is a government, to citizens or residents of the jurisdiction governed by the issuer, and made in accordance with customary local practices and documentation.

(i) *Publication With a General Circulation in the United States.* "Publication with a general circulation in the United States" means any publication that:

(1) Is printed in the United States primarily for distribution in the United States;

(2) Has had, during the preceding twelve months, an average circulation in the United States of 15,000 or more copies per issue; or

(3) Has had, during the preceding twelve months, an average of 50 percent or more of its circulation per issue in the United States.

(j) *Reporting Issuer.* "Reporting issuer" means an issuer that (a) has a class of securities registered pursuant to Section 12(b) or 12(g) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. 78*l*(b) or 78*l*(g)] or is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. 78o(d)], and (b) has filed all the material required to be filed pursuant to Sections 13(a) and 15(d) of the Exchange Act [15 U.S.C. 78m(a) and 78*o*(d)] for a period of at least twelve months immediately preceding the offer or sale of securities made in reliance upon this Regulation S (or for such shorter period that the issuer was required to file such material).

(k) *Restricted Period.* "Restricted period" means a period that commences on the later of the date upon which the securities were first offered to persons other than distributors in reliance upon this Regulation S or the closing of the offering and expires a specified period of time thereafter; *Provided, however,* that in a continuous offering the restricted period shall commence upon completion of the distribution, as determined and certified by the lead managing underwriter or person performing similar functions. All offers and sales by a distributor holding an unsold allotment or subscription shall be deemed to be made during the restricted period.

(l) *Substantial U.S. Market Interest.* (1) An issuer has a "substantial U.S. market interest" with respect to a class of equity securities unless it can be established at the commencement of the offering that:

(i) More than 50 percent of all recorded trading in such class of securities in the issuer's prior fiscal year occurred on or through the facilities of one established foreign securities exchange or designated organized foreign securities market; or

(ii) Less than 20 percent of all recorded trading in such class of securities in the issuer's prior fiscal year occurred in, on or through the facilities of securities exchanges and inter-dealer quotation systems in the United States, and such U.S. markets, in the aggregate, did not constitute the largest single market for such securities.

(2) An issuer has a "substantial U.S. market interest" with respect to its debt securities unless one of the following can be established at the commencement of the offering:

(i) Its debt securities are held of record by fewer than 300 U.S. persons; or

(ii) Less than $1 billion principal amount of its debt securities is held of record by U.S. persons.

(3) An issuer does not have a substantial U.S. market interest if the only securities of the issuer that would otherwise result in such a determination are securities that qualify for the exemption provided by Section 3(a)(3) of the Act [15 U.S.C. 77c(a)(3)].

(m) *U.S. Person.* (1) "U.S. person" means any natural person resident in the United States; any partnership or corporation organized or incorporated under the laws of the United States, its territories or possessions or any state or the District of Columbia; any estate of which any executor or administrator is a U.S. person; any trust of which any trustee is a U.S. person; any agency or branch of a foreign entity located in the United States; any non-discretionary custodial account or similar account held by a dealer or other fiduciary for the account of a U.S. person; and any discretionary custodial account or similar account held by a dealer or other professional fiduciary organized, incorporated, or (if an individual) resident in the United States.

(2) Notwithstanding paragraph (m)(1) of this section, any custodial account or similar account held by a dealer or other fiduciary for a non-U.S. person shall not be deemed a "U.S. person."

(3) Notwithstanding paragraph (m)(1) of this section, any agency or branch of a U.S. person located outside the United States shall not be deemed a "U.S. person" if: (i) The agency or branch operates for valid business reasons and not principally for the purpose of investing in securities not registered under the Act; and (ii) the agency or branch is engaged in the business of banking or insurance and is subject to substantive banking or insurance regulation, as the case may be, in the jurisdiction where located.

(4) The International Monetary Fund, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the United Nations and their agencies, affiliates and pension plans, and any other similar international organization, its agencies, affiliates and pension plans are not U.S. persons for purposes of this Regulation.

§ 230.903 Offers and sales deemed outside the United States.

An offer, offer to sell, offer for sale, sale, or offer to buy that satisfies the applicable conditions of §§ 230.904 through 230.906 shall be deemed to occur outside the United States within the meaning of § 230.901.

§ 230.904 General conditions to be met.

The following conditions shall be applicable to any offer or sale made in reliance on § 230.903.

(a) *Requirement of Offshore Transaction.* The offer or sale shall be made in an offshore transaction.

(b) *Prohibition Against Directed Selling Efforts.* No directed selling efforts shall be made in the United States.

§ 230.905 Offers or sales by the issuer, affiliates of the issuer, distributors, and affiliates of distributors: Conditions relating to specific securities.

Any offer or sale of securities by the issuer, an affiliate of the issuer, a distributor, or an affiliate of a distributor may be made in accordance with the following requirements:

(a) *Securities of Foreign Issuers.* An offer or sale of securities of a foreign issuer may be made in reliance on § 230.903 with no conditions other than those set forth in § 230.904, *provided that:*

(1) The issuer has no substantial U.S. market interest in the class of securities to be offered or sold (if equity securities are offered or sold), or no substantial U.S. market interest in any of its debt securities (if debt securities are offered or sold); or

(2) The securities are offered and sold by a foreign issuer in an overseas domestic offering.

(b) *Securities of Any Reporting Issuers; Debt Securities of any Foreign Issuers.* An offer or sale of any securities of any reporting issuer or debt securities of any foreign issuer may be made in reliance upon § 230.903, provided that the conditions set forth in § 230.904 are met and provided that:

(1) Offering restrictions are adopted;

(2) The offer or sale, if made during a 40-day restricted period, is not made in

the United States or to a U.S. person (other than a distributor) except pursuant to registration under the Act or an available exemption from registration; and

(3) A distributor selling securities to a distributor, a dealer or a person receiving a selling concession, fee or other remuneration in respect of the securities sold, during a 40-day restricted period delivers a confirmation or other notice to the purchaser stating that the purchaser is subject to the same restrictions on offers and sales that apply to a distributor.

(c) *Securities of any Issuer.* An offer or sale of securities of any issuer may be made in reliance on § 230.903, provided that the conditions set forth in § 230.904 are met and provided that:

(1) Offering restrictions are adopted;

(2) In the case of debt securities: (i) The offer or sale, if made during a 40-day restricted period, is not made in the United States or to a U.S. person (other than a distributor) except pursuant to registration under the Act or an available exemption from registration; and (ii) the securities are represented upon issuance by a temporary global security which is not exchangeable for definitive securities until the expiration of the 40-day restricted period and certification of beneficial ownership of the securities by a non-U.S. person or a qualified institutional buyer as defined in Rule 144A [§ 230.144A of this chapter];

(3) In the case of equity securities, (i) the offer or sale, if made during a one-year restricted period, is not made in the United States or to a U.S. person (other than a distributor) except pursuant to registration under the Act or an available exemption from registration; and (ii) the offer or sale is made pursuant to the following conditions: (A) The purchaser of the securities (other than a distributor) certifies that it is not a U.S. person and is not aqcuiring the securities for the account or benefit of any U.S. person, or that it is a qualified institutional buyer as defined in Rule 144A [§ 230.144A of this chapter]; (B) the purchaser of the securities (other than a distributor) agrees to resell such securities only: (1) in accordance with the provisions of this Regulation S; (2) pursuant to registration under the Act; or (3) pursuant to an available exemption from registration; and (C) the issuer is required, either by contract or a provision in its bylaws, articles, charter or comparable document, to refuse to register any transfer of the securities not made in accordance with the provisions of this Regulation S; and

(4) A distributor selling debt securities to a distributor, a dealer or a person receiving a selling concession, fee or other remuneration, during a 40-day restricted period or selling equity securities to a distributor or a dealer during a one-year restricted period delivers a confirmation or other notice to the purchaser stating that the purchaser is subject to the same restrictions on offers and sales that apply to a distributor.

§ 230.906. Resales.

An offer or sale of securities by any person other than the issuer, an affiliate of the issuer, a distributor, or an affiliate of a distributor may be made in accordance with the following requirements, provided that a directed selling effort by any person other than the seller or any person acting on the seller's behalf shall not affect the seller's ability to rely on this section:

(a) *Resales by Persons Other than Dealers and Persons Receiving Selling Concessions.* An offer or sale of securities of any issuer by a person other than a dealer, as defined in section 2(12) of the Securities Act [15 U.S.C. 77b(12)], or any person receiving a selling concession, fee or other remuneration in respect of the securities offered or sold, may be made in reliance on § 230.903 with no conditions other than those set forth in § 230.904.

(b) *Resales by Any Persons.* An offer or sale of securities of any issuer may be made in reliance on § 230.903, provided that the conditions set forth in § 230.904 are complied with and provided that, during the restricted period specified in § 230.905 (b) or (c), as applicable:

(1) Neither the seller not any person acting on his behalf knows that the offeree or buyer of the securities is a U.S. person; and

(2) If the seller or any person acting on his behalf knows that the purchaser is a dealer, as defined in section 2(12) of the Act [15 U.S.C. 77b(12)], or any person receiving a selling concession in respect of the securities sold, the seller delivers to the purchaser a confirmation or other notice stating that the securities may be offered and sold during the restricted period only (i) in accordance with the provisions of this Regulation S; (ii) pursuant to registration of the securities under the Act; or (iii) pursuant to an available exemption from the registration requirements of the Act.

By the Commission.

Jonathan G. Katz,

Secretary.

July 11, 1989.

Editorial note: Appendix A will not appear in the code of Federal Regulations.

BILLING CODE 8010-01-M

APPENDIX A

RULE 905 CATEGORIES

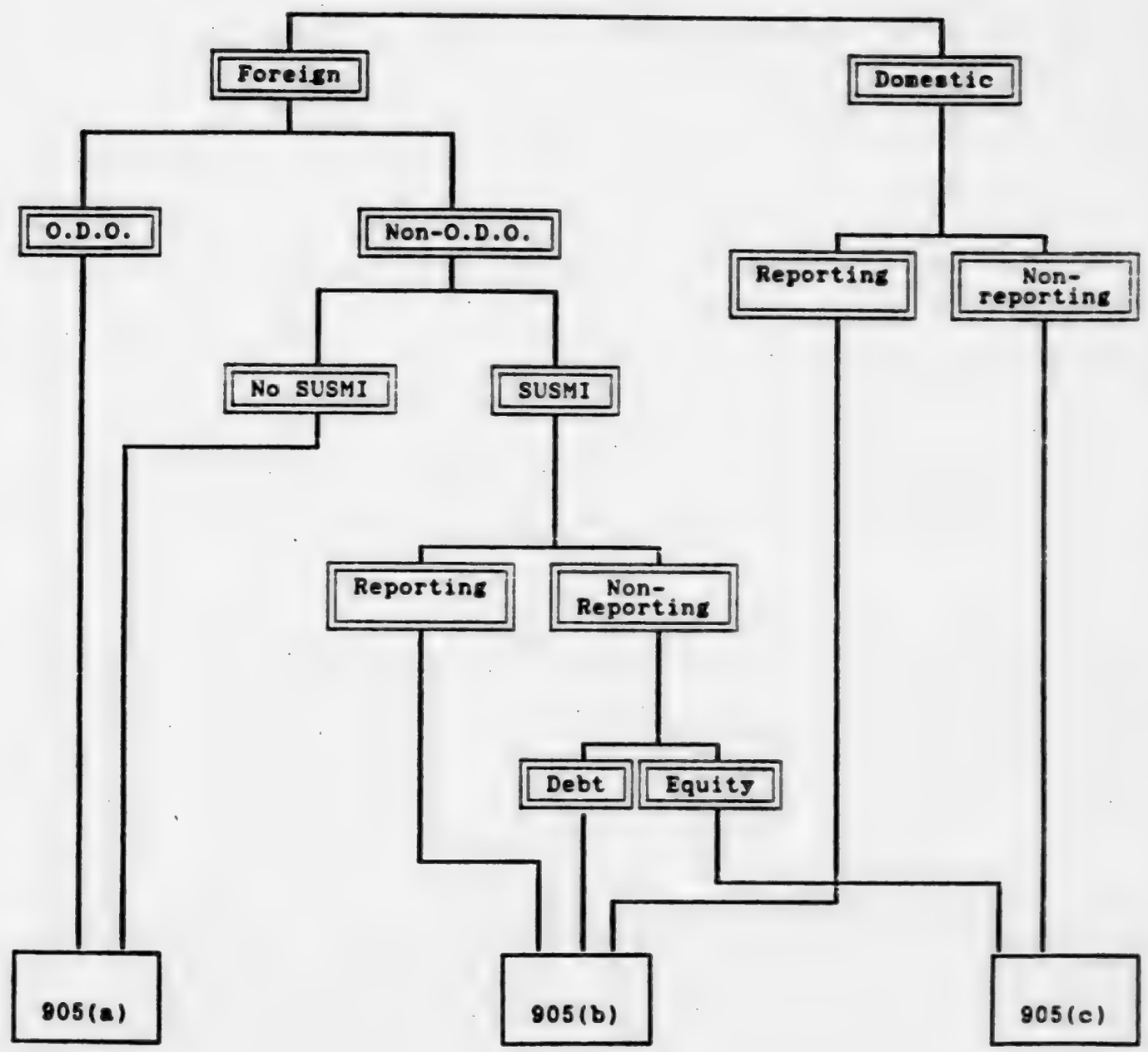

O.D.O. = Overseas Domestic Offering
SUSMI = Substantial US Market Interest

[FR Doc. 89-16632 Filed 7-17-89; 8:45 am]

BILLING CODE 8010-01-C

17 CFR Part 230

[Rel. No. 33-6939; File No. S7-23-88]

RIN 3235-AC65

Resale of Restricted Securities International Series—104; Changes to Method of Determining Holding Period of Restricted Securities Under Rules 144 and 145

AGENCY: Securities and Exchange Commission.

ACTION: Proposed Rule.

SUMMARY: In response to comments on its initial proposal, and upon further consideration, the Commission is reproposing for public comment Rule 144A, which would provide a safe harbor exemption from the registration requirements of the Securities Act of 1933 for resales of restricted securities to "qualified institutional buyers" as defined in the Rule. The Commission also is reproposing amendments to Rules 144 and 145 under the Securities Act, which would redefine the required holding period for restricted securities, whether acquired pursuant to Rule 144A or otherwise.

DATE: Comment letters should be received on or before September 12, 1989.

ADDRESS: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comments should refer to File No. S7-23-88. All comments received will be available for public inspection and copying in the Commission's Public Reference Room at the same address.

FOR FURTHER INFORMATION CONTACT: Sara Hanks or Brent H. Taylor (202) 272-3246, or (as to amendments to Rules 144 and 145) Catherine Dixon at (202) 272-2573, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

On October 25, 1988, the Commission proposed Rule 144A to provide a non-exclusive safe harbor exemption from the registration requirements of the Securities Act of 1933 (the "Securities Act") [1] for specified resales of restricted securities to institutional investors. As proposed, the Rule would have provided a safe harbor for three tiers of transactions. The first tier would have exempted only resales to "qualified institutional buyers," while the other two tiers would have provided an exemption for resales of restricted securities to a broader group of institutional investors. The Commission today is reproposing for public comment a revised Rule 144A that would establish a single class of exempt transactions based on the "qualified institutional buyer" tier of the original proposal.

The revised proposal contains several refinements to the first tier of the Rule as originally proposed. First, the definition of "qualified institutional buyer" has been revised to mean institutions with more than $100 million invested in securities at the conclusion of their most recent fiscal year. Under the original proposal, qualified institutional buyers would have been those with total assets in excess of $100 million. Second, in response to concerns voiced by commenters about the potential development of side-by-side public and private markets for the same class of securities, the Rule, as revised, would not be available for securities that, when issued, were of the same class as securities listed on a U.S. securities exchange or quoted in the National Association of Securities Dealers Automated Quotation system ("NASDAQ"). Third, availability of the Rule is proposed to be conditioned on the seller, or a person acting on its behalf, providing the buyer upon request, with specified information, if the issuer is a non-reporting company under the Securities Exchange Act,[2] and is not exempt from reporting under Rule 12g3-2(b) under the Exchange Act. Fourth, securities of non-reporting foreign private issuers sold in reliance on Rule 144A, which are of the same class as securities traded in the United States, are proposed to be subject to certain resale restrictions. Further, the Commission is proposing to revise the proposed amendments to Rules 144 and 145 to preclude "tacking" of holding periods for securities of non-reporting foreign private issuers.

II. Background

A. Proposed Rule 144A

On October 25, 1988, the Commission published for comment a Release (the "Proposing Release") proposing Rule 144A (the "Rule").[3] As proposed, the Rule would have provided a safe harbor exemption from the registration requirements of the Securities Act for several categories of resales of restricted securities to institutional investors. The proposed Rule provided that, if its conditions were met, any person other than the issuer or a dealer who offered or sold securities would be deemed not to be engaged in a "distribution" and therefore not to be an "underwriter" within the meaning of sections 2(11) and 4(1) of the Securities Act.[4] Similarly, an offering or selling dealer would be deemed not to be a participant in a "distribution" of securities within the meaning of Section 4(3)(C) of the Act, and the securities would be deemed not to have been offered "to the public" within the meaning of section 4(3)(A) of the Act.[5] The securities so offered and sold thus would not have been required to be registered under the Securities Act.

The Rule would have provided a safe harbor for three tiers of transactions. The first tier (the "qualified institutional buyer tier") would have permitted unlimited resales of any securities of any issuer, provided that the purchaser was a specified institution with assets in excess of $100 million.

The second tier (the "non-fungible securities tier") would have permitted unlimited resales of securities to a wider class of specified institutions, if (i) securities of the class offered or sold were not quoted in an inter-dealer quotation system, listed on a securities exchange in the United States, or issued by an open-end investment company, unit investment trust or face-amount certificate company that was registered under Section 8 of the Investment Company Act of 1940 (the "Investment Company Act"),[6] and (ii) the securities were non-convertible debt securities, non-convertible preferred stock, or securities issued by a company subject to a continuous reporting obligation under the Exchange Act.

The third tier of the Rule (the "fungible securities tier") would have covered resales of the same types of securities covered by the non-fungible securities tier to the same class of institutions, but would have extended to classes of securities traded in a public market in the United States.

The qualified institutional buyer and non-fungible securities tiers of the Rule, as proposed, would have imposed no resale restrictions, requiring only that the seller or any person acting on its behalf take reasonable steps to ensure that the buyer was aware that the seller might rely on the exemption from the registration requirements of the Securities Act afforded by the proposed Rule. In contrast, the fungible securities tier would have required that the seller or any person acting on its behalf take reasonable steps to prevent the purchaser from reselling the securities in the United States unless the securities were registered under the Securities Act or an exemption from the registration requirements was available. The proposed Rule set forth a non-exclusive method by which that obligation could have been satisfied.

B. Response of Commenters to Rule 144A

In the Proposing Release, the Commission requested extensive comment regarding the potential impact of the Rule. Additional comment was elicited at a roundtable regarding the proposed Rule held on March 15, 1989, which was attended by representatives of the New York Stock Exchange, the American Stock Exchange, the National Association of Securities Dealers, the North American Securities Administrators Association, the Securities Industry Association, commercial and investment banks, issuers, market intermediaries, institutional investors, and the securities bar. The purpose of the roundtable was to examine the potential effects of Rule 144A on investors (both institutional and retail), the capital raising process, the trading markets, and the internationalization of the securities markets.[7]

Overall, commenters submitting letters to the Commission and those present at the roundtable endorsed the concept of Rule 144A. Commenters believed that the Rule would provide helpful and needed clarification of the exempt status of resales of privately placed securities in the secondary market, and would increase the liquidity and efficiency of the private placement market. These commenters noted that an increase in efficiency and liquidity could lower significantly the discount commonly associated with private placements, which in turn could attract an increasing number of issuers, both foreign and domestic, into the U.S. private placement market.

In response to the Commission's requests for comment regarding the implications of the proposed Rule with respect to the market for, and distribution of, securities, a number of commenters urged the Commission to proceed cautiously by adopting the Rule in stages. Most of the commenters suggesting a staged phase-in of the Rule favored proceeding initially with a rule that was available to large institutional buyers. A few suggested that the types of securities that could be traded under the Rule should be limited to non-convertible investment grade debt and preferred stock, securities of sovereign issuers, or securities of a class that were not fungible with publicly traded securities. Several suggested that a definition of "qualified institutional buyer" linked to securities investments would provide a better test of an institution's investment sophistication than the proposed total assets test.

While many agree with the Commission that some classes of institutional investors clearly could fend for themselves, a number of commenters expressed concerns about the documentation that would be provided and the ability of secondary investors to obtain disclosure concerning the issuer. These commenters supported including a requirement that the issuer provide, upon request, basic information concerning the issuer.

In the Proposing Release, the Commission requested comment on the likelihood that, under Rule 144A, an active, liquid private market would develop alongside a public market in the United States for the same class of securities. If such a development was viewed as likely, comment was requested on the nature of such markets, the consequences to the liquidity and efficiency of the public market for such securities, and to individual investors, and whether any steps should be taken to prevent such a development. In response, commenters were divided, some concurring with the Commission's view that significant side-by-side markets were unlikely. Others, however, stated that the proposed Rule might have the effect of diverting some securities away from the public market to the private market and expressed concern that public markets and investors in those markets might be disadvantaged by resulting reduced liquidity, differential pricing, and volatility. Several commenters also expressed the position that the Rule would decrease the quality and quantity of securities available to retail investors.

The Proposing Release noted that permitting tacking of holding periods under Rule 144, as proposed, could accelerate the movement of previously restricted securities into the public market.[8] In light of this potential, the Commission requested comment on the appropriateness of continuing the exemption from the Exchange Act reporting requirements provided by Rule 12g3-2(b) [9] for foreign private issuers whose equity securities become widely held by non-institutional investors, if proposed Rule 144A were adopted. In the case of domestic issuers, under section 12(g) of the Exchange Act,[10] the public markets would be protected because a company with more than $5 million in assets incurs reporting obligations when any class of its equity securities is held by 500 or more persons.[11] In the case of foreign securities, however, there would be no such protection because Rule 12g3-2(b) permits securities to be held by any number of shareholders, without reporting obligations being incurred, as long as the securities are not quoted in NASDAQ or listed on a U.S. securities exchange.

While recognizing that proposed Rule 144A has the potential to attract additional foreign issuers into the U.S. market, commenters urged that Rule 12g3-2(b) be retained in its current form. These commenters stated that elimination of the rule would be inconsistent with the policy of encouraging increased trading in the United States by foreign issuers, and that the anticipated benefits of Rule 144A would be offset by repeal or modification of Rule 12g3-2(b).

III. Overview of Reproposed Rule 144A

The Commission agrees with the commenters that Rule 144A is likely to improve substantially the efficiency and liquidity of the U.S. private placement market, and as a result may well have major implications for financing practices in the United States of both domestic and foreign issuers. The Commission, therefore, proposes to implement the Rule in stages, to allow market participants to gain experience and assess the effects of the Rule on the securities markets and on investors. Thus the Rule, as reproposed, would apply to offers and sales of securities to specified large institutions; essentially,

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[1] 15 U.S.C. 77a *et seq.*

[2] 15 U.S.C. 78a *et seq.*

[3] Securities Act Release No. 6806 (Oct. 25, 1988) 53 FR 44016. Eighty-nine comment letters were received. These letters and a summary of such comment letters ("Comment Summary") are available for public inspection and copying at the Commission's Public Reference Room in Washington, D.C. (File No. S7-23-88).

[4] 15 U.S.C. 77b(11), 77d(1); *see* proposed Rule 144A(b).

[5] 15 U.S.C. 77d(3)(A), (C); *see* proposed Rule 144A(c).

[6] 15 U.S.C. 80a-8.

[7] The transcript of the roundtable ("Roundtable Transcript") and the agenda of issues that were discussed are available for public inspection and copying in the Commission's Public Reference Room in Washington, DC (File No. 4-345).

[8] Proposing Release, 53 FR at 44023.

[9] 17 CFR 240.12g3-2(b). A foreign private issuer exempt from the periodic reporting requirements of Section 12(g) under Rule 12g3-2(b) is required to furnish to the Commission all documents it is required to make public or file with regulatory authorities in its home jurisdiction.

[10] 15 U.S.C. 78*l*(g).

[11] Rule 12g-1 [17 CFR 240.12g-1].

the reproposal is a modified version of the first tier of the original proposed Rule. The Commission specifically invites comments regarding steps that can be taken to evaluate the performance of Rule 144A markets, if the Rule is adopted, and, eventually, to extend the scope of Rule 144A beyond the specific provisions contemplated in this reproposal.

When it initially proposed Rule 144A, the Commission noted that it did not expect that Rule 144A would give rise to any significant volume of private transactions in classes of publicly-traded securities. Notwithstanding the potential for increased efficiency in the private resale market and the ability to avoid costs and delays associated with registration, information currently available to the Commission suggests that it would not be financially advantageous for companies generally to sell securities in a market that was limited in its depth and liquidity compared to an existing public market for the same securities.[12] Nevertheless, the Commission requested comment on the likelihood that such trading would evolve and whether steps should be taken to preclude the development of such side-by-side markets.

Commenters were divided regarding the likelihood that side-by-side markets would develop. Several commenters, however, urged the Commission to take steps to preclude such markets from developing, although they did not explain why they believed substantial institutional markets would develop in publicly traded equities (which presumably would still trade at a discount to the same securities in the public market). The Commission remains of the opinion that development of significant side-by-side markets is unlikely. Nonetheless, the Rule, as reproposed by the Commission today, would not extend to transactions in securities of a class that is publicly traded in the United States.[13]

To address the potential of Rule 144A to increase substantially the amount of foreign securities being sold into the retail market without Exchange Act periodic reporting obligations being incurred, the Commission proposes to make two changes to the original proposal. First, as revised, tacking of holding periods in Rules 144 and 145 would be precluded for the securities of non-reporting foreign private issuers. Second, resale restrictions are proposed to be included in Rule 144A for transactions involving securites of non-reporting foreign private issuers traded in both a U.S. and foreign market. These changes should minimize the effect of Rule 144A on individual investors,[14] without the substantial problems inherent in restricting the current availability of Rule 12g3–2(b).

In response to concerns expressed by commenters regarding the need for a minimum level of disclosure about the issuer of securities to be resold under the Rule, the Commission proposes to require, as a condition to the availability of the Rule, that, where the issuer of the securities is a non-reporting company and is not exempt from Exchange Act reporting requirements under Rule 12g3–2(b), the seller of the securities or a person acting on its behalf provide the buyer upon request with specified basic information regarding the issuer.

Finally, the Commission wishes to reiterate its statement in the Proposing Release that proposed Rule 144A and the revisions proposed today are not intended to preclude reliance on traditional facts-and-circumstances analysis to prove the availability of an exemption outside the safe harbor Rule 144A would provide.

IV. Discussion of Revised Proposed Rule 144A

A. Eligible Purchasers

As reproposed, for a transaction to qualify under the safe harbor exemption provided by Rule 144A, the securities could be offered or sold only to a "qualified institutional buyer," or to an offeree or purchaser that the seller and any person acting on its behalf reasonably believed was a qualified institutional buyer.

Commenters addressing the definition of "qualified institutional buyer" in the initial proposal were divided as to whether the proposed eligibility threshold of $100 million of total assets should be used to define the class of participating institutions, some stating the threshold was appropriate, others arguing for a lower threshold, and others for a higher threshold. Commenters also suggested that qualified institutions should be required either to have at least $100 million invested in securities or to exercise investment discretion with respect to at least that amount of investment assets owned by others.

The revised proposal would define "qualified institutional buyer" to be an institution, acting for its own account, that at the conclusion of its most recent fiscal year had assets invested in securities purchased for a total of more than $100 million.[15] A definition focused on assets invested in securities should target, with more precision than the asset test originally proposed, sophisticated institutions with experience in investing in securities. Given this revision in the definition, the Rule, as reproposed, would extend to entities formed for the purpose of acquiring restricted securities if they satisfied this definitional standard. The change to a test based on investments in securities would substantially reduce the number of institutional investors that would be qualified institutional buyers for purposes of the Rule if the threshold remains $100 million. The table below shows for several classes of institutional investors the effect of various eligibility thresholds.[16]

	No. of investment companies [a]	No. of broker-dealer firms [b]	No. of insurance companies [c]	No. of commercial banks & trust companies	No. of FDIC-insured savings banks	No. of FSLIC-insured S&Ls and savings banks [d]
1. Total number institutions	3,507	9,204	5,770	12,971 [e]	492 [f]	2,949.
2. With $100 million total assets	1,725	192	1,097	2,808 [g]	318 [h]	1,486.
3. With $100 million invested in securities	1,725	102 (proprietary)	215	605 [i] (proprietary) 86 [j] (fiduciary)	87 (proprietary)	474 (proprietary) 6 (fiduciary)
4. With $75 million invested in securities	1,890	110 (proprietary)		846 [k] (proprietary) 97 [l] (fiduciary)	116 (proprietary)	
5. With $50 million invested in securities	2,095	142 (proprietary)		1,397 [m] (proprietary) 107 [n] (fiduciary)	150 (proprietary)	

[a] As of May 31, 1989. Source: SEC Division of Investment Management. Statistics regarding securities investments of investment companies assume such investments comprise total assets of such investment companies.

[b] As of December 31, 1988. Source: SEC Office of Economic Analysis. Based upon Financial and Operational Combined Uniform Single ("FOCUS") reports that broker-dealers must file with U.S. self-regulatory organizations.

[c] As of December 31, 1988. Source: National Association of Insurance Commissioners ("NAIC") database. Some small insurance companies, most of which do business in only one state, and foreign domiciled insurance companies operating in the United States are not included.

[d] As of December 31, 1988 (except the number of institutions with $100 million of fiduciary accounts invested in securities is as of December 31, 1987). Source: Federal Home Loan Bank Board ("FHLBB"). Due to the presentation of investments on Thrift Financial Reports filed with the FHLBB, upon which the statistics regarding institutions in this category were based, the number of such institutions with securities investments at the levels indicated in the table may be overstated.

[e] Commercial banks and trust companies insured by the Federal Deposit Insurance Corporation ("FDIC") as of June 5, 1989. Source: FDIC.

[f] FDIC-insured savings banks (including 21 FDIC-insured federal savings banks) as of June 5, 1989. Source: FDIC.

[g] FDIC-insured commercial banks and trust companies as of March 31, 1989. Source: FDIC.

[h] Remaining totals in this column reflect FDIC-insured state-chartered savings banks (*i.e.*, excluding FDIC-insured federal savings banks) as of March 31, 1989. Source: FDIC.

[i] *See supra* n. g.

[j] Institutions supervised by the Federal Reserve Board as of December 31, 1988. Source: Federal Reserve Board. Includes state-chartered, Federal Reserve System member bank trust departments and non-insured, non-deposit trust company subsidiaries of bank holding companies. Does not include nationally-chartered banks or trust companies, or state-chartered banks that are not members of the Federal Reserve System.

[k] *See supra* n. g.

[l] *See supra* n. j.

[m] *See supra* n. g.

[n] *See supra* n. j.

The Commission requests comment on whether $100 million is the appropriate threshold, or whether in light of the change to a securities investment test, a lower threshold (*e.g.*, $25 million, $50 million or $75 million) would better define that class of institutional investors that should be included in the first stage in implementing proposed Rule 144A. Such a lower threshold would reflect the fact that the change from an "assets" test to an "investments in securities" test provides a more stringent standard with greater intrinsic safeguards.[17] The Commission also requests information regarding the number and types of institutions (*e.g.*, venture capital firms, industrial corporations, etc.) that would qualify if the threshold were $25 million, $50 million, $75 million, or $100 million invested in securities. Those commenters providing such information should specify whether the institutions satisfying the foregoing thresholds are currently participating in the U.S. private placement market. Comment is also requested as to the percentage of private placement investment accounted for by institutions with securities investments at each of the specified threshold levels. To what extent, if any, should the $100 million threshold be revised, or industry-specific standards used, to assure that the institutional investors in a particular industry can be said to be *per se* sophisticated? To what extent, if any, should the threshold be changed to avoid undue disruption of current restricted securities resale practices or markets? Comment is requested as to the threshold of eligible participants necessary to achieve the anticipated efficiencies in the private placement market.

The Commission also requests comment on whether it would be appropriate in this first stage to make the Rule available to a broader class of institutions (for example, those that have invested over $10 million, $25 million, $50 million or $75 million in securities), where the transaction involves securities of issuers filing periodic reports with the Commission under the Exchange Act. Using such a lower threshold would reflect the protections afforded by the availability of Exchange Act information, which provides access to the same issuer information provided in a Securities Act registration statement for purchasers of publicly traded securities. Commenters responding to the Proposing Release did not address the issue of why the availability of Exchange Act information did not justify making the Rule available to a wider group of institutional purchasers.

As was originally proposed, eligibility of an investment adviser would be determined by aggregating proprietary assets and discretionary assets under management, and eligibility of a registered investment company that is part of a "family of funds" would be determined by aggregating the assets of the family.[18]

Like the original proposal, the revised Rule permits a bank or savings and loan to purchase securities for accounts over which it exercises investment discretion, as well as for its own account. Due to the particular historical development of bank and savings and loan participation in the securities markets, however, proprietary and fiduciary investments in securities could not be aggregated in order to meet the $100 million threshold for eligibility. This qualification to the eligibility test reflects the separate management of proprietary assets and fiduciary accounts by banks and thrifts, as if the two classes of assets comprised separate entities.[19] The Commission

[12] Proposing Release, 53 FR at 44022.

As the Commission noted in the Proposing Release, public companies reportedly tend to issue equity securities privately only in special circumstances, such as in transactions involving debt securities with an equity component, a leveraged buy-out, a joint venture, or a restructuring. Proposing Release, 53 FR at 44020 n.43.

Moreover, securities in the institutional market would be likely to flow into the public market when the holding period requirement of Rule 144A was satisfied. Thus, it appears unlikely that the institutional market for such securities would grow larger than the public market for the same class of securities over time.

[13] Publicly traded securities would include securities listed on a national securities exchange or quoted in an automated inter-dealer quotation system. *See infra* n. 31 and accompanying text.

[14] Rule 906 of proposed Regulation S, permitting substantial access to foreign markets for resales, should also operate to assure that there will not be significant leakage into the U.S. public markets.

[15] The term "security" is defined in Section 2(1) of the Securities Act (15 U.S.C. 77b(1)).

[16] Information with respect to thresholds lower than $100 million was not always available in time to be included in the release.

[17] On July 11, 1989, the Commission adopted Exchange Act Rule 15a–6, 17 CFR § 240.15a–6, concerning registration requirements for foreign broker-dealers. [Exchange Act Release No. 27017 (July 11, 1989)]. The definition of a "major U.S. institutional investor" under that rule parallels the total assets test used in the original proposal of Rule 144A to define a "qualified institutional buyer." The Commission requests comment on whether the definition in Rule 15a–6 should be amended to conform with the revised definition of a qualified institutional buyer included in revised Rule 144A.

[18] In the initial proposal, "family of funds" was defined to mean any two or more registered investment companies which share the same investment adviser *or* principal underwriter *and* hold themselves out to investors as related companies. This definition has been revised to include only registered investment companies that share the same investment adviser (or, in the case of unit investment trusts, the same depositor). *See* proposed Rule 144A(a)(3)(i).

[19] This practice is followed by national banks because regulations issued by the Comptroller of the Currency require such banks to separate investments of fiduciary accounts from proprietary assets (12 CFR § 9.13). Additionally, such investments must "be placed in the joint custody or control of not less than two of the officers or employees of the bank designated for that purpose by the board of directors of the bank or by one or more officers designated by the board of directors of the bank * * *." *Id.* Savings and loan institutions also follow this practice (12 CFR § 550.8).

requests comment on whether the investment structure of these institutions warrants this treatment, or whether banks and savings and loan institutions should be permitted to aggregate the two types of portfolios in determining eligibility.

The reproposed Rule would permit aggregation of securities held by wholly-owned bank subsidiaries of a bank holding company, operating either in a state that prohibits or restricts branch banking or in more than one state, in determining the eligibility of the holding company and any such wholly-owned subsidiary to purchase under the Rule. The holding company structure in these cases is necessitated by provisions of federal and state law and should not operate to the disadvantage of these companies under Rule 144A, precluding them from being qualified institutional buyers. The Commission requests comment regarding whether allowing such aggregation is appropriate, and whether such treatment should be extended to savings and loan holding companies.

In determining whether an institution is a qualified institutional buyer, a seller would measure the value of that institution's securities portfolio by the total cost of the securities in the portfolio. The Commission is proposing that purchaser eligibility be determined on a fiscal year-end basis because this would provide a brightline test and, to the extent that information regarding the purchaser's securities investments is disclosed in its financial statements or regulatory reports, such information is most likely to be available on a year-end basis. The Commission requests comment on whether the eligibility of an institution should instead be based on its securities portfolio on a quarterly basis.

The original Rule proposal provided that sellers could rely upon information filed with the Commission in establishing the requisite reasonable belief that a prospective purchaser was a qualified institutional buyer.[20] In response to the proposal, several commenters suggested that sellers also should be able to rely on information filed with other federal or state regulatory agencies because not all eligible institutional buyers file information with the Commission. The proposal has been modified in response to such comments, and, in light of the likely use of Rule 144A for securities of foreign issuers, reliance on foreign government or self-regulatory organization filings would be permitted as well. Therefore, in determining whether a particular entity is a qualified institutional buyer, the seller and any person acting on its behalf could rely upon publicly available information regarding the securities investments of the entity appearing in financial statements or other material filed with the Commission or another United States federal, state, or local governmental agency or self-regulatory organization, or with a foreign governmental agency or foreign self-regulatory organization. The seller and any person acting on its behalf could rely upon such filings as a non-exclusive means of satisfying the reasonable belief standard if the information is disclosed in the filings.[21]

Additionally, the Commission has added as a *per se* reasonable basis of belief of eligibility, information published in the "recognized securities manual." Where a publication like Moody's includes financial information that would provide the requisite information concerning securities investments, reliance on such information would be a basis for reasonable belief as to the institution's eligibility. The scope of the term "recognized securities manual" would be a matter of interpretation. Many states have exemptions based on publication in a recognized securities manual. The Commission would recognize similar manuals, such as Standard & Poor's Corporation Records; Moody's publications, including the Industrial, Transportation, OTC Industrial, the Bank and Finance, the Public Utility, and the International manuals and Best's Insurance Reports. Questions as to any other particular publication would be answered by the staff.

Several commenters stated that adoption of Rule 144A would necessitate a reevaluation of the limits currently placed on investments in restricted securities by certain types of investment companies. Open-end management investment companies ("mutual funds") and unit investment trusts ("UITs") issue redeemable securities,[22] and are required by section 22(e) of the Investment Company Act to make payment to shareholders for securities tendered for redemption within seven days of their tender.[23] These investment companies must maintain a high degree of liquidity to assure that portfolio securities can be sold and the proceeds used to meet redemptions in a timely manner. Guide 13 to Form N-1A [24] states the staff position that the usual limit on aggregate holdings by mutual funds of illiquid assets is ten percent of the value of the company's assets. Generally, an "illiquid security" is any security that cannot be disposed of promptly and in the ordinary course of business within taking a reduced price.[25] The Commission has taken the position that restricted securities are *per se* illiquid.[26] The commenters urged that, if Rule 144A is adopted, the Commission should reconsider this position to permit investment companies to participate more fully in the private markets, which are expected to be more liquid as a result of the Rule.

The Commission is considering revising its position so that, if Rule 144A is adopted, mutual funds and UITs would not be required to treat securities eligible for resale under rule 144A as *per se* illiquid. The determination of the liquidity of Rule 144A securties in the portfolio of an investment company issuing redeemable securities would be a question of fact for the board of directors to determine, based upon the trading market for the specific security. Comment is requested on whether the Commission should revise its position and, if so, whether any special conditions should be imposed to assure the liquidity of these securities. Commenters are requested to provide information as to any assumptions about market conditions that investment company boards of directors make in determining whether portfolio securities are liquid.

Generally, securities that cannot be publicly offered or sold because of statutory, regulatory or contractual arangements or other restrictions are deemed by the Commission's uniform net capital rule [27] to be non-marketable securities, and broker-dealers are required in their net capital computation to deduct 100 percent of the carrying value of such securities.[28] The Division of Market Regulation has taken the position in the past that a ready market could be deemed to exist with respect to securities that would otherwise be deemed to be non-marketable under the rule.[29] The division of Market Regulation is currently studying the marketability of certain short and medium term unregistered debt instruments and will expand its study to cover instruments which may be traded pursuant to Rule 144A.

B. Exclusion of Fungible Securities From Rule

As reproposed, Rule 144A would not extend to the offer or sale of securities that, when issued, were of the same class as securities listed on a national securities exchange registered under section 6 of the Exchange Act [30] or quoted in an automated inter-dealer quotation system.[31] This revision to the original proposed Rule is designed to address concerns expresed by commenters that Rule 144A could result in the development of side-by-side public and private markets for the same class of securities. As a result of the revision, privately-placed securities that, at the time of their issuance, are fungible with securities trading on a U.S. exchange or quoted in NASDAQ would not be eligible for resale under the proposed Rule. Where American Depositary Shares ("ADSs") are publicly traded in the United States, the deposited securities underlying the ADSs also would be considered publicly traded and could not be sold in reliance on the Rule.

Under the Rule, as reproposed, eligibility for resale would be determined at the time of issuance in the interest of certainty. Thus, privately placed securities of nonreporting companies that go public thereafter would still be eligible to be sold in reliance on the proposed Rule. While this could result in some side-by-side trading, it should not be substantial. Proposed Rule 144(k) can be expected to result in privately placed securities flowing from the private market to the public market three years after issuance. Accordingly, the potential for substantial side-by-side markets developing when a privately held issuer makes an initial public offering appears quite limited both in its duration and in its effect on the public markets.

In the alternative, fungibility could be measured at the time of each resale made under the Rule. To assure against loss of bargained for liquidity, purchasers could obtain registration rights that would be triggered if public trading commenced in securities of the same class. The Commission requests comment on both alternatives and on whether concerns about side-by-side markets developing in the securities of issuers newly traded in the public markets are substantial enough to necessitate changing the rule to measure fungibility on a transaction-by-transaction basis.

The reproposed Rule provides that convertible securities, exercisable within three years of issuance, would be treated as securities of both classes. In the original Rule proposal, for purposes of determining fungibility in the context of the fungible securities tier, all convertible securities were considered securities of both classes. Upon reconsideration, this does not appear necessary to serve the purposes of the Rule. The three-year period parallels Rule 144(k). Thus, if the underlying security were of a class that were traded publicly, even if the senior security were not, the senior security could not be resold under Rule 144A. This treatment is intended to prevent side-by-side markets from developing in the underlying securities through the sale of convertible securities. The Commission requests comment on whether the purpose of this provision would be adequately served by a shorter period of non-exercisability, such as one or two years and, if so, why. The Commission also requests comment on whether an alternative test relying on premiums upon conversion, such as 15 percent or 20 percent, would adequately protect against side-by-side markets developing in the underlying securities.

C. Provision of Information

As reproposed, the Rule would require that the seller provide to the buyer, upon request, basic information concerning the business of the issuer and its final statements, if the issuer was not a reporting company under the Exchange Act or exempt from Exchange Act reporting pursuant to Rule 12g3-2(b).[32] As noted above, the Commission is proposing the information requirement in response to concerns raised with respect to the effect of the proposed rule and the securities.

Where the issuer is a reporting company under the Exchange Act or is providing the information required to maintain a reporting exemption pursuant to Rule 12g3-2(b), publicly available information should sufficiently allay those concerns. Where such information is not available, the proposed information requirement would condition the availability of the rule on the seller or person acting on its behalf providing the buyer with the specified information. The rule does not specify the manner in which the seller would obtain the specified information; the information could be obtained

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[20] The term "reasonable belief" as used in Rule 144A would have the same meaning as it does in Regulation D (17 CFR 230.501-.506).

[21] Given the change in the purchaser eligibility test from total assets to investments in securities, such filings may not disclose such information specifically for all classes of issuers. Regulation S-X specifies the form and content of investment portfolio disclosures for companies that file financial statements with the Commission. *See* 17 CFR 210.1-01 *et seq.* All such companies are required to present, on at least an annual basis, marketable securities separately on the balance sheet, if material, classified into current and non-current components. 17 CFR 210.5-02.2, 6-04.1, 6-06.1, 6A-03.2, 7-03.1, and 9-03.6. More detailed disclosure of the aggregate amounts of the various marketable securities categories (*e.g.*, government obligations, corporate equities, corporate debentures) is required on the balance sheet or notes thereto of certain registered investment companies, employee stock purchase plans, bank holding companies, and savings and loan holding companies. 17 CFR 210.6-06.1, 6A-03.2, 7-03.1, 9-03.6; Staff Accounting Bulletin No. 69. In addition, detailed marketable securities portfolio information including number of shares or units, cost, market value, and carrying value by type of issuer within each category of marketable securities may be required in a supplemental schedule. 17 CFR 210.12-02. Registered investment companies, employee stock purchase plans, and insurance companies are required to provide this information in all cases. 17 CFR 210.6-10(c), (d) and (e), 6A-05, and 7-05. Commercial and industrial companies are required to provide this information if: (1) either total current or total non-current marketable securities constitute 10 percent or more of total assets; (2) total current and non-current marketable securities in the aggregate constitute 15 percent or more of total assets; or (3) total marketable securities of a single issuer constitute two percent or more of total assets. 17 CFR 210.5-04. Bank holding companies and savings and loan holding companies are not required to provide the supplemental schedule, but are required to provide detailed investment portfolio information as part of the description of business in filings with the Commission. *See* Industry Guide 3; Staff Accounting Bulletin No. 69. Additionally, information regarding securities investments of a commercial bank appear in its Report of Condition and Income (call report) on Form FFIEC 031, and in its Annual Report of Trust Assets on Form FFIEC 001 that are filed with the Comptroller of the Currency. Information regarding securities investments of savings and loan institutions and savings banks under the jurisdiction of the Federal Home Loan Bank Board ("FHLBB") would appear in the Thrift Financial Report filed on Form 1313 with the FHLBB and in the certified financial statements they must file with the Federal Home Loan Bank in the District in which they are located. Information regarding securities investments of insurance companies may appear in the annual statements they must file with state insurance regulators.

[22] *See* Sections 5(a)(1) and 4(2) of the Investment Company Act of 1940 (15 U.S.C. §§ 80a-5(a)(1) and 80a-4(2)).

[23] 15 U.S.C. 80a-22(e).

[24] 17 CFR 274.11A.

[25] Investment Company Act Release No. 14983 (March 12, 1986) (51 FR 9773).

[26] Investment Company Act Release No. 5847 (Oct. 21, 1969) (35 FR 19989). In the case of UITs, the Division of Investment Management has taken the position that, if the sponsor maintains a secondary market for trust units so that units are rarely redeemed, the UIT may have up to fifty percent of its assets invested in restricted securities. *See* Guide 3 to proposed Form N-7 in Investment Company Act Rel. No. 15612 (Mar. 9, 1987) (52 FR 8268).

[27] Rule 15c3-1 (17 CFR 240.15c3-1).

[28] *See* Rule 15c3-1(c)(2)(vii) (17 CFR 240.15c3-1(c)(2)(vii)).

[29] *See* Rule 15c3-1(c)(11) [17 CFR 240.15c3-1(c)(11)], and the Division of Market Regulation's letter dated December 29, 1975 to the Securities Industry Association. Rule 15c3-1(c)(11) of the uniform net capital rule sets forth the definition of what constitutes a "ready market" for securities.

[30] 15 U.S.C. 78f.

[31] Consistent with the use of the term in Rule 12g3-2(b), an "automated inter-dealer quotation system" would include NASDAQ but would exclude bid and ask quotations in the current "pink sheets" of the National Quotation Bureau, Inc.

[32] *See* proposed Rule 144A(d)(4).

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pursuant to contracted rights with the issuer or in any other manner.

The Commission requests comment as to whether the information condition should be deleted in its entirety, on the theory that qualified institutional buyers are sophisticated investors that are able to adequately assess their need for information and to determine when to proceed with an investment. Will the requirement unnecessarily impair the efficiency of resale transactions under the proposed rule? The Commission also requests comment as to whether the requirement should be expanded to apply to all transactions subject to Rule 144A, or to require that the holder of the security have the right to obtain such information upon request from the issuer directly. Would the issuer's liability with respect to the information be altered by a delivery to the holder requirement?

V. Securities of Foreign Non-Reporting Issuers

In the Proposing Release, the Commission expressed concerns regarding the possibility that non-reporting foreign issuers' securities, originally issued to and resold among institutions in a transaction or chain of transactions not involving any public offering, would flow into the retail market and become widely held by non-institutional investors without adequate publicly available information concerning the issuer because of the exemption from the Exchange Act's reporting requirements provided by Rule 12g3-2(b).[33] As noted above, commenters expressing a view on this issue advised the Commission that such concerns should not be resolved by repealing or otherwise amending Rule 12g3-2(b), on which more than 1400 foreign issuers currently rely. Rather than modify Rule 12g3-2(b), the Commission proposes to impose resale restrictions on securities of non-reporting foreign private issuers traded in both a U.S. and foreign securities market, which are sold in reliance upon the Rule,[34] and to revise the amendments to Rule 144 to preclude "tacking" of holding periods for securities issued by non-reporting foreign private issuers.[35] Thus, resales of such securities into the retail market under Rule 144 could be made only after the investor had held the security for at least two years. This revision, coupled with the offense resale provisions of proposed Regulation S,[36] should minimize the potential for proposed Rule 144A to increase significantly the sale of foreign securities in the United States to investors other than institutions eligible to purchase under the Rule. The proposed resale restrictions further should impede any flow of securities of non-reporting foreign private issuers into the U.S. public markets.

A. Resale Restrictions

Resale restrictions are proposed to be incorporated in Rule 144A. The revised Rule would requre that, where securities of non-reporting foreign private issuers were traded in the United States, steps would be taken to prevent their leakage into the retail market.[37] Resale restrictions would apply if, at the time of the resale, the issuer of the securities was a foreign private issuer that was not subject to Section 13 or 15(d) of the Exchange Act, and securities of the same class were traded on or through the facilities of a foreign securities exchange or designated organized foreign securities market,[38] and quoted in a U.S. inter-dealer quotation system within the previous 12 months.[39] The criteria are intended to apply resale restrictions to securities fungible with securities traded in the United States. The practical effect of this standard would be that most foreign debt securities generally would not be subject to resale restrictions. The Commission requests comment, however, whether 12 months is a reasonable period of time, and if not, whether a six or three month period during which quotations have appeared in a U.S. inter-dealer quotation system would suffice.

The proposed Rule would require that the seller of the restricted securities, or a person acting on its behalf, take reasonable steps to prevent the purchaser of such securities from reselling the securities in the United States without restriction or an available exemption. Where precautionary procedures were implemented and followed properly, a seller's transaction would be protected by the safe harbor, notwithstanding any subsequent non-exempt unregistered distribution by a purchaser. In such cases, the reselling purchaser would be in violation of Section 5 of the Securities Act,[40] but not the prior holder that sold in compliance with the safe harbor Rule.

The Rule provides that reasonable steps to guard againt an unregistered, non-exempt public offering would be conclusively established where the purchasers agreed in writing not to resell the securities in the United States absent registration or an applicable exemption, and there existed a procedure administered by the issuer or a third party that was reasonably designed to prevent the transfer of the restricted securities to other than qualified institutional buyers, unless the securities were registered under the Securities Act or an exemption was available.[41] The existence of such a procedure could be established, for example, where the securities were subject to stop transfer instructions, legends or restrictions designed to prevent the unregistered distribution of restricted securities into the U.S. public market. The issuer in establishing such a procedure could rely on the reasonable belief standard in proposed Rule 144A(d)(1) in assessing a buyer's qualification. As noted in the Proposing Release, sellers could rely on a closed trading system that limited trading to qualifying institutions and established depositary and clearance systems such that trades could be made only to other such institutions or outside the United States.[42]

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[33] Proposing Release, 53 FR 15 44023.

[34] *See* proposed Rule 144A(d)(5).

[35] *See infra* n. 43 and accompanying text.

[36] *See* Rule 906 of proposed Regulation S. Under Rule 906, resales of securities by persons other than the issuer or a distributor could be made immediately into foreign markets provided certain conditions were met. As a result, rather than wait for the expiration of the applicable holding period under Rule 144, proposed Rule 906 would provide an incentive for holders of restricted securities to resell such securities overseas where they seek access to the foreign trading markets.

[37] *See* proposed Rule 144A(d)(5).

[38] The term "designated organized foreign securities market" would have the same meaning as in Rule 902(a) of proposed Regulation S, and would mean any market for trading of securities designated by the Division of Corporation Finance that is organized under foreign law; has an established operating history; and is subject to oversight by a governmental or self-regulatory body to which securities transactions are reported on a regular basis. *See* Securities Act Release No. 33-6838 (July 11, 1989) (Reg S reproposal).

[39] The term "inter-dealer quotation system" would be defined by reference to Rule 15c2-11(e)(2) [17 CFR § 240.15c-11(e)(2)], as "any system of general circulation to brokers and dealers which regularly disseminates quotations of identified brokers or dealers * * * " Such a system would include NASDAQ as well as the National Quotation Bureau Inc. "pink sheets."

[40] 15 U.S.C. 77e.

[41] *See* proposed Rule 144A(d)(5).

[42] *See* Proposing Release, 53 FR at 44030, 44031. The American Stock Exchange, Inc. has proposed a domestic market for institutional trading of unregistered foreign securities to be known as SITUS, for "System for Institution-Trading of Unregistered Securities." The National Association of Securities Dealers, Inc. has proposed a NASDAQ-type system for the trading of unregistered securities of major foreign and domestic issuers. The NASD system will be known as PORTAL, for "Private Offerings, Resales and Trading through Automated Linkages." The Commission has not yet made any determination as to the status of either SITUS or PORTAL under the Securities Act and the Exchange Act.

The seller's failure to take the particular steps specified in the Rule would not create a presumption that it has acted unreasonably to guard against an unregistered, non-exempt public offering. In the absence of taking the specified steps, the seller would remain free to establish that other reasonable steps had been taken to prevent an unregistered distribution in the United States.

The Commission requests comment on the effectiveness of the proposed resale restrictions in preventing an unregistered public offering, and specifically requests comment on the need for such resale restrictions to protect against Rule 144A's significantly increasing the amount of securities of non-reporting foreign issuers being sold to ineligible buyers.

B. Proposed Amendments to Rules 144 and 145

As originally proposed, the amendments to Rule 144 would have permitted a holder of securities acquired in a transaction or chain of transactions not involving any public offering to include in its holding period the period that prior holders unaffiliated with the issuer of such securities held the securities. The amendments would have permitted such "tacking" regardless of the status of the issuer of the restricted securities. Upon consideration of the comments received, as noted above, the Commission now proposes to modify the amendments so that each purchaser of restricted securities of non-reporting foreign private issuers would continue to be required to hold the securities for the specified holding period to reselling the securities pursuant to Rule 144.[43]

The permissibility of tacking would be determined at the time of the proposed resale. Thus, if the foreign private issuer became a reporting company after issuance of the restricted securities, subsequent sellers of such securities would be able to tack the holding periods of previous unaffiliated holders.

Under the original proposal, the Commission proposed to eliminate certain provisions allowing tacking as no longer necessary.[44] These provisions would be preserved, as revised, to conform to this change to the Commission's original proposal.[45]

In addition, the Commission has made several technical and clarifying changes to the Rules. Such changes are incorporated, as discussed below, in proposed paragraphs (d) (1) and (d)(4)(viii) of Rule 144, and paragraph (d) of Rule 145.

Proposed Rule 144(d)(1) has been revised to clarify that a person acquiring restricted securities from a non-affiliated record owner holding the securities in nominee name on behalf of an affiliate must satisfy the full two or three year holding period that, under new paragraph (d)(1), would begin upon any acquisition of restricted securities from an affiliate. Upon reconsideration, the Commission has inserted in proposed paragraph (d)(1) language from existing paragraph (d)(1) referring to commencement of the holding period upon acquisition from the issuer or an affiliate only where there full purchase price or other consideration is paid or given by the acquiror. This change is consistent with the Commission's position that consideration for the acquisition of securities may be paid through services and other non-cash media.

Technical amendments have been made to proposed Rule 144(d)(4)(viii) and paragraphs 145 (d)(2) and (d)(3) to clarify the Commission's intent that the holding period for securities acquired in merger or other Rule 145(a) transaction begins at the time of the transaction, not the subsequent date when the securities are issued.

A modification to Rule 144(k) also is proposed in response to public comment. As outlined in the Proposing Release,[46] a proposed amendment to this provision would allow a person who has been a non-affiliate for three or more months to resell restricted securities free of the volume, information, manner of sale and Form 144 filing requirements if the securities have been held for at least three years from the later of the date of their acquisition from either an issuer or its affiliate. This modification of current Rule 144(k) was intended solely to incorporate the liberalized tacking principle to be embodied in revised paragraph (d)(1), pursuant to which the three-year holding period must be calculated. One commentator nonetheless has suggested that, if adopted as drafted, amended paragraph (k) could be construed to prevent a non-affiliated trust from combining with its own holding period that of its settlor. To minimize the potential for misinterpretation, the Commission has proposed to revise paragraph (k) to clarify that a non-affiliate taking restricted securities from an affiliate of the issuer in connection with any of the no-sale transactions set forth in amended paragraphs (d)(4)(iv) through (d)(4)(vii) of Rule 144 would be permitted to sell in accordance with paragraph (k), notwithstanding his transferer's affiliate status, and to tack the latter's holding period to his own for purposes of complying with the three-year requirement.[47]

VI. Cost-Benefit Analysis

As an aid in the evaluation of the costs and benefits of these revised proposals, the Commission requests the views and other supporting information from the public. It appears to the Commission that the proposals, if adopted, would work significant cost savings for issuers without compromising investor protection.

VII. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("Analysis") in accordance with 5 U.S.C. 603 regarding proposed Rule 144A and the proposed amendments to Rules 144 and 145. The Analysis explains that the Commission proposed Rule 144A because it appeared that, in certain circumstances, specified institutional investors may not need the protection of the registration provisions of the Securities Act, and that registration in such circumstances may impose undue burdens on the parties to these transactions. The Analysis explains that the proposed amendments to Rules 144 and 145 are intended to provide more equitable means of determining the period for which restricted securities must be held before public resale is protected by the rules.

The Analysis indicates that the effect of Rule 144A would be to enhance the liquidity of the private secondary market, thus making it easier for issuers, including small issuers, to sell their securities in that market. It notes that if the qualified institutional buyer tier was adopted as originally proposed, small issuers would not be disproportionately affected by Rule 144A, as that tier would not be limited to debt securities, preferred stock and securities issued by reporting issuers. The revised definition of "qualified institutional buyer" would similarly not limit the securities that would be permitted to be sold in

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[43] Proposed Rule 144(d)(1) and 144(k); proposed Rule 145(d).

[44] Proposing Release, 53 FR at 44032, 44033.

[45] *See* proposed Rules 144 (d)(2), (d)(3), and (d)(4)(iv) through (d)(4)(vii), and proposed rule 145(d)

[46] Proposing Release, 53 FR at 44032, discussing proposed Rule 144(d)(4)(viii).

[47] *See, e.g., Everest & Jennings International* (Nov. 19, 1981).

reliance on the Rule, except for securities of the same class as securities listed on a national securities exchange or quoted in an automated inter-dealer quotation system. This exception, however, would affect, without regard to size, all issuers contemplating a private or public offering. The Analysis further states that small entities that are broker-dealers generally would be affected by proposed Rule 144A in the same way as other investment firms.

The Analysis also indicates that proposed Rule 144A contains no reporting requirements. Rather, adoption of the Rule may result in decreased reporting, recordkeeping, and other compliance requirements with respect to transactions covered by the Rule. The amendments to Rules 144 and 145 would similarly have no significant effect on reporting, recordkeeping and other compliance requirements.

A copy of the Initial Regulatory Flexibility Analysis may be obtained from Brent H. Taylor, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

The Commission encourages the submission of comments with respect to any aspect of the Analysis. Such written comments will be considered in the preparation of the final Regulatory Flexibility Act Analysis if the proposed Rule is adopted. Persons wishing to submit written comments should file four copies of such comments with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. All submission should refer to File No. S7-23-88 and will be available for public inspection.

VIII. Request for Comments

Any interested persons wishing to submit written comments on proposed Rule 144A and the proposed amendments to Rules 144 and 145, as well as on other matters that may have an impact on the proposals, are requested to do so.

IX. Statutory Basis for Proposals

Rule 144A is being proposed by the Commission and Rules 144 and 145 are proposed to be amended by the Commission pursuant to sections 2(11), 4(1), 4(3), and 19(a) of the Securities Act of 1933.

List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

X. Text of Proposals

In accordance with the foregoing, Title 17, Chapter II, Part 230 of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 is amended by adding the following citation: (citations before * * * indicate general rulemaking authority).

Authority: Sec. 19, 48 Stat. 85, as amended, 15 U.S.C. 77s * * * § 230.144A also issued under Sec. 2, 48 Stat. 74, as amended, 15 U.S.C. 77b; and also Sec. 10, 48 Stat. 81 as amended, 15 U.S.C. 77j.

2. By revising paragraph (a)(3) of § 230.144 to read as follows:

§ 240.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.

(a) * * *

(3) The term "restricted securities" means securities that are acquired directly or indirectly from the issuer, or from an affiliate of the issuer, in a transaction or chain of transactions not involving any public offering, or securities acquired from the issuer that are subject to the resale limitations of regulation D (§ 230.501 through § 230.506 of this chapter) or Rule 701(c) (§ 230.701(c) of this chapter) under the Act, or securities that are subject to the resale limitations of Regulation D and acquired in a transaction or chain of transactions not involving any public offering, or securities that are acquired in a transaction or chain of transactions meeting the requirements of Rule 144A (§ 230.144A of this chapter).

* * * * *

3. By further amending § 230.144 by revising paragraph (c)(2) as follows:

(c) * * *

(2) *Other Public Information.* If the issuer is not subject to Section 13 or 15(d) of the Securities Exchange Act of 1934, there is publicly available the information concerning the issuer specified in paragraph (a)(5)(i) to (xiv), inclusive and paragraph (a)(5) (xvi) of Rule 15c2-11 (§ 240.15c2-11 of this chapter) under that Act or, if the issuer is an insurance company, the information specified in section 12(g)(2)(G)(i) of that Act.

* * * * *

4. By further amending § 230.144 by revising paragraphs (d)(1), (d)(2), (d)(3), (d)(4)(iv) through (d)(4)(vii), and the note after (d)(4)(vii) and adding a new (d)(4)(viii) as follows:

(d) * * *

(1)(i) A minimum of two years must elapse between the later of the date of the acquisition of the securities from the issuer or from an affiliate of the issuer, and any resale of such securities for the account of either the acquiror or any subsequent holder of those securites, and if the holder acquires the securities by purchase, the two-year period shall not begin until the full purchase price or other consideration is paid or given by the person acquiring the securities by purchase, the two-year period shall not begin until the full purchase price or other consideration is paid or given by the person acquiring the securities from the issuer or from an affiliate of the issuer; *provided, however,* (ii) that if the securities sold were issued by a foreign private issuer that is not subject to section 13 or 15(d) of the Securities Exchange Act of 1934 at the time of the resale, the person for whose account the securities are sold shall have acquired the securities at least two years prior to the resale, and if the holder acquired the securities by purchase, the two-year period shall not begin until the full purchase price or other consideration is paid or given by the person acquiring the securities to the person from whom the securities were acquired.

(2) *Promissory Notes, Other Obligations or Installment Contracts.* If the person making the acquisition of the securities from the issuer or from an affiliate of the issuer, or, in the case of securities issued by a foreign private issuer not subject to Section 13 or 15(d) of the Securities Exchange Act of 1934, from the issuer, and affiliate of the issuer or any other holder, gave such seller a promissory note or other obligation to pay the purchase price or enters into an installment purchase contract with such seller, such consideration shall not be deemed full payment of the purchase price unless the promissory note, obligation or contract—

(3) *Short Sales, Puts or Other Options to Sell Securities.* In computing the two-year period with respect to the securities of foreign private issuers not subject to section 13 or 15(d) of the Securities Exchange Act of 1934, the following periods shall be excluded:

(4) * * *

(iv) *Pledged Securities.* Securities which are bona-fide pledged either by an affiliate of the issuer or, where such securities were issued by a foreign private issuer not subject to section 13 or 15(d) of the Securities Exchange Act of 1934, by any person other than the issuer, when sold by the pledgee, or by a purchaser, after a default in the obligation secured by the pledge, shall be deemed to have been acquired when they were acquired by the pledgor, except that if the securities were pledged without recourse they shall be deemed to have been acquired by the pledgee at the time of the pledge or by the purchaser at the time of purchase.

(v) *Gifts of Securities.* Securities acquired either from an affiliate of the issuer or, where such securities were issued by a foreign private issuer not subject to section 13 or 15(d) of the Securities Exchange Act, from any person other than issuer, by gift shall be deemed to have been acquired by the donee when they were acquired by the donor.

(vi) *Trusts.* Where a trust settlor is either an affiliate of the issuer or, in the case of securities issued by a foreign private issuer not subject to section 13 or 15(d) of the Securities Exchange Act, the settlor is any person other than the issuer, securities acquired from the settlor by the trust, or acquired from the trust, or acquired from the trust by the beneficiaries thereof, shall be deemed to have been acquired when such securities were acquired by the settlor.

(vii) *Estates.* Where a deceased person was an affiliate of the issuer or, in the case of securities issued by a foreign private issuer not subject to section 13 or 15(d) of the Securities Exchange Act of 1934, the deceased was any person other than the issuer, securities held by the estate of such person or acquired from such estate by the beneficiaries thereof shall be deemed to have been acquired when they were acquired by the deceased person, except that no holding period is required if the estate is not an affiliate of the issuer or if the securities are sold by a beneficiary of the estate who is not such an affiliate.

Note: While there is no holding period or amount limitation for estates and beneficiaries thereof which are not affiliates of the issuer, paragraphs (c), (f), (g), (h) and (i) of the rule apply to securities sold by such persons in reliance upon the rule.

(viii) *Rule 145(a) transactions.* The holding period for securities acquired in a transaction specified in Rule 145(a) shall be deemed to commence on the date the securities were acquired by the purchaser in such transaction. This provision shall not apply, however, to a transaction effected solely for the purposes of forming a holding company.

* * * * *

5. By further amending § 230.144 by revising paragraph (k) as follows:

* * * * *

(k) *Termination of certain restrictions on sales of restricted securities by persons other than affiliates.* The requirements of paragraphs (c), (e), (f) and (h) of this rule shall not apply to restricted securities sold for the account of a person who is not an affiliate of the issuer at the time of the sale and has not been an affiliate during the preceding three months, provided a period of at least three years has elapsed since the later of the date the securities were acquired from the issuer or from an affiliate of the issuer or, in the case of securities issued by a foreign private issuer not subject to Section 13 or 15(d) of the Securities Exchange Act of 1934 at the time of the sale, a period of at least three years has elapsed since the person for whose account the securities are sold shall have acquired the securities. In computing the three-year period for purposes of this provision, reference should be made to paragraph (d) of this section.

6. By revising § 230.145(d) to read as follows:

§ 230.145 Reclassification of securities, mergers, consolidations and acquisitions of assets.

* * * * *

(d) *Resale provisions for persons and parties deemed underwriters.* Notwithstanding the provisions of paragraph (c), a person or party specified therein shall not be deemed to be engaged in a distribution and therefore not to be an underwriter or registered securities acquired in a transaction specified in paragaph (a) of this section if: (1) Such securities are sold by such person or party in accordance with the provisions of paragraphs (c), (e), (f) and (g) of § 230.144; (2) such person or party is not an affiliate of the issuer, and a period of at least two years, as determined in accordance with paragraph (d) of § 230.144, has elapsed since the date the securities were acquired from the issuer in such transaction or, in the case of securities issued by a foreign private issuer not subject to Section 13 or 15(d) of the Securities Exchange Act of 1934 at the time of the resale, a period of at least two years, as determined in accordance with paragraph (d) of § 230.144, has elapsed since such person shall have acquired the securities, and the issuer meets the requirements of paragraph (c) of § 230.144; or (3) such person or party is not, and has not been for at least three months, an affiliate of the issuer, and a period of at least three years, as determined in accordance with paragraph (d) of § 230.144, has elapsed since the date the securities were acquired from the issuer in such transaction or, in the case of securities issued by a foreign private issuer not subject to section 13 or 15(d) of the Securities Exchange Act of 1934 at the time of the resale, a period of at least three years prior to the resale, as determined in accordance with paragraph (d) of § 230.144, shall have elapsed since such person shall have acquired the securities.

7. By adding § 230.144A to read:

§ 230.144A Private resales of securities to institutions.

Preliminary Notes

1. This rule relates solely to the application of Section 5 of the Securities Act of 1933 (the "Act") and not to antifraud or other provisions of the federal securities laws.

2. Attempted compliance with this rule does not act as an exclusive election; any seller hereunder may also claim the availability of any other applicable exemption from the registration requirements of the Act.

3. Nothing in this rule obviates the need for any issuer or any other person to comply with the securities registration or broker-dealer registration requirements of the Securities Exchange Act of 1934 (the "Exchange Act"), whenever such requirements are applicable.

4. Nothing in this rule obviates the need for any person to comply with any applicable state law relating to the offer or sale of securities.

5. Securities acquired in a transaction meeting the conditions of this rule are deemed to be "restricted securities" within the meaning of § 230.144(a)(3) of this chapter.

6. The fact that purchasers of securities from the issuer may purchase such securities with a view to reselling such securities pursuant to this rule will not affect the availability to the issuer of an exemption under Section 4(2) of the Act from the registration requirements of the Act.

(a) *Definition of Qualified Institutional Buyer.* For purposes of this § 230.144A, "qualified institutional buyer" shall mean:

(1) Any of the following, acting for its own account, that at the conclusion of its most recent fiscal year had assets invested in securities that were purchased for a total of more than $100,000,000: (i) any bank as defined in section 3(a)(2) of the Act, or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Act; (ii) any broker or dealer registered pursuant to section 15 of the Exchange Act; (iii) any insurance company as defined in section 2(13) of the Act; (iv) any investment company registered under the Investment Company Act of 1940 (the "Investment Company Act") or any business development company as defined in section 2(a)(48) of that Act; (v) any Small Business Investment Company licensed by the U.S. Small Business Administration under section 301 (c) or (d) of the Small Business Investment Act of 1958; (vi) any plan established and maintained by a state, its political subdivisions, or any agency

or instrumentality of a state or its political subdivisions, for the benefit of its employees; (vii) any employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in section 3(21) of that Act, which is either a bank, savings and loan association, insurance company, or investment adviser registered under the Investment Advisers Act of 1940 (the "Investment Advisers Act"); (viii) any private business development company as defined in section 202(a)(22) of the Investment Advisers Act; and (ix) any corporation, Massachusetts or similar business trust, organization described in section 501(c)(3) of the Internal Revenue Code, or partnership;

(2) Any investment adviser registered under the Investment Advisers Act, acting for its own account, that at the conclusion of its most recent fiscal year had aggregate assets invested in securities and assets under management invested in securities that it purchased for an aggregate total of more than $100,000,000;

(3) Any investment company registered under the Investment Company Act, acting for its own account, that is part of a family of investment companies which at the conclusion of the company's most recent fiscal year had aggregate assets invested in securities that were purchased for more than $100,000,000. "Family of investment companies" means:

(i) Except for insurance company separate accounts, any two or more investment companies separately registered under the Investment Company Act that share the same investment adviser (or, in the case of unit investment trusts, the same depositor); or

(ii) With respect to insurance company separate accounts, any two or more separate accounts separately registered under the Investment Company Act that share the same investment adviser and that function under operational or accounting or control systems that are substantially similar;

(4) Any bank as defined in section 3(a)(2) of the Act, or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Act, acting in its fiduciary capacity, which at the conclusion of its most recent fiscal year had accounts over which it exercised investment discretion with aggregate assets invested in securities that it purchased on behalf of such accounts for a total of more than $100,000,000;

(5) Any bank holding company, operating either (i) in a state that prohibits or restricts branch banking or (ii) in more than one state, and any wholly-owned subsidiary of that bank holding company, acting for its own account, if in the aggregate the wholly-owned subsidiaries of the holding company at the conclusion of the holding company's most recent fiscal year had assets invested in securities that the holding company and subsidiaries purchased for a total of more than $100,000,000;

(6) Any bank holding company and any wholly-owned subsidiary of the bank holding company operating either (i) in a state that prohibits or restricts branch banking or (ii) in more than one state, acting in its fiduciary capacity, if in the aggregate the wholly-owned subsidiaries of the holding company at the conclusion of the holding company's most recent fiscal year had accounts, over which they exercised investment discretion, with assets invested in securities that the holding company and subsidiaries purchased on behalf of such accounts for a total of more than $100,000,000; and

(7) Any entity all of the equity owners of which are qualified institutional buyers.

(b) *Sales by Persons other than Issuer or Dealers.* Any person, other than the issuer or a dealer, who offers or sells securities in compliance with the conditions set forth in paragraph (d) of this section shall be deemed not to be engaged in a distribution of such securities and therefore not to be an underwriter thereof within the meaning of sections 2(11) and 4(1) of the Act.

(c) *Sales by Dealers.* Any dealer who offers or sells securities in compliance with the conditions set forth in paragraph (d) of this section shall be deemed not to be a participant in the distribution of such securities within the meaning of section 4(3)(C) of the Act, and such securities shall be deemed not to have been offered to the public within the meaning of section 4(3)(A) of the Act.

(d) *Conditions to be Met.* To qualify for exemption under this section, an offer or sale must meet the following conditions:

(1) The securities are offered or sold only to a qualified institutional buyer, or to an offeree or purchaser that the seller and any person acting on behalf of the seller reasonably believe is a qualified institutional buyer. In determining whether a particular offeree or purchaser is a qualified institutional buyer, the seller and any person acting on its behalf shall be entitled to rely upon publicly available information regarding the securities investments of the offeree or purchaser appearing in:

(i) Financial statements or other material filed with the Commission or another United States federal, state, or local governmental agency or self-regulatory organization, or with a foreign governmental agency or foreign self-regulatory organization; or

(ii) A recognized securities manual;

(2) The seller or any person acting on its behalf takes reasonable steps to ensure that the purchaser is aware that the seller may rely on an exemption from the provisions of Section 5 of the Act pursuant to this § 230.144A;

(3) The securites offered or sold:

(i) When issued were not of the same class as securities listed on a national securities exchange registered under Section 6 of the Exchange Act or quoted in a U.S. automated inter-dealer quotation system; *Provided that,* securities that, within three years from the date of issuance, are convertible into or exchangeable for securities aleady publicly traded shall be treated as securities of the class into which they are convertible or exchangeable; and

(ii) Are not securities of an open-end investment company, unit investment trust or face-amount certifiate company that is registered under Section 8 of the Investment Company Act;

(4) In the case of securities of an issuer not subject to section 13 or 15(D) of the Exchange Act and not exempt from reporting pursuant to Rule 12g3-2(b) (§ 240.12g3-2(b) of this chapter) under the Exchange Act, the seller of the securities or a person acting on its behalf must provide the following information to the buyer upon request: a brief description of the business of the issuer and its products and services offered; the issuer's most recent balance sheet and profit and loss and retained earnings statements; and similar financial statements for such part of the two preceding fiscal years as the issuer has been in operation (the statements should be audited statements to the extent available); and

(5) If the issuer of the securities to be offered or sold is a foreign private issuer that is not subject to section 13 or 15(d) of the Exchange Act, and the securities are of the same class as securities (i) that are traded on or through the facilities of a foreign securities exchange or designated organized foreign securities market (as such a market is defined in Rule 902(a) (§ 230.902(a) of this chapter)), and (ii) that have been quoted in a U.S. interdealer quotation system (as such a system is defined in Rule 15c2-11(e)(2) (§ 240.15c2-11(e)(2) of this chapter)) within the previous twelve months, the seller or any person acting on its behalf shall take reasonable steps to prevent the purchaser of the securities from reselling the securities in the United States unless they are registered under the Act, or an exemption from registration is available. Such reasonable steps will be conclusively established where:

(A) The purchaser agrees in writing that the securities will not be resold in the United States unless they are registered under the Act or an exemption from registration is available; and

(B) A procedure exists, which is administered by the issuer of the securities or a third party, that is reasonably designed to prevent the transfer of the securities to other than qualified institutional buyers unless the securities are registered under the Act or an exemption from registration is available.

* * * * *

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

July 11, 1989.

[FR Doc. 89-16631 Filed 7-17-89; 8:45 am]

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17 CFR Part 240

[Release No. 34-27018, International Series Release No. 106; File No. S7-18-89]

Recognition of Foreign Broker-Dealer Regulation

AGENCY: Securities and Exchange Commission.

ACTION: Request for comments.

SUMMARY: The Securities and Exchange Commission solicits comment on a conceptual approach to regulation of foreign broker-dealers that would recognize comparable foreign regulation of broker-dealers in order to achieve the goal of facilitating international securities transactions without compromising the essential protections of the U.S. broker-dealer regulatory regime. In view of the development of comprehensive supervisory schemes in other countries, the Commission is publishing a concept of an exemption from broker-dealer registration that would rely on comparable foreign regulatory regimes and cooperation with foreign securities authorities to regulate certain foreign broker-dealers conducting a limited business from outside the United States with major U.S. institutional investors.

DATE: Comments should be received on or before January 2, 1990.

ADDRESS: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 6-9, Washington, DC 20549. Comment letters should refer to File No. S7-18-89. All comment letters received will be made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Robert L.D. Colby, Chief Counsel, (202) 272-2844; or Dan Gray, Attorney, (202) 272-2848, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5-1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

In June 1988, the Commission published a proposed interpretive statement and proposed rule [1] addressing the broker-dealer registration requirements for foreign broker-dealers under section 15(a) of the Securities Exchange Act of 1934 ("Exchange Act").[2] In a companion to this release,[3] the Commission is adopting Rule 15a-6, which, among other things, exempts from U.S. broker-dealer registration foreign broker-dealers who solicit U.S. institutional investors with a U.S.-registered broker-dealer acting as intermediary. In Release 34-25801, the Commission also noted the development of comprehensive regulatory regimes for broker-dealers in other countries, and indicated that it was weighing whether an approach could be developed at some future point that recognized the regulation of securities professionals in a foreign country as a substitute in some degree for U.S. broker-dealer regulation.[4] Many commenters on Release 34-25801 strongly supported the concept of recognition of foreign regulation.[5]

The Commission believes that recognition of foreign broker-dealer regulation deserves serious consideration. Over the last decade, many institutional investors have actively participated in foreign securities markets in order to diversify their portfolios. Many foreign broker-dealers possess special expertise in foreign markets that would be of use to U.S. institutional investors, yet they may not anticipate obtaining sufficient U.S. business to justify registering in the United States. Recognizing foreign regulation as a substitute, in certain circumstances, for U.S. registration would allow certain of these foreign broker-dealers to deal with U.S. institutional investors without incurring the expense of U.S. registration. This would substantially increase the access of U.S. investors to the valuable services that foreign broker-dealers provide relative to foreign markets. By increasing this access, an approach involving reliance on comparable foreign regulation and cooperation with foreign securities authorities could facilitate international securities transactions, while maintaining effective broker-dealer oversight and preserving the essential protections of U.S. broker-dealer regulation.

Such an approach would, however, raise many difficult issues that must be resolved in order to maintain adequate protection for U.S. investors and markets. In addition, the concept of recognizing foreign regulation could take many forms. To obtain more focused comment on the contours and merits of this concept, the Commission is soliciting public comment on a conceptual approach that would exempt from U.S. broker-dealer registration certain comparably-regulated foreign broker-dealers who conduct a limited business from outside the United States with major U.S. institutional investors. The Commission's preliminary views on the issues raised by such an exemption are discussed below.

II. Background

A. U.S. Broker-Dealer Regulation

Efficient allocation of capital requires that mechanisms exist for bringing buyers and sellers of securities together to ensure liquidity for investors in the capital markets. In most cases, these investors are unlikely to be in a position to locate counterparties and effect transactions efficiently without the assistance of market intermediaries. In their role as market intermediaries, broker-dealers provide services throughout the execution of a securities

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[1] Securities Exchange Act Release No. 25801 (June 14, 1988), 53 FR 23645 ("Release 34-25801").

[2] 15 U.S.C. 78o(a).

[3] Securities Exchange Act Release No. 27017 (July 11, 1989) ("Rule 15a-6 Adopting Release").

[4] *See* Release 34-25801, 53 FR at 23652.

[5] A detailed summary of comments on Release 34-25801 ("Comment Summary") has been prepared and placed in the Commission's public file, together with all comment letters received. *See* File No. S7-11-88. The Commission received seventeen letters commenting on the concept of recognition of foreign regulation, all of which supported the concept. These commentators included U.S. institutional investors, groups representing the U.S. securities industry, foreign securities authorities, and foreign broker-dealers. *See* Part II.D. of the Comment Summary.

transaction, including providing research and advice in the decision-making stage, implementing a decision to buy or sell by finding the most advantageous terms and executing the transaction, arranging for delivery of securities by the seller and payment by the buyer, and maintaining custody of customer funds and securities. In addition, broker-dealer market making and other principal activities are major sources of liquidity in the securities markets. In using a broker-dealer to perform these functions, investors and issuers depend upon the intermediary's integrity, competence, and financial soundness.

Congress has recognized the dangers both to broker-dealers' customers and to the market system as a whole when broker-dealers do not meet minimum standards of integrity, competence, and financial soundness. Congress has enacted a statutory scheme for regulating broker-dealers that requires registration with the Commission and membership in a self-regulatory organization ("SRO"), and that authorizes the Commission and the SROs to establish a comprehensive broker-dealer regulatory regime. U.S.-registered broker-dealers are required, among other things, to meet minimum standards of integrity and competency, to handle customer funds and securities safely, and to maintain sufficient net capital to protect customers and markets from defaults. Comprehensive examination procedures by both the Commission and the SROs have been implemented to monitor broker-dealer compliance and sanction broker-dealers who fail to comply with these requirements.

In view of the longstanding congressional emphasis on the importance of broker-dealer regulation in protecting investors and maintaining the integrity of the securities markets, the Commission believes that any approach recognizing foreign broker-dealer regulation should seek to facilitate international securities transactions without compromising the essential protections of the U.S. regulatory regime.

B. Internationalization and Broker-Dealer Regulation

Securities regulation in the United States, like securities regulation in most other countries, is applied primarily on a territorial basis. When all parties to a securities transaction are located within the same jurisdiction, as in the past was predominantly the case, it is possible to operate an effective regulatory regime within national boundaries. Increasingly, however, issuers and investors are seeking the lowest cost of capital and the greatest return on investment without regard to national boundaries, and securities intermediaries have sought to provide the services necessary to effect securities transactions in which the seller, purchaser, and intermediary may be located in two or more jurisdictions.

In its recent Policy Statement on Regulation of International Securities Markets,[6] the Commission outlined its views on the appropriate regulatory responses to increasing internationalization of the securities markets. The Commission noted that the challenge facing securities regulators is to ensure that global securities markets are efficient and honest. While recognizing that major differences remain among national regulatory structures, the Commission indicated that in its view the appropriate means to reduce these differences without compromising the integrity of national regulatory structures is through increased cooperation between national securities regulators as they seek common solutions to international problems.

The Commission believes that a cooperative approach to the regulation of foreign broker-dealers conducting a limited business from outside the United States with major U.S. institutional investors deserves serious consideration. By relying in certain limited circumstances on comparable foreign regulation as a substitute for U.S. regulation and on cooperation with foreign securities authorities to monitor the cross border activities of these foreign broker-dealers, a cooperative approach potentially could provide U.S. institutional investors with increased access at lower cost to the services of such broker-dealers without undue loss of protection for U.S. investors and markets.

As noted in Release 34–25801, the exclusion of foreign firms from U.S. regulatory requirements possibly could result in risks for U.S. investors and markets if the foreign regulatory system did not afford fundamental protections, or if the cross border activities of exempted broker-dealers were not adequately monitored by either U.S. or foreign regulatory authorities. The Commission believes, however, that a properly tailored approach recognizing foreign broker-dealer regulation can accomplish its goal of maintaining effective regulation of such cross border activities.

III. Conceptual Approach Recognizing Foreign Regulation

To provide a basis for further discussion of a cooperative regulatory approach in the context of U.S. regulation of foreign broker-dealers, the Commission is publishing for comment the concept of a conditional exemption from full U.S. broker-dealer regulation for foreign broker-dealers operating abroad.[7] The purpose of this concept

[6] Securities and Exchange Commission, *Policy Statement on Regulation of International Securities Markets* (November 1988), International Series Release No. 1, 43 SEC Doc. 128 (March 28, 1989) ("Policy Statement"). In addition to the Policy Statement and Release 34–25801, the Commission has on several other occasions indicated its interest in developing approaches that would facilitate international securities transactions. *See, e.g.*, Securities Act Release No. 6806 (October 23, 1988), 53 FR 44016 (proposing Rule 144A); Securities Act Release No. 6779 (June 10, 1988), 53 FR 22861 (proposing Regulation S); Securities Exchange Act Release No. 21958 (April 18, 1985), 50 FR 16302 (request for comment on issues concerning internationalization of the world securities markets); Securities Act Release No. 6568 (February 28, 1985), 50 FR 8281 (request for comment on two conceptual approaches for facilitating multinational securities offerings). *See also Internationalization of the Securities Markets*, Report of the Staff of the U.S. Securities and Exchange Commission to the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Energy and Commerce (July 27, 1987).

Several jurisdictions have adopted or proposed approaches that make special provision for foreign market intermediaries in their regulatory schemes. As noted in Release 34–25801, the U.S. Commodity Futures Trading Commission ("CFTC") has provided an exemption from its rules for futures commission merchants who are located outside the United States, who only transact business in futures traded on a foreign board of trade, and who demonstrates that they are subject to a regulatory scheme comparable to that of the CFTC. *See Interpretive Statement with Respect to the Commission's Exemptive Authority Under § 30.10 of Its Rules*, 17 CFR Part 30, Appendix A. The United Kingdom does not require authorization of a foreign broker-dealer without a permanent office in the United Kingdom if the foreign broker-dealer limits its activities to dealing with sophisticated investors and established customers. *See Financial Services Act 1986*, ch. 60, sch. 1, § 27; *The Financial Services (Unsolicited Calls) Regulation 1987*, § 4. The Ontario Securities Commission requires only limited registration of "international securities dealers." *See Revised Regulations of Ontario*, Regulation 910, § 100. Finally, the European Economic Community has proposed an intra-community approach that would permit firms authorized in one member state to conduct business in other member states without separate authorization in those states. *See* Commission of the European Communities, *Proposal for a Council Directive on investment services in the securities field*, COM (88) 778 (December 16, 1988), O.J. No. C43 (February 22, 1989).

[7] A Commission exemption recognizing foreign regulation would draw on the exemptive authority in section 15(a)(2) of the Exchange Act, 15 U.S.C. 78o(a)(2). Section 15(a)(2) provides that "[t]he Commission, by rule or order, as it deems consistent with the public interest and the protection of investors, may conditionally or unconditionally exempt from paragraph (1) of this subsection any broker or dealer or class of brokers or dealers specified in such rule or order."

release is to give notice of the Commission's preliminary views on how an approach recognizing foreign regulation could be developed and to elicit comment on this approach.

The conceptual approach reflects the Commission's awareness of securities regulatory developments in countries with major trading markets throughout the world, as well as the potential benefits of providing substantial U.S. institutional investors broader access to regulated foreign broker-dealers. In this connection, while the Commission believes that Rule 15a–6 provides an effective means for foreign broker-dealers with U.S. affiliates to provide information and trading assistance to U.S. institutional investors, the Commission is concerned that U.S. registration standards may unduly restrict the access of U.S. institutional investors to unaffiliated broker-dealers. Accordingly, the conceptual approach would provide conditional exemptions for unaffiliated foreign broker-dealers providing cross border services to major U.S. institutional investors.

The conceptual approach would be based on the following elements:

1. A limitation on the scope of the exemption to foreign broker-dealers operating outside the United States whose business is predominantly foreign, who do not have U.S. broker-dealer affiliates, and who limit their activities requiring U.S. broker-dealer registration to providing cross border services to major U.S. institutional investors.

2. The existence of investigative and financial memoranda of understanding ("MOU"), or comparable treaties, between the Commission and the foreign securities authority ("FSA"), that support the reliance by the Commission on the FSA that this conceptual approach would entail.

3. The existence of a foreign regulatory regime that is comparable to that of the United States.

4. Compliance by exempted broker-dealers with specific U.S. regulatory requirements deemed necessary by the Commission for the protection of U.S. investors and markets.

An exemption under the conceptual approach would not depend on a foreign country providing reciprocal treatment to U.S. broker-dealers. The Commission currently extends national treatment to foreign broker-dealers by permitting them to operate in the United States subject to the same terms and conditions applicable to domestic broker-dealers. Although the Commission strongly believes that foreign countries should grant U.S. broker-dealers national treatment, it does not make U.S. national treatment contingent on reciprocal foreign national treatment of U.S. firms. Similarly, although the Commission encourages foreign countries to consider the concept of recognition of U.S. broker-dealer regulation, it would not condition the U.S. exemption on reciprocal recognition by foreign countries of U.S. regulation.

The four elements that would be conditions to an exemption under the conceptual approach are discussed more fully below.

A. Restrictions on U.S.-Related Activities

Broker-dealer regulation is an essential, congressionally-mandated component of the U.S. regulatory structure for protecting investors and maintaining the integrity of the securities markets. To preserve the effectiveness of the U.S. broker-dealer regulatory regime, the Commission does not believe that an exemption recognizing foreign regulation should be made available to foreign broker-dealers if they either (1) operate from within the territory of the United States, whether through corporate affiliates, branches, or otherwise, or (2) conduct a significant portion of their business with U.S. investors. These foreign broker-dealers should be subject to the same rules and regulations applicable to domestic broker-dealers engaged in similar activities. Consequently, the conceptual approach discussed in this release contains several significant restrictions on the U.S.-related activities of exempted broker-dealers.

First, the conceptual approach would make an exemption recognizing foreign regulation available only to foreign broker-dealers operating outside the territory of the United States. The primary rationale for an exemption recognizing foreign regulation is that an FSA can effectively regulate certain cross border activities of broker-dealers operating from its territory. An FSA is unlikely to be able to oversee as effectively as U.S. regulatory authorities those elements of the securities activities of a broker-dealer conducted inside the United States.[8] In this case, U.S. regulators will have much greater access to personnel and records that are located in the United States than will the FSA. Moreover, the Commission has a heightened interest, and governmental comity concerns are less, in activities that are occurring within the territorial boundaries of the United States.

In addition, the Commission does not believe that it would be appropriate to exempt foreign broker-dealers who have an affiliate conducting business as a broker-dealer in the United States. First, Rule 15a–6 provides relief to foreign broker-dealers with U.S. affiliates by permitting foreign associated persons to contact U.S. institutional investors without registration of the foreign broker-dealer.[9] Second, exempting foreign broker-dealers with U.S. broker-dealer affiliates could create a significant potential for inappropriate circumvention of U.S. regulatory requirements. For example, transactions generated by the U.S. affiliate's activities inside the United States, and therefore appropriately subject to U.S. regulation, might be "booked" through the exempted foreign broker-dealer, thereby avoiding U.S. requirements regarding net capital, protection of customer funds and securities, and recordkeeping. The ability of the Commission and SROs to detect such abuse would be limited. In view of the significant connection to the U.S. market of foreign broker-dealers with U.S. affiliates, the Commission does not believe that requiring transactions to be booked through U.S. affiliates, as in Rule 15a–6,[10] constitutes an unreasonable burden on the operations of foreign broker-dealers.

The Commission's conceptual approach also would make an exemption available only to broker-dealers whose business is predominantly foreign. Under this condition, a broker-dealer would not qualify for an exemption under the conceptual approach if its U.S.-related securities activities accounted for more than ten percent of its revenues generated from securities activities.[11] The Commission is concerned that disparities between U.S. and "comparable" foreign broker-dealer regulation could encourage U.S. broker-dealers to relocate offshore while continuing to deal with U.S. institutions. Conceivably, even if a broker-dealer were located outside the United States and its only U.S. customers were institutional investors, the broker-dealer's U.S.-related activities could

[8] As discussed *infra*, note 39, the Commission is seeking comment on the extent to which an exemption recognizing foreign regulation should be available to a foreign broker-dealer operating branches in more than one foreign country.

[9] *See* 17 CFR 240.15a–6(a)(3).

[10] *See* 17 CFR 240.15a–6(a)(3)(iii).

[11] In addition to the percentage restriction, the Commission solicits comment on whether the conceptual approach should include a restriction on the dollar amount of revenues that a foreign broker-dealer could generate from its U.S-related securities activities without being required to register in the United States.

account for a significant portion of its overall business. The Commission does not believe that the conceptual approach should permit this circumvention of the U.S. regulatory scheme.

Finally, the Commission's conceptual approach would exempt foreign broker-dealers only to the extent that they are dealing with major U.S. institutional investors, such as U.S. institutions with more than $100,000,000 in assets or assets under management.[12] Institutional investors have been the most active U.S. participants in foreign securities markets and therefore are most likely to seek the expertise of foreign broker-dealers in foreign markets. Moreover, because major institutions generally are more sophisticated investors than other investors, they are more likely to be capable of dealing with foreign broker-dealers who may have practices and customs different from those of U.S. broker-dealers. These investors also are generally less subject than individual investors to common sales practice abuses, such as churning and unsuitable recommendations. This additional safeguard against foreign broker-dealer misconduct may be important in view of the novelty of an exemptive approach that relies on foreign regulation as a substitute for U.S. regulation. As the Commission and FSAs gain more experience in implementing an approach recognizing foreign regulation, the Commission could consider expanding the types of U.S. investors who could be solicited by exempted broker-dealers.

Some commenters on Release 34-25801 suggested that the Commission adopt an approach providing an exemption for foreign broker-dealers who only deal with major institutional investors, regardless of the nature of the foreign regulation of the broker-dealer.[13] Under present circumstances, the Commission is not inclined to pursue this alternative. Recent experience indicates that major institutional investors can benefit from the safeguards provided by the U.S. regulatory system.[14] Further, institutional investors who specifically seek the opportunity to trade in a foreign market subject to different regulatory standards are free to do so.[15]

The Commission's conceptual approach to an exemption recognizing foreign regulation is intended to increase substantially the access of U.S. institutional investors to foreign markets. At the same time, it will increase the interdependence of U.S. and foreign markets. The increased linkage of world financial markets can benefit investors and the capital-raising process; it also increases the likelihood that a problem in one national market will affect investors based in other markets. In view of the Commission's congressionally-mandated responsibility to protect investors and maintain the integrity of the U.S. securities markets, and the importance of broker-dealer regulation in this process, the Commission is seeking to maintain the safeguards resulting from broker-dealer regulation through cooperation among securities regulators in recognizing international regulatory standards and reducing regulatory differences.

B. Memoranda of Understanding

The conceptual approach would require MOUs between the Commission and the FSA that provide for cooperation and coordination in regulatory, as well as enforcement, matters. To the extent that foreign broker-dealers have dealings with U.S. investors, the conduct and financial condition of these broker-dealers remains of concern to the Commission. Because under the conceptual approach the FSA will be the primary regulator of exempted broker-dealers, the Commission would have to rely on the FSA for information and other assistance necessary for the Commission to fulfill its regulatory responsibilities. Absent agreement by the FSA to provide such assistance to the Commission, broker-dealers from that FSA's jurisdiction would not qualify for an exemption under the conceptual approach.

The essential characteristics of a comprehensive MOU providing for cooperation in enforcement matters are reflected in the Commission's existing MOUs with Canadian and Brazilian securities authorities.[16] These MOUs provide for the fullest mutual assistance possible for investigations and litigation or prosecution of cases where information needed by one authority is located in the territory of another. This assistance includes providing access to information in official agency files, taking the testimony of persons, and obtaining documents from persons.

In addition to cooperation in enforcement matters, an acceptable MOU for purposes of the conceptual approach would provide for cooperation in regulatory matters.[17] Under such a MOU, the FSA would agree to provide (1) periodic reports on the financial condition of exempted broker-dealers and prompt notice of financial difficulties; (2) notice of any disciplinary or other proceedings that bear on an exempted broker-dealer's securities business; and (3) access on an as-

[12] The term "major institutional investor" could be defined in several ways. Rule 15a-6 generally defines the term as institutions that have assets, or assets under management, in excess of $100,000,000. *See* 17 CFR 240.15a-6(b)(4). The Commission solicits comment on appropriate standards for determining the types of U.S. investors that exempted foreign broker-dealers could contact under the conceptual approach.

[13] *See, e.g.*, comments of the Securities Industry Association, Institute of International Bankers, and Brown Brothers Harriman & Co., on proposed Rule 15a-6, summarized in Comment Summary, *supra note 5*.

[14] For example, the practices of unregulated broker-dealers in the primarily institutional government securities market prompted Congress in 1986 to require registration of government securities broker-dealers. *Government Securities Act of 1986*, Pub. L. No. 99-571, 100 Stat. 3208 (1986)("Government Securities Act"). The failures of several government securities broker-dealers during the preceding ten years had resulted in losses of over $900 million for their customers. The failed firms had masked their financial problems by issuing false and misleading financial statements, engaging in complex transactions with affiliated entities, and improperly handling customer funds and securities. The interdependence of modern financial markets and the impact of broker-dealer failures on them were recognized as important factors requiring adequate regulation of broker-dealers in the government securities market:

> The destabilizing effects upon the financial markets of the failures of two relatively small government securities firms must not be underestimated. For example, ESM's failure resulted in losses of over $300 million to local governments and certain savings and loan associations, which precipitated a depositor's run on thrift institutions in Ohio that resulted in the temporary closing of 71 Ohio thrift institutions. The run on Ohio thrifts precipitated a sharp rise in the price of gold in European markets and a corresponding drop in the value of the dollar. The gold and currency markets responded in a similar fashion after the failure of Bevill, Bresler.

S. Rep. No. 426, 99th Cong., 2d Sess. 7-8 (1986).

[15] For one analysis of the implications of competing regulatory structures in the international legal environment, see SEC News Release, Remarks of Joseph A. Grundfest, Commissioner, U.S. Securities and Exchange Commission, to the Chartered Association of Certified Accountants, London, England, *Regulating the International Capital Markets: A New World and a New Perspective* (November 11, 1987).

[16] Memorandum of Understanding between the U.S. Securities and Exchange Commission and the Ontario Securities Commission, the Commission des valeurs mobilieres du Quebec, and the British Columbia Securities Commission (January 7, 1988), International Series Release No. 6, 43 SEC Doc. 186 (March 28, 1989); Memorandum of Understanding between the U.S. Securities and Exchange Commission and the Brazil Comissao de Valores Mobiliarios (July 1, 1988), International Series Release No. 7, 43 SEC Doc. 206 (March 28, 1989).

[17] An example of a limited MOU providing for assistance in regulatory matters is the Commission's MOU with regulatory authorities in the United Kingdom in which the Commission and U.S. SROs agree to assist the U.K. regulators in monitoring the financial condition of U.S. broker-dealers with branches in the United Kingdom. *See* Memorandum of Understanding between the U.S. Securities and Exchange Commission, the Securities and Investments Board, the self-regulatory organizations in the United States and the United Kingdom, and the Bank of England (August 1988).

needed basis to records and reports of an exempted broker-dealer that relate to transactions with U.S. customers. Since in many foreign jurisdictions securities regulatory responsibility is shared among a governmental agency and self-regulatory organizations, the scope of a satisfactory MOU would have to cover both types of regulatory authorities.

C. Comparable Foreign Regulation

Because an exemption recognizing foreign regulation would substantially rely on the foreign regulatory regime as a substitute for U.S. regulation, the conceptual approach envisions that the foreign regulatory regime would be comparable to the U.S. regulatory system. The Commission anticipates that assessing the comparability of a foreign regulatory regime would require extensive consultations with foreign regulators on a country-by- country basis, including comprehensive consideration of the laws and regulations of the foreign jurisdiction.

In assessing comparability, the Commission would not require that a foreign regulatory regime be identical to the U.S. regime. The Commission recognizes that different cultures and market characteristics can result in alternative regulatory requirements appropriate for the particular jurisdiction.[18] The Commission therefore would assess the foreign regulatory regime as a whole and determine whether it adequately addressed the concerns reflected in the U.S. regulatory regime. Such an assessment inevitably would be a complex endeavor, and the Commission solicits comment on any procedures, guidelines, or other suggestions commenters may have that would facilitate the assessment.

The Commission preliminarily believes that an assessment of whether a foreign regulatory regime is comparable to that in the United States involves a consideration of the following elements: (1) Broker-dealer registration qualifications and conduct standards; (2) broker-dealer financial responsibility requirements, and procedures for protection of customer funds securities; (3) limitations on extension of credit in securities transactions; (4) a sound clearance, settlement, and payment system; and (5) a comprehensive monitoring and enforcement program.

1. Registration Qualifications and Conduct Standards

Registration qualifications that require broker-dealers and their associated persons to possess minimum standards of integrity and competence are important components of the U.S. regulatory regime. U.S.-registered broker-dealers are required to disclose the identity of their owners, control persons, and associated persons, and these individuals are required to meet minimum standards of integrity. Firms or persons who have committed securities violations or other violations reflecting unfavorably on their integrity may be prohibited by the Commission from registration as securities professionals or as owners of broker-dealers.[19] In addition, U.S. SROs require all personnel who provide securities services to pass qualification examinations administered by the SROs to demonstrate their competence to engage in the securities business.[20] Finally, broker-dealers are required as a condition of registration to demonstrate that they have sufficient financing and facilities to conduct their securities business properly.[21]

In addition to meeting these qualifications for registration, U.S. broker-dealers and their associated persons are held to high standards of commercial honor and integrity because of the reliance placed on them by their customers. The general antifraud provisions of the Exchange Act,[22] Commission rules thereunder,[23] and SRO rules[24] impose both general and specific obligations on broker-dealers to deal fairly with their customers. The central U.S. elements of fair dealing involve sales practice and disclosure standards, such as having a reasonable basis for recommendations, timely and adequate confirmation of transactions, disclosure of conflicts of interest, and fair compensation both in agency and principal transactions. In addition, broker-dealers must have adequate procedures for supervising the activities of their personnel to ensure that these standards of fair dealing are upheld. Similar standards of fair dealing and supervision would appear to be necessary in order for a foreign broker-dealer regulatory structure to be substantially comparable to that of the United States.

2. Financial Responsibility and Customer Protection

Two critical aspects of U.S. broker-dealer regulation are the requirements that a broker-dealer maintain adequate capital for the safe conduct of its business, and that it properly handle and safeguard customer funds and securities. These requirements serve the important function of protecting not only a broker-dealer's customers, but the integrity of U.S. securities markets. Rule 15c3-1[25] under the Exchange Act imposes a risk-based standard that requires broker-dealers to maintain liquid assets in excess of their liabilities, and Rule 15c3-3[26] under the Exchange Act provides for the segregation and safe handling of customer funds and securities. These rules are intended to ensure that broker-dealers have sufficient capital to conduct a sound securities business, to weather difficult business conditions, and to protect customer funds and securities from general creditors of the broker-dealer in the event of a sudden liquidation. In addition, the Securities Investor Protection Corporation administers a fund to compensate customers for losses, up to specified amounts, arising from the financial difficulties of broker-dealers.[27] Under the Commission's conceptual approach, the Commission would assess whether a foreign regulatory regime included provisions designed to achieve the goals of these financial responsibility and customer protection rules. An important aspect of this assessment may be the status of customer funds and securities under the bankruptcy laws of the foreign country.

Inevitably, any foreign regulatory requirement will differ in some significant respects from U.S. requirements. Accordingly, where a foreign jurisdiction's capital requirements are not sufficiently comparable to certain U.S. requirements, it may be appropriate for the Commission to impose supplemental capital requirements as a condition for an exemption. In particular, the availability of an exemption could be limited to broker-dealers who have a substantial amount of net worth. For such a conditional exemption to be granted, the FSA would have to agree to monitor compliance with the

[18] *See* Policy Statement, 43 SEC Doc. at 120.

[19] Section 15(b)(4) of the Exchange Act, 15 U.S.C. 78o(b)(4), specifies events that may be grounds for disqualification from registration as a broker-dealer, and section 3(a)(39) of the Exchange Act, 15 U.S.C. 78c(a)(39), specifies events that may be grounds for disqualification from membership in a self-regulatory organization.

[20] *See e.g.*, NASD Schedules to the By-Laws, Schedule C, *NASD Manual* (CCH) ¶ 1765. The Commission has authority to set similar requirements pursuant to section 15(b)(7) of the Exchange Act, 15 U.S.C. 78o(b)(7).

[21] *See* 17 CFR 240.15b1-2(c).

[22] Sections 10(b) and 15(c) of the Exchange Act, 15 U.S.C. 78j(b) and 78o(c).

[23] *See, e.g.*, 17 CFR 240.10b-5; 17 CFR 240.15c1-2.

[24] *See, e.g.*, NASD Rules of Fair Practice, *NASD Manual* (CCH) ¶¶ 2151-2200.

[25] 7 CFR 240.15c3-1.

[26] 7 CFR 240.15c3-3.

[27] *See Securities Investor Protection Act of 1970*, 15 U.S.C. 78aaa-78111.

supplemental requirement. The Commission requests comment on whether the imposition of a supplemental minimum net worth requirement would be appropriate.

3. Extension of Credit

Regulations preventing the excessive use of credit for purchasing and carrying securities are an important aspect of the U.S. statutory scheme for enhancing the soundness of individual broker-dealers, as well as the U.S. securities markets in general. Highly leveraged securities transactions can expose broker-dealers to greater risks of customer defaults in margin accounts. In turn, customer defaults in margin accounts can substantially impair the financial soundness of broker-dealers.[28] Section 7(c) of the Exchange Act [29] requires that extensions of credit by broker-dealers must be made in conformity with rules promulgated by the Federal Reserve Board ("FRB"). Regulation T under the Exchange Act governs the amount of initial margin that a customer of a broker-dealer must deposit in effecting a purchase or short sale, as well as the period of time within which the customer must make such deposit.[30] In addition, SRO rules impose requirements for the amount of margin that must be maintained in customer accounts.[31] Similar requirements designed to ensure prompt payment for securities transactions and to prevent customer defaults in margin accounts from adversely affecting broker-dealers would be factors to be considered in assessing whether foreign regulatory regimes are comparable.

4. Clearance, Settlement, and Payment System

The financial condition of individual broker-dealers is directly affected by the soundness and efficiency of the clearance, settlement, and payment system in which the broker-dealer participates. The paperwork crisis experienced by U.S. broker- dealers in the late 1960's provides a noteworthy example of the importance of efficient clearance and settlement procedures to the operational and financial well-being of broker-dealers.[32] For this reason, the Commission has stated in the Policy Statement that the ultimate goal for the international markets should be the establishment of fully automated clearance and settlement systems that permit paperless book-entry movement of all broker-dealer and institutional equity and debt positions.[33]

In the context of an exemption recognizing foreign regulation, it would appear important that a foreign country's clearance, settlement, and payment system be sufficient to service the volume of transactions in that country's markets in a timely fashion with a minimal rate of fails, and to be able to provide secure depository facilities for the safekeeping of securities. In addition, the existence of a sound linkage between the foreign system and the U.S. system that facilitates cross border settlements without compromising the essential soundness and integrity of the respective systems would appear to be a factor for comparability discussions. A sound linkage would contain safeguards to reduce the risk of default and contain potential losses.

5. Monitoring and Enforcement

A further element of a comparable regulatory regime would be the monitoring and enforcement of broker-dealer compliance with the substantive requirements of the regulatory system. In the United States, the Commission and the SROs have implemented a comprehensive program that includes recordkeeping, reporting, surveillance, inspections, and disciplinary actions. Rule 17a–3 [34] and Rule 17a–4 [35] under the Exchange Act require broker-dealers to generate and maintain records relating to their transactions, customers, and financial condition. Rule 17a–5 [36] requires broker-dealers to report periodically on their financial condition, with annual reports to be independently audited,[37] and Rule 17a–11 [38] requires special notification whenever a broker-dealer's net capital approaches its minimum requirement. Finally, the Commission and the SROs cooperate in monitoring the marketplaces, periodically inspecting individual broker-dealers, and taking disciplinary action against broker-dealers who fail to comply with the securities laws and SRO rules. Similar requirements would be of importance in assessing the level of oversight and monitoring of broker-dealers in foreign markets.

6. Solicitation of Comments on Comparability

The Commission requests comment on the attributes identified above as potentially significant in assessing comparability of U.S. and foreign broker-dealer regulatory structures. Are these appropriate attributes on which to focus, or should the Commission be concerned with some subset of the attributes? Are there other significant aspects of the U.S. regulatory structure not identified? If commentators believe that appropriate attributes have been discussed, how close a comparability should be required under the conceptual approach? In addition, it is possible that the Commission could determine that a foreign regulatory regime was substantially comparable to the U.S. regime except for certain areas. The Commission requests comment on whether, as discussed regarding minimum capital requirements, supplemental U.S. requirements should be used to address specific areas of noncomparability.

D. U.S. Regulatory Requirements

The final element of the Commission's conceptual approach to an exemption recognizing foreign regulation relates to the role of the Commission in regulating the cross border activities of exempted broker-dealers. It would appear to be consistent with a cooperative approach to establish special U.S. regulatory requirements to help monitor the effectiveness of the cooperative approach. Accordingly, after comparability of regulatory structures had been determined and an acceptable MOU was in place, as discussed above, the Commission would issue a general exemptive order for the foreign jurisdiction. An individual broker-dealer located in that jurisdiction [39] then would rely on the exemption after satisfying any individual broker-dealer requirements that the Commission adopted. In the event an exempted broker-dealer or its FSA failed to remain in compliance with any of the conditions of the conceptual approach, the Commission would have the discretion to withdraw the exemption from the broker-dealer or from all broker-dealers regulated by the FSA.

The Commission preliminarily believes that an individual firm should be required to (1) notify the Commission of its intention to avail itself of the exemption; (2) provide evidence of its sponsorship by the FSA, including a written indication that the firm is in good standing to conduct a securities business in the foreign jurisdiction and that the firm's U.S.-related activities will be monitored by the FSA; (3) consent to service of process for proceedings in the United States; (4) agree to provide periodic certifications to the Commission (a) that its U.S.-related securities activities account for less than ten percent of its revenues generated by securities activities, and (b) that it is otherwise in compliance with the conditions of its exemption; and (5) agree, subject to applicable laws,[40] to provide records and information relating to its transactions with U.S. customers on request of the Commission. Moreover, exempted foreign broker-dealers could be subjected to Commission proceedings under sections 15(b)(4) and 15(b)(6),[41] and could be required to bar from U.S. activities any person who was subject to a statutory disqualification or other finding specified in Rule 15a–6(a)(3)(ii)(B).[42] These requirements may be of use even where foreign regulation is recognized because the FSA for a foreign broker-dealer may not be in a position to fully regulate the cross border activities of the broker-dealer as they relate to the United States. For cross border activities to be adequately regulated, the authorities in each jurisdiction affected should have the capability to enforce compliance with applicable securities laws.

In addition, although an exemptive approach would rely on foreign regulation as a substitute for some U.S. regulatory requirements, the general antifraud provisions of the federal securities laws would continue to apply to the foreign broker-dealers' U.S. activities.[43] Moreover, to the extent that the general exemptive order for a foreign jurisdiction was conditioned on broker-dealer compliance with supplemental U.S. requirements, foreign broker-dealers would be required to comply with those U.S. requirements, and the Commission would be able to monitor and enforce such compliance. The Commission seeks comment on the need for direct regulatory provisions in light of comparable foreign regulation, and the extent to which they would derogate from the underlying cooperative approach to regulation. The Commission also requests comment on the utility of the direct provisions discussed as part of its conceptual approach.

IV. Request for Comment

The Commission preliminarily believes that the conceptual approach discussed above could be the basis for reliance in certain limited circumstances on foreign regulation of foreign securities intermediaries in place of comprehensive, direct U.S. broker-dealer regulation. Comment is solicited on the extent to which the conceptual approach achieves the objective of facilitating international securities transactions without reducing protections for U.S. investors and markets. In particular, the Commission solicits comment on whether the conceptual approach provides a workable means to realize the benefits made possible by increased comparability and cooperation in international securities regulation.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

By the Commission.

Jonathan G. Katz,

Secretary.

Date: July 11, 1989.

[FR Doc. 89–16726 Filed 7–17–89; 8:45 am]

BILLING CODE 8010–01–M

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[28] *See The October 1987 Market Break*, Report by the Division of Market Regulation, U.S. Securities and Exchange Commission (February 1988), ch. 5, for discussion of the impact of customer defaults on broker-dealers during the October 1987 market break.

[29] 15 U.S.C. 78g(c).

[30] *See* 12 CFR 220.4 and 220.18.

[31] *See, e.g.*, NYSE Rule 431, *NYSE Guide* (CCH) ¶2431; NASD Rules of Fair Practice, Appendix A, *NASD Manual* (CCH) ¶2180A.

[32] The paperwork crisis was precipitated first by an increase in transaction volume that was far beyond the capability of broker-dealers to process, and then by a downturn in the securities markets that resulted in the liquidation of over 100 broker-dealers and the merging of many others. These problems were caused by a number of factors, including weaknesses in the capital structure of broker-dealers, poor recordkeeping, and inefficient clearance and settlement systems. *See Securities Industry Study*, H.R. Rep. No. 1519, 92d Cong., 2d Sess. 3–13 (1972); *Study of Unsafe and Unsound Practices of Brokers and Dealers*, Report and Recommendations of the Securities and Exchange Commission, H. Doc. No. 231, 92d Cong., 1st Sess. 13–30 (1971).

[33] Policy Statement, 43 SEC Doc. at 132. *See also* SEC News Release, Remarks of David S. Ruder, Chairman, U.S. Securities and Exchange Commission, on the Group of Thirty Report on International Clearance and Settlement (May 15, 1989) (discussion of changes in clearance and settlement systems that are needed to support worldwide securities trading).

[34] 17 CFR 240.17a–3.

[35] 17 CFR 240.17a–4.

[36] 17 CFR 240.17a–5.

[37] The audit must be made in accordance with generally accepted auditing standards, and include a review of the accounting system, internal accounting control, and procedures for safeguarding securities. (7 CFR 240.17a–5(g).

[38] 17 CFR 240.17a–11.

[39] In determining the country in which a broker-dealer is located (the broker-dealer's "home country"), the Commission would consider such relevant factors as whether the broker-dealer is organized in that country, whether the broker-dealer's main office is located in the country, and the percentage of the broker-dealer's business conducted in the country. The Commission solicits comment on the appropriateness of these factors, and whether other factors also should be included.

In addition, the Commission solicits comment on the extent to which the conceptual approach should be applicable to the activities of a branch office located in a country other than an exempted broker-dealer's home country. Relevant considerations would appear to be whether the home country's regulatory authorities asserted responsibility for the branch's activities and actively examined the branch for compliance with home country regulatory requirements. If a branch were regulated in part by regulatory authorities in the country where the branch was located, the Commission could require that this country, as well as the home country, satisfy the conditions of the conceptual approach.

[40] As noted above with respect to MOUs, the existence of limitations on a broker-dealer's ability to provide requested information to the Commission could preclude a jurisdiction's broker-dealers from qualifying for an exemption under the conceptual approach.

[41] 15 U.S.C. 78o(b) (4) and (6). Section 15(b)(4) empowers the Commission to discipline a broker-dealer for conduct that reflects unfavorably on its fitness as a broker-dealer. Section 15(b)(6) empowers the Commission to discipline associated persons of broker-dealers for similar types of conduct.

[42] 17 CFR 240.15a–6(a)(3)(ii)(B).

[43] In addition, exempted broker-dealers would need to ensure that offers and sales of securities complied with the registration provisions of the Securities Act of 1933, 15 U.S.C. 77a–77aa, where applicable. *See* Securities Act Release No. 6779 (June 10, 1988), 53 FR 22861; Securities Act Release No. 4708 (July 9, 1964), 29 FR 98281. Moreover, the Commission's views on federal registration requirements for foreign broker-dealers would not alter the broker-dealer registration requirements of the various state securities statutes, which may require registration of foreign broker-dealers acting within the jurisdiction of the states.

DEPARTMENT OF HEALTH OF HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 610 and 640

[Docket No. 88N–0433]

Blood and Blood Products: Proposed Amendment to Allow for Alternative Procedures; Removal of a Labeling Requirement

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the biologics regulations governing the collection and manufacture of blood, blood components, and blood products by allowing these products to be licensed, collected, processed, tested, stored, and distributed in ways alternative to those specified in the biologics regulations, upon approval of the Director, Center for Biologics Evaluation and Research. FDA is also proposing to remove a labeling requirement applicable to injectable products prepared from human blood, plasma, or serum. The agency is taking these actions to provide flexibility needed to accommodate rapid changes in biotechnology and to assure the continued availability of blood and blood products.

DATES: Comments by September 18, 1989. FDA proposes that the effective

date of any final rule resulting from this proposal be 30 days after date of publication in the **Federal Register**. Removal of the labeling requirement would be effective 1 year after date of publication of any final rule in the **Federal Register**.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph Wilczek, Center for Biologics Evaluation and Research (HFB-130), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-295-2188.

SUPPLEMENTARY INFORMATION:

I. Proposal for Alternative Procedures

The current biologics regulations prescribe test methods and manufacturing processes for licensed biological products related to the products' safety, purity, potency, and effectiveness. Various provisions applicable to blood, blood components, or blood products appear throughout Subchapter F of Chapter I of Title 21 of the Code of Federal Regulations. For example, the additional standards in 21 CFR Part 640 apply specifically to blood, blood components, and blood derivative products. The provisions of Part 606 detail current good manufacturing practice requirements for blood and blood components. Part 610 also contains requirements applicable to blood and blood products.

FDA is proposing to add § 640.120 *Alternative procedures* essentially to provide that blood, blood components, and blood products may be licensed, collected, processed, tested, stored, and distributed in ways alternative to those specified in these biologics regulations, only upon approval of the Director, Center for Biologics Evaluation and Research (CBER).

FDA recognizes that as technology and scientific knowledge advance, and the demands placed on the blood industry change, there will continue to be instances when a regulation will become outdated or where unanticipated circumstances may warrant a departure from an approach detailed in the regulations. FDA believes that to be responsive to improved technologies, increased scientific knowledge, and concerns about the continued availability of blood and blood products, the Director, CBER, should have the clear authority to approve alternatives to particular regulatory requirements when adequate information is available to support the alternative approaches.

FDA regulations already provide for the use of alternative procedures or criteria in some circumstances. For example, under § 640.75, FDA may approve procedures applicable to the collection, processing, and licensure of Source Plasma other than those specified in the regulations. Section 606.110 provides for variances from additional standards for plateletpheresis and leukapheresis procedures used to obtain a product for a specific recipient under specified circumstances. However, §§ 606.110 and 640.75 do not apply to the requirements for other blood products, such as most blood and blood components intended for transfusion or other blood fractionation products such as Albumin (Human). Also, under § 610.9, FDA may approve modifications to a required test method or manufacturing process for any biological product upon a showing that the modification provides assurances of the safety, purity, potency, and effectiveness of the product equal to or greater than the assurances provided by the rquired method or process. Section 610.9 is limited to mofidications in test methods and manufacturing processes and therefore does not necessarily apply to all requirements.

Under proposed § 640.120, the Director, CBER, may approve an exception or alternative to the requirements in the biologics regulations applicable to blood, blood components, or blood products. The Director would approve such exception or alternative only if, in the judgment of the Director, the safety, purity, potency, and effectiveness of the final product is assured. The Director may request additional data or information from the person who has requested permission for an excption or alternative before granting the request. Under proposed § 640.120, requests for exceptions or alternatives should ordinarily be submitted in writing; however, oral requests and approval would be permitted if necessary because of time constraints. The requestor would be required to submit written confirmation of the oral request immediately afterwards. Oral approval would also be confirmed in writing after receipt of the written request. Whether the approval is given in writing or verbally, the approval must be obtained prior to distribution of any affected blood, blood component, or blood product. Because proposed § 640.120 could be used in all circumstances for which variances under § 640.75 may be granted, FDA is also proposing to remove § 640.75.

II. Proposed Labeling Removal

Part 610 of Title 21 of the Code of Federal Regulations (21 CFR Part 610) provides general standards for the processing, testing, and labeling of biological products. Section 610.61 prescribes requirements for the labeling of biological products. Under § 610.61(s), FDA requires that the package label for injectable products prepared from human blood, plasma, or serum contain a statement that the product was prepared from blood, plasma, or serum that was found nonreactive when tested for hepatitis B surface antigen (HBsAg). Injectable products prepared from blood or blood components include fractionation products such as Albumin (Human), Plasma Protein Fraction (Human), Antihemophilic Factor (Human), and various immunoglobulin products. Section 610.61(s) does not apply to blood or blood components intended for transfusion or source plasma. The purpose of product labeling is to provide the user of the product with information necessary for its safe and effective use. FDA believes that the labeling statement required by § 610.61(s) does not provide information necessary for the product's proper use and is proposing to remove this requirement from the regulations.

Under § 610.40(a), each donation of blood, plasma, or serum to be used in preparing a biological product must be tested for the presence of HBsAg. Blood, plasma, or serum that is reactive when tested for HBsAg, or collected from a donor known to be reactive for HBsAg, ordinarily may not be used in manufacturing a biological product, except under limited circumstances provided in § 610.40(d). Accordingly, the statement required by § 610.61(s) only reaffirms that the final product adheres to Federal requirements, and the statement does not provide additional information for assuring the proper use of the product.

Moreover, comparable statements for the labeling of fractionation products are not required for other tests required by Federal regulation, such as the test for antibody to human immunodeficiency virus (HIV) or a serologic test for syphilis. As with the test for HBsAg, these are Federally required tests, and labeling statements providing confirmation that the tests have been properly performed are unnecessary.

The issues concerning the label statement required by § 610.61(s) were presented to FDA's Blood Product Advisory Committee at a public meeting on June 3 and 4, 1982. The Advisory Committee recommended at the meeting that § 610.61(s) be removed.

Several additional tests may come into routine use for testing blood and plasma in the next several years. FDA believes that to require that the results of each of these tests be described in product labeling would unduly complicate the labeling, without providing useful information to the users of the product. Therefore, FDA believes the requirement for the labeling statement concerning hepatitis B testing should be removed because the requirement is not useful and is unnecessarily burdensome to industry and because the requirements for labeling concerning all required tests should be consistent. Upon the effective date of any final rule resulting from this proposal, the labeling statement concerning HBsAg testing would no longer be required. FDA would require that the labeling statement be removed within 1 year after date of publication of any final rule in the **Federal Register**.

III. Economic Impact

The agency has examined the economic impact of this proposed rule and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96-354). Specifically, this proposal would remove an unnecessary labeling requirement. The proposed rule also provides manufacturers of blood, blood components, and blood products an opportunity to collect, process, test, and distribute their products in ways alternative to those specified in the biologics regulations, upon approval of the Director, CBER. The immediate effect of the proposal allowing exceptions or alternative procedures is neutral; i.e., it neither adds or removes requirements from the standard for blood products. A manufacturer, however, may benefit from the flexibility permitted under the proposed rule by gaining FDA approval of an exception or an alternative approach that could better conserve blood resources, improve the product through the use of new technologies, or require the use of less time or resources than may be required by a method or process described in detail in the biologics regulations. Therefore, the agency concludes that the proposed rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(c)(10) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Comments

Interested persons may, on or before September 18, 1989, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 610

Biologics, Blood, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 640

Blood, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), it is proposed that Parts 610 and 640 be amended as follows:

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

1. The authority citation for 21 CFR Part 610 continues to read as follows:

Authority: Secs. 201, 501, 502, 505, 510, 701, 52 Stat. 1040-1042 as amended, 1049-1051 as amended by 76 Stat. 780, 1052-1053 as amended, 1055-1056 as amended, 76 Stat. 794 as amended, and sec. 301 of Pub. L. 87-781 (21 U.S.C. 321, 351, 352, 355, 360 and note, 371), the Public Health Service Act (secs. 351 and 361, 58 Stat. 702 and 703 as amended (42 U.S.C. 262 and 264)), and the Administrative Procedure Act (secs. 4, 10, 60 Stat. 238 and 243, as amended (5 U.S.C. 553, 702, 703, 704)); 21 CFR 5.10 and 5.11.

§ 610.61 [Amended]

2. Section 610.61 *Package label* is amended by removing paragraph (s) and by redesignating paragraph (t) as paragraph (s).

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

3. The authority citation for 21 CFR Part 640 continues to read as follows:

Authority: Secs. 201, 501, 502, 505, 510, 701, 52 Stat. 1040-1042 as amended, 1049-1053 as amended, 1055-1056 as amended by 70 Stat. 919 and 72 Stat. 948, 76 Stat. 794-795 as amended (21 U.S.C. 321, 351, 352, 355, 360, 371) and the Public Health Service Act (sec. 351, 361, 58 Stat. 702 as amended (42 U.S.C. 262, 264)) and the Administrative Procedure Act (secs. 4, 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 702, 703, 704)); 21 CFR 5.10 and 5.11.

§ 640.75 [Removed]

4. Section 640.75 *Alternate procedures* is removed from Subpart G.

5. New Subpart L consisting of § 640.120 is added to Part 640 to read as follows:

Subpart L—Alternative Procedures

§ 640.120 Alternative procedures.

The Director, Center for Biologics Envaluation and Research, may approve an exception or alternative to any requirement in Subchapter F of Chapter I of Title 21 of the Code of Federal Regulations regarding blood, blood components, or blood products. Requests for such exceptions or alternatives should ordinarily be made in writing. However, in limited circumstances such requests may be made orally and permission may be given orally by the Director. Oral requests and approvals must be followed by written requests and written approvals. Approval of a request for an exception or alternative must be obtained prior to the distribution of any affected blood, blood component, or blood product.

Dated: June 11, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89-16755 Filed 7-17-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 625

[FHWA Docket No. 89-16]

RIN 2125-AC34

Design Standards for Highways; Interstate System

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FHWA is requesting comments on a proposed amendment to the design standards which apply to Interstate highway construction and reconstrucation projects eligible to receive funding under the Federal-aid highway program. A revised publication of the American Association of State Highway and Tranportation Officials (AASHTO) entitled "A Policy on Design Standards—Interstate System" would be substituted for the previous version of these standards last revised June 20, 1967. If adopted by FHWA, the new AASHTO publication would constitute the FHWA's policy on geometric design for all federally-assisted construction and reconstruction projects on the Interstate highway system.

DATE: Comments must be received on or before September 18, 1989.

ADDRESS: Submit written, signed comments to FHWA Docket No. 89-16 Federal Highway Administration, Room 4232, HCC-10, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t. Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard. The current and proposed design standards are on file at the Office of the Federal Register in Washington, DC, and are available for inspection and copying from the FHWA Washington Headquarters and all FHWA Division and Regional Offices as prescribed in 49 CFR Part 7, Appendix D. Copies of the current AASHTO publications are also available for purchase from the American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol Street NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Mr. Seppo I. Sillan, Geometric and Roadside Design Branch, Federal-Aid and Design Division, Office of Engineering (202) 366-1327, or Mr. Michael J. Laska, Office of the Chief Counsel (202) 366-1383, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The standards, policies, and guides that have been approved by the FHWA for application on all Federal-aid highway projects are incorporated by reference in 23 CFR Part 625.

The American Association of State Highway and Transportation Officials (AASHTO) is an organization which represents the 52 State Highway and Transportation agencies (including the District of Columbia and Puerto Rico). Its members consist of the duly constituted heads and other chief officials of those 52 agencies. The Secretary of the United States Department of Transportation (DOT) is an ex officio member, and DOT officials participate in various AASHTO activities as non-voting representatives. Prior to 1974 the AASHTO was known as the American Association of State Highway Officials (AASHO). Among other functions, the AASHTO develops and issues standards, specifications, policies, guides, and related materials for use by the States for highway projects. Due to AASHTO's recognized expertise and representation of all State highway and transportation agencies, the FHWA has worked with the AASHTO over the years in the development of design standards pursuant to the provisions of Federal law (Title 23, U.S.C.) which directs the FHWA to consult and cooperate with the States in that regard. Many of the standards, polices, and guides approved by the FHWA and incorporated in 23 CFR Part 625 were developed and issued by the AASHTO. Revisions made to such documents by the AASHTO are independently reviewed and adopted by the FHWA before they are applied to Federal-aid projects.

Recently the AASHTO submited a copy of the document entitled "A Policy on Design Standards—Interstate System" to the Federal Highway Administration. The document is referred to in this notice as the "Standards."

The primary reasons for development of the new document are to provide guidance on design of highways on the Interstate System and to update the previous standards to incorporate the latest design criteria. A more detailed discussion of the changes in the proposed Standards is included later in this notice.

Review Procedure

The FHWA intends to conduct its review of the proposed Standards in the following manner:

1. The FHWA through this notice is proposing to approve the Standards for use on Federal-aid Interstate projects. Comments on the design criteria contained in the document are requested.

2. FHWA will analyze all comments. Based on that analysis and its own independent review, the FHWA will furnish AASHTO with those modifications that may be required to make the Standards acceptable for use on Federal-aid Interstate projects.

3. If AASHTO makes the necessary modifications or if no modifications are required, the FHWA will adopt the Standards for use on Federal-aid projects on the Interstate System and incorporate it by reference into 23 CFR Part 625.

4. If there are any unresolved differences, the FHWA will issue a final rule conditionally adopting the document for Federal-aid Interstate projects by incorporating it in 23 CFR Part 625 and officially indicating the extent of material not acceptable to FHWA and, if necessary, alternative criteria would be listed for Federal-aid Interstate projects.

Summary of Changes

The main differences between AASHTO's 1967 (old) and 1988 (new) version of "A Policy on Design Standards—Interstate System" are as follows:

1. The new Standards permit the retention of existing horizontal alignment, vertical alignment and cross-sectional elements for resurfacing, restoration and rehabilitation projects if they meet the AASHTO Interstate standards that were in effect at the time of the original construction.

2. Only if extraordinary circumstances exist, do the new Standards permit a design less than 20 years beyond the time when the plans, specifications and estimate for construction are approved.

3. The exception which permitted at-grade intersections under certain low-volume conditions has been eliminated.

4. The new Standards indicate that the desirable stopping sight distance is the upper range of values established in the current edition of AASHTO's "A Policy on Geometric Design of Highways and Streets."

5. The new Standards provide requirements for paved shoulders on the left of the traveled way. For all shoulder widths the dimensions are for the paved width versus the usable width in the old Standards.

6. Requirements for pavement cross slopes have been included in the new Standards.

7. The section on sideslopes has been revised to indicate a maximum slope of 4:1 and a desirable slope of 6:1 or flatter.

8. Minimum width of median in urban and mountainous areas is now 10 feet rather than 4 feet.

9. Requirements for a recovery area clear of unyielding objects or provision of barriers have been included in the new Standards.

10. The new Standards do not allow the use of barrier curbs except in special cases and, then, they must be located beyond the outer edge of the shoulder.

11. Guidelines for general design and spacing of interchanges have been added in the new Standards.

12. Long bridges have been defined as bridges over 200 feet long. Offset to the parapet, the rail or the barrier for these structures has been increased from 3½ to 4 feet in order to be consistent with minimum median shoulder width.

13. Requirements for structural capacity have been included in the new Standards.

14. The new Standards give criteria for minimum cross-section width for bridges to remain in place.

15. Requirements for cross-section width, vertical clearance and safety walk for tunnels have been included in the new Standards.

16. The specific minimum right-of-way widths of the old Standards have been eliminated.

Regulatory Evaluation and Impact

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. The FHWA has also determined that the expected impact of this proposed amendment will be minimal. This determination is based on the fact that, although the new Standards contain new material, the basic criteria remain essentially the same. In all practicality the new Standards reflect the criteria which have been used in designing Interstate highways for the last several years. Accordingly, a full regulatory evaluation has not been prepared at this time.

Based on the discussion above and under the criteria of the Regulatory Flexibility Act (Pub. L. 96-354), the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

The FHWA has carefully considered the federalism implications of this action in the light of the principles, criteria, and requirements of the President's Executive Order on Federalism, E.O. 12612, October 26, 1987. The FHWA has determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 625

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Reporting requirements.

In consideration of the foregoing, the FHWA is amending Chapter 1 of Title 23, Code of Federal Regulations, Part 625 as set forth below.

Issued on: July 11, 1989.

R.D. Morgan,
Executive Director.

The FHWA proposes to amend 23 CFR Part 625 as follows:

PART 625—DESIGN STANDARDS FOR HIGHWAYS

1. The authority citation for Part 625 continues to read as follows:

Authority: 23 U.S.C. 109, 315, and 402; 49 CFR 1.48(b).

§ 625.4 [Amended]

2. In § 625.4, paragraph (a)(2) is revised to read as follows:

§ 625.4 Standards, policies, and standard specifications.

* * * * *

(1) * * *

(2) A Policy on Design Standards—Interstate System, AASHTO 1988. [3]

* * * * *

[FR Doc. 89-16717 Filed 7-17-89; 8:45 am]

BILLING CODE 4910-22-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Parts 1602 and 1627

Proposed Modifications to Recordkeeping Provisions; Public Hearing

ACTION: Public hearing on proposed rule.

SUMMARY: A public hearing will be held by the Commission on the modifications to the EEOC recordkeeping regulations, 29 CFR Parts 1602 and 1627 as announced by the notice of proposed rulemaking in the **Federal Register** published on February 13, 1989 (54 FR 6551).

DATE: The public hearing will be held on September 18, 1989.

ADDRESS: The hearing will be held in the Commission meeting room, 1801 L Street, NW., Washington, DC 20507.

FOR FURTHER INFORMATION CONTACT: Nicholas M. Inzeo, Assistant Legal Counsel, or Gary L. Janus, at 202/663-4669, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507.

SUPPLEMENTARY INFORMATION: Notice is hereby given that a public hearing will be held on (sixty days from date of publication) commencing at 10 a.m. in the Commission meeting room at 1801 L Street, NW., Washington, DC 20507, with respect to the adoption of the proposed revisions to the EEOC recordkeeping regulations found at 29 CFR Parts 1602 and 1627. This proceeding will constitute the public hearing on the proposed modifications to the above regulations referenced by the Commission in the notice of proposed rulemaking published on February 13, 1989 (54 FR 6551).

Persons wishing to present their views orally should notify the Commission of their desire to do so in writing no later than (thirty days from date of publication) with a request to: Frances Hart, Executive Officer, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507.

The phrase "Hearing 1602/1627 Recordkeeping," should be written at the lower left-hand corner of the envelope. The request should include a written summary of the remarks to be offered.

Signed in Washington, DC.

Dated: July 3, 1989.

Clarence Thomas,
Chairman, Equal Employment Opportunity Commission.

[FR Doc. 89-16736 Filed 7-17-89; 8:45 am]

BILLING CODE 6570-06-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Maryland Regulatory Program; Public Notice; Bonding

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed amendments to the Maryland permanent regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act (SMCRA). The amendments are intended to incorporate rule changes initiated by the State. The proposed changes would establish within the Bituminous Coal Open Pit Mining Reclamation Fund (Reclamation Fund) a bond supplement reserve; would provide for both the funding of the reserve and the disposition of said funds; would require the Secretary of Natural Resources to observe certain reporting provisions regarding the funding, obligation, and disbursement of reserve funds; would revise the performance bond filing requirements by combining the current separate bond requirements for revegetation and permit conformance and establish a single performance bond; would revise the minimum amount required for performance bonds; would provide the Maryland Department of Natural Resources (MDDNR) with discretionary authority to adjust bond amounts; would revise certain bond conditions regarding bank notification requirements; would revise certain criteria for performance bond release; and would authorize the MDDNR in the event of bond forfeiture to recover from the permittee all costs of reclamation in excess of the amount forefeited.

This notice sets forth the times and locations that the Maryland program and proposed amendments to that program are available for public inspection, the comment period during which intererested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on August 17, 1989. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on August 14, 1989, request to present oral testimony at the hearing must be received on or before 4:00 p.m. on August 2, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. James C. Blankenship, Jr., Director, Charleston Field Office, at the address listed below. Copies of the proposed amendments and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendments by contacting OSMRE's Charleston Field Office.

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158.

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street NW., Room 5131, Washington, DC 20240, Telephone: (202) 343-5492.

Maryland Bureau of Mines, 69 Hill Street, Frostburg, Maryland 21532, Telephone: (301) 689-4136.

FOR FURTHER INFORMATION CONTACT: James C. Blankenship, Jr., Director, Charleston Field Office (304) 347-7158.

SUPPLEMENTARY INFORMATION: .

I. Background

On February 18, 1982, the Secretary of Interior approved the Maryland program. Information regarding general background on the Maryland program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982, **Federal Register** (47 FR 7214-7217). Subsequent actions concerning the Maryland program are contained in 30 CFR 920.16.

II. Discussion of Proposed Amendment

By letter dated June 14, 1989, Maryland Bureau of Mines (MDBOM) submitted, as proposed amendments to Maryland's federally approved program, bond supplement reserve legislation (House Bill 1384) and proposed changes to the Code of Maryland Administrative Regulations (COMAR) 08.13.09.15-Performance Bonds.

1. House Bill 1384 Bond Supplement Reserve.

Natural Resources Article (NRA) Section 7-507.1 is amended to authorize the MDBOM to assess a 15 cent mine reclamation surcharge for each ton of coal removed by the open-pit or strip method. Additionally, the MDBOM is authorized to assess a 3 cent bond supplement reserve surcharge to be deposited in the Reclamation Fund for each ton of coal removed.

Section 7-514 is modified to allow funds from the bond supplement reserve to be used for reclamation purposes when the original bond is not sufficient.

Section 7-514.1 is modified to authorize one cent of the mine reclamation surcharge to be paid into the water supply replacement reserve.

Section 7-514.2 authorizes the MDDNR to establish a bond supplement reserve within the Bituminous Coal Open Pit Mining Reclamation Fund with the funding provisions previously discussed in section 7-501.1. The MDDNR will be subject to certain notification requirements; each county must be notified when remitting or suspending remittances and arrangements must be made to meet and confer with the Land Reclamation Committee at least 30 days before procuring services for which funds from the bond supplement reserve will be used.

2. COMAR 08.13.09.15 Performance Bonds.

Paragraph (A) is modified to allow an operator to file a single performance bond instead of the current requirement of two separate bonds, a general bond and a revegetation bond. The bond shall cover the entire approved area or an identified increment of land within the approved area.

Paragraph (C) is revised to require the minimum amount of a performance bond to be $600 per acre and an additional $1,500 per acre for the open-acre limit. Additionally, the minimum amount of the bond initially posted shall not be less than $10,000 for the entire area.

Paragraph (D) is revised to give the MDDNR discretionary authority to adjust the amount of performance bond liability. Additionally, the MDDNR must notify the permittee, the surety and any party with a property interest in collateral who has requested notification of any proposed bond adjustment.

Paragraph (F) is modified to require banks holding permittee's certificates of deposit to notify the MDDNR and the permittee of any pending action involving the insolvency, bankruptcy or cessation of operation of the bank. Any permittee who is without bond coverage because of the failure of a bank shall be given a reasonable period, not to exceed 90 days, to replace bond coverage.

Paragraph (H) has been revised to require an inspection by the Land Reclamation Committee of the revegetated area prior to bond release for Reclamation Phase II work.

Paragraph (I) has been modified to require that bond release applications include proof of advertisement by the permittee of his filing of the release application. The MDDNR is granted discretionary authority to waive its inspection of the completed reclamation work if it has not received any objections or requests for an informal conference; and it has conducted an inspection of the area within a four month period prior to receiving the bond release application and the inspection did not identify any reason for denying bond release.

Paragraph (K) has been modified to allow the MDDNR to recover from the permittee all costs of reclamation in excess of the amount forfeited should the forfeited bond be insufficient to pay the full cost of reclamation.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(b), OSMRE is now seeking comments on whether the amendments proposed by Maryland satisfy the applicable program approval criteria of 30 CFR 732.15.

If the amendments are deemed adequate, they will become part of the Maryland program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking and include explanations in support of the commentor's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the OSMRE Charleston Field Office will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4:00 p.m. on August 2, 1989. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the location under "**ADDRESSES.**" A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 920

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: July 10, 1989.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 89-16774 Filed 7-17-89; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900-AE09

Evaluation of Studies Relating to Health Effects of Dioxin and Radiation Exposure

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its regulation on scientific and medical study evaluations to establish criteria for determining when a significant statistical association exists between exposure to dioxin or ionizing radiation and specific diseases. This change is necessary because of a recent court decision. This change will require reassessment of the importance of scientific and medical studies on the health effects of exposure to dioxin or ionizing radiation.

DATES: Comments must be received on or before August 17, 1989. Comments will be available for public inspection until August 28, 1989. This change is proposed to be effective the date of publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this change to Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132, at the above address between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays), until August 28, 1989.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, (202) 233-3005.

SUPPLEMENTARY INFORMATION: On May 2, 1989, the U.S. District Court for the Northern District of California issued an order in the case of Nehmer, et al., v. United States Veterans' Administration, et al., interpreting the rulemaking requirements of the Dioxin and Radiation Exposure Compensation Standards Act, Pub. L. No. 98-542. The court found Congress intended that VA predicate service connection upon a finding of significant statistical association between exposure and disease. The court also found that VA was required to apply its benefit-of-the-doubt policy to the aggregate rulemaking determination as to which diseases were associated with dioxin exposure.

To implement this court decision we propose to amend 38 CFR 1.17 concerning stuuy evaluation criteria. Paragraphs (a) and (b) of that section have always applied to the evaluation of individual scientific or medical studies and are being retained in their entirety with the exception of technical amendments to paragraph (a) changing "Administrator" to "Secretary" in accordance with VA's elevation to Cabinet status and including clarifying language to more closely track the statutory charge to evaluate studies involving exposure to herbicides containing dioxin rather than exposure to dioxin alone. New paragraphs are being added to establish that service connection will be predicated upon determinations of significant statistical association between dioxin or radiation exposure and various diseases as shown by scientific and medical studies.

Paragraph (c) provides that the guidelines for establishing service connection based on dioxin or radiation exposure (38 CFR 3.311a and 3.311b) will be amended whenever the Secretary determines that a significant statistical association exists between such exposure and any disease. These

determinations will be based on the evaluation of scientific and medical studies and on the advice of the Veterans Advisory Committee on Environmental Hazards.

Paragraph (d)(1) sets forth the general proposition that a significant statistical association shall be deemed to exist when the relative weights of valid positive and negative studies permit the Secretary to conclude that it is at least as likely as not that the purported relationship between exposure and disease exists. This conclusion will be based on a balancing test considering the relative strengths and weaknesses of valid studies whose findings relate to the existence of the relationship under consideration. This balancing test incorporates VA's "reasonable doubt" doctrine with respect to this evaluation process. The criteria for determining whether a study is valid and whether it is positive or negative with respect to the issue under consideration are set forth in paragraphs (d)(2) through (d)(4).

There are three criteria which must be satisfied in order for a study to be considered valid for purposes of determining whether a significant statistical association exists. First, the study design and the methods of data collection, verification and analysis must be adequately described. Such descriptions are necessary for reviewers to properly assess study results.

Second, the study must be reasonably free of biases which would cause serious doubt to be cast on the study's findings and conclusions. While all biases which can affect a study's results are not listed, selection, observation and participation of subjects are included as examples of some of the biases investigators must clearly avoid.

The third criterion for a valid study is a satisfactory accounting for known confounding factors which, if not identified and corrected for, could skew the study results. For example, a study involving lung cancer and dioxin or radiation exposure would have to satisfactorily account for the effects of cigarette smoking or asbestos exposure in the study populations and correct for those factors.

In addition to satisfying the criteria for a valid study, findings of a valid *positive* study must also be statistically significant at a probability level of .05 or less and must properly account for multiple comparison and subgroup analyses. Statistical significance at a probability level of .05 or less means that it must be statistically demonstrated that the likelihood is only one in twenty, or less, that the results of the study are due to chance alone. This is to be accomplished using a standard epidemiological tool for determining with a high degree of confidence that the observed association is real and not a chance occurence. Additionaly, it is recognized that multiple comparisons within a study population or division of a study population into numerous subgroups can, upon analysis of the data, produce results which may be meaningful or may be due to chance. It is through proper analysis of the multiple comparisons and subgroup divisions by the investigators that the possibility of attributing undue importance to chance findings may be avoided.

In order to be considered a valid *negative* study, the criteria for a valid study would have to be satisfied, and, in addition, the study would have to have sufficient statistical power to detect the association of interest if it existed. This means that the study would have to include a sufficient number of subjects in both the exposed group and the comparison group to provide an opportunity for the purported association to appear if, in fact, it were there to be detected.

While satisfaction of the criteria in paragraph (d) will require a determination of "significant statistical association", paragraph (e) is being added to give the Secretary latitude to find that such an association exists on the basis of other scientific or medical evidence which may not satisfy the requirements of paragraph (d) in all respects. The Secretary must have the freedom to act positively on behalf of the veteran population in those instances where the results of one or more studies are so compelling that it is unnecessary to insist on complete satisfaction of the criteria in paragraph (d) before making a finding of significant statistical association.

This change establishes specific criteria which would require further amendment of adjudication regulations, however nothing in this regulatory proposal should be construed as in any way limiting or diminishing the Secretary's rulemaking authority under 38 U.S.C. 210(c).

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons.

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109, and 64.110.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, claims.

Approved: July 12, 1989.

Edward J. Derwinski,

Secretary.

38 CFR Part 1, GENERAL PROVISIONS, is proposed to be amended by revising § 1.17 to read as follows:

PART 1—GENERAL PROVISIONS

§ 1.17 Evaluation of studies relating to health effects of dioxin and radiation exposure.

(a) From time to time, the Secretary shall publish evaluations of scientific or medical studies relating to the adverse health effects of exposure to a herbicide containing 2,3,7,8 tetrachlorodibenzo-p-dioxin (dioxin) or ionizing radiation in the "Notices" section of the **Federal Register**.

(b) Factors to be considered in evaluating scientific studies include:

(1) Whether the study's findings are statistically significant and replicable;

(2) Whether the study and its findings have withstood peer review;

(3) Whether the study methodology has been sufficiently described to permit replication of the study;

(4) Whether the study's findings are applicable to the veteran population of interest;

(5) The views of the appropriate panel of the Scientific Council of the Veterans' Advisory Committee on Environmental Hazards.

(c) When the Secretary determines, based on the evaluation of scientific or medical studies and after receiving the advice of the Veterans' Advisory Committee on Environmental Hazards, that a significant statistical association exists between any disease and exposure to a herbicide containing dioxin or exposure to ionizing radiation, § 3.311a or § 3.311b of this title, as appropriate, shall be amended to provide guidelines for the establishment of service connection.

(d)(1) For purposes of paragraph (c) of this section a "significant statistical association" shall be deemed to exist when the relative weights of valid positive and negative studies permit the conclusion that it is at least as likely as not that the purported relationship between a particular type of exposure and a specific adverse health effect exists.

(2) For purposes of this paragraph a valid study is one which:

(i) Has adequately described the study design and methods of data collection, verification and analysis;

(ii) Is reasonably free of biases, such as selection, observation and participation biases; and

(iii) Has satisfactorily accounted for known confounding factors.

(3) For purposes of this paragraph a valid positive study is one which satisfies the criteria in paragraph (d)(2) of this section and whose findings are statistically significant at a probability level of .05 or less with proper accounting for multiple comparisons and subgroup analyses.

(4) For purposes of this paragraph a valid negative study is one which satisfies the criteria in paragraph (d)(2) of this section and has sufficient statistical power to detect an association between a particular type of exposure and a specific adverse health effect if such an association were to exist.

(e) Notwithstanding the provisions of paragraph (d) of this section, a "significant statistical association" may be deemed to exist between a particular exposure and a specific disease if, in the Secretary's judgment, scientific and medical evidence on the whole supports such a decision.

(Authority: 38 U.S.C. 210(c); Pub. L. 98–542)

[FR Doc. 89–16925 Filed 7–14–89; 1:25 pm]

BILLING CODE

DEPARTMENT OF DEFENSE

48 CFR Part 219

Department of Defense Federal Acquisition Regulation Supplement; DFARS Small Business and Small Disadvantaged Business Concerns

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comment.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council is proposing a revision to the Defense Federal Acquisition Regulation Supplement Subpart 219.8 to conform to proposed FAR revisions published at 54 FR 27310, June 28, 1989.

DATE: Comments concerning the proposed rule must be received by August 17, 1989 to be considered in formulating a final rule. Please cite DAR Case 88–325 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Charles W. Lloyd, Executive Secretary, DAR Council, ODASD (P)/DARS, c/o OASD(P&L) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

Section 303(b) of the "Business Opportunity Development Reform Act of 1988" requires that acquisitions offered for award pursuant to Section 8(a) of the Small Business Act be awarded on the basis of competition restricted to eligible program participants if (a) there is a reasonable expectation that at least two eligible program participants will submit offers and that award can be made at a fair market price, and (b) the anticipated award price of the contract (including options) will exceed $5,000,000 in the case of a contract opportunity assigned a standard industrial classification code for manufacturing and $3,000,000 (including options) in the case of all other contract opportunities. Section 303(d) amends the current appeal authority of the Small Business Administration to permit appeals as to whether a requirement should be offered to the Section 8(a) program and as to whether the estimated fair market price as determined by the contracting agency is correct.

B. Regulatory Flexibility Act

The requirements of the Act are being addressed by the Small Business Administration in development of its regulations implementing the "Business Opportunity Development Reform Act of 1988," Pub. L. 100–656. (FR 12054, March 23, 1989).

C. Paperwork Reduction Act

The requirements of the Paperwork Reduction Act are being addressed by the Small Business Administration in development of its regulations implementing the "Business Opportunity Development Reform Act of 1988", Public Law 100–656. (FR 12054, March 23, 1989)

List of Subjects in 48 CFR Part 219

Government procurement

Charles Lloyd

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR Part 219 be amended as follows:

1. The authority citation for 48 CFR Part 219 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

219.803 [Amended]

2. Section 219.803 is amended by redesignating paragraph (a) as paragraph (c); by changing the reference in the redesignated paragraph (c) to read "19.803(c)" in lieu of "19.803(a); by redesignating (c) (S–71) as paragraph (b); and by removing (c)(S–70) (i) and (ii);

3. Section 219.804–4 is added to read as follows:

219.804–4 Repetitive acquisition.

(a) When the SBA requests that a requirement be reserved for award of a contract (follow-on our otherwise) under the 8(a) Program, the request shall be honored, if otherwise appropriate, and the total SDB set-aside procedure shall not be used.

(b) An SBA request that a new requirement be reserved for the 8(a) Program need not be honored and a contracting officer may proceed with a total SDB set-aside if the SBA request is received after publication of a synopsis pursuant to 205.207(d)(S–72) or (S–73).

[FR Doc. 89–16779 Filed 7–17–89; 8:45 am]

BILLING CODE 3810–01–M

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48 CFR Part 246

Department of Defense Federal Acquisition Regulation Supplement; DFARS Warranties

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule (extension of comment period).

SUMMARY: The Defense Acquisition Regulatory (DAR) Council published a proposed rule with request for public

BEST COPY AVAILABLE

comment on June 30, 1989, 54 FR 27655, to revise the Department of Defense Federal Acquisition Regulation Supplement (DFARS) at Part 246. The proposed rule would specifiy that a contractor's warranty shall specifically state whether or not redesign is an available remedy under the warranty. The original date for submission of comments, July 31, 1989, has been extended to August 31, 1989, to accommodate the requests of interested parties.

DATE: Written comments on the interim rule should be submitted to the address shown below not later than August 31, 1989, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: Defense Acquistion Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(P&L) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062. Please cite DAR Case 89-62 in all correspondence related to this subject.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202) 697-7266.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

[FR Doc. 89-16778 Filed 7-17-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

Groundfish of the Gulf of Alaska, Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of intent.

SUMMARY: A notice of intent to prepare a supplemental environmental impact statement and notice of scoping meetings was published on February 23, 1989 (54 FR 7814). The notice concerned the potential effects of controlling access to sablefish, other groundfish, halibut, and crab fishery resources and included a proposed schedule for analyzing and implementing alternative management systems in those fisheries. The North Pacific Fishery Management Council is issuing this notice to announce that at its meetings September 25-29, 1989, and again in January and June of 1990, that schedule will be reviewed to determine if it should be revised or possibly abandoned completely.

FOR FURTHER INFORMATION CONTACT: Dick Tremaine, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, 907-271-2809.

Dated: July 12, 1989.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-16732 Filed 7-17-89; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 54, No. 136
Tuesday, July 18, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR COMMISSION

Notice of Hearing

Notice is hereby given that a public hearing on the proposed plan for the Blackstone River Valley National Heritage Corridor will be held on Wednesday, July 26, 1989.

The National Heritage Corridor was established pursuant to Pub. L. 99-647. That law also established and directed a Commission to prepare a Cultural Heritage and Land Use Plan, and to submit the plan to the Secretary of the Interior for review and approval.

The Public Hearing will convene at 7:30 P.M. at the Blackstone-Millville Regional Junior-Senior High School, Blackstone MA. The Hearing is expected to end at 9:00 p.m. Interested persons may present testimony at the Hearing or provide their testimony in writing to the Commission. The Commission will accept written testimony received in the Commission offices by July 26, 1989.

The proposed plan under consideration by the Commission includes the following objectives:

1. Protect Historic Resources
2. Protect Natural Resources
3. Complete the State Park and Forest Systems in the Corridor
4. Promote Recreational Activities
5. Interpret Corridor Resources
6. Sponsor Educational and Research Activities
7. Implement Land Use Management Planning
8. Develop Public Awareness
9. Promote Compatible Economic Revitalization

It is anticipated that about twenty people will attend the Hearing in addition to Commission members, planning team, and staff.

Requests for information or written testimony should be sent to: James Pepper, Executive Director, Blackstone River Valley National Heritage Corridor, P.O. Box 34, Uxbridge, MA 01569, or brought to the Commission offices on 21 Mendon Street, Uxbridge, MA. Telephone: 508-278-9400.

James Pepper,

Executive Director, Blackstone River Valley National Heritage Corridor.

[FR Doc. 89-16730 Filed 7-17-89; 8:45 am]

BILLING CODE 4310-70-M

COMMISSION ON CIVIL RIGHTS

Illinois Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 5:15 p.m., on Friday, August 11, 1989, at the Federal Office Building, 230 Dearborn-16SE, Lakeview Conference Room 1690, Chicago, Illinois. The purpose of the meeting is to receive information on efforts made to promote housing integration in Atrium Village and the south suburbs.

Persos desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Hugh J. Schwartzberg, or Farella E. Robinson, Civil Rights Analyst, to the Centeral Regional Division at (816) 426-5253, (TDD 816/426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washngton, DC, July 11, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89-16787 Filed 7-17-89; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 90129-9029]

Foreign Availability Assessment; Personal Computers

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Commerce.

ACTION: Notice of finding of foreign availability.

SUMMARY: Under the authority of the Export Administration Act of 1979, as amended (EAA), the Deputy Assistant Secretary for Export Administration has determined that foreign availability exists to controlled countries of desk top personal computers incorporating industry standard bus architecture that have the following characteristics: A total Processing Data Rate (PDR) no greater than 66 million bits per second; an internal memory (RAM) no greater than 39 million bits; and a hard disk capacity no greater than 140, Megabytes. The Deputy Assistant Secretary for Export Administration has initiated action to implement the appropriate changes in the Export Administration Regulations.

FOR FURTHER INFORMATION CONTACT: Irwin M. Pikus, Office of Foreign Availability, Department of Commerce, Washington, DC., 20230, Telephone (202) 377-8074.

SUPPLEMENTARY INFORMATION:

Background

The Office of Foreign Availability (OFA) of the Bureau of Export Administration is required by sections 5(f) and (h) of the EAA to review the foreign availability of items controlled for national security purposes. Part 791 of the Export Administration Regulations establishes the procedures and criteria for initiating and reviewing claims of foreign availability. The Secretary of Commerce is authorized by statute to determine foreign availability.

In any case in which a determination is made that an item of comparable quality to a U.S. item controlled for national security purposes is available in fact to a controlled country from a foreign source in quantities sufficient to render the control ineffective in meeting its purposes, the Secretary may not require a validated license for its export.

On January 25, 1988, OFA formally undertook an assessment of the foreign availability of personal computers at the performance level of AT-Compatible Microcomputers controlled under ECCN 1565A on the Commodity Control List. The Departments of Defense and State, as well as other interested agencies of

the U.S. Government, have reviewed the report of that assessment.

Based upon the assessment and the statutory criteria, I hereby determine that foreign availability exists to controlled countries of desk top personal computers incorporating industry standard bus architecture, which have the following characteristics: A total Processing Data Rate (PDR) no greater than 68 million bits per second; an internal memory (RAM) no greater than 39 million bits; and a hard disk capacity not greater than 140 megabytes. This determination does not include computers that are ruggedized above commercial/office environment, highly portable personal computers or stand-alone graphics workstations.

Based on this determination, the Bureau of Export Administration is publishing regulations in the Rules section of this **Federal Register** to amend the national security export controls on these computers by removing the individual validated license requirement to all non-controlled destinations. The Department of Commerce also will begin the process whereby the United States Government will work with Coordinating Committee (COCOM) member governments to reach agreement on an orderly change in the multilateral controls maintained on such computers when exported to controlled countries. Upon completion of the COCOM review process, the Department of Commerce will make the appropriate changes to the regulations.

If the Office of Foreign Availability receives substantive new evidence affecting this foreign availability determination, the assessment will be reevaluated. Inquries concerning this assessment may be directed to Dr. Irvin M. Pikus at the above address.

Dated: July 13, 1989.

James M. LeMunyon,

Deputy Assistant Secretay for Export Administration.

[FR Doc. 89-16842 Filed 7-17-89; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Habitat Committee will hold a public meeting on July 27-28, 1989, and the Council's Plan Teams for Gulf of Alaska and Bering Sea/Aleutian Islands groundfish will hold a public meeting during the week of August 28, 1989.

On July 27 at 1 p.m., the Habitat Committee will meet at the National Marine Fisheries Service (NMFS), Federal Building conference room, 709 W. 9th Street, Juneau, AK. The Committee's agenda will include a review of legislative action necessary to provide the National Oceanic and Atmospheric Administration (NOAA) with long-term authority to respond to a disaster, a review of the Alaska Trustees Council Plan for damage assessment and restoration as a result of the Prince William Sound oil spill, and the development of a review system for monitoring activities that could impact the environment. For more information contact Steve Davis at the Council's address, below.

The Plan Teams for the Gulf of Alaska and the Bering Sea/Aleutian Islands groundfish will meet on August 28-31 and on September 1, 1989, at the NMFS, Northwest and Alaska Fisheries Center, 7600 Sand Point Way, NE., Room 2079, Seattle, WA. the public meeting will begin on August 28 at 9 am, PDT. The meeting agenda will include: (1) Preparation of draft Stock Assessment and Fishery Evaluation (SAFE) documents; (2) priority research needs for groundfish stock assessments and fishery evaluations; (3) proposals from the Plan Teams for groundfish amendments for the 1990 cycle; (4) review of proposed National Oceanic and Atmospheric Administration (NOAA) guidelines for FMPs; (5) Gulf of Alaska pollock 1989 and 1990 stock status; (6) Gulf of Alaska Pacific cod quota distribution by regulatory area, and (7) Bering Sea/Aleutian Islands bycatch management approaches for 1991 and beyond. For more information contact Bill Wilson or Hal Weeks, at the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

July 12, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-16733 Filed 7-17-89; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Minneapolis Grain Exchange Proposed Option Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Availability of the Terms and Conditions of Proposed Commodity Option Contract.

SUMMARY: The Minneapolis Grain Exchange ("MGE" or "Exchange") has applied for designation as a contract market in European Exercise options on Hard Red Spring Wheat ("HRSW") futures. The Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, had determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before August 17, 1989.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to MGE European Exercise HRSW futures option contract.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 (202) 254-7303.

SUPPLEMENTARY INFORMATION: The Exchange is seeking designation as a contract market in European Exercise options on the Exchange's HRSW futures contract. The proposed contract will provide for the exercise of option contracts into the underlying HRSW futures contract only on the last trading day of an expiring option contract month. Currently, the MGE also is designated as a contract market in options or HRSW futures contracts with provision for exercise into the futures contract at any time prior to and including the expiration date of an option contract month (i.e., "American exercise" options). Both the proposed and existing option contracts are based upon the Exchange's HRSW futures contract. The Exchange intends to trade the existing option contract concurrently with the proposed option contract.

Copies of terms and conditions can be obtained through the office of the Secretariat by mail at the above address or by phone at (202) 254-6314. Other materials submitted by the MGE in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such material should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures option contract, or with respect to other material submitted by the MGE in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on July 12, 1989.

Steven Manaster,

Director, Division of Economic Analysis.

[FR Doc. 89-16747 Filed 7-17-89; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

Intent To Prepare an Environmental Impact Statement for Development of Geothermal Resources Located Beneath Naval Air Station Fallon, Nevada

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council of Environmental Quality regulations (40 CFR Parts 1500-1508) the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) for development of geothermal resources located beneath Naval Air Station (NAS) Fallon, Nevada.

Field investigation research was completed by the Navy in 1987. The investigation included geophysical, geological, geochemical and petrophysical field data acquisition and analysis. Based on this analysis it was concluded that a potential exists beneath the facilities of NAS Fallon for development of 300 to 500 megawatts geothermal electrical power generation.

The EIS will address the proposed development in two stages:

(1) A power plant on the southeast corner of NAS Fallon,

(2) A power plant on the northern edge of NAS Fallon.

The proposed first stage of development would construct an 80 megawatt electrical power facility. Development of this facility would involve drilling up to thirty-six production and injection wells from multi-well pads. It is anticipated that 75 acres of land for well pads, 29 acres for roads, 24 acres for pipelines, 30 acres for the power plant, and 150 acres for transmission lines (totaling 308 acres) would be disturbed as a result of development of this facility.

A consulting firm has been retained to prepare the Draft and Final Environmental Impact Statements. Publication of the DEIS for agency and public review is planned for January 1990.

The Navy will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this action. Naval Air Station Fallon will hold a public scoping meeting on August 1, 1989, beginning at 7:30 pm, at the Fallon Community Center, 100 Campus Way, Fallon, Nevada. This meeting will be advertised in the Fallon area newspapers.

A formal presentation will precede request for public comment. Navy representatives will be available at this meeting to receive comments from the public regarding issues of concern to the public. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of available time, each speaker will be asked to limit their oral comments to 5 minutes.

Agencies and the public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comments at the public meetings. To be most helpful, scoping comments should clearly describe specific issues or topics which the commentor believes the EIS should address. Written statements and or questions regarding the scoping process should be mailed no later than August 15, 1989 to Dr. Frank Monastero, Geothermal Program Office (Code 2800), Naval Weapons Center, China Lake, California 93555, telephone number (619) 939-3411.

Date: July 13, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register, Liaison Officer.

[FR Doc. 89-16611 Filed 7-17-89; 8:45 am]

BILLING CODE 4810-AE-M

DEPARTMENT OF ENERGY

Advisory Committee on Nuclear Facility Safety; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting.

Name: Advisory Committee on Nuclear Facility Safety.

Date and Time: Thursday, July 27, 1989, 8:30 a.m. to 6:00 p.m.; Friday, July 28, 1989, 8:30 a.m. to 1:00 p.m.

Place: U.S. Department of Energy, Forrestal Building, Room 1E-245, 1000 Independence Avenue SW., Washington, DC 20585.

Contact: Wallace R. Kornack, Executive Director, ACNFS, S-2, 1000 Independence Avenue SW., Washington, DC 20585, 202/586-1770.

Purpose of the Committee: The Committee was established to provide the Secretary of Energy with advice and recommendations concerning the safety of the Department's production and utilization facilities, as defined in section 11 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

Tentative Agenda

July 27, 1989

8:30 a.m. Subcommittee Reports
Review of Waste Isolation Pilot Plant Issues
NOON Lunch
1:00 p.m. Review of Selected Technical Issues
Committee Business
6:00 p.m. Meeting Adjourned Until Next Day

July 28, 1989

8:30 a.m. Review of Selected Technical Issues
12:30 p.m. Public Comment Session
1:00 p.m. Meeting Ends

Public Participation: This meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Wallace Kornack at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a

fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, IE-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issues at Washington, DC, on July 13, 1989.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 89-16790 Filed 7-17-89; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration; Availability of the Bonneville Acquisition Guide (BAG)

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of document availability.

SUMMARY: Copies of the BAG which establishes the procedures BPA uses in the solicitation, award, and administration of procurement contracts, and the Bonneville Power Assistance Instructions (BPAI) which establishes the procedures BPA uses in the solicitation, award, and administration of financial assistance instruments (principally grants and cooperative agreements) are available from BPA for $20 and $10 each, respectively.

ADDRESSES: Copies of the BAG or BPAI may be obtained by sending a check for the proper amount to the General Accounting Section—DSOG, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Norman L. Linscott, Assistant to the Administrator for Contracts and Property Management, at (503) 230-4513.

SUPPLEMENTARY INFORMATION: BPA was established in 1937 as a Federal Power Marketing Agency in the Pacific Northwest. BPA operations are financed from power revenues as opposed to annual appropriations. Its procurement operations are conducted under 16 U.S.C. 832 et seq. as well as 16 U.S.C. 474(d)(20). Pursuant to these special authorities, the BAG is promulgated as a statement of procurement policy and as a body of interpretative regulations governing the conduct of BPA procurement activities. It is similar in format to the Federal Acquisition Regulations to assist offerors in locating pertinent policies. BPA's financial assistance operations are conducted under 16 U.S.C. 832 et seq., and 16 U.S.C. 839 et seq. The BPAI express BPA's financial assistance policy. The BPAI also comprise BPA's rules governing implementation of the principles provided in the following OMB circulars:

A-21 Cost principles applicable to grants, contracts, and other agreements with institutions of higher education.

A-87 Cost principles applicable to grants, contracts, and other agreements with State and local Governments.

A-102 Uniform administrative requirements for grants in aid to State and local governments, and the common rule.

A-110 Grants and agreements with institutions of higher education, hospitals, and other nonprofit organizations.

A-122 Cost principles applicable to grants, contracts, and other agreements with nonprofit organizations.

A-128 Audits of State and local governments.

All BPA solicitations include notice of applicability and availability of the BAG and BPAI, as appropriate, for the information of offerors on particular procurements or financial assistance transactions.

Issued in Portland, Oregon, on June 28, 1989

Jack Roberts,

Acting Administrator, Bonneville Power Administration.

[FR Doc. 89-16791 Filed 7-17-89; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-834-DR]

Amendment to Notice of a Major Disaster Declaration; Kentucky

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Kentucky (FEMA-834-DR), dated June 30, 1989, and related determinations.

DATED: July 8, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: The Notice of a major disaster for the Commonwealth of Kentucky, dated June 30, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in this declaration of June 30, 1989:

The counties of Letcher Magoffin, Pike, and Whitley for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-16782 Filed 7-17-89; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL TRADE COMMISSION

[Dkt. C-3255]

General Rent-A-Car Systems, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibited unfair acts and practices and unfair methods of competition, this consent order requires, among other things, the Miami, Fla. national car rental company to disclose charges that are mandatory or are not reasonably avoidable to every consumer that inquires about the prices and also to disclose to consumers the car models they are to receive under the car size classification that each consumer selects.

DATE: Complaint and Order issued June 13, 1989.[1]

FOR FURTHER INFORMATION CONTACT: Michael MacPhail or Joel Winston, FTC/S-4002, Washington, DC 20580. (202) 326-3084 or 326-3153.

SUPPLEMENTARY INFORMATION: On Monday, March 20, 1989, there was published in the **Federal Register**, 54 FR 11383, a proposed consent agreement with analysis In the Matter of General Rent-A-Car Systems, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.10 Advertising fasely or misleadingly; § 13.155 Prices; § 13.155-5 Additional charges unmentioned. Subpart—Corrective Actions And/Or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-20 Disclosures; § 13.533-50 Maintain means of communication. Subpart—Misrepresenting Oneself And Goods:—Prices: § 13.1776 Prices; § 13.1778 Additional costs mentioned.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 89-16760 Filed 7-17-89; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

[Dkt. C-3253]

KKR Associates, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, that the respondents divest either Beatrice or RJR assets used in the production and sale of packaged nuts, ketchup and oriental food, following KKR's acquisition of RJR Nabisco, Inc. Repondents are also required to hold RJR's assets and operations separate and apart from other entities owned by KKR, pending completion of the required divestitures.

DATE: Complaint and Order issued June 13, 1989.[1]

FOR FURTHER INFORMATION CONTACT: Renee Henning, FTC/S-3302, Washington, DC 20580. (202) 326-2621.

SUPPLEMENTARY INFORMATION: On Friday, February 17, 1989, there was published in the **Federal Register**, 54 FR 7197, a proposed consent agreement with analysis In the Matter of KKR Associates, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of a modified complaint in the form contemplated by the modified agreement, made its jurisdictional findings, and entered an order to divest in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Acquiring Corporate Stock Or Assets: § 13.5 Acquiring corporate stock or assets; § 13.5-20 Federal Trade Commission Act. Subpart—Corrective Actions And/Or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-45 Maintain records; § 13.533-45(k) Records, in general; § 13.533-50 Maintain means of communication.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 89-16761 Filed 7-17-89; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions, and Delegations of Authority; Office of the Regional Director

This Notice amends Part A, Chapter AD of the Statement of Organization, Functions and Delegations of Authority of the Office of the Secretary, Section AD.20—Office of the Regional Director, for the Department of Health and Human Services. Chapter AD was last amended at 47 FR 3611 on 1/26/82. This paragraph is being amended to reflect to consolidation of the Region VII, VIII and X Divisions of Cost Allocation (DCAs) with the DCA offices in adjacent Regions, and the transfer of affected staff and workload.

SUPPLEMENTARY INFORMATION: In January 1989, the Assistant Secretary for Management and Budget signed an order merging these three DCA offices with the DCA offices in adjacent Regions, and transferring their staff and workload to the adjacent Regions. The organizational structure of the Regional DCAs has been a concern for some time. The current structure fragments this function into ten small offices, each dedicated to a small part of the overall national workload. This creates workload/staff imbalances (in overall numbers as well as in the quality and areas of staff expertise), and makes it difficult to use staff most efficiently and productively. These problems have become especially acute in recent years as total DCA staff has been reduced while the cost proposals they are responsible for evaluating and negotiating have become increasingly complex. Accordingly, the Region VII (Kansas City) DCA is being merged into the Region VI (Dallas) DCA; and the Region VIII (Denver) and X (Seattle) DCAs are being merged into the Region IX (San Francisco) DCA. This consolidation is designed to strengthen DCA operations by assuring that there is a sufficient breadth and depth of experties in each DCA office to properly handle the wide range of cost allocation plans and indirect cost proposals they are required to review and negotiate.

While the consolidation will become effective upon publication in the **Federal Register** there will be a period of time before the affected staff actually relocate and the DCA offices in Regions VII, VIII and X physically close. During this transition period, DCA operations in Regions VII, VIII and X will continue to be part of the Regional Administrative Support Centers in those Regions, but will be under the technical oversight of the DCA Director for Region VI or IX. Also, Interim Operating Instructions have been issued to the affected Regions which provide general ground rules for managing DCA activities during the transition. Grantees and contractors located in Regions VII, VIII and X should continue to submit their cost allocation plans and indirect cost proposals to the DCA offices in Kansas City, Denver and Seattle, respectively, until notified to do otherwise.

Accordingly, Chapter AD(I-X) of the Department's Organization Manual is amended as follows:

Section AD.20 D. Regional Administrative Support Center (AD(I-X)L), paragraph 3 is amended by deleting paragraph 3 in its entirety and replacing it with the following:

3. In accordance with policies and procedures established by the Office of Grant and Contract Financial Management, Office of Finance, ASMB, conducts cost allocation activities in Regions I, II, III, IV, V, VI, and IX. Reviews, negotiates and approves indirect cost rates; State and local government cost allocation plans; research patient care rates and amounts; fringe benefit rates and other special rates applicable to Federal grant and contract programs. Provides financial management technical assistance and training on cost allocation to grantees and contractors, HHS grant and contract officials, and grant and contract officials of other Federal agencies. Resolves audit findings on cost allocation plans, indirect cost rates, etc.

Carries out these functions on behalf of all Federal agencies and programs when HHS is designated the congnizant agency by OMB. The Region VI (Dallas) office will generally perform these activities for grantees and contractors located in the following States: Arkansas, Iowa, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, and Texas. The Region IX Office (San Francisco) will generally perform these activities for grantees and contractors located in the following States, Territories and Nations: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming as well as American Samoa, Australia, Japan, the Trust Territories of the Pacific Islands and Eastern Caroline, Guam and Wake Islands.

Date: July 9, 1989.

Kevin E. Moley,

Assistant Secretary for Management and Budget.

[FR Doc. 89-16785 Filed 7-17-89; 8:45 am]

BILLING CODE 4110-40-M

Office of the Assistant Secretary for Personnel Administration

Privacy Act of 1974; Clarification of Record System Notice

AGENCY: Office of the Assistant Secretary for Personnel Administration, Office of the Secretary, HHS.

ACTION: Notice of a change to the routine uses, storage of records, and location of offices.

SUMMARY: In accordance with the Privacy Act, HHS is giving notice that it is clarifying an existing routine use to make it more restrictive, is adding the possibility that records may be stored on computer readable media (discrete to the EAP office), is clarifying and expanding the record safeguards to make it compatible with HHS policy, is editing the entire notice particularly to reflect the program's name change, and is updating the list of system managers. The system of records is 09-90-0010-Employee Assistance Program (formerly Employee Counseling Services), HHS/OS/ASPER. Records in this system contain information on employees and their family members who have been counseled by the Employee Assistance Program for all types of personal problems.

EFFECTIVE DATE: This amendment is effective on July 18, 1989.

FOR FURTHER INFORMATION CONTACT: Manager, Human Resources Development Group, Room 1416 Switzer, 330 C Street, SW., Washington, DC 20201. Telephone number FTS 475-0322.

SUPPLEMENTARY INFORMATION: The existing system notice has a routine use allowing some releases for the purpose of defending the Department in the event of litigation. The new routine use restricts this release further by mandating that a qualified service organization agreement by signed with the Department of Justice for any records falling under 42 CFR Part 2. It also now requires that the Director of the EAP approve any such disclosure to determine if it is compatible with the purpose for which the record was collected. The Department has also revised its Personnel Instruction on the EAP. This system notice reflects the program's name change and storage/safeguard procedures that are in this Instruction. This notice indicates that records may be stored on computer readable media. These computers will not be part of any larger system. Their use will be limited to the EAP and will be password protected. Finally, the list of system managers has been updated.

The notice is published below in its entirety, as amended. Previously, the system was published on January 4, 1984.

Thomas S. McFee,

Assistant Secretary for Personnel Administration.

09-90-0010

System Name

Employee Assistance Program Records HHS/OS/ASPER/OPS.

Security Classification

None.

System Location

Designated offices providing counseling and/or referral for counseling for employees and their family members (see Appendix 1).

Categories of Individuals Covered by the System

This system covers Department employees, employees of other organizations serviced by the HHS EAP, or family members of any of these employees who have been counseled and/or referred for counseling for personal problems by the EAP.

Categories of Records in the System

The system contains records of each employee and family member who has utilized the EAP for a personal problem. Examples of information which may be found in each record are employee or family member name, date of birth, grade, job title, home address, telephone numbers, and supervisor's name and telephone number. In addition to the demographic data, certain clinical information is normally maintained in each record including a psychosocial history, assessment of personal problem, information regarding referrals to treatment facilities in the community, and intervention outcomes. Finally, if an employee is referred to the EAP by a supervisor, the record may contain information regarding the referral such as leave record, reasons for referral, and outcomes of supervisory interventions.

Authority for Maintenance of the System

5 U.S.C. 7361, 7362, 7901, 7904, 44 U.S.C. 3101.

Purpose(s)

These records are used to document the nature and extent of the employee's or family member's personal problem and the background information necessary for formulating an intervention plan in an effort to resolve the personal problem and return the employee to full productivity. The record is also used to document, when appropriate, where the employee or family member has been referred for treatment or rehabilitation and the progress in such treatment.

Anonymous information from these records is also needed for the purpose of preparing statistical reports and analytical studies in support of the EAP's management.

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses

(1) The Department contemplates that it will contract with a private firm, individual, or other group such as a Federal Employee Assistance Program consortium for the purpose of providing the EAP functions. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records. The contractor will surrender to the EAP all of these records as well as any new records at the time of contract termination.

(2) The Department may disclose information from this system of records for litigation purposes when

(a) HHS, or any of its components, or

(b) Any HHS employee in his or her official capacity, or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee, or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components.

is a party to litigation, and HHS determines that such use of records is relevant and necessary to the litigation and would help in the effective representation of the government party. The disclosure may be made to the Department of Justice. Where the records are *not* covered by the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 CFR Part 2), disclosures may also be made to a court or other tribunal, or to another party before such tribunal. Any disclosure of such patient records must be pursuant to a qualified service organization agreement that meets the requirements of 42 CFR Part 2 *and* must also comply with all other aspects of these regulations. The Director of the Employee Assistance Program (in ASPER) must personally approve any disclosure made under this routine use based on his or her determination that it is compatible with the purpose for which the records were collected.

Policies and Practices for Storing, Retrieving, Accessing, Retaining and Disposing of Records in the System

Storage

Employee records are maintained in folders, on index cards and on computer readable media. Computer systems are discrete, for EAP use only, and/or are password protected.

Retrievability

Records are retrieved by a case code number, unique to the employee or family member utilizing the program. These numbers are cross indexed by name.

Safeguards

(1) *Authorized Users:* Access to these records is limited to EAP Administrators who work directly with employees and family members in each program location (see Appendix 1) and their immediate staffs (including staff counselors, staff secretaries, contract or consortia counselors and secretaries). All EAP Administrators, whether or not they directly provide clinical services, may access the records for the purposes of program evaluation, destroying records at the end of their period of maintenance, and transferring records from one contractor to another.

(2) *Physical Safeguards:* All records are stored in a metal filing cabinet equipped with at least a combination lock, and preferably a locking bar. This file cabinet is in a secured area, accessible only to the EAP staff, and is locked when not in use. Computer readable information is maintained in discrete systems and/or is password protected. Computers are also stored in secured areas, accessible to only the EAP staff. These records are always maintained separate from any other system of records.

(3) *Procedural Safeguards:* All persons having access to the records shall have previous training in the proper handling of records covered by the Privacy Act and 42 CFR Part 2 (Confidentiality of Alcohol and Drug Abuse Patient Records). These restrict disclosures to unique situations, such as medical emergencies, except when the employee or family member has consented in writing. Furthermore, employees and family members who utilize the EAP will be informed in writing of the confidentiality provisions; and secondary disclosure of information is prohibited without employee consent.

Retention and Disposal

Records are retained until three years after the employee or family member has ceased contact with the EAP or until any litigation is resolved. However, if an employee has been terminated from HHS employment, records are retained for at least three years after the official date of termination and until any litigation is resolved. Files are then destroyed.

System Manager(s) and Address

The records of individuals participating in the EAP are managed by the EAP Administrators in the various regional and headquarters offices (Appendix 1).

Notification procedures

Inquiries to determine whether the system contains a record about the requester should be addressed to the system manager where the counseling was provided (see Appendix 1). The individual should provide his or her name, grade, organization where employed, date of birth, and location and approximate date of counseling. Upon receiving a request, the EAP Administrator shall weigh the need for disclosure against the potential injury to the patient, to the physician-patient relationship, and to the treatment services. The EAP Administrator will then determine the extent to which any disclosure of all or any part of the record is necessary. 42 CFR Part 2 does not compel disclosure.

Record Access Procedures

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Contact the EAP Administrator at the address found in Appendix 1, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction.

RECORD SOURCE CATEGORIES:

Information in this system of records is: (1) Supplied directly by the individual, or (2) supplied by a member of the employee's family, or (3) derived from information supplied by the individual, or (4) supplied by sources to whom the employee and/or family member has been referred for assistance, or (5) supplied by Department officials, or (6) supplied by EAP counselors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

APPENDIX 1

Regional Offices:

Region I
Employee Assistance Program Administrator
HHS Regional Personnel Office
JFK Federal Building, Room 1503
Boston, Massachusetts 02203

Region II
Employee Assistance Program Administrator
HHS Regional Personnel Office
Room 39-120
26 Federal Plaza
New York, New York 10278

Region III
Employee Assistance Program Administrator
HHS Regional Personnel Office
Room 9400
P.O. Box 13716
Philadelphia, Pennsylvania 19101

Region IV
Employee Assistance Program Administrator
HHS Regional Personnel Office
101 Marietta Tower, Room 1604
Atlanta, Georgia 30323

Region V
Employee Assistance Program Administrator
HHS Regional Personnel Office
31st Floor
300 South Wacker Drive
Chicago, Illinois 60606

Region VI
Employee Assistance Program Administrator
HHS Regional Personnel Office
Room 930
1200 Main Tower
Dallas, Texas 75202

Region VII
Employee Assistance Program Administrator
HHS Regional Personnel Office
Box 15458
601 East Twelfth Street
Kansas City, Missouri 64106

Region VIII
Employee Assistance Program Administrator
HHS Regional Personnel Office
Room 1062
19th & Stout Streets
Denver, Colorado 80294

Region IX

Employee Assistance Program Administrator
HHS Regional Personnel Office
Room 118
50 United Nations Plaza
San Francisco, California 94102

Region X
Employee Assistance Program Administrator
HHS Regional Personnel Office
Mail Stop RX-05
2201 Sixth Avenue
Seattle, Washington 98121

Other Offices:

Centers for Disease Control
Employee Assistance Program Administrator
Employee Service Branch, Personnel Management Office
Centers for Disease Control
1600 Clifton Road, N.E.
Atlanta, Georgia 30333

Health Care Financing Administration
Employee Assistance Program Administrator
GG-5-A East Low Rise
6325 Security Boulevard
Baltimore, Maryland 21207

National Institutes of Health
Employee Assistance Program Administrator
Building 31, Room E2B57
9000 Rockville Pike
Bethesda, Maryland 20205

Public Health Services
Employee Assistance Program Administrator
Room 1335 Parklawn Building
56 Fishers Lane
Rockville, Maryland 20857

Social Security Administration
Employee Assistance Program Administrator
3120 Annex
6401 Security Boulevard
Baltimore, Maryland 21235

Southwest Complex
Employee Assistance Program Administrator
Room 1036 Switzer Building
330 C Street, SW.
Washington, D.C. 20201

[FR Doc. 89-16709 Filed 7-17-89; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

Consumer Participation; Notice of Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Nashville District Office, chaired by Hayward E. Mayfield, District Director. The topic to be discussed is "Consumer Update of FDA Issues Today."

DATES: Thursday, August 3, 1989, 10 a.m. to 12 m.

ADDRESSES: University of Tennessee Agricultural Extension Services, West Tennessee Center for Research, Extension, and Public Service, 605 Airways Blvd., Jackson, TN 38301.

FOR FURTHER INFORMATION CONTACT: Sandra S. Baxter, Consumer Affairs Officer Food and Drug Administration, 297 Plus Park Blvd., Nashville, TN 37217, 615-736-2088.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Date: July 12, 1989.

Alan L. Hoeting,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-16756 Filed 7-17-89; 8:45 am]

BILLING CODE 4160-01-M

Social Security Administration

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services covers the Social Security Administration (SSA). Notice is given that Chapter S1 is amended to add a division-level subcomponent and functions within the Office of Budget (OB) in the Office of the Deputy Commissioner, Management. The new material and changes are as follows:

Section S1.10 *The Office of Budget*—(Organization):

Delete:

D. The Division of Administrative Budget (S1BB).

Add:

D. The Division of Administrative Budget Review and Analysis (S1BC).

F. The Division of Administrative Budget Coordination and Analysis (S1BE).

Section S1B.20 *The Office of Budget*—(Functions):

Delete:

D. The Division of Administrative Budget (S1BB) in its entirety.

Add:

D. The Division of Administrative Budget Review and Analysis (S1BC).

1. Interprets and applies SSA policies and guidelines on budget formulation and execution in the review and analysis of SSA component budget requests.

2. Formulates the operational workload portion of SSA's administrative budget based on SSA plans, policies and operational data.

3. Monitors and analyzes component spending as part of SSA level budget execution policies.

F. The Division of Administrative Budget Coordination and Analysis (S1BE).

1. Interprets administrative budgetary policies and limitations, and develops and issues guidelines and instructions to SSA components for budget formulation and execution.

2. Executes the total administrative and program budgets for SSA through issuance of workyear and dollar controls, budgetary allotments/allowances for administrative and program expenditures and employment ceilings to SSA components, coordinating with OE's Division of Administrative Budget Review and Analysis and the Division of Program Budget as appropriate.

3. Coordinates and analyzes SSA administrative budget totals including the Information Technology Systems Budget.

4. Provides direct budget support for the Office of the Deputy Commissioner for Management.

Dated: July 6, 1989.

John R. Dyer,
Deputy Commissioner Management.

[FR Doc. 89-16783 Filed 7-17-89; 8:45 am]

BILLING CODE 4190-11-M

Public Health Service

National Vaccine Advisory Committee; Public Meeting AGENCY: Office of the Assistant Secretary for Health

SUMMARY: The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary for Health are announcing the forthcoming meeting of the National Vaccine Advisory Committee.

DATE: Date, Time and Place: September 7, 1989 at 9:00 a.m.; September 8, 1989, at 8:30 a.m.; Hubert Humphrey Building, Room 703A, 200 Independence Avenue SW., Washington, DC 20201. The entire meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate should be sent to Yuth Nimit, Ph.D., Executive Secretary, National Vaccine Advisory Committee, National Vaccine Program, 5600 Fishers Lane, Park Building, Room 1-24, Rockville, Maryland 20857, (301) 443-0715.

Agenda

Open Public Hearing

Interested persons may formally present data, information, or views orally or in writing on issues pending before the Advisory Committee or on any of the duties and responsibilities of the Advisory Committee as described below. Those desiring to make such presentations should notify the contact person before August 7, 1989 and submit a brief statement of the information they wish to present to the Advisory Committee. Those requests should include the names and addresses of proposed participants and an indication of the approximate time required to make their comments. A maximum of 15 minutes will be allowed for a given presentation. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting will be allowed to make an oral presentation at the conclusion of the meeting, if time permits, at the chairperson's discretion.

Open Advisory Committee Discussion

Discussion at this meeting will be directed to an update of the National Vaccine Program; the July 26 meeting of the Advisory Commission on Childhood Vaccines; the development status of vaccine information materials; an update on infant immunization; a report from the Resources and Financing Subcommittee; a report from the Vaccine Supply Subcommittee; a report from the Vaccine Utilization Subcommittee; development of a National Vaccine Plan. Meetings of the Advisory Committee shall be conducted, insofar as is practical, in accordance with the agenda published in the **Federal Register** notices. Changes in the agenda will be announced at the beginning of the meeting.

Persons interested in specific agenda items may ascertain from the contact person the approximate time of discussion. A list of Advisory Committee members and the charter of the Advisory Committee will be available at the meeting. Those unable to attend the meeting may request this information from the contact person. Summary minutes of the meeting will be made available after the approval of the Advisory Committee at the subsequent Committee meeting on December 14.

Dated: July 11, 1989.

Yuth Nimit,
Executive Secretary, NVAC.

[FR Doc. 89-16784 Filed 7-17-89; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-89-900; FR2639]

Delegation of Authority

AGENCY: Department of Housing and Urban Development (HUD) Office of the Secretary.

ACTION: Notice of delegation of authority.

SUMMARY: This Notice announces delegation of authority to the Assistant Secretary for Housing-Federal Housing Commissioner and General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner for certain responsibilities under Section 255 of the National Housing Act.

EFFECTIVE DATE: July 7, 1989.

FOR FURTHER INFORMATION CONTACT: Stephen A. Martin, (202) 755-3046. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing each is delegated the power and authority of the Secretary with respect to the following functions and responsibilities under section 255 of the National Housing Act, 12 U.S.C. 1715z-20. This Delegation carries with it the authority to redelegate to employees of the Department unless provided otherwise.

1. Commit to insure and insure home equity conversion mortgages in accordance with section 255(c).

2. Approve mortgages to originate and hold home equity conversion mortgages as provided in Section 255(d)(1).

3. Cause mortgagees to make available to mortgagors, at the time of application, a list of third party information sources, as required by Section 255(e)(1).

4. Provide or cause to be provided, counseling to mortgagors as specified in section 255(f), including the approval pursuant to section 255(e)(1) of information sources as being responsible and able to provide counseling information to mortgagors.

5. Cause disclosure information to be made availble to mortgagors by mortgagees, both prior to the individual loan closing as required by Section 255(e)(2), and annually thereafter in the form of summary statements as required by section 255(e)(3).

6. Pursuant to section 255(i)(1), provide funds to mortgagors when the mortgagee or other party responsible for making the equity conversion payments fails to make them; obtain, by legal, equitable, or administrative means, repayment from any source of funds disbursed; and take such actions described in section 255(i)(2) as may be necessary to enable funds to be provided to mortgagors and mortgagees.

7. Service and foreclose (or accept deeds in lieu of foreclosure) on mortgages assigned to the Secretary, sell, or otherwise convey interest in acquired property, and in all respects carry out the responsibilities of the Secretary under section (7)(i) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(i).

8. Enter into such contracts and agreements as may be necessary or desirable to carry out the responsibilities delegated above, with the exception of procurement contracts.

9. Issue rules and regulations necessary to implement the authority conferred hereby, and required by Section 417(b) of Pub. L. 100-242. This rulemaking authority may not be redelegated.

This Delegation is effective upon execution and until such time as it may be expressly superseded or terminated.

Authority: Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3534(d).

Washington, DC, July 7, 1989.

Jack Kemp,
Secretary of Housing and Urban Development.

[FR Doc. 89-16748 Filed 7-17-89; 8:45 am]

BILLING CODE 4210-32-M

Office of Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. D-89-901; FR-2641]

Redelegation of Authority

AGENCY: Department of Housing and Urban Development, Office of Assistant Secretary for Housing-Federal Housing Commisioner.

ACTION: Notice of redelegation of authority.

SUMMARY: This Notice announces a redelegation of certain responsibilities under Section 255 of the National Housing Act to officials of the Office of the Assistant Secretary for Housing-Federal Housing Commissioner.

EFFECTIVE DATE: July 7, 1989.

FOR FURTHER INFORMATION CONTACT: Stephen A. Martin (202) 755-3046. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

A. The Deputy Assistant Secretary for Single Family Housing is delegated the power and authority of the Assistant Secretary for Housing-Federal Housing Commissioner with respect to the following functions and responsibilities under Section 255 of the National Housing Act, 12 U.S.C. 1715z-20.

1. Commit to insure and insure home equity conversion mortgages in accordance with section 255(c).

2. Approve mortgagees to orginate and hold home equity conversion mortgages as provided in section 255(d)(1).

3. Cause mortgagees to make available to mortgagors, at the time of application, a list of third party information sources, as required by section 255(e)1).

4. Provide or cause to be provided, counseling to mortgagors as specified in section 255(f), including the approval pursuant to section 255(e)(1) of information sources as being responsible and able to provide counseling information to mortgagors.

5. Cause disclosure information to be made available to mortgagors by mortgagees, both prior to the individual loan closing as required by section 225(e)(2), and annually thereafter in the form of summary statements as required by section 225(e)(3).

6. Pursuant to section 255(i)(1), provide funds to mortgagors when the mortgagee or other party responsible for making the equity conversion payments fails to make them; obtain, by legal, equitable, or administrative means, repayment from any source of funds disbursed; and take such actions described in section 255(i)(2) as may be necessary to enable funds to be provided to mortgagors and mortgagees.

7. Service and foreclose (or accept deeds in lieu of foreclosure) on mortgages assigned to the Secretary, sell, or otherwise convey interest in acquired property, and in all respects carry out the responsibilities of the Secretary under section 7(i) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(i).

8. Enter into such contracts and agreements as may be necessary or desirable to carry out the responsibilities delegated above, with the exception of procurement contracts.

B. The Director of the Office of Insured Single Family Housing and the Director of the Single Family Development Division is each delegated the following power and authority with respect to section 255.

1. Commit to insure and insure home equity conversion mortgages in accordance with section 255(c).

2. Cause mortgagees to make available to mortgagors, at the time of application, a list of third party information sources, as required by section 255(e)(1). Provide or cause to be provided, counseling to mortgagors as specified in section 255(f), including the approval pursuant to section 255(e)(1) of information sources as being responsible and able to provide counseling information to mortgagors.

3. Cause disclosure information to be made available to mortgagors by mortgagees, both prior to the individual loan closing as required by section 255(e)(2), and annually thereafter in the form of summary statements as required by section 255(e)(3).

4. Enter into such contracts and agreements as may be necessary or desirable to carry out the responsibilities delegated above.

C. The Director of the Office of Insured Single Family Housing and the Director of the Single Family Servicing Division is each delegated the following power and authority with respect to section 255.

1. Pursuant to section 255(i)(1), provide funds to mortgagors when the mortgagee or other party responsible for making the equity conversion payments fails to make them; obtain, by legal, equitable, or administrative means, repayment from any source of funds disbursed; and take such actions described in section 255(i)(2) as may be necessary to enable funds to be provided to mortgagors and mortgagees.

2. Service and foreclose (or accept deeds in lieu of foreclosure) on mortgages assigned to the Secretary, sell, or otherwise convey interest in acquired property, and in all respects carry out the responsibilities of the Secretary under section 7(i) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(i).

3. Provide or cause to be provided, counseling to mortgagors as specified in section 255(f), including the approval pursuant to section 255(e)(1) of information sources as being responsible and able to provide counseling information to mortgagors.

4. Enter into such contracts and agreements as may be necessary or desirable to carry out the responsibilities delegated above, with the exception of procurement contracts.

D. The Director of the Office of Lender Activities and Land Sales and the Director of the Lender Approval and Recertification Division each is delegated the power and authority to approve mortgagees to originate and hold home equity conversion mortgages as provided in section 255(d)(1).

Officials to whom authority under section 255 has been redelegated may redelegate in turn to subordinate employees of the Department.

The Redelegation is effective upon execution and until such time as it may be expressly terminated or superseded.

Authority: Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Washington, DC, July 7, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 89-16749 Filed 7-17-89; 8:45 am]

BILLING CODE 4210-27-M

[Docket No. D89-902; FR-2642]

Redelegation of Authority

AGENCY: Department of Housing and Urban Development (HUD) Office of Assistant Secretary for Housing-Federal Housing Commissioner.

ACTION: Notice of redelegation of authority.

SUMMARY: This Notice announces a redelegation of authority to certain officials of HUD Regional and Field Offices. The Authority relates to section 255 of the National Housing Act.

EFFECTIVE DATE: July 7, 1989.

FOR FURTHER INFORMATION CONTACT: Stephen A. Martin, (202) 755-3046. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Each Regional Administrator-Regional Housing Commissioner, Deputy Regional Administrator, Director of the Office of Housing in a Regional Office, Manager of a HUD Field Office and Deputy Manager of a HUD Field Office, is redelegated the power and authority of the Assistant Secretary for Housing-Federal Housing Commissioner with respect to the following functions and responsibilities under section 255 of the National Housing Act, 12 U.S.C. 1715z-20.

1. Commit to insure and insure home equity conversion mortgages in accordance with section 255(c).

2. Cause mortgagees to make available to mortgagors, at the time of application, a list of third party information sources, as required by section 255(e)(1).

3. Provide or cause to be provided, counseling to mortgagors as specified in section 255(f), including the approval pursuant to section 255(e)(1) of information sources as being responsible and able to provide counseling information to mortgagors.

4. Cause disclosure information to be made available to mortgagors by mortgagees, both prior to the individual loan closing as required by section 255(e)(2), and annually thereafter in the form of summary statements as required by section 255(e)(3).

5. Pursuant to section 255(i)(1), provide funds to mortgagors when the mortgagee or other party responsible for making the equity conversion payments fails to make them; obtain, by legal, equitable, or administrative means, repayment from any source of funds disbursed; and take such actions described in section 255(i)(2) as may be necessary to enable funds to be provided to mortgagors and mortgagees.

6. Service and foreclose (or accept deeds in lieu of foreclosure) on mortgages assigned to the Secretary, sell, or otherwise convey interest in acquired property, and in all respects carry out the responsibilities of the Secretary under section 7(i) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(i).

7. Enter into such contracts and agreements, including loan agreements with mortgagors, as may be necessary or desirable to carry out the responsibilities delegated above, with the exception of procurement contracts.

Regional and Field Office officials to whom authority under Section 255 has been redelegated may redelegate in turn to subordinate employees of the Department.

This Redelegation is effective upon execution and until such time as it may be expressly terminated or superseded.

Authority: Section 7(d) of the Department of Housing and Urban Development Act. 42 U.S.C. 3535(d).

Washington, DC, 1989.

James E. Schoenberger.

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 89-16750 Filed 7-17-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-040-09-4300-90]

Rock Springs District Grazing Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Rock Springs District Grazing Advisory Board.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Rock Springs District Grazing Advisory Board. Notice of this meeting is required under Pub. L. 92-463.

DATE: September 7, 1989, 9:30 a.m. until 4 p.m.

ADDRESS: Bureau of Land Management District Office, Highway 191 North, Rock Springs, Wyoming 82902-1869.

FOR FURTHER INFORMATION CONTACT: Donald H. Sweep, District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902-1869, (307) 382-5350.

SUPPLEMENTARY INFORMATION: The proposed agenda for the meeting will include:

1. Introduction and opening remarks
2. Approval of the transcript of the September 8, 1988 Board meeting
3. Election of a Chairman and Vice-Chairman
4. Improvements proposed for completion in FY90 with range betterment (8100) funds
5. Update on wild horse gathering
6. Thompson sheep to cattle conversions and related AMPs
7. North LaBarge CRMP
8. Public comment period
9. Arrangements for next meeting.

This meeting is open to the public. Interested persons may make oral statements to the Board between 3:00-3:30 p.m., or file written statements for the Board's consideration. Anyone wishing to make an oral statement should notify the District Manager, Bureau of Land Management, Highway 191 North, P.O. Box 1869, Rock Springs, Wyoming 82902-1869, by September 6, 1989. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

A transcript of the meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Donald H. Sweep,

District Manager.

[FR Doc. 89-16762 Filed 7-17-89; 8:45 am]

BILLING CODE 4310-22-M

[AZ-050-4333-12]

Arizona: Resource Management Planning; Yuma District Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare Category I amendment to the Yuma District Resource Management Plan, Yuma District, Arizona.

FOR FURTHER INFORMATION CONTACT: Mary Barger, Acting Area Manager, Yuma Resource Area, 3150 Winsor Avenue, Yuma, Arizona 85365, 602-726-6300.

SUPPLEMENTARY INFORMATION: In accordance with 43 CFR 1610.2(c) and 1610.3-1(d), notice is hereby given of intent to prepare a planning amendment document. This notice also constitutes the scoping notice required by regulation for the *National Environmental Policy Act* (40 CFR 1501.7).

1. Description of the proposed planning policy: The proposed action is to amend the *Yuma District Resource Management Plan* (RMP), completed in May 1986. The Category I planning amendment will be based upon existing statutory requirements and policies and will carry out the requirements of the *Federal Land Policy and Management Act* of 1976 (FLPMA). The RMP Amendment and accompanying Environmental Assessment (EA) will provide the basis for changing the RMP's Land Ownership Adjustment section (Issue #6). Changes in the Land Ownership Adjustment section will allow the disposal through sale or exchange of approximately 4,317.5 acres of public land not previously identified for disposal. Changes in the Recreation section will be specific to off-road vehicle (ORV) use, and will allow for—(a) classification of approximately 340 acres as open to intensive ORV use and approximately 560 acres as limited to designated roads and trails on public lands that had previously been classified as limited to existing roads and trails; and (b) designation of one additional competitive-use ORV area. The Amendment and EA are scheduled for completion by September 30, 1989.

2. Identification of the geographic area involved: The proposed amendment affects three discrete areas within the Yuma District—

(a) Lands proposed to be available for disposal through sale or exchange are public lands in the vicinity of Quartzsite, Arizona, in sections 15, 17, 20, 21, 22, 23, 26, 27, 28, and 29 of T. 4 N., R. 19 W., G&SRM;

(b) Lands affected by changes in the District's ORV designations are all north of Senator Wash Reservoir in Imperial County, California, in T. 14 S., R. 24 E., SBM, secs. 29, 30, 31, and 32, and T. 15 S., R. 24 E., SBM, sec. 6;

(c) The proposed competitive-use ORV area is approximately 10 miles east of Yuma, Arizona, in T. 8 S., R. 21 W., G&SRM, secs. 27, 28, 33, 34 and 35. A map delineating the proposed disposal area is available for public

review at BLM's Yuma Resource Area Office, 3150 Winsor Avenue, Yuma, Arizona. Final acreages and boundaries for all of these areas will be determined at a later date.

3. General types of issues anticipated: The proposed amendment addresses changes to the Land Tenure Adjustment and Recreation sections of the RMP.

4. Disciplines to be represented and used to prepare the amendment: air quality, soils, vegetation, wildlife, mineral and energy resources, visual resources, floodplains, rangeland resources, recreation resources, cultural resources, and economic conditions.

5. The kind and extent of public participation: A 30-day public comment period will be announced in the **Federal Register** and other appropriate media. There will also be a specific comment period for the Governors of Arizona and California to inform and seek comment from State and local agencies.

6. Times, dates, and locations scheduled for any public meetings, hearings, conferences, or gatherings as known: At this time, no public meetings are planned. All public input is scheduled to be handled through written comments.

7. The location and availability of documents relevant to the planning process: Documents will be available for public review at the Yuma Resource Area, 3150 Winsor Avenue, Yuma, Arizona 85365.

Herman L. Kast,

District Manager.

Date: July 7, 1989.

[FR Doc. 89-16788 Filed 7-17-89; 8:45 am]

BILLING CODE 4333-12-M

[ES-940-09-4520-13; (ES-041293, Group 156)]

Filing of Plat of Dependent Resurvey and Subdivision of Sections; Minnesota

July 12, 1989.

1. The plat, in three sheets, of the dependent resurvey of portions of the south and north boundaries, the west boundary, a portion of the subdivisional lines and the survey of the subdivision of sections 4, 5, 7, 8, 9, 16, 17, 18, 21, 28, 29, 30, 31, 32, and 33 of Township 142 North, Range 39 West, Fifth Principal Meridian, Minnesota, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on August 28, 1989.

2. The dependent resurvey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Mangement, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., August 28, 1989.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Joseph W. Beaudin,

Acting Deputy State Director for Cadastral Survey.

[FR Doc. 89-16789 Filed 7-17-89; 8:45 am]

BILLING CODE 4310-GJ-M

Minerals Management Service

Meeting of Working Panel Established by the Royalty Management Advisory Committee

July 12, 1989.

AGENCY: Minerals Management Service (MMS), Interior..

ACTION: Notice of meeting.

SUMMARY: The Minerals Management Service (MMS) hereby gives notice that the Royalty Management Advisory Committee (RMAC) Strategic Planning Work Panel will meet in Lakewood, Colorado, at the location and on the dates identified below. This panel was established by RMAC to provide recommendations for further program improvements and other changes to Royalty Management Program (RMP) mission and performance.

LOCATION AND DATES: The RMAC Strategic Planning Work Panel will meet at the Sheraton Hotel and Conference Center, 360 Union Blvd., Lakewood, Colorado, on July 26-28, 1989. The Panel will meet again on August 14-18, 1989, and August 28-31, 1989. The Panel will meet from 9:00 a.m. to 5:00 p.m. each day. If the meeting is completed in less than the days scheduled, the Panel will adjourn. For information on the location of the last two meetings and to conform each session in the event a date is changed, contact Ms. Deborah Gibbs at the telephone number shown below.

The public is invited to attend these meetings and make oral comments. A time will be set aside by the panel chairperson during which the public will be invited to make oral comments.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Gibbs, Mineral Management Service, Royalty Management Program, Denver Federal Center, Building 85, Box 25165, Mail Stop 660, Denver, Colorado 80225, Telephone Number (303) 231-3410, FTS 326-3410.

SUPPLEMENTARY INFORMATION: In November 1986, MMS initiated a comprehensive planning process aimed at fostering steady improvements to its royalty program through internal assessment and external input. This process included an evaluation of the overall RMP mission and performance to determine if the program was generally "on track" or if fundamental changes were needed. The assessment was comprised of the following three components:

- Program Performance Standards:
- Selected Options for Change in the Royalty Management Mission:
- RMP Business System Improvement Plan:

An aggressive effort has been made to develop a consensus among RMP's constituents for the appropriate royalty management mission and performance levels to fulfill the needs and expectations of royalty recipients to the maximum practicable entent. In late 1988 and early 1989, the three strategic planning and improvements products listed above were sent to over 170 of RMP's constituents, including Indian tribes and associations, States, industry, RMAC members, Congress, and various review/oversight groups. Constituents were requested to comment on a spectrum of the most likely and historically persistent suggestions for change to the program mission and to provide recommendations on RMP's systems improvement plans and program performance standards.

As a result a Strategic Plan for Operations and Systems is being developed for RMP with emphasis on supporting mission requirement well into the 1990's.

A status report on the findings and input received from RMP constituents was presented to RMAC on June 22, 1989. The RMAC agreed to establish a working panel to review the findings and provide recommendations for further program improvements and other changes in mission and performance.

Recently, numerous issues related to Indian royalty management have been explored through testimony and exhaustively reviewed by the Senate Select Committee on Indian Affairs. The MMS is in the process of evaluating the concerns expressed by the Senate Select Committee relative to royalty management.

The Strategic Planning Work Panel is charged with reviewing the draft Strategic Plan for Operations and Systems and making recommendations as to conclusions drawn in the plan. The Panel will also provide to the Committee proposals on the extent to which the RMP mission and performance should be changed. In addition, the Panel will review and make recommendations on any royalty management improvements being contemplated in response to concerns recently expressed by the Senate Select Committee. The RMAC will review the Panels' recommendations at a meeting tentatively scheduled for later this summer.

Dated: July 12, 1989.

Donald T. Sant,

Acting Associate Director for Royalty Management.

[FR Doc. 89-16745 Filed 7-17-89; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 3, 1989, a proposed Consent Decree in *United States* v. *Boyd, et al.* was lodged with the United States District Court for the District of Maryland. The proposed Consent Decree provides for the payment by defendant Carnegie Institution of Washington, Inc. of $100,000 of the costs incurred by the Environmental Protection Agency in investigation, response, and enforcement activities related to the Security Boulevard Site in Baltimore County, Maryland.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed Consent Decree. Comments should be addressed to the Acting Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Boyd, et al.* D.J. Ref 90-11-3-264.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 101 Lombard Street, Baltimore, Maryland 21201, and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please enclose $1.20 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General.

[FR Doc. 89-16764 Filed 7-17-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 7, 1989 a proposed Consent Decree in *United States* v. *Campbell Soup Company*, Civil Action No. CIV-S 87-1272 EJG/EM, was lodged with the United States District Court for the Eastern District of California. The Complaint sought penalties and injunctive relief against Campbell Soup Company ("Campbell") under section 113 of the Clean Air Act, 42 U.S.C. 7413, for Campbell's violations of the volatile organic compound ("VOC") limitations contained in the federally enforceable California State Implementation Plan.

The proposed Consent Decree imposes a permanent injunction against future violations of the Clean Air Act and imposes a civil penalty of $125,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. Comments should refer to *United States* v. *Campbell Soup Company*, D.J. Ref. 90-5-2-1-1115.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of California, 3305 Federal Building, 650 Capitol Mall, Sacramento, California 95814, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1732(R), Ninth Street and Pennsylvania Avenue NW., Washington, DC 20004. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-16765 Filed 7-17-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 5, 1989 a proposed Consent Decree in *United States* v. *Martin Marietta Corporation and Commonwealth Aluminum Corporation*, District of Oregon Civil Action No. _____ was lodged with the United States District Court for the District of Oregon. This is a civil action against two corporate defendants under sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9606 and 9607, for recovery of costs and injunctive relief in connection with the clean up of the Martin Marietta Reduction Facility, a site that was contaminated with the waste products arising from the reduction of aluminum ore, near The Dalles, Wasco County, Oregon.

The proposed consent decree resolves all of the claims alleged in the complaint and provides for the defendants to implement the remedy selected by EPA in its Record of Decision. The Environmental Protection Agency estimates the remedy will cost approximately $6.7 million.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. Comments should refer to *United States* v. *Martin Marietta Corporation and Commonwealth Aluminum Corporation*, D.J. Ref. 90-11-2-410.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of Oregon, 312 U.S. Courthouse, 620 SW. Main Street, Portland, Oregon 97205, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1732(R), Ninth Street and Pennsylvania Avenue NW., Washington, DC 20004. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the decree, please enclose a check for copying costs in the amount of

$4.80 payable to Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-16766 Filed 7-17-89; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Pursuant to the National Cooperative Research Act of 1984—PDES Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), PDES Inc. ("PDES") on June 27, 1989 has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes to its membership. The additional written notification was filed for the purpose of extending the protections of Section 4 of the Act, which limit the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On September 20, 1988, PDES filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on October 14, 1988 (53 FR 40282). On February 16, 1989, PDES filed an additional written notification. The Department published a notice in response to the additional notification on March 21, 1989 (54 Fed. Reg. 11580).

PDES, with the addition of General Motors Corporation, Honeywell, Inc., Newport News Shipbuilding & Drydock Company, and Westinghouse Electric Corporation, consists of the following firms: The Boeing Company; Computervision Corporation; Digital Equipment Corporation; FMC Corporation; General Dynamics Corporation; General Electric Company; General Motors Corporation; Grumman Corporation; Honeywell, Inc.; International Business Machine Corporation; Lockheed Corporation; LTV Aerospace and Defense Company; Martin Marietta Corporation; McDonnell Douglas Corporation; Newport News Shipbuilding & Drydock Company; Northrop Corporation; Rockwell International Corporation, and Westinghouse Electric Corporation.

The nature and objectives of PDES are not affected by the additional Notification.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-16763 Filed 7-17-89; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 88-73]

Liberty Discount Drugs, Inc. Revocation of Registration

On July 22, 1988, the Deputy Assistant Administrator, Office of Diversion Control of the Drug Enforcement Administration (DEA), issued an Order to Show Cause to Liberty Discount Drug, Inc. (Respondent), proposing to revoke DEA Certificate of Registration, BL0809523, and to deny any pending applications for renewal of that registration. The Order alleged that the pharmacy's continued registration was inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f). Specifically, the Order to Show Cause stated that from November 1986 to May 1987, Respondent had dispensed excessive quantities of Schedule V codeine-based cough preparations and that such dispensing violated 21 CFR 1306.32(b).

Respondent, through counsel, filed a request for a hearing which was held on January 10, 1989, in Ann Arbor, Michigan, before Administrative Law Judge Mary Ellen Bittner. Judge Bittner issued her recommended ruling on April 11, 1989. Thereafter, the entire file was transmitted to the office of the Adminstrator for a final decision. Having reviewed the evidence and Judge Bittner's recommendation, the Administrator makes the following findings.

Respondent is a retail pharmacy located in Detroit, Michigan. George Esho, R.Ph., worked in the pharmacy as a pharmacist since November 1, 1986 and became the sole owner of the pharmacy on March 26, 1987. The Detroit office of the DEA received a suspicious purchase report that Respondent was purchasing between 72 and 144 four-ounce bottles of Schedule V codeine-based cough syrup once or twice a month. According to the Michigan Board of Pharmacy, the average pharmacy in Michigan dispenses an average of 14 four-ounce bottles per month.

On June 2, 1987, DEA Investigators conducted an audit of Respondent pursuant to an administrative inspection warrant. The audit comprised a period from November 1986 to May 1987. Respondent's total monthly sales of four-ounce bottles of Schedule V cough preparations during the audit period were as follows: November 1986—187 bottles, December 1986—266 bottles, January 1987—287 bottles, February 1987—336 bottles, March 1987—432 bottles, April 1987—446 bottles, May 1987—434 bottles. Respondent charged customers approximately $6.50 to $7.00 per bottle.

Three log books, containing the names and addresses of those individuals who received the cough syrup and the dates on which it was dispensed, were seized by the DEA during the regulatory inspection. Nineteen individuals were selected for profiling.

Three individuals with the last name of Mrozowski bought a combined total of 95 four-ounce bottles from Respondent during the seven-month audit period. On seven occasions, all three Mrozowskis, two of whom listed the same address, purchased cough syrup on the same day. On seven other occasions, two of the Mrozowskis purchased cough syrup on the same day. One purchased cough syrup on consecutive days of May 6 and 7 and May 26 and 27, 1987. Mr. Esho initialed the pharmacy's Schedule V log book as the dispenser of these purchases.

Al Dozak purchased 47 bottles of cough syrup from Respondent during the audit period using two different addresses. Mr. Dozak purchased cough syrup every three to four days from December 1986 to March 1987, and increased the frequency of his purchases in April and May 1987. He also made purchases on consecutive days of December 29 and 30, 1986 and April 15 and 16, 1987. Mr. Esho initialed the log book as the dispenser for the April purchases.

E.P. Reyes purchased a total of 37 bottles of cough syrup during the audit period. From January 1, 1987 to February 28, 1987, Mr. Reyes purchased 10 bottles of cough syrup. Eight of the ten were dispensed by Mr. Esho. From March 1, 1987 to May 31, 1987, Mr. Reyes bought 25 bottles of cough syrup, making a purchase approximately every three days.

Keith Sizemore and C. Sizemore, listing the same address, purchased a total of 71 bottles during the audit period. On eight occasions, they purchased cough syrup on the same day, and on 14 different occasions, they alternated their dates of purchases, i.e., one individual would buy on one day, and the other would buy on the following day.

Chico, Sally and James Silva, all using the same address, purchasd a total of 37 bottles during the last three months of the audit period. The family made these purchases on a regular basis, and on two separate occasions, Chico and Sally Silva made purchases on the same day. Dan and Ron Buda, both using the same address, purchased a combined total of 105 bottles during the audit period, buying the medication every three to four days. On 15 occasions, they purchased cough syrup on the same day, and on 25 occasions, they alternated their dates of purchase.

The Administrator may revoke a DEA Certificate of Registration and deny an application for such registration if he determines that the continued registration of the registrant would be inconsistent with the public interest. 21 U.S.C. 823 (f) and 824(a)(4). Under 21 U.S.C. 823(f)(5), it is clear that not only can the Administrator consider violations of the law but also any "conduct which may threaten the public health and safety." There is no question that the pharmacy violated 21 CFR 1306.32(b) when it dispensed more than four ounces of codeine-based cough syrup in less than 48 hours to the same individual.

Respondent contends, however, that he did not violate any other law because 21 CFR 1306.32(b) exempts the dispensing of Schedule V cough syrup from the requirements of a prescription and, since only prescriptions must be issued for a valid medical purpose, a pharmacist may dispense as much cough syrup as he likes as long as he does not violate 21 CFR 1306.32(b).

Respondent's argument is without merit and the Administrator rejects this tortured interpretation of DEA's regulations. Title 21, United States Code, section 829(c) provides that "[n]o controlled substance in Schedule V which is a drug may be distributed or dispensed other than for a medical purpose." Since the entire transaction with respect to a non-prescription Schedule V drug involves only the dispensing pharmacist and the ultimate user, or patient, the pharmacist must bear sole responsibility to assure that the drug is being dispensed for a legitimate medical purpose. The Administrator does not posit that the pharmacist must examine a patient or even question him closely regarding his medical condition. However, the pharmacist may not close his eyes to obvious abuse, ignoring the fact that his clientele are purchasing far more medication that would be necessary for legitimate medical purposes. When controlled substances, even those in Schedule V, are dispensed pursuant to a prescription, the law and regulations place corresponding responsibility on both the prescribing practitioner and the dispensing pharmacist. 21 CFR 1306.04(a). When prescriptions are clearly not issued for legitimate medical purposes, a pharmacist may not intentionally close his eyes and thereby avoid positive knowledge of the real purpose of the prescriptions, thereafter filling them with impunity. See *United States* v. *Kersham*, 555 F.2d 198 (8th Cir. 1977); *United States* v. *Hayes*, 595 F.2d 258 (5th Cir. 1979). Where, as in this case, there is no prescriber, but only a dispenser, the law still requires the exercise of common sense and professional judgment. The Administrator will not permit a pharmacist to abdicate his professional and legal responsibilities merely because a drug is dispensed without a prescription. To do so would make a mockery of the controls inherent in the controlled substance regulatory scheme.

The Administrator finds that from the pattern of dispensing in this case, Respondent knew or should have known that the cough syrup he dispensed was being obtained for other than legitimate medical purposes. It is apparent, even to those with no pharmacology training, that alternating purchases by family members is a ruse to obtain more cough syrup than is allowed under 21 CFR 1306.32(b). Likewise, same day purchases by multiple family members and frequent, regular purchases over a long period, are clear signs of dispensing for other than legitimate medical purposes.

The Administrator finds that the pattern of dispensing in this case is conduct which threatens the public health and safety. The average amounts of cough syrup dispensed by Respondent show that Respondent exercised little or not restraint or independent judgment in dispensing these drugs. Mr. Esho testified that it was "not his job" to guard against the type of purchases described above, and that the law gave his customers the "right" to make these purchases. It thus appears that Mr. Esho is unwilling to make diligent efforst to insure that controlled substances are dispensed from his pharmacy only for legitimate medical purposes. Respondent's continued registration would be contrary to the public interest and his Certificate of Registration must be revoked.

Accordingly, having concluded that there are lawful bases for the revocation of the Respondents's registration and for the denial of any pending applications for renewal thereof, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, BL0809523, previously issued to Liberty Discount Drug, Inc,. be, and it hereby is, revoked. The Administrator further orders that any pending applications for renewal of that registration be, and they hereby are, denied.

The order is effective August 17, 1989.

John C. Lawn,

Administrator.

Dated: June 29, 1989.

[FR Doc. 89-16706 Filed 7-17-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-71]

David W. Warren, D.O., Kansas City, Missouri; Hearing

Notice is hereby given that on July 13, 1988, the Drug Enforcement Administration, Department of Justice, issued to David W. Warren, D.O., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Wednesday, July 12, 1989, commencing at 9:30 a.m., at the Jackson County Courthouse, 415 East 12 Street, Division 7 Courtroom, Kansas City, Missouri.

Dated: July 6, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-16705 Filed 7-17-89; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation

and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 55b of Title 5, United States Code.

1. *Date:* August 1, 1989.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Fellowships for University Teachers applications in Religious Studies, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after January 1990.

2. *Date:* August 2, 1989.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Fellowships for University Teachers applications in Philosopy, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after January, 1990.

3. *Date:* August 2, 1989.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Fellowships for University Teachers applications in British Literature I, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after January, 1990.

4. *Date:* August 3, 1989.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Fellowships for University Teachers applications in Comparative Literature: Germanic, Slavic, Oriental languages and Literatures; and Literary Theory and Criticism, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after January, 1989.

5. *Date:* August 3–4, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for the Humanities Projects in Museums and Historical Organizations program, submitted to the Division of General Programs, projects beginning after October 1, 1989.

6. *Date:* August 4, 1989.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Fellowships for University Teachers applications in Political Science, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after January 1990.

7. *Date:* August 4, 1989.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in Political Science, Law, and Economics, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after January 1990.

8. *Date:* August 7, 1989.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Fellowships for University Teachers and Fellowships for College Teachers and Independent Scholars applications in Music and Dance History and Criticism, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after January 1990.

9. *Date:* August 7, 1989
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in Philosophy, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after January 1990.

10. *Date:* August 8, 1989
Time: 8:30 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review Fellowships for University Teachers applications in European History, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after January 1990.

11. *Date:* August 8, 1989
Time: 8:30 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in Foreign Languages I: French and Spanish, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after January 1990.

12. *Date:* August 8, 1989
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in European History, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after January 1990.

13. *Date:* August 25, 1989
Time: 9:00 a.m. to 5:30 p.m.
Room: 430
Program: This meeting will review applications to Humanities Projects in Libraries and Archives program, submitted to the Division of General Programs, for projects beginning after January 1990.

14. *Date:* August 14, 1989
Time: 8:30 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in American History II, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after January, 1990.

15. *Date:* August 14, 1989
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in American History I, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after January, 1990.

16. *Date:* August 14, 1989
Time: 8:30 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review Fellowships for University Teachers and Fellowships for College Teachers and Independent Scholars applications in Latin American and Non-Western History, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after January, 1990.

17. *Date:* August 15, 1989
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in Religious Studies, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after January, 1990.

18. *Date:* August 15, 1989
Time: 8:30 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review Fellowships for University Teachers applications in Art History and Criticism, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after January, 1990.

19. *Date:* August 15, 1989.
time: 8:30 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review Fellowships for University Teachers appliations in American History I, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after January, 1990.

20. *Date:* August 16, 1989
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in Sociology, Anthropology, Psychology, and Education, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after January, 1990.

21. *Date:* August 16, 1989
Time: 8:30 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review Fellowships for University Teachers applications in Romance and Classical Languages and Literatures, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after January, 1990.

22. *Date:* August 16, 1989
Time: 8:30 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in American Studies, Theater, and Communications, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after January, 1990.

23. *Date:* August 17, 1989
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in American Literature, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after January, 1990.

24. *Date:* August 17, 1989
Time: 8:30 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review Fellowships for University Teachers applications in American Literature and Studies; and film, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after January, 1990.

25. *Date:* August 18, 1989
Time: 8:30 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review Fellowships for University Teachers applications in American History II, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after January, 1990.

26. *Date:* August 18, 1989
Time: 8:30 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in British Literature, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after January, 1990.

27. *Date:* August 18, 1989
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in Linguistics and Foreign Languages II: Classical, Italian, German, Slavic, and Oriental Languages, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after January, 1990.

28. *Date:* August 21, 1989
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in Art History, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after January, 1990.

29. *Date:* August 21, 1989
Time: 8:30 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review Fellowships for University Teachers applications in Sociology, Anthropology, Archaeology, and Psychology, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after January, 1990.

30. *Date:* August 21, 1989
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2
Program: This meeting will review Fellowships for University Teachers applications in British Literature II; Theatre History; and Linguistics, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after January, 1990.

Stephen J. McCleary,
Advisory Committee, Management Officer.

[FR Doc. 89–16716 Filed 7–17–89; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Compliance With Environmental Law in Antarctica

AGENCY: National Science Foundation.

ACTION: Notice of report availability.

SUMMARY: Notice is hereby given that a draft report, "A National Science Foundation Strategy for Compliance with Environmental Law in Antarctica", is available to the public for review and comment.

DATE: Comments on the draft report should be received by the Office of General Counsel, National Science Foundation, no later than Friday, August 25, 1989.

ADDRESS: Copies of the draft report may be obtained at the following address: Robert M. Andersen, Deputy General Counsel, Office of General Counsel, Rm. 501, National Science Foundation, 1800 G Street NW., Washington, DC 20585, ATTN: Report Request. Requests for copies (limit of 1) may also be sent to the above address, or requested by telephone at (202) 357–9435.

SUPPLEMENTARY INFORMATION:

The Office of General Counsel, National Science Foundation (NSF), recently completed a draft report entitled "A National Science Foundation Strategy for Compliance with Environmental Law in Antarctica". The report (1) determines which environmental laws apply to Antarctic activities, (2) applies applicable laws to United States Antarctic Program operations to determine if NSF is in compliance, and (3) develops recommendations designed to bring NSF into full compliance with applicable laws and sound principles of pollution control, wildlife conservation, and waste management.

This review was done at the request of the Director of NSF, and pursuant to the Division of Polar Program's Environmental Protection Agenda, which recognized the need to conduct a comprehensive analysis of environmental laws and their applicability to the United States Antarctic Program, as managed and operated by NSF.

The public is invited to review the draft report, and submit written comments to the Office of General Counsel. All comments must be received no later than Friday, August 25, 1989. Timely comments will be considered prior to the issuance of a final report.

(National Science Foundation Act of 1950, 42 U.S.C. 1861, 1870)

Robert M. Andersen,
Deputy General Counsel.

[FR Doc. 89–16734 Filed 7–17–89; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030-05980 et al.; ASLBP No. 89-590-01-OM]

Safety Light Corp., et al.; (Byproduct Material License No. 37-00030-02 et al.); Order

July 12, 1989.

Before Administrative Judges: Helen H. Hoyt, Chair, Oscar H. Paris, Frederick J. Shon.

1. A prehearing conference is scheduled for 2:00 p.m. EDT August 3, 1989 at the offices of the Board, 4350 East-West Highway, Bethesda, Maryland 20814, in the hearing room on the 5th floor.

2. Parties should be prepared to frame the issues and discuss schedules for future hearings.

3. Written appearance of counsel representing participating parties will be filed prior to August 3, 1989.

For The Atomic Safety and Licensing Board.

Helen F. Hoyt,

Chair, Administrative Judge.

[FR Doc. 89-16793 Filed 7-17-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-456 and 50-457]

Commonwealth Edison Co.; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF-72 and NPF-77 issued to Commonwealth Edison Company (the licensee), for operation of Braidwood Station, Units 1 and 2, located in Will County, Illinois.

Identification of Proposed Action

The amendment would consist of changes to the Technical Specifications (TS) and would authorize an increase of the storage capacity of the spent fuel pool from 1060 fuel assemblies to 2870 fuel assemblies.

The amendment to the TS is responsive to the licensee's application dated January 3, 1989 as supplemented January 24, and February 10, 1989. The NRC staff has prepared an Environmental Assessment of the Proposed Action, "Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the Expansion of the Spent Fuel Pool, Facility Operating License Nos. NPF-72 and NPF-77, Commonwealth Edison Company, Braidwood Station, Units 1 and 2, Docket Nos. 50-456 and 50-457, dated July 13, 1989.

Summary of Environmental Assessment

The "Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light Water Power Reactor Fuel" (NUREG-0575), Volumes 1-3, (1979), concluded that the environmental impact of interim storage of spent fuel was negligible and the cost of the various alternatives reflects the advantage of continued generation of nuclear power with the accompanying spent fuel storage. Because of the differences in design, the FGEIS recommended evaluating spent fuel pool expansions on a case-by-case basis.

For Braidwood Station, Units 1 and 2, the expansion of the storage capacity of the spent fuel pool will not create any significant additional radiological effects or non-radiological environmental impacts beyond those assessed in the Commission's Final Environmental Statement related to operation of Braidwood Station, Units 1 and 2, NUREG-1026, June 1984.

The occupational radiation dose for the proposed operation of the expended spent fuel pool is estimated to be less than one percent of the total annual occupational radiation exposure for this facility.

Finding of No Significant Impact

The staff has reviewed the proposed spent fuel pool expansion to the facility relative to the requirements set forth in 10 CFR Part 51. Based on this assessment, the staff concludes that there are no significant radiological or non-radiological impacts associated with the proposed action and that the issuance of the proposed amendment to the license will have no significant impact on the quality of the human environment. Therefore, pursuant to 10 CFR 51.31, no environmental impact statement needs to be prepared for this action.

For further details with respect to this action, see (10 the application for amendment to the Technical Specifications dated January 3, 1989 as supplemented January 24, and February 10, 1989; (2) the FGEIS on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG-0575), (3) the Final Envorinmental Statement for Braidwood Station, Units 1 and 2, dated June 1964, and (4) the Environmental Assessment dated July 13, 1989. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555 and at the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 13th day of July 1989.

For The Nuclear Regulatory Commission.

Paul C. Shemanski,

Acting Director, Project Directorate III-2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 89-16780 Filed 7-17-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-259, 50-260 and 50-296]

Tennessee Valley Authority; (Browns Ferry Nuclear Plant, Units 1, 2 and 3); Exemption

I

The Tennessee Valley Authority (TVA or the licensee) is the holder of Operating License Nos. DPR-32, DPR-52 and DPR-69 which authorize operating of Units 1, 2 and 3, respectively. These licenses provide, among other things, that Browns Ferry is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

Browns Ferry (BFN), Units 1, 2 and 3 are boiling water reactors (BWR) at the licensee's site located near Decatur, Alabama.

II

10 CFR Part 50.71(e) requires, in part, that licensees shall update periodically the final safety analysis report (FSAR) originally submitted as part of the application for the operating license, to assure that the information in the FSAR contains the latest material developed. Revisions to the original FSAR shall be filed no less frequently than annually and shall reflect all changes up to a maximum of six months prior to the date of filing. This regulation requires the annual updated FSAR (UFSAR) for Browns Ferry to be submitted on July 22, 1989.

III

By letter dated May 23, 1989, the licensee requested a temporary exemption from certain requirements of 10 CFR Part 50.71(e). Specifically, the licensee requested a temporary exemption from the requirements to submit an annual update of the Browns Ferry UFSAR on July 22, 1989. A revised UFSAR would be submitted on July 22, 1990.

Deficiencies regarding the accuracy of the Browns Ferry UFSAR were identified by the licensee through the Employee Concerns Program. The last updated UFSAR was provided to the staff by letter dated July 19, 1988.

Corrective actions have been implemented which include establishing improved controls for maintaining an accurate UFSAR and performance of a program to review relevant documentation to update and verify the UFSAR. The licensee has recently implemented a new UFSAR update program that provides a corporate standard and site procedures necessary to coordinate the updating of the UFSAR with the responsible organizations. A verification program has also been initiated. This UFSAR verification program will utilize the output of the Design Baseline and Verification Program (DBVP) to ensure that the UFSAR is consistent with the latest as-configured drawings and design changes, as well as the existing Technical Specifications, fuel load analysis, and current administrative and operational programs.

TVA has updated the Browns Ferry UFSAR annually for the past six years. With the many design modifications currently underway to support Unit 2 restart, an update in July 1989 would not reflect the Unit 2 configuration relative to the time of its projected start-up (currently projected for late 1989). Units 1 and 3 are currently defueled and will not be restarted until after the next annual updated UFSAR of July 1, 1990. In order to ensure that users of the UFSAR have available the latest information which could affect the UFSAR (e.g., 10 CFR 50.59 determinations, Engineering Change Notices and Design Change Notices), the licensee has put in place programs and procedures to maintain a 10 CFR 50.59 library and a file on UFSAR changes. These compensatory measures should assist UFSAR users by providing the latest information concerning any part of the UFSAR. As part of the licensee's DBVP program, operation personnel are being provided with up-to-date configuration drawings which are utilized in the control room as source material. Therefore, the requested temporary exemption will not affect plant operation and safety.

The staff has concluded that the requested temporary exemption is administrative in nature and would not affect plant equipment, operations or procedures.

The Commission has determined that special circumstances, as provided in 10 CFR 50.12(a)(2)(v), are present justifying the exemption, namely; that the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation.

This exemption would provide Browns Ferry with only temporary relief from compliance with the annual UFSAR update. The licensee is making good faith efforts to comply with the intent of the regulation which is to ensure a complete, updated and a single integral document (UFSAR) on file for each power reactor license. TVA's verification/update program is indicative of their recognition of problems with the updated UFSAR process and their good faith efforts to correct these problems.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR Part 50.12, that (1) this temporary exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security, and (2) in this case, special circumstances are present as described in section II.

In light of this determination and as reflected in the Environmental Assessment and Notice of Finding of No Significant Environmental Impact prepared pursuant to 10 CFR 51.21 and 51.32 (July 6, 1989) (54 FR 28523), it is determined that the intended action will have no significant impact on the environment.

A copy of the licensee's request for exemption dated May 23, 1989 related to this action is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Local Public Document Room located at Athens Public Library, South Street, Athens, Alabama 35611.

This Exemption is effective upon issuance.

Dated at Rockville, Maryland this 7th day of July 1989.

For The Nuclear Regulatory Commission.

B.D. Liaw,

Director, TVA Projects Division, Office of Nuclear Reactor Regulation.

[FR Doc. 89-16781 Filed 7-17-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-443-OL; 50-444-OL (Offsite Emergency Planning Issues)]

Atomic Safety and Licensing Appeal Board; Public Service Co. of New Hampshire, et al.; (Seabrook Station, Units 1 and 2); Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's order of July 11, 1989, oral argument on the appeals of the Attorney General of Massachusetts, the Seacoast Anti-Pollution League, the New England Coalition on Nuclear Pollution, and the Town of Hampton from the Licensing Board's December 30, 1988, initial decision on the New Hampshire Radiological Emergency Response Plan, LBP-88-32, 28 NRC 667 (1988), will be heard at *10:00 a.m. on Thursday, July 27, 1989, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.*

For the Appeal Board.

Barbara A. Tompkins,

Secretary to the Appeal Board.

Dated: July 11, 1989.

[FR Doc. 89-16708 Filed 7-17-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Extension of OPM Form 1164 Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S.C. chapter 35), this notice announces a proposed extension of the use of a form which collects information from the public. OPM Form 1164, Qualifications Inquiry for Testing Personnel, is completed by former employers of candidates being considered for positions as OPM test examiners. OPM uses the information to evaluate the trustworthiness and integrity of candidates being considered for these positions, thus supplementing a National Agency Check and Inquiry (NACI) and satisfying the special needs of this program. This form takes approximately 15 minutes to complete and is submitted by 3,600 persons per year for an annual public burden of 900 hours. For copies of this proposal, call Grace Butler on (202) 632-0259.

DATE: Comments on this proposal should be received within 10 working days from the date of this publication.

ADDRESSES: Send or deliver comments to—

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6410, Washington, DC 20415.

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 3235, Washington, DC 20503.

BEST COPY AVAILABLE

FOR FURTHER INFORMATION CONTACT: James E. Coyle, (202) 653-5914, U.S. Office of Personnel Management.

Constance B. Newman,

Director.

[FR Doc. 89-16751 Filed 7-17-89; 8:45 am]

BILLING CODE 6325-01-M

Request for Approval of Form RI 25-7 Certification of Marital Status Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request to extend an information collection from the public. Section 8341, title 5, U.S. Code permits payments of an annuity to the spouse or former spouse of a deceased employee or retiree provided the survivor is otherwise eligible and does not remarry before reaching age 55. Widows, widowers, and former spouses complete and submit Form 25-7, Certification of Marital Status, to verify that they have not remarried and thereby remain eligible to receive survivor annuity benefits. OPM conducts the survey only as needed. Approximately 50,000 survivors under age 55 are sent a certification of Marital Status form. OPM estimates that each form requires approximately 6 minutes to complete, for total burden of 5,000 hours. For copies of this proposal, call Larry Dambrose, Agency Clearance Officer, on (202) 632-0199.

DATES: Comments on this proposal should be received within 10 working days from the date of this publication.

ADDRESSES: Send or deliver comments to—

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6410, Washington, DC 20415.

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 3235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Beth Smith, (202) 632-5472. U.S. Office of Personnel Management.

Constance B. Newman,

Director.

[FR Doc. 89-16752 Filed 7-17-89; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27015; File No. SR-PSE-89-16]

Self-Regulatory Organizations; Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to the Waiver of Transaction and Order Book Charges for Trades

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 3, 1989, the Pacific Stock Exchange, Inc. ("PSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Item 1. Text of the Proposed Rule Change

Pursuant to the Schedule of Rates and Charges published by the PSE the Exchange will waive the transaction fees for any customer firm, and all Order Book charges, for trades executed in Micron Technology, Inc., a dually listed option. These charges will be waived from July 3, 1989 through January 19, 1990.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rules Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for the Proposed Rule Change

The waiver of Order Book and transaction charges in Micron Technology, Inc., is a competitive response to Securities and Exchange Act Release No. 34-22026,[1] which permits the multiple trading of OTC options. Although the Exchange believes that its Market Makers provide excellent markets in this option, the Exchange deems a waiver of certain fees necessary to remain competitive with other option exchanges. This waiver of Order Book and transaction fees will encourage trading decisions on the basis of the strength of the marketplace.

The proposed rule change is consistent with section 6(b)(5) of the Securities Exchange Act of 1934, in that it will increase competition and the quality of markets.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the

[1] 50 FR 20310 (May 15, 1985).

Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 8, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: July 10, 1989.

[FR Doc. 89-16727 Filed 7-17-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27014; File No PHLX 89-37]

Self-Regulatory Organizations; Proposed Rule Change By the Philadelphia Stock Exchange, Inc. Relating to Half Point Strike Prices

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 26, 1989, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substances of Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange"), pursuant to Rule 19b-4, hereby proposes to adopt a pilot program pursuant to Exchange Rule 1012(a)(ii) to provide for the addition of half point (.005) strike price intervals for the Deutsche Mark, (CFM/XDM), Japanese Yen (CJY/XJY) and Swiss Franc (CSF/XSF) currency options. The pilot program would be applicable to as many as the first three (3) expiration cycles and as many as the nearest four half point strike price intervals to the currency spot market *i.e.*, two (2) above and two (2) below spot.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the pilot program is to provide additional options series at half point exercise prices, two (2) above and two (2) below spot in the three nearest term expiration cycles. By providing these additional options series in both American and European style foreign currency options the PHLX hopes to provide foreign currency options market participants with competitive alternative products to the other foreign currency markets particularly the over-the-counter options market and the forward market.

The proposed rule change is based on section 6(b)(5) of the Securities Exchange Act of 1934 in that it is designed to further promote the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organizations Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organizations. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days after the date of this publication].

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: July 10, 1989.

[FR Doc. 89-16728 Filed 7-17-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17059; 812-7178]

IDS Financial Corporation, et al., Application To Amend a Prior Order

July 10, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: IDS Financial Corporation ("IDS") IDS Financial Services Inc. ("IDSFS"), IDS Bond Fund, Inc., IDS Cash Management Fund, Inc., IDS Discovery Fund, Inc., IDS Equity Plus Fund, Inc., IDS Extra Income Fund, Inc., IDS Federal Income Fund, Inc., IDS Global Bond Fund, Inc., IDS Growth Fund, Inc., IDS International Fund, Inc., IDS Managed Retirement Fund, Inc., IDS Mutual, Inc., IDS New Dimensions Fund, Inc., IDS Precious Metals Fund, Inc., IDS Progressive Fund, Inc., IDS Selective Fund, Inc., IDS Stock Fund, Inc., IDS Strategy Fund, Inc., IDS Utilities Income Fund, Inc. (individually a "Fund" and collectively the "Funds") and any other fund that may in the future be advised

or distributed by IDS or IDSFS (collectively the "Applicants").

Relevant 1940 Act Sections: Amended exemptive order requested under Section 6(c) exempting Applicants from the provisions of section 2(a)(32), 2(a)(35), 22(c), 22(d) and Rule 22c-1.

Summary of Application: Applicants seek an order, pursuant to section 6(c) of the 1940 Act, amending a prior order (Investment Company Act Release No. 13974, May 31, 1984, the "Prior Order"). The amended order would exempt Applicants from sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the 1940 Act and Rule 22c-1 thereunder to the extent necessary (i) to permit the Funds to assess and, in certain circumstances, to waive a deferred sales load and (ii) to permit Strategy Fund to waive a contingent deferred sales load ("CDSL") under certain circumstances in addition to those allowed by the Prior Order.

Filing Dates: The application was filed on November 18, 1988 and amended on May 8, 1989, May 23, 1989, and July 5, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing request should be received by the SEC by 5:30 p.m. on August 3, 1989, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature or the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, Staff Attorney, at (202) 272-3022, or Stephanie M. Monaco, Branch Chief, at (202) 272-3030.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Funds are open-end management investment companies registered under the 1940 Act. IDS Financial Corporation acts as investment adviser to the Funds and IDS Financial Services Inc. acts as distributor.

2. The Prior Order permits Strategy Fund to assess a contingent deferred sales load ("CDSL") on redemptions of its shares. The CDSL is waived with respect to redemptions (a) following the death of a shareholder, and (2) from an Individual Retirement Account or other tax-qualified retirement plan. The Prior Order also permits certain exchanges of shares among the Funds on a basis other than their net asset value per share at the time of exchange.

3. Applicants now seek an amendment to the Prior Order to permit the Strategy Fund to waive the CDSL, in addition to those waivers already permitted under the Prior Order, for any redemption made by: (a) A director, officer or employee of the Fund, IDS or its subsidiaries or IDS financial planners, (b) participants in an employee payroll deduction program, (c) participants in a qualified employee benefit plan or (d) a trust company, bank trust department or similar institution holding shares in a fiduciary, agency, advisory, custodial or similar capacity, subject to minimum requirements.

4. Applicants also seek an amendment to the Prior Order to permit the Funds that charge a front-end sales load (the "FESC Funds") and Cash Management Fund to assess and, in certain circumstances, to waive a deferred sales load. Shares of the FESC Funds are sold with a five percent front-end sales load. Presently the FESC Funds waive the front-end sales load for certain groups, including participants in employee benefits plans qualified under Section 401 of the Internal Revenue Code ("qualified plans") which also meet certain minimum requirements. However Applicants propose to charge these sharesholders and qualified plan participants who are shareholders in the Cash Management Fund a deferred sales load on certain redemptions from the Funds. Applicants contend that if Cash Management Fund had no deferred sales load, investors in the FESC Funds could avoid the deferred sales load by exchanging into Cash Management Fund prior to redeeming their shares. In no event will the deferred sales load exceed four percent of the purchase payments made by the shareholder. The proposed deferred load will decrease to two percent for plans with $1 million or more in assets or 200 or more participants and will be eliminated for plans with $3 million or more in assets or 500 or more participants.

5. Applicants believe that waiver of the front-end sales load will increase sales in the qualified plan market. Applicants do not wish to impose a deferred sales load on all purchases by qualified plan participants, but instead wish to recover distribution costs only when shareholders who have not paid a sales load redeem prior to retirement, in circumstances unrelated to death, disability, loans or hardship withdrawals.

6. Therefore, the proposed deferred sales load will not be assessed (a) on the death or disability of an investor, (b) in connection with lump-sum or other distributions following retirement or attaining age 59½, (c) with respect to loans or hardship withdrawals, or (d) in connection with the combination of any Fund with another investment company by a merger or acquisition of assets.

7. No Fund will be charged with any revenue lost as a result of the proposed waivers.

8. Applicants submit that the deferred sales load, its waiver, and the additional waivers of the CDSL are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provision of the 1940 Act. Applicants believe that the proposal will not harm the Funds or shareholders or unfairly discriminate among shareholders or purchasers.

9. Applicants will implement the deferred sales load and its waiver, and the waiver of the CDSC in a manner consistent with the requirements of Rule 22d-1 applicable to sales loads.

Condition: Applicants state that their proposal will be implemented in accordance with the following condition:

The terms of the deferred sales load and its implementation will comply with Rule 6c-10 as currently proposed and as adopted or modified in the future.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-16729 Filed 7-17-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27020; File No. SR-GSCC-89-8]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Government Securities Clearing Corp.; Relating to the Fee Structure for Government Securities Clearing Corporation ("GSCC")

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 26, 1989 GSCC filed with the Securities and Exchange Commission the proposed rule change

as described in Items I, II, and III below, which Items have been prepared by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change.

The proposed rule change would modify GSCC's fee schedule as summarized in II.A. below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC include statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

(a) The purpose of the proposed rule change is to establish a fee and charge schedule for use of GSCC's netting service. A fee of $1.00 per side that goes into the net is established as the basic netting fee. This fee will be used to cover GSCC's expenses associated with the provision of neeting services. As an incentive for Netting Members to commence netting as early as possible, a discount of 50 cents per side will be offered during the interim period from the start-up of the Netting System until the point in time when GSCC determines that all Treasury Note issues on GSCC's file are eligible for netting.

With regard to the clearance and financing charges that will be incurred by GSCC, which charges will be passed through to its Netting Members, in order to provide an incentive for Inter-Dealer Broker Netting Members to submit, for comparison and netting, data on all of thier trades with other Netting Members, and in recognition of the fact that such Members, by virtue of the nature of their business, will pay a high proportion of the netting fees charged to Netting Members, no clearance or financing charges will be passed through to Inter-Dealer Broker Netting Members. GSCC's clearance and financing charges will be distributed among its other Netting Members, pro rata based on the dollar value of a Member's settlements in a particular product. GSCC believes that this allocation of clearance and financing costs is appropriate, as this method fairly reflects the level of a Member's netted trading activity and provides the most benefits to those Members with the highest netting factor and, thus, its use of the Netting System. Notwithstanding the above, as provided for in GSCC's proposed rules, if, after providing a Netting Member appropriate notice and opportunity to be heard, the Board determines that such Netting Member has, on a recurring basis and without good cause, caused GSCC to incur financing costs, such Member will be obligated to pay for the entire amount of any financing costs incurred by GSCC as the result of deliveries by such Member to GSCC.

Finally, the cost of substitutions and withdrawals of a Netting Member's Clearing Fund or other collateral in custody, which are expected to be minimal, will be passed through directly to such Netting Member.

The GSCC Board of Directors approved the above changes to the GSCC fee schedule with the understanding that the various fees and charges related to netting would be comprehensively reviewed by the Board within 3 months after the commencement of the Netting System.

(b) For the reasons provided in paragraph (a) above of this section, the proposed rule change provides for an equitable allocation of fees and charges and is, therefore, consistent with the requirements of the Securities Exchange Act of 1934, as amended (the "Act") and the rules and regulations thereunder applicable to a self-regulatory organization.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule will have an impact on, or impose a burden on, competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change have not been solicited or received. Members will be notified of the rule filing, and comments will be solicited, by an Important Notice. GSCC will notify the Securities and Exchange Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 8, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: July 11, 1989.

[FR Doc. 89-16775 Filed 7-17-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27021; File No. SR-NSCC-89-8]

Proposed Rule Change by National Securities Clearing Corp.; Processing of Basket Trades

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 7, 1989 NSCC filed with the

Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify NSCC's Rules and Procedures as summarized in II.A. below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. *Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.*

(a) The purpose of the proposed rule filing is to amend NSCC's rules to provide for the processing of Basket Trades. Basket Trades are being defined by NSCC as trades in a group of securities that an exchange or market place Self-Regulatory Organization has designated as eligible for execution in a single trade.

The proposed rule will permit NSCC to accept from an exchange or market place Self-Regulatory Organization locked in Basket Trade data. On T+1, NSCC will report the compared Basket Trades to Members on a Basket Trade Settlement Detail Report. Basket Trades will be netted by NSCC so that a Member will be either a net buyer or net seller for each Basket. The exchange or market place Self-Regulatory Organizations will provide NSCC with the component details for each Basket. After netting the trades, NSCC will separate the netted result into the individual stock components. These will also be reported on the Basket Trade Settlement Detail Report. The rule provides NSCC with the ability to accept adjustment data relating to the Basket Trade prices or component parts from the exchange or market place Self-Regulatory Organization. All adjustment data will be reported to Members on the next issued Basket Trade Settlement Detail Report. If an adjustment made by the Corporation on T+4 or thereafter causes a change in the quantity of securities to be received or delivered or value received or paid, such revised quantity or value will settle two business days later.

Trading of Baskets, with settlement of component parts, will cause the Corporation to make a cash adjustment in order to provide Members with the appropriate value of the Basket Trades. In order to do so, the Corporation will assign a settlement price (the then current NSCC system price) to each component security after netting of the Basket Trades. The number of shares in each component will be multiplied by the settlement price to arrive at the settlement value for each component security. The aggregate settlement value (of all component securities) will be used to create the money adjustment, which is the difference between the net contract money value (of the net Basket Trades) and the aggregate settlement value. This money adjustment will be separately reflected on the Members' settlement statements.

The component securities will either be CNS eligible or processed as Balance Order Securities. They will be reflected on the appropriate CNS or non-CNS Compared Trade Summary and, except as noted below, netted with all other transactions in the same security and entered into the CNS or Balance Order Accounting Operation for settlement on T+5. If an adjustment is made on T+4 or later to a Balance Order security, it will result in the production of a trade-for-trade ticket between the original contracting parties to the Basket Trade.

Permitting NSCC to process Basket Trades will not affect NSCC's operation since trading in the underlying components is currently processed by NSCC. Processing of Basket Trades will result in one trade being received by NSCC, which in turn is broken down into components, rather than the components being separately received.

NSCC intends to implement Basket processing concurrent with the NYSE's implementation of Basket Trading. Certain operational features which are still being developed, may not be available initially. NSCC may not net Basket Trades prior to separating them into the component securities. Thus, Members may see on the Basket Trade Settlement Detail Report both obligations to receive and deliver the same security if they executed Basket purchases and sales on the same day. Once the securities are entered into the appropriate accounting operation the positions will be netted, however, causing the Member to be obligated to receive or deliver one net position in each security. In addition, the Trade Summaries may not have separate indicators to differentiate securities to be received or delivered resulting from Basket Trading. Also, the cash adjustment may not be separately set forth on the settlement statement but may be incorporated with the clearance cash adjustment for Balance Orders. Lastly, NSCC may only issue print reports. As soon as capability permits, NSCC will provide the features discussed above as well as issue reports in machine readable output format.

These enhancements will be phased in as developed.

No determination has been made respecting involvement of specialists in Basket Trades. Accordingly, no determination has been made as to how trades will be reported to specialists who become involved in Basket trading. This filing, therefore, does not indicate the appropriate reporting form.

(b) Since the proposed rule change will facilitate the prompt and accurate clearance and settlement of securities transactions it is consistent with the requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder applicable to self-regulatory organizations.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not perceive that the proposed rule change will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reason for so finding or (ii) as to which the Self-Regulatory Organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be approved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change that are filed with Commission, and all written communications relating to the proposed rule change between the Commisison and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number SR-NSCC-89-8 and should be submitted by August 8, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Johathan G. Katz,

Secretary.

Dated: July 11, 1989.

[FR Doc. 89-16776 Filed 7-17-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27019; File No. SR-NYSE-89-15]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Content Outline for the Compliance Official Qualification Examination

Pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 26, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has filed the Content Outline for its Compliance Official Qualification (Series 14) Examination.

II. Self-Regulatory Organization's Statements Regarding the Purpose of, and Statutory Basis for, the Proposed Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Compliance Official Qualification Examination was created as one of a number of NYSE regulatory initiatives designed to codify, clarify, and give specificity to compliance obligations of Exchange members and member organizations.[1] The Series 14 Examination is a qualification examination intended to insure that the individuals designated as having overall day-to-day compliance responsibilities for their respective firms or who directly supervise ten or more persons engaged in compliance activity have the knowledge, skills and abilities necessary to carry out their job responsibilities. The Series 14 Examination Content Outline filed as this proposed rule change details the subject coverage of the examination.

The Content Outline was developed by the Exchange in conjunction with various committees comprised of compliance professionals from a group of representative member organizations.

The statutory basis for the Series 14 Examination is section 6(c)(3)(B) of the Act. Under that Section, it is the Exchange's responsibility to prescribe standards of training, experience and competence for persons associated with Exchange members. Pursuant to this statutory obligation, the Exchange has developed examinations that are administered to establish that persons associated with Exchange members have attained specified levels of competence and knowledge.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the Content Outline for the Compliance Official Qualification (Series 14) Examination imposes any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC, 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other that those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC, 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-89-15 and should be submitted by August 8, 1989.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has closely reviewed the proposed Content Outline for the NYSE's Compliance Official Qualification (Series 14) Examination and has concluded that it accurately describes the contents and subject matter of the proposed examination. The

[1] The NYSE proposal to require persons responsible for direct day-to-day compliance activity within NYSE member firms and persons with direct supervision of ten or more persons engaged in compliance activity to take and pass a Compliance Official Qualification Examination was approved by the Commission in conjunction with a group of proposed changes to NYSE rules intended to supplement the internal compliance procedures of NYSE members and member organizations by imposing additional trade review, inquiry, and reporting requirements. *See* File No. SR-NYSE-87-10, approved by the Commission in Securities Exchange Act Release No. 25763, May 27, 1988, 53 FR 20925; NYSE Rule 342.13(b).

Commission believes that the proposed Content Outline is consistent with the requirements of the Act and the rules and regulations thereunder pertaining to national securities exchanges. In particular, the Commission believes that the proposed rule change is consistent with Section 6(c)(3)(B) [2] which provides that a national securities exchange may prescribe standards for training, experience, and competence for its members or persons associated with its members.

In addition, the Commission believes that proposed rule change is consistent with the requirements of sections 6(b)(1) and 19(g)(1) of the Act.[3] Section 6(b)(1) requires a national securities exchange to be so organized and have the capacity to enforce compliance by its members and persons associated with its members with theAct, the rules and regulations thereunder, and the rules of the exchange. Section 19(g)(1) requires national securities exchanges to comply with the Act, the rules and regulations thereunder, and absent reasonable justification or excuse enforce compliance with such provisions by its members and persons associated with its members.

As noted above, the requirement that individuals having overall day-to-day compliance resposibilities for their firms, or who directly supervise persons engaged in compliance activity, pass a Compliance Official Qualification Examination was approved by the Commission as part of a package of rule changes proposed by the Exchange that were intended to supplement compliance procedures of NYSE members and member organizations.[4] In its order approving this requirement, the Commission stated that the compliance official examination will ensure that those persons responsible for day-to-day compliance activity will have the requisite specialized knowledge of broker-dealer compliance responsibilities under the federal securities laws and NYSE rules.[5] The proposed Content Outline for the Series 14 Examination is intended to provide a comprehensive guide to the topics which will be included on the examination. It will familiarize examination candidates with the range of subjects covered by the examination as well as provide some indication as to the depth of knowledge required. The Content outline also includes sample questions so that candidates will be familiar with the principal formats of the multiple choice questions used on the examination.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in order that the Exchange may provide compliance officials who will be required to take the examination with advance notice of the subject matter that will be covered by the examination. Because the Exchange projects that the examination will be given for the first time in the fall of 1989, the Commission believes it is appropriate to approve the Content Outline at this time in order to afford examination candidates adequate time to prepare for the examination. Moreover, the Content Outline reflects the input of dozens of compliance officials and securities experts, and thus already has received extensive industry input.

It is Therefore Ordered, pursuant to Section 19(b)(2) [6] of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

Dated: July 11, 1989.

[FR Doc. 89-16777 Filed 7-17-89; 8:45 am]

BILLING CODE 8010-01-M

[2] 15 U.S.C. 78f(c)(3)(B) (1982).

[3] 15 U.S.C. 78f(b)(1) and 78s(g)(1) (1982).

[4] *See* note 1, *supra*.

[5] *Id.*

[6] 15 U.S.C. 78s(b)(2) (1982).

[7] 17 U.S.C. 200.30-3(a)(12) (1988).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2361]

Kentucky (and a Contiguous County in the State of Tennessee); Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on June 30, 1989, I find that Bell, Clay, Floyd, Knott, Knox, and Leslie Counties, in the State of Kentucky, constitute a disaster loan area due to damages from severe storms and flooding beginning on June 15, 1989. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on August 29, 1989, and for economic injury until the close of business on March 30, 1990, at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Fl., Atlanta, GA 30308, or other locally announced locations. In addition, applications for economic injury from small businesses located in the contiguous counties of Breathitt, Harlan, Jackson, Johnson, Laurel, Letcher, Magoffin, Martin, Owsley, Perry, Pike, and Whitley, in the State of Kentucky, and Claiborne County in the State of Tennessee may be filed until the specified date at the above location.

The interest rates are:

Homowners with Credit Available Elsewhere:	8.000%
Homeowners without Credit Available Elsewhere:	4.000%
Businesses with Credit Available Elsewhere:	8.000%
Businesses and Non-Profit Organizations Without Credit Available Elsewhere:	4.000%
Businesses and Non-Profit Organizations (EIDL) Without Credit Available Elsewhere:	4.000%
Others (Including Non-Profit Organizations) with Credit Available Elsewhere:	9.125%

The number assigned to this disaster for physical damage is 236106 for the State of Kentucky. For economic injury the numbers are 678100 for the State of Kentucky and 678200 for the State of Tennessee.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: July 7, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-16753 Filed 7-17-89; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0515]

CMNY Capital II, L.P. Issuance of a Small Business Investment Company License

On February 8, 1989, a notice was published in the Federal Register (54 FR 6228) stating that an application has been filed by CMNY Capital II, L.P. 77 Water Street, New York, New York 10005 with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1988)) for a license as a small business investment company.

Interested parties were given until close of business March 9, 1989, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02-0515 on June 30, 1989, to CMNY Capital II, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: July 11, 1989.

[FR Doc. 89-16754 Filed 7-17-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice No. 1117]

Eagle Pass, Tex.; Application for Bridge Permit

Notice is hereby given that the Department of State has received an application for a permit authorizing construction of a bridge across the Rio Grande River from the City of Eagle Pass, Texas to Piedras Negras, Coahuila, Mexico.

The Department's jurisdiction with respect to this application is based upon Executive Order 11423, dated August 16, 1968, and the International Bridge Act of 1972 (Pub. L. 92-434, 86 Stat. 731, 33 U.S.C. 535 approved September 26, 1972).

As required by E.O. 11423, the Department of State is circulating this application to concerned agencies for comment.

Interested persons may submit their views regarding the application in writing by (*insert date 30 days from publication in* Federal Register) to Mr. Kenneth R. Propp, Office of the Legal Adviser, Economic, Business and Communications Affairs, Room 6420, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520.

The application and related documents made part of the record to be considered by the Department of State in connection with this application are available for inspection and copying in the Office of the Assistant Legal Adviser for Economic, Business and Communications Affairs during normal business hours.

Any questions relating to this notice may be addressed to Mr. Propp at the above address (202) (647-7770).

Date: June 30, 1989.

Ted A. Borek,

Assistant Legal Adviser Economic, Business and Communications Affairs.

[FR Doc. 89-16767 Filed 7-17-89; 8:45 am]

BILLING CODE 4710-01-M

[Public Notice CM-8/1294]

Study Group 8 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 8 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on August 10, 1989, in Room 6332-36, Department of Transportation, Nassif Building, 7th and D Streets SW., Washington, DC. The meeting will be held from 9:30 a.m. to 12:30 p.m.

Study Group 8 studies matters relating to systems of radiocommunications and radiodetermination for the mobile services. The purpose of this meeting is to prepare positions and contributions to be recommended for the United States to take at the Final Study Group 8 Meeting scheduled for October 1989.

Members of the general public may attend and participate in the meeting, subject to available seating and the instructions of the Chairman. Requests for further information should be directed to the Chairman: Mr. Herbert T. Blaker, Rockwell International Corporation, 1745 Jefferson Davis Highway, Arlington, Virginia, 22202; telephone (703) 553-6687.

Date: July 6, 1989.

Richard E. Shrum, Chairman,

U.S. CCIR National Committee.

[FR Doc. 89-16768 Filed 7-17-89; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1293]

The U.S. Organization for the International Telegraph & Telephone Consultative Committee CCITT Study Group B; Meeting

The Department of State announces that Study Group B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on August 3, 1989 at 9:30 a.m. in Room 1912, Department of State, 2201 C Street NW., Washington, DC.

The agenda of the meeting will be as follows:

1. Approval of May 26 Meeting Minutes.
2. Report of CCITT Study Group XVIII Meeting, June 19-30, 1989
3. Consideration of Contributions in Preparation for the CCITT Study Group XI Working Party Meetings, and Consideration of any Appropriate White Contributions for CCITT Study Group XI/Working Party 4 and 7 (December 4-15) and Study Group XVIII (January 8-19, 1990.
4. Other business.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl S. Barbely, State Department, Washington, DC; telephone (202) 647-5220. All attendees must use the C Street entrance to the building.

Date: July 5, 1989.

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards; Chairman, U.S. CCITT National Committee.

[FR Doc. 89-16769 Filed 7-17-89; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1292]

The U.S. Organization for the International Telegraph & Telephone Consultative Committee (CCITT) Study Group D; Meeting

The Department of State Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on August 28, 1989 at 9:30 a.m. in Room 1406, Department of State, 2201 C Street, NW., Washington, DC.

The purpose of the meeting will be to: Review and approve contributions to the September meeting of CCITT Study Group XVII; review contributions circulated from CCITT; report on the results of the July meeting of Study Group VII, and discuss any other business relevant to the scope of Study Group D activities.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC, telephone (202) 647-5220. All attendees must use the C Street entrance to the building.

Date: July 6, 1989

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards; Chairman, U.S. CCITT National Committee.

[FR Doc. 89-16770 Filed 7-17-89; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: July 12, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: 8808
Type of Review: New Collection
Title: Supplemental Medicare Premium
Description: This form is used by Medicare eligible individuals whose adjusted income tax liabilities are $150 or more to figure the supplemental Medicare premium.
Respondents: Individuals or households
Estimated Number of Respondents/ Recordkeepers: 12,169,196
Estimated Burden Hours Per Response:
Recordkeeping, 13 minutes
Learning about the law or the form, 8 minutes
Preparing the form, 38 minutes
Copying, assembling, and sending the form to IRS, 35 minutes
Frequency of Response: Annually
Estimated Total Recordkeeping/ Reporting Burden: 19,105,638 hours
OMB Number: New
Form Number: 8814
Type of Review: New Collection
Title: Parent's Election to Report Child's Interest and Dividends
Description: Form 8814 is used by parents who elect to report the interest and dividend income of their child under age 14 on their own tax return. If this election is made, the child is not required to file a return.
Respondents: Individuals or households
Estimated Number of Respondents/ Recordkeepers: 1,100,000
Estimated Burden Hours Per Response:
Recordkeeping, 20 minutes
Learning about the law or the form, 8 minutes
Preparing the form, 16 minutes
Copying, assembling, and sending the form to IRS, 35 minutes
Frequency of Response: Annually
Estimated Total Recordkeeping/ Reporting Burden: 1,441,000 hours
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 89-16757 Filed 7-17-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 12, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, P.L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0092
Form Number: 1041 and Related Schedules D, J, and K-1
Type of Review: Revision
Title: U.S. Fiduciary Income Tax Return; Capital Gains and Losses; Trust Allocation of an Accumulation Distribution; Beneficiary's Share of Income, Deductions, Credits, etc.
Description: Internal Revenue Code section 6012 requires that an annual income tax return be filed for estates and trusts. Data is used to determine that the estates, trusts, and beneficiaries filed the proper returns and paid the correct tax.
Respondents: Individuals or households, Businesses or other for-profit
Estimated Number of Respondents: 2,400,000
Estimated Burden Hours Per Response/ Recordkeeping:

	Form 1041	Schedule D	Schedule J	Schedule K-1
Recordkeeping	2 hrs. 11 mins.	46 mins.	1 hr. 58 mins.	2 hrs. 11 mins.
Learning abut the law or the form	2 hrs. 45 mins.	35 mins.	25 mins.	34 mins.
Preparing the form	2 hrs. 22 mins.	55 mins.	1 hr. 2 mins.	38 mins.
Copying, assembling, and sending the form to IRS	35 mins.	35 mins.	35 mins.	20 mins.

Frequency of Response: Annually
Estimated Total Recordkeeping/ Reporting Burden: 28,430,575 hours
Clearance Office: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 89-16758 Filed 7-17-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 12, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2409, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Departmental Offices

OMB Number: New
Form Number: TD F 90-21.7a
Type of Review: New Collection
Title: Survey of Depreciation of Assets Used in the Manufacture of Electronic Components, Products, and Systems
Description: The purpose of this study is to collect data that will allow the estimation of the average patterns of economic depreciation for assets used in the manufacture of electronic components, products, or systems. A report describing the results will be given to Congress. The study will affect electronic manufacturers
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 700
Estimated Burden Hours Per Response: 25 hours
Frequency of Response: Unless changes in technology require otherwise, reporting will be required only once.
Estimated Total Reporting Burden: 17,500 hours
Clearance Officer: Dale A. Morgan, (202) 566-2693, Departmental Offices, Room 2409, Main Treasury Building, 1500 Pennsylvania Avenue NW. Washington, DC 20220
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 89-16759 Filed 7-17-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 12, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557-0014.
Form Number: None.
Type of Review: Revision.
Title: Comptroller's Manual for Corporate Activities (NPRM 12 CFR 5 Operating Subsidiaries and Statutory Subsidiaries).
Description: The Comptroller's Manual for Corporate Activities explains the OCC's policies and procedures for the formation of a new national bank, entry into the national banking system by other institutions, and corporate expansion and structural changes by existing national banks.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 3,050.
Estimated Burden Hours Per Response: 13 hours and 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 48,165 hours.
Clearance Officer: John Ference (202) 447-1177, Comproller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219.
OMB Reviewer: Gary Waxman (202) 395-7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 89-16716 Filed 7-17-89; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

United States Advisory Commission on Public Diplomacy

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held July 19, 1989 in Room 600, 301 4th Street SW., Washington, DC from 10:30 a.m. to 11:00 a.m.

The Commission will meet with Mr. Stephen Murphy, Director, Televison and Film Service, USIA, to discuss USIA television programs

Please call Gloria Kalamets, (202) 485-2468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: July 11, 1989.

Ledra L. Dildy,

Staff Asstistant, Federal Register Liaison.

[FR Doc. 89-16738 Filed 7-17-89; 8:45 am]

BILLING CODE 6236-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 136
Tuesday, July 18, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:27 a.m. on Wednesday, July 12, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider: (1) Matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act; (2) requests for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act; and (3) matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: July 13, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-16871 Filed 7-14-89; 11:33 am]

BILLING CODE 6714-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

July 13, 1989.

TIME AND DATE: 10:00 a.m., Thursday, July 20, 1989.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *FMC Wyoming Corporation.* Docket No. WEST 88-43-RM, etc. (Issues include whether FMC Wyoming Corp.'s (FMC) violation of 30 CFR § 57.5002 was a significant and substantial contribution to a mine health hazard and the result of FMC's unwarrantable failure to comply and whether FMC violated 30 CFR § 57.18002)

2. *Consolidation Coal Company,* Docket No. WEVA 87-343. (Issues include whether Consolidation Coal Company was properly found liable for the violation of its independent contractor)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653-5629/(202) 566-2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 89-16926 Filed 7-14-89; 1:21 pm]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, July 24, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS:

MATTERS TO BE CONSIDERED:

1. Policy regarding annual leave program for officers.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: July 14, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-16958 Filed 7-14-89; 3:33 pm]

BILLING CODE 6210-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-89-25]

TIME AND DATE: Thursday, July 27, 1989 at 2:00 p.m.

PLACE: Room 101, 500 E Street, SW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints:
   Certain Imported Artificial Breast Prostheses and the Manufacturing Processes Thereof (Docket No. 1513).
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Kenneth R. Mason,

Secretary.

July 12, 1989.

[FR Doc. 89-16927 Filed 7-14-89; 1:22 pm]

BILLING CODE 7020-02-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-89-26]

TIME AND DATE: Thursday, August 3, 1989 at 11:00 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. No. 731-TA-423 (F) (Generic Cephalexin Capsules from Canada)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Kenneth R. Mason,

Secretary.

July 12, 1989.

[FR Doc. 89-16928 Filed 7-14-89; 1:22 pm]

BILLING CODE 7020-02-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 17, 24, 31, and August 7, 1989.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of July 17

Wednesday, July 19

2:30 p.m.
Briefing on Status of Browns Ferry-2 (Public Meeting)

4:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 24—Tentative

Wednesday, July 26

10:00 a.m.
Briefing on Integration of Policy Statements for Severe Accidents, Advanced Reactors, Safety Goals, and Standardization (Public Meeting)

2:00 p.m.
Briefing on Proposed 1989 Waste Confidence Decision (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 31—Tentative

Tuesday, August 1

10:00 a.m.
Briefing on Status of EPRI Design Requirements Document for Advanced Light Water Reactors (Public Meeting)

Wednesday, August 2

10:00 a.m.
Briefing on Status of Nine Mile Point-1 (Public Meeting)

Thursday, August 3

2:00 p.m.
Briefing on NRC Thermal-Hydraulic Research Program (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 7—Tentative

Thursday, August 10

2:00 p.m.
Periodic Briefing by Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, August 11

10:00 a.m.
Discussion/Possible Vote on Full Power Operating License for Limerick-2 (Public Meeting)

ADDITIONAL INFORMATION: By a vote of 3-0 (Commissioner Roberts not present) on July 7, the Commission determined pursuant to 5 U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that Commission business required that "Affirmation of Revision to Order in Response to Philadelphia Electric Company Request for Clarification of Licensing Status of Limerick Unit 2" (Public Meeting) scheduled for July 7, be held on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERITY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 492-1661.

William M. Hill, Jr.,

Office of the Secretary.

July 13, 1989.

[FR Doc. 89-16941 Filed 7-14-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [54 FR 29636 July 13, 1989].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Tuesday, July 11, 1989.

CHANGES IN THE MEETING: Addition.

The following item will be considered at a closed meeting on Wednesday, July 19, 1989, at 2:30 p.m.

Litigation matter.

Commissioner Cox, as duty officer, determined that Commission business required the above change.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Karen Burgess at (202) 272-2000.

Jonathan G. Katz,

Secretary.

July 14, 1989.

[FR Doc. 89-16962 Filed 7-14-89; 3:54 am]

BILLING CODE 8010-01-M

federal register

Tuesday
July 18, 1989

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Agency Information Collection Activities Under OMB Review; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-89-2019]

Agency Information Collection Activities Under OMB Review

AGENCY: Department of Housing Development Grants.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject comments proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone number (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). It is also requested that OMB complete its review within seven days.

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: June 29, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing.

NOTICE OF SUBMISSION OF PROPOSED INFORMATION COLLECTION TO OMB

Proposal: Housing Development Grant (HDG) Program: Application Packet.

Office: Housing.

Description of the Need for the Information and its Proposed Use: The application and addendum will be used by the applicants participating in the 1989 Funding Round.

Respondents: State or Local Governments, Businesses or Other Non-Profit and Non-Profit Institutions.

Frequency of Submission: As Invitation for Application specifies.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application	54		1		82		4,428
HUD-90031 and 90031-A	200		1		4		800
Total Estimated Burden Hours							5,228

Total Estimated Burden Hours: 5,228.

Status: Revision.

Contact:

Freda Nicolosi, HUD (202) 755-6142.

John Allison, OMB (202) 395-6880.

Date: June 29, 1989.

Supporting Statement

Housing Development Grant Application (Project Application Form HUD 90031 and Packet.)

A. Justification.

1. *Need for Reinstatement.* The HDG Application Packet and Application Form (HUD 90031) were reinstated in FY 1986 and extended through September 30, 1987. The HUD Form 90031 was once again reinstated to expire October 30, 1991, in order to accommodate updates for existing grantees. Since that time HUD has decided to reuse accumulated recaptured funds through a funding round. This funding round will be held in the summer of 1989 and will utilize the HUD Application Packet as approved in 1987. Therefore, the Packet must be reinstated immediately.

2. *Necessity of Information.* The information is necessary to continue implementation of the Housing Development Grant Program in Title III, Section 301 of the HURRA legislation. The statute requires a competitive selection (based upon certain factors and limitations) of applications containing specified material. The application packet provides guidance to applicants interested in preparing an application which contains the required material so that it can be competitively ranked against other applications under all the appropriate criteria. The applications submitted will be evaluated by the Department to determine initial compliance with program requirements and will be ranked competitively. The highest ranked proposals will be awarded funds under the program.

3. *Information Technology.* Improved information technology is not applicable to the collection of application data. The requirements of the statute and regulations preclude reducing the burden below the level required by the application.

4. *Duplication.* We have made every effort to design the application to avoid duplication of data. For example, when two separate statutory or regulatory provisions have requested data on similar items, these items have been combined in the application to avoid repeating contextual material. The material requested does not duplicate material otherwise available to the Department except in the case of Census material which the applicant must also be aware of and may wish to alter with local data, and the Form HUD-92264 (submitted only in HUD insured cases) which is not available in HUD Headquarters where much of the application review is accomplished.

5. *Alternative Data.* There is no substitute for the application required by the program. Each application must contain information required by the specific statute and project specific data not otherwise available.

6. *Small Business.* The application is submitted by a State or unit of general local government, no small businesses are burdened by the application requirements.

7. *Frequency.* Applications will be submitted only once for each funding cycle. Frequency cannot be reduced.

8. *5 CFR 1320.6.* We are aware of no inconsistencies.

9. *Outside consultation.* The HDG program has been through four funding cycles. In our dealings with local and State government officials and from first hand, in house experience, we have provided clarifications for several Parts in the Packet and have been more specific about what constitute firm financial commitments.

10. *Confidentiality.* No assurances of confidentiality can be given. Personal financial statements received as a part of any application, however, will be maintained as confidential in the same manner as those received in HUD insurance cases.

The project close out documents will contain no sensitive materials.

11. *Sensitive Materials.* The application will contain no sensitive material.

12(a). *Cost to Federal Government—Application Packet*

Invitation for Applications	1
Review Hours per Application	+100
Total Hours per Application	101
Number of Applications	×54
Total Hours	**5,454**
Cost per Hour	$19.45
Overhead Percentage	20%
Total cost per Hour	$23.33
Hours times Cost	5,454×$23.33
Cost	**$127,241.82**

12(a). *Cost to Federal Government—Forms HUD-90031 and 90031-A*

Number of Applications	200
Review Hours per Application	×4
	800
Cost per Hour	$10.00
Hours times Cost	800×$10.00
Cost	$8,000
Total Cost	**$135,241.82**

12(b). *Estimated Annual Cost to Respondents—Application Packet*

Number of Applications	54
Hours per Application	82
Total Hours	4,428
Cost per Hour	$20
Overhead Percentage	20%
Total Cost per Hour	$24
Hours times Cost	4,428×$24
Total Cost	$106,272

12(b). *Estimated Cost to Respondents—Forms HUD-90031 and 90031-A*

Number of Applications	200
Hours per Application	×4
	800
Total cost per Hour	$6.00
Hours times Cost	800×$6.00
Cost	$4,800
Total Cost	$111,072

13. *Application Packet Burden.* Following is the best estimate in terms of hours for completing each Part of the application:

Part	Applicants	Owner	Total
A	2	0	2
B	4	0	4
C	5	5	1
D	2	0	2
E	4	0	4
F	3	0	3
G	4	0	4
H	8	0	8
I	3	3	5
J	5	0	5
K	2	2	4
L	3	0	3
M	5	32	37
Total Burden			82

82 Hours Per Application
54 Applications
4,428 Total Burden Hours
Application Forms 90031 and 90031-A
4 Hours per Application
200 Applications
800 Total Burden Hours
Total Application and Forms—5,228 Hours

14. *Reason for change in Burden Hours.* N/A. An addendum has been added to the Housing Development Grants Application Packet, Revised May 1987. The addendum does not add to the work required, but simply updates the information.

15. *Publication for Statistical Use.* N/A.

Addendum to Application Packet (Revised May, 1987) Housing Development Branch

Part B-3. Additional Assistance to Lower Income or Very Low-Income Tenants

Points will be assigned (Selection Factor F.2.) to applications proposing additional assistance through a subsidy mechanism which:

(a) assists tenants with incomes below 50% of median (very low-income) to pay no more than 30% of their income for rent and utilities. (The relevant comparison is the percentage of very low-income units to total units with the higher percentage receiving more points.)

Note: When such assistance is provided in order to comply with the relocation requirements of Part I of this packet, no points will be assigned.

(b) assists the project so that the market rate units have rent levels which are within the Section 8 Existing Fair Market Rents (FMR) (The relevant comparison is the percentage of market rate units within the FMRs to the total with the higher percentage receiving more points.)

(c) extends the period of assistance for all of the lower income units to 25 or more years.

To receive points under (a) or (b), the applicant must:

(1) specify the number and size of units to receive the assistance; and

(2) provide a signed statement from the owner to give occupancy priority to very-low income households in the case of option (a) and to lower and very lower income households (80 percent of median income) in the case of option (b); and

(3) a commitment from the applicant or the owner to provide the resources necessary to compensate for the resulting revenue loss. Other Federal assistance, including Vouchers or Certificates, is not an acceptable source of additional assistance under this part. If the owner elects to absorb the revenue loss, an estimate of the loss must be provided and it must be demonstrated that the project's financial feasibility will not be jeopardized.

Restrictions

The additional assistance under this part must not require HDG funds beyond that required to maintain the units at HDG formula and market rate rent levels.

Exhibit C-1—Applicant Certifications

(Other Than Equal Opportunity/Non Discrimination and Moderate

Rehabilitation Certifications Which Appear Separately.)

The Applicant hereby assures and certifies that it will comply/has complied with the following:

1. The submission of the application is authorized under State and local law (as applicable), and the applicant posseses the legal authority to apply for the grant and to carry out the responsibilities of a grantee in the program.

2. It developed its rental development program after consultation with the public.

3. The project will not cause the involuntary displacement of very low income households by households that are not very low-income households.

4. If a State is the applicant, it is applying for assistance on behalf and with the concurrence of, a specified unit of local government.

5. Its chief executive officer or other officer of the applicant approved by HUD:

(a) Consents to assume the status of a responsible Federal official for environmental review, decision making and action pursuant to the National Environmental Policy Act of 1969, and other authorities listed in 24 CFR 58.5 insofar as the provision of such Act or other authorities apply to the Housing Development Grant program.

(b) Is authorized and consents on behalf of the applicant and himself/herself to accept the jurisdiction of the Federal courts for the purpose of enforcement of his/her responsibilities as such official.

6. The application is consistent with any applicable Housing Assistance Plan.

7. Check one of the following:

☐ The project will be constructed or substantially rehabilitated in accordance with applicable State and local building codes.

☐ Given the absence of these codes, the project will be completed in accordance with the following nationally recognized model building code(s): _____

8. It will comply with the requirements if Part 850.35 of HUD regulations regarding:

(a) Environmental and Historic Preservation requirements of Section 104(f) of the Housing and Community Environmental Policy Act, implementing regulations and related laws and authorities.

(b) Labor standards.

(c) OMB Circulars A-102, A-128, A-87, and A-122.

(d) The Lead-Based Paint Poisoning Prevention Act and implementing regulations at 24 CFR Part 35.

(e) The intergovernmental review requirements of Executive Order 12372 and implementing regulations at 24 CFR Part 52.

(f) Conflicts of interests.

(g) Use of debarred, suspended or ineligible contractors or subcontracts.

(h) The flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973.

(i) It will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1870, as amended and the Federal implementation regulations at 49 CFR Part 24.

9. The prohibition in Paragraph 850.17(b) of the HUD regulation against use of grant funds for administrative costs incurred by an applicant or grantee in carrying out its Housing Development Grant Program responsibilities.

Signature

Date

Title

H-3. Neighborhood Development

This represents a significant change in the relative emphasis on Neighborhood Development as necessary to improve the program's response to the one of the Departmental priorities, i.e., economic development. The goal is give greater advantage to those projects which will significantly enhance the economic base of the neighborhood in which it is located.

There are two considerations to be taken into account when responding to this Part.

A. The applicant should describe the physical, social and economic effects of the project on the neighborhood. If HUD determines that the project will have a negative effect on the neighborhood, the project may be rejected based on Threshold 12.

Typical considerations in determining the neighborhood effect include: compatibility with existing land uses, increased demand on traffic and other environmental burdens, complementary effects on employment patterns, and/or the likely effect of the project on recent changes in neighborhood character and investment patterns.

HUD will view any unmitigated displacement resulting from such an effect as negative.

B. The effect on the neighborhood will be evaluated to determine points to be assigned under Selection Factor C. The applicant should provide the Neighborhood Identification and Description required under Part H-1 if it intends to receive points under this factor. (This description can also be used by HUD to make determinations under A above.) There are three criteria for awarding a maximum of eight (8) points.

1. Projects that "anchor" a neighborhood. It must be clearly demonstrated that the neighborhood where the project is to be located is undergoing severe physical, social or economic decline and that the proposal will help alleviate the conditions. Supporting documentation must clearly demonstrate at least three of the following conditions:

* A major portion of the existing housing stock is in need of substantial repair or replacement

* The neighborhood has lost its economic base to include such factors as a large proportion of its middle income households, supportive commercial/retail services (e.g., grocer, pharmacy) and other investment patterns. Substantial deterioration of its infrastructure is occurring (i.e., street repairs).

* The average income level for the neighborhood is below 80 percent of median income for the community as a whole

* The neighborhood has been largely abandoned as evidenced by high vacancy rates

Or

2. Projects which will effect neighborhood "stabilization". It must be clearly demonstrated that the neighborhood in which the project is located is threatened with moderate decline and that the proposed project will abate such decline. Supporting documentation must clearly demonstrate that:

* The multi- and single-family housing stock is beginning to show clear signs of deterioration as demonstrated by the need for moderate and substantial rehabilitation with a limited amount of the stock in need of replacement.

* The income characteristics of the households have shown a downward trend over the past 5 years reflecting a flight of middle income households and the loss of supportive commercial/retail services.

And/Or

3. Projects which promote an existing neighborhood development, redevelopment, or revitalization plan which is already under implementation. The plan must contain a coordinated strategy of land uses, including a housing component. For purposes of this section, the requirements of 24 CFR 805.15 as elaborated upon in Part E, Neighborhood Preservation Purpose

Applications, may be used. Development of some of the land use components must have already begun; the HDG project cannot be the first activity under the plan.

Examples of appropriate plans under this scenario include, Community Development Block Grant Target Areas, Enterprise Zones and a mixed use waterfront development plan with community wide comprehensive planning which includes a neighborhood, land use, and a housing component.

Examples of neighborhoods which would not qualify for points under this factor include gentrifying neighborhoods (i.e., neighborhoods on the incline rather than decline), stable or stabilized neighborhoods where, although the project may expand lower income housing opportunities, it will not enhance the economic base or effect a change in the character of the neighborhood.

Failure to respond to the requirements of this section will result in no points under Selection Factor C for Neighborhood Development. Please make all explanations concise, but with sufficient data for HUD to make determinations.

Part M-7. Firm Financial Commitments and Site Control

All requirements of Part M-7 of the Application Packet (Revised May, 1987) must be adhered to for maximum points in the rating and ranking process. However, the deadline for submission of these requirements and certain minimum requirements to fulfill the HDG thresholds are changed as follows:

1. The deadline for any requirements under this Part, except under Part M-7.A. Equity Sources, is September 8, 1989. This includes minimum requirements as well as requirements for Additional Points. Failure to provide the requirements for Equity Sources by the August 21, 1989 deadline will result in rejection of the application on thresholds.

2. Minimum requirements for tax-exempt bond financing is changed. The application submission must contain either an inducement resolution as defined in the Application Packet or a firm commitment from an investment banker or underwriter to purchase the bonds as specified in the Application Packet. A bond counsel's opinion will not be required.

ATTACHMENT 2—PROJECT SELECTION FACTORS

Criteria	Points
A. *Shortage of Housing.* Based on review of Part G of the application, HUD will award points on a sliding scale, with higher points awarded for the lower vacancy rate. Projects in areas with an overall rental vacancy rate of less than 4.5 will be entitled to half the points or more. Projects with lower income or overall vacancy rate of over seven percent will not be entitled to any points in the respective category.	20
1. *Lower Income Vacancy Rates.* The average rental vacancy rate for census tracts in the unit of general local government (or market area, if applicable) with median family incomes below 80 percent of area median. Maximum points in this subcategory will be awarded to projects with a 2.5 percent vacancy rate or less. (8 points)	
2. *Overall Vacancy Rates.* Overall rental vacancy rate within the unit of general local government (or market area, if applicable). Maximum points in this subcategory will be awarded to projects with a 2.5 percent vacancy rate or less. (12 points)	
B. *Leveraging Ratios.* Points will be awarded on a sliding scale—highest ratios receive the highest points based on HUD's review of Exhibit M-9. For maximum points, the average of the two ratios described below must equal 6:1. Leveraging ratios of 2.5:1 will receive half the points and no points will be assigned for an average leveraging ratio of less than 1.3:1.	15
1. Project leveraging ratio (7.5 points). Non-Federal public *plus* private contributions divided by the grant amount.	
2. Private leveraging ratio (7.5 points). Private contributions divided by the grant amount.	
C. *Neighborhood Development/Mitigation of Displacement.*	6
1. Neighborhood Development (5 points)—HUD will award points for projects which can substantiate criteria as described in Part H-3 of this Addendum as follows:	
Criteria 1 alone (3 points)	
Criteria 2 alone (3 points)	
Criteria 3 alone (2 points)	
Criteria 3 combined with 1 or 2 (5 points)	
2. Mitigation of Displacement (1 point)—Based on Part I HUD will grant the maximum points to projects which cause no displacement or provide effective mitigation of displacement. Applicants will be rated according to the level of assurance provided that potential displacement will be mitigated.	
D. *Applicant Performance and Capacity.*	2
1. Performance (1 point)—Based on Part B-2 and HUD's own experience, HUD will rate the applicant's past performance in meeting Housing Assistance Plan goals, where they exist, and in administering Federally assisted housing programs.	
2. Capacity (1 point)—HUD will review Part B-2 to assess the applicant's ability to administer the program (i.e., to start and monitor the project through to completion and to meet the grantees' responsibilities under Subparts D, E and F of the regulations).	
E. *Maximum Units for the Least Cost to the Federal Government.* Based on HUD's processing of data in Exhibit M-1.	10
1. HDG Loan (2 points)—Points will accrue if the applicant proposes to loan rather than grant the HDG funds to the owner. To receive points in this category, at least fifty percent of the HDG must be repaid and payments on the HDG loan principal must begin no later than the twenty-first year of project operations. For any portion of the HDG which is invested in a PIA, "fifty percent of the HDG" means fifty percent of the sum of all funds disbursed to the project from the PIA during the Project Term.	
2. Adjusted Per Unit Grant Amount (8 points)—HUD will adjust the per unit grant amount for construction cost differences among geographic areas and among units of various bedroom sizes. Based on a sliding scale, lowest adjusted per unit grant amount will receive the most points. (Refer to discussion in Part M-14 of this Packet.)	
F. *Mechanism to Assure Affordable Rents.*	12
1. Maintenance of Affordable Rents (1 point)—HUD will review Part B-2 as to how well the applicant's proposed method to supervise rent increases for designated units and resale structures for cooperative or mutual housing shares will enforce program requirements concerning lower income occupancy and rents. Failure to sign the Rent Mechanism, Exhibit B-1 will render the application ineligible for points under Selection Factor F.2.	
2. Additional Assistance to Lower Income and Very Low Income Families—Based on a review of Part B-3, HUD will award points for commitments to serve lower and very low-income families. Points for commitments to provide additional assistance under a or b below will be awarded on a sliding scale with the percentage of total units committed receiving the most points.	
(a) where the applicant/owner commits to set aside a specified number of units to assist tenants below 50 percent of median income with additional state, local or owner-provided resources for at least 20 years. (up to 4 points)	
(b) where the applicant/owner commits to establish a specified number of market rate unit rents at or below 110 percent of the effective Fair Market Rate rents with any necessary financial resource other than the HDG for at least 20 years. (up to 4 points)	
(c) where the applicant/owner commits to extend the designated lower income rents and occupancy for at least 25 years. (3 points)	
G. *Financial Feasibility.*	10

ATTACHMENT 2—PROJECT SELECTION FACTORS—Continued

Criteria	Points
Based on a review of Part M of the Application, HUD will score the project as to overall feasibility based on the following: 1. Firmness of Financial Commitments (4 points)—While all projects must present adequate documentation of firm financial commitments to meet program threshold requirement 15, the strength of these commitments, e.g., the level of documentation and absence of qualifying conditions above and beyond the minimum threshold, will determine how many points the project receives in this sub-category. 2. Rents, Costs and Expenses (6 points)—Based on application data, especially Parts M-1, M-3, M-10, and M-12, and HUD's review, projects will be rated as to: (a) plausibility of rents, costs and expenses, e.g., is there any question of unit marketability at the rents proposed? Are costs and expenses underestimated? Are project costs too high resulting in an inflated grant request?; and, (b) Financial feasibility over the Project Term, e.g., will project income be sufficient to cover debt service and expenses over the life of the project?	
H. *Equitable Share of Funds for Families Especially Large Families With Children.* Points will be assigned in this category based upon the average bedroom count. There are two criteria: (1) if the average overall (total project) bedroom count is equal to at least 2.0, up to 10 points will be assigned with the highest average receiving the full 10 points; (2) if the average lower income bedroom count is at least 2.5, up to 5 points will be assigned, however, to qualify for the full five points the average lower income bedroom count must be 3.0 or more.	15
I. *Minority and Women's Business Enterprise.* This is an all or nothing category. Based on HUD's review of Exhibit K-3 and Exhibit M-1, points will be awarded to applications which demonstrate that controlling project ownership will be vested in and exercised by minority persons or women.	5
J. *Locational Housing Opportunities.* Points will be awarded to projects which meet at least one of the three criteria listed in Part H-2 of the application. Factor a alone or combined with b or c (5 points) Factors b and c combined (4 points) Factor b only (3 points) Factor c only (3 points)	5

Priority Projects

Up to 15 priority bonus points will be awarded where:

(a) Based on a review of Section D of Exhibit M-1, HUD finds that more than 25 percent of project units are designated for lower income rents and occupancy, *and*

(b) Based on HUD's review of Part L of the application and other available information, HUD determines that the project is located in a jurisdiction where assisted housing waiting lists are long and where housing assistance certificate holders required excessive time to locate housing.

Higher percentages of lower income units will receive more points. One point will be awarded for each full percentage point of lower income households above 25% up to a maximum of 15 points for 40% lower income or higher percentage.

Application	Regulations	Statute	Explanation/Justification (1) Housing Development Grant Program
Packet-Introduction.	N/A	N/A	Pages iv through vi of the Packet briefly describe what constitutes a project; outlines what is needed to pass Threshold requirements; references the Project Selection Factors used in ranking competitive applications; and encourages applicants to read the Packet thoroughly so that all required forms and exhibits are submitted. These pages also clearly state that no waivers to the HDG regulations or Packet will be granted prior to or during the application review and selection process. In addition, the applicant and project owner are advised that HUD may reduce the grant amount requested if the review process determines the amount to be excessive. Finally, the Introduction addresses where and when applications are to be submitted.
Preparation of the HDG Application.	N/A	N/A	Page vii of the Packet identifies how the application must be packaged and the number of copies required. Five copies are needed because of the unusual need for simultaneous review of the application by both Headquarters and Field Offices. The format of the application submission was developed in consideration of two things: (1) ease of preparation and avoidance of duplication by the applicant, and (2) efficiency of review by HUD. (Necessarily, the format does not follow the structure of the regulations or statute though all paperwork requests are based directly on them.) Example of item (1): Selection Factor F, Rent Affordability, requires consideration of the administrative capacity of the applicant to review requests in future years for rent increases submitted by the owner. Rather than request this information separately, we have requested that it be included with the description of capacity to administer the program which is needed for Selection Factor D, Performance and Capacity. This avoids any duplication of the description of administrative structure by the applicant. Example of item (2): Both the information on Minority/Women Business Enterprise and the non-discrimination/E.O. certifications will be reviewed by HUD's E.O. staff.

Application	Regulations	Statute	Explanation/Justification (2) Housing Development Grant Program
B-3 Additional Assistance to Lower Income or Very Low-Income.	Section 850.33(j) [Section 850.33(k)].	Section 17(d)(5) [Section 17(d)(4)(c)].	The Packet discusses two mechanisms that may involve additional assistance to the lower income or very low-income. The first is a 20-year provision of assistance to prospective tenants with incomes *below* 50% of the median. The second extends the period of assistance for the lower income to 25 years. Such provisions are optional, but if elected, provide additional points under Selection Factor F-affordable rents. If additional assistance to the very low-income is required as a result of relocation/displacement, provision for same would be discussed in Part I.
B-4 HAP Compliance.	Section 850.33(r)	N/A	Though certification is required by regulation, it was felt that a brief description of HAP compliance was necessary to assure early consideration of this element by applicant and owners; to avoid any confusion in HUD's determination of compliance; and to provide the opportunity of submitting 213 letters with the application to avoid later debate and additional staff intensive efforts by HUD.

Application	Regulations	Statute	Explanation/Justification (2) Housing Development Grant Program
Packet—Part C Certifications (Excl. E.O.).	Section 850.33(q) (Owner), Section 850.33(r) (Applicant), Section 850.17(c) (Owner), Section 850.17(b) (Applicant).	Section 17(d)(3)(B), Section 17(d)(4)(C), Section 17(d)(4)(D), Section 17(d)(4)(E), Section 17(e)(3), Section 17(i), Section 17(k)(5), Section 17(d)(8). Various other statutes and circulars, Executive Orders. etc..	Certification forms are provided for both applicant and owner to assure conformity and completeness and reduce applicant burden. E.O. Certifications are provided in Part K of the Application.
Packet—Part H-2 Locational Opportunities Data.	Section 850.39(b)(10), Section 850.33(e)(2).	Section 17(d)(4)(H).	Applicants seeking points under one or more of the elements in Selection Factor J are requested to submit evidence on the applicable criteria. If none of the criteria apply, no information is required.
Packet—Part H-3 Effect on Neighborhood Development.	Section 850.33(n), Section 850.39(b)(3).	Section 17(d)(5)(C)	Self-explantory.
Packet—Part I Relocation/ Displacement.	Section 850.35(d), Section 850.39(b)(3).	Section 17(d)(5)(C), Section 17(d)(4)(C), Section 17(g), Uniform Act.	Relocation plan is necessary to establish degree of mitigation of displacement under Selection Factor C, and to assure compliance with the limitation on displacement of very low-income tenants, and compliance, where applicable, with Uniform Relocation Act.
Packet—Section J Environmental Determination.	Section 850.35(e), Section 850.33(m), Section 850.33(r)(5)(i).	Section 17(i)	Self-Explanatory.
Packet—Section K Equal Opportunity.			
K-1 Equal Opportunity Certifications.	Section 850.33(q), Section 850.35(a), Section 850.37(n), Section 850.35(c).	Section 17(d)(4)(H).	Certifications (Exhibits K-1 and K-2) are self-explanatory.
K-2 Minority/ Women Business Enterprise.	Section 850.35(b), Section 850.33(o), Section 850.39(b)(9).	E.O. 11625, 12432, 12138.	Certification (Exhibit K-3) is self-explanatory. If project selected and points awarded for Selection Factor I, additional information may be required subsequently.
Packet—Part L Waiting List/ Search Time.	Section 850.39(c)	Section17(d)(6)	To avoid excessive effort on the part of the applicant and others (and to assure that waiting list and search time data are relevant to the lower income units being produced by the project), we are requesting data only on the unit sizes which are the same as the proposed lower income units. (Waiting lists are normally maintained by bedroom size.) Requested information concerning waiting list data compensates for the more efficiently operated housing programs. Inefficient program operation could produce very long and outdated waiting list information. Applicants proposing no more than 20 percent assisted units and which do not have experience with assisted housing programs which involve a search time factor are not eligible for priority bonus points.
Packet—Part M Project Information Project Application Form.	Section 850.33(f)	Section 17(d)(6)	Highlights information and documents necessary to define a project's financial and physical structure.
Packet M-1 Project Application Form (Exhibit M-1).	Section 850.33(f), Section 850.33(g), Section 850.33(h), Section 850.37(k).	Section 17(d)(4)(A)(B), (E), (F), Section 17(d)(5)(B)(E), (G), (H), Section 17(d)(8)(A), Section 17(d)(9).	Sections A, B, C, and D of Exhibit M-1 provide basic data on the project. Such data helps determine reasonableness of costs, rents, and expenses for a specific project given its construction type, building characteristics, construction problems, etc. Section D also establishes the total number of units, lower income units and unit sizes proposed for the project as well as information on commercial space to assure compliance with program limitations.
			Sections E and F provide information on equipment and services, utilities, and data for estimating the PBE. This data ensures that the PBE is accurate so that the correct amount may be deducted from the 30% of 50% calculation to arrive at the correct maximum rent amount for the lower income units.
	Same	Same	Sections G, H, I, J and K provide general (nonitemized in most cases) information on costs, annual income and expenses, amount required for settlement and identification of all sources of funds for the project. All information is necessary to make a general determination of project feasibility.

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Application	Regulations	Statute	Explanation/Justification (2) Housing Development Grant Program
	Section 850.33(b), Section 850.37(i), Section 850.33(o), Section 850.39(b)(9).	Section 17(d)(3)(A), Section 17(d)(4)(G).	Section L provides a schedule of project completion necessary to comply with both statutory restrictions listed. Section M identifies all participating parties and assessment of acceptability of data on Minority/Women Business Enterprises and basic information needed to assess firm commitments (see M-7 below).
M-2 Narrative Feasibility Assessment.	Section 850.33(g)(i), Section 850.33(g)(4),(5),(7), Section 850.33(h), Section 850.37(k).		Required as a part of feasibility assessment to ensure understanding by HUD of the project's financing package and how the various identified resources relate. This section also addresses any payback provisions for the HDG loan.
M-3 Appraisal or HUD Mortgage Insurance Commitment.	Section 850.33(f), Section 850.33(g), Section 850.33(h), Section 850.37(b), Section 850.37(g).	Section 17(d)(3)(C), Section 17(d)(4)(F), Section 17(d)(9).	Project feasibility determination by both HUD and the applicant cannot be made without estimates of projected costs, rents, and expenses. (Rent means the market rate units since the lower income unit rents are by formula.) We have provided choices to the applicant on how to obtain these estimates. The appraisal will not be necessary for HUD insured cases where the HUD-92264, issued with the commitment, provides the same data. An appraisal is necessary to ensure that the grant amount does not exceed the limitation of (d)(9) of the statute, and that the project value does not exceed the limitation of (d)(4)(F).
M-12 Long Term Feasibility and Project Investment Account (PIA).	Section 850.33(g), Section 850.33(h).	Section 17(d)(5)(B), Section 17(d)(5)(G).	Pro forma provides analysis with respect to long term feasibility of project. Project Investment Account controls the flow of funds to the project to ensure long-term feasibility. Long term feasibility is Selection Factor G.
M-13 Commercial Space.	Section 850.33(f)(6).	Section 17(d)(4)(A)	Commercial space must be self-supporting. Test to determine such support is self-explanatory.
M-14 Maximum Units for Least Cost.	Section 850.39(b)(5).	Section 17(d)(5)(E)	Test of maximum units for least cost is self-explanatory and is a Selection Factor E.
M-15 Rent Control	Section 850-153	N/A	Self-explanatory.

Addendum #1 to the HDG Application Packet (Revised, May 1987)

The following is supplementary guidance to the section on Site Control, p.47, under Part M-7, *Firm Project Commitments and Site Control* in the Application Packet:

The first sentence of the second paragraph reads "Applications containing a commitment to convey city-owned sites, or sites owned by local public bodies are acceptable provided that the application contains evidence that any official action (i.e. City Council/Board of Commissioners resolution) which is necessary to convey the site to the owner has been taken."

Since time constraints of the funding round will not permit many communities to take the official actions (i.e. City Council/Board of Commissioners resolution) which are necessary to convey city-owned sites or sites owned by local public agencies, the Department has determined that a letter in the application submission from the Mayor or Director of a local public agency indicating their approval of conveyance of the site to the owner contingent upon City Council/Board of Commissioners approval is acceptable. However, in order to be considered for preliminary funding approval, the evidence of the official action and any other requirements of the above cited section must be received by Headquarters not later than Close of Business September 1, 1987.

Public reporting burden for this collection of information is estimated to average *82* hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, DC 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-), Washington, DC 20503.

Supplement—Interfacing HDG With the Tax Credit

A new low-income housing tax credit was created by the Tax Reform Act of 1986. Under the Act, tax credits are provided to individuals and corporations who invest in low-income rental housing. While the tax credit program is administered by the Treasury Department and tax credit authority is allocated to owners and developers by States, HUD has received many inquiries about the potential for using tax credits with projects subsidized by the Housing Development Grant (HDG) program. This Supplement to the HDG Application Packet, Revised May 1987, addresses some concerns regarding use of the tax credits with the HDG program.

The low-income housing tax credit legislation provides that the Federal portion of any grant made with respect to a project must be deducted from a project's eligible basis as defined by the tax credit legislation. The Conference Report accompanying the legislation specifically states:

Examples of grants which may not be included in eligible basis include Community Development Block Grants, Urban Development Action Grants, Rental Rehabilitation Grants, and Housing Development Grants.

Since the HDG is a Federal grant, it must be deducted from a project's eligible basis. Even when the HDG is used for costs which are not associated with the depreciable basis of the project—e.g., land acquisition or the HDG Project Investment Account, this rule still applies. It is unclear, however, whether the recycled Program Income from a Federal grant or interest from a HDG Project Investment Account will be considered Federal funds that must also be deducted from the tax credit eligible

basis of a project. Only Treasury regulations can clarify these matters.

Once the HDG has been deducted from the project's eligible basis, it qualifies for the 70 percent present value credit (9 percent in 1987). If the project is "federally subsidized" in addition to the HDG, the eligible basis and/or the amount of the credit will be further affected.

Within the context of the tax credit legislation, a project is federally subsidized if it is financed with tax-exempt bond proceeds (or, although not permitted by the HDG regulations, with another direct or indirect below-market rate Federal loan, such as the Farmer's Home Administration Section 515 program). If a project is federally subsidized by this definition, it qualifies for the 70 percent credit if the federally subsidized loan is deducted from the remaining eligible basis; or for the 30 percent credit (4 percent in 1987) if the loan is not deducted from the remaining eligible basis.

Tenant Eligibility and the Lower Income Requirement

Two areas of concern about the interface between HDG and Tax Credit relate to the level of income for qualifying tenants and the minimum number of lower income units. In both cases the two programs are basically compatible.

An eligible tax credit project must provide at least 20 percent of the units for families with incomes at 50 percent of median or below, 20/50 rule, or 40 percent of the units for families with incomes at 60 percent of median or below, the 40/60 rule. In conjunction with the income level of tenants at either 50 or 60 percent of median, there is a rent cap which requires the owner to charge a rent which does not exceed 30 percent of the 50 or 60 percent of median income level.

HDG requires that at least 20 percent of the units be made available to lower income tenants with incomes of 80 percent of median or below and a rent cap of 30 percent of 50 percent of median. Therefore, projects using the 20/50 tax credit rule will also satisfy the HDG criteria. In fact, an owner could elect to provide 40 percent of the units for tenants below 50 percent of median, be eligible for tax credit for those units and benefit under HDG by earning 15 bonus points. An additional two points can be earned for serving very low-income families (an irrevocable commitment) under the HDG rating criteria provided the tenants pay no more than 30 percent of their income for rent. Alternatively, an owner could elect to use the 40/60 rule and further restrict rents for half of those units to 30 percent of 50 percent to meet the HDG criteria (i.e., 20/60 plus 20/50). Either of these alternatives can result in a feasible project which provides substantial benefits to the projec. in terms of potential syndication proceeds.

The tax credit provisions permit tenant incomes to rise by as much as 40 percent above the 50 percent of median income level. This permits tenant incomes to rise to 70 percent of median, and remain tax credit eligible as well as HDG eligible. Under HDG, when a tenant's income rises above the lower income limit (80 percent of median) the tenant must move out of the unit. In addition, the HDG restrictions must remain in place for 20 years, while the tax credit has a 15 year compliance period.

Determining Rents for the Lower Income Units

Congress established rent caps on tax credit eligible units. Rents under HDG and tax credit programs are limited to 30 percent of the income of a family whose income is 50 (or 60) percent of median for the area. Even though it is anticipated that Treasury will adopt HUD's method of estimating 50 percent of median income, the rent calculations for determining 30 percent of 50 percent of median income are not the same for tax credits as for HDG. Consequently, owners who plan to use the two programs together should be aware of the potential consequences.

Important differences in the calculation of rents arise because HDG uses net income of the family size *expected* to occupy the units as the basis for rent determination while Treasury uses gross income of the family size *actually* occupying the unit. The attached table, "HDG and Tax Credit Rent Comparisons," illustrates the potential impact on HDG rents when the rent computations also have to meet tax credit caps.

Under tax credit provisions, gross incomes are not adjusted before determining rent as is required by the statute for HDG and other assisted housing programs. Line A of the attached table uses the national average estimate of 50 percent of median income for the illustration with gross income adjusted for family size (Columns 1-8). Line B reflects the maximum rent allowable under tax credit at 30 percent of gross income. HDG, on the other hand, establishes maximum rent at 30 percent of "adjusted" family income (Line C; see Exhibit M-5 of the Application Packet for computation). The income adjustment is based upon the number of persons expected to live in the completed unit. For underwriting analysis, HDG has fixed the rents for various unit sizes.

As shown on Line D of the Table, variations in the maximum rent to be collected with tax credits occur if the number of persons occupying the unit is not the same as projected by HDG. The HDG projection for three persons in a two bedroom unit, for example, would generate a maximum rent of $320 (line C3). If the family size in that same unit were actually four rather than three, the tax credit provisions would allow a maximum rent of $380 (line B4). On the other hand, a family of two in a two bedroom unit would be charged a maximum tax credit rent of $304. This analysis demonstrates that when the number of household members exceeds the HDG projection, owners will be in violation of the HDG requirements if they charge higher rents as allowed with tax credits. On the other hand, when the actual number of households is less than the HDG projection, the maximum tax credit rent will be lower than the HDG maximum. In the latter case, the owner must charge the lower rent to remain in compliance with the tax credit provisions and will experience per unit revenue losses similar to those estimated on Line E of the Table. These revenue losses are not extensive. A project containing 30 lower income units, equally distributed between two and three bedroom units, for example, would have a maximum yearly impact of $7,020 (15 units×$16+15 units×$23) in the unlikely event that the family size were smaller than the HDG projection in all of the units for a whole year.

Although the owner is free to charge the lower rents, the HDG cannot be used as an escrow for the losses nor can the HDG be used to write down the costs to allow for this potential shortfall. Therefore, the owner is at risk. HUD is working with Treasury on issues relating to tax credit and HUD programs. For now, at least, owners and investors should prepare for this potential revenue loss.

Rehabilitation Projects

Although tax credit can be used with other assisted housing programs such as Sections 8 and 236, the HDG regulations do not permit the use of HDG with other Federal housing assistance programs except Section 8 Existing Certificate and Housing Voucher Programs. On the other hand, HDG and tax credit may work very well with existing projects which have, by natural occupancy patterns, become low-income projects over time.

The HDG test for substantial rehabilitation is more stringent than Tax Credit provisions. HDG requires that the per unit rehabilitation costs be more than $6,500, adjusted by the applicable high cost factor, or that there be replacement of more than one major building system that fails local codes to qualify. Under tax credit, projects qualify with expenditures of $2,000 or more per unit. Hence, a project that meets the HDG substantial rehabilitation test will be tax credit eligible.

Financing

HDG does not require that a commitment be provided for tax credit *unless* it affects the project's ability to obtain financing. Where a firm commitment cites tax credit as a condition for financing, then the application must reflect such a commitment as specified in Part M-7 of the Application Packet, Revised May 1987.

Syndication proceeds are not an acceptable source of committed equity at the application stage (unless subscriptions are provided in Part M-7). In the event that syndication does not generate sufficient funds to meet the equity committed in the application, the owner's commitment is irrevocable. Moreover, at the evidentiary stage HDG will count as equity only those syndication payments to be contributed during the construction period. Therefore, any cash commitment for equity must be supported by the owner's net worth statement reflecting assets equal to at least three times the cash to be contributed or a letter of credit or a commitment for a letter of credit in the amount of the owner's equity.

TABLE: HODAG AND TAX CREDIT RENT COMPARISONS

Line		1	2	3	4	5	6	7	8
A	National 50 percent median income by family size for 1987.	$10,640, 1 person.	$12,160, 2 persons.	$13,680, 3 persons.	$15,200, 4 persons.	$16,150, 5 persons.	$17,100, 6 persons.	$18,050, 7 persons.	$19,000, 8 persons
B	Maximum monthly tax credit rents by family size.	$2,66, 1 person.	$304, 2 persons.	$342, 3 persons.	$380, 4 persons.	$404, 5 persons.	$426, 6 persons.	$451, 7 persons.	$475, 8 persons
C	Maximum monthly HoDAG rents by unit size with prototypical income adjustments.	$246, for 0 BR, 1 person.	$264, for 1 BR, 2 persons.	$320, for 2 BR, 3 persons.		$365, for 3 BR, 5 persons.		$412, for 4 BR, 7 persons.	$424, for 5 BR, 8 persons
D	Range of Treasury rents for smaller families with *negative* impact on HoDAG rental income.	N/A	$266, for 1 person in 1 BR.	$304, for 2 persons in 2 BR.		$342, for 3 persons in 3 BR, 4 persons N/A.		$380, for 4 persons, $404 for 5 persons in 4 BR, 6 persons N/A.	$404 for 5 persons in 5 BR, 6 to 7 persons N/A
E	Maximum per monthly/per unit effect on HoDAG.		−$18	−$16		−$23		−$32	−$20

N/A: Not Applicable, i.e., Treasury rents are higher than HoDAG rents so HoDAG maximums presumably apply.

Changes to the Application Packet From 1986 to 1987

The following items represent substantive changes and deletions to the 1986 Housing Development Application Packet. There are other minor editorial changes, but the submission requirements are the same unless noted herein.

Introduction

Page iv

Added, the following paragraphs:

e. "Commercial space in * * * limitation on commercial space."

f. "A building developed with HDG * * * family housing, i.e., condominiums."

g. "HDG funds may not * * * the Urban Development Action * * *."

Page v

Added, the following paragraph:

h. "Manufactured home * * * systems contained therein." *Inserted*, last full paragraph, third sentence:

"* * * and that all exhibits/documents * * * oversight by HUD reviewers."

Part B-1

Page 3

Inserted, second paragraph, ninth sentence:

"* * * or an official who * * * sign the application."

Part D

Page 6

Changed, first paragraph, third sentence:

"HUD does, however, * * * written comments or concerns."

Part E

Page 7

Added, second paragraph, first sentence:

"Vacancy rate information * * * vacancy data in Part G."

Part G

Page 9

Added, second paragraph under Part G:

"The 1980 and estimated * * * narrative provided for Part G."

Page 10

Added, first line and formula at the top of the page.

Page 11

Added, first paragraph (i), last sentence:

"The appropriate 1980 * * * field office economist."

Inserted, second paragraph (ii), first sentence:

"* * * or housing market area, * * *"

Part H-2

Page 14

Inserted, first paragraph, fourth sentence:

"* * * FmHA 515, HDG with 40% or more lower income."

Part J. Environmental Determination

Page 18

Inserted, into second paragraph:

"* * * including HUD approval * * * Release of Funds"

Part K-2. Minority and Women Business Enterprise

Page 19

Added, first paragraph under "Submission Content", second sentence:

"Failure to submit either * * * for Selection Factor I."

Part M. Project Information

Page 23

Added, under item number 3, third sentence:

"When it becomes necessary * * * 24 CFR 207.19 can be met."

Part M-1. Project Application Form

Section G

Page 30

Added, under Line 30, second paragraph:

"The total of both legal * * * whichever is lower."

Page 30

Inserted, under Line 34, first sentence:

"* * * but not the escrow * * * reflected in Section K."

Added, under Line 35–38, last sentence:

"Other projects are * * * list marketing expenses."

Page 31

Added, under Line 40, last sentence:

"If there is less * * * of the purchase price."

Section J

Page 33

Added, under Line 2, last sentence:

"For a leasehold * * * paid during construction."

Page 34

Added, under Line 7, last sentence:

"Such reserve shall not * * * FHA allowance where applicable."

Section K

Page 35

Inserted, under Box 4, paragraph 1:

"* * * or for an escrow account * * *."

Page 36

Added, under Box 4, paragraph 2:

"This figure will * * * an equity contribution."

Added, under Box 5, 2nd sentence:

"In the event such * * * whichever is greater."

Added, in last paragraph under Box 5, second item: "Developer's fee."

Page 37

Inserted, into first paragraph at the top of the page:

"* * * cooperative, mutuals, or for profit projects * * *"

Added, under Box 7, second sentence:

"Funds committed to * * * to the current HDG project."

Part M-2. Narrative Feasibility Assessment

Page 38

Part M-2 was restructured and reflects minor changes throughout this PART.

Part M-7

Page 42

Revised, first paragraph:

Page 44

Added, under paragraph B 3., entire last paragraph:

"Where future year's * * * three-year CDBG plan."

Added, under paragraph C, second sentence:

"HUD will expect to * * * purchase the bonds."

Page 45

Added, under paragraph D 2. "For Additional Points", first sentence:

"Before consideration can be * * * all of the following:"

Added, under paragraph E. 1. a. *Tax-Exempt Bond Financing*

"The inducement resolution * * * amount of the bonds."

Added, under paragraph E 1. a., *Tax-Exempt Bond Financing*, third paragraph:

"[Definition. For purposes of this * * * by the Board of Directors.]"

Page 46

Added, under paragraph c., second sentence:

"The commitment must * * * of the financing."

Added, new fourth paragraph:

"2. Special Considerations for State Housing Finance Agencies.

Projects with an inducement * * * Threshold 16 (see Attachment 1)."

Page 47

Added, the following two new sections:

"F. *Taxable Bond Financing*" and

"G. *Tax Credits Under the Tax Reform Act of 1986*"

Page 47

Revised, entire section on *SITE CONTROL*, last paragraph which continues on page 48:

"Evidence of site * * * prohibited by 24 CFR 850.31(f)."

Part M-12

Page 50

Added, under paragraph A. *Pro Forma Contents, Return on Equity*, second sentence:

"The applicant may * * * as at project closeout."

Part M-13

Page 52

Added, second paragraph, fourth sentence:

"The marketability of * * * review of the application."

Exhibit G

Page 66

Added, a new exhibit to the 1987 Application Packet.

Exhibit J

Page 67

Added, new third paragraph:

"This is to certify * * * have been met."

Exhibit K-1

Page 68

Changed, at item number (v):

"* * * Section 504 of the Rehabilitation Act of 1973."

Exhibit M-8

Page 81

Added, under *ACQUISITION TEST*, paragraph number 2., second sentence:

"In order to determine * * * and then refinance."

Page 82

Inserted, into last paragraph:

"* * * in accordance with the * * * shown in Line h above."

Exhibit M-9

Page 83

Added, under paragraph A. *Instructions*, second paragraph, last sentence which continues on page 84:

"Such amounts may not * * * on Line 1. a. (see * * * below)."

Attachment 2

Page 93

Added, under E. 1., last sentence:

"For any portion of * * * during the Project Term."

Housing Development Grant Program Application Packet

Introduction

Guide for Preparation of Application

APPLICATION DOCUMENTATION

Part A. Instructions for Standard Form 424 and Executive Order 12372
Part B.
  Applicant Information
  Additional Assistance
  HAP Compliance
Part C. Applicant and Owner Certifications
Part D. Applicant's Project Selection Method and Program Description
Part E. Application Eligibility
Part F. Infeasibility of Moderate Rehabilitation
Part G. Housing Shortage
Part H.
  Neighborhood Identification and Description
  Locational Opportunities Effect of Proposed Project on Neighborhood Development
Part I. Relocation/Displacement Information
Part J. Environmental Determination
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  M-6 Determination of Maximum Value
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  M-8 Determination of Maximum Grant and Minimum Equity
  M-9 Leveraging Ratio
  M-10 Architectural Information
  M-11 Cooperatives and Mutuals Only
  M-12 Long-Term Project Feasibility and Periodic Payments
  M-13 Determination of Acceptability of Commerical Space
  M-14 Determination of Maximum Units for Least Cost
  M-15 Rent Control

Exhibits

Exhibit A Standard Form 424
Exhibit B-2 Rent and Tenant Eligibility Determination
Exhibit C-1 Applicant Certification
Exhibit C-2 Owner Certification
Exhibit F Moderate Rehabilitation Determination
Exhibit G Rental Vacancy Rates for Housing Shortage
Exhibit J Certification of Environmental Assessment
Exhibit K-1 Applicant Non-Discrimination Certification
Exhibit K-2 Owner Non-Discrimination Certification
Exhibit K-3 Certification of Minority/Women Ownership
Exhibit M-1 Project Application (Form HUD-90031)
Exhibit M-4 Substantial Rehabilitation Eligibility Test
Exhibit M-5 Determination of Maximum Rents for Lower Income Units
Exhibit M-6 Format for Determination of Maximum Value
Exhibit M-8 Determination of Maximum Grant and Minimum Equity Contribution
Exhibit M-9 Leveraging Ratios
Exhibit M-12 Constant Payment Project Investment Accounts
Exhibit M-13 Commercial Test—Required only where Commercial Income is Involved
Exhibit M-14 Format for Determining Maximum Units for Least Cost

Attachments

Attachment 1 Threshold Requirements
Attachment 2 Project Selection Factors
Attachment 3 Program Flow Chart
Attachment 4 Schedule of High Cost Percentages for Base Cities
Attachment 5 Required Forms and Exhibits Checklist

Introduction to the HDG Application Packet

Thank you for your interest in the Housing Development Grant (HDG) program. This Application Packet provides instructions for preparing an application submission for the HDG program. The provisions of the regulations (24 CFR Part 850) and the most recent Invitation for Applications (IFA) published in the **Federal Register** as elaborated upon in this Packet are also binding.

The first determination to be made is whether the proposed project is eligible for an HDG award. The definition of a project is as follows: One or more buildings containing similarly constructed units, the site(s) on which the building(s) is located, and any functionally related facilities. Multiple buildings will constitute a project only if they are bound together as a result of proximate location, common ownership, and common financing.

The following conditions *must* also be met:

a. For a project with two or more sites, all sites must be located within the same neighborhood and generally within a THREE block radius of each other. Further, each site must contain both lower income and market rate units;

b. The lower income units must be of the same construction type, but need not contain the same interior amenities or the same amount of floor space as long as livability is maintained. The exterior of the lower income units must be indistinguishable from the exterior of the market rate units;

c. The project must be non-transient, residential, rental, cooperative or mutual housing and may not contain special purpose space, e.g., medical facilities requiring specialized features which increase the cost of construction.

d. The project must contain not less than 20 and no more than 200 units.

e. Commercial space in the project is limited to 10 percent. Up to 20 percent of the gross floor area may be designated for commercial use with adequate justification. Portions of the project building cannot be legally separated through establishment of a condominium regime to circumvent the 20 percent limitation on commercial space.

f. A building developed with HDG funds cannot be legally separated through establishment of a condominium regime for the purpose of creating a legally separated portion which can be used for non-rental, single family housing, i.e., condominiums.

g. HDG funds may not be used in conjunction with a project which is currently, or anticipated to be, assisted under any other Federal housing assistance program including the Urban Development Action Grant, Section 312 and Farmers Home Administration Section 515 programs. (This does not include the Section 8 Existing Housing Certificate and Voucher programs.) Projects which were formerly assisted under Section 305 or 313 of the National Housing Act, or projects which were formerly HUD-held or HUD owned are also not eligible to receive HDG funds.

h. Manufactured home parks and manufactured (mobile) homes are not eligible for the program. For HDG purposes, "manufactured home parks" are defined as rental communities of single-family manufactured (mobile) homes, where the occupants either own their manufactured home and rent the site on which the home is placed, or where both the home and the site are rented. For HDG purposes, "manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein.

In addition to meeting the definition of an HDG project, every application must pass all nineteen threshold requirements as set forth in 24 CFR 850.37 and as described in Attachment 1 of this Packet. Failure to meet any one of the threshold requirements or the requirements stated above will result in rejection of the application and no further consideration will be given for funding.

Once you have determined that the application meets all of the threshold requirements, you should review the competitive Project Selection Factors included in Attachment 2 of this Packet. A flow chart of the program is also included so that you will know the approximate timing of the entire HDG process from the Invitation for Applications through Project Closeout (see Attachment 3).

Since the HDG awards are highly competitive, we encourage you to review this entire Packet carefully before proceeding. Information included in your application submission must be clear, comprehensive and sufficiently documented to permit HUD to make all of the necessary determinations and to ensure adequate consideration of the application. Be certain that all documents are submitted, the proper forms and formats have been used, that the application and certifications have been signed as appropriate and that all exhibits/documents are placed in the designated parts of the application to avoid possible oversight by HUD reviewers. Since HUD will "look behind" any certification that appears questionable, explanatory material may be appropriate even when not requested in the Packet. During the application review process, HUD *may* request clarification after the submission deadline has passed. Where there is no documentation, or the documentation provided is clearly insufficient to make appropriate determinations, the application will be rejected under Threshold No. 2. *Absolutely no waivers will be granted to permit deviations from the regulatory requirements or Application Packet prior to or during the application review or selection process.*

Owners and applicants should review the requirements on limitations and uses of the grant, project financing, appraisals and drawings in Part M of the Packet. Potential applicants (i.e., cities, counties, towns, townships, units of local government) not included in the list of Designated Eligible Areas applicable to the current funding round, and States applying on behalf of units of local government should review Parts B-1, E, and F to determine if a Special Housing Need or a Neighborhood Preservation Purpose application can be supported.

HUD reserves the right to evaluate a project's economic structure to determine that the grant amount requested is not *clearly* in excess of the amount needed to provide decent rental or cooperative housing of modest design that is affordable to families without other reasonable and affordable housing alternatives in the private market. This will include an assessment of the owner's return on equity, project costs, rents, terms and conditions of financing and the amount of the owner's equity to determine if they are reasonable and appropriate. The amount of the grant requested may be reduced at the time of application review, preparation of the HUD/Grantee Grant Agreement or Cost Certification or an application may be rejected where clear excesses exist. *Under no circumstances will a grant request be increased.*

THE DEADLINE FOR APPLICATION SUBMISSION IS CLOSE OF BUSINESS ON THE DATE SPECIFIED IN THE MOST RECENT **FEDERAL REGISTER** PUBLICATION OF THE INVITATION FOR APPLICATIONS FOR THE HDG PROGRAM. THE APPLICATION SUBMISSIONS MUST BE RECEIVED AT BOTH HEADQUARTERS IN WASHINGTON, DC AND THE HUD FIELD OFFICE covering the jurisdiction in which the project is located. Close of business for Headquarters is 5:15 P.M. EST. Addresses and telephone numbers of the appropriate HUD field offices may be found in the Invitation for Applications. Contact the appropriate office to determine close of business. Applications must be received by HUD at those times and a receipt should be requested. Applications which have postmarks prior to that time but which are not received by BOTH Headquarters *and* the field office by the deadline will be returned.

Applications to Headquarters must be submitted to and requests for information should be addressed to :

Director, Housing Development Grant Division, Room 6110, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410

While general information will be available by calling the HDG staff at (202) 755-6142, only written answers will serve as grounds for appealing any subsequent HUD determinations. The most recent **Federal Register** publication of the Invitation for Applications announces the expected date of Notification of Preliminary Grant Awards and Project Rejections. No information as to processing status will be provided during the review and selection process.

Guide for Preparation of the Housing Development Grant Program Application

The Department has developed an application format and Checklist (Attachment 5) to assist the applicant in preparing the application and enable the Department to complete its reviews expeditiously

1. The Checklist will assist the applicant in identifying required data and assembling the application. The Checklist will also be used by HUD in its initial review of the application.

2. The Checklist should be used as the Table of Contents in the application.

3. Each application MUST be separated, tabbed and bound in a manner that permits the separation of various components for review (NO SPIRAL BINDERS) in accordance with the Checklist. The Parts must be labelled A through M, including M-1 through M-15. The instructions in this Packet have been prepared and identified in the same order and provide assistance in preparing Parts A through M. The Exhibits are identified by the letter of the Part in which they are to be inserted in the application.

4. Three copies of the application must be submitted: *two* for the appropriate HUD field office and *one* for HUD Headquarters.

A SEPARATE APPLICATION (THREE COPIES) MUST BE SUBMITTED FOR EACH PROJECT. Applicants submitting more than one application may submit the same information for Parts B-1 and 2, D, G, and L, if appropriate.

For additional guidance, you should consult the following **Federal Register** publications applicable to this funding round:

List of Designated Eligible Areas, Invitation for Applications, Program Regulations, 24 CFR 850

Part A.1. Standard Form 424

Standard Form 424 (Exhibit A) should be completed as follows:

1. "Type of Submission" is Application
2. Leave blank
3. To be completed by State Clearinghouse
4. Name, address and contact person of Applicant (i.e., unit of general local government or State, as appropriate)
5. Leave blank
6.a. 14.174
  b. Housing Development Grant
7. Name of proposed Project
8. Enter A or D or E only
9. Name of locality
10. Leave blank
11. Enter A or C
12.a. Enter amount of HDG requested
  b. Enter the amount of funds the applicant is providing to the Project
  c. Enter the amount of funds the State may be providing to the Project
  d. Leave blank
  e. Enter the amount of private financing
  f. Total funding for Project

13.a. Enter Congressional Districts for applicant
b. Enter Congressional District where project is located
14. Enter A
15. Enter date construction/rehabilitation is expected to start
16. Enter a minimum of 240 months
17. Leave blank
18. Enter Application deadline date
19.a. Enter DHUD, Development Grant Division
b. Leave blank
c. 451 7th Street, SW., Room 6110, Washington, DC 20410
20. Leave blank
21. Leave blank
22.a. Enter date application forwarded to State clearinghouse
b. Self-explanatory
23 a. Type name and title of local official submitting application
b. Signature of local official
24. through 33. Leave blank

Part A.2 Executive Order 12372 ("Intergovernmental Review of Federal Program")

An application is subject to the intergovernmental review requirements of Executive Order 12372 and HUD's implementing regulations at 24 CFR Part 52 if (1) the state in which the project is to be located has established a "state process" for carrying out intergovernmental review of applications for Federal financial assistance, and (2) the Housing Development Grant Program is among the programs the state has specifically identified for coverage by the "state process." (There are no project size exclusions.) For any application that is subject to the requirements of Executive Order 12372, the applicant must initiate the intergovernmental review process by sending a copy of the application to the appropriate state review coordinating official or entity before submitting it to HUD. The name and address of the appropriate state review coordinating official or entity may be obtained from the HUD field office in whose jurisdiction the proposed project will be located. A copy of the transmittal letter to the state along with any review comments already available from the state "single point of contact" or other commenting parties should be included in the application.

Part 52 allows clearinghouses 30 days in which to comment, hence, applicants are encouraged to submit applications to the appropriate clearinghouse as early as possible.

Part B. Applicant (and Jurisdiction) Information; Additional Assistance to Lower Income or Very Low-Income Tenants

Part B-1. Eligibility of the Applicant

This section deals only with the eligibility of the applicant, not the eligibility of the application. This section should include a narrative statement indicating the basis for eligibility and, in the case of state applicants, the additional information discussed below. Any unit of general local government, including cities, counties, towns, townships, parishes, villages, or other general purpose political subdivision of a state, and any state, acting on behalf of and with the concurrence of a unit of general local government, is an eligible applicant. States applying on behalf of units of general local government must submit evidence of concurrence of the unit of general local government generally in the form of a letter from the chief executive officer (CEO) of the jurisdiction. Such applications must be signed by the Governor.

A state or local housing finance agency (HFA) or any other independent public agency (IPA) is not eligible to apply but may serve as an agent of an eligible applicant (a state or unit of general local government). HFA's/IPA's may administer the program provided that: (1) the HFA/IPA enabling legislation clearly permits the ability to act as program administrator, *and* (2) the CEO of the grantee (the Governor, in the case of a state applicant) has delegated to the HFA/IPA the authority of program administration which could include preparation of the application. Notwithstanding program administration by the HFA/IPA, the CEO or an official who is authorized to commit the applicant to such agreements, must sign the application, execute the HUD/Grantee Grant Agreement and the Owner/Grantee Agreement and expressly agree to maintain ultimate responsibility for enforcement of program requirements.

The applicant and the owner must be separate and distinct entities. The applicant may not be the owner. Additional information on eligibility is provided in the HDG regulations at Section 850.3.

Part B-2. Performance, Capacity and Rent Mechanism

Discuss the applicant's (a) performance in meeting assisted housing needs, and (b) its capacity to administer the HDG program.

In the section on performance, describe the applicant's past performance in the area of housing assistance, including achievements in meeting Housing Assistance Plan goals and in administering any federally assisted housing programs in its jurisdiction such as Section 8, Public Housing, housing UDAGs, FmHA, HDG, or CDBG housing related activities.

The capacity of the applicant to administer the HDG program should be addressed in detail. Describe the administrative structure which will be responsible for HDG activities: how the applicant will clear any known impediments (e.g., zoning, sewer taps, alley abandonment) to a timely construction start; the staff available or to be made available; how construction or rehabilitation progress will be monitored; how grant funds will be requisitioned and handled (see 24 CFR 850.65); and generally, how the post-construction responsibilities of the applicant (grantee) identified in Subparts D, E, and F of the regulations will be met.

A document for Rent Mechanism and Tenant Eligibility Determination has been included (Exhibit B-2) in this Packet. In order to receive the one point assigned to this requirement (Selection Factor F.1), and to be eligible to receive up to three points for Selection Factor F.2, Exhibit B-2 must be executed by the chief executive officer or designee. At the time of Grant Agreement preparation, this exhibit may be modified to reflect the particular characteristics of the project.

Part B-3. Additional Assistance to Lower Income or Very Low-Income Tenants

Points will be assigned (Selection Factor F.2.) to applications proposing additional assistance through a subsidy mechanism which:

(a) assists tenants with incomes below 50% of median (very low-income) to pay no more than 30% of their income for rent and utilities. (The relevant comparison is the percentage of very low-income units to total units with the higher percentage receiving more points.) OR

(b) extends the period of assistance for all of the lower income units to 25 or more years. (The greater number of years will receive more points.)

To receive points under item (a) above, applicants must include (in Part B-3 or Part M-7) a signed statement which:

(1) specifies the number and size of units to receive the assistance; and

(2) commits the owner to give occupancy priority to the very low-income for these units; and

(3) commits the applicant or the owner to provide the resources necessary to compensate for the resulting revenue loss. (If the owner elects to absorb the revenue loss, an estimate of the revenue loss must be provided and it must be demonstrated that the project's financial feasibility will not be jeopardized.)

To receive points for (b) above, applicants must include (in Part B-3 or Part M-7) the commitment identified in (3) above. WHEN ASSISTANCE TO VERY LOW-INCOME TENANTS IS PROVIDED IN ORDER TO COMPLY WITH THE RELOCATION REQUIREMENTS OF PART I OF THIS PACKET, NO POINTS WILL BE ASSIGNED.

Restrictions

1. The additional assistance must not require HDG funds beyond that required to maintain the units at HDG formula rent levels or beyond 20 years.

2. Points will not be given where the additional assistance is in the form of vouchers, certificates, or other Federal assistance.

Part B-4. HAP Compliance

Applications must include:

1. Comments from the chief executive officer (CEO) of the unit of general local government solicited in accordance with Section 213 of the Housing and Community Development Act of 1974, and either

2. Evidence that the proposed project is consistent with the three-year goals and the general locations set forth in the most recently approved Housing Assistance Plan, if any; OR

3. For localities where no Housing Assistance Plan is in effect, a letter from the unit of general local government indicating that the project is consistent with the need for housing assistance and that public facilities and services for the project are adequate.

Variations on HAP Goals and General Locations

1. Applications proposing a site not included in a general location specified in the HAP will be considered by HUD only if an approvable (to be determined during the application review process) HAP amendment was submitted to the field office *prior to* submission of the HDG application.

2. Applications which propose to exceed the three-year HAP goals by no more than 20 percent will be considered if HUD approval is necessary (a) to obtain a project of feasible size and type; or (b) to meet urgent unforeseen needs (e.g., displacement due to natural disasters); and (c) the application contains a written statement from the CEO in compliance with 24 CFR 791.

3. Applications which propose to exceed the three-year HAP goals by more than 20 percent will be considered only if an approvable (to be determined during the application review process) HAP amendment was submitted to the field office prior to submission of the HDG application.

Part C. Applicant and Owner Certifications

Certifications and assurances are required of applicants and owners. These certifications and assurances are included in this Packet as Exhibits C-1 and C-2 and must be signed by the appropriate parties.

Part D. Applicant's Project Selection Method and Program Description

Briefly describe the method used to select the project(s) submitted under the program and indicate what consideration was given to the items listed in 24 CFR 850.33(c).

Applicants submitting more than one application must briefly describe the overall HDG program including a description of the types of projects proposed and a general schedule for carrying out the program. Submit the same description with each project application.

Applicants must also indicate in this section the method of public consultation used in developing the HDG program. HUD does not specify the method of public consultation. HUD does, however, expect the applicant to do what is necessary to satisfy itself that there has been adequate public consultation to withstand any challenge of failure to consider public views. This could include some mechanism which notifies the general public about the applicant's local HDG program and provides the general public an opportunity to present oral or written comments or concerns. The applicant must certify that this program was developed after public consultation (Exhibit C-1).

Part E. Application Eligibility

Applications may be submitted under one of three categories: (1) Designated Eligible Areas (DEA), (2) Special Housing Need, or (3) Neighborhood Preservation Purpose. DEA applications do not need to address Part E of this Application Packet. Applicants filing under categories (2) or (3) must follow the instructions below.

Special Housing Need Applications

A special housing need application may be submitted where there is (1) a need for housing by a special group of renter households in the jurisdiction or the housing market area, or (2) a special need for rental housing overall as a result of significant changes in the rental housing market *since the 1980 Census.* If a housing market area is used instead of a jurisdiction, the boundaries must conform with Part G, item 3 of this Packet.

Applicants documenting a Special Housing Need are requested to discuss their information, methodologies and data source(s) with the HUD field office economist prior to application submission.

1. Special Renter Group

A special renter group application provides evidence of a need for rental housing by households having specific social, economic, or demographic characteristics. Examples of special renter groups are: large families (five or more persons needing 3 or more bedroom units), or families with physically disabled members in need of barrier-free housing.

In the analysis and documentation of the severity of need, the applicant must provide: (a) information on the duration of the need in the locality, e.g., a chronic on-going need since 1980; (b) information which supports the severity of the need and the lack of available housing to meet that need, e.g., low vacancy rates in units of the size or type needed, long waiting lists for projects with units meeting the need, the number of units of the size or type needed in relation to the number of units in the rental inventory as a whole, or information on the lack of production of such units to meet the special renter group need; (c) a showing that the project is responsive to the needs of the special renter group, i.e., all of the lower income units in the project must serve the special renter group and the remaining units must be compatible in terms of unit sizes and types; and (d) a discussion of why the need cannot be adequately addressed by alternative means considering any Federal, State, local government or private sector opportunities.

Vacancy rate information is not required for Special Renter Group needs in Part E; however, the applicant must provide vacancy data in Part G.

2. Change or Dislocation in the Rental Market

A special housing need application in this category must provide evidence of significant changes in the overall rental housing market *since the 1980 Census.*

The change or dislocation must have affected the entire rental housing market, not just a segment of the market, thereby creating "tight" conditions in the overall rental housing market. The methodology used to determine the current overall rental vacancy rate in this Part E.2. must be the same methodology used in Part G of this Packet.

The analysis of the severity of need must include: (a) an explanation of the current condition of the overall rental market; (b) an explanation of the causes for the change in the market since the 1980 Census; and (c) an estimate of the current rental vacancy rate and the rental vacancy rate in 1980, for the housing market area as a whole.

The analysis of the need should address the causes of the change or dislocation such as: natural disasters, large scale abandonments, deterioration or conversions resulting in significant losses from rental inventory, rapid population and household growth due to increased employment opportunities or in-migration, coupled with little or no production of rental housing to meet the demand, or other factors which have resulted in the current tight rental housing market conditions.

In addition, the applicant should provide information on current market conditions that would give evidence of the severity of need. Such evidence may include an increase in occupancy of units that are of marginal quality and acceptability, large increases in rents in excess of project costs, rapid absorption of new rental units, long waiting lists for projects of all types (assisted and unassisted), or data indicating declining production of rental units in areas showing significant growth of rental households.

The analysis of need should explain how the change or dislocation has affected all renter households in the overall market and lower income renter households in particular. The analysis should also include any information that indicates how long the tight market condition will continue or if it will worsen due to factors such as continued decline in production of rental housing and continued rapid household growth.

The estimated current rental vacancy rate should be derived using: (1) local source data for a substantial portion of the units in the rental market or a sample cross section of all rental units of all types and rent ranges that would be representative of the current rental market in the area as a whole, or (2) local source data on the trend in the rental vacancy rate from 1980 to the present that would, using 1980 Census data as a benchmark, show a significant reduction in the current rate. The current vacancy rate must be compatible to the 1980 Census vacancy definition, representing actual rental units, not solely vacancy by type of structure. *The current rental vacancy rate must be less than seven (7) percent* in the case of a Special Housing Need application based on a change or dislocation in the rental market.

All rental vacancy rates must be calculated as follows:

$$\text{Vacancy rate} = \frac{\text{Units vacant "for rent"}}{\text{Units vacant "for rent"} + \text{Renter occupied units}}$$

Neighborhood Preservation Purpose Applications

An application submitted as a Neighborhood Preservation Purpose application must propose a project which is located in a neighborhood preservation area which meets the standards described in the regulations at Section 850.15(c). Further, the proposed project must advance the particular goals of the neighborhood preservation area strategy. An example of an unacceptable case would be where the goal is to rehabilitate an area of neighborhood commercial structures. The provision of housing in such a neighborhood would not be acceptable. If the goal is to rehabilitate existing low-rise residential rental property, the provision of a newly constructed high-rise structure would not advance the goal of the neighborhood preservation strategy.

The regulations require that public and private efforts be undertaken with a coordinated plan for long-term improvement of the area and that *such efforts be underway at the time of application submission.* Neighborhood Strategy Areas approved under Housing or CDBG programs where activities are underway, would be considered appropriate neighborhood preservation areas for HDG.

It is important that evidence of compliance with all regulatory standards be submitted in as brief a format as possible. Evidence should include a copy of the neighborhood preservation strategy, proof of an ongoing commitment to the neighborhood preservation area, information on funds budgeted for the area and the certainty of such funding.

Part F. Infeasibility of Moderate Rehabilitation to Meet the Purposes of the Proposed Project—Certification and Justification

Special Housing Need or Neighborhood Preservation Purpose applications will be reviewed to determine whether moderate rehabilitation could be used in the project neighborhood (project neighborhood is defined at 24 CFR 850.3 and Part H-1 of this Packet) to produce the same type of lower income units (by bedroom size and occupancy) proposed in the application submission. If moderate rehabilitation will produce the same type of units, a Special Need or Neighborhood Preservation Purpose application will be rejected without further review.

The application must include:

(1) Exhibit F, Moderate Rehabilitation Exclusion Certification, with appropriate box(es) checked and signed by the applicant, and

(2) a justification for the reason(s) checked on the Certification.

The certification and justification will be carefully reviewed by HUD.

Most of the reasons listed in Exhibit F are self-explanatory; however, certain items warrant further discussion.

Item 3 indicates that the definition used for neighborhood under the Rental Rehabilitation Program is different from the definition used in this program (see 24 CFR 850.3, Project Neighborhood) and could well permit a much smaller area. For this reason, the project neighborhood considered in this program could contain within it a project which is currently receiving assistance under the Rental Rehabilitation Program. If the Rental Rehabilitation project is producing the same type of lower income units that are included in the proposed HDG project, the applicant may not check this box.

It is anticipated that there will be few circumstances in when Item 6 will be permitted to justify the infeasibility of moderate rehabilitation. Possible grounds for such certification might be that the entire neighborhood is composed of single family sales-type homes or condominium units, both of which are ineligible under HDG.

Under Items 4 and 5, it is understood that there may be very few single units, scattered throughout the neighborhood, which could be moderately rehabilitated to produce units of the same bedroom size or occupancy type as the proposed lower income units. It is not intended that such very limited, isolated instances would be grounds for rejection of an application.

Part G. Housing Shortage

HUD will give favorable consideration to proposed projects in jurisdictions having lower rental vacancy rates and tighter market conditions relative to the rates and conditions in other applicant jurisdictions. Two criteria will be used: (1) the overall rental vacancy rate in the jurisdiction or housing market area and (2) the aggregate rental vacancy rate in all lower income census tracts in the jurisdiction. For jurisdictions without census tracts and which do not choose to develop current estimates using other data (see 2(b) and 2(c) below), the estimated current overall rental vacancy rate for the jurisdiction or the housing market area in which the project is to be located can be used for both criteria.

The 1980 and estimated current rental vacancy rates for both criteria must be shown in Exhibit G and stated in narrative form for Part G.

1. Overall Rental Vacancy Rates

In order to demonstrate low vacancy rate relative to other jurisdictions, the applicant must submit:

a. The 1980 Census Rental Vacancy Rate for the jurisdiction or the housing market area (see Item 3. below):

All vacancy rates must be calculated as follows:

$$\text{Vacancy Rate} = \frac{\text{Units Vacant "for rent"}}{\text{Renter Occupied Unit's} + \text{Units Vacant "for rent"}}$$

b. Estimate of Current Overall Rental Vacancy Rate for the jurisdiction or housing market area:

The estimated current overall rental vacancy rate should be derivied using (i) data for, or a recent local survey of, a substantial portion of the units in the rental market reflecting a cross section of all rental units of all types and rent ranges that would be representative of the current rental inventory as a whole; or (ii) local source data on the trend in rental vacancies or vacancy rates since 1980, using the 1980 data as a benchmark and applying the trend of change in vacancies or rates from 1980 to the current date to yield a current rate.

Appliants should ensure that the methods and techniques used in gathering and analyzing the data are adequate to yield statistically reliable results and are compatible to methods used in Census definitions and calculations.

Applicants who intend to conduct special surveys should discuss their plan with the local field office economist prior to application submission. In addition, prior consultations is advisable as to data sources, methods and estimates since all data and estimates will be evaluated during the application review and no opportunties for changes will be permitted after application submission.

c. Current Conditions and Change in the Rental Market:

Applicants must provide information that demonstrates the severity or extent of housing shortage. Evidence should address the cause of the changes in the market since 1980 which have resulted in the current tight rental housing market conditions. The description should include such information and data as the rate of absorption of new rental units, length of waiting lists for both new and existing projects of all types (assisted), increases in rents, declines in rental production relative to demand and household growth, significant losses from the rental inventory due to demolition, conversion and other causes. The demonstration should also include any information that indicates that the current tight market will continue or worsen over the next two years.

2. Lower-Income Rental Vacancy Rates

The lower income rental vacancy rate can be determined by the applicant by using either a., b., or c. below.

a. 1980 Census Data

For applicants in areas with census tract data, the process for making this determination involves the following two steps:

1. Using the 1980 Census, determine all census tracts in the jurisdiction having median family incomes at or below 80 percent of the median family income for the area. If an applicant is in a metropolitan jurisdiction, the area should be that currently defined by the Office of Management and Budget as a Metropolitan Statistical Area (MSA) or a Primary Metropolitan Statistical Area (PMSA). For a nonmetropolitan jurisdiction, the area is defined as the county. The appropriate 1980 "80 percent of median family income" figure can be obtained from the field office economist.

ii. For each lower income census tract within the jurisdiction or housing market area, calculate the total units reported as "renter occupied" and the vacant units reported as "for rent". Add the totals for all census tracts. Divide the total "renter occupied" units into the aggregate of all units "for rent." The formula is as follows:

$$\text{Vacancy Rate} = \frac{\text{Units vacant "for rent"}}{\text{Units vacant "for rent"} + \text{"Renter Occupied"}}$$

For applicants in jurisdictions without census tracts, the current overall rental vacancy rate may be used for this criterion if the applicant does not choose to develop an estimate using other methods as described in (b) and (c) below.

b. Use of Data Other Than the 1980 Census

Applicants are encouraged to use 1980 Census data to determine the lower

income rental vacancy rate; however, applicants attempting to demonstrate a significant reduction in vacany rates since 1980 may use other more recent data.

Local surveys may be relied upon provided methods and techniques used in gathering and analyzing the data are adequate to yield statistically reliable results and are comparable to methods used for census calculations.

If an applicant's jurisdiction is delineated by census tracts, and it wishes to provide current data on lower income rental housing vacancy rates, it should define lower income census tracts using 80 percent of HUD's most recent estimate of median family income. This estimate can be obtained from the local field office economist.

Applicants who intend to conduct special surveys, or use other data to update census information, are strongly urged to discuss their plans, methodologies and data sources with the local field office economist prior to application submission. Prior consultation is advisable since all survey data will be evaluated during the application review process and no opportunity to make changes will be permitted after application submission. Failure to contact the field office economist may result in refjection of your methodologies and data.

c. Use of Lower Income Vacancy Rates Calculated for Specific Categories of Rental Housing

Applicants who feel that the overall *lower income* rental vacancy rates do not represent the shortage of housing for a particular category of renter units may wish to provide vacancy rate information solely for a specified category. Local data or surveys cited must be confined to the specific category of units that are considered to be in short supply and are being proposed as the lower income units in the application. Calculation of a vacancy rate for a specific category of rental housing will only be considered for the lower income vacancy rate, not for the overall rental vacancy rate.

An example of this situation would be where the lower income vacancy among *standard* quality rental housing is much lower than that for *all* rental housing. It may also be the case that the lower income vacancy rate for a particular size unit is significantly less than the overall rental vacancy rate.

Vacancy rates for cooperative or mutual housing units alone will not be accepted where higher vacancy rates exist for *rental* units of the same size and type.

3. Use of the Housing Market Area

In very unusual circumstances, applications from very large or very small jurisdictions may request that the determination of rental vacancy rates be made for a housing market area. The definitions of housing *market* area, for purposes of this program, are as follows:

a. Jurisdictions subdivided by boroughs, counties, or country equivalents, and are located in large metropolitan areas (MSAs/PMSAs as defined by the Office of Management and Budget), may be considered separate housing market areas. This determination should consider whether the area qualifies as a distinct housing market based on such factors as geographic barriers, large population concentrations, or a separate economic base as determined by commuting patterns and major sources of employment. Applicants should determine overall rental vacancy rates both within the defined market area as a whole, as in 1. above and within lower income census tracts in the defined market area as in 2. above. It is expected that this situation would occur rarely and only in very large metropolitan areas.

b. For very small jurisdictions in both metropolitan and nonmetropolitan areas, the housing market may be larger than the jurisdiction in which the proposed project is to be located. The market area in such cases may include several contiguous communities or an entire country. Such market areas should be used only where there is reasonable expectation that the proposed project would attract households from the entire area. The use of a market area in order to increse the apparent demand for a large project should be avoided in areas where the population is dispersed over a wide geographic area. Typically only localities having populations of less than 25,000 would use housing market area data rather than jurisdiction data. In nonmetropolitan areas where census tracts have been delineated, the applicant should provide the rental vacancy rate based on the lower income census tracts. Where no tract delineations are available, only the current overall rental vacancy rate needs to be calculated for the housing market area unless the applicant chooses to develop other data to indicate the current lower income vacancy rate as described in 2.b and 2.c above.

Where housing market area data rather than jurisdiction data are used in Part G, data used to address Parts E (Special Housing Needs) and H–2 (Locational Opportunities Data), if applicable, must also address the housing market area.

Part H. Neighborhood Information

H–1. Neighborhood Identification and Description

The neighborhood of the proposed project must be identified in accordance with the definition contained in the regulation at 24 CFR 850.3, Project Neighborhood. The neighborhood should first be identified using significant distinguishing features such as those identified in paragraph (b) of the definition. If the neighborhood does not contain a population of 2,500 persons, the boundaries should be expanded in all directions to include residential housing until the minimum population is attained. This area then becomes the neighborhood for determination of the infeasibility of moderate rehabilitation (Exhibit F) and similar neighborhood determinations. A map of the project neighborhood depicting boundaries and delineating any census designations should be included.

A brief description of the neighborhood should be provided including general indications of building construction type and condition, income of residents, public facilities, recent changes in character or investment patterns, and similar information.

H–2. Locational Housing Opportunities Data

Under Selection Factor J, Locational Housing Opportunities, and in compliance with 24 CFR 850.39(b)(10), a maximum of five points may be awarded only to projects which are located:

a. outside areas of minority concentration where the current pattern shows most assisted housing in minority areas; or

b. in project neighborhoods where there is no other assisted housing; or

c. in project neighborhoods undergoing revitalization through public or private investment and in which rental opportunities for lower income households are declining.

An application will be awarded points if acceptable documentation is provided showing that the project meets any one of these criteria. Points will be assigned in accordance with Selection Factor J of Attachment 2 in this Packet. Where no documentation is provided, zero points may be assigned, provided showing that the project meets any one of these criteria. Points will be assigned in accordance with Selection Factor J of Attachment 2 of this Packet. Where no documentation is provided, zero points will be assigned.

For purposes of the above locational criteria:

• an "area of minority concentration" is an area in which the percentage of the population that is minority is greater than the percentage of the total population, of the unit of local government, that is minority, and

• "assisted housing" includes housing units assisted under Section 8 New Construction, Substantial Rehabilitation or Moderate Rehabilitation; Section 202; Section 23 Public Housing; Section 236; and Section 221(d)(3) BMIR programs, FmHA 515, HDG with 40% or more lower income. Assisted housing does *not* include units assisted under the Section 8 Existing Certificate or Housing Voucher programs or the section 235 program.

To receive consideration for points under the first locational criterion, the applicant should provide racial demographics of the project neighborhood and jurisdiction and data on the distribution of assisted housing projects within the jurisdiction of the unit of local government, including the project neighborhood.

If no other assisted housing exists within the boundaries of the project neighborhood, the applicant should so state in order to receive points under the second criterion.

To receive consideration for points under the third criterion, the applicant should provide racial demographics and incomes of households in the project neighborhood and information on the level of public and/or private investment and on the rate of change and approximate loss of rental housing units for lower income households in the area.

If the proposed project does not clearly provide one of the opportunities for which points will be awarded, the applicant may so state.

Part H–3. Effect of Proposed Project on Neighborhood Development

The applicant should describe the physical, social and economic effects of the project on the neighborhood. If HUD determines that the project will have a negative effect on the neighborhood, the project may be rejected based on Threshold 12. If HUD determines that the project will have a positive effect on the neighborhood, and the project meets all threshold requirements, it will be assigned one point based on Selection Factor C.1.

Typical considerations in determining a positive or negative neighborhood effect include: compatibility with existing land uses, increased demand on traffic and other environmental burdens, complementary effects on employment patterns, and/or the likely effect of the project on recent changes in neighborhood character and investment patterns.

Generally, a positive *social or physical effect* on a neighborhood is one which enhances some valuable cultural, architectural or environmental quality of the neighborhood, especially if the neighborhood is changing. Erosion of such a positive quality would be a negative effect. A positive *economic* effect would enhance the economic stability of a declining or low-income neighborhood; however, HUD will view any unmitigated displacement resulting from such an effect as negative.

Sometimes a project will not be large enough to have a significant positive impact on the surrounding area. Many projects will have both positive and negative effects. In these instances, it is possible that the project might pass the threshold requirement for project acceptability but not qualify for the point.

Part I. Relocation/Displacement Information

24 CFR 850.35(d)(2)(iii)(A) requires that no household, regardless of income, be permanently displaced as a result of the rehabilitation or construction of a project under HDG, unless said household has received advance written notice, appropriate advisory services concerning counseling or housing opportunities, tenant rights under the Federal Fair Housing law, and guidance in searching for suitable replacement housing.

Sites proposed for HDG projects which at the time of application submission house tenants who will be temporarily relocated or permanently displaced must address Part I. Applicants must submit a statement indicating whether there are any residential tenants living on the proposed project site who will be temporarily relocated or permanently displaced as a result of development of the project. In order to comply with 24 CFR 850.35(d)(2), this statement must provide the following information;

1. Number of households by size, income and race expected to be permanently displaced, and in a separate listing, those expected to be temporarily relocated without regard to income level of tenants.

2. Without regard to income levels of tenants, a description of the housing facilities expected to be available for occupancy by temporary relocatees and permanent displacees.

3. A description of the financial assistance, advisory services and any other services to be provided to temporary relocatees and permanent displacees.

4. A chart which clearly defines the estimated cost of all relocation benefits and services, including identification of the source(s) of funding.

5. The anticipated timetable for carrying out all necessary relocation activities.

6. Sample letter to be used informing tenants moving into the project after submission of the HDG application that they may be displaced due to planned rehabilitation activities and that they will not be entitled to any relocation benefits or assistance.

7. A commitment that the applicant will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), if the site is acquired by a state agency.

[A state agency is defined as any department, agency or instrumentality of a state or of a political subdivision of a state or states. If an applicant acquires property under the HDG program, the Uniform Act will apply. When the Uniform Act applies, and the HDG regulations are more stringent, i.e., one for one replacement of very low-income households, the more stringent regulation will apply.]

If any lower income (80 percent of median or below) household is to be permanently displaced, the applicant or owner is obligated to provide financial assistance in an amount sufficient for that household to obtain affordable replacement housing, as defined under 24 CFR 813.107(a), for a minimum of two years.

If any lower income household is to be temporarily relocated as a result of rehabilitation or construction of a project, the household must be provided with the following:

a. Decent, safe and sanitary temporary housing;

b. Financial assistance sufficient, as determined by the applicant, to cover reasonable expenses, including moving costs to and from the temporary housing, rent and utilities; and

c. A unit of appropriate size in the rehabilitated or newly constructed project at a cost equal to or less than that which would apply under 24 CFR 813.107(a).

If *very low-income tenants* (50 percent of median or below) are to be permanently displaced or temporarily relocated, the following must also be provided:

1. A statement describing how the applicant will ensure compliance with the statutory and regulatory (24 CFR 850.35(d)(1)) restrictions on the involuntary displacement of very low-income households.

The regulation states that no very low-income household, as defined in 24 CFR 813.102, may be displaced by a household which is not very low-income. In the event a very low-income household is displaced, that household must be replaced by another very low-income household.

Upon completion of a project, any very low-income household which has been temporarily relocated as a result of the project will pay rent which is the lower of the HDG rent, or the rent required by 24 CFR 813.107(a). A "replacement" very low-income household will pay the HDG formula rent.

The following example is provided to illustrate this obligation.

At the time of application submission, 15 very low-income households are living in a project. Five choose not to live in the rehabilitated (or newly constructed project), five are permanently displaced because there is no unit to accommodate the family size or composition, and five are temporarily relocated, and then moved back into the completed project.

The completed project is for 50 units. The grant application specifies 10 HDG units, but the project must maintain 15 very low-income households at initial occupancy because there were 15 very low-income households in the project at the time of application.

The five households which were temporarily relocated will return to the completed project and pay the rent required by 24 CFR 813.107(a), or the HDG rent, whichever is lower. The ten households which were permanently displaced must be replaced by other very low-income households who will pay HDG rents. Five of the "replacement" households will live in HDG units and five will live in market rate units.

2. A written commitment from the owner guaranteeing placement in the completed project of at least as many very low-income households as were in residence at the time of application submission. The owner must also agree to comply with all regulations at 24 CFR 850.

This latter obligation may require a further financial commitment from the owner/applicant. The pro forma required in Part M-12 of this Packet must reflect the revenue to be lost as a result of households paying rents in accordance with 24 CFR 813.107(a) and as a result of those occupying market rate units and paying HDG formula rents. The pro forma must also demonstrate financial feasibility to HUD's satisfaction. Where such feasibility cannot be demonstrated, the applicant or the owner must provide an escrow account adequate to cover any shortfall.

To determine the amount to be escrowed, the applicant or owner must use one or both of the following methods, as appropriate, for calculating the required subsidy:

A. For Households Who Will Pay Rents in Accordance With 24 CFR 813.107(a)

(i) Survey each of the existing very low-income households to determine 30 percent of their adjusted income;

(ii) calculate for each household the difference between 30 percent of their income and the formula HDG rent;

(iii) calculate the amount of subsidy required annually for all very low-income tenants in this category;

(iv) calculate the annual subsidy needed for seven years.

B. For Households Who Will Occupy Market Rate Units at HDG Formula Rents

(i) calculate for each household the difference between the HDG formula rent and the market rent;

(ii) calculate the subsidy required annually for the units affected;

(iii) calculate the annual subsidy needed for seven years.

Should the original very low-income households choose to stay beyond the seven-year assumption, the subsidy must continue for the duration of their tenancy. The above computations provide only an estimate for determining the minimum commitment of funds for the subsidy account. The amount needed to subsidize the actual families who reside in the project may vary depending upon actual income levels and the length of tenancy. Once the original very low-income households move from the project, the obligation to these very low-income households is fulfilled.

Part J. Environmental Determination

The environmental requirements in 24 CFR Part 58 and the authorities cited in Section 58.5 are applicable to this program. Applicants unfamiliar with environmental assessments, reviews and compliance findings should seek assistance from the Environmental Officer in the field office in whose jurisdiction the project is to be located. At the very least, under the National Environmental Policy Act (NEPA) regulations, all applicants must complete an environmental assessment and make a finding of significant or no significant impact. In the event the environmental assessment determines the project will have a significant impact, an Environmental Impact Statement (EIS) will have to be prepared. The applicant must identify the measures to be taken to correct any negative impact prior to committing funds and undertaking project action. The publication of a finding and the preparation of an EIS, if needed, may be delayed until such time as the application is selected for HDG funding.

In the event an application is funded, all requirements of 24 CFR Part 58 including HUD approval of the Request for Release of Funds, where applicable, must be complied with prior to start of project construction/rehabilitation.

In some instances, a proposed project may be "categorically excluded" from the NEPA requirements of Part 58 (see 24 CFR 58.35(a)(4)), however, the environmental authorities cited at Sections 58.5 and 58.17 are still applicable. Rehabilitation of buildings, except school buildings, are "categorically excluded" from the NEPA requirements when the following conditions are met:

1. Unit density is not increased by more than 20 percent;

2. Project does not involve changes in land use from residential to nonresidential or vice versa or from one class of residential to another (e.g., from single family attached to high rise multiple dwelling units);

3. Estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.

As part of its responsibility, the applicant must determine the specific applicability of the authorities cited in Section 58.5, identify and evaluate resources protected, and comply with the governing policies and procedures. Such determination and identification must precede application submittal. The actual compliance can be achieved after project funding approval and documented as provided at Section 58.34(b). In the event a categorically excluded activity may have a significant environmental effect, NEPA requirements must be met.

All applicants must submit Exhibit J of this Packet, a certification that an environmental assessment has been completed in accordance with NEPA regulations, or provide a statement that the project is "categorically excluded" from the environmental requirements.

Part K. Equal Opportunity Information

Part K-1. Applicant and Owner Non-Discrimination and Equal Opportunity Certifications

Exhibits K-1 and K-2 are certifications from the applicant and the owner concerning non-discrimination and equal opportunity requirements with Federal funding. These certifications must be signed by the appropriate officials and included in the application submission. HUD will consider the past efforts of the unit of general local government, the owner, or the State (where applicable) in determining whether past performance in civil rights and equal opportunity has been acceptable.

Part K-2. Minority and Women Business Enterprise

Criteria for Selection Points

Selection Factor I (24 CFR 850.39(b)(9)) provides favorable consideration to projects with controlling ownership vested in minorities and/or women. Points will be awarded if over 50 percent controlling ownership is held by minority persons or women. Points will not be awarded for: (a) minority or women limited partners; (b) other limited non-controlling ownership; and (c) day-to-day management and control absent actual ownership in the controlling entity.

Furthermore, the controlling ownership vested in minorities and/or women must be continuing and substantial, beyond pro forma ownership of the firm as reflected in the ownership documents. Minority and women owners must enjoy the customary incidents of ownership and share in risks and profits commensurate with their ownership interests. They must also possess the power to direct or cause the direction of management, policies and operations of the firm and to make day-to-day as well as major decisions. If it is determined that non-minority owners are disproportionately responsible for the operation of the firm, then the minority and/or women partners will not be considered "controlling owners."

Submission Content

An application which claims to have minority/women controlling ownership of the project must include both of the following in Part K. Failure to submit either of the above will result in zero points for Selection Factor I.

(a) Exhibit K-3 signed by the applicant

(b) A description of the structure of the project ownership entity which identifies with whom control of the entity is vested and exercised as per the above discussion.

Applicant Guidelines for Evaluating Selection Factor I Eligibility

Applicants shall consider the following circumstances in evaluating the legitimacy of minority/women controlling ownership:

1. Date the firm was established and/or control changed from non-minority to minority/women. If the firm was established or a change made after the date of the Invitation for Applications, scrutinize the reasons for same.

2. Determine the minority/women's management responsibilities and capabilities.

3. In the case of a joint-venture, review the interests of both owner entities to ensure there are no conflicts with the ownership, control, management responsibilities, risks and profits and that the minority/women partner(s) are responsible for a clearly defined portion of the work.

4. A certification by an authorized signatory of the owner entity that over 50 percent of the controlling ownership is held by minorities and/or women.

After Selection for Funding

Upon selection for funding, all applicants (Grantees) must submit minority business enterprise (MBE) and women business enterprise (WBE) development plans.

If points are awarded based on Selection Factor I and the project is funded, HUD may request partnership agreements or other evidence after project selection. Failure to show compliance with Selection Factor I criteria at that time could result in withdrawal of funding approval.

For a project which is funded and was awarded points based on Selection Factor I, the original percentage of minority/women ownership may be increased but not decreased for at least seven years after initial occupancy, i.e., if a minority or woman controlling partner withdraws from the owner entity during this period, the replacement partner must be a minority or woman.

Part L. Assisted Housing Waiting List and Certificate Holders Search-Time

Priority will be given to applications which: (1) are located in areas where the waiting lists for housing assistance are relatively long; *AND* (2) where families holding certificates or housing vouchers require an excessive length of time to find housing. If these two conditions can be documented and verified, points will be awarded in accordance with Selection Factor "Priority Projects."

In order to show relatively long waiting lists, an applicant should provide the number and size of units available for assistance in the locality, i.e., public housing units, section 8 new construction/substantial rehabilitation units, Section 8 Existing Certificate and Housing Voucher programs and any other Federal, State or local housing assistance programs. Waiting list information from these same programs must also be provided by number and size of units. Information should be limited to the unit size proposed for HDG assistance. The comparison of availability of units versus the length of the waiting list will assist in eligibility determination for bonus points.

For condition (2), excessive time is generally defined as anything in excess of sixty (60) days. To complete the eligibility determination for bonus points, the applicant must show excessive search time for the size of the units proposed for HDG assistance. If the application proposes HDG assistance for two and three bedroom units, search time information must be provided for two and three bedroom units. In addressing this search time issue, applicants should take into consideration any or all of the following actions that may have taken place over the last two years: (a) The frequency with which extensions are granted to certificate holders who could not find suitable housing within the initial time period; (b) the number of times a single certificate is re-issued to a potential tenant before the certificate holder is successful in locating a suitable unit; (c) the number of times the PHA administering the Section 8 Existing Program may have had to revise the original bedroom composition of its certificates because units of a particular size were not available; (d) the availability of a local housing placement service which shortens search time for certificate holders; (e) any other mitigating factors that impact on a certificate holder's search time.

Part M. Project Information

Sections A through L of this Packet deal with the applicant, the owner, and the neighborhood. Part M of this Packet focuses on the project itself. Following is a brief guide to defining and documenting the project's financial and physical structure.

Prospective applicants should review all elements of Part M in great detail prior to selecting projects for submission. After selecting a project(s),

the applicant should immediately complete the steps outlined below under Preparing Basic Project Information and Technical Determinations. A separate section highlights special considerations for projects using mortgage insurance.

Structuring the Grant. The applicant should determine the most efficient use of the HDG funds. Following are allowable uses of the grant:

1. A one time up-front interest rate reduction payment;
2. An up-front development cost writedown;
3. Investment in a trust account (Project Investment Account—PIA) from which periodic payments will be made to maintain project feasibility in accordance with Part M-12 by:

a. Maintaining the restricted rents on the lower income units for the full Project Term (20 years or more);

b. Lowering the rents of market rate units; or

c. Making periodic interest payments on the debt service.

Applicants electing to use grant funds as a one time up-front interest rate reduction payment will be permitted to make a lump-sum drawdown of HDG funds *only* when the expenditure of non-Federal project funds reaches a level consistent with the Project Leveraging Ratio (Exhibit M-9). It must also be demonstrated that this mechanism is more cost effective to the Federal Government than a development cost writedown.

Where the grant is to be used for a development cost writedown, land costs are an eligible use of funds; however, since the owner must show clear title to the land in the evidentiary material required by Exhibit D of the Grant Agreement such funds will be made available on a reimbursement basis only.

PIAs for Items 3.a. and 3.b., except where Mortgage Insurance is involved, must be structured to reflect the assumption that project net income will increase at a rate which will reduce the required periodic payment over time. PIAs for periodic interest payments (3.c.) may be structured as constant payments provided it is demonstrated (and HUD approves) that it is the most efficient use of the HDG funds.

Other uses of the grant may be permitted subject to HUD approval. Applicants must demonstrate economic feasibility and cost-effectiveness; failure to do so will result in rejection of the application.

Preparing Basic Project Information. After selecting a project(s) which appears to meet the program requirements, the applicant and/or owner should immediately:

1. Order an appraisal. A basic outline of instructions to the appraiser is provided in this Packet, Part M-3. These instructions can be tailored to accommodate the determinations below. Exhibit M-1 can only be completed once the appraisal is prepared.
2. Complete Exhibit M-5, Determination of Maximum Rents for Lower Income Units. The section 8 very low-income limits may be obtained from the appropriate HUD field office; the utility allowance will be provided in the appraisal.
3. Complete Exhibit M-6, Format for Determination of Maximum Value.
4. Complete sections A, B and C of Exhibit M-1. The remainder of Exhibit M-1 will be completed after the appraisal is submitted.
5. Complete the sketch plan, typicals, elevation drawings, general outline specifications, and any special engineering reports. For substantial rehabilitation, the architect's work write-up also should be submitted.

Technical Determinations. After preparing the foregoing, the applicant should determine whether the following items are to be prepared by the appraiser or by a specialist.

The appraiser selected by the applicant or owner must have at least six years of experience as an appraiser, of which at least three must be in multifamily residential appraising. Where an HFA is providing the financing or acting as the state's agent, a staff appraiser of the HFA, who meets the qualifications specified above, may complete the appraisal as described in Part M-3 of this Packet. Qualified cost estimation and management staff of the HFA may also perform the cost and expense estimation functions.

1. The Estimate of Annual Expense. This may be prepared by an independent management firm experienced in the field of multifamily management and supplied to the appraiser.
2. The Estimate of Replacement Cost, Section G of Exhibit M-1. This may be prepared by an independent cost estimator experienced with multifamily cost estimating and supplied to the appraiser.

Any special independent engineering reports required for substantial rehabilitation cases should be supplied to the appraiser.

Projects With Mortgage Insurance. There are several special considerations for use of grant funds in conjunction with mortgage insurance:

1. *Appraisal.* A copy of the Conditional or Firm Commitment, with supporting Forms HUD-92264 and HUD-92264A *must be submitted* and will be used in place of an independent appraisal.
2. *Cash Requirement for Closing.* Where grant funds are needed to meet the cash requirement to close, 24 CFR 207.19(c) requires that the mortgagor deposit with the mortgagee, or a depository controlled by the mortgagee, an amount deemed by the Commissioner to be sufficient, when added to the proceeds of the insured mortgage, to assure completion of the project and to pay the initial service charge, the carrying charges, and the legal and organizational expenses incident to the construction of the project. In lieu of a cash deposit, a mortgagor may provide either an unconditional irrevocable letter of credit issued to the mortgagee in an amount deemed sufficient by the Commissioner or enter into an agreement with HUD, the grantee and the mortgagee. Such agreement shall comply with 24 CFR 207.19(c)(7) which requires either a cash escrow or an unconditional irrevocable letter of credit equal to no less than 10 percent of the writedown portion of the grant proceeds. The escrow or letter of credit shall be held by the mortgagee and drawn upon in the event the grantee fails to advance the grant proceeds in a timely manner. This letter of credit must remain in place until completion of construction.

Where grant funds are needed to clear title to the land, this letter of credit must be sufficient to cover the land cost. If land costs are greater than 10 percent of the grant, the larger amount will be required. Under no circumstance may this letter of credit be applied toward the owner's equity in the project or credited toward Total Settlement Costs (Section J of Exhibit M-1). The interest or cost of the letter of credit, however, may be considered an equity contribution and included in line J-9 of Exhibit M-1.

3. *Early Starts and Closing Procedures.* HUD will not permit early starts for projects using mortgage insurance. Mortgage insurance closings must occur simultaneously with the HDG approval of evidentiary material required by the Grant Agreement (24 CFR 850.63). When it becomes necessary for a project to reach initial endorsement prior to review and approval of the HDG evidentiaries, the grantee may provide a bridge loan to the owner in the full amount of the HDG writedown so that the mortgage insurance closing requirements of 24 CFR 207.19 can be met. Upon approval of the HDG evidentiaries and release of the HDG, the grantee may be reimbursed. On the average, approval of the evidentiary materials by HUD Headquarters and the field office counsel requires 45 to 60 days after submission.

4. *Project Investment Accounts.* Mortgage insurance in connection with a PIA, may only be used where payments from the account are a constant amount for 20 years. Applicants must complete Exhibit M-12 to demonstrate that the amount needed for the PIA is at least 10 percent less than the amount which would be required if the HDG funds were to be used as a development cost writedown. Also, the use of PIA funds is restricted to the maintenance of the lower income units. The grantee and the owner should review the requirements of a PIA in Part M-12 of this Packet.

5. *Non-Mortgageable Items.* Once the firm commitment for mortgage insurance has been processed, Exhibit M-1 must be amended to reflect the results. The costs shown in Exhibit M-1 may vary from the Form HUD-92264 only to the extent that allowable costs vary between the mortgage insurance and HDG programs. Some examples of items treated differently by the HDG program are: land acquisition costs, off-site construction costs, prepaid leases and leasehold fees and legal and organizational fees. This list may not be all inclusive and is provided only to give examples.

Part M-1. Project Application Form

This part of the application will consist of the Project Application (Exhibit M-1) and the Addendum. The next several pages of this Packet provide instructions for completing the form. While HUD will not subject the HDG application to the level of underwriting analysis completed for mortgage insurance processing, the major categories of costs, rents and expenses will be reviewed to determine that they are reasonable. Substantial guidance is provided to assist the applicant in making decisions about information provided by the owner. HUD will determine the reasonableness of all the information provided.

Projects that have a conditional or firm commitment for mortgage insurance *must* submit the commitment and Forms HUD-92264 and 92264A with the Exhibit M-1. Except for differences attributed to the different methods of calculating eligible costs under the two programs, the mortgage, cost and expense information on Exhibit M-1 must agree with the comparable information on Form HUD-92264.

Section A—Project Identification

Line 1. If the project is an existing project to be rehabilitated and the name is to be changed, include the old name in parentheses.

Line 4. To be completed by HUD.

Line 7. If combination, specify percentage of family and percentage of elderly.

Section B—Location and Description of Property

Line 7. Include lower income and market rate units as revenue. In non-revenue, list only units (for employees) for which rent will not be collected.

Line 11. Check all applicable.

Line 12. If several buildings involved, list range of stories.

Line 15. Examples include steel frame, wood frame, solid masonry, reinforced concrete.

Line 17. Examples include masonry, stucco, siding, prefab panels, etc.

Line 18. Use the following codes. Add "C" to the front of the code for any central system. Add "I" to the code for any individual system:

GFWA—gas, forced warm air
OFWA—oil, forced warm air
EHP—electric heat pump
OFHW—oil, forced hot water

Line 19. Use the following codes: Add "C" to the front of the code for any central system. Add "I" to the code for any individual system:

EHP—electric heat pump
GAC—gas air conditioning
EAC—electric air conditioning

Section C—Information Concerning Land or Property

Line 2. If the site has already been purchased, check the appropriate box and enter the purchase price. If the site has been optioned, check the appropriate box and enter the purchase price set forth in the option. Where the site is to be leased, leave blank.

Line 3. If the property has not produced income since acquisition, you may include rezoning expenses, taxes, improvements made, demolition costs, etc. Otherwise, you may include only the carrying charges. Amounts in this category will be screened by HUD for reasonableness. With a leasehold, enter the amount of ground rent to be paid during construction. Explain entry by attachment.

Line 4. Enter the acquisition cost plus additional costs from line 3. If the land is to be leased, enter the leasehold fee. (Do not include the annual lease payment or ground rent. This amount should be included in Section I, line 5.)

Line 10. Indicate any off-site improvements needed to bring services to the project lot line.

Section D—Estimate of Income

Lines 1 and 2. Before you complete this section, complete the Addendum for Exhibit M-1 in accordance with the following:

Unit Type—Specify unit type by using bedroom count, i.e., 2BR, 3BR, etc. If there are two types of units with the same bedroom count (such as a 2BR unit in a high rise *and* a 2BR unit in a row structure, or a 3BR unit with one bath *and* a 3BR unit with two baths or a den), each unit type should be listed on a separate line.

Lower income and market rate units of the same size and type are to be shown on the same horizontal line. Show market rents in the column labelled "Unit Rent Per Month" and the lower income rents (from Exhibit M-5) in the column labelled "Lower Income Rents."

No. of Living Units—Indicate total units for each type, including lower income and market rate.

No. of Lower Income Units—Indicate number of lower income units for each unit type.

Living Area—Indicate net rentable space within each unit type. Do not include square footage attributable to balconies (use separate lines for units with the same number of bedrooms with different square footages or average the square footage).

Composition of Units—Use the following codes in the order listed.

Number of Bedrooms—#BR
Den, if any—D
Dining Room, if any—DR

Example: 3BR, D, DR, K, 1½B, B

Unit Rent Per Month—Indicate the estimated market rent for each market rate unit type. (In the case of cooperatives, the unit rent per month would be the unit carrying charges.) These rent estimates must be prepared by a qualified appraiser in accordance with Part M-3 of this Packet or the rents must conform to those contained in Form HUD-92264 when a mortgage insurance commitment has been issued.

The estimated rent per month must be based upon and supported by current market rates established for similar units furnishing comparable services in competing areas. Appropriate adjustments must be made to reflect measurable differences between the subject units and comparable units and any variation in the general level of rents expected to occur by the time project units come on the market.

Personal Benefit Expense (PBE) Not Included in Rent—These estimates should reflect all of the utilities and

services checked in Section F of Exhibit M-1. The PBE estimate should be prepared by or reviewed by the appraiser and supported in Exhibit M-3 of the application.

Lower Income Rent—At least a full 20 percent of the total units in the project must be maintained for lower income occupancy for a minimum of 20 years. The rents in these units must be calculated in accordance with Exhibit M-5, Determination of Maximum Rents for Lower Income Units.

Where the applicant proposes a mechanism to lower the rent to give further assistance to very low-income tenants (below 50 percent of median income—See Part B-3), the funds to supplement the tenant's rental or cooperative monthly charges must be explained in Part B of the application. In all cases, Section D of Exhibit M-1, in the column for Lower Income Rents, must be completed using the formula rents calculated in Exhibit M-5.

The rents in all lower income units of the same bedroom count will be the same since the rent determination is based upon income limits and prototypical adjustments established by HUD, rather than a market analysis or square footage.

Total Monthly Unit Rent—(a) Multiply the number of lower income units by the Lower Income Rents. (b) Multiply the market rate units by the Unit Rent Per Month. (c) For each unit type, add the total of (a) and (b) and enter the sum in the last column, Total Monthly Unit Rent. Do *not* include the "PBE not in Rent" in the "Total Monthly Unit Rent" calculation.

EXAMPLE OF COMPLETED ADDENDUM (HUD-90031-A)

Unit type	No. of liv un	No. units lower inc	Living area	Composition of units	Unit rent per month	PBE not in rent	Lower inc rnts	Total mo. unit rent
2BR	3	1	850	2 BR, 1½ BA	650	55	250	1550
2BR	6	2	950	2 BR, 2 BA, DR	700	55	250	3300
3BR	11	5	1100	3 BR, 2 BA, DR	850	75	300	7300
Total	20	8						12150

After you have completed the Addendum, summarize the information in Section D, Items 1 and 2 of Exhibit M-1 as follows: Devote *one horizontal line only* to each bedroom count beginning from the top with 0 BR. Put 0 BR in column 1 under Unit Type on the first horizontal line, 1 BR on the second line, 2 BR on the third line, 3 BR on the fourth line, and 4 BR or more on the fifth line. If there are no units in the project with a particular bedroom count listed in column 1 of a horizontal line, *enter a zero in each column on the horizontal line.*

Where there is more than one unit type with the same bedroom composition listed in the Addendum (such as two types of 2 BR units), *the information for all units with the same bedroom count must be reflected on the same horizontal line.* Square footage and rents of these differing units *must be averaged* based on the number of units in each category, that is, if four market rate 2 BR units rent for $500 and one market rate 2 BR unit rents for $400 per month, the average appearing on horizontal line three under "Unit Rent Per Month" would be (4×$500)+(1×$400) divided by 5, or $480.

It is especially important that Line D-2, the Total Estimated Monthly Rentals for All Living Units, include the total income for all units from the Addendum.

Review the following example of entries in Section D, Items 1 and 2, of Exhibit M-1 (this is the same hypothetical example used above):

Unit type	No. of liv un	No. units lower inc	Living area	Composition of units	Unit rent per month	PBE not in rent	Lower inc rents	Total mo. unit rent
0 BR	0	0	0	0	0	0	0	0
1 BR	0	0	0	0	0	0	0	0
2 BR	9	3	917	See Addendum	683.67	55	250	4,850
3 BR	11	5	1100	3 BR, 2 BA, DR	850	75	300	7,300
4+BR	0	0	0	0	0	0	0	0
								12,150

Lines 3 and 4. Indicate in Line 3 the number of attended and/or self-parking spaces provided and the parking ratio. If covered or open parking spaces are *included* in the rent, list the number of each type of space in Line 4 and indicate zero income.

Line 5. All commercial space must be self-supporting. Where commercial space is proposed, Exhibit M-13 must be completed. This Exhibit indicates total cost attributable to the commercial space, debt service and project expenses attributable to the commercial space, and source of income to support debt service and expenses proposed. The appraisal included in Exhibit M-3 must support the conclusions on income from commercial space or the project may be rejected as infeasible.

Commercial space is generally limited to 10% of total gross floor area. HUD will consider requests for up to 20% commercial. Where such a request is made, attach (to Exhibit M-13) a discussion of the need for inclusion in the project.

Line 8. Gross floor area is the sum of all floor areas of headroom height within the exterior walls, measured to the exterior faces of the walls or to the center line of walls separating attached buildings. Note: built-in garages, commercial areas, basements and all other areas within the exterior walls are to be included.

Items excluded from the gross floor area are recessed, extended, or continuous balconies, carports, accessory buildings, patios, porches, or terraces and all other areas outside the exterior walls.

Line 9. Net Rentable Residential Area is the sum of all living areas within the exterior walls. Living area is the area of a living unit measured from the inside faces of corridor and exterior walls and from the center lines of partitions separating living and/or commercial areas.

Line 10. Net Rentable Commercial Area is the sum of all commercial area within the exterior walls measured from the interior faces of exterior and corridor walls and from the center lines of partitions separating commercial and/or living areas.

Section E—Equipment and Service

Self-Explanatory.

Section F—Utilities

Self-Explanatory.

Section G—Estimate of Replacement Cost

Line 1. Off-site costs reflected on this line may not exceed one percent of Section G, line 41.

Lines 1-10. If the owner is contracting with an arm's length general contractor, leave Lines 1-10 blank and complete only Line 11, Estimated Total Cost of Construction, by inserting the anticipated construction contract amount.

Line 7 must not exceed 10 percent of Line 5. Generally, builder's profit as a percentage of Line 5 should vary inversely with the size of the project; that is, while 10 percent may be appropriate for small projects, it will exceed the standards of reasonableness for large projects.

Line 13. The applicant should assure that the supervisory architect's fee is sufficient to obtain adequate inspection. The applicant should require monthly reports from the owner's supervisory architect to supplement the applicant's own monitoring.

Line 17. Calculate construction interest by multiplying one-half of the estimated construction loan by the interest rate per month. Multiply this amount by the number of months in the construction contract term plus two months (Line 16).

Lines 18 and 19. Indicate the estimated taxes and insurance for the period in Line 16. Insurance includes fire, windstorm, extended coverage, liability and other risks customarily insured in the community during construction. It does not include workmen's compensation and public liability insurance which should be included in the cost estimate in Line G-4.

Line 20. Include any mortgage insurance premium applicable to the construction loan(s) for the period in Line 16. Indicate the rate, as a percentage, in parentheses.

Line 21. Include fees charged by the construction and permanent lender for the examination and processing of the project loan application and mortgage insurance processing fees. No fees may be charged by the applicant. An HFA may charge its normal examination fee. If the applicant has required the owner to pay for an independent appraisal, engineering report, or cost analysis, this fee may also be included here.

Line 22. Include inspection fees charged by a mortgage insurer or by the construction lender as a condition of making the loan. The owner's inspecting architect's fee is included on Line G-13. The applicant may not charge any fee in this line item.

Line 23. Include any financing fee collected by the construction and permanent lender(s) for making the loan. This fee may not exceed three and one-half percent (3½%) of the amount of the permanent loan. This limit includes all expenses involved in underwriting, issuing bonds, if applicable, discounts, etc. Actual costs may exceed this amount but will not be included in calculations of maximum grant amount. Any amount in excess of 3½% may be reflected on line J-5.

Line 24. Include the costs typically incurred in connection with a mortgage transaction such as recording costs for all loans and mortgages, mortgage and stamp taxes, and the cost of survey and title policies in connection with construction and permanent loans.

Lines 25-27. Include any other charges attributable to the construction period and attach an explanation of any item included for consideration.

Line 29. Legal expenses are those expenses typically incurred by an owner for legal services necessary in the creation of projects of the size and kind proposed in the project market area. Legal expenses are separate from organization expenses and must be estimated and listed separately.

Line 30. Organization expenses are the costs of services typically required of an owner to initiate a project, its planning, financing, construction, and control and management of the construction of the project through final closing of the permanent loan. The organizational services may be performed for the owner by experienced individuals or specialists, or they may be performed by the owner.

The total of both legal and organizational costs must not exceed 2% of total development costs or $90,000 whichever is lower.

The following identifies the type of actions and efforts that qualify for consideration under organization:

1. Collecting and assembling data and documentation for the request for construction and permanent financing, including analysis of market need, selection and optioning of site and project design considerations.

2. Assembling data and documentation for mortgage closings from various parties involved in a project, arranging for execution of documents, and attending to closings. Ensure that only the administrative aspects are reflected so that there is no duplication of items under Line 29, Legal Expenses.

3. Controlling and accounting for disbursement of mortgage and grant proceeds.

4. Placing mortgagor's hazard and liability insurance; coordinating building release for occupancy.

5. Continued contact and dealing with lenders and the applicant through closing of the permanent loan and close out of the grant.

Organization expenses *must not* include costs of zoning changes, any of the costs typically included in the estimate of replacement cost, marketing expenses, or recurring operating expenses.

Line 33. Contingency reserve may be included only in substantial rehabilitation projects. This reserve may be up to five percent (5%) of the construction contract amount to cover change orders that are necessary after the rehabilitation process is begun.

Line 34. Include only relocation/displacement costs specifically justified in Part I of the application; but not the escrow needed to meet the obligation to very low-income persons who remain in the project. This escrow amount should be reflected in section K. HUD will review the estimated relocation/displacement costs and reduce or increase this line item if costs are determined to be out of line.

Lines 35-38. In the case of non-profits, cooperatives and mutuals, enter marketing expenses, normally not to exceed three percent of Line 39, Total Estimated Development Cost. Other projects are not permitted to list marketing expenses.

Non-profits, cooperatives and mutuals (Part M-11) may also enter a consultant fee on a separate line, normally not to exceed one percent of Line 39, Total Development Costs. Consultant's fees for profit-motivated rental projects are *not* an allowable line item, except as appropriate to cover an historic preservation consultant for rehabilitation projects.

The following may not be included in Exhibit M-1 (1) Developer/Sponsor's fee

or Risk Allowance; and, (2) syndication fee or expense.

Line 40. If the site has been purchased within the last three years in a true arms-length transaction, enter the purchase price plus any costs associated with the ownership of the property to date, less any income from the property during the period of ownership, (Section C, Box 4). If there is less than a true arms-length transaction, HUD reserves the right to use the lesser of the appraised value or the purchase price.

If the property was purchased more than three years ago, include an estimate of the property's "as-is" value supported by the appraisal in Exhibit M–3.

If the project is to be located on a leasehold, enter the ground rent during the construction period plus any costs paid for the purchase of the lease.

Section H—Annual Income Computations

Line 2. Include the estimate of long-term collection potential as a percentage of gross income. This figure must be based on consideration of market rate and lower income units as well as commercial space and other income sources and should be supported (in the case of non insured cases) by the appraisal in Exhibit M–3. *In the case of cooperatives,* rather than a vacancy allowance, a five percent operating reserve is normally reflected (a three percent operating reserve and a two percent vacancy factor). This percentage may be higher where commercial income is involved. Lower occupancy percentages during the rent-up period should be reflected in Line J–4, Initial Operating Deficit Reserve.

Section I—Estimate of Annual Expenses

Estimate annual expenses for one full year operating period of the project, not the construction period. It must be based upon actual operating experience of comparable projects, adjusted for differences between the proposed project and the project from which the estimates were developed. This estimate must be developed either by the appraiser or by an independent management firm experienced in the area of multifamily management, and supplied to the appraiser for his review and use in the appraisal. In either case, the estimate included in this section must consider both residential and commercial expenses and be supported by the appraisal in Exhibit M–3 or the mortgage insurance commitment (Form HUD–92264).

Only totals for general categories of expenses as indicated on lines one (1) through seven (7) of this section are required. Guidance is provided, however, on the elements that make up each of these line items to assist the applicant in reviewing the owner's proposal and to provide greater assurance that HUD will find the items reasonable.

Line 1—Total Administrative

Total Administrative includes advertising, management fee and any other administrative expenses associated with the owner in operation of the project. If the owner intends to self-manage the property, an allowance must be made to reflect a paid manager and necessary overhead expense.

Line 2—Total Operating

Elevator Maintenance. This includes the estimated cost of service and repairs required to maintain the elevators. It includes service calls and service inspections of the equipment, lubrication and adjustments, and the replacement of worn or defective parts. Maintenance contracts, often referred to as "parts, oil and grease" contracts, may be used to produce the estimate.

Fuel (Heating and Domestic Hot Water). This estimate may include fuel requirements for both heating and domestic hot water. If the tenant pays for heat, only heat used in public spaces is estimated. The estimate should be based on actual expense data for similar projects with similar heating systems and types of fuel.

Lighting and Miscellaneous Power. This estimate is based on electricity expense paid by similar projects.

Water and Sewer. Tenants' domestic requirements where not included in rent, and common requirements such as laundries, boiler water, yard sprinkling and any other project water needs such as a pool.

Gas. This estimate is based on amounts paid by similar projects.

Garbage and Rubbish Removal. The adequacy of public service, if proposed, should be examined as it may be necessary to provide a supplemental service.

Payroll. This includes all personnel directly employed by the project with the exception of administrative personnel. Only cash outlays are included in the payroll cost estimate. Housing provided in the project in lieu of compensation is *not* included. Payroll data from other projects may be utilized where good maintenance and high occupancy ratios exist. The appropriate number of employees can be determined by comparing the size and needs of the project to similar well-run projects.

Other. Insert any item of operating expense peculiar to the project and not included in other estimates. Include expenses such as janitorial materials and equipment, electric light bulbs, small tools, etc.

Line 3—Total Maintenance Expenses

This estimate includes all items of repair and maintenance which competent management deems necessary to maintain the property in an acceptable operating status. The allowances should represent the probable average expenses per year necessary to preserve and protect the property and its attractiveness at a standard expected by tenants. The estimate should be based on data from similar projects more than three years old.

Decorating Costs. Develop estimates based either on employment of an independent contractor for a fixed price, or on materials only if work is to be performed by employees included in payroll.

Repairs. Include the average annual maintenance cost of all physical parts of structures and equipment (exclusive of grounds maintenance) not estimated elsewhere. Grounds maintenance is separately estimated elsewhere. Repairs and maintenance of many items will not recur yearly; however, a replacement reserve account must be included in the expense estimate. Replacement reserves for noninsured projects are limited to .004 percent of the total mortgage, excluding any PIA. Insured projects must use the allowance approved in the mortgage insurance commitment.

Exterminating. Estimates of local exterminating contractors may be used or the work may be done by project labor.

Insurance. Data for estimating insurance expense is obtained from comparable properties. Public Liability Insurance should be included.

Grounds Expense. Include replacement of plant material, yard maintenance equipment, driveways, on-site streets, lighting standards, playground equipment and the like. Consideration must be given to the composition of the expected occupancy, e.g., the probability of damage to lawns and shrubs by children. This expense is affected by the design and type of project under consideration and the extent of grounds to be maintained.

Other. Estimate expenses not included above, e.g., maintenance of furniture, carpets and/or drapes furnished in the units.

Line 4—Total Taxes

For the preparation of this estimate, basic data is obtained from the local assessor's methods and data gathered from comparable properties. Taxes are estimated separately for real estate, personal property, payroll and miscellaneous taxes. If tax abatement has been granted it should be reflected here and explained in Exhibit M–2.

Line 5—Special Assessments

Include the annual cost of special assessments and ground rents, if any.

Section J—Total Settlement Requirements

Line 1. Self-explanatory.

Line 2. If property is owned subject to existing mortgage liens, enter amount required to retire outstanding indebtedness. If property is to be acquired, enter the amount of the purchase price less any option fee already paid. If property is owned free and clear, leave blank. If applicant is providing a land writedown enter purchase price (or appraised value, where applicable) less the amount of writedown. For a leasehold, enter the unpaid portion of any leasehold fee plus the lease or ground rent to be paid during construction.

Line 3. Self-explanatory.

Line 4. Enter the estimated amount (if any) required to cover operating and debt service expenses from project completion until full occupancy when project income will be at its maximum. Commitments in this category are not expected to exceed 1 to 6 months debt service depending upon the project type, location and the vacancy rate for the area.

Line 5. Enter the amount of any loan discounts not included on Line G–23 that will be paid to the construction lender and/or the permanent lender.

Line 6. If tax-exempt financing is to be used for the permanent financing only, enter the amount of any anticipated interest yield cost (i.e., the anticipated difference between the interest that will be due on the escrowed bond proceeds and the investment income that will be earned on the escrowed proceeds where a loss is projected).

Line 7. Enter the amount of working capital reserve necessary to cover the cost of equipping and renting the project after completion: accrued taxes, property insurance premiums, mortgage insurance premiums, etc. Such reserve shall not exceed 2½ percent of the mortgage amount including any HUD/Grantee construction writedown or the allowance permitted with mortgage insurance.

Line 8. Enter the cost of required improvements outside the project boundaries (e.g., streets and utilities) that are not reflected on Line G–1 and will not be installed at public expense or at the expense of the utility company.

Line 9. Enter costs not itemized elsewhere; attach an explanation. The restrictions on Lines G–35 through 38 apply to this line item.

Line 10. Self-explanatory.

Line 11. Self-explanatory.

Line 12a. Self-explanatory.

Line 12b. Enter the amount of HDG funds to be used to cover costs associated with the development of the project. Do *not* enter the amount of any HDG funds to be used to provide lump sum interest reduction payments, project investment account, or any other form of assistance that does not help defray the cost of developing the project.

Line 12c. Enter the sum of any non-HDG grant and the value of any in-kind contributions that will cover development costs which otherwise would have been incurred by the owner. Do not include land writedowns, non-development related escrows or tax abatement.

Line 12d. Enter the total amount of funds to be made available by the owner. This amount includes funds to be invested as equity in the project (i.e., the amount shown on Line 4d of Section K *less* any equity in the land value and less any escrow funds put up by the owner for non-development related costs, *plus* additional funds, such as cash or letter(s) of credit, to be made available to cover items such as the working capital reserve, the initial operating deficit reserve, and any other type of closing cost contingency reserve not included in the project replacement cost in Section G). This total should equal the total shown on line J–11.

Section K—Source of Project Funds

Box 1. Self-explanatory.

Box 2. Check one box in the first column *and* at least one box in the second column. In the first column, check "Loan" if at least one half of the HDG funds will be repaid and if payments on the HDG loan principal balance will begin no later than the 21st year of project operation. (For projects using a Project Investment Account (PIA), half the funds will be considered repaid *only* if half of the funds disbursed to the project from the PIA are repaid.) Otherwise, check "Grant." Do *not* check both "Grant" and "Loan."

In the second column, for interest reduction mechanisms, check the first box in the second column only if the HDG funds will be escrowed to make periodic interest reduction payments. If, however, funds will be provided through an up-front interest "buy-down mechanism, such as discount points (see discussion under Part M, General Information), check 'Other' and explain.

Box 3. If the applicant intends to provide HDG assistance to the owner in the form of a loan, provide a summary of the terms of repayment and describe the repayment structure in Part M–2.

Boxes 4 and 5 (General Guidance)

See instructions for completing Exhibit M–8 to determine the amount of equity contribution required.

Housing Development Grant profit motivated and limited distribution project owners must provide at least a 10 percent equity contribution. Cooperatives, mutuals and non-profit owners do not have to comply with this requirement except when such an entity creates a for-profit structure or when a for-profit corporation is involved in the project ownership.

Box 4. Identify all principals of the owner entity responsible for equity capital and specify the amount to be provided. The following types of owner contributions should be included as "equity" in this Box 4:

1. Cash investment by the principals for project replacement costs (Section G of Exhibit M–1), additional loan discounts (Line J–5), interest yield costs (Line J–6) and off-site construction costs (Line J–8), or for an escrow account as necessary to offset debt service or to meet the relocation requirements of Part I. "Syndication proceeds" are not an acceptable category because the owner must demonstrate an independent capacity to provide identified funds.

2. Land equity may be included. To value such equity for sites owned more than three years, include the appraised value less any debt owed on the property. Where the site has been held for less than three years, the purchase price less any debt owed may be used as equity. Adequate evidence of this equity should be provided in Part M–7 or be supported by the Appraisal in M–3, as appropriate. This figure will be identical to Section J Line 2 above, except where the appraised value is acceptable as an equity contribution.

3. Where the owner has an identity with the builder or the architect, the builder or architect may contribute a portion or all of the fee to the project in exchange for future project earnings or syndication proceeds.

The amounts identified in this section constitute an irrevocable commitment by the owner to contribute such equity toward development costs of the project. These amounts may not be reduced, notwithstanding any changes in total costs or financing. All items listed will

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be included in the computation of the project leveraging ratio calculation.

Where an owner funded escrow account is required (e.g., to finance the difference between project net income and debt service or very low-income, or relocation subsidies) the amount of the escrow account included in Box 4 will be computed in the project leveraging ratio but will not be counted as a part of the owner's 10 percent equity contribution.

Box 5. Indicate the sources and amounts of any owner equity contributions which shall be made available on a contingent or "as needed" basis, such as letters of credit for working capital or operating deficit reserves. In the event such amounts are not needed to meet the contingent obligation or other project overruns, the owner is obligated to make an equivalent cash contribution to the grantee (not as payment on the HDG loan) as necessary to meet the minimum equity required (10%) or the amount committed in Box 4, whichever is greater.

Funds which will not be considered an equity contribution in either Box 4 or Box 5 include the following:

- Debt service reserves required in connection with the issuance of bonds.
- Developer's fee.
- Grants by public organizations.
- Any debt against the project or the "Sole Purpose" owner entity of the project.
- Builder-Sponsor Profit and Risk Allowance (BSPRA) as calculated in mortgage insurance processing Form HUD-92264. Risk allowance is not an allowable cost and will not be considered equity; however, Builder's Profit may be left in the project as specified in the Section K, Box 4 instructions.
- Other ineligible expenses include marketing expenses (except in the case of cooperatives or mutuals), consultant fees (except in the case of non-profits, cooperatives, mutuals, or projects involving historic preservation), rent-up expenses, utility deposits, syndication fees and all refundable fees and escrows.
- Any letter of credit or cash escrow required in connection with mortgage insurance under 24 CFR Part 207.

Box 6. Indicate the amounts and sources of all *permanent* loans (excluding the HDG loan) to be provided to cover costs associated with project development. Indicate for each loan the anticipated annual debt service amount (i.e., payment for principal, interest and, if applicable mortgage insurance premium), and whether the source of the loan is "private", "federal" or "other public."

One of the three boxes, "private", "federal" or "other public" *must be checked* if the project is to get credit for the loan in HUD's calculation of the project leveraging ratio. Loans funded from the proceeds of tax-exempt bonds and loans with insured mortgages should be classified "private."

On the same line, indicate whether the loan will be insured. If the loan is to be funded by tax-exempt bond proceeds, indicate whether tax exemption will be sought under HUD's section 11(b) or section 103 of the IRS Code.

Box 7. Indicate the amount and source of any non-HDG grant to be provided to cover costs associated with the development of the project, as well as the value and source of any in-kind contribution or land write down to be provided to offset costs that the owner would otherwise incur. Funds committed to carry out activities such as "related off-sites" or "water and sewer lines" may not exceed the amount necessary to complete that portion which directly benefits the project. For example, the installation of an access road to benefit other development activity must be credited proportionally to the current HDG project.

Indicate for each grant, in-kind contribution or write down whether the source is "private", "Federal" or "other public" (CDBG funds and revenue sharing should be classified as "other public").

The value of non-HDG public subsidies committed for project operation (e.g., tax abatement, rent subsidies, operating subsidies and interest reduction payments) may also be listed in Box 7. Include the actual amount of such subsidy if it is to be fully expended during the development period and/or the first four years of full project operation. If the subsidy is to be disbursed over a period more than four years of full project operation, include the present value of the subsidy payments based on a 10 percent discount.

Section L—Project Schedule

Provide the projected schedule for the project. For projects that are to be completed in stages, indicate the number of units in each stage beside the projected date. ALL PROJECTS MUST START CONSTRUCTION WITHIN 24 MONTHS OF THE HUD NOTIFICATION OF SELECTION OF PROJECT FOR PRELIMINARY FUNDING APPROVAL OR LOSE HDG FUNDING.

Section M—Project Principals

This section of the application requests the names, roles, percentage of ownership, minority status and gender of individual principals. "Percentage of Ownership" means percentage of controlling ownership. For a limited partnership, list the interest percentage of the "general partner" only (as opposed to his/her percent of ownership of the "limited partner" interest) and do *not* include anyone whose sole role in the project is as a limited partner.

When identifying project principals, pay particular attention to the conflict of interest regulations at 24 CFR 850.35(k). If a project principal has any business or family tie to the applicant (or the jurisdiction in which the project is located) or if the project principal is an employee, agent, consultant, officer or elected or appointed official of such an entity, such a connection must be publicly disclosed and a written exception to the conflict of interest must be requested *prior to* application submission. All information required by this regulation cite must be addressed. The granting of an exception will be considered on a case-by-case basis. Should there be any question of a conflict, seek advice from the HDG Division staff prior to application submission. When completing the minority identifier, one of the following numbers must be indicated in the box provided on the form:

1. White, not Hispanic
2. Black, not Hispanic
3. Asian or Pacific Islander
4. Hispanic
5. American Indian or Alaskan Native

In completing the Gender portion, the letter F should be used for female and the letter M for male.

If it is intended that the project qualify for the five points under Selection Factor I, Minority and Women's Business Enterprise, all project principals with a minority identifier other than "1" or with a gender listed as "F" must have their project role documented with an executed certification (Exhibit K-3) included in this Packet.

Part M-2. Narrative Feasibility Assessment

This section describes the financing structure of the project. This section, together with Exhibit M-1 and the Part M-12 long term narrative and pro forma analysis, should provide an adequate understanding of project financing and demonstrate, to HUD's satisfaction, financial feasibility for the Project Term.

HUD will also review these sections to determine if the grant request, contrary to the HDG statute, is "clearly in excess of the amount necessary to provide decent rental or cooperative housing of modest design". HUD reserves the right to make grant reductions, as necessary, during Application Review or preparation of the Grant Agreement in accordance with sound project economics. Any and all materials presented in the application or requested thereafter will be used to determine the extent of such reductions.

The discussion of the financing structure in part M-2 should include, at a minimum, a description of all sources of debt financing, the distribution of residual receipts in the case of profit-sharing, the impact of the owner/applicant's intent to charge rents that are lower than the market rents set forth in the appraisal, arrangements for a land writedown, the value of a local tax abatement program, a Payment In Lieu of Taxes (PILOT) program and any state or local subsidy to be used in conjunction with the project.

If the HDG funds are to be loaned to the owner, the terms and conditions of repayment must be discussed in this Part. The repayment terms must meet certain criteria in order to receive the two points under Selection Factor E-1 in the rating and ranking process. The criteria are described in paragraph E-1 in Attachment 2 of this Packet and in the Instructions to Exhibit M-1 Box K-2.

All projects must have the assurance of adequate financing for the Project Term (minimum 20 years or Project Term specified in Part B-3). Amortized mortgages that are paid off in less than 20 years are permissible; however, balloon payments which must be refinanced during the Project Term are not allowed. Call provisions, uncapped variable rate mortgages, and the like, are also unacceptable. On the other hand, put provisions or variable rate mortgages with a definitive cap, i.e., a stated percentage cap, will be accepted provided that financing and feasibility can be assured (in this Exhibit M-2 or M-12) with some reasonable level of confidence for the Project Term. Failure to provide such assurance will result in rejection of the application.

Any proposal to charge rents for the HDG units which are less than Exhibit M-5 rents must: (1) estimate the income loss to the project (i.e., the cumulative total of the difference between Exhibit M-5 rents and the proposed lower rents for the Project Term for the number of units subject to the lower rents); (2) identify a source to subsidize the loss of income from charging rents less than Exhibit M-5 rents; and (3) include a firm commitment from the identified source to provide the necessary subsidy. HDG funds cannot be used to subsidize rents below the Exhibit M-5 rents. Project income in Parts D and H of Exhibit M-1 must reflect the Exhibit M-5 rents.

Part M-3. Instructions to the Appraiser. (Appraisal not required where mortgage insurance commitment has been issued.)

An appraisal is required as part of a Housing Development Grant (HDG) application to be submitted to HUD. The HDG program provides grant funds for the development of rental, cooperative or mutual housing. Projects must provide a minimum of twenty percent of the units for occupancy by lower income households for a minimum of twenty years. If the application is awarded a grant, the funds will be used to [Applicant, insert a brief description of the project, how the grant funds will be used, i.e., a loan or grant; development cost writedown or project investment account].

The appraisal must be prepared by a professional who has at least six (6) years of experience, three (3) of which must be in multifamily. Furthermore, the appraisal must be no more than one year old. The appraisal must also determine value by all three approaches: Cost, Market and Income. The document must also provide a determination of land value upon project completion.

In addition, the appraisal must address the following:

1. *Estimate Fair Market Rents.* Estimate the fair market rents for the market rate units. The estimated rental rates per month must be based upon and supported by current market rates established for similar units in comparable projects furnishing comparable services in competing areas. A separate analysis must be made for each unit type proposed in the HDG project application form. Appropriate adjustments must be made in each analysis to reflect measurable differences between the subject units and the comparable units and to account for market increases expected to occur by project occupancy which is scheduled in [Applicant, insert month and year of anticipated first occupancy].

2. *Composite Occupancy Rate.* Estimate the long-term collection potential of the project as a percentage of gross income. This figure must take into consideration any varying rates of collection for the market rate units, [commercial space], and lower income units.

3. *Estimate of Commercial Income.* The estimate of anticipated commercial income should be supported by market data and should include a discussion of the most likely commercial tenants.

4. *Determination of Maximum Rents for Lower Income Units.* Using the data supplied in Exhibit M-5, and estimating the PBE in consideration of the data provided or developed on tenant-paid utilities, complete Exhibit M-5. The M-5 rents constitute the maximum rents which may be charged for the lower income units and will serve as the maximum income to be derived from the lower income units in any debt service analysis. HDG rents must be calculated according to Exhibit M-5 and are *not* to be projected to date of expected occupancy.

5. *As-Is Value of the Site.* Provide an estimate of the fair market value of the property in its current condition.

6. *Conclusion of Total Value of Completed Property.* Using the data supplied concerning the physical construction of the project, the rents for the lower income units, the estimate of rents developed for the market rate units and commercial space, prepare a statement of total value. Any capitalization rates used should be supported by market data. This statement of value should take into consideration:

a. the existence of the 20 year rent restriction for the lower income units; and,

b. any restrictions on value such as limitations placed on the project as a result of bond issuances, limitations on project rentals resulting from additional assistance (over and above the assistance provided to lower income units) to accommodate very low-income tenants, encumbrances on the property as a result of secondary financing or the conditions of the HDG grant funds, etc.

The total value of the project, by statute, cannot exceed the maximum value calculated in Exhibit M-6. The determination of value based on the income approach is the value compared to the Exhibit M-6 value. If the income approach to value exceeds the Exhibit M-6 value, you should contact the applicant immediately so that the project may be redesigned or other steps taken to comply with the statutory requirements. This computation should *not* include the value or the amount of the HDG request in any form.

7. *Estimate of Annual Expense.* Where an independent specialist will not be used, provide an estimate of annual expenses anticipated during the first full year of occupancy; the maintenance and repairs estimate will reflect the first full cycle of maintenance. This estimate should be based upon actual operating experience of comparable projects,

adjusted for differences between the proposed project and the projects from which the estimates were developed. Consider residential and any commercial expenses (separately identified) and reflect items in Section I of Exhibit M-1.

8. *Estimated Replacement Cost.* Provide an estimate of the proposed replacement cost reflecting the items identified in Exhibit M-1. Costs for any commercial space should be listed separately. The replacement cost estimate may be subcontracted out to a reputable cost estimator, and supplied to you for your consideration in making the required determinations.

9. *Use of Independent Specialists.* An estimate of annual expenses and total replacement cost has been ordered and will be provided for consideration in making the required determinations. These estimates should be reviewed and determined acceptable prior to use. Any problems with these estimates should be brought to the applicant's attention immediately.

Part M-4. Substantial Rehabilitation Eligibility Test (Not Applicable to New Construction)

Projects may be developed through New Construction, Substantial Rehabilitation or a combination thereof. If a project includes rehabilitation, it must meet the definition of "substantial rehabilitation" which requires:

A. repairs, replacements and improvements that cost more than the *greater* of (1) 15 percent of the property's value after completion or (2) $6,500 per dwelling unit adjusted by the supportable high-cost factor (see Attachment 4) or

B. the replacement of more than one major building component (includes roof structures; ceilings, walls or floor structures; foundations; plumbing systems; heating and air conditioning systems; or electrical systems).

The test for substantial rehabilitation must be addressed in one of two ways:

For A above, complete Exhibit M-4 in this Application Packet.

For B above, provide a narrative in Part M-4 which describes the rehabilitation work to be completed.

Part M-5. Determination of Maximum Rents for Lower Income Units

The format included as Exhibit M-5 must be completed and submitted with the application. Information required on line 1 must be obtained from the appropriate HUD field office. Line 5 is to be completed by the appraiser after consideration of the utilities to be paid by the tenant in each unit type. The computed rents are the maximum rents chargeable for the lower income units regardless of family size or the income of individual households.

Enter the rents from Exhibit M-5 in Section D of Exhibit M-1 under the column headed "Lower Income Rents." Do *not* project the rents calculated on Exhibit M-5 to the date of occupancy. Updating rents using the most current HUD issued income limits may occur 60 days prior to initial occupancy.

Part M-6. Determination of Maximum Value

The statute and the regulations at 24 CFR 850.37(9) establish a maximum value for projects assisted under the HDG program. Project value cannot exceed the amount which would be insurable using the statutory cost limits of Section 207 of the National Housing Act. Value for the HDG Project is defined as the income approach to property valuation. This determination must be completed as part of the appraisal (Exhibit M-3). The value does not include the HDG or any other Federal, state or local subsidy anticipated as a result of this application.

All applicants must complete and submit Exhibit M-6. This form determines the limit which must be greater than or equal to the appraised income approach to value.

Information on high cost factors are included in Attachment 4. If your community is not listed, contact your local HUD field office for a locality adjustment.

Part M-7. Firm Project Commitments and Site Control

Applications will not be considered for preliminary approval unless they contain evidence of firm financial commitments. All of the guidance necessary to meet the definition of a "firm commitment" is provided in this Part. This guidance specifies the minimum requirements for financial commitments for *all* projects. Commitments which do not reflect the minimum requirements described herein will result in a determination of project infeasibility which will eliminate the project from competitive consideration. Projects that meet the minimum criteria are entitled to one (1) point under the rating system. More points are earned by meeting some or all of the requirements for Additional Points.

Requirements for all Projects

Every owner, lender, investment banker, or other party providing funding or in-kind contributions to the project must provide a firm commitment to make such resources available in the event the HDG is awarded. A general letter of interest or support is not a firm commitment. For example, a commitment which may be withdrawn due to "adverse economic conditions," or "adverse profit position of the developer" or which is subject to "confirmations of the project's economic feasibility," is not a firm commitment. A statement from the Housing Finance Agency (HFA) indicating that the loan board has not met to approve the inducement resolution, but that the project has received staff-level endorsement, is not a firm commitment.

Commitments which contain unreasonable conditions or conditions which are unlikely, in HUD's opinion, to be met in a timely manner, will result in rejection of the application on grounds of infeasibility. Financing commitments may provide reasonable timing constraints, e.g., the commitment expires at a future date which provides sufficient time for HUD reviews and notification of awards, or a range of interest rates, provided there is a ceiling on the rate. In the latter case, the applicant must explain the effect of increased interest rates on the project's financial feasibility in Part M-2.

All projects must have the assurance of adequate financing for 20 years or the Project Term, if longer than 20 years. Amortized mortgages that are paid off in less than 20 years are permissible; however, balloon payments requiring refinancing during the Project Term are not allowed. Call provisions, uncapped variable rate mortgages, and the like, are unacceptable. On the other hand, put provisions or variable rate mortgages with a definitive cap, i.e., a stated percentage maximum, will be accepted provided that financing and feasibility can be assured (in Exhibit M-2 or M-12) for the Project Term.

Where the cost of acquisition has been included in the determination of the maximum grant amount for a substantial rehabilitation project (Part M-8), the financial commitment from the primary lender must reflect *refinancing* in accordance with 24 CFR 850.37(d). The commitment must identify the amount of the existing debt to be paid off where there is an identity of interest between the owner of the site and the owner of the project. In the case of an arms length sales transaction, the commitment must reflect the amount of an existing mortgage which is to be assumed by the HDG owner. In each case, the full amount borrowed must be applied to the construction costs of the HDG.

Requirements by Type of Financing

A. Equity Sources

The following must be provided:

1. Evidence of capacity to provide the committed equity as shown by financial statements (e.g., balance sheets, net worth statements, income statements) showing a net worth exceeding three times the committed cash equity, or a letter of credit or commitment from a lending institution to provide a letter of credit in the event the HDG is funded. (Where an owner has other HDG submissions the net worth test will be applied to the combined equity requirements.)

2. A signed commitment(s) from the builder and/or architect that their fees will remain in the project, if applicable.

3. A statement that the equity committed will be used for project development costs as determined eligible under instructions for Exhibit M-1, Section K.

4. If land equity is committed, provide evidence of land acquisition, date of purchase, purchase price and any outstanding indebtedness. For sites held more than 3 years, the appraisal (Exhibit M-3) must reflect the estimated "as is" value.

B. Commitments from Public Bodies

A commitment from the public sector is an agreement from a unit of general local government, county, or state to provide (1) a grant, loan and/or a loan guarantee for a particular amount of money for the proposed project, such as a State/local financed periodic payment account to be used after construction; (2) a commitment to carry out certain activities such as related off-site improvements, or a land writedown; and/or (3) for the absorption or forgiveness of certain expenses related to the project such as tax abatement or waiver of certain local fees. Commitments from public bodies must consist of:

1. A resolution adopted and signed by the appropriate officials stating the purpose, the nature of the assistance, the amount of the commitment and the source of funds committed, e.g., CDBG.

2. In the case of tax abatement, a letter from the appropriate local official citing the local statute, conditions and term (number of years) of the abatement and an estimate of the approximate dollar value of the abatement. (The discounted value at 10 percent is recorded on Line K-7 of Exhibit M-1.)

3. A statement that the public body will enter into a legally binding commitment.

Where future year's resources, such as CDBG funds, are committed, provide an opinion from applicant's counsel that the applicant has the authority to commit a future year's resources and that the commitment is legally binding and consistent with requirements governing the use of such funds, e.g., an approved three-year CDBG plan.

C. Credit Enhancement

When credit enhancement is required as a condition of a firm financial commitment of any kind, evidence of such enhancement *must* be provided. HUD will expect to find evidence of credit enhancement for all taxable bond financing unless there is a firm commitment to purchase the bonds. Commitments conditioned upon mortgage insurance must provide a Conditional or Firm Commitment as evidence. Failure to provide evidence of such enhancement will result in rejection of the application on the grounds of infeasibility.

D. Private Debt Financing (Except Bonds)

1. Minimum Requirements

Projects must provide a commitment from a permanent lender. Such commitment *must* contain the term(s), interest rate and any other conditions required by the lender and must be signed by the lender's chief executive officer (CEO) or authorized designee.

2. For Additional Points

Before consideration can be given to points beyond the minimum, the application *must* contain a commitment from the interim (construction) lender. Once this criteria has been met, maximum points will be awarded to projects with commitments which contain all of the following:

a. A full statement of any terms, conditions, interest rates or range of rates, disbursement conditions, security requirements, and repayment provisions.

b. A statement that the necessary feasibility reviews or studies of the project are complete and its financial structure *does not warrant a higher financial commitment.*

c. Evidence that there are no conditions on the commitment except the awarding of the HDG to the applicant and the availability of other resources for which firm project commitments are provided in the application.

d. The commitment must be signed by the lending institution's CEO or his designee and contain assurance that the required approval steps, such as action by a loan committee, approval by a parent company, or resolution of a board have been completed.

e. Where there could be any question that the committed resources will be available, submit evidence that such resources are available to the project or identify a firm source for such resources. A firm project commitment from such source must also be provided. For example, mortgage brokers which normally do not hold (or warehouse) long-term loans, should provide evidence of financial capacity to fund the loan or evidence of a take-out loan.

f. A statement or owner's signature on each commitment evidencing the owner's understanding and acceptance of the commitment as stated.

E. Tax-Exempt Bond Financing

1. Minimum Requirements

Projects to be financed with revenue bonds (tax-exempt securities) must meet the following *minimum requirements*:

a. The issuing authority must provide a signed copy of the inducement resolution approving the issue. The inducement resolution must state the term and approximate amount of the bonds.

[Definition. For purposes of this program, an inducement resolution is a document which has been approved by the agency issuing the bonds and which states the amount of the bond issue and any state/local requirements for the use of the bond proceeds. This document must identify the project and contain some indication that the agency has evaluated and accepted the financial feasibility of the project (this assurance may be provided in a separate document, if necessary,) and that the resolution has been approved by the Board of Directors.]

b. Bond counsel must provide an opinion that the issuing authority can legally issue the bonds and the interest earned on the bonds is exempt from Federal income taxation.

c. An investment banker or underwriter must provide a firm commitment to purchase the bonds either for their own account and/or for reoffering. The commitment must state the anticipated interest rate and the amount of the financing. The commitment must state that the analysis has been completed, State and Federal regulatory requirements have been satisfied and that there are no findings or conditions (except state "blue sky" clearances to sell securities) which would prevent marketing of the issue. Terms and conditions of the offering must be limited to reasonable timing considerations and relatively narrow floor/ceiling terms reflective of market conditions.

State and local agencies which propose to use revenue bond proceeds already on hand must provide the following as minimum requirements:

i. A copy of the executed inducement resolution approving the bond issue from which the funds were derived.

ii. A certification from the issuing authority that adequate funds are available and committed to this project.

iii. A copy of the bond counsel opinion that this bond issue was exempt from Federal income taxation.

iv. Evidence that the issue was underwritten and that the bonds were sold.

2. Special Considerations for State Housing Finance Agencies

Projects with an inducement resolution (see definition above) provided by a State Housing Finance Agency and meets the minimum requirements for tax-exempt bond financing will pass Threshold 15, Financial Feasibility. HUD is still required, however, to make a determination that project costs, terms and conditions of the financing (including the proposed mortgage interest rate), and the owner's proposed equity contribution are appropriate and reasonable before the project can pass Threshold 16 (see Attachment 1).

3. For Additional Points

The application must contain a commitment from a financial institution for both the construction and permanent financing. If the issuing authority intends to provide either or both, the resolution or certification must so state. In addition, the inducement resolution, certification, and/or the underwriter's commitment must contain the following:

a. A statement as to whether the interest rate is fixed or variable and, if variable, the maximum rate and benchmark for changes.

b. A statement as to whether credit enhancement is required. If required, a commitment for credit enhancement and a description of the provisions which allow the financing to stay in place for 20 years or the Project Term, whichever is longer, must also be provided. Bonds with less than a 20 year credit enhancement are not acceptable.

F. Taxable Bond Financing

1. Minimum Requirements

Projects proposing the use of taxable bonds must provide the following:

a. A commitment from the issuer that the bonds will be/have been issued for the purpose of financing this HDG project. This commitment must state the term and the anticipated interest rate of the bonds and *whether credit enhancement* is required.

b. A description of the provisions which allow the financing to stay in place for 20 years or the Project Term, whichever is longer.

c. Either: (i) A commitment for credit enhancement which specifies the nature of the credit enhancement and length of the enhancement; or, (ii) a commitment from an investment banker or underwriter which provides a firm commitment to purchase the bonds in accordance with F.1.b. of this part.

2. For Additional Points

Projects must provide a commitment from both the interim (construction) and permanent lenders. Such commitment must contain the term(s), interest rate and any other conditions required by the lender and must be signed by the lender's CEO or authorized designee. If one lender is providing both the interim and the permanent financing, the commitment must so state.

G. Tax Credits Under the Tax Reform Act of 1986

No commitment for tax credit is required unless one or more of the project's firm financial commitments requires a tax credit allocation as a condition of financing. In this case, this part of the application *must* contain a written commitment from the governor (or his designee) or the chief executive officer of the agency which is authorized to administer the tax credit program. The written commitment must do the following:

1. Commit the State to allocate the necessary tax credits to this project subject only to the award of the HDG.

2. Identify the number of tax credit eligible low income units to be provided.

3. Identify the year of the tax credit allocation, i.e., the year in which the units are to be placed in service.

4. Cite the authorization (Executive Order, legislative action) which delegates responsibility for administering the tax credit, where applicable.

Site Control

Evidence of site control must be provided in the form of a contract of sale for the site, a copy of the site option agreement, or a deed or other legal commitment conveying the site to the owner. The application must also include a legal description of the site which will be attached to the Grant Agreement.

Applications containing a commitment to convey city-owned sites, or sites owned by local public bodies are acceptable provided that the application contains evidence that any official action (i.e. City Counsel/Board of Commissioners resolution) which is necessary to convey the site to the owner has been taken. In cases where a site is to be acquired by the city/local public body through the eminent domain process, the application must contain evidence that 1) any official action which is necessary to take possession of the site has taken place; 2) the purchase price has been negotiated and agreed upon; and, 3) a legally binding commitment exists to acquire and convey the site to the owner upon award of the grant.

Failure to exercise an option to purchase, or lease, or a local commitment to acquire and convey after grant award, may result in recision of the grant. Encumbrances to site conveyance or project development including protective covenants, zoning, or other barriers to acquisition, should be investigated prior to submission. Changes in site after award of the HDG are prohibited by 24 CFR 850.31(f).

Part M-8. Determination of Maximum Grant and Minimum Equity

All applications must contain a completed Exhibit M-8.

Determination of Maximum Grant

The statute and regulations at 24 CFR 850.37(d) require that grant amounts not exceed 50 percent of HUD's determination of costs associated with new construction or substantial rehabilitation of the project. Acquisition costs are generally excluded from this determination. *In the case of new construction projects,* acquisition costs may be included when at least *one* of the following public purposes are met:

1. The project has *at least* 30 percent of the units available to lower income families; *Or*

2. The lower income units have an average bedroom count of 3.0 or more; OR

3. The rents on the "market rate" units are written-down to within 110% of the Section 8 Existing fair market rents (FMRs) to assist moderate income households.

In the case of substantial rehabilitation projects, acquisition costs may be included when at least *one* of the above public purposes is met *AND* the owner demonstrates that the debt on the project is being refinanced. In order for this to occur, the application must show that there is *either:* i) an identity of interest between the owner of the structure and the owner of the project and that the project owner intends to obtain new financing to pay off existing debt; or, ii) an arms-length sales transaction where the new owner will assume the existing mortgage and then refinance.

In the case of an identity of interest, the financing commitment must specify the amount of existing debt to be paid off. In the case of an arms-length transaction, the financing commitment must specifically state that the existing debt will be assumed by the project owner.

Determination of Minimum Equity Contribution

The bottom half of Exhibit M-8 enumerates components of development costs which are included in determining the owner's minimum equity contribution. Refer to Exhibit M-1 to complete the Exhibit M-8, item 2. The sum of the amounts shown in Exhibit M-1, Sections K-4 and K-5, less any owner funded escrow account, must equal or exceed the amount computed in line 2.h. of Exhibit M-8.

Part M-9. Leveraging Ratio

The applicant must compute the Leveraging Ratios included in Exhibit M-9. Instructions are provided with the form. Read the instructions carefully.

Part M-10. Architectural Information

A sketch of the site plan, typical building elevations, typical unit floor plans, outline specifications and the work write-up for substantial rehabilitation projects must be submitted with the application. As certified in Exhibit K-1, item (v), the plans must reflect compliance with the minimum percent of units designed for the handicapped as required by the Rehabilitation Act of 1973.

Part M-11. Cooperatives and Mutuals Only

All projects for which tenants purchase a share in project ownership must identify the project ownership during development, provide a schedule and description of any planned changes to the ownership structure during project operation, indicate any restrictions on the sale of cooperative shares and describe how increases in rents or "carrying charges" and any special assessments over the Project Term will be allocated among units.

Such narrative statement must demonstrate to HUD's satisfaction that: (1) the housing is best classified as a cooperative or mutual rather than as a condominium project, (2) the monthly "carrying charge" for lower income units, including any cooperative fees or assessments, will remain at HDG formula rent levels without endangering project feasibility for the Project Term; (3) the initial and resale prices of lower income cooperative shares shall remain affordable to lower income households for the Project Term; and (4) the project qualifies to be exempt from the HDG program ten percent equity requirement. In cases where any equity has been committed, the owner must meet the minimum net worth and/or letter of credit requirements for equity sources described under Part M-7 of this Packet.

In order to assist the applicant in completing this Part, we are providing the following definitions of cooperative and mutual housing along with guidelines for exemption from the ten percent equity requirement:

"Cooperative housing" refers to joint control by the residents of multi-unit housing. A cooperative corporation retains undivided ownership of the housing. Purchase of a certificate or share of stock in the cooperative corporation entitles a household to exclusive occupancy of the unit as a tenant of the corporation and participation in operation of the corporation either directly as an elected Board Member or indirectly as a voter.

Many cooperative housing projects are initiated by for-profit developers who construct or rehabilitate the project and subsequently transfer ownership either through a single transaction or gradually over a period of time to a newly formed cooperative. In such cases, the Part M-11 narrative must describe the intended schedule and terms of ownership transfer between the owner and the cooperative corporation. These projects will *not* be exempted from the HDG program 10 percent owner equity requirement unless the following guidelines are met: (1) transfer of ownership to the cooperative corporation must be completed within three months after the project achieves sustaining occupancy; and, (2) the total price paid to the owner by the cooperative corporation may not exceed the certified total project cost (costs covered by Item J-11 of Exhibit M-1), plus any operating losses sustained by the owner prior to the ownership transfer, plus a reasonable rate of return on the owner's equity in the project less any portion of the HDG not scheduled for repayment during the Project Term.

"Mutual housing" refers to housing which is developed and owned by mutual ownership of a corporation. A mutual ownership corporation is similar to a cooperative corporation but owns and engages in multiple economic enterprises. Purchase of a share in a project owned by a mutual ownership corporation entitles a household to exclusive occupancy in a unit, participation in the operation of the project and participation in operation of the parent mutual ownership corporation.

Part M-12. Long-Term Project Feasibility and Periodic Payments

Each HDG project must provide a pro forma analysis which demonstrates long-term financial feasibility for the Project Term. Where the grant or a portion of the grant is to be invested to provide periodic payments from Project Investment Accounts (PIA) to maintain project feasibility, the pro forma becomes the Investment Plan prescribed below. In addition, each project with a constant payment PIA must demonstrate (complete Exhibit M-12) that the PIA is at least ten percent (10%) less expensive to the government than a development cost writedown.

A. Pro Forma Contents

The pro forma must project economic conditions over the Project Term and predict their effect on project feasibility. The economic conditions must be based upon a reasonable set of assumptions including, but not limited to, rental income, operating expenses, changes in rental income and operating expenses, occupancy rate, and a reasonable return on equity for the owner. Project feasibility as reflected in the pro forma must demonstrate that the project can generate sufficient revenue to meet all financial obligations for the Project Term.

Return on Equity. The owner's return on equity (ROE) is negotiable between the owner and the applicant. The applicant may restrict the owner's return on equity and thereby participate in the net proceeds. Notwithstanding any additional restrictions on the ROE by the applicant, HUD will assess compliance with the guidelines below in the review of the M-1 and project pro forma at the application stage as well as at project close-out.

1. For 100% elderly projects: the initial year ROE may not exceed 6 percent.

2. For 100% non-elderly projects: the initial year ROE may not exceed the greater of 10% *OR* the debt service constant.

3. For Projects which contain both elderly and non-elderly (family) units: Compute the ROE separately for the elderly and family portions using the limits identified above. Add the two returns together for a maximum initial ROE.

Example: Project is 60% family and 40% elderly

Equity	$1,000,000
Debt Service Constant	10%

Compute: $1,000,000 × 60% × 10%.....$60,000
$1,000,000 × 40% × 10%.....$24,000

Initial ROE.....$84,000

4. For projects which use a PIA, the initial year ROE is restricted as above. Any subsequent year ROE may not exceed 13 percent for the life of the PIA.

Any ROE which exceeds these guidelines may result in a grant reduction which can occur either during the application review process or during preparation of the final grant agreement.

B. Project Investment Accounts (PIA)

Projects with PIAs must have an Investment Plan which includes all of the above pro forma requirements. In addition, the Investment Plan must describe the amount to be invested, the type and quality of the investment(s), the anticipated interest rate to be earned and the period of investment. The Investment Plan must also set forth a disbursement schedule for making periodic payments which includes assumptions used to arrive at payment amounts.

PIA Disbursements. The Investment Plan disbursement schedule must provide for declining payments except when mortgage insurance is provided or when PIAs provide constant payments for interest writedowns as described in Part M, Structuring the Grant. Where PIAs are proposed, the disbursement schedule must show that both the principal of the HDG and all interest earnings from the investment will be completely amortized. The periodic payments from the PIA may not include amounts for initial operating deficit reserves or HDG repayments. Such reserves, where necessary, must be funded through other sources.

PIAs for projects with mortgage insurance must provide for constant payments for 20 years. Constant PIA payments may also be used for interest rate buydowns provided it can be demonstrated (subject to HUD approval at either the application review or grant agreement stage) that this mechanism is more efficient than declining payments. Applicants using constant payment PIAs must complete Exhibit M–12.

Where constant payments are used, any portion of the payment which is in excess of debt service plus a predetermined reasonable ROE to the owner will be considered residual receipts. A Residual Receipts Note will be executed and the trust agreement for the PIA will clearly define disbursement procedures. The Residual Receipts Note and disbursement procedures are discussed in detail in a separate document entitled "Conditions Precedent to the Drawdown of Funds." Where declining payments are used, any portion of the payment in excess of debt service plus a predetermined reasonable ROE to the owner must remain in the PIA for future shortfalls which may exceed the scheduled payment. Any balance remaining in the PIA at the end of the PIA term must be returned to the applicant as program income, except in the event of an involuntary loss, including foreclosure. In the case of such a loss, the HDG restrictions may be released and any balance in the PIA must be returned to HUD.

In all cases, it is the responsibility of the applicant to demonstrate project feasibility in the application submission by showing that there is no further need for PIA funds at the end of the PIA term (a maximum of 20 years) and that the PIA payments are sufficient when needed. The pro forma and Investment Plan must show that project income from any relevant source (e.g., interest earnings from a bond debt service reserve) will be sufficient to support the project after the PIA terminates. Failure to demonstrate such feasibility may result in rejection of the application.

Grant funds for PIAs will be released 60 days prior to initial occupancy provided the expenditure of project funds is in accordance with the Project Leveraging Ratio. The PIA funds may be invested by the grantee in a separate interest-bearing account, or by a trustee on behalf of the grantee, or transferred to the owner for investment by a trustee. The primary lender (construction or permanent) may not serve as Trustee of the PIA nor can the PIA be used as collateral for the primary loan. The investment strategy and disbursements from the PIA must be in accordance with the approved Investment Plan (such plans are given final approval during preparation of the final grant agreement) and, where a trustee is involved, such Plan must be incorporated in an executed Trust Agreement and submitted as one of the evidentiary documents required by the grant agreement.

Part M–13. Determination of Acceptability of Commercial Space

Commercial space must be self-supporting. All projects with commercial space must submit Exhibit M–13.

Commercial space is generally limited to 10 percent of total gross floor area. HUD will consider requests for up to 20 percent commercial. Where such a request is made, attach (to Exhibit M–13) a discussion of the need for inclusion in the project. The marketability of commercial space as well as the residential units will be taken into consideration during the technical review of the application.

Portions of the project building cannot be legally separated through establishment of a condominium regime to circumvent the 20 percent limitation on commercial space.

Part M–14. Determination of Maximum Units for Least Cost

Complete Exhibit M–14 and submit with the application. This Exhibit will be used in awarding points under Selection Factor E.

Points will only be awarded to projects where the overall average bedroom composition does not exceed the average lower income bedroom composition by more than 20 percent. This procedure avoids awarding points to projects where the grant would disproportionately assist the "market rate" units. Part M–15. Rent Control

24 CFR 850.153 states that rent control laws or ordinances passed after November 30, 1983, are preempted for projects funded under the HDG program. Rent control requirements or agreements in effect prior to November 30, 1983, are applicable if they would normally apply to projects not funded under HDG.

BILLING CODE 4210–27–M

EXHIBIT A

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☐ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

2. DATE SUBMITTED — Applicant Identifier
3. DATE RECEIVED BY STATE — State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY — Federal Identifier

5. APPLICANT INFORMATION
Legal Name: — Organizational Unit:
Address (give city, county, state, and zip code): — Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es) ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ . ☐☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date — Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant — b. Project

15. ESTIMATED FUNDING

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative — b. Title — c. Telephone number
d. Signature of Authorized Representative — e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF 424 (REV 4-88) Back

BILLING CODE 4210-27-C

Exhibit B-2—Rent and Tenant Eligibility Determination

Grantee Rent Mechanism

1. Section 17 of the United States Housing Act of 1937 and the HDG regulations promulgated thereunder and contained in 24 CFR Part 850, restrict rents charged for lower income units during the Project Term to not more than thirty percent of the adjusted income of a family whose income equals fifty percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families. Section 17 and the HUD/Grantee Grant Agreement require the Grantee to review and approve rents proposed by the owner to be charged for lower income units. The grantee also is required to assure that the type and number of units specified in Section 1.01(e)(2) of the Grant Agreement are occupied or available for occupancy by lower income families during the Project Term. The Grant Agreement requires the grantee to have established a Rent Mechanism to implement the above responsibilities of the grantee.

2. The grantee acknowledges that HUD periodically will determine the income limits for lower income and very low-income families. Based upon the Very Low-Income limits, the HUD occupancy standards limiting the number of persons in each bedroom size category (i.e., 0-Br, 1-Br, etc.), the prototypical adjustments to income established by HUD, and the owner's estimate of the monthly cost of utilities and other essential housing services (utility allowance) to be paid for directly by the tenant, the owner will determine the maximum monthly net rent for each lower income unit. In calculating this amount the owner will follow the format contained in Exhibit M-5 of this packet.

3. Except as noted below, the initial rent schedule for lower income units and the utility allowances shall be as contained in the application approved by HUD.

4. The Owner shall recalculate the rent schedule and the utility allowances and submit the recalculated schedule and allowances to the grantee for review not later than 60 days prior to initial occupancy. The rent schedule recalculation shall be based upon the most recent HUD determination of the Very Low-Income limits and prototypical adjustments. The utility allowances shall approximate a reasonable consumption of utilities by an energy conscious household of modest circumstances.

5. In estimating reasonable consumption levels, the owner shall use, as appropriate, the following sources of information on the cost of utilities and services:

(a) Consumption data on residential use of utilities obtained from utility suppliers or other sources (such as public service commissions, real estate and property management firms, state and local agencies).

(b) Engineering calculations based on technical data concerning energy requirements of appliances and equipment.

(c) Data obtained from energy audits.

6. In establishing allowances, the owner shall take into account relevant factors affecting consumption including

(a) The equipment and functions intended to be covered by the allowance.

(b) The climatic location of the project.

(c) The size of the dwelling units and the number of occupants per dwelling unit.

(d) Type of construction and design of the housing project.

(e) The energy efficiency of owner supplied appliances and equipment.

(f) The physical condition, including insulation and weatherization of the housing project.

(g) Temperature levels intended to be maintained in the unit during the day and at night, and in cold and warm weather.

(h) Temperature of domestic hot water.

(i) If a utility (e.g., garbage collection) is charged on a fixed price basis, the full amount of the price shall be incorporated into the allowance.

7. The Grantee shall review the owner's calculations of the maximum monthly net rent and utility allowances and the information sources used.

8. If the Grantee determines that the calculations are correct and the utility allowances are reasonable, the owner shall be so notified.

9. If the Grantee fails to notify the owner within 60 days after receiving the rent schedule, including the utility allowances, that the schedule and/or allowances are not approved, they shall be deemed approved if they are within the permissible maximum allowed by the Grant Agreement.

10. In the event the owner is notified of the Grantee's disapproval, the recalculated schedule and utility allowances shall not be used. Both parties shall promptly meet to resolve their differences.

11. Subsequent to the initial recalculation, described in item 4 above, of the rent schedule and utility allowances, the maximum monthly net rent for each lower income unit may be recalculated by the owner and submitted to the Grantee for review whenever the HUD determination of Very Low-Income limits, applicable person limits by unit size, or prototypical adjustments to income are revised. Utility allowances may be revised if there is a rate change. In any event, the owner shall recalculate and submit to the Grantee, for review, the maximum monthly rent to be charged each lower income unit, and the utility allowances, twelve months from the date of the first recalculation by the owner, and annually, thereafter, on this date.

12. Any increase in rents for lower income units is subject to the provisions of outstanding leases. In any event, the owner must provide tenants of those units not less than 30 days prior written notice before implementing any increase in rents.

Tenant Eligibility

1. The owner may lease a lower income unit only to a tenant that is a lower income household at the time of its initial occupancy.

2. In order to determine whether a prospective tenant or a tenant is a lower income household, the owner shall ascertain the annual income of the family. Annual income is the anticipated total income from all sources to be received by the family head and spouse and by each additional member of the family, including all net income derived from assets, for the 12-month period following the effective date of initial determination or reexamination of income, exclusive of income that is temporary, nonrecurring or sporadic, as defined in 24 CFR 813.106(c) and exclusive of certain other types of income specified in 24 CFR 813.106(d). As necessary, the owner will consult with the HUD field office to obtain advice and guidance with respect to income determinations.

3. The owner must verify all income, assets, household characteristics, and circumstances that affect eligibility. Written verification directly from the source must be obtained when possible. The owner must maintain documentation of all verification efforts for at least three years after the effective date of the determination.

4. In verifying income the owner shall to the extent feasible:

(a) Maintain a checklist for each tenant documenting verification efforts and tracking progress.

(b) Develop standard verification forms for all information that must be verified. Such forms should: (1) explain why the information is being requested; (2) contain the tenant's authorization to

release information; and (3) ask specific questions that will solicit the specific information required.

(c) Ask applicants/tenants to sign two copies of each verification form.

(d) Send self-addressed, stamped envelopes with the request for verification.

(e) Make personal contacts with large employers and public agencies from whom a large number of tenants receive income.

(f) Give the family an opportunity to explain any significant differences between the amounts they reported on their application and amounts reported on third-party verifications.

5. The owner shall reexamine the income of each tenant household living in lower income units at least once a year.

6. The Grantee shall review the owners verification efforts at least annually to determine whether eligible families are occupying lower income units.

7. In the event a tenant is determined over income, the owner will take one of the following actions, as appropriate: (a) If the unit occupied by the tenant must be leased to a lower income household to maintain the percentage of lower income units specified in the Grant Agreement, the owner must notify the tenant that he/she must move when the current lease expires or six months after the date of the notification, whichever is later; (b) If the owner can meet the lower income unit percentage without the unit occupied by the tenant (by leasing another unit to a lower income family at the appropriate formula rent), the owner may continue to lease to the formerly lower income family, but is free to renegotiate the rent at the expiration of the current lease.

8. The owner shall market the units in accordance with the HUD approved Affirmative Fair Housing Marketing Plan and all fair housing and equal opportunity requirements.

9. With the exception of the income limit requirements, the standards and criteria for tenant selection shall be the same as those used for the market rate units.

_____

Date

_____

Signature

Exhibit C-1—Applicant Certifications

(Other than Equal Opportunity/Non Discrimination and Moderate Rehabilitation certifications which appear separately.)

The Applicant hereby assures and certifies that it will comply/has complied with the following:

1. The submission of the application is authorized under State and local law (as applicable), and the applicant possesses the legal authority to apply for the grant and to carry out the responsibilities of a grantee in the program.

2. It developed its rental development program after consultation with the public.

3. The project will not cause the involuntary displacement of very low income households by households that are not very low-income households.

4. If a State is the applicant, it is applying for assistance on behalf and with the concurrence of, a specified unit of local government.

5. Its chief executive officer or other officer of the applicant approved by HUD:

a) Consents to assume the status of a responsible Federal official for environmental review, decision making and action pursuant to the National Environmental Policy Act of 1969, and other authorities listed in 24 CFR 58.5 insofar as the provision of such Act or other authorities apply to the Housing Development Grant program.

b) Is authorized and consents on behalf of the applicant and himself/herself to accept the jurisdiction of the Federal courts for the purpose of enforcement of his/her responsibilities as such official.

6. The application is consistent with any applicable Housing Assistance Plan.

7. Check one of the following:

☐ The project will be constructed or substantially rehabilitated in accordance with applicable State and local building codes.

☐ Given the absence of these codes, the project will be completed in accordance with the following nationally recognized model building code(s):

_____

8. It will comply with the requirements of Part 850.35 of HUD regulations regarding:

a) Relocation requirements for mitigating displacement caused by the project.

b) Environmental and Historic Preservation requirements of section 104(f) of the Housing and Community Environmental Policy Act, implementing regulations and related laws and authorities.

c) Labor standards.

d) OMB Circulars A-102, A-128, A-87, and A-122.

e) The Lead-Based Paint Poisoning Prevention Act and implementing regulations at 24 CFR Part 35.

f) The intergovernmental review requirements of Executive Order 12372 and implementing regulations at 24 CFR Part 52.

g) Conflicts of interest.

h) Use of debarred, suspended or ineligible contractors or subcontractors.

i) The flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973.

9. The prohibition in Paragraph 850.17(b) of the HUD regulation against use of grant funds for administrative costs incurred by an applicant or grantee in carrying out its Housing Development Grant Program responsibilities.

_____

Title

_____

Signature

_____

Date

Exhibit C-2—Owner Certifications

(Other than non-discrimination and equal opportunity certifications which are included as a separate submission)

The Owner hereby assures and certifies that it will comply/has complied with the following:

1. Housing Development Grant Program project restrictions listed in § 850.151 of HUD regulations:

(a) Mandating an owner-grantee agreement requiring the owner and any successors in interest to carry out requirements of the regulation and the grant agreement;

(b) Preventing the owner from converting project units to condominium ownership for 20 years after project availability for occupancy;

(c) Prohibiting discrimination in tenant selection against households with children unless the project is for elderly housing;

(d) Restricting occupancy in the units designated as "lower income units" to lower income households for 20 years after 50 percent of the units are first occupied;

(e) Limiting rent levels for designated "lower income units" to 30 percent of the adjusted income of a family earning 50 percent of the area median (adjusted for family size) as defined by HUD;

(f) Requiring annual income recertifications for households living in lower-income units and specifying owner actions for such households no longer qualifying as lower-income; and

(g) Prohibiting local residency requirements and restricting residency preferences.

2. Paragraph 850.35(m) of HUD regulations requiring compliance with the flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973.

3. Paragraph 850.17(c) of HUD regulations prohibiting Housing Development Grant funds from assisting construction or substantial rehabilitation of housing currently assisted or anticipated to be assisted under any HUD housing programs or the Urban Development Action Grant program, assisted under section 305 or 313 of the National Housing Act, Farmers Home section 515, or formerly owned by HUD.

3. Any other requirements of Part 850 of the HUD regulation.

_____

Signature

_____

Title

_____

Date

Exhibit F—Moderate Rehabilitation Exclusion—Area Determination

(This certification is mandatory for special need and neighborhood preservation applications.)

The Applicant hereby assures and certifies that the type of housing need addressed by the project cannot be met by moderate rehabilitation of existing units in the project neighborhood as evidenced by the applicability of the following statement(s) (check at least one).

1. ☐ The unit of general local government made reasonable efforts to obtain assistance under each Federal program providing assistance for moderate rehabilitation of real property that could be used to meet the proposed occupancy of the lower income units in the project, but was unsuccessful in obtaining the assistance. (These programs include the section 8 Moderate Rehabilitation Program under CFR 882, Subpart D, and the Rental Rehabilitation under 24 CFR Part 511); or

2. ☐ In the case of a unit of general local government that receives assistance under any such Federal program, the unit of government solicited for moderate rehabilitation projects in the project neighborhood to meet the proposed occupancy of the lower income units in the project under the program, but was unable to obtain any responses; or

3. ☐ The project neighborhood does not meet the requirements for assistance under such Federal program. (For example, the project neighborhood does not meet the neighborhood eligibility requirements for the Rental Rehabilitation Program under § 511.10(d) of HUD's regulation. Because of differences between areas that qualify as a project neighborhood under different programs, a determination that the proposed occupancy of the lower income units in the project cannot be met through moderate rehabilitation on the basis of neighborhood ineligibility under the Housing Development Program will be made only if no activities under the moderate rehabilitation programs are being, or are anticipated to be, carried out in the project neighborhood); or

4. ☐ The project neighborhood lacks housing stock in size or design appropriate to the proposed occupancy of the lower income units in the project; or

5. ☐ The housing stock in the project neighborhood that count be used to meet the proposed occupancy of the lower income units in the project is too deteriorated that the moderate rehabilitation of such stock is not feasible; or

6. ☐ Other reasons (subject to HUD review and approval)

_____

_____

_____

_____

_____

_____

_____

Signature

_____

Date

_____

Title

Exhibit G—Rental Vacancy Rates for Housing Shortage

1. Define the area of housing shortage used (specify name of jurisdiction or define the housing market area)

_____

_____

_____

2. Overall Rental Vacancy Rate
   a. 1980 Census Rental Vacancy Rate _____%
      (1) for the jurisdiction ☐
      or
      (2) for the housing market area ☐
   b. Current Overall Rental Vacancy Rate _____%
      (1) for the jurisdiction ☐
      or
      (2) for the housing market area ☐
3. Lower-Income Rental Vacancy Rate
   a. 1980 Census Lower-Income Rental Vacancy Rate _____%
      (1) for the jurisdiction ☐
      or
      (2) for the housing market area ☐
   b. Current Lower-Income Rental Vacancy Rate _____% (Item 3.b. is optional. See Part G.2.b. and c. of the Package.)
      (1) for the jurisdiction ☐
      or
      (2) for the housing market area ☐

Note: If data for the "jurisdiction" is used in 2.a., then data for the "jurisdiction" must be used in 2.b.

Exhibit J—Certification of Completion of Environmental Assessment

☐ This is to certify that we, the applicant, have completed an environmental assessment for _____ Project, in accordance with the National Environmental Policy Act (NEPA) regulations (40 CFR 1500-1508), and have made a finding of Significant ☐ or No Significant ☐ impact. Upon selection of this project for Housing Development Grant funding, we will complete all remaining requirements found at 24 CFR Part 58. We will not proceed with construction/rehabilitation prior to requesting release of funds under the Part 58 regulations.

☐ This is to certify that we, the applicant, have determined that no environmental assessment is necessary for the _____ Project as it meets all conditions cited at 24 CFR Part 58.35(a)(4) and is "categorically excluded" from the Part 58 NEPA environmental requirements. A determination and identification of the affected applicable environmental authorities cited in § 58.5 has been made. Upon selection of this project for Housing Development Grant funding, we will complete all remaining requirements found at 24 CFR Part 58.34 (b).

☐ This is to certify that we, the applicant, have determined that the _____ Project is a "categorically excluded" activity as defined at 24 CFR Part 58.34(a) but find that specific circumstances and conditions exist that may have a significant environmental effect. Hence, we will not proceed with rehabilitation until all NEPA requirements have been met.

_____

Chief Executive Officer

_____

Date

Exhibit K—Applicant Equal Opportunity and Non-Discrimination Certifications Housing Development Grant Program

The applicant hereby assures and certifies that:

(i) It will comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352) and regulations pursuant thereto (24 CFR Part 1) which states that no person in the United States shall, on the ground of race, color, or national origin, be excluded from particiation in, be denied

the benefits of, or be otherwise subjected to discrimination under any program or activity for which applicant receives financial assistance; and will immediately take any measures necessary to effectuate this agreement. With reference to the real property and structure(s) thereon which are provided or improved with the aid of Federal financial assistance extended to the owner, this assurance shall obligate the owner, or in the case of any transfer, the transferee, for the period during which the real property and structure(s) are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(ii) It will comply with Title VIII of the Civil Rights Act of 1968 (Pub. L. 90–284), as amended, which prohibits discrimination in housing on the basis of race, color, religion, sex or national origin; and, regulations pursuant thereto (24 CFR Parts 108 and 200) requiring that the applicant assure that the owner prepares and implements an AFHM Plan, to be approved by HUD prior to drawdown of the grant funds and that it will provide HUD with its evaluation of the owner's implementation of the plan.

(iii) It will comply with Executive Order 11063 and regulations pursuant thereto (24 CFR Part 107) on Equal Opportunity in Housing which prohibits discrimination because of race, color, creed, or national origin in housing and related facilities provided with Federal financial assistance.

(iv) It will not discriminate in the procedures used to mitigate displacement caused by the project as required by 24 CFR 850.35(d).

(v) It will comply with section 504 of the Rehabilitation Act of 1973.

(vi) It will comply with Executive Order 11246 and all regulations pursuant thereto (41 CFR Chapter 60–1.5) which states that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of Federal contracts and subcontracts (contracts or subcontracts in amounts less than $10,000 are exempt) and shall take affirmative action to insure equal employment opportunity.

(vii) It will comply with section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) which requires that, to the greatest extent feasible, opportunities for training and employment be given to lower income persons residing within the unit of local government or the metropolitan area (or nonmetropolitan county), as determined by the Secretary in which the project is located; and contracts for work in connection with the project be awarded to business concerns which are located in or owned in substantial part by persons residing in the same metropolitan area (or nonmetropolitan county) as the project.

(viii) Jointly with the owner it will prepare minority and women-owned business plans, to be submitted to and reviewed by HUD, prior to drawdown of funds and that these plans will be implemented throughout the construction period.

(ix) It will comply with the prohibitions against age discrimination under the Age Discrimination Act of 1975 and discrimination prohibitions against handicapped individuals under section 504 of the Rehabilitation Act of 1973.

(Date) (Title) (Signature)

Exhibit K–2—Owner Equal Opportunity and Non-discrimination Certifications Housing Development Grant Program

The owner hereby assures and certifies that:

(i) It will comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352) and regulations pursuant thereto (24 CFR Part 1) which states that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives financial assistance; and will immediately take any measures necessary to effectuate this agreement. With reference to the real property and structure(s) thereon which are provided or improved with the aid of Federal financial assistance extended to the Owner, this assurance shall obligate the Owner, or in the case of any transfer, the transferee, for the period during which the real property and structure(s) are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(ii) It will comply with Title VIII of the Civil Rights Act of 1968 (Pub.L. 90–284), as amended, which prohibits discrimination in housing on the basis of race, color, religion, sex or national origin; and, regulations pursuant thereto (24 CFR Parts 108 and 200) requiring marketing in accordance with an Affirmative Fair Housing Marketing Plan, Form HUD 935.2, submitted to and approved by HUD prior to the applicant's drawdown of funds.

(iii) It will comply with Executive Order 11063 and regulations pursuant thereto (24 CFR Part 107) on Equal Opportunity in Housing which prohibits discrimination because of race, color, creed, or national origin in housing and related facilities provided with Federal financial assistance.

(iv) In establishing the criteria for the selection of tenants, the Owner will not utilize preferences or priorities which are based upon the length of time the applicant has resided in the jurisdiction. The Owner shall treat non-resident applicants who are working, or have been notified that they are hired to work in the jurisdiction, as residents of the jurisdiction.

(v) It will comply with Executive Order 11246 and all regulations pursuant thereto (41 CFR Chapter 60–1.5) which states that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of Federal contracts and subcontracts (contracts or subcontracts in amounts less than $10,000 are exempt) and shall take affirmative action to insure equal employment opportunity.

(vi) It will comply with Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) which requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income persons residing within the unit of local government or the metropolitan area (or nonmetropolitan county), as determined by the Secretary in which the project is located; and contracts for work in connection with the project be awarded to business concerns which are located in or owned in substantial part by persons residing in the the same metropolitan area (or nonmetropolitan county) as the project.

(viii) Jointly with the Applicant it will prepare minority and women-owned business plans, to be submitted to and reviewed by HUD prior to drawdown of funds and that these plans will be implemented throughout the construction period.

(ix) It will comply with the prohibitions against age discriminated under the Age Discrimination Act of 1975 and the discrimination prohibitions against handicapped individuals under Section 504 of the Rehabilitation Act of 1973.

(Date) (Title) (Signature)

Exhibit K–3—Certification of Minority/Women Ownership

This is to certify that we, the Applicant, have examined ownership documents for the owner entity, _____, and are satisfied that the minority/women entity or partner(s) is clearly the controlling party for the

_____ project and that we, the Applicant, are committed to the enforcement of the minority or women participation for at least seven years after initial occupancy. In accordance with the guidance provided in Part K–1 of the Packet, Selection Factor points are warranted for this minority/women controlled entity.

_____

Chief Executive Officer

_____

Date

BILLING CODE 4210–27–M

EXHIBIT M-1

Project Application for Housing Development Grant

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB No. 2502-0323(Exp 9/30/91)

Section A - PROJECT IDENTIFICATION

1. Name of Project
2. Type of Project: ☐ Eligible Area ☐ Special Needs ☐ Neighborhood Preservation
3. Type of Tenancy: ☐ Rental ☐ Cooperative ☐ Mutual
4. Project Number
5. Name of Applicant
6. Type of Applicant: ☐ City/Town/Township ☐ Urban County ☐ State on behalf of (specify)
7. This Project will be for: ☐ Nonelderly Families ☐ Elderly Only ☐ Combination

Section B - LOCATION AND DESCRIPTION OF PROPERTY

1. Street Address | 2. Municipality | 3. County | 4. State and ZIP Code | 5. Congressional District
6. Type of Construction: ☐ Proposed ☐ Rehabilitation — Year Built 19 ____
7. Number of Units: Revenue ____ Nonrevenue ____ TOTAL ____
8. Number of Buildings
9. List Accessory Buildings — Area: ____ Sq. Ft. ____
10. List Recreation Facilities — Area: ____ Sq. Ft. ____
11. Type of Buildings: ☐ Elevator ☐ Walkup ☐ Row(Townhouse) ☐ Detached ☐ Semi-Detached
12. No. of Stories
13. No. of Elevators
14. Type of Foundation: ☐ Slab on Grade ☐ Crawl Space ☐ Partial Basement ☐ Full Bsmt.
15. Structural System
16. Floor System
17. Exterior Finish
18. Heating System
19. Air Conditioning System

Section C - INFORMATION CONCERNING LAND OR PROPERTY

1. Date: ☐ Acquired ☐ Optioned / /
2. Price: ☐ Purchase ☐ Option $
3. Additional Cost Paid or Accrued $
4. Total Cost $
5. Outstanding Balance $
6. Relationship Between Seller and Buyer (Personal or Other):
7. Site Area
8. Zoning (If recently changed, submit evidence)
9. If leasehold, show annual ground rent ... $ ____ lease term, remaining years ____

10. Off-Site Facilities:

	Public	Comm.	At Site	Ft. from
Water	☐	☐	☐	____ ft.
Sewer	☐	☐	☐	____ ft.
Paving	☐	☐	☐	____ ft.
Gas	☐	☐	☐	____ ft.
Electrical	☐	☐	☐	____ ft.
Other	☐	☐	☐	____ ft.

11. Unusual Site Features: ☐ None ☐ Cuts ☐ Fill ☐ Erosion ☐ Other ____ ☐ Other ____ ☐ Poor Drainage ☐ Retaining Walls ☐ Rock Foundations ☐ High Water Table
12. Special Assessments: a. ☐ Prepayable b. ☐ Nonprepayable c. Principal Balance ... $ ____ d. Annual Payment ... $ ____ e. Remaining Term ... ____ years;

Section D - ESTIMATE OF INCOME (See * Note)

1. Unit Type	No. of Living Units	No. of Units Lower Income	Living Area (Sq. Ft.)	Composition of Units	Unit Rent per Mo. ($)	PBE not in Rent (Sec. F)	Lower-Income Rents	Total Monthly Unit Rent ($)
Employee(s) Living Units								
TOTALS				2. TOTAL ESTIMATED MONTHLY RENTALS FOR ALL LIVING UNITS				$

3. Number of Parking Spaces: ☐ Attended ☐ Self Park — Total Spaces ... ____ — Parking Ratio ... ____
4. Parking and Other Income (Not Included in Rent):
   - Open Spaces ____ @ $ ____ per month = $ ____
   - Covered Spaces ____ @ $ ____ per month = $ ____
   - Laundry ____ sq.ft., or Living Units @ $ ____ per month = $ ____
   - Other ____ @ $ ____ per month = $ ____
   - TOTAL ANCILLARY INCOME ..... $
5. Commercial Space (Describe):
   - Area Ground Level ____ sq.ft. @ $ ____ per sq.ft., per month = $ ____
   - Other Levels ____ sq.ft. @ $ ____ per sq.ft., per month = $ ____ TOTAL COMM ... $
6. TOTAL ESTIMATED MONTHLY GROSS INCOME AT 100-PERCENT OCCUPANCY ..... $
7. TOTAL ANNUAL RENT (Line 6 above x 12 months) ..... $
8. Gross Floor Area ____ Sq. Ft.
9. Net Rentable Residential Area ____ Sq. Ft.
10. Net Rentable Commercial Area ____ Sq. Ft.

* IF ADDITIONAL SPACE IS NECESSARY, THE ATTACHED ADDENDUM MUST BE USED

HUD-90031 (5-84)
Sec. 17 PL 98-181

Section E — Equipment and Services (Check Items Included in Rent, Listed Below):

Equipment:
☐ Range and Oven ☐ Microwave Oven ☐ Refrigerator ☐ Laundry Facilities: ☐ In Common Area ☐ In Living Unit ☐ L.U. Hookup Only
☐ Carpet ☐ Drapes ☐ Swimming Pool ☐ Air Conditioning Equipment ☐ Trash Compactor ☐ Disposal ☐ Other:

Services	Gas	Elec.	Oil
☐ Heat	☐	☐	☐
☐ Hot Water	☐	☐	☐
☐ Cooking	☐	☐	☐
☐ Air Conditioning	☐	☐	
☐ Lights, etc., in Unit			
☐ Cold Water			
☐ Parking			
☐ Other:			

Section F — Utilities (Not in Rent)

Personal Benefit Expenses (PBE): Check Utilities and Services Not Included in the Rent and Paid Directly by the Tenant:
☐ Electricity ☐ Heating ☐ Gas ☐ Decorating ☐ Repairs ☐ Water ☐ Other ____

Section G — Estimate of Replacement Cost

1. TOTAL LAND IMPROVEMENTS ..... $ ____
2. TOTAL STRUCTURES (Includes Main, Accessory, Garage and Other Buildings) ..... $ ____
3. SUB TOTAL (Line 1 + Line 2) ..... $ ____
4. General Requirements (Line 3 x ____ percent) ..... $ ____
5. SUBTOTAL (Line 3 + Line 4) ..... $ ____

Fees

6. Builder's General Overhead (Line 5 x ____ percent) .. $ ____
7. Builder's Profit (Line 5 x ____ percent) ..... $ ____
8. SUB TOTAL (Sum of Lines 5 through 7) ..... $ ____
9. Bond Premium ..... $ ____
10. Other Fees ..... $ ____
11. ESTIMATED TOTAL COST OF CONSTRUCTION (Sum of Lines 8 through 10) ..... $ ____
12. Architect's Fee - Design (Line 8 x ____ percent) .. $ ____
13. Architect's Fee - Supervisory (Line 8 x ____ percent) . $ ____
14. TOTAL FOR ALL IMPROVEMENTS (Sum of Lines 11 through 13) ..... $ ____
15. Cost per Gross Square Foot (Line 14 divided by Item 8, Section D) ..... $ ____
16. Construction Time ____ months ÷ 2 = ____ months.

Charges and Fees during Construction

17. Interest on $ ____ .00 @ ____ percent for ____ months ..... $ ____
18. Taxes ..... $ ____
19. Insurance ..... $ ____
20. Mortgage Insurance Premium ..... $ ____
21. Examination Fee ..... $ ____
22. Inspection Fee ..... $ ____
23. Financing Fee (____ percent) ... $ ____
24. Title and Recording ..... $ ____
25. ____ $ ____
26. ____ $ ____
27. ____ $ ____
28. TOTAL CHARGES AND FINANCING ..... $ ____

Legal, Organization and Audit Fee

29. Legal ..... $ ____
30. Organization ..... $ ____
31. Cost Certification Audit Fee ..... $ ____
32. TOTAL LEGAL, ORG., & AUDIT FEES ..... $ ____
33. Contingency Reserve (Rehabilitation Only) ..... $ ____
34. Relocation Expenses ..... $ ____
35. ____ $ ____
36. ____ $ ____
37. ____ $ ____
38. ____ $ ____
39. TOTAL ESTIMATED DEVELOPMENT COST (Lines 14 + 28 + 32 through 38) ..... $ ____
40. Land (Acquisition Price of Sale) ..... $ ____
41. TOTAL ESTIMATED REPLACEMENT COST OF PROJECT (Line 39 + Line 40) ..... $ ____
42. Average Cost per Living Unit (Line 41 divided by Total in Section B, Item 7) ..... $ ____

Section H — Annual Income Computations

1. Estimated Project Gross Income (Line 7, Section D, page 1 of form) ..... $ ____
2. Occupancy Rate (Entire Project) ____ percent.
3. Effective Gross Income (Line 1 x Line 2) ..... $ ____
4. Total Project Expenses (Line 6, Section I) ..... $ ____
5. Net Income to Project (Line 3 minus Line 4) ..... $ ____
6. Expense Ratio (Line 4 divided by Line 3) ____ percent.

Section I — Estimate of Annual Expense

1. TOTAL ADMINISTRATIVE (Includes Advertising, Management Fee at ____ percent and any other administrative expenses) ..... $ ____
2. TOTAL OPERATING (Includes elevator maintenance, heating fuel, domestic hot water, lighting and miscellaneous power, water, gas, garbage and trash collection, payroll and other expenses) ..... $ ____
3. TOTAL MAINTENANCE (Includes decorating, repairs, exterminating, insurance, ground expenses and other maintenance expenses. Must be based on data on comparable projects which have experienced a full cycle of maintenance expenses, i.e., three to four years experience) $ ____
4. TOTAL TAXES (Includes Real Estate, Personal Property, Employee Payroll Tax and Other Taxes) ..... $ ____
5. TOTAL FOR SPECIAL ASSESSMENTS AND GROUND RENTS ..... $ ____
6. TOTAL EXPENSES ..... $ ____
7. Average Expense per Unit per Annum (PUPA) (Line 6 divided by Total, Section B, Item 7) ..... $ ____

Section J — Total Settlement Requirements

1. Development Cost (Line 39, Section G) ..... $ ____
2. Cash Required for Acquisition or Indebtedness on Property ..... $ ____
3. SUB TOTAL (Line 1 + Line 2) ..... $ ____
4. Initial Operating Deficit Reserve ..... $ ____
5. Discounts not included in Line 23, Section G ..... $ ____
6. Interest Yield Costs (If Any) ..... $ ____
7. Working Capital Reserve ..... $ ____
8. Off-Site Construction Costs not included in Line 1, Section G ..... $ ____
9. Other (attach explanation) ..... $ ____
10. SUBTOTAL (Sum of Lines 4 + 5 + 6 + 7 + 8 + 9) ..... $ ____
11. TOTAL COSTS (Sum of Line 3 and Line 10) ..... $ ____
12. Funds Available to Meet Total Costs:
    - a. Debt Financing (Line 6d, Section K) ..... $ ____
    - b. Housing Development Grant (Line 1, Section K) ..... $ ____
    - c. Other Grants and In-Kind Contributions (Line 7d, Section K less any land writedowns shown in Section K) ... $ ____
    - d. Owner's Funds ..... $ ____
    - e. TOTAL FUNDS AVAILABLE (Lines 12a + 12b + 12c + 12d) ..... $ ____

Section K — Source of Project Funds

1. Grant Amount Requested $

2. Use of Grant Funds:
- ☐ Grant to Owner
- ☐ Loan to Owner
- ☐ Interest Reduction/Rental Assistance
- ☐ Development Cost Writedown
- ☐ Other (specify) _____

3. Estimated Amount of Grant, if loaned, to be repaid annually:

		Interest Rate %	Dollar Amount
a. Year 1 19____	.....	____	$ ____
b. For Years	through	____	$ ____
c. For Years	through	____	$ ____
d. For Years	through	____	$ ____
e. For Years	through	____	$ ____

4. Owner's Equity Investment:

	Source:	Amount
a.		$
b.		$
c.		$
d. Total		$

5. Other Funds To Be Made Available by Owner:

	Amount
a.	$
b.	$
c.	$
d. Total	$

6. Debt Financing (other than Housing Development Grants):

Source:	Amount	Annual Debt Service Amount	Private	Federal	Other Public	FHA Ins.	11(b)	103(b) Bonds
a.	$	$	☐	☐	☐	☐	☐	☐
b.	$	$	☐	☐	☐			
c.	$	$	☐	☐	☐			
d. Total.....	$	$						

e. For FHA-insured mortgages: Applicable Section of Act _____

7. Other Grants and/or Writedowns (other than Housing Development Grants):

Source	Amount/Value	Private	Federal	Other Public
a.	$	☐	☐	☐
b.	$	☐	☐	☐
c.	$	☐	☐	☐
d. Total.....	$			

Section L — Project Schedule

	MM	YY		MM	YY
1. Estimated Start of Site Preparation			5. Estimated Final Completion of Project		
2. Estimated Start of Construction/Rehabilitation			6. Estimated Date of Initial Occupancy		
3. Estimated Completion of Development — Stage 1			7. Estimated Date of 50-percent Occupancy		
4. Estimated Completion of Development — Stage 2			8. Estimated Date of Final Occupancy		

Section M — Project Principals

1. Owner Entity

Name: _____

Address: _____

Contact Person | Telephone Number

- ☐ Limited Partnership
- ☐ Profit-Motivated Corporation
- ☐ Not For Profit Corporation
- ☐ Joint Venture
- ☐ Sole Proprietor
- ☐ Cooperative
- ☐ Other (specify) _____

Principals	Role/Title/Partnership Status	Percentage Owned	Minority Code	Gender Code
a.		____ %	[ ]	[ ]
b.		____ %	[ ]	[ ]
c.		____ %	[ ]	[ ]
d.		____ %	[ ]	[ ]

2. Construction Lender

Name: _____

Address: _____

Contact Person | Telephone Number

3. Permanent Lender

Name: _____

Address: _____

Contact Person | Telephone Number

4. Contractor (If Known)

Name: _____

Address: _____

Contact Person | Telephone Number

5. Applicant Contact Person(s)

Name: _____
Telephone Number:

Name: _____
Telephone Number:

Name: _____
Telephone Number:

Name: _____
Telephone Number:

6. Other

Project Participation: _____

Name: _____

Address: _____

Contact Person | Telephone Number

7. Other

Project Participation: _____

Name: _____

Address: _____

Contact Person | Telephone Number

Identifier Codes (HUD Use Only)

1. FHA Project Number
2. HUD Locality Code
3. EC Identifier
4. Select: ☐ SMSA Central City ☐ SMSA Other ☐ Non-SMSA
5. Census Tract/Enumeration District
6. SMSA Code (if applicable)
7. County Census Code
8. State Census Code
9. Population Group Code (Area)
10. Population Group Code SMSA
11. Region Code
12. Field Office Code
13. State Alpha Code

Estimate of Income

Addendum to Sec D of Form HUD-90031

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB No. 2502-0323 [redacted]
(Exp. 9/30/91)

Unit Type	No. of Living Units	No. of Units Lower-Inc.	Living Area (Sq. Ft.)	Composition of Units	Unit Rent per Mo. ($)	PBE Not In Rent (Sec. F)	Lower-Income Rents	Total Monthly Unit Rent ($)

Exhibit M-8—Determination of Maximum Grant and Minimum Equity Contribution

1. Determination of maximum grant amount in accordance with 850.37(d)

a. Estimated Total Development Cost (Exhibit M-1, line G-39) $_____

b. Total Cost of Acquisition, if applicable (see Test below) $_____

c. Total Estimated Replacement Cost (Line a plus Line b) $_____

d. Total Development Cost of Commercial Space. (See Exhibit M-6, line I.d. and/or II.d.) $_____

e. Subtract Line d. from Line c. $_____

f. Line e. divided by 2=Maximum Grant Allowed. $_____

Acquisition Test

The cost of acquisition may be included in determining the maximum grant amount if the applicant documents in the application and HUD determines that:

1. For new construction applications the special nature of the project warrants the inclusion of acquisition costs.

2. For substantial rehabilitation applications the special nature of the project must warrant inclusion of acquisition costs AND there must be refinancing of the project debt. In order to determine a "refinancing," as opposed to new financing, there must be *either:* (i) an identity of interest between the owner of the structure and the owner of the project, provided that the project owner intends to obtain new financing to pay off existing debt; or (ii) an arms-length sales transaction where the new owner will assume the existing mortgage and then refinance.

Special Nature projects must meet *one* of the following public purposes:

a. The number of lower income units is 30.0 percent or more of the total number of units (no rounding up from 29.9).

b. The average lower income bedroom count for the project is 3.0 or more (no rounding up from 2.9).

c. The project writes down the rents on the "market rate" units to 110 percent of the Section 8 Existing Fair Market Rents.

2. Determination of minimum equity requirement. (Not required for non-profit owners or cooperative and mutual projects as specified in Part M-11)

a. Total Estimated Replacement Cost (Exhibit M-1, G-41) $_____

b. Initial Operating Deficit Reserve (Exhibit M-1, J-4) $_____

c. Discounts (Exhibit M-1, J-5) $_____

d. Interest Yield Costs (Exhibit M-1, J-6) $_____

e. Working Capital Reserves (Exhibit M-1, J-7) $_____

f. Off-site Construction Costs (Exhibit M-1, J-8) $_____

g. Total $_____

h. 10 percent of Line g. $_____

The sum of Owner's Equity identified in Exhibit M-1, in accordance with the guidance provided in the instructions for Exhibit M-1, Sections K-4 and K-5, must equal or exceed the amount shown in Line h above.

Exhibit M-9—Leveraging Ratios

1. *Project Leveraging Ratio—Ratio of non-Federal public plus private contributions to the grant amount.*

a. Non-Federal Public Loans, Grants, Contributions and/or Other Writedowns (Exhibit M-1, K.7.d.) $_____

b. Owner's Equity Investment (Exhibit M-1, K.4.d.) $_____

c. Private Debt Financing and other Grants (Exhibit M-1, K.6.d.) $_____

d. Non-Federal Public and Private Investment (Sum of Lines a+b+c) $_____

e. Housing Development Grant Requested $_____

f. Project Leveraging Ratio (Line d divided by Line e) _____

2. *Private Project Leveraging Ratio—*

a. Private Investment (Sum of Line lb and Line lc) $_____

b. Private Project Leveraging Ratio (Line 2a divided by Line le) _____

Instructions

A. Enter on Line 1.a. the sum of: (1) All state or local public loans or grants—excluding the Housing Development Grant but including any Community Development Block Grant funding—for direct costs associated with project development, (2) The amount of any State or local in-kind contributions, e.g., site preparation or relocation costs incurred by the local government, or land writedowns, (3) The actual amount of public subsidy which is to be completely expended or escrowed for use *during* the development phase and/or the first four years of project operation, e.g., tax abatement, rental subsidies, operating subsidies, and interest reduction payments; and, (4) The present value of the full amount of any public subsidies—including tax abatement—which are to be disbursed over a period of more than four years, after the project is fully operational. Use a discount rate of 10% in calculating the present value.

All amounts entered on Line 1.a. should be included and identified as being "other public" in Exhibit M-1, K-6. and K-7. Such amounts may not include costs for activities, e.g. offsites, which provide a benefit to other development activities which may (be) occur(ing) in the immediate vicinity of the HDG project. Such expenditures must be prorated to reflect the direct benefit to the HDG project. Loans provided from the proceeds of tax-exempt bond issues should *not* be included in the amount on Line 1.a. (see instruction C below).

B. Enter on Line 1.b. the total amount of the owner's proposed equity investment from Exhibit M-1, K.4.d. The amount on this line should *not* include funds to be escrowed by the owner to cover working capital, operating deficits or other contingency reserves, nor should it include the value of any land writedown reflected in Line 1a.

C. Enter on Line 1.c. the total amount of all permanent debt financing and any private grants to be provided from private sources. The total amount entered on Line 1.c. should reflect all amounts identified as being "private" in Exhibit M-1, K.6 and K.7. The amount should include any permanent loan from a bank, mortgage company, insurance company, pension fund, or any other private mortgagee, regardless of whether or not the loan is insured. The amount should also include any permanent loan derived from the proceeds of tax-exempt bonds, regardless of whether the mortgagee of record is a public or private entity (e.g., a loan made by a State Housing Finance Agency from bond proceeds should be included). Construction financing should not be included on Line 1.c.

D. Enter on Line 1.d. the total of Lines 1.a., 1.b. and 1.c.

E. Enter on Line 1.e. the amount of the Housing Development Grant requested (Exhibits M-1 and K.1.)

F. Enter on Line 1.f. the ratio of Line 1.d. to Line 1.e. This amount represents the Project Leveraging Ratio.

G. Enter on Line 2.a. the sum of Lines 1.b. and 1.c.

H. Enter on Line 2.b. the ratio of Line 2.a. to Line 1.e. This amount represents the Private Project Leveraging Ratio.

Exhibit M-12—Constant Payment Project Investment Accounts

Where HDG funds are proposed to be used to fund a constant payment PIA, the Applicant must demonstrate that it is at least 10 percent more efficient than a development cost writedown based

upon the following test:

(a) For each lower income unit type, subtract the lower income rent from the market rent to obtain "assistance required."

(b) Complete the following analysis.

1. Multiply "assistance required" for each unit by the number of lower income units of each type.

Unit type	Assistance required	×	Number of lower-income units	=	Assistance required
0 bedrooms					
1 bedroom					
2 bedroom					
3 bedroom					
4 bedroom					
Total Assistance Required	$				

2. Multiply the Monthly Total in line 1 by 12 (months) $_____

3. Multiply the Occupancy Factor Exhibit M-1, Line H-2_____% times line (2) $_____

4. Net Income (Exhibit M-1) $_____

5. Total of Lines 3 and 4 $_____

6. Debt Service Factor (divide the total for all annual debt service amount from Section K, line 6(d) by the total debt amount, also from line 6(d))_____%

7. Divide Line 5 by Line 6, to produce the approximate cost writedown that would be required $_____

8. Enter the amount of the Grant which is to be used for a writedown, if any $_____

9. Subtract line 8 from line 7 $_____

10. Multiply line 9 by 90 percent $_____

(c) *If the amount on Line 10 exceeds the HDG requested to establish the PIA the applicant must use a development cost writedown.*

Exhibit M-13—Commercial Test—Required Only Where Commercial Income is Involved

a. Cost of Commercial (Total Cost from Maximum Value Format, M-6, Line Id. and/or IId.) $_____

b. First Mortgage Debt Service Rate _____%

c. Annual Commercial Debt Service (Line (a) times Line (b)) $_____

d. Annual Commercial Expense Estimate (From Appraisal, M-3) $_____

e. Effective Gross Commercial Income Required (Line (c) plus Line (d)) $_____

f. Commercial Occupancy Factor (From Appraisal, M-3) _____%

g. Gross Commercial Income Required to Demonstrate Commercial As Self-Supporting (Line (e) divided by Line (f)) $_____

h. Commercial Income (From Exhibit M-1, Section D, Line 5) $_____

Note: Line (h) must equal or exceed line (g).

Exhibit M-14—Format for Determining Maximum Units for Least Cost

1. Take ½ of line I.b. and/or II.b. of Exhibit M-6 $_____

2. Divide line 1 by Total Project Units (Exhibit M-1, B-7) $_____

3. Divide Grant Amount (Exhibit M-1, K.1.) by Total Project Units. $_____

4. Divide line 3 by line 2 to determine grant to cost ratio._____

In addition, the overall average bedroom composition cannot exceed the average lower income bedroom composition by more than 20%. If it is higher, zero points will be assigned for this selection factor.

5. Determine overall bedroom composition of total project_____

6. Determine average bedroom composition of lower income units_____

7. Multiply line 6 by 1.20_____

8. Is line 7 equal to or greater than Line 5 ☐ yes ☐ no

If yes—points assigned.

If no—zero points assigned.

Attachment 1—Threshold Requirements

To be determined eligible for rating and possible selection on the basis of the HUD selection factors and priorities, an application must meet a number of preliminary threshold requirements. The following summary briefly describes these threshold requirements and indicates each portion(s) of the application submission that will provide information relevant to HUD's threshold determination.

Threshold requirement	Portion(s) of application with relevant information
1. The application must be received by HUD Headquarters and the appropriate HUD field office by the deadline specified in the General Information Section, item (6), of this Packet.	Time and date of receipt issued by HUD 24 CFR 850.37(a).
2. The application must contain forms, exhibits, certifications, and other documentation required by the Packet. Documentation must be adequate in content, clarity and comprehensiveness to permit HUD to make all necessary processing determinations.	Entire Application Packet (see Checklist) 24 CFR 850.31;850.33;850.35; 850.37(b).
3. The proposed project must be located in a HUD-designated eligible area (see published list of eligible areas), *or* be determined by HUD to meet a special housing need or advance a neighborhood preservation purpose.	Part E (Eligibility of the Application) 24 CFR 850.37(c).
4. If the project is a special need or neighborhood preservation project, HUD must determine that it would not be feasible to provide the same type of lower income units (by number of bedrooms and household type) through the moderate rehabilitation of housing located in the project neighborhood.	Part F (Infeasibility of Moderate Rehabilitation-Certification and Justification) and Part H-1 (Neighborhood Identification, Description and Map) 24 CFR 850.37(c).
5. The project must be new construction and/or substantial rehabilitation. To qualify as substantial rehabilitation, the work proposed for the project must (a) involve the replacement of more than one major building component, or (b) entail a cost exceeding the greater of (i) 15 percent of the project's value after rehabilitation or (ii) $6,500 per dwelling unit adjusted by a supportable high cost factor determined by HUD.	Part M-4 (Substantial Rehabilitation Eligibility Test); Part M-3 (Appraisal); Part M-10 (Architectural Information); and Section G of Exhibit M-1 24 CFR 850.3.

Threshold requirement	Portion(s) of application with relevant information
6. The grant amount requested may not exceed the amount necessary to provide decent rental housing of modest design, taking into account the special costs of providing and maintaining the affordability of the lower income units. The requested grant may not exceed 50 percent of HUD's determination of the total development cost. Acquisition costs may be included only when the special nature and refinancing costs justify their inclusion.	Part M-8 (Assessment of Compliance with Overall Grant Limit); Section G of Exhibit M-1; and Part I (Relocation/Displacement Information) 24 CFR 850.37(d) and (f); 850.61.
7. Commercial space normally may not exceed ten percent of the project's gross floor area. With appropriate justification, HUD may allow commercial space to cover up to 20 percent of the gross floor area. In any event, however, the grant assistance may not be used to support commercial space in the project. All such space must be self-supporting.	Part M-13, Exhibit M-1 and Part M-3 (Appraisal) 24 CFR 850.37(e).
8. The estimated value of the project after rehabilitation or construction may not exceed the amount of a mortgage that could be insured for the project under Section 207 of the National Housing Act based on the sum of the statutory per-unit limits (adjusted by the appropriate supportable local high cost factor), a ten percent allowance for costs not attributable to dwelling use and an additional allowance to reflect the actual cost of commercial space.	Part M-3 (Appraisal) and Part M-6 (Maximum Value of Project Worksheet) 24 CFR 850.37(g).
9. The applicant must have a satisfactory record in meeting its assisted housing needs and have the capacity to undertake the program in a timely manner.	Part B-2 (Performance and Capacity) 24 CFR 850.37(h) and (i).
10. The proposed number of lower income units must be 20.0 percent or more of the total number of project units. Where 20 percent of the total number of units results in a fraction of a unit, the applicant must round to the next highest unit (e.g., 3.4 units = 4 units).	Section D of Exhibit M-1 24 CFR 850.37(j).
11. The proposed project must be determined to be consistent with the goals and general location provisions of any applicable local Housing Assistance Plan	Part B-3 (HAP Compliance) 24 CFR 850.37(1).
12. HUD must be satisfied that the proposed project will not have a negative effect on neighborhood development, will not cause undue relocation hardship, and will comply with limitations on displacement of the very low-income.	Part H-3 (Effect of Proposed Project on Neighborhood Development) and Part I (Relocation/Displacement Information) 24 CFR 850.37(m).
13. The applicant and owner certifications concerning nondiscrimination and equal opportunity must be acceptable, and HUD must consider the past efforts of applicant, city, and owner in implementing the civil rights and equal opportunity provisions of HUD programs to be satisfactory. All such certifications must be signed by the same Chief Executive Officer or official who signs Standard Form 424.	Parts K-1 and K-2 (Nondiscrimination and Equal Opportunity Certifications.) K-3 (MBE/WBE Certification) 24 CFR 850.37(n); 850.33(g); 850.33(r).
14. Other required applicant and owner certifications must be submitted and deemed acceptable by HUD. These address, in part, legal authority to submit, public consultation, very low-income displacement, building code conformance, previous HUD assistance, project management after completion and miscellaneous Federal Goverment-wide requirements applicable to this program.	Exhibits C-1 and C-2 (Applicant and Owner Certification) and Exhibit J (Environmental Certification) 24 CFR 850.33(r).
15. The project must contain firm project commitments for all financial and other resources necessary to develop the project, whether the resources are private or public, and must be considered financially feasible for the project term. Financing commitments must be for a minimum of the Project Term (20 years or more) and must not contain provisions for a call, sale or refinancing earlier than the Project term. Aside from the strength of financial and other commitments project feasibility will be determined based on HUD s projections as to coverage by project income of expenses and debt service over the project term. Issues related to this include: are the project units marketable at rents proposed, and, are project costs and operating expenses accurately estimated and reasonable?	Part M-2 (Narrative Feasibility Assessment); Part M-3 (Appraisal) Part M-7 (Firm Commitments, Financial Statements and Evidence of Site Control); Sections D-K of Exhibit M-1; and Part M-12 Pro Forma and Investment Plan 24 CFR 850.37(k)(i)
16. The project costs, terms and conditions of financing must be considered reasonable and owner's equity investment must equal to at least 10 percent of project costs except for cooperatives, mutuals and non profits.	Part M-2 (Narrative Feasibility Assessment); Part M-7 (Firm Commitments, Financial Statements, and Evidence of Site Control); Part M-8; and Exhibit M-1, Section K 24 CFR 850.37(k)(2).
17. The project must be developed for "residential rental purposes." This may include cooperative or mutual housing that has a resale structure enabling the cooperative to maintain affordability for lower income families.	Box 3 of Section A of Exhibit M-1 and Part M-11 24 CFR 850.17(a).
18. The number of units in the project is at least 20 but no greater than 200	Exhibit M-1 The Invitation for Applications.
19. The project must conform with all requirements and/or restrictions of the Application Packet and the applicable regulations.	Entire Application Packet 24 CFR 850.

Attachment 2—Project Selection Factors

Criteria	Points
A. *Shortage of housing.* Based on a review of part G of the application; HUD will award points on a sliding scale, with higher points awarded for lower vacancy rate. Projects in areas with an overall rental vacancy rate of less than 4.5 percent will be entitled to half the points or more. Projects with lower income or overall vacancy rate of over seven percent will not be entitled to any points in the respective category	28
1. *Lower Income Vacancy Rates.* The average rental vacancy rate for census tracts in the unit of general local government (or market area, if applicable) with median family incomes below 80 percent of the area median. Maximum points in this subcategory will be awarded to projects with a 2.5 percent vacancy rate or less. (10 points)	
2. *Overall Vacancy Rate.* Overall rental vacancy rate within the unit of general local government (or market area, if applicable). Maximum points in this subcategory will be awarded to projects with a 2.5 percent vacancy rate or less. (18 points)	
B. *Leveraging Ratios.* Points will be awarded on a sliding scale—highest ratios receive the highest points based on HUD's review of Exhibit M-9. For maximum points, the average of the two ratios described below must equal or exceed 6:1. Leveraging ratios of 2.5:1 will receive half the points and no points will be assigned for an average leveraging ratio of less than 1.3:1	20
1. Project leveraging ratio (10 points). Non-Federal public *plus* private contributions divided by the grant amount.	
2. Private leveraging ratio (10 points). Private contributions divided by the grant amount.	
C. *Neighborhood Development/Mitigation of Displacement*	2
1. Neighborhood Development (1 point)—For all projects HUD will consider the effect of the proposed project on neighborhood development.	
2. Mitigation of Displacement (1 point)—Based on Part I, HUD will grant the maximum points to projects which cause no displacement or provide effective mitigation of displacement. Applicants will be rated according to the level of assurance provided that potential displacement will be mitigated.	
D. *Applicant Performance and Capacity*	2

Criteria	Points
1. Performance (1 point)—Based on Part B-2 and HUD's own experience, HUD will rate the applicant's past performance in meeting Housing Assistance Plan goals, where they exist, and in administering Federally assisted housing programs.	
2. Capacity (1 point)—HUD will review Part B-2 to assess the applicant's ability to administer the program (i.e., to start and monitor the project through to completion and to meet the grantee's responsibilities under Subparts D, E and F of the regulations).	
E. *Maximum Units for the Least Cost to the Federal Government.* Based on HUD's processing of data in Exhibit M-1	10
1. HDG Loan (2 points)—Points will accrue if the applicant proposes to loan rather than grant the HDG funds to the owner. To receive points in this category, at least fifty percent of the HDG must be repaid and payments on the HDG loan principal must begin no later than the twenty-first year of project operations. For any portion of the HDG which is invested in a PIA, "fifty percent of the HDG" means fifty percent of the sum of all funds disbursed to the project from the PIA during the Project Term.	
2. Adjusted Per Unit Grant Amount (8 points)—HUD will adjust the per unit grant amount for construction cost differences among geographic areas and among units of various bedroom sizes. Based on a sliding scale, lowest adjusted per unit grant amount will receive the most points. (Refer to discussion in Part M-14 of this Packet.)	
F. *Mechanism to Assure Affordable Rents*	3
1. Maintenance of Affordable Rents (1 point)—HUD will review Part B-2 as to how well the applicant's proposed method to supervise rent increases for designated units and resale structures for cooperative or mutual housing shares will enforce program requirements concerning lower income occupancy and rents. Failure to sign the Rent Mechanism Exhibit B-1 will render the application ineligible for points under Selection Factor F.2.	
2. Additional Assistance to Lower or Very Low-Income Tenants (2 points)—HUD will award additional points for applicants who propose (at their option) in Part B-3: (a) a financial source to assist tenants below 50 percent of the area median income with additional local or state subsidy for at least 20 years; and/or (b) a commitment to extend designated lower income rents and occupancy for at least five years beyond the 20 year required period. In order to earn any points under this factor, the applicant must qualify for the one point in Selection Factor F.1.	
G. *Financial Feasibility.* "Based on a review of Part M of the Application, HUD will score the project as to overall feasibility based on the following:	10
1. Firmness of Financial Commitments (4 points)—While all projects must present adequate documentation of firm financial commitments to meet program threshold requirement 15, the strength of these commitments, e.g., the level of documentation and absence of qualifying conditions above and beyond the minimum threshold, will determine how many points the project receives in this sub-category.	
2. Rents, Costs and Expenses (6 points)—Based on application data, especially Parts M-1, M-3, M-10, and M-12, and HUD's review, projects will be rated as to: (a) plausibility of rents, costs and expenses, e.g., is there any question of unit marketability at the rents proposed? Are costs and expenses underestimated? Are project costs too high resulting in an inflated grant request?; and, (b) Financial feasibility over the project term, e.g., will project income be sufficient to cover debt service and expenses over the life of the project?"	
H. *Equitable Share of Funds for Families especially Large Families with Children.* Points will be assigned in this category based upon the average bedroom count. There are two criteria: (1) if the average overall (total project) bedroom count is equal to at least 2.0, up to 10 points will be assigned with the highest average receiving the full 10 points; (2) if the average lower income bedroom count is at least 2.5, up to 5 points will be assigned, however, to qualify for the full five points the average lower income bedroom count must be 3.0 or more	15
I. *Minority and Women's Business Enterprise.* This is an all or nothing category. Based on HUD's review of Exhibit K-3 and Exhibit M-1, points will be awarded to applications which demonstrate that controlling project ownership will be vested in and exercised by minority persons or women	5
J. *Locational Housing Opportunities.* Points will be awarded to projects which meet at least one of three criteria listed in Part H-2 of the application	5
Factor a alone or combined with b or c (5 points)	
Factor b and c combined (4 points)	
Factor b only (3 points)	
Factor c only (3 points)	

Priority Projects

Up to 15 priority bonus points will be awarded where:

(a) Based on a review of Section D of Exhibit M-1, HUD finds that more than 25 percent of project units are designated for lower income rents and occupancy, *AND*

(b) Based on HUD's review of Part L of the application and other available information, HUD determines that the project is located in a jurisdiction where assisted housing waiting lists are long *and* where housing assistance certificate holders require an excessive time to locate housing.

Higher percentages of lower income units will receive more points. One point will be awarded for each full percentage point of lower income households above 25% up to a maximum of 15 points for 40% lower income or higher percentage.

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ATTACHMENT 3

Housing Development Grants: Program Flow

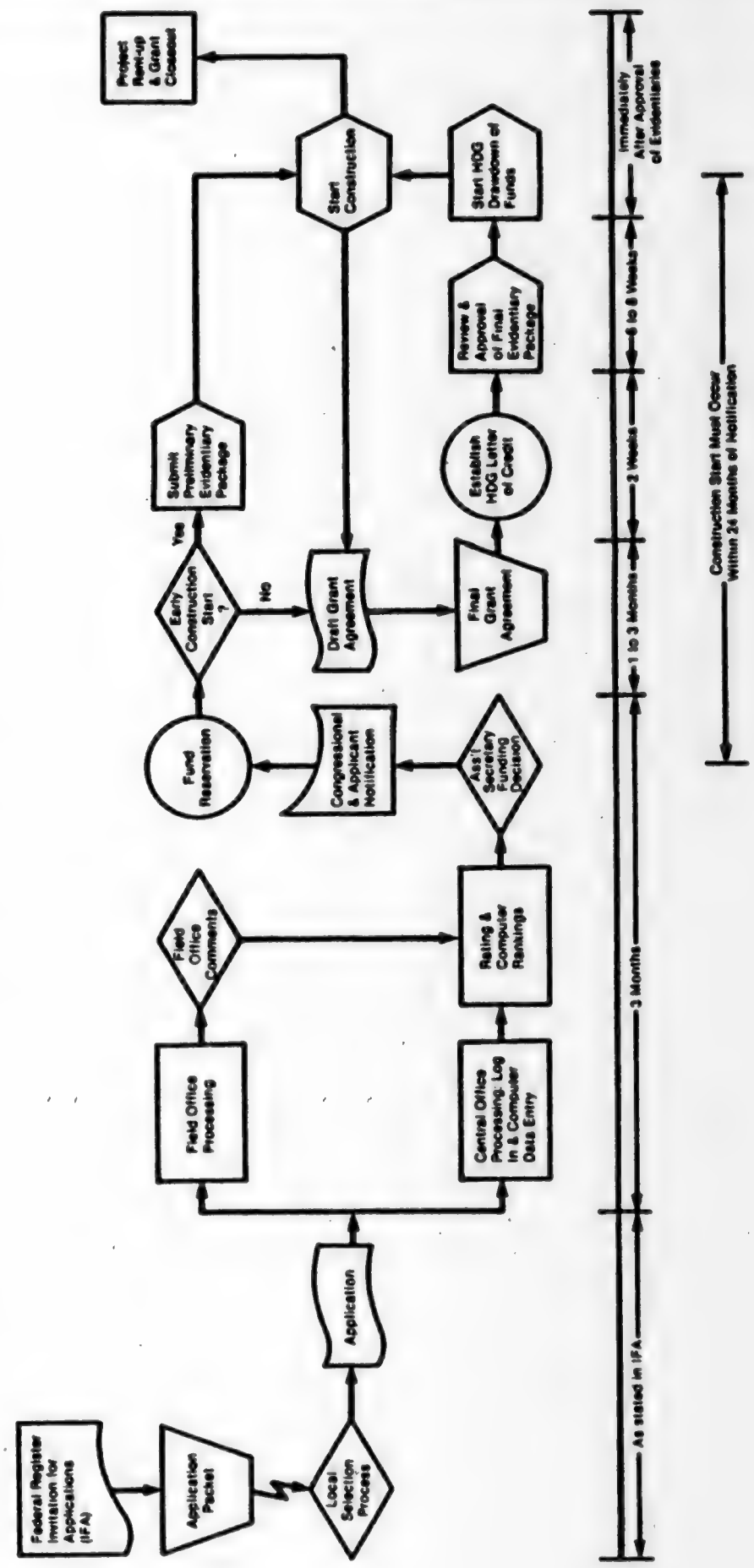

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Attachment 4—The attached list of supportable high cost factors is being provided for use in preparing housing development grant applications. These factors are to be used for the completion of Exhibits M-4 and M-6 for the HDG application only and are not the high cost factors approved for use by field offices in processing under other HUD programs where they exceed 175.

The following high cost factors (HCF) may be used within the stated base cities. For the appropriate HCF for any other area, the applicant must contact the local HUD field office and have the cost analyst determine whether an applicable locality adjustment would change the factor for the proposed location.

HOUSING DEVELOPMENT GRANT PROGRAM—SCHEDULE OF HIGH COST PERCENTAGES FOR BASE CITIES

Field office	Base city	H.C.P. Non-elev. and elev.	H.C.P. elev. only
Region I:			
Hartford, CT	Hartford	172	232
Boston, MA	Boston	231	
Manchester, NH	Manchester	194	
	Bangor, ME	201	
	Portland, ME	162	
	Burlington, VT	198	
Providence, RI	Providence	209	
Region II:			
Newark, NJ	Camden	175	
	Newark	202	
Buffalo, NY	Albany	176	
	Buffalo	175	
New York, NY	Manhattan	240	
San Juan, PR	San Juan	157	164
Region III:			
Wilmington, DE	Wilmington	176	
Washington, DC	Washington	213	
Baltimore, MD	Maryland	207	
Philadelphia, PA	Philadelphia	227	
Pittsburgh, PA	Pittsburgh	175	
Richmond, VA	Richmond	176	
Charleston, WV	Charleston	176	
Region IV:			
Birmingham, AL	Birmington	167	
Jacksonville, FL	Jacksonville	141	142
	Miami	152	195
	Tampa	147	
Atlanta, GA	Atlanta	155	161
Louisville, KY	Louisville	131	159
Jackson, MS	Jackson	171	
Greensboro, NC	Greensboro	167	
Columbia, SC	Columbia	167	
Knoxville, TN	Knoxville	136	
Memphis	154		
Nashville, TN	Nashville	145	
Region V:			
Chicago, IL	Chicago	206	—
	Springfield	211	217
Indianapolis, IN	Indianapolis	164	240
Detroit, MI	Detroit	181	
Grand Rapids, MI	Grand Rapids	142	
Minneapolis, MN	Minneapolis	176	
Cincinnati, OH	Cincinnati	168	206
Cleveland, OH	Cleveland	176	
Columbus, OH	Columbus	162	200
Milwaukee, WI	Milwaukee	175	
Region VI:			
Little Rock, AR	Little Rock	140	
New Orleans, LA	New Orleans	175	240
	Shreveport	160	211
Oklahoma City, OK	Oklahoma City	156	
	Tulsa	156	
Fort Worth, TX	Fort Worth	175	
	Dallas	175	
	Albuquerque, NM	175	
Houston, TX	Houston	164	
San Antonio, TX	San Antonio	142	
	Lubbock	171	
Region VII:			
Des Moines, IA	Des Moines	145	
Kansas City, MO	Topeka, KS	157	
	Kansas City, MO	180	
St. Louis, MO	St. Louis	206	
Omaha, NE	Omaha	167	
Region VIII:			
Denver, CO	Denver	170	
	Billings, MN	166	

HOUSING DEVELOPMENT GRANT PROGRAM—SCHEDULE OF HIGH COST PERCENTAGES FOR BASE CITIES—Continued

Field office	Base city	H.C.P. Non-elev. and elev.	H.C.P. elev. only
	Fargo, ND	161	
	Sioux Falls, SD	150	
	Salt Lake City, UT	166	
	Casper, WY	135	
Region IX:			
Phoenix, AZ	Phoenix	142	
Los Angeles, CA	Los Angeles	240	
	San Diego	205	
	Santa Ana	219	
Sacramento, CA	Sacramento	204	
San Francisco, CA	San Jose	229	
	Reno, NV	175	
Honolulu, HI	Honolulu	240	
Region X:			
Anchorage, AK	Anchorage, AK	240	
Portland, OR	Boise, ID	138	
	Portland, OR	151	
Seattle, WA	Seattle	233	
	Spokane	197	240

Attachment 5—Required Forms and Exhibits Housing Development Grant Program Application

	Applicant	HUD field office	HUD headquarters
A. 1. Standard Form 424			
2. Copy of Applicant's Transmittal Letter required by Executive Order 12372			
B. Applicant (and jurisdiction) information:			
1. Eligibility of Applicant			
2. Performance and Capacity			
3. Assistance to lower or very-low income tenants (below 50% of median) if any			
4. HAP Compliance			
C. Applicant and Owner Certifications:			
Applicant Certification—Exhibit C-1			
Owner Certification—Exhibit C-2			
D. Applicant's Project Selection Method and Program Description			
E. Eligibility of the Application			
F. Infeasibility of Moderate Rehabilitation—Special Needs and Neighborhood Preservation only—Exhibit F			
G. Housing Shortage Data			
H. Neighborhood Information:			
1. Neighborhood Identification and Description Including Map			
2. Locational Opportunities Data			
3. Effect of Proposed Project on Neighborhood Development			
I. Relocation/Displacement Information (if required)			
J. Environmental Determination—Exhibit J			
K. E.O. Certification and Minority Business Enterprise/Women Business Enterprise.			
Applicant's Equal Opportunity and Non-Discrimination Certifications—Exhibit K-1			
Owner's Equal Opportunity and Non-Discrimination Certification—Exhibit K-2			
MBE/WBE Ownership Information—Exhibit K-3			
L. Assisted Housing Waiting List/Certificate Holders Search Time			
M. Project Information:			
1. Project Application Exhibit M-1			
2. Narrative Feasibility Assessment			
3. Appraisal:			
a. Independent Appraisal or			
b. HUD Conditional or Firm Mortgage Insurance Commitment and Form HUD-92264			
4. Eligibility as Substantial Rehabilitation-Project Test for Rehab Projects Only Exhibit M-4, or Narrative Statement			
5. Determination of Maximum Lower Income Rents—Exhibit M-5			
6. Maximum Value of Project Exhibit M-6			
7. Firm Commitments, Financial Statements and Evidence of Site Control—Exhibit M-7			
8. Assessment of Compliance With Overall Grant Limit and Equity Determination—Exhibit M-8			
9. Leveraging Ratios—Exhibit M-9			
10. Architectural, Site Plan, elevations, typical unit floor plans, and outline specifications—Exhibit M-10			
11. Cooperative and Mutual			
12. Use of Grant for PIAs—Exhibit M-12			
13. Determination of Acceptability of Commericial Space—Exhibit M-13			
14. Determination of Maximum Units for Least Cost—Exhibit M-14			
15. Rent Control			

[FR Doc. 89-16530 Filed 7-17-89; 8:45 am]
BILLING CODE 4210-27-M

federal register

Tuesday
July 18, 1989

Part III

Department of Education

Talent Search Program; Final Priority

DEPARTMENT OF EDUCATION

Talent Search Program

AGENCY: Department of Education.

ACTION: Final priority.

SUMMARY: The Secretary of Education establishes a priority for a fiscal year 1989 grant competition under the Talent Search Program for two-year awards. Under this priority, approximately $2.9 million will be made available for proposals from 177 current Talent Search Program grantees to attract project participants in the seventh and eighth grades in order to encourage them to complete high school and continue their education at the postsecondary level after graduation.

EFFECTIVE DATE: This priority takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Jowava M. Leggett, Office of Postsecondary Education, Department of Education (Room 3060, ROB-3), 400 Maryland Avenue SW., Washington, DC 20202-5249. Telephone: (202) 732-4804.

SUPPLEMENTARY INFORMATION: The Talent Search Program is authorized under Title IV, Part A, Section 417B of the Higher Education Act of 1965, as amended. The purpose of the program is to identify and encourage low-income individuals, two-thirds of whom must be potential first-generation college students, to pursue or re-enter a program of postsecondary education. Grantees may be institutions of higher education, public or private agencies, and, under exceptional circumstances, secondary schools. Program participants must be at least 12 years old and not older than 27 must have completed the sixth grade. The Talent Search projects provide services including academic services, admissions and financial aid counseling, career exploration, and general information on postsecondary education.

On May 5, 1989, the Secretary published a notice of proposed priority for the Talent Search Program in the **Federal Register** (54 FR 19534). No changes have been made to the proposed priority.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, ten parties submitted comments on the proposed priority. An analysis of the comments follows.

Comments: Six commenters expressed support for the proposed priority as stated in the **Federal Register.**

Discussion: None.

Change: None.

Comments: The Secretary received three comments concerning the eligibility of applicants for grants under this Talent Search priority. Two commenters suggested that Educational Opportunity Centers that do not have Talent Search projects in their areas be eligible to apply for the $2.9 million available for service to seventh and eighth grades. One commenter suggested that the competition be open to all applicants rather than the 177 current Talent Search grantees.

Discussion: The Secretary has decided to limit the competition for these two-year awards to current grantees under the Talent Search Program because current grantees already have a mechanism in place for serving students who are at risk of dropping out. Existing Talent Search projects have operative methodology to provide services to resolve problems faced by older adolescents who are likely to drop out of high school. These existing mechanisms may be extended to provide appropriate services to seventh and eighth graders. By limiting the universe of applicants, this priority will ensure that seventh and eighth grade students and dropouts are served by projects with operative methodology and staff. If entities that did not have current grants were allowed to receive grants, start-up time would be needed before the new projects could become fully operative.

In addition, students served in the seventh and eighth grades by such grantees would be at increased risk of dropping out because there would be no support services available to those students after eighth grade.

Changes: None.

Comments: One commenter stated that services should be extended to sixth grade students because patterns of growth and development would indicate that students in that age group would appear to require services as well.

Discussion: The current Talent Search Program regulations define eligible project participants as individuals who have completed the sixth grade or who are at least 12 years old and are not older than 27 and meet other eligibility criteria for participants. To retain consistency among Talent Search projects, the Secretary has decided not to extend services under this priority to sixth graders.

Changes: None.

Final Priority

Current grantees under the Talent Search Program may compete for 2-year projects that focus on serving seventh and eighth grade students and dropouts in order to encourage them to complete high school and continue their education at the postsecondary level after graduation, without regard to 34 CFR 643.3(a)(5).

Authority: 20 U.S.C. 1070d, 1070d-1.

Dated: July 7, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number: 84.044-Talent Search Program)

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Part IV

Department of Education

34 CFR Part 203

Chapter 1 Program for Neglected or Delinquent Children; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 203

RIN 1810-AA46

Chapter 1 Program for Neglected or Delinquent Children

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The U.S. Secretary of Education (Secretary) issues final regulations implementing the portion of Chapter 1 that provides financial assistance to State agencies responsible for the education of neglected or delinquent children in institutions. Under Part D of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended, the U.S. Department of Education provides financial assistance to meet the special educational needs of children in institutions for neglected or delinquent children, children attending community day programs for neglected or delinquent children, and children in adult correctional institutions.

EFFECTIVE DATES: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Mr. James R. Ogura, Chief, Program Policy Branch, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 2043), Washington, DC 20202-6132. Telephone: (202) 732-4701.

SUPPLEMENTARY INFORMATION:

Title I of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297) amended the Elementary and Secondary Education Act of 1965 (ESEA) to include a number of new and reauthorized programs. One of these programs is Chapter 1 of Title I of the ESEA, which reauthorizes programs previously contained in Chapter 1 of the Education Consolidation and Improvement Act of 1981 (ECIA). Part D of Chapter 1 of the ESEA, as amended, which is implemented by these final regulations, provides financial assistance to State agencies for projects designed to meet the special educational needs of children in institutions for neglected or delinquent childen, children attending community day programs for neglected or delinquent children, and children in adult correctional institutions.

On December 2, 1988, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (53 FR 48856-48863). The preamble to the NPRM included a discussion of the changes enacted by the Congress to improve services for children participating in the program. In addition, the preamble presented five issues the Secretary particularly requested comments on: (1) Reservation of funds for transition services; (2) definitions of institutions; (3) maintenance of effort; (4) State regulations; and (5) the applicability of relevant parts of the Education Department General Administrative Regulations (EDGAR).

The only major changes from the NPRM in these final regulations are the following:

1. Supplement, not Supplant—Section 203.43

As provided in section 1242(b) of the Act, § 203.43(b) of the proposed regulations required that, for the purposes of determining compliance with the supplement, not supplant requirement, a program under this part is considered supplementary to the regular education program on the basis of the number of hours students receive instruction from State sources regardless of the subject areas of instruction. Several commenters were concerned that in an institution that provides a full school day of instruction in its regular program, the addition of instructional time for services under this part may not be appropriate. On the other hand, other institutions, particularly adult correctional institutions, may provide less than a full school day of instruction, and the addition of time for services under this part may be appropriate. The Secretary has revised § 203.43 to provide an additional way to demonstrate compliance with the basic supplement, not supplant requirements.

2. State Regulations—Section 203.50

The final regulations make a number of changes to the provisions concerning the committee of practitioners in § 203.50. Section 1451(b) of the Act requires review by a State committee of practitioners "[b]efore publication of any proposed or final State rule or regulation." The proposed regulations attempted to minimize any burden caused by this provision by requiring review by the committee of practitioners only before publication of either a proposed rule, if State law required issuance of proposed rules, or a final rule, if no proposed rule was required. Moreover, the proposed regulations did not require a State to convene the committee except after issuance of an emergency rule if review prior to publication was not possible.

Although no comments were received on these proposed requirements, upon further consideration the Secretary has revised § 203.50(e) to require that a State convene the State committee of practitioners to review before publication any major proposed or final rule or regulation. The State must also ensure that any other rules or regulations be reviewed by the committee but not necessarily in a meeting. In addition, if a State does not issue rules or regulations relating to programs under this part but issues policies that the State educational agency (SEA) and State agencies must follow, the State must comply with the consultation requirements for issuing rules and regulations in § 203.50(e).

3. State Complaint Procedures—Sections 203.52 through 203.54

Section 203.52 of the proposed regulations contained requirements concerning complaint procedures that each SEA would have to adopt. Those regulations were developed, in part, in response to Congress' suggestion in the Conference Report accompanying the Act that the Secretary "issue amended regulations making 34 CFR 76.780-76.783 applicable to Chapter 1." See H.R. Rept. 567, 100th Cong., 2d Sess. 341 (1978). However, subsequent to enactment of the Act but before the proposed Chapter 1 regulations were published, the Secretary published an NPRM proposing changes to EDGAR. See 53 FR 31580 (Aug. 18, 1988). One of those proposed changes was the removal of the general complaint procedures in 34 CFR 76.780 through 76.782 of EDGAR and the transfer of those procedures to the regulations implementing Part B of the Education of the Handicapped Act, which had shown the greatest need for the complaint procedures. As a result, the Secretary proposed separate Chapter 1 complaint procedures. In response to comments on the EDGAR NPRM, the Secretary is reconsidering whether to remove the complaint procedures from EDGAR. Because this issue has not yet been resolved, the Secretary has decided on an interim basis to make the general complaint procedures from EDGAR applicable to programs under this part. For the convenience of SEAs, State agencies, and other interested parties, the procedures are included in §§ 203.52 through 203.54. However, paragraphs (b) and (c) of § 76.780 are not included as the statutory references are no longer appropriate. In addition, the acronym "SEA" replaces the term "State" and term "State agency" replaces the term "subgrantee" to be consistent with the remaining regulations under this part.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 20 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows. Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Section 203.5—What regulations apply?

Comment: Two commenters recommended that the provisions of EDGAR not apply to programs under this part as the requirements placed additional time-consuming demands on State staff members.

Discussion: In order to provide additional guidance and to ensure that Chapter 1 funds are spent only for authorized program purposes, the Secretary has made certain provisions of EDGAR applicable to programs under this part. In determining which provisions to apply, the Secretary carefully balanced the need for basic program accountability with the important principle of minimum Federal interference in State affairs. In particular, the final regulations allow States to use their own procedures to ensure accountability with respect to matters governed by two Office of Management and Budget (OMB) circulars: A-102 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), codified for programs of the Department in 34 CFR Part 80; and A-87 (Principles for Determining Costs Applicable to Grants and Contracts with State and Local Governments) as amended on January 28, 1981. Only if a State chooses not to apply its own procedures would the provisions in these parts of EDGAR apply to programs under this part.

If a State wishes to use its own procedures instead of the two OMB circulars implemented in EDGAR, the final regulations require that the State's procedures meet three general criteria, set forth in § 203.5(a)(4) (i)-(iii), that are designed to ensure the minimal standards necessary for proper management of Chapter 1 funds. A State may adopt new procedures, or may use accountability procedures applicable to the use of its own funds, if those procedures meet the general criteria. The State's procedures do not have to be submitted to the Secretary for approval, but must be available for Federal inspection. If a State does not have its own written requirements implemented by July 1, 1989, but wishes to develop them, the requirements in Part 80 and Appendix C to Part 74 apply until such time as the State's written requirements are adopted. In the event a State's requirements are determined to be insufficient, the enforcement provisions in Part E of the General Education Provisions Act (GEPA) apply, including the due process provisions in that part. During the transition period provided for in section 1491(c) of the Act, a State may continue to comply with the requirements under Chapter 1 of the ECIA.

The Secretary wishes to emphasize that State have complete discretion, subject to meeting the general criterai set forth in § 203.5(a)(4)(i)-(iii), to use their own procedures instead of the procedures in the two OMB circulars. Moreover, on further consideration of the criteria in the NPRM, the Secretary has determined that the criterion in § 203.5(a)(4)(ii) of the proposed regulations was unnecessary because the criterion was redundent with the other criteria.

In addition, the final regulations make applicable a limited number of provisions from Part 76 (State-Administered Programs); Part 77 (Definitions That Apply to Department Regulations); Part 78 (Education Appeal Board); and Part 81 (General Education Provisions Act—Enforcement). The Secretary believes these minimal requirements will help to ensure basic accountability without imposing undue burden and paperwork on SEAs and State agencies.

Changes: The criterion that a State's procedures must "result in the efficient and effective administration of programs under this part" has veen deleted from § 203.5(a)(4).

Comment: One commenter suggested that the regulations provide additional guidance on how State agency institutions relate to community day programs. The commenter stated the definition in § 203.6(c) was unclear.

Discussion: Section 1242 of the Act provides that a State agency shall use funds received under this part "to meet the special educational needs of children in institutions for neglected or delinquent children, children attending community day programs for neglected or delinquent children, or children in adult correctional institutions." Because the children eligible to receive services under this part are those for whom the State agency has the rsesponsibility to provide a free public education, the definition in § 203.6(c) defines a community day program "as a regular program of instruction provided by a State agency at a community day school operated for neglected or delinquent children." The Secretary is aware that some State agencies operate community day schools for delinquent children and, therefore, the children are eligible to be counted for allocation purposes and to receive services under this part.

Changes: None.

Section 203.6—What definitions apply?

Comment: Several commenters recommended that the definitions of "institution for delinquent children" and "institution for neglected children" be revised to exclude the requirement that the children in institutions have an average length of stay of at least 30 days. Commenters were primarily concerned that facilities such as detection centers, which hold children for less than 30 days, are not considered eligible institutions. Commenters stated that even though children are in the centers for short periods of time, immediate intake assessment and placement are possible, and this information is important in the children's placement in regular school district programs. Other commenters stated that effective instruction could be provided in less than 30 days.

Discussion: Section 1241 of the Act clearly establishes the program under this part to serve a very specific and needy population of children—neglected or delinquent children in institutions for which a State agency has the responsibility to provide an elementary and secondary educaetion. Section 1242(a) of the Act requires that the services provided with funds under this part must be "supplementary to the basic educaetion of such children which must be provided by the State." Although there are some unique detention, diagnostic, and reception centers that provide basic educational services for children on a short-term basis, the Secretary believes that the limited funds available must be directed to institutions serving childen that have an average stay of at least 30 days. Although children may benefit from additional services provided over short periods of time, the Secretary believes that the most effective and efficient use of the funds requires that children have

an average stay in the institution of at least 30 days.

Changes: None.

Section 203.21—How does the Secretary determine the amount of a State agency grant?

Comment: Although supporting the provision in § 203.21(b)(4) of the proposed regulations, one commenter requested that the issue of services to be provided by programs under this part and services provided by programs for handicapped children under 34 CFR Part 302 should be addressed in a policy manual. Another commenter requested that § 203.21(b)(4) be revised to clarify that collaboration between the two programs is encouraged, and that any prohibitions against the commingling of funds not defeat the intent of this provisions.

Discussion: Section 1292 of the Act states that "[n]eglected or delinquent children under [this subpart] who are eligible for programs for handicapped children [under 34 CFR Part 302], may be counted under each subpart for purposes of grant determination and may be served under each program." The Secretary interprets this provision to mean that neglected or delinquent children under this part, who are also eligible for services under 34 CFR Part 302 (Chapter 1 Programs for Handicapped Children), may receive supplementary services under both programs. The Secretary agrees that there must be collaboration among State agencies responsible for the two programs, if more than one agency has the responsibilities. In all cases, the Secretary recognizes the need for coordinating services provided by the Federal grants with the service provided by the State. The Secretary does not believe that the regulations need to provide additional clarification for this requirement. However, the Secretary will consider providing examples of coordination of services in the policy manual required by section 1436 of the Act.

Changes: None.

Section 203.22—What funds are available for an SEA to carry out its responsibilities?

Comment: One commenter asked whether the 15 percent limitation on indirect costs in § 203.22(b) of the proposed regulations applied to State applicant agencies.

Discussion: Section 1404 of the Act authorizes a grant to each SEA to carry out its responsibilities for programs under the Act. This 15 percent limitation on indirect costs applies only to the SEA's administrative grant. The limitation does not apply to other grants received under this part.

Changes: None.

Section 203.31—What are the State agency needs assessment requirements?

Comment: One commenter believed that the proposed regulations interpret the Act in a manner that is contrary to the needs of the children in correctional facilities. Specifically, the commenter noted that although the Act provides that all children in institutions who meet the age requirements are eligible to be counted for allocation purposes and are eligible for services, only designated children may benefit from the services. The commenter recommended that the regulations be revised to ensure that more of the children benefit from the services.

Discussion: Section 1242(a) of the Act requires that programs under this part be carried out in a manner consistent with section 1014 of the Act. Section 1014(b) includes the local educational agency (LEA) requirements for conducting an annual needs assessment. The Secretary has determined that not all of the requirements that apply to LEAs in section 1014(b) of the Act are applicable to State agencies implementing programs under this part. For example, section 1014(b) requires that LEAs identify educationally deprived children in all eligible attendance areas. A State agency carries out its program in institutions rather than attendance areas. In addition, children are eligible for services if they are in an eligible institution and meet the definition of "children" in § 203.6(c) of the regulations. Therefore, § 203.31 of the regulations does not require the identification of educationally deprived children. Rather, the State agency must annually assess the needs of all children in eligible institutions. On the basis of the needs assessment, the State agency must select for participation those children with the greatest need. If there are sufficient resources to serve all of the children, the State agency could include all of them in programs under this part. The Secretary believes that § 203.31 provides this flexibility to the State agency.

Changes: None.

Section 203.32—Under what conditions does an SEA approve a State agency's application?

Comment: Two commenters were concerned that § 203.32(a) of the proposed regulations appeared to require that a State agency maintain fiscal effort in order to have its application approved rather than requiring a reduction in the agency's allocation as provided in section 1018(a) of the Act. The commenters recommended that the requirement in § 203.32(a) be deleted or revised to reflect section 1018(a).

Discussion: The Secretary agrees that section 1018(a) of the Act provides that if a State agency fails to maintain effort, the SEA shall reduce the amount of the agency's allocation of funds under this part rather than disapprove the application.

Changes: Section 203.32(a) has been revised to clarify that a State agency's allocation must be reduced if it fails to maintain effort.

Section 203.40—What costs are allowable?

Comment: A number of commenters supported the interpretation in § 203.40(b) that allows the State agency to reserve 10 percent or less of the funds it receives under this part for projects designed to facilitate the transition of children from State institutions into locally opoerated elementary and secondary education programs. However, two commenters believed that projects should not be restricted to the transition of children into locally operated elementary and secondary education programs. According to the commenters, the overall goal for children in institutions should be to successfully return the children to the community, which could include using a wider range of resources and placements such as private institutions with LEAs paying tuition; vocational education, both public and private; and adult basic education and General Education Development (GED) preparation offered by community college systems. One commenter also cited the recent emphasis placed on "transition-to-work" programs as a viable alternative for many older children transitioning from institutions to local communities.

Discussion: Section 1243(a) of the Act states that transition services should "support projects that facilitate the transition of children from State operated institutions for neglected and delinquent children into locally operated programs." Section 1243(c) of the Act limits the transition services to children in schools other than State operated institutions. On further review, the Secretary believes that statutory language in section 1243(a) provides the flexibility State agencies need to develop projects to facilitate the transition of children from State institutions to local communities. For many children, the transition will be to regular local elementary and secondary education programs. However, other children (section 1242(d) (Evaluation) recognizes special programs) may be helped by placement in special programs, including vocational and adult basic education programs and job training programs.

Changes: The phrase "elementary and secondary education" has been deleted from § 203.40(b)(1).

Comment: One commenter recommended that, because section 1471 of the Act included definitions of "pupil services" and "pupil services personnel," paragraphs (a)(2) and (b)(2)(ii) of § 203.40 of the proposed regulations be revised to include pupil services. The commenter believed that SEA and State agency personnel need to be aware that pupil services are allowable costs under this part. In addition, the commenter further stated that, in assessing the needs of children in transition projects, a State agency must consider the pupil services needs, including counseling, psychological, and school social work services.

Discussion: The Secretary agrees that pupil services are allowable costs under this part and that pupil services, as defined in section 1471 of the Act, represent important resources for a State agency to consider as it designs its program.

Changes: Paragraphs (a)(1) and (b)(2)(ii) of § 203.40 have been revised to include pupil services.

Section 203.41—What is the maintenance of effort requirement?

Comment: A number of commenters supported the Secretary's attempt to clarify the expenditures to include in determining whether a State agency has maintained effort. However, in response to the Secretary's specific request for comments on this issue, several commenters requested that the expenditures be broadened to include the salaries of school administrators and support staff, including guidance counselors, school psychologists, speech clinicians, and school clerical staff. In addition, some commenters requested that expenditures for fringe benefits also be included.

Discussion: Section 1242(a) of the Act requires that programs and projects under this part be carried out in a manner consistent with the maintenance of effort requirements in section 1018(a) of the Act. In § 203.40(a)(3) of the proposed regulations, the Secretary attempted to limit the expenditures to be considered in determining whether a State agency has properly maintained effort to those expenditures directly related to providing a free public education for children in institutions. The Secretary agrees with the commenters' requests that expenditures for instructional staff salaries include expenditures for educational administrators and school support staff, including pupil services personnel and school clerical staff. In addition, the Secretary interprets salary expenditures to include costs for wages and related fringe benefits.

Changes: Section 203.41(a)(3) has been changed to include expenditures for salaries of educational administrators and other school support staff.

Section 203.43—What is the supplement, not supplant requirement that applies to the program?

Comment: Several commenters were concerned that § 203.43(d) of the proposed regulations would require that in order to meet the supplement, not supplant requirement under section 1018(b) of the Act, a program under this part must provide more hours of instructional time for participating children than is provided by the regular instructional program. The commenters stated that in many institutions, particularly those for juveniles, the regular program includes a full school day, and that it would not be feasible to add more time to the school day. Another commenter supported the provision because it provided additional flexibility for State agencies to meet the uniqueness of institutions.

Discussion: Section 1242(a) of the Act requires that programs under this part be carried out in a manner consistent with section 1018(b) of the Act. Section 1018(b) requires that funds received under this part be used "to supplement, and to the extent practicable, increase the level of funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of pupils participating in programs and projects assisted under this chapter." Although this basic Chapter 1 fiscal requirement is applicable to programs under this part, section 1242(b) of the Act and § 203.43(a)(2)(ii) contain a special interpretation of how this provision applies to State agencies under this part, which permits the determination of the supplement, not supplant requirement to be based on the total number of hours of instruction without regard to the subject area of instruction. Both the House and Senate reports accompanying the Act make reference to this special interpretation. H.R. Rept. 95, 100th Cong., 1st Sess. 48 (1987); S. Rept. 222, 100th Cong., 1st Sess. 24 (1987). The Secretary believes that the intent of this provision is to continue the basic supplement, not supplant requirement for programs under this part, and to also preclude the application of a narrow interpretation that requires that services under this part only be provided in instructional or support areas that are included in a regular State agency program. For example, under this narrow interpretation, a State agency could not provide reading instruction with funds under this part unless the State agency provided reading instruction in the regular program. On the basis of the comments received and upon further review, the Secretary recognizes the problem a State agency could have if the only way to comply with the supplement, not supplant requirement is to add to the length of the school day, particularly State agencies that provide a full day of instruction. Therefore, the only way to give meaning to the special interpretation to section 1242(b) of the Act is to consider it as an additional interpretation of the requirement.

Changes: Section 203.43(a) has been revised to clarify that § 203.43(a)(2)(ii) is an additional means for determining compliance with the supplement, not supplant requirement in § 203.43(a)(1).

Section 203.46—What are the requirements for evaluating and reporting project results?

Comment: Two commenters asked the meaning of the term "school credit" as used in § 203.46(a)(1)(ii). A commenter indicated that the term could refer to academic, curricular, attendance, or individual class credit, and recommended that the school credit be maintained for the purpose of completing high school requirements

Discussion: The Secretary interprets section 1242(d) of the Act to require that a State agency include in its annual evaluation a determination of the impact the program has on participants earning credits in courses required by the State to successfully complete elementary and secondary education programs. Section 203.46(a)(1)(ii) provides the necessary flexibility for State agencies to determine the impact of programs under this part at both the elementary and secondary school levels.

Changes: None.

Comment: Several commenters recommended that the evaluation criterion in § 203.46(a)(1)(iii) of the regulations be broadened to include the transition of participants into programs other than those operated by LEAs. The commenters suggested that participation in programs such as those operated by private institutions under a tuition arrangement with an LEA, privately

sponsored adult education programs for children above age 16, vocational educational programs not operated by an LEA, and adult basic education and GED preparation courses offered by community colleges also be considered.

Discussion: Although section 1242(d) of the Act refers specifically to programs "operated by a local education agency," the Secretary agrees that in evaluating the impact of programs under this part, a State agency should determine, to the extent feasible, the success former participants experienced in transitioning into special or regular educational programs operated by LEAs or other public or private educational agencies. The important criterion is that the children transition from the institution to local, rather than State, education programs.

Changes: Section 203.46(a)(1)(iii) has been revised to include transition to other public or private educational agency programs.

Section 203.50—Does a State have authority to issue State regulations for the program?

Comment: None.

Discussion: Section 1451(b) of the Act requires that a State committee of practitioners review before publication any proposed or final State rule or regulation relating to the administration and operation of programs under this part. In addition, the Act requires that the State convene the committee to review an emergency regulation prior to issuance in final form. On further consideration, the Secretary recognizes the inconsistency in requiring a State to convene to committee to review emergency rules and regulations while not requiring that the committee be convened to review other regulations. However, the Secretary is concerned with the undue burden that will be placed on States if the committee must be convened to review all rules and regulations. Therefore, the Secretary believes that the most appropriate way to carry out the intent of the Act and reduce undue burden is to require that the State convene the committee to review all major rules and regulations. All other rules and regulations must be reviewed by the committee before publication but not necessarily in a meeting. In addition, in a State that does not issue rules or regulations relating to the administration and operation of programs under this part but issues policies that the SEA and State agencies are required to follow, the State must comply with the consultation requirements for issuing rules and regulations.

Changes: Section 203.50(e) has been revised to require a State to convene the committee of practitioners to review any major proposed or final rule or regulation that the SEA and State agencies are required to follow in administering and implementing programs under this part. In addition, a change has been made to require that, for a State that does not issue rules or regulations but only issues policies that the SEA and State agencies must follow, the State must comply with the consultation requirements for issuing rules and regulations.

Comment: A commenter stated that § 203.50(e)(3)(ii) of the regulations, which requires that a majority of the committee of practitioners represent State agencies, goes beyond the statute and should not be included.

Discussion: As discussed in the preamble to the NPRM, section 1242 of the Act requires that programs under this part be administered in a manner consistent with section 1451(b). Section 1451(b) requires that a majority of the members of the committee of practitioners be representatives of LEAs. Because funds under this part go to State agencies rather than LEAs, the Secretary believes it is consistent with the purposes of the statute to require that the majority of the committee represent State agencies rather than LEAs.

Changes: None.

Comment: One commenter stated that children in adult correctional institutions are usually 18 years of age and older and, therefore, are considered responsible for their own actions. The commenter noted that it may be inappropriate to require that parents be included on the committee of practitioners. The same commenter also indicated that parents may be appropriate for juvenile programs, but parents of juveniles may be located many miles from the institutions or State agency.

Discussion: Section 1451(b) of the Act requires that parents be included as members of the committee of practitioners. The Secretary believes that parents can and should play a central role in the education of their children. Even though children are placed in institutions, parents can still make significant contributions to the educational progress of the children. Although children above the age of 18 years may be responsible for their own actions, parents still have a role in the educational process. The Secretary also believes that since the committee of practitioners is a State group, proximity of parents to an institution or State agency is not a deciding factor for determining whether parents should be members. However, States may select parents who reside nearer to the location of the meetings.

Changes: None.

Section 203.52—What complaint procedures must an SEA adopt?

Comment: One commenter was concerned about § 203.52(c)(2) of the proposed regulations, which provided the opportunity for a complainant who is dissatisfied with the decision of the State agency to file an appeal with the SEA. The commenter stated that the provision would require additional time and effort by the SEA, particularly in adult correctional institutions, where there are numerous "jail house lawyers" who enjoy challenging the "system." The commenter suggested that rather than specify a complaint process, the regulations process should require that the SEA establish a complaint procedure through recommendations from the committee of practitioners.

Discussion: Section 203.52 of the proposed regulations, including § 203.52(c)(2), has been deleted, and §§ 203.52 through 203.54 of the final regulations incorporate and make applicable to programs under this part the general complaint procedures in §§ 76.780 through 76.782 of EDGAR. Section 203.52 of the proposed regulations contained requirements concerning complaint procedures that each SEA would have to adopt. Those regulations were developed, in part, in response to Congress' suggestion in the Conference Report accompanying the Act that the Secretary "issue amended regulations making 34 CFR 76.780–76.783 applicable to Chapter 1." See H.R. Rept. 567, 100th Cong., 2d Sess. 341 (1978). However, subsequent to enactment of the Act but before the proposed Chapter 1 regulations were published, the Secretary published an NPRM proposing changes to EDGAR. See 53 FR 31580 (Aug. 18, 1988). One of those proposed changes was the removal of the general complaint procedures in 34 CFR 76.780 through 76.782 of EDGAR and the transfer of those procedures to the regulations implementing Part B of the Education of the Handicapped Act, which had shown the greatest need for the complaint procedures. As a result, the Secretary proposed separate Chapter 1 complaint procedures. In response to comments on the EDGAR NPRM, the Secretary is reconsidering whether to remove the complaint procedures from EDGAR. Because this issue has not yet been resolved, the Secretary has on an interim basis decided to make the general complaint procedures from EDGAR applicable to programs under this part. For the convenience of SEAs, State agencies, and other interested parties, the procedures are included in § § 203.52 through 203.54. However, paragraphs (b) and (c) of § 76.780 are not included as the statutory references are no longer appropriate. In addition, the acronym "SEA" replaces the term "State" and the term "State agency" replaces the term "subgrantee" to be consistent with the remaining regulations under this part. In addition, § 203.52 of the regulations requires that an SEA's written procedures for resolving complaints include any complaint that the SEA or a State agency is in violation of the Federal statute or regulation that applies to a program. Section 203.53 of the regulations also requires that an SEA's complaint procedures include the right to request the Secretary to review the final decision of the SEA. Comments received on the proposed Chapter 1 complaint procedures will be given additional consideration in whatever final action the Secretary takes regarding the EDGAR complaint procedures.

Changes: The separate Chapter 1 complaint procedures in § 203.52 of the proposed regulations have been deleted, and § § 203.52 through 203.54 incorporate and make applicable to programs under this part the general complaint procedures in § 76.780 through 76.782 of EDGAR.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Executive Order 12606—The Family

The Secretary certifies that these regulations have been reviewed in accordance with Executive Order 12606 and that they do not have a significant negative impact on family formation, maintenance, and general well-being. To the contrary, the program provides educational and support services for children removed from families because of delinquency or neglect and supports activities that facilitate children's return to family and local school programs.

List of Subjects in 34 CFR Part 203

Education, Education of disadvantaged, Elementary and secondary education, Grant programs—education, Juvenile delinquency, Neglected, Reporting and recordkeeping requirements.

Dated: June 20, 1989.

(Catalog of Federal Domestic Assistance Number 84.013—Chapter 1 Program for Neglected or Delinquent Children)

Lauro F. Cavazos,

Secretary of Education.

The Secretary revises Part 203 of Title 34 of the Code of Federal Regulations to read as follows:

PART 203—CHAPTER 1 PROGRAM FOR NEGLECTED OR DELINQUENT CHILDREN

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Authority: 20 U.S.C. 1232(b) (2), (5), 2721(a), 2724(b), 2728 (a), (b), (d), 2729(b), 2801–2804, 2811–2812, 2824 (a), (b), 2831(a), 2835 (a), (d), 2838 (a), (b), (c), 2851, 2853, 2891, unless otherwise noted.

Subpart A—General

§ 203.1 What is the Chapter 1 Program for Neglected or Delinquent Children?

Under the Chapter 1 Program for Neglected or Delinquent Children, the Secretary provides Federal financial assistance for projects designed to meet the special educational needs of neglected or delinquent children—

(a) In institutions for neglected children;

(b) In institutions for delinquent children;

(c) Attending community day programs for neglected or delinquent children; and

(d) In adult correctional institutions.

Authority: 20 U.S.C. 2802(a))

§ 203.2 Who is eligible for a grant?

The Secretary provides funds under this part to State educational agencies (SEAs) for State agencies directly responsible for providing free public education for children referred to in § 203.1.

Authority: 20 U.S.C. 2801(a))

§ 203.3 Who is eligible for a subgrant?

(a) A State agency that is responsible for providing free public education for children in institutions for neglected or delinquent children, children attending community day programs for neglected or delinquent children, or children in adult correctional institutions is eligible to receive a subgrant under this part.

(b) The SEA shall annually notify each eligible State agency of the amount of funds the State agency is eligible to receive under the Chapter 1 Neglected or Delinquent Program.

Authority: 20 U.S.C. 2801 (a), (b))

§ 203.4 What kind of activities may be assisted?

Under the Chapter 1 Neglected or Delinquent Program, the Secretary makes payments to SEAs to assist State agencies in conducting—

(a) Programs and projects that are designed to meet the special educational needs of children in institutions for neglected or delinquent children, children attending community day programs for neglected or delinquent children, and children in adult correctional institutions; and

(b) Projects that facilitate the transition of children from State institutions for neglected or delinquent children into programs operated by local educational agencies (LEAs).

(Authority: 20 U.S.C. 2802(a), 2803(a))

§ 203.5 What regulations apply?

The following regulations apply to the Chapter 1 Neglected or Delinquent Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 76 (State-Administered Programs) as follows:

(i) Subpart A (General), except for § 76.3 (ED general grant regulations apply to these programs).

(ii) Sections 76.125 through 76.137 (Consolidated Grant Applications for Insular Areas).

(iii) Section 76.401 (Disapproval of an application—opportunity for a hearing).

(iv) Subpart F (What Conditions Must Be Met by the State and Its Subgrantees?), except for the following sections:

(A) Sections 76.580–76.581 (Coordination).

(B) Sections 76.650 through 76.662 (Participation of Students Enrolled in Private Schools).

(C) Section 76.684 (Day care services).

(D) Section 76.690 (Energy conservation awareness).

(v) Subpart G (What Are the Administrative Responsibilities of the State and Its Subgrantees?), except for the following sections:

(A) Sections 76.770 through 76.772 (State Administrative Responsibilities).

(B) Section 76.780 (A State shall adopt complaint procedures).

(C) Section 76.781 (Minimum complaint procedures).

(D) Section 76.782 (An organization or individual may file a complaint).

(vi) Subpart H (What Procedures Does the Secretary Use to Get Compliance?).

(2) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR Part 78 (Education Appeal Board).

(4) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), unless a State formally adopts its own written fiscal and administrative requirements for expending and accounting for all funds received by SEAs and State agencies under this part. These requirements must be available for Federal inspection and must—

(i) Be sufficiently specific to ensure that funds received under this part are used in compliance with all applicable statutory and regulatory provisions;

(ii) Ensure that funds received under this part are only spent for reasonable and necessary costs of operating programs under this part; and

(iii) Ensure that funds received under this part are not used for general expenses required to carry out other responsibilities of State or local governments.

(5) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(b) The regulations in this Part 203.

(Authority: 20 U.S.C. 2831(a))

§ 203.6 What definitions apply?

(a) *Definitions in the Act.* The following terms used in this part are defined in section 1471 of the Act:

Average daily attendance
Average per pupil expenditure
Construction
Current expenditures
Equipment
Free public education
Local educational agency
Parent
Pupil services
Pupil services personnel
Secretary
State
State educational agency

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

GEPA
Grant
Nonprofit
Private
Project
Supplies

(c) *Other definitions.* The following definitions also apply to this part:

"Act" means Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended.

"Adult correctional institution" means a facility in which persons are confined as a result of a conviction of a criminal offense, including persons under 21 years of age.

"Children" means—

(1) Persons up to age 21 who are entitled to a free public education not above grade 12; and

(2) Preschool children.

"Community day program" means, as determined by the SEA, a regular program of instruction provided by a State agency at a community day school operated specifically for neglected or delinquent children.

"ECIA" means the Education Consolidation and Improvement Act of 1981.

"Fiscal year" means the Federal fiscal year—a period beginning on October 1 and ending the following September 30—or another 12-month period normally used by the SEA for recordkeeping.

"Institution" means either an institution for neglected children or an institution for delinquent children, or an adult correctional institution.

"Institution for delinquent children" means, as determined by the SEA, a public or private residential facility that is operated for the care of children who—

(1) Have been determined to be delinquent or in need of supervision; and

(2) Have had an average length of stay in the institution of at least 30 days.

"Institution for neglected children" means, as determined by the SEA, a public or private residential facility, other than a foster home, that is operated for the care of children who—

(1) Have been committed to the institution or voluntarily placed in the institution under applicable State law because of abandonment, neglect, or death of the parents or guardians; and

(2) Have had an average length of stay in the institution of at least 30 days.

"Regular program of instruction" means an educational program (not beyond grade 12) in an institution or a community day program for neglected or delinquent children that consists of classroom instruction in basic school subjects such as reading, mathematics, and vocationally oriented subjects, and that is supported by non-Federal funds. Neither the manufacture of goods within the institution nor activities related to institutional maintenance are considered classroom instruction.

"State agency" means an agency of State government directly responsible for the free public education of children in institutions for neglected or delinquent children or in adult correctional institutions, or in community day programs for neglected or delinquent children. Although the term generally refers to an agency other than an SEA, the term includes an SEA that receives a specific State appropriation for the education of neglected or delinquent children but transfers the funds to another agency that has responsibility for providing the educational services. The educational services may be provided in schools operated by the SEA or the State agency or in schools under contract or other arrangement with the SEA or the State agency.

(Authority: 20 U.S.C. 2831(a), 2891)

§§ 203.7–203.9 [Reserved]

Subpart B—How Does a State Apply for a Grant?

§ 203.10 What assurances must a State submit to receive a grant?

(a) A State that wishes to receive funds under this part for State agency projects designed to meet the special educational needs of neglected or delinquent children shall submit to the Secretary, through its SEA, assurances that the SEA will—

(1) Meet the requirements in section 435(b) (2) and (5) of the General Education Provisions Act (GEPA) relating to fiscal control and fund accounting procedures;

(2) Carry out the evaluation requirements in § 203.46; and

(3) Ensure that its State agencies comply with all applicable statutory and regulatory requirements.

(b) The assurances submitted under paragraph (a) of this section remain in effect for the duration of the SEA's participation in programs under this part.

(Authority: 20 U.S.C. 1232d(b) (2), (5), 2729 (b), (c), (d), 2838(c))

§§ 203.11–203.19 [Reserved]

Subpart C—How Does the Secretary Determine the Amount of a Grant?

§ 203.20 How does the Secretary determine the amount of a grant to an SEA?

(a) The Secretary annually determines the amount of funds under this part that State agencies in a State are eligible to receive in accordance with sections 1241(b) and 1291 of the Act.

(b) The Secretary annually notifies the SEA of the amount each State agency is eligible to receive under this part.

(Authority: 20 U.S.C. 2801(b), 2811)

§ 203.21 How does the Secretary determine the amount of a State agency grant?

(a) *Amounts of grants.* The Secretary determines the amount of a State agency grant according to section 1241 of the Act and the following data:

(1) Average daily attendance data, determined according to the provisions of paragraph (b) of this section, in the schools operated or supported by the State agencies in the State, including community day schools for neglected or delinquent children.

(2) The applicable average per pupil expenditure data.

(3) The amount appropriated for programs for neglected and delinquent children for the relevant fiscal year.

(b) *Determination of average daily attendance.* (1) Average daily attendance is computed for each institution or community day program serving neglected or delinquent children by—

(i) Calculating from daily attendance records the total number of days of attendance of children in the regular educational program, as defined in § 203.6(c), during the most recently completed school year; and

(ii) Dividing that total by 180.

(2) For the purpose of computing average daily attendance—

(i) A child is counted as being in a full day of attendance for each day the child attends the regular educational program for three or more hours; and

(ii) A child is counted as being in one-half day of attendance for each day the child attends the regular educational program for at least one hour, but less then three hours.

(3) To be counted in average daily attendance, a child must be—

(i) One for whom a State agency is providing a free public education; and

(ii) Enrolled for at least 10 hours a week in a regular educational program for which daily attendance records are kept.

(4) Neglected or delinquent children under this part, who are eligible for programs for handicapped children under 34 CFR Part 302, may be counted for grant determinations under both programs and may be served under both programs.

(Authority: 20 U.S.C. 2801(b))

(Approved by the Office of Management and Budget under control number 1810–0060.)

§ 203.22 What funds are available for an SEA to carry out its responsibilities?

(a) Except for programs under Part C of Chapter 1, an SEA shall use funds received under section 1404(a) of the Act for the proper and efficient performance of its duties under Chapter 1.

(b) The SEA may use not more than 15 percent of the funds referred to in paragraph (a) of this section for indirect costs.

(Authority: 20 U.S.C. 2824 (a), (b))

§§ 203.23–203.29 [Reserved]

Subpart D—How Does a State Agency Apply For and Receive a Subgrant?

§ 203.30 How does a State agency apply for a subgrant?

(a) A State agency shall submit an application to the SEA for a period of not more than three fiscal years.

(b) The application submitted by the State agency must include the following:

(1) A description of the procedures to be used to conduct an annual assessment of educational needs that meets the requirements of § 203.31.

(2) A description of the project to be conducted, including a budget for the initial project year.

(3) Data showing that the State agency has maintained fiscal effort as required by § 203.41.

(4) Other information the SEA may request.

(c) A State agency shall annually update an application that has been approved for more than one year by submitting the following information to the SEA:

(1) Data showing that the State agency has maintained fiscal effort as required by § 203.41.

(2) A budget for the expenditure of funds received under this part.

(d) If there are substantial changes in the numbers or the needs of children to be served or the services to be provided, the State agency shall submit a description of the changes to the SEA.

(Authority: 20 U.S.C. 2721(a), 2724(b), 2728 (a), (b), (d), 2802 (a), (c))

(Approved by the Office of Management and Budget under control number 1810–0060.)

§ 203.31 What are the State agency needs assessment requirements?

A State agency may receive funds under this part only if it conducts an annual assessment of all children in eligible institutions to—

(a) Identify the special educational needs of children in the institutions and children attending community day programs for neglected or delinquent children;

(b) Identify the general instructional areas on which the program will focus;

(c) Select for participation those children with the greatest need for special assistance; and

(d) Determine the special needs of participating children with sufficient specificity to ensure concentration on those needs.

(Authority: 20 U.S.C. 2724(b))

§ 203.32 Under what conditions does an SEA approve a State agency's application?

(a) An SEA shall approve a State agency's application for funds under this part if—

(1) The application meets the requirements in §§ 203.30 and 203.31; and

(2) The SEA determines that the State agency—

(i) Maintained fiscal effort in accordance with § 203.41; or

(ii) Has modified its application to take into account its reduced allocation if the State agency failed to maintain effort.

(b) An SEA may approve an application for a grant to a State agency for one year or for a period of up to three years if a State agency operates programs for children who participate for more than one year.

(c) SEA approval of an application under paragraph (a) of this section does not relieve the State agency of its responsibility to comply with all applicable requirements.

(Authority: 20 U.S.C 2802 (a), (c))

§§ 203.33-203.39 [Reserved]

Subpart E—What Post-Award Conditions Must Be Met by a State Agency?

§ 203.40 What costs are allowable?

(a) A State agency shall use funds under this part only for programs and projects (including the acquisition of equipment and, if necessary, the construction of school facilities) that are designed to—

(1) Meet the special educational and pupil services needs of children in institutions for neglected or delinquent children, children attending community day programs for neglected or delinquent children, or children in adult correctional institutions; and

(2) Support educational services supplemental to the basic education of neglected or delinquent children that must be provided by the State.

(b) (1) A State agency may reserve 10 percent or less of the funds it receives for any fiscal year under section 1241 of the Act for projects designed to facilitate the transition of children from State institutions or community day programs for neglected or delinquent children into locally operated programs.

(2) The services provided from the funds reserved under paragraph (b)(1) of this section may include, but are not limited to, the following:

(i) Supplemental instruction to improve achievement in basic and more advanced skills.

(ii) Pupil services, including counseling, psychological, and social work services designed to meet the needs of the children.

(iii) The services of persons with special responsibilities to act on behalf of individual children (ombudspersons).

(iv) Tutoring.

(v) Re-entry orientation programs.

(3) Projects funded under paragraph (b)(1) of this section may be conducted directly by the State agency, or by contracts or other arrangements with one or more of the following:

(i) One or more LEAs.

(ii) Other public agencies.

(iii) Private, nonprofit organizations.

(4) The special educational services funded under paragraph (b) of this section shall be provided to neglected or delinquent children in schools other than those operated for children in State institutions or community day programs for neglected or delinquent children.

(Authority: 20 U.S.C. 2802(a), 2803)

§ 203.41 What is the maintenance of effort requirement?

(a) (1) *Basic standard.* Except as provided in paragraph (b) of this section, an SEA shall pay a State agency its allocation of funds under this part if the SEA finds that either the combined fiscal effort per student or the aggregate expenditures of State funds with respect to the provision of free public education by the State agency for the preceding fiscal year was not less than 90 percent of the combined fiscal effort per student or the aggregate expenditures for the second preceding fiscal year.

(2) *Meaning of "preceding fiscal year."*—For purposes of determining maintenance of effort, the "preceding fiscal year" is the Federal fiscal year or the 12-month fiscal period most commonly used in a State for official reporting purposes prior to the beginning of the Federal fiscal year in which funds are available.

Example: For funds first made available on July 1, 1989, if a State is using the Federal fiscal year, the "preceding fiscal year" is Federal fiscal year 1988 (which began on October 1, 1987) and the "second preceding fiscal year" is fiscal year 1987 (which began on October 1, 1986). If a State is using a fiscal year that begins on July 1, 1989, the "preceding fiscal year" is the 12-month period ending on June 30, 1988 and the "second preceding fiscal year" is the period ending on June 30, 1987.

(3) *Expenditures.* (i) *To be considered.* In determining a State agency's compliance with the maintenance of effort requirement, the SEA shall consider the State agency's expenditures from State funds for free public education. These include expenditures for the following:

(A) Instructional staff salaries.

(B) Salaries for educational administrators.

(C) Salaries for school support staff, including pupil services personnel and school clerical staff.

(D) Instructional supplies and materials.

(ii) *Not to be considered.* The SEA may not consider the following expenditures in determining a State agency's compliance with the maintenance of effort requirement:

(A) Any expenditures related primarily to the care of children in institutions rather than for free public education.

(B) Any expenditures for community services, capital outlay, or debt service.

(C) Any expenditures from funds provided under Chapter 1 and Chapter 2 of Title I of the Act or Chapter 1 and Chapter 2 of the ECIA.

(b) *Failure to maintain effort.* (1) If a State agency fails to maintain effort and a waiver under § 203.42 is not granted, the SEA shall reduce the State agency's allocation of funds under this part in the exact proportion by which the State agency fails to meet 90 percent of both the combined fiscal effort per student and aggregate expenditures (using the measure most favorable to the State agency) for the second preceding fiscal year.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year in which the State agency failed to maintain effort, the SEA shall consider the State agency's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the State agency) for the third preceding fiscal year.

Example: In Federal fiscal year 1990, a State agency fails to maintain effort because its fiscal effort in the preceding fiscal year (1988) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1987). In assessing whether the State agency maintained effort during the next fiscal year (1991), the SEA may consider the State agency's expenditures for the second preceding fiscal year (1988) (the year that caused the State agency's failure to maintain effort) to be no less than 90 percent of the State agency's expenditures in the prior fiscal year (1987).

(Authority: 20 U.S.C. 2728(a), 2802(a))

§ 203.42 Under what circumstances may an SEA waive the maintenance of effort requirement?

(a) (1) An SEA may waive, for one fiscal year only, the maintenance of effort requirement in § 203.41 if the SEA determines that a waiver would be equitable due to exceptional or uncontrollable circumstances. These circumstances include, but are not limited to, the following:

(i) A natural disaster.

(ii) A precipitous and unforeseen decline in the financial resources of the State agency.

(2) An SEA may not consider tax initiatives or referenda to be exceptional or uncontrollable circumstances.

(b) (1) If the SEA grants a waiver under paragraph (a) of this section, the SEA shall not reduce the amount of funds under this part the State agency is otherwise entitled to receive.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year for which the waiver was granted, the SEA shall consider the State agency's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the State agency) for the third preceding fiscal year.

Example: In fiscal year 1990, a State agency secures a waiver because its fiscal effort in the preceding year (1988) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1987) due to exceptional or uncontrollable circumstances. In assessing whether the State agency maintained effort during the next fiscal year (1991), the SEA may consider the State agency's expenditures for the second preceding fiscal year (1988) (the year for which the State agency needed a waiver) to be no less than 90 percent of the State agency's expenditures in the prior fiscal year (1987).

(Authority: 20 U.S.C. 2728(a), 2802(a))

§ 203.43 What is the supplement, not supplant requirement that applies to the program?

(a) (1) Except as provided in paragraph (b) of this section, a State agency may use funds available under this part only to supplement and, to the extent practical, increase the level of non-Federal funds that would, in the absence of funds under this part, be made available for the education of pupils participating in projects funded under this part, and in no case may funds available under this part be used to supplant those non-Federal funds.

(2) In determining compliance with paragraph (a)(1) of this section, a program is considered to have met the requirement if funds under this part are used to either—

(i) Provide services that are supplemental to the services that would, in the absence of funds under this part, be provided to children participating in the program under this part; or

(ii) Increase the total number of hours of instruction that students receive with State funds and without regard to the subject area the additional instruction is provided.

Example: The regular program of instruction in an institution provides classes with State funds in English, mathematics, and vocational education. Each student receives three hours of instruction each day. The Chapter 1 program provides a remedial reading class for children selected to receive Chapter 1 services. Although reading is not part of the regular program of instruction, the Chapter 1 remedial reading class is supplemental to the regular program because the Chapter 1 services provide additional instructional time for participating children.

(b) To meet the requirements in paragraph (a) of this section, a State agency is not required to provide services under this part through use of a particular instructional method or in a particular instructional setting.

(c) A State agency may exclude, for the purpose of determining compliance with the supplement, not supplant requirement in paragraph (a) of this section, State and local funds spent to carry out special programs that the Secretary has determined, in advance and in writing, meet the requirements of section 1018(d)(1)(B) of the Act.

(Authority: 20 U.S.C. 2728(b), (d) 2802(a), (c))

§ 203.44 What is included in the records of transferred students?

A State agency shall include any individualized education plans in the records of students who transfer to another State or local education agency.

(Authority: 20 U.S.C. 2802(c))

(Approved by the Office of Management and Budget under control number 1810-0060.)

§ 203.45 How may personnel be assigned supervisory duties?

(a) A State agency may assign personnel paid entirely with funds available under this part to limited supervisory duties that may provide some benefit to children not participating in the Chapter 1 project if—

(1) Similarly situated personnel at the same site, who are not paid with funds available under this part, are assigned these duties; and

(2) The time spent by Chapter 1 personnel on these duties does not exceed the least of the following:

(i) The proportion of total work time that similarly situated non-Chapter 1 personnel at the same site spend performing these duties.

(ii) One period per day.

(iii) Sixty minutes per day.

(b) The amount of time referred to in paragraph (a)(2) of this section may be calculated on a daily, weekly, monthly, or annual basis.

(c) The limited supervisory duties in paragraph (a) of this section need not be limited to classroom instruction and may include but are not limited to the following:

(1) Supervision of halls, playgrounds, lunchrooms, study halls, bus loading and unloading, and homerooms.

(2) Participation as a member of a school curriculum committee.

(3) Participation in the selection of regular curriculum materials and supplies:

(Authority: 20 U.S.C. 2853)

§ 203.46 What are the requirements for evaluating and reporting project results?

(a) *State agency evaluations.* (1) A State agency that receives funds under this part shall annually conduct an evaluation to determine the impact of the project on the ability of the participants to—

(i) Maintain and improve their educational achievement;

(ii) Maintain school credit in compliance with State requirements; and

(iii) Make the transition to regular or special education programs operated by LEAs or other public or private educational agencies.

(2) If an evaluation shows that a project is not making substantial progress in meeting the goals in paragraph (a)(1) of this section, the State agency shall make changes in the project, with the approval of the SEA, that will enable the project to meet those goals.

(b) *SEA evaluation.* (1) An SEA shall conduct an evaluation of programs under this part that is based on State agency data collected under paragraph (a) of this section at least once every two years.

(2) The SEA shall inform its State agencies, in advance, of the specific data that will be needed and how the data may be collected.

(3) The SEA shall—

(i) By a date established by the Secretary, submit the results of that evaluation to the Secretary; and

(ii) Make public the results of that evaluation.

(c) *Performance report.* (1) An SEA shall—

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(i) Collect data specified in the Act and by the Secretary in the SEA's performance report; and

(ii) Submit those data to the Secretary.

(2) A State agency receiving funds under this part shall provide to the SEA any data needed by the SEA to complete its performance report.

(d) *Average daily attendance.* On a date specified by the Secretary each year, the SEA shall submit to the Secretary the average daily attendance data required under § 203.21(a).

(Authority: 20 U.S.C. 2729(b), 2802(d), 2835(a), (d))

(Approved by the Office of Management and Budget under control number 1810-0060.)

§§ 203.47-203.49 [Reserved]

Subpart F—What Are Other State Responsibilities for the Program?

§ 203.50 Does a State have authority to issue State regulations for the program?

(a) (1) Except as provided in paragraph (b) of this section, Chapter 1 does not preempt, prohibit, or encourage State rules, regulations, or policies issued pursuant to State law.

(2) If a State issues rules, regulations, or policies, they may not be inconsistent with the provisions of the following:

(i) The Chapter 1 statute.

(ii) The regulations in this part.

(iii) Other applicable Federal statutes and regulations.

(b) A State may not issue rules, regulations, or policies that limit a State agency's decisions regarding—

(1) Grade levels to be served;

(2) Basic skill areas to be addressed;

(3) Instructional settings, materials, or teaching techniques to be used;

(4) Instructional staff to be employed, as long as this staff meets State certification and licensing requirements for educational personnel; or

(5) Other essential support services.

(c) Nothing in paragraph (b) of this section limits an SEA's authority to review and approve State agencies' applications or to ensure that State agencies use Chapter 1 funds in accordance with all applicable requirements.

(d) The State shall identify any State rule, regulation, or policy relating to the administration and operation of Chapter 1 programs, including those based on State interpretation of any Federal law, regulation, or guideline, as a State-imposed requirement.

(e)(1) (i) Except as provided in paragraph (e)(1)(ii) and (iii) of this section, if a State issues major rules or regulations relating to the administration or operation of programs funded under this part, the State shall convene a State committee of practitioners to review before publishing any major proposed or final rule or regulation.

(ii) In an emergency situation in which a major rule or regulation must be issued within a very limited time to assist State agencies with the operation of programs under this part, the State—

(A) May issue the regulation without consulting the committee of practitioners; but

(B) Shall immediately thereafter convene the State committee of practitioners to review the emergency rule or regulation prior to issuance in final form.

(iii) The State shall ensure that the committee of practitioners reviews non-major rules or regulations before publication.

(2) If a State does not issue rules or regulations relating to the administration or operation of programs under this part but issues policies that the SEA and State agencies are required to follow, the State must comply with the requirements in this section for issuing rules and regulations.

(3) (i) The committee of practitioners must include—

(A) Administrators;

(B) Teachers; and

(C) Parents.

(ii) The majority of the committee must be representatives of State agencies.

(4) SEAs are encouraged to request from appropriate organizations recommendations for membership on the committee.

(Authority: 20 U.S.C. 2851)

§ 203.51 How can State personnel paid with Chapter 1 funds be assigned to State programs?

(a) As provided in paragraph (b) of this section, an SEA may use funds received under § 203.22(a) to pay the salary costs for any employee assigned to programs funded under this part and special State programs that meet the requirements of section 1018(d)(1) of the Act.

(b) Salary costs are allowable charges to funds received under § 203.22(a) if the following conditions are met:

(1) An employee's assignments are related to the SEA's administrative, training, and technical assistance responsibilities under the programs.

(2) The SEA maintains contemporaneous time distribution records reflecting the actual amount of time the employee spends on the programs.

(3) The time distribution records are signed by the employee's supervisor.

(4) Actual costs are charged to the programs on the basis of the employee's time distribution records.

(c) If an employee is assigned administrative, training, and technical assistance duties that jointly benefit programs funded under this part and special State programs that meet the requirements of § 200.45(a)(1)(i) and (a)(2), costs may be charged to the programs on a basis other than the time spent on each of the programs, provided charges are equitably distributed among funding sources.

Example: An employee spends three hours developing a manual for State agencies to use to improve reading instruction in compensatory programs supported with funds under this part and under a State compensatory education program. Since only one manual is produced, the employee is unable to divide the actual time spent on each program. Therefore, the SEA may prorate costs, for example, to each program on the basis of the proportion of funds allocated for each of the programs benefiting from the manual.

(Authority: 20 U.S.C. 2728(d), 2853)

Complaint Procedures of the SEA

§ 203.52 What complaint procedures shall an SEA adopt?

An SEA shall adopt written procedures for—

(a) Receiving and resolving any complaint that the SEA or a State agency is violating a Federal statute or regulations that apply to programs under this part;

(b) Reviewing an appeal from a decision of a State agency with respect to a complaint; and

(c) Conducting an independent on-site investigation of a complaint if the SEA determines that an on-site investigation is necessary.

(Authority: 20 U.S.C. 2831(a))

(Approved by the Office of Management and Budget under control number 1810-0600.)

§ 200.53 What are the minimum complaint procedures?

An SEA shall include the following in its complaint procedures—

(a) A time limit of 60 calendar days after the SEA receives a complaint:

(1) If necessary, to carry out an independent on-site investigation; and

(2) To resolve the complaint.

(b) An extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint.

(c) The right to request the Secretary to review the final decision of the SEA.

(Authority: 20 U.S.C. 2831(a))

§ 203.54 How does an organization or individual file a complaint?

An organization or individual may file a written signed complaint with an SEA. The complaint must include—

(a) A statement that the SEA or a State agency has violated a requirement of a Federal statute or regulations that apply to programs under this part;

(b) The facts on which the statement is based.

(Authority: 20 U.S.C. 2831(a))

§§ 203.55-203.59 [Reserved]

[FR Doc. 89-16771 Filed 7-17-89; 8:45 am]

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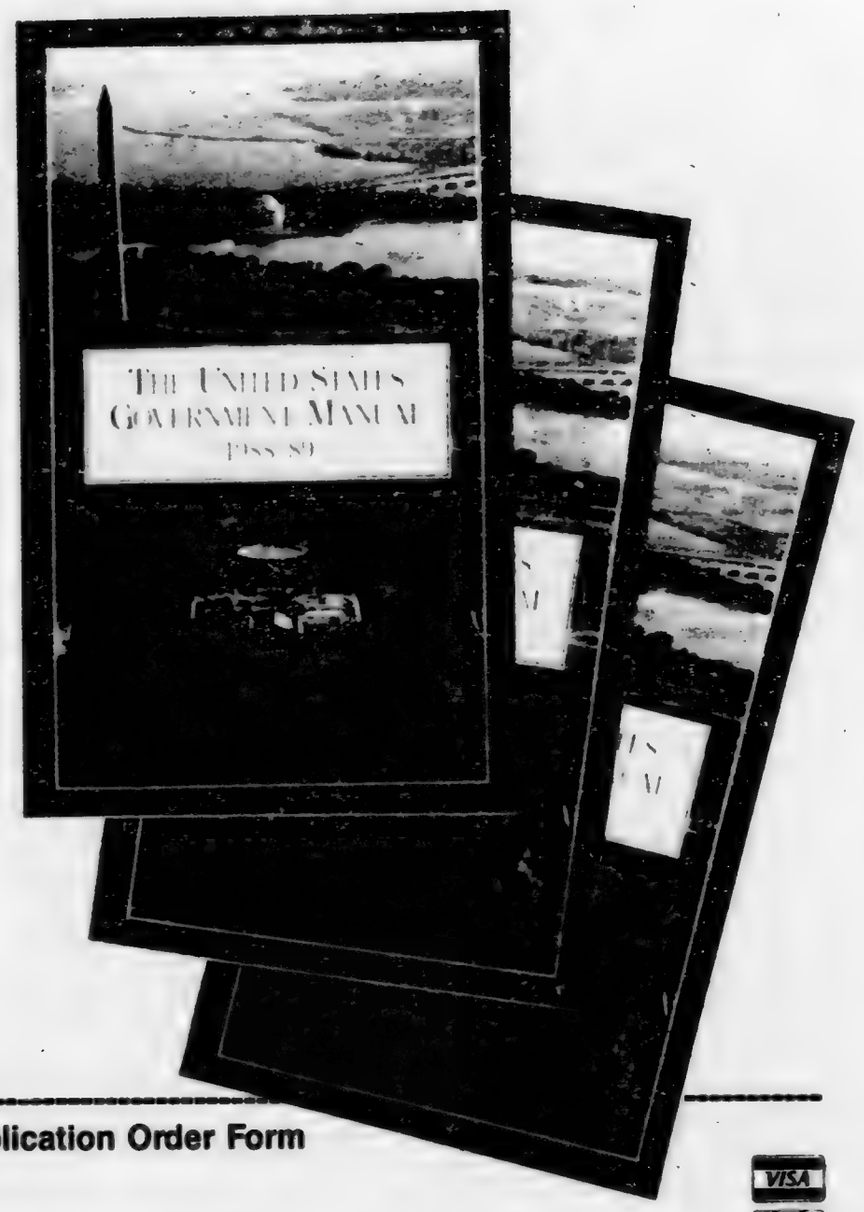

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Rules and Regulations

Federal Register
Vol. 54, No. 137
Wednesday, July 19, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520, 522, 524, and 548

Animal Drugs, Feeds, and Related Products; Chlorpromazine Hydrochloride, Griseofulvin, Phthalofyne Tablets, Piperacetazine Tablets, Ronnel Tablets, Chlorpromazine Hydrochloride Injection, Piperacetazine Injection, Sulfadimethoxine Injection, Ronnel Emulsifiable Concentrate, and Bacitracin Methylene Disalicylate and Streptomycin Sulfate Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations by removing the portions of the regulations reflecting the approval of 10 new animal drug applications (NADA's) held by Pitman-Moore, Inc., for the use of various new animal drugs in dogs, cats, and horses. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA's. The firm requested the withdrawal of approval.

EFFECTIVE DATE: July 31, 1989.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of 10 NADA's held by Pitman-Moore, Inc., Mundelein, IL 60060. The sponsor has requested that approval of the NADA's be withdrawn.

Upon withdrawal of approval of an NADA, the agency is required by section 512(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(i)) to remove the regulations that reflect the approval. This document removes 21 CFR 520.443, 520.1760, 520.1780, 520.2080b, 522.443, 522.1800, 524.2080, and 548.112b, and amends 21 CFR 520.1100 and 522.2220 to reflect withdrawal of the approvals.

List of Subjects

21 CFR Part 520, 522, and 524

Animal drugs.

21 CFR Part 548

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 520, 522, 524, and 548 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 520.443 [Removed]

2. Section 520.443 *Chlorpromazine hydrochloride* is removed.

3. Section 520.1100 is amended by revising paragraph (c), and by redesignating paragraphs (d)(3) and (4) as paragraphs (d)(2) and (3), respectively, to read as follows:

§ 520.1100 Griseofulvin.

* * * * *

(c) *Sponsor.* See No. 000061 in § 510.600(c) of this chapter.

* * * * *

§ 520.1760 [Removed]

4. Section 520.1760 *Phthalofyne tablets* is removed.

§ 520.1780 [Removed]

5. Section 520.1780 *Piperacetazine tablets* is removed.

§ 520.2080b [Removed]

6. Section 520.2080b *Ronnel tablets* is removed.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

7. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 522.443 [Removed]

8. Section 522.443 *Chlorpromazine hydrochloride injection* is removed.

§ 522.1800 [Removed]

9. Section 522.1800 *Piperacetazine injection* is removed.

10. Section 522.2220 is amended by revising paragraphs (c)(2), (c)(3)(i), and (c)(3)(ii), by removing paragraph (c)(3)(iii), and by redesignating paragraph (c)(3)(iv) as paragraph (c)(3)(iii) to read as follows:

§ 522.2220 Sulfadimethoxine injection.

* * * * *

(c) * * *

(2) *Sponsor.* See No. 054273 in § 510.600(c) of this chapter.

(3) * * * (i) It is used or intended for use in the treatment of sulfadimethoxine-susceptible bacterial infections in dogs.

(ii) It is administered by subcutaneous, intramuscular, or intravenous injection at an initial dose of 25 milligrams per pound of body weight followed by 12.5 milligrams per pound of body weight every 24 hours thereafter. Continue treatment until the animal is free from symptoms for 48 hours.

* * * * *

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

11. The authority citation for 21 CFR Part 524 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 524.2080 [Removed]

12. Section 524.2080 *Ronnel emulsifiable concentrate is* removed.

PART 548—CERTIFIABLE PEPTIDE ANTIBIOTIC DRUGS FOR ANIMAL USE

13. The authority citation for 21 CFR Part 548 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10, 5.83.

§ 548.112b [Removed and Reserved]

14. Section 548.112b *Bacitracin methylene disalicylate and streptomycin sulfate tablets* is removed and the section is reserved.

Dated: July 11, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89–16852 Filed 7–18–89; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 862

[Docket Nos. 84P-0304 and 84P-0305]

Bilirubin (Total and Unbound) in the Neonate Test System; Panel Recommendation and Report on Petitions for Bilirubin in the Neonate Reclassification and Codification of Reclassification

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has issued orders in the form of letters to two petitioners, reclassifying the bilirubin (total and unbound) in the neonate test system from class III (premarket approval) into class I (general controls). The orders are being codified in the Code of Federal Regulations as specified herein.

EFFECTIVE DATES: The reclassification was effective December 1, 1986. The rule becomes effective August 18, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: On December 1, 1986, FDA sent both Helena Laboratories and Aviv Biomedical, Inc., letters (orders) reclassifying the bilirubin (total and unbound) in the neonate test system, and substantially equivalent devices of this generic type, from class III into class I. Accordingly, as required by 21 CFR 860.134(b)(7) of the regulations, FDA is announcing the reclassification of the generic bilirubin (total and unbound) in the neonate test system from class III into class I. In addition, FDA is issuing a final rule that codifies the reclassification of the device by adding new § 862.1113. The reclassification orders were issued after FDA published a notice announcing an advisory panel's reclassification recommendation (April 28, 1986; 51 FR 15839). FDA has developed criteria for its use in determining whether a class I device should be exempt from the premarket notification procedures. Based on these criteria, FDA has exempted certain class I clinical chemistry and clinical toxicology devices from the premarket notification requirements (53 FR 21447: June 8, 1988). FDA has considered the bilirubin in the neonate test system in accordance with its criteria for exemption from premarket notification and has determined that the device is not an appropriate candidate for exemption, because it is used in the treatment of neonates.

After considering the economic consequences of approving this reclassification, FDA certifies that this final rule requires neither a regulatory impact analysis, as specified in Executive Order 12291, nor a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). Approval of this petition will not have a significant economic impact on a substantial number of small entities. The petitioner and all future manufacturers of substantially equivalent bilirubin (total and unbound) in the neonate test system devices will be relieved of the costs of complying with the premarket approval requirement in section 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e).

There are no off-setting costs that the petitioner or other manufacturers would incur from reclassification into class I. The magnitude of the economic savings attributable to approval of this petition depends on the extent of premarket approval studies that would have been required of the petitioners and other competitors had reclassification not occurred. This savings may not be reliably calculated to permit quantification of the economic savings.

List of Subjects in 21 CFR Part 862

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Chapter I of Title 21 of the Code of Federal Regulations is amended in Part 862 to read as follows:

PART 862—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

1. The authority citation for 21 CFR Part 862 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j 371(a)); 21 CFR 5.10.

2. Section 862.1113 is added to Subpart B to read as follows:

§ 862.1113 Bilirubin (total and unbound) in the neonate test system.

(a) *Identification.* A bilirubin (total and unbound) in the neonate test system is a device intended to measure the levels of bilirubin (total and unbound) in the blood (serum) of newborn infants to aid in indicating the risk of bilirubin encephalopathy (kernicterus).

(b) *Classification.* Class I.

Dated: July 12, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–16794 Filed 7–18–89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS WASP (LHD–1) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval amphibious assault ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: July 6, 1989.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (202) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS WASP (LHD–1) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(a), pertaining to the location of the masthead lights over the fore and aft centerline of the ship; Annex I, section 2(g), pertaining to the distance of the sidelights above the hull; Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights; and Annex I, section 3(b), pertaining to the positioning of the sidelights in relationship to the forward masthead light, without interfering with its special functions as a Navy ship. The Judge Advocate General of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Two of § 706.2 is amended by revising the existing entry for USS WASP (LHD–1) to read as follows:

Vessel	Number	Masthead lights, distance to stbd of keel in meters; Rule 21(a)	Forward anchor light, distance below flight dk in meters; § 2(k), Annex I	Forward anchor light, number of; Rule 30(a)(i)	AFT anchor light, distance below flight dk in meters; Rule 21(e), Rule 30(a)(ii)	AFT anchor light, number of; Rule 30(a)(ii)	Side lights, distance below flight dk in meters; § 2(g), Annex I	Side lights, distance forward of forward masthead light in meters; § 3(b), Annex I	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I
USS WASP	LHD–1	9.0					3.1	90.4	

3. Table Five of § 706.2 is amended by revising the existing entry for USS WASP (LHD–1) to read as follows:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical seperation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS WASP	LHD–1						X	X	39

Date: July 6, 1989.

Approved:

E.D. Stumbaugh,

Rear Admiral, JAGC, U.S. Navy Judge Advocate General.

[FR Doc. 89–16816 Filed 7–18–89; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900-AD93

Loan Guaranty; Determination of Net Value

AGENCY: Department of Veterans Affairs.

ACTION: Final regulatory amendments.

SUMMARY: The Department of Veterans Affairs (VA) is amending its loan guaranty regulations to revise the definition of the "net value" of a property to the Secretary of Veterans Affairs. Under the revised definition, the Government's cost of borrowing funds will be taken into account in determining "net value". VA is promulgating this rule because it realistically reflects the true net value of a property.

EFFECTIVE DATE: August 21, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard A. Levy, Assistant Director for Loan Management (261), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–6376.

SUPPLEMENTARY INFORMATION: Under section 1810 of Title 38, United States Code, VA guarantees a portion of the loan made to an eligible veteran to acquire or refinance a home, condominium, or manufactured home which is treated as real estate under State law, or to install certain energy conservation features or other home improvements. The guaranty is a promise by the Government to pay to the holder a portion of the veteran's indebtedness in the event of a loan default and eventual termination through foreclosure or other proceedings.

On March 31, 1989, VA published in the **Federal Register** (54 FR 13320) proposed regulations to revise the definition of the "net value" of a

property to the Secretary for purposes of determining whether a loan holder would be offered an election to convey a foreclosed property to the Secretary. On April 5, 1989, a notice of correction was published in the **Federal Register** (54 FR 13703) to advise that the March 31, 1989, **Federal Register** notice erroneously stated that October 1, 1989, was the proposed effective date and that the change in the definition of net value was intended to be made effective August 1, 1989. However, to meet the 30 day notice requirement under the Administrative Procedure Act, this rule is now effective August 21, 1989.

A total of 22 written comments were received in response to the proposed regulations. Comments were received from 16 lenders (one lender submitted two comments), three trade associations and two secondary market institutions, all of which are involved with the VA-guaranteed home loan program.

Most of the comments expressed the opinion that the proposed amendment would increase the number of VA-guaranteed loan foreclosures which result in "no-bids", i.e., situations in which VA pays a maximum claim under the guaranty and the loan holder must dispose of the property which secured the loan in order to recover the balance of its investment. The comments state that an increase in the number of no-bids will cause substantial additional losses to loan holders in foreclosure cases, and that such losses may have three possible consequences: (1) Reduced participation of lenders in the GI loan program; (2) more stringent underwriting and increased fees for GI loans by lenders which continue to make home loans to veterans; and (3) insolvency for some lenders due to increased losses.

We believe there may be some validity to the comments as to the potential for increased losses to lenders as a result of the promulgation of this amendment. However, the amount of such losses should be minimal and lenders should be able to reduce such losses through better and more aggressive property disposal efforts. It is important to note that the losses incurred by lenders as a result of no-bids under VA's current procedures are not predictive of the impact of additional no-bids which are projected as a result of the amendment. Currently, when a lender acquires a property as a result of a no-bid, the property may be worth substantially less than the balance of the lender's investment which is unpaid after application of VA's claim payment. This is because no-bids presently occur whenever the net value of the property (which is 89.37% of the fair market value) will be less than the balance of the indebtedness on the loan remaining after the account is credited with VA's guaranty payment. However, foreclosures affected by the amendment will be limited to situations in which an additional 4.45% reduction in the fair market value of the property will reduce the net value (which will be 84.92% of the fair market value under the amended regulation) to an amount which will be less than the balance of the indebtedness on the loan remaining after the account is credited with VA's guaranty payment. Thus, every additional property acquired by lenders as a result of the amendment will have a fair market value which is greater than the balance of the loan indebtedness which remains unsatisfied after payment of VA's guaranty.

While the proposed amendment to our net value regulation will increase the number of VA no-bids in the short run, for the long term it is likely that a return to stability in major real estate markets may act to reduce the number of no-bids.

Further, as noted above, actual loss increases to lenders should be minimal due to the fact that all properties acquired as a result of this amendment will have a market value which is greater than the balance of the lender's investment. We are therefore confident that relatively few lenders will be seriously impacted by the amendment and that financing will continue to be provided to creditworthy veterans who have served their country and seek to take advantage of the loan guaranty benefit they have earned. We also note that VA does not require lenders to make loans which they do not consider to be sound; comments received indicated that some lenders have, in fact, already introduced more stringent underwriting and fee requirements to compensate for a perceived greater risk in making GI loans since the enactment of Pub. L. 98-369, The Deficit Reduction Act of 1984, which established the requirement that property net value be determined by the Secretary and used for purposes of deciding whether VA would acquire property in connection with a loan termination. We anticipate that the competitive marketplace will continue to dictate the most favorable terms for the extension of credit to veteran homebuyers.

A large number of the comments cited the increase in the percentage of GI loan foreclosures resulting in no-bids from 2.9% in 1981 to 23.9% in 1988 as being responsible for the decline in VA's market share from 13% in 1984 to 7.9% in 1988. We note that a number of factors are involved in VA's declining share of the home loan market. Aging of the veteran population reduces the pool of veteran homebuyers; high real estate values in some areas preclude the use of VA-guaranteed financing for home purchases; and, competition from lenders offering adjustable rate mortgages at low initial interest rates gives many veteran home buyers an option they find more attractive than VA fixed rate financing. We are unable to quantify the effect of each factor on VA's loss of market share, or to gauge the impact, if any, of lender reluctance to make GI loans which results from the increased risk of loss upon foreclosure due to the possibility that VA will not provide an election to convey the property. However, we are not familiar with any recent situations in which qualified veterans have been unable to obtain home loans because of a lack of lender program participation and we do not expect such situations to arise as a result of this amendment.

Comments were also received to the effect that the timing of VA's proposal to implement the change in the definition of net value is inconsistent with the intent of the conference report on Pub. L. 98-369 for two reasons: (1) The report indicated that notice of any change should be provided to the Veterans' Affairs Committees by February 1 of the year prior to the fiscal year in which the change would take effect, and VA proposes to implement the change before October 1, 1989, which is the beginning of a new fiscal year; and, (2) the report indicated there was no legislative intention that VA's policy of excluding the cost of funds borrowed to acquire property from the determination of value should be changed. VA has complied with the conference report by advising the Veterans' Affairs Committees of our intention to make this change. We do not believe that the language in the report was intended to restrict the ability of VA to take timely action when necessary to improve program operations. Our proposal is consistent with the stated intent of the

conference report "to maintain the effective functioning of the loan guaranty program and make its operation more economical and, thus, to help ensure that the program will continue to be able to fulfill its basic purpose of assisting eligible veterans to buy homes." The substantial operating shortfalls sustained by the program in recent years have required additional funding to keep the Loan Guaranty Revolving Fund solvent. Therefore, it is critical that VA accurately determine when it is in the Government's best interest to acquire a property so as to reduce the cost of operating the loan guaranty program. Far from precluding considerations of the Government's cost of funds, the legislative history evidences a clear recognition by the Congress that the Government's cost of borrowing funds is a legitimate cost factor for inclusion in the net value formula. There is no requirement in the statute itself that Congress be notified by February 1 of the fiscal year preceding the fiscal year in which the change will take place. Although the language contained in the committee reports is not binding upon the Government, VA has notified the House and Senate Veterans' Affairs Committees that this change in the net value formula would be made, effective August 1, 1989.

Most of the comments received opposed application of the proposed amendment to loans originated prior to the effective date of the amendment. Some of these comments cited an inconsistency with the provisions of 38 CFR 36.4300, which provides that regulations will apply to previously guaranteed loans to the extent that no legal rights vested under the regulations are impaired. The existing regulation for determining net value does not vest any rights in the lender but rather identifies those costs and expenses which VA will consider at the time a determination of net value is made.

Those costs are subject to change and are designed to reflect the net value of the property at a particular point in time. This is the amount which VA will require to be credited to a borrower's indebtedness and the amount which VA will pay to acquire the property if the lender elects to convey the property to VA. The regulations do not grant the lender any specific contractual rights. The lender has no vested right to require that VA continue to use an old cost formula when in fact the actual costs, required by law to be taken into account, are not all included in the old formula. It is therefore our opinion that VA has the authority to apply the changed procedure for determining net value to all foreclosures which occur after the effective date of the regulation. Other comments noted that loans have been originated, bought and sold at prices which were based on certain assumptions as to risk of loss which will be impacted by implementation of the proposal. We are not in a position to comment on the internal procedures used by lenders for evaluating their own risk in the origination, sale and purchase of loans. We would note that the VA guaranty has always been limited to a specific percentage of the loan, not to exceed a maximum dollar amount. These regulations do not change the basic principle that program participants share the risk of loss upon default with the Government nor do they change the amount of VA's guaranty liability with respect to existing loans.

One commentator proposed that VA develop separate net value percentages for each VA field station, because property holding time (which is a major factor in the proposed estimate of the Government's cost of funds) varies between field stations; the same commentator proposed that VA adjust the cost of funds factor on a quarterly basis rather than annually to avoid undue influence from interest rate volatility. We think these are valid issues. It is, however, necessary to use a nationwide average holding time figure because some jurisdictions have post-foreclosure redemption periods which are required under state law. In these areas, VA's holding time is necessarily well above the national average and use of local figures would therefore reduce net values and increase no-bids substantially. This could have the effect of discouraging lenders from assisting veteran homebuyers in these states due to the unusually high no-bid risk. In addition, use of nationwide average figures avoids situations in which lenders in a particular state are penalized because local market conditions have caused delays in the disposition of acquired properties. The use of a quarterly cost of funds rate would keep VA's value determinations in line with more current data but would also increase their volatility. Making the change on an annual basis provides more stability to the process. Moreover, use of quarterly interest rates and local holding times would create administrative problems in the calculation and distribution of new value figures. Accordingly, while we agree that these proposals would increase the accuracy of value determinations, we do not believe they offer sufficient benefit to merit adoption.

Several comments were received to the effect that Pub. L. 98-369 limits the costs which can be taken into account in determining net value to expenses incurred by the Secretary, and that use of the cost of federal borrowing in the net value determination is precluded because the Government's borrowing cost is not passed on to VA when funds are provided to support the operation of the Loan Guaranty program. The law does not distinguish between costs to the Government which directly result from expenditures arising from the loan program and expenses which result to the Secretary in support of that program. Those costs to the Government would not have been incurred without an obligation arising under the loan program and may properly be included when making a net value determination as to the total expenses associated with acquiring, maintaining and selling property under the loan guaranty program. Additionally, the statute specifically requires that the Secretary consider, in addition to expenses incurred by the Secretary, "other costs resulting from the acquisition and disposition of property."

One commentator proposed that, if the amendment is adopted, the cost of funds should be calculated based on the percentage of federal operating costs which are raised through borrowing. The comment pointed out that approximately 90% of budgeted federal operating funds are raised directly through taxation, and only the balance must be raised through new borrowing. Applying that ratio would result in an increase in the percentage figure used for determining net value from 10.63% to 11.075% rather than to 15.08%. This argument fails to take into account the fact that federal borrowing is substantitally greater than the budget deficit for any given fiscal year. So long as the total national debt remains well above the operating budget amount for a fiscal year, and this debt must be refinanced through periodic Treasury borrowing at current rates, any Government spending reduces the amount of funds available for application to the current year's deficit as well as for application to the national debt. In this context, all Government expenses are effectively being financed at a cost equivalent to the current cost of funds.

One commentator noted that the key factors in the net value determination, the appraised value of the property and the average VA property holding time, are not under the control of the lender. This observation is accurate; however, the purpose of the amendment is to take into account all factors which affect the

value of property which may be acquired by VA. Some of these factors are economic influences on market value which are beyond the control of VA as well as lenders. VA makes every effort to establish accurate liquidation appraisal values through the use of qualified fee appraisers whose work is reviewed by VA staff. In situations where lenders disagree with liquidation value established by VA, we are willing to reconsider that value whenever a lender can demonstrate that an adjustment would be appropriate. VA holding time, too, is a legitimate factor in determining the cost of property acquisitions to the Government. The fact that it is not subject to influence by the lender does not affect the necessity for using it when the net value of a property is determined. It should be noted that improvements in the marketing and sale of VA-acquired properties have led to substantial reduction in the average holding time over the last few years. We will strive to continue this improvement.

Two comments were received which contrasted treatment of lenders under the proposed regulation with treatment of veterans; i.e., that the reduction in net value would be applied by VA in dealing with lenders but would be excluded from consideration when a veteran's debt to the Government after foreclosure is determined. Calculation, establishmemt, and collection of a veteran's debt is a matter between VA and the veteran based on the veteran's contractual liability to indemnify the Government for the loss incurred due to a loan default, and subrogation rights derived through the foreclosure process. The Secretary already has the right and obligation to consider waiver or compromise of a veteran's debt under appropriate circumstances. This right is exercised independently of VA's determination of the amount of claim payable and whether or not to acquire property as a result of loan termination since there is no necessary connection between these actions. These are two highly disparate areas of the loan guaranty program and there is no compelling reasons for the Secretary to pass on increases in the amount of claims paid, which result from application of this regulation, to veterans.

Several commentators suggested that increased costs to lenders due to increased numbers of no-bids would result in more lenders being unable to meet their responsibilities to pass through payments to certificate holders on loans pooled through the Government National Mortgage Association (GNMA). It was noted that GNMA has already incurred substantial losses because lender/issuers have insufficient resources to meet their pool obligations when they are not made whole by the Government in connection with GI loan foreclosures. We understand this concern and appreciate the fact that losses incurred by GNMA are as detrimental to the Government as losses incurred by VA's Loan Guaranty Revolving Fund. However, as we have indicated above, it is our opinion that any increase in no-bids which may result from this amendment will have minimal impact on lender profitability and consequently should not affect the operation of GNMA.

A number of comments were received concerning the delay in promulgating regulations to implement sections of Pub. L. 100-198, Veterans' Home Loan Program Improvements and Property Rehabilitation Act of 1987, which are intended to reduce the number of no-bids. These regulations were published for comment (RIN: 2900-AD39) on the same date as the subject proposal and are being published in final form in today's **Federal Register**, effective in 30 days.

One comment was received recommending that VA mitigate the Government's risk of loss under the Loan Guaranty program by increasing the funding fee charged to veterans. The amount of the funding fee is established by statute and, consistent with the beneficial nature of the program, was never intended to offset all costs of program operation. VA, as an executive agency, is not authorized to act through the regulatory process to increase funding fees in order to raise money to finance the costs of program operation. In addition, the primary purpose of this proposal is to improve the accuracy of the process by which VA determines whether or not to acquire property in order to reduce the costs of program operation rather than to raise funds. In making the determination as to whether or not a property should be acquired, all potential costs of acquisition and disposition need to be considered. VA currently only takes estimated out of pocket cash expenditures into consideration, thereby ignoring the real cost to the Treasury of borrowing funds which are used to pay for VA's acquisitions. This regulation amends the definition of "net value" in 38 CFR 36.4301 to rectify this omission.

By including the imputed interest cost of holding properties in inventory, the revised definition of "net value" will more realistically reflect the true cost to the Government of a decision to provide the holder of a loan the option of conveying the property to VA. This in turn will assure that VA does not acquire foreclosed properties except when it is in the best interest of the Government to do so.

Under 38 CFR 36.4323(e), any amounts paid by VA on account of a VA guaranteed home loan constitute a debt owing to the United States by the veteran. This section has been amended to exclude from the veteran's debt any amount attributable to the estimated interest cost to the Government for property acquisition and holding time which would not otherwise be included in such debt. VA does not believe it would be equitable to charge the veteran with the Government's estimated cost of borrowing the money to pay for the property to be acquired.

Editorial changes have also been made, to eliminate the use of gender specific pronouns, to assure the use of plain English, and to correct typographical errors in 38 CFR 36.4319 through 36.4323.

The Secretary hereby certifies that these regulatory amendments will not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. In each case affected by this amendment, the loan holder will acquire an asset after foreclosure which has a current market value in excess of the unguaranteed portion of the loan indebtedness; accordingly, we believe any increased losses which may be incurred as a result of this amendment will be minimal. Moreover, lenders and holders of VA guaranteed loans will retain the right to payment of the full amount prescribed by law for claims on defaulted VA guaranteed loans. Pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory analysis requirements of sections 603 and 604.

The regulatory amendments have been reviewed pursuant to Executive Order 12291 and have been found to be nonmajor regulation changes. The regulations will not impact on the public or private sectors as major rules. They will not have an annual effect on the economy of $100 million or more; cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Catalog of Federal Domestic Assistance Program Number is 64.114.

List of Subjects in 38 CFR Part 36

Condominium, Handicapped, Housing loan programs—housing and community development, Veterans.

These amendments are promulgated under authority granted the Secretary by sections 210(c), 1803(c)(1), 1820 and 1832 of Title 38, United States Code, and the enabling legislation.

Approved: June 5, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR Part 36, Loan Guaranty, is amended as follows:

1. In § 36.4301, the first sentence of the introductory text for the definition for "net value" is revised, an authority citation is added for the introductory text, and paragraph (4) and an authority citation are added to read as follows:

§ 36.4301 Definitions.

* * * * *

Net value. The fair market value of real property, minus the total of the costs the Secretary estimates would be incurred by the Government resulting from the acquisition and disposition of the property for the Government's costs of funds from the time the property is acquired until it is sold, property taxes, assessments, liens, property maintenance, property improvement, administration, and resale. * * *

(Authority: 38 U.S.C. 1832)

* * * * *

(4) *Government cost of funds.* The estimated interest cost of funds payable for property acquisition is determined by multiplying the average holding time (expressed in years) from property acquisition to resale for properties acquired under § 36.4320 of this part which were sold during the preceding fiscal year by an interest rate equivalent to the yield on Treasury obligations with a maturity comparable to such average holding time. This yield is calculated from the "Treasury Market Bid Yields at Constant Maturities: Bills, Notes and Bonds" as prepared by the Department of the Treasury showing the average yields on Treasury obligations for selected maturities. Source data for the calculation are the average yields during the last month of the preceding fiscal year for the next lower and next higher maturities as compared to the average holding time. The yield for the average holding time is interpolated from the yields for these maturities. Based on fiscal year 1988 data, the percentage of fair market value representing the Government's cost of funds will be 4.45 percent. The fiscal year and the percentage will be updated annually through a notice in the **Federal Register.** The first three cost averages will be added and the sum will be divided by the average fair market value at the time of acquisition for properties which were sold during the 3 preceding fiscal years, and the percentage of fair market value representing the Government's cost of funds will be added to the quotient, to derive the percentage to be used in estimating net value. (The Secretary may, when determining property management costs, group properties in incremental value brackets.) The calculation of net value will be based on the actual cost incurred over the last 3 years plus the estimated interest cost to the Government of funds payable for property acquisition in the current fiscal year. Based on fiscal year 1988 data, the percentage to be used when calculating net value will be 15.08 percent, which consists of 10.63 percent representing estimated actual costs plus 4.45 percent representing estimated interest costs. The fiscal year and the percentages will be updated annually through a notice in the **Federal Register.**

(Authority: 38 U.S.C. 1832)

* * * * *

§ 36.4323 [Amended]

2. In § 36.4323, paragraph (a), remove the word "his" where it appears in the first sentence and add, in its place, the word "the".

In § 36.4323, paragraph (b), remove the word "him" where it appears.

In § 36.4323, paragraph (g), remove the word "1817(a)" where it appears and add, in its place, the word "1813".

3. In § 36.4323, paragraph (e) is revised to read as follows:

§ 36.4323 Subrogation and indemnity.

* * * * *

(e) Any amounts paid by the Secretary on account of the liabilities of any veteran guaranteed or insured under the provisions of 38 U.S.C. Chapter 37 shall constitute a debt owing to the United States by such veteran. The amount of debt owing pursuant to this paragraph will exclude the amount by which inclusion of estimated interest costs to the Government for property acquisition and holding time in the determination of the net value of the property increased the claim paid by the Secretary.

(Authority: 38 U.S.C. 1832)

* * * * *

[FR Doc. 89-16267 Filed 7-18-89; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 704

[OPTS-82013F; FRL-3618-9]

Comprehensive Assessment Information Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for additional comments on the final rule.

SUMMARY: EPA is requesting comments from the public on certain issues concerning the Toxic Substances Control Act (TSCA) section 8(a) Comprehensive Assessment Information Rule (CAIR). These issues were raised by various industry groups since the publication of the rule on December 22, 1988. It is EPA's intention to obtain comments from all interested parties for use in future CAIR rulemaking.

DATE: Written comments must be received by September 18, 1989.

ADDRESSES: Written comments must bear the docket control number OPTS-82013F. An original and two copies should be sent to: TSCA Public Docket Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

All written comments on this notice will be available for public inspection in Rm. NE-G004 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION:

I. Background

The CAIR is a model rule designed to gather production, use, and exposure information from chemical manufacturers, importers, and processors on listed chemical substances and mixtures. The main components of the CAIR are a reporting form which companies use to submit their chemical information and a list of substances for which reporting is required. The final rule published in the **Federal Register** of December 22, 1988 (53 FR 51698), contained a list of 19 substances for which reporting was required during the summer of 1989. EPA intends to add substances to this list

from time to time which are of interest to the Agency or other Federal agencies.

Since the promulgation of the CAIR, the Agency has received a Petition for Reconsideration from the Synthetic Organic Chemical Manufacturers Association (SOCMA) asking EPA to reconsider certain aspects of the rule. In addition to SOCMA's petition, the Agency has also received a Petition for Judicial Review from the Chemical Manufacturers Association (CMA) and the Society for the Plastics Industry (SPI). In response to SOCMA's petition, the Agency made a commitment to review certain rule provisions for future iterations of the CAIR and stated so in the **Federal Register** of April 10, 1989 (54 FR 14324).

In addition to the above mentioned petitions, EPA has received some comments and questions on the CAIR since promulgation. At this time, EPA is formally soliciting comments on the following issues from all interested parties for consideration in future rulemaking.

II. Small Volume Exemption

In its petition, SOCMA suggested that the CAIR should contain an exemption for companies which manufacture, import, or process a CAIR listed substance solely in small quantities. It was further suggested that the lack of such an exemption imposes a huge burden on those companies who produce very small quantities and that such information is of minimal value to the Agency. Comments regarding this issue often cite the Preliminary Assessment Information Rule (PAIR) (June 22, 1982, 47 FR 26992), which contains an exemption for individuals who manufacture or import a listed substance in annual quantities of less than 10,000 pounds. EPA is seeking comments on the extent of the burden on the chemical industry if such a small volume exemption is not added to the CAIR, the value of information that would be lost to the Agency if a small volume exemption were included, and whether such an exemption should be added to the CAIR.

III. "De Minimis" Exemption

The CAIR currently requires reporting on a listed substance whether it is in pure form or in a mixture. SOCMA and other industry groups requested the inclusion of a concentration exemption, setting a de minimis cutoff for CAIR substances in mixtures. Currently EPA's regulation under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 40 CFR 372.38(a), and the Occupational Safety and Health Administration's (OSHA) Hazard Communication Standards, 29 CFR 1910.1200, have a general de minimis cutoff of 1 percent or a cutoff of 0.1 percent if the substance is a carcinogen. EPA is requesting comments on the benefits and/or problems that would result from the inclusion of a de minimis exemption for future iterations of the CAIR.

IV. Trade Name Reporting Revealing Confidential Business Information

Under § 704.208, companies that sell a CAIR substance under a trade name must do one of three things: (1) Submit to EPA a list of all trade names under which the person distributes the substance. EPA will then publish submitted trade names in the **Federal Register** in order to notify processors of these trade name substances of their CAIR reporting and recordkeeping obligations.

(2) Submit to EPA a CAIR reporting form that answers the processor's reporting requirements for each customer who would be required to report if the customer knew he or she was processing the listed substance.

(3) Notify each customer who would be required to report if the customer knew he or she was processing the listed substance.

EPA incorporated these options to prevent companies' customers from determining the components of trade name products. Many commenters stated that providing a list of trade names to EPA along with their subsequent publication in the **Federal Register** would provide enough information for customers to link chemical names with trade names. This linkage would supposedly release confidential business information (CBI) in some cases. Each of the other options could also result in disclosure of trade secret information. This issue was also raised in the SOCMA petition and the petition from CMA and SPI which questioned the statutory authority of such a requirement. EPA believes that it does have the authority to require such information to be submitted but does not intend that compliance with the CAIR result in the inadvertent disclosure of CBI. In the **Federal Register** of April 10, 1989 (54 FR 14324), the Agency issued a Notice of Temporary Administrative Relief from § 704.208 for the manufacturers, importers, and processors of the initial list of 19 chemicals. This notice grants temporary administrative relief to persons who are unable to report for their customers and who believe that compliance with each of the other options will result in disclosure of CBI. If persons had already submitted trade names to EPA, they were to notify the Agency that the publication of the trade names under which they distribute a CAIR listed substance would result in the likelihood of CBI being released. If EPA received this notification, the Agency would not publish the trade names in the **Federal Register**. To date, EPA has not received such a notice from a single company on any of the 19 listed chemicals.

While this situation does not seem to have been a problem for the current list of chemicals, there is concern that this issue will be raised each time new chemicals are added to the reporting requirements of the CAIR. The Agency is therefore requesting comments on the likelihood that future compliance with § 704.208 will result in the release of CBI. If such a release is likely, how should the Agency prevent this release while ensuring the reporting of comprehensive data?

V. Processing Activities

CMA and SPI expressed difficulty in interpreting the definition of "process" and "processing activities," leading to some confusion as to who is subject to the reporting requirements of the CAIR. For clarification purposes, they have suggested that the Agency divide the universe of processors into sub-classes. EPA could identify at each iteration of the CAIR, those sub-classes of processors (if any) who are exempt. CMA and SPI believe that this approach would aid potential respondents in determining their reporting obligation.

EPA has received numerous questions on its interpretation of processing and processing activities and has compiled them in the form of a Question and Answer document. (This document, dated March 1989, is available from the TSCA Assistance Office, (202) 554-1404). However, EPA is interested in hearing from the public on this issue, whether or not this option would clarify any current problems, and how best to proceed in developing processor sub-classes.

VI. Advance Substantiation of CBI Claims

CMA and SPI expressed a concern with regard to the reporting burden resulting from the CAIR requirement that all confidentiality claims be substantiated at the time information is submitted to EPA. CMA and SPI have suggested a modification to the advance substantiation requirement which would limit the requirement to types of information that are not normally entitled to confidential treatment, such as submitter and chemical substance identity. Other types of information, such as production volume data and process descriptions, would not be subject to the advance substantiation requirements. EPA requests comments on this or other approaches.

List of Subjects in 40 CFR Part 704

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements.

Dated: July 11, 1989.

Gary E. Timm,

Acting Director, Existing Chemicals Assessment Division, Office of Toxic Substances.

[FR Doc. 89-16858 Filed 7-18-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6736

[AZ-920-09-4214-10; A-6641]

Public Land Order No. 6729, Correction; Modification of Secretarial Order Dated July 10, 1908, as Amended; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order will correct an error in the land description in Public Land Order No. 6729.

EFFECTIVE DATE: July 19, 1989.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602-241-5534.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

The land description in Public Land Order No. 6729, 54 FR 17709, April 25, 1989 is hereby corrected as follows:

In the second column, lines 38 through 41, which read "Sec. 7, NE¼SW¼SW¼SE¼, NW¼SE¼SW¼SE¼, W½W½NE¼SE¼SW¼SE¼NW¼NW¼SE¼SE¼SW¼SE¼, N½NE¼SW¼SE¼SW¼SE¼" are hereby corrected to read "Sec. 7, NE¼SW¼SW¼SE¼, NW¼SE¼SW¼SE¼, W½W½NE¼SE¼SW¼SE¼, NW¼NW¼SE¼SE¼SW¼SE¼, N½NE¼SW¼SE¼SW¼SE¼."

Frank A. Bracken,

Under Secretary of the Interior.

July 12, 1989.

[FR Doc. 89-16825 Filed 7-18-89; 8:45 am]

BILLING CODE 4310-32-M

43 CFR Public Land Order 6735

[CA-940-09-4214-10; CACA 17361]

Partial Revocation of Public Land Order No. 2301; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes Public Land Order No. 2301 insofar as it affects 110.08 acres of public land withdrawn for the U.S. Forest Service's Shay Creek Recreation Area. The land is no longer needed for the purpose for which it was withdrawn. This action will open 110.08 acres to surface entry and mining. Of the 110.08 acres, 60 acres were previously opened to disposal under the General Exchange Act of March 20, 1922, as amended, 16 U.S.C. 485, by Public Land Order No. 6398. All of the land has been and will remain open to mineral leasing.

EFFECTIVE DATE: August 18, 1989.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, E-2845 Federal Office Building, 2800 Cottage Way, Sacramento, California 95825, 916-978-4820.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 2301 is hereby revoked as it affects the following described land:

Mount Diablo Meridian

Toiyabe National Forest

T. 10 N., R. 19 E.,
Tract 37 (formerly described as a portion of the S½NE¼SE¼, N½SE¼SE¼, and SW¼SE¼);
Sec. 24, lots 1 and 2 (formerly described as a portion of the NE¼SE¼), and SE¼NE¼.

The area described contains 110.08 acres in Alpine County.

2. At 10 a.m. on August 18, 1989, the land described in paragraph 1 shall be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Frank A. Bracken,

Under Secretary of the Interior.

July 12, 1989.

[FR Doc. 89-16827 Filed 7-18-89; 8:45 am]

BILLING CODE 4310-40-M

43 CFR Public Land Order 6733

[CO-930-09-4214-10; C-38723]

Withdrawal of National Forest System Land for the Silver Jack Recreation Area; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 100 acres of National Forest System land from mining for a period of 20 years for the protection of the Bureau of Reclamation Silver Jack Reservoir Recreation Area. The land has been and remains open to such other forms of disposition as may by law be made of National Forest System land and to mineral leasing.

EFFECTIVE DATE: July 19, 1989.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, Lakewood, Colorado 80215, 303-236-1768.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land, which is under the jurisdiction of the Secretary of Agriculture, is hereby withdrawn from location and entry under the general mining laws (30 U.S.C. Ch. 2), to protect the Bureau of Reclamation Silver Jack Reservoir Recreation Area:

New Mexico Principal Meridian

Uncompahgre National Forest

T. 46 N., R. 6 W.,
Sec. 16, Unsurveyed (Protraction Diagram No. 20, Accepted May 5, 1965): S½SW¼NW¼, SW¼SE¼NW¼, N½NW¼SW¼, SE¼NW¼SW¼, W½NE¼SW¼, and E½SW¼SW¼.

The area described aggregates approximately 100 acres in Gunnison County, Colorado.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System land under lease, license or permit, or governing the disposal of its mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal should be extended.

Frank A. Bracken,

Under Secretary of the Interior.

July 12, 1989.

[FR Doc. 89-16826 Filed 7-18-89; 8:45 am]

BILLING CODE 4310-JB-M

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43 CFR Public Land Order 6738

[CO-930-09-4214-10; C-012292]

Partial Revocation of Public Land Order 1742; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order insofar as it affects 1.534 acres of National Forest System land withdrawn for the Forest Service as a roadside zone. This revocation is needed to permit consummation of a proposed Forest Service exchange. This action will open this land to surface entry and to mining. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: August 18, 1989.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215-7076, 303-236-1768.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order 1742 which withdrew National Forest System land for a Forest Service roadside zone is hereby revoked insofar as it affects the following described land:

Sixth Principal Meridian

Roosevelt National Forest

T. 7 N., R. 75 W.

All that portion of a 400-foot-wide roadside strip 200 feet in width on either side of the centerline of Colorado Highway No. 14 lying within SW¼SW¼ section 5 as it existed at the time of issuance of Public Land Order 1742 and as shown on standard 7½ USGS Topographic Map Chambers Lake dated 1962.

The area described aggregates approximately 1.534 acres of National Forest System land in Larimer County.

2. At 10:00 a.m. on August 18, 1989, the land shall be opened to such forms of disposition as may by law be made of National Forest System land, including location and entry under the United States mining laws. Appropriation of land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Frank A. Bracken,

Under Secretary of the Interior.

[FR Doc. 89-16828 Filed 7-18-89; 8:45 am]

BILLING CODE 4310-JB-M

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43 CFR Public Land Order 6739

[CO-930-09-4214-10; C-39289]

Public Land Order No. 6725, Correction; Withdrawal of Public Land for Cheney Reservoir Disposal Site; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order will correct an error in the land description in Public Land Order No. 6725.

EFFECTIVE DATE: July 19, 1989.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215-7076, 303-236-1768.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

The land description in Public Land Order No. 6725, 54 FR 17707-17708, April 25, 1989, on page 17708, column one, Ute Principal Meridian, T. 3 S., R. 2 E., the line reading "Sec. 13, W½NW¼SW¼;" is hereby corrected to read "Sec. 13, W½NW¼NW¼;".

Frank A. Bracken,

Under Secretary of the Interior.

July 12, 1989.

[FR Doc. 89-16831 Filed 7-18-89; 8:45 am]

BILLING CODE 4310-JB-M

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43 CFR Public Land Order 6732

[ID-943-09-4214-10; I-07470, I-09371, I-012556, I-15302, I-15594]

Public Land Order 6702, Correction; Revocation of Secretarial Order Dated December 9, 1918; Bureau of Land Management Order Dated August 18, 1955, and Public Land Order Nos. 1829, 2022, 2066, and 3164; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order will correct errors in land descriptions and withdrawal order citations in Public Land Order No. 6702.

EFFECTIVE DATE: July 19, 1989.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1597.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

Public Land Order No. 6702, 54 FR 976-977, January 11, 1989, is hereby corrected as follows:

1. The heading is corrected to read "Revocation of Secretarial Orders Dated December 9, 1918, October 8, 1921, October 30, 1922, June 25, 1941, April 1, 1942; Bureau of Land Management Order Dated August 18, 1955; and Public Land Order Numbers 1829, 2022, 2066, and 3164; Idaho."

2. The beginning of paragraph number 1 which reads "The Secretarial Order dated December 9, 1918," is hereby corrected to read "The Secretarial Orders dated December 9, 1918, October 8, 1921, October 30, 1922, June 25, 1941, April 1, 1942; Bureau of Land Management Order dated August 18, 1955; and Public Land Order Numbers 1829, 2022, 2066, and 3164, which withdrew the following described lands for stock driveways, are hereby revoked in their entirety."

3. The land descriptions are hereby corrected as follows:

The land description on page 976, column 2, is corrected by adding "Sec. 35, E½W½" immediately following the bottom line which currently reads "Sec. 27, E½E½ and NW¼NW¼."

The land description on page 977, column 1, line 1, which reads "Sec. 18, lots 1, 2, NW¼, and E½NW¼" is corrected to read "Sec. 18, lots 1 and 2, NE¼, and E½NW¼."

The land description on page 977, column 1, line 9, which reads "Sec. 8, N½" is corrected by adding the following immediately after line 9:

Sec. 9, N½;
Sec. 10, N½;
Sec. 11, N½ and SE¼;
Sec. 12;
Sec. 13, W½;
Sec. 14, E½;
Sec. 23, E½;
Sec. 24, W½;
Sec. 25, W½;
Sec. 26.

Frank A. Bracken,

Under Secretary of the Interior.

July 12, 1989.

[FR Doc. 89-16824 Filed 7-18-89; 8:45 am]

BILLING CODE 4310-GG-M

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43 CFR Public Land Order 6737

[NM-940-09-4214-10; KS NM 63447]

Partial Revocation of Executive Order Dated May 5, 1855; Kansas

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive order insofar as it affects 77.51 acres of public land withdrawn for the Department of the Army, Corps of Engineers, for the Fort Riley Military Reservation. The land is no longer needed for the purpose for which it was withdrawn. This action will open 77.51 acres to operation of the public land laws and the mineral leasing laws. The land is not subject to the United States mining laws pursuant to the Act of May 5, 1876, 30 U.S.C. 49.

EFFECTIVE DATE: August 18, 1989.

FOR FURTHER INFORMATION CONTACT: Clarence F. Houghland, BLM New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87504-1449, 505-988-6071.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Executive Order dated May 5, 1855, which withdrew public land for the Department of the Army, Corps of Engineers, for the Fort Riley Military Reservation is hereby revoked insofar as it affects the following described land:

Sixth Principal Meridian

A tract of land situated in the E½ of section 13, Township 11 South, Range 6 East, and the W½ of section 18, Township 11 South, Range 7 East, more particularly described as follows:

Commencing at the northwest corner of said section 18, thence southerly along the west line of said section 18, a distance of 1,485.27 feet to the southerly right-of-way line of Kansas Highway K-18; thence N. 31°15'56" E., along said southerly right-of-way line, 85.08 feet to the point of beginning of the tract of land herein described;
Thence S. 60°07'42" E., 8.05 feet;
Thence S. 48°11'52" E., 546.07 feet;
Thence S. 14°47'03" E., 716.86 feet;
Thence S. 20°06'27" W., 718.77 feet;
Thence S. 32°41'10" W., 1,027.74 feet;
Thence S. 57°47'50" W., 801.26 feet;
Thence S. 76°50'50" W., 755.83 feet;
Thence N. 84°21'20" W., 111.75 feet to the southerly right-of-way line of Kansas Highway K-18;
Thence N. 6°29'00" E., along said right-of-way line, 420.06 feet;
Thence N. 31°15'56" E., along said right-of-way line, 250.00 feet;
Thence N. 80°40'00" E., along said right-of-way line, 230.50 feet;
Thence N. 31°15'56" E., along said right-of-way line, 150.00 feet;
Thence N. 28°59'00" W., along said right-of-way line, 201.60 feet;
Thence N. 31°15'56" E., along said right-of-way line, 2,592.58 feet to the point of beginning.

The area described contains 77.51 acres in Riley and Geary Counties.

2. At 9 a.m. on August 18, 1989, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on August 18, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on August 18, 1989, the land will be opened to applications and offers under the mineral leasing laws.

Frank A. Bracken,

Under Secretary of the Interior.

July 12, 1989.

[FR Doc. 89-16829 Filed 7-18-89; 8:45 am]

BILLING CODE 4310-FB-M

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43 CFR Public Land Order 6734

[MT-930-09-4214-10; MTM 42115]

Revocation of Executive Order No. 1500; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive Order which withdrew 40 acres of National Forest System land for the Rock Creek Administrative Site. The land is no longer needed for that purpose. The revocation is needed to permit consummation of an exchange. This action will open the land to surface entry and mining of nonmetalliferous minerals. The land has been and will remain open to mining of metalliferous minerals and mineral leasing.

EFFECTIVE DATE: August 18, 1989.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-255-2935.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Executive Order No. 1500, which withdrew the following described National Forest System land for Rock Creek Administrative Site, is revoked in its entirety:

Principal Meridian

Lolo National Forest

T. 23 N., R. 26 W.,
Sec. 30, NE¼NE¼.

The area described contains 40.00 acres in Sanders County.

At 9 a.m. on August 18, 1989, the land will be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry for nonmetalliferous minerals under the United States mining laws. Appropriation of land described in this order under the general mining laws for nonmetalliferous minerals prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Frank A. Bracken,

Under Secretary of the Interior.

July 12, 1989.

[FR Doc. 89-16830 Filed 7-18-89; 8:45 am]

BILLING CODE 4310-GN-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Parts 302, 303, 304 and 305

RIN: 0970-AA50

Child Support Enforcement Program: Cooperative Arrangements

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Final rule.

SUMMARY: This document contains six provisions that must be contained in all cooperative arrangements between child support enforcement (IV-D) agencies and courts and law enforcement officials. It also requires that cooperative arrangements meet these criteria in order to be eligible for Federal financial participation.

EFFECTIVE DATE: July 19, 1989.

FOR FURTHER INFORMATION CONTACT: Andrew J. Hagan, Policy Branch, OCSE (202) 252-5375.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Public reporting burden for the collection of information requirements at 45 CFR 302.34 (reporting) and 302.34 and 305.34 (recordkeeping) is estimated to average 43 and 240 minutes per response respectively, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A notice will be published in the **Federal Register** when OMB approves these information collection requirements under 3507 of the Paperwork Reduction Act.

Background

IV-D agencies enter into cooperative arrangements to obtain the assistance of courts and law enforcement officials in carrying out the functions of the IV-D program: The location of absent parents, the establishment of paternity and support obligations and the collection and enforcement of those obligations.

Under the prior regulation at 45 CFR 302.34, cooperative arrangements had to be in the form of a written agreement and had to meet certain criteria. These criteria included providing courts and law enforcement officials with pertinent information needed in locating absent parents, establishing paternity and securing support, including the immediate transfer of the information obtained from the State IV-A agency, pursuant to 45 CFR 235.70. Cooperative arrangements also had to provide for assistance to the IV-D agency in carrying out the program and may have related to any other matters of common concern. Cooperative arrangements may have included provisions for the investigation and prosecution of fraud directly related to paternity and child and spousal support and provisions to reimburse courts and law enforcement officials for their assistance.

In May of 1980, OCSE issued a publication that addressed the major considerations and elements of a cooperative arrangement as part of its "Techniques for Effective Management of Program Operations (TEMPO)" series. The TEMPO publication was updated in March, 1988, in a publication titled "Improved Program Performance Through Professionally Managed Cooperative Agreements." Both contain specific recommendations and sample language for use in the development of effective cooperative arrangements. However, it appears that many States have not used the publications' recommendations when entering into cooperative arrangements and program performance may have been affected as a result.

Program audits and Regional Office reports indicate that some States do not ensure that the functions delegated under cooperative arrangements are carried out properly, efficiently and effectively. Since one third of all child support workers are employed through cooperative arrangements, we believe that greater accountability and control are necessary for arrangements between State IV-D agencies and other entities. Therefore, this rule includes additional specifications for cooperative arrangements as a condition for Federal financial participation in the costs incurred under those arrangements.

Two separate reviews were conducted on cooperative arrangements—in 1984 and again in late 1987. In the initial 1984 review, we compiled information and recommendations on the identification of problem areas and suggestions for improvements in the quality of cooperative arrangements. Copies of cooperative arrangements in effect in 1984 were obtained. In late 1987, we analyzed arrangements made in the period after the initial review to determine if awareness of the problem and new informational tools for improving performance under cooperative arrangements were sufficient to improve the quality of the cooperative arrangements negotiated since 1984. That analysis indicated no measurable improvement in the quality of the cooperative arrangements.

Because there has been little voluntary improvement and strengthening of cooperative arrangements to ensure accountability and efficient and effective operation of the IV-D program, we believe more specific requirements based on those elements of cooperative arrangements recommended in the 1980 and 1988 publications are essential. These requirements will improve the accountability of agencies providing IV-D services under cooperative arrangements and increase program cost effectiveness by ensuring that the delegated or contracted functions are carried out efficiently and effectively.

The requirements are effective October 1, 1989 for new arrangements and October 1, 1990 for arrangements existing prior to October 1, 1989. The delayed effective date for existing cooperative arrangements will allow States adequate time to renegotiate existing agreements to ensure compliance with these requirements.

Statutory Authority

This rule is published under the authority of section 1102 of the Social Security Act (the Act) which requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Act.

Section 454(7) of the Act requires that each State plan for child and spousal support must "provide for entering into cooperative arrangements with appropriate courts and law enforcement officials (A) to assist the agency in administering the plan, including the entering into of financial arrangements with such courts and officials in order to assure optimum results under such program, and (B) with respect to any other matters of common concern to such courts or officials and the agency administering the plan."

Regulatory Provisions

45 CFR 302.34—State Plan Requirement

Prior regulations at 45 CFR 302.34 required States to enter into written agreements for cooperative arrangements with appropriate courts and law enforcement officials to provide certain services in carrying out the functions of the Child Support Enforcement program.

This regulation redesignates this section in its entirety as paragraph (a), and makes minor editorial changes to the language.

New paragraph (b) requires that all cooperative arrangements, entered into on or after October 1, 1989, contain the provisions required under the new 45 CFR 303.107, and that cooperative arrangements existing prior to October 1, 1989, contain the provisions required under the new 45 CFR 303.107 by October 1, 1990.

45 CFR 303.107—Requirements for Cooperative Arrangements

This regulation adds a new § 303.107 entitled "Requirements for cooperative arrangements." This section specifies certain information which States must include in all cooperative arrangements with courts and law enforcement officials, in addition to the criteria required under § 302.34, as follows:

1. Section 303.107(a): Arrangements must contain a clear description of the specific duties, functions and responsibilities of each party

Any arrangement must clearly describe the duties, functions and responsibilities of each of the parties. The selection and definition of the duties, functions and responsibilities depends upon the identity, resources and skills of the parties involved. Once identified, those responsibilities must be clearly stated to avoid confusion by either party. In other words, the arrangement must specify clearly what will be done and who will do it. Since the State IV-D agency has the responsibility, under 45 CFR 303.20(b)(2), to evaluate the quality, efficiency, effectiveness, and scope of services provided under the plan, the State IV-D agency must monitor cooperative arrangements to ensure effective implementation of the terms of the arrangement and to identify any problems that may affect the delivery of services promised under the arrangement.

2. Section 303.107(b): Arrangements must specify clear and definite standards of performance which meet Federal requirements

An arrangement must specify clear and precise performance standards by which the terms of the arrangement and quality of services provided under the arrangement are measured. All arrangements should contain standards of performance that are measurable, consistent with Federal requirements, and acceptable to each party. These standards should be related specifically to the duties outlined.

The arrangements should contain both qualitative and quantifiable performance standards. Some examples of qualitative standards are accuracy and thoroughness. Examples of quantifiable standards are: How many specific actions must be taken; what time frame is allowable for completion of a task, for example, paternity establishment; what collection levels must be maintained; or what ratio of costs to collections must be achieved. Reimbursement for services should be conditioned upon meeting the standards, as discussed further under financial arrangements.

Any performance standards contained in Federal regulations governing areas covered under cooperative arrangements must be met by the party who has entered into the arrangement with the IV-D agency.

Because the IV-D agency remains responsible for the implementation of the program, it must also retain authority for the interpretation of this material. Since program success depends upon mutual cooperation, there should be a common effort to develop reasonable standards which are ambitious, attainable and consistent with Federal requirements.

3. Section 303.107(c): Arrangements must specify that the parties will comply with title IV-D of the Act, implementing regulations and any other applicable Federal regulations and requirements

To ensure that all IV-D functions are performed in accordance with approved State plans and all relevant Federal requirements, the rule requires all arrangements to specify that applicable Federal requirements will be met by the parties to the arrangement. The State should ensure that key Federal and State laws or regulations that apply to the services and actions provided under the arrangement are available to the parties.

4. Section 303.107(d): Arrangements must specify the financial arrangements including budget estimates, covered expenditures, methods of determining costs, procedures for billing the IV-D agency and any relevant Federal and State reimbursement requirements and limitations

The financial section of the arrangement establishes the resources necessary to accomplish program objectives. In addition, the financial section not only controls expenditures but also ensures the propriety of those expenditures. Therefore, the rule requires all arrangements to specify in detail the financial terms under which the parties will carry out the arrangement. We strongly encourage States to link funding to performance in the terms and conditions of their cooperative arrangements. This link can be both positive and negative, e.g., increased funding for better performance and passing on any audit or other penalties sustained by the State as an outgrowth of inadequate performance under the agreement. Ideally, States should negotiate terms that would allow them to pass on to the other parties to the arrangement the impact of those parties' performance.

We also suggest that arrangements contain detailed financial arrangements such as:

(1) The proportion in which expenditures are divided between the parties, e.g., State/county matching rate;

(2) If indirect costs are to be included in the arrangement, a statement on the computation of those indirect costs, including whether or not:

(A) A fixed rate is to be used and, if so, what that rate will be; or

(B) An estimate is to be used and, if so, how it is to be determined and how and when a final rate will be set; or

(C) A "lump sum" amount is to be negotiated each year;

(3) The base costs to which the indirect rate will be applied to determine the amount of eligible indirect costs that can be claimed;

(4) The type or cost of equipment purchases that will require prior approval;

(5) The method and cost threshold of depreciation; and

(6) If applicable, the method for passing through an appropriate share of the incentive payments to political subdivisions that participate in the costs of the program.

5. Section 303.107(e): Arrangements must specify the kind of records that must be maintained and the appropriate Federal, State and local reporting and safeguarding requirements

In framing the requirements for record maintenance and reporting, the State must comply with State and Federal reporting and record keeping requirements. The State also has the right to require that the parties to an arrangement keep and present information in a format compatible with its needs. Local needs may require still other kinds of information to be reported or variations in the reporting format. Therefore, the regulation requires that the arrangement specifies whatever reports or records are needed to meet Federal, State and local requirements.

Confidentiality of records deserves separate treatment in arrangements. It is vital that case information be disclosed only to authorized individuals and only for authorized purposes. The arrangement should specify who is to have access to information in case records and for what purpose. Federal and State legislation and regulations are

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controlling. Federal regulations at 45 CFR 303.21 provide general guidance for the safeguarding of information. 45 CFR 303.70 requires agencies to take protective measures to safeguard personal information transmitted and received through the Federal Parent Locator Service. Additionally, States and localities which obtain certain address or asset information from the Internal Revenue Service are subject to the more stringent record keeping and safeguarding requirements of the Internal Revenue Code at 26 U.S.C. 6103(p)(4). Therefore, arrangements are required to specify that these requirements will be met.

6. Section 303.107(f): Arrangements must specify the dates on which the arrangement begins and ends, any conditions for revision or renewal, and the circumstances under which the arrangement may be terminated

To ensure that an existing arrangement responds to current conditions and needs, the regulation requires that the arrangement contain dates signifying when it begins and ends. A State might wish to limit the time frame on arrangements to one or two years. In addition, to protect the State from inadequate and deficient services, all arrangements are required to contain provisions that specify the conditions for revision or renewal and the circumstances under which the arrangement can be terminated. Conditions for revision of the cooperative arrangement during its effective period should include revisions for incorporating revised IV-D program requirements or to address program budget revisions. We also suggest that the arrangement provide, at a minimum, for termination as a result of clear violations of Federal or State law or of the agreement itself, or for failure to take appropriate corrective action. States may also wish to include a provision for a monetary penalty to avoid termination of an arrangement. Such a penalty could be used to boost performance and as an alternative to outright termination of the arrangement.

We also encourage States to include in arrangements provisions for dispute resolution, corrective action and procedures for implementing any necessary corrective action to be used at the discretion of the State. This will enable parties to correct deficiencies when review indicates that they are not meeting the terms of the arrangement or are performing poorly with respect to the defined performance standards. If the State requires the court or law enforcement official to take corrective action, the corrective action period should be limited to a specified length of time. Although the period of time allowed for corrective action must be determined on a case-by-case basis, we suggest that States limit the corrective action period to three months since we believe that this time frame is generally sufficient to correct inadequate performance or other noted problems. Because there may be situations in which a State believes immediate termination is the best solution, corrective action may not be appropriate in all cases of poor performance.

45 CFR 304.21—Federal Financial Participation

Prior regulations at 45 CFR 304.21 stated the conditions that had to exist to make Federal financial participation available for costs incurred under cooperative arrangements.

This regulation makes minor editorial changes to the title of this section for purposes of consistency with § 302.34 and adds a new paragraph (b)(6).

The new paragraph (b)(6) requires that all cooperative arrangements contain the provisions in the new 45 CFR 303.107 as a condition for Federal financial participation. Regional office staff will evaluate any of these arrangements when necessary to ensure compliance with the new cooperative arrangement standards. If the review by Regional staff finds a cooperative arrangement is not in compliance with the requirements of 45 CFR 303.107, Federal financial participation will not be available for the costs associated with such arrangement until a determination is made that the cooperative arrangement meets the standards.

45 CFR 305.34—Audit Requirements

Prior regulations at 45 CFR 305.34 required that States enter into written cooperative arrangements with appropriate courts and law enforcement officials when necessary for the purpose of carrying out the functions of the IV-D program. This regulation adds a new sentence to require that all cooperative arrangements conform to the requirements at § 303.107.

Response to Comments

We received 24 comments in response to the Notice of Proposed Rulemaking published in the **Federal Register** on October 5, 1988, (53 FR 39110). Commenters included State and local child support agencies and State and local courts. One advocacy group submitted comments.

Section 302.34 State PLan Requirement

We received several comments concerning changes to 45 CFR 302.34, the State plan requirement that States enter into cooperative arrangements with appropriate courts and law enforcement officials.

1. *Comment:* One commenter recommended that the regulations clarify whether, in the case of a State-supervised, county-operated IV-D program, the local IV-D agencies may enter into cooperative arrangements with the local courts and law enforcement officials.

Response: Section 303.20(b) requires the State IV-D agency to have an organizational structure and sufficient staff to fulfill certain functions at the State level, including formal evaluation of the quality, efficiency, effectiveness, and scope of services provided under the plan and the financial control of the operation of the plan. Section 303.20(d) specifies that the State-level functions of formal evaluation of the quality, efficiency, effectiveness, and scope of services and the financial control of the operation of the plan may not be delegated by the State IV-D agency. Section 302.12(a)(2) specifies that the IV-D agency, except as provided in § 303.20, need not perform all the functions of the IV-D program so long that it insures that all these functions are being carried out properly, efficiently, and effectively. Therefore, the regulations at § 302.34 continue to permit both State and local IV-D agencies to enter into cooperative arrangements with appropriate courts and law enforcement officials.

We strongly encourage States to exercise more authority over cooperative arrangements by centralizing the cooperative arrangement function, or by mandating State IV-D review of locally developed cooperative arrangements, and by developing other mechanisms which enhance the State's control and oversight.

2. *Comment:* One commenter asked whether the new requirement that cooperative arrangements must meet the requirements of 45 CFR 303.107 applies only to those cooperative arrangements under which the court or law enforcement officials receive Federal funding under the IV-D program.

Response: Federal requirements regarding cooperative arrangements apply to any cooperative arrangement between State IV-D agencies and courts or law enforcement officials whether or not the courts or law enforcement officials receive Federal funding under the IV-D program.

3. *Comment:* One commenter asked if the cooperative arrangement requirements apply only to cooperative arangements that the State IV-D agency has with courts and law enforcement officials or whether the requirements also apply to cooperative arrangements with other agencies (e.g., welfare departments, vital statistics recorders, data processing agencies).

Response: Section 454(7) of the Act addresses only cooperative arrangements with courts and law enforcement officials to assist in the administration of the State plan. Therefore, States are not required to include the cooperative arrangement criteria under § 303.207 in cooperative arrangements with other agencies. However, these criteria are basic elements of any contractual arrangement and including them in any cooperative arrangement will improve the accountability and performance of those involved in IV-D activities.

4. *Comment:* One commenter suggested that 90 percent Federal funding should be available for the costs associated with the monitoring and enforcing of cooperative arrangements by IV-D agency staff.

Response: Section 455 of the Act does not authorize enhanced Federal funding for staff to monitor and enforce cooperative arrangements.

Section 303.107 Requirements for Cooperative Arrangements

Section 303.107(a): Arrangements must contain a clear description of the specific duties, functions and responsibilities of each party

Comment: Several commenters asked whether the more detailed criteria required in 45 CFR 303.107 would necessarily result in more effective, efficient and cost-effective cooperative arrangements. One commenter suggested that the Federal audits are already an effective monitoring mechanism to identify deficiencies in cooperative arrangements.

Response: As discussed earlier, audits and program reviews indicate to us that some States do not ensure that the functions delegated under cooperative arrangements are carried out properly, efficiently and effectively. There has been little voluntary effort to strengthen cooperative arrangements, under which nearly one third of all child support enforcement workers are employed, despite the need to ensure accountability and efficient and effective operation of the IV-D program. Further, these new requirements are basic elements of administering cooperative arrangements or any contractual arrangement, i.e., clearly delineated responsibilities and expectations as conditions for reimbursement. They will also focus sorely-needed attention on improving performance under cooperative arrangements.

The purpose of the Federal audit is to evaluate the State IV-D program's substantial compliance with the title IV-D requirements. The audit does not substitute for the State's responsibility, under § 303.20, to monitor the quality, efficiency, effectiveness, and scope of services provided under the IV-D program. A State that monitors services provided under cooperative arrangements will ensure that IV-D services are administered effectively and efficiently, rather than risk financial penalties as a result of a Federal audit that determines IV-D requirements are not being met. For these reasons, we believe it is essential to include specific criteria for cooperative arrangements under the IV-D program in Federal regulations.

Section 303.107(b): Arrangements must specify clear and definite standards of performance which meet Federal requirements

1. *Comment:* Four commenters suggested that we specify quantitative and qualitative standards for specific performance, including time limits, number of actions per caseload and staffing levels per caseload. One commenter requested that national standards, with possible consideration of regional adjustments, be established. Some commenters requested we delay cooperative arrangement requirements until Federal performance standards regulations currently under development have been finalized.

Response: Soon after the October 5, 1988 publication of these regulations in proposed form, the President signed the Family Support Act of 1988 (Pub. L. 100-485) on October 13, 1988. Section 121 of Pub. L. 100-485 revised section 452 of the Act to require the Secretary to develop, by August 1, 1989, regulations that establish time limits for State IV-D agencies in accepting and responding to requests for IV-D services. The regulations being developed in response to section 121 will establish specific performance standards for a State's IV-D program. Any entity providing services under the IV-D program, whether services are provided by the IV-D agency directly or under cooperative arrangement, must meet those standards. Until those revised standards are effective, cooperative arrangement standards of performance must be consistent with existing Federal program standards under 45 CFR Parts 302 and 303. Once revised standards are effective, which should coincide with the effective dates of the requirements in this final rule on all cooperative arrangements, the State must ensure that performance standards included under a cooperative arrangement are revised to be consistent with Federal requirements.

2. *Comment:* Several commenters expressed concern that the IV-D agencies may require courts and law enforcement officials to meet higher performance standards than are required of the IV-D agencies themselves.

Response: Cooperative arrangements must specify clear and definite standards of performance which meet Federal requirements. However, the terms and conditions of the arrangement are negotiable as long as they are consistent with Federal requirements. Therefore, IV-D agencies may negotiate cooperative arrangements which have higher standards of performance than those mandated in Federal regulations.

3. *Comment:* Several commenters believe that the regulations do not consider cooperative arrangements to be cooperative partnerships between IV-D agencies and courts and law enforcement officials with negotiation and accommodation by each side. Others supported the additional requirements.

Response: We agree that cooperative arrangements should be reached by a process of negotiation rather than being dictated by one of the parties. However, the State IV-D agency cannot agree to a cooperative arrangement which contains provisions that are inconsistent with Federal requirements.

4. *Comment:* One commenter asked if a State should withhold reimbursement under a cooperative arrangement for failure to meet the standards of performance.

Response: As discussed previously, we strongly encourage States to link funding to performance in the terms and conditions of their cooperative arrangements. States currently face financial consequences in the form of audit penalties for failing to meet program requirements and in the future the possibility of penalties under the program will be linked to compliance with Federal performance standards published as a result of Pub. L. 100-485. Therefore, States may wish to pass these financial consequences on to those under cooperative arrangement. By the same token, States may wish to provide

additional financial incentives for performing in an exemplary manner as the States themselves receive incentives based on their performance under the program.

5. *Comment:* One commenter requested that the unit cost concept it uses be allowed to be incorporated into the performance standards specified in the cooperative arrangements. Under that concept, a unit of activity to be performed and the cost for that activity are identified. Under the State's proposal, the unit of service additionally would include acceptable timeframes for completion of the activity. If the unit of activity is not completed properly and within the specified timeframe, reimbursement would be withheld.

Response: States may use such a concept as a performance standard in cooperative arrangements as long as the Federal performance standards are met or exceeded.

Section 303.107(c): Arrangements Must Specify That the Parties will Comply With Title IV-D of the Act, Implementing Regulations and any Other Applicable Federal Regulations and Requirements

Comment: One commenter requested that the requirements referenced in § 303.107(c) be spelled out and that States be given the opportunity to comment on them prior to implementation of § 303.107(c).

Response: Since the inception of the IV-D program, State IV-D agencies have been responsible, under § 302.12(a)(3), for ensuring that child support enforcement services were provided under the State's IV-D plan in accordance with Federal requirements. Those requirements are set forth in title IV-D of the Act and implementing regulations at 45 CFR Parts 301 through 307. States and others are given the opportunity to comment on proposed regulations when they are published, as was the case with § 303.107. This new requirement merely reiterates that those under cooperative arrangement must provide services in accordance with Federal requirements as they should have been doing already.

Section 303.107(d): Arrangements Must Specify the Financial Arrangements Including Budget Estimates, Covered Expenditures, Methods of Determining Costs, Procedures for Billing the IV-D Agency and any Relevant Federal and State Reimbursement Requirements and Limitations

1. *Comment:* Two commenters requested that OCSE require, rather than just encourage, that financial incentives be passed through by the IV-D agency to those under cooperative arrangement.

Response: Section 454(22) of the Act, and 45 CFR 303.52(d), specify that the State shall determine the appropriate share of incentive payments each political subdivision participating in the costs of the IV-D program should receive. There is no statutory requirement that incentives be paid to those under cooperative arrangement with the IV-D agency unless those under cooperative arrangement meet the definition of a political subdivision and are participating in the costs of the program. A political subdivision is defined in 45 CFR 303.52(a) as "a legal entity of the State as defined by the State, including a legal entity of the political subdivision so defined, such as a Prosecuting or District Attorney or a Friend of the Court."

States are given much discretion to determine the best way to fund their IV-D programs, including how to use incentives paid to the State. While we strongly encourage States to pay incentives to reward exceptional performance in providing services, we believe Congress intended that States should determine how best to reward performance.

2. *Comment:* Another commenter suggested that audit penalties and disallowances, as well as incentives, should also be passed along by the IV-D agency to the courts and law enforcement officials under cooperative arrangements so that the courts and law enforcement officials will experience the rewards and punishments that result from their performance.

Response: We agree that cooperative arrangements should provide rewards and penalties for performance as part of the specification of financial arrangements in the cooperative arrangement. However, as indicated in the prior response to comment, States are allowed much flexibility to determine the specifics of operating their IV-D programs, including their cooperative arrangements. Our relationship is with the State, and the State is responsible for operating its program in a way that meets Federal requirements. How the State decides to accomplish that responsibility, including the specifics of its relationship with local agencies or those under cooperative arrangement is left largely to the State, within the constraints of Federal law and regulations.

3. *Comment:* One commenter requested that incentives be extended to all collections under cooperative arrangements, including non-AFDC collections beyond the AFDC incentive ceiling and medical support collections.

Response: Section 458 of the Act and 45 CFR 303.52(b) specify the formula for providing incentive payments to States. There is no Federal statutory or regulatory prohibition on States using their own funds to provide additional incentives to their political subdivisions or to those under cooperative arrangement for meeting or exceeding performance standards established in the cooperative arrangements. In fact, we have always encouraged States to do so, particularly with respect to providing incentives for cost avoidance as a result of families remaining self-sufficient as a result of child support collections or health insurance coverage.

4. *Comment:* Some commenters were concerned that failure to meet the Federal requirements with respect to cooperative arrangements could result not only in the loss of Federal funding for the costs incurred under cooperative arrangement but also could jeopardize funding of the entire State's IV-D program for failure to meet State plan requirements.

Response: After the effective dates (October 1, 1989 for new cooperative arrangements, and October 1, 1990 for cooperative arrangements entered into prior to October 1, 1989), the State plan must certify that the criteria contained in 45 CFR 303.107 are contained in all cooperative arrangements. The commenter is correct that failure of a State to certify that cooperative arrangements meet Federal requirements in § 303.107 could result in disapproval of the IV-D State plan and loss of all Federal funding of the IV-D program and that failure of cooperative arrangements to meet these requirements could result in audit penalties. Since nearly a third of all child support workers are employed through cooperative arrangements, we believe these requirements are essential for proper control of activities under the IV-D plan.

5. *Comment:* One commenter requested clarification of whether reference to the methods of determining costs in cooperative arrangements is permissible or whether actual cost regulations must be included in the cooperative arrangement.

Response: The cooperative arrangement may refer to another document containing the specific method of determining costs or other financial arrangement details, providing that such referenced documents are provided to the court or law enforcement official working under the cooperative arrangement.

6. *Comment:* One commenter suggested that only cooperative arrangements with annual expenditures above a specified dollar amount (e.g., $100,000) should be required to meet the criteria in 45 CFR 303.107.

Response: We believe that the need for accountability and enunciation of clear responsibilities under a cooperative arrangement is necessary under all circumstances. Any cooperative arrangement should ensure that the State receives appropriate services and value for its expenditures.

7. *Comment:* One commenter wanted cooperative arrangements to refer to Statewide application fees and recovery of cost policy to avoid separate fees and charges by counties.

Response: Federal law and regulations do not prohibit States from charging fees other than those authorized in regulations. Accordingly, we do not have the authority to limit charging of fees to those specified in Federal regulations if fees are charged in all child support enforcement cases in the State regardless of whether or not they are IV-D cases. Such fees must be reported as program income if the charging entity is under cooperative arrangement. However, we urge States to make non-AFDC cost recovery requirements under § 302.33 and program income requirements under § 304.50 clear in any cooperative arrangements with courts and law enforcement officials.

Section 303.107(e): Arrangements Must Specify the Kind of Records That Must be Maintained and the Appropriate Federal, State and Local Reporting and Safeguarding Requirements

Comment: One court expressed concern that recordkeeping requirements in the cooperative arrangement regulations might become burdensome or interfere with the actual delivery of the legal services, and would also have the potential for violating the attorney-client privilege.

Response: The recordkeeping requirements referenced in 45 CFR 303.107(e) are not being added by this regulation. State IV-D agencies, and courts and law enforcement officials under cooperative arrangements with the State IV-D agencies, have always been responsible for adequate recordkeeping and reporting and the safeguarding of confidential information, under section 454(10) of the Act and 45 CFR 302.15 and 303.21. This new regulation merely clarifies that courts and law enforcement officials under cooperative arrangement with the State must meet the appropriate recordkeeping, reporting and safeguarding requirements that the State IV-D agencies are required to meet.

Section 303.107(f): Arrangements Must Specify he Dates on Which the Arrangement Begins and Ends, any Conditions for Revision or Renewal, and the Circumstances Under Which the Arrangement May Be Terminated

1. *Comment:* Some commenters recommended we require States to limit the cooperative arrangement timeframes to one or two years. Another commmenter wanted a one-year maximum, while others suggested longer timeframes (e.g., until the term of office ends for the official operating under the cooperative arrangement).

Response: We believe States should determine the length of cooperative arrangements. Timeframes of one or two years for cooperative arrangements will help ensure maximum performance and avoid complacency because of an extended effective period. Close supervision and frequent reevaluation of the terms of the cooperative arrangement are essential to ensure that the goals of the program, Federal expectations and requirements, and the needs of children continue to be met.

2. *Comment:* Two commenters recommended that States allow corrective action periods of three to six months. Another commenter recommended 12 months for corrective action since a major deficiency could take that long to correct.

Response: The length of allowed time for corrective action should be determined on a case-by-case basis. However, it should be noted that since, under the requirements of 45 CFR 302.10(c)(2), the State IV-D agency has the responsibility for oversight of IV-D operations performed by other agencies and offices, a major deficiency should not occur if proper oversight is exercised.

3. *Comment:* Other commenters have recommended that cooperative arrangements contain specific provisions for revising the cooperative arrangement during the timeframe it is in effect (e.g., budget revisions, revisions necessary to ensure compliance with revised requirements) and for resolution of disputes between the parties.

Response: We agree that cooperative arrangements should specify conditions for revising the cooperative arrangement during the timeframe it is in effect, for example, to ensure compliance with changing Federal or State requirements. Therefore, we have revised 45 CFR 303.107(f) to specify that States must ensure that all cooperative arrangements specify any conditions for revision.

We also encourage, although we have not required, States to include provisions in cooperative arrangements for the resolution of disputes short of termination. Under appropriate circumstances, the parties to a cooperative arrangement which may be ambiguous or subject to different interpretations should discuss and attempt to resolve disputes and, if warranted, renegotiate the cooperative arrangement rather than terminate the arrangement. However, careful drafting of cooperative arrangements and discussion of the meaning of all terms and conditions should minimize disputes once an arrangement is signed.

Section 304.21 Federal Financial Participation

We received several comments addressing the requirements of the new paragraph 45 CFR 304.21(b)(6) that all cooperative arrangements contain the provisions in the new 45 CFR 303.107 as a condition of receiving Federal financial participation.

Comment: One commenter requested clarification as to the effective date of the provision that Federal funding is not available for cooperative arrangements which do not meet the requirements of 45 CFR 303.107.

Response: The effective date for the revision to 45 CFR 304.21(b)(6) is the same as for the rest of this revised regulation. Federal funding is only available for new cooperative arrangements, entered into on or after October 1, 1989, that contain the provisions of 45 CFR 303.107. For cooperative arrangements operating prior to October 1, 1989, States have until October 1, 1990 to comply with the requirement that their existing cooperative arrangements also contain the provisions of 45 CFR 303.107. After the appropriate effective date, if a cooperative arrangement is found not to contain the criteria required in 45 CFR 303.107, no Federal funding is available for costs incurred under the cooperative arrangement until a determination is made that the cooperative arrangement complies with the requirements of § 303.107.

Section 305.34 Audit Requirements

We had one comment concerning the addition of a new sentence in 45 CFR 305.34 requiring that all cooperative arrangements conform to the requirements at the new 45 CFR 303.107.

Comment: One commenter requested that OCSE provide States with model cooperative arrangement language, as specific as possible and acceptable to auditors as meeting the requirements.

Response: Specific terms and conditions of the cooperative

arrangement should be negotiated with the individual provider to best meet the needs of the State. There are two OCSE publications, issued in May, 1980 and March, 1988, discussed earlier in this document, which contain specific recommendations and sample language for the development of effective cooperative arrangements.

Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), we are required to prepare a regulatory flexibility analysis for those rules which have a significant economic impact on a substantial number of small entities. The principle impact of this regulation is on State IV–D agencies which are required to revise only those existing cooperative arrangements which do not meet the new requirements. This regulation could potentially save money for both the Federal Government and the States by controlling amounts spent on and ensuring adequate performance under cooperative arrangements.

States enter into cooperative arrangements to obtain the assistance of courts and law enforcement officials in carrying out the functions of the IV–D program: The location of absent parents, the establishment of paternity, the establishment of support obligations, and the enforcement and collection of those obligations.

Federal regulations at 45 CFR 304.21 provide that Federal financial participation, at the applicable matching rate, is available for the costs of cooperative arrangements. The intent of this regulation is to specify certain conditions all cooperative arrangements must meet to increase the effectiveness of the IV–D program and to ensure that States get what they pay for.

This regulation strengthens the prior regulation and may result in initial additional costs when States renegotiate and revise their existing cooperative arrangements. However, we believe that the renegotiated arrangements will result in services being provided at a substantial net savings to State and Federal governments due to the increased specificity and effectiveness of such arrangements. States will be in a better position to ensure effective operation of the program by controlling the performance of those under cooperative arrangements.

Therefore, these regulations would not have a significant economic impact on a substantial number of small entities and a regulatory flexibility analysis is not required.

Regulatory Impact Analysis

The Secretary has determined, in accordance with Executive Order 12291 that this rule does not constitute a "major" rule for the following reasons:

(1) The annual effect on the economy is less than $100 million:

(2) This rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(3) This rule will not result in significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

As discussed above, this regulation will result in net savings for State and Federal governments because of improved performance of services specified under cooperative arrangements, and improved accountability under those arrangements.

Federalism Impact Analysis

Executive Order 12612 requires Federal agencies, in formulating and implementing policies and regulations, to assess the impact of these on federalism. For those rules that have a significant effect on the roles, rights, and responsibilities between the States and the Federal government, a federalism impact analysis is required.

There is one federalism issue we have identified in this analysis that may affect the institutional relationship between the States and the Federal Government. This relates to the addition of the six provisions which are required in all cooperative arrangements.

The six provisions as submitted in this regulation are designed to improve the accountability of courts and law enforcement officials providing IV–D services under cooperative arrangements to the State. These new provisions will strengthen the State's authority by ensuring that delegated or contracted functions are carried out as the State intended and by delineating the consequences of a subgrantee's failure to meet their responsibilities. The Federal government holds States accountable for program services and the States need the authority to hold those actually providing those services accountable. These six new provisions are in no way intended to preempt State law. They are minimal standards which should be part of any contract.

List of Subjects

45 CFR Part 302

Child support, Grant programs—social programs, Reporting and recordkeeping requirements, Unemployment compensation.

45 CFR Part 303

Child support, Grant programs—social programs, Reporting and recordkeeping requirements.

45 CFR Part 304

Child welfare, Federal financial participation, Grant programs—social programs, Reporting and recordkeeping requirements.

45 CFR Part 305

Accounting, Child support, Grant programs—social programs, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program No. 13.783, Child Support Enforcement Program)

Dated: May 17, 1989.

Laurence Love,

Acting Director, Office of Child Support Enforcement.

Approved: May 26, 1989.

Louis W. Sullivan,

Secretary.

For the reasons set out in the preamble, Title 45 Chapter III of the Code of Federal Regulations is amended as follows:

PART 302—[AMENDED]

1. The authority citation for Part 302 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

2. Section 302.34 is revised to read as follows:

§ 302.34 Cooperative arrangements.

(a) The State plan shall provide that the State will enter into written agreements for cooperative arrangements with appropriate courts and law enforcement officials. Such arrangements may be entered into with a single official covering more than one court, official, or agency, if the single official has the legal authority to enter into arrangements on behalf of the courts, officials, or agencies. Such arrangements shall contain provisions for providing courts and law enforcement officials with pertinent information needed in locating absent parents, establishing paternity and securing support, including the immediate transfer of the information obtained under § 235.70 of this title to the court or law enforcement official, to the extent that such information is relevant to the duties to be performed pursuant to the arrangement. They shall also provide for assistance to the IV–D agency in carrying out the program, and may relate to any other matters of common concern. Under matters of common concern, such arrangements may include provisions for the investigation and prosecution of fraud directly related to paternity and child and spousal support, and provisions to reimburse courts and law enforcement officials for their assistance.

(b) Cooperative arrangements entered into on or after October 1, 1989 must meet the criteria prescribed under § 303.107 of this chapter. Cooperative arrangements existing prior to October 1, 1989 must meet the criteria prescribed under § 303.107 of this chapter by October 1, 1990.

PART 303—[AMENDED]

3. The authority citation for Part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

4. Part 303 is amended by adding § 303.107 to read as follows:

§ 303.107 Requirements for cooperative arrangements.

The State must ensure that all cooperative arrangements:

(a) Contain a clear description of the specific duties, functions and responsibilities of each party;

(b) Specify clear and definite standards of performance which meet Federal requirements;

(c) Specify that the parties will comply with title IV–D of the Act, implementing Federal regulations and any other applicable Federal regulations and requirements;

(d) Specify the financial arrangements including budget estimates, covered expenditures, methods of determining costs, procedures for billing the IV–D agency, and any relevant Federal and State reimbursement requirements and limitations;

(e) Specify the kind of records that must be maintained and the appropriate Federal, State and local reporting and safeguarding requirements; and

(f) Specify the dates on which the arrangement begins and ends, any conditions for revision or renewal, and the circumstances under which the arrangement may be terminated.

PART 304—[AMENDED]

5. The authority citation for Part 304 continues to read as follows:

Authority: 42 U.S.C. 651 through 654, 657, 660, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

6. Section 304.21 is amended by revising the heading, replacing the period at the end of paragraph (b)(5) with "; and" and adding a new paragraph (b)(6) to read as follows:

§ 304.21 Federal financial participation in the costs of cooperative arrangements with courts and law enforcement officials.

* * * * *

(b) * * *

(6) Costs of cooperative arrangements that do not meet the requirements of § 303.107 of this chapter.

* * * * *

PART 305—[AMENDED]

8. The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 603(h), 604(d), 652(a)(1) and (4), and 1302.

9. Section 305.34 is amended by adding a sentence to the end of the current language to read as follows:

§ 305.34 Cooperative arrangements.

* * * The cooperative arrangements must meet the requirements at § 303.107 of this chapter.

* * * * *

[FR Doc. 89–16786 Filed 7–18–89; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85–15; Notice 9]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment; Technical Amendments

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Technical amendments; final rule.

SUMMARY: This notice contains technical amendments of the final rule published on May 9, 1989, which revised requirements for headlamps. Section S7.4 is reparagraphed for clarity on the basis of early public reaction. A reference in paragraph (f) of section S7.5 to other paragraphs is corrected. Relevant revisions of equipment and location requirement paragraphs, and the Tables in Motor Vehicle Safety Standard No. 108 were not made, and the technical amendments of this notice complete the revisions of that standard. The notice also corrects typographical errors appearing in the final rule.

EFFECTIVE DATE: The amendments are effective on July 19, 1989.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, National Highway Traffic Safety Administration, Washington, DC 20590 (202–366–5263).

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* was republished in its entirety on May 9, 1989, and amended to incorporate revised requirements for headlamps (54 FR 20066). One of these amendments was the adoption of Section S7.4. Early public reaction indicates that readers find the paragraphing confusing. To clarify the rule, the agency is deleting a redundancy created by paragraphs (a)(1) through (a)(5) of that section, and redesignating the succeeding paragraphs of S7.4.

Additionally, paragraph (f) of Section S7.5 references "paragraphs (e) and (f)" when the correct reference is to "paragraphs (d) and (e)", and the notice corrects this error.

Because all headlighting performance requirements are now specified in new section S7 (other than for motorcycles), the continued reference to them in the "required equipment" Tables I and III is unnecessary, and NHTSA is amending the Tables to omit them. A corresponding corrective amendment is made to paragraph S5.1.1. Certain locational requirements also now appear in section S7, and their continued presence in "location" Tables II and IV are unnecessary. They are deleted. A corresponding corrective amendment is made to paragraph S5.3.1. The final rule contained several typographical errors, some attributable to NHTSA, others to the **Federal Register**. They are corrected.

Because the amendments are technical in nature and have no substantive impact, it is hereby found that notice and public comment thereon are unnecessary. Further, because the amendments are technical in nature, it is hereby found for good cause shown that an effective date earlier than 180 days after issuance of the rule is in the public interest, and the amendments are

effective upon publication in the **Federal Register**.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing Part 571 of 49 CFR is amended as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50

§ 571.108 [Amended]

2. Paragraph S5.1.1 is amended by adding the words "and S7," after the words "Tables I and III,". The word "of" appearing between "Standards" and "Recommended" is corrected to read "or".

3. In paragraph S5.1.1.7 in the sentence beginning "If multiple compartment lamps" the word "effected" is corrected to read "effective".

4. Paragraph S5.3.1 is amended by adding the words "and S7," in the text after "S5.3.1", and by revising the phrase "Table I or III and in location" to read "Table I and Table III, as applicable, and S7, and in the location".

5. The second paragraph designated "S5.3.1" (that begins "Except as provided in S5.3.1.1.1") is redesignated S5.3.1.1.

6. In paragraph S5.7.1 the word "conform" is corrected to read "conform".

7. In paragraph S7.3.5, the word "heardware" is corrected to read "hardware".

8. In paragraph (c)(2) of paragraph S7.3.8, the figure "20 in/lbs" is corrected to read "20 in.-lbs."

9. In paragraph (c) of paragraph S7.3.9, in the first sentence the word "and" appearing between "both" and "upper" is corrected to read "an".

10. The paragraph immediately following paragraph (k) of paragraph S7.4 is correctly designated paragraph (l).

11. In newly designated paragraph (l) of paragraph S7.4, paragraphs (i) through (viii) and corresponding references in the introductory text are correctly designated paragraphs (1) through (8).

12. In newly designated paragraph (l)(2) of paragraph S7.4, the word "deterioriation" is corrected to read "deterioration".

13. In newly designated paragraph (l)(5) of paragraph S7.4, paragraphs (A) and (B) and corresponding references in the introductory text are correctly designated paragraphs (i) and (ii) respectively.

14. Paragraph S7.4(a) is revised as follows:

(a) The system shall provide in total not more than two upper beams and two lower beams of the performance described in one of the following:

(1) In a four-headlamp system, each upper beam headlamp and each lower beam headlamp shall be designed to conform to the photometrics of one of the following:

(i) Figure 15; or

(ii) Figure 15 except that the upper beam test values at 2½ D–V and 2½ D–12R and 12L shall apply to the lower beam headlamp and not to the upper beam test point value at 1½D–9R and 9L shall be 1000, or

(iii) Table 2 of SAE J579 DEC84.

(2) In a two-headlamp system, each headlamp shall be designed to conform to the photometrics of one of the following:

(i) Figure 17; or

(ii) Table 1 of SAE J579 DEC84.

(3) In a system in which there is more than one beam contributor providing a lower beam, and/or more than one beam contributor providing an upper beam, each beam contributor in the system shall be designed to meet only the photometric performance requirements of Figure 15 based upon the following mathematical expression: conforming test point value=2 (Figure 15 test point value)/total number of lower or upper beam contributors for the vehicle, as appropriate. The system shall be designed to use the Vehicle Headlamp Aiming Device (VHAD) as specified in paragraph S7.7.5.2.

14A. In paragraph S7.4, paragraphs (b), (c), and (d) are removed and paragraphs (e), (f), (g), (h), (i), (j), (k), and newly designated (l) are redesignated respectively paragraphs (b), (c), (d), (e), (f), (g), (h), and (i).

14B. In newly designated paragraph S7.4(e), the reference "S7.4(b)" is changed to read "S7.4(a)(1)".

14C. In newly designated paragraph S7.4(f), the phrase "subsections (a) through (d) of this section" is changed to read "paragraph S7.4(a)".

15. In paragraph (f) of paragraph S7.5, the phrase "paragraphs (e) and (f)" is revised to read "paragraphs (d) and (e)."

16. In paragraph (f) of paragraph S7.6 (as redesignated in the amendments published on June 29, 1989 (54 FR 27362, at 27368)), the word "Figures" in the penultimate sentence is corrected to read "Figures".

17. In paragraph (a) of paragraph S7.7.5.1, the word "downwad" is corrected to read "downward".

18. In paragraph S7.7.5.2, the following corrections are made:

(a) The first paragraph (a)(1)(vi) appearing after (a)(1)(iv) is correctly designated (a)(1)(v).

(b) In paragraph (a)(2)(iv) the word "horizonal" is corrected to read "horizontal",

(c) In paragraph (b), the words "set a 'O' " appearing in the penultimate sentence are corrected to read "set at 'O' ", and

(d) In paragraph (c)(3)(iv) the word "small" appearing in the last sentence is corrected to read "shall".

19. In paragraph (b) of paragraph S8.4, the word "hours" appearing at the end of the third sentence is corrected to read "hour".

20. In paragraph S8.7, in the penultimate sentence the phrase "73+/−7 −0 degrees F (20+/−4 −0 degrees C)" is corrected to read "73+7 −0 degrees F (23+4 −0 degrees C)".

21. In the Title of Table I in § 571.108 the words "OTHER THAN HEADLAMPS" are added after the word "EQUIPMENT"; in Table I the entire entry for "Headlamps" is removed.

22. In Table III in § 571.108, the two paragraphs associated with headlamps under the second column are removed, and the words "See S7" substituted; the two paragraphs of SAE references under the fifth column associated with headlamp paragraphs of the second column are removed.

23. The second columns of Table II and Table IV in § 571.108 are amended by removing the second sentence of the paragraph associated with headlamps (which begins "If a single . . . ."), and by adding a sentence to read "See also S7."

Issued on: July 12, 1989.

Jeffrey R. Miller,

Acting Administrator.

[FR Doc. 89–16650 Filed 7–18–89; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 81132–9033]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the portion of the total allowable catch (TAC) of sablefish allocated to hook-and-line gear in the Western Regulatory Area of the Gulf of Alaska will be taken by July 13, 1989. The Secretary of Commerce (Secretary) is prohibiting retention of sablefish by longline vessels fishing in this area from 12:00 noon, Alaska Daylight Time (ADT), on July 13, 1989, through December 31, 1989.

DATES: Effective from 12:00 noon, ADT, on July 13, until midnight, Alaska Standard Time, December 31, 1989. Public comments may be submitted to the Regional Director through July 28, 1989.

ADDRESS: Comments should be addressed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802–1668.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker, Fishery Management Biologist, 907–586–7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. Regulations implementing the FMP are at 50 CFR Part 672. Section 672.20(a) of the regulations establishes an optimum yield (OY) range of 116,000–800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. TACs for target species and species groups are specified annually within the OY range and apportioned among the regulatory areas and districts.

Section 672.24(b)(1) of current regulations restricts the hook-and-line catch of sablefish in the Western Regulatory Area to 80 percent of the TAC. The 1989 TAC specified for sablefish in this area is 3,770 mt (54 FR 6524, February 13, 1989); the portion of the TAC allocated to hook-and-line gear is 3,020 mt. Under section 672.24(b)(3)(ii), if the share of the sablefish TAC assigned to any type of gear for any area or district is reached, further catches of sablefish must be treated as prohibited species by persons using that type of gear for the remainder of the year.

The directed hook-and-line fishery for sablefish started April 1, 1989. The Regional Director reports that vessels using hook-and-line gear have landed 2,917 mt of sablefish through July 8 in the Western Regulatory Area. At recent catch rates, the balance of the 3,020 mt will be harvested by July 13, 1989.

Therefore, pursuant to § 672.24(b)(3)(i), the Secretary is prohibiting retention of sablefish caught with hook-and-line gear in the Western Regulatory Area effective 12:00 noon, ADT, July 13, 1989.

Allocation of the sablefish resource between hook-and-line and trawl gear in the Western Regulatory Area will be jeopardized unless this notice takes effect promptly. NOAA therefore finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed.

Public comments on the necessity for this action are invited for a period of 15 days after the effective date of this notice. Public comments on this notice of closure may be submitted to the Regional Director at the address above through July 28, 1989. If written comments are received which oppose or protest this action, the Secretary will reconsider the necessity of this action, and, as soon as practicable after that reconsideration, will publish in the **Federal Register** a notice either of continued effectives of the adjustment, responding to comments received, or that modifies or rescinds the adjustment.

Classification

This action is taken under § 672.22 and 672.24, and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: July 13, 1989.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–16833 Filed 7–13–89; 4:48 pm]

BILLING CODE 3510–22–M

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50 CFR Part 674

[Docket No. 90652–9152]

High Seas Salmon Fishery Off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of Closure.

SUMMARY: The Secretary of Commerce (Secretary) closes the commercial fishery for chinook salmon throughout the U.S. exclusive economic zone (EEZ) off Southeastern Alaska and closes the "Outer Fairweather Grounds" for all commercial salmon fishing. This action is necessary to conserve chinook salmon stocks. The intent of this action is to prevent overfishing and to ensure that the harvest of chinook salmon does not exceed the limit imposed by the Pacific Salmon Treaty. This action complements similar closures of the commercial troll fishery in waters managed by the State of Alaska.

DATE: This notice is effective from 11:59 p.m. Alaska Daylight Time (ADT), July 13, 1989, until 12 midnight, September 20, 1989. Public comments are invited until August 11, 1989.

ADDRESSES: Send comments to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802–1668. During the 30-day public comment period, the data upon which this notice is based will be available for public inspection during the hours of 8:00 a.m. to 4:30 p.m. (ADT) Monday through Friday at the NMFS Regional Office, Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Aven M. Andersen (Fishery Management Biologist, NMFS) 907–586–7229.

SUPPLEMENTARY INFORMATION: The Pacific Salmon Treaty (Treaty) and the Fishery Management Plan for the High Seas Salmon Fishery Off the Coast of Alaska (FPM) govern the salmon fisheries in the EEZ off the coast of Alaska east of 175° east longitude. The FMP was developed and amended by the North Pacific Fishery Management Council. Regulations implementing the FMP (50 CFR Part 674) were issued under section 7(a) of Pub. L. 99–5, the Pacific Salmon Treaty Act of 1985 (16 U.S.C. 3631 *et seq.*) and under section 305 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Closure of the Chinook Fishery

The Secretary issued a final rule, effective June 30, 1989, announcing the 1989 time and area limitations for the harvest of chinook and other species of salmon for the commercial troll fishery in the EEZ off Southeast Alaska (54 FR 28423). That rule provided for the closure of the chinook salmon troll fishery when 221,000 chinook salmon were harvested from the base stocks.

Base stocks consists of those wild and hatchery stocks that were being harvested in the fishery when the Treaty was signed. Base stocks do not include supplemental stocks resulting from salmon enhancement activity conducted by the State of Alaska after the Treaty was signed. Supplemental stocks are identified through the recovery of coded wire tags.

No separate harvest quotas were established for supplemental stocks and the harvest of these fish is permitted as long as the harvest quota for the base stocks is not reached. Separate harvest

quotas are not established for the EEZ and State waters.

The predicted total allowable harvest of chinook salmon was 305,200. This amount consisted of 263,000 chinook salmon from the base stocks, as authorized by the harvest quota established by the Pacific Salmon Commission, plus an estimated 42,200 chinook salmon from supplemental stocks.

The original forecast for the total allowable harvest of chinook salmon for the troll fishery was at least 247,000 fish. This amount consisted of 221,000 chinook salmon from the base stocks, as allocated to the troll fishery under harvest guidelines established by the State of Alaska, plus an estimated 26,000 (at least) chinook salmon from supplemental stocks.

The 1989 winter troll fishery harvested about 35,000 chinook salmon and an additional 35,00 chinook were taken in the June experimental troll fisheries. The Alaska Department of Fish and Game was managing the 1989 summer troll fishery so that 177,000 chinook salmon would be harvested and thus, a predicted total allowable harvest of 247,000 chinook salmon would be achieved.

The ADF&G estimates that the summer commercial troll fishery will have harvested 177,000 chinook salmon by midnight July 13, 1989. The troll harvest guideline of 221,000 chinook salmon taken from base stocks is expected to be reached at the same time. The Secretary, therefore, closes the commercial troll fishery for chinook salmon in the EEZ off Southeastern Alaska at 11:59 p.m., July 13, 1989.

Closure of the Outer Fairweather Grounds

A provision of the Pacific Salmon Treaty requires that each party to the treaty "minimize * * * all sources of induced fishing mortality * * * of chinook salmon" (Annex 4, Chapter 3, Paragraph 1(e)). To achieve this requirement, the Alaska Department of Fish and Game and the Secretary are closing commercial fishing for all salmon species in certain areas known to have high numbers of chinook salmon. This action is expected to minimize the incidence of chinook salmon hook-and-release mortality. These areas are known to have a high chinook salmon concentration; if left open, a large number of chinook salmon will be caught and released with a substantial mortality resulting.

The area of the EEZ being closed to all commercial salmon fishing, known as the Outer Fairweather Grounds, is bounded by lines connecting the following points:

Lat. 58°46.7' N., Long. 138°54.5' W.
Lat. 58°24.5' N., Long. 139°48.8' W.
Lat. 57°50.0' N., Long. 138°19.5' W.
Lat. 58°15.9' N., Long. 137°21.5' W.

The following Loran C lines are provided at the request of fishermen as estimates of the boundary lines of the Outer Fairweather Grounds. The closed area is roughly bounded on the northwest by Loran C line 7960–Y–29800, on the seaward side by Loran C line 7960–X–14400, and on the southeast by Loran C line 7960–Y–29150, and on the shoreward side by Loran C line 7960–X–14660. The provisions of Loran C lines does not affect the legal boundaries of the Outer Fairweather Grounds and fishermen are cautioned to use these lines and other navigational aids to assure that they are not conducting illegal fishing activities in this area. Fishermen should refer to NOAA chart 16760.

This action is authorized by 50 CFR 674.23 which provides that the Secretary may modify the fishing periods and areas by publishing a notice in the **Federal Register**. Any modification will be based on a determination by the Director of the Alaska Region of NMFS (Regional Director) that the condition of a salmon species is substantially different from the condition anticipated in the FMP and that this difference requires a modification of the fishing times and areas to adequately conserve and manage that salmon species. The regulations specify the factors that the Regional Director may consider. The regulations also specify that the Secretary must consult with the ADF&G before any period or area modifications.

In conformity with these requirements, the Regional Director (acting on behalf of the Secretary) has consulted with the ADF&G, has reviewed the information on the 1989 salmon fishery to date, and has determined that the chinook stocks in 1989 are substantially weaker than the condition anticipated in the FMP, although some wild stocks are rebuilding under provisions of the Treaty and although Alaska's new hatchery stocks are increasing their contribution to the harvest. The Regional Director further has determined that this difference in stock condition requires, in conjunction with area closures made by the ADF&G, the closure of the Outer Fairweather Grounds to all commercial salmon fishing at 11:59 p.m. (ADT) on July 13, 1989.

Possibility of Reopening the Troll Chinook Fishery

After the fishery closure, the actual troll fishery harvest of chinook salmon will be tabulated and the number of chinook salmon taken from supplemental stocks resulting from Alaska's recent salmon enhancement activities will be determined. If the total chinook harvest by the troll fishery is considerably less than the harvest guideline, then the troll fishery will be reopened to allow harvest of the remainder of its guideline number before the troll season closes on September 20.

Classification

This action is exempt from sections 4 through 8 of the Administrative Procedure Act, the Regulatory Flexibility Act, and Executive Order 12291 because, as is expressly provided in section 7(a) of Pub. L. 99–5, it involves a foreign affairs function. It contains no collection-of-information requirement for purposes of the Paperwork Reduction Act.

Section 674.23(b)(3) of the rule implementing the FMP requires the Secretary to accept and consider public comments for 30 days after the effective date of this notice. The aggregated data upon which this closure was based are available for public inspection at the address given above. If comments are received, the Secretary will reconsider the necessity for this action and will publish another notice in the **Federal Register** either confirming the notice's continued effect, modifying it, or rescinding it, unless the notice has already expired or been rescinded.

List of Subjects in 50 CFR Part 674

Administrative practice and procedure, Fish, Fisheries, Fishing, International organizations.

Authority: 16 U.S.C. 3631 *et seq.*; 16 U.S.C. 1801 *et seq.*

Dated: July 13, 1989.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–16812 Filed 7–13–89; 4:12 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 137
Wednesday, July 19, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 281

[DoD Directive 5000.51]

Total Quality Management

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule establishes policy and assigns responsibility for implementation of the Total Quality Management (TQM) concept in the Department of Defense. Included in this policy is the authorization of a DoD TQM Guide. The TQM concept will be implemented both internally with the Department of Defense as well as in DoD acquisition strategies.

DATE: Comments should be received by August 18, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. F. Doherty, Office of the Assistant Secretary of Defense (Production and Logistics), Room 2A316, Pentagon, Washington, DC 20301, telephone (202) 695–7915.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 281

Procurement.

Accordingly, Title 32, Subchapter M, Chapter I, is proposed to be amended to add Part 281 as follows:

PART 281—TOTAL QUALITY MANAGEMENT

Sec.
281.1 Purpose.
281.2 Applicability.
281.3 Definition.
281.4 Policy.
281.5 Responsibilities.

Authority: E.O. 12637, 53 FR 15349, 3 CFR, 1988 Comp., p. 566.

§ 281.1 Purpose.

This part:

(a) Establishes policy and assigns responsibilities under E.O. 12637 for the implementation of the Total Quality Management (TQM) concept in the Department of Defense. TQM is the vehicle to drive out waste and maximize the effectiveness of overall DoD performance. This includes improving efficiency and effectiveness, innovation, productivity, quality of worklife, and providing products and services that satisfy or exceed customer requirements at a cost that represents best value.

(b) Authorizes publication of DoD 5000.51–G, "Total Quality Management Guide," in accordance with DoD 5025.1–M.

§ 281.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Joint Chiefs of Staff (JCS), and the Defense Agencies.

§ 281.3 Definition.

Total Quality Management (TQM). A philosophy and a set of guiding principles that represent the foundation of a continuously improving organization. It is the application of quantitative methods and human resources to improve the material and services supplied to an organization, all the processes within an organization, and the degree to which the needs of the customer are met, now, and in the future. It integrates fundamental management techniques, existing improvement efforts, and technical tools under a disciplined approach focused on continuous improvement.

§ 281.4 Policy.

It is DoD policy that:

(a) Principles of TQM must involve all DoD personnel, processes, products, and services, including the generation of products in paper and data form.

(b) Process management, process improvement, and process measurement are fundamental management approaches that are to be used, as appropriate, by all DoD managers.

(c) TQM concepts are to be among the fundamental management tenets of every DoD activity and are to be ingrained throughout the Department of Defense with tailored training for each organizational level, starting with top management.

(d) Managers and personnel at all levels must take responsibility for the quality of their processes and products. Accurate quantitative measures of quality should be established as a basis for informed improvement action.

(e) Involved, competent, and dedicated employees make the greatest contributions to quality and productivity. They must be recognized and rewarded accordingly.

(f) Acquisition strategies shall address plans to measure and pursue continuous process improvement to provide products and services that will provide best value.

(g) TQM shall be a key consideration in source selection.

(h) Emphasis must change from relying on inspection to designing and building quality into the processes that affect product quality.

(i) Technology, being one of our greatest assets, must be used, where appropriate, to continuously improve the quality of defense systems, equipment, and services.

(j) Continuous process improvement is a key to performance improvement and must be pursued with the necessary resources to achieve the desired cultural change in the Department of Defense.

§ 281.5 Responsibilities.

(a) The *Defense Council on Integrity and Management Improvement* (DCIMI), under the leadership of the Secretary of Defense and the Deputy Secretary of Defense, shall function as the Executive Steering Committee for TQM.

(b) The *Under Secretary of Defense (Acquisition)* (USD(A)) shall:

(1) Act as the OSD office of primary responsibility for development of TQM policy and procedures.

(2) Ensure commonality of TQM training and implementation throughout the Department of Defense.

(c) The *Secretaries of the Military Departments, the Joint Chiefs of Staff* (JCS), and the *Directors of Defense Agencies* shall:

(1) Implement DoD policy on TQM.

(2) Provide the leadership and management necessary to implement TQM in their organizations.

(3) Develop and maintain a TQM implementation plan.

(4) Provide appropriate training in TQM principles and techniques.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 13, 1989.

[FR Doc. 89-16805 Filed 7-18-89; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264 and 265

[AD-FRL-3614-2]

Hazardous Waste Treatment, Storage, and Disposal Facilities-Controls for Equipment Leaks; Leakless Technology for Valves

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Supplemental Information with Request for Comments.

SUMMARY: The EPA is today requesting comments on the use, applicability, operation, reliability, impacts, and costs of leakless valve technology at hazardous waste treatment, storage, and disposal facilities (TSDF). These comments are being sought because control of leaks from conventional valves at some TSDF may not be sufficient to protect human health and the environment. Any information received by EPA regarding the use of leakless valves at TSDF will be considered in applying additional controls, if necessary, at TSDF to reduce organic emissions to a level protective of human health and the environment.

DATE: Comments. The EPA must receive comments from the public on or before September 18, 1989.

ADDRESS: Comments may be mailed to the Docket Clerk (Docket Number F-86-AESP, Organic Air Emission Standards for Process Vents and Equipment Leaks), Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A duplicative copy should be sent to Rick Colyer, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

FOR FURTHER INFORMATION CONTACT: For further information on the technical aspects of this notice, contact Robert Lucas, Chemicals and Petroleum Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-0884. For further information on the regulatory aspects of this notice, contact Rick Colyer, Standards Development Branch, telephone number (919) 541-5262, at the same address.

SUPPLEMENTARY INFORMATION:

Background

The EPA is developing standards that would limit organic emissions as a class at certain hazardous waste treatment, storage, and disposal facilities that are subject to regulation under Subtitle C of the Resource Conservation and Recovery Act (RCRA). This is a multiphased regulatory effort to control TSDF air emissions. Proposed standards (52 FR 3748, February 5, 1987) developed in the first phase would limit organic emissions from equipment leaks at new and existing hazardous waste TSDF and apply to valves, pumps, compressors, pressure relief devices, sampling connection systems, and open-ended valves or lines that contain or contact hazardous waste with 10 percent or more organics. As part of compliance with the proposed equipment leak standards, the facility owner/operator would be required to conduct a monthly monitoring survey of valves in gas/vapor or light liquid service using EPA Reference Method 21 (contained in Appendix A of 40 CFR Part 60). If a leak is detected, the valve must be repaired within 15 days.

The EPA estimates that once a monthly monitoring plan is in place, emission reductions of about 75 and 60 percent can be expected for valves in gas and light liquid service, respectively. In some situations, there are potentially more stringent, technologically feasible controls for valves. Leakless equipment for valves, such as sealed-bellows and diaphragm valves, where applicable, eliminate the seals that allow fugitive emissions; thus, control efficiencies in such cases would be virtually 100 percent during the valve operating life. However, EPA could not conclude that the use of leakless valves is an appropriate control alternative because EPA does not have sufficient information to understand both the applicability of this technology and the long-term potential for reducing health risks (i.e., achieving long-term emission reductions). Nonetheless, the equipment leak rules allow for use of leakless valve technologies; monthly monitoring is not required if a leakless valve, such as a diaphragm, pinch, or sealed-bellows valve, is used to achieve a no-detectable emissions limit (i.e., 500 ppm above background, as measured by Method 21, with an annual performance test).

Because of the possible need for additional controls at some TSDF to protect human health and the environment, EPA is currently evaluating the applicability and control efficiencies achieved by these technologies in light of current information and is requesting comment and information from manufacturers, TSDF owner/operators, and other industry users on such topics as leakless technology advances, applicability criteria and constraints, commercial availability, failure rates, valve lifetime, methods of determining valve failure, estimates of emissions (leak quantities) from failed leakless valves, and other (alternative) leakless valve technologies.

Overview

The valve is one of the most basic, common elements found in a chemical plant. Valves are available in numerous designs, including gate, globe, control, plug, ball, check, and relief, and are used for widely disparate applications or functions (e.g., on-off service, throttling or flow control, pressure control, sampling, or no reverse flow). Most of these valve designs (check and relief valves excepted) have a valve stem which operates to restrict or to open the valve for fluid flow. The stem requires a seal to isolate the process fluid inside the valve from the outside environment. Typically the stem is sealed by a packing gland or O-ring to prevent leakage of process fluid to the atmosphere. Packing glands are the most commonly used sealing mechanism for valves, and a wide variety of packing materials are available to suit most operational requirements of temperature, pressure, and process fluid compatibility. Because of temperature and pressure limitations, O-rings are much less common as the sealing mechanism for valves in chemical plants.

With time and prolonged use, the packing or sealing O-ring in the valve can wear and the valve can leak around the stem. To eliminate the (organic) leakage resulting from the stem seal failure, the valve packing and seals must be replaced or the valve body repaired or replaced. There are, however, some valve types and designs that have less potential for stem leakage of process fluids, i.e., valves with "leakless" or "sealless" technologies.

There are basically three valve designs that to some extent can be considered leakless; i.e., these valve types provide a 100 percent bonnet seal which eliminates leakage around the valve stem. The three leakless valve types are diaphragm valves, pinch valves, and sealed-bellows valves. Other technologies are also reported to provide for zero stem leakage; these technologies along with sealed-bellows valves, diaphragm valves, and pinch valves are described below.

Sealed-Bellows Valves

Instead of conventional packing of O-rings that eventually wear and leak, sealed-bellows valves use a metal (in most cases) bellows to seal or isolate the valve stem. Because there is no path for leakage from this traditional trouble spot, sealed-bellows valves totally eliminate media loss due to valve stem leakage. The bellows unit is a flexible metallic membrane (varying from about 0.005 to 0.010 inch in thickness). The bottom end of the bellows is welded around the lower end of the stem and the top end is welded to some part of the valve casing. A stem anti-rotation device is incorporated in the design to prevent torque from being applied to the bellows as the valve is opened and closed. On some designs, a shield or shroud is arranged around the bellows to protect it as much as possible from damage by erosion and stress.

As an assurance in the event of a failure of the bellows, for example by fatigue or corrosion, it is not unusual when dealing with hazardous media to fit sealed-bellows valves with an additional back-up gland having conventional packing or seals or with a leak detector in case of failure, i.e., to have direct, continuous monitoring of the valve for critical service situations. The frequency of catastrophic leaks to the environment is thereby reduced.

Diaphragm

The potential for leakage around the stem of a diaphragm valve is eliminated by isolation of the valve stem from the process fluid by a flexible elastomer diaphragm. The two major types of daiphragm valves are weir valves and straight-through valves. The former has a dividing weir on the valve's body below which is a mounted elastomeric diaphragm. In the closed position, the diaphragm seats on the weir. The design of the straight-through diaphragm valve consists of either a parallel, top-tapered, or venturi-pattern body with closure provided by a wedge-shaped projection of the diaphragm.

Current literature indicates that diaphragm valves may be suitable for handling corrosive and toxic solutions, as well as solids-laden liquids. If failure occurs, catastrophic release of line contents to the environment is reported as not a serious danger if the bonnet is properly designed (although the bonnet will be pressurized if the diaphragm fails). Diaphragm valves are not typically backed up with conventional packing around the stem.

Pinch Valves

The concept incorporating a double diaphragm with two flat sheets being forced against each other to close the valve, has appeared in valves for service with corrosives and slurries. This form of the pinch valve or clamp valve, is close to the diaphragm valve in design and also has an isolated stem to prevent leaks.

The basic components of the valve are a metal body, consisting of two flanged half cylinders bolted together, and two elastomer liner halves. In its simplest form, it can consist merely of a length of elastomeric tube fitted with a pinch bar mechanism. Usually the molded rubber tube is housed in a metal body which also incorporates the pinching mechanism.

The literature indicates that pinch valves could be used for a wide variety of applications. In general, it appears that pinch valves could be used for handling corrosive media, solids in suspension, and slurries, since the valve can be tightly shut off, and will even close when entrained solids are present in the fluid.

Other Technologies

Other technologies are also currently available which are said to be capable of eliminating stem leakage. The double-packed plug valve is one such technology. The double-packed plug valve involves a constant dynamic load on the plastic (teflon) packing. The load on the plug allows the plug to self-compensate, i.e., the plug is constantly forced down into the body taper to provide line shutoff. The new stem seal design employs an octagonal-shaped seal ring and a pair of O-rings that assure positive sealing under the most severe operating conditions. This design could effectively prevent fluid from reaching the valve stem. Other double-packed valves are also available that are claimed to provide "leakless service". In these valves, the double packing is independently compressed.

Request for Comments

The EPA will use the comments received from this request to reevaluate the control technologies available for reducing valve stem leakage, the emission control efficiencies achieved by these technologies, and the appropriateness of requiring the use of these technologies for particular types of service at TSDF. Comments submitted in response to the following questions will be useful in determining future EPA action on the application of leakless valves. The questions are grouped according to facilities (including synthetic organic chemical manufacturing facilities, petroleum refineries, etc., as well as TSDF) that currently use or plan to use leakless valve technologies, facilities that have evaluated leakless valve technologies and chosen not to use them, and manufacturers/vendors of leakless valve technologies. Any additional information not covered here that a submitter thinks is pertinent is also welcomed.

A. Questions for facilities that currently use or plan to use leakless valve technologies:

1. What types of leakless valves/technologies (e.g., sealed-bellows or diaphragm valves) are used or planned for use at your facility?

2. What configurations are these particular valves;

a. Sealed-bellows: globe, gate, ball, plug, etc.?

b. Diaphragm: weir or straight-through?

c. Pinch?

3. Why were these valve technologies selected for use?

4. Approximately how many leakless valves are in use (or are planned for use) at your facility and what percentage is this of the total number of valves in the facility.

5. For what functions are these valves used; i.e., flow control, on/off, pressure control, sampling, etc.?

6. Are there any special requirements for these valves (e.g., quick opening/closing, free draining, etc.)?

7. What processes are the leakless valves associated with (e.g., distillation operations, bulk pumping storage operations, waste incineration, etc.)?

8. What size (diameter) is each valve?

9. What are the operating conditions and limits for each valve;

a. Temperature?

b. Pressure?

c. Characteristics of waste stream in terms of corrosiveness/erosiveness?

10. What are the materials of construction of the valve bodies/body linings?

11. What are the materials of construction of the bellows/diaphragm?

12. Why were the materials of construction chosen?

13. Is each valve backed up with conventional packing around the stem?

14. Are there installation and/or maintenance requirements specific to leakless valves?

15. What is the expected/actual service life of each leakless valve (i.e., number of cycles before replacement of bonnet/diaphragm)?

16. How does this service life compare with the service life of a conventional valve *in the same application*?
17. Are routine inspections performed? If so, describe.
18. How is valve failure defined? How is valve failure detected?
19. What have been the principal causes for failure of leakless valves at your facility (e.g., corrosion of the bellow seal, erosion of the diaphragm, bonnet failure, etc.)?
20. What are the leak (emission) rates of failed sealed-bellows, pinch, or diaphragm valves (i.e., estimated media loss in terms of lb/hour)? Can you describe a typical and a worst case leak; are these leaks detectable visually?
21. How do the failure and leak rates of leakless valves compare to the failure and leak rates of conventional valves?
22. What are the costs of leakless valves compared to the costs of conventional valves for each specific application?
23. Are there plans to replace the conventional valves at your facility with leakless valves?
24. Over what time frame will the conventional valves be replaced? What was the main consideration in setting the schedule?
25. Why do you plan to continue using conventional valves; why are leakless technologies not being used;
a. Service life?
b. Pressure/temperature limitations?
c. Waste stream characteristics?
d. Cost?
e. Availability?
f. New technology?
g. Maintenance requirements?
h. Other?
26. Are you aware of any other commercially-available leakless technologies for valves?

B. Questions for facilities that have evaluated leakless valve technologies and chose not to use them:
1. What types of valves/technologies (e.g., sealed-bellows or diaphragm valves) were evaluated for use?
2. For what functions were these valves considered for use; i.e., flow control, on/off, pressure control, sampling, etc.?
3. Were there any special requirements for these valves (e.g., quick opening/closing, free draining, etc.)?
4. What processes would the valves have been associated with (e.g., distillation operations, bulk pumping storage operations, waste incineration, etc.)?
5. What sizes (diameter) of valves would have been required?
6. What would the operating conditions have been for each valve;
a. Temperature?
b. Pressure?
c. Characteristics of waste streams in terms of corrosiveness/erosiveness?
7. What was the basis for the decision not to use leakless valves;
a. Service life?
b. Pressure/temperature limitations?
c. Waste stream characteristics?
d. Cost?
e. Availability?
f. New technology?
g. Maintenance requirements?
h. Other?

C. Questions for manufacturers/vendors of leakless valves:
1. What types of leakless valves (sealed-bellows, diaphragm, pinch, other) does your company offer?
2. What are the recommended applications for each type of leakless valve?
3. What are the applications/operating conditions (e.g., temperature and pressure limits) for which each type of valve is not recommended for use?
4. Are leakless valves better suited for certain types of service than others, i.e., control valves vs. on/off vs. throttling, etc.?
5. What materials of construction are used in the valve bodies?
6. Are the valve bodies lined, and if so, with what materials?
7. What bellows/diaphragm materials are used?
8. How are materials of construction chosen for a specific application?
9. Are the valves backed up with conventional packing or are other precautions taken to avoid leaks (emissions) to the environment?
10. Are there leakless valves that can handle abrasive particles in the company of corrosive organic liquids and are these valves available in a wide range of configurations and sizes?
11. What is the expected useful life of each type of leakless valve handled (i.e., manufactured or marketed) by your company?
12. How does your company test these valve technologies? Can data be provided on failure rates for each type of leakless valve under various operating conditions?
13. In what sizes are the leakless valves handled by your company available?
14. What are the costs of the leakless valves handled by your company? (Provide a range of costs for various valve configurations, sizes, and materials of construction.)
15. Over what ranges of sizes and materials are the leakless valves handled by your company readily available in quantity and in what ranges are special orders necessary?
16. If special orders are necessary, what are typical lead times?
17. Can information be provided on the types of industries, processes, applications, and operating ranges for which leakless valves are typically supplied?
18. Are you aware of any new valve technologies that limit stem leaks? Are these technologies commerically available or currently under development?

Date: July 3, 1989.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 89–16349 Filed 7–18–89; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF ENERGY

48 CFR Parts 916 and 970

Acquisition Regulation Amendment

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy is proposing to amend the Department of Energy Acquisition Regulation regarding its contracting practices in management and operating (M&O) contracts. The proposed amendment is necessary because the current award fee clauses for these arrangements are not mandatory, and they do not incorporate certain features which the Department desires. The proposed rule provides a mandatory contract clause and instructions for its use, incorporating certain desirable features used in individual contracts throughout the agency.

DATE: Comments must be received on or before August 18, 1989.

ADDRESS: Comments should be addressed to the U.S. Department of Energy, Procurement Policy Division (MA–421), 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Charles A. Dan, Procurement Policy Division (MA–421), U.S. Department of Energy, 1000 Independence Avenue, Washington, DC 20585; telephone (202) 586–8247.

Christopher T. Smith, Office of the Assistant General Counsel for Procurement and Finance (GC–34), Washington, DC 20585; (202) 586–1526.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
a. Review Under Executive Order 12291
b. Review Under the Regulatory Flexibility Act
c. Review Under the Paperwork Reduction Act
d. Review Under the National Environmental Policy Act
e. Review Under Executive Order 12612
f. Public Hearing
III. Public Comments

I. Background

The Department of Energy (DOE) wishes to revise its contracting procedures for management and operating (M&O) contracts. The Department has conducted an intensive evaluation of its existing practices relating to award-fee provisions of the M&O contract providing for the operation of DOE's production, laboratory, and test facilities. The proposed changes to the Department of Energy Acquisition Regulation, discussed herein, are a result of this evaluation.

The Department's study revealed a need for more standardization of its award fee contract provisions relating to management and operating (M&O) contracts, and further determined that existing clauses cited at 916.405 and referenced for use in M&O contracts do not include necessary features as discussed in the subsequent paragraphs. The five contract clauses at section 916.405 are proposed to be replaced by a single clause for use in M&O contracts. This new clause will be similar to the existing clauses, in that it will contain subparagraphs which parallel the subject matter of the five existing clauses. However, there are certain key differences. Since the Acquisition Regulation contains a separate part for M&O contracting, Part 970, the new clause will be located in Subpart 970.52, with implementing instructions located in Subpart 970.15.

The new clause, to be located at 970.5204–54, will be mandatory for M&O contracts with award fee provisions.

For payment provisions, the new clause would refer to the *Payments and Advances* clause from section 970.5204–16, rather than creating separate procedures. This will eliminate conflicts in the use of existing clauses, which envision a voucher/payment process, rather than the letter-of-credit drawdown procedures which are more prevalent in M&O contracts.

For convenience, the new clause would identify the Fee Determination Official (FDO) by title, making such designation part of the body of the contract, rather than including such identification in the Performance Evaluation Plan.

The new clause would establish clearly that the FDO may use any available information in his/her evaluation of contractor performance. The new clause would also explicitly provide that the FDO may withhold fee for unsatisfactory performance in any important area of performance required by the contract, regardless of whether that performance area is specified in the Performance Evaluation Plan. Although such powers were implied in the existing clauses (e.g., the FDO's decision is absolute, not subject to the appeal procedures of its Disputes clause), they were not explicit. The Department wishes to ensure that this important leverage is emphasized in its award-fee M&O contracts.

The new M&O clause would eliminate a provision allowing the FDO to specify that unearned award fee may be carried over to subsequent periods.

The new clause would establish a six-month appraisal period as the standard. In its evaluation of its award-fee practices under M&O contracts, the Department found the six-month appraisal period to be most commonly used and preferable to more frequent appraisals, which were more costly to administer without corresponding benefits. The new regulation will allow deviations to this standard, pursuant to existing deviation procedures.

The Department's evaluation of its current procedures determined that most contractors are submitting self-assessments which are of little value in the Department's award fee determinations. The new clause would require the contractor to submit a performance self-assessment, which will be used by the DOE in its evaluation of the contractor's management. The Department wishes to establish a system whereby a contractor will be encouraged to submit realistic assessments of its own performance, recognizing problems and deficiencies and addressing plans for correcting such shortcomings in the future. Under the new clause, contractor self-assessments will be required, and will be evaluated as part of the appraisal of contractor management efforts. Unrealistic self-assessments, or those which reveal inadequate planning to avoid recurrence of problems, may result in lower awards.

A section is proposed to be added to explain revisions required to the *Payments and Advances* clause when an award fee arrangement is used, and to clarify other areas of the clause.

II. Procedural Requirements

a. Review Under Executive Order 12291

The Department has concluded that this proposed rule is exempt from the requirement for review by the Office of Management and Budget under E.O. 12291 pursuant to an exemption for procurement regulations as discussed in OMB Bulletin No. 85–7 of December 14, 1984.

b. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–345), which requires preparation of a regulatory flexibility analysis for any rule expected to have significant economic effect on a substantial number of small entities. The Department has concluded that this proposed rule is expected to have no significant effect on interest rates, tax policy or liabilities, the cost of goods or services, or other direct economic considerations. Nor is it expected to have a significant effect on indirect economic considerations. The Department certifies that this proposed rule will not have a significant economic effect on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

c. Review Under the Paperwork Reduction Act

The information collection requirement contained in this proposed rule is approved under OMB Control Number 1910–4100. It imposes no additional paperwork burden.

d. Review Under the National Environmental Policy Act

The Department has concluded that this proposed rule does not constitute a major Federal action having a significant effect on the environment under the National Environmental Policy Act of 1969 (42 U.S.C. 432 *et seq.* (1976)), the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508) or DOE guidelines (10 CFR Part 1021). Therefore, an environmental assessment is not required pursuant to the Act.

e. Review Under Executive Order 12612

The Department has concluded that this proposed rule does not involve issues which are expected to have substantial direct effect on traditional state functions or their institutional interest and, thus, the "federalism" assessment requirements of Executive Order 12612 (52 FR 41685, October 30, 1987) do not apply.

f. Public Hearing

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law, nor

should it have a substantial effect on the nation's economy or large numbers of individuals or businesses. Therefore, pursuant to Pub. L. 95–91, the DOE Organization Act, and the Administrative Procedure Act (5 U.S.C. 553), the Department does not plan to hold a public hearing on this proposed rule.

III. Public Comments

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposed changes set forth in this notice. Three copies of written comments should be submitted to the address indicated in the "**ADDRESS**" section of this notice. All comments received will be available for public inspection in the DOE Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received by August 18, 1989 will be fully considered prior to publication of a final rule resulting from this proposal. Any information you consider to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information and to treat it according to our determination.

List of Subjects in 48 CFR Parts 916 and 970

Government contracts, DOE management and operating contracts.

Dated: July 12, 1989.

Berton J. Roth,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set forth in this preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below:

1. The authority citation for Part 916 continues to read as follows:

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

PART 916—TYPES OF CONTRACTS

2. Section 916.405(e) is proposed to be revised to read as follows:

916.405 Contract clause.

(e) For other than management and operating contracts, award fee contracts should include in the contract schedule the Articles shown below. The Articles may be modified to meet individual situations and any Article or specified requirement therein should be deleted when it is not applicable to a given contract. If substantial changes are believed appropriate, consultation with the Director, Office of Policy, Headquarters, is advisable.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

3. The authority citation for Part 970 continues to read as follows:

Authority: Section 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201); Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); Section 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420); and Section 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99–145 (42 U.S.C. 7256a), as amended.

4. Part 970 is proposed to be amended by adding the following new paragraph (f) under § 970.1509–8.

Subpart 970.15—Contracting by Negotiation

970.1509–8 Special considerations—award fee.

* * * * *

(f) When a management and operating contract is to be awarded on an award-fee basis, the contract shall include the clause at 970.5204–54.

5. Section 970.5204–16 is proposed to be amended by redesignating the NOTE following subparagraph (a) as NOTE 1, and adding the following thereafter as NOTE 2:

* * * * *

970.5204–16 Payments and advances.

* * * * *

Note 2: When award-fee provisions are used, the clause should be modified by replacing subparagraph (a) with the following:

(a) Payment of Base Fee and Award Fee. The base fee shall become due and payable in equal monthly installments. Award fees earned shall become due and payable following the issuance by the government Fee Determination Official (FDO) of a Determination of Award Fee Earned, in accordance with the clause of this contract entitled Award Fee.

6. Section 970.5204–54 is proposed to be added as follows:

970.5204–54 Award fee (date to be entered).

(a) *Base Fee and Award Fee.* A base fee of $ (Insert Amount) and a maximum award fee of $ (Insert Amount) are available for payment in accordance with the clause of this contract entitled Payments and Advances.

(b) *Determination of Award Fee Earned.* (1) The government shall, at the conclusion of each specified evaluation period, evaluate the contractor's performance for a determination of award fee earned.

(2) For this contract, the government Fee Determination Official (FDO) will be (Insert title of FDO). The contractor agrees that the determination as to the amount of award fee earned will be made by the government FDO and such determination is binding on both parties and shall not be subject to appeal under the "Disputes" clause or any other appeal clause.

(3) The evaluation of contractor performance shall be in accordance with the Performance Evaluation Plan described in subparagraph (c), below. The contractor shall be promptly advised in writing of the determination, and the reasons why the award fee was or was not earned. While it is recognized that the basis for determination of the fee shall be the evaluation by the government, in accordance with the Performance Evaluation Plan, the FDO may also consider any information available which relates to the contractor's performance of contract requirements. In the event that the FDO determines the contractor's performance to be unacceptable in any important area, critical to contract performance—whether or not that area is specified in the Performance Evaluation Plan, the FDO may at his/her discretion determine the contractor's overall performance to be unacceptable, and accordingly may withhold the entire award fee.

(c) *Performance Evaluation Plan.* (1) The government will establish unilaterally a Performance Evaluation Plan upon which the determination of award fee shall be based. Such Plan will include the criteria to be considered under each area evaluated and the percentage of award fee, if any, available for each area. A copy of the plan will be provided to the contractor thirty (30) calendar days prior to the start of an evaluation period.

(2) The Performance Evaluation Plan will set forth the criteria upon which the contractor will be evaluated for performance relating to any technical, schedule, management, and/or cost functions selected for evaluation.

(3) The Performance Evaluation Plan may, consistent with the contract, be revised unilaterally by the government at any time during the period of performance. Notification of such changes shall be provided to the contractor at least thirty (30) calendar days prior to the start of the evaluation period to which the change will apply.

(d) *Distribution of Award Fee.* (1) The total amount of award fee available under this contract is assigned to the following evaluation periods in the following amounts:

Evaluation Periods: (See NOTE, below).
Available Award Fee: (See NOTE, below).

(2) In the event of contract termination, either in whole or in part, the amount of award fee available shall be distributed on a pro-rata basis associated with evaluation period activities or events as determined by the FDO.

(e) *Contractor Self-Assessment.* The contractor shall submit a Self-Assessment within (Insert Number) calendar days after the end of each evaluation period. This Self-Assessment shall address both the strengths and weaknesses of the contractor's performance during the evaluation period. Where deficiencies in performance are noted, the contractor shall describe the actions planned or taken to correct such deficiencies and avoid their recurrence. The FDO will review the contractor's Self-Assessment as part of his/her evaluation of the contractor's management during the period. An unrealistic Self-Assessment will result in lower award fee determinations. The contractor will not be penalized for a realistic Self-Assessment, although deficiencies noted by the contractor may be reflected in the government's evaluation. The Self-Assessment itself will not be the basis for the award fee determination.

Note—In subparagraph (d), insert the appropriate number of award fee periods and corresponding award fee amounts. Ordinarily, in a management and operating contract for an ongoing operation, award fee periods should be six (6) months in duration, and the award fee available should be distributed evenly among award fee periods. Variations from this arrangement should be justified prior to negotiation.

[FR Doc. 89–16931 Filed 7–18–89; 8:45 am]

BILLING CODE 6450–01–M

Notices

Federal Register
Vol. 54, No. 137
Wednesday, July 19, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

July 14, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of P.L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Revision

• Cooperative State Research Service
Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program; Application Guidelines
CSRS—701, 702, 703, 706, 707, 708, & 709; AD-1047, 1048, & 1049
Annually
Individuals or households; Non-profit institutions; 200 responses; 7,833 hours; not applicable under 3504(h)
Louise Ebaugh, (202) 447–7854

Extension

• Food and Nutrition Service
Integrated Quality Control Review—Worksheet
FNS–380
Recordkeeping; On occasion
Individuals or households; State or local governments; 68,700 responses; 619,921 hours; not applicable under 3504(h)
Thomas O'Connell, (703) 756–3461

• Food and Nutrition Service
Integrated Quality Control Review Schedule (Reporting and Recordkeeping)
FNS–380–1
Recordkeeping; On occasion
Individuals or households; State or local governments; 68,700 responses; 70,321 hours; not applicable under 3504(h)
Karen Peko, (703) 756–3471

• Agricultural Stabilization and Conservation Service
7 CFR 2.65, 1423.1, 1496.2 Report of Cargo Over, Short and/or Damaged
KC–269A
On ocassion; 9,000 responses; 2,250; not applicable under 3504(h)
Dean W. Peterson, (818) 926–6451

• Animal and Plant Health Inspection Service
Endangered Species Regulations and Forfeiture Procedures
PPQ Forms 621, 623, 625, and 626
Recordkeeping; On occasion
Businesses or other for-profit; Small businesses or organizations; 16,148 responses; 3,111 hours; not applicable under 3504(h)
Andrea M. Elston, (301) 436–5100

• Forest Service
Pilot Qualification and Approval Record, Aircraft Data Card and Approval Record
FS 5700–20, FS 5700–20a, FS 5700–21, FS 5700–21a
Annually
Individuals or households; Business or other for-profit; Small Businesses or organizations; 1,915 responses; 1,454 hours; not applicable under 3504(h)
John Eckert, (703) 235–8022.

Donald E. Hulcher,
Acting Departmental Clearance Officer.
[FR Doc. 89–16876 Filed 7–18–89; 8:45 am]
BILLING CODE 3410-01-M

Agricultural Marketing Service

[No. FV-89-209]

Perishable Agricultural Commodities Act—Industry Advisory Committee Meeting

AGENCY: Agricultural Marketing Service.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Act (Pub. L. No. 92–463 and Pub. L. No. 100–414), notice is hereby given of the third meeting of the Perishable Agricultural Commodities Act (PACA) Industry Advisory Committee. The Committee will meet on August 2, 1989 from 8:00 p.m. to 10:00 p.m. and on August 3, 1989 beginning at 8:30 a.m. through 4:30 p.m. at the Rosslyn West Park Hotel, 1900 North Fort Myer Drive, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: John D. Flanagan, (202) 447–2272.

SUPPLEMENTARY INFORMATION: The 20-member Perishable Agricultural Commodities Act Industry Advisory Committee, appointed by the Secretary of Agriculture, represents fruit and vegetable growers, shippers, brokers, processors, wholesalers, and retailers. The Committee was established pursuant to Pub. L. 100–414, to discuss policies and procedures relating to the administration of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a *et. seq.*) and identify areas where the law and program might be enhanced to ensure program efficiency and equitable treatment among the various segments of the fruit and vegetable industry. The Committee will report on its findings and develop recommendations for consideration by Congress and the Secretary of Agriculture. Its interim report will be submitted to the Secretary of Agriculture, the House Committee on Agriculture, and the Senate Committee on Agriculture, Nutrition, and Forestry no later than September 30, 1989. A final report containing the results of the Committee's review and its recommendations will be submitted no later than May 1, 1990. The Committee's meeting will be open to the public. Due to the limitation of time, the public will not be allowed to participate in the meeting. Statements may be submitted before or after the meeting to Mr. John D. Flanagan at the address listed below.

The names of Committee members, agenda, and other information pertaining to the meeting may be obtained from John D. Flanagan, Chief, PACA Branch, Room 2095 So., Fruit and Vegetable Division, Agricultural Marketing Service, USDA, P.O. Box 96456, Washington, DC 20090–6456, telephone (202) 447–2272.

Done at Washington, DC, July 17, 1989.

Kenneth C. Clayton,
Acting Administrator.
[FR Doc. 89–17055 Filed 7–18–89; 8:45 am]
BILLING CODE 3410-02-M

COMMISSION ON CIVIL RIGHTS

Arizona Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Arizona Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 10:00 p.m. on July 27, 1989, at the Hilton Inn by the Airport, 4636 East University Drive, Phoenix, Arizona 85034. The Committee will discuss the immigration forum report.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, John White or Philip Montez, Director of the Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 5, 1989.

Melvin L. Jenkins,
Acting Staff Director.
[FR Doc. 89–16879 Filed 7–18–89; 8:45 am]
BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.
Title: Northeast Region Dealer Purchase Reports and Trip Interviews.
Form Number: NOAA Forms 88–142 and 88–30; OMB–0648–0013
Type of Request: Request for extension of OMB approval of a currently cleared collection.
Burden: 980 respondents; 960 reporting hours; average hours per response—.05 hours.
Needs and Uses: Seafood dealers are required to file weekly reports on their purchases of surf clams and ocean quahogs. Selected fishermen are asked to voluntarily respond to questions about their fishing trip as they land. The information is used in fishery management decision-making.
Affected Public: Small businesses or organizations.
Frequency: On occasion, weekly.
Respondent's Obligation: Mandatory and voluntary.
OMB Desk Officer: Russell Scarato, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 12, 1989.

Edward Michals,
Departmental Clearance Officer, Office of Management and Organization.
[FR Doc. 89–16800 Filed 7–18–89; 8:45 am]
BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.
Title: Water Use in Manufacturing; Water Use in Mineral Industries.
Form Number: MC–5001, MC–5002.
Agency Approval Number: 0607–0455.
Type of Request: New collection.
Burden: 12,000 hours.
Number of Respondents: 12,000.
Avg Hours per Response: 1 hour.
Needs and Uses: Government agencies, business firms, and trade associations use the results of the Water Use Surveys as benchmark data for their studies of industrial use.
Affected Public: Businesses or other for-profit institutions.
Frequency: Once every five years.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Don Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 13, 1989.

Edward Michals,
Departmental Clearance Officer, Office of Management and Organization.
[FR Doc. 89–16837 Filed 7–18–89; 8:45 am]
BILLING CODE 3510-07-M

Bureau of Export Administration

William L. Thompson, d.b.a. Armex Equipment Corp. (Respondents); Order

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), having determined to initiate an administrative proceeding against William L. Thompson, individually and doing business as Armex Equipment Corporation (hereinafter collectively referred to as Thompson), pursuant to section 13(c) of the Export Administration Act of 1979 (50 U.S.C. app. 2401–2420 (1982 and Supp. III 1985), as amended by Pub. L. 100–418, 102 Stat. 1107 (August 23, 1988)) [1] (the Act), and Part 788 of the Export Administration Regulations (15 CFR Parts 768 through 799) [2] (the Regulations), based on allegations that Thompson violated Sections 787.3, 787.5 and 787.6 of the Regulations in that, during the period from on or about April 2, 1983 through on or about February 2, 1985, Thompson (1) exported or caused to be exported U.S.-origin goods from the United States to the United Kingdom

[1] Between March 30, 1984 and July 12, 1985, the Regulations were continued in effect by Executive Order 12470 (49 FR 13099, April 3, 1984), issued pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (1982)).

[2] Effective October 1, 1988, the Export Administration Regulations were redesignated as 15 CFR Parts 768 through 799 (53 FR 37751, September 28, 1988). The transfer merely changed the first number of each Part from "3" to "7". Until such time as the Code of Federal Regulations is republished, the Regulations may be found in 15 CFR Parts 368 through 399 (1988).

contrary to the terms of a validated export license, (2) attempted to export U.S.-origin goods from the United States to the United Kingdom without the required validated export license, and (3) filed or caused to be filed with the United States Government false and misleading statements of material fact on export control documents submitted to the U.S. Customs Service in connection with the export of U.S.-origin goods from the United States to Switzerland;

The Department and Thompson having entered into a Consent Agreement whereby the parties have agreed to settle this matter by Thompson's being denied all U.S. export privileges for a seven-year period; and

The terms of the Consent Agreement having been approved by me;

It is therefore ordered:

First, that all outstanding individual validated export licenses in which William L. Thompson, individually and doing business as Armex Exquipment Corporation, appears or participates, in any manner or capacity, are hereby revoked and shall be returned to the Office of Export Licensing for cancellation. Further, all of Thompson's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

Second, that William L. Thompson, individually with an address at 1915 Plantation Drive, Richmond, Texas 77469, and doing business as Armex Equipment Corporation, 42831 North Fleming Springs Road, Cave Creek, Arizona 85331 (collectively referred to as Thompson), for a period of seven years from the date of entry of this Order, is denied the privilege of participating, directly or indirectly, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad.

A. Participation prohibited in any such transaction, either in the United States or abroad, shall mean participation: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control document; (iv) in receiving, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States and subject to the Regulations; and (v) in forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

B. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which Thompson is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

C. No person, firm, corporation, or business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to U.S.-origin commodities and technical data which are subject to denial of export privileges as set out herein, do any of the following acts, directly or indirectly, in any manner or capacity, on behalf of or in any association with Thompson or anyone who is now or may be subsequently named as a related party, or whereby Thompson or any such related party may obtain any benefit therefrom or have any interest in or participation therein, directly or indirectly: (i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported, by, to, or for Thompson or any related party denied export privileges; or (ii) buy, receive, use, sell, deliver, store, dispose of, forward, transport, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States. These prohibitions apply only to those commodities and technical data which are subject to the Act and the Regulations.

Third, that the proposed Charging Letter, the Consent Agreement and this Order shall be made available to the public and this Order shall be published in the **Federal Register.**

This Order is effective immediately.

Kenneth A. Cutshaw,

Assistant Secretary for Export Enforcement.

Entered this 13th day of July 1989.

[FR Doc. 89-16881 Filed 7-18-89; 8:45 am]

BILLING CODE 3510-DT-M

Subcommittee on Export Administration of the President's Export Council; Closed Meeting

Federal Register citation of previous announcement: FR Doc. 89-16463, 54 FR 29594 July 13, 1989.

Previously announced as a Partially Closed Meeting.

Changes in the meeting: Meeting will be closed to the public.

Date: July 13, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-16836 Filed 7-18-89; 8:45 am]

BILLING CODE 3510-DT-M

Telecommunications Equipment Technical Advisory Committee, Partially Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held August 8, 1989, 9:30 a.m., Room 1617-F, at the Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment or technology.

Agenda:

Open Session

1. Opening Remarks by the Chairman.
2. Presentation of Papers or Comments by the Public.
3. Old business: Commercial spread spectrum radios.
4. Review of Regulations:
a. Discussion of Streamlining and Segment B work program.
b. Annual review of the list pursuant to sections 5(c)(3) and 5(c)(4) of the Act:
i. ECCN 1514A (Pulse modulators)
ii. ECCN 1516A (Receivers)
iii. ECCN 1517A (Radio transmitters)
iv. ECCN 1519A (Telecommunications transmission equipment)
v. ECCN 1520A (Radio relay communication equipment)
vi. ECCN 1527A (Cryptographic equipment)
5. Review necessity for various subcommittees.
6. Future meeting dates.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that the materials be forwarded two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, OTPA/BXA, Room 4069A, U.S. Department of Commerce, 14th & Constitution Avenue NW., Washington, DC 20230.

The Assistant Secretary for Administration with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes, call Lee Ann Carpenter at (202) 377-2583.

Date: July 14, 1989.

Betty Anne Ferrell,

Director, Tenchnical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 89-16937 Filed 7-18-89; 8:45 am]

BILLING CODE 3510-DT-M

Switching Subcommittee Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Switching Subcommittee of the Telecommunications Equipment Technical Advisory Committee will be held August 8, 1989, 1:00 p.m., Herbert C. Hoover Building, Room 1617F, 14th Street & Constitution Avenue, NW., Washington, DC. The Switching Subcommittee was formed to study computer controlled switching equipment with the goal of making recommendations to the Office of Technology & Policy Analysis relating to the appropriate parameters for controlling exports for reasons of national security.

Agenda

1. Opening Remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Old business: Review of radio paging systems.
4. Review of Regulations: Recommendations for revision to ECCN 1567A.
5. Future meeting dates.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, OTPA/BXA, Room 4069A, U.S. Department of Commerce, 14th & Constitution Avenue NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meeting or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, call Lee Ann Carpenter at (202) 377-2583.

Date: July 14, 1989.

Betty Anne Ferrell,

Director, Technical Support Staff, Office of Technology & Policy Analysis.

[FR Doc. 89-16938 Filed 7-18-89; 8:45 am]

BILLING CODE 3510-DT-M

Radio Subcommittee, Telecommunications Equipment Technical Advisory Committee; Closed Meeting

A meeting of the Radio Subcommittee of the Telecommunications Equipment Technical Advisory Committee will be held August 8, 1989, 1:00 p.m., Herbert C. Hoover Building, Room 1092, 14th Street & Constitution Avenue NW., Washington, DC. The Radio Subcommittee was formed to study radio equipment with the goal of making recommendations to the Office of Technology & Policy Analysis relating to the appropriate parameters for controlling exports for reasons of national security.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, call Lee Ann Carpenter at (202) 377-2583.

Date: July 14, 1989.

Betty A. Ferrell,

Director, Technical Support Staff.

[FR Doc. 89-16939 Filed 7-18-89; 8:45 am]

BILLING CODE 3510-DT-M

BEST COPY AVAILABLE

Foreign-Trade Zones Board

[Docket 14-88]

Foreign-Trade Zone 68, El Paso, Texas, Withdrawal of Request for Manufacturing Authority for SNA Nut Co.

Notice is hereby given of the withdrawal of the applicaton submitted by the City of El Paso, Texas, grantee of Foreign-Trade Zone 68, requesting authority for manufacturing within FTZ 68 on behalf of SNA NUT Company for its pecan shelling operation. The application was filed on March 3, 1988 (53 FR 8479, 3/15/88).

The withdrawal is requested by the applicant because of changed circumstances.

The case has been withdrawn without prejudice, and FTZ Board Docket 14-88 is closed.

Dated: Jun3 30, 1989.

John J. Da Ponte Jr.,

Executive Secretary.

[FR Doc. 89-16801 Filed 7-18-89; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number:

Recreation User Permit; ENG Form 4457-1; OMB Control Number 0702-0078.

Type of Request: Extension.

Average Burden Hours/Minutes per Response: 1/2 min.

Frequency of Response: Annually.

Number of Respondents: 125,000.

Annual Burden Hours: 1,000.

Annual Responses: 125,000.

Needs and Uses: The Recreation User Permit is part of a registration process at fee campgrounds, visitors will be asked three questions, and a fee collector will collect three additional items by observation. The information will be used to provide improved visitor services and facilities.

Affected Public: Individuals or households.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at the Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 30503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Writting request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

July 13, 1989.

[FR Doc. 89-16803 Filed 7-18-89; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number:

Recreation Research—Use Survey; ENG Form 4835; OMB Control Number 0702-0035.

Type of Request: Extension.

Average Burden Hours/Minutes Per Response: 11 hours.

Frequency of Response: On Occasion.

Number of Respondents: 25,000.

Annual Burden Hours: 2,750.

Annual Responses: 25,000.

Needs and Uses: The Recreation Research—Use Survey figures are needed to supplement research efforts directed toward evaluation and increasing cost efficiency of planning, design and management of Corps projects and to report visitation to Congress as required by Pub. L. 92-347.

Affected Public: Individuals or households.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at the Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 13, 1989.

[FR Doc. 89-16804 Filed 7-18-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Environmental Assessment; High Endoatmospheric Defense Interceptor Technology Testing Program

AGENCY: U.S. Army Strategic Defense Command, USA.

COOPERATING AGENCY: Strategic Defense Initiative Organization, DOD.

ACTION: Notice of availability of finding of no significant impact.

SUMMARY The Department of the Army has prepared a finding of no significant impact based on an Environmental Assessment of a proposal to conduct the High Endoatmospheric Defense Interceptor (HEDI) technology testing program. Pursuant to Department of Defense and Department of the Army regulations and regulations of the President's Council on Environmental Quality, a decision on whether to proceed with the proposed action will be made upon expiration of a 30 day period commencing with the date of this notice.

Background

The HEDI technology program is one of the technologies being considered in the Strategic Defense Initiative Program. It is currently in the Concept Exploration phase of the DOD systems acquisition process. The purpose of this EA is to analyze the environmental consequences of testing activities for the HEDI technology development program in compliance with all pertinent regulations and agreements.

Army Regulation 200-2 establishes policy, procedures, and responsibilities for assessing the environmental effects of Army actions. It implements DOD Directive 6050.1 which establishes the DOD environmental impact analysis process. This directive implements the National Environmental Policy Act (NEPA) of 1969 (Pub. L. No. 91-90 (1970), 42 U.S.C. 4321, 4331-4335, 4341-4347 (1976) and the President's Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, (40 CFR Parts 1500 through 1508).

HEDI Technology Testing Program

The current HEDI concept would employ ground-based missiles to intercept and destroy hostile submarine-launched and intercontinental ballistic missiles in the terminal portion of their trajectory. The HEDI vehicle would consist of a two-stage launch vehicle (booster) and a kill vehicle with a conventional warhead. The basic thrust of the efforts already accomplished in Concept Exploration has been to assess the technical feasibility of HEDI in the context of a complete strategic defense system.

The HEDI technology test program will be conducted in two parts. Each part will test a particular aspect of the technology and provide information and data necessary to make decisions for advancing to the next phase of testing. The first part, which includes the Kinetic Kill Vehicle Integrated Technology Experiment (KITE), will consist of a number of test activities to be conducted at nine different testing sites culminating with a series of flight tests at White Sands Missile Range, New Mexico. These activities are catagorized as analyses, simulations, component/assembly testing, and flight testing. Part two includes the HEDI Experimental Test Vehicle (XTV) development, which is expected to conclude with two flight tests at the U.S. Army Kwajalein Atoll. The specifics of the HEDI XTV testing activities have not yet been defined; however, further environmental analysis will be conducted as the program progresses and new information is identified. This EA, submitted in accordance with applicable directives and policies and made available to the public, provides information on the potential environmental effects of conducting the testing activities described and known at this time.

The locations of test activities for HEDI technology testing activities include the McDonnell Douglas Space Systems Company, Huntington Beach, CA; Vandenberg AFB, CA/Western Test Range; the National Test Facility, Falcon AFB, CO; Naval Surface Warfare Center, MD; Sandia National Laboratories, NM; White Sands Missile Range (WSMR), NM; the U.S. Army, Kwajalein Atoll (USAKA), Republic of the Marshall Islands; Arnold Engineering Development Center, Arnold AFB, TN; and Hill AFB, UT. Of these, the major component/assembly testing and flight testing will occur at USAKA and WSMR.

In addition to the above test activities, a no action alternative was considered. An environmental impact analysis was conducted for test activities at each location. An environmental assessment was prepared documenting the results of those analyses. To determine the potential for significant environmental impacts of HEDI technology testing, the magnitude and frequency of the tests that would be conducted at the proposed test locations were compared to the current activities at those locations.

The proposed test activities were evaluated to assess impacts in the following areas: air quality, biological resources, cultural resources, hazardous waste, infrastructure, land use, noise, public health and safety, socioeconomics, and water quality. As a result of that evaluation, consequences were assigned to one of three catagories: insignificant, mitigable and non-significant, or potentially significant.

The following methodology was used. Environmental consequences were determined to be insignificant if no serious concerns existed regarding impacts to the affected area. Consequences were deemed mitigable and non-significant if concerns existed but it was determined that all of those concerns could be readily mitigated through standard procedures or by measures recommended in existing environmental documentation. If serious concerns were identified that could not be readily mitigated, the activity was determined to represent potentially signficant consequences.

Insignificant environmental consequences were found for all test activities at McDonnell Douglas Space Systems Company, Huntington Beach, CA; Arnold Engineering Development Center, Arnold AFB, TN; Hill AFB, UT; National Test Facility, Falcon AFB, CO; Naval Surface Warfare Center, MD; Sandia National Laboratories, NM; and Vandenberg AFB, CA/Western Test Range.

Mitigable and nonsignificant impacts resulting from flight testing of the HEDI were found at USAKA and at WSMR.

Flight tests for HEDI XTV at USAKA will have mitigable and nonsignificant environmental consequences for infrastructure and socioeconomics (housing). Potential infrastructure impacts on water supply will be mitigated by construction of a proposed desalination plant. Potential infrastructure impacts on the wastewater treatment system will be mitigated by participation in water conservation procedures, continued wastewater monitoring, and participation in a wastewater treatment effectiveness study. Potential socioeconomic (housing) impacts which are a result of the anticipated housing shortage will be mitigated by the construction of new housing units and the retention of trailers beyond their planned phase-out date. Potential impacts from solid and hazardous waste will be avoided by requiring HEDI XTV contractors to manage their waste in accordance with appropriate federal requirements.

Flight tests for HEDI KITE at WSMR will have mitigable and nonsignificant environmental consequences for biological and cultural resources. Potential biological resource impacts will be mitigated by avoidance of threatened and endangered plant and animal species. Potential cultural resource impacts will be mitigated by avoidance and/or data recovery of historic and prehistoric archaeological sites.

Finding of No Significant Impact

Based upon the foregoing, the U.S. Army Strategic Defense Command has concluded that the proposed action, to conduct the HEDI technology testing program, would not significantly impact the human environment.

FOR FURTHER INFORMATION CONTACT: Mr. Dru Barrineau, (205) 895-3632. Address: U.S. Army Strategic Defense Command, CSSD-H-SSP, Post Office Box 1500, Huntsville, Alabama 35807-3801.

Date: July 13, 1989.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, Environment, Safety, and Occupational Health OASA (I&L).

[FR Doc. 89-16855 Filed 7-18-89; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Chief of Naval Operations; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Technology Surprise Task Force will meet September 13-14, 1989 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to discuss the possibility of unexpected technological breakthroughs that vastly change warfighting capabilities. The entire agenda of the meeting will consist

of discussions of key issues regarding space exploration in support of U.S. national security, and related intelligence. These matters consitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public because they will be concerned with matters listed in section 552b(c) (1) of title 5, United States Code.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Date: July 13, 1989.

Sandra M. Kay,

Department of the Navy Alternate Federal Register Liaison Officer.

[FR Doc. 89-16815 Filed 7-18-89; 8:45 am]

BILLING CODE 3810-AE-M

Chief of Naval Operations; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Technology Surprise Task Force will meet August 8-9, 1989 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The propose of this meeting is to discuss the possibility of unexpected technological breakthroughs that vastly change warfighting capabilities. The entire agenda of the the meeting will consist of discussions of key issues regarding space exploration in support of U.S. national security, and related intelligence. These matters constitute by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public because they will be concerned with matters listed in section 552b(c) (1) of Title 5, United States Code.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Date: July 13, 1989.

Sandra M. Kay,

Department of the Navy Alternate Federal Register Liaison Officer.

[FR Doc. 89-16814 Filed 7-18-89; 8:45 am]

BILLING CODE 3810-AE-M

Patent Licenses; San'Doil Co.

AGENCY: Department of the Navy, DOD.

ACTION: Intent to grant partially exclusive patent license; San'Doil Company.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to the San'Doil Company a revocable, nonassignable, partially exclusive license to practice the Government-owned inventions described in U.S. Patent No. 4,689,305, entitled, "Solid State Photometer Circuit," issued August 25, 1987, inventor: Arthur V. Stiffey; and U.S. Patent Application Serial No. 07/135,969, entitled, "Microbiological Assay Using Bioluminescent Organisms," filed December 21, 1987, inventor: Arthur V. Stiffey. Anyone wishing to object to the grant of this license has 60 days from the date of this notice of file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of the Chief of Naval Research (Code OOCCIP), Arlington, Virginia 22217-5000.

DATE: July 19, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), 800 N. Quincy Street, Arlington VA 22217-5000, telephone (202) 696-4001.

Dated: July 13, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-16813 Filed 7-18-89; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Chicago Operations Office; Availability of a Solicitation

AGENCY: Department of Energy.

ACTION: Notice of availability of a Federal assistance solicitation for cooperative agreement proposals (FASCAP).

SUMMARY: The U.S. Department of Energy (DOE) pursuant to the DOE Financial Assistance Rules, 10 CFR 600.9, announces the availability of a solicitation, FASCAP No. DE-PS02-89CH10407, for a Medium-BTU Biomass Gasifier Scale-up Facility.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Russo Schassburger, U.S. Department of Energy, Chicago Operations Office, Solar Energy Research Institute Area Office (SAO), 1617 Cole Boulevard, Golden, CO 80401, (303) 231-1495.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE) plans to issue a Federal Assistance Solicitation for Cooperative Agreement Proposals (FASCAP), fifteen days after the publication of this notice, for a cooperative cost-shared experimental scale-up facility for producing medium-BTU gas from the thermo-chemical conversion of biofuel feedstocks. The project has the following objectives: (1) To design, engineer, construct, and operate a thermal biomass gasifier that will dependably product a medium Btu gas (between 300 and 50 Btu/scf exclusive of sensible heat and calculated according to ASTM D 3588-81, "Standard Method of Calculating Calorific Value and Specific Gravity of Gaseous Fuels") of consistent quality over an extended period of time and can accommodate a variety of biomass feedstocks with minimal modification at a feed rate of 50 to 200 dry tons per day; (2) to provide the scale-up and operating engineering data necessary to demonstrate the commercial feasibility of the technology; and (3) to provide a "centerpice" for DOE's continuing research on biomass gasification and product gas commercial applications including the synthesis of methanol.

Proposals should focus on the development of a flexible facility which will provide the essential engineering scale-up and economic data from which industry can commercialize the technology, while at the same time being capable for use of follow-on research. The principal thrust of the project is an integrated facility which will produce medium-BTU gas. Initially, a majority of the gas will be available to support facility operations; however, a portion of the gas should be made available for experimental purposes, such as, cleanup for use as synthesis gas, shift to adjust hydrogen/carbon monoxide ratios, and synthesis reactions for the production of methanol and other liquid fuels. Further, the facility should be constructed such that on-site experiments leading to methanol synthesis may be conducted in the future. Proposers may propose to utilize a feedstock consisting of a combination of different biomass feedstocks including municipal solid waste. Fossil fuel(s), either alone or in a mixture with biomass, may not be used as a feedstock.

Proposer must be a United States citizen (if proposing as an individual); or a U.S. business organized or incorporated under the laws of the U.S.; or a state, local government, or other jurisdiction within the U.S., or an instrumentality thereof. If the proposer is a domestic corporation which has foreign ownership, then the controlling interest in the corporation must be held by a U.S. citizen, corporation, or governmental unit. If the proposer is a partnership, then the controlling interest in the corporation must be held by a U.S. citizen, corporation, or governmental unit. The proposer must make a commitment to construct and operate the proposed project within the United States, i.e., the 50 United States or the U.S. territorial possessions. DOE expects at least 50% cost sharing of the project, although this is not a firm requirement. The share of the costs to be contributed by the proposer, and the amount of DOE funding requested, are important selection considerations. DOE has funds available in the amount of $5,000,000. The resultant agreement will be managed by the DOE Chicago Operations Office/SAO and is expected to have a five year period of performance. Proposals will be due 120 days from the release of the solicitation. A preproposal conference will be held 20 days after issuance of the FASCAP. If you are interested in receiving the FASCAP and in attending the preproposal conference, contact Patricia Russo Schassburger at the above address or phone number. All responsible sources may submit a proposal which will be considered.

Issued in Chicago, Illinois, on June 30, 1989.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 89-16932 Filed 7-18-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP89-178-001]

Colorado Interstate Gas Co., Compliance Filing

July 13, 1989

Take notice that Colorado Interstate Gas Company ("CIG"), on June 30, 1989, tendered for filing the following tariff sheet to revise its FERC Gas tariff, Original Volume No. 1:

First Revised Sheet No. 61G12-B

CIG states that the above-referenced tariff sheet is being filed in compliance with the Commission's Order issued June 16, 1989, in this docket and relates to the Commission's requirement for CIG to track any modifications, as may be approved by the Commission, in Northwest Pipeline Corporation's Buyout-Buydown filing in Docket No. RP89-137.

CIG states that copies of the filing were served upon all of the parties to this proceeding and affected state commissions as well as all of CIG's firm sales customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 20, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16817 Filed 7-18-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-45-000]

Inter-City Minnesota Pipelines Ltd., Inc.; Tariff Filing

July 13, 1989.

Take notice that on July 7, 1989, Inter-City Minnesota Pipelines Ltd., Inc. ("Inter-City"), 245 Yorkland Boulevard, North York, Ontario, Canada M2J 1R1, tendered for filing a revised tariff sheet to Original Volume No. 1 of its FERC Gas Tariff to be effective August 1, 1989:

Original Volume No. 1

Thirty-Fourth Revised Sheet No. 4

Inter-City states that this revised tariff sheet is filed as Inter-City's quarterly PGA pursuant to Order Nos. 483 and 483-A.

Inter-City states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 20, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16818 Filed 7-18-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-14-008, TA89-1-45-005, TQ89-1-45-004]

Inter-City Minnesota Pipelines Ltd., Inc.; Compliance Filing

July 13, 1989.

Take notice that on July 6, 1989, Inter-City Minnesota Pipelines Ltd., Inc., 245 Yorkland Boulevard, North York, Ontario, Canada M2J 1R1 ("Inter-City") tendered for filing revised tariff sheets to its FERC Gas tariff:

Original Volume No. 1

Corrected Third Substitute First Revised Thirty-First Revised Sheet No. 4

Corrected Fourth Substitute First Revised Thirty-First Revised Sheet No. 4

Inter-City states that these sheets correct minor errors contained on sheets filed in these dockets on June 12, 1989. Inter-City states those revised tariff sheets were filed in compliance with an Order issued in this proceeding on January 30, 1989. That order required Inter-City to revise its test period adjustments to the extent necessary to reflect only the annualization of charges that occurred during the base period.

Inter-City states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before July 20, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this

filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16823 Filed 7-18-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP89-31-000]

State of Kansas, Kansas Corp. Commission; Preliminary Findings

July 11, 1989

On various dates in 1979 through 1987, the Kansas Corporation Commission (Kansas) notified this Commission that certain wells [1] qualified under section 102,[2] section 103,[3] or section 108 of the Natural Gas Policy Act of 1978 (NGPA).[4]

If the Commission had taken no action, the notices would have become final after 45 days pursuant to section 275.202(a) of the Commission's regulations.[5] However, within 45 days after receiving notifications of the determinations, the Commission notified Kansas and each applicant that the notice was incomplete because such notice did not include either all of the information required to complete the application [6], or an explanatory statement sufficient to enable a person examining the notice to ascertain the basis for the determination.[7] As a result, none of the determinations have become final because section 275.202(b) of the Commission's regulations provides that the 45-day period for Commission review does not begin if the Commission notifies the jurisdictional agency, and the applicant, that the notice is deficient. Despite these and other requests to Kansas and the applicants to provide the necessary additional information it has not been provided.[8] The Appendix to this order summarizes each determination and its deficiency.

Under § 275.202(a), the Commission may, before any determination becomes final, make a preliminary finding that the determination is not supported by substantial evidence in the record. Based on the foregoing facts and circumstances, the Commission hereby makes a preliminary finding that the subject determinations submitted by Kansas are not supported by substantial evidence in the record upon which the determinations were made. Any state or federal agency or any person may, within 30 days after issuance of a preliminary finding, submit written comments and may request an informal conference with the Commission pursuant to § 275.202(f) of the regulations. A final Commission order will be issued within 120 days after issuance of the preliminary finding.

The Commission Orders

(A) Pursuant to § 275.202 of the Commission's regulations and section 503 of the NGPA, the Commission makes preliminary findings that the above-mentioned 14 well category determinations made by the State of Kansas and described in the attached Appendix are not supported by substantial evidence in the record on which the determinations were made.

(B) Kansas, interested parties, or any other person may, within 30 days after issuance of this notice, submit written comments and request an informal conference with the Commission's staff.

By direction of the Commission.

Lois D. Cashell,

Secretary.

[1] See Appendix.

[2] 15 U.S.C. 3312 (1982).

[3] 15 U.S.C. 3313 (1982).

[4] 15 U.S.C. 3318 (1982).

[5] 18 CFR 275.202(a) (1988).

[6] The filing requirements for applications for determinations are contained in Subpart B of Part 274 of the Commission's regulations.

[7] Section 274.104 of the Commission's regulations specifies what must be included in a notice of determination.

[8] On June 14, 1988, the Commission sent a follow-up letter to Kansas and the applicants advising that the Commission may reverse the determinations if the required information is not received and noted that refunds may consequently be required. The required information has still not been received for the 14 subject determinations.

APPENDIX—KANSAS INCOMPLETE NOTICES OF DETERMINATION

FERC no. JD	Applicant	Well name	NGPA section	JA docket no.	Purchaser	Initial FERC letter sent	Deficiency in record
83-16456	J. Mark Richardson	Ralstin #1	102(c)(1)(B)(i)	K-82-1057	Kansas Gas Supply Corporation.	02/17/83	Surface drilling of the well began prior to 02/19/77.
83-28497	Graves Drilling Company, Inc.	Bartlett #1	103	K-82-1366	Kansas Power and light company.	05/05/83	Well was spudded in 1955 and re-entered in July 1981 with practically no additional drilling.
84-49968	Stephfield Oil & Gas, Inc.	Conrod #1	102(c)(1)(B)(i)	K-84-0357	Colonial Corp	10/26/84	The location plat identifying the well within 2.5 miles of the subject well was not included.
84-49969	Stephfield Oil & Gas, Inc.	County Shop #1	102(c)(1)(B)(i)	K-84-0355	Colonial Corp	10/26/84	The location plat identifying the well and any marker well within 2.5 miles of the subject well was not included.
84-49970	Stephfield Oil & Gas, Inc.	Graham #1	102(c)(1)(B)(i)	K-84-0354	Colonial Corp	10/26/84	The location plat identifying the well and any marker well within 2.5 miles of the subject well was not included.
84-50011	Clyde Petroleum Inc.	Bossi #2	108	K-82-0789	COGAS Inc and Arkla Gas Company.	10/26/84	No production data was included in the notice which indicated that production increased above an average of 60 Mcf/d for any 90-day period due to the use of an enhanced recovery technique.
84-50012	Clyde Petroleum	Bossi #3	108	K-82-0790	COGAS Inc. and Arkla Gas Company.	10/26/84	No production data was included in the notice which indicated that production increased above an average of 60 Mcf/d for any 90-day period due to the use of an enhanced recovery technique.

APPENDIX—KANSAS INCOMPLETE NOTICES OF DETERMINATION—Continued

FERC no. JD	Applicant	Well name	NGPA section	JA docket no.	Purchaser	Initial FERC letter sent	Deficiency in record
84-50013	Clyde Petroleum Inc.	Bossi #5	108	K-82-0792	COGAS Inc. and Arkla Gas Company.	10/26/84	No production data was included in the notice which indicated that production increased above an average of 60 Mcf/d for any 90-day period due to the use of an enhanced recovery technique.
84-50014	Clyde Petroleum Inc.	Bossi #9	108	K-82-0785	COGAS Inc. and Arkla Gas Company.	10/26/84	No production data was included in the notice which indicated that production increased above an average of 60 Mcf/d for any 90-day period due to the use of an enhanced recovery technique.
84-50015	Clyde Petroleum Inc.	Bossi #10	108	K-82-0784	COGAS Inc. and Arkla Gas Company.	10/26/84	No production data was included in the notice which indicated that prodution increased above an average of 60 Mcf/d for any 90-day period due to the use of an enhanced recovery technique.
84-50016	Clyde Petroleum Inc.	Bossi #8	108	K-82-0786	COGAS Inc. and Arkla Gas Company.	10/26/84	No production data was included in the notice which indicated that production increased above an average of 60 Mcf/d for any 90-day period due to the use of an enhanced recovery technique.
86-24566	McCoy Petroleum Corp.	Swingle "N" #1	103	K-83-0828	Peoples Natural Gas.	07/02/86	Original spud date was not given in the notice. On the back of the form ACO-1 is the statement "plugged in 1957."
86-29612	John Jay Darrah, Jr..	Doran #1	103	K-86-0124	Central States Gas Company.	09/11/86	Well was originally completed on 11/09/46. Well was worked over on 10/01/85 but did not involve additional drilling.
87-06704	Kaiser-Francis Oil Company.	Theis "A" #1	108	K-80-0111	Northern Natural Gas Company.	04/08/87	Notice included 24 months of production data which does not appear to demonstrate that the increase in production during the 90-day period was the result of a seasonal fluctuation.

[FR Doc. 89-16810 Filed 7-18-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-5-16-000]

National Fuel Gas Supply; Proposed Changes in FERC Gas Tariff

July 13, 1989.

Take notice that on July 7, 1989, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to be effective on August 1, 1989, with the exception of Fourth Revised Sheet No. 72-C, which is proposed to be effective on June 1, 1989.

Seventh Revised Sheet No. 71, Page 1 of 2
Sixth Revised Sheet No. 71, page 2 of 2
Fifth Revised Sheet No. 71-A, Page 1 of 2
Fourth Revised Sheet No. 71-A, Page 2 of 2
Fifth Revised Sheet No. 71-B, Page 1 of 2
Fourth Revised Sheet No. 71-B, Page 2 of 2
Second Revised Sheet No. 71-D
Seventh Revised Sheet No. 72, Page 1 of 3
Seventh Revised Sheet No. 72, Page 2 of 3
Seventh Revised Sheet No. 72, Page 3 of 3
Fifth Revised Sheet No. 72-A, Page 1 of 7
Fifth Revised Sheet No. 72-A, Page 2 of 7
Fifth Revised Sheet No. 72-A, Page 3 of 7
Fifth Revised Sheet No. 72-A, Page 4 of 7
Fifth Revised Sheet No. 72-A, Page 5 of 7
Fifth Revised Sheet No. 72-A, Page 6 of 7
Fifth Revised Sheet No. 72-A, Page 7 of 7
Fifth Revised Sheet No. 72-B, Page 1 of 4
Fifth Revised Sheet No. 72-B, Page 2 of 4
Fifth Revised Sheet No. 72-B, Page 3 of 4
Fifth Revised Sheet No. 72-B, Page 4 of 4
Fourth Revised Sheet No. 72-C
Third Revised Sheet No. 72-D

National states that the purpose of this filing is to update the amount of take-or-pay charges approved by the Federal Energy Regulatory Commission to be billed to National by its pipeline-suppliers and to be recovered by National by operation of section 20 of the General Terms and Conditions to National's FERC Gas Tariff, First Revised Volume No. 1. National further states that its pipeline-suppliers which have received approval to bill take-or-pay charges to National are: Columbia Gas Transmission Corporation, CNG Transmission Corporation, Texas Eastern Transmission Corporation, Transcontinental Gas Pipe Line Corporation, and Tennessee Gas Pipeline Company.

Copies of National's filing were served on National's jurisdictional customers and on the interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions or protests should be filed on or before July 20, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16819 Filed 7-18-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-6-26-000]

Natural Gas Pipeline Co. of America; Changes in FERC Gas Tariff

July 13, 1989.

Take notice that on July 6, 1989, Natural Gas Pipeline Company of America (Natural) submitted for filing Second Revised Sheet Nos 171 and 172 to be a part of its FERC Gas Tariff, Third Revised Volume No. 1. The proposed effective date of the revised tariff sheets is August 1, 1989. The purpose of this filing is to reflect the revised allocation of transition costs to Natural in Colorado Interstate Gas Company's May 15, 1989 compliance filing at Docket Nos. RP89-98-003 and RP89-133-001.

Natural requests any waivers of the Commission's Regulations as are necessary to allow the tendered tariff sheets to become effective August 1, 1989. A copy of the filing was mailed to Natural's jurisdictional sales customers, interested state regulatory agencies, and all parties set out on the official service list compiled by the Secretary in these proceedings.

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed on or before July 20, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16820 Filed 7-18-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP89-40-000]

Oil Conservation Division of the State of New Mexico; Preliminary Finding

July 11, 1989

On various dates in 1979 through 1984, the Oil Conservation Division of the State of New Mexico (New Mexico) notified the Commission that it had made affirmative determinations under section 503 of the Natural Gas Policy Act of 1978 (NGPA) [1] concerning gas from six wells operated by four different producers. Under section 503(a) of the NGPA, when a jurisdictional state or federal agency makes a well category determination, that agency is required to provide the Commission with notice of the determination. Section 503(b) provides that the Commission shall reverse any jurisdictional agency determination if the Commission finds that the determination is not supported by substantial evidence in the record upon which the determination was made.

The Commission has established filing requirements for applications for well category determinations, which specify for each type of determination the minimum information that an applicant must file with the jurisdictional agency to support an affirmative determination. The Commission has also specified the information required to be included with the jurisdictional agency's notice to this Commission of its determinations. Under § 274.104 of the Commission's regulations [2] the notice must include a copy of the application, all information required by sections 274.201-208 of the regulations to be filed with the jurisdictional agency, and an explanatory statement which is sufficient to enable a person examining the notice to ascertain the basis for the determination without reference to information or data not contained in the notice.

If the Commission had taken no action with respect to the notices, they would have become final after 45 days under § 275.202(a) of the regulations. However, within 45 days of receiving each notice, the Commission advised New Mexico and each applicant that such notice was incomplete, lacking either sufficient explanation of the basis for the determination or sufficient information to complete the application. Despite these and other requests for necessary additional information, New Mexico has not provided it.[3] As a result, none of the determinations has become final because § 275.202(b) of the regulations provides that the 45 day period for Commission review does not begin if the Commission notifies the jurisdictional agency, the purchaser, and all parties that the notice is deficient. The Appendix of this notice summarizes each determination and its deficiency, and gives the date of the initial Commission letter advising New Mexico and each applicant that a particular notice is incomplete.

Under § 275.202(a) the Commission may, before any determination becomes final, make a preliminary finding that the determination is not supported by substantial evidence in the record. Based on the foregoing facts and circumstances, the Commission hereby makes a preliminary finding that the subject determinations submitted by New Mexico are not supported by substantial evidence in the record upon which the determinations were made. New Mexico of the applicants may, within 30 days after issuance of this preliminary finding, submit written comments and may request an informal conference with the Commission staff pursuant to § 275.202(f) of the regulations. A final Commission order will be issued within 120 days after issuance of this preliminary finding.

By direction of the Commission.

Lois D. Cashell,

Secretary.

APPENDIX—NEW MEXICO'S INCOMPLETE NOTICES OF DETERMINATION

FERC No. JD	Applicant	Well, name	NGPA section	API No.	Purchaser	Initial FERC letter sent	Deficiency in record
79-12357	Stevens Oil Company	State "CH" Com # 3.	103	30-005-00000	Transwestern Pipeline Company	08/24/79	Effective and efficient finding is needed.
80-09022	Phillips Petroleum Company	E Vacuum GB/SA Unit Tract 2171 # 7	103	30-025-26371	El Paso Natural Gas Company	01/24/80	Notice does not contain appropriate geological data to support an effective and efficient finding.

[1] 15 U.S.C. 3413 (1982).

[2] 18 CFR 274.104 (1988).

[3] On April 28, 1988, the Commission sent a follow-up letter to New Mexico and each applicant advising that the Commission might reverse the determinations if the required information was not received and noted that refunds might also be required.

APPENDIX—NEW MEXICO'S INCOMPLETE NOTICES OF DETERMINATION—Continued

FERC No. JD	Applicant	Well, name	NGPA section	API No.	Purchaser	Initial FERC letter sent	Deficiency in record
80-09023	Phillips Petroleum Company.	E Vacuum GB/SA Unit Tract 2622 # 1.	103	30-025-26376	El Paso Natural Gas Company.	01/24/80	Notice does not contain appropriate geological data to support an effective and efficient finding.
80-09024	Phillips Petroleum Company.	E Vacuum GB/SA Unit Tract 3236 # 5.	103	30-035-26388	El Paso Natural Gas Company.	01/24/80	Notice does not contain appropriate geological data to support an effective and efficient finding.
83-08248	Yates Petroleum Corporation.	Rio Penasco "RT" Com # 1.	102(c)(1)(C)	30-015-23976	Transwestern Pipeline Company.	12/15/82	Notice did not contain an oath statement.
84-13199	El Paso Natural Gas Company.	San Juan 27-4 Unit MV & PC.	108	30-039-06966	El Paso Natural Gas Company.	02/10/84	Well did not produce gas at a rate in excess of an average of 60 Mcf/d.

[FR Doc. 89-16809 Filed 7-18-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-41-000]

Paiute Pipeline Co.; Proposed Change in FERC Gas Tariff

July 13, 1989.

Take notice that Paiute Pipeline Company (Paiute) on June 30, 1989, tendered for filing pursuant to Part 154 of the Commission's regulations, a Quarterly Adjustment in Rates for jurisdictional gas service rendered to sales customers served under rate schedules affected by and subject to the PGA provisions contained in section 9 of the General Terms and Conditions of Paiute's FERC Gas Tariff, Original Volume No. 1.

Paiute tendered Ninth Revised Sheet No. 10 which reflected a decrease in quarterly demand charges of $4,863 in aggregate and a decrease of 60.89 cents per dekatherm in commodity rates compared with those in effect on May 1, 1989. In determining its projected purchased gas costs included in this filing, Paiute has utilized rates filed by Northwest Pipeline Corporation (Northwest) on June 1, 1989, in Docket No. TQ89-4-37-000 to be effective July 1, 1989. If the rates proposed by northwest are revised for any reason, Paiute reserves the right to submit a substitute sheet to track the Northwest revision.

Paiute states that in its previous quarterly PGA filing, the Commission ordered Paiute to provide in future PGA filings a breakdown of its purchases from Natural Gas Clearinghouse, Inc. (NGC) a gas marketer, by NGPA category. In accordance with the Commission's Order, Paiute has included the required information, which was provided by NGC, in its filing. Paiute states that the projected rate reflected in its filing for purchases from NGC is not based on NGPA category, but rather upon the total projected supply delivered into Paiute's system.

The proposed effective date for the tendered tariff sheet is August 1, 1989.

Copies of the filing were served on Paiute's jurisdictional sales customers, interested parties and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 20, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16821 Filed 7-18-89; 8:45 am]

BILLING CODE 6716-01-M

[Docket No. TM89-4-29-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

July 12, 1989.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on June 27, 1989 certain revised tariff sheets to Second Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff, which tariff sheets are included in Appendix A attached to the filing. The proposed effective dates of the revised sheets are indicated in Appendix A.

Transco states that this filing is to revise the Fixed Monthly PSP Charges and Commodity PSP Charges for the initial Annual Recovery Period of May 1, 1988 through April 30, 1989 to reflect for such period the actual quarterly FERC interest rates computed in accordance with § 154.67(c) of the Commission's regulations.

Transco states that copies of the instant filing are being mailed to those customers, State Commissions and interested parties in Docket No. RP88-68. In accordance with the provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 19, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16822 Filed 7-18-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed With the Office of Hearings and Appeals During the Week of June 12 Through June 16, 1989

During the Week of June 12 through June 16, 1989, the appeals and applications for other relief listed in the Appendix to this Notice were filed with

the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

July 7, 1989.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 12 through June 16, 1989]

Date	Name and location of applicant	Case no.	Type of submission
June 12, 1989	Lynn Landon, Pocatello, Idaho	KFA-0300	Freedom of Information Appeal Denial. If granted: The May 15, 1989 Freedom of Information Request Denial issued by the Idaho Operations Office would be rescinded, and Lynn Landon would receive access to the DOE investigator's notes.
June 16, 1989	Amoco/Indiana, Indianapolis, Indiana	RM251-153	Request for Modification/Rescission. If granted: The May 28, 1989, Decision and Order issued to Indiana would be modified, regarding the State's plan submitted in the Amoco second stage refund proceeding.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
1/31/89	Ford's Exxon, Inc	RF307-9981.
6/8/89	John E. Jones Oil Company.	RF308-13.
6/8/89	M.R. Pasley	RF308-14.
6/9/89	Carter & Hensley Oil Company.	RF307-9980.
6/9/89	Frank's Payless Spur.	RF309-1361.
6/9/89	Buras Fuel Dock	RF309-1362.
6/9/89	Armstrong Oil Company, Inc.	RF313-167.
6/9/89 thru 6/16/89.	Crude Oil Refund Applications Received.	RF272-75508 thru RF272-75222.
6/9/89 thru 6/16/89.	Atlantic Richfield Refund Applications Received.	RF304-9424 thru RF304-9508.
6/9/89 thru 6/16/89.	Shell Oil Refund Applications Received.	RF315-6110 thru RF315-6187.
6/12/89	Todd Enterprises, Inc.	RF313-168.
6/12/89	Todd Enterprises, Inc.	RF313-169.
6/12/89	Jerry W. Talley	RF300-10828.
6/12/89	Darlington Propage Gas Company.	RF300-10829.
6/12/89	Pryor Interprises, Inc.	RF313-170.
6/12/89	Sundance Enterprises, Inc.	RF313-171.
6/12/89	Modern Gas Company, Inc.	RF300-10830.
6/12/89	Fowler Equity	RF308-15.
6/13/89	Kirk Brown's Gulf	RF300-10831.
6/13/89	Millage Gulf	RF300-10832.

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/name of refund application	Case No.
6/13/89	K.D. McCall Gulf	RF300-10833.
6/13/89	Quinn's Gulf	RF300-10834.
6/13/89	County Line Grocery.	RF300-10835.
6/13/89	Marsh's Apco	RF310-341.
6/13/89	Niblett Oil Company.	RF300-10836.
6/13/89	Matthews Exxon Service Station.	RF307-9982.
6/13/89	Ada Resources/Port of Galveston.	RQ24-513.
6/14/89	Kent Oil & Trading Company.	RF307-9983.
6/14/89	Vitro Corporation	RF307-9984.
6/14/89	Fifth Wheel Service.	RF308-16.
6/14/89	Kent Oil & Trading Company.	RF309-1363.
6/15/89	Tweedell & Van Buren Oil Corp.	RF313-172.
6/15/89	Chana, Inc	RF313-173.
6/15/89	Kent Oil & Trading Company.	RF313-174.
6/15/89	Hemker Oil Company, Inc.	RF309-1364.
6/15/89	Kent Oil & Trading Company.	RF311-10.
6/16/89	Siler City Oil Company, Inc.	RF313-175.
6/16/89	Amoco/Wisconsin	RQ251-514.

[FR Doc. 89-16033 Filed 7-18-89; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed With the Office of Hearings and Appeals During the Week of June 16 Through June 23, 1989

During the Week of June 16 through June 23, 1989, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

July 7, 1989.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 16 through June 23, 1989]

Date	Name and location of applicant	Case No.	Type of submission
June 19, 1989	Cibro Sales Corporation, Inc., Washington, DC	KEF-0136	Implementation of Special Refund Procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the March 24, 1984 Consent Order endered into with Cibro Sales Corporation, Inc.
June 19, 1989	ARCO/William H. Flud, Harrison, Arkansas	RR304-6	Request for Modification/Rescission in the Arco Refund Proceeding. If Granted: The December 22, 1988 Decision and Order issued to William H. Flud would be modified regarding the firm's application for refund submitted in the ARCO refund proceeding.
June 21, 1989	Anne K. Magnuson, Clifton Park, New York	KFA-0301	Appeal of Information Request Denial. If Granted: The May 24, 1989 Freedom of Information Request Denial issued by the Office of Administrative Services would be rescinded, and Anne K. Magnuson would receive access to records at Albany Medical Center and research on mentally ill patients.
June 22, 1989	Hanford Education Action League, Spokane, Washington.	KFA-0302	Appeal of An Information Request. If Granted: The DOE would reverse its dismissal of Case No. KFA-0257 and release those portions deleted from a May 3, 1959 document provided to the Hanford Education Action League.

REFUND APPLICATIONS RECEIVED

[Week of June 16 to June 23, 1989]

Date received	Name of refund proceeding/name of refund applicant	Case No.
06/19/89	Brantley's Gulf	RF300-10837.
06/19/89	Bamer Exxon	RF307-9987.
06/19/89	Gant Oil Company	RF314-32.
06/22/89	Sysco Food System.	RC272-47.
06/22/89	John Mobley	RF308-19.
06/22/89	George E. Davis	RF309-1365.
06/22/89	Riverfront Gulf Service, Inc.	RF300-10838.
06/20/89	Kirk's Service, Inc	RF314-34.
06/23/89	International Fueling Co. Inc.	RF307-9989.
06/23/89	Buettemeyer's Exxon.	RF307-9990.
06/23/89	Sav-Mor Gas Co	RF313-182.
06/23/89	Darsey Oil Company, Inc.	RF313-183.
06/23/89	C. Herschel Darsey.	RF318-184.
06/21/89	Carroll L. Bond, Jr	RF313-176.
06/22/89	Mor-Gas Industries, Inc.	RF313-177.
06/22/89	Gautier' Crown	RF313-178.
06/22/89	Bramlett's Lakewood S/S.	RF313-179.
06/22/89	Fisca Oil Co., Inc	RF313-180.
06/13/89	Sundance Enterprises, Inc.	RF313-181.
06/20/89	Elmer Thiringer	RF308-18.
06/16/89 thru 06/23/89.	Crude Oil Refund	RF272-75523 thru RF 272-75536.
06/16/89 thru 06/23/89.	Atlantic Richfield Refund.	RF304-9509 thru RF304-9603.
06/16/89 thru 06/23/89.	Shell Refund	RF315-6186 thru RF315-6252.

[FR Doc. 89-16034 Filed 7-18-89; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders Issued the Week of May 8 Through May 12, 1989

During the week of May 8 through May 12, 1989, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director Office of Hearings and Appeals.

July 6, 1989.

Appeal

Roy D. Woodruff, 5/10/89, KFA-0276

Roy D. Woodruff filed an Appeal from a determination issued by the Acting Assistant Manager for Administration of the San Francisco Operations Office, denying Woodruff's request for information which he submitted pursuant to the Freedom of Information Act (FOIA) and the Privacy Act. Woodruff sought access to, *inter alia*, letter reports prepared by two scientists at the request of the DOE, investigating allegations made by Woodruff concerning the Department's x-ray laser program. In considering the Appeal, the DOE found that the information was predecisional and deliberative, and properly withheld pursuant to Exemption 5 of the FOIA. The DOE also concluded: (1) The letters did not lose their Exemption 5 privilege simply because the DOE adopted the conclusions set forth in the documents; (2) the DOE did not waive the deliberative process privilege by releasing the letters to members of Congress, the General Accounting Office, and the Vice-President of the University of California; (3) there was no reasonably segregable factual information contained in the letters that could be released without compromising the deliberative process; and (4) Woodruff was not entitled to the letters pursuant to the Privacy Act. Since the DOE determined that the documents were properly withheld, the Appeal was denied.

Remedial Order

Morrison Petroleum Company, Inc. 5/11/89, KRO-0350

The DOE issued a Remedial Order to Morrison Petroleum Company, Inc. (Morrison). In the Remedial Order, the DOE found that during the months of July 1976 through May 1977, Morrison violated the entitlements reporting regulations codified at 10 CFR 211.66 and 211.67 and the circumvention regulation set forth at 10 CFR 205.202. Specifically, the DOE found that Morrison entered into two contracts with the International Petroleum Trading Company (IPTC). These contracts arranged a series of crude oil sales, processing and refined product transactions which were designed to

allow Morrison to report the crude oil volumes as processed for its account in order to receive small refiner bias entitlements benefits for those volumes. The DOE found that despite Morrison's acquisition of legal title to the crude oil, the primary functions of ownership of the crude oil remained at all times with IPTC. The DOE therefore concluded that Morrison was not the owner of the crude oil for regulatory purposes, that it improperly reported the crude oil as processed for its account, and that it was not entitled to the small refiner basis entitlements benefits that it received as a result of filing those reports. The DOE also found that the contracts between Morrison and IPTC constituted a scheme to circumvent the clear intent of the DOE regulations by using a small refiner as title holder of the crude oil for the sole purposes of obtaining small refiner bias entitlements benefits. The DOE ordered Morrison to refund the sum of $4,843,227, plus interest, which represents the amount of entitlements benefits paid to Morris for the crude oil subject to its agreements with IPTC.

Request For Exception

Martin & Bayley Inc., 5/10/89, KEE-0171

Martin & Bayley Inc. (Martin) filed an Application for Exception from the Energy Information Administration (EIA) reporting requirements in which the firm sought relief from filing the following forms: Form EIA-782B, entitled "Reseller/Retailers Monthly Petroleum Product Sales Report"; Form EIA-821, entitled "Annual Fuel Oil & Kerosene Sales Report"; and Form EIA-863, entitled "Petroleum Product Sales Identification Survey." In considering the request, the DOE found that the firm was not adversely affected by the reporting burden in a way significantly different from the burden borne by similar reporting firms. Accordingly, exception relief was denied with respect to the filing of Form EIA-782B and Form EIA-821. The DOE reached no determination with regard to Form EIA-863 as Martin is not required to file that form covering sales in 1988.

Refund Applications

Aminoil U.S.A. Inc./Fred G. McKenzie Co., 5/9/89, RR139-45

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed on behalf of the Fred G. McKenzie Company (McKenzie) in the Aminoil U.S.A., Inc. special refund proceeding. The firm's initial Application for Refund was denied under the presumption of non-injury applicable to spot purchasers. The Motion contained no information to persuade the DOE to modify the earlier decision. Accordingly, McKenzie's Motion for Reconsideration was denied.

Arizona Electric Power Cooperative, 5/12/89, RF272-74939 RD272-9358

The DOE issued a Decision and Order granting a refund from Crude oil overcharge funds to Arizona Electric Power Cooperative (Arizona), an electricity generation and transmission cooperative. In reaching its determination, the DOE rejected the objections to Arizona's claim submitted by a group of States and denied the States Motion for Discovery. The States contended that Arizona should not receive a refund because the firm was not an injured end-user, and because it should to be permitted to act as a conduit for the distribution of refund benefits to its injured customers. The DOE rejected both of the States arguments, finding that Arizona was not claiming a refund for itself, but rather agreed to pass through to its customers the benefits of any refunds which it receives. The DOE also found that the Settlement Agreement permitted cooperatives to receive refunds in Subpart V crude oil proceedings in order to distribute direct restitution to their injury customers. Accordingly, the application was approved and Arizona was granted a refund totaling $29,128.

Atlantic Richfield Company/Anaconda Company Brass Division 5/11/89, RF304-739

The DOE issued a Decision and Order concerning an Application for Refund filed by the Anaconda Company Brass Division (Anaconda) in the Atlantic Richfield Company (ARCO) special refund proceeding. Anaconda, a wholly-owned subsidiary of ARCO, requested a refund based upon documented purchases of 2,632,960 gallons of ARCO propane. However, the DOE determined that granting a refund to an ARCO subsidiary would effectively return a portion of the ARCO consent order funds to ARCO, a result inconsistent with the restitutionary purposes of the Subpart V special refund proceeding. Therefore, Anaconda's claim was denied.

Atlantic Richfield Company/Fase LP Gas Service Inc. et al., 5/8/89, RF304-101, et al.

The DOE issued a Decision and Order concerning 21 Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. As reseller/retailers claiming refunds of less than $5,000 or end users, each applicant was presumed to have been injured by ARCO's alleged overcharges. After examining the applications and supportingf documentation, the DOE determined that the firms should receive refunds totaling $69,639, representing $53,860 in principal and $15,779 in interest.

Atlantic Richfield Company/Glen Rock Car Wash et al., 5/12/89, RF304-2340 et al.

The DOE issued a Decision and Order concerning fifty-four Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants documented the volume of their ARCO purchases and were end users or reseller/retailers requesting refunds of $5,000 or less. Therefore, each applicant was presumed injured. The refunds granted in this Decision totaled $87,590 ($67,582 in principal and $20,008 in interest).

Atlantic Richfield Company/Tony Fava Sports Center, et al., 5/9/89, RF304-2473, et al.

The DOE issued a Decision and Order concerning fourteen Applications for Refund in the Atlantic Richfield Company special refund proceeding. Eleven of the applicants were either end users or reseller/retailers that applied for refunds of $5,000 or less. The remaining applicants elected to use the mid-level presumption of injury. In addition, each applicant documented the volume of its purchases from ARCO and, therefore, was presumed to have been injured and entitled to a refund. The DOE concluded that the applicants should receive refunds totalling $101,374, representing $78,212 in principal and $23,162 in accrued interest.

Beacon Oil, Company/Mack J. Sylver, Inc., 5/12/89, RF238-57

The DOE issued a Decision and Order concerning one Application for Refund filed by Mack J. Sylver, Inc., from a consent order fund made available by the Beacon Oil Compnay. As a reseller applying for a $5,000 small claims refund, the firm was presumed to have been injured. Accordingly, the DOE concluded that it should receive a refund of $11,384, representing $5,000 in principal and $6,384 in accrued interest.

City of Independence, et al., 5/11/89, RF272-21217, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to four end-users of refined petroleum products. Each applicant submitted information indicating the volumes of motor gasoline, fuel oil, jet fuel, motor oil or heating oil that were purchased during the crude oil price control period. The sum of the refunds approved in this Decision is $69,635.

Crown Central Petroleum Corporation/Biltmore Oil Compnay, Inc., et al., 5/9/89, RF313-115 et al.

The DOE issued a Decision and Order granting applications filed by six purchasers of Crown refined petroleum products in the Crown Central Petroleum Corporation special refund proceeding. According to the procedures set forth in *Crown Central Petroleum Corp.*, 18 DOE ¶ 85,326 (1988), each applicant was found to be eligible for a refund based on the volume of products it purchased from Crown. The total amount of refunds approved in this Decision was $38,111, representing $32,657 in principal plus $5,454 in accrued interest.

Crown Central Petroleum Corporation/Jet-Way Service Station, et al., 5/12/89, RF313-105 et al.

The DOE issued a Decision and Order considering applications filed by five purchasers of Crown refined petroleum products in the Crown Central Petroleum Corporation special refund proceeding. Each applicant was found to be eligible for a refund based on the volume of products it purchased from Crown. The refund applications were granted using a presumption of injury procedure set forth in *Crown Central Petroleum Corp.*, 18 DOE ¶ 85,326 (1988). The total amount of refunds approved in this Decision was $35,226, representing $30,185 in principal plus $5,041 in accrued interest.

Exxon Corporation/Dean Drive Service Center et al., 5/12/89, RF 307-147 et al.

The DOE issued a Decision and Order concerning 17 applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $18,553 ($15,698 principal plus $2,855 interest).

Exxon Corporation/Petroleum Heat & Power Co. et al. 5/10/89, RF307-5225 et al.

The DOE issued a Decision and Order granting a refund to four resellers of refined petroleum products from consent order funds collected from Exxon Corporation. Because each firm chose to limit its refund claim to the greater of $5,000 or 40 percent of its volumetric refund amount, each firm was presumed to have been injured by Exxon's alleged overcharges. Three of the firms received a refund of $5,909 ($5,000 principal and $909 interest). The fourth, Petroleum Heat & Power Co., recieved 40% of its volumetric amount, or $17,442, plus $3,171 in interest.

Exxon Corporation/Premium Gas Service, County Petroleum Products Inc., 5/11/89, RF307-3688, RF307-4099

The DOE issued a Decision and Order concerning Applications for Refund in the Exxon Corp. special refund proceeding filed by Premium Gas Service (Case No. RF307-3688) and County Petroleum Products Inc. (Case No. RF307-4099), both wholesale distributers of Exxon products. The applications were both filed by Robert Blank, the owner of the firms. Because Premium and County are under common ownership, they were not separately eligible for refunds under the injury presumptions established in the Exxon proceeding. The firms' collective allocable share is more than $5,000. However, a reseller applicant whose allocable share exceeds $5,000 may elect to receive as its refund the larger of $5,000 or 40 percent of its allocable share up to $50,000. In the present case, 40 percent is greater. Accordingly, the refund granted in this Decision totals $6,541 ($5,535 principal plus $1,006 interest).

Exxon Corporation/Thomas B. Turner et al. 5/18/89, RF307-6300 et al.

The Office of Hearings and Appeals of the Department of Energy issued a Decision and Order granting 50 Applications for Refund from consent order funds obtained from Exxon Corporation. Each Applicant was a reseller that sought a refund of less than $5,000, and was therefore presumed to have suffered injury as a result of Exxon's alleged overcharges. The sum of the refunds granted is $41,057.

Exxon Corporation/Van's Exxon et al., 5/10/89, RF307-1774, et al.

The Office of Hearings and Appeals of the Department of Energy issued a Decision and Order granting 48 Applications for Refund from consent order funds obtained from Exxon Corporation. Each Applicant was a reseller that sought a refund of less than $5,000, and was therefore presumed to have suffered injury as a result of Exxon's alleged overcharges. The sum of the refunds granted is $49,816.

Gulf Oil Corporation/Basham's Gulf Service Center, Basham's Gulf Service Inc., 5/10/89, RF300-7238, RF300-7239

The DOE issued a Decision and Order concerning 2 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Because both applicants were under common ownership during the consent order period, both applications were considered together. Both applications were approved based on a presumption of injury. The sum of the refunds granted in this Decision is $6,563.

Gulf Oil Corporation/Choctaw Fuels, Inc., Martin Gas Sales, Inc., 5/11/89, RF300-5285, RF300-5290

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by Choctaw Fuels, Inc. and Martin Gas Sales, Inc. Because both firms were under common ownership during the consent order period, the two applications were considered together in applying the presumptions of injury. The two firms collectively purchased 50,584,158 gallons of covered Gulf products, and their Applications were approved under the 40 percent presumption of injury. The refund granted in this Decision, which includes both principal and interest, is $16,996.

Gulf Oil Corporation/Elmore Oil Company, Inc., et al., 5/10/89, RF300-825, et al.

The DOE issued a Decision and Order concerning 17 Applications for Refund submitted in the Gulf Oil Corporation refund proceeding. Each application was approved using the 40 percent presumption of injury. The sum of the refunds granted in this Decision is $288,375.

Gulf Oil Corporation/Franco Distributors, Inc., Carr Oil Company, Inc., Joe A. Emerson, 5/12/89, RF300-827, RF300-3644, RF300-3719

The DOE issued a Decision and Order concerning 3 Applications for Refund submitted by consignees in the Gulf Oil Corporation refund proceeding. Each application was approved using the 10 percent presumption of injury. The sum of the refunds granted in this Decision is $2,885.

Gulf Oil Corporation/Gary E. Wygle, 5/8/89, RF300-10800

On February 2, 1989, the DOE issued a Decision and Order granting a refund of $974 to Gary E. Wygle (Wygle), Case No. RF300-6021. *Gulf Oil Corporation/*

William J. Smith, et al., 18 DOE ¶ 85,586 (1989). The DOE determined that this refund was a duplicate of the refund granted to Wygle, Case No. RF300-1862, on November 26, 1988. *Gulf Oil Corporation/Floyd Rogers, et al.*, 18 DOE ¶ 85,278 (1988). Accordingly, the DOE issued a Supplemental Order rescinding the refund granted to Wygle in *Gulf Oil Corporation/William J. Smith, et al.*

Gulf Oil Corp./J. P. Tyke Gulf Service, J. P. Tyke Gulf Service, 5/12/89, RF300-7206, RF300-7207

The DOE issued a Decision and Order concerning 2 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Because the Applicants were affiliated, the Applications were considered together. The Applications were approved based on a presumption of injury. The sum of the refunds granted in this Decision is $6,563.

Gulf Oil Corporation/John M. Lapinski, Sr., et al., 5/12/89, RF300-806, et al

The DOE issued a Decision and Order concerning 29 Applications for Refund submitted in the Gulf Oil Corporation refund proceeding. Each application was approved using a presumption of injury. The sum of the refund granted in this Decision is $67,649.

Gulf Oil Corporation/Leased Vehicles Co., et al., 5/10/89, RF300-7220, et al

The DOE issued a Decision and Order concerning 8 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $23,857.

Gulf Oil Corp./Lloyd C. Shanks, et al., 5/8/89, RF300-7219, et al

The DOE issued a Decision and Order concerning 9 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each applicant was an indirect purchaser of Gulf product. However, because the DOE made no determinations of the injury of the direct purchasers, from whom the applicants purchased Gulf product, the indirect purchasers were presumed injured and eligible to receive their full allocable shares. The applications were therefore granted.

Gulf Oil Corporation/M&W Oil Company, Inc., W. L. Hubert, 5/8/89, RF300-7435, RF300-7538

The DOE issued a Decision and Order concerning 2 Applications for Refund submitted by consignees in the Gulf Oil Corporation special refund proceeding. Each application was approved based on the consignee 10% presumption of injury. The sum of the refunds granted in this Decision is $415.

Gulf Oil Corporation/McLendon Gulf Oil Roger's Gulf, 5/10/89, RF300-10028, RF300-10268

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by Federal Refunds, Inc. (FRI) on behalf of McLendon Gulf Oil (Case No. RF300-10028) and Roger's Gulf (Case No. RF300-10268). Both firms claimed gallonage amounts far in excess of the figures provided on the master list of Gulf's customers that Gulf provided the OHA. Neither applicant was able to substantiate its claim with records of any kind. In the absence of a verifiable estimate by a claimant, DOE adopted the Gulf list's gallonage figures. Thus, the refund amounts of both McLendon and Roger's were based on the gallonage estimates provided by Gulf. The total of the refunds granted was $3,229. The refund checks were sent directly to the applicants, rather than to FRI.

Gulf Oil Corporation/Wald Oil Company, et al., 5/8/89, RF300-6497, et al

The DOE issued a Decision and Order concerning 14 Applications for Refund submitted by ten applicants in the Gulf Oil Corporation refund proceeding. Each applicant claimed gallons purchased as a retailer and gallons purchased as a consignee. Each of the applicants were approved for its full allocable share as a reseller and 10% of its allocable share as a consignee. None of the applicants claimed a principal refund greater than $5,000 for its combined purchases as a reseller and as a consignee. The sum of the refunds granted in this Decision is $15,470.

J.R. Hale Contracting Co., Inc., et al., 5/12/89, RF272-27158 et al

The DOE issued a Decision and Order granting Applications for Refund filed by 12 claimants from crude oil overcharge funds based on purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The applicants were found to be end-users eligible to receive refunds totaling $38,722.

Jacksonville Electric Authority, et al., 5/11/89, RF272-420, et al

The DOE issued a Decision concerning four applications for refund in the OHA Subpart V crude oil refund proceedings. The applicants consist of two regional transit authorities and two municipal utilities. Comments were submitted by Philip P. Kalodner alleging that the four applicants are ineligible for Subpart V crude oil refunds because governmental authorities are ineligible to participate in the crude oil refund proceedings and these applicants necessarily passed through any crude oil overcharges. The OHA determined that the four applicants were eligible to receive their full allocable shares of the crude oil overcharge monies under the end-user presumption of injury. The total refund granted in this Decision is $2,446,305, and the total gallonage approved is 3,057,880,677.

John J. Craig 5/11/89, RC272-46

The DOE issued a Supplemental Decision and Order modifying the crude oil refund granted to John J. Craig (Craig) in *Village of Arlington Heights*, 17 DOE ¶ 85,721 (1988). The $364 refund approved for Craig in Case No. RF272-12302 was calculated using an incorrect volume of refined petroleum products. The correct purchase volume upon which to calculate Craig's refund was 45,571 gallons. Based upon that number of gallons, Craig's correct refund was $36.45. Accordingly, the DOE requested a repayment from Craig of $327.55, and on May 2, 1989, Craig remitted that sum to the DOE.

Miller and Miller Real Estate, et al., 5/10/89, RF272-17715, et al

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 11 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant calculated its volume claim either by consulting actual purchase records or by estimating its consumption. Each applicant was an end-user of the products it claimed and was therefore found injured and entitled to a refund. The sum of the refunds granted in this Decision is $68,634.

Mobil Oil Corp. Fosti/Economy Boat Store of Texas, Inc., 5/9/89, RF225-10144

The DOE issued a Decision and Order denying an Application for Refund filed by FOSTI/Economy Boat Store of Texas, Inc. (FOSTI) in the Mobil Oil Corp. special refund proceeding. FOSTI claimed a refund for its purchases of a product after the product's date of decontrol. Because no overcharges could have occurred in FOSTI's purchases, the DOE denied the firm's claim.

Murphy Oil Corporation/Frank-Len, Inc., et al., 5/10/89, RF309-1007 et al

The DOE issued a Decision and Order concerning Applications for Refund filed by 10 claimants in the Murphy Oil Corporation special refund proceeding. Each applicant claimed a refund in excess of $5,000 and was found to be eligible for a refund at the relevant presumption level from the Murphy consent order fund according to the procedures established in *Murphy Oil Corp.*, 17 DOE ¶ 85,782 (1988). The refunds approved in the Decision totaled $75,466 ($65,046 in principal plus $10,420 in interest).

Murphy Oil Corporation/Willis Weedman et al., 5/10/89, RF309-1003 et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by 43 claimants in the Murphy Oil Corporation special refund proceeding. Each applicant documented its purchases of regulated petroleum products from Murphy and was found to be eligible for a refund from the Murphy consent order fund according to the procedures established in *Murphy Oil Corp.*, 17 DOE ¶ 85,782 (1988). The refunds approved in the Decision totaled $84,583 ($72,904 in principal plus $11,679 in interest).

Plaquemines Oil Sales Corp./Buras Fuel Docks, 5/11/89, RR305-3

The DOE issued a Decision and Order denying a Motion for Reconsideration filed by Buras Fuel Docks (Buras) in the Plaquemines Oil Sales Corp. (POSC) special refund proceeding. In its Motion, Buras contended that a prior Decision and Order denying its Application for Refund was incorrect because the calculation of its base period margin for the purposes of approximating its banks of unrecouped increased product costs did not use POSC's weighted average selling price to Buras' class of purchaser. The DOE rejected this argument because the weighted average price represents POSC's average selling price to a class of purchaser, and did not represent the price that Buras paid on or before May 15, 1973. Accordingly, the Motion for Reconsideration was denied.

Silgas, Inc., 5/12/89, RF272-64883

The DOE issued a Decision and Order, denying an Application for Refund filed by Silgas, Inc. in the Subpart V crude oil refund proceedings. Silgas was reseller of refined petroleum products during the period August 19, 1973 through January 27, 1981. Because Silgas did not demonstrate that it was injured due to crude oil overcharges, it was ineligible for a crude oil refund.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case number	Date	Number of applicants	Total refund
Herbert Koester *et al*	RF272-50000	5/11/89	160	$17,996
Marvin Miller Farms Ltd. *et al*	RF272-50400	5/12/89	157	20,787
Trans-Mix Co., Inc. *et al*	RF272-24000	5/8/89	22	13,713

Dismissals

The following submissions were dismissed:

Name	Case No.
Albert's Service, Inc	RF307-44
Andy's Exxon	RF307-7988
Angel Service Center	RF300-8000
Bob 77 Service Center	RF300-8467
Bronco Transportation *et al* (See Attached List).	RF272-55459
Ciampi Holiday Gulf	RF300-9645
Coastal Gulf, Inc	RF300-8505
Cooper's Gulf Service	RF300-8648
Country Service Center, Inc	RF307-7989
D.O. Blevins Sons, Inc	RF313-86
De Los Reyes Gulf Service	RF300-8522
Dept. of Transportation, Md	RF307-8737
Durham Coca-Cola Bottling Co	RF300-8884
Garden Shell Service Station	RF315-314
Gate Petroleum Co	RF313-107
George J. Switzer Co., Inc	RF300-9257
Homestead Gulf	RF300-9254
Jack Mariani Co	RF272-39301
John F. Van Luvender	RF300-7981
John's Exxon Service	RF307-971
Johnson Gulf Service	RF300-8460
Joseph Vizzi	RF300-7975
Ken Lilly	RF307-2075
Latours Gulf Service	RF300-8901
M. Harold Whitley	RF307-9677
McGraw-Edson Power Systems	RF300-2923
Metz Oil Company	RF307-1017
Mt Furn Gulf	RF300-8468
Preston Moore Oil Co	RF300-160
R.W. Mathews & Sons	RF300-9265
Schaan Oil Co	RF300-7883
Service Distributing Co., Inc	RF313-95
Southside Gulf *et al* (See Attached List).	RF300-06623
Thames Gulf Station	RF300-284
The American Tobacco Company	RF307-8222
The Little Oil Company, Inc	RF313-89
Tony's Service	RF307-8367
V.B. Smith Distributor, Inc	RF300-7881
Wayne Hopkins	RF307-2055
Westport Energy Corporation	HRO-0177
Westvaco Corporation	RF307-9166
Willow Creek Exxon	RF307-1825
	RF307-2103

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Case No.	Firm	Location
RF272-55459	Bronco Transportation	153 Avery St., Dallas, TX 75208.
RF272-55460	Murphy Bonded Warehouse, Inc.	5805 Courtesy Lane, Shreveport, LA 71133.
RF272-55461	Castle Delivery, L.J. Castle	3177 Irving St., Dallas, TX, 75247.
RF272-55463	B-Line-Delivery, Inc.	Imperical Centeral, Dallas, TX 75235.
RF272-55464	Bandit Messeros/Lee Ojeda	2136 N. Harwood Dr., Dallas, TX 75201.
RF272-55466	City Wide Delivery Service	404 N. Hawkins, Dallas, TX 75204.
RF272-55468	Allstate Auto Rents, Inc.	3535 Forrest Lane, Dallas, TX 75242.

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Case No.	Firm	Location
RF272-55469	Allstate Auto Rents, Inc.	3206 Live Oak Dr., Dallas, TX 75204.
RF272-58086	Wylie Propane Gas	P.O. Box 578, Wylie, TX 75098.
RF272-58087	Armsted Trucking	P.O. Box 581, Coushatta, LA 71019.
RF272-58089	Morris Oil Company	P.O. Box 368, Senatobia, MS 38668.
RF272-58092	Atlantic Aviation Corp.	P.O. Box 15000, Wilmington, DE 19850.
RF272-58098	Welland Peanut Co., Inc.	Hwy 258, Woodland, NC 27897.
RF272-58099	Jet Fleet Corporation	5200 Keller Springs Road, Dallas, TX 75248.
RF272-58100	Davidsmyer Bus Company	2513 East Higgin Road, Elk Grove Village, IL 60007.
RF272-58102	Air Exchange, Inc.	7338 Aviation Place, Dallas, TX 75235.
RF272-58104	Mid-American Charter Lines	2513 East Higgins Road, Elk Grove Village, IL 60007.
RF272-58105	Air Fly School	34511 Eddy Rackenbaker, Dallas, TX 75248.
RF272-58106	Allstate Auto Rents Inc.	2423 West Mockingbird Ln., Dallas, TX 75235.
RF272-58107	Fire Dept. City of Mesquite	P.O. Box 137, Mesquite, TX 75149.
RF272-58901	Salley Farms	Box 157, Palcedo, TX 77977.
RF272-58806	Lauren H. Enns	Route 3 Box 20, Hillsboro, KS 67063.
RF272-59708	Fayetta County School System	P.O. Box 10, Somerville, TN 38068.
RF272-59710	Ambu-Wagon Inc.	94 1st St., New Rochelle, NY 10801.
RF272-59711	Raffie Exxon & Wrecker Service	8022 Fergerson Rd., Dallas, TX 75228.
RF272-59716	Willowcreek Exxon Wrecker Ser	9701 N. Central Exprswy., Dallas, TX 75231.
RF272-62417	Murphree Exxon	3156 Mendenhall, Memphis, TN 38118.
RF272-62423	AAA Shell Station	6300 Asher Ave., Little Rock, AR 72204.
RF272-62424	Hurdle Oil Co.	679 Poplar W., Collierville, TN 38017.
RF272-62425	Eddie Wyatt Inc.	510 Pert Dr., San Antonio, TX 78219.
RF272-62428	Wilkerson Travel Mart	1926 Colonial Hills Dr., Southhaven, MS 38671.
RF272-62435	Taylor Amoco Service Station	1393 Mississippi Blvd., Memphis, TN 38103.
RF272-62436	Smith & Sons Amoco	2260 Elvis Presley Blvd., Memphis, TN 38106.
RF272-62438	Brooks Rd. Amoco	1709 E. Brooks Rd., Memphis, TN 38116.
RF272-62452	Benton Furniture Co., Inc.	229 Main St., Tarboro, NC 27886.
RF272-62453	Parker Wrecker	1874 South Highland, Jackson, TN 38301.
RF272-62455	Rays Union 76	989 Wellsville Cove, Memphis, TN 38109.
RF272-62461	Rogers Oil Co.	Box 416, Union City, TN 38261.
RF272-62463	Dutton Aviation	Box C5, Sand Springs, MT 59077.
RF272-62464	Tarboro Intnl. Truck Sales	PO Box 309, Tarboro, NC 27886.
RF272-62466	Bailey's Station	10022 Poplar Ave., Collierville, TN 38017.
RF272-62470	Hornsby Texaco	820 W. Main, Union City, TN 38261.
RF272-62471	Captain Dicks Marina	PO Box 601, Murrells Inlet, SC 29576.
RF272-62473	Poplar & Hollywood Mobil	2444 Poplar, Memphis, TN 28112.
RF272-62474	Wells & Son Exxon	1820 Elvis Presley Blvd., Memphis, TN 38106.
RF272-62477	Hey Lion Oil	3395 Macon Rd., Memphis, TN 38106.
RF272-62479	Wilemon Bros. Union 76	Park-Mt. Moriah, Memphis, TN 38128.
RF272-62483	Wilemon Bros. Texaco	1447 S. 3rd, Memphis, TN 38106.
RF272-62484	Kemp Service Station	4602 Knight Arnold Rd., Memphis, TN 38118.
RF272-62488	Taylor Arco	4775 Hornlake Rd., Memphis, TN 38109.
RF272-62490	Scott Union 76	749 N. Parkway, Memphis, TN 38174.
RF272-62693	Pelletier Oil-Fertilizer, Inc.	PO Box 8, Maysville, NC 28555.
RF272-62694	Hackney Petroleum Tennessee	PO Box 7, Alcoa, TN 37701.
RF272-62695	Hackney Petroleum Kentucky	PO Box 7, Alcoa, TN 37701.
RF272-62696	Hackney Petroleum Tennessee	PO Box 7, Alcoa, TN 37701.
RF272-62697	Hackney Petroleum Kentucky	PO Box 7, Alcoa, TN 37701.
RF272-62698	Hackney Petroleum Caroline	PO Box 7, Alcoa, TN 37701.
RF272-64879	Aviritt Express	P.O. Box 3166, Cookeville, TN 38501.
RF272-64980	Norman Stancill	13 Goldenleaf Dr., Winterville, NC 28950.
RF272-64981	Roberts-Gillison	P.O. Box 681, Dyersburg, TN 38025.
RF272-65046	Vincent A. Glowacki	401 Lyons Avenue, Wheaton, IL 60187.
RF272-65047	Dodd Distributing Co.	1548 Vance Street, Rockey Mount, NC 27801.
RF272-65048	Mallory Transportation	P.O. Box 9436, Memphis, TN 38104.
RF272-65050	Cox Trailers Inc.	P.O. Box 338, Grifton, NC 28530.
RF272-65057	Mertz Oil Co.	R.1 Box 8, Hurdsfield, ND 58451.
RF272-65058	Craft Spraying Inc.	P.O. Box 256, Farmville, NC 27828.
RF272-65061	Taylor Union Oil Serv. Sta	600 S. Parkway E, Memphis, TN 38106.
RF272-65062	Trusty Union 76	4690 Winchester Rd, Memphis, TN 38118.
RF272-65068	College Tire Supply	483 George Rd., North Brunswick, NJ 08902.
RF272-65070	Davis Drive Gulf Station	2004 Moody Rd., Warner Robins, GA 31088.
RF272-65071	Gurley Oil Co.	P.O. Box 626, Memphis, TN 38101.
RF272-65072	W-Ashely Service Station	2957 W. Montague Ave., Charleston, SC 29418.
RF272-65073	Davis Oil Co.	P.O. Box 1403, Hot Springs, AR 71902.
RF272-65080	Philps Consumer Electronics	P.O. Box 1210, Greeneville, TN 37744.
RF272-65081	Whitehead Oil Co.	1221 Riverside Blvd., Memphis, TN 38106.
RF272-65082	Bob 66 Service Center	907 Folley Rd., Charleston, SC 29412.
RF272-65088	Kruger Standard	Box 598 316 Dennisston St., Caseville, WI 53806.
RF272-65090	Davis Oil Co.	P.O. Box 5560, Statesville, WC 28677.
RF272-65092	Jerry OConnell Distributer Inc.	1610 Boradway, Superior, WI 54880.
RF272-65094	Garner Whilesale	1702 Knowlwood Dr., Greenville, NC 27834.
RF272-65095	Plaza Beverages	1500 Ceder Crest Blvd., Allentown, PA 18104.
RF272-65098	B Lloyd Pecan Products	P.O. Box 70, Barnesville, GA 30204.
RF272-65099	Universal Motors	2971 River Avenue, Camden, NJ 08105.
RF272-65100	Grimms Pump Service Co.	126 St Francis St., Rapid City, SD 57701.
RF272-66218	Ellebecker Oil Co.	309 W 13th, Tama, IA 52339.
RF272-66219	Withee Oil Company Inc.	701 E Mill St., Withee, WI 54498.
RF272-66220	Howe Oil Co.	108 4th St. South East, State Center, IA 50247.

MAY 8, 1989—Continued

Case No.	Firm	Location
RF272-66221	Hubel Oil Co.	P.O. Box 131, Maynard, MN 56260.
RF272-66222	East Side Oil Co.	621 S. E. Lincoln Avenue, St. Cloud, MN 56304.
RF272-66223	Dan Flynn Oil Co.	P.O. Box 162, Suring, WI 54174.
RF272-66227	Olszak Garage	Rd 1 Box 474, East Brady, PA 16028.
RF272-66229	Daphne Auto Parts	P.O. Box 211, Daphne, AL 36326.
RF272-66233	V-N Oil Co. Inc.	P.O. Box 32, Rosemount, MN 55068.
RF272-66236	Roy Motors Inc.	490 Meadow St., Chicopee, MA 01013.
RF272-66238	King County Carburetor	6324 Ft Hamilton Pkwy, Brooklyn, NY 11219.
RF272-66242	Great Southern Mercantile Corp.	P.O. Box 932, Gulfport, MS 39502.
RF272-66243	Kirk Oil Company	56 S. W. 2nd St Box 32, Forest Lake, MN 55025.
RF272-66245	Plamondon Oil Co.	P.O. Box 207, Lake Leelanau, MI 49653.
RF272-66246	Glidden Oil Co.	P.O. Box 687, Immokalee, FL 33934.
RF272-66248	Edwards Farms	Rt. 2 Box 256, Greenville, NC 27834.
RF272-66249	Grady-John H. Latham Diary	Rt. 1 Box 32, Gordo, AL 35466.
RF272-66250	Ralph Garage	135 Erie St., Blauvelt, NY 10913.
RF272-66251	D&M Tow Service	8201 Pased, Kansas City, MO 64131.
RF272-66259	Thorne Truck Line	Post Office Box 699, Milan, TN 38358.
RF272-66260	Davenport Oil Co.	190 Eastman Rd., Memphis, TN 38109.
RF272-66269	Oakley Oldfield Inc.	P.O. Box 3307, Kalamazoo, MI 49003.
RF272-67288	Transamerica Airlines	P.O. Box 2504, Oakland, CA 94614.
RF272-67290	Tier Oil Corp.	3300 Old Vestal Rd., Vestal, NY 13850.
RF272-67291	Major Oil of Iowa	P.O. Box 251, Merrill, IA 51038.
RF272-67294	A & B Moving Co.	8536 Hwy. 70, Memphis, TN 38114.
RF272-67353	Diamond Wine Novelty Co.	1918 Bible Rd., Lima, OH 45801.
RF272-67354	Wayne Oakland Oil Co. Inc.	P.O. Box 158, Royal Oak, MI 48068.
RF272-67355	Bergstrom Reity Oil Co.	P.O. Box 220, Elgin, NE 68636.
RF272-67356	Sioux Oil Co.	P.O. Box 261, Orange City, IA 51041.
RF272-67357	Toenyan Oil Co.	Rt. 1, Grey Eagle, MN 56336.
RF272-67358	Service Oil Co.	PO Box 1209, Cullman, AL 35055.
RF272-67359	Stoskopf Oil Co. Inc.	717 Mechanic St., Decorah, IA 52101.
RF272-67360	Frank Graves Oil Co.	103 W. Main, Princeville, IL 61559.
RF272-67361	Lloyd Lane Inc.	PO Box 492, Chiefland, FL 32626.
RF272-67362	Bjerke Oil Co., Inc.	Rt. 1 Box 117, Sykeston, MN 56283.
RF272-67364	Gessler Auto Sales	21275 W. Good Hope Rd., Lannon, WI 53046.
RF272-67366	Ward Corp. of PA	PO Box 1670, Altoona, PA 16603.
RF272-67368	Long Mfg. Co. North Carolina	7987 Main St., Tarboro, NC 27886.
RF272-67369	A-C-T Company Inc.	Rt. 2, Box 377, Hagerstown, MD 21740.
RF272-67370	McDowell Oil Supply Inc.	302 W. Main St., Bridgeville, DE 19933.
RF272-67371	Talley Sr. Trucks	Rt. 1, Box 100B, Lyons, GA 30436.
RF272-67373	L. Thomas Stanton Horse Trans.	PO Box 687, Williston, FL 32696.
RF272-67374	Clark Trucks	Rt. 2, Box 301, Greenville, NC 27858.
RF272-67375	Cook Trucks	Rt. 1, Box 263, Greenville, NC 28901.
RF272-67376	Pioneer Oil Co.	PO Box 1838, Fort Worth, TX 76101.
RF272-67377	Stevens Aviation, Inc.	PO Box 589, Greer, SC 29652.
RF272-67385	William B. Tanner Co.	2076 Union Ave., Memphis, TN 38104.
RF272-67386	Grady-White Boats	PO Box 1527, Greenville, NC 27835.
RF272-67387	True Line Coring-Cutting	260 Hermitage, Nashville, TN 37210.
RF272-67389	Memphis Concrete Cutting	3440 Hoelman Pl., Memphis, TN 38118.
RF272-67390	Pafford Oil Co.	1010 Wahish Ave., Tallahassee, FL 32304.
RF272-67391	Standard Realty-Mrotage Corp.	PO Box 40969, Memphis, TN 38174.
RF272-67394	Bruce Trucks	Rt. 3, Box 213, Greenville, NC 27834.
RF272-67396	Dick Trucking Inc.	3611 North West 124th St., Coral Springs, FL 33065.
RF272-67397	Southeastern Car-Truck	PO Box 92, Montgomery, AL 36195.
RF272-67400	Klatt Motors, Inc.	330 S. Main St., Blue Earth, MN 56013.
RF272-72378	Central Distributors	361 Hwy 45 By-Pass, Jackson, TN 38301.
RF272-72379	Errigo Dist. Co., Inc.	Box 146, Curwensville, PA 16833.
RF272-72381	Iredell Oil Company	1310 N Center Street, Statesville, NC 28677.
RF272-72382	Marus Oil & Supply Company	Box 465, Marcus, IA 51035.
RF272-72383	J J Repair	Box 28, Lonsy, MN 56349.
RF272-72384	Baldwin Piano & Organ Co.	422 Wards Corner Road, Loveland, OH 45140.
RF272-72385	Dann Carr Trucking	Route 1, Box 243, Hilland, NC 28478.
RF272-72387	Marvca Import Car Service Inc.	789 Main Street, Springfield, MA 01105.
RF272-72389	Sweeney Distributing Co., Inc.	3600 Wetzel Street, Wheeling, WV 26003.
RF272-72391	Wymore Oil Company	401 South 7th Street, Wymore, NE 68448.
RF272-72392	JT Beverage Inc.	P.O. Box 1526, Jamestown, ND 58402.
RF272-72396	FCX, Inc.	P.O. Box 2419, Raleigh, NC 27602.
RF272-72398	Drohn Foreign Car Service	Route 191, Box 96, Ackermanville, PA 18010.
RF272-72399	B-M Service	Box 13, Forest River, ND 58233.
RF272-72401	Big D Oil Company	2575 Kathlenn Drive, Brighton, MI 48116.
RF272-72402	H McLain Oil Company	P.O. Box 116, Carroll, NE 68723.
RF272-72403	Geo L Ralph Inc.	P.O. Box 1544, Salisbury, MD 21801.
RF272-72405	Lemars Truck Stop	1345 15th Ave. South West, Le Mars, IA 51031.
RF272-72406	Collins Oil Company	Local, Barnesville, MN 56514.
RF272-72411	Bunny Service Center Inc.	920 Southview, Blvd., South St. Paul, MN 55075.
RF272-72412	Sweetwater Drilling Co., Inc.	311 Ash, Sweetwater, TX 79556.
RF272-72413	Dons Imported Car Repair	P.O. Bin B, Ringoes, NJ 08551.
RF272-72414	Miami Berverage Inc.	Box 106, Peru, IN 46970.
RF272-72416	Amcon Products Inc.	2203 N. Lois Ave Ste. 720, Tampa, FL 33607.
RF272-72417	New Creations, Inc.	6544 Highland Road, Pontiac, MI 48054.
RF272-72418	Litening Auto Inc.	Route 191, Newfoundland, PA 18445.

MAY 8, 1989—Continued

Case No.	Firm	Location
RF272-72419	L & O Trucklines	140 E. Virginia Avenue, Memphis, TN 38106.
RF272-72420	Ray Repair & Service	Rural Route 1, Box 19, Petersburg, NE 68652.
RF272-72421	Johnnie Service & Repair	Box 55, Shoeendeon, KS 67667.
RF272-72424	Pugh Shell & Tire Service	5th Street & Greene, Greenville, NC 27834.
RF272-72425	Burrell Express	852 McGratt Highway, Somerville, MA 02145.
RF272-72427	Roger Blanchett Haulers	Route 5, Box 466, Tifton, GA 31794.
RF272-72430	Becker & Ditter Oil Company	204 Burlington, Kingsley, IA 51028.
RF272-72432	Lincoln County Coop Oil Co.	Box R, Tyler, MN 56178.
RF272-72433	Kanoma Cooperative Assoc.	P.O. Box 58, Coffeyville, KS 67337.
RF272-72434	Keya Paha Coop Assin	P.O. Box 97, Springview, NE 68778.
RF272-72439	Rothrock Fishing Enterprises	6329 Myrtle Grove Road, Wilmington, NC 28403.
RF272-72440	Tri State Cooperative	S Hwy 71, Box 520, Kimball, NE 69145.
RF272-72442	J E Sharber Oil Company	P.O. Box 527, Bainbridge, GA 31717.
RF272-72443	Cumberland Oil Company	P.O. Box 129, Somerset, KY 42501.
RF272-72449	Rays Lawn & Home Care, Inc.	1730 South 6th, Lincoln, NE 68502.
RF272-72454	Independent Oil Company, Inc.	Box 727, Coldwater, KS 67029.
RF272-72456	Farm Service Coop	306 6th Street, Corning, IA 50841.
RF272-72457	Dunlap Farmer Coop Assn	105 S. 1st Street, Dunlap, IA 51529.
RF272-72461	Fishermen Marine Products	P.O. Box 727, Bayou La Batre, AL 36509.
RF272-72463	South Central Coop	118 W. Meyers, Lacona, IA 50139.
RF272-74314	Cooper Construction	2801 E. Spring St., Long Beach, CA 90806.
RF272-74315	Reese Auto/ARCO Sales Inc.	556 Somerset Ave., North Dighton, MA 02764.
RF272-74317	Bullocks Tire Shop	P.O. Box 5, Lincoln, AL 35096.
RF272-74319	Weaver Transport	Rt. 2 Box 181, Woodbury, TN 37109.
RF272-74320	Shelby Petroleum Corporation	P.O. Box 88, La Follette, TN 37766.
RF272-74572	Denslow Oil	417 N. Main Street, Cedar Springs, MI 49319.
RF272-74573	Quality Oil Company	630 Ottawa Avenue, Holland, MI 49423.
RF272-74574	B & J Construction Company	Route 2, Box 621, Gassville, AR 72635.
RF272-74575	Community Service Center	260 Territorial Road, New Bern, NC 28560.
RF272-74576	Connetts Pump Service	101 Tremont Drive, Tuscumbia, AL 35674.
RF272-74577	Wright Sanitation	3350 Hwy 17 North, New Bern, NC 28560.
RF272-74578	Independent Oil Company	Route 1, Box 163, Lebanon, KS 66952.
RF272-74582	Wolfe Motor Company	5942 North Brodway, Wichita, KS 67219.
RF272-74586	Farmers Gas & Oil Co. of MI.	420 S. Pine River Street, Ithaca, MI 48847.
RF272-74587	S & S Petroleum Sales, Inc.	P.O. Box 860343, Plano, TX 75806.
RF272-74588	Schluckebier Oil	4990 Frank Road, Frankenmuth, MI 48734.
RF272-74589	EDS Refinery Corporate	15750 North East Street, Lansing, MI 48906.
RF272-74590	Ken Sutherland Gas & Oil Inc.	11379 3 Mile Road, Morley, MI 49336.
RF272-74591	United Petroleum Corporation	P.O. Box 27579, Milwaukee, MI 53227.
RF272-74593	Flippin Brother Well Drilling	Route A, Flippin, AR 72634.
RF272-74594	Switzer Petroleum Products, Inc.	P.O. Box 860343, Plano, TX 75074.
RF272-75014	Svatek Distributing Co.	P.O. Box 866, Wharton, TX 77488.
Total	209	

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Case No.	Firm	Location
RF300-06623	Southside Gulf	1911 South Stockton, Monahans, TX 79756.
RF300-06624	Young Drive In #3	South Mechanic, El Campo, TX 77437.
RF300-07016	One Stop	612 Pebblebrook, Alan, TX 75002.
RF300-07017	One Stop #2	4005 Stemmons, Garland, TX 76201.
RF300-07021	One Stop	Hwy. 75 at 380, McKinney, TX 76201.
RF300-07022	One Stop	4005 Stemmons, Denton, TX 76201.
RF300-07023	Wylie Propane Gas	PO Box 578, Wylie, TX 75098.
RF300-07024	Willow Dist.	2601 Cockrell LN., Dallas, TX 75215.
RF300-07026	Hawkins Gulf	HWY. 64 W, Somerville, TN 38068.
RF300-07029	451 Service Center	PO Box 368, Senatobia, MS 38668.
RF300-07031	Welland Peanut Co., Inc.	HWY. 258, Woodland, NC 27897.
RF300-07035	Carter's Best Way	214 E. Front St., Haynesville, LA 71038.
RF300-07039	Jet Fleet Corp.	5200 Keller Spring Rd., Dallas, TX 75248.
RF300-07040	Jerry Jeuno C/O J & M	4706 Barksdale Blvd., Bossier City, LA 71111.
RF300-07042	Somme's Food Mart #2	PO Box 96, Des Allemands, LA 70030.
RF300-07043	Somme's Food Mart #1	PO Box 96, Des Allemands, LA 70030.
RF300-07045	Farmers Oil Co	PO Box 159, Walstonburg, NC 27888.
RF300-07047	H & H Gulf	3000 S. Lamar St., Dallas, TX 75215.
RF300-07053	E-Z Shop	107 Jennings St., Bennettsville SC 29512.
RF300-07303	Happy Stores, Wilson	1560 Leaview Ave., Suite 2, Norfolk, VA 23503.
RF300-07317	Parkway Gulf	N S 127 St., Lawrenceburg, KY 40342.
RF300-07322	Provine Grocery	Rt. 3, Box 266, Grenada, MS 38901.
RF300-07324	Leroy Gulf	PO Box 64, Leroy, AL 36548.
RF300-07325	Kwik Mart	PO Box 849, Windeboro, LA 71418.
RF300-07328	Rayne Gulf Service Station	203 W. Branch, Rayne, LA 70578.
RF300-07332	Bob's Truck Stop	Rt. 2, Box 146, Mt. Pleasant, TN 38474.
RF300-07335	Town & Country Food Mart	503 Maysville Rd., Mt. Sterling, KY 40353.
RF300-07346	Hendrix Gulf Service	200 Hwy. 431 South, Boaz, AL 35957.
RF300-07351	Mel Dahle Oil	101 1st Ave. NW., Watertown, SD 57201.
RF300-07358	Collins Mini Mkt. & Bait Shop	Rt. 4, Columbia, TN 38401.

MAY 11, 1989—Continued

Case No.	Firm	Location
RF300-07360	Marion Station	PO Box 632, Marion, LA 71260.
RF300-07363	A & T Highway	Rt. 2, 276, Canton, NC 28716.
RF300-07364	Allen Store	Rt. 2, Robeline, Allen, LA 71469.
RF300-07372	Guntersville Service Center	500 Gunter Ave., Guntersville, AL 35976.
RF300-07374	Gordon Gulf Station	120 Broadway, Mt. Pleasant, TN 38474.
RF300-07375	Gulf Truck Stop	PO Box 770, Collinsville, AL 35961.
RF300-07620	Simmerman Gulf	P.O. Box 5, Sardis, MS 38666.
RF300-07635	Dumas Oil Co	8024 Glenwood Avenue, Raleigh, NC 27612.
RF300-07638	Motor Lodge Gulf	1107 S. College Ave., Newark, DE 19711.
RF300-07644	Kens Super Service Inc.	812 W. Laketon Ave., Muskegon, MI 49441.
RF300-07651	Fulton Market	9439 N. US 31, Freesoil, MI 49411.
RF300-07652	Chucks Ful Service	127 N. Charles Street, White Clouds, MI 49349.
RF300-07654	Pelullo Gulf	1869 Kennedy Blvd., Jersey City, NJ 07305.
RF300-07659	Scheoder Oil Co	367 Glenn Oak, San Antonio, TX 78214.
RF300-07669	Tim Alan Shrimp Boat	P.O. Box 525, Little River, SC 29566.
RF300-07670	Walter Mintz Seafood	P.O. Box 525, Little River, SC 29566.
RF300-07671	Ayden Transit Co., Inc	P.O. Box 87, Grifton, NC 28530.
RF300-07681	Gene Garage	628 East Savidge, Spring Lake, MI 49456.
RF300-07687	Little John Taxi Service	2505 Farrisview, Memphis, TN 38118.
RF300-07688	Benton Furniture Co., Inc	229 Main St., Greenville, NC 27834.
RF300-07690	Captain Dicks Marina	P.O. Box 601, Murrells Inlet, SC 29576.
RF300-07700	Rays Gas	2210 Holton Rd, Muskegon, MI 49445.
RF300-07705	Cockran Service Center	216 W. Broad St., Fairburn, GA 30213.
RF300-07707	Hollywood Gulf	2242 Hollyway Drive, Jackson, TN 38305.
RF300-07716	Peter Pan Service Station	103 N. Panola St., Senatobia, MS 38668.
RF300-07721	Cordova Service Station	P.O. Box 57, 8610 Macon Rd, Cordova, TN 38018.
RF300-07727	Fayetta County School System	P.O. Box 10, Somerville, TN 38068.
RF300-07728	Ambu Wagon Inc.	94 1At St., New Rochelle, NY 10801.
RF300-07729	American Ready Mix	P.O. Box 27441, Memphis, TN 38127.
RF300-07737	McPeak Service Center	7515 Baseline Rd, North Little Rock, AR 72118.
RF300-07746	University Gulf	600 Colwater Rd., Murray, KY 42071.
RF300-07889	Rice Oil Company	Rural Route Box 16, Westhope, ND 58793.
RF300-07895	Allstate Auto Rents Inc	3206 Live Oak Drive, Dallas, TX 75204.
RF300-07896	Allstate Auto Rents Inc	2423 West Mockingbird Ln, Dallas, TX 75235.
RF300-07897	Bronco Transportation	153 Avery Street, Dallas, TX 75208.
RF300-07898	Bandit Messeror of Dallas	2136 North Hardwood Drive, Dallas, TX 75201.
RF300-07899	B Line Delivery Inc	Imperial Central, Dallas, TX 75235.
RF300-07900	Murphy Bonded Warehouse Inc	5850 Courtesy Lane, Shreveport, LA 71133.
RF300-07901	Allstate Auto Rents Inc	3535 Forrest Lane, Dallas, TX 75042.
RF300-07902	Castle Delivery Service	3177 Irving Street, Dallas, TX 75247.
RF300-07903	Sams Auto Service	5604 Westfield Avenue, Pennsauken, NJ 08110.
RF300-07905	Ben Parkhouse	Box 523, Casselton, ND 58012.
RF300-07907	Wallace Service Center	506 East McPherson, Nashville, GA 31368.
RF300-07908	Dick Wilson Gulf	1529 Odette Lane, Las Vegas, NV 89112.
RF300-07910	McVay Service	110 N. Mill St., Fredricksburg, OH 44627.
RF300-07911	Bennett Grocery	P.O. Box 332, Garysburg, NC 27831.
RF300-07916	Mitcalf Service Station	Route Box 247, Sycamore, GA 31790.
RF300-07917	Halls Gulf	Route 7, Box 540, Baxley, GA 31513.
RF300-07922	Hazel Road Gulf Inc	309 Hazed Street, Clifton, NJ 07011.
RF300-07924	Tifton Maintenance Center	Route 3, Box 288, Tifton, GA 31794.
RF300-07952	Schneider Service	101 East Main, Bismarck, ND 58501.
RF300-07961	Stephen R. Skillings Auto Serv	120 Plymouth, St. Abington, MA 02351.
RF300-07965	Steve Halls Automotive Ctr	2239 Bailey Avenue, Buffalo, NY 14211.
RF300-07966	East Brother Service Station	P.O. Box 3428, La Grange, GA 30241.
RF300-07969	Vorgt Cash Grocery	Box 1 Route 1, Olnsted, IL 62970.
RF300-07972	G & G Car Wash & Gas	920 Madison Avenue, Madison, IL 62060.
RF300-07983	Knights Gulf Station	Route 125, Barrington, NH 03825.
RF300-07988	A & M Service Station	814 Nicholson Street, Richland, GA 31825.
RF300-07989	Long Sing Service	207 S. Stonewall St., Dawson, GA 31742.
RF300-07992	Williams Gulf Service Station	34 N. Main Street, Brewster, NY 10509.
RF300-07995	Botti Auto Sales	494 Bridgeport Avenue, Shelton, CT 06484.
RF300-07998	R & S Gulf Service	3020 N. Main Street, Jacksonville, FL 32206.
RF300-07999	Ray Service Station	479 Main Street, Torrington, CT 06790.
RF300-08003	Dave Gulf Inc	9 Liberty Ct., Washingtonville, NY 10992.
RF300-08005	Flying Tigers	4831 Express Drive, Charlotte, NC 28219.
RF300-08442	Grady & John H. Latham Dairy	Route 1 Box 32, Gordon, AL 35466.
RF300-08445	Walsh Gulf	25639 W. 7 Mile, Redford, MI 48240.
RF300-08447	R. E. Ficdor Farm	Rt. 1 Box 329, Ethelsville, AL 35461.
RF300-08453	Grimms Pump Service	128 St. Francis Street, Rapid City, SD 57701.
RF300-08466	Mill Road Service	430 White Plains Road, Eastchester, NY 10707.
RF300-08470	Hilltop Gulf Service Station	Rt. 1 Box 982, Lynn, AL 35575.
RF300-08473	Friendship Store	HWY 76 W., Hinawassee, GA 30546.
RF300-08474	Blissfield Gulf	505 W. Adrian Street, Blissfield, MI 49220.
RF300-08485	Lens Service	Box 6, Gaylord, MN 55334.
RF300-08486	Geo Smith Fuel Oil Inc	7748 Stillwell Road, Jacksonville, FL 32221.
RF300-08495	Data Incorporated	100 E. Texas, Columbia, MO 65202.
RF300-08497	Vasel Gulf	Rd. 1 Box 76, Galway, NY 12074.
RF300-08506	South Shore Car Wash	523 W. 17th, Holland, MI 49423.
RF300-08509	Craft Spraying Inc	P.O. Box 256, Farmville, NC 27838.
RF300-08510	Cox Trailer Inc	P.O. Box 338, Grifton, NC 28530.

MAY 11, 1989—Continued

Case No.	Firm	Location
RF300-08516	Garner Wholesale	1702 Knowlwood Dr., Greenville, NC 27834.
RF300-08519	L & B Car Wash	P.O. Box 3243, Darien, CT 06820.
RF300-08521	Cherokee Exxon & Rivers Hdwre	16110 S W 108 Circle, Miami, FL 33157.
RF300-08525	Sleboda Gulf Service Station	38 Wyoming Ave., Wyoming, PA 18644.
RF300-08526	Flood Service Center Inc	18 Franklin Street, Stoneham, MA 02180.
RF300-08527	Bob Service Center	2032 Greensboro Ave., Tuscaloosa, AL 35401.
RF300-08529	George Gulf	914 W. State Street, Fremont, OH 43420.
RF300-08532	Wynn Service Station	212 Church St. NW, Decatur, AL 35601.
RF300-08536	Gordon Gulf Service Center	7921 White Bluff Rd., Savannah, GA 31406.
RF300-08538	Don Gulf Service	Market & Buffalo, Cadiz, OH 43967.
RF300-08541	Peace Tree Roxford Gulf	3639 Peachtree Road, Atlanta, GA 30319.
RF300-08547	V J Service Station	60-41 Metro Avenue, Ridgewood, NY 11138.
RF300-08550	East Town Car Wash	499 E. 8th Street, Holland, MI 49423.
RF300-08551	Pica Automotive Service	13-15 Ayers Village Road, Methuen, MA 01844.
RF300-08552	Downtown Car Wash	149 S. River Avenue, Holland, MI 49423.
RF300-08554	Jarvis Gulf	155 Arthor Road, Asheville, NC 28806.
RF300-08555	Artie Service Centers	Vassar Road, Wappingers Falls, NY 12590.
RF300-08560	Phills Service Station	252 Kimball Street, Fitchburg, MA 01420.
RF300-08563	Cliff Superette	P.O. Box 103 HWY 26, Hatcheckubbe, AL 36858.
RF300-08567	Johnson Mobile Service	929 N. Knowles Ave, Cogswell, ND 58017.
RF300-08569	Ken Lakeside Gulf	P.O. Box 1486, Meredith, NH 03253.
RF300-08571	Sandberg Service Station	1776 6th NW #202, Winter Haven, FL 33881.
RF300-08573	Bob One Gulf Service	323 Burleigh Blvd, Tavares, FL 32778.
RF300-08575	Svatek Distributing Co	P.O. Box 866, Wharton, TX 77488.
RF300-08577	Avirett Express	PO Box 3166, Cookeville, TN 38501.
RF300-08579	Helane Shield	Main St. Rt. 11 Box 49, Alton Bay, NH 03810.
RF300-08584	The Station	Box 64, Pembroke, GA 31321.
RF300-08586	Valenzano Super Service	1500 Lincoln Avenue, Utica, NY 13502.
RF300-08592	Shelton Gulf Service	315 Retnuh Drive, Winston-Salem, NC 27101.
RF300-08593	Freddie Automotive Ser. Ctr	395 Broadway, Chicopee, MA 01020.
RF300-08594	Pittinger Gulf	7 Oak Hill Drive, Hanover, PA 17331.
RF300-08595	Klege Corner	604 8th, Baraboo, WI 53913.
RF300-08596	Southside Gulf	2032 Gleenson Ave., Tuscaloosa, AL 35401.
RF300-08912	Suburban Golf Course	1730 Morris Avenue, Union, NJ 07083.
RF300-09241	B-S Service	Box 13, Forest River, ND 58233.
RF300-09243	Marvca Import Car Service	789 Main Street, Springfield, MA 01105.
RF300-09244	Robo Car Wash	1200 S. 1st. Street, Willmar, MN 56201.
RF300-09245	66 Car Wash	1200 S. 1st. Street, Willmar, MN 56201.
RF300-09246	Tompsons Gulf Service	St. Rt. Box 370, Stockton, AL 36579.
RF300-09248	Shore Getty	178 Four Winds Dr., Middletown, NJ 07748.
RF300-09249	Dicks Gulf	625 Winthrop Street, Larrance, MA 01960.
RF300-09250	Lana Gas & Tire Shop	201 Main Street, Sauk Centre, MN 56378.
RF300-09251	Shaws Service Station	4027, S. U S 41, Marquette, MI 49855.
RF300-09255	Rays Gulf	Frd 2 Box 1250, Mechanic Falls, ME 04256.
RF300-09258	Bob Gulf	3440 Chicago Drive, Hudsonville, MI 49426.
RF300-09264	Lloyd Lane Inc	P.O. Box V92, Chiefland, FL 32626.
RF300-09268	Johns 76 Service	202 W. Plott, Maquobeta, IA 52060.
RF300-09270	Wymore Oil Co	Wymore, Wymore, NE 68466.
RF300-09271	Lous Morane McKinney Gulf Ser	15471 Spring Garden, Detroit, MI 48205.
RF300-09276	Collins Oil Co	General Delivery, Barnesville, MN 56514.
RF300-09277	Stevens Aviation, Inc	P.O. Box 589, Greer, SC 29652.
RF300-09279	Lazara Service Center	435 Hubbel St, Marshall, WI 53559.
RF300-09281	Bobs Certified	315 S. Delaware, Crooksville, OH 43731.
RF300-09282	Brewens Gulf Service	2575 Kathleen Dr, Brighton, MI 48116.
RF300-09284	Brand Service Service	3330 E. Main #15, Mesa, AZ 85203.
RF300-09285	Meadowcroft Gulf	506 Winding Way, Warminster, PA 18974.
RF300-09286	Yeats Transfer Co	Box 687, Altavista, VA 24517.
RF300-09239	Lloyd Lane Inc	Box 492, Chiefland, FL 32626.
RF300-09295	Southeastern Car & Truck	Box 92, Montgomery, AL 36195.
RF300-09835	Sweetwater Drilling Co	311 Ash, Sweetwater, TX 79556.
RF300-09837	Fritts Oil Co	P.O. Box 1429, Lexington, NC 27292.
RF300-09844	Sweeney Distributing Co	3600 Wetxel St., Wheeling, WV 26003.
RF300-09846	FCX, Inc	PO Box 2419, Raleigh, NC 27602.
RF300-09849	RF3009-9849	P.O. Box 2419, Raleigh, NC 27602.
RF300-09851	Richardson Oil Co	N 8294 HWY. E, Brooklyn, WI 53521.
RF300-09852	B & F Distributing	830 Main Street, Red Wing, MN 55066.
RF300-09853	H McLain Oil Co	P.O. Box 116, Carroll, NE 68723.
RF300-09854	Iredell Oil Co	1310 N Center Street, Statesville, NC 28677.
RF300-09855	Meijer, Inc	2929 Walker, N.W., Grand Rapids, MI 49504.
RF300-09856	FCX, Inc	P.O. Box 2419, Raleigh, NC 27602.
RF300-09859	Long Mfg Co	7987 Main Street, Tarboro, NC 27886.
RF300-09870	Baldwin Piano & Organ Co	422 Wards Corner Road, Loveland, OH 45140.
RF300-09871	H McLain	P.O. Box 116, Carroll, NE 68723.
RF300-09873	B & F Distributing	830 Main Street, Red Wing, MN 55066.
RF300-09874	Matson Distributing Inc	1221 1st Ave N., Moorhead, MN 56560.
RF300-09876	6329 Myrtle Grove Road	Wilmington, Wilmington, NC 28403.
RF300-09877	Farmer	Route 1 Box 100 B, Lyons, GA 30436.
RF300-09879	Torticilla Service	P.O. Box 451, Dakota City, NE 68731.
RF300-09881	Joed Inc	3431 School House Lane, Philadelphia, PA 19144.
RF300-09884	Filipia Auto Service	815 Hamilton, Sioux City, IA 51103.

MAY 11, 1989—Continued

Case No.	Firm	Location
RF300-09903	Marks Super Gulf	420 Worth, Council Bluffs, IA 51501.
RF300-09908	Stewart Oil Co	1 N Logan, Danville, IL 61832.
RF300-09914	Myers Service Station	Rd 5 Box 5280, Spring Grove, PA 17362.
RF300-09919	B T Gulf	P.O. Box 239, Libson, ME 04250.
RF300-09920	Courtrighs Service Station	RR3 P.O. Box 189, Pekin, IL 61554.
RF300-09922	Fletchers Service	P.O. Box 182, Minetto, NY 13115.
RF300-09923	Ortman Gas Mart	524 No 13th, Hebron, NE 68370.
RF300-09924	Howard Enterprises	1000 Market Street, Oxford, PA 19363.
RF300-09926	Rainbow Getty	6829 Wedd, Merriam, KS 66203.
RF300-09927	Lavilles Getty	395 W. Northfield Road, Livingston, NJ 07039.
RF300-09929	Grasslands Service Station	Knollwood-Grasslands Road, White Plains, NY 10603.
RF300-09932	Amcon Products Inc	2203 N. Lois Ave., Ste. 720, Tampa, FL 33607.
RF300-09934	Point Gas Station	P.O. Box 72, E Freetown, MA 02717.
RF300-09958	Fuel Distributor Inc	2415 Garden Oaks, Irvin, TX 75061.
RF300-09959	Fuel Distributor Inc	100 Irby Lane, Irving, TX 75061.
RF300-09960	Fule Distributor Inc	617 Betline, Irving, TX 75061.
RF300-09971	Ptopp Stop Inc	8768 Belding Road, Rockford, MI 49341.
RF300-09974	Food Sack	Hwy 45, Fulton, KY 42041.
RF300-09976	Shaftbury Gulf	Box 204, Shaftbury, VT 05262.
RF300-09979	Campus	803 Medary, Brookings, SD 57006.
RF300-09981	Tom Gulf Service	Route 1 Box 828A, Orefield, PA 18069.
RF300-09982	Huerters Service	Main Street, Kelly, KS 66446.
RF300-09987	Green Hills Standard	9710 South West 100th Ave, Miami, FL 33176.
RF300-10229	Lincoln Co. Coop Oil Co	Box B, Tyles, MN 56178.
RF300-10230	Burrell Express Inc	852 McCrath Highway, Somerville, MA 02145.
RF300-10232	Kanoma Coop Association	P.O. Box 58, Coffeyville, KS 67337.
RF300-10235	Farm Service Coop	306 6th Street, Casming, IA 50841.
RF300-10236	Harry Love Beverage Co	1101 South Broadway, Greenville, MS 38701.
RF300-10240	Dubnlap Farmers Coop	105 So. 1st Street, Dunlap, IA 51529.
RF300-10408	Iredell Oil Company	1310 N Center Street, Statesville, NC 28677.
RF300-10482	Tristate Oil Co., Inc	P.O. Box 759, Easton, MD 21601.
RF300-10484	Community Service Center	260 Territorial Road, New Bern, NC 28560.
RF300-10485	Cornetts Pump Service	101 Tremont Frice, Tuscumbia, AL 35674.
RF300-10486	Wells Exxon	316 Main Street, Nyack, NY 10960.
Total	224	

[FR Doc. 89-16935 Filed 7-18-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FR-3618-8]

Financial Assistance Program; Extension of Deadline

AGENCY: Environmental Protection Agency.

ACTION: Notice of extension of deadline.

SUMMARY: The Environmental Protection Agency's (EPA) Pollution Prevention Office (PPO) is announcing that the deadline for submitting applications for the Pollution Prevention Incentives for States program has been extended from August 15, 1989 until September 30, 1989.

FOR FURTHER INFORMATION CONTACT: Jackie Krieger or Brian Symmes, Office of Policy, Planning, and Evaluaton (OPPE), Pollution Prevention Office (PPO), Mail Code PM-219, U.S. Environmental Protection Agnecy, 401 M Street, SW., Washington, DC 20460. Phone: (202) 245-4167.

SUPPLEMENTARY INFORMATION: On May 17, 1989, the EPA announced in the **Federal Register** (54 FR 21281) the availability of $3.2 million in grant/cooperative agreement funds for the Pollution Prevention Incentives for States program. The purpose of this program is to support state- and regional-level innovative pollution prevention programs that address the reduction or elimination of pollutants across all environmental media: air, land, and water. Eligible applicants are state and interstate agencies.

With this publication, EPA is announcing an extension of the deadline for submittal of applications from August 15 to September 30, 1989. Response to the May 17 **Federal Register** (54 FR 21281) notice has been substantial; EPA has received over 100 letters of intent and many organizations are still learning of this financial assistance program. EPA believes that an extension of the deadline of six weeks will give potential applicants more time to coordinate within their states and regions and to develop comprehensive multimedia applications. In addition, EPA plans to increase the total amount of funds distributed in this round by including any additional FY 1990 grant funds appropriated by Congress with the $3.2 million in remaining FY 1989 funds. Another round of distributing grant funds in FY 1990 is not planned. Interested organizations that did not submit a letter of intent by May 31 may nevertheless submit an application by September 30.

To apply for funds, state and interstate agencies must submit a complete application package plus two copies to: Grants Operations Branch, Grants Administration Division (PM-216F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Applications postmarked after September 30, 1989 will not be considered for an award.

Application packages can be obtained by contacting Jackie Krieger at the address and phone number listed above in the "Further Information" section.

Robert H. Wayland III,

Deputy Assistant Administrator.

[FR Doc. 89-16870 Filed 7-18-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3616-9]

Transfer of Data to Contractor

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) will transfer to its

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contractor, Westat, Inc., information which has been, or will be, submitted to EPA under the authority of the Resource Conservation and Recovery Act (RCRA). This firm is conducting regulatory impact analyses, regulatory flexibility analyses, operational and resource impact analyses, environmental impact statements, and developing information about hazardous waste generation and handling activities. Some of the information may have a claim of business confidentiality.

ADDRESS: Comments should be sent to Dina Villari, Document Control Officer, Office of Solid Waste (OS-312), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Comments should be identified as "Transfer of Confidential Data."

FOR FURTHER INFORMATION CONTACT: Dina Villari, Document Control Officer, Office of Solid Waste (OS-312), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4670.

SUPPLEMENTARY INFORMATION:

I. Transfer of Data

The U.S. Environmental Protection Agency is using annual and biennial report data to conduct regulatory impact analyses, regulatory flexibility analyses, operational and resource impact analyses, environmental impact statements, and to develop information about hazardous waste generation and handling activities. These analyses will support the policies and programs established for solid and hazardous waste management under the authority of the Resource Conservation and Recovery Act of 1976 (RCRA), including subsequent amendments through 1984.

Under EPA Contract No. 68-01-7359, Westat, Inc., will assist the Information Management Staff of the Office of Solid Waste in using annual and biennial report data to conduct regulatory impact analyses, regulatory flexibility analyses, operational and resource impact analyses, environmental impact statements, and to develop information about hazardous waste generation and handling activities. Some of the information being transferred may have been claimed as confidential business information.

In accordance with 40 CFR 2.305(h), EPA has determined that Westat requires access to confidential business information (CBI) submitted to EPA under the authority of RCRA to perform work satisfactorily under the above-noted contract. EPA is issuing this notice to inform all submitters of confidential business information that EPA may transfer to this firm, on a need-to-know basis, CBI collected under the authority of RCRA. Upon completing their review of materials submitted, Westat will return all such materials to EPA.

Westat has been authorized to have access to RCRA CBI under the EPA "Contractor Requirements for the Control and Security of RCRA Confidential Business Information" security manual. EPA has approved the security plan of the contractor and will inspect the facility and approve it prior to RCRA CBI being transmitted to the contractor. Personnel from this firm will be required to sign nondisclosure agreements and be briefed on appropriate security procedures before they are permitted access to confidential information, in accordance with the "RCRA Confidential Business Information Security Manual" and the Contractor Requirements Manual.

Dated: June 29, 1989.

Robert L. Duprey,

Acting Assistant Administrator.

[FR Doc. 89-16859 Filed 7-18-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-100066; FRL-3618-4]

Science Applications International Corp., ABT, Assoc. Inc., Radian Corp., Versar Inc., Westat Inc., and John M. Wise Assoc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Science Applications International Corp. (SAIC), ABT Assoc. Inc., and Radian Corp. and its subcontractors, Westat Inc., Versar Inc., and John M. Wise Assoc. have been awarded a contract to perform work for EPA's Office of Water Regulations & Standards and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to SAIC, ABT Assoc. Inc., and Radian Corp., its subcontractors Westat Inc., Versar Inc., and John M. Wise Assoc. consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2), respectively and will enable them to fulfill the obligations of the contracts and this notice serves to notify affected persons.

DATES: SAIC, ABT Assoc. Inc., Radian Corp., its subcontractors Westat Inc., Versar Inc., and John M. Wise Assoc. will be given access to this information no sooner than July 24, 1989.

FOR FURTHER INFORMATION CONTACT:

By mail: Catherine S. Grimes, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

Office location and telephone number: Rm. 212, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-4460.

SUPPLEMENTARY INFORMATION: Under the Clean Water Act, the Office of Water Regulations & Standards is conducting a survey to obtain information to support the development of an effluent guidelines regulation. A data base will be used to develop and evaluate a sampling plan for surveying the pesticide formulating/packaging point source category. In addition, the production rate of pesticide products will be used, in conjunction with the data obtained from the OWRS survey, towards the development of wastewater pollutant limitations and standards. The type of information to be collected includes a description of the formulating and packaging processes, the volume and chemical nature of wastewater generated by these processes and any related sources of wastewater, the treatment technologies used to remove pollutants from wastewater and the effectiveness of this treatment.

Under Contract No. 68-03-3453, SAIC will assist with the statistical analysis for development of the effluent guidelines regulation.

Under Contract No. 68-C8-0008, Radian Corp. and its subcontractors, Westat Inc., Versar Inc., and John M. Wise Assoc. will assist with the engineering analysis for development of the effluent guideline regulation.

Under Contract No. 68-03-3548, ABT Assoc. will assist with the development of an economic impact analysis of effluent guidelines on the pesticide industry. This analysis will require use of sections 6 and 7 of FIFRA data, needed for the plant/product line closure analysis and for the foreign trade analysis. This review will include the use of demand elasticity estimates for clusters or groups of pesticide active ingredients both imports and exports.

The Office of Water Regulations & Standards and the Office of Pesticide Programs have jointly determined that the contracts herein described involve work that is being conducted in connection with FIFRA, in that pesticide chemicals will be subject of certain evaluations to be made under these contracts. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2) the contracts with SAIC, ABT Assoc. Inc., and Radian Corp. prohibit use of the information for any purpose other than purposes specified in the contract; prohibit disclosure of the information in any form to a third party without prior written approval from the Agency or affected business; and require that each official and employee of the contractors sign an agreement to protect the information from unauthorized release. In addition, SAIC, ABT Assoc., and Radian Corp. and its subcontractors, Westat Inc., Versar Inc., and John M. Wise Assoc. are required to submit for EPA approval a security plan in accordance with the FIFRA Information Security Manual under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to these contractors until the above requirements have been fully satisfied. Records of information provided to these contractors and subcontractors will be maintained by the Project Officer for these contracts in the EPA, Office of Water Regulations & Standards. All information supplied to SAIC, ABT Assoc. Inc., Radian Corp. and its subcontractors Westat Inc., Versar Inc., and John M. Wise Assoc. by EPA for use in connection with these contracts will be returned to EPA when they have completed their work.

Dated: July 5, 1989.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

[FR Doc. 89-16868 Filed 7-18-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-100065; FRL-3618-5]

Newtek Corp.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Newtek Corp. has been awarded a contract to perform work for the EPA Office of Pesticide Programs, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Newtek Corp. consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2), respectively. This transfer will enable Newtek Corp. to fulfill the obligations of the contract and serves to notify affected persons.

DATES: Newtek Corp. will be given access to this information no sooner than July 24, 1989.

FOR FURTHER INFORMATION CONTACT:

By mail: Catherine S. Grimes, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 212, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-4460.

SUPPLEMENTARY INFORMATION: Under Contract No. 68-W9-0014, Newtek Corp. will assist the Office of Pesticide Programs (OPP) in the process of converting major flat file systems to ADABAS, and develop major data systems under ADABAS sofware in a Natural programming language supported by the Customer Information Control System (CICS). Conversion to an ADABAS environment will provide the systems capability to interact with each other via both online and the batch environment. Newtek Corp. will provide data base management system analysis and have access to data bases containing information submitted to EPA under FIFRA and FFDCA. This access in incidental to their work, which involves loading and maintenance of all systems and applications sofware, system performance tuning, data file backup services, diagnosis and remedy of system hardware and software failures and implementation of EPA directed security protocols within the system environment. While Newtek Corp. employees have complete access to all data within the systems environment, they are not in a position to know the actual significance to the data, nor do they use the data within its subject matter context.

The Office of Pesticide Programs has determined that access by Newtek Corp. to information on all pesticide chemicals is necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2) the contracts with Newtek Corp. prohibits use of the information for any purpose other than purposes specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency or affected business; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition Newtek Corp. is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Pesticide Programs. All information supplied to Newtek Corp. by EPA for use in connection with this contract will be returned to EPA when Newtek Corp. has completed its work.

Dated: July 3, 1989.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

[FR Doc. 89-16869 Filed 7-18-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-42050C; FRL-3617-8]

Illinois State Plan for Certification of Applicators of Pesticides Classified for Restricted Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to approve amendments to the Illinois State Plan.

SUMMARY: The State of Illinois has submitted to EPA proposed amendments to the Illinois State Plan for Certification of Applicators of Pesticides Classified for Restricted Use. Illinois is proposing to revise its commercial applicator recordkeeping provisions and to establish additional commercial

applicator subcategories. Illinois also proposes a strengthening of private applicator certification and recertification requirements and the establishment of a special certification for private applicator grain fumigation. Notice is given of the intention of the Regional Administrator, Region V, to approve the proposed amendments. EPA is at this time soliciting comments on the proposed amendments.

DATE: Written comments should be submitted on or before August 18, 1989.

ADDRESSES: Send written comments identified by the docket control number OPP-42050C, to: Lavarre Uhlken, Pesticides and Toxic Substances Branch (5SPT-7), U.S. Environmental Protection Agency, Region V, 230 Dearborn St., Chicago, IL 60604.

Copies of the Illinois State Plan and the proposed amendments are available for review at the following locations:

1. Pesticides and Toxic Substances Branch, U.S. Environmental Protection Agency, Region V, 536 South Clark St., 7th Floor, Federal Building, Chicago, IL 60605
2. Bureau of Plant and Apiary Protection, Illinois Department of Agriculture, State Fairgrounds, Springfield, IL 62794-9281.

FOR FURTHER INFORMATION CONTACT: Lavarre Uhlken (312-886-6016), or William Anderson (217-785-2427), Chief, Bureau of Plant and Apiary Protection, Illinois Department of Agriculture, State Fairgrounds, Springfield, IL 62794-9281.

SUPPLEMENTARY INFORMATION: The Illinois State Plan for Certification of Applicators of Pesticides Classified for Restricted Use was formally approved by notice in the **Federal Register** of July 26, 1978 (43 FR 32327). Illinois is proposing a revision of the recordkeeping requirements for commercial applicators.

Other amendments propose that private applicators be required to pass a written examination to demonstrate competency. The written examination may be taken with or without formal training programs offered by the University of Illinois, Cooperative Extension Service. The Private Applicator training programs are now required to be a minimum of 3 hours in length instead of 2 hours. The State is proposing at this time to amend the recertification procedures for private applicators by requiring private applicators to become recertified on a 3-year cycle instead of a 5-year cycle.

In addition, Illinois proposes to further subdivide the commercial category, Industrial, Institutional, Structural and Health Related Pest Control, by adding the subcategory Wood Products Pest Control. The Illinois Department of Public Health, in cooperation with the Illinois Department of Agriculture, certifies and recertifies commercial applicators in this category. The subcategories under the Ornamental and Turf category have been revised and are now: (1) Ornamental Pest Control, (2) Turf Pest Control, and (3) Plant Management Pest Control. A new commercial certification category, Soil Fumigation Pest Control has been added. Private applicators engaged in grain fumigation will be required to receive a special grain fumigation certification in addition to their private applicator certification.

Copies of the amended State Plan are available at the addresses given above. EPA is now soliciting comments on these amendments.

Dated: July 3, 1989.

Valdas V. Adamkus,

Regional Administrator, Region V.

[FR Doc. 89-16861 Filed 7-18-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-42026B; FRL-3616-2]

Indiana State Plan for Certification of Applicators of Pesticides Classified for Restricted Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to approve amendments to the Indiana State Plan.

SUMMARY: The State of Indiana has submitted to EPA proposed amendments to the Indiana State Plan for Certification of Applicators of Pesticides Classified for Restricted Use. Indiana is proposing to amend its Plan by establishing new commercial certification categories and subcategories and registered technican programs for Categories 3B and 7B. Indiana also is requiring additional private applicator certificatidn requirements in space and commodity fumigation and eliminating the nonreader certification provision. Notice is given of the intention of the Regional Administrator, Region V, to approve the proposed amendments. EPA is now soliciting comments on the proposed amendments.

DATE: Comments must be received by August 18, 1989.

ADDRESSES: Send comments identified by the docket control number OPP-42026B, to: Lavarre Uhlken, Pesticides and Toxic Substances Branch (5SPT-7), U.S. Environmental Protection Agency, Region V, 230 Dearborn St., Chicago, IL 60604.

Copies of the Indiana State Plan, as proposed, are available for review at the following locations:

1. Pesticides and Toxic Substances Branch, U.S. Environmental Protection Agency, Region V, 536 South Clark St., 7th Floor, Federal Building, Chicago, IL 60605
2. Pesticide Administrator, Indiana State Chemist Office, Department of Biochemistry, Purdue University, West Lafayette, IN 47907.

FOR FURTHER INFORMATION CONTACT: Lavarre Uhlken, (312-886-6016), or David Scott (317-494-1583), Pesticide Administrator, Indiana State Chemist Office, Department of Biochemistry, Purdue University, West Lafayette, IN 47907.

SUPPLEMENTARY INFORMATION: The Indiana State Plan for Certification of Applicators of Pesticides Classified for Restricted Use was formally approved by notice in the **Federal Register** of November 26, 1976 (41 FR 52101). Indiana is now proposing to upgrade its certification program by establishing a new aerial category for commercial applicators and further subdividing the commercial applicator category Industrial, Institutional, Structural and Health Related Pest Control to include the subcategories food industry fumigation and grain fumigation. Uncertified persons working under the direct supervision of a commercial applicator in Wood Destroying Pest Control (Category 7B) and Turf Pest Control (Category 3B) must also successfully complete a comprehensive registered technician program. An applicator who wants to become certified in the above two subcategories must first have been a registered technician. Furthermore, a private applicator who uses space and commodity fumigants is required to receive special certification in space and commodity fumigation in addition to their private applicator certification.

In addition, the nonreader certification provision will be eliminated as a certification option. Unless the State Lead Agency is required by court order, the State will not certify nonreaders.

Copies of the amended State Plan are available for review at the addresses given above. EPA solicits comments on these amendments.

Dated: July 3, 1989.

Valdas V. Adamkus,

Regional Administrator, Region V.

[FR Doc. 89-16862 Filed 7-18-89; 8:45 am]

BILLING CODE 6560-50-M

[PP 7G3531/T581; FRL-3616-5]

Establishment of Temporary Tolerance; Isazofos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for residues of the insecticide isazofos in or on certain raw agricultural commodities. These temporary tolerances were requested by Ciba-Geigy Corp.

DATE: These temporary tolerances expire December 31, 1990.

FOR FURTHER INFORMATION CONTACT:

By mail: William Miller, Product Manager (PM) 16, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 211, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-557-2600.

SUPPLEMENTARY INFORMATION: Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, has requested in pesticide petition (PP) 7G3531 the establishment of temporary tolerances for residues of the insecticide isazofos (O-[5-chloro-1-(methylethyl)]-1H-1,2,4-triazol-3-yl) O,O-diethyl phosphorothioate) and its metabolites expressed as isazofos equivalents, and calculated as its primary hydrolysis metabolite (5-chloro-3-hydroxy-1-isopropyl-1*H*-1,2,4-triazole) in or on corn grain and fresh corn (including sweet corn kernels plus cob with husks removed) at 0.02 part per million (ppm), corn forage and silage at 0.10 ppm, and corn fodder at 0.30 ppm. These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 100-EUP-89, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances are established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active insecticide to be used must not exceed the quantity authorized by the EUP.

2. Ciba-Geigy Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company will also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of EPA or the Food and Drug Administration.

3. These temporary tolerances expire December 31, 1990. Residues not in excess of .02 part per million in or on corn grain and fresh corn, of 0.10 in or on corn forage and silage, and of 0.30 ppm in or on corn fodder after expiration of these tolerances will not be considered actionable if the insecticide is legally applied during the term of, and in accordance with, provisions of the experimental use permit/tolerance.

4. These temporary tolerances may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicate such revocation is necessary to protect the public health.

Authority: 21 U.S.C. 346(j).

Dated: June 28, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89-16540 Filed 7-18-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-42016C; FRL-3616-1]

Michigan State Plan for Certification of Applicators of Pesticides Classified for Restricted Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to approve amendments to the Michigan State Plan.

SUMMARY: The State of Michigan has submitted to EPA proposed amendments to Michigan's State Plan for Certification of Applicators of Pesticides Classified for Restricted Use. Michigan is proposing to upgrade and expand its procedures for the recertification of both private and commercial applicators, add five new subcategories and standards of competency for commercial certification, include additional standards of competency for both private and commercial applicators engaged in the application method of soil and grain fumigation, and require additional administrative standards for commercial specialty categories. Notice is given of the intention of the Regional Administrator, Region V, to approve the proposed amendments. EPA is at this time soliciting comments on the proposed amendments.

DATE: Written comments must be submitted on or before August 18, 1989.

ADDRESSES: Send written comments identified by the docket control number OPP-42016C, to: David Star, Pesticides and Toxic Substances Branch (5SPT-7), U.S. Environmental Protection Agency, Region V, 230 Dearborn St., Chicago, IL 60604.

Copies of the Michigan State Plan and the proposed amendments are available for review at the following locations:

1. Pesticides and Toxic Substances Branch, U.S. Environmental Protection Agency, Region V, 536 South Clark St., 7th Floor, Federal Building, Chicago, IL 60605
2. Pesticide and Plant Pest Management Division, Michigan Department of Agriculture, 611 West Ottawa, North Ottawa Tower, 4th Floor, Lansing, MI 48909.

FOR FURTHER INFORMATION CONTACT: David Star (312-886-6009), or Keith Creagh (517-373-1087), Pesticide and Plant Pest Management Division, Michigan Department of Agriculture, 611 West Ottawa, North Ottawa Tower, 4th Floor, Lansing, MI 48909.

SUPPLEMENTARY INFORMATION: The Michigan State Plan for Certification of Applicators of Pesticides Classified for Restricted Use was formally approved by notice in the **Federal Register** of February 15, 1977 (42 FR 9203). The State of Michigan has now submitted to EPA an amended State Plan. The proposed amendments include the addition of subcategories and corresponding standards of competency for commercial applicators. The Aquatic Pest Control category has been expanded by the addition of microbial pests in swimming pools subcategory and microbial pests in cooling towers subcategory. The Industrial, Institutional, Structural, and Health Related Pest Control category has been expanded to include vertebrate pest control subcategory and interior plantscape subcategory. Under the Ornamental and Turf category there is established a separate Turf subcategory for applicators desiring only certification in turf pest control.

Michigan is proposing to amend the standards of competency for both private and commercial applicators involved in grain and soil fumigation. Before a private or commercial applicator may apply a pesticide through soil and grain fumigation methods, the applicator will be required to receive special certification in grain and soil fumigation in addition to certification as a private or commercial applicator. Further, Michigan has promulgated administrative standards to

permit the adoption of additional requirements for other specialized pesticide applications.

Michigan is also proposing to modify the mechanism used for the recertification of private and commercial applicators by adding a continuing certification credits (pesticide education) program. Voluntary participation in this program, by certified applicators, would be allowed in lieu of taking an appropriate examination for recertification.

EPA is now soliciting comments on the proposed amendments to the Michigan State Plan. Interested persons are invited to submit their written comments, to the address given above.

Dated: July 3, 1989.

Valdas V. Adamkus,

Regional Administrator, Region V.

[FR Doc. 89-16863 Filed 7-18-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-42043D; FRL-3618-6]

Minnesota State Plan for Certification of Applicators of Pesticides Classified for Restricted Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to approve amendments to the Minnesota State Plan.

SUMMARY: The State of Minnesota has submitted to EPA proposed amendments to the Minnesota State Plan for Certification of Applicators of Pesticides Classified for Restricted Use. Minnesota is proposing to amend its Plan by upgrading the certification and recertification provisions for private and commercial applicators and adding two new commercial subcategories. In addition, the amended plan will eliminate direct supervision of uncertified applicators. Notice is given of the intention of the Regional Administrator, Region V, to approve the proposed amendments. EPA is soliciting comments on the proposed amendments at this time.

DATE: Comments must be received by August 18, 1989.

ADDRESSES: Send comments identified by the docket control number OPP-42043D, to: Lavarre Uhlken, Pesticides and Toxic Substances Branch (5SPT-7), U.S. Environmental Protection Agency, Region V, 230 Dearborn St., Chicago, IL 60604.

Copies of the Minnesota State Plan, as proposed, are available for review at the following locations:

1. Pesticides and Toxic Substances Branch, U.S. Environmental Protection Agency, Region V, 536 South Clark St., 7th Floor, Federal Building, Chicago, IL 60605
2. Chief, Agronomy Services Division, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107.

FOR FURTHER INFORMATION CONTACT: Lavarre Uhlken, (312-886-6016), or Michael Fresvik, (612-296-8547), Supervisor, Agronomy Service Division, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107.

SUPPLEMENTARY INFORMATION: The Minnesota State Plan for Certification of Applicators of Pesticides Classified for Restricted Use was formally approved by notice in the **Federal Register** of September 27, 1978 (43 FR 43765). Minnesota is now requesting to upgrade and expand its certification and recertification requirements for private and commercial applicators. Private applicators will be required to pass a written examination or complete a correspondence course to become certified. The written examination can be taken at the end of any county Cooperative Extension Service training sessions, or be completed at a State Office. Certification of commercial applicators will be required by all who apply restricted use pesticides; the Plan proposes to eliminate direct supervision of uncertified commercial applicators. Annual recertification will be required of all commercial applicators except in the Agricultural Pest Control Category. Those certified in the Agricultural Pest Control Category will have a 3-year certification period. Previously the recertification period for commercial applicators, except in the Industrial, Institutional, Structural and Health-Related Pest Control category which remains 1 year, was 5 years. The State plans to establish a fumigation subcategory and a wood preservative subcategory in the Industrial, Institutional, Structural and Health-Related Pest Control Category.

Passage of the 1987 Minnesota Pesticides Control Law, as amended, required the State Lead Agency to change major portions of its certification program.

Copies of the amended State Plan are available for review at the addresses given above. EPA is now soliciting comments on these amendments.

Dated: July 3, 1989.

Valdas V. Adamkus,

Regional Administrator, Region V.

[FR Doc. 89-16864 Filed 7-18-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-42042B; FRL-3618-3]

Ohio State Plan for Certification of Applicators of Pesticides Classified for Restricted Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to approve amendments to the Ohio State Plan.

SUMMARY: The State of Ohio has submitted to EPA proposed amendments to the Ohio State Plan for Certification of Applicators of Pesticides Classified for Restricted Use. Ohio is proposing to amend its Plan by establishing new competency standards and new certification categories and subcategories for private and commercial applicators. Ohio is also proposing to upgrade the recertification training requirements. Notice is given of the intention of the Regional Administrator, Region V, to approve the proposed amendments. EPA is soliciting comments on the proposed amendments at this time.

DATE: Written comments must be submitted on or before August 18, 1989.

ADDRESSES: Send written comments identified by the docket control number OPP-42042B, to: Lavarre Uhlken, Pesticides and Toxic Substances Branch (5SPT-7), U.S. Environmental Protection Agency, Region V, 230 Dearborn St., Chicago, IL 60604.

Copies of the Ohio State Plan, as proposed, are available for review at the following locations:

1. Pesticides and Toxic Substances Branch, U.S. Environmental Protection Agency, Region V, 536 South Clark St., 7th Floor, Federal Building, Chicago, IL 60605.
2. Pesticide Regulation Section, Ohio Department of Agriculture, 8995 East Main St., Reynoldsburg, OH 43068.

FOR FURTHER INFORMATION CONTACT: Lavarre Uhlken (312-886-6016), or Oren Spilker (614-866-6361), Specialist-In-Charge, Pesticide Regulation Section, Ohio Department of Agriculture, 8995 East Main St., Reynoldsburg, OH 43068.

SUPPLEMENTARY INFORMATION: The Ohio State Plan for Certification of Applicators of Pesticides Classified for Restricted Use was formally approved by notice in the **Federal Register** of April 13, 1977 (42 FR 19377). Ohio is now requesting to upgrade general competency standards for the certification and recertification of commercial and private applicators. These include the demonstration of practical knowledge on (1) ground water contamination by pesticides and resource protection and (2) protection of endangered animals and plants. The plan proposes to amend the following commercial applicator categories by adding subcategories: (1) The Forest Pest Control category will include a wood preservation subcategory, (2) The Ornamental Plant and Shade Tree Pest Control category will include an interior plantscape subcategory, and (3) The Specialized Pest Control category will include a bee pest control subcategory, greenhouse pest control subcategory and pole treatment subcategory. Ohio proposes to add a Wood Preservatives Category for private applicators, thus expanding private applicator certification categories to 15. Category competency standards have been expanded to adequately cover the new categories and to reflect changing pest control technologies.

Recertification training requirements are being upgraded to include minimum training credits to be accumulated during the last 2 years of an individual's 3-year certification period. This continuing certification credits program will apply to both commercial and private applicators.

Copies of the amended State Plan are available for review at the addresses given above. EPA is now soliciting comments on these amendments.

Dated: July 3, 1989.

Valdas V. Adamkus,

Regional Administrator, Region V.

[FR Doc. 89-16865 Filed 7-18-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-42052D; FRL-3617-9]

Wisconsin State Plan for Certification of Applicators of Pesticides Classified for Restricted Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to approve amendments to the Wisconsin State Plan.

SUMMARY: The State of Wisconsin has submitted to EPA proposed amendments to the Wisconsin State Plan for Certification of Applicators of Pesticides Classified for Restricted Use. Wisconsin is proposing to amend its Plan by establishing an additional category and subcategory for commercial applicators, and requiring that only certified commercial and private applicators may apply restricted use pesticides. Notice is given of the intention of the Regional Administrator, Region V, to approve the proposed amendments. EPA is at this time soliciting comments on the proposed amendments.

DATE: Comments must be received by August 18, 1989.

ADDRESSES: Send comments identified by the docket control number OPP-42052D, to: David Star, Pesticides and Toxic Substances Branch (5SPT-7), U.S. Environmental Protection Agency, Region V, 230 Dearborn St., Chicago, IL 60604.

Copies of the Wisconsin State Plan and the proposed amendments are available for review at the following locations:

1. Pesticides and Toxic Substances Branch, U.S. Environmental Protection Agency, Region V, 536 South Clark St., 7th Floor, Federal Building, Chicago, IL 60605.
2. Agricultural Resources Management Division, Wisconsin Department of Agriculture, Trade and Consumer Protection, 801 West Badger Road, Madison, WI 53708.

FOR FURTHER INFORMATION CONTACT: David Star (312-886-6009), or Edward Bergman (608-266-0197), Agricultural Resources Management Division, Wisconsin Department of Agriculture, Trade and Consumer Protection, 801 West Badger Road, Madison, WI 53708.

SUPPLEMENTARY INFORMATION: The Wisconsin State Plan for Certification of Applicators of Pesticides Classified for Restricted Use was formally approved by notice in the **Federal Register** of November 28, 1978 (43 FR 55462). Wisconsin is now requesting to upgrade its certification program by establishing a subcategory for wood preservation under the existing commercial category, Industrial, Institutional, Structural and Health Related Pest Control, and by establishing a new commercial applicator category for aerial application. Certification of both private and commercial applicators will be required by all who apply restricted use pesticides; thereby, eliminating all direct supervision of uncertified applicators.

Copies of the amended State Plan are available for review at the addresses given above. EPA is soliciting comments on these amendments at this time.

Dated: July 3, 1989.

Valdas V. Adamkus,

Regional Administrator, Region V.

[FR Doc. 89-16866 Filed 7-18-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51736; FRL-3617-7]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 53 such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 89-799, 89-800, 89-801, September 10, 1989.
P 89-802, September 11, 1989.
P 89-803, September, 12, 1989.
P 89-804, September 11, 1989.
P 89-805, 89-806, 89-807, 89-808, 89-809, September 12, 1989.
P 89-810, September 13, 1989.
P 89-811, 89-812, 89-813, 89-814, 89-815, 89-816, September 16, 1989.
P 89-817, 89-818, 89-819, 89-820, 89-821, 89-822, 89-823, 89-824, 89-825, 89-826, 89-827, 89-828, 89-829, 89-830, 89-831, 89-832, 89-833, September 17, 1989.
P 89-834, September 16, 1989.
P 89-835, September 18, 1989.
P 89-836, 89-837, 89-838, September 20, 1989.
P 89-839, 89-840, 89-841, 89-842, 89-843, September 23, 1989.
P 89-844, September 18, 1989.
P 89-845, 89-846, 89-847, 89-848, 89-849, 89-850, 89-851, September 24, 1989.

Written comments by:

P 89-799, 89-800, 89-801, August 11, 1989.
P 89-802, August 12, 1989.
P 89-803, August 13, 1989.
P 89-804, August 12, 1989.
P 89-805, 89-806, 89-807, 89-808, 89-809, August 13, 1989.
P 89-810, August 14, 1989.
P 89-811, 89-812, 89-813, 89-814, 89-815, 89-816, August 17, 1989.
P 89-817, 89-818, 89-819, 89-820, 89-821, 89-822, 89-823, 89-824, 89-825, 89-826, 89-827, 89-828, 89-829, 89-830, 89-831, 89-832, 89-833, August 18, 1989.
P 89-834, August 17, 1989.
P 89-835, August 19, 1989.
P 89-836, 89-837, 89-838, August 21, 1989.
P 89-839, 89-840, 89-841, 89-842, 89-843, August 24, 1989.
P 89-844, August 19, 1989.
P 89-845, 89-846, 89-847, 89-848, 89-849, 89-850, 89-851, August 25, 1989.

ADDRESS: Written comments, identified by the document control number "[OPTS-51736]" and the specific PMN

number should be sent to: Document Processing Center [TS-790], Office of Toxic Substances, Environmental Protection Agency, 401 M Street SW., Room L-100, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room EB-44, 401 M Street, SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 89-799

Manufacturer. 3(M).
Chemical. (G) Fluoro-substituted urethane.
Use/Production. (G) Water repellant. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5 g/kg species (Rat). Acute dermal toxicity: LD 50>2 g/kg species (Rabbit). Eye irritation: none species (Rabbit). Skin irritation: moderate species (Rabbit).

P 89-800

Manufacturer. The Dow Company.
Chemical. (G) Unsaturated organic substituted siloxane.
Use/Production. (S) Intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50>2000 mg/kg species(Rat).

P 89-801

Manufacturer. Lilly Industrial Coatings, Inc.
Chemical. (G) Polymer of benzenecarboxylic acid, benzene dicarboxylic anhydride, vegetable fatty acids, aliphatic polyol and phenolic acids.
Use/Production. (G) Industrial liquid paints. Prod. range: 26,532-44,220 kg/yr.

P 89-802

Manufacturer. ChemRex, Inc.
Chemical. (G) Modified polyether polyurethane propolymer.
Use/Production. (S) Moisture-curable polymer for commercial coating. Prod. range: Confidential.

P 89-803

Manufacturer. ChemRex, Inc.
Chemical. (G) Polyether polyurethane prepolymer.
Use/Production. (S) Component of a moisture-curable polyurethane. Prod. range: Confidential.

P 89-804

Manufacturer. ChemRex, Inc.
Chemical. (G) Polyurethane prepolymer with polyether polyols.
Use/Production. (S) Moisture-curable polymer for industrial coating. Prod. range: Confidential.

P 89-805

Manufacturer. Confidential.
Chemical. (G) Polyisocyanate polyaddition product (PIPA).
Use/Production. (G) Stable dispersion of polyurethane particles. Prod. range: Confidential.

P 89-806

Manufacturer. Eastman Kodak Company.
Chemical. (G) (Substituted nitrogen heterocyle)amino substituted pyrazole.
Use/Production. (G) Nondispersive use in a commercial/consumer article. Prod. range: 750-2,000 kg/yr.

P 89-807

Manufacturer. Eastman Kodak Company.
Chemical. (G) (Aromaticamine)substituted nitroheterocyclic halide.
Use/Production. (G) Chemical intermediate. Prod. range: 1,000-2,500 kg/yr.

P 89-808

Manufacturer. Eastman Kodak Company.
Chemical. (G) Substituted nitrogenheterocyclic halide.
Use/Production. (G) Chemical intermediate. Prod. range: 1,000-25,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD 50 473 mg/kg species(Rat). Acute dermal toxicity: LD50 2 g/kg. Skin irritation: slight species(Guinea Pig). Skin sensitization: negative species(Guinea Pig).

P 89-809

Importer. Kuraray International Corporation.
Chemical. (G) Modified polyisoprene.
Use/Import. (G) Rubber modifier of tires and industrial goods, sealants and adhesives of automobile and construction. Import range: Confidential.

P 89-810

Manufacturer. Confidential.
Chemical. (G) Polyamino polyether.
Use/Production. (G) Dispersively applied coatings. Prod. range: 1,500-300,000 kg/yr.

P 89-811

Manufacturer. Confidential.
Chemical. (G) Dimer modified polyester.
Use/Production. (G) Resin for coatings (protective and decorative). Prod. range: Confidential.

P 89-812

Manufacturer. The Dow Chemical Company.
Chemical. (G) Unsaturated organic.
Use/Production. (S) Intermediate for polymer manufacture. Prod. range: Confidential.

P 89-813

Manufacturer. The Dow Chemical Company.
Chemical. (G) Unsaturated organic.
Use/Production. (S) Intermediate for polymer manufacture. Prod. range: confidential.

P 89-814

Manufacturer. E.I. du Pont de Nemours & Company, Inc.
Chemical. (G) Ethylene interpolymer.
Use/Production. (G) Injection molder parts. Prod. range: Confidential.

P 89-815

Manufacturer. 3M.
Chemical. (G) Trimethylammonium salt.
Use/Production. (G) Isolated intermediate, destructive use. Prod. range: Confidential.

P 89-816

Manufacturer. LanChem.
Chemical. (G) Acrylic resin solution.
Use/Production. (S) Resin used to manufacture industrial coatings. Prod. range: Confidential.

P 89-817

Importer. Kuraray International Corporation.
Chemical. (S) 3-Methyl-1, 3-butanediol.
Use/Import. (S) Solvent. Import range: 9,090.9-18,181.8 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5,000 species(Mouse). Eye irritation: none species(Rabbit). Skin irritation: negligible species(Rabbit). Mutagenicity: negative. Skin sensitization: negative species(Guinea pig). Photoallergenicity: negative species.

P 89-818

Manufacturer. Sanncor Industries, Inc.

Chemical. (G) Polyurethane based on Polyisocyanates, polyols and polyamines.
Use/Production. (G) Coating. Prod. range: Confidential.

P 89-819

Manufacturer. The Dow Chemical Company.
Chemical. (G) Unsaturated organic.
Use/Production. (S) Intermediate for polymer manufacture. Prod. range: Confidential.

P 89-820

Manufacturer. Confidential.
Chemical. (S) Isophtalic acid; trimethylolpropane; pontaerythritopalm oil.
Use/Production. (S) Printing ink vehicle. Prod. range: 18,000-25,000 kg/yr.

P 89-821

Manufacturer. Confidential.
Chemical. (G) Substituted heteropolycyclic sulfonic acid, compound with alkanolamine.
Use/Production. (S) Component of sales item. Prod. range: Confidential.

P 89-822

Manufacturer. Confidential.
Chemical. (G) Polymethylene polyphenyl isocyanate prepolymer.
Use/Production. (S) Component of industrial auto armrest. Prod. range: 1,700-2,500 kg/yr.

P 89-823

Importer. Confidential.
Chemical. (G) Triazinyl reactive azo dye.
Use/Import. (S) Dyestuff for cellulosic fiber. Import range: Confidential.
Toxicity Data. Mutagenicity: negative.

P 89-824

Manufacturer. Confidential.
Chemical. (G) An Alkoxide.
Use/Production. (G) Destructive use. Prod. range: Confidential.

P 89-825

Manufacturer. Confidential.
Chemical. (G) Alkylbenzene.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 89-826

Manufacturer. Confidential.
Chemical. (G) Alkaryl sulfonic acid.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 89-827

Manufacturer. Confidential.
Chemical. (G) Metal salt of alkaryl sulfonic.
Use/Production. (G) Contained use. Prod. range: Confidential.

P 89-828

Manufacturer. Confidential.
Chemical. (G) Metal salt of alkaryl sulfonate.
Use/Production. (G) Contained use. Prod. range: Confidential.

P 89-829

Manufacturer. Confidential.
Chemical. (G) Metal salt alkaryl sulfonate.
Use/Production. (G) Contained use. Prod. range: Confidential.

P 89-830

Manufacturer. Confidential.
Chemical. (G) Acrylated alkyd.
Use/Production. (G) Resin in coatings. Prod. range: Confidential.

P 89-831

Manufacturer. Confidential.
Chemical. (G) Alkyd.
Use/Production. (G) Resin in coatings. Prod. range: Confidential.

P 89-832

Manufacturer. Confidential.
Chemical. (S) Alpha methyl styrene hydrocarbon resin.
Use/Production. (S) Printing ink vehicle component. Prod. range: 600,000-610,000 kg/yr.

P 89-833

Manufacturer. DSM Resins U.S., Inc.
Chemical. (G) Dibasic acid/glycol ester.
Use/Production. (G) Used in the formulation of organic coatings. Prod. range: Confidential.

P 89-834

Manufacturer. Confidential.
Chemical. (G) Disubstituted naphthalene sulfonic acid.
Use/Production. (G) Destructive use. Prod. range: Confidential.

P 89-835

Manufacturer. Confidential.
Chemical. (G) Phosphoric acid-mono(and di)octadecyl ester-zinc salt.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 15,000 mg/kg species(Rat). Mutagenicity: negative.

P 89-836

Importer. Confidential.
Chemical. (G) Phosphoyrylated polyester.
Use/Import. (G) Additive open, nondispersive use. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10,000 mg/kg species(Rat). Eye irritation: moderate species(Rabbit). Skin irritation: negligible species(Rabbit).

P 89-837

Importer. Confidential.
Chemical. (G) Phosphorylated polyester.
Use/Import. (G) Additive, open, nondispersive use. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 10,000 mg/kg species(Rat). Eye irritation: moderate species(Rabbit). Skin irritation: negligible species(Rabbit).

P 89-838

Manufacturer. Confidential.
Chemical. (G) High solids copolymer resin.
Use/Production. (S) High solids, low-VOC industrial enamels. Prod. range: Confidential.

P 89-839

Manufacturer. Confidential.
Chemical. (G) Metal salt of a naphthalic acid.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 89-840

Manufacturer. The Dow Chemical Company.
Chemical. (G) Epoxy/polyolefin composition.
Use/Production. (S) A binder resin. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 1,000 mg/kg species(Rabbit). Acute dermal toxicity: LD50 > 2,000 mg/kg species(Rat). Mutagenicity: negative.

P 89-841

Manufacturer. The Dow Chemical Company.
Chemical. (G) Epoxy/polyolefin composition.
Use/Production. (S) A binder for flame sprayable epoxy powder resin. Prod. range: Confidential.

P 89-842

Importer. DNP (America)., Inc.
Chemical. (G) Vinyl chloride alkyl acrylate poly styrene derivative polymer.
Use/Import. (S) Thermal transfer printing. Import range: 400-2,500 kg/yr.

P 89-843

Manufacturer. Confidential.
Chemical. (G) Crosslinked phenolic/acids resin.

Use/Production. (G) Filler for modeling compounds. Prod. range: Confidential.

P 89-844

Importer. Himont U.S.A., Inc.
Chemical. (S) Melamine hydrobromide.
Use/Import. (S) Flame retardant for polypropylene and propylene/ethylene copolymers. Import range: 15,000–1,000,000 kg/yr.

P 89-845

Manufacturer. Monsanto Company.
Chemical. (G) Modified bismaleimide.
Use/Production. (G) Laminting resin. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species(Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species(Rabbit). Eye irritation: none species(Rabbit). Skin irritation: negligible species(Rabbit).

P 89-846

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Substituted naphthalene disulfonic acid salt.
Use/Production. (G) Fiber reactive dye. Prod. range: Confidential.

P 89-847

Manufacturer. General Electric Plastics Business Group.
Chemical. (G) Bisphenol A aromatic diether diimide.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species(Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species(Rabbit). Eye irritation: none species(Rabbit). Skin irritation: negligible species(Rabbit).

P 89-848

Manufacturer. General Electric Plastics Business Group.
Chemical. (G) Nitroaromatic imide.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 89-849

Manufacturer. E.I. du Pont de Nemours & Co., Inc.
Chemical. (G) Acrylic ester copolymer, quaternary salt.
Use/Production. (G) Open, dispersive use. Prod. range: Confidential.

P 89-850

Manufacturer. Diaz Chemical Company.
Chemical. (S) Dibromofluorobenzene-3,4.
Use/Production. (S) Intermediate to production of monobromofluorobenzene to be used in research and development. Prod. range: 50,000 kg/yr.

P 89-851

Manufacturer. Diaz Chemical Company.
Chemical. (S) Dibromofluorobenzene-2,4.
Use/Production. (S) Intermediate production of monofluorobenzene for research and development in pharmaceutical and stable. Prod. range: 50,000 kg/yr.

Date: July 7, 1989.

Steven Newburg-Rinn,
Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-16867 Filed 7-18-89; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Requirement Approval by Office of Management and Budget

July 12, 1989.

The following information collection requirements have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0128
Title: Application for Private Land Mobile and General Mobile Radio Services
Form No.: FCC 574

A revised application form FCC 574 has been approved through 5/31/92. The November 1987 edition with an expiration date of 9/30/90 will remain in use until revised forms are available.

OMB No.: 3060-0057
Title: Application for Equipment Authorization
Form No.: FCC 731

A revised application form FCC 731 has been approved through 4/30/92. The March 1988 edition with an expiration date of 1/31/91 will remain in use until revised forms are available.

OMB No.: 3060-0059
Title: Statement Regarding the Importation of Radio Frequency Devices Capable of Causing Harmful Interference
Form No.: FCC 740

The approval on form FCC 740 has been extended through 11/30/90. The January 1988 edition with an expiration date of 10/31/90 will remain in effect.

Federal Communications Commission.

Donna R. Searcy,
Secretary.

[FR Doc. 89-16850 Filed 7-18-89; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35.).

Type: New.
Title: Evaluation of the Dissemination of NEHRP Materials on Seismic Safety of New Buildings.
Abstract: Evaluate extent and effectiveness of dissemination of National Earthquake Hazards Reduction Program materials. Used to improve the Building Seismic Safety Council's dissemination for future years. Targeted audiences are potential users of the materials—design professionals, building code organizations and officials, building owners, and earthquake-specific organizations.
Type of Respondents: Individuals or households, State or local governments.
Estimate of Total Annual Reporting and Recordkeeping Burden: 1,300.
Number of Respondents: 2,980.
Estimated Average Burden Hours Per Response: .436 (26 minutes).
Frequency of Response: Other—One time.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Pamela Barr, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: July 12, 1989.

Wesley C. Moore,
Director, Office of Administrative Support.

[FR Doc. 89-16902 Filed 7-18-89; 8:45 am]
BILLING CODE 6718-01-M

[FEMA-828-DR]

Texas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-828-DR), dated May 19, 1989, and related determinations.

DATED: June 7, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: The notice of a major disaster for the State of Texas, dated May 19, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 19, 1989:

The counties of Cass, Cherokee, Coryell, Denton, Houston, Jasper, Limestone, Upshur, Van Zandt, Wichita, and Waller for Individual Assistance.

George H. Orrell,
Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

[FR Doc. 89-16901 Filed 7-18-89; 8:45 am]
BILLING CODE 6718-02-M

FEDERAL RESERVE SYSTEM

Horizon Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 9, 1989.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Horizon Bancorp, Inc.*, Bethesda, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of GOLDCrest Bank, Bethesda, Maryland, a *de novo* bank.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Country Bank Shares Corporation*, Janesville, Wisconsin; to acquire 88 percent of the voting shares of State Bank of Mt. Horeb, Mt. Horeb, Wisconsin; 90 percent of the voting shares of State Bank of Argyle, Argyle, Wisconsin; and 90 percent of the voting shares of Citizens State Bank of Clinton, Clinton, Wisconsin. Comments on this application must be received by August 2, 1989.

2. *Fayette Bancorporation*, Marion, Iowa; to acquire 100 percent of the voting share of Maynard Savings Bansharescorp, Maynard, Iowa, and thereby indirectly acquire The Maynard Savings Bank, Maynard, Iowa. Comments on this application must be received by August 4, 1989.

3. *Mansfield Bancorp, Inc.*, Mansfield, Illinois; to become a bank holding company by acquiring at least 90 percent of the voting shares of Peoples State Bank of Mansfield, Mansfield, Illinois.

4. *Liberty National Bancorp, Inc.*, Louisville, Kentucky; to acquire 100 percent of the voting shares of Florence Deposit Bank, Florence, Kentucky, which engages in the sale, as agent, of credit related insurance sold in connection with extensions of credit made by the bank.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Bank System, Inc.*, Minneapolis, Minnesota; to merge with Northern Cities Bancorporation, Inc., Anoka, Minnesota, and thereby indirectly acquire The Northern Bank, Anoka, Minnesota, and The Northern National Bank, Forest Lake, Minnesota.

2. *Martinius Corporation*, Rogers, Minnesota; to acquire 28.88 percent of the voting shares of Almelund Bancshares, Inc., Almelund, Minnesota, and thereby indirectly acquire Farmers State Bank, Almelund, Minnesota.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Fidelity Bankshares, Inc.*, Garden City, Kansas; to acquire 100 percent of the voting shares of Olathe Financial Services Corporation, Olathe, Kansas, and thereby indirectly acquire 96.4 percent of the voting shares of Heritage Bank of Olathe, Olathe, Kansas. Comments on this application must be received by August 4, 1989.

Board of Governors of the Federal Reserve System, July 12, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89-16847 Filed 7-18-89; 8:45 am]
BILLING CODE 6210-01-M

Federal Open Market Committee; Domestic Policy Directive of May 16, 1989

In accordance with § 271.5 of its Rules Regarding Availability of Information (12 CFR 271, *et seq.*), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on May 16, 1989.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that the rate of economic growth has slowed in recent months. Gains in total nonfarm payroll employment moderated substantially in March and April, and employment in manufacturing was about unchanged over the two months. The civilian unemployment rate rose considerably to 5.3 percent in April. Industrial production increased in April after declining on balance in the preceding two months. Growth in consumer spending has slowed considerably in recent months. Housing starts declined further in April. Recent indicators of business capital spending show a rebound after a decline in the fourth quarter. The nominal

[1] Copies of the record of policy actions of the Committee for the meeting of May 16, 1989, are available upon request to The Board of Governors of the Federal Reserve System, Washington, DC 20551.

U.S. merchandise trade deficit was smaller on average in January and February than in the fourth quarter. Broad measures of prices have risen somewhat more rapidly in 1989, with a significant contribution from sharp increases in energy prices.

Interest rates have declined considerably since the Committee meeting in late March. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies rose further on balance over the intermeeting period.

Growth of M2 and M3 was sluggish in April, primarily because of a sizable decline in transactions balances. Through April, expansion of M2 has been at a rate below the Committee's range for the year, while growth of M3 has been in the lower portion of its range.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. In furtherance of these objectives, the Committee at its meeting in February established ranges for growth of M2 and M3 of 3 to 7 percent and 3½ to 7½ percent, respectively, measured from the fourth quarter of 1988 to the fourth quarter of 1989. The monitoring range for growth of total domestic nonfinancial debt was set at 6½ to 10½ percent for the year. The behavior of the monetary aggregates will continue to be evaluated in the light of movements in their velocities, developments in the economy and financial markets, and progress toward price level stability.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. Taking account of indications of inflationary pressures, the strength of the business expansion, the behavior of the monetary aggregates, and developments in foreign exchange and domestic financial markets, somewhat greater reserve restraint or somewhat lesser reserve restraint would be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with growth of M2 and M3 over the period from March through June at annual rates of about 1½ and 4 percent, respectively. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that reserve conditions during the period before the next meeting are likely to be associated with a federal funds rate persistently outside a range of 8 to 12 percent.

By Order of the Federal Open Market Committee, July 11, 1989.

Normand Bernard,

Assistant Secretary, Federal Open Market Committee.

[FR Doc. 89-16846 Filed 7-18-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Revision of Vessel Sanitation Program Operations Manual

AGENCY: Centers for Disease Control (CDC), Public Health Service, HHS.

ACTION: Publication of a revised *Vessel Sanitation Program Operations Manual.*

SUMMARY: The *Vessel Sanitation Program Operations Manual* has been revised and will be distributed to members of the cruise ship industry and other interested parties.

DATE: On or about August 1, 1989.

FOR FURTHER INFORMATION CONTACT: Linda Anderson, Chief, Special Programs Group, Center for Environmental Health and Injury Control, CDC, 1600 Clifton Road, NE., Atlanta, Georgia, 30333. Telephone: FTS: 236-4595, Commercial: (404) 488-4595.

SUPPLEMENTARY INFORMATION: A request for public comment on a proposal to revise the *Vessel Sanitation Program Operations Manual* was published in the **Federal Register** on Wednesday, April 12, 1989 (54 FR 14684). The public notice of the intent to revise the Manual provided for a 60-day comment period. During the 60-day period, 65 separate comments were received from 6 sources. None of the comments received opposed a revision of the *Operation's Manual.* Of the 65 comments received, 5 were editorial and not of a technical nature, 11 comments addressed issues regarding the water systems on board, 12 comments were made concerning food protection and source, 17 comments addressed equipment and warewashing, 1 comment concerned solid and liquid waste disposal, 2 comments addressed handwashing requirements, 4 comments concerned pest control, 4 comments concerned miscellaneous facilities, and 9 comments addressed issues concerning administration of the Vessel Sanitation Program. All comments were considered and reviewed for technical accuracy and, if appropriate, the recommended changes were incorporated into the Manual. A list of the comments received and the Department's rationale for accepting or rejecting the comments may be obtained by writing to: Linda Anderson, Chief, Special Programs Group, Center for Environmental Health and Injury Control (F29), CDC, 1600 Clifton Road NE., Atlanta, Georgia, 30333.

The revised *Vessel Sanitation Program Operations Manual* will be distributed to members of the passanger cruise vessel industry and other interested parties on or about August 1, 1989.

Dated: July 13, 1989.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 89-16845 Filed 7-18-89; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Pitman-Moore, Inc.; Withdrawal of Approval of New Animal Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 10 new animal drug applications (NADA's) held by Pitman-Moore, Inc. The NADA's provide for the use of various new animal drugs in dogs, cats, and horses. The firm requested the withdrawal of the approvals. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations by removing the portions of the regulations reflecting the approvals.

EFFECTIVE DATE: July 31, 1989.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: Pitman-Moore, Inc., Mundelein, IL 60060, is the sponsor of the following 10 NADA's.

1. NADA 9-342; Phthalofyne tablets; for the treatment of whipworm (*Trichuris vulpis*) infection in dogs; originally approved April 8, 1954.

2. NADA 10-905; Chlorpromazine hydrochloride (tablets and injection); for use as a tranquilizer, potentiator, and antiemetic with a sedating effect in dogs and cats; originally approved July 18, 1957.

3. NADA 11-699; Phthalofyne intravenous solution; for the treatment of whipworm infection in dogs; originally approved February 4, 1960.

4. NADA 12-360; Ronnel tablets; for the treatment of demodectic mange, tick, flea, and lice infections in dogs, and for the treatment of flea infestations in cats; originally approved May 16, 1961.

5. NADA 12-361; Ronnel emulsifiable concentrate; for the treatment of demodectic and sarcoptic mange, ticks, fleas, and ear mites in dogs, and for the treatment of fleas and ear mites in cats; originally approved June 2, 1961.

6. NADA 12-554; Sulfadimethoxine injection; for the treatment of susceptible bacterial infections in dogs, cats, and horses; originally approved May 26, 1961.

7. NADA 13-618; Piperacetazine injection; for use as a tranquilizer, sedative, and antiemetic agent, and for the symptomatic relief of pruritis in dogs and cats; originally approved June 6, 1972.

8. NADA 13-619; Piperacetazine tablets; for use as a tranquilizer, sedative, and antiemetic agent, and for the symptomatic relief of pruritis in dogs and cats; originally approved June 6, 1972.

9. NADA 47-341; Griseofulvin tablets; for the treatment of fungal infections of the skin, hair, and claws caused by *Trichophyton mentagrophytes, T. rubrum, T. schoenleini, T. sulphurem, T. verrucosum, T. interdigitale, Epidermophyton floccosum, Microsporum gypseum, M. canis,* and *M. audouini* in dogs and cats; originally approved June 30, 1978.

10. NADA 65-192; Bacitracin methylene disalicylate and streptomycin sulfate tablets, for the treatment of bacterial enteritis caused by susceptible pathogens such as *Escherichia coli, Proteus* spp., *Staphylococcus* spp., and *Streptococcus* spp., and for the symptomatic treatment of associated diarrhea in dogs; originally approved September 6, 1955.

Pitman-Moore, Inc., requested the withdrawal of approval of the above NADA's because the products are no longer being marketed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 9-342, NADA 10-905, NADA 11-699, NADA 12-360, NADA 12-361, NADA 12-554, NADA 13-618, NADA 13-619, NADA 47-341, and NADA 65-192 and all supplements thereto is hereby withdrawn, effective July 31, 1989.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing 21 CFR 520.443, 520.1760, 520.1780, 520.2080b, 522.443, 522.1800, 524.2080, and 548.112b, and amending 21 CFR 520.1100 and 522.2220 to reflect withdrawal of the approvals.

Dated: July 11, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-16851 Filed 7-18-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89N-0301]

Drug Export: ORTHO* HCV Antibody Elisa Test System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ortho Diagnostic Systems, Inc., has filed an application requesting approval for the export of the biological product ORTHO* HCV Antibody ELISA Test System to Austria, Australia, Belgium, Canada, Denmark, Federal Republic of Germany, Finland, France, Ireland, Italy, Luxembourg, The Netherlands, New Zealand, Norway, Sweden, Switzerland, and The United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Center for Biologics Evaluation and Research (HFB-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8191.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency published a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Ortho Diagnostic Systems, Inc., Raritan, NJ 08869, has filed an application requesting approval for the export of the biological product ORTHO* HCV Antibody ELISA Test System to Austria, Australia, Belgium, Canada, Denmark, Federal Republic of Germany, Finland, France, Ireland, Italy, Luxembourg, The Netherlands, New Zealand, Norway, Sweden, Switzerland, and The United Kingdom. The ORTHO* HCV Antibody Test System is a qualitative, enzyme-linked, immunosorbent assay for the detection of antibody to hepatitis C virus (anti-HCV) in human serum or plasma.

The application was received and filed in the Center for Biologics Evaluation and Research on June 30, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by July 31, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated under 21 CFR 5.44.

Dated: July 7, 1989.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 89-16853 Filed 7-18-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89N-0229]

Drug Export; Prednisolone Acetate Ophthalmic Suspension, 1 Percent (Sterile)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Pharmafair, Inc., has filed an application requesting approval for the export of the human drug Prednisolone

Acetate Ophthalmic Suspension, 1% (Sterile) to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drug under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Mary F. Cooper, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8073.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Pharmafair, Inc., 110 Kennedy Dr., Hauppauge, NY 11788, has filed an application requesting approval for the export of the drug Prednisolone Acetate Ophthalmic Suspension, 1 percent (Sterile), to Canada. This product is used in the treatment of inflammatory and allergic conditions, allergic nonpurulent blepharitis, herpes zoster ophthalmicus, nonspecific superficial keratitis, and nonpurulent keratoconjunctivitis. It may suppress graft reaction after keratoplasty. The application was received and filed in the Center for Drug Evaluation and Research on June 29, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by July 31, 1989, and to provide an additional copy of the submission directly to te contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: July 10, 1989.

Sammie R. Young,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 89-16796 Filed 7-18-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89N-0229]

Drug Export; Pro-Air® (Procaterol Hydrochloride) Aerosol

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Parke-Davis has filed an application requesting approval for the export of the human drug Pro-Air® (procaterol hydrochloride) Aerosol to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Mary F. Cooper, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8073.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, ther agency is providing notice that Parke-Davis, Pharmaceutical Research Division, Warner-Lambert Co., 2800 Plymouth Road, Ann Arbor, MI, 48105-2430, has filed an application requesting approval for the export of the drug Pro-Air® (procaterol hydrochloride) Aerosol, to Canada. This drug is indicated as a bronchodilator for the symptomatic relief of reversible bronchospasm due to bronchial asthma, chronic bronchitis and other bronchopulmonary disorders in which bronchospasms are a complicating factor. The application was received and filed in the Center for Drug Evaulation and Research on June 20, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by July 31, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: July 10, 1989.

Sammie R. Young,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 89-16797 Filed 7-18-89; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees. MEETINGS: The following advisory committee meetings are announced.

Drug Abuse Advisory Committee

Date, time, and place. August 7 and 8, 1989, 8:30 a.m., Parklawn Bldg., Conference Rms. D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, August 7, 1989, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 4:30 p.m.; open committee discussion, August 8, 1989, 8:30 a.m. to 4:30 p.m.; Thomas E. Nightingale, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs which possess stimulant, depressant, or analgesic properties including those aspects of safety related to the potential of these drugs to produce dependence and to be abused.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact persons before July 24, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On August 7, 1989, the committee will discuss the abuse potential and the possible necessity of scheduling dezocine (NDA 19-082) DALGAN/ Wyeth-Ayerst Laboratories) under the Controlled Substances Act. Wyeth-Ayerst Laboratories plans to market dezocine as a potent analgesic. Dezocine is a partial agonist which produces analgesia through an interaction with central opiate receptors. On August 8, 1989, the committee will discuss general issues relating to assuring safety of volunteers used in abuse potential evaluations, specific issues relating to the testing of hallucinogenic drugs, and abuse of parenteral medicine by health professionals.

Obstetrics-Gynecology Devices Panel

Date, time, and place. August 24 and 25, 1989, 9 a.m., Rm. 503A-529A, Hubert H. Humphrey Bldg., 200 Independence Avenue SW., Washington, DC.

Type of meeting and contact person. Open public hearing, August 24, 1989, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open public hearing, August 25, 1989, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; Colin M. Pollard, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1180.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before August 11, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application on a catheter used for chorionic villus sampling. The committee will also discuss guidelines to evaluate female barrier contraceptive devices.

Anesthetic and Life Support Drugs Advisory Committee

Date, time, and place. August 28 and 29, 1989, 8:30 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857.

Type of meeting and contact person. Open public hearing, August 28, 1989, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; open committee discussion, August 29, 1989, 8:30 a.m. to 4 p.m.; Isaac F. Roubein, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the field of anesthesiology and surgery.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before August 15, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On August 28, 1989, the committee will discuss NDA 19-627, propofol (Diprivan®, ICI Pharmaceuticals—Stuart Pharmaceuticals) emulsion for intravenous injection. On August 29, 1989, the committee will discuss: (1) NDA 19-627, noted above, (2) a status report on isoflurane (Forane®, Anaquest), and (3) NDA's 19-677 and 19-678 for edrophonium and atropine combination (Enlon Plus®, Anaquest).

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public

advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting.

Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: July 13, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-16795 Filed 7-18-89; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

Availability of a Collaborative Agreement for the Development of a Two-Gigaflop Computer for Molecular Simulations

The National Institutes of Health wishes to develop, under the Federal Technology Transfer Act of 1986, a special purpose computer (GEMMSTAR) designed for macromolecular simulations and molecular mechanics applications. The Government seeks a collaborator which, in accordance with the requirements of the regulations governing the licensing of government-owned inventions (37 CFR Part 404), has the most meritorious plan for the development of GEMMSTAR under the best terms for the Government.

GEMMSTAR is the subject of U.S. Patent pending number 261,304 (application 10/24/88). This machine will be a translation into computer hardware of an existing software package, Generate, Emulate, and Manipulate Macromolecules (GEMM), developed by the Molecular Graphics and Simulation Laboratory of the Division of Computer Research and Technology (DCRT) of the National Institutes of Health. The GEMMSTAR will interface to a host machine, which will do other calculations necessary for molecular mechanics and simulations.

GEMMSTAR will calculate the compute-intensive pair interaction potential found in most molecular simulation codes including a van der Waal term and an electrostatic energy term. Additional terms (such as a pressure and a polarization term) will be incorporated into GEMMSTAR in order to make the machine more flexible so as to be able to better respond to future demands. GEMMSTAR will compute the energy and forces for these potential energy terms and save them for subsequent analysis, minimization, or integration of the equations of motion for molecular dynamics.

Development of GEMMSTAR under the agreement will consist of the following general steps:

(1) Participate in a detailed architectural design and simulation.

(2) Provide non-recurring engineering funding and design facilities.

(3) Provide an appropriate engineering team to the project.

(4) Design and supply Application Specific Integrated Circuits (ASIC's). The design calls for 50 to 60 copies of a single, new, ASIC. (approximately 50,000 gates and 256 pins.)

(5) Carry out the mechanical and board layouts, and build and test prototype boards.

(6) Develop system software to support the GEMMSTAR. Applications software will be the responsibility of the Government.

(7) Manufacture and market production units.

Under the resulting Cooperative Research and Development Agreement, NIH will grant an exclusive royalty-bearing license for the subject U.S. patent application, and an option to acquire an exclusive royalty-bearing license for future related U.S. patent applications and patents issued thereon, and those that may result from the agreement.

A panel of senior Government scientists and computer specialists from the Division of Computer Research and Technology will use the following criteria to choose the industrial partner:

(1) Demonstrable experience with modern computer and/or chip manufacturing techniques.

(2) Prior manufacture of computers and components and application specific computers in particular.

(3) Demonstrated experience and ability to market and distribute production special purpose computers.

(4) Willingness and demonstrated plan to commit the necessary resources to the project, including funding, personnel, design, computation, testing, and manufacturing resources.

(5) Likely availability, and ability to interface to, a host machine capable of approximately 200 megaflops, and capable of sustaining close to a 50 mbyte/second I/O bandwidth.

(6) Willingness to cooperate and collaborate on a regular basis with appropriate NIH scientific and engineering staff.

(7) Demonstrated ability to bring this class of product to market in a timely manner.

(8) A business plan favorable to the interests of the Government including reasonable royalties from any GEMMSTAR revenue, and for the retention of the exclusive license.

For further information (including a copy of the patent application and design notes) contact Ms. Marian Dawson, Executive Officer, Division of Computer Research and Technology, The National Institutes of Health, Building 12A, Room 3023, Bethesda, MD, 20892, or telephone (301) 496-5206.

This notice will be effective until the close of business September 5, 1989.

J.E. Rall,

Acting Director, National Institutes of Health.

Dated: July 12, 1989.

[FR Doc. 89-16802 Filed 7-18-89 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Claims Court is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Claims Court, 717 Madison Place, NW., Washington, DC 20005, (202) 633-7257. For information on the Public Health Service's role in the Program, contact the Administrator, Vaccine Injury Compensation Program, Parklawn Building, 5600 Fishers Lane, Room 4-101, Rockville, MD 20857, (301) 443-6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq*, provides that those seeking compensation are to file a petition with the U.S. Claims Court and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS. The Claims Court is directed by statute to appoint special masters to take evidence, conduct hearings as appropriate, and to submit to the Court proposed findings of fact and conclusions of law.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table set forth at section 2114 of the PHS Act. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by PHS from June 13 through July 6, 1989. Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table (see section 2114 of the PHS Act) but which was caused by" one of the vaccines referred to in the table, or

(b) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Claims Court at the address listed above (under the heading "For Further Information Contact"), with a copy to PHS addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Room 8-05, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of Title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Patsy Johnson on Behalf of Christa Johnson, Albuquerque, New Mexico Claims Court, Docket No. 89-62 V
2. Robin D. Cooper and Ruth M. Cooper on Behalf of Jason Dean Cooper, Wichita, Kansas, Claims Court Docket No. 89-63 V
3. Margie Marie Davis on Behalf of Mark Allan Davis, Denver, Colorado, Claims Court Docket No. 89-64 V
4. Brett K. Wilson and Julianne Wilson on Behalf of Jadanne Rose Wilson, Cheyenne, Wyoming, Claims Court Docket No. 89-65 V
5. Anna Maria Gazzi, Chicago, Illinois, Claims Court Docket No. 89-66 V
6. Brenda Sue Edgar on Behalf of Marvin A. Edgar, Atlanta, Georgia, Claims Court Docket No. 89-67 V
7. Marvin Meyer and Carol Meyer on Behalf of Laura Michelle Meyer, Wichita, Kansas, Claims Court Docket No. 89-68 V
8. Jane Hussey on Behalf of Adam Troy Monteith, Rochester, New Hampshire, Claims Court Docket No. 89-69 V
9. James Lewis Brooks, Knoxville, Tennessee, Claims Court Docket No. 89-70 V
10. Lisa Munn on Behalf of Chelsea Vukelich, Gobebic, Michigan, Claims Court Docket No. 89-71 V
11. Carol A. Huber and Steve J. Huber on Behalf of Garrett Michael Huber, Waterville, Maine, Claims Court Docket No. 89-72 V
12. Gloria Crossett on Behalf of Laurie Ann Crossett, Plantation, Florida, Claims Court Docket No 89-73 V
13. Joyce Metzger and Donald A. Metzger on Behalf of Glenn Metzger, Honolulu, Hawaii, Claims Court Docket No. 89-74 V

Dated: July 12, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-16799 Filed 7-18-89; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-89-2020]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below

have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESS: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: July 10, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Section 8 Housing Assistance Payments Program—Special Allocations (Loan Management Set-Aside).

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The rule containing these information collections authorizes use of Section 8 assistance in existing multifamily projects with insured or HUD-held mortgages, including Section 202 projects and projects sold by HUD subject to purchase money mortgages.

Form Number: None.

Respondents: Individuals or Households, State or Local Governments, and Non-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Content of Application	300		1		40		12,000
Notice Upon Contract Expiration	175		1		1		175

Total Estimated Burden Hours: 12,175.

Status: New.

Contact: James J. Tahash, HUD, (202) 426-3944; John Allison, OMB, (202) 395-6880.

Date: July 10, 1989.

Proposal: Good Faith Estimate.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: Section 5 of the Real Estate Settlement Procedures Act (RESPA) requires lenders to provide borrowers the Special Information Booklet and the Good Faith Estimate of Settlement Costs to inform the borrower of the nature and costs of real estate settlement services. Section 4 of RESPA requires the settlement agents to provide the borrowers and the sellers a HUD-1 which sets forth all settlement costs.

Form Number: HUD-1.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Recordkeeping	20,000		173.5		.25		867,500

Total Estimated Burden Hours: 876,500.

Status: Extension.

Contact: Richard Harrington, HUD, (202) 755-5676; John Allison, OMB, (202) 395-6880.

Date: July 10, 1989.

[FR Doc. 89-16848 Filed 7-18-89; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-89-2021]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: July 11, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Deed-in-Lieu of Foreclosure (Corporate Mortgagors or Mortgagors Owning More Than One Property).

Office: Housing.

Description of the Need For The Information and Its Proposed Use: Mortgagees must obtain written consent from local HUD Field Offices to accept a deed-in-lieu of foreclosure when the mortgagor is a corporate mortgagor or a mortgagor owning more than one property. Mortgagees must provide HUD specific information.

Form Number: None.

Respondents: Individuals or Households and Businesses or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of Respondents	×	Frequency of Response	×	Hours per Response	=	Burden Hours
Information Collection	600		1		.5		300

Total Estimated Burden Hours: 300.

Status: Extension.

Contact: Ann M. Sudduth, HUD, (202) 755-7330. John Allison, OMB, (202) 395-6880.

Date: July 11, 1989.

[FR Doc. 89-16849 Filed 7-18-89; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-060-4760-90]

Roswell District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Roswell District Grazing Advisory Board Meeting.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the Roswell District Grazing Advisory Board.

DATE: Thursday, August 17, 1989, beginning at 10 a.m. A public comment period will be held following conclusion of the agenda.

Location: BLM Roswell District Office, 1717 West Second St., Roswell, New Mexico 88201.

FOR FURTHER INFORMATION CONTACT: David L. Mari, Associate District Manager, or Terry Keim, Public Affairs Specialist, Bureau of Land Management, P.O. Box 1397, Roswell, NM 88202-1397, (505) 622-9042.

SUPPLEMENTARY INFORMATION: The agenda will consist of two issues; (1) Discussion of FY 90 Range Improvement Projects and (2) New Mexico Drought Policy. The meeting is open to the public. Interested persons may make oral statements to the Board during the public comment period or may file written statements. Anyone wishing to make an oral statement should notify the Associate District Manager by August 10, 1989. Summary minutes will be maintained in the District Office and will be available for public inspection during regular business hours, within 30 days following the meeting. Copies will be available for the cost of duplication.

Francis R. Cherry, Jr.,

District Manager.

[FR Doc. 89-16878 Filed 7-18-89; 8:45 am]

BILLING CODE 4310-FB-M

[AZ-020-09-4212-13; AZA-23975; AZA-13143]

Realty Action; Disposal of Public Land; Acquisition of Non-Federal Lands, Pima County, AZ

The following described federal lands have been determined to be suitable for disposal either by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716 or the Recreation and Public Purposes Act, as amended, 43 U.S.C. 869, et seq.:

Gila and Salt River Base and Meridian, Pima County, Arizona

T. 14 S., R. 15 E.,
Sec. 5, lots 3 and 4, S½NW¼.
Comprising 172.8 acres.

In the event the above-described public land is conveyed via exchange, the United States will acquire all of the below-described non-federal land from the city of Tucson.

Parcel 1

The West Half of the Southwest Quarter of the Northeast Quarter of section 7, Township 14 South, Range 16 East, Gila and Salt River Base and Meridian, Pima County, Arizona.

Parcel 2

The South Half of the Southeast Quarter of section 7, Township 14 South, Range 16 East, Gila and Salt River Base and Meridian, Pima County, Arizona.

Except that part thereof lying within East Broadway, as shown on Road Map recorded in Box 6 of Road Maps at Page 96 thereof.

Further except that part thereof lying within Freeman Extension, Road No. 238, as shown on Road Map recorded in Book 2 of Road maps at Page 156.

Parcel 3

The South Half of the Southeast Quarter of the Northeast Quarter of section 7, Township 14 South, Range 16 East, Gila and Salt River Base and Meridian, Pima County, Arizona.

Except that portion described as follows:

Beginning at the Southeast corner of that Southeast Quarter of the Northeast Quarter;

Run thence North 89°56'30" West, a distance of 681.65 feet to a point;

Thence North 00°00'15" East, a distance of 662.92 feet to a point;

Thence North 89°57'00" East, a distance of 681.60 feet to a point;

Thence South along the Easterly Quarter section line to the true point of beginning;

Except the East 30 feet thereof within the right-of-way of Freeman Extension as shown on the Road Map recorded in Book 2 of Road Maps at Page 156.

Except all coal and other minerals as reserved in the patent from the United States of America.

Parcel 4

The East Half of the Southwest Quarter of the Northeast Quarter; and the North Half of the Southeast Quarter, all in section 7, Township 14 South, Range 16 East, Gila and Salt River Base and Meridian, Pima County, Arizona.

Except any portion lying within Freeman Road.

Parcel 5

That part of the South Half of the Southeast Quarter of of the Northeast Quarter of section 7, Township 14 South, Range 16 East, Gila and Salt River Base and Meridian, Pima County, Arizona.

Beginning at the Southeast corner of the Southeast Quarter of the Northeast Quarter;

Run thence North 89°56'30" West, a distance of 681.65 feet to a point;

Thence North 00°00'15" East, a distance of 662.92 feet to a point;

Thence North 89°57'00" East, a distance of 681.60 feet to a point;

Thence South along the Easterly Quarter section line to the true point of beginning;

Except the East 30 feet thereof within the right-of-way of Freeman Extension as shown on the Road Map recorded in Book 2 of Road Maps as Page 156.

Parcel 6

The North Half of the Southeast Quarter of the Northeast Quarter of section 7, Township 14 South, Range 16 East, Gila and Salt River Base and Meridian, Pima County, Arizona;

Except the East 30 feet thereof within the right-of-way of Freeman Extension as shown of the Road Map recorded in Book 2 of Road Maps at Page 156.

Parcel 7

The East Half of the East Half of the Southwest Quarter; and the East Half of the West Half of the East Half of the Southwest Quarter, all in section 7, Township 14 South, Range 16 East, Gila and Salt River Base and Meridian, Pima County, Arizona.

Except any portion laying within Broadway Boulevard; and

Further except all coal and other minerals as reserved in the patent from the United States of America.

Parcel 8

The Southwest Quarter of the Southeast Quarter of the Southeast Quarter of the Southwest Quarter in section 7, Township 14 South, Range 16 East, Gila and Salt River Base and Meridian, Pima County, Arizona.

Except any portion lying within Broadway Boulevard; and

Further except all coal and other minerals as reserved in the patent from the United States of America.

Comprising 297.00 acres, more or less.

The subject lands to be conveyed to the city of Tucson are currently encumbered with two withdrawals, PLO 5761 and EO 1082. Prior to the conveyance to the city, the above-listed withdrawals will be revoked.

The parcel is also encumbered with R&PP Lease AZA-13143. This Lease shall also be relinquished prior to transfer.

Lands to be transferred from the United States will be subject to the following reservations, terms and conditions:

1. A right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. Rights-of-way AZA-9738, AZA-22102 and AZA-23678.

3. Minerals shall be reserved to the United States.

4. All valid existing rights.,

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the public lands from appropriation under the public land laws, except exchange or conveyance under R&PP Act, including the mining laws, and from any subsequent land exchange proposals filed by any proponent other than the city of Tucson.

The segregation of the described selected lands shall terminate upon issuance of a document conveying title to such lands or upon publication in the **Federal Register** of a notice of termination of the segregation, or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days from the date of publication of this Notice in the **Federal Register**, interested persons may submit comments to the District Manager, Phoenix District, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Objections will be reviewed by the State Director, who may modify, vacate or sustain this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

William T. Childress,

Acting District Manager.

Date: July 13, 1989.

[FR Doc. 89-16843 Filed 7-18-89; 8:45 am]

BILLING CODE 4310-32-M

[CA-060-09-4212-13; CA-23043]

Realty Action; Exchange of Public and Private Lands, San Diego County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; exchange of public and private lands, CA-23043.

SUMMARY: The following described public lands, located in San Diego County, have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

San Bernardino Meridian

T. 18S., R. 1E.,
Sec. 29: NW¼.
Containing 160 acres, more or less.

In exchange for these lands the United States will acquire from the Rancho Vista Del Mar Corporation the following offered private lands abutting the Otay National Cooperative Land and Wildlife Management Area:

San Bernardino Meridian

T. 18S., R. 1E.,
Sec. 21: SW¼SW¼;
Sec. 28: N½N½.
Containing 200 acres, more or less.

In addition to the above described lands, the United States will also acquire from Rancho Vista Del Mar a fifty (50) foot wide road right-of-way across lands located within T. 18S., R. 1E, sections 19, 29, and 30, SBM, San Diego County. This right-of-way will provide the United States with legal access to the western boundary of the Otay National Cooperative Land and Wildlife Management Area.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to acquire non-Federal lands adjacent to, and access for, the Otay National Cooperative Land and Wildlife Management Area. These private offered lands are also within a Bureau Wilderness Study Area. These non-federal lands will provide additional habitat for wildlife, contain sensitive plant species, and will enhance the Bureau of Land Management's ability to manage the area by consolidating land ownership. The right-of-way to be acquired will enable the Bureau to facilitate providing the public with unrestricted access to the area. Since the 160 acres of public land to be disposed of in this exchange is surrounded by private land owned by the Rancho Vista Del Mar Corporation, this exchange allows the Bureau to consolidate lands in the area for practical and sound management purposes. The public interest will be well served by completing this exchange.

The values of the lands to be exchanged are approximately equal. Full equalization of values will be achieved through either acreage adjustment or by cash payment in an amount not to exceed 25% of the value of the lands being transferred out of Federal ownership.

The lands to be transferred from the United States will be subject to the following reservations and rights-of-way:

1. A reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States; Act of August 30, 1890 (43 U.S.C. 945).

2. A reservation to the United States of a right-of-way for a helicopter training site; Act of October 21, 1976 (43 U.S.C. 1761-1771); BLM Serial No. CA-8906.

3. A reservation to the United States of a right-of-way for a firebreak and access road; 44 L.D. 513; BLM Serial No. R-433.

4. A road right-of-way granted to San Diego Gas & Electric Company, its successors, or assigns under the authority of the Act of October 21, 1976 (43 U.S.C. 1761-1771); BLM Serial No. CA-10677.

5. A reservation to the United States of a road right-of-way; Act of October 21, 1976 (43 U.S.C. 1761-1771);

Lands to be acquired in this exchange will not be subject to any encumbrances or reservations.

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the mining laws, except for mineral leasing. This segregative effect will expire upon issuance of patent or two (2) years from the date of publication, whichever occurs first.

For detailed information concerning this exchange contact Mike Selman, BLM Palm Springs-South Coast Resource Area, at (619) 323-4421.

For a period of 45 days after publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, California Desert District, 1695 Spruce Street, Riverside, CA 92507. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

H.W. Riecken,

Acting District Manager.

July 12, 1989.

[FR Doc. 89-16844 Filed 7-18-89; 8:45 am]

BILLING CODE 4310-40-M

[MT-020-09-4212-14]

Realty Action—Amendment

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: Notice of realty action, amendment.

SUMMARY: A reappraisal of the fair market value of the following lands has resulted in the corresponding values for disposal by sale:

5th Principal Meridian

SDM-58032
T. 103 N., R. 73 W.,
Section 5, S½N½ containing 80.00 acres
Reappraisal Fair Market Value $50 per acre ($4,000)

SDM-66124
T. 3 N., R. 30 E.
Section 28, NE¼SW¼, containing 40.00 acres
Reappraisal Fair Market Value $50 per acre ($2,000)

SDM-66126
T. 3 N., R. 30 E.
Section 28, NW¼NE¼, containing 40.00 acres
Reappraisal Fair Market Value $52.50 per acre ($2,100)

SDM-66127
T. 3 N., R. 30 E.
Section 28, SW¼NE¼ containing 40.00 acres
Reappraisal fair market value $52.50 per acre ($2,100)

SDM-66584
T. 5 N., R. 29 E.
Section 1, Lot 1 containing 39.93 acres
Reappraisal fair market value $50 per acre ($2,000)

DATES: For 45 days from the date of this publication in the **Federal Register**, comments may be submitted to the District Manager, P.O. Box 940, Miles City, Montana 59301. Any adverse comments will be evaluated by the Montana State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

The subject land will be offered for sale on an open competitive basis by sealed bid only. Each bid must be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Bureau of Land Management for not less than one-fifth (20%) of the amount bid. Bids will be opened on September 8, 1989, at 9 a.m. If not sold, the land will remain available for sale on a continuing basis until a sale is completed or until September 8, 1990, when this sale will be terminated.

Any sealed bids received will be opened at 9 a.m. each succeeding Wednesday until the lands are sold or the sale is closed.

Bidder Qualifications: The bidder must be a U.S. citizen or, in the case of a corporation, subject to the laws of any state of the U.S. A state, state instrumentality or political subdivision submitting a bid must be authorized to hold property. Any other entity submitting a bid must be legally capable of holding and conveying lands or interests therein under the laws of the State of South Dakota. Bids must be made by the principal or his agent.

Bid Standards: No bid will be accepted for less than the appraised fair market value. Bids must be individually submitted for each parcel in this notice. The sealed bid envelope must be addressed as follows: Cashier-Sealed Bid, Public Land Sale SDM_____, P.O. Box 36800, Billings Montana 59107-6800. If two or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by drawing. The drawing, if required, shall be held immediately following the opening of the sealed bid. The highest qualifying sealed bid shall then be declared.

Final Details: Once a high bid is accepted, the successful bidder shall submit the remainder of the full bid price within 180 days of the date of the

BEST COPY AVAILABLE

sale. Failure to submit the required amount within 180 days shall disqualify the apparent high bidder and cause the bid deposit to be forfeited to the BLM.

FOR FURTHER INFORMATION CONTACT: Information related to this sale is available at the Miles City District Office, P.O. Box 940, Miles City, Montana 59301 or the South Dakota Resource Area, 310 Roundup Street, Belle Fourche, South Dakota 57717 or at (605) 892-2526.

SUPPLEMENTARY INFORMATION: This proposed action is consistent with BLM policies and plans. The sale first appeared in the **Federal Register** in 48 FR 48715, October 20, 1983, (SDM-58032) and in 51 FR 9723, March 20, 1986 (SDM-66124, SDM-66126, SDM-66127, and SDM-66584).

Sandra E. Sacher,

Associate District Manager.

[FR Doc. 89-16838 Filed 7-18-89; 8:45 am]

BILLING CODE 4310-DN-M

[CA-940-09-4520-12; C-5 and 10-89]

Filing of Plat of Survey

July 10, 1989.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, Nevada County

T. 6 S., R. 8 E.

2. These supplemental plats of the NE¼NE¼ of section 8, Township 16 North, Range 9 East, and E½NE¼ section 12, Township 17 North, Range 8 East, Mount Diablo Meridian, California, were accepted May 4 and May 8, 1989.

3. These supplemental plats will immediately become the basic record of describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

4. These supplemental plats were executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 89-16867 Filed 7-18-89; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-09-4520-12; (Group 774)]

Plat of Survey

July 10, 1989.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, El Dorado and Alpine Counties

T. 11 N., R. 18 E.

2. This plat, representing the dependent resurvey of the Second Standard Parallel North along a portion of the south boundary, a portion of the north boundary, a portion of the subdicisional lines, and the survey of the subdivision of sections 13, 24, and 25, Township 11 North, Range 18 East, Mount Diablo Meridian, California, under Group No. 774 California, was accepted May 17, 1989.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Alpine and El Dorado National Forests.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 89-16888 Filed 7-18-89; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-09-4520-12; (Group 1036)]

Plat of Survey

July 10, 1989.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, Inyo County

T. 16 S., R. 37 E.

2. This plat, representing the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, and a portion of the North Pole Placer, Mineral Survey No. 5404, and the survey of a portion of the subdivision of Section 24, Township 16 South, Range 37 East, Mount Diablo Meridian, California, under Group No. 1036 California, was accepted May 9, 1989.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California, 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 89-16889 Filed 7-18-89; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-09-4520-12; (Group 913)]

Plat of Survey

July 10, 1989.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, Shasta County

T. 36 N., R. 1 W.

2. This plat, representing the dependent resurvey of a portion of the north boundary, and a portion of the subdivisional lines, and the survey of the subdivision of Section 2, 10, and 14, Township 36 North, Range 1 West, Mount Diablo Meridian, California, under Group No. 000 California, was accepted March 28, 1989.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Shasta Trinity National Forest.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California, 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 89-16890 Filed 7-18-89; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-09-4520-12; (Group 913)]

Plat of Survey

July 10, 1989.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, Shasta County

T. 36 N., R. 1 E.

2. This plat, representing the dependent resurvey of a portion of the west boundary and subdivisional lines, and the survey of the subdivision of Section 6, Township 36 North, Range 1 East, Mount Diablo Meridian, California, under Group No. 913 California, was accepted March 28, 1989.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California, 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 89-16891 Filed 7-18-89; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-09-4520-12 (Group 996)]

Plat of Survey

July 11, 1989.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, Shasta County

T. 36 N., R. 1 E.

2. This plat, representing the dependent resurvey of a portion of the north boundary and a portion of the subdivisional lines, the survey to complete Section 3, and the survey of the subdivision of Section 3, Township 36 North, Range 1 East, Mount Diablo Meridian, California, under Group No. 996 California, was accepted May 24, 1989.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Shasta Trinity National Forest.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California, 95825.

Herman J. Lyttge,

Chief Public Information Section.

[FR Doc. 89-16892 Filed 7-18-89; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-09-4520-12 (Group 978)]

Plat of Survey

July 11, 1989.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, Modoc County

T. 42 N., R. 15 E.

2. This plat, representing the dependent resurvey of a portion of the south boundary and a portion of the subdivisional lines, and the survey of the subdivision of Sections 27 and 34, Township 42 North, Range 15 East, Mount Diablo Meridian, California, under Group No. 978 California, was accepted May 26, 1989.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Lassen National Forest.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California, 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 89-16893 Filed 7-18-89; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-09-4520-12 (Group 985)]

Plat of Survey

July 11, 1989.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

San Bernardino Meridian, Madera County

T. 9 N., R. 22 E.

2. This plat, representing the dependent resurvey of the subidivision of Section 13, and the survey of the survey of subdivision of Section 13 and the metes-and-bounds survey of Lots 7 and 8, in Section 13, Township 9 North, Range 22 East, San Bernardino Meridian, California, under Group No. 985 California, was accepted May 26, 1989.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California, 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 89-16894 Filed 7-18-89; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-09-4520-12 (Group 770)]

Plat of Survey

July 11, 1989.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

San Bernardino Meridian, San Luis Obispo and Santa Barbara Counties

T. 9 N., R. 32 W.,
T. 10 N., R. 32 and 33 W.,
T. 11 N., R. 32 W.

2. These plats, representing the (1) Dependent resurvey of portions of the Tepusquet Rancho and Sisquoc Rancho, the limiting of fractional sections, and a portion of the exterior boundaries and subdivisional lines, and the extension survey and survey of a portion of the subdivisional lines of T. 9 N., R. 32 W., San Bernardino Meridian, California,

(2) Dependent resurvey of portion of the Rancho de Suey, Tepusquel Rancho, and Sisquoc Rancho in T. 10 N., R. 32 and 33 W., the limiting boundaries of fractional sections, and a portion of the exterior boundaries and subdivisional lines of T. 10 N., R. 32 W., and the extension survey and survey of the subdivision of section 34, T. 10 N., R. 32 W., San Bernardino Meridian, California,

(3) Dependent resurvey of the south and east boundaries, portions of the west and north boundaries, a portion of the Rancho de Suey, and a portion of the subdivisional lines, of T. 11 N., R. 32 W., San Bernardino Meridian, California, under Group No. 770 California, was accepted March 24, 1989.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat

has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Los Padres National Forest.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 89-16895 Filed 7-18-89; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-09-4520-12 (Group 1042)]

Plat of Survey

July 11, 1989.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

San Bernardino Meridian, Madera County

T. 6 S., R. 20 E.

2. This plat, representing the dependent resurvey of a portion of the south and east boundaries, and a portion of the subdivisional lines, the survey of the subdivision of Section 33, and the metes-and-bounds survey of a portion of the southerly right-of-way boundary of Interstate 10, and a portion of the easterly right-of-way boundary of Wiley Well Road, in Section 33, Township 6 South, Range 20 East, San Bernardino Meridian, California, under Group No. 1042 California, was accepted June 30, 1989.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California, 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 89-16896 Filed 7-18-89; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-09-4520-12 (Group 927)]

Plat of Survey

July 11, 1989.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Humboldt Meridian, Humboldt County

T. 7 and 8 N., R. 4 and 5 E.

2. This plat, representing the dependent resurvey of the exterior boundaries of a portion of the interior lines, and the survey of lots 140A, 140B, 141A, 141B, 143A, 145A, 145B, 146A, 146B, and 165B, of Campbell Field within the Hoopa Valley Indian Reservation, in Townships 7 and 8 North, Ranges 4 and 5 East, Humboldt Meridian, California, under Group No. 927 California, was accepted April 5, 1989.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Indian Affairs.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 89-16897 Filed 7-18-89; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-09-4520-12 (Group 1004)]

Plat of Survey

July 11, 1989.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, Mariposa County

T. 3 S., R. 20 E.

2. This plat, representing the dependent resurvey of portions of the west and north boundaries, a portion of the subdivisional lines, the survey of the subdivision of Section 16, and the metes-and-bounds survey of Parcel A in Section 16, Township 3 South, Range 20 East, Mount Diablo Meridian, California, under Group No. 1004 California, was accepted May 22, 1989.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the National Park Service.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California, 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 89-16898 Filed 7-18-89; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-09-4520-12; C-8-89]

Filing of Plat of Survey

July 11, 1989.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

San Bernardino Meridian, San Bernardino County

T. 10 N., R. 6 W.

2. This supplemental plat of Section 28, Township 10 North, Range 6 West, San Bernardino Meridian, California, was accepted May 22, 1989.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2811, Sacramento, California, 95825.

Herman J. Lyttge,

Public Information Section.

[FR Doc. 89-16899 Filed 7-18-89; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-09-4520-12; C-6-89]

Filing of Plat of Survey

July 11, 1989.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, Napa County

T. 10 N., R. 6 W.

2. This supplemental plat of Section 33, Township 10 North, Range 6 West, Mount Diablo Meridian, California, and the mineral survey records was accepted June 13, 1989.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2811, Sacramento, California, 95825.

Herman J. Lyttge,

Public Information Section.

[FR Doc. 89-16900 Filed 7-18-89; 8:45 am]

BILLING CODE 4310-40-M

[OR-943-09-4214-10; GP9-123; OR-44410]

Proposed Withdrawal and Opportunity for Public Meeting; OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 507.50 acres of public land for the National Historic Oregon Trail Interpretive Center at Flagstaff Hill. This notice closes the land for up to 2 years from surface entry and new mining claims. The land will remain open to mineral leasing.

DATE: Comments and requests for a public meeting must be received by October 17, 1989.

ADDRESS: Comments and meeting requests should be sent to the Oregon State Director, BLM, P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

SUPPLEMENTARY INFORMATION: On July 13, 1989, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Willamette Meridian

T. 9 S., R. 41 E.,

Sec. 5, SW¼SW¼ of lot 4, NW¼SW¼ NE¼, N½NW¼SW¼NW¼, S½N½S½ NW¼, S½S½NW¼, and that portion of the N½SW¼ located north of the northerly right-of-way line of State Highway 86;

Sec. 6, lots 1, 2, 3, and 4, S½NE¼, and those portions of lot 5, SE¼NW¼, NE¼ SW¼, and N½SE¼ located north of the northerly right-of-way line of State Highway 86.

The area described contains approximately 507.50 acres in Baker County, Oregon.

The purpose of the proposed withdrawal is to protect the proposed National Historic Oregon Trail Interpretive Center at Flagstaff Hill located adjacent to State Highway 86 approximately five miles northeast of Baker, Oregon.

For a period of 90 days from the date of publication of this notice, all persons who wish to subject comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date: *Provided,* that such segregation shall not be construed to prevent the owner or owners of any unperfected mining claim currently existing on the land from making a discovery of valuable minerals for the purpose of establishing validity and securing mineral patent. The temporary uses which may be permitted during this segregative period are leases, licenses, permits, and disposal of mineral or vegetative resources.

Dated: July 13, 1989.

Robert E. Mollohan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89-16832 Filed 7-18-89; 8:45 am]

BILLING CODE 4310-33-M

Geological Survey

Topographic Quadrangle Maps; Building Classifications; Discontinuance

AGENCY: Department of the Interior, Geological Survey.

ACTION: Notice of intent; discontinuing building classifications on topographic maps.

SUMMARY: National Mapping Division policy calls for buildings to be classified as Class 1 or 2 on standard topographic quadrangle maps, based on information on building use obtained during field survey operations. Class 1 buildings are structures intended primarily for housing human activities and include residences, hotels, churches, schools, shops, most public and commercial buildings, factories, service stations, and others of similar character. Class 2 buildings are structures not intended primarily for housing human activities and include warehouses, barns, greenhouses, sheds, and others constructed to house machinery or animals, or for storage. The National Mapping Division proposes to eliminate building class distinctions on standard topographic quadrangle maps. This proposal is based on a lack of definitive requirements for building use information and the desire to expedite mapping operations. The result is that all buildings will be portrayed with uniform symbology regardless of building use. It should be noted that churches, schools, and landmark buildings will still be symbolized and/or labeled according to existing standards. Comments are being requested from other Federal agencies, State agencies, and the private sector to determine the use of building class information as currently depicted on standard topographic quadrangle maps, and the impact of eliminating building class distinctions.

DATE: Please submit all comments on the impact of eliminating Class 1 or 2 building distinctions in writing by August 15, 1989.

FOR FURTHER INFORMATION WRITE OR CALL: William J. Jones, Chief, Office of Technical Management, National Mapping Division, 510 National Center, Reston, Virginia 22092, 703-648-4566.

SUPPLEMENTAL INFORMATION: If you support continuation of present symbology, please include a statement of the application being made of the building classification.

Lowell E. Starr,

Chief, National Mapping Division, U.S. Geological Survey.

Date: July 12, 1989.

[FR Doc. 89-16880 Filed 7-18-89; 8:45 am]

BILLING CODE 4310-31-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that McMoRan Oil & Gas Co. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 10739, Block 210, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on July 7, 1989. Comments must be received on or before August 3, 1989, or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention: OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: June 10, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-16886 Filed 7-18-89; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Mobil Exploration and Producing U.S. Inc. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 5473 and 5475, Blocks 192 and 205, respectively, South Marsh Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Morgan City, Louisiana.

DATES: The subject DOCD was deemed submitted on July 7, 1989. Comments must be received on or before August 3, 1989, or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: July 10, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-16885 Filed 7-18-89; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 8, 1989. Pusuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington DC 20013-7127. Written comments should be submitted by August 3, 1989.

Beth Boland,

Chief of Registration, National Register.

ARIZONA

Maricopa County

Wrigley, William, Jr., Winter Cottage, 2501 E. Telawa Trail, Phoenix, 89001045

CALIFORNIA

Santa Clara County

Campbell Union High School Historic District, 1 W. Campbell Ave., Campbell, 89001048

FLORIDA

Highlands County

Central Station (Sebring MPS), 301 N. Mango St., Sebring, 89001009

Hainz, Edward, House, (Sebring MPS), 155 W. Center Ave., Sebring, 89001010

Highlands County Courthouse, (Sebring MPS), 430 S. Commerce Ave., Sebring, 89001013

Sebring, H. Orvel, House, (Sebring MPS), 463 S. Lake View Dr., Sebring, 89001012

Vinson, Paul L., House, (Sebring MPS), 309 N. Lake View Dr., Sebring, 89001011

Polk County

Polk County Courthouse, Old, 100 E. Main St., Bartow, 89001055

LOUISIANA

Caddo Parish

Kings Highway Christian Church, 806 Kings Hwy., Shreveport, 89001042

Grant Parish

Ethridge House, 401 Louise St., Colfax, 89001043

Livingston Parish

Livingston Parish Courthouse, Old, Second and Mulberry Sts., Springfield 89001040

Sabine Parish

Kansas City Southern Depot, Spanish and Port Arthur Sts., Zwolle, 89001041

St. Landry Parish

St. Landry parish Lumber Company, 215 N. Railroad Ave., Opelousas, 89001044

MASSACHUSETTS

Middlesex County

Tyler Park Historic District, Roughly bounded by Princeton, Foster, and Pine Sts., Lowell, 89001056

NEW JERSEY

Camden County

Cooper Street Historic District, Cooper St. from 2nd to 7th Sts., Camden, 89001057

NORTH CAROLINA

Cabarrus County

Spears House, 1615 Morrison Rd., Concord vicinity, 89001046

Orange County

Rocky Ridge Farm Historic District, Roughly bounded by Rocky Ridge Rd., Country Club Rd., Laurel Hill Rd., Laurel Hill Cir., and Buttons Dr., Chapel Hill, 89001039

Wake County

Henderson, Isabelle Bowen, House and Gardens, 2134 Oberlin Rd., Raleigh, 89001049

OHIO

Franklin County

Arendt-Seymour House, (Canal Winchester MPS), 53 W. Columbus St., Canal Winchester, 89001024

Barnhardt-Bolenbaugh House, (Canal Winchester MPS), 113 E. Waterloo St., Canal Winchester, 89001027

Berry, Dr. L. W., House (Canal Winchester MPS), 68 Washington St., Canal Winchester, 89001033

Bruns-Wynkoop House, (Canal Winchester MPS), 129 Washington St., Canal Winchester, 89001023

Carty, J.—R. J. Tussing House, (Canal Winchester MPS), 48 Elm St., Canal Winchester, 89001025

David's Reformed Church, (Canal Winchester MPS), 80 W. Columbus St., Canal Winchester, 89001017

Decker, Elias, Farmhouse, (Canal Winchester MPS), 6170 Lithopolis Rd., Canal Winchester, 89001034

Deitz, Samuel, Farmhouse, (Canal Winchester MPS), 280 Ashbrook Rd., Canal Winchester, 89001021

Epley, Henry J., House, (Canal Winchester MPS), 55 Franklin St., Canal Winchester, 89001020

Foor-Alspach House, (Canal Winchester MPS), 92 E. Waterloo St., Canal Winchester, 89001035

Cayman, Christian, House, (Canal Winchester MPS), 110 E. Waterloo St., Canal Winchester, 89001037

Griffith, James, House (Canal Winchester MPS), 172 Waterloo St., Canal Winchester, 89001019

Haffey, Parley, Farm Complex (Canal Winchester MPS), 525 Gender Rd., Canal Winchester, 89001022

Helpman—Chaney House (Canal Winchester MPS), 132 W. Columbus St., Canal Winchester, 89001032

King, William, House (Canal Winchester MPS), 80 E. Waterloo St., Canal Winchester, 89001031

Lehman, Abraham, Farmhouse (Canal Winchester MPS), 40 Lehman Dr., Canal Winchester, 89001016

Methodist Church Parsonage (Canal Winchester MPS), 59 W. Columbus St., Canal Winchester, 89001030

North High Street Historic District (Canal Winchester MPS), Roughly N. High St. and E. and W. Mound St., Canal Winchester, 89001038

Peoples Bank Company Building (Canal Winchester MPS), 10 N. High St., Canal Winchester, 89001026

Thursh, Morgan, Farm Complex (Canal Winchester MPS), 375 Gender Rd., Canal Winchester, 89001036

Times Building—Lodge Hall (Canal Winchester MPS), 19 E. Waterloo St., Canal Winchester, 89001028

Zellers—Langel House (Canal Winchester MPS), 163 W. Waterlooo St., Canal Winchester, 89001029

Williams County

Stryker Depot, N. Depot St., Stryker, 89001014

PENNSYLVANIA

Chester County

Kennett Square Historic District, Roughly bounded by Sicklea, Willow, Mullberry, Broad, South, Union, Cedar, Lafayette, State, and Washington, Kennett Square, 89001052

Delaware County

Thunderbird Lodge, 45 Rose Valley Rd., Rose Valley, 89001053

Lancaster County

Eby Shoe Corporation, 136 N. State St., Ephrata, 89001050

Nissly—Stauffer Tobacco Warehouses, 322-24 N. Arch St. and 317-19 N. Mulberry St., Lancaster, 89001051

North Prince Street Historic District, Roughly N. Prince St. and W. Lemon St., Lancaster, 89001054

VIRGINIA

Prince William County

Brentsville Courthouse and Jail (Civil War Properties in Prince William County MPS), 12239 and 12249 Bristow Rd., Brentsville, 89001060

Freestone Point Confederate Battery (Civil War Properties in Prince William County MPS), At Potomac River off VA 610 in Leesylvania State Park, Woodbridge vicinity, 89001059

Greenwich Presbyterian Church and Cemetery (Civil War Properties in Prince William County MPS), 9510 Burwell Rd., Greenwich, 89001065

Mayfield Fortification (Civil War Properties in Prince William County MPS), Address Restricted, Manassas vicinity, 89001063

Mitchell's Ford Entrenchments, (Civil War Properties in Prince William County MPS), Address restricted, Manassas Park vicinity, 89001064

Orange and Alexandria Railroad Bridge Piers (Civil War properties in Prince William County MPS), Address Restricted, Manassas Park vicinity, 89001061

Signal Hill (Civil War Properties in Prince William County MPS), Signal Hill Rd. and Blooms Rd., Manassas vicinity, 89001062

WISCONSIN

Milwaukee County

Coast Guard Station, Old, 1600 N. Lincoln Memorial Dr., Milwaukee, 89001047

[FR Doc. 89-16854 Filed 7-18-89; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Research Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the A.I.D. Research Advisory Committee meeting on August 10–11, 1989 in Conference Room 'C' of the Pan American Health Organization Building, 525 Twenty-Third Street, NW., Washington, DC. The Committee will (1) continue its discussion of the system of scientific review A.I.D. uses for science and technology projects; (2) hear a brief update on U.S. and international research on AIDS; and (3) work on a scope of work for a special panel report to RAC on Global Warming which will be used as a discussion document at a later meeting.

The meeting will begin at 9:00 a.m. August 10 and adjourn at 5:00 p.m. On August 11, the meeting will begin at 8:00 a.m. and adjourn at 12:30 p.m. The meeting is open to the public. Any interested persons may attend, may file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee and to the extent time available for the meeting permits. Dr. Curtis R. Jackson, Director, Research and University Relations, Bureau for Science and Technology, is designated as the A.I.D. Representative at the meeting. Persons desiring more specific information should contact Dr. Jackson at (703) 875–4005 or Room 309, 1601 North Kent Street, Rosslyn, Virginia.

Curtis R. Jackson,

A.I.D. Representative, Research Advisory Committee.

Date: July 11, 1989.

[FR Doc. 89–16877 Filed 7–18–89; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget for review.

Purpose of Information Collection: The proposed information collection is for use by the Commission in connection with investigation No. 332–275, Competitive Position of the U.S. Gear Industry in U.S. and Global Markets, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). Certain information from one of three forms will also be for use by the U.S. Department of Commerce and the Department of the Navy in their joint study, Department of Commerce/Department of the Navy National Security Assessment of the Gear Industry, instituted under the authority of the Defense Production Act of 1950, as amended (50 U.S.C. 2155).

Summary of Proposals:

(1) *Number of forms submitted:* Three.

(2) *Title of form:* Investigation No. 332–275, Competitive Position of the U.S. Gear Industry in U.S. and Global Markets—Questionnaires for U.S. Producers, U.S. Importers/Purchasers, and U.S. Distributors.

(3) *Type of request:* New.

(4) *Frequency of use:* Nonrecurring.

(5) *Description of respondents:* Firms which produce, assemble, import, purchase, and distribute gears, gear products, flexible couplings, and vehicle gearing.

(6) *Estimated number of respondents:* 482.

(7) *Estimated total number of hours to complete the forms:* 22,358.

(8) Information obtained from the forms that qualify as confidential business information will be so treated and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment: Copies of the forms and supporting documents may be obtained from Dennis Fravel, telephone (202) 252–1404. Comments about the proposals should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503, Attention: Don Arbuckle, Desk Officer for the U.S. International Trade Commission. If you anticipate commenting on a form but find that time to prepare comments will prevent you from submitting them promptly you should advise OMB of your intent within 2 weeks of the date this notice appears in the **Federal Register**. Mr. Arbuckle's telephone number is (202) 395–7340. Copies of any comments should be provided to Charles Ervin (U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436).

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 252–1810.

By order of the Commission.

Issued: July 14, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–16940 Filed 7–18–89; 8:45 am]

BILLING CODE 7020–02–M

Possible Modifications to the Harmonized System

AGENCY: International Trade Commission.

ACTION: Consideration of proposed modifications to the Harmonized Commodity Description and Coding System (Harmonized System).

SUMMARY: This notice is intended to obtain views of interested parties and agencies concerning possible modifications to the nomenclature of chapters 84, 85 and 90 of the Harmonized System.

EFFECTIVE DATE: July 12, 1989.

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements (202–252–1592) or Craig Houser, Nomenclature Analyst (202–252–1597).

Background

Effective January 1, 1989, the Harmonized Tariff Schedule of the United States (HTS), based upon the nomenclature structure of the Harmonized System, replaced the Tariff Schedules of the United States. Administered by the Customs Cooperation Council, the Harmonized System is an international nomenclature scheme adopted by way of a convention and intended to serve as a thorough, up-to-date classification of goods for tariff, statistical and shipping documentation purposes.

The United States International Trade Commission (Commission), the Customs Service, and the Bureau of Census have been assigned responsibilities for the development of technical proposals to be directed to the Harmonized System Committee (HSC) under section 1210 of the Omnibus Trade and Competitiveness Act of 1988. As indicated in the notice issued by the United States Trade Representative (USTR) (53 FR 45646 of November 10, 1988), the Commission is the lead agency in considering amendments to the Harmonized System nomenclature that are intended to insure that the HS keeps abreast of changes in technology and patterns of international trade. At its last session, the HSC announced a deadline of September 30 for the receipt of comments from contracting parties to the HS convention on proposals to amend the nomenclature of chapters 84, 85 and 90 of the Harmonized System.

Request for proposals. In accordance with the USTR notice, the Commission is seeking proposals for specific modifications to the nomenclature of these three chapters that will further the above goals. In particular, the Commission is interested in obtaining views regarding possible amendments covering robotic devices, telecommunications products, and other goods of these chapters of interest to the U.S. trade and business community. Interested parties, associations, and government agencies should submit specific language for proposed article descriptions together with appropriate descriptive comments and, to the extent available, trade data. To permit review of these proposals, suggested modifications must be received by the Commission by no later than the close of August 16, 1989.

Submission of views. Written submissions along with nine copies should be submitted to the Secretary of the Commission at 500 E St. SW., Washington, DC 20436. Hearing-impaired persons are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 252–1810.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: July 13, 1989.

[FR Doc. 89–16823 Filed 7–18–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–284]

Certain Electric Power Tools, Battery Cartridges, and Battery Chargers; Commission Decision To Extend the Deadline for Determining Whether To Review an Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend its administrative deadline for determining whether to review an initial determination ("ID") issued by the presiding administrative law judge ("ALJ") concerning violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation. The deadline is extended by eight (8) days—*i.e.*, from July 20, 1989, to July 28, 1989.

ADDRESSES: Copies of all nonconfidential documents filed in this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, Docket Section, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone 202–252–1000.

FOR FURTHER INFORMATION CONTACT: P. N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1061. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–252–1810.

SUPPLEMENTARY INFORMATION: The subject investigation is being conducted to determine whether there is a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337 (1982 and Supp. VI 1988) in the importation or sale of certain electric power tools, battery cartridges, and battery chargers from Taiwan. *See* 53 FR 31112 (Aug. 17, 1988) as amended by 53 FR 45787 (Nov. 23, 1988). Owing to the complexity of the issues, the number of parties, and other factors, the investigation has been designated "more complicated." *See* 54 FR 16009 (Apr. 20, 1989).

On June 2, 1989, the presiding ALJ issued an ID holding that there has been no violation of section 337 by any respondent except one who was found to have infringed complainants' registered trademark in the importation or sale of an accused Taiwanese product. Complainants and two groups of respondents have petitioned for review of the ID. Collectively, the petitions contest nearly every finding and conclusion in the ID. Various parties have filed responses opposing each petition in whole or in part.

Under interm Commission rule 210.53(h), the Commission's 45-day deadline for determining whether to review the ID was Thursday, July 20, 1989. Because of the complexity of this investigation and the number of issues raised in the petitions and the responses, the Commission has ordered an 8-day extension of the review decision deadline—*i.e.*, from Thursday July 20 to Friday July 28, 1989. If the Commission does not order a review on or before that date (and does not order a further extension of time to do so), the ID will become the Commission's final determination concerning violation of section 337 in this investigation. *See* interim Commission rule 210.53(h) (53 FR 33043 and 33070, Aug. 29, 1988) (to be codified at 19 CFR 210.53). This action was taken pursuant to Commission rule 201.14(b) (19 CFR 201.14(b)) and interim rule 210.54(b)(1) (53 FR 33053 and 33071, Aug. 29, 1988) (to be codified at 19 CFR 210.54(b)(1)).

The 18-month statutory deadline for completing this investigation is February 20, 1990. *See* 19 U.S.C. 1337(b)(1). The statement in 54 FR 16009 (Apr. 20, 1989) indicating that the statutory deadline is January 17, 1990, was in error and should be disregarded.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: July 10, 1989.

[FR Doc. 89–16924 Filed 7–18–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 731–TA–436 and 437 (Preliminary)]

Generic Cephalexin Capsules From Israel and Portugal

AGENCY: International Trade Commission.

ACTION: Institution of preliminary antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731–TA–436 and 437 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Israel and Portugal of generic cephalexin capsules, provided for in subheading 3004.20.00 of the Harmonized Tariff Schedule of the United States (previously reported under item 411.76 of the Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by August 28, 1989.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207, as amended), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: July 12, 1989.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202–252–1184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW.,

Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background. These investigations are being instituted in response to a petition filed on July 12, 1989, by Biocraft Laboratories, Inc., of Elmwood Park, NJ.

Participation in the investigations. Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public service list. Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under an administrative protective order (APO) and APO service list. Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in these preliminary investigations to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference. The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on August 4, 1989, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Diane J. Mazur (202-252-1184) not later than July 31, 1989, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions. Any person may submit to the Commission on or before August 8, 1989, a written brief containing information and arguments pertinent to the subject matter of these investigations, as proided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than August 11, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: July 13, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-16922 Filed 7-18-89; 8:45 am]

BILLING CODE 7020-02-M

[Inv. No. 337-TA-266]

Certain Reclosable Plastic Bags and Tubing; Determination Not To Review Initial Advisory Opinion

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is given that the Commission has determined not to raview the initial advisory opinion (IAO) issued by the presiding administrative law judge (ALJ) in the above-captioned advisory opinion proceeding, finding that reclosable plastic bags sought to be exported to the United States by Kingdom Plastic Manufacturing Co., Ltd. (KPM) are not covered by the exclusion order issued at the conclusion of ITC Inv. No. 337-TA-266. The IAO therefore becomes the Commission's advisory opinion.

ADDRESSES: Copies of the nonconfidential version of the IAO and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington DC 20436, telephone 202-252-1000.

FOR FURTHER INFORMATION CONTACT: Paul R. Bardos, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E St., SW., Washington, DC 20436, Room 707M, telephone 202-252-1102. Hearing impaired individuals are advised that information in this matter can be obtained by contacting the Commission's TDD terminal at 202-252-1810.

SUPPLEMENTARY INFORMATION: On April 29, 1988, the Commission issued a general exclusion order at the conclusion of the above-captioned investigation. On June 28, 1988, upon a request by KPM, the Commission instituted an advisory opinion proceeding pursuant to Commission rule 211.54 (19 CFR 211.54) to determine whether certain reclosable plastic bags sought to be exported to the United States by KPM are covered by the Commission's exclusion order. The proceeding was assigned to the ALJ who had presided over the original section 337 investigation. On March 8-11, 1989, the ALJ held a hearing on the matter in which KPM, the Commission investigative attorney, and the complainant (Minigrip Inc.) in the original investigation participated. On May 25, 1989, the ALJ issued an IAO finding that the reclosable plastic bags sought to be exported to the United States by KPM are not covered by the Commission's exclusion order. On June 12, 1989, complainant Minigrip Inc. filed a petition for review of the IAO. On June 19, 1989, requester KPM filed an opposition to the petition for review.

Authority for the Commission's action is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rule § 211.54(b) (53 FR 33075, Aug. 29, 1988).

By Order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: July 11, 1989.

[FR Doc. 89-16921 Filed 7-18-89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31487]

Natchez Trace Railroad—Purchase and Lease—CSX Transportation Lines Between Wellington and Anniston, AL and Talladega and Gantt's Jct., AL; Decision

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision accepting application for consideration.

SUMMARY: The Commission is accepting for consideration the application, filed June 19, 1989, by Natchez Trace Railroad (NTR), Kyle Railways, Inc. (Kyle), and CSX Transportation, Inc. (CSXT) for the purchase and lease of unconnected lines of CSXT railroad totaling 41.42 miles. One line runs between Anniston and Wellington, AL; the other line runs between Talladega and Gantt's Junction, AL. The Commission finds that this a minor transaction under 49 CFR Part 1180.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than August 17, 1989. Comments from the Secretary of Transportation and Attorney General of the United States must be filed by September 1, 1989. Applicant's reply is due September 21, 1989. Comments must be served on all parties of record within 10 days of the Commission's issuance of a service list. The Commission expects to issue the service list shortly thereafter.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245 (TDD for hearing impaired: (202) 275-1721).

ADDRESSES: Send an original and 10 copies of all documents to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 31487, Interstate Commerce Commission, Washington, DC 20423.

In addition, concurrently send one copy of all documents to the United States Secretary of Transportation, the Attorney General of the United States, and each of applicants' representatives.

Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Room 5101, 400 Seventh Street SW., Washington, DC 20590

Attorney General of the United States, Washington, DC 20530

Lawrence H. Richmond, CSX Transportation, Inc., 100 North Charles Street, Baltimore, MD 21201

Fritz R. Kahn, Verner, Liipfert, Bernhard, McPherson & Hand, 901 15th St., NW., Washington, DC 20005-2301.

SUPPLEMENTAL INFORMATION: Natchez Trace Railroad (NTR), Kyle Railways, Inc. (Kyle), and CSX Transportation, Inc. (CSXT), collectively "applicants," seek approval under 49 U.S.C. 11343, *et seq.* to purchase a 15.06-mile line between Anniston and Wellington, AL, and to lease a 26.36-mile line between Talladega and Gantt's Junction, AL. They contend that this is a minor transaction under 49 CFR 1180.2(c), and submitted their application in accordance with the railroad consolidation regulations at 49 CFR Part 1180. They intend to consummate the transaction as soon as possible after final Commission approval.

NTR is a Class III railroad common carrier which presently operates 55 miles of line between Oxford and Grand Junction, MS. NTR is controlled by Kyle, which in turn controls other carriers.

CSXT is a Class I railroad and a unit of CSX Corporation. It transported about 8,100 and 7,700 originating and terminating carloads on the two lines at issue in 1987 and 1988, respectively. During 1987-1988, 2,800 of the carloads moved on the line to be sold and 13,000 on the line to be leased. The lines carry no overhead traffic.

Applicants state that the proposed transaction will result in operating economies and improved service, thus enhancing their financial viability. Specifically, the proposed transaction will enable NTR to enter a new market and spread its administrative, insurance, and operating costs over a larger base. CSXT, on the other hand, will be relieved of inefficiencies inherent in operating what for it is a marginal line. Applicants also state that the transaction will improve service. As a local carrier, NTR assertedly will be better able to accommodate the needs of the line's shippers.

Applicants contend that the proposed transactions will not substantially reduce competition, create a monopoly, or restrain trade in freight surface transportation in any region of the United States. As applicants do not compete for traffic on the line, the transaction will merely substitute one rail carrier for another on an existing line. The line is parallel to an interstate highway, and the area is served by motor carriers. Applicants state that, if anything, the transaction should enhance intermodal competition by allowing the rail mode to compete more effectively with other modes.

NTR will be able to interchange traffic on the Anniston-Wellington line at Wellington with CSXT and at Anniston with Southern Railway Company (Southern). On the Talladega-Gantt's Jct. line, NTR will be able to interchange traffic with CSXT at Talladega and Southern at Sylacauga, AL.

NTR intends to operate the line with its own employees. As a result, CSXT's work force will be reduced by three employees on the Anniston-Wellington line and by seven employees on the Talladega-Gantt's Jct. line. No positions with NTR will be eliminated. It expects to hire additional employees to operate the line and states that it will offer these positions to former CSXT employees.

CSXT states that it intends to negotiate employee protection agreements with affected employees pursuant to the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979) and Mendicino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).*

Under the consolidation regulations, we must determine whether a proposed transaction is major, significant, minor, or exempt. The proposed transaction, involving Class I and Class III railroads, has no regional or national significance and will neither result in a major market extension nor reduce the present level of competition. Accordingly, we find the proposal is a minor transaction under § 1180.2(c). Since the application complies with our regulations governing minor transactions, with appropriate modifications, we are accepting it for consideration.

The application and exhibits are available for inspection in the Public Docket Room at the Offices of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained upon request from applicants' representatives named above.

Any interested persons, including governmental entities, may participate in this proceeding by submitting written comments. Any person who files timely written comments shall be considered a party of record if the comments so request. In this event, no petition for leave to intervene need be filed.

Consistent with 49 CFR 1180.4(d)(iii) written comments must contain:

(a) The docket number and title of the proceeding;

(b) The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

(c) The commenting party's position, *i.e., whether it supports or opposes the proposed transaction;*

(d) A statement of whether the commenting party intends to participate formally in the proceeding or merely comment on the proposal;

(e) If desired, a request for an oral hearing with reasons supporting the request; the request must indicate the disputed material facts that can only be resolved at a hearing; and

(f) A list of all information sought to be discovered from applicant carriers.

Because we have determined that the proposal constitutes a minor transaction, no responsive applications will be permitted. The time limits for processing a minor transaction are set forth at 49 U.S.C. 11345(d).

Discovery may begin immediately. We admonish the parties to resolve all discovery matters expeditiously and amicably.

This action will not significantly affect either the quality of the human environment or energy conservation.

It is ordered:

1. This proposal is found to be a minor transaction under 49 CFR 1180.2(c).

2. The application in Finance Docket No. 31487 is accepted for consideration.

3. The parties shall comply with all provisions as stated above.

4. This decision is effective on the date of service.

Decided: July 12, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-16036 Filed 7-18-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Senior Executive Service; Appointment of Member to the Performance Review Board

Title 5 U.S.C. 4314 (c) (4) provides that Notice of the appointment of an individual to serve as a member of the Performance Review Board of the Senior Executive Service shall be published in the **Federal Register**.

The following individual is hereby appointed to a three-year term, effective June 19, 1989: Roderick DeArment.

FOR FURTHER INFORMATION CONTACT: Mr. Larry K. Goodwin, Director of Personnel Management, Room C-5526, Department of Labor, Frances Perkins Building, Washington, DC 20210, Telephone Number (202) 523-6551.

Signed at Washington, DC, this 11th day of July, 1989.

Elizabeth Dole,

Secretary of Labor.

[FR Doc. 89-16917 Filed 7-18-89; 8:45 am]

BILLING CODE 4510-23-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 31, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 31, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 10th day of July 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Albert Forte Neckwear (workers)	Paulsboro, NJ	7/10/89	6/5/89	23,096	Neckties.
Allied Bendix (workers)	Troy, NY	7/10/89	6/16/89	23,097	Auto & Aircraft Break Lining.
C.C. Tank Rental Co. (workers)	Colorado, City, TX	7/10/89	6/19/89	23,098	Frac Tank Rental for Oil Wells.
Charles Komar & Son (workers)	Middletown, NJ	7/10/89	6/19/89	23,099	Womens' Lingene, Nightwear & Outerwear.
Cone Mills Corp. (workers)	New York, NY	7/10/89	6/9/89	23,100	Finished Fabrics.
Crist Lakeshore Plateau Co. (workers)	Phoenix, AZ	7/10/89	6/15/89	23,101	Oil & Gas.
Demetrious Designs (workers)	New York, NY	7/10/89	6/13/89	23,102	Bridals Gowns & Evening Dresses.
Diebold Inc. (SWO)	Hamilton, OH	7/10/89	6/19/89	23,103	Security Products.
Dorothy Undergarment (ILGWU)	New York, NY	7/10/89	6/13/89	23,104	Ladies' Undergarments.
Dotronix, Inc. (workers)	Elk River, MN	7/10/89	6/21/89	23,105	CRT Monitors.
E.D.M. Electronics (workers)	Linden, NJ	7/10/89	6/13/89	23,106	Car Alarms.
Ford Motor Co. (company)	Edison, NJ	7/10/89	6/20/89	23,107	Passenger Cars.

APPENDIX—Continued

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
General Electric/Microelectronics Center (workers)	Somerville, NJ	7/10/89	6/10/89	23,108	Semiconductor Clips.
Ilford Photo Corp. (company)	Fairfield, NJ	7/10/89	6/13/89	23,109	Photographic Chemicals.
Klinger Industries (workers)	Morton, MS	7/10/89	6/22/89	23,110	Automobile Wire Harnesses.
Lasmo Energy Corp. (company)	Tulsa, OK	7/10/89	6/12/89	23,111	Oil & Gas.
Lasmo Energy Corp. (company)	Hays, KS	7/10/89	6/12/89	23,112	Oil & Gas.
Lasmo Energy Corp. (company)	Great Bend, KS	7/10/89	6/12/89	23,113	Oil & Gas.
Liberty Services, Inc. (workers)	Belle Chasse, LA	7/10/89	6/16/89	23,114	Oil & Gas.
Magna-Tek, Inc. (company)	Paterson, NJ	7/10/89	6/16/89	23,115	Video Tapes.
National Leather Goods Co. (workers)	Philadelphia, PA	7/10/89	6/22/89	23,116	Luggage.
Plateau Supply (workers)	Farmington, NM	10/7/89	6/15/89	23,117	Oil & Gas.
RCA Broadcast Systems Div. (workers)	Gibbsboro, NJ	10/7/89	6/14/89	23,118	Equipment for Broadcasting.
R.S.P. Industries, Inc. (workers)	Brooklyn, NY	10/7/89	5/23/89	23,119	Refrigerators & Freezers.
Robinson Drilling of Texas (workers)	Big Spring, TX	10/7/89	6/9/89	23,120	Oil & Gas.
Rockwell, International; Measurement & Flow Div. (workers).	Pittsburgh, PA	10/7/89	6/15/89	23,121	Admin. & Tech. Support.
Santa Fe Energy Co. (workers)	Amarillo, TX	10/7/89	6/20/89	23,122	Oil & Gas.
Soroco Well Service (workers)	Bloomfield, NM	10/7/89	6/10/89	23,123	Oil & Gas.
Tektronix, Inc.; Test & Measurement Div. (workers)	Beaverton, OR	7/10/89	6/6/89	23,124	Electronic Testing.
Trafalgar House Oil & Gas, Inc. (workers & company).	Houston, TX	7/10/89	5/23/89	23,125	Oil & Gas.
Universal Resources Corp. (workers)	Oklahoma City, OK	7/10/89	6/21/89	23,126	Oil & Gas.
Volkswagen of America (workers)	New Stanton, PA	7/10/89	6/17/89	23,127	Assemble Cars.
W.W. Steel Co., Elec. Transformer Div. (workers)	Norman, OK	7/10/89	4/13/89	23,128	Electric Transformer Cases.
Western Atlas Int'l., Atlas Cased Hole (workers)	Pampa, TX	7/10/89	6/8/89	23,129	Provide Wireline Services.
Wildcat Well Logging, Inc. (company)	Oklahoma City, OK	7/10/89	6/15/89	23,130	Oil & Gas.

[FR Doc. 89-16914 Filed 7-18-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,561]

Bates Fabrics, Inc. Lewiston, ME; Revised Determination on Reconsideration

On June 19, 1989, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers at Bates Fabrics, Inc., Lewiston, Maine. The affirmed notice regarding application for reconsideration was published in the **Federal Register** on June 27, 1989 (54 FR 27077).

The Amalgamated Clothing and Textile Workers of America (ACTWA) claimed that the Yarn Department at Bates Fabrics, Lewiston, Maine closed because of company imports of yarn. The union also claimed that U.S. imports of bedspreads increased in 1988 compared to 1987.

With respect to the workers in the Yarn Department, all of the group eligibility criteria of the Trade Act of 1974 were met.

On reconsideration, the Department found that the subject firm eliminated the on-site manufacturing of yarn in the Yarn Department and imported substantial amounts of yarn in 1988. The Yarn Department ceased production in December 1988 when all workers in the Yarn Department were laid off.

With respect to workers producing bedspread, the "contributed importantly" test was not met. In order for a worker group to become certified eligible to apply for adjustment assistance, it must meet all three of the Group Eligibility Requirements of the Trade Act—a significant decrease in employment, an absolute decrease in sales or production and an increase in imports "contributing importantly" to worker separations and declines in sales or production.

The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The Department's initial survey showed that the majority of customers did not import bedspreads. Customers increasing their imports while decreasing their purchases from the subject firm reported insignificant imports of bedspreads.

The Amalgamated Clothing and Textile Workers submitted a list of additional customers of the subject firm alleging that the customers increased their import purchases of bedspreads.

On reconsideration, the Department found that the additional list of customers submitted by the union either included customers previously surveyed or were customers who did not import bedspreads in the period relevant to the petition.

Conclusion

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with the yarn produced at Bates Fabrics, Lewiston, Maine contributed importantly to the decline in sales and to the total or partial separation of workers at Bates Fabrics, Inc., Lewiston, Maine. In accordance with the provisions of the Act, I make the following revised determination:

All workers of the Yarn Department of Bates Fabrics, Inc., Lewiston, Maine who became totally or partially separated from employment on or after February 27, 1988 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Also, after careful review of the additional facts obtained on reconsideration, I affirm the Department's negative determination for workers producing bedspreads at Bates Fabrics, Inc., Lewiston, Maine.

Signed at Washington, DC, this 10th day of July 1989.

Barbara A. Farmer,

Director, Office of Program Management, Unemployment Insurance Service.

[FR Doc. 89-16916 Filed 7-18-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,479]

Forest Oil Corp., Corpus Christi, TX; Affirmative Determination Regarding Application for Reconsideration

A former worker supported by a company official requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for former workers of the Forest Oil Corporation, Corpus Christi, Texas. The negative determination was issued on April 18,

1989 and published in the **Federal Register** on May 23, 1989 (54 FR 22379).

New data was submitted showing that the decreased production criterion of the Trade Act was met in 1988 for the South Texas Division. A list of customers was submitted alleging that the "contributed importantly" test will also be met.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 7th day of July, 1989.

Barbara Ann Farmer,

Director, Office of Program Management, Unemployment Insurance Service.

[FR Doc. 89-16920 Filed 7-18-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,774]

Halliburton Logging Services, Inc. Houston Manufacturing Facility Former Welex Manufacturing Plant, Houston, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 23, 1989 applicable to all workers of the Houston Manufacturing plant of Halliburton Logging Services, Inc., Houston, Texas.

The certification is being amended to show the correct receipt date of the petition as April 17, 1989. The impact date is also corrected to March 20, 1988, one year prior to the petition date instead of April 13, 1988 which applies to the Welex field locations (TA-W-22,857A-J) and not the Houston manufacturing plant (TA-W-22,774).

The notice, therefore is amended by including the correct petition receipt date of April 17, 1989 and the correct impact date of March 20, 1988 for Halliburton Logging Services' Houston Manufacturing Facility (former Welex Manufacturing Plant) Houston, Texas.

The amended notice applicable to TA-W-22,774 is issued as follows:

All workers of Halliburton Logging Services, Inc., Houston Manufacturing facility, (former Welex Manufacturing Plant), Houston, Texas who became totally or partially separated from employment on or after March 20, 1988 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 6th day of July, 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-16912 Filed 7-18-89; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of June 1989.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-22,859; I.L.C. Data Device Corp., Bohemia, NY

TA-W-22,870; Rexon Technology, Wayne, NJ

TA-W-22,783; Loadcraft, Brady, TX

TA-W-22,869; Regina Co., Rahway, NJ

TA-W-22,871; Richard Braid Corp, New York, NY

TA-W-22,830; Royal, Inc., Chattanooga, TN

TA-W-22,898; Martin Lithographers, Plainview, NY

TA-W-21,899; Microwave Semiconductor Corp., Somerset, NJ

TA-W-22,874; Allen-Stevens Drum Accessories, Somerset, NJ

TA-W-22,902; Pensilco Corp., Bradford, PA

TA-W-22,875; Allied-Signal Aerospace Co., Flight Systems Div., Teterboro, NJ

In the following cases, the investigations revealed that criterion (3) has not been met for the reasons specified.

TA-W-22,863; Mario Papa & Sons, Gloversville, NY

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,886; Elco Corp., Huntingdon Div., Huntington, PA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,884; Weiss Bros. Fur Co., Inc., New York, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,904; Plastic Box Corp., Wood Ridge, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,894; ITT Corp., Clifton, NJ

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-22,850; Cooper Industries, Inc., Kirsch Div., Scottsville, KY

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,841; Almer's Construction, Tioga, ND

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,858; Homco International, Inc., Casper, WY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,873; UNOCAL Pipeline Co., Illinois District, Olney, IL

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,867; Public Service Co., of NM, Waterflow, NM

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,849; Continental Beverage Packaging, Inc., Wayne, NJ

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-22,852; Endicott Johnson Corp., Tuckhannock, PA

Aggregate U.S. imports of work footwear did not increase in 1988 compared to 1987 or in January through March 1989 period compared to the same preiod in 1988.

TA-W-22,851; Delisle Fashions, Inc., Fitchburg, MA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,391; A.K. Guthrie Drilling, Big Spring, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,872; Springs Industries, Inc., Huntsville, AL

Aggregate U.S. imports of broadwoven fabrics (Total cotton, man-made and silk) did not increase in 1988 compared to 1987.

TA-W-22,839; A & S Manufacturing/ CFC International, Inc., Moonachie, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,900; Parker and Parsley Petroleum Co., Midland, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,888; Fenn Wright & Masson, New York, NY

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,889; G. Ikola, Inc., McCall, ID

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,882; Berman Brothers, Inc., New York, NY

U.S. imports of fur wearing apparel decreased in 1988 compared to 1987.

TA-W-22,891; Greenwood Mills, Inc., New York, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

Affirmative Determination

TA-W-22,709; Peters Stamping Co., Perrysburg, OH, Fayette, OH

A certification was issued covering all workers separated on or after March 14, 1988 and before December 31, 1988

TA-W-22,908; Shure Electronics of Arizona, Inc., Phoenix, AZ

A Certification was issued covering all workers separated on or after May 1, 1989 and before June 30, 1989.

TA-W-22,926; Northwest Drilling & Supply, Inc.

A certification was issued covering all workers separated on or after May 1, 1988 and before December 31, 1988.

TA-W-22,883; Beta Handbag, Hialeah, FL

A certification was issued covering all workers separated on or after March 28, 1988.

TA-W-22,853; Etra Handbags, Long Island, NY

A certification was issued covering all workers separated on or after October 31, 1988.

TA-W-22,897; Levolor-Lorentzen, Inc., Weirton, WV

A certification was issued covering all workers separated on or after August 1, 1988.

TA-W-22,868; R & J Fashions, Inc., Long Branch, NJ

A certification was issued covering all workers separated on or after April 10, 1988 and October 30, 1988.

TA-W-22,837; Wiedmer Brothers Well Service, Tioga, ND

A certification was issued covering all workers separated on or after August 1, 1988.

TA-W-22,893; IBM Systems Technology Div., Colorado Spring, CO

A certification was issued covering all workers separated on or after April 17, 1988.

TA-W-22,906; Prall Molding Co., Bloomfield, NJ

A certification was issued covering all workers separated on or after April 9, 1988.

TA-W-22,887; Federal Mogul Corp., Signal-Stat Div., Somerset, NJ

A certification was issued covering all workers enaged in employment related to the assembly of 900 and 100 switches separated on or after January 1, 1989.

TA-W-22,907; Schmid Laboratories, Inc., Little Falls, NJ

A certification was issued covering all workers separated on or after December 1, 1988.

TA-W-22,905; Plastic, Inc., Winnebago, IL

Certification was issued covering all workers separated on or after June 23, 1989.

TA-W-22,955; Atlas Wireline Service, Casper, WY

A certification was issued covering all workers separated on or after October 1, 1988.

TA-W-22,956; Atlas Wireline Service, Cody, WY

A certification was issued covering all workers separated on or after October 1, 1988.

TA-W-22,957; Atlas Wireline Service, Gillette, WY

A certification was issued covering all workers separated on or after October 1, 1988.

TA-W-22,927; Pool Company, San Angelo, TX

A certification was issued covering all workers separated on or after May 1, 1988.

TA-W-22,744; Technical Drilling Service, Midland TX

A certification was issued covering all workers separated on or after March 21, 1988 and before January 31, 1989.

TA-W-22,745; Technical Drilling Service, Elk City, OK

A certification was issued covering all workers separated on or after March 21, 1988 and before January 31, 1989.

TA-W-22,746; Technical Drilling Service, Oklahoma City, OK

A certification was issued covering all workers separated on or after March 21, 1988 and before January 31, 1989.

TA-W-22,848; Collyer Insulated Wire Co., Lincoln, RI

A certification was issued covering all workers separated on or after April 12, 1988.

TA-W-22,847; Cardell-Tlapek Co., Magnolia, AR

A certification was issued covering all workers separated on or after April 14, 1988.

TA-W-22,814; Ideal Security Hardware Corp., St. Paul, NM

A certification was issued covering all workers separated on or after March 30, 1988.

TA-W-22,814A; Ideal Security Hardware Corp., Roseville, MN

A certification was issued covering all workers separated on or after March 30, 1988.

TA-W-21,866; Parker Drilling Co., Rocky Mountain Div., Mills, WY

A certification was issued covering all workers separated on or after April 12, 1988.

TA-W-22,866A; Parker Drilling Co, Rocky Mountain Div., Located in The State of Wyoming

A certification was issued covering all workers separated on or after April 12, 1988.

TA-W-22,866B; Parker Drilling Co., Rocky Mountain Div., Located in The State of Idaho

A certification was issued covering all workers separated on or after April 12, 1988.

TA-W-22,866C; Parker Drilling Co., Rocky Mountain Div., Located in The State of Colorado

A certification was issued covering all workers separated on or after April 12, 1988.

TA-W-22,866D; Parker Drilling Co., Rocky Mountain Div., Located in The State of Montana

A certification was issued covering all workers separated on or after April 12, 1988.

TA-W-22,866E; Parker Drilling Co., Rocky Mountain Div., Located in The State of Utah

A certification was issued covering all workers separated on or after April 12, 1988.

TA-W-22,916; Data Log, Inc., LaPlace, LA

A certification was issued covering all workers separated on or after January 1, 1989.

TA-W-22,842; Alvin Associates, New York, NY

A certification was issued covering all workers separated on or after April 12, 1988 and before June 4, 1989.

TA-W-22,846; Bishop Construction, Inc., Killdeer, ND

A certification was issued covering all workers separated on or after April 13, 1988 and before June 1, 1989.

TA-W-22,845; Bayless Drilling Co., Farmington, NM

A certification was issued covering all workers separated on or after December 1, 1988.

TA-W-22,774; Halliburton Logging Service, Inc., Houston Manufacturing Facility (Former Welex Manufacturing Plant), Houston, TX

A certification was issued covering all workers separated on or after April 13, 1988.

TA-W-22,938; Halliburton Logging Service, Inc., Fort Worth Manufacturing Facility, (Former Gearhart Manufactruing Plant), Forth Worth, TX

A certification was issued covering all workers separated on or after May 2, 1988.

TA-W-22,844; Artesia Fishing Tool Co., Artesia, NM

A certification was issued covering all workers separated on or after April 9, 1988.

TA-W-22,812; General Electric Co., Lighting Business Group, Warren, OH

A certification was issued covering all workers engaged in the production of subassemblies in the parts operations department and the hand and hologen mounting department separated on or after April 5, 1988.

TA-W-22,857; Welex (Formerly A Div. of Halliburton Co), Headquartered in Houston, TX & Operating at Various Locations in The Following states:

TA-W-22,857A California
TA-W-22,857B Colorado
TA-W-22,857C Kansas
TA-W-22,857D Louisiana
TA-W-22,857E Mississippi
TA-W-22,857F New Mexico
TA-W-22,857G Oklahoma
TA-W-22,857H Texas
TA-W-22,857I Utah
TA-W-22,857J Wyoming

A certification was issued covering all workers separated on or after April 13, 1988 and before January 1, 1989.

TA-W-22,856; Halliburton Logging Services, Inc., (Formerly Welex & Gearhart Industries, Inc.) (Currently a Div. of Halliburton Co) Headquartered in Houston, TX and Operating at Various Locations in The Following States:

TA-W-22,856A Alaska
TA-W-22,856B Arkansas
TA-W-22,856C California
TA-W-22,856D Colorado
TA-W-22,856E Kansas
TA-W-22,856F Louisiana
TA-W-22,856G Mississippi
TA-W-22,856H New Mexico
TA-W-22,856I North Dakota
TA-W-22,856J Oklahoma
TA-W-22,856K Pennsylvania
TA-W-22,856L Texas
TA-W-22,856M Utah
TA-W-22,856N West Virginia
TA-W-22,856O Wyoming

A certification was issued covering all workers separated on or after January 1, 1989.

TA-W-22,855; Halliburton Services, Inc., Headquartered in Ducan Oklahoma And Operating at Various Locations in The Following States:

TA-W-22,855A California
TA-W-22,855B Colorado
TA-W-22,855C Illinois
TA-W-22,855D Kansas
TA-W-22,855E Kentucky (Except Henderson, KY TA-W-22,669)
TA-W-22,855F Louisiana
TA-W-22,855G Michigan
TA-W-22,855H Montana
TA-W-22,855I Nebraska
TA-W-22,855J New Mexico
TA-W-22,855K North Dakota
TA-W-22,855L Ohio
TA-W-22,855M Oklahoma
TA-W-22,855N Pennsylvania
TA-W-22,855O Texas
TA-W-22,856P Utah
TA-W-22,855Q West Virginia
TA-W-22,856R Wyoming

A certification was issued covering all workers separated on or after April 13, 1988.

TA-W-22,854; Gearhart Industries, Inc., Headquartered in Fort Worth, Texas and Operating at Various Locations in the Following States:

TA-W-22,854A Alaska
TA-W-22,854B Arkansas
TA-W-22,854C California
TA-W-22,854D Colordao
TA-W-22,854E Illinois
TA-W-22,854F Kansas
TA-W-22,854G Louisiana
TA-W-22,854H Michigan
TA-W-22,854I Mississippi
TA-W-22,854J New Mexico
TA-W-22,854L North Dakota
TA-W-22,854M Ohio
TA-W-22,854N Oklahoma
TA-W-22,854O Pennsylvania (Except Homer City (TA-W-22,144)
TA-W-22,854P Tennessee
TA-W-22,854Q Texas
TA-W-22,854R Utah
TA-W-22,854S Virginia
TA-W-22,854T West Virginia
TA-W-22,854U Wyoming

A certification was issued covering all workers separated on or after April 13, 1988 and before January 1, 1989.

I hereby certify that the aforementioned determinations were issued during the month of June 1989. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213 during normal business hours or will be mailed to persons to write to the above address.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance

Dated: July 11, 1989.

[FR Doc. 89-16913 Filed 7-18-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,406]

Muskogee Inspection Co., Muskogee, OK; Revised Determination on Reconsideration

On June 21, 1989, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers at the Muskogee Inspection Company, Muskogee, Oklahoma. The affirmed notice regarding application for reconsideration was published in the **Federal Register** on June 30, 1989 (54 FR 27769).

On reconsideration, the Department found that the inspection services provided by the subject firm are fully integrated with its parent company, Tubular Corporation of America (TCA), Muskogee, Oklahoma. The worker separations at the Muskogee Inspection Company were directly attributable to a reduced demand for their services from their parent company. Workers at TCA were certified eligible to apply for adjustment assistance on March 29, 1989 (TA-W-22,374).

Conclusion

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with the articles produced at the Muskogee, Oklahoma plant of TCA contributed importantly to the decline in sales and to the total or partial separation of workers at the Muskogee Inspection Company, Muskogee, Oklahoma. In accordance with the provisions of the Act, I make the following revised determination:

All workers of Muskogee Inspection Company, Muskogee, Oklahoma who became totally or partially separated from employment on or after November 1, 1988 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 10th day of July 1989.

Barbara Ann Farmer,

Director, Office of Program Management, Unemployment Insurance Service.

[FR Doc. 89-16915 Filed 7-18-89; 8:45 am]

BILLING CODE 4510-30-M

Spielberg Manufacturing; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of

TA-W-22,506 Antonia, Missouri
TA-W-22,506A New York, New York
TA-W-22,506B Los Angeles, California

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 13, 1989 applicable to all workers of Spielberg Manufacturing, Antonia, Missouri. The Certification was published in the **Federal Register** on May 23, 1989 (54 FR 22381).

Based on new information from the company, workers at the New York, New York Sales Office and the Los Angeles, California Sales Office and Distribution Center were separated from employment when the Antonia plant closed on July 23, 1988. The notice, therefore is amended by including all locations of Spielberg Manufacturing.

The amended notice applicable to TA-W-22,506 is hereby issued as follows:

All workers of Spielberg Manufacturing, Antonia, Missouri; and the New York, New York Sales Office and the Los Angeles, California Sales Office and Distribution Center who became totally or partially separated from employment on or after January 4, 1988 and before August 23, 1988 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 11th day of July 1989.

Barbara Ann Farmer,

Director, Office of Program Management, Unemployment Insurance Service.

[FR Doc. 89-16919 Filed 7-18-89; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Meeting

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770) notice is hereby given of a public meeting in the vicinity of Los Angeles, California. The location of this meeting is to be announced at a later date in the **Federal Register.**

DATE: Thursday, August 3, 1989; 1:30-4:30.

Status: The meeting is to be open to the public.

Matters to be Discussed: The purpose of this public meeting is to enable the Commission members to discuss progress on the proposed research agenda, and to discuss findings received from the prior hearings.

FOR FURTHER INFORMATION CONTACT: Barbara C. McQuown, Director, National Commission for Employment Policy, 1522 K Street, NW., Suite 300, Washington, DC 20005, (202) 724-1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy was established pursuant to Title IV-F of the Job Training Partnership Act (Pub. L. 97-300). The Act charges the Commission with the broad responsibility of advising the President, and the Congress on national employment issues. Handicapped individuals wishing to attend should contact the Commission so that appropriate accomodations can be made. Minutes of the meeting will be available for public inspection at the Commission's headquarters, 1522 K Street, NW., Suite 300, Washington, DC 20005.

Signed at Washington, DC, this 14th day of July.

Barbara C. McQuown,

Director, National Commission for Employment Policy.

[FR Doc. 89-16929 Filed 7-18-89; 8:45 am]

BILLING CODE 4510-30-M

Hearings

ACTION: Notice of hearing.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770) notice is hereby given of two public hearings to be held in the vicinity of Los Angeles, California. The location of these hearings is to be announced at a later date in the **Federal Register.**

DATES: Thursday, August 3, 1989, 9:00-1:00; Friday, August 4, 1989, 9:00-12:00.

Status: The hearing is to be open to the public.

Matters to be Discussed: The purpose of this public hearing is to enable the Commission members to learn from various segments of the Job Training Partnership Act (JTPA) system their reactions to a draft Commission paper which examines possible explanations for the under-representation of Hispanics in JTPA. Persons invited to testify represent State and local government agencies that administer JTPA programs and organizations that provide training under JTPA. Interested parties may submit written comments either prior to or after the official hearing date, but no later than August 15, 1989 to the Commission headquarters. These will be the last of a series of hearings that were conducted across the U.S. over the course of four months. It is anticipated that the results of the hearings will be used to develop formal Commission recommendations.

FOR FURTHER INFORMATION CONTACT: Barbara C. McQuown, Director, National Commission for Employment Policy, 1522 K Street, NW., Suite 300, Washington, DC 20005, (202) 724-1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy was established pursuant to Title IV-F of the Job Training Partnership Act (Pub. L. 97-300). The Act charges the Commission with the broad responsibility of advising the President, and the Congress on national employment issues. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made. Minutes of the hearing and written testimony submitted by witnesses will be available for public inspection at the Commission's headquarters, 1522 K Street, NW., Suite 300, Washington, DC 20005.

Signed at Washington, DC, this 14th day of July.

Barbara C. McQuown,

Director, National Commission for Employment Policy.

[FR Doc. 89-16930 Filed 7-18-89; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by August 18, 1989.

ADDRESSES: Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests a review of the revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Locals Program Application Guidelines for FY 1991.

Frequency of Collection: Annually.

Respondents: State or local governments; Non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from non-profit organizations and state or local arts agencies that apply for funding under specific program categories. This information is necessary for the accurate, thorough, and fair consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 75.

Average Burden Hours per Response: 13.76.

Total Estimated Burden: 1,032.

Anne C. Doyle,

Administrative Services Division, National Endowment for the Arts.

[FR Doc. 89-16835 Filed 7-18-89; 8:45 am]

BILLING CODE 7537-01-M

Media Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (National Services Section) to the National Council on the Arts will be held on August 9-10, 1989, from 9:15 a.m.-5:30 p.m. in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public, if time allows, on August 10, 1989, from 4:15 p.m-5:30 p.m. The topic for discussion will be policy issues.

The remaining portions of this meeting on August 9, 1989, from 9:15 a.m.-5:30 p.m. and August 10, 1989, from 9:15 a.m.-4:15 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public prusuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations National Endowment for the Arts.

[FR Doc. 89-16863 Filed 7-18-89; 8:45 am]

BILLING CODE 7537-01-M

Opera-Musical Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Opera-Musical Theater Advisory Panel (Professional Companies Section) to the National Council on the Arts will be held on August 15-17, 1989, from 9:00 a.m.-7:00 p.m. and August 18, 1989, from 9:00 a.m.-5:30 p.m. in Room M07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 15, 1989, from 9:00 a.m.-9:30 a.m. and on August 18, 1989, from 10:00 a.m.-noon. The topic for discussion will be policy issues.

The remaining portions of this meeting on August 15, 1989, from 9:30 a.m.-7:00 p.m., August 16-17, 1989, from 9:00 a.m.-7:00 p.m., and August 18, 1989, from 9:00 a.m.-10:00 a.m. and from noon-5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-16884 Filed 7-18-89; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-373 and 50-374]

Commonwealth Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-11 and NPF-18, issued to Commonwealth Edison Company, (the licensee), for operation of the LaSalle County Station, Units 1 and 2, located in LaSalle County, Illinois.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would revise the provisions in the Technical Specifications (TS) relating to the deletion of the 3.25 limitation from the refuel outage interval surveillance.

The proposed action is in accordance with the licensee's application for amendment dated December 4, 1987, as supplemented by a letter dated March 10, 1989.

The Need for the Proposed Action

The proposed change to the TS is required in order to provide flexibility for scheduling the performance of surveillance and to permit consideration of plant operating conditions that may not be suitable for conducting a surveillance at its specified time interval.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to Technical Specifications. The proposed revisions would allow the licensee to exempt surveillance specified within an 18-month surveillance interval from the provision of Specification 4.0.2 that limits the combined time interval for three consecutive surveillances to 3.25 times the 18-month surveillance interval. Therefore, the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impact associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on April 14, 1989 (54 FR 15040). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements for LaSalle County Station, Units 1 and 2, dated November 1978.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated December 4, 1987 and a supplement dated March 10, 1989 which are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L St., NW., and the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Dated at Rockville, Maryland, this 12th day of July 1989.

For the Nuclear Regulatory Commission.

Paul C. Shemanski,

Acting Director, Project Directorate III-2, Division of Reactor Projects III, IV, V, and Special Projects.

[FR Doc. 89-16907 Filed 7-18-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-250 and 50-251]

Florida Power & Light Co., Turkey Point Plant, Units 3 and 4; Issuance of Partial Director's Decision

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a partial decision concerning a request filed pursuant to 10 CFR 2.206 by Mr. Thomas J. Saporito, Jr., which asked the NRC to (1) Keep Turkey Point Units 3 and 4 shut down until Florida Power & Light Company (the licensee) completes an internal safety investigation and the NRC completes an investigation of the allegations provided by Mr. Saporito to the NRC Region II office on December 5, 1988, (2) immediately suspend and revoke the operating licenses for Turkey Point Units 3 and 4, (3) issue a notice of violation and impose an escalated civil penalty on the licensee because of discrimination and harassment, and (4) immediately issue an order outlining the steps to be taken to correct problems with security, operations, maintenance, plant equipment, and employee/operator training deficiencies.

The Director of the Office of Nuclear Reactor Regulation has determined that, with the exception of two issues raised in the Petition, the Petition should be denied. These two issues, which involve (1) a chilling effect on reporting safety concerns as a result of discrimination and harassment, and (2) the falsification and destruction of documents, are still under investigation. When the investigation is complete, the NRC will determine whether any action is appropriate with regard to these two issues. The reasons for this decision are explained in the Partial Director's Decision Under 10 CFR 2.206, DD-89-05, which is available for public inspection in the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Local Public Document Room at the Environmental and Urban Affairs Library, Florida International University, Miami, Florida.

A copy of the partial decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c). As provided in this regulation, the partial decision will constitute the final action of the Commission, except for the remaining two open issues, 25 days after issuance, unless the Commission, on its own motion, institutes review of the partial decision within that time period.

Dated at Rockville, Maryland, this 12th day of July 1989.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 89-16908 Filed 7-18-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-277 and 50-278]

Philadelphia Electric Co. et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-44 and DPR-56, issued to Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company for operation of the Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, located in York County, Pennsylvania.

The proposed amendments would revise the calibration frequencies for certain narrow range reactor water level instrumentation and reactor pressure instrumentation from once per six months to once per operating cycle in accordance with the licensee's application for amendment dated July 12, 1989.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The current Technical Specifications (Table 4.2.F) for Peach Bottom contain the requirement that the reactor water level (narrow range) and the reactor pressure instrumentation associated with the Feedwater Control System be calibrated at a frequency of once per six months. This instrumentation is not safety related and is not part of the post accident monitoring instrumentation. The current TS also require that certain reactor pressure recorders associated with NUREG-0737 accident monitoring requirements be calibrated at six month intervals.

The licensee has provided the following analysis to support a no significant hazards consideration determination for this change:

(i) *The proposed revisions do not involve a significant increase in the probability or consequences of an accident previously evaluated.* The proposed frequency of once/operating cycle is consistent with the industry standards and NRC guidelines, and ensures an acceptable level of reliability for the instrumentation. Based on a review of historical calibration data, feedwater level control and accident monitoring will not be adversely affected.

The feedwater instruments share manifolds with other instruments which generate scram and/or primary containment isolation signals. If the calibration is done at power, valving the narrow range level and pressure instruments back into service following calibration may cause a pressure transient which could result in a reactor scram or isolation. The proposed frequency would eliminate the need to perform the calibration at power or to shut the plant down for the purpose of calibration. Because the proposed change does not alter the function of the instrumentation, the change does not increase the probability of occurrence or the consequences of an accident or malfunction previously evaluated.

(ii) *The proposed revisions do not create the possibility of a new or different kind of accident from any accident previously evaluated.* The proposed change does not involve any hardware changes to the instruments or changes to their ranges. The proposed change effects only the frequency of calibration, and does not involve any new testing or calibration methods or configurations. Additionally, the proposed change does not effect the redundancy, electrical separation or equipment qualification of the instruments. Therefore, the proposed change does not create the possibility for an accident or malfunction of a different type than any previously evaluated.

(iii) *The proposed revisions do not involve a significant reduction in a margin of safety.* The feedwater reactor water level and feedwater reactor pressure indicators which are the subject of the proposed Technical Specification change do not initiate or control safety-related systems, and are not part of accident monitoring. Their function is to provide indication as part of the feedwater level control loops. Feedwater level control is discussed in Section 7.10 of the UFSAR. The accident monitoring instruments involved are similar to numerous other instruments which serve more significant safety functions and are calibrated once/operating cycle. Thus, accident monitoring capability will not be degraded such that any margin of safety could be decreased. Accident monitoring is discussed in Section 7.20 of the UFSAR. Surveillance intervals for the instrumentation involved are not discussed in the UFSAR or Technical Specification BASES. The proposed change does not affect the function or operability of the indicators or their associated transmitters and therefore, does not reduce any safety margins.

Based on the above reasoning, the licensee has determined that the proposed changes involve no significant hazards consideration. The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analyses. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be addressed to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the Federal Register notice. Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 17, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1 (800) 325-6000 (in Missouri 1 (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Walter R. Butler: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Conner and Wetterhahn, 1747 Pennsylvania Avenue, N.W., Washington, DC 20006, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 12, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Dated at Rockville, Maryland, this 14th day of July 1989.

BEST COPY AVAILABLE

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I-2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-16906 Filed 7-18-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27013; File No. SR-Amex-89-11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Expansion of AUTO-EX To Select Amex Equities

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 12, 1989, the American Stock Exchange, Inc. ("Amex") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange Incorporated ("Amex" or "Exchange"), proposes to implement a pilot program for the use of AUTO-EX (a feature of the Exchange's PER/AMOS order routing system) for the automatic execution of select Amex equities. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

(1) Purpose

In 1977, the Exchange introduced the Post Execution Reporting ("PER") system that electronically routes public customer orders of up to 2099 shares to the post where the order is automatically printed on an order ticket and given to the specialist for execution. In 1984, the per system was enhanced by the introduction of Autoper, which bypasses the printed order ticket and allows the specialist to automatically execute the order displayed on a "touch screen" located at the post. The Exchange now proposes to further enhance the PER system by introducing the AUTO-EX feature to selected Amex equities.

AUTO-EX is an extension of the PER order routing system. It automatically executes market and marketable limit orders that have been routed by the PER system to the specialist's post. The execution is immediately reported to the tape and to the member firm entering the order. AUTO-EX trades are submitted for comparison processing by the Exchange as locked-in trades.

Since 1986, the AUTO-EX has been used in selected option classes; the strong support AUTO-EX has received from member firms has prompted the Exchange to begin to expand the use of the system to all option classes (see SEC Release No. 34-25996 permitting the Exchange to expand AUTO-EX to all option-classes.)

Amex stated that the AUTO-EX for equities pilot program will be in effect for one year and will initially include twenty of the Exchange's most active stocks. During the course of the pilot period, however, Amex will review the program and expand it to include additional equities.[1]

The pilot program proposed by the Exchange will allow the immediate execution of certain public customer market and marketable limit orders of up to 599 shares in the stocks selected by the Exchange for the program. Orders will be automatically executed, except when the best bid or offer represents an order on the specialist's book or in the trading crowd.[2] Thus, for example, if the best bid represented an order on the book or in the crowd, an incoming order to sell up to 599 shares would be diverted to the specialist's PER screen for manual execution by the specialist against such bid. Similarly, where a regional exchange is displaying a quote through the Intermarket Trading System (ITS) with a better bid or offer than currently displayed on the Amex, the specialist could either match the quote or provide for diversion of the incoming AUTO-EX order to the PER screen to allow for manual execution on the regional exchange.

The Exchange believes that this expansion of AUTO-EX to selected Amex equities will help in its overall efforts to retain equity order flow and to remain competitive with exchanges which have similar automated systems in place. In furtherance of these efforts the Exchange will waive transaction charges for orders of up to 599 shares in the stocks selected for participation in the pilot program whether or not executed through AUTO-EX. If these efforts prove successful, the Exchange will consider expanding the pilot program to additional stocks.

(2) Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular, in that it will foster cooperation and coordination with persons engaged in facilitating transactions in securities, and will also result in more efficient and effective market operations, consistent with Section 11A(a)(1)(B).

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) institute proceedings to determine whether the Proposed rule change should be disapproved.

Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other that those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspections and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 9, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: July 10, 1989.

[FR Doc. 89-16806 Filed 7-18-89; 8:45 am]

BILLING CODE 8010-01-M

[1] Amex has informed the Commission that it will notify the Commission each time it expands the number of stocks in the pilot program.

[2] The automated execution systems of the Boston, Midwest and Pacific Stock Exchanges automatically display to the specialist for 15 seconds every order sent through the systems for execution. The purpose of this exposure period is to provide the specialist an opportunity to improve upon the execution price. Amex's proposed system, like the Philadelphia Stock Exchange's, does not provide, however, a similar exposure period for those orders that will be automatically executed.

(Release No. 34-27028; File No. SR-Amex-89-16]

Self-Regulatory Organizations; Proposed Rule Change by the American Stock Exchange, Inc. Relating to Options on the Japan Index

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 28, 1989, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to trade options on a new Japan Index developed by the Exchange and based on stocks traded on the Tokyo Stock Exchange ("TSE").

The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange is proposing to trade options based on the Japan Index developed by the Amex, a two-hundred stock, price-weighted index based entirely on shares of Japanese issuers traded on the TSE. The TSE securities chosen for the Index meet the proposed eligibility standards (discussed below) with respect to market value, trading activity, and price level. In choosing the component securities, the Exchange also has given consideration to the distribution of securities across various major industrial categories. The Exchange reserves the right to increase or decrease the number of stocks in the Index as needed to maintain a balanced industry representation of the Japanese market.

The Exchange will calculate and disseminate the value of the Japan Index once a day before the opening of U.S. trading. Index values are calculated based on the daily last sale prices in yen of the component securities trading on the TSE, applying the special index valuation method described below. The Amex will administer the Index, applying offsetting divisor adjustments to the Index in light of stock splits, stock replacements, or other corporate actions which would otherwise cause a discontinuity in the Index values. The initial value of the Japan Index will be set to a level of approximately 330.00 on June 30, 1989.

The proposed options on the Index are European style (exercise at expiration only), and cash settled. Standard option trading hours (9:30 a.m. to 4:15 p.m. NY time) would apply.

Index Valuation Method. The Exchange considers its proposed valuation method to be a substantial innovation in the means of trading instruments on foreign stock indices in U.S. dollar terms. Simply stated, the valuation method assigns a value of one U.S. dollar to 100 decimal points of the Index. Thus, as the Index level follows changes in the yen prices of the component stocks, the option premium values change in U.S. dollar terms, without regard to fluctuations in the exchange rate. To illustrate the direct relationship between yen movement of prices on the Tokyo Stock Exchange and dollar movement of the Japan Index, suppose, hypothetically, that the yen price of all stocks on the Tokyo Stock Exchange were to drop by 1 percent (*e.g.*, from 2500.00 yen to 2475.00 yen as measured by TOPIX) one day. The Japan Index would also drop by 1 percent in U.S. dollars, (*e.g.*, from 350.00 to 346.50) without regard to fluctuations in the yen/dollar exchange rate that day.

This method permits the option premiums to be quoted in U.S. dollars and trading accounts to be denominated in U.S. dollars. All Exchange, Options Clearing Corporation, and clearing member systems will be able to accommodate trading, clearance, and settlement of the options without alteration.

A market participant desiring to invest solely in the direction of the Japanese stock market, and who holds a Japan Index call, for example, will gain in dollars if the Japanese stock market rises and lose if it declines. The converse is true for a put holder.

The Exchange believes the proposed valuation method is superior to possible alternative methods. The valuation method utilized for the Japan Index is designed to facilitate trading in the options by those who are concerned primarily with benefiting in dollar terms from changes in the yen price levels of the Japanese stocks, and not in the combined effect of yen price and dollar/yen exchange rate changes. The valuation method will also be useful to

those whose interest is in the combined effect of exchange rate and yen price changes by combining positions in the Japan Index options with positions in exchange rate products (*e.g.*, currency futures, forwards, options, etc.).

Standards for Component Stock Selection. The Exchange has established the following eligibility criteria for selecting stocks to be included in the Index:

1. Each component security shall be issued by a Japanese issuer and traded on the TSE.

2. The minimum market value in Japanese yen of the component security during the preceding 20 business days before Index inclusion as measured by total shares outstanding must be 25 billion yen (approximately 175 million dollars as of June 22, 1989).

3. The yen price per share for each component security during the preceding 20 business days before Index inclusion must be less than five times the average price of all stocks in the Index. To continue to be included in the Index, the yen price per share for each component security during the preceding 20 business days before quarterly Index review must be less than ten times the average price of all stocks in the Index.

4. All securities selected for inclusion in the Index must have traded an average of more than 500,000 shares per month over the previous six months. The Exchange will monitor the trading of all component securities, and if it determines that any component security fails to meet this liquidity threshold, consideration will be given to substituting another security with greater liquidity, consistent with maintaining balanced industry representation.

The Amex will review the performance of each component security at the end of each calendar quarter, and if any should fail to continue to meet the above criteria, the Amex will consider the selection of suitable replacements.

Choice of Japan Index Calculation/Settlement Time. On normal business weekdays, the TSE holds two two-hour trading sessions daily. The morning trading session runs from 9:00 a.m. to 11:00 a.m. Tokyo time, and the afternoon trading sessions runs from 1:00 p.m. to 3:00 p.m. Tokyo time. In terms of New York time, the Friday TSE morning trading session runs from 7:00 p.m. to 9:00 p.m. New York time on Thursday night, and the Friday TSE afternoon trading session runs from 11:00 p.m. to 1:00 a.m. New York time later that Thursday night. (Three Saturdays each month the TSE also holds a morning trading session).

For option trading purposes, the daily value of the Japan Index will be determined based on the closing prices of component securities in the latest trading session held that calendar day on the TSE, (normally the afternoon trading session except if that session has been canceled due to a holiday or other reason). The options will expire on the Saturday following the third Friday of the expiration month. The last trading day in an options series will normally be the second to last business day preceding the Saturday following the third Friday of the expiration month (normally a Thursday), except in the event of holiday scheduling as described below.

For settlement purposes, the settlement value of the Japan Index will be determined based on the closing TSE prices of component securities in the morning trading session on the trading day in Japan following the last day of trading in the expiring contracts. Normally, because trading in expiring options contracts will cease on a Thursday at 4:15 p.m. New York time, the settlement value of the Japan Index will be determined at the close of the Friday TSE morning trading session, that is, at 9:00 p.m. New York time on Thursday night, just under 5 hours after trading has ceased in the expiring options.

The closing TSE prices in the Friday morning session will be used because they are chronologically closest to the time when options trading on the Amex ceases on the last trading day in expiring options series, thereby providing the most timely, reliable, and accurate measurement of the price level of TSE stocks at expiration of the Japan Index options.

Holiday Scheduling. In the event that the TSE is closed on the third calendar Friday of a contract month due to a Japanese holiday or other reason, the last trading day for expiring Japan Index options contracts will be the exchange business day in New York which precedes the last TSE trading day prior to the third calendar Friday of the month. In this event, the Index settlement valuation will be determined at the close of the morning trading session on the TSE on the last trading day prior to the third calendar Friday in Japan.

In the event that the Thursday preceding expiration Friday is not an Amex business day in the U.S., the preceding business day will be the last trading day for expiring Japan Index options, and settlement will be based on the close of the morning trading session on the TSE on calendar Thursday in Japan.

There will be no trading on any holiday on which the Amex is closed for trading, independent of whether the TSE is open for trading. Likewise, there will be trading on any day on which the American Stock Exchange is open for trading, independent of whether or not the TSE is open for trading.

Extension of Surveillance Agreement. Currently, in connection with Amex trading of options on the International Market Index ("IMI"), the Exchange has a market surveillance agreement with the TSE which provides that the TSE will supply the Amex, upon request, with clearing data, large position holder information, and time, sale, and quote information with respect to the Japanese component stocks included in the IMI. The Exchange has undertaken to discuss with the TSE extension of the existing agreement to share market surveillance information on all stocks included in the Japan Index.

Exchange Rules Applicable to Stock Index Options. Amex Rules 900C through 980C will apply to option contracts based on the Index. The Index is deemed to be a Broad Stock Index Group under Rule 900C(b)(1). Under Rule 903C, the Exchange intends to list up to three near calendar months and five additional long-term option series with consecutive June and December expirations, extending into successive years. Under Rule 904C(b), the Exchange proposes to establish a position limit of 25,000 contracts on the same side of the market, provided no more than 15,000 of such contracts are in series in the nearest expiration month.

(2) The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 400 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from date of publication].

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: July 12, 1989.

EXHIBIT A.—COMPONENT SECURITIES OF THE JAPAN INDEX (AS OF JULY 15, 1989)

Stock	Industry	Avg mthly trdg vol Dec 88–May 89 (000's)	LS (6/9/89) (yen)	Shrs out (000's)	Mkt val (6/9/89) (million yen)	Component % price weight	Industry % price weight
All Nippon Airways	Air Transport	1749	1850	1,373,492	2,540,960	0.62	0.62
Mitsui Bank	Bank	5760	2290	1,777,511	4,070,500	0.77	7.41
Mitsui Trust and Banking	Bank	4015	2020	1,134,360	2,291,407	0.66	
Sumitomo Bank	Bank	16259	3520	2,524,290	8,885,501	1.16	
The Daiichi Kangyo Bank	Bank	8460	3320	2,691,194	8,934,764	1.11	
Mitsubishi Trust & Banking	Bank	5497	2650	1,236,837	3,277,616	0.89	
The Bank of Tokyo	Bank	6582	1640	1,915,519	3,141,451	0.55	
The Mitsubishi Bank	Bank	11153	3180	2,551,304	8,113,147	1.07	
The Fuji Bank	Bank	8109	3480	2,549,536	8,872,365	1.17	
UBE Industries, Ltd	Chemicals	9316	874	831,920	727,096	0.29	9.13
Konica Corp	Chemicals	1984	1150	354,492	407,866	0.39	
Toa Gosei Chemical Industry	Chemicals	2458	1080	194,651	210,223	0.36	
Nippon Kayaku Co. Ltd	Chemicals	2210	1360	181,725	247,146	0.46	
Mitsui Toatsu Chemicals	Chemicals	11507	1060	673,881	714,314	0.36	
Tosoh Corp	Chemicals	5123	1010	441,168	445,580	0.34	
Rasa Industries	Chemicals	6831	780	55,480	43,274	0.26	
Showa Denko K.K	Chemicals	12089	1190	976,873	1,162,479	0.40	
Nissan Chemical Ind. Ltd	Chemicals	2679	850	138,440	117,674	0.28	
Nippon Carbide Ind	Chemicals	8305	896	66,921	59,961	0.30	
Fuji Photo Film Co., Ltd	Chemicals	2214	3970	378,675	1,503,340	1.33	
Mitsubishi Kasei Corp	Chemicals	5245	1130	1,329,628	1,502,480	0.38	
Shin-Etsu Chemical Co., Ltd	Chemicals	2612	1770	318,359	563,495	0.50	
Asahi Denka Kogyo	Chemicals	3384	1040	63,258	65,788	0.35	
Denki Kagaku Kogyo K.K	Chemicals	7976	940	474,813	446,324	0.32	
Nippon Synthetic Chem. Ind	Chemicals	3353	1030	65,778	67,751	0.35	
Nippon Oil & Fats Co	Chemicals	1443	1130	212,580	240,215	0.38	
Sumitomo Chemical Co	Chemicals	7985	955	1,621,170	1,548,217	0.32	
Nippon Soda Co	Chemicals	1216	955	84,000	80,220	0.32	
Kanegafuchi Chemical	Chemicals	17772	1020	340,912	347,730	0.34	
Mitsubishi Petrochemical	Chemicals	6149	1630	440,415	717,876	0.55	
Sekisui Chemical	Chemicals	23231	1410	460,162	648,828	0.47	
Sumitomo Cement Co	Clay and Glass	3672	927	271,959	252,106	0.31	4.40
Nippon Carbon Co	Clay and Glass	1912	867	118,267	102,537	0.29	
Nippon Sheet Glass Co	Clay and Glass	5015	1110	417,649	463,590	0.37	
Nihon Cement Co	Clay and Glass	4221	1170	293,526	343,425	0.39	
Tokai Carbon Co	Clay and Glass	2204	1000	156,954	156,954	0.34	
Onoda Cement Co	Clay and Glass	3072	991	463,144	458,976	0.33	
Asahi Glass Co	Clay and Glass	3619	2360	1,161,923	2,742,138	0.79	
Toto Ltd	Clay and Glass	10482	2340	302,736	708,402	0.78	
Noritake Co., Ltd	Clay and Glass	931	1440	139,818	201,336	0.46	
Mitsubishi Mining and Cement	Clay and Glass	4763	922	451,549	416,326	0.31	
Tekken Construction Co	Construction	4941	1430	142,219	203,373	0.46	6.11
Shimizu Corp	Construction	13294	2090	210,192	439,301	0.70	
Kajima Corp	Construction	9180	2140	858,488	1,837,164	0.72	
Daiwa House Industries	Construction	1997	2130	438,005	932,951	0.71	
Toa Harbor Works	Construction	1933	1290	177,200	228,588	0.43	
Taisei Corp	Construction	34962	1650	1,012,357	1,670,389	0.55	
Sata Kogyo Co	Construction	18240	2460	240,710	592,147	0.82	
Ohbayashi Corp	Construction	13158	1820	728,047	1,325,046	0.61	
Tobishima Corp	Construction	1938	1350	225,768	304,787	0.45	
Fujita Corp	Construction	18890	1880	443,533	833,842	0.63	
Takeda Chemical Industries	Drugs	2177	2340	869,706	2,035,112	0.78	2.79

EXHIBIT A.—COMPONENT SECURITIES OF THE JAPAN INDEX (AS OF JULY 15, 1989)—Continued

Stock	Industry	Avg mthly trdg vol Dec 88–May 89 (000's)	LS (6/9/89) (yen)	Shrs out (000's)	Mkt val (6/9/89) (million yen)	Component % price weight	Industry % price weight
Sankyo Co	Drugs	3141	2440	354,755	865,602	0.82	
Yamanouchi Pharmaceutical	Drugs	1072	3540	276,517	978,870	1.19	
Oki Electric Industry Co	Electric Equipment	5275	1110	575,801	639,138	0.37	10.16
Yokogawa Electric	Electric Equipment	2152	1880	252,667	475,014	0.63	
Fuji Electric	Electric Equipment	11930	1130	700,714	791,807	0.38	
Nippondenso Company, Ltd	Electric Equipment	12454	2420	714,358	1,728,742	0.81	
Sony Corp	Electric Equipment	3134	7670	286,043	2,193,950	2.57	
Sanyo Electric	Electric Equipment	17272	951	1,864,429	1,773,072	0.32	
Toshiba Corp	Electric Equipment	25575	1410	3,083,468	4,347,690	0.47	
Hitachi, Ltd	Electric Equipment	13946	1600	3,025,008	4,840,013	0.54	
Fujitsu, Ltd	Electric Equipment	6045	1500	1,761,839	2,642,759	0.50	
Matsushita Electric Industry	Electric Equipment	5837	2400	1,958,324	4,699,978	0.80	
Mitsubishi Electric Corp	Electric Equipment	18111	1160	2,125,360	2,465,418	0.39	
Sharp Corp	Electric Equipment	4909	1380	956,881	1,320,498	0.46	
NEC Corp	Electric Equipment	4536	1820	1,499,224	2,728,588	0.61	
Yuasa Battery Co. Ltd	Electric Equipment	4250	1409	174,959	244,943	0.47	
Meidensha Corp	Electric Equipment	2324	1260	201,705	254,148	0.42	
Hitachi Cable	Electric Equipment	2075	1280	374,780	479,718	0.43	
Nisshin Flour Milling Co	Foods	1811	1650	197,510	325,892	0.55	5.67
Kikkoman Corp	Foods	2992	1230	168,901	205,268	0.41	
Kirin Brewery Co	Foods	2069	1910	951,035	1,816,477	0.64	
Meiji Milk Products	Foods	1476	1000	280,565	280,565	0.34	
Meiji Seika Kaisha, Ltd	Foods	1430	1150	389,431	447,846	0.39	
Asahi Breweries, Ltd	Foods	11692	2140	307,197	657,402	0.72	
Nippon Flour Mills Co	Foods	1249	933	181,751	169,574	0.31	
Ajinomoto Co	Foods	1143	2710	638,832	1,733,945	0.91	
The Nisshin Oil Mills Ltd	Foods	1581	1170	133,715	156,447	0.39	
Nippon Beet Sugar Mfg Co	Foods	1767	867	153,250	132,868	0.29	
Nichirei Corp	Foods	1808	1210	295,764	357,874	0.41	
Morinaga & Co	Foods	1558	961	243,194	233,709	0.32	
Osaka Gas Co. Ltd	Gas Services	13433	889	2,399,539	2,133,190	0.30	0.67
Tokyo Gas Co., Ltd	Gas Services	7018	1120	2,725,953	3,053,067	0.38	
Taisho Marine & Fire Ins	Insurance	2435	1320	681,260	899,263	0.44	1.96
Tokio Marine & Fire Ins. Co	Insurance	5388	2030	1,468,115	2,980,273	0.66	
Yasuda Fire & Marine Ins	Insurance	2798	1320	871,589	1,150,470	0.44	
Nippon Fire & Marine	Insurance	15378	1170	537,259	628,593	0.39	
Mitsubishi Steel Mfg. Co	Iron & Steel	856	2290	144,000	329,760	0.77	4.30
Nippon Yakin Kogyo Co	Iron & Steel	3310	1390	165,237	229,679	0.47	
Nippon Steel Corp	Iron & Steel	37700	845	6,636,705	5,608,016	0.28	
Japan Steel Works Ltd	Iron & Steel	13191	1140	371,463	423,468	0.38	
Sumitomo Metal Industry	Iron & Steel	30900	830	2,786,152	2,312,506	0.28	
Kobe Steel, Ltd	Iron & Steel	29532	837	2,539,739	2,125,762	0.28	
Kawasaki Steel Corp	Iron & Steel	24274	998	2,933,280	2,927,413	0.33	
Nippon Denko Co	Iron & Steel	3928	1060	111,762	120,703	0.36	
Nippon Metal Industry Co	Iron & Steel	2370	1230	156,306	192,256	0.41	
Nippon Stainless	Iron & Steel	21172	1330	94,579	125,790	0.45	
Nippon Kokan K.K	Iron & Steel	28877	875	3,188,820	2,790,043	0.29	
Nippon Seiko K.K	Machinery	7682	1100	539,825	593,918	0.37	4.15
Komatsu Ltd	Machinery	10164	1260	922,555	1,162,419	0.42	
Niigata Eng. Co	Machinery	4475	905	333,417	301,742	0.30	
Chiyoda Chemical Engineering	Machinery	5188	1700	195,224	331,881	0.57	
Nachi-Fujikoshi Corp	Machinery	2083	1150	227,193	261,272	0.39	
Kubota Ltd	Machinery	7096	1250	1,407,759	1,759,699	0.42	
Ebara Corp	Machinery	9772	2290	280,904	643,270	0.77	
Okuma Machinery Works Ltd	Machinery	9585	1670	129,762	216,703	0.58	
NTN Toyo Bearing Co	Machinery	4327	1070	408,375	436,961	0.36	
Nippon Suisan Kaisha Ltd	Marine Products	1704	885	295,960	261,925	0.30	0.87
Kyokuyo Co	Marine Products	1095	885	113,260	100,253	0.30	
Nichiro Gyogyo Kaisha, Ltd	Marine Products	3074	839	164,490	138,007	0.28	
Tokyo Rope Mfg. Co	Metal Products	1028	1570	141,462	222,095	0.53	5.91
Nippon Mining Co	Metal Products	11951	900	867,008	780,307	0.30	
Fujikura Ltd	Metal Products	2712	1210	332,679	402,542	0.41	
Showa Electric Wire & Cable	Metal Products	3540	1300	208,326	270,826	0.44	
Furukawa Co	Metal Products	4481	960	238,373	228,838	0.32	
Nippon Light Metal Co	Metal Products	4371	985	415,520	409,287	0.33	
Sumitomo Electric Ind	Metal Products	2800	1530	690,406	1,056,321	0.51	
Mitsui Mining & Smelting Co	Metal Products	15808	880	486,090	427,680	0.29	
Dowa Mining Co	Metal Products	3721	885	218,582	193,454	0.30	
Sumitomo Metal Mining Co	Metal Products	2694	1440	416,055	599,119	0.48	
Toyo Seikan Kaisha	Metal Products	2542	2850	164,000	434,600	0.89	
Toho Zinc	Metal Products	14128	900	100,000	90,000	0.30	
Mitsubishi Metal Corp	Metal Products	15978	1130	656,990	742,399	0.38	
Furukawa Electric	Metal Products	9287	1300	620,368	806,478	0.44	
Sumitomo Coal Mining	Mining	9357	890	73,570	65,477	0.30	0.71
Mitsui Mining Co	Mining	4200	1220	152,108	185,572	0.41	
Honda Motor Co	Motor Vehicles	2401	1940	948,373	1,839,844	0.65	3.45
Isuzu Motor Ltd	Motor Vehicles	4654	1020	919,110	937,492	0.34	

EXHIBIT A.—COMPONENT SECURITIES OF THE JAPAN INDEX (AS OF JULY 15, 1989)—Continued

Stock	Industry	Avg mthly trdg vol Dec 88–May 89 (000's)	LS (6/9/89) (yen)	Shrs out (000's)	Mkt val (6/9/89) (million yen)	Component % price weight	Industry % price weight
Toyota Motor Corp	Motor Vehicles	3026	2680	2,845,164	7,625,040	0.90	
Suzuki Motor Co	Motor Vehicles	2958	925	382,522	353,833	0.31	
Hino Motor	Motor Vehicles	2144	1110	351,667	390,350	0.37	
Nissan Motor Co	Motor Vehicles	12792	1600	2,481,515	3,970,424	0.54	
Mazda Motor Corp	Motor Vehicles	4693	1020	1,026,865	1,047,423	0.34	
Yamaha Motor	Other Manufacturing	1152	1420	225,631	320,396	0.48	1.90
Toppan Printing Co	Other Manufacturing	2145	1930	627,162	1,210,423	0.65	
Dai Nippon Printing Co	Other Manufacturing	1428	2330	675,596	1,574,139	0.78	
Jujo Paper Co	Paper & Pulp	4266	1230	473,019	581,813	0.41	2.51
Hokuetsu Paper Mills	Paper & Pulp	5166	1200	119,464	143,357	0.40	
Honshu Paper Co	Paper & Pulp	2979	1000	312,686	312,686	0.34	
Oji Paper Co	Paper & Pulp	6820	1730	601,799	1,041,112	0.58	
Sanyo-Kokusaku Pulp Co	Paper & Pulp	4936	1060	432,169	458,099	0.36	
Mitsubishi Paper Mills, Ltd	Paper & Pulp	3248	1260	319,502	402,573	0.42	
Nippon Oil Co	Petroleum	11474	1490	1,202,707	1,792,033	0.50	2.06
Tonen Corp	Petroleum	4500	2060	587,760	1,210,786	0.69	
Mitsubishi Oil Co	Petroleum	2105	1140	336,232	383,304	0.38	
Showa Shell Sekiyu K.K	Petroleum	1038	1470	273,080	401,428	0.49	
Ricoh Company, Ltd	Precision Instrument	3438	1250	601,443	751,804	0.42	1.98
Nikon	Precision Instrument	2774	1450	363,536	527,127	0.49	
Canon Inc	Precision Instrument	5362	1790	617,295	1,104,958	0.60	
Citizen Watch Co	Precision Instrument	6048	1120	306,419	343,189	0.38	
Tokyu Corp	Railroad Transportat	4068	1690	1,038,016	1,754,247	0.57	3.87
Tobu Railway Co. Ltd	Railroad Transportat	6648	1480	796,137	1,178,283	0.50	
Odakyu Electric Railway	Railroad Transportat	2966	1430	639,292	914,188	0.48	
Keihin Electric Express Rail	Railroad Transportat	2491	1630	460,889	751,249	0.55	
Keio Teito Electric	Railroad Transportat	2275	1400	555,674	777,944	0.47	
Keisei Electric Railway	Railroad Transportat	2712	2540	271,670	690,042	0.85	
Kinki Nippon Railway	Railroad Transportat	2824	1380	1,467,621	2,025,317	0.46	
Heiwa Real Estate Co	Real Estate	1297	2100	97,293	204,315	0.70	2.34
Mitsui Real Estate Devel	Real Estate	5078	2500	724,623	1,811,558	0.84	
Mitsubishi Estate Co., Ltd	Real Estate	3827	2390	1,269,893	3,035,044	0.80	
Mitsukoshi, Ltd	Retail Stores	2004	2360	474,155	1,119,006	0.79	0.79
Bridgestone Corp	Rubber	3344	1620	721,512	1,168,849	0.54	0.97
The Yokohama Rubber Co	Rubber	2656	1280	241,474	309,087	0.43	
Kawasaki Kisen Kaisha, Ltd	Sea Transport	13686	881	585,500	515,826	0.30	1.25
Showa Line	Sea Transport	2027	922	272,787	251,519	0.31	
Nippon Yusen K.K	Sea Transport	16425	1020	1,143,454	1,166,323	0.34	
Mitsui OSK Lines	Sea Transport	14485	920	1,047,495	963,895	0.31	
The Nomura Securities Co	Securities/Finance	2762	3250	1,957,304	6,361,238	1.09	3.43
The Nikko Securities Co	Securities/Finance	1188	1820	1,430,698	2,603,870	0.61	
Daiwa Securities	Securities/Finance	1105	2200	1,273,317	2,801,297	0.74	
Nippon Shinpan Co	Securities/Finance	12697	1380	301,923	416,654	0.46	
Japan Securities Finance	Securities/Finance	1664	1580	123,750	195,525	0.53	
Toei Company	Services	1125	1230	141,427	173,955	0.41	1.97
Korakeun Co	Services	4937	4090	139,913	572,244	1.37	
Nikkatsu Corp	Services	5010	563	237,142	133,511	0.19	
Hitachi Zosen Corp	Shipbuilding	17682	778	1,001,975	779,537	0.26	1.34
Mitsubishi Heavy Ind	Shipbuilding	23736	1190	3,323,935	3,955,483	0.40	
Ishikawajima-Harima Heavy	Shipbuilding	11614	1140	1,298,490	1,480,279	0.36	
Mitsui Eng. and Shipbldg	Shipbuilding	27293	905	763,090	690,596	0.30	
Kanebo, Ltd	Textile Products	6361	860	488,801	420,369	0.29	4.02
Mitsubishi Rayon Co	Textile Products	10095	829	606,878	503,102	0.28	
Fuji Spinning Co	Textile Products	1498	821	108,000	88,668	0.28	
Toray Industries	Textile Products	13702	995	1,376,482	1,369,600	0.33	
Teijin Ltd	Textile Products	6739	879	945,525	831,116	0.29	
Toho Rayon Co. Ltd	Textile Products	20831	1140	90,530	103,204	0.38	
Asahi Chemical Ind	Textile Products	8485	1200	1,347,480	1,616,976	0.40	
Kuraray Co	Textile Products	929	1330	243,315	323,609	0.45	
Nisshinbo Industries	Textile Products	6440	1430	225,519	322,492	0.48	
Nitto Boseki Co. Ltd	Textile Products	1689	831	240,463	199,825	0.28	
Toyobo Co	Textile Products	8607	880	684,936	602,744	0.29	
Unitikao, Ltd	Textile Products	6855	798	475,960	379,816	0.27	
Sumitomo Corp	Trade	3608	1320	884,042	1,166,935	0.44	2.27
Marubeni Corp	Trade	16869	884	1,379,290	1,219,292	0.30	
Mitsubishi Corp	Trade	7858	1450	1,544,993	2,240,240	0.49	
C. Itoh & Co	Trade	11353	990	1,330,554	1,317,248	0.33	
Iwatani International	Trade	3890	1110	225,940	250,793	0.37	
Mitsui & Co	Trade	10369	1030	1,371,278	1,412,416	0.35	
Nippon Sharyo Seizo Kaisha	Transport Equipment	16824	1620	131,455	212,957	0.54	0.54
Nippon Express Company	Trucking	6400	1480	1,029,578	1,523,775	0.50	0.50

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[Release No. 34-27025; File No. SR-NYSE-89-09]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Stock Option and Broad Index Option Position and Exercise Limits

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 2, 1989, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change establishes hedge exemptions from the Exchange's position limits for stock options and broad index options and amends its position and exercise limits for broad index options.

The proposed rule change amends Rule 704(b) to establish a pilot program to exempt certain hedge positions from the current three-tiered position limits for stock options. The exemption will enable investors to double stock option positions from the current limits, provided that (a) the options in excess of the current limits are fully hedged on a nominal, one-for-one basis (e.g., by 100 shares or, in the case of an adjusted contract, the number of shares represented by the adjusted contract) and (b) the hedged positions consist of:

- Long stock and short calls,
- Long stock and long puts,
- Short stock and long calls, or
- Short stock and short puts.

The exemption will be automatic (i.e., the Exchange need not specifically approve a position in advance). Excess option positions must be liquidated prior to or contemporaneously with a decrease in the hedged stock position. In no event can a stock option position, even if fully hedged, exceed twice the current position limit.

The proposed rule change amends Rules 704(c)(i) and 705 to modify the broad index option position and exercise limits applicable to options on the NYSE Composite Index [1] ("NYA") in three respects to conform them with limits presently applicable to broad index options traded on the other options exchanges. First, it re-expresses the limits as numbers of contracts rather than in dollars. Second, it raises the aggregate position limit to 45,000 contracts on the same side of the market, with no more than 25,000 in the nearest-term series. And third, it sets the exercise limits at 25,000 contracts (the nearest-term series' position limit).

The filing amends Rules 704(c)(ii) and 705 to establish a pilot program for a hedge exemption to the position limit for broad index options that will be limited to public customers of member organizations.[2] The exemption, which will be available upon individual application and approval by the Exchange, will enable a public customer of a member organization to hedge a qualified long stock portfolio with broad index option contracts, either long puts or short calls, or a combination, or an equivalent position, up to a maximum of 125,000 contracts, without regard to the normal position limits. Owners of expiring contracts held in reliance on the hedge exemption will be allowed to exercise all such contracts just prior to expiration.

The exemption will be available only in accordance with the procedures and conditions of Supplementary Material .70 of Rule 704. In order to use the exemption, a public customer of a member organization must have a previously-established and Exchange-approved stock portfolio (a) that is comprised of common stocks that are each net long and are distributed across at least four industry groups, (b) that consists of at least 20 stocks, none of which account for more than 15 percent of the value of the portfolio and (c) that is carried in an account with a member organization, thus assuring that the Exchange has the ability to conduct adequate surveillance of the hedged position. A broad index option position held pursuant to the hedge exemption cannot exceed the value of the hedged stock portfolio after the value of the public customer's offsetting stock index futures, options on those futures and other broad index option positions have been subtracted from the portfolio value.

The pilot program's procedures preclude use of the hedge exemption for arbitrage between stock portfolios and broad index options. They also require the hedge exemption customer to establish and liquidate stock and broad index option hedge positions in an orderly fashion so as not to cause unreasonable fluctuations or price changes; to liquidate or decrease the options hedge prior to or contemporaneously with any decrease in the value of the hedged stock portfolio; and to mark appropriately all options orders affecting the hedged position.

Holders of broad index option positions under the exemption will be under a continuing obligation to update application information and to report to the Exchange any material changes related to their hedge position, including changes to their hedged stock portfolios and their positions in stock index futures, options on those futures and other broad index options. Any customer who violates any of the hedge exemption provisions will be required to liquidate any excess position promptly and in an orderly manner and may lose its exemption.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose—Institutional investors often have stock holdings greater than their positions in the stock and broad index options that overlie their stock positions. Yet, because of the position limits for stock and broad index options, such investors are unable to increase their option positions enough to hedge their long stock positions. The rule change proposal increases the broad index option position and exercise limits and also provides specific relief from the otherwise-applicable stock and broad index option position and exercise limits to meet more effectively the hedging needs of institutional customers. The rule change proposal also conforms the Exchange's position and exercise limits for stock and broad index options with those of the other options exchanges.

[1] "NYSE Composite Index" is a registered mark of the New York Stock Exchange, Inc.

[2] The proposed rule change also amends Rule 700(b) and Supplementary Material .30 of Rule 753 to transfer the definition of a "public customer of a member organization" to the definitional section of Rule 700.

Stock Option Position Limits: Hedge Exemption

Rule 704(b) sets position limits on the number of stock options on the same side of the market that an investor may control. These position limits are 8,000, 5,500 or 3,000 contracts on the same side of the market, depending upon the trading volume and number of outstanding shares of the underlying stock. Since each stock option contract generally corresponds to 100 shares of the underlying stock, Rule 704(b) normally restricts investors from acquiring option positions covering more than 800,000, 550,000 or 300,000 shares of the stock. These limits currently apply regardless of any offsetting position an investor may have in the underlying stock. Thus, institutional investors, though they often have stock holdings greater than these translated limits, are unable to acquire offsetting option positions beyond the limits even for purposes of hedging their stock positions.

The proposed pilot program will address this need by enabling investors to double stock option positions that are fully hedged by qualifying stock positions.

The Exchange's Market Surveillance Department will monitor use of the exemption to detect any abuses or violations of the program or any attempts at manipulation. If an excess option position is not fully hedged with shares of stock on a one-for-one basis, the options holder will lose the exemption, be required to close out his positions in excess of the current position limit and be precluded from effecting additional opening transactions until he has done so. In addition, the Exchange can proceed against the responsible member organization(s) with appropriate disciplinary action.

The proposed cut-off date of May 19, 1990, for the pilot program coincides with the virtually identical pilot programs that the Commission has approved for the American Stock Exchange, Inc. ("Amex"), the Chicago Board Options Exchange, Inc. ("CBOE") and the Philadelphia Stock Exchange, Inc. ("Phlx") (Rel. No. 34-25738) (May 24, 1988)), and, more recently, for the Pacific Stock Exchange, Inc. ("PSE") (Rel. No. 34-25811 (June 20, 1988)).

Broad Index Option Positions: Altered Limits

Under current Exchange rules, the position and exercise limits for NYA contracts are expressed in terms of the dollar value of contracts rather than their number. Thus, when the index value fluctuates, the allowable number of contracts also fluctuates. The proposed rule change, which bases the limits on a fixed number of contracts rather than on their dollar value, will eliminate unnecessary compliance and administrative complications that can now occur because of the index's fluctuation.

The proposal will increase the NYA position limit from the current $300 million level (equal to approximately 19,250 contracts based on the closing index value of 155.56 for December 27, 1988). The new aggregate position limit will be 45,000 contracts (approximately $700 million at index value 155.56) and the limit for the nearest expiration month will be 25,000 contracts (approximately $389 million at index value 155.56). As noted, the general exercise limit is specifically set at the position limit for the nearest-term series. When compared on the basis of the value that the contracts cover, these limits are approximately the same as those approved by the Commission for broad index options traded at the Amex, CBOE and Phlx (Rel. Nos. 34-24556 (June 5, 1987) and 34-25644 (May 3, 1988)).

Broad Index Options Positions: Hedge Exemption

The proposed index option hedge exemption will enable a public customer of a member organization to hedge a qualifying stock portfolio with up to 125,000 broad index options contracts, in addition to any broad index option positions the customer holds under the position limits of Rule 704(c)(i).

On the Wednesday prior to expiration, member organizations carrying broad index option hedge positions for customers will, for surveillance purposes, be required to telefax data to the Exchange regarding the current status of the customers' hedge position. In addition, the Exchange will monitor broad index option hedge positions and movements in those positions daily to determine if the positions are being maintained in accordance with all conditions and requirements, as well as for other rule violations.[3] The Exchange may take disciplinary action against the responsible member organization(s) for any violation of the hedge exemption, if warranted.

Exercises of broad index options in excess of the near-term series' position limits will be examined carefully. Any account that liquidates a substantial amount of stock on the last trading day prior to the expiration and that exercises in excess of 25,000 broad index option contracts will be subject to a rebuttable presumption that the customer has violated the hedge exemption provisions. The Exchange is prepared to coordinate its hedge exemption program with the other options exchanges in order to prevent an applicant from using more than one hedge exemption to hedge a single qualified stock portfolio.

The proposed cut-off date of July 22, 1989, for the pilot program coincides with the virtually identical pilot programs approved by the Commission for the CBOE (Rel. No. 34-25739 (May 24, 1988)) and the Amex (Rel. No. 34-25936 (July 22, 1988)).

Statutory Basis. The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 (the "1934 Act") and rules and regulations thereunder applicable to the Exchange in that it will facilitate transactions in securities and thus increase market depth and liquidity. Therefore, the proposed rule change is consistent with section 6(b)(5) of the 1934 Act, which provides that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the 1934 Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

[3] The Exchange will specifically monitor the pilot program to determine the effects of the hedge exemption on the market and to ensure that problems do not arise because of the exemption. Specifically, the Exchange will obtain the following information in its monitoring program: (1) The persons who use the hedge exemption; (2) how often the hedge exemption is used; (3) the dollar values of any portfolios hedged; (4) the number of stocks represented in the portfolios and the quantity of each stock held; (5) the positions held by the hedge exemption customers in broad index stock group futures, options on those futures and other broad index options; and (6) the number of broad index option contracts held pursuant to the exemption. The Exchange will further advise the Commission of the results of any investigations of apparent violations of any of the hedge exemption provisions.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 9, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 12, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-16911 Filed 7-18-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-17064; 811-3433]

BMI Equity Fund, Inc.; Application for Deregistration

July 12, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 [the "1940 Act").

Applicant: BMI Equity Fund, Inc. ("Applicant").

Relevant 1940 Act Section: Deregistration under section 8(f).

Summary of Application: Applicant seeks an order declaring that it has creased to be an investment company subject to the 1940 Act.

Filing Dates: The application on Form N-8F was filed on June 23, 1989, and amended on July 10, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 7, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 67 Wall Street, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: Regina Hamilton, Staff Attorney, at (202) 272-3024, or Stephanie M. Monaco, Branch Chief, at (202) 272-3030 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee. One may obtain a copy by going to the SEC's Public Reference Branch or by telephoning the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant, organized as a Maryland corporation and open-end non-diversified management investment company under the 1940 Act, filed a Notification of Registration pursuant to section 8(a) of the 1940 Act on Form N-8A, and a registration statement pursuant to section 8(b) on March 31, 1982. Applicant's registration statement became effective on November 19, 1982.

2. On April 12, 1989, Applicant's Board of Directors adopted a resolution declaring the liquidation and dissolution of the Applicant to be in the best interests of the Applicant and its shareholders, and directed that the matter be submitted to the shareholders for consideration. On May 24, 1989, at a special meeting of Applicant's shareholders, the shareholders voted in favor of the proposed liquidation and dissolution of Applicant.

3. By May 22, 1989, all investment activity of Applicant had terminated. Proceeds from portfolio liquidation were retained at Applicant's custodian bank. All shareholders were paid net asset value of $33.18 as of May 24, 1989, for each of 59,310.414 shares.

4. Applicant has no assets, nor has it retained any investment securities. Applicant has not within the past eighteen months transferred any of its assets to a separate trust, the beneficiaries of which were or are shareholders of the Applicant.

5. As of the filing of the application, Applicant had no outstanding debts or liabilities, except for an estimated accounting fee of approximately $4,500 to be assumed and paid for by Brean Murray, Foster Securities Inc., Applicant's principal underwriter. Brean Murray, Foster Securities Inc. has assumed all expenses, including legal fees, incurred in connection with the liquidation.

6. Applicant is not a party to any litigation or administrative proceeding, has no shareholders, and is not engaged in, nor intends to engage in, any business activities other than those necessary for the winding up of its affairs.

7. Applicant will file Articles of Dissolution with the Maryland Department of Assessments and Taxation following issuance of the requested order deregistering Applicant under the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-16909 Filed 7-18-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24924]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

July 13, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 7, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Ohio Power Company (70-6373)

Ohio Power Company ("Ohio Power"), 301 Cleveland Avenue, SW., Canton, Ohio 44702, an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed a post-effective amendment to its application-declaration pursuant to sections 9(a), 10 and 12(d) of the Act and Rule 44(b)(3) promulgated thereunder.

By order dated November 26, 1979 (HCAR No. 21308), Ohio Power was authorized to enter into an agreement of sale ("Agreement") with the Ohio Air Quality Development Authority ("Authority") concerning the financing of pollution control facilities ("Facilities") at Ohio Power's Cardinal and Muskingum River Generating Stations. Under the Agreement the Authority is to issue and sell its pollution control revenue bonds ("Revenue Bonds"), in one or more series, the proceeds from which sales are to be deposited by the Authority with the trustee ("Trustee") under the indenture ("Indenture") entered into between the Authority and the Trustee pursuant to which Indenture the Revenue Bonds are issued and secured. The proceeds will then be applied to the payment of the costs of construction of the Facilities, originally estimated at $100 million, or, in the case of proceeds from the sale of refunding bonds, to the payment of principal, premium, if any, and/or interest on Revenue Bonds to be refunded.

Ohio Power conveyed an undivided interest in a portion of the Facilities to the Authority, which portion the Authority sold to Ohio Power under an installment sales arrangement requiring Ohio Power to pay as the purchase price semi-annual installments in such an amount, together with other monies held by the Trustee under the Indenture for that purpose, as to enable the Authority to pay, when due, the interest and principal on the Revenue Bonds. Jurisdiction was reserved in the order of November 26, 1979, with respect to the payment of the purchase price of the Facilities by installment payments insofar as such payments were affected by the interest rate or rates of the Revenue Bonds to be issued and sold by the Authority.

It is stated that the Authority now proposes to issue and sell a series of refunding bonds ("Refunding Bonds") in the aggregate principal amount of $50 million, the net proceeds from the sale of which will be used to provide for the principal payment requirement for the refunding prior to their stated maturity of $50 million principal amount of Revenue Bonds previously issued by the Authority. The Refunding Bonds will be issued under and secured by the Indenture and a first supplemental indenture, will bear interest semi-annually and will mature at a date or dates not more than thirty years from the date of issuance.

Electec, Inc. (70-7610)

Electec, Inc. ("Electec"), One Poydras Plaza, 639 Loyola Avenue, New Orleans, Louisiana 70113, a nonutility subsidiary of Entergy Corporation ("Entergy"), a registered holding company, has filed a post-effective amendment to its application pursuant to sections 9(a) and 10 of the Act.

By Commission order dated April 19, 1989 (HCAR No. 24886) Electec was authorized to enter into an agreement with an initial eight-year term, with the Vosko Arkansas Joint Venture ("Joint Venture"), pursuant to which Electec will assign to the Joint Venture rights to process liquid hydrocarbons contained in a natural gas stream owned by Arkansas Power & Light Company ("AP&L"), a public-utility subsidiary of Entergy. AP&L will grant to Electec a limited right to process the natural gas purchased by AP&L from the McKamie Patton Unit A field in Miller County, Arkansas (both of Electec's agreements with the Joint Venture and AP&L collectively referred to as "Agreements"). The Joint Venture will gather and process the raw natural gas to eventually produce pipeline quality natural gas.

AP&L will provide Electec with the base load charge of raw natural gas to be processed by the Joint Venture. AP&L will receive back from Electec, at no cost, natural gas having an equivalent amount of Btus as that which it provided to Electec. Any additional natural gas needed to satisfy this return requirement as a result of loss during processing ("Make-up Btus") will be provided to Electec by the Joint Venture at no cost to Electec.

The Joint Venture has been experiencing difficulty in procuring gas supplies in addition to those to be received from AP&L, the availability of which are critical to the Joint Venture's ability to return Make-Up Btus to AP&L. As a consequence, the proposed Agreements have not been executed. Electec and the Joint Venture still intend to enter into the proposed transactions as soon as the above-described difficulties are resolved. Electec therefore requests authorization to enter the Agreements at any time prior to December 31, 1989.

New England Electric System (70-7659)

New England Electric System ("NEES"), a registered holding company, 25 Research Drive, Westborough, Massachusetts 01582, has filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12(c) of the Act and Rules 42 and 50(a)(5) thereunder.

NEES proposes to pay a portion of its outside directors' compensation in the form of NEES common shares. NEES further proposes, from time to time through May 1, 1999, to purchase on the open market its common shares, not exceeding in the aggregate 20,000 shares, and pay said shares to its outside directors as such compensation pursuant to an exception from the competitive bidding requirements of Rule 50 under subsection 50(a)(5) thereunder. The shares will be in addition to retainers and fees for board and committee service. Initially, compensation for service on the board will include 100 NEES common shares payable as of each May 1, to each outside director serving on such date.

New England Electric System (70-7064)

New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01582, a registered holding company, has filed a declaration pursuant to sections 6(a) and 7 of the Act and Rule 50 and 50(a)(5) thereunder.

NEES proposes to issue and sell from time-to-time through July 31, 1991, up to 4,000,000 shares of its authorized but unissued common stock, par value $1 per share ("Additional Common Stock"),

at competitive bidding in accordance with the alternative procedures authorized by the Statement of Policy dated September 2, 1982 (HCAR No. 22623) or alternatively, pursuant to an exception from the competitive bidding requirements of Rule 50 under subsection 50(a)(5) thereunder.

The proceeds from the sale of the Additional Common Stock, estimated at approximately $100,000,000, will be used to finance, in part, capital expenditures of NEES' subsidiary companies. NEES proposes to provide funds to its subsidiaries through: (1) Loans; (2) the purchase of subsidiary capital stock; and (3) capital contributions, as previously authorized. In addition, NEES proposes to use the proceeds to pay short-term indebtedness of the company pursuant to the exceptions available under Rule 42(b) and for other corporate purposes.

Transok, Inc. (70-7668)

Transock, Inc. ("Transok"), P.O. Box 3008, Tulsa, Oklahoma 74101, a subsidiary of Central and South West Corporation ("CSW"), a registered holding company, has filed an application pursuant to sections 9 and 10 of the Act.

Transok is seeking authority to spend up to $750,000 for a 25% interest in a natural gas compression facility to be constructed in Navarro County, Texas. The remaining 75% of the facility will be owned by Valero Transmission Company, L.P. and Phillips Natural Gas Company. Among other benefits, Transok will be able to transport natural gas from Oklahoma to CSW's Texas electric operating subsidiaries, Central Power & Light Company and West Texas Utilities Company for use in their generating plants.

Allegheny Power System, Inc. (70-7693)

Allegheny Power System, Inc. ("Allegheny"), 320 Park Avenue, New York, New York 10022, a registered holding company, has filed an application pursuant to section 6(b) of the Act and Rule 50(a)(5) thereunder.

Allegheny proposes to issue and sell notes to banks ("Bank Notes") and commercial paper to dealers in commercial paper in an aggregate principal amount of up to $75 million at any one time outstanding through September 30, 1991. This amount will include any short-term debt presently outstanding pursuant to order of the Commission dated September 29, 1987 (HCAR No. 24467).

Each Bank Note will be dated as of the date of the borrowing which it evidences, will mature not more than 270 days after the date of issuance or renewal thereof, and will bear interest at no greater rate than the then current prime commercial credit or equivalent interest rate of the bank at which the borrowing is made. The Bank Notes may or may not have prepayment provisions.

Allegheny has agreed to pay for lines of credit with a group of banks by maintaining compensating balances (no greater than 2.5% of all or a portion of the line of credit) and/or by paying an annual case fee (no greater than 1/8% of all or the balance of the line of credit.)

The commercial paper will not be prepayable and will have varying maturities, none more than 270 days. The commercial paper notes will be sold directly to dealers at a discount not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and of the particular maturity sold by issuers to dealers in commercial paper. Allegheny requests an exception from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5) for the issuance and sale of the commercial paper.

Allegheny will use the proceeds of the Bank Notes and commercial paper to make capital contributions to its direct and advances to its indirect subsidiaries, to acquire notes or stock of such subsidiaries, and to finance other general corporate purposes, including the financing of construction. In addition, Allegheny may use the proceeds of such proposed borrowings to repurchase shares of Allegheny common stock in order to fund its Dividend Reinvestment and Stock Purchase Plan ("Dividend Plan") in lieu of issuing additional new shares of common stock pursuant to such Dividend Plan. Allegheny is not requesting authorization to make capital contributions to its direct and advances to its indirect subsidiaries, to acquire notes or stock of such subsidiaries or to repurchase shares of its common stock in this application. Allegheny will file a future application with the Commission for authorization to make capital contributions to its direct and advances to its indirect subsidiaries, to acquire notes or stock of such subsidiaries and to repurchase shares of Allegheny common stock.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-16910 Filed 7-18-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Honolulu, will hold a public meeting at 9:30 a.m. on Thursday, August 17, 1989, at the Prince Kuhio Federal Building, 300 Ala Moana Boulevard, Conference Room 4113A, Honolulu, Hawaii, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Charles T. C. Lum, District Director, U.S. Small Business Administration, 300 Ala Moana Boulevard, Room 2213, Honolulu, Hawaii 96850.

Jean M. Nowak,

Director, Office of Advisory Councils.

July 10, 1989.

[FR Doc. 89-16840 Filed 7-18-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Formulation of a National Transportation Policy

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice of public hearings.

SUMMARY: This notice announces the intent of the Department of Transportation to elicit public comment with respect to intercity passenger and international transportation systems, in the formulation of a comprehensive, integrated National Transportation Policy. The policy cluster groups addressing these issues plan to conduct two public hearings to solicit information and advice. The DOT believes public comment is essential to development of a viable public policy. As a consequence, this notice describes some key issues and requests a dialogue and input on issues, positions, problems, and recommended solutions for addressing the challenges facing intercity passenger and international transportation in the 1990's and beyond.

In order to stimulate a discussion of such concerns, in addition to the public hearings the cluster groups will be holding a series of focus groups and site visits. Through the discussion and comments gathered from these outreach efforts, the Department seeks to broaden its knowledge and garner consensus for a national multi-modal transportation policy addressing intercity passenger systems and international transportation. The information will be used in formulation of a National Transportation Policy which will set forth the framework through which decisions in transportation infrastructure, services, and related needs can be systematically assessed and implemented during the next decade and into the 21st Century.

DATE: Comments must be received on or before September 1, 1989, in order to be fully considered in the development of the national transportation policy. Comments can be sent to the Cluster Chairpersons listed below.

Comments addressing intercity passenger service concerns should be sent to the Intercity Passenger Service Cluster Group Chairman: Mr. Dale E. McDaniel, Acting Associate Administrator for Policy, Planning, and International Aviation, Federal Aviation Administration, Room 1005, 800 Independence Avenue, SW., Washington, DC 20591 Ph: (202) 267-9105.

Comments relating to international transportation issues should be addressed to the International Cluster Group Chairman: Mr. Arnold Levine, Director, Office of International Transportation and Trade, U.S. Department of Transportation, Room 10300, 400 Seventh Street, SW., Washington, DC 20590 Ph: (202) 366-4368.

The public hearings will be held on July 31, 1989 and August 1, 1989, in Chicago, Illinois; on August 14 and August 15, 1989, in Fort Worth, Texas.

The jointly arranged public hearings will be held with the first day devoted to intercity passenger service issues and the following day allocated for international transportation matters. The Chicago hearing on intercity passenger service issues will be held July 31, 9 a.m. to 5 p.m.; the Chicago hearing on international transportation issues, with a focus on items related to U.S.-Canada, will be conducted August 1 from 9 a.m. to 5 p.m.

The Fort Worth hearing on intercity passenger service issues will be held from 9 a.m. to 5 p.m. on August 14; the Forth Worth hearing on international issues, with a focus on items relating to U.S.-Mexico/Latin American interests, will follow on August 15, from 9 a.m. to 5 p.m.

ADDRESSES: The public hearings will be held at the following locations:

(1) July 31, 1989 and August 1, 1989, from 9:00 a.m. to 5 p.m. at the FAA, Great Lakes Region Headquarters, O'Hare Lake Office Center, 2300 East Devon Avenue, Room 166, Des Plaines, IL 60018.

(2) August 14, and August 15, 1989, from 9:00 a.m. to 5 p.m., at the Worthington Hotel, 200 Main Street, Pacific Room, Forth Worth, Texas 76102.

FOR FURTHER INFORMATION CONTACT: For further information on Intercity Passenger Cluster activities: Mr. John Mathewson, Manager, Planning Analysis Division, APO-100, Room 933C, 800 Independence Street SW., Washington, DC 20591 (202) 267-8444.

Regarding International Cluster Group activities: Ms. Florizelle Liser, Special Trade Policy Advisor, P-22, Office of International Transportation and Trade, U.S. Department of Transportation, Room 10300, 400 Seventh Street, SW., Washington, DC 20590 (202) 366-4368.

SUPPLEMENTARY INFORMATION: The DOT policy cluster groups believe that development of an integrated National Transportation Policy should involve the widest possible dialogue with affected parties. To that end, public hearings have been scheduled at which views may be expressed orally.

With regard to the overall purpose of developing an integrated National Transportation Policy, refer to OST's notice issued on June 28, 1989 (54 FR 27970); published July 3, 1989.

Hearing Procedures

(a) Attendance is opened to the interested public but limited to the space and time available. With the approval of the chairperson, members of the public may present oral statements at the hearings.

(b) Persons desiring to present oral statements should notify the appropriate cluster group chairperson listed in this notice not later than July 25, 1989.

(c) Any person wishing to make a presentation will be asked to sign in and estimate an amount of time needed for their statement. Statements should be limited to fifteen minutes.

(d) The chairperson may allocate the time available for each presentation in order to accommodate all speakers. The hearing may be adjourned at any time if all persons present have had the opportunity to speak.

(e) Written material concerning the topics may be accepted at the discretion of the chairperson of each hearing.

(f) The hearings will not be formally recorded. However, informal recordings will be made of presentations to ensure that each respondent's comments are accurately noted.

Materials relating to the stated issues will be accepted at the individual meetings. Every reasonable effort will be made to hear every request for presentation consistent with a reasonable closing time for the hearing.

Issues To Be Addressed at the Hearings

There are a number of key issues the Intercity Passenger Service Cluster Group must consider in assisting in the formulation of a national transportation policy. These include, but are not limited to, the following:

1. *Roles:* What should be the roles of the Federal, state, local, and private sectors in providing intercity passenger service? How should they interact, coordinate, and cooperate with one another? Who should regulate, research, develop, plan, produce, operate, fund, assist, collect and disseminate information, or otherwise be involved in intercity passenger transportation, and in broad terms how should each be involved?

2. *Preserving the infrastructure:* What steps should be taken to ensure appropriate reconstruction rehabilitation, preservation, and maintenance of the transportation infrastructure, including roadways, railways, airways, terminals, and control systems?

3. *More effective, efficient transportation:* What steps should be taken to gain more effective and efficient use of the intercity passenger service and facilities available today? Possible answers include modernization, use of new technology, converting old infrastructure to new uses, providing service to special groups, fostering better intermodal connections, improving the quality, timeliness, and frequency of service, managing demand, and assuring enough trained, skilled human resources to operate the transportation system. What economic incentives or discincentives exist or could be used in the future to maximize efficiency in our transportation system? How is adequacy of service measured, and when is service deemed adequate?

4. *Expanding the infrastructure:* What steps should be taken to expand the infrastructure, where, and how? How should local concerns be addressed, and when if ever, should they be overridden? How can expansion of roads, rail, and air, including possible new modes such as high speed rail and tiltroter, be coordinated so that expansion does the most good possible for the entire national transportation system?

5. *New technology:* What technological innovations should be fostered for intercity passenger service and how? The Federal role in research and development seems an important part of the issue; what should the Federal Government do, if anything, to

promote, fund, conduct, and apply behavioral and human factors research and to help research, design, demonstrate, build, and operate new technologies such as high speed rail, tiltrotor, new generation SSTs, smart cars and highways, and new safety devices?

6. *Costs and financing:* What will future programs cost, who should pay, and how? Are there new approaches to financing that should be used? Who subsidizes modes in the transportation system now, are there cross-subsidies, and what level of subsidy or cross subsidy should there be? How does the tax system affect transportation and the choice among modes, and should changes be made in the tax incentive structure? How far should the transportation system move toward user charges, and what about those who may be denied transportation because they cannot pay? How should costs and financing differ for different existing modes and possible future modes such as high speed rail?

7. *Safety:* How should safety issues such as aging facilities and equipment, security, and drug and alcohol abuse in transportation be addressed? How can operator safety be enhanced, given the likelihood of older operators and an increasingly complexity and automated transportation environment? How should the Department maintain and improve the safety of intercity passenger transportation? What should be the appropriate level of safety oversight, promotion, guidance, and regulation for each mode? Should the Department emphasize regulation, enforcement, and/or voluntary compliance, and how?

8. *Environment and energy:* How can the transportation system provide needed services with less noise and pollution? How far should the Department go in encouraging, providing incentives, or requiring reduced environmental impacts and more energy efficiency? How should the Department work with States and localities to meet environmental concerns and encourage compatible land use while building or improving the transportation system?

The international cluster group has identified a number of broad issues to be addressed; they include:

1. *Maximizing transportation effeciency* for passengers and shippers for the purpose of fostering a more competitive economy; facilitating international transportation of passengers and freight;

—How can the U.S. Government encourage U.S. flag and other carriers and port authorities to operate efficiently? To invest in modern equipment and facilities?

—How can the U.S. Government encourage its trading partners to adopt market oriented policies that emphasize the development and facilitation of efficient transportation infrastructure necessary to support an integrated international system?

—How vigorously should the U.S. Government protect access of third-flag carriers to U.S. trade?

—How can the U.S. Government balance the sometimes competing demands of carriers, passengers, and shippers in international markets?

2. *Achieving an equitable international competitive environment* for U.S. transportation companies; eliminating unfair and discriminatory practices that affect U.S. carriers;

—How best can the U.S. Government eliminate those foreign policies and practices that discriminate against or otherwise inhibit the provision of competitive services by U.S. carriers? Merits of multilateral vs. bilateral vs. unilateral approaches?

—Under what circumstances should the U.S. Government apply sanctions against foreign carriers (i.e. reduce efficiency in the short term for potential gains in efficiency in the long term)?

—Again, how best can the U.S. Government balance the needs of carriers, passengers, and shippers?

3. *Promoting U.S. transportation interests* to achieve national security, transportation safety and security and economic objectives through such unilateral measures as direct or indirect financial assistance, buy/fly/ship American policies, and cabotage restrictions;

—What are the broad national policy goals that warrant government promotion and support of transporation services and equipment manufacturing?

—How effective are current methods of promoting and supporting the transportation industry in helping to achieve those broad policy goals?

—What alternative methods of promotion and support might be more effective?

—What role, if any, should the Department of Transportation play in promoting the sale of U.S. transportation equipment and services (e.g. consulting and engineering services)?

4. *Cooperating internationally* to achieve national security, transportation safety and security, environmental, and economic objectives through adoption of treaties and conventions, participation in international organizations, and the development of joint policy approaches bilaterally and internationally;

—What key international treaties and conventions should the United States adopt?

—In what, if any, areas should the United States consider proposing new international agreements?

—On what international bodies should the United States focus its resources?

Issued in Washington, DC on July 13, 1989.

Dale E. McDaniel,

Chairman, Intercity Passenger Cluster Group.

Arnold Levine,

Chairman, International Cluster Group.

[FR Doc. 89-16882 Filed 7-14-89; 12:41 pm]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

Automotive Fuel Economy Program Report to Congress

The attached document, *Automotive Fuel Economy Program, Thirteenth Annual Report to the Congress,* has been prepared pursuant to Section 502(a)(2) of the Motor Vehicle Information and Cost Savings Act (Pub. L. 92-513), as amended by the Energy Policy and Conservation Act (Pub. L. 94-163) which requires in pertinent part that "each year beginning 1977, the Secretary shall transmit to each House of Congress, and publish in the **Federal Register**, a review of average fuel economy standards under this part."

Barry Felrice,

Associate Administrator for Rulemaking.

July 12, 1989.

Automotive Fuel Economy Program

Thirteenth Annual Report to the Congress

May 1989.

Table of Contents

Section I: Introduction
Section II: Fuel Economy Improvement by Manufacturers
Section III: 1988 Activities
Section IV: Use of Advanced Technology

Section I: Introduction

This Thirteenth Annual Report to the Congress summarizes the activities of the National Highway Traffic Safety Administration (NHTSA) during 1988 regarding implementation of applicable Sections of Title V: "Improving Automotive Fuel Efficiency," of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 *et seq.*), as amended (the Act). Section 502(a)(2) of the Act requires submission of a report

each year. Included in this report are sections summarizing rulemaking activities during 1988 and a discussion of the use of advanced automotive technology by the industry as required by Section 305, Title III of the Department of Energy Act of 1978 (Pub. L. 95-238).

Title V of the Act requires the Secretary of Transportation to administer a program for regulating the fuel economy of new passenger cars and light trucks in the United States (U.S.) market. The authority to administer the program has been delegated by the Secretary to the Administrator of NHTSA, 49 CFR 1.50(f).

NHTSA's responsibilities in the fuel economy area include: (1) Establishing and amending average fuel economy standards for manufacturers of passenger cars and light trucks, as necessary; (2) promulgating regulations concerning procedures, definitions, and reports necessary to support the fuel economy standards; (3) considering petitions for exemption from established fuel economy standards by low volume manufacturers (those producing fewer than 10,000 passenger cars annually worldwide) and establishing alternative standards for them; (4) preparing reports to Congress annually on the fuel economy program; (5) enforcing fuel economy standards and regulations; and (6) responding to petitions concerning domestic production by foreign manufacturers and other matters.

To date, passenger car fuel economy standards have been established by the Congress for Model Years (MY's) 1978 through 1980 and for 1985 and thereafter, and by NHTSA for MY's 1981 through 1984. In addition, during the 1985 to 1988 period, NHTSA amended passenger car standards for MY's 1986 through 1989. Standards for light trucks have been established by NHTSA for MY's 1979 through 1991. All current standards are listed in Table I-1.

On October 14, 1988, the President signed the Alternate Motor Fuels Act of 1988, Pub. L. 100-494. This act amends the Motor Vehicle Information and Cost Savings Act to provide special CAFE treatment for vehicles capable of using non-petroleum fuels in MY 1993 and thereafter. The intent of this provision is to encourage manufacturers to produce vehicles that can operate on alternate fuels.

TABLE I-1.—FUEL ECONOMY STANDARDS FOR PASSENGER CARS AND LIGHT TRUCKS MODEL YEARS 1978 THROUGH 1991 (MPG)

Model year	Passenger cars	Two-wheel drive	Light trucks [1]	
			Four-wheel drive	Combined [2] [3]
1978	[4] 18.0			
1979	[4] 19.0	17.2	15.8	17.2
1980	[4] 20.0	16.0	14.0	([5])
1981	22.0	[6] 16.7	15.0	([5])
1982	24.0	18.0	16.0	17.5
1983	26.0	19.5	17.5	19.0
1984	27.0	20.3	18.5	20.0
1985	[4] 27.5	[7] 19.7	[7] 18.9	[7] 19.5
1986	[8] 26.0	20.5	19.5	20.0
1987	[8] 26.0	21.0	19.5	20.5
1988	[8] 26.0	21.0	19.5	20.5
1989	[8] 26.5	21.5	19.0	20.5
1990	[4] 27.5	20.5	19.0	20.0
1991	[4] 27.5	20.7	19.1	20.2

[1] Standards for MY 1979 light trucks were established for vehicles with a gross vehicle weight rating (GVWR) of 6,000 lbs. or less. Standards for MY's 1980-1991 are for light trucks with a GVWR of 8,500 lbs. or less.

[2] For MY 1979, light truck manufacturers may comply separately with standards for four-wheel drive, general utility vehicles and all other light trucks, or combine their trucks into a single fleet and comply with the 17.2 mpg standard.

[3] For MY's 1982-1991, manufacturers may comply with the two-wheel and four-wheel drive standards or may combine their two-wheel and four-wheel drive light trucks and comply with the combined standard.

[4] Established by Congress in Title V of the Act for 1985 and subsequent years unless revised by DOT.

[5] Manufacturers whose light truck fleet is powered exclusively by basic engines which are not also used in passenger automobiles, must meet standards of 14 mpg and 14.5 mpg in MY's 1980 and 1981, respectively.

[6] Revised in June 1979 from 18.0 mpg.

[7] Revised in October 1984 from 21.6 mpg for two-wheel drive, 19.0 mpg for four-wheel drive, and 21.0 mpg for combined.

[8] Title V provided the Department of Transportation with the authority to amend the standard of 27.5 mpg for 1985 and subsequent model years. NHTSA amended the standard to 26.0 for MY 1986 in October 1985, to 26.0 mpg for MY's 1987 and 1988 in October 1986, and to 26.5 mpg for MY 1989 in September 1988.

Section II: Fuel Economy Improvement by Manufacturers

The fuel economy achievements for domestic and foreign manufacturers in MY 1987 have been updated to include final Environmental Protection Agency (EPA) calculations, where available, since the publication of the *Twelfth Annual Report to the Congress* and, together with current data for MY 1988, are listed in Tables II-1 and II-2.

Overall fleet fuel economy improved for passenger cars from 28.4 mpg in MY 1987 to 28.7 mpg in MY 1988. Continued lower fuel prices during 1988 contributed to the low demand for diesel engines (0.3 percent market share for MY 1987 and less than 0.1 percent for MY 1987). For MY 1988, CAFE values increased over MY 1987 levels for 11 of 27 passenger car manufacturers which produced cars in both MY's 1987 and 1988. (See Table II-1.) These 11 companies accounted for about 55 percent of the total MY 1988 production. Manufacturers continued to introduce new technologies and more fuel-efficient models, as well as some larger, less fuel-efficient imported cars. For MY 1988, two domestic manufacturers raised their passenger car CAFE 0.7 and 0.9 mpg from their MY 1987 levels, while one fell 0.4 mpg below its MY 1987 CAFE level. Overall, the three domestic manufacturers increased their combined CAFE by 0.3 mpg. The average CAFE for imported cars increased 0.1 mpg in MY 1988 from the MY 1987 CAFE level. Graph II-1 illustrates the steady increase in total fleet CAFE from MY 1978 to MY 1988 for passenger cars.

TABLE II-1.—PASSENGER CAR FUEL ECONOMY PERFORMANCE BY MANUFACTURER [1] MODEL YEARS 1987 AND 1988

Manufacturer	Model year CAFE (MPG)	
	1987	1988
Domestic:		
Chrysler	27.5	28.4
Ford	26.8	26.4
GM	26.9	7.6
Sales Weighted Average	27.0	27.3
Imported:		
Alfa Romeo	25.5	25.6
AMC/Renault	33.0	([3])
Bertone	29.5	29.5
BMW	24.9	21.6
Chrysler Imports	33.4	30.3
Daihatsu		46.5
Ford Imports	23.8	35.6
GM Imports	39.7	38.5
Honda	32.6	32.0
Hyundai	34.8	35.0

TABLE II-1.—PASSENGER CAR FUEL ECONOMY PERFORMANCE BY MANUFACTURER [1] MODEL YEARS 1987 AND 1988—Continued

Manufacturer	Model year CAFE (MPG)	
	1987	1988
Isuzu	36.8	32.6
Jaguar	19.3	22.0
Mazda	29.0	28.7
Mercedes-Benz	22.3	21.3
Mitsubishi	31.7	29.8
Nissan	29.7	30.4
Peugeot	24.1	23.4
Porsche	25.4	24.7
Saab	26.2	26.5
Sterling	22.8	23.7
Subaru	31.0	31.8
Suzuki	50.4	50.3
Toyota	33.4	32.6
Volvo	26.4	26.0
VW [2]	30.1	30.3

TABLE II-1.—PASSENGER CAR FUEL ECONOMY PERFORMANCE BY MANUFACTURER [1] MODEL YEARS 1987 AND 1988—Continued

Manufacturer	Model year CAFE (MPG)	
	1987	1988
Yugo	34.7	33.8
Sales Weighted Average	31.1	31.2
Total Fleet Average	28.4	28.7
Fuel Economy Standards	26.0	26.0

[1] Manufacturers of fewer than 10,000 passenger cars annually that have requested alternative fuel economy standards are not listed.
[2] Includes VW domestic production and VW and Audi imports.
[3] Included with Chrysler Imports.

Note: Some MY 1987 CAFE values differ from those in the Twelfth Annual Report to Congress due to inclusion of final EPA calculations.

TABLE II-2.—LIGHT TRUCK FUEL ECONOMY PERFORMANCE BY MANUFACTURER

[Model Years 1987 AND 1988]

Manufacturer	Model year CAFE (MPG)					
	Two-wheel drive		Four-wheel drive		Combined [1]	
	1987	1988	1987	1988	1987	1988
Domestic:						
AMC	23.9		20.7			([2])
Chrysler					21.0	21.6
Ford					20.4	20.4
GM	20.8		19.0			20.4
Sales Weighted Average	20.9		19.6		20.7	20.7
Imported:						
Chrysler Imports					22.3	22.8
Ford Imports	26.8		21.0			
Isuzu	29.6	25.9	21.8	20.0		
Mazda					26.2	26.4
Mitsubishi	27.5	26.7	21.7	21.7		
Nissan					23.4	22.6
Range Rover			16.4	16.7		
Subaru			27.6	30.8		
Suzuki			33.1	33.3		
Toyota	27.8	25.8	23.8	23.1		
VW		20.3			19.0	
Sales Weighted Average	28.0	25.9	25.4	24.8	23.9	23.3
Total Fleet Average	22.4	25.9	21.5	24.8	21.4	20.9
Fuel Economy Standard	21.0	21.0	19.5	19.5	20.5	20.5

[1] In MY's 1987 and 1988, light truck manufacturers could comply with the two-wheel and four-wheel drive standards or could combine their two-wheel and four-wheel drive fleets and comply with the combined standards.
[2] Included with Chrysler.

Note: Some MY 1987 CAFE values differ from those used in the Twelfth Annual Report to Congress due to the use of final EPA calculations.

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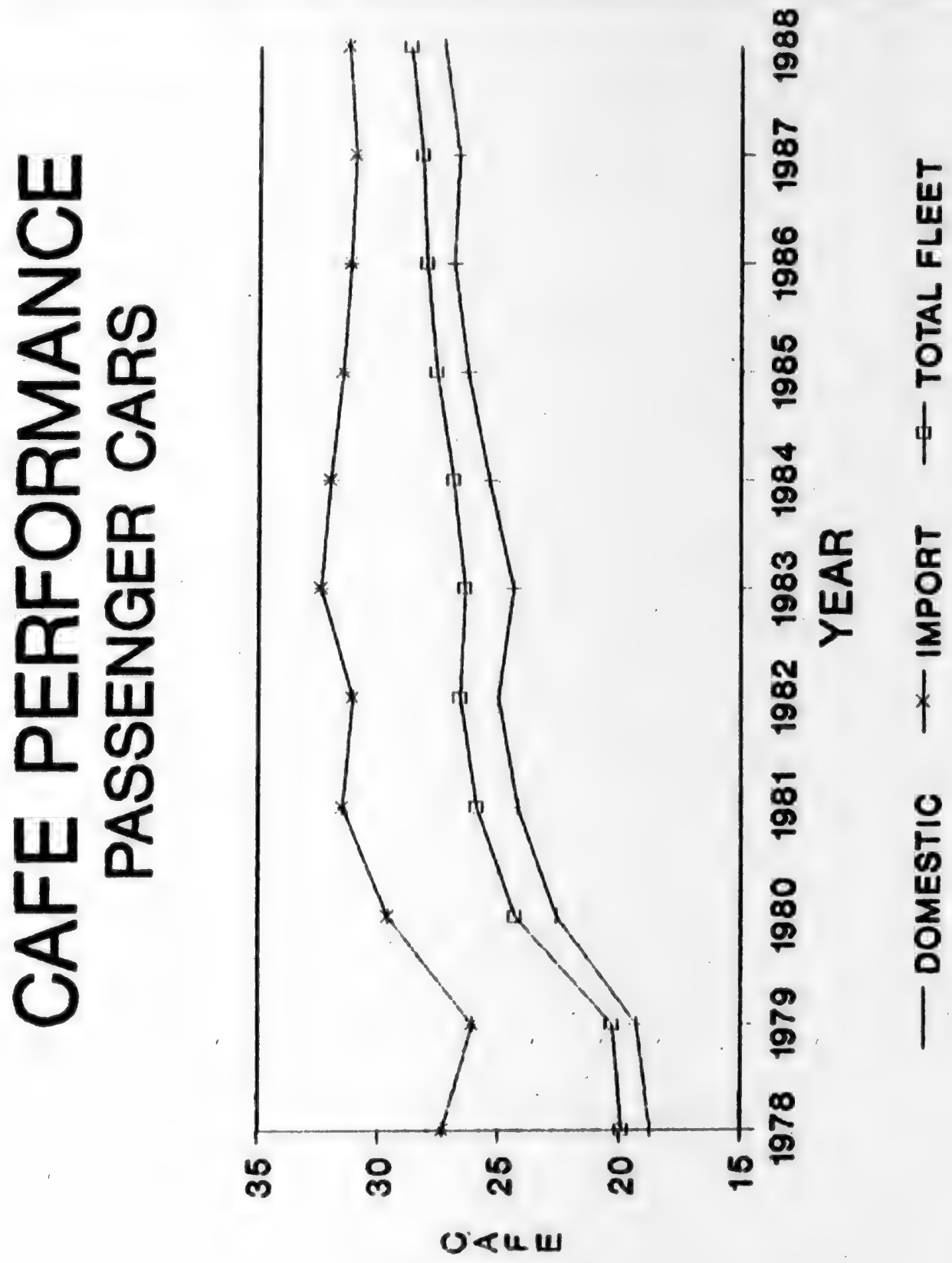

GRAPH II-1

GRAPH II-1

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CAFE levels for imported light truck manufacturers decreased by 2.1 mpg for two-wheel drive trucks, 0.6 mpg for four-wheel drive trucks, and 0.6 mpg for manufacturers using the combined standard. Domestic light truck manufacturers did not use the separate two-wheel drive or four-wheel drive standards for MY 1988. The domestic total fleet CAFE remained the same from MY 1987 to MY 1988 for manufacturers using the combined standards. Graph II–2 illustrates the increase in total fleet CAFE from MY 1979 to MY 1988 for light trucks.

Two domestic and two imported light truck manufacturers are projected to be below the level of the MY 1988 CAFE standards. Also, a number of European manufacturers with limited model offerings are not projected to meet the level of the MY 1988 passenger car CAFE standard. However, NHTSA is not yet able to determine which of these manufacturers may be liable for civil penalties for noncompliance. Some MY 1988 CAFE projections may change when final MY 1988 CAFE figures are provided to NHTSA by EPA in mid-1989. In addition, many manufacturers are not expected to pay civil penalties because the credits they earned by exceeding the fuel economy standards in earlier years offset subsequent shortfalls. Other manufacturers may file carryback plans to demonstrate that they anticipate earning credits in future model years to eliminate current deficits.

Fleet average fuel economy for all MY 1988 passenger cars exceeded both the MY 1988 standard and the higher 27.5 mpg standard originally set by the Congress for MY's 1985 and beyond. Thus, even though NHTSA lowered the original MY 1988 standard in accordance with statutory criteria, overall CAFE continued to rise. Fleet average fuel economy for MY 1988 light trucks also exceeded the MY 1988 standards for both two- and four-wheel drive fleets and the combined basis.

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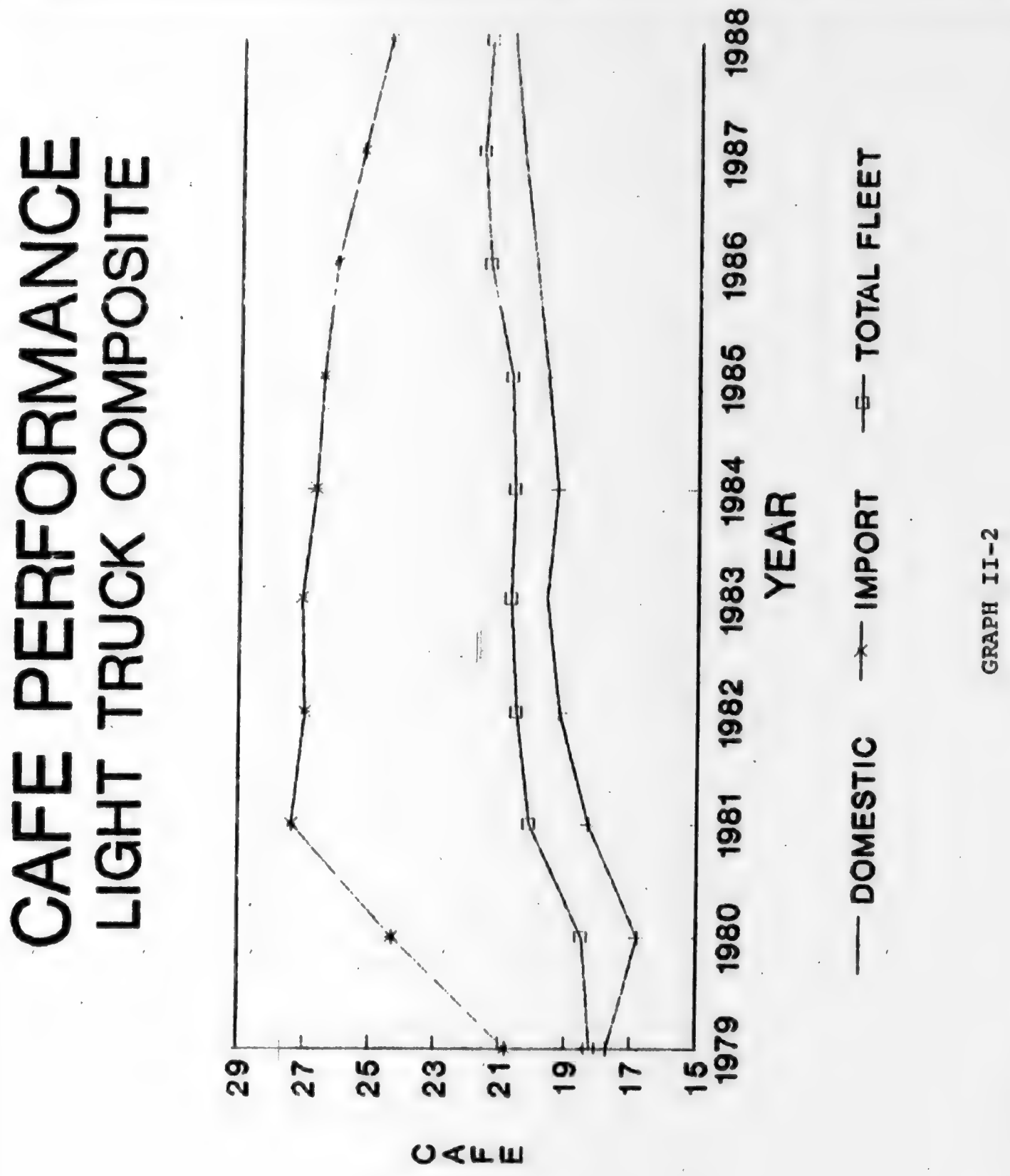

GRAPH II-2

GRAPH II-2

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NHTSA estimates that by the year 2000 the projected cumulative passenger car and light truck fuel savings due to manufacturers, achievements through calendar year 1988 will amount to approximately 585 billion gallons, when compared to the consumption projected at MY 1976 new vehicle fuel economy levels. This calculation assumes that manufacturers will continue to achieve the fuel economy levels of existing standards for the post-1990 period and that on-road fuel economy averages 15 percent below EPA ratings, which is consistent with current EPA labeling requirements.

The characteristics of the MY 1988 passenger car fleet reflect a continuing trend toward increased consumer demand for higher performance cars. (See Table II-3.) Since MY 1987, the average curb weight increased 43 pounds for the domestic fleet and decreased 15 pounds for the import fleet, with the total new passenger car fleet being 28 pounds heavier because of the relatively large share of domestic cars. From MY 1987 to MY 1988, horsepower per 100 pounds increased 3.5 percent for domestic cars and 2 percent for imported cars. Average engine size remained the same for domestic cars and was slightly smaller for imported cars. The size class breakdown for domestic cars shows a continued shift for MY 1988 to compact cars at the expense of two-seater, subcompact, and mid-size cars. The shift of import cars to both the large and subcompact sizes is particularly pronounced. The import share of the passenger car market declined slightly in MY 1988, but large car exports increased to 2.8 percent of the import fleet in MY 1988 from just 0.4 percent in MY 1987, indicating the importers' strategy of competing in what were market segments previously served almost exclusively by domestic manufacturers.

The 0.3 mpg passenger car fuel economy improvement for the MY 1988 overall domestic fleet may be attributed in part to mix shifts and in part to technology changes in several areas: significant changes in engine design, a pronounced increase in the use of fuel injection and front wheel drive, and more automatic transmissions with lockup torque converters.

The 0.1 mpg passenger car fuel economy increase for the MY 1988 import fleet is attributed to the substantial shift from compact to subcompact size cars, a decrease in average curb weight, improved engine technology, and more use of front-wheel drive. These changes offset losses due to increased application of automatic transmissions with less usage of lockup clutches, and more large cars. CAFE for the MY 1988 import passenger car fleet continued to exceed 30.0 mpg for the eighth consecutive model year.

The characteristics of the MY 1988 light truck fleet (see Table II-4) show an average weight increase of 90 pounds and higher performance as reflected by the increase in the average horsepower to weight ratio. Increased popularity of large pickups and special purpose vehicles contributed to the 0.2 mpg fleet fuel economy decrease for MY 1988. There was a 20.5 percentage point increase in the use of fuel injection and a nearly 4 percentage point increase in the use of lockup torque converter clutches on automatic transmissions. Diesel engine usage declined in light trucks to 0.2 percent in MY 1988 from 0.6 percent in MY 1987. The import share of the MY 1988 light truck fleet declined to 20.1 percent, 7.6 percentage points lower than in MY 1987.

TABLE II-3.—PASSENGER CAR FLEET CHARACTERISTICS FOR MY'S 1987 AND 1988

Characteristics	Total fleet		Domestic fleet		Import fleet	
	1987	1988	1987	1988	1987	1988
Fleet Average Fuel Economy, mpg	26.4	26.7	27.0	27.3	31.1	31.3
Fleet Average Curb Weight, lbs.	2,805	2,833	2,982	3,025	2,523	2,508
Fleet Average Engine Displacement, in.³	162	162	190	190	117	115
Fleet Average Horsepower/Weight ratio, HP/100 lbs.	3.98	4.12	4.03	4.18	3.91	3.99
Percent of Fleet	100	100	61.5	61.9	38.5	38.1
Segmentation by EPA Size Class, percent:						
Two-Seater	2.6	1.5	1.5	1.1	4.4	2.4
Minicompact	1.0	0.9	0.0	0.0	2.7	2.5
Subcompact*	20.0	21.0	7.8	6.7	39.2	45.5
Compact*	40.1	41.0	33.7	39.9	50.0	43.0
Mid-Size*	23.9	21.5	36.8	31.9	3.4	3.7
Large*	12.5	13.8	20.1	20.2	0.4	2.8
Diesel Engines	0.3	0.01	0.1	0.0	0.6	0.2
Turbocharged Engines	3.9	2.4	3.5	2.2	4.8	2.8
Fuel-Injection	72.0	80.9	82.4	93.6	56.0	59.0
Front-Wheel Drive	74.9	82.6	68.8	79.1	84.6	88.7
Automatic Transmissions	75.0	77.2	89.7	90.6	51.7	54.5
Automatic Transmissions with Lockup Clutches or Split Torque Features	83.0	88.5	84.6	93.5	78.5	74.3

*Includes associated station wagons.

TABLE II-4.—LIGHT TRUCK FLEET CHARACTERISTICS FOR MY'S 1987 AND 1988

Characteristics	Total fleet		2wd fleet		4wd fleet	
	1987	1988	1987	1988	1987	1988
Fleet Average Fuel Economy, mpg	21.6	21.4	22.2	22.0	21.5	20.4
Fleet Average Equivalent Test Weight, lbs.	3,797	3,887	3,745	3,837	3,902	3,986
Fleet Average Engine Displacement, in.³	210	225	212	225	207	227
Fleet Average Horsepower/Equivalent Test Weight ratio, HP/100 lbs.	3.38	3.61	3.39	3.58	3.36	3.65
Percent of Fleet	100	100	67.2	64.2	32.9	35.5
Import Share, percent	27.7	20.1	25.0	18.8	36.1	28.6
Segmentation by Type, percent:						
Passenger Van:						
Compact	14.6	6.2	21.1	9.3	1.5	0.5
Large	1.1	0.7	1.7	1.0	.....	.....

TABLE II-4.—LIGHT TRUCK FLEET CHARACTERISTICS FOR MY'S 1987 AND 1988—Continued

Characteristics	Total fleet		2wd fleet		4wd fleet	
	1987	1988	1987	1988	1987	1988
Cargo Van:						
Compact	3.0	2.0	4.4	3.2	0.2	.....
Large	7.6	6.3	11.3	9.8	.....	.....
Small Pickup	29.0	23.8	35.8	30.8	15.1	11.3
Large Pickup	21.9	28.4	20.4	27.1	25.1	31.0
Special Purpose	22.5	31.8	5.0	17.9	58.1	57.2
Cab Chassis	0.3	0.6	0.4	0.9	.....	.....
Diesel Engines	0.6	0.2	0.7	0.1	0.4	0.3
Fuel Injection	66.8	87.3	65.9	87.8	68.6	87.2
Automatic Transmissions	60.3	63.6	65.7	67.7	49.4	56.1
Automatic Transmissions with Lockup Clutches	77.6	81.5	76.8	80.9	79.6	84.2

Section III: 1988 Activities

A. Petitions to Amend Passenger Car CAFE Standards

On April 28, 1988, NHTSA published a denial of two petitions for rulemaking filed by General Motors Corporation (GM) and Mercedes-Benz of North America, Inc. (Mercedes), seeking retroactive reductions in passenger car fuel economy standards. Mercedes asked the agency to reduce the model year 1984 and 1985 standards to 26.0 mpg or lower. GM asked the agency to reduce the model year 1985 standard to 26.0 mpg or lower.

As the agency explained, it based its denial on a determination that exercising its discretion to amend retroactively would be inconsistent with the statutory scheme of the Federal fuel economy law. Title V of the Motor Vehicle Information and Cost Savings Act (53 FR 15241, at 15243, April 28, 1988).

GM filed another petition on the same issue on May 27, 1988, after the April 28, 1988 petition denial. GM indicated three bases for the agency to consider again the retroactive amendment of the MY 1985 CAFE level, including the argument that NHTSA should agree to a "one-time-only" retroactive amendment of the standard. The agency considered all of the arguments presented by GM, but decided to deny the petition for rulemaking. NHTSA affirmed the rationale of its original decision, and further concluded that an agency exercise of discretion to issue a "one-time-only" retroactive amendment would not be consistent with the scheme of the CAFE statute (53 FR 39115, October 5, 1988). On November 22, 1988, GM filed a petition for judicial review in the DC Circuit, U.S. Court of Appeals, of the agency's denial of its rulemaking petition.

The agency also received petitions from the Automobile Importers of America, Inc. (AIA), Mercedes, GM, Austin Rover, and the Competitive Enterprise Institute (CEI) to lower passenger car fuel economy standards for MY's 1989–1990. All petitions requested a reduction in the CAFE standards to below 27.5 mpg, with four of them requesting a lower standard based on their alleged inability to meet the statutorily set standard of 27.5 mpg. The petitions suggested various levels at which to set the standard, with the lowest recommended level being 22 mpg. CEI requested a lower standard based on the contention that the CAFE program has caused an increase in motor vehicle fatalities.

On August 29, 1988, NHTSA published in the **Federal Register** (53 FR 33080) a notice of a public meeting to be held on September 14, 1988, and a notice of a proposed rulemaking (NPRM) to amend the existing MY 1989–1990 standards of 27.5 mpg to values within the range of 26.5 mpg to 27.5 mpg. In the NPRM, the agency requested information and comments to assist it in this analysis of manufacturers' fuel economy capabilities for MY's 1989–90. Comments were requested by September 15, 1988 for MY 1989 and October 28, 1988 for MY 1990.

On September 30, 1988, after receiving extensive comments on its proposal and holding a public reeting, NHTSA issued a final rule amending the MY 1989 standard to 26.5 mpg (53 FR 39275, October 6, 1988). NHTSA determined that 26.5 mpg was the "maximum feasible" average fuel economy level after balancing the statutory criteria of economic practicability, technological feasibility, the effect of other Federal motor vehicle standards and the need of the nation to conserve energy.

On October 27, 1988, the National Resources Defense Council (NRDC) filel a petition for judicial review of the MY 1989 standard in the U.S. Court of Appeals for the Ninth Circuit in San Francisco. GM, Ford, and AIA have filed petitions to intervene in that suit. NRDC's petition is addressed solely to alleged violations of the National Environmental Policy Act of 1969. On November 28, 1988, the Competitive Enterprise Institute (CEI) filed a petition for review of the MY 1989 Standard in the District of Columbia Circuit. CEI asserts that the standard was set too high, citing safety concerns.

On November 7, 1988, the Center for Auto Safety and Public Citizen jointly submitted a petition for administrative reconsideration of the MY 1989 standard. The petition addressed various issues arising under the fuel economy provisions (Title V) of the Motor Vehicle and Information Cost Savings Act. [On May 23, 1989, NHTSA denied the petition (54 FR 22899; May 30, 1989).]

[On May 16, 1989, NHTSA terminated rulemaking with respect to the MY 1990 standard (54 FR 21985; May 22, 1989). NHTSA stated that the decision reflected the increasing need of the nation to conserve energy and the agency's conclusion that retention of the 27.5 mpg standard for MY 1990 would not have a significant adverse effect on U.S. employment or on the competitiveness of the U.S. auto industry due in part, to the availability of credits from past years.]

B. Light Truck Standards

NHTSA published a final rule establishing MY 1990 and 1991 light truck fuel economy standards on April 5, 1988 (53 FR 11074). The agency set a combined standard of 20.0 mpg for MY 1990; with optional standards of 20.5 mpg for two-wheel drive (2WD) trucks and 19.0 mpg for four-wheel drive (4WD) trucks. For MY 1991, the combined standard was established at 20.2 mpg; and optional standards are 20.7 mpg for 2WD trucks and 19.1 for 4WD trucks.

In the final rule for MY 1990 and 1991 trucks, the agency determined that Ford is the "least capable" manufacturer for both years with a combined fuel economy capability of 20.0 mpg for MY 1990 and 20.2 mpg for MY 1991. GM is

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the least capable manufacturer for 4WD trucks for both years, with projected nominal CAFE levels of 19 mpg for MY 1990 and 19.1 mpg for MY 1991. For 2WD trucks, Ford is the least capable manufacturer with a range of 20.3 mpg to 20.7 mpg for both model years.

The agency concluded, upon balancing the relevant statutory factors, that the relatively small and uncertain energy savings that would be associated with setting a standard above Ford or GM's capability would not justify the economic harm to the companies and the economy as a whole. The agency projected that Ford could achieve a combined fuel economy level no higher than 20.0 mpg for MY 1990 and 20.2 mpg for MY 1991 and GM no higher than 20.4 mpg for MY's 1990 and 1991. A 20.4 mpg optimistic projection for MY 1990 by Ford could drop to as low as 19.9 mpg, if all potential risks are realized.

The 20.4 mpg figure projected by GM was also subject to risks, these being a potential loss of 0.4 mpg due to mix-shift risk resulting from lower gas prices and shifts towards larger trucks and engines for MY's 1990 and 1991.

The agency selected 20.0 mpg for MY 1990 and 20.2 mpg for MY 1991 as the final combined standards to balance the potentially serious adverse economic consequences associated with the realization of the above market and technological risks against Ford and GM's opportunities as the "least capable" manufacturers with a substantial share of sales. Since Ford and GM produce more than 52 percent of all light trucks subject to the fuel economy standards, their capabilities have a significant effect on the level of the industry's capability and, therefore, on the level of the standards.

C. Low Volume Petitions

Section 502(c) of the Act provides that a low volume manufacturer of passenger automobiles may be exempted from the generally applicable passenger car fuel economy standards if these standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for that manufacturer at its maximum feasible level. Under the Act, a low volume manufacturer is one that manufactured fewer than 10,000 passenger automobiles, worldwide, in the model year for which the exemption is sought (the affected model year) and in the second model year before the affected model year.

The agency has pending petitions for alternative standards from Lamborghini, Lotus, Maserati, LondonCoach, Ferrari, Bitter, Shelby, Dutcher Motors, Rolls-Royce, ASC Inc., and Prototype Automotive Services. Some manufacturers previously eligible for alternative fuel economy standards may not be eligible for future model years as a result of acquisitions or other relationships with larger manufacturers. In addition, the agency has received inquiries concerning eligibility to file for low volume exemption by certain small importers/manufacturers.

D. Carryback Plans

Section 502(1) of the Act allows an automobile manufacturer to earn fuel economy credits during any model year in which the manufacturer's fleet exceeds the established CAFE standard. The amount of credits a manufacturer earns is determined by multiplying the number of tenths of a mile per gallon by which the average fuel economy of the manufacturer's fleet in the model year exceeds the standard by the total number of vehicles in the manufacturer's fleet for the model year.

Already earned fuel economy credits are carried forward by the agency, (with affected manufacturers given an opportunity to comment on the agency's allocation of credits) and distributed to any of the three succeeding model years in which the manufacturer's fleet falls below the CAFE standard. For example, credits earned in MY 1983 have been used to offset deficiencies in MY 1984, 1985, and/or 1986. A manufacturer also may submit to the agency a carryback plan, which demonstrates that it will earn sufficient credits within the following three model years which can be allocated to meet the CAFE standard in the model year involved.

Ford submitted a carryback plan on January 13, 1988, for MY 1985 light truck Cafe compliance. Ford's carryback plan was approved. Ford also submitted a carryback plan on July 28, 1988, requesting that credits earned by its MY 1988 import passenger car fleet, which includes cars from its recently-acquired Aston Martin Lagonda subsidiary, be carried back to satisfy penalties for either of the predecessor fleets that accrue from MY's 1985–1987.

E. Enforcement

Notice letters for shortfalls in MY 1986 for most affected manufacturers were distributed after the disposition of Center for Auto Safety v. Thomas by the DC Circuit of the U.S. Court of Appeals. This case involved a challenge to an EPA rule adopting a new methodology for calculating automobile fuel efficiency. After a rehearing *en banc*, the case was dismissed because a majority of the full court did not find that the petitioners had standing to sue. This decision had the effect of reinstating the challenged EPA rule.

On May 3, 1988, the agency's complaint counsel commenced an enforcement action against Mercedes-Benz of North America (MBNA) to collect the $5,509,400 in civil penalties owed for MY 1985. On December 29, 1988, a DOT administrative law judge issued an initial decision concluding that MBNA could not challenge the agency's decision not to retroactively amend the MY 1984 and 1985 standards in that administrative enforcement proceeding, and that MBNA was liable for the full amount claimed. [MPNA has appealed that initial decision to the Administrator.]

Also on December 29, 1988, MBNA paid the $5,509,400 that NHTSA claimed was due, on condition that if the civil penalty were ultimately reduced NHTSA will refund the difference. On the same date MBNA paid NHTSA $20,214,700 it owed for its non-compliance with the MY 1986 standard.

F. Technology Studies

A study of low tension piston rings and roller cam followers for engine friction reduction was performed. U.S. major automobile manufacturers were surveyed to determine the state of the art of these technologies. Manufacturing costs and fuel economy benefits were evaluated. These approaches were found to be effective, and details of the methodology and costs are discussed in a final report entitled: "Low Tension Piston Rings and Roller Cam Followers for Engine Friction Reduction-Costs of Retooling and Fuel Economy Benefits". The report is being made available to the public through the National Technical Information Service.

Section IV: Use of Advanced Technology

This section fulfills the statutory requirement of Section 305 of Title III of the Department of Energy Act of 1978 (Pub. L. 95–238) which directs the Secretary of Transportation to submit an annual report to Congress on the use of advanced technologies by the automotive industry to improve motor vehicle fuel economy. This report focuses on the introduction of new models, the application of materials to save weight, and the advances in electronic technology which improved fuel economy in MY 1988.

New Models. In 1988, ranufacturers introduced more aerodynamic models and new front-wheel drive (FWD) cars and some more aerodynamic, lighter-weight trucks.

The domestic automakers introduced several all-new cars as well as updates of previous cars. GM projuced the new mid-size GM10 FWD cars in three models: The Buick Regal, the Pontiac Grand Prix and the Oldsmobile Cutlass Supreme. GM designed more-rounded lines for its compact J-body Chevrolet Cavalier, Pontiac Sunbird, Oldsmobile Firenza, and Buick Skyhawk. Chrysler introduced four all-new FWD cars for the 1988 model year: the midsize C-body Chrysler New Yorker and New Yorker Landau, the Dodge Dynasty, and the Jeep Eagle Division's Premier. Ford introduced the completely redesigned Continental, featuring FWD for the first time. It weighs 170 pounds less than its rear-drive predecessor, but is 0.5 inches longer in wheelbase and has more interior room. Ford also introduced, as an early 1989 model, the sporty Probe, produced by Mazda at its new Flat Rock, MI, assembly plant in conjunction with the Mazda MX–6. Ford emphasized aerodynamics in its restyling of the Tempo/Topaz and Crown Victoria/Grand Marquis models.

Automobile imorters introduced a variety of new cars and updates to their current models. Mazda's first luxury car for the U.S. market, the 929 rear-wheel drive sedan, debuted with the firm's first V–6 overhead cam, 18 valve 3-liter engine. Mazda also introduced a restyled 626 compact sedan and hatchback and began production of the MX–6 model at its U.S. assembly plant. Mercedes introduced two gasoline-powered models, the midsize 300CE hardtop, and also the 300TE wagon and the S-class 300 SEL, replacing the diesel 300TD and 300 SDL, respectively. BMW introduced the 750iL powered by a 295-hp 5-liter V–12 engine, an all-wheel drive 325iX, a sporty 535iS, and a performance oriented M5 model. Ihe 1.6 liter 26-valve 4-cylinder Toyota Corolla entered the market in 1988. Ihe engine uses scissor gears to position the camshafts closer to each other for a smaller valve angle. Toyota also revived the supercharger with the new 1.6 liter 16-valve MR2 engine with better fuel economy during low and midrange operation. The Nissan Pulsar 1.6 liter engine was replaced with a port-injected 1.8 liter 16-valve engine. Nissan also introduo.i a lighter weight Garrett T–25 high-flow turbocharger on the 300ZX to improve low-end response. Mitsubishi introduced an early 1989 FWD Galant model that is smaller than the Galant Sigma and offers a 16-valve engine with low friction roller cam followers, 4-speed automatic transmission, and an "active" suspension that modifies spring rates and ride heights for various driving conditions. Some other newcomers include the subcompact Ford Festiva frcm South Korea and the compact Mexican-built Mercury Tracer.

In the domestic light truck area, GM's redesignated C/K pickups improved the average fuel economy by 0.8 mpg over 1987 pickups (*Automotive Engineering*, February 1988), by enhancing the aerodynamics and reducing weight. GM's new manual HM 290 transmission introduced on 2WD and 4WD light duty trucks improved fuel economy through low-friction ccmponents and low viscosity lubricants. GM offered an optional 4.3-liter V–6 in the S–10/S–15 lineup, the biggest engine in the compact pickup field.

Engine Technology. Some manufacturers rade significant changes to the engines in their 1988 models. Both Chrysler's 2.2 and 2.5 liter, 4 cylinder powerplants have roller camshaft followers, which improve idle quality and fuel economy at low speeds and when idling. City cycle fuel economy for both engines increased 4% with the automatic and 3% with manual transaxle. Ford used fuel injection Ford installed the fuel injection systems on all gasoline powered light trucks, with the exception of the 2.0-liter engine offered on the Ranger S. GM enlarged its Cadillac 4.1-liter V–8 engine to 4.5-liters of displacement, increasing horsepower and torque by 20%, without increasing fuel consumption in most applications. The GM 3.8-liter engine was extensively redesigned for reduced internal friction and smoothness, resulting in an engine with more power and acceleration as well as improved fuel economy and lcwer emissions. The all-new 16-value Quad 4 engine was optional in all GM compact N-cars: The Oldsmobile Calais, Pontiac Grand AM and Buick Skylark. Multi-valve engine designs such as the Quad 4 offer the potential for both improved performance and improved fuel economy. For 1988, 3- snd 4-valve engines were offered on an array of imported cars including the Austin Rover Sterling, Saab 9000, Jaquar XJ6, BMW M–5, Nissan Pulsar, scme Mazdas and Chevrolet Novas, and most Hondas and Ioyotas.

New Material Applications. For the 1988 model year, automakers chose plastics, aluminum, and stainless steel for a number of significant new component applications in their cars, vans, and pickup trucks.

GM's Buick Reatta is the second car designed and built in the U.S. to use thermoplastic fenders. The first was the 1987 Buick LeSabre T-type. Ford expanded the use of all-plastic bumpers on the Ford Escort and Tempo and Mercury Topaz in MY 1988. Another important new application for plastics was the use of blow-molded high-density polyethylene fuel tanks on 1988 Chrysler Eagle Premier cars. Ihe plastic tanks weigh approximately 30 percent less than conventional terne-plated steel tanks. A significant new application for plastics was the integrated rear fender/sidestep/taillamp molding for the Sportside versions of GM's large pickup truck. Additional new applications of plastics included the urethane bumper fascias on Chrysler's New Yorker and Dynasty models, as well as those on GM's new GM10 cars.

GM's Quad 4 engine featured an aluminum cylinder head, camshaft carrier and ignition oover. The Quad 4 engine used aluminum pistons and aluminum tuned tubular intake manifolds. Other significant new aluminum applications include the reinforcement bars on bumper systems for Chrysler C-cars, oil pans and rocker covers on Chrysler's Eagle Premier cars, radiators used in some GM mid-size cars, heater cores in most 1988 Fords, and cylinder blocks and heads on the European-built V–6 engine option for the Eagle Premier.

New uses for stainless steel included exhaust ranifolds on GM's Quad 4 engine and exhaust pipes, intermediate pipes, mufflers and tailpipes on Chrysler C-cars. Fire rings in the cylinder head gaskets on several of GM's V–6 and V–8 engines were also made of stainless steel in the 1988 model year, as were the foil substrates, or liners, in some GM catalytic converters.

Electronics. Application of electronic components that increase fuel economy in vehicles continues to rise. There is a worldwidw growth rate of 18% per year in vehicle electronics, not including audio. Electronics has had its biggest success in two main areas engine controls and comfort/convenience items. Electronics were vital in reducing exhaust emission, and electronic fuel injection has all but taken over from carburetors. Cars of the future may use three different ccmputers to control functions: One for engine and transmission; one for instrumentation and interior functions, including climate control; and one combining suspension, steering and anti-lock brakes. Market projections call for an average value of $2,000 per car in electronics content by 1990.

Summary

Due to the stabilization of oil prices and supply, consumer demand in MY 1988 shifted slightly to more powerful and larger passenger cars and light

trucks. The auto industry, responding to this shift, has increased the horsepower of its engines and shifted production mix causing an increase in average weight of MY 1988 passenger cars. Still, there were some considerable technical gains, particularly in engine design, that contributed to improvements in fuel economy in MY 1988.

[FR Doc. 89-16715 Filed 7-18-89; 8:45 am]

BILLING CODE 4910-59-M

[Docket 84-02, Notice 5]

Report to Congress on the Pilot Test Program of the National Driver Register Problem Driver Pointer System

AGENCY: National Highway Traffic Safety Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: The National Highway Traffic Safety Administration submitted to Congress on March 31, 1989, its report on the one-year pilot test program of the National Driver Register (NDR) Problem Driver Pointer System which was conducted from August 3, 1987 to July 31, 1988. The agency was directed to conduct the pilot test program and to prepare the report by the NDR Act of 1982 (Pub. L. 97-364), which mandated the establishment of an improved NDR system to assist chief driver licensing officials of participating States in exchanging information regarding the motor vehicle driving records of individuals.

ADDRESSES: Copies of the report have been placed in the agency docket and are available for public inspection in Room 5109, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. (Docket hours are 8 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. Clayton E. Hatch, Chief, National Driver Register (NTS-24), 400 Seventh Street, SW., Washington, DC 20590.

Authority: 23 U.S.C. 401 note; delegation of authority at 49 CFR 1.50.

Issued on: July 11, 1989.

George L. Reagle,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 89-16834 Filed 7-13-89; 4:55 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: July 13, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557-0156
Form Number: FFIEC 035
Type of Review: Revision
Title: Monthly Consolidated Foreign Currency Report of Banks in the U.S.
Description: This information is needed to monitor the foreign positions of major banking institutions and to detect changes in policy in individual banks. Also used as an aid in the analysis of foreign exchange markets. All respondents are major U.S. banks or agencies of foreign banks
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 46
Estimated Burden Hours Per Respondent: 12 hours 41 minutes
Frequency of Response: Monthly
Estimated Total Reporting Burden: 6,999 hours
Clearance Officer: John Ference (202) 447-1177, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219
OMB Reviewer: Gary Waxman (202) 395-7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 89-16872 Filed 7-18-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 13, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0085
Form Number: 1040A
Type of Review: Revision
Title: U.S. Individual Income Tax Return
Description: This form is used by individuals to report their income subject to income tax and to compute their correct tax liability and supplemental Medicare premium. The data is used to verify that the income reported on the form are correct and are also for statistics use
Respondents: Individuals or households
Estimated Number of Respondents: 18,334,000
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping, 1 hour 21 minutes
Learning about the law or the form, 2 hours 13 minutes
Preparing the form, 2 hours 56 minutes
Copying, assembling, and sending the form to IRS, 35 minutes
Frequency of Response: Annually
Estimated Total Recordkeeping/Reporting Burden: 135,751,677 hours
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 89-16873 Filed 7-18-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 13, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0089
Form Number: ATF F 5100.24 (1637)
Type of Review: Extension
Title: Application for a Basic Permit Under the Federal Alcohol Administration Act
Description: ATF F 5100.24 (1637) is an application for a basic permit for beverage distilled spirits plants and bonded wineries. The issuance of basic permits to distillers, and wine producers is required by the Federal Alcohol Administration Act. The permit identifies persons entitled to engage in operations and the location and extent of operations
Estimated Number of Respondents: 150
Estimated Burden Hours Per Response: 3 hours
Frequency of Response: On occasion
Estimated Total Reporting Burden: 435 hours
Clearance Officer: Robert Masarsky, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 89-16874 Filed 7-18-89; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

Tax Counseling for the Elderly (TCE) Program; Availability of Application Packages

AGENCY: Internal Revenue Service, Treasury.

ACTION: Availability of TCE application packages.

SUMMARY: This document provides notice of the availability of Application Packages for the 1990 Tax Counseling for the Elderly (TCE) Program.

DATES: Application packages are available from the IRS at this time. The deadline for submitting an application package to the IRS for the 1990 Tax Counseling for the Elderly (TCE) Program is September 1, 1989.

ADDRESSES: Application Packages may be requested by contacting: Program Manager, Tax Counseling for the Elderly Program, Internal Revenue Service, Volunteer and Education Programs Branch (T:T:VE), 1111 Constitution Ave., NW., Room 7215, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Mr. Roy Johnson, Volunteer and Education Programs Branch, (T:T:VE), Room 7215, Internal Revenue Service, 1111 Constitution Ave. NW., Washington, DC 20224. The non-toll-free telephone number is: (202) 566-4904.

SUPPLEMENTARY INFORMATION: Authority for the Tax Counseling for the Elderly (TCE) Program is contained in section 163 of the Revenue Act of 1978, Pub. L. No. 95-600, 92 Stat. 2810, Nov. 6, 1978. Regulations were published in the **Federal Register** at 44 FR 72113 on December 13, 1979. Section 163 gives the Internal Revenue Service authority to enter into cooperative agreements with private or public non-profit agencies or organizations to establish a network of trained volunteers to provide free tax information and return preparation assistance to elderly individuals. Elderly individuals are defined as individuals age 60 and over at the close of their taxable year.

Cooperative agreements will be entered into based upon competition among eligible agencies and organizations. Because applications are being solicited before the FY 1990 budget has been approved, cooperative agreements will be entered into subject to appropriation of funds. Once funded, sponsoring agencies and organizations will receive a grant from the IRS for administrative expenses and to reimburse volunteers for expenses incurred in training and in providing tax return assistance. The Tax Counseling for the Elderly (TCE) Program is referenced in the Catalog of Federal Domestic Assistance in § 21.006.

Clarithe D. Nichols,

Acting Chief, Volunteer and Education Programs Branch.

[FR Doc. 89-16904 Filed 7-18-89; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Patti Viers, VA Clearance Officer (732), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3172.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: July 11, 1989.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information, Management and Statistics.

Extension

1. Office of Information Management and Statistics.
2. Application of Service Representative for Placement on Department of Veterans Affairs Mailing List.
3. VA Form 70-3215.
4. VA Form 70-3215 is used by service organizations for placing their representatives on the Department's mailing list to receive publications.
5. On occasion.
6. Individuals or households.
7. 150 responses.
8. .166 hour.
9. Not applicable.

[FR Doc. 89-16857 Filed 7-18-89; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 137
Wednesday, July 19, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:08 p.m. on Thursday, July 13, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider: (1) Matters relating to assistance agreements pursuant to Section 13(c) of the Federal Deposit Insurance Act; (2) matters relating to requests for financial assistance pursuant to Section 13(c) of the Federal Deposit Insurance Act; (3) a personnel matter; and (4) matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: July 14, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-17036 Filed 7-17-89; 12:49 pm]

BILLING CODE 6714-01-M

federal register

Wednesday
July 19, 1989

Part II

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for March 1989

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53116; FRL-3605-2]

Premanufacture Notices; Monthly Status Report for March 1989

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption request pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for MARCH 1989.

Nonconfidential portions of the PMNs and exemption request may be seen in the Public Reading Room NE-G004 at the address below between 8:00 a.m. and 4:00 p.m., Monday thru Friday, excluding legal holidays.

ADDRESS: Written comments, identified with the document control number "[OPTS-53116]" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW, Room L-100, Washington, DC 20460, (202) 554-1304.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street, SW., Washington, D.C. 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during MARCH; (b) PMNs received previous and still under review at the end of MARCH; (c) PMNs for which the notice review period has ended during MARCH; (d) chemical substances for which EPA has received a notice of commencement to manufacture during MARCH; and (e) PMNs for which the review period has been suspended. Therefore, the MARCH 1989 PMN Status Report is being published.

Date: June 13, 1989

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

Premanufacture Notice Monthly Status Report March 1989

I. 156 PREMANUFACTURE NOTICES AND EXEMPTION REQUESTS RECEIVED DURING THE MONTH:

PMN No.

P 89-0428	P 89-0429	P 89-0430	P 89-0431
P 89-0432	P 89-0433	P 89-0434	P 89-0435
P 89-0436	P 89-0437	P 89-0438	P 89-0439
P 89-0440	P 89-0441	P 89-0442	P 89-0443
P 89-0444	P 89-0445	P 89-0446	P 89-0447
P 89-0448	P 89-0449	P 89-0450	P 89-0451
P 89-0452	P 89-0453	P 89-0454	P 89-0455
P 89-0456	P 89-0457	P 89-0458	P 89-0459
P 89-0460	P 89-0461	P 89-0462	P 89-0463
P 89-0464	P 89-0465	P 89-0466	P 89-0467
P 89-0468	P 89-0469	P 89-0471	P 89-0472
P 89-0473	P 89-0474	P 89-0475	P 89-0476
P 89-0477	P 89-0478	P 89-0479	P 89-0480
P 89-0481	P 89-0482	P 89-0483	P 89-0484
P 89-0485	P 89-0486	P 89-0487	P 89-0488
P 89-0489	P 89-0490	P 89-0491	P 89-0492
P 89-0493	P 89-0494	P 89-0495	P 89-0496
P 89-0497	P 89-0498	P 89-0499	P 89-0500
P 89-0501	P 89-0502	P 89-0503	P 89-0504
P 89-0505	P 89-0506	P 89-0507	P 89-0508
P 89-0509	P 89-0510	P 89-0511	P 89-0512
P 89-0513	P 89-0514	P 89-0515	P 89-0516
P 89-0517	P 89-0518	P 89-0519	P 89-0520
P 89-0521	P 89-0522	P 89-0523	P 89-0524
P 89-0525	P 89-0526	P 89-0527	P 89-0528
P 89-0529	P 89-0530	P 89-0531	P 89-0532
P 89-0533	P 89-0534	P 89-0535	P 89-0536
P 89-0537	P 89-0538	P 89-0539	P 89-0540
P 89-0541	P 89-0542	P 89-0543	P 89-0544
P 89-0545	P 89-0546	P 89-0547	P 89-0548
P 89-0549	P 89-0550	P 89-0551	P 89-0552
P 89-0553	P 89-0554	P 89-0555	P 89-0556
P 89-0557	P 89-0558	P 89-0559	P 89-0560
P 89-0561	P 89-0562	P 89-0563	P 89-0564
P 89-0565	P 89-0566	P 89-0567	P 89-0568
P 89-0569	P 89-0570	P 89-0571	P 89-0572
Y 89-0070	Y 89-0071	Y 89-0072	Y 89-0073
Y 89-0074	Y 89-0075	Y 89-0076	Y 89-0077
Y 89-0078	Y 89-0079	Y 89-0080	Y 89-0081

II. 306 PREMANUFACTURE NOTICES RECEIVED PREVIOUSLY AND STILL UNDER REVIEW AT THE END OF THE MONTH:

PMN No.

P 85-0216	P 85-0535	P 85-0536	P 85-0619
P 85-0718	P 86-0294	P 86-0295	P 86-0592
P 86-1078	P 86-1189	P 86-1235	P 86-1602
P 86-1603	P 86-1604	P 86-1607	P 87-0057
P 87-0058	P 87-0059	P 87-0105	P 87-0197
P 87-0198	P 87-0199	P 87-0200	P 87-0201
P 87-0323	P 87-0770	P 87-0794	P 87-0930
P 87-0931	P 87-0963	P 87-1028	P 87-1066
P 87-1104	P 87-1192	P 87-1226	P 87-1227
P 87-1273	P 87-1337	P 87-1379	P 87-1417
P 87-1436	P 87-1542	P 87-1546	P 87-1547
P 87-1548	P 87-1549	P 87-1555	P 87-1759
P 87-1872	P 87-1881	P 87-1882	P 88-0049
P 88-0083	P 88-0156	P 88-0157	P 88-0195
P 88-0225	P 88-0275	P 88-0319	P 88-0320
P 88-0353	P 88-0387	P 88-0393	P 88-0468
P 88-0515	P 88-0522	P 88-0576	P 88-0598
P 88-0602	P 88-0606	P 88-0622	P 88-0658
P 88-0671	P 88-0701	P 88-0726	P 88-0836
P 88-0864	P 88-0875	P 88-0884	P 88-0888
P 88-0889	P 88-0890	P 88-0894	P 88-0898
P 88-0918	P 88-0972	P 88-0981	P 88-0985
P 88-0997	P 88-0998	P 88-0999	P 88-1005
P 88-1020	P 88-1021	P 88-1035	P 88-1063
P 88-1116	P 88-1118	P 88-1120	P 88-1168
P 88-1189	P 88-1211	P 88-1212	P 88-1220
P 88-1240	P 88-1250	P 88-1271	P 88-1272
P 88-1273	P 88-1274	P 88-1275	P 88-1277
P 88-1303	P 88-1377	P 88-1426	P 88-1443
P 88-1446	P 88-1460	P 88-1473	P 88-1514
P 88-1529	P 88-1543	P 88-1567	P 88-1568
P 88-1618	P 88-1619	P 88-1620	P 88-1621
P 88-1622	P 88-1630	P 88-1631	P 88-1632
P 88-1647	P 88-1648	P 88-1657	P 88-1658
P 88-1682	P 88-1686	P 88-1690	P 88-1691
P 88-1730	P 88-1739	P 88-1740	P 88-1748
P 88-1753	P 88-1761	P 88-1763	P 88-1774
P 88-1783	P 88-1786	P 88-1807	P 88-1809
P 88-1811	P 88-1823	P 88-1839	P 88-1844
P 88-1850	P 88-1856	P 88-1857	P 88-1889
P 88-1898	P 88-1937	P 88-1938	P 88-1940
P 88-1956	P 88-1958	P 88-1980	P 88-1982
P 88-1984	P 88-1985	P 88-1995	P 88-1999
P 88-2000	P 88-2001	P 88-2002	P 88-2069
P 88-2100	P 88-2160	P 88-2169	P 88-2177
P 88-2179	P 88-2180	P 88-2181	P 88-2188
P 88-2196	P 88-2204	P 88-2210	P 88-2212
P 88-2213	P 88-2228	P 88-2229	P 88-2230
P 88-2231	P 88-2236	P 88-2237	P 88-2271
P 88-2275	P 88-2293	P 88-2328	P 88-2334
P 88-2341	P 88-2343	P 88-2344	P 88-2349
P 88-2365	P 88-2367	P 88-2380	P 88-2389
P 88-2398	P 88-2399	P 88-2405	P 88-2434
P 88-2435	P 88-2436	P 88-2437	P 88-2463
P 88-2469	P 88-2470	P 88-2473	P 88-2484
P 88-2518	P 88-2529	P 88-2530	P 88-2536
P 88-2540	P 88-2562	P 88-2563	P 88-2564
P 88-2566	P 88-2568	P 88-2575	P 88-2582
P 88-2587	P 88-2620	P 88-2631	P 88-2632
P 89-0030	P 89-0031	P 89-0066	P 89-0073
P 89-0077	P 89-0078	P 89-0089	P 89-0090
P 89-0091	P 89-0097	P 89-0099	P 89-0115
P 89-0116	P 89-0117	P 89-0122	P 89-0184
P 89-0191	P 89-0194	P 89-0195	P 89-0225
P 89-0227	P 89-0234	P 89-0241	P 89-0245
P 89-0254	P 89-0268	P 89-0278	P 89-0279
P 89-0280	P 89-0287	P 89-0292	P 89-0298
P 89-0301	P 89-0303	P 89-0309	P 89-0310
P 89-0311	P 89-0312	P 89-0313	P 89-0314
P 89-0319	P 89-0321	P 89-0322	P 89-0326
P 89-0328	P 89-0329	P 89-0330	P 89-0336
P 89-0340	P 89-0341	P 89-0344	P 89-0347
P 89-0367	P 89-0380	P 89-0383	P 89-0384
P 89-0385	P 89-0386	P 89-0387	P 89-0388
P 89-0396	P 89-0413	P 89-0418	P 89-0420
P 89-0422	P 89-0423	P 89-0424	P 89-0426
P 89-0427	P 89-0470		

III. 117 PREMANUFACTURE NOTICES AND EXEMPTION REQUEST FOR WHICH THE NOTICE REVIEW PERIOD HAS ENDED DURING THE MONTH. (EXPIRATION OF THE NOTICE REVIEW PERIOD DOES NOT SIGNIFY THAT THE CHEMICAL HAS BEEN ADDED TO THE INVENTORY).

PMN No.

P 83-0669	P 86-0065	P 86-0066	P 86-0067
P 87-0105	P 87-1769	P 87-1770	P 88-0049
P 88-0436	P 88-0468	P 88-0831	P 88-0837
P 88-1250	P 88-1293	P 88-1428	P 88-1460
P 88-1559	P 88-1697	P 88-1698	P 88-1742
P 88-1763	P 88-1801	P 88-1802	P 88-2110
P 88-2112	P 88-2210	P 88-2212	P 88-2213
P 88-2228	P 88-2229	P 88-2230	P 88-2236
P 88-2328	P 88-2399	P 88-2515	P 88-2529
P 88-2530	P 88-2571	P 88-2576	P 88-2597
P 88-2598	P 88-2599	P 88-2610	P 89-0052
P 89-0077	P 89-0085	P 89-0166	P 89-0168
P 89-0169	P 89-0170	P 89-0171	P 89-0172
P 89-0173	P 89-0174	P 89-0175	P 89-0176
P 89-0177	P 89-0178	P 89-0179	P 89-0180
P 89-0181	P 89-0182	P 89-0183	P 89-0185
P 89-0186	P 89-0187	P 89-0188	P 89-0189
P 89-0190	P 89-0192	P 89-0193	P 89-0196
P 89-0197	P 89-0202	P 89-0203	P 89-0204
P 89-0205	P 89-0206	P 89-0207	P 89-0208
P 89-0209	P 89-0210	P 89-0211	P 89-0212
P 89-0213	P 89-0214	P 89-0215	P 89-0216
P 89-0217	P 89-0218	P 89-0219	P 89-0220
P 89-0221	P 89-0222	P 89-0223	P 89-0224
P 89-0226	P 89-0227	P 89-0228	P 89-0229
P 89-0230	P 89-0231	P 89-0232	P 89-0233
P 89-0238	Y 89-0055	Y 89-0063	Y 89-0064
Y 89-0065	Y 89-0066	Y 89-0067	Y 89-0068
Y 89-0069	Y 89-0070	Y 89-0071	Y 89-0072
Y 89-0073			

IV. 150 Chemical substances for which EPA has received notices of commencement to manufacture.

PMN No.	Identity/Generic Name	Date of Commencement
P 81-0537	1-Amino-4-(phenylamino)-9,10-dihydro-9,10-dioxo-2-methoxyethyl)oxo	November 28, 1988.
P 82-0168	G Polyurethane of substituted alkanols and a diisocyanate	February 1, 1989.
P 82-0186	G Substituted alkyl amide	January 31, 1989.
P 82-0549	G Sulfonyldiazo substituted naphthalene sulfonic acid salt	February 27, 1989.
P 84-0362	G Polyamido-amine	February 10, 1989.
P 84-4060	Copper ferrocyanide salt of C.I. basic green 1 and C.I. basic yellow 1	November 28, 1989.
P 84-1176	G Alkyl alicyclic alcohol	February 1, 1989.
P 85-0433	1-Propanol,3-mercapto-	April 20, 1987.
P 85-0978	G Amine polyglycol	November 16, 1989.
P 86-0005	Polymer of: terephthalic acid; isophthalic acid; adipic acid; trimellitic anhydride; 2,2'-dimethyl-1,3-propanediol; ethylene glycol; and hexanediol.	July 21, 1988.
P 86-0085	Polymer of 3,3,3-trifluoro-2-trifluoromethyl-1-propene; and 1,1-difluoroethylene	February 8, 1989.
P 86-0339	G Styrenated acrylic copolymer	March 2, 1989.
P 86-1440	G C.I. Disperse yellow 149	November 2, 1988.
P 86-1525	2-pyrrolidone-1-dodecyl	March 6, 1989.
P 86-1559	G Diethylenetriamine, polymer with an alkyl diacid, a monocyclic anhydride, and a quaternized substituted alkyl diamine	February 23, 1987.
P 86-1609	Polyester of aliphatic acid	March 3, 1989.
P 87-0090	G Methylene-bis-trisubstituted aniline derivative	December 20, 1988.
P 87-0093	G Alkylene diol alkyl ether	July 27, 1987.
P 87-0094	G Alkylene diol alkyl ether ester	July 27, 1987.
P 87-0109	G Perfluoroalkyl ester	January 22, 1987.
P 87-0112	G Substituted tartaric acids, sodium salts	August 2, 1987.
P 87-0113	G Substituted tartaric acids, calcium-sodium salts	August 1, 1987.
P 87-0138	G Reaction product of alkyl and aryl dicarboxylics/alkane diols ester polyester with an acrylate prepolymer	March 31, 1988.
P 87-0139	G Reaction product of aryl and alkyl dicarboxylics/alkane polyols/ester polyester with an acrylate prepolymer	February 25, 1988.
P 87-0161	G Disubstituted quinoline hydrochloride	April 1, 1987.
P 87-0236	G Chromate, (1-),bis((5-chloro-2-hydroxyphenyl)azo-2-naphtaleneolato(2-))-, hydrogen, compound with 1-tetradecanamine (1:1).	June 19, 1987.
P 87-0296	1-Penten-3-one, 2-methyl-1-(2,6,6-trimethyl-2-cyclohexen-1-y')	June 22, 1987.
P 87-0328	G Piperidinyl triazine derivative	December 8, 1987.
P 87-0330	Aluminum, benzoate 2-ethylhexanonate isopropyl alcohol complexes	October 5, 1987.
P 87-0332	G Substituted benzenesulfonamide	September 18, 1987.
P 87-0334	G Substituted benzenesulfonyl chloride	September 18, 1987.
P 87-0341	G Modified epoxy resin	March 17, 1987.
P 87-0356	G Urethane acrylate	November 30, 1988.
P 87-0363	Polymer of trichloromethylsilane; dichloromethylsilane; trichlorophenylsilane; and dichlorophenylsilane	April 2, 1987.
P 87-0371	G Partially fluorinated polyamic acid	April 7, 1987.
P 87-0372	G Partially fluorinated polyamic acid	March 27, 1987.
P 87-0577	G Alkylindolenium bromide	November 22, 1988.
P 87-0584	G N,N-dialkylarylamine	February 27, 1989.
P 87-1072	G Aromatic sulfonated ester	February 3, 1989.
P 87-1260	G Carbocyanine dye	December 1, 1988.
P 87-1425	G Water based acrylic copolymer solution	February 19, 1989.
P 87-1511	G Staphylococcus aureas	March 14, 1989.
P 87-1553	G Substituted triphenylmethane	January 5, 1989.
P 87-1591	G Modified styrene, butadiene polymer	November 3, 1988.
P 87-1615	G Polyester	February 24, 1989.
P 87-1630	G Aliphatic aromatic acrylic resin	January 19, 1989.
P 87-1652	G Methyl hydrogen methoxy polysiloxane	February 15, 1989.
P 87-1661	G Cycloalkenyl substituted alkyl alkenyl	January 23, 1989.
P 87-1687	G Modified impact polystyrene	February 24, 1989.
P 87-1700	G Polyurethane	February 15, 1989.
P 87-1782	G Siloxane dimer	August 23, 1988.
P 87-1831	G Butylic acid telomer	January 27, 1989.

IV. 150 Chemical substances for which EPA has received notices of commencement to manufacture.—Continued

PMN No.	Identity/Generic Name	Date of Commencement
P 87-1839	G Acrylic lactone copolymer	April 29, 1988.
P 87-1840	G Alkoxylated amine alcohol	December 20, 1987.
P 87-1841	G Sulfur containing hindered phenolic derivative	February 17, 1989.
P 87-1849	3,3',3-Fluoropropyl-methyl cyclosiloxane	February 15, 1989.
P 88-0336	G Zeromethine merocyanine dye	June 22, 1988.
P 88-0354	G Oleoresinous	February 1, 1989.
P 88-0410	G Reaction product of alkanolamine and dicarboxylic acid	November 14, 1988.
P 88-0434	Unreacted 2,2'-Bicinchronic acid	February 21, 1989.
P 88-0571	G Sodium metal salt of phosphonomethylated diamine	December 13, 1988.
P 88-0589	G Fatty acid amide	February 21, 1989.
P 88-0760	G Polyfunctional copolymer of styrene with alkyl acrylate and substituted alkyl acrylates	February 16, 1989.
P 88-0761	G Silicones resin	January 6, 1989.
P 88-1009	G Organopolysiloxane containing hydrogen, trifluoroalkyl and methyl groups	February 15, 1989.
P 88-1101	G Reaction product between imidazole and phenoxy resin	January 26, 1988.
P 88-1110	G Cobalt aluminum organometallic compound	March 9, 1989.
P 88-1165	G Modified cellulose	February 19, 1989.
P 88-1202	G Benzoate ester	February 23, 1988.
P 88-1383	G Peroxide curable polymer of hexafluoropropylene, tetrafluoroethylene, and vinylidene fluoride	February 24, 1989.
P 88-1389	G Polymer of a quarternary titanate ester and bifunctional acid	February 1, 1989.
P 88-1390	G Modified acrylate polymer	February 1, 1989.
P 88-1488	G Hycar amine terminated butadiene/acrylonitrile polymer	February 22, 1989.
P 88-1553	G Alkylnaphthalene sulfonic acid, magnesium salt	January 5, 1989.
P 88-1602	G Acrylic copolymers emulsion	March 14, 1989.
P 88-1609	G Substituted triazine azomethanesulfonic acid	March 3, 1989.
P 88-1615	Reaction product of siloxanes and silicones, dimethyl, 3-(N-methylamino)isobutylterminated plus Cyclohexane, 1,1-methylen-ebis-4-isocyanato-, plus 1,4-butanediol plus poly(oxy-1,2-ethanediyl),.alpha.-hydro-.omega. hydroxy-..	February 24, 1989.
P 88-1617	G Terpene resin	February 26, 1989.
P 88-1672	G Alkoxylated dialkyl-diethylene triamine, alkyl sulfate salt	March 1, 1989.
P 88-1679	G Unsaturated hydrocarbon resin from cyclooctene	February 16, 1989.
P 88-1687	G Alkoxysilane terminated polyether polymer	February 24, 1989.
P 88-1700	Amides from dibasic and fatty amine	February 15, 1989.
P 88-1701	G Pentanal, 4-(4-methyl-3-cyclohexenylidene)-(e) & (z) in a ratio of 40/60 or 60/40	February 23, 1989.
P 88-1709	G Castor oil hydrogenerated polymer with ethylenediamine 12,hydroctanoic acid and adipic acid	February 7, 1989.
P 88-1721	Bicyclo(3,2,1)octan-8-ol,1,5,8-trimethyl-	February 24, 1989.
P 88-1724	G Vinyl acid polymer	January 26, 1989.
P 88-1734	G Acrylic polymer containing quaternary ammonium salts	December 19, 1988.
P 88-1743	G Amino alkyl substituted hydroxypropylcellulose	November 30, 1988.
P 88-1747	G 1,4-Bis(2-(alkenoxy)alkoxy benzene	December 7, 1988.
P 88-1760	G Organosilicone	February 14, 1989.
P 88-1782	G Vinyl modified nonionic surfactant	February 2, 1989.
P 88-1799	G Organosiloxane	February 14, 1989.
P 88-1803	G Ethylene copolymer	January 3, 1989.
P 88-1814	G Derivatized polyalkylene glycol	February 15, 1989.
P 88-1824	G Polyoxypropylene amine derivative	February 15, 1989.
P 88-1838	Cyclohexanone, 2-(1-mercaptoacetyl-1-methyl ethyl)-5-methyl-(E)+(2) in a ratio 60/40	February 23, 1989.
P 88-1847	G Substituted benzophenone ester	December 28, 1989.
P 88-1873	G Alkenylsuccinimide	March 9, 1989.
P 88-1877	G Poly (oxyalkylene) amine	February 25, 1989.
P 88-1908	G Ethylene copolymer	December 17, 1988.
P 88-1909	G Ethylene copolymer	December 17, 1988.
P 88-1944	Acetylated cedrus terpenes	March 1, 1989.
P 88-1946	G Salt of substituted naphthalene disulfonic acid	February 11, 1989.
P 88-1960	G Heterocyclic amine	January 13, 1989.
P 88-1993	G Epoxy modified oleoresinous varnish	December 16, 1988.
P 88-1997	1,1-Bis(4-hydroxyphenyl)-1-phenylethane, polymer with dichlorocarbon monooxide, terminated by 4-(ter-butyl)phenol	December 12, 1988.
P 88-2067	G Vinyl modified nonionic surfactant	February 13, 1989.
P 88-2068	G Sodium polyacrylate; acrylate copolymer salt; vinyl copolymer	February 2, 1989.
P 88-2161	G Organopolysiloxane	March 14, 1989.
P 88-2171	G Hexamethylenediamine/adipi acid/dimer acid copolyamide	March 1, 1989.
P 88-2185	Ethaneperoxoic acid, reaction products with aluminum isopropoxide and 1,5,10-trimethyl-1,5,9-cyclododecatriene	February 15, 1989.
P 88-2193	G Substituted carboxylic acid, alkane diol polyester	December 22, 1988.
P 88-2195	G Chrome yellow light	December 27, 1988.
P 88-2199	G Polyurethane resin	February 23, 1989.
P 88-2200	G Polyester	February 3, 1989.
P 88-2209	G Carbamodithioc acid, ethylphenyl-lead(2+)salt	February 23, 1989.
P 88-2242	G Hydrogenated fatty acid alkyd	March 9, 1989.
P 88-2252	G Polyurethane	March 2, 1989.
P 88-2306	Poly(oxy(methyl-1,2-ethanediyl)), alpha, alpha'-(methyl-1,2-ethanediyl)bis; (omega-hydroxy-toluene diisocyanate); 2-propen-1-ol.	February 19, 1989.
P 88-2424	G Polymeric product of the reaction of epoxy with organic acids and anhydrides	January 4, 1989.
P 88-2459	Substituted dioxazine dye	February 12, 1989.
P 88-2477	G Chromophore substituted polyoxyalkylene	December 28, 1988.
P 88-2478	G Chromophore substituted polyoxyalkylene	December 28, 1988.
P 88-2479	G Chromophore substituted polyoxyalkylene	December 28, 1988.
P 88-2480	G Chromophore substituted polyoxyalkylene	December 28, 1988.
P 88-2481	G Substituted furanone	December 23, 1988.
P 88-2505	G Glycidyl functional acrylic copolymer	March 15, 1989.
P 88-2506	G Polyester	February 26, 1989.
P 88-2565	4-(2-Hydroxyethyoxy)phenyl(2-chloro-2-propyl)ketone	January 28, 1989.

IV. 150 Chemical substances for which EPA has received notices of commencement to manufacture.—Continued

PMN No.	Identity/Generic Name	Date of Commencement
P 88-2577	G Alkyl aryl ethoxylate	January 18, 1989.
P 89-0005	Isononanoic acid adipic acid polyester of glycerine	March 15, 1989.
P 89-0023	G Carboxylated vinyl acrylic copolymer	January 26, 1989.
P 89-0049	G Polyphenylene ether graft polymer	February 15, 1989.
P 89-0059	G Ethylene interpolymer	March 7, 1989
P 89-0067	G Styrene acryl copolymer	January 12, 1989.
P 89-0083	G Trisubstituted naphthalene	February 25, 1989.
P 89-0088	G N-Butyltriphenylphosphonium chloride	March 6, 1989.
P 89-0106	G Humic acid, sodium salt, polymer with acrylic monomer	March 8, 1989.
P 89-0118	G Substituted lactone	February 28, 1989.
P 89-0172	2-Methy-omega-hydroxy poly(oxy-1,4)butandiyl polymer with 3-hydroxy-2-hydroxy-methyl-2-methyl propanic acid, meta-tetra methyloxylene diisocyanate and 3-amino methyl-3,5,5-trimethyl cyclohexylamine.	March 21, 1989.
P 89-0183	2,3-dihydroxybutanedioic acid-bis(1-methylethyl) ester	March 14, 1989.
P 87-0066	G Ethylene terpolymer	March 1, 1989.
P 88-0058	G Norbornene copolymer	March 12, 1989.
P 88-0106	G Water dispersible epoxy	March 14, 1989.
P 89-0019	G Polyether/polycarbonate	February 22, 1989.
P 89-0042	2,2-dimethyl-1,3-propanediol 2,2,4-trimethyl-1,3-pentanediol isobenzo-1,3-furandione hexanedioic acid 1,3-benzenedicarboxylic acid 1,4-benzenedicarboxylic acid.	February 16, 1989.
P 89-0050	G Intaglio varnish	March 11, 1989.
P 89-0051	G Intaglio varnish	March 11, 1989.
Y 89-0054	G Acrylic polymer	February 23, 1989.
Y 89-0063	G Copolymer alkyd resin	March 14, 1989.

V. 24 Premanufacture Notices For Which The Period Has Been Suspended

PMN No.

P 88-0972	P 88-1005	P 88-1620	P 88-1621
P 88-1690	P 88-1783	P 88-1786	P 88-1823
P 88-1857	P 88-2231	P 88-2237	P 88-2463
P 88-2568	P 88-2587	P 88-2631	P 88-2632
P 89-0073	P 89-0191	P 89-0194	P 89-0195
P 89-0225	P 89-0298	P 89-0426	P 89-0427

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federal register

Wednesday
July 19, 1989

Part III

Department of Labor

Occupational Safety and Health Administration

Bloodborne Diseases, Survey; Notice

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Bloodborne Diseases, Survey

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35; 5 CFR Part 1320 (53 FR 16618 to 16632, May 10, 1988)), is submitting this survey to the Office of Management and Budget (OMB) for the Agency's approval. OSHA is developing a standard to protect workers from occupational exposure to bloodborne diseases, particularly the hepatitis B virus and the human immunodeficiency virus (HIV). The survey will support an assessment of the economic and technological feasibility of a standard by providing data on the population at risk, the extent of exposure, and the extent to which facilities have adopted measures to protect workers. This will be a one time only telephone survey. OSHA estimates that there will be 2669 non-response or screening only respondents requiring 5 minutes per response and 2245 completed surveys from respondents requiring an average of 30 minutes per response for an average of 16 minutes per total responses.

DATE: OSHA has requested an expedited review of this submission under the Paperwork Reduction Act to be completed on or before July 26, 1989.

FOR FURTHER INFORMATION CONTACT: Comments and questions about this survey or the reporting burden should be directed to Paul E. Larson, Departmental Clerance Officer, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-1301, Washington DC 20210 (telephone (202) 523-6331). Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA, Office of Management and Budget, Room 3001, Washington, DC 20503 (telephone (202) 395-6880).

Any member of the public who wants to comment on the information collection clearance package which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible data.

SUPPLEMENTARY INFORMATION: OSHA has requested expedited review of this submission because of the high priority the Agency has assigned the completion of the standard for bloodborne diseases. To collect the data necessary for the economic and technological assessment of the final standard, OSHA must adhere to the schedule set forth below. As a first step, OSHA is submitting the following clearance package to OMB in a request for approval of the survey contained in Appendix I.

Supporting Statement for Survey and Related Data Gathering To Support OSHA Rulemaking on Bloodborne Diseases

A. Justification

1. Necessity of Data Collection

The Office of Regulatory Analysis of the Occupational Safety and Health Administration (OSHA) is collecting data to support an assessment of the technological and economic feasibility of a standard to protect workers from occupational exposure to certain bloodborne diseases, primarily the hepatitis-B virus (HBV) and the human immunodeficiency virus (HIV). Health care and certain other workers are at increased risk for certain infectious diseases due to their exposure to blood and other potentially infectious body fluids. Occupational exposure takes place in a variety of ways, the most common being injuries from needles and other sharp instruments and the contamination of open wounds from blood splash. These exposures are common, not just in medical personnel but in workers indirectly involved in the handling of potentially infectious body fluids.

OSHA has at this time no specific standard regulating exposure to biological hazards such as viruses. In 1983 the Agency issued guidelines in conjunction with the Department of Health and Human Services for reducing the risks of occupational exposure to HBV. In 1988 the Agency issued enforcement procedures providing uniform inspection procedures and guidelines to be followed when conducting inspections and issuing citations under section 5(a)(1) of the Act for occupational exposure to both HBV and HIV.

OSHA has developed a proposed section 6(b) rule to protect workers from bloodborne diseases. The proposal includes provisions for safe work practices, personal protective equipment, training, post-exposure protocol and, in the case of HBV, a vaccination program.

OSHA's Congressional mandate stipulates that the Agency carefully design and study its regulatory proposals. Section 6(b)(5) of the OSHA Act 2d U.S.C. 655 (b)(5) mandates that regulations promulgated by the Agency shall most adequately assure worker safety and health "to the extent feasible on the basis of the best available evidence." They are to be based on "research and the latest available scientific data." Section 6(f) of the Act requires regulations to be justified by "substantial evidence in the record" and authorizes the Secretary of Labor "to enter into contracts, agreements or other arrangements with appropriate public agencies or private organizations for the purposes of conducting studies related to his responsibility under the Act." The courts have endorsed the view that technological and economic factors affect the feasibility of proposed regulations. Thus, OSHA is obligated to gather data on the technological feasibility, cost of compliance, and economic consequences of future standards.

Executive Order 12291 reiterates this obligation by requiring the preparation of preliminary and final Regulatory Impact Analyses for each major rule. The Agency must analyze the potential benefits and costs of the rule and alternative approaches. The Regulatory Impact Analysis may be combined with the analysis required by the Regulatory Flexibility Act. This Act specifically requires an analysis that describes the "impact of the proposed rule on small entities" and significant regulatory alternatives that "take into account the resources available to small entities."

In order to fulfill the Congressional and Presidential mandates and to better evaluate the economic and technological feasibility of the final OSHA standard, OSHA requires a data base that describes current industry practices and identifies situations where potential hazards exist. Thus, in accordance with Section 6 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 655, OSHA is planning to gather statistically accurate data through a survey to assess the extent to which the various types of facilities affected have already implemented infection control measures to protect workers from these infectious diseases and the direct and indirect costs associated with each of these measures. As discussed below, none of the available data sources are adequate for this purpose.

To estimate accurately the cost of the standard, data are needed on baseline compliance rates by facility for specific provisions of the standard. OSHA also needs an estimate of the proportion of each type of facility that is at various levels of compliance for each provision of the standard. Currently, the data available for estimating the extent to which facilities have adopted measures

to protect workers from bloodborne pathogens is extremely limited or outdated. In addition, most of the data available to OSHA are not based on a random sample, and thus their accuracy cannot be judged. The data that do exist are for the most part over a year old, and are mostly from large, urban hospitals in areas which report a high incidence of HBV and HIV infection. In some facility types, notably physicians' offices, there are almost no data on current compliance levels. Moreover, those studies on compliance that exist do not allow an estimate of the extent to which a facility may have adopted measures which would, at least in part, meet the requirements of the proposed standard.

In addition to estimates of compliance rates, data are needed on a variety of specific aspects of a facility's operation. For example, data on the number of incidents of employee exposure to blood or materials contaminated with blood are needed to estimate the cost of the post-exposure protocol. All existing data on exposure rates are for hospitals or atypical facilities. Similarly, facility-specific data are needed to estimate the number of workers that are at risk.

A timetable for the survey is presented in Figure A-1. The timetable shows that OSHA is attempting to complete the survey within a short period of time in order to permit completion of the final regulatory analysis in conjunction with the final rule. The schedule currently calls for completion of the bulk of the survey effort within a 7-week period. Therefore, we request that an expedited review be performed by OMB.

2. Uses of the Information

The data gathered through this survey will be used by OSHA to make estimates of the direct and indirect costs of the various provisions for safe work practices, personal protective equipment, training, post-exposure followup and HBV vaccination. The information gathered from all of the data collection efforts will be used by OSHA to prepare a final Regulatory Impact Analysis (RIA) for the final rule. Executive Order 12291 requires preparation of an RIA for each major rule. In an RIA, the Agency must assess the potential benefits and costs of the rule and of alternative approaches.

The discussion below describes in detail the data uses for responses to each set of questions in the survey instrument.

A. Introduction and Collection of Identification Data. The first elements of the survey instrument describe the telephone survey in general and determine whether the respondent is in the facility type anticipated by the survey design. If the respondent is not in the anticipated facility type, the survey will be concluded.

Figure A-1.—*Schedule for design and completion*

Complete design of survey instrument and submit information collection plan to OMB.	Apr. 28, 1989.
Published Federal Register notice of survey submission to OMB.	Apr. 28, 1989.
Obtain sampling frames for each sample stratum.	May 31, 1989.
Mail notification letters to survey targets.	July 10, 1989.
Receive OMB approval of final survey instrument (expedited).	July 28, 1989.
Begin telephone interviewing	July 31, 1989.
Complete telephone interviewing	Sept. 1, 1989.
Perform data tabulations	Sept. 15, 1989.
Integrate survey results into a draft final report.	Sept. 30, 1989.
Respond to comments and submit final report.	Oct. 15, 1989.

B. Data Collection on Type of Organization. These questions identify the type of organization/administration of the facility.

C. Questions on Infection Control Policies and Employment. This set of questions identifies whether the facility has written infection control policies and the general nature of those policies. The type of policy will provide a general indication of the facility's compliance level and a quality control check on later responses. Data are also collected on the number of employees.

D. Data on Rates of Employee Exposure. The next set of questions asks for estimates of the proportion of workers that are potentially exposed to blood or materials contaminated with blood. The information on these workers will provide a more complete understanding of the distribution of exposure within facilities.

E. Questions on Personal Protective Equipment. The industries covered by this data collection were not included in the OSHA survey on personal protective equipment. Questions are asked here regarding employee practices with regard to the use of gloves, face protection, and gowns. Questions are also asked regarding PPE use by non-paid or contract workers.

F. Questions on Medical Surveillance. Questions are asked to determine the percentage of exposed workers who have received the HBV vaccination, the extent to which these workers are offered the HBV vaccine free of charge, and when appropriate, the proportion of workers that accept the vaccine. In addition to the vaccination program, data are collected on the facility's protocol to respond to exposure incidents. To estimate the cost of the post-exposure protocol in the proposed standard, data are collected on the number of incidents in 1988, and the types of tests the facility administers for the source patient and the exposed worker.

G. Questions Concerning Training. Data are collected on the length and frequency of infection control training provided by the facility. To minimize the burden on the respondent, OSHA will estimate from other sources the reasonable length of time necessary for a training program to cover all the elements called for in the standard.

H. Questions Concerning Housekeeping. Data are collected on the quantity of waste contaminated by blood now disposed of in a manner consistent with the proposal. Data are also collected on sharps and the quantity of sharps disposal containers in use.

I. Questions Concerning Laboratory Facilities. These questions request data on the use of concentrated viruses, the use of centrifuges, and the availability of sinks and autoclaves. Very little data is available from secondary sources regarding laboratory practices.

Because OSHA has not regulated infectious diseases before this time and does not have a substantial amount of experience with the types of workplaces that would be affected, the Agency needs the information that this survey would provide in order to refine the proposed standard.

3. Use of Technology To Reduce Burden

Information for this survey will be collected using a Computer Assisted Telephone Interviewing (CATI) system. Such a procedure will improve the quality and efficiency of the survey in a number of ways and will also reduce respondent burden. First, since the survey is done via telephone, there is no need for scheduling on-site visits to gather the information. This is expected to increase both the response rate and reduce the cost and time of completing interviews. Respondents are also not being asked to fill out a long questionnaire form on their operations.

Further, CATI system responses are entered directly into the computer, eliminating the need for separate recording and coding operations. Also, the computer ensures that the proper sequence of questions is followed automatically. For example, if the response to one question suggests that a follow-up question can be skipped, the computer will automatically move on. The interviewer simply reads the questions as they appear on the screen.

In addition, the use of CATI allows the interviewer to omit questions that would not be relevant for the particular industry being questioned. For example, the questions regarding work with concentrated amounts of the hepatitis-B or the AIDS virus would not be asked of establishments such as corrections facilities or police departments. This system produces a smoothly flowing interview and eliminates any pauses or delays by the interviewer to enter responses by hand or to find the next question. In essence, the computer produces a questionnaire tailored to each industry sector. There are no technical or legal obstacles to these plans for reducing the burden.

4. Efforts To Identify Duplication

OSHA and its contractor, Jack Faucett Associates, Inc., have conducted an extensive literature review and have explored sources within governmental and private agencies for data that are to be collected from these surveys. The findings indicate that there are no attempts to gather, in a systematic fashion, data on the work practices and the costs of control measures to protect workers from occupationally related exposures to bloodborne diseases in the various industries and facility types affected by the rule.

5. Availability of the Data From Existing Sources

OSHA is currently working with the Centers for Disease Control (CDC) to develop a separate questionnaire for the hospital sector. This questionnaire will address the needs of both agencies. As a consequence, the sample frame proposed in this survey excludes hospitals. OSHA will submit a separate survey approval request for hospitals.

There have been several surveys estimating the level of compliance with some aspects of the standard. The Academy of General Dentistry conducted a survey in September of 1987 of practices regarding infectious disease control in private dental practices. This survey, while useful in developing the preliminary RIA, did not collect data on the usage *rate* of various personal protective equipment and other important information. Most important, it is very likely that compliance rates in dental offices have increased significantly since the AGD survey was conducted.

The Service Employees International Union (SEIU) surveyed workers at a variety of facilities to estimate compliance with various infection control practices. Like the AGD survey, the SEIU data were useful in developing the preliminary RIA but do not cover all the areas of interest. In addition, the small sample size and non-random selection of facilities limits the usefulness of these data.

There have been a number of surveys and studies analyzing the cost effectiveness of HBV vaccination programs, but these studies are limited to specific, non-randomly selected sets of hospitals.

CDC collects information regarding the incidence of bloodborne diseases in their national medical surveillance, but these data lack information regarding occupationally related exposures to these infections, and do not address current work practices or control costs.

6. Minimizing Small Employer Burden

Over 90 percent of the establishments surveyed will be small. To reduce the burden on these facilities, both the total number of facilities surveyed and the number of questions asked have been kept to a minimum.

7. Consequence of Less Frequent Collection

This is a one time only data collection. No plans exist for subsequent periodic follow up of this survey.

8. Consistency With 5 CFR 1320.6

There are no special circumstances that require the collection of information in any manner inconsistent with the guidelines in 5 CFR 1320.6.

9. Expert Review of the Survey Questionnaire

The survey design team has had discussions with industry experts in order to assess the substance of the survey questions. The clarity of instructions and other specific survey design elements have been reviewed by contractor survey experts, OSHA personnel and expert safety consultants in industry.

A. The survey instrument has been reviewed in March of 1989 by:

Dr. Hugh Conway, Office of Regulatory Analysis, OSHA, 202-523-7283;

Mr. Larry Braslow, Office of Regulatory Analysis, OSHA, 202-523-7283;

Mr. Robert Andrei, Office of Regulatory Analysis, OSHA, 202-523-7283;

Mr. Michael Lawrence, Jack Faucett Associates, 301-961-8800;

Mr. Jack Smalligan, Jack Faucett Associates, 301-961-8800;

Dr. Arnold Greenland, Washington Consulting Group, Inc., 202-457-0233;

Mr. Richard Gruberg, Washington Consulting Group, Inc., 202-457-0233;

Dr. Robert Hiett, KCA Research, Inc., 703-642-5220.

B. No major problems arose during this review.

C. Public comment will be solicited through the **Federal Register** notice for the study, and through notification to the trade associations for the affected industries.

10. Confidentiality

Procedures have been developed to protect the confidentiality of the collected data. These measures are summarized below:

A. All contractor and subcontractor personnel will be given instructions regarding the importance of keeping all information they obtain from respondents confidential.

B. The data will be collected using a Computer Assisted Telephone Interviewing (CATI) system. This technology enables the survey responses to be automatically written to a computer data file. Neither the name of the company nor the respondent will appear in the data file. A listing of respondents will be kept separately in a locked file cabinet at the contractor's office, and will be destroyed when no longer needed. The respondents' names will be linked to the data base through a unique number assigned at the time of the interview.

D. Publication of study results will be of a statistical nature only. Respondents will never be identified in any publication or presentation, nor will their names be made available to other individuals or groups.

11. Sensitive Questions

The proposed survey instrument contains no questions of a sensitive nature.

12. Costs

The total one-time cost to the government of the proposed data collection is $225,000. This estimate includes costs incurred by contractors for administration and operation of the data collection, tabulation of survey results, and subsequent analyses. The total one-time cost to industry is estimated to be $27,505 (using 30 minutes per facility for complete responses and 5 minutes/facility for screening or refusals).

13. Estimate of Respondent Reporting Burden

The survey instruments have been designed to allow the respondent to provide estimates and approximations. It is not the intent of the survey to require respondents to compile new

data. Where data are requested, the survey instruments note that reference is being made to data which the respondent should be able to estimate readily or access easily.

It is estimated that 30 minutes will be required for the completion of the survey. Based on 2,245 respondents, the respondent burden for completed surveys will be approximately 1,123 hours. For non-complete responses (screening or refusals), the burden will be 222 hours. The total respondent burden will be 1,345 hours. The respondent burden is summarized below.

Type of respondent	Number of respondents	Average completion time (min.)	Total burden (hrs.)	Respondent Cost [1]
Non-response or screening only	2,669	5	222	$4,540
Complete	2,245	30	1,123	22,965
Total	4,914	—	1,345	27,505

[1] Based on an administrative wage rate of $20.45 per hour including fringe benefits.

OSHA's 1989 information collection budget (ICB) allocated 1,500 hours to this survey. Because the survey is only expected to require 1,345 hours, the survey will not exceed the hours approved in the ICB.

15. Tabulation/Publication Timetable

The survey results will be placed in the relevant OSHA docket in whole or in part by OSHA as deemed appropriate as soon as complete computer files are finalized. Analysis of the data will appear in the final Regulatory Impact Analysis.

B. Statistical Methods

1. Characterization of the Universe and Sample

To collect data sufficient for the development of a Regulatory Impact Analysis, a probability sample will be taken from each of the 18 industries listed in Table 1.

This universe was reviewed carefully from the perspective of the proposed standard. OSHA considers workers in these industries to have a significant probability of exposure to bloodborne diseases. Hospitals are not included in this data collection effort since a separate survey instrument will be designed for this sector in cooperation with the Centers for Disease Control. Company health units are limited to those existing in establishments having 500 employees or more as it is believed that such facilities are most likely to have doctors and nurses employed on the premises.

Universe establishment counts and proposed sample sizes are presented in Table 2. The sources to be used for the sampling of this universe are given in Table 3. Much of this universe is derived from the Dun and Bradstreet database. For those particular industries where the Dun and Bradstreet database is weak (e.g., fire and police protection) or does not allow for sampling of highly specialized establishments without extensive screening (e.g., bloodbanks), alternative sources are used. During the data collection effort, OSHA intends to contact approximately 4914 firms (of which approximately 3740 are estimated to be "affected") to produce 2245 useable responses. This response rate is based on OSHA's experience with previous surveys of industry employing similar collection methodologies.

TABLE 1.—SAMPLE STRATIFICATION

Description	SIC [1]
Offices of MD's, Osteopaths, Podiatrists.	8011, 8031, 8043.
Offices of Dentists	8021.
Nursing Homes	805.
Medical and Dental Labs	807.
Outpatient Care: Home Health Care, Kidney Dialysis Centers, Hospices, Drug Treatment Centers.	8082, 8092, 8093.
Blood Banks and Blood Plasma Centers.	8099.
Residential Care	8361.
Personal Services	7363.
Funeral Services	7261.
Health Units in Industry	20-48.
Research Labs	283, 8221, 8731, 8733.
Non-Volunteer Fire and Rescue Services.	9224.
Correctional Institutions	9223.
Police	9221.
Medical Equipment Repair	384.

[1] Based on 1987 edition of SIC manual.

TABLE 2.—NUMBER OF FIRMS AND SAMPLE SIZES FOR INDUSTRIES TO BE SURVEYED

Description	Cell	Total facilities	Precision (RSE)	Required completes	Total number of solicitations
Offices of MD's & DO's	01	179,405	0.050	195	325
Offices of dentists	02	84,994	.050	206	343
Nursing homes	03	18,274	.050	196	327
Medical and dental labs	04	12,195	.100	124	207
Outpatient Care:					
Home health care	05	7,000	.100	123	205
Hospices	06	812	.100	108	180
Drug treatment	07	3,867	.100	109	182
Dialysis clinic	08	861	.100	109	182
Blood banks and others	09	672	.075	102	170
Residential care	10	20,537	.075	123	205
Personnel services	11	1,615	.075	112	709
Funeral services	12	15,051	.100	67	112
Health units in industry	13	65,350	.075	132	293
Research labs	14	2,146	.075	120	590
Fire and rescue	15	3,174	.100	117	195
Corrections	16	2,333	.100	113	188
Police	17	6,205	.100	123	205
Medical equipment repair	18	2,967	.100	66	296
Total		457,478		2,245	4,914

Note: The total number of solicitation attempts takes into account the anticipated non-response rate as well as screening for out of scope units.

TABLE 3.—BLOOD BORNE DISEASES SURVEY—SAMPLING FRAMES

Industry	Source
Physicians	D&B, 1977 SIC definition for 8011 and 8031. 1987 SIC definition for 8043.
Dentists	D&B SIC 8021.
Nursing Homes	NCSH 1986 Inventory of Long Term Care Places.
Medical/Dental Labs	D&B SICs 8071 and 8072.
Outpatient Care:	
Home Health Care	D&B SIC 8082 (1987 definition).
Kidney Dialysis Center.	Health Care Financing Administration Directory.
Hospices	National Hospice Organization.
Drug Treatment Centers.	National Institute of Drug Abuse Directory.
Blood/Plasma/Tissue Center:	
Blood Banks	National Association for Community Blood Banks List.
Plasma Banks	American Blood Resources Association List.
Tissue Banks	American Association of Tissue Banks Lists.
Residential Care	NCHS 1986 Inventory of Long Term Care Places.
Personnel Services	D&B SIC 7361 with screen.
Funeral Services	D&B SIC 7261.
Research Labs:	
Indepenent Labs	D&B SIC 7391 with screen.
Drug Company Labs.	D&B SIC 283 with screen.
Medical Schools Labs.	
Fire & Rescue	National Fire Protection Association.
Corrections	American Corrections Association Directory.
Police	National Association of Police Chiefs.
Health Units in Industry.	D&B SICS 20-48 (>500 employees).
Medical Equipment Repair:	
Manufacturers	D&B SIC 384 with screen.
Repair Companies.	Health Devices Source Book.

Notes: 1. Unless otherwise stated all SIC codes are according to the 1977 definitions.

The estimated total number of solicitations required to achieve the target number of completed interviews

in Table 2 is based both upon the expected response rate, as well as upon the anticipated screening process required to reach an affected establishment in each particular industry. For the screening, it is anticipated that 1 in 3.8 establishments in Personnel Services (7361) has employees working with or exposed to blood products (i.e., those providing nursing services); 1 in 3.6 private research labs; 1 in 1.3 establishments for health units in industry; and 1 in 2.9 medical equipment manufacturers.

2. Information Collection Procedures

As described above, independent random samples will be selected from each industry, allowing statistical estimates to be made at levels of precision indicated by Table 2. The precision levels are expressed in terms of relative standard error (RSE), defined as the standard error of the estimate divided by the estimate. All sample sizes have been derived to achieve a confidence level of 95 percent that cost estimates as described below are within plus or minus (1.96 × RSE) of actual values. In general, smaller RSE values were assigned to industries where the expected cost of compliance to the proposed standard constitutes a large fraction of the total cost borne by all affected establishments in all industries. Conversely, larger RSE values were selected for those industries which are not expected to contribute as much to this overall compliance cost.

Sample sizes were derived as follows. The actual (i.e., incremental) cost incurred by a given establishment as a result of the proposed standard may be modeled as the product of two independent random variables. The first variable relates to the *total* compliance cost for the establishment. This includes its baseline costs (costs it currently experiences as a result of its current health safety policies) plus incremental costs (additional costs stemming from new policies it may have to implement based upon the new standard). This total cost is independent of any establishment policy or practice and derives solely from the characteristics of each facility (numbers of employees, numbers of people treated, etc.). The second variable varies between 0 and 1, and measures the establishment's current rate of non-compliance with the proposed standard. Hence, the cost to each establishment as a result of the standard may be modeled as,

$COST_i = Y_i \times P_i$;

where:

$COST_i$ = Incremental Cost to Establishment

Y_i = Total Compliance Cost to Establishment

P_i = Establishment's Current Percent Non-compliance to New Standard

and the variance may be expressed as,

$$Var(COST) = (E(Y))^2\, var(P) + (E(P))^2\, var(Y) + var(P)\, var(Y).$$

Having split the total variability in cost into two *independent* components, one stemming from the variability in facility characteristics and the other stemming from variability in policy (i.e., current compliance), sample requirements may be estimated based upon various assumptions about the distributions of each.

For the total cost variable, Y, a gamma distribution was assumed. For cells 4 through 18 the alpha (shape) parameter of the distribution was set to a value equal to 2, resulting in a coefficient of variation (CV) of 70 percent. For cells 1 through 3 (Doctors' Offices, Dental Offices, and Nursing Homes), OSHA has assumed a shape parameter of 3, resulting in a CV of 57 percent. Since only the CV is required to produce estimates for sample size, and since the CV is independent of the scale parameter, no assumptions for the scale paramenter were made.

For the non-compliance variable, P, a triangular distribution was assumed with endpoints at zero and one. The mean of the distribution (expected non-compliance rate) as determined for each industry based on expert opinion obtained by OSHA. It was assumed here that mean non-compliance would not be lower than 33 percent and would not be higher than 67 percent.

Survey estimators will be self weighting, and will take the form,

$$Y = \sum (WGT_i \times NRAF_i \times Response_i),$$

where, WGT is the cell's sampling weight, and NRAF is the cell's non-response adjustment factor based on a mean imputation.

Because the Dun and Bradstreet universe counts for Physicians' and Dental Offices are approximately 25 to 30 percent lower than similar counts obtained from BLS data, estimates for cells 1 and 2 will be benchmarked to BLS 202 employment data. Such estimates will take the form of a ratio estimator:

$$Y = BLS202_{EMP} \times \sum (WGT_i \times NRAF_i \times Response_i) / \sum (WGT_i \times NRAF_i \times E_i);$$

where, $BLS202_{EMP}$ is the BLS 202 total employment estimate for the industry, and E_i is establishment employment.

The data from the survey will be collected via a Computer Assisted Telephone Interviewing (CATI) procedure. This methodology allows data to be both edited and entered into a computer database as the survey information is being collected over the telephone. Such a procedure greatly helps to reduce nonsampling error by (1) ensuring that the data for each interview are internally consistent; (2) eliminating the risk of key-punch errors arising from the transcription of hard-copy survey data into machine readable form; and by (3) ensuring that the interviewer follows the correct set of questionnaire skip patterns for each respondent.

3. Methods to Maximize Response Rates

This survey is voluntary and is expected to yield a response rate equal to 75 percent for in scope cases. The CATI collection process will help to improve the overall response rate by:

1. Allowing the direct telephone contact with the respondent.

2. Scheduling and maintaining a detailed record of all necessary call-backs.

Establishments will not be classified as non-responses until five attempts to make contact have been made. Efforts will be made to distinguish between those units that do not respond because they are out of business and those that are "refusals." Non-response adjustment procedures to be used during estimation are discussed in Section B.2.

4. Testing

A pretest was conducted and the information from this procedure along with comments received from the public were used to fine-tune the survey instrument.

5. Reviewers

The statistical aspects of the survey have been reviewed by:

Dr. Hugh Conway, Office of Regulatory Analysis, Occupational Safety and Health Administration, (202) 523-9690

Dr. Arnold Greenland, Mr. Richard Gruberg, The Washington Consulting Group, Inc., 1625 Eye Street, NW., Suite 214, Washington, DC 20006, (202) 457-023314.

Appendix I: Survey Instrument

Signed at Washington, DC, this 17th day of July 1989.

Paul E. Larson,

Departmental Clearance Officer.

BILLING CODE 4510-26-M

APPENDIX I--SURVEY INSTRUMENT

_____, 1989

OMB Approval # _____
OSHA Contact: Robert Andrei
(202) 523-9916

Name _____
Address _____
_____
_____

Dear _____:

The objective of the Occupational Safety and Health Act of 1970 is to provide a safe and healthful workplace for all employees in the United States. To help achieve this objective, the Occupational Safety and Health Administration (OSHA) is conducting a survey to support an assessment of the technological and economic feasibility of a standard to protect workers from occupational exposure to certain bloodborne diseases, primarily the hepatitis B virus (HBV) and the human immunodeficiency virus (HIV). Your facility has been selected to participate in this survey, and an interviewer will be calling you in a few weeks to ask some questions about practices at your facility which provide workers with protection against bloodborne diseases.

The information you can provide is essential to OSHA's rulemaking process, and will help to ensure that the Agency's final analysis reflects the infection control practices of facilities such as yours. The survey will cover the infection control policies of your facility, personal protective equipment, training programs, and related topics. To assist you in your preparation for this survey, we have enclosed a list of the topics and information needs which will be covered. Participation in the survey is voluntary and all responses will be kept strictly confidential and will not be identified by name in any reports or data compilations submitted to OSHA.

We estimate that it will take an average of 30 minutes per complete response for this survey including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information. If you have any comments regarding this estimate or any other aspect of this survey,

Mr. _____
Page 2

including suggestions for reducing this burden, send them to the Office of Information Management, Department of Labor, Room N1301, 200 Constitution Avenue, NW, Washington, DC 20210; and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

You can help us to expedite our survey process by designating the best qualified person to answer questions regarding worker protection from blood and other body fluids. Your cooperation will be instrumental in OSHA's development of a feasible and effective final standard.

Thank you for your time and assistance and we look forward to receiving your valuable input.

Sincerely,

_____
Acting Assistant Secretary

TOPICS COVERED BY OSHA SURVEY

1. General Firm Characteristics

* Primary activity at this location.
* Total full and part-time employment at this location, including contract workers.
* Number of employees and contract workers who are reasonably anticipated to contact human blood or other materials contaminated with human blood as a result of the performance of their duties (exposed workers).
* Numbers of employees and contract workers who come into contact with human blood or other materials contaminated with human blood, on average, at least once a month.
* Number of clients served in an average month.
* Percentage of client visits that expose employees to blood.

2. Infection Control Policies

* The circumstances during which exposed workers are expected to use infection control measures.
* Hepatitis B vaccination policy.
* The percentage of exposed workers who have received the hepatitis B vaccine.
* Procedures followed when an exposure incident occurs, including testing for hepatitis B and human immunodeficiency virus (AIDS virus).

3. Personal Protective Equipment (PPE) and Waste Disposal

* Quantity of disposable latex and vinyl gloves, reusable gloves, gowns and face protection devices purchased each month.
* Practices regarding use of PPE for protection against infectious diseases.
* Disposal of blood-contaminated waste.
* Quantity of sharps disposal containers in use.

4. Other Topics

* Length and frequency of training in infection control practices provided for exposed workers.
* The number of exposure incidents and associated follow-up tests during 1988.
* Quantity of needles purchased each month.
* General laboratory characteristics if establishment has a laboratory.

5. Definitions to be used

* Employee - all workers at your establishment, including owners or partners, except for workers hired under contractual arrangements with an outside firm or agency.
* Full-time employee - Employee working at least 35 hours per week.
* Part-time employee - Employee working less than 35 hours per week.
* Contract worker - One who provides service at your establishment, but who remains on the payroll of an outside firm or agency.
* Exposed - Having probable contact with human blood or other blood contaminated materials.
* Exposure incident - A specific eye, mouth, other mucous membrane, nonintact skin, or parenteral (piercing the skin) contact with blood or other material contaminated by blood.

BEST COPY AVAILABLE

OSHA, BLOODQ, JULY 13, 1989

[INTERVIEWER INSTRUCTIONS: RECORD THE FOLLOWING INFORMATION]

Interviewer Number
Sequence Number
ZIP Code
Sector Code

INTRODUCTION

Hello. My name is _____ and I'm calling from KCA Research in Virginia/California. We are conducting a survey on behalf of the Occupational Safety and Health Administration of the U.S. Department of Labor to assess current practices regarding handling of potentially infectious materials.

A letter was sent to your organization explaining the project. As the letter indicated, we are interested in obtaining information about the potential for exposure to bloodborne diseases such as hepatitis-B and AIDS in organizations such as yours as well as methods of protection which are commonly used. I would like to emphasize that all responses will be kept strictly confidential and respondents will not be identified by name in any reports or data compilations submitted to OSHA.

We are interested in collecting information for your organization at (list address). Should I direct my questions to you or is there someone in the facility with whom you would prefer that I speak?

1. Our records show that your firm is a (give name of sampling sector). Is that correct?

Yes	1	GOTO Q.3
No	2	

2. What type of organization are you?

Physician's office	01	
Dentist's office	02	
Nursing home	03	
Home health care	04	
Hospice	05	
Kidney dialysis	06	
Other	08	TERMINATE

3. Which of the following best describes the type of ownership of your organization? Is it a sole proprietorship, a partnership, an incorporated unit or a governmental agency?

Sole proprietorship	1	GO TO Q.7
Partnership	2	GO TO Q.9
Government	3	GO TO Q.5
Incorporated	4	
Other (Specify)	5	GO TO Q.11
Don't know	6	GO TO Q.11
Refused	7	GO TO Q.11

4. Are you a for-profit corporation, not for profit, or nonprofit?

For profit	1	GO TO Q. 11
Not for profit	2	
Non profit	3	
Other (specify)	4	
Don't know	5	
Refused	6	

5. Is that state, federal or local?

Federal	1	GO TO Q. 11
State	2	
Local	3	

6. What state is your establishment located in?

[RECORD VERBATIM, CHECK AGAINST LIST, TERMINATE IF NOT STATE PLAN STATE OR GO TO Q.11]

7. Are there any employees of this firm other than the owner?

Yes	1
No	2——TERMINATE

8. Is the owner of this business a health care provider at this establishment?

Yes	1
No	2——GO TO Q.11

[IF YES:] Please include the owner as one of the healthcare employees in the following questions.
[GO TO Q.11]

9. Are there any employees working in this establishment other than the owners?

Yes	1
No	2——TERMINATE

10. How many partners work at this establishment as health care providers?

[IF Q.10 IS GREATER THAN 0:] Please include these partners as healthcare employees in the following questions.

11. Are any of the persons working at your establishment ever exposed to human blood or other materials contaminated with human blood as part of the performance of their assigned duties? By exposed we mean persons who are in situations which may reasonably lead to contact with blood or blood contaminated objects.

Yes	1
No	2——TERMINATE

[IF Q.1 or 2 IS NURSING HOME, GO TO Q.13]
[IF Q.1 or 2 IS HOME HEALTH CARE, GO TO Q.14]
[IF Q.1 or 2 IS HOSPICE, ASK BOTH 13 AND 14]

12. Approximately how many patient visits are there at this location in an average month?
[RECORD NUMBER, THEN GO TO Q. 15]

13. Approximately how many patients are at this location on an average day?

[IF HOSPICE, ASK 14, OTHERWISE GO TO Q.15]

14. Approximately how many patient visits are made from this location in an average month?

15. Are there policies at your establishment regarding infection control?

Yes	1	
No	2	GO TO Q.20
Don't know	3	GO TO Q.20
Refused	4	GO TO Q.20

16. Are these policies written?

Yes	1
No	2
Don't know	3
Refused	4

17. Does your infection control policy require that all bodily fluids, including saliva and urine as well as blood, from all patients be handled as if they were infectious?

Yes	1——GO TO Q.20
No	2
Don't know	3
Refused	4

18. Does the policy require that <u>blood</u> from <u>all patients</u> be handled as if it were infectious?

Yes	1——GO TO Q.20
No	2
Don't know	3
Refused	4

19. Does the policy only require that the blood of patients known or suspected of being infected with a bloodborne disease be handled as if it were infectious?

Yes	1
No	2
Don't know	3
Refused	4

The next series of questions are about numbers and categories of employees.

20. How many total employees, including full and parttime employees, are presently employed at your establishment? Do not include contract workers.

21. How many contract workers do you have who perform work onsite? Please include both professional staff and service staff such as laundry and housekeeping workers if they are on contract to you and work on site.

I'm going to read you a list of four separate employee categories and then ask you questions about those categories that you have at your establishment. The categories are health care, housekeeping, administrative and any other category of worker you may use. Please place employees in only one group even though their assigned work may overlap into more than one group. Consider employees administrative only if they do not perform any of the other activities. (The "extra" employee category will be used for occupations which are unique to a particular industry sector).

22. How many of your (answer to Q.20) employees are healthcare workers? Please include employees such as doctors, nurses, aides, technicians, and laboratory employees.

23. How many of these are full-time?

[GO TO Q. 26]

24. How many of your (answer to Q.20) employees are (extra employee category)?

25. How many of these are full time?

26. How many of your (answer to Q.20) employees are housekeeping staff? Please include laundry workers if they do their work on site.

27. How many of these are full-time?

28. How many of your (answer to Q.20) employees are administrative staff?

29. How many of these are full-time?

[IF NUMBER OF EMPLOYEES ADDS TO TOTAL EMPLOYEES, GO TO Q.33]

30. I have (___) not accounted for. Is that correct?

Yes	1	
No	2	GO TO Q.20 & RECOUNT
Don't Know	3	
Refused	4	

31. What type of employee are the employees I have not accounted for?

32. How many of these employees are full-time?

33. Do you have any unpaid workers such as students or volunteers?

Yes	1	
No	2	GO TO Q.35
Don't Know	3	GO TO Q.35
Refused	4	GO TO Q.35

34. How many?

[IF Q.1 OR 2 IS NURSING HOME, GO TO Q.36]

35. What percentage of your patient visits require procedures that expose employees to blood?

36. On an average day, about what percentage of patients are given injections or intravenous infusions or have open wounds which would expose employees to blood?

37. Are any of your healthcare employees exposed to blood or material contaminated with blood as part of their assigned duties?

Yes	1	
No	2	GO TO Q.45
Don't Know	3	GO TO Q.45
Refused	4	GO TO Q.45

38. What percentage of your (answer to Q.22) health care employees are exposed?

39. What percentage of your (answer to Q.22) health care employees are exposed on average at least once a month?

40. What percentage of your health care employees are exposed to splashes, spatter or aerosols of blood?

[GO TO Q.45]
[IF Q.24 = -1, GO TO Q.45]

41. Are any of your (extra employee category) exposed to blood or material contaminated with blood as part of their assigned duties?

Yes	1	
No	2	GO TO Q.45
Don't Know	3	
Refused	4	

42. What percentage of your (answer to Q.24) (extra employee category) are exposed?

43. What percentage of your (answer to Q.24) (extra employee category) are exposed on average at least once a month?

44. What percentage of your (extra employee category) are exposed to splashes, spatter or aerosols of blood?

[IF Q.26 = 0, GO TO Q.49]

45. Are any of your housekeeping employees exposed to blood or material contaminated with blood as part of their assigned duties?

Yes	1	
No	2	GO TO Q. 49
Don't Know	3	
Refused	4	

46. What percentage of your (answer to Q.26) housekeeping employees are exposed?

47. What percentage of your (answer to Q.26) housekeeping employees are exposed on average at least once a month?

48. What percentage of your housekeeping employees are exposed to splashes, spatter or aerosols of blood?

[IF Q.30 = -1, GO TO Q.53]

49. Are any of your "other" employees exposed to blood or material contaminated with blood as part of their assigned duties?

Yes	1	
No	2	GO TO Q.53
Don't Know	3	
Refused	4	

50. What percentage of your (number of employees at Q.30) "other" employees are exposed?

51. What percentage of your (number of employees at Q.30) "other" employees are exposed on average at least once a month?

52. What percentage of your "other" employees are exposed to splashes, spatter or aerosols of blood?

The following questions are about personal protective equipment used to guard against exposure to blood.

53. Do employees at your establishment use disposable latex gloves?

Yes	1	
No	2	GO TO Q.55
Don't know	3	
Refused	4	

54. How many disposable latex gloves are purchased by your establishment each month?

55. Do employees at your establishment use disposable vinyl gloves?

Yes	1	
No	2	GO TO Q.57
Don't know	3	
Refused	4	

56. How many disposable vinyl gloves are purchased by your establishment each month?

[ASK IF Q.53 = 1 OR Q.55 = 1, OTHERWISE GO TO Q. 61]

Of all the disposable gloves, what percentage is used _____?

57. during the provision of health care _____
[GO TO Q.59]
58. while doing (extra empl. cat.)_____
59. while doing housekeeping _____
60. during other activities _____

61. Do employees at your establishment use reusable gloves?

Yes	1	
No	2	GO TO Q.67
Don't Know	3	
Refused	4	

62. How many pairs of reusable gloves are available at your establishment?

Of all the reusable gloves, what percentage is used _____?

63. during the provision of health care _____
[GO TO Q.65]
64. while doing (extra empl. cat.)_____
65. while doing housekeeping _____
66. during other activities _____

[ASK OF 53 = 1 OR 55 = 1 OR 61 = 1, OTHERWISE GO TO Q.80]
[IF Q.37 IS OTHER THAN YES, GO TO Q.71]
[IF Q.57 AND 63 = 0, GO TO Q.71]

67. Do your health care workers always use gloves in situations that could otherwise lead to skin contact with blood?

Yes	1	GO TO Q.69
No	2	
Don't Know	3	GO TO Q.71
Refused	4	

68. What percent of your health care employees wear gloves in situations that could lead to contact with blood?

69. What percent of those health care employees using gloves replace these gloves as soon as possible whenever they are torn or soiled by blood?

70. What percent of those health care employees who use gloves and see patients replace their gloves for each new patient?

[GO TO Q.74]
[IF Q.41 IS OTHER THAN YES, GO TO Q.74]
[IF Q.58 AND Q.64 = 0, GO TO Q.74]

71. Do your (extra employee category) always use gloves in situations that could otherwise lead to skin contact with blood?

Yes	1	GO TO Q.73
No	2	
Don't Know	3	GO TO Q.74
Refused	4	

72. What percent of (extra employee category) wear gloves in situations that could lead to contact with blood?

73. What percent of those (extra employee category) using gloves replace these gloves as soon as possible whenever they are torn or soiled by blood?

[IF Q.45 IS OTHER THAN YES, GO TO Q.77]
[IF Q.59 AND Q.65 = 0, GO TO Q.77]

74. Do your housekeeping employees always use gloves in situations that could otherwise lead to skin contact with blood?

Yes	1	GO TO Q.76
No	2	
Don't Know	3	GO TO Q.77
Refused	4	

75. What percent of your housekeeping employees wear gloves in situations that could lead to contact with blood?

76. What percent of those housekeeping employees using gloves replace these gloves as soon as possible whenever they are torn or soiled by blood?

[IF Q.49 IS OTHER THAN YES, GO TO Q.80]
[IF Q.60 AND 66 = 0, GO TO Q.80]

77. Do your "other" employees always use gloves in situations that could otherwise lead to skin contact with blood?

Yes	1	GO TO Q.79
No	2	
Don't Know	3	GO TO Q.80
Refused	4	

78. What percent of your "other" employees wear gloves in situations that could lead to contact with blood?

79. What percent of those "other" employees using gloves replace these gloves as soon as possible whenever they are torn or soiled by blood?

80. Do employees at your establishment use reusable face shields?

Yes	1	
No	2	
Don't know	3	GO TO Q.82
Refused	4	

81. How many reusable face shields are available at your establishment?

82. Do employees at your establishment use disposable masks?

Yes	1	
No	2	
Don't know	3	GO TO Q.84
Refused	4	

83. How many disposable masks are purchased by your establishment each month?

84. Do employees at your establishment use goggles?

Yes	1	
No	2	
Don't know	3	GO TO Q.86
Refused	4	

85. How many pairs of goggles are available at your establishment?

[ASK IF Q.80 = 1 OR Q.82 = 1 OR Q.84 = 1, OTHERWISE GO TO Q.103]

Of all the face protection items, what percentage is used _____?

86. during the provision of health care _____
[GO TO Q.88]
87. while doing (extra empl. cat.) _____
88. while doing housekeeping _____
89. during other activities _____

[IF Q.37 IS OTHER THAN YES, GO TO Q.94]
[IF Q.86 = 0, GO TO Q.94]

90. Do your health care employees always use face protection in situations that could otherwise lead to facial contact with blood?

Yes	1	GO TO Q.92
No	2	
Don't Know	3	GO TO Q.94
Refused	4	

91. What percent of your health care employees wear face protection in situations that could lead to facial contact with blood?

92. What percent of those health care employees using face protection replace the face protection as soon as possible whenever it is torn or soiled by blood?

93. What percent of those health care workers who use disposable masks and see patients replace their disposable masks for each new patient?

[GO TO Q.97]
[IF Q.41 IS OTHER THAN YES, GO TO Q.97]
[IF Q.87 = 0, GO TO Q.97]

94. Do your (extra employee category) always use face protection in situations that could otherwise lead to skin contact with blood?

Yes	1	GO TO Q.96
No	2	
Don't Know	3	GO TO Q.97
Refused	4	

95. What percent of your (extra employee category) wear face protection in situations that could lead to facial contact with blood?

96. What percent of those (extra employee category) using face protection replace this face protection as soon as possible whenever it is torn or soiled by blood?

[IF Q.45 IS OTHER THAN YES, GO TO Q.100]
[IF Q.88 = 0, GO TO Q.100]

97. Do your housekeeping employees always use face protection in situations that could otherwise lead to skin contact with blood?

Yes	1	GO TO Q.99
No	2	GO TO Q.100
Don't Know	3	
Refused	4	

98. What percent of your housekeeping employees wear face protection in situations that could lead to facial contact with blood?

99. What percent of those housekeeping employees using face protection replace this face protection as soon as possible whenever it is torn or soiled by blood?

[IF Q.49 IS OTHER THAN YES, GO TO Q.103]
[IF Q.89 = 0, GO TO Q.103]

100. Do your "other" workers always use face protection in situations that could otherwise lead to facial contact with blood?

Yes	1	GO TO Q.102
No	2	GO TO Q.103
Don't Know	3	
Refused	4	

101. What percent of your "other" employees wear face protection in situations that could lead to facial contact with blood?

102. What percent of those "other" employees using face protection replace this face protection as soon as possible whenever it is torn or soiled by blood?

103. Do the employees use disposable gowns?

Yes	1	
No	2	GO TO Q.109
Don't know	3	
Refused	4	

104. How many disposable gowns are purchased by your establishment each month?

Of all the disposable gowns, what percentage is used _____?

105. during the provision of health care _____
[GO TO Q.107]
106. while doing (extra empl. cat.)_____
107. while doing housekeeping _____
108. during other activities _____

109. Do the employees use reusable gowns?

Yes	1	
No	2	GO TO Q 115
Don't know	3	
Refused	4	

110. How many reusable gowns do you have on hand?

Of all the reusable gowns, what percentage is used _____?

111. during the provision of health care _____
[GO TO Q.113]
112. while doing (extra empl. cat.) _____
113. while doing housekeeping _____
114. during other activities _____

[ASK IF 103 = 1 OR 109 = 1, OTHERWISE GO TO 128]
[IF Q.37 IS OTHER THAN YES, GO TO Q.119]
[IF Q.105 AND 111 = 0, GO TO Q.119]

115. Do your health care employees always use gowns in situations that could otherwise lead to clothing contact with blood?

Yes	1	GO TO Q.117
No	2	GO TO Q.119
Don't Know	3	
Refused	4	

116. What percent of your health care employees wear gowns in situations that could lead to clothing contact with blood?

117. What percent of those health care employees using gowns replace these gowns as soon as possible whenever they are torn or soiled by blood?

118. What percent of those health care employees who use gowns and see patients replace their gowns as soon as possible if they are torn or soiled by blood?

[GO TO Q.122]
[IF Q.41 IS OTHER THAN YES, GO TO Q.122]
[IF Q.106 AND Q.112 = 0, GO TO Q.122]

119. Do your (extra employee category) always use gowns in situations that could otherwise lead to skin contact with blood?

Yes	1	GO TO Q.121
No	2	GO TO Q.122
Don't Know	3	
Refused	4	

120. What percent of your (extra employee category) wear gowns in situations that could lead to clothing contact with blood?

121. What percent of those (extra employee category) using gowns replace these gowns as soon as possible whenever they are torn or soiled by blood?

[IF Q.45 IS OTHER THAN YES, GO TO Q.125]
[IF Q.107 AND Q.113 = 0, GO TO Q.125]

122. Do your housekeeping employees always use gowns in situations that could otherwise lead to clothing contact with blood?

Yes	1	GO TO Q.124
No	2	GO TO Q.125
Don't Know	3	
Refused	4	

123. What percent of your housekeeping employees wear gowns in situation that could lead to clothing contact with blood?

124. What percent of those housekeeping employees using gowns replace these gowns as soon as possible whenever they are torn or soiled by blood?

[IF Q.49 IS OTHER THAN YES, GO TO Q.128]
[IF Q.108 AND Q.114 = 0, GO TO Q.128]

125. Do your "other" employees always use gowns in situations that could otherwise lead to clothing contact with blood?

Yes	1	GO TO Q.127
No	2	GO TO Q.128
Don't Know	3	
Refused	4	

126. What percent of your "other" employees wear gowns in situations that could lead to clothing contact with blood?

127. What percent of those "other" employees using gowns replace these gowns as soon as possible whenever they are torn or soiled by blood?

[IF Q.21 IS 0, GO TO Q. 137]

128. Are any of your contract workers exposed to blood or material contaminated with blood while at your workplace?

Yes	1	
No	2	GO TO Q. 137
Don't Know	3	
Refused	4	

129. How many of those exposed contract workers are health care workers?

[IF 0, GO TO Q.131]

130. Does your firm provide personal protective equipment such as gloves, gowns, face protection for these contract health care workers?

Yes	1
No	2
Don't know	3
Refused	4

[GO TO Q.133]

131. How many of these exposed contract workers are (extra employee category)?

[IF 0, GO TO Q.133]

132. Does your firm provide personal protective equipment such as gloves, gowns, face protection for these contract (extra employee category)?

Yes	1
No	2
Don't know	3
Refused	4

133. How many of these exposed contract workers are housekeeping workers?

[IF 0, GO TO Q.135]

134. Does your firm provide personal protective equipment such as gloves, gowns, face protection for these contract housekeeping workers?

Yes	1
No	2
Don't know	3
Refused	4

135. How many of these exposed contract workers are "other" workers?

[IF 0, GO TO Q.137]

136. Does your firm provide personal protective equipment such as gloves, gowns, face protection for these "other" contract workers?

Yes	1
No	2
Don't know	3
Refused	4

[IF Q.33 = 2, 3, OR 4, GO TO Q.140]

137. Are any of your unpaid workers exposed to blood or material contaminated with blood while at your workplace?

Yes	1	
No	2	GO TO Q.140
Don't Know	3	GO TO Q.140
Refused	4	GO TO Q.140

138. What percent of your unpaid workers are exposed?

139. Does your firm provide personal protective equipment such as gloves, gowns, masks, goggles for these unpaid workers?

Yes	1
No	2
Don't Know	3
Refused	4

[ASK Q.140-145 FOR HEALTHCARE EMPLOYEES IF Q. 39 > 0]
[ASK Q.140-145 FOR EXTRA EMPLOYEE CATEGORY IF Q.43 > 0]
[ASK Q.140-145 FOR HOUSEKEEPING EMPLOYEES IF Q.47 > 0]
[ASK Q.140-145 FOR "OTHER" EMPLOYEES IF Q.51 > 0]

140. What percentage of the (type of employee) who are exposed at least once a month to blood or material contaminated with blood have been vaccinated against Hepatitis B?

141. Are (type of employee) who are exposed to blood on average at least once a month <u>required</u> to be immunized against Hepatitis B?

Yes	1
No	2
Don't Know	3
Refused	4

142. Does your establishment offer the Hepatitis-B vaccine to all of those (type of employee) free of charge?

Yes	1	GO TO Q.144
No	2	
Don't know	3	GO TO Q.146
Refused	4	GO TO Q.146

143. Of these (type employee) who are exposed to blood on average at least once a month, what percentage are offered the hepatitis-B vaccine free of charge?

144. Of these (type of employee) what percentage have accepted the offer of free hepatitis-B vaccination?

145. Are these (type of employee) screened for the hepatitis-B antibody prior to vaccination?

Yes	1
No	2
Don't Know	3
Refused	4

[REPEAT Q.140-146 FOR EACH TYPE OF EMPLOYEE]

[ASK Q.146-153 FOR HEALTHCARE EMPLOYEES IF Q.37 = 1]
[ASK Q.146-153 FOR EXTRA EMPLOYEE CATEGORY IF Q.41 = 1]
[ASK Q.146-153 FOR HOUSEKEEPING EMPLOYEES IF Q.45 = 1]
[ASK Q.146-153 FOR "OTHER" EMPLOYEES IF Q.49 = 1]

146. Do you offer training regarding the characteristics of bloodborne diseases and acceptable practices to prevent occupational exposure to (type of employee)?

Yes	1	
No	2	GO TO Q.151
Don't know	3	GO TO Q.151
Refused	4	GO TO Q.151

147. What percent of (type of employee) do not receive training because of their previous training and experience?

148. How frequently is the training provided to (type of employee)?

Once upon employment	01
At job change	02
Monthly	03
Quarterly	04
Semiannually	05
Annually	06
Less often than annually	07
Other (specify)	08
Don't Know	09
Refused	10

149. What is the length of the average training session for this (type of employee)?

Less than half an hour	1
1/2 to 1 hour	2
2 to 3 hours	3
4 to 6 hours	4
7 to 8 hours	5
Longer than 8 hours	6
Other (specify)	7
Don't know	8
Refused	9

150. Does the initial training for employees take place prior to assignment to tasks involving exposure to blood or other materials contaminated with blood?

Yes	1
No	2
Don't know	3
Refused	4

An exposure incident is defined as blood contact with the eyes, other mucous membranes, or broken skin, as well as any cut or puncture-caused contact with blood or other materials contaminated with blood. How many exposure incidents resulting from _____ occurred during 1988 by your (type of employee)?

151. needle sticks _____
152. cuts from instruments other than needles _____
153. other blood contact _____

[REPEAT Q.146 THROUGH 153 FOR EACH TYPE OF EMPLOYEE]

[ASK 154 THROUGH 172 ONLY IF Q.151 OR 152 OR 153 IS GREATER THAN 0]

154. After employees were involved in the (sum of Q.151, 152, 153) exposure incidents, were any attempts made to test the source patient for the Hepatitis-B virus?

Yes	1	
No	2	GO TO Q.158
Don't Know	3	GO TO Q.158
Refused	4	GO TO Q.158

155. After these incidents, how many times did you attempt to test the source patient?

156. Was that with the patient's permission?

Yes	1	
No	2	GO TO Q.158
Don't Know	3	GO TO Q.158
Refused	4	GO TO Q.158

157. Of the patients asked, how many agreed to be tested for Hepatitis-B?

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158. After employees were involved in the (sum of Q. 151, 152, and 153) exposure incidents, did you offer to test any of the employees for antibody to Hepatitis-B virus?

Yes	1	
No	2	GO TO Q.161
Don't know	3	
Refused	4	

159. After these incidents, how many times did you offer to test the employees?

160. Of the employees asked, how many agreed to be tested for Hepatitis-B?

161. Were any of the employees involved in an exposure incident offered Hepatitis-B immune globulin?

Yes	1	
No	2	GO TO Q.164
Don't know	3	
Refused	4	

162. How many times did you offer Hepatitis-B immune globulin to these employees?

163. Of the employees asked, how many agreed to receive the Hepatitis-B immune globulin?

164. After employees were involved in the (sum of Q. 151, 152, and 153) exposure incidents, were any attempts made to test the source patient for the AIDS virus?

Yes	1	
No	2	GO TO Q.168
Don't know	3	
Refused	4	

165. After these exposure incidents, how many times did you attempt to test the source patient?

166. Was that with the patient's permission?

Yes	1	
No	2	GO TO Q.168
Don't know	3	
Refused	4	

167. Of the patients asked, how many agreed to be tested for the AIDS virus?

168. After employees were involved in the (sum of Q.151, 152, and 153) exposure incidents, did you ever offer followup testing of the employee for the AIDS virus?

Yes	1	
No	2	GO TO Q.171
Don't know	3	
Refused	4	

169. After these exposure incidents, how many times did you offer followup testing of the employee?

170. Of the employees asked, how many agreed to be tested for the AIDS virus?

171. After employees were involved in exposure incidents, did you ever offer to provide post exposure counseling about the AIDS virus?

Yes	1	
No	2	GO TO Q.173
Don't know	3	
Refused	4	

172. How many times did employees accept this offer?

173. What percentage of your waste that is contaminated by blood is disposed of in containers that are color coded or labeled as infectious?

174. Do you have a policy for general cleaning and disinfection?

Yes	1	
No	2	GO TO Q.176
Don't know	3	GO TO Q.176
Refused	4	GO TO Q.176

175. Is this policy written?

Yes	1
No	2
Don't know	3
Refused	4

176. Does your facility use needles?

Yes	1	
No	2	GO TO Q.180
Don't know	3	GO TO Q.180
Refused	4	GO TO Q.180

177. Do your employees ever recap needles by hand?

Yes	1
No	2
Don't know	3
Refused	4

178. How many disposable needles do you purchase each month?

179. How many other needles do you purchase each month?

180. Do you use sharp instruments other than needles?

Yes	1
No	2
Don't Know	3
Refused	4

[If NO TO Q.176 AND Q.180, GO TO Q. 185]

181. A Sharps Disposal Container is defined as a closable, leakproof, puncture resistant, disposable container that is labeled or color coded. Are such containers available in your facility?

Yes	1	
No	2	GO TO Q.185
Don't know	3	GO TO Q.185
Refused	4	GO TO Q.185

182. Are these containers available at all locations where needles or sharp instruments are used?

Yes	1	GO TO Q.185
No	2	
Don't know	3	
Refused	4	

183. In how many different locations are needles or sharp instruments used which do not presently have a Sharps Disposal Container?

184. What percentage of the contaminated needles or other sharp objects are currently disposed of in such containers?

185. Does your establishment have an area where blood or tissue samples are processed?

Yes	1	
No	2	GO TO Q.193
Don't Know	3	GO TO Q.193
Refused	4	GO TO Q.193

186. Do you operate a centrifuge on the premises?

Yes	1	
No	2	GO TO Q.189
Don't know	3	GO TO Q.189
Refused	4	GO TO Q.189

187. Are safety cups used in centrifuge operation for all blood, body fluid, and other potentially infectious material?

Yes	1	GO TO Q.189
No	2	
Don't know	3	
Refused	4	

188. Are safety cups used when handling materials which are known to be infectious?

Yes	1
No	2
Don't know	3
Refused	4

189. Do you work with concentrated amounts of the hepatitis-B or the AIDS virus?

Yes	1	
No	2	GO TO Q.192
Don't know	3	GO TO Q.192
Refused	4	GO TO Q.192

190. Is there a potential for aerosolization of fluid containing these viruses?

Yes	1
No	2
Don't know	3
Refused	4

191. Are hazard warning signs incorporating the universal biohazard symbol posted on all access doors of work areas and all rooms containing these concentrated viruses?

Yes	1
No	2
Don't know	3
Refused	4

192. Is there a sink for hand washing in the laboratory area?

Yes	1
No	2
Don't know	3
Refused	4

193. Does your establishment have an autoclave?

Yes	1
No	2
Don't know	3
Refused	4

194. Is your organization independent or is it affiliated with other establishments?

Independent	1
Affiliated	2
Don't Know	3
Refused	4

[IF NOT NURSING HOME, GO TO Q.196]

195. What is your average daily skilled census? Please include Medicare, Medicaid and private.

196. Which of the following best describes the total annual revenue (budget) at your establishment? Is it less than $250,000, $250,000 to less than $1,000,000, $1,000,000 to less than $3,500,000, or $3,500,000 or more?

Less than $250,000	1
$250,000 to $1,000,000	2
$1,000,000 to $3,500,000	3
More than $3,500,000	4
Don't know	5
Refused	6

197. For our records, what is your name, title and the name of your firm?

If you wish to elaborate on any of the responses given today or supply any additional new information, I can provide you with an address where you may forward your comments. Would you like that address?

Thank you for your time.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV-89-063]

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Order Nos. 916 and 917 (California nectarines, plums and peaches) for the 1989-90 fiscal year which began March 1, 1989. The action is needed for the Nectarine Administrative Committee, and the Plum and Peach Commodity Committees established under these orders to incur operating expenses during the 1989-90 fiscal year and to collect funds during that year to pay those expenses. This will facilitate program operations. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATE: Sections 916.227, 917.250, and 917.251 are effective for the period March 1, 1989 through February 28, 1990.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone: (202) 475-3919.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order Nos. 916 [7 CFR Part 916] regulating the handling of nectarines grown in California and 917 [7 CFR Part 917] regulating the handling of fresh pears, plums, and peaches grown in California.

These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 650 handlers of California plums, peaches and nectarines subject to regulation under these marketing orders [7 CFR Parts 916 and 917], and there are approximately 2,030 producers of these commodities in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having average gross annual revenues for the last three years of less than $500,000. Small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

Each marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the U.S. Department of Agriculture for approval. The members of the committees are primarily handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services and personnel in their local areas, and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expected so that the committees will have funds to pay their expenses.

The Nectarine Administrative Committee met May 3, 1989, and unanimously recommended 1989-90 marketing order expenditures of $3,515,037 and an assessment rate of $0.185 per 25-pound package or equivalent. For comparison, 1988-89 fiscal year actual expenditures were $2,787,093 and the assessment rate was $0.18 cents per package or equivalent. Major expenditure categories projected for 1989-90 with actual 1988-89 expenditures in parenthesis are: salaries and employee benefits, $193,191 ($177,712); consultant fees, $45,000 ($53,179); production research, $86,587 ($87,403); market development and promotion, $2,076,100 ($1,494,762); and inspection, $907,500 ($871,209). With the exception of $65,000 budgeted for uncollected assessment accounts, the remaining expenses are for program administration.

Estimated total income for 1989-90 of $3,824,490 includes projected assessment income of approximately $3,101,155 based on anticipated shipments of 16,763,000 packages of fresh nectarines, carryover income from 1987-88 of $620,085, anticipated income from export development and research subsidies from state and federal agencies of $70,250 and interest income totalling $33,000. This income will cover anticipated expenditures for 1989-90 and provide an adequate carryover to meet authorized committee expenses until 1990-91 assessment funds are collected. Committee operating reserves are within the limits authorized under the program.

The Plum Commodity Committee met May 3, 1989, and unanimously recommended 1989-90 marketing order expenditures of $3,154,353 and an assessment rate of $0.21 per 28-pound

package or equivalent. For comparison, 1988–89 fiscal year expenditures were $3,090,693 and the assessment rate was $0.19 per 28-pound package or equivalent. Major expenditure categories projected for 1989–90 with actual 1988–89 expenditures in parenthesis are: salaries and employee benefits, $193,190 ($188,713); consultant fees, $5,000 (nothing budgeted); production research, $87,091, ($77,302); market development and promotion, $1,749,663 ($1,679,526); and inspection, $1,078,000 ($1,038,355). With the exception of $85,000 budgeted for uncollected assessment accounts, the remaining expenses are for program administration.

Total income for 1989–90 would amount to $3,402,340, including projected assessment income of $2,969,190 based on shipments of 14,139,000 packages of fresh plums at $0.21 per 28-pound package or equivalent. Assessment income would be supplemented with unexpended 1988–89 funds ($311,650), interest income ($20,000) and export subsidies ($101,500) from state and federal agencies. This income will cover the anticipated expenditures for 1989–90 and provide an adequate carryover to meet authorized committee expenses until 1990–91 assessment funds are collected. Committee reserves are within limits authorized under the program.

The Peach Commodity Committee met May 4, 1989, and unanimously recommended 1989–90 marketing order expenditures of $2,849,419 and an assessment rate of $0.185 cents per 25-pound package or equivalent. For comparison, 1988–89 fiscal year expenditures were $2,269,776 and the assessment rate was $0.18 per 25-pound package or equivalent. Major expenditure categories projected for 1989–90 with actual 1988–89 expenditures in parenthesis are: salaries and employee benefits, $182,282 ($159,261); consultant fees, $5,000 (nothing budgeted); production research, $61,067 ($61,902); market development and promotion, $1,546,700 ($1,073,846); and inspection, $864,000 ($863,223). With the exception of $50,000 budgeted for uncollected assessment accounts, the remaining expenses are for program administration.

Total income for 1989–90 would amount to $3,218,650, including projected assessment income of approximately $2,572,240, based on shipments of 13,904,000 packages of fresh peaches at $0.185 per 25-pound package or equivalent. Assessment income would be supplemented with unexpended 1988–89 funds ($564,660), interest income ($24,000) and export subsidies ($57,750) from state and federal agencies. This income will cover the anticipated expenditures for 1989–90 and provide an adequate carryover to meet authorized committee expenses until 1990–91 assessment funds are collected. Committee reserves are within limits authorized under the program.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action adds new §§ 916.227, 917.250, and 917.251 and is based on the Committees' recommendations and other information. A proposed rule concerning this action was published in the **Federal Register** [54 FR 26382, June 23, 1989]. Comments on the proposed rule were invited from interested person until July 3, 1989. No comments were received.

After consideration of all relevant matter presented, including the Committees' recommendations, and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This final rule should be expedited because the committees need to have sufficient funds to pay their expenses, which are incurred on a continuous basis. In addition, handlers are aware of these actions which were recommended at public meetings. Therefore, it is found that good cause exists for not postponing the effective dates of these actions until 30 days after publication in the **Federal Register** [5 U.S.C. 553].

List of Subjects in 7 CFR Parts 916 and 917

Marketing agreements and orders, Nectarines, Plums, Peaches and pears, California.

For the reasons set forth in the preamble, 7 CFR Parts 916 and 917 are amended as follows:

Note. These sections will not appear in the annual Code of Federal Regulations.

1. The authority citation for 7 CFR Parts 916 and 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 916.227 is added to read as follows:

PART 916—NECTARINES GROWN IN CALIFORNIA

§ 916.227 Expenses and assessment rate.

Expenses of $3,515,037 by the Nectarine Administrative Committee are authorized, and an assesssment of $0.185 per 25-pound package or equivalent of assessable nectarines is established for the fiscal period ending February 28, 1990. Unexpended funds may be carried over as a reserve.

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

3. A new § 917.250 is added to read as follows:

§ 917.250 Expenses and assessment rate.

Expenses of $3,154,353 by the Plum Commodity Committee are authorized, and an assessment of $0.21 per 28-pound package or equivalent of assessable plums is established for the fiscal period ending February 28, 1990. Unexpended funds may be carried over as a reserve.

4. A new § 917.251 is added to read as follows:

§ 917.251 Expenses and assessment rate.

Expenses of $2,849,419 by the Peach Commodity Committee are authorized, and an assessment of $0.185 per 25-pound package or equivalent of assessable peaches is established for the fiscal period ending February 28, 1990. Unexpended funds may be carried over as a reserve.

Dated: July 17, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–17056 Filed 7–19–89; 8:45am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1446

Peanut Warehouse Storage Loans and Handler Operations for the 1986 Through 1990 Crops (Amdt. 3)

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule adopts, with one clarifying amendment, an interim rule published in the **Federal Register** on September 15, 1988, 53 FR 35984, which amended regulations set out in 7 CFR Part 1446 for the peanut program.

However, by a spearate notice published elsewhere in this issue of the **Federal Register**, an amendment to § 1446.138, with respect to the 1989 and 1990 crops, will be proposed to modify the "shrink" allowance for handlers choosing nonphysical supervision for the 1989 and 1990 crop years.

EFFECTIVE DATE: July 20, 1989.

FOR FURTHER INFORMATION CONTACT: David L. Kincannon, Peanut Operations Branch, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone 202–382–0152.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures, Executive Order 12291, and Secretary's Memorandum No. 1512–1, and has been classified "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, industries, Federal, State or local government agencies, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The information collection requirements contained in this regulation and information requests authorized by this regulation have been reviewed and approved by the Office of Management and Budget (OMB) under OMB Number 0560–0024.

The title and number of the Federal assistance program to which this rule applies are: Title—Commodity Loans and Purchases, Number—10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and County Officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

An interim rule published on September 15, 1988 (53 FR 35984), made a number of changes in 7 CFR Part 1446. Eleven comments were received. The respondents were shellers, sheller organizations, and a grower organization. No adverse comments were received concerning the provisions of the interim rule regarding: (1) The incorporation of the foreign person eligibility provisions of 7 CFR Part 1498; (2) the change in the definition of "Segregation 1" peanuts and in the provisions in the regulations covering the maximum acceptable moisture level for peanuts pledged as collateral for a price support loan; (3) changes in the price support pool accounting provisions; (4) changes in the sound mature kernel (SMK) and sound split (SS) kernel qualifying standards for contract additional Virginia-type peanuts; and (5) adjustments in the letter of credit provisions for handlers choosing nonphysical supervision.

Shrink. Several handlers objected that the "shrink" allowance for nonphysical supervision is too low and causes inappropriate costs to be incurred by peanut handlers who choose that method of supervision. Some of the handlers submitted data to indicate that the shrink allowance for nonphysical supervision handlers should be higher than 2.0 percent because the Peanut Administrative Committee (PAC) standards effectively limit options that could facilitate a nonphysical supervision handler's ability to meet the handler's disposition requirements with respect to contract additional peanuts.

As indicated below, it will be proposed for the 1989 and subsequent crop years that the shrink allowance for nonphysical supervision be increased. However the 2.0 percent shrink adjustment in § 1446.138 was in effect for the greater portion of the time of marketing the 1988 crop. A retroactive increase in the shrink adjustment for the 1988 crop would create considerable administrative burdens and could create economic advantages for some handlers. Based on these considerations, the potential effect on producers and CCC of increasing the allowance, and the need for further comment, it has been determined, for the 1988 crop, that the "shrink" for nonphysical supervision handlers shall remain 2.0 percent of the total kernel content (TKC) poundage which is obtained for the crop year by the handler as contract additional peanuts; provided, that the handler complies with such restrictions on use as the Executive Vice President, CCC, may impose as a condition for the 2.0 percent allowance, to take into account common industry practice. Section 1446.138 has, however, been reorganized for the purpose of clarity.

Based on the comments, it has been determined that an increase in the shrink allowance could possibly be warranted for future crop years for handlers choosing nonphysical supervision. Before any increase is implemented, a proposed rule will be issued to further address this issue and to seek comments on a proposed increase. Accordingly, CCC will, concurrently, propose an increased shrink allowance for the 1989 and 1990 crops for such handlers.

Marketing cards. Several handlers suggested that in some cases producer marketing cards should be adjusted to show eligibility to market contract additional peanuts before the contracts are approved by the Secretary. This would not be consistent with the statutory requirement that the Secretary approve all such contracts for private sale of additional peanuts. Accordingly, this suggestion has not been adopted.

One respondent suggested that handlers should not be responsible for determining the producer's eligibility for a price support loan when peanuts are presented for such a loan at the participating handler's place of business. It is planned that ineligibility for benefits due to the "foreign person"provisions of 7 CFR Part 1446 and ineligibility due to those provisions in Part 1446 dealing with the conservation compliance provisions of 7 CFR Part 12 ("sodbuster" and "swampbuster" restrictions) will be shown on the marketing card. This refinement of agency practice does not require a change in the program regulations. Handlers will, however, continue to have the responsibility for checking other matters such as whether there are liens outstanding against the peanuts.

Other issues. One respondent suggested that the "buyback" policy for Segregation 3 peanuts be codified in the regulations rather than set out in the storage contracts signed by handlers who handle peanuts pledged for collateral for a price support loan. Because all handlers have direct notice of the policy and the peanuts involved are in CCC's inventory, this suggestion has not been adopted.

One respondent supported changing the Segregation 1 definition, as provided in the interim rule, only if buybacks of Segregation 2 and Segregation 3 peanuts continue to be handled in the current manner. There are no plans to change the rules with respect to buybacks.

Some respondents objected that in several instances the regulations in Part

1446 allow for individual determinations to be made by the Executive Vice President, CCC. The Executive Vice President, CCC is not authorized to make determinations in contradiction of provisions of the regulations. Once regulations have been adopted, the Executive Vice Pesident has the authority to make any determinations and issue procedures to carry out the provisions of the regulations. That authority is needed to account for individual circumstances and changed circumstances in this complex program and is essential for the effective operation of the peanut price support program.

One respondent asked that handlers be permitted to move farmer stock peanuts with excess loose shelled kernels (LSK's) in the manner permitted under the PAC Maraketing Agreement. Part 1446, at this time, does not prohibit such movement.

List of Subjects in 7 CFR Part 1446

Loan programs—Agriculture, Peanuts, Price support programs, Warehouse.

Final Rule

Accordingly, the interim rule amending 7 CFR Part 1446 which was published at 53 FR 35984 is hereby adopted as a final rule with the following change.

PART 1446—PEANUTS

1. The authority citation for Subpart—Peanut Warehouse Storage Loans and Handler Operations for the 1986 Through 1990 Crops continues to read as follows:

Authority: 7 U.S.C. 1359, 1375, 1421 *et seq.*; 15 U.S.C. 714 *et seq.*

2. Section 1446.138 is revised to read as follows:

§ 1446.138 Storage requirements under nonphysical supervision.

(a) *Basic shrinkage allowance.* For handlers operating under nonphysical supervision, contract additional peanuts placed in commingled storage must be accounted for on TKC basis less a one time adjustment for shrinkage for each crop and for all peanut types equal to one half of one percent (0.5 percent) of the total kernel content of the poundage obtained as contract additional peanuts, except as otherwise provided in this section for the 1988 or subsequent crop years.

(b) *Increased shrinkage allowance for the 1988 crop and subsequent crops.* Notwithstanding the provisions of paragraph (a) of this section, for handlers operating under nonphysical supervision who certify compliance with, and in fact comply with, such additional restrictions on use of various qualities of peanuts as may be specified by the Executive Vice President, CCC, to take into account common industry practices, the shrinkage allowance with respect to the 1988 crop and subsequent crops of peanuts will be 2.0 percent of the TKC of poundage obtained by the handler as contract additional peanuts.

Signed at Washington, DC on July 14, 1989.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89-16977 Filed 7-19-89; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 211 and 216

[INS Number 1134-89]

RIN 1115-AB18

Documentary Requirements; Immigrants; Waivers: Conditional Basis of Lawful Permanent Resident Status for Certain Alien Spouses and Sons and Daughters

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rulemaking allows individuals who are outside the United States to file either a Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status or an Application for Waiver of Requirement to File Joint Petition to Remove Conditional Basis of Status. It also clarifies the regulation relating to travel outside the United States while the petition or application is pending. It is necessary in order to prevent undue hardship to those individuals who have legitimate reasons for travelling outside the United States. It will facilitate international travel by conditional permanent residents for business, tourism and other purposes.

EFFECTIVE DATE: July 20, 1989.

FOR FURTHER INFORMATION CONTACT: Michael L. Shaul, Senior Immigration Examiner, Immigration and Naturalization Service, Room 7122, 425 Eye Street NW., Washington, DC 20536, Telephone (202) 633-3240.

SUPPLEMENTARY INFORMATION: Federal regulations at 8 CFR 211.1(b)(1) provide that an alien who has been admitted to the United States as a conditional permanent resident may present an Alien Registration Receipt Card in lieu of an Immigrant visa if he or she is returning after a temporary absence not exceeding one year (or as a crewman under certain circumstances) to an unrelinquished lawful permanent residence prior to the second anniversary of the date on which he obtained permanent residence. The regulation also provides that once the alien has filed either a Joint Petition to Remove the Conditional Basis of Alien's Permanent Status (Form I-751) or an Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I-752) he or she shall be allowed to present that Alien Registration Receipt Card in combination with a receipt for filing the Form I-751 or I-752 in lieu of an immigrant visa for a period of up to six months after such filing. This provision is made because the statute allows the Service up to 180 days to adjudicate the petition (up to 90 days to conduct an interview and an additional 90 days thereafter to make a final adjudication). Since the petitioners may file Form I-751 at any time within the 90 days immediately preceding the second anniversary of the date on which the alien became a conditional permanent resident, many aliens will not receive a decision on their petitions until well after the second anniversary.

The regulation therefore facilitates international travel while the petition is pending before the Service. This rulemaking provides that the six month continuation period begins with the filing of the petition or application, and not with the second anniversary of the date of residence, so that the continuation period and the statutory time limit on the adjudication of the petition will coincide.

Furthermore, the rulemaking removes the requirement that the alien be physically present within the United States at the time of filing the joint petition. Presently, only those aliens who are outside the United States pursuant to official U.S. government travel orders (either civilian or military) are allowed to file from outside the country. However, upon further examination, it has been determined that the requirement is extremely difficult to police (since petitioners outside the United States could simply forward the petition to an associate in the United States for mailing) and that the requirement does not significantly reduce the probability of fraud. Also, the requirement causes undue hardship to petitioners with a bona fide marriage who are temporarily outside the United States. The rulemaking, therefore, removes the requirement for the physical presence at time of filing. However, the rulemaking also clearly states that it is the responsibility of the petitioners to ensure that they, their dependent children and any witnesses that they wish to present are made available for an interview at the Service office in the United States having jurisdiction over this case.

The Service received no responses from interested parties to its February 24, 1989 proposed rulemaking. Therefore, the final rulemaking is being published as proposed, without modifications.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget in accordance with provision of the Paperwork Reduction Act and are cited under 8 CFR 299.5.

List of Subjects

8 CFR Part 211

Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 216

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, Chapter I of Title 8, Code of Federal Regulations, is amended as set forth below:

PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS

1. The authority citation for Part 211 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1161, 1182, 1203, 1225, 1257.

2. In § 211.1 paragraph (b)(1) is revised to read as follows:

§ 211.1 Visas.

* * * * *

(b) * * *

(1) *Alien Registration Receipt Card (Form I-151 or I-551)*—(i) *Alien not travelling pursuant to government orders.* An Alien Registration Receipt Card may be presented in lieu of an immigrant visa by an immigrant alien who is returning to an unrelinquished lawful permanent residence in the United States, in returning prior to the second anniversary of the date on which he or she obtained such residence if subject to the provisions of section 216 of the Act, or within six months of the date of filing a Joint Petition to Remove the Conditional Basis of Aliens Permanent Resident Status (Form I-751) or an Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I-752) pursuant to Part 216 of this chapter if the alien is in possession of a Service-issued receipt for such filing, and:

(A) Is returning after a temporary absence abroad not exceeding one year, or

(B) Is an alien crewman regularly serving abroad an aircraft or vessel of American registry who is returning after a temporary absence abroad in connection with his/her duties as a crewman.

(ii) *Alien traveling pursuant to government orders.* An Alien Registration Receipt Card, including an expired Alien Registration Receipt Card issued to a conditional resident may be presented in lieu of an immigrant visa by an immigrant alien who is returning to an unrelinquished lawful permanent residence in the United States and:

(A) Is a civilian employee of the United States government returning from a foreign assignment pursuant to official orders; or

(B) Is a spouse or child of a civilian employee of the United States government or member of the United States Armed Forces, provided that the spouse or child resided abroad while the employee or serviceperson was on overseas duty, and the spouse or child is preceding or accompanying the employee or serviceperson, or is following to join the employee or serviceperson within four months of his or her return to the United States.

* * * * *

PART 216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS FOR CERTAIN ALIEN SPOUSES AND SONS AND DAUGHTERS

3. The authority citation for Part 216 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1154, 1184, 1136a.

§ 216.4 [Amended]

4. In § 216.4, paragraph (a)(4) is revised to read as follows:

(a) * * *

(4) *Physical presence at time of filing.* A petition may be filed regardless of whether the alien is physically present in the United States. However, if the alien is outside the United States at the time of filing, he or she must return to the United States, with his or her spouse and dependent children, to comply with the interview requirements contained in the Act. Furthermore, if the documentation submitted in support of the petition includes affidavits of third parties having knowledge of the bona fides of the marital relationship, the petitioner must arrange for the affiants to be present at the interview, at no expense to the government. Once the petition has been properly filed, the alien may travel outside the United States and return if in possession of documentation as set forth in § 211.1(b)(1) of this chapter, provided the alien and the petitioning spouse comply with the interview requirements described in § 216.4(b). An alien who is not physically present in the United States during the filing period but subsequently applies for admission to the United States shall be processed in accordance with § 235.11 of this chapter.

* * * * *

Dated: July 5, 1989.

Richard E. Norton,

Associate Commissioner, Examinations Immigration and Naturalization Service.

[FR Doc. 89-17040 Filed 7-19-89; 8:45 am]

BILLING CODE 4410-10-M

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8 CFR Part 299

[INS Number: 1045-89]

RIN 1115-AA54

Immigration and Nationality Forms; Display of Control Numbers

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule updates the listing of forms contained in 8 CFR 299.1 and 299.5 by consolidating the Forms I-20A-B and I-20ID, and revising the edition date for Form I-538. This revision is necessary to ensure that the Immigration and Naturalization Service (INS) uses and accepts only the current editions of forms listed in §§ 299.1 and 299.5 of this chapter. Periodic updates will be made to these sections as required.

EFFECTIVE DATE: July 20, 1989.

FOR FURTHER INFORMATION CONTACT: Pearl B. Chang, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW.,

Washington, DC 20536. Telephone: (202) 633-3240.

SUPPLEMENTARY INFORMATION: Section 299.1 lists the prescribed forms to be used in compliance with subchapters A, B, and C of this chapter. This revision is necessary to ensure that the forms listings remain current. Section 299.5 is updated to maintain the centralized listing of current public use forms and their respective control numbers as issued by the Office of Management and Budget (OMB).

The Immigration and Naturalization Service recently consolidated the Forms I-20A-B and I-20ID under one form number (I-20A-B/I-20ID), and also revised the Form I-538. To give the public sufficent notice to obtain the revised versions of these forms, INS will continue to accept the old and new versions of the forms until October 15, 1989. Beginning on October 16, 1989, INS will only accept the version of the Forms I-20A-B/I-20ID and I-538, that is listed in § 299.1.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary as this rule provides an up-to-date listing of approved Immigration and Nationality Forms to be used and accepted by the Immigration and Naturalization Service.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant economic impact on a substantial number of small entities.

This is not a major rule within the meaning of section 1(B) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment Analysis in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 299

Forms, Reporting and recordkeeping requirements.

Accordingly, Part 299 of Chapter I of Title 8, Code of Federal Regulations, is amended as follows:

PART 299—IMMIGRATION FORMS

1. The authority citation for Part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR Part 2.

2. Section 299.1 is amended by removing the Form I-20ID from the listing, and revising the entries for Form I-20A-B, and Form I-538 to read as follows:

§ 299.1 Prescribed forms.

* * * * *

I-20A-B/I-20ID (4-27-88)—Certificate of Eligibility of Nonimmigrant (F-1) Student Status—For Academic and Language Students.

* * * * *

I-538 (1-19-89)—Application by Nonimmigrant Student for Extension of Stay, School Transfer, or Permission to Accept or Continue Employment.

* * * * *

3. Section 299.5 is amended by removing the Form I-20ID from the listing, and revising the entry for Form I-20AB to read as follows:

§ 299.5 Display of control numbers.

* * * * *

INS form No.	INS form title	Currently assigned OMB control No.
* * *	* * *	* * *
I-20A-B/I-20ID	Certificate of Eligibility of Nonimmigrant (F-1) Student Status—For Academic and Language Students.	1115-0051
* * *	* * *	* * *

Dated: June 26, 1989.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 89-17039 Filed 7-19-89; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM88-25-000]

Generic Determination of Rate of Return on Common Equity for Public Utilities

July 14, 1989.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of benchmark rate of return on common equity for public utilities.

SUMMARY: In accordance with § 37.5 of its regulations, the Federal Energy Regulatory Commission, by its designee, the Director of the Office of Economic Policy, issues the update to the benchmark rate of return on common equity applicable to rate filings made during the period August 1, 1989 through October 31, 1989. This benchmark rate is set at 12.43 percent.

EFFECTIVE DATE: August 1, 1989.

FOR FURTHER INFORMATION CONTACT: Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. (202) 357-8283.

SUPPLEMENTARY INFORMATION:

Notice of Benchmark Rate of Return on Common Equity for Public Utilities

Issued July 14, 1989.

On December 19, 1988, the Federal Energy Regulatory Commission (Commission) issued a final rule (Order No. 510) concerning the generic determination of the rate of return on common equity for public utilities.[1] In several earlier rulemaking proceedings, the Commission established a discounted cash flow (DCF) formula to determine the average cost of common equity and a quarterly indexing procedure to calculate benchmark rates of return on common equity for public utilities and codified the formula and procedure at § 37.9 of its Regulations.[2] In Order No. 510, the Commission determined that 4.3 percent is an appropriate expected annual dividend growth rate for use in the quarterly indexing procedure during the 12 months beginning February 1, 1989 and that 0.03 percent is an appropriate flotation cost adjustment factor for that period.

The Commission, by its designee, the Director of the Office of Economic Policy, uses the quarterly indexing procedure to determine that the benchmark rate of return on common equity applicable to rate filings made during the period August 1, 1989 through October 31, 1989 is 12.43 percent.

Section 37.9 of the Commission's regulations requires that the quarterly benchmark rate of return be set equal to the average cost of common equity for the jurisdictional operations of public utilities. This average cost is based on the average of the median dividend yields for the two most recent calendar quarters for a sample of 98 utilities.[3] The average yield is used in the following formula with fixed adjustment factors (determined in the most recent annual proceeding) to determine the cost rate:

$k_t = 1.02\ Y_t + 4.33$

where k_t is the average cost of common equity and Y_t is the average dividend yield.

The attached appendix provides the supporting data for this update. The median dividend yields for the sample of utilities for the first and second quarters of 1989 are 8.04 and 7.83 percent, respectively. The average yield for those two quarters is 7.94 percent. Use of the average dividend yield in the above formula produces an average cost of common equity of 12.43 percent.

This notice supplements the generic rate of return rule announced in Order No. 510, issued December 19, 1988 and effective on February 1, 1989.

List of Subjects in 18 CFR Part 37

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 37, Chapter I, Title 18 of the Code of Federal Regulations, as set forth below, effective August 1, 1989.

Richard P. O'Neill,

Director, Office of Economic Policy.

PART 37—GENERIC DETERMINATION OF RATE OF RETURN ON COMMON EQUITY FOR PUBLIC UTILITIES

1. The authority citation for Part 37 continues to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a-825r (1982); Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982).

2. In § 37.9, paragraph (d) is revised to read as follows:

§ 37.9 Quarterly Indexing Procedure

* * * * *

(d) *Table of Quarterly Benchmark Rates of Return.* The following table presents the quarterly benchmark rates of return on common equity:

Benchmark applicability period(t)	Dividend increase adjustment factor (a)	Expected growth adjustment factor (b)	Current dividend yield (Y_t)	Cost of common equity (K_t)	Benchmark rate of return
2/1/86 to 4/30/86	1.02	4.54	9.03	13.75	13.75
5/1/86 to 7/31/86	1.02	4.54	8.37	13.06	13.25
8/1/86 to 10/31/86	1.02	4.54	7.49	12.18	12.75
11/1/86 to 1/31/87	1.02	4.54	6.75	11.43	12.25
2/1/87 to 4/30/87	1.02	4.63	6.44	11.20	11.20
5/1/87 to 7/31/87	1.02	4.63	6.54	11.30	11.30
8/1/87 to 10/31/87	1.02	4.63	6.97	11.74	11.74
11/1/87 to 1/31/88	1.02	4.63	7.49	12.27	12.27
2/1/88 to 4/30/88	1.02	4.36	7.90	12.42	12.42
5/1/88 to 7/31/88	1.02	4.36	7.99	12.51	12.51
8/1/88 to 10/31/88	1.02	4.36	7.84	12.36	12.36
11/1/88 to 1/31/89	1.02	4.36	7.92	12.44	12.44
2/1/89 to 4/30/89	1.02	4.33	7.89	12.38	12.38
5/1/89 to 7/31/89	1.02	4.33	7.95	12.44	12.44
8/1/89 to 10/31/89	1.02	4.33	7.94	12.43	12.43

Note: The Appendix will not be published in Code of Federal Regulations.

APPENDIX

Exhibit No.	Title
1	Initial sample of utilities.
2	Utilities excluded from the sample for the indicated quarter due to either zero dividends or a reduction in dividends for this quarter or the prior three quarters.
3	Annualized dividend yields for the indicated quarter for utilities retained in the sample.

Source of Data: Standard and Poor's Compustat Services, Inc., Utility COMPUSTAT II Quarterly Data Base.

EXHIBIT 1.—SAMPLE OF UTILITIES

Utility	Ticker symbol	Industry code
Allegheny Power System	AYP	4911
American Electric Power	AEP	4911
Atlantic Energy Inc	ATE	4911

EXHIBIT 1.—SAMPLE OF UTILITIES—Continued

Utility	Ticker symbol	Industry code
Baltimore Gas & Electric	BGE	4931
Black Hills Corp	BKH	4911
Boston Edison Co	BSE	4911
Carolina Power & Light	CPL	4911
Centerior Energy Corp	CX	4911
Central & South West Corp	CSR	4911
Central Hudson Gas & Elec	CNH	4931
Central Ill Public Servic	CIP	4931
Central Louisiana Electri	CHL	4911
Central Maine Power Co	CTP	4911
Central Vermont Pub Serv	CV	4911
Cilcorp Inc	CER	4931
Cincinnati Gas & Electric	CIN	4931
CMS Energy Corp	CMS	4931
Commonwealth Edison	CWE	4911
Commonwealth Energy Syste	CES	4931
Consolidated Edison of NY	ED	4931
Delmarva Power & Light	DEW	4931
Detroit Edison Co	DTE	4911
Dominion Resources Inc	D	4931
DPL Inc	DPL	4931
Duke Power Co	DUK	4911
Duquesne Light Co	DQU	4911
Eastern Utilities Assoc	EUA	4911
Empire District Electric	EDE	4911
Entergy Corp	ETR	4911
Fitchburg Gas & Elec Ligh	FGE	4931

EXHIBIT 1.—SAMPLE OF UTILITIES—Continued

Utility	Ticker symbol	Industry code
Florida Progress Corp	FPC	4911
FPL Group Inc	FPL	4911
General Public Utilities	GPU	4911
Green Mountain Power Corp	GMP	4911
Gulf States Utilities Co	GSU	4911
Hawaiian Electric Inds	HE	4911
Houston Industries Inc	HOU	4911
I E Industries Inc	IEL	4931
Idaho Power Co	IDA	4911
Illinois Power Co	IPC	4931
Interstate Power Co	IPW	4931
Iowa Resources Inc	IOR	4911
Iowa-Illinois Gas & Elec	IWG	4931
Ipalco Enterprises Inc	IPL	4911
Kansas City Power & Light	KLT	4911
Kansas Gas & Electric	KGE	4911
Kansas Power & Light	KAN	4931
Kentucky Utilities Co	KU	4911
Long Island Lighting	LIL	4931
Louisville Gas & Electric	LOU	4931
Maine Public Service	MAP	4911
Midwest Energy Co	MWE	4931
Minnesota Power & Light	MPL	4911
Montana Power Co	MTP	4931
Neco Enterprises Inc	NPT	4911
Nevada Power Co	NVP	4911
New England Electric Syst	NES	4911

[1] Generic Determination of Rate of Return on Common Equity for Public Utilities, Order No. 510, 53 FR 51,752 (Dec. 23, 1988), 45 FERC ¶ 61,452 (Dec. 19, 1988).

[2] 18 CFR 37.9 (1988). The most recent adoption of the DCF formula and quarterly indexing procedure came in Order No. 489, 53 FR 3342 (Feb. 5, 1988).

[3] As a result of the acquisition of Utah Power and Light by PacifiCorp, the Commission has reduced the number of companies in the sample to 98. It has made this change in accordance with the criteria for inclusion in the sample specified in 18 CFR 37.9(c) (1987).

One utility, Middle South Utilities, changed its name to Entergy Corp. on May 19, 1989.

EXHIBIT 1.—SAMPLE OF UTILITIES

Utility	Ticker symbol	Industry code
Allegheny Power System	AYP	4911
American Electric Power	AEP	4911
Atlantic Energy Inc	ATE	4911
Baltimore Gas & Electric	BGE	4931
Black Hills Corp	BKH	4911
Boston Edison Co	BSE	4911
Carolina Power & Light	CPL	4911
Centerior Energy Corp	CX	4911
Central & South West Corp	CSR	4911
Central Hudson Gas & Elec	CNH	4931
Central Ill Public Servic	CIP	4931
Central Louisiana Electri	CHL	4911
Central Maine Power Co	CTP	4911
Central Vermont Pub Serv	CV	4911
Cilcorp Inc	CER	4931
Cincinnati Gas & Electric	CIN	4931
CMS Energy Corp	CMS	4931
Commonwealth Edison	CWE	4911
Commonwealth Energy Syste	CES	4931
Consolidated Edison of NY	ED	4931
Delmarva Power & Light	DEW	4931
Detroit Edison Co	DTE	4911
Dominion Resources Inc	D	4931
DPL Inc	DPL	4931
Duke Power Co	DUK	4911
Duquesne Light Co	DQU	4911
Eastern Utilities Assoc	EUA	4911
Empire District Electric	EDE	4911
Entergy Corp	ETR	4911
Fitchburg Gas & Elec Ligh	FGE	4931
Florida Progress Corp	FPC	4911
FPL Group Inc	FPL	4911
General Public Utilities	GPU	4911
Green Mountain Power Corp	GMP	4911
Gulf States Utilities Co	GSU	4911
Hawaiian Electric Inds	HE	4911
Houston Industries Inc	HOU	4911
I E Industries Inc	IEL	4931
Idaho Power Co	IDA	4911
Illinois Power Co	IPC	4931
Interstate Power Co	IPW	4931
Iowa Resources Inc	IOR	4911
Iowa-Illinois Gas & Elec	IWG	4931
Ipalco Enterprises Inc	IPL	4911
Kansas City Power & Light	KLT	4911
Kansas Gas & Electric	KGE	4911
Kansas Power & Light	KAN	4931
Kentucky Utilities Co	KU	4911

EXHIBIT 1.—SAMPLE OF UTILITIES—Continued

Utility	Ticker symbol	Industry code
Long Island Lighting	LIL	4931
Louisville Gas & Electric	LOU	4931
Maine Public Service	MAP	4911
Midwest Energy Co	MWE	4931
Minnesota Power & Light	MPL	4911
Montana Power Co	MTP	4931
Neco Enterprises Inc	NPT	4911
Nevada Power Co	NVP	4911
New England Electric Syst	NES	4911
New York State Elec & Gas	NGE	4931
Niagara Mohawk Power	NMK	4931
Nipsco Industries Inc	NI	4931
Northeast Utilities	NU	4911
Northern States Power-MN	NSP	4931
Ohio Edison Co	OEC	4911
Oklahoma Gas & Electric	OGE	4911
Orange & Rockland Utilit	ORU	4931
Pacific Gas & Electric	PCG	4931
Pacificorp	PPW	4931
Pennsylvania Power & Ligh	PPL	4911
Philadelphia Electric Co	PE	4931
Pinnacle West Capital Cor	PNW	4911
Portland General Corp	PGN	4911
Potomac Electric Power	POM	4911
PSI Holdings Inc	PIN	4911
Public Service Co of Colo	PSR	4931
Public Service Co of N H	PNH	4911
Public Service Co of N ME	PNM	4931
Public Service Entrp	PEG	4931
Puget Sound Power & Light	PSD	4911
Rochester Gas & Electric	RGS	4931
San Diego Gas & Electric	SDO	4931
SCANA Corp	SCG	4931
SCECORP	SCE	4911
Sierra Pacific Resources	SRP	4931
Southern Co	SO	4911
Southern Indiana Gas & El	SIG	4931
St Joseph Light & Power	SAJ	4931
Teco Energy Inc	TE	4911
Texas Utilities Co	TXU	4911
TNP Enterprises Inc	TNP	4911
Tucson Electric Power Co	TEP	4911
Union Electric Co	UEP	4911
United Illuminating Co	UIL	4911
Unitil Corp	UTL	4911
Utilicorp United Inc	UCU	4931
Washington Water Power	WWP	4931
Wisconsin Energy Corp	WEC	4931
Wisconsin Public Service	WPS	4931
WPL Holdings Inc	WPH	4931

N=98.

EXHIBIT 2.—UTILITIES EXCLUDED FROM THE SAMPLE FOR THE INDICATED QUARTER DUE TO EITHER ZERO DIVIDENDS OR A CUT IN THE DIVIDENDS FOR THIS QUARTER OR THE PRIOR THREE QUARTERS

Year=89 Quarter=2

Ticker symbol	Utility	Reason for exclusion
CMS	CMS Energy Corp.	Dividend rate was zero for quarter calendar 89Q2.
ETR	Entergy Corp.	Dividend rate was zero for quarter calendar 88Q3.
GSU	Gulf States Utilities Co.	Dividend rate was zero for quarter calendar 89Q2.
IPC	Illinois Power Co.	Dividend rate was zero for quarter calendar 89Q2.
LIL	Long Island Lighting.	Dividend rate was zero for quarter calendar 89Q2.
PCG	Pacific Gas & Electric.	Dividend rate was zero for quarter calendar 88Q3.
PNW	Pinnacle West Capital Cor.	Dividend rate was zero for quarter calendar 89Q1.
PIN	PSI Holdings Inc.	Dividend rate was zero for quarter calendar 88Q4.
PNH	Public Service Co of N H.	Dividend rate was zero for quarter calendar 89Q2.
PNM	Public Service Co of N ME.	Dividend rate was zero for quarter calendar 89Q2.

N=10.

EXHIBIT 3.—ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR UTILITIES RETAINED IN THE SAMPLE

Year=89 Quarter=2

Ticker symbol	Price, 1st month of qtr-high	Price, 1st month of qtr-low	Price, 2nd month of qtr-high	Price, 2nd month of qtr-low	Price, 3rd month of qtr-high	Price, 3rd month of qtr-low	Average price	Dividends annual rate	Annualized dividend yield
AEP	27.000	26.000	26.125	25.750	26.375	27.375	27.104	2.370	8.744
ATE	33.000	32.500	34.875	32.500	36.000	34.500	33.896	2.880	8.497
AYP	36.500	35.750	36.125	36.125	36.500	36.750	36.958	3.080	8.334
BGE	30.875	29.000	32.375	30.000	32.500	30.250	30.833	2.100	6.811
BKH	26.875	25.375	26.750	25.500	26.500	25.750	26.458	1.520	5.745
BSE	16.500	15.500	16.875	15.875	17.750	16.250	16.458	1.820	11.058
CER	34.500	33.250	35.500	33.625	36.250	34.750	34.646	2.460	7.100
CES	31.875	30.375	33.000	30.625	33.875	32.750	32.083	2.800	8.727
CIN	26.500	25.000	27.000	25.625	27.625	26.500	26.375	2.320	8.796
CIP	21.750	20.375	22.125	21.000	22.875	21.750	21.646	1.800	8.316
CNH	21.375	20.375	22.125	20.875	22.875	22.000	21.604	1.760	8.147
CNL	32.500	31.375	33.000	31.625	33.875	32.875	32.542	2.440	7.498
CPL	36.250	35.125	38.375	36.125	40.500	38.250	37.437	2.840	7.586
CSR	32.500	30.000	34.000	31.375	34.750	33.500	32.687	2.600	7.954
CTP	17.625	16.875	18.250	17.125	18.875	18.000	17.792	1.520	8.543
CV	25.375	23.875	26.500	24.000	27.250	25.500	25.417	1.980	7.790
CWE	34.000	32.625	36.500	33.500	36.125	36.000	35.125	3.000	8.541
CX	16.250	15.625	17.250	15.750	18.250	17.000	16.687	1.600	9.588
D	42.250	40.750	44.750	41.875	44.500	43.375	42.917	3.200	7.456
DEW	17.875	17.125	18.625	17.500	19.375	18.250	18.125	1.500	8.276
DPL	25.625	24.125	25.875	24.375	26.375	25.250	25.271	2.240	8.864
DQU	18.500	17.500	20.000	18.250	20.875	19.375	19.083	1.280	6.707
DTE	19.000	17.625	20.250	18.875	21.375	19.750	19.479	1.680	8.625
DUK	48.750	44.250	49.000	45.000	50.500	47.625	47.187	2.960	6.273
ED	47.250	45.500	50.000	46.250	52.000	49.000	48.333	3.440	7.117
EDE	27.875	26.500	29.125	27.750	29.500	28.625	28.229	2.220	7.864
EUA	33.750	32.000	36.500	33.250	37.500	36.000	34.667	2.500	7.212
FGE	35.000	29.625	34.625	33.250	34.500	33.250	33.375	2.000	5.993
FPC	34.875	33.500	36.375	34.125	36.375	35.125	35.062	2.560	7.301
FPL	30.750	29.000	32.000	30.375	31.375	30.375	30.646	2.280	7.440
GMP	23.750	22.500	24.125	22.750	24.875	23.500	23.583	1.920	8.141
GPU	37.875	36.250	37.875	36.250	40.750	37.375	37.729	1.800	4.771

EXHIBIT 3.—ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR UTILITIES RETAINED IN THE SAMPLE—Continued

Year=89 Quarter=2

Ticker symbol	Price, 1st month of qtr-high	Price, 1st month of qtr-low	Price, 2nd month of qtr-high	Price, 2nd month of qtr-low	Price, 3rd month of qtr-high	Price, 3rd month of qtr-low	Average price	Dividends annual rate	Annualized dividend yield
HE	30.750	30.000	32.625	30.250	33.875	32.250	31.625	2.040	6.451
HOU	29.375	27.250	30.000	28.000	33.375	29.125	29.521	2.960	10.027
IDA	24.250	23.250	26.000	23.500	26.500	25.375	24.812	1.800	7.254
IEL	23.625	21.625	24.500	23.000	25.750	23.500	23.667	2.040	8.620
IOR	18.375	17.125	19.000	18.000	19.875	18.625	18.500	1.660	8.973
IPL	23.375	22.000	24.375	23.000	25.375	23.875	23.667	1.720	7.268
IPW	22.750	21.625	23.125	22.250	24.250	22.750	22.792	2.000	8.775
IWG	39.625	37.125	39.875	38.250	42.375	39.500	39.458	3.260	8.262
KAN	22.750	21.750	24.125	22.250	23.875	23.125	22.979	1.760	7.659
KGE	20.875	19.625	22.375	20.250	22.875	21.250	21.208	1.600	7.544
KLT	30.250	29.125	31.750	29.750	33.625	31.125	30.937	2.440	7.887
KU	18.875	18.125	19.250	18.500	20.250	19.000	19.000	1.400	7.368
LOU	34.625	32.000	36.500	34.250	38.250	36.375	35.333	2.720	7.698
MAP	24.250	23.500	24.875	22.375	24.625	21.000	23.438	1.600	6.827
MPL	24.250	23.500	25.000	23.500	25.625	24.250	24.354	1.780	7.309
MTP	36.875	34.625	41.750	36.375	42.125	39.625	38.562	2.760	7.157
MWE	18.875	18.000	19.750	18.125	19.875	18.750	18.896	1.600	8.467
NES	24.000	22.500	26.500	23.250	26.375	25.375	24.667	2.040	8.270
NGE	23.875	22.750	25.375	23.375	27.375	24.750	24.583	2.000	8.136
NI	15.500	13.500	16.500	14.875	18.000	16.000	15.729	0.840	5.340
NMK	12.125	11.375	11.875	10.750	12.000	11.125	11.542	1.200	10.397
NPT	18.500	15.875	19.000	17.625	18.875	14.875	17.458	1.500	8.592
NSP	33.500	30.750	35.875	32.375	37.625	35.375	34.250	2.120	6.190
NU	20.250	19.500	21.750	20.000	22.375	21.250	20.854	1.760	8.440
NVP	20.125	19.250	21.000	19.750	22.000	20.750	20.479	1.520	7.422
OEC	20.500	19.875	21.750	20.000	21.750	20.500	20.729	1.960	9.455
OGE	33.375	32.125	34.750	32.875	36.000	34.625	33.958	2.380	7.009
ORU	28.250	27.250	29.125	27.375	30.250	29.000	28.542	2.260	7.918
PE	21.250	19.750	21.875	20.625	22.875	20.750	21.187	2.200	10.383
PEG	24.750	24.125	26.750	24.250	27.500	25.125	25.417	2.040	8.026
PGN	22.625	21.250	24.125	22.125	25.125	23.500	23.125	1.960	8.476
POM	20.500	19.625	22.000	20.250	21.625	20.500	20.750	1.460	7.036
PPL	35.875	34.625	39.000	35.000	39.625	38.375	37.083	2.860	7.712
PPW	37.750	34.625	39.875	36.625	41.500	38.375	38.125	2.640	6.925
PSD	19.000	18.250	19.625	18.500	21.000	19.250	19.271	1.760	9.133
PSR	21.500	20.125	22.250	20.500	23.250	21.750	21.562	2.000	9.275
RGS	17.625	17.000	19.375	17.250	20.875	18.750	18.479	1.500	8.117
SAJ	21.875	21.000	22.500	21.000	22.875	22.125	21.896	1.520	6.942
SCE	32.875	31.250	35.125	32.750	36.250	34.375	33.771	2.560	7.581
SCG	30.875	30.000	33.000	30.250	33.875	32.500	31.750	2.460	7.748
SDO	38.500	37.125	40.500	38.125	41.500	39.375	39.187	2.700	6.890
SIG	28.375	27.500	29.000	27.750	29.750	28.500	28.479	1.800	6.320
SO	24.500	23.125	25.875	23.125	27.125	25.375	24.854	2.140	8.610
SRP	24.000	22.625	23.250	22.375	25.250	23.250	23.458	1.800	7.673
TE	24.000	22.625	25.125	23.250	25.625	24.500	24.187	1.520	6.284
TEP	40.125	32.750	39.125	36.250	39.000	31.125	36.396	3.900	10.716
TNP	20.000	19.000	20.125	19.500	21.000	19.750	19.896	1.550	7.791
TXU	29.375	27.750	31.375	28.000	32.500	29.625	29.771	2.920	9.808
UCU	18.250	17.625	18.375	17.625	19.500	18.125	18.250	1.440	7.890
UEP	24.375	23.750	25.750	24.000	26.500	24.875	24.875	2.000	8.040
UIL	25.875	24.875	28.250	25.125	28.375	26.625	26.521	2.320	8.748
UTL	38.875	34.000	38.375	36.875	37.625	37.125	37.146	2.080	5.600
WEC	27.250	25.625	28.750	26.500	29.875	27.875	27.646	1.660	6.005
WPH	22.500	21.875	24.000	21.875	23.500	22.750	22.750	1.680	7.385
WPS	21.750	20.750	22.750	21.125	23.250	22.375	22.000	1.580	7.182
WWP	27.500	26.125	29.125	27.000	30.000	28.375	28.021	2.480	8.851

N=88.

[FR Doc. 89-17042 Filed 7-19-89; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 51

[Public Notice 1119; 108.881]

Denial of Passports to Certain Convicted Drug Traffickers

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is issuing final regulations to implement provisions of the Anti-Drug Abuse Act of 1988, Pub. L. 100-690. The regulations prescribe the conditions governing the issuance, denial or revocation of United States passports to individuals convicted of offenses violating Federal and state drug abuse laws where the individual used a U.S. passport or crossed an international border in committing the offense. The rule also makes technical, non-substantive conforming amendments to existing regulations governing the revocation and denial of passports in other cases.

EFFECTIVE DATE: July 20, 1989.

FOR FURTHER INFORMATION CONTACT: Bonnie Lea-Brown, Office of Citizenship Appeals and Legal Assistance, Telephone (202) 326-6213.

SUPPLEMENTARY INFORMATION: The Department of State published an

interim rule regarding the denial of passports to certain convicted drug traffickers on March 1, 1989 (54 FR 8531). No comments were received and the interim rule is adopted as final.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act (5 U.S.C. 301 et seq.), it is hereby certified that the interim rule will not have a significant impact on small business entities. The provisions of the Paperwork Reduction Act (44 U.S.C. Ch. 35) apply.

List of Subjects in 22 CFR Part 51

Passports.

For the reasons set forth in the preamble, 22 CFR Part 51 is amended as follows:

PART 51—PASSPORTS

1. The authority citation for Part 51 is revised to read as follows:

Authority: 22 U.S.C. 2658 and 3926; sec. 1, 44 Stat. 887; sec. 1, 41 Stat. 750; sec. 4, 63 Stat. 111, as amended; 22 U.S.C. 211a, as amended, 2658; sec. 122 (d)(3), Pub. L. 96–164, 97 Stat. 1017; E.O. 11295, 36 FR 10603; 3 CFR 1966–70 Comp. p. 507; Pub. L. 100–690.

2. Section 51.70 is revised to read as follows:

§ 51.70 Denial of passports

(a) A passport, except for direct return to the United States, shall not be issued in any case in which the Secretary of State determines or is informed by competent authority that:

(1) The applicant is the subject of an outstanding Federal warrant of arrest for a felony, including a warrant issued under the Federal Fugitive Felon Act (18 U.S.C. 1073); or

(2) The applicant is subject to a criminal court order, condition of probation, or condition of parole, any of which forbids departure from the United States and the violation of which could result in the issuance of a Federal warrant of arrest, including a warrant issued under the Federal Fugitive Felon Act; or

(3) The applicant is subject to a court order committing him or her to a mental institution; or

(4) The applicant is the subject of a request for extradition or provisional arrest for extradition which has been presented to the government of a foreign country; or

(5) The applicant is the subject of a subpoena issued pursuant to section 1783 of Title 28, United States Code, in a matter involving Federal prosecution for, or grand jury investigation of, a felony; or

(6) The applicant has not repaid a loan received from the United States as prescribed under §§1.10 and 71.11 of this chapter; or

(7) The applicant is in default on a loan received from the United States to effectuate his or her return from a foreign country in the course of travel abroad.

(b) A passport may be refused in any case in which the Secretary of State determines or is informed by competent authority that:

(1) The applicant has not repaid a loan received from the United States to effectuate his or her return from a foreign country in the course of travel abroad; or

(2) The applicant has been legally declared incompetent unless accompanied on his or her travel abroad by the guardian or other person responsible for the national's custody and well being; or

(3) The applicant is under the age of 18 years, unmarried and not in the military service of the United States unless a person having legal custody of such national authorizes issuance of the passport and agrees to reimburse the United States for any monies advanced by the United States for the minor to return to the United States; or

(4) The Secretary determines that the national's activities abroad are causing or are likely to cause serious damage to the national security or the foreign policy of the United States; or

(5) The applicant has been the subject of a prior adverse action under this section or § 51.71 and has not shown that a change in circumstances since the adverse action warrants issuance of a passport; or

(6) The applicant is subject to an order of restraint or apprehension issued by an appropriate officer of the United States Armed Forces pursuant to Chapter 47 of Title 10 of the United States Code.

§§ 51.71, 51.72 and 51.73 [Redesignated as §§ 51.72, 51.73 and 51.74 Respectively]

3. Current § 51.73 is redesignated as 51.74; § 51.72 is redesignated as 51.73; and §51.71 is redesignated as 51.72.

4. A new § 51.71 is added after § 51.70 and reads as follows:

§ 51.71 Denial of passports to certain convicted drug traffickers.

(a) A passport shall not be issued in any case in which the Secretary of State determines or is informed by competent authority that the applicant is subject to imprisonment or supervised release as the result of a felony conviction for a Federal or state drug offense if the individual used a U.S. passport or otherwise crossed an international border in committing the offense, including a felony conviction arising under:

(1) The Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.); or

(2) Any Federal law involving controlled substances as defined in section 802 of the Controlled Substances Act (21 U.S.C. 801 et seq.); or

(3) The Bank Secrecy Act (31 U.S.C. 5311 et seq.) or the Money Laundering Act (18 U.S.C. 1956 et seq.) if the Secretary of State is in receipt of information that supports the determination that the violation involved is related to illicit production of or trafficking in a controlled substance; or

(4) Any state law involving the manufacture, distribution, or possession of a controlled substance.

(b) A passport may be refused in any case in which the Secretary of State determines or is informed by competent authority that the applicant is subject to imprisonment or supervised release as the result of a misdemeanor conviction of a Federal or state drug offense if the individual used a U.S. passport or otherwise crossed an international border in committing the offense, other than a first conviction for possession of a controlled substance, including a misdemeanor conviction arising under:

(1) The federal statutes described in § 51.71(a); or

(2) Any state law involving the manufacture, distribution, or possession of a controlled substance.

(c) Notwithstanding paragraphs (a) and (b) of this section the Secretary of State may issue a passport when the competent authority confirms, or the Secretary of State otherwise finds, that emergency circumstances or humanitarian reasons exist.

5. Newly redesignated § 51.72 is revised to read as follows:

§ 51.72 Revocation or restriction of passports.

A passport may be revoked or restricted or limited where:

(a) The national would not be entitled to issuance of a new passport under § 51.70 or § 51.71; or

(b) The passport has been obtained by fraud, or has been fraudulently altered, or has been fraudulently misused.

6. Current § 51.80 is revised to read as follows:

§ 51.80 Applicability of §§51.81 through 51.89.

The provisions of §§ 51.81 through 51.89 apply to any action of the Secretary taken on an individual basis in denying, restricting, revoking or invalidating a passport or in any other way adversely affecting the ability of a person to receive or use a passport except action taken by reason of noncitizenship, refusal to grant a discretionary exception under the emergency or humanitarian relief provisions of §51.71(c) or refusal to grant a discretionary exception from geographical limitations of general applicability. The provisions of this subpart shall constitute the administrative remedies provided by the Department to persons who are the subject of adverse action under §§ 51.70, 51.71 or § 51.72.

Joan M. Clark,

Assistant Secretary for Consular Affairs.

[FR Doc. 89–17043 Filed 7–19–89; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS DEFENDER (MCM–2) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a mine countermeasures ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: July 12, 1989.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400. Telephone number: (202) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS DEFENDER (MCM–2) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a Navy ship. The Judge Advocate General of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizonal separation attained
USS DEFENDER	MCM–2							X	62

Dated: July 12, 1989.

Approved:

E.D. Stumbaugh,

Rear Admiral, JAGC, U.S. Navy, Judge Advocate General.

[FR Doc. 89–17011 Filed 7–19–89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 90114–9135]

RIN 0651–AA42

Patent Term Extension for Animal Drug Products

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (PTO) is amending the rules of practice in patent cases directed to the extension of patent term. These amendments implement the patent term restoration provisions of Pub. L. No. 100–670, 102 Stat. 3971 (November 16, 1988) which permits owners of patents relating to new animal drugs or veterinary biological products that are

not biotechnology-generated to apply for extension of the terms of such patents in the same manner as owners of patents relating to human drugs, medical devices, food additives, or color additives are permitted to do under 35 U.S.C. 156.

EFFECTIVE DATE: August 22, 1989.

FOR FURTHER INFORMATION CONTACT: Charles E. Van Horn by telephone at [703] 557-4035 or by mail marked to his attention and addressed to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: Pub. L. No. 100-670 has made it possible for owners of patents directed to new animal drugs and to veterinary biological products that are not biotechnology-generated to apply for extension of the term of such patents in a manner similar to the owners of patents directed to human drugs, food additives, color additives, and medical devices. A new animal drug or veterinary biological product is biotechnology-generated if it is primarily manufactured using recombinant DNA, recombinant RNA, hybridoma technology, or other processes including site specific genetic manipulation techniques. The primary purpose of this rule change is to revise the present regulations contained in 37 CFR Part 1, Subpart F, to include the two additional categories of subject matter that can now form the basis of patent term extension. These regulations set forth procedures that govern the content and submission of applications for the extension of a patent term to the PTO, and procedures governing the extension determination and issuance of patent term extension certificates by the PTO.

Initial guidelines directed to the preparation and filing of applications for patent term extension as authorized by Pub. L. No. 100-670 were published as "Guidelines For Extension of Patent Term For New Animal Drugs or Veterinary Biological Products Under 35 U.S.C. 156 as Amended" in the Official Gazette. 1097 *Official Gazette* 63 (December 27, 1988). A notice of proposed rulemaking was published in the **Federal Register** on March 7, 1989, at 54 FR 9507 and in the Official Gazette. 1100 *Official Gazette* 128 (March 28, 1989). No oral hearing was conducted on these proposed rules. One written comment was received.

The only written comment received was directed to the proposed amendment to § 1.710(a). The proposed amendment indicated that a patent is eligible for extension of the patent term if the patent claims a product either alone or in combination with other ingredients that read on a composition that received permission for commercial marketing or use. The proposed modification was objected to because of the implication that patent term extension would not be available for composition patents where the claimed compositions do not read on the composition (new drug) approved by the FDA. Such an interpretation, it was argued, would unfairly and narrowly interpret the statute. The comment noted that where a marketing applicant seeks approval of multiple dosage forms or compositions of a new drug, the right to obtain patent term extension is triggered at the time the first new drug application is approved. In a typical situation, an injectable dosage form to be used for acute indications will require a lesser development time and be approved more rapidly than the oral dosage form of the same active ingredient intended for chronic administration. It was represented in the comment that justification for the drug development program might hinge on the expectation of an extension of an oral composition patent. If there were patents on both the injectable dosage form and the oral administration form containing the same active ingredient, which were mutually exclusive for the purposes of this illustration, the new drug holder, it is argued, should have a choice of which patent term to extend based on the first approval of a new chemical entry (NCE) drug. Finally, the comment suggested that the proposed amendment to § 1.710(a) with respect to composition patents stands in marked contrast to the situation which applies in the case of method of use patents. It is alleged, in the comment, that the rule in effect allows an extension of a method of use patent whenever the claimed method of use embraces the use of the active ingredient. According to the comment, where an NCE drug is first approved for the treatment of arthritis, a patent limited to an analgesic use of the NCE drug may be extended. (Note the requirement in § 1.740(a)(4) to identify the use for which the product was approved.)

These remarks made in this comment raise a substantive issue relating to the eligibility of patents for patent term extension under 35 U.S.C. 156 that is not addressed in the rules. The exercise of the Commissioner's rulemaking authority under 35 U.S.C. 6 and 156 can neither enlarge nor reduce the scope of eligibility of a patent for patent term extension under 35 U.S.C. 156. Secondly, the proposed amendment to § 1.710(a) is clearly couched in terms which are permissive without either explicitly or implicitly excluding other possibilities. The proposed amendment was made in response to many inquiries received over the years since enactment of 35 USC 156 as to whether a formulation or composition claim in a patent could form a basis for eligibility for patent term extension. Finally, the PTO has a long-standing policy of not addressing an issue in advance of receiving an application presenting the issue for determination. The issue of whether a patent is eligible for patent term extension that could not be enforced in either the original or extended term against the approved formulation or use that allegedly would give rise to eligibility has not been addressed yet by the PTO.

PTO experience to date did involve consideration of two applications that were filed based on approval of the human drug product OCUFEN Ophthalmic Solution, which contains the active ingredient Flurbiprofen [2-(2-fluoro-4-biphenylyl) propionic acid]. Relevant claims from the two patents that were the subject of the applications for patent term extension were as follows:

I. Patent 3,755,427 (issued August 28, 1973)

Claim 2. 2-(2-fluoro-4-biphenylyl)propionic acid.

II. Patent 3,793,457 (issued February 19, 1974)

Claim 1. A therapeutic composition useful in the treatment of pain, inflammation, and pyretic conditions which comprises a compound selected from the group consisting of 2-(2-fluoro-4-biphenylyl) propionic acid, [2-(2'-fluoro-4-biphenylyl) propionic acid, and 2-(2,2'-difluoro-4-biphenylyl) propionic acid in association with a pharmaceutically acceptable excipent the amount of said compound present in said composition being an amount effective against at least one of said conditions.

Claim 2 of the earlier issued patent is directed to the active ingredient per se, whereas claim 1 of Patent No. 3,793,457 is directed to a formulation which can contain Flurbiprofen in an amount which was effective in the treatment of pain, inflammation, and pyretic conditions.

However, since the approved indication for Ocufen was for the inhibition of intraoperative miosis, it was not immediately apparent to the PTO whether the '457 patent claimed the product within the meaning of 35 U.S.C. 156. Our view was that the 1984 Act was intended to restore to those patent owners a portion of the enforceable term of an appropriate patent of their choice which was lost due to Government required regulatory review for the product covered by the patent prior to the commercial marketing of the claimed product or the use thereof. If the patent could not be enforced against an infringer who was making, using, or selling an ophthalmic solution containing Flurbiprofen for the treatment of intraoperative miosis, it was questioned how the restoration of the lost patent term due to the regulatory process for the approved product is appropriate under the statute.

In this case, the applicant for patent term extension submitted evidence that Flurbiprofen, in an amount of 0.0004% to 0.1%, has anti-inflammatory activity in the eye when topically administered. The approved label showed that Ocufen contained 0.03% of the active ingredient and stated that the product is "a topical nonsteroidal anti-inflammatory product for ophthalmic use." The specification of the '457 patent indicated that useful compositions preferably contain 0.1-90% by weight of a compound of the invention. Thus, the dosage of the active ingredient for the indicated use clearly overlapped the effective dosages specified in the functional language of claim 1 of the '457 patent. On the basis of this evidence, the PTO concluded that the later issued patent claimed the product. As both patents were determined to be eligible for patent term extension, applicant was permitted to choose the single patent term to be extended. 35 U.S.C. 156(c)(4).

Discussion of Specific Rules

Section 1.710(a) specifically sets forth the existing policy and practice relating to eligibility of patents claiming a composition or formulation that includes the active ingredient. A patent is considered to claim the product at least in those situations where the patent claims the active ingredient per se, or claims a composition or formulation which contains the active ingredient(s) and reads on the composition or formulation approved for commercial marketing or use.

Section 1.710(b) revises the definition of human drug product in paragraph (b)(1) to make the definition conform to Pub. L. No. 100-670. A new paragraph (b)(2) is added to expand the definition of "product" in § 1.710(a) to include a new animal drug and a veterinary biological product, but not one that is primarily manufactured using recombinant DNA, recombinant RNA, hybridoma technology, or other processes including site specific genetic manipulation techniques. Present paragraph (b)(2) is redesignated as paragraph (b)(3). It should be understood that the discussion here of new animal drugs and veterinary biological products is limited to the animal drugs and products defined in Pub. L. No. 100-670.

Paragraph (e)(2) of § 1.720 is revised to indicate that the conditions given therein concern a patent for a product other than one recited in §1.710(b)(2), due to the exclusion of biotechnology-generated new animal drugs and veterinary biological products in Pub. L. No. 100-670. A new paragraph (e)(3) is added to §1.720 directed to the provision in 35 U.S.C. 156(a)(5)(C), which permits the term of a patent directed to a new animal drug or veterinary biological product to be extended based on a second or subsequent approval of the active ingredient provided all the following conditions exist: (a) The patent claims the drug or product, (b) the drug or product is not covered by the claims in any other patent that has been extended ("covered by the claims" means that the drug or product would infringe a claim in the other patent), (c) the patent term was not extended on the basis of the regulatory review period for use in non-food-producing animals, and (d) the second or subsequent approval was the first permitted commercial marketing or use of the drug or product for administration to a food-producing animal. A new portion is added to paragraph (f) directed to the case where eligibility is to be based on 35 U.S.C. 156(a)(5)(C). In this latter case, the application must be filed within 60 days of the first approval for administration to a food-producing animal.

Paragraph (a)(4) of § 1.740(a) is amended to (1) eliminate "human" as a modifier for "product", (2) add the Public Health Service Act and the Virus-Serum-Toxin Act to the list of appropriate statutes, and (3) add a requirement to indicate the use for which the product was approved. The first two amendments are necessary to comply with terms of 35 U.S.C. 156 as amended, and the third amendment is necessary to a determination of eligibility where, for example, the application is based on a second or subsequent approval of an active ingredient, but the first approval for administration to a food-producing animal. Paragraph (a)(9) is amended to eliminate the requirement to set forth the statement, beginning on a new page, that the patent for which patent term extension is sought claims the approved product or a method of using or making same, and the required showing listing each applicable claim of the patent and demonstrating the manner in which each applicable claim reads on the approved product or a method of using or making same. This change is made because the information required by this paragraph is within the province of PTO review and there is no need to have such information recited in a readily segregable section of the application. Paragraph (a)(10) is amended to indicate that, as appropriate, the Secretary of Health and Human Services or the Secretary of Agriculture will determine the applicable regulatory review period. Paragraph (a)(10)(i) is amended to recite that a Product License Application is a type of application that may be recited in an application for term extension of a patent claiming a human biological product. New paragraphs (a)(10)(ii) and (a)(10)(iii) are added to set forth the type of tests or applications that are to be considered for determination of the applicable regulatory review period for patents claiming a new animal drug or a veterinary biological product. Present paragraphs (a)(10)(ii) and (a)(10)(iii) are redesignated as paragraphs (a)(10)(iv) and (a)(10)(v), respectively. Paragraph (a)(10)(v) has been amended to reflect that approval of a medical device could be made through the use of a product development protocol. Paragraph (a)(13) is amended to indicate that the duty to disclose any information material to the determination of entitlement to the extension sought applies also to the Secretary of Agriculture where the regulatory review was conducted by the USDA.

Section 1.741(a)(2) is amended to acknowledge that regulatory review may take place under more than one Federal statute and that each appropriate statute should be listed. This amendment is intended to apply to a situation where a human biological product is tested under an investigational new drug (IND) application pursuant to the Federal Food, Drug, and Cosmetic Act, but is approved under the Public Health Service Act. The amendment is not intended to include a situation where approval is sought for use of a particular medical device with a specific drug product which may require approval under more than a single provision of law. The product that forms the basis of an application for patent term extension

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must be either a medical device or a drug product; it cannot be a combination of those separate products. See the file history of U.S. Patent No. 4,428,744 for an example of the application of this principle.

Section 1.741(a)(5) is amended to recognize that the Secretary of Agriculture may determine the length of the regulatory review period where the regulatory review of the product takes place at the USDA. The section is further modified to point out that a determination of the length of the regulatory review period is made under 35 U.S.C. 156(g), and not the length of the patent term extension that is made by the PTO under 35 U.S.C. 156(c).

Section 1.765(a) is amended to recite that a duty of candor and good faith is owed to the Secretary of Agriculture in patent term extension proceedings wherein the USDA is involved.

The title of § 1.775 is amended to reflect that the section is directed to calculating patent term extension for human drug, antibiotic drug, and human biological products. Paragraphs (a), (b), (c), and (d) are amended to indicate that the determinations are being made for any of a human drug, an antibiotic drug, or a human biological product. Sections (c)(1) and (c)(2) are amended to refer merely to a "product" rather than to a "human drug product" or a "drug product" in order to make the sections clearer.

Section 1.778 is added to set forth the manner of calculation of the patent term extension for an animal drug product.

Paragraph (a) specifies that the extension will run from the original expiration date of the patent as shortened by any terminal disclaimer.

Paragraph (b) of § 1.778 provides that the patent term will be extended by the regulatory review period for the product but reduced, where appropriate, by the time periods provided in paragraph (d).

Paragraph (c) defines how the regulatory review period is to be calculated. The period is determined by counting:

(1) The number of days in the period beginning on the earlier of the dates a major health or environmental effects test was initiated on the drug or an exemption under subsection (j) of section 512 of the Federal Food, Drug, and Cosmetic Act became effective for the drug and ending on the date an application was initially submitted for the drug under section 512 of the Federal Food, Drug, and Cosmetic Act; and

(2) The number of days in the period beginning on the date the application was initially submitted for the approved drug under subsection (b) of section 512 of the Federal Food, Drug, and Cosmetic Act and ending on the date the application was approved under the section.

The added total of the days determined in subparagraphs (c)(1) and (c)(2) constitutes the regulatory review period, which is then reduced, where appropriate, by the time periods described in paragraph (d).

Paragraph (d) of § 1.778 modifies the term of the patent extension by indicating that

(1) The time period determined from paragraph (c) would be reduced, where appropriate, by—

(i) The number of days in the period of paragraphs (c)(1) and (c)(2) of § 1.778 that were before the date on which the patent issued;

(ii) The number of days in paragraphs (c)(1) and (c)(2) of § 1.778 during which it is determined under 35 U.S.C. 156(d)(2)(B) that applicant did not act with due diligence; and

(iii) The number of days equal to one-half the number of days remaining in paragraph (c)(1) afer the paragraph (c)(1) determination has been reduced in accordance with paragraphs (d)(1)(i) and (d)(1)(ii) of § 1.778 (half days to be ignored for subtraction purposes);

(2) Adding the number of days determined in paragraph (d)(1) to the original expiration date of the patent as shortened by any terminal disclaimer;

(3) Adding 14 years to the date of approval of the application under section 512 of the Federal Food, Drug, and Cosmetic Act;

(4) Comparing the dates obtained from paragraphs (d)(2) and (d)(3) with each other and selecting the earlier date;

(5) If the original patent issued after November 16, 1988, by—

(i) Adding 5 years to the original expiration date of the patent as shortened by any terminal disclaimer; and

(ii) Comparing the dates obtained from paragraphs (d)(4) and (d)(5)(i) with each other and selecting the earlier date;

(6) If the original patent issued before November 16, 1988, and

(i) If no major health or environmental effects test on the drug was initiated and no request was submitted for an exemption under subsection (j) of section 512 of the Federal Food, Drug, and Cosmetic Act before November 16, 1988, by—

(A) Adding 5 years to the original expiration date of the patent as shortened by any terminal disclaimer; and

(B) Comparing the dates obtained pursuant to paragraphs (d)(4) and (d)(6)(i)(A) with each other and selecting the earlier date; or

(ii) If a major health or environmental effects test was initiated or a request for an exemption under subsection (j) of section 512 of the Federal Food, Drug, and Cosmetic Act was submitted before November 16, 1988, and the application for commercial marketing or use of the drug was not approved before November 16, 1988, by—

(A) Adding 3 years to the original expiration date of the patent as shortened by any terminal disclaimer; and

(B) Comparing the dates obtained from paragraphs (d)(4) and (d)(6)(ii)(A) with each other and selecting the earlier date.

Section 1.779 is added to set forth the manner of calculation of the patent term extension for a veterinary biological product.

Paragraph (a) specifies that the extension runs from the original expiration date of the patent as shortened by any terminal disclaimer.

Paragraph (b) of § 1.779 provides that the patent term would be extended by the regulatory review period for the product but reduced, where appropriate, by the time periods provided in paragraph (d).

Paragraph (c) defines how the regulatory review period is to be calculated. The period is determined by counting

(1) The number of days in the period beginning on the date the authority to prepare an experimental biological product under the Virus-Serum-Toxin Act became effective and ending on the date an application for a license was submitted under the Virus-Serum-Toxin Act; and

(2) The number of days in the period beginning on the date an application for a license wsa initially submitted under the Virus-Serum-Toxin Act and ending on the date a license was issued.

The added total of the days determined in paragraphs (c)(1) and (c)(2) constitutes the regulatory review period, which is then reduced, where appropriate, by the time periods described in paragraph (d).

Paragraph (d) of § 1.779 defines the term of the patent extension by indicating that:

(1) The time period determined from paragraph (c) would be reduced, where appropriate, by—

(i) The number of days in the periods of paragraphs (c)(1) and (c)(2) that were on and before the date on which the patent issued;

(ii) The number of days in the periods of paragraphs (c)(1) and (c)(2) during which it is determined under 35 U.S.C. 156(d)(2)(B) that the applicant did not act with due diligence; and

(iii) One-half the number of days remaining in the period defined by paragraph (c)(1) after that period is reduced in accordance with paragraphs (d)(1)(i) and (d)(1)(ii) (half days being ignored for purposes of subtraction);

(2) Adding the number of days determined in paragraph (d)(1) to the original term of the patent as shortened by any terminal disclaimer;

(3) Adding 14 years to the date of the issuance of a license under the Virus-Serum-Toxin Act;

(4) Comparing the dates for the ends of the periods obtained pursuant to paragraphs (d)(2) and (d)(3) and selecting the earlier date;

(5) If the patent was issued after November 16, 1988, by—

(i) Adding 5 years to the original expiration date of the patent as shortened by any terminal disclaimer; and

(ii) Comparing the dates obtained pursuant to paragraphs (d)(4) and (d)(5)(i) with each other and selecting the earlier date;

(6) If the original patent issued before November 16, 1988, and

(i) If no request for the authority to prepare an experimental biological product under the Virus-Serum-Toxin Act was submitted before November 16, 1988, by—

(A) Adding 5 years to the original expiration date of the patent as shortened by any terminal disclaimer; and

(B) Comparing the dates obtained pursuant to paragraphs (d)(4) and (d)(6)(i)(A) with each other and selecting the earlier date; or

(ii) If a request for the authority to prepare an experimental biological product under the Virus-Serum-Toxin Act was submitted before November 16, 1988, and the commercial marketing or use of the product was not approved before November 16, 1988, by—

(A) Adding 3 years to the original expiration date of the patent as shortened by any terminal disclaimer; and

(B) Comparing the dates obtained pursuant to paragraphs (d)(4) and (d)(6)(ii)(A) and selecting the earlier date.

Section 1.785(b) is amended to indicate that, in those instances where an applicant is seeking patent term extension for two or more patents based upon the same regulatory review period, the applicant will have the right to elect which patent is to have its term extended. In the absence of the election by applicant, the Commissioner will extend that patent having the earliest date of issuance.

Other Considerations

The rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. No. 96-354), Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration that the rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96-354). The rule change setting forth procedures allowing owners of patents directed to new animal drugs and veterinary biological products to apply for extension of patent term would not be expected to result in any adverse economic impact on small entities because patented drugs are generally not commercialized by small entities.

The PTO has determined that this rule change is not a major rule under Executive Order 12291. The annual effect to the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The PTO has also determined that this notice has no federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

The rule change contains a collection of information subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* which has been approved by the Office of Management and Budget under control number 0651-0020. Preparation of an application for patent term extension is estimated to take approximately sixty hours, including time for reviewing instructions, gathering and maintaining data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Office of Management and Organization, Patent and Trademark Office, Washington, DC 20231, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. (Paperwork Reduction Project 0651-0030) No comments regarding this burden estimate or any other aspect of this collection of information were received in response to the notice of proposed rulemaking.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Authority delegations (Government agencies), Conflict of interest, Courts, Inventions and patents, Lawyers.

For the reasons given in the preamble and pursuant to the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6 and 156, the PTO is amending Part 1 of Title 37 of the Code of Federal Regulations as set forth below.

Subpart F—Extension of Patent Term

1. The authority citation for 37 CFR Part 1, Subpart F, continues to read as follows:

Authority: 35 U.S.C. 6 and 156.

2. Section 1.710 is revised to read as follows:

§ 1.710 Patents subject to extension of the patent term.

(a) A patent is eligible for extension of the patent term if the patent claims a product as defined in paragraph (b) of this section, either alone or in combination with other ingredients that read on a composition that received permission for commercial marketing or use, or a method of using such a product, or a method of manufacturing such a product, and meets all other conditions and requirements of this subpart.

(b) The term "product" referred to in paragraph (a) of this section means—

(1) The active ingredient of a new human drug, antibiotic drug, or human biological product (as those terms are used in the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act) including any salt or ester of the active ingredient, as a single entity or in combination with another active ingredient; or

(2) The active ingredient of a new animal drug or veterinary biological product (as those terms are used in the Federal Food, Drug, and Cosmetic Act and the Virus-Serum-Toxin Act) that is not primarily manufactured using recombinant DNA, recombinant RNA, hybridoma technology, or other processes including site specific genetic manipulation techniques, including any salt or ester of the active ingredient, as a

single entity or in combination with another active ingredient; or

(3) Any medical device, food additive, or color additive subject to regulation under the Federal Food, Drug, and Cosmetic Act.

3. Section 1.720 is amended by revising paragraphs (e)(2) and (f) and adding paragraph (e)(3) to read as follows:

§ 1.720 Conditions for extension of patent term.

* * * * *

(e) The product has received permission for commercial marketing or use and—

* * * * *

(2) In the case of a patent other than one directed to subject matter within § 1.710(b)(2) claiming a method of manufacturing the product that primarily uses recombinant DNA technology in the manufacture of the product, the permission for the commercial marketing or use is the first received permission for the commercial marketing or use of a product manufactured under the process claimed in the patent, or

(3) In the case of a patent claiming a new animal drug or a veterinary biological product that is not covered by the claims in any other patent that has been extended, and has received permission for the commercial marketing or use in non-food-producing animals and in food-producing animals, and was not extended on the basis of the regulatory review period for use in non-food-producing animals, the permission for the commercial marketing or use of the drug or product after the regulatory review period for use in food-producing animals is the first permitted commercial marketing or use of the drug or product for administration to a food-producing animal.

(f) The application is submitted within the sixty-day period beginning on the date the product first received permission for commercial marketing or use under the provisions of law under which the applicable regulatory review period occurred; or in the case of a patent claiming a method of manufacturing the product which primarily uses recombinant DNA technology in the manufacture of the product, the application for extension is submitted within the sixty-day period beginning on the date of the first permitted commercial marketing or use of a product manufactured under the process claimed in the patent; or in the case of a patent that claims a new animal drug or a veterinary biological product that is not covered by the claims in any other patent that has been extended, and said drug or product has received permission for the commercial marketing or use in non-food-producing animals, the application for extension is submitted within the sixty-day period beginning on the date of the first permitted commercial marketing or use of the drug or product for administration to a food-producing animal;

* * * * *

4. Section 1.740 is amended by revising paragraphs (a)(4), (a)(9), (a)(10) and (a)(13) to read as follows:

§ 1.740 Application for extension of patent term.

(a) An application for extension of patent term must be made in writing to the Commissioner of Patents and Trademarks. A formal application for the extension of patent term shall include:

* * * * *

(4) In the case of a drug product, an identification of each active ingredient in the product and as to each active ingredient, a statement that it has not been previously approved for commercial marketing or use under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, or the Virus-Serum-Toxin Act, or a statement of when the active ingredient was approved for commercial marketing or use (either alone or in combination with other active ingredients), the use for which it was approved, and the provision of law under which it was approved.

* * * * *

(9) A statement that the patent claims the approved product or a method of using or manufacturing the approved product, and a showing which lists each applicable patent claim and demonstrates the manner in which each applicable patent claim reads on the approved product or method of using or manufacturing the approved product;

(10) A statement, beginning on a new page, of the relevant dates and information pursuant to 35 U.S.C. 156(g) in order to enable the Secretary of Health and Human Services or the Secretary of Agriculture, as appropriate, to determine the applicable regulatory review period as follows:

(i) For a patent claiming a human drug, antibiotic, or human biological product, the effective date of the investigational new drug (IND) application and the IND number; the date on which a new drug application (NDA) or a Product License Application (PLA) was initially submitted and the NDA or PLA number and the date on which the NDA was approved or the Product License issued;

(ii) For a patent claiming a new animal drug, the date a major health or environmental effects test on the drug was initiated and any available substantiation of the date or the date of an exemption under subsection (j) of section 512 of the Federal Food, Drug, and Cosmetic Act became effective for such animal drug; the date on which a new animal drug application (NADA) was initially submitted and the NADA number; and the date on which the NADA was approved;

(iii) For a patent claiming a veterinary biological product, the date the authority to prepare an experimental biological product under the Virus-Serum-Toxin Act became effective; the date an application for a license was submitted under the Virus-Serum-Toxin Act; and the date the license issued;

(iv) For a patent claiming a food or color additive, the date a major health or environmental effects test on the additive was initiated and any available substantiation of that date; the date on which a petition for product approval under the Federal Food, Drug, and Cosmetic Act was initially submitted and the petition number; and the date on which the FDA published the **Federal Register** notice listing the additive for use;

(v) For a patent claiming a medical device, the effective date of the investigational device exemption (IDE) and the IDE number, if applicable, or the date on which the applicant began the first clinical investigation involving the device if no IDE was submitted and any available substantiation of that date; the date on which the application for product approval or notice of completion of a product development protocol under section 515 of the Federal Food, Drug, and Cosmetic Act was initially submitted and the number of the application or protocol; and the date on which the application was approved or the protocol declared to be completed.

* * * * *

(13) A statement that applicant acknowledges a duty to disclose to the Commissioner of Patents and Trademarks and the Secretary of Health and Human Services or the Secretary of Agriculture any information which is material to the determination of entitlement to the extension sought (see § 1.765);

* * * * *

5. Section 1.741 is amended by revising paragraphs (a)(2) and (a)(5) to read as follows:

§ 1.741 Filing date of the application.

(a) * * *

(2) An identification of each Federal statute under which regulatory review occurred.

* * * * *

(5) Sufficient information to enable the Commissioner to determine under 35 U.S.C. 156 subsections (a) and (b) the eligibility of a patent for extention and the rights that will be derived from the extension and information to enable the Commissioner and the Secretary of Health and Human Services or the Secretary of Agriculture to determine the length of the regulatory review period; and

* * * * *

6. Section 1.765 is amended by revising paragraph (a) to read as follows:

§ 1.765 Duty of disclosure in patent term extension proceedings.

(a) A duty of candor and good faith toward the Patent and Trademark Office and the Secretary of Health and Human Services or the Secretary of Agriculture rests on the patent owner or its agent, on each attorney or agent who represents the patent owner and on every other individual who is substantively involved on behalf of the patent owner in a patent term extension proceeding. All such individuals who are aware, or become aware, of material information adverse to a determination of entitlement to the extension sought, which has not been previously made of record in the patent term extension proceeding must bring such information to the attention of the Office of the Secretary, as appropriate, in accordance with paragraph (b) of this section, as soon as it is practical to do so after the individual becomes aware of the information. Information is material where there is a substantial likelihood that the Office of the Secretary would consider it important in determinations to be made in the patent term extension proceeding.

* * * * *

7. Section 1.775 is amended by revising the title and paragraphs (a), (b), (c), and (d) introductory text to read as follows:

§ 1.775 Calculation of patent term extension for a human drug, antibiotic drug or human biological product.

(a) If a determination is made pursuant to § 1.750 that a patent for a human drug, antibiotic drug or human biological product is eligible for extension, the term shall be extended by the time as calculated in days in the manner indicated by this section. The patent term extension will run from the original expiration date of the patent or any earlier date set by terminal disclaimer (§ 1.321).

(b) The term of the patent for a human drug, antibiotic drug or human biological product will be extended by the length of the regulatory review period for the product as determined by the Secretary of Health and Human Services, reduced as appropriate pursuant to paragraphs (d)(1) through (d)(6) of this section.

(c) The length of the regulatory review period for a human drug, antibiotic drug or human biological product will be determined by the Secretary of Health and Human Services. Under 35 U.S.C. 156(g)(1)(B), it is the sum of—

(1) The number of days in the period beginning on the date an exemption under subsection (i) of section 505 or subsection (d) of section 507 of the Federal Food, Drug, and Cosmetic Act became effective for the approved product and ending on the date the application was initially submitted for such product under those sections or under section 351 of the Public Health Service Act; and

(2) The number of days in the period beginning on the date the application was initially submitted for the approved product under section 351 of the Public Health Service Act, subsection (b) of section 505 or section 507 of the Federal Food, Drug, and Cosmetic Act and ending on the date such application was approved under such section.

(d) The term of the patent as extended for a human drug, antibiotic drug or human biological product will be determined by—

* * * * *

8. Section 1.778 is added to Subpart F to read as follows:

§ 1.778 Calculation of patent term extension for an animal drug product.

(a) If a determination is made pursuant to § 1.750 that a patent for an animal drug is eligible for extension, the term shall be extended by the time as calculated in days in the manner indicated by this section. The patent term extension will run from the original expiration date of the patent or any earlier date set by terminal disclaimer (§ 1.321).

(b) The term of the patent for an animal drug will be extended by the length of the regulatory review period for the drug as determined by the Secretary of Health and Human Services, reduced as appropriate pursuant to paragraphs (d)(1) through (d)(6) of this section.

(c) The length of the regulatory review period for an animal drug will be determined by the Secretary of Health and Human Services. Under 35 U.S.C. 156(g)(4)(B), it is the sum of—

(1) The number of days in the period beginning on the earlier of the date a major health or environmental effects test on the drug was initiated or the date an exemption under subsection (j) of section 512 of the Federal Food, Drug, and Cosmetic Act became effective for the approved animal drug and ending on the date an application was initially submitted for such animal drug under section 512 of the Federal Food, Drug, and Cosmetic Act; and

(2) The number of days in the period beginning on the date the application was initially submitted for the approved animal drug under subsection (b) of section 512 of the Federal Food, Drug, and Cosmetic Act and ending on the date such application was approved under such section.

(d) The term of the patent as extended for an animal drug will be determined by—

(1) Subtracting from the number of days determined by the Secretary of Health and Human Services to be in the regulatory review period:

(i) The number of days in the periods of paragraphs (c)(1) and (c)(2) of this section that were on and before the date on which the patent issued;

(ii) The number of days in the periods of paragraphs (c)(1) and (c)(2) of this section during which it is determined under 35 U.S.C. 156(d)(2)(B) by the Secretary of Health and Human Services that applicant did not act with due diligence;

(iii) One-half the number of days remaining in the period defined by paragraph (c)(1) of this section after that period is reduced in accordance with paragraphs (d)(1) (i) and (ii) of this section; half days will be ignored for purposes of subtraction;

(2) By adding the number of days determined in paragraph (d)(1) of this section to the original term of the patent as shortened by any terminal disclaimer;

(3) By adding 14 years to the date of approval of the application under section 512 of the Federal Food, Drug, and Cosmetic Act;

(4) By comparing the dates for the ends of the periods obtained pursuant to paragraphs (d)(2) and (d)(3) of this section with each other and selecting the earlier date;

(5) If the original patent was issued after November 16, 1988, by—

(i) Adding 5 years to the original expiration date of the patent or any earlier date set by terminal disclaimer; and

(ii) Comparing the dates obtained pursuant to paragraphs (d)(4) and (d)(5)(i) of this section with each other and selecting the earlier date;

(6) If the original patent was issued before November 16, 1988, and

(i) If no major health or environmental effects test on the drug was initiated and no request was submitted for an exemption under subsection (j) of section 512 of the Federal Food, Drug, and Cosmetic Act before November 16, 1988, by—

(A) Adding 5 years to the original expiration date of the patent or earlier date set by terminal disclaimer; and

(B) Comparing the dates obtained pursuant to paragraphs (d)(4) and (d)(6)(i)(A) of this section with each other and selecting the earlier date; or

(ii) If a major health or environmental effects test was initiated or a request for an exemption under subsection (j) of section 512 of the Federal Food, Drug, and Cosmetic Act was submitted before November 16, 1988, and the application for commercial marketing or use of the animal drug was not approved before November 16, 1988, by—

(A) Adding 3 years to the original expiration date of the patent or earlier date set by terminal disclaimer, and

(B) Comparing the dates obtained pursuant to paragraphs (d)(4) and (d)(6)(ii)(A) of this section with each other and selecting the earlier date.

9. Section 1.779 is added to Subpart F to read as follows:

§ 1.779 Calculation of patent term extension for a veterinary biological product.

(a) If a determination is made pursuant to § 1.750 that a patent for a veterinary biological product is eligible for extension, the term shall be extended by the time as calculated in days in the manner indicated by this section. The patent term extension will run from the original expiration date of the patent or any earlier date set by terminal disclaimer (§ 1.321).

(b) The term of the patent for a veterinary biological product will be extended by the length of the regulatory review period for the product as determined by the Secretary of Agriculture, reduced as appropriate pursuant to paragraphs (d)(1) through (d)(6) of this section.

(c) The length of the regulatory review period for a veterinary biological product will be determined by the Secretary of Agriculture. Under 35 U.S.C. 156(g)(5)(B), it is the sum of—

(1) The number of days in the period beginning on the date the authority to prepare an experimental biological product under the Virus-Serum-Toxin Act became effective and ending on the date an application for a license was submitted under the Virus-Serum-Toxin Act; and

(2) The number of days in the period beginning on the date an application for a license was initially submitted for approval under the Virus-Serum-Toxin Act and ending on the date such license was issued.

(d) The term of the patent as extended for a veterinary biological product will be determined by—

(1) Subtracting from the number of days determined by the Secretary of Agriculture to be in the regulatory review period:

(i) The number of days in the periods of paragraphs (c)(1) and (c)(2) of this section that were on and before the date on which the patent issued;

(ii) The number of days in the periods of paragraphs (c)(1) and (c)(2) of this section during which it is determined under 35 U.S.C. 156(d)(2)(B) by the Secretary of Agriculture that applicant did not act with due diligence;

(iii) One-half the number of days remaining in the period defined by paragraph (c)(1) of this section after that period is reduced in accordance with paragraphs (d)(1)(i) and (ii) of this section; half days will be ignored for purposes of subtraction;

(2) By adding the number of days determined in paragraph (d)(1) of this section to the original term of the patent as shortened by any terminal disclaimer;

(3) By adding 14 years to the date of the issuance of a license under the Virus-Serum-Toxin Act;

(4) By comparing the dates for the ends of the periods obtained pursuant to paragraphs (d)(2) and (d)(3) of this section with each other and selecting the earlier date;

(5) If the original patent was issued after November 16, 1988, by—

(i) Adding 5 years to the original expiration date of the patent or any earlier date set by terminal disclaimer; and

(ii) Comparing the dates obtained pursuant to paragraphs (d)(4) and (d)(5)(i) of this section with each other and selecting the earlier date;

(6) If the original patent was issued before November 16, 1988, and

(i) If no request for the authority to prepare an experimental biological product under the Virus-Serum-Toxin Act was submitted before November 16, 1988, by—

(A) Adding 5 years to the original expiration date of the patent or earlier date set by terminal disclaimer; and

(B) Comparing the dates obtained pursuant to paragraphs (d)(4) and (d)(6)(i)(A) of this section with each other and selecting the earlier date; or

(ii) If a request for the authority to prepare an experimental biological product under the Virus-Serum-Toxin Act was submitted before November 16, 1988, and the commercial marketing or use of the product was not approved before November 16, 1988, by—

(A) Adding 3 years to the original expiration date of the patent or earlier date set by terminal disclaimer; and

(B) Comparing the dates obtained pursuant to paragraphs (d)(4) and (d)(6)(ii)(A) of this section with each other and selecting the earlier date.

10. Section 1.785 is amended to revise paragraph (b) to read as follows:

§ 1.785 Multiple applications for extension of term of the same patent or of different patents for the same regulatory review period for a product.

* * * * *

(b) If more than one application for extension is filed by a single applicant which seeks the extension of the term of two or more patents based upon the same regulatory review period, and the applications or otherwise eligible for extension pursuant to the requirement of this subpart, in the absence of an election by applicant, the certificate of extension of patent term, if appropriate, will be issued upon the application for extension of the patent term having the earliest date of issuance of those patents for which extension is sought.

Date: May 31, 1989.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 89-16991 Filed 7-19-89; 8:45 am]

BILLING CODE 3510-16-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

Decrease in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) is decreasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans are also decreased. These decreases in interest rates are possible because of recent improvements in the availability of funds in various credit markets. The decrease in the interest rates will allow eligible veterans to obtain loans at a lower monthly cost.

EFFECTIVE DATE: July 17, 1989.

FOR FURTHER INFORMATION CONTACT: Mrs. Judy Caden, Loan Guaranty Service (264), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202-233-3042).

SUPPLEMENTARY INFORMATION: The Secretary is required by section 1812(f), title 38, United States Code, to establish maximum interest rates for manufactured home loans guaranteed by VA as he finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general decrease in interest rates charged on conventional manufactured home loans, and the decrease of other short-term and long-term interest rates—have shown that the manufactured home capital markets have improved. It is now possible to decrease the interest rates on manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans while still assuring an adequate supply of funds from lenders and investors to make these types of VA loans.

The Secretary is also required by section 1803(c), title 38, United States Code, to establish maximum interest rates for home and condominium loans including graduated payment mortgage loans, and loans for home improvement purposes. Market indicators similarly favor reductions in the maximum interest rates for these types of loans. These lower interest rates should assist more veterans in the purchase of homes and condominiums or to obtain improvement loans because of the decrease in the monthly loan payments for principal and interest.

Regulatory Flexibility Act/Executive Order 12291

For the reasons discussed in the May 7, 1981 **Federal Register**, (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to chapter 37 of Title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601-612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. VA finds that they are not "major rules" as defined in that Order. The existing process of informal consultation among representatives within the Executive Office of the President, OMB, VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgages credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured or direct loans would deny veterans the benefit of lower interest rates pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers, 64.113, 64.114, and 64.119)

These regulations are adopted under authority granted to the Secretary by sections 210(c), 1803(c)(1), 1811(d)(1) and 1812(f) and (g) of title 38, United States Code.

These decreases are accomplished by amending §§ 36.4212(a)(1), (2), and (3), and 36.4311(a), (b), and (c) and 36.4503(a), title 38, Code of Federal Regulations.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan programs—housing and community development, Manufactured Homes, Veterans.

Approved: July 14, 1989.

By direction of the Secretary.

Anthony J. Principi,

Deputy Secretary of Veterans Affairs.

38 CFR Part 36, Loan Guaranty, is amended as follows:

PART 36—[AMENDED]

1. In § 36.4212, paragraph (a) is revised to read as follows:

§ 36.4212 Interest rates and late charges.

(a) The interest rate charged the borrower on a loan guaranteed or insured pursuant to 38 U.S.C. 1812 may not exceed the following maxima except on loans guaranteed or insured pursuant to guaranty or insurance commitments issued by VA prior to the respective data:

(Authority: 38 U.S.C. 1812(f))

(1) Effective July 17, 1989, 12 percent simple interest per annum for a loan which finances the purchase of a manufactured home unit only.

(2) Effective July 17, 1989, 11½ percent simple interest per annum for a loan which finances the purchase of a lot only and the cost of necessary site preparation, if any.

(3) Effective July 17, 1989, 11½ percent simple interest per annum for a loan which will finance the simultaneous acquisition of a manufactured home and a lot and/or the site preparation necessary to make a lot acceptable as the site for the manufactured home.

* * * * *

2. In § 36.4311, paragraphs (a), (b), and (c) are revised as follows:

§ 36.4311 Interest rates.

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by VA which specify an interest rate in excess of 9½ per centum per annum, effective July 17, 1989, the interest rate on any home or condominium loan, other than a graduated payment mortgage, guaranteed or insured wholly or in part on or after such date may not exceed 9½ per centum per annum on the unpaid principal balance.

(Authority: 38 U.S.C. 1803(c)(1))

(b) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by VA which specify an interest rate in excess of 9¾ per centum per annum, effective July 17, 1989, the interest rate of any graduated payment mortgage loan guaranteed or insured wholly or in part on or after such date may not exceed 9¾ per centum per annum.

(Authority: 38 U.S.C. 1803(c)(1))

(c) Effective July 17, 1989, the interest rate on any loan solely for energy conservative improvements or other alterations, improvements or repairs, which is guaranteed or insured wholly or in part on or after such date may not exceed 11½ per centum per annum on the unpaid principal balance.

(Authority: 38 U.S.C. 1803(c)(1))

* * * * *

3. In § 36.4503, paragraph (a) is revised as follows:

§ 36.4503 Amount and amortization.

(a) The original principal amount of any loan made on or after October 1, 1980, shall not exceed an amount which bears the same ratio to $33,000 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to $27,500. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Except as to home improvement loans, loans made by VA shall bear interest at the rate of 9½ percent per annum. Loans solely for the purpose of energy conservation improvements or other alterations, improvements, or repairs shall bear interest at the rate of 11 percent per annum.

(Authority: 38 U.S.C. 1811(d)(1) and (2)(A))

* * * * *

[FR Doc. 89-17009 Filed 7-19-89; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6839]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of Eligible Communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Current effective map date
Region III—Regular Conversions			
Pennsylvania:			
Greensboro, borough of, Greens County	420477	Mar. 2, 1989, suspension withdrawn	Mar. 2, 1989.
Orwigsburg, borough of, Schuylkill County	421204	....do	Do.
Spruce Creek, township of, Huntingdon County	422621	....do	Do.
Union, township of, Huntingdon County	421704	....do	Do.
Region IV			
North Carolina: Hoke County, unincorporated areas	370397	....do	Do.
South Carolina: Lake View, town of, Dillon County	450066	....do	Do.
Region V			
Michigan: Nottawa, township of, St. Joseph County	260514	....do	Do.
Ohio: Shelby, city of, Richland County	390479	....do	Do.
Region III			
Pennsylvania:			
Clifford, township of, Susquehanna County	422077	Mar. 16, 1989 suspension withdrawn	Mar. 16, 1989.
Franklin, township of, Beaver County	421065	....do	Do.
Greenwood, township of, Columbia County	421551	....do	Do.
West Virginia:			
Richmond County, Richmond County	510310	....do	Do.
Paden City, city of, Tyler and Wetzel Counties	540196	....do	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Current effective map date
Pennsylvania: Mill Creek, borough of, Huntingdon County	420468	....do	Mar. 2, 1989.
Region IV			
South Carolina: Pawleys Island, town of, Georgetown County	450251	....do	Mar. 16, 1989.
Region VII			
Iowa: Clayton, city of, Clayton County	190072	....do	Do.
Arkansas: Arkansas County, unincorporated areas	050418	Apr. 5, 1989, Emerg	Aug. 16, 1977.
Louisiana: Varnado, village of, Washington Parish	220234	Apr. 5, 1989, Emerg.; Apr. 5, 1989, Reg	Feb. 17, 1989.
California: Avenal, city of, Kings County	065073	Apr. 5, 1989, Emerg.; Apr. 5, 1989, Reg	May 17, 1988.
Pennsylvania:			
Berlin, township of, Wayne County	422158	Jan. 23, 1976, Emerg.; July 15, 1988, Reg.; July 15, 1988, Susp.; Apr. 10, 1989, Rein.	July 15, 1988.
Sewickley Hills, borough of, Allegheny County	420072	Dec. 10, 1976, Emerg.; Sept. 1, 1986, Reg.; Sept. 1, 1986, Susp.; Apr. 11, 1989, Rein.	Sept. 1, 1986.
Greene, township of, Clinton County	421538	Oct. 14, 1975, Emerg.; Sept. 1, 1986, Reg.; Sept. 1, 1986, Susp.; Apr. 11, 1989, Rein.	Do.
Tennessee: Alcoa, city of, Blunt County	475421	Jan. 15, 1971, Emerg.; Jan. 8, 1972, Reg.; Feb. 4, 1988, Susp.; Apr. 12, 1989, Rein.	Apr. 15, 1977.
Idaho: Rathdrum, city of, Kootenai County	160187	Apr. 23, 1975, Emerg.; Sept. 28, 1984, Reg.; July 4, 1988, Susp.; Apr. 12, 1989, Rein.	Sept. 28, 1984.
Pennsylvania: Marion, township of, Beaver County	422249	Aug. 6, 1974, Emerg.; Mar. 2, 1989, Reg.; Mar. 2, 1989, Susp.; Apr. 14, 1989, Rein.	Mar. 2, 1989.
Georgia: Chattooga County, unincorporated areas	130036	Apr. 13, 1989, Emerg	Mar. 26, 1978.
Texas: Meadowlakes, city of, Burnet County [1]	481613	....do	Do.
Kentucky: Bullitt County, unincorporated areas [2]	210273	Apr. 11, 1989, Emerg	May 20, 1977.
Texas: Gaines County, unincorporated areas	481219	Apr. 19, 1989, Emerg	Do.
California: Alpine County, unincorporated areas	060632	Apr. 19, 1989, Emerg.; Apr. 19, 1989, Reg	Nov. 19, 1987.
Kentucky: Falmouth, city of, Pendleton County [2]	210189	Nov. 5, 1975, Emerg.; July 3, 1986, Reg.; July 3, 1986, Susp.; Apr. 12, 1989, Rein.	July 3, 1986.
Florida: Zolfo Spring, town of, Hardee County	120106	July 2, 1975, Emerg.; May 4, 1988, Reg.; May 4, 1988, Susp.; Apr. 21, 1989, Rein.	May 4, 1988.
Michigan:			
Coe, township of, Isabella County	[3] 260819	Apr. 24, 1989, Emerg	Do.
Isabella, township of, Isabella County	[3] 260820	....do	Do.
Nottawa, township of, Isabella County	[3] 260821	....do	Do.
Rolland, township of, Isabella County	260422	....do	Do.
Sherman, township of, Isabella County	[3] 260822	....do	Do.
North Dakota: Williams County, unincorporated areas	380146	....do	Do.
Kentucky: Carlisle County, unincorporated areas [2]	210042	Apr. 18, 1989, Emerg	July 27, 1977.
Michigan: Woodhaven, city of, Wayne County	260730	Apr. 24, 1989, Emerg.; Apr. 24, 1989, Reg	Feb. 5, 1986.
Kentucky:			
Hart County, [2] unincorporated areas	210257	Apr. 21, 1989, Emerg	July 8, 1977.
Versailles, city of, Woodford County	210231	....do	July 29, 1977.
Region I			
Maine: Wayne, town of, Kennebec County	230186	Apr. 3, 1989, suspension withdrawn	Apr. 3, 1989.
Region III			
Pennsylvania:			
Lenox, township of, Susquehanna County	422086	....do	Do.
Pine, township of, Columbia County	421556	....do	Do.
Adams, township of, Butler County	421415	Apr. 17, 1989, suspension withdrawn	Apr. 17, 1989
Callery, borough of, Butler County	420213	....do	Do.
Region IV			
Kentucky: Nicholasville, city of, Jessamine County	210126	....do	Do.
Region V			
Minnesota:			
Bigfork, city of, Itasca County	270201	....do	Do.
Isanti, city of, Isanti County	270199	....do	Do.
Ohio:			
Fairfield County, unincorporated areas	390158	....do	Do.
Cumberland, village of, Guernsey County	390824	....do	Do.
Region VIII			
Colorado:			
Arapahoe County, unincorporated areas	080011	....do	Do.
Cherry Hills Village, city of, Arapahoe County	080013	....do	Do.
Columbine Valley, town of, Arapahoe County	080014	....do	Do.
De Beque, town of, Mesa County	080307	....do	Do.
Englewood, city of, Arapahoe County	085074	....do	Do.
Greenwood Village, city of, Arapahoe County	080195	....do	Do.
Sheridan, city of, Arapahoe County	080018	....do	Do.
Region IX			
Arizona: Maricopa County, unincorporated areas	040037	....do	Do.
Region X			
Idaho: McCall, city of, Valley County	160175	....do	Do.
Oregon: Mitchell, city of, Wheeler County	410247	....do	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of Flood insurance in community	Current effective map date
Arkansas: Perryville, city of, Perry County	050362	Mar. 12, 1976, Emerg.; Apr. 19, 1983, Reg.; Aug. 16, 1988, Susp.; May 1, 1989, Rein.	Apr. 19, 1983.
New Mexico: Espanola, city of, Santa Fe/Rio Arriba Counties	350052	Apr. 4, 1975, Emerg.; Feb. 19, 1986, Reg.; Aug. 16, 1988, Susp.; May 1, 1989, Rein.	Feb. 19, 1986.
Indiana: Fayette County, unincorporated areas	180417	Apr. 11, 1975, Emerg.; Sept. 1, 1988, Reg.; Sept. 1, 1988, Susp.; May 2, 1989, Rein.	Sept. 1, 1988.
Texas: Bayview, town of, Cameron County	480102	Oct. 7, 1975, Emerg.; Sept. 1, 1981, Reg.; Jan. 16, 1989, Susp.; May 8, 1989, Rein.	Do.
Kentucky: Washington County, unincorporated areas	210365	May 5, 1989, Emerg	Do.
Ohio: Port Jefferson, village of, Shelby County	390506	May 14, 1975, Emerg.; Sept. 2, 1988, Reg.; Sept. 2, 1988, Susp.; May 15, 1989, Rein.	Sept. 2, 1988.
Indiana: Johnson County, unincorporated areas	180111	July 24, 1975, Emerg.; Mar. 2, 1989, Reg.; Mar. 2, 1989, Susp.; May 15, 1989, Rein.	Mar. 2, 1989.
South Carolina: Darlington County, unincorporated areas	450060	May 15, 1989, Emerg	June 23, 1978
Tennessee: Carroll County, unincorporated areas	470222	....do	Nov. 4, 1977.
Texas: Leakey, city of, Real County	480980	....do	May 13, 1977.
Arkansas: Jasper, city of, Newton County	050160	July 10, 1975, Emerg.; Feb. 5, 1986, Reg.; Aug. 16, 1988, Susp.; May 16, 1989, Rein.	Feb. 5, 1986.
Texas: Newton County, unincorporated areas	480499	June 4, 1975, Emerg.; Apr. 1, 1987, Reg.; Sept. 2, 1988, Susp.; May 16, 1989, Rein.	Apr. 1, 1987.
Maryland: Walkersville, town of, Frederick County	240032	June 12, 1974, Emerg.; Sept. 30, 1980, Reg.; May 4, 1989, Susp.; May 16, 1989, Rein.	Sept. 30, 1980.
Pennsylvania:			
Lathrop, township of, Susquehanna County	422065	July 30, 1980, Emerg.; Apr. 3, 1989, Reg.; Apr. 3, 1989, Susp.; May 16, 1989, Rein.	Apr. 3, 1989.
Mars, borough of, Butler County	420220	June 10, 1975, Emerg.; May 4, 1989, Reg.; May 4, 1989, Susp.; May 16, 1989, Rein.	May 4, 1989.
Nebraska: Tilden, city of, Antelope County	310401	Dec. 4, 1974, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.; May 19, 1989, Rein.	Sept. 4, 1987.
Missouri: Springfield, city of, Greene County	290149	Apr. 12, 1974, Emerg.; Sept. 4, 1978, Reg.; Sept. 4, 1978, Susp.; May 16, 1989, Rein.	Do.
Pennsylvania:			
Paradise, township of, Monroe County	421891	Jan. 30, 1980, Emerg.; Sept. 2, 1988, Reg.; Sept. 2, 1988, Susp.; May 22, 1989, Rein.	Sept. 2, 1988.
Pleasantville, borough of, Bedford County	421327	Mar. 8, 1977, Emerg.; Sept. 30, 1988, Reg.; Sept. 30, 1988, Susp.; May 22, 1989, Rein.	Sept. 30, 1988.
Lincoln, township of, Bedford County	421344	Aug. 21, 1975, Emerg.; Sept. 30, 1988, Reg.; Sept. 30, 1988, Susp.; May 22, 1989, Rein.	Do.
Illinois: Farmer City, city of, Dewitt County	170618	May 22, 1989, Emerg	Mar. 21, 1975.
New York: Centre Island, village of, Nassau County	360461	Aug. 19, 1975, Emerg.; Oct. 16, 1983, Reg.; Sept. 16, 1988, Susp.; May 24, 1989, Rein.	Oct. 16, 1983.
Georgia: Dade County, unincorporated areas	130246	Aug. 6, 1974, Emerg.; May 17, 1989, Reg.; May 17, 1989, Susp.; May 19, 1989, Rein.	May 17, 1989.
Minnesota: Koochiching County, unincorporated areas	270233	July 1, 1974, Emerg.; June 1, 1988, Reg.; May 1, 1989, Susp.; May 30, 1989, Rein.	June 1, 1988.
Missouri: Kimmswick, city of, Jefferson County	290193	Apr. 15, 1974, Emerg.; Jan. 6, 1982, Reg.; Jan. 6, 1982, Susp.; May 30, 1989, Rein.	Jan. 6, 1982.
Maryland: Harford County, unincorporated areas	240040	May 5, 1972, Emerg.; Mar. 2, 1983, Reg.; May 4, 1989, Susp.; May 30, 1989, Rein.	May 17, 1986.
Virginia: Madison County, unincorporated areas	510094	Aug. 9, 1974; Emerg.; Apr. 3, 1989, Reg.; Apr. 3, 1989, Susp.; May 31, 1989, Rein.	Apr. 3, 1989.
Pennsylvania: Auburn, borough of, Schuylkill County	420766	July 29, 1975, Emerg.; May 17, 1989, Reg.; May 17, 1989, Susp.; May 31, 1989, Rein.	May 17, 1989.
Texas: Marion County; unincorporated areas	[3] 481630	May 25, 1989; Emerg	Do.
Region VIII—Minimal Conversions			
Colorado: Bent County; unincorporated areas	080271	May 1, 1989, suspension withdrawn	May 1, 1989.
Region I—Regular Conversions			
Maine: Rockport, town of, Knox County	230077	May 4, 1989, suspension withdrawn	May 4, 1989.
New Hampshire:			
Northumberland, town of, Coos County	330036	....do	Do.
Tuftonboro, town of, Carroll County	330234	....do	Do.
Vermont:			
Brighton, town of, Essex County	500205	....do	Do.
Reading, town of, Windsor County	500152	....do	Do.
Region II			
New York: Western, town of, Oneida County	360564	....do	Do.
Region III			
Pennsylvania:			
Greenwood, township of, Columbia County	421551	....do	Mar. 16, 1989.
Harmony, borough of, Butler County	420217	....do	May 4, 1989.
South Manheim, township of, Schuylkill County	422022	....do	Do.
Valencia, borough of, Butler County	420223	....do	Do.
Region V			
Illinois: Hanover, village of, Jo Daviess County	170755	....do	Do.
Michigan:			
Allegan, city of, Allegan County	260003	....do	Do.
Garfield, township of, Newaygo County	260469	....do	Do.
Bangor, city of, Van Buren County	260529	....do	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of Flood insurance in community	Current effective map date
Ashland, township of, Newaygo County	260694	....do	Do.
Wisconsin:			
Augusta, city of, Eau Claire County	550127	....do	Do.
Ellsworth, village of, Pierce County	550325	....do	Do.
Woodville, village of, St. Croix County	550390	....do	Do.
Region VII			
Kansas: Ellsworth, city of, Ellsworth County	200098	....do	Do.
Region VIII			
Wyoming: Teton County, unincorporated areas	560094	....do	Do.
Region X			
Oregon: Fossil, city of, Wheeler County	410246	....do	Do.
Region I			
Maine: South Thomaston, town of, Knox County	230078	May 17, 1989, Suspension withdrawn	May 17, 1989.
New Hampshire:			
Colebrook, town of, Coos County	330031	....do	Do.
Greenland, town of, Rockingham County	330210	....do	Do.
Littleton, town of, Grafton County	330064	....do	Do.
Stratham, town of, Rockingham County	330197	....do	Do.
Wolfeboro, town of, Carroll County	330239	....do	Do.
Region III			
Pennsylvania:			
Cass, township of, Schuylkill County	422000	....do	Do.
Hop Bottom, borough of, Susquehanna County	420812	....do	Do.
Liberty, township of, Susquehanna County	422087	....do	Do.
West Virginia: Kenova, city of, Wayne County	540221	....do	Do.
Region IV			
Georgia:			
Upson County, unincorporated areas	130407	....do	Do.
Thomaston, city of, Upson County	130408	....do	Do.
Region V			
Michigan: Au Gres, township of, Arenac County	260013	....do	Do.
Ohio:			
Apple Creek, village of, Wayne County	390642	....do	Do.
Wayne County, unincorporated areas	390574	....do	Do.
Lancaster, city of, Fairfield County	390161	....do	April 17, 1989.
Region VII			
Iowa: Elliott, city of, Montgomery County	190209	....do	May 17, 1989.
Region V—Minimal Conversions			
Michigan: Ravenna, township of, Muskegon County	260731	....do	Do.
Minnesota: Waite Park, city of, Stearns County	270461	....do	Do.
Region III—Minimal Conversions			
Pennsylvania:			
Addison, township of, Somerset County	422508	June 1, 1989, suspension withdrawn	June 1, 1989.
Hopewell, township of, Cumberland County	421581	....do	Do.
Wellersburg, borough of, Somerset County	422526	....do	Do.
Virginia: Louisa County, unincorporated areas	510092	....do	Do.
Region II—Minimal Conversions			
New York:			
Fowler, town of, St. Lawrence County	360698	June 5, 1989, suspension withdrawn	June 5, 1989.
Philadelphia, town of, Jefferson County	360347	....do	Do.
Region IV			
North Carolina: Elon College, town of, Alamance County	370411	....do	Do.
Region V			
Michigan:			
Lake, township of, Benzie County	260030	....do	Do.
Wayland, city of, Allegan County	260744	....do	Do.
Region I—Regular Conversions			
Maine:			
China, town of, Kennebec County	230235	....do	Do.
Eliot, town of, York County	230149	....do	Do.
Kingfield, town of, Franklin County	230058	....do	Do.
New Hampshire: Newfields, town of, Rockingham County	330228	....do	Do.
Vermont: Newfane, town and village of, Windham County	500133	....do	Do.
Massachusetts.:			
Andover, town of, Essex County	250076	....do	Do.
Dracut, town of, Middlesex County	250190	....do	Do.
Needham, town of, Norfolk County	255215	....do	Do.
Weymouth, town of, Norfolk County	250257	....do	Do.
Royalton town of, Windsor County	500153	....do	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Current effective map date
Region III			
Pennsylvania:			
Benner, township of, Centre County	421460	do	Do.
Curtin, township of, Centre County	421462	do	Do.
Harris, township of Centre County	420262	do	Do.
Liberty, township of, Centre County	421196	do	Do.
Millheim, borough of, Centre County	420265	do	Do.
Region VI			
Texas:			
Bailey's Prairie, village of, Brazoria County	480065	do	Do.
Brazoria, city of, Brazoria County	480066	do	Do.
Oyster Creek, village of, Brazoria County	481255	do	Do.
West Columbia, city of, Brazoria County	480081	do	Do.
Region VIII			
Colorado: Georgetown, town of, Clear Creek County	080035	do	Do.
Region X			
Washington: Chelan County, unincorporated areas	530015	do	Do.
Region I			
Massachusetts:			
Wenham, town of, Essex County	250107	June 19, 1989, Suspension Withdrawn	June 19, 1989.
Worthington, town of, Hampshire County	250175	do	Do.
Maine:			
Owl's Head, town of, Knox County	230075	do	Do.
Bristol, town of, Lincoln County	230215	do	Do.
New Hampshire: Gilford, town of, Belknap County	330004	do	Do.
Vermont:			
Plymouth, town of, Windsor County	500151	do	Do.
Winhall, town of, Bennington County	500022	do	Do.
Region III			
Pennsylvania:			
Albion, borough of, Erie County	422409	do	Do.
Carbon, township of, Huntingdon County	421685	do	Do.
Center, township of, Butler County	421417	do	Do.
Cranesville, borough of, Erie County	421356	do	Do.
Dean, township of, Cambria County	421440	do	Do.
East Providence, township of, Bedford County	421336	do	Do.
Elder, township of, Cambria County	422592	do	Do.
Elk Creek, township of, Erie County	422412	do	Do.
Forward, township of, Butler County	421419	do	Do.
Lehman, township of, Pike County	421967	do	Do.
Snow Shoe, township of, Centre County	421198	do	Do.
Maryland: Brookeville, town of, Montgomery County	240166	do	Do.
Region IV			
Mississippi: Iuka, city of, Tishomingo County	280266	do	Do.
Region V			
Wisconsin: Sussex, village of, Waukesha County	550490	do	Do.
Region VIII			
Idaho: Elmore County, unincorporated areas	160212	do	Do.
Region V—Minimal Conversions			
Michigan: Crystal Lake, township of, Benzie County	260026	do	Do.
Minnesota: Winsted, city of, McLeod County	270661	do	Do.
Region III—Regular Conversions			
Pennsylvania:			
Beccaria, township of, Clearfield County	421512	July 4, 1989, Suspension Withdrawn	July 4, 1989.
Harrison, township of, Bedford County	421338	do	Do.
Little Meadows, borough of, Susquehanna County	420814	do	Do.
Mahaffey, borough of, Clearfield County	420310	do	Do.
North Franklin, township of, Washington County	422150	do	Do.
Sugarloaf, township of, Columbia County	421558	do	Do.
West Providence, township of, Bedford County	421353	do	Do.
Virginia: Northumberland County, unincorporated areas	510107	do	Do.
Region IV			
Alabama:			
Daleville, city of, Dale County	010061	do	Do.
Pell City, city of, St. Clair County	010189	do	Do.
Region V			
Minnesota: Blue Earth, city of, Faribault County	270116	do	Do.
Region VII			
Kansas: Bazine, city of, Ness County	200243	do	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Current effective map date
Region VIII			
South Dakota: Mountain View, town of, Uinta County	560092	do	Do.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.
[1] The City of Meadowlakes has adopted by reference Burnet County's Flood Hazard Boundary Map (FHBM) that became effective on *November 8, 1977.*
[2] Declared Disaster Areas.
[3] New.

Issued: July 13, 1989.

Harold T. Duryee,
Administrator, Federal Insurance Administration.

[FR Doc. 89-16905 Filed 7-19-89; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-462; RM-6432]

Radio Broadcasting Services; Central, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of C.N. Morris, allots Channel 237C2 to Central, New Mexico, as the community's first local FM service. Channel 237C2 can be allotted to Central in compliance with the Commission's minimum distance separation requirements without a site restriction. The coordinates for this allotment are North Latitude 32-46-30 and West Longitude 108-09-18. Mexican concurrence has been received. With this action, this proceeding is terminated.

DATES: Effective August 28, 1989. The window period for filing applications will open on August 29, 1989, and close on September 28, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-462, adopted June 26, 1989, and released July 12, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM, Table of Allotments is amended by adding the following entry: Central, New Mexico, Channel 237C2.

Federal Communications Commission.

Karl A. Kensinger,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-16955 Filed 7-19-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF LABOR

48 CFR Part 2919

Amendment to Department of Labor Acquisition Regulation

AGENCY: Department of Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor (DOL) hereby amends Part 2919 of the Department of Labor Acquisition Regulation (DOLAR) to make editorial changes and delete material that duplicates existing Federal Acquisition Regulation (FAR) coverage.

DATE: The effective date of this rule is July 20, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Adam W. Hare. Telephone: (202) 523-9174.

SUPPLEMENTARY INFORMATION: The Department of Labor (DOL) has determined that this rule concerns agency procedures. These procedures are required to conform the DOLAR to existing FAR requirements. The purpose of this rule is to lower the dollar threshold from $25,000 to $10,000 for prior review of solicitations by the Small Business Administration Procurement Center Representative to conform with existing FAR requirements and to delete duplicative material regarding synopsizing of proposed procurement actions already contained in the FAR. The DOL has determined that this rule does not constitute a significant revision since it deletes duplicative materials and only impacts on internal DOL components. As a rule of agency procedure, this amendment is being issued as a final rule without inviting public comments (see 5 U.S.C. 553 (b)(A) and (d)(3)).

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act: The DOL has determined that this rule is not a major rule under Executive Order 12291 and certifies that it will not have a significant economic affect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), since no new requirements are being imposed. This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et. seq.

List of Subjects in 48 CFR Chapter 29

Government procurement.

For the reasons set out in the preamble, Chapter 29 of Title 48 of the Code of Federal Regulations is amended as set forth below.

Thomas C. Komarek,
Assistant Secretary for Administration and Management.

48 CFR Chapter 29 is hereby amended as follows:

PART 2919—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

1. The authority citation for Part 2919 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

2919.202-1 [Removed]

2. Part 2919 is amended by removing 2919.202-1.

[FR Doc. 89-16916 Filed 7-19-89; 8:45 am]

BILLING CODE 4510-23-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 90515-9115]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA announces the three-day closure of the commercial salmon fishery in the exclusive economic zone (EEZ) from Cape Falcon to Cape Arago, Oregon, at midnight, July 14, 1989, to assess coho salmon landings. The Director, Northwest Region, NMFS (Regional Director), has determined that 75 percent of the commercial catch ceiling of 349,000 coho salmon for the subarea south of Cascade Head, Oregon, will be reached by that time. The closure is necessary to conform to the preseason announcement of 1989 management measures. This action is intended to ensure conservation of coho salmon.

EFFECTIVE DATE: Closure of the EEZ from Cape Falcon to Cape Arago, to commercial salmon fishing is effective at 2400 hours local time, July 14, 1989. The fishery will reopen at 0001 hours local time July 18, 1989. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23 (as amended May 1, 1989). Comments must be received by July 31, 1989.

ADDRESS: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way N.E., BIN C15700, Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries are published at 50 CFR Part 661. In its preseason notice of 1989 management measures (54 FR 19798, May 8, 1989), NOAA announced that "When the STT [Salmon Technical Team] estimates 75 percent of the coho catch ceiling south of Cascade Head has been reached, the season between Cape Falcon and Punta Gorda will close for 3 days to assess whether landing limits or ratio fisheries should be continued or imposed." (Table 1, note C-7; 54 FR 19798).

The 1989 commercial catch ceiling for the subarea south of Cascade Head, Oregon, is 349,000 coho salmon. Based on the best available information, the commercial fishery catch south of Cascade Head is projected to reach 75 percent of the subarea coho catch ceiling by midnight, July 14, 1989. The season between Cape Arago, Oregon, and Punta Gorda, California, will already be closed to commercial fishing when this action must take place. Therefore, the season between Cape Falcon and Cape Arago, Oregon, must be closed for three days to evaluate coho salmon landings.

Consequently, NOAA issues this notice to close the commercial salmon fishery in the EEZ from Cape Falcon to Cape Arago, from 2400 hours local time, July 14, 1989, to 0001 hours local time, July 18, 1989. This notice does not apply to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Pacific Fishery Management Council and the Oregon Department of Fish and Wildlife regarding a closure of the commercial fishery between Cape Falcon and Cape Arago, Oregon. The State of Oregon will manage the commercial fishery in State waters adjacent to this area of the EEZ in accordance with this federal action.

In accordance with the revised inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen was given prior to 2400 hours local time, July 14, 1989, by telephone hotline number (206) 526-6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz. NOAA issues this notice of the three-day closure of the commercial salmon fishery in the EEZ from Cape Falcon to Cape Arago, Oregon, which is effective from 2400 hours local time, July 14, 1989, to 0001 hours local time, July 18, 1989.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after filing with the Office of the Federal Register, through July 31, 1989.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 14, 1989.

Joe P. Clem,

Acting Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-16980 Filed 7-14-89; 5:04 pm]

BILLING CODE 3510-22-M

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50 CFR Part 675

[Docket No. 81132-9033]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that, by July 14, 1989, 12,000 red king crabs will have been taken as bycatch in the trawl fishery for Pacific cod in the shallow water area between 160°00′ and 162°00′ W. longitude commonly known as the "Port Moller area." Therefore, the Secretary of Commerce (Secretary) is prohibiting any further fishing with trawl gear in that area. This action is necessary to prevent excessive bycatch of red king crabs in the trawl fishery for groundfish in an area of particular importance to the red king crab stock. This action is intended to carry out the objectives of an emergency interim rule currently in effect to control the bycatch of prohibited species in the trawl fishery for groundfish.

EFFECTIVE DATE: July 14, 1989 at 1800 Alaska Daylight Time.

FOR FURTHER INFORMATION CONTACT: Jay J. C. Ginter (Fishery Management Biologist), NMFS Alaska Region, P.O. Box 21668, Juneau, Alaska 99802-1668, telephone 907-586-7229.

SUPPLEMENTARY INFORMATION: The Secretary promulgated an emergency interim rule effective March 15, 1989 for a period of 90 days (54 FR 11376, March 20, 1989, corrected at 54 FR 12989, March 29, 1989) to control the bycatch of certain species of crab and Pacific halibut which are prohibited species in the groundfish fisheries in the Bering Sea and Aleutian Islands (BSAI) Area. The effective date of this emergency interim rule was extended for an additional 90-day period until

September 11, 1989 (54 FR 25279, June 14, 1989).

The principal effect of the emergency interim rule was to prohibit fishing with trawl gear at any time in that part of the BSAI area that is south of 158°00′ N. latitude and between 160°00′ and 163°00′ W. longitude (§ 675.22(a)). The purpose of this prohibition on trawl fishing is to prevent the excessive bycatch of specified prohibited species while fishing for groundfish species with trawl gear. The area closed is of particular importance to the red king crab stock which is currently at an historically low level of abundance.

The emergency interim rule provides the Secretary with discretion to allow trawl fishing for Pacific cod in that part of the closed area between 160°00′ and 162°00′ W. longitude and south of a straight line connecting the coordinates 56°43′ N. latitude, 160°00′ W. longitude and 56°00′ N. latitude, 162°00′ W. longitude (§ 675.22(b)). Due to the proximity of Port Moller, Alaska, this excepted area has become known as the "Port Moller area." The rule provides that two conditions must be satisfied by trawl fishing operations in the "Port Moller area" if the Secretary allows trawl fishing in the area for Pacific cod. These conditions are (a) that fishing is conducted in full compliance with a scientific data collection and monitoring (observer) program established by the Regional Director, and (b) that the total bycatch of red king crab does not exeed 12,000 animals.

The Secretary exercised this discretion to allow trawl fishing in the otherwise closed "Port Moller area" beginning May 25, 1989. Since that date, 11 fishing vessels have been authorized by the Regional Director to operate trawl gear within this area. Based on data collected under the observer program and analysis of those data by NMFS scientists, the Regional Director has determined that trawl fishing in the "Port Moller area" will have taken 12,000 red king crabs as bycatch on July 14, 1989. Continued fishing with trawl gear in this area will likely result in a red king crab bycatch in excess of 12,000 animals. Therefore, the Secretary, by this notice and direct notification to the authorized fishing operations, withdraws allowance to fish with trawl gear in the "Port Moller area".

Classification

This action is taken under § 675.22 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: July 14, 1989.

Joseph P. Clem,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-16979 Filed 7-14-89; 5:04 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 138
Thursday, July 20, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 917

[Docket No. FV-89-083]

Proposed Expenses and Assessment Rate for Marketing Order Covering Fresh Pears, Plums, and Peaches Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate for the Pear Commodity Committee (Committee) established under Marketing Order 917 for the 1989-90 fiscal year. The proposal is needed for the Committee to incur reasonable operating expenses during the 1989-90 fiscal year and to collect funds during that year to pay those expenses. This would facilitate program operations. Funds to administer this program are derived primarily from assessments on handlers.

DATES: Comments must be received by July 31, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, Room 2085-S, Washington, DC 20090-6456. Comments should reference the docket number, date, and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: George Kelhart, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone: (202) 475-3919.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 917 (7 CFR Part 917) regulating the handling of fresh pears, plums, and peaches grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 45 handlers of California pears under this marketing order, and approximately 300 pear producers in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

Marketing Order 917 requires that the assessment rate for a particular fiscal year shall apply to all assessable pears handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the U.S. Department of Agriculture for approval. The members of the Committee are handlers and producers of the regulated commodity. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local areas, and are thus in a position to formulate an appropriate budget. The 1989-90 budget was formulated and discussed in public meetings. Thus, all directly affected persons had an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of the commodity (e.g., pounds, tons, boxes, cartons, etc.). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. Recommended budgets and rates of assessment are usually acted upon by the Committee before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the Committee will have authority to incur reasonable expenses and have funds to pay their expenses.

The Committee met June 28, 1989, and unanimously recommended 1989-90 fiscal year expenditures of $912,390 and an assessment rate of $0.22 per 36 pound carton or equivalent of assessable pears shipped under M.O. 917. For comparison, 1988-89 fiscal year expenditures were $698,719 and the assessment rate was $0.22 per carton or equivalent.

The major expenditure item this year is $733,800 for advertising, promotion, and food safety compared to $556,737 in 1988-89. The remaining expenses, which are primarily for program administration, are budgeted at about last year's amounts. A total of $10,000 is included for uncollected assessment accounts.

Estimated total income for 1989-90 would amount to $800,060, including assessment income of $786,060 based on shipments of 3,573,000 cartons of fresh pears, $2,000 from the California Department of Food and Agriculture, and $12,000 from other sources such as interest earned on the reserve fund. The reserve fund of $249,095 would be sufficient to cover the anticipated deficit.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approvals for the pear program need to be expedited so the committee has authority to incur reasonable expenses and has sufficient funds to pay its expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 917

Marketing agreements and orders, Pears, Plums, Peaches and California.

For the reasons set forth in the preamble, it is proposed that § 917.253 be added as follows:

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 917 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. New § 917.253, is added to read as follows:

§ 917.253 Expenses and assessment rate.

Expenses of $912,390 by the Pear Commodity Committee are authorized, and an assessment rate of $0.22 per 36 pound box or equivalent of assessable pears is established, for the fiscal year ending February 28, 1990. Unexpended funds may be carried over as a reserve.

Dated: July 17, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-17058 Filed 7-19-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 926

[Docket No. FV-89-078]

California Tokay Grapes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order 926 for the 1989-90 fiscal period. Authorization of this budget would allow the Tokay Industry Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program would be derived from assessments on handlers.

DATES: Comments must be received by July 31, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone 202-447-5331.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 93 and Marketing Order No. 926 (7 CFR Part 926), regulating the handling of Tokay grapes grown in San Joaquin County, California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 10 handlers of California Tokay grapes under this marketing order, and approximately 20 California Tokay grape producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The budget of expenses for the 1989-90 fiscal year was prepared by the Tokay Industry Committee (committee), the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of grapes. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in public meetings. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected shipments of Tokay grapes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on March 21 and June 19, 1989, and unanimously recommended a 1989-90 budget of $13,575. This year's budget is $59,550 less than last year's due to decreases in most expense items. The most significant reductions are for market development activities and salaries, which together account for savings of $52,100. The committee also recommended an assessment rate of $0.06 per 23-pound lug, down from last year's rate of $0.175. This rate, when applied to anticipated shipments of 200,000 lugs, would yield $12,000 in assessment revenue which, when added to $1,575 from reserve funds, would be adequate to cover budgeted expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1989 shipping season begins in August, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable Tokay grapes handled during the fiscal period. In addition, handlers are aware of this action which was recommended

by the committee at public meetings. Therefore, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for this program needs to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 926

Marketing agreements and orders, Tokay grapes (California).

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 926 be amended as follows:

PART 926—TOKAY GRAPES GROWN IN SAN JOAQUIN COUNTY, CALIFORNIA

1. The authority citation for 7 CFR Part 926 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new section 926–228 is added to read as follows:

§ 926.228 Expenses and assessment rate.

Expenses of $13,575 by the Tokay Industry Committee are authorized and an assessment rate of $0.06 per 23-pound container of grapes is established for the fiscal year ending March 31, 1990. Unexpended funds may be carried over as a reserve.

Dated: July 17, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–17057 Filed 7–19–89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 948

[Docket No. FV–89–073]

Irish Potatoes Grown in Colorado Area II; Proposed Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order 948 for the 1989–90 fiscal period. Authorization of this budget would enable the Colorado Potato Administrative Committee, San Luis Valley Office (Area II) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program would be derived from assessments on handlers.

DATES: Comments must be received by July 31, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–5331.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 97 and Marketing Order No. 948 (7 CFR Part 948) regulating the handling of Irish potatoes grown in Colorado. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 handlers of Colorado Area II potatoes under this marketing order, and approximately 290 potato producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The budget of expenses for the 1989–90 fiscal year was prepared by the Colorado Potato Administrative Committee, San Luis Valley Office (Area II) (committee), the agency responsible for local administration of the order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of Colorado Area II potatoes. They are familiar with the committee's needs and the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directed affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of potatoes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on June 15, 1989, and unanimously recommended a 1989–90 budget of $50,477 and an assessment rate of $0.004 per hundredweight. The proposed assessment rate is up from last year's rate of $0.0035. The proposed budget is $6,925 more than last year's due to increases in expenditures for additional staff, compliance, employee benefits, insurance and office expenses. The recommended assessment rate, when applied to anticipated fresh market potato shipments of 11,800,000 hundredweight, would yield $47,200 in assessment revenue which, when added to $3,277 from reserve funds, would be adequate to cover budgeted expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses. The 1989–90 fiscal period begins on September 1, 1989, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for this program needs to be expedited. The committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 948

Marketing agreements and orders, Potatoes, Colorado.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 948 be amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR Part 948 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 948.203 is added to read as follows:

§ 948.203 Expenses and assessment rate.

Expenses of $50,477 by the Colorado Potato Administrative Committee, San Luis Valley Office (Area II) are authorized, and an assessment rate of $0.004 per hundredweight of potatoes is established for the fiscal period ending August 31, 1990. Unexpended funds may be carried over as a reserve.

Dated: July 17, 1989.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–17059 Filed 7–19–89; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1446

[Amdt. 4]

Peanut Warehouse Storage Loans and Handler Operations for the 1986 Through 1990 Crops

AGENCY: Commodity Credit Corporation, USDA

ACTION: Proposed rule.

SUMMARY: This notice proposes amending regulations for the 1986–90 crops of peanuts codified in 7 CFR Part 1446 with regard to the "shrink" adjustment for handlers operating under the nonphysical supervision provisions of the regulations. This rule proposes, for the 1989 and 1990 crops, to allow a "shrink" adjustment for the export obligation for such handlers with respect to "contract additional peanuts" of 4.0 percent if the handler agrees to abide by restrictions on handling and use of certain "other edible quality" (OEQ) peanuts as may be imposed by the Executive Vice President of the Commodity Credit Corporation to comport with common industry practice. Handlers choosing nonphysical supervision who do not agree to restrictions on use or who do not comply with the agreed-to restricted use will be allowed a 0.5 percent shrink adjustment.

DATES: To be assured of consideration, comments must be submitted so as to be received on or before August 10, 1989.

ADDRESSES: Send comments to the Director, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013. All written submissions made pursuant to this notice will be made available for public inspection in Room 5750, South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: David L. Kincannon, Peanut Operations Branch, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone 202–382–0152.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures, Executive Order 12291, and Secretary's Memorandum No. 1512–1, and has been classified "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, industries, Federal, State or local government agencies, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The information collection requirements contained in this regulation and information requests authorized by this regulation have been reviewed and approved by the Office of Management and Budget (OMB) under OMB Number 0560–0024.

The title and number of the Federal assistance program to which this rule applies are: Title—Commodity Loans and Purchases, Number—10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and County Officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This proposed rule would amend, for the 1989 and 1990 peanut crops, provisions of 7 CFR 1446.138. The 1989 crop marketing year runs from August 1, 1989, through July 31, 1990. So that the final rule may allow, to the extent practicable, for uniform 1989 crop marketing, it has been determined that the comment period for this proposed rule should be limited to 21 days.

Background

The regulations at 7 CFR 1446.126 permit a peanut handler to choose between "physical" and "nonphysical" supervision for disposition of contract additional peanuts. For handlers choosing nonphysical supervision, the regulations at 7 CFR 1446.138 provide a "shrink" allowance for determining the handler's export obligation with respect to contract additional peanuts. For handlers operating under physical supervision, the regulations at 7 CFR 1446.130 permit a shrink adjustment ranging from 3.0 to 4.0 percent, depending on the date of delivery from storage and on the type of peanuts, to compensate for the loss in value due to "shrink" (loss of moisture, breakage and other damage) during commingled storage of contract additional, loan, and quota commercial peanuts. Subject to certain restrictions, when the nonphysical supervision provision was added for the 1986 through 1990 crops handlers were no longer required to handle, export, or crush lots identified as contract additional peanuts under physical supervision. For a handler operating under nonphysical supervision, the handler's export obligation is established based on the total kernel content (TKC) of the peanuts purchased as contract additional peanuts. The TKC export obligation is established at time of purchase when the peanuts are delivered to a handler operating under nonphysical supervision as opposed to when the peanuts are graded out of

storage as is the case for physical supervision. The TKC export obligation is broken out by kernel type for sound mature kernels (SMK), sound split (SS) kernels, and all other (AO) kernels. The provisions of the Agricultural Adjustment Act of 1938 have a "built in" shrink allowance for nonphysical supervision. The statute provides in part for "shrink" by allowing the export obligation for SS kernels to be double the incoming SS's and for the SMK obligation to be reduced by the amount of SS kernels purchased. As a result of switching to a TKC basis, handlers were able to recover from their AO kernels a portion of their "shrink" loss by substituting certain kernels. This recovery was in addition to the 0.5 shrink allowance previously provided for by regulation and to the inherent allowance permitted by the statutory allowance for increases in SS kernels and decreases in SMK's. The recovery from AO kernels was accomplished by exporting lower quality peanuts that were purchased as quota peanuts and substituting into the domestic edible market the OEQ grade of peanuts from the AO group of contract additional peanuts that were otherwise eligible, under standards of the Peanut Administrative Committee (PAC), for use in domestic edible markets. A handler could thus sell into the edible market OEQ peanuts purchased as contract additional AO kernels and replace them with an equal quantity of lower valued non-edible (oilstock) peanuts from stocks of quota commercial peanuts. Oilstock peanuts include broken and damaged kernels and, to a lesser extent, loose shelled kernels (LSK's) found in farmers stock peanuts. Such oilstock peanuts can be purchased from producers for prices as low as 7 cents per pound. The amount of "gain" in value which could thus be obtained by placing contract additional OEQ peanuts into the domestic food market was not constant but would depend on such factors as the quantity of OEQ peanuts found in the peanuts purchased as contract additional peanuts, the contract price for additional peanuts, and the market price for domestic edible use peanuts.

In 1988, the PAC, a private industry standards group, made changes in the procedures governing its members to eliminate the OEQ grade, thereby eliminating the sale of these peanuts for edible use and reducing the recoverable value available to be used to offset actual value that might be lost due to commingled storage. As a result of this change, the Department adjusted the "shrink" allowance for handlers choosing nonphysical supervision.

Specifically, from information gathered from the peanut industry, it was estimated that approximately 3 percent of the contract additional peanuts purchased are OEQ kernels, which, because of the PAC changes, could no longer be substituted into the edible market by handlers complying with PAC standards. However, it was also estimated that as much as 50 percent of the OEQ kernels from stocks of additional peanuts could still be recovered for edible use by blending such peanuts into edible grades through splits or permitted allowances for fall-through of certain smaller seed kernels. This would still leave 1.5 percent of the contract additional peanuts available for substitution into the edible market to offset "shrink" in value. Accordingly, an interim rule was published in the **Federal Register** on September 15, 1988 (53 FR 35984) which changed the "shrink" adjustment to 2.0 percent for handlers choosing nonphysical supervision. In other words, the 0.5 percent adjustment allowed by regulations applicable to nonphysical supervision was increased by 1.5 percent.

As a result of the comments to the interim rule, the Department determined that a higher shrink allowance may possibly be justified for crop years after the 1988 crop year and that comments should be sought concerning a shrink adjustment greater than 2.0 percent pending results of a study of actual shrink of stored peanuts. Such a study is under consideration by the Department at this time; however, it is improbable that the results will be available before the marketing of the 1989 crop. The "shrink allowance" can be significant as it can affect the effective market price for contract additional peanuts. If the shrink allowance is set too high, the shrink adjustment could give a handler an undue windfall at the expense of the producers. Also, an overly high allowance can cause losses in price support marketing pools because of sales of additional peanuts into the domestic edible market. Losses not covered by cross-pool compliance, in addition to loss of pool profits for producers, could increase government outlays for the price support program to the extent losses from crushing of CCC quota loan stocks are not covered by producers' profit pools for additional and quota loan peanuts.

To take into account the change in PAC practice on this issue, this rule proposes to amend the regulations to increase the shrink adjustment to 4.0 percent for the 1989 and 1990 crops for those handlers who abide by such restrictions as the Executive Vice President, CCC, may specify regarding the use of smaller kernels and other restrictions as are deemed needed. Such restrictions would include, but not necessarily be limited to, the same restrictions PAC placed on its membership for the 1988 crop year. Handlers, to take advantage of the higher shrink allowance, will make such certifications of use as may be required by the Executive Vice President to insure that the higher shrink allowance is appropriate. Handlers choosing nonphysical supervision, who do not abide by restrictions on use as may be prescribed by the Executive Vice President, CCC, or do not provide the necessary certifications, will continue to receive a 0.5 percent shrink allowance. This proposed rule does not affect the shrink allowance for handlers choosing physical supervision.

Options Considered

Shrink can be greatly influenced by handling practices. The adjustment for shrink was not intended to compensate handlers for improper handling practices. Such practices include excessive conveyor belt speeds or other practices not in compliance with recommended "good management practices" such as those which have been promulgated by the National Peanut Council or are set out in recommendations derived from research conducted by the USDA's Agricultural Research Service, as may apply to proper handling and storage of peanuts.

Consideration of the amount of shrink adjustment that should be allowed for handlers operating under the nonphysical supervision provisions of the regulations will be aided by up-to-date and independently derived indication of shrink. Data derived from independent and disinterested sources may identify whether a portion of the shrink reported by, or experienced by, handlers could be attributed to failure to abide by "good management practices".

In considering the amount of shrink to propose for the 1989 and 1990 crops, the following options have been considered with respect to handlers choosing nonphysical supervision.

Option 1. Allow a 3 percent shrink adjustment. This option, for nonphysical supervision, would establish the shrink adjustment for 1989 and 1990 crops at one percent greater than that permitted for the 1988 crop. This shrink allowance would be 2.5 percent greater than the shrink allowed for handlers not agreeing to restrict the sale of OEQ peanuts into the domestic edible market. The shrink amount for this option anticipates that a greater amount of value is recovered from the sale of OEQ peanuts into the domestic edible market through blending than is anticipated in options 2 and 3.

This option was not chosen because, in the absence of independent research, a 3 percent shrink allowance may force nonphysical supervision handlers to bear a larger share of shrink loss than could be justified if the non-recoverable shrink exceeds 3 percent and if such excess shrink could not be reduced by strict compliance with "good management practices".

Option 2. Allow a 4 percent shrink adjustment (Option selected for proposed rule). This shrink adjustment represents a shrink allowance of about one-half percent greater than the shrink allowance traditionally used for physical supervision. Although the TKC export obligation for nonphysically supervised peanuts and the "value" obligation for physically supervised peanuts are both established at the time the peanuts are purchased, the cutoff points for shrink consideration are considerably different. Under physical supervision, the export obligation is effectively accounted for at the time peanuts are graded out of commingled storage; at that time, the value of the peanuts removed from the warehouse must be equal to the value of the additional peanuts placed in commingled storage, less a 3.0–4.0 percent adjustment for shrink. This adjustment, for physical supervision, accounts for the shrink during the period from the date the peanuts were delivered into commingled storage until the date peanuts were graded out of commingled storage as additional peanuts. Subsequent to grading the peanuts out of storage the peanuts are shelled, crushed, or otherwise handled and processed as additional peanuts under physical supervision of the area association. Since further handling, processing, and exportation of the peanuts is under physical supervision and export credit is earned on a lot-by-lot basis, an allowance for shrinkage that occurs after the date the peanuts are removed from storage is unnecessary. On the other hand, for nonphysically supervised peanuts, the export poundage obligation is established when the peanuts are delivered to the handler, and the accounting for the satisfaction of the export obligation is made from evidence submitted to prove export. Therefore, for nonphysically supervised peanuts, significantly more handling of the peanuts may occur before export credit is determined than occurs for peanuts under physical supervision. The additional handling may result in additional shrink for nonphysical supervision as compared to the shrink for physical supervision.

The proposed 4.0 shrink also represents an amount 3.5 percent above the adjustment allowed nonphysically supervised handlers who do not comply with standards posed by the Executive Vice President, CCC, which would take into account whether OEQ contract additional peanuts are placed into the domestic edible market. It is estimated that there are approximately 60 pounds of OEQ kernels in every ton of farmers stock peanuts (approximately 1,300 pounds, shelled basis) or about 4.5 percent. This option represents less recovery of value through blending than was considered in option 1, but more than in option 3.

Option 2 was selected as the proposed option on the basis that a portion of the quantity of OEQ peanuts may still, through blending, be used to recover value. Also, handlers selecting nonphysical supervision are not required to export peanuts of like value as the peanuts purchased as additional peanuts. Since the export obligation is not based on equivalent value but on equivalent quantities of SMK, SS, and AO kernels, the proposed amount of shrink appears adequate. Although this amount is less than the amount requested by some handlers in response to the previous interim rule, it is within the range requested by other handlers responding to that rule and to other rules issued since the regulations for the 1988 through 1990 crops were issued. Also, to some extent, handlers have control of the amount of shrink through stricter adherence to "good management practices".

Option 3. Allow a 5 percent shrink adjustment. This shrink allowance is 4.5 percent above the adjustment allowed nonphysically supervised handlers who do not agree to withhold peanuts historically classified as OEQ from sale into the edible market. This increase closely approximates the amount of OEQ peanuts estimated to be in a ton of additional peanuts, without consideration of management practices and the recovery of a portion of the lost value by blending.

This option was not selected because it ignores the recoverable value through blending and because of the absence of reliable statistics about industry adherence to "good handling practices". Also, to the extent the shrink allowance considered in this option could cause displacement of quota peanuts, there is the risk of losses in producer marketing pools and exposure of CCC to increased budget outlays.

Request for Comments

Public comments are requested with respect to the amount of shrink adjustment that should be allowed handlers operating under nonphysical supervision when determining whether such handlers have properly accounted for disposition of contract additional peanuts. While a 4.0 percent shrink allowance is proposed, the final rule may adopt a different shrink allowance. All timely submitted comments will be considered. Documentation of the basis for any recommendation would be most helpful.

List of Subjects in 7 CFR Part 1446

Loan programs—Agriculture, Peanuts, Price support programs, Warehouse.

Proposed Rule

PART 1446—[AMENDED]

For the reasons set out in the preamble, it is proposed to amend 7 CFR Part 1446, Subpart—Warehouse Storage Loans and Handler Operations for the 1986 Through 1990 Crops, as follows:

1. The authority citation for the subpart continues to read as follows:

Authority: 7 U.S.C. 1359, 1375, 1421 *et. seq.*; 15 U.S.C. 714 *et seq.*

2. Section 1446.138 is proposed to be amended by deleting in the heading and text of paragraph (b) the words "and subsequent crops"; and by adding paragraph (c) to read as follows:

§ 1446.138 Storage requirements under nonphysical supervision.

* * * * *

(c) *Increased shrinkage allowance for the 1989 and 1990 crops.* Notwithstanding the provisions of paragraph (a) of this section, for handlers operating under nonphysical supervision who certify compliance with, and in fact comply with, such additional restrictions on use of various qualities of peanuts as may be specified by the Executive Vice President, CCC, to take into account common industry practices, the shrinkage allowance with respect to the 1989 and 1990 crops will be 4.0 percent of the TKC of the poundage obtained by the handler as contract additional peanuts.

BEST COPY AVAILABLE

Signed at Washington, DC, on July 14, 1989.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89-16978 Filed 7-19-89; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 687]

RIN 1512-AA07

Arroyo Grande Valley Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms proposes to establish in San Luis Obispo County, California, an American viticultural area to be known by the appellation "Arroyo Grande Valley." The proposal is the result of a petition filed by the proprietors of two wineries in the area. The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising will allow wineries to better designate the specific grape-growing area where their wines come from and will enable consumers to better identify wines they purchase.

DATE: Written comments must be received by September 5, 1989.

ADDRESS: Send written comments to the Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 (Ref: Notice No. 687). Copies of this proposal, the petition, the appropriate maps, and the written comments are available for public inspection during normal business hours at the ATF Reading Room, Ariel Rios Federal Building, Room 4412, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Robert L. White, Coordinator, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, Room 6237, Washington, DC 20226, telephone (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in Title 27, Code of Federal Regulations, Part 4. These regulations allow the establishment of definite American viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine. On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added to Title 27 a new Part 9 providing for the listing of approved American viticultural areas.

Section 4.25a(e)(1) defines an American viticultural area as a delimited grape growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundary of the proposed viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and,

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the proposed boundary prominently marked.

Petition

By letter dated July 8, 1987, Don Talley of Talley Vineyards and William S. Greenough of Saucelito Canyon Vineyard filed a petition for the establishment of an "Arroyo Grande Valley" viticultural area in San Luis Obispo County, California.

The Arroyo Grande Valley is approximately 12 miles southeast of the Town of San Luis Obispo. The western leg of the boundary of the proposed viticultural area is about three miles directly east of the Pacific Ocean at Grover City. The proposed area covers approximately 67 square miles. The principal stream in the area is the Arroyo Grande Creek which meanders approximately 12 miles in a southwesterly direction from the spillway of Lopez Lake to the Pacific Ocean. The proposed viticultural area includes substantially all the drainage of the Arroyo Grande Creek including the (upper) Arroyo Grande Creek. Feeding waters into the Arroyo Grande Creek are Tar Spring Creek, Los Berros Creek and Lopez Lake into which flow the (upper) Arroyo Grande Creek, Wittenberg Creek and the creek in Lopez Canyon. Tributaries to the (upper) Arroyo Grande Creek are Phoenix Creek and Saucelito Creek. Within the proposed area are four vineyards totaling 350 acres planted in wine grapes and three bonded wineries. The Edna Valley viticultural area lies immediately to the northwest, the boundary of Los Padres National Forest straddles the north leg of the proposed boundary, the Santa Maria viticultural area lies to the southeast of Arroyo Grande Valley, and the Pacific Ocean communities of Oceano, Grover City and Arroyo Grande abut the southwestern leg of the proposed boundary.

Name and History

The mission at San Luis Obispo farmed the bottomlands in the valley from 1780 until 1842 when the Mexican governor granted "Rancho Arroyo Grande" to Zefarino Carlon. Today, the names "Arroyo Grande" and "Arroyo Grande Valley" can be found on many maps of the area. Commercial vineyards were first planted in 1880 in Saucelito Canyon. The oldest winery in San Luis Obispo County, St. Remy, was also established in Saucelito Canyon in 1880 and produced wines until National Prohibition. The petitioner states that the St. Remy Winery identified itself as being from Arroyo Grande.

Climate

According to the petitioner, the primary characteristic distinguishing Arroyo Grande Valley from neighboring areas is climate. The climate ranges from high Region I to Region II as classified by the University of California system of heat summation.

The climate during the growing season is influenced by the proximity of the Arroyo Grande Valley to the Pacific Ocean. The marine air produces frequent morning and evening fog. This distinguishes the area from inland areas of San Luis Obispo County which are not open to the ocean and have much higher summer temperatures and colder winter temperatures.

The climate during the months of March, April, and May is dominated by a strong onshore air flow bringing cold winds which delay early season growing and fruit set of the grapevines. Because the Arroyo Grand Valley is shielded by the mountain range of the northwest side, the effects of the onshore air flow are moderated.

The valley experiences a long dry moderate summer season and a mild winter season. The average rainfall is 20 inches with about 80 percent of the rain falling between December and March.

The valley floor ranges from sea level to 400 feet above sea level. The proposed viticultural area takes in higher elevations from 300 to 1000 feet in elevation. Present grape plantings are low on hills near the valley floor. During the summer growing season, the sun shines more than 90 percent of the day. Temperatures of 100 degrees F occur nearly every year. Average maximum readings for July are in the 90's and range from about 92 degrees F at higher elevations to 98 degrees F at lower elevations with occasional highs ranging from 110 degrees F to 115 degrees F.

The climate of the area is characterized by cool summer night temperatures, often dropping to 30 degrees below daytime highs.

The Arroyo Grande Valley, as a whole, is slightly warmer than the Santa Maria Valley viticultural area to the south, and somewhat cooler than the Edna Valley and Paso Robles viticultural areas to the north, as determind by the average total number of degree days during the growing season.

The Arroyo Grande Valley usually gets more precipitation each year than the Santa Maria Valley to the south or the Paso Robles area to the north. Edna Valley, to the immediate northwest, usually gets just slightly less precipitation than Arroyo Grande Valley.

The Arroyo Grande Valley is oriented on a northeast-southwest axis whereas both Edna Valley and Santa Maria Valley are oriented on a northwest-southeast axis. This northeast-southwest orientation for Arroyo Grande Valley results in prevailing southwesterly winds in the valley.

Farm Advisor Statement

Mr. John H. Foott, Farm Advisor, Cooperative Extension, University of California, San Luis Obispo County, states that Arroyo Grande Valley is definitely a valley with a climate and terrain different from the Paso Robles and Edna Valley appellations. Arroyo Grande Valley has a southwest orientation to the coast, which gives it some protection from northwest winds. Fog in the summer keeps the valley cool and would designate it as a Region I, according to Mr. Foott. The fog usually burns back in the late morning hours, which gives a gentle warming in the afternoon—ideal for good wine grape quality. Mr. Foott feels that these are the items that distinguish the Arroyo Grande Valley from the other areas of the county.

Statement from Professor Fountain

Mr. H. Paul Fountain, Professor of Viticulture, Crop Science Department, California Polytechnic State University, states that Arroyo Grande Valley has many climatic characteristics similar to the Edna Valley. The area is much different from most of the grape growing areas of San Luis Obispo County, particularly the northern parts of the county including Paso Robles and Shandon. The greatest difference between Arroyo Grande and the Paso Robles/Shandon area is temperature. Paso Robles is much warmer in the summer and colder in the winter. The difference is not only the high and low temperatures during the growing season, but the length of time each day that the maximum temperatures occur.

Mr. Fountain goes on to state that the Arroyo Grande area is west of the Santa Lucia Mountain range and experiences the moderating coastal influences. Early morning fogs (many times up until 9:00 to 10:00 AM) and afternoon coastal onshore breezes during the growing season keep this area much cooler and the maximum temperatures of shorter duration than the grape growing areas east of the Santa Lucia Mountain range. Mr. Fountain believes that the Arroyo Grande Valley should have its own viticultural area because its climate is sufficiently different from the other grape growing areas of San Luis Obispo County.

Soils

Soils within the proposed Arroyo Grande Valley viticultural area are shallow and moderately deep, moderately sloping to extremely steep, and well drained. Some soils on the valley floor are very deep, nearly level to moderately sloping, somewhat poorly drained and well drained silty clay loam and sandy clay loam soils.

Proposed Boundary

The boundary of the proposed Arroyo Grand Valley viticultural area may be found on four United States Geological Survey maps with a scale of 1:24,000. The boundary is described in proposed § 9.129.

Executive Order 12291

It has been determined that this proposed regulation is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603 and 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. § 604(b)) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice of proposed rulemaking because no requirement to collect information is proposed.

Public Participation

ATF requests comments from all interested parties. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any comment as confidential. Comments may be disclosed to the public. Any material which a commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure. During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However,

the Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is Robert L. White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Par. 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The Table of Sections in Subpart C is amended to add the title of § 9.129 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

§ 9.129—Arroyo Grande Valley.

Par. 3. Subpart C is amended by adding § 9.129 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.129 Arroyo Grande Valley.

(a) *Name.* The name of the viticultural area described in this section is "Arroyo Grande Valley."

(b) *Approved maps.* The appropriate maps for determining the boundary of Arroyo Grande Valley viticultural area are four U.S.G.S. topographical maps of the 1:24,000 scale:

(1) "Arroyo Grande, NE, California", edition of 1965, photorevised 1978.

(2) "Tar Spring Ridge, California", edition of 1967.

(3) "Nipomo, California", edition of 1965.

(4) "Oceano, California", edition of 1965, photorevised 1979.

(c) *Boundary.* The Arroyo Grande Valley viticultural area is located in San Luis Obispo County in the State of California. The boundary is as follows:

(1) Beginning on the "Arroyo Grande" map at the point of intersection of State Route 227 and Corbit Canyon Road in Arroyo Grande Township, the boundary proceeds approximately 0.1 mile, in a northwesterly direction, along the roadway of State Route 227 to the point where State Route 227 intersects with Printz Road in Poorman Canyon in the Santa Manuela land grant;

(2) Then northwesterly, approximately 1.5 miles, along Printz Road to its intersection with Noyes Road in the Santa Manuela land grant;

(3) Then northerly, approximately 1.5 miles, along Noyes road to its intersection with State Route 227 (at vertical control station "BM 452") in the Santa Manuela land grant;

(4) Then in a northeasterly direction in a straight line approximately 1.4 miles to the intersection of Corbit Canyon Road with an unnamed, unimproved road at Verde in the Santa Manuela land grant;

(5) Then approximately 1.9 miles in a generally northeasterly direction, along the meanders of said unimproved road to its easternmost point, prior to the road turning back in a northwesterly direction to its eventual intersection with Biddle Ranch Road;

(6) Then in a northwesterly direction approximately 1.13 miles in a straight line to the summit of an unnamed peak identified as having an elevation of 626 feet in the Santa Manuela land grant;

(7) Then easterly, approximately 0.46 miles in a straight line, to the summit of an unnamed peak identified as having an elevation of 635 feet, in the Santa Manuela land grant;

(8) Then east northeasterly, approximately 0.27 mile in a straight line, to the summit of an unnamed peak identified as having an elevation of 799 feet, in the Santa Manuela land grant;

(9) Then easterly, approximately 0.78 mile in a straight line, to the summit of an unnamed peak identified as having an elevation of 952 feet, in the Santa Manuela land grant;

(10) Then easterly, approximately 0.7 mile in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,188 feet, in the southwest corner of section 29, T. 31 S., R. 14 E.;

(11) Then east southeasterly, approximately 0.9 mile in a straight line, to the point at which Upper Arroyo Grande Road crosses the spillway of Lopez Dam in section 32, T. 31 S., R. 14 E. (see "Tar Spring Ridge" map);

(12) Then, in a generally easterly direction, approximately 3.64 miles along Upper Arroyo Grande Road (under construction) to the point where the broken red line for the proposed location of said road diverges in a northerly direction from the light duty roadbed of said road in the Arroyo Grande land grant (north of section 35, T. 31 S., R. 14 E.);

(13) Then, in a generally northerly direction, approximately 2.5 miles, along the broken red line for the proposed location of Upper Arroyo Grande Road to its point of intersection with an unnamed unimproved road (this intersection being 1.2 miles northwest of Ranchita Ranch) in the Arroyo Grande land grant;

(14) From the point of intersection of the proposed location of Upper Arroyo Grande Road and the unnamed unimproved road, the boundary proceeds in a straight line, east northeasterly, approximately 1.8 miles, to the summit of an unnamed peak identified as having an elevation of 1,182 feet, in the northwest corner of section 19, T. 31 S., R. 15 E.;

(15) Then southeasterly, approximately 1.8 miles in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,022 feet, in the northeast corner of section 29, T. 31 S., R. 15 E.;

(16) Then west southwesterly, approximately 0.84 mile in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,310 feet, in the northeast corner of section 30, T. 31 S., R. 15 E.;

(17) Then south southeasterly, approximately 1.46 miles in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,261 feet, in section 32, T. 31 S., R. 15 E.;

(18) Then southeasterly, approximately 0.7 mile in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,436 feet, in the northwest corner of section 4, T. 32 S., R. 15 E.;

(19) Then southwesterly, approximately 1.07 miles in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,308 feet, in the Huasna land grant;

(20) Then west northwesterly, approximately 1.50 miles in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,070 feet, along the east border of section 1, T. 32 S., R. 14 E.;

(21) Then south southeasterly, approximately 1.38 miles in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,251 feet, in the Huasna land grant;

(22) Then southwesterly, approximately 0.95 mile in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,458 feet, in the Santa Manuela land grant;

(23) Then southeasterly, approximately 0.8 mile in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,377 feet, in the Huasna land grant;

(24) Then southwesterly, approximately 1.4 miles in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,593 feet, in the Santa Manuela land grant (See "Nipomo" map);

(25) Then southwesterly, approximately 1.1 miles in a straight line, to the jeep trail immediately north of the summit of an unnamed peak identified as having an elevation of 1,549 feet, just north of section 35, T. 32 S., R. 14 E.;

(26) Then northwesterly, approximately 2.73 miles along the jeep trail on Newsom Ridge to the point of intersection of said jeep trail and an unnamed unimproved road (immediately north of section 28, T. 32 S., R. 14 E.);

(27) Then southerly, approximately 1.63 miles along said unimproved road to its intersection with Upper Los Berros No. 2 Road in section 33, T. 32 S., R. 14 E.;

(28) Then southwesterly, approximately 3.27 miles along the stream in Los Berros Canyon (of which approximately 2.0 miles are along Upper Los Berros No. 2 Road) to the point at which U.S. Highway 101 crosses said stream in section 35, T. 12 N., R. 35 W. (See "Oceano" map);

(29) Then across U.S. Highway 101 and continuing in a southwesterly direction approximately .1 mile to Los Berros Arroyo Grande Road;

(30) Then following Los Berros Arroyo Grande Road in generally a northwesterly direction approximately 4 miles until it intersects with Valley Road;

(31) Then following Valley Road in generally a northerly direction approximately 1.2 miles until it intersects with U.S. Highway 101;

(32) Then in a northwesterly direction along U.S. Highway 101 approximately .35 mile until it intersects with State Highway 227;

(33) Then in a northeasterly and then a northerly direction along State Highway 227 approximately 1.4 miles to the point of beginning.

Approved: July 13, 1989.

Stephen E. Higgins,

Director.

[FR Doc. 89-17034 Filed 7-19-89; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket S-015]

RIN 1218-AA59

Electric Power Generation, Transmission, and Distribution; Electrical Protective Equipment

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of hearing; extension of written comment period.

SUMMARY: This notice schedules an informal public hearing on the proposed standards on electric power generation, transmission, and distribution and on electrical protective equipment, which were published on January 31, 1989 (54 FR 4974). It also extends the period for submission of written comments on the proposed rule.

DATES: The hearing will begin in Washington, DC, on November 28, 1989, at 9:30 a.m., and may continue for more than one day based on the number of notices of intention to appear. Once all parties who wish to do so have testified in Washington, DC, the hearing will be recessed and reconvened in Los Angeles, CA, on December 12, 1989, for the receipt of testimony of parties who prefer to testify at that location. Written comments on the proposed standards and notices of intention to appear must be postmarked by September 30, 1989. Testimony and evidence to be introduced into the record at the hearing must be postmarked by October 30, 1989.

ADDRESSES: The informal public hearing will begin in the Auditorium, Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210. The hearing will be reconvened at the Sheraton Plaza La Reina Hotel, 6101 West Century Boulevard, Los Angeles, CA, 90045. (Telephone: 213-642-4867.)

Four copies of written comments must be sent to the Docket Office, Docket No. S-015, U.S. Department of Labor, Occupational Safety and Health Administration, Room N2634, 200 Constitution Avenue, NW., Washington, DC 20210. (Telephone: 202-523-7894.)

Four copies of each notice of intention to appear and testimony and evidence that will be introduced into the hearing record must be sent to: Mr. Tom Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210. (Telephone: 202-523-8615.)

FOR FURTHER INFORMATION CONTACT: *Hearing:* Mr. Tom Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210. (Telephone: 202-523-8615.) For information on how to submit notices of intention to appear, see the section of this notice entitled "Public Participation."

Proposal: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210 (Telephone: 202-523-8148.).

SUPPLEMENTARY INFORMATION: On January 31, 1989, OSHA published a proposed new standard on electric power generation, transmission, and distribution and a proposed revision of the existing regulations on electrical protective equipment for general industry (54 FR 4974). Interested parties were given until May 1, 1989, to submit written comments and to file objections to the proposal and request hearing. The deadline for submitting written comments was subsequently extended to June 1, 1989 (54 FR 18546).

Issues

OSHA received 77 comments, including one hearing request that was received by the May 1 deadline. After this date, five additional requests for a hearing were received. Therefore, OSHA has scheduled a public hearing to begin on November 28, 1989. The hearing is being held to examine all issues raised by the proposal, including the following issues, which were gleaned from the comments:

1. *Grandfathering.* Many commenters requested some form of "grandfathering" (or exemption) for existing electrical protective equipment from the requirements proposed in § 1910.137 and for existing power generation, transmission, and distribution installations from § 1910.269. In their objections, § 1910.269(h)(4) on step bolts and manhole steps, (u)(1) and (v)(3) on access and working space about electric equipment, and (u)(4) and (v)(4) on guarding of live parts were specifically mentioned as requirements that would force extensive modification of existing installations. Public comment is requested on the issue of which requirements cannot be met by existing equipment and installations. Specific instances of non-compliance and alternatives that provide safety

equivalent to the provision in question should be cited, along with cost estimates of bringing equipment and installations into compliance with the proposal and the suggested alternatives.

2. *Performance-oriented requirements.* One of the hearing requests objected to the lack of performance language in some of the proposed regulations. Public comment is invited on the issue of whether any of the proposal's requirements are too specification oriented. Commenters should provide alternative language that will provide flexibility but that will also equally protect employees and be enforceable. Since the proposal is based, in large part, on various national consensus standards, suggested alternatives to the proposed requirements should be accompanied by evidence demonstrating that they are equivalent to or more effective in promoting the safety of employees than the corresponding provisions contained in the proposal.

3. *Preliminary Regulatory Impact Analysis.* Some comments questioned the validity of the Preliminary Regulatory Impact Analysis. They claimed that OSHA did not include the cost of bringing certain installations, such as steps on poles and towers, into compliance with the proposed requirements. Public comment is invited on the issue of whether or not the Preliminary Regulatory Impact Analysis fully accounts for all the costs and benefits associated with the proposal. Additionally, information regarding the changes in costs and benefits associated with any suggested changes to the proposal (e.g., in response to any of the issues in this notice) is welcome and will enable the Agency to assess the impact of the final regulations fully. For example, if a comment suggests elimination of a requirement, the commenter should also estimate the cost savings and decrease in benefits associated with the removal of the provision.

4. *Scope of the standard.* Many of the comments addressed the scope of proposed § 1910.269. The preamble to the proposal had requested comments on the issue of whether or not power generation, transmission, and distribution installations not under the exclusive control of an electric utility should be covered. Comments were received supporting both sides of this issue, but additional public comment is requested. Specifically, advocates of a "utility-only" standard should submit evidence that utility installations and the hazards associated with these installations are truly unique. They should also justify why OSHA should not cover work performed on similar installations not under the exclusive control of electric utilities. Commenters who support extending the scope of the standard should submit information demonstrating the presence of the hazards of electric power generation, transmission, and distribution work and should submit accident and cost information with respect to non-utility installations.

Additionally, one of the hearing requests objected to the manner in which non-electrical hazards were covered in proposed § 1910.269. Therefore, public comment is also requested on the issue of whether or not the non-electrical hazards addressed by the standard are unique to electric power generation, transmission, and distrubtion work and whether or not they should be covered in § 1910.269.

5. *General training.* Proposed §1910.269(a)(2)(i) would require employees to be trained in any safety practices that are necessary for their safety. Several comments argued that this requirement was unreasonable. Public comment is invited on the issue of whether or not employees should receive such training.

6. *Training in cardiopulmonary resuscitation (CPR).* Proposed §1910.269(b)(1) would require persons trained in CPR and first aid to be available for persons working on or with energized electric lines or equipment. Nearly all the comments received from organizations associated with tree-trimming operations opposed the application of §1910.269(b)(1) to line-clearance tree-trimming work. Additionally, other commenters questioned the practicality of the 4-minute maximum response time for fixed work locations proposed in § 1910.269(b)(1)(i)(B). Public comment is invited on the issues of whether or not CPR training is necessary for line-clearance tree trimmers and on whether the 4-minute response time is reasonable and necessary.

7. *Job briefings.* Paragraph (c) of proposed §1910.269 would require job briefings to be conducted before the start of work. Some comments opposed this requirement; others suggested that it be applied to employees working alone; and still others suggested that the application of this requirement be limited to field work or to electrical work only. Public comment is invited on the issues of whether or not the proposed job briefing requirements are appropriate and of what alternatives would provide equivalent protection to employees.

8. *Lockout and tagging.* Many of the comments received in response to the proposal addressed the lockout and tagging provisions contained in §1910.269(d). Some of the comments suggested that the standard be consistent with the generic lockout/tagout standard proposed on April 29, 1988 (53 FR 15496). Others objected to the proposal's recognition of tagging alone as a protective measure, while the electric utility industry groups argued that utilities had excellent "tagout" systems that should not be altered by the standard. These commenters offered suggested changes to the language contained in several of the provisions proposed in §1910.269(d). For example, it was recommended that paragraph (d)(7)(iii) be revised to allow an authorized employee to remove locks or tags from energy isolating devices without restriction. Public comment is invited on the issue of whether or not the lockout and tagging provisions of proposed §1910.269(d) are appropriate. Accident records demonstrating the presence or absence of hazards under existing lockout and tagging programs should also be submitted.

9. *Enclosed spaces.* Several interested parties commented on proposed §1910.269(e) on enclosed spaces. Specifically, they objected to the provisions of paragraph (e)(2), which would require a determination to be made as to the presence of any hazardous temperature, pressure, or atmosphere, and to paragraph (e)(7), which would require the atmosphere of an enclosed space to be tested for the presence of flammable gases and vapors. Public comment is requested on the issue of whether or not the provisions on enclosed space are neessary and reasonable as proposed.

10. *Fall protection.* Paragraph (g)(2)(v) of §1910.269 proposes that employees climbing wood poles without steps use fall protection equipment and that employees working more than 4 feet above the ground on poles, towers, trees, and structures be provided with fall protection. Many comments objecting to these provisions were received. It was claimed that fall protection was not always practical at heights of less than 10 feet, and that it was more hazardous for employees to climb poles with safety straps than for them to climb poles without this protection. (Although protection was not proposed for climbing trees, treetrimming contractors objected to its use for employees climbing trees). Public comment is invited on the issue of whether or not § 1910.269(g)(2)(v) is reasonable and necessary as proposed.

Comments opposing these provisions should present unique situations involving electric power generation, transmission, and distribution installations that preclude the use of fall protection or that present more severe hazards to an employee using fall protection than to one who is not. Accident statistics based on the use and lack of fall protection should also be provided.

11. *Live-line tools.* Several comments suggested that live-line tools (hot sticks) be tested every 1 or 2 years, using the guidelines contained in Institute of Electrical and Electronic Engineers (IEEE) Standard 978–1984, "IEEE Guide for In-Service Maintenance and Electrical Testing of Live-Line Tools." Test voltages given in the IEEE standard are 75 kV/ft for fiberglass and 50 kV/ft for wood; the test voltages are to be applied for 1 minute. Public comment is invited on the issue of whether or not these recommendations are reasonable and necessary for employee safety. Costs of performing the tests should also be submitted.

12. *Clearance distances.* Paragraph (1) of proposed § 1910.269 contains requirements for working on or near exposed energized parts. Two tables (Tables R–6 and R–7) of clearance distances to be maintained from exposed energized electric circuit parts were included in this paragraph. A similar table, Table R–8, is given in paragraph (q), which applies when live-line bare-hand work is being performed. The preamble to the proposal requested public comment on these tables, and several responses on this issue were received. Some commenters suggested that OSHA use the clearance tables in the National Electrical Safety Code (NESC), American National Standard Institute Standard C2–1987. Others urged the Agency to adopt provisions allowing closer clearance distances if protective gaps were installed on power lines. A few suggested including a table of clearances from direct current lines for live-line bare-hand work. Public comment is invited on the issues of: (1) whether the distances in the proposal are appropriate for all types of work or whether the standard should use some other clearance distances, such as those in the NESC; (2) whether or not OSHA should permit the use of protective gaps to perform work that could not otherwise be performed; (3) what types of work necessitate the use of clearances smaller than those proposed in tables R–6 and R–7; and (4) whether or not a table of clearances for DC live-line bare-hand work should be incorporated into the standard.

13. *Location of protective grounds.* Paragraph (n)(3) of § 1910.269 proposed that protective grounds be located at the work location. OSHA received many comments regarding this provision. It was argued that, in some situations, grounding on each side of the location would provide better safety for workers on the ground and that it would therefore be more effective to require whichever method was the safest for the conditions present when work was being performed. Public comment is invited on the issue of whether or not § 1910.269(n)(3) is appropriate as proposed.

14. *Operation of mechanical equipment near overhead power lines.* Proposed § 1910.269(p)(4)(iii) would require mechanical equipment to be insulated or considered energized if it could be taken close to overhead power lines. Some of the commenters objected to this requirement, arguing that grounding would protect employees if the mechanical equipment contacted the power line. Others objected to the requirement that equipment connected to an aerial lift, such as a brush chipper, be considered as energized. They argued that the aerial lift would be insulated and thus would protect employees on the ground. (Using insulated equipment is one of the options listed in the proposal, however.) Public comment is invited on the issues of: (1) Whether or not grounding mechanical equipment protects employees from electric shock if the equipment contacts a power line and, if so, under what conditions (such as voltage levels) and with what grounding techniques will employees be fully protected against electric shock, and (2) what other measures will protect employees from the hazards of operation of mechanical equipment near overhead lines. Calculations of voltage impressed on the grounded equipment and descriptions of cases where employees were protected by grounding when an actual contact occurred should be submitted by commenters supporting this as an option.

15. *Line-clearance tree trimming.* Two provisions contained in proposed § 1910.269(r), line-clearance tree trimming, brought objections from tree-trimming contractors: (1) Paragraph (r)(1)(viii), which prohibits line-clearance tree-trimming operations by other than qualified linemen during storms or other emergency conditions; and (2) paragraph (r)(2)(v), which would require the use of eye and face protection for employees operating brush chippers. The contractors argued that line-clearance tree trimmers are fully trained and qualified to perform their work under emergency conditions and that this has been done safely for many years. They also contended that full face protection is not necessary to protect chipper operators from injury. Public comment is invited on the issue of whether or not these two paragraphs are reasonable and necessary as proposed. Accident information would help demonstrate any claims that existing work practices in the tree-trimming industry adequately protect employees.

16. *Underground installations.* Employee organizations argued that the provisions proposed in § 1910.269(t), underground installations, would inadequately protect employees. They asserted that additional requirements are needed with respect to access (e.g., requiring manlifts for emergency rescue of employees working in manholes more than 8 feet deep), defective cables, and protection in public work areas. Public comment is invited on the issue of whether or not proposed § 1910.269(t) would provide adequate protection for employees working on underground installations.

17. *Definitions of "Authorized employee," "Designated employee," and "Qualified employee."* OSHA received several comments objecting to the definitions of authorized, designated, and qualified employees. The definitions in the proposal are based on the relevant national consensus standards (e.g., American National Standard C2, the National Electrical Safety Code). Public comment is requested on the issue of whether the definitions in proposed § 1910.269(x) are appropriate. Commenters objecting to the proposed definitions should submit evidence demonstrating that their proposed suggested alternatives to the consensus-standards-based definitions would better protect employees.

18. *Two-person crews for field work.* Many employer and employee groups commented on the issue of requiring two employees for work involving energized electric equipment. OSHA did not propose such a requirement, but the Agency will consider evidence supporting or opposing this type of rule. Public comment is invited on the issue of what conditions necessitate the presence of at least two employees. Accidents involving employees working alone should be submitted by those supporting a provision requiring two employees under certain conditions. Evidence that employees injured while working alone will receive prompt medical attention, and ways in which the employer can ensure that such attention is available, should be

submitted by those opposed to such a rule.

19. *Fire-resistant protective clothing.* In the preamble to the proposal, OSHA requested comments on the issue of whether or not to require any type of fire-resistant protective clothing for employees working on electric equipment. While most commenters agreed that certain fabrics, such as polyester, pose a hazard to electrical workers, there was no agreement as to the approach to take to protect employees from this hazard. The Agency is considering a prohibition of any clothing that would substantially increase the severity of any injury received from arcing electric equipment. Public comment is invited on the issue of whether or not this approach is necessary and reasonable for the protection of electrical workers. Evidence should be submitted demonstrating the hazard of clothing made from materials that are highly flammable (at least in a relative sense), and suggestions should be made with respect to which employees need to be protected. OSHA will also consider other approaches to the problem of flammable clothing.

20. *Aerial lifts.* A few of the accident descriptions submitted into the record by OSHA indicated that fatalities are occurring because of the use of aerial lift buckets to move overhead power lines. The employees in the aerial lift were killed when the unrestrained line slid up the bucket and contacted the employee (in two cases) or when current passed through a leakage hole in the bottom of the bucket (in the other case). In order to prevent such accidents, the Agency is considering incorporation of a prohibition on moving or contacting overhead power lines with the bucket of an aerial lift. Public comment is invited on the issue of whether or not such a prohibition is necessary and appropriate and, if not, on what other measures can be taken to prevent such accidents in the future.

21. *Other issues.* Public comment is invited on any other issue related to and within the scope of proposed §§ 1910.137 and 1910.269.

Public Participation

Under section 6(b)(3) of the Occupational Safety and Health Act, and 29 CFR Part 1911, an opportunity to testify orally concerning the issues raised in this notice will be provided at an informal public hearing, which will begin on November 28, 1989, in Washington, DC and on December 5, 1989, in Los Angeles, CA.

Notice of Intention to Appear at Hearing. All persons desiring to participate at the hearing, including those who previously requested that a public hearing be held, must file a notice of intention to appear with Mr. Tom Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3647, 200 Constitution Avenue NW., Washington, DC 20210. (Telephone: 202-523-8615.) Filing of this notice entitles the participant to present information orally and to question witnesses at the hearing. This notice must be postmarked by September 30, 1989.

The notice of intention to appear, which will be available for inspection and copying at the OSHA Docket Office, must contain the following information:

1. The name, address and telephone number of each person to appear;
2. At which hearing site the party wishes to testify;
3. The capacity in which the person will appear;
4. The approximate amount of time required for the presentation;
5. The specific issues that will be addressed;
6. A detailed statement of the position that will be taken with respect to each issue addressed; and
7. Whether the party intends to submit documentary evidence, and a summary of the evidence proposed to be adduced at the hearing.

Filing of Testimony and Evidence Before the Hearing. Any party requesting more than 10 minutes for a presentation at the hearing, or who will submit documentary evidence, must provide, in quadruplicate, the complete text of the testimony including all documentary evidence to the OSHA Division of Consumer Affairs. This material must be postmarked by September 30, 1989. This material will be available for inspection and copying at the OSHA Docket Office.

Each submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact.

Any party who has not substantially complied with this requirement may be limited to a 10 minute presentation and may be requested to return for questioning at a later time. Any party who has not filed a notice of intention to appear may be allowed to testify, as time permits, at the discretion of the Administrative Law Judge.

OSHA emphasizes that the hearing is open to the public, and that interested persons are welcome to attend. However, only persons who have filed proper notices of intention to appear at the hearing will be entitled to ask questions and otherwise participate fully in the hearing.

Conduct and Nature of the Hearing. The hearing will commence at 9:30 a.m. on November 28, 1989, in the Auditorium of the Frances Perkins Department of Labor Building, 200 Constitution Avenue NW., Washington, DC 20210. At that time any procedural matters relating to the hearing will be resolved. The nature of the informal rule making hearings to be held is established in the legislative history of section 6 of the Act and is reflected by the OSHA hearing regulations (see 29 CFR 1911.15(a)). Although the presiding officer is an Administrative Law Judge and questioning by interested persons is allowed on crucial issues, it is clear that the proceeding shall remain informal and legislative in type. The essential intent is to provide an opportunity for effective oral presentation by interested persons which can be carried out expeditiously and in the absence of rigid procedures which might unduly impede or protract the rulemaking process.

The hearing will be presided over by an Administrative Law Judge who will have all the powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR Part 1911, including the powers:

1. To regulate the course of the proceedings;
2. To dispose of procedural requests, objections and comparable matters;
3. To confine the presentation to the matters pertinent to the issues raised;
4. To regulate the conduct of those present at the hearing by appropriate means;
5. In the Judge's discretion, to question and permit questioning of any witness and to limit the time for questioning; and
6. In the Judge's discretion, to keep the record open for a reasonable stated time to receive written information and additional data, views, and arguments from any person who has participated in the oral proceedings.

Written Comments. Interested persons are invited to submit written comments on the issues raised in the proposal and summarized in this notice. Information that has previously been submitted to this rulemaking remains part of the records and should not be resubmitted. Written comments must be postmarked on or before September 30, 1989, and submitted, in quadruplicate, to the Docket Office, Docket No. S-015, U.S. Department of Labor, Occupational Safety and Health Administration, Room N2634, 200 Constitution Avenue, NW., Washington, DC 20210. The telephone number of the Docket Office is 202-523-7894, and its hours of operation are 8:15 am to 4:45 pm Monday through Friday except Federal holidays. Comments of up to 10 pages may also be transmitted by facsimile to 202-523-5046 or (for FTS) 8-523-5046 provided the original and three copies are sent to the Docket Office thereafter. Additionally, OSHA requests (but does not require) that comments prepared with word-processing equipment be accompanied by an MS-DOS-formatted, 5.25-inch floppy disc containing the comments in a Wordperfect or ASCII file. Written submissions must clearly identify the provisions of the proposal which are addressed and the position taken on each issue.

All materials submitted will be available for inspection and copying at this address. All timely submissions will be part of the record of the proceeding.

Certification of Record and Final Determination After Hearing. Following the close of the hearing, the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health. The Administrative Law Judge does not make or recommend any decisions as to the content of a final standard.

The proposed standard will be reviewed in light of all testimony and written submissions received as part of the record, and a standard will be issued, or a determination will be made not to issue a rule, based on the entire record of the proceeding, including the written comments and data received from the public.

Authority

This document was prepared under the direction of Alan C. McMillan, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

It is issued pursuant to Sec. 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 655); Secretary of Labor's Order No. 9-83 (48 FR 35736); and 29 CFR Part 1911.

Signed at Washington, DC, this 14th day of July 1989.

Alan C. McMillan,

Acting Assistant Secretary of Labor.

[FR Doc. 89-17054 Filed 7-19-89; 8:45 am]

BILLING CODE 4510-26-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 123 and 403

[FRL-3617-5]

California Application for EPA Approval of Revisions to the State National Pollution Discharge Elimination System Program

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: California has requested Environmental Protection Agency (EPA) approval of revisions to the State's approved National Pollutant Discharge Elimination System (NPDES) program. These revisions, if approved by EPA, will allow California to administer the pretreatment program and also to issue NPDES general permits. In addition, California has repealed its previously approved NPDES regulations, which contained requirements for its existing NPDES permit program, and now implements the permit program by incorporating federal NPDES requirements and regulations into State law. The State also has requested approval of this revision. Today's notice provides for a 45 day comment period on California's revisions and an opportunity for interested persons to request a public hearing. EPA's Regional Administrator for Region IX will approve or disapprove the State's application after taking into consideration all comments received.

DATE: Comments must be received on or before September 5,1989. Interested persons may also request a public hearing on California's application. If significant public interest is expressed, EPA will schedule a hearing. In the event a hearing is held, EPA will provide prior notice of the date, time, and location. All requests for a hearing must be submitted on or before expiration of the public comment period.

ADDRESS: Comments should be addressed to William H. Pierce, Chief, Permits Branch, Water Management Division, U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: William H. Pierce, Chief, Permits Branch, Water Management Division, (415) 974-8110, 215 Fremont Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION: Section 402 of the Clean Water Act (CWA) (133 U.S.C. 1251 *et seq.*) requires EPA to administer the NPDES permit program under which the Agency may issue permits for the discharge of pollutants into waters of the United States in accordance with conditions required by the Act. Section 402(b) of the CWA provides for States to assume NPDES permitting responsibilities upon approval by EPA. States also may request authority to issue general permits for similar dischargers with the same effluent limitations. (*See* 40 CFR 122.28.) In addition, under section 54 of the 1977 amendments to the CWA, States requesting NPDES permitting authority, as well as States already approved to administer the NPDES permit program, must also request permitting authority over discharges from federal facilities located within the State and authority to administer the federal pretreatment program governing the introduction of industrial pollutants into publicly owned treatment works (POTWs). (*Cf.* CWA section 402(n).) After EPA approves a State's request for NPDES permit and/or pretreatment authority, the State must thereafter submit any proposed program revisions to EPA for reapproval pursuant to 40 CFR 123.62(b).

On May 14, 1973, California became the first State to be approved by EPA to administer the NPDES permit program. On May 5, 1978, it also became the first State to receive EPA approval to regulate discharges from federal facilities. California has not yet been approved to administer the pretreatment program or issue NPDES general permits.

On March 10, 1988, California submitted an application to EPA for approval of revisions to its approved NPDES program in accordance with 40 CFR 123.62 and 403.10. This application includes a request to add pretreatment and general permit authority to its approved program. It also includes a request for EPA approval of revisions to the State's existing NPDES permit regulations. (California does not have, and has not requested, EPA approval to administer the NPDES and pretreatment programs on Indian lands.) Pursuant to 40 CFR 123.62(b) and 403.10(g), California has submitted in support of its application an Attorney General's Statement (including copies of all applicable State statutes and regulations) certifying that the State has adequate authority to administer the NPDES program being sought, a program description describing how the State intends to carry out its responsibilities, and a proposed EPA/ California Memorandum of Agreement. These documents are revisions of the original copies submitted to EPA when

California sought approval of its existing NPDES permit program.

With respect to California's request for approval of revisions to the State's existing NPDES permit regulations, California has repealed its approved NPDES permit regulations and now proposes to implement the State permit program under State law, which, according to the Attorney General, incorporates by reference all existing and future federal NPDES law and regulations. Specifically, the Attorney General has certified that the Porter-Cologne Water Quality Control Act (Porter-Cologne Act), which implements the California NPDES program, incorporates federal NPDES and pretreatment law and regulations prospectively, meaning that future amendments to federal law and regulations are automatically incorporated into State law without the need for amendment of State statutes and regulations. [In support of this authority for prospective incorporation by reference, the Attorney General has cited the Porter-Cologne Act, sections 13160, 13170, 13177, 13385, 13386, and 13387.] The Attorney General also has certified that regulations adopted by the California State Water Resources Control Board, the Statewide NPDES permitting agency, prospectively incorporate EPA regulations applicable to the processing of NPDES applications and issuance of NPDES permits. [The cited State regulations in the Attorney General's Statement are 23 Cal. Admin. Code Sections 2235.1(c), 2235.2, and 2235.4] Such prospective incorporation of federal law and regulations is, according to the Attorney General, authorized under California law and the State's Constitution.

As discussed above, California also has requested authority to issue NPDES general permits and administer the pretreatment program. With respect to general permit authority, EPA regulations at 40 CFR 122.28 provide for the issuance of general permits to regulate discharges of waste water which result from similar operations, are of the same type wastes, require the same effluent limitations, require similar monitoring, and are more appropriately controlled under a general permit rather than by individual permits. If EPA approves California's request for general permit authority, each general permit proposed by the State would be subject to EPA review and approval as provided by 40 CFR 123.44(a)(2). Public notice and opportunity to request a hearing also must be provided for each general permit.

With respect to California's request for pretreatment authority, the State also proposes to implement its pretreatment program under the Porter-Cologne Act provisions which prospectively incorporate federal law and regulations. Under the CWA and EPA regulations at 40 CFR Part 403, the primary objectives of the pretreatment program are to: (1) Prevent the introduction of pollutants into POTWs which will interfere with plant operations and/or disposal or use of municipal sludge; (2) prevent the introduction of pollutants into POTWs which will pass through treatment works in unacceptable amounts to receiving waters; and (3) improve the feasibility of recycling and reclaiming municipal and industrial waste water and sludge. In order to be approved, California's request for pretreatment program approval must demonstrate that there is appropriate legal authority, procedures, available funding, and qualified personnel to implement the program as specified in 40 CFR 403.10. Generally, local pretreatment programs will be the primary vehicle for administering, applying, and enforcing California's pretreatment requirements. Currently, 102 such programs have been approved by EPA. Where local programs have not yet been required or developed in California, the State must apply and enforce the pretreatment requirements directly against industries that discharge to POTWs [*e.g.*, 40 CFR 403.10(f)(2)(i)].[1]

If approved by the Regional Administrator, California's pretreatment program, as well as its revised NPDES permit program, will be administered by the California State Water Resources Control Board and nine Regional Water Quality Control Boards. The Regional Administrator's decision to approve or disapprove California's proposed program revisions, including its request for pretreatment and general permit authority, will be based on a determination of whether the proposed program meets the requirements of the Clean Water Act and 40 CFR Parts 122, 123, 124, and 403.

The California submission may be reviewed by the public at the State Water Resources Control Board, 901 "P" Street, 2nd Floor, Sacramento, CA 95814 and U.S. Environmental Protection Agency, Library, 6th Floor, 215 Fremont Street, San Francisco, CA 94105. Copies of the submittal may also be obtained for $75.00 from these offices.

Review Under Executive Order 12291 and the Regulatory Flexibility Act

The Office of Management and Budget has exempted this rule from the review requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. The proposed approval of California's NPDES program revisions, including the addition of pretreatment and general permit authority, does not alter the regulatory control over any municipal or industrial category. No new substantive requirements are established by this action. Therefore, since this notice does not have a significant impact on a substantial number of small entities, a Regulatory Flexibility Analysis is not necessary.

Dated: June 28, 1989.

John C. Wise,

Acting Regional Administrator for Region IX.

[FR Doc. 89-16860 Filed 7-19-89; 8:45 am]

BILLING CODE 6560-50-M

[1] According to the California Attorney General, the requirements of the CWA and implementing regulations incorporated by reference by the Porter-Cologne Act, include but are not limited to the pretreatment standards and reporting requirements for IUs of POTWs (for example 40 CFR 403.5, 403.8 and 403.12)

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40 CFR Part 261

[SW-FRL-3619-2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by USX Corporation, Chicago, Illinois, to conditionally exclude certain solid wastes generated at its Southworks Plant, Gary Works facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of a fate and transport model and its application in evaluating the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed of.

DATES: EPA is requesting public comments on today's proposed decision and on the applicability of the fate and transport model used to evaluate the petition. Comments will be accepted until September 5, 1989. Comments postmarked after the close of the comment period will be stamped "late."

Any person may request a hearing on this proposed decision and/or the model used in the petition evaluation by filing a request with Joseph Carra, whose address appears below, by August 4, 1989. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (OS-343), U.S. Envrionmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-89-UXEP-FFFFF."

Requests for a hearing should be addressed to Joseph Carra, Director, Permits and State Programs Division, Office of Solid Waste (OS-340), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m. in room M2427, Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Mr. Terry Grist, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4782.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On Janaury 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constitutents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*,, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of a hazardous waste, generators remain obligated to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3 (c) and (d)(2). The substantive standard for "delisting" a treatment residue or a mixture is the same as previously described for listed wastes.

B. Approach Used to Evaluate This Petition

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (a)(3). If the Agency believes that the waste remains hazardous based on the factors for which the waste was originally listed, EPA will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria, EPA then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considers whether the waste is acutely toxic, and considers the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and any other additional factors which may characterize the petitioned waste.

The Agency is proposing to use such information to identify plausible exposure routes for hazardous constituents present in the waste, and is proposing to use a fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the unregulated disposal of USX's petitioned waste on human health and the environment. Specifically, the model will be used to predict compliance-point concentrations which will be compared directly to the levels of regulatory concern for particular hazardous constituents.

EPA believes that this model represents a reasonable worst-case waste disposal scenario for the petitioned waste, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. Because a delisted waste is no longer subject to

hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off-site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off-site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data to its evaluation of delisting petitions. In this case, the Agency determined that, because USX is seeking an upfront delisting (*i.e.*, an exclusion based on data from wastes generated from a laboratory-scale treatment process), ground-water monitoring data collected from the area where the petitioner plans to dispose of the waste is not necessary. Because the petitioned wastestream is not currently generated or disposed of, ground-water data would not characterize the effects of the petitioned waste on the underlying aquifer at the disposal site, and, thus, would serve no purpose.

USX petitioned the Agency for an upfront exclusion (for wastes that have not yet been generated) based on a laboratory-scale waste treatment process (*i.e.*, a scaled-down version of a proposed treatment system), untreated waste characteristics, and process descriptions. The Agency is proposing that verification testing requirements (*i.e.*, required analytical testing of representative samples obtained from the full-scale treatment system verifying that the treatment system is on-line and operating as described in the petition) be made conditions of the exclusion. These conditions, if the exclusion is granted, will be implemented in order to show that, once on-line, the treatment system can render the waste non-hazardous by meeting the Agency's verification testing limitations (*i.e.*, the maximum allowable levels of the hazardous constituents of concern present in the waste, below which, the waste would not be considered hazardous).

From the evaluation of USX's upfront delisting petition, a list of constituents was developed for the verification testing. Tentative maximum allowable treated waste concentrations for these constituents then were derived by back calculating from the regulatory standards through the use of the proposed fate and transport model for a landfill management scenario. These levels (*i.e.*, "delisting levels") are proposed conditions of the delisting.

The Agency encourages the use of upfront delisting petitions because they have the advantage of allowing the applicant to know what treatment levels for constituents should be sufficient to render specific wastes non-hazardous, before investing in new or modified waste treatment systems. Therefore, upfront delisting will allow new facilities to receive exclusions prior to generating wastes which, without upfront exclusions, would unnecessarily have been considered hazardous. Upfront delistings for existing facilities can be processed concurrently during construction or permitting activities; therefore, new or modified treatment systems should be capable of producing wastes that are considered non-hazardous sooner than otherwise would be possible. At the same time, conditional batch testing requirements to submit data verifying that the delisting levels are achieved by the fully operational manufacturing/treatment systems will maintain the integrity of the delisting program and will ensure that only non-hazardous wastes are removed from Subtitle C control.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made on this petition proposed today until all public comments (including those at requested hearings, if any) are addressed.

II. Disposition of Petition

USX Corporation, Southworks Plant, Gary Works, Chicago, Illinois

1. Petition for Exclusion

USX Corporation (USX), located in Chicago, Illinois, produces predominantly carbon steel and some alloy grades of steel for use in its rolling mills. USX petitioned the Agency to exclude its chemically stabilized electric arc furnace dust (CSEAFD), presently listed as EPA Hazardous Waste No. K061—"Emission control dust/sludge from the primary production of steel in electric furnaces." The listed constituents of concern for EPA Hazardous Waste No. K061 are cadmium, chromium, and lead. USX petitioned to exclude its waste because it does not believe that the waste will meet the criteria for which it was listed. USX also believes that its treatment process will generate a non-hazardous waste because the constituents of concern, although present in the waste, are in an essentially immobile form. USX further believes that the waste is not hazardous for any other reason (*i.e.*, there are no additional constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 222 of the Amendments, 42 U.S.C. 6921(f), and 40 CFR 260.22(d) (2)–(4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of USX's petition.

2. Background

USX petitioned the Agency to exclude its CSEAFD on April 13, 1988, and subsequently provided additional information to complete its petition. In support of its petition, USX submitted (1) detailed descriptions of its manufacturing and proposed CHEMFIX waste treatment processes (a commercially available and patented waste treatment process); (2) a list of all the raw materials used in both the manufacturing and treatment processes; (3) results from total constituent analyses for all the EP toxic metals, antimony, beryllium, nickel, thallium, and total cyanide performed on representative samples of the untreated EAF dust; (4) results from the EP toxicity analyses for all the EP toxic metals, antimony, beryllium, nickel, thallium, and total cyanide performed on representative samples of the fully-cured (*i.e.*, hardened) CSEAFD derived from a laboratory-scale treatment system; (5) results from the multiple extraction procedure (MEP) analyses performed on representative samples of the stabilized material (required for stabilized wastes) for all the EP toxic metals (except barium), antimony, beryllium, nickel, and thallium; and (6) results from total oil and grease analyses performed on representative samples of both the untreated EAF dust and the fully-cured CSEAFD. Once

USX's full-scale treatment system is on-line, EPA proposes that USX be required to perform analyses for EP leachate concentrations of all the EP toxic metals, nickel, and cyanide, and total concentrations of reactive sulfide and reactive cyanide on batches of treated waste (see section 6—Verification Testing Conditions).

USX produces predominantly carbon steel and some alloy grades of steel for use in its rolling mills by processing steel scraps in two, 200-ton electric arc furnaces (EAFs). (A third, but smaller, 100-ton EAF is located in the same plant; however, waste from this furnace is not covered by the petition.) A weight of scrap steel from stockpiles of identified grades is selected to give the desired chemical properties in the finished steel. The scrap (or charge) is melted and refined in the furnace when an electric arc surges between three electrodes and scrap. After approximately four hours, the molten steel reaches 3000 °F. The furnace is tilted and the molten steel is poured from the furnace. Table 1 presents the typical types and quantities of materials used annually by USX (based on data compiled by USX for 1983). USX also uses dolomite and burnt lime as fluxing materials and coke, graphite, and phosphorus to adjust the chemical composition of the steel.

TABLE 1—TYPICAL MATERIALS AND QUANTITIES USED ANNUALLY BY USX (1983)

Raw materials	Quantity (tons)
Scrap:	
Iron scrap—broken cast iron ingot molds and stools, and spilled iron from Gary blast furnaces	40,229
Ordinary steel scrap—plates, beams, etc. from demolition of structures, purchased from scrap dealers	341,282
Structural steel scrap—recycle scrap from plant's own structural rolling mill	90,257
Basic oxygen furnance pit scrap—spillings etc. from Gary works basic oxygen furnace operations and steel contained in slag from these operations	317,592
Turnings—waste metal generated at Gary Works and Southworks Plant machine shops	13,776
Nickel-bearing scrap—used to adjust nickel content of certain products	1,557
No. 2 bundle scrap—compressed blocks of scrap materials purchased from scrap dealers	6,308
No. 1 heavy metal scrap—compressed blcoks of higher quality than No. 2 bundles above, purchased from scrap dealers	80,954
Copper armatures—added only occasionally for copper adjustment to certain products	57
Alloying Additions:	
Copper	80.9
Manganese	1,151.1
Chromium	363.4

TABLE 1—TYPICAL MATERIALS AND QUANTITIES USED ANNUALLY BY USX (1983)—Continued

Raw materials	Quantity (tons)
Silicon	117.1
Molybdenum	30.0
Vanadium	214.1
Columbium	0.8
Titanium	0.3
Nickel	69.2
Aluminum	194.1

The EAFs produce dust (air emissions) during (1) melting of scrap, (2) pouring molten steel, (3) pneumatic injection of additives, (4) oxygen blowing, and (5) meltdown/refining periods. Both EAFs are equipped with a direct furnance offtake system for capture of the primary air emissions and an overhead canopy hood for capture of secondary fugitive emissions. The primary and secondary emissions are cleaned using wet scrubbers. The wastewater from each wet scrubber is partially recycled and the blowdown (effluent) is passed through a thickener for removal of the suspended solids. The effluent from the thickener is sent to the plant's central wastewater treatment system. The sludge from the thickener is dewatered using vacuum filtration and is currently being disposed of off site at USX Corporation's USS Division's Gary Works. The filtration from the vacuum filter is returned to the thickener.

The filter cake (EAF dust) is then mixed in a prescribed ratio with weighed amounts of dry reagent (Portland Cement Type 1)—12 to 15 percent by weight, liquid reagent (Sodium Silicate)—three to five percent by weight, and an activator reagent (Ferrous Sulfate)—two to four percent by weight, in accordance with the CHEMFIX proprietary processing sequence. The CHEMFIX process is defined as a chemical fixation/stabilization technology. This technology stabilizes mobile constituents of concern within a waste by chemical reactions and physical encapsulation. A description of this technology (contained in USX's petition) is provided below.

The CHEMFIX process is based on the use of soluble silicates and silicate setting agents. The combination and proportions of reagents are optimized for each particular waste requiring treatment. The two-part inorganic chemical system reacts with polyvalent metal ions, certain other waste components, and also with itself to produce a chemically and physically stable solid material. The cross-lined three dimensional polymeric matrix displays properties of stability, high melting point, and a rigid, friable texture similar to that of a clay soil. Three general classes of interactions can be described. First are the rapid reactions between soluble silicates and the polyvalent metal ions, producing insoluble metal silicates. Second are reactions between the soluble silicates and the reactive components of the setting agent, immediately producing a gel structure. Third are hydrolysis, hydration, and neutralization reactions between the setting agent and the waste and/or water.

The resulting mixture of waste and reagents will then be discharged to a prepared solidification area in which the gel will continue to set. There are no side streams or discharges resulting from the CHEMFIX process.

USX tested laboratory-scale samples of fully-cured stabilized waste derived from a laboratory treatment unit. Data from this unit were submitted as the basis for an upfront delisting petition. USX plans to construct a fully-enclosed, full-scale mixing and stabilization facility if their laboratory-scale system produces treated wastes that supports an upfront delisting decision. The fully-cured chemically stabilized EAF dust will be disposed of at a non-hazardous dedicated landfill, if the exclusion is granted.

To collect representative samples from vacuum filter presses like USX's, petitioners are normally requested to collect a minimum of four composite samples comprised of independent grab samples collected over time (*e.g.*, grab samples collected every hour and composited by shift, etc.). See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA Office of Solid Waste and Emergency Response, Publication SW-846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste (EPA/530-SW-85-003), April 1985.

USX collected eight daily composite samples between July 6, 1986 and July 16, 1986. Each daily composite sample was composed of ten random two-liter grab samples collected from the vacuum filter press. A second set of eight daily composite samples was collected between October 27, 1987 and November 11, 1987. These daily composite samples, comprised of eight random two-liter grab samples, taken one per hour, were collected from the vacuum filter press. USX collected a total of sixteen daily composite samples of the non-stabilized vacuum filter cake.

The sixteen daily composite samples of vacuum filter cake were analyzed for total constituent concentrations (*i.e.*, mass of a particular constituent per mass of waste) of all the EP toxic metals, antimony, beryllium, nickel, thallium, total cyanide, and total oil and grease content. The sixteen daily composite samples of vacuum filter cake were stabilized by CHEMFIX using a laboratory-scale stabilization system. The sixteen fully-cured samples were analyzed for the EP toxicity concentrations (*i.e.*, mass of a particular constituent per unit volume of extract) of all the EP toxic metals, antimony, beryllium, nickel, thallium, and total cyanide and total oil and grease content. CHEMFIX then randomly selected four of the sixteen fully-cured samples for MEP analyses. The four samples were analyzed for all the EP toxic metals (except barium), antimony, beryllium, nickel, and thallium. The four samples were also analyzed for total concentrations of reactive cyanide and reactive sulfide, cation exchange capacity, and total alkalinity.

3. Agency Analysis

USX used SW-846 Method Numbers 7041-7841 and 9010 to quantify the total constituent concentrations of all the EP toxic metals, antimony, beryllium, nickel, thallium, and cyanide. USX used SW-846 Method Number 1310 (standard EP) to quantify the leachable concentrations of the EP toxic metals, antimony, beryllium, nickel, and thallium in the fully-cured CSEAFD. USX used SW-846 Method Numbers 3060 and 1310 (using deionized water instead of acetic acid in the cyanide extraction) to quantify the leachable concentrations of hexavalent chromium and cyanide, respectively in the fully-cured CSEAFD. USX used SW-846 Method Number 1320 (MEP) to quantify the leachable concentrations of the EP toxic metals, antimony, beryllium, nickel, and thallium in the fully-cured CSEAFD. USX did not perform MEP extraction analyses for cyanide because the maxium total concentration of cyanide was 0.81 mg/kg; therefore, assuming 100 percent leaching and a 20 fold dilution of the EP/MEP tests (100 grams of sample diluted with 2 liters of extractant) the maximum theoretical EP or MEP concentrations would be 0.04 mg/1. USX stated that due to an oversight, the laboratory used by USX did not perform MEP extraction analyses for barium. Table 2 persents the maximum concentrations obtained from the total constituent analyses performed on the unstabilized material. Tables 3 and 4 present the maximum leachate concentrations obtained from the EP and MEP leachate analyses performed on the stabilized material, respectively.

TABLE 2—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS UNTREATED EAF DUST

Constituents	Total constituent concentrations (mg/kg)
Antimony	40.0
Arsenic	36.0
Beryllium	<0.5
Barium	236
Cadmium	336
Chromium	3,160
Hexavalent Chromium	74.2
Lead	14,600
Mercury	0.2
Selenium	4.8
Silver	53.0
Thallium	<0.1
Nickel	422
Cyanide	0.81
Total oil and grease	1,290
Percent solids	75.4

<: Denotes that the constituent was not detected at the detection limit specified in the Table.

TABLE 3.—MAXIMUM EP LEACHATE CONCENTRATIONS FULLY-CURED CSEAFP

Constituents	EP leachate concentrations (mg/1)
Antimony	<0.1
Arsenic	<0.01
Beryllium	<0.01
Barium	0.4
Cadmium	0.02
Chromium (Total)	0.12
Hexavalent Chromium	[1] 0.16
Lead	0.051
Mercury	<0.001
Selenium	0.012
Silver	<0.05
Thallium	<0.01
Nickel	<0.04
Cyanide	[1] 0.03

<: Denotes that the constituent was not detected at the detection limit specified in the Table.
[1] Deionized water extraction.

The Agency notes that the data presented in Table 3 appear to suggest that hexavalent chromium leaches from the waste at a higher concentration than does total chromium. EPA cautions that a direct comparison between the leachability of hexavalent chromium and total chromium is not possible due to the differences between extraction tests. Specifically, the concentration of leachable hexavalent chromium was determined using an alkaline extraction test, whereas the leachable concentration of total chromium was determined using an acetic acid extraction test. See SW-846 Method Nos. 3060 and 1310, respectively.

TABLE 4—MAXIMUM MEP LEACHATE CONCENTRATIONS FULLY-CURED CSEAFD (MG/1)

Constituents	Days/concentrations								
	1	2	3	4	5	6	7	8	9
Antimony	<0.1	<0.1	<0.1	<0.1	<0.1	<0.1	<0.1	<0.1	<0.1
Arsenic	0.02	0.01	0.02	0.01	<0.01	<0.01	<0.01	<0.01	<0.01
Beryllium	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01
Cadmium	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01
Chromium	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05	0.05	<0.05
Lead	0.025	0.095	0.020	0.095	0.024	0.037	0.022	0.046	0.046
Mercury	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001
Nickel	<0.04	<0.04	<0.04	<0.04	<0.04	<0.04	<0.04	<0.04	<0.04
Selenium	0.018	0.012	0.006	0.005	<0.005	<0.005	<0.005	<0.005	<0.005
Silver	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05	
Thallium	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01

<: Denotes that the constituent was not detected at the detection limit specified in the Table.

Table 5 presents the maximum total reactive cyanide and total reactive sulfide levels, total alkalinity, cation exchange capacity, flash point, and total oil and grease content of the fully-cured material.

TABLE 5—CHARACTERIZATION OF THE FULLY-CURED MATERIAL

Parameters	Value
Reactive cyanide	3.4 mg/kg
Reactive sulfide	10.0 mg/kg
Total alkalinity	317,000 mg/kg
Cation Exchange capacity.	15.3 meq/100g
Flash point	<100° C
Total oil and grease	1,090 mg/kg

(Analysis for EP or MEP leachable concentrations of sulfide (or reactive sulfide) were not performed since the Agency's level of regulatory concern is based on the total constituent concentration of reactive sulfide.) Detection limits represent the lowest concentrations quantifiable by USX when using the appropriate SW-846 analytical methods to analyze its waste. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices varies, and "dirty" waste matrices may cause interferences, thus raising the detection limit.)

USX used Method Number 3-284 ("Procedures for Handling and Chemical Analyses of Sediment and Water Samples," EPA, 1981) to determine that the unstabilized EAF dust and the CSEAFD had maximum oil and grease contents of 1,290 mg/kg (0.129 percent) and 1090 mg/kg (0.1090 percent), respectively. Therefore, the EP analyses did not have to be modified in accordance with the Oily Waste EP methodology. (Wastes having more than one percent total oil and grease may either have significant concentrations of the constituent of concern in the oil phase, which may not be assessed using the standard EP leachate procedure, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leaching of metals from the sample.) See SW-846 method Number 1330. None of the analyzed samples exhibited the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261,.22, and 261.23.

USX submitted a signed certification stating that, based on the current annual waste generation and the laboratory-scale mixing ratio of reagent to EAF dust, the maximum annual generation rate of CSEAFD will be 35,000 tons. The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts USX's certified estimate of 35,000 tons.

EPA does not generally verify submitted test data before proposing delisting decisions, and has not verified the data upon which it proposes to grant USX's exclusion. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has previously conducted a spot-sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions, and may elect to visit this facility in the future for spot-sampling.

4. Agency Evaluation

The Agency considered the appropriateness of alternative disposal scenarios for stabilized wastes and decided that a landfill scenario is the most reasonable, worst-case scenario for this waste. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The Agency, therefore, evaluated the petitioned waste using its vertical and horizontal spread (VHS) landfill model, which predicts the potential for ground-water contamination from wastes that are landfilled. See 50 FR 7882 (February 26, 1985), 50 FR 48896 (November 27, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. This modeling approach, which includes a ground-water transport scenario, was used with conservative, generic parameters to predict reasonable worst-case contaminant levels in ground water at a hypothetical receptor well (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The Agency requests comments on the use of the VHS model as applied to the evaluation of USX's waste.

Specifically, the Agency used the VHS model to evaluate the mobility of all the inorganic constituents (except antimony, beryllium, mercury, nickel, silver, and thallium—see explanation below) from USX's fully-cured CSEAFD waste. The Agency's evaluation, using the CSEAFD volume of 35,000 tons and the maximum EP or MEP leachate concentrations of all the inorganic constituents of concern in the VHS model, generated the compliance-point concentrations shown in Table 5. The Agency did not evaluate the mobility of the remaining inorganic constituents (*i.e.*, antimony, beryllium, mercury, nickel, silver, and thallium) from USX's waste because they were not detected in either the EP or MEP extract using the appropriate SW-846 analytical test methods (see Tables 3 and 4). The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropriate analytical method) the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

TABLE 5—VHS: CALCULATED COMPLIANCE-POINT CONCENTRATIONS LISTED AND NON-LISTED CONSTITUENTS FULLY-CURED CSEAFD

Constituents	Compliance-point concentrations (mg/l)	Levels of regulatory concern (mg/l) [1]
Arsenic	[2] 0.0032	0.05
Barium	[2] 0.0634	1.0
Cadmium	[2] 0.0032	0.01
Chromium (total)	[2] 0.0190	0.05
Lead	[2] 0.0150	0.05
Selenium	[2] 0.0028	0.01
Cyanide	[3] 0.0047	0.70

[1] See "Docket Report on Health-Based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket.
[2] Obtained from the Multiple Extraction Procedure.
[3] Obtained from the standard Extraction Procedure.

The fully-cured CSEAFD exhibited arsenic, barium, cadmium, chromium, lead, selenium, and cyanide levels at the compliance point below the health-based levels used in delisting decision-making. Additionally, the total constituent concentrations of reactive cyanide and reactive sulfide are below the Agency's interim standards of 250 ppm and 500 ppm, respectively (see Table 4). See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, internal Agency memorandum in the RCRA public docket.

The Agency generally does not separately evaluate levels of hexavalent chromium using the VHS model, rather EPA compares the VHS model results for total chromium to the health-based level established for chromium. However, EPA notes that if the data for hexavalent chromium (see Table 3) were evaluated using the VHS model, the compliance-point concentration (0.0254 mg/l) would also be below the health-based level (0.05 mg/l) for chromium used in delisting decision-making.

The Agency used the MEP test to assess the long-term stability of USX's fully-cured stabilized waste. In this procedure, a sample of USX's fully-cured stabilized waste was ground and passed through a 100x mesh screen in order to facilitate the determination of whether the metals are chemically bound in the waste matrix. Once a sample was prepared, a series of nine synthetic acid rain extractions (*i.e.*, acid leaching) was performed in order to determine whether the metals would leach from the waste matrix over time. The MEP data reported in Table 4 indicate that the fully-cured CSEAFD treatment residue exhibits long-term stability by leaching non-hazardous levels of metals after multiple extractions.

The Agency generally requires that MEP analyses be performed for all the EP toxic metals, nickel, and cyanide. As noted above, USX did not perform MEP analyses for barium. In this particular case, the Agency decided not to request USX to resample and analyze its waste using the MEP for barium because the EP concentration for barium (0.4 mg/l) was significantly below the maximum allowable leachate level obtained from the VHS model analysis (6.3 mg/l). In addition, the Agency believes that if the stabilization process were ineffective at reducing the mobility of barium (and the other metals), the EP leachate concentration of barium (and the other metals) would be higher. Furthermore, the MEP leachable data for all the other metals demonstrates that the stabilization process provides a waste with excellent long-term stability against leaching. Lastly, the Agency recently evaluated data from total, EP and MEP analyses for barium performed on EAF dust which had been stablized using a similar type of stablization process. See 54 FR 11706, March 22, 1989. The subject waste exhibited maximum total, EP, and MEP barium concentrations of 385 mg/kg, 1.48 mg/l, and 0.27 mg/l, respectively. The Agency notes that USX's waste contains less barium and leaches less barium on the EP leach test (see Tables 2 and 3) than the waste discussed in 54 FR 11706. The Agency, therefore, is confident that USX's fully-cured CSEAFD treatment residue would exhibit long-term stability by leaching non-hazardous levels of barium after multiple extractions.

The Agency concluded, after reviewing USX's processes and raw materials list, that no other hazardous constituents of concern are being used by USX, and that no other constituents of concern are likely to be present or formed as reaction products or by-products of USX's waste. On the basis of test results submitted by the petitioner, pursuant to § 260.22, the Agency concludes that the waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23.

5. Conclusion

The Agency believes that USX's EAF dust filter cake, when stabilized using CHEMFIX's treatment process, is rendered non-hazardous. The Agency believes that the analyzed samples of the fully-cured CSEAFD reflect the day-to-day variations in manufacturing and treatment processes for both the particular grades of scrap used and the particular grades of steel produced during the demonstration period. The Agency, however, believes that the concentration of the constituents of concern can vary depending on the type and quality of scrap metal charged in the steel making process. Therefore, the Agency is proposing to require the petitioner to analyze weekly composites of the CSEAFD in order to ensure that the stabilization process effectively handles the potential variation in constituent concentrations (see section 6—Verification Testing Conditions).

The Agency is proposing that USX's fully-cured CSEAFD waste, if it meets certain verification testing requirements, be considered non-hazardous, as it should not present a hazard to either human health or the environment. The Agency proposes to grant a conditional exclusion to the USX Steel Corporation, USS Division, Southworks Plant, Gary Works, located in Chicago, Illinois, for its fully-cured chemically stabilized electric arc furnace dust treatment residue described in their petition as EPA Hazardous Waste No. K061. If the proposed rule becomes effective, the fully-cured treatment residue would no longer be subject to regulation under 40 CFR Parts 262 through 268 and the permitting standards of 40 CFR Part 270.

6. Verification Testing Conditions

As stated earlier, the proposed exclusion contains verification testing requirements. If the final exclusion is granted, the petitioner will be required both to verify that the treatment system is on-line and operating as described in the petition, and to show that, once on-line, the treatment system can continue to meet the Agency's verification testing limitations (*i.e.*, "delisting levels"). These proposed conditions are specific to the upfront exclusion petitioned for by USX.

This proposed exclusion is conditional upon the following:

(1) *Testing:* Sample collection and analyses (including quality control (QC) procedures) must be performed according to SW-846 methodologies.

(A) *Initial Testing:* During the first four weeks of operation of the full-scale treatment system, USX must collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentration of all the EP toxic metals, nickels, and cyanide (using distilled water in the cyanide extractions), and the total concentrations of reactive sulfide and reactive cyanide. USX must report analytical test data, including quality control information, obtained during this initial period no later than 90 days after the treatment of the first full-scale batch.

The Agency has determined, through its review of similar petitions from the iron and steel industry, that approximately four weeks are required for a facility to train operators and to collect sufficient data to verify that a full-scale stabilization process is operating correctly. The proposed initial testing condition, if promulgated, will require USX to collect daily composite samples during the first four weeks of operation of the full-scale treatment system. The Agency proposed this initial testing condition both to gather data obtained from the full-scale treatment system and to ensure that the full-scale treatment system is closely monitored during the start-up period.

As stated in section 5, the Agency believes that the concentration of the constituents of concern can, over time, vary depending on the type and quality of scrap metal charged in the steel making process. The Agency also believes that the commerical availability of different types of scrap metal are subject to change with time. As a result, in order to ensure that the stabilization process effectively handles the likely variation in constituent concentrations, the Agency is proposing a subsequent testing condition. In this case, the Agency believes that the potential variations in waste composition (*i.e.*, constituent concentrations) resulting from changing scrap, justify the requirement for continual testing of weekly composite samples of CSEAFD. Therefore, the Agency is proposing to require the petitioner to analyze weekly composites of the CSEAFD.

(B) *Subsequent Testing:* USX must collect representative grab samples from every treated batch of CSEAFD generated daily and composite all of the grab samples to produce a weekly composite sample. USX then must analyze each weekly composite sample for all of the EP toxic metals, and nickel. The analytical data, including quality control information, must be compiled and maintained on site for a minimum of three years. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Illinois.

The Agency believes that collecting composite samples on a weekly basis will be frequent enough to ensure that the stabilization process is able to handle the potential changes in constituent concentrations because the composition of the scrap charges should not vary from day-to-day. Rather, the Agency expects that the composition of the scrap charges will change gradually since scrap is generally purchased in bulk (*i.e.*, the scrap supply lasts longer than one day).

Future upfront delisting proposals and decisions issued by the Agency may include different testing and reporting requirements based on an evaluation of the uniformity of the process and of the waste, of the waste volume (including whether there is a fixed volume of waste or an infinite source), and of other factors normally considered in the petition review process. For example, wastes with variable constituent concentrations, discussed in previous delisting decisions (See *e.g.*, 51 FR 41323, November 14, 1986), may require continuous batch testing.

(2) *Delisting levels:* If the EP extract concentrations for chromium, lead, arsenic, or silver exceed 0.315 mg/1; for barium exceeds 6.3 mg/1; for cadmium or selenium exceed 0.063 mg/1; for mercury exceeds 0.0126 mg/1; for nickel exceeds 3.15 mg/1; or for cyanide exceeds 4.42 mg/1, total reactive cyanide or total reactive sulfide levels exceed 250 mg/kg and 500 mg/kg, respectively, the waste must either be re-treated until it meets these levels or managed and disposed of in accordance with Subtitle C of RCRA.

(3) *Data submittals:* Within one week of system start-up USX must notify the Section Chief, Variances Section (see address below) when their full-scale stabilization system is on-line and waste treatment has begun. The data obtained through condition (1)(A) must be submitted to the Section Chief, Variances Section, PSPD/OSW (OS-343), U.S. EPA, 401 M Street, SW., Washington, DC 20460 within the time period specified. At the Section Chief's request, USX must submit any other analytical data obtained through conditions (1)(A) or (1)(B) within the time period specified by the Section Chief. Failure to submit the required data obtained from condition (1)(A) or (1)(B) within the specified time period or maintain the required records for the specified time will be considered by the Agency, at its discretion, sufficient basis to revoke USX's exclusion to the extent directed by EPA. All data must be accompanied by a signed certification statement attesting to the truth and accuracy of the data submitted.

If made final, the proposed exclusion will only apply to the processes and waste volume covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes (including stabilization reagents) are significantly altered such that an adverse change in waste composition or increase in waste volume occurred. Accordingly, the facility would need to file a new petition for the altered waste. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site treatment, storage, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if promulgated, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant an exclusion is not major, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional economic impact, therefore, due to today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VI. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 et. seq.) and have been assigned OMB Control Number 2050–0053.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.)

Date: July 12, 1989.

Bruce R. Weddle,

Acting Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

2. In Table 2 of Appendix IX, add the following wastestream in alphabetical order:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

* * * * *

TABLE 2—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
USX Steel Corporation, USS Division, Southworks Plant, Gary Works.	Chicago, Illinois	Fully-cured chemically stabilized electric arc furnace dust/sludge (CSEAFD) treatment residue (EPA Hazardous Waste No. K061) generated from the primary production of steel after [insert date of final rule's publication]. This exclusion is conditioned upon the date obtained from USX's full-scale CSEAFD treatment facility because USX's original data was obtained from a laboratory-scale CSEAFD treatment process. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern once the full-scale treatment facility is in operation, USX must implement a testing program for the petitioned waste. This testing program must meet the following conditions for the exclusion to be valid: (1) *Testing:* Sample collection and analyses (including quality control (QC) procedures) must be performed according to SW-846 methodologies. (A) *Initial Testing:* During the first four weeks of operation of the full-scale treatment system, USX must collect representative grab samples of each treatment batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel, and cyanide (using distilled water in the cyanide extractions), and the total concentrations of reactive sulfide and reactive cyanide. USX must report the analytical test data, including quality control information, obtained during this initial period no later than 90 days after the treatment of the first full-scale batch. (B) *Subsequent Testing:* USX must collect representative grab samples from every treated batch of CSEAFD generated daily and composite all of the grab samples to produce a weekly composite sample. USX then must analyze each weekly composite sample for all of the EP toxic metals, and nickel. The analytical data, including quality control information, must be compiled and maintained on site for a minimum of three years. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Illinois. (2) *Delisting levels:* If the EP extract concentrations for chromium, lead, arsenic, or silver exceed 0.315 mg/1; for barium exceeds 6.3 mg/1; for cadmium or selenium exceed 0.063 mg/1; for mercury exceeds 0.0126 mg/1; for nickel exceeds 3.15 mg/1; or for cyanide exceeds 4.42 mg/1, total reactive cyanide or total reactive sulfide levels exceed 250 mg/kg and 500 mg/kg, respectively, the waste must either be re-treated until it meets these levels or managed and disposed of in accordance with Subtitle C of RCRA.

TABLE 2—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(3) *Data submittals:* Within one week of system start-up USX must notify the Section Chief, Variances Section (see address below) when their full-scale stabilization system is on-line and waste treatment has begun. The data obtained through condition (1)(A) must be submitted to the Section Chief, Variances Section, PSPD/OSW (OS-343), U.S. EPA, 401 M Street, SW., Washington, DC 20460 within the time period specified. At the Section Chief's request, USX must submit any other analytical data obtained through conditions (1)(A) or (1)(B) within the time period specified by the Section Chief. Failure to submit the required data obtained from conditions (1)(A) or (1)(B) within the specified time period or maintain the required records for the specified time will be considered by the Agency, at its discretion, sufficient basis to revoke USX's exclusion to the extent directed by EPA. All data must be accompanied by the following certification statement: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code which include, but may not be limited to, 18 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of wastes will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."

[FR Doc. 89-17033 Filed 7-19-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6960]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and Proposed base flood elevation modifications listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by Section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prohibit development. Thus, this action only forms the basis for future

local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) @Mean Lower Low Water (MLLW)
ALABAMA	
Greene County (unincorporated areas)	
Tombigbee River:	
At confluence of Black Warrior River	*95
About 14.9 miles upstream of Gainesville Dam	*131
Maps available for inspection at the County Courthouse, Eutaw, Alabama. Send comments to The Honorable James E. Carter, Chairman, County Commissioners, Greene County, P.O. Box 656, Eutaw, Alabama 35462.	
ALASKA	
Aniak (city), Bethel Borough	
Kuskokwim River:	
Just south of the runway at the middle of the road running parallel to the landing strip	*87
At the intersection of Boundary Avenue and Fourth Street	*89
At the west end of the existing levee	*90
Aniak Slough: Outside and south of the levee	*90
Maps are available for review at the Department of Public Works, Maintenance Office, Boundary Avenue, Aniak, Alaska. Send comments to The Honorable Robert Gibson, Mayor, City of Aniak, P.O. Box 43, Aniak, Alaska 99557.	
Ketchikan (city) Ketchikan Gateway Borough	
Ketchikan Creek:	
Just upstream of Stedman Street (without consideration of backwater from Tongass Narrows coastal flooding)	@14
Just upstream of Lower Park Avenue bridge	@46
Approximately 45 feet downstream of Upper Park Avenue bridge	@60
Just upstream of Fair Street bridge	@72
Approximately 300 feet upstream of Fair Street	@79
Schoenbar Creek:	
Sheetflow flooding at the intersection of Schoenbar Road and Park Lane	#1
Just upstream of the road to Schoenbar Junior High School	@66
At an unnamed road which intersects Schoenbar Road to the east of Valley Park Elementary School	@72
Approximately 900 feet northwest of the intersection of Fairy Chasm Road and Schoenbar Road	@116
Hoadley Creek:	
Approximately 180 feet downstream of Tongass Avenue	@18
Just downstream of Tongass Avenue bridge	@22
Just upstream of Baranof Avenue	@132
Approximately 530 feet north of the intersection of Thatcher Way and Baranof Avenue	@172

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) @Mean Lower Low Water (MLLW)
Carlanna Creek:	
At Tongass Avenue bridge (without consideration of backwater from Tongass Narrows coastal flooding)	@14
Approximately 155 feet upstream of Tongass Avenue	@18
At the upstream corporate limits	@44
Maps are available for review at the Department of Public Works, 334 Front Street, Ketchikan, Alaska. Send comments to The Honorable Ted Ferry, Mayor, City of Ketchikan, 334 Front Street, Ketchikan, Alaska 99901.	
ARKANSAS	
Baxter County (unincorporated areas)	
White River:	
Approximately 2,567 feet downstream of confluence of Jenkins Creek	*443
Downstream face of Bull Shoals Dam	*493
North Fork River:	
At confluence with White River	*397
At the downstream face of Norfork Dam	*398
Tributary No. 1:	
At confluence with Tributary No. 2	*612
Approximately 127 feet upstream of County Route 98A	*742
Tributary No. 2:	
Approximately 395 feet downstream of County Route 999	*582
Approximately 100 feet upstream of County Route 998	*724
Walker Creek:	
Approximately 1,267 feet downstream of County Route 27	*741
Approximately 2,255 upstream of confluence of Walker Tributary	*868
Walker Tributary:	
At confluence with Walker Creek	*830
Approximately 755 feet upstream of Spring Lake Avenue	*850
Hicks Creek:	
Approximately 1.16 miles downstream of County Route 55	*561
At the City of Mountain Home corporate limits	*686
Hicks Creek Tributary:	
At confluence with Hicks Creek	*643
Approximately 970 upstream of County Route 54	*749
Dodd Creek:	
At confluence with Hicks Creek	*664
Approximately 1,750 feet downstream of Wade Avenue	*719
Approximately 900 feet downstream of Bucher Drive	*770
Upstream side of State Route 178	*801
Dodd Creek Tributary:	
At the confluence with Dodd Creek	*692
Approximately 260 feet upstream of Pine Tree Lane	*790
Indian Creek:	
At confluence with Hicks Creek	*752
At downstream side of Bradley	*820
Maps available for inspection at the Mountain Home City Hall, Mountain Home, Arkansas.	
Send comments to The Honorable Joe Dillard, Baxter County Judge, Baxter County Courthouse, Mountain Home, Arkansas 72653.	
Salesville (city), Baxter County	
North Fork River: Its entire length within the community	*397
Maps available for inspection at the City Hall, Salesville, Texas.	
Send comments to The Honorable Sylvester Miller, Mayor of the City of Salesville, Baxter County, P.O. Box 277, Mountain Home, Arkansas 72653.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) @Mean Lower Low Water (MLLW)
GEORGIA	
Monroe (city), Walton County	
Jacks Creek Tributary No. 1:	
About 650 feet upstream of Monroe Dam	*779
Just downstream of East Marable Street	*796
Jacks Creek Tributary No. 2:	
About 2400 feet upstream of mouth	*789
Just downstream of East Spring Street	*841
Jacks Creek Tributary No. 3:	
At mouth	*789
Just downstream of East Spring Street	*820
Grubby Creek:	
About 1200 feet downstream of Poplar Street	*791
Just downstream of Poplar Street	*800
Just upstream of Poplar Street	*805
Just downstream of runway (Monroe-Walton County Airport)	*813
Just upstream of runway (Monroe-Walton County Airport)	*821
About 1600 feet upstream of confluence of Grubby Creek Tributary	*839
Mountain Creek:	
About 0.9 mile upstream of Liberty Hill Church Road	*744
Just downstream of State Route 138	*772
Mountain Creek Tributary No. 1:	
At mouth	*755
Just downstream of Breedlove Drive	*759
Just upstream of Breedlove Drive	*764
About 0.5 mile upstream of West Spring Street	*820
Mountain Creek Tributary No. 2:	
Just upstream of Vine Street	*756
Just downstream of Barrett Street	*852
Maps available for inspection at the City Hall, Monroe, Georgia. Send comments to The Honorable Knox Bell, Mayor, City of Monroe, P.O. Box 1249, Monroe, Georgia 30655.	
Thomas County (unincorporated areas)	
Ogeina Creek:	
At mouth	*169
Just downstream of North Pine Tree Boulevard	*186
Good Water Creek:	
At mouth	*177
Just downstream of Georgia-Florida Parkway	*186
Just upstream of Georgia-Florida Parkway	*192
About 1.0 mile upstream of Georgia-Florida Parkway	*201
Gatling Branch:	
About 600 feet upstream of mouth	*134
About 3.2 miles upstream of mouth	*172
Gatling Branch Tributary:	
At mouth	*151
Just downstream of Summer Hill Road	*202
Olive Creek:	
About 550 feet downstream of Cone Road	*148
Just downstream of South Pine Tree Boulevard	*197
Olive Creek Tributary:	
At mouth	*188
About 400 feet downstream of Mill Pond Road	*202
Warda Creek:	
Just upstream of CSX railroad	*178
About 1600 feet upstream of Habersham Road	*247
Maps available for inspection at the Building Inspection Department, 201 Broad Street, Thomasville, Georgia.	
Send comments to The Honorable John Bullock, Chairman, County Commission, Thomas County, P.O. Box 920, Thomasville, Georgia 31799.	
Walton County (unincorporated areas)	
Alcovy River:	
About 1.1 miles upstream of confluence of Beaverdam Creek	*735
About 0.8 mile upstream of State Route 81	*767
Shoal Creek:	
At mouth	*698

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) @Mean Lower Low Water (MLLW)
Just upstream of Tom Odom Road	*824
Little Haynes Creek:	
About 1.1 miles downstream of Center Hill Church Road	*712
About 350 feet downstream of Center Hill Church Road	*730
Just upstream of Center Hill Church Road	*743
Just upstream of Green Street	*790
Big Flat Creek:	
About 2,500 feet upstream of Marce Camp Road	*860
Just downstream of Old Zion Cemetery Road	*879
Jacks Creek Tributary 1:	
Just upstream of Monroe Dam	*777
About 600 feet upstream of Monroe Dam	*778
Mountain Creek:	
Just downstream of State Route 138	*773
Just upstream of U.S. Route 78	*788
About 300 feet upstream of U.S. Route 78	*794
About 1,800 feet upstream of U.S. Route 78	*795
Mountain Creek Tributary No. 2:	
Just upstream of Criswell Road	*748
Just downstream of Vine Street	*748
Just upstream of Vine Street	*756
About 2,200 feet upstream of Vine Street	*762
Maps available for inspection at the County Code Office, County Courthouse Annex 2, 100 North Broad Street, Monroe, Georgia.	
Send comments to The Honorable William Greeg, Chairman, Board of County Commissioners, Walton County, P.O. Box 585, Monroe, Georgia 30655.	
ILLINOIS	
Herrin (city), Williamson County	
Norge Ditch:	
About 1,400 feet downstream of 8th Street	*405
About 1,350 feet upstream of Clark Trail	*444
Hurricane Creek Tributary:	
About 1,350 feet downstream of Railroad Avenue	*422
About 0.8 mile upstream of Railroad Avenue	*465
17th Street Ditch:	
About 1,600 feet upstream of Union Pacific Railroad	*394
Just downstream of Herrin Avenue	*396
Just upstream of Herrin Avenue	*401
About 1,350 feet upstream of Clark Trail	*468
Maps available for inspection at the Clerk's Desk, City Hall, 300 North Park Avenue, Herrin, Illinois.	
Send comments to The Honorable Ed Quaglia, Mayor, City of Herrin, City Hall, 300 North Park Avenue, Herrin, Illinois 62948–3199.	
Mound City (city), Pulaski County	
Ohio River:	
Within corporate limits	*331
Maps available for inspection at the City Utilities Office, 314 Main Street, Mound City, Illinois.	
Send comments to The Honorable Frederick Winkler, Mayor, City of Mound City, 314 Main Street, Mound City, Illinois 62963–1128.	
KANSAS	
Cimarron (city), Gray County	
Arkansas River:	
About 3500 feet downstream of Main Street	*2608
About 1600 feet upstream of Main Street	*2615
Maps available for inspection at the City Hall, 119 South Main Street, Cimarron, Kansas. Send comments to The Honorable T. Leon Brady, Mayor, City of Cimarron, City Hall, 119 South Main Street, Cimarron, Kansas 67835.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) @Mean Lower Low Water (MLLW)
MAINE	
Greene (town), Androscoggin County	
Androscoggin River:	
At downstream corporate limits	*263
At upstream corporate limits	*266
Dead River:	
Approximately 90 feet downstream of Bull Run Road	*248
At confluence of Hooper Brook	*249
Hooper Brook:	
At confluence with Dead River	*249
At upstream corporate limits	*319
Hooper Brook Tributary:	
At confluence with Hooper Brook	*261
Approximately 80 feet upstream of U.S. Route 202 and State Routes 11 and 100	*277
Stetson Brook:	
At downstream corporate limits	*244
Approximately 70 feet upstream of Sullivan Road	*273
East Branch Stetson Brook:	
At confluence with Stetson Brook	*265
Approximately 55 feet upstream of Sullivan Road	*274
Maps available for inspection at the Town Office, Greene, Maine.	
Send comments to The Honorable Peter Brockway, Manager of the Town of Greene, Androscoggin County, Town Office, P.O. Box 1300, Greene, Maine 04236.	
Mechanic Falls (town), Androscoggin County	
Little Androscoggin River:	
At downstream corporate limits	*246
At upstream corporate limits	*300
Bog Brook:	
At confluence with Little Androscoggin River	*249
At confluence with Gardner Brook	*250
Maps available for inspection at the Town Office, 90 Lewiston Street, Mechanic Falls, Maine.	
Send comments to The Honorable Harvard Urquehart, Mechanic Falls Town Manager, Androscoggin County, Town Office, 90 Lewiston Street, Mechanic Falls, Maine 04256.	
Minot (town), Androscoggin County	
Little Androscoggin River:	
At downstream corporate limits	*227
Approximately 2,700 feet upstream from confluence of Bog Brook	*249
Bog Brook:	
At confluence with Little Androscoggin River	*249
Approximately 675 feet upstream of State Route 124	*308
Maps available for inspection at the Town Hall, Minot, Maine.	
Send comments to The Honorable John Gould, Chairman of the Minot Town Planning Board, Androscoggin County, Town Hall, Minot, Maine 04258.	
Peru (town), Oxford County	
Androscoggin River:	
Downstream corporate limits	*402
Upstream corporate limits	*419
Worthley Pond: Entire shoreline within community	*577
Maps available for inspection at the Town Office, Peru, Maine.	
Send comments to The Honorable Dennis Newton, Chairman of the Town of Peru Board of Selectmen, Oxford County, P.O. Box 196, West Peru, Maine 04290.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) @Mean Lower Low Water (MLLW)
Searsport (town), Waldo County	
Atlantic Ocean:	
Small Tributary, approximately 700 feet west of eastern corporate limits	*11
Shoreline along Searsport Harbor	*25
Maps available for inspection at the Town Office, Searsport, Maine.	
Send comments to The Honorable Donald Grant, Manager of the Town of Searsport Waldo County, Town Office, Reservoir Street, Searsport, Maine 04974.	
MASSACHUSETTS	
Hamilton (town), Essex County	
Miles River:	
Approximately 0.65 mile downstream of Gardner Street	*22
Approximately 0.45 mile upstream of Myopia Road	*32
Ipswich River:	
Approximately 700 feet downstream of Highland Street	*19
At upstream corporate limits	*37
Maps available for inspection at the Town Hall, Hamilton, Massachusetts.	
Send comments to The Honorable Susan Willshire, Chairman of the Town of Hamilton Board of Selectmen, Essex County, Town Hall, P.O. Box 429, Hamilton, Massachusetts 01936.	
MICHIGAN	
Lapeer (township), Lapeer County	
South Branch Flint River:	
About 1.2 miles downstream of Peppermill Road (west of Meyers Road)	*823
Just downstream of Peppermill Road (near dam)	*829
Just upstream of Peppermill Dam	*839
About 0.7 mile upstream of Higley Road	*848
Hunters Creek:	
About 0.6 mile downstream of Turrill Road	*831
Just downstream of Turrill Road	*832
About 0.4 mile upstream of Interstate 69	*839
Mirror Lake Drain: Within community	*839
Maps available for inspection at the Township Hall, 1500 Morris, Lapeer, Michigan.	
Send comments to The Honorable Robert E. Sutton, Supervisor, Township of Lapeer, Township Hall, 1500 Morris, Lapper, Michigan 48446.	
Mayfield (township), Lapeer County	
South Branch Flint River:	
Just upstream of Millville Road	*801
About 1.2 miles upstream of confluence of Rood Lake Drain	*812
Plum Creek Drain:	
At mouth	*802
Just downstream of Farnsworth Road	*810
Rood Lake Drain:	
At mouth	*810
About 0.6 mile upstream of Haines Road	*817
Maps available for inspection at the Township Hall, 1900 North Saginaw, Lapeer, Michigan.	
Send comments to The Honorable Chris O. Rauh, Supervisor, Township of Mayfield, Township Hall, 1900 North Saginaw, Lapeer, Michigan 48446.	
MISSISSIPPI	
Forrest County (unincorporated areas)	
Leaf River:	
Just upstream of Sims Road	*131

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PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) @Mean Lower Low Water (MLLW)
About 0.6 miles upstream of U.S. Highway 11	*168
Bowie River:	
At mouth	*148
About 4.5 miles upstream of Illinois Central Railroad	*185
Greene Creek:	
About 1,000 feet downstream of U.S. Highway 11	*150
About 700 feet upstream of Norfolk Southern Railway	*156
Maps available for inspection at the Board of Supervisor's Office, County Courthouse, 629 Main Street, Hattiesburg, Mississippi. Send comments to The Honorable Lynn Cartlidge, President, Board of Supervisors, Forrest County, County Courthouse, 629 Main Street, Hattiesburg, Mississippi 39401.	
Jones County (unincorporated areas)	
Tallahoma Creek:	
At mouth	*202
About 5.0 miles upstream of U.S. Highway 84 along hydraulic base line	*243
Tallahala Creek:	
About 1.8 miles upstream of State Highway 29	*201
About 1.4 miles upstream of U.S. Highway 11	*241
Rocky Creek:	
About 1.4 miles upstream of mouth	*157
At confluence of Rocky Creek Tributary No. 2	*207
Little Rocky Creek:	
At mouth	*189
About 0.9 mile upstream of Interstate 59	*226
Basie Branch:	
At mouth	*196
About 1.1 miles upstream of mouth	*211
Rocky Creek Tributary No. 2: Within community	*207
Maps available for inspection at the Board of Supervisor's Office, County Courthouse, Laurel, Mississippi.	
Send comments to The Honorable Milton Saul, President, Board of Supervisors, Jones County, County Courthouse, P.O. Box 1468, Laurel, Mississippi 39441.	
Lamar County (unincorporated areas)	
Perkins Creek:	
Just upstream of Oak Grove Road	*260
Just downstream of U.S. Highway 98	*297
Just upstream of dam	*319
Just downstream of Ralph Rials Road	*331
Mixons Creek:	
Just upstream of Interstate 59	*175
Just downstream of Gravel Pit Road	*253
Mixons Creek Tributary:	
At mouth	*175
Just downstream of Illinois Central Railroad	*181
Just upstream of West Fourth Street	*187
About 1600 feet upstream of Westover Drive	*195
Black Creek:	
About 1700 feet downstream of Interstate 59	*208
About 3500 feet upstream of U.S. Highway 98	*290
Little Black Creek:	
About 2.1 miles downstream of Interstate 59	*210
About 4100 feet upstream of U.S. Highway 11	*247
Maps available for inspection at the County Administrator's Office, Purvis, Mississippi.	
Send comments to The Honorable V.E. Douglas, President, Board of Supervisors, Lamar County, P.O. Box 1240, Purvis, Mississippi 39475.	
Lee County (unincorporated areas)	
Coonewah Creek:	
At mouth	*229
About 2000 feet upstream of Brewer Road	*234

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) @Mean Lower Low Water (MLLW)
Little Coonewah Creek:	
About 2300 feet downstream of State Highway 6	*296
About 500 feet upstream of State Highway 6	*301
Tributary to Coonewah Creek:	
About 0.5 mile above mouth	*275
About 0.5 mile upstream of Green Tee Road	*301
Kings Creek:	
At mouth	*262
About 0.6 mile upstream of Natchez Trace Parkway	*285
Mud Creek:	
About 1.6 miles above mouth	*286
Just downstream of Barnes Road	*276
Russell Creek:	
About 0.5 mile above mouth	*309
Just upstream of Butler Drive	*336
Sand Creek:	
Just upstream of Lake Lamar Bruce Road	*307
About 0.4 mile upstream of Pea Ridge Road	*318
Town Creek:	
At confluence of Coonewah Creek	*229
About 2,150 feet upstream of U.S. Highway 78	*273
Town Creek Tributary No. 1:	
At mouth	*267
About 325 feet upstream of U.S. Highway 78	*273
Town Creek Tributary No. 2:	
At mouth	*236
Just downstream of Brewer Road	*256
Tulip Creek:	
Just upstream of Burlington Northern railroad	*258
Just downstream of U.S. Highway 78	*292
Maps available for inspection at the Board of Supervisors' Office, The Chancery Clerk Building, Tupelo, Mississippi.	
Send comments to The Honorable Alfred W. Rice, President, Board of Supervisors, Lee County, P.O. Box 1785, Tupelo, Mississippi 38802.	
NEBRASKA	
Schuyler (city), Colfax County	
Shell Creek:	
About 1.4 miles downstream of U.S. Highway 30	*1345
About 2900 feet upstream of U.S. Highway 30	*1355
Shell Creek Right Overbank:	
At mouth	*1346
About 1.3 miles upstream of U.S. Highway 30	*1354
Platte River:	
About 1.8 miles downstream of State Highway 15	*1343
About 0.9 mile upstream of State Highway 15	*1357
Lost Creek:	
About 2.1 miles downstream of State Highway 15	*1343
About 2.1 miles upstream of State Highway 15	*1357
Maps available for inspection at the City Hall, 1020 A Street, Schuyler, Nebraska.	
Send comments to The Honorable Paul Rupprecht, Mayor, City of Schuyler, City Hall, 1020 A Street, Schuyler, Nebraska 68661.	
NORTH CAROLINA	
Edwin (town), Harnett County	
Black River:	
About 0.5 mile downstream of SR 1735	*163
Just downstream of SR 1725	*174
Juniper Creek:	
At mouth	*108
About 0.7 mile upstream of U.S. Route 421	*145
Stewarts Creek:	
At mouth	*124
About 0.4 mile downstream of SR 1725	*155
Cape Fear River:	
About 0.7 mile below State Road 217	*107
At confluence of Upper Little River	*110

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) @Mean Lower Low Water (MLLW)
Maps available for inspection at the Town Manager's Office, Municipal Building, Erwin, North Carolina.	
Send comments to The Honorable Richard Hicks, Town Manager, Town of Erwin, P.O. Box 456, Erwin, North Carolina 28339.	
Harnett County (unincorporated areas)	
Black River:	
About 1.5 miles downstream of Long Branch Road	*152
Just downstream of SR 1725	*174
Buies Creek:	
At mouth	*118
Just downstream of SR 1519	*125
Just upstream of SR 1519	*130
Just downstream of U.S. Route 421	*142
Just upstream of State Road 27	*149
Just downstream of SR 1516	*178
West Buies Creek:	
At mouth	*122
Just downstream of Golf Road	*128
Just upstream of Golf Road	*134
About 850 feet upstream of U.S. Route 421	*156
East Buies Creek:	
At mouth	*124
Just upstream of SR 1516	*197
Juniper Creek:	
At mouth	*109
Just downstream of SR 2009	*185
South Prong Anderson Creek:	
About 0.3 mile downstream of SR 1120	*171
About 1.0 mile upstream of SR 1120	*187
Stewarts Creek:	
At mouth	*124
Just upstream of SR 1725	*164
Stony Run:	
At mouth	*161
Just downstream of Interstate 95	*169
Just upstream of Interstate 95	*174
Just downstream of dam	*184
Just upstream of dam	*191
Just upstream of SR 1712	*219
Tributary No. 1:	
About 900 feet above mouth	*133
Just downstream of SR 1124	*158
Just upstream of SR 1124	*164
About 575 feet upstream of SR 1124	*164
Tributary No. 2:	
At mouth	*150
About 1580 feet upstream of Appalooza Road	*175
Cape Fear River:	
At Southern County Boundary	*103
At Northern County Boundary	*153
Maps available for inspection at the Planning Office, County Courthouse, Lillington, North Carolina.	
Send comments to The Honorable Dallas Pope, County Manager, Harnett County, P.O. Box 759, Lillington, North Carolina 27546.	
OHIO	
Columbiana County (unincorporated areas)	
Longs Run:	
About 2450 feet downstream of East Liverpool	*924
Just downstream of Yeager Drive	*999
North Fork Yellow Creek:	
About 0.8 mile downstream of Haitt Road	*849
About 600 feet upstream of Haitt Road	*886
Middle Fork Little Beaver Creek:	
About 2400 feet downstream of State Route 7	*815
Just downstream of State Route 45	*1015
Ohio River:	
About 2.3 miles downstream of Newell Bridge	*885
About 0.5 mile downstream of Newell Bridge	*886
Maps available for inspection at the County Courthouse, Lisbon, Ohio.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) @Mean Lower Low Water (MLLW)
Send comments to The Honorable Don Lowe, Chairman, Board of Commissioners, Columbiana County, County Courthouse, Lisbon, Ohio 44432.	
Garrettsville (village), Portage County	
Eagle Creek:	
Just upstream of Broslus Road	*948
Just downstream of drop structure	*967
Just upstream of drop structure	*985
About 0.7 mile upstream of South Street	*986
Camp Creek:	
At mouth	*949
Just downstream of drop structure	*953
Just upstream of drop structure	*970
About 1.0 mile upstream of Center Street	*980
Maps available for inspection at the Village Hall, 8213 High Street, Garrettsville, Ohio.	
Send comments to The Honorable Milt Pollock, Mayor, Village of Garrettsville, Village Hall, 8213 High Street, Garrettsville, Ohio 44231.	
Jeffersonville (village), Fayette County	
Sugar Creek:	
About 1050 feet downstream of Campground Road	*1037
About 600 feet upstream of Grand Trunk Western Railroad	*1048
Maps available for inspection at the Village Hall, 4 North Main Street, Jeffersonville, Ohio.	
Send comments to The Honorable Bill Michael, Mayor, Village of Jeffersonville, Village Hall, 4 North Main Street, P.O. Box 7, Jeffersonville, Ohio 43128.	
OKLAHOMA	
Kay County (unincorporated areas)	
Arkansas River:	
Approximately 2.0 miles downstream of U.S. Route 60	*922
At Kaw Dam (upstream limit of detailed study)	*951
Tributary W:	
At confluence with Arkansas River	*932
At upstream corporate limits	*939
Salt Fork Arkansas River:	
At downstream side of U.S. Route 77	*959
Approximately 0.74 mile upstream of U.S. Route 77	*960
Chikaskia River:	
Approximately 1.15 miles downstream of the City of Blackwell corporate limits	*1,001
Approximately 0.6 mile upstream of State Route 11	*1,009
Maps available for inspection at the Kay County Courthouse, Newkirk, Oklahoma.	
Send comments to The Honorable John McFadden, Chairman of the Kay County Commissioners, Kay County Courthouse, Newkirk, Oklahoma 74647.	
Seminole County (unincorporated areas)	
Wewoka Creek:	
Approximately 800 feet downstream of confluence of Tributary A	*778
Approximately 200 feet upstream of Strother Avenue	*877
Coon Creek:	
At confluence with Wewoka Creek	*801
Approximately 1,600 feet upstream of Missouri-Kansas-Texas Railroad crossing	*817
Tributary A:	
At confluence with Wewoka Creek	*781
Approximately 200 feet upstream of US Route 270	*841

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) @Mean Lower Low Water (MLLW)
Carter Creek:	
At confluence with Wewoka Creek	*848
Approximately 100 feet upstream of Harvey Road	*866
Magnolia Creek:	
At downstream side of Goodhope Road	*892
Approximately 1.1 miles upstream of Goodhope Road	*923
Tributary No. 3 of Carter Creek:	
At confluence with Carter Creek	*892
At downstream Seminole City corporate limits	*939
Tributary No. 3 of Magnolia Creek:	
At downstream side of Goodhope Road	*907
Approximately 1.2 miles upstream of Goodhope Road	*967
Tributary No. 1 of Tributary No. 3 of Magnolia Creek:	
At Seminole City corporate limits	*906
Approximately 1.1 miles upstream of confluence with Tributary No. 3	*923
Sandy Creek:	
Approximately .5 mile upstream of confluence with Wewoka Creek	*791
Upstream side of Missouri-Kansas-Texas Railroad	*795
Tributary No. 1 of Carter Creek:	
Approximately .5 mile upstream of confluence with Carter Creek	*860
Approximately 920 feet upstream of Strother Avenue	*864
Maps available for inspection at the Commissioner's Office, Seminole County Courthouse, Wewoka, Oklahoma.	
Send comments to The Honorable James Tooley, Chairman of the Board of County Commissioners, Seminole County, P.O. Box 457, Seminole County Courthouse, Wewoka, Oklahoma 74884.	
PENNSYLVANIA	
Armstrong (township), Indiana County	
Crooked Creek:	
At corporate limits	*989
At CSX Transportation	*1,006
Maps available for inspection in care of Mr. Donald Harris, Jr., Township Secretary, Shelocta Road, Shelocta, Pennsylvania.	
Send comments to The Honorable Russell Blystone, Chairman of the Township of Armstrong Board of Supervisors, Indiana County, R.D. #3, Shelocta, Pennsylvania 15774.	
Cassandra (borough), Cambria County	
Little Conemaugh River:	
Approximately 250 feet downstream of downstream corporate limits	*1,781
At upstream corporate limits	*1,790
Maps available for inspection at the Borough Building, Portage, Pennsylvania.	
Send comments to The Honorable Steve Shuniak, President of the Cassandra Borough Council, Cambria County, Borough Building, Cassandra, Pennsylvania 15925.	
Clearfield (township), Cambria County	
Chest Creek:	
Approximately 5,450 feet downstream of corporate limits	*1,734
Approximately 4,500 feet upstream of corporate limits	*1,742
Clearfield Creek:	
Approximately 300 feet downstream of T-521	*1,504
Approximately 1,000 feet upstream of T-521	*1,507
Approximately .5 mile downstream of State Route 36	*1,614
State Route 36	*1,622

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) @Mean Lower Low Water (MLLW)
Maps available for inspection at the home of Evelyn Preloh, Township Secretary, R.D. #1, Box 285, Patton, Pennsylvania.	
Send comments to The Honorable Charles H. Nagle, Chairman of the Township of Clearfield Board of Supervisors, Cambria County, R.D. #1, Box 105, Dysart, Pennsylvania 16636.	
Coaldale (borough), Bedford County	
Six Mile Run:	
Approximately 410 feet downstream of downstream corporate limits	*1,090
At upstream corporate limits	*1,139
Maps available for inspection at the Six Mile Run Community Center (off Fulton Street), Six Mile Run, Pennsylvania 16679.	
Send comments to The Honorable Louise Hinish, President of the Coaldale Borough Council, Bedford County, Six Mile Run, Pennsylvania 16679.	
East Carroll (township), Cambria County	
Little Chest Creek:	
At downstream corporate limits	*1,786
Approximately 25 feet upstream of the confluence of Unnamed Tributary to Little Chest Creek	*1,795
Unnamed Tributary to Little Chest Creek:	
At confluence with Little Chest Creek	*1,795
Approximately 750 feet upstream of T-527	*1,846
Maps available for inspection at the Township Building, R.D. 1, Carrolltown, Pennsylvania.	
Send comments to The Honorable Robert Hoover, Chairman of the Township of East Carroll Board of Supervisors, Cambria County, R.D. 2, Box 49, Patton, Pennsylvania 16668.	
East Conemaugh (borough), Cambria County	
Little Conemaugh River:	
Approximately 125 feet downstream of downstream corporate limits	*1,211
Approximately 0.6 mile upstream of upstream corporate limits	*1,239
Maps available for inspection at the Borough Building, 355 First Street, Conemaugh, Pennsylvania.	
Send comments to The Honorable Peter Pencola, Mayor of the Borough of East Conemaugh, Cambria County, 322 Green Street, Conemaugh, Pennsylvania 15909.	
East Taylor (township), Cambria County	
Little Conemaugh River:	
Downstream corporate limits (extended)	*1,239
Approximately 3,640 feet upstream of L.R. 11106	*1,387
Maps available for inspection at the Township Building, 1552 William Penn Avenue, Conemaugh, Pennsylvania.	
Send comments to The Honorable Alfred Coleman, Chairman of the Township of East Taylor Board of Supervisors, Cambria County, 1195 William Penn Avenue, Conemaugh, Pennsylvania 15909.	
Ehrenfeld (borough), Cambria County	
Little Conemaugh River:	
At downstream corporate limits	*1,491
At upstream corporate limits	*1,519
Maps available for inspection at the Borough Building, Ehrenfeld, Pennsylvania.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) @Mean Lower Low Water (MLLW)
Send comments to The Honorable Albert Keller, President of the Ehrenfeld Borough Council, Cambria County, Third Street, Ehrenfeld, Pennsylvania 15956.	
Franklin (borough), Cambria County	
Little Conemaugh River:	
Approximately 1,230 feet downstream of State Route 271 (River Avenue)	*1,202
Approximately 3,610 feet upstream of confluence of Clapboard Run	*1,248
Clapboard Run:	
At confluence with Little Conemaugh River	*1,230
At upstream corporate limits	*1,275
Maps available for inspection at the Borough Building, 125 Main Street, Conemaugh, Pennsylvania.	
Send comments to The Honorable Richard McNulty, President of the Borough of Franklin Council, Cambria County, 171 Main Street, Conemaugh, Pennsylvania 15909.	
Geistown (borough), Cambria County	
Sams Run:	
Approximately 155 feet downstream of State Route 756 (Belmont Street)	*1,798
At upstream corporate limits	*1,895
Maps available for inspection at the Geistown Borough Building, 721 East Oakmont Boulevard, Johnstown, Pennsylvania.	
Send comments to The Honorable Mathew Orsekowich, President of the Geistown Borough Council, Cambria County, 721 East Oakmont Boulevard, Johnstown, Pennsylvania 15904.	
Pine Grove (township), Schuylkill County	
Lower Little Swatara Creek:	
At confluence with Swatara Creek	*506
At upstream corporate limits	*535
Swatara Creek:	
At Interstate Route 81 (southbound)	*486
At upstream corporate limits	*613
Maps available for inspection at the Township Building, Long Stretch Road, Pine Grove, Pennsylvania.	
Send comments to The Honorable John Brown, Chairman of the Township of Pine Grove Board of Supervisors, Schuylkill County, Long Stretch Road, R.D. #4, Box 280-A, Pine Grove, Pennsylvania 17963.	
Portage (borough), Cambria County	
Little Conemaugh River:	
Approximately 50 feet downstream of downstream corporate limits	*1,584
At State Route 53	*1,602
Trout Run:	
At downstream corporate limits	*1,636
Approximately 40 feet upstream of upstream corporate limits	*1,716
Spring Run:	
Approximately 960 feet downstream of Lee Street	*1,801
Approximately 190 feet upstream of CONRAIL	*1,827
Maps available for inspection at the Borough Building, 721 Main Street, Portage, Pennsylvania.	
Send comments to The Honorable John Mutsko, President of the Portage Borough Council, Cambria County, 1020 Gillespie Avenue, Portage, Pennsylvania 15946.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) @Mean Lower Low Water (MLLW)
Portage (township), Cambria County	
Little Conemaugh River:	
Approximately 1,800 feet downstream of State Route 53	*1,595
Approximately 1,150 feet upstream of State Route 164	*1,814
Trout Run:	
At downstream corporate limits (at Borough of Portage)	*1,715
Approximately 0.92 mile upstream of Abandoned Railroad	*1,856
Spring Run:	
At downstream corporate limits (at Borough of Portage)	*1,627
Approximately 0.58 mile upstream of L.R. 11071 (Washington Avenue)	*1,677
Maps available for inspection at the Township Building, Portage, Pennsylvania.	
Send comments to The Honorable John Mrosek, Jr., Chairman of the Township of Portage Board of Supervisors, Cambria County, R.D. 1, Box 528, Portage, Pennsylvania 15946.	
Reade (township), Cambria County	
Clearfield Creek:	
Approximately 1,000 feet downstream of T-406	*1,412
Approximately 0.5 mile upstream of confluence of Powell Run	*1,433
Powell Run:	
At confluence with Clearfield Creek	*1,425
Approximately 820 feet upstream of State Route 53	*1,439
Approximately 100 feet downstream of T-562	*2,010
Approximately 500 feet upstream of T-564	*2,089
Maps available for inspection at the Township Building, Route 665, Glasgow, Pennsylvania.	
Send comments to The Honorable Albert Lewis, Chairman of the Township of Reade Board of Supervisors, Cambria County, Box 531, Blendburg, Pennsylvania 16619.	
Scott (township), Lackawanna County	
South Branch Tunkhannock Creek:	
Approximately 430 feet downstream of State Route 438	*1,108
Approximately 2,100 feet upstream of State Route 247	*1,322
Unnamed Tributary to South Branch Tunkhannock Creek:	
At confluence with South Branch Tunkhannock Creek	*1,269
Approximately 1,200 feet upstream of State Route 247	*1,371
Hull Creek:	
At downstream corporate limits	*1,376
Approximately 1,110 feet upstream of State Route 954	*1,511
Maps available for inspection at the Township Building, R.D. #1, Olyphant, Pennsylvania.	
Send comments to The Honorable Dale Noldy, Chairman of the Township of Scott Board of Supervisors, Lackawanna County, R.D. 1, Box 405, Jermyn, Pennsylvania 18433.	
Shamokin (township), Northumberland County	
Shamokin Creek:	
Approximately 340 feet downstream of T-705	*530
At upstream corporate limits	*617
Maps available for inspection at the Shamokin Township Building, Township Road #465, Village of Storington, Pennsylvania.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) @Mean Lower Low Water (MLLW)
Send comments to The Honorable Robert Ammerman, Chairman of the Township of Shamokin Board of Supervisors, Northumberland County, R.R. 1, Box 379, Paxinos, Pennsylvania 17860.	
South Fork (borough), Cambria County	
Little Conemaugh River:	
At downstream corporate limits	*1,470
At upstream corporate limits	*1,491
South Fork Little Conemaugh River:	
At confluence with Little Conemaugh River	*1,478
At upstream corporate limits	*1,500
Maps available for inspection at the Borough Building, Grant Street, South Fork, Pennsylvania.	
Send comments to The Honorable Clyde Wadsworth, President of the Borough of South Fork Council, Cambria County, 610 Maple Street, South Fork, Pennsylvania 15956.	
Southmont (borough), Cambria County	
Chaney Run:	
Upstream side of Langhorne Avenue	*1,333
Downstream side of Olive Street	*1,505
Maps available for inspection at the Borough Building, 148 Wonder Street, Johnstown, Pennsylvania.	
Send comments to The Honorable Charles Glass, President of the Borough of Southmont Council, Cambria County, 422 State Street, Johnstown, Pennsylvania 15905.	
Summerhill (borough), Cambria County	
Little Conemaugh River:	
Approximately 0.6 mile downstream of downstream corporate limits	*1,522
At upstream corporate limits	*1,537
Laurel Run:	
At confluence with Little Conemaugh River	*1,534
At upstream corporate limits	*1,608
Maps available for inspection at the Borough Building, Summerhill, Pennsylvania.	
Send comments to The Honorable Lawrence Wilburn, President of the Summerhill Borough Council, Cambria County, P.O. Box 293, Summerhill, Pennsylvania 15958.	
Upper Yoder (township), Cambria County	
Stonycreek River:	
At downstream corporate limits	*1,204
Approximately 0.53 mile upstream of Boone Street	*1,213
Mill Creek:	
Approximately 25 feet downstream of corporate limits	*1,234
Approximately 1.04 mile upstream of corporate limits	*1,326
Maps available for inspection at the Township Building, 302 Elm Street, Johnstown, Pennsylvania.	
Send comments to The Honorable Roy Schaffer, Chairman of the Township of Upper Yoder Board of Supervisors, Cambria County, 302 Elm Street, Johnstown, Pennsylvania 15905.	
Vintondale (borough), Cambria County	
South Branch Blacklick Creek:	
At downstream corporate limits	*1,391
Approximately 150 feet upstream of confluence with Bracken Run	*1,421
Shanger Run:	
At confluence with South Branch Blacklick Creek	*1,412

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) @Mean Lower Low Water (MLLW)
Approximately 990 feet above confluence with South Branch Blacklick Creek	*1,465
Bracken Run:	
At confluence with South Branch Blacklick Creek	*1,420
At upstream corporate limits	*1,475
Maps available for inspection at the residence of Mr. Don Kerkes, Secretary/Treasurer of the Borough of Vintondale, Vintondale, Pennsylvania.	
Send comments to The Honorable John J. Malloy, President of the Vintondale Borough Council, Cambria County, Rear Second Street, Vintondale, Pennsylvania 15961.	
Washington (township), Indiana County	
Crooked Creek:	
Approximately 1.0 mile downstream of CSX Transportation	*1,025
Approximately 900 feet upstream of Blue Spruce Road	*1,054
McKee Run:	
At corporate limits of Borough of Creekside	*1,039
Approximately 1,420 feet upstream of corporate limits of Borough of Creekside	*1,040
Sugarcamp Run:	
Approximately 925 feet downstream of State Route 205	*1,059
Approximately 1.22 miles upstream of State Route 954	*1,152
Maps available for inspection at the residence of Connie L. Johnston, Township Secretary, Johnston Road, Creekside, Pennsylvania.	
Send comments to The Honorable Richard Sprankle, Chairman of the Township of Washington Board of Supervisors, Indiana County, R.D. #1, Creekside, Pennsylvania 15732.	
West Taylor (township), Cambria County	
Conemaugh River:	
Approximately 500 feet downstream of confluence of Laurel Run	*1,154
At upstream corporate limits	*1,163
Laurel Run:	
At confluence with Conemaugh River	*1,155
Approximately 860 feet upstream of confluence of Red Run	*1,390
Maps available for inspection at the Township Building, West Taylor, Pennsylvania.	
Send comments to The Honorable Harry Sentichan, Chairman of the West Taylor Township Board of Supervisors, Cambria County, R.D. #1, Naylor Road, Johnstown, Pennsylvania 15906.	
West Wheatfield (township), Indiana County	
Conemaugh River:	
At downstream corporate limits	*997
At upstream corporate limits	*1,084
Maps available for inspection at the residence of the Jean Yarnel, Township Secretary, U.S. Route 22 (west of intersection 22 and 259), New Florence, Pennsylvania.	
Send comments to The Honorable Donald Baird, Chairman of the Township of West Wheatfield Board of Supervisors, Indiana County, R.D. #1, Blairsville, Pennsylvania 15717.	
White (township), Cambria County	
Clearfield Creek:	
Approximately 1,000 feet downstream of T-406	*1,412
Approximately 2,900 feet upstream of T-561 (Foster Road)	*1,433
Beaverdam Run:	
At confluence with Clearfield Creek	*1,385

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) @Mean Lower Low Water (MLLW)
Approximately 900 feet upstream of confluence of Strayer Run	*1,386
Strayer Run:	
At confluence with Beaverdam Run	*1,385
Approximately 850 feet upstream of L.R. 11063	*1,406
Dutch Run:	
Approximately 500 feet downstream of L.R. 11052	*1,398
Approximately 0.78 mile upstream of L.R. 11052	*1,401
Maps available for inspection at the residence of Mr. John Gates, R.D. 1, Flinton, Pennsylvania.	
Send comments to The Honorable Richard Black, Chairman of the Township of White Board of Supervisors, Cambria County, R.D. 1, Flinton, Pennsylvania 16640.	
SOUTH DAKOTA	
Lawrence County	
Higgins Gulch:	
Approximately 690 feet downstream of U.S. Forest Service Road	*3,805
Approximately 440 feet upstream of U.S. Forest Service Road	*3,865
Approximately 950 feet upstream of U.S. Forest Service Road	*3,969
Approximately 280 feet upstream of U.S. Forest Service Road	*4,040
Maps are available for review at the Lawrence County Planning and Zoning Administrator's Office, 644 Main, Deadwood, South Dakota.	
TEXAS	
Argyle (city), Denton County	
Graveyard Branch:	
Approximately 700 feet downstream of corporate limits	*622
Approximately 1,300 feet upstream of Old Justin Road	*664
Fincher Branch:	
At Hickory Hills Road	*612
Approximately 800 feet upstream of confluence with Stream FB-1	*630
Stream FB-1:	
Confluence with Fincher Branch	*628
Approximately 70 feet upstream of Harpole Road	*638
Maps available for inspection at the City Hall/Police Station, Highway 377, Argyle, Texas.	
Send comments to The Honorable Norman Thomas, Mayor of the City of Argyle, Denton County, P.O. Box 1035, Argyle, Texas 76226.	
Ballinger (city), Runnels County	
Colorado River:	
Approximately 1,400 feet downstream of confluence of Elm Creek	*1,628
Approximately 700 feet upstream of Atchinson, Topeka, and Santa Fe Railway	*1,630
Elm Creek:	
At confluence with Colorado River	*1,628
At upstream corporate limits	*1,637
Maps available for inspection at the City Hall, 7th and Railroad Avenue, Ballinger, Texas.	
Send comments to The Honorable W. F. Goetz, Mayor of the City of Ballinger, Runnels County, P.O. Box 497, Ballinger, Texas 76821.	
Booker (City), Lipscomb and Ochiltree Counties	
North Fork Kiowa Creek Tributary:	
At North County Road	*2,823

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) @Mean Lower Low Water (MLLW)
Approximately .5 mile upstream of State Route 15	*2,829
Maps available for inspection at the City Hall, South Main, Booker, Texas.	
Send comments to The Honorable Ralph Maxfield, Mayor of the City of Booker, Lipscomb and Ochiltree Counties, P.O. Box 122, Booker, Texas 79005.	
Madisonville (city), Madison County	
Town Branch:	
Approximately 676 feet downstream of downstream corporate limits	*232
Upstream corporate limits	*286
Town Branch Tributary 1:	
At confluence with Town Branch	*252
Approximately 470 feet upstream of Mincer Street	*268
Maps available for inspection at the City Hall, 203 Cottonwood, Madisonville, Texas.	
Send comments to The Honorable James B. Goodrum, Mayor of the City of Madisonville, Madison County, P.O. Box 549, Madisonville, Texas 77864.	
WEST VIRGINIA	
Ronceverte (city), Greenbrier County	
Greenbrier River:	
Approximately 500 feet downstream of the downstream corporate limits	*1,662
Approximately 1.4 miles upstream of upstream Route 219 and State Route 3	*1,674
Maps available for inspection at the City Hall, Main Street, Ronceverte, West Virginia.	
Send comments to The Honorable Eugene Kelley, Mayor of the City of Ronceverte, Greenbrier County, P.O. Box 417, Ronceverte, West Virginia 24970.	
WISCONSIN	
Bell Center (village), Crawford County	
Kickapoo River:	
About 1.2 miles downstream of Town Road	*695
About 1.6 miles upstream of Town Road	*700
Maps available for inspection at Route 2, Gays Mills, Wisconsin.	
Send comments to The Honorable Hallie H. Campbell, Village President, Village of Bell Center, Route 2, Box 24, Gays Mills, Wisconsin 54631.	
Elmwood (village), Pierce County	
Eau Galle River:	
About 4,100 feet downstream of Public Avenue	*828
About 4,800 feet upstream of State Highway 72	*847
Maps available for inspection at the Village Hall, 323 West Winter Avenue, Elmwood, Wisconsin.	
Send comments to The Honorable Larry Feiler, Village President, Village of Elmwood, 323 West Winter Avenue, Elmwood, Wisconsin 54740.	

The proposed modified base (100-year) flood elevations for selected locations are:

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)	
				Existing	Modified
Arkansas	Cotter, City, Baxter County.	White River	Approximately 2.3 miles downstream of U.S. Route 62.	None	*449
			Approximately 2.0 miles upstream of U.S. Route 62.	None	*458
Maps available for inspection at the City Hall, Cotter, Arkansas.					
Send comments to The Honorable Louis E. Dennis, Mayor of the City of Cotter, Baxter County, Drawer G, Cotter, Arkansas 72626.					
Arkansas	Norfork, City, Baxter County.	North Fork River	At confluence with White River	None	*397
			Approximately 1.3 miles upstream of State Route 5.	None	*397
Maps available for inspection at the City Hall, Norfork, Arkansas.					
Send comments to The Honorable Bob Nease, Mayor of the City of Norfork, Baxter County, P.O. Box 32, Norfork, Arkansas 72658.					
Connecticut	New Canaan, Town, Fairfield County.	Rippowam River	Approximately 800 feet downstream of Cascade Road.	*227	*226
			Approximately 0.63 mile upstream of State Route 124 (Pinney Road).	*444	*436
		Laurel Brook	Approximately 250 feet upstream of confluence with Rippowam River.	*244	*245
			Upstream side of Laurel Road bridge	*280	*276
		Noroton River	At downstream corporate limits	*115	*119
			Upstream side of State Route 29 (West Road)	*397	*391
		Silvermine River	Approximately 800 feet downstream of dam located downstream of Sawmill Lane.	*122	*123
			Approximately 1,000 feet upstream of Valley Road bridge.	*285	*290
		Five Mile River	Approximately 700 feet downstream of State Route 15.	*142	*141
			Approximately 0.8 mile upstream of Country Club Road.	*412	*405
		Parting Brook	Approximately 450 feet downstream of downstream corporate limits.	None	*248
			Approximately 0.7 mile upstream of Thayer Road.	*396	*393
Maps available for inspection at the Town Office, 77 Main Street, New Canaan, Connecticut.					
Send comments to The Honorable Louis Moreno, First Selectman of the Town of New Canaan, Fairfield County, Town Office, 77 Main Street, New Canaan, Connecticut 06840.					
Illinois	City of Wilmington, Will County.	Kankakee River	About 0.8 mile downstream of confluence of unnamed tributary.	*529	*536
			About 0.8 mile upstream of Wilmington Dam	*540	*547
		Kankakee River East Channel	Just upstream of confluence with Kankakee River.	*534	*539
			Just upstream of West Street	*537	*543
		Kahler Road Drainage Ditch	At mouth	*537	*543
			About 0.3 mile upstream of Kahler Road	*555	*555
		Forked Creek	At mouth	*533	*539
			About 0.5 mile upstream of Kahler Road	*549	*549
Maps available for inspection at the Clerk's desk, City Hall, 114 North Main Street, Wilmington, Illinois.					
Send comments to The Honorable Robert Weidling, Mayor, City of Wilmington, City Hall, 114 North Main Street, P.O. Box 235, Wilmington, Illinois 60481-0235.					
Massachusetts	Boston, City, Suffolk County.	Massachusetts Bay	Eastern shoreline of Deer Island approximately 0.61 mile southeast of corporate limits.	*10	*24
			Shoreline at extreme northeastern top of Long Island.	*10	*29
			Southwestern shoreline of Gallops Island	*10	*10
		Boston Harbor	Approximately 400 feet south of Saratoga Street.	*9.5	*10
			At Saratoga Street Bridge	*9.5	*10
			At eastern end of Castle Island	*10	*21
			Approximately 0.11 mile northeast along William J. Day Boulevard from its intersection with East Broadway Street.	*10	*10
		Dorchester Bay	Shoreline at 6 Street (extended)	*10.5	*15
			Approximately 0.11 mile northeast of intersection of Mount Vernon Street and Columbia Road.	*10.5	*10.5
			Shoreline approximately 0.15 mile northeast of intersection of Blair Road and Monticello Avenue.	*10.5	*18
			Shoreline of Savin Hill Cove west of William T. Morrissey Boulevard.	*11.5	*11.5

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)	
				Existing	Modified
			Shoreline approximately 0.19 mile southwest of Columbia Point.	*11.5	*25
		Boston Inner Harbor	Shoreline of Reserved Channel west of Sumner Street.	*10	*10
			Shoreline at State Street, extended	*10	*14
*100-year Water-Surface Elevation (National Geodetic Vertical Datum).					
Maps available for inspection at the Department of the Environment, City Hall, Boston, Massachusetts.					
Send comments to The Honorable Raymond L. Flynn, Mayor of the City of Boston, Suffolk County, City Hall, Boston, Massachusetts 02108.					
Minnesota	Unincorporated Areas of Blue Earth County.	Blue Earth River	About 1,100 feet downstream of U.S. Highway 169.	*785	*782
			About 1.0 mile upstream of County Highway 33	*804	*792
		Le Sueur River	At mouth	*797	*788
			Just downstream of County Highway 41	*909	*915
		Cobb River	At mouth	None	*826
			Just downstream of County Highway 16	None	*892
		Watonwan River	About 1.4 miles above mouth	*892	*868
			Just downstream of Chicago and North Western.	*911	*916
		Minnesota River	At downstream county boundary	*770	*770
			At upstream county boundary	*803	*804
Maps available for inspection at the Zoning Administrator's Office, Planning and Zoning Office, 202 East Jackson, Mankato, Minnesota.					
Send comments to The Honorable Laverne Bergemann, Chairman, Board of Commissioners, Blue Earth County, County Courthouse, 204 South 5th Street, P.O. Box 5608, Mankato, Minnesota 56001.					
Mississippi	City of Hattiesburg, Forrest & Lamar Counties.	Bowie River	At mouth	*152	*148
			About 2.0 miles upstream of Interstate 59	*169	*170
		Leaf River	About 3.2 miles downstream of South Main Street.	*140	*139
			About 2,500 feet upstream of U.S. Highway 11	*152	*150
		Gordons Creek	At mouth	*150	*147
			Just downstream of Walnut Street	*150	*150
Maps available for inspection at the Building Inspection Department, City Hall, 200 Forrest Street, Hattiesburg, Mississippi.					
Send comments to The Honorable G.D. Williamson, Mayor, City of Hattiesburg, City Hall, 200 Forrest Street, Hattiesburg, Mississippi 39401.					
Mississippi	City of Petal, Forrest County.	Greens Creek	At mouth	*153	*150
			Just downstream of North Main Street	*160	*160
		Leaf River	About 2.2 miles downstream of South Main Street.	*140	*140
			About 1.5 miles upstream of U.S. Highway 11	*153	*152
		Unnamed Tributary	At mouth	*147	*146
			Just downstream of South Main Street	*149	*149
Maps available for inspection at the City Hall, 107 West 6th Avenue, Petal, Mississippi.					
Send comments to The Honorable Sidney O. Smith, Mayor, City of Petal, City Hall, 107 West 6th Avenue, Petal, Mississippi 39465.					
North Carolina	City of Dunn, Harnett County.	Black River	Just downstream of SR 1718	None	*168
			About 500 feet upstream of U.S. Route 421	None	*172
		Stony Run	About 1000 feet upstream of Interstate 95	None	176*
			About 0.3 mile upstream of U.S. Route 301	None	201*
Maps available for inspection at the City Hall, Dunn, North Carolina.					
Send comments to The Honorable Carl G. Dean, City Manager, City of Dunn, P.O. Box 1065, Dunn, North Carolina 28334.					
North Carolina	Town of Lillington, Harnett County.	Cape Fear River	About 1.2 miles downstream of U.S. Route 421	None	*125
			About 1.0 mile upstream of Norfolk Southern Railway.	None	*131
Maps available for inspection at the City Manager's Office, Town Hall, Lillington, North Carolina.					
Send comments to The Honorable Frank Stumpf, Town Manager, Town of Lillington, P.O. Box 296, Lillington, North Carolina 27546.					
Oklahoma	Edmond, City, Oklahoma County.	Spring Creek Tributary 1	Approximately 125' upstream of Coltrane Road	None	*1,070
			Approximately 225' upstream of Coltrane Road	None	*1,070
		Chisholm Creek	At Coffee Creek Road Creek	*1,030	*1,035
			At upstream corporate limits	*1,045	*1,054
		Winding Creek	Downstream corporate limit	None	*1,091
			Approximately 0.77 mile upstream of confluence with Santa Fe Creek.	None	*1,126

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)	
				Existing	Modified
		Covell Creek (formerly Chisholm Creek Tributary 2).	Confluence with Chisholm Creek	*1,038	*1,043
			Approximately 0.65 mile upstream of Covell Road.	None	*1,113
		Trail Creek	Confluence with Santa Fe Creek	None	*1,074
			Upstream side of Santa Fe Avenue	None	*1,119
		Santa Fe Creek (formerly Chisholm Creek Tributary 4).	Approximately 0.26 mile downstream of confluence with Trail Creek.	*1,064	*1,071
			Approximately 50' upstream of Kelly Avenue	None	*1,151
		Mander Creek	Confluence with Santa Fe Creek	None	*1,094
			Upstream side of Kelly Avenue	None	*1,151
		Hunters Creek (formerly Chisholm Creek Tributary 1).	Corporate limits	*1,029	*1,033
			Approximately 3,465' upstream of confluence with Hunters Creek Tributary.	None	*1,120
		Oak Creek	Corporate limits	None	*1,042
			At Kelly Avenue	None	*1,084
		Hunters Creek Tributary	Confluence with Hunters Creek	None	*1,104
			Approximately 2,160' upstream of Coffee Creek Road.	None	*1,124
		Mill Creek	Corporate limits	None	*1,031
			Approximately 70' upstream of Santa Fe Avenue.	None	*1,075
		Pond Creek (formerly Chisholm Creek Tributary 3).	Confluence with Chisholm Creek	*1,040	*1,049
			3,260' upstream of confluence with Chisholm Creek.	*1,045	*1,051
		Willow Creek	Confluence with Santa Fe Creek	None	*1,103
			5,060' upstream of confluence with Santa Fe Creek.	None	*1,137

Maps available for inspection at the City Hall, 100 East First, Edmond, Oklahoma.

Send comments to The Honorable Paul Walters, Mayor of the City of Edmond, Oklahoma County, P.O. Box 2970, 100 East First, Edmond, Oklahoma 73083-2970.

Rhode Island	Newport, City, Newport County.	Atlantic Ocean	Approximately 200 feet southwest of intersection of D. Thomas Road and Ocean Avenue.	*18	*28
			Shoreline at Ledge Road (extended)	*19	*22
			Shoreline at Barclay Road (extended)	*19	*40
			Ocean Avenue, approximately 1,200 feet west of its intersection with Prices Neck Road.	None	#2

Maps available for inspection at the City Hall, Building Inspector's Office, Newport, Rhode Island.

Send comments to The Honorable Frank Edwards, Manager of the City of Newport, Newport County, City Hall, 43 Broadway, Newport, Rhode Island 02840.

South Dakota	City of Deadwood, Lawrence County.	White Wood Creek	Approximately 818 feet upstream of Charles Street.	*4,609	*4,609
			At U.S. Highway 85	None	*4,624
			Approximately 343 feet upstream of U.S. Highway 85 which is located approximately 500 feet downstream of the corporate limits.	None	*4,727

Maps are available for review at the City of Deadwood, City Planner, 3 Siever Street, Deadwood, South Dakota.

Send comments to The Honorable Bruce Oberlander, Mayor, City of Deadwood, P.O. Box G, Deadwood, South Dakota 57732.

South Dakota	Pennington County	Box Elder Creek North Tributary.	Approximately 1,600 feet downstream of Old U.S. Highways 14 and 16.	None	*2,997
	Unincorporated Areas		Just upstream of U.S. Highways 14 and 16	None	*3,004
			Approximately 75 feet upstream of Interstate Highway 90 overpass.	None	*3,029
			Approximately 500 feet upstream of Dam # 2	None	*3,046
			Approximately 3,975 feet upstream of Dam # 2	None	*3,070
		Box Elder Creek Northwest Tributary.	At confluence with Box Elder Creek North Tributary.	None	*3,045
			Approximately 1,600 feet above confluence with Box Elder Creek North Tributary.	None	*3,055
			Approximately 2,950 feet above confluence with Box Elder Creek North Tributary.	None	*3,069

Maps are available for review at the City/School Administration Building, 300 Sixth Street, Rapid City, South Dakota.

Send comments to The Honorable Shirley Alexander, Chairperson, Pennington County Board of Commissioners, County Courthouse, 315 St. Joseph Street, Rapid City, South Dakota 57701.

Wisconsin	Village of Gays Mills, Crawford County.	Kickapoo River	About 1,500 feet downstream of confluence of Hall Branch.	*698	*699
			About 0.85 mile upstream of confluence with Dellamater Hollow Tributary.	*704	*706

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Community Building, Gays Mills, Wisconsin.					
Send comments to The Honorable Kenneth F. Pettit, Village President, Village of Gays Mills, Community Building, P.O. Box 237, Gays Mills, Wisconsin 54631.					
Wisconsin	Village of Soldiers, Grove, Crawford County.	Kickapoo River	About 1,800 feet downstream of confluence of Johnson Valley Creek.	*726	*723
			About 0.5 mile upstream of A Street	*735	*734
		Johnson Valley Creek	At mouth	*726	*724
			About 1.0 mile upstream of mouth	*757	*757
		Baker Creek	At mouth	*731	*729
			Just downstream of Pine Street (near corporate limits).	*780	*780
Maps available for inspection at the Community Building, Soldiers Grove, Wisconsin.					
Send comments to The Honorable S. Robert Peterson, Village President, Village of Soldiers Grove, Community Building, Box 121, Soldiers Grove, Wisconsin 54655.					

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: July 13, 1989.

[FR Doc. 89-16903 Filed 7-19-89; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL MARITIME COMMISSION

46 CFR Part 588

[Docket No. 89-06]

Inquiry Concerning the Definitions of United States and Foreign Carriers in the Foreign Shipping Practices Act of 1988

AGENCY: Federal Maritime Commission.

ACTION: Discontinuance of proceeding.

SUMMARY: The Federal Maritime Commission had solicited public comment on the definition of United States carrier and foreign carrier for the purposes of the Foreign Shipping Practices Act of 1988 and the Commission's implementing regulations at 46 CFR Part 588, and on the interpretation of the statutory provision identifying foreign carriers who may be subject to sanctions under the Act on the basis of their nationality. The Commission has determined, based on the comments received, not to propose any rule amending its implementing regulations at this time, and is discontinuing this proceeding.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 1986, the Commission initiated a proceeding, Docket No. 88-24, to propose a rule implementing the Foreign Shipping Practices Act of 1988 ("1988 Act"). Docket No. 88-24 produced evidence of disagreement and confusion over the definitions of U.S. carrier and foreign carrier as used in the 1988 Act, particularly with respect to who are the U.S. carriers qualifying for protection, and who are the foreign carriers subject to sanctions.

The 1988 Act defines foreign carrier as one "a majority of whose vessels are documented under the laws of a country other than the United States." 46 U.S.C. app. 10002(a)(2). A United States carrier "operates vessels documented under the laws of the United States." 46 U.S.C. app. 10002(a)(5). Thus, under the statute an ocean common carrier which operates some U.S.-flag vessels but an even greater number of foreign-flag vessels could be argued to fit both definitions. Therefore, the Proposed Rule in Docket No. 88-24 added language to the definition of U.S. carrier to clarify that a carrier which meets both definitions shall be considered a foreign carrier.

This language prompted criticism from U.S.-flag carrier interests, who in their comments on the Proposed Rule expressed the view that this interpretation of the definitions was antithetical to Congress' intent. These parties were concerned that a narrow definition of U.S. carrier might disqualify carriers otherwise considered to be U.S. carriers from protections under the 1988 Act by virtue of owning or operating a given number or percentage of foreign-flag vessels. These parties suggested alternative definitions, and also urged that the Commission consider retaining the statutory language in the Commission regulations.

Docket No. 88-24 concluded with a Final Rule which, *inter alia,* adopted the statutory rather than the Proposed Rule definitions of U.S. and foreign carriers. Immediately thereafter, the Commission instituted a separate proceeding, the instant Notice of Inquiry, to solicit comment on whether and how those definitions adopted in the Commission's implementing regulations might be amended to clarify any ambiguity and to enhance the efficacy of the 1988 Act. Noting the suggestions arising from the Proposed Rule in Docket No. 88-24, the Commission stated in the Notice of Inquiry that it is

> amenable to suggested language defining the terms in issue, or standards or criteria to be used to make those determinations. A wide range of comments, including both opinions of previous proposals and new suggestions, will ensure that the Commission reaches an informed and appropriate decision on this issue.

Notice of Inquiry, 54 FR 12662, March 28, 1989.

The Commission additionally sought comment on the interpretation to be given the statutory provision at section 10002(e)(1) of the 1988 Act which states, *inter alia:*

> * * * the Commission shall take such action as it considers necessary and appropriate against any *foreign carrier* that is a contributing cause to, or *whose government* is a contributing cause to, such [adverse] conditions * * * *

(Emphasis added.) The phrase "foreign carrier * * * whose government" is not otherwise defined. The Commission noted:

> The phrase could refer to the national flag a carrier flies, to the country in which the carrier was incorporated, to the citizenship of a majority of its owners, or to other criteria of ownership.

Notice of Inquiry, 54 FR 12662, March 28, 1989. The Commission therefore solicited suggestions for either a precise

definition or a set of criteria to make the appropriate determination.

Comments

Comments were received from three parties—United Shipowners of America ("USA"), American President Lines ("APL") and Sea-Land Service, Inc. ("Sea-Land"). All three urge that the statutory language be retained and that no clarifications or amended definitions be attempted.

Definition of U.S. Carrier

USA recommends that the Commission "exercise flexibility" and treat each definitional issue on a case-by-case basis. USA states that in determining whether a carrier is eligible for protection under the 1988 Act, "the Commission should take into account such factors as (i) totality of a U.S.-flag carrier's U.S.-flag capacity; (ii) the U.S.-flag capacity of the entire corporate entity involved, including related and affiliated companies; and (iii) corporate citizenship * * *."

USA's concern is that clearer definitions could result in disqualification of U.S.-flag carriers from 1988 Act protections, based on number of vessels flagged U.S. versus foreign. It would be "inimical to the purposes of the Act," USA asserts, "to hold that a long-standing U.S.-flag carrier who happened to have more foreign-flag vessels than U.S.- flag vessels not be qualified to take advantage of the statute as a United States carrier."

Sea-Land also argues that "ownership and control" should be the determining factors in identifying U.S. carriers. Flag should not be the determining criterion, Sea-Land contends, and "a U.S. liner operator does not lose its national identity when it uses a mix of U.S. and foreign-flag vessels * * *."

Sea-Land argues that Congress did not intend the Commission to "make a separate redundant determination of which U.S. liner companies qualified" as U.S. carriers. Rather, Congress simply restricted the definition of foreign carrier to prohibit foreign carrier evasion of the 1988 Act via reflagging. No amended definitions are necessary, Sea-Land asserts, but if the Commission does see "immediate need" for such, Sea-Land suggests the use of U.S. citizenship status determined under section 2 of the 1916 Act (46 U.S.C. 802(a)).

APL also supports retaining the statutory U.S. carrier definition adopted in Docket No. 88-24. APL contends that "Congress has contemplated that any operation of a vessel documented under the laws of the United States and engaged in liner operations in the U.S.-foreign commerce is entitled to benefit from the Act's provisions." Thus, it argues, no U.S. liner operators should be excluded by the imposition of new limitations.

APL dismisses the "hypothetical possibility" that foreign carriers might reflag under U.S. law. "The fact that, technically, a foreign carrier might conceivably fit the definition of United States carrier under improbable circumstances," it says, "does not do violence to the Act or its purposes."

Definition of Foreign Carrier

USA urges that in deciding who are "foreign carriers"—*i.e.*, those who are potential subjects of sanctions—a "flexible approach should be taken in determining the link between a foreign carrier and that contributory government." USA notes the following language in the legislative history of the 1988 Act:

> The FMC is authorized to act against a carrier or the vessels of a carrier that is owned or controlled by citizens of the contributory government regardless of whether the carrier's vessels are documented under the law of the contributory government.

H. Rep. No. 100-576, p. 1095. USA urges a broad interpretation of foreign carrier, based on ownership, residence of the vessel owner, citizenship of those who control a carrier's operations, and who benefits by the adverse conditions.

Sea-Land also cites the House Report language cited above, for the proposition that ownership and control are the determining factors. However, Sea-Land also argues that the Commission should not impose sanctions on a "foreign-flag vessel owned, controlled, or chartered by * * * a U.S. citizen carrier just because the vessel's flag of registry happens to be that of an offending foreign government." Sea-Land concludes that "there does not appear to be an urgent need" to amend the regulations to address this matter.

APL too suggests the Commission emphasize the control and ownership aspects of common carrier companies, rather than the flags of the vessels they own or charter. APL concludes that no additional standards or criteria for invoking sanctions against foreign carriers are necessary. The only clarification APL would find acceptable, though not necessary, is one stating that foreign-flag carriers chartering U.S.-flag vessels are liable to sanctions just as are foreign-flag carriers with foreign-flag vessels.

Discussion

Rather than clarifying the definitions in issue, the comments received demonstrate the variety of possible interpretations—some more supportable than others—of the ambiguous terms used in the statute and marked for comment in this proceeding.

For example, many of the arguments that the definitions of U.S. and foreign carrier are clear enough, are themselves tautological in the sense that the arguments start out with or utilize undefined terms like "long-standing U.S.-flag carrier" (USA), "U.S. liner operator" (Sea-Land, APL), "U.S. citizen carrier" (Sea-Land), "U.S. carrier interests" (APL), and "foreign carrier" (all three commenters). The commenters also advocate possible interpretations (not to be codified, but simply to be adopted in practice) as that vessels who *benefit* from adverse foreign conditions should be subject to sanctions, or that a foreign government could be marked for sanctions according to where the vessel owner *resides*. (USA Comment, at 2). In short, the commenters urge the narrowest possible definition of "U.S. carrier" and the broadest possible definition of "foreign carrier".

The Commission's interest and purpose in initiating this proceeding was not to alter the objectives of Congress in enacting this legislation, but rather to streamline investigations conducted under the 1988 Act in which definitional issues arise, and to avoid a piecemeal resolution of these issues. Thus, the Commission sought suggestions clarifying the definitions or prescribing criteria. The commenters, however, claim that no clarifications are needed and urge instead that any disputes be resolved on a case-by-case basis using a spectrum of considerations.

While the Commission maintains that more precise definitions or criteria would aid in the effective administration of the statute, it has determined, in light of the comments received, not to propose amendments to its rules at this time. The Commission will, instead, and as recommended by the commenters, attempt to make case-by-case determinations as to which carriers are subject to protections and sanctions in the course of proceedings conducted under the 1988 Act. The actual administration of the 1988 Act may demonstrate, as the commenters contend, that no amendments are necessary. Or, it may illustrate more clearly than is presently apparent where clarifications are necessary and how they might be effected. Should it occur that the administration of the 1988 Act is hampered by the absence of clearer definitions or criteria in the Commission's implementing rules, the parties affected by such procedural difficulties in the 1988 Act—including, perhaps, the commenters in this Inquiry—may request the Commission to propose appropriate amendments to the rules at that time, or the Commission may do so on its own initiative. Inasmuch as no further proceeding will be instituted or pursued for the time being, however, this Inquiry is discontinued.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89-16944 Filed 7-19-89; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 89-15 Notice 1]

Federal Motor Vehicle Safety Standard 205 Glazing Materials

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Grant of petition for rulemaking; request for comments.

SUMMARY: This notice responds to an August 10, 1988 petition for rulemaking from Gila River Products Inc., Madico, Inc., Martin Processing, Inc. and 3M Energy Control Products. The petition seeks permission for applying tinting film with 35 percent light transmittance to *side and rear* windows of passenger cars. The agency has decided to grant the petition and to request comments to specific issues raised in the petition. The light transmissibility requirements for passenger car *windshields* are not at issue. States are particularly invited to comment whether there are any law enforcement concerns involving the operation by motorists of vehicles with darkly tinted window film and whether there is a need for Federal regulation of aftermarket films. The comments received in response to this notice will aid the agency in deciding whether to propose any changes to the current requirements.

DATES: Comments must be received on or before September 18, 1989.

ADDRESSES: Comments should refer to the Docket and notice numbers set forth above and be submitted (preferably in ten copies) to the docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. (Docket hours are from 8 a.m. to 4 p.m. Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Mr. Jere Medlin, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Mr. Medlin's telephone number is: (202) 366-5276.

SUPPLEMENTARY INFORMATION: On August 10, 1988, a group of businesses, Gila River Products, Inc., Madico, Inc., Martin Processing, Inc., and 3M Energy Control Products, submitted a petition for rulemaking on the issue of the light transmissibility for motor vehicle glazing. Specifically, NHTSA was petitioned "to amend Federal Motor Vehicle Safety Standard 205 to permit 35 percent minimum luminous transmittance plastic film on glazing in the side and rear locations of passenger cars.' The petition was accompanied by a report, "Safety Benefits and Costs of Tinted Vehicle Glazing" by the Illinois Institute of Technology Research Institute (IITRI). The IITRI report summarized previous research conducted on the safety benefits and costs of tinted vehicle glazing. The report also discussed the methodology and results of an original study conducted by the IITRI to determine the effects on driver performance of reduced transmittance glazing in side and rear window locations.

In a letter dated January 11, 1989, NHTSA notified Robert P. Davis, then counsel to the petitioners, that it had granted the petition. The letter went on to state:

> Please note that the granting of this petition does not necessarily mean that the current requirements of Federal Motor Vehicle Safety Standard 205, Glazing Materials, will be revised as requested.
>
> Rather, the granting of this petition signifies that the agency believes that a review of the issues raised in the petition appears to have merit.

To aid in that review, the agency is issuing this request for comments.

Scope of Request for Comments

Since petitioners requested that Standard 205 be amended for "glazing in the side and rear locations of passenger cars," this request for comments will apply only to the issue of lowered transmissibility requirements for side and rear windows in passenger cars. Front windshields are not a subject of this request for comments. Petitioners have asked NHTSA to "permit 35 percent minimum luminous transmittance plastic film *on* glazing in the side and rear locations of passenger cars." All windows in passenger cars are currently required to have a transmissibility of at least 70 percent. The potential impact of this petition on light transmissibility of glazing may be seen from the following example. If film with 35 percent luminous transmittance is applied to side and rear windows with 70 percent transmissibility, those windows would have a transmissibility of 24.5 percent (.35×.70=.245). Petitioners are aware of this fact, noting with respect to the transmissibility levels discussed in the IITRI report, that:

> Since the film will reduce transmittance through the glass on which the film is installed, IITRI's findings presented in Exhibit #1 would regulate absolute transmittance levels, taking into account the installation of 35% minimum luminous transmittance film. (See P. I-5)

This request for comments has divided petitioners' conclusions and findings into four broad categories of issues. First is the potential effect which implementing the petitioners' request would have on visibility through motor vehicle glazing and, in turn, on safety. Second is the possibility that adding the petitioners' film to windows would reduce injuries due to laceration or ejection. Third is the potential change in driver comfort and health and vehicle design (including cost) that would result from adding the petitioners' film on vehicle windows. Forth is the effect that placing low transmittance film on vehicle windows would have on the ability of law enforcement officials to observe the actions of motor vehicle occupants, especially occupants in vehicles which have been stopped by those officials. In addition to responding to these four categories of issues, commenters are requested to address general questions raised by this petition.

For easy reference, each of the issues or questions has been numbered. Commenters are requested to provide all supplementary data (especially quantitative data) necessary to fully explain their answers.

1. Effect of Window Transmittance Levels on Driver Visibility and Safety

1. A. Studies and References Cited in the Petition

The petitioners state that driver perception or driver performance is at least as good with tinted glazing as without. They cite numerous references and the original research conducted by the Illinois Institute of Technology Research Institute (IITRI) in support of this claim.

Several of the cited studies date back to the 1950's (Roper, 1953; Heath and Finch, 1953; Doane and Rassweiler,

1955). (Page 8–12 of the report.) In each of these reports, untinted glass with about 89 percent transmittance is compared to "heat absorbing" glass with about 70 percent transmittance. For example, the 1984 Roper and Engel study compared windshields with 88 and 79 percent trransmitance, respectively. Even so, each study indicates some degree of reduction in visibility distance with reduced transmittance. In general, window tinting reduces visibility distance or target visibility. Moreover, most of these studies did not examine transmittances as low as those requested in this petition. Further, this early research was conducted comparing tinted and nontinted windshields. Finally, it is unclear whether the referenced studies are sufficiently applicable to support the hypothesis stated above, since both the petition for rulemaking and this request for comments are limited to side and rear windows.

(01) The agency seeks comment on the applicability of the referenced studies to the safety of glazing with a low level of light transmittance on side and rear windows for passenger cars, and the appropriateness of the conclusions that the petitioners have drawn from this research. The agency solicits any original, newer research available that may demonstrate a correlation between light transmittance and object visibility. The agency is particularly interested in studies on effect of glazing with a low level of light transmittance on front side windows of passenger cars and on drivers' ability to pick up movement in the area of peripheral vision, an ability which is critical in avoiding collisions or near misses.

The petitioners cite studies (e.g., Rockwell, 1970, Burger, 1977, and Mortimer, 1971) which conclude that visibility through side and rear glazing affects a small percentage of crashes. These studies all were conducted during the 1970's, a time when passenger cars very rarely had tinting applied to side and rear windows.

(02) The agency seeks comments on these studies and whether they support view that darker tinting is consistent with the needs of motor vehicle safety. The agency solicits any original, newer research that supports or refutes the petitioners' hypothesis.

The petitioners cite references indicating that other factors such as headlamp photometrics, window distortion, haze, headlamp dirt, headlamp aim, road curvature, pedestrian location, pedestrian reflectance, and presence of a glare vehicle, affect visibility more than tinting would.

(03) The agency seeks comment on whether the fact that environmental factors can cause reduced visibility should lead the agency to permit darker film, which may further reduce visibility.

(04) Please comment on whether forward field of view targets are seen by the driver through the driver's side window and thus, this window has critical zones of vision as does the windshield. As previously stated, the petitioner did not petition to change light transmittance values for windshields. (Reference: January 1989 Japan Society of Automotive Engineers (JSAE) Vol. 10 No. 1 Paper by Naofumi Nagaike and Yukio Hoshino titled "A Study of Driver's Forward Fields of Direct View for Large Trucks.")

1. B. Glare Reduction

The petitioners cite many references showing that tinted windows reduce glare. They state that reduced glare will lead to better visibility and improve driver performance because of increased driver comfort. There is little doubt that window tinting reduces glare. The tinting reduces light transmittance which reduces the amount of glare light reaching a driver's eyes. However, this is mainly true for windshields, which were not at issue in the petition and are not at issue in this request for comments. The question is whether the reduction of glare as a result of tinting in or on side and rear windows improves driver performance and/or driver visibility.

One of the major references cited by the petitioners is a 1955 report by Doane and Rassweiler. The IITRI test report states that these researchers "demonstrated that reduced masking attributable to glare reduction by tinted glazing compensated entirely for the visual effect of reduced brightness." An examination of the paper shows that although this statement appears to be true for a few selected times and conditions in the Doane and Rassweiler tests, it is not generally true. Throughout most of the visibility/glare encounter situations, seeing distance is greater through clear windows. The best visibility for "heat-absorbing" windows occurs under the test (nighttime) conditions where both of the two vehicles approaching each other are equipped with new headlamps, all headlamps are properly aimed, and the target has the highest reflectance (7 percent as opposed to 3 percent). For almost a half a mile before the vehicles meet, seeing distance is about the same through both types of windshield. On the other hand, immediately after the vehicles have passed one another, visibility distance through clear windows is about 5 to 10 percent greater through the clear glass than through the tinted glass, indicating a slower dark adaptation for the driver of the vehicle with darker windshields. Thus, it appears that this study does not support the hypothesis stated above. In addition, this report does not address effects of glazing tinted to 35 percent transmittance or less.

(05) Comments are solicited on the above report and agency analysis.

The petitioners also indicated that reduced transmittance of rear windows will reduce "veiling" glare. Petitioners define this as:

> produced when light is uniformly scattered from a reflecting or transparent surface with scratches, dust, or surface irregularities that scatter light uniformly across the surface. This scattering reduces the contrast between target and background making the target difficult or impossible to detect.

An example of "veiling" glare is the glare from the reflection on the rearview mirror of the lights of a following vehicle. Miller *et al.* (1974), stated that reflection from a vehicle's windshield is only a significant problem "in the presence of condensed moisture on the windshield or with excessively dirty windshields." NHTSA notes that these two causes of windshield "veiling" glare can be eliminated if the windshield defogging system is used and if the inside of the windshield is kept clean.

Concerning glare reduction:

(06) Miller *et al.* (1974), the reference cited by the petitioner for glare, state that "veiling" glare is a significant problem only "in the presence of condensed moisture or excessively dirty windshields." Do any data exist to show veiling glare from a following vehicle is a problem when caused by reflection from other objects such as rearview mirrors?

(07) Would veiling glare from the sides and rear be a problem in a passenger car, with scratched or dirty 24.5 transmissibility glazing (35 percent film applied onto 70 percent glazing results in a transmissibility of 24.5 percent) on the side and rear windows, when approached from straight ahead or from behind by a vehicle with high beams or regular headlights on?

(08) Do rear mirrors with "night settings" or the electronic mirrors which automatically switch and are now available on some vehicles, effectively eliminate glare from lights to the rear of a vehicle?

(09) Do most real world instances of disabling glare involve direct viewing through windshields? If so, how would tinting side and rear windows contribute to reduction of disabling glare?

(10) What are the glare reduction advantages of tinted window film on side and rear windows as compared to those from a driver wearing sunglasses? Would the same effects and benefits be achieved? If not, why not?

(11) Petitioners assert that "Sunglasses produce problems due to distortion and other factors that can reduce driving safety." (p. 13 of IITRI Report) What are the "other factors" reducing driving safety that may be a concern with sunglasses but not window tinting?

1. C. Drivers Field of View and Side Collision Avoidance

The petitioners state that a 1970 paper by Lyman Forbes indicates that drivers "spend most of their time looking at a small area in the forward field of view." The petitioners also cited a paper by Rockwell (1972) that indicates that 95 percent of driver foveal (the fovea, a small region of the center of the retina, subtending about two degrees, is the site of most distinct vision) viewing is limited to a small area of the windshield. The same reference states that side collision avoidance uses a small area of the driver's side window and the passenger side windshield. A 1974 paper by Burger *et al.* demonstrates, however, that 5 to 20 percent of "rear information seeking glances" in their study were viewed directly rather than through a mirror.

(12) If the 5 to 20 percent of rear information seeking glances, as cited by the 1974 paper by Burger, are direct viewing; how is that consistent with the finding on side collision avoidance in the 1970 Forbes paper?

(13) Is urban driving around blind corners explored in the paper by Rockwell (1972), that indicated that 95 percent of driver forward viewing is limited to a small area of the windshield?

(14) Even if drivers spend most of their time looking through the windshield, is it appropriate to reduce the visibility through those fields of view that are used by the driver in side-collision or other collision avoidance situations?

1. D. Reaction Time

The petitioners rely heavily on an IITRI experiment that sought to "compare the effects of various levels of side and rear transmittance upon driver performance under a variety of roadway conditions." The experiment, which involved a laboratory simulation of roadway conditions, was apparently performed to show that tinted glazing causes no detriment to driver visibility. This experiment measured the reaction time required for a subject to locate targets. The targets, which were light sources, were viewed through glazing with a 91 percent transmittance for tests of direct visibility. For tests of indirect visibility, they were viewed, via a mirror with 94 percent reflectivity, through tinted films of various levels of transmissivity. The experimenters conclude that, "the safety impact of tinting, as measured by response time is not significant compared to other variables." The agency notes that the targets used in the experiment may be representative of high contrast objects such as the front view of another vehicle, but they are not representative of low contrast objects such as the low reflectance pedestrian targets used in Society of Automotive Engineers (SAE) lighting tests. Visibility of pedestrians and bicyclists is important under a variety of circumstances, including turning, backing up, and pulling out of a parking space. The targets are also unrepresentative of adjacent vehicles that are seen from the side or the rear.

Concerning IITRI's experiment:

(15) Does the use of high contrast lights provide a reliable way of evaluating the visibility of low reflectance targets such as pedestrians and bicyclists through front, side, and rear windows?

(16) Since the IITRI sutdy was done with subjects from 18 to 45 years of age, are the light requirements for older drivers not considered in this research?

(17) Since the IITRI study was conducted with subjects with "normal" visual acuity and that many states issue drivers' licenses to drivers with 20/40 vision, should more work be done to consider this type of driver's ability to detect and identify objects at low levels of light?

(18) Should the issue of the effect of tinted glazing in combination with dirty or scratched glazing be considered, since the IITRI report identified dirty and scratched glazing, but not combined effects, as significant impediments to driver visibility?

(19) Please comment on the fact that accepted models such as "Detect", the copyrighted Ford Motor Company computer visibility model, available under a licensing agreement from Ford, show that an approximate reduction in seeing distance of some 97 feet for 55 year old drivers would occur if windshield transmittance was lowered from 70 to 24.5 percent (70 percent (glazing) × 35 percent (tinting film)) when detecting low contrast targets such as pedestrians with 8–12 percent reflectance?

(20) Would a deeper tinted rear window in the car ahead of a driver reduce the driver's ability to look through the preceding car and see cars ahead of the preceding car? Would any reduction in transmissivity lead to an increase in the reaction time to actions by the car ahead of the preceding car? Besides these effects, what other consequences are there of reduced visibility in this situation?

(21) What reduction, if any, in the visibility or detection of high mounted stop lights (and other stop lamps) of cars ahead of the preceding car would result if cars had 24.5 percent rear window light transmittance?

1. E. Night Driving and Adaptation to Darkness

Petitioners cited a study (p. 13) (McFarland, *et al.*, (1960)) that concluded "both clear and tinted windshield glass are impediments to vision under low levels of illumination for persons ranging in age from 16 through 89 yr." Petitioners argue that drivers continue to drive at night and "there is not presently any evidence to indicate that the interaction of tinted glazing and dark adaptation has in any way decreased driver safety". This comment appear to have missed the essence of the McFarland study. That report noted on page 52 that:

> The evidence from this study and other research clearly indicates that filters of all types including sections of tinted windshields interfere with every major visual function. There is no evidence to support the assertion that tinted windshields aid vehicle drivers in any way.

A recent Society of Automotive Engineers (SAE) paper entitled "Visibility from Motor Vehicles" authored by Henderson, Smith, Burger, and Stein concludes that: "At night luminance levels, however, all relevant research has shown tinted windshields to degrade visual performance."

(22) Please provide any additional comments on the studies cited above and provide any other available data or studies.

(23) Is slower dark adaptation, particularly after two vehicles pass on a two lane road, an inescapable effect of tinted windows? Are any test data available for glazing as low as 24.5 percent transmittance (35 percent (tinting film) × 70 percent (glazing))?

(24) Are there any data to support the claim that side and rear windows with 24.5 percent light transmittance on passenger cars at night, gives equivalent or better performance than glazing with 70 percent light transmittance?

(25) Nearly all of the past studies conclude that there is some impairment of visibility distance and target

identification when light transmittance is reduced, particularly with respect to viewing low contrast targets at night. Are there any data supporting the view that there is equal or better performance under such conditions?

(26) Does darker tinting pose any specific problems for the growing population of elderly drivers, particularly at night?

(27) What data on night target detection and identification of low reflectance targets exists for 24 to 70 percent transmittance glazing? Please describe the data, and provide findings, if any.

(28) Are there any experiments regarding backing up at night with 24 to 70 percent transmittance rear and side windows and only an inside mirror and on driver's side passenger car mirror? Are the mirrors and/or backup lights helpful or should larger mirrors and/or brighter backup lights be required on such vehicles?

1. F. Window Transmittance and Mirror Reflectance

The petitioners argue that trade-offs should be allowed between mirror reflectance and window transmittance. They cite references that indicate that there is very little direct viewing through side and rear windows. This appears, however, to be contradicted by the 1974 paper by Burger, *et al.* The petitioners also state that the effects of mirror reflectance and window transmittance are "multiplicative and interchangeable". (p. 51)

(29) Please provide comments on whether the effects of mirror reflectance and window transmittance are in fact "multiplicative and interchangeable". Please provide any data available.

(30) Does the petitioner's claim that there is a multiplicative and interchangeable relationship between these factors apply to backing up situations in which direct viewing is necessary and critical?

The IITRI report calculates the total amount of light available to the driver for visibility, when looking at the rearview mirror, as a combination of mirror reflectance and glazing transmittance. They cite the overall amount of luminance at the driver's eyes as 21 percent. (70 percent glazing × 30 percent reflectivity=21 percent). The report asserts that 21 percent

has been shown to be acceptable for side and rear viewing under the most critical roadway ambient lights conditions (Olson et al., 1974; Mansour, 1971). It is likely that even lower levels of luminance are acceptable for most roadway conditions and that the glare reductions obtained would significantly improve overall highway visibility, as indicated by Olson and Sivak (1984).

No basis is provided for the latter assertion about lower levels of luminance and glare reduction.

The above calculation does not take into effect the reduced light transmittance through tinting. If tinting is taken into account at the lowest transmissibility level, the calculation would be: 35 percent tinting×70 percent glazing×30 percent mirror reflectivity=7.35 percent luminance at the driver's eyes.

(31) Please comment on the validity of the two calculations made above. Which would be a more realistic assessment, assuming the driver is looking at the rearview mirror in a passenger car with 35 percent tinted film applied to 70 percent glazing on the side and rear windows?

(32) If the latter assessment is valid, would 7.35 percent liminance at the driver's eyes be an acceptable level of liminance under real life driving situations?

(33) Why should higher reflectance mirrors be required in vehicles with window tinting in order to provide equivalent visibility? What is the advantage of higher mirror reflectance over higher light transmissibility through side and rear windows?

1. G. Consequences of Incorrect Film Applications on Glazing

(34) Are there problems of distorted wision from incorrectly installed window film on rear or side windows?

(35) Would improperly installed window film tend to allow moisture or condensation between the glazing and the film, thus impairing visibility?

(36) How common is the problem of bubbling between the glazing and the film or creases in the film, that may arise from improper installation?

(37) What other problems may arise from improper installation?

(38) What mistakes are possible in installing film?

(39) How may these mistakes be avoided or corrected?

(40) Are there any data that show whether there is a greater or lesser incidence of incorrect tinted film installation among for-profit installers versus installation by individual passenger car owners?

(41) How prevalent is the problem of abrasion of the applied film through normal use? Is the film vulnerable to abrasion from actions by pets, children, ordinary window washing, or other means?

(42) How easy is it to remove the film once it has been applied? Can the individual passenger car owner personally remove the film or would this be a task to be undertaken by professionals?

1. H. Light Trucks, Vans, and Multipurpose Vehicles

Concerning the issue of MPVs, vans and light trucks being permitted to have tinted rear side and rear windows below 70 percent transmittance:

(43) Should passenger vans have different visibility requirements than cargo vans and light trucks for rear and side windows?

(44) Are the mirror requirements for larger fields of view and for outside rear view mirrors on both sides of a vehicle a significant reason why these vehicles may not experience any great loss of visibility?

(45) Would mirror requirements have to be changed on vehicles with tinted front side windows to provide equivalent visibility to those vehicles with 70 percent transmittance front side windows?

(46) Since vans and similar vehicles often do not have rear side windows, or even rear windows, do these vehicles belong in a separate category from passenger cars for visibility requirements?

1. I. Miscellaneous Visibility Issues

(47) Is there a need for NHTSA to conduct an extensive research program to investigate what minimum visibility should be allowed through each vehicle window?

(48) Should the visibility needs for each window be determined separately by careful scientific experiments using low contrast targets?

(49) Are front side window and rear side window minimum visibility needs similar? Is front side window visibility more critical than rear side window visibility? Please provide any available data on this issue.

(50) Are portions of front side windows as critical to visibility as the windshield? Why should they be different?

(51) Is the rear window more critical to visibility than the rear side windows?

(52) Petitioners claim that the 70 percent transmittance requirement is design based and not safety based. What is the transmittance through 70 percent transmittance production glazing when mounted at the largest installation angles measured as the driver looks through the window (not perpendicular to the glass)? Please provide curves of transmittance versus installation angle.

(53) Do states that allow tinted window film have any safety data to support allowing less transmittance than the 70 percent required in FMVSS No. 205? Are test data available to demonstrate this?

(54) Is glazing that reverts to clear when not exposed to light available to address glare?

Petitioners stated that haze is a serious problem, and is not to be confused with reduced transmittance. (p. III–9) They define "haze" as a "general term used to describe light scattering by particles suspended in an otherwise nonscattering or transparent medium (Wiedner and Hsai, 1979)." (p. 38) Research by Rompe and Engel, and subsequently by Weight, was referred to. Petitioners cited the research as showing transmittance levels as low as forty percent on side and rear glazing do not detract from driver performance, and that tinted glazing can substantially reduce the effects of haze.

(55) The agency seeks comments on the relevance of these studies to this petition.

(56) Are there data that confirm tinted glazing can reduce the effects of haze?

(57) Are data on acceptable haze levels (allowed by ANS Z2.1) available to show that lower window transmittance reduces the effect of haze?

Petitioners stated that the growing use of larger and more curved glazing surfaces in vehicles has resulted in problems "with double images, distortion, astigmatism and differential deviation." (p. III–9) Petitioners assert that at least in the case of double images, tinted glazing can be a substantial remedy.

(58) Are there any data that support this assertion?

2. Amelioration of Injuries From Laceration and/or Ejection

The petitioners argue that tinted film applied to the interior of vehicle windows makes the glazing perform as (Item 14) glass/plastic glazing which has been shown to be highly effective in preventing laceration injuries and reducing ejections in automobile crashes. Petitioners cite research by Clark and Sursi (1984) (p. III–12) indicating that an inner plastic layer in glass-plastic glazing may be strong enough to hold broken glazing together to reduce partial ejection of occupants in side impacts. Petitioners state that the IITRI believes applying tinting film on the side windows of vehicles may reduce the number of occupant ejections, even without extending the film beyond the visible edge of the window.

There is little dispute that glass/plastic glazing prevents laceration and could reduce ejections. However, the agency is unaware of any data which show that application of tinted film to glazing will cause that glazing to perform the same as glass/plastic glazing.

(59) Are there data on aftermarket-installed film to support petitioners' assertions?

(60) How will the installer attach the plastic film to the existing glazing in a passenger car so that it will act as Item 14 glass-plastic glazing?

(61) In the case of a new vehicle, if the film and the glazing is to be considered as glass/plastic glazing, what difficulties would there be in the film installer's certifying it as such?

(62) Besides lower costs, are there benefits to *not* requiring glazing to be attached so that it acts as glass-plastic glazing?

(63) Can there be effective ejection protection if the tinted plastic film is not attached to the window frame and if application is not certified as being done correctly?

(64) Are data available to substantiate claims of ejection and laceration prevention on consumer applied tinted window film?

(65) Are there films available which can mitigate ultraviolet radiation, heat, glare, etc., have high transmissibility, and also help mitigate lacerations and/or ejections?

3. Health Effects, Protection of Interior Parts, and Driver Comfort

The petitioners also raise several considerations that involve the general health of motor vehicle occupants and light and heat damage to vehicle components. The petitioners argue that tinted film will protect vehicle interiors and occupants from the effects of ultraviolet (UV) light from the sun. They cite damage to upholstery fabrics and injury to occupant skin and eyes as reasons to permit lowered light transmittance on side and rear windows. Damage to upholstery fabric due to UV light is not a safety issue, and therefore cannot be considered a valid reason to propose amending FMVSS 205. Injury to the skin and eyes of vehicle occupants due to UV light may be considered a health issue, but not a motor vehicle safety issue.

The references cited by petitioners indicate that excessive exposure to UV radiation may cause skin and eye damage. However, there is no indication in these references that current ultraviolet exposure in automobiles exceeds critical levels. The petitioners argue that tinted films will protect vehicle occupants from eye damage due to infrared (IR) radiation. They also combine the discussion of the infrared radiation with heat loads and driver comfort. These last two issues are discussed elsewhere, so only the eye damage issue is addressed here.

3. A. Eye Damage From Exposure to Infrared Radiation

The petitioners argue that tinted films will protect vehicle drivers from glare and permanent eye damage due to radiation in the visible spectrum. Petitioners cited only one reference that discussed the possibility of eye damage due to exposure to infrared radiation. No indication was given that infrared radiation within an automobile reaches damaging levels.

(66) What data are there to demonstrate that the exposure of automobile drivers to infrared and ultraviolet radiation is sufficient to cause permanent eye damage?

(67) Are there clear films or high transmittance films which have the capability to block infrared and ultraviolet radiation?

3. B. Adverse Effects on Driver Performance From Excessive Heat and Glare

The petitioners argue that reduced glare and reduced passenger compartment heat will improve driver comfort and therefore, driver performance. Among the studies cited by petitioners, a 1980 study by Beshir and Romsey investigated the performance of "four perceptual motor-tasks (reaction time, pursuit tracking, eye hand coordination and mental multiplication) under four different levels of temperature: 74 degrees, 90 degrees, 100 degrees and 110 degrees Farenheit Wet Bulb Globe Temperature (WBGT)." It was found that both heart rate and body temperature increased with ambient temperature. Subjects also indicated that they thought their performance decreased with increasing temperature. Test scores, however, "indicated that increasing the temperature to 100 degrees and 110 degrees Farenheit . . . WBGT actually enhanced performance during the brief thermal exposure of this study."

Hockey (1986) studied effects of temperature on task performance with respect to time. He concludes: "For cognitive/reaction time tasks there is a clear trade-off of time and temperature, though marked impairments . . . are rare below about 35 degrees C (95 degrees F), unless exposure time is greater than about 2.5 hr. For the continuous performance tasks (tracking, vigilance, and dual tasks), however, the most striking feature is that decrement

is almost independent of exposure time, though very sensitive to temperature increases above about 80 degrees C." Though these studies may relate driver comfort and performance, it is difficult to tell bacause the test tasks are not decribed in the reports. The studies appear to indicate that driver performance is maintained at a higher temperature than is driver comfort.

(68) The agency seeks comments on (a) the relationship of these studies to safe driving, (b) the interior temperatures at which the driving task becomes difficult, and (c) the effects of tinted and clear films on reducing interior temperatures. Quantitative responses would be most helpful.

3.C. Effect of Heat on Internal Vehicle Components

The petitioners argue that tinted films will reduce heat and thereby reduce damage to internal vehicle components, specifically sensitive electronic components.

(69) The agency requests comments on the validity of petitioners' arguments on this issue.

The petitioners claim that tinted window films will reduce vehicle heat loads. This, they argue, will reduce air conditioner size and use, and thus, cholorofluorocarbon (CFC) emissions will be reduced. This is not a safety issue. However, the agency is interested not only in the safety effects, but also the environmental effects of its standards.

(70) What is the relationship, if any, of tinting to CFC emissions?

(71) What is the relevance of this point in the future when use of CFCs may be prohibited (as in Sweden) or it may be mandatory to capture and reprocess any emissions?

(72) Are there clear or high transmittance films that will also block heat?

4. Law Enforcement Issues

The petition acknowledged that various state and local law enforcement officials have raised concerns about the use of tinted films on motor vehicle windows. Petitions asserted that they have thoroughly investigated these issues. Petitioners stated that they "believe that the concerns of law enforcement authorities arise from misperceptions and from reactions to very deeply tinted films for which this Petition does *not* seek approval." In petitioners' experience, law enforcement officials' concerns have been alleviated once they "become more knowledgeable about tinted film and certain misperceptions have been corrected."

Petitioners asserted that once the law enforcement officials operate motor vehicles with 35 percent luminous transmittance film, "their objections typically disappear", and they realize that their ability to look safely into vehicle interiors is not impaired. Petitioners also asserted the following:

> Petitoners fully recognize the need to protect the safety of law enforcement officers. Petitioners are not aware, however, of *any* instances in which law enforcement officers have been assaulted from behind the cover of tinted side or rear windows, much less from windows tinted with 35 percent luminous transmittance film.

Petitioners cited film cards that display various levels of luminous transmittance, and lightweight portable photometric sensing devices as aids for law enforcement officials to monitor compliance with luminous transmittance requirements.

(73) What is the minimum transmittance for a vehicle's windows necessary to enable a person to look through those windows and see objects, persons, and activities within the vehicle in bright sunlight? At night?

(74) Have law enforcement officers encountered difficulties when trying to identify occupants of vehicles or observe activities within vehicles using low percent transmittance film? How common an occurrence is this?

(75) Are there documented instances in which law enforcemnet officers or other individuals have been unexpectedly assaulted by vehicle occupants whose actions were obscured by tinting on the glazing? Is there any information about the light transmittance of the film plus glazing in these instances?

(76) Please comment on the efficacy of film cards and photometric sensing devices in monitoring compliance with motor vehicle luminous transmittance requirements.

5. Other General Questions Associated With This Petition

Answers to the following questions will further help the agency in determining whether a rulemaking action on Standard 205 is necessary.

(77) What should the light transmissibility standard be? Should the existing 70 percent light transmissibility standard be raised, or lowered? Please provide a rationale and background materials and other information for your recommendation.

(78) How should light transmissibility be measured? Should the agency continue to measure it at a 90 degree angle to the glazing? Should the agency instead measure light transmissibility according to the angle of installation of the glazing on the motor vehicle, and how the driver sees through the glazing?

(79) Should the agency regulate directly the performance characteristics of aftermarket window tinting film? If so, how and to what extent? Since tinted film may be used not just on motor vehicle glazing but on boats or buildings, how could NHTSA distinguish between film intended for motor vehicle applications and film intended for other uses?

(80) The agency requests that domestic and foreign manufacturers supply data as to what percentage of their passenger car fleet is sold with tinted glazing and what the tint (percent transmittance) is on these various vehicles according to glazing type (both measured perpendicular to the glass and measured at the angle at which the driver sees through the glass as installed in his or her vehicle).

(81) The agency addresses this question to domestic and foreign manufacturers. If the light transmissibility standard for passenger cars should be lowered to some point below 70 percent, will manufacturers offer, as standard or optional equipment on new cars, tinted windows that conform to the lower standard? If so, will the tinting be in glazing itself, or will it be in film applied onto the glazing?

(82) Are there data at the state level that show the effects of aftermarket window tinting on visibility, increase in accidents or near misses, law enforcement or other issues that are relevant to this request for comment? If so, please cite references, or provide the data.

(83) Why should windows remain tinted at night when technology now exists to change the transmission of glazing to avoid night visibility problems?

(84) Is it important for a driver to establish eye contact with another driver for detecting hand signals or intent in various traffic scenarios, which 35 percent light transmissibility film over 70 percent light transmissibility glazing might make impossible?

(85) How should questions of international harmonization on this subject be treated? The Japanese Ministry of Transport (MOT) plans to revise their Safety Regulations for Road Vehicles by introducing new regulations on motor vehicle windows to which tinted films have been applied. The MOT notified member nations of the General Agreement on Tariffs and Trade (GATT) of the planned revisions through the GATT Secretariat in December 1988. In summary, the new

regulations prescribe that the use of tinted films will be restricted to those which allow a light transmission of 70 percent or more after application. Side windows to the immediate left and right of the driver are regulated. The revisions were scheduled to be implemented in March 1989.

Interested persons are invited to submit comments on the request for comments. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Issued on: July 17, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-17000 Filed 7-17-89; 2:08 pm]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 54, No. 138
Thursday, July 20, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Foster Grandparent Program and Senior Companion Program, Income Eligibility Levels

AGENCY: ACTION.

ACTION: SSI adjusted income eligibility levels for the Foster Grandparent and Senior Companion Programs.

SUMMARY: This Notice adjusts the 1989 income eligibility levels for the Foster Grandparent and Senior Companion Programs published in the **Federal Register**, April 19, 1989 (54 Fed. Reg. 74).

This adjustment is based on the 1989 Supplemental Security Income (SSI) guidelines disseminated by the Social Security Administration in May 1989. Revised income eligibility level for each state adopts the higher amount of either: (a) 125% of the Department of Health and Human Services (DHHS) Poverty Income Guidelines, or (b) 100% of the DHHS Guidelines plus the current amount of each state supplemented federal SSI. Amounts are rounded to the next highest multiple of $5.00.

Persons whose incomes met the eligibility levels published in April 19, 1989, shall remain eligible under the conditions provided in current policy. The adjusted eligibility levels in this Notice shall apply to persons enrolling in the Programs on or after its effective date.

Schedules of Income Eligibility Level: Foster Grandparent Program and Senior Companion Program

[For the following States]

State	One	Two	Three	Four	Five	Six	Seven	Eight
AK	$11,285	$15,575	$18,125	$20,675	$23,225	$25,775	$28,325	$30,875
CA	9,570	16,340	18,380	20,420	22,460	24,500	26,540	28,580
CO	7,475	11,610	13,650	15,690	17,730	20,225	22,775	25,325
CT	10,590	14,635	16,675	18,715	20,755	22,795	24,835	26,875
MA	7,530	10,445	12,575	15,125	17,675	20,225	22,775	25,325

(For household units with more than eight members, add $2,550 in Alaska, Massachusetts and $2,040 for California, Colorado, and Connecticut for each additional member)

The following income eligibility levels reflecting 125% of the DHHS Poverty Income Guidelines were published in the April 19, 1989 **Federal Register** and remain in effect. The levels apply to all states, the District of Columbia, Puerto Rico, and the Virgin Islands (except Alaska, California, Colorado, Connecticut, and Massachusetts).

Household Units of

States	One	Two	Three
All	$7,475	$10,025	$12,575
Hawaii	8,590	11,525	14,485

(For household units with more than three members, add $2,550 in "All" States and $2,940 in Hawaii for each additional member)

EFFECTIVE DATE: July 20, 1989.

FOR FURTHER INFORMATION CONTACT: Rey Tejada, Program Officer, Foster Grandparent Program/Senior Companion Program, 1100 Vermont Avenue, NW., Suite 6100, Washington, DC 20525 or telephone (202) 634-9349.

SUPPLEMENTARY INFORMATION: ACTION programs are authorized pursuant to section 211 and 213 of the Domestic Volunteer Service Act of 1973, as amended Pub. L 93-113, 87 Stat. 394. The income eligibility levels are determined by the currently applicable guideline published by DHHS pursuant to sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 which requires poverty income guidelines to be adjusted for Consumer Price Index changes.

Signed in Washington, DC on July 13, 1989.

Donna M. Alvarado,

Director of ACTION.

[FR Doc. 89-17018 Filed 7-19-89; 8:45 am]

BILLING CODE 6050-28-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket 89-115]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Cotton Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Calgene, Inc., to allow the field testing in the State of Mississippi of cotton plants genetically engineered for tolerance to the herbicide Bromoxynil and to initiate crosses between genetically engineered plants and nontransformed cotton varieties and lines. The assessment provides a basis for the conclusion that the field testing of these genetically engineered cotton plants will not present a risk of introduction or dissemination of a plant pest and will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. Sivramiah Shantharam, Biotechnologist, Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under accession number 89-047-07.

SUPPLEMENTAL INFORMATION: The regulations in 7 CFR Part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced in the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 53 FR 22906).

Calgene, Inc., of Davis, California, has submitted an application for a permit for release into the environment, to field test cotton plants genetically engineered for tolerance to the herbicide Bromoxynil and to initiate crosses between genetically engineered plants and nontransformed cotton varieties and lines.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the cotton plants under the conditions described in the Calgene, Inc., application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Calgene, Inc., as well as a review of other relevant literature, provided the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene for herbicide tolerance has been inserted into the cotton genome. In nature, genetic material contained in chromosome can only be transferred to other sexually compatible flowering plants by cross-pollination. In this field test, the introduced gene cannot spread to other plants by cross-pollination because the field test is at a sufficient distance away from any compatible plants with which cotton plants may cross-pollinate.

2. Neither the herbicide tolerance gene by itself, nor its gene product, confer on cotton plants any plant pest characteristic. Traits that lead to weediness in plants are polygenic and cannot be conferred by adding a single herbicide tolerance gene.

3. The micro-organism *Klebstilla pneumoniae* subsp. *ozoanae* from which the herbicide tolerance gene was isolated is not a plant pest and is widely distributed in the environment as a common soil inhabitant.

4. The herbicide tolerance gene does not provide the transformed cotton plants with any measurable selective advantage over nontransformed cotton plants in their ability to disseminate or to become established in the environment.

5. The vector (tumor inducing Ti-plasmid) used to transfer the herbicide tolerance gene to cotton plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from a DNA sequence of a known plant pest, has been effectively disarmed; that is, genes that are necessary for producing plant disease have been removed from the vector. The vector has been tested and shown to be nonpathogenic to plants.

6. The vector agent, *Agrobacterium tumefaciens*, the bacterium that was used to deliver the vector DNA containing the herbicide tolerance gene into the plant cell is a well known plant pest, and has been effectively eliminated with an appropriate antibiotic and no longer associated with the transformed cotton plants.

7. Generally, the horizontal movement of the introduced gene(s) is not possible except by pollination of compatible flowering plants. In this case, the cotton plants are generally self-pollinators and therefore, do not cross-pollinate other cotton varieties or other plants. The vector acts by delivering the gene to the plant genome where it is inserted stably into the plant chromosomal DNA. The vector moiety does not survive in the plants as it cannot replicate in plant cellular background.

8. Bromoxynil is a herbicide that rapidly degrades in the environment. It has been shown to be less toxic to animals than many herbicides commonly used.

9. The size of the field test is very small (238 feet and 4 inches wide by 378 feet long) and is biologically isolated from many species of wild plants and animals by a surrounding area of cultivated land.

10. Being located on a private farm, the experimental plot has good physical security.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions on NEPA (40 CFR Parts 1500-1509), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 14th day of July 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-16976 Filed 7-19-89; 8:45 am]

BILLING CODE 3410-34-M

Soil Conservation Service

Santa Teresa Critical Area Treatment Measure, New Mexico

AGENCY: Soil Conservation Service.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40

CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Santa Teresa Critical Area Treatment Measure, Dona Ana County, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ray T. Margo, Jr., State Conservationist, Soil Conservation Service, 517 Gold Ave., SW., Rm. 3301, Albuquerque, NM 87102-3157, telephone 505-766-3277.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Ray T. Margo, Jr., State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The measure concerns critical area treatment. The planned works of improvements will control wind and water erosion. Conservation practices to be installed include an earthen diversion (800 linear feet), an underground outlet (450 linear feet), grade stabilization structures (2 structures), and a two row field windbreak (2,740 linear feet).

The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Ray T. Margo, Jr.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

Ronald L. Lauster,
Acting State Conservationist

July 13, 1989.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

[FR Doc. 89-16992 Filed 7-19-89; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Export Administration

[Docket Nos. 9102-01, 9102-02]

Action Affecting Export Privileges; Marek Cieslak

Summary

Pursuant to the June 16, 1989, recommended Decision and Order of the Administrative Law Judge (ALJ), which Decision and Order is attached hereto and affirmed by me, Marek Cieslak, individually and doing business as M.C. Electronics, Orabantvagen 21, S-17530 Jarfalla, Sweden (hereinafter Respondents), and all successors, assignees, officers, partners, representatives, agents and employees are hereby denied for a period of twenty years from the date hereof all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Export Administration Regulations (15 CFR Parts 768-799).

Order

On June 16, 1989, the ALJ entered his Recommended Decision and Order in the above-referenced matter. The Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record and based on the facts in this case, I hereby affirm the Decision and Order of the ALJ.

This constitutes final agency action in this matter.

Date: July 14, 1989.

Joan M. McEntee,
Acting Under Secretary for Export Administration.

Decision and Order

Appearance for Respondents: Rodney A. Klein, Esq., 2300 Bell Executive Lane, Sacramento, CA 95825

Appearance for Agency: Louis K. Rothberg, Esq., Office of Chief Counsel for Export Administration U.S. Department of Commerce Room H-3329 14th Constitution Ave. NW., Washington, DC 20230

Preliminary Statement

The Office of Export Enforcement (the "Agency"), Bureau of Export Administration, U.S. Department of Commerce issued a January 13, 1989 charging letter against Respondent Marek Cieslak, individually and doing business as Respondent M.C. Electronics. The letter was issued under the authority of the Export Administration Act of 1979 (50 U.S.C.A. app. 2401-2420), as amended (the "Act"), and under the authority of the Export Administration Regulations (the "Regulations"), promulgated pursuant to the Act.[1] The letter charged that, on four occasions from December 1986 through May 1987, Respondents exported, caused to be exported, or attempted to export microprocessors from the United States to Sweden without the required U.S. export license, in violation of §§ 787.3(a) and 787.6 of the Regulations.

Respondents filed an answer denying the charges. Neither party requested a hearing, and accordingly this case is decided on the record without a hearing. The record for decision June 7, 1989.

Discussion

The Agency's essential argument was that Respondent Cieslak has previously been found guilty in a criminal proceeding of the unlawful export activity alleged in the charging letter, and hence in this administrative proceeding is now collaterally estopped from denying that he engaged in such activity. Thus the Agency showed that Respondent Cieslak, in October 1987 in a federal district court in California, pleaded guilty to four counts of a criminal indictment that were essentially the same as the four instances of unalwful export activity alleged in the charging letter.

What happened in these four instances emerges generally from the submissions by both the Agency and Respondents. Apparently on or about each of the first three dates cited in the indictment and in the charging letter—December 15, 1986, January 26, 1987, and February 2, 1987—Respondents ordered microprocessors were shipped from the United States to Respondents in Sweden. These shipments were made without the U.S. licenses that were required for national security reasons for the exports, and the charge for each shipment was making an unlawful export. According to the Agency's submissions, Respondents for several years made lawful exports of this type both by understating the value of the shipment in the invoices so as to avoid arousing suspicion and also by

[1] The Act was resuthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985), and amended by the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100-418, 102 Stat. 1107 (August 23, 1988).

The Regulations, formerly codified at 15 CFR Parts 368-399, were redesignated as 15 CFR Parts 768-799, effective October 1, 1988 (53 FR 37751 September 28, 1988).

smuggling the goods out of the United States by hand.

As to the fourth date cited in the indictment and in the charging letter, evidently on or about February 2, 1987 Respondent Cieslak was in the United States with microprocessors purchased from this same distributor, and he was arrested while still in the country. Again the U.S. license required for national security reasons for an export had not been obtained, and the charge was attempting an unlawful export.

For each of three counts in the criminal indictment based on the first three instances described above, Respondent Cieslak was sentenced to an imprisonment of two years and three months, such terms to run concurrently; and on the fourth count he was given a five-year suspended sentence, and five years' probation commencing upon his release from prison, on condition that he not reenter the United States without the written permission of the Probation Officer. For a sanction in this administrative proceeding, the Agency proposed a twenty-year denial of U.S. export privileges.

Respondents argued that the criminal conviction should not be controlling in this administrative proceeding because Respondent Cieslak's guilty plea had been based on the mistaken belief that he would be sentenced only to time served. Respondents also challenged the Agency's assertion that these microcomputers are controlled for national security reasons, noting that the destination of the shipments was Sweden, a friendly country.

Respondents further claimed that the Agency's case is defective for failure to identify the actual exporter of the microprocessors in the three instances of an export, and for failure to make that exporter a party to this proceeding. Respondents argued additionally that imposition of any sanction in this administrative proceeding would be unconstitutional double jeopardy.

Respondents contended also that the Agency should be barred from bringing this administrative action because it knew of this possible action for over two years, but waited to serve Respondents until the day before Respondent Cieslak's deportation from the United States. That situation, claimed Respondents, left Respondent Cieslak unable to defend himself, since he cannot automatically reenter this country for five years. Respondents claimed both laches and the statute of limitations.

Finally, Respondents asserted that a denial of U.S. export privileges would be an undeservedly severe sanction because the criminal conviction was not for a willful violation, because Respondent Cieslak has been a reputable businessman in Sweden, and because he voluntarily opened his books to the U.S. Embassy there. Further on the magnitude of the sanction, Respondents asserted that they had made some attempts to obtain U.S. export licenses, and that the U.S. supplier from whom they purchased the microcomputers really should be the one held responsible for obtaining the licenses. Respondents also introduced evidence suggesting that microprocessors of this type are sold to Poland by a large American company and that they are sold on the open market in Poland.

Conclusion

As contended by the Agency, Respondents are collaterally estopped in this proceeding from contesting their violations of the Act and Regulations as established by the criminal conviction. This application of collateral estoppel is not avoided by Respondents' claim that the guilty plea in that criminal case was based on a mistken belief. If Respondents should succeed in obtaining a reversal of the criminal conviction, that reversal would justify a reconsideration of this application of collateral estoppel; but, in the present state of the record of this proceeding, that conviction establishes Respondents' commission of the alleged violations. See, e.g., *Spawr Optical Research, Inc.* v. *Baldrige*, 649 F. Supp. 1366, 1369 (D.D.C. 1986).

As to Respondents' challenge to the national security basis for controlling the export of the microcomputers at issue here, Respondents have supplied no evidence to support their challenge (see generally Section 770.1(b) of the Regulations). As for the absence from this case of the exporter or any identification of it, Respondents have not shown any attempt to obtain the identification through discovery or any convincing reason why their appearing alone in the case leaves them unable fairly to defend themselves. Respondents also argued double jeopardy, but supplied no reason why it should apply to an administrative proceeding like this one.

Respondents' argument based on the statute of limitations also fails. The applicable statute is five years (28 U.S.C. 2462), and the oldest violation charged here is dated December 15, 1986. The Agency commenced this proceeding in January 1989, well within the five-year period, and the Agency's position is that this commencement tolls the statute. Past rulings of this Department have held that cases such as this one lack grounds for dismissal in this Tribunal based on the statute of limitations. See, e.g., *In the Matter of Linotype Company, a Subsidiary of Allied Corporation and a Successor-in-Interest of Bunker Ramo-Eltra*, ITA-AB-6-84, April 10, 1987 Decision and Order 20.

As for Respondents' argument of laches, they have failed to support it with any showing of how the passage of time has disadvantaged them, other than a reference to Respondent Cieslak's needing permission to reenter this country. But they have shown neither any effort to obtain that permission, nor how their defense has suffered from his remaining abroad.

As to an approprite sanction, the twenty-year denial of U.S. export privileges proposed by the Agency is severe. But Respondents' actions, which resulted in a multiple count criminal conviction, constituted a serious transgression. Respondents' arguments aimed at lessening the severity of any sanction carry only modest weight. That they expended some efforts to obtain U.S. export licenses is commendable, but still substantially short of the actual obtaining of the licenses that they law required. Their efforts indicate also their awareness of the licensing requirements.

Respondents' argument that their U.S. supplier should be held to some responsibility for obtaining the export licenses fails to undo the point that their criminal conviction establishes their having violated the Act and the Regulations. It is their violations thereby established—including the fact that their transgressions were serious enough to support a criminal conviction—that supplies the basis, in this administrative proceeding, for finding that they committed the charged violations and for determining the appropriate sanction.

Respondents argued additionally, citing evidence they introduced, that microprocessors of the type with which they were involved are being sold to Poland and on the open market in Poland. Even if Respondents' evidence were accepted as establishing the sales postulated by Respondents—an issue that is inconclusive in the record—it leaves unaddressed the basic point that such sales to Poland could lawfully be made only pursuant to U.S. validated licenses. It leaves unaddressed also such questions as whether such licenses would actually be issued and, if so, to what sort of end users and for what sort of end uses, and subject to what conditions. The whole effectiveness of this export control is obviously undercut

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by efforts such as Respondents to export without the required licenses.

In sum as to the sanction, Respondents' violations were significant, and as such merit the significant twenty-year denial period proposed by the Agency. Accordingly, it shall be so ordered.

Order

I. For a period of twenty years from the date of the final Agency action, Respondents: Marek Cieslak, individually and doing business as M.C. Electronics, Drabantvagen 21, S-17530 Jarfalla, Sweden, and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondents are now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. All outstanding individual validated export licenses in which Respondents appear or participate, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondents' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1)).

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., Room 3898B, Washington, DC 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 388.23(b), 50 FR 53134 (1985). Pursuant to section 13(c)(3) of the Act, the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

Date: June 16, 1989.

Thomas W. Hoya,

Administrative Law Judge.

[FR Doc. 89-16961 Filed 7-19-89; 8:45 am]

BILLING CODE 3510-DT-M

Minority Business Development Agency

Business Development Center Applications; Harlem (Manhattan), NY (Service Area)

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is estimated at *$165,000* in Federal funds and a minimum of *$29,118* in non-Federal contributions for the budget period *January 1, 1990* to *December 31, 1990*. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the *Harlem (Manhattan), New York SMSA* geographic service area bounded on the South by 110th Street; on the East by the East River; on the West by the Harlem River; and on the North by 155th Street.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points).

An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

DATE: *Closing Date:* The closing date for applications is *September 29, 1989*. Applications must be postmarked on or before *September 29, 1989*.

ADDRESS: New York Regional Office, Minority Business Development Agency, Jacob K. Javits Federal Building, Room 3720, New York, New York 10278. Telephone Number: (212) 264-3262.

FOR FURTHER INFORMATION CONTACT: Gina A. Sanchez, Regional Director, New York Regional Office, (212) 264-3262.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address. A Pre-application Conference to assist all interested applicants will be held on August 22, 1989 from 10:00 a.m. to 3:00 p.m. in New York, New York at the Adam Clayton Powell State Office Building, 163 West 125th Street, 12th Floor. For information, please contact the MBDA New York Regional Office at (212) 264-3262.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Gina A. Sanchez,

Regional Director, New York Regional Office.

Date: July 14, 1989.

[FR Doc. 89-16988 Filed 7-19-89; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit; NMFS, Southwest Fisheries Center (P77 #35)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Applicant:* NMFS, Southwest Fisheries Center, P.O. Box 271, La Jolla, California 92038.
2. *Type of Permit:* Scientific Research.
3. *Name and Number of Marine Mammals:* Up to 20,000 California sea lions (*Zalophus californianus*) will be harassed during annual pup counts. Of these, 15 will be radio or satellite tagged (juvenile or adults), 900 pups will be tagged or marked, and 900 pups will be hot branded. All age and sex classes may be disturbed during the censusing, food habit, and tagging operations.
4. *Location of Activity:* Southern California Bight.
5. *Period of Activity:* 3 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Highway, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7324, Silver Spring, Maryland 20910; and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731.

Date: July 14, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89-16986 Filed 7-19-89; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent to Grant Exclusive Patent License; Upjohn Co.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to The Upjohn Company having a place of business in Kalamazoo, MI, an exclusive license in the United States and certain foreign countries to practice the invention entitled "Novel Inhibitor of HIV" U.S. Patent Application Serial Number 7-263,739. Prior to the grant of any license by NTIS, the patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning (703) 487-4650 or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Inquirites, comments, and other materials relating to the proposed license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Stephen Gates,

Associate Director, Center for the Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89-16993 Filed 7-19-89; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Overshipment Charges for Certain Man-Made Fiber Tetile Products Produced or Manufactured in Pakistan

July 17, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting overshipment charges.

EFFECTIVE DATE: July 24, 1989.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of the current limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6498. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In accordance with an exchange of letters dated January 6 and 28, 1988 between the Governments of the United States and Pakistan, 3,798,530 square meters shall be charged to the 1989 limit for Category 615.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 51, published on January 4, 1988; and 53 FR 50438, published on December 15, 1988.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

July 17, 1989.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, as amended, between the Government of the United States and Pakistan, I request that, effective on July 24, 1989, you charge 3,798,530 square meters to the current limit established for Category 615 in the directive of December 12, 1988.

This letter will be published in the **Federal Register.**

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-17030 Filed 7-19-89; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Polish People's Republic; Correction

July 14, 1989.

On page 25490 in the table of the letter to the Commissioner of Customs published on June 15, 1989 (54 FR 25489), change "Group V" to "Group IV."

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-17028 Filed 7-19-89; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

July 14, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: July 24, 1989.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-6736. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Effective Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 50440, published on December 15, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

July 14, 1989.

Commissioner of Customs

Department of the Treasury

Washington, DC 20229

Dear Mr. Commissioner:

This directive amends, but does not cancel, the directive issued to you on December 12, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the period which began on January 1, 1989 and extends through December 31, 1989.

Effective on July 24, 1989 the directive of December 12, 1988 is being amended to increase the current limits for the following categories, as provided by the current agreement between the Governments of the United States and Singapore:

Category levels in group I	Amended twelve-month limit [1]
239	369,379 kilograms
331	374,579 dozen pairs
334	62,038 dozen
335	177,021 dozen
340	601,966 dozen
341	163,334 dozen
342	102,714 dozen
435	6,951 dozen
604	740,288 kilograms
631	385,490 dozen pairs
534	236,853 dozen
645/646	133,422 dozen
647	473,304 dozen
Group II	
200-229,237,300/301, 313-330, 332, 333/633, 336, 345, 349, 350, 351/651, 352/652, 353/354/653/654, 359-369, 400-434, 436, 438, 439, 440-444, 445/446, 447, 448, 459-469, 600-603, 606, 607, 611-630, 632, 636, 642-644, 649, 650, 659-S,[2] 659-V,[3] 659-O [4] and 665-670, as a group.	38,634,813 square meters equivalent
Sublevels in group II	
237	199,006 dozen
642	202,163 dozen

[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.

[2] In Category 659-S, only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[3] In Category 659-V, only HTS numbers 6110.30.1030, 6110.30.1040, 6110.30.2030, 6110.30.2040, 6110.30.3030, 6110.30.3035, 6110.90.6052, 6110.90.0054, 6201.93.2020, 6202.93.2020, 6211.33.0050 and 6211.43.0080.

[4] In Category 659-O, all HTS numbers except 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 in Category 659-S; and 6110.30.1030, 6110.30.1040, 6110.30.2030, 6110.30.2040, 6110.30.3030, 6110.30.3035, 6110.90.0052, 6110.90.0054, 6201.93.2020, 6202.93.2020, 6211.33.0050 and 6211.43.0080 in Category 659-V.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreement.

[FR Doc. 89-17027 Filed 7-19-89; 8:45 am]

BILLING CODE 3510-DR-M

Facsimile of the New Export Visa Stamp for Textiles and Textile Products Exported From India

July 17, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION: On May 26, 1989 a notice was published in the **Federal Register** (54 FR 22795) announcing the use of a new export visa stamp for goods which are produced or manufactured in India and exported from India on and after June 1, 1989. A facsimile of the new stamp is published below.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

BILLING CODE 3510-DR-M

[FR Doc. 89-17029 Filed 7-19-89; 8:45 am]

BILLING CODE 3510-DR-C

Announcement of Request for Bilateral Textile Consultations with the Government of Argentina

July 14, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On June 30, 1989, the Government of the United States requested consultations with the Government of Argentina regarding imports of wool trousers, slacks and shorts in Category 448, produced or manufactured in Argentina.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with Argentina, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of wool textile products in Category 448, produced or manufactured in Argentina and exported during the twelve-month period which began on June 30, 1989 and extends through June 29, 1990, at a level of 51,108 dozen.

A summary market statement concerning Category 448 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 448, or to comment on domestic production or availability of products included in Category 448, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The United States remains committed to finding a solution concerning Category 448. Should such a solution be reached in consultations with the Government of Argentina, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

Ronad I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Argentina

Category 448—Women's and Girls' Wool Trousers, Slacks and Shorts

June 1989

Summary and Conclusions

U.S. imports of women's and girls' wool trousers, slacks, and shorts (Category 448) from Argentina reached 54,870 dozen during the year ending April 1989, nearly 5 times the 11,474 dozen imported a year earlier. During the first four months of 1989 imports of women's and girls' wool trousers, slacks, and shorts (Category 448) from Argentina reached 17,226, 52 percent above the amount imported in the first four months of 1988. Argentina is the largest supplier of women's and girls' wool trousers, slacks, and shorts to the U.S., accounting for 16 percent of total year ending April 1989 imports, and 49 percent of total Category 448 imports during the first four months of 1989.

The U.S. market of women's and girls' wool trousers, slacks, and shorts (Category 448) is being disrupted by the sharp and substantial increase in Category 448 imports from Argentina.

U.S. Production and Market Share

U.S. production of women's and girls' wool trousers, slacks, and shorts (Category 448) has been on the decline since 1982, falling from 885,000 dozen in 1982 to 541,000 dozen in 1988, a decline of 39 percent.

The domestic manufacturers' share of the women's and girls' wool trousers, slacks, and shorts market declined 25 percentage points in just six years, falling from 87 percent in 1982 to 62 percent in 1988.

U.S. Imports and Import Penetration

U.S. imports of women's and girls' wool trousers, slacks, and shorts (Category 448) almost tripled, increasing from 129,000 dozen in 1982 to 339,000 dozen in 1988. The ratio of imports to domestic production quadrupled, rising from 15 percent in 1982 to 62 percent in 1988.

Duty-Paid Value and U.S. Producers' Price

All of Category 448 imports from Argentina during the first four months of 1989 entered under HTSUSA number 6204.61.0010—women's trousers of wool or fine animal hair. These trousers entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable trousers.

[FR Doc. 89-17025 Filed 7-19-89; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Request for Bilateral Textile Consultations With the Government of the United Arab Emirates

July 14, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On June 28, 1989, the Government of the United States requested consultations with the Government of the United Arab Emirates regarding cotton and man-made fiber textile products in Categories 336/636 and 342/642, produced or manufactured in the United Arab Emirates.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the United Arab Emirates, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber textile products, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on

June 28, 1989 and extends through June 27, 1990, at a level of 48,501 dozen (Categories 336/636) and 96,768 dozen (Categories 342/642).

Summary market statements concerning these categories follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 336/636 and 342/642, or to comment on domestic production or availability of products included in the categories, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 336/636 and 342/642. Should such a solution be reached in consultations with the Government of the United Arab Emirates, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—United Arab Emirates

Category 336/636—Cotton and Man-Made Fiber Dresses

June 1989.

Summary and Conclusions

U.S. imports of cotton and mad-made fiber dresses (Category 336/636) from the United Arab Emirates reached 70,656 dozen during the year ending April 1989, more than 300 times the 209 dozen imported a year earlier. Cotton and man-made fiber dress imports from the United Arab Emirates were 2,384 dozen in 1987 and 5,861 dozen in 1988. During the first four months of 1989 imports of cotton and man-made fiber dresses (Category 336/636) from the United Arab Emirates reached 64,970 dozen, nearly 400 times the January-April 1988 level and eleven times the total amount imported in calendar year 1988. The U.S. government regards with serious concern the alarming increase, over a short period of time in a sensitive category, of imports from an uncontrolled supplier.

Further, cotton and man-made fiber dresses from the United Arab Emirates enter the U.S. market at an average value 78 percent below the price of domestically produced dresses and on average 66 percent below the value of other major foreign suppliers of cotton and man-made fiber dresses to the United States market.

The levels reached by U.S. imports of cotton and man-made fiber dresses from the United Arab Emirates in the first four months of 1989, if maintained throughout the current year, reach an annualized level of nearly 195 thousand dozen.

The U.S. market for these products has been disrupted. The sharp and substantial growth of imports of these products from the United Arab Emirates at values 78 percent below the domestic price contributes to this disruption, particularly if the annual level of imports reaches the annualized amount indicated by the first four months of data.

At this level, United Arab Emirates' imports would equal or exceed the import limits for these products established with several major suppliers which are participants in the Arrangement Regarding International Trade in Textiles (the MFA). The U.S. government is concerned that rapidly rising imports from uncontrolled non-MFA suppliers will frustrate and undermine U.S. efforts to maintain orderly growth of imports through the bilateral agreements negotiated under auspices of the MFA.

U.S. Production and Market Share

U.S. production of cotton and man-made fiber dresses (Category 336/636) has been on the decline, falling from 19,843,000 dozen in 1982 to 13,338,000 dozen in 1988, a decline of 33 percent. The domestic manufacturers' share of the cotton and man-made fiber dress market fell from 91 percent in 1982 to 71 percent in 1988.

U.S. Imports and Import Penetration

U.S. imports of cotton and man-made fiber dresses (Category 336/636) have increased steadily since 1982, increasing from 1,933,000 dozen in 1982 to 5,493,000 dozen in 1988, an average annual rate of 19 percent. The ratio of imports to domestic production quadrupled, rising from 10 percent in 1982 to 41 percent in 1988.

Duty-Paid Value and U.S. Producers' Price

Approximately 73 percent of Category 336/636 imports from the United Arab Emirates during the first four months of 1989 entered under HTSUSA numbers 6204.42.3030—women's cotton dresses of yarn dyed fabric, other than corduroy and 6204.42.3050 women's cotton dresses, other than of yarn dyed fabric, other than corduroy. These dresses entered the U.S. at landed duty-paid values on average 78 percent below U.S. producers' prices for comparable dresses.

Market Statement—United Arab Emirates

Category 342/642—Cotton and Man-Made Fiber Skirts

June 1989.

Summary and Conclusions

U.S. imports of cotton and man-made fiber skirts (Category 342/642) from the United Arab Emirates reached 104,010 dozen during the year ending April 1989, almost 3 times the 35,893 dozen imported a year earlier. During the first four months of 1989 imports of cotton and man-made fiber skirts (Category 342/642) from the United Arab Emirates reached 42,601 dozen, 47 percent above the amount imported in the first four months of 1988. The U.S. government regards with serious concern the alarming increase, over a short period of time in a sensitive category, of imports from an uncontrolled supplier.

Further, cotton and man-made fiber skirts from the United Arab Emirates enter the U.S. market at an average value 74 percent below the value of domestically produced skirts and on average 53 percent below the value of other major foreign suppliers of cotton and man-made fiber skirts to the United States market.

The levels reached by U.S. imports of cotton and man-made fiber skirts from the United Arab Emirates in the first four months of 1989, if maintained throughout the current year, reach an annualized level of nearly 130 thousand dozen. The U.S. market for these products has been disrupted. The sharp and substantial growth of imports of these products from the United Arab Emirates at values 74 percent below domestic prices contributes to this disruption, particularly, if the annual level of imports reaches the annualized amount indicated by the first four months of data.

At this level, the United Arab Emirates' imports would approach the import limits for these products established with major suppliers which are participants in the Arrangement Regarding International Trade in Textiles (the MFA). The U.S. government is concerned that rapidly rising imports from an uncontrolled non-MFA supplier will frustrate and undermine U.S. efforts to maintain orderly growth of imports through bilateral agreements negotiated under auspices of the MFA.

U.S. Production and Market Share

U.S. production of cotton and man-made fiber skirts (Category 342/642) has been on the decline, falling from 9,101,000 dozen in 1982 to a depressed 7,940,000 dozen average during 1984 and 1985, a decline of 13 percent. Production in 1986 and 1987 recovered slightly reaching 8,184,000 and 8,732,000 dozen respectively, but fell again in 1988 to 6,936,000 dozen, its lowest level since 1980, 20 percent below the 1987 level and 24 percent below the 1982 level. The domestic manufacturers' share of the cotton and man-made fiber skirt market dropped 34 percentage points in just six years, falling from 83 percent in 1982 to 49 percent in 1988.

U.S. Imports and Import Penetration

U.S. imports of cotton and man-made fiber skirts (Category 342/642) quadrupled since 1982, increasing from 1,818,000 dozen in 1982 to 7,211,000 dozen in 1988. The ratio of imports to domestic production increased over 5 times, rising from 20 percent in 1982 to 104 percent in 1988.

Duty-Paid Value and U.S. Producers' Price

Approximately 67 percent of Category 342/642 imports from the United Arab Emirates during the first four months of 1989 entered under HTSUSA number 6204.52.2070—women's cotton skirts, other than of corduroy and of blue denim, and other than certified hand-loomed and folklore products. These skirts entered the U.S. at landed duty-paid values on average 74 percent below U.S. producers' prices for comparable skirts.

[FR Doc. 89-17026 Filed 7-19-89; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Notice was published June 21, 1989, at 54 FR 26073 that the Naval Research Advisory Committee Panel on Survivability of Navy Tactical Communications in a Hostile Environment will meet on July 13–14, 1989 at the Center for Naval Analyses, 4401 Ford Avenue, Alexanadria, Virginia. The meeting has been canceled. In accordance with 5 U.S.C. 552b(e)(2), the meeting cancellation is publicly announced at the earliest practical time.

Date: July 17, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-17012 Filed 7-19-89; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Notice was published July 7, 1989, at 54 FR 28708 that the Naval Research Advisory Committee Panel on Tactical Defense Suppression in the Year 2000 will meet on July 19–20, 1989, at the Naval Strike Warfare Center, Fallon, Nevada. The agenda for the meeting has been expaned to include an Executive Session on Friday, July 21, 1989. The meeting will commence at 8:00 a.m. and terminate at 4:00 p.m. on July 21, 1989. The session will be closed to the public. All other information in the previous notice remains effective. In accordance with 5 U.S.C. 552b(e)(2), the meeting change is publicly announced at the earliest practical time.

Date: July 17, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-17013 Filed 7-19-89; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before August 21, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: July 17, 1989.

Carlos U. Rice,

Director, for Office of Information Resources Management.

Office of Planning, Budget, and Evaluation

Type of Review: New
Title: Evaluation of Dropout Prevention and Reentry Demonstration Projects in Vocational Education
Frequency: Biennial
Affected Public: Individuals or households; State or local governments; public schools
Reporting Burden:
Responses: 7591
Burden Hours: 1533
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This study will determine Vocational education, dropout rates. Demonstration projects are required to disseminate information about effective dropout prevention practices in vocational education. The Department will use the information collected to assess the accomplishments of program goals and objectives and to aid in effective program management.

Type of Review: New.
Title: Study of Programs for Retaining the Benefits of Early Childhood Education for Disadvantaged Children
Frequency: One time
Affected Public: State or local government
Reporting Burden:
Responses: 2,404
Burden Hours: 1,491
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: The purpose of this study is to determine the extent of transition programs designed to improve the school performance of disadvantaged children. Data will identify and describe transition programs in public schools and develop criteria for exemplary programs.

Office of Special Education and Rehabilitative Services

Type of Review: New.
Title: Evaluation of the Impact of the State Vocational Rehabilitation Agency Management Control Project (MCP)
Frequency: One time
Affected Public: State or local governments
Reporting Burden:
Responses: 700
Burden Hours: 170
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: The purpose of the study is to evaluate the impact of the Management Control Project (MCP) adopted by State Vocational Rehabilitation agencies. The information collected from state agency counselors and supervisors will be used to determine the effectiveness of the state agencies in achieving the goals of the MCP for effective and efficient delivery of services of eligible clients.

Type of Review: Extension.
Title: Annual Report on State Agency Independent Living Rehabilitation Services Title VII, Part A
Frequency: Annually
Affected Public: State and local governments
Reporting Burden:
Responses: 79
Burden Hours: 632
Recordkeepers: 0
Burden Hours: 0
Abstract: This information will be used to analyze and evaluate the Independent Living Rehabilitation (ILR) services provided by State ILR agencies funded under Title VII, Part A of the Rehabilitation Act, as amended.

Office of Postsecondary Education

Type of Review: Extension.
Title: New and Continuation Application for Grants Under Educational Opportunity Centers Program
Frequency: Annually
Affected Public: State or local governments; Non-profit institutions; Small Businesses or organizations
Reporting Burden:
Responses: 41
Burden Hours: 615
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by State agencies to apply for funding under the Educational Opportunity Centers program. The Department uses the information to make grant awards.

Office of Elementary and Secondary Education

Type of Review: Existing.
Title: Chapter 1—Migrant Education Coordination Program for State Educational Agencies Interstate and Intrastate Coordination of Migrant Education Activities
Frequency: Triennially
Affected Public: State or local governments
Reporting Burden:
Responses: 40
Burden Hours: 1600
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: The information is used as a basis for awarding grants to State educational agencies who individually or cooperatively through a group or consortium of states operate special projects to improve the interstate and intrastate migrant education program coordination activities.

Type of Review: Revision.
Title: Application for Grant under the Indian Education Act
Frequency: Annually
Affected Public: State or local governments
Reporting burden:
Responses: 1500
Burden Hours: 45,000
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This application will be used by state and local agencies to apply for funding under the Indian Education Act. The Department uses the information to make grant awards.

Office of Educational Research and Improvement

Type of Review: Revision.
Title: Application for a Research and Development Centers Program Grant
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 42
Burden Hours: 3600
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by public or private organizations, institutions of higher education and individuals to apply for research and development grants under the Research and Development Centers Program. The Department uses the information to make grant awards.

[FR Doc. 89-17050 Filed 7-19-89; 8:45 am]
BILLING CODE 4000-01-M

Office of Elementary and Secondary Education

Intent to repay to the Pennsylvania State Department of Education Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Intent to award grantback funds.

SUMMARY: Under section 456 of the General Education Provisions Act (GEPA), the U.S. Secretary of Education (Secretary) intends to repay to the Pennsylvania State Department of Education, the State educational agency (SEA), an amount equal to 75 percent of the funds recovered by the U.S. Department of Education (Department) as a result of a final audit determination. This notice describes the SEA's plan, submitted on behalf of the Philadelphia School District (PSD), the local educational agency (LEA), for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. The notice invites comments on the proposed grantback.

DATE: All written comments must be received on or before August 21, 1989.

ADDRESSES: All written comments should be submitted to Dr. James Spillane, Director, Division of Program Support, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 2043), Washington, DC 20202-6132.

FOR FURTHER INFORMATION CONTACT: Dr. James Spillane. Telephone: (202) 732-4694.

SUPPLEMENTARY INFORMATION:

A. Background

In December 1985, the Department recovered $2,318,060 from the Pennsylvania SEA in satisfaction of a claim arising from a fiscal year (FY) 1973 audit. This claim involved the SEA's administration of Title I of the Elementary and Secondary Education Act of 1965, a program that addressed the special educational needs of educationally deprived children in areas with high concentrations of children from low-income families. Specifically, the Philadelphia LEA's FY 1973 Title I application was approved by the SEA despite the fact that not all schools in the LEA were in compliance with Title I comparability requirements. Those requirements provided that an LEA could receive Title I funds only if it used its State and local funds in the Title I project areas to provide services that "taken as a whole, [were] at least comparable to services being provided in [non-Title I] areas * * *" 20 U.S.C. 241e(a)(3)(C) (1976).

B. Authority for Awarding a Grantback

Section 456(a) of GEPA, 20 U.S.C. 1234e(a) (1982), provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the SEA or LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that the—

(1) Practices and procedures of the SEA or LEA that resulted in the audit determination have been corrected, and the SEA or LEA is, in all other respects, in compliance with the requirements of the applicable program;

(2) SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the program, and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) Use of the funds to be awarded under the grantback arrangement in accordance with the SEA's plan would serve to achieve the purposes of the program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 456(a)(2) of GEPA, the SEA has applied for a grantback of $1,738,545 and has submitted a plan on behalf of the Philadelphia LEA for use of the grantback funds to meet the special educational needs of educationally deprived children in programs administered under Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 (Chapter 1), as amended by Public Law 100-297. Although the final audit determination resulted from improper expenditures of Title I funds, that program has been repealed. Chapter 1 is a successor program that, like Title I, is designed to serve educationally deprived children in low-income areas.

Under the SEA's plan, activities are proposed for 72 elementary schools and 25 middle schools that would supplement the regular Chapter 1 program provided by the LEA. These sites include 33 schools that were not comparable according to the audit and 64 similar sites that serve high concentrations of children from low-income families. Educationally deprived children in 34 nonpublic schools who are eligible for Chapter 1 services would also benefit from the grantback funds.

The activities in the SEA's plan include: (1) An incentive program to recruit new teachers to certain Chapter 1 project sites and to provide staff development and support that will equip these teachers with the necessary skills to meet the special needs of Chapter 1 children; (2) additional staff development regarding instructional strategies for at-risk students; and (3) parent involvement activities to increase the support of learning activities in the home.

The incentive program for new teachers would address the teacher vacancy and turnover problem in Chapter 1 schools. These schools have twice the number of new teachers and three times the teacher turnover each year of other schools in the LEA. This creates several problems that affect the success of Chapter 1 children. First, these students have a much greater-than-average chance of being taught by a new teacher with little experience in addressing needs of educationally deprived children. Second, because of a shortage of teachers, it is in these schools that vacancies are likely to go unfilled. This puts Chapter 1 students at much higher-than-average risks of being taught either by a long-term substitute or by a string of per diem substitutes.

An amount of $715,861 would be used to provide an incentive package to recruit new teachers to Chapter 1 schools and to provide support that would equip the teachers with the necessary skills to address the special needs of educationally deprived children. This package would consist of staff development in August and September to be led by experienced teachers; instructional materials, supplies, and reference materials that most experienced teachers build up gradually over the years; and mentoring that would be focused on setting up the classroom and developing instructional strategies in ways that would support the success of Chapter 1 students.

The incentive package would be offered to all prospective teachers (new and temporarily assigned) who sign up to fill vacancies in the Chapter 1 schoolwide project sites and to those signing up to fill Chapter 1 vacancies in the other elementary grantback project sites.

There is an ongoing program in the 25 middle schools that is funded by regular Chapter 1 funds for at-risk students. This program features reduced class size, team teaching, and an ungraded, interdisciplinary approach for children who have twice failed to meet promotion requirements. The LEA would spend $34,639 of the grantback funds to provide central staff development for five Chapter 1 teachers form each of the 25 sites regarding instructional strategies that meet the special needs of these adolescent at-risk students and strategies for effective communication with parents. These teachers and one

classroom assistant from each site would also be provided on-site planning time to maximize teamwork and to support the interdisciplinary nature of the program.

The parent involvement component would be initiated with grantback funds at a cost of $893,423. One of the activities in this component would be a take-home computer program for participating Chapter 1 children at 14 Chapter 1 schools. The parents would be trained to use the computers with their children to provide ongoing learning-related activities at home, so as to communicate the value of learning and increasing basic skills. Each of the 14 sites would receive a package consisting of 25 take-home computers, training, and software. The software would be tailored to the needs of the participating children.

In addition, in 61 elementary schools, all of which operate Chapter 1 schoolwide projects, grantback funds would be used to equip parent communication centers to support meaningful parent involvement. Meeting the requirements regarding parent participation in these schools is especially demanding and the need is great. These project sites are not currently technologically equipped to maximize communication with parents. A telephone and telephone line would be installed at each site to be used exclusively for contacts between staff and parents to support communication about goals and progress of the children and to enhance the home/school connection.

Finally, for the at-risk students in the 25 middle schools, Chapter 1 teachers would make visits during the months of August and September to the homes of participating Chapter 1 students. The purpose of these visits would be to enable the teachers to establish a personal relationship with each student and his or her family, establish expectations about the student's progress, identify ways that the family could support the student's learning, and create a climate conducive to ongoing exchange throughout the school year.

The balance of the grantback funds would be applied to indirect costs.

D. The Secretary's Determination

The Secretary has carefully reviewed the plan submitted by the SEA. Based upon that review, the Secretary has determined that the conditions under section 456 of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

E. Notice of the Secretary's Intent to Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the Pennsylvania SEA under a grantback arrangement. The grantback award would be in the amount of $1,738,545, which is 75 percent—the maximum percentage authorized by the statute—of the funds recovered by the Department as a result of the final audit determination.

F. Terms and Conditions Under Which Payments Under A Grantback Arrangement Would Be Made

The SEA and LEA agree to comply with the following terms and conditions under which payment under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and any amendments to that plan that are approved in advance by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be obligated by September 30, 1989, in accordance with section 456(c) of GEPA and the SEA's plan.

(3) The SEA, on behalf of the LEA, will not later than January 1, 1990, submit a report to the Secretary which—

(a) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budget, and

(b) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

Dated: July 13, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.010, Educationally Deprived Children—Local Educational Agencies)

[FR Doc. 89-16974 Filed 7-19-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Award on a Noncompetitive Basis; American Wind Energy Association

AGENCY: Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: The Department of Energy (DOE), Chicago Operations Office, through its SERI Area Office (SAO), announces that pursuant to the DOE Financial Assistance Rules 10 CFR 600.7 (b)(2), it intends to award a cooperative agreement on a noncompetitive basis to the American Wind Energy Association (AWEA). The objective of the work to be supported by this cooperative agreement is the development and promulgation of industry-based consensus test standards for wind energy systems.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen L. Sargent, U.S. Department of Energy, SERI Area Office, 1617 Cole Boulevard, Golden, CO 80401, (303) 231-1366.

SUPPLEMENTARY INFORMATION: The American Wind Energy Association is composed primarily of companies in the wind energy business. One function of AWEA is to develop standards covering a variety of subjects affecting the wind energy industry, such as performance testing, acoustics, installation, siting, operation safety, and interconnection. Standards are drafted by individual subcommittees, reviewed by the Standards Coordinating Committee, then sent to the AWEA membership for a vote on adoption as a consensus standard. Modifications to existing standards are handled in a similar fashion. AWEA is the only known organization that develops and promulgates standards for the wind energy industry. Therefore, the cooperative agreement renewal application is being accepted by DOE because it knows of no other organization which is conducting or planning to conduct this type of activity.

The project for the cooperative agreement renewal is one year, expected to begin in July 1989. DOE plans to provide funding in the amount of $64,306 for this project period.

Issued in Chicago, Illinois on June 30, 1989.

Timothy S. Crawford,

Assistant, Manager for Administration.

[FR Doc. 89-17064 Filed 7-19-89; 8:45 am]

BILLING CODE 6450-01-M

Determination of Noncompetitive Financial Assistance; Coalition of Northeastern Governors

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b)(2), it intends to renew on a noncompetitive basis a grant to the Coalition of Northeastern Governors (CONEG) to organize and carry out a Regional Biomass Program in the Northeast Area of the Northern Tier States. The grant renewal will continue the project through 8/8/90. The estimated amount is $335,000.

Procurement Request No.: 05-890R21389.001.

Project Scope: This grant renewal is to continue a Regional Biomass Program in the Northeast Area of the Northern Tier States. The primary purpose is to implement biomass research and development, technology utilization, and technology transfer on a regional basis in a manner which will maximize the participation of the public and private sectors of each state. CONEG has the unique capability to equally represent all of the states in the Northeast subregion and involve the appropriate private and public interest groups in the states. CONEG is an existing, regionally organized consortium with background experience in management of similar activities. Eligibility for this award is, therefore, restricted to CONEG.

FOR FURTHER INFORMATION CONTACT: Lynda H. McLaren, Research Management Branch, Research and Laboratory Waste Management Div., U.S. Department of Energy, Oak Ridge, TN 37831-8621, (615) 576-1763.

Issued in Oak Ridge, Tennessee, on July 7, 1989.

Robert E. Lynch,

Acting Director,

Procurement and Contracts Division, Oak Ridge Operations.

[FR Doc. 89-17068 Filed 7-19-89; 8:45 am]

BILLING CODE 6450-01-M

Noncompetitive Financial Assistance for Cooperative Agreement Award; Commercial Vehicle Safety Alliance

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance for cooperative agreement award.

SUMMARY: The Department of Energy (DOE) Chicago Operations Office announces that pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(2), it is pursuing a noncompetitive financial assistance award renewal of a cooperative agreement with the Commercial Vehicle Safety Alliance (CVSA). Under the terms of the cooperative agreement, the CVSA provides the DOE with services for the development of standards and procedures for inspecting truck shipments of spent nuclear fuel and high-level radioactive waste. In addition, the cooperative agreement will be amended to allow the CVSA to contract with appropriate State agencies to conduct a pilot study of the CVSA's proposed procedures for inspecting highway vehicles transporting spent fuel and high-level radioactive waste.

FOR FURTHER INFORMATION CONTACT: John M. Willis, RTTD, U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois 60439. (312) 972-2516

SUPPLEMENTARY INFORMATION: The Transportation Program of the DOE's Office of Civilian Radioactive Waste Management (OCRWM) addresses a mandate of the Nuclear Waste Policy Act (NWPA), which requires the DOE to establish a safe, secure, and efficient transportation system for moving spent nuclear fuel and high-level waste. To that end, the DOE requires the cooperation of and input from, among others, representatives of State Governments.

The CVSA, whose membership includes representatives from 46 States and 10 Canadian territories and provinces, is the only association of State agencies responsible for conducting commercial vehicle inspections. The DOE's purpose for renewing the cooperative agreement is to enable it to continue to interact directly with the transportation industry and the States through their memberships in the CVSA, in developing standards for inspection of highway truck shipments of spent fuel and high-level nuclear waste. Prior to the cooperative agreement, which has been in effect since 1986, the CVSA had conducted similar work on hazardous materials transportation for the Department of Transportation. Moreover, the CVSA has already submitted to the DOE a draft of highway vehicle inspection procedures, and renewal of the cooperative agreement to provide for validation of those procedures would be a logical extension of the work performed to date.

The CVSA has proposed to contract with appropriate agencies within a core group of States in order to conduct the pilot study. The agencies selected by CVSA will represent State vehicle safety, inspection and/or enforcement agencies, and will have the ability to meet the requirements for a valid test of the draft inspection procedures.

Eligibility for renewal of the cooperative agreement award is being restricted to CVSA because of its past experience with the DOE and its unique institutional ties and expertise. The estimated total cost of the 60-month cooperative agreement with CVSA is $1,488,521. The proposed award date is September 1, 1989.

Issued in Chicago, Illinois, on July 6, 1989.

Edwin H. Hendricks,

Acting Assistant Manager for Administration.

[FR Doc. 89-17065 Filed 7-19-89; 8:45 am]

BILLING CODE 6450-01-M

Award of a Cooperative Agreement, Noncompetitive Financial Assistance; University of Utah

AGENCY: Nevada Operations Office, DOE.

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: DOE announces that purusant to the DOE Financial Assistance Rules, 10 CFR 600.14(e)(1), it intends to award, in conjunction with the Defense Nuclear Agency, a noncompetitive financial assistance cooperative agreement for a research program to be conducted at the Environmental Radiation & Toxicology Laboratory of the University of Utah to conduct a baseline study of plutonium in human urine within the United States and relate these data to human metabolism of plutonium from environmental sources.

The Environmental Radiation & Toxicology Laboratory at the University of Utah has developed the ability to measure plutonium in human urine at concentrations of 0.0001 picocuries per daily sample using a fission track analysis technique. This award will provide funds to continue development of the technique and apply it to measuring background concentrations of plutonium in human urine in the United States. During the years of atmospheric testing of nuclear weapons an estimated 500 tons of plutonium were deposited

worldwide. This plutonium cannot be measured in bioassay samples by traditional analytical means because of the extremely low concentrations of plutonium in urine. In order to assess the uptake of plutonium from accidental exposures of people, it is necessary to determine the background levels resulting from environmental contamination.

Project Scope: The University of Utah will develop a data base of background concentrations of plutonium in urine in residents of the United States designated by age, sex, location of residency, and concentration of plutonium in the soil. They will study the variability of plutonium in urine measurements resulting from sampling procedures and lifestyles of the participants. It is necessary to understand the variability within samples from single individuals and variability between individuals in the same contaminated environment.

The University will develop metabolic models for the excretion of plutonium in urine based on the results of the baseline study. They will also perform interlaboratory comparisons with Brookhaven National Laboratory and other research facilities that may develop the ability to measure plutonium at these ultralow concentrations.

Eligibility for the award of this cooperative agreement is being limited to the University of Utah because of the unique technique that has been developed through Department of Energy funding. No other research facility, outside of the Department of Energy system, has demonstrated the capability of measuring plutonium in urine at environmental levels, which is required in order to provide the baseline data base.

The term of this cooperative agreement is for five years and will commence October 1, 1989, and end September 30, 1994. The total estimated cost of this award is $2.6 million.

FOR FURTHER INFORMATION, CONTACT: U.S. Department of Energy, Nevada Operations Office, ATTN: David L. Wheeler, P.O. Box 78518, Las Vegas NV 89193–8518.

Issued in Las Vegas, Nevada, on June 28, 1989

Nick C. Aquilina,

Manager.

[FR Doc. 89–17066 Filed 7–19–89; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

[Special Reseach Grant Program Notice 89–7]

Global Survey of Carbon Dioxide in the Ocean

AGENCY: Office of Energy Research, DOE.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Department of Energy (DOE) hereby announces its interest in receiving applications for Special Research Grants to support of global survey of carbon dioxide in the ocean in conjunction with the World Ocean Circulation Experiment Hydrographic Program (WOCE/HP) Cruises. This notice requests applications for grants to support: (1) the acquisition of CO_2 data at sea and (2) analyses of total carbon dioxide in replicate water samples by precision manometry at a shore-based laboratory. Applicants may apply for Special Research grants to conduct at-sea measurements and/or land-based manometry.

Consortia are encouraged to submit coordinated proposals in order to consolidate scientific resources, equipment, and personnel for (1) and (2) above. It is anticipated that up to three grants for measurements at sea (see (1) above) will be awarded for a three- to five-year period beginning in early 1990. One award is anticipated for the shore-based laboratory measurements (see (2) above). Some of the funds being set aside for this program may be used to support research at DOE laboratories.

DATES: The first WOCE cruise will be in the Pacific Ocean, aboard the NOAA R/V Discoverer. The cruise will most likely begin in January 1990 and will include approximately 60 days at sea. A section of hydrographic stations from Hawaii to 60° S along 150° W will be made. A second cruise is being planned for late FY 1990 which will include a leg from Central America to 50° S along 90° W. In order to participate in the first cruise, grant applications for at-sea CO_2 measurements must be received by the Division of Acquisition and Assistance Management prior to August 10, 1989. Applications for grants to perform shore-based CO_2 measurements on replicate water samples and for WOEC cruises beginning after June 1990 must be received by DOE prior to October 10, 1989.

ADDRESS: Completed applications referencing Program Notice 89–7 should be forwarded to: U.S. Department of Energy, Division of Acquisition and Assistance Management, Office of Energy Research, ER–64, Room G–232, Washington, DC 20545.

FOR FURTHER INFORMATION CONTACT: Dr. Ari Patrinos, Carbon Dioxide Research Program, Office of Health and Environmental Research, ER–74, Washington, DC 20545, (301) 353–4375.

SUPPLEMENTARY INFORMATION: One of the major scientific objectives of the Carbon Dioxide Research Program is to quantify the uptake of atmospheric CO_2 by the ocean and to make estimates of future atmospheric concentrations resulting from fossil fuel combustion. The purpose of the global carbon dioxide survey is to provide a data set to characterize the global distribution of CO_2 in the oceans in support of the U.S. Global Ocean Flux Study (GOFS) Program. A global description of CO_2 chemistry will provide essential data for the development of a three-dimensional model of the ocean carbon cycle, a critically needed tool for predicting future atmospheric CO_2 concentrations.

This notice requests applications for grants to support: (1) The acquisition of CO_2 data at sea and/or (2) analyses of total carbon dioxide in replicate water samples by precision manometry at a shore-based laboratory as described below.

(1) Successful applicants for grants to make at-sea measurements will provide personnel and equipment to perform accurate measurements of total alkalinity, total dissolved carbon dioxide, and/or carbon dioxide partial pressure in small-volume water samples aboard WOCE/HP research vessels. The interim primary technique for measuring total carbon dioxide will be CO_2 coulometry. Instruments will be calibrated at sea with interim standards. Because coulometry is the subject of active scientific research, the successful applicant will be expected to attend a comprehensive training course on the technique and to be familiar with interim protocols for handling and analyzing samples at sea. Training, interim protocols, and interim standards will be provided to the successful applicant by DOE prior to the FY 1990 WOCE/HP cruises. Secondary analytical techniques may be proposed for simultaneous research and evaluation with the ultimate purpose of improving the accuracy and efficiency of CO_2 analyses on later WOCE/HP cruises.

(2) The successful applicant will make replicate analyses on up to 10% of water samples taken during the at-sea measurements (see (1) above) at a shore-based laboratory using an approved precision manometric method so that CO_2 data from the WOCE/HP surveys will be comparable to data from previous oceanographic expeditions. The applicants for a grant to perform these analyses must have established laboratory instrumentation for precision manometry and extensive experience with CO_2 analysis in sea water.

It is essential that the global CO_2 measurements be made simultaneously with the WOCE/HP surveys so that carbon fluxes can be estimated from synoptic hydrographic data. The projected level of effort for the WOCE/HP global survey is as follows:

	Work stations	Samples
Atlantic Ocean	1,400	49,500
Pacific Ocean	2,300	80,700
Indian Ocean	1,100	37,500
Southern Ocean	350	12,600
Totals	5,150	180,300

This level may be modified to reflect the actual level of the WOCE field program.

To help ensure that consistency and quality of the CO_2 data are maintained during the WOCE/HP cruises, successful applicants in (1) and (2) above will compose a project Science Team to aid communications and information transfer.

About $1,000,000 has been requested in FY 1990 to fund (1) carbon dioxide measurements on WOCE/HP cruises in FY 1990; (2) replicate total carbon dioxide analyses by precision manometry; (3) formulation of interim protocols for at-sea analyses; (4) training on CO_2 coulometry; and (5) preparation of interim standards. Activities (3), (4), and (5) will be conducted by DOE National Laboratory. Funding for at-sea measurements ((1) above) during FY 1991 and succeeding years will depend on the WOCE/HP cruise schedules and the resources required for scientific and logistical support for CO_2 measurements. It is anticipated that funding could reach a maximum of $2,000,000 per year at some time during the three- to five-year program. Continuation of the Global CO_2 Surveys beyond FY 1990 is contingent upon availability of funds.

Information abourt submission of applications, eligibility, limitations, evaluation and selection processes, and other policies and procedures may be found in the OER Application and Guide for the Special Research Grants Program 10 CFR Part 605. The application kit and guide is available from the U.S. Department of Energy, Acquisition and Assistance Management Division, Office of Energy Research, ER–64, Washington, DC 20545. Telephone requests may be made by calling (301) 353–3213. The Catalog of Federal Domestic Assistance Number for this program is 81.049.

Issued in Washington, DC, on June 1989.

June 30, 1989.

D.D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 89–17069 Filed 7–19–89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. EC89–14–000, et al.]

New England Power Service Co., et al., Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. New England Power Service Company

[Docket No. EC89–14–000]

July 7, 1989.

Take notice that on June 30, 1989, New England Power Service Company (NEP) tendered for filing an application for the sale of electric facilities by NEP to the Town of West Boylston, Massachusetts. NEP requests approval for this sale pursuant to Section 203 of the Federal Power Act and Part 33 of the Commission's regulations.

Comment date: July 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Gulf States Utilities Company

[Docket No. ER86–556–022]

July 7, 1989.

Take notice that on June 8, 1989, Gulf States Utilities Company (Gulf States) tendered for filing its refund compliance report in response to a letter from the Commission dated May 1, 1989.

Comment date: July 24, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Western Area Power Administration

[Docket No. EF89–5031–000]

July 7, 1989.

Take notice that on June 30, 1989, the Deputy Secretary of The Department of Energy, by Rate Order No. WAPA–35, did confirm and approve on an interim basis, to be effective on the first day of the October 1989 billing period, Western Area Power Administration's (Western's) power rate Schedules P–SED–F3 and P–SED–FP3 for the Pick-Sloan Missouri Basin Program (P–SMBP). The power rates will be in effect pending the FERC's approval of them or substitute rates, or until superseded.

The fiscal year 1987 power repayment study indicated that the existing rates do not yield sufficient revenue to satisfy the cost recovery criteria through the study period. The revised rate schedules will yield adequate revenue to satisfy these criteria. A comparison of the proposed rates to the existing rates is as follows:

Eastern Division

Existing class of power	Existing rate	Proposed rate	Absolute change	Percentage change
Firm capacity $/kW-month	$1.65	$1.85	+0.20	+12.1
Firm energy up to and including 60-percent monthly load factor, mills/kWh	4.41	5.06	+0.65	+14.7
Above 60-percent monthly load factor, mills/kWh	7.79	8.44	+0.65	+8.3
Peaking capacity, $/kW-season	9.90	11.10	+1.20	+12.1
Peaking energy, mills/kWh	4.41	5.06	+0.65	+14.7
Seasonal firm				

Western Division

The rate schedules for the P–SMBP–Western Division are associated with the Post-1989 Marketing Criteria which goes into effect on the first day of the October 1989 billing period and will be the subject of a subsequent and separate formal rate adjustment procedure.

The Administrator of Western certifies that the rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles. The rate schedule is submitted by the Deputy Secretary for confirmation and approval on a final basis for a 5-year period of time,

pursuant to authority vested in the Federal Energy Regulatory Commission by Delegation Order No. 0204-108, as amended.

Comment date: July 26, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Western Area Power Administration

[Docket No. EF89-[5]-000]

July 7, 1989.

Take notice that on June 30, 1989, the Deputy Secretary of the Department of Energy, by Rate Order No. WAPA-42, did confirm and approve, on an interim basis, to be effective beginning on July 1, 1989, Rate Schedule SP-FT3 for firm transmission service on the Colorado River Storage Project (CRSP) system.

Rate Schedule SP-FT3 will be in effect on an interim basis pending the Federal Energy Regulatory Commission (FERC) approval of it or a substitute rate on a final basis.

The transmission-rate study, based on the fiscal year 1988 final CRSP power repayment study, indicates a firm transmission rate of $21.72 per kilowatt-year (kW-year) is needed to recover the cost of planned transmission facilities investment and associated operation, maintenance, and replacement costs. This is a 36.63 percent increase from the current rate of $15.94/kW-year. This increase will result in an expected average yearly increase in CRSP revenues of $789,597. The Administrator of the Western Area Power Administration certifies that the rate is consistent with applicable laws and that it is the lowest possible rate consistent with sound business principles.

The Deputy Secretary states that the rate schedule is submitted for confirmation and approval on a final basis for a 3-year period beginning July 1, 1989, and ending June 30, 1992, pursuant to the authority vested in the FERC by Delegation Order No. 0204-108.

Comment date: July 25, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Vermont Electric Power Company, Inc.

[Docket No. ER88-447-000]

July 7, 1989.

Take notice that on June 30, 1989, Vermont Electric Power Company, Inc. (VELCO) tendered for filing an Amendment to Supplement No. 1 to FERC Rate Schedule No. 235 and an Amendment to Supplement No. 3 to FERC Rate Schedule No. 240, Rate Schedules that provide for the allocation of transmission capacity on the VELCO system among Vermont distribution utilities. At the same time, VELCO also filed an Exhibit A to FERC Rate Schedule No. 235 and an Exhibit A to FERC Rate Schedule 240. The new Exhibits set forth allocations of transmission capacity as of December 31, 1989.

VELCO proposes that the Amendments become effective on July 1, 1989. VELCO requests a waiver of the Commission's Regulations to allow the filings to become effective as of that date. If the waiver is granted, VELCO states that there will be no adverse effect upon any of VELCO's customers. If the waiver is not granted, VELCO requests that the filings become effective on September 1, 1989 or on such other date as the Commission deems appropriate.

VELCO states that it has served the filings upon the Vermont Public Service Board and upon VELCO's transmission customers: Allied Power and Light Company, Barton Village, Inc., The City of Burlington Electric Department, Central Vermont Public Service Corporation, Citizens Utilities Company, Village of Enosburg Falls Water Light Department, Franklin Electric Light Company, Green Mountain Power Corporation, Village of Hardwick Electric Department, Village of Hyde Park, Inc., Village of Ludlow Electric Light Department, Village of Lyndonville Electric Department, Village of Morrisville Water and Light Department, Village of Northfield Electric Department, Village of Orleans Electric Department, Village of Readsboro Electric Light Department, Rochester Light and Power Company, Village of Stowe Water and Light Department, Village of Swanton, Vermont Department of Public Service, Vermont Electric Cooperative, Vermont Electric Generation and Transmission Cooperative, Inc., Vermont Marble Company, Vermont Public Power Supply Authority, and Washington Electric Cooperative, Inc.

Comment date: July 25, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. PacifiCorp, Doing Business as Pacific Power & Light Company and Utah Power & Light Company

[Docket No. ER89-356-000]

July 7, 1989.

Take notice that on June 21, 1989, PacifiCorp, doing business as Pacific Power & Light Company and Utah Power & Light Company (PacifiCorp), tendered for filing, in accordance with 18 CFR 35.12 of the Commission's Rules and Regulations, an amendment to its filing of the South Idaho Exchange Agreement (Agreement), Contract No. DE-MS79-89BP992524 dated February 13, 1989 under the docket Reference above.

PacifiCorp respectfully requests, pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and that the rate schedule become effective on February 13, 1989, corresponding to the effective date of the Agreement.

Comment date: July 25, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Arkansas Power & Light Company

[Docket No. ER89-417-000]

July 7, 1989.

Take notice that on June 14, 1989, Arkansas Power & Light Company (AP&L) tendered for filing an informational letter stating that an error had been found in the transmission rate redetermination for Louisiana Energy & Power Authority in the above docket in the cost of capital (variable D) which resulted from an overstatement of interest on the obligation to the Department of Energy for spent nuclear fuel. AP&L states that correction of this error created a small reduction in the monthly transmission demand rate.

Comment date: July 25, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Louisville Gas and Electric Company

[Docket No. ER89-482-000]

July 7, 1989.

Take notice that on June 16, 1989, as supplemented on June 19, 1989, Louisville Gas and Electric Company tendered for filing in this docket clarifying information concerning the price provisions of Supplement No. 7 to the Interconnection Agreement between Louisville Gas and Electric Company and East Kentucky Power Cooperative and clarifying information concerning the price provisions of the Initial Interconnection Agreement between Louisville Gas and Electric Company and Indiana Municipal Power Agency.

Comment date: July 25, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Central Illinois Public Service Company

[Docket No. ES89-30-000]

July 12, 1989.

Take notice that on July 3, 1989, Central Illinois Public Service Company (Applicant), filed an application with the Federal Energy Regulatory Commission (Commission), pursuant to Section 204 of the Federal Power Act, seeking authorization to issue from time to time short-term debt obligations in the aggregate maximum principal amount not exceeding $120,000,000 outstanding at any time with final maturities not later than December 31, 1991.

Comment date: August 2, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. Geothermal Energy Partners Ltd.

[Docket No. QF89-47-002]

July 12, 1989.

On July 3, 1989, Geothermal Energy Partners, Ltd. (Applicant), c/o Western Geothermal Company, 38 Executive Park, Irvine, CA 92714, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located approximately seven miles east of Cloverdale, California, in the northwest quarter of Section 5 of Township 11 North, Range 9 West, Mt. Diablo Base and Meridian, Sonoma County, California. The facility will consist of two units, each of which will include a steam turbine-generator and associate ancillary equipment. The primary energy source of the facility will be geothermal steam. The net electric power production capacity of the facility will be 20 MW.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

11. BASF Corporation

[Docket No. QF89-262-000]

July 12, 1989.

On July 3, 1989, BASF Corporation (Applicant), of 100 Cherry Hill Road, Parsippany, NJ 07054 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located at 602 Copper Road, Freeport, Texas 77541. The facility will consist of combustion turbine generator, a heat recovery steam generator and a back pressure steam turbine generator. The thermal energy recovered from the facility will be used for chemical process application at the BASF Corporation. The net electric power production capacity of the facility will be 40 MW. The primary source of energy will be natural gas. The installation of the facility is expected to commence in the fourth quarter of 1990.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17041 Filed 7-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1681-000, et al.]

Great Lakes Gas Transmission Company, et al.; Natural Gas Certificate Filings

July 14, 1989.

Take notice that the following filings have been made with the Commission:

1. Great Lakes Gas Transmission Company

[Docket No. CP89-1681-000]

July 7, 1989.

The "Notice of Request Under Blanket Authorization" issued July 3, 1989, in Docket No. CP89-1681-000 should be changed to read "Re-Notice of Application." As corrected the notice reads as follows:

Take notice that on June 23, 1989, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226 filed in Docket No. CP89-1681-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience necessity authorizing Great Lakes to transport natural gas, on an interruptible basis, for the account of Western Gas Marketing U.S.A. Ltd. (WGM), until August 31, 1993, all as more full set forth in the application which is on file with the Commission and open to public inspection.

Great Lakes states that WGM has requested two services from Great Lakes. In the first, Great Lakes indicates that it would transport up to 250,000 Mcf per day for the account of WGM, from a point on the International Border between the United States and Canada, at Emerson, Manitoba (Emerson Receipt Point), where the facilities of Great Lakes interconnect with the facilities of TransCanada Pipelines Limited (TransCanada), to (1) an existing point of interconnection between the facilities of Great Lakes and TransCanada located at a point on the International Border at Sault Ste. Marie, Michigan (Sault Ste. Marie Delivery Point), and (2) an existing point of interconnection between the facilities of Great Lakes and Michigan Consolidated Gas Company (MichCon), located at Belle River Mills, Michigan (Belle River Mills Delivery Point).

In the second service, Great Lakes states that it would during the summer period (April 1 to October 31), transport up to 30,000 Mcf per day from the Emerson Receipt Point to the Belle River Mills Delivery Point. Great Lakes further states that MichCon would store such volumes for WGM. Great Lakes indicates that during the winter period (November 1 to March 31), it would receive the storage volumes from MichCon at the Belle River Mills Delivery Point and deliver an equivalent quantity of volumes for the account of WGM at the Sault Ste. Marie Delivery Point.

Great Lakes states that WGM and Great Lakes have entered into two transportation service agreements, each dated June 1, 1989 (Agreement No. 1 and Agreement No. 2), which implement these arrangements. Great Lakes further states that these Agreements provides for a term ending August 31, 1993.

Great Lakes indicates that both Agreements provide for a rate for the transportation service to the Belle River Mills Delivery Point which is equal to the 100% load factor rate as determined from the demand and commodity components utilized in Rate Schedule T-4 of Great Lakes FERC Gas Tariff, under which volumes are also transported from the Emerson Receipt Point to Great Lakes Eastern Zone.

Great Lakes asserts that Agreement No. 1 provides for a rate for the transportation service to the Sault Ste. Marie Delivery Point which is equal to the 100% load factor rate as determined from the demand and commodity components utilized in the transportation component of existing

Rate Schedule CQ-2 of Great Lakes' FERC Gas Tariff, under which volumes of gas are also transporated from the Emerson Receipt Point to Great Lakes' Central Zone. It is stated that no new facilities would be required to provide either of the services.

Great Lakes states that WGM or its sales customers have entered into the contractual arrangements with MichCon for the transportation of volumes from Belle River Mills to points of interconnection between the facilities of MichCon and the end users who will purchase the subject volumes from WGN; and WGM has entered into the contractual arrangements with MichCon related to the storage of volumes. Great Lakes further states that WGM has entered into arrangements with various end users in Michigan and in Canada (near Sault Ste. Marie, Ontario), for the sale of the subject volumes.

Comment date: July 28, 1989, in accordance with Standard Paragraph F at the end of this notice.

2. Natural Gas Pipeline Company of America

[Docket No. CP89-1693-000]

July 7, 1989.

Take notice that on June 28, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP89-1693-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Enogex Services Corporation (Enogex), a marketer of natural gas, under Natural's blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Pursuant to a transportation agreement dated January 3, 1989, Natural requests authority to transport up to 100,000 MMBtu of gas per day (plus any additional volumes accepted pursuant to the overrun provisions of its Rate Schedule ITS), on an interruptible basis, for Enogex. Natural states that the agreement provides for it to receive the gas at various existing points of receipt along its system and to deliver the gas to various existing points of delivery along its system. Enogex has informed Natural that is expects to have only 25,000 MMBtu of gas transported on an average day and, based thereon, estimates that 9,120,000 MMBtu of gas would be transported annually. Natural advises that the transportation service commenced on May 1, 1989, as reported in Docket ST89-4020, pursuant to § 284.223 of the Commission's Regulations.

Comment date: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89-1726-000]

Take notice that on June 30, 1989, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-1726-000, an application pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authority to transport natural gas on behalf of Trinity Pipeline, Inc. a marketer of natural gas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northern proposes to transport up to 30,000 MMBtu per day for Trinity Pipeline, Inc. through existing facilities. Construction of facilities will not be required to provide the proposed service. Service under § 284.223(a) commenced May 15, 1988, as reported in Docket No. ST89-3853-000 (filed June 8, 1988).

Comment date: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89-1727-000]

July 7, 1989.

Take notice that on June 30, 1989, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-1727-000, an application pursuant to §§ 57.205 and 284.223 of the Commission's Regulations for authority to transport natural gas on behalf of Tamarack Energy, Inc., a marketer of natural gas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northern proposes to transport up to 600 MMBtu per day for Tamarack Energy, Inc. through existing facilities. Construction of facilities will not be required to provide the proposed service. Service under § 284.223(a) commenced May 26, 1989, as reported in Docket No. ST89-3899-000 (filed June 15, 1989).

Comment date: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Tennessee Gas Pipeline Company

[Docket No. CP89-1729-000]

July 7, 1989.

Take notice that on July 3, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252 filed in Docket No. CP89-1729-000 a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Yuma Gas Corporation (Yuma), a marketer of natural gas, under Tennessee's blanket certificate, issued in Docket No. CP87-115-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated May 23, 1989, it proposes to transport natural gas for Yuma from points of receipt located Offshore Louisiana to two (2) delivery points interconnecting with Creole Gas Pipeline at Ysclosky and Shell Oil Company at Ysclosky, both points in St. Bernard Parish, Louisiana. The state of ultimate delivery is Louisiana. Tennessee further states that the volumes of gas to be delivered are 5,000 dt equivalent on an average day, 5,000 dt equivalent on a peak day, and 1,825,000 dt equivalent on an annual basis, and that service commenced under § 284.223(a) on June 3, 1989, as reported in Docket No. ST89-3997, filed June 26, 1989.

Comment date: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Stingray Pipeline Company

[Docket No. CP89-1730-000]

July 7, 1989.

Take notice that no July 3, 1989, Stingray Pipeline Company (Stingray), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1730-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Eagle Natural Gas Company (Eagle), a shipper and marketer of natural gas, under the blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89-70-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Stingray states that pursuant to a transportation agreement dated March 23, 1989, under its Rate Schedule ITS, it proposes to transport up to 50,000 dekatherms (dt) per day equivalent of natural gas for Eagle. Stingray states that it would transport the gas from various receipt points on its system as shown in Exhibit "A" of the transportation agreement and would deliver the gas, less fuel used and unaccounted line loss, to Holly Beach and OXY-NGL Plant located in Cameron Parish, Louisiana and Stingray-HIOS Exchange (EHI-A330) located offshore Texas.

Stingray advises that service under § 284.223(a) commenced May 10, 1989, as reported in Docket No. ST89-3854-000. Stingray further advises that it would transport 30,000 dt on an average day and 10,950 dt annually.

Comment data: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Trunkline Gas Company

[Docket No. CP89-1732-000]

July 7, 1989.

Take notice that on July 6, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1732-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Tejas Power Corporation (Tejas), a marketer, under the blanket certificate issued in Docket No. CP88-586-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement dated May 12, 1989, under its Rate Schedule PT, it proposes to transport up to 50,000 dekatherms (dt) per day equivalent of natural gas for Tejas. Trunkline states that it would transport the gas received from Anadarko at East Cameron 359, offshore Louisiana, as shown in Exhibit "A" of the transportation agreement, and would deliver the gas, less fuel and unaccounted for line loss, to Stringray Subsea at East Cameron 378, offshore Louisiana.

Trunkline advises that service under § 284.223(a) commenced May 1, 1989, as reported in Docket No. ST89-3961-000. Trunkline further advises that it would transport 50,000 dt on an average day and 18,250,000 dt annually.

Comment date: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. El Paso Natural Gas Company

[Docket No. CP89-1736-000]

July 7, 1989.

Take notice that on July 6, 1989, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79979, filed in Docket No. CP89-1736-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for BP Gas Inc. (BP), broker, under the blanket certificate issued in Docket No. CP88-433-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso states that pursuant to a transportation service agreement dated March 29, 1989 under its Rate Schedule T-1, it proposes to transport up to 263,750 MMBtu per day equivalent of natural gas for BP. El Paso states that it would transport the gas from any receipt point on its system, as provided in Exhibit "A" of the transportation agreement, and would deliver the gas to delivery points in the states of Oklahoma, Texas and New Mexico, as shown in Exhibit "B" of the agreement.

El Paso advises that service under § 284.223(a) commenced May 13, 1989, as reported in Docket No. ST89-3865-000. El Paso further advises that it would transport 10,550 MMBtu on an average day and 3,850,750 MMBtu annually.

Comment date: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Colorado Interstate Gas Company

[Docket No. CP89-1750-000]

July 11, 1989.

Take notice that on July 7, 1989, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89-1750-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for PSI, Inc. (PSI), a marketer, under the blanket certificate issued in Docket No. CP88-589, et al., pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

CIG states that pursuant to a transportation service agreement dated October 1, 1988, under its Rate Schedule T1-1, it proposes to transport up to 25,000 Mcf per day of natural gas for PSI. CIG states that it would transport the gas from an existing point of receipt on its system in Sweetwater County, Wyoming, and would redeliver the gas, less fuel gas and lost and unaccounted for gas, for the account of PSI in Sweetwater County, Wyoming.

CIG advises that service under § 284.223(a) commenced May 1, 1989, as reported in Docket No. ST89-3550-000. CIG further advises that it would transport 20,000 Mcf on an average day and 7.3 Bcf annually.

Comment date: August 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Williams Natural Gas Company

[Docket No. CP89-1716-000]

July 12, 1989.

Take notice that on June 29, 1989, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-1716-000 a request pursuant to § 157.205 of the Commissions Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Union Pacific Resources Company (Union Pacific), a natural gas producer, under its blanket authorization issued in Docket No. CP88-631-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williams would perform the proposed interruptible transportation service for Union Pacific, pursuant to an interruptible transportation service agreement dated May 5, 1989 (Reference No. TR-A0075). The transportation agreement is effective for a term until June 1, 1990, and month-to-month thereafter unless terminated by either party on ten days written notice. Williams proposes to transport approximately 18,000 MMBtu of natural gas on a peak day; 9,400 MMBtu on an average day; and on an annual basis 3,431,000 MMBtu of natural gas for Union Pacific. Williams proposes to receive the subject gas at various points located in the state of Wyoming for delivery to various points on Williams' pipeline system located in the states of Kansas, Missouri and Nebraska.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Williams commenced such self-implementing service on May 6, 1989, as reported in Docket No. ST89-3604-000.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Natural Gas Pipeline Company of America

[Docket No. CP89-1720-000]

July 12, 1989.

Take notice that on June 30, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP89-1720-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Apache Corporation (Apache), under Natural's blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in application which is on file with the Commission and open to public inspection.

Natural requests authorization to transport, on an interruptible basis, up to a maximum of 50,000 MMBtu of natural gas per day (plus any additional volumes accepted pursuant to the overrun provision's of Natural's Rate Schedule ITS) for Apache from receipt points located in Louisiana, offshore Louisiana, Oklahoma, Illinois, Kansas, Texas, offshore Texas, and Wyoming to delivery points located in Texas, Oklahoma, offshore Louisiana and Illinois. Natural anticipates transporting, on an average day 30,000 MMBtu and an annual volume of 10,950,000 MMBtu.

Natural states that the transportation of natural gas for Apache commenced May 1, 1989, as reported in Docket No. ST89-4062-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Natural in Docket No. CP86-582-000.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Natural Gas Pipeline Company of America

[Docket No. CP89-1724-000]

July 12, 1989.

Take notice that on June 30, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP89-1724-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Eron Gas Marketing Inc. (EGM), a marketer of natural gas, under Natural's blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Pursuant to a transportation agreement dated September 28, 1988, as amended, Natural requests authority to transport up to 200,000 MMBtu of gas per day (plus any additional volumes accepted pursuant to the overrun provisions of its Rate Schedule ITS), on an interruptible basis, for EGM. Natural states that the agreement provides for it to receive the gas at various existing points of receipt along its system and to deliver the gas to certain utility and interstate pipeline companies at existing points of delivery located in Illinois. EGM has informed Natural that it expects to have only 50,000 MMBtu of gas transported on an average day and, based thereon, estimates that 18,250,000 MMBtu of gas would be transported annually. Natural advises that the transportation service commenced on May 1, 1989, as reported in Docket ST89-4161, pursuant to § 284.223 of the Commission's Regulations.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Natural Gas Pipeline Company of America

[Docket No. CP89-1728-000]

July 12, 1989.

Take notice that on July 3, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-1728-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Phillips 66 Natural Gas Company (Phillips), a gatherer/processer of natural gas, under its blanket authorization issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural would perform the proposed interruptible transportation service for Phillips, pursuant to an interruptible transportation service agreement dated May 6, 1988. The transportation agreement is effective for a primary term ending September 30, 1988, and shall continue month to month thereafter unless terminated by five days prior notice by either party. Natural proposes to transport up to a maximum of 25,000 MMBtu of natural gas per day (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS). Phillips advised Natural that the volume anticipated to be transported on an average day is 20,000 MMBtu; and based on that average day figure, and annual volume to be transported is 7,300,000 MMBtu. Natural proposes to receive the subject gas at various points located in the states of Oklahoma and Texas and the delivery points are located in the state of Illinois. Natural avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. Natural commenced self-implementing service on May 4, 1989, as reported in Docket No. ST89-4077-000.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Trunkline Gas Company

[Docket No. CP89-1733-000]

July 12, 1989.

Take notice that on July 6, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1733-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Consumers Gas Marketing, Inc. (Consumers), a marketer, under Trunkline's blanket certificate issued in Docket No. CP86-586-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement dated February 2, 1989, it proposes to receive up to 8,000 dt equivalent of natural gas per day from Consumers at specified receipt points located in Illinois, and offshore and onshore Louisiana and Texas and redeliver the gas at a specified point in Douglas County, Illinois. Trunkline estimates that the peak day volumes, average day volumes, and annual volumes would be 8,000 dt equivalent of natural gas, 5,000 dt equivalent of natural gas, and 1,825,000 dt equivalent of natural gas, respectively. It is stated that on June 5, 1989, Trunkline commenced a 120-day transportation service for Consumers under § 284.223(a), as reported in Docket No. ST89-3975-000.

Trunkline further states that no facilities need be constructed to implement the service. Trunkline states that the agreement provides for a primary term of one month from the initial date of service, but that the agreement would continue month-to-month thereafter until terminated by either party upon at least thirty days' prior notice to the other. Trunkline proposes to charge rates and abide by the terms and conditions of its Rate Schedule PT.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. United Gas Pipe Line Company

[Docket No. CP89-1734-000]

July 12, 1989.

Take notice that on July 6, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1734-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Texaco Gas Marketing (Texaco), a marketer, under the blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United states that pursuant to a transportation agreement dated July 25, 1988, as amended on April 17, 1989, under its Rate Schedule ITS, it proposes to transport up to 103,000 MMBtu per day equivalent of natural gas for Texaco. United states that it would transport the gas from multiple receipt points as shown in Exhibit "A" of the transportation agreement and would deliver the gas to multiple delivery points shown in Exhibit "B" of the agreement.

United advises that service under § 284.223(a) commenced May 3, 1989, as reported in Docket No. ST89-3898-000 (filed June 15, 1989). United further advises that it would transport 103,000 MMBtu on an average day and 37,595,000 MMBtu annually.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. El Paso Natural Gas Company

[Docket No. CP89-1736-000]

July 12, 1989.

Take notice that on July 6, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP89-1736-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Hadson Gas Systems, Inc. (Hadson), a shipper of natural gas, under El Paso's blanket certificate issued in Docket No. CP88-433-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso proposes to transport, on an interruptible basis, up to 105,500 MMBtu equivalent of natural gas, 31,650 MMBtu equivalent on an average day, and 11,552,250 MMBtu equivalent on an annual basis for Hadson. It is stated that El Paso would receive the gas for Hadson's account at any receipt point on El Paso's system and would deliver equivalent volumes at delivery points on El Paso's system in Oklahoma, Texas, New Mexico and Colorado. It is asserted that the transportation service would be effected using existing facilities and that no construction of additional facilities would be required. It is explained that the transportation service commenced May 26, 1989, under the self-implementing authorization of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-3884.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. Granite State Gas Transmission, Inc.

[Docket No. CP89-1755-000]

July 12, 1989.

Take notice that on July 10, 1989, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, filed in Docket No. CP89-1755-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new point for deliveries of gas to Bay State Gas Company (Bay State), an existing affiliated distribution customer, under the blanket certificate issued in Docket No. CP82-515-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Granite State states that it would install the new delivery point on its pipeline within the borders of an existing facility located in Haverhill, Massachusetts, known as the Pleasant Street Meter Station, where Tennessee Gas Pipeline Company (Tennessee) currently connects with Granite State's pipeline and where Tennessee also delivers gas to the Essex County Gas Company (Essex County). Granite State further states that the new connection would be located immediately downstream of the point where the Tennessee pipeline now connects to Granite State's pipeline. It is estimated that approximately 10,000 Mcf per day for 150 days each year, at maximum use, would be delivered to Bay State at the proposed delivery point. It is stated that the estimated cost of the new delivery point is $350,000, and that Granite State would be reimbursed for the cost by Bay State.

Granite State states that the new delivery point, through displacement, would enable it to deliver gas to Bay State in cooperation with Tennessee at other delivery points in Massachusetts where Tennessee now delivers gas for Granite State's account to Bay State. It is further stated that deliveries to Bay State through the new delivery point would enable Granite State to increase off-season purchases from Shell.

Granite State states that the total volumes which it is authorized to deliver to Bay State after approval of this request would not exceed the volumes authorized prior to its approval. It is also stated that construction of the new delivery point is not prohibited by Granite State's existing tariff under which sales are made to Bay State. Granite State alleges that deliveries through the new delivery point would be made without detriment or disadvantage to Granite State's other customer requirements and, furthermore, no abandonment of service would result from approval of this request.

Comment date: July 28, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

18. ANR Pipeline Company

[Docket No. CP89-1763-000]

July 12, 1989.

Take notice that on July 11, 1989, ANR Pipeline Company (ANR) 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1763-000 an application pursuant to §§ 157-205 and 284.223 (18 CFR 157.205 and 284.223 18 CFR 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act for authorization to provide interruptible transportation service for Texaco Gas Marketing, Inc. (Texaco), a marketer of gas, pursuant to ANR's blanket transportation certificate issued July 25, 1988, in Docket No. CP88-532-000. All as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR states that it will receive the gas at various supply sources in the offshore areas of Louisiana and Texas and deliver the gas for the account of Texaco at a delivery point in West Cameron Block 167, offshore Louisiana.

BEST COPY AVAILABLE

ANR proposes to transport up to 1,000 dt of gas on a peak and average day and approximately 36,500.00 dt of gas annually. ANR states the transportation commenced on May 1, 1989, pursuant to the 120-day automatic authorization under § 284.223 of the Commission's Regulations under the terms of a transportation agreement dated November 16, 1988. ANR notified the Commission of the transportation service in Docket No. ST89-4128-000 on July 11, 1989.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

19. Southern Natural Gas Company

[Docket No. CP89-1610-000]

July 13, 1989.

Take notice that on June 13, 1989, Southern Natural Gas Company (Southern) P.O. Box 2563, Birmingham, Alabama 35303-3563, filed in Docket No. CP89-1610-000 a request, as supplemented June 27, 1989, purusant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct, install and operate pipeline facilities in Vermilion, Iberia, and St. Martin Parishes, Louisiana under the authorization issued in Docket No. CP82-406-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposed to construct, install, and operate the proposed pipeline facilities in order to provide its markets direct access to additional gas reserves located in the offshore Louisiana area beyond the reach of its existing gas supply facilities. The proposed pipeline would connect directly to Southern's existing pipeline system, both the Sea Robin Pipeline Company (Sea Robin) Compressor Station and Sabine Pipe Line Company's (Sabine) Henry Hub header located at the outlet of Texaco Inc.'s (Texaco) Henry gas processing plant (Sabine Henry Hub), in Erath, Vermilion Parish, Louisiana. Specifically, Southern proposes to construct, install, and operate: (i) A meter station, consisting of two 12-inch meter runs along with flow control valves and other appurtenances, located at the Sea Robin Compressor Station; (ii) a meter station, located at the south end of Southern's existing 16-inch Erath Bypass Line, adjacent to Sabine's Henry Hub header, consisting of two 12-inch meter runs along the flow control valves and other appurtenances; and (ii) approximately 28.6 miles of 20-inch pipeline extending from the Sea Robin Compressor Station and the north end of Southern's existing 16-inch Erath Bypass Line to a point of interconnection with Southern's pipeline system at Mile Post 2.5 on its South Section 28 pipeline in St. Martin Parish, Louisiana. Southern alleges that the proposed extension of the South Section 28 Line would result in that pipeline having a maximum design capacity of 225,000 Mcf per day. It is anticipated that the new pipeline would initially transport approximately 127,000 Mcf per day.

Southern states that the construction and operation of the proposed meter station and pipeline would have no significant adverse impact on the quality of the human environment. The total cost for all of the proposed pipeline and metering facilities is estimated to be $12,677,834. It is alleged that although the exact plan of financing has not been determined, Southern expects that the cost of constructing and installing the proposed facilities would be financed initially by short-term financing and/or cash from current operations, and ultimately from permanent financing.

It is alleged that the proposed facilities are an eligible facility as defined in § 57.202(b)(2)(i) of the Commission's regulations in that they would enable Southern to attach gas supplies directly to its pipeline system for both its general system supply and in the performance of transportation service pursuant to its blanket certificate issued pursuant to § 284.221 of the Commission's regulations. It is further alleged that the specific purpose of the proposed facilities is to provide Southern's markets with direct access to additional gas reserves located in the offshore Louisiana area beyond the reach of its existing gas supply facilities. It is stated that the proposed facilities would allow Southern to extend its South Section 28 Line and establish a direct connection with the Sea Robin Compressor Station and the Sabine Henry Hub, so that its customers would have access to available gas supplies without the incurrence of third party transportation charges. It is averred that pursuant to Southern's transportation tariff, the Sea Robin Compressor Station and the Sabine Henry Hub interconnection would become new receipt points under all existing and future transportation service agreements.

Southern states that during 1988, the Sea Robin pipeline system had an average daily throughput of 512,300 Mcf per day. Of these volumes, 503,434 Mcf per day represent volumes transported through Sea Robin's system. In addition to the gas available from Sea Robin, Southern alleges that its proposal to connect to the Sabine Henry Hub, would provide access to large volumes of gas which pass through both the Sabine Henry Hub and the Texaco Henry Plant daily. The Texaco Henry Plant has a capacity of 803,000 Mcf per day, with an average daily throughput in 1987 of 274,000 Mcf per day. Reported volumes through the Sabine Henry Hub are approximately 750,000 Mcf per day, consisting of approximately 350,000 Mcf per day flowing from the Texaco Henry Plant and approximately 400,000 Mcf per day originating from Sabine's mainline sources and the pipelines connected to the Sabine Hemy Hub, including 100,000 Mcf from Sea Robin.

Southern does not propose to charge an incremental rate to perform services through the facilities, but proposes to charge its currently effective rates under the existing tariff. It is further indicated that transportation through the proposed facilities pursuant to Southern's existing tariff represents the most cost effective alternative Southern has been able to devise for providing its customers with direct access to the gas supplies available from the Sea Robin system and the Sabine Henry Hub.

Southern avers that transportation through the proposed facilities is especially significant with respect to the gas supplies available on the Sea Robin system because Southern's pipeline system traditionally has been the market for one-half of Sea Robin's reserves. It is alleged that Sea Robin's system is used primarily for transportation but because it would require incurring third party transportation charges to move spot market gas supplies from the Sea Robin system to Southern system, Southern's customers have been economically foreclosed from this traditional source of supply for Southern's markets. It is alleged that the proposed facilities would correct the inequitable situation and once again establish the Sea Robin system as a significant source for Southern's system requirements.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

20. Southern Natural Gas Company

[Docket No. CP89-1721-000]

July 13, 1989.

Take notice that on June 30, 1989, Southern Natural Gas Company ("Southern"), 1900 Fifth Avenue North, P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP89-1721-000 an application pursuant to sections 4 and 7 of the Natural Gas Act for a certificate of Public Convenience and Necessity authorizing Southern to restructure its jurisdictional sales service by instituting effective October 1, 1989, its Supply Reservation Fee ("SURF") Program under which customers can elect gas purchase options that incorporate a gas inventory charge and commodity rates based upon market prices. Southern also requests abandonment authorization in accordance with the provisions of the proposed program and other pregranted authorization as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern states that the proposed program, which will be applicable to all Southern's jurisdictional firm sales customers, accords customers certain rights to convert the Contract Demand or Maximum Delivery Obligation in their current service agreements to Firm Transportation Demand, and each customer is to submit on or before September 1, 1989 such customer's designation of the amount it elects to convert. Also, Southern states that under the proposed program customers have certain rights to convert additional amounts of Contract Demand or Maximum Delivery Obligation to Firm Transportation Demand. Southern seeks pregranted abandonment of its sales obligations with respect to the initial and the subsequent reduction in each customer's Contract Demand and Maximum Delivery Obligation.

Southern states that under the proposed program customers are to make monthly purchase nominations. Southern seeks abandonment of its obligation to offer for sale except on a best efforts basis volumes of gas in excess of 105% of any customer's monthly purchase nominations. Southern states that under the proposed program certain fees can apply if a customer purchases less than 85% of its monthly purchase nomination.

Southern states that under the proposed program, customers are to elect among various pricing options, some of which have commondity rates based upon a spot market price index and provide for the possibility of fixed price agreements between Southern and the customer. Southern states that there is a Supply Reservation Fee that applies under two of the pricing options and Southern has requested authority to put into effect without suspension and not subject to refund certain automatic adjustments in the fee and changes in the terms and conditions applicable to its computation, the latter subject to certain rights of the customers affected to convert any portion or all of their Contract Demand or Maximum Delivery Obligation to Firm Transportation Demand and/or to file revised purchase nominations.

Southern states that the program also contains certain provisions and options for customers with respect to overcollection and undercollections of costs under the proposed program.

Southern also requests authorization to terminate its PGA and to bill its customers directly for the balance in its PGA, FERC Account No. 191, on the basis of their purchases during the twelve-month period ended March 1989.

Southern states that other terms, conditions and rates apply as more fully set out in the application and the proposed tariff sheets attached thereto, all of which are on file with the Commission and open to public inspection.

Southern seeks expedited treatment of its application.

Comment date: August 3, 1989, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 dsays after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest if filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16861 Filed 7-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-86-010, RP86-11-007, RP85-11-024 (Phase II), RP89-110-004, RP98-111-004]

KN Energy, Inc.; Proposed Changes in FERC Gas Tariff

July 14, 1989.

Take notice that KN Energy, Inc. ("KN") on June 27, 1989 tendered for filing two revised tariff sheets. The proposed effective date for these tariff sheets is April 1, 1989.

KN states that its May 17, 1989 compliance filing inadvertently inserted certain language incorrectly and also created an ambiguity. This filing according to KN, corrects the insertion and removes the ambiguity.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and procedure [18 CFR 385.214, 385.211 (1988)]. All such protests should be filed on or before July 21, 1989. Protests will be considered by the Commission determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16982 Filed 7-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-49-007]

National Fuel Gas Supply Corp.; Filing

July 14, 1989.

Take notice that on July 6, 1989, National Fuel Gas Supply Corporation (National) filed Second Substitute Eighteenth Revised Sheet No. 4 to its FERC Gas Tariff, First Revised Volume No. 1, to be effective July 1, 1989.

National states that Substitute Eighteenth Revised Sheet No. 4, filed on June 30, 1989, inadvertently reflected erroneous rates and charges under Rate Schedules T-1 and GSS. National requests that the corrected Second Substitute Eighteenth Revised Sheet No. 4 be substituted.

National states that copies of this filing have been mailed to all intervenors in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1989)]. All such protests should be filed on or before July 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16983 Filed 7-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-55-044]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

July 14, 1989.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) Tendered for filing on July 6, 1989 certain revised tariff sheets to Second Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff, Which tariff sheets are included in Appendix A attached to the filing. The proposed effective dates of the revised tariff sheets are indicated in Appendix A.

Transco states that the purpose of this filing is to comply with Ordering paragraph (B) of the Commission's order issued June 8, 1989 in Docket No. RP82-55-041. Such order accepted Transco's compliance filing of January 23, 1989 in the referenced docket and requires Transco to file tariff sheets reflecting for periods beyond April 30, 1988, the Commission's directives in the Opinion No. 260 series of orders and the cost of service approved in Docket No. RP87-7-030. Ordering Paragraph (B) of the June 8 Order further directs Transco to utilize the throughput mix reflected in the January 23, 1989 compliance filing, or in the alternative, the throughput mix reflected in Transco's comprehensive settlement filed on April 3, 1989 in Docket Nos. RP88-68-000, *et al.* In the instant filing Transco has reflected the throughput mix contained in the April 3 Settlement.

Transco States that copies of the instant filing are being mailed to customers, State Commissions and interested parties. In accordance with the provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16984 Filed 7-19-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-44533; FRL-3619-1]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on 1,3 dichloropropanol (CAS No. 96-23-1), dihydrosafrole (CAS No. 94-58-6), dibromomethane (CAS No. 74-95-3), ortho-cresol (CAS No. 95-48-7) and para-cresol (CAS No. 106-44-5) submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions.

Test data for 1,3 Dichloropropanol was submitted by the Dow Chemical Company pursuant to a test rule at 40 CFR 799.5055. It was received by EPA on July 5, 1989. The submission describes a soil adsorption study of dichloropropanol. Soil adsorption isotherm testing is required by this test rule.

Test data for dihydrosafrole was submitted by the Ethyl Corporation pursuant to a test rule at 40 CFR 799.5055(c). It was received by EPA on July 5, 1989. The submission describes a determination of the hydrolysis potential of dihydrosafrole as a function of pH at 25°C. Hydrolysis testing is required by this test rule.

Test data for dibromomethane was submitted by the Ethyl Corporation pursuant to a test rule at 40 CFR 799.5055(c). It was received by EPA on July 5, 1989. The submission describes a determination of the hydrolysis potential of dibromomethane as a function of pH at 25°C. Hydrolysis testing is required by this test rule.

Test data for ortho-cresol and para-cresol were submitted by Chemical Manufacturers Association pursuant to a test rule at 40 CFR 799.1250. These were received by EPA on July 6, 1989. The submissions describe: (1) A mutagencity test on ortho-cresol; in the vitro transformation of BALB/C-3T3 cells assay in the presence of a rat liver cell activation system, (2) dominant lethal assay in mice with ortho-cresol and (3) dominant lethal assay in mice with para-cresol. Mutagenicity testing is required by this test rule.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for these TSCA section 4(d) receipt of data notices (docket number OPTS-44533). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: July 11, 1989.

Gary E. Timm,

Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 89-17032 Filed 7-19-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3618-7]

Proposed General NPDES Permit for Private Domestic Discharges in the State of Louisiana; Fact Sheet

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of Proposed General NPDES Permit.

SUMMARY: The Regional Administrator of Region 6 has tentatively decided to prepare a draft general NPDES permit for certain dischargers who treat sanitary wastes. When issued, this general NPDES permit will establish effluent limitations, standards, prohibitions, and other conditions on these discharges. The facilities covered by this permit include single family residences, multi-family residences, small trailer parks, restaurants, hospitals, shopping centers, motels and office buildings located within the State of Louisiana.

This draft general permit is based on the administrative record available for public review in Region 6 of the Environmental Protection Agency (EPA). The fact sheet sets forth the principal facts and the significant factual, legal and policy questions considered in the development of the draft permit. A copy of the draft permit is attached.

DATE: Interested persons may submit comments of the draft general permit and administrative record to the address below no later than August 21, 1989.

ADDRESS: Ms. Ellen Caldwell (6W-PS), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell (6W-PS), Permits Branch (6W-P), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, Telephone: (214) 655-7190.

SUPPLEMENTARY INFORMATION:

I. Background

A. General Permits

Section 301(a) of the Clean Water Act (the Act) provides that the discharge of pollutants is unlawful except in accordance with a National Pollutant Discharge Eliminating System (NPDES) Permit. In the past, such permits have generally been issued to individual dischargers. However, EPA's regulations authorize the issuance of general permits to categories of dischargers (40 CFR 122.28). EPA may issue a single, general permit to a category of point sources located in the same geographic area whose discharges warrant similar pollution control measures. The Regional Administrator (with delegation to the Water Management Division Director) is authorized to issue a general permit if there are a number of point sources operating in a geographic area that:

1. Involve the same or substantially similar types of operations;
2. Discharge the same types of wastes;
3. Require the same effluent limitations or operating conditions;
4. Require the same or similar monitoring requirements; and
5. In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

As is the case of individual permits, violations of any condition of a general permit constitutes a violation of the Act and subjects the discharger to the penalties specified in section 309 of the Act. Any owner or operator authorized by a final general permit may be excluded from coverage by applying for an individual permit. This request may be made by submitting a NPDES permit application, together with reasons supporting the request, no later than October 16, 1989. New facilities, which qualify, are covered under this general permit unless they apply for an individual permit using the appropriate application.

The Regional Administrator may require any privately owned facility authorized to discharge by a final general permit to apply for and obtain an individual permit. In addition, any interested person may petition the Regional Administrator to take this action. However, an individual permit will not be issued for any point source covered by a general permit unless it can be demonstrated that inclusion under a general permit is clearly inappropriate.

The Regional Administrator may consider the issuance of individual permits according to the criteria in 40 CFR 122.28(b)(2). These criteria include:

1. The discharge(s) is a significant contributor of pollution;
2. The discharger is not in compliance with the terms and conditions of the general permit;
3. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
4. Effluent limitation guidelines are subsequently promulgated for the point sources covered by the general permit;
5. A Water Quality Management Plan containing requirements applicable to such point sources is approved; or
6. The requirements listed in 40 CFR 122.28(a) and identified in the previous paragraphs are not met.

B. Expiration Date

This NPDES general permit shall expire five (5) years from the effective date of the permit or for coverage of a facility under the general permit upon termination of discharge and closure of the facility.

C. Water Quality Based Effluent Limitations

The Louisiana Department of Environmental Quality, Office of Water Resources, has promulgated area wide policies which update the Water Quality Management Plan for all sanitary waste treatment facilities which discharge to U.S. waters in the State of Louisiana.

Minimum levels of effluent quality attainable by secondary treatment are established by 40 CFR 133.102. The State of Louisiana has established a more stringent requirement for all privately owned facilities with a design flow of less than 2,500 gpd (0.0025 MGD), 45 mg/1 for daily maximum for BOD_5 and TSS. Disinfection is required by the State of

Louisiana. The pH limits within the range of 6.0 and 9.0 standard units are based on 40 CFR 133.102(c).

D. Technology Based Effluent Limitations

This permit applies only to facilities with design capacities (flows) of less than 2500 gpd (0.0025 MGD).

E. Monitoring Requirements

All facilities operating under conditions of this general permit are required to monitor each parameter twice per year. However, if the daily maximum limit in any sample is exceeded then the monitoring frequency increases to once per month. This increased frequency shall continue until a sample demonstrates a value less than or equal to the daily maximum.

II. The Nature of Discharge From Privately Owned Sources

The source of wastewater discharges from privately owned treatment plants is sanitary sewage which is amenable to biological treatment. There are no toxic or priority pollutants present.

III. Conditions In the General Permit

A. Geographic Areas and Covered Facilities

The draft permit, when issued, will authorize discharges from facilities at various locations within the State of Louisiana, to various storm sewers, tributaries, stream segments and rivers basins. The permit will be applicable only to privately owned facilities which have direct discharges to "waters of the United States" as defined in 40 CFR 122.2 and are therefore subject to the requirements of sections 301 and 402 of the Act.

B. Privately Owned Discharges

The facilities covered by this permit are discharges of sanitary wastes. These facilities are not publicly owned treatement works (POTW) as defined under 40 CFR Part 122.2. Within the State of Louisiana there is a significant number of privately owned dischargers which are covered by the Secondary Treatment Regulations. The nature of effluents from these facilities involves the same types of operations, discharge of the same type of wastewater, and the same effluent limitations and monitoring requirements. Therefore, these facilities are more appropriately controlled by a general permit. In addition, the general permit will eliminate or reduce, for the Agency, the time consuming process of drafting and issuing individual permits and similarly eliminate, for the dischargers, the regulatory burden of applying for and obtaining individual permits.

IV. Other Legal Requirements

A. State Certification

Under section 401(a)(1) of the Act, EPA may not issue a NPDES permit until the State in which the discharge will originate, grants or waives certification to ensure compliance with appropriate requirements of the Act and State law, including water quality standards. Region VI has requested the State of Louisiana to certify this draft general permit.

B. Water Quality Standards

Section 301(b)(1)(C) of the Act requires that NPDES permits contain limitations necessary to meet water quality standards established pursuant to State law or regulation or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to the Act. The maximum 30-day average load allowed by this general permit for either BOD or TSS is 0.6 lb/day. Therefore, no water quality standard violations are expected due to the de minimus nature of discharges.

C. Duty to Provide Information

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

D. Planned Changes

The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility.

E. Economic Impact (Executive Order 12291)

The Office of Management and Budget (OMB) has exempted this action from the review requirements of Executive Order 12291 pursuant to Section 8(b) of that order.

F. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in this draft general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements of this permit have already been approved by the Office of Management and Budget in submissions made for the NPDES permit program under the provisions of the Clean Water Act.

G. The Regulatory Flexibility Act

After reivew of the facts presented in the notice printed above, I hereby certify, pursuant to the provisions of 5 USC 605(b), that this general NPDES permit will have a positive benefit on a substantial number of small entities. Moreover, the permits reduce a significant administrative burden on regulated sources.

Dated: July 5, 1989.

Joseph D. Winkle,

Acting Regional Administrator, Region VI.

Wastewater Discharge Permit

General Permit Number LAG550200

Pursuant to the provisions of the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1251, et. seq; the "Act"), and Federal Regulations promulgated under the authority of the Act, a National Pollutant Discharge Elimination System (NPDES) General Permit is issued authorizing privately owned facilities, in the State of Louisiana, that meet the requirements of Part II. B herein and who discharge to waters of the United States, sanitary wastewater totaling less than 2,500 gallons per day, in accordance with effluent limitations, monitoring requirements, and other conditions set forth in Parts I and II herein. Privately owned facilities covered include, but are not limited to single family residences, multi-family residences, small trailer parks, restaurants, hospitals, shopping centers, motels and office buildings.

This permit shall become effective on

This permit and the authorization to discharge shall expire at midnight on

Signed this day of

Myron O. Knudson,

Director, Water Management Division (6W).

Part I

Section A. Effluent Limitations

During the period beginning on the effective date of this general permit and lasting through the date of expiration, all privately owned sanitary wastewater dischargers with facilities having a design flow of less than 2,500 gallons per day are covered under this general permit and are authorized to discharge sanitary wastewater from their treatment plant in accordance with the following limitations and monitoring requirements.

Effluent characteristics	Discharge limits		Monitoring requirements	
	30-day avg.	Daily max.	Measurement frequency	Sample type
Flow-gpd	Monitor	2499	Two/year [1]	Estimate
BOD5	30 mg/l	45 mg/l	Two/year [1]	Grab
TSS [3]	30 mg/l	45 mg/l	Two/year [1]	Grab
Oil and Grease [2]	10 mg/l	15 mg/l	Two/year [1]	Grab
Fecal Coliform Colonies/100 ml	200/100 ml	400/100 ml	Two/year [1]	Grab

The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored twice/year [1] by grab sample.

[1] If the value of this effluent characteristic exceeds the daily maximum limit in any sample, then the monitoring frequency shall increase to one/month. This increased frequency shall continue until a sample demonstrates a value less than or equal to the daily maximum limitation.

[2] Required only for commercial food service operations.

[3] Facilities using stabilization ponds as the primary treatment process are limited to 90 mg/l for the 30-day avg. and 135 mg/l for the daily maximum TSS.

Section B. Monitoring Requirements

All sampling and testing shall be done in accordance with 40 CFR Part 136, "Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act."

Samples shall be taken at the discharge from the final treatment unit and prior to mixing with the receiving waters. Provisions must be made during the installation of the treatment unit for the taking of a proper sample. This permit has a minimum requirement that samples must be taken and analyzed only twice a year. However, the permittee shall at all times operate and maintain the facilities used to achieve compliance with the conditions of this permit, including additional sampling and testing as necessary to assure that the permit limitations are not exceeded at any time.

Records of monitoring and testing information shall include:

a. The date, exact place and time for sampling and measuring;

b. The individual who performed the sampling and measurements;

c. The dates and times analyses were begun;

d. The individuals who performed the analyses;

e. The analytical techniques or methods used;

f. The results of such analyses;

g. The results of all quality control procedures; and

h. The instantaneous flow estimates.

All monitoring records must be retained for a period of at least three (3) years from the date of the sample measurement. Monitoring results must be recorded on a discharge monitoring report (DMR) form (EPA No. 3320-1 or an approved substitute). The permittee shall make available to this office and the Louisiana Department of Environmental Quality, upon request, copies of all monitoring data required by this permit. Upon request, the permittee shall submit signed and certified DMRs and any other reports required by this office to the Regional Administrator of the Environmental Protection Agency and the Louisiana Office of Water Resources at the following addresses:

Chief, Enforcement Branch (6W-E), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

Office of Water Resources, Department of Environmental Quality, P.O. Box 44091, Capital Station, Baton Rouge, Louisiana 70804-4091.

Section C. Other Discharge Limitations

There shall be no discharge of floating solids or visible foam, other than trace amounts.

Part II

Other Requirements

The permittee must comply with all applicable provisions of the Act and the Regulations. The following definitions and additional requirements are in accordance with the Act and the Regulations.

Section A. Definitions

"Act" means the Clean Water Act (33 U.S.C. 1251 et. seq.), as amended.

"Biochemical Oxygen Demand (BOD5)" means the amount of oxygen required by bacteria during the decay of organic or nitrogenous material in sanitary sewage.

"Total Suspended Solids (TSS)" means the amount of solid material suspended in water, commonly expressed as a concentration, in terms of mg/l.

"Fecal Coliform" means a gram negative, non-spore forming, rod shaped bacteria found in the intestinal tract of warm-blooded animals.

"Facility" means a pollution source, or any public or private property or site and all contiguous land and structures, other appurtenances and improvements, where any activity is conducted which discharges or may result in the discharge of pollutants into waters of the U.S.

"mg/l" means milligrams per liter; it is essentially equivalent to parts per million in dilute aqueous solutions.

"Sanitary sewage" means treated or untreated wastewater which contains human metabolic and domestic wastes.

"Standard Methods" means Standard Methods for the Examination of Water and Wastewater, American Public Health Association, Washington, DC.

"30-day average" other than fecal coliform bacteria, is the arithmetic mean of the daily values for all effluent samples collected during a calendar month, calculated as the sum of all the daily dischareges measured during a calendar month divided by the number of daily discharges measured during that month. The 30-day average for fecal coliform bacteria is the geometric mean of the values for all effluent samples collected during a calendar month.

"Daily Maximum" means the highest allowable daily discharge during the calendar month.

"Grab Sample" means an individual sample collected in less than 15 minutes.

"National Pollutant Discharge Elimination System" (NPDES) means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment under sections 307, 318, 402, and 405 of the Act.

Section B. Applicability

All privately owned facilities operating a source or conducting an activity that results in a sanitary sewage discharge as described below are covered under this general permit and will become permittees authorized to discharge upon the effective date of this permit. Any discharger covered by an individual permit may request that the individual permit be canceled if the permitted source or activity is eligible for coverage by this general permit. As long as the source or activity is covered by an individual permit, as well as this general permit, the conditions of the individual permit will govern, until such time as it is canceled or expires.

Facilities covered by this general permit are those discharging only sanitary sewage as defined herein and

discharge less than 2500 gallons of wastewater per day. Facilities covered include, but are not limited to single family residences, multi-family residences, small trailer parks, restaurants, hospitals, shopping centers and office buildings.

This General Permit shall not apply to:

1. Facilities having multiple discharges, not all of which are sanitary sewage, even though the total sanitary discharge is less than 2500 gallons per day. Contaminated or possibly contaminated stormwater runoff is one such non-sanitary discharge; or

2. Facilities built in conflict with the State of Louisiana Sanitary Code.

The Director reserves the right to require any discharger to apply for an individual permit and to operate the facility in accordance with that indiviual permit.

Section C. Facility Changes

The authorization to discharge in accordance with this general permit is terminated upon the increase in the average discharge rate to 2500 gallons per day or greater. Prior to such an increase in the discharge rate from a treatment unit covered by this general permit, the permittee must submit a modified wastewater discharge permit application (Form 1 General Information and Form 2E—Facilities Which Do Not Discharge Process Wastewater) to this office and receive from this office an individual permit with authorization to discharge at that increased rate.

Section D. Termination of Authorization to Discharge

This office reserves the right to revoke the authorization to discharge in accordance with this general permit as it applies and/or require such person to apply for and obtain an individual permit if:

1. The covered source or activity is a significant contributor to pollution or creates other environmental problems;

2. The permittee is not in compliance with the terms or conditions of this general permit; or

3. Conditions or standards have changed so that the source or activity no longer qualifies for this general permit.

Section E. Schedule of Compliance

Compliance by the permittee with the effluent limitations and monitoring requirements specified for discharges shall be achieved upon the effective date of this general permit.

Section F. Prohibition of Bypass

Bypass is prohibited and the director may take enforcement action against a permittee for bypass.

Section G. Inspection and Entry

The permittee shall allow the Director or an authorized representative upon the presentation of credentials and other documents as may be required by the law to:

1. Enter upon the permittees premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times for the purpose or assuring permit compliance, or as otherwise authorized by the Act any substances, or parameters at any location.

Section H. Property Rights

This permit does not convey any property rights of any sort, or any exclusive privilege.

Section I. State Laws

Nothing in this permit shall be construed to preclude the institution from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Act.

Section J. Signatory Requirements

All records, reports and other information required by this permit, or requested by the Director shall be signed by the owner or his/her duly authorized representative.

[FR Doc. 89-16953 Filed 7-19-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Requirements

July 13, 1989.

The following information collection requirements have been approved by the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, (44 U.S.C. 3507). For further information contact Judy Boley, Federal Communications Commission, (202) 632-7513.

OMB No.: 3060-0010
Title: Ownership Report
Form No.: FCC 323

The approval on FCC 323 has been extended through 6/30/92. The March 1988 edition with the previous expiration date of 4/30/89 will remain in use until updated forms are availble.

OMB No.: 3060-022
Title: Application of Alien Amateur Radio Licensee for Permit to Operate in the United States
Form No.: FCC 610-A

The approval on FCC 610-A has been extended through 6/30/92. The August 1986 edition with the previous expiration date of 6/30/89 will remain in use until updated forms are avilable.

OMB No.: 3060-0027
Title: Application for Construction Permit for Commercial Broadcast Station
Form No.: FCC 301

A revised application form FCC 301 has been approved for use through 2/28/92. The current edition of the form is dated June 1989. The previous edition dated August 1987 with the previous OMB expiration date of 2/28/89 will continue to be accepted until August 31, 1989.

OMB No.: 3060-0034
Title: Application for Construction Permit for Noncommercial Educational Broadcast Station
Form No.: FCC 340

A revised application for FCC 340 has been approved for use through 4/30/92. The current edition of the form is dated May 1989. The previous edition dated May 1985 with the previous expiration date of 9/30/87 will continue to be accepted until August 31, 1989.

OMB No.: 3060-0355
Title: Rate of Return Report
Form No.: FCC 492

The approval on FCC 492 has been extended through 4/30/92. The January 1987 edition with the previous expiration date of 4/30/89 will remain in use until updated forms are available.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-17015 Filed 7-19-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-003813-012
Title: Hawaii Terminal Agreement.
Parties:
Department of Transportation of the State of Hawaii (Port)
Matson Terminals, Inc. (MTI).

Synopsis: The Agreement amends the basic agreement providing for the Port's lease to MTI of certain terminal facilities at Honolulu, Hawaii. The purpose of the amendment is to (1) enlarge the area under lease by the addition of Easement K and L; (2) increase the annual ground rental proportionately; (3) substitute revised exhibits; and (4) restate Section 3.3(1)(i) to add the purpose, area and ground rental of various parcels and easements.

Agreement No.: 224-200060-008
Title: Port of New Orleans Terminal Agreement
Parties:
Port of New Orleans
Coastal Cargo Company

Synopsis: The Agreement provides for the cancellation of ten sections of the Galvez Street Wharf leased under the basic agreement and reduces the rent proportionally. The action is authorized under an option contained in section 9(a) of the basic lease agreement.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: July 13, 1989.

[FR Doc. 89-16945 Filed 7-19-89; 8:45 am]

BILLING CODE 6730-01-M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirement for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 206-011150-002
Title: Atlantic Westbound Stabilization Agreement.
Parties:
North Europe-U.S. Atlantic Conference
North Europe-U.S. Gulf Freight Association
South Europe/U.S.A. Freight Conference

Synopsis: The proposed modification would delete North Europe-U.S. Atlantic Conference and North Europe-U.S. Gulf Freight Association as parties to the Agreement. It would also add North Europe-USA Rate Agreement as a party to the Agreement.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: July 14, 1989.

[FR Doc. 89-16946 Filed 7-19-89; 8:45 am]

BILLING CODE 6730-01-M

Security For the Protection of the Public Financial Responsibility to Meet Liability Incurred For Death or Injury To Passengers Or Other Persons on Voyages; Issuance of Certificate [Casualty]

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Pub. L. 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR 540):

Mitsui O.S.K. Lines (Passenger) Ltd., and Mitsui O.S.K. Lines Ltd., c/o Mitsui O.S.K. Lines (America) Inc., One World Trade Center, Suite 2211, New York, New York 10048.

Vessel: Fuji Maru.

Date: July 13, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-16947 Filed 7-19-89; 8:45 am]

BILLING CODE 6730-01-M

Security For the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Mitsui O.S.K. Lines (Passenger) Ltd. and Mitsui O.S.K. Lines Ltd., c/o Mitsui O.S.K. Lines (America) Inc., One World Trade Center, Suite 2211, New York, New York 10048.

Vessel: Fuji Maru.

Date: July 13, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-16948 Filed 7-19-89; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 89-15]

Martexport, Inc. v. Jugolinija Line, et al.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Martexport, Inc. ("Complaint") against Jugolinija Line, Brian Lux and John Soroko, Cross Ocean Shipping Co., Inc., Chew International Group, A.E. Chew & Co., Inc., Ralph Chew, Gillman Products International, Murtaza Fazal, Kevin Egan, Canio DiMilia and Ibrahim Jaffer ("Respondents") was served July 13, 1989. Complainants allege that Respondents engaged in violations of sections 10(a)(1) and 10(b) (1), (3), (4), (5), (6), (10), (11), and (12), of the Shipping Act of 1984, 46 U.S.C. app. 1709(a)(1) and 1709(b) (1), (3), (4), (5), (6), (10), (11), and (12), by engaging in undercharges to the Chew International Group ("Chew") of $570,404 on 539 shipments of non-perishable foodstuffs and grocery items. Complainant alleges that secret untariffed rates, unavailable to Complainant, created a sales advantage for Chew in the Middle East, causing Complainant to lose sales from 1984 through the present time, and pay higher freight rates on cargo shipped by Complainant.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the

Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by July 13, 1990, and the final decision of the Commission shall be issued by November 13, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 89-16940 Filed 7-19-89; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Rescission of Order of Revocation

Notice is hereby given that the following ocean freight forwarder license revocation has been rescinded by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License No.	Name/Address
2561	Fontana International, Inc., P.O. Box 330136, 2335 NW., 107th Street, Miami, FL 33172.

Bryant L. VanBrakle,

Deputy Director, Bureau of Domestic Regulation.

[FR Doc. 89-17019 Filed 7-19-89; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 2804
Name: Pacific Rim Shipping, Inc.
Address: Seattle Tower, #1205, Seattle, WA 98111
Date Revoked: June 21, 1989
Reason: Failed to maintain a valid surety bond

License Number: 1208
Name: Hamilton Brothers, Inc.
Address: P.O. Box 1500, Tampa, FL 33601
Date Revoked: June 29, 1989
Reason: Failed to maintain a valid surety bond

License Number: 2676
Name: Elba De Melo dba Texas Cargo
Address: 11261 Richmond Bldg. 106
Date Revoked: June 30, 1989
Reason: Surrendered license voluntarily.

Bryant L. VanBrakle,

Deputy Director, Bureau of Domestic Regulation.

[FR Doc. 89-17020 Filed 7-19-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Citrus Financial Services Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 9, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Citrus Financial Services Corporation, Vero Beach, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Citrus Bank, National Association, Vero Beach, Florida, a *de novo* bank.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First National Security Company, DeQueen, Arkansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of First National Bank of DeQueen, DeQueen, Arkansas; Citizens National Bank of Nashville, Nashville, Arkansas; First National Bank of Howard County, Dierks, Arkansas; and Bank of Ashdown, N.A., Ashdown, Arkansas. These banks only engage in the sale, as agent, of credit related insurance sold in connection with extensions of credit made by the bank.

2. Union Planters Corporation, Memphis, Tennessee, and its subsidiary, United Southern Corporation, Clarksdale, Mississippi; to merge with National Commerce Corporation, New Albany, Mississippi, and thereby indirectly acquire First National Bank, New Albany, Mississippi, which only engages in the sale, as agent, of credit related insurance sold in connection with extensions of credit made by the bank. Also, depositors of the bank may join a club (called "First Flight Club") which offers to its members the option to purchase accidental death group life insurance coverage through Fisi Madison Financial, Nashville, Tennessee.

C. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. Palm Desert Investments, Indian Wells, California; to become a bank holding company by acquiring at least 25 percent of the voting shares of Palm Desert National Bank, Palm Desert, California.

Board of Governors of the Federal Reserve System, July 13, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-16959 Filed 7-19-89; 8:45 am]

BILLING CODE 6210-01-M

Johnson Heritage Bancorp, Ltd.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking

activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 11, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Johnson Heritage Bancorp, Ltd., Racine, Wisconsin; to engage *de novo* through its subsidiary, Johnson Heritage Trust Company, Racine, Wisconsin, in trust company functions pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 13, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-16960 Filed 7-19-89; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Terminology To Incorporate Standards in Solicitations

AGENCY: Information Resources Management Services, General Services Administration (GSA).

ACTION: Notice.

SUMMARY: GSA is issuing a notice to provide the opportunity to comment on the proposed terminology to incorporate standards in solicitations for approved and amended Federal Information Processing Standards (FIPS). When FIPS are adopted by the Government, it is necessary for these standards to be implemented into the Federal ADP and Telecommunications Standards Index for use by Departments and Agencies when acquiring information processing equipment and services.

Prior to approval and incorporation of this procurement language into the Federal ADP and Telecommunications Index, it is essential to ensure that consideration is given to the views and concerns of suppliers, the public, State and local governments, and Federal Departments and agencies.

DATE: Comments on the proposed acquisition terminology must be received on or before September 18, 1989.

ADDRESS: Comments should be submitted to the: General Services Administration, IRMS, KMPS, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

1. New Specifications Terminology.

a. FIPS 126, Database Language NDL

Proposed Solicitation Wording:

Acquisition of NDL Database Language

All NDL Database languages offered as a result of the requirements of which this is a part shall conform to the requirements set forth in FIPS 126 and shall implement all of the language elements specified, as well as any additional language features as specified elsewhere in this document [insert reference here].

b. FIPS 127, Database Language SQL

Proposed Solicitation Wording:

Acquisition of SQL Database Language

All SQL Database languages offered as a result of the requirements of which this is a part shall conform to the requirements set forth in FIPS 127 and shall implement all of the language elements specified, as well as any additional language features as specified elsewhere in this document [insert reference here].

c. FIPS 128, Computer Graphics Metafile (CGM)

Proposed Solicitation Wording:

Acquisition of Computer Graphics Metafile (CGM)

All equipment, applications software or services acquired to accept, process, store, transmit, or interchange graphical/pictorial information that is in file format and is required to be recorded, displayed or printed must be in compliance with the requirements set forth in FIPS PUB 128.

d. FIPS 129, Optical Character Recognition (OCR) Dot Matrix Character Sets for OCR-MA

Proposed Solicitation Wording:

Acquisition of Optical Character Recognition (OCR) Dot Matrix Character Sets for OCR-MA

All applicable optical character recognition (OCR) equipment or services resulting from this requirement which utilizes the dot matrix character set must comply with the requirements set forth in FIPS 129.

e. FIPS 130, Intelligent Peripheral Interface

Proposed Solicitation Wording:

Acquisition of Intelligent Peripheral Interface

Unless otherwise excluded as specified in FIPS 130 by reference to FIPS 60-2, FIPS 61-1, FIPS 62, FIPS 63, FIPS 97 or otherwise a waiver is granted, following the waiver procedures specified in the standard, applicable ADP systems and peripheral storage subsystems that may result from this solicitation must conform to FIPS 130. The correct operation of all interfaces whose conformance to FIPS 130 is required may be verified before the acceptance of all applicable ADP peripheral equipment. Arrangements for verification may be made according to procedures specified in FIPS 60-2 or as specified [insert reference here] in this solicitation.

f. FIPS 131, Small Computer Systems Interface

Proposed Solicitation Wording:

Acquisition of Small Computer System Interface

Unless otherwise excluded as specified in FIPS 131 by reference to FIPS 60-2, FIPS 62, FIPS 63 and FIPS 97 or unless a waiver is granted, following the waiver procedures specified in the standard, applicable computer systems and peripheral storage subsystems that may result from this solicitation must conform to FIPS 131. The correct operation of all interfaces whose conformance to FIPS 131 is required may be verified before the acceptance of ADP systems and peripheral subsystems. Arrangements for verification may be made according to procedures specified in FIPS 60-2 or as specified [insert reference here] in this solicitation document.

g. FIPS 143, General Purpose 37-Position and 9-Position Interface

between Data Terminal Equipment and Data Circuit-Terminating Equipment

Proposed Solicitation Wording:

Acquisition of General Purpose 37-Position and 9-Position Interface Between Data Terminal Equipment and Data Circuit-Terminating Equipment

All general purpose 37-position and 9-position interfaces offered for use with data communication systems as a result of the requirements for which this is a part shall conform to the requirements established in FIPS PUB 143.

h. FIPS 146, GOSIP: Government Open Systems Interconnection Profile

Proposed Solicitation Wording:

Data Communications Protocols

All computer network and communications equipment, systems, and services offered as a result of this requirement must provide the protocols specified in the standards contained in FIPS PUB 146, Government Open Systems Interconnection Profile (GOSIP).

i. FIPS 149, General Aspects of Group 4 Facsimile Apparatus

Proposed Solicitation Wording:

Design and Acquisition of Group 4 Facsimile Apparatus

All Group 4 facsimile apparatus designed and offered as a result of this requirement shall comply with FIPS PUB 149.

j. FIPS 150, Facsimile Coding Schemes and Coding Control Functions for Group 4 Facsimile Apparatus

Proposed Solicitation Wording:

Design and Acquisition of Facsimile Coding Schemes and Coding Control Functions for Group 4 Facsimile Apparatus

All Group 4 facsimile apparatus designed and offered as a result of this requirement shall comply with FIPS PUB 150.

k. FIPS 151, POSIX: Portable Operating Systems Interface for Computer Environments

Proposed Solicitation Wording:

Acquisition and Development of Portable Operating Systems

Operating systems environments offered as a result of the requirements of which this is a part shall implement FIPS PUB 151, as well as any additional elements specified elsewhere in this requirements document [insert reference here], and shall require validation in accordance with provisions contained in FIPS PUB 151.

l. FIPS 152, Standard Generalized Markup Language (SGML)

Proposed Solicitation Wording:

Acquisition/Development of SGML Systems

SGML systems offered as a result of the requirements of which this is a part shall conform to the requirements established in FIPS PUB 152 and shall implement all of the language elements of SGML, as well as any additional language features as specified elsewhere in this document [insert reference here], and shall require validation in accordance with the provisions of FIPS PUB 152.

m. FIPS 153, Programmer's Hierarchical Interactive Graphics Systems (PHIGS)

Proposed Solicitation Wording:

Acquisition of Programmer's Heirarchical Interactive Graphics System (PHIGS)

Programmer's Heirarchical Interactive Graphics Systems (PHIGS) offered as a result of the requirements of which this is a part shall conform to the requirements established in FIPS PUB 153 and shall implement all of the functions contained in Part 1 thereof. PHIGS offered must also implement all of the programming language binds contained in FIPS PUB 153, Part 2, except those explicitly excluded as specified elsewhere in this document [insert reference here], as well as any additional programming language bindings specified elsewhere in this document [insert reference here].

n. FIPS 154, High Speed 25-Position Interface for Data Terminal Equipment and Data Circuit-Terminating Equipment

Proposed Solicitation Wording:

Acquisition of High Speed 25-Position Interface for Data

Terminal Equipment and Data Circuit-Terminating Equipment Telecommunications systems offered as a result of this requirement which employ high speed (20,000 to 2,000,000 bits per second) interchange between DTEs and DCEs shall conform to the electrical, mechanical and procedural characteristics established for interfaces in FIPS PUB 154.

o. FIPS 155, Data Communications Systems and Services User-Oriented Performance Measurement Methods.

Proposed Solicitation Wording:

Data Communications Performance Testing

Test measurements on data communications systems and services offered as a result of this requirement shall be conducted in accordance with FIPS PUB 155 to determine compliance with the user oriented performance specification contained in FIPS PUB 144.

2. Amended Specification Terminology:

a. ADP and Telecommunications Standard Index, page 69, implementation of FIPS 68-1, Minimal BASIC, change all references from FIPS 68-1 to FIPS 68-2, and change title from Minimal BASIC, to BASIC.

b. Change Solicitation Wording to read:

Acquisition of BASIC Language Compilers

BASIC compilers offered as a result of the requirements of which this is a part shall implement BASIC (FIPS 68-2), as well as any additional language elements as specified elsewhere in this requirements document [insert reference here].

c. Note: the current solicitation language for validation of BASIC compilers contained in the body of the Index, pages 69-70, have not been changed and remain in effect.

Dated: July 11, 1989.

Francis A McDonough,

Deputy Commissioner for Federal Information Resources Management.

[FR Doc. 89-17044 Filed 7-19-89; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Committee on Vital and Health Statistics Subcommittee on Long-Term Care Statistics; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the National Committee on Vital and Health Statistics Subcommittee on Long-Term Care Statistics established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, announces the following Subcommittee meeting.

Name: National Committee on Vital and Health Statistics Subcommittee on Long-Term Care Statistics.

Time and Date: 10:30 am-5:00 pm—August 15, 1989.

Place: Hubert H. Humphrey Building, Room 337A-339A, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: To be briefed on the status of mental illness screening of nursing home patients and to consider a possible information system, resulting from the HCFA Uniform Data Set for Nursing Home Dissident Assessment.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, National Committee on Vital and Health Statistics, Room 2-12, Center Building, 3700 East West Highway, Hyattsville, Maryland 20782, telephone (301) 436-7050.

Dated: July 13, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89-16989 Filed 7-19-89; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 89C-0203]

Bausch & Lomb, Inc.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Bausch & Lomb, Inc., has filed a petition proposing that the color additive regulations be amended to provide for the safe use of 1,4-bis[4-(2-methacryloxyethyl)phenylamino] anthraquinone to color contact lenses.

FOR FURTHER INFORMATION CONTACT: Sandra L. Varner, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1), 74 Stat. 402-403 (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 9C0215) has been filed by Bausch & Lomb, Inc., 1400 North Goodman, Rochester, NY 14692-0450, proposing that 21 CFR Part 73 of the color additive regulations be amended to provide for the safe use of 1,4-bis[4-(2-methacryloxyethyl)phenylamino] anthraquinone to color contact lenses.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: July 10, 1989.

Richard J. Ronk,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-16951 Filed 7-19-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89M-0211]

Technomed International; Premarket Approval of the Technomed SONOLITH 2000 Lithotriptor

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Technomed International, Danvers, MA, for premarket approval, under the Medical Device Amendments of 1976, of the Technomed SONOLITH 2000 Lithotriptor. After reviewing the recommendation of the Gastroenterology-Urology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of June 23, 1989, of the approval of the application.

DATE: Petitions for administrative review by August 21, 1989.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert Gatling, Center for Devices and Radiological Health (HFZ-420), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-7750.

SUPPLEMENTARY INFORMATION: On June 22, 1988, Technomed International, Danvers, MA 01923, submitted to CDRH an application for premarket approval of the Technomed SONOLITH 2000 Lithotriptor. The device is an extracorporeal shock wave lithotriptor for use in the fragmentation of kidney stones.

On December 6, 1988, the Gastroenterology-Urology Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On June 23, 1989, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Robert Gatling (HFZ-420), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 21, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 13, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89-16952 Filed 7-19-89; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration.

The Department of Health and Human Services (HHS) previously published a list of information collection packages it submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (Pub. L. 96-511). The Health Care Financing Administration (HCFA), a component of HHS, now publishes its own notices as the information collection requirements are submitted to OMB. The HCFA has submitted the following requirements to OMB since the last HCFA list was published.

1. *Type of Request:* Revision; *Title of Information Collection:* Hospital Survey Report Form; *Form Number:* HCFA-1537; *Frequency:* On occasion; *Respondents:* State/local governments; *Estimated Number of Responses:* 1,539; *Average Hours per Response:* 3.25; *Total Estimated Burden Hours:* 5,002.

2. *Type of Request:* Revision; *Title of Information Collection:* Medicare/Medicaid Hospital Swing-bed Survey Report Forms; *Form Number:* HCFA-1537C; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 1,500; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 375.

3. *Type of Request:* Extension; *Title of Information Collection:* Hospital Request for Certification in the Medicare/Medicaid Program; *Form Number:* HCFA-1514; *Frequency:* On occasion; *Respondents:* State/local governments; *Estimated Number of Responses:* 1,984; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 496.

4. *Type of Request:* Revision; *Title of Information Collection:* Medicare Renal Dialysis Facility Cost Report; *Form Number:* HCFA-265; *Frequency:* Annually; *Respondents:* Business/other for profit and small businesses/organizations; *Estimated Number of Responses:* 1,097; *Average Hours per Response:* 196; *Total Estimated Burden Hours:* 215,012.

5. *Type of Request:* Extension; *Title of Information Collection:* Outpatient Physical Therapy and/or Speech Pathology Services Request for Certification and Survey Report Form; *Form Number:* HCFA-1856/1893; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 313; *Average Hours per Response:* 1.75; *Total Estimated Burden Hours:* 548.

6. *Type of Request:* Extension; *Title of Information Collection:* Histocompatibility Testing Laboratories Survey Report Form; *Form Number:* HCFA-445; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 200; *Average Hours per Response:* 1; *Total Estimated Burden Hours:* 200.

7. *Type of Request:* Extension; *Title of Information Collection:* Request for Certification as a Supplier and the Portable X-ray Survey Report Form; *Form Number:* HCFA-1880/1882; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 160; *Average Hours per Response:* 1.75; *Total Estimated Burden Hours:* 280.

Additional Information or Comments: Call the Reports Clearance Officer on 301-966-2088 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Herron, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: July 13, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89-16975 Filed 7-19-89; 8:45 am]

BILLING CODE 4120-03-M

Privacy Act of 1974; Matching Program

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of a Matching Program—Beneficiary State File (BEST) and Medicaid master files maintained by State agencies.

SUMMARY: The Department of Health and Human Services in providing public notice that HCFA agrees to disclose information on Medicare eligible individuals to State agencies.

The matching report set forth below is in compliance with the Computer Matching and Privacy Protection Act of 1988 (Pub. L. No. 100-503).

DATE: The match will begin August 21, 1989, and shall remain in effect for a period not to exceed 18 months unless three months prior to the actual expiration date, the Data Integrity Board of the Department of Health and Human Services finds that the program will be conducted without change and each party certifies that the program has been conducted in compliance with the Matching Agreement. Under this finding, the Board may extend the Agreement for one additional year.

ADDRESS: The public should address comments to Richard A. DeMeo, Health Care Financing Administration, Privacy Act Officer, Office of Budget and Administration, Room G-M-1, East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: William A. Grant, Division of Entitlement Requirements, Office of Program Operations Procedures, Bureau of Program Operations, Health Care Financing Administration, G-E-7 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone Number 301-966-6464.

SUPPLEMENTARY INFORMATION: The Health Insurance (HI) Master Record contains a record of each individual who is, or has been, entitled to health insurance benefits under title XVIII of the Social Security Act (the Act). The BEST file is an extract of the HI Master Record. The BEST file is an alphabetic listing, on magnetic tape, of all Medicare beneficiaries in the State by name, sex, date of birth, address, zip code, buy-in indicator and health insurance claim number (HICN). This extract is the most economical and efficient method of obtaining the claim number of a beneficiary when other identifying information is available. The BEST file has been provided to all States for the express purpose of identifying Medicaid beneficiaries to the State buy-in rolls. In most States, the activity is conducted by the State agency responsible for Medicaid.

The BEST file will enable the State agency to identify individuals eligible for inclusion in a State buy-in account. The BEST file will also enable the State agency to identify those Medicare/Medicaid dually eligible individuals for whom Medicaid has deductible and co-insurance liability. States under a buy-in agreement may enroll individuals for Medicare Part B coverage who are eligible for title XVI (Supplemental Security Income) benefits or eligible under State grants for medical assistance. The State pays the Medicare Part B premiums for these individuals eligible under title XVI.

To query the BEST file, it is necessary for the State to have the individual's name, date of birth, sex and address. With this information, the HICN can be determined. The State is then able to add the individual to its buy-in account, request the carrier or intermediary to provide a report of any medical expenses paid by Medicare for Medicaid eligibles, or to request payment by Medicare for expenses already paid by Medicaid.

Furnishing the BEST tape to State agencies is essential in enabling the States to determine the correct HICN of individuals eligible for buy-in. The Medicaid master file maintained by the State agency is sequenced according to the individual's social security number of according to the State agency's numbering system. Generally, the State knows who its dually eligible individuals are or should be and needs to obtain the HICN to properly include eligible individuals in its buy-in account.

Use of the BEST file has resulted in the prevention of payments on duplicate claims and fewer referrals by Medicare contractors to Social Security Offices. As a consequence, its use has also been instrumental in the realization of improved service to the public.

Before the BEST file is released to the State, the State must sign an agreement to protect the confidentiality of the information received.

The individual records are retrieved from the BEST file when a Medicaid claim is submitted for payment without a HICN or the HICN is determined to be incorrect. Also, individual records are retrieved for the purpose of screening pre-payment and post-payment Medicaid claims.

Only information that is relevant to the indentification of beneficiaries is contained in the BEST record system.

Set forth below is the information required by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. No. 100-503). A copy of this notice has been provided to the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate and the Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget.

Dated: July 13, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Report of Computer Matching Program—Beneficiary State File (BEST)

a. *Authority:* Sections 1814 and 1833 of title XVIII of the Social Security Act (42 U.S.C. Section 1395f and 1395l).

b. *Purpose and Description:* The purpose of this disclosure is to enable the State agency to identify individuals eligible for inclusion in a State buy-in account and to identify Medicare/Medicaid dually eligible individuals for whom Medicaid has deductible and co-insurance liability. Most State agencies require access to the BEST file for improved administration of the Medicaid program. Routine uses of the BEST file are: (a) Obtaining a beneficiary's correct HICN and (b) screening of pre-payment and post-payment Medicaid claims.

The BEST file is an extract of the HI Master Record listing, in alphabetic order, all Medicare beneficiaries in the State by name, sex, date of birth, address, zip code, buy-in indicator and HICN.

c. *Personal Records To Be Matched:* The State agency will match the beneficiary's name, date of birth, sex and address to the BEST file in order to determine the HICN, and to screen pre-payment and post-payment Medicaid claims. The number of beneficiaries vary from State to State.

d. *Period of Match:* The tape will be furnished by HCFA to the States, semi-annually (spring and fall), for continuous use by the States for a period not to exceed 18 months. The match may be renewed for a one year period if approved by the Data Integrity Board.

e. *Safeguards:* Before the BEST file is released to a State, the State must sign an agreement to protect the confidentiality of the information received.

Access to the records matched and to any records created by the match will be restricted to only those authorized employees and officials who need them to perform their official duties in connection with the match.

The records matched and any records created by the match will be stored in areas that are physically safe from access by unauthorized persons during duty hours as well as non-duty hours or when not in use.

The records matched and any records created by the match will be processed under the immediate supervision and control of the authorized personnel in a manner which will protect the confidentiality of the records and in such a way that unauthorized persons cannot retrieve any such records by computer, remote terminal or other means.

All personnel who will have access to the records matched and to any records created by the match will be advised of the confidential nature of the information, the safeguards required to protect the information and the civil and criminal sanctions for noncompliance contained in applicable Federal laws.

f. *Retention and Disposition of Records:* When an updated BEST tape is received, the State agency is instructed to destroy the previous BEST file and put the tape in their blank tape inventory.

[FR Doc. 89-16987 Filed 7-19-89; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-89-1917; FR-2506]

Underutilized and Unutilized Federal Buildings and Real Property Determined by HUD To Be Suitable for Use for Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: July 20, 1989.

ADDRESS: For further information, contact Morris Bourne, Director, Transitional Housing Development Staff, Room 9140, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-9075; TDD number for the hearing- and speech-impaired (202) 426-0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under

section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the **Federal Register** identifying the properties determined as suitable.

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency with respect to any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Finally, in lieu of declaring any particular property as excess, the landholding agency may decide to make the property available to the homeless for use on an interim basis.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, Room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's **Federal Register** Notice on June 23, 1989 (54 FR 26421).

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: (Military Facilities) HQ-DA, Attn: DAEN-ZCI-P-Robert Conte; Room 1E671 Pentagon, Washington, DC 20360-2600 (202) 693-4583; (Corps of Engineers civil works projects Bob Swieconek, HQ-US Army Corps of Engineers, Attn: CERE-MN, 20 Massachusetts Avenue NW, Washington DC 20415-1000 (202) 272-1750; U.S. Navy: Andrea Wohfeld, Code 20 YAW, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332 (202) 325-7342; GSA: James Folliard, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405 (202) 535-7067. (These are not toll-free numbers.)

Date: July 14, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing-Federal, Housing Commissioner.

Number of properties ( )

Colorado

Bennett Army Natl. Guard Site (1)
Arapaho, CO
Landholding Agency: Army
Location: 30 miles SE of Denver
Comment: 242 acres with silos and underground rooms, partial use

Louisiana

Ouachita-Block River Navigation (1)
Sterlington Recreation
Sterling, LA
Landholding Agency: Army COE

North Carolina

City of Havelock (1)
Havelock, NC
Landholding Agency: Navy
Comment: 10.75 acres currently used by city for recreational park, lease expires 6/90

Puerto Rico

U.S. Naval Station (4)
Roosevelt Road
Puerto Rico, PR
Landholding Agency: GSA
Location: Properties 11E, 17E, 7, 12 Adjacent to south boundary
Comment: Accessible by rough terrain; appears to be a road

Washington

Ruston Way Natl. Guard Site (1)
3001 Starr Street
Tacoma, WA
Landholding Agency: Army
Comment: 5.5 acres

Suitable Buildings (By State)

Georgia

U.S. Army Signal Center, Fort Gordon (22)
Augusta, GA
Landholding Agency: Army
Comment: Buildings will be relocated.
Location: Properties A-1624; R-0362 (128 sf); R-0262 (128 sf); 430 (3600 sf); 474 (1024 sf); 501 (2246 sf); 971 (5310 sf); 972 (5310 sf); 973 (1230 sf); 989 (2511 sf); 1104 (262 sf);10803 (3108 sf); 10805 (224 sf); 13302 (240 sf); 33434 (5310 sf); 33402 (5310 sf); 33404 (5310 sf); 33432 (5310 sf); 34419 (5310 sf); 51505 (144 sf); 61206 (224 sf); PA-3304 (312 sf, asbestos and termites)

Indiana

Fort Benjamin Harrison (1)
Harrison, IN
Landholding Agency: Army
Location: Property T00109
Comment: Large storage building in poor condition; (16,500 sf)

New Jersey

Nelson Courts Family Housing Units (45)
Fort Dix, NJ
Landholding Agency: Army
Comment: Asbestos present; Nelson Court approved for demolition Aug. 1989
Location: Properties 3301 (4 units, 4046 sf); 3302 (8 units, 8048 sf); 3303 (2 units); 3304 (8 units); 3305 (2 units); 3306 (8 units, 5368 sf); 3307 (4 units); 3310 (2 units, 1990 sf); 3314 (2 units, 1990 sf); 3374 (2 units 1990 sf); 3378 (2 units, 1990 sf); 3311 (2 units, 2150 sf); 3312 (6 units); 3313 (2 units, 2150 sf); 3375 (2 units); 3377 (2 units, 2216 sf); 3376 (6 units, 8604 sf); PA-3302 (Storage bldg, 624 sf); PA-3303 (312 sf); PA-3305 (detached storage bldg, 312 sf); PA-3306 (detached storage bldg); PA-3378 (detached storage bldg, 312 sf); PA-3310 (detached storage bldg); PA-3312 (storage bldg, 520 sf); PA-3375 (storage bldg, 416 sf); PA-3304 (312 sf).

New York

Stewart Army Support (1)
1210 Breunig Road
New Windsor, NY
Landholding agency: Army
Location: Property 1210

Comment: 25,690 sf dining hall, 30% utilized

South Carolina

Fort Jackson (1)
Garland Street
Fort Jackson, SC
Landholding agency: Army
Location: Property 9705, Admin Bldg
Comment: Building must be relocated; 1144 sf

Fort Jackson (1)
Garland Street
Fort Jackson, SC
Landholding agency: Army
Location: Property 9710, Mess Hall
Comment: Building must be relocated; asbestos present; 2512 sf

Texas

Fort Bliss (1)
Robert E. Lee Road
El Paso, TX
Landholding agency: Army
comment: 8615 sf; bldg must be relocated

Fort Bliss (1)
Robert E. Lee Road
Fort Bliss, TX
Landholding agency: Army
Location: Property T5346
Comment: 1165 sf; bldg must be relocated

Fort Bliss (1)
Robert E. Lee Road
Fort Bliss, TX
Landholding agency: Army
Location: Property T5376
Comment: 759 sf; bldg must be relocated

For Bliss (1)
Robert E. Lee Road
Fort Bliss, TX
Landholding agency: Army
Location: Property T-5445
Comment: 1165 sf; bldg must be relocated

Fort Bliss (1)
Pleasonton Road
Fort Bliss, TX
Landholding agency: Army
Location: Property T-1628
Comment: 3108 sf; bldg must be relocated

Fort Bliss (1)
Haan Road
Fort Bliss, TX
Landholding agency: Army
Location: Property T-1634
Comment: 2360 sf; bldg must be relocated

Fort Bliss (1)
Halbrook Road
Fort Bliss, TX
Landholding agency: Army
Location: Property T-838
Comment: 3108 sf; bldg must be relocated

Fort Bliss (1)
Lufberry Road
Fort Bliss, TX
Landholding agency: Army
Location: Property T-847
Comment: 2360 sf; bldg must be relocated

Fort Bliss (1)
Lufberry Road
Fort Bliss, TX
Landholding agency: Army
Location: Property T-848
Comment: 1144 sf; bldg must be relocated

Fort Bliss (1)
Lufberry Road
Fort Bliss, TX
Landholding agency: Army
Location: Property T-849
Comment: 1296 sf; bldg must be relocated

Fort Bliss (1)
Lufberry Road
Fort Bliss, TX
Landholding agency: Army
Location: Property T-851
Comment: 1144 sf; bldg must be relocated

Fort Bliss (1)
Pleasonton Road
Fort Bliss, TX
Landholding agency: Army
Location: Property T-926
Comment: 2360 sf; bldg must be relocated

Virginia

Fort Lee (1)
Shop Road
Fort Lee, VA
Landholding agency: Army
Comment: 1575 sf; bldg must be relocated; partly stripped and deteriorating; utilities removed

Fort Lee (4)
Shop Road
Fort Lee, VA
Landholding agency: Army
Location: Properties 6015, 6024, 6025, 6026
Comment: Each bldg 5260 sf; no utilities; must be relocated

Fort Lee (1)
Lee Avenue
Fort Lee, VA
Landholding agency: Army
Comment: 15,275 sf; utilities removed; must be relocated

Washington

Ruston Way Natl Guard Site (1)
3001 Starr Street
Tacoma, WA
Landholding agency: Army
Comment: 50,000 sf; structurally unsound

Unsuitable Land (By State)

Number of Properties ( )

Georgia

U.S. Army Signal Center, Fort Gordon (16)
Augusta, GA
Landholding agency: Army
Location: Properties 946, 10807, 11803, 11806, 12302, 12802, 14302, 26302, 28302, 32302, 35302, 61202, 61207, 71202, 81202, 81207, 10305, 10804, 10803, 10806, 11611, 12805, 12811, 13803, 13804, 14304
Comment: Property not designated as unutilized or underutilized

Unsuitable Building (By State)

California

Camp Roberts (1)
San Luis Obispo
Monterey County CA
Landholding agency: Army
Location: Property 178 Units
Comment: Secured area

Camp Roberts (1)
San Luis Obispo
Monterey County CA
Landholding agency: Army
Location: Property 47 units
Comment: Secured area

Presidio of San Francisco (1)
San Francisco, CA
Landholding agency: Army
Location: Property T-681
Comment: Secure area

Oakland Army Base (1)
Oakland, CA
Landholding agency: Army
Location: Property 780
Comment: Secure facility

Oakland Army Base (1)
Oakland, CA
Landholding agency: Army
Location: Property 640
Comment: Secure facility

Navajo Army Depot Activity (1)
1 mile SI-40
Bellemont, CO
Landholding agency: Army
Location: Buffer area between perimeter fence and ammunition bunkers
Comment: 5 bldgs, 1497 sf each; within 2000 feet from flammable or explosive material

Fort Carson (4)
Fort Carson, CO
Landholding agency: Army
Location: Property T-1002, T-1003, T-1004, T-1105
Comment: Secured area

Maryland

Fort Detrick (1)
Porter Street
Frederick, MD
Landholding agency: Army

Comment: Bldg severely deterioriated.

[FR Doc. 89-17031 Filed 7-19-89; 8:45 am]

BILLING CODE 4310-37-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

July 11, 1989.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Paucatuck Eastern Pequot Indians of Connecticut, c/o Ms. Agnes E. Cunha, 939 Lantern Hill Road, Ledyard, Connecticut 06339 has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The letter petition was received by the Bureau of Indian Affairs on July 20, 1989, and was signed by the Chairman and members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under Section 83.8(d) (formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the bureau of Indian Affairs' files. Such submissions will be provided to the petitioner upon receipt by the Bureau. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined by appointment in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Mail Stop 4627-MIB, 18th and C Streets NW., Washington, DC 20240, Phone: (202) 343-3592.

Hazel E. Elbert,

Deputy to the Asssistant Secretary—Indians Affairs (Tribal Services).

[FR Doc. 89-16994 Filed 7-19-89; 8:45 am]

BILLING CODE 4310-80-M

Bureau of Land Management

[NM-010-09-4320-12/GP9-0119]

District Grazing Advisory Board Meeting; Albuquerque, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Albuquerque District Advisory Board Meeting.

SUMMARY: The BLM's Albuquerque District Grazing Advisory Board will meet on Wednesday, August 23, 1989, at 9:00 a.m., in the BLM Farmington Area Office located at 1235 La Plata Highway in Farmington, New Mexico.

The agenda for the meeting will include:

1. Introduction and opening remaks.
2. Review of final ranking of FY 90 Range Improvement Projects.
3. Range improvements progress report for FY 89.
4. Drought policy proposal.
5. Big game transplants.

The meeting is open to the public. Any one interested in attending this meeting to make a presentation must notify the District Manager by August 13, 1989. Written statements may also be filed for the Board's consideration.

Summary minutes of the meeting will be on file in the Albuquerque District Office and available for public inspection during business hours within 30 days of the meeting.

FOR FURTHER INFORMATION CONTACT: Gary Wood, District Range Conservationist, BLM, 435 Montano NE, Albuquerque, New Mexico 87107.

Robert T. Dale,

District Manager.

[FR Doc. 89-17047 Filed 7-19-89; 8:45 am]

BILLING CODE 4310-FB-M

[CA-060-09-4352-10]

California Desert District Desert Tortoise Coordinating Committee Meetings

SUMMARY: Notice is hereby given in accordance with Pub. L. 92-463 and 94-579 that the California Desert District Advisory Council will be meeting as the District's Desert Tortoise Coordinating Committee on Saturday, August 26, 1989, from 9:30 a.m. to 5:00 p.m. at the Heritage Inn, 1050 North Norma, Ridgecrest, CA.

The agenda for the meeting will include:

—Report from the Advisory Council's Desert Tortoise Subcommittee
—Report from the Desert Tortoise Technical Committee
—Discussion of the potential effects of State and Federal listing of the desert tortoise as a threatened and/or endangered species on tortoise management in the California Desert District
—Review and comment on the District's Fiscal Year 1990 budget and priorities for desert tortoise management
—Discussion of a public education and information program regarding desert tortoises
—Discussion of other current issues facing tortoise management

The meeting is open to the public, with time allotted for public comment.

In preparation for this meeting, the District Advisory Council's Desert Tortoise Subcommittee will meet on July 24, 1989, at 7:30 p.m. in the San Bernardino County Air Pollution Control District Office, 15428 Civic Drive, Suite 200, Victorville, California. The subcommittee will hold a general discussion of desert tortoise issues and develop a detailed agenda for the August 26 meeting. The public is welcome to attend, but the Council would prefer that the public defer making their comments until the full Coordinating Committee meets on August 26.

FOR FURTHER INFORMATION CONTACT: Wes Chambers of the Bureau of Land Management's California Desert District Office, 1695 Spruce Street, Riverside, California 92507-2497, (714) 351-6402.

Dated: July 13, 1989.

Gerald E. Hillier,

District Manager.

[FR Doc. 89-16990 Filed 7-19-89; 8:45 am]

BILLING CODE 4310-40-M

[UT-040-09-4830-12]

Cedar City District Multiple Use Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 92-463, that a field meeting of the Cedar City District Multiple Use Advisory Council will be held Tuesday, August 22, 1989. The meeting will begin at 8:45 a.m. in the Kanab Area Office at 320 North First Street, Kanab, Utah. The agenda will include: Kanab and Escalante Resource Area land use planning; Andalex Coal Mining proposal; drought; riparian improvement projects; and a review of ongoing activities in the Kanab Resource Area.

All Advisory Council meetings are open to the public. Interested persons may make oral statements at 9:00 a.m., or submit written comments for the Council's consideration. Anyone wishing to make an oral statement must notify the District manager, 176 East DL Sargent Drive, Cedar City, Utah 84720 by Wednesday, August 16, 1989. Depending on the number of persons wishing to make a statement, a per person time limit may be established by the District Manager or the Council Chairman.

Following oral public statements, the Council will depart for a field trip. Persons interested in accompanying the Council on the field trip must provide their own four wheel drive transportation and lunch.

Date: July 12, 1989.

Gordon R. Staker,

District Manager.

[FR Doc. 89-16995 Filed 7-19-89; 8:45 am]

BILLING CODE 4310-DQ-M

[CO-920-89-4111-15; COC31055]

Colorado; Proposed Reinstatement

Notice is hereby given that a petition for reinstatement of oil and gas lease COC31055 for lands in Routt County, Colorado, was timely filed and was accompanied by all the required rentals and royalties accruing from March 1, 1989, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5 and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the estimated cost of this **Federal Register** notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920, as amended, (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective March 1, 1989, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 236-1772.

Mary Patricia Nagel,

Acting Chief Fluid Minerals Adjudication Section.

[FR Doc. 89-16996 Filed 7-19-89; 8:45 am]

BILLING CODE 4310-JB-M

[AZ-920-09-4212-12 and 15; AZA-23700]

Arizona; Notice of Realty Action; Transfer of Public Land to State of Arizona; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction notice.

FOR FURTHER INFORMATION CONTACT: Barbara Ahern, Phoenix District Office, Bureau of Land Management, 2015 W. Deer Valley Road, Phoenix, Arizona 85027 (602) 863-4464.

SUMMARY: The Notice of Realty Action published on Wednesday, June 28, 1989, in **Federal Register** document 89-15257, Vol. 54, No. 123, on page 27215, is hereby corrected to read as follows:

Column 2, line 63, change "11,500" to "90,000"

Column 2, line 27, change "Pinal County" to "Pima County".

Henri R. Bisson,

District Manager.

[FR Doc. 89-16997 Filed 7-19-89; 8:45 am]

BILLING CODE 4310-32-M

[OR 45150; (OR-035-82-3110-10-8006; GP9-265)]

Realty Action Exchange of Public Lands in Malheur County, Oregon

The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Willamette Meridian

T. 40 S., R. 40 E.,
Sec. 21: SE¼SE¼;
Sec. 22: S½S½;
Sec. 23: S½SW¼;
Sec. 26: E½NW¼, SW¼NW¼, SW¼;
Sec. 27: W½NE¼, SE¼NE¼, NW¼, S½;
Sec. 28: E½E½;
Sec. 34: NE¼, N½NW¼, SE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 35: W½;
T. 41 S., R. 40 E.;
Sec. 2: N½NW¼, SE¼NW¼.
T. 41 S., R. 42 E.;
Sec. 4: N½SE¼.

The area described aggregates 2240.00 acres in Malheur County, Oregon.

In exchange for these lands, the United States will acquire the following described private lands from Wilkinson Ranches:

Willamette Meridian

T. 39 S., R. 40 E.,
Sec. 31: Lot 2.
T. 40 S., R. 39 E.,
Sec. 4: W½SW¼;
Sec. 5: Lot 4, S½NW¼, S½;
Sec. 8: NE¼, N½SE¼, SE¼SE¼;
Sec. 9: W½.
T. 40 S., R. 40 E.,
Sec. 3: Lot 4;
Sec. 36: All.

The area described aggregates 1828.68 acres in Malheur County, Oregon.

The purpose of this exchange is to acquire non-Federal land inholdings in wilderness study areas within the Trout Creek Mountains to enhance wilderness characteristics and improve wilderness manageability and to achieve more efficient management of the public lands through consolidation of ownership. The non-Federal land also possesses significant riparian and wildlife habitat. The public interest will be well served by completing this exchange.

The values of the lands to be exchanged are approximately equal. Full equalization of values will be achieved through acreage adjustment, or by cash payment in an amount not to exceed 25% of the value of the lands being transferred out of federal ownership. Some of the lands identified above may also be deleted to eliminate conflicts that arise during processing.

The exchange will be subject to:

1. The reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States, under the Act of August 30, 1890 (43 U.S.C. 945).

2. All valid existing rights, including but not limited to any right-of-way, easement or lease of record.

3. Grazing permits authorized under the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315), will remain in effect until the end of the two year prior notification period, unless unconditionally waived by the permittee.

4. Mineral rights may be reserved dependent upon the findings in the mineral report.

5. All necessary clearances for cultural resources and threatened and endangered plants and animals shall be granted prior to conveyance of title.

Publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant. The segregative effect of this Notice will terminate upon issuance of patent or in two years, whichever occurs first.

For detailed information concerning this exchange, contact Jim Ledger, BLM Baker Resource Area Office, (503) 523-6391, Ext. 324.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Vale District, 100 East Oregon St., Vale, Oregon 97918. Objections will be reviewed by the State Director who may sustain, vacate, or modify this

realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Date of Issue: July 11, 1989.

David Lodzinski,

Acting District Manager.

[FR Doc. 89-16956 Filed 7-19-89; 8:45 am]

BILLING CODE 4310-33-M

[OR 45151; (OR-035-82-3110-10-8006; GP9-266)]

Realty Action Exchange of Public Lands in Malheur County, Oregon

The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Willamette Meridian

T. 38 S., R. 40 E.,
Sec. 34: E½E½, E½SW¼SE¼;
Sec. 35: N½, SW¼, NW¼SE¼.
T. 39 S., R. 40 E.,
Sec. 1: All;
Sec. 2: Lot 1, N½SE¼NE¼.
T. 38 S., R. 41 E.,
Sec. 31: Lot 1, N½NE¼, NE¼NW¼;
Sec. 33: NE¼;
Sec. 34: SE¼;
Sec. 35: S½SW¼.

The area described aggregates 1962.95 acres in Malheur County, Oregon.

In exchange for these lands, the United States will acquire the following described private lands from Oregon Canyon Ranches:

Willamette Meridian

T. 36 S., R. 37 E.,
Sec. 21: All.
T. 37 S., R. 40 E.,
Sec. 32: SE¼NW¼.
T. 38 S., R. 40 E.,
Sec. 9: NW¼SE¼;
Sec. 16: SW¼, NE¼SE¼;
Sec. 28: SW¼NW¼;
Sec. 29: NW¼NW¼.
T. 39 S., R. 40 E.,
Sec. 4: SW¼NW¼.
T. 34 S., R. 41 E.,
Sec. 16: All.
T. 39 S., R. 42 E.,
Sec. 32: SW¼SE¼.

The area described aggregates 1720.00 acres in Malheur County, Oregon.

The purpose of this exchange is to acquire non-Federal land inholdings in wilderness study areas within the Trout Creek Mountains to enhance wilderness characteristics and improve wilderness manageability and to achieve more efficient management of the public lands through consolidation of ownership. The non-Federal land also possesses significant riparian and wildlife habitat. The public interest will be well served by completing this exchange.

The values of the lands to be exchanged are approximately equal. Full equalization of values will be achieved through acreage adjustment, or by cash payment in an amount not to exceed 25% of the value of the lands being transferred out of federal ownership. Some of the lands identified above may also be deleted to eliminate conflicts that arise during processing.

The exchange will be subject to:

1. The reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States, under the Act of August 30, 1890 (43 U.S.C. 945).

2. All valid existing rights, including but not limited to any right-of-way, easement or lease of record.

3. Grazing permits authorized under the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315), will remain in effect until the end of the two year prior notification period, unless unconditionally waived by the permittee.

4. Mineral rights may be reserved dependent upon the findings in the mineral report.

5. All necessary clearances for cultural resources and threatened and endangered plants and animals shall be granted prior to conveyance of title.

Publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant. The segregative effect of this Notice will terminate upon issuance of patent or in two years, whichever occurs first.

For detailed information concerning this exchange, contact Jim Ledger, BLM Baker Resource Area Office, (503) 523-6391, Ext. 324.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Vale District, 100 East Oregon St., Vale, Oregon 97918. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Date of Issue: July 11, 1989.

David Lodzinski,

Acting District Manager.

[FR Doc. 89-16957 Filed 7-19-89; 8:45 am]

BILLING CODE 4310-33-M

[NV-930-05-4333-11]

Camping Stay Limits for Public Lands; Las Vegas, Nevada District

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Establishment of Camping Stay Limit for Public Lands Administered by the BLM in the Las Vegas District, Nevada.

SUMMARY: Person(s) may occupy a site or multiple sites within a ten (10) mile radius on public lands not closed or otherwise restricted to camping within the Las Vegas District for a total period of not more than fourteen (14) days during any twenty-eight (28) day period. Following the fourteen (14) day period, person(s) may not relocate within a distance of ten (10) miles of the site that was just previously occupied until completion of the twenty-eight (28) day period. The fourteen (14) day limit may be reached either through a number of separate visits or through a period of continuous occupations of a site. Under special circumstances and upon request, the authorized officer may give written permission for extension of the fourteen (14) day limit.

Additionally, no person may leave personal property unattended in designated campgrounds, recreation developments or elsewhere on public lands within the Las Vegas District for a period of more than forty-eight (48) hours without written permission from the authorized officer.

This camping limit does not apply to Long Term Visitor Use Areas so designated by the Las Vegas District.

EFFECTIVE DATE: Fifteen (15) days following the thirty (30) day public comment period to allow for analysis of public comments.

Comment Period: The BLM requests comments from the public concerning the establishment of camping stay limits for public lands administered by the BLM in the Las Vegas District, Nevada. The comment period will be open until August 21, 1989. Comments received or postmarked after the close of the comment period may not be considered in finalizing these camping stay limitations.

ADDRESS: Comments should be sent to District Manager, Las Vegas District Office, 4765 W. Vegas Driver, P.O. Box 26569, Las Vegas, Nevada 89125.

SUPPLEMENTARY INFORMATION: This camping stay is consistent with BLM policy and is being established in order to assist the BLM in reducing the incidence of long-term occupancy trespass being conducted under the guise of camping on public lands within the Las Vegas District. Of equal importance is the problem of long-term camping which precludes equal opportunities for other members of the public to camp in the area which creates user conflicts.

Authority for this camping stay limit is contained in CFR Title 43, Chapter II, Part 8360, Subpart 8364.1, Subpart 8365, Subpart 8365.1-2, 8365.1-6, and 8365.2-3.

8360.0-7 Penalties: Violations of any regulations in this part by a member of the public, except for the provisions of 8365.1-7 are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Violations of supplementary rules authorized by 8365.1-6 are punishable in the same manner.

Date: July 12, 1989.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 89-16998 Filed 7-19-89; 8:45 am]

BILLING CODE 4310-84-M

[ID-942-09-4730-12]

Filing of Plats of Survey; Idaho

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 10:00 a.m., July 12, 1989.

The plat representing the dependent resurvey of portions of the south boundary and subdivisional lines and the subdivision of section 33, T. 45 N., R. 4 W., Boise Meridian, Idaho, Group No. 733, was accepted July 11, 1989.

This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

July 12, 1989.

[FR Doc. 89-16999 Filed 7-19-89; 8:45 am]

BILLING CODE 4310-GG-M

[OR-942-09-4730-12; GP9-265]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 5 S., R. 10 E., accepted June 9, 1989
T. 13 S., R. 31 E., accepted May 12, 1989

Washington

T. 21 N., R. 4 W., accepted June 9, 1989
T 2 N., R. 1 E., accepted June 9, 1989
T. 8 N., R. 15 E., accepted June 23, 1989
T. 8 N., R. 16 E., accepted June 23, 1989
T 36 N., R. 42 E., accepted May 12, 1989.

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 825 NE Multnomah, Portland, Oregon 97208, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 N.E. Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

Dated: July 11, 1989.

[FR Doc. 89-17048 Filed 7-19-89; 8:45 am]

BILLING CODE 4310-33-M

[CO-930-09-4214-10; C-24653]

Amendment to Withdrawal Application and Opportunity for Public Meeting; Colorado

July 14, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior has filed an application to amend the Windy Gap Archaeological Site withdrawal application to include an additional 40-acre parcel of public land. This notice provides an opportunity for a public meeting and public comment on this parcel but does not segregate the land from operation of any of the public land laws since the 2-year segregation period provided by the original application has terminated.

DATE: Comments or requests for public meeting should be received on or before October 18, 1989.

ADDRESS: Comments or requests for public meeting should be addressed to the State Director, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215-7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303-236-1752.

SUPPLEMENTARY INFORMATION: On July 12, 1989, an application was approved to amend withdrawal application C-24653 which requested a 20-year protective withdrawal to allow for the preservation and development of archaeological values. This amendment affects the following described land:

Sixth Principal Meridian

T. 2 N., R. 76 W., sec. 17, SW¼SE¼.

The area described aggregates approximately 40 acres of public land in Grand County.

Effective on date of publication, this land becomes a part of the Windy Gap Archaeological Site withdrawal application and is subject to the requirements set forth in 52 FR 5356 published on February 20, 1987.

Any persons who desire to comment in connection with this 40-acre site may submit their views in writing to the Colorado State Director at the address shown above within the 90-day comment period.

Robert S. Schmidt,

Chief, Branch of Realty Programs.

[FR Doc. 89-17049 Filed 7-19-89; 8:45 am]

BILLING CODE 4310-JB-M

BEST COPY AVAILABLE

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Union Texas Petroleum has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 6673, Block 187, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on July 12, 1989. Comments must be received within on or before August 4, 1989 or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: July 13, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-17000 Filed 7-19-89; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Upper Delaware Citizens Advisory Council; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: July 28, 1989, 7:00 p.m.[1] Inclement Weather Reschedule Date: August 11, 1989.

ADDRESS: Town of Tusten Hall, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent; Upper Delaware Scenic and Recreational River, P.O. Box C, Narrowsburg, NY 12765-0159; 717-729-8251.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95-625, 16 U.S.C. 1724 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation and implementation of the management plan, and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will surround disposal of septage materials in the Upper Delaware Region.

The art of eel wier fishing on the Upper Delaware River, including a video recorded tape of the process.

The meeting will be open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council, P.O. Box 84, Narrowsburg, NY 12764. Minutes of the meeting will be available for inspection four weeks after the meeting, at the permanent headquarters of the Upper Delaware scenic and Recreational River; River Road, 1-3/4 miles north of Narrowsburg, New York; Damascus Township, Pennsylvania.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 89-17062 Filed 7-19-89; 8:45 am]

BILLING CODE 4310-70-M

[1] Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL, and WVOS.

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 388 A]

State Intrastate Rail Rate Authority (Pub. L. 96-448); Recertification Process

AGENCY: Interstate Commerce Commission.

ACTION: Policy Statement.

SUMMARY: To continue to exercise jurisdiction over intrastate railroad rates, State authorities are required under 49 U.S.C. 11501(b)(5)(A) to resubmit standards and procedures consistent with Federal law for I.C.C. approval. This notice adopts simplified procedures for use in fulfilling this requirement. The procedures are outlined below.

EFFECTIVE DATE: These procedures are effective on August 21, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: States seeking recertification will not be required to resubmit their previously approved standards and procedures. Instead, they will be required to certify that their standards and procedures remain the same, except as updated to conform with changes in Federal standards. The States will also be required to submit a list of these updates, which may include all Federal changes. They must certify that they have adopted these changes and incorporated them into their standards and procedures. Finally, States must certify that their intrastate authority will be exercised in accordance with Federal law, and that Federal law will govern even if not explicitly so provided in their rules. To aid States in updating their standards and procedures, Appendix C to the decision in this proceeding lists those updates that should have been made to date.

It is each State's responsibility to maintain eligibility to regulate by seeking recertification prior to the expiration date of its existing certification. The Commission does not notify States that their existing certifications are nearing expiration. To prevent any lapse in certification, the timely filing of the above information will constitute automatic provisional certification for the State to continue regulation under its previously approved plan while its request for recertification is processed. A Notice of Provisional Certification will be published in the **Federal Register**. This simplified process will be unavailable to States not previously certified or to those States that allow their certification to expire.

When the State files the required information with us, it must also serve a copy on all interstate railroads operating in the State. The carriers will have 30 days to file comments. Comments may include requests that this abbreviated procedure not be used, but such requests must be accompanied by compelling evidence that a more rigorous investigation of the State's activities is warranted, *i.e.*, that the State's actions have been in conflict with Federal law and therefore that the presumptions upon which this abbreviated process is based do not apply. The State may reply to any comments. The Commission will either extend recertification, or take other action appropriate in the circumstances. Notice will be published in the **Federal Register** concerning all final decisions.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc. Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services, (202) 275-1721.)

Decided: July 12, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-17037 Filed 7-19-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31492]

Itel Corp. et al.; Notice of Exemption

In the matter of Itel Corporation, Itel Rail Holdings Corporation, Itel HG, Inc., Signal Capital Holdings Corporation, and Itel Rail Corporation—transfer of control exemption—Hartford & Slocomb Railroad Company, McCloud River Railroad Company, Green Bay & Western Railroad Company, Ahnapee & Western Railroad Company, Fox River Valley Railroad Corporation, and The Ferdinand and Huntingburg Railroad Company.

Itel Corporation (Itel), a noncarrier, and its direct and indirect wholly owned subsidiaries discussed below have filed a notice of exemption for the transfer of control of Itel's rail carrier subsidiaries within the corporate family. The restructuring is for the purpose of consolidating Itel's car leasing business.

The former Itel Rail Corporation, a wholly owned subsidiary of Itel, has been renamed Itel Rail Holdings Corporation (Itel Rail Holdings). Prior to the initial restructuring, it directly or indirectly controlled five Class III rail carriers, Hartford & Slocomb Railroad Company, McCloud River Railroad Company, Green Bay & Western Railroad Company (GB&W), Ahnapee & Western Railway Company (A&W) (a subsidiary of GB&W), the Ferdinand and Huntingburg Railroad Company (F&H) (a subsidiary of Itel Railcar Corporation), and one recently created carrier, Fox River Valley Railroad Corporation (formerly FRVR Corporation), which will be a Class II or Class III rail carrier, depending upon the results of its operations.

The initial phase of the restructuring occurred on February 2, 1989, and created the following new noncarrier subsidiaries. Itel HG, Inc. has become a wholly owned subsidiary of Itel Rail Holdings and in turn wholly owns Signal Capital Holdings Corporation (Signal Capital). Pullman Leasing Company (Pullman) is now a wholly owned subsidiary of Signal Capital and in turn wholly owns a newly formed Itel Rail Corporation. Itel Railcar Corporation (Itel Railcar) is now a wholly owned subsidiary of the new Itel Rail Corporation (Current Rail), with F&H continuing as subsidiary of Itel Railcar.

The second phase of the restructuring occurred after the effective date of the notice of exemption in Finance Docket No. 31413, served and published in the **Federal Register** on March 23, 1989, 54 FR 12026. That notice exempted the transfer of control resulting from the transfer of the stock of Itel's remaining regulated carrier subsidiaries first to Pullman and then to Pullman's direct subsidiary, Itel Rail Corporation (the A&W continued to be a subsidiary of the GB&W). After this part of the subsidiaries were interposed between Itel Rail Holdings and the carrier subsidiaries.

Continuing this restructuring, Itel Railcar will be merged into Current Rail, and Current Rail as the surviving corporation. Current Rail will then be merged into Pullman, with Pullman as the surviving corporation whose name will be changed to Itel Rail Corporation (New Rail). This restructuring will not occur until after this notice has become effective.

This is a transaction within a corporate family of the type specifically exempted from prior approval under 49 CFR 1180.2(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. The proposed transaction is intended to effect operating efficiencies.

To ensure that all employees who may be effected by the transaction are given the minimum protection afforded under 49 U.S.C. 10505(g)(2) and 49 U.S.C. 11347, the labor conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), are imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing or a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on:

Thomas J. Byrne, Carl V. Lyon, Itel Corporation, 1101 30th Street, NW., Suite 302, Washington, DC 20007

John M. Nannes, Robert A. Potter, Skadden, Arps, Slate, Meagher & Flom, 1440 New York, Avenue, NW., Washington, DC 20005.

Decided: July 14, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-17038 Filed 7-19-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental

policy, 28 CFR 50.7, notice is hereby given that on June 30, 1989, a proposed Partial Consent Decree in *United States* v. *Kayser Roth Corporation, et al.*, Civil No. 88-0325-B, was lodged with the United States District Court for the District of Rhode Island related to defendant Hydro-Manufacturing, Inc. The proposed Consent Decree concerns the recovery of costs incurred and costs to be incurred to respond to the release and threatened release of hazardous substances at the Stamina Mills Superfund Site in Forestdale, Rhode Island pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended. Under the terms of the Consent Decree, Hydro will, at some future date agreed to by the United States Environmental Protection Agency, sell the Stamina Mills Site property and transmit the net proceeds from the sale to the Superfund. In addition, Hydro will pay the future taxes for the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to Jay Printing, D.J. Ref. 90-11-2-356.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of Rhode Island, Westminster Square Building, 10th Floor, 10 Dorrance Street, Providence, Rhode Island and at the Region 1 Office of the Environmental Protection Agency, J.F.K. Federal Building, Boston, Massachusetts 02203. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1647, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $2.20 (10 cents per page reproduction cost) made payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-17001 Filed 7-19-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on July 11, 1989, a proposed Consent Decree in *United States* v. *LTV Steel Company, Inc.* Civil Action No. 89-C-5387, was lodged with the United States District Court for the Northern District of Illinois. The proposed Consent Decree resolves a judicial enforcement action brought by the United States against LTV Steel Company, Inc. (LTC) under the Clean Air Act for violations of the Prevention of Significant Deterioration (PSD) permit issued by the U.S. Environmental Protection Agency in 1979 for a coke battery at LTV's Chicago, Illinois steel-making facility located at 11600 South Burley Avenue, Chicago, Illinois.

The proposed Consent Decree requires LTV to achieve compliance with the PSD permit limit of 5% on leaking coke oven doors (with an exclusion of two doors), and requires that LTV install brand new doors (already accomplished), as well as new door jambs and jamb sealing systems. Under the Decree, LTV must demonstrate final compliance by August 1, 1979, and the Decree provides for stipulated penalties for any noncompliance. In addition, the Consent Decree provides that LTV is liable for a civil penalty of $337,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, U.S. Department of Justice, Washington, DC and should refer to *United States* v. *LTV Steel Company*, D.J. #90-5-2-1-993.

The proposed Consent Decree may be examined at the office of the United States Attorney, 219 South Dearborn Street, Chicago, Illinois 60604, and at the Region V office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 6317, Tenth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.40 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-17002 Filed 7-19-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(i), notice is hereby given that on June 22, 1989, a proposed consent decree in *United States of America* v. *Nabisco, Inc., et al.*, Civil Action No. CV-86-3277, has been lodged with the United States District Court for the Eastern District of New York. This consent decree resolves the United States' claims under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") for recovery of initial cleanup costs incurred by the United States Environmental Protection Agency ("EPA") in response to hazardous substances released at a site (the "Sag Harbor Site") located near the Village of Sag Harbor, Long Island, New York.

The consent decree provides that the defendants will pay $400,000 to the Hazardous Substance Superfund in reimbursement of the costs of certain work performed by EPA at the Sag Harbor Site prior to the lodging of the consent dcree, together with prejudgment interest and enforcement costs. The defendants have separately agreed, in an administrative order on consent, to undertake additional investigations of the contamination at the Sag Harbor Site.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Nabisco, Inc.*, D.J. Ref. 90-11-3-112.

The proposed consent decree may be examined at the office of the United States Attorney, 225 Cadman Plaza East, Brooklyn, New York 11201, and at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, NY 10278. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. Copies of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, at the above address.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-17003 Filed 7-19-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is here given that on July 7, 1989, a proposed Consent Decree in *United States* v. *Texaco, Inc.* was lodged with the United States District Court for the District of Rhode Island. This agreement resolves a judicial enforcement action brought by the United States against Texaco, Inc. which alleged violations of Section 111 of the Clean Air Act, 42 U.S.C. 7411, and the New Source Performance Standards for Bulk Gasoline Terminals, 40 CFR Part 60, Subpart XX, at the bulk gasoline loading terminal formerly owned by Texaco, Inc. located in Providence, Rhode Island.

The consent decree provides for the payment of a civil penalty of $65,000 for past violations of the Clean Air Act.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to: *United States* v. *Texaco, Inc.*, D.J. Ref. No. 90-5-2-1-1269.

The proposed Consent Decree may be examined at the office of the United States Attorney or the regional office of the Environmental Protection Agency as follows:

U.S. Attorney

U.S. Attorney, District of Rhode Island, 10 Dorrance Street, Providence, RI 02903

EPA

Office of Regional Counsel, Region 1, John F. Kennedy Federal Bldg., Boston, MA 02203

A copy of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the Decree, please enclose a check payable to the Treasurer of the United States in the amount of $1.90 for reproduction costs.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-17004 Filed 7-19-89; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; the Development of a Computer-Aided Armor Design/Analysis System

Notice is hereby given that, on June 26, 1989, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission of a project entitled "The Development of a Computer-Aided Armor Design/Analysis System." The notification discloses (1) the identities of the parties to the project and (2) the nature and objective of the project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the project and its general areas of planned activities are given below:

The parties to the project are:

1. Chamberlain Manufacturing Corporation (effective April 3, 1989)
2. AAI Corporation (effective April 19, 1989)
3. FMC Corporation (effective April 20, 1989)
4. Honeywell, Inc. (effective May 16, 1989)

The purpose of the project is to advance the state-of-the-art in analytical procedures for use in the analysis of threat/armor interactions. The major tasks involve: (1) The assessment of existing engineering models; (2) the adaptation of existing models into forms which can be used interchangeably within the software being developed; (3) the enhancement of existing models where deficiencies are found; and (4) the development of software which can be used by researchers to analyze and design armor systems.

Membership in this group research project remains open, and the parties intend to file additional written notification disclosing all changes in membership of this project.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-17045 Filed 7-19-89; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Quotas for Controlled Substances in Schedule II

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of established 1989 aggregate production quotas.

SUMMARY: This notice establishes revised 1989 aggregate production quotas for controlled substances in Schedule II, as required under the Controlled Substances Act of 1970.

DATE: This order is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S. Code 826) requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to Section 0.100 of Title 21 of the Code of Federal Regulations.

On April 24, 1989, a notice of the proposed revised 1989 aggregate production quotas for certain controlled substances in Schedule II was published in the **Federal Register** (54 FR 16418). All interested parties were invited to comment on or object to these proposed aggregate production quotas on or before May 24, 1989. No comments or objections were received.

Pursuant to Sections 3(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the

preparation of a Federalism Assessment.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by the international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Therefore, under the authority vested in the Attorney General by Section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826) and delegated to the Administrator of the Drug Enforcement Administration by Section 0.100 of Title 28 of the Code of Federal Regulations, the Administrator of the Drug Enforcement Administration hereby orders that the 1989 revised aggregate production quotas be established as follows:

Basic class	Established revised 1989 aggregate production quotas (expressed as grams of anhydrous acid or base)
Schedule II:	
Amobarbital	160,000
Amphetamine	352,000
Codeine (for conversion)	5,194,000
Desoxyephedrine	1,487,000
Levodesoxyephedrine	1,487,000
Methamphetamine	0
Dextropropoxyphene	82,381,000
Dihydrocodeine	269,000
Diphenoxylate	948,000
Fentanyl	18,000
Hydrocodone	3,244,000
Hydromorphone	221,000
Levorphanol	11,000
Methadone	1,856,000
Methadone Intermediate	2,320,000
Methamphetamine (for conversion)	965,000
Mixed Alkaloids of Opium	7,000
Morphine (for sale)	3,634,000
Oxycodone (for sale)	2,452,000
Pentobarbital	13,219,000
Phenylacetone	1,198,000
Secobarbital	545,000

Dated: June 26, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-16943 Filed 7-19-89; 8:45 am]

BILLING CODE 4410-09-M

Foreign Claims Settlement Commission

Privacy Act of 1974; New System of Records Notice; Egyptian Claims Program

AGENCY: Foreign Claims Settlement Commission, Justice.

ACTION: Notice of New System of Records.

SUMMARY: The Foreign Claims Settlement Commission (FCSC) hereby publishes notice that an additional records system will be established as of August 21, 1989, and designated "FCSC-35, Egypt, Claims Against." Any person interested in commenting on this system may do so by submitting comments in writing to the Administrative Office of the Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579. Comments must be submitted on or before August 21, 1989. This new records system will be added to the Commission's current Privacy Act Systems of Records.

EFFECTIVE DATE: The system of records designated "FCSC-35, Egypt, Claims Against" shall be established and become effective on August 21, 1989, as published herein unless amended by notice published prior to that date. The existing systems of records continue in effect.

FOR FURTHER INFORMATION CONTACT: David E. Bradley, Chief Counsel, Foreign Claims Settlement Commission, 1111 20th Street NW., Room 400, Washington, DC 20579, Tel. (202) 653-5883, FAX (202) 653-6009.

FCSC-35

SYSTEM NAME:

Egypt, Claims Against.

SYSTEM LOCATION:

Foreign Claims Settlement Commission, 1111 20th Street NW., Room 400, Washington, DC 20579.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Natural and juridical persons who assert claims for property losses resulting from actions by the Government of the Arab Republic of Egypt.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim information, including name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; other evidence establishing entitlement to compensation of claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title I, International Claims Settlement Act of 1949, as amended, and the *Agreement Between the Government of the United States of America and the Government of the Arab Republic of Egypt Concerning Claims of Nationals of the United States of May 1, 1976.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records are used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act and Agreement; notifications to claimants of rights to appeal; and preparation of certifications of awards, if any, to the Treasury Department for payment. Names and other information furnished by claimants may be used for verifying citizenship status with the Immigration and Naturalization Service. The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein including but not limited to Members of Congress or Congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

Law Enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil or criminal or regulatory in nature and whether arising by general statute or particular program statute or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her official capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions

is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. Alphabetical index used for identification of claim. Indexing by other information in the claim.

SAFEGUARDS:

At FCSC: Building employs security guards.

Records are maintained in locked room accessible to authorized FCSC personnel and other persons when accompanied by such personnel.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be in accordance with 44 U.S.C. 3301-3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579; Phone (202) 653-6155 or FAX (202) 653-6009.

NOTIFICATION PROCEDURE:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Claimant on whom the record is maintained.

Dated at Washington, DC, on July 10, 1989.

Stanley J. Glod,

Chairman.

[FR Doc. 89-17005 Filed 7-19-89; 8:45 am]

BILLING CODE 4410-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Mangement and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Mangement and Budget (OMB) for review the following proposal for the collection of information under the provisions of Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. *Type of submission (new, revision, or extension):* Extension
2. *The title of the information collection:* 10 CFR 4, "Nondiscrimination in Federally Assisted Commission Programs."
3. *The form number if applicable:* Not applicable
4. *How often the collection is required:* On occasion
5. *Who will be required or asked to report:* Recipients of Federal financial assistance provided by the Nuclear Regulatory Commission
6. *An estimate of the number of responses:* 60 per year
7. *An estimate of the total number of hours needed to complete the requirement or request:* 176 hours annually (an average of .23 hours per response plus 5.6 hours per recordkeeper)
8. *An indication of whether section 3504(h), Pub. L. 96-511 applies:* Not applicable
9. *Abstract:* Recipients of NRC financial assistance provide data on procedures to provide assurance to NRC that they are in compliance with nondiscrimination policies.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW., Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer: Nicholas B. Garcia, Paperwork Reduction Project (3150-0053), Office of Management and Budget, Washington, DC 20503.

Comments can also be communicated by telephone at (202) 395-3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 7th day of July 1989.

For the U.S. Nuclear Regulatory Commission.

Joyce A. Amenta,

Designated Senior Official for Information Resources Management.

[FR Doc. 89-17021 Filed 7-19-89; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35)

1. *Type of submission, new, revision, or extension:* Extension.
2. *The title of the information collection:* Request for Records.
3. *The form number if applicable:* NRC Form 57
4. *How often the collection is required:* On occasion.
5. *Who will be required or asked to report:* Individuals requesting Public Document Room (PDR) documents
6. *An estimate of the number of responses:* 45,000 per year.
7. *An estimate of the total number of hours to complete the requirement or request:* 750 hours annually (45,000 forms × .01666 hr/form) or about 1 minute per individual.
8. *An indication of whether Section 3504(h), Pub. L. 96-511 applies:* Not applicable.
9. *Abstract:* This form is utilized by the public in the Public Document Room (PDR) in requesting documents for their use at the PDR; this form then serves as a suspense slip on the shelf when the document is charged out to a member of the public.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer: Nicolas B. Garcia, Paperwork Reduction Project (3150-0063), Office of Management and Budget, Washington, DC 20503.

Comments can also be communicated by telephone at (202) 395-3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 7th day of July 1989.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,

Designated Senior Official for Information Resources Management.

[FR Doc. 89-17022 Filed 7-19-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-272/311]

Public Service Electric and Gas Co.; Environmental Assessment And Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission is considering issuance of a number of exemptions from the requirements of Appendix R to 10 CFR Part 50 to Public Service and Gas Company, et. al., for the Salem Generating Station, Units 1 and 2, located at the licensee's site in Salem County, New Jersey.

Environmental Assessment

Identification of Proposed Action

The licensee's request for the exemptions and the bases therefore are contained in a letter dated July 15, 1988. The exemptions relieve the licensee from the technical requirements concerning:

1. Non-3-hour fire-rated features in 3-hour fire barriers in various areas of the plants (Licensee Exemption 1);
2. Lack of a fixed fire suppression system in the control room (Licensee Exemption 2);
3. Lack of an automatic fire suppression system in the reactor plant auxiliary equipment area, elevations 100 and 110 feet (Licensee Exemption 3);
4. Lack of an automatic fire suppression system in the inner piping penetration area (Licensee Exemption 4),
5. Lack of an automatic fire suppresion system in the reactor plant auxiliary building, elevation 64 feet (Licensee Exemption 10);
6. Lack of an automatic fire suppression system in the mechanical penetration areas, elevations 78 and 100 feet (Licensee Exemption 5);
7. Lack of complete 1-hour fire rated barriers between redundant shutdown systems and a manually actuated fire suppression system in lieu of an automatic system in the 460V switchgear room (Licensee Exemption 6),
8. Lack of complete 1-hour fire rated barriers between redundant shutdown systems in the lower electrical penetration area (Licensee Exemption 8);
9. Lack of complete 1-hour fire rated barriers between redundant shutdown systems in the 4160 V switchgear room (Licensee Exemption 9);
10. Lack of complete 1-hour fire-rated barriers or 20 feet free of intervening combustibles between redundant systems in the reactor plant auxiliary equipment area, elevation 84 feet (Licensee Exemption 7);
11. Lack of complete 3-hour fire barriers between redundant shutdown systems in the RHR pump and heat exchanger areas (Licensee Exemption 13);
12 Lack of 20 feet of separation free of intervening combustibles between redundant shutdown systems in containment (Licensee Exemption 12);
13. Lack of an automatic fire suppression system and the absence of 20 feet of spatial separation between redundant systems in the pipe tunnel, elevation 84 feet (Licensee Exemption 14); and
14. Lack of an automatic fire suppression system in the CO_2 equipment room, elevation 84 feet (Licensee Exemption 15).

The Need for the Proposed Action

The proposed exemptions are needed because the features described in the licensee's request regarding the existing fire protection at the two plants for these items are the most practical means for meeting the intent of Appendix R and literal compliance would not significantly enhance the fire protection capability.

Environmental Impacts of the Proposed Action

The proposed exemptions will provide a degree of fire protection that is equivalent to that required by 10 CFR Part 50, Appendix R for the affected areas of the plant such that there is no increase in the risk of fires at this facility. Consequently, the proposed exemptions will not: increase the probability of fires; increase the post-fire radiological releases beyond those previously determined nor otherwise affect radiological plant effluents; and increase the probability or consequences of any reactor accident. Therefore, the Commission concludes that there is no significant radiological environmental impacts associated with these proposed exemptions.

With regard to potential non-radiological impacts, the proposed exemptions involve features located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemptions.

Alternative to the Proposed Action

Since the Commission concluded that there are no measurable environmental impacts associated with the proposed exemptions, any alternatives to the exemptions will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemptions. Such action would not reduce the environmental impacts of Salem Unites 1 and 2 operations and would require additional time and resources to bring the facility into literal compliance with 10 CFR Part 50, Appendix R with no significant enhancement of the fire protection capability.

Alternative Use of Resources

These actions do not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Salem Generating Station, Unites 1 and 2," dated April 1973.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request that supports the proposed exemptions. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed exemptions will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

For further details with respect to the proposed action, see the licensee's request for the exemptions dated July 15, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the Salem Free County Public Library, 112 W. Broadway, Salem, New Jersey 08079.

Dated at Rockville, Maryland, this 6 day of July 1989.

For The Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I-2 Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-17024 Filed 7-19-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Nuclear Waste; Cancellation

The Advisory Committee on Nuclear Waste (ACNW) meeting scheduled for July 26-27, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, MD has been cancelled. This meeting notice was previously published on Tuesday, June 20, 1989 (54 FR 25919).

Date July 14, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89-16942 Filed 7-19-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-295 and 50-304]

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Operating License Nos. DPR-39 and DPR-48, issued to Commonwealth Edison Company, for operation of Zion Station, Units 1 and 2, located in Lake County, Illinois.

This amendment would permit temporary one-time changes to Zion Technical Specifications regarding the Auxiliary Electric Power that would allow performing extensive preventive maintenance, in accordance with the manufacturer's recommendation, on the diesel generator shared between the two units. Because the common diesel generator is shared, extended maintenance periods have not been available under present Technical Specifications, even during scheduled refueling outages of either of the two units. The proposed changes would extend the present allowable out-of-service period for the common diesel from 7 days to 45 days during which, with one unit in cold shutdown, only two diesel generators would be required to satisfy the standby AC on-site power requirements.

By August 21, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR § 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitoner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Paul C. Shemanski: petitioner's name and telephone number; date petition was mailed; plant number; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael Miller, Esquire, Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.174(a)(1) (i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated July 6, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the local public document room, Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland, this 14th day of July 1989.

For the Nuclear Regulatory Commission.

Chandu P. Patel,

Project Manager, Project Directorate III-2, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-17023 Filed 7-19-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27031; File No. SR-Amex-89-17]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Effecting Delivery on Short Sales.

Pursuant to Section 19(b)(1), 15 U.S.C. 78s(b)(1), of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, 17 CFR 240.19b-4, notice is hereby given that on July 5, 1989, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing to amend its policy to require that members arrange to borrow securities, or obtain other assurances that delivery will be possible, prior to effecting short sales.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

Exchange Rule 784(C) requires members and member organizations to employ every reasonable means to borrow securities in order to make delivery on open contracts, but does not specifically require that arrangements be made to borrow the stock prior to effecting short sale transactions. However, the Exchange has periodically advised members to make such arrangements as to specific stocks, when, for instance, an increased short interest or undue concentration in the public ownership has been noted, resulting in a lack of liquidity in the borrowing market.

The Exchange is now proposing to amend its policy to require member organizations effecting short sales for both customer and proprietary accounts to, in all cases, either make prior arrangements to borrow the stock or obtain other acceptable assurances that delivery can be made on settlement date. Such assurances would include knowledge that the security is available for borrowing, conversion privileges, rights exercise or other similar situations, so long as the security needed for delivery can be exchanged in normal transfer time. The policy will provide an exception for short sales by specialists, market makers and odd-lot dealers in fulfilling their market making responsibilities. However, arbitrageurs and other participating traders will not be able to rely on this exception.

Implementation of the new policy is expected to provide increased stability to the market for Amex stocks subject to significant short selling, by decreasing the number of "fails" (*i.e.*, when a short seller is unable to effect delivery of the stock). It will also conform Amex policy to that of the New York Stock Exchange ("NYSE"), which has such a policy in effect, thereby eliminating confusion as to whether Amex policy is different for the NYSE's.[1]

(2) Basis

The proposed policy change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to "promote just and equitable principles of trade," and "protect investors and the public interest."

B. Self-Regulatory Organizations' Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by August 10, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

Dated: July 13, 1989.

[FR Doc. 89-16968 Filed 7-19-89; 8:45 am]

BILLING CODE 8010-01-M

[1] *See* NYSE, *Interpretation Handbook* at 4450, Rule 440C.10/01 ("Deliveries Against Short Sales") (1984).

[Release No. 34-27012; File No. SR-BSE-87-1]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Approval of Proposed Rule Change Relating to the Establishment of the Boston Stock Exchange Automated Communications Order-routing Network (BEACON)

On February 22, 1989, the Boston Stock Exchange, Inc. ("BSE") requested that the Securities and Exchange Commission ("Commission") permanently approve the proposed BEACON system, an automated order-routing and execution system, and rules governing the system.[1] The Commission published notice of the request on March 8, 1989, in Securities Exchange Act Release No. 26578, 54 FR 9952. On August 25, 1988, BSE received approval to proceed with the implementation of BEACON up to full-scale operational levels during a six-month trial period, which ended on February 25, 1989. BSE requested an extension of this trial period until the Commission completed its review pursuant to BSE's request for permanent approval of BEACON.[2]

Description of Beacon

BEACON routes orders in eligible stocks from member firms to the BSE. For stocks traded on the Intermarket Trading System ("ITS"),[3] BEACON guarantees either an automatic or manual execution of up to either 599 or 1,299 shares, depending on the classification of the stock, at the BEACON quotation.[4] To accomplish this, a BEACON order electronically entered into the system by a member firm is transmitted to a BSE specialist's post where it is displayed on the specialists's terminal together with the automatically assigned BEACON quote at which the order would be automatically executed. The order is displayed on the specialist's terminal for up to 15 seconds to permit the specialist to intervene in the automatic execution of the order should he wish to improve on the BEACON quotation. Where the specialist does not intervene, the order automatically will be executed at the BEACON quote.

The BSE stated that it currently receives orders in 900 stocks (out of a total of 1,800 stocks listed on the exchange) from 7 firms through BEACON. All specialists on the floor have at least one stock for which market orders are automatically executed and reported back to the firm. In addition, BEACON now maintains day limit orders for all 900 issues for the specialist. One completed book (77 issues) has been activated in total.

BEACON will be interfaced with the BSE's BASE system,[5] a computerized back office system that currently processes all orders executed on the Exchange floor. Once the BEACON and BASE interface is completed, BASE will be able to generate a report immediately confirming the execution of a BEACON order, including the number of shares and the execution price, and transmit it to the member firm that entered the order. The new system will also be able to provide BSE specialists with continuous updates of their positions, average costs, concentrations (short or long), and a computerized limit order book.

Description of Proposed Rule

The BSE's proposed BEACON rules define the specific procedures for the entry and execution of orders in the system.[6] Section 1 of the proposed rules provides that BEACON is available to BSE member organizations and to foreign stock exchanges with which BSE has established a trading link. All issues traded on the Exchange will be eligible for processing through BEACON but only agency orders[7] will be eligible for automatic execution.

Section 2 provides that BEACON will permit orders to be routed to specialists or to floor brokers.[8] The system also will allow floor brokers to transmit orders to specialists. Under subparagraph (c), member firms may send market and limit orders to BSE over the system in size parameters established by the BSE.[9] Once orders are routed to the specialist, they may be executed either automatically (if eligible) or manually.

Execution parameters for BEACON are set out in Section 3 of the proposed rule. Market and marketable limit orders in issues traded over ITS transmitted to the specialist prior to the BSE's opening will be provided the opening price on the primary market on which the issue is traded. The primary market opening price usually will be the NYSE or Amex opening price for the stock. The only exception to applying the primary market opening price to an opening transaction would be where the member firm entering the order asks, instead, for the order to be provided the consolidated opening price.

Market and marketable limit orders entered after the opening will receive an execution price based upon the BEACON quotation.[10] As noted previously, these orders, when transmitted to the specialist for execution, will be displayed on the specialist's video display terminal for up to 15 seconds (so-called "exposure period") to allow the specialist to improve on the BEACON quotation that was automatically determined when the

[1] *See* letter from Geogre W. Mann, Jr., Senior Vice President and General Counsel, BSE, to Christine A. Sakach, Branch Chief, Division of Market Regulation, dated February 22, 1989. The term "BEACON" is an acronym for Boston Exchange Automated Communications Order-routing Network. The initial set of rules proposed for BEACON (File No. SR-BSE-87-1) was noticed in Securities Exchange Act Release No. 24187 (March 6, 1987), 52 FR 8662. No comments were received on this proposal. Subsequently, the Commission received amendments to the BSE's proposed BEACON rules. These amendments were noticed in Securities Exchange Act Release No. 14690, July 9, 1987, 52 FR 26612. On December 8, 1987, June 10, 1988, July 1, 1988, and August 10, 1988, the Commission received additional amendments to the proposed BEACON rules. These amendments were not separately noticed by the Commission; however, on August 25, 1988, the Commission approved BEACON for a six-month trial period. Securities Exchange Act Release No. 26029 (August 25, 1988), 53 FR 27584.

[2] Securities Exchange Act Release No. 26578, (March 8, 1989), 54 FR 9952.

[3] ITS is a communications system designed to facilitate trading among competing markets by providing each market with order routing capabilities based on current quotation information. Specifically, ITS links the participating markets (American Stock Exchange, BSE, Cincinnati Stock Exchange, Midwest Stock Exchange, New York Stock Exchange, Pacific Stock Exchange, Philadelphia Stock Exchange, and the National Association of Securities Dealers) and provides facilities and procedures for: (1) Display of composite quotation information from each participating market so that brokers are able to determine the best bid and offer available from any participating market for a multiply traded security; (2) efficient routing of orders and administrative messages between participating markets; and (3) participation, under certain conditions, by members of all participating markets in opening transactions in those markets. As of May 30, 1989, 1,961 stocks were traded over ITS.

[4] *See* discussion *infra* note 9.

[5] "BASE" is an acronym for Brokerage Accounting Systems Element.

[6] These include how orders are entered into the system, the types of orders that may be entered, how orders will be executed, how the execution price will be determined, and how the system may be used to route orders.

[7] The term agency order refers to orders executed on behalf of a member organization's client.

[8] A floor broker receiving such an order would bring the order to the trading crowd for execution.

[9] The BSE has informed the Commission that there are currently no size limits for orders routed on BEACON and that it has no plans to adopt such limits. Telephone conversation between George W. Mann, Jr., Senior Vice President and General Counsel, BSE, and Howard Kramer, Assistant Director, Division of Market Regulation, on June 30, 1988. Automatic execution limits for BEACON are discussed *infra* at note 12. Should BSE determine to implement size limits, it would have to submit those size limits to the Commission for review.

[10] The BEACON quotation, defined in section 5(c) of the proposed rule, is the primary market quotation price, except that, where bids and offers from other markets are displayed that are superior to the BEACON price, the BEACON order will be executed at that superior price up to the size of the quote displayed.

system received the order. Certain types of orders entered on BEACON shall always be manually executed.[11]

The circumstances under which orders entered on BEACON are eligible for automatic execution are set forth in Section 5 of the proposed rule.[12] The system automatically will execute all market and marketable limit orders in ITS issues up to 1,299 shares for Tier I stocks and 599 shares for Tier II stocks.[13] This section also permits specialists to provide guaranteed automatic execution of 2,500 shares on specific stocks.[14] Automatic execution guarantee levels for BEACON orders will be published in BEACON and in hard copy. Guarantee levels in excess of 2,500 shares may be made by arrangement between a specialist and a specific member organization. These guarantees will not be published in BEACON unless requested by the specialist.

Market orders that would be executed outside the primary market price range for the day will be "stopped" and will be executed at the BEACON quotation or better as subsequent trades occur on the consolidated tape. An order that has been "stopped" must be executed by the close of trading.

Discussion

The Commission has determined that it is appropriate to permanently approve the implementation and operation of the BEACON system. The proposed BEACON system is similar in many respects to automatic execution systems currently in operation on other regional stock exchanges such as the Midwest Stock Exchange's "MAX" system and the Pacific Stock Exchange's "SCOREX" system. These systems are designed to receive small orders electronically from member firms and route them to the appropriate specialist for automatic or manual execution. These systems provide the primary means of handling the vast majority of small orders executed on these regional exchanges.

On July 15, 1988, the Commission gave approval to the BSE to proceed with the initial stages of the implementation of BEACON [15] and on August 25, 1988, authorized the BSE to institute a six-month trial period during which the BSE was to gradually phase-in use of BEACON.[16] The Commission reviewed results of the operational tests on the system as the Exchange added stocks and connected more specialist posts and member firms to BEACON. In addition, the BSE submitted results of stress tests on the system to demonstrate that BEACON has the capacity to handle transaction and other volume levels that surpassed those encountered by the Exchange during the October 1987 market break without experiencing significant order queues or delays in execution.[17] The BSE stated that BEACON was easily able to handle the traffic from SIAC and had excess capacity of approximately 20–35%.[18]

The Commission has received and reviewed the preliminary test results on the implementation stages of BEACON. From the data provided by the Exchange and discussions with BSE officials, the Commission is satisfied with the results of the pilot period.

Approval of Proposed Rule Change

On the basis of the BSE's experience with BEACON in the trial period to date, the Commission has concluded that it is appropriate to grant the BSE approval of the BEACON system. Accordingly, the Commission has determined that the BSE may continue its implementation of BEACON up to full-scale operational levels, operating under the procedures outlined in the proposed BEACON rule, as amended. We note, however, that in order for the Commission to continue its oversight of the BEACON system, the BSE shall continue to provide it with the same monthly statistical information as it has provided during the pilot period.

In view of the above, the Commission concludes that proposed rule change is consistent with the requirements of the Act, particularly section 6(b)(5), in that it facilitates transactions in securities and removes impediments to the mechanism of a free and open market.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 10, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-16969 Filed 7-19-89; 8:45 am]

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[11] These include cross orders entered in the system; non-marketable limit orders; orders that are "stopped"; and orders entered prior to opening, which are executed at the primary market opening price.

[12] As noted previously, automatic execution guarantees under BEACON are available to agency orders only.

[13] Subparagraph (b) of section 5 provides that all ITS issues will be deemed Tier I stocks. Tier II stocks will be comprised of exceptions from Tier I. Those exceptions may be requested by specialists who must submit a statement to the BSE's Market Performance Committee that would set forth the specific reasons that would cause Tier I classification of the stock to be burdensome (*e.g.*, a high priced, lightly traded stock).

[14] The Exchange currently has an execution guarantee under Chapter II, Section 33 of the BSE Rules. Under this provision, BSE specialists guarantee execution on all agency orders from 100 to 1,299 shares in all issues traded through ITS registered to a BSE member specialist. For the 100 most actively traded stocks reported to the consolidated tape, BSE specialists must guarantee execution on all agency orders of up to 2,500 shares. Market orders filled under this guarantee must be filled on the basis of the Consolidated Quotation System ("CQS") best bid or offer or better.

[15] Securities Exchange Act Release No. 25918 (July 15, 1988), 53 FR 27584.

[16] Securities Exchange Act Release No. 26029 (August 25, 1988), 53 FR 33565.

[17] *See* letters from George W. Mann, Jr., Senior Vice President and General Counsel, BSE, to Howard Kramer, Assistant Director, Division of Market Regulation, dated August 17, 1988; to Richard G. Ketchum, Director, Division of Market Regulation, dated December 14, 1988; to Christine A. Sakach, Branch Chief, Division of Market Regulation, dated February 22, 1989 and June 9, 1989.

The tests were conducted by SIAC and designed to test the performance of vendors and other market participants such as the BSE to receive output from the consolidated transaction and quotation lines for equities and options.

[18] *See* letter from George W. Mann, Jr., Senior Vice President and General Counsel, BSE, to Christine A. Sakach, Branch Chief, Division of Market Regulation, dated February 22, 1989.

[Release No. 34-27016; File No. SR-MSRB-89-4]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to Professional Qualifications

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 15, 1989, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board hereby submits revised examination specifications and a revised study outline for the Municipal Securities Representative Qualification Examination (Series 52). The Board requests that the Commission delay the effectiveness of the proposed rule change until January 1, 1990, in order to permit the Series 52 question bank to be updated to reflect the revised test specifications and study outline and to provide time for information concerning the revised study outline to be circulated to the industry.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

It is the Board's responsibility under section 15B(b)(2)(A) of the Act to propose and adopt rules that:

> provide that no municipal securities broker or municipal securities dealer shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any municipal security unless * * * such municipal securities broker or municipal securities dealer and every natural person associated with such municipal securities broker or municipal securities dealer meets such standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors.

Section 15B(b)(2)(A) of the Act also provides that the Board may appropriately classify municipal securities brokers and municipal securities dealers and their associated personnel and require persons in any such class to pass tests prescribed by the Board.

Specific subjects and questions have been updated from time to time in the Series 52 examination to reflect changes in the municipal securities industry or in Board rules. At this time, however, the Board's Professional Qualification Advisory Committee ("PQAC") [1] determined that a comprehensive review of the current study outline should be undertaken, both to ensure that the subject matter reflected current products and practices, and to realign some of the topics for clarity. The Series 52 examination contains questions not only on municipal securities and the municipal markets but also on U.S. Government, federal agency and money market instruments, government economic policy and behavior of interest rates, and applicable federal securities laws and regulations.

To achieve the PQAC's objective of the study outline reflecting current products and practices and ensuring clarity, some topics have been revised (*e.g.*, the section on "Revenue Bonds" was expanded and reformatted to reflect the increasing use of these bonds in the market). The most significant revision made to the current study outline concerns the topic of customer suitability. The current examination tests suitability indirectly by testing the components of suitability (*e.g.*, product knowledge, tax considerations, and Board rules). The revised study outline contains the topic "Customer Suitability Considerations" as a direct means to test suitability. This will be achieved by requiring the candidates to answer "application" questions by making suitability determinations with respect to a given customer's financial profile, investment objectives, tax status and similar information.[2]

The examination specifications specify how the questions asked on each examination are to be allocated among the various topics. In general, the PQAC concluded that the allocation of questions in the current examination specifications are appropriate, although some changes were made to increase questions on some topics and to decrease the number in other topic areas. The revised queston allocation to Part Two (U.S. Government, Federal Agencies and Other Financial Instruments) reflects a realignment of the subject matter. The revised examination specifications have been filed under a separate letter requesting confidential treatment to Jonathan G. Katz, Secretary, SEC.

The revised examination will remain a three-hour 100 question examination administered by the National Association of Securities Dealers, Inc. using Control Data Corporation's PLATO computer system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposed of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board neither solicited nor received comments on the proposed rule change.

III. Date of effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

[1] The PQAC is composed of the Representative Examination Subcommittee and the Principal Examination Subcommittee. The Subcommittees are composed of individuals with extensive experience in the securities industry. The committee members are employed by securities firms and bank dealers and come from diverse geographic locations.

[2] As discussed in section IV below, copies of the proposed revised Study Outline are available for inspection and copying in the Public Reference Room at the Commission's home office in Washington, DC.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Jonathan G. Katz,

Secretary.

Dated: July 10, 1989.

[FR Doc. 89-16970 Filed 7-19-89; 8:45 am]

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[Release No. 34-27035; SR-NYSE-88-19]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Accelerated Approval of Amendments No. 1 and No. 2 of Proposed Rule Change Relating to the Shareholder Approval Policy.

I. Introduction and Background

The New York Stock Exchange, Inc. ("NYSE or "Exchange") submitted on July 13, 1988,[1] copies of a proposed rule change, and on December 8, 1988 and June 23, 1989, copies of amendments to that proposal,[2] pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")[3] and Rule 19b-4 thereunder,[4] to modify the Exchange's shareholder approval policy for domestic companies, as set forth in § 312.00 of the NYSE Listed Company Manual. The proposal will continue to require shareholder approval as a prerequisite to listing securities to be issued in certain circumstances as set forth in the policy, but will revise the circumstances triggering the shareholder vote requirement, and provide definitions and exceptions to the policy.

The NYSE's proposal to amend its shareholder approval policy was the result of the Exchange's review, begun in 1984, of its voting rights policies. In June 1984, the Exchange formed the Subcommittee on Shareholder Participation and Qualitative Listing Standards ("Subcommittee") to consider the continued relevance and appropriateness of the Exchange's voting rights policies which included the so-called one share, one vote[5] and shareholder approval policies.[6]

Currently, Paragraph 312 of the NYSE Listed Company Manual requires prior shareholder approval as a pre-requisite to the listing of securities issued in connection with certain transactions. These transaction relate primarily to issuances of common stock or securities convertible into common stock[7] in connection with: (a) Options granted to or special remuneration plans for directors, officers and key employees; (b) actions resulting in a change of control; (c) transactions involving the acquisition of property from directors, officers and substantial security holders; (d) transactions involving the issuance of 18½% or more of the outstanding common shares for acquisitions of a business, company or other assets or property;[8] and (e) transactions where the present or potential issuance of common stock and any other consideration has a combined fair value of 18½% or more of the market value of the outstanding common shares.[9]

Pursuant to its review, the Subcommittee noted that certain provisions of the current shareholder approval policy have proven difficult for the Exchange staff to apply. In addition, the Exchange noted that the Subcommittee was unable to find any conceptual basis for selecting 18½% as the standard, rather than some other figure, with respect to the issuance of stock in acquisitions.[10]

Pursuant to its review, the Subcommittee submitted its initial recommendations to the NYSE's Legal Advisory Committee ("LAC"). After review by the LAC, the Subcommittee's recommendations were returned for further modification and revision. Subsequently, the Subcommittee's final recommended modifications to the Exchange's current shareholder approval policy received the concurrence of the LAC.

The Subcommittee recommended that the Exchange retain its present shareholder approval policy with certain modifications which, according to the NYSE, were designed to simplify the Exchange's administration of the policy and conform it to more realistic standards.[11]

II. Description of the Proposal

The NYSE proposes to amend its shareholder approval policy set forth in § 312.00 of its Listed Company Manual in several ways. First, the rule proposal would identify those situations where a shareholder vote is needed for the issuance of securities in connection with the acquisition of property from directors, officers or substantial security holders or any company or party in which such persons have a direct or indirect interest. Under the proposal, shareholder approval would not be required for the issuance of securities in connection with the acquisition of property from directors, officers or shareholders who hold less than 5% of the outstanding shares of the company or less than 5% of the company's voting power, or to an acquisition of an entity or property in which directors, officers and 5% shareholders of the listed company had interests aggregating less than 5%. Further, shareholder approval would not be required if the issuances of securities in connection with the acquisition of property from an officer, director or substantial security holder represents less than 1% of the number of shares or voting power outstanding prior to the issuance.

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[3] 17 CFR 200.30-3(a)(12) (1986).

[1] This filing was published for comment in Securities Exchange Act Release No. 25644 (July 26, 1988), 53 FR 28930 (August 1, 1988). The Commission received four written comments along with a written response by the NYSE to these comments as discussed below.

[2] The December 8, 1988 and June 23, 1989 Amendments (respectively, Amendment No. 1 and Amendment No. 2), which were approved by the Exchange's Board on July 6, 1989, were published for comment in Securities Exchange Act Release No. 26959 (June 23, 1989), 54 FR 27259 (June 28, 1989), the text of which are discussed below. *See* notes 12 and 13 *infra* and accompanying text. No comments were received on these amendments. The NYSE has also requested that the changes proposed in Amendment No. 2 be approved on an accelerated basis. *See* letter from Daniel P. Odell, Assistant Secretary, NYSE to Sharon Lawson, Special Counsel, Division of Market Regulation, dated July 11, 1989.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b-4 (1989).

[5] *See* Securities Exchange Act Release No. 25891 (July 7, 1988), 53 FR 26376 in which the Commission adopted Rule 19c-4 under the Act, an anti-disinfranchisement rule that applies to all national securities exchanges and associations.

[6] At that time, the Exchange declared a moratorium on compliance with its one share, one vote rule and its shareholder approval policy for the period necessary to complete a review of these rules. The NYSE believed that it would not be able to provide its listed companies any real guidance on how their proposed transactions would be viewed until the Exchange completed its review of its voting rights policies and modified such policies.

[7] This would not include issuances solely involving a public offering for cash.

[8] The term "acquisitions" has been interpreted by the NYSE to include, among other things, issuances of securities for cash.

[9] Both the American Stock Exchange, Inc. ("Amex") and the National Association of Securities Dealers ("NASD") have similar provisions. The Amex's shareholders' approval policy requires shareholder approval for, among other things, approval of applications to list additional shares issued in connection with an acquisition where the present or potential issuance could result in an increase in outstanding common shares of 20% or more. *See* Amex Company Guide Section 712. The Amex has filed a proposed rule change with the Commission to amend certain provisions of this policy. *See* SR-Amex-88-26. The NASD has a similar requirement, but applies a 25% threshold standard rather than 20% and additionally requires shareholder approval for actions resulting in a change in control of the issuer. *See* Part III, section 5(i)(1) of Schedule D of the NASD By-Laws.

[10] Several years ago, the standard with respect to issuances of stock in acquisitions was "approximately 20%." Overtime, the Exchange staff increasingly interpreted this standard as meaning 18½%, with the result that this figure became a fixed standard.

[11] As initially proposed, the modified policy also received concurrence for the Exchange's Listed Company Advisory Committee and American Society of Corporate Secretaries. On July 7, 1988, the Board of Directors of the Exchange approved the proposed policy modifications.

Second, the threshold amount for requiring shareholder approval for certain issuances of common stock in connection with acquisitions would be increased from the current 18½% standard to 20%. The Exchange originally proposed to raise this standard to 25%, but reduced it to 20% in Amendment No. 2 to the proposed rule change. The proposal also would amend the rule to apply to total voting power[12] in addition to the stock outstanding at the time of the issuance and to specifically exclude public offerings for cash. Accordingly, any such issuances of securities, other than a public offering for cash, would require shareholder approval if the securities issued represented 20% or more of the outstanding voting power or shares outstanding prior to the issuance.

Third, the proposal would eliminate the requirement for shareholder approval of transactions involving a combination of the issuance of common stock *and* any other consideration which has a fair value of 18½% or more of the market value of the outstanding common shares and the common share portion represents a market value in excess of 5% of the market value of the common shares.

Fourth, the policy requires shareholder approval prior to listing securities issued pursuant to options and special renumeration plans[13] for directors, officers and key employees. The proposal would delete key employees from this provision.

Finally, the Exchange proposes to grant financial distress exceptions to § 312.03(c), which is the provision requiring shareholder approval for any issuance of common stock, other than a public offering for cash, where the issuance is equal to 20% or more of the outstanding common stock or voting power. Under the proposal the financial distress exception would be available if: (a) Delaying the issuance in order to obtain shareholder approval would jeopardize the company's existence; (b) the company's audit committee approved the waiver; and (c) appropriate notice of such action is sent to all shareholders of the company at least 10 days prior to the issuance.

The proposed rule change as originally filed with the Commission, would "grandfather" those companies which had issued shares in violation of the current policy during the period in which the Exchange's voting rights policies were under review by the Committee. In Amendment No. 2 the NYSE has proposed to extend this grandfather period through the filing of this Amendment. The Exchange stated that the decision to grandfather companies in this manner is consistent with the position taken by the Exchange regarding those companies which had violated the Exchange's one share, one vote policy while that policy was under review by the Committee.

The NYSE also had proposed that the requirement of a shareholder vote for the issuance of securities resulting in a change in control be deleted. In Amendment No. 2 to the proposed rule change, the Exchange reinstated this requirement.

III. Summary of Comments

Four comment letters were received regarding the NYSE proposal.[14] Two of the commentators focused their discussion solely on a proposed amendment to subsection (1) of § 312.00 which would have required shareholder approval of options and special remuneration plans for directors or officer prior to the adoption of the plan. These commentators expressed concerns that the proposed rule would effectively change the long established practice under the existing rule of permitting NYSE listed companies to adopt such a plan prior to shareholder approval, as long as no securities are actually issued under the plan until after shareholder approval is received.[15] In response to this comment, the NYSE amended its proposed rule change to clarify that approval need be secured only prior to the issuance of securites under the plan.

Sullivan & Cromwell generally supported the NYSE's proposed changes to § 312.00, but made two suggestions regarding language additions to the propsed rule. First, it was suggested that the word "related" be added to the phrase "any transaction or series of transactions" as that phrase is used in § 312.00(c) as proposed. Sullivan & Cromwell believed that this would eliminate some of the subjectivity of determining what constitutes a series of transactions.[16] The NYSE incorporated this recommendation in Amendment No. 1. Second, Sullivan & Cromwell addressed the provision which states that shareholder approval may not be required for issuances to a person not previously employed by the company if the securities are issued as an inducement essential to entering into an employment contract. They suggested that the proposal more specifically indicate that shareholder approval "is not" required rather than "may not be" required in such a case, and that the requirement that the issuances of securities must be an "essential" inducement to employment be eliminated from the policy. Sullivan & Cromwell believed that as proposed this provision would be subject to considerable subjective interpretation which could be eliminated by amending the proposed language as described above.[17] In response to this comment, the Exchange stated that the text relating to the granting of options as an inducement to employment reflects the Exchange's current and consistent practice, as set forth in § 703.09(A) of the NYSE Listed Company Manual. Accordingly, the Exchange did not amend this section as suggested by the commentator.

Finally, one commentator recommended four changes to the proposed rule change. Mr. Ball suggested that the proposed rule provide for the following: (1) A 1% exception from § 312.03(a) for granting of options to meet a "raid" on a company's personnel or otherwise retain personnel; (2) that the 20% threshold test (originally proposed as 25%) be measured on a fully-diluted common stock basis to reflect more accurately the impact on shareholders of such issuances; (3) that stock dividends and stock splits should be excluded from § 312.03(c) regarding the issuance of 20% (25%) or more of outstanding shares or voting power in any transactions or series of transactions; and (4) that the Paragraph 312.05 defintion of the minimum vote

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[12] The Exchange proposes to define "voting power outstanding" as the aggregate number of votes which may be cast by holders of those securities outstanding which entitles the holders thereof to vote generally on all matters submitted to the company's security holders for a vote. *See* NYSE Amendment No. 2, at 3.

[13] *See* NYSE Amendment No. 1, and text accompanying note 15, *infra*. As initially proposed this provision required shareholder approval prior to the adoption of such a plan.

[14] All of these comment letters were submitted to the Commission in response to the Exchange's initial proposal. No comments were received regarding NYSE Amendment No. 1 or NYSE Amendment No. 2. *See* letters from Joseph E. Bachelder, Esq. ("Bachelder") to Jonathan G. Katz, Secretary, SEC, dated September 27, 1988; Philip L. Ball, Esq. ("Ball") to Jonathan G. Katz, Secretary, SEC, dated August 19, 1988; Frank M. Macoice, Jr., First Vice President and Assistant General Counsel, Merrill Lynch ("Merrill Lynch") to Jonathan G. Katz, Secretary, SEC dated August 30, 1988; and Sullivan & Cromwell ("Sullivan & Cromwell" to Jonathan G. Katz, Secretary, SEC, dated August 22, 1988. The NYSE formally responded to these comment letters. *See* Letter from David Domijan, Senior Vice President, New Listings & Corporate Liaison, NYSE to Howard L. Kramer, Esq., Assistant Director, SEC, dated November 28, 1988 ("NYSE Response").

[15] *See* Bachelder letter; Merrill Lynch letter.

[16] *See* Sullivan & Cromwell.

[17] *SEe* NYSE response, *supra* note 14.

necessary to constitute shareholder approval should distinguish between votes actually present and cast at an anual meeting versus the use of consents in lieu of convening an annual meeting and that abstentions should not affect the minimum vote required for quorum purposes.[18]

IV. Discussion

The Commission carefully has reviewed the NYSE's filing, as amended, as well as the comment letters submitted with respect to the proposal, to determine whether the proposed modifications to § 312.00 are consistent with the Act. The Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act which, among other things, requires Exchange rules to "remove impediments to and perfect the mechanism of a free and open market and in general to protect investors and the public interest."

The NYSE traditionally has required certain minimum standards of corporate governance for its listed companies. The NYSE, in adopting the proposed rule change, has reiterated its belief that approval of certain significant corporate transactions is an important aspect of its corporate governance listing standards. It has proposed the changes contained in SR-NYSE-88-19 in order to improve the application of the policy. For reasons discussed below, the Commission believes that the proposed rule change achieves this objective without vitiating the underlying purpose of the Shareholder Approval Policy.

First, the Commission notes that several of the proposed modifications will enhance the objectivity of the application of the policy to specific transactions. By deleting the term "key employee" from § 312.03(a) the Exchange will eliminate the uncertainty of determining who properly would be characterized as such an employee for purposes of this provision.[19] Moreover, the proposed modification to § 312.03(b) will establish an objective standard in determining who is a "substantial security holder" and whether an officer, director or substantial security holder has a substantial interest in property for purposes of requiring shareholder approval for an acquisition of property from such a person.

Second, the Commission believes that the NYSE's determination not to require shareholder approval for insignificant or deminimus acquisitions, *i.e.*, involving issuances of less than 1% of the outstanding common stock or voting power, from officers, directors and substantial security holders is reasonable. This change will enable companies to enter into such limited transactions without the burden of allowing for the time to call a shareholders meeting and for solicitation of proxies. The Commission notes that it is reasonable for the NYSE to have determined that the burden upon issuers in such a situation may outweigh the benefits to be gained by requiring shareholder participation in such minor transactions. Similarly, by expressly amending the rule to take into account the "voting power outstanding" in addition to the number of shares outstanding when determining when a shareholder vote is needed for various issuances[20] the rule will focus more specifically on the actual effect of an issuance on shareholders. This is particularly true for companies with dual class capital structures, where the classes have different voting rights.

Third, the Commission believes that the exemption from shareholder approval for financially troubled companies is an appropriate and limited adjustment to the application of the policy. We note that the exemption is only available where the time necessary to obtain approval would jeopardize the continued existence of the company, and where the company's independent audit committee[21] has approved the waiver.

Fourth, the Commission believes that retention of the policy's requirement for shareholder approval of actions resulting in a change of control,[22] will provide the Exchange with the flexibility and discretion necessary in ascertaining whether shareholder approval is appropriate with regard to a particular issuance of less than 20% of the common stock or voting power of the issuer. In this regard, the Commission notes that depending on the facts of the particular transaction, such an issuance may be sufficient in some situations to accomplish such a change in control.[23] Although the Exchange originally intended the proposed rule change to remove subjectivety from its application of the policy, the Exchange did not intend to alter the Policy's purpose of ensuring shareholder ratification of significant issuances of securities. Clearly, an issuance resulting in a change of control is significant. Accordingly, its retention is important to the effectiveness of the policy, although it is less "objective" than the other provisions of the Policy as amended.

Fifth, the Commission recognizes that the proposed rule will permit some transactions without shareholder approval that would not be permitted by the current policy as a result of increasing the 18½% threshold standard to 20%, and eliminating the requirement for shareholder approval of tranactions involving the issuance of common stock in combination with any other consideration which has a specific fair value of 18½% or more of the market value of the outstanding stock. The Commission, however, believes that the increase of 18½% to 20% represents a *de minimis* change to this provision. Moreover, as noted above, the policy's change of control provision will afford the Exchange the flexibility to analyze the facts and circumstances of a particular transaction to determine if shareholder approval is appropriate as a result of a change of control, even though the tranaction may fall below the 20% standard. The deletion of the fair value provision removes the difficult and subjective determination as to the value of the "other consideration." In addition, this deletion properly limits NYSE shareholder vote requirements to situations where the issuance of securities is central to the transaction in question.

As noted above, the NYSE proposes to provide grandfathered status for all companies which had issued shares in violation of the current shareholder approval policy during the period that the Exchange conducted its review of this policy, and extended through the filing of Amendment No. 2. While the Commission is concerned about those shareholders who were deprived of their right, pursuant to § 312.00, to vote on certain important corporate decisions, the Commission believes that it is not inconsistent with the Act to grandfather companies as proposed by the NYSE. In arriving at this decision, the Commission has taken into account the fact that these companies entered into otherwise violative transactions at a time when the Exchange had declared a moratorium on the application and enforcement of its shareholder approval policy.[24] The Commission is sensitive to the fact that the Exchange was not able to provide these companies with effective guidance on how their proposed transactions would be viewed once the Exchange completed its review of its shareholder approval policy and modified that policy.[25]

The Commission finds good cause for approving this proposed rule change prior to the thirtieth day after the date of publication of Amendments No. 1 and No. 2 in the **Federal Register** in that the proposed modifications to the Exchange's shareholder approval policy previously were noticed[26] and the subsequent amendments to the initial filing were either nonsubstantive clarifying changes or reflect changes that make the shareholder approval policy closer in substance to the standards set forth in the existing policy rather than make additional changes to the proposed modified policy. Moreover, the Commission has not received any comments regarding the proposed amendments.

Based on the above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2)[27] of the Act, that the above mentioned proposed rule change be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Jonathan G. Katz,

Secretary.

Dated: July 14, 1989.

[FR Doc. 89-16971 Filed 7-19-89; 8:45 am]

BILLING CODE 8010-01-M

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[18] The NYSE did not believe that any changes recommended by Mr. Ball were appropriate. With respect to Mr. Ball's first comment, the NYSE stated that during the course of the Committee's review of the Exchange's shareholder approval policy, the only de minimis exception deemed appropriate related to transactions with officers and directors as set forth in proposed 312.03(b). In regard to the second issue raised, the NYSE stated that there is no reason to change the manner in which it traditionally has applied the outstanding common share threshold. In response to Mr. Ball's third point, the NYSE noted that the policy does notapply to stock dividends and stock splits because they are distributions rather than transactions. Finally, the NYSE responded to Mr. Ball's last comment by stating that the appropriate standard for determining the minimum vote necessary to constitute approval is, and should remain, based on votes cast.

[19] *See* text accompany note 13, *supra*.

[20] For example, the policy would now require shareholder approval for transactions involving issuances of common stock representing 20% or more of the outstanding voting power of the common stock prior to the issuance in addition to issuances of 20% or more of the number of shares of common stock outstanding prior to the issuance.

[21] The NYSE requires companies to establish and maintain an audit committee comprised solely of directors independent of management and free from any relationship that, in the opinion of the Board of Directors, would interfere with the exercise of independent judgment as a Committee member. *See* Paragraph 303.00 of the NYSE Listed Company Manual.

[22] As intially proposed, the rule change eliminated the change of control provision from the policy. The Exchange, however, determined to retain this provision.

[23] We note that in proposing to eliminate the change of control standard, the NYSE stated that there is a widely held belief that the ownership of 20% or more of the outstanding common shares or voting power in a widely held company in most instances constitutes control. Accordingly, the NYSE had concluded that the specific threshold standard in the rule for shareholder approval should encompass most change of control situations. The decision to retain the change of control standard recognizes, however, that in some situations issuances of less than 20% (25%, as originally proposed) may also constitute a change of control that should require shareholder approval. Accordingly, the Commission believes it is appropriate for the NYSE to retain its change of control standard, because the specific threshold percentage may not, as NYSE originally envisioned, encompass all change of control situations.

[24] The reasons for the moratorium are discussed in Securities Exchange Act Release No. 25891 (July 7, 1988), 53 FR 26376. The Commission views the moratorium as a unique circumstance without any precedential value for future Exchange actions regarding enforcement of its rules.

[25] As noted above, the Commission previously has grandfathered companies that issued stock in violation of the NYSE's one share, one vote policy during its moratorium. *See* Section II and note 24, *supra*. The Commission can find no justification for treating those companies that violated the NYSE shareholder approval policy during this moratorium any differently.

[26] *See* notice of proposed rule change, *supra* note 1. We note that the notice on the original proposal was issued more than 30 days ago.

[27] 15 U.S.C. 78S(b)(2) (1982).

[28] 15 CFR 200.30-3(a)(12) (1988).

[Release No. 34-27032; File No. SR-PHLX-89-42]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Floor Employee Termination Notices

Pursuant to section 19(b)(1), 15 U.S.C. 78s(b)(1), of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, 17 CFR 240.19b-4, notice is hereby given that on June 30, 1989, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to Commission Rule 19b-4, the Exchange hereby proposes to adopt a Floor Procedure Advice in accordance with Phlx Rule 970 governing the filing of Floor Employee Termination Notices with a representative of the Exchange. The following constitutes all new text:

Filing Floor Employee Termination Notices with the Exchange

Promptly following the termination of any employee of a member for whom the Exchange has issued an Identification Card and Trading Badge, the member firm employer must submit to the Exchange's Director of Regulatory Services a completed "Termination Notice" and should submit the Identification Card and Trading Badge issued in the person's name.

1st Occurence: Official Warning.

2nd Occurence: $100.

3rd Occurence: $200.

4th and thereafter: Sanctions are discretionary with Business Conduct Committee.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to provide an effective means for the Exchange to implement a card key access/security system to control admission to its trading floors. The proposed Floor Procedure Advice will also assist the Exchange in keeping track of active floor members and clerical employees while controlling unauthorized access to its trading floors by removing access codes for terminated floor personnel from the security system.

The proposed rule change is based on section 6(b)(5) of the Act in that it is designed to further promote the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fith Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to the file number in the caption above and should be submitted by August 10, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: July 13, 1989.

[FR Doc. 89-16072 Filed 7-19-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27036; File No. SR-NASD-89-24]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Definition of Direct Participation Programs

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 17, 1989, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would exclude from the definition of "direct participation programs" in Part II, section 2(d)(ii) of Schedule C to the NASD By-Laws those programs that are quoted on the NASDAQ System or listed on a registered national securities exchange or for which an application for quotation or listing has been made.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD has become concerned about the scope of the present definition of direct participation program ("DPP") in Part II, section 2(d)(ii) of Schedule C to the By-Laws with respect to the types of securities in which Direct Participation Programs—Limited Principals and Limited Representatives are qualified to transact business. These categories of registration originally were established for those member firms and their associated persons who participated in the distribution of securities, usually interests in limited partnerships, that provide for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution. One of the distinguishing characteristics of the DPP vehicle had been its illiquidity relative to other investments and, for this reason, the DPP limited representative and principal qualifications examinations have not included questions on the distribution of liquid securities, secondary trading in the securities markets, and related market regulation.

In recent years, freely tradeable limited partnerships, such as master limited partnerships, have emerged as a significant portion of the DPP segment of the securities industry. Technically, freely tradeable partnership securities are encompassed by the current definition of a direct participation program in section 2(d)(ii) to Part II of Schedule C. The NASD believes that, in cases where limited partnership securities are or will be quoted in the NASDAQ System or listed on a registered national securities exchange, the freely tradeable feature of the limited partnership interests requires a substantial body of additional knowledge, including the operation of secondary securities markets, customer account and margin requirements, and trading-related regulation, which is not covered by the current DPP qualifications examinations. Therefore, the NASD believes that such freely tradeable partnership interests should not be included in the definition of the direct participation program in Schedule C, as such securities more closely resemble other equity products that are publicly traded in the secondary securities markets. As a result of this proposed rule change, persons who are currently qualified only as Direct Participation Programs—Limited Principals and Limited Representatives, will be required to take an additional examination in order to sell those freely tradeable limited partnership securities that are being excluded from the definition of direct participation programs.

The proposed rule change is consistent with the provisions of section 15A(g)(3) of the Act, which section provides that the NASD may prescribe standards of training, experience, and competence for persons seeking to associate with a registered broker-dealer.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed amendment imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

As orginally published in Notice to Members 89-24, the proposed amendment would have excluded from the definition of "direct participation program" both programs that *are* quoted on the NASDAQ System or listed on a registered national securities exchange and those that "*will be* quoted * * * or *will be* listed * * * within a reasonable period following the formation of the program." (emphasis added) The NASD received five (5) comment letters in response to this Notice. Three of the five commentators objected to the exclusion of programs that "*will be*" quoted or listed within a reasonable time following formation. These commentators expressed concern that the "reasonable period" language is too vague and could be construed to prevent the participation of a direct participation programs representative in any program that might at some future time become quoted or listed. In response to these commentators, the NASD has modified the proposed amendment to exclude only those programs that are quoted or listed or for which an application for quotation or listing has been made.

Another commentator noted that individuals who are registered as corporate securities representatives would continue to be permitted to sell freely-tradeable direct participation programs. While the corporate sucurities examination addresses the trading characteristics of these securities, it does not address the structure and operation of the programs themselves. In response to this comment, the NASD intends to incorporate material pertaining to the structure and operation of the programs into the corporate securities examination.

The fifth commentator objected to the exclusion of limited representatives and principals from secondary trading in direct participation programs.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commissin and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by August 10, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: July 14, 1989.

[FR Doc. 89-17052 Filed 7-19-89; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; (Dillard Department Stores, Inc., Class A Common Stock, No Par Value) File No. 1-6140)

July 11, 1989.

Dillard Department Stores, Inc. ("Company"), has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange ("AMEX"). The Company's Common Stock is also listed on the New York Stock Exchange, Inc. ("NYSE")

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

In making the decision to withdraw its Class A Common Stock from listing on the AMEX, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its Class A Common Stock on the NYSE and AMEX. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its Class A Common Stock.

Any interested person may, on or before August 1, 1989, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-16073 Filed 7-19-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Delegation of Authority No. 179; Public Notice 118]

Under Secretary of State for Management; Delegation of Authority

By virtue of the authority vested in me as Acting Secretary of State, including section 4 of the Act of May 26, 1949 (22 U.S.C. 2658), I hereby delegate to the Under Secretary of State for Management the functions vested in the Secretary of State under section 9 of the U.N. Participation Act of 1945 (122 U.S.C. 298e-1) as amended by section 304(b) of Pub. L. 100-459 (102 Stat. 2207).

Notwithstanding any provisions of this delegation of authority, the Secretary of State may at any one time exercise the functions herein delegated.

This delegation of authority supersedes any prior delegation on this subject to the extent such delegation may be inconsistent herewith.

Date: July 8, 1989.

Lawrence S. Eagleburger,

Acting Secretary of State.

[FR Doc. 89-17006 Filed 7-19-89; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF TRANSPORTATION

Announcement of Public Forums on Intercity Freight Transportation and International Transportation Issues; Development of a National Transportation Policy

AGENCY: Office of the Secretary, DOT.

ACTION: Public forums announcement.

SUMMARY: This notice announces a series of eight public forums on intercity freight and international transportation issues to be held in various locations around the country. These meetings are a key component of the information gathering process leading to development of a national transportation policy. All interested parties, whether representing an organization of themselves, are invited to participate in these public forums. Oral statements will be limited to 5 to 10 minutes per individuals dependent upon the numbers that appear to testify; written statements or comments will be accepted. Notification of your intent to participate should be received by the Chairman of the Intercity Freight Transportation Cluster Group and International Cluster Group as soon as possible.

DATES: Public forums on intercity freight transportation issues are scheduled from 9:00 a.m. to 4:00 p.m. on the following dates:

Intercity Freight

- July 26, 1989—Baltimore, Maryland.
- August 1, 1989—Denver, Colorado.
- Autust 2, 1989—Los Angeles, California.
- August 3, 1989—Cleveland, Ohio.
- August 10, 1989—New Orleans, Louisiana.

International

- July 27, 1989—Baltimore, Maryland.
- August 3, 1989—Los Angeles, California.
- August 11, 1989—New Orleans, Louisiana.

ADDRESSES: The public forums will be held in the following locations:

- World Trade Center, Constellation Room, 401 E. Pratt Street, Baltimore, Maryland.
- FHWA Regional Headquarters, 3rd Floor Conference Room, 955 Zang Street, Lakewood, Colorado.
- Viscount Hotel, California Ballroom, 9750 Airport Blvd., Los Angeles, California.
- Marine Safety Office, Conference Room, 1055 East 9th Street, Cleveland, Ohio.
- Sheraton New Orleans, Pontchatrain Room, 500 Canal Street, New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Those seeking further information or wishing to participate in a public forum should contact:

Mr. William J. Watt, Chairman, Intercity Freight Transportation Cluster Group, Room 800A, RRP 1, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-0173.

Mr. Arnold L. Levine, Chairman, International Transportation Cluster Group, Room 10300, P 20, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-6438.

SUPPLEMENTARY INFORMATION: A top priority of the Department of Transportation during the remainder of 1989 will be to develop a comprehensive national transportation policy and accompanying implementation strategies which reflect the role of transportation in a changing national and international environment. Early next year, the Secretary of Transportation will issue a National Transportation Policy Statement that will set forth the policy guidelines and strategies for meeting the Nation's transportation needs over the next decade and into the 21st Century.

In order to stimulate a discussion of issues, problems and solutions from a multimodal prospective, development of the National Transportation Policy will be organized largely by transportation market needs, with senior Departmental staff conducting analyses based on information and opinions from a variety of sources. The transportation market "clusters" to be examined will include:

- Urban/surburban transportation systems and services.
- Rural America transportation systems and services.
- Intercity freight: domestic transportation systems and services.
- Intercity passenger: domestic transportation systems and services.
- International transportation systems and services, and
- Innovation and human factors in transportation.

Concurrent with these market segment analyses, a series of seminars will be held to examine cross-cutting issues having broad implications for the development of a national transportation policy. Preliminary plans call for seminars addressing special needs of the transportation disadvantaged, transportation and energy, national security transportation needs, environmental considerations in achieving national transportation goals, and transportation's role in economic growth.

A key component of this policy development process will be to reach the transportation users, the transportation industry, interest groups (including government agencies), transportation employees, and the Congress for their views on issues, problems, and recommended solutions. In addition to public forums, this outreach effort will involve solicitation of written comments from the public (see **Federal Register** Notice * published July 3, 1989), meeting with key transportation and other organizations, site visits, and other events to obtain the views of concerned parties and individuals and to build a consensus for a national policy.

William J. Watt,

Chairman, Intercity Freight Transportation Cluster.

Issued at Washington, DC.

Date: July 14, 1989.

[FR Doc. 89-11654 Filed 7-14-89; 3:45 pm]

BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement; Guilford County, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Guilford County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Robert L. Lee, District Engineer, Federal Highway Administration, P.O. Box 26806, Raleigh, North Carolina 27611, Telephone (919) 790-2856.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare an Environmental Impact Statement (EIS) on a proposed Greensboro Road/High Point Road (U.S. 29A/70A) Improvement and/or Jamestown Bypass. The proposed action would be a multi-lane, at-grade facility, with partial access control, potentially on new location. The proposed project would begin just west of the Greensboro Road (U.S. 29A/70A)/proposed U.S. 311 interchange in the City of High Point, possibly bypassing the Town of Jamestown to the south, continuing northeast to Hilltop Road within the City of Greensboro corporate limits for a distance of about 8 miles. The proposed facility can provide a bypass for the Town of Jamestown while also relieving congestion for the existing High Point-Jamestown-Greensboro corridor travel.

Alternatives under consideration include: (1) The "no-build", (2) improve existing facilities, (3) construction an at-grade, partial control of access, multi-lane highway on new location. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Public meetings and meetings with local officials and neighborhood groups will be held in the study area. The first public meeting will be held in August, 1989. A public hearing will also be held. Public notice will be given on the time and place of the public meetings and hearings. The draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Robert L. Lee,

District Engineer, Raleigh, North Carolina.

[FR Doc. 89-17007 Filed 7-19-89; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement: Flathead County, Montana

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway in Flathead County, Montana.

FOR FURTHER INFORMATION CONTACT: Dale Paulson, Environmental and Project Development Engineer, Federal Highway Administration, 301 South Park Street, Drawer 10056, Helena, Montana 59626, Telephone: (406) 449-5310; or Mr. Steve Kologi, Chief, Preconstruction Section, Montana Department of Highways, 2701 Prospect Street, Helena, Montana 59620, Telephone (406) 444-6242.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Montana Department of Highways will prepare an environmental impact statement (EIS) on a proposal to improve U.S. Route 2 (U.S. 2) in Flathead County, Montana. The proposed improvement would involve the reconstruction of the existing U.S. 2 from the junction of Federal Aid Secondary Route 206 (FAS 206), east of Columbia Falls to the west edge of Hungry Horse, a distance of 4.4 miles.

Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand. Also, included in this proposal is the widening or replacement of the existing bridge over the South Fork of the Flathead River, at the east end of the proposed project, and the reconstruction of the U.S. 2/FAS 206 intersection.

Alternatives under consideration include (1) taking no action; (2) widening the existing two-lane highway to four lanes; and (3) replacing the existing facility with a "special design" two-lane highway. Incorporated into and studies with the various build alternatives will be design variations of roadway width, grade, and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and Local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of formal scoping meetings will be held in the Columbia Falls area between August and October, 1989. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comments prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: July 14, 1989.

D.C. Lewis,

Assistant Division Administrator, Montana Division, Helena.

[FR Doc. 89-17046 Filed 7-19-89; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Grant Availability to the States for Projects Implementing School Bus Safety

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of a grant program.

SUMMARY: NHTSA intends to make funds available during fiscal year 1990 to assist the States in implementing school bus safety measures. Funding will be set aside from the "Section 402" program, and each State will be eligible for a proportionate share of that funding. To participate in this grant program, a State must submit an application to NHTSA which proposes to expend the funds on one or more of the measures designated by NHTSA to be "effective" or "most effective" in improving school bus safety. This notice solicits applications from the States that are interested in developing and implementing projects under this program.

DATES: Applications must be received by November 1, 1989.

ADDRESSES: A State must submit its application to the NHTSA Regional Administrator serving the Region in which the submitting State is located. All applications submitted should be labeled "School Bus Safety Implementation Project." Interested States are advised that no separate application package exists beyond the contents of this announcement.

FOR FURTHER INFORMATION CONTACT: States should direct all questions concerning the grant program and applications to the NHTSA Regional Administrator having responsibilities for the applicant State. More general inquiries on school bus safety may be directed to Ron Engle, Traffic Safety Programs (NTS-23), National Highway

* 54 FR 27970

BEST COPY AVAILABLE

Traffic Safety Administration, Room 5125, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-2717.

SUPPLEMENTARY INFORMATION:

Background

Section 204 of the Highway Safety Act of 1987 (Pub. L. 100-17, Title II) authorized the National Academy of Sciences (NAS) to conduct a comprehensive study on school bus safety. The NAS issued its report, entitled "Improving School Bus Safety" (Special Report No. 222), in May 1989. This report confirmed the high degree of safety provided by America's school bus fleet, especially those buses built after several Federal safety standards took effect on April 1, 1977. The report also listed those safety measures most effective in protecting the safety of school children while boarding, leaving, and riding in school buses.

As required by the Act, NHTSA has reviewed the NAS study and has recently published a companion notice in the **Federal Register** (54 FR 29629, July 13, 1989, Notice entitled "School Bus Safety Measures," issued July 7, 1989) listing the measures determined to be the most effective in protecting the safety of school-bused children. The list has been divided into two categories: (1) Those measures considered to be "most effective," and (2) those measures considered to be "effective."

Section 204 of the Act also permits NHTSA to set aside an amount not to exceed $5,000,000 out of monies available under 23 U.S.C. 402 in each of Fiscal Years 1990 and 1991 for the purpose of making grants to the States to implement school bus safety measures listed in the earlier notice. This notice announces the agency's intention to establish such a grant program available to all States in FY 1990. The set-aside will be reflected in the agency's apportionment of Section 402 funds and distribution of obligation limitations, which are normally issued at the start of the new fiscal year (October 1, 1989). In determining the exact amount of this set-aside, NHTSA will take into account the total level of Section 402 funding made available by Congress for FY 1990.

In taking this action, the agency does note its reservations about the establishment of such programs. As a general rule, NHTSA opposes efforts to "earmark" or "set-aside" funds from the Section 402 program. Those practices interfere with State decisions on how to use those funds most effectively (i.e., to obtain the greatest possible improvement in highway safety). While this set-aside program should help to improve school bus safety, it may divert funding away from other highway safety projects which have greater potential safety benefits.

But NHTSA also shares the special concerns of the Congress and others in enhancing safe transportation for school children, even though the current safety record is already quite positive. The recent public focus on school bus issues may also make this an opportune time for some added emphasis on these safety programs. Accordingly, in line with the 1987 Act and the recent NAS report, NHTSA does intend to implement this short-term set-aside program. However, the agency wishes to state that it will continue to oppose the enactment of new set-asides or earmarks in the Section 402 program.

Objectives

The NAS report made a number of recommendations on ways to enhance and improve the safety of school children while boarding, leaving and riding in school buses and walking to and from school. NHTSA has evaluated these safety measures and agrees that all have the potential for reducing the risk of death and injury to school children. The Agency's evaluation appears in the **Federal Register** Notice listing the most effective measures. In addition to those measures identified in the NAS report, NHTSA has included riding bicycles to and from school as a component of pedestrian safety education.

This grant program emphasizes those measures which NHTSA has determined to be the "most effective" in protecting the safety of school children, but retains sufficient flexibility for the particular needs of each State. All States are given an equal opportunity to participate in this grant program. Each State should determine which safety measures from the "most effective" or "effective" listings would best address its own problems.

The NAS recommended that school buses manufactured prior to the implementation of the April 1, 1977 school bus safety standards be replaced as rapidly as possible with those manufactured after that date. While NHTSA agrees that the replacement of these vehicles is a highly effective means of reducing risks to bus riders, it has been a longstanding policy of the Agency not to allow the use of Section 402 funds to purchase school buses. This policy is consistent with the "seed money" concept of the Highway Safety Program and with the Agency's policy directive on allowable costs, NHTSA Order 462-13A. Accordingly, funds under this grant program may not be used for bus purchases.

For the purpose of assisting the States in deciding which pupil transportation safety measures they wish to propose as grant projects, the measures have been organized into three basic categories. These are Safety Education, Program Administration and Safety Equipment Acquisition. NHTSA guidance and training materials for program development purposes are available through the Regional Administrators.

Most Effective Measures

The following is a listing of eligible "most effective" safety measure projects in each of these categories:

Safety Education

(1) School Bus Stop and Boarding Safety: Safety education initiatives that emphasize the importance of: (1) Safe walking practices to and from bus stops; (2) how and where to wait safely for the bus; and (3) how to board and leave the bus safely (including the emergency evacuation of buses).

(2) Pedestrian Safety Education: Programs that address safe walking and riding bicycles to and from school.

(3) School Bus Driver Training: Programs that monitor and upgrade bus driver skills and qualifications, including training and licensing requirements. Such programs should also address the responsibilities of the driver for the safety of children inside the bus and in loading zones.

Program Administration

(4) School Bus Routes and Stops: Programs that regularly evaluate school bus routes and stops to ensure that they represent the safest, most convenient and efficient transportation for children traveling to and from school, including programs to develop loading and unloading plans for all vehicles at school locations.

(5) Standees: Programs to evaluate current bus routing to eliminate standees from school buses.

(6) School Bus Stopping Procedures: Programs to review school bus stopping procedures and related traffic laws for effectiveness and consistency with other jurisdictions. Includes development of public information and enforcement campaigns to ensure that motorists fully understand these procedures and laws.

Safety Equipment Acquisition

(7) Stop Signal Arms: Programs to require installation of stop-signal arms on new buses and retrofit them on older buses, because of their ability to alert other motorists. Also, programs to require their use.

(8) Outside Crossview and Rearview Mirrors: Programs to require installation of additional cross-view mirrors on new buses, and to retrofit them on older buses, consistent with Federal Motor Vehicle Safety Standard III, which allow the driver to see the area immediately in front of and along both sides of the bus.

Effective Measures

The Agency also believes that certain measures are "effective" in protecting the safety of school children while riding in buses. If a State elects to use its grant funds for one or more of these measures, it will be expected to explain why the selection of an "effective" measure is more appropriate than the choice of any of the "most effective" measures. The following is a listing of eligible "effective" safety measure projects by basic category:

Safety Education

(1) Emergency Evacuation Drills: Programs that establish or improve emergency school bus evacuation drills within school districts or States.

Program Administration

(2) School Bus Crash Data: Programs that upgrade and standardize school bus crash data. These data would be used to analyze why, where and how children are being injured and to evaluate the effectiveness of school bus safety programs and devices.

Safety Equipment Acquisition

(3) Reflective Markings: Programs that involve the installation of reflective materials to make buses more visible and reduce the risk of nighttime crashes.

(4) Other safety features and equipment: Programs that upgrade State-level requirements for school bus exits, flammability of interior materials and fuel system integrity. NHTSA has commenced rulemaking on these issues to incorporate further safety improvements in the mandatory Federal standards for new vehicles. However, in the interim, States may wish to revise their own specifications for the purchase of new buses, or the overhaul of vehicles already in the fleet.

Funding

The application for funding assistance should address what is proposed and can be accomplished during this period. A State may receive in fiscal year 1990 an amount not to exceed that percentage of the set-aside which is equal to its allotted share of FY90 Highway Safety Program funds under 23 U.S.C. 402. A State may apply for a grant equal to the full amount of its share or some lesser amount. NHTSA intends to make decisions on all grant applications within 30 days afer the application deadline. After that time, all monies which have not been obligated under grants approved by NHTSA will be released for general Section 402 purposes and distributed to all States in accordance with the apportionment formula under 23 U.S.C. 402.

Eligibility

Consistent with 23 U.S.C. 402, only the Governor's Representative for Highway Safety may make application for grants under this program.

Application Procedure

Each State must submit one original and two copies of its application to the NHTSA Regional Administrator having responsibility for such State. All applications submitted must be labeled "School Bus Safety Implementation Project." Only complete applications received on or before November 1, 1989, shall be considered. States which do not make an application for these grant funds on or before November 1, 1989, shall be deemed to have decided not to participate in this program.

Application Contents

The application package should be submitted as a part of the State's Highway Safety Plan or as an addendum to such Plan. Applications shall include a project narrative statement which addresses the following items:

(1) A discussion of school bus safety in the State in relation to the "most effective" measures and a rationale for the State's selection of its proposed projects.

(2) A description of the proposed projects for improving school bus safety.

(3) The plan of action for conducting the proposed projects, including target dates and methods for assessing the accomplishments of the projects.

(4) The anticipated results and benefits to be derived.

Evaluation Criteria and Review Process

Each application will be reviewed to assure that it contains all of the required information to determine that the project or projects adequately cover one or more of the "most effective" or "effective" measures. If an "effective" measure category is selected, the application must include a discussion of why the "effective" measure is more appropriate than any of the "most effective" measures.

All applications will be judged using the following criteria listed in descending order of importance:

(1) The applicant's careful consideration of school bus safety problems in relation to the measures determined to be "most effective" in improving school bus safety.

(2) The technical merit of the proposed grant project effort, including the feasibility of the approach, plan of action and anticipated results.

(3) The adequacy of the resources for accomplishing the proposed grant project effort.

Final Report

Each State receiving a grant under this program shall submit a final report which includes a complete description of the projects and the results. Such final report may be included as part of the State's final report on Section 402 projects for FY 1990.

Terms and Conditions of the Award

Prior to award, the State must comply with the certification requirements of 49 CFR Part 29, "Government-wide Requirements for Drug-Free Workplace," if the State has not already made such a certification for the year of the award. Any grant awarded as a result of this notice shall be subject to the applicable requirements of 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." Unless otherwise stated, all procedures and requirements of the Section 402 program are applicable.

Issued on: July 14, 1989.

Jeffrey R. Miller,

Acting Administrator.

[FR Doc. 89-17061 Filed 7-17-89; 1:38 pm]

BILLING CODE 4910-59-M

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA, in conjunction with the International Regulations Committee (INTEREC) of the Hazardous Materials Advisory Council, will conduct a public meeting to discuss the issues that will be presented at the next meeting of the International

Civil Aviation Organization's (ICAO) Dangerous Goods Panel (DGP).

DATE: September 29, 1989, 12:30 p.m.

ADDRESS: Room 6236, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Transportation, Department of Transportation, Washington, DC 20590; (202) 366-0656.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss proposed changes to the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air that will be presented to the next meeting of the DGP meeting which is scheduled to meet in Montreal, Canada from 9 to 20 October, 1989. If adopted, the changes to the Technical Instructions would become effective on January 1, 1991.

Issued in Washington, DC, on July 14, 1989.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 89-17035 Filed 7-19-89; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 19-89]

Treasury Notes, Series G-1996

Washington, July 13, 1989.

The Secretary announced on July 12, 1989, that the interest rate on the notes designated Series G-1996, described in Department Circular—Public Debt Series—No. 19-89 dated July 6, 1989, will be 7⅞ percent. Interest on the notes will be payable at the rate of 7⅞ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89-17016 Filed 7-19-89; 8:45 am]

BILLING CODE 4810-40-M

Secret Service

Senior Executive Service; Performance Review Board; Membership

ACTION: Appointment of Performance Review Board (PRB) Members.

This notice announces the appointment of members of Senior Executive Service Performance Review Boards in accordance with 5 U.S.C. 4314(c)(4) for the rating period beginning July 1, 1988, and ending June 10, 1989. Each PRB will be composed of at least three of the Senior Executive Service members listed below.

Name and Title

Stephen E. Garmon—Deputy Director, U.S. Secret Service
Garry M. Jenkins—Assistant Director, Investigations (USSS)
Guy P. Caputo—Assistant Director, Protective Operations (USSS)
Jack A. Renwick—Assistant Director, Inspection (USSS)
David C. Lee—Assistant Director, Administration (USSS)
Robert R. Snow—Assistant Director, Government Liaison & Public Affairs (USSS)
Don A. Edwards—Assistant Director, Training (USSS)
H. Terrence Samway—Deputy Assistant Director, Protective Operations (USSS)
John R. Smith—Deputy Assistant Director, Protective Operations (USSS)
Stephen J. Harrison—Deputy Assistant Director, Protective Operations (USSS)
John Magaw—Deputy Assistant Director, Protective Research (USSS)
Richard A. McCann—Deputy Assistant Director, Investigations (USSS)
John J. Kelleher—Chief Counsel, U.S. Secret Service (USSS)

FOR FURTHER INFORMATION CONTACT: Wesley Bishop, Chief, Personnel Division, Room 901, 1800 G Street, NW., Washington, DC 20223, Telephone No. 202-535-5635.

John R. Simpson,

Director.

[FR Doc. 89-17008 Filed 7-19-89; 8:45 am]

BILLING CODE 4810-42-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. USIA is requesting clearance of an internal form IAP-90 "Fact Sheet for Performing Artists Touring Privately", which is used to collect information on the availability of performing artists for appearance overseas on behalf of the United States, which has been approved previously by OMB clearance number 3116-0165. Respondents will be required to respond only one time.

DATE: August 21, 1989.

Copies: Copies of the Request for Clearance (SF-83), supporting statement, transmittal letter and other documents submitted on OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Debbie Knox, United States Information Agency, M/ASP, 301 Fourth Street SW., Washington DC 20547. Telephone (202) 485-7503, and OMB review: Mr. Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC, 20503. Telephone (202) 395-7340.

SUPPLEMENTARY INFORMATION: Title: "Fact Sheet for Performing Artists Touring Privately".

Form Number: IAP-90.

Abstract: Under the requirements of Pub. L. 87-256. The Mutual Educational and Cultural Exchange Act of 1961. The U.S. Information Agency tries to strengthen the understanding and respect of the United States by foreign people through the sponsorship of performing artists and groups. This is done at minimal cost to the U.S. Government by our program of selecting artists on private tours overseas to schedule performances, in countries of the U.S. Government. The purpose of these programs is to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, development, and achievements of the people of the United States, and the contributions being made toward a peaceful and more fruitful life for people throughout the world.

Proposed Frequency of Responses:

No. of Respondents—500
Recordkeeping Hours—0

Total Annual Burden—500

July 14, 1989.

Ledra Dildy,

Federal Register Liaison.

[FR Doc. 89-16950 Filed 7-19-89; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information (1) The agency reponsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (203C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before August 21, 1989.

Dated: July 13, 1989.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Veterans Benefits Administration.
2. Request for change of Program or Place of Training.
3. VA Form 22-1995.
4. The information on this form is necessary to determine eligibility for continued educational assistance for veterans, servicepersons, and reservists who change their programs or places of training.
5. On occasion.
6. Individuals or households.
7. 130,000 responses.
8. 1/3 hour.
9. Not applicable.

[FR Doc. 89-17010 Filed 7-19-89; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 138
Thursday, July 20, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, July 25, 1989 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Tuesday, July 25, 1989, at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:
Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Draft Advisory Opinion 1989-11
Messrs. Mac Asbill, Jr. and Wright H. Andrews, Jr. on behalf of Sutherland, Asbill & Brennan.
Draft Advisory Opinion 1989-12
Edward D. Feigenbaum regarding an Indiana statute that prohibits political contributions by and the awarding of contracts to certain vendors.
Regulations—Explanation and Justification of the Affiliation and Earmarking Regulations (11 CFR 110.3-110.6).
ADP Project Status Report
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer. Telephone: 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 89-17167 Filed 7-18-89; 2:50 pm]

BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 2:00 p.m.-July 25, 1989.

PLACE: Hearing Room One—1100 L Street, NW., Washington, DC 20573-0001.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Service Contract Docket No. 89-13 North Europe-U.S. Atlantic Conference Correction of Clerical Errors in Service Contract S.C. No. 541/89

2. Docket No. 89-07—Inquiry Into Laws, Regulations, and Policies of the Government of Ecuador Affecting Shipping in the United States/Ecuador Trade

CONTACT PERSON FOR MORE INFORMATION: Ronald D. Murphy, Assistant Secretary, (202) 523-5725.

Ronald D. Murphy,
Assistant Secretary.

[FR Doc. 89-17102 Filed 7-17-89; 5:06 pm]

BILLING CODE 6730-01-M

NATIONAL LABOR RELATIONS BOARD

AGENCY HOLDING THE MEETING: National Labor Relations Board.

TIME AND DATE: Immediately following a 9:30 a.m. case-adjudicatory meeting, Tuesday, July 18, 1989.

PLACE: Board Conference Room, Sixth Floor 1717 Pennsylvania Avenue, NW., Washington, DC 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. 552b(c)(2) (internal personnel rules and practices and (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

MATTERS CONSIDER: Personnel matter.

CONTACT PERSON FOR MORE INFORMATION: Joseph E. Moore, Acting Executive Secretary, National Labor Relations Board, Washington, DC 20570, Telephone: (202) 254-9430.

Dated, Washington DC, July 14, 1989.
By direction of the Board.

Joseph E. Moore,
Acting Executive Secretary, National labor Relations Board.

[FR Doc. 89-17121 Filed 7-18-89; 11:06 am]

BILLING CODE 7445-01-M

POSTAL RATE COMMISSION

AGENCY HOLDING THE MEETING: Postal Rate Commission.

TIME AND DATE: 10:30 a.m., Tuesday, July 25, 1989.

PLACE: Commission Conference Room, 1333 H Street, NW., Washington, DC 20268-0001.

STATUS: Open.

MATTERS TO BE CONSIDERED: To discuss and vote on the Postal Rate Commission Budget for FY 1990.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW., Washington, DC 20268-0001, Telephone (202) 789-6840.

Charles L. Clapp,
Secretary.

[FR Doc. 89-17140 Filed 7-18-89; 12:05 pm]

BILLING CODE 7715-01-M

Corrections

Federal Register
Vol. 54, No. 138
Thursday, July 20, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-021]

Cell-Site Transceivers and Related Subassemblies From Japan; Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke

Correction

In notice document 89-16133 beginning on page 29077 in the issue of Tuesday, July 11, 1989, make the following correction:

On page 29079, in the second column, in the last paragraph, in the eighth and ninth lines "[insert date 90 days prior to date of publication]" should read "April 12, 1989."

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

Indian Education National Advisory Council; Meeting

Correction

In notice document 89-16033 beginning on page 28832 in the issue of Monday, July 10, 1989, make the following correction:

On page 28833, in the first column, under **FOR FURTHER INFORMATION CONTACT:**, in the last line, "(212)" should read "(202)".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP89-1340-000, et. al.]

Sabine Pipe Line Co., et al.; Natural Gas Certificate Filings

Correction

In notice document 89-16156 beginning on page 29093 in the issue of Tuesday, July 11, 1989, make the following corrections:

On page 29093, in the first column, in the heading, the docket number was incorrect and should appear as set forth above.

On page 29094, in the third column, under **8. Panhandle Eastern Pipe Line Co.**, in the first line, the docket number should read "CP89-1686-000".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10690-000]

Utah Power and Light Co.; Availability of Environmental Assessment

Correction

In notice document 89-16152 appearing on page 29097 in the issue of Tuesday, July 11, 1989, make the following correction:

On page 29097, in the first column, in the fourth line, the date should read "July 5, 1989."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-920-09-4212-12 & 15; AZA-23700]

Arizona; Realty Action; Transfer of Public Land to State of Arizona

Correction

In notice document 89-15257 beginning on page 27214, in the issue of Wednesday, June 28, 1989, make the following correction:

On page 27215, in the second column, in the second line, "NE¼" should read "NW¼".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-943-09-4214-10; GP9-247; OR-42920(Wash)]

Partial Termination of Proposed Withdrawal; Washington

Correction

In notice document 89-15260 beginning on page 27217 in the issue of Wednesday, June 28, 1989, make the following correction:

On page 27217, in the second column, under "Okanogan National Forest", in the third line, "southeasterly" should read "northeasterly".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 70

RIN 1290-AA08

Department of Labor Regulations Implementing Freedom of Information Act and Executive Order 12600

Correction

In the issue of Tuesday, June 13, 1989, on page 25204, in the third column, a correction to FR Doc. 89-12716 appeared. The sixth item was inaccurately printed and should have appeared as follows:

6. On page 23149, in the second column, § 70.40(b)(4) should appear as a paragraph.

BILLING CODE 1505-01-D

federal register

Thursday
July 20, 1989

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Part 57

Safety Standards for Methane in Metal and Nonmetal Mines; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 57

RIN 1219-AA52

Safety Standards for Methane in Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule.

SUMMARY: MSHA is revising two sections of its safety standards for methane in metal and nonmetal mines to conform the standards to recently issued approval requirements for brattice cloth and ventilation tubing. The methane standards currently require that those materials have a flame spread rating of 25 or less if used in underground metal and nonmetal mines with a history of, or a potential for methane liberation. The reference to flame spread rating is replaced with a requirement that brattice cloth and ventilation tubing be approved by MSHA in accordance with 30 CFR Part 7.

EFFECTIVE DATE: This final rule is effective August 22, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203, phone (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Background and Effect of Rule

A final rule updating MSHA's standards for methane in metal and nonmetal mines was published as a new Subpart T of Part 57 on July 1, 1987 (52 FR 24924). Sections 57.22215 and 57.22222 of these standards specify the use of brattice cloth and ventilation tubing with a flame spread rating of 25 or less as determined by American Society of Testing Materials (ASTM) test method E-162. Under § 57.22215, rigid ventilation tubing is required to be constructed of noncombustible material. The July 1, 1987 preamble noted that MSHA was engaged in development of an improved test method to evaluate the flame resistance of brattice cloth and ventilation tubing. The preamble further stated that upon promulgation of Part 7, §§ 57.22215 and 57.22222 would be revised to require the use of approved brattice cloth and ventilation tubing. On June 22, 1988 the new test method was issued as part of new approval regulations in 30 CFR Part 7 (53 FR 23466). MSHA published a proposed rule to revise §§ 57.22215 and 57.22222 on December 5, 1988 (53 FR 48934). No comments were received on these two sections as proposed and the final rule retains the proposed language. These revisions will become effective on August 22, 1989. As of that date, brattice cloth and ventilation tubing newly installed in a mine will be required to be approved by MSHA in accordance with 30 CFR Part 7. This delayed effective date coincides with the phase-in of new approval requirements under Part 7 and will provide sufficient time for mine operators to obtain approved ventilation materials. To the extent that ventilation materials approved under Part 7 become available sooner, they may be installed and will be considered in compliance with current §§ 57.22215 and 57.22222. Operators may also continue to install currently acceptable ventilation materials until the effective date of this rule. The approval status of those products previously tested and accepted by MSHA's Approval and Certification Center and issued an MSHA BC or VT acceptance number will remain unaffected allowing those products to be manufactured and used as MSHA approved.

II. Executive Order 12291 and the Regulatory Flexibility Act

This rule revises two previously issued standards to update technical performance requirements for brattice cloth and ventilation tubing. The cost impact of the new requirements on mine operators will be negligible. Many operators already use brattice cloth and ventilation tubing meeting the new requirements. The cost impact of the test requirements of the ventilation materials has been analyzed in the context of the Part 7 rulemaking. Accordingly, the Agency has determined that this rule will not result in a major cost increase or have an incremental effect of $100 million or more on the economy. Therefore, a regulatory impact analysis is not required. The Agency has also determined that the final rule will not have a significant impact on a substantial number of small entities.

III. Paperwork Reduction Act

This final rule does not contain any information collection requirements subject to the Paperwork Reduction Act of 1980.

List of Subjects in 30 CFR Part 57

Mine safety and health, Metal and nonmetal mining, safety standards for methane.

David C. O'Neal,

Assistant Secretary for Mine Safety and Health.

Date: July 14, 1989.

Accordingly, Subpart T, Part 57, Subchapter N, Chapter I, Title 30 of the Code of Federal Regulations is amended as follows:

PART 57—[AMENDED]

1. The authority citation for Subpart T continues to read as follows:

Authority: 30 U.S.C. 811.

2. Section 57.22215(b)(1) is revised to read as follows:

§ 57.22215 Separation of intake and return air (I-A, II-A, III, and V-A mines).

* * * * *

(b) * * *

(1) Ventilation tubing approved by MSHA in accordance with 30 CFR Part 7 or previously issued a BC or VT acceptance number by the MSHA Approval and Certification Center may be used for separation of main air currents in the same opening. Flexible ventilation tubing shall not exceed 250 feet in length.

* * * * *

3. Section 57.22222 is revised to read as follows:

§ 57.22222 Ventilation materials (I-A, I-B, I-C, II-A, III, V-A, and V-B mines).

Brattice cloth and ventilation tubing shall be approved by MSHA in accordance with 30 CFR Part 7, or shall bear a BC or VT acceptance number issued by the MSHA Approval and Certification Center.

[FR Doc. 89-16966 Filed 7-19-89; 8:45 am]

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federal register

Thursday
July 20, 1989

Part III

Department of Labor

Mine Safety and Health Administration

30 CFR Part 75

Safety Standards for Roof, Face and Rib Support; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219-AA58

Safety Standards for Roof, Face and Rib Support

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule would add an exception applicable to anthracite coal mines to 30 CFR 75.206(a). This rule was promulgated on January 27, 1988. Section 75.206(a) contains requirements for the use of conventional roof support but does not address the specific mining conditions unique to anthracite mining. This section would remain in effect for mines other than anthracite mines.

DATE: Written comments must be submitted on or before September 18, 1989.

ADDRESS: Send written comments to the Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, phone (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion of Proposed Rule

The Mine Safety and Health Administration (MSHA) is proposing to revise its existing safety standard for roof support in underground coal mines.

On January 27, 1988 (53 FR 2354) MSHA published final rules revising its safety standards for roof, face and rib support in underground coal mines. This proposal affects § 75.206 which sets out requirements for the use of conventional roof supports. Paragraph (a) of § 75.206 addresses mines that only use conventional supports and limits the width of entries in these mines to 20 feet. In addition, this paragraph also contains standards that address the spacing and number of supports in and around roadways. After further review of these requirements and the unique ground control conditions in near vertical seams, MSHA determined that this provision is not appropriate for anthracite mines, and exempting anthracite mines would not result in a diminution of safety.

As noted in the preamble, the requirement that the width of openings be limited to 20 feet when using only conventional support was derived from previous criteria provisions (53 FR 2359). A review of the history of application of these provisions in roof control plans indicates that they have never been applied to anthracite mines. In fact, most entry widths in anthracite mines are ten feet or less and the areas where widths extend beyond 20 feet have been successfully addressed in plans on an individual basis.

Discussions in the preamble to the final rule also consistently make reference to use of roof bolts as a means to achieve compliance with the requirements of paragraph (a). For example, the preamble states that the Agency concluded that a combination of roof bolts and conventional support is necessary to support openings wider than 20 feet (53 FR 2359). Use of roof bolts would not be a practical or even safe option in most anthracite mines which contain pitching seams that preclude the use of roof bolting equipment. The requirements in the standard and discussions in the preamble also consistently make reference to roadway widths which are relevant to bituminous coal mines using conventional supports and not to anthracite mines where roadways are not used and entries are often fully supported. In addition, heavy equipment, for which roadways are necessary, is not used in anthracite mines.

The preamble to the final rule also makes reference to 71 mining sections that the Agency estimated to be mining openings greater than 20 feet in width and only using conventional supports. The text goes on to state that to continue mining, these mines would be required to use roof bolts in conjunction with conventional supports. The preamble makes no mention of the impact of this standard on anthracite mines. However, because the use of roof bolts is considered the only means of compliance with the standard it seems clear that this impact was not taken into account.

II. Executive Order 12291 and the Regulatory Flexibility Act

This proposed rule would make a modification to a previously issued rule. MSHA has determined that the rule would not result in major cost increases nor have an incremental effect of $100 million or more on the economy. The Agency also determined that the proposed rule will not have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

III. Paperwork Reduction Act

There are no information collection requirements contained in this proposal.

List of Subjects in 30 CFR Part 75

Mine safety and health, Underground coal mines, Roof, face and rib support.

Date: July 14, 1989.

David C. O'Neal,

Assistant Secretary for Mine Safety and Health.

Therefore, Part 75, Subchapter O, Chapter I, Title 30 of the Code of Federal Regulations is proposed to be amended under 30 U.S.C. 811 as follows:

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

1. The authority citation to 30 CFR Part 75 continues to read as follows:

Authority: 30 U.S.C. 811, 957, and 961.

2. Section 75.206(a) is revised to read as follows:

§ 75.206 Conventional roof supports.

(a) Except in anthracite mines, when conventional roof support materials are used as the only means of support—

* * * * *

[FR Doc. 89-16967 Filed 7-19-89; 8:45 am]

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federal register

Thursday
July 20, 1989

Part IV

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 20, 75, and 77

Electric Mine Lamps Other Than Standard Cap Lamps, Certified and Qualified Persons, and Mobile Equipment; Automatic Warning Devices; Revisions of Existing Procedures and Requirements; Final Rules

DEPARTMENT OF LABOR

30 CFR Part 20

RIN 1219-AA40

Electric Mine Lamps Other Than Standard Cap Lamps

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule.

SUMMARY: This final rule amends 30 CFR Part 20 by revising the requirements for the testing and approval of electric mine lamps, other than standard cap lamps, used in underground mines. These amendments allow MSHA to approve lamps with different designs that are as safe as lamps approved under the existing rules. This final rule does not affect lamps which have been or could be approved under the existing rules.

EFFECTIVE DATE: September 18, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 2203, phone (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Background

Under the existing rules, MSHA investigates and approves lamps which meet the design, construction and test requirements in Part 20 of Title 30 of the Code of Federal Regulations (CFR). These rules do not recognize lamps and flashlights that incorporate new or newly-applied technology. As a result, MSHA has not approved lamps and flashlights with innovative improvements.

This final rule amends Part 20 to enable MSHA to issue approvals for electric lamps and flashlights incorporating new designs if, after testing, they are found to be safe for their intended use and provide, at a minimum, the same degree of safety as lamps currently approved under the existing rules.

On April 13, 1988, MSHA published a proposed rule in the **Federal Register** (53 FR 12250) which would allow MSHA to approve lamps with different designs that would be as safe as lamps approved under the existing rules.

On August 11, 1988 (53 FR 30312), MSHA published a notice of public hearing which outlined the major issues raised during the comment period. A public hearing was held on August 30, 1988, in Pittsburgh, Pennsylvania, during which further comment was received. A transcript of the proceeding was taken and made available for public inspection. Following the public hearing, interested persons were allowed to submit supplementary statements and data until the record closed on September 30, 1988.

MSHA reviewed all written and oral statements submitted in response to the proposed rule and public hearing. This final rule was developed after a full evaluation of the rulemaking record.

II. Discussion and Summary of the Final Rule

This final rule permits MSHA to approve electric lamps and flashlights that incorporate technology for which the requirements of Part 20 are not applicable if the Agency determines by testing that the electric lamps or flashlights are as safe as those that meet the requirements of Part 20. Under this provision, MSHA can modify design, construction or test requirements as necessary to investigate and approve lamps or flashlights which incorporate technological improvements that were not available or not applied when Pact 20 was originally promulgated.

One commenter suggested that the regulation specifically reference "design features" as a component of MSHA's determination that the product is as safe as others approved by MSHA. The commenter reasoned that new mine lamps should be tested for rigid construction appropriate for the mining environment and be designed to prevent easy removal of devices which are included for protection. However, the existing requirements adequately address these concerns without further reference in the final rule to design features. Existing § 20.6(a) requires that lamps are durable in construction, practical in operation, and suitable for the service for which they are designed and approved. Existing § 20.8(a)(3) requires that for lamps other than flashlights, all parts, such as the bulb housing and battery container, through which access may be had to live terminals or contacts must be adequately sealed or equipped with magnetic or other equally reliable locks to prevent opening by unauthorized persons. For flashlights, provision must be made for sealing the battery container.

Consistent with this amendment, this final rule revises § 20.8(a)(1) to allow MSHA to investigate and approve lamps that are designed and constructed to prevent bulb breakage, thus preventing exposure of the filament and possible ignition of an explosive atmosphere. Under this rule, this design is an alternative to the existing requirement for a safety device to prevent exposure of the filament. Typically, the safety device used in approved electric mine lamps ejects the bulb automatically when the lamp lens is broken. MSHA is aware of lamps currently being designed and constructed with breakage-resistant material that prevents exposure of the filament by protecting the bulb from breakage. This final rule authorizes MSHA to approve these types of lamps, provided that they are as safe as currently approved lamps. One commenter suggested that § 20.8(a)(1) include the requirement that alternative designs be constructed "of rigid material maintainable for the work environment." This requirement is addressed by design features in existing § 20.6(a). Another commenter suggested that § 20.8(a)(1) specify specific performance and test criteria. MSHA agrees and the final rule has been modified to clarify that alternative designs will be evaluated by mechanical impact tests, temperature tests and thermal shock tests. However, the final rule does not contain detailed test requirements because the specific requirements will vary according to the technology used by the applicant. Section 20.1(c)(2) of the final rule provides that MSHA determine by testing that the electric lamps or flashlights are as safe as those which meet the requirements of this part. Since it is impossible to foresee all of the possible designs that will meet this requirement, it is impossible to specify detailed test requirements.

At a future date, and under a separate rulemaking, MSHA will review Part 20 to determine the appropriateness of incorporating it into the Agency's program which allows product testing by the applicant or third party, under 30 CFR Part 7. One commenter was opposed to the concept of third party testing for products approved under Part 20. Products will only be included under Part 7 when the technical and test requirements can be specified in detail. New technology will only be evaluated by MSHA.

III. Executive Order 12291 and the Regulatory Flexibility Act

This rulemaking does not result in major cost increases nor have an incremental effect of $100 million or more on the industry. Therefore, this final rule is not a major rule under Executive Order 12291, and a Regulatory Impact Analysis is not required. This rule removes restrictions in MSHA's Approval and Certification requirements for electric mine lamps, other than standard cap lamps. It does not include any new requirements nor result in additional costs. For these reasons the Agency has not conducted a regulatory flexibility analysis and, in accordance with section 605(b) of the Regulatory Flexibility Act, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

This final rule does not contain information collection requirements subject to the Paperwork Reduction Act of 1980.

List of Subjects in 30 CFR Part 20

Mine safety and health, Electric mine lamps.

Date: July 14, 1989.

David C. O'Neal,

Assistant Secretary for Mine Safety and Health.

Accordingly, Part 20, Subchapter O, Chapter I, Title 30 of the Code of Federal Regulations is amended under 30 U.S.C. 957.

PART 20—ELECTRIC MINE LAMPS OTHER THAN STANDARD CAP LAMPS

1. The authority citation to Part 20 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

2. Section 20.1 is amended by redesignating paragraph (c) as (c)(1) and adding a new paragraph (c)(2) to read as follows:

§ 20.1 Purpose.

* * * * *

(c) * * *

(2) MSHA May approve electric lamps and flashlights that incorporate technology for which the requirements of this part are not applicable if MSHA determines by testing that the electric lamps or flashlights are as safe as those which meet the requirements of this part.

* * * * *

3. Section 20.8 is amended by revising paragraph (a)(1) to read as follows:

§ 20.8 Class 1 lamps.

(a) * * *

(1) *Safety device or design.* The lighting unit shall have a safety device to prevent the ignition of explosive mixtures of methane and air if the bulb glass surrounding the filament is broken. Alternatively, if the lamp is designed and constructed of materials that will prevent the ignition of explosive mixtures of methane and air by protecting the bulb from breakage and preventing exposure of the hot filament, no separate safety device is required. Alternative designs will be evaluated by mechanical impact tests, temperature tests and thermal shock tests to determine that the protection provided is no less effective than a safety device.

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FR Doc. 89-16963 Filed 7-19-89; 8:45 am]

BILLING CODE 4510-43-M

30 CFR Parts 75 and 77

RIN 1219-AA36

Certified and Qualified Persons

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule.

SUMMARY: This final rule revises certain provisions of the Mine Safety and Health Administration's (MSHA) existing procedures concerning temporary qualification and certification of persons who work at coal mines. Existing procedures limit temporary qualifications and certifications to six months, after which time reapplication must be made. This final rule permits persons to be qualified or certified for as long as they continue to satisfy the requirements needed to obtain the certification or qualification, fulfill any applicable retraining requirements, and remain employed at the same coal mine or by the same independent contractor. This eliminates the six-month recertification requirement, thereby eliminating the unnecessary paperwork involved in the routine reapplication for certification and qualification of persons.

EFFECTIVE DATE: September 18, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203, phone (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Background

MSHA requires that persons who perform certain examinations, tasks and duties related to safety and health at coal mines and involving specialized expertise be either "certified" or "qualified" to do so. This final rule primarily affects mine foremen; assistant mine foremen; and preshift examiners who must be certified or qualified to perform certain duties such as testing for methane and oxygen deficiency. Additionally, this final rule affects qualified persons who operate hoists.

The existing procedures and requirements for certified and qualified persons affected by this rulemaking are set forth in §§ 75.100, 75.155, 77.100 and 77.105 of Title 30 of the Code of Federal Regulations (CFR). These existing standards recognize state certification and qualification programs. Thus, persons certified or qualified by the State in which they work are authorized to perform the duties prescribed. However, where state programs are not available, the existing standards allow MSHA to temporarily certify or qualify miners.

To be determined qualified and certified under MSHA's existing standards, persons must initially meet certain minimum experience requirements. Depending on the applicable certification or qualification, one to two years of general employment experience at a coal mine is required. For certified and qualified persons at underground mines, six months of that experience must have been in a specific job category and that experience must have immediately preceded the filing of the application. Persons applying for temporary certification and qualification must do so in writing and must certify that the experience requirements have been satisfied. After initial certification or qualification, reapplication must be made twice a year in order for certified and qualified persons to continue to be authorized to perform their duties.

On April 13, 1988, MSHA published a proposed rule in the **Federal Register** (53 FR 12251) to eliminate the six-month recertification requirement.

On August 11, 1988 (53 FR 30312), MSHA published notice of a public hearing which outlined the major issues raised during the comment period. A public hearing was held on August 30, 1988, in Pittsburgh, Pennsylvania, during which further comment was received. A transcript of the proceeding was taken and made available for public inspection. Following the public hearing, interested persons were allowed to submit supplementary statements and data until the record closed on September 30, 1988.

MSHA reviewed all written and oral statements submitted in response to the proposed rule and public hearing. The final rule was developed after a full evaluation of the entire public record.

II. Discussion and Summary of Final Rule

In developing this final rule, MSHA has been responsive, to the extent possible, to the many comments received from the mining community. However, some of the comments, as discussed more fully below, were

beyond the limited scope of the proposal.

This final rule eliminates the six-month limitation and permits persons to be certified or qualified for as long as they continue to satisfy the requirements needed to obtain the certification or qualification, fulfill any applicable retraining requirements, and remain employed at the same coal mine or by the same independent contractor. This change eliminates repetitive and unnecessary paperwork, which had no safety purpose, involved with reapplication. When employment at a particular mine or with a particular independent contractor ends, the person's certification or qualification lapses. In order to be reinstated as a certified or qualified person, reapplication must be made. Reapplication will ensure that the experience requirements for certified and qualified persons, contained in §§ 75.100(c)(1), 75.155 (a)(2) and (b)(2), 77.100(b)(2) and 77.105(a)(2), are met.

The purpose of this rulemaking, to address the six-month recertification process, was clearly stated by the Agency in the proposal and during the public hearing. Therefore, this final rule does not adopt suggestions made by commenters for other changes in the rule ranging from a restructuring of the certification and qualification procedures to allowing certifications to be valid from State-to-State.

Several commenters felt that since the final rule permits employees of independent contractors to transfer from one mine to another without having to be recertified MSHA should provide mine operators the same privilege. The final rule retains the existing requirement that miners be recertified when transferring from one mine to another. The final rule also incorporates the existing policy that employees of independent contractors are employed by the same employer regardless of their location and therefore are not required to be recertified or requalified when assigned to a new work location. Mine operators are responsible for the compliance of their employees with MSHA's standards and regulations at their specific mines. Independent contractors are also responsible for the compliance of their employees with MSHA's standards and regulations. However, the independent contractor's employees move from mine-to-mine with the contractor, making the status of the employee more determinant on the contractor than the mine site.

Under existing rule § 77.100(b)(2), persons are required to test for oxygen deficiency with a permissible flame safety lamp. Several commenters suggested that persons be allowed to test for oxygen deficiency with any device that has been approved by the Bureau of Mines, MESA, or MSHA. MSHA agrees and in keeping with advancing technology, the final rule allows persons to test for oxygen deficiency with either a permissible flame safety lamp, or any other device approved by the Secretary.

III. Executive Order 12291 and the Regulatory Flexibility Act

In accordance with Executive Order 12291, MSHA has considered the potential costs and benefits associated with this final rule in general and as they specifically impact small entities as required by the Regulatory Flexibility Act. This final rule makes no substantive change to the requirements for certification or qualification, and MSHA has determined that the final rule is not a major rule and a Regulatory Impact Analysis is not required.

The Regulatory Flexibility Act requires that agencies evaluate and include, wherever possible, compliance alternatives that minimize adverse impact on small businesses when developing regulatory proposals. This final rule revises current reporting requirements which eliminates cumulative and burdensome paperwork concerning qualified and certified persons, and also directly benefits small as well as large coal mining operations while maintaining miner safety. For these reasons the Agency has not conducted a regulatory flexibility analysis and, in accordance with section 605(b) of the Regulatory Flexibility Act, certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

This final rule contains information collection requirements subject to the Paperwork Reduction Act of 1980. Under the existing requirements MSHA is receiving approximately 2,800 applications from mine operators annually. The cost of the government is approximately $4,160 annually to process these applications. Mine operators spend approximately 1,400 hours annually preparing these applications.

Annual burden hours for mine opeator compliance will be reduced by approximately 1,025 hours, under this final rule. As a result of this reduction, costs to the government for processing applications will also be substantially reduced.

The collection of information requirements contained in this final rule have been approved by the Office of Management and Budget (OMB) in accordance with section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 35).

List of Subjects in 30 CFR Parts 75 and 77

Mine safety and health, Qualified and certified persons, Coal mines.

Date: July 14, 1989.

David C. O'Neal,

Assistant Secretary for Mine Safety and Health.

Parts 75 and 77 Subchapter O, Chapter I of Title 30 of the Code of Federal Regulations are amended under 30 U.S.C. 811 as follows:

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

1. The authority citation for Part 75 continues to read as follows:

Authority: 30 U.S.C. 811, 957 and 961.

2. Section 75.100 paragraph (c) is revised to read as follows:

Subpart B—Qualified and Certified Persons

§ 75.100 Certified person.

* * * * *

(c)(1) The Secretary may certify persons in the categories of mine foreman, assistant mine foreman, and preshift examiner whenever the State in which persons are presently employed in these categories does not provide for such certification. A person's initial certification by MSHA is valid for as long as the person continues to satisfy the requirements necessary to obtain the certification and is employed at the same coal mine or by the same independent contractor. The mine operator or independent contractor shall make an application which satisfactorily shows that each such person has had at least 2 years underground experience in a coal mine, and has held the position of mine foreman, assistant mine foreman, or preshift examiner for a period of 6 months immediately preceding the filing of the application, and is qualified to test for methane and for oxygen deficiency. Applications for Secretarial certification should be submitted in writing to the Health and Safety Activity, Mine Safety and Health Administration, Certification and Qualification Center, P.O. Box 25367, Denver Federal Center, Denver, Colorado 80225.

(2) A person certified by the Secretary under this paragraph will be a certified person, within the meaning of the provisions for Subpart D of this part and § 75.1106 referred to in paragraph (a) of this section, as long as that person continues to satisfy the requirements for qualification or certification and is employed at the same coal mine or by the same independent contractor.

* * * * *

3. Section 75.155 paragraphs (a)(2) and (b)(2) are revised to read as follows:

§ 75.155 Qualified hoisting engineer; qualifications.

(a) * * *

(2) If a State has no program for qualifying persons as steam-hoisting engineers, the Secretary may qualify persons for this purpose if the operator of the coal mine in which such persons are employed, or the independent contractor, makes an application and a satisfactory showing that each such person has had 1 year experience in operating steam-driven hoists and has held the position of hoisting engineer for a periond of 6 months immediately preceding the application. A person's qualification is valid for as long as this person continues to satisfy the requirements necessary for qualification and is employed at the same coal mine or by the same independent contractor.

(b) * * *

(2) If a State has no program for qualifying persons as electric-hoisting engineers, the Secretary may qualify persons for this purpose if the operator of the coal mine in which such persons are employed, or the independent contractor, makes an application and a satisfactory showing that each such person has had 1 year experience in operating electric-driven hoists and has held the position of hoisting engineer for a period of 6 months immediately preceding the application. A person's qualification is valid for as long as this person continues to satisfy the requirements for qualification and is employed at the same coal mine or by the same independent contractor.

PART 77—MANDATORY SAFETY STANDARDS, SURFACE COAL MINES AND SURFACE WORK AREAS OF UNDERGROUND COAL MINES

1. The authority citation for Part 77 is revised to read as follows:

Authority: 30 U.S.C. 811, 957 and 961.

2. Section 77.100 paragraph (b)(2) is revised to read as follows:

Subpart B—Qualified and Certified Persons

§ 77.100 Certified person.

* * * * *

(b) * * *

(2) If this person has been certified for such purpose by the Secretary. A person's initial certification is valid for as long as the person continues to satisfy the requirements necessary to obtain the certification and is employed at the same coal mine or by the same independent contractor. The mine operator or independent contractor shall make an application which satisfactorily shows that each such person has had at least 2 years experience at a coal mine or equivalent experience, and that each such person demonstrates to the satisfaction of an authorized representative of the Secretary that such person is able and competent to test for oxygen deficiency with a permissible flame safety lamp, or any other device approved by the Secretary and to test for methane with a portable methane detector approved by the Bureau of Mines, MESA, or MSHA, under Part 22 of this Chapter (Bureau of Mines Schedule 8C), and to perform such other duties for which application for certification is made. Applications for certification by the Secretary should be submitted in writing to the Mine Safety and Health Administration, Certification and Qualification Center, P.O. Box 25367, Denver Federal Center, Denver, Colorado 80225.

* * * * *

3. Section 77.105 paragraph (a)(2) is revised to read as follows:

§ 77.105 Qualified hoistman; slope or shaft-sinking operation; qualifications.

(a) * * *

(2) If a State has no program for qualifying persons as hoistmen, the Secretary may qualify persons if the operator of the slope or shaft-sinking operation makes an application and a satisfactory showing that the person has had 1 year of experience operating hoists. A person's qualification is valid for as long as the person continues to satisfy the requirements for qualification and is employed at the same coal mine or by the same independent contractor.

[FR Doc. 89-16964 Filed 7-19-89; 8:45 am]

BILLING CODE 4510-43-M

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30 CFR Part 77

RIN 1219-AA38

Mobile Equipment; Automatic Warning Devices

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule.

SUMMARY: This final rule revises and updates the Mine Safety and Health Administration's (MSHA) existing safety rule requiring devices on mobile equipment at surface coal mines and surface work areas of underground coal mines to automatically sound an audible warning (backup alarm) when the equipment is operated in reverse. This final rule also clarifies MSHA's current policy that the standard does not apply to pickup trucks, provided that the driver of the vehicle has an unobstructed rear view. This final rule upgrades provisions consistent with advances in mining technology, and permits the use of strobe lights as an alternative to audible automatic warning devices when the equipment is operated at night. It also permits the use of infrared light, ultrasonic waves, radar, or other effective devices as an alternative to conventional backup alarms presently in use.

EFFECTIVE DATE: September 18, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203, phone (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Background

The existing rule, 30 CFR 77.410, was promulgated on May 22, 1971 (36 FR 9364). It requires that mobile equipment, such as front-end loaders, forklifts, tractors, and graders be equipped with an automatic warning device which gives an audible (backup) alarm when the equipment is operated in reverse. The existing rule includes "trucks" but makes no mention of how the standard applies to pickup trucks. However, MSHA has consistently applied the backup alarm requirement to pickup trucks only when the operator has an obstructed rear view. The existing rule does not allow for alternative methods of achieving compliance using new technology.

On April 13, 1988, MSHA published a proposed rule in the **Federal Register** (53 FR 12253) to revise and update MSHA's existing safety standard requiring devices on mobile equipment at surface coal mines and surface work areas of underground coal mines to automatically sound an audible warning when the equipment is put in reverse; to clarify the Agency's policy that the standard does not apply to pickup trucks, provided that the driver of the vehicle has an unobstructed rear view; to permit the use of strobe lights as an alternative to audible automatic warning devices when the equipment is operated at night; and to allow for

alternatives to the conventional backup alarms presently in use.

On August 11, 1988 (53 FR 30312), MSHA published a notice of public hearing which outlined major issues raised during the comment period. A public hearing was held on August 30, 1988 in Pittsburgh, Pennsylvania, during which further comment was received. A transcript of the proceeding was taken and made available for public inspection. Following the public hearing, interested persons were allowed to submit supplementary statements and data until the record closed on September 30, 1988.

MSHA reviewed all written and oral statements submitted in response to the proposed rule and public hearing. This final rule was developed after a full evaluation of the rulemaking record.

II. Discussion and Summary of Final Rule

MSHA's review of the existing standards and comments received has resulted in revisions to reflect both the Agency's experience and the concerns of commenters. In developing this final rule, MSHA has been responsive, to the extent possible, to the comments received from the mining public. These changes are consistent with the goals of the Federal Mine Safety and Health Act of 1977, Executive Order 12291, the Paperwork Reduction Act, and the Regulatory Flexibility Act in that the final rule provides new compliance alternatives to accommodate advances in mining technology while offering effective protection for persons working at mines.

This final rule modifies the existing rule for backup alarms by allowing an exception for pickup trucks where the driver has an unobstructed rear view. MSHA has consistently applied the existing rule to large mobile equipment commonly used at mine sites. Most earth-moving haulage equipment used at coal mines has a large area to the rear of the equipment that cannot be seen from the equipment operator's position. A primary function of backup alarms is to compensate for this "blind spot" by warning persons who may be in that area that the operator is preparing to move the equipment in reverse. Normal operation of this equipment involves frequent backup maneuvers creating an environment in which the sound of backup alarms is regularly heard.

Unloaded pickup trucks have only a small area immediately behind the tailgate that cannot be seen from the driver's seat. Normally, pickup trucks are not operated in revese gear as part of the mining cycle as frequently as other mobile mining equipment. Under these conditions, MSHA's policy has consistently been to apply the backup alarm requirement to pickup trucks only when the driver has an obstructed rear view. This policy will continue to apply when an obstruction such as a large tool chest or other fixture is mounted on the pickup truck in a manner that blocks the driver's rear view. One commenter suggested that pickup trucks with an unobstructed rear view be excepted from the automatic warning device provisions only if they are equipped with functioning backup lights. MSHA's existing standard § 77.1605(d) requires that mobile equipment be provided with audible warning devices and that lights be provided on both ends when required.

One commenter objected to the exclusion of pickup trucks because at any given time, the view could become obstructed while the pickup is hauling supplies and parts. MSHA recognizes that this may occur; however, the mine operator is responsible for providing the unobstructed view to the rear or providing the backup alarm.

Under the existing rule, the warning device is required to give an audible alarm (backup alarm) when the equipment is operated in reverse. Several commenters suggested that the standard read "an automatic warning device which gives an audible alarm when the equipment is put in reverse and/or begins to move in the reverse direction". MSHA did not adopt the suggestion because it may not warn persons who may be in the area that the operator is preparing to move the equipment in reverse.

Another commenter reasoned that some equipment may move in a rearward direction while the shifting lever remains in a forward gear. MSHA believes that the equipment operator should maintain control of the equipment at all times. Intentional movement in a rearward direction with the transmission in neutral or a forward gear is generally considered as an unsafe practice.

Recent advances in backup alarm technology have resulted in the development of discriminating backup alarms, commonly referred to as proximity devices. These devices are an acceptable compliance alternative under this final rule provided that they offer sufficient coverage of the operator's obstructed view area to ensure that persons who enter the sensing area have adequate time to get out of the danger zone. These discriminating backup alarm systems use infrared light, ultrasonics or radar, and the alarm is activated only when a person or object is detected in the sensing area. These new systems feature an alarm that sounds both inside and outside the operator's compartment and only sounds when a hazard exists in the sensing area.

When deciding on whether to install either a conventional backup alarm or a discriminating backup alarm, mine operators and equipment manufacturers should evaluate the equipment size, speed and other operating parameters including noise in the surrounding area. Additional information on discriminating backup alarms is available from the U.S. Department of the Interior, Bureau of Mines, 2401 E Street NW., Washington, DC 20241 (see Technology News Bulletin No. 255, August 1986, and Information Circular No. 9079).

Workers exposed to the constant sounding of a conventional backup alarm system may become accustomed to the sound. Therefore, the sound can become less noticeable and effective as a warning. One of the principal advantages of the discriminating alarm is that this habituation is less likely to occur.

The conventional backup alarm gives an audible alarm outside of the compartment when the equipment is operated in reverse. This makes the persons in the danger zone solely responsible for getting out of the danger area. Another advantage of these new systems is that they feature an annunciator which gives an audible and visual alarm inside of the compartment and at least a one time audible alarm outside of the compartment. This causes both the operator and the person in the danger zone to be aware of the potential danger and to work cooperatively to avoid a collision. The annunciator can also serve as a fail-safe type system for the operator to know whether the unit is functioning.

Several commenters suggested that the proposal needed performance criteria to better define the conditions under which discriminating alarms would be an effective alternative. MSHA agrees and the final rule includes performance requirements addressing the detection zone, the audible alarm, and means to ensure that the device is working.

Some commenters questioned the reliability of the discriminating backup alarms in the day-to-day use, especially in wet and muddy conditions. MSHA recognizes that all equipment requires a measure of maintenance in order to perform within its design capabilities. The equipment should be checked frequently and on a regular basis to ensure the system works as designed.

The final rule requires the alarms to be maintained in functional condition.

Another commenter was concerned with the possibility of blasting caps being set off or detonated by the radio waves coming from a microwave unit. According to testimony and a publication by the Institute of Makers of Explosives (ANSI No. C95.4), there is virtually no chance of this ever occurring. MSHA recommends that discriminating backup alarm manufacturers consult the Institute of Makers of Explosives when developing their systems.

MSHA has received numerous petitions for modification of the audible backup alarm requirement from both coal and metal and nonmetal mining operations. The majority of these operations are located near residential areas and operate on multiple shifts, and have requested that they be allowed to use reverse-activated strobe lights in order to comply with local noise ordinances. Strobe lights are effective as warning devices at night. Therefore, paragraph (d) of the final rule permits the use of a strobe light instead of an audible alarm when mobile equipment is operated at night. One commenter, agreed that the use of strobe lights as backup warning devices could provide a valuable margin of protection, but also recommended that the strobe lights be a distinct color, easily distinguished from other strobe lights, capable of warning for at least 100 feet from the equipment and used in conjunction with an audible alarm. MSHA believes that strobe lights are effective warning devices instead of audible warning devices at night.

Although MSHA recommends the use of distinct color strobe lights to distinguish the backup strobe light from other strobe lights in use in the area, the Agency does not believe that such a distinction is always necessary and has not included this recommendation in the regulation. MSHA considers an effective strobe light to be one that can be seen from a reasonable distance.

III. Executive Order 12291 and the Regulatory Flexibility Act

This rulemaking does not result in major cost increases or have an incremental effect of $100 million or more on the industry. Therefore, this final rule is not a major rule under Executive Order 12291, and a Regulatory Impact Analysis is not required.

The Regulatory Flexibility Act requires that agencies evaluate and include, whenever possible, compliance alternatives that minimize adverse impact on small businesses when developing regulatory proposals. The final rule incorporates alternatives to assist small mines. The Agency estimates that about 200 pieces of mobile surface mining equipment at small mines and 500 pieces at large mines annually would require installation or replacement of a backup warning device to maintain compliance with the existing and final rules. The annual cost for industry compliance, therefore, is $13,600 at small mines and $34,000 at large mines, totalling $47,600 industry wide. MSHA concludes that this final rule will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

This final rule does not contain collection of information requirements subject to the Paperwork Reduction Act of 1980.

List of Subjects in 30 CFR Part 77

Mine safety and health; Automatic warning devices; Mobile equipment.

David C. O'Neal,

Assistant Secretary for Mine Safety and Health.

Date: July 14, 1989.

Accordingly, Part 77, Subchapter O, Chapter I, Title 30 of the Code of Federal Regulations is amended under 30 U.S.C. 811 as follows:

PART 77—MANDATORY SAFETY STANDARDS, SURFACE COAL MINES AND SURFACE WORK AREAS OF UNDERGROUND COAL MINES

1. The authority citation to Part 77 is revised to read as follows:

Authority: 30 U.S.C. 811, 957 and 961.

2. Section 77.410 is revised to read as follows:

§ 77.410 Mobile equipment; automatic warning devices.

(a) Mobile equipment such as front-end loaders, forklifts, tractors, graders, and trucks, except pickup trucks with an unobstructed rear view, shall be equipped with a warning device that—

(1) Gives an audible alarm when the equipment is put in reverse; or

(2) Uses infrared light, ultrasonic waves, radar, or other effective devices to detect objects or persons at the rear of the equipment, and sounds an audible alarm when a person or object is detected. This type of discriminating warning device shall—

(i) Have a sensing area of a sufficient size that would allow endangered persons adequate time to get out of the danger zone.

(ii) Give audible and visual alarms inside the operator's compartment and a audible alarm outside of the operator's compartment when a person or object is detected in the sensing area; and

(iii) When the equipment is put in reverse, activate and give a one-time audible and visual alarm inside the operator's compartment and a one-time audible alarm outside the operator's compartment.

(b) Alarms shall be audible above the surrounding noise levels.

(c) Warning devices shall be maintained in functional condition.

(d) An automatic reverse-activated strobe light may be substituted for an audible alarm when mobile equipment is operated at night.

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Part V

Department of Labor

Pension and Welfare Benefits Administration

29 CFR 2550

Loans to Plan Participants and Beneficiaries Who Are Parties in Interest With Respect to the Plan; Final Rule

BEST COPY AVAILABLE

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2550

RIN 1210-AA09

Loans to Plan Participants and Beneficiaries Who Are Parties in Interest With Respect to the Plan

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document contains a final regulation under the Employee Retirement Income Security Act of 1974 (the Act or ERISA) relating to loans from employee benefit plans to plan participants and beneficiaries who are parties in interest with respect to the plan. The regulation is intended to clarify the scope of section 408(b)(1) of the Act, and to define certain terms used therein. Section 408(b)(1) provides an exemption from certain prohibitions of section 406 of the Act for loans to plan participants and beneficiaries. The regulation will affect employee benefit plans, their sponsors and fiduciaries, and participants and beneficiaries engaging in such loan transactions.

EFFECTIVE DATE: The regulation will be effective for all participant loans granted or renewed after October 18, 1989, except that § 2550.408b-1(d)(2), which relates to the specific plan provisions requirement of section 408(b)(1)(C) of the Act, is effective for participant loans granted or renewed on or after the last day of the first plan year beginning on or after January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Susan E. Rees, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, (202) 523-9141; or Deborah S. Hobbs, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 523-8671. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On January 22, 1988, the Department of Labor published a proposed regulation at 53 FR 1798 which is intended to provide guidance on the scope of the statutory exemption under section 408(b)(1) of the Act, relating to loans from ERISA-covered employee benefit plans to plan participants and beneficiaries. The Department received over 200 comments in response to the proposal, and conducted a public hearing on the proposed regulation on April 25, 1988. The following discussion summarizes the proposed regulation and the major issues raised by the commentators and explains the Department's reasons for adopting the final regulation.

Background

Section 408(b)(1) of the Act provides a statutory exemption which permits a plan fiduciary within the meaning of 3(21)(A) of the Act to make loans from the plan to plan participants and beneficiaries. In the absence of an exemption, such transactions would be prohibited under section 406 of the Act. Specifically, section 406(a)(1)(B) prohibits a plan fiduciary from engaging in the direct or indirect lending of money to parties in interest to the plan such as themselves or other fiduciaries, plan participants, or employers whose employees are covered by the plan; section 406(b) also prohibits a plan fiduciary from engaging in transactions on behalf of the plan in which he has a conflict of interest. The final regulation 29 CFR 2550.408b-1 defines the scope of the exemption and the specific conditions contained therein.

Under section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), the Secretary of Labor has the authority to promulgate regulations for section 4975(d)(1) of the Internal Revenue Code (the Code), a parallel provision to section 408(b)(1) of ERISA. Therefore, unless otherwise specified, all references herein to section 408(b)(1) of the Act apply also to section 4975(d)(1) of the Code.

Discussion

A. Scope of the Regulation

Proposed regulation paragraph 2550.408b-1(a)(1) set out the terms of section 408(b)(1) of the Act under which participant loans are permitted. Specifically, the proposed regulation stated that the relief provided under section 408(b)(1) is available if loans made by a plan to participants and beneficiaries who are parties in interest with respect to the plan (A) are available to all such participants and beneficiaries on a reasonably equivalent basis; (B) are not made available to highly compensated employees, officers, or shareholders [1] in an amount greater than the amount made available to other employees; (C) are made in accordance with specific provisions regarding such loans set forth in the plan; (D) bear a reasonable rate of interest; and (E) are adequately secured. The proposal made it clear that participant loan transactions that meet these criteria will not violate section 406(a) of the Act (which prohibits fiduciaries from engaging in certain transactions with parties in interest), section 406(b)(1) of the Act (which prohibits a fiduciary from dealing with plan assets in his own interest or for his own account) or section 406(b)(2) of the Act (which prohibits fiduciaries in their individual or in any other capacity from acting in any transaction involving the plan on behalf of, or representing a party whose interests are adverse to those of the plan, its participants, or its beneficiaries).

Proposed § 2550.408b-1(a) clarified that fiduciaries who are plan participants are permitted to receive loans under a participant loan program. Because the Department received no unfavorable comments on this paragraph, it has been adopted as proposed.

The Department notes, however, that the exemption encompasses certain transactions in which the potential for self-dealing by fiduciaries exists and in which the interests of fiduciaries may conflict with the interests of participants. To guard against potential abuses, the Department will subject loans to fiduciaries to special scrutiny to assure that the conditions of the regulation are met. In this regard, the regulation is designed to assure that participant loan programs are operated under strict objective criteria. Accordingly, the regulation specifically requires that a fiduciary may only receive a loan from a plan if: (1) The program is administered under strict objective criteria which assure the equitable availability of the assets committed to the program among qualified participants, and (2) the borrowing fiduciary does not receive more favorable consideration or terms than other plan participants requesting a loan. As did the proposal, the final regulation also states that section 408(b)(1) of the Act will not exempt transactions violating the provisions of section 406(b)(3) of the Act. Such a transaction is a separate transaction not covered by section 408(b)(1).

Proposed § 2550.408b-1(a)(3) made clear that a loan will not be exempt under section 408(b)(1) unless it is arranged and approved by the fiduciary administering the loan program

[1] Section 1114(b)(15)(B) of the Tax Reform Act of 1986 (Pub. L. 99-514) amended section 408(b)(1)(B) by deleting the phrase "highly compensated employees, officers, or shareholders" and substituting the phrase "highly compensated employees (within the meaning of section 414(q) of the Internal Revenue Code of 1986)." Thus, § 2550.408b-1(a)(1) contains a provision reflecting the statutory amendment.

primarily in the interest of the participants and such loan otherwise satisfies the conditions set forth in section 408(b)(1) of the Act. For example, the section 408(b)(1) exemption does not provide relief for loan programs which grant loans only to employees who agree to apply the loan proceeds for the benefit of some other party in interest, such as the employer. [2] However, in the absence of any inappropriate precondition or other facts and circumstances indicating that the loan program is not administered primarily for the benefit of the participants, the proposal contained no restrictions on the uses that plan participants may make of the loan proceeds. In this regard, one commentator urged that the regulation specifically prohibit participant loan proceeds being reloaned to the employer because of the great potential for coercion of employees without such a limitation.

While the Department acknowledges that a potential for employer coercion may exist under the proposed regulatory scheme, it believes that any benefit which might be gained by imposing a strict prohibition against the subsequent use by or transfer to a party in interest of a participant loan would be far outweighed by the practical problems such a prohibition would create for the fiduciary administering the loan program, *e.g.*, the monitoring by the administering fiduciary of the actual subsequent use of the proceeds of each loan by each participant.

As explained by Example (3) of § 2550.408b-1(a)(4), a loan program may meet all the conditions of section 408(b)(1) so that the loans will be exempt under that section, and yet if the employer exerts pressure on participants to borrow funds and reloan the proceeds to him, that coercion will be viewed by the Department as a separate transaction violative of Code section 4975(c)(1)(D) that is not exempt under ERISA section 408(b)(1) or Code section 4975(d)(1). As illustrated by that example, the employer would be liable for the excise taxes under Code section 4975. In this regard, the Department also notes that section 511 of ERISA makes it unlawful for a person to coerce a participant for the purpose of interfering with a right he has under a plan. In contrast, where a participant has taken out a plan loan and by exercising his unfettered discretion has transferred the proceeds to a party in interest, the final regulation, as did the proposal, contains no restrictions on the use of the loan proceeds.

In the event of a default on a participant loan, the preamble to the proposed regulation stated that the relief provided by section 408(b)(1) necessarily includes the foreclosure on, or sale or disposal of, a plan's security interest by a fiduciary. The Department stressed, however, that the section 408(b)(1) exemption does not extend to the sale or disposal of the security interest to a party in interest and further cautioned that, in circumstances other than default, the transfer of property by a party in interest in repayment of a participant loan will be viewed as a prohibited sale or exchange of property between a plan and a party in interest under section 406 of the Act.

One commentator queried why a sale of collateral on default to a party in interest must be prohibited. In response, the Department notes that Congress strictly delimited the exemptive relief provided by section 408(b)(1) to the otherwise prohibited transaction of a loan of plan assets from a plan to a party in interest who is either a participant or beneficiary of that plan. There is no evidence in either the statute or legislative history of a Congressional intent to exempt any other prohibited transaction—such as a sale of the plan security upon participant default to a party in interest—which may flow from, but is not a necessary result of, the loan transaction. It is the position of the Department that the sale of collateral upon default to a party in interest would constitute a separate prohibited transaction not described in section 408(b)(1).

As explained in the proposal, it is the Department's position that the exemption under section 408(b)(1) applies only to *bona fide* loans. If a loan is made with the understanding that the borrower has no intention to repay, the transaction would not be considered a participant loan for purposes of the relief provided by section 408(b)(1), but would merely constitute a transfer of plan assets to or for the benefit of a party in interest in violation of section 406(a)(1)(D) of the Act and section 4975(c)(1)(D) of the Code. Whether any particular loan satisfies the requirements of section 408(b)(1) will be determined based on all the facts and circumstances of the transaction. [3] The Department received no substantive comments in this area, and, accordingly, the Department has retained its position as proposed.

Commentators also sought clarification as to the extent of fiduciary liability in administering a loan program with respect to both the general statutory requirement of diversification and the specific requirement of section 408(b)(1) that loans be made available on a reasonably equivalent basis. It was requested that the final regulation specifically limit the liability of all plan fiduciaries other than the fiduciary responsible for administering the loan program. In this regard, one commentator suggested that the regulation should be amended to clarify that the administration of a loan program is not a trustee responsibility under section 405(c)(3) of ERISA for the following reasons: (1) Participant loan programs are usually administered by a loan committee and not by the plan trustee(s), and (2) participant loans are regarded as an incidental plan benefit, and as such should not be considered as involving management of plan assets.

The Department notes that the exemption provided by 408(b)(1) provides relief from the prohibited transaction rule of section 406 of the Act but not the fiduciary responsibility rules set out in sections 404 and 405. In this regard, Congress stated that all statutory exemptions from the prohibited transaction rules are:

> To have no effect with respect to the basic fiduciary responsibility rules requiring prudent action, diversification of investments, and actions exclusively for the benefit of participants and beneficiaries, etc. [4]

Because the administration of a participant loan program is the management of plan assets, fiduciary conduct with respect to administration of a loan program must conform to the rules governing all other transactions involving plan assets, although plans are free to allocate fiduciary responsibility in this regard to the extent permitted by section 405(c) of the Act.

Lastly, the Tax Reform Act of 1986 amended section 408(d) of the Act to give the Department the authority to

[2] Example (3) of § 2550.408b-1(a)(4) of the final regulation indicates, however, that a loan program will not fall outside the scope of the regulation merely because the program, by its express terms, limits loans to certain stated purposes, *e.g.*, hardship, medical or college education, which are not inconsistent with the interests of plan participants and beneficiaries. Any such limitation, however, must also meet the requirement of § 2550.408b-1(b)(1) that loans under the program be available to participants and beneficiaries on a reasonably equivalent basis.

[3] The Department does wish to note that, in its opinion, the fact of a subsequent default will not, in itself, cause the Department to treat the loan as one which was entered into with no intention to repay.

[4] H.R. Rep. No. 1280, 93rd Cong., 2d Sess. at 310-11 (1974) [hereinafter Conf. Rpt.], *reprinted in* Subcomm. on Labor, Senate Comm. on Labor and Pub. Welfare, Legislative History of the Employee Retirement Income Security Act of 1974, 4577-78 (Comm. Print 1976) [hereinafter Legis. Hist.].

grant administrative exemptions under section 408(a) to permit owner-employees to participate in participant loan programs. In this regard, several commentators suggested that the Department utilize its authority and grant a blanket exemption in this regulation from the prohibited transaction rules for owner-employees. The Department has determined that such an exemption is beyond the scope of this regulation, which relates solely to the statutory relief provided by section 408(b)(1).[5] However, consideration will be given to individual requests for relief in this area in accordance with established procedures. (See ERISA Proc. 75-1, 40 FR 18471, April 28, 1975).[6]

B. Reasonably Equivalent Basis

Under section 408(b)(1)(A) of the Act, the 408(b)(1) exemption applies only if the loans are available on a reasonably equivalent basis to all participants and beneficiaries of the plan. Consistent with the legislative history of this provision, proposed § 2550.408b-1(b) required that such loans be made available to all plan participants and beneficiaries without regard to an individual's race, color, religion, age, sex or national origin, while permitting a plan to consider factors which would be considered in a normal commercial setting by an entity in the business of making similar loans, *e.g.*, the applicant's creditworthiness.[7] Also consistent with the legislative history, the Department indicated that a plan could consider financial need in determining loan availability.[8]

Finally, the proposal stated that both the form and operation of the participant loan program will determine whether, in actual practice, loans are unreasonably withheld from any applicant. As the proposed examples (1) and (2) at § 2550.408b-1(b)(2) illustrated, the proposed regulation would prohibit the practice of applying different terms to different loan applicants, *e.g.*, offering lower interest rates to certain applicants without a commercial justification or informally restricting access to loans to certain participants. The proposal also indicated that under particular facts and circumstances, loan programs which have uniformly applied loan requirements but which in operation exclude large numbers of plan participants from receiving loans under the program may be found to have failed to make loans available to all participants on a reasonable equivalent basis. *See, e.g.*, § 2550.408b-1(a)(4), Example (8), and § 2550.408b-1(b)(2), Example (3).

The Department received a number of comments asking whether loan programs that exclude all but active employees from participation would be considered to be providing loans on a reasonably equivalent basis. In this regard, it is the position of the Department that such an exclusion is not justifiable because the statute provides, without condition, that section 408(b)(1) applies to loans that, *inter alia*, are available to *all* participants and beneficiaries on a reasonably equivalent basis. It should be noted, however, that these regulations are intended to be sufficiently flexible to accommodate differing treatment of loan applicants based on valid economic differences which may exist between active employees and other participants and beneficiaries and which commercial lenders in the business of making similar types of loans legally recognize for purposes of loan availability. Thus, participants and beneficiaries other than active employees may be offered loans on different terms and conditions where such terms and conditions are based solely on factors that are legally considered by commercial entities in the business of making similar loans.

Several commentators requested clarification concerning the reference in the proposed regulation to creditworthiness as the type of commercial factor that plans could consider in granting loans. These commentators expressed concern that § 2550.408b-1(b)(1)(ii) might be read as requiring plans to consider each applicant's creditworthiness in order to meet the requirements of the regulation. As a point of clarification, consideration may be given to individual creditworthiness if the plan is so designed; however, the final regulation does not require that a program be so designed. In this regard, the Department reiterates that the fiduciary administering the loan program must do so in such a way as to comport with the general fiduciary responsibilities of ERISA, *e.g.*, the provisions of section 404. Therefore, based on the facts and circumstances of any particular loan program, the administering fiduciary must decide what factors need to be taken into consideration in order to administer that particular program prudently.

Other commentators questioned whether minimum or maximum loan amounts, or required minimum account balances were permissible under this section. Commentators suggested that minimum loan amounts were necessary because of the administrative cost of processing loans, and many asked that the regulation provide a "safe harbor" minimum loan amount. One commentator questioned whether a plan could, consistent with the requirement that loans be available on a reasonably equivalent basis, charge fees for processing, and contract out and charge borrowers for loan administration. Several commentators queried whether loans are available on a reasonably equivalent basis where the loan program restricts accounts from which loans can be made.

None of these limitations and conditions necessarily contravene the conditions of section 408(b)(1) of the Act or the provisions of this regulation. Such limitations, however, would have to be examined to determine whether in practice (1) the limitation is the basis for loans being unreasonably withheld from any applicant, and (2) the loan program, through such limitation, excludes large numbers of plan participants from receiving loans under the program, thereby raising the issue of whether the program meets the requirement of section 408(b)(1)(B) of the Act and § 2550.408b-1(c) of the regulation.

In general, the Department does not believe that it is feasible to set a "safe harbor" with regard to permissible limitations in the areas mentioned above. However, based on the comments received and the testimony given concerning the proposal, it appears that many participant loan programs currently require a minimum loan amount due to administrative cost. Thus, in this regard, the Department has amended the regulation by adding § 2550.408b-1(b)(2) which provides that a participant loan program will not fail the requirements of §§ 2550.408b-1 (b)(1) or (c) if the program establishes a minimum loan amount of up to $1000, provided that the loans granted by the program meet the requirements of § 2550.408b-1(f) concerning adequate security.

C. Highly Compensated Employees

Section 408(b)(1)(B) states that the relief provided in section 408(b)(1) is available only if participant loans are not made available to highly compensated employees, officers, or shareholders[9] in an amount greater than the amount made available to other employees. With regard to this provision, the legislative history indicates a Congressional intent to allow plans to lend the same percentage of a person's vested benefits to participants with both large and small amounts of accrued vested benefits, or to lend the same dollar amounts if security other than the vested benefit is provided. *See* Conf. Rpt., *supra*, at 312; Legis. Hist., *supra*, at 4579. In light of the expressed Congressional intent, proposed § 2550.408b-1(c)(2) stated that a participant loan program would not fail to meet this requirement merely because the plan documents specifically governing the participant loan program set forth either (i) a maximum dollar limitation, or (ii) a maximum percentage of vested accrued benefit which no loan may exceed. If the second alternative (maximum percentage of vested accrued benefit) is chosen, the proposal explained that a loan program would not fail to meet this requirement solely because maximum loan amounts varied directly with the size of the participant's vested accrued benefit.[10] Section 2550.408b-1(c)(1) of the proposed regulation made it clear, however, that a loan program will satisfy the requirements of this paragraph if the program does not operate to exclude large numbers of plan participants from receiving loans.

The Department received no substantive comment on this paragraph, and thus, this paragraph is published in final as proposed. Numerous commentators did, however, request a Departmental view as to fiduciary liability, if any, in those cases where in order to comply with the Department's articulated requirements of adequate security and reasonable rate of interest, a loan program, in operation, excludes a large number of plan participants from receiving loans. In part, the Department believes that the concern of these commentators may be answered by the clarifications contained in this final regulation concerning the adequate security and reasonable rate of interest requirements. In addition, as evidenced by the legislative history, Congress clearly believed that loan programs could be conducted under the rules specified within section 408(b)(1), as well as the general ERISA fiduciary rules which govern other plan investments, and still operate in a non-discriminatory manner. Thus, by definition, loan programs which meet the requirements concerning reasonable rate of interest and adequate security will not be deemed discriminatory for purposes of the provisions of either section 408(b)(1) (A) or (B) of the Act solely by reason of compliance with the requirements of section 408(b)(1) (D) and (E) of the Act and the corresponding provisions of this regulation.

D. Specific Plan Provisions

Section 408(b)(1)(C) of the Act requires that participant loans be made in accordance with specific provisions regarding such loans set forth in the plan. Under the proposed regulation at § 2550.408b-1(d), all participant loan programs must be established pursuant to specific authority provided in a plan document. Additionally, a participant loan program which is contained in the plan or in a written document forming part of the plan must include, but need not be limited to, the following: (1) The identity of the person or positions authorized to administer the participant loan program; (2) a procedure for applying for loans; (3) the basis on which loans will be approved or denied; (4) limitations (if any) on the types and amounts of loans offered; (5) the procedure under the program for determining a reasonable rate of interest; (6) the types of collateral which may secure a participant loan; and (7) the events constituting default and the steps that will be taken to preserve plan assets in the event of such default. The proposal further specified that if a plan fails either to contain such specific provisions or to administer participant loans in accordance with a written program, loans made under such a program will fail to qualify for the relief extended in section 408(b)(1).

Under the proposed regulation, the specific terms enumerated above would apply to loans granted or renewed at any time on or after the last day of the first plan year beginning on or after January 1, 1989. Until that date, the Department will consider loans to satisfy the requirement of section 408(b)(1)(C) if the plan contains an explicit authorization for the establishment of a participant loan program. Example (1) of this paragraph also stated that the specific provisions describing the loan program, whether contained in the plan or in a written document forming part of the plan, affect the rights and obligations of the participants and beneficiaries under the plan and therefore must, in accordance with section 102(a)(1), be disclosed in the plan's summary plan description (SPD).

The Department received numerous comments seeking clarification as to what types of documents would satisfy the requirements of this subsection. Several commentators asked whether the SPD itself would be considered "a written document forming part of the plan" and, thus, satisfy the requirements of § 2550.408b-1(d) of this regulation. Others asked whether the regulation would require that the summary plan description disclose all specific plan loan provisions.

As indicated in Example (1) of § 2550.408b-1(d), the Department anticipates that the specific loan provisions under which the loan program is operated in many cases will not be contained in the plan itself but rather in a separate document forming part of the plan. The Department can find no reason to limit descriptively the range of documents which may form part of the plan. Thus, the Department sees no reason why an SPD could not satisfy the conditions of § 2550.408b-1(d) if it contains the required loan program provisions and is a document forming part of the plan. With regard to the extent to which loan program provisions must be disclosed in the SPD, the Department notes that section 102 of ERISA requires that the SPD be sufficiently accurate and comprehensive to reasonably apprise participants and beneficiaries of their rights and obligations under the plan. In this regard, it is the opinion of the Department that satisfaction of the requirements of section 102 would, at a minimum, require summary disclosures with respect to those items listed in § 2550.408b-1(d)(2).[11]

[5] The Department notes that section 408(d), while amended to permit exemptions under section 408(a), specifically provides that the statutory relief under 408(b)(1) is not available to owner-employees.

[6] On June 28, 1988, the Department proposed a new prohibited transaction exemption procedure which the Department intends to finalize in the immediate future. (53 FR 24422).

[7] Conf. Rpt., *supra* at 311, *reprinted in* Legis. Hist., *supra*, at 4578.

[8] *Id.*

[9] See footnote 1 *infra*.

[10] The Department notes that the Internal Revenue Code (the Code) places a number of restrictions on participant loans for tax purposes. Under section 72(p) of the Code, a participant loan will be treated as a taxable distribution from the plan unless such loan does not exceed the lesser of: (i) $50,000 (which amount must be reduced by the outstanding balances for any previous participant loans from the plan in accordance with section 72(p)(2)(A)(i)); or (ii) one-half of the present value of the nonforfeitable accrued benefit of the employee under the plan (but not less than $10,000). It is the view of the Department that a participant loan program administered pursuant to plan provisions which have been amended to preclude the making of loans which would be considered distributions under section 72(p) of the Code will not fail, by virtue of those provisions, to satisfy the condition in section 408(b)(1)(B) of the Act and § 2550.408b-1(c) of this regulation.

The Department also notes that a determination that a particular plan loan program meets the requirements of § 2550.408b-1(c) will not determine the status of that plan's loan program under Code section 401(a)(4).

[11] Depending on the facts and circumstances of any particular loan program, the list of items required by § 2550.408b-1(d) may not, alone, adequately describe the rights and obligations of participants of that plan, and, hence, additional information may be required.

The Department also received many comments arguing that the Department should require less detail in the plan documents because of the changing nature of loan programs and the expense of plan amendments. Several commentators opined that section 408(b)(1)(C) of the Act should not be read to require that such things as loan application procedures, interest rates and types of security be included.

In this regard, the Department reiterates that the specific terms enumerated in § 2550.408b–1(d)(2) may be included in a separate written document forming part of the plan. Also, it is the view of the Department that the requirements of this paragraph of the regulation are sufficiently general to permit plan provisions to be framed in a manner which would limit the number of plan amendments. For example, § 2550.408b–1(d)(2) does not require the inclusion in the plan of the actual rate of interest or the actual loan application form, but merely the general procedures for determining the interest rate and for applying for a loan.

A number of commentators indicated that sponsors of master and prototype plans would have difficulty complying with the requirements of § 2550.408b–1(d) of the regulation because these types of plans have no effective mechanism for setting forth the specific provisions required in the regulation. It was suggested that special guidance be developed for these plans and that, if necessary, a later effective date should be provided for amendments to such plans.

The Department believes that there is no basis in the statute to conclude that participants and beneficiaries of master or prototype plans are entitled to less specific disclosure of their rights and benefits under their plan than participants of other types of plans. Thus, the final regulation contains no special rules for these plans. Lastly, the Department believes that the grace period for compliance with this paragraph should be sufficient to accommodate the adoption of any necessary changes to master and prototype plans, as well as other types of plans.

E. Reasonable Rate of Interest

Section 408(b)(1)(D) of the Act states that, in order for a loan to be covered by the relief provided by section 408(b)(1), such loan must bear a reasonable rate of interest. In line with the Department's view that a participant loan is a plan investment, § 2550.408b–1(e) of the proposed regulation provided that a reasonable rate of interest is one which provides the plan with a return commensurate with the prevailing interest rate charged on similar commercial loans by persons in the business of lending money. This standard was first described in Advisory Opinion 81–12A[12] and reflects the relevant legislative history and the practice under the Internal Revenue Code prior to the enactment of ERISA.

In A.O. 81–12A, the Department expressed its view that Congress intended to incorporate into 408(b)(1) the objective prevailing rate standard under existing IRS regulations. The Department described the prevailing rate standard as a composite of what persons and institutions in the business of lending money would obtain as compensation for the use of money which they lend under similar circumstances. The Department noted that the prevailing rate standard permits a fiduciary to consider those factors pertaining to the opportunity for gain and the risk of loss that professional lenders would consider in setting the rate of interest on a similar arm's-length loan, and emphasized that a participant loan as a plan investment would not be prudent if it provided a plan with less return, relative to risk, than comparable investments available to the plan, or if it involved a greater risk to the security of plan assets than other investments offering a similar return.

The Department's approach was not followed in *Brock* v. *Walton* 794 F.2d 586 (11th Cir. 1986), where the Court of Appeals held that a rate 2½ percent lower than the prevailing rate in the community was neither imprudent under section 404(a)(1) of the Act nor unreasonable for purposes of 408(b)(1). After a careful review of the court's opinion, the Department issued the proposed regulation which adhered to the position that Congress intended participant loans to be treated as any other plan investment and, thus, governed by the objective prevailing rate standard.

Although several commentators agreed with the Department's position with respect to defined benefit plans, the Department received many comments arguing that less than commercial rates should be permitted for participant loan programs in individual account-type plans. In general, commentators disagreed both with the concept that participant loans are solely plan investments and with the position that for investment purposes prevailing commercial rates are the appropriate points of comparison. Many commentators argued that Congress did not intend that plans be required to charge the prevailing market rates of interest. Most in this group contended that the DOL should follow the *Brock* v. *Walton* rule that "reasonable rate" doesn't have to be prevailing market rate of interest.[13]

After due consideration of these comments, the Department continues to believe that the law of trusts establishes an objective standard of fiduciary conduct which has been incorporated by Congress in ERISA and applied in numerous cases thereunder. *See, e.g., Donovan* v. *Cunningham*, 716 F.2d 1455, 1467–68 (5th Cir. 1983), *cert. denied*, 467 U.S. 1251 (1984); *Donovan* v. *Mazzola*, 716 F.2d 1226, 1231–32 (9th Cir. 1983), *cert. denied*, 464 U.S. 1040 (1984); *Freund* v. *Marshall & Ilsley Bank*, 485 F. Supp. 629, 635 (W.D. Wisc. 1979). In addition, as noted in the preamble to the proposed regulation, the legislative history clearly indicates that in section 408(b)(1) Congress provided an exemption from the prohibited transaction rules for participant loans "following current practice." Conf. Rpt., *supra* at 310–11. In discussing the state of the law prior to the passage of ERISA, Congress noted:

> Under the Internal Revenue Code, qualified retirement plans must be for the exclusive benefit of the employees and their beneficiaries. Following this requirement, the Internal Revenue Service has developed general rules that govern the investment of plan assets including a requirement that cost must not exceed fair market value at the time of the purchase, *there must be a fair return commensurate with the prevailing rate*, sufficient liquidity must be maintained to permit distributions, and the safeguards and diversity that a prudent investor would adhere to must be present.

Id. at 302 (Emphasis added.) See 26 U.S.C. 503(b)(1) (1970), Treas. Reg. 26 CFR 1.503(b)–1(c) (1960). Further, although Congress clearly intended, through the enactment of section 408(b)(1) to permit certain parties in interest, i.e., plan participants, to engage in what would otherwise be prohibited transactions involving plan assets, it is the opinion of the Department that Congress also clearly intended that the exemption would have no effect with respect to the requirements of the basic fiduciary responsibility rules. Conf. Rpt., *supra*, at 310–11; Legis. Hist., *supra*, at 4577–78. Based on the above, the Department issued A.O. 81–12A in which it concluded that both sections 404 and 408(b)(1) require participant loans to be treated as other plan investments, and that prevailing commercial loan rates are to be the appropriate benchmarks for determining a reasonable rate of interest. After careful review of the comments, the Department has determined to adhere to this longstanding interpretation.[14]

Other commentators stated that requiring the use of commercial rates is particularly inappropriate where a loan is in effect a self-directed investment, the investment experience of which is attributable only to the participant. In the Department's view, there is no basis in the statute for departing from the position that participant loans should function as plan investments, whether the investment return is used to provide benefits to one participant or to all covered participants. Moreover, it is the opinion of the Department that the primary purpose of a pension plan is to provide the benefit of retirement income not to make participant loans.[15]

Many commentators sought clarification on how to determine the rate of interest, and how often it should be adjusted. A majority of the commentators argued that ascertaining the prevailing market rate would be administratively infeasible, and that the Department should adopt a standard rate such as the applicable federal rate, a GIC rate, prime or prime plus rate, rates comparable to other plan returns, or state usury law rates. Other commentators argued that plans administered on a nationwide basis should not be required to charge different rates of interest in different locales.

Providing a standard "safe harbor" interest rate would not be compatible with the Department's view that a "reasonable rate of interest" is one which provides the plan with a return commensurate with the prevailing interest rate charged by persons in the business of lending money for loans which would be made under similar circumstances. A Departmentally-established standard rate would also run counter to the Department's view of a participant loan as an investment subject to the same standards of ERISA as any other investment, *e.g.*, the prudence and exclusive benefit rules. Such a standard rate would also ignore the fact that the commercially prevailing rate may vary based on certain factors, *e.g.*, creditworthiness of the borrower and the security given for the loan. Indeed, the Department believes that no one particular standard rate will consistently reflect the appropriate risk relative to return ratio for all plans and all participant loans. Thus, with respect to setting loan rates, the Department suggests that plan administrators conduct the same type of inquiry that would be prudent prior to making any other type of investment.

With respect to geographical differences in the market rates, the Department believes that administrative costs may justify the adoption of a national rate of interest by a plan which is administered on a nationwide basis. Such a plan may also grant loans on a regional basis at rates which reflect appropriate regional factors. In the case of a plan which is not a plan administered on a nationwide basis, the Department believes that an appropriate determination of the "reasonable rate of interest" must be based on appropriate regional factors.

A number of commentators questioned Example (3) of proposed § 2550.408b–1(e) which states that a plan may not limit the rate of interest to the state usury limit if commercial institutions not subject to the usury laws are charging higher rates. According to these commentators, this places a plan sponsor in the untenable position of being forced to choose between complying with state usury laws or with the Department's regulation. In this regard, the Department notes that ERISA contains no mandate requiring ERISA-covered plans to provide loan programs for their participants; thus, there is no absolute conflict between state usury laws and ERISA. The Department continues to adhere to its position that a "reasonable rate of interest" is one which provides the plan with a return commensurate with the prevailing interest rate charged by persons in the business of lending money for loans which would be made under similar circumstances. Also, because participant loans are plan investments, a participant loan program which limits its interest rate to a maximum state usury ceiling when higher yielding comparable investment opportunities exist may not meet the requirements of ERISA section 403(c) and 404(a).

G. Adequate Security

Section 408(b)(1)(E) of the Act states that the relief provided by paragraph 408(b)(1) will apply only to loans that are adequately secured. Based on similar IRS regulations, the Department proposed § 2550.408b–1(f) which provided a test for the adequacy of the security similar to that which would be required by a commercial lender. The proposed regulation made it clear that in the participant loan context, the security must be such that, in the event of default, the participant's retirement income is preserved and loss to the plan is prevented. The proposal indicated that at least a portion of a participant's vested accrued benefit under the plan may be used as security to the extent that it meets this test. Citing to the spousal consent requirements of ERISA and the Code, the Department also suggested in the preamble to the proposed regulation that restrictions on distributions in qualified plans could affect the adequacy of vested accrued benefits as security.

Virtually all commentators on this paragraph of the regulation requested clarification that vested accrued benefits could serve as adequate security for participant loans. Most of these commentators made their arguments with respect to loan programs administered by individual account plans under which principal and interest payments made on any particular participant's loan would be allocated

[12] Advisory Opinion 81–12A (letter to Robert Georgine, January 15, 1981) (A.O. 81–12A).

[13] In this regard, some commentators argued that the Department is required to follow *Brock* v. *Walton*, in part, because the Department did not seek review by the Supreme Court. To the contrary, the government is not bound to alter its national policy based on an adverse Court of Appeals decision. Such a rule would serve to prevent the development of important questions of law by giving the first decision preclusive effect on a particular issue. *United States* v. *Mendoza*, 464 U.S. 154, 160 (1984). In addition, the government is not required to seek Supreme Court review in order to preserve its position, particularly on the first adverse decision, in part because the Court's general practice is to review cases only after a conflict among the Circuits has developed. *See* S.Ct. Rule 17.1(a).

[14] Many commentators also argued that under the "facts and circumstances" prudent person test of A.O. 81–12A, a below-prevailing rate of interest is permissible for participant loans which are both secured by participants' vested accrued benefits and repaid through payroll deduction. It is the Department's view that these factors may not be relied upon to justify the granting of loans at less than the prevailing rate. The Department does, however, wish to clarify that plan fiduciaries may choose a loan rate which reflects these factors, to the same extent that commercial loan rates would, and fall within the narrow range of the prevailing rate.

[15] In this regard, a number of commentators urged that all types of plans be permitted to use less than prevailing rates in recognition of the plan loan as an incidental benefit of, and in the case of some plans, incentive for, plan participation. In the Department's view, this suggestion is not compatible with the express intent of Congress that participant loans be governed by the general rules of fiduciary responsibility, which require that participant loans function as other plan investments. In addition, adopting the view that a participant loan is an incidental benefit would constitute a major departure from the purpose of pension plans—to provide retirement income. Also, in the case of plans in which individual benefits are based on the investment experience of the general pool of plan assets, such an approach may be unfair to those participants who do not take out loans. Lastly, the Department does not believe that the purpose of the exemption is to encourage borrowing from retirement plans but rather to permit it in circumstances that are not likely to either diminish the borrower's retirement income or cause loss to the plan.

totally to that same participant's account. Since in such plans any loss would be suffered only by the participant borrower, it was argued that the restrictions on timing of foreclosure due to the Code restrictions on in-service distributions should not affect the adequacy of accrued benefits as security. If such plans also require repayment by payroll deduction, it was argued that an account balance should be considered adequate security, at least in these types of plans, even though default could not occur until a distributable event, *i.e.*, termination of service. Other commentators suggested that vested accrued benefits in either a defined benefit or defined contribution plan could be considered adequate as security if its value was discounted to take into account any time lag between a default and actual enforcement of the security interest. Another commentator suggested that an employer's guarantee of participant loans should provide the Department a basis for determining that vested accrued benefits are adequate security.

In contrast, a number of commentators agreed that loans from defined benefit plans or other plans in which each participant's benefit is based on a share of the plan's pooled asset investment experience might require collateral beyond that required for loans from individual account plans in order to assure that the plan suffer no loss in the event of default.

In light of the comments, the Department has made the following amendments and clarifications to § 2550.408b–1(f). In the Department's view, Congress clearly intended that at least a portion of a participant's vested accrued benefit be a permissible form of security, *see, e.g.*, Conf. Rpt., *supra*, at 312; *reprinted in* Legis. Hist., *supra*, at 4579. But in that regard, Congress also clearly intended that the security given must be adequate in commercial terms. *Id.* Because of the overriding concern for protecting the plan from loss and thus preserving the participant's retirement income, the Department has determined to retain the general requirement that the security for all participant loans be such that the plan will suffer no loss of principal or income if a default occurs. However, with regard to plan loan programs which intend to accept a participant's vested accrued benefit as security, the Department has also established a cap which places an upper limit on the amount of the vested accrued benefit which the plan administrator may consider for purposes of determining adequate security for participant loans made pursuant to section 408(b)(1). Specifically, the final regulation permits up to fifty percent of the present value of a participant's vested accrued benefit to be used as security for participant loans and taken into account in determining whether the security is adequate, leaving the remaining account balance unencumbered.[16] Thus, immediately after the origination of any participant loan to be secured in whole or in part by the vested accrued benefit, the amount of the participant's vested accrued benefit actually being considered as security for the outstanding balance of that participant's loans may not exceed the 50% cap. A participant loan program may, however, grant participant loans which require aggregate security in excess of the fifty percent cap provided that the plan receives additional collateral the value of which equals or exceeds the amount required in excess of the cap. The Department believes this cap is necessary to assure that the primary purpose of a pension plan is achieved—to provide retirement income for plan participants.

Like the proposal, the final regulation does not require enforcement of the security interest held by a plan at any particular time after a default by a participant borrower. Section 2550.408b–1(f)(1), however, does require that in order for the security posted for the loan to be considered adequate, (1) the plan must have the ability to foreclose on, or sell, or otherwise dispose of it in the case of default; and (2) the value of the security must be such that it can be reasonably anticipated that the plan will not suffer a loss of principal or interest from the loan due to the actual date of enforcement of the security interest resulting from a default. The requirement that the plan have the ability to foreclose on the security interest in the case of default does not require that the plan have the ability to foreclose immediately upon default. For example, where a portion of the vested accrued benefit is used as security, the plan's ability to enforce the security interest immediately upon default is not required as long as no loss of principal or income will occur to the plan due to the delay of such enforcement. Similarly, in the case of collateral other than a participant's vested accrued benefit, the Department is of the opinion that it is within the plan fiduciary's discretion to determine whether it is prudent to extend the date of enforcement of the security interest, as long as no loss of principal or interest occurs.

For plans which accept a portion of the vested accrued benefit as security, the Department understands that the effect of the "no loss" requirement will vary depending upon the type of plan. With regard to plans in which the investment experience of the plan's assets is shared by all participants or used to fund the benefits of all plan participants, additional loan program requirements in conjunction with the pledging of a portion of the participant's vested accrued benefit may be necessary in order to assure "no loss" of principal and interest to the plan. For example, a loan program in a 401(k) plan in which the investment experience is shared might meet this "no loss" requirement by using a portion of a participant's account balance as security in conjunction with mandatory payroll deduction repayment which would stop only upon the happening of a distributable event, *i.e.*, retirement, separation from service or death. In addition, discounting the value of the vested accrued benefit to take into account the time delay between any possible default and the first distributable event for that participant's benefit may be another viable way of meeting the "no loss" adequate security requirement. ERISA's general fiduciary requirements may also require a plan administrator of a defined benefit plan who intends to use a portion of a participant's vested accrued benefit as security to consider additional factors such as the funding of the plan in determining the amount that may be borrowed based on the vested accrued benefit. However, where a plan provides an individual account for each participant and the investment experience of the assets contributed to that account is attributable solely to that plan participant's account, any participant who has a vested accrued benefit may borrow up to 50% of the present value of the vested accrued benefit secured by that 50% of the vested account balance. For example, a participant who has a vested accrued benefit the present value of which is $10,000 may borrow up to $5,000, secured by 50% of his vested account balance, *i.e.*, $5,000, and meet the terms of §§ 2550.408b–1(f) (1) and (2).

Finally, it was suggested that an employer guarantee of a participant loan might be a means of adequately securing the loan. In this regard, if requested, the Department will consider the issues surrounding this subject in the context of specific guarantee arrangements submitted for review.

[16] The Department chose to correspond the cap to one of the upper limits imposed by section 72(p)(2)(A)(ii) of the Code, beyond which participant loans will be treated as taxable distributions. The Department wishes to note, however, that it is not adopting the provisions of section 72(p) as requirements of this regulatory exemption.

H. Effective Date

Proposed § 2550.408b–1(g) of the regulation stated that, if adopted, the regulation would generally be effective January 1, 1975, except that § 2550.408b–1(d)(2) relating to specific plan provisions would be effective for loans granted or renewed on or after the last day of the first plan year beginning on or after January 1, 1989.

Many of the comments received by the Department urged that all provisions of the regulations be made prospective in effect, contending that it would be unfair to issue retroactive regulations which are inconsistent with current practice both as to rates of interest and the security required, and which may impose substantial liability on plan fiduciaries and cause possible disqualification of plans. Other commentators suggested that the effective date be extended to include the time which plans will need to comply with the Tax Reform Act of 1986. One commentator stated that the retroactive effective date was reasonable except as applied to existing loans designed to be reloaned to the plan sponsor since, in the commentator's view, the Department has not definitively called this practice a prohibited transaction. Another commentator opined that the regulations should be prospective because plans are complying with state usury laws.

In support, commentators noted that the 1974 legislative history of ERISA gave permission to continue current practice which various commentators believed to include use of lower than prevailing rates of interest and use of distribution-restricted vested accrued benefits as security for loans. With respect to the proposed definition of reasonable rate of interest, many commentators stated that the proposed regulation is inconsistent with A.O. 81–12A, which commentators contend led plans to believe that using less than prevailing rates was permissible. Commentators also asserted that many plans reasonably relied upon the 1986 *Brock* v. *Walton* decision where the Eleventh Circuit approved a participant loan rate less than the prevailing rate. Some commentators suggested that a grace period be given plans so that they would have the opportunity to come into compliance with the regulation. Others suggested that existing plan loans be "grandfathered," *i.e.*, not be required to change their terms.

In response, the Department believes that the clarifications contained in this final regulation may alleviate some of the commentators' concern about the effective date of the regulation. It also believes, however, that many plans have in good faith attempted to follow the terms of the exemption but may not meet the precise terms contained in this final regulation. Section 2550.408b–1(g) has therefore been amended to provide that with the exception of the provisions of § 2550.408b–1(d)(2), the regulation will be effective for all new or renewed loans 90 days from the publication date of this final regulation.[17]

Executive Order 12291 Statement

The final rule in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The action will impose some costs on employee benefit plans. These costs have been estimated to be one-time costs of just under $18 million and subsequent annual costs of less than $150,000.

Regulatory Flexibility Act Statement

The Department has determined that this final regulation would not have a significant economic impact on small entities. The purpose of this regulation is to provide guidance to employee benefit plans and their sponsors and administrators who wish to provide a participant loan program to their plan participants and beneficiaries. A number of commentators suggested that the Department had underestimated the cost of implementing a participant loan program under the regulation. In conducting the analysis required under the Regulatory Flexibility Act, it was determined that several aspects of the final regulation will serve to alleviate their concerns. First, many commentators projected higher costs based on misinterpretations of the proposed regulation's requirements under ERISA section 408(b)(1)(E), relating to adequate security.

Second, the Department anticipates that, given the nature of the requirements of ERISA section 408(b)(1) as clarified by the regulation, employee benefit service providers will be able to develop standardized language for inclusion in plan documents and summary plan descriptions, thereby reducing costs incurred by individual plan sponsors. Finally, it should be noted that no plan sponsor is required under section 408(b)(1) of ERISA, or the regulation, to provide for a loan program as part of a plan; thus, only those plan sponsors voluntarily adopting loan programs will be affected by the regulation.

Paperwork Reduction Act Statement

Section 2550.408b–1(d) of the final regulation contains a paperwork requirement which has been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511). The final regulation is assigned control number 1210–0076.

Statutory Authority

The regulation set forth herein is issued pursuant to section 408(b)(1), 29 U.S.C. 1108(b)(1), and section 505, 29 U.S.C. 1135, of the Act. The regulation is also issued under section 102, Reorganization Plan No. 4 of 1978, (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), 3 CFR, 1978 Comp., 332, *reprinted in* 5 U.S.C. app. at 1163 (1982); and under Secretary of Labor Order No. 1–87.

List of Subjects in 29 CFR Part 2550

Employee benefit plans, Employee Retirement Income Security Act, Employee stock ownership plans, Exemptions, Fiduciaries, Investments, Investments foreign, Party in interest, Pensions, Pension and Welfare Benefits Administration, Prohibited transactions, Real estate, Securities, Surety bonds, Trusts and Trustees.

In view of the foregoing, the Department amends Part 2550 of Chapter XXV of Title 29 of the Code of Federal Regulations as follows:

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

1. The authority citation for Part 2550 is revised to read as set forth below and

[17] The Department notes that making the regulation prospective in effect does not necessarily create an inference that all existing loan programs are *per se* acceptable. For instance, the Department may find that certain existing loan arrangements are non-exempt prohibited transactions, based not on the regulation, but on the Department's longstanding interpretation of the reasonable rate of interest requirement, as contained in A.O. 81–12A and as argued in *Brock* v. *Walton*, 794 F.2d 586 (11th Cir. 1986). Consequently, the Department will continue to bring enforcement actions aimed at participant loans made prior to the effective date of the regulation at below prevailing rates.

the authority citations following all the sections in Part 2550 are removed.

Authority: 29 U.S.C. 1135.

Section 2550.407c-3 also issued under 29 U.S.C. 1107.

Section 2550.408b-1 also issued under sec. 102, Reorganization Plan No. 4 of 1978 (43 FR 47713, Oct. 17, 1978), effective December 31, 1978 (44 FR 1065, Jan. 3, 1979), 3 CFR, 1978 Comp., 332, *reprinted in* 5 U.S.C. app. at 1163 (1982), and under 29 U.S.C. 1108(b)(1).

Section 2550.412-1 also issued under 29 U.S.C. 1112.

Section 2550.414b-1 also issued under 29 U.S.C. 1114.

Secretary of Labor Order No. 1-87.

2. Part 2550 is amended by adding a new § 2550.408b-1, entitled *General statutory exemption for loans to plan participants and beneficiaries who are parties in interest with respect to the plan*, to read as follows:

§ 2550.408b-1 General statutory exemption for loans to plan participants and beneficiaries who are parties in interest with respect to the plan.

(a)(1) *In general.* Section 408(b)(1) of the Employee Retirement Income Security Act of 1974 (the Act or ERISA) exempts from the prohibitions of section 406(a), 406(b)(1) and 406(b)(2) loans by a plan to parties in interest who are participants or beneficiaries of the plan, provided that such loans:

(i) Are available to all such participants and beneficiaries on a reasonably equivalent basis;

(ii) Are not made available to highly compensated employees, officers or shareholders in an amount greater than the amount made available to other employees;

(iii) Are made in accordance with specific provisions regarding such loans set forth in the plan;

(iv) Bear a reasonable rate of interest; and

(v) Are adequately secured.

The Internal Revenue Code (the Code) contains parallel provisions to section 408(b)(1) of the Act. Effective, December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to promulgate regulations of the type published herein to the Secretary of Labor. Therefore, all references herein to section 408(b)(1) of the Act should be read to include reference to the parallel provisions of section 4975 (d)(1) of the Code.

Section 1114(b)(15)(B) of the Tax Reform Act of 1986 amended section 408(b)(1)(B) of ERISA by deleting the phrase "highly compensated employees, officers or shareholders" and substituting the phrase "highly compensated employees (within the meaning of section 414(q) of the Internal Revenue Code of 1986)." Thus, for plans with participant loan programs which are subject to the amended section 408(b)(1)(B), the requirements of this regulation should be read to conform with the amendment.

(2) *Scope.* Section 408(b)(1) of the Act does not contain an exemption from acts described in section 406(b)(3) of the Act (prohibiting fiduciaries from receiving consideration for their own personal account from any party dealing with a plan in connection with a transaction involving plan assets). If a loan from a plan to a participant who is a party in interest with respect to that plan involves an act described in section 406(b)(3), such an act constitutes a separate transaction which is not exempt under section 408(b)(1) of the Act. The provisions of section 408(b)(1) are further limited by section 408(d) of the Act (relating to transactions with owner-employees and related persons).

(3) *Loans.* (i) Section 408(b)(1) of the Act provides relief from the prohibitions of section 406(a), 406(b)(1) and 406(b)(2) for the making of a participant loan. The term "participant loan" refers to a loan which is arranged and approved by the fiduciary administering the loan program primarily in the interest of the participant and which otherwise satisfies the criteria set forth in section 408(b)(1) of the Act. The existence of a participant loan or participant loan program will be determined upon consideration of all relevant facts and circumstances. Thus, for example, the mere presence of a loan document appearing to satisfy the requirements of section 408(b)(1) will not be dispositive of whether a participant loan exists where the subsequent administration of the loan indicates that the parties to the loan agreement did not intend the loan to be repaid. Moreover, a loan program containing a precondition designed to benefit a party in interest (other than the participant) is not afforded relief by section 408(b)(1) or this regulation. In this regard, section 408(b)(1) recognizes that a program of participant loans, like other plan investments, must be prudently established and administered for the exclusive purpose of providing benefits to participants and beneficiaries of the plan.

(ii) For the purpose of this regulation, the term "loan" will include any renewal or modification of an existing loan agreement, provided that, at the time of each such renewal or modification, the requirements of section 408(b)(1) and this regulation are met.

(4) *Examples.* The following examples illustrate the provisions of § 2550.408b-1(a).

Example (1): T, a trustee of plan P, has exclusive discretion over the management and disposition of plan assets. As a result, T is a fiduciary with respect to P under section 3(21)(A) of the Act and a party in interest with respect to P pursuant to section 3(14)(A) of the Act. T is also a participant in P. Among T's duties as fiduciary is the administration of a participant loan program which meets the requirements of section 408(b)(1) of the Act. Pursuant to strict objective criteria stated under the program, T, who participates in all loan decisions, receives a loan on the same terms as other participants. Although the exercise of T's discretion on behalf of himself may constitute an act of self-dealing described in section 406(b)(1), section 408(b)(1) provides an exemption from section 406(b)(1). As a result, the loan from P to T would be exempt under section 408(b)(1), provided the conditions of that section are otherwise satisfied.

Example (2): P is a plan covering all the employees of E, the employer who established and maintained P. F is a fiduciary with respect to P and an officer of E. The plan documents governing P give F the authority to establish a participant loan program in accordance with section 408(b)(1) of the Act. Pursuant to an arrangement with E, F establishes such a program but limits the use of loan funds to investments in a limited partnership which is established and maintained by E as general partner. Under these facts, the loan program and any loans made pursuant to this program are outside the scope of relief provided by section 408(b)(1) because the loan program is designed to operate for the benefit of E. Under the circumstances described, the diversion of plan assets for E's benefit would also violate sections 403(c)(1) and 404(a) of the Act.

Example (3): Assume the same facts as in Example 2, above, except that F does not limit the use of loan funds. However, E pressures his employees to borrow funds under P's participant loan program and then reloan the loan proceeds to E. F, unaware of E's activities, arranges and approves the loans. If the loans meet all the conditions of section 408(b)(1), such loans will be exempt under that section. However, E's activities would cause the entire transaction to be viewed as an indirect transfer of plan assets between P and E, who is a party in interest with respect to P, but not the participant borrowing from P. By coercing the employees to engage in loan transactions for its benefit, E has engaged in separate transactions that are not exempt under section 408(b)(1). Accordingly, E would be liable for the payment of excise taxes under section 4975 of the Code.

Example (4): Assume the same facts as in Example 2, above, except that, in return for structuring and administering the loan program as indicated, E agrees to pay F an amount equal to 10 percent of the funds loaned under the program. Such a payment would result in a separate transaction not covered by section 408(b)(1). This transaction would be prohibited under section 406(b)(3) since F would be receiving consideration from a party in connection with a transaction involving plan assets.

Example (5): F is a fiduciary with respect to plan P. D is a party in interest with respect to plan P. Section 408(a)(1)(B) of the Act would prohibit F from causing P to lend money to D. However, F enters into an agreement with Z, a plan participant, whereby F will cause P to make a participant loan to Z with the express understanding that Z will subsequently lend the loan proceeds to D. An examination of Z's credit standing indicates that he is not creditworthy and would not, under normal circumstances, receive a loan under the conditions established by the participant loan program. F's decision to approve the participant loan to Z on the basis of Z's prior agreement to lend the money to D violates the exclusive purpose requirements of sections 403(c) and 404(a). In effect, the entire transaction is viewed as an indirect transfer of plan assets between P and D, and not a loan to a participant exempt under section 408(b)(1). Z's lack of credit standing would also cause the transaction to fail under section 408(b)(1)(A) of the Act.

Example (6): F is a fiduciary with respect to Plan P. Z is a plan participant. Z and D are both parties in interest with respect to P. F approves a participant loan to Z in accordance with the conditions established under the participant loan program. Upon receipt of the loan, Z intends to lend the money to D. If F has approved this loan solely upon consideration of those factors which would be considered in a normal commercial setting by an entity in the business of making comparable loans, Z's subsequent use of the loan proceeds will not affect the determination of whether loans under P's program satisfy the conditions of section 408(b)(1).

Example (7): A is the trustee of a small individual account plan. D, the president of the plan sponsor, is also a participant in the plan. Pursuant to a participant loan program meeting the requirements of section 408(b)(1), D applies for a loan to be secured by a parcel of real property. D does not intend to repay the loan; rather, upon eventual default, he will permit the property to be foreclosed upon and transferred to the plan in discharge of his legal obligation to repay the loan. A, aware of D's intention, approves the loan. D fails to make two consecutive quarterly payments of principal and interest under the note evidencing the loan thereby placing the loan in default. The plan then acquires the real property upon foreclosure. Such facts and circumstances indicate that the payment of money from the plan to D was not a participant loan eligible for the relief afforded by section 408(b)(1). In effect, this transaction is a prohibited sale or exchange of property between a plan and a party in interest from the time D receives the money.

Example (8): Plan P establishes a participant loan program. All loans are subject to the condition that the borrowed funds must be used to finance home purchases. Interest rates on the loans are the same as those charged by a local savings and loan association under similar circumstances. A loan by P to a participant to finance a home purchase would be subject to the relief provided by section 408(b)(1) provided that the conditions of 408(b)(1) are met. A participant loan program which is established to make loans for certain stated purposes (e.g., hardship, college tuition, home purchases, etc.) but which is not otherwise designed to benefit parties in interest (other than plan participants) would not, in itself, cause such program to be ineligible for the relief provided by section 408(b)(1). However, fiduciaries are cautioned that operation of a loan program with limitations may result in loans not being made available to all participants and beneficiaries on a reasonably equivalent basis.

(b) *Reasonably Equivalent Basis.* (1) Loans will not be considered to have been made available to participants and beneficiaries on a reasonably equivalent basis unless:

(i) Such loans are available to all plan participants and beneficiaries without regard to any individual's race, color, religion, sex, age or national origin;

(ii) In making such loans, consideration has been given only to those factors which would be considered in a normal commercial setting by an entity in the business of making similar types of loans. Such factors may include the applicant's creditworthiness and financial need; and

(iii) An evaluation of all relevant facts and circumstances indicates that, in actual practice, loans are not unreasonably withheld from any applicant.

(2) A participant loan program will not fail the requirement of paragraph (b)(1) of this section or § 2550.408b-1(c) if the program establishes a minimum loan amount of up to $1,000, provided that the loans granted meet the requirements of § 2550.408b-1(f).

(3) *Examples.* The following examples illustrate the provisions of § 2550.408b-1(b)(1):

Example (1): T, a trustee of plan P, has exclusive discretion over the management and disposition of plan assets. T's duties include the administration of a participant loan program which meets the requirements of section 408(b)(1) of the Act. T receives a participant loan at a lower interest rate than the rate made available to other plan participants of similar financial condition or creditworthiness with similar security. The loan by P to T would not be covered by the relief provided by section 408(b)(1) because loans under P's program are not available to all plan participants on a reasonably equivalent basis.

Example (2): Same facts as in example 1, except that T is a member of a committee of trustees responsible for approving participant loans. T pressures the committee to refuse loans to other qualified participants in order to assure that the assets allocated to the participant loan program would be available for a loan by P to T. The loan by P to T would not be covered by the relief provided by section 408(b)(1) since participant loans have not been made available to all participants and beneficiaries on a reasonably equivalent basis.

Example (3): T is the trustee of plan P, which covers the employees of E. A, B and C are employees of E, participants in P, and friends of T. The documents governing P provide that T, in his discretion, may establish a participant loan program meeting certain specified criteria. T institutes such a program and tells A, B and C of his decision. Before T is able to notify P's other participants and beneficiaries of the loan program, A, B, and C file loan applications which, if approved, will use up substantially all of the funds set aside for the loan program. Approval of these applications by T would represent facts and circumstances showing that loans under P's program are not available to all participants and beneficiaries on a reasonably equivalent basis.

(c) *Highly Compensated Employees.* (1) Loans will not be considered to be made available to highly compensated employees, officers or shareholders in an amount greater than the amount made available to other employees if, upon consideration of all relevant facts and circumstances, the program does not operate to exclude large numbers of plan participants from receiving loans under the program.

(2) A participant loan program will not fail to meet the requirement in paragraph (c)(1), of this section, merely because the plan documents specifically governing such loans set forth either (i) a maximum dollar limitation, or (ii) a maximum percentage of vested accrued benefit which no loan may exceed.

(3) If the second alternative in paragraph (c)(2) of this section (maximum percentage of vested accrued benefit) is chosen, a loan program will not fail to meet this requirement solely because maximum loan amounts will vary directly with the size of the participant's accrued benefit.

(4) *Examples.* The following examples illustrate the provisions of § 2550.408b-1(c).

Example (1): The documents governing plan P provide for the establishment of a participant loan program in which the amount of any loan under the program (when added to the outstanding balances of any other loans under the program to the same participant) does not exceed the lesser of (i) $50,000, or (ii) one-half of the present value of that participant's vested accrued benefit under the plan (but not less than $10,000). P's participant loan program does not fail to meet the requirement in section 408(b)(1)(B) of the Act, and would be covered by the relief provided by section 408(b)(1) if the other conditions of that section are met.

Example (2): The documents governing plan T provide for the establishment of a participant loan program in which the minimum loan amount would be $25,000. The documents also require that the only security

acceptable under the program would be the participant's vested accrued benefit. A, the plan fiduciary administering the loan program, finds that because of the restrictions in the plan documents only 20 percent of the plan participants, all of whom earn in excess of $75,000 a year, would meet the threshold qualifications for a loan. Most of these participants are high-level supervisors or corporate officers. Based on these facts, it appears that loans under the program would be made available to highly compensated employees in an amount greater than the amount made available to other employees. As a result, the loan program would fail to meet the requirement in section 408(b)(1)(B) of the Act and would not be covered by the relief provided in section 408(b)(1).

(d) *Specific Plan Provisions.* For the purpose of section 408(b)(1) and this regulation, the Department will consider that participant loans granted or renewed at any time prior to the last day of the first plan year beginning on or after January 1, 1989, are made in accordance with specific provisions regarding such loans set forth in the plan if:

(1) The plan provisions regarding such loans contain (at a minimum) an explicit authorization for the plan fiduciary responsible for investing plan assets to establish a participant loan program; and

(2) For participant loans granted or renewed on or after the last day of the first plan year beginning on or after January 1, 1989, the participant loan program which is contained in the plan or in a written document forming part of the plan includes, but need not be limited to, the following:

(i) The identity of the person or positions authorized to administer the participant loan program;

(ii) A procedure for applying for loans;

(iii) The basis on which loans will be approved or denied;

(iv) Limitations (if any) on the types and amount of loans offered;

(v) The procedure under the program for determining a reasonable rate of interest;

(vi) The types of collateral which may secure a participant loan; and

(vii) The events constituting default and the steps that will be taken to preserve plan assets in the event of such default.

Example (1): Plan P authorizes the trustee to establish a participant loan program in accordance with section 408(b)(1) of the Act. Pursuant to this explicit authority, the trustee establishes a written program which contains all of the information required by § 2550.408b-1(d)(2). Loans made pursuant to this authorization and the written loan program will not fail under section 408(b)(1)(C) of the Act merely because the specific provisions regarding such loans are contained in a separate document forming part of the plan. The specific provisions describing the loan program, whether contained in the plan or in a written document forming part of a plan, do affect the rights and obligations of the participants and beneficiaries under the plan and, therefore, must in accordance with section 102(a)(1) of the Act, be disclosed in the plan's summary plan description.

(e) *Reasonable Rate of Interest.* A loan will be considered to bear a reasonable rate of interest if such loan provides the plan with a return commensurate with the interest rates charged by persons in the business of lending money for loans which would be made under similar circumstances.

Example (1): Plan P makes a participant loan to A at the fixed interest rate of 8% for 5 years. The trustees, prior to making the loan, contacted two local banks to determine under what terms the banks would make a similar loan taking into account A's creditworthiness and the collateral offered. One bank would charge a variable rate of 10% adjusted monthly for a similar loan. The other bank would charge a fixed rate of 12% under similar circumstances. Under these facts, the loan to A would not bear a reasonable rate of interest because the loan did not provide P with a return commensurate with interest rates charged by persons in the business of lending money for loans which would be made under similar circumstances. As a result, the loan would fail to meet the requirements of section 408(b)(1)(D) and would not be covered by the relief provided by section 408(b)(1) of the Act.

Example (2): Pursuant to the provisions of plan P's participant loan program, T, the trustee of P, approves a loan to M, a participant and party in interest with respect to P. At the time of execution, the loan meets all of the requirements of section 408(b)(1) of the Act. The loan agreement provides that at the end of two years M must pay the remaining balance in full or the parties may renew for an additional two year period. At the end of the initial two year period, the parties agree to renew the loan for an additional two years. At the time of renewal, however, A fails to adjust the interest rate charged on the loan in order to reflect current economic conditions. As a result, the interest rate on the renewal fails to provide a "reasonable rate of interest" as required by section 408(b)(1)(D) of the Act. Under such circumstances, the loan would not be exempt under section 408(b)(1) of the Act from the time of renewal.

Example (3): The documents governing plan P's participant loan program provide that loans must bear an interest rate no higher than the maximum interest rate permitted under State X's usury law. Pursuant to the loan program, P makes a participant loan to A, a plan participant, at a time when the interest rates charged by financial institutions in the community (not subject to the usury limit) for similar loans are higher than the usury limit. Under these circumstances, the loan would not bear a reasonable rate of interest because the loan does not provide P with a return commensurate with the interest rates charged by persons in the business of lending money under similar circumstances. In addition, participant loans that are artificially limited to the maximum usury ceiling then prevailing call into question the status of such loans under sections 403(c) and 404(a) where higher yielding comparable investment opportunities are available to the plan.

(f) *Adequate Security.* (1) A loan will be considered to be adequately secured if the security posted for such loan is something in addition to and supporting a promise to pay, which is so pledged to the plan that it may be sold, foreclosed upon, or otherwise disposed of upon default of repayment of the loan, the value and liquidity of which security is such that it may reasonably be anticipated that loss of principal or interest will not result from the loan. The adequacy of such security will be determined in light of the type and amount of security which would be required in the case of an otherwise identical transaction in a normal commercial setting between unrelated parties on arm's-length terms. A participant's vested accrued benefit under a plan may be used as security for a participant loan to the extent of the plan's ability to satisfy the participant's outstanding obligation in the event of default.

(2) For purposes of this paragraph, (i) no more than 50% of the present value of a participant's vested accrued benefit may be considered by a plan as security for the outstanding balance of all plan loans made to that participant; (ii) a plan will be in compliance with paragraph (f)(2)(i) of this section if, with respect to any participant, it meets the provisions of paragraph (f)(2)(i) of this section immediately after the origination of each participant loan secured in whole or in part by that participant's vested accrued benefit; and (iii) any loan secured in whole or in part by a portion of a participant's vested accrued benefit must also meet the requirements of paragraph (f)(1) of this section.

(g) *Effective date.* This section is effective for all participant loans granted or renewed after October 18, 1989, except with respect to paragraph (d)(2) of this section relating to specific plan provisions. Paragraph (d)(2) of this section is effective for participant loans granted or renewed on or after the last day of the first plan year beginning on or after January 1, 1989.

(Approved by the Office of Management and Budget under control number 1210-0076)

Signed this 14th day of July, 1989.

Ann L. Combs,

Deputy Assistant Secretary for Policy Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 87-16985 Filed 7-19-89; 8:45 am]

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federal register

Thursday
July 20, 1989

Part VI

Presidential Commission on Catastrophic Nuclear Accidents

Meeting

PRESIDENTIAL COMMISSION ON CATASTROPHIC NUCLEAR ACCIDENTS

Meeting

July 19, 1989.

AGENCY: The Presidential Commission on Catastrophic Nuclear Accidents.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463 as amended, the Presidential Commission on Catastrophic Nuclear Accidents announces a forthcoming meeting of the Commission.

DATE: July 26, 1989, 1:00 p.m. to 3:00 p.m.

ADDRESS: Longworth House Office Building, Room 1324, Independence Ave. SW., Washington, DC 20515.

FOR FURTHER INFORMATION CONTACT: Steve C. Griffith, Jr. Chairman, The Presidential Commission on Catastrophic Nuclear Accidents, P.O. 33189, Charlotte, North Carolina 28242 (704/373-4380).

Type of Meeting: Open

Agenda:

1:00 p.m.-1:15 p.m.—Welcoming Remarks from Chairman

1:15 p.m.-2:00 p.m.—Swearing in of Commissioners

2:00 p.m.-3:00 p.m.—General Discussion on the study, scope, and schedule

3:00 p.m.—Adjourn

John J. Kearney,

Commissioner.

[FR Doc. 89-17262 Filed 7-19-89; 12:24 pm]

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Vol. 54 No. 139

federal register

Friday
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 675]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 675 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 400,000 cartons during the period July 23 through July 29, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 675 (§ 910.975) is effective for the period July 23 through July 29, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended [7 CFR Part 910], regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administration Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1988-89. The Committee met publicly on July 18, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that overall demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.975 is revised to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.975 Lemon Regulation 675.

The quantity of lemons grown in California and Arizona which may be handled during the period July 23, 1989, through July 29, 1989, is established at 400,000 cartons.

Dated: July 19, 1989.

Charles H. Brader,
Director, Fruit and Vegetable Division.

[FR Doc. 89-17270 Filed 7-20-89; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 528 and 531

[No. 89-1746]

Nondiscrimination Requirements

Date: June 29, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule; miscellaneous conforming and technical amendments.

SUMMARY: The Federal Home Loan Bank Board ("Bank Board") is amending its regulations governing nondiscrimination by members of the Federal Home Loan

Bank System to implement changes made in Title VIII of the Civil Rights Act of 1968 by the Fair Housing Amendments Act of 1988. The amendments by the Bank Board are necessary to conform Bank Board regulations to the requirements of the statute and implementing regulations promulgated by the Department of Housing and Urban Development ("HUD"); they include adding two new protected classes, adopting a new Equal Housing Lender poster, and conforming complaint processing procedures. Technical amendments are also being made to up-date and conform the regulations to current Bank Board structure and current law. Finally, the appendices containing report preparation instructions are being revised to specify treatment of home equity loans and to clarify other instructions.

The Bank Board amendments do not address all significant aspects of the amended Fair Housing Act and new HUD regulations, because most of the broad nondiscrimination policies set forth in the existing regulations do not need to be rewritten. However, all Bank System members and their counsel should carefully review the extensive amendments to HUD regulations (24 CFR Parts 100 *et seq.*) distributed to members with FHLBB Thrift Bulletin No. 19, dated March 10, 1989.

EFFECTIVE DATE: June 29, 1989.

FOR FURTHER INFORMATION CONTACT: Gilda Morse, Senior Civil Rights Specialist, (202) 906–6324 or Stephen D. Johnson, Attorney Advisor, (202) 906–6318, Office of Community Investment, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601–3619; "Title VIII") made it unlawful to discriminate in any aspect of the sale, rental, or financing of dwellings or in the provision of brokerage services or facilities in connection with the sale or rental of a dwelling because of race, color, religion, sex, or national origin. The Fair Housing Amendments Act of 1988 (Pub. L. 100–430; 102 Stat. 1619) amended Title VIII by (1) strengthening administrative enforcement procedures and private civil rights of action, (2) adding prohibitions against discrimination in housing on the basis of handicap and familial status (having one or more children under the age of 18), and (3) increasing monetary damages that can be awarded where discriminatory housing practices are found. The amended law, referred to as the Fair Housing Act, became effective March 12, 1989. Implementing regulations were published by HUD on January 23, 1989, in the **Federal Register** (52 FR 3232; Jan. 23, 1989) as amendments to 24 CFR Parts 14, 100, 103–106, 109, 110, 115 and 121, effective March 12, 1989.

Bank Board regulations governing nondiscrimination by members of the Federal Home Loan Bank System, found at 12 CFR Parts 528 and 531(§ 531.8), are necessary (1) to affirmatively promote fair housing and lending as expressly required by sections 808(d) and (e) of the Fair Housing Act, (2) to enforce the Fair Housing Act, the Equal Employment Opportunity Act, the Housing and Community Development Act of 1977, the Equal Credit Opportunity Act and other statutes prohibiting discrimination, and (3) to monitor fair lending practices. Part 528 includes both prohibitions against discriminatory practices and mandatory data collection requirements. Section 531.8, entitled "Guidelines relating to nondiscrimination in lending," provides supplementary guidelines to aid Bank System member institutions in developing and implementing nondiscriminatory lending policies.

Bank Board Amendments

Section 528.1(c) is being amended in accordance with the Fair Housing Act by adding an explanation of "dwelling-related" in the definition of "dwelling" to clarify that all loans secured by residential real estate are covered by the Fair Housing Act and Part 528 of Bank Board regulations. This change should resolve any past confusion concerning how to classify home equity loans for monitoring and data collection purposes.

A reference to the HUD Fair Housing regulations is being added to § 528.1a.

Section 528.2 is being amended to include specific reference to purchases of loans and securities as covered activities, in accordance with the Fair Housing Act. In addition, protected classes are being expanded to include handicap and familial status from the Fair Housing Amendments Act of 1988 and marital status and age from the Equal Credit Opportunity Act. A reference to the HUD Fair Housing regulations is also being added as an additional source of information and guidance.

Handicap, familial status, marital status, and age are also being added to § 528.3(a) as protected classes.

Sections 528.4 and 528.5 are being amended to adopt a new equal housing lender poster that includes the two new protected classes and reflects changes in complaint handling. The new poster, approved by HUD for use by federal financial regulatory agencies, separates the Fair Housing Act and ECOA provisions and directs Fair Housing Act complainants to contact both HUD and the Bank Board's Office of Community Investment.

The instructions in the appendices to § 528.6, explaining the preparation of loan application registers and data submission reports, have been clarified in response to past questions raised by member institutions. The treatment of home equity loans has been specifically addressed. In addition, a number of minor editorial revisions have been made to eliminate ambiguous instructions and to clarify others. No changes have been made in the data required or the forms for the reports. The appendices are being reprinted in full for the convenience of member institutions.

References in § 528.7 to statutes and regulations requiring nondiscrimination in employment are being updated to include provisions that member institutions have been subject to for some time.

The complaint processing provision of § 528.8 is being up-dated to reflect that the Office of Community Investment is the successor unit to the Office of Housing and Urban Affairs in the Bank Board, and to require that all Fair Housing Act complaints be sent to both HUD and the Bank Board.

Section 531.8 is being amended to add handicap, familial status, marital status, and age as protected classes and loan purchases as a covered activity.

This regulation, effective immediately upon adoption by the Board, is being issued without the notice and comment and delayed effective date requirements of the Administrative Procedure Act, as amended ("APA"). Pursuant to 5 U.S.C. 553(b)(3)(B), 553(d)(3) and in accordance with the Board's regulations published at 12 CFR 508.11 and 508.14, the Board has determined that the regulation is not subject either to the notice and comment or delayed effective date requirements of the APA because the regulations are necessary to conform the Bank Board's regulations to statutory requirements and implementing regulations promulgated by HUD.

Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Bank Board is providing the following regulatory flexibility analysis.

HUD provided a Regulatory Flexibility Act analysis in its adoption of the final Fair Housing Act regulations at 54 FR 3280 (Jan. 23, 1989).

1. *Need for and objectives of the rules.* As explained in the **SUPPLEMENTARY INFORMATION,** these amendments to Bank Board regulations are mandatory under the Fair Housing Amendments Act of 1988 and HUD's implementing regulations.

2. *Issues raised by commenters and agency assessment and response.* Since the amendments are mandatory and technical, public comment is not required and was not solicited.

3. *Significant alternatives minimizing small-entity impact and response.* No new requirements are being added by the amendments. There are no alternatives that would be less burdensome in meeting the objectives discussed in the **SUPPLEMENTARY INFORMATION.**

List of Subjects

12 CFR Part 528

Advertising, Civil rights, Credit, Fair housing, Federal home loan banks, Mortgages, Reporting and recordkeeping requirements, Signs and symbols.

12 CFR Part 531

Federal home loan banks.

Accordingly, the Bank Board hereby amends Parts 528 and 531, Subchapter A, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER A—GENERAL

PART 528—[AMENDED]

1. The authority citation for Part 528 is revised to read as follows:

Authority: Title VIII, Pub. L. 95–128, 91 Stat. 1147 (12 U.S.C. 2901); Title VII, Pub. L. 93–495 (15 U.S.C. 1691); Title VIII, Pub. L. 90–284, 82 Stat. 81, as amended (42 U.S.C. 3601–3619), 16 Stat. 144, 14 Stat. 27 (42 U.S.C. 1981, 1982); EO 11063, 27 FR 11527; sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); secs. 5, 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

2. Section 528.1(c) is revised to read as follows:

§ 528.1 Definitions.

* * * * *

(c) *Dwelling.* The term "dwelling" means any building, structure, or portion thereof, including a mobile home, which is occupied, or designed or intended for occupancy, as a residency by one or more individuals, and any vacant land that is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof. "Dwelling-related" means secured by a dwelling, regardless of the purpose of the loan or transaction, or intended for purposes related to a dwelling.

* * * * *

3. Section 528.1a is revised to read as follows:

§ 528.1a Supplementary guidelines.

The Board's § 531.8 policy statement supplements, and should be read together with, Part 528. Refer also to the HUD Fair Housing regulations at 24 CFR Parts 100 *et seq.* and Federal Reserve Regulation B at 12 CFR Part 202.

4. Section 528.2 is revised to read as follows:

§ 528.2 Nondiscrimination in lending and other services.

(See also, § 531.8 (a) through (d).)

(a) No member institution may deny a loan or other service, or discriminate in the purchase of loans or securities or discriminate in fixing the amount, interest rate, duration, application procedures, collection, or enforcement procedures, or other terms or conditions of such loan or other service on the basis of the age or location of the dwelling, or on the basis of the race, color, religion, sex, handicap, familial status (having one or more children under the age of 18), marital status, age (provided the person has the capacity to contract), or national origin of:

(1) An applicant or joint applicant;

(2) Any person associated with an applicant or joint applicant regarding such loan or other service, or with the purposes of such loan or other service;

(3) The present or prospective owners, lessees, tenants, or occupants of the dwelling(s) for which such loan or other service is to be made or given;

(4) The present or prospective owners, lessees, tenants, or occupants of other dwellings in the vicinity of the dwelling(s) for which such loan or other service is to be made or given.

(b) A member institution shall consider without prejudice the combined income of joint applicants for a loan or other service.

(c) No member institution may discriminate against an applicant for a loan or other service on any prohibited basis (as defined in 12 CFR 202.2(z) and 24 CFR Part 100).

5. Section 528.3(a) is revised to read as follows:

§ 528.3 Nondiscrimination in applications.

(See also, § 531.8 (a) through (d).)

(a) No member may discourage, or refuse to allow, receive, or consider, any application, request, or inquiry regarding a loan or other service, or discriminate in imposing conditions upon, or in processing, any such application, request, or inquiry on the basis of the age or location of the dwelling, or on the basis of the race, color, religion, sex, handicap, familial status (having one or more children under the age of 18), marital status, age (provided the person has the capacity to contract), national origin, or other characteristics prohibited from consideration in § 582.2(c) of this part, of the prospective borrower or other person, who:

(1) Makes application for any such loan or other service;

(2) Requests forms or papers to be used to make application for any such loan or other service; or

(3) Inquires about the availability of such loan or other service.

* * * * *

6. Section 528.4 is revised to read as follows:

§ 528.4 Nondiscriminatory advertising.

No member institution may directly or indirectly engage in any form of advertising that implies or suggests a policy of discrimination or exclusion in violation of Title VIII of the Civil Rights Act of 1968, the Equal Credit Opportunity Act, or this part. Advertisements, other than for savings, shall include a facsimile of the following logotype and legend:

7. Section 528.5(b) is revised to read as follows:

§ 528.5 Equal housing lender poster.

* * * * *

(b) The text of the Equal Housing Lender Poster shall be as follows:

EQUAL HOUSING LENDER

We Do Business In Accordance With Federal Fair Lending Laws

UNDER THE FEDERAL FAIR HOUSING ACT, IT IS ILLEGAL, ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, RELIGION, SEX, HANDICAP, OR FAMILIAL STATUS (HAVING CHILDREN UNDER THE AGE OF 18), TO:

[ ] Deny a loan for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to deny any loan secured by a dwelling; or

[ ] Discriminate in fixing the amount, interest rate, duration, application procedures, or other terms or conditions of such a loan, or in appraising property.

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, YOU SHOULD SEND A COMPLAINT TO:

Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, DC 20410.

For processing under the Federal Fair Housing Act

AND TO:

Director, Office of Community Investment, Federal Home Loan Bank Board, Washington, DC 20552.

For processing under Federal Home Loan Bank Board Regulations

* * * * *

UNDER THE EQUAL CREDIT OPPORTUNITY ACT, IT IS ILLEGAL TO DISCRIMINATE IN ANY CREDIT TRANSACTION:

[ ] On the basis of race, color, national origin, religion, sex, marital status, or age;

[ ] Because income is from public assistance; or

[ ] Because a right has been exercised under the Consumer Credit Protection Act.

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, YOU SHOULD SEND A COMPLAINT TO:

Director, Office of Community Investment, Federal Home Loan Bank Board, Washington, DC 20552.

* * * * *

8. The text Appendix A and Appendix B to § 528.6 are revised to read as follows:

Appendix A—§ 528.6—Instructions—Association Instructions for Preparation of Loan Application Registers

Separate Loan Application Registers will be maintained for mortgage loans, home improvement and equipping loans, and mobile home loans. Only applications related to one- to four-family dwellings should be entered.

All home equity loans, secured by one- to four-family dwellings, should be entered on a Loan Application Register. If the primary loan purpose is stated as home improvement, the loan should be entered on the home improvement and equipping loan register. All other home equity loans should be entered on the register for mortgage loans.

Please note that these application registers are for loans originated by the institution or its decision centers, which may include branches, mortgage companies and service corporations. See Appendix B for instructions on completing Section R, Decision Centers. Loans or participations purchased from unaffiliated entities are never included in the registers.

I. Mortgage Loan Application Register

A. Loan Identification

1. *Loan Purpose.* Indicate the purpose of the loan, if known, by use of the numeric codes provided. If the purpose is not known, use Code 9, "Other."

2. *Application Number.* Indicate the application number in this column. Each application must be assigned a number at the time of receipt. The number should identify the application and facilitate locating it if the requested loan is not made.

3. *Date of Application.* Indicate the date that the application is received or taken by the association. These dates must appear on the application register in chronological order.

4. *Loan Number.* If a loan is made as a result of the application, show the loan's identifying number.

B. Loan Disposition

Disposition. Indicate the final disposition of the application using the numeric codes provided.

1. *Approved as Requested.* Loan application is approved and settled with terms as originally requested.

2. and 3. If the application is approved, but with any of the originally requested terms changed, the indication will be: a "2," if the terms are accepted by the applicant; or "3," if refused by the applicant. Any applications with changed terms must appear as either a "2" or "3."

4. Denied—Decision based on Applicant's Creditworthiness.

5. Denied—Decision based on Collateral.

6. Denied—Decision based on considerations other than those shown in 4 and 5 above.

7. *Withdrawn by Applicant.* Use this indication only if application is withdrawn before an approval/denial decision is made; or if application is approved with the same terms as requested and is withdrawn by applicant.

Date. For applications with a disposition code of "1" or "2," indicate the date the loan is settled. (Not the date of approval.) For all other disposition codes, indicate the date of denial, refusal by applicant, or withdrawal by applicant.

C. Property Location

1. *SMSA.* Indicate, by *name*, the SMSA in which the property is located. If the property is not in an SMSA, leave blank.

2. *Census Tract.* Indicate the census tract in which the property is located. If the property is not within a census tract, leave blank.

3. *Zip Code.* Indicate the zip code in which the property is located.

Note: All of the above locators which are obtainable must be shown.

D. Area Data

1. *CRA Delineated Community (as defined at 12 CFR 563e.3).* Show Y-yes if the property is located within the area established as the delineated community(ies) in the association's CRA Statement(s). If the property is not within a delineated community, show N-no.

2. *Low Income Census Tract.* Show (Y-yes, N-no) to indicate whether or not the property is located within a Low income census tract. If the property is within a census tract, this column must be completed. If the property is not located within a census tract, leave this column blank.

3. *Moderate Income Census Tract.* Show (Y-yes, N-no) to indicate whether or not the property is located within a moderate income census tract. If the property is within a census tract, this column must be completed. If the property is not located within a census tract, leave this column blank.

4. *Substantially Minority Census Tract.* Show (Y-yes, N-no) to indicate whether or not the property is located within a census tract which is substantially minority in composition. If the property is within a census tract, this column must be completed. If the property is not located in a census tract, leave this column blank. ("Substantially minority" is defined as those census tracts in which the minority resident constitute 25 percent or more of the total population in the census tract.)

The source data needed to enable an association to supply the information required in items 2, 3, and 4 above, will be furnished by the Federal Home Loan Bank Board. Each association will be furnished a complete list of census tracts by SMSA. This listing will be coded to show each census tract that is: (a) Low income, (b) moderate income, or (c) substantially minority.

The institution may also use data that it has available relative to the demographics required in 2, 3, and 4 above provided the data used conforms with the definitions for "Substantially Minority," "Low Income," and "Moderate Income" as used in the Bank Board's data—i.e., "Substantially Minority" means 25 percent or more of the area's population consists of minority residents; "Low Income" means those census tracts in which the median family income is 80 percent or less of the median family income for the entire SMSA; and "Moderate Income" means those census tracts in which the median family income ranges from 81 percent through 95 percent of the median family income for the entire SMSA. If the association uses its own data it must make the data sources available for examiner inspection.

E. Applicant(s) Information

1. *Race.* Indicate the race of both the applicant and coapplicant using the numeric codes provided.

2. *Sex.* Indicate "M" for male or "F" for female for both the applicant and coapplicant.

3. *Marital Status.* Indicate the marital status of both the applicant and coapplicant using the codes provided.

4. *Age.* Indicate the age of the applicant and coapplicant.

F. Property Data

1. *Property Type.* Indicate the property type using the numeric codes provided.

2. *Purchase Price.* Indicate the purchase price of the security property if the Loan Purpose code is either "1" or "2." Leave blank for all other loan purpose codes.

3. *Appraised Value.* Indicate the appraised value of the security property, if an appraisal was made.

4. *Year Built.* Indicate the year built, or the approximate year built for the security property.

G. Loan Terms

For each heading under this section, if the loan was granted (disposition code 1 or 2), show the final loan terms. If the loan was not granted (disposition codes 3 through 7), show the loan terms requested.

1. *Loan Amount.* Indicate the dollar amount of the loan.

2. *Loan to Value Ratio.* Indicate the ratio of loan amount to appraised value. If an appraisal was not made, show ratio of loan amount to purchase price, if applicable.

3. *Interest Rate.* Indicate the contract interest rate.

4. *Maturity.* Indicate the term of the loan in number of months.

5. *Type of Financing.* Indicate the type of financing using the numeric codes provided.

II. Mobile Home Loan Application Register

Note: The instructions for the preparation of the Mortgage Loan Application Register shall be used in the preparation of this register for the following major headings:

A. *Loan Identification*
B. *Loan Disposition*
C. *Property Location*
D. *Area Data*
E. *Applicant(s) Information*

Instruction for Mobile Home Loan Application Register only:

F. Property Data

1. *Buyer's Total Cost.* Show an amount in this column when the amount loaned was based on the borrower's total cost.

2. *Valuation.* Show an amount in this column when the amount loaned was based on an appraisal, or other accepted system of valuation of a new or used mobile home.

3. *Year Built.* Show year in which mobile home unit was manufactured.

G. Loan Terms

Note: For each heading under this section, if the loan was granted (disposition code 1 or 2), show the final loan terms. If the loan was not granted (disposition codes 3 through 7), show the loan terms requested.

1. *Loan Amount.* Show the dollar amount of the loan, but exclude interest, however computed.

2. *Loan to BTC Ratio or Loan to Value Ratio.* A ratio should be shown in this column only when applicable. If the loan was based on the buyer's total cost or on a valuation, then a ratio should be shown. Leave this column blank for loans that are based on prescribed amounts, such as FHA and VA loans for the purchase of new homes.

3. *Interest*—a. *Rate.* Show contract rate of interest (not APR).

b. *Calculation Method.* Indicate the method of calculating interest by use of the alphabetic codes provided.

4. *Maturity Term.* Indicate the term of the loan in months.

5. *Type of Financing.* Indicate the type of financing using the numeric codes provided.

III. Home Improvement and/or Equipping Loan Application Register

Notes: All loan applications that identify home improvement as their primary purpose should be entered on this register.

The instructions for the preparation of the Mortgage Loan Application Register shall be used in the preparation of this register for the following major headings:

A. Loan Identification.
B. Loan Disposition (Including, when appropriate, item No. 5—denial based on collateral.)
C. Property Location.
D. Area Data.
E. Applicant(s) Information.
F. Property Data (Item No. 2—Purchase Price, and Item No. 3—Appraised Value, may be omitted if they are not contained in the application file).

Instructions for Home Improvement and/or Equipping Loan Application Register only:

G. Loan Terms.

1. *Loan Amount.* Show the *total* dollar amount of the loan, but exclude interest, however computed.

2. *Interest*—a. *Rate.* Show contract rate of interest (Not APR).

b. *Calculation Method.* Indicate the method of calculating interest by use of the alphabetic codes provided. If necessary, use an additional code, "O-Other".

3. *Maturity Term.* Indicate the term of the loan in months.

4. *Type of Financing.* Indicate the type of financing using the numeric codes provided.

Appendix B—§ 528.6—Instructions—Association Instructions for Preparation of Data Submission Report

Sections O, P, and Q

(Use FHLBB Forms 1192–O, 1192–P, and 1192–Q)

Introduction

The Data Submission Report (DSR) calls for tabulated summary information on applications that have had a disposition during the reporting cycle. Information on pending (i.e., no disposition) applications is collected and reported as a memo item. Information is requested on a semiannual basis for the periods ending in June and December.

All information for this report is obtained from the Loan Application Register. Information on the DSR is broken down by the total number and dollar amount of applications received and acted on, the number and dollar amount of these applications that have been granted, the number and dollar amount denied, and the number and dollar amount withdrawn. All dollar amounts are reported in thousands (e.g., $10,100 is reported as 10, not 10.1).

Under each of these divisions, the applications are further broken down by census tract groupings, race, sex, and marital status. An additional memo reflects the number of those applications still pending. The number of pending applications is NOT included in the total columns.

In technical amendments conforming to the Fair Housing Amendments Act of 1988, § 528.1(c) of the Federal Home Loan Bank System Regulations has been revised to make it clear that "dwelling-related" includes all loans secured by a one to four family dwelling, regardless of purpose or classification. This is also reflected in Appendix A.

Section 528.1(d) of the Federal Home Loan Bank System Regulations defines a "Decision Center" to mean a member institution's office where decisions are made to approve (on the terms requested, or as changed and accepted) or take any adverse action on applications for dwelling-related loans.

Each Decision Center will be responsible for maintaining its own Loan Application Registers and preparation of its own semiannual DSR. All Decision Centers should submit their Data Submission Reports to the institution's main office. The main office is responsible for submission of all DSRs for all its Decision Centers to the Federal Home Loan Bank Board AND to the District Bank of which the institution is a member.

Decision Centers are discussed on page OPQ–8 of these instructions

Completion of Form. A separate DSR will be prepared for:

FHLBB FORM

Mortgage loans	1192–O
Home improvement and/or equipping loans	1192–P
Mobile Home Loans	1192–Q

Home equity loans will be reported as mortgage loans on 1192–O, unless the stated purpose is home improvement and/or equipping, in which case they will be reported on 1192–P.

However, no DSR will be required for mobile home loan applications or home improvement and/or equipping loan applications if the decision center has not received more than 50 of these types of applications during the six (8) month reporting cycle.

The tabulation procedures described below will be used for all three types of Data Submission Reports.

I. Applications With a Disposition

Under this section, tabulate only those applications which have an indicator in the "Disposition" column of the application register.

Those with no disposition at the time this report is prepared will be separately tabulated and reported under the Pending column. Please refer to Part II (Applications Without a Disposition) of these instructions.

A. Category A—Census T

1. *Both Low Income and Substantially Minority.* From the appregister, total by number and dollar amount all applications with a disposition which have an indicator "Y" (yes) under both the Low Income census tract column and the Substantially Minority census tract column.

Of the above tabulated applications, total all which have a Loan Disposition code of "1" or "2" and place under the "Granted" columns.

Total those above applications with a Loan Disposition code of 3, 4, 5, or 6 and place under the "Rejected/Denied" columns.

Total the above applications with a Loan Disposition code of "7" and place under the "Withdrawn" columns.

The number and dollar amounts under "Granted," "Rejected/Denied," and "Withdrawn" on this line, when added together must total the amounts under the "Total" column.

Example

Nos. 103+105+107=101
Nos. 104+106+108=102

The following relationship of equality must be maintained on each line throughout this report:

Granted+Rejected/Denied+Withdrawn = Total

The number of pending applications should NOT be included in the total.

2. *Both Moderate Income and Substantially Minority.* From the application register, total by number and dollar amount all applications with a disposition which have an indicator "Y" (yes) under both the Moderate Income census tract column and Substantially Minority, by the same procedures described previously.

Breakdown these applications by the same disposition categories of "Granted," "Rejected/ Denied," and "Withdrawn," by the same procedures described previously.

3. *Low Income but not Substantially Minority.* From the application register, total by number and dollar amount all applications with a disposition which have an indicator of "Y" (yes) under the Low Income census tract column, and an indicator of "N" (no) under the Substantially Minority census tract column.

Breakdown these applications by the same disposition categories of "Granted," "Rejected/ Denied," and "Withdrawn" by the same procedures described previously.

4. *Moderate Income but not Substantially Minority.* From the application register, total by number and dollar amounts all applications with a disposition which have an indicator of "Y" (yes) under the Moderate Income census tract column, and an indicator of "N" (no) under the Substantially Minority census tract column.

Breakdown these applications by the same disposition categories of "Granted," "Rejected/Denied," and "Withdrawn" by the same procedures described previously.

5. *Not Low or Moderate Income but Substantially Minority.* From the application register, total by number and dollar amount all applications with a disposition which have an indicator of "Y" (yes) under the Substantially Minority census tract column, and an indicator of "N" (no) under both the Low Income census tract column and Moderate Income census tract column.

Breakdown these applications by the same disposition categories of "Granted," "Rejected/Denied," and "Withdrawn" by the same procedures described previously.

6. *All Other Tracts.* From the application register, total by number and dollar amount the applications which have a disposition, and for which a census tract is shown, but which do not have an indicator of "Y" (yes) in either the Low Income census tract column, the Moderate Income census tract column, or the Substantially Minority census tract column.

Breakdown these applications by the same disposition categories of "Granted," "Rejected/Denied," and "Withdrawn" by the same procedures described previously.

7. *Non-tracted Areas.* From the application register, total by number and dollar amount all applications which have a disposition, and are located in a non-tracted area.

Breakdown these applications by the same disposition categories of "Granted," "Rejected/ Denied," and "Withdrawn" by the same procedures described previously.

Total all columns under "Category A—Census Tracts." As with each individual line above, the totals under "Granted," "Rejected/Denied," and "Withdrawn" for this whole section will equal the accumulated "Total" column.

B. Category B—Race

Tabulate all applications with a disposition, on the basis of race, using the same breakdown procedures with respect to "Total," "Granted," "Rejected/Denied," and "Withdrawn" under this category as those used for Census Tracts. An additional instruction relative to race breakdowns is necessary, however.

The loan application register requests information relative to both the applicant and coapplicant. For the Data Submission Report, however, only one indicator per application is allowed in order to maintain comparable totals. Therefore:

If both the applicants are white, include the application under the totals for "White."

If one of the applicants is white and the other is one of the minority designations, tabulate the application under that minority designation.

If both applicants are the same minority, tabulate the application under that minority designation.

If both applicants are minorities, but different minorities, tabulate the application under either minority designation but not both.

As with the Census Tract category, all figures will total horizontally. In addition, the totals of each column under race will equal the totals of each column under Census Tracts, as well as all other categories.

Example

No. 191 = No. 291
No. 192 = No. 292
No. 193 = No. 293 etc.

C. Category C—Sex

Tabulate all applications with a disposition, on the basis of sex, using the same breakdown procedures with respect to "Total," "Granted," "Rejected/ Denied," and "Withdrawn" under this category as those described previously. An additional instruction relative to Sex designation is necessary, however.

As with the race breakdowns, only one indicator per application is allowed. Therefore:

If either of the applicants or both applicants are male, tabulate the application under the "Male" designation. (This will include coapplicants who are husband and wife.)

If there is only one applicant and that person is a female or if both applicants are females, tabulate the application under the "Female" designation.

(Anytime a male is involved as an applicant, tabulate under "Male." Tabulate under "Female" when all applicants are female.)

As with the other categories, all figures will total horizontally. In addition, all totals under Sex category will equal all totals under the other categories.

D. Category D—Marital Status

Tabulate all applications with a disposition, on the basis of marital status, using the same breakdown procedures with respect to "Total," "Granted," "Rejected/ Denied," and "Withdrawn" under this category as those described previously. An additional instruction relative to Marital Status is necessary, however.

As with the previous breakdowns, only one indicator per application is allowed. Therefore:

If both applicants are married, not necessarily to each other, tabulate the application under the "Married" designation.

If one applicant is married and the other is either unmarried or separated, tabulate the loan under that appropriate non-married designation.

If both applicants are in different non-married statuses, (i.e., one unmarried and one separated), tabulate the application under either designation but not both designations.

As with the other categories, all figures will total horizontally. In addition, all totals under the Marital Status category will equal all totals under the other categories.

II. Applications Without a Disposition (Pending)

Under this section, tabulate only those applications which were received during the six (6) month reporting cycle, and for which there has been no disposition as of the last day of the reporting cycle. Do not include pending applications from any previous reporting cycle.

Remember that Pending applications are not included in tabulating the total columns.

A. Category A—Census Tracts

1. *Both Low Income and Substantially Minority.* From the application register, total, by number only, all applications with no disposition which have an indicator of "Y" (yes) under both the Low Income census tract column and the Substantially Minority census tract column. Place total number under Pending column.

2. *Both Moderate Income and Substantially Minority.* From the application register, total, by number only, all applications with no disposition which have an indicator of "Y" (yes) under both the Moderate Income census tract column and the Substantially Minority census tract column. Place total number under Pending column.

3. *Low Income but not Substantially Minority.* From the application register, total, by number only, all applications with no disposition which have an indicator of "Y" (yes) under the Low Income census tract column and an indicator of "N" (no) under the Substantially Minority census tract column.

4. *Moderate Income but not Substantially Minority.* From the application register, total, by number only, all applications with no disposition which have an indicator of "Y" (yes) under the Moderate Income census tract column and an indicator of "N" (no) under the Substantially Minority census tract column.

5. *Substantially Minority, but not Low or Moderate Income.* Total, by number only, all applications with no disposition which have a "Y" (yes) under the Substantially Minority census tract column, and an indicator of "N" (no) under both the Low Income and Moderate Income census tract columns.

6. *All Other Tracts.* Total, by number only, all applications with no disposition which show a census tract but which do not have an indicator of "Y" (yes) in either Low or Moderate census tract column or the Substantially Minority census tract column.

7. *Non-tracted Areas.* Total, by number only, all applications with no disposition for which a census tract is not shown.

Total all figures obtained in the above breakdown.

B. Category B—Race

Total, by number only, all applications with no disposition, by various race categories, using the same criteria previously supplied. The total for all applications without a disposition broken down by race will equal the total for all such applications under "Category A—Census Tracts," as well as all the other categories.

C. Category C—Sex

Total, by number only, all applications with no disposition, by sex, using the same criteria previously supplied. The total for all applications without a disposition under this category will equal the totals under the other categories.

D. Category D—Marital Status

Total, by number only, all applications with no disposition, by marital status, using the same criteria previously supplied. The total for all applications without a disposition under this category will equal the totals under all other categories.

The totals in each category will be equal.

Example

No. 199=No. 299=No. 399=No. 499

Decision Centers

Section 528.6(d) requires that:

* * * each member institution shall maintain, at each of its decision centers (defined in § 528.1 of this part), separate, current, readily accessible loan application registers for each of the following loan types made: one- to four-family dwelling loans, mobile home loans, and home improvement and/or equipping loans.

The decision center concept and the semiannual reporting requirement entail certain responsibilities for each decision center and for the main office of the association. These are as follows:

1. Individual Decision Center

A. Maintains its own loan application registers.

B. Prepares its own Data Submission Reports.

C. Assures that each Data Submission Report's line items and totals conform with the arithmetic equalities required.

Example

Nos. 103 + 105 + 107 = 101
Nos. 104 + 106 + 108 = 102
Nos. 191 = 291 = 391 = 491
Nos. 192 = 292 = 392 = 492

D. A unique and permanent identifying number must be reported to the Federal Home Loan Bank for each decision center (see the instructions on Section R). Decision centers must show this number on all Data Submission Reports. This number cannot be changed and cannot be re-assigned if the decision center is deleted.

E. Data Submission Reports (and required copies) will be submitted only to the main office of the institution by each decision center (the main office will submit all DSR's). One copy should be retained at the decision center.

2. Main Office

A. Assures that each Data Submission Report received from a decision center shows the proper decision center number, as recorded by the Board.

B. Assures that Data Submission Reports balance as required. (See 1.c. above.)

C. Makes sure that each decision center has submitted all required semiannual Data Submission Reports.

D. Data Submission Reports should be submitted by the main office as follows:

(1) The original of each report and one copy are to be filed with the Federal Home Loan District Bank of which the institution is a member.

(2) One additional copy of each report is to be mailed to: Information Systems Division, Federal Home Loan Bank Board, 1700 G Street NW., Mail Stop 2-6, Washington, DC 20552.

The copy of the report mailed to Washington, DC is used to enter data into the computerized system. Accordingly, such data entry copy must be completely legible. Where carbon copies of reports are prepared, it is suggested that the first copy of the report be mailed to Washington for data entry.

9. Section 528.7(f) is revised to read as follows:

§ 528.7 Nondiscrimination in employment.

* * * * *

(f) Any violation of the following laws or regulations by a member institution shall be deemed a violation of this Part 528:

(1) The Equal Employment Opportunity Act, as amended, 42 U.S.C. 2000e–2000h–2, and Equal Employment Opportunity Commission (EEOC) regulations at 29 CFR 1600;

(2) The Age Discrimination in Employment Act, 29 U.S.C. 621–633, and EEOC and Department of Labor regulations;

(3) Department of the Treasury regulations at 31 CFR Part 12 and Office of Federal Contract Compliance Programs (OFCCP) regulations at 41 CFR Part 60;

(4) The Veterans Employment and Readjustment Act of 1972, 38 U.S.C. 2011–2012, and the Vietnam Era Veterans Readjustment Adjustment Assistance Act of 1974, 38 U.S.C. 2021–2026;

(5) The Rehabilitation Act of 1973, 29 U.S.C. 701 et al.; and

(6) The Immigration and Nationality Act, 8 U.S.C. 1324b, and INS regulations at 8 CFR Part 274a.

10. Section 528.8 is revised to read as follows:

§ 528.8 Complaints.

Complaints regarding discrimination in lending by a member institution shall be referred to the Assistant Secretary for Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, Washington, DC 20410 for processing under the Fair Housing Act, and to the Director, Office of Community Investment, Federal Home Loan Bank Board, Washington, DC 20552 for processing under Federal Home Loan Bank Board regulations. Complaints regarding discrimination in employment by a member institution should be referred to the Equal Employment Opportunity Commission, Washington, DC 20506 and a copy, for information only, sent to the Office of Community Investment, Federal Home Loan Bank Board, Washington, DC 20552.

PART 531—[AMENDED]

11. The authority citation for Part 531 continues to read as follows:

Authority: Sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

12. Amend § 531.8 by revising paragraph (a) and adding a new paragraph (c)(8) to read as follows:

§ 531.8 Guidelines relating to nondiscrimination in lending.

(a) *General.* Fair housing and equal opportunity in home financing is a policy of the United States established by Federal statutes and Presidential orders and proclamations. In furtherance of the Federal civil rights laws and the economical home financing purposes of the statutes administered by the Board, the Board has adopted, in Parts 528 and 529 of this subchapter, nondiscrimination regulations that, among other things, prohibit arbitrary refusals to consider loan applications on the basis of the age or location of a dwelling and prohibit discrimination based on race, color, religion, sex, handicap, familial status (having one or more children under the age of 18), marital status, age (provided the person has the capacity to contract), or national origin in fixing the amount, interest rate, duration, application procedures, collection, or enforcement procedures, or other terms or conditions of housing related loans. Such discrimination is also prohibited in the purchase of loans and securities. This section provides supplementary guidelines to aid member institutions in developing and implementing nondiscriminatory lending policies. Each member institution should reexamine its underwriting standards at least annually in order to ensure equal opportunity.

* * * * *

(c) * * *

(8) *Fair Housing Act (Title VIII, Civil Rights Act of 1968, as amended).* Member institutions must comply with all regulations promulgated by the Department of Housing and Urban Development to implement the Fair Housing Act, found at 24 CFR 100 *et seq.*, except that they shall use the Equal Housing Lender logo and poster prescribed by Bank Board regulations at 12 CFR 528.4 and 528.5 rather than the Equal Housing Opportunity logo and poster required by 24 CFR Parts 109 and 110.

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–16405 Filed 7–20–89; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject to Certification; Nitrofurazone Soluble Powder

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Hess & Clark, Inc., providing for use of nitrofurazone soluble powder for the prevention or treatment of certain surface bacterial infections on dogs, cats, or horses.

EFFECTIVE DATE: July 21, 1989.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: Hess & Clark, Inc., Seventh and Orange Sts., Ashland, OH 44805, is sponsor of NADA 140–910 providing for use of a 0.2-percent nitrofurazone soluble powder (NFZ® Wound Powder) for the prevention or treatment of surface bacterial infections of wounds, burns, skin ulcers, and abscesses after incision of dogs, cats, or horses. The application is approved, and 21 CFR 524.1580c(b) is revised to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 524 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Section 524.1580c is amended by revising paragraph (b) to read as follows:

§ 524.1580c Nitrofurazone soluble powder.

* * * * *

(b) *Sponsor.* See 011519, 011801, and 054273 in § 510.600(c) of this chapter.

* * * * *

Dated: July 17, 1989.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 89–17114 Filed 7–20–89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Amendment to the Bank Secrecy Act Regulations Regarding Administrative Rulings

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule.

SUMMARY: Treasury is revising the Appendix to 31 CFR Part 103 to list a new administrative ruling. Bank Secrecy Act Administrative Ruling 89–2 deals with the aggregation and reporting of multiple transactions involving exempted accounts. Copies of administrative rulings may be obtained by contacting the Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement).

EFFECTIVE DATE: Bank Secrecy Act Administrative Ruling 89–2 was effective June 21, 1989.

ADDRESS: Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: John Zoscak, Acting Director, Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, 202–566–8022.

SUPPLEMENTARY INFORMATION: The Bank Secrecy Act, Pub. L. 91–508 (codified at 12 U.S.C. 1730d, 1829b, 1951–1959, and 31 U.S.C. 5311–5326), authorizes the Secretary of the Treasury to require financial institutions to keep records and file reports that the Secretary determines have a high degree of usefulness in criminal, tax, or regulatory matters. The regulations implementing the Bank Secrecy Act are at Part 103 of Title 31 of the Code of Federal Regulations. On September 22, 1987, Treasury issued final regulations implementing an administrative ruling system for interpretations of the Bank Secrecy Act. 52 FR 35545. Administrative rulings are published in the Appendix to Part 103. The administrative rulings are effective when signed. Publication in the **Federal Register** is merely a method of publicizing their existence.

One ruling is being added to the Appendix by this Final Rule. Bank Secrecy Act Administrative Ruling 89–2 deals with the aggregation and reporting of multiple transactions involving exempted accounts.

Copies of rulings may be obtained by contacting the Office of Financial Enforcement at the address listed above. Please make all requests for rulings in writing, specifying the relevant number or subject of the ruling.

Applicability of Notice and Effective Date Requirements

This amendment merely revises the appendix to add the text of an issued administrative ruling that interprets the Bank Secrecy Act regulations. The regulations in Part 103 are not amended in any way. Therefore, for good cause found, pursuant to 5 U.S.C. 553(b) and (d), notice and public procedure thereon and a delayed effective date are unnecessary.

Executive Order 12291

As this final rule promulgates a regulation dealing solely with issues of agency management and organization, compliance with Executive Order 12291 and a regulatory impact analysis are not required.

Regulatory Flexibility Act

As no Notice of Proposed Rulemaking is required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or by any other statute, this document is not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document is the Office of Financial Enforcement. However, personnel from other offices participated in its development.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Investigations, Law Enforcement, Reporting and recordkeeping requirements, Taxes.

Amendment

For reasons set forth in the preamble, 31 CFR Part 103 is amended as set forth below:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation of Part 103 continues to read as follows:

Authority: Pub. L. 91–508, Title I, 84 Stat. 1114 (12 U.S.C. 1730d, 1829b and 1951–1959); and the Currency and Foreign Transactions Reporting Act, Pub. L. 91–508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311–5326).

2. The Appendix to 31 CFR Part 103 is amended by adding at the end of following:

Appendix—Administrative Rulings

* * * * *

89–2 (June 21, 1989)

Issue

When a customer has established bank accounts for each of several establishments that it owns, and the bank has exempted one or more of those accounts, how does the bank aggregate the customer's currency transactions?

Facts

X Company ("X") operates two fast-food restaurants and a wholesale food business. X has opened separate bank accounts at the A National Bank (the "Bank") for each of its two restaurants, account numbers 1 and 2 respectively. Each of these two accounts has been properly exempted by the bank. Account number 1 has an exemption limit of $25,000 for deposits, and account number 2 has an exemption limit of $40,000 for deposits. X also has a third account, account number 3, at the bank for use in the operation of its wholesale food business. On occasion, cash deposits of more than $10,000 are made into this third account. Because these cash deposits are infrequent, the bank cannot obtain additional authority to grant this account a special exemption.

During the same business day, two $15,000 cash deposits totalling $30,000 are made into account number 1, a separate cash deposit of $35,000 is made into account number 2 and a deposit of $9,000 in currency is made into account number 3 (X's account for its wholesale food business).

The bank must now determine how to aggregate and report all of these transactions on a Form 4789, Currency Transaction Report, ("CTR"). Must they aggregate all of the deposits made into account numbers 1, 2 and 3 and report them on a single CTR?

Law and Analysis

Section 103.22 of the Bank Secrecy Act ("BSA"), 31 CFR Part 103, requires a financial institution to treat multiple currency transactions "as a single transaction if the financial institution has knowledge that they are by or on behalf of any person and result in either cash-in or cash-out totalling more than $10,000 during any one business day." This means that a financial institution must file a CTR if it knows that multiple currency transactions involving two or more accounts have been conducted by or on behalf of the same person and, those transactions, when aggregated, exceed $10,000. Knowledge, in this context, means knowledge on the part of a partner, director, officer or employee of the institution or on the part of any existing computer or manual system at the institution that permits it to aggregate transactions.

Thus, if the bank has knowledge of multiple transactions, the bank should aggregate the transactions in the following manner.

First, the bank should separately review and total all cash-in and cash-out transactions within each account. Cash-in transactions should be aggregated with other cash-in transactions and cash-out transactions should be aggregated with cash-out transactions. Cash-in and cash-out transactions should not be aggregated together or offset against each other.

Second, the bank should determine whether the account has an exemption limit. If the account has an exemption limit, the bank should determine whether it has been exceeded. If the exemption limit has not been exceeded, the transactions for the exempted account should not be aggregated with other transactions.

If the total transactions during the same business day for a particular account exceed the exemption limit, the total of all of the transactions for that account should be aggregated with the total amount of the transactions for other accounts that exceed their respective exemption limits, with any accounts without exemption limits, and with transactions conducted by or on behalf of the same person that do not involve accounts (e.g., purchases of bank checks with cash) of which the bank has knowledge.

In the example discussed above, all of the transactions have been conducted "on behalf of" X, as X owns the restaurants and the wholesale food business. The total $30,000

deposit for account 1 exceeds the $25,000 exemption limit for that account. The $35,000 deposit into account number 2 is less than the $40,000 exemption limit for that account. Finally, the $9,000 deposit into account number 3, does not by itself constitute a reportable transaction.

Therefore, under the facts above, the bank should aggregate the entire $30,000 deposit into account number 1 (not just the amount that exceeds the exemption limit), with the $9,000 deposit into account number 3, for a total of $39,000. The bank should not include the $35,000 deposit into account number 2, as that deposit does not exceed the exemption limit for that account. Accordingly, the bank should complete and file a single CTR for $39,000.

If the bank does not have knowledge that multiple currency transactions have been conducted in these accounts on the same business day (e.g., because it does not have a system that aggregates among accounts and the deposits were made by three different individuals at different times) the bank should file one CTR for $30,000 for account number 1, as the activity into that account exceeds its exemption limit.

Holding

When a customer has more than one account and a bank employee has knowledge that multiple currency transaction have been conducted in the accounts or the bank has an existing computer or manual system that permits it to aggregate transactions for multiple accounts, the bank should aggregate the transactions in the following manner.

First, the bank should aggregate for each account all cash-in or cash-out transactions conducted during one business day. If the account has an exemption limit, the bank should determine whether the exemption limit of that account has been exceeded. If the exemption limit has not been exceeded, the total of the transactions for that particular account does not have to be aggregated with other transactions. If the total transactions during the same business day for a particular account exceed the exemption limit, however, the total of all of the transactions for that account should be aggregated with any total from other accounts that exceed their respective exemption limits, with any accounts without exemption limits, and with any reportable transactions conducted by or on behalf of the customer not involving accounts (e.g., purchases of bank checks or "cash back" transactions) of which the bank has knowledge. The bank should then file a CTR for the aggregated amount.

Dated: June 28, 1989.

Salvatore R. Martoche,

Assistant Secretary, (Enforcement).

[FR Doc. 89-17124 Filed 7-20-89; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Hampton Roads, Reg. 89-40]

Safety Zone: Chesapeake Bay, Hampton Roads, Virginia

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone around three Soviet warships while entering and leaving Chesapeake Bay and the Norfolk Harbor. The vessels will be arriving at the Norfolk Naval Station on July 21, 1989 and departing on July 25, 1989. The safety zone is intended to minimize the risk of collision between these warships and other vessels. The Captain of the Port will establish a moving safety zone around the vessels. Vessels or individuals will not be permitted to enter the moving safety zone, except as permitted by the Captain of the Port or his designated representative.

EFFECTIVE DATE: These regulations are effective from 6:00 a.m., July 21, 1989 or when the Soviet vessels arrive at buoy "CBH" until the vessels have moored at the Norfolk Naval Station and again upon departure from the Norfolk Naval Station at about 7:00 a.m., July 25, 1989 until the vessels have departed Chesapeake Bay in the vicinity of buoy "CBH."

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander R.R. Fiebrandt at telephone number (804) 441-3295.

SUPPLEMENTARY INFORMATION: Under 5 U.S.C. 553 a Notice of Proposed Rulemaking was not published for this regulation and good cause exists for making it effective less than 30 days from the date of **Federal Register** publication. The Coast Guard has determined that the circumstances of this safety zone allow for a military affairs exemption and normal rulemaking procedures are not applicable.

Drafting Information

The drafters of this regulation are Lieutenant Commander R.R. Fiebrandt, Project Officer, and Lieutenant Commander R.K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Coast Guard is establishing a moving safety zone around the Soviet guided missile cruiser Marshall Ustinov, the destroyer Otlichny, and the oiler Genrik Gasanov while transiting the Chesapeake Bay through Thimble Shoal Channel, the Entrance Reach and the Norfolk Harbor Reach enroute to the Norfolk Naval Station on July 21, 1989 and upon their departure on July 25, 1989. This safety zone will begin in the vicinity of buoy "CBH," located at approximately position 36°56.0′ N Lat, 75°55.8′ W Long. Because the arrival of these vessels is expected to generate considerable public interest and, therefore, vessel traffic, a moving safety zone is needed to minimize the risk of collision between the warships, spectator craft and all other vessels. The Captain of the Port will establish the moving safety zone and apply its provisions to all vessels in the interest of safety. This zone will extend from a point 500 yards directly ahead of the lead Soviet vessel to a point 500 yards directly astern of the trailing Soviet vessel, and will include those waters within 300 yards to either side of them. Commercial vessels anchored or moored within 300 yards of established channels and commercial vessels restricted to those channels by their draft will be permitted inside the safety zone, but only as directed by the Captain of the Port or his designated representative. Coast Guard patrol vessels will be on scene at all times while the safety zone is in effect to enforce the safety zone. Vessels desiring to enter the safety zone must contact the Captain of the Port or his designated representative aboard the Coast Guard Cutter BEAR prior to entering into passing agreements with the Soviet vessels. The Coast Guard Cutter BEAR can be contacted on channel 13 or 16 VHF-FM.

List of subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Vessels, Waterways.

Final Regulation

In consideration of the foregoing, Subpart D of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 33 CFR 160.5.

2. A new § 165.T0574 is added to read as follows: § 165.T0574 Safety Zone: Chesapeake Bay and Hampton Roads, Virginia.

(a) *Location.* The following area is a safety zone: The waters surrounding the Soviet guided missile cruiser Marshall Ustinov, the destroyer Otlichny, and the oiler Genrik Gasanov, extending from a point 500 yards directly ahead of the lead Soviet vessel to a point 500 yards directly astern of the trailing Soviet vessel and including all waters within 300 yards to either side of them while these vessels transit the Chesapeake Bay and Hampton Roads in both directions between buoy "CBH," located at approximate position 36°56.0′ N Latitude, 75°55.8′ W Longitude, and Pier 7 at the Norfolk Naval Station.

(b) For the purpose of this section "designated representative" means a Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his behalf with respect to this safety zone.

(c) *Regulations:* (1) No vessel other than those vessels already anchored or moored within 300 yards of the established shipping channels may enter the moving safety zone unless authorized by Captain of the Port or his designated representative.

(2) The Captain of the Port or his designated representative aboard the Coast Guard Cutter BEAR will permit commercial vessels restricted to established shipping channels by their draft to enter the moving safety zone and may permit other vessels to enter the safety zone in the event of an emergency. The Captain of the Port or his designated representative may be contacted aboard the Coast Guard Cutter BEAR on channel 13 or 16 VHF-FM.

(3) Any person or vessel given permission to enter the safety zone under the provisions of paragraph (c)(2) of this section shall obey immediately any lawful direction or order of the Captain of the Port or his designated representative.

(d) *Effective Dates.* These regulations are effective from 6:00 a.m., July 21, 1989 or when the Soviet vessels arrive at buoy "CBH" until the vessels have moored at the Norfolk Naval Station and again upon departure from the Norfolk Naval Station at about 7:00 a.m., July 25, 1989 until the vessels have departed Chesapeake Bay in the vicinity of buoy "CBH."

Dated: July 13, 1989.

E. K. Johnson,

Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads.

[FR Doc. 89-17141 Filed 7-20-89; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6840]

Suspension of Community Eligibility; New York et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The third date ("Susp.") listed in the third column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et. seq.). Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended.) This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any

economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1973, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region II				
New York:				
Coeymans, town of, Albany County	360005	July 31, 1974, Emerg.; Aug. 3, 1989, Reg.; Aug. 3, 1989, Susp	Aug. 3, 1989	Aug. 3, 1989.
Westerloo, town of, Albany County	360017	June 17, 1975, Emerg.; Aug. 3, 1989, Reg.; Aug. 3, 1989, Susp	do	Do.
Region III				
Pennsylvania:				
Bell, township of, Clearfield County	421513	Feb. 17, 1976, Emerg.; Aug. 3, 1989, Reg.; Aug. 3, 1989, Susp	do	Do.
Berwick, borough of, Columbia County	420338	June 20, 1975, Emerg.; Aug. 3, 1989, Reg.; Aug. 3, 1989, Susp	do	Do.
Coalmont, borough of, Huntingdon County.	420484	Apr. 26, 1977, Emerg.; Aug. 3, 1989, Reg.; Aug. 3, 1989, Susp	do	Do.
Fishing Creek, township of, Columbia County.	421550	Aug. 7, 1975, Emerg.; Aug. 3, 1989, Reg.; Aug. 3, 1989, Susp	do	Do.
Hastings, borough of, Cambria County	420230	Aug. 25, 1975, Emerg.; Aug. 3, 1989, Reg.; Aug. 3, 1989, Susp	do	Do.
Howard, borough of, Centre County	420263	May 13, 1975, Emerg.; Aug. 3, 1989, Reg.; Aug. 3, 1989, Susp	do	Do.
Howard, township of, Centre County	421464	Feb. 9, 1976, Emerg.; Aug. 3, 1989, Reg.; Aug. 3, 1989, Susp	do	Do.
Jackson, township of, Huntingdon County.	421691	Dec. 21, 1978, Emerg.; Aug. 3, 1989, Reg.; Aug. 3, 1989, Susp	do	Do.
Lawrence, township of, Clearfield County.	421528	July 29, 1975, Emerg.; Aug. 3, 1989, Reg.; Aug. 3, 1989, Susp	do	Do.
Logan, township of, Huntingdon County.	421694	Mar. 20, 1978, Emerg.; Aug. 3, 1989, Reg.; Aug. 3, 1989, Susp	do	Do.
Madison, township of, Columbia County.	421553	Sept. 7, 1976, Emerg.; Aug. 3, 1989, Reg.; Aug. 3, 1989, Susp	do	Do.
Region V				
Illinois: St. Marie, village of, Jasper County	170820	Jan. 8, 1979, Emerg.; Aug. 3, 1989, Reg.; Aug. 3, 1989, Susp	do	Do.
Wisconsin:				
Merton, village of, Waukesha County	550484	July 21, 1975, Emerg.; Aug. 3, 1989, Reg.; Aug. 3, 1989, Susp	do	Do.
Waupaca, city of, Waupaca County	550502	May 13, 1975, Emerg.; Aug. 3, 1989, Reg.; Aug. 3, 1989, Susp	do	Do.
Region VI				
Texas: Trophy Club, town of, Denton County.	481606	June 12, 1987, Emerg.; Aug. 3, 1989, Reg.; Aug. 3, 1989, Susp	do	Do.
Region VIII				
Colorado: Sedgwick, city of, Sedgwick County.	080171	July 16, 1975, Emerg.; Aug. 3, 1989, Reg.; Aug. 3, 1989, Susp	do	Do.
Region IX				
California:				
San Diego County, unincorporated areas.	060284	Mar. 5, 1971, Emerg.; June 15, 1984, Reg.; Aug. 3, 1989, Susp	do	Do.
Benicia, city of, Solano County	060368	May 28, 1975, Emerg.; May 31, 1977, Reg.; Aug. 3, 1989, Susp	do	Do.
Region I				
Massachusetts: Chesterfield, town of, Hampshire County.	250158	Aug. 11, 1975, Emerg.; Aug. 15, 1989, Reg.; Aug. 15, 1989, Susp	Aug. 15, 1989	Aug. 15, 1989.
Region III				
Pennsylvania:				
Boggs, township of, Centre County	421193	Sept. 16, 1975, Emerg.; Aug. 15, 1989, Reg.; Aug. 15, 1989, Susp.	do	Do.
Midway, borough of, Washington County.	422558	Mar. 22, 1976, Emerg.; Aug. 15, 1989, Reg.; Aug. 15, 1989, Susp	do	Do.
Penn, township of, Butler County	421241	June 10, 1974, Emerg.; Aug. 15, 1989, Reg.; Aug. 15, 1989, Susp.	do	Do.
Petersburg, borough of, Huntingdon County.	420490	Aug. 3, 1976, Emerg.; Aug. 15, 1989, Reg.; Aug. 15, 1989, Susp	do	Do.
Quemahoning, township of, Somerset County.	422053	Apr. 9, 1976, Emerg.; Aug. 15, 1989, Reg.; Aug. 15, 1989, Susp	do	Do.
Shirley, township of, Huntingdon County.	421700	Feb. 4, 1976, Emerg.; Aug. 15, 1989, Reg.; Aug. 15, 1989, Susp	do	Do.
Spangler, borough of, Cambria County	420240	July 30, 1975, Emerg.; Aug. 15, 1989, Reg.; Aug. 15, 1989, Susp	do	Do.
Stillwater, borough of, Columbia County.	421546	June 6, 1974, Emerg.; Aug. 15, 1989, Reg.; Aug. 15, 1989, Susp	do	Do

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Westover, borough of, Clearfield County.	420317	July 23, 1975, Emerg.; Aug. 15, 1989, Reg.; Aug. 15, 1989, Susp	do	Do.
Worth, township of, Centre County	421472	Dec. 8, 1975, Emerg.; Aug. 15, 1989, Reg.; Aug. 15, 1989, Susp	do	Do.
Virginia: Carolina County, unincorporated areas.	510249	June 3, 1974, Emerg.; Aug. 15, 1989, Reg.; Aug. 15, 1989, Susp	do	Do.
West Virginia:				
Petersburg, city of, Grant County	540039	Apr. 18, 1975, Emerg.; Aug. 15, 1989, Reg.; Aug. 15, 1989, Susp	do	Do.
Pendleton County, unincorporated areas.	540153	Oct. 22, 1975, Emerg.; Aug. 15, 1989, Reg.; Aug. 15, 1989, Susp	do	Do.
Franklin, town of, Pendleton County	540154	July 2, 1975, Emerg.; Aug. 15, 1989, Reg.; Aug. 15, 1989, Susp	do	Do.
Region IV				
Florida: Jacksonville, city of, Duval County	120077	Nov. 19, 1971, Emerg.; Aug. 15, 1989, Reg.; Aug. 15, 1989, Susp.	do	Do.
Region VIII				
Colorado: Edgewater, city of, Jefferson County.	080089	June 6, 1974, Emerg.; Aug. 15, 1989, Reg.; Aug. 15, 1989, Susp	do	Do.
Region III				
Pennsylvania: Franklin, township of, Susquehanna County.	422079	Dec. 4, 1975, Emerg.; May 17, 1989, Reg.; May 17, 1989, Susp	May 17, 1989	May 17, 1989.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Issued: June 17, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-17136 Filed 7-20-89; 8:45 am]

BILLING CODE 6718-21-M

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44 CFR PART 64

[Docket No. Fema 6841]

Suspension of Community Eligibility; Missouri et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, the community will not be suspended and the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATE: As shown in third column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas,, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, Federal Center Plaza, 500 C Street, SW., Room 416, Washington, DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures.

On August 25, 1986, FEMA published a final rule in the **Federal Register** that revised the NFIP floodplain management criteria. The rule became effective on October 1, 1986. As a condition for continued eligibility in the NFIP, the criteria at 44 CFR 60.7 require communities to revise their floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly, the communities are not compliant with NFIP criteria and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt and submit the required documentation of legally enforceable revised floodplain management regulations after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.** In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator finds that notice and public procedures under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 90- and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a

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significant economic impact. Any economic impact results from the community's decision not to adopt adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

State, community name, and county	Community No.	Effective date
Missouri: Kinlech, city of, St. Louis	290432	Aug. 3, 1989.
Ohio:		
Fairlawn, city of, Summit	390657	Do.
Greenfield, city of, Highland	390267	Do.
Hanover, village of, Licking	390831	Do.
Hebron, village of, Licking	390333	Do.
Holland, village of, Lucas	390659	Do.
Indian Hill, city of, Hamilton	390221	Do.
Ironton, city of, Lawrence	390327	Do.
Kenton, city of, Hardin	390253	Do.
Macedonia, city of, Summit	390750	Do.
McDonald, village of, Trumbull	390538	Do.
Parma, city of, Cuyahoga	390123	Do.
Pennsylvania:		
Bristol, borough of, Bucks	240183	Do.
Hulmeville, borough of, Bucks	240190	Do.
South Fayette, Township of, Allegheny	241106	Do.
South Dakota:		
Kennebec, town of, Lyman	460050	Do.
Montrose, town of, McCook	460052	Do.
Redfield, town of, Spink	460081	Do.
Utah:		
Glenwood, town of, Sevier	490126	Do.
Green River, city of, Emery	490062	Do.
Hatch, town of, Garfield	490068	Do.
Honefer, town of, Summit	490136	Do.
Henrieville, town of, Garfield	490069	Do.
Holden, town of, Millard	490201	Do.
Hyde Park, town of, Cache	490016	Do.
Unincorporated areas, Iron	490073	Do.
Joseph, town of, Sevier	490127	Do.
Lewiston, city of, Cache	490016	Do.
Mantua, town of, Box Elder	490009	Do.

Issued: June 17, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-17137 Filed 7-20-89; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[General Docket No. 87-551]

Radiofrequency Radiation Compliance of FM Booster Stations; Correction

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule; correction.

SUMMARY: This correction document is intended to make it clear that *low-powered* FM booster stations were meant to be categorically excluded from paragraph (b) of § 1.1307 as well as FM translator stations.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Cleveland, Office of Engineering and Technology, FCC, (202) 653-8169.

SUPPLEMENTARY INFORMATION: The summary of the *Report and Order* in the above captioned proceeding (FCC No. 88-401, adopted December 9, 1988, released December 29, 1988), that was published in the **Federal Register** on January 12, 1989 (54 FR 1177), is Corrected by *Erratum*, released February 23, 1989, as follows:

§ 1.1307 [Corrected]

The note published on page 1178, in the Thursday, January 12, 1989, **Federal Register**, FR Doc. 89-646, is correctly revised to read as follows:

§ 1.1307 Actions which may have a significant environmental effect, for which environmental assessments (EAs) must be prepared.

* * * * *

(b) * * *

Note: Paragraph (b) shall apply to facilities and operations licensed or authorized under the following Parts of the Commission's Rules: 5, 25, 73, 74 (Subpart A), 74 (Subpart G), 74 (Subpart L; only applies to FM booster stations with output powers in excess of 10 watts), and 80 (applies only to ship earth stations). Facilities and operations licensed or authorized under all other Parts, Subparts, or Sections of the Commission's Rules shall be categorically excluded from consideration under paragraph (b), unless such exclusion is superseded by actions taken by the Commission under the provisions of paragraphs (c) or (d) of this Section.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-17014 Filed 7-20-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-455; RM-5899; RM-6223; RM-6224; RM-6225; RM-6226, MM Docket No. 87-486; RM-5938; RM-6242; RM-6278]

Radio Broadcasting Services; Perry, Cross City, Holiday, Avon Park, Sarasota, Live Oak, Tallahassee, Quincy and Crawfordsville, FL, and Bambridge and Thomasville, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, allots: (1) Channel 291A to Live Oak, Florida, as the community's second local FM service, at the request of Ray W. Forrester; (2) substitutes Channel 296C1 for Channel 296A at Thomasville, Georgia, and modifies the license of Station WLOR(FM) accordingly, at the request of Thomasville Radio, Inc.; and (3) substitutes Channel 295C1 for Channel 292A at Cross City, Florida, and modifies the license of Station WDFL-FM accordingly, at the request of Women in Florida Broadcasting, Inc. With this action, this proceeding is terminated.

EFFECTIVE DATES: August 31, 1989. The window period for filing applications for Channel 291A at Live Oak, Florida, will open on September 1, 1989, and close on October 2, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket Nos. 87-455 and 87-486, adopted June 27, 1989, and released July 17, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Channel 291A can be allotted to Live Oak, Florida, without the imposition of a site restriction. The coordinates for Channel 291A at Live Oak are North Latitude 30-17-30 and West Longitude 82-59-12. Channel 296C1 can be allotted to Thomasville, Georgia, with a site restriction of 9.1 kilometers southwest. The coordinates for Channel 296C1 are North Latitude 30-47-12 and West Longitude 84-03-25. Channel 295C1 can be allotted to Cross City, Florida, with a site restriction of 26.1 kilometers south. The coordinates for this allotment are North Latitude 29-24-07 and West Longitude 83-08-10.

The request of: (1) Dolcom Broadcasting, Inc. to substitute Channel 276C2 for Channel 276A at Tallahassee, Florida; (2) Bitner-James Partnership to substitute Channel 276C2 for Channel 274A at Quincy, Florida; and (3) Pasco Pinellas Broadcasting Co. to substitute Channel 292C2 for Channel 292A at Holiday, Florida, are denied. The request of Roy Simpson, Virgle Leon Strickland and Paul H. Reynolds to allot Channel 298A to Bambridge, Georgia, and Channel 297A to Crawfordsville, Florida, is dismissed. The request of Rahu Broadcasting, Inc. to allot Channel 295A to Perry, Florida, is dismissed.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Florida, is amended as follows for the following communities: Cross City, add Channel 295C1, remove Channel 292A; Live Oak, add Channel 291A. Section 73.202(b), the FM Table of Allotments for Georgia, is amended as follows for the following community: Thomasville, add Channel 296C1, remove Channel 296A.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-17074 Filed 7-20-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-355; RM-6396]

Radio Broadcasting Services; Indian Springs, NV

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: The Commission, at the request of Claire B. Benezra, allots Channel 257A to Indian Springs, Nevada, as the community's first local FM service. Channel 257A can be allotted to Indian Springs in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 36-34-30 and West Longitude 115-40-06. With this action, this proceeding is terminated.

EFFECTIVE DATES: August 31, 1989. The window period for filing applications will open on September 1, 1989, and close on October 2, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-355, adopted June 26 , 1989, and released July 17, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Nevada is amended by adding the following entry, Indian Springs, Channel 257A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-17076 Filed 7-20-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-332; RM-6390]

Radio Broadcasting Services; Egg Harbor City, NJ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Rodio Radio, Inc., substitutes Channel 285B1 for Channel 285A at Egg Harbor City, New Jersey, and modifies its license for Station WRDR(FM) to specify operation on the higher powered channel. Channel 285B1 can be allotted to Egg Harbor City, New Jersey, in compliance with the Commission's minimum distance separation requirements with a site restriction of 22.6 kilometers (14.1 miles) east to avoid a short-spacing to Station WQHQ, Channel 284B, Ocean City, Maryland. The coordinates for this allotment are North Latitude 39–29–05 and West Longitude 74–23–38. With this action, this proceeding is terminated.

EFFECTIVE DATES: August 31, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–332, adopted June 26, 1989, and released July 17, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Egg Harbor City, New Jersey, is amended by deleting Channel 285A and adding Channel 285B1.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–17075 Filed 7–20–89; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB18

Endangered and Threatened Wildlife and Plants; Final Rule To Determine "Ranunculus Acriformis" var. "Aestivalis" (Autumn Buttercup) To Be Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service has determined a plant, *Ranunculus acriformis* var. *cestivalis* (autumn buttercup), to be an endangered species under the authority of the Endangered Species Act of 1973, as amended. The plant is endemic to the upper Sevier River Valley in western Garfield County, Utah. The plant occurs on less than 0.004 hectare (0.01 acre) within a fresh water marsh. The single known population has experienced a population decline of over 90 percent in the past 6 years and now numbers only about 20 individuals. Continued grazing and any modification of its habitat is likely to cause the extinction of this taxon in the foreseeable future. This action implements protection provided by the Endangered Species Act of 1973, as amended, for *Ranunculus acriformis* var. *aestivalis*.

EFFECTIVE DATE: August 21, 1989.

ADDRESS: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Fish and Wildlife Enhancement Office, 1745 West 1700 South, Salt Lake City, Utah 84104.

FOR FURTHER INFORMATION CONTACT: John L. England, Botanist, at the above address, (801/524–4430 or FTS 588–4430).

SUPPLEMENTARY INFORMATION:

Background

Marcus E. Jones first collected the autumn buttercup in early September 1894. Jones' diary for the period indicates "Orton's Ranch" as the collection location (Benson 1948). Jones apparently did not describe the taxon (Mutz 1984) and his specimens of the buttercup were eventually deposited at Pomona College in Claremont, California. Lyman Benson while preparing a monograph of the genus *Ranunculus* in North America recognized the uniqueness of the Jones collection and revisited the general location in an attempt to rediscover the population. Benson located a grandson of Orton who led him to a swampy area along the Sevier River where he discovered a population of the buttercup and collected specimens from a group of "15 or 20 small clumps" in the vicinity of the Jones collection of a half century earlier; from this collection Benson described *Ranunculus acriformis* var. *aestivalis* (Benson 1948).

Despite Benson's very complete description of the population's location, the taxon was essentially lost for more than 30 years (Mutz 1984). The habitat was reported "over grazed" in 1960 (Mutz 1984), and the **Federal Register** dated July 1, 1975 (40 FR 27824), indicated that the taxon was "probably extinct." During field work in connection with a review of the genus *Ranunculus* for Utah, Margaret Plamieri was unable to relocate the autumn buttercup in August of 1974 (Palmieri 1976).

On August 23, 1982, Kathryn Mutz located the autumn buttercup in a wetland above the Sevier River about 1 mile north of the type location. This newly discovered site was revisited by Mutz in 1983 in conjunction with the preparation of a status report of that species for the Service, and 407 mature plants and 64 seedlings were counted. The species' habitat is a series of small peaty hummocks on a low knoll less than 0.004 hectare (0.01 acre) in size surrounded by a marsh. The knoll may be the result of a raised peat bog uplifted by the upwelling waters of a spring which surrounds it. The overflow channel of a nearby spring fed stock water pond also runs past the knoll. In 1984 the autumn buttercup was again observed but had been heavily grazed. In 1985 the habitat was heavily grazed and trampled; no flowers were observed and only eight individuals were counted. Of those eight plants only one mature leaf had not been grazed (Service 1985). In 1986, 14 plants were counted, 4 of which were in flower, and there had been only moderate grazing in the immediate vicinity of the buttercup (Service 1986). In 1987, 12 plants were counted, 2 with floral buds in early August. The site was revisited in late August of that year. During the 3 intervening weeks the site had been moderately grazed and all the flowering systems had been cropped before seed had set (Service 1987). In 1988, 9 mature plants and 13 seedlings were counted, most of these were severely grazed by small herbivores, probably voles (Service 1988).

Wire cages have been set over all remaining plants to protect them from large herbivores. Five seedlings were taken (one died) and moved to the Arboretum at Flagstaff, Arizona, for protective cultivation in a greenhouse environment under the auspices of The Center for Plant Conservation. In December 1988 The Nature Conservancy purchased the property which harbors the species' last known population. The autumn buttercup apparently has been extirpated from its type locality. Searches by Mutz in 1982 and 1983 (Mutz 1984) and by the Service in 1985, 1986, and 1987 have not located any other populations of *R. acriformis* var. *aestivalis*. The entire known population of the taxon is on lands in private ownership.

The autumn buttercup is a herbaceous perennial plant normally growing between 0.3 to 0.6 meter (1 to 2 feet) tall. Most of the simple but deeply palmately divided leaves are clustered at the base. Leaves and stems are covered with fine hairs. Leaves with three linear divisions are found high on the flowering stems. Flowers, usually six to ten per plant, are about 1.3 centimeters (0.5 inch) in diameter with five yellow petals and five reflexed yellow green sepals which fall off soon after the flower opens. Fruits of the buttercup are achenes. Twenty to forty of these small, dry, one-seeded fruits are clustered on the surface of the receptacle of the past flower in the shape of a cylinder or inverted cone from 0.6 to 0.8 centimeter (0.25 to 0.33 inch) high. Height of the buttercups at flowering may apparently be altered by the intensity of grazing; the few plants observed flowering in 1983 were less than 7.6 centimeters (3 inches) tall. Seedlings of the autumn buttercup have small (less than 1.3 centimeters (0.5 inch) wide) leaves with three broad, rounded lobes (Mutz 1984).

Benson (1948) followed a conservative taxonomic approach in his nomenclatural designations. His publication contained the scientific description and the naming of the autumn buttercup from the Sevier River Valley of central Utah as *R. acriformis* var. *aestivalis*. In the same publication Benson indicated that by following a moderate policy in taxonomic determination, it would have been appropriate to designate the autumn buttercup as a species in its own right rather than a variety of *R. acriformis* (i.e., "*R. aestivalis*"). *R. acriformis* var. *aestivalis*, has floral characteristics very similar to typical *R. acriformis* (i.e., petal size and shape), although tending to be somewhat smaller. Seed characteristics, however, are markedly different, and leaf shape is different, with the lobes of *R. acriformis* var. *aestivalis*, being much narrower than the other varieties.

Welsh (1986) and Welsh et al. (1987) assigned the taxon to *R. acris* as *R. acris* var. *aestivalis* based on the more angular lobes of the basal leaves and the short beak of the achene which are typical of *R. acris*. *R. acris* is native to Europe and Asia with one variety, *R. acris* var. *frigidus*, occurring in the Aleutian Islands. Thus *R. acris* var. *aestivalis* would represent a Pleistocene relict population extremely isolated geographically from the main body of that species' population. The autumn buttercup differs morphologically from *R. acris* with its smaller and proportionally narrower petals, more slender stems, and more angular leaf shape. In addition, the autumn buttercup exhibits none of the aggressive weedy behavior and poisonous properties of *R. acris*, which has the common name of tall buttercup. Benson (1948) argues that *R. turneri* of the Western American arctic may be a phylogenetic link between *R. acris* of the old world and the *R. occidentalis* group (including *R. acriformis*) of the new world, with the closest relationship being with *R. acriformis* var. *montanensis*. Thomas Duncan, University of California at Berkeley, pers. comm., 1987, stated that his preliminary taxonomic evaluation of *R. acriformis* var. *aestivalis* would align that entity with *R. occidentalis* of the Pacific Northwest and that it appears to be a species in its own right. *R. acriformis* var. *aestivalis* represents an important part of scientific understanding of the development of the buttercup genus and its relationships in western North America and eastern Asia.

With the apparent extinction of all but one of its populations, an occupied habitat of less than 0.004 hectare (0.01 acre), a total population of about 20 individuals and a documented population decline of more than 90 percent in its remaining occupied habitat within the past 6 years, the autumn buttercup is in imminent danger of extinction.

Section 12 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) directed the Secretary of the Smithsonian Institution to prepare a report of those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of Section 4 of the Act and of its intention to review the status of plant taxa named within. *R. acriformis* var. *aestivalis* was included on list "C" of that notice as probably extinct.

On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to Section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, *Federal Register* publication. *R. acriformis* var. *aestivalis* was included in that proposed rule and was marked with an asterisk to denote it as a species for which the Service especially desired information on living specimens and extant populations. General comments received in relation to the 1976 proposal were summarized in the **Federal Register** on April 26, 1978 (43 FR 17909). The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. On December 10, 1979, the Service published a notice (44 FR 70796) withdrawing the June 16, 1976, proposal.

On December 15, 1980, the Service published a revised notice of review for native plants in the **Federal Register** (45 FR 82480); *R. acriformis* var. *aestivalis* was included in that notice as a category 1 species. Category 1 is comprised of taxa for which the Service has sufficient biological data to support proposing them as endangered or threatened. In addition, *R. acriformis* var. *aestivalis* was designated with an asterisk to identify that species as one that may have recently become extinct. In 1982, a *R. acriformis* var. *aestivalis* population was discovered (Mutz 1984). On November 28, 1983, the Service published a supplement to its December 15, 1980, notice of review in the **Federal Register** (48 FR 53640); *R. acriformis* var. *aestivalis* was included in that notice as a category 2 species. Category 2 is composed of taxa for which the Service has information which indicates that proposing to list those taxa as endangered or threatened species is possibly appropriate, but for which substantial data on biological vulnerability and threat are not currently known or on file to support proposed rules.

In 1983 another population of *R. acriformis* was discovered in the Wasatch Plateau of central Utah, and in 1984 still another population was found in the Wasatch Mountains of Utah. Before 1983 the only known occurrence of *R. acriformis* in Utah was of the variety *aestivalis*. The *R. acriformis* populations of the Wasatch Mountains and Wasatch Plateau have now been determined to be the variety *montanensis*, which previously had a known distribution in the northern Rocky Mountains of Idaho, Wyoming, and Montana. *R. acriformis* var.

aestivalis is morphologically, phenologically, and distributionally distinct from *R. acriformis* var. *montanensis*, which is distributed in Utah far to the north at a much greater elevation and flowers earlier than *R. acriformis* var. *aestivalis* (Welsh and Chatterley 1985, Welsh et al. 1987). As a consequence of a Service sponsored status survey (Mutz 1984) and taxonomic evaluation of the *R. acriformis* var. *aestivalis* and *R. acriformis* var. *montanensis* population in Utah (Welsh and Chatterly 1985), the Service changed the status of *R. acriformis* var. *aestivalis* back to category 1 in the updated plant notice of review published in the **Federal Register** on September 27, 1985.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary of the Interior to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the Act's amendments of 1982 further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *R. acriformis* var. *aestivalis* because of the Service's acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, October 12, 1984, October 11, 1985, October 10, 1986, and October 9, 1987, the Service made the successive 1-year findings that the listing of *R. acriformis* var. *aestivalis* was warranted, but precluded by other listing actions of higher priority. Biological data supplied by Mutz (1984) and by the Service (1985, 1986, 1987, and 1988) fully support the listing of *R. acriformis* var. *aestivalis*. On July 22, 1988, the Service published in the **Federal Register** (53 FR 27724) a proposal to list *R. acriformis* var. *aestivalis* as an endangered species. The Service now determines *R. acriformis* var. *aestivalis* to be an endangered species with the publication of this final rule.

Summary of Comments and Recommendations

In the July 22, 1988, proposed rule (53 FR 27724) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting general public comment were published, during the open public comment period between July 22, 1988 and September 20, 1988, in the following newspapers: Garfield County News, Panguitch, Utah; Deseret News, Salt Lake City, Utah; and The Salt Lake Tribune, Salt Lake City, Utah. Two comments were received and are discussed below.

One comment was received from a university botanist which questioned the taxonomic validity of *R. acriformis* var. *aestivalis*, suggesting that the extant population may be a remnant of an abandoned herb garden and that *R. acriformis* var. *aestivalis* may be an introduced population of *R. acris*. That same commenter suggested that the Service resolve that taxonomic question and provide interim protection to the Panguitch population of *R. acriformis* var. *aestivalis* until that question could be resolved. The commenter suggested that Dr. Thomas Duncan be contacted to resolve the question.

The Service had previously been aware of a possible taxonomic problem and had contacted Dr. Duncan. Dr. Duncan indicated that the species was not *R. acris*, but that it might be a species in its own right (pers. comm., 1987; see the Background section above). The time involved in resolving the question of the relationship of *R. acriformis* var. *aestivalis* to *R. acris* was a primary reason for the delay in proposing *R. acriformis* var. *aestivalis* to be an endangered species. A critical reevaluation of the taxonomy of *R. acriformis* var. *aestivalis* will be published in the scientific literature (Thomas Duncan, pers. comm., 1987). It will demonstrate the uniqueness of the taxon. The Governor of Utah commented in behalf of the State of Utah and did not oppose the proposed listing of *R. acriformis* var. *aestivalis* as an endangered species.

Summary of Factors Affecting the Species

After a through review and consideration of all information available, the Service has determined that *Ranunculus acriformis* var. *aestivalis* should be classified as an endangered species. Procedures found at Section 4(a)(1) of the Endangered Species Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Ranunculus acriformis* var. *aestivalis* L. Benson (autumn buttercup) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Since the species was proposed as an endangered species, the Nature Conservancy purchased the land on which the last known population exists. This action has removed the impending threat of destruction or modification of that population's habitat. However, considering that the total known population of the autumn buttercup has been reduced to one hummocky knoll of less than 0.004 hectare (0.01 acre) and about 20 individuals as of August 1988, any inadvertent destruction or modification of that population's habitat could cause the species' extinction.

The autumn buttercup apparently has been extirpated from its type locality about 1 mile south of its currently known location (Benson 1948, Palmieri 1976, Mutz 1984). This modification of the species' range is the result of intense agriculture activities, primarily livestock grazing of wet meadows.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* With the very small existing population, any use of the autumn buttercup may seriously reduce the prospect of the species' survival. Benson (1948) recognized this threat. Any collecting or vandalism could cause the extinction of the autum buttercup.

C. *Disease or predation.* The autumn buttercup has been observed to be palatable to livestock and small mammals and to be selectively grazed. In the 1985 survey of the autumn buttercup population (Service 1985) only one leaf, on one of the eight plant found that year, had not been partially eaten. In 1987 and again in 1988 all the flowering stems had been grazed to ground level, with no seed produced. There are no known insect herbivores, parasites, or disease organisms which significantly affect this species.

D. *The inadequacy of existing regulatory mechanisms.* The autumn buttercup presently receives no protection or consideration under any Federal, State, or local law or regulation.

E. *Other natural or manmade factors affecting its continued existence.* The low numbers and limited distribution of the autumn buttercup contribute to the buttercup's vulnerability to natural or man-caused stresses. Further reduction in the number of plants would reduce the reproductive capability and genetic potential of the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Ranunculus acriformis* var. *aestivalis* as endangered without critical habitat. Threatened

status would not reflect the extreme vulnerability of this species to extinction, because *Ranunculus acriformis* var. *aestivalis* is in danger of extinction throughout its very limited range due to grazing, inadvertent destruction or modification of its limited habitat, and the fact that there is currently no existing legislation (Federal, State, or local) to protect the species. The reasons for not designating critical habitat are discussed below.

Critical Habitat

Section 4(a)(3) of the Act requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. The limited distribution and accessibility of the autumn buttercup make it vulnerable to vandalism and collecting. These potential threats are of particular significance since the known population site is easily accessible and public access would be difficult to control under existing authorities. The one remaining site contains a very small population, and any collection would be extremely detrimental. Publication of a critical habitat description would make this species even more vulnerable and increase enforcement problems. All involved parties and landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the Section 7 jeopardy standard. Therefore, it would not be prudent to determine critical habitat for *Ranunculus acriformis* var. *aestivalis*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. However, *R. acriformis* var. *aestivalis* is not known to occur on lands under Federal jurisdiction and no Federal involvement with this species is currently known.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession this species from areas under Federal jurisdiction. In addition, for listed plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands, and their removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. With respect to *R. acriformis* var. *aestivalis*, it is anticipated that few, if any, trade permits would ever by sought or issued because the species is not common in the wild and, at present, only four individual plants are in cultivation. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507, Arlington, Virginia 22203 (703/358–2104).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Benson, L. 1948. A treatise on the North American Ranunculi. American Midland Naturalist 40:1–261.

Mutz, K.M. 1984. Status report on *Ranunculus acriformis* A. Gray var. *aestivalis* L. Benson. Unpublished report prepared under contract with U.S. Fish and Wildlife Service, Denver, Colorado. 36 pp.

Palmieri, M.D. 1976. A revision of the genus *Ranunculus* for the State of Utah. Unpublished Master's Thesis. Brigham Young University, Provo, Utah. 141 pp.

U.S. Fish and Wildlife Service. 1985. Status of *Ranunculus acriformis aestivalis*. Salt Lake City, Utah. 1 p.

———. 1986. Status of *Ranunculus acriformis aestivalis*. Salt Lake City, Utah. 1 p.

———. 1987. Status of *Ranunculus acriformis aestivalis*. Salt Lake City, Utah. 1 p.

———. 1988. Status of *Ranunculus acriformis aestivalis*. Salt Lake City, Utah. 1 p.

Welsh, S.L. 1986. New taxa and combinations in the Utah Flora. Great Basin Naturalist 46:254–260.

Welsh, S.L., N.D. Atwood, L.C. Higgins, and S. Goodrich. 1987. A Utah flora. Great Basin Naturalist Memoirs Number 9. 897 pp.

Welsh, S.L. and L.M. Chatterley. 1985. Utah's rare plants revisited. Great Basin Naturalist 45:173–236.

Author

The primary author of this final rule is John L. England, U.S. Fish and Wildlife Service, Salt Lake City, Utah (see **ADDRESSES** section above) (801/524–4430 or FTS 588–4430).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation.

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–

304, 90 Stat. 1411; Pub. L. 100-478, 102 Stat. 2306; Pub. L. 100-653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under Ranunculaceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species						
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Ranunculaceae—Buttercup Family:						
* * *	* * *	* * *	* * *	* * *		
Ranunculus acriformis var. *aestivalis* (=*Ranunculus acris* var. *aestivalis*).	Autumn buttercup	U.S.A. (UT)	E	355	NA	NA
* * *	* * *	* * *	* * *	* * *		

Dated: June 12, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-17157 Filed 7-20-89; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 90637-9166]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: The Secretary of Commerce changes the total allowable catch (TAC), allocations, and quotas for the Atlantic and Gulf of Mexico migratory groups of king and Spanish mackerel in accordance with the framework procedure of the Fishery Management Plan for the Coastal Migratory Pelagic Resources (FMP). This notice (1) for Gulf and Atlantic migratory groups of king mackerel, increases TAC, allocations, and quotas; and (2) for Gulf and Atlantic migratory groups of Spanish mackerel, increases TAC and allocations. The intended effects are to protect the mackerels and continue stock rebuilding programs while still allowing catch by the important recreational and commercial fisheries that are dependent on these species.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-893-3722.

SUPPLEMENTARY INFORMATION: The king and Spanish mackerel fisheries are regulated under the FMP, which was prepared and amended jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR Part 642.

In accordance with the FMP and its implementing regulations, the Councils recommended and NOAA published a proposed rule containing changes in TACs, allocations, and quotas for king and Spanish mackerel for the 1989/90 fishing year (54 FR 24920, June 12, 1989). That notice (1) described the framework procedures of the FMP through which the Councils recommended changes in TACs, allocations, and quotas; (2) specified the recommended changes; and (3) described the need and rationale for the recommended changes. Those descriptions are not repeated here; the specifications implemented by this final rule are the same as those in the proposed rule. No comments were received on the proposed rule.

NOAA concurs that the Councils' recommendations are necessary to protect the stocks and prevent overfishing and that they are consistent with the goals and objectives of the FMP. In addition, they are consistent with the Magnuson Act and other applicable law. Accordingly, the Councils' recommended changes are implemented.

Amendment 4 to the FMP proposes to reallocate Atlantic migratory group Spanish mackerel between commercial and recreational users. A proposed rule to implement Amendment 4 was published in the **Federal Register** on June 16, 1989 (54 FR 25593). If Amendment 4 is approved and implemented during the 1989/90 fishing year, further changes will be made to the commercial and recreational allocations for Atlantic group Spanish mackerel, contained in 50 CFR 642.21 paragraphs (c)(2) and (d)(2).

Other Matters

This action is authorized by 50 CFR 642.27, and complies with E.O. 12291.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 17, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 642 is amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for Part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 642.21 [Amended]

2. In § 642.21, the numbers are revised in the following places to read as follows:

Paragraph	Removed	Added
(a)(1), introductory text	1.09	1.36
(a)(1)(i)	0.75	0.94
(a)(1)(ii)	0.34	0.42
(a)(2), first sentence	2.60	3.34
(b)(1)	2.31	2.89
(b)(2)	4.40	5.66
(c)(1)	2.85	2.99
(c)(2)	3.04	4.56
(d)(1)	2.15	2.26
(d)(2)	0.96	1.44

[FR Doc. 89-17101 Filed 7-17-89; 5:05 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 139
Friday, July 21, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL HOME LOAN BANK BOARD

[No. 89-1892]

12 CFR Part 523

Extension of Time Period for Board Action on Outstanding Proposal

Date: July 12, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule; extension of time period for Board action.

SUMMARY: Pursuant to its regulatory review procedures, *see* Board Res. No. 88-269, 53 FR 13156 (April 21, 1988), the Federal Home Loan Bank Board ("Board") hereby gives notice that it is extending the time period for possible action by the Board or any successor agency on the following outstanding proposed regulation: Readmission of Federal Home Loan Bank members terminating their status as insured institutions, adopted by the Board on August 15, 1988 (53 FR 30686, August 15, 1988). The Board is taking this action in order to allow adequate time for consideration of a number of complex issues raised by this proposal. It is not soliciting additional comments on this proposal.

FOR FURTHER INFORMATION CONTACT: Mary Hoyle, Paralegal, Specialist, (202) 906-7135, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552 or the appropriate contact persons listed in the referenced **Federal Register** document.

SUPPLEMENTARY INFORMATION: Although the comment period on the following proposal has been closed for more than six months, the Board still has the proposal under active consideration for possible further action. The Board is hereby extending the time for possible final action by the Board or any successor agency on this proposal until sixty days after the enactment of the legislation currently pending regarding the regulation of the thrift industry.

Readmission of Federal Home Loan Bank Members Terminating Their Status as Insured Institutions, adopted by the Board on August 5, 1988 (53 FR 30686, August 15, 1988).

The Board notes that this action does not constitute a representation that the Board or any successor agency will take final action with respect to this proposal, only that it may do so within this extension of time. Moreover, this action carries no implication whatsoever with respect to the Board's view of the merits of the proposal.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-17073 Filed 7-20-89; 8:45 am]

BILLING CODE 6720-01-M

[No. 89-1768]

12 CFR Part 545

Agency Offices; Federal Savings and Loan System

Date: July 11, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is proposing to revise 12 CFR Part 545 to remove the current restriction banning federal institutions from establishing agency offices to originate and service mortgage loans outside the same state as the home office of the institution or the same state of any institution's branch office approved by the Board. This change should, in the Board's view, afford federal institutions the flexibility required to effectively and efficiently service and manage their multi-state operations. Additionally, the Board proposes to amend 12 CFR 545.96(d) to require notification in writing of agency openings and closings.

DATE: Comments must be received on or before September 19, 1989.

ADDRESS: Please send comment letters to the Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comment letters will be available for inspection at the Board's Information Services Office, 801 17th Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Cindy L. Hausch, Financial Analyst, (202) 906-7488; or Cheryl Martin, Regional Director, (202) 906-7869; or Kathleen V. O'Dea Willard, Assistant Director, (202) 906-6789; or Patrick G. Berbakos, Director, Office of District Banks, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: Section 545.96 of the Federal Regulations, 12 CFR 545.96 (1988), currently restricts federal institutions from establishing agency offices to originate and service mortgage loans outside the same state as the home office of the institution or the same state of any institution's branch office approved by the Board.

As part of Corporate Governance, Parts III and IV, Board Res. No. 87-687, 52 FR 25870 (July 9, 1987) ("Corporate Governance"), the Board requested comments as to whether its regulations on branch and agency offices should be revised in light of the Board's policy statement on branching which encourages Federal institutions to provide "choices of facilities for improved financial services to the public." 12 CFR 556.5(a)(1) (1988).

Seven commenters addressed the issue of agency offices. The commenters noted that agency offices (also referred to as loan production offices) can provide more efficient and effective support for activities in which federal institutions are currently engaged if federal institutions are permitted to establish agency offices in any state.

The Board believes that permitting federal institutions to establish agency offices on a nationwide basis without regard to the location of the home office or branch office(s) would result in a number of benefits as follows:

(1) Increase the efficiency of a federal institution by reducing loan origination costs;

(2) Benefit consumers by permitting federal institutions to offer mortgages and other loans at lower costs, without reducing present profit margins;

(3) Increase the competitiveness of federal institutions; and

(4) Permit federal institutions to become equivalent with national banks in the nationwide lending arena.

This change should, in the Board's view, afford federal institutions the

flexibility required to effectively and efficiently service and manage their multi-state operations. Nationwide lending can only realize its potential benefits to lenders and consumers alike if lenders are permitted to move appropriate operations closer to their customers. Expanding the agency offices on a nationwide basis would enhance the competitiveness and business flexibility of federal institutions, while bringing a number of potential benefits to consumers. The change would in no way diminish an institution's obligation to help meet the credit needs of its local community under the Community Reinvestment Act.

At the present time, a federal institution has the option to open a second tier service corporation that services and originates mortgage loans. Present regulations require that agency offices in states other than where an institution has a home or branch office must be operated through the service corporation of a federal institution because of the geographical limitations on the locations of agency offices. The Board does not believe that limiting agency offices to the state or states in which institutions have "brick-and-mortar" branches is necessary or in the best interest of the industry. To require institutions to establish loan production offices through the use of a second tier service corporation in states where the institution has no branch is costly. It denies the institution the opportunity to originate mortgage loans on uniform instruments which contain uniform provisions which are in full and complete compliance with the regulations of the Board. Federal institutions should be able to operate an agency office directly rather than through its second tier service corporation. The use of the service corporation requires additional legal, administrative, and licensing expenses which would not otherwise be required. Origination of mortgages through a second tier service corporation increases costs and is generally less efficient than through loan production offices.

Because a federal institution's second tier service corporation already may engage in nationwide lending, the proposed change would not directly represent an increase in the powers of federal institutions. Instead of operating the loan production office through a service corporation, the loan production office would be operated as an agency office of the federal institution and would be monitored routinely by the supervisory and examination staff. Loan records and documentation would continue to be kept in the institution's decision center for examination review.

The Board's present policy puts federal institutions at a competitive disadvantage with commercial banks who are able to establish loan production or agency offices anywhere in the United States. The Board's agency office regulation is more restrictive than comparable provisions applicable to other depository institutions. Present federal laws and regulations permit national banks, state institutions and state banks, to establish loan production offices in states in which they are not permitted to branch. 12 CFR 7.7380 delineates the national bank's regulation regarding loans originated at other than banking offices. Specifically, it states "Origination of loans by employees or agents of a national bank or of a subsidiary corporation at locations other than the main office or a branch office of the bank does not violate 12 U.S.C. 36 and 81; Provided, That the loans are approved and made at the main office or a branch office of the bank or at an office of the subsidiary located on the premises of, or contiguous to, the main office or branch office of the bank." The regulation gives no limitation based on state lines. The Board's proposed action thus would not allow federal institutions to penetrate new markets but allow them to operate more efficiently and to compete more effectively in existing markets. The proposal would allow federal institutions to become equivalent with other depository institutions in the nationwide-lending arena.

The Board welcomes comments on this proposed rule.

Initial Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following initial regulatory flexibility analysis.

1. *Reasons, objectives and legal basis underlying the proposed rule.* These elements are incorporated in the **SUPPLEMENTARY INFORMATION** regarding the proposal.

2. *Small entities to which the proposed rule would apply.* The proposed rule would apply to all insured institutions.

3. *Impact of the proposed rule on small entities.* The proposed rule would not have a significant economic impact on small institutions. Small institutions as well as large ones will benefit from the changes recommended in this proposal.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this proposal.

5. *Alternatives to the proposed rule.* There are no alternatives that would be less burdensome than the proposal in addressing the concerns expressed in the **SUPPLEMENTARY INFORMATION** set forth above.

List of Subjects in 12 CFR Part 545

Accounting, Consumer protection, Electronic funds transfers, Credit, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend Part 545, Subchapter C, Chapter V, Title 12, *Code of Federal Regulations*, as set forth below.

PART 545—OPERATIONS

1. The authority citation for Part 545 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

2. Amend § 545.96 by revising paragraphs (a) and (d) to read as follows:

§ 545.96 Agency.

(a) *General.* A Federal association may, without approval of the Board, to the extent authorized by its board of directors, establish or maintain, agencies which only service and originate (but do not approve) loans and contracts and/or manage or sell real estate owned by the association.

* * * * *

(d) *Notice.* A Federal association shall notify the Supervisory Agent in writing when it opens or closes an agency.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–17072 Filed 7–20–89; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–019]

RIN 1218–AA51

Permit Required Confined Spaces; Extension of Comment Period

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Extension of written comment period.

SUMMARY: This notice extends the time in which written comments and requests for a hearing may be submitted concerning the notice of proposed rulemaking which OSHA issued on June 5, 1989 on permit required confined spaces (54 FR 24080).

DATE: Written comments and requests for a hearing on the proposal must be postmarked by October 4, 1989.

ADDRESS: Comments and requests for a hearing must be submitted, in quadruplicate, to the Docket Office, Room N–2634, 200 Constitution Avenue NW., Washington, DC 20210. The information and comments, along with any hearing requests and objections that are submitted, will be available for public inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, U.S. Department of Labor, OSHA, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523–8151.

SUPPLEMENTARY INFORMATION: OSHA issued a notice of proposed rulemaking on June 5, 1989 (54 FR 24080) which proposed to establish safety requirements, including a permit system, for entry into those confined spaces which OSHA has identified as posing special dangers for entrants due to their configuration or other features. Interested persons were given until August 4, 1989 to submit comments pertaining to the proposal. The notice of proposed rulemaking also informed the public of the opportunity to request an informal public hearing on the proposal.

OSHA has received several requests for an extension of the comment period, based on the complexity of the subject matter. To ensure the fullest participation of interested persons, OSHA is extending the period in which written comments may be submitted on the proposed rule until October 4, 1989. The comments should be sent in quadruplicate to the Docket Office at the above address. Commenters are requested to provide substantive data and documentary evidence in support of their views regarding the proposal.

In addition, OSHA is extending the period during which interested persons may file objections to the proposed rule or request an informal hearing until October 4, 1989. The objections and hearing requests should be submitted in quadruplicate to the Docket Office at the above address and must comply with the following conditions:

1. The objections and hearing requests must include the name and address of the objector;

2. The objections and hearing requests must be postmarked by October 4, 1989;

3. The objections and hearing requests must specify with particularity the provisions of the proposed rule to which objection is taken and must state the grounds therefor;

4. Each objection and hearing request must be separately stated and numbered; and

5. The objections and hearing requests must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

Authority

This document was prepared under the directin of Alan C. McMillan, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. It was issued under sec. 6(b) of the Occupational Safety and Health Act (29 U.S.C. 655), Secretary of Labor's Order No. 9–83 (48 FR 35736) and 29 CFR Part 1911.

Signed at Washington, DC, this 14th day of July 1989.

Alan C. McMillan,

Acting Assistant Secretary.

[FR Doc. 89–17129 Filed 7–20–89; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 761

Areas Unsuitable for Mining; Areas Designated by Act of Congress; Applicability of Prohibitions of the Surface Mining Act to the Surface Impacts of Underground Coal Mining

AGENCY: Office of Surface Mining Reclamation and Enforcement, Department of the Interior.

ACTION: Withdrawal of proposed rule.

SUMMARY: On December 27, 1988, the Department of the Interior published a proposal to amend those portions of its permanent program regulations at 30 CFR Part 761 that address the circumstances which constitute valid existing rights (VER) to mine in areas where Congress has otherwise prohibited mining under section 522(e) of the Surface Mining Control and Reclamation Act of 1977. 53 FR 52374.

The comment period on this proposed rule closed on April 24, 1989. A large number of comments were received during the comment period.

After further consideration of the proposed rule and the comments on the proposal, the Department of the Interior has decided that the proposed rule should be withdrawn for further study.

FOR FURTHER INFORMATION CONTACT: Dr. Annetta Cheek or Mr. Dermot Winters, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington DC 20240; telephone Dr. Cheek at (202) 343–5241 and Dr. Winters at (202) 343–1928 (Commercial or FTS).

Accordingly, the proposed rule published at 53 FR 52374 (December 27, 1988) is hereby withdrawn.

James M. Hughes,

Deputy Assistant Secretary—Land and Minerals Management.

July 18, 1989.

[FR Doc. 89–17130 Filed 7–20–89; 8:45 am]

BILLING CODE 4310-05-M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM89–5]

Filing of Petition and Request for Initial Comments

July 17, 1989.

AGENCY: Postal Rate Commission.

ACTION: Notice of filing of petition for rulemaking proceeding and request for initial comments.

SUMMARY: On July 10, 1989, Advo-System, Inc. (Advo) filed a petition for rulemaking, asking that the Commission establish rules of practice for the consideration, pursuant to 39 U.S.C. ch. 36, subch. II, of contract rates, which might be arrived at by negotiation between the United States Postal Service (Service) and one or more mail users. The Commission hereby gives public notice of the filing of this petition and concurrently invites any interested party to file initial comments on the legal feasibility of the Advo proposal, together with any preliminary views they may wish to present on its desirability.

DATE: Comments must be received on or before September 19, 1989.

ADDRESS: Comments and correspondence relating to this Notice should be sent to Charles L. Clapp, Secretary of the Commission, Suite 300, 1333 H Street NW., Washington, DC 20268 (telephone: 202/789-6840).

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street NW., Washington, DC 20268 (telephone: 202/789-6820).

SUPPLEMENTARY INFORMATION: Advo suggests that the Commission should enact a set of rules of practice for the consideration of contract rates of postage. It urges that nothing in the Postal Reorganization Act (39 U.S.C. 101 et seq.) forbids the negotiation of contractual rates, as long as they cover attributable costs, contribute reasonably to institutional costs, and otherwise meet the regulatory criteria of the Act. Advo describes two forms of contract rate mechanism that might be considered: (i) A contract rate classification, whereby the Commission in classification proceedings would establish eligibility terms and a permissible range of rates for a classification of mail, and eligible mailers would then negotiate with the Service over the precise rate payable; and (ii) joint Postal Service-mailer proposals, negotiated between the Service and one or more mailers and submitted to the Commission in a proceeding the result of which would be a contract service that other mailers could obtain on the same terms. Eligibility conditions might include mailer-guaranteed minimum volumes, frequencies, or revenues, and preparation steps involving addressing, presortation, containerization, time/place of entry, and advance notice. Specialized service features might include guaranteed delivery dates, follow-up reports by the Service concerning delivery, and refunds for failure to serve. Advo submitted with its petition a sample draft of rules.

In order to use its own, and interested parties', resources economically, the Commission has decided to begin exploration of the general idea Advo presents by soliciting an initial round of comments, principally concerning the feasibility under the Postal Reorganization Act of such contract rates—which are not in use today and were not in use in 1970 when the Act was signed. If commenters wish at this time to include preliminary views on the wisdom of or need for a contract rate mechanism they may do so—although, if the matter is pursued further, the Commission expects to provide another opportunity for general comment on the merits of the idea. This Notice does not solicit comments on the specific sample language submitted by Advo, though commenters are also free to discuss it.

Following consideration of the initial comments solicited herein, the Commission will determine what if any further proceedings are warranted and will give notice of its determination in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 89-17105 Filed 7-20-89; 8:45 am]

BILLING CODE 7715-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 424

[BDP-610-P]

RIN 0938-AE06

Medicare Program; Diagnosis Codes on Physician Bills

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing that each bill or request for payment for a service furnished by a physician under Medicare Part B must include appropriate diagnostic coding for the diagnosis or the nature of the illness or injury for which the Medicare beneficiary received care. This rule would implement certain provisions of section 202(g) of the Medicare Catastrophic Coverage Act of 1988.

DATE: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on September 19, 1989.

ADDRESS: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-610-P, P.O. Box 26676, Baltimore, Maryland 21207

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

If comments concern information collection or recordkeeping requirements, please address a copy of the comments to:

Office of Management and Budget, Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron

In commenting, please refer to file code BPD-610-P. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Pat Brooks, R.R.A., (301) 966-5319.

SUPPLEMENTARY INFORMATION:

I. Background

Generally, medical services are furnished to a Medicare beneficiary by providers, physicians, and suppliers. Title XVIII of the Social Security Act (the Act) defines the term physician, just as it defines the terms provider and supplier. Under section 1861(r) of the Act, the term physician, subject to limitations concerning the scope of practice by each State and other provisions of title XVIII of the Act, means a doctor of—(1) Medicine or osteopathy; (2) Dental surgery or dental medicine; (3) Podiatry; (4) Optometry; or (5) Chiropractic.

In general, payment for physician services furnished directly to a beneficiary is made under Part B of the Medicare program (Supplementary Medical Insurance). After furnishing physician services to a beneficiary, billing and payment are generally made in one of two ways. A physician may bill the beneficiary directly or some other person or entity on behalf of the beneficiary. That person or entity then seeks reimbursement from Medicare. Altenatively, a physician may bill Medicare directly for his or her services furnished to the beneficiary. When a physician or other supplier agrees to accept the amount the carrier determines to be the reasonable charge as payment in full, it is called "assignment" or accepting payment on "an assignment-related basis." In this case, the physician can bill the beneficiary only for applicable deductible and coinsurance amounts.

Rules concerning assignment are located at 42 CFR 424.55.

A physician who bills Medicare for payment submits a Health Insurance Claim Form (HCFA-1500) directly to a Medicare carrier who then processes the claim. This form, which is also used by most third-party payors, including Medicaid and other Federal government health insurance programs, is, in effect, an itemized bill. If a physician is not to be paid directly by Medicare for physician services, the physician generally bills the Medicare beneficiary directly (or bills another third-party payor). The beneficiary then seeks reimbursement from Medicare for payment made to the physician by submitting a Patient's Request for Medicare Payment (HCFA-1490 S) to the carrier. This form directs the beneficiary to attach itemized bills from his or her physician to the form. In cases in which a third party has made payment to the physician, the third party seeks reimbursement from Medicare for this payment by submitting a Request for Medicare Payment by Organizations which Qualify to Receive Payment for Paid Bills (HCFA-1490 U). We require that the physician fill out Part II of this form, which is similar to an itemized bill.

Currently, each bill or request for payment for physician sevices furnished to a Medicare beneficiary must include, among other information, a narrative description of the diagnosis of the nature of the illness or injury for which the beneficiary received care. Although there is no current requirement for diagnostic coding (that is, a description of the diagnosis or the nature of the illness or injury in a numeric code), many physicians have routinely provided this information. In addition, all physicians currently provide a narrative description of procedures, medical services, and supplies that are furnished to a beneficiary and many physicians also furnish procedure codes for these activities.

II. New Legislation

Section 202(g) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360), enacted July 1, 1988, added paragraph (p) to section 1842 of the Act. Under the provisions of new section 1842(p)(1) of the Act, each bill or request for payment for physician services under Medicare Part B must include appropriate diagnostic coding "as established by the Secretary" for the narrative diagnosis or the nature of the illness or injury for which the Medicare beneficiary received treatment. The conference report that accompanied Pub. L. 100-360 explained clearly the purpose of the requirement for physician diagnostic coding. After rejecting a Senate provision that would have required the use of diagnosis codes on all prescriptions because the conferees decided that that requirement would have been "unduly burdensome," the conferees agreed to require diagnostic coding for physician services under Part B, explaining their reasoning for this requirement as follows:

"This information would be available for immediate use for utilization review of physician services (and could be used for prepayment screens) and could be used in the future to facilitate drug utilization review by merging Part B with drug claims data." H.R. Rep. No. 661, 100th Cong., 2nd Sess. 191 (1988).

Section 1842(p)(2) of the Act provides for denial of payment for a bill submitted by a physician on an assignment-related basis if it does not include the appropriate diagnostic coding. Section 1842(p)(3) of the Act directs the Secretary to impose penalties if a physician who is not paid on an assignment-related basis fails to provide the appropriate diagnostic coding on the bill to the Medicare beneficiary. That is, section 1842(p)(3(A) of the Act provides for a civil money penalty not to exceed $2,000 if the physician knowingly and willfully fails to provide the appropriate diagnostic coding, and section 1842(p)(3)(B) of the Act provides for a sanction under 1842(j)(2)(A) of the Act if the physician "knowingly, willfully, and in repeated cases fails, after being notified by the Secretary of the obligations and requirements of this subsection," to furnish appropriate diagnostic coding. Section 1842(p)(3) of the Act does not prohibit the payment of an unassigned claim simply because the physician did not provide diagnosis codes. Section 202(m)(4) of Pub. L. 100-360 provides that new paragraph 1842(p) of the Act will apply to physician services furnished after March 31, 1989.

This proposed rule concerns the requirements related to the provisions of section 1842(p)(1) and (p)(2) of the Act. In the Department of Health and Human Services, the responsibility for both civil money penalties and sanctions has been delegated to the Office of Inspector General (OIG). The OIG is currently developing a separate rulemaking document concerning civil money penalties under section 1842(p)(3)(A) of the Act and sanctions under section 1842(p)(3)(B) of the Act.

III. Provisions of this Proposed Rule

Under the provisions of new section 1842(p)(1) of the Act, each bill or request for payment for physician services under Part B must include appropriate diagnostic coding "as established by the Secretary" that relates to the narrative description of the diagnosis or the nature of the illness or injury for which the Medicare beneficiary received care.

As noted above, generally, physician services furnished directly to a beneficiary are paid under Medicare Part B. (In addition, under the regulations set forth at Subpart D of 42 CFR Part 405, we make payments to hospitals under Part A for physician services related to the supervision and teaching of interns and residents who participate in the care of hospital inpatients. Rules concerning bills for these Part A physician services would not be affected by this proposed rule.)

Under this proposed rule, a physician would be required to furnish diagnosis codes in lieu of the narrative description that a physician is currently required to furnish. Payment would be denied for a claim for physician services furnished on an assignment-related basis if the claim did not contain appropriate diagnostic coding. This would not be true for a claim for physician services not furnished on an assignment-related basis. In other words, the beneficiary's submission of a claim for the payment for physician services would not be denied solely because the claim did not contain diagnostic coding. If enough information is provided to enable a carrier to process the claim, the claim would be processed without the diagnostic coding. (As explained above, section 1842(p)(3)(B) of the Act provides for a sanction under section 1842(j)(2)(A) of the Act if the physician "knowingly, willfully, and in repeated cases fails, after being notified by the Secretary of the obligations and requirements of this subsection," to furnish appropriate diagnostic coding.) To aid in implementation, a limited grace period will be established during which payment will not be denied and sanctions will not be imposed for failure to include diagnosis codes.

To implement the provisions of section 1842(p)(1) of the Act, we must determine which system should be used to code diagnoses and provide direction to physicians for use of that coding system with our claim forms. We are proposing to use the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM). (The Tenth Revision of ICD would not automatically be used. Instead, we would announce our use of that or any other subsequent revision.)

We have chosen ICD-9-CM as the most appropriate diagnostic coding system because it is the only nationally recognized coding system that includes

all possible diagnoses for Medicare beneficiaries. It is for that reason that it is already widely used by physicians. Other coding systems are limited to medical specialties. For example, the American Psychiatric Association publishes the Diagnostic and Statistical Manual of Mental Disorders, Third Edition, Revised (DSM-III-R), which contains a coding syustem that is limited to mental disorders. (Although all DSM-III-R codes are based on ICD-9-CM codes, there are variations between the two systems.) (Although the many physicians who currently furnish procedure codes use the American Medical Association's Physicians' Current Procedural Terminology, Fourth Edition (commonly referred to as CPT-4), this system cannot be used for diagnostic coding because it contains procedure codes only.)

We are already using ICD-9-CM in the Medicare program for classifying Diagnosis Related Groups (DRGs) for payment under the inpatient hospital prospective payment system. That is, cases are classified into DRGs based on the principal diagnosis, up to four additional diagnoses, and certain procedures performed during the hospital stay, as well as age, sex, and discharge status of the patient.

The International Classification of Diseases, Ninth Revision (ICD-9) is a classification system developed by the World Health Organization for recording morbidity and mortality information for statistical purposes, for indexing hospital records by diseases, and for storing and retrieving data. The clinical modification to ICD-9 (that is, ICD-9-CM) is a coding system for reporting diagnostic information and procedures performed on a patient in hospitals or connected with other types of health care delivery systems.

ICD-9-CM was developed under the guidance of the National Center for Health Statistics (NCHS) to adapt the ICD-9 classification system to the needs of hospitals in the United States. The modifications were intended to provide a mechanism to present a clinical picture of the patient. Thus, ICD-9-CM codes are more precise than those included in ICD-9 since greater precision is needed to describe the clinical picture of a patient than for statistical groupings and trend analysis.

Effective January 1979, after nearly two years of development by numerous national experts on clinical technical matters, the ICD-9-CM became the single classification system intended for use by hospitals in the United States. This system replaced several earlier related but somewhat dissimilar classification systems. Once the ICD-9-CM classification system was in place, several errors and omissions were noted. Consequently, in September 1980 a second edition of ICD-9-CM was published. The preface to the second edition noted that the continuous maintenance of ICD-9-CM is the responsibility of the Federal government. The preface also stated that no future modifications to ICD-9-CM would be made by the Federal government without considering the opinions of representatives of major users of the classification system.

In September 1985, the ICD-9-CM Coordination and Maintenance Committee (the committee) was formed. This is a Federal interdepartmental committee that maintains and updates the ICD-9-CM. This includes approving new coding changes, developing errata, addenda, and other modifications to the ICD-9-CM to reflect newly developed procedures and technologies and newly identified diseases. The committee is also responsible for promoting the use of Federal and non-Federal educational programs and other communication techniques with a view toward standardizing coding applications and upgrading the quality of the classification system.

The committee is co-chaired by NCHS and HCFA. NCHS has primary responsibility for the ICD-9-CM diagnosis codes included in Volume 1—Diseases: Tabular List and Volume 2—Diseases: Alphabetic Index. HCFA has primary responsibility for the ICD-9-CM procedure codes included in Volume 3—Procedures: Tabular List and Alphabetic Index.

The committee encourages participation in the development of diagnosis and procedure codes by health-related organizations, organizations in the coding field, and other members of the public. During each Federal fiscal year (FY), the Committee holds three public meetings during which coding changes are discussed. (For example, the Committee presented proposals for coding changes for FY 1990 at public meetings held on April 14, 1988, July 21-22, 1988, and December 1-2, 1988.) Taking into account the public comments made at each meeting and the public correspondence received within 30 days after each meeting, the committee then formulates recommendations, which must be approved by the co-chair agency heads (that is, the Administrator of HCFA and the Director of NCHS) before adoption for general use.

Coding changes approved by the committee and agency heads are published annually in the **Federal Register** (see 53 FR 38590, September 30, 1988, for changes concerning diagnosis and procedure codes that became effective on October 1, 1988).

Only these official volumes and addenda as published by GPO are to be considered in the assignment of diagnosis codes for Medicare patients. (That is, we are not responsible for mistakes made by businesses in the replication of these official volumes and addenda, which are then sold to the public.) Three official addenda became effective on the following dates: October 1, 1986, October 1, 1987, and October 1, 1988. A fourth addendum, containing the Human Immunodeficiency Virus (HIV) Infection Codes, became effective for Medicare patients discharged on or after July 1, 1988.

The GPO has exhausted its supply of these addenda and has no plans to reprint more copies. In addition, we expect that changes to the ICD-9-CM coding system will continue to be published each October 1st. However, GPO will no longer provide addenda except to purchasers of the 3rd edition. Therefore, for physicians to comply with the requirements of this rule, they should obtain Volumes 1 and 2 of ICD-9-CM, third edition. The third edition was published in March 1989. It incorporates all four addenda that were previously published. Therefore, if a physician has not yet obtained ICD-9-CM, second edition, and updated the set with the addenda, the physician should obtain the recently updated Volumes 1 and 2 (that include the four addenda). Any new addenda issued through 1991 will automatically be sent without charge to anyone who orders the recently updated Volumes 1 and 2. (Although these future addenda will not be furnished by the GPO to anyone other than to purchasers of ICD-9-CM, third edition, both the American Medical Records Association (AMRA), the national professional association of medical records practitioners, and the American Hospital Association (AHA) have indicated that they intend to reprint these future addenda and make them available for sale.)

The price of Volumes 1 and 2 of ICD-9-CM, third edition is $43.00 for delivery within the United States and $53.75 for delivery outside of the United States. A purchaser must furnish an address other than a post office box because the volumes will be delivered only to a place of business or a residence. When ordering, the purchaser should enclose a check, money order, or Visa or Mastercard account name, number, and expiration date. Checks should be made out to the Superintendent of Documents.

Updated volumes 1 and 2 may be purchased by writing to the following address—

ICD-9-CM, 3rd Edition, Volumes 1 and 2, P.O. Box 360121, Pittsburgh, PA 15250-6121

(Telephone orders may not be made.)

Section 424.32 sets forth the basic requirements for all claims. Under § 424.32(a), all claims (including claims filed directly with Medicare by physicians and claims filed by beneficiaries or other persons or entities for physician services furnished to Medicare beneficiaries) must be filed in accordance with HCFA instructions. Section 424.34 provides additional requirements for claims filed with Medicare by beneficiaries. Under § 424.34(b)(4), the itemized bill must include a listing of services in sufficient detail to permit determination of reasonable charges. We would revise § 424.32(a) to state specifically that a claim for physician services must include appropriate diagnostic coding using ICD-9-CM. We would revise § 424.34(b)(4) to state specifically that an itemized bill furnished by a physician to a beneficiary for physician services must include appropriate diagnostic coding using ICD-9-CM. In addition, we would add the definition of ICD-9-CM, the International Classification of Diseases, Ninth Revision, Clinical Modification, to § 424.3.

Procedures and other instructions for diagnostic coding were developed in order to take into account circumstances unique to care furnished by physicians. These procedures and other instructions for completing bills and requests for payment were distributed to the carriers on March 3, 1989. The carriers then mailed this information, in the form of a Medicare Bulletin, to the physicians that they service. During preparation of these procedures and other instructions, we consulted with the American Medical Association (AMA) and provided them with an opportunity to comment on the material. We considered all of AMA's comments and made changes where appropriate. (For the convenience of the reader, we have republished the coding and reporting requirements as an appendix to this proposed rule.) If additional coding requirements are developed, they will also be distributed to the physicians.

Currently, there are a number of organizations and individuals that publish coding advice. The only publication endorsed by HCFA is Coding Clinic for ICD-9-CM (Coding Clinic), published by AHA for use by hospitals. Coding Clinic provides specific diagnostic information and guidelines that are helpful for determining proper diagnostic coding. For example, a recent issue of Coding Clinic contained an article about sepsis and septic shock that included significant pointers for coding these cases. (Although the articles in Coding Clinic are about diagnostic coding or procedure coding involving hospital inpatients or outpatients, this periodical contains information that may be helpful for coding involving physician services furnished in any setting.)

In 1985, the Editorial Advisory Board of Coding Clinic identified four organizations whose representatives have responsibility for review and approval of the contents of this publication. These four cooperating organizations are AMRA, AHA, HCFA, and NCHS. Because the Department has reviewed and approved all articles published in Coding Clinic since the May-June 1985 issue, users of Coding Clinic may assume that the written material is consistent with our position on coding. Subscriptions for Coding Clinic may be ordered by writing to the following address:

American Hospital Association, Division of Quality Control Management, 840 N. Lake Shore Drive, Chicago, IL 60611

The subscription rate is $85.00 per year for AHA members and $135.00 per year for nonmembers. Refer to publication ISSN 0742-9800.

Currently, the AMA is offering instruction in ICD-9-CM coding to its members. Additional information may be obtained by writing to the following address:

Barry Eisenberg, Director, Division of Health Programs, The American Medical Association, 535 North Dearborn Street, Chicago, IL 60610

AMRA is also offering nationwide training classes and training materials for physician office staff for ICD-9-CM diagnostic coding. (Physicians may also wish to contact the Medical Records Association in the State in which they practice to determine whether that association is offering training classes and materials.) Written inquiries to AMRA should be made to the following address:

The American Medical Records Association, 875 N. Michigan Avenue, Suite 1850, Chicago, IL 60611

Telephone inquiries concerning AMRA training sessions and materials should be made to Rita Finnegan at (312) 787-2672.

IV. Regulatory Impact Analysis

A. Executive Order 12291 and Regulatory Flexibility Analysis

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, the rule would likely result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all physicians are treated as small entities.

We are preparing a voluntary regulatory impact analysis and voluntary regulatory flexibility analysis because of our inability to quantify with any degree of certainty the estimated costs of these provisions, and because of the large number of physicians who would be affected and the significance and potential controversy of these provisions.

This proposed rule would implement some of the provisions of section 202(g) of Pub. L. 100-360. These provisions require that each bill or request for payment for a service furnished by a physician include appropriate diagnostic coding related to the illness or injury for which the Medicare beneficiary received care. A physician who is to be paid on an assignment-related basis would not be paid if he or she failed to include appropriate diagnostic coding on the bill. (As stated above, the Department's OIG is currently developing a separate rulemaking document concerning civil money penalties under section 1842(p)(3)(A) of the Act and sanctions under section 1842(p)(3)(B) of the Act applicable when a physician who is not accepting assignment intentionally fails to furnish diagnostic coding on the bill submitted to his or her patient.)

With one exception, any effects of this proposed rule would be a direct result of the legislative provisions in section 202(g) of Pub. L. 100-360. The exception is that the legislation allows us discretion in the choice of which system should be used to code diagnoses. We are proposing to use ICD-9-CM because it is the only nationally recognized coding system that includes all possible diagnoses for Medicare beneficiaries. It is for that reason that it is already widely used by physicians. Furthermore, we are already using ICD-9-CM in the Medicare program for classifying DRGs for payment under the inpatient hospital prospective payment system. Therefore, we believe that it would be the easiest coding system for physicians to use.

Currently, physicians are not required to provide ICD-9-CM or any other type of diagnostic codes on their Medicare bills or requests for payment. Therefore, we believe that most physicians would be affected by the provisions of this proposed rule through increased paperwork, the cost of training themselves and their staff, and the probable need to purchase ICD-9-CM, third edition.

As of December 31, 1986, there were 569,160 physicians practicing in the United States (Physician Characteristics and Distribution in the U.S., 1986. Department of Data Release Services, Division of Survey and Data Resources, American Medical Association, 1987). We believe that at least 30 percent of physicians are currently reporting ICD-9-CM codes, thus the 70 percent of the physicians not reporting codes equals approximately 398,000. If all of these physicians need new coding books, ICD-9-CM Volumes 1 and 2 at a cost of $43.00 per set, the total cost would be approximately $17,100,000. However, we believe that not all of these physicians would purchase new coding books. For example, some physicians may be in a group practice, some may work for hospitals and would not have thier own patients, while some may already own coding books.

Based on claims data, we project that there will be approximately 320.1 million physician claims processed for the period from April 1, 1989 to March 31, 1990. We estimate the clerical cost of coding each claim to be $0.075 for a total of $24,007,500. We arrived at the $0.075 figure be assuming an hourly rate of the typical physician's office staff person to be $4.50 per hour. We believe that it takes one minute to code a claim, therefore $4.50 divided by 60 minutes equals $0.075. However, we believe that approximately 30 percent of the claims are already being coded. Thus, 70 percent or approximately $16,800,000 of the cost of coding of claims could be attributed to this proposed rule. These coding costs would be ongoing. However, we believe that coding time and costs would probably be reduced with experience.

We are aware that AMRA and other vendors are sponsoring, for a fee, coding training for physicians' office staff. Additionally, carrier-sponsored training will be available at no cost. Of the 70 percent of physicians who do not currently code, we anticipate that each of those physicians may either send one or more persons for training, or may determine that formal training is not needed. Some of those physicians may not send any staff since they may be in a group practice (in which case, one staff member may represent several physicians), or may work for hospitals and not have their own patients.

Below, we are providing a range of estimated training costs through the use of two examples. The first example gives a higher estimate; the second, a lower.

In the first example, we assume that all physicians who currently do not code would, on average, send one of their office staff to attend a half-day session sponsored by a national firm. We anticipate that the cost of such a training session could be as high as $100.00. Thus, for this estimate, we are assuming a cost of $100.00. Furthermore, we assume they would pay the hourly rate (assumed to the $4.50 per hour) of their employees while they are attending the coding session. Given these assumptions, we would estimate training costs as follows:

(All estimates are rounded to the nearest $100.000.)

• Half-day (four hours) at $4.50 per hour=$18.00. Then $18.00×398,000 employees	$7,200,000
• Session cost $100.000×398,000 employees	39,800,000
• Total training costs	47,000,000

In the second example, we assume that, on average, physicians who currently do not code would send one of their office staff to coding sessions sponsored by carriers or insurance companies at no cost or not send them at all. Assuming that the office employee is paid $4.50 an hour, we estimate the total training costs as follows:

• Half-day (four hours) at $4.50 per hour=$18.00. Then $18.00×398,000 employees	$7,200,000
• Session costs	0
• Total training costs	$7,200,000

Below, we show the total estimated first year costs for the two examples.

• For the first example, the total estimated first year costs would consist of:

Coding costs	$16,800,000
Training	47,000,000
Books	17,100,000
Total	$80,900,000

• For the second example, the total estimate first year costs would consist of:

Coding costs	$16,800,000
Training	7,200,000
Books	17,100,000
Total	$41,100,000

These are an estimated range of first year costs. The cost of books would be a one-time expense. Training costs would be recurring to the extent that staff turnover would occur. Coding costs would be ongoing. However, we believe that coding time and costs would probably be reduced with experience.

In conclusion, we do not know how the physician community would react to this proposed rule insofar as the extent to which they would utilize coding training for their office staff. Thus, we cannot with any accuracy estimate the costs involved.

B. Rural Hospital Impact Statement

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule would have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

As discussed above, only physicians would be affected by this proposed rule. Therefore, we are not preparing a rural impact statement since we have determined, and the Secretary certifies that this proposed rule would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

V. Other Required Information

A. Paperwork Reduction Act

Proposed regulations at §§ 424.32(a) and 424.34(b) contain information collection and recordkeeping requirements that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3511). These proposed regulations and the information collection and recordkeeping requirements apply to the requirement that a physician provide appropriate diagnostic coding on each bill or request for payment for a physician service furnished under Medicare Part B. Public reporting burden for this collection of information is estimated to average one minute per submitted Part B claim. This includes time spent reviewing instructions, searching existing data sources, gathering and maintaining needed data, and completing and reviewing the collection of information. The information collection and recordkeeping requirements associated with this proposed rule have been sent to the Office of Management and Budget for review under the Paperwork Reduction Act of 1980. Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to the OMB official whose name appears in the "ADDRESS" section of this preamble.

B. Public Comment

Because of the large number of pieces of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date specified in the "Dates" section of this preamble, and we will respond to the comments in the preamble of the final rule.

List of Subjects in 42 CFR 424

Assignment of benefits, Physician certification, Claims for payment, Emergency services, Plan of treatment.

42 CFR Part 424 would be amended as set forth below:

PART 424—CONDITIONS FOR MEDICARE PAYMENT

A. The authority citation for Part 424 is revised to read as follows:

Authority: Secs. 215(j), 1102, 1814, 1815(c), 1835, 1842(b) and (p), 1861, 1866(d), 1870(e) and (f), 1871 and 1872 of the Social Security Act (42 U.S.C. 415(j), 1302, 1395f, 1395g(c), 1395n, 1395u(b) and (p), 1395x, 1395cc(d), 1395gg(e) and (f), 1395hh and 1395ii)

Subpart A—General Provisions

B. In § 424.3, the introductory text is republished and a definition for "ICD-9-CM" is added in alphabetical order to read as follows:

§ 424.3 Definitions.

As used in this part, unless the context indicates otherwise—

"ICD-9-CM" means the International Classification of Diseases, Ninth Revision, Clinical Modification.

* * * * *

Subpart C—Claims for Payment

C. In § 424.32, paragraph (a) is revised to read as follows:

§ 424.32 Basic requirements for all claims.

(a) A claim must meet the following requirements:

(1) A claim must be filed with the appropriate intermediary or carrier on a form prescribed by HCFA and in accordance with HCFA instructions.

(2) A claim for physician services must include appropriate diagnostic coding using ICD-9-CM.

(3) A claim must be signed by the beneficiary or the beneficiary's representative (in accordance with § 424.36(b)) unless the beneficiary has died.

(4) A claim must be filed within the time limits specified in § 424.44.

* * * * *

D. In § 424.34, the introductory text of paragraph (b) is republished and paragraph (b)(4) is revised to read as follows:

§ 424.34 Additional requirements: Beneficiary's claim for direct payment.

* * * * *

(b) *Itemized bill from the hospital or supplier.* The itemized bill for the services, which may be receipted or unpaid, must include all of the following information:

* * * * *

(4) A listing of the services in sufficient detail to permit determination of reasonable charges; for itemized bills from physicians, appropriate diagnostic coding using ICD-9-CM must be used. (For example, a bill for ambulance service must specify the pick-up and delivery points.)

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare Supplementary Medical Insurance)

Dated: February 22, 1989.

Terry Coleman,

Acting Administrator, Health Care Financing Administration.

Approved: May 26, 1989.

Louis W. Sullivan,

Secretary.

Appendix—Claims Review and Adjudication Procedures

4020.3

C. Coding and Reporting Requirements

Use of ICD-9-CM:

For information about the use of certain abbreviations, punctuation, symbols, and other conventions used in the ICD-9-CM Tabular List (the volume with the code numbers and titles) see the sections on Conventions Used in the Tabular List and guidance in the use of ICD-9-CM at the beginning of Volume 1. Information about the correct sequence to use in finding a code is described in the Introduction of Volume 2, Diseases: Alphabetic Index. The most critical rule involves beginning the search for the correct code assignment through the Index, Volume 2. Never begin searching initially in the Tabular List (Volume 1) as this will lead to coding errors.

1. Physicians must use the appropriate code or codes from 001.0 through V82.9 to identify diagnoses, symptoms, conditions, problems, complaints, or other reason(s) for the encounter/visit.

A. In reporting ICD-9-CM diagnosis codes, physicians will be describing the patient's condition using terminology which includes specific diagnoses as well as symptoms, problems, or reasons for the encounter. There are ICD-9-CM codes to describe all of these.

In selecting codes to describe the reason for the encounter the physician will frequently be using codes 001.0 through 999.9 which is the section ICD-9-CM for the classification of diseases and injuries (e.g. infectious and parasitic diseases; neoplasms; symptoms, signs, and ill-defined conditions, etc.). Codes that describe symptoms and signs, as opposed to diagnoses, are acceptable for reporting purposes if this is the level of certainty documented by the physician. Chapter 16 of ICD-9-CM, Symptoms, Signs, and Ill-defined Conditions (code 780.0-799.9) contains many, but not all codes for symptoms.

B. However, ICD-9-CM also provides codes to deal with encounters for circumstances other than a disease or injury. This Supplememtary Classification of Factors Influencing Health Status and Contact with Health Services (V01.0-V82.9) is provided to deal with occasions when circumstances other than a disease or injury are recorded as diagnoses or problems. The V codes should be used for bills of this type. For example, the correct code for a cancer patient who is seen solely for radiotherapy is V58.0, Radiotherapy session.

2. List first the ICD-9-CM code for the diagnosis, condition, problem, or other reason for encounter/visit shown in the medical record to be chiefly responsible for the

services provided. List additional codes that describe any coexisting conditions.

Physicians will be reporting up to four diagnosis codes, not narrative descriptors, on the billing form. In addition, they will indicate which diagnosis code relates to the service(s) reported. The physician must select among the four diagnosis codes to be reported that code which best describes the reason for the encounter, as discussed above. At times there may be several conditions that equally led to the encounter. In these cases the physician is free to select the one to be listed first.

The physician will be reporting a minimum of one diagnosis code. However, there will frequently be instances where the patient has greater than four conditions present at the time of the encounter. Bill limitations allow the reporting of only four diagnosis codes. The physician should select first the reason for the encounter. In selecting the other three conditions to report, the physician should attempt to select first those conditions for which procedure codes are listed and to which the procedures where directed.

3. Codes are to be used at their highest level of specificity, e.g.

—Assign 3-digit codes only if there are no 4-digit codes within that code category,
—Assign 4-digit codes only if there is no fifth digit subclassification for that category, and
—Assign the fifth digit subclassification code for those categories where it exists.

ICD–9–CM is composed of codes with either 3, 4, or 5 digits. Codes with 3 digits are included in ICD–9–CM as stand alone codes or as the heading of a category of codes that are further subdivided by the use of fourth or fifth digits which provide greater specificity.

Examples:

a. Chronic obstructive pulmonary disease is assigned code 496, Chronic airway obstruction, not elsewhere classified. There are no fourth of fifth digits for 496.

b. Acute myocardial infarction, 410, has fourth digits that describe the location of the infraction (e.g. 410.5 Of other inferior wall). It would be incorrect to report code category 410, without a fourth digit, when there are fourth digits provided. Also note that for this code category there is a fourth digit provided to use when the coder is not given information about the location of the infarction (410.9 Unspecified site).

c. Gastric ulcer, 531, has fourth digits assigned to provide information such as whether there is hemorrhage or perforation. In addition the coder is instructed to assign a fifth digit (0 or 1) the describe whether or not obstruction is mentioned. It would be incorrect to leave off the fifth digit.

d. Rupture of tendon, nontraumatic, 727.6, has fifth digits that provide information on the tendon which has ruptured. It would be incorrect to leave off the fifth digit.

Claims submitted with 3 or 4 digit codes where 4 and 5 digit codes are available may be returned for proper coding. It is recognized that a specific diagnosis may not be known at the time of an initial office visit. However, that is not an acceptable reason to submit a 3 digit code when 4 or 5 digits are more appropriate.

Example:

A pediatric patient presents with blood in the urine (hematuria) and high blood pressure. The physician makes a diagnosis of acute glomerulonephritis. There is a 3 digit code for the category Acute glomerulonephritis (580), but it is further subdivided into fourth and fifth digits. A claim with the diagnosis code 580 will not be accepted because more specificity is available and must be provided. For example, 580.0 is the code for acute poststreptococcal glomerulonephritis. If, as often is the case with initial visits, it is not certain whether the condition is poststreptococcal or associated with a specified pathological lesion, then code 580.9, Acute glomerulonephritis with unspecified pathological lesion in kidney, would be appropriate.

4. Do not code diagnoses documented as "probable," "suspected," "questionable," or "rule out" as if they are established. Rather code the condition(s) to the highest degree of certainty for that encounter/visit, such as symptoms, signs, abnormal test results, or other reason for the visit.

Physicians should be aware that this is contrary to the coding practices used by hospital and medical record departments for coding the diagnoses of hospital inpatients. Hospital coding practices would lead to the coding of all discharge diagnoses listed as "probable," "suspected," "questionable," or "rule out" as if the condition existed. Further the coding of symptoms by medical record departments for inpatients is generally unacceptable particularly when there is an established diagnosis. A requirement that conditions listed as "probable," "suspected," "questionable," or "rule out" as if the condition existed would lead to significant over-counting of conditions. Therefore codes for symptoms and signs are appropriate and acceptable for physician reporting.

Example:

A neurologist evaluates a patient with complaints of dizziness and double vision. On physical examination, a visual field defect in noted. A diagnosis of "rule out multiple sclerosis" is made and the patient is referred for a magnetic resonance imaging (MRI). Multiple sclerosis would not be coded as an established diagnosis. The physician should identify one of the signs or symptoms as the reason for the encounter and may list others as additional diagnoses if desired.

Note that the requirement for diagnosis coding applies only to the neurologist's bill or claim for payment. Ordering physicians are not required to include diagnosis codes on referral slips or requests for radiologic or other diagnostic tests. However, consistent with accepted medical practice such referral slips or requests should include a narrative description of the reason for the test. In addition to assisting the radiologist, pathologist, or other physician in the proper performance and interpretation of the requested test, the information will assist the referring physician in the completion of his/her bill or claim for payment. (See #6 below).

In those instances where the physician does not document (identify) a definite diagnosis or problem at the conclusion of a patient care encounter/visit, the physician's office staff may select the documented chief complaints(s) as the reason for the encounter/visit.

Example:

Patient is seen in the office with chief compliant of severe neck pain exacerbated by any movement. Pain appeared earlier in the day upon awakening from nap. No history of any injury or unaccustomed physical activity. The Physician's brief write-up stated normal finding on physical and neurological examination, and the patient was instructed on immobility, heat, and analgesics. No diagnosis was documented. In this instance, code the chief complaint of neck pain, 723.1.

5. Chronic disease treated on an ongoing basis may be coded and reported as many times as the patient receives treatment and care for the condition(s).

Example:

A patient is seen on a monthly basis for treatment of rheumatoid arthritis, 714.0. This diagnosis should be coded and reported at each visit regardless of the number or frequency of visits.

6. For patients receiving ancillary diagnostic services only during an encounter/visit, the appropriate V code for the examination is sequenced first, and the diagnosis or problem for which the services are being performed is sequenced second.

This category will be used frequently by radiologists who are performing radiological examinations on referrals. V72.5, Radiological examination, not elsewhere classified will describe the reason for the encounter and will be sequenced first on the bill. When the reason for the referral is for other than a routine screening exam, a second diagnosis code should be reported, e.g., wheezing, coughing.

Failure to list a second code in addition to V72.5 may lead to problems with carrier screens on bill submittal. The code for Radiological examination, Not Elsewhere Classified (V72.5) includes referrals for routine chest x-rays which are not covered by Medicare. Carriers may establish screens to verify that the referrals were not for routine chest x-rays. By supplying a second code to describe the reason for the referral, these bills can clearly be identified as referrals to evaluate symptoms, signs, or diagnoses. The omission of a second code may lead to requests from carriers for more information prior to payment of the claim.

This category will also be used frequently by pathologists. V72.6, Laboratory examination, will describe the reason for the encounter (e.g., study of biopsy specimen). If at the time of the bill submittal there is a diagnosis (e.g., malignant neoplasm) then an additional code can be submitted to describe the diagnosis.

Examples:

A physician refers a healthy, asymptomatic patient to a radiologist for a routine chest x-ray as part of a routine physical examination. The radiologist will code V72.5, Radiological examination, not elsewhere classified, as the reason for the visit.

A physician refers an ill patient to a radiologist for a chest x-ray but does not indicate the reason for the test. Use code V72.5, Radiological examination, not elsewhere classified, as the reason for the visit. Since it is generally accepted medical practice to include the reason for the referral on a referral note the internist's office should be contacted for this information. The reason for the referral (e.g., chest pain (786.50), wheezing (786.09)) should then be coded and reported on the bill.

A physician refers a patient to a radiologist for a chest x-ray with the reason for exam identified as cough and fever, rule out pneumonia. The x-ray is normal. The radiologist should code V72.5, Radiological examination, not elsewhere classified, as the reason for the visit. List an additional code or codes for cough (786.2) and/or fever (780.6, Pyrexia of unknown origin) to describe the reason for the referral. Do not code "rule out pneumonia", as it is not an established condition.

A physician refers a patient to a radiologist for a chest x-ray with the reason for exam identified as cough and fever, rule out pneumonia. The x-ray demonstrates bronchopneumonia. The radiologist should code V72.5, Radiological examination, not elsewhere classified, as the reason for the visit. List an additional code for bronchopneumonia (485, Bronchopneumonia, organism unspecified). Do not code cough and fever, as more specific information is available.

A physician refers a patient to a radiologist for a chest x-ray with the reason for exam identified only as rule-out pneumonia. The x-ray is normal. The radiologist should code V72.5 as the reason for the visit. Do not code "rule out pneumonia" as if it exists. List an additional code for undiagnosed disease (799.9, Other unknown and unspecified cause). This code indicates that the patient has some condition, but it is not clearly defined.

7. For patients receiving ancillary therapeutic services only during an encounter/visit, the appropriate V code for the service is listed first, and the diagnosis or problem for which the services are being performed is listed second.

Example:

Use a code to describe rehabilitation services, V57.1, Other physical therapy, or V57.89, Other care involving use of rehabilitation procedures for a patient with multiple sclerosis, 340. Sequence the V code first, followed by the code for multiple sclerosis.

8. For surgery, code the diagnosis for which the surgery was performed. If the postoperative diagnosis is known to be different from the preoperative diagnosis at the time the claim is filed, select the postoperative diagnosis for coding.

9. Code all documented conditions that coexist at the time of the encounter/visit, and that require or affect patient care treatment or management. Do not code conditions previously treated and no longer existing.

Physicians are advised to exercise care in coding (a) conditions presently existing, (b) conditions no longer existing, (c) residuals (late effects) of conditions no longer existing, and (d) certain postoperative status conditions that require consideration in the management of patient care and warrant coding. Some physicians will add to the list of conditions currently being treated any previous surgery or conditions that no longer exist to provide easy reference of patient's history for recapitulation in the ongoing care of the patient. These should not be coded unless they require or affect patient case treatment or management.

Example:

The physician sees a patient for a follow-up visit for hypertension and angina and prescribes a diuretic and nitroglycerin. The physician documents benign hypertension, angina, status post pneumonia (6 months ago), status post hysterectomy (6 years ago), and status post appendectomy (15 years ago). In this instance, only two code assignments are made: hypertension (401.1, Essential hypertension, benign) and angina (413.9, Chronic ischemic heart disease, unspecified). The other conditions are not listed since they did not require or affect patient care.

[FR Doc. 89–17122 Filed 7–20–89; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR 325

RIN 3067-AB48

Emergency Health and Medical Occupations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This rulemaking amends part 325 in Title 44 CFR Emergency Health and Medical Occupations Guidance, Chapter 1, Federal Emergency Management Agency, Subchapter E Preparedness. Part 325 responds to part 1 of Executive Order 12656 of November 18, 1988, which provides that the Director, FEMA, assists the National Security Council in the implementation of national security emergency preparedness policy and which delegates to the Director the responsibility for coordinating and supporting the initiation, development, and implementation of national security emergency preparedness programs and plans among the Federal departments and agencies. This part lists and defines those Emergency Health and Medical Occupations necessary to ensure survival. The list is provided for use in the implementation of health and human services programs. The Director, FEMA, is to provide policy guidance for use by Federal departments and agencies in their mobilization plans and programs. The Director is also to provide the President with a periodic assessment of Federal, State, and local capabilities to respond to national security emergencies.

DATE: Comments are requested and should be submitted in writing to the address listed below no later than September 19, 1989.

ADDRESSES: Submit written comments, in duplicate, on the proposed rulemaking, to the Rules Docket Clerk, Federal Emergency Management Agency, Room 840, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Victor H. Esch, M.D. Health Resources Manager, Office of Mobilization Preparedness, Federal Emergency Management Agency, Room 624, 500 C Street, SW., Washington, DC 20472, Telephone (202) 646–3062.

SUPPLEMENTARY INFORMATION: This proposed procedure is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. It will not have an annual effect on the economy of $100 million or more; will not result in a major increase in costs or prices to consumers, individual industries, Federal, State or local agencies, or geographic regions; and will not have a significant adverse impact on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

This part applies to Federal Government agencies. In accordance with the Regulatory Flexibility Act of 1980, it is hereby certified that this proposed rule will not have a significant economic impact on a substantive number of small entities.

This rule does not contain information requirements that are subject to the Paper Work Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and OMB implementing regulations 5 CFR 1320.

The regulation in this part provides guidance to Federal agencies which may or may not take an action which could be subject to environmental documentation requirements. The guidance has no environmental consequences and it is determined, under FEMA's regulation published in 44 CFR 10.8, that it is not necessary to prepare either an environmental assessment or an environmental impact statement.

In promulgating these rules, FEMA has considered the President's Executive Order on Federalism issued on October 26, 1987 (E.O. 12612, 52 FR 41685). The purpose of the order is to assure the appropriate division of governmental responsibilities between national government and the States. Among other provisions, this rule implements the requirements that agency rules be in accordance with the so-called common rule, adopted by FEMA at 44 CFR Part 13, Uniform Administrative Requirements for Grants and

Cooperative Agreements to State and local Governments. The problem dealt with in this part is national in scope. In view of the joint Federal-State responsibility for civil defense, and FEMA's role under the Federal Civil Defense Act of 1950, as amended, the regulation in this part is determined to conform FEMA assistance to Executive Order 12612.

List of Subjects in 44 CFR Part 325:

National defense, Emergency health and medical occupations.

Accordingly, Subchapter E Chapter 1, Title 44, Code of Federal Regulations is amended by revising Part 325 to read as follows:

PART 325—EMERGENCY HEALTH AND MEDICAL OCCUPATIONS

Sec.
325.1 Purpose.
325.2 Scope applicability.
325.3 Policy.
325.4 Definitions.
325.5 Implementation.
325.6 Reporting.

Authority: National Security Act of 1947, as amended, 50 U.S.C. 404; Defense Production Act of 1950, as amended, 50 U.S.C. App. 2061 *et seq*; Federal Civil Defense Act, as amended, 50 U.S.C. App. 2251 *et seq*; E.O. 12148 of July 20, 1979, 3 CFR 1979 Comp., p. 412; and E.O. 12656 of November 18, 1988, 53 FR 47491.

§ 325.1 Purpose.

(a) The Director, Federal Emergency Management Agency, after consultation and agreement with the Secretary of Labor and the Secretary of Health & Human Services, and in support of the requirement of section 203(5) of Executive Order 12656, is issuing this List of Emergency Health & Medical Occupations to identify those medical occupations and skills for which there will be a critical need in time of a national security emergency.

(b) This List is for the use of Departments and agencies with responsibility for developing plans and programs to mobilize the health industry and health resources for use in time of a national security emergency.

(c) This List is for use by those departments and agencies concerned with planning for the emergency training and emergency recruitment of health & medical personnel engaged in the listed occupations.

§ 325.2 Scope and applicability.

The list entitled "Emergency Health and Medical Occupations" is not intended to be all inclusive, rather it identifies those health and medical occupations which would be most needed to provide health and medical services for national defense needs and during and immediately after an emergency in which survival of the population is the primary consideration.

§ 325.3 Policy.

(a) As part of the national security emergency preparedness policy, it is the responsibility of each Federal department and agency to identify occupations and skills for which there may be a critical need in the event of a national security emergency.

(b) The List of Health and Medical Occupations shall be used by departments and agencies in the development of plans and programs for the mobilization of the health industry and health resources for national defense needs.

§ 325.4 Definitions.

(a) *National Security emergency* is any occurrence, including natural disaster, military attack, technological emergency, or other emergency, that seriously degrades or seriously threatens the national security of the United States.

(b) *Mobilization* is the process of marshalling resources, including human and health resources, to respond to and manage a national security emergency.

§ 325.5 Implementation.

(a) *Develop plans, programs and training.* (1) Under Part 8 of Executive Order 12656, the Secretary of Health and Human Services, in cooperation with other Federal departments and agencies, State and local governments, and appropriate private sector organizations as part of its mobilization preparedness responsibility shall:

(i) Define the emergency roles which would be performed by those individuals filling the occupations included on the List of Emergency Health and Medical Occupations;

(ii) Develop and implement appropriate emergency training programs designed to prepare individuals in these occupations to perform effectively their specialized roles in a national security emergency as distinguished from their peacetime functions; and

(iii) Set quantitative and qualitative training objectives for each occupational category and developing arrangements for payment for the training.

(2) Under Part 12 of Executive Order 12656, the Department of Labor as part of its mobilization preparedness responsibility shall:

(i) Develop programs for increasing the availability of critical workforce skills and occupations.

(ii) Plan for the effective use of civilian workforce resources during national security emergencies. Plans shall include, but not necessarily be limited to priorities and allocations, recruitment, referral, training and programs for increasing the availability of critical workforce skills and occupations.

(b) *Volunteerism.* Although Federal, State, and local health officials are expected to have the requisite authority to take such actions in a declared national emergency, it is probable that the traditional role of volunteerism in the health and medical field will prevail and minimize the need for involuntary controls. Jurisdiction over health and medical personnel in actual emergencies would remain with their employers and the integrity of institutional services will be preserved wherever possible.

(c) *Priority of the health and medical workforce.* During a declared national security emergency, in which survival of the population is the preeminent consideration, the provision of health and medical services would be a priority emergency response and recovery function.

(d) *Mobilization of health and medical personnel.* To ensure that this priority need is met, departments and agencies responsible for the allocation of the workforce in emergencies will use the List of Emergency Health and Medical Occupations as an aid in the mobilization of available health and medical personnel and the staffing of emergency health and medical services. Emergency situations may dictate the need to redistribute, on a temporary basis, health and medical personnel in order to provide for equitable and needed coverage of the emergency caseload.

(e) *Use of health and medical personnel in other priority emergency activities.* While health and medical services will be an immediate priority need in most declared national security emergencies, as each situation unfolds, different priority needs will evolve, placing unusual demand on scarce workforce resources. As emergency health hazards and medical care loads are brought under control, it may be possible to release certain health and medical personnel who fill positions in the occupational categories listed on the List of Emergency Health and Medical Occupations for augmentation of other essential work groups on a temporary basis.

(f) *Ancillary and support personnel.* Vital to the effective performance of the emergency health and medical teams are individuals in direct support occupations such as hospital, sanitation, and laboratory helpers, as well as engineering, clerical, food service, and custodial personnel. Personnel in these ancillary and support categories should remain on their jobs during and after a declared national security emergency until health hazards and medical care loads are brought under control. Reassignment of these personnel will follow the policy cited in paragraph (e) of this section.

(g) *List of emergency health manpower occupations.*

Occupational title	Code number [1]
Administrator, Hospital	187.117
Biophysicist	041.061
Dentist (all categories)	072
Dental Assistant (Medical Service)	079.371
Dietitian, Clinical (Prof. & Kindred)	077.127
Emergency Medical Services Coordinator	079.117
Entomologist (Prof. & Kindred)	041.061
Food and Drug Inspector (Government Services	168.267
Health Physicist	079.021
Laboratory Assistant, Blood and Plasma	078.687
Medical Assistant	079.367
Medical Laboratory Assistant	078.381
Medical Record Administrator	079.167
Nurse Aide	355.674
Nurse, Licensed Practical	079.374
Nurse, Registered (all categories)	075
Orderly (Medical Service)	355.674
Orthopedic Assistant	712.681
Osteopathic Physician	071.101
Pharmacist (all categories)	074
Phlebotomist	079.364
Physicians and Surgeons (all categories)	070
Physician Assistant	079.364
Podiatrist	079.101
Radiological Equipment Specialist	719.261
Psychiatric Aide	355.377
Psychologist, Clinical	045.107
Public Health Microbiologist	041.261
Radiation Monitor	199.167
Sanitary Engineer	005.061
Social Worker, Medical	195.107
Social Worker, Psychiatric	195.107
Technicians:	
Biomedical Equipment Technician (inst. and app.; medical service)	719.261
Biomedical Equipment Technician (Prof. & Kindred)	019.261
Cardiac monitor technician	077.367
Dialysis Technician	078.362
Electrocardiograph Technician	078.362
Electroencephalographic Technician	078.362
Emergency Medical Technician	079.374
Laboratory Technician, Veterinary	073.361
Medical Laboratory Technician	078.381
Pulmonary function techician	078.262
Medical Record technician	079.367
Surgical Technician	079.374
Decontaminator	199.384
Technologists:	
Cardia pulmonary technologist	078.362
Cytotechnologist	078.281
Immune technologist	078.221
Medical Technologist	078.361
Microbiology Technologist	078.261
Nuclear Medical Technologist	078.361
Perfusionist technologist	078.362
Radiologic Technologist	078.362
Radiation therapy technologist	078.361
Tissue Technologist	078.361
Ultra sound technologist	078.364
X-ray Technologist	078.362
Therapists:	
Inhalation Therapist	079.361
Respiratory Therapist	079.361
Veterinarians [2]	073

[1] Dictionary of Occupational Titles/Department of Labor/Fourth Edition.

[2] Though current planning provides that many veterinarians be utilized in casualty care and preventive medicine activities immediately after an emergency, veterinarians will continue to be needed to perform services of a strictly veterinary nature after most of the human casualties have been cared for temporarily. Such veterinary activities will include protection of food, animals against diseases and the effects of atomic, biological, and chemical warfare; meat and poultry inspection and supplementing food inspection forces for certain food processing plants, and food storage facilities.

§ 325.6 Reporting.

In carrying out its responsibility of periodically reporting to the President and the National Security Council on the implementation of the national security emergency preparedness policy, the departments and agencies shall cooperate with FEMA to the extent appropriate, in compiling, evaluating, and exchanging data on emergency health and medical occupations programs.

Dated: July 14, 1989.

Robert H. Morris,

Acting Director, Federal Emergency Management Agency.

[FR Doc. 89-17132 Filed 7-20-89; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-314, RM-6773]

Radio Broadcasting Services; Colusa, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed on behalf of Mark P. Guidotti, permittee of Station KKLU(FM), Channel 243A, Colusa, California, seeking the substitution of Channel 276A for Channel 243A and modification of his permit accordingly.

DATE: Comments must be filed on or before September 7, 1989, and reply comments on or before September 22, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Howard M. Liberman and Gerald Stevens-Kittner, Esqs., Arter & Hadden, 1919 Penn. Ave., NW., Suite 400, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-314 Adopted June 26, 1989, and released July 17, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-17077 Filed 7-20-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-315, RM-6662]

Radio Broadcasting Services; Spirit Lake, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Campus Radio Company, Inc. proposing the substitution of Channel 280C2 for Channel 280A at Spirit Lake, Iowa, and the modification of its license for Station KUOO(FM) to specify operation on the

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higher powered channel. Channel 280C2 can be allotted to Spirit Lake in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.6 kilometers (2.2 miles) south to avoid a short-spacing to the proposed allotment of Channel 283C2 to St. James, Minnesota (MM Docket 86-491). In accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in use of Channel 280C2 at Spirit Lake or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before September 7, 1989, and reply comments on or before September 22, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Marnie K. Sarver, Esq., Pierson, Ball & Dowd, 1200 18th Street, NW., Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-315, adopted June 27, 1989, and released July 17, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-17078 Filed 7-20-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No 89-317, RM-6677]

Radio Broadcasting Services; Taos, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Taos County Radio seeking the substitution of Channel 260C2 for Channel 260A at Taos, New Mexico, and the modification of its construction permit for a new station on the Class A channel accordingly. Channel 260C2 can be allotted to Taos in compliance with the Commission's minimum distance separation requirements with a site restriction of 25.8 kilometers (16.0 miles) northeast to accommodate petitioner's desired transmitter site. The coordinates for this allotment are North Latitude 36-32-10 and Wesdt Longitude 105-20-10. In accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in use of the channel at Taos or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before September 7, 1989, and reply comments on or before September 22, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert A. DePont, Esq., Fletcher, Heald & Hildreth, 1225 Connecticut Avenue, NW., Suite 400, Washington, DC 20036-2679 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-317, adopted June 23, 1989, and released July 17, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-17079 Filed 7-20-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-316, RM-6709]

Radio Broadcasting Services; Morristown, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Four Seasons Communications, Inc. seeking the allotment of Channel 275A to Morristown, New York, as the community's first local FM service. Channel 275A can be allotted to Morristown in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 44-35-18 West Longitude 75-39-00. Canadian concurrence is required since Morristown is located within 320 kilometers (220 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before September 7, 1989, and reply comments on or before September 22, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Timothy D. Martz, President, Four Seasons Communications, Inc., P.O. Box 36, Fairfield, Connecticut 06430 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commision's Notice of Proposed Rule Making, MM Docket No. 89-316, adopted June 27, 1989, and released July 17, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contracts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-17080 Filed 7-20-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF ENERGY

48 CFR Parts 914, 915, and 952

Acquisition Regulations

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) proposes to amend the Department of Energy Acquisition Regulation (DEAR) by revising current policies concerning the use and format of DOE's unique simplified offeror representations and certifications procedures, thereby relying substantially on the current Federal Acquisition Regulation (FAR) coverage in this area. However, specific DEAR coverage on this subject will still be necessary to implement the FAR for DOE's purposes.

On October 27, 1987, a proposed rule was published in the **Federal Register** (52 FR 41390) which, among other things, amended the FAR coverage concerning the use of annual versus individual offeror representations and certifications submissions in response to solicitations. This proposed rule (to amend the DEAR) is being issued prospectively and in anticipation of the final FAR rule.

The amendments being proposed today will be implemented in the DEAR as amended sections 914.201-5; 915.406-5; 952.215-71; and, 952.215-72.

DATE: Written comments on this proposed rule must be received by August 21, 1989.

ADDRESS: Comments should be addressed to: Edward Simpson, Procurement Policy Division (MA-421), Office of the Deputy Assistant Secretary for Procurement and Assistance Management, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Edward Simpson, Procurement Policy Division (MA-421), Office of the Deputy Assistant Secretary for Procurement and Assistance Management, U.S. Department of Energy, Washington, DC 2058, (202) 586-8246.

Paul Gervas, Office of the Assistant General Counsel for Procurement and Finance (GC-34), U.S. Department of Energy, Washington, DC 20585, (202) 586-6918.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
A. Review Under Executive Order 12291
B. Review Under the Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act
D. Review Under the National Environmental Policy Act
E. Review Under Executive Order 12612
III. Public comments

I. Background

Federal agencies are required by various statutes, Executive orders, and regulations to obtain certain representations and certifications from offerors as part of the bid/proposal evaluation process. These representations and certifications aid the Federal agency in determining the eligibility of the offeror to receive a Federal contract award. The customary practice of most Federal agencies is to require the submission of these representations and certifications with each bid or proposal.

With the promulgation of the Department of Energy Acquisition Regulation (DEAR) on April 1, 1984 (49 FR 11922, March 28, 1984), the Department of Energy (DOE) implemented the use of a simplified offeror representation and certification procedure on an elective basis by its contracting activities. The purpose of this optional procedure was to reduce administrative and paperwork burdens on offerors (particularly small businesses, educational institutions, and nonprofit organizations) in submitting the representations and certifications needed by DOE as part of the contract award process. Regulatory coverage for the optional simplified representation and certification procedure was contained in the DEAR at section 915.406-5.

In essence, this simplified procedure permitted those offerors, who submitted numerous bids and proposals to a particular DOE contracting activity, to complete and place on file with that organization a comprehensive submission of recurrent representations and certifications. The representations and certifications considered to be "recurrent" were those that would apply to virtually all contracts, and, therefore, did not need to be executed by offerors with each individual contract award. Upon acceptance by the contracting activity, the comprehensive submission would be placed on record with the contracting activity for a period of three years. During this three year period, those offerors who submitted an acceptable comprehensive representations and certifications package would need only to submit with their bids and proposals (1) a certification regarding the accuracy and currency of their comprehensive submission, (2) any representations and certifications that differed from those contained in their comprehensive submission, and (3) any additional representations and certifications required by the instant solicitation or contract.

Subsequently, DOE amended its acquisition regulations (the DEAR) to further simplify the submission of representations and certifications (50 FR 35956, September 4, 1985). This amendment mandated the use of simplified procedures by DOE's contracting activities in obtaining representations and certifications from offerors through what could be

characterized as a phased submission process. By implementing these further simplified procedures, DOE anticipated that additional administrative efficiencies would be realized both by its own contracting actitivities and by offerors.

In implementing this new requirement, DOE developed a three part form for representations and certifications whereby all offerors would initially submit, with their proposal, the minimally needed representations and certifications to allow for evaluation of the bid or proposal by DOE. A comprehensive submission of recurrent representations and certifications would only be obtained by DOE from the successful offeror. This later submission would then be placed on file with the contracting activity in a repository and remain valid for that offeror for a period of three years, subject to certain conditions. Under this procedure, offerors not advancing to selection for award of a contract would be spared the time and expense of completing unnecessary paperwork.

The amendments being proposed today would revise existing coverage of the simplified representation and certification submission procedures by eliminating the requirements for mandatory use of the simplified approach, for use of the three part form, and for the maintenance of a central repository. In lieu thereof, DOE will use a one-part comprehensive format to be completed and submitted by offerors as part of their proposal at the time of bid or proposal submission. The use of an annual representations and certifications submission procedure will remain as an option to DOE contracting activities, using the appropriate coverage in the Federal Acquisition Regulation (FAR), as supplemented by the DEAR.

The lack of Governmentwide implementation of significantly similar procedures has resulted in offerors having to establish several approaches to provide the representations and certifications to individual Federal agencies in response to their solicitations. In this regard, DOE has discovered that many times offerors are not fully complying with DOE's solicitation instructions regarding the submission of the three part form, but rather continue to complete the whole form with each bid or proposal; offerors thus are not taking the advantages that could accrue to them in future bid/proposal submittals by not having to complete the full complement of representations and certifications on a proposal-by-proposal basis. This situation is complicated by the decentralized operations of DOE's contracting activities. Individual offerors that have received contract awards from more than one contracting activity must submit the full complement of representations and certifications to each awarding contracting activity to establish the "official file" version of the recurrent portion of the representation and certification submission. Further, absent universal acceptance of its procedures by offerors, DOE has, in effect, been forced to operate under two systems to obtain this needed information. Because of the oftentimes sporadic offeror compliance with the three part procedures, the administrative burden on the individual DOE contracting activity in establishing and maintaining the central repository at the local level is great.

Therefore, DOE has concluded that these amendments to the existing simplified representations and certifications submission procedures are needed because the expected benefits of the current procedures both to offerors and DOE are not being realized. DOE has further concluded that a reliance on the FAR coverage of the subject will probably result in less of an administrative and paperwork burden on all affected parties through the use of the FAR approach.

As a result, DEAR section 914.201-5, "Part IV—Representations and instructions," which provides instructions concerning the use of the simplified three part representations and certifications in sealed bidding, and DEAR section 915.406-5, "Part IV Representations and instructions," governing negotiated acquisitions, are being amended to implement the revised policies regarding the submission of representations and certifications by offerors. In addition, the solicitation provisions at DEAR section 952.215.71, "Simplified representations and certifications—negotiated acquisition" and DEAR sections 952.215-72, "Simplified representations and certifications—sealed bid," will be removed as they will no longer be necessary.

II. Procedural Requirements

A. Review Under Executive Order 12291

This Executive order, entitled "Federal Regulation," requires that certain regulations be reviewed by the Office of Mangement and Budget (OMB) prior to their promulgation. OMB Bulletin 85-7 exempts all but certain types of procurement regulations from such review. This proposed rule does not involve any of the topics requiring review under the Bulletin and, accordingly, is exempt from such review.

B. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this proposed rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.* (1976)), or the Council on Environmental Quality regulations (40 CFR Parts 1500 through 1508), and the DOE Guidelines (40 CFR Parts 1021), and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

E. Review Under Executive Order 12612

Executive Order 12612 requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power and responsibilities among the various levels of government. If there are sufficient substantial direct effects, then the Executive order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's proposed rule, when finalized, will implement certain policies and procedures set forth in the FAR relating to the methods used by Federal agencies to collect the representations and certifications of offerors that are needed as part of the contract award process. States which contract with DOE will be subject to this rule.

However, DOE has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of the States.

III. Public Comments

Interested persons are invited to participate by submitting data, views, or arguments with respect to the proposed DEAR amendments set forth in this notice. There copies of written comments should be submitted to the address indicated in the "ADDRESS" section of this notice. All written comments received by August 21, 1989, will be carefully assessed and fully considered prior to publication of the proposed amendment as a final rule.

DOE has concluded that this proposed rule does not involve a substantial issue of fact or law, and that the proposed rule should not have a substantial impact on the nation's economy or large numbers of individuals or businesses. Therefore, pursuant to Pub. L. 95-91, the DOE Organization Act, and the Administrative Procedure Act (5 U.S.C. 553), the Department does not plan to hold a public hearing on this proposed rule.

List of Subjects

48 CFR Part 914

Sealed bidding.

48 CFR Part 915

Contracting by negotiation.

48 CFR Part 952

Solicitation provisions and contract clauses.

For the reasons set out in the preamble, Parts 914, 915, and 952 of Title 48 of the Code of Federal Regulations are proposed to be amended as set forth below.

Berton J. Roth,

Deputy Assistant Secretary for Procurement and Assistance Management.

The regulations in 48 CFR Chapter 9 are proposed to be amended as set forth below:

1. The authority citation for Parts 914, 915, and 952 would continue to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

914.201-5 [Amended]

2. Section 914.201-5 is amended by revising paragraph 914.201-5(a)(1) to read as follows and by adding a new paragraph 914.201-5(a)(2):

(a) *Section K, Representations, certifications, and other statements of bidders.* (1) The Office of Policy, Procurement and Assistance Management, will maintain a pre-printed comprehensive one-part representations, certifications, and other statements package for use by contracting activities in solicatations.

(2) DOE contracting activities may elect to use an annual representations and certifications submission procedure for sealed bidding, as authorized by FAR 14.213, subject to the requirements therein and to the requirements of 915.406-5(a)(2).

* * * * *

915.406-5 [Amended]

3. Section 915.406-5 is amended by revising paragraph 915.406-5(a) to read as follows:

(a) *Section K, Representations, certifications, and other statements of offerors or quoters.* (1) The Office of Policy, Procurement and Assistance Management, will maintain a pre-printed comprehensive one part representations, certifications, and other statements package for use by contracting activities in solicitations.

(2) DOE contracting activities may elect to use an annual representations and certifications submission procedure for negotiated acquisitions, as authorized by FAR 15.407(i).

(i) The decision to implement and use an annual representation and certification submission procedure shall be made by the Head of the Contracting Activity for all contracting offices under the cognizance of the Head of the Contracting Activity.

(ii) The use of an annual representation and certification submission procedure should be considered in instances where a contracting activity issues numerous solicitations for like or similar supplies or services, thereby creating a situation where offerors would benefit from not having to complete and submit an individual comprehensive representation and certification package as part of each proposal submitted in response to the solicitations.

(iii) If the contracting activity decides to use an annual representations and certifications submission procedure, the contracting activity shall establish written procedures and responsibilities for requesting, receiving, storing, verifying, and updating offerors' annual submissions.

(iv) The Head of the Contracting Activity may authorize the use of an effective period for offeror's annual representations and certifications of greater than one year from the date of signature by the offeror; however, under no circumstances shall the effective period for the offeror's annual representations and certifications exceed three years from the date of signature by the offeror.

* * * * *

952.215-71 [Removed]

4. Section 952.215-71 is hereby removed.

952.215-72 [Removed]

5. Section 952.215-72 is hereby removed.

[FR Doc. 89-17160 Filed 7-20-89; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85-07; Notice 5]

RIN 2127-AB12

Federal Motor Vehicle Safety Standards; Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Proposed rule, reopening of period for public comment.

SUMMARY: This notice grants three requests for an extension of the period to submit written comments on an agency notice about air brake systems. The agency notes that the additional comment period will allow commenters to develop meaningful test data. Accordingly, the period for comment is extended by 90 days from the date the initial comment period closed.

DATES: Comments on Docket No. 85-07; Notice 4 must be received on or before October 3, 1989.

ADDRESSES: Comments should refer to Docket No. 85-07; Notice 4 and be submitted to the following: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours 8:00 a.m. to 4:00 p.m.).

FOR FURTHER INFORMATION CONTACT: Mr. Marvin L. Shaw, Office of Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2992.

SUPPLEMENTARY INFORMATION: On May 3, 1989, NHTSA published in the **Federal Register** (54 FR 18912) a supplemental notice of proposed rulemaking (SNPRM) seeking comments on two proposed amendments to Standard No. 121, *Air Brake Systems*, concerning pneumatic

timing. Comments were requested by July 3, 1989.

Bendix Heavy Vehicle Systems of Allied Signal (Bendix), Ford Motor Company, and the Motor Vehicle Manufacturers Association (MVMA) submitted timely petitions requesting an extension of the period to comment on the SNPRM. Ford and MVMA requested a 90 day extension of the comment period, and Bendix requested a 60 day extension.

Ford stated that its preliminary review of the agency's proposal suggests that there may be difficulties with some of its existing products, if the proposal were adopted. Ford requested additional time so that it could conduct additional tests to determine whether the proposed timing requirements are practicable. Ford noted that it would need at least two months to conduct the additional tests to evaluate the gladhand timing and one month to analyze this data and prepare its comments. Bendix and MVMA offered similar reasons for an extension of the comment period.

NHTSA recognizes that manufacturers need the 90 day extension to conduct and evaluate the additional testing. The agency believes that the comments based on this testing will benefit the agency by providing more comprehensive test data on air-braked vehicles. Accordingly, the agency has decided to grant the petitioners' request and is reopening the comment period for this notice to provide a total of 150 days to comment, starting from the publication date of the May notice.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor Vehicles, Rubber and rubber products, Tires.

(15 U.S.C. 1392, 1407; delegation of authority at 49 CFR 1.50 and 501.8)

Issued on July 17, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-17068 Filed 7-17-89; 3:34 p.m.]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN: 1018-AB31

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Geum Radiatum and Hedyotis Purpurea var. Montana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list two plants, *Geum radiatum* (spreading avens) and *Hedyotis purpurea* var. *Montana* (Roan Mountain bluet), to be endangered species under authority of the Endangered Species Act of 1973, as amended (Act). These perennial herbs, limited to 11 *Geum* populations and 5 *Hedyotis* populations in North Carolina and Tennessee, are endangered by residential and recreational development and from habitat disturbance due to heavy use by hikers and climbers, collection, and natural succession. This proposal, if made final, would implement Federal protection provided by the Act for *Geum radiatum* and *Hedyotis purpurea* var. *montana*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by September 19, 1989. Public hearing requests must be received by September 5, 1989.

ADDRESSES: Comments and materials, and requests for public hearing concerning this proposal should be sent to the Field Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Nora Murdock at the above address (704/259-0321 or FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

Geum radiatum, described by André Michaux (1803) from material collected in North Carolina, is a perennial herb with basal rosettes of leaves arising from horizontal rhizomes. The stems grow 2 to 5 decimeters tall and are topped with an indefinite cyme of bright yellow actinomorphic flowers. Flowering occurs from June through September with fruiting from August through October. The fruit is a hemispheric aggregate of hirsute achenes, 7 to 9 millimeters in diameter (Kral 1983, Radford *et al.* 1968, Massey *et al.* 1980). This species can be easily distinguished from other southeastern *Geums* by its large yellow flowers and by its leaves (mostly basal) that have large terminal lobes and small laterals (Massey *et al.* 1980). *Geum radiatum* has been placed in other genera by various workers; Robert Brown (1823) placed it in the genus *Sieversia;* Bolle (1933) placed it in the genus *Acomastylis; and* Hara (1935) placed it in *Parageum.* Currently accepted taxonomic treatment places this species in the genus of Michaux's original description (Raynor 1952, Robertson 1974).

Hedyotis purpurea (L.) T. & G. var. *montana* (Small) Fosberg was first described as *Houstonia montana* in 1903 by J. K. Small from specimens collected by J. W. Chickering, Jr. in 1877 from the summit of Roan Mountain in North Carolina and Tennessee. Another synonym is *Houstonia purpurea L.* var. *montana* (Small) (Terrell 1959, Terrell 1978). This species is a shallow-rooted perennial that forms low-growing, loose tufts 1 to 1.5 decimeters tall. The inflorescence is a subsessile few-flowered cyme. The bright purple flowers appear in July and early August, followed by the many-seeded capsule (Kral 1983, Radford *et al.* 1968). *H. purpurea* var. *montana* is distinguished from *H. p.* var. *purpurea* by its larger corolla size, different corolla color (deep purple as opposed to purplish to white in *H. p.* var. *purpurea*), and its larger seed size (Kral 1983, Terrell 1978).

These two species are endemic to a few scattered mountaintops in western North Carolina and eastern Tennessee where they grow, exposed to full sunlight, in the shallw acidic soils of high elevation cliffs, outcrops, steep slopes, and gravelly talus associated with cliffs. Substrate types are variable for the species but include various igneous, metamorphic, and metasedimentary rocks such as quartz diorite, garnet-rich biotite, muscovite and quartz schist, quartz phyllite, metagraywacke, metaconglomerate, and metarkoses containing feldspar and chlorite, amphibole, hornblende, and feldspar gneiss (Massey *et al.* 1980). Common associates of these two species include *Leiophyllum buxifolium, Menziesia pilosa, Rhododendron catawbiense, Aster* spp., *Carex* spp., *Solidago* spp., *Heuchera villosa, Saxifraga michauxii,* and various grass species. Some of the sites are also occupied by *Liatris helleri* and/or *Solidago spithamaea,* species that are already federally listed as threatened. The high elevation coniferous forests adjacent to the rock outcrops and cliffs occupied by these two species are dominated by red spruce (*Picea rubens*) and another Federal candidate species, Fraser fir (*Abies fraseri*) (Massey *et al.* 1980, Morgan 1980, Kral 1983).

Sixteen populations of *Geum radiatum* have been reported historically; 11 remain in existence. Three of these populations are in Ashe County, North Carolina, with one population each remaining in Avery, Transylvania, Watauga, Buncombe, and Yancey Counties, North Carolina, and Sevier County, Tennessee; the other two populations are located on the Mitchell County, North Carolina/Carter County, Tennessee line and the Avery/Watauga County line in North Carolina. Six of the remaining populations are located on privately owned lands; four are located on public land administered by the U.S. Forest Service and the National Park Service, and one is located on State park land administered by the North Carolina Department of Natural Resources and Community Development. Five additional populations were historically known for this species. The reasons for the disappearance of *Geum radiatum* at these sites are undocumented. However, most of these former sites have been subjected to heavy recreational use by hikers, climbers, and sightseers.

Hedyotis purpurea var. *montana* was known historically from six populations; five remain. Two of these are located on the line between Avery and Watauga Counties, North Carolina; one is at the juncture of the boundaries of Mitchell and Avery Counties, North Carolina, and Carter County, Tennessee; and one population each remains in Ashe and Watauga Counties, North Carolina. The sixth population was reported from Yancey County, North Carolina, but has not been found there during recent searches (Paul Somers, personal communication, Tennessee Department of Conservation, 1988). That site, like those from which *Geum radiatum* has vanished, has also been subjected to relatively heavy recreational use.

The continued existence of both species is threatened by trampling and associated soil erosion and compaction, other forms of habitat disturbance due to heavy use of the habitat by recreationists such as hikers, as well as by development for commercial recreational facilities and residential purposes. Since both species are early successional pioneers, some of the populations are also threatened by natural succession (Massey *et al.* 1980, Kral 1983). Construction of new trails, other recreational improvements, significant increases in intensity of recreational use, or intensive development without regard to the welfare of these species at any of the sites could further jeopardize their continued existence.

Most of the populations occupy a very small total area. Seven of the remaining *Geum radiatum* populations have fewer than 50 plants remaining in each, with 3 of these having fewer than 10 plants each. Over the past decade, at least four of the currently extant *Geum radiatum* populations have undergone significant population declines (ranging from 67 percent to 96 percent); four others have suffered declines of lesser magnitude. Only three are known to have maintained relative stability during the same period. One of the privately owned sites for these two species has been developed as a commercial recreation facility; development of a second site as a ski resort is currently underway. The third privately owned site is owned in part by The Nature Conservancy and is, therefore, partially protected. The remaining three sites in private ownership are unprotected, with residential development currently underway at two of the sites. The five sites in public ownership are located in scenic areas that attract large numbers of visitors annually.

Federal government actions on *Geum radiatum* began with section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27832) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act and of its intention thereby to review the status of the plant taxa named within. *Geum radiatum* was included in the July 1, 1975, notice of review. On December 15, 1980, the Service published a revised notice of review for native plants in the **Federal Register** (45 FR 82480); *Geum radiatum* was included in that notice as a category 1 species; *Hedyotis purpurea* var. *montana* was included as a category 2 species. Category 1 species are those species for which the Service currently has on file substantial information on biological vulnerability and threats to support proposing to list them as endangered or threatened species. Category 2 species are those for which listing as endangered or threatened may be warranted but for which substantial data on biological vulnerability and threats is not currently known or on file to support proposed rules.

On November 28, 1983, the Service published a supplement to the notice of review for native plants in the **Federal Register** (48 FR 53640); the plant notice was again revised September 27, 1985, (50 FR 39536). *Geum radiatum* was included as a category 2 species in both the 1983 supplement and the 1985 revised notice. *Hedyotis purpurea* var. *montana* was included in the 1985 notice as a category 2 species. Subsequent to the 1985 notice, the Service received additional information from the North Carolina Natural Heritage Program (A. Weakley, personal communication, 1988); this information and additional field data gathered by the Heritage Program, the Fish and Wildlife Service, and the National Park Service (Keith Langdon, personal communication, Great Smoky Mountains National Park, 1988; Bambi Teague, personal communication, Blue Ridge Parkway, 1988) indicate that the addition of *Geum radiatum* and *Hedyotis purpurea* var. *montana* to the Federal List of Endangered and Threatened Plants is warranted.

Section 4(b)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Geum radiatum* because of the acceptance of the 1975 Smithsonian Report as a petition. In October of 1983, 1984, 1985, 1986, 1987, and 1988, the Service found that the petitioned listing of *Geum radiatum* was warranted but precluded by listing actions of a higher priority and that additional data on vulnerability and threats were still being gathered. Publication of this proposal constitutes the final finding that is required.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal list. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Geum radiatum* Michaux (spreading avens) and *Hedyotis purpurea* var. *montana* (Chickering) Fosberg (Roan Mountain bluet) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Geum radiatum* and *Hedyotis purpurea* var. *montana* are restricted to a few mountaintops and cliff faces in the souther Appalachians of western North Carolina and eastern Tennessee (see "Background" section for specific distributions). Although

populations are declining and vanishing for reasons that are, in many cases, not clearly understood, destruction and adverse modification of their habitat pose a major threat to the remaining populations of both species. Thirty-one percent of the historically known *Geum radiatum* populations have been extirpated, along with 17 percent of the *Hedyotis purpurea* var. *montana* populations. Only 11 populations of the *Geum* and 5 of the *Hedyotis* remain.

The five remaining *Hedyotis* populations are small and vulnerable, with two occupying a total of less than 10 square meters. Two of these populations occupy sites that have been or are being developed for commercial recreation. A third site, located on land administered by the U.S. Forest Service, contains 41 percent of the remaining individuals of this species and is subjected to heavy and increasingly intense recreational use. The other two populations are located on private land and are completely unprotected.

As detailed in the **Background** section, significant declines have been documented in many of the extant *Geum* populations during the past decade. Five of the remaining 11 *Geum* populations are located on public lands where they are subjected to heavy recreational use. One of these sites, owned by the U.S. Forest Service, currently supports 73 percent of the remaining individuals of this species; recreational pressure on this already heavily used site is steadily increasing. Of the six privately owned sites, one has been developed as a commercial recreation facility, which attracts several hundred thousand visitors annually. A second site is currently being developed as a ski resort; the other four privately owned sites are currently unprotected and located in an area that is rapidly developing as a center for resorts and tourism.

The greatest damage to *Geum radiatum* and *Hedyotis purpurea* var. *montana* in the past has probably come from the commercial development of the open mountain summits where they occur. The construction of trails, parking lots, roads, buildings, observation platforms, suspension bridges, and other recreational, residential, and commercial facilities has taken its toll on the species either through the actual construction process or by trampling due to hikers and sightseers (Kral 1983). Currently, heavy trampling occurs at six of the locations where these two species are known to survive; however, all of the small habitats occupied by these species are threatened by increase in intensity of use, particulary if additional development occurs (Massey *et al.* 1980).

With anticipated increased usage by sightseers, rock climbers, and hikers at 6 of the remaining 11 localities where *Geum radiatum* occurs, and at 4 of the 5 remaining *Hedyotis purpurea* var. *montana* localities, significant impacts on these species in the form of increased soil erosion, soil compaction, and trampling could occur if protection is not provided. Likewise, additional development at any of the locales (such as expansion of trails or sidewalks, construction of additional visitor facilities, or residential development) could further threaten the species if proper planning does not occur.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Neither *Geum radiatum* nor *Hedyotis purpurea* var. *montana* is currently a significant component of the commercial trade in native plants; however, both have attractive growth habits and showy flowers and have potential for horticultural use. Some collecting from wild populations of *Geum* is already occuring. Publicity could generate an increased demand and intensify collecting pressure on wild populations of both species.

C. *Disease or predation.* These taxa are not known to be threatened by disease or predation.

D. *The inadequacy of existing regulatory mechanisms. Geum radiatum* and *Hedyotis purpurea* var. *montana* are afforded legal protection in North Carolina by North Carolina General Statute, Chapter 106, Article 19–B, 202.12–102.19, that prohibits intrastate trade and taking of State-listed plants without a State permit and written permission of the landowner. *Geum radiatum* is listed in North Carolina as threatened—special concern (currently proposed as endangered—special concern); *Hedyotis purpurea* var. *montana* is currently being added to the State's list as endangered. In Tennessee, State-listed plants are afforded legal protection by the Rare Plant Protection and Conservation Act of 1985, Tennessee Code Ann., Chapter 242, Section 11–26–201 to 11–26–214, Public Acts of 1985. This statute prohibits taking of listed species without permission of the landowner or manager and regulates commercial sale and export. *Geum radiatum* is listed as endangered in Tennessee. State prohibitions against taking are difficult to enforce and do not cover adverse alterations of habitat or unintentional damage from recreational use. The Endangered Species Act will provide additional protection and encouragement of active management for *Geum radiatum* and *Hedyotis purpurea* var. *montana*, particularly on Federal lands.

E. *Other natural or manmade factors affecting its continued existence.* These taxa are rare and vulnerable due to their specialized habitat requirements and the limited amount of potential habitat. As mentioned in the previous sections of this proposed rule, most of the remaining populations are small in numbers of individuals and in terms of area covered by the plants. Therefore, little genetic varibility exists in these species, making it more important to maintain as much habitat and as many of the remaining colonies as possible. *Geum radiatum* and *Hedyotis purpurea* var. *montana* are early pioneer species growing on rock ledges in full sun. Depending upon the elevation and suitability of the site for supporting woody vegetation, invasion by shrubs and trees can occur, eliminating these species by overcrowding and shading. Since this type of succession is a slow process, this is not considered an immediate threat to survival of the species. However, proper management planning for *Geum radiatum* and *Hedyotis purpurea* var. *montana* is needed to address this aspect of the species' biology. Natural rock slides, severe storms or droughts, or other natural events may also eliminate populations of these plants.

In recent years the spruce fir forests adjacent to the cliffs and rock outcrops occupied by these species have suffered dramatic declines due, at least in part, to airborne pollution and the impacts of an exotic insect, the balsam wooly aphid. The impacts of this forest decline on these two rare herbaceous species cannot be accurately assessed at this time. Even though both species are pioneers and require exposure to full sunlight, the drastic decline in the high elevation forests may result in excessive desiccation of the moist sites occupied by the *Geum* and *Hedyotis*. This theory would seem to be supported by the fact that populations of the *Geum*, particularly those located on drier sites, usually abort the fruiting stems before seed can be set. The rhizomes of these perennials are believed to be capable of surviving for decades. (Prince and Morse 1985), but continued failure in seed production poses a definite threat to long-term survival and recovery of the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Geum radiatum* and *Hedyotis purpurea* var. *montana* as endangered. With 31 percent of *Geum* and 17 percent of *Hedyotis* populations having already been extirpated, and only eleven populations of *Geum* and five of *Hedyotis* remaining (all of which are subject to some form of threat), these species warrant protection under the Act. With the small number of remaining populations and the small number of individuals and area covered by these populations, and with significant declines having been documented in many of the surviving populations, these two plants are in danger of extinction throughout all or significant portions of their ranges and, therefore, qualify as endangered species under the Act. Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatend. The Service finds that designation of critical habitat is not presently prudent for either *Geum radiatum* or *Hedyotis purpurea* var. *montana* at this time. Publication of critical habitat descriptions and maps would increase public interest and possibly lead to additional threats for these species from collecting and vandalism (see threat factor "B" above). Both species have showy flowers and have some potential for horticultural use. Increased publicity and a provision of specific location information associated with critical habitat designation could result in increased collecting from wild populations since neither is readily available from cultivated sources. Although taking of endangered plants from lands under Federal jurisdiction (and from privately owned lands under certain circumstances—see "Available Conservation Measures" section) and reduction to possession is prohibited by the Endangered Species Act, taking provisions are difficult to enforce. Publication of critical habitat descriptions would make *Geum radiatum* and *Hedyotis purpurea* var. *montana* more vulnerable and would increase enforcement problems for the U.S. Forest Service and the National Park Service. Also, the populations on private lands would be more vulnerable to taking. Increased visits to population locations stimulated by critical habitat designation, even without collection of plants, could adversely affect the species due to the associated increase in trampling of the fragile habitat occupied by these plants. The Federal and State agencies and landowners involved in managing the habitat of these species have been informed of the plants' locations and of the importance of protection; therefore, it would not be prudent and no additional benefit would result from a determination of critical habitat.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed in part below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The U.S. Forest Service and the National Park Service have jurisdiction over portions of the species' habitat. Federal activities that could impact *Geum radiatum* and *Hedyotis purpurea* var. *montana* and their habitat in the future include, but are not limited to, the following: Construction of recreational facilities (including trails, buildings, or maintenance of these facilities), use of aerially applied retardants in fire fighting efforts, road construction, permits for mineral exploration, and any other activities that do not include planning for the species' continued existence. The Service will work with the involved agencies to secure protection and proper management of *Geum radiatum* and *Hedyotis purpurea* var. *montana* while accommodating agency activities to the extent possible.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions at section 9(a)(2) of the Act, implemented by 50 CFR 17.61 would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. In addition, the 1988 amendments (Pub. L. 100–478) to the Act protect listed plants from malicious damage or destruction on Federal lands and their removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since *Geum radiatum* and *Hedyotis purpurea* var. *montana* are not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507, Arlington, VA 22203–3507 (703/358–2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby

solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Geum radiatum* or *Hedyotis purpurea* var. *montana;*

(2) The location of any additional populations of either species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of these species; and

(4) Current or planned acitvities in the subject area and their possible impacts on *Geum radiatum* and *Hedyotis purpurea* var. *montana.*

Final promulgation of the regulation on *Geum radiatum* and *Hedyotis purpurea* var. *montana* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Asheville Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Bolle, F. 1933. Ein Ubersicht über die Gattung *Geum* L. und ihr nahestehenden Gattungen. Repert. Sp. Nov. Fedde, Beih. 72:1–119.

Brown, R. 1823. A supplement to the appendix to Captain Parry's voyage. Reprinted in Miscellaneous Bot. Works of R. Brown. R. Hardwicke, London.

Hara, H. 1935. Preliminary report on the flora of southern Hidaka, Hokkaidô (Yezo) VI. Bot. Mag. Tokyo 49:124–125.

Kral, R. 1983. A report on some rare, threatened, or endangered forest-related vascular plants of the south. USDA Forest Service Tech. Pub. R8–TP2. 1305 pp.

Massey, J., P. Whitson, and T. Atkinson. 1980. Endangered and threatened plant survey of 12 species in the eastern part of region IV. USFWS Contract 14–160004–78–108. Unpub. report.

Michaux, A. 1803. Flora Boreali-Americana. Typis Caroli Crapelet, Paris and Argentorati.

Morgan, S. 1980. Species status summary for *Geum radiatum* Michaux; Species General Information System: species, population, habitat, and threat inventory. Unpub. report submitted to U.S. Fish and Wildlife Service, Atlanta, GA.

Prince, J., and L. Morse. 1985. The Nature Conservancy global ranking form: *Geum radiatum.* The Nature Conservancy National Office, Arlington, VA. 2 pp.

Radford, A., H. Ahles, and R. Bell. 1968. Manual of the Vascular flora of the Carolinas. University of North Carolina Press, Chapel Hill. 1183 pp.

Raynor, L. 1952. Cytotaxonomic studies of *Geum.* American Jour. Bot. 39:713–719.

Robertson, K. 1974. The genera of *Rosaceae* in the southeastern U.S. J. of the Arnold Arboretum 55:344–385.

Small, J. 1903. Flora of the southeastern U.S. Science Press Printing Co., Lancaster, PA. 1554 pp.

Terrell, E. 1959. A revision of the Houstonia purpurea group (Rubiaceae). Rhodora 61:157–180, 188–207.

Terrell, E. 1978. Taxonomic notes on *Houstonia purpurea* var. *montana* (Rubiaceae). Castanea 43:25–29.

Author

The primary author of this proposed rule is Nora Murdock, Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 672–0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation of Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Rosaceae—Rose family:						
*	*	*		*	*	
Geum radiatum	Spreading avens	U.S.A. (NC, TN)	E		NA	NA
*	*	*		*	*	
Rubiaceae—Coffee family:						
*	*	*		*	*	
Hedyotis purpurea var. *montana.*	Roan Mountain bluet	U.S.A. (NC, TN)	E		NA	NA
*	*	*		*	*	

Dated: June 12, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–17158 Filed 7–20–89; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

RIN 1018–AB31

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for Spiraea Virginiana (Virginia Spiraea)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Spiraea virginiana* (Virginia spiraea) to be a threatened species and thereby provide the species needed protection under the authority contained in the Endangered Species Act of 1973, as amended. Eighteen populations are recorded from West Virginia south to Georgia. Although the species is widespread geographically, it is restricted to a narrow ecological niche and occurs in limited to moderate populations at most locations. Occurring along scoured banks of high gradient streams or braided features of lower reaches, *Spiraea virginiana* is presently known from 17 stream systems in 5 states. Approximately eight historic records are known in addition to one unverified record. A combination of factors contributes to the rarity of the species, including a very narrowly defined habitat niche that is subject to scouring and flooding, an apparent lack of successful sexual reproduction, limited opportunities for colonization, and competition from other species. Threats to the species include human disturbance at specific site locations and two proposed hydroelectric facilities. Unsuccessful seed germination tests and the lack of seedlings at any location suggest that only one genotype is present at each location. Critical habitat is not proposed at this time. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by September 19, 1989. Public hearing requests must be received by September 5, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Supervisor, Ecological Services Field Office, U.S. Fish and Wildlife Service, Suite 322, 315 S. Allen Street, State College, Pennsylvania 16801. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Sharon W. Morgan, Fish and Wildlife Biologist (see **ADDRESSES** section) (814/234–4090).

SUPPLEMENTARY INFORMATION:

Background

Spiraea virginiana Britt. was described from a specimen collected by C.F. Millspaugh on June 20, 1890, along the Monongahela River in Monongalia County, West Virginia (Clarkson 1959, Glencoe 1961). The original description also noted an 1878 collection from the mountains of North Carolina made by G.R. Vasey (Britton 1890).

Later studies of the Virginia spiraea described variations in leaf size, shape and degree of serration, resulting in the publication of variety *serrulata* (Rehder 1920), which was later reduced to form *serrulata* (Rehder 1949). Clarkson (1959) referred some specimens to *S. corymbosa* Raf. (=*S. betulifolia* Pallas) although Glencoe (1961) included these specimens in his concept of *S. virginiana,* noting that the species was extremely variable. After visiting many populations throughout the range of the species, Ogle has concluded that *S. virginiana* is a distinct species and is easily distinguished from *S. corymbosa* on the basis of plant height, branching patterns, inflorescence size, and leaf morphology (D. Ogle, Virginia Highlands Community College, pers. comm. 1988.). More important differences are the distinct habitat preferences of the two species and the non-overlapping geographic (allopatric) ranges (Ogle, pers. comm. 1988).

Virginia spiraea is a shrub in the rose family that grows from two to ten feet tall, with arching and upright stems. The species is a prolific sprouter and forms dense clumps that spread in rock crevices and around boulders. Leaves are alternate and quite variable in size, shape and degree of serration. Cream-colored flowers occur in branched, flat-topped inflorescences approximately four to eight inches wide. Plants flower during June and July.

S. virginiana is found in a narrowly defined habitat. It occurs along scoured banks of high gradient streams, or on meander scrolls, point bars, natural levees, or braided features of lower reaches. Scour must be sufficient to prevent canopy closure, but not extreme enough to completely remove small, woody species. Plants are most vigorous in full sun, but can tolerate some shading until released from competition (primarily from trees, large shrubs or vines). They occur within the maximum floodplain, usually at the water's edge with a variety of other disturbance-prone species (Ogle, pers. comm. 1988).

Presently, *S. virginiana* is known from 18 locations on 17 stream systems in 5 states. One unconfirmed record has been reported from the Greenbrier River in West Virginia and approximately 8 historic records are known. In Georgia, populations occur on Rock Creek in Walker County and Bear Creek in Dade County. The North Carolina sites are found on the South Fork of the New River in Ashe County, the Little Tennessee River in Macon County, the Nolichucky River in Mitchell and Yancey Counties (extending downstream into Unicoi County, Tennessee), the South Toe River in Yancey County, and the Cane River in Yancey County. The species is known from additional sites in Tennessee along Abrams Creek in Blount County, Cane Creek in Van Buren County, White Oak Creek in Scott County, and Clifty Creek in Roane County. The Virginia populations are found on the Russell Fork and Pound Rivers in Dickenson County, the New River in Grayson County, and the Guest River in Wise County. West Virginia records occur on the Bluestone River in Mercer County, in a shrub-dominated wet meadow in Raleigh County, and along the Gauley and Meadow Rivers in Nicholas and Fayette Counties.

Historic collections are known from North Carolina (Graham and Buncombe Counties), Tennessee (Blount and Morgan Counties), West Virginia (Fayette, Monongalia and Upshur Counties) and Pennsylvania (Fayette County).

Since the species is found sporadically scattered along streams and rivers, it is difficult to delineate the exact boundaries of discrete populations. All of the populations listed above occur within a five to six mile section of river; however, most populations are not scattered and only occur along a half mile or less of streambank.

Population estimates are based on the number of clumps recorded during field visits. Of the 18 known sites, 8 are limited populations (less than 10 clumps), 8 are moderate in size (from 10 to 50 clumps) and only 2 are abundant (greater than 50 clumps).

Populations occur in a variety of Federal and State ownerships. Many are also found on private property, and since populations occur along rivers, several sites involve more than one landowner. Federal ownership includes the Jefferson National Forest (Virginia),

the Cherokee National Forest (Tennessee), Great Smoky Mountains National Park (Tennessee), Big South Fork National River and Recreation Area (Tennessee—Corps of Engineers and National Park Service) and John Flannagan Dam (Virginia—Corps of Engineers). Populations are found in four State parks in Georgia, Tennessee, Virginia and West Virginia. Presently, three sites are voluntarily protected by private landowners contacted by The Nature Conservancy or State heritage programs. Throughout the range of the species, historically known sites have been eliminated by dam or navigational facility construction (sites on the Monongahela and Buckhannon Rivers in West Virginia). Other historically known populations have not been relocated and are assumed extirpated (five sites in North Carolina, Tennessee, West Virginia and Pennsylvania).

The Virginia spiraea is a rare species due to a combination of factors, and biological circumstances as well as documented and potential human disturbance threaten many populations. The species occurs in a constantly fluctuating environment and requires disturbance for successful colonization, establishment and maintenance; however, too much scouring and/or flooding could eliminate populations entirely (Ogle, pers. comm. 1988). Field observations have documented a lack of or a significant reduction in seed production (many populations show aborted seeds), and germination tests have produced low germination rates. These observations suggest that only one genotype may be present at each location. Opportunities for colonization of new sites are probably very limited and dependent upon a unique combination of biological and environmental conditions (Ogle, pers. comm. 1988). Competition by both native and introduced species adversely affects populations. Additionally, many populations are threatened by a range of human activities. A proposed hydroelectric facility at Summersville Dam on the Gauley River in West Virginia is located immediately upstream from one of the largest known populations, and long range plans include a hydroelectric generating facility at John Flannagan Dam on the Pound River in Virginia, above another population.

In 1986, the Service contracted with The Nature Conservancy's Eastern Regional Office to conduct status survey work on *Spiraea virginiana* and other Federal candidate plant species. Historic sites were searched in Pennsylvania, Tennessee and West Virginia. Suitable habitat was searched in Maryland (E. Thompson, Maryland Natural Heritage Program, pers. comm. 1988), West Virginia (Bartgis 1987) and Virginia (Ogle 1987). After completing fieldwork in Virginia, Ogle relocated historic sites in Georgia, Tennessee and North Carolina, searched approximately 75 to 100 miles of riverbank resulting in the discovery of about 20 new clones, and recorded detailed information at 14 of the 18 known sites (Ogle, pers. comm. 1988). Most field workers reported that much suitable habitat exists; however, they indicated that the potential for finding new locations is low due to the rough and remote terrain that needs to be searched, and the sporadic occurrence of the species. It is anticipated that some additional populations will be found, but apparent lack of sexual reproduction, small sizes of known populations, and a variety of threats suggest that few additional sites will be located.

The U.S. Fish and Wildlife Service (Service) recognized *Spiraea virginiana* as a Category 2 candidate for listing in the Supplement to Review of Plant Taxa for Listing as Endangered or Threatened Species published in the **Federal Register** on November 28, 1983 (48 FR 53641). Category 2 comprises those taxa for which listing is possibly appropriate but for which existing information is insufficient to support a proposed rule. The updated notice of review for plant taxa published on September 27, 1988, again included *Spiraea virginiana* in Category 2.

After evaluating the results of recent status survey work, the Service determined that listing *Spiraea virginiana* as a threatened species was appropriate. This decision was supported by The Nature Conservancy, Heritage Program personnel and other botanists (Bartgis 1987; Ogle, pers. comm. 1988; T. Rawinski, The Nature Conservancy, pers. comm. 1988; A. Weakley, North Carolina Heritage Program, pers. comm. 1988).

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations codified at (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Spiraea virginiana* Britt. (Virginia spiraea) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Human disturbance at Virginia spiraea locations has been observed throughout the range of the species. Obvious signs of disturbance include debris sliding down a railroad embankment, mowing and clearing at the edge of a farm field, cutting for right-of-way maintenance, cutting for an access path to the river, habitat disturbance by rafters, a culvert draining directly onto plants and debris settling on plants from cutting of trees up slope. Recreational use of rivers is rising, and disturbance to *S. virginiana* populations is expected to continue or increase. However, appropriate disturbance (to eliminate competition from other species) is necessary to maintain open habitat for *S. virginiana* populations.

Populations in West Virginia have been eliminated through construction of a dam (Monongalia County) and construction of a railroad adjacent to the river (Upshur County) (Bartgis 1987). Populations have not been relocated and are believed to be extirpated from the only known site in Pennsylvania, two sites in North Carolina, and one location each in Tennessee and West Virginia.

Suitable habitat has been eliminated throughout the range of the species by reservoir construction. Even if populations are not directly flooded, they may face the potential indirect threats of upstream and downstream water stabilization, which would eliminate or reduce scouring action necessary to maintain open habitat for the species.

Natural threats to the species include large scouring floods and competition from other woody species. Although *S. virginiana* is adapted to a fluctuating riverine environment, large storm events (100-year or larger floods) would probably eliminate most populations. Competition from native species such as *Physocarpus opulenta, Cornus ammomum, Alnus serrulata, Platanus occidentalis, Rhus radicans, Salix* sp., *Ilex* sp., and *Vitis* sp. has been observed at most locations in varying degrees, in addition to competition from introduced species like *Pueraria lobata, Polygonum cuspidatum, Lonicera japonica, Miscanthus sinensis, Arthraxon hispidus, Phalaris arundinacea* and *Rosa multiflora* (Ogle, pers. comm. 1988).

B. *Overutilization for commercial, recreational, scientific or educational purposes. Spiraea virginiana* is not currently a significant component of the commercial trade in native plants; however, the species has good potential for horticultural use, and publicity surrounding the listing of the species could generate an increased demand.

C. *Disease or predation.* Aphid damage on short tips has been observed at several populations in addition to leaf removal and laceration by caterpillars (Ogle, pers. comm. 1988). It is not known if this predation affects the competitive ability of *Spiraea virginiana.*

D. *Inadequacy of existing regulatory mechanisms.* Currently, personnel in Georgia, North Carolina and Virginia are working to add *S. virginiana* to their official State lists. The species is listed as extirpated in Pennsylvania and endangered in Tennessee. West Virginia does not maintain an official list of rare plants.

The Georgia Wildflower Preservation Act of 1973 prohibits digging, removal, or sale of State-listed plants from public lands without the approval of the Georgia Department of Natural Resources. One population in Georgia is on State park land and will be provided stronger protection once official State-listing occurs. However, the second population is on private land and is only protected voluntarily through an informal agreement (Patrick, Georgia Natural Heritage Inventory, pers. comm. 1988).

The unofficial status of *S. virginiana* in North Carolina is presently "primary proposed." Some legal protection will be given the species once listing occurs. North Carolina General Statute 19–B, 202.12–202.19, provides State-listed plants protection from intrastate trade without a permit, and provides for monitoring and management of listed populations. Most populations in North Carolina occur on private land.

Spiraea virginiana is not currently State-listed in Virginia, although the Department of Agriculture and Consumer Services is presently working to add it to the list. The Endangered Plant and Insect Species Act provides protection from taking without permits; however, private landowners are exempt from this provision. The Act also gives the Department authority to regulate the sale and movement of listed plants, and to establish programs for the management of listed plants.

S. virginiana is listed as an endangered species on Tennessee's list of endangered, threatened, and rare plant species. The Tennessee Rare Plant Protection and Conservation Act prohibits taking without permission of the landowner and requires that any commercial activity in the species be authorized by permit. Populations in Tennessee occur on Federal, State and private lands and have some protection under current State regulations.

Pennsylvania presently lists the species as extirpated under the regulations of the Wild Resources Conservation Act (25 Pa. Code, Chapter 82). Wild plant management permits are required by anyone who wishes to collect, remove, or transplant wild plants classified as endangered or threatened. Landowners are exempt from these requirements. Pennsylvania regulations also provide for the establishment of native wild plant sanctuaries on private lands where there is a management agreement between the landowner and the Department of Environmental Resources. It is anticipated that if *S. virginiana* were rediscovered in Pennsylvania, a change in the official State status would afford some protection for the species.

Existing regulatory mechanisms do not provide protection from human disturbance, habitat loss or biological limitations, which are presently the major threats to the species.

E. *Other natural or manmade factors affecting its continued existence.* Biological factors apparently threaten the continued existence of *S. virginiana.* Although the species flowers profusely and is visited by a variety of common insects, mature seeds have been observed at only a few populations (Ogle, pers. comm. 1988). While plants spread clonally, most plants observed are generally very old with well-established root systems. Field biologists have not reported the presence of seedings at any population. Ogle attempted to germinate seeds collected from two North Carolina populations and reported successful germination from seeds collected at only one site. Nicholson collected seeds from a Virginia population but only five seeds germinated out of hundreds (perhaps thousands) of seeds collected, an unusual occurrence for *Spiraea* species (R. Nicholson, Arnold Arboretum Greenhouse, pers. comm. 1988). Germination tests indicate that a mineral soil may be required for successful germination; then, successful growth and establishment of young plants may require humus to be added through seasonal deposition without flooding or swiftly flowing waters (e.g. slowly receding after high flows) (Ogle, pers. comm. 1988).

It is expected that new populations could originate from clumps breaking off and becoming established downstream during flood events. However, severe floods could potentially eliminate original populations and the dispersed clumps would have to lodge in a location where conditions favorable to establishment and survival existed (open canopy, lack of competition, available moisture without flooding or fast flows, and sufficient soil for plants to take root).

While few details of the life history are known, observations made during field visits suggest that each population may represent only one genotype (for a total of 18 different genotypes), and that opportunities for colonization and establishment of new sites are very limited (Ogle, pers. comm. 1988). Most populations appear to be very old and face a variety of threats throughout the range of the species. Heavy competition from other species occurs at most populations.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Spiraea virginiana* as a threatened species. Although known from 18 sites in 5 states, human disturbance, a constantly fluctuating environment, and competition from other species pose problems to the continued existence of many populations. Additionally, biological factors apparently limit opportunities for establishment and colonization of new sites. Field observations suggest that only 18 different genotypes exist, and 89 percent of the known populations are limited to moderate in size. However, populations are reproducing colonally, and it is possible that few additional populations will be discovered. These factors support listing as a threatened species. Critical habitat is not being designated for reasons discussed in the following section.

Critical Habitat

Section 4(a)3 of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Spiraea virginiana* at this time. Most populations of this species are limited to moderate in size and loss of plants to vandalism, or increased collection for scientific or horticultural use could potentially eliminate smaller populations. Collecting, without permits, will be prohibited at the locations under Federal management; however, taking restrictions will be dificult to enforce at these sites and will not be applicable to sites on private land. Therefore,

publication of critical habitat descriptions and maps would increase the vulnerability of the species without significantly increasing protection. The owners of all populations on Federal and State lands have been informed of the importance of protecting the species and its habitat. Landowners of major populations on private land have also been contacted by the Service, and State heritage program personnel have contacted two other landowners. Protection of this species' habitat will be addressed throughout the recovery process and through the section 7 jeopardy standard. No additional benefits would result from a determination of critical habitat. For these reasons, it would not be prudent to determine critical habitat for *Spiraea virginiana* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State and private agencies, groups and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species.

The Nature Conservancy and State natural resource agencies have already secured voluntary protection of three sites. As a result of the Service funded status survey work and the subsequent recommendation list the species, three States are working to add *Spiraea virginiana* to their official State lists.

Five populations occur totally or partially on Federal lands (U.S. Forest Service, National Park Service and Army Corps of Engineers). An additional four sites occur partially or completely on State park lands in Georgia, Tennessee, Virginia and West Virginia. The appropriate managing agencies have been contacted, and it is anticipated that they will implement appropriate management plans.

Listing should encourage research on critical aspects of population biology. Information is needed regarding the number of different genotypes, the lack of successful seed production, and disturbance regimes required for population establishment and maintenance. These factors will be important in long-term management considerations for individual populations.

Other conservation measures, including required protection efforts by Federal agencies and prohibition against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Two populations occur downstream of dams at Army Corps of Engineers Reservoirs (John Flannagan Dam, Dickenson County, Virginia and Summersville Lake, Nicholas County, West Virginia). A hydroeletric project that requires a license from the Federal Energy Regulatory Commission (FERC) is currently proposed for Summersville Dam and long range plans include a similar project at John Flannagan Dam. Three populations in West Virginia occur in areas recently designated a National Recreation Area or a National Scenic River. These three populations occur on the Gauley, Meadow and Bluestone Rivers. Although These populations presently occur on private land, it is anticipated that the National Park Service will eventually acquire these lands. All of these projects will require consultation with the Servcie.

Other Federally funded or permitted actions that could affect this plant include, but are not limited to, Soil Conservation Service watershed management activities, FERC-permitted hydroelectric projects, road construction projects involving Federal Highway Administration funds, railroad abandonment proposals under the jurisdiction of the Interstate Commerce Commission, or projects under the jurisdiction of the Army Corps of Engineers.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plants. With respect to *Spiraea virginiana*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since the species is not common in cultivation or the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-1903).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) of *Spiraea virginiana*;

(2) The location of any additional population of *Spiraea virginiana* and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Spiraea virginiana*.

Final promulgation of the regulations on *Spiraea virginiana* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Supervisor, Ecological Services Field Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Bartgis, R. 1987. Status surveys in West Virginia for *Carex polymorpha*, *Spiraea virginiana*, and *Thalictrum steeleanum*. Unpub. rept. West Virginia Field Office, The Nature Conservancy.

Britton, N.L. 1890. New or noteworthy American phanerogams. Bull. Torrey Bot. Club 17:310-316.

Clarkson, R.B. 1959. The West Virginia Spiraea. Castanea 24:143-146.

Glencoe, J.F. 1961. *Spiraea virginiana* Britton: A rare southern Appalachian endemic. MS. Thesis, West Virginia University. 29 pp.

Ogle, D. 1987. Contract report to the Virginia Natural Heritage Program on *Spiraea virginiana*. Unpub. rept. Va. Highlands Community College.

Rehder, A. 1920. New species, varieties and combinations from the herbarium and the collections of the Arnold Arboretum. Jour. Arn. Arb. 1:254-263.

———. 1949. Bibl. Cult. Trees and Shrubs, 2nd ed. 229.

Author

The primary author of this proposed rule is Sharon W. Morgan (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation of Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411; Pub. L. 100-478, 102 Stat. 2306; Pub. L. 100-653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.12(h) for plants by adding the following, in alphabetical order under the family Rosaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species: Scientific name	Species: Common name	Historic range	Status	When listed	Critical habitat	Special rules
Rosaceae—Rose family:						
*	*	*	*	*	*	*
Spirea virginiana	Virginia spirea	U.S.A. (GA, NC, PA, TN, VA, WV)	T		NA	NA

Dated: June 12, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-17159 Filed 7-20-89; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 54, No. 139
Friday, July 21, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Regeneration Harvest and Road Construction Within the Tie Creek Drainage of the Absaroka Mountains

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The purpose of this Environmental Impact Statement (EIS) is to analyze and disclose the environmental impacts of proposed regeneration timber harvest and road construction within the Tie Creek drainage, Absaroka Mountains, Livingston Ranger District, Park County, Montana. The action being considered invovles harvest of approximately 650 acres of mostly mature/overmature lodgepole pine and Douglas-fir forest and construction of 10.5 miles of new road in Sections 3, 4, 5, 8, 9, 10, 14, 15, 16, 22 and 23, Township 3 South, Range 11 East, P.M.M. The estimated volume yield is 7.5 million board feet (MMBF). This EIS will tier to the Gallatin National Forest Land and Resource Management Plan (Forest Plan) EIS of September, 1987, which analyzed goals and objectives for land management activities within the area. The purpose and goal for the proposed action is to help satisfy short-term demands for timber, to initiate age and size diversity of forested stands, and to improve the health and yield of specific sites within management area (MA) 10.

While some preliminary scoping for this project was done during the preparation of an Environmental Assessment for Tie Creek in 1982–83, the Forest Service is seeking additional information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparing the Draft EIS. The process will include identifying potential issues and environmental effects of the project. Issues currently identified include:

1. The effects of timber harvest and road development on the natural integrity of an area which is currently roadless. What effects the project will have on opportunities for solitude, primitive recreation use, and the potential for future wilderness classification.

2. The potential for increased sediment in streams from timber harvest and road construction. Stream sedimentation may affect Yellowstone Cutthroat Trout, a sensitive species which has been identified downstream from the project area in Mill Fork Creek.

3. The effects of timber harvest and new roads on big game cover and habitat security. Mule deer, moose, and elk are the primary species of concern.

4. The potential for noise, dust, and safety hazards to adjacent private landowners and forest visitors caused from logging, road construction and log hauling activities.

5. The effects of developmental change resulting from new roads and harvest units on outfitting and dude ranching businesses within the area.

The agency invites written comments and suggestions on these or other issues and on management opportunities which may occur in conjunction with proposed regeneration harvest and road construction.

DATE: Comments on this proposal should be received by August 31, 1989, to receive timely consideration in preparation of the draft EIS. Appointments to discuss issues and provide input may be made during the first three weeks of August by contacting Rita Beard at the Livingston Ranger Station, phone (406) 222–1892. In addition, a public meeting is scheduled for September 12, 1989, 7:00 p.m. at the Livingston Civic Center, Livingston, Montana.

ADDRESS: Submit written comments to Fred Salinas, District Ranger, Livingston Ranger District, Gallatin National Forest, Route 62, Box 3197, Livingston, Montana, 59047.

FOR FURTHER INFORMATION CONTACT: Comments or questions about the proposal and the Environmental Impact Statement should be made to Steve Christiansen, Interdisciplinary Team Leader, Gallatin National Forest, Supervisor's Office, P.O. Box 130, Bozeman, MT 59771, or to Fred Salinas, District Ranger, Livingston Ranger District, Gallatin National Forest, Route 62, Box 3197, Livingston, Montana, 59047.

SUPPLEMENTARY INFORMATION: Actions under consideration would occur in an area of approximately 2,700 acres in the northern tip of the Absaroka Mountain Range, in Sections 3, 4, 5, 8, 9, 10, 14, 15, 16, 22 and 23, Township 3 South, Range 11 East, P.M.M. This area is included within the North Absaroka Roadless Area (1–371) as identified in the Gallatin Forest Plan, final EIS.

The proposed action is designed in part, to fulfill the goals and objectives of the Land and Resource Management Plan (Forest Plan) for the Gallatin National Forest which provides the overall guidance for management activities in the area. Proposed timber harvest, regeneration and road construction occurs primarily within Forest Plan Management Area (MA) 10. Lands within MA 10 are considered suitable for timber management in conjunction with providing forage for livestock grazing. These areas are to be managed to provide for healthy stands of timber and promote a level of timber growth consistent with other goals.

The Forest Service will consider a range of alternatives. One of these will be the "no action" alternative, in which none of the proposed regeneration harvest or road construction would be implemented. Other alternatives will examine varying levels and locations for the proposal in response to issues and objectives.

The Forest Service will analyze and document the direct, indirect and cumulative environmental effects of the alternatives. Past, present and projected activities on both private and National Forest lands will be considered. In addition, the EIS will disclose the analysis of site-specific mitigation measures and their effectiveness.

Public participation will be important during the scoping process (now through August, 1989), and in the review of the Draft EIS (January, 1990). People may also visit with Forest Service officials at any time during the analysis and prior to the decision.

The draft Environmental Impact Statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in December of 1989. At that time, EPA will publish a notice of availability of the DEIS in the **Federal Register.**

The comment period on the draft environmental impact statement will be 45 days from the date the EPA's notice of availability appears in the **Federal Register.** The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

After the comment period ends on the DEIS, the comments will be analyzed and considered by the Forest Service in preparing the final Environmental Impact Statement. The final EIS is scheduled to be completed by March, 1990. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to review under applicable Forest Service regulations.

Fred Salinas, District Ranger, Livingston Ranger District, Gallatin National Forest is the responsible official.

Date: July 14, 1989.

Fred S. Salinas,

District Ranger, Livingston Ranger District, Gallatin National Forest.

[FR Doc. 89–17146 Filed 7–20–89; 8:45 am]

BILLING CODE 3410–11–M

Snowbasin Land Exchange; Wasatch-Cache National Forest, Weber County, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an environmental impact statement for a proposal to exchange acquired private lands for 1320 acres of National Forest land adjacent to the Snowbasin Ski Area. The National Forest land involved would provide space at key locations for the Sun Valley Company (the present owners) to develop a four season recreation resort. The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur in the analysis so that interested and affected parties are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis should be received in writing by August 22, 1989.

ADDRESSES: Send written comments and suggestions concerning the scope of the analysis to Raymon Carling, District Ranger, Ogden Ranger District, 507 25th St., P.O. Box 1433, Ogden, Utah 84402.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed land exchange and environmental impact statement to Glen Casamassa, Recreation and Lands Forester, Ogden Ranger District, phone (801) 625–5110.

SUPPLEMENTARY INFORMATION: Management direction for the Snowbasin area is included in the Wasatch-Cache National Forest Land and Resource Management Plan. Preliminary scoping, data collection, and analysis for development of the environmental study has been in progress for approximately seven months.

The scoping process has included public meetings, on the ground reviews, news releases, personal telephone conversations, interviews, and letters. The environmental analysis progressed to the point of identifying relevant issues, concerns, and opportunities when it was determined that the effects on the quality of the human environment was highly controversial. At that point, it was determined that the intensity of the controversy was significant enough to require preparation of an environmental impact statement.

Federal, State, local agencies, organizations, and individuals have participated in the scoping process. Comments already received will be included in the environmental impact statement preparation. Additional scoping will be conducted so that any additional agencies, organizations, or individuals may participate. A public scoping meeting will be held on August 19, 1989 at 10:00 a.m. at the Snowbasin Lodge.

This process will include:

1. Identification of potential issues.

2. Identification of issues to be analyzed in depth.

3. Elimination of insignificant issues or those which have been covered by a previous environmental review.

4. Determination of potential cooperating agencies and assignment of responsibilities.

At this point the following issues have been identified: the impacts of mass development in a municipal watershed, displacement of current recreation users, both dispersed and developed, effects on summer and winter wildlife habitat, impacts on facilities currently under Forest Service special use permits, loss of wetlands, impacts of development on identified highly erosive, unstable lands, and the long term economic impact to the surrounding counties.

A description of the preliminary alternatives are as follows:

1. Approve the land exchange as proposed.

2. Disapprove the land exchange as proposed.

3. Approve portions of the exchange. This option would eliminate portions of the exchange to resolve specific issues and concerns.

Stan Tixier, Regional Forester, Intermountain Region, 324 25th Street, Ogden, Utah 84401 is the responsible official. The Forest Service is the lead agency.

The draft environmental impact statement should be available for public review by October 1, 1989. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register**. The Final Environmental Impact Statement is scheduled to be completed in December 1990.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposed action participate at this time. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for Implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

Date: July 14, 1989.

Dale N. Boswort,

Forest Supervisor.

[FR Doc. 89-17145 Filed 7-20-89; 8:45 am]

BILLING CODE 3410-11-M

Packers and Stockyards Administration

Certification of Central Filing System; Wyoming

The Statewide central filing system of Wyoming is hereby certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by Kathy Karpan, Secretary of State, for all farm products produced in that State except timber to be cut.

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99-198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.17(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: July 17, 1989.

B. H. (Bill) Jones,

Administrator, Packers and Stockyards Administration.

[FR Doc. 89-17089 Filed 7-20-89; 8:45 am]

BILLING CODE 3410-KD-M

Rural Telephone Bank

Patronage Refunds and Class C Stock Dividends Calculation; Amendments to Bylaws

AGENCY: Rural Telephone Bank, USDA.

ACTION: Notice of revised bylaws.

SUMMARY: Notice is hereby given of amendments to the bylaws of the Rural Telephone Bank pertaining to the calculation of patronage refunds and Class C stock dividends.

EFFECTIVE DATE: This action was effective March 30, 1989.

FOR FURTHER INFORMATION CONTACT: Blaine D. Stockton, Jr., Assistant Secretary, Rural Telephone Bank, Room 4063—South Building, 14th & Independence Avenue, SW., Washington, DC 20250 (202) 382-9552.

The Rural Telephone Bank Board of Directors adopted amendments on March 30, 1989, to the bylaws of the Rural Telephone Bank primarily to conform such bylaws with the amendments to the Rural Electrification Act of 1936 approved on December 22, 1987, as Pub. L. 100-203. Section 8.2 Calculation of Patronage Refunds of the bylaws was amended and Article VIII—Patronage Capital was amended to add Section 8.3 Calculation of Class C Stock Dividend. The amendments to the bylaws follow:

Sec. 8.2 Calculation of Patronage Refunds. (a) After the end of each fiscal year after fiscal year 1987, the patronage capital assignable will be transferred to the reserve for losses due to interest rate fluctuations. Any amounts in this reserve then in excess of $10,000,000 shal be transferred from the reserve, on the basis of amounts first transferred to the reserve being those first transferred therefrom and these amounts shall be allocated as Class B stock to those borrowers holding Class B stock during the fiscal year the amounts were earned. The amount allocated to each such holder of Class B stock for each fiscal year shall be calculated by applying to the amount for a particular year transferred from the reserve pursuant to the preceding sentence the ratio which the amount of interest revenue to the Bank from each such holder of Class B stock in that same fiscal year bears to the Bank's total interest revenue from all holders of Class B stock in that same fiscal year.

(b) If, at any time after all Class A stock has been retired, the board should determine that the Bank's financial condition will not be impaired thereby, it may establish procedures for the retirement of Class B stock in full or in part or its conversion to Class C stock in addition to the conversion authorized in section 2.2(b) hereof.

Sec. 8.3 Calculation of Class C Stock Dividend. For any fiscal year after 1988, any dividends on Class C stock shall be paid to the holders hereof on the basis of one-twelfth of the dividend for each full month, or portion of a month, the stock is held during such fisal year.

Dated: July 17, 1989.

Blaine D. Stockton, Jr.,

Acting Governor, Rural Telephone Bank.

[FR Doc. 89-17166 Filed 7-20-89; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF AGRICULTURE

Human Nutrition Information Service

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Dietary Guidelines Advisory Committee; Notice of Meeting

SUMMARY: The Committee will hold its second meeting on August 10, 1989 9:00 a.m. to 5:00 p.m. at the Wilbur J. Cohen Building, 330 Independence Avenue SW., Room 5051, Washington, DC 20201. The meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Betty B. Peterkin, Executive Secretary to the Committee from USDA, Human Nutrition Information Service, Federal Building, Hyattsville, MD 20782. (301) 436-5090; or Linda Meyers, Ph.D, Executive Secretary to the Committee from DHHS, Office of Disease Prevention and Health Promotion, Room 2132 Switzer Building, 300 C Street, Washington, DC 20201, (202) 472-5308.

SUPPLEMENTARY INFORMATION: Committee's Task: The Committee is to advise the Secretaries of the two Departments as to whether a revision of the second (1985) edition of Nutrition and Your Health: Dietary Guidelines for Americans is warranted. If the Committee decides a revision is warranted, it will recommend revisions to the Secretaries.

Announcement of Meeting: The Committee's second meeting will be August 10 from 9:00 a.m. to 5:00 p.m. e.s.t. The meeting will be held in the Wilbur J. Cohen Building, 330 Independence Avenue SW., Room 5051, Washington, DC 20201.

The agenda will include discussions of materials drafted by Committee members for possible inclusion in a third edition of Nutrition and Your Health: Dietary Guidelines for Americans. Drafts are being prepared by 2-3 member teams appointed at the first meeting on April 5-6, 1989.

Public Participation at Meeting: The meeting is open to the public; however, space is limited.

The public may file statements with the Committee before or after the meeting by addressing them to either of the contact persons listed above.

Done at Washington, DC this 17th of July, 1989.

James T. Heimbach,

Acting Administrator, Human Nutrition Information Service, U.S. Department of Agriculture.

J. Michael McGinnis,

Deputy Assistant Secretary for Health, Office of Disease Prevention and Health Promotion, U.S. Department of Health and Human Services.

[FR Doc. 89-17131 Filed 7-20-89; 8:45 am]

BILLING CODE 3410-46-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Cynthia B. Thompson From an Objection by the South Carolina Coastal Council

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice of dismissal.

On December 7, 1988, Cynthia B. Thompson (Appellant) filed with the Department of Commerce a notice of appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1456(c)(3)(A), and implementing regulations, 15 CFR Part 930, Subpart H. The appeal arose from an objection by the South Carolina Coastal Council (State) to Appellant's certification that her proposal to alter a freshwater wetland in order to create a boat channel to Lake Moutrie in Berkeley County, South Carolina would be consistent with South Carolina's coastal management program.

Appellant failed to submit a mandatory brief on the appeal. Accordingly, the Department of Commerce dismissed the appeal on June 26, 1989 for good cause pursuant to 15 CFR 930.128. The dismissal bars Appellant from filing another appeal from the State's objection to her consistency certification.

FOR ADDITIONAL INFORMATION CONTACT: Stephanie S. Campbell, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235, (202) 673-5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Date: July 17, 1989.

B. Kent Burton,

Assistant Secretary for Oceans and Atmosphere.

[FR Doc. 89-17067 Filed 7-20-89; 8:45 am]

BILLING CODE 3510-08-M

Marine Mammals Permit Application; Miami Seaquarium (P35G)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*) and Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Applicant:* Miami Seaquarium, 4400 Rickenbacker Causeway, Miami, Florida 33149.

2. *Type of Permit:* Public Display.

3. *Name and Number of Marine Mammals:* One (1) pilot whale (*Globecephala melaena*) and one (1) common dolphin (*Delphinus delphis*).

4. *Type of Take:* Transfer stranded animals from Sealand of Cape Cod to maintain for public display at Miami Seaquarium.

5. *Location and Duration of Activity:* The pilot whale and common dolphin will be transported from Sealand of Cape Cod to the Miami Seaquarium via truck and aircraft in accordance with professionally accepted techniques and in compliance with regulations, standards, and conditions of the National Marine Fisheries Service, the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture, and the staff of the Miami Seaquarium. This transport is anticipated to take less than 12 hours.

Both animals were stranded in 1986 and, due to their physical condition and length of captivity, are not releasable to the wild. They are currently maintained in Sealand's exhibit pool which APHIS has determined does not meet minimum space requirements. The Applicant proposes to maintain these animals as part of a permanent multi-species cetacean exhibit in facilities of adequate size.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7330, Silver Spring, Maryland 20910;

Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01920.

Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

Date: July 14, 1989.

[FR Doc. 89-17113 Filed 7-20-89; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1989 commodities to be produced and a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: August 21, 1989

ADDRESS: Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On May 12 and 26, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (54 FR 20628 and 22795) of proposed additions to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018). No comments were received concerning the proposed additions to the Procurement list. After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and provided the service at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6. I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and service listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the service procured by the Government.

Accordingly, the following commodities and service are hereby added to Procurement List 1989:

Commodities

Clamp, Loop
5340-01-156-5482
5340-01-160-0398

Service

Food Service Attendant
Little Rock Air Force Base, Arkansas

E. R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 89-17150 Filed 7-20-89; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1989, Addition; Correction

The effective date of the addition to the Procurement List appearing on page 28832 of FR Doc. 89-16116 in the issue of Monday, July 10, 1989, should read August 9, 1989 rather than August 8, 1989.

E.R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 89-17152 Filed 7-20-89; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1989; Proposed Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed addition to procurement list.

SUMMARY: The Committee has received a proposal to add to Procurement List 1989 a commodity to be produced by workshops for the blind or other severely handicapped.

DATE: Comments must be received on or before August 21, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government will be required to procure the commodity listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018):

Lacquer
8010-00-085-0559
(Requirements of U.S. Army Armament Munitions and Chemical Command, Rock Island, Illinois only)

E.R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 89-17151 Filed 7-20-89; 8:45 am]

BILLING CODE 6820-33-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange; Proposed Amendment Relating to Delivery Points for the Live Cattle Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule change.

SUMMARY: The Chicago Mercantile Exchange ("CME") has submitted a proposed amendment to its live cattle futures contract that would eliminate Peoria, Illinois as a delivery point for that contract. The amendment as proposed would apply to all existing and newly listed contract months. In accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that the proposed amendment is of major economic significance. On behalf of the Commission, the Division is requesting comment on this proposal.

DATE: Comments must be received on or before August 21, 1989.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the proposed deletion of Peoria, Illinois as a delivery point for the CME live cattle futures contract.

FOR FURTHER INFORMATION CONTACT: Frederick V. Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone (202) 254-7303.

SUPPLEMENTARY INFORMATION: The live cattle futures contract currently provides that delivery may be made at approved livestock yards in Peoria, Illinois; Omaha, Nebraska; Sioux City, Iowa; Dodge City, Kansas; Amarillo, Texas; and Greeley, Colorado. In addition, the existing terms of the futures contract provide that delivery can be made at Joliet, Illinois through the December 1989 contract month. The amendment, which would eliminate Peoria, Illinois as a live cattle futures delivery point, has been proposed to apply all existing and subsequently listed contract months upon Commission approval.

The CME bases its action on the view of its Live Cattle Committee that Peoria, Illinois should be eliminated immediately from the list of delivery points for the live cattle futures contract because it appears that the delivery facility at Peoria "* * * is no longer a viable stockyard * * *." In particular, the CME notes that, beginning on July 3, 1989, the Peoria Union Stock Yards reduced its live cattle market to sales on Mondays only. The CME also submits that, although the stockyards at Peoria will accommodate futures deliveries on all other weekdays, long traders will be extremely disadvantaged when disposing of cattle received on futures delivery at Peoria on days other than Monday because cattle buyers are not likely to be present on any day except Monday.

In addition, the CME notes that the U.S. Department of Agriculture (USDA) has advised the CME that its cattle graders will no longer be present each day at the Peoria facility. The CME notes that, although USDA graders can be made available in Peoria for grading futures delivery cattle on days when such graders would not otherwise be present, making graders available in Peoria on such days will involve an additional expense which will be the responsibility of the short trader. The CME contends, accordingly, that this situation has the impact of making Peoria less economical as a delivery point than other existing delivery points for the futures contract. The CME also notes that annual saleable cattle receipts at the Peoria Stockyard have been steadily declining over time, with annual cattle receipts falling 78.3 per cent from 1976 to 1988.

In support of its proposal to make the deletion of Peoria effective immediately for all currently listed contract months, the CME notes that the recent reduction in live cattle sales at Peoria to one day per week affects all currently listed contract months and believes that this recent change in operations "* * * effectively eliminates Peoria as a viable delivery point * * *." Therefore, the CME believes it is necessary to implement the proposal immediately to prevent any possible delivery problems with currently listed contract months.

The Division specifically solicits comment on the following questions:

(1) To what extent, if any, will the deletion of the Peoria delivery point affect deliverable supplies for the CME's live cattle futures contract and the contract's susceptibility to price manipulation or market congestion?

(2) What delivery problems, if any, are likely to result for either long or short traders if Peoria is retained as a live cattle futures delivery point?

(3) If the Peoria delivery point is to be deleted, how should this change be implemented? For example, should the proposal apply exclusively to newly listed months or should it apply to certain currently listed contract months as well? If application to currently listed months is appropriate, should this amendment be applied immediately with respect to all currently listed contract months (*i.e.*, commencing with the first contract month that expires after the date the CME implements the amendment)? Alternatively, should this amendment be applied to only those currently listed contract months that expire after a specified time period following the implementation date for the amendment and, if so, what such period is appropriate (*e.g.*, all existing contract months that expire more than six months after the implementation date)?

Copies of the proposed amendment will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by telephone at (202) 254-6314.

The materials submitted by the CME in support of the proposed amendment may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC on July 18, 1989.

Steven Manaster,
Director, Division of Economic Analysis.

[FR Doc. 89-17111 Filed 7-20-89; 8:45 am]

BILLING CODE 6351-01-M

Minneapolis Grain Exchange; Proposed Amendments Relating to the White Wheat Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Minneapolis Grain Exchange ("MGE" or "Exchange") has submitted for the white wheat futures contract a number of proposed changes in the standards and procedures relating to the delivery of white wheat, including amendments to the regularity requirements for white wheat shippers, acceptable transportation modes of delivery, the daily premium charge for white wheat shipping certificates, delivery payment procedures, and quality price differentials. In accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that these proposals are of major economic significance. On behalf of the Commission, the Division is requesting comment on these proposals.

DATE: Comments must be received on or before August 21, 1989.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the amendments to the MGE white futures wheat contract.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 (202) 254-7303.

SUPPLEMENTARY INFORMATION: The Exchange submitted proposed amendments to the white wheat futures contract that would:

(1) Increase the number of persons or firms that are eligible to issue white wheat shipping certificates for delivery on the futures contract to include all entities that are capable of making delivery of white wheat by rail or barge to the Columbia River District (CRD) and that have adequate financial standing and credit. Currently, only persons or firms operating waterfront elevators located in the CRB are eligible to issue shipping certificates.

(2) Eliminate the existing provision of the futures contract specifying that receivers of shipping certificates may elect to take delivery of white wheat Free-on-Board (F.O.B.) a vessel at the certificate issuer's waterfront elevator in the CRD. As amended, the contract will require the delivery of white wheat by rail to a location in the CRD specified by the buyer. In addition, the amended contract will continue to specify that certificate issuers may choose to deliver by barge to the CRD if the quantity of wheat involved in the delivery is at least 90,000 bushels.

(3) Reduce to one-sixteenth from one-fifth of one cent per bushel per day the premium charge paid to issuers by holders of outstanding shipping certificates and change the date on which the daily premium charge commences to 20 calendar days from the day the certificates are delivered. Currently, the futures contract specifies that the daily premium charge on outstanding certificates commences on

BEST COPY AVAILABLE

the day after the certificates are delivered.

(4) Establish new requirements that receivers of shipping certificates must make payment to the Exchange for such certificates and that the payment shall be forwarded to the deliverer on the earlier of the day that the deliverer provides documents indicating that the wheat has been shipped to the location in the CRD specified by the receiver, or the 20th calendar day after the day on which the delivery notice was delivered to the receiver. Any interest earned on funds while they are deposited with the Exchange would be returned to the receiver less a servicing fee specified by the Board of Directors. The existing contract terms require that the receiver directly pay the deliverer for the certificates on the day following the receipt of the delivery notice.

(5) Change the contract's quality specifications by deleting the existing provision for delivery at par of grade U.S. No. 2 or better soft white wheat, and providing in lieu thereof for the delivery of grade U.S. No. 1 soft white wheat at par and grade U.S. No. 2 soft white wheat at a one-cent per bushel discount.

The MGE indicates that the proposal to expand the number of persons or firms who may issue shipping certificates for delivery on the futures contract will enhance the visability of the contract for hedging and pricing purposes by allowing a larger segment of the cash market to make full use of the benefits of futures trading. In addition, the MGE notes that many elevators and producers located outside the CFD are reluctant to trade the futures contract on the grounds that they currently cannot make delivery against the futures contract. The Exchange also indicates that the proposed amendment deleting the option of delivery of white wheat F.O.B. vessel in the CRD is appropriate in view of the fact that no vessel deliveries have occurred since the futures contract began trading. In this respect, the MGE further indicates that cash market participants have noted that delivery by rail or barge allows receivers greater flexibility than that afforded by vessel delivery in regard to the movement of the wheat to a location desired by the receiver.

In addition, the MGE notes that the proposal to reduce to one-sixteenth of one cent per bushel the daily premium charge applicable to outstanding shipping certificates will bring the premium charge into close alignment with corresponding fees charged by commercial firms in the existing rail delivery cash market within the CRD. The Exchange further notes that its proposals concerning the procedures for making and receiving payments for shipping certificates are intended, in part, to permit the contract's terms to reflect more closely cash market practices. Specifically, the MGE notes that receivers of shipping certificates currently are required to make full payment for the certificates on the day after the day the delivery notice is received and, therefore, lose control over the funds used to make payment without having yet received the wheat. The Exchange notes that, under prevailing cash market practices, payment for the wheat is not made until the grain has been received by the buyer. The MGE notes that the proposed amendments will allow receivers, who request and receive delivery of white wheat against certificates within 20 calendar days of receiving the certificates, to retain the interest earned on the funds to be used in payment for the certificate until such time as the wheat is delivered to the receiver.

The Exchange indicates that the proposed changes to the contract's quality specifications are intended to reflect the fact that grade U.S. No. 2 soft white wheat typically trades at a one-cent per bushel discount to grade U.S. No. 1 soft white wheat. The MGE believes that this proposed amendment will make the futures contract a more effective hedging and pricing mechanism.

The Exchange proposes to make the proposed amendments effective within 30 days after receipt of Commission approval. The MGE proposes to apply the proposed amendments to all contract months listed subsequent to the effective date for the proposals and to any contract months listed on the effective date which do not have open interest.

The Commission is seeking comment on the proposed amendments noted above. Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

The materials submitted by the Exchange in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on July 18, 1989.

Steven Manaster,

Director, Division of Economic Analysis.

[FR Doc. 89-17112 Filed 7-20-89; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: August 11, 1989.

Time of Meeting: 0900-1900 hours.

Place: Yuma Proving Ground, Arizona.

Agenda: The Army Science Board Ad Hoc Subgroup for Tactical Explosive Systems (TEXS) will meet to review data regarding this subject matter. This meeting will be closed to the public in accordance with section 552(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude Board Administrative Officer, Sally Warner, for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-17147 Filed 7-20-89; 8:45 am]

BILLING CODE 3710-08-M

Department of the Army

Performance Review Boards, Membership

ACTION: Notice.

SUMMARY: Notice is given of the names of members of the Performance Review Boards for the Department of Army.

EFFECTIVE DATE: July 15, 1989.

FOR FURTHER INFORMATION CONTACT: Robert C. Zenda, Senior Executive Service Office, Directorate of Civilian Personnel, Headquarters, Department of the Army, the Pentagon, Washington, DC 20310.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the Office, Secretary of the Army are:

1. Mr. Milton H. Hamilton, Administrative Assistant to the Secretary of the Army, Office, Secretary of the Army.
2. Mr. Peter Stein, Deputy Administrative Assistant to the Secretary of the Army, Office, Administrative Assistant to the Secretary of the Army.
3. Mr. Thomas Druzgal, Director, Audit Policy, Plans and Resources, Army Audit Agency.
4. Mr. Francis E. Reardon, Deputy Audit General, Army Audit Agency.
5. Mr. Walter W. Hollis, Deputy Under Secretary of the Army (Operations Research), Office, Under Secretary of the Army.
6. Mr. Thomas W. Taylor, Deputy General Counsel (Installations and Operations), Office, General Counsel.
7. Mr. Anthony H. Gamboa, Deputy General Counsel (Acquisition), Office, General Counsel.
8. Ms. Susan J. Crawford, General Counsel, Office, General Counsel.
9. Mr. Charles A. Chase, Director, Riview and Oversight, Office, Assistant Secretary of the Army (Financial Management).
10. Brigadier General Josue Robles, Jr., Assistant Director Operations Division, Office, Assistant Secretary of the Army (Financial Management).
11. Mr. Paul W. Johnson, Deputy Assistant Secretary of the Army (Installations and Housing), Office, Assistant Secretary of the Army (Installations and Housing).
12. Mr. Eric A. Orsini, Deputy Assistant Secretary of the Army (Logistics), Office, Assistant Secretary of the Army (Installations and Housing).
13. Mr. Michael W. Owen, Principal Deputy Assistant Secretary of the Army (Installations and Housing), Office, Assistant Secretary of the Army (Installations and Housing).
14. Mr. Robert M. Emmerichs, Deputy Assistant Secretary of the Army (Military Personnel Management and Equal Opportunity Policy), Office, Assistant Secretary of the Army (Manpower and Reserve Affairs).
15. Ms. Judy A. Miller, Deputy Assistant Secretary of the Army (Civilian Personnel Policy, NAF and Personnel Security), Office, Assistant Secretary of the Army (Manpower and Reserve Affairs).
16. Mr. George E. Dickey, Deputy for Policy and Evaluation, Office, Assistant Secretary of the Army (Civil Works).
17. Mr. Steven Dola, Deputy for Management and Budget, Office, Assistant Secretary of the Army (Civil Works).
18. Mr. George E. Dausman, Deputy Assistant Secretary of the Army (Procurement), Office, Assistant Secretary of the Army (Research, Development and Acquisition).
19. Brigadier General William S. Chen, Assistant Deputy for Systems Management, Office, Assistant Secretary of the Army (Research, Development and Acquisition).

The members of the Performance Review Board for the Program Executive Officer structure are:

1. Mr. Feliciano Giordano, Program Executive Officer, Strategic Information Systems.
2. Major General Peter A Kind, Program Executive Officer, Command & Control Systems.
3. Mr. Anthony M. Valletta, Program Executive Officer, Standard Army Management Information Systems.
4. Brigadier General Otto J. Guenther, Program Executive Officer, Communications Systems.
5. Brigadier General David L. Funk, Program Executive Officer, Aviation.
6. Mr. Albert J. Calabrese, Program Executive Officer, For Armaments.
7. Brigadier General Peter M. McVey, Program Executive Officer Heavy Force Modernization.
8. Brigadier General Robert A. Drolet, Program Executive Officer, Air Defense.
9. Brigadier General William J. Schumacher, Program Executive Officer, Fire Support.
10. Brigadier General William H. Campbell, Program Executive Officer, Intelligence and Electronic Warfare.
11. Lieutenant General Robert D. Hammond, Program Executive Officer, Strategic Defense Systems.
12. Mr. Melvin E. Burcz, Program Executive Officer, Combat Support.
13. Major General Ronald K. Anderson, Program Manager, Light Helicopter Program.
14. Mr. Robert F. Giordano, Deputy PEO, Command and Control Systems.
15. Mr. Neal Atkinson, Deputy PEO, Communications, Systems.
16. Mr. Andrew R. D'Angelo, Deputy PEO, Intelligence and Electronic Warfare.
17. Mr. Gary L. Smith, Deputy Program Executive, Aviation.
18. Mr. Robert D. Hubbard, Deputy Project Manager, Light Helicopter.
19. Mr. Jerry L. Chapin, Deputy PEO, Close Combat Vehicles.
20. Mr. George G. Williams, Deputy PEO, Fire Support Program Executive Office.
21. Mr. Bennie H. Pinkley, Deputy PEO, Air Defense.
22. Mr. Keith Charles, Deputy for Plans and Programs, Office, Assistant Secretary of the Army (Research, Development and Acquisition).
23. Mr. Stephen R. Burdt, Deputy for Program Evaluation, Office, Assistant Secretary of the Army (Research, Development and Acquisition).

The members of the Performance Review Board for the Office, Chief of Staff of the Army are:

1. Brigadier General William H. Forster, Deputy of Requirement Information, Deep Operations, Office Deputy Chief of Staff for Operations and Plans.
2. Mr. John A Reinte, Technical Advisor to the Deputy Chief of Staff for Operations and Plans, Office, Deputy Chief of Staff for Operations and Plans.
3. Mr. James C. Katechis, Project Manager, Exoatmospheric Re-entry Vehicle Interceptor Subsystem Project, U.S. Army Strategic Defense Command.
4. Mr. Edward L. Wilkinson, Director, Kinetic Energy Weapons Division, Weapons Directorate, U.S. Army Strategic Defense Command.
5. Mr. James D. Davis, Assistant Deputy Chief of Staff, Intelligence (Management), Office, Deputy Chief of Staff for Intelligence.
6. Major General Charles E. Eichelberger, Assistant Deputy Chief of Staff for Intelligence, Office, Deputy Chief of Staff for Intelligence.
7. Mr. Charles W. Weatherholt, Deputy Director of Civilian Personnel, Office, Deputy Chief of Staff for Personnel.
8. Mr. Gary L. Purdum, Deputy for Manpower, Programs and Budget, Office, Deputy Chief of Staff for Personnel.
9. Mr. Edgar B. Vandiver, III, Director, Concepts Analysis Agency, US Army Concepts Analysis Agency.
10. Mr. Julius J. Bellaschi, Deputy Director, Program Analysis and Evaluation, Office, Chief of Staff.
11. Major General James R. Klugh, Assistant Deputy Chief of Staff for Logistics, Office, Deputy Chief of Staff for Logistics.

12. Mr. Joseph P. Cribbins, Special Assistant to the Deputy Chief of Staff, Logistics and Chief, Aviation Logistics Office, Office, Deputy Chief of Staff for Logistics.

The members of the Performance Review Board for the Consolidated Command are:

1. Mr. Michael F. Bauman, Deputy Director, U.S. Army TRADOC Analysis Command.

2. Major General James W. Wurman, Assistant Deputy Chief of Staff for Civilian Personnel, U.S. Army HQ TRADOC.

3. Brigadier General Edward R. Baldwin, Jr., Commander, 7th Signal Command, U.S. Army Information Systems Command.

4. Dr. Michael L. Gentry, Technical Director, U.S. Army Information Systems and Engineering Command.

5. Major General W. H. Gourley, Director of Personnel, J1, HQ Forces Command.

6. Mr. William S. Fraim, Civilian Personnel Director, HQ Forces Command.

7. Mr. Thomas D. Collinsworth, Special Assistant for Transportation and Engineering, HQ Military Traffic Management Command.

8. Ms. Mary Lou McHugh, Senior Transportation Advisor, HQ Military Traffic Management Command.

9. Mr. Larry K. Lancaster, Deputy for Policy and Development, U.S. Army Intelligence and Security Command.

10. Brigadier General Floyd Runyon, Deputy Commanding General, U.S. Army Intelligence and Security Command.

11. Mr. Archie D. Grimmett, Assistant Deputy Chief of Staff for Personnel (Civilian Personnel), HQ U.S. Army Europe.

12. Mr. C. Cary Jones, Assistant Deputy Chief of Staff, Engineer, HQ U.S. Army Europe.

The members of the Performance Review Board for the U.S. Army Corps of Engineers are:

1. Major General George K. Withers, Jr., Deputy, Corps of Engineers, USA Corps of Engineers.

2. Mr. Herb Kennon, Chief, Engineering Division (Engineering and Construction).

3. Major General Peter J. Offringa, Assistant Chief of Engineers, Office of the Chief of Engineers.

4. Brigadier General Patrick J. Kelley, Commanding General, USA Engineering Division, South Pacific.

5. Brigadier General Arthur E. Williams, Commanding General, U.S. Army Engineering Division, Pacific Ocean.

6. Brigadier General Theodore Vander Els, Commanding General, USA Engineering Division, North Central.

7. Mr. Jack Kiper, Chief, Construction Operations Division, Ohio River Division.

8. Mr. Daniel Mauldin, Chief, Planning Division (Civil Works), Army Corps of Engineers.

9. Mr. William L. Robertson, Deputy Chief Counsel, Headquarters, U.S. Army Corps of Engineers.

10. Mr. Richard E. Hanson, Chief, Construction Division, (Engineering and Construction).

11. Mr. Joe G. Higgs, Chief, Engineering Division, Europe Division.

12. Mr. Barry G. Rought, Chief, Planning Division, ACE, Southwestern Division.

13. Dr. Robert Whalin, Technical Director, U.S. Army Engineer Waterways Experiment Station.

14. Dr. Robert B. Oswald, Jr., Assistant to the Chief of Engineers for Research and Development and Director, ACE, Directorate of Research and Development.

15. Mr. Allen M. Carton, Deputy Assistant Chief of Engineers for Planning, Programming and Congressional Affairs, ACE, Assistant Chief of Engineers.

The members of the Performance Review Board for the U.S. Army Surgeon General are:

1. Major General Alcide LaNoue, Deputy Surgeon General.

2. Major General Philip K. Russell, Commander, U.S. Army Medical Research and Development Command.

3. Major General Billy B. Lefler, Assistant Surgeon General for Dental Services.

4. Brigadier General Clara L. Adams-Ender, Chief, Army Nurse Corps.

5. Brigadier General Michael J. Scotti, Chief, Medical Corps Affairs.

6. Brigadier General Robert E. Via, Jr., Chief, Veterinary Corps.

7. Brigadier General Bruce T. Miketinac, Chief, Medical Service Corps.

8. Dr. Timothy J. O'Leary, Chairman, Department of Cellular Pathology, Armed Forces Institute of Pathology.

9. Dr. Louis S. Baron, Chief, Department of Bacterial Immunology, Walter Reed Army Institute of Research.

10. Dr. Michael A. Chirigos, Deputy of Science, U.S. Army Institute of Infectious Diseases.

11. Dr. Bhupendra P. Doctor, Director, Division of Biochemistry, Walter Reed Army Institution of Research.

12. Dr. Robert R. Engle, Deputy Director, Division of Experimental Therapeutics, Walter Reed Army Institute of Research.

13. Dr. Samuel B. Formal, Chief, Department of Bacterial Diseases, Walter Reed Army Institute of Research.

14. Dr. Elson D. Helwig, Chairman, Department of Bacterial Diseases, Walter Reed Army Institution of Research.

15. Dr. Nelson S. Irey, Chairman, Department of Environmental and Drug Induced Pathology, Armed Forces Institution of Pathology.

16. Dr. Kamal G. Ishak, Chairman, Department of Hepatic Pathology, Armed Forces Institution of Pathology.

17. Dr. Frank B. Johnson, Chairman, Department of Chemical Pathology, Armed Forces Institute of Pathology.

18. Dr. Arthur D. Mason, Chief, Laboratory Division, U.S. Army Institute of Surgical Research.

19. Dr. Fatholiah K. Mostofi, Chairman, Department of Genitourinary Pathology, Armed Forces Institute of Pathology.

20. Dr. Henry J. Norris, Chairman, Department of OB/GYN Pathology, Armed Forces Institute of Pathology.

21. Dr. Donald E. Sweet, Chairman, Department of Orthopedic Pathology, Armed Forces Institute of Pathology.

22. Dr. James A. Vogel, Director, Exercise Physiology Division, U.S. Army Research Institute of Environmental Medicine.

23. Dr. Florabel G. Mullick, Associat Director, Group D. Center for Advanced Pathology, Armed Forces Institute of Pathology.

24. Dr. Leslie H. Sobin, Associate Director for Scientific Publications, Armed Forces Institute of Pathology.

25. Dr. Liselotte Hochholzer, Chairman, Department of Pulmonary and Mediastonal Pathology, Armed Forces Institute of Pathology.

26. Dr. Sharon A. Weiss, Chairman, Department of Soft Tissue Pathology, Armed Forces Institute of Pathology.

The members of the Performance Review Board for the U.S. Army Materiel Command are:

1. Major General Leon E. Salomon, Deputy Chief of Staff for Readiness, Headquarters, U.S. Army Materiel Command.

2. Major General Paul L. Greenberg, Deputy Chief of Staff for Ammunition, Headquarters, U.S. Army Materiel Command.

3. Brigadier General Larry R. Capps, Deputy Commander, U.S. Army Missile Command.

4. Brigadier General Joseph Raffiani, Jr., Deputy Commander for Armament and Munitions, U.S. Army Armament, Munitions and Chemical Command.

5. Dr. Richard Chait, Chief Scientist, Headquarters, U.S. Army Materiel Command.

6. Mr. Edward J. Korte, Command Counsel, Headquarters, U.S. Army Materiel Command.

7. Mr. Robert O. Weidenmuller, Assistant Deputy Chief of Staff for Cost Analysis, Headquarters, U.S. Army Materiel Command.

8. Dr. Thomas E. Davidson, Technical Director for Armament, U.S. Army Armament, Munitions and Chemical Command.

9. Mr. Marvin L. Hanks, Chief Counsel, U.S. Army Armament, Munitions and Chemical Command.

10. Mr. Lawarence D. Johnson, Director, Benet Weapons Laboratory, U.S. Army Armament, Munitions and Chemical Command.

11. Dr. Marion Z. Thompson, Deputy for Industrial Preparedness and Installation, U.S. Army Armament, Munitions and Chemical Command.

12. Mr. Thomas L. House, Technical Director, U.S. Army Aviation Systems Command.

13. Mr. David M. McEneany, Director of Engineering, U.S. Army Aviation Systems Command.

14. Mr. Donald W. Schmitz, Deputy for Procurement and Production, U.S. Army Aviation Systems Command.

15. Mr. Anthony V. Campi, Director, Research Development and Engineering Center, U.S. Army Communications-Electronics Command.

16. Mr. Victor J. Ferlise, Chief Counsel, U.S. Army Communications-Electronics Command.

17. Mr. Joseph J. Pucilowski, Jr., Director, Product Assurance and Test, U.S. Army Communications-Electronics Command.

18. Mr. David E. Bahr, Deputy for Command Operations, U.S. Army Depot Systems Command.

19. Mr. Thomas R. Dudney, Deputy for Supply, Maintenance and Transportation, U.S. Army Depot Systems Command.

20. Mr. Bruce M. Fonoroff, Assistant Deputy Chief of Staff for Technology Planning and Management, U.S. Army Laboratory Command.

21. Mr. Jerry L. Reed, Director, Harry Diamond Laboratories, U.S. Army Laboratory Command.

22. Dr. Edward S. Wright, Director, U.S. Army Materials and Technology Laboratory, U.S. Army Laboratory Command.

23. Mr. Rex B. Powell, Director for Advanced Sensors, U.S. Army Missile Command.

24. Mr. Alfred D. Reeder, Director for Procurement, U.S. Army Missile Command.

25. Dr. Walter W. Wharton, Director Propulsion Directorate, U.S. Army Missile Command.

26. Mr. Albert A. Dawes, Chief Counsel, U.S. Army Tank-Automotive Command.

27. Mr. Henry B. Jones, Director for Procurement and Production, U.S. Army Tank-Automotive Command.

28. Mr. Douglas Munro, Associate Director of Systems, U.S. Army Tank-Automotive Command.

29. Mr. Wayne Wheelock, Associate Director for Technology, U.S. Army Tank-Automotive Command.

30. Mr. James C. Kelton, Technical Director, Combat System Test Activity, U.S. Army Test and Evaluation Command.

31. Mr. Harry J. Peters, Technical Director, U.S. Army Test and Evaluation Command.

32. Dr. Robert W. Lewis, Technical Director, Natick Research, Development and Engineering Center, U.S. Army Troop Support Command.

33. Mr. Harold L. Mabrey, Director for Procurement and Production, U.S. Army Troop Support Command.

34. Mr. Morris J. Zusman, Technical Director, Belvoir Research, Development and Engineering Center, U.S. Army Troop Support Command.

35. Mr. John J. McCarthy, Chief, Logistics and Readiness Analysis Division, U.S. Army Materiel Systems Analysis Activity.

36. Mr. Arend H. Reid, Chief Combat Support Division, U.S. Army Materiel Systems Analysis Activity.

Robert C. Zenda,

Personnel Management Specialist, Senior Executive Service Office.

[FR Doc. 89-17232 Filed 7-20-89; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Wilmington Harbor Turns and Bends Project, New Hanover and Brunswick Counties, NC

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The proposed project would consist of widening six turns and bends along the existing 38-foot-deep by 400-foot-wide Wilmington Harbor navigational channel in the Cape Fear River. The widths of the turns and bends would be increased by 75 to 175 feet for a total width ranging from 475 to 575 feet (to a depth of 38 feet plus overdepth). The purpose of these improvements would be to provide adequate widths in the turns and bends for ships, up to a length of 950 feet and a beam of 108 feet, to maneuver at a speed greater than with the existing project conditions. Vessels will be able to gain an average of 15 minutes each time they navigate the channel.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by: Mr. Frank Yelverton; Environmental Resources Branch; U.S. Army Engineer District, Wilmington; Post Office Box 1890; Wilmington, North Carolina 28402-1890; telephone: (919) 251-4640.

SUPPLEMENTARY INFORMATION: The DEIS is being prepared as a part of the feasibility study for the Wilmington Harbor Turns and Bends and the feasibility study is being conducted under authority of Section 107 of the River and Harbor Act of 1960, as amended. The feasibility study is being cost shared between the Corps of Engineers and the State of North Carolina. The proposed six turns and bends are within a 14-mile reach of the Cape Fear River, located approximately midway between the ocean bar at the mouth of the river and Wilmington, North Carolina. Preliminary analysis indicates that the most economical and environmentally sound method of dredging during construction and maintenance would be by bucket and barge with ocean disposal. Disposal of the dredged material by bucket and barge would be in the U.S. Environmental Protection Agency designated ocean dredged material disposal site beginning approximately 3 miles south of the mouth of the Cape Fear River. Alternative dredging and disposal methods, including beach disposal, and renourishment of colonial waterbird nesting islands will be discussed in the DEIS. Blasting may be required in areas that contain rock.

All private parties and Federal, State, and local agencies having an interest in the study are hereby notified of the study and are invited to comment at this time. Also, a scoping letter requesting input to the study will be sent to all known interested parties on July 11, 1989, and comments are requested by August 11, 1989. No formal scoping meetings are planned at this time, but based on the responses received, scoping meetings may be held with specific agencies or individuals as required. All comments received as a result of this notice of intent and the

scoping letter will be considered in preparation of the DEIS.

Significant issues to be analyzed in the DEIS include: (1) Economic benefits of improvements, (2) acceptability of sediments for ocean disposal, (3) alternative dredging and disposal methods, (4) impacts to fishes and benthic resources, and (5) impacts to cultural resources.

The lead agency for this project is the Wilmington District, Corps of Engineers. Cooperating agency status has not been assigned to, or requested by, any other agency.

The DEIS is being prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended, and will address the relationship of the proposed action to all other applicable Federal and State laws and Executive Orders.

The DEIS is currently scheduled to be available in October 1990.

Dated: July 6, 1989.

Paul W. Woodbury,

Colonel, Corps of Engineers District Engineer.

[FR Doc. 89-17233 Filed 7-20-89; 8:45 am]

BILLING CODE 3710-GN-M

Department of the Navy

Public Hearings and Availability of the Draft Environmental Impact Statement for Electronic Installations in the Western Pacific

Pursuant to Council on Environmental Quality regulations (40 CFR Parts 1500-1506) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency a DRAFT Environmental Impact Statement (DEIS) for proposed electronic installations in the western pacific. The DEIS has been distributed to various federal, state and local agencies, local elected officials, interest groups, the media and local libraries. A limited number of copies of the DEIS to fill single copy requests are available from the Commanding Officer, Pacific Division, Naval Facilities Engineering Command, Pearl Harbor, HI 96860.

Public hearings to inform the public of the DEIS findings and to solicit comments will be held on:

16 August 1989
2:00 pm in the Governor's Conference Room, Saipan, CNMI,

16 August 1989
7:00 pm at the Garapan Elementary School, Saipan, CNMI,

17 August 1989
1:00 pm in the Mayor's Office, San Jose Village, Tinian, CNMI,

18 August 1989
2:00 pm in the Governor's Conference Room, Guam, Marianas Islands,

18 August 1989
7:00 pm in the Governor's Conference Room, Guam, Marianas Islands.

These hearings will be conducted by the U.S. Navy. All interested parties are invited and urged to be present or represented at these hearings. This includes representatives of federal and non-federal agencies; commercial, business, and civic groups; ecological and environmental groups, fish and wildlife organizations; concerned citizens and other interested groups. All parties will be afforded full opportunity to express their views; however, in order to allow all present an opportunity to speak, statements will be limited to five (5) minutes. If longer statements are to be presented, they should be delivered in writing either at the hearing or mailed to the Commanding Officer, Pacific Division, Naval Facilities Engineering Command, and summarized at the public hearing. All written statements must be postmarked by September 5, 1989 to become part of the official record.

Oral statements will be heard and transcribed by a stenographer, to assure accuracy of the record all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this study. Equal weight shall be given to both oral and written statements.

The public hearings will be reported verbatim. Copies of the transcript of the proceedings may be purchased at the cost of reproduction and will be available three weeks from the date of the hearings. In addition, copies of the transcript will be made available for public review during normal working hours at Pacific Division, Naval Facilities Engineering Command.

As discussed in the DEIS, the Navy proposes to construct and operate up to three electronic installations, which are Relocatable Over-the-Horizon Radar (ROTHR) systems, on Tinian, Commonwealth of Northern Marianas Islands, and on Guam, Marianas Islands. Each installation would include antenna towers and arrays, ground screens and support facilities sited on each island. Transmitter facilities would be located on Tinian, receiver and operational control center facilities would be located on Guam.

The proposed installations would be constructed over a period of years with the first to be funded in FY 89. Construction of the other two ROTHR systems would depend on Congressional approval and funding. Each ROTHR system is a stand-alone project and would operate independently. Collocation of the systems is not an operational necessity; however, collocation would permit sharing of some facilities.

Each transmitter would consist of 34 vertical antenna towers, including the sounder antenna, and 24 vertical support poles. Maximum height above ground level would be 125 feet, total length of the antenna array would be 265.5 feet. Each transmitter system could produce up to 200 kilowatts of power, which will be radiated only in the direction of its orientation. The antenna array and ground screen would be fenced with a wire fence on four sides. The fenced area, called the radiation hazard area or exclusion fence area, would extend a maximum of 1,058 feet in front and 200 feet behind the antenna array. The fence would be posted with signs warning of radiation hazard from the antenna array. Beyond this fence, there would be no hazard from radio frequency radiation from the transmitter. The transmitter would be operated by civilian contractor personnel on a 24-hours per day, 7 days per week basis. No military personnel will be permanently located at the transmitter site. A total of approximately 62 civilian personnel will be required to operate the three transmitters, if collocated.

Each receiver would consist of 372 pairs of aluminum monopole antennas (a total of 744 poles), each about 18 feet tall and 6 inches in diameter. These pairs would be sited about 23 feet apart. Total length of the receiver antenna array would be about 8,600 feet; width of the receiver antenna array would be about 800 feet. Each receiver would require an operation control center consisting of operational vans, equipment shelters, and other support facilities. The receivers would be operated by military and civilian contractor personnel on a 24-hours per day, 7-days-per-week basis. A total of 216 military and 69 civilian personnel would be required to operate three receivers.

Surveillance of critical areas is required to detect aircraft and ships coming from eastern Asia. To meet this operational siting requirement, ROTHR systems must be sited in the Marianas Islands. In addition, technical siting requirements necessitate that the transmitter and receiver be separated by 50 to 100 miles to permit their concurrent operation. A site of about 100 acres is necessary for the transmitter and about 200 acres for the receiver; however, the transmitter can be accommodated on a site of 58 acres and the receiver on a site of 172 acres.

Based on these two primary criteria, a number of islands were evaluated for development of ROTHR systems, including island combinations involving Guam, Tinian, Rota, Saipan, and Anatahan. Saipan and Anatahan do not possess sufficient land areas for ROTHR development. The convenant between the U.S. Government and the Commonwealth of Northern Marianas Islands requires military facilities be sited on the military lease area of Tinian, if at all possible, before considering acquisition of rights to use of other areas. Thus, only sites on Guam and Tinian were considered.

Other active and passive surveillance systems were considered prior to initiation of development of the ROTHR system, including radar satellite systems and aircraft surveillance. Current technology will not permit the development of a radar satellite which can be launched into stationary orbit where it could continuously monitor areas of interest. Aircraft surveillance would not provide the same coverage as the proposed ROTHR system; moreover, the land area required to base sufficient surveillance aircraft would be much greater than the area required for the proposed ROTHR systems.

The DEIS provides a comprehensive analysis of primary issues identified during the scoping process, including endangered or threatened species, air pollution, historic resources, and the effect of high frequency radiation generated by the transmitters on the environment and human health.

The U.S. Fish and Wildlife Service intends to designate portions of Guam as critical habitat for four species of endangered birds. The Navy would initiate a Memorandum of Agreement with the U.S. Fish and Wildlife Service to minimize impacts to this habitat should proposed receiver sites on Guam be included in the critical habitat area.

Transmitters would require continuous on-site generation of electrical power. Calculations of controlled air pollution emissions indicate operation of all three transmitters would create sufficient pollutants to be considered a major stationary source according to CNMI Air Quality Regulations, thus requiring a permit from the CNMI Department of Public Health and Environmental Services.

One transmitter and some support facilities would be located in the North Field National Historic Landmark, which is listed on the National Register of Historic Places. The Navy would initiate a Memorandum of Agreement with the CNMI Historic Preservation Officer and the President's Advisory Council on Historic Preservation to identify measures to protect this historic site.

A series of detailed studies evaluating hazards from radio frequency radiation were prepared by the Navy. Results of these studies indicate no restrictions of access outside the fenced exclusionary zone would be necessary.

Questions regarding this notice may be directed to Mr. Gordon Ishikawa at (808) 471-3088.

Date: July 18, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-17153 Filed 7-20-89; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board.

ACTION: Amendment of notice of open meeting.

SUMMARY: This amends the notice of an open meeting of the Mathematics and Technical Methodology Standing Committees of the National Assessment Governing Board published on Tuesday, June 27, 1989 in Vol. 54, No. 122 at page 27048. This notice reschedules the meeting originally scheduled for July 11, 1989.

Date: July 24, 1989.

Time: 11:00 a.m.

Location: U.S. Department of Education National Assessment Governing Board Suite 4060, Mary E. Switzer Building, 330 C Street, SW., Washington, DC. 20202-7583

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Staff Director, National Assessment Governing Board, U.S. Department of Education, Suite 4060, Mary E. Switzer Building, 330 C Street, SW., Washington, DC 20202-7583. Telephone: (202) 732-1824.

SUPPLEMENTARY INFORMATION: Due to technical telecommunications problems, the telephone conference originally scheduled for July 11, 1989 was not completed. The meeting of the Mathematics and Technical Methodology Standing Committee of the National Assessment Governing Board via teleconference is rescheduled for Monday July 24, 1989 from 11:00 until completion of business. The agenda remains the same..

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89-17218 Filed 7-20-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of the Secretary

Public Hearing To Solicit Views From Public Officials and the General Public on the Development of a National Energy Strategy

AGENCY: Office of the Secretary, DOE.

ACTION: Notice of Meetings to invite public officials and the general public to provide comments on the development of a National Energy Strategy.

SUMMARY: The Department of Energy will conduct a series of public hearings throughout the country soliciting comments from interested parties on a wide range of energy issues and recommended solutions.

In order to develop a comprehensive National Energy Strategy which properly balances the concerns of all segments of our society, the Department seeks to broaden its knowledge and garner consensus among frequently competing interests. Specifically, the Department seeks comments on how we can best achieve ample supplies of competitively priced energy in an environmentally sensitive manner.

It is the intent of the Department to conduct an initial series of public hearings in different parts of the country beginning in early August and ending in early September. The Department wants to understand each region's unique energy needs and constraints.

Dates and Procedures: The first public hearing is scheduled for August 1, 1989 at the J.W. Marriott in 1331 Pennsylvania Ave., NW., Washington, DC. Persons wishing to submit testimony to DOE in conjuction with this hearing should forward written comments to Ruth Burns, Office of Policy, Planning and Analysis, Department of Energy, Forrestal Building, Room 7H-034, 1000 Independence Avenue SW., Washington, DC 20585.

Individuals interested in testifying at this hearing should contact Ruth Burns, Office of Policy, Planning and Analysis, Department of Energy at (202) 586-4767 no later than 4:00 p.m., Friday, July 28, 1989.

Additional hearings will be held throughout the country during the months of August and September. Specific times, dates, and places will be subsequently scheduled and announced. All testimony received will be compiled and made available to the public.

Focus: 1. Assessing the relationship between energy use in the American economy and quality of life for the American citizen;

2. Assuring adequate energy supplies;

3. Insuring energy production and energy use are compatible with the environment;

4. Developing technology export opportunities for our domestic energy industries;

5. Educating the energy experts of tomorrow by stressing the inportance of science and math for all Americans.

FOR FURTHER INFORMATION: For further information, please write or call Mr. William H. Hatch, Office of Policy, Planning and Analysis Department of Energy, Forrestal Building, Room 7H-034, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586-4767.

Linda G. Stuntz,

Deputy Under Secretary, Office of Policy, Planning and Analysis, U.S. Department of Energy.

[FR Doc. 89-17314 Filed 7-19-89; 5:02 pm]

BILLING CODE 6450-01-M

Financial Assistance Award; Intent To Award Grant to the Symagery Productions, Inc.

AGENCY: U.S. Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award based on an unsolicited application under Grant Number DE-FG01-89CE15424 to Symagery Productions, Inc. (SPI) to assist in the development of the invention, "An Automated Process for Garment Manufacture."

Scope: This Grant will aid in providing funding for a well integrated plan to perform several studies, including manufacturing cost studies, garment specification analyses and overall business feasibility studies to serve as a basis for design of machine.

The purpose of this project will be the development and testing of an automated process for garment manufacture, which should result in substantial reductions (up to 80%) in the energy and labor cost elements for domestically produced garments. The anticipated objective is a fully automated system for garment manufacture which will manufacture from the bolt of material to a finished garment without human intervention.

Eligibility: Based on receipt of an unsolicited application, eligibility of this award is being limited to SPI, a private company with high qualifications in this specialized field of technology. The President of SPI, Brett Stern, is the principal investigator, inventor of the technology and the owner of the patent "which lies at the heart of the technology and is the only party legally entitled and motivated to develop this technology." SPI will subcontract work to the Textile Engineering Department of the Georgia Institute of Technology for their expertise with the technology. It has been determined that this project has high technical merit, representing an innovative and novel idea which has a strong possibility of allowing for future reductions in the nation's energy consumption.

The term of this grant shall be eighteen months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Lisa Tillman, MA-453.2, 1000 Independence Avenue SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 89-17161 Filed 7-20-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 2548-024, et al]

Hydroelectric Applications (Lyons Falls Hydro Electric, Inc., et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. Type of Application: Amendment of License.

b. Project No.: 2548-024.

c. Date Filed: April 24, 1989.

d. Applicant: Lyons Falls Hydroelectric, Inc.

e. Name of Project: Lyons Falls Hydroelectric Project.

f. Location: On the Moose River and the Black River in Lewis County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r)

h. Applicant Contact: Mr. Allen S. Rodgers, Vice President, Lyons Falls Hydroelectric, Inc., P.O. Box 790, Walpole, NH 03608, (603) 756-4307.

i. FERC Contact: Ken Fearon, (202) 376-9789.

j. Comment Date: August 6, 1989.

k. Description of Amendment: The amendment of license proposes the removal of the new powerhouse, 5.8-MW generating unit, and appurtenant facilities originally planned for the Lyons Falls development, and the removal of the new 390-kw and 550-kw generating units and appurtenant facilities originally planned for the Kosterville development, from the license. The licensee states that the planned development is no longer economically feasible due to increased project construction costs and diminished project revenues. The licensee also plans to rehabilitate the existing project structures to extend the service life of the project.

1. This notice also consists of the following standard paragraphs: B, C, and D2.

2 a. Type of Application: Transfer of License.

b. Project No.: 2594-002.

c. Date Filed: May 15, 1989.

d. Applicant: Montana Light & Power Company (Transferor) and Champion International Corporation (Transferee).

e. Name of Project: Lake Creek Project.

f. Location: On Lake Creek in Lincoln County, Montana.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Transferee: Amy S. Koch, Chadbourne & Parke, 1101 Vermont Avenue NW., Washington, DC 20005 (202) 289-3000.

i. FERC Contact: Nanzo T. Coley (202) 376-9416.

j. Comment Date: August 7, 1989.

k. Purpose of Proposed Action: On December 16, 1981, a major license was issued to the transferor to operate and maintain the lake Creek Project. It is proposed to transfer the license to the transferee. The transfer will not result in any changes to the existing project. The transfer is requested because in 1985, St. Regis Corporation, of which Montana Light & Power Company was a subsidiary, was purchased by the transferee, and in January 1988, Montana Light & Power Company merged with the transferee.

1. This notice also consists of the following standard paragraphs: B and C.

3 a. Type of Application: Transfer of license.

b. Project No.: 2794-003.

c. Date filed: April 24, 1989.

d. Applicant: Jack W. Pickell (Transferor) and Silver King, Inc. (Transferee).

e. Name of Project: Warren Project.

f. Location: On Warren Creek, Idaho County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Transferor: Mr. Jack W. Pickell, Box 1, Warren, ID 83671. Transferee: Mr. Bill Hunt, Silver King, Inc., P.O. Box 52, Warren, ID 83671.

i. FERC Contact: Michael Spencer at (202) 376-1669.

j. Comment Date: August 7, 1989.

k. Description of Proposed Action: On August 16, 1979, a license was issued to Jack W. Pickell for the construction, operation, and maintenance of the Warren project. It is proposed to transfer the license to Silver King, Inc. The proposed transfer will not result in any changes to the proposed development. The Transferor certifies that it has fully complied with the terms and conditions of the license. The Transferee accepts all the terms and conditions of the license and agrees to be bound thereby to the same extent as though it were the original licensee.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

4 a. Type of Application: Transfer of License.

b. Project No.: 4113-008.

c. Date filed: April 12, 1989.

d. Applicant: Long Lake Energy Corporation and Oswego Hydro Partners, L.P.

e. Name of Project: Phoenix Project.

f. Location: On the Oswego River in Oswego and Onondaga Counties, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Sandy Hartman, Long Lake Energy Corporation, 420 Lexington Ave., Suite 540, New York, NY 10170, (212) 986-0440.

i. FERC Contact: Robert Bell (202) 376-9237.

j. Comment Date: August 17, 1989.

k. Description of Project: On March 28, 1986, a license was issued to Long Lake Energy Corp. (licensee), to construct, operate, and maintain the Phoenix Project No. 4113. The licensee intends to transfer the license to Oswego Hydro Partners L.P. (transferee), which will purchase, construct, and operate the project. The transferee agrees to accept the terms and conditions of the license as if it were the original licensee. The transfer is requested to facilitate the financing and construction of the project.

l. This notice also consists of the following standard paragraphs: B and C.

5 a. Type of Application: Transfer of License.

b. Project No.: 4574-010.

c. Date filed: May 15, 1989.

d. Applicant: Gail W. Marshall (Transferor) and Wildcat Hydro Associates, Ltd. (Transferee).

e. Name of Project: Three Lynx Creek.

f. Location: In Mt. Hood National Forest, on Three Lynx Creek, a tributary of the Clackamas River, in Clackamas County, Oregon.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Transferor: Mr. Gail W. Marshall, 5004 Southeast 44th Avenue, Portland, OR 97206. Transferee: Mr. Bruce A. Forcum, Wildcat Hydro Associates, Ltd., 1530 S.W. Taylor, Portland, OR 97205, (503) 292-9834.

i. FERC Contact: Michael Spencer at (202) 376-1669.

j. Comment Date: August 7, 1989.

k. Description of Proposed Action: On May 22, 1987, a minor license was issued to Gail W. Marshall for the Construction, operation, and maintenance of the Three Lynx Creek project. It is proposed to transfer the license to Wildcat Hydro Associated, Ltd. The proposed transfer will not result in any changes to the proposed development. The Transferor certifies that it has fully complied with the terms and conditions of the license. The Transferee accepts all the terms and conditions of the license and agrees to be bound thereby to the same extent as though it were the original licensee.

l. This notice also consists of the following standard paragraphs: B and C.

6 a. Type of Application: Revisions to the Application for Major License.

b. Project No.: 5841-001.

c. Date Filed: April 17, 1989.

d. Applicant: County of Sierra.

e. Name of Project: North Yuba River Water Power Project.

f. Location: On the North Yuba River within the Sierra National Forest near Downieville in Sierra County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 781(a)-825(r).

h. Applicant Contact: Mr. Daniel F. Gallery, 926 Jay Building, Suite 505, Sacramento, CA 95814, (916) 444-2880.

i. FERC Contact: Ms. Julie Bernt, (202) 376-1936.

j. Comment Date: August 14, 1989.

k. Description of Project: The modified project would consist of: (1) A 6-foot-high, 80-foot-long concrete diversion structure; (2) a 3,200-foot-long, 58-inch-diameter low pressure conduit; (3) a 11,500-foot-long, 54-inch-diameter steel penstock; (4) a powerhouse containing one generating unit with an installed capacity of 7,500 kW; (5) a 45-foot-long tailrace; (6) a 1.8-mile-long transmission line; and (7) appurtenant facilities. This revision proposes a new penstock route along Highway 49 right-of-way including burying a portion of the penstock along or within portions of Highway 49. The applicant also proposes the relocation of the powerhouse to the west bank of the North Yuba River and upstream of the original site at an elevation of approximately 4,630 feet msl in order to avoid a pipeline river crossing. The average annual energy production is estimated to be 16 million kWh.

l. Purpose of Project: The power produced will be sold to the Pacific Gas and Electric Company.

m. This notice also consists of the following standard paragraphs: B, C and D1.

7 a. Type of Application: Transfer of License.

b. Project No.: 5867-011.

c. Date Filed: April 12, 1989.

d. Applicant: Long Lake Energy Corporation and Alice Falls Hydro Partners L.P.

e. Name of Project: Alice Falls Project.

f. Location: On the AuSable River in Clinton and Essex Counties, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contacts: Mr. Sanford L. Hartman, Long Lake Energy Corporation, 420 Lexington Avenue, Suite 540, New York, NY 10170, (212) 986-0440. Ms. Amy S. Koch, Chadbourne & Parke, 1101 Vermont Avenue NW., Suite 900, Washington, DC 20005 (202) 289-3000.

i. FERC Contact: Steven H. Rossi, (202) 376-9814.

j. Comment Date: August 21, 1989.

k. Description of Transfer: On April 12, 1989, Long Lake Energy Corporation (licensee) and Alice Falls Hydro Partners L.P. (transferee) filed a joint application for transfer of a major license for the Alice Falls Project No. 5867.

The purpose of the proposed transfer of license is to facilitate the financing of the project. No construction has started to date.

The proposed transfer would not result in any changes in the operation of the project. All engineering, design, and feasibility studies performed would be transferred to the transferee. The transferee states that it would comply with all the terms and conditions of the license.

l. This notice also consists of the following standard paragraphs: B and C.

8 a. Type of Application: Surrender of License.

b. Project No.: 5969-009.

c. Date Filed: April 10, 1989.
d. Applicant: City of Jersey City, NJ.
e. Name of Project: Boonton Reservoir.
f. Location: On the Rockaway River in Morris County, New Jersey.
g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)–825(r).
h. Applicant Contact: Keh-Jong Liu, P.E., P.P., Water Engineering, 60 Collard Street, Jersey City, New Jersey 07306 (201) 547–4414.
i. FERC Contact: Mary Nowak (202) 376–9634.
j. Comment Date: August 21, 1989.
k. Description of Project: The license for this project was issued on July 18, 1985, for an installed capacity of 1,150 kilowatts. The licensee states that it has determined that the project would be economically infeasible. No construction has commenced at the project site.
l. This notice also consists of the following standard paragraphs: B and C.

9 a. Type of Application: Surrender of License.
b. Project No.: 8245–003.
c. Date Filed: May 17, 1989.
d. Applicant: Bellows-Tower Hydro, Inc.
e. Name of Project: Forge Dam Hydro Project.
f. Location: On the Chateaugay River in Clinton and Franklin Counties, New York.
g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).
h. Applicant Contact: Mr. Frank O. Christie, Ballard Mill, S. William Street, Malone, NY 12953 (518) 483–2198.
i. FERC Contact: Ed Lee (202) 376–5786.
j. Comment Date: August 21, 1989.
k. Description of Project: The license for this project was issued on August 4, 1987, for an installed capacity of 300 kW. The licensee states that it was determined that the project would be economically infeasible. No construction has commenced at the project site.
l. This notice also consists of the following standard paragraphs: B and C.

10 a. Type of Application: Conduit Exemption.
b. Project No.: 10688–000.
c. Date Filed: November 4, 1988.
d. Applicant: Massachusetts Water Resources Authority, Waterworks Division.
e. Name of Project: Cosgrove Intake and Power Plant Project.
f. Location: On the Cosgrove Aqueduct at the Wachusett Reservoir in Worcester County, Massachusetts.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Applicant Contact: Mr. William A. Brutsch, Massachusetts Water Resources Authority, Waterworks Division, 100 First Avenue, Charlestown Navy Yard, Boston, MA 02129 (617) 242–6000.
i. FERC Contact: Steven H. Rossi, (202) 376–9814.
j. Comment Date: August 11, 1989.
k. Description of Project: The existing operating project consists of: (1) Two turbine-generator units each rated at 1,700 kW for a total installed capacity of 3,400 kW; and (2) appurtenant facilities. The project generates an average of 23,500 MWh annually. The project is owned by the Metropolitan District Commission. The project is operated and maintained by the applicant.
l. Purpose of Project: Project power would continue to be sold to the New England Power Company and Boston Edison Company.
m. This notice also consists of the following standard paragraphs: A3, A9, B, C, D3b.

11 a. Type of Application: Minor License.
b. Project No.: 10773–000.
c. Date Filed: April 17, 1989.
d. Applicant: Alaska Aquaculture, Inc.
e. Name of Project: Burnett River Hatchery.
f. Location: Within the Tongars National Forest on the Burnett River in the First Judicial District of Alaska.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Applicant Contact: Mr. Tod A. Jones, Alaska Aquaculture, Inc., P.O. Box 1288, Wrangell, AK 99929 (907) 874–2250.
i. FERC Contact: Mr. William Roy-Harrison (202) 376–9830.
j. Comment Date: September 1, 1989.
k. Description of Project: The proposed project would consist of a primary and a secondary system at the Burnett River fish hatchery.

The primary system comprising: (1) A new 2-foot-high dam across the mouth of Burnett Lake; (2) the existing Burnett Lake with a surface area of 165 acres; (3) a 28-inch-diameter intake pipe extending 600 feet into Burnett Lake; (4) a 28-inch-diameter, 3,000-foot-long penstock; (5) a powerhouse containing a generating unit with a rated capacity of 250 kW; (6) a 480-volt line supplying power on site; and (7) appurtenant facilities.

The secondary system comprising: (1) Two existing pipes extending out of the Burnett Lake, one 200 feet and the other 600 feet long, both leading into; (2) an existing 12-inch-diameter, 3,540-foot-long penstock; (3) an existing powerhouse containing a generating unit with a rated capacity of 80-kW; (4) a 480-volt line supplying power on site; and (5) appurtenant facilities.

The applicant estimates an average annual energy generation of 2,745,000 kWh under a total rated capacity of 330 kW.
l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

a. Type of Application: Preliminary Permit.
b. Project No.: 10775–000.
c. Date filed: May 8, 1989.
d. Applicant: May Creek, Inc.
e. Name of Project: May Creek.
f. Location: On Lake Isabel in the Mt. Baker—Snoqualmie National Forest near the town of Goldbar in Snohomish County, Washington.
g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).
h. Applicant Contact: Mr. Gary P. Marcus, May Creek, Inc., 1710 Willow Creek Circle, Suite 37, Eugene, OR 97402 (503) 683–5200.
i. FERC Contact: Michael Spencer at (202) 376–1669.
j. Comment Date: August 28, 1989.
k. Description of Project: The proposed project would consist of: (1) a submerged, screened pipe intake on the bottom of Lake Isabel; (2) a 12,100-foot-long, 36-inch-diameter steel penstock; (3) a powerhouse containing a generator with a capacity of 4,890 kW and an average annual generation of 28,592 Mwh; and (4) a 0.7-mile-long transmission line.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $135,000.
l. Purpose of Project: Project power would be sold to Puget Sound Power and Light Company.
m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

a. Type of Application: Declaration of Intention.
b. Project No.: EL89–37–000.
c. Date Filed: May 15, 1989.
d. Applicant: Peter M. Dorey.
e. Name of Project: Gristmill Brook Project (ME).
f. Location: Gristmill Brook, Town of Bridgton, Cumberland County, Maine.
g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).
h. Applicant Contact: Peter M. Dorey, Route 2, Box 652–A, Bridgton, ME 04009–9550 (207) 647–8072.
i. FERC Contact: Hank Ecton, (202) 376–9073.
j. Comment Date: August 3, 1989.
k. Description of Project: The proposed Gristmill Brook Project would consist of: (1) A reservoir with a storage of 965-acre feet; (2) an existing 8-foot-high, 165-foot-long stone-and-earthen dam; (3) a proposed 4-foot-diameter, 500-foot-long penstock; (4) a proposed 16-foot by 20-foot powerhouse, containing a 12-inch Mitchell-Banki turbine, producing approximately 21 kilowatts; (5) a 30-foot-wide, 250-foot-long tailrace; (6) a proposed 125-foot-long transmission line; and (7) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.
l. Purpose of Project: Applicant intends to use the energy produced on-site and to sell excess energy to the Central Maine Power Company.
m. This notice also consists of the following standard paragraphs: B, C, and D2.

Standard Paragraphs

A3. Development—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203–RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in Section 313(b) of the Federal Power Act, 16 U.S.C. Section 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not respond to the Commission within the time set for filing, it will be

presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. Agency Comments—The Commission requests that the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game Agency(ies), for the purposes set forth in Section 408 of the Energy Security Act of 1980, file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, state and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: July 17, 1989, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17093 Filed 7-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-44-004]

Florida Gas Transmission Co.; Filing

July 17, 1989.

Take notice that on July 11, 1989, Florida Gas Transmission Company (FGT) filed Substitute Sheet No. 57R to its FERC Gas Tariff, First Revised Volume No. 1, to be effective June 1, 1989.

FGT states that on June 30, 1989, it filed Substitute Sheet No. 57R which omitted a portion of the pagination caption. FGT states that the tariff sheet in this instant filing includes the full pagination caption, and is otherwise identical to the sheet filed on June 30, 1989.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such protests should be filed on or before July 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17094 Filed 7-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-162-003]

Ringwood Gathering Co.; Filing

July 17, 1989.

Take notice that on July 12, 1989, Ringwood Gathering Company (Ringwood) filed Second Revised Sheet No. 4-A and Second Revised Sheet No. 4-B to its FERC Gas Tariff, to be effective April 1, 1989.

Ringwood states that, pursuant to the Commission's May 31, 1989 order, this filing supplements its June 15, 1989 compliance filing.

Ringwood states that a copy of this filing has been served on the official service list and interested state regulatory commissions and jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1988)]. All such motions or protests should be filed on or before July 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17096 Filed 7-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP89-47-000]

Sandstone Resources, Inc. v. Columbia Gas Transmission Corp.; Complaint

July 17, 1989

On June 22, 1989, Sandstone Resources, Inc. (Sandstone) filed a complaint againt Columbia Gas Transmission Corporation (Columbia) pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206. Sandstone, acting as agent and attorney-in-fact on behalf of various producers who sell gas to Columbia, requests the Commission to determine that certain gas conditioning costs incurred by a natural gas producer to meet the gas purchaser's contract specifications and to prevent damage to meters and pipelines constitute "production-related costs" under 18 CFR 271.1104(c)(7).

Sandstone asserts that Columbia has refused to process claims for reimbursement of costs incurred to separate and remove water and other liquids from the natural gas stream after it leaves the wellhead even though such expenses are "production-related costs" under 18 CFR 271.1104(c)(7). Sandstone also asserts that almost all natural gas requires some conditioning after it leaves the wellhead and before it enters a pipeline to remove liquid impurities, such as brine and liquid hydrocarbons, from the gas stream to prevent corrosion and damage to sales meters and pipelines. According to Sandstone, Columbia's contracts expressly acknowledge that a natural gas guage cannot measure gas flow if liquid or other impurities are present. Sandstone states that it is seeking to recover only those costs that are expressly allowed by contract and by 18 CFR 271.1104(d)(3)(A), *i.e.*, operation and maintenance expenses, disposal costs, lost opportunity costs based on average annual net plant investment, and average annual depreciation expense.

The Production-Related Costs Board (Board) was established to resolve disputes regarding the appropriate allowance that a first seller is authorized to collect under § 271.1104 for production-related costs. Since the complaint involves a question concerning entitlement to production-related costs under § 271.1104 of the Commission's regulations, the complaint will be referred to the Board for resolution.

Under Rules 206(b) and 213(a), 18 CFR 385.206(b) and 385.213(a), Columbia must file an answer to Sandstone's complaint with the Commission unless otherwise ordered by the Commission. Under Rule 213(e), 18 CFR 385.213(e), any person failing to answer a complaint may be considered in default, and all relevant facts stated in such complaint may be deemed admitted. Columbia shall file its answer with the Commission not later than 15 days after publication of this notice in the **Federal Register.**

Any person desiring to be heard or to protest said filing should file a protest or a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214, 18 CFR 385.211 and 385.214. All such protests or motions should be filed not later than 15 days after publication of this notice in the **Federal Register.** Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17095 Filed 7-20-89; 8:45 am]

BILLING CODE 6717-01-M

Tennessee Gas Pipeline Co.;

[Docket No. RP88-228-023]

July 17, 1989.

By letter order dated June 30, 1989, the Diretor of OPPR accepted certain tariff sheets filed by Tennessee on May 31, 1989 in order to conform its FERC Gas Tariff to the terms of the Interim Stipulation and Agreement approved by the Commission on May 24, 1989 in the referenced proceeding. Tennessee also requested authority to withdraw certain tariff sheets filed January 17, 1989 in Docket Nos. CP87-103, *et al.* which were to be effective February 1, 1989. The June 30th letter order directed Tennessee to refile to supersede those sheets rather than withdraw them.

Tennessee requested that the Commission waive the refiling requirement or, alternatively, deem that the sheets in effect prior to the sheets to be withdrawn have been refiled by its July 10th filing.

Tennessee states that copies of the filing have been mailed to all parties in this proceeding, affected customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17097 Filed 7-20-89; 8:45 am]

BILLING CODE 6717-01-M

TransAmerican Natural Gas Corp.; Petition Requesting Approval of Refund Plan

[Docket No. GP89-44-000]

July 18, 1989.

On June 9, 1989, TransAmerican Natural Gas Corporation (TransAmerican) filed a petition requesting approval of a refund plan. In *TransAmerican Natural Gas Corporation*, 41 FERC ¶ 62,206 (1987), the Director of the Office of Pipeline and Producer Regulation denied TransAmerican's petition for adjustment requesting relief from the Btu refund obligations of Order Nos. 399, 399-A, and 399-B (FERC Statutes and Regulations [Regulations Preambles 1982-1985], ¶¶ 30,597, 30,612, and 30,651).

TransAmerican states that on January 26, 1983, GHR Energy Corp., predecessor of TransAmerican, filed a petition for relief under Chapter 11 of the United States Bankruptcy Code. TransAmerican further states that it is operating under a Confirmed Amended and Restated Negotiated Chapter 11 Plan of Reorganization, and that the confirmation was effective October 19, 1987.

TransAmerican requests that the Commission issue an order approving its refund plan and finding that: (1) All Btu refund amounts owed by TransAmerican to Valero Transmission Company are pre-petition and therefore subject to the jurisdiction of the Bankruptcy Court; (2) all pre-petition Btu refund amounts owed by TransAmerican to El Paso Natural Gas Company (El Paso) are also subject to the jurisdiction of the Bankruptcy Court and the post-petition Btu refund amounts owed by TransAmerican to El Paso have been properly calculated by TransAmerican and paid in the amount of $27,518.62; and (3) all pre-petition Btu refund amounts owed by TransAmerican to United States Transmission Company (United Texas) as also subject to the jurdisdiction of the Bankruptcy Court and that post-petition refunds are properly resolved under an April 19, 1985 letter agreement and contract between TransAmerican and United Texas.

Any person desiring to be heard or to make any protest should file a protest or petition to intervene in accordance with the requirements of Rules 211 or 214 of the Commission's rules of practice and procedure (18 CFR 385.211 or 385.214). All such filings should be made not later than 30 days following publication of this notice in the **Federal Register** and should be addressed to Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426. Protests will be considered by the Commission in determining the action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with Rule 214.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17098 Filed 7-20-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3619-5]

Notification of Indefinite Suspension of Determination To Prohibit, Deny, or Restrict the Specification of an Area for Use as a Disposal Site; Santa Ysabel Creek, San Diego County, CA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of indefinite suspension of proposed section 404(c) proceedings pending additional studies.

SUMMARY: On December 29, 1987, EPA announced the initiation of proceedings under section 404(c) of the Clean Water Act (CWA) in the **Federal Register** (52 FR 49082), describing its proposed determination to prohibit, deny, or restrict the discharge of dredged or fill material for construction of Pamo Dam by the San Diego County Water Authority (SDCWA), because the project would likely result in

unacceptable adverse impacts to wildlife. In reaching this conclusion, EPA found that the project failed to comply with Guidelines for Specification of Disposal Sites for Dredged or Fill Material (40 CFR 230), also known as EPA's 404(b)(1) Guidelines. The **Federal Register** notification also postponed the public hearing on the matter pending receipt of an independent analysis by the City of San Diego, the landowner of the proposed reservoir and mitigation sites, of project alternatives, cost, and mitigation. EPA anticipated reviewing the results of the City of San Diego's analysis of the Pamo Dam Project as part of EPA's 404(c) evaluation.

Proceedings to Date: In August 1988, the SDCWA Board of Directors through its General Manager requested that the U.S. Army Corps of Engineers, Los Angeles District, suspend the SDCWA's request for a section 404 permit. The SDCWA stated that a suspension would allow it to further evaluate the environmental impacts and proposed mitigation plan for the Pamo Dam Project and investigate additional water supply alternatives. In September 1988, in response to this request, the Corps of Engineers withdrew the SDCWA's permit application and advised that a new application will be required should the SDCWA decide to pursue the Pamo Dam Project, or any similar project in the future.

In October 1988, EPA received and reviewed an August 1988 final report prepared by independent consultants for the City of San Diego on Pamo Dam alternatives, costs and mitigation. This report substantiated many of EPA's previously stated concerns regarding the Pamo Dam Project. The SDCWA, through an independent contractor, is currently conducting an "Optimal Storage Study" to, in part, identify water storage alternatives within its service area.

Purpose of Public Notice: This serves as a notice of indefinite suspension of section 404(c) proceedings for the Pamo Dam Project pending completion and review of the SDCWA's independent analysis discussed above under *Proceedings to Date.* This suspension will allow EPA to fully consider the findings of the SDCWA's study prior to taking any further action under section 404(c) of the CWA.

Public Hearing: A separate public notice will be published in the **Federal Register** to announce any changes in this indefinite suspension of the 404(c) proceedings and to announce the date, location and procedures of any public hearing. Such notification of a public hearing will also be published in local newspapers.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yocom or Robert Leidy, Wetlands, Oceans and Estuaries Branch (W-7-2), 215 Fremont Street, San Francisco, California 94105, (415) 974-7970.

Daniel W. McGovern,
Regional Administrator.

[FR Doc. 89-17138 Filed 7-20-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3619-8]

Intent To Prepare an Environmental Impact Statement (EIS) on the Proposed Monticello-B-2 Area Surface Lignite Mine in Titus County, TX

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Issuance of a new source National Pollutant Discharge Elimination System (NPDES) permit to the Texas Utilities Mining Company (TUMCO) for a proposed expansion (referred to as the B-2 Area) of the existing Monticello Surface Lignite Mine.

Purpose: EPA has determined that the issuance of an NPDES permit to the TUMCO to operate the proposed B-2 Area Lignite Mine represents a major Federal Action that may significantly affect the quality of the human environment. Therefore, an EIS will be prepared to assess the potential environmental consequences of EPA's permit action.

For Further Information or To Be Placed on the Project Mailing List Contact: Mr. Norm Thomas; Chief, Federal Activities Branch; U.S. EPA, Region VI (E-FF); 1445 Ross Avenue; Dallas, Texas 75202-2733. Telephone: (Commercial) 214-655-2260 or (FTS) 255-2260.

SUMMARY: TUMCO proposes two expansions of the existing 20,000 acre Monticello Surface Lignite Mine. The first of these expansions is an additional 25,000 acres near Leesburg, Texas. EPA and TUMCO have entered into a Memorandum of Understanding (MOU) for a third-party EIS on the proposed Monticello-Leesburg Mine area. The second proposed expansion (i.e. the B-2 area, approximately 17,000 acres located north of Mount Pleasant, Texas) is covered by a separate MOU for this EIS.

Alternatives: Alternatives available to EPA are to issue the NPDES permit for the project; to issue the NPDES permit for the project with certain modifications to minimize adverse impacts; or to deny the permit.

Scoping: EPA encourages agency and public participation in the decision-making process on this proposed permit action. Federal, State and local agencies and the public are invited to participate in the process for determining the scope of issues to be addressed and for identifying the major issues related to the proposed action. A public meeting to receive input to this scoping process will be held on Thursday, August 17, 1989, at 7:00 p.m. in the Commissioner's Courtroom of the County Courthouse in Mount Pleasant, Texas.

Estimated Date of Draft EIS Release: February, 1990.

Responsible Official: Robert E. Layton Jr., P.E. Regional Administrator.

Dated: July 17, 1989.

Richard Sanderson,
Director, Office of Federal Activities.

[FR Doc. 89-17164 Filed 7-20-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3619-6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed July 10, 1989 Through July 14, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890190, Draft, FHW, ME, Topsham-Brunswick Bypass Construction, I-95/196 Interchange to Rt-1, Funding, 404 Permit and Section 9 Permit, Sagadahoc and Cumberland Counties, ME, Due: September 8, 1989, Contact: Robert Beaudry (207) 622-8486.

EIS No. 890191, Draft, FHW, MI, MI-45 Reconstruction, West of 68th Avenue to east of 24th Avenue, Funding and 404 Permit, Ottawa County, MI, Due: September 4, 1989, Contact: James Kirschensteiner (517) 377-1851.

EIS No. 890192, Draft, USN, GU, TT, Relocatable Over-the-Horizon Radar (ROTHR)/Electronic Installations in the Western Pacific, Construction and Operation, Tinian, Commonwealth of the Northern Mariana Islands and Guam, Due: September 4, 1989, Contact: E.C. Rushing (808) 471-3088.

EIS No. 890193, Final, AFS, AK, Big Islands Management Area Analysis, Implementation and Special Use Permit, Chugach National Forest Land and Resource Management Plan, Hawkins, Hinchinbrook, Montague, Green, Little Green and Wooded Islands and The Needle, Prince William Sound, AK, Due: August 21, 1989, Contact: Cecil R. Kuhn (907) 271-2558.

EIS No. 890194, FSuppl, AFS, MT, Deerlodge National Forest Noxious Weed Control Program, Implementation, Use of Herbicide within the Rock Creek Drainage and Other Areas, Deerlodge, Jefferson, Granite, Powell, Madison and Silver Bow Counties, MT, Due: August 21, 1989, Contact: Dave Ruppert (406) 496-3368.

Amended Notices

EIS No. 890007, DSuppl, AFS, CO, Routt National Forest Land and Resource Management Plan, Incorporation of the Dersch Report, Implementation, Routt, Garfield, Grand, Moffat, Rio Blanco, Jackson and Summit Counties, CO, Due: April 17, 1989, Contact: Reese Pope (303) 879-1722.

EIS No. 890145, DSuppl, AFS, AK, Alaska Pulp Long-Term Timber Sale/Road Construction, Phase II 1981-86 and 1986-89 Operating Plan Amendments, Meed-Bay, Freshwater-Whitestone, Corner Bay, and Kuia Island Analysis Areas, Tongass National Forest, AK, Due: July 24, 1989, Contact: James Pierce (907) 586-8871.

Published in the **Federal Register** 6-9-89—Review period extended.

Dated: July 18, 1989.

William D. Dickerson,
Deputy Director, Office of Federal Activities.

[FR Doc. 89-17162 Filed 7-20-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3619-7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 3, 1989 through July 7, 1989 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 7, 1989 (54 FR 15006).

DRAFT EISs

ERP No. D-FHW-D40240-PA, Rating LO, I-81 Connector/LR-1067, Section A01 Construction, US 11/Harrisburg Exchange to I-81 on the North, Funding and 404 Permit, Cumberland County, PA.

Summary. EPA concurs with the selection of Alternative 8B as the preferred alternative. The draft EIS thoroughly discussed the environmental impacts of the alternatives and adequately addressed the necessary mitigation measures.

ERP No. D-FHW-E50085-00, Rating EC2, US 62/68/Ohio River Bridge Construction, Mason County, KY to Brown County, OH, Funding, US Coast Guard Bridge Permit and COE Section 404 Permit, Mason Co., KY and Brown Co., OH.

Summary. EPA has concerns regarding wetland losses, channel relocation and lack of a detailed mitigation plan to offset these losses.

ERP No. D-FHW-H40139-MO, Rating EC2, Rt-115 Extension, I-70 to MO-94 and Rt-115/I-70 Interchange Construction, Funding and 404 Permits, St. Charles City and St. Peters City, St. Charles County, MO.

Summary. EPA requested that noise levels be conducted on completion of this highway project to determine how the actual noise levels compare with the projected levels, and that baseline ambient air quality samples be taken in the proposed construction area along the I-70 corridor. The final EIS should include a thorough discussion of the effects of highway construction on demographics and increased commercial/industrial development.

ERP No. D-UAF-J11004-MT, Rating EC2, Malstrom AFB, Deployment of the Second KC-135R Air Refueling Squadron, 301st Air Refueling Wing, City of Great Falls, Cascade County, MT.

Summary. EPA recommended commitments to the mitigation of impacts. Additional explanation is needed for the elimination of all alternatives except "no action". Ground water characteristic should be assessed and potential impact documented, regardless of the current use. The criteria used to assess the affected environment should be consistently applied to the analysis of environmental consequences for all resources categories.

Final EISs

ERP No. F-AFS-L65115-OR, Fremont National Forest, Land and Resource Management Plan, Implementation, Lake and Klamath Counties, OR.

Summary. EPA has no objections to the project as described in this document.

ERP No. F-AFS-L65129-AK, 1989-94 Ketchikan Pulp Long-Term Timber Sale Management Plan, Implementation, Tongass National Forest, Prince of Wales Island, AK.

Summary. Review of the final EIS has been completed and the project found to be satisfactory.

ERP No. F-AFS-L65129-OR, Shady Beach Fire Recovery Project, Beach Mountain to Slapjack Butte, Implementation, Rigdon Ranger District, Williamette National Forest, Lane County, OR.

Summary. EPA has no objections to the project as described in this document.

ERP No. F-BLM-K60065-CA, Death Valley and Joshua Tree National Monuments Boundary Adjustments, Transfer of Land Between the Bureau of Land Management and the National Park Service, California Desert District, Inyo and Riverside Counties, CA.

Summary. Review of the final EIS was not deemed necessary.

Dated: July 18, 1989.

William D. Dickerson,
Deputy Director, Office of Federal Activities.

[FR Doc. 89-17163 Filed 7-20-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1767]

Petitions for Reconsideration and Clarification of Actions in Rule Making Proceedings

July 17, 1989.

Petitions for reconsideration and clarification have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor International Transcription Service (202-857-3800). Oppositions to these petitions must be filed [Insert date of 16 days after FR pub date]. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Milan, Metter & Swainsboro, Georgia) Number of petitions filed: 1

Subject: Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and Other Participants to the

Comparative Renewal Process and to the Prevention of Abuse of the Renewal Process. (BC Docket No. 81–742) Number of Petitions filed: 3

Subject: Access to Telecommunications Equipment & Services by the Hearing Impaired and Other Disabled Persons. (CC Docket No. 87–124) Number of petitions filed: 1

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (West Point and Blair, Nebraska) (MM Docket No. 88–493, RM's 6431 & 6445) Number of petitions filed: 2

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–17084 Filed 7–20–89; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Proceeding

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and state	File No.	MM docket No.
A. Cabrini College; Radnor Township, PA.	BPED–860725MH	89–309
B. Villanova University in the State of Pennsylvania; Villanova, PA.	BPED–870402KA	
C. Bux-Mont Educational Radio Association; Sellersville, PA.	BPED–870514MN	
D. Trustees of the University of Pennsylvania; Philadelphia, PA.	BPED–870515OE	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applicants have been designated for a hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 Fed. Reg. 19347, May 29, 1986. The letter shown before each applicant's name, above, is used to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. 307(b)—Noncommercial Educational, A, B, C, D
2. Contingent Comparative, A, B, C, D
3. Ultimate, A, B, C, D

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in the Appendix to this Notice. A copy of the complete HDO in this proceeding is available in the FCC Dockets branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW, Washington, DC 20037 (Telephone No. (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 89–17081 Filed 7–20–89; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing

1. The Commission has before it the following groups of mutually exclusive applications for three new FM stations and one new AM station:

Applicant, city, and state	File No.	MM docket No.
A. Pleasant Hope Broadcasting; Pleasant Hope, MO.	BPH–871209MB	89–312
B. Roy H. Williams, III and Elizabeth Williams, d/b/a Williams Partnership; Pleasant Hope, MO.	BPH–871210MA	
C. Charles T. Williams; Pleasant Hope, MO.	BPH–871210MB	
D. Missouri Broadcast Limited Partnership; Pleasant Hope, MO.	BPH–871210MC	
E. Koyle Broadcasting Corporation; Pleasant Hope, MO.	BPH–871210MD	
F. Minorities Broadcasting Company of Missouri, Inc.; Pleasant Hope, MO.	BPH–871210ME	
G. Multicom Broadcasting; Pleasant Hope, MO.	BPH–871210MF	
H. Trifecta Communications, a general partnership; Pleasant Hope, MO.	BPH–871210MG	
I. FR Broadcasting, Inc.; Pleasant Hope, MO.	BPH–871210MH	

Issue Heading and Applicants

1. See Appendix, D
2. See Appendix, D
3. See Appendix, D
4. See Appendix, D
5. Financial Qualifications, H
6. Misrepresentation, H
7. Comparative, A–I
8. Ultimate, A–I

II.

Applicant, city, and state	File No.	MM docket No.
A. East Carolina Radio Associates Limited Partnership, New Bern, NC.	BPH–871008MB	89–310
B. Mike Conner, d/b/a Conner Broadcasting, New Bern, NC.	BPH–871008ME	

Issue Heading and Applicants

1. See Appendix, A
2. See Appendix, A
3. See Appendix, A
4. See Appendix, A
5. Air Hazard, A, B
6. Comparative, A, B
7. Ultimate, A, B

III.

Applicant, city, and state	File No.	MM docket No.
A. Marc A. ALbert; Syracuse, NY.	BPH–870918MC	89–311
B. Taylor Communications of Syracuse, Inc.; Syracuse, NY.	BPH–870918ML	
C. Salt City Communications, Inc.; Syracuse, NY.	BPH–870918MN	
D. Huston Telecom, Inc.; Syracuse, NY.	BPH–870918MX	
E. D.J.'s Broadcasting Co.; Syracuse, NY.	BPH–870918MY	

Issue Heading and Applicants

1. & 2. Real Party-in-Interest, D
3. 1.65 and Misrepresentation, D
4. Qualifications, D
5. City Coverage, E
6. Air Hazard, A, B, C, D, E
7. Comparative, A, B, C, D, E
8. Ultimate, A, B, C, D, E

IV.

Applicant, city, and state	File No.	MM docket No.
A. Contemporary Media, Inc.; Terre Haute, IN.	BP–870331BX	89–313
B. Nu-View Associates, Inc.; Battle Ground, IN.	BP–871029AE	

Issue Heading and Applicants

1. Ownership, B
2. Misrepresentation, B
3. 307(b)—Modification, All applicants
4. Contingent comparative, All applicants
5. Ultimate, All applicants

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix I (Pleasant Hope, Missouri)

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of D (MBLP).
2. To determine whether D's (MBLP's) organizational structure is a sham.
3. To determine whether D (MBLP) violated Section 1.65 of the Commission's Rules, and/or lacked candor, by failing to timely report the designation of character issues against other applicants in which one or more of its partners has an ownership interest and/or the dismissal of such ownership interest and/or the dismissal of such applications with unresolved character issues pending.
4. To determine, from the evidence adduced pursuant to Issues 1 through 3 above, whether D (MBLP) possesses the basic qualifications to be a licensee of the facilities sought herein.

Appendix II (New Bern, North Carolina)

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of A (ECR).
2. To determine whether A's (ECR's) organizational structure is a sham.
3. To determine whether A (ECR) violated Section 1.65 of the Commission's Rules, and/or lacked candor, by failing to report the designation of character issues against other applicants in which one or more of its partners has an ownership interest and/or the dismissal of such ownership interest and/or the dismissal of such applications with unresolved character issues pending.
4. To determine, from the evidence adduced pursuant to Issues 1 through 3 above, whether A (ECR) possesses the basic qualifications to be a licensee of the facilities sought herein.

Appendix III (Syracuse, New York)

Additional Issue Paragraphs

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of D (Huston).
2. To determine whether D's (Huston) organizational structure is a sham.
3. To determine whether D (Huston) violated § 1.65 of the Commission's Rules, and/or lacked candor, by failing to report: (1) The designation of character issues against other applicants in which one or more of its partners has an ownership interest; (2) the dismissal of such ownership interest and/or the dismissal of such applications with unresolved character issues pending; and (3) the interest held by one or more of its partners in applications pending before the Commission.

[FR Doc. 89–17082 Filed 7–20–89; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–834–DR]

Amendment to Notice of a Major Disaster Declaration; Kentucky

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Kentucky (FEMA–834–DR), dated June 30, 1989, and related determinations.

DATED: July 12, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

Notice

Notice is hereby given that the incident period for this disaster is amended, as follows: June 15, 1989, through and including July 6, 1989.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89–17133 Filed 7–20–89; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–834–DR]

Amendment to Notice of a Major Disaster Declaration; Kentucky

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Kentucky (FEMA–834–DR), dated June 30, 1989, and related determinations.

DATED: July 13, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

Notice

The notice of a major disaster for the Commonwealth of Kentucky, dated June 30, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 30, 1989:

The counties of Breathitt and Owsley for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89–17134 Filed 7–20–89; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–829–DR]

Amendment to Notice of a Major Disaster Declaration; Louisiana

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA–829–DR), dated May 20, 1989, and related determinations.

DATE: July 13, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

Notice

The notice of a major disaster for the State of Louisiana, dated May 20, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaraton of May 20, 1989:

The parishes of Jackson and Webster for Individual Assistance and public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-17135 Filed 7-20-89; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010829-011.

Title: Eurocorde Discussion Agreement.

Parties:

("Conference Parties")
North Europe-USA Rate Agreement
USA-North Europe Rate Agreement
("Independent Carrier Parties")
Evergreen Marine Corp. (Taiwan), Ltd.
American Transport Lines, Ltd.
Mediterranean Shipping Co.
Orient Overseas Container Line (UK) Ltd.
South Atlantic Cargo Shipping, NV
Lykes Bros. Steamship Co., Inc.
Polish Ocean Lines
Independent Container Line Limited
Topgallant Lines, Inc.

Synopsis: The proposed modification would authorize the Independent Carrier Parties to meet, discuss, negotiate, clarify differences, and to reach consensus with the Conference Parties. This authorization would expire on December 31, 1989.

Agreement No.: 207-011144-004.

Title: Australia-New Zealand Direct Line Service Agreement.

Parties:

PAD Line Overseas S.A.
Australia-New Zealand Container Line S.A.
Societe Navale et Commerciale
Delmas-Vieljeux
Compagnie Generale Maritime

Synopsis: The proposed amendment would substitute Pacific Container S.A., for PAD Line Overseas S.A. as a party to the Agreement. It would also delete Compagnie Generale Maritime as a party to the Agreement.

By Order of the Federal Maritime Commission.

Dated: July 17, 1989.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 89-17063 Filed 7-20-89; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 89-16]

Actions to Address Adverse Conditions Affecting United States Carriers That Do Not Exist for Foreign Carriers in the United States/Taiwan Trade; Notice and Order of Investigation

Upon publication of this Order in the **Federal Register** the Federal Maritime Commission ("Commission" or "FMC") initiates an investigation under the Foreign Shipping Practices Act of 1988 ("FSPA" or "1988 Act"), 46 U.S.C. app. section 1710a, of shipping conditions in the United States/Taiwan trade ("Trade").[1] This investigation seeks to determine whether Taiwan laws, rules, regulations, policies or practices result in the existence of conditions which adversely affect the operations of United States carriers and which do not exist for Taiwan carriers in the United States.

This investigation focuses on certain "doing business" restrictions which appear to affect adversely the intermodal operations of United States carriers in Taiwan. These include restrictions on off-dock container terminal licensing, shipping agency licensing, and trucking licensing as well as restrictions affecting chassis registration and the domestic use of containers.[2]

The Foreign Shipping Practices Act authorizes the Commission to investigate adverse conditions affecting a United States carrier in the United States oceanborne trade. Section 10002(b) states:

(b) Authority to Conduct Investigations—The Federal Maritime Commission shall investigate whether any laws, rules, regulations, policies, or practices of foreign governments, or any practices of foreign carriers or other persons providing maritime or maritime-related services in a foreign country result in the existence of conditions that—

(1) adversely affect the operations of United States carriers in United States oceanborne trade; and

(2) do not exist for foreign carriers of that country in the United States under the laws of the United States or as a result of acts of United States carriers or other persons providing maritime or maritime-related services in the United States.

The FSPA expressly applies not only to the port-to-port carriage of cargo but also to services ancillary to port-to-port transportation services. Section 10002(a)(4) defines such "maritime-related services" as follows:

(4) "maritime-related services" means intermodal operations, terminal operations, cargo solicitation, forwarding and agency services, non-vessel-operating common carrier operations, and all other activities and services integral to total transportation systems of ocean common carriers and their foreign domiciled affiliates on their own and others' behalf * * *.

The 1988 Act thus has broad application to any restrictions which impede the access of United States carriers to cargo. Land-based restrictions that would make a U.S. carrier less capable of competing with foreign carriers are clearly within the scope of the FSPA.

The Foreign Shipping Practices Act also provides for action against foreign carriers to correct adverse shipping conditions. Section 10002(e) provides:

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[1] The Commission has issued a Final Rule implementing the Foreign Shipping Practices Act. See Part 588—Actions to Address Adverse Conditions Affecting U.S.-flag Carriers That Do Not Exist For Foreign Carriers in the United States, 24 S.R.R. 1631 (March 16, 1989), 54 FR 11529 (March 21, 1989). This proceeding is governed by that Final Rule. Section 588.5(a), 46 CFR 588.5(a), states:

An investigation shall be considered to have been initiated for the purposes of the time limits imposed by the Foreign Shipping Practices Act of 1988 upon the publication in the **Federal Register** of the Commission's notice of investigation, which shall announce the initiation of the proceeding upon either the Commission's own motion or the filing of a petition.

[2] The Commission has already noted its concern with other impediments and restrictions in the Trade which appear to hamper the operations of U.S. carriers. The late delivery of gantry cranes at the Port of Kaohsiung and the lengthy period of time taken to repair damaged berth facilities at Kaohsiung were made the subject of a letter of June 20, 1989 to Taiwan authorities. Investigation of these matters is not called for at this time because progress toward removal of these impediments and restrictions appears to be underway.

The Commission notes two other shipping matters in the Trade which cause concern. These are berthing arrangements at the Port of Keelung, which appear to discriminate in favor of Taiwan carriers and to disadvantage U.S. carriers, and the prohibition against carriers using tandem trailers, otherwise known as "doubles," on Taiwan highways. The Commission opted not to include those matters in this proceeding but anticipates that efforts will be made toward a satisfactory resolution.

(e) Action Against Foreign Carriers.—(1) Whenever, after notice and opportunity for comment or hearing, the Commission determines that the conditions specified in subsection (b) of this section exist, the Commission shall take such action as it considers necessary and appropriate against any foreign carrier that is a contributing cause to, or whose government is a contributing cause to, such conditions, in order to offset such conditions.

Section 10002(a)(2) of the FSPA defines "foreign carrier" as follows:

"foreign carrier" means an ocean common carrier a majority of whose vessels are documented under the laws of a country other than the United States.

In this proceeding, two Taiwan carriers, Evergreen International (USA) Corporation ("Evergreen") and Yang Ming Line ("Yang Ming"), are named as respondents under the authority of section 10002(e) on the basis of their ownership and control by Taiwan persons and the documentation of their vessels under the laws of Taiwan.

Sections 10002(e)(1) (A), (B) and (C) of the 1988 Act authorize sanctions against foreign carriers, including limitation of sailings, tariff suspension, suspension of rights to operate under agreements, and a fee of up to $1,000,000 per voyage. In addition, section 10002(f) authorizes the Commission to request other government agencies to take certain actions including denial of port clearance, denial of entry to a U.S. port, and detention at a U.S. port. The investigation will consider what sanctions might be applied or remedial action taken should adverse conditions be found to exist.

Finally, the 1988 Act is intended to protect and to provide relief to United States carriers whose operations are affected adversely. Two United States carriers serving the Trade, American President Lines, Ltd. ("APL") and Sea-Land Service, Inc. ("Sea-Land"), appear to be affected adversely. Accordingly, APL and Sea-Land are named as United States carrier parties in this proceeding.

Background

The Commission first initiated an inquiry into shipping conditions in the Trade by an order issued pursuant to section 15 ("Section 15 Order") of the Shipping Act of 1984, 46 U.S.C. app. section 1714. *See* "Inquiry Into Laws, Regulations and Policies of Taiwan Affecting Shipping in the United States/Taiwan Trade", 24 S.R.R. 101 (April 15, 1987). Responses to that order identified a number of restrictions that allegedly had an adverse impact on the intermodal operations of U.S. carriers in Taiwan.

Based on these responses, the Commission issued a Notice of Proposed Rulemaking ("Proposed Rule") pursuant to section 19(1)(b) of the Merchant Marine Act, 1920 ("Section 19"), 46 U.S.C. app. section 876(1)(b). *See* Docket No. 87-25, "Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Taiwan Trade", 52 FR 46505 (December 8, 1987). The Proposed Rule addressed the two issues which were then most urgent: (1) Restrictions on the ownership and operation of dockside equipment and facilities; and (2) impediments to the ability of U.S. carriers to obtain licenses to operate on-dock container terminals. Discussions involving the affected parties led to a resolution of these two issues and the Commission therefore discontinued that proceeding. *See* "Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Taiwan Trade", 24 S.R.R. 866 (March 2, 1988).

However, the Commission indicated in its order discontinuing the proceeding that it would continue to closely monitor the Trade and take further appropriate action where warranted by conditions in the Trade. 24 S.R.R. at 869. The Commission subsequently served a supplemental section 15 order ("Supplemental Section 15 Order") which sought updated information on shipping conditions in the Trade. *See* "Inquiry Into Laws, Regulations and Policies of Taiwan Affecting Shipping in the United States/Taiwan Trade", 24 S.R.R. 1045 (June 22, 1988). Responses to the Supplemental Section 15 Order identified certain other restrictions which allegedly continue to hamper the ability of U.S. carriers to conduct their intermodal operations in Taiwan.

Discussion

Although there has been progress on some issues in the Trade, notably on the issues of on-dock container terminals and ownership of dockside equipment as noted above, the following areas remain subject to restrictions which impede the operations of U.S. carriers.

I. Off-Dock Container Terminal Operations

Article 6 of the "Shipping Enterprise Act" of Taiwan provides as follows:

Persons and juristic persons whose nationality is other than that of the Republic of China shall not be permitted to establish any organization for the purpose of doing business as a shipping agency or sea cargo forwarder or of operating container terminals; provided, however, if the foreign government of these persons reciprocally accords the same rights to persons or juristic persons of the Republic of China and that an approval has been granted by the Ministry of Communications, the above restriction shall not apply.

Further, Article 6 of Taiwan's "Regulations Governing Operations of Container Terminal," which requires approval of an application to operate a container terminal by the Ministry of Communciations ("MOC"), states:

In processing the above application, the local maritime authority shall scrutinize whether it conforms to the provisions of Article 6 of the Shipping Enterprises Act and review whether two-thirds or more of the capital stock of the company is to be held by ROC citizens and the board chairman and two-thirds or more of directors are to be ROC citizens.

These regulations allegedly have been administered in such a way as to prevent a U.S. carrier from conducting off-dock container terminal operations through its own branch office or subsidiary company and to limit U.S. carrier ownership participation in a local company to a one-third interest and allow only one-third of the directors to be non-Taiwan citizens.

Information provided in section 15 order responses indicates that the barriers to establishing an off-dock container terminal are increased by the requirement that an off-dock container terminal operation have at least 33,000 square meters of land. Lease of land appears to be prohibited. Moreover, purchase of land by a branch of a U.S. carrier or its foreign subsidiary requires approval of both local and central authorities.

The Taiwan statutory and regulatory scheme thus appears to make the establishment of an inland container terminal prohibitive from a practical business point of view given the high price of land and the limits on ownership and control. Under the current system, a U.S. carrier would be required to make a substantial investment in a facility with no controlling interest either initially or through increased ownership participation.

The effect of this system seems therefore to reduce the efficiency and economy of the intermodal operations of United States carriers by imposing significant barriers to the operation of inland terminals. The regulations may also affect U.S. carriers competitively insofar as the inability to maintain a presence in inland operations may deny the opportunity to compete for cargo.

Conversely, it appears that Taiwan carriers are not subject to similar restrictions upon their U.S. operations under the laws of the United States. The Commission knows of no restrictions on the ability of Taiwan carriers to operate

off-dock container terminals either through a subsidiary company or through a branch office in the United States, or to be free to purchase or lease land, to increase their ownership participation, and to determine the amount of land to be leased. Thus there do not appear to be the same barriers to the establishment of an inland container terminal under U.S. law.

II. Inland Trucking Operations

United States carriers also appear to be subject to various restrictions applied to their trucking operations in Taiwan that prevent them from competing on an equal basis and achieving greater economies in their operations.

A. Trucking Licensing

Article 35 of the Taiwan Highway Law states:

Foreign nationals are not allowed to engage in the investment and operation of public automobile transportation within the territory of the Republic of China.

The law prohibits U.S. carriers from obtaining a license to provide trucking services to Taiwan.

During the April 6–7, 1987 maritime discussions between the American Institute in Taiwan ("AIT") and the Coordination Council for North American Affairs ("CCNAA"), CCNAA indicated that it would consider AIT's suggestion that the law be amended to allow foreign carriers to operate inland trucking services. However, it appears that no progress has been made toward legislative changes which would extend to U.S. carriers the opportunity to operate inland trucking services in Taiwan.

The ability to operate one's own trucking service could be an integral link in modern intermodal transportation services. This ability would appear to allow ocean carriers to achieve economies and to operate more efficiently. Moreover, inland trucking operations may give a carrier a greater visibility and presence in terms of competing for broader segments of cargo. Finally, the mere entitlement to operate one's own trucking business may mean that a carrier is no longer captive of local trucking companies and might obtain trucking services at more competitive prices. U.S. carriers indicate that trucking services represent their largest single operating cost in Taiwan. Moreover, it appears that U.S. carriers are more reliant on inland trucking services to the Port of Kaohsiung because of congestion at the Port of Keelung. While it is difficult to quantify the benefits of operating an in-house trucking service, it appears that U.S. carriers are disadvantaged and their operations made less efficient and economical by the prohibition on being licensed to operate their own trucking services.

Taiwan carriers operating in the United States do not appear to be subject to this disadvantage. The Commission understands that Taiwan carriers are not prohibited by U.S. law from conducting their own trucking operations in the U.S. if they wish. They are also free to obtain trucking services from any operator in the U.S. Therefore, it appears that Article 35 of the Taiwan Highway Law subjects U.S. carriers in Taiwan to adverse conditions which Taiwan carriers do not face in the United States.

B. Chassis Registration

Taiwan automobile registration authorities have prohibited U.S. carriers from registering truck chassis in their own names without reference to any local trucking companies, and have insisted that chassis must be registered in the name of the respective trucking companies that operate them. U.S. carriers have asked the MOC to permit registration of the chassis for operation in the name of the U.S. carriers as owners. Although there has recently been some progress on this issue and there are indications that this prohibition may be removed, to date the restriction remains in place.

Such a restriction would make it difficult for U.S. carriers to change trucking companies and thereby have an opportunity to improve the efficiency and economy of their operations. The restriction appears to inhibit competition in the market for trucking services and tends to tie U.S. carriers to a particular trucking company. The restriction thus may raise inland trucking costs and limit the degree of control carriers may have over trucking operations, thereby hampering the competitiveness and profitability of U.S. carriers.

The Commission is aware of no similar restrictions for chassis registration for Taiwan carriers in the United States. U.S. law does not appear to impose such restrictions on chassis registration.

C. Repositioning of Containers

Containers undergoing repositioning in Taiwan are subject to customs regulations which limit their use during repositioning. Articles 14 and 23 of the Taiwan "Regulations Governing Administration of Containers by the Customs" provide as follows:

Article 14

If the containers after having been loaded for export and inspected and sealed by the customs need to be reopened for further loading, separation or repackaging, the carrier or its agent shall apply for a special permit with the customs or obtain approval documents therefrom for processing such operations under the inspection of officials at the export warehouse or other designated area located in the container yard.

The customs may authorize the owner of container yard to dispatch persons for handling such operations and the customs may dispatch officials for inspection and investigation.

Article 23

The import and export of empty container [sic] will not be subject to the inspection of import and export licenses, however, the carrier or its agent shall fill out a list of the empty containers for import and the movement status of the containers thereof or fill out a list of the empty containers for export and list the quantities of empty containers for import and export for application with the customs for a special permit. Upon loading of such empty containers, the carrier or its agent shall designate sufficient persons specially for opening such empty containers for inspection by the customs officials. Upon completion of loading, the persons as designated above shall sign a list showing the actual loading quantities and numbers of containers for investigation by the customs.

These regulations can be interpreted in a manner which prohibits U.S. carriers from the general use of containers while in Taiwan and subjects containers to significant restuffing restrictions. Moreover, these restrictions on U.S. carriers appear not to apply to Taiwan-flag carriers. U.S. carriers have requested the MOC for a ruling which would permit them to lease or interchange empty containers being repositioned to local trucking companies for use in hauling domestic cargo but have not received a response.

These policies thus could prevent U.S. carriers from offsetting their repositioning costs by hauling domestic cargo. The cost of repositioning empty containers for U.S. carriers appears significant due to the limitations at port facilities at the Port of Keelung which necessitates the hauling of containers from Keelung in the north to Kaohsiung in the south.

The Commission believes that Taiwan-flag carriers are not subject to any similar restrictions on their operations in the United States. Thus Taiwan carriers in the United States who reposition their containers from the East to West coasts appear to be generally permitted to carry domestic cargo.

III. Shipping Agency Operations

Pursuant to the Agreed Minutes of the April 6–7, 1987 maritime discussions between AIT and CCNAA, U.S. carriers are eligible to apply for a license to conduct shipping agency operations in Taiwan. Local authorities, however, appear to have imposed unrealistic information requirements which have defeated or discouraged U.S. carrier applications. The Keelung Harbor Bureau returned a U.S. carrier application and demanded the following additional information before processing the application: (1) The names of the shipping companies to be represented; (2) the ship routes of such companies; (3) the number of sailings; and (4) income expenditure forecasts. The effect of these demands is to require U.S. carriers to obtain commitments from customers before receiving even preliminary approval to establish a shipping agency.

To the extent these requirements have prevented U.S. carriers form conducting shipping agency operations in Taiwan, such carriers are denied collateral business opportunities which would integrate with their shipping operations in Taiwan. Again U.S. carriers' efficiency and profitability may be impeded because of their inability to earn additional revenue and offset the costs of assets and overhead devoted to U.S. carrier operations in Taiwan.

The Commission knows of no similar requirements for Taiwan carriers in the U.S. Taiwan carriers do not appear to be prohibited from operating shipping agency services in the U.S. nor do there appear to be application and approval processes which burden applicants with unreasonable requirements.

Conclusion

The restrictions on the shipping operations of U.S. carriers in Taiwan which are placed in issue in this proceeding have been the subject of attention for some time. Despite expectations raised with respect to certain of the issues in maritime discussions, there appears to have been little significant progress. Thus with respect to truck licensing, Taiwan authorities had provided assurances during the April 6–7, 1987 maritime discussions that legislative changes in the Highway Law would be sought. To date, however, no such action has been taken.. Similarly, there have been recent indications that the chassis registration restrictions would be removed but no action has been taken as of this date. On the other issues of container use and shipping agency and off-dock container licensing, administrative policies appear to raise significant barriers to participation by U.S. carriers. Investigation of each of these issues is warranted.

Proceedings under the Foreign Shipping Practices Act are conducted within the framework of statutorily-imposed deadlines. Once initiated, the Commission must complete an investigation and render a decision within 120 days unless certain factors warrant a 90-day extension. The investigation will therefore be structured in terms of two rounds of simultaneous submissions by all parties. Thus there will be an initial filing and a reply filing. Moreover, the proceeding will be conducted on the basis of written submissions only without oral hearings and without discovery. Any motions filed will not alter the deadlines established in the procedural schedule. The Commission may, in its discretion, not rule on such motions until its final order.

Any persons seeking to intervene must file their submission in accordance with the procedural schedule. Moreover, any person interested in participating as an intervenor should file a notice of intention to intervene with the Commission's Secretary and serve such notice on all parties. The purpose of this notice is to ensure that intervenors will be served by all participating parties. The filing of a notice of intention to intervene, however, does not obligate a party to subsequently file a written submission.

Now therefore, pursuant to section 10002(b) of the Foreign Shipping Practices Act of 1988, the Commission hereby conditions adversely affecting U.S. carriers exist in Taiwan that do not exist for Taiwan carriers in the United States/Taiwan trade and if such adverse conditions are found to exist, what shall be determined to be an appropriate remedy or remedies. More specifically this investigation focuses on the following issues:

(1) Whether Taiwan laws, rules, regulations, policies, or practices prevent United States carriers from conducting off-dock container terminal operations in Taiwan and adversely affect the operations of United States carriers, and whether such restrictions do not exist for Taiwan carriers in the United States;

(2) Whether Taiwan laws, rules, regulations, policies, or practices prevent United States carriers from conducting trucking operations in Taiwan, including licensing, chassis registration, and use of containers, and adversely affect the operations of United States carriers, and whether such restrictions do not exist for Taiwan carriers in the United States; and

(3) Whether Taiwan laws, rules, regulations, policies, or practices prevent United States carriers from conducting shipping agency operations in Taiwan, including obtaining a shipping agency license, and adversely affect the operations of United States carriers, and whether such restrictions do not exist for Taiwan carriers in the United States.

It is further ordered, That Evergreen International (USA) Corporation and Yang Ming Line are each named Respondents in this proceeding;

It is further ordered, That American President Lines, Ltd. and Sea-Land Service, Inc. are each named United States Carrier Parties in this proceeding;

It is further ordered, That the Commission's Bureau of Hearing Counsel is made a party to this proceeding;

It is further ordered, That any person interested in participating in this proceeding shall file a notice of intention to participate as an intervenor with the Commission's Secretary by August 10, 1989;

It is further ordered, That any interested person may participate in this proceeding in accordance with the filing schedule set forth below;

It is further ordered, That this proceeding is limited to the submission of affidavits of fact and memoranda of law;

It is further ordered, That this Notice and Order of Investigation be published in the **Federal Register**, and that a copy thereof be served upon Respondents;

It is further ordered, That this proceeding shall be conducted in accordance with the Commission's Rules in 46 CFR Part 588;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, as well as being mailed directly to all parties of record;

It is further ordered, That all initial affidavits and memoranda of law shall be filed no later than August 30, 1989;

It is further ordered, That all reply affidavits and memoranda of law shall be filed no later than September 19, 1989; and

Finally, it is ordered, That pursuant to the terms of the Foreign Shipping Practices Act and the Commission's Rules, the final decision of the Commission in this proceeding shall be issued by November 17, 1989.

BEST COPY AVAILABLE

By the Commission.

Ronald D. Murphy,

Assistant Secretary.

Service List for Docket No. 89-16

Mr. Timothy J. Rhein, President, American President Lines, Ltd., 1800 Harrison Street, Oakland, CA 94612.

Mr. Alex Mandl, Chairman and Chief Executive Officer, Sea-Land Service, Inc., P.O. Box 800, Iselin, NJ 08830.

Mr. Richard Huang, President, Evergreen International (USA) Corporation, One Evertrust Plaza, Jersey City, NJ 07302.

Yang Ming Line, c/o Mr. James Liu, President, Solar International Shipping Agency, Inc., Two World Trade Center, Suite 2260, New York, NY 10048.

Mr. Seymour Glanzer, Director, Bureau of Hearing Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573.

[FR Doc. 89-17144 Filed 7-20-89; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

Consortium of Federal, Academic, and Industry Logistics Experts

Notice is hereby given that the Consortium of Federal, Academic, and Industry Logistics Experts will meet August 16, 1989, from 10:00 am to 12:00 noon in Crystal Mall Building 4, Room 1129, Arlington, Virginia. Notice is required by the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the implementing regulation, 41 CFR Part 101-6.

The purpose of the meeting is to provide a forum for discussion of logistics issues. The agenda for the meeting will include an update of fiscal year 1989 agenda topics, a report on NASA Disposal System, Material Safety Data Sheets, Freight Transportation Management Practices (FSS), plus a presentation by Dr. V.C. Sequin, James Madison University.

The meeting will be open to the public.

For further information contact Mr. William B. Foote, Assistant Commissioner for Customer Service and Marketing, GSA/FSS, Washington, DC 20406, telephone (703) 557-7970.

Dated: July 13, 1989.

Donald C.J. Gray,

Commissioner, Federal Supply Service, GSA.

[FR Doc. 89-17148 Filed 7-20-89; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Program Announcement No. 945]

Studies of Non-AIDS Human Retroviruses in Endemic Areas

Introduction: The Centers for Disease Control (CDC) announces that applications are being accepted for cooperative agreements to conduct epidemiologic research of non-AIDS human retroviruses (human T lymphotropic virus types I and II—HTLV-I/II) in endemic areas.

Authority: This program is authorized under sections 301(a) and 317(k)(3) of the Public Health Service Act (42 U.S.C. 241 and 247b), as amended. Regulations are set forth in 42 CFR Part 52, entitled "Grants for Research Projects."

Eligible Applicants: Eligible applicants are official public health agencies of State and local governments, including the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Federated States of Micronesia, Guam, the Marshall Islands, the Northern Marianna Islands, the Republic of Palau, and the Virgin Islands, and other public, nonprofit, and for-profit organizations. Foreign applicants are encouraged to apply; however, they must meet the requirements outlined in the area entitled Recipient Activities and be governed by the policies and procedures in accordance with Grants Administration Manual part 709. Applicants for this project must have access to general populations that have been shown to have significant seroprevalence rates (at least 3-5%) for HTLV-I/II.

Availability of Funds: Approximately $100,000 will be available in Fiscal Year 1989 to fund one or two cooperative agreements. It is expected that the cooperative agreement(s) will begin on or about September 30, 1989, for a 12-month budget period within a 1 to 3 year project period.

These funds may be used for the costs associated with interviewing and performing appropriate physical examinations on individuals to be sampled in the target population, and for obtaining, processing, storing, and transporting blood specimens obtained from these individuals. Under Section 317 of the Public Health Service Act as amended, direct assistance may be requested by State agencies in lieu of cash. Funds may not be used to support programs unrelated to the requirements of the project.

Purpose: The purpose of this program is 1) to provide assistance in investigating the prevalence of and risk factors for HTLV-I/II infection and the incidence/prevalence of HTLV-I/II-associated diseases in well-defined general populations in which the virus(es) appear to be endemic; 2) to conduct specific studies concerning modes of transmission of HTLV-I/II, and 3) to characterize the endemic viruses by special studies in the laboratory.

Program Requirements

1. Recipient Activities

a. Identify a general population in which HTLV-I/II infection is endemic (seroprevalence at least 3-5%).

b. Have access to the target population and demonstrate the ability to recruit study subjects for research.

c. Develop a protocol to study the epidemiology of HTLV-I/II infection in the target population. Attention will be given to adequate and appropriate sampling of the target population; development of an interview/questionnaire/physical examination to collect demographic and epidemiologic information and to ascertain the presence of HTLV-I/II-associated diseases; and to the collection, processing, storing, and transporting of appropriate blood specimens. For special studies concerning modes of transmission of HTLV-I/II, attention will be given to formulation of study hypotheses and appropriate study design.

Projects funded through this cooperative agreement that involve collection of information from ten or more individuals will be subject to review under the Paperwork Reduction Act.

d. Identify the appropriate resources needed to implement the study.

e. Collaborate with the CDC Project Officer in data analysis and publication of results.

2. Centers for Disease Control Activities

a. Provide current scientific information regarding HTLV-I/II infection, and disease associations.

b. Through site visits, provide consultation and technical assistance in the planning, implementation, and evaluation of the epidemiologic studies.

c. Perform laboratory studies, including serology for HTLV-I/II, polymerase chain reaction (PCR) and virus isolation.

d. Provide assistance in data management/analysis and collaborate in publication of results.

Evaluation Criteria: Review of the applications will be conducted in accordance with PHS Grants Administration Manual part 134,. Objective Review of Grant Applications. Applications will be reviewed and evaluated based on the information submitted which specifically describes the applicant's abilities to meet the criteria below:

1. The uniqueness of the study population and the extent to which the applicant has documented that HTLV-I/II is endemic in that population. (25%)

2. The extent to which the applicant has the organizational structure, administrative support, and accessibility to an adequate target population. (15%)

3. The technical quality of the proposal including scientific quality/soundness of the study protocol; overall quality of the plan for conducting the proposed activities; the extent to which the methods, strategies, and activities proposed are operationally and financially feasible; and the degree to which objectives are presented that are consistent with the purposes of the project and are specific, attainable, measurable, and time-phased. (45%)

4. The qualifications and experience of the personnel who will carry out the proposed activities. (15%)

5. The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds. (Not scored)

E.O. 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 13.283.

Applications Submission and Deadline

The original and two copies of the application (PHS Form 5161-1 Revised 3/89) must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 415, Atlanta, GA 30305, on or before August 21, 1989.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or,

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures, and an application package may be obtained from Donna Rushin, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 415, Atlanta, GA 30305 (404) 842-6799 or FTS 236-6799.

Please refer to Announcement Number 945 when requesting information and submitting any application on the Request for Assistance.

Technical assistance may be obtained from Jonathan E. Kaplan, M.D., Retrovirus Diseases Branch, Division of Viral Diseases, Center for Infectious Diseases, Centers for Disease Control, Bldg 6, Rm 127, Atlanta, GA 30333, (404) 639-1338 or FTS 236-1338.

Dated: July 14, 1989.

Robert L. Foster,

Acting Director, Office of Program Support Centers for Disease Control.

[FR Doc. 89-17109 Filed 7-20-89; 8:45 am]

BILLING CODE 4160-18-M

[Announcement No. 944]

Availability of Funds for Fiscal Year 1989 Cooperative Agreements To Support State Pregnancy Nutrition Surveillance

Introduction

The Centers for Disease Control (CDC) announces that cooperative agreement applications are to be accepted from eligible applicants for implementing the enhanced Pregnancy Nutrition Surveillance System (PNSS). The development and implementation of this strategy will enable the States, with assistance from CDC, to monitor trends in pregnancy risks and outcomes in the low-income subpopulation.

Authority

This program is authorized under Section 317(k)(3) and section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended.

Eligible Applicants

Because the intent of this cooperative agreement is to develop State capacity to conduct program-based pregnancy nutrition surveillance, eligible applicants are restricted to the official public health agencies of States, the District of Columbia, federally-recognized Indian tribes, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, and the Republic of Palau that have not received prior funding for this project. No other applications will be accepted.

Availability of Funds

Approximately $345,000 is available in Fiscal Year 1989 to fund up to 10 awards. It is expected that the average award will be $35,000, ranging from $30,000 to $50,000. Funding estimates may vary and are subject to change. It is expected that the awards will begin on or about September 30, 1989, and will be made for a 12-month budget period within a 2-year project period. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

CDC proposes to assist States in developing program-based pregnancy surveillance through the enhanced Pregnancy Nutrition Surveillance System (PNSS). PNSS will support new State efforts to initiate this enhanced system. Nutritional and behavioral risk factor data will be collected on women enrolled in the Special Supplemental Food Program for Women, Infants, and Children (WIC), Maternal and Child Health Programs (MCH), and in other publicly supported prenatal care programs. PNSS data can provide States with prevalence estimates of nutritional and behavioral risk factors as well as alert States to any health care access problems among the populations served. Programs can utilize PNSS data to evaluate the effectiveness of interventions designed to reduce specific risk factors among high-risk, low-income women. Additionally, through linkage of PNSS records with birth certificates and other vital data, it may be possible to evaluate both the coverage and targeting of those programs designed to serve high-risk, low-income women and their infants. CDC will cooperate with States in carrying out these surveillance activities. In addition, the Office of Maternal and Child Health, Health

Resources and Services Administration, will collaborate with CDC and the States in facilitating the effective utilization of these data for prenatal program development and evaluation.

It is anticipated that PNSS will become an ongoing State surveillance system, with an increased number of States participating over time. Eventual coverage would include all States and territories.

The purposes of these Cooperative Agreements are to:

1. Promote the development and use of standardized pregnancy surveillance methods in support of State MCH and WIC program efforts to reduce pregnancy-related health risks and adverse pregnancy outcomes.

2. Assist States in monitoring trends in the prevalence of prenatal and early infancy risk factors, which are major predictors of low birthweight and infant mortality, and in linking these risk factors to the incidence of adverse pregnancy outcomes.

3. Provide information needed by the States to assess coverage, targeting, and effectiveness of prenatal and early infancy programs; to redirect health care services accordingly; and to evaluate the extent to which service redirections result in improved health outcomes.

Program Requirements

A. Recipient Activities

1. Identify and describe public health programs, such as WIC, that have the capability of providing statewide data on pregnant and postpartum women.

2. Develop, in collaboration with CDC, a data collection system for PNSS, including the flow, editing, analysis, and application of data and the design and field test of a data collection tool in appropriate programs.

3. In accordance with guidelines to be provided by CDC, collect clinical and program data on risk factors associated with poor pregnancy outcome among high-risk population (e.g., tobacco use, weight gain, socioeconomic indicators, trimester of first prenatal visit, alcohol use, etc.).

4. Plan and implement procedures for assuring the completeness and quality of the data, including personnel training and data editing.

5. Coordinate the surveillance system with various organizational units in the agency to assure consistency and comparability in the data that is collected.

6. With technical assistance and/or provision of software from CDC, produce a clean, edited tape for analysis that includes the specified maternal and postpartum data.

7. Develop and implement a plan for the analysis and use of surveillance data in appropriate prevention and intervention programs to reduce the prevalence of risk factors associated with low birthweight outcomes.

8. Prepare and disseminate surveillance information, in collaboration with CDC, through presentation and publication in appropriate forums.

9. Propose an evaluation strategy and collaborate with CDC to assess the effectiveness and efficiency of the surveillance system to monitor the health risks of the high-risk prenatal population.

10. Describe potential plans, or the feasibility and capability, for linking of the prenatal information with birth certificates and the general plan for using such information.

B. CDC Activities

1. Collaborate in the design of standardized data items, definitions, procedures, and methods to collect the desired surveillance information. Projects funded through this cooperative agreement that involve collection of information from ten or more individuals will be subject to review under the Paperwork Reduction Act.

2. Provide training in the appropriate skills to develop, manage, and implement the surveillance project.

3. Coordinate all facets of project activities with participating States and with appropriate CDC staff and consultants.

4. Provide technical support for data processing or assist State participants in developing appropriate data-processing capabilities.

5. Assist States to analyze, interpret, and utilize the surveillance data to improve the coverage, targeting, and effectiveness of State interventions toward reducing pregnancy-related health risks.

6. Collaborate with the recipients in preparing and presenting program-relevant surveillance findings to appropriate State and national audiences.

7. Collaborate with the recipient to evaluate the effectiveness and efficiency of the surveillance system to monitor and intervene upon the health risks of high-risk prenatal populations.

Evaluation Criteria

Review of the applications for the Pregnancy Nutrition Surveillance System will be evaluated and priorities for funding based on the following factors and point system:

A. Project Design (60 points)

1. The applicant's understanding of what surveillance data will be needed and how they will be used in evaluating and planning pregnancy risk-reduction activities.

2. The adequacy of describing characteristics of the target population, participating programs and clinics, and, if relevant, the existing or planned health information data collection system into which PNSS will be incorporated (e.g., WIC certification data system).

3. The adequacy of procedures for selecting the target population, the extent to which information will be collected on the initial prenatal and subsequent postpartum visit, and the ability to consolidate information collected into a single record for analysis.

4. The availability of Statewide data, such as 100 percent of all clinics of the WIC Program and, where feasible, including multiple program sources of data (e.g., WIC, prenatal clinics, Medicaid).

5. The specificity with which the roles and responsibilities of participating units of the State health department are described in relationship to: Project management; design of instruments; data collection, analysis, interpretation and dissemination; and enlisting the support of local health departments/agencies.

6. The adequacy of proposed data management procedures to assure data quality (e.g., ensuring data completeness, training of personnel, validating the quality of data, data entry, and editing).

7. The adequacy of procedures for designing, implementing, and debugging the surveillance system. This includes the feasibility of the proposed time schedule for designing, pretesting, and evaluating the surveillance system within the first year.

8. The adequacy of the applicant's plans to analyze the data on a timely basis and to share the data with CDC for providing national estimates.

9. The adequacy of the applicant's plans to apply surveillance findings to the planning and evaluation of intervention activities.

10. The appropriateness of goals and objectives as well as timeliness stated in the overall plan.

11. The appropriateness of the proposed budget to the stated activities.

B. Capability (25 points)

1. The extent and appropriations of previous efforts to monitor health risks of prenatal, pediatric and other high risk populations which utilized similar systems and data collection methods, such as the Pregnancy Risk Assessment Monitoring System (PRAMS), the Pediatric Nutrition Surveillance System (PedNSS), or other Statewide surveillance systems.

2. The evidence of strong working relationships with the organizational entities involved with this project.

3. The experience of the proposed project staff in developing and implementing similar surveillance systems, as well as in analyzing data and using findings in evaluating and planning program activities.

4. The qualifications and time allocations of key staff and the availability of equipment and facilities to be used during the project.

C. Commitment (10 points)

1. An organizational alignment conducive to accomplishing the stated objectives, including written commitments from the appropriate organizational entities responsible for MCH and WIC activities, State vital records, State data processing, and other organizational units that would be expected to support activities related to the surveillance system.

2. Evidence of intent to expand and refine the system and to assume the costs of the program in the future.

D. Potential for Public Health Impact (5 points)

1. Evidence that the State has a high rate of nutrition and behavioral health risks associated with low birthweight and infant mortality.

2. Evidence of State health department plans to improve the outcome of pregnancy through intervention programs to reduce risk factors occurring during pregnancy, and of the State health department's ability to develop, implement, evaluate, and use surveillance activities to support effective program interventions.

E.O. 12372 Review

Applications are not subject to review as governed by Executive Order 12372, entitled "Intergovernmental Review of Federal Programs."

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 13.283.

Application Submission and Deadline

The original and two copies of the application must be submitted to Candice Nowicki, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305 on or before July 28, 1989.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely application.

2. Late Application: Applications that do not meet the criteria in 1. a or b above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, and an application package may be obtained from Carole J. Tully, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, (404) 842-6511 or FTS 236-6511.

Please refer to Announcement Number 944 when requesting information and submitting an application.

Technical assistance may be obtained from Colette Zyrkowski, Division of Nutrition, Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Mail Stop A-42, 1600 Clifton Road, NE., Atlanta, Georgia 30333, (404) 639-3075 or FTS 236-3075.

Dated: July 17, 1989.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 89-17108 Filed 7-20-89; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 89N-0305]

Animal Drug Export; Tilmicosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: TheFood and Drug Administration (FDA) is announcing that Elanco Products Co., Division of Eli Lilly & Co., has filed an application requesting approval for export to Canada of the animal drug tilmicosin.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any furture inquiries concerning the export of animal drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Beverly E. Bartolomeo, Center for Veterinary Medicine (HFV-142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2855.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Elanco Products Co., Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, has filed an application requesting approval for export to Canada of the animal drug tilmicosin. The drug is intended for the treatment of bovine respiratory disease caused by organisms sensitive to tilmicosin.

The application was received and filed in the Center for Veterinary Medicine on July 10, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions

may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by July 31, 1989, and to provide an additional copy of the submission directly to the countact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.44).

Dated: July 17, 1989.

Robert C. Livingston,

Deputy Director, Office of New Animal Drug Evaluation Center for Veterinary Medicine.

[FR Doc. 89-17115 Filed 7-20-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89P-0222]

Liquid Eggs Deviating From the Standard of Identity; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Crystal Foods, Inc., to market test experimental packs of liquid eggs, designated as "ultrapasteurized liquid whole eggs" and "ultrapasteurized liquid whole eggs with citric acid," products that are not provided for by the U.S. standard of identity for liquid eggs (21 CFR 160.115). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product, identify mass production problems, and assess commercial feasibility.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than October 19, 1989.

FOR FURTHER INFORMATION CONTACT: Joanne Travers, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0324.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Crystal Foods, Inc., 6465 Wayzata Blvd., Minneapolis, MN 55426.

The permit covers interstate marketing tests of liquid whole eggs and liquid whole eggs with citric acid. The test products deviate from the U.S. standard of identify in § 160.115 (21 CFR 160.115) because they are processed by a special procedure that involves increased heat treatment combined with aseptic processing and packaging. The purpose of the special process is to (1) render the eggs products free of *Salmonella* and *Listeria monocytogenes*, (2) substantially reduce the number of spoilage bacteria in the liquid whole eggs and liquid whole eggs with citric acid, (3) prevent postprocess contamination of the products, and (4) obtain a shelf life greater than four weeks under refrigeration. Citric acid is added at a level of 0.15 percent to preserve color.

The products will be identified as "ultrapasteurized liquid whole eggs" or "ultrapasteurized liquid whole eggs with citric acid." The package labeling will declare the term "keep refrigerated" and will include a "use by date" statement to indicate extended shelf life under refrigeration.

The permit provides for the temporary marketing of a total of 200 million pounds of the egg products to be packaged in 2.2-and 5-pound-size packages. The test products will be produced and packaged at Crystal Foods, Inc., Gaylord, MN 55334, and will be distributed throughout the continental United States.

Each of the ingredients used in the food will be stated on the label as required by the applicable sections of 21 CFR Part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than October 19, 1989.

Dated: July 14, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-17116 Filed 7-20-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89N-0227]

Health Omnibus Extension Act; Establishment of Clinical Trial Data Bank

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the establishment of a Data Bank of information on clinical trials related to Human Immunodeficiency Virus (HIV), the etiological agent for Acquired Immune Deficiency Syndrome (AIDS). This Data Bank was established pursuant to the Health Omnibus Programs Extension Act of 1988, enacted on November 4, 1988, which requires that sponsors of clinical trials submit information to the Data Bank when a trial to test efficacy begins. FDA is also announcing its interpretation of when a trial to test efficacy begins for the purpose of determining when a sponsor must submit certain information to the Data Bank. Sponsors may also voluntarily submit information to the Data Bank earlier in the clinical development process. The information in this Data Bank became available to the public through this computerized system on July 17, 1989.

DATE: The Data Bank was established on July 17, 1989.

ADDRESSES: For the submission of information for the Data Bank contact: Janet B. Arrowsmith, FDA AIDS Coordination Staff, Food and Drug Administration (HFB-5), 5600 Fishers Lane, Rockville, MD 20857; 301-443-0104.

To access the information in the Data Bank by telephone: 1-800-TRIALS-A (1-800-874-2572).

For information on accessing the information in the Data Bank by computer, or to request an application packet, telephone the MEDLARS Management Section at the National Library of Medicine (NLM), at 1-800-638-8480, or 1-301-496-6193 in Maryland. For current users of NLM's computer system, no additional application is needed; access the data base by entering: File AIDSTRIALS.

FOR FURTHER INFORMATION CONTACT: *Regarding the collection of information for the Data Bank:* Janet B. Arrowsmith, FDA AIDS Coordination Staff (HFB-5), Food and Drug Administration, Rm. 12A-40, 5600 Fishers Lane, Rockville, MD 20857, 301-443-0104.

For information regarding this notice: Andrea Chamblee, Center for Biologics Evaluation and Research (HFB-130), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-295-8188.

SUPPLEMENTARY INFORMATION:

Introduction

The Health Omnibus Programs Extension Act of 1988 (the Act) Pub. L. 100-607) was enacted on November 4 1988. The new Act contains amendments to the Public Health Service (PHS) Act. New section 2317 of the PHS Act specifies that the Secretary of Health and Human Services shall establish a program of information services to disseminate information on research, treatment, and prevention of HIV. The program is to be coordinated and integrated among the agencies in the Department of Health and Human Services. The Act provides that certain information on AIDS-related clinical trials be made available to the public through a Data Bank of information on clinical trials with respect to infection with HIV, the etiologic agent for AIDS (42 U.S.C. 300cc-17(d)). The Data Bank is a central resource providing current information on clinical trials to persons infected with HIV, health care providers, researchers, and other members of the public. In particular, the Data Bank contains a list of clinical trials of experimental treatments for AIDS and related illnesses, a description of the purpose of the experimental drug protocol, eligibility criteria for patients, and the location of clinical trial sites. The Data Bank will be available through a free telephone hotline with trained operators responding to callers (1-800-TRIALS-A). This Data Bank expands upon information regarding Federally-sponsored AIDS-related clinical trials made available by the National Institutes of Health's Institute for Allergy and Infectious Diseases (NIAID). Later this summer, the information will also be available through a directly accessible online data base on the NLM computer system. This service is a PHS project sponsored by FDA and NIAID, in cooperation with the Centers for Disease Control.

Prior to passage of this new legislation, information about investigational drugs was considered confidential unless the sponsor of the drug agreed to disclosure of the information (21 CFR 312.130(a) and 601.50). The new Act requires the release of specified information regarding HIV-related clinical trials conducted under FDA's investigational new drug (IND) regulations (21 CFR Part 312), including information about trials begun before enactment of the new Act.

Access to the Data Bank

The information in the Data Bank became available to the public through this computerized system on July 17, 1989. Experienced health information specialists, contacted at the toll-free number, can provide callers with free information on AIDS and AIDS-related clinical trials currently underway. The information used by the information specialists is updated every week. Callers can receive this information immediately over the telephone; or, upon request, callers can also obtain a free printout of a custom search of the clinical trials data base. The printout will be mailed in an envelope marked only with a return post office box, city, and state.

The information in the Data Bank will also be available as the Aids Clinical Trials data base (called AIDSTRIALS) to subscribers of the NLM computer system later this summer. The charge for the use of this system, provided in cooperation with NLM, will range from approximately $17 to $25 per hour, depending on the time of day. The system will be available 24 hours per day, 7 days per week except for a brief daily maintenance period. Users will be able to access the system with a terminal or a computer with a modem. The search results may be obtained directly by use of a printer attached to the terminal or computer, or by requesting that the search results be mailed to them. The printout will be delivered in an envelope marked with NLM's return address. For information about the NLM system, or to obtain an application with an access code, call NLM's MEDLARS Management Section at 1-800-638-8480, or 1-301-496-6193 in Maryland.

Obligations of IND Sponsors

On March 1, 1989, and April 24, 1989, FDA sent letters to sponsors who hold applications (IND's) for products related to the prevention and treatment of HIV infection. The letters informed sponsors of the requirement that they submit specific information concerning these clinical trials to the Data Bank. FDA is issuing this notice in part to advise those who did not receive either of these letters, such as potential sponsors of AIDS-related clinical trials, of the requirements of the new Act. These two letters are available for public inspection between the hours of 9 a.m. and 4 p.m. at the Dockets Management Branch, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20852.

The new Act requires that sponsors submit information to the Data Bank on the purpose of each experimental protocol to be listed in the registry, the eligibility criteria and the location of clinical trial sites. The information must be forwarded to the Data Bank within 21 days after the start of a trial to test efficacy. FDA is encouraging sponsors to voluntarily submit information to the Data Bank earlier in the clinical development process. Both the information released voluntarily and the information required by the new Act should be submitted to the FDA AIDS Coordination Staff at the address above. A copy of the information should be submitted to the sponsor's IND file at the same time.

The Data Bank will include the following information: the name of the drug; the name and address of the sponsor; a contact person and telephone number; the protocol title; the purpose of the protocol; the eligibility criteria; the trial sites; and whether the trial is currently enrolling patients. In addition, if a sponsor chooses to release additional information such as the trial's duration, need for inpatient hospitalization, and expected patient accrual, such additional information may be accommodated by the Data Bank. Sponsors may also release the name, address, and telephone number of the investigators at each of the trial sites.

The new Act also specifies that the Data Bank include information regarding HIV-related treatments available under an IND application for a treatment use. If a sponsor consents, the Data Bank shall include additional information on the results of clinical trials of such treatments, including information concerning toxicities or adverse effects associated with the use or administration of such treatments. FDA will discuss the information to be included in the Data Bank with the sponsor at the time of treatment IND approval.

FDA has recently reviewed all protocols of clinical trials for AIDS-related illnesses to determine which protocols meet the criteria for a trial for efficacy. For each identified AIDS-related protocol, FDA requested the sponsor to identify an employee (an FDA AIDS liaison) as liaison to the FDA AIDS Coordination Staff. The sponsor should also designate an employee (either the FDA AIDS liaison or another employee) to respond to inquiries from the public (such as consumers, health care providers, and researchers) regarding the information included in the Data Bank.

Definition of an Efficacy Trial

The sponsor may consent to list information in the Data Bank on clinical trials conducted under an AIDS-related IND by contacting the FDA AIDS Coordination Staff at the address above. When a sponsor has not consented to list a particular trial, the information on that trial must nevertheless be listed with FDA determines a trial to test efficacy has begun. Because not all trials conducted pursuant to 21 CFR Part 312 are trials to test efficacy, FDA has developed a statement of policy for guidance in determining which trials are

"efficacy trials" under the Health Omnibus Programs Extension Act.

FDA will consider a trial to be a trial to test efficacy if the trial is not on clinical hold and is:

1. A trial identified in an End-of-Phase I Conference, as defined in 21 CFR 312.82(b) (see 53 FR 41516; October 21, 1988) or in an End-of-Phase 2 Conference (21 CFR 312.47(b)(1)) as one whose design is such that it could be considered adequate and well controlled, and which, alone or in conjunction with other studies or data, may be used in support of product approval, or

2. a. A trial in which the end points for analysis are ones that are generally accepted as demonstrating effectiveness, and that may be sufficient to demonstrate clinical benefit, alone or in conjunction with data from other sources, and

b. The trial is one whose design is such that it could be considered adequate and well controlled, and

c. The trial is one that initially appears to be of a sufficient size to support a claim of efficacy.

The determination to list a trial in the Data Base is not a guarantee that the trial design will be considered adequate to support approval of a drug, nor does the determination reflect any judgment on the adequacy of the conduct, analysis, or outcome of the study.

Dated: July 15, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89-17117 Filed 7-20-89; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Cancer Institute; Amended Meeting

Notice is hereby given to amend the meeting notice for the meeting of the National Committee to Review Current Procedures for Approval of New Drugs for Cancer and AIDS which was published in the **Federal Register** (52 FR 11447) on March 20, 1989.

The meeting of September 13 originally scheduled in Wilson Hall, Building 1, will now be held in Conference Room E, 3rd Floor, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m.

Dr. Elliott H. Stonehill, Assistant Director, National Cancer Institute, 9000 Rockville Pike, Building 31, Room 11A29, National Institutes of Health, Bethesda, Maryland 20892 (301/496-1148) will provide agenda details, transcripts or summaries of the meetings and rosters of the Committee members upon request.

Dated: July 13, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-17085 Filed 7-20-89; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting of Board of Scientific Counselors, Division of Cancer Prevention and Control

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, October 12-13, 1989, Building 31, "C" Wing, 6th Floor, Conference Room 6, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public on October 12 from 8:30 a.m. to recess and on October 13 from 8:30 a.m. to adjournment to discuss administrative details and for the discussion and review of concepts and programs within the Division. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892-3100 (301/496-5708) will provide a summary of the meeting and a roster of committee members, upon request.

Other information pertaining to this meeting can be obtained from the Executive Secretary, Linda M. Bremerman, National Cancer Institute, Executive Plaza-North, Room 318, National Institutes of Health, Bethesda, Maryland 20892 (301-496-8526), upon request.

Dated: July 13, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-17086 Filed 7-20-89; 8:45 am]

BILLING CODE 4140-01-M

Office of Human Development Services

Agency Information Collection Under the Office of Management and Budget OMB Review

AGENCY: Office of Human Development Services, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Office of Human Development Services (OHDS) has submitted to the Office of Management and Budget (OMB) a request for an information collection approval for individualized habilitation plans for developmentally disabled individuals under the Developmental Disabilities Assistance and Bill of Rights Act.

ADDRESSES: Copies of the information collection request may be obtained from Larry Guerrero, OHDS Reports Clearance Officer, by calling (202) 245-6275.

Written comments and questions regarding the requested approval for information collection should be sent directly to Justin Kopca, OMB Desk Officer for OHDS, OMB Reports Management Branch, New Executive Office Building, Room 3208, 725 17th Street, NW., Washington, DC 20503, (202) 395-7316.

Information on Document

Title: Individualized Habilitation Plan

OMB No: 0980-0139

Description: Section 123 of the Developmental Disabilities Assistance and Bill of Rights Act states that the Secretary shall require, as a condition of receiving a State grant under Part B of the Act, that the State must have in effect for each person with developmental disabilities who receives services under the Act, a habilitation plan.

Annual Number of Respondents: 60,000

Annual Frequency: 1

Average Burden Hours Per Response: 8

Total Burden Hours: 480,000

Dated: July 17, 1989.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

[FR Doc. 89-17123 Filed 7-20-89; 8:45 am]

BILLING CODE 4130-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on Friday, July 7, 1989.

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

1. Good Manufacturing Practice Regulations for Medicated Feeds—0910-0152—Medicated feeds are given to food producing animals for disease prevention, treatment, and to improve productive performance. Compliance with Good Manufacturing Practices (GMP's) provides assurance that feeds will be safe, effective, and not cause unsafe residues in the edible products of treated animals. *Respondents:* Farms, businesses or other for-profit, small businesses or organizations. *Number of Respondents:* 28,500; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 18.18 hours; *Estimated Annual Burden:* 518,165 hours.

2. Reporting and Recordkeeping Requirements for Low-Acid and Acidified Canned Food Processors, 21 CFR Parts 108, 113, and 114—0910-0036—Under the Food, Drug and Cosmetic Act, FDA is charged with prevention of interstate distribution of food which is potentially hazardous to the public health. The information to be recorded is essential to provide assurance that every container of low-acid and acidified food receives a process which renders the food safe from micro-organisms of public health concerns. *Respondents:* Businesses or other for-profit, small businesses or organizations.

	Number of respondents	Number of hours per response	Number of responses per respondent
Notification of spoilage process deviation/contamination 21 CFR 108.25(d) & (e)	42	.25	3
Maintenance of Records 21 CFR 108, 113, 114	4,196	250	1

Estimated Annual Burden.....1,049,032 hours

Note: Information collection burden for process filing under 21 CFR 108.35(c)(2)(ii) is separately approved under OMB No. 0910-0037.

3. Birth Defects and/or Adverse Reproductive Outcome Surveillance—0920-0010—CDC uses this surveillance of adverse pregnancy outcomes as an important tool in learning about the causes of congenital malformations and other neonatal conditions, in assessing the role played by suspected agents, and in evaluating the effectiveness of control programs for those defects and diseases for which preventive techniques are available. *Respondents:* Individuals or households. *Number of Respondents:* 1,785; *Number of Responses per Respondent:* 1.22; *Average Burden per Response:* .81 hours; *Estimated Annual Burden:* 1,769 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

James M. Friedman,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 89-17154 Filed 7-20-89; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-030-09-4322-02]

Carson City District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Mangement, Interior.

ACTION: Notice of meeting.

SUMMARY: The Carson City District Grazing Advisory Board will meet at 10:00 a.m. on Thursday, September 14, 1989 at the Carson City District Office Conference Room, 1535 Hot Springs Road, Ste #300, Carson City, Nevada.

The primary topics will be the FY 1989 Rangeland Improvement Projects, Allotment Management Plans, status of the Land Use Plans and proposed military land withdrawals.

FOR FURTHER INFORMATION CONTACT: Andy Anderson, Carson City District, Bureau of Land Management, 1535 Hot Springs Road, Ste #300, Carson City, Nevada, 89706 (702) 885-6141.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Interested persons may make oral or file written statments for the board's consideration.

James W. Elliott,

District Manager, Carson City District.

[FR Doc. 17149 Filed 7-20-89; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

Endangered Species; Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-738210

Applicant: Zoo Atlanta, Atlanta, GA.

The applicant requests a permit to import one male captive-born black rhinoceros (*Diceros bicornis*) from Zoo Dvur Kralove in Czechoslovakia for the purposes of propagation and exhibition. Zoo Atlanta possesses one female black rhinoceros.

PRT-738193

Applicant: Tracy Aviary, Salt Lake City, UT.

The applicant requests a permit to import one pair of captive-born white eared pheasants (*Crossoptilon crossoptilon*) from Harry Hardy, South View Aviaries, Burnaby, B.C. Canada, for the purposes of enhancement of propagation and survival of the species through breeding and educational display.

PRT-739431

Applicant: Chicago Zoological Park, Brookfield, IL.

The applicant requests a permit to import blood samples taken from capitive-held specimens of spider monkeys (*Ateles geoffroyi frontatus*) and (*A.G. panamensis*) from Central and South American Zoos for the purpose of scientific research.

PRT-737125

Applicant: John Sutterlin, Auburn, WA.

The applicant requests a permit to import seven capitive-born white eared pheasants (*Crossoptilon crossoptilon*) from Harry Hardy, South View Aviaries, Burnaby, B.C. Canada, for the purpose of enhancement of propagation.

PRT-739484

Applicant: Cincinnati Zoo, Cincinnati, OH.

The applicant requests a permit to import two captive-born male Temminck's golden cats) *Felis temmincki*) from the Royal Melbourne Zoological Gardens, Australia for the purposes of exhibition, education, propagation, and research.

PRT-739005.

Applicant: Duke University Primate Center, Durham, NC.

The applicant requests a permit to import 1 male and 2 female wild caught blue-eyed lemurs (*Lemur macaco*

flavifrons) for the purpose of propagation. The animals will be taken from an area threatened by slash and burn agriculture near the village of Antanandava, Madagascar.

PRT-739641

Applicant: Duke University Primate Center, Durkam, NC.

The applicant requests a permit to import 2 male and 1 female wild caught red-bellied lemurs (*Lemur rubriventer*) for the purpose of propagation. The animals will be taken from areas in Madagascar where their habitat has been disturbed.

PRT-739316

Applicant: Sparks Nugget Inc., Sparks, NV.

The applicant requests a permit to purchase in interstate commerce one female captive-bred Asian elephant (*Elephas maximus*) born 13 December 1988, from Roman P. Schmitt, Inc., Tampa, FL, for the purposes of exhibition and conservation education.

PRT-738971

Applicant: Siegfried & Roy Enterprises, Las Vegas, NV.

The applicant requests a permit to import from Japan and reexport a total of five male and one female captive-born white tigers (*Panthera tigris*) born in Japan to white tigers owned by Siegfried & Roy. The tigers will be imported and reexported several times during their lifetimes for the purpose of enhancement of the survival of the species through conservation education. This amends a previous notice of receipt of application PRT-738971 to export 3 male tigers.

PRT-739706

Applicant: Roger Bringas, Hollwood, CA.

The applicant request a permit to import 5 female and 5 male captive-born scarlet-chested parakeets (*Neophema splendida*) and 5 female and 5 male captive-born turquoise parakeets (*Neophema pulchella*) from Mr. Roger De Coppel, Belgium and Mr. Emil Antonin, West Germany for breeding purposes.

PRT-739682

Applicant: New York Blood Center, New York, NY.

The applicant requests a permit to import blood and tissue biopsy samples taken from chimpanzees (*Pan troglodytes*) being held at the Liberian Institute for Biomedical Research, Robertsfield, Liberia, for purposes of scientific research

PRT-739665

Applicant: National Zoological Park, Washington, DC.

The applicant requests a permit to import two captive-born male golden lion tamarins (*Leontopithecus rosalia*) from the Twycross Zoo, East Midland Zoological Society, Atherstone, Warwickshire, England, and reexport the tamarins to Brazil for reintroduction purposes.

PRT-739656

Applicant: Hawthorn Corporation, Grayslake, IL.

The applicant requests a permit to import two male white tigers (*Panthera tigris*) from Germany, where they were born to applicant's tigers currently touring that country. The tigers will be imported and then subsequently exported and reimported for purposes of display and breeding.

PRT-739360

Applicant: Exotic Animals, Tarzana, CA.

The applicant requests a permit to export one captive-born female white tiger (*Panthera tigris*) cub to the Bahamas for educational purposes in a magic act. During the day the tiger will be housed at the Ardastra Gardens and Zoo, Nassau, Bahamas.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 a.m. to 4:15 p.m.), Room 432, 4401 N. Fairfax Dr., Arlington, VA 22203, or by writing to the the Director, U.S. Office of Management Authority, P.O. Box 3507, Arlington, Virginia 22203-3507.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Date: July 18, 1989.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 89-17155 Filed 7-20-89; 8:45 am]

BILLING CODE 4310-55-M

Availability of Draft Recovery Plans for the Colorado Squawfish, Humpback Chub, and Bonytail Chub for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of draft recovery plans for the Colorado squawfish (*Ptychocheilus lucius*), humpback chub (*Gilacypha*), and bonytail chub (*Gila elegans*). These endangered fish species occur in the Colorado River system. The Service solicits review and comment from the public on these draft plans.

DATE: Comments on the draft recovery plans must be received on or before September 19, 1989 to receive consideration by the Service.

ADDRESS: Persons wishing to review the draft recovery plans may obtain copies by contacting: Chief, Division of Endangered Species and Environmental Contaminants (Mail Stop 60153), U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225, 303/236-7398 or (FTS) 776-7398. Written comments and materials regarding the plans should be addressed to: Chief, Division of Endangered Species and Environmental Contaminants, at the mailing address given above. Comments and materials received will be made available on request for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service's Regional Office located at 134 Union Boulevard, Suite 405, Lakewood, Colorado 80228.

FOR FURTHER INFORMATION CONTACT: Chief, Division of Endangered Species and Environmental Contaminants, at the mailing address shown above, 303/236-7398 or (FTS) 776-7398.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The original recovery plan for the Colorado squawfish was approved on March 16, 1978. The original recovery plan for the humpback chub was approved on August 22, 1979, and revised on May 15, 1984. The original recovery plan for the bonytail chub was approved on May 16, 1984. These documents were updated recently by the Colorado River Fishes Recovery Team. Drafts were sent out for technical review by species experts and revised accordingly. The humpback chub and bonytail chub plans were also reviewed by State and Federal agencies, and revised accordingly.

Recovery efforts for the Colorado squawfish will focus on maintaining naturally self-sustaining populations in the Upper Colorado River Basin in major portions of the Green, Yampa, White, and Colorado Rivers; ensuring the threat of siginficant habitat fragmentation is removed; and legally protecting essential habitats, primary migration routes, required streamflows, and necessary water quality. Recovery efforts for the humpback chub will be directed toward protecting or restoring five viable, self-sustaining populations in sections of the Little Colorado, Colorado, Yampa, and Green Rivers, and protecting these populations' habitat. Recovery efforts for the bonytail chub will concentrate first on preventing extinction in the wild, then afterwards on high priority recovery sites which may include the Green, Yampa, Colorado, and San Juan Rivers, and Lake Mohave.

Implementation of the recovery tasks identified in the recovery plans will depend upon the commitment and capability of public and private entities with the authority and resources to help these species. The Department of the Interior, Western Area Power Administration, the States of Colorado, Utah, and Wyoming, conservation organizations, and water development groups are presently committing $2.3 million/year to a 15-year "Recovery Implementation Program" that will be the primary vehicle for implementing recovery tasks for these endangered big-river fishes of the Upper Colorado River Basin. A similar cooperative interagency plan is being drafted for the endangered big-river fishes of the Lower Basin. When completed, it will be the primary mechanism for implementing the recovery plans in the Lower Basin.

Public Comments Solicited

The Service solicits written comments on the recovery plans described. All comments received by the date specified above will be considered prior to approval of these plans.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 14, 1989.

Galen L. Buterbaugh,

Regional Director.

[FR Doc. 89-17110 Filed 7-20-89; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-1; Sub 198X]

Chicago & North Western Transportation Co., Abandonment Exemption in Brown, Watonwan, and Cottonwood Counties, MN

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by Chicago and North Western Transportation Company of 11.2 miles of rail line in Brown, Watonwan, and Cottonwood Counties, MN, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on August 22, 1989. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by July 31, 1989, petitions to stay must be filed by August 7, 1989, and petitions for reconsideration must be filed by August 17, 1989. Requests for a public use condition must be filed by July 31, 1989.

ADDRESSES: Send pleadings referring to Docket No. AB-1 (Sub-No. 198X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423;

and

(2) Petitioner's representative: Mack H. Shumate, Jr., Chicago and North Western Transportation Company, One North Western Center, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245 [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD service at (202) 275-1721.)

Decided: July 14, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-17143 Filed 7-20-89; 8:45 am]

BILLING CODE 7035-01-M

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987), and final rules published in the Federal Register on December 22, 1987 (52 FR 48440-48446).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 88-95]

Russell J. Leonard; Notice of Hearing

Notice is hereby given that on September 12, 1988, the Drug Enforcement Administration, Department of Justice, issued to Russell J. Leonard, M.D., Sewanee, Tennessee, an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AL8420109, and deny any pending applications for renewal.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in

this matter will be held on Tuesday, July 18, 1989, commencing at 10:00 a.m., at the United States District Court, 800 United States Courthouse, 801 Broadway, Courtroom 874, Nashville, Tennessee.

Dated: July 12, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-17118 Filed 7-20-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-96]

Sewanee Pharmacy; Notice of Hearing

Notice is hereby given that on September 14, 1988, the Drug Enforcement Administration, Department of Justice, issued to Sewanee Pharmacy, Sewanee, Tennessee, an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, BSO473518, and deny any pending applications for renewal.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing have been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, July 18, 1989, commencing at 10:00 a.m., at the United States District Court, 800 United States Courthouse, 801 Broadway, Courtroom 874, Nashville, Tennessee.

Dated: July 12, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-17119 Filed 7-20-89; 8:45 am]

BILLING CODE 4410-09-M

Myong S. Yi, M.D.; Revocation of Registration

On June 5, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Myong S. Yi, M.D. of 581 Northrop, Las Vegas, Nevada 89119, proposing to revoke his DEA Certificate of Registration, AM1617806, and to deny any pending applications for the renewal of such registration as a practitioner under 21 U.S.C. 823(f). The proposed action was predicated on Dr. Yi's lack of authorization to handle controlled substances in the State of Nevada. 21 U.S.C. 824(a)(3).

The Order to Show Cause was sent to Dr. Yi by registered mail and was returned to DEA unclaimed with a notation that Dr. Yi had moved and left no forwarding address. Both DEA and the Nevada State Division of Investigation made numerous attempts to locate Dr. Yi, and have determined that his whereabouts are unknown. It is quite evident that Dr. Yi is no longer practicing medicine at the address listed on his DEA Certificate of Registration. The Administrator concludes that considerable effort has been made to serve Dr. Yi with the Order to Show Cause without success. Consequently, the Administrator now enters his final order in this matter based on the investigative file.

The Administrator finds that by order dated October 28, 1988, the Nevada State Board of Medical Examiners revoked Dr. Yi's license to practice medicine in the State of Nevada, thereby terminating his authority to prescribe, dispense, administer or otherwise handle controlled substances in the State of Nevada. The Administrator concludes that DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances. See 21 U.S.C. 823(f). The Administrator and his predecessors have consistently so held. See, *Clifford E. Bigott, D.M.D.*, Docket No. 88-24, 53 FR 28711 (1988); *Howard J. Reuben, M.D.*, 52 FR 8375 (1987); *Ramon Pla, M.D.*, Docket No. 86-54, 51 FR 41168 (1986); and cases cited therein.

Having considered the facts and circumstances in this matter, the Administrator concludes that Dr. Yi's DEA Certificate of Registration should be revoked due to his lack of authorization to handle controlled substances in the State of Nevada. Accordingly, the Administrator of the Drug Enforcement Administrator, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), orders that DEA Certificate of Registration, AM1617806, previously issued to Myong S. Yi, M.D., be, and it hereby is, revoked. The Administrator further orders that all pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective July 21, 1989.

John C. Lawn,

Administrator.

Dated: July 13, 1989.

[FR Doc. 89-17120 Filed 7-20-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Employment and Training Administration

Alien Labor Certification State Agency Transmittal of Application and Processing Record

1205-0182; ETA 4748; one per application.

State or local governments; Federal agencies or employees; 64,000 respondents; 19,200 total hours; 18 minutes per response; 1 form. The ETA 4748 is used by State and local employment service offices, and DOL regional offices, to facilitate case control and processing, assist in certification determinations and provide data for program MIS.

Interstate Claims Bypass Data Exchange

1205-0189, weekly; Monthly.

State or local governments; 53 respondents; 748 total hours; 16 minutes per response; no forms. The Interstate Claims Bypass Data Exchange provides for the exchange of interstate claims counts and claimant characteristics among the States. This data is necessary to the operation of the Interstate Benefit Program and is needed for the ETA 5-39, ETA 5-159 and ES 203 reports. This exchange does not involve the collection of any new data.

Signed at Washington, DC this 17th day of July, 1989.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 89-17126 Filed 7-20-89; 8:45 am]

BILLING CODE 4510-30-M

Employment and Training Administration

Job Corps Advisory Committee; Renewal

In accordance with the provisions of the Federal Advisory Committee Act, and after consultation with the General Services Administration, the Secretary has determined that renewal of the Job Corps Advisory Committee is in the public interest in connection with the performance of duties imposed on the Department.

The Committee will advise the Assistant Secretary of Labor for Employment and Training on such matters as improvements to the Job Corps performance management system and to the programmatic areas it encompasses. Secondarily, it is to advise the Department on matters pertaining to the Job Corps program performance standards. The Committee's scope of activity is consideration of and recommendations concerning all matters involved in the operation of Job Corps training centers and other closely related activities including outreach, screening, and placement functions.

The Committee shall consist of 13 members: 8 contractors who operate Job Corps Centers to represent the viewpoint of such contractors, 2 Federal Government members (one each from the Departments of Agriculture and the Interior, which also operate Job Corps Centers), 1 member of a local Private Industry Council, (PIC) to represent the viewpoint of PICs, 1 representative from a building trades training organization to represent the viewpoint of such organizations, and 1 former Job Corps participant to represent the program's trainees.

Other than the two Federal Government members, the members shall not be compensated and shall not be deemed to be employees of the United States.

The Committee will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act 15 days from the date of this publication.

Interested persons are invited to submit comments regarding the establishment of the Job Corps Advisory Committee. Such comments should be addressed to: Mr. Peter E. Rell, Director, Office of Job Corps, U.S. Department of Labor, ETA, 200 Constitution Ave., NW., Room N-4510, Washington, DC 20210. Telephone: (202) 535-0550.

Signed at Washington, DC, this 17th day of July 1989.

Elizabeth Dole,

Secretary of Labor.

[FR Doc. 89-17127 Filed 7-20-89; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL SCIENCE FOUNDATION

Meeting

The National Science Foundation announces the following meeting:

Name: DOE/NSF Nuclear Science Advisory Committee

Date and Time: August 11, 1989 from 1:00 pm to 10:00 pm; August 12, 1989 from 9:00 am to 3:00 pm

Place: Engineering Center, Room CR 1-42, The University of Colorado, Boulder, Colorado.

Type of Meeting: Open

Contact Person: Karl A. Erb, Program Director for Nuclear Physics, National Science Foundation, Washington, DC 20550, (202) 357-7993

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To advise the National Science Foundation and the Department of the Energy on scientific priorities within the field of basic nuclear science research.

Agenda: Consideration of Long Range Plan Scientific Priorities; Presentation of Charge to NSAC concerning RHIC construction within the context of the continuing DOE Program; Response to Charge

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-17009 Filed 7-20-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-271]

Vermont Yankee Nuclear Power Corp.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-28 issued to Vermont Yankee Nuclear Power Corporation (the licensee), for operation of Vermont Yankee Nuclear Power Station located in Windham County, Vermont.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would change the Technical Specifications to eliminate the present requirements to test the remaining train(s) of the ECCS and SLC systems repeatedly on a daily basis when one train has a component out of service. The licensee proposes that the ECCS and the SLC systems be deemed operable when the remaining train is tested within 24 hours and on a monthly basis thereafter, rather than on a daily basis. The licensee's application for amendment is dated December 7, 1987, with clarifying information provided July 15, 1988, and June 8, 1989.

The Need for the Proposed Action

The proposed change will contribute to an increase in the ECCS and SLC system reliability and thereby enhance safety, while reducing unnecessary wear on equipment.

Environment Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the Technical Specifications. The proposed revision would allow the licensee to eliminate the present requirements to test the remaining train(s) of ECCS and SLC systems daily when one train has a component out of service. The licensee submitted a probablistic analysis which quantified the unavailability of the subject systems, comparing the currently required test frequency with the proposed test frequency. Under the proposed test frequency, the predicted unavailability of the systems was reduced by at least a factor of 3. The staff has reviewed the licensee's analysis and has determined that it is valid and conservative. The staff concludes that this change will enhance SLC and ECCS system reliability and, therefore, does not adversely affect operation or increase the probability or consequences of accidents. No changes are being made in the types of any effluents that may be released offsite, nor should there be any increase in the allowable individual or cumulative occupational radiation exposure as a result of this proposal. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact not already considered in the NRC-approved Final Environmental Statement (FES) July 1972.

With regard to potential nonradiological impacts, the proposed change involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on January 26, 1988 (53 FR 2114).

In response to the notice of opportunity for hearing, two petitioners (the State of Vermont and the Commonwealth of Massachusetts) filed requests for a hearing and petitions to intervene. Subsequently, however, the two Intervenors and the Applicant filed a joint motion to withdraw the contention and to dismiss the proceeding.

The Atomic Safety and Licensing Board appointed to deal with the proceeding issued a Memorandum and Order dismissing the proceeding on May 23, 1989. No other request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and could result in reduced ECCS and SLS system reliability and unnecessary equipment wear.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Vermont Yankee Nuclear Power Station dated July 1972.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Findings of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environment assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated December 7, 1987 and clarifying letters dated July 15, 1988 and June 8, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the Local Public Document Room, Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Dated at Rockville, Maryland, this 17th day of July 1989.

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Director, Project Directorate I-3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-17156 Filed 7-20-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Maintenance Practices and Procedures; Meeting

The ACRS Subcommittee on Maintenance Practices and Procedures will hold a meeting on August 8, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, August 8, 1989—8:30 a.m. until 1:00 p.m.

The Subcommittee will review policy statement and draft regulatory guide.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone: 301/492-7750) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: July 17, 1989.

Gary R. Quittschreiber,

Chief Project Review Branch No. 2.

[FR Doc. 89-17165 Filed 7-20-89; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Order No. 832; Docket No. C89-3]

Complaint of Advo-System, Inc.; Order on Filing of Complaint of Advo-System, Inc.

Issued July 17, 1989.

On July 10, 1989, Advo-System, Inc. (Advo) filed a complaint pursuant to 39 U.S.C. 3662 alleging that the current classification and rates for bulk third-class regular rate local saturation mail (described by Advo at pp. 11-12 of the Complaint) do not conform to Postal Reorganization Act policies because they do not adequately reflect the low-cost and price-sensitive demand characteristics of this mail. Concurrently, Advo filed a separate but related petition for initiation of a mail classification proceeding to consider new subclasses of third-class bulk rate mail. Advo requests a Commission determination that its complaint is justified, institution of proceedings in conformity with section 3624 of the Act and issuance of a decision recommending to the Governors of the Postal Service the creation of a new subclass within third-class mail for local saturation mail, either addressed or unaddressed. In addition, Advo says the Commission should authorize and establish procedures for consideration of contract rates and take such further action as may be necessary to provide appropriate relief, including the initiation of a mail classification proceeding and a rulemaking proceeding to amend the Commission's rules of practice and procedure. Complaint at 1 and 13-14.

Basis of the complaint. Advo states that the basis of its complaint is that the existing third-class classification and rate schedules do not properly reflect "the significant cost and demand differences that exist between and among the component parts of the third-class mailstream." *Id.* at 2. In support of its position, Advo presents recent postal cost and revenue data which it says demonstrate the unfairness of the existing classification and rates, as between carrier route bulk rate regular (BRR) mail and other BRR mail (the combined categories of five-digit and basic-rate or "all other" mail), asserts that carrier route mail produces the entire BRR subclass contribution to institutional costs and further claims that a disproportionate share of the carrier route contribution comes from allegedly low-cost price-sensitive local saturation mail.

Advo says that local saturation mail differs from other mail in the BRR subclass (both non-carrier route mail and some carrier route mail) in terms of cost-causing operational needs (such as transportation and number of handlings) and intrinsic competitive market and demand characteristics. It says:

> As elements of a single subclass, these cost and demand differences are averaged together for purposes of establishing rates. The result is inequitable and economically inefficient pricing that overcharges the lowest-cost, most price-sensitive segments of the third-class mailstream and underprices the higher-cost portions of BRR mail. Accordingly, the current classification and rates for this mail violate the policies established in section 101(d), 3621, 3622(b) and 3623(c)(1) of the Postal Reorganization Act to establish fair and equitable mail classifications and rates.

Id. at 5.

Advo says the inequity of "averaged-cost pricing" is illustrated by the large cost differential that is not reflected in presort discounts and that deficiencies in the worksharing discount approach mean that the low-cost attributes of local saturation mailings cannot adequately be reflected in additional discounts of that type. *Id.* at 6-7.

Based on these assertions and data and its interpretation of the Commission's discussion of the Donnelley *et al.* carrier route subclass proposal in Docket No. R87-1, Advo claims that its local saturation subclass proposal is an appropriate (non-exclusive) remedy and satisfies the Commission's subclass criteria.

In light of Commission rule 84 (39 CFR § 3001.84), which allows thirty days for the answer to the complaint, the Postal Service's answer to the complaint is due by August 9, 1989. *It is ordered:*

(1) The Postal Service's answer to the Complaint of Advo-System, Inc. is to be filed by August 9, 1989.

(2) Stephen A. Gold, Director of the Office of the Consumer Advocate, is appointed to represent the interests of the general public.

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 89-17103 Filed 7-20-89; 8:45 am]

BILLING CODE 7715-01-M

[Docket No. MC89-1]

Advo Local Saturation Subclass Proposal; Filing of Petition of Advo-System, Inc. for Initiation of Mail Classification Proceeding to Consider New Subclasses of Third-Class Bulk Rate Mail

Issued July 17, 1989.

Notice is hereby given that on July 10, 1989, Advo-System Inc. (Advo), pursuant to § 3623 of title 39, United States Code, filed a petition with the Postal Rate Commission requesting that the Commission institute a mail classification proceeding to consider establishment of a subclass of third-class bulk rate mail for local saturation mail. The petition was filed concurrently with a Complaint of Advo-System, Inc., which has been assigned Docket No. C89-3 and is the subject of a separate Commission Notice and Order.[1]

In its petition for a mail classification proceeding, Advo specifically requests the Commission to consider and recommend (1) a subclass for addressed saturation mail, or (2) a subclass for unaddressed saturation mail. It notes that the relief it seeks is limited to the establishment of a new subclass for this mail and that the rates that would attach to the subclass could be determined in a subsequent rate proceeding.[2]

Advo's petition describes proposed eligibility criteria for both subclass alternatives; asserts (referencing its accompanying Complaint) that establishment of a new subclass for local saturation mail is consistent with the criteria of the Postal Reorganization Act and is necessary for closer alignment of classifications and rates with the cost and demand characteristics of this mail; and identifies certain additional advantages of its unaddressed subclass alternative.

A service list will be prepared for this docket. Persons wishing to be included on it should contact Charles L. Clapp, Secretary of the Commission, 1333 H Street, NW., Suite 300, Washington, DC, 20268-0001.

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[1] Advo served its petition and complaint on the Docket No. R87-1 service list.

[2] Advo states that its petition and the subclass proposal included therein, which is also a remedy set forth in its complaint, are not dependent upon a finding that the existing classification and rates do not conform to the policies of the Postal Reorganization Act. Instead, Advo maintains that the issue in the instant docket is whether the proposed subclass satisfies the statutory criteria for subclass treatment.

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 89-17104 Filed 7-20-89; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-27030; File No. SR-Phlx-89-11]

Self-Regulatory Organization; Philadelphia Stock Exchange, Inc., Order Approving Proposed Rule Change Relating To Responsibility of Specialists To Display Best Bids and Officers

On March 23, 1989, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend Phlx Options Floor Procedure Advice ("OFPA") A-1 relating to the responsibility of specialists to display the best bids and offers.

The proposed rule change was noticed in Securities Exchange Act Release No. 26900 (June 7, 1989), 54 FR 25525 (June 15, 1989). No comments were received on the proposed rule change.

Currently, pursuant to Phlx OFPA A-1, a specialist shall use due diligence to ascertain that the best bid and offer for an option on his book is displayed. A specialist also shall use due diligence to ascertain that the best bid and offer in the trading crowd is displayed, but only when requested to do so.

The proposed amendment to OFPA A-1 will require a specialist to use due diligence to ensure, rather than ascertain, that the best available bid and offer is displayed for those option series in which he is assigned. Pursuant to the proposed rule change, bids and offers are deemed available for display purposes when they are bids and offers for the specialist's own account, bids and offers on the book, and bids and offers established in the trading crowd.

The Phlx states that the proposed rule change is designed to promote fair competition among brokers and dealers and the practicability of brokers executing investors' orders in the best market by clarifying the responsibility of Exchange specialists to display the best bids and offers available on the floor, regardless of whether those bids and offers are from a member in the crowd, an order on the book, or for the specialist's own proprietary account. The Phlx also suggests that the proposed rule change will protect investors and promote the public interest by assuring that best bid and offer quotations are displayed on the options and foreign currency options floor, regardless of the source.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 and the rules and regulations thereunder. More specifically, providing that a specialist shall use due diligence to ensure that the best available bid and offer is displayed for those option series in which he is assigned, whether such bids and offers are for the specialist's own account, on the book, or established in the trading crowd, will facilitate the protection of options investors and promote the public interest by serving to ensure that investors' orders are executed at the best possible quoted price. In addition, inclusion of crowd orders in the display of the best bid and offer will provide more information to market participants off the trading floor, thereby facilitating fair and orderly options trading. Finally, obligating Exchange specialists to use due diligence to ensure, rather than ascertain, that the best available bid and offer is displayed is consistent with the specialists' marketmaking obligations under Section 11(b) of the Act.[3]

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[4] that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

Dated: July 13, 1989.

[FR Doc. 89-17091 Filed 7-20-89; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1988).

[3] 15 U.S.C. 78k(b) (1982).

[4] 15 U.S.C. 78s(b)(2) (1982).

[5] 17 CFR 200.30-3(a)(12) (1988).

[Rel. No. 34-27033; File No. SR-Phlx-89-03]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Enhancement of AUTOM

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 26, 1989, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange ("PHLX" or the "Exchange"), pursuant to Rule 19b-4, hereby submits as a proposed rule change a procedure to enhance the Exchange's Automated Opitions Market ("AUTOM") system, which is an electronic delivery system of small options orders to the PHLX trading floor, by installing an automatic execution feature on a pilot basis until June 30, 1990. Also, the Exchange proposes to make day limit orders eligible for delivery through the system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments if received on the proposed rule change. The text of these statements may be examined at the places specified in Items IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, or the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

On March 31, 1988, the Commission filed an order granting accelerated approval of SR-PHLX-88-10, a proposed rule change establihsing AUTOM on a pilot basis for market orders [1] of up to 5 contracts, all exercise prices in the near month, for 12 PHLX equity options until June 30, 1988.

On June 30, 1988, the Commission approved SR-PHLX-88-22 and authorized an expansion of AUTOM to 37 PHLX equity options and an extension of the pilot through December 31, 1988.

On December 13, 1988, the Commission approved SR-PHLX-88-33 to make orders in all exercise prices for all expiration months for the 37 options approved for the pilot eligible to be handled by AUTOM and to increase eligible order size for AUTOM to 10 contracts. At the same time, the Commission approved an extension of the pilot until June 30, 1989.

On February 3, 1989, the Commission approved SR-PHLX-89-01 to extend the AUTOM pilot until December 31, 1989 and to expand the pilot to include an additional 25 equity options, increasing to 62 the number of equity options that would be permitted to be traded in the AUTOM pilot.

[1] A market order is an order to buy or sell a stated amount of a security at the most advantageous price obtainable after the order is represented in the trading crowd.

Manual AUTOM Execution Procedures

A member organization wishing to use the AUTOM system must designate an AUTOM floor representative on the options floor, which representative is responsible for reviewing all AUTOM activity for accuracy and completeness.

Currently, all eligible orders delivered electronically to the options floor of the Exchange through AUTOM are executed manually. Every eligible order electronically delivered to the options floor through AUTOM is printed in hard copy form at the floor representative booth of the delivering member organization and show to the trading crowd on a display screen with buy/sell information omitted.[2] Simultaneously, the order is printed in hard copy form at the specialist post. The order is executed manually in accordance with the rules of the Exchange, like any other order, with interaction between all interests, including the specialist, limit order book and the trading crowd. Upon execution of the order, the contra-side(s) prepares a ticket evidencing participation in the transaction. The hard copy of the AUTOM order which is printed at the specialist post is matched with the contra-side buy/sell ticket(s) and essential trade information (*i.e.*, number of contracts, symobl, price, buyer/seller) and clearing information is entered into the Exchange's CENTRAMART system [3] for comparison and settlement purposes, which entry immediately generates a hard copy floor confirmation to the floor represenatives for the buyer and seller and also generates a report to the Options Price Reporting Authority ("OPRA"). A report of such execution is electronically returned to the delivering member organization. Finally, a report of the execution is immediately printed in hard copy form at the floor representative booth of delivering member organizations.

The AUTOM floor representative, having received a copy of the incoming order, a copy of the Exchange floor confirmation and a copy of the execution report which was sent to the member organization which delivered the order, matches the informaiton for accuracy. If the information is incorrect or deficient in any way, it is corrected.

The contra-side of the transaction matches the information contained on the contra-side ticket with the Exchange floor confirmation for accuracy. If the information is incorrect or deficient in any way, it is corrected.

Shortly after the close of trading, every member which transacted business in options during the course of the day receives a complete summary of all transactions affected as well as a record of any changes made to such information during the course of the day. All transactions are checked for accuracy by the AUTOM floor representative and contra-side against the terms of the order. If the information is incorrect or deficient in any way, it is corrected. When the check-out process has been completed, all transaction information is transmitted to the Options Clearning Corporation ("OCC") for clearance and settlement.

Automatic AUTOM Execution Procedures

The Exchange now proposes to further enhance the AUTOM system by installing an automatic execution feature for certain eligible market and marketable limit orders [4] as well as making day limit orders [5] eligible for delivery through the system. It is proposed that such automatic execution feature operate on a pilot basis for 12 PHLX equity options until June 30, 1990.

Automatic execution will apply to market orders and marketable limit orders of up to 10 contracts in at the money options, the next strike price higher and the next strike price lower (*i.e.*, three strike prices, all expirations). All other eligible market orders, marketable limit orders and day limit orders delivered to the Exchange through the AUTOM system will be executed manually.

Only single orders of up to 10 contracts will be eligible for delivery and automatic execution through the AUTOM system. For example, a retail user of the AUTOM system may not break up a 20 contract order into 2 orders for the purpose of attempting to make such order eligible for delivery through the system.

Only customer (*i.e.*, agency) orders will be eligible for automatic execution. Orders identified as "firm" or "market maker" and those identified as required to yield priority, parity and precedence pursuant to SEC rules are not eligible for automatic execution through the AUTOM system.

Market orders received by the specialist through the AUTOM system before 9:25 AM shall participate in the opening and shall be manually executed at the price of the opening sale. Market orders received by the specialist after 9:25 AM and prior to the opening sale shall participate in the opening and shall be manually executed at the price of the opening sale, provided such opening sale shall take place at a time which would reasonably include such orders; otherwise they shall be executed upon completion of opening rotation.[6]

Limit orders received by the specialist through the AUTOM system before 9:25 AM shall participate in the opening and shall be manually executed at the price of the opening sale if they are so entitled based upon price and the size of the bid which is accepted or size of the offer which is taken establishing the opening price. Limit orders received by the specialist after 9:25 AM and prior to the opening sale shall participate in the opening and shall be manually executed at the price of the opening sale if they are so entitled based upon price and the size of the bid which is accepted or size of the offer which is taken establishing the opening price, provided such opening sale shall take place at a time which would reasonably include such

[2] For example, an order to buy 4 XYZ AA at the market is displayed as 4 XYZ AA MKT.

[3] CENTRAMART is the Exchange system used for quote dissemination, trade reporting and clearing information.

[4] A marketable limit order is an order to buy or sell a stated amount of a security as a specified price, if obtainable, after the order is represented in the trading crowd, entered at a time when the market is trading at or better than the specified price.

[5] A day limit order is an order to buy or sell a stated amount of a security at a specified price. A day limit order expires at the end of the day on which it is entered if it is not executed.

[6] A trading rotation is a procedure initiated by the Exchange in order to aid in producing a fair and orderly market in a particular option. It generally consists of a series of brief time periods during each of which bids, offers and transactions may be made only with respect to a single, specified series of the option for which it was initiated. During a trading rotation (which typically takes several minutes to conduct, but may at times take a substantially longer period), customer orders already on the trading floor may be executed, but it may be difficult or impossible for new customer orders to be executed or for pending customer orders to be executed.

orders; otherwise they shall be executed upon completion of opening rotation.

All AUTOM orders received prior to the opening will be printed and displayed at floor locations as previously described. When manually executed during rotation, such executions are printed, confirmed on the floor and reported to OPRA as previously described.

Orders eligible for automatic execution receive a guaranteed execution at the market quote. In the case of an automatic execution, the specialist is the contra-side of all trades although he must ensure participation of bids and offers on the limit book and in the trading crowd which are entitled to executions under the Exchange's rules of priority, parity and precedence.

Upon the completion of rotation, markets (*i.e.*, bids and offers) will be reviewed by the specialist and updated as necessary after which the automatic execution feature of the AUTOM system will be engaged. Thereafter, market orders and marketable limit orders which were delivered through the AUTOM system during the rotation process but were not entitled to be executed at the opening will be executed automatically, if entitled, based upon the displayed bid and offer. Similarly, orders subsequently received which are eligible for automatic execution will be executed based upon the displayed bid and offer. Away from the market day limit orders subsequently received will be entrusted to the specialist for execution on a manual basis.

When the automatic execution feature is engaged, an incoming eligible market order will: be printed in hard copy form at the floor representative booth of the delivering member organization; be shown on the trading crowd display screen with buy/sell information omitted; be printed in hard copy form at the specialist post; automatically be priced at the displayed bid or offer, as appropriate; automatically be executed at the assigned price with the specialist being contra-side; automatically be reported to OPRA; immediately generate a hard copy floor confirmation to the floor representative of the delivering firm; and, automatically be reported back to the delivering member organization. An incoming eligible marketable limit order priced at the offer, if an order to buy, or priced at the bid, if an order to sell, will be handled in the same fashion.

Upon execution of the order, the contra-side prepares a ticket evidencing participating in the transaction. The hard copy of the AUTOM order which is printed at the specialist post is matched with the contra-side buy/sell ticket(s) and essential trade information is entered into the Exchange's CENTRAMART system for comparision and settlement purposes, which entry immediately generates a hard copy floor confirmation to the floor representative for the buyer and seller and also generates a report to OPRA. A report of such execution is electronically returned to the delivering member organization. Finally, a report of the execution is printed in hard copy form at the AUTOM floor representative's booth of the delivering member organization.

The trade checking process for automatic executions is the same as those previously described.

The automatic execution feature of the AUTOM system will remain in continuous operation during the trading day absent operational failure, trading halts, or trading suspensions in underlying securities, and would be disengaged only in the interest of maintaining a fair and orderly market and investor protection. If a situation arose that necessitated disengaging the automatic execution feature in a specific options class, two floor officials would have to concur. Before the automatic execution feature could be disengaged floorwide during a trading day, the Exchange's Emergency Committee [7] would have to determine that such action was necessary to maintain fair and orderly markets or protect investors. Similarly, before a decision could be made not to activate the automatic execution feature in a given options class two floor officials would have to concur that such action was appropriate to ensure fair and orderly markets and investor protection; before a decision could be made not to activate the automatic execution feature floorwide, the Emergency Committee would have to concur that such action was appropriate to ensure fair and orderly markets and investor protection.

The Exchange believes expansion of the AUTOM system to include certain limit orders and an automatic execution feature will permit it to offer a level of service prospective users will require, while remaining competitive with other markets.[8]

[7] The Emergency Committee consists of the Exchange's Chairman, President, and Chairmen of the Floor Procedure, Options and Foreign Currency Options Committees.

[8] For example, the Chicago Board Options Exchange ("CBOE") and American Stock Exchange ("AMEX") have small order execution systems for options.

The Exchange has received insignificant order flow through AUTOM and it does not foresee any significant taxing of the Exchange's computer systems if the Commission approves the expansion of the pilot as proposed herein.

Because the purpose of the development and implementation of AUTOM is to improve the efficiency of execution of transactions in PHLX equity options through the use of new data processing and communications techniques, the proposed rule change is consistent with Section 11A(a)(1)(B) and (C)(i) of the Securities Exchange Act of 1934 ("Act"). In addition, the proposal fosters "fair competition * * * among exchange markets" consistent with Section 11A(a)(1)(C)(ii) of the Act in that other options exchanges currently have in place Commission approved automatic execution features in their small options order delivery systems. The proposal is also consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 11, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 13, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-17092 Filed 7-20-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 14, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No.: 46391
Date Filed: July 10, 1989
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 7, 1989
Description: Application of Trans-Jamaican Airlines, Limited pursuant to section 402 of the Act and Subpart Q of the Rules of Practice applies for a foreign air carrier permit to enable it to engage in scheduled and charter foreign air transportation of persons, property and mail as follows:

(a) From Jamaica via intermediate points in Haiti and the Dominican Republic to San Juan, Puerto Rico.

(b) Such off-route charter authority as may be permitted under Part 212 of the Department's Economic Regulations.

Docket No.: 46392
Date Filed: July 10, 1989
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 7, 1989
Description: Application of Challenge Air Cargo, Inc. pursuant to section 401 of the Act and Subpart Q of the Rules of Practice applies for amendment of its certificate of public convenience and necessity to authorize it to engage in the foreign scheduled air transportation of property and mail between points in the United States, or any territory or possession of the United States, and any point or points in the following additional countries:

France
Trinidad and Tobago
Ecuador
Paraguay
Luxembourg
Bolivia
Dominican Republic
Suriname
Uruguay
Haiti
United Kingdom
Jamaica
Shannon, Ireland
Norway
The Netherlands
Belgium
Federal Republic of Germany
Grenada
Guyana
Barbados
St. Maarten/St. Martin
Guadaloupe
Martinique
Switzerland
Spain
Sweden
Denmark

Docket No.: 46393
Date Filed: July 14, 1989
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 11, 1989
Description: Application of Discovery Airways, Inc. pursuant to section 401 of the Act and Subpart Q of the Rules of Practice request that it be found fit, willing and able to provide service between the islands of the State of Hawaii.

Docket No.: 45288
Dated Filed: July 14, 1989
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 11, 1989
Description: Third Amended Application of Servicios De Transportes Aereos Fueguinos, S.A. pursuant to section 402 of the Act and Subpart Q of the Rules of Practice requests a foreign air carrier permit to operate non-scheduled, including charter, property and mail in air service between Miami, Florida and points in Argentina, with Asuncion, Paraguay as an intermediate point, for not more than three (3) frequencies per week.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89-17139 Filed 7-20-89; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 89-055]

Study of the Use of Vessel Tonnage in U.S. Laws and Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meetings and request for comments.

SUMMARY: The Coast Guard is conducting public meetings and requesting comments as part of a Congressionally mandated study. The purpose of the study is to assess the impacts should Congress decide to eliminate the present regulatory tonnage measurement option for vessels of 79 feet or more in length and to require tonnages determined under the International Convention for the Tonnage Measurement of Ships, 1969, (Tonnage Convention) to be used in applying all Federal laws and regulations based on vessel tonnage. In addition, the study is to determine what changes would be needed throughout tonnage laws and regulations to minimize adverse impact on the maritime industry in the event Tonnage Convention measurement is required for all regulatory applications. Information received at the public meetings or during the comment period will be used in preparing recommendations on this subject for Congress.

DATES: Public meetings will be held at the following locales:

Cleveland, Ohio: Tuesday, August 22, 1989, 10:00 a.m. to 5:00 p.m., Anthony Celebrese Federal Bldg., Auditorium (31st floor), 1240 E. 9th St., Cleveland, Ohio

Miami, Florida: Thursday, August 31, 1989, 10:00 a.m. to 5:00 p.m., Marriott

Hotel and Marina, 1633 N. Bayshore Drive, Miami, Florida (Tel: (305) 374-3900))

San Diego, California: Tuesday, September 12, 1989, 10:00 a.m. to 5:00 p.m.; Ramada Inn-Old Town, 2435 Jefferson St., San Diego, CA. (Tel: (619) 260-8500))

Seattle, Washington: Thursday, September 14, 1989, 10:00 a.m. to 5:00 p.m.; Seattle Airport Hilton, 17620 Pacific Hwy. S., Seattle, WA. (Tel: (206) 244-4800))

Boston, Massachusetts: Tuesday, September 19, 1989, 10:00 a.m. to 5:00 p.m., All Hands Club, U.S. Coast Guard Support Center, 427 Commercial Street, Boston, MA. (no parking available)

New Orleans, Louisiana: Tuesday, September 26, 1989, 10:00 a.m. to 5:00 p.m.; Holiday Inn-French Quarter, 124 Royal St., New Orleans, LA. (Tel: (504) 529-7211))

Persons who are unable to attend one of the above public meetings or who otherwise choose to submit their comments in writing should submit their written comments on or before October 27, 1989.

ADDRESSES: Written comments should be mailed to the Tonnage Survey Branch (G-MVI-5), Room 1316, U.S. Coast Guard Headquarters, 2100 Second St., Washington, DC 20593-0001, (202) 267-2992. Comments should identify this notice (CGD 89-055) and the sector of the maritime community that the person making the comments represents. Between the hours of 8:00 a.m. and 3:00 p.m. Monday through Friday, except holidays, written comments may be hand-delivered to, and are available for inspection at this address.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph T. Lewis, Chief, Tonnage Survey Branch (G-MVI-5), Office of Marine Safety, Security and Environmental Protection, 2100 Second St., SW., Washington, DC 20593-0001, (202) 267-2992, between 7:30 a.m. and 3:45 p.m. EST Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION:

Background

(1) *Use of Tonnage.* Since 1864, U.S. vessels have been "admeasured" to determine their tonnage capacities under a system devised by George Moorsom, a British naval architect. The Moorsom system was a significant improvement over the many different systems used around the world. It became the international standard for ship measurement. It provided for a gross tonnage and a net tonnage calculated in "tons" of 100 cubic feet. Gross tonnage was intended to reflect a measure of a vessel's size; net tonnage was intended to reflect a vessel's earning capacity. Gross tonnage has been used extensively for triggering various domestic and international laws and regulations which have thresholds based on vessel tonnage. Net tonnage has been used, among other things, as a base for collecting tonnage taxes on vessels entering from abroad and for establishing pilot fees and drydocking charges.

(2) *Factors affecting tonnage accuracy.* The 1864 Moorsom system was designed around 19th century sailing vessel technology. Because of subsequent advances in ship design, propulsion systems, and construction materials, the Moorsom system's rules were subjected to frequent modification. These adjustments had a negative impact on the accuracy of tonnage. For instance, there is no limitation in the 1864 law on the size of hull frames and floors. This enables designers to reduce substantially the measurable volume within the hull by selectively increasing frame sizes, while retaining the utility of the space. Other means employed to reduce tonnage include the construction of shelter deck vessels (in which between-deck areas are not included in tonnage because of an opening in a vessel's uppermost deck) and the use of "tonnage openings" (that legally may be secured) in deck structures. Water ballast spaces and passenger spaces above a vessel's upper deck are other methods used legally to reduce tonnage.

(3) *Early attempts at uniformity.* Within fifty years of the Moorsom system's inception, it became apparent that this once universally applied system had become so variously interpreted by so many nations that gross and net tonnages derived under that system could not be accepted as reasonable gauges of a vessel's size or earning capacity. The need for a universally applied and meaningful tonnage measurement system was recognized by the League of Nations in the 1920's. Their recommendations culminated in an international measurement system under the 1947 Oslo Convention. The United States, then the major shipping influence, declined to join that system because of that convention's inflexible amendment structure. The "Oslo Rules" took root only in a small number of European nations.

(4) *1969 Tonnage Convention.* In 1963, the Intergovernmental Maritime Consultative Organization (now called the International Maritime Organization) undertook to establish an internationally accepted tonnage measurement system for vessels engaging on international voyages. The result was the adoption of the International Convention on Tonnage Measurement of Ships, 1969 (Tonnage Convention), which is a much simpler, yet more reliable, system. The Tonnage Convention entered into force internationally on July 18, 1982. The United States ratified the Convention in November 1982 and it took effect for U.S. vessels on May 5, 1983. Its rules require measuring the molded volumes of a vessel's hull and its structures. These volumes are then modified by a coefficient that takes into account normal vessel framing and ballasting (among other things) to establish a gross tonnage. Net tonnage is based on cargo and passenger space volumes. The much simpler Tonnage Convention system enables a ship designer to estimate accurately a vessel's Convention tonnage while calculating its stability data. Since 1983, the Coast Guard has applied the 1969 Convention Measurement System to new U.S. vessels of 79 feet and longer engaged on a foreign voyage.

(5) *Experience gained from Convention measurement.* Experience gained since the 1983 application of Convention Measurement to vessels 79 feet or more engaged on a foreign voyage indicated to Congress that this new system could be equally effective for measuring vessels operating domestically and that the need to measure a vessel under distinctly different systems could be eliminated. The problem is in reconciling the tonnage thresholds now found in U.S. laws and regulations with the far more accurate (hence, often higher) tonnages obtained under Tonnage Convention rules.

(6) *Pub. L. 99-509.* The tonnage legislation included in Pub. L. 99-509 (October 26, 1986) addressed the problem of reconciling Convention tonnage with regulatory laws by instituting the first phase of converting to the Convention system as a basis for implementing tonnage-based laws domestically. It required that all new vessels 79 feet and longer (except for vessels of war and Great Lakes vessels) be Convention measured, authorized the Coast Guard to require Convention measurement to be used for the application of domestic laws (with specific exceptions), and provided that all tonnage based laws that become effective after July 18, 1994, should use Convention measurement for applicability determinations. This law did not impose additional regulatory requirements on existing domestic vessels. In addition, Pub. L. 99-509 required the Coast Guard to conduct a study of the impact of a conversion to the Convention system for the application of all tonnage-based laws and regulations. In conducting the study, the Coast Guard was directed to consult with the private sector likely to be affected by U.S. laws based on tonnage.

(7) *The study.* Pub. L. 99-509 was designed to set in motion a process to determine the extent to which a total conversion to the Convention system domestically would result in additional requirements and costs to the domestic industry. In part by means of the Coast Guard study and recommendations required by section 5103(g) of Pub. L. 99-509, this process was intended to enable Congress to make informed judgments at a future date on the proper timing and extent of converting more completely to the Convention System.

An interim report, entitled "Study of the Use of Vessel Tonnage in U.S. Laws and Regulations—Interim Progress Report," was submitted to Congress in 1988. A copy of this report is available at the address under **FOR FURTHER INFORMATION CONTACT** in this notice. This report indicated that the study will be accomplished in five phases. Phases I through III are complete and include the development of a computer program that identifies tonnage related requirements in laws, regulations, conventions, and treaties and that is capable of grouping these requirements by vessel class. Also, a data base has been established to compare Convention tonnages for vessels in differing services with their tonnages under the Standard and Dual Measurement Systems in 46 CFR 69.03 and 69.15, respectively. Phase IV of the study involves gathering information and recommendations from government and private sector interests involved with vessel tonnage assignments. Input from government interests has been received and is presently being evaluated by the Coast Guard. To complete phase IV, input from the private sector is now being solicited. Phase V will identify problem areas, examine potential solutions, include recommendations, and produce a final study for submission to Congress.

Scope of the Public Meetings and Comments

To maximize and encourage input from the private sector, the Coast Guard is holding six public meetings in locales selected for regional diversity and maritime interest. In addition, the Coast Guard is soliciting written comments from those unable to attend one of the meetings or those who otherwise prefer to submit their comments in writing.

The scope of the six public meetings and the comments submitted is limited to subject matter relating to the Coast Guard study being conducted under section 5103(g) of Pub. L. 99-509. That section directs the Secretary of Transportation (Coast Guard) to submit to Congress by July 19, 1990, a study of—

(1) The impact of using Convention tonnage when applying U.S. laws based on tonnage, including an analysis of the number and types of vessels that would become subject to additional laws or to more stringent requirements because of the use of Convention tonnage; and

(2) The extent to which the tonnage thresholds in U.S. laws based on tonnage would have to be raised so that additional vessels would not become subject to those laws if Convention tonnage is used.

After consideration of the comments received at the six public meetings and those received by the Coast Guard in writing, the Coast Guard is required to submit to Congress, together with the study, a recommendation of the levels to which the tonnage thresholds in U.S. laws based on tonnage should be raised if a complete conversion to the Conversion System is made.

Suggested Topics and Questions for Discussion at Public Meetings and in Written Comments

In addition to establishing the Convention System as the primary measurement system for vessels 79 feet or more in length, Pub. L. 99-509 also allows vessel owners the option of having their vessels measured also under the regulatory measurement systems (Standard or Dual Measurement Systems) for the purpose of applying laws and regulations based on vessel tonnage. In providing this option, Congress intended to avoid subjecting additional vessels to these laws and regulations or increasing the regulatory burden on these vessels currently regulated. Congress also recognized that a more complete conversion to the Convention System should be considered because multiple systems lead to confusion and unnecessary design and construction costs. For example, if the optional regulatory measurement systems, which allow vessels to be designed around various exclusions to reduce their tonnage, were eliminated, vessel owners would be free to focus their design efforts on structural strength, accessibility, and watertight integrity, rather than on design schemes intended solely to reduce tonnage. In turn, the design, construction, and operating costs relating to tonnage reduction schemes would be eliminated.

However, if Congress were to convert completely to the Convention System for all vessels of 79 feet or more in length (vessels under 79 feet would be measured under the Simplified system), Congress intends that such a conversion should have minimal adverse affect on vessel owners. This means that all Federal laws and regulations which use vessel tonnage as a threshold may have to be amended to raise the threshold level or to use a parameter other than tonnage, as a threshold. Determining the impacts of this conversion and the resulting changes needed to Federal laws and regulations based on tonnage is the reason for this study and for the six public meetings.

Preliminary review of the data compiled to date indicates that more than 100 provisions in Federal laws and over 800 provisions in Federal regulations use vessel tonnage as a regulating parameter. The threshold levels used vary greatly. For instance, 33 different gross tonnage levels and 7 net tonnage levels are used. Within Coast Guard regulations alone, thresholds of 50, 100, 150, 200, 300, 400, 500, 1,000 and 1,600 gross tons are used.

Preliminary information also suggests that the vessels most affected by tonnage laws and regulations appear to be small passenger vessels, oil and mineral industry vessels, and fishing vessels. In general, these vessels range in size from 79 feet to as much as 250 feet in length. (Operators of larger vessels usually must meet all vessel inspection and vessel manning requirements for their vessels even if they resort to regulatory tonnage measurement.) For example, passenger vessels frequently are designed to avoid certain Coast Guard safety regulations in Subchapter H of 46 CFR, Chapter I. Passenger vessels of up to 250 feet in length have been measured at less than 100 gross tons under the regulatory system to qualify as a small passenger vessel but measure as much as 2,354 gross tons under the Convention system. Statistics indicate that the preponderance of small passenger vessels measure about 800 Convention gross tons or less. Oil and mineral industry vessels of up to 220 feet are designed to avoid a 300 regulatory ton threshold or, in some cases, a 500 regulatory ton threshold. Statistics indicate that the average oil and mineral industry vessel would measure less than 1,600 Convention gross tons. Our data also indicates that fishing industry vessels upwards of 200 feet in length frequently are designed to avoid a

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variety of tonnage thresholds (100, 200, 300, 500, and 1,600 regulatory gross tons) which affect safety and manning requirements.

Under these and similar circumstances, the following questions should be considered:

(1) Should the tonange threshold for regulating small passenger vessels be increased from 100 regulatory to 800 Convention gross tons, as discussed above? If not, what level would be appropriate, and why?

(2) If Convention tonnage thresholds were substituted for regulating small passenger vessels, what related laws and regulations would also be affected? Should those regulating tonnages also be adjusted?

(3) Should the threshold in the law governing inspection of offshore supply vessels be increased from 500 to 1,600 Convention gross tons, as discussed above? If not, what level would be appropriate, and why?

(4) If Convention tonnage thresholds were substituted for regulating offshore supply vessels, what related regulations would also be affected? Should those regulating tonnages also be adjusted?

(5) If Convention tonnage thresholds were substituted for regulating fishing industry vessels, what related regulations would also be affected? Should those regulating tonnages also be adjusted, and why?

(6) If regulatory tonnage was fully replaced by Convention tonnages, what other type vessels would be affected and how would they be affected? How many? What proportion of the industry's fleet?

(7) Recognizing that laws governing the licensing of personnel and the assigning of manning requirements for vessels are governed by tonnage thresholds, what thresholds should be adjusted to reflect Convention tonnages?

(8) How do the additional costs (e.g. construction, operating, personnel) required in designing vessels around tonnage thresholds compare with the costs for complying with safety and other regulatory requirements?

(9) What specific regulatory recommendations or solutions do you suggest that might help to eliminate the use of the old systems without unduly altering the scope of present regulating criteria?

(10) What specific tonnage thresholds in U.S. laws and regulations based on tonnage would have to be raised so that additional vessels would not become subject to those laws if Convention tonnage is used?

(11) Are there tonnage thresholds in U.S. laws and regulations based on tonnage that should be lowered or eliminated?

(12) If you believe that Convention tonnage cannot effectively replace regulatory tonnage or is inappropriate in general or for specific applications, what other type of regulating parameter or combinations of parameters (length, horsepower, displacement tonnage, deadweight tonnage, etc.) do you suggest?

(13) What impacts do you perceive if vessels of 79 feet and longer that operate exclusively on the Great Lakes become subject to Convention measurement?

(14) If there is cause to formally measure vessels under 79 feet, is there any reason for not applying Convention measurement to these vessels?

Comments and remarks on other topics and questions within the scope of the study are welcome. Written comments should be sent to the address listed in the **ADDRESSES** section of this notice. All comments received at the public meetings and all comments submitted in writing on or before the close of the comment period will be considered fully before completion of the study.

Dated: July 17, 1989.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-17142 Filed 7-20-89; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: July 17, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557-0153
Form Number: None.
Type of Review: Extension
Title: Appraisal of Property Upon Transfer to Other Real Estate Owned/ Instructions to Appraiser
Description: This recordkeeping requirement affects any national bank which acquires title to or possession of Other Real Estate Owned (OREO). The required records substantiate the carrying value of OREO in conformity with generally accepted accounting principles. This provides for more meaningful bank financial statement depictions and comparisons.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Recordkeepers: 3,195
Estimated Burden Hours Per Recordkeeper: 4 hours
Frequency of Response: Recordkeeping
Estimated Total Reporting Burden: 12,804 hours
OMB Number: 1557-0154
Form Number: None
Type of Review: Extension
Title: Investment in Bank Premises or Stock of a Corporate Holding Premises
Description: This regulation prescribes procedures necessary for a national bank to comply with statutory restrictions on its investment in bank premises. National banks wishing to invest an amount greater than its capital stock must obtain the Comptroller's approval under 12 U.S.C. 371d.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 533
Estimated Burden Hours Per Respondent: 1 hour
Frequency of Response: When investment in excess of statutory limits are desired.
Estimated Total Reporting Burden: 533 hours
Clearance Officer: John Ference (202) 447-1177, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219.
OMB Reviewer: Gary Waxman (202) 395-7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 89-17106 Filed 7-20-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 17, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0034
Form Number: ATF F 5000.9
Type of Review: Extension
Title: Personnel Questionnaire—Alcohol and Tobacco Products
Description: The information listed on ATF 5000.9, Personnel Questionnaire, enables ATF to determine whether or not an applicant for an alcohol or tobacco permit meets the minimum qualifications. The form identifies the individual, residence, business background, financial sources for business and criminal record. If the applicant is found not to be qualified, the permit may be denied.
Estimated Number of Respondents: 5,000
Estimated Burden Hours Per Response: 2 hours
Frequency of Response: On occasion
Estimated Total Reporting Burden: 10,000 hours
Clearance Officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 89-17107 Filed 7-20-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 17, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: 8816
Type of Review: New Collection
Title: Special Loss Discount Account and Special Estimated Tax Payments for Insurance Companies
Description: Form 8816 is used by insurance companies claiming an additional deduction under Internal Revenue Code section 847, to reconcile their special loss discount, and special estimated tax payments, and to determine their tax benefit associated with the deduction. The information is needed by the IRS to determine that the proper additional deduction was claimed and to ensure the proper amount of special estimated tax was computed and deposited.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 2,500
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping—6 hours 42 minutes
Learning about the law or the form—47 minutes
Preparing, copying, assembling, and sending the form to IRS—56 minutes
Frequency of Response: Annually
Estimated Total Recordkeeping/ Reporting Burden: 21,075 hours
Clearance: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 89-17060 Filed 7-20-89; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1954, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott [within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954]. The list is the same as the prior quarterly list published in the **Federal Register**.

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott [within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954].

Bahrain
Iraq
Jordan
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Arab Republic
Yemen, Peoples Democratic Republic of

Date: July 14, 1989.

Kenneth W. Gideon,

Assistant Secretary for Tax Policy.

[FR Doc. 89-17125 Filed 7-20-89; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 139
Friday, July 21, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMISSION ON CIVIL RIGHTS

PLACE: University of California at San Francisco Nursing Building, Conference Room N-721/N-729 Third and Parnassus Avenue San Francisco, CA 94143.

DATE AND TIME: Friday, July 28, 1989, 9:00 a.m.—5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of June Meeting
III. Announcements
IV. Resolution on Police Handling of Operation Rescue Protest
V. Consideration of the Draft Report on the Immigration Reform and Control Act
Consideration of the Draft Summary Regarding the Los Angeles Forum, *Changing Perspectives on Civil Rights*
VI. SAC Reports and Recharters
Civil Rights Concerns of Older Americans (Arkansas)
Nativism Rekindled: A Report on the Effort to Make English Colorado's Official Language
Bigotry and Violence in Georgia
Implementation in Texas of the Immigration Reform and Control Act: A Preliminary Review
Minorities and Women in Higher Education in West Virginia and Civil Rights Issues in the Huntington Area
Alabama, Hawaii, and Iowa SAC Recharters
VII. Commission Subcommittee Reports
A. Asian Roundtable
B. Campus Tension
VIII. Staff Director's Report
IX. Future Agenda Items

PERSON TO CONTACT FOR FURTHER INFORMATION: John Eastman, Press and Communications Division, (202) 376-8312.

William H. Gillers,
Solicitor, 376-8514.

[FR Doc. 89-17215 Filed 7-18-89; 5:01 pm]

BILLING CODE 6335-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m, Friday, August 4, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 89-17295 Filed 7-19-89; 2:54 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m, Friday, August 11, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 89-17296 Filed 7-19-89; 2:54 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 1:00 a.m, Friday, August 18, 1989.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 89-17297 Filed 7-16-89; 2:54 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m, Friday, August 25, 1989.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 89-17298 Filed 7-19-89; 2:59 pm]

BILLING CODE 6351-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, July 26, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed amendments to Regulations CC (Availability of Funds and Collection of Checks) regarding treatment of bank payable through checks. (Proposed earlier for public comment; Docket No. R-0646)
2. Mid-year review of the Board's 1989 budget.
3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: July 19, 1989.
William W. Wiles,
Secretary of the Board.

[FR Doc. 89-17219 Filed 7-19-89; 10:16 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 11:00 a.m., Wednesday, July 26, 1989, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Federal Reserve Bank and Branch director appointments. (This item was previously announced for a closed meeting on July 12, 1989.)
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 19, 1989.
William W. Wiles,
Secretary of the Board.

[FR Doc. 89-17220 Filed 7-19-89; 10:16 am]

BILLING CODE 6210-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [54 FR 29636 July 13, 1989].

STATUS: Open meeting.

PLACE: 450 Fifth Street NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Tuesday, July 11, 1989.

CHANGES IN THE MEETING: Deletion.

The following item will not be considered at an open meeting on Thursday, July 20, 1989, at 10:00 a.m.

Consideration of whether to issue a release proposing amendments to the Net Capital Rule. Under the Proposed Securities Exchange Act Rule 15c3-1 would be amended to raise the minimum net capital required of registered broker-dealers and to standardize the deductions that broker-dealers incur in arriving at net capital for their equity securities positions. Furthermore, the amendments would establish a haircut for zero coupon bonds and relieve certain aggregate indebtedness charges. For further information, please contact David L.A. Abramovitz at (202) 272-2398.

Commissioner Grundfest, as duty office, determined that Commission business required the above change.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Karen Burgess at (202) 272-2000.

Jonathan G. Katz,
Secretary.

July 19, 1989.

[FR Doc. 89-17280 Filed 7-19-89; 2:30 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 54, No. 139
Friday, July 21, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket No. FV-88-205]

Shelled Pistachio Nuts; Grade Standards

Correction

In proposed rule document 89-14137 beginning on page 25281 in the issue of Wednesday, June 14, 1989, make the following correction:

On page 25282, in the third column, in § 51.2560, in paragraph (f)(4), in the third line, after "shall" insert "not".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TA89-1-15-000]

Mid Louisana Gas Co.; Compliance of Filing

Correction

In notice document 89-16625 beginning on page 29930 in the issue of Monday, July 17, 1989, the Docket No. should read as printed above.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TQ89-3-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff Filing

Correction

In notice document 89-16624 beginning on page 29932 in the issue of Monday July 17, 1989, the Docket No. should read as printed above.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM89-3-18-000]

Texas Gas Transmission Corp.; Tariff Filing

Correction

In notice document 89-16607 beginning on page 29932 in the issue of Monday, July 17, 1989, the Docket No. should read as printed above.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 9F3706/R1029; FRL-3604-5]

Pesticide Tolerances for 1-[[2-(2,4-Dichlorophenyl)-4-Propyl-1,3-Dioxolan-2-YL]Methyl]-1H-1,2,4,-Triazole and its Metabolites

Correction

In rule document 89-14683 beginning on page 26043 in the issue of Wednesday, June 21, 1989, make the following corrections:

On page 26044, in the third column, in § 180.434 and on page 26045, in the first column, the expiration dates in the table should read June 21, 1991.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 704

[OPTS-82013; FRL-3601-7]

Comprehensive Assessment Information Rule; Technical Amendment

Correction

In rule document 89-14003 beginning on page 25398 in the issue of Wednesday, June 14, 1989, make the following corrections:

1. On page 25398, in the table in the 1st column, the 18th line should read "920C134 COROCOOL™/ curing agent".

2. On page 25402, in the 1st column, the 42nd line should read "CE-1155-35 Part A".

3. On the same page, in the 1st column, the 58th line should be removed.

4. On page 25403, in the 1st column, the 27th line should read "EN-1554 Part B Black".

5. On page 25406, in the 1st column, the 18th line should read "Fuji CN-16Q NQ1-R Color Developer Replenisher".

BILLING CODE 1505-01-D

FEDERAL MARITIME COMMISSION

Cancellation of Inactive Domestic Offshore Tariffs

Correction

In notice document 89-16659 beginning on page 29936 in the issue of Monday, July 17, 1989, make the following correction:

On page 29938, in the 1st column, after the 23rd line, insert:

Attachment B--Federal Maritime Commission, Bureau of Domestic Regulation, Office of Carrier Tariffs and Service Contract Operations

Carriers that Failed to Respond to the Notice of Intent to Cancel Inactive Tariffs

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Performance Review Board Appointments

Correction

In notice document 89-15978 appearing on page 28724 in the issue of Friday, July 7, 1989, make the following correction:

1. On page 28724, in the second column, under *Assistant Secretary for Fish and Wildlife and Parks*, the fourth line should read "Jay Gerst, FWS, CA"

2. On the same page, in the same column, under *Office of the Solicitor*, in the second line "(CA)" should read "(NC)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-020-09-4212-12; A 20346-Q]

Realty Action; Exchange of Public Lands, Pima County, Arizona

Correction

In notice document 89-14863 appearing on page 26432 in the issue of Friday, June 23, 1989, make the following correction:

In the first column, under **Gila and Salt River Meridian, Arizona**, in the eighth line, "sec. 13" should read "sec. 12".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-010-09-4212-13; CA 25406]

Realty Action: Exchange of Public and Private Lands in Placer County, California

Correction

In notice document 89-16195 beginning on page 29109 in the issue of Tuesday, July 11, 1989, make the following correction:

On page 29109, in the second column, under the **DATES** caption, in the last line, the date should read "August 25, 1989".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-030-09-4212-13; GP9-259, OR 39525]

Realty Action, Exchange of Public Lands in Malheur County, OR

Correction

In notice document 89-15386 beginning on page 27435 in the issue of Thursday, June 29, 1989, make the following correction:

On page 27435, in the second column, under the first heading **Willamette Meridian**, the fifth line should read, "Sec. 33: W½SW¼", and in the same column under the second heading **Willamette Meridian**, the second line should read "Sec. 11: S½SW¼".

BILLING CODE 1505-01-D

THE PRESIDENT

3 CFR

Proclamation 5997 of July 6, 1989

To Amend the Generalized System of Preferences

Correction

The editorial note appearing on page 29000 in the issue of Tuesday, July 11, 1989, should have referred to Presidential Proclamation 5998 of July 7, 1989, and should have appeared on page 29314 of the issue.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-AWA-9]

RIN 2120-AD02

Proposed Establishment of the Salt Lake City Terminal Control Area and Revocation of the Salt Lake City International Airport, Airport Radar Service Area; UT

Correction

In proposed rule document 89-14859 beginning on page 26680 in the issue of Friday, June 23, 1989, make the following correction:

§ 71.403 [Corrected]

On page 26685, in the first column, in § 71.403, in the first paragraph, the third line should read "111°58'05" W".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 316, 342, and 351

[Dept. of Treasury Circs. No. 653, Tenth Revision; Public Debt Series No. 3-67, 2nd Rev.; and No. 1-80, 2nd Rev.]

U.S. Savings Bonds and Notes; Tables Reflecting Investment Yields and Maturity Periods

Correction

In rule document 89-9459 beginning on page 15924 in the issue of Thursday, April 20, 1989, and corrected at 54 FR 19486, May 5, 1989, and 54 FR 20476, May 11, 1989, make the following corrections:

The tables appearing on pages 15926 and 15927, and the table beginning at the bottom of page 15928, contained errors and are republished below.

U.S. SAVINGS BONDS, SERIES E - REDEMPTION VALUES AND INVESTMENT YIELDS FOR ACCRUAL DATES OCCURRING MAY 1, 1989 THRU OCT 1, 1989

ISSUE PRICE	$18.75	$37.50	$75.00	$150.00	$375.00	$750.00	$7500.			
DENOMINATION	25.00	50.00	100.00	200.00	500.00	1000.00	10000.			
ISSUE DATES	ACCRUAL DATE(1)	REDEMPTION VALUES DURING HALF-YEAR PERIOD FOLLOWING ACCRUAL DATE (VALUES INCREASE ON FIRST DAY OF PERIOD)							ACTUAL YIELD(2)	MARKET YIELD(3)	MINIMUM YIELD(4)
5/52 THRU 5/52	7/1/89	130.97	261.94	523.88	1047.76	2619.40	5238.80	52388.	8.50%	8.25%	8.50%
6/52 THRU 8/52	8/1/89	131.27	262.54	525.08	1050.16	2625.40	5250.80	52508.	8.50%	8.25%	8.50%
9/52 THRU 9/52	9/1/89	127.13	254.26	508.52	1017.04	2542.60	5085.20	50852.	8.50%	8.25%	8.50%
10/52 THRU 10/52	6/1/89	128.73	257.46	514.92	1029.84	2574.60	5149.20	51492.	8.50%	8.25%	8.50%
11/52 THRU 11/52	7/1/89	128.73	257.46	514.92	1029.84	2574.60	5149.20	51492.	8.50%	8.25%	8.50%
12/52 THRU 2/53	8/1/89	129.07	258.14	516.28	1032.56	2581.40	5162.80	51628.	8.50%	8.25%	8.50%
3/53 THRU 3/53	5/1/89	123.08	246.12	492.24	984.48	2461.20	4922.40	49224.	8.25%	8.25%	7.50%
4/53 THRU 4/53	6/1/89	124.58	249.16	498.32	996.64	2491.60	4983.20	49832.	8.25%	8.25%	7.50%
5/53 THRU 5/53	7/1/89	124.58	249.16	498.32	996.64	2491.60	4983.20	49832.	8.25%	8.25%	7.50%
6/53 THRU 8/53	8/1/89	124.88	249.76	499.52	999.04	2497.60	4995.20	49952.	8.25%	8.25%	7.50%
9/53 THRU 9/53	9/1/89	120.94	241.88	483.76	967.52	2418.80	4837.60	48376.	8.25%	8.25%	7.58%
10/53 THRU 10/53	6/1/89	122.48	244.96	489.92	979.84	2449.60	4899.20	48992.	8.25%	8.25%	7.58%
11/53 THRU 11/53	7/1/89	122.48	244.96	489.92	979.84	2449.60	4899.20	48992.	8.25%	8.25%	7.58%
12/53 THRU 2/54	8/1/89	122.80	245.60	491.20	982.40	2456.00	4912.00	49120.	8.25%	8.25%	7.58%
3/54 THRU 3/54	5/1/89	118.95	237.90	475.80	951.60	2379.00	4758.00	47580.	8.25%	8.25%	7.65%
4/54 THRU 4/54	6/1/89	120.45	240.90	481.80	963.60	2409.00	4818.00	48180.	8.25%	8.25%	7.66%
5/54 THRU 5/54	7/1/89	120.45	240.90	481.80	963.60	2409.00	4818.00	48180.	8.25%	8.25%	7.66%
6/54 THRU 8/54	8/1/89	120.77	241.54	483.08	966.16	2415.40	4830.80	48308.	8.25%	8.25%	7.65%
9/54 THRU 9/54	5/1/89	116.97	233.94	467.88	935.76	2339.40	4678.80	46788.	8.25%	8.25%	7.73%
10/54 THRU 10/54	6/1/89	118.52	237.04	474.08	948.16	2370.40	4740.80	47408.	8.25%	8.25%	7.73%
11/54 THRU 11/54	7/1/89	118.52	237.04	474.08	948.16	2370.40	4740.80	47408.	8.25%	8.25%	7.73%
12/54 THRU 2/55	8/1/89	118.81	237.62	475.24	950.48	2376.20	4752.40	47524.	8.25%	8.25%	7.73%
3/55 THRU 3/55	5/1/89	115.04	230.08	460.16	920.32	2300.80	4601.60	46016.	8.25%	8.25%	7.81%
4/55 THRU 4/55	6/1/89	116.55	233.10	466.20	932.40	2331.00	4662.00	46620.	8.25%	8.25%	7.81%
5/55 THRU 5/55	7/1/89	116.55	233.10	466.20	932.40	2331.00	4662.00	46620.	8.25%	8.25%	7.81%
6/55 THRU 8/55	8/1/89	116.85	233.70	467.40	934.80	2337.00	4674.00	46740.	8.25%	8.25%	7.81%
9/55 THRU 9/55	5/1/89	113.18	226.36	452.72	905.44	2263.60	4527.20	45272.	8.25%	8.25%	7.88%
10/55 THRU 10/55	6/1/89	114.70	229.40	458.80	917.60	2294.00	4588.00	45880.	8.25%	8.25%	7.88%
11/55 THRU 11/55	7/1/89	114.70	229.40	458.80	917.60	2294.00	4588.00	45880.	8.25%	8.25%	7.88%
12/55 THRU 2/56	8/1/89	114.99	229.98	459.96	919.92	2299.80	4599.60	45996.	8.25%	8.25%	7.89%
3/56 THRU 3/56	5/1/89	111.37	222.74	445.48	890.96	2227.40	4454.80	44548.	8.25%	8.25%	7.96%
4/56 THRU 4/56	6/1/89	114.50	229.00	458.00	916.00	2290.00	4580.00	45800.	8.25%	8.25%	7.96%
5/56 THRU 5/56	7/1/89	114.50	229.00	458.00	916.00	2290.00	4580.00	45800.	8.25%	8.25%	7.96%
6/56 THRU 8/56	8/1/89	114.75	229.50	459.00	918.00	2295.00	4590.00	45900.	8.25%	8.25%	7.96%
9/56 THRU 9/56	5/1/89	111.13	222.26	444.52	889.04	2222.60	4445.20	44452.	8.25%	8.25%	8.04%
10/56 THRU 10/56	6/1/89	112.42	224.84	449.68	899.36	2248.40	4496.80	44968.	8.25%	8.25%	8.04%
11/56 THRU 11/56	7/1/89	112.42	224.84	449.68	899.36	2248.40	4496.80	44968.	8.25%	8.25%	8.04%
12/56 THRU 1/57	8/1/89	113.08	226.16	452.32	904.64	2261.60	4523.20	45232.	8.25%	8.25%	8.03%
2/57 THRU 5/57	7/1/89	114.62	229.24	458.48	916.96	2292.40	4584.80	45848.	8.25%	8.25%	7.96%

(1) ACCRUAL DATE SHOWN IS FOR BONDS OF THE FIRST ISSUE DATE LISTED -- ADD ONE MONTH FOR EACH SUCCESSIVE MONTH OF ISSUE.
(2) ACTUAL INVESTMENT YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.
(3) MARKET BASED VARIABLE INVESTMENT YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.
(4) GUARANTEED MINIMUM YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.
NOTE: ADDITIONAL INVESTMENT INFORMATION IS OBTAINABLE FROM FEDERAL RESERVE BANKS AND THE BUREAU OF THE PUBLIC DEBT, SAVINGS BOND OPERATIONS OFFICE, 200 THIRD ST., PARKERSBURG, WV 26102-1328.

U.S. SAVINGS BONDS, SERIES E - REDEMPTION VALUES AND INVESTMENT YIELDS FOR ACCRUAL DATES OCCURRING MAY 1, 1989 THRU OCT 1, 1989

ISSUE PRICE	$18.75	$37.50	$75.00	$150.00	$375.00	$750.00	$7500.			
DENOMINATION	25.00	50.00	100.00	200.00	500.00	1000.00	10000.			
ISSUE DATES	ACCRUAL DATE(1)	REDEMPTION VALUES DURING HALF-YEAR PERIOD FOLLOWING ACCRUAL DATE (VALUES INCREASE ON FIRST DAY OF PERIOD)							ACTUAL YIELD(2)	MARKET YIELD(3)	MINIMUM YIELD(4)
6/57 THRU 6/57	5/1/89	111.49	222.98	445.96	891.92	2229.80	4459.60	44596.	8.25%	8.25%	8.04%
7/57 THRU 7/57	6/1/89	112.77	225.54	451.08	902.16	2255.40	4510.80	45108.	8.25%	8.25%	8.04%
8/57 THRU 11/57	7/1/89	112.77	225.54	451.08	902.16	2255.40	4510.80	45108.	8.25%	8.25%	8.04%
12/57 THRU 12/57	5/1/89	109.70	219.40	438.80	877.60	2194.00	4388.00	43880.	8.25%	8.25%	7.53%
1/58 THRU 1/58	6/1/89	111.00	222.00	444.00	888.00	2220.00	4440.00	44400.	8.25%	8.25%	7.53%
2/58 THRU 5/58	7/1/89	111.00	222.00	444.00	888.00	2220.00	4440.00	44400.	8.25%	8.25%	7.53%
6/58 THRU 6/58	5/1/89	107.95	215.90	431.80	863.60	2159.00	4318.00	43180.	8.25%	8.25%	7.73%
7/58 THRU 7/58	6/1/89	109.21	218.42	436.84	873.68	2184.20	4368.40	43684.	8.25%	8.25%	7.73%
8/58 THRU 11/58	7/1/89	109.21	218.42	436.84	873.68	2184.20	4368.40	43684.	8.25%	8.25%	7.73%
12/58 THRU 12/58	5/1/89	106.23	212.46	424.92	849.84	2124.60	4249.20	42492.	8.25%	8.25%	7.92%
1/59 THRU 1/59	6/1/89	107.50	215.00	430.00	860.00	2150.00	4300.00	43000.	8.25%	8.25%	7.92%
2/59 THRU 5/59	7/1/89	107.50	215.00	430.00	860.00	2150.00	4300.00	43000.	8.25%	8.25%	7.92%
6/59 THRU 7/59	9/1/89	107.19	214.38	428.76	857.52	2143.80	4287.60	42876.	8.25%	8.25%	7.53%
8/59 THRU 8/59	5/1/89	103.81	207.62	415.24	830.48	2076.20	4152.40	41524.	8.25%	8.25%	7.73%
9/59 THRU 9/59	6/1/89	104.98	209.96	419.92	839.84	2099.60	4199.20	41992.	8.25%	8.25%	7.73%
10/59 THRU 11/59	7/1/89	104.98	209.96	419.92	839.84	2099.60	4199.20	41992.	8.25%	8.25%	7.73%
12/59 THRU 1/60	9/1/89	105.20	210.40	420.80	841.60	2104.00	4208.00	42080.	8.25%	8.25%	7.73%
2/60 THRU 2/60	5/1/89	101.90	203.80	407.60	815.20	2038.00	4076.00	40760.	8.25%	8.25%	7.92%
3/60 THRU 3/60	6/1/89	103.07	206.14	412.28	824.56	2061.40	4122.80	41228.	8.25%	8.25%	7.92%
4/60 THRU 5/60	7/1/89	103.07	206.14	412.28	824.56	2061.40	4122.80	41228.	8.25%	8.25%	7.92%
6/60 THRU 7/60	9/1/89	103.24	206.48	412.96	825.92	2064.80	4129.60	41296.	8.25%	8.25%	7.92%
8/60 THRU 8/60	5/1/89	100.01	200.02	400.04	800.08	2000.20	4000.40	40004.	8.25%	8.25%	8.11%
9/60 THRU 9/60	6/1/89	101.16	202.32	404.64	809.28	2023.20	4046.40	40464.	8.25%	8.25%	8.11%
10/60 THRU 11/60	7/1/89	101.16	202.32	404.64	809.28	2023.20	4046.40	40464.	8.25%	8.25%	8.11%
12/60 THRU 1/61	9/1/89	101.34	202.68	405.36	810.72	2026.80	4053.60	40536.	8.25%	8.25%	8.11%
2/61 THRU 2/61	5/1/89	98.50	197.00	394.00	788.00	1970.00	3940.00	39400.	8.31%	8.25%	8.31%
3/61 THRU 3/61	6/1/89	99.63	199.26	398.52	797.04	1992.60	3985.20	39852.	8.31%	8.25%	8.31%
4/61 THRU 5/61	7/1/89	99.63	199.26	398.52	797.04	1992.60	3985.20	39852.	8.31%	8.25%	8.31%
6/61 THRU 7/61	9/1/89	99.92	199.84	399.68	799.36	1998.40	3996.80	39968.	8.31%	8.25%	8.31%
8/61 THRU 8/61	5/1/89	97.95	195.90	391.80	783.60	1959.00	3918.00	39180.	8.50%	8.25%	8.50%
9/61 THRU 9/61	6/1/89	99.04	198.08	396.16	792.32	1980.80	3961.60	39616.	8.50%	8.25%	8.50%
10/61 THRU 11/61	7/1/89	99.04	198.08	396.16	792.32	1980.80	3961.60	39616.	8.50%	8.25%	8.50%
12/61 THRU 1/62	9/1/89	99.32	198.64	397.28	794.56	1986.40	3972.80	39728.	8.50%	8.25%	8.50%
2/62 THRU 2/62	5/1/89	96.20	192.40	384.80	769.60	1924.00	3848.00	38480.	8.50%	8.25%	8.50%
3/62 THRU 3/62	6/1/89	96.89	193.78	387.56	775.12	1937.80	3875.60	38756.	8.50%	8.25%	8.50%
4/62 THRU 5/62	7/1/89	96.89	193.78	387.56	775.12	1937.80	3875.60	38756.	8.50%	8.25%	8.50%
6/62 THRU 7/62	9/1/89	97.13	194.26	388.52	777.04	1942.60	3885.20	38852.	8.50%	8.25%	8.50%
8/62 THRU 8/62	5/1/89	94.08	188.16	376.32	752.64	1881.60	3763.20	37632.	8.50%	8.25%	8.50%
9/62 THRU 9/62	6/1/89	94.74	189.48	378.96	757.92	1894.80	3789.60	37896.	8.50%	8.25%	8.50%

(1) ACCRUAL DATE SHOWN IS FOR BONDS OF THE FIRST ISSUE DATE LISTED -- ADD ONE MONTH FOR EACH SUCCESSIVE MONTH OF ISSUE.
(2) ACTUAL INVESTMENT YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.
(3) MARKET BASED VARIABLE INVESTMENT YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.
(4) GUARANTEED MINIMUM YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.
NOTE: ADDITIONAL INVESTMENT INFORMATION IS OBTAINABLE FROM FEDERAL RESERVE BANKS AND THE BUREAU OF THE PUBLIC DEBT, SAVINGS BOND OPERATIONS OFFICE, 200 THIRD ST., PARKERSBURG, WV 26102-1328.

U.S. SAVINGS BONDS, SERIES E - REDEMPTION VALUES AND INVESTMENT YIELDS FOR ACCRUAL DATES OCCURRING MAY 1, 1989 THRU OCT 1, 1989

ISSUE PRICE	$18.75	$37.50	$75.00	$150.00	$375.00	$750.00	$7500.					
DENOMINATION	25.00	50.00	100.00	200.00	500.00	1000.00	10000.					
ISSUE DATES	ACCRUAL DATE(1)	REDEMPTION VALUES DURING HALF-YEAR PERIOD FOLLOWING ACCRUAL DATE (VALUES INCREASE ON FIRST DAY OF PERIOD)							ACTUAL YIELD(2)	MARKET YIELD(3)	MINIMUM YIELD(4)
10/62 THRU 11/82	7/1/89	94.74	189.48	378.96	757.92	1894.80	3789.60	37896.	8.50%	8.25%	8.50%
12/62 THRU 1/83	9/1/89	95.16	190.28	380.56	761.12	1902.80	3805.60	38056.	8.50%	8.25%	8.50%
2/63 THRU 2/83	5/1/89	92.14	184.28	368.56	737.12	1842.80	3685.60	36856.	8.50%	8.25%	8.50%
3/63 THRU 3/83	6/1/89	92.56	185.12	370.24	740.48	1851.20	3702.40	37024.	8.50%	8.25%	8.50%
4/63 THRU 5/83	7/1/89	92.56	185.12	370.24	740.48	1851.20	3702.40	37024.	8.50%	8.25%	8.50%
6/63 THRU 7/83	9/1/89	93.28	186.56	373.12	746.24	1865.60	3731.20	37312.	8.50%	8.25%	8.50%
8/63 THRU 8/83	5/1/89	90.33	180.66	361.32	722.64	1806.60	3613.20	36132.	8.50%	8.25%	8.50%
9/63 THRU 9/83	6/1/89	90.76	181.52	363.04	726.08	1815.20	3630.40	36304.	8.50%	8.25%	8.50%
10/63 THRU 11/83	7/1/89	90.76	181.52	363.04	726.08	1815.20	3630.40	36304.	8.50%	8.25%	8.50%

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U.S. SAVINGS BONDS, SERIES E - REDEMPTION VALUES AND INVESTMENT YIELDS FOR ACCRUAL DATES OCCURRING MAY 1, 1989 THRU OCT 1, 1989

ISSUE PRICE	$18.75	$37.50	$56.25	$75.00	$150.00	$375.00	$750.00	$7500.				
DENOMINATION	25.00	50.00	75.00	100.00	200.00	500.00	1000.00	10000.				
ISSUE DATES	ACCRUAL DATE(1)	REDEMPTION VALUES DURING HALF-YEAR PERIOD FOLLOWING ACCRUAL DATE (VALUES INCREASE ON FIRST DAY OF PERIOD)								ACTUAL YIELD(2)	MARKET YIELD(3)	MINIMUM YIELD(4)
8/69 THRU 8/69	6/1/89	71.42	142.84	214.26	285.68	571.36	1428.40	2856.80	28568.	8.25%	8.25%	7.88%
9/69 THRU 11/69	7/1/89	71.42	142.84	214.26	285.68	571.36	1428.40	2856.80	28568.	8.25%	8.25%	7.88%
12/69 THRU 12/69	10/1/89	71.79	143.58	215.37	287.16	574.32	1435.80	2871.60	28716.	8.25%	8.25%	7.88%
1/70 THRU 1/70	5/1/89	69.55	139.10	208.65	278.20	556.40	1391.00	2782.00	27820.	8.25%	8.25%	7.96%
2/70 THRU 2/70	6/1/89	69.70	139.40	209.10	278.80	557.60	1394.00	2788.00	27880.	8.25%	8.25%	7.96%
3/70 THRU 5/70	7/1/89	69.70	139.40	209.10	278.80	557.60	1394.00	2788.00	27880.	8.25%	8.25%	7.96%
6/70 THRU 6/70	10/1/89	70.02	140.04	210.06	280.08	560.16	1400.40	2800.80	28008.	8.25%	8.25%	7.96%
7/70 THRU 7/70	5/1/89	67.82	135.64	203.46	271.28	542.56	1356.40	2712.80	27128.	8.25%	8.25%	8.04%
8/70 THRU 8/70	6/1/89	68.01	136.02	204.03	272.04	544.08	1360.20	2720.40	27204.	8.25%	8.25%	8.04%
9/70 THRU 11/70	7/1/89	68.01	136.02	204.03	272.04	544.08	1360.20	2720.40	27204.	8.25%	8.25%	8.04%
12/70 THRU 12/70	10/1/89	68.16	136.28	204.42	272.56	545.12	1362.80	2725.60	27256.	8.25%	8.25%	8.04%
1/71 THRU 1/71	5/1/89	66.01	132.02	198.03	264.04	528.08	1320.20	2640.40	26404.	8.25%	8.25%	7.53%
2/71 THRU 2/71	6/1/89	66.16	132.32	198.48	264.64	529.28	1323.20	2646.40	26464.	8.25%	8.25%	7.53%
3/71 THRU 5/71	7/1/89	66.16	132.32	198.48	264.64	529.28	1323.20	2646.40	26464.	8.25%	8.25%	7.53%
6/71 THRU 6/71	10/1/89	66.35	132.70	199.05	265.40	530.80	1327.00	2654.00	26540.	8.25%	8.25%	7.54%
7/71 THRU 7/71	5/1/89	64.25	128.50	192.75	257.00	514.00	1285.00	2570.00	25700.	8.25%	8.25%	7.73%
8/71 THRU 8/71	6/1/89	64.40	128.80	193.20	257.60	515.20	1288.00	2576.00	25760.	8.25%	8.25%	7.72%
9/71 THRU 11/71	7/1/89	64.40	128.80	193.20	257.60	515.20	1288.00	2576.00	25760.	8.25%	8.25%	7.72%
12/71 THRU 12/71	10/1/89	64.56	129.12	193.68	258.24	516.48	1291.20	2582.40	25824.	8.25%	8.25%	7.73%
1/72 THRU 1/72	5/1/89	62.53	125.06	187.59	250.12	500.24	1250.60	2501.20	25012.	8.25%	8.25%	7.92%
2/72 THRU 2/72	6/1/89	62.68	125.36	188.04	250.72	501.44	1253.60	2507.20	25072.	8.25%	8.25%	7.92%
3/72 THRU 5/72	7/1/89	62.68	125.36	188.04	250.72	501.44	1253.60	2507.20	25072.	8.25%	8.25%	7.92%
6/72 THRU 6/72	10/1/89	62.85	125.70	188.55	251.40	502.80	1257.00	2514.00	25140.	8.25%	8.25%	7.92%
7/72 THRU 7/72	5/1/89	60.89	121.78	182.67	243.56	487.12	1217.80	2435.60	24356.	8.25%	8.25%	8.11%
8/72 THRU 8/72	6/1/89	61.02	122.04	183.06	244.08	488.16	1220.40	2440.80	24408.	8.25%	8.25%	8.11%
9/72 THRU 11/72	7/1/89	61.02	122.04	183.06	244.08	488.16	1220.40	2440.80	24408.	8.25%	8.25%	8.11%
12/72 THRU 12/72	10/1/89	61.16	122.28	183.42	244.56	489.12	1222.80	2445.60	24456.	8.25%	8.25%	8.11%
1/73 THRU 1/73	5/1/89	59.42	118.84	178.26	237.68	475.36	1188.40	2376.80	23768.	8.31%	8.25%	8.31%
2/73 THRU 2/73	6/1/89	59.58	119.16	178.74	238.32	476.64	1191.60	2383.20	23832.	8.31%	8.25%	8.31%
3/73 THRU 5/73	7/1/89	59.58	119.16	178.74	238.32	476.64	1191.60	2383.20	23832.	8.31%	8.25%	8.31%
6/73 THRU 6/73	10/1/89	59.71	119.42	179.13	238.84	477.68	1194.20	2388.40	23884.	8.31%	8.25%	8.31%
7/73 THRU 7/73	5/1/89	58.53	117.06	175.59	234.12	468.24	1170.60	2341.20	23412.	8.50%	8.25%	8.50%
8/73 THRU 8/73	6/1/89	58.67	117.34	176.01	234.68	469.36	1173.40	2346.80	23468.	8.50%	8.25%	8.50%
9/73 THRU 11/73	7/1/89	58.67	117.34	176.01	234.68	469.36	1173.40	2346.80	23468.	8.50%	8.25%	8.50%
12/73 THRU 12/73	6/1/89	57.01	114.02	171.03	228.04	456.08	1140.20	2280.40	22804.	8.31%	8.25%	8.31%
1/74 THRU 4/74	7/1/89	57.01	114.02	171.03	228.04	456.08	1140.20	2280.40	22804.	8.31%	8.25%	8.31%
5/74 THRU 5/74	5/1/89	55.89	111.78	167.67	223.56	447.12	1117.80	2235.60	22356.	8.50%	8.25%	8.50%
6/74 THRU 6/74	6/1/89	56.02	112.04	168.06	224.08	448.16	1120.40	2240.80	22408.	8.50%	8.25%	8.50%
7/74 THRU 10/74	7/1/89	56.02	112.04	168.06	224.08	448.16	1120.40	2240.80	22408.	8.50%	8.25%	8.50%

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federal register

Friday
July 21, 1989

Part II

Department of Education

Office of Special Education Programs

Application for New Awards Under Certain Direct Grant Programs for Fiscal Year 1990

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.023, 84.024, 84.025, 84.026, 84.029, 84.030, 84.086, 84.0158]

Office of Special Education Programs

Notice Inviting Applications for New Awards Under Certain Direct Grant Programs for Fiscal Year 1990

Note to Applicants: This notice is a complete application package. Together with the applicable statute and regulations, the notice contains all of the information, application forms, and instructions needed to apply for a grant under these competitions.

The estimates of funding levels and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants, unless the amount is otherwise specified by statute or regulation.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, and 85; and the following program regulations:

Research in Education of the Handicapped (CFDA No. 84.023) 34 CFR Part 324, except that 34 CFR Part 79 does not apply to the program. Final priorities were previously published on April 4, 1989, at 54 FR 13608.

Handicapped Children's Early Education Program (CFDA No. 84.024) 34 CFR Part 309.

Services for Deaf-Blind Children and Youth (CFDA No. 84.025) 34 CFR Part 307. Final regulations were published on April 17, 1989, at 54 FR 15308.

Educational Media Research, Production, Distribution, and Training Program (CFDA No. 84.026) 34 CFR Part 332.

Training Personnel for the Education of the Handicapped (CFDA No. 84.029) 34 CFR Part 318. Final Regulations were published on November 19, 1988, at 53 FR 45730.

Clearinghouses for the Handicapped (CFDA No. 84.030) 34 CFR Part 320. Final Regulations were published on July 15, 1987, at 52 FR 26657.

Programs for Severely Handicapped Children (CFDA 34.086) 34 CFR Part 315.

Secondary Education and Transitional Services for Handicapped Youth Program (CFDA No. 84.158) 34 CFR 326.

Final priorities were previously published on January 26, 1989, at 54 FR 3938 for the following programs: Handicapped Children's Early Education Program; Educational Media Research, Production, Distribution, and Training Program; Program for Severely Handicapped Children; and Secondary and Transitional Services of Handicapped Youth Program.

RESEARCH IN EDUCATION OF THE HANDICAPPED PROGRAM

[Application Notices for Fiscal Year 1990]

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available fund [1]	Estimated range of awards (per year)	Estimated size of awards [1] (per year)	Estimated number of awards	Project period in months
Field initiated research projects (84.023C)	10/06/89	N/A	2,061,000	30,000–130,000	100,000	20	Up to 60.
Research on general education social studies or language arts curricula (CFDA No. 84.023D).	10/06/89	N/A	550,000	200,000–250,000	225,000	2	Up to 36.
Initial career awards (CFDA 84.023N)	11/17/89	N/A	300,000	50,000–100,000	75,000	4	Up to 36.
Small grants program (CFDA 84.023A)	12/01/89	N/A	750,000	50,000–100,000	75,000	10	Up to 18.
Interventions to support junior high school-aged students with handicaps who are at risk of dropping out of school (CFDA. 84.023K).	12/22/89	N/A	550,000	150,000–215,000	183,000	3	Up to 60.
Research on the delivery of services to students with handicaps from nonstandard English, limited English proficiency (including monolingual) and/or non-dominant cultural groups (CFDA No. 84.023H).	01/12/90	N/A	900,000	250,000–350,000	300,000	3	Up to 36.
Student-initiated research projects (84.023B)	01/19/90	N/A	150,000	5,000–15,000	10,000	15	Up to 18.

[1] These are estimates. The actual amount available for awards cannot be determined pending final action by the Congress.

CFDA No. 84.023—Research in Education of the Handicapped Program

Purpose of Program

To assist research and related purposes, and to conduct research, surveys, or demonstrations, relating to the education of infants, toddlers, children, and youth with handicaps.

Priorities

CFDA No. 84.023C—Field-Initiated Research

This priority provides support for a broad range of field-initiated research projects focusing on the education of, and early intervention services for infants, toddlers, children, and youth with handicaps consistent with the purposes of the program as stated in 34 CFR 324.1. This priority allows projects to address problems identified by researchers/investigators in the field.

CFDA No. 84.023B—Student-Initiated Research

This priority provides support for a broad range of student initiated projects focusing on the education of, and early intervention services for infants, toddlers, children, and youth with handicaps consistent with the purposes of the program as stated in 34 CFR 324.1.

The Secretary particularly encourages applications for short term projects (up to 18 months) that will develop research skills in post-secondary students. The Secretary further encourages applications that, while developed by the student, will identify a principal investigator who will serve as a mentor to the student/researcher. However, in accordance with 34 CFR 75.105(c)(1), applications that meet the criteria discussed in this paragraph will not be given a competitive or absolute preference over other applications.

CFDA No. 84.023A—Small Grants Program

This priority provides support for a broad range of research projects that can be completed within a 12–18 month time period, are budgeted at $75,000 or less for the entire project period, and are focused on the education of infants, toddlers, children, and youth with handicaps consistent with the purpose of the program as stated in 34 CFR 324.1. This priority is for pilot studies, projects that employ new methodologies, descriptive studies, instrument validation studies, projects that synthesize state-of-the-art research and practice, projects for research dissemination and utilization, and projects that analyze extant data bases.

CFDA No. 84.023D—Research on General Education Social Studies or Language Arts Curricula

The purpose of this priority is to support projects that analyze general education kindergarten through grade eight curricula in (1) social studies or (2) language arts using a cross-grade (e.g., primary, elementary and middle grades) perspective to determine the compatibility of the scope, sequence, and presentation (including rate, complexity, informational density, and approach for organizing and presenting content) with the learning characteristics and needs of students with handicapping conditions for whom the regular education curriculum is considered appropriate. In planning the research, projects must consider the kindergarten through grade eight curriculum in social studies and language arts as a whole, not just as a year-by-year treatment, so that assumptions about students' prior knowledge and skills as well as their need for acquisition, mastery, automaticity, application of skills, and understanding of concepts can be examined. While focusing on the needs of children with handicaps, projects must consider current national initiatives in social studies or language arts including those of professional associations and the Federal Government to develop standards and new curricula for use in regular primary, elementary and middle school grades.

Alternative curriculum approaches to organizing disciplinary knowledge bases in social studies or language arts curriculum design must be included, and their implications for educating children with handicaps in kindergarten through grade eight examined. For example, in social studies such alternative approaches might include social studies as process for conveying facts, events, and historical trends; social studies as a process for teaching values (e.g., citizenship, capitalism, democracy); social studies as a means to teach general social science principles (e.g., the tenets of economics) rather than details related to historical events (e.g., the Great Depression); social studies as a process for teaching problem solving skills by emphasizing cause-effect relationships; or social studies as a process for reflective inquiry. In language arts, these alternative approaches might include language arts as a process for teaching language skills and knowledge for the purpose of transmitting the culture; language arts as a means for teaching skills that have utilitarian value in our society; or language arts as a means for enhancing the cognitive development of students (by giving students tools to access, process, and interpret information).

These alternative approaches for organizing social studies or language arts curricula will provide the starting point for analyzing alternative structures for prioritizing, segmenting and arranging social studies or language arts content to be covered in kindergarten through grade eight. In addition, potential alternatives for structuring this content must be examined. These analyses must include examination of current curricula scope and sequence, textbooks and supplementary materials. Finally, the structural alternatives for presenting social studies or language arts content for kindergarten through grade eight must be examined in relation to the learning characteristics of children with a variety of handicaps, particularly related to needs associated with acquisition, mastery, automaticity, application of skills, and understanding of concepts. The purpose of this activity is to develop guidelines for decision-making related to determining appropriateness of, establishing priorities for, and adapting or modifying, curriculum goals and objectives for children and youth with handicapping conditions. These guidelines must make explicit the factors to be considered in making these decisions. Further, the guidelines must be useful to publishers for textbook revision activities, to teachers for analyzing and prioritizing content for students, and to school district personnel who conduct school building or district-wide curriculum revision activities and textbook evaluation and adoption procedures.

To determine the usefulness of the guidelines, projects must include several field tests. These field tests must determine: (1) The usefulness of the guidelines to publishers in the development of new materials and in the revision of existing materials; (2) the extent to which the guidelines help teachers analyze and prioritize content for students; and (3) the utility of the guidelines in improving school building or district-wide curriculum revision and textbook evaluation and adoption procedures. Part of the field testing must include obtaining informed judgments about the logic, design, and content of the guidelines from each of the target audiences above. For purposes (2) and (3), the projects must also include field tests in at least four school districts to test the usefulness of the guidelines as implemented in typical settings (classrooms and districts). The target populations for this priority are primary, elementary, and middle school aged students (kindergarten through grade eight) with handicapping conditions. It is anticipated that two cooperative agreements will be funded under this priority: one addressing social studies curricula and one addressing language arts curricula.

CFDA No. 84.023H—Research on the Delivery of Services to Students With Handicaps From Non-Standard English, Limited English Proficiency (Including Mono-Lingual) and/or Non-Dominant Cultural Groups

The purpose of this priority is to support projects that focus on students with handicaps from non-standard English-speaking, limited English proficiency (including mono-lingual), and/or non-dominant cultural groups. Projects supported under this priority must: (1) Use ethnographic and observational research techniques to identify the cultural and language features of classrooms and related service settings (e.g., speech or occupational therapy provided elsewhere on school grounds) that detrimentally affect the delivery of educational services to students with handicaps from non-standard English-speaking, limited English proficiency (including mono-lingual), and/or non-dominant cultural groups by general education, special education, and related services personnel; (2) develop and test strategies, including personnel training strategies, for adapting the delivery of educational services to better accommodate the cultural and language patterns of these students; and (3) develop and test strategies for enhancing the development of the language, social, and survival skills necessary for functioning and learning

in special and regular educational and community settings by students with handicaps from non-standard English-speaking, limited English proficiency (including mono-lingual) and/or non-dominant cultural groups. Projects may select one or more target groups for the research but must make the selection through consideration of research evidence showing the need to address the particular groups.

CFDA No. 84.023K—Interventions to Support Junior High School-Aged Students With Handicaps Who Are at Risk for Dropping Out of School

This priority supports research projects that focus on junior high school-aged students who are classified as seriously emotionally disturbed (SED) and students who are classified as learning disabled (LD), and who are at risk for leaving school prior to completion. These projects must develop and field test interventions designed to enhance students' engagement in school. Each project must identify a target school district in light of relevant district and student characteristics including the percentage of nonhandicapped students and the percentage of students with handicaps, by handicapping condition, who exit schooling by dropping out. Information and hypotheses as to the reasons district students classified as SED and students classified as LD drop out of school must also be considered along with strategies for keeping these students in school. Hypotheses must be based on a conceptual framework that is drawn from previous special education and general education research regarding school drop-outs and drop-out prevention but tailored to the particular characteristics and circumstances of the target district and its students. This framework must identify school, home, and community factors that result in student engagement in schooling. Indicators of student engagement in schooling include attendance, participation in school and extra-curricular activities, completion of assignments, development of friendships, as well as commitment to school completion as measured by continuance in schooling during the entire project period. The interventions must address underlying problems rather than correct symptoms associated with students who drop out of school. For example, failing grades may be associated with students who drop out, but to simply give passing grades to students at risk for dropping out is not an acceptable intervention. Projects must develop, implement, and test comprehensive interventions related to these factors. School-based components of interventions must be implemented in general education settings, though they may be implemented in alternative school settings if these settings include nonhandicapped students. Projects must select at least two cohorts of students in successive years and follow them through at least two years of participation in the interventions through their transition to high school and at least to a chronological age that is 6 months past the minimum age for exiting from compulsory schooling as determined by State law or regulations. Research findings from the first cohort of students must be used to adjust (if necessary) the interventions used with the second cohort. In designing the field tests, investigators must concurrently or retrospectively collect information on comparison cohorts of similar students within the district to provide a longitudinal data base for measuring the effectiveness of the interventions. The final (fifth) year's activities must be limited to student follow-up and dissemination of project findings and materials, and thus will entail a reduced level of funding. Each project supported under this priority must include both SED and LD students at risk for dropping out of school.

CFDA 84.023N—Initial Career Awards

This priority provides awards to eligible applicants for the support of individuals who have exited from graduate school programs no longer than three years prior to the award to conduct research and related activities focusing on the education of infants, toddlers, children, and youth with handicaps consistent with the purpose of the program as stated in 34 CFR 324.1. The support is intended to allow individuals in the initial phases of careers to initiate and develop promising lines of research that will improve the education of children with handicaps. The project must include a potential contribution to be derived from the proposed line of inquiry that will be pursued during the project period. The project must include a plan for obtaining sustained involvement with nationally recognized experts having substantive or methodological knowledge and techniques critical to the conduct of the proposed research. These experts may be geographically located at other institutions. The nature of this interaction must be of sufficient frequency and duration for the researcher to develop the capacity to effectively pursue the research into mid-career activities. An applicant may apply for up to three years of funding. At least 50% of the researcher's time must be devoted exclusively to the project.

Selection Criteria

The Secretary uses the following selection criteria to evaluate applications for research projects. The maximum score for all of the criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel that the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

(Cross Reference: 34 CFR 75.590. Evaluation by the grantee.)

(2) The Secretary considers the extent to which the methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Importance.* (10 points) The Secretary reviews each application to determine the importance of the project in leading to the understanding of, remediation, or compensation for the problem or issue relating to the education of handicapped children and youth being addressed.

(g) *Impact.* (5 points) The Secretary reviews each application to determine the probable impact of the proposed research and development products and the extent to which those products can be expected to have a direct influence on handicapped children and youth or personnel responsible for their education.

(h) *Organizational capability.* (10 points) The Secretary considers—

(1) The applicant's special education experience; and

(2) The ability of the applicant to disseminate the findings of the project to appropriate groups to ensure that they can be used effectively.

(i) *Technical soundness.* (40 points) The Secretary reviews each application to determine the technical soundness of the research or evaluation plan, including—

(1) The design;

(2) The proposed sample;

(3) Instrumentation; and

(4) Data analysis procedures.

Eligible Applicants:

Eligible applicants are State and local educational agencies, institutions of higher education, and other public agencies and nonprofit private organizations.

Program Authority: 20 U.S.C. 1441–1444.

HANDICAPPED CHILDREN'S EARLY EDUCATION PROGRAM

[Application Notices for Fiscal Year 1990]

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds [1]	Estimated range of awards (per year)	Estimated size of awards [1] (per year)	Estimated number of awards	Project period in months
State or multi-State outreach projects (84.024D)[3].	09/28/89	11/27/89	2,500,000	100,000–130,000	125,000	20	Up to 36.
Information management of services for infants and toddlers (84.024M) [3].	09/29/89	11/28/89	750,000	100,000–130,000	125,000	6	Up to 24.
Nondirected demonstrations (84.024B) [3]	11/15/89	1/15/90	3,421,000	100,000–130,000	125,000	[2] 9	Up to 36.

[1] These are estimates. The actual amount available for awards cannot be determined pending final action by the Congress.

[2] Approximately $3,421,000 of 1990 funds are available to fully fund these projects for the total 36 month project period. Estimated size of awards information ($125,000) is for each 12 months of the project period. Applicants are encouraged to submit budget estimates of approximately $125,000 for each 12 month budget period requested.

[3] Awards may not exceed 90 percent of the total costs of development, operation, and evaluation of these projects.

CFDA No. 84.024—Handicapped Children's Early Education Program

Purpose of Program: To provide Federal support for a variety of activities designed to address the special problems of infants, toddlers, and children with handicaps, from birth through age eight and their families, and to assist State and local entities in expanding and improving programs and services for those infants, toddlers, and children and their families. Activities include demonstration, outreach, experimental research and training projects, and research institutes.

Priorities:

CFDA No. 84.024B—Nondirected Demonstrations

This priority supports demonstration projects that develop, implement, and evaluate new or improved approaches for serving young children with handicaps (ages birth through eight). Projects funded under this priority must design models that allow young children with handicaps to achieve their optimal functioning level within normalized, nonsegregated environments.

Projects must (1) address a specific service problem or issue; (2) include specific components or procedures of the model and the rationale, based on theory, research, or practice evaluation, for those components or procedures; (3) include specific types of students to participate in the project (i.e., by age, handicapping condition or diagnosis, level of functioning) and (4) include an evaluation design that includes functional outcome measures for the young children with handicaps who participate in the proposed interventions. Final reports submitted by projects funded under this priority must include both the specific findings of the project as well as general principles that have been learned or tested for developing interventions for young children with handicaps. Quantifiable information from project evaluation activities must also be included along with precise information regarding the procedures for the interventions and the contexts in which they were implemented as well as available cost information.

The Secretary particularly invites applications for demonstration projects that develop models for delivering, coordinating, or supplementing needed developmental, special educational, or related services to infants, toddlers, or preschool-aged children with handicaps who are in day-care programs (home-

based, center-based, or home or center based in conjunction with part-day special education preschool programs). This invitational priority responds to the growing number of young children, including children with handicaps, who are placed in day-care services to accommodate the childcare needs of working parents. However, in accordance with EDGAR at 34 CFR 75.105(c)(1), an application that meets this invitational priority receives no competitive or absolute preference over other applications for demonstration projects that develop, implement, and evaluate new or improved approaches for serving young children with handicaps (ages birth through eight).

CFDA No. 84.024M—Information Management of Services for Infants and Toddlers

This priority supports demonstration projects to develop or improve and evaluate automated information management systems for tracking, managing, and planning services for young children with handicaps, aged birth through two years of age, and their families within a State or major urban area. The system must (1) separately track and count the children and families who receive early intervention services; (2) identify the types and location of those services provided and/or needed but not provided; (3) identify the provider and the funding sources (Federal, State, private, or local) for each service provided; (4) alert programs serving preschool-aged children of incoming three year old children, at least three months in advance of the children's transition from early intervention services to preschool services; and, (5) use data elements compatible with State or regional child count systems.

Projects must coordinate the program with the State education agency and the State agency designated to administer the Program for Infants and Toddlers With Handicaps in the States where the information system is tested. The system must be coordinated with any other information systems in the State (e.g., health agency systems for tracking specific medical conditions), that overlap in population tracked, intent or purpose. This may be achieved, for example, by using identifiers compatible with other existing systems, or by merging the existing systems into a single system.

Projects funded under this priority must include an evaluation design that assures that the automated system is operational (*i.e.* produces information and reports that are accurate and consistent with the system design), that the required information linkages are compatible and reliable, and that the information produced is useful for tracking and planning purposes by the intended users of the information system. It is anticipated that projects funded under this priority will develop the software, documentation, and users' guides that will allow other interested agencies to adopt the information system. Users guides must provide as much information as possible as to the ways elements of the system can be adapted to fit the data needs or hardware configurations of other agencies.

CFDA No. 84.024D—State or Multi-State Outreach Projects

This priority supports projects that facilitate the implementation in single or multiple States of proven infant, toddler or early childhood models, or selected components of those models. Projects supported under this priority must:

(1) Coordinate their dissemination and replication activities with the lead agency for Part H of the Education of the Handicapped Act for early intervention services or the State educational agency for special education and related services;

(2) Disseminate and replicate proven models, or components of proven models, that provide services needed to assist young children, aged eight and below to achieve the children's optimal functioning. Services at a minimum must contain the following components:

(a) Approaches relevant to programming in regular settings including provision for skills necessary to function in integrated educational environments;

(b) Team based programming that integrates the delivery of services that includes parents, teachers, therapists and other professional disciplines;

(c) Effective involvement of families in the planning and delivery of services; and

(d) Interagency coordination when multiple agencies are involved in the provision of services to children;

(3) Evaluate the dissemination and replication activities to determine their effectiveness including their impact on the provision of services to infants, toddlers, and young children with handicaps.

The models or components of models must be state-of-the-art, providing procedures and information that are not readily available to program sites within States where outreach is planned. The models or components of models must be based on current theory and research, and must have unambiguous evaluation information regarding effectiveness. In addition, the project must be consistent with the provisions of Part B or Part H of the Education of the Handicapped Act. Outreach activities may include, but not be limited to: public awareness, product development and dissemination, site development, training and technical assistance. The projects may work with major early childhood associations, provider groups or agencies in disseminating and replicating the proven models, or components of proven models.

Projects under this priority must (1) include models or components of models selected for outreach activities and a rationale as to the importance of these models; (2) select a model based on unambiguous evidence as to its effectiveness; (3) include specific dissemination and replication activities; and (4) have a rationale for those activities.

Final reports submitted by projects funded under this priority must include evaluation information as to the effectiveness of the model as implemented by replication sites.

The Secretary particularly invites applications for outreach projects that are based on models serving young children with severe disabilities, young children with handicaps due to chronic health problems, or young children with handicapping conditions who have been previously unserved or underserved. However, in accordance with EDGAR at 34 CFR 75.105(c)(1), an application that meets this invitational priority receives no competitive or absolute preference over other applications for outreach projects that serve other young children with handicaps aged birth through eight.

Selection Criteria:

The Secretary uses the following criteria to evaluate an application. The maximum score for all the criteria is 100 points.

(a) Importance. (15 points)

(1) The Secretary reviews each application to determine the extent to which the proposed project addresses concerns in light of the purposes of this part.

(2) The Secretary considers—

(i) The significance of the problem or issue to be addressed;

(ii) The extent to which the project is based on previous research findings related to the problem or issue;

(iii) The numbers of individuals who will benefit; and

(iv) How the project will address the identified problem or issue.

(b) Impact. (15 points)

(1) The Secretary reviews each application to determine the probable impact of the proposed project in meeting the needs of children with handicaps, birth through age eight, and their families.

(2) The Secretary considers—

(i) The contribution that project findings or products will make to current knowledge and practice;

(ii) The methods used for dissemination of project findings or products to appropriate target audiences; and

(iii) The extent to which findings or products are replicable, if appropriate.

(c) Technical soundness. (35 points)

(1) The Secretary reviews each application to determine the technical soundness of the project plan;

(2) In reviewing applications under this part, the Secretary considers—

(i) The quality of the design of the project;

(ii) The proposed sample or target population, including the numbers of participants involved and methods that will be used by the applicant to ensure that participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition;

(iii) The methods and procedures used to implement the design, including instrumentation and data analysis; and

(iv) The anticipated outcomes.

(3) With respect to training projects, in applying the criterion in paragraph (c)(2)(iii) of this section, the Secretary considers—

(i) The curriculum, course sequence, and practice leading to specific competencies; and

(ii) The relationship of the project to the comprehensive system of personnel development plans required by Parts B and H of the Act, and State licensure or certification standards.

(4) In addition to the criteria in paragraph (c)(2) of this section, the Secretary, in reviewing outreach projects, also considers—

(i) The agencies to be served through outreach activities;

(ii) The current services, their location, and anticipated impact of outreach assistance for each of those agencies;

(iii) The model demonstration project upon which the outreach project is based, including the effectiveness of the model program with children, families, or other recipients of project services; and

(iv) The likelihood that the demonstration project will be continued and supported by funds other than those available through this part.

(d) *Plan of operation.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary considers—

(i) The extent to which the management plan will ensure proper and efficient administration of the project;

(ii) Clarity in the goals and objectives of the project;

(iii) The quality of the activities proposed to accomplish the goals and objectives;

(iv) The adequacy of proposed timelines for accomplishing those activities; and

(v) Effectiveness in the ways in which the applicant plans to use the resources and personnel to accomplish the goals and objectives.

(e) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application to determine the quality of the plan for evaluating project goals, objectives, and activities.

(2) The Secretary considers the extent to which the methods of evaluation are appropriate and produce objective and quantifiable data.

(f) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use.

(2) The Secretary considers—

(i) The qualifications of the project director and project coordinator (if one is used);

(ii) The qualifications of each of the other key project personnel;

(iii) The time that each person referred to in paragraphs (f)(2) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant will ensure that personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(3) The Secretary considers experience and training in areas related to project goals to determine qualifications of key personnel.

(g) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine adequacy of resources allocated to the project.

(2) The Secretary considers the adequacy of the facilities and the equipment and supplies that the applicant plans to use.

(h) *Budget and cost-effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to undertake project activities; and

(ii) Costs are reasonable in relation to objectives of the project.

Eligible Applicants: Public agencies and nonprofit private organizations may apply for an award under any of the priorities.

Program Authority: 20 U.S.C. 1423.

SERVICES FOR DEAF BLIND CHILDREN AND YOUTH

[Application Notices for Fiscal Year 1990]

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds [1]	Estimated range of awards (per year)	Estimated size of awards [1] (per year)	Estimated number of awards	Project period in months
State and multi-State projects for deaf-blind children and youth (84.025A)	9/29/89	11/28/89	400,000	80,000–110,000	100,000	4	34
Technical assistance to State and multi-State projects (84.025C)	10/27/89	12/26/89	940,000	940,000	940,000	1	36

[1] These are estimates. The actual amount available for awards cannot be determined pending final action by the Congress.

CFDA No.: 84.025—Services for Deaf-Blind Children and Youth

Purpose of Program:

To provide support for projects that enhance services to deaf-blind children and youth, particularly by providing technical assistance to State educational agencies and others who are involved in the education of deaf-blind children and youth.

Priorities:

CFDA 84.025A—State Deaf-Blind Projects

This priority supports State deaf-blind projects for services to deaf-blind children and youth and technical assistance to agencies, institutions, and organizations as described in 34 CFR 307.11.

This priority provides the opportunity for a State presently participating in a multi-State project for deaf-blind children and youth to apply for a single State project, or for a State not participating at all to apply for a project.

CFDA 84.025C—Technical Assistance to Grantees Under 34 CFR 307.11

This priority supports one project to provide technical assistance to grantees under 34 CFR 307.11 as described in 34 CFR 307.12.

The Secretary particularly invites applications that in addition to providing technical assistance services on a national basis to State and Multi-State projects funded under 34 CFR 307.11, include the following:

(a) Selection of quality project reports, research findings, peer-reviewed journal articles, and other materials pertaining to the provision of services to deaf-blind children and youth, and the dissemination of this information to the field in response to requests from State educational agencies or grantees under 34 CFR 307.11. The selection of these materials would be based on established criteria to determine evidence of replicable, best practices, and could include material relating to the education of children with other severe handicaps that have a high degree of relevance for the education of children with deaf-blindness. This task would include the development of materials addressing topical issues of prominent concern to the field.

(b) Provide the planning assistance and managerial support for programmatically substantive annual meetings in Washington, DC, of directors of projects serving children and youth with deaf-blindness. The planning for these meetings would be approved by and conducted in coordination with Federal program staff; and

(c) Provide technical assistance to the 34 CFR 307.11 grantees in their preparation and submission of data required under Paragraph (c)(2) of section 622 of the Education of the Handicapped Act.

However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications to provide technical assistance to grantees under 34 CFR 307.11 as described in 34 CFR 307.12.

Selection Criteria:

The Secretary uses the following criteria to evaluate the quality of an application submitted under 34 CFR 307.11. Each applicant may receive up to a total of 100 points. Each application will be evaluated based only on those factors of each criterion that relate to the service needs of the States the applicant proposes to serve.

(a) *Justification for the project, extent of need, and expected impact.* (15 points) The Secretary reviews each application to determine the justification for the proposed activities in each State, based on the extent of State need for and expected impact from the provision of services and technical assistance, including consideration of—

(1) The age, number, and location of deaf-blind children and youth in the State to whom the State is not obligated to provide a free appropriate public education under Part B of the EHA, to whom the State is not providing special educational and related services under some other authority, and to whom the applicant proposes to provide services;

(2) The specific actions needed for the provision of educational and related services to deaf-blind children and youth based on the State's plan for delivery of services to students with handicaps required under Parts B and H;

(3) The specific actions needed for the provision of technical assistance addressed by the project based on the State's plan for provision of technical assistance to providers of services to deaf-blind children and youth;

(4) The expected benefits to be gained by providing the educational and related services to deaf-blind children and youth to be served by the project, their parents and service providers; and

(5) The expected benefits to be gained by meeting the technical assistance needs of service providers to be assisted by the project.

(b) *Quality of services and technical assistance.* (40 points) The Secretary reviews each application to determine the quality of the plan to provide services and technical assistance in each State to be served, including—

(1) The quality of the design of the project for providing each of the educational and related services described under 34 CFR 307.11(a)(1), and for providing technical assistance as described under 34 CFR 307.11(a)(2);

(2) The extent to which the applicant's plan for providing services and technical assistance implements current research findings and exemplary practices including arranging for services that are age-appropriate for project participants, and providing for the maximum integration of deaf-blind children and youth in the least restrictive environment;

(3) How well the objectives of the project respond to the needs of deaf-blind children and youth in the State, their parents, and service providers;

(4) The extent to which the plan of management is effective and ensures proper and efficient provision of educational and related services and technical assistance, and reflects an analysis of the service needs of deaf-blind children and youth in the State;

(5) How well the objectives of the project relate to the purpose of the program;

(6) How the project will assist the State in developing and implementing the State's Comprehensive Systems of Personnel Development required under Parts B and H of EHA;

(7) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition;

(8) The quality of the applicant's plan for providing consultative and training services for families of deaf-blind children and youth as described in 34 CFR 307.11(a)(1)(iii);

(9) The quality of the applicant's plan to involve parents in the development and delivery of appropriate services to their deaf-blind children and youth; and

(10) The extent to which services provided for children birth through two years of age meet the requirements of Part H of the EHA.

(c) *Quality of key personnel.* (10 points) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project for the provision of services to deaf-blind children and youth and technical assistance to agencies, including—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The experience among key personnel referred to in paragraphs (c)(1) and (2) of this section, relevant to the provision of quality educational services to deaf-blind children and youth in less restrictive environments;

(4) The time that each person referred to in paragraphs (c)(1) and (2) of this section will commit to the project; and

(5) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee)

(e) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine for technical assistance, and direct services where appropriate, in each State to be served, the extent to which—

(1) The budgets are adequate to support the activities;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) Costs reflect—

(i) The time anticipated to be spent by each staff member for the provision of services described under 34 CFR 307.11(a)(1) and costs for contracted and consultative services, travel costs, and other direct costs;

(ii) The time anticipated to be spent by each staff member for the provision of technical assistance under 34 CFR 307.11(a)(2), and costs for contracted and consultative services, travel, and other related expenditures for technical assistance activities; and

(iii) The time anticipated to be spent for administrative services.

(Authority: 20 U.S.C. 1422)

(f) *Coordination.* (5 points) The Secretary reviews each application to determine the adequacy of the applicant's procedures for initiating and maintaining coordination in each State to be served with—

(1) Related activities funded from grants, contracts, and cooperative agreements awarded under Parts C, D, E, F, and G of the EHA; and

(2) Relevant agencies, organizations, and institutions having responsibility to deliver services to deaf-blind children and youth in the State, including State education agencies and other service providers under Parts B and H of the EHA and Section 1221 *et seq.* of Title I of the Elementary and Secondary Education Act of 1965.

(g) *Dissemination.* (5 points) The Secretary reviews each application to determine the adequacy of the applicant's procedures for disseminating significant project information within the State(s) to providers of services to deaf-blind children and youth.

The Secretary uses the following criteria to evaluate an application for the provision of technical assistance under 34 CFR 307.12 or 307.13:

(a) *Extent of need and expected impact of the project.* (25 points) The Secretary reviews each application to determine the extent to which the project will assist in meeting national needs in the provision of services to deaf-blind children and youth, including consideration of—

(1) The extent and importance of the needs addressed by the project;

(2) The expected benefits to deaf-blind children and youth served by the project, their parents, and service providers; and

(3) The national significance of the project in terms of potential benefits to deaf-blind children and youth who are not directly involved in the project.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(c) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (c)(1)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(d) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Dissemination plan.* (5 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including the extent to which the applicant's plan—

(1) Ensures proper and efficient dissemination of project information throughout the Nation; and

(2) Adequately includes the content, intended audiences, and timelines for production of all project documents and other products that the applicant will disseminate.

Eligible Applicants: Public or nonprofit private agencies, institutions, or organizations may apply for support under this program.

Program Authority: 20 U.S.C. 1422

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EDUCATIONAL MEDIA RESEARCH, PRODUCTION, DISTRIBUTION AND TRAINING PROGRAM

[Application Notices for Fiscal Year 1990]

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds [1] per year	Estimated range of awards (per year)	Estimated size of awards [1]	Estimated number of awards	Project period in months
Closed captioned local and regional news (84.026L)	09/29/89	11/28/89	300,000	50,000	50,000	6	36

[1] These are estimates. The actual amount available for awards cannot be determined pending final action by the Congress.

CFDA No. 84.026—Educational Media Research, Production, Distribution, and Training Program

Purpose of Program

To promote the educational advancement of persons with handicaps by providing assistance for: (a) Conducting research in the use of educational media for persons with handicaps; (b) producing and distributing educational media for the use of persons with handicaps, their parents, their actual or potential employers, and other persons directly involved in work for the advancement of persons with handicaps; and (c) training persons in the use of educational media for the instructions of persons with handicaps.

Priority

CFDA No. 84.026L—Closed-Captioned Local and Regional News

The purpose of this priority is to support projects for the closed-captioning of local television news programs which, at the end of this three year award, will be maintained and continued without additional Federal funding. Projects must:

(1) Include a total number of television hours (first time and repeat) to be captioned per week and a specific method to be used for each hour—real-time, computer assisted, teleprompting, etc.;

(2) Obtain financial commitments for project continuation by the end of the third year;

(3) Provide a back-up system that will ensure successful, timely captioning; and

(4) Have obtained willingness of major networks to permit captioning of their programs.

Selection Criteria

The Secretary uses the following criteria to evaluate applications for new awards. The maximum score for all criteria is 100 points.

(a) *Plan of operation.* (25 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally under represented, such as—

(A) Handicapped persons;

(B) Members of racial or ethnic minority groups;

(C) Women; and

(D) The elderly.

(b) *Quality of key personnel.* (20) points

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally under represented, such as—

(A) Handicapped persons;

(B) Members of racial or ethnic minority groups;

(C) Women; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (15 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (*See* 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources for the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need.* (20 points)

(1) The Secretary reviews each application for information that shows the need for the project.

(2) The Secretary looks for information that shows—

(i) The need for the proposed activity with respect to the handicapping condition served or to be served by the applicant; and

(ii) The potential for using the results in other projects or programs.

(g) *Marketing and dissemination.* (5 points)

(1) The Secretary reviews each application for information that shows adequate provisions for marketing or disseminating results.

(2) The Secretary looks for information that shows—

(i) The provisions for marketing or otherwise disseminating the results of the project; and

(ii) Provisions for making materials and techniques available to the populations for whom the project would be useful.

Eligible Applicants

Parties eligible for grants under this subpart are profit and nonprofit public and private agencies, organizations, and institutions.

Program Authority: 20 U.S.C. 1451, 1452.

TRAINING PERSONNEL FOR THE EDUCATION OF THE HANDICAPPED

[Application Notices for Fiscal Year 1990]

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds [1]	Estimated range of awards (per year)	Estimated size of awards [1] (per year)	Estimated number of awards	Project period in months
Special Projects (84.029K)	11/03/89	01/02/90	2,300,000	65,000–85,000	80,000	29	Up to 36.
Preparation of personnel for careers in special education and early intervention (84.029B).	11/10/89	01/09/90	7,400,000	60,000–80,000	75,000	99	Up to 36.
Preparation of personnel for transition of handicapped youth to adult and working life (84.029G).	11/17/89	01/16/90	1,150,000	60,000–80,000	75,000	15	Up to 36.
Preparation of leadership personnel (84.029D)	11/27/89	01/26/90	2,250,000	70,000–90,000	85,000	26	Up to 60.
Preparation of personnel to provide early intervention services to infants and toddlers with handicaps (84.029O).	12/08/89	02/06/90	1,100,000	60,000–80,000	75,000	15	Up to 60.
Preparation of personnel for special populations of infants, toddlers, children and youth with handicaps (84.029E).	01/08/90	03/09/90	1,150,000	60,000–80,000	75,000	15	Up to 36.
Preparation of personnel to work in rural areas (84.029J).	01/08/90	03/09/90	1,000,000	60,000–80,000	75,000	13	Up to 36.
Preparation of personnel for low-incidence handicapped students (84.029A).	01/12/90	03/13/90	500,000	60,000–80,000	75,000	7	Up to 60.
Preparation of related services personnel (84.029F).	01/12/90	03/13/90	2,250,000	60,000–80,000	75,000	30	Up to 36.

[1] These are estimates. The actual amount available for awards cannot be determined pending final action by the Congress.

CFDA No.: 84.029—Training Personnel for the Education of the Handicapped

Purpose of Program

This program serves to increase the quantity and improve the quality of personnel available to serve infants, toddlers, children, and youth with handicaps through the provision of awards to support the preservice training of personnel for careers in special education and early intervention in special education teaching, related services, supervision and administration, research, and early intervention; and through support of special projects designed to develop and demonstrate new approaches for preservice and inservice training.

Priorities

CFDA No. 84.029B—Preparation of personnel for Careers in Special Education and Early Intervention

This priority supports projects under 34 CFR 318.3 (b) and (c) that are designed to provide preservice training of personnel for careers in special education and early intervention, or supervisors of those personnel. The priority includes the preparation of special teachers of infants, toddlers, children, and youth with handicaps, special education administrators and supervisors, speech-language pathologists, audiologists, adaptive physical educators, vocational educators, and infant intervention specialists.

CFDA No. 84.029F—Preparation of Related Services Personnel

This priority supports projects under 34 CFR 318.3 (b) and (c) that are designed to provide preservice preparation of individuals who provide developmental, corrective, and other supportive services that assist infants, toddlers, children, and youth with handicaps to benefit from special education. These include paraprofessional personnel, therapeutic recreation specialists, health service providers, physical therapists, occupational therapists, and other related services personnel.

CFDA No. 84.029D—Preparation of Leadership Personnel

This priority supports projects under 34 CFR 318.3 (b) and (c) that are designed to provide preservice doctoral and post-doctoral preparation of professional personnel such as administrators, supervisors, researchers, and teacher trainers.

CFDA No. 84.029G—Preparation of Personnel for Transition of Youth With Handicaps to Adult and Working Life

This priority supports projects under 34 CFR 318.3 (b) and (c) that are designed to provide preservice preparation of individuals who assist youth with handicaps in their transition from school to adult roles. Personnel may be prepared to provide short-term transitional services, long-term structured employment services, or instruction in community and school settings with secondary school students.

CFDA No. 84.029Q—Preparation of Personnel to Provide Early Intervention Services to Infants and Toddlers With Handicaps

This priority supports projects under 34 CFR 318.3 (b) and (c) that are designed to provide preservice preparation of individuals who serve infants and toddlers with handicaps or those who are at high risk of being handicapped. Personnel may be prepared to provide short-term services or long-term services that extend into a child's preschool program.

CFDA No. 84.029E—Preparation of Personnel for Special Populations of Infants, Toddlers, Children, and Youth With Handicaps

This priority supports the preservice preparation of early intervention, special education, and related services personnel under 34 CFR 318.3 (b) and (c) who will serve special populations of infants, toddlers, children, and youth with handicaps who, because of special characteristics, require professional competencies in addition to those needed for other infants, toddlers, children, and youth with similar disabilities. Project personnel funded under this priority must define a specific special population, describe the additional competencies that are needed by professionals serving that population, and describe how the project's training program will result in the attainment of those competencies.

The Secretary especially invites applications in which personnel are prepared to address the special characteristics of children with handicaps from minority groups, those who have limited English proficiency, and those from disadvantaged groups. However, in accordance with EDGAR at 34 CFR 75.105(c)(1), an application that meets this invitational priority receives no competitive or absolute preference over other special population applications.

CFDA No. 84.029J—Preparation of Personnel to Work in Rural Areas

This priority supports projects under 34 CFR 318.3 (b) and (c) that are designed to provide preservice training of personnel who will serve infants, toddlers, children, and youth with handicaps in rural areas. Projects must also be designed to provide training to assist personnel to work with parents, teachers, and administrators in a rural environment.

CFDA No. 84.029K—Special Projects

This priority supports projects with preservice and inservice activities specified in 34 CFR 318.3(a).

CFDA No. 4.029A—Preparation of Personnel for Low Incidence Handicapped Students

This priority supports preservice preparation of special educators and early intervention personnel who serve infants, toddlers, children, and youth with low incidence handicaps in a designated State or geographic area.

Specifically, the Secretary selects the following low-incidence categories:

(1) Severe handicaps, including intense physical or mental problems, deaf-blindness, and other multiple handicaps.

(2) Deaf

(3) Blind

(4) Serious emotional disturbance

(5) Other health impairments, including autism and chronic or acute health problems.

Selection Criteria

(a) The Secretary uses the following criteria to evaluate all applications other than applications for special projects, as described in 34 CFR 318.3(a).

(1) *Impact on critical present and projected need.* (30 points) The Secretary reviews each application to determine the extent to which the training will have a significant impact on critical State, regional, or national needs in the quality or the quantity of personnel serving infants, toddlers, children, and youth with handicaps. The Secretary considers—

(i) The significance of the personnel needs to be addressed to the provision of special education, related services and early intervention services. Significance of need identified by the applicant may be shown by—

(A) Evidence of critical personnel shortages in targeted specialty or geographic areas, as demonstrated by data from the State Comprehensive System of Personnel Development; reports from the Clearinghouse on Careers and Employment of Personnel serving children and youth with handicaps; or other indicators of need that the applicant demonstrates are relevant, reliable, and accurate; or

(B) Evidence showing significant need for improvement in the quality of personnel providing special education, related services and early intervention services, as shown by comparisons of actual and needed skills of personnel in targeted specialty or geographic areas; and

(ii) The impact the proposed project will have on the targeted need. Evidence that the project results will have an impact on the targeted needs may include—

(A) The projected number of graduates from the project each year who will have necessary competencies and certification to affect the need;

(B) For ongoing programs, the extent to which the applicant's projections are supported by the number of previous program graduates that have entered the field for which they received training, the professional contributions of those graduates, and data on the need for graduates in paragraph (a)(1)(ii)(A) of this section; and

(C) For new programs, the extent to which program features support the projections in 34 CFR 318.21(a)(1)(ii)(A), and the applicant's plan for helping graduates locate appropriate employment in the area of need or the program features that ensure that graduates will have competencies needed to address identified qualitative needs.

(2) *Capacity of the institution.* (25 points) The Secretary reviews each application to determine the capacity of the institution or agency to train qualified personnel, including consideration of—

(i) The qualifications and accomplishments of the project director and other key personnel directly involved in the proposed training program, including prior training, publications, and other professional contributions;

(ii) The amount of time each key person plans to commit to the project;

(iii) The adequacy of resources, facilities, supplies, and equipment that the applicant plans to commit to the project;

(iv) The quality of the practicum training settings, including evidence that they are sufficiently available, apply state-of-the-art services and model teaching practices, materials and technology, provide adequate supervision to trainees, and offer opportunities for trainees to teach and foster interaction between students with handicaps and their non-handicapped peers;

(v) The capacity of the applicant to recruit well-qualified students;

(vi) The experience and capacity of the applicant to assist local public schools and early intervention service agencies in providing training to these personnel, including the development of model practicum sites: and

(vii) The extent to which the applicant cooperates with State educational agency (SEAs), the State designated lead agency under Part H of the Act, other institutions of higher education (IHEs), and other appropriate public and private agencies in the region served by the applicant in identifying personnel needs and plans to address those needs.

(3) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) High quality in the design of the project;

(ii) The extent to which the plan of management ensures effective, proper, and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition;

(vi) The extent to which the application includes a delineation of competencies that program graduates will acquire and how the competencies will be evaluated;

(vii) The extent to which substantive content and organization of the program—

(A) Are appropriate for the students' attainment of professional knowledge and competencies deemed necessary for the provision of quality educational and early intervention services for infants, toddlers, children, and youth with handicaps; and

(B) Demonstrate an awareness of methods, procedures, techniques, technology, and instructional media or materials that are relevant to the preparation of personnel who serve infants, toddlers, children, and youth with handicaps; and

(viii) The extent to which program philosophy, objectives, and activities implement current research and demonstration results in meeting the educational or early intervention needs of infants, toddlers, children, and youth with handicaps.

(4) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate for the project;

(ii) To the extent possible, are objective and produce data that are quantifiable, including, but not limited to, the number of trainees graduated and hired;

(iii) Provide evidence that evaluation data and student follow-up data are systematically collected and used to modify and improve the program. (See 34 CFR 75.590, Evaluation by the grantee.)

(5) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(i) The budget for the project is adequate to support the project activities:

(ii) Costs are reasonable in relation to the objectives of the project; and

(iii) The applicant presents appropriate plans for the institutionalization of Federally supported activities into basic program operations.

(b) The Secretary uses the following criteria to evaluate a special projects application described in § 318.3(a):

(1) *Anticipated project results.* (20 points) The Secretary reviews each application to determine the extent to which the project will meet present and projected needs under Parts B and H of the Act in special education, related services, or early intervention services personnel development.

(2) *Program content.* (20 points) The Secretary reviews each application to determine—

(i) The project's potential for national significance, its potential for replication and effectiveness, and the quality of its plan for dissemination of the results of the project;

(ii) The extent to which substantive content and organization of the program—

(A) Are appropriate for the attainment of knowledge that is necessary for the provision of quality educational and early intervention services to infants, toddlers, children, and youth with handicaps; and

(B) Demonstrate an awareness of relevant methods, procedures, techniques, technology, and instructional media or materials that can be used in the development of a model to prepare personnel to serve infants, toddlers, children and youth with handicaps; and

(iii) The extent to which program philosophy, objectives, and activities are related to the educational or early intervention needs of infants, toddlers, children, and youth with handicaps.

(3) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) How the objectives of the project relate to the purpose of the program; and

(iv) The way the applicant plans to use its resources and personnel to achieve each objective.

(4) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate for the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable. (See 34 CFR 75.590, Evaluation by the grantee.)

(5) *Quality of key personnel.* (15 points) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use in the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each of the key personnel plans to commit to the project:

(iv) How the applicant, as a part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition; and

(v) Evidence of the applicant's past experience and training in fields related to the objectives of the project.

(6) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(7) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project: and

(ii) Costs are reasonable in relation to the objectives of the project.

Eligible Applicants

Eligible applicants include institutions of higher education, State agencies, and other appropriate private non-profit agencies.

Program Authority: 20 U.S.C. 1431.

CLEARINGHOUSES FOR THE HANDICAPPED

[Application Notices for Fiscal Year 1990]

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds [1]	Estimated range of awards	Estimated size of awards [1]	Estimated number of awards	Project period in months
National Information Center (84.030A)	09/29/89	11/28/89	615,000	615,000	615,000	1	36
Postsecondary Clearinghouse (84.030C)	09/29/89	11/28/89	283,000	283,000	283,000	1	36
Clearinghouse on Careers and Employment (84.030E)	09/29/89	11/28/89	237,000	237,000	237,000	1	36

[1] These are estimates. The actual amount available for awards cannot be determined pending final action by the Congress.

CFDA 84.030—Clearinghouses for the Handicapped

Purpose.

To support national clearinghouses on special education information, postsecondary education for persons with handicaps, and special education careers and employment. The authorizing legislation requires support for three national clearinghouses. A national clearinghouse on the education of the handicapped that disseminates information and provides technical assistance to parents, professionals, and other interested parties; a national clearinghouse on post-secondary education for handicapped individuals; and a national clearinghouse designed to encourage students to seek careers and professional personnel to seek employment in the various fields relating to the education of handicapped children and youth.

Priorities

CFDA No. 84.030A—National Information Center

This priority provides support to establish and operate a national clearinghouse on the education of the handicapped that will—

(a) Disseminate information and provide technical assistance on a national basis to parents, professionals, and other interested parties concerning at least—

(1) Programs relating to the education of the handicapped under the Education of the Handicapped Act and other Federal laws;

(2)(i) Special educational programs, services, and resources;

(ii) Related medical, health, social, and recreational services;

(iii) Options for training and experience in daily living skills programs;

(iv) The nature of various handicapping conditions and their educational and employment implications;

(v) Legal issues affecting the handicapped; and

(vi) Information on available services and programs in postsecondary education for the handicapped; and

(3) Participation in programs described above, including referral of individuals to appropriate national, State, and local agencies and organizations for further assistance; and

(b) Promote the involvement of handicapped individuals, parents, volunteers, professionals, and interested organizations in the provision of information to the general public concerning the handicapped.

CFDA No. 84.030C—Postsecondary Clearinghouse

This priority provides support to establish and operate a national clearinghouse on postsecondary education for handicapped individuals that will collect and disseminate information on a national basis to handicapped individuals, professionals and other interested individuals, concerning postsecondary services and programs for the handicapped, including specially designed programs of postsecondary, vocational, technical, and adult education for handicapped individuals.

CFDA No. 84.030E—Clearinghouse on Careers and Employment

This priority provides support to establish and operate a national clearinghouse designed to encourage students to seek careers and professional personnel to seek employment in the various fields related to the education of handicapped children and youth through the following:

(a) Collection and dissemination of information on current and future national, regional, and State needs for special education and related services personnel. To meet this requirement the clearinghouse must—

(1) Collect, validate, and provide ready access to existing information about current needs;

(2) Develop a plan to estimate future needs;

(3) Conduct investigations designed to improve the relevance and accuracy of information on current and future needs;

(4) Collect, analyze, and report on information concerning the current personnel needs related to differently aged children and youth with handicaps of varying severity; and

(5) Devise mechanisms to foster better collection and dissemination on information on current and future personnel needs.

(b) Dissemination of information to high school guidance counselors and others concerning current career opportunities in special education and related services, location of programs that prepare personnel for the various special education and related service professions, and various forms of financial assistance (such as scholarships, stipends, and allowances).

(c) Identification of training programs, for the various special education and related service professions, that meet State and professionally recognized standards for programs that prepare personnel for those professions.

(d) Establishment of a network among local and State educational agencies and institutions of higher education concerning the supply of graduates and available openings.

(e) Provision of technical assistance to institutions seeking to meet State and professionally recognized standards of personnel preparation.

Selection Criteria

The Secretary uses the following criteria to evaluate applications for new grants. The maximum score for all the criteria is 100 points. The maximum score for each complete criterion is indicated in parentheses.

(a) Plan of operation. (40 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) Quality of key personnel. (15 points)

(1) The Secretary reviews each application for information that shows the qualifications of key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) Budget and cost effectiveness. (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) Evaluation plan. (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590, Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project, and to the extent possible, are objective and produce data that are quantifiable.

(e) Adequacy of resources. (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) Experience and ability. (10 points)

The Secretary looks for information that shows the applicant's—

(1) National experience relevant to performance of the functions supported by this program;

(2) Ability to conduct its proposed project;

(3) Ability to communicate with the intended consumers of information; and

(4) Ability to maintain the necessary communication with other agencies and organizations.

(g) Cooperation and coordination with other agencies. (10 points)—

(1) The Secretary reviews each application for information that shows the activities funded under this section will be coordinated with—

(i) Similar activities funded from grants and contracts awarded under this part and under Part C of the Act; and

(ii) Other agencies and organizations conducting or eligible to conduct activities essential to the effective implementation of the proposed project.

(2) The Secretary looks for information that shows the nature and extent of, and timeline for, coordination which the applicant has had and proposes to have to facilitate implementation and continuation of the project activities after termination of Federal funding.

Eligible Applicants: Parties eligible to apply for assistance under this part are Public agencies or nonprofit private organizations or institutions.

Program Authority: 20 U.S.C. 1433.

PROGRAMS FOR SEVERELY HANDICAPPED CHILDREN

[Application Notices for Fiscal Year 1990]

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds*	Estimated range of awards (per year)	Estimated size of awards (per year) [1]	Estimated number of awards	Project period in months
Utilization of innovative practices for children with severe handicaps (84.086U)	09/29/89	11/28/89	600,000	100,000–120,000	112,000	5	Up to 36.
Validated practices: children with deaf-blindness (84.086G)	09/29/89	11/28/89	680,000	100,000–120,000	113,000	6	Up to 36.
State-wide systems change (84.086J)	10/13/89	12/15/89	750,000	220,000–260,000	250,000	3	Up to 60.
Innovations for meeting special problems of children with severe handicaps in the context of regular education settings (84.086D)	10/13/89	12/15/89	450,000	100,000–120,000	112,000	4	Up to 36.
Utilization of innovative practices for children with deaf-blindness (84.086L)	10/13/89	12/15/89	680,000	100,000–120,000	113,000	6	Up to 36.

[1] These are estimates. The actual amount available for awards cannot be determined pending final action by the Congress.

CFDA No.: 84.086—Program for Severely Handicapped Children

Purpose: To provide Federal financial assistance for demonstration or development, research, training, and dissemination activities for severely handicapped, including deaf-blind, children and youth.

Priorities

CFDA No. 84.086J—State-wide Systems Change

This priority supports projects that do all of the following:

(a) Develop, in conjunction with the Part B State plan, activities to improve the quality of special education and related services in the State for severely handicapped (including deaf-blind) children and youth, birth through 21 years of age, and to change the delivery of these services from segregated to integrated environments;

(b) Significantly increase the number of severely handicapped including deaf-blind children in the State who are served in regular school settings alongside their same-aged nonhandicapped peers;

(c) Evaluate the effectiveness of these activities, including tracking the number of children with severe handicaps and deaf-blindness in the State in each type of educational setting and showing changes from previous years; and,

(d) Evaluate and disseminate information about the project's outcomes.

Projects under this priority must:

(1) Identify resources available in the State to provide the needed services to children and youth who are severely handicapped, including deaf-blind, as well as financial resources available through other agencies or parties.

(2) Establish services needed to assist these children and youth to achieve their most realistic functioning level in normalized, nonsegregated least restrictive environments. These services must include at a minimum:

(i) Delivery of integrated educational services that include providing severely handicapped, including deaf-blind, children who are currently being served in segregated environments with special educational and related services in programs at facilities with nonhandicapped children;

(ii) Movement of participating children and youth to and integration into less segregated environments, with the objective of facilitating the placement of these children in appropriate regular school settings;

(iii) Delivery of curricula relevant to education in integrated settings including the teaching of social integration skills, community referenced skills, and employment skills;

(iv) Activities to promote acceptance of severely handicapped including deaf-blind children and youth by the general public through increasing both the quality and frequency of meaningful interactions of these children and youth with handicapped and nonhandicapped peers and adults;

(v) Delivery of services to meet the unique needs of severely handicapped including deaf-blind children and youth; and

(vi) Effective involvement of families in the planning and delivery of services to their severely handicapped children and youth.

(3) Establish a project advisory board having representation of parents of project children and youth, including parents of deaf-blind children and youth, providers of services to this population, and State and professional organizations, that is responsible for providing significant input on project management procedures.

(4) Formulate and implement formal, written policies and procedures with relevant State, local and professional organizations for coordinating services provided to the target population, of severely handicapped including deaf-blind children and youth including the elimination of overlapping and redundant services.

Each project must include a specific number of deaf-blind students that will benefit from the project.

CFDA No. 84.086D—Innovations for Meeting Special Problems of Children With Severe Handicaps in the Context of Regular Education Settings

This priority supports projects that are designed to develop in-depth, innovative approaches to a particular problem for educating students with severe handicaps in the context of regular educational settings. Towards this end, projects must include a setting in which the activities will be carried out, with particular attention paid to the extent to which physical and social integration between students with severe handicaps and students without handicaps exist in the proposed setting. Projects must ensure that the proposed setting has the following prerequisite components: (1) An established system of community-based training; (2) a systematic, data-based educational program; and (3) an established functional curriculum. Projects must build upon previous research and demonstration activities in the field and demonstrate a thoughtful synthesis and extension of such work within a complete approach of their own. Projects funded under this priority must include (1) a specific problem that the project will address; (2) a proposed approach developed by the project that can be expected to alleviate that problem; and (3) an evaluation design that includes functional outcome measures for children and youth who experience severe handicaps who participate in the proposed intervention. Final reports submitted by projects funded under this priority must include both the specific findings of the project as well as general principles that have been learned and tested for solving specific problems that may arise when students who experience severe handicaps are educated within the context of regular education settings. Quantifiable information from project evaluation activities must also be included.

The Secretary particularly invites applications that address one of the following special problems:

(1) Serving individuals with profound disabilities and/or who are treatment-assisted or otherwise require significant therapeutic or medical intervention;

(2) Designing models for incorporating nonaversive approaches within curriculum and instruction, particularly for students who present difficult and persistent excess behaviors;

(3) Developing approaches to encourage social support systems for individuals with severe handicaps within educational and community environments;

(4) Establishing innovative approaches to facilitating home-school communication and interactions that serve to benefit the student and the family and that allow for the varied needs and concerns of individual families;

(5) Developing steps for providing related services within regular education settings; or

(6) Developing approaches that address the problems children and youth with severe handicaps who use assistive technology have when attending regular education programs.

However, in accordance with EDGAR at 34 CFR 75.105(c)(1), an application that meets this invitational priority receives no competitive or absolute preference over applications that meet the priorities described in this notice.

CFDA No. 84.086G—Validated Practices: Children with Deaf-Blindness

This priority supports projects that test solutions to specific problems in the delivery of special education and related services to students with deaf-blindness. Projects supported under this priority must use methodological procedures that will produce unambiguous findings regarding the relative effectiveness of different solutions to a specific problem, or that use well-designed outcome evaluations to test the effects of a single program or solution in addressing the service delivery problem. The projects must be designed to improve the services for children and youth with deaf-blindness as defined at 34 CFR 300.5(b)(2).

Projects funded under this priority must include (1) a specific problem that the project will address; (2) specific solutions that will be compared or validated, including previous evaluations regarding these approaches; and (3) an evaluation design that includes functional outcome measures for children and youth with deaf-blindness who participate in the proposed interventions. Final reports submitted by projects funded under this priority must include both the specific findings of the project as well as general principles that have been learned or tested for solving specific problems that may arise in providing services. Quantifiable information from project evaluation activities must also be included along with precise information regarding the procedures for the interventions and the contexts in which they were implemented as well as available cost information. Each project must include a specific number of deaf-blind students that will benefit from the proposed project.

The Secretary particularly invites applications that address one of the following areas:

(1) Improving and expanding social interaction skills in regular classrooms, workplaces, or recreational settings;

(2) Improving curricular and instructional procedures that enhance acquisition, generalization, and maintenance of functional skills and activities;

(3) Improving communications skills of children who are deaf-blind in their interaction with peers and others in educational and noneducational settings;

(4) Expanding the activities that support the participation in a range of community-based settings for children with deaf-blindness, with such settings to include living environments, recreation-leisure options, transportation options, and neighborhood shopping, educational and cultural settings;

(5) Supported employment for youth with deaf-blindness; or

(6) Supported living for children and youth with deaf-blindness.

However, in accordance with EDGAR at 34 CFR 75.105(c)(1), an application that meets this invitational priority receives no competitive preference over applications that meet the priorities described in this notice.

CFDA No. 84.086U—Utilization of Innovative Practices for Children With Severe Handicaps

This priority promotes the adoption and use of innovative practices for the education of students with severe handicaps through the support of technical assistance activities such as inservice training, program replication, and/or product dissemination. The practices are to be selected from current data and best practices and must be justified in the application in terms of their proven ability to address the needs of children with severe handicaps.

Applicants are particularly encouraged to select practices that have been generated and implemented across a range of disciplines that provide services to students with severe handicaps. Projects must identify a focus of the utilization activities and the importance of the focus in terms of its impact on the education and quality of life of students with severe handicaps, as defined at 34 CFR 315.4.

Projects under this priority must include a design that (a) defines a target audience for the training or dissemination activities; (b) includes what this target audience is expected to do or to accomplish by participating in the project; (c) includes the utilization activities that are appropriate and well-suited to achieving the described activities with the intended audiences; i.e., inservice training, program replication, and/or product dissemination, as needed to accomplish the selected change; and (d) includes systematic evaluation and reporting of the impact and effectiveness of project activities. Target audiences must include family members to the extent practicable.

The Secretary particularly invites applications that address one of the following topics:

(1) Least restrictive environments for children and youth with severe handicaps;

(2) Supported employment for youth with severe handicaps;

(3) Community-based curriculum and instruction for children and youth with severe handicaps;

(4) Integration of related services for children and youth with severe handicaps into instructional objectives;

(5) Increased participation of parents in the educational process; or

(6) Communication skills of children and youth with severe handicaps.

However, in accordance with EDGAR at 34 CFR 75.105(c)(1), an application that meets this invitational priority receives no competitive preference over applications that meet the priorities described in this notice.

CFDA No. 84.086L—Utilization of Innovative Practices for Children With Deaf-Blindness

This priority promotes the adoption and use of innovative practices for the education of students with deaf-blindness through the support of technical assistance activities such as inservice training, program replication, and/or product dissemination. The practices are to be selected from current data and best practices and must be justified in terms of their proven ability to address the needs of children who are deaf-blind.

Applicants are particularly encouraged to select practices that have been generated and implemented across a range of disciplines that provide services to students who are deaf-blind. Projects must identify a focus of the utilization activities and the importance of the focus in terms of its impact on the education and quality of life of students with deaf-blindness, as defined at 34 CFR 300.5(b)(2).

Projects under this priority must include a design that (a) defines a target audience for the training or dissemination activities; (b) includes what this target audience is expected to do or to accomplish by participating in the project; (c) includes activities that are appropriate and well-suited to achieving the training or dissemination activities with the intended audience; i.e., inservice training, program replication, and/or product dissemination, as needed to accomplish the selected change; and (d) includes systematic evaluation and reporting of the impact and effectiveness of the project activities. Target audiences must include family members whenever practicable.

The Secretary particularly invites applications that address one of the following topics:

(1) Least restrictive environments for children and youth with deaf-blindness;

(2) Supported employment for youth with deaf-blindness;

(3) Community-based curriculum and instruction for children and youth with deaf-blindness;

(4) Integration of related services for children and youth with deaf-blindness into instruction objectives;

(5) Communication skills of children and youth with deaf-blindness; or

(6) Transitional services from school to independent living or working for youth with deaf-blindness.

However, in accordance with EDGAR at 34 CFR 75.105(c)(1), an application that meets this invitational priority receives no competitive preference over applications that meet the priorities described in this notice.

Selection Criteria

The Secretary uses the following criteria to evaluate an application for a demonstration project or a training project.

(a) Extent of need and expected impact of the project. (25 points) The Secretary reviews each application to determine the extent to which the project is consistent with national needs in the provision of innovative services to severely handicapped children and youth, including consideration of—

(1) The needs addressed by the project;

(2) The impact and benefits to be gained by meeting the educational and related service needs of severely handicapped children and youth served by the project, their parents and service providers; and

(3) The national significance of the project in terms of potential benefits to severely handicapped children and youth who are not directly involved in the project.

(b) Plan of operation. (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(c) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (c)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(d) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project: and

(2) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation hy the grantee.)

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Dissemination plan.* (5 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including the extent to which the applicant's plan—

(1) Ensures proper and efficient dissemination of project information within the State in which the project is located and throughout the Nation; and

(2) Adequately includes the content, intended audiences, and timeliness for production of all project documents and other products which the applicant will disseminate.

Eligible Applicants: Any public or private, profit or nonprofit, organization or institution may apply for a grant under this program.

Program Authority: 20 U.S.C. 1424

SECONDARY EDUCATION AND TRANSITIONAL SERVICES FOR HANDICAPPED YOUTH PROGRAM

[Application Notices for Fiscal Year 1990]

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds [1]	Estimated range of awards (per year)	Estimated size of awards [1] (per year)	Estimated number of awards	Project period in months
Family networking (84.158S)	09/28/89	11/27/89	315,000	100,000–110,000	105,000	3	36
Training and employment models for youth with handicaps (84.158N)	12/16/89	2/14/90	880,000	105,000–115,000	110,000	4 [2]	36

[1] These are estimates. The actual amount available for awards cannot be determined pending final action by the Congress.

[2] Approximately $880,000 of FY 1990 funds are available to initially fund these projects for two 12 month budget periods of the total 36 month project period. Estimated size of awards information ($110,000) is for each 12 months of the project period. Applicants are encouraged to submit budget estimates of approximately $110,000 for each 12 month budget period requested.

CFDA No. 84.158: Secondary Education and Transitional Services for Handicapped Youth Program

Purpose

To assist handicapped youth in the transition from secondary school to postsecondary environments such as competitive or supported employment and to ensure that secondary special education and transitional services result in competitive or supported employment for handicapped youth.

Priorities

CFDA No. 84.158N:—Training and Employment Models for Youth With Handicaps

This priority supports school and community-based model projects for youth with handicaps to be prepared for and placed in competitive or supported work prior to leaving school. This priority responds to growing evidence that youth with handicaps who exit from school may have difficulty obtaining competitive or supported employment despite the vocational programming that may have been offered in school. These students often remain at home for several years before a placement can be found in a job training or supported employment program. By providing employment experiences in settings where the requisite support services are provided by adult service agencies or other public or private providers prior to exit from school, it is more likely that a smooth transition can be made from school to work and adult life. Projects funded under this priority must include models that emphasize the following:

(1) Collaboration with employers;

(2) Measurement of employer and youth satisfaction;

(3) Program evaluation with outcome measures to determine initial and continuing employment status;

(4) Working relationships between education agencies and supported and transitional work efforts at the State and/or local level; and

(5) Working partnerships with families that demonstrate a commitment to maximizing independence.

The goal of these models is to place youths with handicaps in competitive or supported employment. Supported employment must include paid employment in integrated work settings and ongoing support from adult service agencies or other public or private services.

Final reports submitted by projects funded under this priority must include both the specific findings of the project as well as general principles that have been learned or tested regarding the preparation of youth with handicaps for competitive or supported employment upon leaving school. Quantifiable information from project evaluation activities must also be included along with precise information regarding the procedures used to implement the model and the contexts in which the model was implemented.

CFDA No. 84.158S—Family Networking

This priority supports model demonstration projects that build on existing transition planning processes to assist youth with handicaps and their families in identifying, accessing, and using formal and informal networks to obtain needed supports and services to maximize independence in adult life. Projects under this priority must ensure that there is an existing planning process in place that includes the student, his or her family, representatives from the school, and representatives from adult service agencies or other providers in planning for the transition of students who will be exceeding the maximum age for public school services.

Models funded under this priority must assist youth with handicaps and their families in identifying the range of possible post-school options for living, working, recreation, or post-secondary education, and assessing the supports or services needed by the student to participate in different Post-school options. Projects must develop strategies to assist youth with handicaps and their families in identifying potential formal (service agencies, handicapped student services) and informal (extended family, friends) sources of services and supports and in learning to effectively access and use these sources. Persistent barriers to obtaining needed supports or services must also be identified and strategies developed and tested for overcoming these barriers.

Final reports submitted by projects funded under this priority must include both the specific findings of the project as well as general principles that have been learned or tested regarding the identification, access, and use of formal and informal networks by youth with handicaps and their families to obtain needed supports and services. Common barriers identified to accessing and using various sources for support and service should be described along with any implications for policy makers or service providers. Quantifiable information from project evaluation activities must also be included along with precise information regarding the model procedures, the context in which it was implemented, and available cost information.

Selection Criteria

The Secretary uses the following criteria to evaluate an application for new awards. The maximum score for all of the criteria is 100 points.

(a) Plan of operation. (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective ; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project.

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, as well

as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget of the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(See 34 CFR 75.590. Evaluation by the grantee)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Importance.* (10 points)

The Secretary reviews each application for information that shows—

(1) The service delivery problem addressed by the proposed project is of concern to others in the Nation, and

(2) The importance of the project in solving the problem.

(g) *Impact.* (10 points)

The Secretary reviews each application for information that shows the probable impact of the proposed model in educating handicapped youth, including—

(1) The contribution that the project findings or products will make to current knowledge or practice; and

(2) The extent to which findings and products will be disseminated to, and used for the benefit of, appropriate target groups.

(h) *Innovativeness.* (10 points)

(1) The Secretary reviews each application for information that shows the innovativeness of the proposed project.

(2) The Secretary looks for information that shows a conceptual framework that—

(i) Is founded on previous theory and research; and

(ii) Provides a basis for the unique strategies and approaches to be incorporated into the model.

(i) *Technical soundness.* (25 points)

The Secretary reviews each application for information demonstrating the technical soundness of the plan for the development, implementation, and evaluation of the model with respect to such matters as—

(1) The population to be served;

(2) The model planning process;

(3) Recordkeeping systems;

(4) Coordination with other service providers;

(5) The identification and assessment of students;

(6) Interventions to be used, including proposed curricula;

(7) Individualized educational program planning; and

(8) Parent and family participation.

Eligible Applicants: Institutions of higher education, State educational agencies, local educational agencies, and other public and private nonprofit institutions or agencies (including the State job training coordinating councils and service delivery area administrative entities established under the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*)).

Program Authority: 20 U.S.C. 1425

Intergovernmental Review of Federal Programs

These programs, except Research in Education of the Handicapped, CFDA 84.023, are subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the Single Point of Contact for each State and follow the procedure established in those States under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on November 18, 1987, pages 44338–44340.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# ( ) U.S. Department of Education, Room 4161, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

PLEASE NOTE THAT THIS ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATION TO THE ABOVE ADDRESS.*

Instructions for Transmittal of Applications:

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #), Washington, DC 20202–4725

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA#), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms:

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form GCS–008) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS–009) and instructions. (NOTE: ED Form GCS–009 is intended for the use of grantees and should not be transmitted to the Department.)

Certification Regarding Drug-Free Workplace Requirements: Grantees Other than Individuals (ED 80–0004).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature.* No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT:

Joseph Clair, Division of Educational Services, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW,. (Switzer Building, Room 4620–2644), Washington, DC 20202 (except CFDA No. 84.023 and 84.029). Telephone: Joseph Clair (202) 732–4503

Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, 400 Maryland Avenue, SW., (Switzer Building, Room 3094–M.S. 2313), Washington, DC 20202 (CFDA No. 84–023 only). Telephone: Linda Glidewell (202) 732–1099

Angele Thomas, Division of Personnel Preparation, Office of Special Education Programs, 400 Maryland Avenue, SW., (Switzer Building, Room 3517–M.S. 2313), Washington, DC 20202 (CFDA No. 84–029 only). Telephone: Angele Thomas (202) 732–1100.

Dated: July 14, 1989.

Patricia McGill Smith,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

Appendix

Potential applicants frequently direct questions to officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants the Department has assembled the following most commonly asked questions.

Q. CAN WE GET AN EXTENSION OF THE DEADLINE?

A. No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the **Federal Register** and apply to *all* applications. Waivers for individual applications *cannot* be granted, regardless of the circumstances.

Q. HOW MANY COPIES OF THE APPLICATION SHOULD I SUBMIT AND MUST THEY BE BOUND?

A. Current Government-wide policy is that only AN ORIGINAL AND TWO COPIES need be submitted. The binding of applications is optional. At least one copy should be left unbound to facilitate any necessary reproduction. Applicants should not use foldouts, photographs, or other materials that are hard-to-duplicate.

Q. WE JUST MISSED THE DEADLINE FOR THE XXX COMPETITION. MAY WE SUBMIT UNDER ANOTHER COMPETITION?

A. Yes, but it may not be worth the postage. A properly prepared application should meet the specifications of the competition to which it is submitted.

Q. I'M NOT SURE WHICH COMPETITION IS MOST APPROPRIATE. WHAT SHOULD I DO?

A. We are happy to discuss the questions with you and provide clarification on the unique elements of the various competitions.

Q. WILL YOU HELP US PREPARE OUR APPLICATION?

A. We are happy to provide general program information. Clearly, it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about application requirements, evaluation criteria, and the priorities. Applicants should understand that this previous contact is not required nor does it guarantee the success of an application.

Q. WHEN WILL I FIND OUT IF I'M GOING TO BE FUNDED?

A. You can expect to receive notification within 3 to 4 months of the application closing date, depending on the number of applications received and the number of competitions with closing dates at about the same time.

Q. ONCE MY APPLICATION HAS BEEN REVIEWED BY THE REVIEW PANEL, CAN YOU TELL ME THE OUTCOME?

A. No. Every year we are called by a number of applicants who have legitimate reasons for needing to know the outcome of the review prior to official notification. Some applicants need to make job decisions, some need to notify a local school district, etc. Regardless of the reason, because final funding decisions have not been made at that point, we cannot share information about the review with *anyone.*

Q. HOW LONG SHOULD AN APPLICATION BE?

A. The Department of Education is making a concerted effort to reduce the volume of paperwork in discretionary program applications. The scope and complexity of projects is too variable to establish firm limits on length. Your application should provide enough information to allow the review panel to evaluate the significance of the project against the criteria of the competition. Is helpful to include in the appendices such information as:

(1) Staff qualifications. These should be brief. They should include the person's title and role in the proposed project and contain only information relevant to the proposed project. Qualification of consultants and advisory council members should be provided and be similarly brief.

(2) Assurance of participation of an agency other than the applicant if such participation is critical to the project, including copies of evaluation instruments proposed to be used in the project in instances where such instruments are not in general use.

Q. HOW CAN I BE SURE THAT MY APPLICATION IS ASSIGNED TO THE CORRECT COMPETITION?

A. Applicants should clearly indicate in Block 10 of the face page of their application (Standard Form 424) the CFDA number and the title of the program priority (e.g., 84.023) representing the competition in which the application should be considered. If this information is not provided, your application may inadvertently be assigned and reviewed under a different competition from the one you intended.

Q. WILL MY APPLICATION BE RETURNED IF I AM NOT FUNDED?

A. We no longer return original copies of unsuccessful applications. Thus, applicants should retain at least one copy of the application. Copies of reviewer comments will be mailed to applicants who are not successful.

Q. HOW SHOULD MY APPLICATION BE ORGANIZED?

A. The application narrative should be organized to follow the exact sequence of the components in the selection criteria of the regulations pertaining to the specific program competition for which the application is prepared. In each instance, a table of contents and a one-page abstract summarizing the objectives, activities, project participants, and expected outcomes of the proposed project should precede the application narrative.

Q. IS TRAVEL ALLOWED UNDER THESE PROJECTS?

A. Travel associated with carrying out the project is allowed (i.e. travel for data collection, etc.). Because we may request the principal investigator or director of funded projects to attend an annual meeting, you may also wish to include a trip to Washington, D.C. in the travel budget. Travel to conferences is sometimes allowed when it is for purposes of dissemination.

Q. IF MY APPLICATION RECEIVES A HIGH SCORE FROM THE REVIEWER DOES THAT MEAN THAT I WILL RECEIVE FUNDING?

A. No. It is often the case that the number of applications scored highly by or approved by the reviewers exceeds the dollars available for funding projects under a particular competition. The order of selection, which is based on the scores of the applications and other relevant factors, determines the applications that can be funded.

Q. WHAT HAPPENS DURING NEGOTIATIONS?

A. During negotiations technical and budget issues may be raised. These are issues that have been identified during panel and staff review and require clarification. Sometimes issues are stated as "conditions." These are issues that have been identified as so critical that the award cannot be made unless those conditions are met.

Questions may also be raised about the proposed budget. Generally, these issues are raised because there is inadequate justification or explanation of a particular budget item, or because the budget item seems unimportant to the successful completion of the project. If you are asked to make changes that you feel could seriously affect the project's success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all negotiation issues have been resolved.

Q. IF MY APPLICATION IS SUCCESSFUL CAN I ASSUME I WILL GET THE ESTIMATED/PROJECTED BUDGET AMOUNTS IN SUBSEQUENT YEARS?

A. No. The estimate for subsequent year project costs is helpful to us for planning purposes but it in no way represents a commitment for a particular level of funding in subsequent years. Grantees having a multiyear project will be asked to submit a continuation application and a detailed budget request prior to each year of the project.

Q. WHAT IS A COOPERATIVE AGREEMENT AND HOW DOES IT DIFFER FROM A GRANT?

A. A cooperative agreement is similar to a grant in that its principal purpose is to provide assistance for a public purpose of support or stimulation as authorized by a Federal statute. A cooperative agreement differs from a grant because of the substantial involvement anticipated between the executive agency (in this case the Department of Education) and the recipient during the performance of the contemplated activity.

Q. IS THE PROCEDURE FOR APPLYING FOR A COOPERATIVE AGREEMENT DIFFERENT FROM THE PROCEDURE FOR APPLYING FOR A GRANT?

A. No. If the Department of Education determines that a given award should be made by cooperative agreement rather than a grant, the applicant will be advised at the time of negotiation of any special procedures that must be followed.

Q. HOW DO I PROVIDE AN ASSURANCE?

A. Simply state in writing that you are meeting a prescribed requirement.

Q. WHERE CAN COPIES OF THE FEDERAL REGISTER, PROGRAM REGULATIONS, AND FEDERAL STATUTES BE OBTAINED?

A. Copies of these materials can usually be found at your local library. If not, they can be obtained from the Government Printing Office by writing to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 783-3238.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name	Organizational Unit
Address (give city, county, state, and zip code)	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A State, B County, C Municipal, D Township, E Interstate, F Intermunicipal, G Special District, H Independent School Dist., I State Controlled Institution of Higher Learning, J Private University, K Indian Tribe, L Individual, M Profit Organization, N Other (Specify) _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A Increase Award B Decrease Award C Increase Duration
D Decrease Duration Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ . ☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date | Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

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established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item:	Entry:
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

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Notice: Reporting Burden

Public reporting burden for this collection of information is estimated to be 40 hours (for new applications) per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820-0028, Washington, DC 20503.

Part III—Program Narrative

A. New Grants

Prepare the program narrative statement in accordance with the following instructions for all new grants programs and all new functions or activities for which support is being requested.

Note that the program narrative should encompass each program and each function or activity for which funds are being requested. Relevant selection criteria (included in this package) should be carefully examined for criteria upon which evaluation of an application will be made and the program narrative must respond to such criteria under the related headings below. The program narrative should begin with an overview statement (Abstract) of the major points covered below.

1. Objectives and Need for This Assistance

Describe the problem and demonstrate the need for assistance and state the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used.

Any relevant data based on planning studies should be included or footnoted. Projects involving Demonstration/Service activities should present available data, or estimates for need in terms of number of handicapped children (by type of handicap and by type of service) in the geographic area involved.

Projects involving Training should present available data, or estimates, for need in terms of number of personnel by position type (e.g., teachers, teacher-aides) by type of handicap to be served. Documentation by the SEA should be supplied for 84.029 (Handicapped Personnel Preparation).

2. Results or Benefits Expected

Identify results and benefits to be derived. Projects involved in training activities should indicate the number of personnel to be trained. Projects involved in demonstration/service activities must provide research or other evidence that indicate that the proposed activities will be effective.

3. Approach

a. Outline a plan of action pertaining to the scope and detail of how the proposed work will be accomplished for each grant program, function or activity provided in the budget. Cite factors which might accelerate or decelerate the work and your reason for taking this approach as opposed to others.

For example, an application for demonstration/service programs should describe the planned educational curriculum: the types of attainable accomplishments set for the children served; supplementary services including parent education; and the composition and responsibilities of an advisory council.

An application for a training program should describe the substantive content and organization of the training program, including the roles or positions for which students are prepared, the tasks associated with such roles, the competencies that must be acquired; the program staffing; and the practicum facilities including their use by students, accessibility to students and their staffing.

b. Provide for each grant program, function or activity, quantitative projections of the accomplishments to be achieved.

An applications for demonstration/service programs should project the number of children to receive demonstration/services by type of handicapping conditions, and number of persons to receive inservice training.

Training programs should project the number of students to be trained by type of handicapping condition.

For non-demonstration/service and non-training activities of all programs, planned activities should be listed in chronological order to show the schedule of accomplishment and their target dates.

c. Identify the kinds of data to be collected and maintained and discuss the criteria to be used to evaluate the results and successes of the project. For demonstration/service child-centered objectives set for project participants. For 84.029 (Handicapped Personnel Preparation), the positions for which students are receiving training should be related to the needs as explained in 1 and 2 above.

For all activities, explain the methodology that will be used to evaluate project accomplishments.

d. List organizations, cooperators, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution. Especially for demonstration/service activities, describe the liaison with community or State organizations as it affects project planning and accomplishments.

e. Present biographical sketch of the project director with the following information: name, address, telephone number, background, and other qualifying experience for the project. Also, list the names, training and background for other key personnel engaged in the project.

Note—The application narrative should not exceed 30 double-spaced typed pages (on one side only).

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ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202-4725, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion–Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

ED Form GCS-009, (REV. 12/88)

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

ED Form GCS-009, (REV. 12/88)

Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;
(2) The grantee's policy of maintaining a drug-free workplace;
(3) Any available drug counseling, rehabilitation, and employee assistance programs; and
(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and
(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination; or
(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

ED 80-0004

[FR Doc. 89-17051 Filed 7-20-89; 8:45 am]
BILLING CODE 4000-01-C

federal register

Friday
July 21, 1989

Part III

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

BUDGET

Cumulative Report on Rescissions and Deferrals

July 1, 1989.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of July 1, 1989 of six rescission proposals and 14 deferrals contained in the first four special messages of FY 1989. These messages were transmitted to the Congress on September 30 and November 29, 1988, and January 9 and April 18, 1989.

Rescissions (Table A and Attachment A)

As of July 1, 1989, there are no funds being withheld related to rescission proposals.

As of July 1, 1989 $4,935.1 million in budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1989.

Information from Special Messages

The special messages containing information on the rescission proposals and deferrals covered by this cumulative report are printed in the Federal Registers listed below:

Vol. 53, FR p. 39879, Wednesday, October 12, 1988

Vol. 53, FR p. 49530, Wednesday, December 7, 1988

Vol. 54, FR p. 1650, Friday, January 13, 1989

Vol. 54, FR p. 16234, Thursday, April 27, 1989

Richard G. Darman,
Director.

	Amount (in millions of dollars)
Rescissions proposed by President Reagan	143.1
Accepted by the Congress as of July 1, 1989	0
Funding made available	123.1
Funding never withheld	22.0

TABLE B.—STATUS OF 1989 DEFERRALS

	Amount (in millions of dollars)
Deferrals proposed by the President	9,156.2
Routine Executive releases through July 1, 1989 (OMB/Agency releases of $4,227.1 million and cumulative adjustments of $6.0 million)	−4,221.1
Overturned by the Congress	0
Currently before the Congress	4,935.1

BILLING CODE 3110-01-M

Attachment A - Status of Rescissions - Fiscal Year 1989

As of July 1, 1989 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs:								
Subsidized housing programs.....	R89-1	20,000		1-9-89		(See note below.)		
Community Planning and Development:								
Urban development action grants.....	R89-2	51,651		1-9-89		51,651	2-28-89	
DEPARTMENT OF THE INTERIOR								
Fish and Wildlife Service:								
Land acquisition.....	R89-3	30,000		1-9-89		30,000	2-28-89	
National Park Service:								
Land acquisition and State assistance.....	R89-4	35,000		1-9-89		35,000	2-28-89	
DEPARTMENT OF JUSTICE								
Office of Justice Programs:								
Justice assistance.....	R89-5	5,000		1-9-89		5,000	3-16-89	
DEPARTMENT OF LABOR								
Employment Standards Administration:								
Black lung disability trust fund.....	R89-6	1,445		1-9-89		1,445	3-16-89	
TOTAL, RESCISSIONS.....		143,096	0			123,096		

NOTE. - The $20 million proposed for rescission in Rescission Proposal No. 89-1 was never withheld from obligation. Therefore, there was no need to release the funds.

P. 1

BEST COPY AVAILABLE

Attachment B - Status of Deferrals - Fiscal Year 1989

As of July 1, 1989 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change (+)	Date of Message	Cumulative OMB/Agency Releases (-)	Congressionally Required Releases (-)	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 7-1-89
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Foreign military sales credit.....	D89-11	4,122,750		11-29-88	1,490,000				2,632,750
Economic support fund.....	D89-01	592,760		09-30-88					
	D89-01A		2,054,000	11-29-88	1,860,009				786,751
Military assistance.....	D89-12	457,000		11-29-88	291,250				165,750
International military education and training.....	D89-13	37,400		11-29-88	37,400				0
Agency for International Development									
International disaster assistance.....	D89-14	18,125		11-29-88	15,164				2,961
Special Assistance for Central America									
Promotion of stability and security in Central America.....	D89-2	1,000		09-30-88	1,000				0
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal.....	D89-3	144,649		09-30-88	751				143,898
Cooperative work.....	D89-4	335,263		09-30-88					
	D89-4A		172,737	04-18-89	508,000				0
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense.....	D89-5	1,212		09-30-88					
	D89-5A		227	04-18-89	56				1,383
DEPARTMENT OF ENERGY									
Power Marketing Administration									
Southwestern Power Administration, Operation and maintenance.....	D89-6	2,800		09-30-88					
	D89-6A		5,600	04-18-89					8,400

Attachment B - Status of Deferrals - Fiscal Year 1989

As of July 1, 1989 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change (+)	Date of Message	Cumulative OMB/Agency Releases (-)	Congressionally Required Releases (-)	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 7-1-89
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses (construction).....	D89-7	6,745		09-30-88					
	D89-7A		80	04-18-89					6,824
DEPARTMENT OF JUSTICE									
Office of Justice Programs									
Crime victims fund.....	D89-8	90,000		09-30-88					
	D89-8A		35,000	04-18-89					125,000
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund, executive.....	D89-9	26,135		09-30-88					
	D89-9A		27,000	11-29-88	23,492			6,001	35,644
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Facilities and equipment (Airport and airway trust fund).....	D89-10	823,608		09-30-88					
	D89-10A		202,084	11-29-88					1,025,692
TOTAL, DEFERRALS.....		6,659,446	2,496,728		4,227,122	0		6,001	4,935,053

[FR Doc. 89-17100 Filed 7-20-89; 8:45 am]

BILLING CODE 3110-01-C

federal register

Friday
July 21, 1989

Part IV

Commodity Futures Trading Commission

17 CFR Part 34

Regulation of Hybrid Instruments; Policy Statement Concerning Swap Transactions; Final Rule and Notice

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 34

RIN 3038-AA58

Regulation of Hybrid Instruments

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is adopting final regulations concerning certain "hybrid" instruments that combine characteristics of commodity option contracts with debt, preferred equity or depository interests. The final rules establish an exemption from CFTC regulations under the Commodity Exchange Act (CEA or Act) for certain hybrid instruments with commodity option components, based upon the limited nature of the option component and deference to other regulatory frameworks applicable to the non-commodity component of such instruments. In addition, the final rules establish a notice requirement for hybrid instruments qualifying for the exemption.

EFFECTIVE DATE: July 21, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Rosenfeld, Attorney, Division of Trading and Markets, telephone (202) 254-8955, David Merrill, Senior Assistant General Counsel, telephone (202) 254-9880, or Eugene Moriarty, Director, Research Section, Division of Economic Analysis, telephone (202) 254-6990, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Burden

The public reporting burden for this collection of information is estimated to average 0.17 hours per response, including the time for reviewing instructions, searching existing data resources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Joseph G. Salazar, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581, and Office of Management and Budget, Paperwork Reduction Project, NEOB, Washington, DC 20503.

I. Background

On January 11, 1989, the Commission published for public comment proposed regulations concerning certain "hybrid" instruments that combine elements of commodity option contracts with debt or depository interests.[1] The proposed rules would have established an exemption from CFTC regulations under the CEA for certain hybrid instruments with limited commodity option components and a notice requirement applicable to specified exempt hybrid instruments. The Commission received letters from 31 commenters on the proposal: Four from futures exchanges; five from federal regulatory agencies; six from industry associations; one from a lawyers' professional association; two from oil companies; one from a law firm; one from the Student Loan Marketing Association; one from the Federal National Mortgage Association; five from broker-dealer and investment banking firms; three from banking organizations; one from a floor-trading and market-maker partnership; and one from the chairman of the Senate Resources Committee of the Alaska State Legislature.

Most commenters supported the general objectives of the rulemaking (*i.e.*, providing clarity concerning the regulatory treatment of hybrids) even though they differed with respect to the content of the release. Certain futures exchanges raised concerns that the rulemaking could impair the Commission's exclusive jurisdiction. Others, however, concurred in the Commission's approach, at least in part. Some exchanges also expressed concern that unless the eligibility rules were made more stringent, the Commission's and the exchanges' regulatory efforts could be compromised. A contrary view was taken by representatives of the banking industry, who contended that the Commission does not have jurisdiction over any security or hybrid instrument offered by banks. Most of the remaining commenters suggested revisions to clarify various provisions or to broaden their applicability. In this regard, commenters representing the securities and banking industries contended that relief should be made available for any security (whether registered or exempt) or any depository instrument offered by federally-insured banks and savings and loans. Finally, the Department of the Treasury contended that the ambiguities in the CEA were too substantial to address on a case-by-case basis and that a legislative solution was needed.

Comments addressing specific rule provisions and an explanation of the Commission's revisions thereto are discussed in more detail below.

Section 4c of the CEA grants the Commission the authority to permit the offer and sale of commodity options without the requirement of exchange trading under such terms and conditions as the Commission may prescribe.[2] The exemptive rule discussed herein does not represent a transfer of regulatory responsibility for option instruments subject to another regulatory scheme. Instead, the rule identifies certain debt, preferred equity or depository instruments in which the commodity option component is not predominant and which meet performance criteria intended to assure that Commission regulation in addition to that of another regulatory would be unnecessary. Accordingly, the Commission has determined to retain the general scheme of the exemptive rule as proposed, subject to modifications discussed below which broaden and clarify certain aspects of the rule.

The Commission did not intend to address the entire universe of hybrid instruments in the proposed rules but, rather, to establish an exemptive framework applicable to categories of instruments in which issuers had expressed interest. As instruments are developed that do not fall within the criteria of the final rule, the Commission will continue to review transactions on a case-by-case basis.

II. Substantive Revisions

A. Section 34.1 Definitions

1. *Section 34.1(b) Hybrid instrument.* As proposed, the definition of hybrid instrument in § 34.1(b) was drafted to include only debt or depository instruments with a commodity-dependent payment that is not severable thereform. In the release accompanying the proposed rules, the Commission specifically requested comment as to the appropriateness of including equity and other interests with commodity-dependent payments as hybrid instruments within the meaning of proposed Rule 34.1(b).[3] A number of commenters who addressed the appropriateness of expanding the definition of hybrid instruments to include equities supported broadening the definition to include such interests. Some commenters specifically advocated the inclusion of preferred stock, many forms of which, unlike common stock, appear to be readily analyzable under the exemptive

[1] 54 FR 1128 (January 11, 1989); 54 FR 9460 (March 7, 1989) (extending the comment period to April 6, 1989).

[2] 7 U.S.C. 6c(b), 6c(c).

[3] 54 FR at 1134 n.26.

framework. Based upon its evaluation of these comments, the Commission is revising proposed § 34.1(b) to include in the definition of hybrid instruments preferred equity interests that otherwise can meet the exemptive criteria. The Commission is limiting the category of included equity interests to preferred equity interests because such interests can closely resemble debt instruments. Although the Commission currently is expanding the definition of hybrid instruments in the final rule only to the extent of including those preferred equities for which an implied option premium meeting the exemptive criteria can be calculated, this action does not foreclose later consideration of other forms of equity interests when the Commission has gained further experience relevant to measurement of the commodity-dependent payment.

The proposed definition of hybrid instrument also was limited to instruments having a commodity component that is not severable from the instrument as a whole. The definition was designed to make clear that hybrid instruments are interests that combine non-severable option or futures-like interests with other interests.[4] Several commenters suggested that the non-sever-ability condition in § 34.1(b) could be read as disallowing the exemption to instruments with detachable hybrid components, such as units or packages of debt securities that incorporate hybrid instruments, even if such detachable components separately meet the criteria of the exemption. The Commission did not, however, intend to prohibit the sale of detachable hybrid option instruments sold in units with other interests, provided that the detachable hybrid instrument itself complies with the criteria for exemption under § 34.2. For purposes of analysis each detachable unit could itself constitute a hybrid instrument subject to the exemptive criteria. As noted in the release accompanying the proposed rules, the Commission intended to exclude from the hybrid instrument definition instruments in which the commodity component is detachable from the non-commodity interest. The non-severability condition would therefore render ineligible for exemption instruments which, for example, combined a commodity option component with a debt instrument and permitted the option component to be detached at a later date (such as a security and a detachable gold warrant).[5]

2. *Section 34.1(d) Commodity-dependent payment.* Proposed § 34.1(d) defined "commodity-dependent payment" as any payment pursuant to a hybrid instrument "resulting from indexing to, or calculation by reference to, the price of a commodity." One commenter questioned the applicability of the definition to instruments that do not provide for periodic interest payments, such as zero coupon debt securities, or instruments that do not provide for cash returns, such as securities that permit or require an issuer to issue additional securities in lieu of cash interest payments. The Commission does not construe "payment" as used in § 34.1(d) to be limited to periodic cash payments. The definitions of commodity-dependent and commodity-independent payments were intended to permit flexibility in the design of hybrid instruments as long as the commodity component is not severable from the instrument as a whole. Thus, as the Commission noted previously, a hybrid's commodity component includes that portion of the principal or interest, or both, that is indexed to the price of a commodity; the commodity indexing mechanism need not be confined to any particular component of the instrument.[6] Hybrid instruments in the form of zero coupon securities or instruments providing for other than cash returns (*e.g.*, interest paid by discount, premium or coupon) are eligible for the exemption. However, the definition of hybrid instrument is limited to instruments containing a debt, depository, or preferred equity component in addition to a commodity-dependent component. Although the rule does not address explicitly hybrid instruments containing more than one non-commodity component, if the additional non-commodity component did not affect the commodity price indexing of a hybrid and the instrument would otherwise satisfy the exemptive criteria, the instrument may qualify for exemption. In any event, an instrument structured in a manner not contemplated by the rule, such as an instrument containing a to-be-issued security, may be eligible for exemption on a case-by-case basis.

3. *Section 34.1(e) Commodity option based payment.* Proposed § 34.1(e) defines "commodity option based payment" to include any commodity-dependent payment in which the commodity indexing results in the indexing of payments to commodity price changes either above or below the indexing reference price but not both. Several commenters contended that the definition of "commodity option based payment" would unreasonably limit the scope of the exemption because hybrid instruments may include combinations of embedded options that offer investors a collar-like return, that is, one limited by both a floor and a ceiling. A collar which has its cap and floor significantly out-of-the-money would have *de facto* futures-like indexing. The definition is designed to assure that exemptive relief is available only to hybrids the commodity component of which is an option and to exclude hybrids with futures-like commodity components.[7] However, indexing with a collar where one of the implicit strike prices is sufficiently near-the-money to create non-trivial option indexing would be eligible for exemptive relief on a case-by-case basis. The Commission believes that the definition as drafted and the provision for case-by-case review appropriately deal with the necessity to distinguish between instruments which have *de facto* futures-like indexing from those with embedded options.[8]

4. *Section 34.1(f) Implied option premium.* Proposed § 34.1(f) defines "implied option premium" as the issue price of a hybrid instrument with commodity based option payments less the present discounted value of the instrument's commodity-independent payments.[9] The proposed rule specifies

[4] Although hybrid instruments may include futures-like interests, the exemption provided in Rule 34.2 only applies to hybrid instruments with option components.

[5] *See, e.g.*, Interpretative Letter No. 85-7, March 6, 1985 *reprinted in* [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,727.

[6] *See* 54 FR at 1134.

[7] It should be noted that option indexing either above or below an implicit strike price where the indexing is capped by an implicit short option further out-of-the-money would meet the rule's definition of an option based payment.

[8] The Commission recognizes that, for example, the indexing of an instrument's coupon above and below a given interest rate subject to a floor on the interest rate may be eligible for the exemption if the strike price implied by the interest rate floor creates a significant option indexing feature.

[9] In response to suggestions that the Commission clarify the factual assumptions of footnote 29 in 54 FR 1128, 1134 n.29 (January 11, 1989), the Commission is restating the text of that footnote as follows:

For example, consider the case of a note with a principal amount of $1000 and a maturity of 5 years that pays interest of 3% per annum, but also pays an additional return when the price of crude oil is between $30 to $50 per barrel. The note is issued at par when the price of crude oil is $20 per barrel. Under the definitions in the regulatory exemption, the commodity-independent payments include the repayment of the original principal at maturity and the annual payment of interest of $30. The commodity-dependent return is the payment at maturity when the price of oil is between $30 and $50 per barrel. This payment is equal to the price of crude oil multiplied by 100 barrels. The calculation of the implied option premium does not involve the

Continued

that the discount rate to be used is "the annual yield at the time of issuance for a comparable non-hybrid debt or depository instrument of a similar term issued by the same or a comparable issuer." Several commenters observed that a comparable instrument may not be available for these purposes on the issuance date and suggested that the Commission permit an estimated annual yield for a comparable non-hybrid instrument to be used. The Commission agrees that issuers should be permitted to use reasonable estimates of the annual yield on a comparable non-hybrid instrument in cases where an actual yield cannot be determined and has amended § 34.1(f) accordingly. See § 34.1(f)

Several commenters also requested that the Commission clarify the time at which the implied option premium is to be calculated for purposes of § 34.1(f). One commenter noted that in a typical underwritten offering of securities, the relevant time for the premium calculation would be the time at which the offering is priced and the underwriting agreement is signed or released from escrow (the process being similar for private placements and "best efforts" offerings). This point in time was suggested in order to enable issuers to determine the exemption is available at the time the instruments are sold as opposed to when they are actually issued by the underwriter. The Commission agrees and confirms that the relevant time for making the § 34.1(f) implied option premium calculation is when the instrument is priced. For instruments that are offered on a continuous basis but are frequently repriced based upon market conditions, the Commission believes that the § 34.1(f) premium test should be met each time firm prices are fixed.

One commenter suggested that the Commission clarify how the definition would apply to an instrument in which the principal amount increases or decreases during the term of the instrument, which pays a higher coupon to compensate investors for the lack of a final maturity date, or which is sold at a deep discount to par. In general, the implied option premium definition measures the difference between the market price of the instrument at issuance and the value of the instrument without its commodity-dependent option payments. This difference is an approximation of the value of the commodity-dependent payments. In cases in which the principal amount is indexed to a commodity price, the gain or loss resulting from such indexing represents the commodity-dependent component of the instrument. Cases in which interest payments are based upon a variable principal should also pose no calculation problem since the effect of such principal indexing will be reflected in the issue price of the instrument. The concerns raised by one commenter with respect to payment of higher coupons to compensate investors for the lack of a final maturity date suggest an instrument design which has not yet been presented to the Commission and which is not contemplated by the exemptive rule. If the instrument is indexed in an option-like manner, the coupons generally would be expected to be lower for the option purchaser than the straight debt rate and a maturity date would be required to enable the buyer to assess the value of the instrument.

The same commenter also inquired about the treatment of discount instruments under the implied option premium definition. Discount instruments are adequately addressed in the definition of the implied option premium as the issue price used in the calculations will reflect the discount.

commodity-dependent payment, only the commodity-independent payments.

Assume the issuer of the note would pay 9% per annum for a conventional debt instrument of the same maturity. The implied option premium is:

Discount rate=9% per annum

Issue price=$1000

Present discounted value of the commodity-independent payments=

$$\frac{\$1,000}{(1.09)^5} + \frac{\$30 \times 1 - [1/(1.09)^5]}{.09} = \$766.62$$

Implied option premium=$1,000-$766.62=$233.38

$$\frac{\text{Implied option premium}}{\text{Issue price}} = \frac{\$233.38}{\$1,000} = 23.3\%$$

The formulas used to calculate the present discounted values are standard annuity formulas. The Commission will accept the underwriter's good-faith estimate of what the issuer's debt rate would be for a comparable fixed income instrument payment be indexed to the price of a commodity on no more than a one-to-one basis. This instrument would fail such a requirement since at issuance the price of crude oil of $20 and the principal amount is $1000 so that one-to-one indexing would be on 50 barrels (*i.e.*, $1,000/$20=50).

B. Section 34.2 Option Hybrid Exemption

1. *Section 34.2(a) General.* As proposed, Rule § 34.2(a) would have provided an exemption from Commission regulation applicable to hybrid instruments for which an appropriate degree of federal oversight exists, conditioned upon compliance with one of a number of alternative performance criteria designed to provide indicia of the financial soundness of such transactions. Extensive comments were received concerning the scope of the exemption as delimited by the criteria set forth in § 34.2(a)(1).

2. *Section 34.2(a)(1) Certain exempt securities.* As proposed, § 34.2(a)(1) would have made the exemption available to a class of hybrid instruments with limited option components subject to the applicability of an alternate regulatory framework, as specified in the proposed rule, and to compliance with one of a number of alternative performance criteria. Included in the class of eligible hybrid instruments were certain securities exempt from the registration requirements of the Securities Act of 1933. A number of commenters stated that the categories of exempt securities specified in the proposed rule were too narrow and that certain of these categories could be interpreted too restrictively. Commenters proposed various additions to the list of eligible securities set forth in proposed § 34.2(a)(1). These suggestions, certain of which the Commission is incorporation in the final rule, are discussed below.

a. *Securities which are deemed to be exempt securities by federal statute.* Several commenters stated that proposed § 34.2(a)(1) should be expanded to include securities which are, by federal statute, deemed to be exempt securities for purposes of the federal securities laws. Examples of statutes that provide for such exemption include the legislation establishing the Student Loan Marketing Association, 20 U.S.C. 1087-2(1), the Federal National Mortgage Association, 12 U.S.C. 1723(c), the Federal Home Loan Mortgage Corporation, 12 U.S.C. 1455(g), and the Financing Corporation, 12 U.S.C. 1441(e)(9). These commenters essentially contended that such exempt securities are analogous to the type of exempt security described in proposed § 34.2(a)(1)(iii) (exempt securities under section 3(a)(2) of the Securities Act of

1933 issued or guaranteed by the United States or any state). In addition, one federally chartered corporation stated that providing eligibility under the rule for its securities would be necessary to preserve that corporation's competitive position in capital market transactions and thereby facilitate performance of its Congressionally mandated functions. While this commenter noted that a federal statute makes its securities exempt securities for purposes of SEC regulations, it nonetheless questioned whether as a matter of statutory interpretation these securities would be deemed to be exempt securities under Section 3(a)(2) of the Securities Act of 1933 for purposes of proposed § 34.2.

Proposed § 34.2(a)(1)(iii) was intended to include securities which are deemed to be exempt by statute, such as those listed above. However, to eliminate any potential ambiguities, the Commission has revised proposed § 34.2(a)(1)(iii) to clarify that instruments issued or guaranteed as to principal or interest by a corporation, the securities of which are designated by statute to constitute exempt securities, are eligible for the exemption pursuant to § 34.2(a)(1)(iii).

b. *Life insurance products exempt under section 3(a)(2) of the Securities Act of 1933.* Proposed § 34.2(a)(1)(ii) would have made eligible for the exemption securities that constitute exempt securities under Sections 3(a)(3) and 3(a)(8) of the Securities Act of 1933. This provision would have included, among other things, insurance policies and annuity contracts subject to state regulation and exempt from registration under Section 3(a)(8) of the Securities Act of 1933.[10] In proposing this provision, the Commission noted that this exemptive approach was:

> based both upon the character of such interests as primarily non-investment vehicles as well upon the existence of a state regulatory structure applicable to a field historically viewed as sufficiently addressed by state regulation.[11]

An insurance industry trade group stated that the Commission should modify proposed § 34.2(a)(1) to include the full range of insurance products exempt under the Securities Act of 1933 and thereby fulfill completely the Commission's previously expressed intention to include life insurance and annuity contracts within the proposed exemptive framework.[12] In this regard, the commenter noted that life insurance and annuity contracts that fulfill the requirements of Section 3(a)(2) of the Securities Act of 1933 "possess indicia of soundness" (such as comprehensive state regulation) warranting their treatment as eligible exempt instruments.

The Commission agrees and is revising § 34.2(a)(1) by adding a new paragraph to include any securities issued by an insurance company that constitute exempt securities under Section 3(a)(2) of the Securities Act of 1933. *See* § 34.2(a)(1)(v).

c. *Exempt securities under Section 3(a)(2) of the Securities Act: Inclusion of other federally insured institutions.* In proposed § 34.2(a)(1)(iv), the Commission included, as potentially eligible for the exemption, securities exempt under Section 3(a)(2) of the Securities Act of 1933 and issued or guaranteed by a bank that is a member of the Federal Deposit Insurance Corporation (FDIC). Several commenters, including the Federal Home Loan Bank Board and the staff of the Board of Governors of the Federal Reserve System (Federal Reserve), contended that restricting qualifying bank depository instruments to those issued by members of the FDIC inappropriately omitted instruments issued by other federally insured institutions such as savings and loan associations and credit unions. These commenters perceived no distinguishing characteristics of the applicable regulatory system that would warrant such differential treatment and noted that, if uncorrected, this difference in treatment would place other federally insured institutions at a competitive disadvantage to FDIC-insured institutions. Based upon an evaluation of these comments, the Commission has revised proposed § 34.2(a)(1)(iv) by replacing the phrase "FDIC-insured institution" with the phrase "financial institution that is insured by a United States government agency or United States chartered corporation." § 34.2(a)(1)(iv). See also § 34.2(a)(1)(vii) and § 34.2(a)(3)(iv).

Those commenters who urged that federally insured savings and loans be accorded equal treatment with FDIC-insured institutions requested that securities issued by such organizations that are exempt under Section 3(a)(5) of the Securities Act of 1933 be included as eligible exempt securities. The Commission is revising the final rules to accommodate those securities exempt under Section 3(a)(5) issued by federally insured financial institutions. § 34.2(a)(1)(iv).

d. *Exempt securities under Section 3(a)(2) of the Securities Act of 1933 that are issued by foreign banks licensed in the U.S.* Several commenters (including the Institute of International Bankers (IIB), the Federal Reserve and a law firm) suggested that the exemption should be made available to the uninsured domestic offices of foreign banks. These commenters noted that most U.S. branch offices of foreign banks are not FDIC-insured because they are not engaged in retail deposit-taking activities requiring federal deposit insurance within the meaning of the International Banking Act of 1978 (IBA) and implementing regulations of the FDIC.[13] Moreover, it was noted that U.S. agency offices of foreign banks are not eligible for FDIC insurance because they are empowered only to issue non-depository debt obligations to (and maintain credit balances for) citizens or residents of the United States. Both the IIB and the Federal Reserve contended that the uninsured status of most foreign banks and consequent unavailability of the proposed exemption would place such foreign banks' U.S. operations at a competitive disadvantage to FDIC-insured banks and would be inconsistent with the principle of parity of treatment between foreign and domestic banks under the IBA.[14]

The Federal Reserve noted that foreign banks are entitled to be treated equally with domestic banks under the General Agreement on Tariffs and Trade and United States trade laws and that the IBA provides for equal treatment for the U.S. branches and agencies of foreign banks. Commenters represented that disparity of treatment under the hybrid exemptive rule is unwarranted, particularly since the uninsured U.S. offices of foreign banks would be subject to supervision by U.S. bank regulatory authorities, as well as by the regulatory authorities of their

[10] This exemption addresses only insurance contracts and annuities that are not otherwise excluded from Commission jurisdiction.

[11] 54 FR at 1135 n.30.

[12] For example, Section 3(a)(2) of the Securities Act of 1933 exempts any security arising out of a contract issued by an insurance company used to fund certain stock bonus, pension, or profit-sharing plans which meet the requirements for qualification under specified provisions of the Internal Revenue Code.

[13] *See* 12 U.S.C. 3102(b), 3104 (1982); 12 CFR 28.8(a), 346.5 and 346.6 (1988).

[14] *See* U.S.C. 3102(b) which provides in part: "In establishing and operating a Federal branch or agency, a foreign-bank shall be subject to such rules, regulations, and orders as the Comptroller considers appropriate to carry out this section * * * Except as otherwise specifically provided in this chapter or in rules, regulations, or orders adopted by the Comptroller under this section, operations of a foreign bank at a Federal branch or agency shall be conducted with the same rights and privileges as a national bank at the same location and shall be subject to all the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply under the National Bank Act to a national bank. * * *"

home jurisdiction, to the same extent generally as insured institutions. In this regard, the IIB noted that all U.S. branches and agencies of foreign banks are subject to essentially the same statutory and regulatory restrictions, reporting obligations, and examination requirements that are applicable to U.S.-chartered commercial banks. In the case of a federally licensed uninsured branch or agency of a foreign bank, the IBA requires that regulations issued by the Comptroller of the Currency and the Federal Reserve concerning such branches or agencies track the regulation of national banks.[15]

The Commission believes that the principles of parity of treatment contained in the IBA and other relevant laws and treaties warrant an accommodation in the exemptive framework applicable to hybrid option instruments to address the special status of domestic [16] uninsured offices of foreign banks. Accordingly, the Commission is amending its proposal to permit the uninsured U.S. offices of foreign banks that are subject to federal bank regulatory supervision to be eligible for the exemption. See § 34.2(a)(1)(iv) and § 34.2(a)(1)(vii) discussed below. The Commission is limiting such relief to federally supervised institutions, since such relief will remove any disparity in treatment as between federally regulated domestic and foreign banks. Since the rule does not extend eligibility for the exemption to securities offered by solely state supervised institutions (*i.e.*, state chartered, and not federally insured), this limitation creates no inequality of treatment between foreign and U.S. banks. However, the Commission invites uninsured state-chartered foreign bank branches and agencies who wish to offer option hybrids to apply for no-action relief on a case-by-case basis.[17]

The Commission is therefore revising proposed § 34.2(a)(1)(iv) to make eligible for the exemption securities exempt under section 3(a)(2) of the Securities Act of 1933 that are issued or guaranteed by a U.S. branch or agency of a foreign bank that is licensed under the laws of the United States and that is supervised by federal banking authorities. Section 34.2(a)(1)(iv). See also § 34.2(a)(1)(vii).

e. *Securities exempt under section 4(2) of the Securities Act of 1933.* Proposed § 34.2(a)(1)(v) would have made eligible for the exemption securities that are exempt from registration pursuant to 17 CFR 230.506. (SEC Regulation D). Numerous commenters stated that § 34.2(a)(1)(v) should be expanded to include securities exempt from registration under section 4(2) of the Securities Act, without regard to whether the securities are offered within a Regulation D safe harbor. These commenters noted that many financial institutions offer securities under section 4(2) of the Securities Act without reliance upon Regulation D. For example, a securities industry trade association represented that most privately-placed securities are offered pursuant to the statutory exemptions from registration of the Securities Act of 1933 without reliance upon SEC Regulation D. The SEC represented that a large number, if not a majority, of private placements rely solely on the section 4(2) exemption of the Securities Act of 1933 and not on Rule 506.[18] These commenters noted that offerings of securities under section 4(2) are exempt only from the registration requirements of section 5 of the Securities Act but that transactions in such securities are not exempt from the antifraud, civil liability or other provisions of the federal securities laws, applicable state securities laws or rules of the National Association of Securities Dealers, Inc. The securities industry trade association and a broker-dealer also noted that use of the Regulation D exemption generally occurs only where unaccredited investors are taking part in the initial offering. Thus, the commenters argued that offerings under section 4(2) of the Securities Act of 1933 may be made to a more restricted class of investors than offerings under Regulation D. In addition, a bar association noted that because many novel financial products are offered under section 4(2), a failure to include such offerings in § 34.2 could retard product development and innovation.

The Commission has determined to reformulate § 34.2(a)(1)(v) to permit securities offered pursuant to section 4(2) of the Securities Act of 1933 to be eligible for exemption. As commenters indicated that private placements pursuant to Section 4(2) of the 1933 Act generally would be made to a subset of permissible Rule 506 purchasers, the revised provision should not restrict the scope of private placements under existing practice and will be consistent with the Commission's objective of limiting eligibility to instruments not offered to the general public.

3. *Section 34.2(a)(1)—Time deposits.*

a. *Time deposits offered by non-FDIC insured institutions and at certain uninsured branches and agencies of foreign banks.* Proposed § 34.2(a)(1)(vi) would have made eligible for the exemption time deposits, within the meaning of 12 CFR 204.2(c)(1), which are offered by a bank that is a member of the FDIC and marketed and sold directly to a customer or through a broker registered in accordance with Section 15 of the Securities Exchange Act of 1934 and applicable regulations.

As noted above, several commenters objected to the exclusion from eligibility under § 34.2(a)(1) of institutions that were not members of the FDIC but that otherwise were subject to federal insurance, such as federally insured savings and loan institutions. For the reasons previously discussed, the Commission is revising proposed § 34.2(a)(1)(vi), as well as § 34.2(a)(1)(iv), to extend eligibility for the exemption to other federally insured institutions.

Similarly, also for the reasons previously discussed, the Commission is revising proposed § 34.2(a)(1)(vi) to extend the exemption to deposits at the uninsured branches or agencies of U.S. supervised foreign banks. Section 34.2(a)(1)(vii) (revision and redesignation of proposed § 34.2(a)(1)(vi)).

b. *Time deposits under 12 CFR 204.2(c)(1): Expansion of category.* As noted above, proposed § 34.4(a)(1)(vi) would have established eligibility for the exemption for time deposits within

[15] *Id.*

[16] The IIB noted that the FDIC-insurance criterion in the proposed exemption could, in conjunction with a technical reading of the Federal Deposit Insurance Act (FDIA), allow all non-U.S. offices of a foreign bank having an insured U.S. branch to be eligible under the exemption. The IIB noted that Section 3 of the FDIA defines the term "insured bank" to include "a foreign bank having an insured branch." 12 U.S.C. 1813(b) (1982). Thus, read technically, all offices of a foreign bank having an insured U.S. branch, including not only the uninsured offices of such a bank located in the United States, but also all non-U.S. offices of such a bank, could rely on the exemption to issue hybrid instruments in the United States.

The Commission has replaced references to FDIC-insured banks with references to U.S. financial institutions insured by a U.S. Government agency or chartered corporation. It is the Commission's intention that only a domestic issuer which is subject to federal insurance be eligible under the federally-insured provisions of the exemption. Thus, a non-insured branch or agency of a foreign bank having an insured U.S. branch would not be eligible for the exemption but would be an eligible issuer only if it is licensed under U.S. law and appropriately regulated, supervised and examined by U.S. banking authorities. See, e.g. § 34.2(a)(1)(iv).

[17] Review of foreign bank branches and agency offerings on a case-by-case basis, followed by more generalized treatment, is consistent with the SEC's practice with respect to foreign branch and agency offerings under Section 3(a)(2) of the Securities Act of 1933. *See* SEC Release No. 33-6661, 39-2038, 51 FR 34462 (September 29, 1986).

[18] The SEC previously has stated that "in general, private placements with large institutions are made in reliance on section 4(2) rather than on the safe harbor provisions of Regulation D." SEC Release 33-6806, 53 FR 44016, 44025 (November 1, 1988) (proposed Rule 144A).

the meaning of 12 CFR 204.2(c)(1). Several commenters, including an association of banks and the Federal Reserve, contended that limiting such eligibility to time deposits under 12 CFR 204.2(c)(1) was too restrictive and omitted other forms of bank accounts that could be characterized as hybrids. These commenters noted, for example, that the proposed rule did not cover demand deposits, demand notes, NOW accounts and other liabilities that constitute transaction accounts under 12 CFR 204.2. The Federal Reserve noted that the regulatory distinction between time deposits and transaction accounts, from which funds may be withdrawn at any time without notice or penalty, is made primarily for monetary policy purposes and should not be material for purposes of the proposed exemption.[19]

The Commission is revising proposed § 34.2(a)(1)(vi) to include demand deposits, time deposits and transaction accounts within the meaning of 12 CFR 204.2(b)(1), (c)(1) and (e), respectively. § 34.2(a)(1)(vii) (redesignation and revision of proposed § 34.2(a)(1)(vi). However, while such accounts will be potentially eligible for the exemption, the conventional structure of some such accounts, for example demand deposits, as deposits without a fixed maturity or interest payment, may not be readily accommodated under the final exemptive rule.

4. *Section 34.2(a)(2) Implied option premium limitation.* Under proposed § 34.2(a)(2), the commodity component of exempted instruments would have been subject to a maximum implied option premium of 40% of the issue price of the instrument. As previously noted, the term "implied option premium" would have been defined in § 34.1(f) as the issue price of the instrument less the present, or discounted, value of the instrument's commodity-independent payments.[20] Under this standard, instruments that have implied option premiums greater than 40% of the instrument's total price at issuance would be ineligible for exemption under the proposed regulations.

Many commenters opposed this criterion. Several commenters objected to the use of a quantitative standard which could result in different permissible implied option premiums depending upon transitory market conditions. It was also noted that calculating the implied option premium depends upon a determination of the commodity-independent payments of the hybrid instrument, an amount which may not be readily ascertainable due to the absence of a final maturity date, variation in the principal amount of the instrument over its term, or other factors. For example, one commenter noted that due to possible fluctuations in the discount rate, an issuer may be unable to predict whether an identical hybrid instrument, issued shortly after an exempted instrument, would be exempt. The implied option premium test is applied at one point in time, at pricing of the instrument. At that time, the issue price and discount rate should be calculable. More generally, it is in the nature of a hybrid instrument to introduce temporal commodity pricing into debt, preferred equity, or depository instruments. Commodity pricing can differ greatly over time; a market may be inverted at one point in time and be a carrying charge market at another point in time. Thus, the reflection of such variables in regulatory standards applicable to hybrid instruments is appropriate.

The Federal Reserve contended that the maximum implied option premium standard could impair legitimate transactions, such as foreign currency deposits at U.S. banks paying interest at the prevailing rates for such currency. The Federal Reserve noted that this concern is particularly relevant to deposits in currencies on which lower interest rates tend to be paid, such as Japanese yen. The implied option premium standard should afford substantial flexibility in the construction of foreign currency linked accounts.

The Federal Reserve also commented that the criterion appears to favor instruments with imbedded options that are "out of the money" rather than "in" or "at the money." However, the criterion does not "favor" instruments that are out-of-the-money but simply puts a maximum limit at issuance on the amount of overall premium that may be embedded in an instrument. To the extent that more commodity units could be effectively indexed with out-of-the-money options as compared to in-the-money options, this simply reflects the lower price, other things being equal, of the former. This same principle governs any valuation of options, including exchange-traded options.

Finally, a number of commenters noted that if the Commission expanded the list of instruments eligible for the exemption to include broader groups of deposits under 12 CFR Part 204, it may not be possible to calculate the implied option premium of some instruments, for example, a demand deposit lacking a fixed maturity date. The Commission believes, however, that to the extent the option value can be effectively estimated, such an instrument may qualify for exemptive relief.

5. *Section 34.2(a)(3)(i) and (iv) Rating.* The Commission proposed to restrict the availability of exemptive relief under proposed § 34.2(a) to transactions satisfying one of five alternate performance criteria designed to provide assurance of the ability of the offeror to satisfy its obligations under the hybrid instrument.

Proposed § 34.2(a)(3)(i) would have provided as an alternative performance criterion that the instrument be rated in one of the three highest categories by at least two nationally recognized investment organizations. A number of commenters argued that requiring more than one rating would impose an unnecessary expense upon option hybrid issuers. An investment bank also commented that the requirement that the rating be in one of the three highest categories was unduly restrictive, since this requirement would exclude, for example, securities rated A (*i.e.*, under a rating system in which AAA, AA+ and AA are the three highest ratings), which are considered to be of investment grade. The investment bank noted that investment grade securities are eligible for investment by most fund managers and fiduciaries and recommended that the criterion be revised to require only that the instrument be rated investment grade.[21] The Commission has revised the final rule to provide that rating of the instrument by a nationally recognized investment rating organization in one of the four highest categories satisfies the performance requirement. See § 34.2(a)(3)(i).

A life insurance industry trade association stated that some life insurance companies are not evaluated by investment rating organizations because they do not issue debt or equity instruments. Nonetheless, the trade association noted that such life insurance companies are evaluated by nationally recognized financial rating organizations such as A.M. Best Company or Moody's Investor Services. The Commission believes that with respect to insurance companies which have not been rated by an investment rating organization, the § 34.2(a)(3)(i) criterion may be fulfilled by an equivalent rating by a nationally recognized financial rating organization.

[19] For example, the Federal Reserve noted that transaction accounts are subject to higher reserve requirements than time deposits. See 12 CFR 204.2(c), 204.2(e) and 204.9(a)(1).

[20] *See* 54 FR at 1135 n.29.

[21] Several commenters noted that investment grade would include instruments rated Baa or better under one grading system.

Proposed §34.2(a)(3)(iv) would have provided as an alternative performance criterion that other outstanding debt instruments offered by the same bank have been rated in one of the three highest categories by at least two nationally recognized investment rating organizations. Several commenters noted that while proposed § 34.2(a)(3)(i) (rating of instrument) would be available both to bank and non-bank issuers, proposed § 34.2(a)(3)(iv) (rating of other outstanding instrument) would be available only to banks. These commenters advocated that all issuers, not only banks, be permitted to employ this performance criterion. In particular, several commenters noted that such flexibility would be most important for issuers of private placements, where the instruments usually are not rated but where the issuers' other outstanding debt frequently has received such ratings.

The Commission agrees that § 34.2(a)(3)(iv) appropriately may be extended to non-bank issuers. Therefore, the Commission has revised § 34.2(a)(3)(iv) by incorporating it into § 34.2(a)(3)(i). The Commission also has clarified the revised rule to specify that where the performance criterion relied upon is the rating of an instrument other than the hybrid instrument, the rated instrument should be one of comparable seniority to the hybrid instrument. In addition, for the reasons discussed above, only one investment rating by a qualified rating agency will be required. See § 34.2(a)(3)(i).

6. *Section 34.2(a)(3)(ii) Net worth.* Proposed § 34.2(a)(3)(ii) provided a $100 million net worth alternative performance criterion. Several commenters suggested that the Commission make clear that the net worth calculation should be measured at only one date, the date the terms of the hybrid instrument are fixed. As discussed below, the Commission believes that, with the exception of cover, compliance with the performance standard should be determined at the time at which the instrument is issued. One commenter suggested that the net worth calculation should be derived from the issuer's most recent balance sheet, prepared in accordance with generally accepted accounting principles or regulatory accounting principles. The Commission concurs in this view.

7. *Section 34.2(a)(3)(iii) Cover or letter of credit.* Proposed § 34.2(a)(3)(iii) would have provided as an alternative performance criterion that the issuer maintain cover, consisting of the physical commodity or futures, forward or option contracts for the commodity, equal to the amount of its commitments to deliver, to take delivery of, or to pay the cash value of, the commodity (or a change in the price of the commodity) that is the subject of the commodity component of the instrument.

A number of commenters stated that the proposed cover requirement appeared to restrict unduly the type of permissible cover arrangements and should be modified to permit other forms of cover. In this regard, some commenters noted that in the Advance Notice, futures or options on futures were not intended as the exclusive means of cover.[22] Commenters suggested, for example, that customized agreements or letters of credit might be used. Others raised questions concerning whether physical inventory or reserves of the physical commodity to which the instrument is indexed would constitute acceptable cover.

The Commission has made several clarifying changes in § 34.2(a)(3)(iii) to address the forms of permissible cover. First, the Commission has revised the provision to make express reference to letters of credit as an alternative to cover.[23] Second, in response to the requests of various commenters that contractual interests in the relevant commodity be considered acceptable cover, the Commission has revised § 34.2(a)(3)(iii) to make clear that interests in the relevant commodity that qualify as cover under Commission Regulation 1.17(j) also would qualify as cover under the exemptive rule. The Commission has retained in the definition of cover specific references to the physical commodity that is deliverable under the hybrid instrument or whose price is the reference price for the instrument, as well as futures, forward, and option contracts.

8. *Section 34.2(a)(3)(v).* Proposed § 34.2(a)(3)(v) would have provided as an alternative performance requirement that the instrument be subject to insurance by the FDIC. In accordance with the revision of §34.2(a)(iii) discussed above, the Commission is expanding this performance criterion to include other forms of federal insurance. In addition, an association of banks contended that the insurance provision should be modified to specify that the institution, not the instrument, be federally insured. As deposits in an FDIC-insured bank are insured to $100,000, some commenters contended that the proposed formulation makes it unclear whether an instrument with a face value in excess of $100,000 would be deemed to be "subject to insurance" for purposes of the rule. The Commission intended the phrase "subject to insurance," as used in the proposed rule, to mean that the issuing bank is insured and that, subject to the applicable ceiling on coverage, the hybrid instrument would be covered by such insurance. The Commission did not intend to disallow exemptive relief to instruments with face values in excess of $100,000. The Commission has revised § 34.2(a)(3)(iv) (redesignation and revision of proposed §34.2(a)(3)(v)) to clarify this issue.

Finally, one commenter urged that proposed § 34.2(a)(3)(v) be revised to permit U.S. offices of foreign banks that are licensed and supervised by U.S. authorities to meet this alternative performance criterion solely by virtue of such a foreign bank's status as a U.S. licensed bank. While the Commission has revised the proposed rules to make clear that hybrid instruments issued by U.S. branches and agencies of foreign banks may qualify for the exemption, the Commission does not believe that revision of proposed § 34.2(a)(3)(v) in the manner suggested is appropriate. Were foreign status alone sufficient to satisfy the performance requirement, uninsured U.S. branches and agencies of foreign banks would be subject to no performance requirement while U.S. banks would, like all other U.S. issuers, be required to satisfy one of the alternate performance criteria. As the Commission has made clear above, it has revised the final rules to reflect the principle of parity of treatment established in the IBA. However, it does not believe that foreign banks should receive a waiver of performance requirements fully applicable to domestic banks, particularly as such requirements may be satisfied by one of several alternative methods.[24] Thus, the Commission believes that, as revised, its final rules treat the uninsured U.S. offices of foreign banks comparably with U.S. banks.

9. Section 34.2(a)(3) *Other comments.* A number of commenters questioned whether the performance requirement set forth in proposed § 34.2(a)(3) was intended to continue for the full term to maturity of the instrument or to be applicable only at the time of issuance of the instrument and objected to the former interpretation. Some commenters suggested that if satisfaction of one of

[22] *See* 52 FR 47022, 47025–26 (December 11, 1987).

[23] Although letters of credit may be used as cover for purposes of Rule 34.2, they do not constitute qualifying capital for purposes of calculating net capital under Commission Rule 1.17. *See* CFR 1.17(c)(3)(i) (1988).

[24] For example, such branches and agencies may rely upon the rating criterion of § 32 4(a)(3)(i).

the alternate performance criteria is required throughout the term of the instrument such a requirement may make it difficult for issuers to obtain opinions of counsel that registered securities will be legally issued. Moreover, these commenters represented that it would be unlikely for cover to be available on acceptable terms for longer maturity instruments. Finally, other commenters requested that the Commission clarify the consequences of a subsequent lack of compliance with a performance criterion.

The Commission agrees that, with the exception of the letter of credit or cover criterion, compliance with the alternate performance criteria is properly determined at the time the instrument is issued and that the exempt status of the instrument is not affected by subsequent events, *e.g.*, a decline in net worth, that result in noncompliance with the performance criterion initially relied upon. This clarification reflects the fact that the performance criteria are not designed to guarantee or assure the issuer's performance of its obligations under the hybrid instrument but only to provide indicia of the issuer's ability to satisfy its obligations under the hybrid instrument. The Commission believes, however, that use of letters of credit or cover to satisfy the performance standard is meaningful only to the extent that such arrangements continue throughout the term of the instrument. Compliance with the performance criteria other than letters of credit and cover, *e.g.*, net worth, is less likely to vary substantially over time. As a general matter, the issuer's failure to maintain compliance with the letter of credit or cover criterion throughout the term of the hybrid instrument should not affect the rights of purchasers who would be considered bona fide purchasers of such instruments. The Commission will continue to evaluate this criterion based upon further experience with the exemptive rule.

10. *Section 34.2(a)(4)—Marketing prohibition.* Proposed § 34.2(a)(4) would have precluded marketing of the instrument as a futures contract or a commodity option, or, except to the extent necessary to describe the instrument or to comply with applicable disclosure requirements, as having the characteristics of a futures contract or a commodity option. Several commenters contended that this requirement was vague and could discourage full disclosure. Other commenters recommended that the Commission make clear that this marketing restriction applies only to the initial issuance of the hybrid instrument and sales literature prepared by the issuer and not to material prepared by the underwriter. One commenter suggested that in order to prevent circumvention of this restriction through collusion between the issuer and underwriter, the issuer should be required to obtain from the underwriter a representation that the hybrid instrument in question will be marketed in accordance with the § 34.2(a)(4) marketing restriction.

The Commission believes that proposed § 34.2(a)(4) adequately described the type or representations that should be precluded as inconsistent with the character of an exempted instrument while preserving the ability of issuers to describe the instrument accurately. By making clear that issuers may describe the operation of the instrument and otherwise make such disclosures as are required by applicable disclosure requirements, the Commission believes that the rule as proposed adequately specifies the conduct prohibited.

As some commenters suggested, the marketing prohibition could be negated to the extent that persons involved in marketing and sales activity ignore the requirements of the rule. Therefore, the issuer must take reasonable steps to assure that the marketing restriction is complied with by other parties responsible for the initial marketing of the instrument.

11. *Section 34.2(b) Case-by-case additional relief.* Proposed § 34.2(b) stated that the Commission may, upon written petiton, grant such further exemptions with respect to hybrid instruments as it determines are not contrary to the public interest. Several commenters suggested that the reference to "hybrid instrument" should be deleted in order to allow the provision to address instruments that do not come within the meaning of that term as defined in proposed § 34.1(b). However, the Commission believes that the relief available under § 34.2(b) is appropriately limited to hybrid instruments inasmuch as the Commission retains exemptive authority under Rule 32.4(b) to grant exemptive relief with respect to options transactions in general, subject to certain exceptions set forth in that rule.[25] In addition, of course, issuers may seek other relief (*e.g.*, "no-action" letters) for instruments that warrant particularized treatment but do not fall within the definition hybrid instrument.

As suggested by one commenter, the Commission wishes to make clear that the exemptive rule is not exclusive and that issuers may continue to rely upon the CEA, other rules, and interpretations. However, a number of no-action positions granted during the pendency of this rulemaking specified that they were subject to such action as the Commission might take in the course of the rulemaking. Although promulgation of these final rules is not intended to affect the validity of existing issues offered pursuant to previous no-action positions, such prior no-action positions are superseded as to all other offerings.

Finally, several commenters stated that before the Commission grants other exemptive relief under § 34.2(b), it should provide a 90-day period for public comment as required by Section 4c(b) of the CEA. The Commission believes, however, that the notice and public comment requirements of Section 4c(b) of the CEA have been satisfied by the comment opportunities provided not only on the rule proposal but also with respect to the Advance Notice. The public has thus been given ample notice and opportunity to comment on the case-by-case exemptive rule.

C. Section 34.3 Notice

Proposed § 34.3 would have required that where the price used for determining the settlement of the commodity-dependent payments of an option hybrid is based on prices reported on a designated contract market, the issuer must provide the Commission with written notification within five business days of the effective date of the offering. One commenter noted that the phrase "the effective date of the offering" is ambiguous and requested clarification. The Commission construes the phrase "effective date of the offering" to mean the date on which the instrument is issued.

D. Additional Issues

1. *Granted options.* In connection with the proposed rules, the Commission requested comment as to the appropriateness of extending the proposed exemption to granted options and the conditions pursuant to which such options should be permitted.[26]

[25] Commission Rule 32.4(b), 17 CFR 32.4(b) provides that: "The Commission may, by order, upon written request or upon its own motion, exempt any other person, either unconditionally or on a temporary or other conditional basis, from any provisions of this Part, other than §§ 32.2, 32.8 and 32.9, if it finds, in its discretion, that it would not be contrary to the public interest to grant such exemption."

[26] 54 FR at 1135 n.32.

Several commenters urged the Commission to permit granted option hybrid instruments (such as instruments containing an option granted to the issuer) and suggested possible revisions to the proposed rules to implement this suggestion. The Commission believes that the issues raised by granted option hybrid instruments require further consideration. Therefore, to the extent that issuers seek to issue granted options, they may do so subject to the conditions of the trade option exemption of Commission Rule 32.4(a) or pursuant to case-by-case relief.[27]

III. Other Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, (PRA) 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA the Commission previously submitted this rule in proposed form and its associated information collection requirements to the Office of Management and Budget. The Office of Management and Budget approved the collection of information associated with this rule on April 10, 1989 and assigned OMB control number 3038-0041 to the rule. The burden associated with this entire collection, including this final rule, is as follows:

Average burden hours per response	0.17
Number of Respondents	30
Frequency of response	1

Copies of the OMB approved information collection package associated with this rule may be obtained from Gary Waxman, Office of Management and Budget, Room 3220, NEOB, Washington, DC 20503, (202) 395-7340.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*, requires each Federal agency to consider, in the course of proposing substantive rules, the effect of those rules on small entities. A small entity is defined to include, *inter alia*, a "small business" and a "small organization." 5 U.S.C. 601(6).[28]

The Commission notes that the notification procedure for the regulatory exemption (§ 34.3), would apply generally to any issuer of hybrid instruments with commodity option-dependent payments that are referenced to a futures price on a designated contract market and does not specifically implicate any Commission registrant, large trader or contract market in its status as such.

Based upon the Commission's experience with issuers who have sought no-action relief and filed notices pursuant to published Commission advisories concerning hybrid instruments, the Commission anticipates that most issuers would not constitute "small businesses." [29] The Commission notes that the exemptive rules adopted herein will not require burdensome legal, accounting, consulting or expert costs. The determination of whether an offering would qualify for the proposed exemption requires minimal analysis of data that will be readily available to the issuer.

Accordingly, the Chairman, on behalf of the Commission, certifies pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), that the rules adopted herein will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 34

Commodity futures, Commodity options, Hybrid instruments.

For the reasons set forth above, new Part 34 is added to Title 17 of the Code of Federal Regulations, to read as follows:

[27] Commission Rule 32.4(a), 17 CFR 32.4(a)(1988) provides: "Except for the provisions of §§ 32.2, 32.8 and 32.9, which shall in any event apply to all commodity option transactions, the provisions of this Part shall not apply to a commodity option offered by a person which has a reasonable basis to believe that the option is offered to a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or by-products thereof, and that such producer, processor, commercial user or merchant is offered or enters into the commodity option transaction solely for purposes related to its business as such." *See also* note 7 referring to capped option indexing, *supra*, and related text.

[28] "Small organizations," as used in the RFA, means a "not-for-profit enterprise which is independently owned and operated and is not dominant in its field." 5 U.S.C. 601(4). The RFA does not incorporate the six standards of the Small Business Administration for small organizations. Agencies are expressly authorized to establish their own definitions of small organization. (*Id.*)

[29] All such petitioners for relief were either major corporations, government-chartered corporations or large banks and all had assets approaching or in excess of $100 million. Under SEC Rule 157, 17 CFR 230.157, issuers of securities are considered to be small entities for purposes of the RFA if their total assets are $5 million or less and the proposed offering does not exceed $5 million. Under such criteria, all of the petitioners who have sought regulatory relief or filed under hybrid advisory procedures with Commission also would not be small entities under SEC Rule 157.

PART 34—REGULATION OF HYBRID INSTRUMENTS

Sec.
34.1 Definitions.
34.2 Option hybrid exemption.
34.3 Option hybrid notice requirement.

Authority: 7 U.S.C. 2, 6c and 12a.

§ 34.1 Definitions.

(a) *Commodity.* Commodity means a commodity within the meaning of Section 2(a)(1)(A) of the Commodity Exchange Act.

(b) *Hybrid instruments.* Hybrid instrument means a debt, preferred equity or depository instrument with a commodity-dependent payment that is not severable therefrom.

(c) *Commodity-independent payment.* Commodity-independent payment means any payment pursuant to a hybrid instrument that does not result from indexing to, or calculation by reference to, the price of a commodity.

(d) *Commodity-dependent payment.* Commodity-dependent payment means any payment pursuant to a hybrid instrument resulting from indexing to, or calculation by reference to, the price of a commodity.

(e) *Commodity option based payment.* Commodity option based payment means any commodity-dependent payment in which the commodity price indexing or referencing results in the indexing of payments for commodity prices either above or below the indexing reference price but not both.

(f) *Implied option premium.* Implied option premium means the issue price of a hybrid instrument with commodity based option payments less the present, or discounted, value of the commodity-independent payments. The discount rate to be used in determining the present value is the actual, or if unavailable, the estimated annual yield at the time of issuance for a comparable non-hybrid debt, preferred equity or depository instrument of a similar term issued by the same or a comparable issuer.

§ 34.2 Option hybrid exemption.

(a) A hybrid instrument whose only commodity-dependent payments are commodity option based payments is exempt from regulation under the Commodity Exchange Act, except as provided in § 34.3 of this part, if:

(1) The instrument is:

(i) A security within the meaning of section 2(1) of the Securities Act of 1933 which is registered in accordance with section 5 of the Securities Act of 1933;

(ii) An exempt security under section 3(a)(3) or 3(a)(6) of the Securities Act of 1933;

(iii) An exempt security under section 3(a)(2) of the Securities Act of 1933 that is issued or guaranteed by the United States, any territory of the United States, the District of Columbia or any state of the United States, or any political subdivision or public instrumentality thereof; or a security issued or guaranteed as to principal or interest by any corporation the securities of which are designated, by statute specifically naming such corporation, to constitute exempt securities within the meaning of the laws administered by the Securities and Exchange Commission.

(iv) An exempt security under section 3(a)(2) or 3(a)(5) of the Securities Act of 1933 that is issued or guaranteed by a financial institution that is insured by a United States Government agency or United States chartered corporation; or an exempt security under section 3(a)(2) of the Securities Act of 1933 that is issued or guaranteed by a United States branch or agency of a foreign bank that is licensed under the laws of the United States and regulated, supervised and examined by United States government authorities having regulatory responsibility for such financial institutions.

(v) An exempt security under section 3(a)(2) of the Securities Act of 1933 that is issued by an insurance company;

(vi) A security that is offered and sold pursuant to an exempt transaction under section 4(2) of the Securities Act of 1933; or

(vii) A demand deposit, time deposit or transaction account within the meaning of 12 CFR 204.2 (b)(1), (c)(1) and (e), respectively, offered by a U.S. financial institution that is insured by a United States government agency or United States chartered corporation, or by a United States branch or agency of a foreign bank that is licensed under the laws of the United States and regulated, supervised and examined by U.S. federal authorities having regulatory responsibility for such financial institutions, and marketed and sold directly to a customer or through a broker registered in accordance with section 15 of the Securities Exchange Act of 1934 and applicable regulations;

(2) The value of the implied option premium is no greater than 40% of the issue price of the instrument;

(3) The issuer or instrument satisfies one of the following requirements:

(i) The instrument or, if the instrument has not been rated, another outstanding instrument of comparable seniority of the issuer has been rated in one of the four highest categories by a nationally recognized investment rating or financial rating organization;

(ii) The issuer has at least $100 million in net worth;

(iii) The issuer maintains letters of credit or cover, consisting of:

(A) The physical commodity that is the subject of the hybrid instrument,

(B) Futures, forward, or option contracts for the commodity, or

(C) Interests constituting acceptable cover under § 1.17(j), equal to the amount of its commitments to deliver, to take delivery of, or to pay the cash value of, the commodity (or a change in the price of the commodity) that is the subject of the commodity component of the instrument;

(iv) The instrument is eligible, subject to applicable restrictions upon the amount of coverage, to insurance by a United States Government agency or United States chartered corporation;

(4) The instrument is not marketed as a futures contract or a commodity option, or, except to the extent necessary to describe the functioning of the instrument or to comply with applicable disclosure requirements, as having the characteristics of a futures contract or a commodity option;

(5) The instrument does not provide for settlement in the form of a delivery instrument, for example, an exchange-approved warehouse receipt or shipping certificate, specified in the rules of a designated contract market.

(b) The Commission may, based upon written petition, grant such further exemptions with respect to hybrid instruments subject to this Section as it determines are not contrary to the public interest.

§ 34.3 Option hybrid notice requirement.

Where the price used for determining the settlement of the commodity-dependent payments of an option hybrid instrument exempted pursuant to § 34.2 is based on prices reported on a designated contract market, the issuer shall provide the Commission in writing, within five business days of the effective date of the offering of the instrument:

(a) The name, address, and telephone number of the issuer and of a designated contact person for such issuer;

(b) The maturity date and authorized or expected size of the offering; and

(c) A copy of the prospectus, offering document or other written description of the instrument provided to actual or prospective purchasers thereof.

Issued in Washington, DC, on July 17, 1989 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-17071 Filed 7-20-89; 8:45 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Policy Statement Concerning Swap Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Statement of Policy.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is issuing a policy statement concerning swap transactions. In this statement, the Commission identifies those swap transactions which will not be regulated as futures or commodity option transactions under the Commodity Exchange Act or the related regulations. As a consequence, the Commission will take no action to preclude the effectuation of or to regulate such transactions.

EFFECTIVE DATE: July 21, 1989.

FOR FURTHER INFORMATION CONTACT: Robert H. Rosenfeld, Attorney, Division of Trading and Markets, telephone (202) 254-8955, David Merrill, Senior Assistant General Counsel, Office of the General Counsel, telephone (202) 254-9880, or Eugene Moriarty, Director, Research Section, Division of Economic Analysis, telephone (202) 254-8990, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

Section 2(a)(1)(A) of the Commodity Exchange Act (CEA or Act) grants the Commission exclusive jurisdiction over "accounts, agreements (including any transaction which is of the character of * * * an 'option' * * *), and transactions involving contracts of sale of a commodity for future delivery traded or executed on a contract market * * * or any other board of trade, exchange, or market * * * *'" 7 U.S.C. 2. The CEA and Commission regulations require that transactions in commodity futures contracts and commodity option contracts, with narrowly defined exceptions, occur on or subject to the rules of contract markets designated by the CFTC.[1] In several recent releases [2] and in response to requests for case-by-case review of various proposed offerings,[3] the Commission has addressed the applicability of the Act and Commission regulations to various forms of commodity-related instruments offered and sold other than on designated contract markets. An overview of off-exchange transactions and issues was commenced by issuance in December 1987 of an Advance Notice of Proposed Rulemaking (Advance Notice). The Advance Notice requested comment concerning, among other things, a proposed no-action position concerning certain commercial transactions, which, as described, would have extended to certain categories of swap transactions.

Based upon careful review of the comments received in response to the Advance Notice, indicating generally a need for greater clarity in this area, representations from market users, and consultations with other federal regulators concerning the issues raised by swap transactions, the Commission is issuing this policy statement to clarify its view of the regulatory status of certain swap transactions. This statement reflects the Commission's view that at this time most swap transactions, although possessing elements of futures or options contracts, are not appropriately regulated as such under the Act and regulations. This policy statement is intended to recognize a non-exclusive safe harbor for transactions satisfying the requirements set forth herein.

II. Safe Harbor Standards

In determining whether a transaction constitutes a futures contract, the Commission and the courts have assessed the transaction "as a whole with a critical eye toward its underlying purpose." [4] Such an assessment entails a review of the "overall effect" of the transaction as well as a determination as to "what the parties intended." [5] Although there is no definitive list of the elements of futures contracts, the CFTC and the courts recognize certain elements as common to such contracts.[6]

[1] 7 U.S.C. 6(a), 6c(b), 6c(c). Section 4(a) of the CEA provides, *inter alia*, that it is unlawful to enter into a commodity futures contract that is not made "on or subject to the rules of a board of trade which has been designated by the Commission as a 'contract market' for such commodity." 7 U.S.C. 6(a). This prohibition does not apply to futures contracts made on or subject to the rules of a foreign board of trade, exchange or market. 7 U.S.C. 6(a). The exchange trading requirement reflects Congress's view that such an environment would control speculation and promote hedging. H.R. Rep. No. 44, 67th Cong., 1st Sess. 2 (1921). *See also* 7 U.S.C. 5 (Congressional findings concerning necessity for regulation of futures and commodity option transactions). Pursuant to Sections 4c(b) and 4c(d), 7 U.S.C. 6c(b) and 6c(d), of the CEA, the Commission has authority to permit transactions in commodity options which do not take place on contract markets. Currently, only two narrow categories of such option transactions exist: trade options (in which the offeree is a "commercial user" of the underlying commodity) and dealer options (in which the grantor fulfills the criteria of Section 4c(d)(1) of the CEA). See also 54 FR 1128 (January 11, 1989) (Proposed Rules Concerning Regulation of Hybrid Instruments); Final Rules Concerning Regulation of Hybrid Instruments, published elsewhere in this issue.

[2] 52 FR 47022 (December 11, 1987) (Advance Notice of Proposed Rulemaking); 54 FR 1139 (January 11, 1989) (Statutory Interpretation Concerning Certain Hybrid Instruments); 54 FR 1128 (January 11, 1989) (Proposed Rules Concerning Regulation of Hybrid Instruments). See also 50 FR 42963 (October 23, 1985) (Statutory Interpretation and Request for Comments Concerning Trading in Foreign Currencies for Future Delivery).

[3] The Commission staff's Task Force on Off-Exchange Instruments has addressed a number of proposed offerings of hybrid instruments in a series of published "no-action" letters. See, *e.g.*, CFTC Advisory No. 39-86, June 23, 1986 [Interpretative Letter No. 86-10, June 20, 1986, 2 Comm. Fut. L. Rep. (CCH) ¶ 24,252] (notes indexed to dollar/Yen exchange rate); CFTC Advisory No. 45-88, July 19, 1988 [Interpretative Letter No. 88-11, July 13, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶ 24,284] (notes indexed to dollar/Yen exchange rate); CFTC Advisory No. 48-88, July 26, 1988 [Interpretative Letter No. 88-12, July 22, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶ 24,285] (notes indexed to dollar/foreign currency exchange rate); CFTC Advisory No. 58-88, August 30, 1988 [Interpretative Letter No. 88-16, August 26, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶ 24,312] (federally-chartered corporation issuing notes indexed to nationally disseminated measure of inflation published by a U.S. government agency); CFTC Advisory No. 63-88, September 21, 1988 [Interpretative Letter No. 88-17, September 6, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶ 24,320] (fixed-rate debentures with additional payments indexed to the price of natural gas over an established base price); CFTC Advisory No. 66-88, September 23, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶ 24,321] (certificates of deposit with interest payable at maturity indexed in part to the spot price of gold). See also CFTC Advisory No. 18-19, March 17, 1989 (letter dated November 23, 1988, concerning proposed sale of hay for delayed delivery).

[4] *CFTC* v. *Co. Petro Marketing Group, Inc.*, 680 F.2d 573, 581 (9th Cir. 1982).

[5] *CFTC* v. *Trinity Metals Exchange*, No. 85-1482-CV-W-3 (W.D. Mo. January 21, 1986) [*citing CFTC v. National Coal Exchange, Inc.* [980-1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,424 at 26,046 (W.D. Tenn. 1982)].

[6] See generally, 52 FR 47022, 47023 (December 11, 1987) (*citing In the Matter of First National Monetary Corp.*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,698 (CFTC 1985)); Letter to the Honorable Patrick Leahy and the Honorable Richard Lugar, Committee on Agriculture, Nutrition and Forestry, United States Senate, from Wendy L. Gramm, Chairman, Commodity Futures Trading Commission, dated May 16, 1989 (Attachment at 7-8). The Commission has explained that this does not

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Futures contracts are contracts for the purchase or sale of a commodity for delivery in the future at a price that is established when the contract is initiated, with both parties to the transaction obligated to fulfill the contract at the specified price. In addition, futures contracts are undertaken principally to assume or shift price risk without transferring the underlying commodity. As a result, futures contracts providing for delivery may be satisfied either by delivery or offset.

In addition to these necessary elements, the CFTC and the courts also recognize certain additional elements common to exchange-traded futures contracts, including standardized commodity units, margin requirements related to price movements, clearing organizations which guarantee counterparty performance, open and competitive trading in centralized markets, and public price dissemination.[7] These additional elements facilitate the trading of futures contracts on exchanges and historically have developed in conjunction with the growth of organized contract markets. The presence or absence of these additional elements, however, is not dispositive of whether a transaction is a futures contract.[8]

In general, a swap may be characterized as an agreement between two parties to exchange a series of cash flows measured by different interest rates, exchange rates, or prices with payments calculated by reference to a principal base (notional amount).[9] Commenters have described the swap market as one in which the customary large transaction size effectively limits the market to institutional participants rather than the retail public.[10] Market participants also have noted that swaps typically involve long-term contracts, with maturities ranging up to twelve years.[11] In addition to these characteristics, many comparisons between swaps and futures contracts have stressed the tailored, non-standardized nature of swap terms; the necessity for particularized credit determinations in connection with each swap transaction (or series of transactions between the same counterparties); the lack of public participation in the swap markets; and the predominantly institutional and commercial nature of swap participants. Other commenters have stressed that despite these distinctions in the manner of trading of swaps and exchange products, the economic reality of swaps nevertheless resembles that of futures contracts.

The Commission recognizes that swaps generally have characteristics, such as individually-tailored terms, predominantly commercial and institutional participants, and expectation of being held to maturity, rather than offset during the term of the agreement, that may warrant distinguishing them from futures contracts. The criteria set forth below identify certain swaps for which regulation under the CEA and Commission regulations is unnecessary. These safe harbor standards are consistent with policies reflected in the CEA's jurisdictional exclusion for forward contracts,[12] the Treasury Amendment,[13] and the trade option exemption,[14] and are otherwise consistent with Section 2(a)(1)(A) of the CEA. Although these jurisdictional and exemptive or exclusionary provisions are not sufficiently broad to provide clear exemptive boundaries for many swaps, they reflect policies relevant to the safe harbor policy set forth herein and may encompass certain swap transactions.[15]

mean that "all commodity futures contracts must have all of these elements * * * *'" *In re Stovall*, [1977-1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,941 (CFTC 1979). To hold otherwise would permit ready evasion of the CEA.

[7] *E.g.*, Advance Notice, 52 FR at 47023; Letter to the Honorable Patrick Leahy and the Honorable Richard Lugar, Committee on Agriculture, Nutrition and Forestry, United States Senate, from Wendy L. Gramm, Chairman, Commodity Futures Trading Commission, dated May 16, 1989 (Attachment at 8); OGC Statutory and Regulatory Interpretation (Regulation of Leverage Transactions and Other Off-Exchange Future Delivery-Type Instruments), 50 FR 11656, 11657, n.2 (March 25, 1985); *CFTC* v. *Co Petro Marketing Group, Inc.*, 680 F.2d 573 (9th Cir. 1982).

[8] In addition, the Commission and the courts have consistently recognized that "the requirement that a futures contract be executed on a designated contract market is what makes the contract legal, not what makes it a futures contract." *In the Matter of First National Monetary Corp.*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,698 at 30,975 (CFTC 1985); *In re Stovall*, 1977-1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,941 at 23,776 (CFTC 1979). *See, also*, Interpretative Statement, "The Regulation of Leverage Transactions and Other Off-Exchange Future Delivery Type Investments-Statutory Interpretation," 50 FR 11656 (March 25, 1985).

[9] *See generally*, Bank for International Settlements, *Recent Innovations in International Banking* at 37-60 (April 1986); S. K. Henderson, "Swap Crdit Risk: A Multi-Perspective Analysis," 44 *Business Lawyer* 365 (1989). Interest rate swaps have been described as having three primary forms: coupon swaps (fixed rate to floating rate swaps); basis swaps (swap of one floating rate for another floating rate); and cross-currency interest rate swaps (swaps of fixed rate payments in one currency to floating rate payments in another currency). Currency swap transactions involve agreements between two parties providing for exchanges of amounts in different currencies which are calculated on the basis of a pre-established interest rate, a specified exchange rate, and a specified notional amount. Commodity swaps generally include swap transactions similar in structure to interest rate swaps, except that payments are calculated by reference to the price of a specified commodity, such as oil.

[10] The average notional amount for swaps has been estimated at $24 million. Letter from the New York Clearing House to CFTC, dated April 6, 1989, commenting on Proposed Rule and Statutory Interpretation Concerning Certain Hybrid and Related Instruments.

[11] *E.g.*, Letter to CFTC from the International Swap Dealers Association, Inc., dated April 6, 1988, concerning Advance Notice; Letter to CFTC from Morgan Guaranty Trust Company of New York, dated April 11, 1988 concerning Advance Notice.

[12] Section 2(a)(1)(A) of the CEA provides that the term "future delivery" does not include sales of any cash commodity for deferred shipment or delivery. 7 U.S.C. 2. Sales of cash commodities for deferred delivery, or forward contracts, generally have been recognized to be commercial, merchandising transactions in physicial commodities entered into by commercial counterparties who have the capacity to make or take delivery of the underlying commodity but in which delivery "may be deferred for purposes of convenience or necessity." 52 FR 47027; *In re Stovall*, [1977-1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,941 at 23,777-78 (CFTC 1979). The forward contract exclusion may apply to certain types of swap transactions.

[13] The Treasury Amendment provides that "[n]othing in this Act shall be deemed to govern or in any way be applicable to transactions in foreign currency, security warrants, security rights, resales of installment loan contracts, repurchase options, government securities, or mortgages and mortgage purchase commitments, unless such transactions involve the sale thereof for future delivery conducted on a board of trade." 7 U.S.C. 2. *See generally*, 50 FR 42963 (October 23, 1985) (CFTC Statutory Interpretation). *See also, Commodity Futures Trading Commission* v. *American Board of Trade*, 473 F. Supp. 117 (S.D.N.Y. 1979), *aff'd*, 603 F.2d 1242 (2d Cir. 1986). The Treasury Amendment may apply to some types of transactions also characterized as swaps.

[14] The trade option exemption, which is set forth in Rule 32.4(a), 17 CFR 32.4(a) (1988), authorizes commodity option transactions, other than those on commodities specified in Rule 32.2(a), that are not executed on a designated contract market and that are:

offered by a person which has a reasonable basis to believe that the option is offered to a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or byproducts thereof, and that such producer, processor, commercial user or merchant is offered or enters into the commodity option transaction solely for purposes related to its business as such.

It should be noted that under Rule 32.4(a), only the offeree of the trade option need qualify as a "commercial user" or "merchant." Rule 32.4(a) is silent concerning which party to a trade option may be the option buyer of a put or call or "long," and which party may be the option seller of a put or call or "short." As a result, provided that the qualifying commercial offeree is entering the trade option transaction solely for non-speculative purposes demonstrably related to its commercial business in the commodity which is the subject of the option transaction, the requirements of Rule 32.4(a) are met.

[15] The forward contract exclusion facilitates commodity transactions within the commercial merchandising chain. The trade option exemption similarly may be viewed as facilitating principal-to-principal transactions in which the offeree is a commercial party with respect to the underlying commodity. The Treasury Amendment reflects

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Consequently, the Commission has determined that a greater degree of clarity may be achieved through safe harbor guidelines establishing specific criteria for swap transactions to which the Commission's regulatory framework will not be applied. Swaps satisfying the requirements set forth below will not be subject to regulation as futures or commodity option transactions under the Act and regulations. This policy statement addresses only swaps settled in cash, with foreign currencies considered to be cash.[16]

1. Individually-Tailored Terms

Individual tailoring of the terms of swap agreements is frequently cited as indispensable to the operation of the swap market. Commenters have indicated that swap agreements are based upon individualized credit determinations and are tailored to reflect the particular business objectives of the counterparties. Tailoring occurs through private negotiations between the parties and may involve not only financial terms but issues such as representations, covenants, events of default, term to maturity and any requirement for the posting of collateral or other credit enhancement. Such tailoring and counterparty credit assessment distinguish swap transactions from exchange transactions, where the contract terms are standardized and the counterparty is unknown. In addition, the tailoring of swap terms means that, unlike exchange contracts, which are fungible, swap agreements are not fully standardized.

To qualify for safe harbor treatment, swaps must be negotiated by the parties as to their material terms, based upon individualized credit determinations, and documented by the parties in an agreement or series of agreements that is not fully standardized.[17] This requirement is intended to exclude from safe harbor treatment instruments which are fungible and therefore may be readily transferred and traded.

2. Absence of Exchange-Style Offset

Exchange-traded futures contracts generally may be terminated by offset,[18] that is, liquidated through establishment of an equal and opposite position. For exchange-traded futures contracts, the universal counterparty to each cleared position is the clearing organization. Prior consent of the clearing organization, as counterparty, is unnecessary to offset.[19]

In contrast, swap transactions have been described as transactions which create performance obligations terminable only with counterparty consent and which generally are expected to be maintained to maturity. A swap counterparty who seeks to eliminate the economic effect of a swap agreement may enter into a reverse swap agreement, that is, a second swap with the same maturity and payment requirements, with the same or a new counterparty, but in which the party seeking to eliminate its economic exposure assumes the reverse position (in this case the obligations of each party to both transactions continue to maturity). A swap counterparty who seeks to terminate, absent default, its obligations under a swap agreement may: (1) Undertake a swap sale, in which, based upon consent of the counterparty, it assigns its rights and obligations under the swap to a third party; or (2) negotiate an early termination of the transaction, or swap "closeout," in which it negotiates a lump sum payment with its counterparty to terminate the swap.[20] In the latter two cases, termination of the obligations created by a swap is dependent upon consent of the counterparty.

To qualify for safe harbor treatment, the swap must create obligations that are terminable, absent default, only with the consent of the counterparty. If consent to termination is given at the outset of the agreement and a termination formula or price fixed, the consent provision must be privately negotiated. This requirement is intended to confine safe harbor treatment to instruments that are not readily used as trading vehicles, that are entered into with the expectation of performance and that are terminated as well as entered into based upon private negotiation.

3. Absence of Clearing Organization or Margin System

As noted above, the necessity for individualized credit determinations has been described as a hallmark of swap transactions. A number of commenters have stressed both the dependence of the current swap market on such determinations and the absence of a multilateral "credit support" mechanism, such as a clearing organization, for swaps. In accordance with the concept of swaps as dependent upon private negotiation and individualized credit determinations as to the capacity of certain parties to perform, this safe harbor is applicable only to swap transactions that are not supported by the credit of a clearing organization and that are not primarily or routinely supported by a market-to-market margin and variation settlement system designed to eliminate individualized credit risk.[21] The ability to impose individualized credit enhancement requirements to secure either changes in the credit risk of a counterparty or increases in the credit exposure between two counterparties consistent with the above criteria would not be affected.

4. The Transaction is Undertaken in Conjunction With a Line of Business

The absence of public participation in the swaps market has frequently been

Congressional intent to avoid duplicative regulation of foreign currency transactions and other transactions in the interbank market supervised by bank regulatory agencies.

[16] As noted previously, certain categories of swap transactions may be subject to the forward contract exclusion, the Treasury Amendment and the trade option exemption. The safe harbor criteria set forth herein apply equally to options on swaps.

[17] Formation of swaps pursuant to a master agreement between two counterparties that establishes some or all contract terms for one or more individual swap transactions between those counterparties is not precluded by this requirement, provided that material terms of the master agreement and transaction specifications are individually tailored by the parties.

[18] In the context of exchange-traded futures, offset refers to the liquidation of a futures position through the acquisition of an opposite position. The availability of such offset, resulting in the liquidation of the position, typically is established by exchange rules governing exchange members' relationships with the clearing house. *See, e.g.*, Chicago Mercantile Exchange Rule 806 ("a clearing member long or short any commodity to the Clearing House as a result of substitution may liquidate the position by acquiring an opposite position for its principal"); Board of Trade Clearing Corporation Regulation 705.00 ("Where a member buys and sells the same commodity for the same delivery, and such contracts are cleared through the Clearing House, the purchases and sales shall be offset to the extent of their equality, and the member shall be deemed a buyer from the Clearing House to the extent that his purchases exceed his sales, or a seller to the Clearing House to the extent that his sales exceed his purchases"); New York Futures Exchange Rule 3-4 ("As between the Clearing Corporation and the original parties to futures contracts and option contracts, such contracts shall be binding upon the original parties until liquidated by offset, delivery, exercise or expiration, as the case may be"). Of course, the ability to offset in any given case depends upon the availability of a counterparty to enter into an offsetting transaction at an acceptable price.

[19] However, the ability to liquidate contractual positions through offset is established by clearing organization rules to which all clearing members consent.

[20] Swap paties may agree in advance upon a termination formula or price for the swap.

[21] Several commenters urged the Commission to adopt a safe harbor for swaps that would be conditioned upon, among other things, the absence of a credit support mechanism. *See* Letter to CFTC from Sullivan & Cromwell, dated April 6, 1988, concerning Advance Notice, at 41–42; Letter to CFTC from Manufacturers Hanover, dated April 11, 1988, concerning Advance Notice, at 4. The safe harbor standard is based upon individualized credit determinations at the outset and during the pendency of the contract.

cited as a factor supporting different regulatory treatment of swaps and futures contracts. Swap market participants are predominantly institutional and commercial entities such as corporations, commercial and investment banks, thrift institutions, insurance companies, governments and government-sponsored or chartered entities.[22]

The safe harbor set forth herein is limited to swap transactions undertaken in conjunction with the parties' line of business.[23] This restriction is intended to preclude public participation in qualifying swap transactions and to limit qualifying transactions to those based upon individualized credit determinations. This restriction does not preclude dealer transactions in swaps undertaken in conjunction with a line of business, including financial intermediation services.

5. Prohibition Against Marketing to the Public

Swap transactions eligible for safe harbor treatment may not be marketed to the public. This restriction reflects the institutional and commercial nature of the existing swap market and the Commission's intention to restrict qualifying swap transactions to those undertaken as an adjunct of the participant's line of business.

[22] Letter dated April 8, 1988, to CFTC from International Swap Dealers Association, Inc. Concerning Advance Notice.

[23] Swap transactions entered into with respect to exchange rate, interest rate, or other price exposure arising from a participant's line of business or the financing of its business would be consistent with this standard.

III. Conclusion

This policy statement is intended to clarify the regulatory treatment of certain transactions in order to facilitate legitimate market transactions in a field distinguished by innovation and rapid growth. Consequently, the Commission proposes to continue to review on a case-by-case basis transactions that do not meet the above criteria and that are not otherwise excluded from Commission regulation.

Issued in Washington, DC, on July 17, 1989 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-17070 Filed 7-20-89; 8:45 am]

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federal register

Friday
July 21, 1989

Part V

Environmental Protection Agency

40 CFR Part 355
Extremely Hazardous Substance List; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 355

[FRL-3303, 3553-3]

RIN 2050-AC77

Extremely Hazardous Substance List

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing the deletion of six substances from the list of "extremely hazardous substances" promulgated by the Agency under section 302. This action is being taken because further review of the information which formed the basis for the original listing as extremely hazardous substances indicates that these listings may have been in error. This proposal will reduce the number under the law.

DATE: Comments must be submitted on or before August 21, 1989.

ADDRESS:

Comments: Written comments should be submitted to: Chemical Emergency Preparedness and Prevention Office, Superfund Docket Clerk, Attention: Docket Number 300PQ, Room 2427 Mall, U.S. Environmental Protection Agency, Mail Stop OS-240, 401 M Street, SW., Washington, DC 20460.

Copies of materials relevant to this rulemaking are contained in Room 2427 Mall, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The technical background document relevant to the rulemaking is available in the docket. The docket is available for inspection, by appointment only, between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding federal holidays. The docket telephone number is (202) 382-3064. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Kathleen Bishop, Chemical Emergency Preparedness and Prevention Office, OS-120, U.S. EPA, 401 M Street SW., Washington, DC 20460, (202) 382-7912.

The Emergency Planning and Community Right-to-Know Information Hotline can also be contacted for further information at 1-800-535-0202, in Washington, DC and Alaska at 1-202-479-2449

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This proposed rule is issued under sections 302 and 328 of the Emergency Planning and Community Right-to-Know Act of 1986 ("the Act").

B. Background

On October 17, 1986, the President signed into law the Superfund Amendments and Reauthorization Act of 1986 ("SARA"). Pub. L. 99-499 (1986). Title III of SARA established a program designed to require state and local planning and preparedness for spills or releases of hazardous substances and to provide the public and local governments with information concerning potential chemical hazards in their communities. This program is codified as the Emergency Planning and Community Right-to-Know Act of 1986. 42 U.S.C. 11001-11050.

Subtitle A of the Act establishes the framework for local emergency planning. The Statute required that EPA publish the Agency's list of acutely toxic chemicals. This had previously been published in November, 1985, by the EPA Administrator in Appendix A of the "Chemical Emergency Preparedness Program Interim Guidance" (CEPP Guidance), as the list of "extremely hazardous substances" ("EHSs"). Under section 302, a facility which has present an EHS in excess of its "threshold planning quantity" ("TPQ") must notify the State emergency response commission and participate, as necessary, in local emergency planning activities.

EPA published as an interim final rule the list of extremely hazardous substances required by the Act and threshold planning quantities for each of these on November 17, 1986. 51 FR 41570. On the same day, EPA proposed the deletion of 40 substances from the list of extremely hazardous substances based on the fact that further analysis had revealed that these substances did not meet the Agency's criteria for acute toxicity that formed the basis of the list of chemicals in Appendix A of the CEPP Guidance. 51 FR 41593.

On April 22, 1987, EPA published a final rule revising the previously published interim final rule. 52 FR 13378. In the preamble to that rule, EPA announced that it was deferring the proposed delisting of the 40 substances, pending an evaluation of the long-term effects from short-term exposure to each of the substances proposed for delisting. 52 FR 13388. This deferral was in response to comments from members of the public who argued that the proposed deletion would be premature and inconsistent with the statutory requirements. These requirements include consideration of both short-term and long-term health effects from short-term exposure when revising the list.

On November 23, 1987, the District Court for the District of Columbia issued an order in A.L. Laboratories, Inc. v. Environmental Protection Agency, 674 F. Supp. 894 (D.D.C. 1987) Civ. Action No. 87-1991-OG (and consolidated cases) requiring EPA to remove four of the substances proposed for delisting from the list of extremely hazardous substances under section 302 of the Act. EPA's November 17, 1986 proposed delisting of all 40 substances was based on the Agency's explicit recognition that these substances did not meet the criteria established by the Agency for qualification for the list referred to by Congress in section 302(a)(2). The Court concluded that such substances were thus originally listed under section 302 in error.

In response to the Court's order, EPA published two final rules removing four substances from the section 302 list. 52 FR 48072, 48073 (December 17, 1987). The remaining 36 substances proposed for deletion subsequently were removed from the list. 53 FR 5574 (February 25, 1988). EPA based its decision to delist these substances on its belief that although the Court's order did not expressly address these 36 substances, the Court's reasoning extended to these substances.

On July 1, 1988, EPA received a petition from the Gaylord Chemical Corporation requesting the Agency to delete dimethyl sulfide from the list of extremely hazardous substances because it did not meet the list criteria. In response to this petition, EPA undertook a review of dimethyl sulfide and other chemicals the Agency suspected may not have met the original listing criteria. In March 1989 the Agency received a second petition from the Food Ingredient Division of Hercules Incorporated, also requesting that the Agency delist dimethyl sulfide from the list of extremely hazardous substances. Today's rule proposing to delist dimethyl sulfide from the section 302 list constitutes the Agency's proposed response to these petitions. The Agency's decision to delist or not delist dimethyl sulfide in a final rule will constitute the Agency's final response to the rulemaking petitions.

II. Proposed Deletions and Changes

Today EPA is proposing to remove dimethyl sulfide (CAS# 75-18-3); isopropyl formate (625-55-8); methyl disulfide (624-92-0); phenol, 2,2'-thiobis (4,6-dichloro-(97-18-7); piprotal (5281-13-0), and sodium pentachlorophenate (131-52-2) from the list of EHSs under section 302 of the Act. The Agency has reviewed the available toxicity data for these chemicals and has concluded that they do not meet the listing criteria. EPA believes that these chemicals, like the 40 previously delisted, were incorrectly listed under section 302. Therefore, based on the reasoning in A.L. Laboratories the Agency believes that these chemicals should be delisted. The references reviewed for these chemicals and for the other chemicals discussed in this preamble are cited in the technical background document, available in the docket.

Dimethyl sulfide and methyl disulfide were listed as EHSs on the basis of an article that has been found to contain critical inconsistencies. In addition, key experimental design and conduct details were not given. The article thus was determined to contain flawed scientific methods. Other articles that EPA considers valid indicate that these substances clearly do not meet the criteria for listing as EHSs.

Isopropyl formate was listed on the basis of a secondary reference that appears to have included a typographical error. Toxicological data for chemicals of similar structure strongly indicate that isopropyl formate is not expected to be sufficiently toxic to warrant its listing as an EHS.

Phenol, 2,2'-thiobis (4,6-dichloro- was listed as an EHS on the basis of a toxicity value from a secondary reference that appears to be in error. This chemical is used as a human medication; reported therapeutic doses do not indicate that it is extremely toxic.

Piprotal, according to toxicity values currently listed by the Registry of Toxic Effects of Chemical Substances (RTECS) and a recent study, does not meet the listing criteria. The toxicity value originally used as the basis for listing appears to have been a clerical error which has since been corrected by RTECs.

Sodium pentachlorophenate was listed on the basis of a study that could not be validated. Another study, which appears to be valid, indicates that the chemical does not meet the listing criteria. In addition, pentachlorophenol, a substance with similar toxicological properties that was previously listed on the basis of a flawed study, has already been delisted (53 FR 5574).

The Agency requests comments on whether it should proceed to delist these six chemicals based upon this information or any additional information submitted by commenters relating to whether these chemicals meet the section 302 listing criteria.

On January 23, 1989, EPA proposed the designation of 232 EHSs as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. Under section 304 of SARA, releases of EHSs not currently subject to CERCLA must be reported if the quantity released is one pound or more. The Agency will be proposing in a separate rulemaking to adjust reportable quantities (RQs) for all EHSs proposed for designation in the January 23 rulemaking and for some EHSs already listed as CERCLA hazardous substances. The substances identified for proposed delisting in today's rulemaking were included in the January 23 rulemaking and will be part of the proposed rulemaking on the RQ adjustments. However, any final decisions regarding these substances will be deferred until this current rulemaking is finally decided. Once a final decision is made regarding today's proposed delisting, any chemical to be delisted will not be designated as a CERCLA hazardous substance or receive an adjusted RQ in the final rule responding to the January 23 designation proposal.

EPA is also proposing to change the TPQ of muscimol (2763-96-4) from 10,000 pounds in all instances to 500 pounds when the substance is in solution, in molten form, or has a particle size of 100 microns or less. The TPQ will remain at 10,000 pounds for solid forms with particle size greater than 100 microns. This proposed change returns the TPQ for muscimol to the levels published in the Agency's November 17, 1986 interim final rule originally listing the EHSs and their TPQs. It was noted during Agency review that muscimol was footnoted in the Final Rule of April 22, 1987, as not meeting the acute toxicity criteria. 52 FR 13378. This footnote was a typographical error. The basis for the listing has been verified. However, because of the error in footnoting, the TPQ for muscimol was raised to 10,000 pounds, the TPQ level of lowest concern. Based on the toxicity, the TPQ should have remained at 500 pounds or 10,000 pounds depending on the physical form of the substance.

One chemical, methyl mercaptan (74-93-1), was listed on the basis of the same article which identified dimethyl sulfide and methyl disulfide as extremely hazardous. As discussed above this article has been found to contain flawed scientific methods. However, other articles that EPA considers scientifically valid indicate that although methyl mercaptan does not meet the criteria for acute toxicity, it does meet the secondary criteria of toxicity in combination with a large production volume, which was an original basis for inclusion on the list. Therefore, EPA is not proposing to delist methyl mercaptan, but to keep it on the list as one of the "chemicals on the original list that do not meet toxicity criteria but because of their high production volume and recognized toxicity are considered chemicals of concern ('other chemicals')." 52 FR 13403.

III. Other Chemicals—Request for Comment

Five additional chemicals have been reviewed for possible removal from the list of EHSs. These chemicals are methacryloyl chloride (920-46-7), methyl vinyl ketone (78-94-4), pentadecylamine (2570-26-5), phosphorus pentoxide (1314-56-3), and pyrene (129-00-0). These chemicals are not being proposed for deletion at this time. Four of these chemicals were listed on the basis of inhalation toxicity studies that may contain flawed scientific methods. One is listed on the basis of an abstract. The information currently available to the Agency does not rebut the validity of the original listing of these chemicals. The Agency requests comments and additional information on these five chemicals.

IV. Regulatory Analyses

A. Executive Order 12291

Under Executive Order 12291, the Agency must judge whether a regulation is "major" and thus subject to the requirement to prepare a Regulatory Impact Analysis. The proposed rule today is not major because it will not result in an effect on the economy of $100 million or more, will not result in increased costs or prices, will not have significant adverse effects on competition, employment, investment, productivity, and innovation, and will not significantly disrupt domestic or export markets. Therefore, the Agency has not prepared a Regulatory Impact Analysis under the Executive Order.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant

economic effect on a substantial number of small entities.

EPA has examined the rule's potential effects on small entities as required by the Regulatory Flexibility Act. It has determined this rule will have no adverse effect on small entities because it reduces any reporting burden on all businesses, including small entities. Therefore, I certify that today's proposed rule will not have a significant economic effect on a substantial number of small entities.

C. Paperwork Reduction Act

This rule relieves facilities from having to report the presence of these six chemicals to the State Emergency Response Commissions and Local Emergency Planning Committees. If these facilities have no other Extremely Hazardous Substances, they will no longer be required to participate in the emergency planning process required by the statute. Therefore, there are no information collection requirements for OMB to review under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 355

Chemicals, Hazardous substances, Extremely hazardous substances, Community right-to-know, Chemical accident prevention, Chemical emergency preparedness, Threshold planning quantity, Reportable quantity, Community emergency response plan, Contingency planning, Reporting and recordkeeping requirements.

Dated: July 10, 1989.

William K. Reilly,

Administrator, Environmental Protection Agency.

For the reasons set out in the Preamble, Part 355 of Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 355—EMERGENCY PLANNING AND NOTIFICATION

1. The authority citation for Part 355 continues to read as follows:

Authority: Secs. 302, 303, 304, 325, 326, 328, and 329 Pub. L. 99-499, 100 Stat. 1613, 42 U.S.C. 11002, 11003, 11004, 11025, 11026, 11028, and 11029 (1986).

Appendixes A and B [Amended]

2. Appendix A to Part 355 is proposed to be amended by removing the following entries:

Appendix A—The List of Extremely Hazardous Substances and Their Threshold Planning Quantities

[Alphabetical Order]

CAS No.	Chemical name
75-18-3	Dimethyl sulfide.
625-55-8	Isopropyl formate.
624-92-0	Methyl disulfide.
97-18-7	Phenol, 2,2'-thiobis(4,6-dichloro-
5281-13-0	Piprotal.
131-52-2	Sodium pentachlorophenate.

3. Appendix B to Part 355 is proposed to be amended by removing the following entries:

Appendix B—The List of Extremely Hazardous Substances and Their Threshold Planning Quantities

[CAS Number Order]

CAS No.	Chemical name
75-18-3	Dimethyl sulfide.
97-18-7	Phenol, 2,2'-thiobis(4,6-dichloro-
131-52-2	Sodium pentachlorophenate.
624-92-0	Methyl disulfide.
625-55-8	Isopropyl formate.
5281-13-0	Piprotal.

4. Appendix A and Appendix B to Part 355 are proposed to be amended by removing "a,h" from the Notes column and changing the threshold planning quantity to 500/10,000 pounds for Muscimol, CAS No. 2763-96-4.

5. Appendix A and Appendix B to Part 355 are proposed to be amended by adding "l" to the Notes column for Methyl Mercaptan, CAS No. 74-93-1.

[FR Doc. 89-16539 Filed 7-20-89; 8:45 am]

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federal register

Friday
July 21, 1989

Part VI

Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite; Extension of Partial Stay and Amendment of Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

[Docket No. H-033]

RIN 1218—AA26

Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Extension of partial stay and amendment of final rule.

SUMMARY: OSHA is hereby extending the partial administrative stay of the revised final standards for occupational exposure to asbestos, tremolite, anthophyllite and actinolite for general industry (§ 1910.1001) and construction (§ 1926.58), insofar as they apply to occupational exposure to non-asbestiform tremolite, anthophyllite and actinolite. The current partial stay, originally set to expire on April 21, 1987 and extended until July 21, 1988 and July 21, 1989 is being further extended until November 30, 1990 to allow OSHA to conduct supplemental rulemaking limited to the issue of whether non-asbestiform tremolite, anthophyllite and actinolite should continue to be regulated in the same standard as asbestos, or should be treated in some other way. OSHA also is making minor conforming amendments to notes to the affected standards.

DATES: The partial stay of §§ 1901.1001 and 1926.58 is extended until November 30, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Director, Office of Information and Consumer Affairs, OSHA, U.S. Department of Labor, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION: In June 1986, OSHA issued revised standards governing occupational exposure to asbestos, tremolite, anthophyllite and actinolite for general industry and construction which were to be effective on July 21, 1986. (See 51 FR 22812 et. seq., June 20, 1986).

On October 17, 1986, OSHA published a partial stay of the revised standards insofar as they apply to occupational exposure to non-asbestiform tremolite, anthophyllite and actinolite, in order to enable the Agency to review new submissions raising questions about the appropriateness of regulating these minerals in the revised asbestos standards, and to allow sufficient time to reopen the rulemaking record and conduct supplemental rulemaking proceedings limited to this issue (51 FR 37002).

OSHA extended the stay until July 21, 1988 in a notice published on April 30, 1987 (52 FR 15722), and again until July 21, 1989, in a notice published on July 20, 1988 (53 FR 27345).

The extensions were issued to allow OSHA sufficient time first to gather data relating to the feasibility of regulating all impacted industries, then to collect and analyze additional health data and to draft a notice of proposed rulemaking. OSHA is now completing the drafting and staff level review of the agency's draft notice of proposed rulemaking. The following rulemaking milestones have now been established: publication of a notice of proposed rulemaking—October 1989; publication of a final standard—November 1990. Thus, an extension of the stay until November 30, 1990 is necessary to conclude the rulemaking on the regulation of non-asbestiform tremolite, anthophylite and actinolite.

As was the case with the initial partial stay, the 1972 standard governing occupational exposure to asbestos (redesignated 29 CFR 1910.1101) will remain in effect to the extent of the stay during the period of the extension.

The full text of the stay with respect to these non-asbestiform minerals was published in the October 17, 1986 **Federal Register** (51 FR 37002).

With respect to the extension of the partial stay, OSHA finds that advance notice and opportunity for comment are inpractical and unnecessary within the meaning of 5 U.S.C. 553 in view of the limited duration of the extension and the continued applicability of the 1972 standard (29 CFR 1910.1101) to cover the gaps in coverage created by the partial stay.

The minor amendments to the notes to 29 CFR 1910.1001, 1910.1101, and 1926.58, similarly are made without advance notice and opportunity for comment. OSHA finds such process unnecessary and impracticable in that the changes merely reference the extension of the stay and restate the applicability of the 1972 standard.

No evidentiary issues are involved.

List of Subjects in 29 CFR Parts 1910 and 1926

Asbestos, Occupational safety and health.

Authority and Signature

This document was prepared under the direction of Alan McMillan, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

It is issued pursuant to sections 4, 6(b), 8(c) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333), the Longshore and Harbor Workers Compensation Act (33 U.S.C. 941), 29 CFR Part 1911, Secretary of Labor's Order No. 9-83 (48 FR 35736), and 5 U.S.C. 551 et seq.

Signed at Washington, DC, this 18th day of July, 1989.

Alan McMillan,

Acting Assistant Secretary.

Amended Standards

Part 1910 of Title 29 of the Code of Federal Regulations is hereby amended as follows:

PART 1910—[AMENDED]

1. The authority citation for Subpart Z of Part 1910 continues to read as follows:

Authority: Secs. 6 and 8, Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders Nos. 12-71 (36 FR 8754), 6-76 (41 FR 25059), or 9-83 (48 FR 35736), as applicable; and 29 CFR Part 1911.

All of Subpart Z issued under Sec. 6(b) of the Occupational Safety and Health Act, 29 U.S.C. 655(b) except those substances listed in the Final Rule Limits columns of Table Z-1-A, which have identical limits listed in the Transitional Limits columns of Table Z-1-A, Table Z-2 or Table Z-3. The latter were issued under Section 6(a) (5 U.S.C. 655(a)).

Section 1910.1000, the Transitional Limits columns of Table Z-1-A, Table Z-2 and Table Z-3 also issued under 5 U.S.C. 533. Section 1910.1000, Tables Z-1-A, Z-2 and Z-3 not issued under 29 CFR 1911 except for the arsenic, benzene, cotton dust, and formaldehyde listings.

Section 1910.1001 also issued under Sec. 107 of Contract Work Hours and Safety Standards Act, 40 U.S.C. 333.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR Part 1911; also issued under 5 U.S.C. 653.

Section 1910.1003 through 1910.1016 also issued under 29 CFR 653.

Section 1910.1025 also issued under 29 U.S.C. 653 and 5 U.S.C. 553.

Section 1910.1028 also issued under 29 U.S.C. 653.

Section 1910.1043 also issued under 5 U.S.C. 551 et seq.

Sections 1910.1045 and 1910.1047 also issued under 29 U.S.C. 653.

Section 1910.1048 also issued under 29 U.S.C. 653.

Sections 1910.1200, 1910.1499 and 1910.1500 also issued under 5 U.S.C. 553.

§ 1910.1001 [Amended]

2. Section 1910.1001 is hereby amended by revising the note after Appendix H to § 1910.1001 to read as follows:

Note.—Pursuant to an administrative stay effective July 21, 1986, published on October 17, 1986 (51 FR 37002), extended to July 21, 1988 (52 FR 15722), to July 21, 1989 (53 FR 27345) and to November 30, 1990 (54 FR ____), enforcement of this section is stayed as it applies to non-asbestiform tremolite, anthophyllite and actinolite. During the period and to the extent of this stay, the 1972 standard governing occupational exposure to asbestos (redesignated as 29 CFR 1910.1101) will remain in effect.

3. Section 1910.1101 is hereby amended by revising the note preceding § 1910.1101(a) to read as follows:

§ 1910.1101 Asbestos.

Note.—This section applies in lieu of the revised standards governing occupational exposure to asbestos, tremolite, anthophyllite, and actinolite (29 CFR 1910.1001; 29 CFR 1926.58), during the period and to the extent that the revised standards have been partially stayed. (See 51 FR 37002, October 17, 1986, 52 FR 15722, April 30, 1987, 53 FR 27345, July 20, 1988, and 54 FR ____, July 21, 1989, for a description of the stay).

Part 1926 of the Code of Federal Regulations is hereby amended as follows:

PART 1926—[AMENDED]

Subpart D—[Amended]

4. The authority citation for Subpart D of Part 1926 continues to read as follows:

Authority: Secs. 4, 6, and 8, Occupational Safety and Health Act of 1970, 29 U.S.C. 653, 655, 657; sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act), 40 U.S.C. 333, and Secretary of Labor's Orders 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736), as applicable. Sections 1926.55(c) and 1926.58 also issued under 29 CFR Part 1911.

§ 1926.58 [Amended]

5. Section 1926.58 is hereby amended by revising the note after Appendix I to § 1926.58 to read as follows:

Note.—Pursuant to an administrative stay effective July 21, 1986, published October 17, 1986 (51 FR 37002), extended to July 21, 1988 (at 52 FR 15722, April 30, 1987) to July 21, 1989 (53 FR 27345, July 20, 1988) and to November 30, 1990 (54 FR 30705, July 21, 1989), enforcement of this section is stayed as it applies to non-asbestiform tremolite, anthophyllite and actinolite. During the period and to the extent of this stay, the 1972 standard governing occupational exposure to asbestos (redesignated as 29 CFR 1910.1101) will remain in effect.

[FR Doc. 89-17128 Filed 7-20-89; 8:45 am]

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federal register

Friday
July 21, 1989

Part VII

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 19 and 52

Federal Acquisition Regulation (FAR); Liquidated Damages; Interim Rule With Request For Comments

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19 and 52

[Federal Acquisition Circ. 84-50]

Federal Acquisition Regulation (FAR); Liquidated Damages

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: Federal Acquisition Circular (FAC) 84-50 amends the Federal Acquisition Regulation (FAR) to require a prime contractor to pay liquidated damages upon a finding of lack of good faith effort to meet its small business subcontracting goals.

DATES: *Effective Date:* August 15, 1989. *Comment Date*: Comments should be submitted to the FAR Secretariat at the address shown below on or before September 19, 1989 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4041, Washington, DC 20405. Please cite FAC 84-50 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GSA Building, Washington, DC 20405, (202) 523-4755. Please cite FAC 84-50.

SUPPLEMENTARY INFORMATION:

A. Determination to Issue An Interim Regulation

A determination has been made under authorities of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) to issue the regulations in FAC 84-50, as an interim rule. This action is necessary to implement in the FAR section 304 of the Business Opportunity Development Reform Act of 1988, Pub. L. 100-656. However, pursuant to Pub. L. 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

B. Background

Section 304 of Pub. L. 100-656 provides for the imposition of liquidated damages on a prime contractor that fails to make a good faith effort to achieve its subcontracting goals under 15 U.S.C. 637(d)(4) and the implementing FAR regulations. The legislative history of an earlier bill, H.R. 1807, which contained the liquidated damages provision, stated that "Maximum practicable utilization of small and small disadvantaged business concerns as subcontractors in government contracts is a matter of national interest with both social and economic implications." H. Rept. No. 460, 100th Cong., 1st Sess., 68 (1987). The report went on to state that failure of a contractor to comply with the terms of the subcontracting goals, which are part of the contract, deprives the Government of the full benefit of its bargain.

Section 304 specifically requires that the contractor be afforded an opportunity to demonstrate a good faith effort regarding compliance prior to the contracting officer's final decision regarding the imposition of damages. The contracting officer's final decision is expressly made subject to the Contract Disputes Act. Subsection 19.705-7, Liquidated damages, is added to implement this requirement.

C. Regulatory Flexibility Act

It is not anticipated that this interim rule will have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 et seq. This rule addresses large contractors with plans that require them to attempt to place a certain amount of subcontracts with small and small disadvantaged businesses. It does not have a direct impact on the small businesses themselves. Accordingly, no Initial Regulatory Flexibility Analysis has been prepared. Comments are invited from small businesses and other interested parties and will be considered in determining whether or not a Final Regulatory Flexibility Analysis is required. Comments from small entities concerning the affected FAR sections will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 89-610 (FAC 84-50).

D. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because this rule does not impose any reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 19 and 52

Government procurement.

Dated: July 19, 1989.

Harry S. Rosinski,
Acting Director, Office of Federal Acquisition and Regulatory Policy.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-50 is effective August 15, 1989.

Eleanor Spector,
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Associate Administrator for Acquisition Policy, GSA.

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Associate Administrator for Procurement, NASA.

Federal Acquisition Circular (FAC) 84-50 amends the Federal Acquisition Regulation (FAR) as specified below:

Item-Liquidated Damages

FAR 19.701, 19.702, 19.705-4, 19.705-6, 19.706, 19.708 are revised and 19.705-7 and the clause at 52.219-16 are added to implement section 304 of the Business Opportunity Development Reform Act of 1988 (Pub. L. 100-656) which, among other things, requires a prime contractor to pay liquidated damages upon a finding of lack of good faith effort to meet its small business subcontracting goals. The contracting officer's final decision is expressly made subject to the Contract Disputes Act.

Liquidated damages will be assessed at the actual dollar amount by which the contractor failed to achieve each subcontract goal. Such damages may be in addition to any other remedies the Government may have under the contract.

These changes apply to contracts awarded on or after August 15, 1989.

Therefore, 48 CFR Parts 19 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 19 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

2. Section 19.701 is amended by alphabetically adding the definition "Failure to make a good faith effort to comply with the subcontracting plan," to read as follows:

19.701 Definitions.

"Failure to make a good faith effort to comply with the subcontracting plan," as used in this subpart, means willful or intentional failure to perform in accordance with the requirements of the subcontracting plan, or willful or intentional action to frustrate the plan.

* * * * *

3. Section 19.702 is amended by revising paragraph (c) to read as follows:

19.702 Statutory requirements.

* * * * *

(c) As stated in 15 U.S.C. 637(d)(8), any contractor or subcontractor failing to comply in good faith with the requirements of the subcontracting plan is in material breach of its contract. Further, 15 U.S.C. 637(d)(4)(F) directs that a contractor's failure to make a good faith effort to comply with the requirements of the subcontracting plan shall result in the imposition of liquidated damages.

4. Section 19.705-4 is amended by revising paragraph (c); by redesignating existing paragraphs (d)(2), (3), (4), and (5) as (d)(3), (4), (5), and (6); and by adding a new (d)(2) to read as follows:

19.705-4 Reviewing the subcontracting plan.

* * * * *

(c) In negotiated acquisitions, the contracting officer shall determine whether the plan is acceptable based on the negotiation of each of the six elements of the plan (see 19.704). Subcontracting goals should be set at a level that the parties reasonably expect can result from the offeror expending good faith efforts to use small and small disadvantaged subcontractors to the maximum practicable extent. Particular attention should be paid to the identification of steps that, if taken, would be considered a good faith effort. No goal should be negotiated upward if it is apparent that a higher goal will significantly increase the Government's cost or seriously impede the attainment of acquisition objectives. An incentive subcontracting clause (see 52.219-10, Incentive Subcontracting Program for Small and Small Disadvantaged Business Concerns) may be used when additional and unique contractor effort could significantly increase subcontract awards to small or small disadvantaged businesses.

(d) * * *

(2) In accordance with 15 U.S.C. 637(d)(4)(F)(iii), ensure that the goals offered are attainable in relation to—

(i) The subcontracting opportunities available to the contractor, commensurate with the efficient and economical performance of the contract;

(ii) The pool of eligible subcontractors available to fulfill the subcontracting opportunities; and

(iii) The actual performance of such contractor in fulfilling the subcontracting goals specified in prior plans.

* * * * *

5. Section 19.705-6 is amended by adding paragraph (f) to read as follows:

19.705-6 Postaward responsibilities of the contracting officer.

* * * * *

(f) Initiating action to assess liquidated damages in accordance with 19.705-7 upon a recommendation by the administrative contracting officer or receipt of other reliable evidence to indicate that such action is warranted.

6. Section 19.705-7 is added to read as follows:

19.705-7 Liquidated damages.

(a) Maximum practicable utilization of small and small disadvantaged business concerns as subcontractors in Government contracts is a matter of national interest with both social and economic benefits. When a contractor fails to make a good faith effort to comply with a subcontracting plan, these objectives are not achieved, and 15 U.S.C. 637(d)(4)(F) directs that liquidated damages shall be paid by the contractor.

(b) The amount of damages attributable to the contractor's failure to comply shall be an amount equal to the actual dollar amount by which the contractor failed to achieve each subcontract goal or, in the case of a commercial products plan, shall be that portion of the dollar amount allocable to Government contracts by which the contractor failed to achieve each subcontract goal.

(c) If, at contract completion, or in the case of a commercial products plan, at the close of the fiscal year for which the plan is applicable, a contractor has failed to meet its subcontracting goals and the contracting officer decides in accordance with paragraph (d) of this subsection that the contractor failed to make a good faith effort to comply with its subcontracting plan, the contracting officer shall give the contractor written notice specifying the failure, advising the contractor of the possibility that the contractor may have to pay to the Government liquidated damages, and providing a period of 10 days (or longer period as necessary) within which to respond. The notice shall give the contractor an opportunity to demonstrate what good faith efforts have been made before the contracting officer issues the final decision, and shall further state that failure of the contractor to respond may be taken as an admission that no valid explanation exists. When appropriate, the notice may invite the contractor to discuss the matter.

(d) In determining whether a contractor failed to make a good faith effort to comply with its subcontracting plan, a contracting officer must look to the totality of the contractor's actions, consistent with the information and assurances provided in its plan. The fact that the contractor failed to meet its subcontracting goals does not, in and of itself, constitute a failure to make a good faith effort. For example, notwithstanding a contractor's diligent effort to identify and solicit offers from small business and small disadvantaged business concerns, factors such as unavailability of anticipated sources or unreasonable prices may frustrate achievement of the contractor's goals. However, when considered in the context of the contractor's total effort in accordance with its plan, the following may be considered as indicia of a failure to make a good faith effort: a failure to attempt to identify, contact, solicit, or consider for contract award, small business or small disadvantaged business concerns; a failure to designate a company official to administer the subcontracting program; a failure to maintain records or otherwise demonstrate procedures adopted to comply with the plan; and the adoption of company policies or procedures which have as their objectives the frustration of the objectives of the plan.

(e) If, after consideration of all the pertinent data, the contracting officer finds that the contractor failed to make a good faith effort to comply with its subcontracting plan, the contracting officer shall issue a final decision to the contractor to that effect and require the payment of liquidated damages in an amount stated. The contracting officer's final decision shall state that the contractor has the right to appeal under the clause in the contract entitled Disputes.

(f) With respect to commercial products plans, i.e., company-wide or division-wide subcontracting plans approved under paragraph (g) of the clause in the contract entitled Small Business and Small Disadvantaged Business Subcontracting Plan, the contracting officer of the agency that originally approved the plan will exercise the functions of the contracting

officer under this subsection on behalf of all agencies that awarded contracts covered by that commercial products plan.

(g) Liquidated damages shall be in addition to any other remedies that the Government may have.

7. Section 19.706 is amended by removing at the end of paragraph (a)(4) the word "and"; by removing at the end of paragraph (a)(5) the period and inserting in its place "; and"; and by adding paragraph (a)(6) to read as follows:

19.706 Responsibilities of the cognizant administrative contracting officer.

* * * * *

(a) * * *

(6) Immediate notice and rationale if, during performance, the contractor is failing to comply in good faith with the subcontracting plan.

* * * * *

8. Section 19.708 is amended by redesignating existing paragraphs (b)(1), (2), and (3) as (b)(1)(i), (ii), and (iii) by redesignating paragraph (b) introductory text as (b)(1); and by adding a new paragraph (b)(2) to read as follows:

19.708 Solicitation provisions and contract clauses.

* * * * *

(b) * * *

(2) The contracting officer shall insert the clause at 52.219-16, Liquidated Damages-Small Business Subcontracting Plan, in all solicitations and contracts containing the clause at 52.219-9, Small Business and Small Disadvantaged Business Subcontracting Plan, or its Alternate I.

* * * * *

PART 52—SOLICITATIONS PROVISIONS AND CONTRACT CLAUSES

9. Section 52.219-16 is added to read as follows:

52.219-16 Liquidated damages-small business subcontracting plan.

As prescribed in 19.708(b)(2), insert the following clause:

LIQUIDATED DAMAGES-SMALL BUSINESS SUBCONTRACTING PLAN (AUG 1989)

(a) "Failure to make a good faith effort to comply with the subcontracting plan," as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small Business and Small Disadvantaged Business Subcontracting Plan," or willful or intentional action to frustrate the plan.

(b) If, at contract completion, or in the case of a commercial products plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled Small and Small Disadvantaged Business Subcontracting Plans, the Contractor shall pay the Government liquidated damages in an amount stated. The amount of damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal or, in the case of a commercial products plan, that portion of the dollar amount allocable to Government contracts by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

(d) With respect to commercial products plans, i.e., company-wide or division-wide subcontracting plans approved under paragraph (g) of the clause in this contract entitled, Small Business and Small Disadvantaged Business Subcontracting Plan, the Contracting Officer of the agency that originally approved the plan will exercise the functions of the Contracting Oficer under this clause on behalf of all agencies that awarded contracts covered by that commercial products plan.

(e) The Contractor shall have the right of appeal, under the clause in this contract entitled Disputes, from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may leave.

(End of clause)

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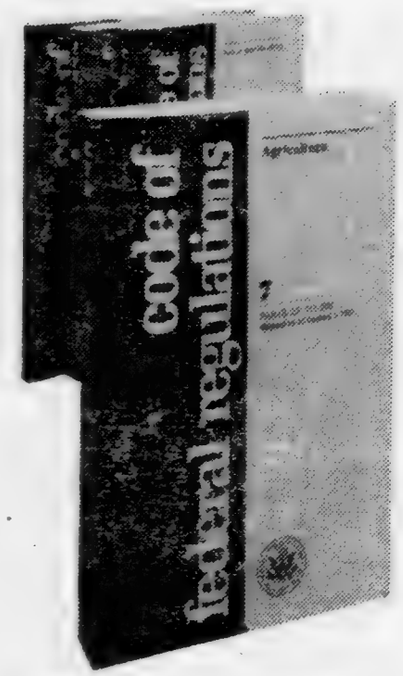

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department to delegate the authority contained in section 1416 of the Food Security Act of 1985.

EFFECTIVE DATE: July 24, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Siegler, Deputy Assistant General Counsel, Office of the General Counsel, United States Department of Agriculture, Washington, DC 20250 (202) 447-6035.

SUPPLEMENTARY INFORMATION: Section 1416 of Pub. L. No. 99-198, the Food Security Act of 1985, authorizes the Secretary to make grants to upgrade 1890 land-grant college extension facilities. This document delegates that authority to the Assistant Secretary for Science and Education and to the Administrator of the Extension Service.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the Federal Register. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order No. 12291. Finally, this action is not a rule as defined by Pub. L. No. 96-354, the Regulatory Flexibility Act and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, Part 2, Title 7, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 2 reads as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.30 is amended by adding paragraph (a)(89) to read as follows:

§ 2.30 Delegations of authority to the Assistant Secretary for Science and Education.

* * * * *

(a) * * *

(89) Make grants, under such terms and conditions as the Assistant Secretary determines, to eligible institutions for the purpose of assisting such institutions in the purchase of equipment and land, and the planning, construction, alteration, or renovation of buildings, to provide adequate facilities to conduct extension work, and issue rules and regulations as necessary to carry out this authority (7 U.S.C. 3224).

Subpart N—Delegations of Authority by the Assistant Secretary for Science and Education

3. Section 2.108 is amended by adding paragraph (a)(29) to read as follows:

§ 2.108 Administrator, extension service.

(a) * * *

(29) Make grants, under such terms and conditions as the Administrator determines, to eligible institutions for the purpose of assisting such institutions in the purchase of equipment and land, and the planning, construction, alteration, or renovation of buildings, to provide adequate facilities to conduct extension work, and issue rules and regulations as necessary to carry out this authority (7 U.S.C. 3224).

For Subpart C:

Clayton Yeutter,
Secretary of Agriculture.

Date: July 15, 1989.

For Subpart N:

Robert W. Long,
Deputy Assistant Secretary for Science and Education.

Date: June 9, 1989.

[FR Doc. 89-17208 Filed 7-21-89; 8:45 am]
BILLING CODE 3410-14-M

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV-88-044]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Temporary Relaxation of Handling Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting without modification as a final rule an interim final rule, which relaxed the minimum size requirement for shipments of domestic and imported white seedless grapefruit from size 48 (3 5/16 inches in diameter) to size 56 (3 5/16 inches in diameter). In addition, that rule relaxed the minimum external grade requirement for domestic and import shipments of pink and white seedless grapefruit from Improved No. 2 to U.S. No. 2 Russet. Also, the rule relaxed the minimum grade requirement for domestic shipments of Valencia and other late type oranges from U.S. No. 1 to U.S. No. 1 Golden. The grade, size, and maturity of the remaining 1988-89 season Florida crop and market demand conditions for these fruits warranted this action.

EFFECTIVE DATE: July 24, 1989.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: (202) 475-3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No.

905, both as amended [7 CFR Part 905], regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 shippers of Florida oranges, grapefruit, tangerines, and tangelos subject to regulation under the marketing order for these citrus fruits. In addition, there are approximately 13,000 orange, grapefruit, tangerine, and tangelo producers in Florida, and approximately 26 importers who import grapefruit into the United States. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. A minority of these shippers and a majority of the producers and importers may be classified as small entities.

Grade and size requirements for the Florida citrus fruits covered under this marketing order are specified in 905.306 Florida Orange, Grapefruit, Tangerine, and Tangelo Regulation 6 [7 CFR 905.306]. This regulation was issued on a continuing basis subject to modification, suspension, or termination by the Secretary. Paragraph (a) of § 905.306 provides that no handler shall ship between the production area and any point outside thereof, in the continental United States, Canada, or Mexico, specified varieties of oranges, grapefruit, tangerines and tangelos unless such varieties meet the minimum grade and size requirements prescribed in Table I of this section.

An interim final rule amending paragraph (a) of § 905.306 was issued May 12, 1989, and published in the **Federal Register** [54 FR 21407, May 18, 1989]. That rule provided that interested persons could file written comments through June 19, 1989. No comments were received.

Paragraph (a) of § 905.306 was amended by temporarily relaxing the minimum size requirement for domestic and import shipments of white seedless grapefruit from size 48 (3⁹⁄₁₆ inches in diameter) to size 56 (3⁵⁄₁₆ inches in diameter). Also, the minimum external grade requirements for domestic and import shipments of pink and white seedless grapefruit were temporarily relaxed by the interim final rule from Improved No. 2 to U.S. No. 2 Russet. In addition, the minimum grade requirement for domestic shipments of Valencia and other late type oranges was temporarily relaxed from U.S. No. 1 to U.S. No. 1 Golden. The relaxations for grapefruit are effective for the period May 15, 1989, through August 20, 1989, and for Valencia oranges for the period July 1, 1989, through September 24, 1989, by which ending dates 1988–89 season shipments of these fruits will be finished.

As specified in § 905.306, tighter minimum grade and size requirements will resume for pink and white seedless grapefruit effective August 21, 1989, and for Valencia oranges September 25, 1989. The resumption of tighter handling requirements for 1989–90 season shipments are based upon the maturity, size, quality, and flavor characteristics of these fruits early in their shipping seasons.

The Citrus Administrative Committee (committee), which administers the program locally, met April 18, 1989, and unanimously recommended the relaxations. The committee recommended the relaxed size requirements based on an analysis of the then current and prospective marketing conditions as well as a projection of the size composition and maturity level of the crop remaining for shipment at that time. The committee reported that it expected that by May 15, size 56 grapefruit, and by July 1, Valencia and other late type oranges, would be of a satisfactory quality, maturity, and flavor to be shipped to fresh markets. Also, size 56 white seedless grapefruit receives increased consumer acceptance late in the season. The grade relaxations pertained only to the external quality of the fruit, and they did not change internal requirements. The committee's recommendation to relax the grade and size requirements followed the practice of prior years of lowering such requirements when the fruit had reached an acceptable level of quality, maturity, and flavor, and was designed to maximize shipments to fresh market channels.

The committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida oranges, grapefruit, tangerines, and tangelos. Committee meetings are open to the public and interested persons may express their views at these meetings. The U.S. Department of Agriculture (Department) reviews committee recommendations and information submitted by the committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

Some Florida orange and grapefruit shipments are exempt from the minimum grade and size requirements effective under the marketing order. Shippers may ship up to 15 standard packed cartons (12 bushels) of fruit per day under a minimum quantity exemption provision. Also, shippers may ship up to two standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale, under the current exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

Section 8e of the Act [7 U.S.C. 608e–1] provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. Section 8e also provides that whenever two or more marketing orders regulating a commodity produced in different areas of the United States are currently in effect, the Secretary shall determine which of the areas produces the commodity in most direct competition with the imported commodity. Imports then must meet the quality standards set for that particular area.

Grapefruit import requirements are specified in § 944.106 [7 CFR Part 944], and are effective under section 8e of the Act. That section requires that grapefruit imported into the United States must meet the same minimum grade and size requirements as those specified for the various varieties of Florida grapefruit in Table I of paragraph (a) in § 905.306. Since this action maintains relaxed minimum grade and size requirements for domestically produced white and pink seedless grapefruit, the relaxed requirements are automatically maintained for imported white and pink seedless grapefruit. An exemption provision in the grapefruit import regulation permits persons to import up to 10 standard packed ⅝-bushel cartons exempt from the import requirements. In addition, import requirements for oranges (§ 944.312) are based upon requirements established for Texas oranges issued under M. O. 906 (7 CFR Part 906). Accordingly, the findings and determinations with respect to imports of grapefruit and oranges contained in Part 944 of the regulations will not be changed by this action and no changes to these provisions of Part 944 are made necessary by this action.

Relaxation of the handling requirements for Florida and imported grapefruit and Florida Valencia oranges was designed to maximize domestic shipments to meet consumer needs. Therefore, the Department's view is that the impact of this action upon producers, shippers, and importers was beneficial because it enabled shippers to continue to provide grapefruit and oranges consistent with buyer requirements. The application of minimum grade and size requirements to Florida grapefruit and oranges and imported grapefruit over the past several years, has resulted in fruit of acceptable size, maturity, and flavor being shipped to fresh markets throughout the season.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that the interim rule, as published in the **Federal Register** [54 FR 21407] on May 18, 1989, is hereby made a final rule and will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action maintains relaxed handling requirements currently in effect for Florida grapefruit and oranges and imported grapefruit; (2) Florida grapefruit and orange shippers are aware of the relaxations, which were recommended by the committee at a public meeting and they will need no additional time to continue complying with the relaxed requirements; (3) The end of shipments of the 1988–89 season Florida grapefruit and Valencia orange crops is approaching; (4) The grade and size relaxations for imported grapefruit are mandatory under section 8e of the Act; and (5) No useful purpose would be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Part 905

Marketing agreements and orders, Florida, Grapefruit, Oranges, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR Part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 905 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Accordingly, the interim final rule amending the provisions of § 905.306, which was published in the **Federal Register** [54 FR 21409, May 18, 1989], is adopted as a final rule without change.

Note: This section will appear in the Code of Federal Regulations.

Dated: July 18, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–17207 Filed 7–21–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 981

[Docket No. FV–89–068]

Almonds Grown in California; Order Directing That a Referendum be Conducted; Determination of Representative Period for Voter Eligibility; and Designation of Referendum Agents To Conduct the Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible growers of California almonds to determine whether they favor continuance of the marketing agreement and order regulating the handling of almonds grown in the State of California.

DATES: The representative production period is from July 1, 1988, through June 30, 1989. The referendum will be conducted from August 7 through August 21, 1989.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order and Agreement No. 981, as amended [7 CFR Part 981], and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], it is hereby directed that a referendum be conducted within the period August 7 through August 21, 1989, among the growers who, during the period July 1, 1988, through June 30, 1989, (which period is hereby determined to be a representative period for purposes of such referendum), were engaged in the production area in the production of almonds covered by the said amended marketing agreement and order to ascertain whether continuance of the said amended order is favored by the growers.

Then Almond Board of California (Board), the agency responsible for local administration of the marketing order, is considering possible amendments to the marketing order. However, before an amendatory hearing is requested, the Board would like to determine the level of grower support for the marketing order. Therefore, the Board unanimously voted at its May 11, 1989, meeting, to request the Secretary to conduct a continuance referendum.

The Secretary of Agriculture has determined that continuance referenda are an effective means for ascertaining whether growers favor continuation of marketing order programs. The Secretary would consider termination of the order if less than two-thirds of the growers of almonds voting in the referendum and growers of less than two-thirds of the volume of almonds represented in the referendum favor continuance. However, in evaluating the merits of continuance versus termination, the Secretary will not only consider the results of the continuance referendum but also all other relevant information concerning the operation of the order and the relative benefits and disadvantages to producers, handlers, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act.

In any event, section 8c(16)(B) of the Act requires the Secretary to terminate

an order whenever the Secretary finds that a majority of all growers favor termination, and such majority produced for market more than 50 percent of the commodity covered by such order.

Martin J. Engeler and Gary D. Olson, California Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, 1755 N. Gateway, Suite B, Fresno, California 93727, are hereby designated as referendum agents of the Secretary of Agriculture to conduct such referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection with Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" [7 CFR Part 900.400 *et seq.*].

Copies of the text of the aforesaid amended marketing order may be examined in the offices of the referendum agents or at the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456.

Ballots to be cast in the referendum may be obtained from the referendum agents and from their appointees.

Authority: Agricultural Marketing Agreement Act of 1937, as amended, Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Dated: July 18, 1989.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 89-17205 Filed 7-21-89; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1421

Grains and Similarly Handled Commodities

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule amends 7 CFR Part 1421 to set forth the manner in which the Commodity Credit Corporation (CCC) will make storage payments with respect to 1985-crop Farmer-Owned Reserve (FOR) corn and grain sorghum loans which are extended by producers. This interim rule also amends 7 CFR Part 1421 to provide that sample grade grain may not be pledged as collateral for CCC price support loans.

These amendments are necessary in order to provide for the enhanced administration of CCC programs and to provide affected producers with notice of CCC's determinations with respect to such loans.

DATES: Effective July 24, 1989. Comments must be received by August 23, 1989 in order to be assured of consideration.

ADDRESS: Comments concerning this interim rule should be directed to Thomas VonGarlem, Assistant Deputy Administrator, State and County Operations, USDA-ASCS, Room 3096, South Building, P.O. Box 2415, Washington, DC 20013.

The Regulatory Impact Analysis describing the options considered in developing this interim rule is available on request from Thomas VonGarlem at this address.

FOR FURTHER INFORMATION CONTACT: Thomas VonGarlem, (202) 447-6761.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512-1 and has been designated as "non-major".

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human evironment; therefore, neither an environmental assessment nor an environmental impact statement is needed.

The title and number of the Federal Assistance Program to which this interim rule applies are: Title-Commodity Loans and Purchases, Number 10.051, as found in the catalog of Federal Domestic Assistance.

It has been determined that this action will not increase the federal paperwork burden for individual, small businessmen and other persons. The Commodity Credit Corporation (CCC) is also not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this interim rule. Therefore, the Regulatory Flexibility Act is not applicable.

Keith Bjerke, Executive Vice President, Commodity Credit Corporation hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities because the action taken in this rule will reduce uncertainty in the operation of the program and will have the effect of stabilizing commodity supply and demand situations.

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 23, 1983).

Since producers are currently making marketing decisions with respect to commodities which may be affected by this rule, the provisions of this rule are effective upon publication in the **Federal Register**. It has been determined that it would not be in the public interest to engage in a proposed rule making since producers must be able to make immediate marketing decisions with respect to loans which are affected by these changes. Comments are, however, requested with respect to this interim rule and will be taken into consideration when developing the final rule.

Background

CCC makes available price support loans to producers of wheat and feed grains in accordance with 7 CFR Part 1421. On September 1, 1988 (53 FR 34004) CCC published a final rule in the **Federal Register** which amended such part to provide that certain crop year CCC price support loans could be extended. The following statement was included in that final rule:

II. Background of Proposed Changes to 7 CFR Part 1421

CCC makes available price support to eligible producers through a variety of means, including purchase agreements and nonrecourse loans. Producers who comply with applicable program requirements are afforded the opportunity to obtain CCC price support loans for a term determined by CCC. These loans are made available in accordance with several sections of the Agricultural Act of 1949, as amended (the 1949 Act). The terms and conditions of the loans are set forth in the loan agreement. See 7 CFR 1421.1-1421.32 for feed grain, rice, soybean and wheat price support loans and purchase agreements (53 FR 20280, June 3, 1988). In accordance with the provisions of the loan agreement and 7 CFR 1421.6, these loans mature no later than the last day of the ninth calendar month following the month in which the loan application is made, unless extended by CCC. In the event CCC determines to extend such loans, the producer receives actual notice of the terms and conditions of the offered extension. The producer is not, however, required to accept the offered extension.

In accordance with section 110 of the 1949 Act CCC may make available extended price support loans to producers who have specified maturing regular wheat and feed grain price support loans. These loans are referred to as Farmer-Owned Reserve (FOR) loans. The minimum and maximum levels of the wheat and feed grain reserves are determined annually. The terms and conditions of the loans are set forth in the loan agreement. See 7 CFR 1421.740-54 (53 FR 11239, April 26, 1988).

Section 110 of the 1949 Act provides that, whenever the total quantity of wheat pledged as collateral for FOR loans is less than 300 million bushels and the market price for wheat is less than 140 percent of the current price support level, entry into the reserve must be allowed. Currently, 395 million bushels are in the FOR wheat reserve and wheat prices are in excess of 140 percent of the current price support rate. With respect to feed grains, the minimum FOR level is 450 million bushels and the minimum market price is 140 percent of the current price support rate. Currently, 1.06 billion bushels of corn, 54 million bushels of sorghum and 50 million bushels of barley are in the FOR feed grain reserve. Corn prices exceed 140 percent of the current price support rate.

Prior to the enactment of the Food Security Act of 1985 (the 1985 Act), which amended section 110 of the 1949 Act, the term of a FOR loan could not exceed 5 years. The 1985 Act amended section 110 to provide for FOR loans of not less than 3 years with extensions as warranted. However, prior to this amendment, producers possessed a substantial number of FOR loans which were maturing and, due to market conditions, the loan collateral would be forfeited to CCC. In order to provide greater flexibility to producers, CCC established the Special Producer Storage Loan Program in accordance with the CCC Charger Act, as amended. The terms and conditions of these loans are set forth in the loan agreement. See 7 CFR 1421.900-1421.917.

In January and March 1988, after evaluating existing and projected supply and demand conditions for wheat and feed grains, CCC determined and announced that certain price support loans would be extended and that certain other loans would not be extended. Accordingly, with respect to loans that were not extended, producers are required to comply with the terms and conditions of their loan agreements which require repayment of the loan or forfeiture to CCC of the loan collateral by a specified date.

Following the announcement of these decisions, the State of Minnesota and several Minnesota producers brought an action in the United States District Court of the District of Minnesota which alleged that the actions taken concerning these loans were not made in accordance with statutory requirements. Among the allegations, plaintiffs contend that these decisions were not made in accordance with the Administrative Procedure Act, as amended, 5 U.S.C. 551 et seq. Subsequently, on July 22, 1988, based upon the United States Magistrate's Report and Recommendation, the United States District Court entered an order enjoining the use of two intra-agency notices which were used by the Agricultural Stabilization and Conservation Service (ASCS) to notify State and County ASCS Offices of these decisions.

It is the position of CCC that the provisions of the Administrative Procedure Act, as amended, are not applicable to these decisions since 5 U.S.C. 553(a)(2) specifically exempts agencies from conducting proposed rulemaking actions with respect to "a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts." It is also the position of CCC that the Statement of Policy signed by the Secretary of Agriculure on July 20, 1971 (see 36 FR 13804), which provided that, in certain specified instances, proposed rulemaking would be undertaken by all agencies of the Department notwithstanding the exemption set forth in 5 U.S.C. 553(a)(2) is not applicable to the types of actions involved in these decisions since proposed rulemaking actions would be impracticable.

However, in order to alleviate the concerns of interested parties regarding the procedure which CCC utilized in making these decisions and to provide market stability, comments were requested with resepct to proposed amendments to the regulations of CCC which are set forth in Title 7 of the Code of Federal Regulations. These proposed amendments would amend 7 CFR 1421.6 to provide that 1987 and subsequent crop price support loans for feed grains, rice, soybeans and wheat would not be subject to any additional extension of the original loan term of nine months. Section 1421.6 would also be amended to provide the 1985 and 1986 crop loans of wheat, barley, oats and soybeans would not be extended at maturity and that producers with 1985 and 1986 crop corn and grain sorghum loans which mature on March 31, 1988 through and including December 31, 1988 would be provided the opportunity to extend such loans for one year. The proposed rule would also amend the FOR program regulations which are set forth at 7 CFR 1421.741 to provide the 1984 crop FOR loans which mature on March 31, 1988 through and including December 31, 1988 may be extended for one year and that 1983 and prior crop year FOR loans would not be extended.

The proposed rule would also amend the regulations at 7 CFR 1421.900-1421.917 which set forth the regulations governing the special producer storage loan program. The basis for the program was explained in the preamble of the rule which set forth the initial regulations which established the program:

The Farmer-Owned Grain Reserve Program has been implemented for wheat, corn, barley, sorghum, and oats in accordance with the provisions of section 110 of the Agriculture Act of 1949, as amended. Producers with matured grain reserve loans will have utilized the entire period of their reserve loan agreement which is available for the commodity. Normally, producers with matured grain reserve loans would be required to redeem the loan collateral or forfeit the collateral to CCC in full satisfaction of the loan obligation. However, under the Special Producer Storage Loan Program, producers will be given the opportunity to pledge the collateral securing a matured grain reserve loan as collateral for a loan obtained under the new program. 50 FR 16221 (April 25, 1985).

The program was determined to be necessary since, at that time, section 110 of the 1949 Act specified that FOR loan agreements could not be for a term in excess of 5 years. Section 110 of the 1949 Act was subsequently amended by the Food Security Act of 1985 by deleting the 5-year maximum limitation and by providing that FOR loans could be extended as warranted by market conditions. Accordingly, it has been determined that this program is no longer necessary. Therefore, the proposed rule would delete the regulations which set forth the provisions which were used to make Special Producer Storage Loans and would also specify that maturing Sepecial Producer Storage Loans will not be extended.

The quantities of outstanding CCC loan collateral as of August 17, 1988 which would be affected by the proposed amendments are as follows:

[Million of bushels]

Program crop year	Wheat	Corn	Sorghum	Barley	Oats	Soybeans
Regular Loans:						
1985	6	*76	*4	2	0	2
1986	23	*454	*27	11	0	7
1987	29	532	11	12	0	44
Farmers-Owned Reserve (FOR) Loans:						
1983 & Prior [1]	166	0	0	3	0	
1984	*71	281	*11	*14	*0	
1985 [2]	158	781	43	33	0	
Special Producer Storage (SPSL) Loans	0	110	17	25	1	

(Asterisks denote loans which would be available for extension.)
[1] These loans do not begin to mature until 1990.
[2] These loans do not begin to mature until 1989.

Basis For CCC's Actions Regarding CCC Price Support Loans

In January and March 1988, CCC announced that certain CCC price support loans would be extended and that certain loans would not be extended. CCC also announced that 1986 crops of wheat and feed grains would not be allowed entry into the FOR. These decisions were based upon market conditions which existed at that time. These decisions were based upon expected 1988 normal crop production. In making these determinations, CCC took into account the impact the decisions would have on

producers of wheat, feed grains and soybeans as well as on the ultimate users of these products.

At that time, excessive surpluses of these crops existed as the result of overproduction in previous years. These excessive surpluses had occurred due in larger part to the loss of export markets from 1981–1985. In order to reduce these excessive surpluses, the Food Security Act of 1985 amended the 1949 Act to mandate acreage reduction programs for wheat and feed grains and also mandated the use of export enhancement programs. Accordingly, CCC's decisions in January and March 1988 were based in large part upon a concern to maintain regained export markets. The U.S. share of export markets for wheat had increased from 29 percent in the 1985–1986 marketing year to 42 percent in the 1987–1988 marketing year, still below the 1981–1982 marketing year level of 48 percent. With respect to corn, such U.S. share had increased from 58 percent in the 1985–1986 marketing year to 78 percent in 1987–1988 marketing year, still below the 1979–1980 marketing year level of 82 percent. By retaining these markets through the availability of grain from CCC inventory and from free stocks, U.S. producers would be able to market larger quantities of 1988 and subsequent crops. At that time, estimated 1988 crop production was projected to be less than the combined total of 1988 projected uses and would result in sharp declines in both total carryover stocks and free stocks. Accordingly, access to CCC stocks and loan collateral was determined to be necessary.

However, the production of 1988 crops of many commodities, including wheat, feed grains and soybeans, has been severely reduced by the drought conditions which exist throughout major agricultural regions of the United States. For example, on May 10, 1988 the estimated 1988 production of corn was 7.3 billion bushels. These estimates have declined to 5.2 billion bushels on July 12, 1988 and to 4.48 billion bushels on August 11, 1988. Thus, at this time, even greater accessibility to CCC inventory and loan collateral is necessary to meet demand than previously was determined to exist in January and March 1988. Similarly estimated wheat production has fallen from 2.17 billion bushels to 1.82 billion bushels. While soybean production had fallen from 1.88 billion bushels in May 1988 to 1.47 billion bushels in August 1988.

The decrease in feed grain and soybean production, together with the reduction in other feed supplies, has caused significant and unexpected increases in feed prices for livestock and poultry producers and has also resulted in the unavailability of feed in some regions of the country. These factors have resulted in the liquidation of livestock herds and poultry flocks which has adversely affected producers' income.

The United States' supply of wheat has also been reduced due to the 1988 drought. Coupled with the expansion of U.S. export markets during the past year, the drought has resulted in the smallest supply of U.S. wheat in nearly a decade. Durum wheat production was reduced 41 percent from 1987, while other spring wheat production is down 53 percent. Similar reductions have occurred as a result of the drought in 1988 oat and barley production. Barley production is down 45 percent and oat production, also down 45 percent will be the lowest since 1866. Accordingly, substantial quantities of oats will be imported into the U.S. during the next year.

In summary, early 1988 estimates showed that the 1988 use of wheat, feed grain and soybeans would exceed 1988 production thereby necessitating access to CCC inventory and CCC loan collateral. The effects of the 1988 drought further necessitate such accessibility.

In order to ensure orderly marketing of these commodities, including 1988 production, it has been determined that some crop year loans with 1988 maturity dates will be extended until 1989. By allowing some crop year loans to mature in accordance with the loan agreements previously entered into by producers with CCC and by allowing producers to extend certain other loans, CCC's action will provide: (1) Producers the opportunity to deliver grain into the market in an orderly fashion with very minimal forfeitures to CCC; (2) Purchasers, both domestic and foreign, with reliable supplies, and (3) Parties who transport and handle such commodities sufficient time to determine the most efficient manner to move these commodities from the producer to a consumer.

Section 110 of the 1949 Act provides for the implementation of "a program under which producers of wheat and feed grains will be able to store wheat and feed grain when such commodities are in abundant supply, extend the time period for their orderly marketing, and provide for adequate but not excessive carryover stocks to ensure a reliable supply of the commodities." It is generally accepted that an adequate carryover supply of wheat is .75 −1.0 billion bushels and that an adequate carryover supply of corn is 1.5 −2.0 billion bushels. Sections 107D and 105C of the 1949 Act provide, with respect to wheat and feed grains, respectively that if the estimated carryover on the first day of the marketing year for a crop will exceed 1 billion bushels for wheat and 2 billion bushels for corn, acreage reductions programs must be implemented. As of August 29, 1988, ending 1988/89 marketing year wheat stocks are estimated to be 597 million bushels and ending 1988/89 marketing year corn stocks are estimated to be 1.58 billion bushels. Accordingly, assuming that the quantities specified in sections 105C and 107D are adequate carryout quantities, the U.S. will have minimally adequate or less than adequate carryovers of these crops going into the 1989 marketing year. Section 110 of the 1949 Act provides that the FOR program is to be conducted only when wheat and feed grains are in "abundant supply." Such supplies are clearly not abundant and are projected to be below even "adequate carryover" levels. Section 110 also provides that the FOR must be conducted in a manner which does not curtail free market activity. Further entry of grain into the FOR would, by the end of the marketing year, result in record high levels of grain in the FOR and would cause serious market disruptions.

Based upon these estimates, entry of any further crops into the FOR would not only be contrary to market demands but would also violate the provisions of section 110 of the 1949 Act which require that free market activity not be disrupted. Currently the following quantities are in the FOR as of August 17:

[Millions of bushels]

Program crop year	Wheat	Corn	Sorghum	Barley	Oats
1983 and prior	166	0	0	0	0
1984	71	281	11	14	0
1985	158	781	43	33	0
Total	395	1,062	54	50	0

Wheat FOR loans for 1983 and prior crops do not begin to mature until 1990 and 1985 wheat and feed grain FOR loans begin to mature early in 1989. Accordingly, sufficient quantities of FOR loan collateral exist and are in excess of statutory minimums set forth in section 110 of the 1949 Act which must be maintained when price fall below specified levels.

On July 7, 1988, CCC published in the Federal Register a proposed notice of determination with respect to the entry of 1988 crops into the FOR. No comments were received during the 30-day comment period. CCC proposed to allow entry into the FOR only if market prices for wheat and feed grains fell below 140 percent of the respective 1988 crop price support rate and if levels in the FOR fell below 300 million bushels of wheat and 450 million bushels of feed grains. Subsequently, the Disaster Assistance Act of 1988 (the 1988 Act) was enacted principally in response to the 1988 drought. The 1988 Act provided approximately $3.9 billion of disaster related relief measures to producers affected by the 1988 drought and other specified natural disasters.

Included in the 1988 Act were provisions which relate to the FOR Program. Section 303(b) of the 1988 Act provides greater accessibility to FOR stocks which are acquired through the exchange of CCC commodity certificates. Section 303(a) of the 1988 Act provides that, once market prices of a commodity attain the FOR release level during the 1988 marketing year, producers may repay, without penalty, FOR loans during the remainder of such marketing year without regard to market prices. The Joint Explanatory Statement of the Committee of Conference which was prepared in connection with the 1988 Act states as follows:

The conferees believe that the Secretary should operate the Farmer-Owned Reserve in a way that will remove wheat and feed grains from the market during times of surplus supply and increase market supply during times of short supply. Current Farmer-Owned Reserve quantities of wheat and feed grains exceed statutory minimums. The Secretary has previously determined not to allow entry of 1987 crops of wheat and feed grains into the reserve. In making any subsequent determinations as to whether to permit entry of 1988 or other crops of such commodities into the reserve, the Secretary should take into consideration the reduced production of 1988 crops of wheat and feed grains as a result of the drought, the size of the Farmer-Owned Reserve, the impact of such entry upon the availability of these commodities in the marketplace, including, but not limited to consideration of the impact on the domestic livestock and poultry industry, the ethanol industry, and export share.

See 134 Cong. Rec. H. 6474 (daily ed. August 8, 1988).

Accordingly, in addressing the manner in which the FOR is to be conducted, Congress has specifically recognized that statutory FOR minimums have been maintained and that entry of 1987 crops will not be permitted.

Since September 1, 1988, CCC has continued to review supply and demand situations for feed grains. Based upon the decreased production in the United States and throughout the world, supplies of feed grains in the United States are currently less than current and projected demand, as was the case throughout 1988. Accordingly, since January 1, 1989 CCC has not allowed the extension of maturing CCC price support loans. However, CCC has now determined that 1985-crop corn and grain sorghum FOR loans which mature on or after August 31, 1989 may be extended for a period of 6 months. By allowing some crop year loans to mature in accordance with the loan agreements previously entered into by producers with CCC and by allowing producers to extend 1985 crop loans, CCC's action will ensure: (1) Producers the opportunity to deliver grain into the market in an orderly fashion with minimal forfeitures to CCC; (2) purchasers, both domestic and foreign, with reliable supplies, and (3) parties who transport and handle such commodities sufficient time to determine the most efficient manner to move these commodities from the producer to a consumer. In addition, this action will ensure that quantities of feed grains in the FOR will continue to exceed 450 million bushels, as required by section 110 of the 1949 Act when certain market conditions exist. Producers with 1985 crop FOR loans who exercise this option to extend will receive storage payments at a rate of 26.5 cents per bushel annually or .0726 cents per bushel daily. Producers will, in accordance with 7 CFR 1421.741, receive actual notice of this offered extension.

In order to facilitate the handling of 1985 crop loans which are extended by producers, as well as the workload associated with other CCC activities, it has been determined that CCC will make the storage payment earned as a result of this extension at the time of the loan settlement. Accordingly, 7 CFR 1421.750 is amended to reflect the manner in which these storage payments will be made.

In accordance with section 3 of the United States Grain Standards Act Amendments of 1988, the Secretary of Agriculture is required to conduct with respect to the 1989 crop year a pilot program in not less than six multicounty areas which utilizes premiums and discounts for CCC price support loan collateral in order to encourage the production, marketing and exportation of high quality, clean grain. In order to ensure that local and national marketing practices are not adversely affected by such a program, CCC has determined to implement the program on a nationwide basis. As a portion of this program, it was determined that CCC would not accept sample grade grain as collateral for CCC price support loans. Among other benefits, this action will ensure that CCC does not acquire low quality grain through forfeitures which will ultimately be released from CCC inventory into the market. Producers will, therefore, be encouraged to maintain the quality of the grain for sale in the market rather than using nonrecourse price support loans as the method for marketing their low quality grain to CCC. Accordingly, 7 CFR 1421.18 is amended to provide that sample grade grain may not be pledged as collateral for CCC price support loans.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs/agriculture, Price support programs, Warehouses.

Accordingly, Title 7 of the Code of Federal Regulations would be amended as follows:

PART 1421—[AMENDED]

1. The authority citation for Part 1421 is revised to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1441, 1444–1, 1444b, 1445–2, 1445c–2, 1445e, 1446, and 1447; 15 U.S.C. 714b and 714c.

2. 7 CFR 1421.18(b) is revised to read as follows:

§ 1421.18 Warehouse-stored loans.

* * * * *

(b) *Grade requirements.* (1) In order to be eligible to be pledged as collateral for a loan, the commodity must not be "Sample Grade" and must meet the requirements of § 1421.5 and this section.

(2) Barley must grade No. 5 or better except that:

(i) The barley may have the following special grade designations: "Bright"; "Stained"; "Garlicky"; and, in Alaska only, "Tough";

(ii) The barley must not grade "Infested" or have moisture in excess of 14.5 percent unless a supplemental certificate is provided in accordance with § 1421.9; and

(iii) The barley may not have any of the following special grade designations:

(A) Blighted.

(B) Bleached.

(C) Ergoty.

(D) Smutty.

(3)(i) Corn must grade No. 3 or better except that the corn may have the following special grade designations: "Flint", "Flint and dent", or "Waxy"; and

(ii) The corn must not grade "Infested" or have moisture in excess of 15.5 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(4)(i) Oats must grade No. 3 or better, except that the oats may have the special grade designation "Garlicky";

(ii) The oats must not grade "Smutty"; "Ergoty"; "Bleached"; "Thin"; Tough"; or otherwise be of distinctly low quality; and

(iii) The oats must not grade "Infested" or have moisture in excess of 14.0 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(5) Rice must grade No. 5 or better and must not have moisture in excess of 14.0 percent. Rice of special grades shall not be eligible.

(6)(i) Rye must grade No. 2 or better except that the rye may grade No. 3 because of "Thin" rye, or grade No. 3 or No. 4 on the factors of test weight or damaged kernels (total) or both:

(ii) The rye must not grade "Smutty"; "Light Smutty"; "Garlicky"; "Light"; "Light Garlicky"; and

(iii) The rye must not grade "Infested" or have moisture in excess of 14.0 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(7)(i) Sorghum must grade No. 4 or better except that the sorghum may have the special grade designation of "Smutty"; and

(ii) The sorghum must not grade "Infested" or have moisture in excess of 14.0 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(8)(i) Soybeans must grade No. 4 or better;

(ii) The soybeans must be adjusted for foreign material exceeding 1 percent;

(iii) The soybeans may not grade "Garlicky"; and

(iv) The soybeans may not grade "Infested" or have moisture in excess of 14.0 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(9)(i) Wheat must grade No. 5 or better;

(ii) If the wheat is of the class "Mixed Wheat", the wheat must consist of mixtures of grades of eligible wheat as provided in paragraph (b)(9)(i) of this section, if such mixtures are the result of natural conditions;

(iii) The wheat may have the special grade designations "Garlicky", "Smutty", or "Lightly Smutty";

(iv) The wheat must not grade "Ergoty", or "Treated"; and

(v) The wheat must not grade "Infested" or have moisture in excess of 13.5 percent unless a supplemental certificate is provided in accordance with § 1421.9.

3. 7 CFR 1421.750(f) is added to read as follows:

§ 1421.750 Storage Payments.

* * * * *

(f) Notwithstanding paragraph (a) of this part or any other provision of this part, producers who extend 1985-crop corn and grain sorghum grain reserve loans, which mature on or after August 31, 1989, shall receive storage payments earned as a result of this extension at the time the loan is settled by the producer through either the forfeiture of the loan collateral or the repayment of the loan.

Signed at Washington, DC, on July 14, 1989.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89-17211 Filed 7-21-89; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-CE-07-AD; Amdt. 39-6269]

Airworthiness Directives; British Aerospace (BAe) PLC, Jetstream Model 3101 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to British Aerospace (BAe) PLC, Jetstream Model 3101 airplanes, which supersedes AD 87-07-02, Amendment No. 39-5579. AD 87-07-02 requires a life limitation on the autopilot elevator trim cable of 2,000 hours. Subsequent to the issuance of AD 87-07-02, another control cable failed at 1,475 hours. Failure of this cable can cause either a nose up trim indication on the flight deck console without affecting the elevator trim tabs, or an irreversible nose down trim, which may lead to flight with excessive control force and loss of airplane control. It is, therefore, necessary to reduce the cable life limit to 1,000 hours to prevent the development of this unsafe condition.

DATES: *Effective Date:* August 24, 1989. *Compliance:* As prescribed in the body of the AD.

ADDRESSES: BAe Alert Service Bulletin (ASB) Jetstream 22-A-JA861023, Rev 1, dated January 6, 1989, applicable to this AD may be obtained from British Aerospace (BAe) PLC, Manager, Product Support, Civil Aircraft Division, Prestwick Airport, Ayrshire, KA9 2RW, Scotland; Telephone (44-292) 79888; or British Aerospace Inc., Technical Librarian, P.O. Box 17414, Dulles International Airport, Washington DC 20041; Telephone (703) 435-9100. This information may also be examined at the Rules Docket, FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Ebina, Aircraft Certification Office, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium; Telephone (322) 513.38.30; or Mr. John P. Dow, Sr., Project Support Section-Foreign, ACE-109, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include an AD requiring changes to the life limit of the autopilot elevator trim servo cable on certain BAe Jetstream Model 3101 airplanes was published in the **Federal Register** on April 6, 1989 [54 FR 13893]. The proposal resulted from AD 87-07-02, Amendment Number 35-5579, published in the **Federal Register** on March 13, 1987 (52 FR 7823), which required replacement of the elevator trim servo cable on BAe Jetstream Model 3101 airplanes equipped with Sperry SPZ-200B or SPZ-500 autopilot installations after 2,000 hours time-in-service (TIS). Subsequent to the issuance of AD 87-07-02, another cable was found broken at 1,475 hours TIS. Consequently, BAe issued ASB Jetstream 22-A-JA861023, Rev 1, dated January 6, 1989, which changes the life limit of the autopilot elevator trim servo cable. The Civil Aviation Authority (CAA), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in the United Kingdom (UK), has classified this ASB and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes.

On airplanes operated under UK registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the CAA-UK combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA examined the available information related to the issuance of BAe ASB Jetstream 22-A-JA861023, Rev 1, dated January 6, 1989, and the mandatory classification of this ASB by the CAA-UK, and concluded that the condition addressed by BAe ASB Jetstream 22-A-JA861023, Rev 1, dated January 6, 1989, was an unsafe condition

that may exist on other airplanes of this type certificated for operation in the United States. Accordingly, the FAA proposed an amendment to Part 39 of the FAR to include an AD on this subject. Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change.

The FAA has determined that this regulation involves 2 airplanes at an approximate cost of $560 per airplane, for a total fleet cost of $1,120 each time that the AD becomes due.

Therefore, the cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant impact on any small entities operating these airplanes.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of 14 CFR Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By superseding AD 87-07-02, Amendment No. 39-5579, with the following new AD:

§ 39.13 [Amended]

British Aerospace (BAe) PLC: Applies to Jetstream Model 3101 (all serial numbers) airplanes equipped with Sperry SPZ-200B or SPZ-500 autopilot installations.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent the possible loss of elevator trim control, accomplish the following:

(a) For all airplanes on which the autopilot elevator trim servo cable has accumulated 900 or more hours time-in-service (TIS) on the effective date of this AD, within the next 100 hours TIS and thereafter at intervals not to exceed 1,000 hours TIS, replace the elevator trim servo cable, ET1, BAe Part Number 137187E472, in accordance with BAe Mandatory Alert Service Bulletin Jetstream 22-A-JA861023, Rev 1, dated January 6, 1989.

(b) For all airplanes on which the autopilot elevator trim servo cable has accumulated less than 900 hours TIS on the effective date of this AD, at or before reaching 1,000 hours TIS and thereafter at intervals not exceeding 1,000 hours TIS, replace the autopilot elevator trim servo cable, ET1, BAe Part Number 137187E472, in accordance with BAe Mandatory Alert Service Bulletin Jetstream 22-A-JA861023, Rev 1, dated January 6, 1989.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Office, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to British Aerospace PLC, Manager, Product Support, Civil Aircraft Division, Prestwick Airport, Ayrshire, KA9 2RW, Scotland; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC 20041; or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on August 24, 1989.

Issued in Kansas City, Missouri, on July 7, 1989.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-17242 Filed 7-21-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-CE-13-AD; Amdt. 39-6272]

Airworthiness Directives; Piper Models PA-23, PA-23-160, PA-23-250, PA-23-235, PA-E23-250 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD), 88-21-07 which requires periodic inspection and repair, as required, of the fuel vent/drain lines, the thermos type fuel cell caps, and the fuel filler compartment covers on all Piper Model PA-23 series airplanes. This amendment deletes from the applicability those PA-23-250 airplanes with serial numbers (S/N's) 27-7654001 through 27-8154030 which incorporate fuel caps flush with the wing surface. The FAA has determined that airplanes which incorporate fuel caps flush with the wing surface are not subject to water contamination.

DATES: *Effective:* August 22, 1989. *Compliance:* As indicated in the body of the AD.

ADDRESSES: The applicable service bulletin may be obtained from the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; Telephone (407) 567-4366. This information may also be examined in the Rules Docket, Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Goodall, Aerospace Engineer, Propulsion Branch, ACE-140A, Atlanta Aircraft Certification Office, FAA, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; Telephone (404) 991-3810.

SUPPLEMENTARY INFORMATION: This amendment revises AD 88-21-07, Amendment 39-6042 [53 FR 38000; September 29, 1988], which currently requires periodic inspection and repair, as required, of the fuel vent/drain lines, the thermos type fuel cell caps, and the fuel filler compartment covers on all Piper PA-23 series airplanes. After issuing Amendment 39-6042, the FAA determined that Piper Aircraft Corporation implemented a design change in 1976 which elimiated the fuel filler compartment covers, the recessed fuel filler ports, the thermos type fuel caps and the drain system on certain PA-23 series airplanes. This design incorporates a vent system and fuel caps that are flush with the wing surface. This design change occurred

after the issuance of Piper Service Bulletin No. 340, dated May 24, 1971, which was the basis of AD 88-21-07. Therefore, the FAA is revising AD 88-21-07 to delete all those Model PA-23-250 airplanes manufactured with S/N's 27-7654001 through 27-8154030 from the applicability listing in the AD.

Since this amendment reduces the applicability of the AD and imposes no additional burden on any person, notice and public procedure hereon are unnecessary, and the amendment may be made effective in less than 30 days. The regulations adopted herein do not have substantial direct effects on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this revision involves approximately 715 airplanes. The cost of implementing this revision is negligible. The cost of complying with this AD will not have a significant financial impact on any small entities owning affected airplanes.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption **ADDRESSSES** at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By revising AD 88-21-07, Amendment 39-6042 [53 FR 38000; September 29, 1988], to read as follows:

§ 39.13 [Amended]

Piper: Applies to Models PA-23, PA-23-160, PA-23-250, PA-23-235 and PA-E23-250 (all serial numbers) airplanes certificated in any category except Model PA-23-250 airplanes, serial numbers 27-7654001 through 27-8154030.

Compliance: Required within the next 60 calendar days after the effective date of this AD and at intervals not to exceed 12 calendar months thereafter, unless already accomplished per the unrevised version of this AD. To reduce the possibility of precipitation and/or wash water from entering the fuel filler compartment and leaking into the fuel cell resulting in engine failure, accomplish the following:

(a) Inspect the fuel vent/drain lines, the thermos type fuel cell caps, and the fuel filler compartment covers on both main fuel cell systems and, if installed, both auxiliary fuel cell systems in accordance with the instructions in Piper Service Bulletin (SB) No. 340, dated May 24, 1971.

(b) If any defects are found, correct them before further flight.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Atlanta Aircraft Certification Office, ACE-115A, Federal Aviation Administration, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349.

This amendment revises AD 88-21-07, Amendment 39-6042.

This amendment becomes effective on August 22, 1989.

Issued in Kansas City, Missouri, on July 11, 1989.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-17243 Filed 7-21-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-123-AD; Amdt. 39-6278]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped With General Electric CF6-80C2 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which requires modification of seals in the area of the outboard strut trailing edge access doors. This amendment is prompted by the discovery that hydraulic fluid leakage in the aft strut area can penetrate the firewall seal and come in contact with the engine primary exhaust nozzle, creating the potential for a fire.

EFFECTIVE DATE: August 11, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Propulsion Branch, ANM-140S; telephone (206) 431-1970. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Investigations by the manufacturer have revealed the existing firewalls in the outboard strut trailing edge installation on certain Model 747 airplanes equipped with General Electric CF6-80C2 engines can allow hydraulic fluid leakage in the aft strut area to penetrate the firewall seal and come in contact with the engine primary exhaust nozzle. This condition, if not corrected, creates the potential for a fire.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747-54A2129, dated June 8, 1988, which describes a modification of the existing seals and addition of block seals and splash plates in the outboard strut trailing edge fairing door/inconel pan area.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires modification of seals and installation of new seals and splash plates in the outboard strut trailing edge fairing door/inconel pan area, in accordance with the service bulletin previously described.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance

with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, and evaluation is not required). A copy of it, if filed, may be obtained from the Rule Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes equipped with General Electric CF6-80C2 engines, as listed in Boeing Alert Service Bulletin 747-54A2129 dated June 8, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To eliminate the potential for a fire due to an inadequately sealed firewall in the outboard struts, accomplish the following:

A. Within the next 60 days after the effective date of this AD, modify the existing seal configuration in the aft outboard strut trailing edge fairing door/inconel pan area in accordance with the accomplishment instructions of Boeing Alert Service Bulletin 747-54A2129, dated June 8, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides and acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21. 199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective August 11, 1989.

Issued in Seattle, Washington, on July 17, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-17240 Filed 7-21-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-205-AD; Amdt. 39-6277]

Airworthiness Directives; Boeing Models 727-100C and 727C Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Models 727-100C and 727C series airplanes, which requires inspection of the main cargo door lower still latch support fittings for cracks, and replacement of the fittings, if necessary. This proposal is prompted by reports of cracks in latch support fittings. Cracking in multiple fittings, if allowed to grow, could result in rapid decompression during flight and in-flight loss of the main cargo door.

EFFECTIVE DATE: August 31, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington, 98124. This information may be examined at the FAA, Transport Airplane Directorate, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Kathi N. Ishimaru, Airframe Branch, ANM-120S; telephone (206) 431-1525. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires inspection for cracks and replacement, if necessary, of the main cargo door lower still latch support fittings on Boeing Models 727-100C and 727C airplanes, was published in the **Federal Register** on February 14, 1989 (54 FR 6689). The comment period for the proposal closed April 19, 1989.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One comment was received which requested the repetitive inspection interval include a 3,000 flight hour interval as an alternative to the proposed 3,000 flight cycle interval because some operators schedule maintenance on hours instead of flight cycles. The FAA disagrees with this specific request because Boeing Model 727 flights may be less than 1 hour. The short flight would unacceptably increase the inspection interval. Paragraph E. of the final rule contains provisions for an operator to request alternate means of compliance based on an operator's average flight time.

The Air Transport Association (ATA) of America stated that no ATA member expressed objection to the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 129 Model 727 cargo airplanes of the affected design in the worldwide fleet. It is estimated that 83 airplanes of U.S. registry will be affected by this AD, that it will take approximately 28 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $92,960.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034); (February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Models 727–100C and 727C (cargo) series airplanes, as listed in Boeing Alert Service Bulletin 727–53A0177, Revision 1, dated August 27, 1987, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent in-flight loss of the main cargo door, accomplish the following:

A. Prior to the accumulation of 25,000 flight cycles or within the next 3,000 flight cycles after the effective date of this AD, whichever occurs later, conduct a close visual or an eddy current inspection of the eight main cargo door latch support fittings, in accordance with Figure 1 of the Boeing Alert Service Bulletin 727–53A0177, Revision 1, dated August 27, 1987.

B. If a cracked latch support fitting is found, prior to further flight, replace the fitting with a fitting made of 7075–T73 material, in accordance with Figure 2 or 3 of Boeing Alert Service Bulletin 727–53A0177, Revision 1, dated August 27, 1987.

C. Repeat the inspection required in paragraph A., above, at intervals not to exceed 3,000 flight cycles.

D. Replacement of a latch support fitting with the 7075–T73 fitting specified in Figure 2 or 3 of Boeing Alert Service Bulletin 727–53A0177, Revision 1, dated August 27, 1987, constitutes terminating action for the repetitive inspections required for that fitting.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Transport Airplane Directorate, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective August 31, 1989.

Issued in Seattle, Washington, on July 17, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–17241 Filed 7–21–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 89–ASO–17]

Revocation of Transition Area, Andrews, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revokes the Andrews, SC, transition area. The transition area was established to provide controlled airspace protection for Instrument Flight Rules (IFR) operations at the Andrews Municipal Airport. The Punch Nondirectional Radio Beacon (NDB) which supports the only Standard Instrument Approach Procedure (SIAP) to the airport has been decommissioned. Thus, a need no longer exists for the transition area. Concurrent with revocation of the transition area, the operating status of the airport will change from IFR to Visual Flight Rules (VFR).

EFFECTIVE DATE: 0901 UTC, August 24, 1989.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

History

On May 4, 1989, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke the Andrews, SC, transition area (54 FR 19196). The Punch NDB which supports the only SIAP to the Andrews Municipal Airport has been decommissioned. Thus, a need no longer exists for the transition area. Concurrent with revocation of the transition area, the operating status of the airport will change from IFR to VFR. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revokes the Andrews, SC, transition area. The transition area was established to provide controlled airspace protection for Instrument Flight Rules (IFR) operations at the Andrews Municipal Airport. The Punch Nondirectional Radio Beacon (NDB) which supports the only Standard Instrument Approach Procedure (SIAP) to the airport has been decommissioned. Thus, a need no longer exists for the transition area.

The FAA had determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Andrews, SC [Removed]

Issued in East Point, Georgia, on June 30, 1989.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89–17246 Filed 7–21–89; 8:45 am]

BILLING CODE 4910–13–M

RAILROAD RETIREMENT BOARD

20 CFR Part 218

RIN 3320–AA13

Annuity Beginning and Ending Dates

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends Part 218 of its regulations to implement sections 103 and 104 of the Railroad Retirement Solvency Act of 1983, which amended section 5 of the Railroad Retirement Act covering annuity beginning and ending dates, and section 7302 of the Railroad Unemployment Insurance and Retirement Improvement Act which eliminated the last person service disqualification. This final rule also revises Part 218 to simplify the language and make the regulations easier to use.

DATE: July 24, 1989.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, General Attorney, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513 (FTS 386–4513).

SUPPLEMENTARY INFORMATION: The Board's regulations concerning annuity beginning and ending dates were issued in December 1981 and do not reflect the addition of new categories of beneficiaries provided for in Title XI, Subtitle D of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) namely, divorced spouses, surviving divorced spouses and remarried widow(er)s, nor do they reflect amendments made to the Act by the Railroad Retirement Solvency Act of 1983 (Pub. L. 98–76). These amendments generally limited annuity beginning dates for most annuities to a maximum of six months before the application for the annuity was filed. Part 218 is revised to reflect these changes. In addition, Part 218 sets forth in greater detail than present Part 218 the rules restricting when annuities may begin and end.

The Board published Part 218 as a proposed rule on November 3, 1988 (53 FR 44477–44485) and invited comments by December 5, 1988. No comments were received. However, a reviewer within the agency discovered an error in proposed § 218.9(d)(2) which has been corrected to read "The first day of the first full month in which the claimant is age 60 and will accept a reduced annuity." See 45 U.S.C. 231d(a)(iii)(D).

The proposed rule has also been revised to reflect the liberalization in post retirement work restrictions brought about by the Railroad Unemployment Insurance and Retirement Improvement Act of 1988. Pub. L. 100–647, Title VII, Subtitle C. Section 7302 of Pub. L. 100–649 modified the "last person service" disqualification found in section 2(e) of the RRA to permit an individual to begin to receive an annuity while continuing to work for a non-railroad employer. See §§ 218.9, 218.11, 218.26, 218.27, and 218.28.

In this final rule the Board replaces current Part 218 Subpart A, General, with a new Subpart A, General. This Subpart A provides a better explanation of the contents of Part 218, and contains a new § 218.3 which describes the actions the Board takes when notice is received of an employee's disappearance.

The Board also revises the current Part 218 Subpart B: When An Annuity Begins, and portions of Subpart E, When Windfall Benefit Begins and Ends, by replacing it with a new Subpart B which provides a better explanation of the requirements for establishing when any annuity under the Act may begin. New § 218.7 is a redesignation of the current § 218.8 and is revised to explain that the three-month rule for designating an annuity beginning date does not apply to a disability annuity.

The Board revises current Part 218 Subpart C, How Work and Special Payments Affect An Employee Or Spouse Annuity Beginning Date, by replacing it with a new Subpart C, How Work And Special Payments Affect An Employee, Spouse, Or Divorced Spouse Annuity Beginning Date, which provides a better explanation of how work and special payments affect an employee or spouse annuity beginning date.

The Board revises current Part 218 Subpart D, When An Annuity Ends, by replacing it with a new Subpart D which provides a better explanation of the requirements for when any annuity under the Act may end.

The Bureau of Law within the Board is currently involved in a project to revise all regulations for which it has responsibility. It is the aim of the project to incorporate the latest legislative, legal and policy changes while using plain language in order to make the regulations easier to use and understand. As a result, this part has been written to be an integral part of the planned revised and reorganized regulations and may, in certain instances, refer to parts of regulations which are not currently in effect. The Board believes that any minor inconveniences that might arise as a result of publishing the regulations on a part-by-part basis are outweighed by the benefits derived from publishing current, more easily useable and understandable regulations on a consistent basis.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required. The information collections associated with this rule have been approved by the Office of Management and Budget.

In order to enable users to check the completeness, accuracy and reasoning behind these revisions to the regulations, Derivation and Distribution Tables follow:

BEST COPY AVAILABLE

DERIVATION TABLE

New section and name	Current section and name
Part 218—Annuity Beginning And Ending Dates.	Part 218—Annuity Beginning And Ending Dates.
Subpart A—General	
218.1 Introduction	218.1 Introduction (except 2nd and 3rd sentences).
218.2 Definitions	218.2 Definitions (except definition of "Claimant").
218.3 When an employee disappears.—New.	
Subpart B—When An Annuity Begins	
218.5 General rules.	218.5 General rules.
(a) New	
(b)	(b)
218.6 How to choose an annuity beginning date.	218.7 How to choose an annuity beginning date.
(a)	(a)
(b)	(b)
218.7 When chosen annuity beginning date is more than three months after filing date.	218.8 When chosen annuity beginning date is more than three months after filing date.
218.8 When an individual can change the annuity beginning date.	218.9 When an applicant can change the annuity beginning date.
(a)	(a)
(b)	(b)
218.9 When an employee annuity begins.—New	
218.10 When a supplemental annuity begins.	218.6 When a supplemental annuity begins.
218.11 When a spouse annuity begins.—New	
218.12 When a divorced spouse annuity begins.—New	
218.13 When a widow(er) annuity begins.—New	
218.14 When a child annuity begins.—New	
218.15 When a parent annuity begins.—New	
218.16 When a surviving divorced spouse annuity begins.—New	
218.17 When a remarried widow(er) annuity begins.—New	
Subpart C—How Work and Special Payments Affect An Employee, Spouse, or Divorced Spouse Annuity Beginning Date	
218.25 Introduction	218.15 Introduction.
218.26 Work started after annuity beginning date.	218.16 Work started after annuity beginning date.
218.27 Vacation pay	218.17 Vacation pay.
218.28 Sick pay	218.18 Sick pay.
(a)	(a)
(b)	(b)
218.29 Pay for time lost.	218.19 Pay for time lost.
218.30 Separation, displacement, or termination pay.	218.20 Separation, displacement, or termination pay.

DERIVATION TABLE—Continued

New section and name	Current section and name
(a)	218.20 1st paragraph.
(b)	(b)
(c)	(c)
Subpart D—When an Annuity Ends	
218.35 When an employee age annuity ends.	218.25 Employee age annuity.
(a)	218.25
(b) New	
218.36 When an employee disability annuity ends.	218.26 Employee disability annuity.
218.37 When a supplemental annuity ends.	218.27 Supplemental annuity.
218.38 When a spouse annuity ends—New.	218.28 Spouse annuity. [Reserved]
218.39 When a divorced spouse annuity ends.—New	
218.40 When a widow(er) annuity ends.—New.	218.29 Surviving spouse annuity. [Reserved]
218.41 When a child annuity ends.—New.	218.30 Child's annuity [Reserved]
218.42 When a parent annuity ends.	218.31 Parent's annuity.
(a) New	
(b)	218.31 Except parenthetical statement at end of (c).
218.43 When a surviving divorced spouse annuity ends.—New	
218.44 When a remarried widow(er) annuity ends.—New	

DISTRIBUTION TABLE

Current section and name	New section and name
218.1 Introduction—except second sentence.	218.1 Introduction.
218.2 Definitions—except words following "Claimant".	218.2 Definitions.
218.5 General Rules—except paragraph (a).	218.5 General Rules.
218.6 When a supplemental annuity begins.	218.10 When a supplemental annuity begins.
218.7 How to choose an annuity beginning date.	218.6 How to choose an annuity beginning date.
(a)	(a)
(b) except words "claimant" and "preparing".	(b)
218.8 When chosen annuity beginning date is more than three months after filing date.	218.7 When chosen annuity beginning date is more than three months after filing date.
218.9 When an applicant can change the annuity beginning date.	218.8 When an individual can change the annuity beginning date.

DISTRIBUTION TABLE—Continued

Current section and name	New section and name
(a) Before an annuity is awarded.—except word "applicant" in introductory sentence.	(a) Before anfuity is awarded.
(1)—except word "applicant"..	(1)
(2)	(2)
(b) After annuity is awarded—introductory sentence words "if annuity has been awarded", and second sentence except words "However", and "as described in § 216.5(a)(2) of this chapter" and "as described in § 216.20(c)(i) of this chapter".	(b) After annuity is awarded. (1) (2)
218.15 Introduction	218.25 Introduction.
218.16 Work started after annuity beginning date.	218.26 Work started after annuity beginning date.
(a) General	(a) General.
(b) Intent to retire	(b) Intent to retire.
(1)	(1)
(2) —except word "or" following "railroad" in paragraph (i).	(2)
218.17 Vacation pay	218.27 Vacation pay.
218.18 Sick pay	218.28 Sick pay.
218.19 Pay for time lost.	218.29 Pay for time lost.
218.20 Separation, displacement, or termination pay. —Introductory paragraph except words "as follows:"	218.30 Separation, displacement, or termination pay. (a) General.
(a) Separation allowance.	(b) Separation allowance.
(b) Monthly compensation payments.	(c) Monthly compensation payments.
218.25 Employee age annuity.	218.35 When an employee age annuity ends. (a) Entire annuity.
218.26 Employee disability annuity.	218.36 When an employee disability annuity ends.
(a) Ending date	(a) Ending date.
(1)	(1)
(2) except word "becomes".	(2)
(3)	(3)
(b) Effect of ended disability annuity on eligibility for a later annuity—except word "becomes" in second sentence.	(b) Effect of ended disability annuity on eligibility for a later annuity.
218.27 Supplemental annuity.	218.37 When a supplemental annuity ends.
(a)—plus introductory paragraph except words "with earliest of"	
(b)	Obsolete.
218.28 Spouse Annuity [Reserved].	218.38 When a spouse annuity ends.
218.29 Surviving spouse annuity. [Reserved].	218.39 When a widow(er) annuity ends.

DISTRIBUTION TABLE—Continued

Current section and name	New section and name
218.30 Child's annuity. [Reserved].	218.40 When a child annuity ends.
218.31 Parent's annuity—Introductory.	218.31 When a parent annuity ends. Obsolete.
(a)	(a)(1) and (b)(1).
(b)	(b)(2).
(c)	(b)(3).
218.35 When an employee windfall benefit begins. [Reserved].	Unnecessary.
218.36 When an employee windfall benefit ends. [Reserved].	218.35 When an employee age annuity ends. (b) Vested dual benefit based on disability.
218.37 When a spouse windfall benefit begins. [Reserved].	Unnecessary.
218.38 When a spouse windfall benefit ends. [Reserved].	Unnecessary.
218.39 When a surviving spouse windfall benefit begins. [Reserved].	Unnecessary.
218.40 When a surviving spouse windfall benefit ends. [Reserved].	Unnecessary.

List of Subjects in 20 CFR Part 218

Railroad employees, Railroad retirement.

For the reasons set out in the preamble, Chapter II of Title 20 of the *Code of Federal Regulations* is amended as follows:

1. Part 218, Annuity Beginning and Ending dates, is revised to read as follows:

PART 218—ANNUITY BEGINNING AND ENDING DATES

Subpart A—General

Sec.
218.1 Introduction.
218.2 Definitions.
218.3 When an employee disappears.

Subpart B—When an Annuity Begins

218.5 General rules.
218.6 How to choose an annuity beginning date.
218.7 When chosen annuity beginning date is more than three months after filing date.
218.8 When an individual may change the annuity beginning date.
218.9 When an employee annuity begins.
218.10 When a supplemental annuity begins.
218.11 When a spouse annuity begins.
218.12 When a divorced spouse annuity begins.
218.13 When a widow(er) annuity begins.
218.14 When a child annuity begins.
218.15 When a parent annuity begins.
218.16 When a surviving divorced spouse annuity begins.
218.17 When a remarried widow(er) annuity begins.

Subpart C—How Work and Special Payments Affect an Employee, Spouse, or Divorced Spouse Annuity Beginning Date

218.25 Introduction.
218.26 Work started after annuity beginning date.
218.27 Vacation pay.
218.28 Sick pay.
218.29 Pay for time lost.
218.30 Separation, or displacement, or dismissal allowance.

Subpart D—When an Annuity Ends

218.35 When an employee age annuity ends.
218.36 When an employee disability annuity ends.
218.37 When a supplemental annuity ends.
218.38 When a spouse annuity ends.
218.39 When a divorced spouse annuity ends.
218.40 When a widow(er) annuity ends.
218.41 When a child annuity ends.
218.42 When a parent annuity ends.
218.43 When a surviving divorced spouse annuity ends.
218.44 When a remarried widow(er) annuity ends.

Authority: 45 U.S.C. 231f(b)(5).

Subpart A—General

§ 218.1 Introduction.

This part tells when a person's entitlement to a monthly railroad retirement annuity begins and ends. Ordinarily, an annuity begins on the earliest date permitted under the Railroad Retirement Act (Act). This part also tells when and how a person may select a later beginning date. Included is an explanation of how work and certain types of special payments affect the beginning date of an employee or spouse annuity.

§ 218.2 Definitions.

As used in this part:

"Applicant" means a person who signs an application for an annuity for himself, herself or for some other person.

"Application" means a form described in Part 217 of this chapter.

"Award" means to process a form to make a payment.

"Claimant" means the person for whom an annuity application is filed.

"Filing date" means the date on which an application or written statement is filed with the Board.

"Tier I benefit" means the benefit calculated using the Social Security formulas and is based upon earnings, both in and outside the railroad industry.

"Tier II benefit" means the benefit calculated under a formula found in the Act and is based only upon railroad earnings.

§ 218.3 When an employee disappears.

(a) *General.* If an employee who is entitled to an annuity disappears, the employee annuity ends on the last day of the month before the month of the disappearance.

(b) *Employee has a current connection.* (1) The Board may pay survivor benefits from the month of the employee's disappearance if both of the following conditions are met at the time of the disappearance:

(i) The employee has a current connection with the railroad industry as defined in Part 216 of this chapter, and

(ii) The employee's spouse is entitled, or would have been entitled if he or she had filed an application, to a spouse annuity in the month that the employee disappeared.

(2) If the employee is later found to have been alive during any month for which a survivor annuity was paid, the amount of any incorrect payment must be recovered under the rules of Part 255, Erroneous Payments, of this chapter. The incorrect payment is the amount of any survivor benefits which were paid minus any spouse benefits which were paid minus any spouse benefits that would have been paid.

(c) *Employee has no current connection.* If the employee does not have a current connection and the employee's spouse is entitled to an annuity in the month of the employee's disappearance, the spouse annuity will continue to be paid until one of the following events occurs:

(1) The employee's death is established.

(2) The spouse annuity ends for another reason.

Subpart B—When an Annuity Begins

§ 218.5 General rules.

(a) An annuity begins either on the earliest date permitted by law, or on a specific date chosen by the applicant. If the applicant chooses a specific date, that date must not be before the earliest date permitted by law.

(b) An annuity may not begin on the thirty-first day of a month, unless the claimant would lose benefits if the annuity begins on the first day of the following month. No annuity is payable for the thirty-first day of any month.

§ 218.6 How to choose an annuity beginning date.

(a) *When application is filed.* The applicant may choose an annuity beginning date by—

(1) Naming the month, day and year in an application accepted by the Board; or

(2) Including with the application a signed statement which tells the date (month, day and year) when the annuity should begin.

(b) *After application is filed.* After an application is filed, the claimant may choose an annuity beginning date by submitting a signed statement which tells the month, day and year when the annuity should begin.

(Approved by the Office of Management and Budget under Control Nos. 3220-0002, 3220-0030 and 3220-0042)

§ 218.7 When chosen annuity beginning date is more than three months after filing date.

If the applicant for any type of annuity other than a disability annuity, or a spouse annuity based upon the disabled applicant's compensation, chooses an annuity beginning date in a month which is more than three months after the date the application is filed, the Board will deny the application as explained in Part 217 of this chapter. The applicant must file a new application no earlier than three months before the month he or she wants the annuity to begin.

(Approved by the Office of Management and Budget under Control Nos. 3220-0002, 3220-0030 and 3220-0042.)

§ 218.8 When an individual may change the annuity beginning date.

(a) *Before annuity is awarded.* A claimant may change the annuity beginning date if—

(1) The claimant requests the change in a signed statement; and

(2) The statement is received by the Board on or before the date of the claimant's death.

(b) *After annuity is awarded.* An award can be reopened to change the annuity beginning date to a later date if—

(1) The annuitant requests the change in a signed statement;

(2) The statement is received by the Board on or before the date of the annuitant's death;

(3) The annuitant shows that it is to his or her advantage to have a later annuity beginning date; and

(4) All payments made for the period before the later annuity beginning date are recovered by cash refund or setoff.

§ 218.9 When an employee annuity begins.

(a) *Full-age annuity*—employee has completed 10 years but less than 30 years of service. An employee full-age annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law. The earliest date permitted by law is the latest of—

(1) The day after the day the claimant last worked for a railroad employer;

(2) The first day of the month in which the claimant attains age 65; or

(3) The first day of the sixth month before the month in which the application is filed.

(b) *Reduced-age annuity*—employee has completed 10 years but less than 30 years of service. An employee reduced-age annuity begins on the later of either the date chosen by the applicant, or the earliest date permitted by law. The earliest date permitted by law is the latest of—

(1) The day after the day the claimant last worked for a railroad employer;

(2) The first day of the first full month in which the claimant is age 62; or

(3) The first day of the month in which the application is filed if the claimant does not have a spouse (or divorced spouse) who would be entitled to a retroactive unreduced spouse (or divorced spouse) annuity. If the claimant has such a spouse (or divorced spouse) the claimant's annuity can begin on the first day of the month in which the spouse (or divorced spouse) annuity begins.

(c) *Disability annuity.* An employee disability annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law. The earliest date permitted by law is the latest of—

(1) The day after the day the claimant last worked for a railroad employer;

(2) The first day of the twelfth month before the month in which the application is filed;

(3) The first day of the sixth month after the month of disability onset; or

(4) The first day of the month of disability onset if the claimant was previously entitled to an employee disability annuity which ended within five years of the current disability onset month.

(d) *Annuity based on at least 30 years of service.* An employee annuity based on at least 30 years of service begins on the later of either the date chosen by the applicant or the earliest date permitted by law. The earliest date permitted by law is the latest of—

(1) The day after the day the claimant last worked for a railroad employer;

(2) The first day of the first full month in which the claimant is age 60 and will accept a reduced annuity;

(3) The first day of the month in which the claimant attains age 62; or

(4) The first day of the sixth month before the month in which the application is filed.

§ 218.10 When a supplemental annuity begins.

An employee supplemental annuity begins on the latest of—

(a) The beginning date of the employee age or disability annuity;

(b) The first day of the month in which the employee meets the age and years of service requirements as shown in Part 216 of this chapter; or

(c) The first day of the twelfth month before the month in which the employee disability annuitant under age 65 gives up the right to return to work as explained in Part 216 of this chapter.

§ 218.11 When a spouse annuity begins.

(a) A spouse annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law.

(b) *Earliest date permitted by law*—(1) *General rules.* The earliest date permitted by law is the latest of—

(i) The day after the day the claimant last worked for a railroad employer;

(ii) The beginning date of the employee annuity;

(iii) The first day of the month in which the claimant meets the marriage requirement as shown in Part 216 of this chapter; or

(iv) The first day of the month in which the employee annuitant meets the age requirement to qualify the claimant as shown in Part 216 of this chapter.

(2) *Full-age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant meets the age requirement as shown in Part 216 of this chapter; or

(iii) The first day of the sixth month before the month in which the application is filed.

(3) *"Child in care" annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant becomes eligible for a spouse annuity based on having a "child in care" as shown in Part 216 of this chapter; or

(iii) The first day of the sixth month before the month in which the application is filed.

(4) *Reduced-age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section.

(ii) The first day of the first full month in which the spouse is age 62 if the employee has less than 30 years of service

(iii) The first day of the month in which the spouse is age 60, if the employee has at least 30 years of service;

(iv) The first day of the sixth month before the month in which the application is filed; or

(v) The first day of the month in which the application is filed if beginning the annuity in an earlier month would increase the age reduction factor applied to the annuity.

§ 218.12 When a divorced spouse annuity begins.

(a) A divorced spouse annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law.

(b) *Earliest date permitted by law.*—(1) *General rules.* The earliest date permitted by law is the latest of—

(i) The day after the day the claimant last worked for a railroad employer;

(ii) The beginning date of the employee annuity;

(iii) The first day of the first full month in which the employee annuitant is age 62 if the employee has not been granted a period of disability;

(iv) The first day of the month in which the employee annuitant attains age 62 if the employee has been granted a period of disability; or

(v) The first day of the month in which the final decree of divorce is effective.

(2) *Full-age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant attains age 65;

(iii) The first day of the twelfth month before the month in which the application is filed if the employee is a disability annuitant or has been granted a period of disability; or

(iv) The first day of the sixth full month before the month in which the application is filed if the employee is not entitled to a disability annuity or a period of disability.

(3) *Reduced-age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the first full month the claimant is age 62 if the application is filed in or before that month; or

(iii) The first day of the month in which the application is filed.

§ 218.13 When a widow(er) annuity begins.

(a) A widow(er) annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law.

(b) *Earliest date permitted by law.*—(1) *Full-age annuity.* The earliest date permitted by law is the latest of—

(i) The first day of the month in which the employee dies;

(ii) The first day of the month in which the claimant attains age 65; or

(iii) The first day of the sixth month before the month in which the application is filed.

(2) *Reduced-age annuity.* (i) *Widow(er) age 60 through age 62.* The earliest date permitted by law is the latest of—

(A) The first day of the month in which the employee dies;

(B) The first day of the month in which the claimant attains age 60; or

(C) The first day of the sixth month before the month in which the application is filed.

(ii) *Widow(er) over age 62 but under age 65.* The earliest date permitted by law is the latest of—

(A) The first day of the month in which the employee dies;

(B) The first day of the month in which the claimant attains age 62 and one month; or

(C) The first day of the month in which the application is filed.

(3) *Disability annuity.* The earliest date permitted by law is the latest of—

(i) The first day of the month in which the employee dies;

(ii) The first day of the month in which the claimant attains age 50;

(iii) The first day of the twelfth month before the month in which the application is filed; or

(iv) The first day of the sixth month after the month of disability onset.

(4) *"Child in care" annuity.* The earliest date permitted by law is the latest of—

(i) The first day of the month in which the employee dies;

(ii) The first day of the month in which the claimant becomes eligible for a widow(er) annuity based on having a "child in care" as explained in Part 216 of this chapter; or

(iii) The first day of the sixth month before the month in which the application is filed.

§ 218.14 When a child annuity begins.

(a) A child annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law.

(b) *Earliest date permitted by law.*—(1) *General rules.* The earliest date permitted by law is the later of—

(i) The first day of the month in which the employee dies; or

(ii) The first day of the month in which the claimant becomes eligible for a child annuity as explained in Part 216 of this chapter.

(2) *Child age annuity.* The earliest date permitted by law is the later of—

(i) The month shown in paragraph (b)(1) of this section; or

(ii) The first day of the sixth month before the month in which the application is filed.

(3) *Child annuity based on full-time school attendance.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the sixth month before the month in which the application is filed;

(iii) The first day of the month in which the claimant is in full-time school attendance at an elementary or secondary educational institution; or

(iv) The first day of the month in which the claimant attains age 18.

(4) *Child disability annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the sixth month before the month in which the application is filed;

(iii) The first day of the month in which the claimant meets the definition of disability as explained in Part 220; or

(iv) The first day of the month in which the claimant attains age 18.

§ 218.15 When a parent annuity begins.

A parent annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law. The earliest date permitted by law is the latest of—

(a) The first day of the month in which the employee dies;

(b) The first day of the month in which the claimant attains age 60; or

(c) The first day of the sixth month before the month in which the application is filed.

§ 218.16 When a surviving divorced spouse annuity begins.

(a) A surviving divorced spouse annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law.

(b) *Earliest date permitted by law*—(1) *General rules.* The earliest date permitted by law is the later of—

(i) The first day of the month in which the employee dies; or

(ii) The first day of the month in which the claimant becomes eligible for a surviving divorced spouse annuity as shown in Part 216 of this chapter.

(2) *Full-age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant attains age 65; or

(iii) The first day of the sixth month before the month in which the application is filed.

(3) *Reduced age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant attains age 60; or

(iii) The first day of the month in which the application is filed or the first day of the month preceding the month in which the application is filed if the employee died in that preceding month.

(4) *Disability annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant attains age 50;

(iii) The first day of the twelfth month before the month in which the application is filed; or

(iv) The first day of the sixth month after the month of disability onset.

(5) *"Child in Care" annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section; or

(ii) The first day of the sixth month before the month in which the application is filed.

§ 218.17 When a remarried widow(er) annuity begins.

(a) A remarried widow(er) annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law.

(b) *Earliest date permitted by law*—(1) *General rules.* The earliest date permitted by law is the later of—

(i) The first day of the month in which the employee dies; or

(ii) The first day of the month in which the claimant becomes eligible for a remarried widow(er) annuity as shown in Part 216 of this chapter.

(2) *Full-age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant attains age 65; or

(iii) The first day of the sixth month before the month in which the application is filed.

(3) *Reduced-age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant attains age 60; or

(iii) The first day of the month in which the application is filed or the first day of the month preceding the month in which the application is filed if the employee died in that preceding month.

(4) *Disability annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant attains age 50;

(iii) The first day of the twelfth month before the month in which the application is filed; or

(iv) The first day of the sixth month after the month of disability onset.

(5) *"Child in care" annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section; or

(ii) The first day of the sixth month before the month in which the application is filed.

Subpart C—How Work and Special Payments Affect an Employee, Spouse, or Divorced Spouse Annuity Beginning Date

§ 218.25 Introduction.

The rules in this subpart apply only to an employee, spouse, divorced spouse, and supplemental annuity. They do not apply to any type of survivor annuity.

§ 218.26 Work started after annuity beginning date.

(a) *General.* An annuity can begin only after an employee, spouse, or divorced spouse stops any work for a railroad employer. However, if the employee, spouse or divorced spouse starts work after an "intent to retire" is established, that work will have no effect on the annuity beginning date. However, an annuity cannot be paid for any month the employee, spouse or divorced spouse returns to work for a railroad employer.

(b) *Intent to retire*—(1) *Disability annuity.* An "intent to retire" is established to pay a disability annuity when—

(i) The employee files for a disability annuity; or

(ii) The employee gives up all rights to return to work for a railroad employee before starting any new work.

(2) *Age annuity.* An "intent to retire" is established to pay an employee age, spouse or divorced spouse annuity when the employee, spouse or divorced spouse gives up all rights to return to work for a railroad employer before starting any new work.

§ 218.27 Vacation pay.

(a) *From railroad employer.* Vacation pay may be credited to the vacation period due the employee or to the last day of actual work for the railroad employer. If the vacation pay is credited to the vacation period, the annuity can begin no earlier than the day after the vacation period ends. (Part 211 of this chapter discusses how vacation pay is credited as compensation.)

(b) *From non-railroad employer.* Vacation pay will not affect the annuity beginning date.

§ 218.28 Sick pay.

(a) *From railroad employer.* If the employee is carried on the payroll while sick, the annuity can begin no earlier than the day after the last day of sick pay. However, sick pay is not considered compensation and does not affect the annuity beginning date if it is a payment described in § 211.2(c)(6) of these regulations.

(b) *From non-railroad employer.* Sick pay will not affect the annuity beginning date.

§ 218.29 Pay for time lost.

Pay for time lost because of personal injury must be credited to an actual period of time lost. The annuity can begin no earlier than the day after that period ends.

§ 218.30 Separation, displacement or dismissal allowance.

(a) *General.* When an employee receives a separation, displacement or dismissal allowance from a railroad employer, the annuity beginning date depends on whether the payments are a separation allowance as described in paragraph (b) of this section, or monthly compensation payments as described in paragraph (c) of this section. (Part 211 of this chapter discusses how a separation, displacement or dismissal alowance is credited as compensation.)

(b) *Separation allowance.* When an employee accepts a separation allowance, the employee gives up his or her job rights. Regardless of whether a separation allowance is paid in a lump sum or in installments, the annuity can begin as early as the day after the day the separation allowance is credited.

(c) *Monthly compensation payments.* An employee who receives monthly compensation payments keeps his or her job rights while the payments are being made. The annuity cannot begin until after the end of the period for which payments are made.

Subpart D—When an Annuity Ends

§ 218.35 When an employee age annuity ends.

An employee annuity based on age ends with the last day of the month before the month in which the employee dies.

§ 218.36 When an employee disability annuity ends.

(a) *Ending date.* An employee annuity based on disability ends with the earliest of—

(1) The last day of the month before the month in which the employee dies;

(2) The last day of the second month following the month in which the employee's disability ends; or

(3) The last day of the month before the month in which the employee attains age 65 (the disability annuity is changed to an age annuity).

(b) *Effect of ended disability annuity on eligibility for a later annuity.* The ending of a disability annuity will not affect an employee's rights to receive any annuity to which he or she later becomes entitled. When a disability annuity ends before an employee attains age 65, any additional railroad service the employee has after the disability annuity ends can be credited as if no annuity had previously been paid.

§ 218.37 When a supplemental annuity ends.

A supplemental annuity ends when the employee age or disability annuity ends.

§ 218.38 When a spouse annuity ends.

(a) *General rules.* A spouse annuity ends with the earliest of—

(1) The last day of the month before the month in which the spouse dies;

(2) The last day of the month before the month in which the employee dies or the employee's entitlement to an annuity ends;

(3) The last day of the month before the month in which the spouse's marriage to the empoyee is ended by absolute divorce, annulment, or other judicial action (the spouse may be entitled to a divorced spouse annuity as explained in Part 216 of this chapter); or

(4) The month shown in paragraphs (b) and (d) of this section.

(b) *Annuity entitlement based on "child in care."* A spouse annuity based on having a "child in care" ends as shown in this paragraph if he or she is not also eligible for a full-age spouse annuity as explained in Part 216 of this chapter. However, see also paragraph (c) of this section. If the spouse is eligible for a full-age spouse annuity when he or she is no longer entitled on the basis of a child, his or her annuity is changed to a spouse annuity based on age. A spouse annuity based on having a "child in care" ends with the earliest of—

(1) The last day of the month shown in paragraphs (a) and (d) of this section;

(2) The last day of the month before the month in which the child is no longer in the spouse's care, as explained in Part 216 of this chapter;

(3) The last day of the month before the month in which the child attains age 18 and is not disabled;

(4) The last day of the month before the month in which the child marries;

(5) The last day of the month before the month in which the child dies; or

(6) The last day of the second month after the month in which the child's disability ends, if the child is over age 18.

(c) *Tier I benefit entitlement based on "child in care."* The tier I benefit of a spouse entitled because he or she has a "child in care" and is not otherwise entitled to a tier I benefit based on age, ends with the earliest of—

(1) The last day of the month shown in paragraphs (a) and (d) of this section;

(2) The last day of the month before the month in which the child is no longer in the spouse's care as explained in Part 216 of this chapter;

(3) The last day of the month before the month in which the child attains age 16 and is not disabled;

(4) The last day of the month before the month in which the child marries;

(5) The last day of the month before the month in which the child dies; or

(6) The last day of the second month after the month in which the child's disability ends, if the child is over age 16.

(d) *Entitlement based on deemed marriage.* If the spouse entitlement is based on a deemed valid marriage, the annuity ends with the earliest of—

(1) The last day of the month shown in paragraphs (a) and (b) of this section;

(2) The last day of the month before the month in which the deemed spouse enters a valid marriage with someone other than the employee; or

(3) The last day of the month before the month in which the Board approves an award to someone else as the employee's legal spouse.

§ 218.39 When a divorced spouse annuity ends.

A divorced spouse annuity ends with the earliest of the last day of the month before the month in which the—

(a) Divorced spouse dies;

(b) Employee's entitlement to an annuity ends;

(c) Divorced spouse marries;

(d) Employee dies; or

(e) Divorced spouse becomes entitled to a retirement or disability insurance benefit under the Social Security Act based on a primary insurance amount which equals or exceeds the amount of the full divorced spouse annuity before reduction for age.

§ 218.40 When a widow(er) annuity ends.

(a) *Entitlement based on age.* When a widow(er)'s annuity is based on age, the annuity ends with the earliest of the last day of the month before the month in which—

(1) The widow(er) dies;

(2) The widow(er) remarries (the widow(er) may be entitled to benefits as a remarried widow(er) as explained in Part 216 of this chapter);

(3) The widow(er) becomes entitled to another survivor annuity in a larger amount, unless he or she elects to be paid the smaller annuity; or

(4) The Board approves an award to someone else as the employee's legal widow(er) if entitlement is based on a deemed valid marriage.

(b) *Disabled widow(er).* If entitlement is based on the widow(er)'s disability, the annuity ends with the earliest of—

(1) The last day of the month shown in paragraph (a) of this section;

(2) The last day of the second month following the month in which the disability ends; or

(3) The last day of the month before the month in which the widow(er) attains age 60 (the disability annuitant then becomes entitled to an annuity based upon age).

(c) *Annuity entitlement based on "child in care."* A widow(er) annuity based on having a "child in care" ends as shown in this paragraph if he or she is not eligible for a widow(er) annuity based on age as explained in Part 216 of this chapter. However, see also paragraph (d) of this section. If the widow(er) is eligible for a widow(er) annuity based on age, when he or she is no longer entitled on the basis of having a "child in care," his or her annuity is changed to a widow(er) annuity based on age. A widow(er) annuity based on having a "child in care" ends with the earliest of—

(1) The last day of the month shown in paragraph (a) of this section;

(2) The last day of the month before the month in which the child is no longer in the widow(er)'s care as explained in Part 216 of this chapter (in this case entitlement to the annuity does not terminate, but no annuity is payable while the child is no longer in care);

(3) The last day of the month before the month in which the child attains age 18 and is not disabled;

(4) The last day of the month before the month in which the widow(er) attains age 65 (the "child in care" annuity is changed to an age annuity);

(5) The last day of the month before the month in which the child marries;

(6) The last day of the month before the month in which the child dies; or

(7) The last day of the second month after the month in which the child's disability ends, if the child is over age 18.

(d) *Tier I benefit entitlement based on child in care.* The tier I benefit of a widow(er), entitled because he or she has a "child in care" and is not otherwise entitled to a tier I benefit based on age, ends with the earliest of—

(1) The last day of the month shown in paragraph (a) of this section;

(2) The last day of the month before the month in which the child is no longer in the widow(er)'s care as explained in Part 216 of this chapter;

(3) The last day of the month before the month in which the child attains age 16 and is not disabled;

(4) The last day of the month before the month in which the child marries;

(5) The last day of the month before the month in which the child dies; or

(6) The last day of the second month after the month in which the child's disability ends, if the child is over age 16.

§ 218.41 When a child annuity ends.

A child annuity ends with the earliest of—

(a) The last day of the month before the month in which the child marries;

(b) The last day of the month before the month in which the child dies;

(c) The last day of the month before the month in which the child attains age 18 if the child is not eligible for an annuity as a disabled or student child;

(d) The last day of the last month in which the child is considered a full-time student, as defined in Part 216 of this chapter, if the child is a full-time student age 18 through 19; or

(e) The last day of the second month after the month in which the child's disability ends, if the child is over age 18.

§ 218.42 When a parent annuity ends.

(a) *Tier I.* The tier I benefit of a parent annuity ends with the earliest of the last day of the month before the month in which the parent—

(1) Dies;

(2) Becomes entitled to an old age benefit under the Social Security Act that is equal to or larger than the tier I benefit of the parent annuity before any reduction for the family maximum, unless he or she is also entitled to a tier II benefit (reduction for the family maximum is discussed in Part 228 of this chapter);

(3) Becomes entitled to another survivor annuity in a larger amount, unless he or she elects to be paid the smaller annuity; or

(4) Remarries after the employee's death, unless he or she marries a person who is entitled to Social Security or Railroad Retirement Act benefits as a divorced spouse, widow, widower, mother, father, parent, or disabled child.

(b) *Tier II.* The tier II benefit of a parent annuity ends with the earliest of the last day of the month before the month in which the parent—

(1) Dies;

(2) Remarries after the employee's death; or

(3) Becomes entitled to another survivor annuity in a larger amount, unless he or she elects to be paid the smaller annuity.

§ 218.43 When a surviving divorced spouse annuity ends.

(a) *Entitlement based on age.* When the surviving divorced spouse annuity is based on age, the annuity ends with the earliest of the last day of the month before the month in which the surviving divorced spouse—

(1) Dies;

(2) Becomes entitled to an old age benefit under the Social Security Act that is equal to or larger than the amount of the full surviving divorced spouse annuity before reduction for age; or

(3) Becomes entitled to a spouse or survivor annuity in a larger amount, unless he or she elects to be paid the smaller annuity.

(b) *Entitlement based on disability.* When the surviving divorced spouse annuity is based on disability, the annuity ends with the earliest of—

(1) The last day of the month shown in paragraph (a) of this section;

(2) The last day of the second month following the month in which the disability ends; or

(3) The last day of the month before the month in which the surviving divorced spouse attains age 65 (the disability annuitant then becomes entitled based upon age).

(c) *Entitlement based on "child in care."* When the surviving divorced spouse annuity is based on having a "child in care" as explained in Part 216 of this chapter, the annuity ends as shown in this paragraph unless he or she is at least age 60 and was married to the employee for at least 10 years. In that case, the surviving divorced spouse annuity based on having a child in care is changed to an annuity based on age. If the surviving divorced spouse is not entitled to an annuity based on age, the surviving divorced spouse annuity based on "child in care" ends with the earliest of—

(1) The last day of the month shown in paragraph (a) of this section;

(2) The last day of the month before the month in which the child is no longer in the surviving divorced spouse's care, as explained in Part 216 of this chapter (in this case entitlement to the annuity does not terminate, but no annuity is payable while the child is no longer in care);

(3) The last day of the month before the month in which the child attains age 16, unless the child is disabled;

(4) The last day of the month before the month in which the surviving divorced spouse remarries unless the marriage is to an individual entitled to a retirement, disability, widow(er)'s, father's/mother's, parent's or child's disability benefit under the Railroad Retirement Act or Social Security Act;

(5) The last day of the second month after the month in which the child's disability ends, if the child is over age 16; or

(6) The last day of the month before the month in which the surviving divorced spouse attains age 65 (the annuitant then becomes entitled to an annuity based upon age).

§ 218.44 When a remarried widow(er) annuity ends.

(a) *Entitlement based on age.* When the remarried widow(er) annuity is based on age, the annuity ends with the earliest of the last day of the month before the month in which the remarried widow(er)—

(1) Dies;

(2) Becomes entitled to an old age benefit under the Social Security Act that is equal to or larger than the amount of the full remarried widow(er) annuity before reduction for age or the family maximum (see Part 228 of this chapter); or

(3) Becomes entitled to a spouse or survivor annuity in a larger amount, unless he or she elects to be paid the smaller annuity.

(b) *Entitlement based on disability.* When the remarried widow(er) annuity is based on disability, the annuity ends with the earliest of—

(1) The last day of the month shown in paragraph (a) of this section;

(2) The last day of the second month following the month in which the disability ends; or

(3) The last day of the month before the month in which the remarried widow(er) attains age 65 (the disability annuitant then becomes entitled to an annuity based upon age).

(c) *Entitlement based on "child in care."* When the remarried widow(er) annuity is based on having a "child in care," as explained in Part 216 of this chapter, the annuity ends as shown in this paragraph unless the remarried widow(er) is at least age 60. In that case, the remarried widow(er) annuity based on having a "child in care" is changed to an annuity based on age. If the remarried widow(er) is not entitled to an annuity based on age, the remarried widow(er) annuity based on having a "child in care" ends with the earliest of—

(1) The last day of the month shown in paragraph (a) of this section;

(2) The last day of the month before the month in which the child is no longer in the remarried widow(er)'s care, as explained in Part 216 of this chapter (in this case entitlement to the annuity does not terminate but no annuity is payable while the child is no longer in care);

(3) The last day of the month before the month in which the child attains age 16, unless the child is disabled;

(4) The last day of the month before the month in which the remarried widow(er) remarries unless the marriage is to an individual entitled to a retirement, disability, widow(er)'s, father's/mother's, parent's or child's disability benefit under the Railroad Retirement Act or Social Security Act;

(5) The last day of the second month after the month in which the child's disability ends, if the child is over age 16; or

(6) The last day of the month before the month in which the remarried widow attains age 65 (the annuitant then becomes entitled to an annuity based upon age).

Dated: July 14, 1989.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89-17235 Filed 7-21-89; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 88F-0315]

Indirect Food Additives; Adhesives and Components of Coatings

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of siloxanes and silicones, dimethyl, 3-hydroxypropyl group-terminated, diesters with poly(2-oxepanone), diacetates as components of articles for use in contact with food. This action is in response to a petition filed by BYK Chemie GmbH.

DATES: Effective July 24, 1989, written objections and requests for a hearing by August 23, 1989.

ADDRESSES: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 20, 1988 (53 FR 41241), FDA announced that a food additive petition (FAP 8B4103) had been filed by BYK Chemie GmbH, Abelstrasse 14, D-4230 Wesel, Federal Republic of Germany, proposing that § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) be amended to provide for the safe use of *alpha, omega*-bis(3-hydroxypropyl)dimethylpolysiloxane reaction product with *epsilon*-caprolactone, acetylated as components of articles for use in contact with food.

FDA has evaluated data in the petition and other relevant material and find it would be more appropriate to name the additive "siloxanes and silicones, dimethyl, 3-hydroxypropyl group-terminated, diesters with poly(2-oxepanone), diacetates." Based on its review of the available evidence, the agency concludes that the proposed food additive use is safe. Therefore, the agency is amending paragraph (b)(3)(xxxiii) of § 175.300 to provide for the safe use of the proposed food additive.

In accordance with § 171.1(h) (21 CFR 171.(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before August 23, 1989 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR Part 175 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 175.300 is amended in paragraph (b)(3)(xxxiii) by

alphabetically adding a new entry to read as follows:

§ 175.300 Resinous and polymeric coatings.

* * * * *

(b) * * *

(3) * * *

(xxxiii) * * *

Siloxanes and silicones, dimethyl, 3-hydroxypropyl group-terminated, diesters with poly(2-oxepanone), diacetates (CAS Reg. No. 116810-47-0) at a level not to exceed 0.025 weight percent of the finished coating having no greater than a 0.5 mil thickness for use as a component of polyester, epoxy, and acrylic coatings complying with paragraphs (b)(3)(vii), (viii), and (xx) of this section, respectively.

* * * * *

Dated: July 17, 1989

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-17286 Filed 7-21-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R, Amdt. 23]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Rebasing of Residential Treatment Center (RTC) Rates and Capped Amount

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule will revise DoD 6010.8-R (32 CFR 199) which implements the Civilian Health and Medical Program of the Uniformed Services. The rule establishes the methodology and procedures for rebasing Residential Treatment Center (RTC) rates implemented on December 1, 1988. The new rates will reflect increases in RTC costs attributable to the treatment of more severely disturbed children. The new rates will assure continued high quality care for CHAMPUS beneficiaries.

EFFECTIVE DATE: December 1, 1988.

FOR FURTHER INFORMATION CONTACT David E. Bennett, Office of Program Development, OCHAMPUS, Aurora, Colorado 80045-6900, telephone (303)-361-3537.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title. 32 CFR Part 199 (DoD 6010.8-R) was reissued in the **Federal Register** on July 1, 1986 (51 FR 24008).

In FR Doc. 89-6934 appearing in the **Federal Register** on March 23, 1989 (54 FR 11966), the Office of the Secretary of Defense published for public comment a proposed amendment establishing the methodology and procedures for rebasing of the prospective all-inclusive RTC rates which went into effect on December 1, 1988.

The new reimbursement system was to go into effect on September 1, 1988; however, on August 10, 1988, a lawsuit was filed in the U.S. District Court for the District of Colorado seeking to enjoin implementation of the new reimbursement system. Pursuant to a court order, OCHAMPUS met with the plaintiffs' attorney and representatives of the National Association of Psychiatric Treatment Centers for Children (NAPTCC) in an attempt to resolve without judicial intervention those conflicts that were still existing over the methodology. In order to accommodate the negotiation process and to avoid preliminary injunction, the effective date of the RTC final rule was first postponed to October 1, 1988 (53 FR 33808 (September 1, 1988)) and later to December 1, 1988 (53 FR 38947 (October 4, 1988)).

Since August of 1988, OCHAMPUS staff and representatives from NAPTCC have engaged in serious discussions in person, by telephone, and by correspondence to resolve those major areas of dispute. Under a stipulation settlement both parties agreed to the following terms:

(1) The terms of the final rule published August 1, 1988, and revised October 4, 1988, shall become effective December 1, 1988.

(2) In going through this current rulemaking the rates determined under the final rule will be applied retroactively, as if the Rule were effective December 1, 1988.

(3) NAPTCC agreed that OCHAMPUS had the legal authority to promulgate the methodology in the August 1, 1988, rule establishing reimbursement for RTCs.

(4) NAPTCC agreed not to challenge OCHAMPUS' legal authority in establishing: (a) An overall cap on RTC per diem reimbursement; (b) a rate high enough to cover one-third of an RTC's total patient days during the base period; (c) an index based on the (CPI-U) for medical care; (d) an all-inclusive rate for RTCs; (e) provisions restricting the status of CHAMPUS authorized independent providers so that they may not directly provide and bill for RTC care; and (f) provisions restricting the delivery of RTC care solely to CHAMPUS authorized RTCs.

(5) OCHAMPUS agreed to review additional data submitted by a cross-section of RTCs in support of "rebasing" the base period used in determining individual RTC reimbursement rates and the overall RTC limit on per diem charges (capped amount).

(6) Upon reaching a settlement both parties agreed to submit a joint motion to the 10th Circuit Court of Appeals requesting that it vacate the District Court's decision in *NAPTCC* v. *Weinberger*.

On November 3, 1988, NAPTCC submitted RTC cost and staffing data collected by the National Association of Private Psychiatric Hospitals (NAPPH). Upon analysis, the data was found to be inadequate to support NAPTCC's contention that the base period used by OCHAMPUS was not appropriate due to subsequent changes in the severity of the RTC patient case mix. The data was insufficient and riddled with inconsistencies. Since neither the accuracy nor consistency of the data could be verified, it was CHAMPUS' decision not to rebase.

On November 22, 1988, OCHAMPUS staff met with representatives of NAPTCC and their attorney to discuss OCHAMPUS' decision that the data provided by NAPTCC was inadequate to support a change in the base period for computation of RTC reimbursement rates. OCHAMPUS officials provided NAPTCC one final opportunity to submit additional data for consideration. NAPTCC agreed to resolve the inconsistencies in the previous data submission and to provide additional reimbursement information on 6 out of 12 OCHAMPUS designated RTCs.

The submitted data was found, in general, to be representative of a substantial portion of the CHAMPUS RTC population and showed significant increases in core professional staff, in salary costs for those personnel, and in operating costs overall. Although a majority of these cost increases could be accounted for in the update factor applied by OCHAMPUS to the original base period data, it was decided to proceed with the rulemaking to "rebase" the RTC individual rates and payment cap.

Terms of the final rule published in the August 1, 1988, **Federal Register** (53 FR 28873) went into effect on December 1, 1988, with the understanding that OCHAMPUS would proceed with the proposed rulemaking to revise the final rule to establish a methodology and procedures for rebasing individual RTC rates and the overall per diem, all-inclusive, cap. In other words, the RTCs agreed to the rates established under the August 1, 1988, rule with the agency's assurance that their rates would be rebased and applied retroactively to December 1, 1988. OCHAMPUS elected to use the base period of July 1, 1987, through June 30, 1988, since it was: (1) representative of 1988 charging practices; and (2) prior to publication of the RTC final rule (August 1, 1988).

The 10th Circuit Court of Appeals, in an order dated December 16, 1988, remanded the appeal to the District Court with instructions to vacate the judgment appealed. On December 21, 1988, the judgment was vacated by the District Court. On December 14, 1988, the 1988 lawsuit was dismissed with prejudice.

The agency's decision to rebase required the development of a detailed collection instrument in order to obtain the individual RTC data for the revised base period. The data collected from CHAMPUS Form 771 will be used in calculating new prospective all-inclusive per diem rates and capped amount for CHAMPUS authorized RTCs. The capped per diem amount will be set at a specific percentile of all established CHAMPUS rates, weighted by the total CHAMPUS days provided at each rate during the base period (July 1, 1987 through June 30, 1988). The data collection form, along with a detailed justification of its use, was coordinated through appropriate Department of Defense (DoD) components and submitted to the Office of Management and Budget (OMB) on March 23, 1989, for review and approval. OMB approval is expected to coincide with publication of this rule.

Review of Comments

As a result of the publication of the proposed rule, the following comments were received from interested RTCs, associations, and agencies.

1. One commentor felt that the proposed changes would directly penalize RTCs whose CHAMPUS rates were below those charged to other third-party payors. The methodology did not provide an opportunity to adjust CHAMPUS reimbursement to a level equitable with other payors.

The prospective reimbursement system permits OCHAMPUS to determine a reasonable market value for RTC services based upon the RTC charges during the revised base period (July 1, 1987 through June 30, 1988), and to limit reimbursement accordingly—to limit each RTC,s reimbursement rate based upon its base period data, and impose a single per diem, per patient cap on all RTCs. The RTC industry has become keenly aware of the CHAMPUS prospective all-inclusive per diem system through extensive litigation. This insight has come about through proposed and final rulemaking, numerous correspondence and meetings with representatives from national associations and individual RTCs. The industry has had more than 4 years to analyze and adjust for our RTC reinbursement system. During the revised base period, RTCs have been allowed to set their own CHAMPUS per diem rates and be reimbursed for unlimited professional fees and other ancillary charges. The failure of an RTC to set its CHAMPUS rate at a level equitable with other payors is solely a management decision and not a result of the methodology or procedures used in rebasing RTC rates.

2. Another commentor felt that since the rebased rates will apply to services provided during 1989, an update factor should be applied to the all-inclusive per diem calculations obtained from the use of the base period of July 1, 1987 through June 30, 1988.

It is the agency's intent to update RTC rates on October 1 of each year using the annual Consumer Price Index—Urban Wage Earners for medical care (CPI-U (medical care)) for the reporting period of July through June. This reporting period is being used due to the 2- to 3-month lag in publication of CPI-U statistics. However, because of the delay in implementation of the prospective reimbursement system and the fact that RTCs cannot recoup for increases in cost-sharing resulting from retroactive adjustments, the agency will update the rebased rates on a one-time basis, for the 5-month period ending November 30, 1988 (July 1, 1988 through November 30, 1988). The rates will be updated again on October 1, 1989, by a prorated CPI-U for the remaining 7 months ending July 1, 1989.

3. One commentor felt that the data collection terminology was misleading and reflected a fundamental misunderstanding of the "charging practices" of RTCs. It was pointed out that payment received/allowed from third-party payors may be significantly different than the amounts charged.

This fact has been recognized and elaborated on in our previous data collection requests. Data element requirements were also discussed with NAPTCC and individual RTCs over the 4 months of negotiation. However, to eliminate any confusion or misunderstanding, we have clarified our data collection requirements in the data collection instrument/form and final rule. The following is an excerpt from the instructional page of the data collection form. "Item 9: For the period July 1, 1987, through June 30, 1988, provide the name, mailing address, and telephone number of *all third-party payors* for whom a rate was established and what the accepted rate was, and the number of patient days actually provided at that rate * * * The accepted rate is the rate that is actually accepted from a third-party payor and not an arbitrary amount billed by the RTC; for example, an RTC has a standard charge of $300/day; however, it gives one of its preferred payors a 20 percent discount ($240/day). The accepted rate for reporting purposes is the $240 amount."

4. One commentor stated that it was impossible to comment on the data collection approach without having an opportunity to review the data collection material and OCHAMPUS' planned methods to analyze the data to set all-inclusive per diem rates.

The methodology and procedures for collection and calculation of the all-inclusive per diem rates and capped amount have appeared in: (1) Previous participation agreements; (2) data collection instructions; (3) correspondence and meetings with NAPTCC, NAPPH, individual professional providers and RTCs; (4) **Federal Register** amendments and notices; and (5) litigation documents and proceedings. The data request for rebasing is essentially the same as that which appeared back in April of 1986, with the exception of the base period. The OMB-approved data collection instrument simply provides a format for arraying the data. This should reduce inconsistency in data submission.

The following data collection issues were discussed with representatives from NAPTCC subsequent to the filing of their lawsuit: (1) Data elements required for rebasing; (2) availability of data requested; (3) time frames for publishing proposed and final rules necessary for rebasing; (4) time frames for receiving OMB approval for the collection form; and (5) frequency of collection. Upon entering into the settlement agreement, NAPTCC was aware of the data collection requirements necessary for rebasing. Through these negotiations, RTCs have become keenly aware of the data collection requirements of our prospective all-inclusive per diem system. Many of them have already collected and computed their rates in anticipation of the settlement agreement.

5. One commentor stated that RTCs with open staff models have no knowledge of the charging practices of, or amounts paid to, these practitioners under CHAMPUS. The commentor questioned how the RTC could determine the professional component amount for an accurate all-inclusive per diem rate.

The data collection instrument will request RTCs to identify all separately billed charges, whether performed by employees and billed directly by the RTC, or performed and billed by independent professional providers. This should include the charged amounts and frequency with which they occurred. The frequency of these services must be based on a random sampling of patient clinical records representing at least 20 percent of total patient days during the base period. Examples of charges to be included are: (1) Individual and group psychotherapy; (2) family therapy (unless specifically exempted as part of the treatment plan); and (3) routine medical management services. Independent professional provider cooperation is anticipated because of their vested interest in the accuracy of this data. If independent professionals are reluctant to share this information with the RTCs, area prevailings may be obtained for each specialty. These prevailings may be used in calculating the professional/ancillary components. However, it is somewhat naive to believe that RTC staff are not privy to professional billing information within their own mental health community.

Upon entering into the settlement agreement, NAPTCC was aware of the data collection requirements for rebasing under the CHAMPUS all-inclusive per diem system. NAPTCC represents over 50 percent of CHAMPUS patient days. Since CHAMPUS RTCs have been operating under the all-inclusive system for the last four and one-half months and have previously submitted the data in question, they should be capable of determining the professional component amount for an accurate all-inclusive per diem rate.

6. Another commentor felt that the participation of an RTC in a demonstration project should not affect its entitlement to rebase its rates as a CHAMPUS participating provider.

The participation of an RTC as a contracted provider in a demonstration project will not affect its entitlement to rebase its rates as a CHAMPUS participating provider. Contracted RTCs will be subject to the same data requirements and reimbursement computations as the other RTCs in the program. The RTCs will be requested to identify all payors for whom a rate was established and accepted, what the rate was, and the number of patient days actually provided at the rate. If the rates did not include all charges, the RTCs will be requested to identify the charges not included.

An RTC rate accepted or contracted for by an RTC in a demonstration area will be included in the base period. For example, during the base period from July 1, 1987, to June 30, 1988, Sentara First Step was providing mental health care in the Virginia tidewater area (Norfolk CPA demonstration) to CHAMPUS beneficiaries. Sentara First Step was a private corporation operating pursuant to a fixed price procurement contract awarded pursuant to the Federal Acquisition Regulation (FAR). Payments accepted by an RTC from Sentara First Step for RTC care will be considered, just like payments from any other third party payor. Sentara First Step was a separate legal entity and was not operating as an agent of the United States. Since April 1, 1989, the Government's contractor for the Norfolk CPA is FHC Options. Payments by FHC Options to RTCs will also be considered when those payments are part of an RTC's base period.

The RTCs will be required to sign a new participation agreement incorporating the rebased rate. However, when an RTC elects to become a contracted provider under the terms of the demonstration, the actual negotiated (demonstration) rate may be different from the rate indicated in the CHAMPUS participation agreement.

Contracted providers under the demonstration project are not subject to the rates and conditions set forth under the new reimbursement system except as a ceiling for beneficiary cost-sharing. However, the CHAMPUS participating rate will be calculated, maintained, and updated for the contracted RTCs in the demonstration area. The rates will be available upon termination of the demonstration project or for care not affected by the demonstration.

7. Another commentor stated that if an RTC is a contract provider under a demonstration project, and negotiates a lower rate than its CHAMPUS participating rate, such lower rate should not be used to subsequently decrease the CHAMPUS participating rates.

The decision to become a contract provider under a CHAMPUS demonstration project and to negotiate a rate lower than the CHAMPUS participation rate is solely an RTC management decision. The decision presumably was based on sound economic/financial considerations. These considerations could include: (1) The facility's actual cost of operation; (2) the facility's desired rate of return (profit margin); and (3) consideration of market share, patient volume and impact on its rate structure. Negotiating a rate with a CHAMPUS demonstration contractor (e.g., Sentara First Step or FHC Options) is no different than providing a discount to private third-party payors or negotiating a rate with local or state agencies. Thus, the negotiated demonstration rate will be used in establishing the CHAMPUS participating rate. The 33⅓ percent (most favored) approach establishes a rate high enough to cover a reasonable portion of an RTC's total business based upon total patient days and charges to all payors. This allows the facility a buffer for artificially set state rates representing an insignificant amount of the provider's business. CHAMPUS has no funds to subsidize lower rates paid by other payors. Nor does CHAMPUS wish to pay higher rates simply because of a more liberal payment policy; that is, paying whatever is charged.

8. One commentor urged OCHAMPUS to calculate a capped per diem rate based upon the use of an 80th percentile figure since it has been consistently used by OCHAMPUS in rate setting for hospitals, physicians and previously proposed RTC payment methodologies.

During the negotiation process with NAPTCC and its legal counsel, OCHAMPUS agreed to review data in support of their contention that the base period used was not appropriate due to subsequent changes in the severity of patient case mix. However, the agency made it clear that even if the decision were to rebase, it would maintain the option of adjusting the percentile used in calculating the capped per diem amount if it was found that one or several of the facilities were skewing the charge data. This was appropriate given the fact that RTCs have had more than 4 years to analyze and adjust to our new prospective payment system. During the revised base period, RTCs have been allowed to set their own CHAMPUS per diem rates and be reimbursed for unlimited professional fees and other ancillary charges. Upon preliminary analysis of internal payment data, it appears that a single RTC chain would have a substantial impact on establishment of the capped amount if set at the 80th percentile. However, this is assuming that the CHAMPUS rate was always the most favored rate and that all professional services were captured in the payment reports. The agency will be unable to make a final decision in this matter until it has had the opportunity to collect and analyze the requested RTC data from July 1, 1987 through June 30, 1988.

Summary of Regulation Changes

The following procedures and methodology will be used in rebasing individual RTC rates:

1. *RTCs Participating in CHAMPUS During Base Period.* The per diem rate for an RTC participating in CHAMPUS during the base period of July 1, 1987, through June 30, 1988, will be based on the actual charging practices during that 12-month period. The individual RTC rate will be the lower of either the CHAMPUS rate in effect on June 30, 1988, or the rate high enough to cover at least one-third of the total patient days of care provided by the RTC during the 12 months ending July 1, 1988. Under either methodology, the rate will be adjusted by an appropriate CPI–U inflation factor for the 5-month period of July 1, 1988 through November 30, 1988 and subject to a maximum cap.

2. *RTCs New to CHAMPUS After June 30, 1988.* For RTCs new to the CHAMPUS program, one of the following two alternative methods will be used in determining their individual rates:

A. The rates for an RTC which was in operation during the base period (July 1, 1987 through June 30, 1988) will be calculated based on the actual charging practices of the RTC during the 12 months ending July 1, 1988. The individual RTC rate will be the lower of either the CHAMPUS rate in effect on June 30, 1988, or the rate high enough to cover at least one-third of the total patient days of care provided by the RTC during the 12 months ending July 1, 1988. Under either methodology, the rate will be adjusted by an appropriate inflation factor for the 5-month period of July 1, 1988 through November 30, 1988 and subject to a maximum cap.

B. The rates for an RTC which began operation after June 30, 1988, or began operation before July 1, 1988, but had less than 6 months of operation by July 1, 1988, will be based on the actual charging practices during its first 6 to 12 consecutive months, with 6 months being the minimum time in operation for certification under the CHAMPUS program. A period of less than 12 months will be used only when the RTC has been in operation for less than 12 months. Once a full 12 months is available, the rate will be recalculated. The rates would be calculated the same as in A above, except a different base period would be used. If the RTC was in operation prior to December 1, 1988, an appropriate inflation factor would be applied for the period ending November 30, 1988.

3. *Calculation of Capped Per Diem Amount.* During the negotiation process OCHAMPUS made it clear to NAPTCC representatives that the capped percentile might be set lower than the 80th percentile based on evaluation of the new base year data (July 1, 1987 through June 30, 1988). This allows the agency flexibility in determining a reasonable percentile for establishing its maximum daily charge for RTC care. Under the new provision, OCHAMPUS will establish a capped per diem amount not to exceed the 80th percentile of all established CHAMPUS RTC rates nationally, weighted by total CHAMPUS days provided at each rate during the period of July 1, 1987, through June 30, 1988. The percentile used in calculating the capped amount will be based on an analysis of reimbursement information submitted by the RTCs.

Analysis of previous cost and staffing data collected by The National Association of Private Psychiatric Hospitals (NAPPH) indicates that the approximate percent change in cost per patient day for total personnel between the base period (March 1, 1984–February 28, 1985) and fiscal year 1988 was 51 percent. It was NAPTCC's contention that increases in rates were directly attributable to changes in the cost of personnel due to the increased severity of patients treated in RTCs. Since our decision to rebase was made on the above premise, personnel cost increases will weigh heavily in selection of an appropriate percentile for calculating the capped amount.

Although approval of the data collection form is expected to coincide with publication of the final rule, establishment of the percentile used in calculating the capped amount will be delayed. The percentile will be published in the Federal Register as soon as the agency has had the opportunity to collect and analyze the requested RTC data from July 1, 1987 through June 30, 1988.

4. *Update Factors.* It is the agency's intent to update RTC rates on October 1 of each year using the annual Consumer Price Index—Urban Wage Earners for medical care (CPI–U (medical care)) for the reporting period of July through June. This reporting period is being used due to the 2-to-3 month lag in publication of CPI–U statistics. However, because of the delay in implementation of the prospective reimbursement system and the fact that RTCs cannot recoup for increases in cost-sharing resulting from retroactive adjustments, the agency will update the rebased rates on a one-time basis, for the 5-month period ending November 30, 1988 (July 1, 1988 through November 30, 1988). The rates will be updated again on October 1, 1989, for the remaining 7 months ending July 1, 1989.

5. *Data Collection Instrument.* The data collection form, CHAMPUS Form 771, "Reimbursement Information—Psychiatric Residential Treatment Centers Serving Children and Adolescents," is simplistic in design in order to minimize the administrative burden on RTCs. It consists of two major categories of data collection: (1) Institutional per diem rates; and (2) additional ancillary or professional charges not included in the per diem rates. The information should already be maintained by the facility for normal operation. It is anticipated that it should take one person 8 to 10 hours to prepare the data, and an additional 2 to 4 hours if OCHAMPUS should have follow-up inquiries regarding their data submission. The RTCs have been assured that data will be kept in strict confidence and will not be accessible to competitors. The only information accessible to the general public will be the OCHAMPUS all-inclusive rates calculated for each RTC as a result of rebasing.

The agency will be responsible for: (1) Sending out the data collection instrument to all CHAMPUS authorized RTCs; (2) answering all inquiries regarding the data collection; (3) compiling and analyzing the submitted data; (4) following up on missing or incomplete data; (5) calculating the individual prospective all-inclusive per diem rates and capped amount for individual RTCs; and (6) sending out revised RTC participation agreements with the rebased rates. All requested information will be subject to on-site verification by OCHAMPUS or its representative. In accordance with Article 6 of the current CHAMPUS RTC participation agreement, failure to provide all the requested information may result in denial of an application for CHAMPUS certification or termination of a current agreement.

6. *Cost-Sharing Provision.* Dependents of retirees and the U.S. Government will be held harmless for increases in cost-sharing resulting from retroactive increases in RTC per diem rates. This simply means that RTCs will not be able to go back and bill dependents of retirees or the government for increases in cost-sharing resulting from retroactive adjustments. The differential in cost-sharing will be absorbed by the RTCs.

The new rates will: (1) Provide the potential for control over rapidly increasing costs for mental health care

within the Department of Defense; (2) ensure that CHAMPUS beneficiaries are not subject to exaggerated or unjustified costs for RTC care solely because of the CHAMPUS entitlement; (3) provide for a rate of reimbursement for all participating RTCs which reflects a reasonable amount consistent with rates charged by their peers nationally and with reimbursement they are accepting from other third-party payors; and (4) reflect the increases in core professional staff, in salary costs for those personnel, and overall operating costs experienced by RTCs since February of 1985.

Regulatory Flexibility Act

Less than 0.13 percent of CHAMPUS institutional providers and less than 0.04 percent of CHAMPUS individual professional providers will be affected by this amendment. Although several independent professional providers have expressed concerns over the new system and the potential impact on their method of doing business, approximately 98 percent of the currently approved RTCs have indicated that they will continue their participation under the new prospective all-inclusive per diem system. In fact, OCHAMPUS has received a number of requests from new RTCs seeking certification under the program. Since the net impact on both institutional and professional components of RTC care will not be significant, the Secretary certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. It is not, therefore, a "major rule" under Executive Order 12291.

List of Subjects in 32 CFR Part 199

Health insurance, Military personnel, Handicapped.

Accordingly, 32 CFR Part 199, is proposed to be amended as follows:

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.14 is amended by revising paragraphs (f)(1) and (f)(2).

§ 199.14 Provider reimbursement methods.

* * * * *

(f) * * *

(1) The all-inclusive per diem rate for RTCs operating or participating in CHAMPUS during the base period of July 1, 1987, through June 30, 1988, will be the lowest of the following conditions:

(i) The CHAMPUS rate paid to the RTC for all-inclusive services as of June 30, 1988, adjusted by the Consumer Price Index—Urban (CPI–U) for medical care as determined applicable by the Director, OCHAMPUS, or designee; or

(ii) The per diem rate accepted by the RTC from any other agency or organization (public or private) that is high enough to cover one-third of the total patient days during the 12-month period ending June 30, 1988, adjusted by the CPI–U; or

Note: The per diem rate accepted by the RTC from any other agency or organization includes the rates accepted from entities such as Government contractors in CHAMPUS demonstration projects.

(iii) An OCHAMPUS determined capped per diem amount not to exceed the 80th percentile of all established CHAMPUS RTC rates nationally, weighted by total CHAMPUS days provided at each rate during the base period discussed in paragraph (f)(1) of this section.

(2) The all-inclusive per diem rates for RTCs which began operation after June 30, 1988, or began operation before July 1, 1988, but had less than 6 months of operation by June 30, 1988, will be calculated based on the lower of the per diem rate accepted by the RTC that is high enough to cover one-third of the total patient days during its first 6 to 12 consecutive months of operation, or the OCHAMPUS determined capped amount. Rates for RTCs beginning operation prior to July 1, 1988, will be adjusted by an appropriate CPI–U inflation factor for the period ending June 30, 1988. A period of less than 12 months will be used only when the RTC has been in operation for less than 12 months. Once a full 12 months is available, the rate will be recalculated.

* * * * *

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 18, 1989.

[FR Doc. 89–17265 Filed 7–21–89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

34 CFR Part 200

RIN 1810–AA50

Chapter 1 Program in Local Educational Agencies

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends 34 CFR Part 200 to add Office of Management and Budget (OMB) control numbers to certain sections of the regulations. These sections contain information collection requirements approved by OMB. The Secretary takes this action to inform the public that these requirements have been approved.

EFFECTIVE DATE: These regulations are effective July 24, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. James R. Ogura, Chief, Program Policy Branch, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 2043), Washington, DC 20202–6132. Telephone: (202) 732–4701.

SUPPLEMENTARY INFORMATION: On May 19, 1989 final regulations implementing Part A of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended, were published as 34 CFR Part 200 (54 FR 21752–21809). The effective date of certain sections of these regulations was delayed until information collection requirements contained in those sections were approved by OMB under the Paperwork Reduction Act of 1980, as amended. OMB has approved the information collection requirements, and these sections of the regulations will become effective with the other sections of the regulations published on May 19, 1989.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the publication of OMB control numbers is purely technical and does not establish substantive policy. Therefore, the Secretary has determined, under 5 U.S.C. 553(b)(B), that proposed rulemaking is unnecessary and contrary to the public interest.

List of Subjects in 34 CFR Part 200

Administrative practice and procedure, Education of disadvantaged, Elementary and secondary education, Reporting and recordkeeping requirements.

Dated: July 17, 1989.

(Catalog of Federal Domestic Assistance Numbers: 84.010, Chapter 1 Program in Local Education Agencies; 84.012, Chapter 1 Program—State Administration)

Lauro F. Cavazos,

Secretary of Education.

The Secretary amends Part 200 of Title 34 of the Code of Federal Regulations as follows:

PART 200—CHAPTER 1 PROGRAM IN LOCAL EDUCATIONAL AGENCIES

1. The authority citation for Part 200 continues to read as follows:

Authority: 20 U.S.C. 2701–2731, 2821–2838, 2851–2854, 2891–2901, unless otherwise noted.

§§ 200.20, 200.30, 200.36, 200.37, 200.43, and 200.57 [Amended]

2. Sections 200.20, 200.30, 200.36, 200.37, 200.43, and 200.57 are amended by adding "(Approved by the Office of Management and Budget under control number 1810–0504)" following each section.

§§ 200.35, 200.38, 200.80, 200.82, 200.83, 200.84, and 200.87 [Amended]

3. Sections 200.35, 200.38, 200.80, 200.82, 200.83, 200.84, and 200.87 are amended by adding "(Approved by the Office of Management and Budget under control number 1810–0037)" following each section.

§ 200.23 [Amended]

4. Section 200.23 is amended by adding "(Approved by the Office of Management and Budget under control number 1810–0060)" following the section.

[FR Doc. 89–17191 Filed 7–21–89; 8:45 am]

BILLING CODE 4000-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–606; RM–6434]

Radio Broadcasting Services; Eureka, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 288C1 for Channel 288A at Eureka, California, and modifies the Class A permit of Eureka Christian Broadcasting, Inc. for Station KECU(FM), as requested, to specify operation on the higher class channel, thereby providing that community with an additional expanded coverage FM service. See 54 FR 4047, January 27, 1989. Coordinates at the petitioner's specified site for Channel 288C1 at Eureka are 40–43–36 and 123–58–18. With this action, the proceeding is terminated.

EFFECTIVE DATE: September 1, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88–606, adopted June 26, 1989, and released July 18, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 US.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for California, is amended by revising the entry for Eureka, by deleting Channel 288A and adding Channel 288C1.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–17184 filed 7–21–89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88–618; RM–6525]

Radio Broadcasting Services; Redwood Falls, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 249C1 to Redwood Falls, Minnesota, and modifies the license for Station KLGR–FM, Channel 249A, to specify operation on Channel 249C1. This action is taken in response to a petition filed by CD Broadcasting Corporation. The coordinates for Channel 249C1 are 44–32–33 and 95–07–57. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 1, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–618, adopted June 26, 1989, and released July 18, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota is amended by removing Channel 249A and adding Channel 249C1 at Redwood Falls.

Federal Communications Commission

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–17185 Filed 7–21–89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88–617; RM–6493]

Radio Broadcasting Services; Walker, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 256C2 to Walker, Minnesota, and modifies the license of Station KLLR–FM, Channel 257A, to specify operation on Channel 256C2. This action is taken in response to a petition filed by Midland Broadcasting Company, licensee of Station KLLR–FM. Canadian concurrence has been obtained for the allotment of Channel 256C2 at Walker. The coordinates for Channel 256C2 are 47–05–37 and 94–34–47. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 1, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–617, adopted June 26, 1989, and released July 18, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230),

1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota is amended by removing Channel 257A and adding Channel 256C2 at Walker.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-17186 Filed 7-21-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-30; RM-6419]

Radio Broadcasting Services; Floresville and Pearsall, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 231C2 for Channel 232A at Floresville, Texas, and modifies the license of Station KWCB(FM) to specify operation on the higher class channel, at the request of Alfonso Bazan Gonzalez, d/b/a Wilson County Broadcasting Company. *See* 54 FR 8220, February 27, 1989. This document also substitutes Channel 281A for Channel 231A at Pearsall, Texas, in order to accomplish the substitution at Floresville. Mexican concurrence has been obtained for the allotments. A site restriction of 27.9 kilometers (17.4 miles) west of Floresville has been requested for Channel 231C2, at coordinates 29-13-34 and 98-25-55. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 1, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6350.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-30, adopted June 30, 1989, and released July 18, 1989.The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. § 73.202(b), the Table of FM Allotments, is amended under Texas, by removing Channel 232A and adding Channel 231C2 at Floresville; and removing Channel 231A and adding Channel 281A at Pearsall.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-17187 Filed 7-21-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 203, 208, 209, 212, 213, 214, 215, 216, 217, 219, 222, 223, 236, 242, 245, 252, 253, and 271

[Defense Acquisition Circular (DAC) 88-10]

Department of Defense, Federal Acquisition Regulation Supplement; Regulatory and Miscellaneous Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final rules.

SUMMARY: Defense Acquisition Circular (DAC) 88-10 amends the DoD FAR Supplement (DFARS) with respect to inspections and audits under the Anti-Kickback Act; use of DD Form 1155, Order for Supplies or Services; safety provisions; construction and architect-engineer contracts; use of Standard Form (SF) 44 for aviation fuel and oil; sealed bidding; Small Business Competitiveness Demonstration Program; Davis-Bacon Act; Service Contract Act of 1965; providing facilities—determination and findings; and editorial corrections.

EFFECTIVE DATE: September 20, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, Defense Acquisition Regulatory Council, ODASD(P)/DARS, OASD(P&L), c/o OUSD(A)(M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062, telephone (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

The DoD FAR Supplement is codified in Chapter 2 Title 48 of the Code of Federal Regulations.

The October 1, 1988, revision of the CFR is the most recent edition of that title. It reflects amendments to the 1988 edition of the DoD FAR Supplement made by Defense Acquisition Circulars 88-1 through 88-16.

B. Public Comments

DAC 88-10, Items I, II, IV, V, VII, IX, X, and XI

Public comments are not solicited with respect to these revisions since such revisions do not alter the substantive meaning of any coverage in the DFARS having a significant impact on contractors or offerors, or do not have a significant effect beyond agency internal operating procedures.

DAC 88-10, Item III

A proposed rule was published in the **Federal Register** on September 27, 1988 (53 FR 37611), and public comments were solicited. Those public comments were considered in the development of this final rule.

DAC 88-10, Item IV

A proposed rule was published in the **Federal Register** on October 21, 1988 (53 FR 41390), and public comments were solicited. Only one comment was received and that comment concurred with the proposed rule.

DAC 88-10, Item VIII

A proposed rule was published in the **Federal Register** on October 3, 1988 (53 FR 38749), and public comments were requested. Only two comments were received, and they were considered in the development of this final rule.

C. Regulatory Flexibility Act

DAC 88-10, Items I, II, IV, V, IX, X, and XI

These final rules do not constitute a significant revision within the meaning of Pub. L. 98-577, and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected DoD FAR Supplement Subpart will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately. Please cite DAR Case 89-610D in correspondence.

DAC 88-10, Item III

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. because the changes apply to only those small entities who want to contract with the Government to supply hazardous materials (as defined in the latest version of Federal Standard 313). Most small entities affected by the changes will be distributors rather than manufacturers. An Initial Regulatory Flexibility Analysis has not been performed, but comments were invited from small businesses and other interested parties. None were received.

DAC 88-10, Item VI

This final rule does not constitute a significant revision within the meaning of Pub. L. 98-577 as the coverage is simply transferred to the FAR.

DAC 88-10, Item VII

As stated in the joint policy directive (53 FR 52889), the Office of Federal Procurement Policy and the Small Business Administration will prepare the appropriate regulatory flexibility analysis upon completion of the first quarterly review under the program.

DAC 88-10, Item VIII

A full, final regulatory impact and Regulatory Flexibility Analysis was prepared by DOL and a summary was published in the **Federal Register** on April 29, 1983 (48 FR 19541) when DOL published its regulation. DFARS 222.4 is an implementation of the policy and regulation published by DOL. This final rule will not have a significant economic impact on a substantial number of small entities because it merely codifies in the DFARS (48 CFR), for the convenience of contractors and Government contracting personnel, regulations issued by DOL and codified in 29 CFR for which comments were requested and considered. Accordingly, the Regulatory Flexibility Act does not apply to this rule, and comments are not required.

D. Paperwork Reduction Act

DAC 88-10, Items I through VI, VIII, X, and XI

These rules do not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

DAC 88-10, Item VII

The necessary approvals are being obtained by the Office of Federal Procurement Policy and the Small Business Administration.

DAC 88-10, Item IX

The rule does contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq. This rule reduces the burden hours under OMB clearance number 0704-0213 by 243 hours. The clearance request is presently being prepared for OMB approval.

List of Subjects in 48 CFR Parts 203, 208, 209, 212, 213, 214, 215, 216, 217, 219, 222, 223, 236, 242, 245, 252, 253, and 271

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

[Defense Acquisition Circular No. 88-10]

July 20, 1989.

Unless otherwise specified, all DoD FAR Supplement and other directive material contained in this Defense Acquisition Circular is effective September 20, 1989.

Defense Acquisition Circular (DAC) 88-10 amends the DoD Federal Acquisition Regulation Supplement (DFARS) 1988 Edition and prescribes procedures to be followed. The following is a summary of the amendments and procedures.

Item I—Inspections and Audits Under the Anti-Kickback Act (Final Rule)

DFARS 203.502-2(h) is added to identify those organizations authorized by the DoD IG to conduct inspections and audits under the Anti-Kickback Act of 1986.

Item II—Use of DD Form 1155, Order for Supplies or Services (Final Rule)

(a) DFARS 208.705-1 and 216.506(c) are added to clarify the availability of the DD Form 1155 for use as a delivery order form.

(b) DFARS 213.505-2(S-70) is revised to remove the implication that when the DD Form 1155, Order for Supplies or Services, is used as a delivery order form or for procurements governed by parts other than Part 213, it is subject to the requirement to include certain clauses referred to in 213.505-2(S-70).

Item III—Safety Provisions (Final Rule)

New coverage is added to DFARS 209.1, 222.1, Part 223, 236.5, and clauses in 252.223 and 252.236, to implement recent regulations on hazardous material issued by the Occupational Safety and Health Administration (OSHA). The changes (a) add safety programs to DFARS 209.104-1 as an example of an element which may be applicable to responsibility determinations; (b) clarify the role of OSHA in relation to the administration and enforcement of OSHA regulations (222.102-2); (c) revise the requirements for submission of the Material Safety Data Sheets required by 29 CFR 1910.1200; (d) clarify coverage and contractual provisions on radioactive materials notification; (e) add coverage on system safety programs required by DoD Instruction 5000.36; and (f) clarify the accident prevention responsibilities of contractors (236.513, 252.236-7019).

Item IV—Construction and Architect-Engineer Contracts (Final Rule)

The DFARS is revised to make an editorial change regarding cost-plus-fixed-fee contracts for architect-engineer (A-E) services, to update the preparation and distribution of performance evaluation reports for construction and A-E contracts, and raise the dollar threshold for inclusion of a liquidated damages clause in construction contracts.

Item V—Use of Standard Form (SF) 44 for Aviation Fuel and Oil (Final Rule)

DFARS 213.505-3 is revised to allow use of SF 44 up to the dollar threshold at FAR 13.000 for aviation fuel and oil purchases. Unless a specific exception is listed, the normal $2,500 limitation for use of SF 44 remains unchanged.

Item VI—Sealed Bidding (Final Rule)

DFARS 214.270 and 215.470 are deleted because the coverage now appears in the FAR.

Item VII—Small Business Competitiveness Demonstration Program (Final Rule)

This DAC provides further changes to the coverage at DFARS 219.10 to revise the listing of Targeted Industry Categories applicable to the Department of Defense by deleting SIC 5172, Petroleum Products NEC, and by adding SIC Code 3761, Guided Missiles and Space Vehicles.

Item VIII—Davis-Bacon Act (Final Rule)

DFARS Subpart 222.4 is added to provide implementing instructions to contracting officers regarding FAR Subpart 22.4, and a minor change is made to 222.101-1(S-74). The new coverage implements Department of Labor labor standards provisions applicable to the Davis-Bacon Act.

Item IX—Revisions to Subpart 222.10, Service Contract Act of 1965, As Amended (Final Rule)

FAC 84-46 issued new FAR coverage with respect to the Service Contract Act (SCA). This DAC contains revisions to DFARS 222.10 to supplement the FAR.

Item X—Providing Facilities—Determination and Findings (Final Rule)

DFARS 245.302-1 is revised to require a determination to be coordinated with the program or project manager. Associated FAR coverage will appear in FAC 84-51.

Item IX—Revisions to Subpart 222.10, Service Contract Act of 1965, As Amended (Final Rule)

FAC 84-46 issued new FAR coverage with respect to the Service Contract Act (SCA). This DAC contains revisions to DFARS 222.10 to supplement the FAR.

Item X—Providing Facilities—Determination and Findings (Final Rule)

DFARS 245.302-1 is revised to require a determination to be coordinated with the program or project manager. Associated FAR coverage will appear in FAC 84-51.

Item XI—Editorial Corrections (Final Rule)

(a) A number of editorial changes have been made to DFARS 208.470, 208.405, 209.305, 213.204, 217.72 and 219.201. These changes are needed to correct erroneous references and to add a reference to Section 844 of Pub. L. 100-456 at DFARS 219.201.

(b) Other changes are made to correct typographical errors.

Adoption of Amendments

Therefore, the DoD FAR Supplement is amended as set forth below.

1. The authority for 48 CFR Parts 203, 208, 209, 212, 213, 214, 215, 216, 217, 219, 222, 223, 236, 242, 245, 252, 253, and 271 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. Section 203.502-2 is added to read as follows:

203.502-2 General.

(h) The DoD Inspector General has designated Special Agents of the following investigative organizations as representatives for conducting inspections and audits under the Anti-Kickback Act of 1986:

(1) U.S. Army Criminal Investigation Command.

(2) Naval Investigative Service.

(3) Air Force Office of Special Investigations.

(4) Defense Criminal Investigative Service.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

208.405-2 [Amended]

3. Section 208.405-2 is amended by changing the title of paragraph (S-70) to read "Oral orders not to exceed small purchase threshold." in lieu of "Oral orders."

208.470-1 [Amended]

4. Section 208.470-1 is amended by substituting in the first and second sentences of the introductory paragraph and in the first sentence of the paragraph following paragraph (c) the word "section" in lieu of the word "subsection" in all three places.

5. Subpart 208.7 is added to read as follows:

Subpart 208.7—Acquisitions From Blind and Other Severely Handicapped

Sec.
208.705 Procedures.
208.705-1 General.

Subpart 208-7—Acquisitions From Blind and Other Severely Handicapped

208.705 Procedures.

208.705-1 General.

Orders placed with the blind and other severely handicapped in accordance with the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) may be issued on the DD Form 1155.

PART 209—CONTRACTOR QUALIFICATION

6. Section 209.104-1 is added to read as follows:

209.104-1 General standards.

(e) Have the necessary safety programs applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors.

209.305 [Amended]

7. Section 209.305 is amended by removing in the parenthetical phrase at the end of the sentence the word "Subpart".

PART 212—CONTRACT DELIVERY OR PERFORMANCE

212.204 [Amended]

8. Section 212.204 is amended by changing in paragraph (b) the dollar figure to read "$500,000" in lieu of "$25,000" in both places.

PART 213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

213.204 [Amended]

9. Section 213.204 is amended by substituting in the first sentence the words "above the dollar threshold at FAR 13.000" in lieu of the words "over $25,000"; and by substituting at the end of the first sentence of paragraph (b) the words "FAR Part 6" in lieu of the words "Part 206".

10. Section 213.505-2 is amended by revising paragraph (S-70)(1) to read as follows:

213.505-2 Agency order forms in lieu of Optional Forms 347 and 348.

(S-70) * * *

(1) The DD Form 1155, Order for Supplies or Services, is authorized for use in small purchases made pursuant to FAR Part 13 and other simplified purchases made pursuant to FAR Part 13 and this supplement. (For additional restrictions applicable to classified purchases, see 213.507(a)(4).) It is also authorized for use in issuing orders against departmental contracts or from Government agencies outside the Department of Defense (see FAR 8.4, 8.6, 8.7, and 16.5). The DD Form 1155 provides in one document:

* * * * *

213.505-3 [Amended]

11. Section 213.505-3 is amended by substituting in paragraph (b)(1)(i) the words "the small purchase threshold at FAR 13.000" in lieu of the dollar figure "$10,000"; and by substituting in paragraph (b)(1)(ii) the words "the small purchase threshold at FAR 13.000" in lieu of the dollar figure "$25,000".

PART 214—SEALED BIDDING

214.270 [Removed]

12. Section 214.270 is removed.

PART 215—CONTRACTING BY NEGOTIATION

215.470 [Removed]

13. Section 215.470 is removed.

215.811-70 [Amended]

14. Section 215.811-70 is amended by substituting at the end of definition "Contractor" the reference "FAR 31.001" in lieu of the reference "FAR 30.102."

PART 216—TYPES OF CONTRACTS

15. Section 216.506 is added to read as follows:

216.506 Ordering.

(c) Orders placed under indefinite delivery contracts may be issued on the DD Form 1155.

217.7201-1 [Amended]

16. Section 217.7201-1 is amended by substituting in the second and third sentences the reference "Part 227" in lieu of the references "FAR Part 27" and "Part 27".

217.7201-2 [Amended]

17. Section 217.7201-2 is amended by adding in the first sentence of paragraph (b)(2) the word "FAR" before the word "Part"; and by substituting at the end of paragraph (b)(3) the reference "17.4" in lieu of the reference "217.4".

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

219.201 [Amended]

18. Section 219.201 is amended by adding in the first sentence of paragraph (a) a comma after the reference "Pub. L. 99-661"; by adding between the reference "Pub. L. 100-180" and the word "established" the words "and Section 844 of Pub. L. 100-456"; by changing the fiscal years "1987-89" to read "1987-90"; and by changing the reference at the end of the second sentence to read "32.4" in lieu of "232.4".

19. Section 219.1005 is amended by revising paragraph (b) to read as follows:

219.1005 [Amended]

20. Section 219.1005 is amended by adding in paragraph (b) SIC (6) entitled "Guided missiles and Space Vehicles, SIC Code 3761"; by redesignating in paragraph (b) the existing SIC (6), (7), (8), and (9) as (7), (8), (9), and (10); and by removing the existing SIC (10).

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

222.101-1 [Amended]

21. Section 222.101-1 is amended by substituting in the designation "For the DLA" in paragraph (S-74) the designation "DLA-PPR" in lieu of the designation "DLA-PR".

22. Section 222.102-2 is added to read as follows:

222.102-2 Administration.

(a)(S-70) The U.S. Department of Labor is responsible for the administration and enforcement of the Occupational Safety and Health Act. Contractors or contractor employees who inquire concerning applicability or interpretation of Occupational Safety and Health Administration regulations shall be advised that ruling(s) concerning such matters fall within the jurisdiction of the U.S. Department of Labor, and shall be given the address of the appropriate field office of the Occupational Safety and Health Administration of the U.S. Department of Labor.

23. Subpart 222.4 is revised to read as follows:

Subpart 222.4—Labor Standards for Contracts Involving Construction

Sec.
222.403 Statutory and regulatory requirements.
222.403-4 Department of Labor Regulations.
222.404 Davis-Bacon Act wage determinations.
222.404-2 General requirements.
222.404-3 Procedures for requesting wage determinations.
222.404-11 Wage determination appeal.
222.406 Administration and enforcement.
222.406-1 Policy.
222.406-6 Payrolls and statements.
222.406-8 Investigations.
222.406-9 Withholding from or suspension of contract payments.
222.406-10 Disposition of disputes concerning construction contract labor standards enforcement.
222.406-23 Semiannual enforcement reports.
222.407 Contract clauses.

Subpart 222.4—Labor Standards for Contracts Involving Construction

222.403 Statutory and regulatory requirements.

222.403-4 Department of Labor regulations.

If a question arises relating to the application and interpretation of wage determinations (including the classifications therein), the Department concerned should attempt to resolve it with the appropriate office of the Department of Labor. In any case in which resolution of the question by higher authority within the contracting agency is deemed appropriate, such question shall be submitted via appropriate channels to the Departmental Labor Advisor (see 222.101-1(S-74)).

222.404 Davis-Bacon Act wage determinations.

(S-70) Not later than 1 April of each year, each Department shall furnish the Administrator, Wage and Hour Division, with a general outline of its proposed construction program for the coming fiscal year indicating by individual project the anticipated type of construction, the estimated dollar value, and the location in which the work is to be performed (city, town, village, county or other civil subdivision of the state). Individual projects less than $500,000 need not be reported. The report format is contained in Department of Labor All Agency Memo 144, 27 December 1985. The report control number is 1671-DOL-AN. The Department of Labor uses this information to determine where General Wage Determination surveys will be conducted.

222.404-2 General requirements.

(c)(5) Information concerning the proper application of wage rate schedules to the type or types of construction involved, shall be obtained from the appropriate District Commander, Corps of Engineers, for the Army, from the cognizant Naval Facilities Engineering Command Division for the Navy, from the appropriate Regional Industrial Relations Office for the Air Force, and from the appropriate Defense Logistics Agency Region (ATTN: Industrial Labor Relations Office) for the Defense Logistics Agency.

222.404-3 Procedures for requesting wage determinations.

(b) *Requests for Project Wage Determinations.* Requests for project wage determinations shall be initiated and forwarded to the Department of Labor as follows:

(1) *For the Army:* SF 308 shall be initiated by the office responsible for the preparation of specifications or the awarding of contracts, and shall be forwarded in duplicate to the appropriate District Commander. The original SF 308 shall be sent by the District Commander to the Department of Labor.

(2) *For the Navy:* Within the Naval Facilities Engineering Command, requests shall be initiated by the office responsible for the preparation of specifications. The original SF 308 shall be sent to the Department of Labor with a copy of the cognizant Naval Facilities Engineering Command Division Office. Requests relating to contracts of other commands or offices should be processed through the cognizant Naval Facilities Engineering Command Division Office.

(3) *For the Air Force:* Requests shall be initiated by a civil engineering office in cases where it is responsible for preparing the construction specifications, and by the contracting officer administering the contract in cases of subcontracts and facilities. The original SF 308 shall be submitted to the Department of Labor. One copy of the SF 308 shall be forwarded to the appropriate Air Force Regional

Industrial Relations Office and one copy retained in the requesting office's files.

(4) *Defense Logistics Agency:* Requests shall be initiated by the office responsible for the preparation of specifications or award of contracts. The original SF 308 shall be sent to the Department of Labor with a copy to Headquarters, DLA, ATTN: Industrial Labor Relations (DLA-PRS).

(c) *Time for Submission of Requests.* When due to an emergency, a wage determination is required immediately, the requiring activity shall request assistance from the appropriate office listed under 222.404-3(b).

(e) *Review of Wage Determinations.* The requesting office shall inform the appropriate office indicated in 222.404-3(b) of any changes considered to be necessary or appropriate to correct errors in a wage determination.

222.404-11 Wage determination appeals.

A copy of a petition for review filed by the contracting agency shall be sent to the Departmental Labor Advisor (see 222.101-1 (S-74)).

222.406 Administration and enforcement.

222.406-1 Policy.

(a)(5) Training appropriate contract administration, labor relations, inspection, and other labor standards enforcement personnel in their responsibilities.

(a)(6) Periodic review of field enforcement activities to ensure compliance with applicable regulations and instructions.

(b) *Preconstruction Letters and Conferences.*

(S-70) *Preconstruction Letters.* Promptly after award of the contract, the contracting officer shall furnish to the prime contractor a preconstruction letter calling attention to the labor standards requirements contained in the contract which relate to:

(i) Employment of foremen, laborers, mechanics, and others;

(ii) Wages and fringe benefits payments, payrolls and statements;

(iii) Differentiation between subcontractors and suppliers;

(iv) Additional classifications;

(v) Benefits to be realized by contractors and subcontractors in keeping complete work records;

(vi) Penalties and sanctions for violations of labor standards provisions; and

(vii) The provisions of FAR 22.403 which may be of consequence in contract performance. The letter shall state that the labor standards requirements are based on the following statutes and regulations: Davis-Bacon Act, Contract Work Hours and Safety Standards Act, Copeland ("Anti-Kickback") Act, and Parts 3 and 5 of the Secretary of Labor's Regulations (Parts 3 and 5, Subtitle A, Title 29, Code of Federal Regulations). Executive Order 11246 (Equal Employment Opportunity) also may be covered in this letter. Prime contractors shall also be advised to send a copy of the preconstruction letter to each subcontractor.

(S-71) *Preconstruction Conference.* The contracting officer shall confer with the contractor and such subcontractors as the prime contractor designates to emphasize their labor standards obligations under the contract, when the prime contractor has not performed previous Government construction contracts or has experienced difficulty in complying with labor standards requirements on previous contracts, or when for other reasons the contracting officer considers such action warranted. Such conferences should be held prior to the beginning of construction. During the conference, the contracting officer should determine whether the contractor and his subcontractors intend to pay any required fringe benefits in the manner specified in the wage determination or to elect a different method of payment. If the latter is indicated, the contractor shall be advised of the requirements of FAR 22.406-2.

222.406-6 Payrolls and statements.

(a) *Submission.* Contractors who do not use Department of Labor Form WH 347 of equivalent must submit a DD Form 879, Statement of Compliance, with each payroll report.

222.406-8 Investigations.

(a)(S-70) The investigator shall comply with the following:

(i) The contract shall be checked for inclusion of labor standards provisions and the wage determination. The contract file shall be checked for completeness of the following items, if applicable:

(A) List of subcontractors,

(B) Payrolls and payroll statements for the contractor and subcontractors,

(C) Approvals of additional classifications,

(D) Data regarding apprentices and trainees as required by FAR 22.406-4,

(E) Daily inspector's report or other inspection reports,

(F) Employee interview statements, and

(G) Statement and Acknowledgment, Standard Form 1413.

(ii) Contractors' and subcontractors' weekly payrolls and payroll statements should be checked for completeness and accuracy with respect to the following items:

(A) Identification of employees, payroll amount, the contract, contractor, subcontractor, and payroll period;

(B) Inclusion of only job classifications and wage rates specified in the contract specifications, or otherwise established for the contract or subcontract;

(C) Computation of daily and weekly hours;

(D) Computation of time-and-one-half for work in excess of 40 hours per week in accordance with FAR 22.406-2(c);

(E) Gross weekly wages;

(F) Deductions;

(G) Computation of net weekly wages paid to each employee;

(H) Ratio of helpers, apprentices and trainees to labors and mechanics;

(I) Apprenticeship and trainee registration and ratios; and

(J) Computation of fringe benefits payments.

(iii) The contractor shall be informed in advance by the investigator that he is investigating compliance with pertinent contract labor standards provisions, and outline the general scope of the investigation, which includes examining pertinent records and interviewing employees. The names of the employees to be interviewed shall not be divulged to the contractor. At this time, the investigator shall verify the exact legal name of the firm, its address, and the names and titles of principal officers. If verification of the investigator's authority is requested, he shall provide an appropriate letter from the contracting officer to the contractor.

(iv) Complaint investigations shall include an interview with the complainant, except when this is impractical. The interview shall cover all aspects of the complaint to ensure that all pertinent information is obtained. Whenever an investigation does not include an interview of the complainant, its omission shall be explained in the investigator's report.

(v) Contractor and subcontractor records such as basic time cards, books, cancelled payroll checks, and fringe benefits payments records shall be compared with submitted payrolls. When discrepancies are found, pertinent excerpts or copies of the records shall be included in the investigation report as provided in paragraph (a)(S-70)(vi) below, together with a statement of the discrepancy and any explanation obtained by the investigator. In cases where wages include contributions or anticipated costs for fringe payments requiring approval of the Secretary of Labor as provided in FAR 22.406-2(a)(3), the contractor's records shall be examined to ensure that such approval has been obtained and that any requirements specified in the approval have been met.

(vi) The contractor's records shall be transcribed whenever they contain information at variance with payrolls or other submitted documents. The transcriptions shall be made in sufficient detail to permit them to be used to check computations of restitutions and to determine amounts to be withheld from the contractor. Transcriptions shall follow the form used by the contractor. Comments or explanations concerning the transcriptions shall be placed on separate memoranda or in the narrative report.

(vii) The investigator shall interview a sufficient number of employees or former employees, representative of all classifications, to develop information regarding method and amount of payments, deductions, hours worked, and type of work performed. Standard Form 1445, "Labor Standards Interview", shall be used for employee interviews. Employees shall be interviewed during working hours at the job site if the interview can be conducted privately. Former employees or others may be interviewed elsewhere. Interviews shall be arranged to cause the least inconvenience to the employer and the employee. When personal interviews are impractical, information may be obtained by mail. The investigator shall not disclose to the employee any information finding, recommendation, or conclusion relating to the investigation, except to the extent necessary to obtain the required information. An employee's statement shall not be divulged to his employer, nor to anyone other than Government representatives working on the case, without the employee's written permission. The investigator shall request the employee to sign his statement, and to initial any changes thereto, and shall indicate his evaluation of the employee's credibility.

(viii) An interview of the foreman serves to provide information concerning the contractor's compliance with the labor standards provisions with respect to the employee under the foreman's supervision, and the correctness of the foreman's classification as a supervisory employee. All the conditions established for conduct of employee interviews, and the recording and use of data obtained, also apply to foreman interviews.

(ix) The investigator shall determine whether the wage determination decision, any modifications thereto, and any additional classifications are posted as required.

(x) Whenever information indicating possible violations has been developed, the investigator shall interview the contractor involved. At the outset of the interview, the contractor shall be advised that the purpose of the interview is only to obtain such data the contractor may desire to present in connection with the investigation, and that the interview does not mean that a violation has been found or that a requirement for corrective action exists. During the interview, the investigator shall not disclose the identity of any individual who filed a complaint, or whom he has interviewed.

(a)(S-71) The investigator's report shall include at least the following:

(i) Basis for the investigation, including the name of the complainant;

(ii) Names and addresses of prime contractors and subcontractors involved, and names and titles of their principal officers;

(iii) Contract number, date, dollar value of prime contract, and date and number of wage determination therein;

(iv) Description of the contract and subcontract work involved;

(v) Summary of the findings with respect to each of the items listed in 222.406-8(a)(S-70);

(vi) Concluding statement concerning:

(A) The types of violations, including the amount of kickbacks under the Copeland Act, underpayments of basic hourly rates and fringe benefits under the Davis-Bacon Act, or underpayments and liquidated damages under the Contract Work Hours and Safety Standards Act;

(B) Whether violations are considered to be willful, or due to the negligence of the contractor or his agent;

(C) The amount of funds withheld from the contractor; and

(D) Other aspects of violations found.

(vii) The exhibition portion of the report, indexed and appropriately tabbed, including copies of the following when applicable:

(A) Complaint letter;

(B) Contract wage determination;

(C) Preconstruction letter and memorandum of preconstruction conference;

(D) Payrolls and statements indicating violations;

(E) Transcripts of pertinent records of the contractor, and approvals of fringe benefits payments;

(F) Employee interview statements;

(G) Foreman interview statements;

(H) Statements of others interviewed, including Government personnel;

(I) Detailed computations showing kickbacks, underpayments, and liquidated damages;

(J) Summary of all payments due to each employee or to a fund plan or program, and liquidated damages; and

(K) Receipts and cancelled checks.

(c)(4) Where a notification to the contractor informs the contractor of his liability for Contract Work Hours and Safety Standards Act (CWHSSA) liquidated damages, the contractor shall be advised that pursuant to 40 U.S.C. 330(c), a contractor has 60 days after such notice in which he may request relief from an assessment of liquidated damages. The contractor's appeal must demonstrate that the CWHSSA violations did not occur, were improperly computed, or occurred inadvertently notwithstanding the exercise of due care. The notification shall be provided the contractor by certified mail.

(d)(1) The contracting officer shall forward, in accordance with (d)(2)(S-70) below, a report in duplicate which shall include at least the following:

(i) Standard Form 1446, "Labor Standards Investigation Summary Sheet";

(ii) His findings;

(iii) Statement as to the disposition of any contractor rebuttal to the findings;

(iv) Statement as to whether the contractor has accepted the findings and has paid any restitution or liquidated damages;

(v) Statement as to the disposition of funds available;

(vi) Recommendations as to disposition or further handling of the case (when appropriate, include recommendations as to the reduction, waiver, or assessment of liquidated damages, whether the contractor should be debarred, and whether the file should be referred for possible criminal prosecution); and

(vii) The exhibit portion of the report which shall include, when applicable:

(A) Investigator's report;

(B) Copy of contractor's written rebuttal or a summary of the oral rebuttal of the contracting officer findings;

(C) Copies of correspondence between the contractor and contracting officer, including a statement of specific violations found, corrective action requested, and contractor's letter of acceptance or rejection;

(D) Evidence of payment by the contractor of restitution or liquidated damages, such as copies of receipts, cancelled checks, or supplemental payrolls; and

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(E) Letter from the contractor requesting relief from the liquidated damages provisions of the CWHSSA.

(d)(2)(S–70) Contracting officers shall forward detailed enforcement reports or summary reports through channels as specified in paragraphs (d)(2)(S–70) (A) through (D) below. When the contracting officer concludes that a criminal statute has been violated, he shall forward one extra copy of the report through the channels specified.

(A) *Army Contracts.* The report, together with the recommendation of the Head of the Contracting Activity, shall be forwarded through channels to the Labor Advisor.

(B) *Navy Contracts.* On contracts of the Naval Facilities Engineering Command, the report shall be forwarded through channels to the Commander. On contracts of other contracting activities, the report shall be forwarded through channels to the Office of the Assistant Secretary of the Navy, Attention: CBM–CM.

(C) *Air Force Contracts.* The report shall be forwarded to the appropriate Air Force Regional Industrial Relations Office for review and evaluation. The Air Force Regional Industrial Relations Office shall forward it, with the findings and recommendations, to HQ AFCMD/PDC, Attention: Director, Air Force Industrial Relations, for evaluation and final disposition. Reports involving criminal violations shall be referred to the nearest Office of Special Investigations District Officer for review and disposition.

(D) *Defense Logistics Agency Contracts.* The report shall be forwarded together with the recommendation of the Head of the Contracting Activity to Headquarters, Defense Logistics Agency, Attention: DLA–AP.

222.406–9 Withholding from or suspension of contract payments.

(a)(S–70) When payments due a contractor are not available to satisfy that contractor's liability for Davis-Bacon Act and/or CWHSSA wage underpayments or liquidated damages, the contracting officer shall contact the Departmental Labor Advisor (see listing at 222.101–1(S–74)) if assistance is needed.

(c)(1) *Forwarding Wage Underpayments to the Comptroller General.* The Standard Form 1093 shall be sent to: U.S. General Accounting Office, Claims Group/GGD, Payment Branch, 441 G Street, NW, Washington, DC 20548.

(c)(3) The Department of Labor has given blanket approval to forward withheld funds to the Comptroller General pending completion of an investigation or other administrative proceedings, when disposition of withheld funds remains the final action necessary to close out a contract.

(c)(4) *Liquidated Damages.* Whenever the sum of liquidated damages is $500 or less, and the violations are found to be nonwillful, or inadvertent, and to have occurred notwithstanding the exercise of due care by the contractor or his agent, or the sum is incorrect, the agency head or his designee may waive or adjust such liquidated damages. Whenever the liquidated damages exceed $500, the agency head or his designee may recommend to the Administrator, Wage and Hour Division, that assessed liquidated damages be adjusted because incorrect, or waived because the violation was nonwillful, or inadvertent, and occurred notwithstanding the exercise of due care.

222.406–10 Disposition of disputes concerning construction contract labor standards enforcement.

(d) The contracting officer's findings and the contractor's statement to the Administrator, Wage and Hour Division, shall be forwarded through the Departmental Labor Advisor (see listing at 222.101–1(S–74)).

222.406–13 Semiannual enforcement reports.

The report shall not include information from investigations conducted by the Department of Labor. The report shall contain the following information, as applicable, for construction work subject to the Davis-Bacon Act and the CWHSSA:

(a) Period covered;

(b) Number of prime contracts awarded;

(c) Total dollar amount of prime contracts awarded;

(d) Number of contractors/subcontractors against whom complaints were received;

(e) Number of contractors/subcontractors found in violation;

(f) Amount of wage restitution found due under:

(1) Davis-Bacon Act,

(2) CWHSSA;

(g) Number of employees due wage restitution under:

(1) Davis-Bacon Act,

(2) CWHSSA;

(h) Amount of liquidated damages assessed under the CWHSSA;

(i) Prework activities:

(1) Number of compliance checks performed,

(2) Preconstruction letters sent.

Reports shall be forwarded through the HCA to the Departmental Labor Advisor (see listing at 222.101–1(S–74)) within 15 days following the end of the reporting period.

222.407 Contract clauses.

(S–70) *Contracts With a State or Political Subdivision.* In the case of construction contracts with a State or political subdivision thereof, the contract clauses prescribed in this Subpart shall be inserted therein, but shall be prefaced by the following provision:

The Contractor agrees to comply with the requirements of the Contract Work Hours and Safety Standards Act and to insert the following clauses in all subcontracts hereunder with private persons or firms.

24. Subpart 222.10 is revised to read as follows:

Subpart 222.10—Service Contract Act of 1965, as Amended

Sec.
222.1003 Applicability.
222.1003–4 Administrative limitations, variations, tolerances, and exemptions.
222.1003–7 Questions concerning applicability of the Act.
222.1008 Procedures for preparing and submitting notice (SF 98/98a).
222.1008–2 Preparation of SF 98a.
222.1008–7 Required time of submission of notice.
222.1014 Delay of Acquisition dates over 60 days.

Subpart 222.10—Service Contract Act of 1965, as Amended

222.1003 Applicability.

222.1003–4 Administrative limitations, variations, tolerances, and exemptions.

(S–70) *Requests for limitations, variations, tolerances, and exemptions.* The contracting officer shall submit in writing requests for exemption from the Act through Departmental channels, as appropriate, to the Labor Advisor (see 222.101–1(S–70)). The Labor Advisor shall effect necessary coordination and submit the request, if endorsed, to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210.

222.1003–7 Questions Concerning Applicability of the Act.

Contracting officers may contact the Departmental Labor Advisor by telephone for informal advice concerning the applicability of the Act to a specific acquisition. Requests for a formal determination as to the Act's applicability shall be submitted to the Departmental Labor Advisor in writing through appropriate channels.

222.1008 Procedures for preparing and submitting Notice (SF 98/98a).

222.1008–2 Preparation of SF 98a.

(b)(1) The contracting officer shall secure the assistance of the cognizant customer/technical personnel to ensure maximum use of the Service Contract Act Directory of Occupations (Directory) and incorporation of all service employee classes (Directory and non-Directory) expected to be utilized. When the statement of work job title, for which there is a Directory equivalent, differs form the Directory job title, the contracting officer shall make a written cross-reference either directly on the SF 98a file copy or on an attached sheet to the SF 98a file copy.

(c) The SF 98a shall include classifications and minimum hourly wage rates conformed under any predecessor contract and so noted as such. Where a previously conformed classification is not included in the Directory, the job description shall also be attached to the SF 98a.

222.1008–7 Required time of submission of notice.

(e) Requests for immediate wage determination responses to emergency acquisitions shall be made through the Departmental Labor Advisor (see listing at 222.101–1(S–74)). If the request is justified, the Labor Advisor shall contact cognizant Department of Labor headquarters officials regarding the requirement.

222.1014 Delay of acquisition dates over 60 days.

(S–70) *Requests to determine whether initial wage determination is current (up-date requests).* Up-date requests shall be forwarded in writing directly to the Wage and Hour Division. The up-date request shall state that one or more procurement dates on the original Notice have been delayed more than 60 days and will further list the new procurement dates. A copy of the original Notice and SF 98a shall be attached as enclosures. Contracting officers shall provide the Departmental Labor Advisor an information copy of the up-date request with all enclosures.

PART 223—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

25. Section 223.300 is added to read as follows:

223.300 Scope of subpart.

The Department of Defense has granted itself a deviation to FAR 23.3. DoD agencies shall follow policies and procedures set forth in 223.72 rather than the coverage in FAR 23.3.

223.303 [Removed]

26. Section 223.303 is removed.

27. Subpart 223.72 is added to read as follows:

Subpart 223.72—Hazardous Material Identification and Material Safety Data

Sec.
223.7200 Scope of subpart.
223.7201 Definitions.
223.7202 Policy.
223.7203 Contract clause.

Subpart 223.72—Hazardous Material Identification and Material Safety Data

223.7200 Scope of subpart.

This subpart prescribes policies and procedures for acquiring deliverable items, other than ammunition and explosives, that require the furnishing of data involving hazardous material.

223.7201 Definitions.

"Hazardous material" is defined in the latest version of Federal Standard No. 313. (Federal Standards are sold to the public and Federal agencies through: General Services Administration (3FFN), Room 6622, 7th and D Streets, SW., Washington, DC 20407.)

223.7202 Policy.

(a) The Occupational Safety and Health Administration (OSHA) is responsible for issuing and administering regulations that require Government activities to apprise their employees of—

(1) All hazards to which they may be exposed;

(2) Relative symptoms and appropriate emergency treatment; and

(3) Proper conditions and precautions for safe use and exposure.

(b) To accomplish this objective, it is necessary to obtain certain information relative to the hazards which may be introduced into the workplace by the supplies being acquired. Accordingly, the apparently successful offeror is required to submit hazardous materials data whenever the supplies being acquired are identified as hazardous materials. The latest version of Federal Standard No. 313 (Material Safety Data Sheet, Preparation and Submission of) includes criteria for identification of hazardous materials.

(c) Hazardous material data (Material Safety Data Sheets (MSDSs)) are required on the following:

(1) All items in, or ordinarily cataloged under, the Federal Supply Classes listed in Table I of Appendix A of the latest version of Federal Standard No. 313.

(2) Items having hazardous characteristics in the Federal Supply Classes listed in Table II of Appendix A of the latest version of Federal Standard No. 313.

(3) Any other material designated by the technical representative of the contracting activity as potentially hazardous and requiring safety controls. Technical personnel are required to identify items that in their professional opinion will involve exposure of Government personnel to hazardous materials in any manner (e.g., performance of work use, handling, manufacturing, packaging, storage, inspection, disposal, or any other use) after delivery to the Government-designated destination.

(d) The clause at 252.233–7004, Hazardous Material Identification and material Safety Data, requires submission of MSDSs by the apparently successful offeror prior to contract award, unless the offeror certifies that the supplies are not hazardous.

(e) The contracting officer shall provide a copy of MSDSs received from apparently successful offerors to the cognizant safety officer and/or other designated official, in order to facilitate:

(1) Inclusion of relevant data in an agency MSDS information system, if applicable; and

(2) Other control, safety, or information purposes, as applicable.

223.7203 Contract clause.

The contracting officer shall insert the clause at 252.223–7004, Hazardous Material Identification and Material Safety Data, in solicitations and contracts when one or more of the circumstances listed in 223.7202(c) exists.

28. Subpart 223.73 is added to read as follows:

Subpart 223.73—Notice of Radioactive Material

Sec.
223.7300 Requirements.
223.7301 Contract clause.

Subpart 223.73—Notice of Radioactive Material

223.7300 Requirements.

(a) The contract clause at 252.223–7005 requires the contractor to notify the contracting officer prior to delivery of radioactive material.

(b) Upon receipt of the notice, the contracting officer shall notify receiving

activities so that appropriate safeguards can be taken.

(c) The contract clause permits the contracting officer to waive the notification if the contractor certifies that a notification on prior deliveries is still accurate. The contracting officer may waive the notice only after consultation with cognizant technical representatives.

(d) The contracting officer is required to specify in the clause at 252.223-7005 the number of days in advance of delivery that the contractor will provide notification. The determination of the number of days should be done in coordination with the installation/facility radiation protection officer (RPO). The RPO is responsible for insuring the proper license, authorization or permit is obtained prior to receipt of the radioactive material.

223.7301 Contract clause.

The contracting officer shall insert the clause at 252.223-7005, Notice of Radioactive materials, in solicitations and contracts for supplies which are, or which contain: (a) Radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954; or (b) radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram, or the activity per item equals or exceeds 0.01 microcuries. Such supplies include, but are not limited to, aircraft, ammunition, missiles, vehicles, electronic tubes, instrument panel gauges, compasses, and identification markers.

29. Subpart 223.74 is added to read as follows:

Subpart 223.74—System Safety Program

Sec.
223.7401 Scope of subpart.
223.7402 Policy.

Subpart 223.74—System Safety Program

223.7401 Scope of subpart.

This subpart prescribes the policies for implementing the System Safety Program as required by DoD Instruction 5000.36, "System Safety Engineering and Management."

223.7402 Policy.

Identification and control of safety and health hazards to systems, facilities, personnel, or property during the acquisition process are more cost effective than sustaining the consequences of such hazards, or instituting corrective measures after the fact. The primary objective of the Department of Defense System Safety Program required by DoDI 5000.36, therefore, is to provide for safety and health hazard analysis; to correct or control those hazards commensurate with mission requirements; and to facilitate the acquisition of associate personnel protective equipment and safety health training. The system safety effort considers safety and health hazards throughout the entire life cycle of the system, to include operations, maintenance, repair, transportation, and disposal.

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

30. Section 236.201 is amended by revising paragraph (a)(1)(S-70); by removing the existing paragraph (a)(1)(S-71); by redesignating the existing paragraph (a)(1)(S-72) as paragraph (a)(1)(S-71); and by revising paragraphs (c)(1) and (c)(2) to read as follows:

236.201 Evaluation of contractor performance.

(a) *Preparation of performance evaluation reports.*

(1)(S-70) Place the Contractor Establishment Code (formerly referred to as the DUNS number) from Item B5A of the DD 350 in Block 2 of SF 1420.

* * * * *

(c) *Distribution and use of performance reports.*

(1) Each performance report will be forwarded to the central data base after completing the review. The central data base, set forth below, will retain reports for six years. HQUSACE, CEPR, is responsible for establishing procedures and practices which will assure appropriate distribution and utilization of performance evaluation data within the Defense Department.

(2) The central automated data base containing performance evaluation information on DOD construction contractors is available to all DOD construction activities.

The centralized data base is maintained at: U.S. Army Engineer Division, North Pacific, ATTN: CENPD-CT, P.O. Box 2870, Portland, OR 97208-2870, Telephone: (503) 326-3459/4910.

Computer access to these files can be made available by contacting North Pacific Division to obtain user logon and procedure instructions.

* * * * *

236.206 [Amended]

31. Section 236.206 is amended by changing the dollar figure in the first and second sentences to read "$500,000" in lieu of "$25,000" in both places.

236.272 [Amended]

32. Section 236.272 is amended by adding between the word "construction" and the word "contracts" the words "and architect-engineer".

236.402 [Amended]

33. Section 236.402 is amended by changing the title of paragraph (S-70) to read "Profit or fee for cost-reimbursement type construction contracts" in lieu of "Profit or Fee"; by removing the title of paragraph (S-70)(1); by redesignating the existing paragraphs (S-70)(1)(i) and (S-70)(1)(ii) to paragraphs (S-70) (1) and (2); and by removing the existing paragraph (S-70)(2).

34. Section 236.513 is added to read as follows:

236.513 Accident prevention.

(S-70) When the circumstances arise for using either the Accident Prevention clause or the Alternate I prescribed at FAR 36.513, the contracting officer shall insert the clause at 252.236-7019 or its Alternate I in solicitations and contracts when a contract for services to be performed at Government facilities (see FAR Part 37) is contemplated and technical representatives advise that special precautions are appropriate. The contracting officer should inform OSHA, or other cognizant Federal, state, or local officials, of instances where the contractor has been notified to take immediate action to correct serious or imminent dangers.

236.602-1 [Amended]

35. Section 236.602-1 is amended by removing in the first sentence of paragraph (S-70) the words "For contracts estimated to cost more than $2,500," and by capitalizing the word "criteria".

36. Section 236.604 is revised to read as follows:

236.604 Performance evaluation.

(a) *Preparation of performance reports.*

(1) The SF 1421 shall be filed and utilized in a manner similar to the SF 254, Architect-Engineer and Related Services Questionnaire.

(2) A separate report shall be prepared after completion of the actual construction of the project. Ordinarily, the evaluating official who prepares the after construction report should be the person most familiar with the architect-engineer's performance.

(c) *Distribution and use of performance reports.* Each performance report will be forwarded to the central data base after completing the review.

The central data base is identified in 236.201(c). The procedures in that paragraph also apply to architect-engineer performance reports.

PART 242—CONTRACT ADMINISTRATION

242.7204 [Amended]

37. Section 242.7204 is amended by substituting in paragraph (c) the reference "252.242-7001" in lieu of the reference "252.245-7001".

PART 245—GOVERNMENT PROPERTY

245.302-1 [Amended]

38. Section 245.302-1 is amended by adding paragraph (a)(4) to read: "The Determination and Findings shall be coordinated with the program or project manager."

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.222-7000 and 252.222-7001 [Removed and Reserved]

39. Sections 252.222-7000 and 252.222-7001 are removed and the sections marked "Reserved."

252.223-7000 [Removed and Reserved]

40. Section 252.223-7000 is removed and the section marked "Reserved."

41. Sections 252.223-7004 and 252.223-7005 are added to read as follows:

252.223-7004 Hazardous material identification and material safety data.

As prescribed at 223.7203(a), insert the following clause in solicitations and contracts.

Hazardous Material Identification and Material Safety Data (Jul 1989)

(a) "Hazardous material", as used in this clause, includes the following:

(1) All items in, or ordinarily cataloged under, the Federal Supply Classes listed in Table I of Appendix A of the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract);

(2) Items having hazardous characteristics in the Federal Supply Classes listed in Table II of Appendix A of the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract);

(3) Any other item to be delivered under this contract which will contain hazardous material or expose Government personnel to those materials.

(b) Each Offeror shall certify as follows: The Offeror certifies that the material to be delivered (_____) is (_____) is not a hazardous material as defined in paragraph (a) above.

(c) The apparently successful Offeror agrees to submit prior to award a Material Safety Data Sheet meeting the requirements of 29 CFR 1910.1200 (g) and the latest version of Federal Standard No. 313 in effect on the date of this solicitation for all hazardous material(s) described in paragraph (a) above, unless the Offeror certifies in paragraph (b) above that the material is not hazardous. Data shall be submitted on all items included in the offer, whether or not the apparently successful Offeror is the actual manufacturer of these items. Failure to comply with this requirement shall result in the Offeror's being considered nonresponsible and ineligible for award.

(d) If there is a change in the composition of the item(s) after award or a revision to Federal Standard No. 313 which renders incomplete or inaccurate the data submitted under paragraph (c) of this clause or the certification submitted under paragraph (b) of this clause, the Contractor shall promptly notify the Contracting officer and resubmit the data.

(e) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(f) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, state, and local laws, codes, ordinanaces, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(g) Notwithstanding any other clause in this contract, the Government's rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate, and disclose any data to which this clause is applicable. The purposes of this right are to——

(i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;

(ii) Obtain medical treatment for those affected by the material; and

(iii) Have others use, duplicate, and disclose the data for the Government for these purposes(s).

(2) That the Government is not precluded from using similar or identical data acquired from other sources.

(End of clause)

252.223-7005 Notice of radioactive materials.

As prescribed at 223.7301, insert the following clause in solicitations and contracts:

Notice of Radioactive Materials (Jul 1989)

(a) The Contractor shall notify the Contracting Officer or designee, in writing (_____) (The Contracting Officer shall insert the number of days required in advance of delivery of the item or completion of the servicing to assure that required licenses are obtained and appropriate personnel are notified to institute any necessary safety and health precautions.) days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either (1) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 CFR, in effect on the date of this contract, or (2) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcurie(s) per gram or the activity per item equals or exceeds 0.01 microcuries. Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (OMB No. 0704-0193).

(b) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material from deliveries under this contract or prior contracts, the Contractor may request that the Contracting Officer or designee waive the notice requirement in paragraph (a) of this clause. Any such request shall (1) be submitted in writing; (2) contain a certification that the quantity of activity, characteristics, and composition of the radioactive material has not changed; and (3) cite the contract number on which the prior notification was submitted and the contracting office to which it was submitted.

(c) All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcurie per gram or activity per item equals or exceeds 0.02 microcuries and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of MIL-STD 129 in effect on the date of the contract.

(d) This clause, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a).

(End of clause)

42. Section 252.236-7019 is added to read as follows:

252.236-7019 Accident prevention.

As prescribed at 236.513, insert the following clause in solicitations and contracts:

Accident Prevention (Jul 1989)

(a) The Contractor shall provide and maintain work environments and procedures which will safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to contractor operations and activities; avoid interruptions of Government operations and delays in project completion dates; and control costs in the performance of the contract.

(b) For these purposes, on contracts for construction or dismantling, demolition, or removal of improvements, the Contractor shall—

(1) Provide appropriate safety barricades, sign, and signal lights;

(2) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910;

(3) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary for the purposes are taken.

(c) If this contract is for construction or dismantling, demolition or removal of improvements with any Department of Defense agency or component, the Contractor shall comply with all pertinent provisions of the latest version of U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the solicitation.

(d) Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Government personnel, the Contracting Officer shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site, shall be deemd sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to equitable adjustment of the contract price or extension of the performance schedule on any stop order issued under this clause.

(e) The Contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontracts.

(End of clause)

Alternate I (JUL 1989)

If the contract will involve (a) work of a long duration or hazardous nature, or (b) performance on a Government facility which on the advice of technical representatives involves hazardous materials or operations which might endanger the safety of the public and/or Government personnel or property, add the following paragraph (f) to the basic clause:

(f) Before commencing the work, the Contractor shall—(1) Submit a written proposed plan for implementing this clause. The plan shall include an analysis of the significant hazards to life, limb, and property inherent in contract work performance and a plan for controlling these hazards; and (2) meet with representatives of the Contracting Officer to discuss and develop a mutual understanding relative to administration of the overall safety program.

PART 253—FORMS

43. The list of forms following section 253.204-70 is amended by removing between the listing "253.303-70-DD-1547 DD Form 1547: Record of Weighted Guidelines Application" and the listing "253.303-70-DD-1567 DD Form 1567: Labor Standards Interview" the listing "253.303-70-DD-1565 DD Form 1565: Request for Authorization of Additional Classification and Rate".

PART 271—RECOVERY OF NONRECURRING COSTS ON COMMERCIAL SALES OF DEFENSE PRODUCTS AND TECHNOLOGY AND OF ROYALTY FEES FOR USE OF DOD TECHNICAL DATA

271.004 [Redesignated from 217.004]

44. Section "217.004" is redesignated as "271.004".

[FR Doc. 89-17183 Filed 7-21-89; 8:45 am]

BILLING CODE 3810-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1320

[Ex Parte No. MC-1]

Regulations for Payment of Rates and Charges—Penalty Charges for Nonpayment

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is amending its credit regulations at 49 CFR Part 1320 to require disclosure on the freight bill of penalties for late payment and notice to the shipper of imposition of collection expense charges within 90 days after the expiration of the authorized credit period. This will ensure that a shipper is notified of its liability for penalty or collection charges.

EFFECTIVE DATE: October 22, 1989.

FOR FURTHER INFORMATION CONTACT: Richard Johnson, (202) 275-7939, or Richard Felder, (202) 275-7291. [TDD for hearing impaired: (202) 275-1721.]

SUPPLEMENTARY INFORMATION: The new rules are set forth below. Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275-1721.]

This action will not significantly affect the quality of the human environment or the conservation of energy resources.

The Commission certifies that the adoption of these amendments to the credit regulations will not have a significant economic impact on a substantial number of small entities. The new rules will not require the filing of reports or recordkeeping by small entities, and will not duplicate, overlap, or conflict with any existing Federal rules.

List of Subjects in 49 CFR Part 1320

Credit, Freight forwarders, Motor carriers, Maritime carriers, Railroads.

Authority: 49 U.S.C. 10321, 10701, 10702, 10741, 10743, and 10744, and 5 U.S.C. 553.

Decided: July 17, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners André, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

For the reasons set forth in the Preamble, Title 49, Chapter X, Part 1320 of the Code of Federal Regulations is amended as follows:

PART 1320—EXTENSION OF CREDIT TO SHIPPERS BY RAIL COMMON CARRIERS, MOTOR COMMON CARRIERS, WATER COMMON CARRIERS, AND HOUSEHOLD GOODS FREIGHT FORWARDERS

1. The authority-citation for 49 CFR Part 1320 continues to read as follows:

Authority: 5 U.S.C. 553 and 49 U.S.C. 10321, 10701, 10702, 10741, 10743, and 10744.

§ 1320.2 [Amended]

2. Section 1320.2 is amended by adding a new paragraph (g)(2)(vi) to read as follows:

§ 1320.2 Extension of credit to shippers.

* * * * *

(g)(2) * * *

(vi) shall be applied only after the authorized credit period, and when the carrier has issued a revised freight bill or notice of imposition of collection expense charges for late payment within 90 days after expiration of the authorized credit period.

3. Section 1320.2(g)(2)(v) is amended by removing the period and inserting a semicolon at the end of the paragraph.

§ 1320.3 [Amended]

4. Section 1320.3(c) is revised to read as follows:

§ 1320.3 Presentation of freight bills.

* * * * *

(c) *Bills or accompanying written notices shall state penalties for late payment, credit time limits and service charge and/or collection expense charge and discount terms.* When credit is extended, freight bills or a separate written notice accompanying a freight bill or a group of freight bills presented at one time shall state that "failure timely to pay freight charges may be subject to tariff penalties" (or a statement of similar import). The bills or other notice shall also state the time by which payment must be made and any applicable service charge and/or collection expense charge and discount terms.

* * * * *

[FR Doc. 89-17261 Filed 7-21-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 81133-9030]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of area opening.

SUMMARY: NOAA issues this notice terminating certain restrictive management measures that were imposed when two areas were reopened to surf clam fishing offshore of Atlantic City, New Jersey, and Ocean City, Maryland, on July 3, 1988, since the criteria for terminating the special management measures have been met. These previously restricted fishing areas are thereby incorporated into the general fishery

EFFECTIVE DATE: July 24, 1989.

FOR FURTHER INFORMATION CONTACT: John G. Terrill, Surf Clam/Ocean Quahog Plan coordinator, 508-281-9252.

SUPPLEMENTARY INFORMATION: Two areas designated as Atlantic City and Ocean City were reopened to surf clam fishing on July 3, 1988 (53 FR 20854) based upon the reopening criteria specified in § 652.23(b)(2). The areas reopened are specified by the following:

Atlantic City Reopened Area—located between 3 and 9½ nautical miles offshore of Atlantic City, New Jersey. (Part of the area was reopened in 1982.)

Latitude	*Longitude*
39°15.5' N.	74°30.0' W.
39°28.5' N.	74°14.15' W.
39°27.2' N.	74°05.7' W.
39°17.62' N.	74°14.3' W.
39°11.6' N.	74°23.5' W.

Area reopened in 1982:

Latitude	*Longitude*
39°12.4' N.	74°22.3' W.
39°29.33' N.	74°22.37' W.
39°18.35' N.	74°13.6' W.
39°17.6' N.	74°14.3' W.

Ocean City Reopened Area—located between 6 and 10 miles offshore of Ocean City, Maryland.

Latitude	*Longitude*
38°17.0' N.	74°57.0' W.
38°20.5' N.	74°51.0' W.
38°19.0' N.	74°48.5' W.
38°12.5' N.	74°51.0' W.

Section 652.23(b)(3) established that "The Secretary will control the harvest of surf clams from reopened areas separated from the management of the general fishery until the catch per unit of effort in the reopened area is comparable to the average catch per unit of effort in the general fishery, at which time the reopened area will become part of the general fishery." From the time the two areas were reopened, vessels were limited to one trip a quarter in each of the two areas. Vessel owners were also required to provide advance notice of their intention to fish in either of these areas in the course of their regular notification of surf clam fishing days. Section 652.23(c) established that adjustment to harvest restrictions in a reopened area will be made by **Federal Register** notice.

Logbook records submitted by surf clam harvesters were analyzed at the conclusion of each quarter since the reopening of the two areas. From these records it was determined that during the first quarter of 1989, the catch per unit of effort in the Ocean City reopened area had declined to 205.9 bushels per hour. The catch per unit of effort in the general fishery for the same time period was 199 bushels per hour and the Regional Director made the determination to remove the effort restrictions for the Ocean City reopened area. The catch per unit of effort for the Atlantic City reopened area for the first quarter was at 241 bushels per hour necessitating the continued imposition of the effort restrictions. A letter was sent to all vessel operators eligible to fish the Mid-Atlantic surf clam fishery informing them of this decision.

Analysis of catch records for the second quarter of 1989 indicated that the catch rate for the Atlantic City reopened area dropped to 201.6 bushels per hour while the general fishery catch rate rose to 212.0 bushels per hour. Given that the catch rates are similar and the criterion for removing restrictions is satisfied, the Regional Director has determined that effort restrictions should be removed and the Atlantic City area should become part of the general fishery. The only remaining closed area is the area designated as Chincoteague which continues to remain closed with no fishing operations allowed.

The effort restrictions of one trip in each reopened area and the notification requirements imposed through the notice published on June 7, 1988 (53 FR 20854) are terminated effective July 2, 1989. After that date, fishing for surf clams in either area will only be subject to the provisions applying to the general surf clam fishery.

Other Matters

This action is taken under the authority of 50 CFR Part 652 and is taken in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 652

Fisheries.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 18, 1989.

Joe P. Clem,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-17213 Filed 7-21-89; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 140
Monday, July 24, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agriculture Marketing Service

7 CFR Part 52

[FV-89-202]

United States Standards for Grades of Canned Tomatoes

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: In compliance with the requirements for periodic review of existing regulations and in response to a petition from the canned tomato industry, the Agricultural Marketing Service (AMS) reviewed and proposes to revise the United States Standards for Grades of Canned Tomatoes. The proposed rule would: (1) Include the styles of "whole", "sliced", "halves", "wedges", and "diced" for canned and stewed tomatoes; (2) eliminate the "U.S. Grade A Whole" classification; (3) eliminate drained weight as a scoreable factor but retain it as a grade requirement; (4) incorporate "character" as a scoreable quality factor in all styles; (5) redefine tomato flavor; (6) provide for the use of the U.S. Standard No. 8 circular sieve to determine drained weights of "sliced" and "diced" canned tomatoes; (7) change from dual grade nomenclature to single letter grade designations; (8) change the format and make other minor editorial changes consistent with other recently revised U.S. grade standards.

The effect of this proposed rule would be to provide more comprehensive U.S. grade standards which reflect changes in cultivars, harvesting and processing techniques, and consumer trends that have developed since the current standards became effective.

DATES: Comments must be received on or before October 23, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the office of the Branch Chief, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 0709, South Building, P.O Box 96456, Washington, DC 20090-6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Branch Chief during public inspection in the Office of the Branch Chief during regular business hours.

FOR FURTHER INFORMATION CONTACT: Harold A. Machias, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 0709, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-6247.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures, Executive Order 12291, and Departmental Regulation 1512-1 and has been designated as a "nonmajor" rule.

It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Agencies are required to periodically review existing regulations. An objective of the regulatory review is to ensure that the grade standards are serving their intended purpose, the language is clear, and the standards are consistent with AMS policy and authority.

The Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601 et seq.). The proposed changes reflect current marketing practices. The use of these standards is voluntary. A small entity may avoid incurring any economic impact by not employing the standards.

The United States Department of Agriculture (USDA) received a petition in March 1986 from the Indiana Food Processors Association, Incorporated (IFPA), a segment of the canned tomato industry, requesting changes in the United States Standards for Grades of Canned Tomatoes.

The IFPA requested these changes to reflect corresponding horticultural, harvesting, processing, and marketing changes in the canned tomato industy.

IFPA stated that over the last ten years there have been significant changes in the canned tomato industy. Coreless tomato varieties have all but replaced the cored, round tomato varieties in the canned tomato market. New manufacturing techniques and procedures have improved in the quality of canned tomatoes and tomato products. However, the grade standards by which these products are graded have not change.

The USDA reviewed IFPA's request and conducted two informal market surveys during the 1987 and 1988 tomato processing seasons. The USDA solicited comments from the canned tomato industry including all the major canned tomato processing areas in California, Ohio, Indiana, Michigan, and the Southeast.

The market survey conducted in 1987, wherein USDA visited 17 processors around the country indicated that virtually all tomato processors agreed that the current grade standards are outdated and do not address current harvesting, processing, and marketing techniques. As a result, the tomato industry closely examined IFPA's proposed changes.

USDA conducted another market survey in July 1988 and a more general consensus on the recommendations with some exceptions from the canned tomato industry. The USDA has reviewed the recommendations and has proposed the following changes.

The current standards are based only on the style of "whole tomatoes". The canned tomato marketplace contains a wide range of canned and stewed tomatoes of various styles. This proposal would address the additional styles of "sliced", "halves", "wedges", and "diced" and the product "stewed tomatoes" as defined in the Food and Drug Administration (FDA) Standards of Identity for Canned Tomatoes (21 CFR 155.190). Including these styles within the U.S. grade standards for canned tomatoes should promote uniformity in grading and marketing for this product.

Under this proposal, the current grade classification "U.S. Grade A Whole" will be eliminated because "whole" is a specified style rather than a grade. The quality level for the current "U.S. Grade A Whole" standard (which requires at least 95% of the tomatoes are whole or almost whole) is proposed to be included under the grade classification "U.S. Grade A" for whole tomatoes (which requires at least 80% of the tomatoes are whole or almost whole).

This proposal eliminates drained weight as a scoreable factor but retains it as a grade requirement as set out in § 52.5170, Table I. Elimination of drained weight as a scoreable quality factor was proposed by IFPA but is not supported by other segments of the industry. Marketing of canned tomatoes has been based on scoring the drained weights for many years. AMS specifically solicits comments on the desirability of eliminating drained weight as a scoreable factor.

Eliminating drained weight as a scoreable factor would be in line with other U.S. grade standards. However, unlike most other standards, drained weight would be retained as a grade requirement to reflect marketing practices for canned tomatoes. The drained weight requirements would apply to ally styles of canned tomatoes.

This proposal incorporates the quality factor of "character" in the grade standards as a scoreable factor. Many segments of the industry favored the addition of this quality factor since many retail and food service specifications include it as a requirement. Character is the degree of firmness normally found when properly ripened tomatoes have been processed.

Canned or stewed tomatoes containing specified amounts of excessively soft or mushy tomatoes would be classified U.S. Grade B or U.S. Grade C. There is no "Substandard" classification for character for the purposes of these grade standards.

This proposed rule redefines canned tomato flavor as "normal" or "off" flavor. In the current grade standards, flavor is "good", "normal", or "off". It is difficult to distinguish readily between "good" and "normal" flavor. However "normal" flavor is more readily distinguishable from "off" flavor.

This proposal provides for the use of the U.S. Standard No. 8 circular sieve to determine the drained weight averages for "diced" and "sliced" canned tomatoes. The U.S. Standard No. 2 circular sieve is used to determine drained weights for whole style in the current standards. In the proposal, the No. 2 sieve is used for "whole", "halves", and "wedges" styles and the No. 8 sieve is used for "diced" and "sliced" styles. Since the latter two styles expose more internal surface area, more of the placenta (gelatinous internal tissue) may drain through if the No. 2 sieve were used. The use of the No. 8 circular sieve would provide more representative drained weight determinations. Most other processed fruit and vegetable grade standards provide for the use of the U.S. Standard No. 8 circular sieve to determine drained weights.

This proposal replaces dual grade nomenclature with single letter grade designations. Under this proposed rule, "U.S. Grade A (or U.S. Fancy)", "U.S. Grade B (or U.S. Extra Standard)", and "U.S. Grade C (or U.S. Standard)" become "U.S. Grade A", "U.S. Grade B", and "U.S. Grade C" respectively.

Also, this proposal changes the format and makes other minor editorial changes by providing easy-to-read tables and definitions (explaining, where appropriate, some of the textual definitions in the current standards) in a comprehensive format consistent with recently revised U.S. grade standards.

The standards would provide uniform guidelines for efficient marketing of canned tomatoes as authorized by the Agricultural Marketing Act of 1946.

List of Subjects in 7 CFR Part 52

Fruits, Vegetables, Food grades and standards.

For reasons set forth in the preamble, it is proposed that 7 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

The Subpart—United States Standards for Grades of Canned Tomatoes, 7 CFR 52.5161-52.5171 are revised to read as follows:

Subpart—United States Standards for Grades of Canned Tomatoes

Sec.
52.5161 Product description.
52.5162 Styles.
52.5163 Type of pack.
52.5164 Definitions of terms.
52.5165 Fill of container.
52.5166 Minimum drained weight averages.
52.5167 Sample unit sizes.
52.5168 Grades.
52.5169 Factors of quality.
52.5170 Requirements for grades.
52.5171 Determining the grade of a lot.

Authority: Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended; (7 U.S.C. 1622, 1624).

§ 52.5161 Product description.

The products to which these standards apply are defined in the Standards of Identity issued under the Federal Food, Drug, and Cosmetic Act as:

(a) *Canned tomatoes* (21 CFR 155.190); and

(b) *Canned stewed tomatoes* (21 CFR 155.190).

§ 52.5162 Styles.

(a) *Whole* means tomatoes, peeled or unpeeled, of any size that are substantially whole or almost whole.

(b) *Sliced* means tomatoes, peeled or unpeeled, that have been cut into units of approximately uniform thickness.

(c) *Halves* means tomatoes, peeled or unpeeled, that have been cut into two approximately equal halves.

(d) *Wedges* means tomatoes, peeled or unpeeled, that have been cut into approximate quarters or wedge-shaped sectors.

(e) *Diced* means tomatoes, peeled or unpeeled, that have been cut into approximate cube-shaped units.

§ 52.5163 Type of pack.

Regular pack means tomatoes packed in a medium consisting of tomato juice, tomato puree, or tomato paste.

§ 52.5164 Definitions of terms.

(a) *Character* means the degree of firmness normally found when tomatoes have been processed using good manufacturing practices as defined in 21 CFR Part 110. Canned and stewed tomatoes that, when fully cooked, are *excessively soft or mushy* are considered to lack character. *Excessively soft* is further defined for all styles and means that the unit may disintegrate upon handling, has evidence of sloughing (erosion of the tomato tissue) or has ragged edges, and has lost ability to retain shape. For the purposes of these grade standards, character is classified as good, reasonably good and fairly good. There is no substandard classification for the quality factor of character.

(1) *Good character* in whole, halves, wedges, or sliced tomatoes is defined as tomatoes in which not more than 15 percent by count are excessively soft or mushy. *Good character* in diced tomatoes is defined as diced tomatoes in which not more than 15 percent by weight of the lot average are excessively soft or mushy.

(2) *Reasonably good character* in whole, halves, wedges, or sliced tomatoes is defined as tomatoes in which not more than 25 percent by count are excessively soft or mushy. *Reasonably good character* in diced tomatoes is defined as diced tomatoes in

which not more than 25 percent by weight are excessively soft or mushy.

(3) *Fairly good character* in whole, halves, wedges, or sliced tomatoes is defined as tomatoes in which more than 25 percent by count are excessively soft or mushy. *Fairly good character* in diced tomatoes is defined as diced tomatoes in which more than 25 percent by weight are excessively soft or mushy.

(b) *Color.*

(1) *USDA Tomato Red* means the color of an USDA approved plastic color comparator.

(2) *Minimum Red for Canned Tomatoes* means the equivalent of any of the colors produced by blending the combinations of the following Munsell Color discs of equal diameter when placed as indicated.

Red—Munsell 5 R 2.6/13 (glossy finish)
Yellow—Munsell 2.5 YR 5/12 (glossy finish)
Black—Munsell N 1/ (glossy finish)
Grey—Munsell N 4 (mat finish)

(i) The discs are placed so that one-third of the area of the Red disc, and not more than one third of the area of the Yellow disc, are exposed. The exposed areas of the Black and Gray discs make up the remainder of the area.

(ii) To determine U.S. Grade C Color for canned and stewed tomatoes, apply the test for strength and redness of color outlined in 21 CFR 155.190 (b).

(c) *Defects* refer to objectionable core material, tomato peel, extraneous vegetable material (EVM), blemished areas, and discolored portions that affect the appearance and eating quality of the product as further described below.

(1) *Blemished* areas are abnormal areas on the tomatoes which contrast strongly in color and/or texture with normal tomato tissue. Blemished areas may show objectionable discoloration ranging from light to dark discoloration. Blemished areas include but are not limited to scarred, raised, scabby tissue; darkened, tough areas which remain around the core area; internal or external dark tissue around blossom ends of the tomatoes; or any other areas that are objectionable or unsightly.

(2) *Discolored* portions are imperfections of the tomato tissue which may not be strong contrasting color with respect to the tomato tissue but which detract slightly from the appearance of the product. Examples include sunburned areas, internal browning or tobacco mosaic, cloudy spots or ghost spots.

(3) *Extraneous vegetable material (EVM)* is vegetable material that is not harmful and includes, but is not limited to, whole or parts of stems, calyx bracts, tomato leaves or portions thereof, sprouted seeds, and other similar vegetable material which may not be part of the tomato plant.

(4) *Objectionable core material* is tomato material associated with the core of the tomato which detracts from the appearance or edibility of the product and includes tough fibers and tough or slightly discolored tomato tissue.

(5) *Peel* means the loose or attached skin of the tomato.

(d) *Drained tomatoes* means all of the tomato material that remains on the sieve after draining as prescribed in 21 CFR 155.190.

(e) *Flavor and odor.*

(1) *Normal flavor and odor* means a typical characteristics flavor and odor of mature tomatoes.

(2) *Off-flavor and off-odor* means any flavor or odor other than typical characteristic flavor and odor of mature tomatoes that is objectionable.

(f) *Whole or almost whole,* for whole style only, regardless of size, means that:

(1) The contour of the tomato is not materially affected by coring, trimming, or other means;

(2) The tomato may be cracked or split but not to the extent that there is material loss of seeds or placenta (gelatinous mass filling the seed cavity); and

(3) The tomato units may be restored to their approximate original shape during handling.

§ 52.5165 Fill of container.

The standard of fill of container for canned tomatoes [21 CFR 155.190 (c)] requires that the product occupy not less than 90 percent of the water capacity of the container.

§ 52.5166 Minimum drained weight averages.

(a) The average minimum drained weight requirements for U.S. Grades are listed in Table I in § 52.5170.

(b) The drained weight must not be less than 50 percent of the weight of water required to fill the container.

(c) The minimum drained weight averages are based on equalization of the product 15 days or more after the product has been canned.

(d) The method for ascertaining drained weight for all styles of canned and stewed tomatoes is found in 21 CFR 155.190 except that the U.S. Standard Number 8 circular sieve is used in lieu of a U.S. Standard Number 2 circular sieve for "sliced" and "diced" styles of canned and stewed tomatoes.

(e) *Meeting drained weight averages.* A lot of canned tomatoes is considered as meeting the minimum drained weight averages if the following criteria are met:

(1) The average of the drained weights from all the containers in the sample meets the average drained weight in Table I in § 52.5170.

(2) The drained weights from the individual containers which do not meet the minimum are:

(i) For No. 2½ can size and smaller and for *all styles except diced*: not more than 0.7 ounce lower than the minimum average.

(ii) For *diced* style: not more than 0.5 ounce lower than the minimum average.

(iii) For No. 10 cans, *all styles*: not more than 2.0 ounces below the minimum average; and

(3) The number of containers in the sample which do not meet the requirements of paragraph (f)(2) of this section, does not exceed the acceptance number prescribed for the sample size in 7 CFR 52.38, Table I.

§ 52.5167 Sample unit sizes.

(a) For "whole", "halves", and "wedges" styles, the sample unit size is the amount of product specified to be used for inspection in 7 CFR 52.38, Table I.

(b) For "sliced" and "diced" styles, the sample unit size is the same as indicated in paragraph (a) of this section *EXCEPT* in containers Number 10 (No. 10) can size and larger, an optional sample unit size of 32 ounces per container (drained weight) is permitted.

§ 52.5168 Grades.

(a) *U.S. Grade A* is the quality of canned tomatoes that meets the applicable requirements of Tables I, II, and III of § 52.5170, and scores not less than 90 points.

(b) *U.S. Grade B* is the quality of canned tomatoes that meets the applicable requirements of Tables I, II, and III of § 52.5170, and scores not less than 80 points.

(c) *U.S. Grade C* is the quality of canned tomatoes that meets the applicable requirements of Tables I, II, and III of § 52.5170, and scores not less than 70 points.

(d) *Substandard* is the quality of canned tomatoes that fails the requirements for U.S. Grade C.

§ 52.5169 Factors of quality.

The grade of canned tomatoes is based on the following quality factors:

(a) Drained weight;
(b) Character;
(c) Color;
(d) Wholeness ("whole style" only);
(e) Flavor and odor; and
(f) Defects.

§ 52.5170 Requirements for grades.

TABLE I.—RECOMMENDED MINIMUM DRAINED WEIGHT AVERAGES FOR CANNED TOMATOES AND STEWED TOMATOES ALL GRADES, ALL STYLES

[English (avoirdupois) weights]

Container	Container dimensions [1]	Average drained weight (ounces)	
		U.S. Grade A and B	U.S. Grade C
8 oz. Tall	211 X 304	5.0	4.3
No. 300	300 X 407	8.8	7.6
No. 303	303 X 406	9.8	8.5
No. 2	307 X 409	11.9	10.3
No. 2½	401 X 411	17.3	14.9
No. 10	603 X 700	63.5	54.7

[1] The first figure in this column represents the diameter of the container and the second figure represents the height. The first digit in each number represents inches and the second two digits represent sixteenths of an inch. Thus 307 is three and seven-sixteenths inches.

TABLE II—Maximum Defects Permitted in Each Grade

[All Styles]

	Defect (aggregate area)	In a single container		In total sample representing a lot; in cans of any size [per pound of total contents of all containers (average)]
		In cans of less than 2 pounds total contents (in any container)	In cans of 2 or more pounds total contents (equivalent amount per pound of contents of any container)	
Grade A	Peel	2 square inches	1 square inch	½ square inch.
	Blemished areas	⅛ square inch	1/16 square inch	1/16 square inch
	Discolored portions	½ square inch	¼ square inch	¼ square inch
Grade B	Peel	3 square inches	2 square inches	1.06 square inches.
	Blemished areas	¼ square inch	⅛ square inch	⅛ square inch.
	Discolored portions	1 square inch	½ square inch	½ square inch.
Grade C	Peel	No limit	No limit	1.06 square inches.
	Blemished areas	½ square inch	¼ square inch	¼ square inch.
	Discolored portions	1½ square inches	¾ square inch	¾ square inch.

TABLE III—QUALITY REQUIREMENTS FOR CANNED TOMATOES AND STEWED TOMATOES [1]

[Whole Style]

Factor	Grade A	Grade B	Grade C
Average drained weight	See Table I	See Table I	See Table I.
Character: (by count)	Good character	Reasonably good character	Fairly good character.
Score	18–20 points	16–17 points [2]	14–15 points. [3]
Color: (by surface area)	At least 90% USDA Tomato Red, but not more than 5% less red than Minimum Red for Canned Tomatoes or yellow, and none may be vivid green.	At least 50% USDA Tomato Red but not more than 10% less red than Minimum Red for Canned Tomatoes or yellow, and none may be vivid green.	Meets FDA requirements for strength and redness of color [21 CFR 155.190 (b)].
Score	27–30 points	24–26 points [2]	21–23 points. [3]
Wholeness	80% by weight whole or almost whole	70% by weight whole or almost whole	Less than 70% whole or almost whole.
Score	18–20 points	16–17 points [4]	14–15 points. [3]
Flavor	Normal	Normal	Normal.
Defects:			
Core material	Trace	Slight	Moderate.
EVM	Trace	Slight	Moderate.
Peel	See Table II	See Table II	See Table II.
Blemished areas	See Table II	See Table II	See Table II.
Discolored portions	See Table II	See Table II	See Table II.
Score	27–30 points	24–26 points [2]	21–23 points [3]
Total Score	90–100 points	80–89 points	70–79 points.

[1] Stewed tomatoes are graded excluding other vegetable ingredients.
[2] Cannot be graded above U.S. Grade B, regardless of the total score.
[3] Cannot be graded above U.S. Grade C, regardless of the total score.
[4] Can be graded U.S. Grade A, if the total score requirement is met.

TABLE IV—QUALITY REQUIREMENTS FOR CANNED TOMATOES AND STEWED TOMATOES [1]

[Halves and Wedges Styles]

Factor	Grade A	Grade B	Grade C
Average drained weight	See Table I	See Table I	See Table I.
Character: (by count)	Good character	Reasonably good character	Fairly good character.
Score	18–20 points	16–17 points [2]	14–15 points. [3]

TABLE IV—QUALITY REQUIREMENTS FOR CANNED TOMATOES AND STEWED TOMATOES [1]—Continued

[Halves and Wedges Styles]

Factor	Grade A	Grade B	Grade C
Color: (by surface area)	At least 90% USDA Tomato Red, but not more than 5% less red than Minimum Red for Canned Tomatoes or yellow, and none may be vivid green.	At least 50% USDA Tomato Red but not more than 10% less red than Minimum Red for Canned Tomatoes or yellow, and none may be vivid green.	Meets FDA requirements for strength and redness of color [21 CFR 155.190 (b)].
Score	27–30 points	24–26 points [2]	21–23 points.[3]
Flavor	Normal	Normal	Normal.
Defects:			
Core material	Trace	Slight	Moderate.
EVM	Trace	Slight	Moderate.
Peel	See Table II.	See Table II.	See Table II.
Blemished areas	See Table II.	See Table II.	See Table II.
Discolored portions	See Table II.	See Table II.	See Table II.
Score	27–30 points	24–26 points [2]	21–23 points.[3]
Total Score [4]	90–100 points	80–89 points	70–79 points.

[1] Stewed tomatoes are graded excluding other vegetable ingredients.
[2] Cannot be graded above U.S. Grade B, regardless of the total score.
[3] Cannot be graded above U.S. Grade C, regardless of the total score.
[4] For "Halves" and "Wedges" styles, the final total score is adjusted by dividing the total score by 80 then multiplying by 100 to allow for the absence of the factor of wholeness.

TABLE V—QUALITY REQUIREMENTS FOR CANNED TOMATOES AND STEWED TOMATOES [1]

[Sliced and Diced Styles]

Factor	Grade A	Grade B	Grade C
Average Drained weight	See Table I.	See Table I.	See Table I.
Character	Good character	Reasonably good character	Fairly good character.
Sliced: by count, Diced: by weight Score.	18–20 points	16–17 points [2]	14–15 points [3].
Color: (by surface area)	At least 90% USDA Tomato Red, but not more than 5% less red than Minimum Red for Canned Tomatoes or yellow, and none may be vivid green.	At least 50% USDA Tomato Red but not more than 10% less red than Minimum Red for Canned Tomatoes or yellow, and none may be vivid green.	Meets FDA requirements for strength and redness of color [21 CFR 155.190(b)].
Score	27–30 points	24–26 points [2]	21–23 points.[3]
Flavor	Normal	Normal	Normal
Defects:			
Core material	Trace	Slight	Moderate.
EVM	Trace	Slight	Moderate.
Peel	See Table II.	See Table II.	See Table II.
Blemished areas	See Table II.	See Table II.	See Table II.
Discolored portions	See Table II.	See Table II.	See Table II.
Score	27–30 points	24–26 points [2]	21–23 points.[3]
Total Score [4]	90–100 points	80–89 points	70–79 points.

[1] Stewed tomatoes are graded excluding other vegetable ingredients.
[2] Cannot be graded above U.S. Grade B, regardless of the total score.
[3] Cannot be graded above U.S. Grade C, regardless of the total score.
[4] For "Sliced" and "Diced" styles, the final total score is adjusted by dividing the total score by 80 then multiplying by 100 to allow for the absence of the factor of wholeness.

§ 52.5171 Determining the grade of a lot.

The grade of a lot of canned tomatoes covered by these standards is determined by the procedures found in the "Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products" (7 CFR 52.1 through 52.83).

Dated: July 18, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89-17210 Filed 7-21-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 967

[FV-89-061PR]

Expenses and Assessment Rate for Celery Grown in Florida

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 967 for the 1989–90 fiscal year established under the celery marketing order. Funds to administer this program are derived from assessments on handlers. The celery marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable celery handled from the beginning of such year. An annual budget of expenses is prepared by the Florida Celery Committee (Committee) and submitted to the U.S. Department of Agriculture for approval.

DATES: Comments must be received by August 3, 1989.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3861.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement and Order No. 967 [7 CFR Part 967], both as amended, regulating the handling of celery grown in Florida. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately seven handlers of celery grown in Florida who are subject to regulation under the celery marketing order, and approximately 13 producers of celery in the production area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of celery handlers and producers may be classified as small entities.

The celery marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable celery handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the U.S. Department of Agriculture for approval. The members of the Committee are handlers and producers of celery. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Committee before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay its expenses.

The Committee met on May 24, 1989, and unanimously recommended 1989–90 fiscal year expenditures of $131,500, ($127,000 from income and $4,500 from the reserve) and an assessment rate of $0.02 per 60-pound crate of celery shipped. In comparison, 1988–89 fiscal year budgeted expenditures were $126,000, and the asessment rate was $0.02 per 60-pound crate.

Major expenditure categories in the 1989–90 budget include $60,000 for administration, $54,500 for promotion, merchandising, and public relations, $8,800 for travel, and $5,000 for research. Assessment income for 1989–90 is estimated at $120,000, based on a crop of 6,000,000 crates of celery. An additional $7,000 is expected to be received from interest. Additional reserve funds may be used to meet any deficit in assessment income.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for the program needs to be expedited. The Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 967

Celery, Florida, Marketing agreements and orders.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 967 be amended as follows:

PART 967—[AMENDED]

1. The authority citation for 7 CFR Part 967 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 967.325 is added to read as follows:

§ 967.325 Expenses and assessment rate.

Expenses of $131,500, by the Florida Celery Committee are authorized, and an assessment rate of $0.02 per crate of celery is established for the 1989–90 fiscal year ending July 31, 1990. Unexpended funds from the 1989–90 fiscal year may be carried over as a reserve.

Dated: July 18, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-17208 Filed 7-21-89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-96-AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which would require a one-time inspection and installation, if necessary, of the power control actuator bushings on the left-hand and right-hand elevators. This proposal is prompted by reports of bushings missing from elevator power control actuator reaction link rod end locations. This condition, if not corrected, could result in unacceptable airframe vibration during flight.

DATES: Comments must be received no later than September 15, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Fededral Aviation Administration, Northwest

Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-96-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM-120S; telephone (206) 431-1919. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested pesons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-96-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

During recent elevator free-play checks on a Boeing Model 757 series airplane, an operator found bushings missing from each of the three power control actuators installed on the right elevator. The FAA has not determined whether these bushings were installed during production and subsequently removed, or whether they were not installed during production. Missing bushings, if not detected and corrected, could lead to unacceptable airframe vibration during flight.

The FAA has reviewed and approved Boeing Service Letter 757-SL-27-43, dated May 3, 1989, which describes procedures for inspection of the power control actuator's bushings to determine if the bushings are installed, and replacement, if necessary.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would required a one-time inspection to determine the presence and proper installation of the power control actuator bushings on the left and right elevator, and installation, if necessary, in accordance with the service letter previously described. In addition, operators would be required to submit a report of their findings to the FAA.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub.L. 96-511) and have been assigned OMB Control Number 2120-0056.

There are approximately 75 Model 757 series airplaines of the affected design in the worldwide fleet. It is estimated that 48 airplanes of U.S. registry would be affected by this AD, that it would take approximately 30 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $57,600.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

PART 39—[AMENDED]

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes, listed in Boeing Service Letter 757-SL-27-43, dated May 3, 1989, certificated in any category. Compliance required within the next 60 days after the effective date of this AD, unless previously accomplished.

To prevent unacceptable airframe vibration during flight, accomplish the following:

A. Conduct a one-time inspection of the left and right elevator power control actuator to determine the presence of the bushings, in accordance with Boeing Service Letter 757-SL-27-43, dated May 3, 1989. If any bushing is missing, prior to further flight, install new a bushing in accordance with the Boeing Model 757 Maintenance Manual.

B. Within 10 days after the completion of the inspection required by paragraph A., above, submit a report of findings, positive or negative, to the Manager, Manufacturing Inspection Office, ANM-108, FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Reports must include the aircraft serial number.

C. An alternate means of compliance or adjustment of the comliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on July 17, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-17248 Filed 7-21-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-99-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which would require inspection and repair, if necessary, of the nose wheel well sidewalls, top panel, and aft pressure pan. This proposal is prompted by numerous reports of cracking of the nose wheel well box structure. This condition, if not corrected, could result in crack propagation to adjacent structure and, consequently, reduced structural integrity and/or loss of cabin pressurization.

DATES: Comments must be received no later than September 15, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-99-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Moutain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM-120S; telephone (206) 431-1919. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-99-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Several operators of Model 747 series airplanes have reported approximately 70 instances of cracking of the nose wheel well box structure on airplanes having accumulated between 2,400 flight cycles and 19,000 flight cycles. Reports have described various crack locations, including the top panel web and spin brake intercostals, the forward top corner angles, the sidewall vertical beam webs, vertical beam to horizontal stiffener, attach clips and adjacent side panel web, the wheel well floor beam lower chords and webs, the sidewall web at the nose gear trunnion fitting, and the pressure pan at body station (BS) 400. Crack lengths varied according to location, from 1.00 inch at the sidewall horizontal stiffener clips to 11.00 inches at the pressure pan. There have been several reports of the spin brake intercostals, the sidewall panel clips, and the sidewall vertical beam webs found cracked through. In addition, several instances of secondary top panel and side panel cracking have been reported adjacent to these locations. Cracking is attributed to cabin pressure and landing gear cycle loading.

Continued operation with undetected or unrepaired cracking could result in crack propagation to adjacent structure and, consequently, reduced structural integrity below required levels and/or loss of cabin pressurization.

The FAA has reviewed and approved Boeing Service Bulletin 747-53-2293, dated December 1, 1988, which describes the specific inspection procedures to be used to check for cracks in the nose wheel well left and right sidewalls, the nose wheel well top panel, and the aft pressure pan at BS 400; repair procedures; and modification on Boeing Model 747 airplanes.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspections for cracks and repair, if necessary, in the nose wheel well box structure, in accordance with the service bulletin previously described.

There are approximately 686 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 186 airplanes of U.S. registry would be affected by this AD, that it would take approximately 68 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $505,920.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39:

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. Section 39.13 is amended by adding the following new airworthiness directive.

Boeing: Applies to Model 747 series airplanes, listed in Boeing Service Bulletin 747-53-2293, dated December 1, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent cabin pressure loss due to cracking in the nose wheel well box structure, accomplish the following:

A. Perform the following inspections at the intervals indicated below, in accordance with Boeing Service Bulletin 747-53-2293, dated December 1, 1988. The specified flight cycles (or threshold) applies to the cycles accumulated on the structure within the corresponding inspection areas, and not necessarily to the total number of cycles on the airplane; therefore, inspections may be deferred in any area where structure has been replaced with new structure, until the new structure reaches the appropriate flight cycle threshold.

Note: Flight cycles need not be counted if cabin differential pressure was below 2.0 psi.

1. Prior to the accumulation of 4,000 flight cycles or within 1,500 flight cycles after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 1,500 flight cycles, conduct a detailed visual internal and external inspection for cracks in the top panel and intercostals.

2. Prior to the accumulation of 10,000 flight cycles or within 1,500 flight cycles after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 1,500 flight cycles, conduct a detailed visual internal inspection for cracks in the nose wheel well vertical beam clips and sidewall panel web.

3. Prior to the accumulation of 10,000 flight cycles or within 1,500 flight cycles after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 3,000 flight cycles, conduct a detailed visual internal and external inspection for cracks in the nose wheel vertical beam webs.

B. If cracks are found during any of the inspections required by paragraph A., above, prior to further flight, conduct an inspection for secondary cracking at locations specified in Boeing Service Bulletin 747-53-2293, dated December 1, 1988. Repair all cracks, prior to further flight, by replacing cracked parts with original design parts, or by repairing cracked structure in accordance with Boeing Service Bulletin 747-53-2293, dated December 1, 1988, or the 747 Structural Repair Manual (SRM).

C. An an alternative to the repetitive inspections required by paragraphs A.1. and A.2. above, conduct a detailed visual inspection plus a high frequency eddy current (HFEC) inspection of the nose wheel well top panel and intercostals, nose wheel well vertical beam clips, and sidewall panel web in accordance with Boeing Service Bulletin 747-53-2293, dated December 1,1988, at intervals not to exceed 3,000 flight cycles.

D. As an alternative to the inspection of nose wheel well top panel intercostals, sidewall panel vertical beam clips, and vertical beam webs, required by paragraphs A. and C., above, replace the nose wheel well top panel intercostals, sidewall vertical beam clips, and vertical beam webs with redesigned structure, within the threshold specified in paragraph A., above, and conduct an inspection for cracking of adjacent structure, in accordance with Boeing Service Bulletin 747-53-2293, dated December 1, 1988. Repair any cracks prior to further flight, in accordance with the Boeing service bulletin.

1. For those areas with redesigned structure, perform the inspections required by paragraphs A.1. and A.2., above, at intervals not to exceed 3,000 flight cycles; and perform the inspections required by paragraph A.3., above, at intervals not to exceed 6,000 flight cycles.

2. As an alternative to the inspections required by paragraphs A.1. and A.2. above, for those areas with redesigned structure, conduct a detailed visual inspection plus a HFEC inspection of the nose wheel well top panel intercostals and nose wheel well side panel vertical beam clips, in accordance with Boeing Service Bulletin 747-53-2293, dated December 1, 1988, at intervals not to exceed 6,000 flight cycles.

E. For Model 747SR airplanes, all specified flight limits, allowance periods, and reinspection intervals may be multiplied by a 1.2 adjustment factor, based on mixed operation at lower cabin pressure differentials.

F. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on July 17, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 89-17249 Filed 7-21-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-ASW-27]

Airworthiness Directives; California Department of Forestry et al.

In the matter of Garlick Helicopters; Hawkins and Powers Aviation, Inc.; International Helicopters, Inc.; Lenair Corporation; Pilot Personnel International, Inc.; Smith Helicopters; and Wilco Aviation, Model UH-1 and TH-1 Series Helicopters (these helicopters were manufactured by Bell Helicopter Textron, Inc., under military contract).

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); withdrawal.

SUMMARY: This document withdraws an NPRM which proposed to adopt an airworthiness directive (AD) to provide a one-time inspection on the tail rotor (T/R) grip assembly used on Model UH-1A, UH-1B, UH-1E, UH-1F, UH-1L, and TH-1L helicopters (modified by California Department of Forestry; Garlick Helicopters; Hawkins and Powers Aviation, Inc.; International Helicopters, Inc.; Lenair Corporation; Pilot Personnel International, Inc.; Smith Helicopters; and Wilco Aviation).

The NPRM is being withdrawn because the FAA has concluded that the requirements of the inspection have either been satisfied or the introduction into service of a new tail rotor grip assembly has eliminated the inspection requirements.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Henry, Federal Aviation Administration, Rotorcraft Certification Office, ASW-170, Fort Worth, Texas 76193-0170, telephone (817) 624-5168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring a one-time visual inspection of the T/R grip assembly, Part Number (P/N) 204-011-728-19, internal bore and thread area for corrosion and other damage on certain Model UH-1 and TH-1 series helicopters was published in the **Federal Register** on March 31, 1986.

AD 88-25-05, Docket No. 88-ASW-34, Amendment 39-6079, issued November 15, 1988, with an effective date of December 13, 1988, reduced the service life of the P/N 204-011-728-19 T/R grip assembly from 500 to 300 hours' time in service. Parts with 250 or more hours' time in service must be removed and replaced with a serviceable part within the next 50 hours' time in service after the effective date of the AD.

The AD also informed operators that a new replacement T/R grip assembly, P/N 205-011-711-101, having a 2,500 hour service life was available.

Since publication of the NPRM, the FAA has determined that the one-time inspection is no longer required. Based on the fact that the safety issue is resolved by AD 88-25-05 (53 FR 47944; December 29, 1988) and in light of the requirements of Executive Order 12291 (46 FR 13193; February 19, 1981), this rulemaking should be terminated.

Accordingly, I conclude that the FAA should not proceed with the adoption of the proposed rulemaking in the NPRM now pending. Therefore, the NPRM (51 FR 10876; March 31, 1986) to amend Part 39 of the FAR (14 CFR 39.13) to add an AD pertaining to Model UH-1 and TH-1 series helicopters is withdrawn.

The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85

Issued in Fort Worth, Texas, on July 12, 1989.

James D. Erickson,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89-17250 Filed 7-21-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-AWA-8]

RIN: 2120-ADOO

Proposed Establishment of the Phoenix Terminal Control Area and Revocation of the Phoenix Airport Radar Service Area; AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to notice of proposed rulemaking; correction.

SUMMARY: This action corrects a typographical error in the correction to notice of proposed rulemaking for the Phoenix, AZ, Terminal Control Area which was published in the **Federal Register** on June 28, 1989, Part 4. Under the caption titled History, the words "Salt Lake City very high frequency omni-directional radio range and tactical air navigational aid" should read "Salt River very high frequency omni-directional radio range and tactical air navigational aid.".

FOR FURTHER INFORMATION CONTACT: Betty Harrison, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

Issued in Washington, DC, on July 13, 1989.

Jerry W. Ball,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-17253 Filed 7-21-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-AWP-16]

Proposed Revision of Santa Rosa, CA Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to review and extend the Santa Rosa, California Transition Area. This action will provide controlled airspace for the conduct of instrument procedures at Lampson Airport.

DATE: Comments must be received on or before September 8, 1989.

Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-1180

The official docket may be examined at the above address, Office of the Associate Chief Counsel, AWP-7.

An informal docket may also be examined during normal business hours at the above address, Airspace and Procedures Branch, AWP-530.

FOR FURTHER INFORMATION CONTACT: Dan Martin, Airspace and Procedures Specialist, Airspace, and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-0166.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-AWP-16." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace and Procedures Branch, AWP-530, 15000 Aviation Boulevard, Lawndale, Califirnia 90261 both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, AWP-530 at the above address. Communications must identify the notice number of the NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to section 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise and extend the Santa Rosa, California Transition Area so as to include Lampson Airport. This action will provide controlled airspace for the conduct of instrument operations at Lampson Airport. Section 71.181 of Part 71 of the Federal Aviation

Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "Significant rule" under DOT Regulatory Policies and procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Santa Rosa, CA [Revised]

That airspace extending upward from 700 feet above the surface bounded by a line beginning at latitude 38°51'30" N/longitude 123°02'00" W; to latitude 39°15'00" N/longitude 123°02'00" W; to latitude 39°15'00" N/longitude 122°39'00" W; to latitude 38°47'30" N/longitude 122°39'00"; to latitude 38°27'00" N/longitude 122°39'05" W; to latitude 38°22'45" N/longitude 122°39'05" W; to latitude 38°49'30" N/longitude 123°08'28" W; thence to the point of beginning.

Issued in Los Angeles, California on July 5, 1989.

Jacqueline L. Smith,

Manager, Air Traffic Division.

[FR Doc. 89–17254 Filed 7–21–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 88–AGL–25]

Proposed Alteration of VOR Federal Airways; IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This notice withdraws the Notice of Proposed Rulemaking (NPRM), Airspace Docket No. 88–AGL–25, which was published in the **Federal Register** on May 24, 1989. That NPRM proposed to realign Federal Airways V–24, V–97, V–100, V–217 and V–228 located in the vicinity of the Chicago O'Hare, IL, Airport (54 FR 22446). This action was proposed to improve traffic flow in the Chicago O'Hare airport traffic area and reduce arrival/departure delays. After futher study of the proposal, the FAA found that other airspace changes are necessary.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

The Proposed Rule

On May 24, 1989, a Notice of Proposed Rulemaking was published in the **Federal Register** to alter the descriptions of several VOR Federal Airways located in the Chicago metropolitan area. These changes would have improved the flow of traffic in the Chicago, IL, area and would have provided air traffic controllers with additional flexibility for maneuvering traffic to reduce arrival/departure delays.

Conclusions

After further study of the proposed airway changes, the FAA found that other changes are necessary. The new airway alignments would require additional holding fixes to ensure safety. Therefore, holding fixes must be developed before these proposed airway changes are implemented.

List of Subjects in 14 CFR 71

Aviation safety, VOR Federal Airways.

The Withdrawal

Accordingly, pursuant to the authority delegated to me, the Notice of Proposed Rulemaking, Airspace Docket No. 88–AGL–25, as published in the **Federal Register** on May 24, 1989 (54 FR 22446) is hereby withdrawn.

(Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.)

Issued in Washington, DC, on July 12, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89–17255 Filed 7–21–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 89–AWA–14]

Proposed Alteration of VOR Federal Airway V–40; MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Federal Airway V–40 located in the state of Michigan. The alignment, which is at the request of Transport Canada, will coincide with changes in the Canadian airspace structure. This action would improve traffic flow during transborder operations.

DATES: Comments must be received on or before September 5, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AGL–500, Docket No. 89–AWA–14, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in the developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–AWA–14." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive pubic contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of VOR Federal Airway V–40 located in the state of Michigan. This proposed alteration is at the request of Transport Canada to support airway changes in the Canadian airspace structure. This proposed action also is in conjunction with the Detroit Metropolitan Airport project. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6En dated January 3, 1989.

The FAA had determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V–40 [Amended]

By removing the words "From DRYER, OH;" and substituting the words "From INT DRYER, OH, 321°T(326°M) and Salem, MI, 130°T(133°M) radials; INT DRYER 000°T(005°M) and Akron, OH, 312°T(316°M) radials; DRYER;"

Issued in Washington, DC, on July 12, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89–17256 Filed 7–21–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 89–ASW–24]

Proposed Establishment of Control Zone; Fort Worth Alliance Airport, Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a part-time control zone at Fort Worth Alliance Airport, TX. This proposed action is necessary because Alliance Airport meets the criteria for the establishment of a control zone by the fact that there is to be a part-time federal airport traffic control tower (ATCT) at the Alliance Airport and there will be a federally certificated weather observer who will be able to take hourly and special weather observations at the Alliance Airport during the times the control zone is in effect. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the standard instrument approach procedures (SIAP) that will serve the Alliance Airport. The establishment of a control zone will allow the Alliance Airport to be used as an alternate airport under instrument flight rules (IFR) weather conditions. The proposed control zone will not include the Hicks Airfield or Northwest Regional Airport.

DATES: Comments must be received on or before September 8, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 89–ASW–24, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: (817) 624–5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environment, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to

acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASW-24." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure

The Proposal

The FAA is considering an amendment to § 71.171 of the Federal Aviation Regulations (14 CFR Part 71) to establishing a part-time control zone at Forth Worth Alliance Airport, TX. This proposed action is necessary because Alliance Airport meets the criteria for the establishment of a control zone by the fact that there is to be a part-time federal ATCT at the Alliance Airport and there will be a federally certificated weather observer who will be able to take hourly and special weather observations at the Alliance Airport during the times the control zone is in effect. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the SIAP's that will serve the Alliance Airport. The establishment of a control zone will allow the Alliance Airport to be used as an alternate airport under IFR weather conditions. The ATCT is scheduled to be commissioned on December 14, 1989. The effective date of this part-time control zone will depend entirely upon the installation and certification of the ATCT. The proposed control zone will not include the Hicks Airfield or Northwest Regional Airport. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Control Zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Fort Worth Alliance Airport, TX [New]

Within a 6-mile radius of the Alliance Airport (latitude 32°59'11" N., longitude 97°19'02" W.). This control zone is effective during the specific dates and times established in advance by a notice to airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Issued in Fort Worth, TX on July 5, 1989.

Larry L. Craig,

Manager, Air Traffic Division Southwest Region.

[FR Doc. 89-17251 Filed 7-21-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 71 and 73

[Airspace Docket No. 89-ASW-3]

Proposed Alteration of Restricted Areas R-2401 and R-2402; Fort Chaffee, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to subdivide the existing Restricted Area R-2401 Fort Chaffee, AR, into two areas, R-2401A and R-2401B. This action allows the more efficient use of airspace by enabling that portion of the area not being used by the military to be released for access by civil traffic. In addition, R-2402 is amended to reflect minor corrections to the boundary description and time of designation. The proposal will also amend the Continental Control Area to reflect R-2401A and R-2401B.

DATES: Comments must be received on or before September 5, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASW-500, Docket No. 89-ASW-3, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Rich Uhrick, Military Operations Branch (ATO-140), Operations Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9363.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties ar invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, aeronautical, economic and energy aspects of the proposals. Communications should identify the

airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASW-3." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposals

The FAA is considering amendments to Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to subdivide the existing Restricted Area R-2401 Fort Chaffee, AR, into two areas, R-2401A and R-2401B. When R-2401 is activated for fast moving military aircraft, it greatly restricts air traffic inbound to Fort Smith Airport. Subdividing the area would, therefore, result in more efficient use of airspace by allowing increased access for civil traffic inbound to Fort Smith Airport. Additionally, this action amends R-2402 by effecting minor corrections to the boundary description. This action would more accurately reflect the boundaries of R-2402 and would not result in an increase in restricted airspace. Further, this action would establishe the time of designation for R-2401A, R-2401B and amend the time of designation for R-2402 resulting in a decreased restriction on the flying public. In addition, the Continental Control Area would be amended to reflect R-2401A and R-2401B. Sections 71.151 and 73.24 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Continental control area, Restricted areas.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. § 71.151 is amended as follows:

§ 71.151 [Amended]

R-2401 Fort Chaffee, AR [Remove]

R-2401A Fort Chaffee, AR [New]

R-2401B Fort Chaffee, AR [New]

PART 73—SPECIAL USE AIRSPACE

3. The authority citation for Part 73 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

4. § 73.24 is amended as follows:

§ 73.24 [Amended]

R-2401 Fort Chaffee, AR [Remove]

R-2401A Fort Chaffee, AR [New]

Boundaries. Beginning at lat. 35°18'17" N., long. 94°12'00" W., to lat. 35°17'45" N., long. 94°15'35" W.; to lat. 35°15'35" N., long. 94°18'00" W.; to lat. 35°13'50" N., long. 94°15'00" W.; to lat. 35°13'50" N., long. 94°12'00" W.; to the point of beginning.

Designated altitudes. Surface to and including 30,000 feet MSL.

Time of designation. Sunrise to sunset, Monday through Sunday; other times by NOTAM.

Controlling agency. FAA, Memphis ARTCC.

Using agency. U.S. Army, Commanding General, Fort Chaffee, AR

R-2401B Fort Chaffee, AR [New]

Boundaries. Beginning at lat. 35°17'45" N., long. 94°15'35" W., to lat. 35°17'37" N., long. 94°17'23" W.; to lat. 35°16'06" N., long. 94°19'03" W.; to lat. 35°15'35" N., long. 94°18'00" W.; to the point of beginning.

Designated altitudes. Surface to and including 30,000 feet MSL.

Time of designation. Sunrise to sunset, Monday through Sunday; other times by NOTAM.

Controlling agency. FAA, Memphis ARTCC.

Using agency. U.S. Army, Commanding General, Fort Chaffee, AR.

R-2402 Fort Chaffee, AR [Amended]

By removing the existing boundaries and time of designation and substituting the following:

Boundaries. Beginning at lat. 35°18'09" N., long. 94°03'00" W., to lat. 35°17'00" N., long. 94°03'00" W.; to lat. 35°17'00" N., long. 94°01'00" W.; to lat. 35°10'20" N., long. 94°01'00" W.; thence west along Arkansas State Highway No. 10. to lat. 35°11'33" N., long. 94°12'00" W.; to lat. 35°13'50" N., long. 94°12'00" W.; to lat. 35°18'10" N., long. 94°12'00" W.; to lat. 35°18'12" N., long. 94°09'51" W.; thence east along Arkansas State Highway No. 22 to the point of beginning.

Time of designation. Sunrise to sunset, Monday through Sunday; other times by NOTAM.

Issued in Washington, DC, on July 12, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-17252 Filed 7-21-89; 8:45 am]

BILLING CODE 4910-13-M

BEST COPY AVAILABLE

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana—Proposed Regulatory Program Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed amendments to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments consist of proposed changes to the Indiana Surface Mining Rules concerning: (1) The definition of "cemetery"; (2) the length of time allowed for the State to determine the completeness of a lands unsuitable petition; and (3) nonsubstantive word changes and correction of typographical errors. The amendments are intended to revise the Indiana program to be consistent with the corresponding Federal regulations and to clarify the language of the rules.

This notice sets forth the times and locations that the Indiana program and the proposed amendments will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed for the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on August 23, 1989; if requested, a public hearing on the proposed amendments is scheduled for 1:00 p.m. on August 18, 1989; and requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on August 8, 1989.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Mr. Richard D. Rieke, Director, Indianapolis Field Office, at the address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Indiana program, the amendments, a listing of any scheduled public meeting, and all written comments received in response to this notice will be available for public review at the addresses listed below, during normal business hours Monday through Friday, excluding holidays. Each requester may receive, free of charge, one single copy of the proposed amendment by contacting the OSMRE Indianapolis Field Office.

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204. Telephone: (317) 226-6166.

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5131, Washington, DC 20240. Telephone (202) 343-5492.

Indiana Department of Natural Resources, 608 State Office Building, Indianapolis, IN 46204. Telephone (317) 232-1547.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Indianapolis Field Office, (317) 226-6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

The Secretary of the Interior conditionally approved the Indiana program, effective July 29, 1982. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of Amendments

By letter dated June 12, 1989 (Administrative Record No. IND-0649), the Indiana Department of Natural Resources (IDNR) submitted proposed amendments to the Indiana program at 310 Indiana Administrative Code (IAC) 12-1-3 and 310 IAC 12-2-7. The proposed changes are briefly summarized below: The amendment to 310 IAC 12-1-3 changes the definition of "cemetery" from "any land dedicated and used for the interment of human remains pursuant to the Indiana General Cemetery Act (IC 23-14-1-1)" to "any area of land where human remains are interred." This revision is made in response to an OSMRE notification to the State specifying the need to change the State's definition of "cemetery."

The amendment to 310 IAC 12-2-7 changes from forty-five (45) to thirty (30) the number of days the State is allowed for determining the completeness of a lands unsuitable petition. The State program amendment is intended to bring the Indiana rule into conformance with the counterpart Federal regulation. Other changes to 310 IAC 12-2-7 are stylistic or correction typographical errors.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendments proposed by IDNR satisfy the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendments are deemed adequate, they will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by the close of business August 8, 1989. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet the OSMRE representatives to discuss the proposed amendment may request a meeting at the Indianapolis Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be included in the Administrative Record.

List of Subjects in 30 CFR Part 914

Coal Mining, Intergovernmental relations, Surface mining, Underground mining.

Carl C. Close,

Assistant Director Eastern Field Operations.

Date: July 13, 1989.

[FR Doc. 89-17237 Filed 7-21-89; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 130

[FRL-3620-1]

Water Quality Planning and Management; Reopening of Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Request for comment and extension of public comment period for proposed rule.

SUMMARY: EPA is announcing the reopening of the public comment period on proposed amendments to 40 CFR Part 130, the Water Quality Planning and Management Regulation. On January 12, 1989, EPA published a proposed rule to amend Part 130 together with 40 CFR Parts 122 and 123, and invited public comment (54 FR 1300, January 12, 1989). The public comment period closed February 13, 1989. On June 2, 1989, EPA published a final rule (54 FR 23868) to amend Parts 122, 123 and § 130.10 to address, among other things, the listing of waters and development of individual control strategies under section 304(1) of the CWA. However, EPA did not finalize amendments to §§ 130.7 and 130.8, which were also included in the January 12 proposal, because EPA has decided to reopen and extend the public comment period on these proposed amendments.

DATE: Written comments must be submitted on or before September 22, 1989.

ADDRESSES: Submit three copies of comments to Judith Leckrone, Assessment and Watershed Protection Division, Office of Water Regulations and Standards (WH-553), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460. The public record for this proposed amendment is available at the EPA Library, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Judith Leckrone, Assessment and Watershed Protection Division, Office of Water Regulations and Standards (WH-553), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. (202) 382-7056.

SUPPLEMENTARY INFORMATION: The Clean Water Act (CWA) contains a number of provisions for developing pollutant discharge controls as needed to meet water quality standards. Today EPA is reopening the public comment period on proposed amendments to EPA's regulations that implement sections 303(d) and 305(b) of the Act. Under section 303(d) of the Clean Water Act, the States are required to identify water quality limited segments, establish a priority ranking for these waters, and develop total maximum daily loads (TMDLs). States must submit the identified waters and the TMDLs to EPA for approval "from time to time."

Under section 305(b) of the Act, states are required to submit reports to EPA every two years which describe the water quality of all navigable waters and then compare this quality with the water quality goals of the Clean Water Act.

On January 12, 1989, EPA proposed to require that States submit to EPA the lists of water quality limited segments under section 303(d) of the CWA as part of the biennial water quality reports required by section 305(b) of the CWA (54 FR 1300, January 12, 1989). EPA also proposed certain data requirements, and review and approval criteria to be used by the States and EPA for development and review of the lists of waters developed under section 303(d).

As explained in the preamble in the **Federal Register** on January 12, EPA proposed these amendments for several reasons. Most importantly, the changes would provide an on-going national inventory of waters with water qualtiy problems and provide a basis for setting priorities for assessment and control actions, enhance EPA's and the State's abilities to track specific water quality problems over time, help ensure that the States develop lists of waters on a consistent national basis, and ensure that the lists are periodically updated with the most recent data available.

Improved lists of waters would also strengthen the implementation of other section 303(d) requirements such as establishing a priority ranking for developing total maximum daily loads (TMDLs).

In the past, the quality of the State's section 303(d) lists and TMDLs has been highly variable. A recent report by the General Accounting Office, *More EPA Action Needed To Improve the Quality of Heavily Polluted Waters* (January 1989, GAO/RCED-89-38), criticized EPA and the States for their lack of activity and consistency in identifying needs for and developing TMDLs. Because of this report, and past and recent litigation, and because permitting and nonpoint source control programs need to be based on reasonable, up-to-date evaluations of water quality problems, EPA believes that it should emphasize the listing of waters under section 303(d), and thus strengthen the national program for identifying and developing controls for water quality problems.

EPA is extending the comment period for these proposed amendments because many reviewers were confused about how these proposed amendments relate to the lists and individual control strategies required under section 304(l) of the CWA. EPA did not propose to repeat the one-time listing of waters and developing of individual control strategies under section 304(l). Instead, the proposed amendments address the on-going listing requirements of section 303(d) and the reporting requirements under section 305(b) of the Clean Water Act. Sections 303(d) and 305(b) are longstanding and ongoing requirements established by Congress in 1972. Specifically, the proposed amendments would require the States to include their section 303(d) lists of waters in their biennial section 305(b) reports.

EPA is also extending the comment period on the proposed amendments in order to solicit additional comments on the implications of adding new emphasis to the section 303(d) program. The Agency is also responding to requests for a longer public comment period on these amendments in order to evaluate how they might affect related State and EPA programs.

In addition to all comments received in response to this notice, EPA will consider all the comments on the proposed amendments to Part 130.7 and 130.8, and Part III.B.4 of the preamble which wre received by EPA during the previous public comment period that began January 12.

In particular, EPA is interested in receiving responses to the following questions:

(1) How would improved identification and regular reporting of water quality limited segments and the subsequent development of TMDLs affect the permitting process for point sources of pollution? For example, would it expedite or hinder the issuance of NPDES permits?

(2) How would improved identification and regular reporting of

water quality limited segments and the subsequent development of TMDLS affect existing nonpoint source control programs? How should States consider nonpoint source contributions in the development of TMDLs.

(3) Should EPA require States to rely on and interpret the narrative water quality criteria in the absence of numeric water quality criteria, for the purposes of section 303(d).

(4) Should EPA require States to provide public participation in the development of the lists of water quality limited segments?

(5) Are EPA's proposed documentation requirements at proposed paragraphs 130.7(b)(6) adequate? Are they too burdensome? Should the regulations be more or less specific about the documentation requirements?

(6) Section 303(d) requires the States to "establish a priority ranking" for the development of TMDLs for the water quality limited segments that they identify. How should States set these priorities for the water quality limited segments? For example, should States set priorities based on human health or aquatic life concerns, or public interest concerns? Should EPA be more or less specific about how States set these priorities?

(7) When should these requirements go into effect? Should the lists of water quality limited segments be required to be a part of the 1990 section 305(b) reports, or should the requirements start in 1992 or even 1994?

(8) Should EPA require the States to report these lists in a standard format?

(9) Besides the changes proposed on January 12, 1989, should EPA propose additional changes to Part 130?

Date: July 12, 1989.

Rebecca Hanmer,

Acting Assistant Administrator for Water.

[FR Doc. 89-17264 Filed 7-21-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

RIN 1094-AA37

Special Rules Applicable to Surface Coal Mining Hearings and Appeals

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: The Office of Hearings and Appeals is reopening the period for the submission of comments on the proposed rules providing procedures for administrative review of decisions of the Office of Surface Mining Reclamation and Enforcement under the permanent regulatory program established by the Surface Mining Control and Reclamation Act of 1977.

DATES: The comment period on the proposed rules is extended until August 23, 1989.

ADDRESSES: Comments may be mailed or delivered in person to: Director, Office of Hearings and Appeals, U.S. Department of the Interior, Room 1111, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Telephone 703-235-3750.

SUPPLEMENTARY INFORMATION: On March 6, 1989, the Office of Hearings and Appeals published proposed rules amending the procedures for administrative review of decisions of the Office of Surface Mining Reclamation and Enforcement under the permanent regulatory program (54 FR 9852-55 (Mar. 8, 1989); 54 FR 10784-10794 (Mar. 15, 1989)). The National Wildlife Federation and the Environmental Policy Institute have requested that the period for comment be reopened, based in part on their interest in commenting on the unpublished decision in *Peabody Coal Co.* v. *United States of America*, CIV 86-502 PCT CLH (D. Ariz., Mar. 11, 1988), and on the settlement agreement in *Peabody Coal Co.* v. *Lujan*, Civil No. 87-3462 (RCL) (D.D.C., filed Dec. 21, 1987), stating that the Department would initiate rulemaking proceedings to amend 43 CFR 4.1360-4.1388 and that the proposed rules published on March 6, 1989, address some of the plaintiffs' concerns in the latter case.

We are reopening the comment period until August 23, 1989.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Mines, Public lands, Surface mining.

Date: July 14, 1989.

James L. Byrnes,

Director.

[FR Doc. 89-17224 Filed 7-21-89; 8:45 am]

BILLING CODE 4310-79-M

Bureau of Land Management

43 CFR Part 3160

[AA-630-09-4211-02]

RIN 1004-AA67

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 6—Hydrogen Sulfide Operations; Extension of Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of extension of comment period.

SUMMARY: The proposed rule that would issue Onshore Oil and Gas Order No. 6 under 43 CFR Part 3160 was published in the Federal Register on May 16, 1989 (54 FR 21075), with a 60-day comment period. The comment period is being extended to July 31, 1989, in response to public requests.

DATE: The period for the submission of comments in hereby extended to July 31, 1989. Comments received or postmarked after this date may not be considered as part of the decisionmaking process on issuance of the final rule.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Building, 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Chris Hanson, (414) 291-4421 or Sie Ling Chiang, (202) 653-2127.

July 18, 1989.

James M. Hughes,

Deputy Assistant Secretary of the Interior.

[FR Doc. 89-17193 Filed 7-21-89; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-301, RM-6672 and RM-6736]

Radio Broadcasting Services; Carthage and Webb City, Missouri

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two separate conflicting petitions. The first petition, filed by Carthage Broadcasting Company, proposes the substitution of FM Channel 236C2 for Channel 285A at Carthage, Missouri, and modification of the license for Station KRGK(FM), to specify operation on Channel 236C2. To accommodate Channel 236C2 at Carthage it would be necessary to substitute Channel 250A for 236A at Webb City, Missouri, and modify the license of Station KKLL(FM) accordingly. The coordinates for Channel 236C2 at Carthage are 37-17-54 and 94-21-49, which includes a site restriction 13.9 kilometers north of the community. The coordinates for Channel 250A at Webb City are 37-06-11 and 94-24-11, the existing site for Station KKLL(FM). The second petition was filed by Don and Gail Stubblefield, requesting the substitution of Channel 236C2 for Channel 236A and modification of the license for Station KKLL(FM), Webb City, Missouri, to reflect the Class C2 channel. The coordinates for Channel 236C2 at Webb City are 37-16-09 and 94-33-04. Those coordinates include a site restriction 15.4 kilometers northwest of the community. In comments, parties should compare the gain area provided by each proposal including the population and area with expanded service.

DATES: Comments must be filed on or before September 7, 1989, and reply comments on or before September 22, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Allan G. Moskowitz, Kaye, Scholer, Fierman, Hays & Handler, 901—15th Street, NW., Suite 1100, Washington, DC 20005 (Counsel to Carthage Broadcasting Company).

Don and Gail Stubblefield, Radio Station KKLL-FM, Group 5, Box 136, Joplin, Missouri 64801.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-301, adopted June 16, 1989, and released July 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-17204 Filed 7-21-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-159; RM-6204]

Radio Broadcasting Services; New London, NH

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: The Commission denies the request of Kevin O'Kane to allot Channel 259A to New London, New Hampshire. Upon review, it is found that Channel 259A cannot be allotted to New London in compliance with the Commission's minimum distance separation requirements. Rather, it conflicts with the proposed allotment of Channel 259A to Royalton, Vermont. See MM Docket 87-410, 2 FCC Rcd 6102 (1987) and counterproposals thereto. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-159, adopted June 30, 1989, and released July 18, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-17188 Filed 7-21-89; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 54, No. 140
Monday, July 24, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Farmer-Owned Reserve Loan Extensions—1985 Crop Corn and Grain Sorghum Loans

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of Determination.

SUMMARY: In accordance with 7 CFR 1421.41 the Commodity Credit Corporation (CCC) is offering producers the opportunity to extend 1985-crop Farmer-Owned Reserve (FOR) corn and grain sorghum loans which mature on or after August 31, 1989. These loans may be extended for six months with producers receiving at settlement a storage payment with respect to the grain pledged as collateral for such loan.

These determinations provide for the enhanced administration of CCC programs and provide affected producers with notice of CCC's determinations with respect to such loans.

EFFECTIVE DATE: July 24, 1989.

ADDRESS: Comments concerning this notice should be directed to Thomas VonGarlem, Assistant Deputy Administrator, State and County Operations, USDA–ASCS, Room 3096, South Building, P.O. Box 2415, Washington, DC 20013.

The Regulatory Impact Analysis describing the options considered in developing this notice is available on request from Thomas VonGarlem at this address.

FOR FURTHER INFORMATION CONTACT: Thomas VonGarlem (202) 447–6761.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512–1 and has been designated as "non-major".

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment; therefore, neither an environmental assessment nor an environmental impact statement is needed.

The title and number of the Federal Assistance Program to which this notice applies are: Title-Commodity Loans and Purchases, Number 10.051, as found in the catalog of Federal Domestic Assistance.

It has been determined that this action will not increase the federal paperwork burden for individual, small businessmen and other persons. The Commodity Credit Corporation (CCC) is also not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice. Therefore, the Regulatory Flexibility Act is not applicable.

Keith Bjerke, Executive Vice President, Commodity Credit Corporation hereby certifies that this notice will not have a significant economic impact on a substantial number of small entities because the action taken in this rule will reduce uncertainty in the operation of the program and will have the effect of stabilizing commodity supply and demand situations.

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 23, 1983).

Background

CCC makes available price support loans to producers of wheat and feed grains in accordance with 7 CFR Part 1421. On September 1, 1988 (53 FR 34004) CCC published a final rule in the **Federal Register** which amended such part to provide that certain crop year CCC price support loans could be extended. The following statement was included in that final rule:

II. Background of Proposed Changes to 7 CFR Part 1421

CCC makes available price support to eligible producers through a variety of means, including purchase agreements and nonrecourse loans. Producers who comply with applicable program requirements are afforded the opportunity to obtain CCC price support loans for a term determined by CCC. These loans are made available in accordance with several sections of the Agricultural Act of 1949, as amended (the 1949 Act). The terms and conditions of the loans are set forth in the loan agreement. See 7 CFR 1421.1–1421.32 for feed grain, rice, soybean and wheat price support loans and purchase agreements (53 FR 20280, June 3, 1988). In accordance with the provisions of the loan agreement and 7 CFR 1421.6, these loans mature no later than the last day of the ninth calendar month following the month in which the loan application is made, unless extended by CCC. In the event CCC determines to extend such loans, the producer receives actual notice of the terms and conditions of the offered extension. The producer is not, however, required to accept the offered extension.

In accordance with section 110 of the 1949 Act CCC may make available extended price support loans to producers who have specified maturing regular wheat and feed grain price support loans. These loans are referred to as Farmer-Owned Reserve (FOR) loans. The minimum and maximum levels of the wheat and feed grain reserves are determined annually. The terms and conditions of the loans are set forth in the loan agreement. See 7 CFR 1421.740–54 (53 FR 11,239, April 26, 1988).

Section 110 of the 1949 Act provides that, whenever the total quantity of wheat pledged as collateral for FOR loans is less than 300 million bushels and the market price for wheat is less than 140 percent of the current price support level, entry into the reserve must be allowed. Currently, 395 million bushels are in the FOR wheat reserve and wheat prices are in excess of 140 percent of the current price support rate. With respect to feed grains, the minimum FOR level is 450 million bushels and the minimum market price is 140 percent of the current price support rate. Currently, 1.06 billion bushels of corn, 54 million bushels of sorghum and 50 million bushels of barley are in the FOR feed grain reserve. Corn prices exceed 140 percent of the current price support rate.

Prior to the enactment of the Food Security Act of 1985 (the 1985 Act), which amended section 110 of the 1949 Act, the term of a FOR loan could not exceed 5 years. The 1985 Act amended section 110 to provide for FOR loans of not less than 3 years with extensions as warranted. However, prior to this amendment, producers possessed a substantial number of FOR loans which were maturing and, due to market conditions, the loan collateral would be forfeited to CCC. In order to provide greater flexibility to producers, CCC established the Special Producer Storage Loan Program in accordance with the CCC Chapter Act, as amended. The terms and conditions of these loans are set forth in the loan agreement. See 7 CFR 1421.900–1421.917.

In January and March 1988, after evaluating existing and projected supply and demand conditions for wheat and feed grains, CCC determined and announced that certain price support loans would be extended and that certain loans would not be extended. Accordingly, with respect to loans that were not extended, producers are required to comply with the terms and conditions of their loan agreements which require repayment of the loan or forfeiture to CCC of the loan collateral by a specified date.

Following the announcement of these decisions, the State of Minnesota and several Minnesota producers brought an action in the United States District Court of the District of Minnesota which alleged that the actions taken concerning these loans were not made in accordance with statutory requirements. Among the allegations, plaintiffs contend that these decisions were not made in accordance with the Administrative Procedure Act, as amended, 5 U.S.C. 551 et seq. Subsequently, on July 22, 1988, based upon the United States Magistrate's Report and Recommendation, the United States District Court entered an order enjoining the use of two intra-agency notices which were used by the Agricultural Stabilization and Conservation Service (ASCS) to notify State and County ASCS Offices of these decisions.

It is the position of CCC that the provisions of the Administrative Procedure Act, as amended, are not applicable to these decisions since 5 U.S.C. 553(a)(2) specifically exempts agencies from conducting proposed rulemaking actions with respect to "a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts." It is also the position of CCC that the Statement of Policy signed by the Secretary of Agriculture on July 20, 1971 (see 36 FR 13804), which provided that, in certain specified instances, proposed rulemaking would be undertaken by all agencies of the Department notwithstanding the exemption set forth in 5 U.S.C. 553(a)(2) is not applicable to the types of actions involved in these decisions since proposed rulemaking actions would be impracticable.

However, in order to alleviate the concerns of interested parties regarding the procedure which CCC utilized in making these decisions and to provide market stability, comments were requested with respect to proposed amendments to the regulations of CCC which are set forth in Title 7 of the Code of Federal Regulations. These proposed amendments would amend 7 CFR 1421.6 to provide that 1987 and subsequent crop price support loans for feed grains, rice, soybeans and wheat would not be subject to any additional extension of the original loan term of nine months. Section 1421.6 would also be amended to provide that 1985 and 1986 crop loans of wheat, barley, oats and soybeans would not be extended at maturity and that producers with 1985 and 1986 crop corn and grain sorghum loans which mature on March 31, 1988 through and including December 31, 1988 would be provided the opportunity to extend such loans for one year. The proposed rule would also amend the FOR program regulations which are set forth at 7 CFR 1421.741 to provide the 1984 crop FOR loans which mature on March 31, 1988 through and including December 31, 1988 may be extended for one year and that 1983 and prior crop year FOR loans would not be extended.

The proposed rule would also amend the regulations at 7 CFR 1421.900–1421.917 which set forth the regulations governing the special producer storage loan program. The basis for the program was explained in the preamble of the rule which set forth the initial regulations which established the program:

> The Farmer-Owned Grain Reserve Program has been implemented for wheat, corn, barley, sorghum, and oats in accordance with the provisions of section 110 of the Agriculture Act of 1949, as amended. Producers with matured grain reserve loans will have utilized the entire period of their reserve loan agreement which is available for the commodity. Normally, producers with matured grain reserve loans would be required to redeem the loan collateral or forfeit the collateral to CCC in full satisfaction of the loan obligation. However, under the Special Producer Storage Loan Program, producers will be given the opportunity to pledge the collateral securing a matured grain reserve loan as collateral for a loan obtained under the new program. 50 FR 16221 (April 25, 1985).

The program was determined to be necessary since, at that time, section 110 of the 1949 Act specified that FOR loan agreements could not be for a term in excess of 5 years. Section 110 of the 1949 Act was subsequently amended by the Food Security Act of 1985 by deleting the 5-year maximum limitation and by providing that FOR loans could be extended as warranted by market conditions. Accordingly, it has been determined that this program is no longer necessary. Therefore, the proposed rule would delete the regulations which set forth the provisions which were used to make Special Producer Storage Loans and would also specify that maturing Special Producer Storage Loans will not be extended.

The quantities of outstanding CCC loan collateral as of August 17, 1988 which would be affected by the proposed amendments are as follows:

[Millions of bushels]

Program crop year	Wheat	Corn	Sorghum	Barley	Oats	Soybeans
Regular Loans:						
1985	6	*76	*4	2	0	2
1986	23	*454	*27	11	0	7
1987	29	532	11	12	0	44
Farmers-Owned Reserve (FOR) Loans:						
1983 & Prior [1]	166	0	0	3	0	
1984	*71	281	*11	*14	*0	
1985 [2]	158	781	43	33	0	
Special Producer Storage (SPSL) Loans	0	110	17	25	1	

(Asterisks denote loans which would be available for extension.)

[1] These loans do not begin to mature until 1990.
[2] These loans do not begin to mature until 1989.

Basis For CCC's Actions Regarding CCC Price Support Loans

In January and March 1988, CCC announced that certain CCC price support loans would be extended and that certain loans would not be extended. CCC is also announced that 1986 crops of wheat and feed grains would not be allowed entry into the FOR. These decisions were based upon market conditions which existed at that time. These decisions were based upon expected 1988 normal crop production. In making these determinations, CCC took into account the impact the decisions would have on producers of wheat, feed grains and soybeans as well as on the ultimate users of these products.

At that time, excessive surpluses of these crops existed as the result of overproduction in previous years. These excessive surpluses had occurred due in larger part to the loss of export markets from 1981–1985. In order to reduce these excessive surpluses, the Food Security Act of 1985 amended the 1949 Act to mandate acreage reduction programs for wheat and feed grains and also mandated the use of export enhancement programs.

Accordingly, CCC's decisions in January and March 1988 were based in large part upon a concern to maintain regained export markets. The U.S. share of export markets for wheat had increased from 29 percent in the 1985–1986 marketing year to 42 percent in the 1987–1988 marketing year, still below the 1981–1982 marketing year level of 48 percent. With respect to corn, such U.S. share had increased from 58 percent in the 1985–1986 marketing year to 78 percent in 1987–1988 marketing year, still below the 1979–1980 marketing year level of 82 percent. By retaining these markets through the availability of grain from CCC inventory and from free stocks, U.S. producers would be able to market larger quantities of 1988 and subsequent crops. At that time, estimated 1988 crop production was projected to be less than the combined total of 1988 projected uses and would result in sharp declines in both total carryover stocks and free stocks. Accordingly, access to CCC stocks and loan collateral was determined to be necessary.

However, the production of 1988 crops of many commodities, including wheat, feed grains and soybeans, has been severely reduced by the drought conditions which exist throughout major agricultural regions of the United States. For example, on May 10, 1988 the estimated 1988 production of corn was 7.3 billion bushels. These estimates have declined to 5.2 billion bushels on July 12, 1988 and to 4.48 billion bushels on August 11, 1988. Thus, at this time, even greater accessibility to CCC inventory and loan collateral is necessary to meet demand than previously was determined to exist in January and March 1988. Similarly estimated wheat production has fallen from 2.17 billion bushels to 1.82 billion bushels, while soybean production has fallen from 1.88 billion bushels in May 1988 to 1.47 billion bushels in August 1988.

The decrease in feed grain and soybean production, together with the reduction in other feed supplies, has caused significant and unexpected increases in feed prices for livestock and poultry producers and has also resulted in the unavailability of feed in some regions of the country. These factors have resulted in the liquidation of livestock herds and poultry flocks which has adversely affected producers' income.

The United States' supply of wheat has also been reduced due to the 1988 drought. Coupled with the expansion of U.S. export markets during the past year, the drought has resulted in the smallest supply of U.S. wheat in nearly a decade. Durum wheat production was reduced 41 percent from 1987, while other spring wheat production is down 53 percent. Similar reductions have occurred as a result of the drought in 1988 oat and barley production. Barley production is down 45 percent and oat production, also down 45 percent will be the lowest since 1866. Accordingly, substantial quantities of oats will be imported into the U.S. during the next year.

In summary, early 1988 estimates showed that the 1988 use of wheat, feed grain and soybeans would exceed 1988 production thereby necessitating access to CCC inventory and CCC loan collateral. The effects of the 1988 drought further necessitate such accessibility.

In order to ensure orderly marketing of these commodities, including 1988 production, it has been determined that some crop year loans with 1988 maturity dates will be extended until 1989. By allowing some crop year loans to mature in accordance with the loan agreements previously entered into by producers with CCC and by allowing producers to extend certain other loans, CCC's action will provide: (1) Producers the opportunity to deliver grain into the market in an orderly fashion with very minimal forfeitures to CCC; (2) Purchasers, both domestic and foreign, with reliable supplies, and (3) Parties who transport and handle such commodities sufficient time to determine the most efficient manner to move these commodities from the producer to a consumer.

Section 110 of the 1949 Act provides for the implementation of "a program under which producers of wheat and feed grains will be able to store wheat and feed grain when such commodities are in abundant supply, extend the time period for their orderly marketing, and provide for adequate but not excessive carryover stocks to ensure a reliable supply of the commodities." It is generally accepted that an adequate carryover supply of wheat is .75–1.0 billion bushels and that an adequate carryover supply of corn is 1.5–2.0 billion bushels. Sections 107D and 105C of the 1949 Act provide, with respect to wheat and feed grains, respectively that if the estimated carryover on the first day of the marketing year for a crop will exceed 1 billion bushels for wheat and 2 billion bushels for corn, acreage reductions programs must be implemented. As of August 29, 1988, ending 1988/89 marketing year wheat stocks are estimated to be 597 million bushels and ending 1988/89 marketing year corn stocks are estimated to be 1.58 billion bushels. Accordingly, assuming that the quantities specified in sections 105C and 107D are adequate carryout quantities, the U.S. will have minimally adequate or less than adequate carryovers of these crops going into the 1989 marketing year. Section 110 of the 1949 Act provides that the FOR program is to be conducted only when wheat and feed grains are in "abundant supply." Such supplies are clearly not abundant and are projected to be below even "adequate carryover" levels. Section 110 also provides that the FOR must be conducted in a manner which does not curtail free market activity. Further entry of grain into the FOR would, by the end of the marketing year, result in record high levels of grain in the FOR and would cause serious market disruptions.

Based upon these estimates, entry of any further crops into the FOR would not only be contrary to market demands but would also violate the provisions of section 110 of the 1949 Act which require that free market activity not be disrupted. Currently the following quantities are in the FOR as of August 17:

[Millions of bushels]

Program crop year	Wheat	Corn	Sorghum	Barley	Oats
1983 and prior	166	0	0	0	0
1984	71	281	11	14	0
1985	158	781	43	33	0
Total	395	1,062	54	50	0

Wheat FOR loans for 1983 and prior crops do not begin to mature until 1990 and 1985 wheat and feed grain FOR loans begin to mature early in 1989. Accordingly, sufficient quantities of FOR loan collateral exist and are in excess of statutory minimums set forth in section 110 of the 1949 Act which must be maintained when prices fell below specified levels.

On July 7, 1988, CCC published in the **Federal Register** a proposed notice of determination with respect to the entry of 1988 crops into the FOR. No comments were received during the 30-day comment period. CCC proposed to allow entry into the FOR only if market prices for wheat and feed grains fell below 140 percent of the respective 1988 crop price support rate and if levels in the FOR fell below 300 million bushels of wheat and 450 million bushels of feed grains. Subsequently, the Disaster Assistance Act of 1988 (the 1988 Act) was enacted principally in response to the 1988 drought. The 1988 Act provided approximately $3.9 billion of disaster related relief measures to producers affected by the 1988 drought and other specified natural disasters.

Included in the 1988 Act were provisions which relate to the FOR Program. Section 303(b) of the 1988 Act provides greater accessibility to FOR stocks which are acquired through the exchange of CCC commodity certificates. Section 303(a) of the 1988 Act provides that, once market prices of a commodity attain the FOR release level during the 1988 marketing year, producers may repay, without penalty, FOR loans during the remainder of such marketing year without regard to market prices. The Joint Explanatory Statement of the Committee of Conference which was prepared in connection with the 1988 Act states as follows:

> The conferees believe that the Secretary should operate the Farmer-Owned Reserve in a way that will remove wheat and feed grains from the market during times of surplus supply and increase market supply during times of short supply. Current Farmer-Owned Reserve quantities of wheat and feed grains exceed statutory minimums. The Secretary has previously determined not to allow entry of 1987 crops of wheat and feed grains into the reserve. In making any subsequent determinations as to whether to permit entry of 1988 or other crops of such commodities into the reserve, the Secretary should take into consideration the reduced production of 1988 crops of wheat and feed grains as a result of the drought, the size of the Farmer-Owned Reserve the impact of such entry upon the availability of these commodities in the marketplace, including, but not limited to consideration of the impact on the domestic livestock and poultry industry, the ethanol industry, and export share.

See 134 Cong. Rec. H. 6474 (daily ed. August 8, 1988).

Accordingly, in addressing the manner in which the FOR is to be conducted, Congress has specifically recognized that statutory FOR minimums have been maintained and that entry of 1987 crops will not be permitted.

Since September 1, 1988, CCC has continued to review supply and demand situations for feed grains. Based upon the decreased production in the United States and throughout the world, supplies of feed grains in the United States are currently less than current and projected demand, as was the case throughout 1988. Accordingly, since January 1, 1989 CCC has not allowed the extension of maturing CCC price support loans. However, CCC has now determined that 1985-crop corn and grain sorghum FOR loans which mature on or after August 31, 1989 may be extended for a period of 6 months. By allowing some crop year loans to mature in accordance with the loan agreements previously entered into by producers with CCC and by allowing producers to extend 1985 crop loans, CCC's action will ensure: (1) Producers the opportunity to deliver grain into the market in an orderly fashion with minimal forfeitures to CCC; (2) purchasers, both domestic and foreign, with reliable supplies, and (3) parties who transport and handle such commodities sufficient time to determine the most efficient manner to move these commodities from the producer to a consumer. In addition, this action will ensure that quantities of loan grains in the FOR will continue to exceed 450 million bushels, as required by section 110 of the 1949 Act when certain market conditions exist. Producers with 1985 crop FOR loans who exercise this option to extend will receive storage payments at a rate of 28.5 cents per bushel per year or .0726 cents per bushel daily payable at the time the loan is settled. Producers will, in accordance with 7 CFR § 1421.741 receive actual notice of this offered extension.

Since the action to extend these loans is authorized by 7 CFR 1421.741, no proposed rule making is required. Accordingly, CCC makes the following determination:

Notice of Determination

Producers with 1985-crop corn and grain sorghum FOR loans which mature on or after August 31, 1989 will, in accordance with 7 CFR 1421.741, be given actual notice of the opportunity to extend such loans for a period of six months. Storage programs which are earned by a producer during this time will be made by CCC to the producer at the time of the loan settlement.

Authority: 7 U.S.C. 1445e; 15 U.S.C. 714b and 714c.

Signed at Washington, DC on July 13, 1989.

Keith D. Bjerke,

Executive Vice President,

Commodity Credit Corporation.

[FR Doc. 89-17212 Filed 7-21-89; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Draft Supplement to the Final Environmental Impact Statement for the Regional Guide for the South

AGENCY: Forest Service, USDA.

ACTION: Notice; extension of due date for comments concerning the scope of the analysis for the proposed draft and final supplement to the final

environmental impact statement for the Regional Guide for the Southern Region filed in June 1984.

SUMMARY: The process for developing the draft supplement to the Regional Guide EIS is expected to take about 2 years. The Forest Service has begun the NEPA process for developing interim guidelines for protecting and enhancing Red-cockaded Woodpecker habitat while the Regional Guide supplement is being prepared. A scoping letter and a proposal for the interim guidelines has been distributed to the public for review and comment. In order to avoid the possible confusion of having two proposals and scoping letters out for public review and comment simultaneously, distribution of the scoping letter for the Regional Guide supplement has been delayed. It will be distributed to the public the week of August 21–25, 1989, following the 30 day scoping period for the interim guidelines.

DATES: The July 3, 1989, due date for comments published in the **Federal Register** on May 5, 1989 (54 FR 19422) for the Regional Guide supplement is being extended to October 10, 1989.

FOR FURTHER INFORMATION CONTACT: David P. Smith, 1720 Peachtree Road, NW., Atlanta, Georgia 30367. Phone No. (404) 347–4338.

Date: July 17, 1989.

Marving C. Meier,

Deputy Regional Forester.

[FR Doc. 89–17217 Filed 7–21–89; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Asian Roundtable Conference

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the United States Commission on Civil Rights will convene an Asian Roundtable Conference at 9:00 a.m. on July 29, 1989, and adjourn at 5:00 p.m., at Cole Hall of the University of California at San Francisco, 513 Parnassus Avenue, San Francisco, CA 94143. The purpose of the conference is to elicit input to help set the Commission's agenda for the 1990s on Asian civil rights issues.

Persons desiring additional information should contact Harriet O. Duleep, Project Director, (202) 376–8582. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Staff Director's office at least five (5) days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 17, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89–17214 Filed 7–21–89; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration

Title: Fishermen's Contingency Fund

Form Number: NOAA Forms 88–164 and 88–166; OMB–0648–0082

Type of Request: Request for extension of OMB approval of a currently cleared collection

Burden: 1,365 respondents; 13,650 reporting hours; average hours per response—10 hours—12.8 for 88–164—5 minutes for 88–166

Needs and Uses: Fishermen whose vessels or gear are damaged as a result of oil or gas activities on the Outer Continental Shelf can file claims for compensation. The information submitted establishes eligibility and the amount of compensation.

Affected Public: Individuals or households, small businesses or organizations

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Russell Scarato; 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 18, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–17229 Filed 7–21–89; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA)

Title: Commodity Classification and Information Requests

Form Number: Export Administration Regulations 770.11, 799.1; OMB No 0694–0048

Type of Request: Extension of the expiration date of a currently approved collection

Burden: 4,300 respondents; 2,150 reporting hours. Average time per respondent is one-half hour.

Needs and Uses: This reporting requirement is mandated by section 10(1) (1) and (2) of the Export Administration Act of 1979, as amended. It is required to aid exporters in determining the need for export licenses. It also aids in informing the exporter of requirements and restrictions in exporting or reexporting goods and technology.

Affected Public: Individuals, businesses or other for-profit institutions, non-profit institutions, small businesses or organizations

Frequency: On Occasion

Respondent's Obligation: Voluntary

OMB Desk Officer: Donald Arbuckle, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: July 18, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–17230 Filed 7–21–89; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration

Title: Fishing Vessel and Gear Damage Compensation Fund

Form Number: NOAA Form 88–178; OMB—0648–0094

Type of Request: Request for extension of OMB approval of a currently cleared collection

Burden: 400 respondents; 8,000 reporting hours; average hours per response—20 hours

Needs and Uses: Fishermen whose vessels are damaged by foreign vessels, or whose gear is damaged by foreign or domestic vessels, can file claims for compensation under the Fisherman's Protective Act.

Affected Public: Individuals or households, small businesses or organizations

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Russell Scarato, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 18, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–17231 Filed 7–21–89; 8:45 am]

BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Docket No. 11–89]

Proposed Foreign-Trade Zone—Homestead, Florida (Miami Port of Entry)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Vision Foreign-Trade Zone, Inc. (VFTZ), a Florida non-profit corporation and affiliate of Vision Council, Inc., requesting authority to establish a general-purpose foreign-trade zone in Homestead, Florida, adjacent to the Miami Customs port of entry. Vision Council, Inc., is a non-profit corporation made up of public and business officials concerned with economic development in South Dade County, Florida. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on July 14, 1989. VFTZ is authorized to make this application under Section 288.36 of the 1987 Florida Statutes Annotated.

The proposed zone would consist of 1,000 acres located between Southwest 152nd and 137th Avenues, and bordered to the south by Southwest 352 Street, within the Villages of Homestead, a planned industrial/residential community in Homestead, Florida, 24 miles southeast of Miami International Airport. The site is owned by Homestead Properties, a partnership which VFTZ has designated as operator of the proposed zone. The site in question was the subject of a previous action by the FTZ Board (Bd Order 184, 47 FR 10612, 3/11/82); however, the option to purchase the site under the earlier proposal lapsed before the site was activated. The previous grantee relinquished its authority upon applying for an expansion of the existing Miami FTZ (54 FR 28454, 7/6/89).

The application contains evidence of the need for zone services in the southern Dade County area, in addition to those provided by FTZ 32 in the Miami International Airport area, for large-scale warehousing/distribution, especially for those firms needing separate facilities. Specific manufacturing approvals are not being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Howard Cooperman, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southeast Region, 909 SE. First Avenue, Miami, Florida 33131–2595; and Colonel Robert L. Herndon, District Engineer, U.S. Army Engineer District Jacksonville, P.O. Box 4970, Jacksonville, Florida 32232–0019.

Comments concerning the proposed foreign-trade zone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before September 8, 1989.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

U.S. Department of Commerce District Office, Suite 224, Federal Building, 51 SW. First Avenue, Miami, Florida 33130

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 2835, Washington, DC 20230

Dated: July 18, 1989.

John J. De Ponte, Jr.,

Executive Secretary.

[FR Doc. 89–17276 Filed 7–21–89; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 12–89]

Proposed Foreign-Trade Zone—Clark County, Indiana Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Indiana Port Commission (IPC), requesting authority to establish a general-purpose foreign-trade zone in Clark County, Indiana, within the Louisville Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on July 17, 1989. The applicant is authorized to make this proposal under Indiana Code 8–10–3–2.

The proposed foreign-trade zone plan calls for a site at the Clark Maritime Center and at the Clark County Airport. The Maritime Center site covers 35 acres on Utica Pike at Port Road in Jeffersonville, Indiana. It is part of the 830-acre Clark Maritime Center Complex on the Ohio River, owned and operated by the IPC. The Airport site covers 22 acres on airport property between State Route 31 and the airport terminal area in Sellersburg, Indiana. The airport is owned and operated by the Clark County Airport Commission.

The application contains evidence of the need for zone services in the Clark County area. Several firms have

indicated an interest in using zone procedures for warehousing/distribution activity involving products such as machinery and robotics, chemicals, steel mill products, animal oils, battery parts, cable, and sports equipment. Specific manufacturing approvals are not being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; John F. Nelson, District Director, U.S. Customs Service, North Central Region, 6th Floor, Plaza Nine Building, 55 Erieview Plaza, Cleveland, Ohio 44114; and Colonel David E. Peixotto, District Engineer, U.S. Engineer District Louisville, P.O. Box 59, Louisville, Kentucky 40201.

As part of its investigation, the examiners committee will hold a public hearing on September 13, 1989, beginning at 9:00 a.m., in the 4th Floor Conference Room of the City-County Building, 501 E. Court Avenue, Jeffersonville, Indiana.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377-2862) by August 31. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through October 13, 1989.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, Room 636B, Gene Snyder Courthouse and Customhouse Building, 601 W. Broadway, Louisville, Kentucky 40202.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 2835, Washington, DC 20230.

Dated: July 18, 1989.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-17277 Filed 7-21-89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[CV-122-807]

Final Affirmative Countervailing Duty Determination: Fresh, Chilled, and Frozen Pork from Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to producers or exporters in Canada of fresh, chilled, and frozen pork, as described in the "Scope of Investigation" section of this notice. The estimated net subsidy is Can$0.08/kg. (Can$0.036/lb.) for all producers or exporters in Canada of fresh, chilled, and frozen pork and *de minimis* for all producers or exporters in Canada of fresh, chilled, and frozen sow and boar meat.

EFFECTIVE DATE: July 24, 1989.

FOR FURTHER INFORMATION CONTACT: Kay Halpern or Rick Herring, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0192 or 377-2438.

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to producers or exporters in Canada of fresh, chilled, and frozen pork. For purposes of this investigation, the following programs are found to confer subsidies:

Federal Programs

- Tripartite Stabilization Programs under the Agricultural Stabilization Act.
- Feed Freight Assistance Program.
- Western Diversification Program.
- Western Transportation Industrial Development Program.

Federal/Provincial Program

- Canada/Quebec Subsidiary Agreement on Agri-Food Development.

Provincial Programs

- Alberta Crow Benefit Offset Program.
- Alberta Economic Development and Trade Act.
- Alberta Grant to Fletcher's Fine Foods.
- Ontario Farm Tax Rebate Program.
- Ontario Marketing Assistance Program for Pork Producers.
- Ontario (Northern) Livestock Improvement and Transportation Assistance Programs.
- Onterio Pork Industry Improvement Program.
- Quebec Farm Income Stabilization Insurance Program.
- Quebec Productivity Improvement and Consolidation of Livestock Production Program (Farm Building Subprogram).
- Quebec Regional Development Assistance Program (Livestock Transportation Subprogram).
- Saskatchewan Hog Assured Returns Programs.
- Saskatchewan Livestock Investment Tax Credit Program.
- Saskatchewan Livestock Facilities Tax Credit Program.

We determine the estimated net subsidy to be Can$0.08/kg. (Can$0.036/lb.) for all producers or exporters in Canada of fresh, chilled, and frozen pork and *de minimis* for all producers or exporters in Canada of fresh, chilled, and frozen sow and boar meat.

Case History

Since the last **Federal Register** publication pertaining to this investigation (*Preliminary Affirmative Countervailing Duty Determination: Fresh, Chilled, and Frozen Pork from Canada*, 54 FR 19582, May 8, 1989) (*Preliminary Determination*), the following events have occurred. Respondents submitted a supplemental response to our third supplemental/deficiency questionnaire on May 11, 1989. We conducted verification of the questionnaire responses of the Government of Canada and the provincial governments of Alberta, Manitoba, Ontario, Quebec and Saskatchewan in Canada from May 15 to June 1, 1989. Respondents submitted amended responses and additional clarifying information requested at verification on May 24, June 13, June 14, June 15, June 22 and June 30, 1989.

Both petitioner and respondents requested a public hearing in this investigation. Case briefs were filed by petitioner and respondents on June 23 and rebuttal briefs were filed on June 27, 1989. The hearing was held on June 28, 1989.

During the hearing, one party presented oral arguments which had not been included in a rebuttal brief. Under section 355.38(b) of the Commerce Department's regulations, published in the **Federal Register** on December 27, 1988 (to be codified at 19 CFR 355.38(b)), during the hearing "an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief." For this reason, that party's rebuttal presentation has been stricken from the transcripts of the hearing. We wish to remind all interested parties that, in all hearings before the Department, we will strictly enforce the requirements of section 355.38(b).

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the *Harmonized Tariff Schedule* (HTS), and all merchandise entered or withdrawn from warehouse for consumption on or after that date is now classified solely according to the appropriate HTS item number(s). The Department is providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with product descriptions for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the products covered by this investigation.

The products covered by this investigation are fresh, chilled, and frozen pork, currently provided for under TSUSA item numbers 106.4020 and 106.4040, and currently classifiable under HTS item numbers 0203.11.00, 0203.12.90, 0203.19.40, 0203.21.00, 0203.22.90, and 0203.29.40. Specifically excluded from this investigation are any processed or otherwise prepared or preserved pork products such as canned hams, cured bacon, sausage and ground pork.

Application of Section 771B

Section 1313 of the Omnibus Trade and Competitiveness Act of 1988 amended the Tariff Act of 1930 to include a new section 771B. This section reads as follows:

> In the case of an agricultural product processed from a raw agricultural product in which—
> (1) the demand for the prior stage product is substantially dependent on the demand for the latter stage product, and
> (2) the processing operation adds only limited value to the raw commodity,
> subsidies found to be provided to either producers or processors of the product shall be deemed to be provided with respect to the manufacture, production, or exportation of the processed product.

The subject merchandise in this investigation is an agricultural product, fresh, chilled, and frozen pork, processed from a raw agricultural product, live swine. Therefore, in this investigation, we must analyze the elements of section 771B to determine whether the subsidies provided to producers or processors of live swine shall be deemed to be provided with respect to the manufacture, production, or exportation of fresh, chilled, and frozen pork. For the reasons discussed below, we determine that the elements of section 771B are met.

Prior to the enactment of section 771B, the Department considered a benefit to producers of a raw agricultural product as a benefit to producers of a processed agricultural product. See *Certain Fish from Canada: Final Countervailing Duty Determination* (43 FR 25996, June 16, 1978); *Lamb Meat from New Zealand: Preliminary Affirmative Countervailing Duty Determination* (46 FR 58128, November 30, 1981); *Final Affirmative Countervailing Duty Determination: Live Swine and Fresh, Chilled, and Frozen Pork Products from Canada (Swine)* (50 FR 25098, June 15, 1985); *Final Affirmative Countervailing Duty Determination and Order: Lamb Meat from New Zealand (Lamb Meat 1985)* (50 FR 37708, September 17, 1985); *Preliminary Affirmative Countervailing Duty Determination: Red Raspberries from Canada* (50 FR 42574, October 21, 1985); *Final Affirmative Countervailing Duty Determination and Order: Rice from Thailand* (51 FR 12356, April 10, 1986); and *Final Affirmative Countervailing Duty Determination: Certain Fresh Atlantic Groundfish from Canada (Groundfish)* (51 FR 10041, March 24, 1986). For example, in *Swine*, respondents argued that the Department should apply the upstream subsidy provision, section 771A of the Act, to determine if benefits to hog producers passed through to pork producers. We disagreed because we did not consider live swine to be an "input" into unprocessed pork. Instead, we considered benefits to hog producers as direct benefits to pork producers. Therefore, since we otherwise did not find reasonable grounds to believe or suspect that an upstream subsidy was being paid or bestowed with respect to unprocessed pork, we did not conduct an upstream subsidy investigation.

We clearly spelled out in *Swine* our reasons for determining that benefits to hog producers directly benefit pork producers. "We believe there are two characteristics which evidence that live swine should not be considered an 'input' into fresh, frozen, and chilled pork products. These characteristics are level of value added and the role of the producer." First, in our discussion of value added we said, "A low level of value added at a given level of processing is an indication that the prior stage product entering that level is not an input into the processed product." Second, in our discussion of the role of the processor and whether the processor merely makes the product ready for the next consumer we said, "The salient criterion is the degree to which the demand for the prior stage product is dependent on the demand for the latter stage product."

Respondents in *Swine* appealed the Department's decision not to apply the upstream subsidies provision. The Court of International Trade (CIT) remanded *Swine* to the Department of conduct an upstream subsidy investigation. The CIT ruled that Commerce had to apply the upstream subsidy provision because it found no exception to that provision for agricultural products either in the statute or in the legislative history. *See, Canadian Meat Council* v. *United States*, 661 F. Supp. 622 (1987). The decision of the CIT can only be considered advisory, however, because its later decision to uphold the ITC's negative injury determination regarding the domestic industry for pork products mooted its remand instructions. *See, National Pork Producers Council* v. *United States*, 661 F. Supp. 633 (1987). In light of the Court's decision, Congress amended the Act by adding section 771B to codify the Department's practice. 133 Cong. Rec. S8814-16 (daily ed. June 16, 1989).

In this investigation, we determine that the first criterion of section 771B is met because the demand for live swine depends substantially upon the demand for fresh, chilled, and frozen pork. Swine producers raise most swine for slaughter. Pork constitutes the primary product of the slaughtered pig. Thus, the demand for pork and for live swine are inextricably linked, a fact recognized by the provincial hog marketing boards, which actively promote the consumption of pork to increase the demand for live swine. The demand for live swine to be processed further, *e.g.*, into canned ham or sausage, still requires that the live swine first be processed as fresh, chilled, and frozen pork. In this regard, the demand for fresh, chilled, and frozen pork incorporates both the retail customer who demands fresh, chilled, and frozen pork for consumption and the wholesale customer who demands fresh, chilled, and frozen pork for further processing.

The second criterion of section 771B is also met in this investigation because

the processing operation used to manufacture fresh, chilled, and frozen pork adds limited value to the live swine. We verified that pork producers in Canada add, on average, approximately 20 percent in value to the live swine. This figure, however, encompasses various levels of processing that often go beyond the initial steps needed to first make a pig into pork. That is, to make the product under this investigation, the pork manufacturer immobilizes, kills, washes, dehairs, eviscerates, and splits the hog. After the pork producer weighs the carcass, he then removes the head and kidneys and trims air pockets or diseased portions. The split carcass now classifies as fresh, chilled, and frozen pork.

While a percentage figure for value added helps focus our evaluation of the second element of section 771B, it does not resolve the question of whether the processing operation adds only *limited* value to the raw commodity. The pork producers incur most of their cost in processing the live swine into split carcasses. The additional cost associated with processing the split carcass into primal or trimmed cuts is small relative to the price which these cuts receive in the market. For example, we verified that, in some cases, a flick of the knife transformed a primal cut into a more expensive, trimmed cut. As explained by the General Manager for the Canadian Meat Council, "It has made practical and economic sense for the industry to do this additional fat trimming at the plant level due to high returns for the fat credits and, in many cases, the fat is removed without additional labour." Thus, the figure of 20 percent value added to a degree corresponds to the higher profits earned in the marketplace by product presentation, and not the cost of processing the split carcass into primal or trimmed cuts. For these reasons, we find in this investigation that the processing operation adds only limited value to the raw commodity because the processing represented by the figure of 20 percent has not changed the essential character of the live swine.

Therefore, for the reasons set forth above, we determine that subsidies found to be provided to live swine shall be deemed to be provided with respect to the manufacture, production, or exportation of fresh, chilled, and frozen pork in accordance with section 771B of the Act.

Analysis of Programs

We streamlined this investigation because of the large number of programs involved, the large number of swine and pork producers in Canada, and the fact that we have previously examined most of the programs upon which we initiated, and decided to examine only swine and pork producers in the provinces of Quebec, Ontario, Alberta, Manitoba, and Saskatchewan. These five provinces accounted for 92.5 percent of hogs slaughtered in Canada in 1987, the most recent year for which such information is available.

We used our standard methodology to calculate benefits under grant programs. Grants provided on a recurring basis are expensed in the year of receipt. For non-recurring grants, we totalled the grants provided under each program and divided that amount by the total sales value of the subject merchandise from the five provinces examined for purposes of this investigation. If the sum was less than 0.5 percent of the sales concerned, we expensed such grants in the year of receipt. Since we have not received sales information for the years prior to the review period, we used as best information available the sales value for 1988, as reported in the response, to determine if grants received prior to 1988 should be allocated over time or expensed in the year of receipt. Based on this methodology, all grants were expensed in the year of receipt.

In both *Swine* and this investigation, we have used a conversion factor to calculate the percentage of pork yield from live swine. This percentage is then used in calculating the subsidy. Both respondents and petitioner have made suggestions as to the appropriate conversion factor. We have selected a conversion factor of 79.5 percent as verified for the review period.

We believe that 79.5 percent is the most appropriate conversion factor to use because the two largest countervailable programs in this investigation, the tripartite program and the Quebec Farm Income Stabilization Insurance Program, both use similar conversion factors. Of the conversion factors which have been proposed in this investigation, the factor of 79.5 percent most closely approximates the conversion factor used by the stabilization programs and the provincial marketing boards and packers in determining the final price to be paid for the live swine.

In the *Final Results of Countervailing Duty Administrative Review; Live Swine from Canada*, 54 Fed. Reg. 651 (1989) *(Live Swine Review)*, separate rates were calculated for market hogs and for sows and boars. Sows and boars were determined to be a distinct subclass of merchandise. Both respondents and petitioner have argued that a separate rate should be applied for sow and boar meat. In light of the practice established in the administrative review, and the arguments provided by respondents and petitioner, we have calculated a separate rate for sow and boar meat. For those programs where sows and boars are not eligible for benefits, we have allocated payments only to market hogs. For additional information on this issue, see Comment 11.

We discovered the Quebec Reimbursement of Municipal and Educational Taxes Program, which may provide different levels of tax rebates to farmers based on regional criteria, too late in the investigation to gather sufficient information to be used in this determination. If a final countervailing duty order is issued in this investigation, we will examine this program in any subsequent 751 review.

For purposes of this final determination, the period for which we are measuring subsidies ("the review period") is calendar year 1988.

Based upon our analysis of the petition, the responses to our questionnaire, verification, and written comments from respondents and petitioner, we determine the following:

I. Programs Determined To Confer Subsidies

We determine that subsidies are being provided to producers or exporters in Canada of fresh, chilled, and frozen pork under the following programs:

A. Federal Programs

1. *Tripartite Programs under the Agricultural Stabilization Act.* The Agricultural Stabilization Act (ASA) of 1958 was passed by the federal government to provide for the price stabilization of certain agricultural commodities. In 1975, the ASA was amended to revise the list of named commodities to cattle, hogs, sheep, industrial milk and cream, corn, soybeans, and oats and barley grown outside the Canadian Wheat Board designated areas. The support formula was update to a minimum of 90 percent of a five year average market price plus an index to reflect production cost changes.

In January 1985, the ASA was further amended by Bill C-25, which authorized the Minister of Agriculture, with the approval of the Governor in Council, to enter into tripartite agreements with the provinces and/or producers to provide price stabilization schemes for any natural or processed product of agriculture. The Minister may enter into a tripartite agreement only after he determines that it will not give a financial advantage to some producers in the production or marketing of the product not enjoyed by other producers of the same product in Canada and that it will not provide an incentive to overproduce. The Bill also amended the Act by (1) changing "sheep" to "lamb and wool," (2) adding to the list of named commodities spring and winter wheat grown outside the Canadian Wheat Board designated areas, and (3) providing for different support periods with respect to different commodities (*e.g.* quarterly periods for livestock).

Tripartite agreements on hogs were signed effective January 1, 1986, with Alberta, Saskatchewan, Manitoba, and Ontario. An amended agreement was signed on February 8, 1989, adding the Provinces of British Columbia, Quebec, New Brunswick, Prince Edward Island, and Nova Scotia. Under the terms of the tripartite agreements on hogs, the provinces, with the exception of Quebec, may not offer separate stabilization plans or other *ad hoc* assistance for hogs, nor may the federal government offer compensation to hog producers in a province not a party to the agreement. The tripartite scheme provides for a five-year phase-in period to adjust for differences between the tripartite scheme and previously existing provincial programs. Existing provincial stabilization plans, with the exception of the Quebec Farm Income Stabilization Program, are to be completely phased out by 1991.

The tripartite agreements on hogs are administered by the Stabilization Committee ("Committee") in conjunction with the Agricultural Stabilization Board ("Board"). The Committee calculates the stabilization payments on a quarterly basis in the following manner. First, it calculates a "support price," which is equal to the cash costs of production in the current 13-week period plus 95 percent of the average margin in the same 13-week period for the preceding five years. The margin for any period is equal to the national average market price for the period minus the national average cash costs in that period. The difference between the support price and the average market price is the amount of stabilization payment. Stabilization payments are triggered in any 13-week period that the market price falls below the support price. Payments are made only on hogs indexing 80 or above, thereby automatically excluding sows and boars.

To date, tripartite ageements have been signed for the following commodities: hogs, cattle, cows/calves, lambs, sugar beets, apples, white pea beans and other dry edible beans, honey, and yellow seeded onions. We verified that producers of one commodity, asparagus, requested a tripartite agreement and were rejected. Producers of two other commodities, sour cherries and corn, have also requested agreements, but no agreements are being drawn up for these commodities.

Support payments under the tripartite agreements for various commodities are calculated in the manner described above, using a formula ranging from 85 to 95 percent of the average market price over the past five years plus an index to reflect production cost changes. We verified that the support level for beef and apples, both of which are covered under tripartite agreements, is 85 percent, as compared to the 95 percent used for hogs.

As federal and provincial payments to hog producers are now made pursuant to tripartite agreements, rather than as named commodities under the ASA, we must, as respondents have argued, focus on the tripartite program and consider whether it is, *de jure* or *de facto*, limited to a specific enterprise or industry, or group of enterprises or industries, within the meaning of section 771(5)(B) of the Act.

We typically consider three factors in determining whether a program is limited to a specific enterprise or industry or group of enterprises or industries: (1) The extent to which a foreign government acts (as demonstrated in the language of the relevant enacting legislation and implementing regulations) to limit the availability of a program; (2) the number of enterprises, industries, or groups thereof that actually use a program, which may include the examination of disproportionate or dominant users; and (3) the extent, and manner in which, the government exercises discretion in making the program available.

Pursuant to the first factor, we verified that there is no *de jure* limitation as to which commodities may be covered under tripartite agreements. Thus, we find that the federal government did not act to limit the availability of the tripartite program.

Pursuant to the second factor, by its terms, the ASA, as amended, provides that any agricultural product may be covered under a tripartite agreement. However, since the January 1985 amendment authorizing tripartite agreements, only nine out of an innumerable number of agricultural commodities have been incorporated under such agreements. Furthermore, not all producers who request tripartite agreements for their commodities obtain such agreements. For example, agreements for sour cherries and corn have not been drawn up because of "administrative difficulties" involving the valuation of land and other factors, despite the fact that an agreement already exists for apples, a commodity with similar valuation problems. Asparagus growers were rejected because government officials deemed there was little need for an asparagus agreement due to the rising price of asparagus and the relatively small value of asparagus sales.

Pursuant to the third factor, we found that discretion in the administration of the tripartite program, which results in different treatment for different commodities, is exercised in the following ways. First, there are no explicit or standard criteria for evaluating tripartite agreement requests. Neither the ASA, as amended, nor the regulations and guidelines concerning tripartite agreements, establish procedures or criteria for when a commodity is to become subject to a tripartite agreement. In practice, it is ultimately at the Ministry's discretion whether to implement a request for a tripartite agreement (see Comment 7).

Second, we verified that the level of price stabilization and the terms of each scheme varies, at the discretion of the government, from commodity to commodity. For parity of benefits among the producers of different commodities to exist, it is essential that the cost of production elements in the stabilization formulas for various commodities be comparable to one another. That is, the cost of production model used for the swine program should reflect the actual cost of production experience of swine producers to the same extent that the model for other commodities reflects the actual cost of production experience of producers of those commodities. At verification, we learned that cost of production models do not necessarily reflect the experience of the relevant producer group.

Furthermore, the support level has varied historically for the same product and is ofter different for different commodities. For example, the support level for hogs was raised from 93 percent to 95 percent in an effort to get Quebec to sign a tripartite agreement on hogs. Moreover, as noted above, the suport level for apples and beef is only 85 percent., We were told during verification that the Committee worked with different support models for these commodities, and that a model was originally devised for beef in which the

support level would be 50 percent. However, due to opposition to that support level, it was raised to the present level but elements in the cash cost component of the model were dropped. Thus, the incomes of producers of certain covered commodities are being stabilized to a significantly greater or lesser extent than those of others for no objective reasons.

Even among swine producers, benefits are not available on equal terms. Indeed, it appears that, by allowing Quebec to keep its provincial hog stabilization program, the Ministry is undermining the general guidelines of the tripartite program by giving an advantage to some producers in the production of hogs not enjoyed by other producers of the same product in Canada.

For the foregoing reasons, we determine the tripartite program to be limited to a group of enterprises or industries, and therefore countervailable.

To calculate the benefit under this program, we first calculated the dressed-weight equivalent of hogs marketed during the review period in the five provinces examined for purposes of this investigation (less sows and boars). To obtain the dressed-weight equivalent, we used the live-weight to dressed-weight conversion factor of 79.5 percent as verified for the review period. Since the stabilization payments are disbursed from a pool of funds made up of equal contributions from the federal government, provincial governments, and producer premiums, plus interest, we multiplied the stabilization payments which we verified were made to hog producers during the review period by two-thirds to factor out the producer premiums. We then allocated the result over the dressed-weight equivalent of hogs marketed in the five provinces during the review period (less sows and boars) to obtain an estimated net subsidy of Can$0.027486/kg. (Can$0.012468/lb.) for fresh, chilled, and frozen pork. Because sows and boars are ineligible for benefits under this program, we determine the benefit to be zero for sow and boar meat.

2. *Feed Freight Assistance Program.* The Feed Freight Assistance Program was administered by Agriculture Canada until 1967, when the Livestock Feed Act (LFA) was passed and the Livestock Feed Board was formed to administer the program. Parliament enacted the LFA in response to domestic feed grain supply problems and price fluctuations in eastern Canada and British Columbia. The Board ensures the availability of feed grain to meet the needs of livestock feeders, the availability of adequate storage space in eastern Canada for feed grain, and price stability for feed grain in eastern Canada, British Columbia, the Yukon, and the Northwest Territories. Only users of feed grain, *i.e.*, those who buy it to feed livestock (commercial mills and livestock producers), are eligible for assistance.

Eligibility for the program is restricted to feed grain millers in "designated areas" (Manitoba, Saskatchewan, Alberta and parts of British Columbia) whose grain is fed to livestock, and to livestock owners in parts of eastern Canada and British Columbia, and in the Yukon Territory and the Northwest Territories.

To qualify for assistance, the feed grain must be transported outside the farm where it is grown and moved through commercial channels. Commercial channels are defined as transactions that provide an invoice, weight certificate, grade certificate, and bill of lading. Payments are made only on grain that will be fed to livestock.

Benefits are provided for transporting and storing feed. Payments for feed grain transportation are set per ton according to the destination of the grain. Feed grain storage payments are made on a product-specific basis.

Because this program is limited to feed grain millers in the above described "designated areas" whose grain is fed to livestock, and to livestock owners in parts of eastern Canada and British Columbia, and in the Yukon Territory and the Northwest Territories, we, determine that it is limited to a specific enterprise or industry, or group of enterprises or industries, and is therefore countervailable.

Of the five provinces we are examining for purposes of this investigation, livestock owners in only Ontario and Quebec are eligible for assistance under the program. We found that no benefits were provided to hog producers in Ontario. Therefore, we are only considering the assistance provided to Quebec producers. We verified that 2.7 percent of all payments under this program went to livestock owners in Quebec. At verification we found that 50 percent of feed grains were consumed by hogs. Therefore, to calculate the benefit to hog producers, we used 1.35 percent (50 percent of 2.7 percent) of total payments as the benefit to hog producers. We divided this total by the dressed-weight equivalent of hogs marketed during the review period in the five provinces to obtain an estimated net subsidy of Can$0.000034/kg. (Can$0.000016/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

3. *Western Diversification Program.* The Western Diversification Program was established by the federal government in August 1987 to diversify the economic base of western Canada (British Columbia, Alberta, Saskatchewan and Manitoba). The program was established as a five-year program with a $1.2 billion diversification fund. Assistance is provided in the form of "contributions," either repayable or non-repayable. The amount of funding provided, as well as the terms and conditions attached to it, are determined on a project-by-project basis. The federal government funds the program; provincial governments do not. Interest is rarely charged on repayable assistance. Eligible projects include new product development, plant establishment, new market development, industry-wide productivity improvement, feasibility studies or new technology. Upon approval of a project, an offer of financial assistance is made. Contributions are disbursed quarterly, usually after the project is completed.

Because this program is limited to western Canada, we determine that it is limited to enterprises or industries located in a specific region of Canada, and is therefore, countervailable. We verified that, of the projects approved to date, only one provided benefits on the production of hogs or the processing of pork during the review period.

To calculate the benefit, since we do not have the calendar year 1988 figures, we used as best information available the non-repayable contribution disbursed to the one hog/pork-related project during fiscal year 1988–1989 and divided it by the dressed-weight equivalent of hogs marketed during the review period in the five provinces to obtain an estimated net subsidy of Can$0.000105/kg. (Can$0.000048/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

4. *Western Transportation Industrial Development Program.* Under this program, assistance was provided by the federal government to manufacturing, processing and related service industries in Manitoba, Saskatchewan, Alberta and British Columbia. This program expired in June 1988 and was incorporated into the Western Diversification Program.

Because this program is limited to firms in the four provinces of western Canada, we determine that it is limited to enterprises or industries located in a specific region of Canada, and is therefore countervailable.

To calculate the benefit under this program, we divided the grants attributable to pork production during the review period by the dressed-weight equivalent of hogs marketed during the review period in the five provinces to yield an estimated net subsidy of Can$0.000054/kg. (Can$0.000025/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

B. Federal Provincial Program

1. *Canada/Quebec Subsidiary Agreement on Agri-Food Development:* The Subsidiary Agreement on Agri-Food Development is pursuant to an Economic and Regional Development Agreement (ERDA) between the Government of Canada and the Province of Quebec. Programs funded under the Subsidiary Agreement include the following:

Program 1: Research and Development; A. Contract Research; B. Food Research

Program 2: Technological Innovations and New Initiatives; A. Agricultural Production; B. Conservation, Processing and Marketing

Program 3: Soil Conservation and Improvement; A. Inventory of Soil Degradation Problems; B. Soil and Water Conservation Research; C. Technology Transfer in Soil and Water Conservation

Funding for each program and subprogram for the duration of the Subsidiary Agreement is estimated at Can$35 million, and is split evenly between the federal and provincial governments.

Of the seven subprograms available, we verified that only three, 1.A., 2.A. and 3.B., include hog-related projects. Of these projects, those under subprogram 1.A. were contracted with universities or research institutions, and the one under subprogram 3.B. was contracted with a consulting firm. We verified that the projects under these two subprograms included provisions for making the research results publicly available. (See Section II of the notice, *Programs Determined to be Not Countervailable*, concerning subprograms 1.A. and 3.B.) The hog-related projects under subprogram 2.A. were contracted with private individuals or farmers, and do not involve research.

Because projects under subprogram 2.A. are limited to Quebec, we determine that the federal government's contribution is limited to enterprises or industries located in a specific region of Canada and is therefore countervailable. Because we verified that projects in subprogram 2.A. involve a large number and a wide variety of agricultural products, we determine that the provincial government's contribution is not limited to a specific enterprise or industry, or group of enterprises or industries, and is therefore not countervailable.

To calculate the benefit, we summed the grants provided to hog-related projects under subprogram 2.A. during the review period and multiplied this sum by one-half to factor out the Government of Quebec contribution. We divided the result by the dressed-weight equivalent of hogs marketed in the five provinces during the review period to obtain an estimated net subsidy of Can$0.000019/kg. (Can$0.000009/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

C. Provincial Programs

1. *Alberta Crow Benefit Offset Program.* The purpose of this program, which is administered by Agriculture Alberta, is to eliminate market distortions in feed grain prices created by the federal government's policy on grain transportation.

Assistance is provided on feed grain produced in Alberta, feed grain produced outside Alberta but sold in Alberta, and feed grain produced in Alberta to be fed to livestock on the same farm. The government provides certificates to registered feed grain users and registered feed grain merchants, which can be used as partial payments for grains purchased from grain producers. Feed grain producers who feed their own grain to their own livestock submit a claim directly to the government for payment.

Hog producers receive benefits in one of three ways. Hog producers who do not grow any of their own feed grain receive certificates which are used to cover part of the cost of purchasing grain. Hog producers who grow all of their own grain submit a claim to the Government of Alberta for direct payment. Finally, hog producers who grow part of their own grain but who also purchase grain receive both certificates and direct payments.

Because this program is limited to feed grain users, we determine that it is limited to a specific enterprise or industry, or group of enterprises or industries, and is therefore, countervailable.

Since we do not have precise data on hog consumption of feed grain, as best information available, we are using data published in *Agriculture in Alberta*, which states that hogs consumed 15 percent of the province's barley production and that barley is the primary grain fed to hogs. Therefore, to calculate the benefit, we allocated 15 percent of the total amount of benefits to feed grain users in Alberta over the dressed-weight equivalent of hogs marketed during the review period in the five provinces. On this basis, we calculated an estimated net subsidy of Can$0.003228/kg. (Can$0.001464/lb.) for fresh, chilled, and frozen pork, and for sow and boar meat.

2. *Alberta Department of Economic Development and Trade Act.* The purpose of this program is to foster economic development in the province. Assistance may be provided in the form of grants, loans, or loan guarantees. However, only loans and loan guarantees have been provided under the program. Loans and loan guarantees are only provided to firms which cannot receive financing or equivalent financing from commercial sources. Two pork producers in Alberta have received benefits under this program. Gainers Inc. has received both a loan and a loan guarantee from the province under this program, and Fletcher's Fine Foods has received a loan guarantee.

In order to determine whether a domestic program confers a countervailable subsidy, we must determine whether the benefits provided under the program are limited to a specific enterprise or industry, or group of enterprises or industries, in accordance with section 771(5)(B) of the Act. We typically consider three factors when making this determination: (1) The extent to which a foreign government acts (as demonstrated in the language of the relevant enacting legislation and implementing regulations) to limit the availability of a program; (2) the number of enterprises, industries, or groups thereof that actually use a program, which may include the examination of disproportionate or dominant users; and (3) the extent, and manner in which, the government exercises discretion in making the program available. (See, *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Carbon Steel Wire Rod from Malaysia (Wire Rod)*, 53 FR 13303, April 22, 1988, and the DOC Position to Comment 7.)

During verification, we found no standard criteria for either the approval or rejection of applicants under this program. We were unable to review applications of successful and rejected companies under this program. We were also unable to determine why certain companies were approved for either a loan or a loan guarantee, including both pork packers under investigation in Alberta. Provincial officials were unable to provide us with a list of rejected companies. They were also unable to determine the number of companies that have applied for benefits under this program. In addition, we noted that

there was no formal or standard application process.

Since we were unable to review the documents necessary to make an adequate evaluation of two of the three factors cited above, as best information available, we determine that the program is limited to a specific enterprise or industry, or group of enterprises or industries. In making this determination, we note that, of the amount of loans granted under this program from its inception in 1986 through March 1989, approximately 75 percent went to Gainers. Also, in any given year there were only a limited number of loan guarantees provided.

We determine this program to be countervailable because the terms of the loan and loan guarantees are inconsistent with commercial considerations. During the review period, two loan guarantees and one loan were provided to pork packers. In considering the guaranteed loans, we assumed that the packers would not have received loans at the interest rates provided without these guarantees because this program is available only to companies that could not otherwise receive financing. In addition, we found that loan guarantees are not provided as a normal banking practice in Alberta.

One loan guarantee was used to obtain a short-term interim loan. Therefore, to calculate the benefit from this loan, we used our standard short-term loan methodology, comparing the interest rate on this guaranteed loan to a benchmark rate for non-guaranteed loans. No guarantee fee was paid on this loan during the review period; therefore, we did not deduct a guarantee fee from the net benefit.

The other loan guarantee was used to obtain a long-term loan, and we therefore used our standard long-term loan methodology. We used as our benchmark the average long-term corporate bond rate during the review period. To that, we added our standard risk premium to reflect the fact that this program is available only to uncreditworthy companies. We considered as the principal of this loan only the amount attributable to pork operations. Because the firm paid part of the guarantee fee during the review period, we subtracted that portion of the fee attributable to the loan for pork operations from the net benefit.

We followed the same methodology for the one loan provided under this program without a guarantee, except that no guarantee fee was subtracted from the benefit.

We then totalled the net benefits from this program and divided the result by the dressed-weight equivalent of hogs marketed in the five provinces during the review period to yield an estimated net subsidy of Can$0.000018/kg. (Can$0.000008/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

3. *Alberta Grant to Fletcher's Fine Foods.* During verification we found that Fletcher's Fine Foods had received a grant from the province of Alberta. Company officials stated that the grant was received prior to the review period, but no supporting documentation was provided. They were unable to tell us under which program this grant was provided.

The grant from the province of Alberta is limited specifically to Fletcher's, and is therefore countervailable. Because we were unable to verify that this grant was provided prior to the review period, as best information available, we are attributing the full amount of the grant to the review period. We divided this grant by the dressed-weight equivalent of hogs marketed in the five provinces during the review period to yield an estimated net subsidy of Can$0.000066/kg. (Can$0.000030/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

4. *Ontario Farm Tax Rebate Program.* The Ontario Farm Tax Rebate Program replaced the Ontario Farm Tax Reduction Program. While the Ontario Farm Tax Reduction Program provided a rebate of 60 percent of total property taxes levied on eligible farm properties, the current program provides a rebate of 100 percent of taxes levied on outbuildings and properties only. Taxes levied on the residence and one acre of land are no longer rebated.

Any resident of Ontario may receive a rebate if he or she owns and pays taxes on eligible properties. Eligible properties are farming enterprises that produce farm products with a gross value of at least Can$8,000 in southern and western Ontario and Can$5,000 in northern and eastern Ontario. We determine that this program is limited to enterprises or industries located in a specific region within the province, and is thus countervailable. However, since all farmers in Ontario whose gross output is at least Can$8,000 are eligible to receive a rebate under this program, the program is countervailable only to the extent that farmers in northern and eastern Ontario whose gross output is between Can$5,000–8,000 receive benefits.

Based on data taken from the *1986 Census of Agriculture, Statistics Canada,* the last year for which complete information is available, the Government of Ontario estimated that 4.7 percent of all Ontario swine farmers have sales valued within the Can$5,000–8,000 range. To calculate the benefit, we therefore multiplied the total amount paid to swine producers in eastern and northern Ontario during the review period by 4.7 percent. We divided the result by the dressed-weight equivalent of hogs marketed in the five provinces during the review period to obtain an estimated net subsidy of Can$0.000020/kg. (Can$0.000009/lb.) for both fresh, chilled, and frozen pork and for sow and boar meat.

5. *Ontario (Northern) Livestock Improvement and Transportation Assistance Programs.* The purpose of these programs is to assist livestock producers in northern Ontario by reducing their relatively high costs of maintaining and improving herd quality. Livestock producers in northern Ontario are reimbursed up to 20 percent of the cost of purchasing breeding stock and 50 percent of the transportation cost associated with the purchase of such breeding stock.

Because these programs are limited to livestock producers in northern Ontario, we determine that they are limited to a specific enterprise or industry, or group of enterprises or industries, and therefore countervailable.

To calculate the benefit to swine producers, we allocated the reimbursements made to swine producers during the review period over the dressed-weight equivalent of hogs marketed in the five provinces during the review period to obtain an estimated net subsidy of less than Can$0.000001 in either kilograms or pounds for fresh, chilled, and frozen pork and for sow and boar meat.

6. *Ontario Pork Industry Improvement Plan (OPIIP).* The purpose of this program is to foster excellence in farm business management and the adoption of improved production technologies. Assistance is provided under a number of subprograms. To be eligible for any of the subprograms, a producer must have at least 20 sow equivalents (one sow equivalent is equal to one sow or 15 market-weight hogs marketed annually) and must submit the required production records.

Grants are provided to hog producers under the following subprograms: Swine Production Analysis, Enterprise Analysis, Swine Ventilation, Productivity and Quality Improvement, Artificial Insemination, Rodent Control, Private Veterinary Herd Health, Education, Feed Analysis and Herd Health Improvement.

In addition to the above subprograms, there are three other subprograms under OPIIP. One provides grants to the Ontario Swine Artificial Insemination Association, a farmer cooperative organized for the purpose of developing swine semen production facilities. This Association is the only licensed producer of swine semen in the province. The other two subprograms provide grants to support (1) research projects related to swine production and (2) local chapters of the Ontario Pork Producers' Marketing Board. (For additional information on these last two subprograms, see Section II of the notice, *Programs Determined to be Not Countervailable.*)

Because the OPIIP provides grants under the remaining subprograms only to swine producers, we determine that these remaining subprograms are limited to a specific enterprise or industry, or group of enterprises or industries, and are therefore, countervailable.

To calculate the benefit, we summed the grants provided under these subprograms during the review period and divided the result by the dressed-weight equivalent of hogs marketed in the five provinces during the review period to obtain an estimated net subsidy of Can$0.002324/kg. (Can$0.001054/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

7. *Ontario Marketing Assistance Program for Pork (MAPP).* This program, instituted in 1986, assists Ontario port processors in their efforts to improve domestic market prospects for pork sales and to sustain and enhance their ability to compete in global pork markets. Pork processors receive grants of 25 percent of the total cost of plant upgrading, new technology adoption or new product development.

Because this program provides grants to only pork processors, we determine that it is limited to a specific enterprise or industry, or group of enterprises or industries, and is therefore, countervailable.

A consumer survey was also financed under MAPP. For additional information on that project, see Section II of this notice, *Programs Determined to Be Not Countervailable.* In addition, there was an export promotion subprogram which was not used during the review period.

To calculate the benefit, we summed the grants provided under this program during the review period and divided the result by the dressed-weight equivalent of hogs marketed in the five provinces during the review period to obtain an estimated net subsidy of Can$0.000613/kg. (Can$0.000278/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

8. *Quebec Farm Income Stabilization Insurance Program.* This program was started in 1976 to guarantee a net annual income to participating producers. It is administered by the Regie des Assurances Agricoles du Quebec (the Regie). The program covers calves, feeder cattle, potatoes, piglets, feeder hogs, corn, oats, wheat, barley, heavy veal, and sheep. There are no established criteria and no authorization for designating additional commodities to be covered. To be eligible for the piglet or feeder hog programs, a producer must own the hogs or sows he insures, be personally involved in raising the hogs or piglets, own at least 300 insurable hogs or 15 insurable sows, and enroll in the scheme for at least five years. The coverage year runs from April 1 to March 31, for the feeder hog program, and runs from July 1 to June 30 for the piglet program.

The support level is calculated according to a cost of production model that includes an adjustment for the difference between the average wage of farm workers and the average wage of all other workers in Quebec. Payments to growers are calculated on a yearly basis and are made at the end of the coverage year. The program is funded two-thirds by the provincial government and one-third by producer assessments. Producer and government contributions are made once a year and are kept in one account from which all disbursements are made. Pursuant to an amendment of July 13, 1988, producer assessments and the stabilized net annual income are set according to the size of production, effective in the 1988–89 coverage years. Payments received from another source, *e.g.,* under a tripartite agreement, are deducted from any stabilization payments made by the Regie.

Since several major agricultural commodities, such as eggs, dairy products, and poultry, are not covered under this program, we determine that it is limited to a specific enterprise or industry, or group of enterprises or industries, and is therefore countervailable.

We calculated the benefit by multiplying the total amount of stabilization payments made under the piglet and feeder hog programs during the review period by two-thirds to factor out producer assessments. We then divided the result by the dressed-weight equivalent of hogs marketed in the five provinces during the review period (less sows and boars) to obtain an estimated net subsidy of Can$0.043170/kg. (Can$0.019582/lb.) for fresh, chilled and frozen pork. Because sows and boars slaughtered for meat are ineligible for benefits under this program, we determine the benefit to be zero for sow and boar meat.

9. *Quebec Productivity Improvement and Consolidation of Livestock Production Program (Farm Building Improvements Subprogram).* This program was started in 1987 and is designed to aid small producers. It is divided into eight subprograms. Swine growers are only eligible for one subprogram, the Farm Building Improvements Subprogram. With regard to hogs, this subprogram provides grants to consolidate production so that the process from farrowing to finishing takes place on the same farm. The grants cover up to 30 percent of the actual cost of the conversion.

To be eligible for assistance, applicants must be recognized farm producers according to the Farm Producer's Act and be registered with the Bureau de Renseignements Agricoles. Producers operating farrowing facilities must maintain between 40 and 80 sows, and finishing farms must maintain between 500 and 1,000 hogs. The maximum assistance is Can$200 per sow and Can$25 per hog, with a maximum of Can$15,000 per farm operation for the duration of the program.

Because this subprogram is limited to livestock producers, we determine that it is limited to a specific enterprise or industry, or group of enterprises or industries, and is therefore countervailable.

To calculate the benefit, we summed the grants provided under this program during the review period and divided the result by the dressed-weight equivalent of hogs marketed in the five provinces during the review period to obtain an estimated net subsidy of Can$0.000010/kg. (Can$0.000005/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

10. *Quebec Regional Development Assistance Program (Livestock Transportation Subprogram).* This program was started in 1987 to promote regional development in Quebec. The program consists of four subprograms, only one of which, the Livestock Transportation Subprogram, is available to hog producers. This subprogram provides financial assistance to eligible producers for transporting animals to a government inspected slaughterhouse. Quebec is divided into twelve agricultural regions, only five of which (three full regions and parts of two others) are eligible for aid under the subprogram. These five regions are divided into seven zones based on the distance from the Montreal-Quebec triangle, where most of the slaughterhouses are located. The assistance offered varies according to

the zone in which the applicant's operation is located.

Because this subprogram is limited to livestock producers in specific regions of Quebec, we determine that it is limited to a specific group of enterprises or industries located in a specific region within the province, and is therefore countervailable.

To calculate the benefit, we divided the amount of payments made to hog producers during the review period by the dressed-weight equivalent of hogs marketed in the five provinces during the review period to obtain an estimated net subsidy of Can$0.000025/kg. (Can$0.000011/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

11. *Saskatchewan Hog Assured Returns Program (SHARP).* SHARP was established in 1976 pursuant to the Saskatchewan Agricultural Returns Stabilization Act. SHARP provides stabilization payments to Saskatchewan hog producers when market returns fall below a designated "floor price." The program is administered by the Saskatchewan Pork Producers' Marketing Board on behalf of the provincial Department of Agriculture. Under the Saskatchewan Agricultural Returns Act, the provincial government may establish a stabilization plan for any agricultural commodity. However, in practice, only hogs and cattle have such plans.

To be eligible, a producer must own market hogs raised and finished to slaughter weight on the production unit or purchased as weanlings or feeder hogs and fed a minimum of 60 days. Coverage is limited to 1,500 hogs per producer per quarter.

The program is funded by producer premiums and matching funds from the provincial government. When Saskatchewan joined the tripartite agreement on hogs effective January 1, 1986, SHARP payments were reduced by the amount of payments received through the tripartite program. No producers have been eligible to join SHARP since December 31, 1985. SHARP payments are being phased out and will be terminated by March 31, 1991.

Stabilization payments are based on the sum of the producer's cash costs plus 75 percent of the sum of non-cash costs for each quarter. Payments are made approximately four weeks after the end of each quarter. Unlike the tripartite program, under which all producers of a commodity receive the same payment per unit of that commodity, each producer under SHARP is paid the difference between his average market price and the support price.

Although the Saskatchewan Agricultural Returns Act allows the provincial government to establish stabilization plans for any agricultural commodity, in practice, only hog and cattle producers have such plans. Because stabilization payments under this program are limited to only hogs and cattle, we determine that the program is limited to a specific group of enterprises or industries, and therefore countervailable.

To calculate the benefit, we multiplied the total amount of stabilization payments made to hog producers during the review period by one-half to factor out producer premiums. We then divided the result by the dressed-weight equivalent of hogs marketed in the five provinces during the review period (less sows and boars) to obtain an estimated net subsidy of Can$0.001408/kg. (Can$0.000639/lb.) for fresh, chilled, and frozen pork. The estimated net subsidy is zero for sow and boar meat because sows and boars are ineligible for benefits under this program.

12. *Saskatchewan Livestock Investment Tax Credit Program.* The Saskatchewan Livestock Investment Tax Credit Program was introduced in March 1984, under the Saskatchewan Livestock Investment Tax Credit Act. The program is administered by the Economics Branch of Saskatchewan Agriculture. It provides incentives for the finishing of livestock in Saskatchewan. The program provides a tax credit on a per head basis for feeder cattle, hogs and lambs sold for slaughter. Dairy cows, hogs and lambs used for breeding purposes do not qualify for assistance. Poultry is also not eligible for tax credit under this program.

To be eligible for a tax credit, hogs must index 80 or above and be owned by a resident of Saskatchewan for at least 60 days. (This qualification automatically excludes sows and boars.) There is a credit of $3.00 per hog and a $100 deductible per claimant per year. Any unused portion of the tax credit can be carried forward for seven years and applied to provincial tax payable.

Because this program is limited to livestock producers, we determine that it is limited to a specific enterprise or industry, or group of enterprises or industries, and is therefore countervailable.

To calculate the benefit, we divided the tax credits net of deductibles claimed by swine producers during the review period by the dressed-weight equivalent of hogs marketed in the five provinces during the review period (less sows and boars) to obtain an estimated net subsidy of Can$0.000721/kg. (Can$0.000327/lb.) for fresh, chilled, and frozen pork. The estimated net benefit is zero for sow and boar meat because sows and boars are ineligible for benefits under this program.

13. *Saskatchewan Livestock Facilities Tax Credit Program.* This program, implemented on January 1, 1986, provides tax credits to livestock producers for investment in livestock production facilities. The credit may only be used to offset provincial taxes and applications for tax credits must be received by Saskatchewan Agriculture no later than six months after the project is completed.

Unlike the Investment Tax Credit Program, livestock covered under this program can be raised for either breeding or slaughter. Eligible livestock include cattle, horses, sheep, swine, goats, poultry, bees, fur-bearing animals raised in captivity, or any other designated animals. Investments covered under the program include new buildings, improvements to existing livestock facilities and any stationary equipment related to livestock facilities.

The program pays 15 percent of 95 percent of project costs, or 14.25 percent of total costs, in order not to overlap the Business Investment Tax Credit Program, a federal program. As with the Livestock Investment Tax Credit Program, participants may carry forward any unused credit for up to seven years.

Because this program is limited to livestock producers, we determine that it is limited to a specific enterprise or industry, or group of enterprises or industries, and is therefore countervailable.

To calculate the benefit, we divided the total tax credits claimed by hog producers by the dressed-weight equivalent of hogs marketed in the five provinces during the review period to obtain an estimated net subsidy of Can$0.000355/kg. (Can$0.000161/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

II. Programs Determined To Be Not Countervailable

1. *Special Canada Grains Program.* The Special Canada Grains Program 1987 Extension provides grants to grain, oilseed, special crop and honey producers who have experienced dramatic drops in income due to international agricultural policies. To be eligible, farmers must have seeded acreage in Canada of eligible crops harvested in 1987 or have seeded acreage which was cut for silage, greenfeed, ploughed down, or left for summerfallow due to a natural disaster.

Eligible crops include wheat, oats, barley, mixed grains, rye, corn, and high moisture grains which are intended to be harvested as grains or fed to livestock.

Because this program is based on seeded acreage of eligible crops, we determine that it does not provide a countervailable benefit with respect to the production or exportation of pork. To determine whether this program provides a benefit to hog producers, it would be necessary to conduct an upstream subsidy investigation. However, petitioner did not make a sufficient upstream subsidy allegation, and we therefore did not undertake such an investigation.

This program is distinguished from the Feed Freight Assistance Program (FFA), which we did find countervailable. Under the FFA, the benefit was provided directly to the hog producer for the purpose of purchasing feed. Under the Special Canada Grains Program, payment is made to a grain farmer based on his grain production.

2. *Research Projects under the Canada/Quebec Subsidiary Agreement on Agri-Food Development.* At verification, we examined three subprograms under the Subsidiary Agreement, 1.A., 2.A. and 3.B., which include hog-related projects. Of these projects, those under subprogram 1.A. were contracted with universities or research institutions, and those under 3.B. were contracted with a consulting firm. We verified that the research results of projects under these two subprograms are made available to the public, including producers of fresh, chilled, and frozen pork in the United States. Therefore, we determine that projects under subprograms 1.A. and 3.B. are not limited to a specific enterprise or industry, or group of enterprises or industries, and are thus not countervailable. Subprogram 2.A. is discussed under Section I of the notice, *Programs Determined to be Countervailable.*

3. *Research Projects under the Canada/Saskatchewan Agricultural Development Subsidiary Agreement.* Under the Canada/Saskatchewan Agricultural Development Subsidiary Agreement, pursuant to the ERDA between the federal government and the Province of Saskatchewan, a variety of research projects are funded. These projects involve crops, livestock, soil, irrigation, and human resources. The livestock projects include a number of hog/pork-related projects, including the Swine Herd Technology Transfer Program. Some projects are 100 percent funded by the federal government, while others are 100 percent funded by the provincial government. In the end, however, dollar amounts for all projects work out to be split 50/50 between federal/provincial financing.

We verified that the research results of projects related to hogs or pork funded under the Subsidiary Agreement are made available to the public, including producers of fresh, chilled, and frozen pork in the United States. Therefore, we determine that projects under the Subsidiary Agreement are not limited to a specific enterprise or industry, or group of enterprises or industries, and are thus not countervailable.

4. *Alberta Processed Food Market Expansion Program.* This program promoted consumer awareness of Alberta products throughout the province. The promotion was for all agricultural products produced in Alberta. Because this promotion is designed to increase domestic awareness, and therefore is tied to the sale of products to a market other than the United States, we determine that it does not provide a countervailable benefit to the production or exportation of fresh, chilled, and frozen pork.

5. *Alberta Food Processors' Promotion Assistance Program.* This program replaced the Processed Food Market Expansion Program. The objective of the program is to promote Alberta agricultural products within Alberta. Because this promotion is designed to increase domestic awareness, and therefore is tied to the sale of products to a market other than the United States, we determine that it does not provide a countervailable benefit to the production or exportation of fresh, chilled, and frozen pork.

6. *MAPP Consumer Survey.* The Ontario Ministry of Agriculture and Food commissioned a survey on U.S. consumer attitudes toward pork. The cost of the survey was Can$250,000 and was financed under MAPP. The results of the survey are publicly available both inside and outside of Canada. Therefore, we determine that the benefits from this project are not limited to a specific enterprise or industry, or group of enterprises or industries, and are thus not countervailable.

7. *Research Grants under the OPIIP.* Research grants under OPIIP are provided to support research projects related to swine production. We verified that the results of such research are publicly available both inside and outside Canada. Therefore, we determine that the benefits of such research grants are not limited to a specific enterprise or industry, or group of enterprises or industries, and are thus not countervailable.

8. *Education Grants to the Ontario Pork Producers' Marketing Board under the OPIIP.* Grants are given to local chapters of the Marketing Board to help defray the costs of general agricultural education programs. The amount of the grants is determined by the membership of the organization. Because these grants are paid to the marketing boards for agricultural education programs, we determine that there is no countervailable benefit to the production or exportation of pork.

9. *Grants to the Pork Producers' Marketing Boards.* During verification we found that some marketing boards had received funds from the provincial governments to defray the cost of pork promotion campaigns. Because these promotions were designed to increase domestic consumption, and therefore were tied to the sale of products to a market other than the United States, we determine that they do not provide a countervailable benefit to the production or exportation of fresh, chilled, and frozen pork.

III. Programs Determined Not To Be Used

We determine that the following programs were not used by producers or exporters in Canada of fresh, chilled, and frozen pork during the review period:

1. *Export Expansion Fund.* This fund covers the costs of federal government travel to foreign countries for trade consultations or technical seminars. The fund also brings foreign officials to Canada. No funds were used to finance travel related to the exportation of pork to the United States during the review period.

2. *Canada/Alberta Subsidiary Agreement on Agricultural Processing and Marketing.* This subsidiary agreement operates under the ERDA between the Government of Alberta and the Government of Canada, which became effective June 8, 1984. The agreement is jointly funded and administered by the federal and the provincial government. The purpose of the agreement is to enhance the agricultural processing sector of Alberta's economy.

Applicants who carry out approved projects within the agricultural processing sector receive non-repayable contributions toward eligible costs incurred. Eligible projects include the establishment, expansion, and modernization of processing operations and testing and research facilities, as well as feasibility studies and product research and development.

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We verified that no assistance was provided to federally-inspected pork producers (the only pork producers eligible to export) during the review period.

3. *Canada/Alberta Livestock Drought Assistance Program.* This program provided relief to livestock producers in certain areas affected by drought. The program was jointly funded by the provincial and federal governments. Eligible livestock included beef cattle, dairy cattle, bison, sheep, goats and horses. Hog producers were not eligible for benefits under this program.

4. *Alberta Livestock Assistance Program.* This program provided assistance to livestock producers living in areas not covered by the joint federal-provincial drought program. Livestock eligible for this program were the same as for the joint program. Hog producers were not eligible for assistance under this program.

5. *Alberta Red Meat Stabilization Program.* This interim program provided assistance to livestock producers before the tripartite agreements were signed. We verified that no assistance was provided to hog or pork producers during the review period, as all payments were made during 1985.

6. *Alberta Grants to Pork Producers.* The province of Alberta agreed to provide funds to two pork producers in the province under the same terms and conditions as the Canada Alberta Subsidiary Agreement on Agricultural Processing and Marketing. However, the grants are to be fully funded by the province. We verified that no funds were disbursed during the review period.

7. *Manitoba Development Corporation.* During verification, we discovered that East-West Packers received a forgiveable loan from the Manitoba Development Corporation. We requested additional information on the Manitoba Development Corporation but none was submitted. However, using our methodology, the forgiveable loan was received too late to have provided a benefit to the company during the review period.

8. *Manitoba Hog Income Stabilization Program.* This program provided income support payments to hog producers when the market price for hogs fell below an established price support level. It was funded by premiums from participating producers and from the provincial government. This program was terminated effective June 28, 1986. We verified that no assistance was provided to hog producers during the review period, as the last payout under this program was made in July 1986.

9. *Ontario Export Sales Aid.* This program assists agriculture and food producers and processors in developing markets abroad by providing financial and technical support for various promotional activities. We verified that no assistance was provided to hog or pork producers during the review period.

10. *Ontario Small Food Processors Assistance Program.* This program assists eligible small food processing companies by improving their access to market information, strengthening their business planning skills and capabilities, and providing financial assistance on eligible capital investments. We verified that no assistance was provided to hog or pork producers during the review period.

11. *Quebec Meat Sector Rationalization Program.* Under this program, the Ministry of Agriculture assumed part of the eligible capital costs of investments for the establishment, standardization, expansion, modernization or amalgamation of slaughterhouses and meat processing plants. The program started in 1975 with a three-year mandate, after which it was renewed four times for one year at a time. The program officially terminated in 1982, with financial assistance granted until 1984. We verified that there were no benefits to slaughterhouses or pork packers under this program during the review period.

Comments

All written comments submitted by the interested parties in this investigation which have not been previously addressed in this notice are addressed below.

Comment 1. Respondents assert that the application of section 771B in this investigation is inconsistent with U.S. obligations under the General Agreement on Tariffs and Trade (GATT) which states that a signatory cannot impose a duty in excess of the subsidy. Respondents maintain that unless it can be shown that benefits completely pass through from the producers of the raw agricultural product to the processors of that product, the countervailing duty on the procesed product may be greater than the actual subsidy to the producers of the processed product.

Petitioner argues that the application of section 771B is not a violation of the GATT because the type of analysis contained in that section has been used in several previous agricultural cases where a "pass through" analysis was deemed inappropriate. According to petitioner, in cases involving agricultural products which are closely related, such as hogs and pork, any subsidy paid on the raw product is itself paid on the initially processed product. Moreover, petitioner claims that the government of Canada has applied a similar analysis in a countervailing duty investigation involving boneless beef from the European Economic Community. Petitioner contends that in that investigation the Canadians considered benefits to cattle producers as direct benefits to producers of boneless beef.

DOC Position. Section 771B is consistent with Article VI(3) of the GATT. Article VI(3) of the GATT holds, in part, "No countervailing duty shall be levied on any product * * * in excess of an amount equal to the estimated bounty or subsidy determined to have been granted, directly or indirectly, on the manufacture, production or export of such product in the country of origin or exportation * * *" First, section 771B simply recognizes that, due to the nature of the market for certain agricultural products, the subsidy on such products is deemed to be provided directly to the manufacture, production, or exportation of the processed product. See *Application of Section 771B.* Second, section 771B does not inflate the subsidy given on the raw or processed product. In fact, to accurately measure the subsidy, we used a conversion factor to calculate the percentage of pork yield from live swine. For these reasons, section 771B remains consistent with the GATT.

Comment 2. Respondents contend that section 771B supersedes any prior administrative practice regarding raw and processed agricultural products. Respondents argue that the Department's practice in such cases was not consistent and consequently could not be considered to be codified in section 771B.

DOC Position. The criteria codified in section 771B are the same criteria used in *Swine.* In fact, as the legislative history clearly shows, Congress passed this amendment in order to codify the Department,s practice in past investigations regarding agricultural products, particularly the *Swine* investigation. For these reasons, we consider previous final and preliminary determinations that discussed these past practices to be relevant to this investigation.

Comment 3. Petitioner argues that the Department's determination that 20 percent value added was not limited in *Initiation of Countervailing Duty Investigation: Certain Table Wine from France* (50 FR 40460, October 4, 1985) (*Table Wine*), is not relevant to this case because, unlike hogs, grapes have several other end uses. Petitioner argues that the value added threshold for a product with multiple alternative retail uses is not necessarily the same as for a product dedicated to a single end use.

Respondents argue that the Department should find the 20 percent value added by pork packers to be more than limited, as it found in the initiation notice for *Table Wine.* Respondents argue that in *Table Wine* the Department refused to consider benefits to grape growers as benefits to wine producers because the value added by wine producers was at least 20 percent.

DOC Position. We have determined that, in this investigation, it is reasonable to consider the 20 percent added by pork producers to live swine to be limited value, as the term is defined under section 771B. Because we never reached a preliminary or final determination following the initiation of *Table Wine,* the initiation notice for that investigation carries no precedential weight.

Comment 4. Petitioner contends that the Alberta Crow Benefit Offset Program is countervailable because it provides direct benefits to livestock producers who use either farm-fed or purchased grains.

Respondents assert that the Alberta Crow Benefit Offset Program is not countervailable because the program only partially offsets the disadvantage to grain users created by the federal Crow Benefit Program. Respondents argue that it is consistent with Department practice to find such offsetting programs not countervailable when there is no gross subsidy to the producer. Respondents cite the *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from the Federal Republic of Germany* (47 FR 39345, September 7, 1982) (*FRG Steel*), and the *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Belgium* (47 FR 39304, September 7, 1982) (*Belgium Steel*), as examples of cases involving offsetting programs which were found not countervailable. In addition, respondents claim that if there is any benefit to hog producers, that benefit goes to an input, grain, and therefore an upstream subsidy investigation is required. Since no upstream investigation has been carried out, respondents contend that any possible benefit to hog producers cannot be measured.

DOC Position. Unlike the Special Canada Grains Program, this program is not tied to grain production; it is limited to feed grain users and merchants. Therefore, we have determined that it is countervailable.

The fact that a program is designed to offset the economic effects of another government program or policy does not exempt it from investigation under the countervailing duty law. For example, programs designed to exempt certain companies from income taxes in order to offset the effect of an extremely high national income tax policy are still potentially countervailable. In order to be considered an offset, the criteria of the offset provisions of section 771(6) of the Act must be met. Clearly, these provisions were not met here.

We reject respondents' claim that this program is analogous to *FRG Steel.* In that investigation, the German Government chose to impose an import ban on coal and to subsidize coal production. We found no countervailable benefit to steel producers resulting from the coal subsidy because the price that steel producers were paying for coal was higher than the world price. Since the *FRG Steel* determination, we have adopted an upstream subsidy analysis, which would now be applied to determine whether benefits to coal producers passed through to steel producers. In this investigation, the benefit is paid directly to grain users and not to grain producers. Thus, there is no need to conduct an upstream subsidy analysis.

The precedent set in *Belgium Steel* also does not apply to this investigation. In *Belgium Steel,* the government assumed responsibility for funding the cost it imposed on the steel companies by mandating early retirement of certain workers. We determined in that case that this assistance was not countervailable because it benefitted only the workers and not the steel companies.

Comment 5. Petitioner asserts that the Department should determine that at least 50 percent of all benefits under the Alberta Crow Benefit Offset Program are paid to hog producers because hogs account for about 50 percent of total feed consumption in both eastern and western Canada. Petitioner contends that the 12 percent figure used in the preliminary determination should be rejected because it is based on the relative value of swine with respect to other livestock and, therefore, is not relevant to the amount of feed grains consumed by hogs.

Respondents argue that the Department should not use the 50 percent figure requested by petitioner because (1) it is unverified, (2) it relates to feed consumption in western Canada and not Alberta, and (3) it is unclear whether this 50 percent figure relates to all feed grains or just corn and barley. Moreover, respondents claim that the 12 percent figure used in the preliminary determination was based on the cash receipts for hog producers over the cash receipts for all livestock producers. Respondents argue that it would be more accurate to use the cash receipts for hog producers over cash receipts for all agricultural production because this program benefits grain producers and not livestock producers. Respondents claim that the correct percentage of payouts which can be attributed to hog producers is 5.48 percent.

DOC Position. We have used, as best information available, data contained in the publication *Agriculture in Alberta,* which stated that hogs accounted for 15 percent of the consumption of the province's barley production, and that barley is the primary grain fed to hogs in Alberta. We consider this to be the most appropriate measure of the benefits conferred on hog production under this program. We have rejected respondents' 5.48 percent figure because the relative value of hogs to other agricultural commodities bears no relationship to the amount of grains fed to hogs. The 15 percent figure published in *Agriculture in Alberta* is the only data we have on the amount of grain consumed by hogs in Alberta and represents the best information available to measure the countervailable benefit under the program.

Comment 6. Petitioner argues that the full amount of rebates to hog producers under the Ontario Farm Tax Rebate Program should be found countervailable because some farmers, namely those with a gross value of production of less than Can$5,000, are ineligible for benefits. Petitioner maintains that in two prior cases, *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Lime from Mexico* (49 FR 35672, September 11, 1984) and *Groundfish,* programs which provided higher benefits to certain groups or classes of producers were found countervailable to the extent that there was a differential between the most and the least preferred producer. Since the least preferred producer in this program receives no benefits, petitioner contends that all benefits to hog producers should be found countervailable.

Respondents argue that this program is generally available to all *bona fide* farmers and that only rebates to swine producers in northern and eastern Canada with a gross value of production between Can$5,000 and Can$8,000 are countervailable. Respondents also claim that the programs cited by petitioner are not relevant in this investigation because under those programs, even the least preferred producer was included in

the program, whereas those farmers with a gross value of production of less than Can$5,000 are not even eligible under this program. Respondents assert that these farmers are not eligible because they are not considered to be bona fide farmers.

DOC Position. For purposes of this program, the province of Ontario has defined a bona fide farmer as one with a gross value of production of at least Can$5,000 a year. We find that definition to be reasonable and one that does not restrict benefits to any specific group within agriculture. However, we do find the program countervailable to the extent that farmers in southern and western Ontario need a gross value of production of Can$8,000 to qualify for the program. Our decision is consistent with the cases cited by petitioner. In each of those cases, we only countervailed the difference in the level of benefits based on regional distinction.

Comment 7. Respondents argue that the Department is not authorized to examine the process by which benefits are conferred in determining whether benefits under the tripartite program are limited to a specific enterprise or industry or group of enterprises or industries. They state that the CIT has "never approved * * * the examination of governmental discretion or intent" in determining whether a program is limited to a specific enterprise or industry or group of enterprises or industries. They cite *Cabot Corp.* v. *United States*, 620 F. Supp. 722, 730 (1985)(*Cabot I*), in which the Court ruled that the Department "must examine the actual results or effects of assistance provided by foreign governments and not the purposes or intentions."

Petitioner counters that the *Cabot I* citation is part of a larger discussion having nothing to do with the role of intent or discretion, and that "the passing reference to intent" is therefore *dicta*. Petitioner argues that, "in the absence of any reliable evidence of specific criteria for extending tripartite coverage to given commodities, the Department must examine discretion and intent in order to determine how the tripartite schemes, as a group, operate."

DOC Position. We typically consider three factors in determining whether a program is limited to a specific enterprise or industry or group of enterprises or industries: (1) The extent to which a foreign government acts (as demonstrated in the language of the relevant enacting legislation and implementing regulations) to limit the availability of a program; (2) the number of enterprises, industries, or groups thereof that actually use a program, which may include the examination of disproportionate or dominant users; and (3) the extent, and manner in which, the government excercises discretion in making the program available. With respect to the third factor, it is our general policy when verifying domestic programs to review the procedures for approving or rejecting applications for benefits. We must examine relevant documents to ensure that a situation does not exist where a program, which based on the statute appears to be available to all companies in a country, is being administered in a manner that is distortive. See, for example, *Wire Rod.*

At verification, we found no standard criteria for establishing or operating tripartite agreements. Instead, we found that (1) tripartite agreements only exist for nine agricultural commodities; (2) tripartite agreements do not exist for all commodities requested by producers; (3) different levels of stabilization exist among commodities covered by tripartite agreements, and (4) even among swine producers, benefits are not available on equal terms, due to the fact that Quebec is allowed to maintain its provincial stabilization program while other provincial stabilization programs must be phased out.

Comment 8. Petitioner argues that the benefit from the tripartite program should be calculated on a credits-as-earned basis. Petitioner states that this methodology is consistent with the Department,s past practice, and cites *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Certain Steel Wire Nails from New Zealand* (52 FR 37196, October 5, 1987), in which benefits under the Export Performance Taxation Incentive (EPTI) program, a New Zealand tax program, were calculated in this manner because there was "no uncertainty as to eligibility, no need for complex tax accounting, and no dependence on ultimate tax liability." Petitioner asserts that the tripartite program is similar in that there is "no uncertainty as to eligibility, no need for complex accounting, and no adjustments for individualized circumstances." Petitioner adds that the credits-as-earned methodology would yield the most accurate cash deposit rate because it is "based on market conditions which actually existed during the review period."

The Canadian Pork Council (CPC) argues that, if the Department does determine that the tripartite program and provincial stabilization programs are countervailable, the benefits should be based only on government contributions to the stabilization fund, regardless of payments to producers. It characterizes the tripartite program as an insurance scheme in which "the actual benefit to producers * * * should be viewed as the income security that is available on a continuing basis" which "should be measured not by the amount of any particular payment a producer may receive in any given year, but by the funds available in the 'insurance' plan, made up of premiums paid by producers, provincial and Federal governments, and any interest on the accumulated funds." The CPC counters petitioner by stating that this methodology would result in "a more predictable level of countervailable duties from year to year, and avoid significant differences between deposits and assessed duties."

The Canadian Meat Council and Canada Packers, Inc., (CMC and CP) agree with the CPC but add that if the Department decides not to use the government contribution approach, it should use the credits-as-earned methodology suggested by petitioner. The CMC and CP qualify this point by arguing that the time period used should be fiscal year 1988/89 (April 1, 1988–March 31, 1989). They state that the credits-as-earned method and the fiscal year 1988/89 time period would result in a deposit rate "that is most consistent" with any final duties which might later be assessed in an administrative review.

DOC Position. The Department has consistently used the cash flow method in determining when benefits are received.

There are two exceptions. One applies to certain situations involving big ticket items, the production and delivery of which may extend over several years. In such situations, the application of the cash flow method would enable certain countervailable subsidies to go unremedied. *See Final Affirmative Countervailing Duty Determination: Offshore Platform Jackets and Piles from Korea*, 51 FR 11779 (1986). This is not the case with payments under the tripartite program, which would be captured at the time they are paid out to producers.

The second excention involves an export benefit provided as a percentage of the value of the exported merchandise (such as a cash payment or an overrebate of indirect taxes) on the date of export. This exception is based on the New Zealand EPTI program cited by petitioner. The EPTI example is not applicable here, however, because the recipients of the EPTI payments knew at the time they made their export sales what their cash payment would be. By contrast, hog producers enrolled in the tripartite plan for hogs do not know what cash payments, if any, they will

receive until their checks are sent out. Certainty as to the amount to be received does not occur when the federal and provincial governments contribute to the stabilization fund or when hogs are sold.

Regarding our use of the cash-flow methodology for determining when benefits are received, we note that under Article VI(3) of the GATT we are not allowed to countervail more than the actual amount of a subsidy. Our cash-flow methodology ensures that we do not exaggerate the actual subsidy paid on a product during the period under review. The accrual method suggested by respondents could lead the Department to finding a subsidy when, in fact, pig farmers have received no payments at all or to finding no benefit when pig farmers actually received substantial payments.

As for the argument made by the CMC and CP that we change our review period to the Government of Canada's 1988/89 fiscal year, the Department has consistently refused to change the review period in an investigation after the preliminary determination. To change the review period after the preliminary determination would substantially prejudice the position of all parties to the proceeding by decreasing their ability to comment on our findings.

Comment 9. Petitioner states that there are discrepancies between the tripartite payouts reported in the March 9, 1989 response and those reported in a subsequent response. Petitioner argues that the Department should therefore use the higher figures contained in the later response.

Respondents state that the Department verified the figures reported in the March 9 response and that the figures contained in the subsequent response are hypothetical amounts based on 100 percent participation in the tripartite program, *i.e.*, participation of all ten provinces and all federally and provincially inspected plants and all exports of market hogs, rather than the actual amounts paid out under the program.

DOC Position. We have based our calculations on verified information.

Comment 10. Respondents argue that we should allocate the benefits provided to the production of swine over the entire live weight of swine. Citing *Groundfish*, respondents contend that when analyzing benefits from a domestic subsidy, the Department's practice is to allocate those benefits over all domestic production. They state that the Department allocated the benefit over all fresh fish and shellfish, even though shellfish was not under investigation. They also cite *Lamb Meat 1985*, in which the Department allocated the domestic subsidy over all products produced during the slaughter operation, including the meat, pelts, wool and offal.

DOC Position. Respondents cite *Lamb Meat 1985* as an instance where the Department allocated the domestic subsidy over all products produced during the slaughter operation. This case is not relevant to the present investigation, however, as hogs are raised for the sole purpose of producing pork. Lambs, on the other hand, are raised for two primary purposes, their meat and wool. *Groundfish* also has no relevance to this investigation. In *Groundfish*, the Department did allocate certain program benefits over fish and shellfish. We did so because benefits under those programs were provided to both fish and shellfish and could not be segregated to the subject merchandise.

Comment 11. Petitioner argues that slaughter sows and boars should be excluded from the denominator used to calculate benefits under any program that does not cover sows and boars. Sows and boars are not eligible under the tripartite program and were considered a distinct subclass of merchandise in the Department's first administrative review of the countervailing duty order on live swine. For that review, the rate for all programs under investigation was recalculated by deducting 2.1 percent of production to account for sows and boars.

Respondents, citing the *Live Swine Review*, also argue that the Department should calculate a separate rate for sows and boars and, in addition, determine which benefits pass through to producers of sow and boar meat. They maintain that if the Department does not calculate a separate rate for sows and boars, it will be determining that benefits from programs for which sows and boars are ineligible pass through to sow and boar meat. They maintain that sow and boar meat should not be subjected to any countervailing duty on fresh, chilled, and frozen pork produced from market hogs. They contend that sow and boar meat is distinguishable from market hog meat by its color, weight, and consistency, and that boar meat must be stamped as such.

DOC Position. We have calculated a separate rate for sows and boars. Sows and boars are not eligible for stabilization under the tripartite and other subsidy programs. Additionally, sows and boars were considered a distinct subclass of merchandise in the Department's *Live Swine Review*. Following the methodology used in that review, we have deducted 2.1 percent of hog production to account for sows and boars, where appropriate, from our subsidy calculations.

Comment 12. Respondents contend that the Department's use of total pork production in the five provinces as the denominator is accurate. They maintain that, unlike imports of live swine, pork imports are not identified by their province of origin. Additionally, hogs often originate in one province but are exported as pork by another province. For these reasons, respondents state that calculating the countervailing duties using the trade-weighted approach would be inaccurate.

DOC Position. We agree. We verified that hogs are often shipped across provincial boundaries for slaughter and cutting into pork. Therefore, any countervailing duties based on the trade-weighted approach would overstate or understate the level of benefit depending on whether the province is a net importer or exporter of hogs.

Verification

In accordance with section 776(b) of the Act, except where noted in this determination, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, examination of relevant accounting records, and examination of original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099) of the Main Commerce Building.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we instructed the U.S. Customs Service to suspend liquidation of all entries of fresh, chilled, and frozen pork from Canada which is entered, or withdrawn from warehouse, for consumption, on or after May 8, 1988, the date of publication of our preliminary determination in the **Federal Register**. The liquidation of all entries, entered or withdrawn from warehouse, for consumption will continue to be suspended, and as of the date of publication of this notice in the **Federal Register**, the Customs Service will require a cash deposit or bond for all entries of fresh, chilled and frozen pork equal to Can$0.06/kg. (Can$0.036/lb.), and zero for all entries of fresh, chilled, and frozen sow and boar meat.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order, directing Customs officers to assess countervailing duties on all entries of fresh, chilled, and frozen pork from Canada entered, or withdrawn from warehouse, for consumption, as described in the "Suspension of Liquidation" section of this notice.

This determination is published pursuant to section 705 (d) of the Act [19 U.S.C. 1671d(d)].

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

July 17, 1989.

[FR Doc. 89-17278 Filed 7-21-89; 8:45 am]

BILLING CODE 3510-DS-M

Notice of Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88-095R. *Applicant:* University of Chicago, 5801 South Ellis Avenue, Chicago, IL 60637. *Instrument:* Laser System. *Manufacturer:* Lumonics, Canada. Original notice of this resubmitted application was published in the **Federal Register** of March 15, 1988.

Docket Number: 89-163. *Applicant:* The College of William and Mary, Virginia Institute of Marine Science, Route 1208, P.O. Box 1346, Gloucester Point, VA 23062. *Instrument:* Electronic Fish Measuring Boards, Model IV. *Manufacturer:* Limnoterra Atlantic, Inc., Canada. *Intended Use:* The instrument will be used in studies of various fish and crustaceans native to the Chesapeake Bay and Mid-Atlantic Bight to determine the abundance and length frequency distribution. *Application Received by Commissioner of Customs:* June 13, 1989.

Docket Number: 89-164. *Applicant:* University of Illinois at Chicago, Department of Chemistry, 829 W. Taylor Street, Chicago, IL 60680. *Instrument:* Excimer Laser, Model 201F MSC.*Manufacturer:* Lambda Physik, West Germany. *Intended Use:* The instrument will be used in studies to determine if the oxygen produced by photodissociating carbon dioxide is electronically excited. *Application Received by Commissioner of Customs:* June 13, 1989.

Docket Number: 89-165. *Applicant:* Southwest Foundation for Biomedical Research, West Loop 410 at Military Drive, P.O. Box 28147, San Antonio, TX 78284. *Instrument:* Electron Microscope, Model JEM 1200EX. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used for viral assay, identification and pathology in cell culture and animal tissue; diagnosis including neoplasia, mycotic, protozoal and degenerative disease. The specimens will be of biological origin, including animal tissue, cell culture, and human tissue. *Application Received by Commissioner of Customs:* June 13, 1989.

Docket Number: 89-166. *Applicant:* University of Virginia, Charlottesville, VA 22901. *Instrument:* Scanning Electron Microscope, Model JSM-840A/FCS. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used for studies of metals, alloys, ceramics, composite materials, electronic materials, geological, and polymeric or biological materials. The experiments to be conducted will include high resolution microprobe analysis, scanning electron microscopy imaging of surface microstructures, and determination of the relationship of chemical composition and microstructure to materials properties. In addition, the instrument will be used for educational purposes in two courses: MS-604, Scanning Electron Microscopy and Microanalysis, and MS 692, Materials Science Laboratory. *Application Received by Commissioner of Customs:* June 19, 1989.

Docket Number: 89-167. *Applicant:* Brandeis University, Rosenstiel Basic Medical Sciences Research Center, P.O. Box 9110, Waltham, MA 02254-9110. *Instrument:* Electron Microscope, Model CM12. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used in various research projects to determine the three-dimensional structure of organized macromolecular systems and to understand their functions in terms of dynamic states of their structure. *Application Received by Commissioner of Customs:* June 19, 1989.

Docket Number: 89-168. *Applicant:* University of Arkansas for Medical Sciences, College of Medicine, 4301 West Markham, Little Rock, AR 72205-7199. *Instrument:* Electron Microscope, Model JEM 100CX. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument wil be used to carry out ultrastructural studies on the nervous system and musculoskeletal system. Included among these are studies related to:

1. Development of the spinal cord,
2. Responses of the spinal cord to injury,
3. Effects of ethanol (alcohol) on responses of brain cells to injury,
4. Graft versus host disease and its effect on brain development,
5. Altered gene expression in Alzheimer's dementia,
6. Cellular transplantation into the spinal cord in an attempt to restore functional losses,
7. Immunological models of receptors on nerve cells,
8. Trophic factors involved in survival of retinal neurons and
9. In vitro and in vivo models to study repair of the cartilages in the knee.

In addition, the instrument will be used for training graduate students and postdoctoral fellows to carry out portions of these studies. *Application Received by Commissioner of Customs:* June 20, 1989.

Docket Number: 89-169. *Applicant:* University of Georgia, Athens, GA 30602. *Instrument:* Electron Probe X-ray Microanalyzer, Model JXA-8600. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used to obtain quantitative major, minor, and trace element analyses of geologic materials, and to determine element distributions in complex, multi-phase materials. These data will be used to determine the physical conditions affecting the formation and evolution of the earth's crust and mantle. In addition, the instrument will be used in teaching various geology courses. *Application Received by Commissioner of Customs:* June 21, 1989.

Docket Number: 89-170. *Applicant:* New York State Department of Health, Empire State Plaza, Albany, NY 12201. *Instrument:* Electron Microscope, Model H-7000, with Accessories. *Manufacturer:* Hitachi, Ltd., Japan. *Intended Use:* Studies of air- and waterborne asbestiform minerals, aerosols associated with acid rain and biological specimens including bacterial, fungi, viruses and tissue culture cells. Electron images, x-ray energy spectra and diffraction patterns from the above materials will be recorded on photographic films. The structural relationship between pathogens (fungal, bacterial and viral) and host cells will be studied. *Application Received by Commissioner of Customs:* June 21, 1989.

Docket Number: 89-171. *Applicant:* University of Alabama at Birmingham, Department of Biochemistry, UAB Station, 520 CH19, Birmingham, AL 35294. *Instrument:* Rapid Kinetic Instrument. *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. *Intended Use:* The instrument will be used for investigations of fast to very fast (a fraction of one second to tens of a millionth of one second) chemical and biochemical reactions. The objective of the experiments conducted is to understand the fundamental processes related to the mechanisms of diverse biological processes such as muscle contraction, enzyme action, transport of metabolites, etc. *Application Received by Commissioner of Customs:* June 23, 1989.

Docket Number: 89-172. *Applicant: National Institute of Standards and Technology, Gaithersburg, MD 20899. Instrument:* Ultraviolet Fourier Transform Spectrometer, Model FT500. *Manufacturer:* Chelsea Instruments, Ltd., United Kingdom. *Intended Use:* The instrument will be used for fundamental research in trace atomic spectrometry and to fully characterize atomic spectra of metallic and some non-metallic elements in common analytical plasmas such as the inductively-coupled plasma. This characterization will include the accurate determination of spectral line positions and intensities for all the elements normally encountered in chemical analysis. *Application Received by Commissioner of Customs:* June 28, 1989.

Docket Number: 89-173. *Applicant:* Board of Trustees of Southern Illinois University, School of Medicine, 801 North Rutledge, Springfield, IL 62702. *Instrument:* Electron Microscope, Model H-7000. *Manufacturer:* Nissei Sangyo America, Ltd., Japan. *Intended Use:* The instrument will be used to study binding sites in lens membranes, morphology of cytoplasmic vesicles produced by cloned genes, synaptic development in cultured neurons, age-related loss of hearing and receptor sites, attachment and infection of two sexually transmitted disease pathogens, neurotransmitters in nerve terminals of cerebral blood vessels, effects of ototoxic drugs on cochlea, immune and non-immune interactions of *Histoplasma capsulatum* and cultured endothelial cells, synaptic morphology and auditory function during development, and effects of chronic maternal insults (alcohol, caffeine, etc.) and stress on fetal tissue. The instrument will also be used to teach medical and graduate level students. *Application Received by Commissioner of Customs:* June 28, 1989.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-17279 Filed 7-21-89; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Advisory Board Meeting

AGENCY: Defense Intelligence Agency Advisory Board.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of the DIA Advisory Board has been changed as follows: The 12-13 September 1989 meeting has been rescheduled to the date listed below.

DATE: 25-26 September 1989, 9:00 a.m. to 5:00 each day.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Advisory Board, Washington, DC 20340-1328 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting will be devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA on related scientific and technical intelligence matters.

Dated: July 18, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-17266 Filed 7-21-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Chief of Naval Operations; Rescheduling of Closed Meeting

Notice was published July 19, 1989 at 54 FR 30240 that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Technology Surprise Task Force will meet August 8-9, 1989 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. Because of operational necessity, this meeting has been rescheduled from August 8-9, 1989 to August 1-2, 1989.

This notice is being published late because operational necessity constitutes an exceptional circumstance, not allowing for 15 days' Notice of this meeting.

Date: July 20, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-17327 Filed 7-21-89; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education; Meeting

AGENCY: National Advisory Council on Indian Education.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES: August 3-4, 1989, 9:00 a.m. until conclusion of business each day.

ADDRESSES: Holiday Inn on the Bay, 1355 Harbor Drive, San Diego, California 619/232-3861.

FOR FURTHER INFORMATION CONTACT: Jo Jo Hunt, Executive Director, National Advisory Council on Indian Education, 330 C Street SW., Room 4072, Switzer

Building, Washington, DC 20202-7556 (202/732-1353).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 5342 of the Indian Education Act of 1988 (25 U.S.C. 2642). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act of 1988 (Part C, Title V, Pub. L. 100-297) and to advise Congress and the Secretary of Education with regard to federal education programs in which Indian children or adults participate or from which they can benefit.

The Executive Committee of the Council will meet starting at approximately 9:00 a.m. and will end at the conclusion of business each day at approximately 5:00 p.m. The meeting is open to the public. The agenda includes reports by the Chairman and Executive Director; a review of the updated NACIE Handbook; a planning session for the agenda of the Full Council Meeting to be scheduled in October 1989 in conjunction with the meeting of the National Indian Education Association in Anchorage, Alaska, and planning of any site visits in Alaska; discussion of the staff evaluation process; and approval of the 1990 revised budget proposal and the 1991 proposed budget for the Council.

The public is being given less than 15 days notice due to rescheduling problems of this previously cancelled meeting of the Executive Committee and the need to hold the meeting as soon as possible.

Date: July 19, 1989. Signed at Washington, DC.

Jo Jo Hunt,

Executive Director National Advisory Council on Indian Education.

[FR Doc. 89-17315 Filed 7-20-89; 8:45 am]

BILLING CODE 4000-01-M

Office of Elementary and Secondary Education

Education Appeal Board Hearings; Intent to Compromise a Claim, Kansas Department of Education

AGENCY: Department of Education.

ACTION: Notice of intent to compromise a claim.

SUMMARY: The Department intends to compromise a claim against the Kansas Department of Education now pending before the Education Appeal Board (EAB), Docket No. 31-(295)-88. (20 U.S.C. 1234a(f) (1982)).

DATE: Interested persons may comment on the proposed action by submitting written data, views, or arguments on or before September 7, 1989.

ADDRESS: Comments should be addressed to Patricia L. Boochever, Esq., Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., (Rooms 4091, FOB-6), Washington, DC 20202.

SUPPLEMENTARY INFORMATION: The claim in question arose from an audit of the financial affairs and operations of the Kansas Department of Education (State) for the two fiscal years ended June 30, 1985 and June 30, 1986. The audit was performed by Peat, Marwick, Main & Company, Certified Public Accountants, to fulfill the requirements of Office of Management and Budget Circular A-128. The audit included the evaluation of the internal control systems, including applicable internal administrative controls, used in administering Federal financial assistance programs. Among the systems examined was the allocation of funds to local educational agencies (LEAs) under Chapter 1 of the Education Consolidation and Improvement Act of 1981 (20 U.S.C. 3801 *et seq.*). Chapter 1 provides financial assistance to State and local educational agencies for programs and projects designed to meet the special educational needs of educationally deprived children in areas of high concentrations of children from low-income families.

During the course of the audit, the auditors discovered that some allocations, although based on the approved procedures, were not made correctly for several LEAs. Because of the nature of the allocation process, in which the total allocation remains the same, some LEAs received too little and several LEAs received too much. Within the scope of the auditors' sample, two counties, Washington and Crawford, were found to have been given too much. Washington County was given an excess of $21,226 and Crawford County was given an excess of $9,129.

Based on these findings, the Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) notified the State in a final determination letter dated September 28, 1988, that it had to repay a total of $30,355 for overallocated Chapter 1 funds. In making these overallocations, the State violated the provisions in section 111 of Title I (20 U.S.C. 2711), which apply to Chapter 1 through section 554(a) of Chapter 1 (20 U.S.C. 3803(a)). Further support for the repayment of overallocated funds is contained in section 435(b)(5) of the General Education Provisions Act (GEPA) (20 U.S.C. 1232d(b)(5) which states, "that the State will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds paid to the State under each program." The State appealed the Assistant Secretary's determination to the EAB.

The Department proposes to compromise the full amount of the $30,355 claim for $20,000. In its response to the audit finding, the State stated that the overallocation problem occurred due to a calculation error when transfer funds from four other counties were included in the original county totals. The transfer funds should have been kept separate from the original county amount, thereby reducing the per pupil amount used in the calculation. Since it became aware of these calculation errors, the State has closely monitored its allocation procedures for this type of error, with the result that the problem has not recurred. It thus appears that the overallocation error was a one-time error. Given these factors, the percentage of the claim to be repaid, and the cost of litigating the claim through the appeal process, the Department has determined that it would not be practical or in the public interest to continue this proceeding. Moreover, the Department is satisfied that the practices that resulted in the claim have been corrected and will not recur.

The public is invited to comment on the Department's intent to compromise this claim. Additional information may be obtained by writing to Patricia L. Boochever, Esq. at the address given at the beginning of the notice.

(20 U.S.C. 1234a(f))

Dated: July 18, 1989.

Gary J. Rasmussen,

Acting Deputy Under Secretary for Management.

(Catalog of Federal Domestic Assistance No., Not Applicable)

[FR Doc. 89-17192 Filed 7-21-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangements

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of proposed "subsequent arrangements" under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangements to be carried out under the above-mentioned agreement involve approval of the following sales, to the Power Reactor and Nuclear Fuel Development Corporation, Tokai-Mura, Japan:

Contract Number S-JA-395, for the supply of 20 grams of uranium-233,
Contract Number S-JA-402, for the supply of 9.211 grams of plutonium as certified reference materials,
Contract S-JA-403, for the supply of 8.688 grams of plutonium as certified reference materials, and
Contract Number S-JA-404, for the supply of 81.467 grams of plutonium as certified reference materials.

The above mentioned materials will be used for the calibration of instruments and certification of analytical methods.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: July 19, 1989.

Richard H. Williamson,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 89-17274 Filed 7-21-89; 8:45 am]

BILLING CODE 6450-01-M

Award of a Cooperative Agreement, Noncompetitive Financial Assistance

AGENCY: Department of Energy (DOE), Nevada Operations Office.

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: DOE, Nevada Operations Office, announces that pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(2), it intends to award a cooperative agreement on a noncompetitive basis to the University of Nevada—Las Vegas, to facilitate participation in the Yucca Mountain repository program.

The Nuclear Waste Policy Act of 1982 (NWPA) implemented a federal policy decision to concentrate the U.S. Department of Energy (DOE) disposal and research efforts in the development of a mined geologic repository. The Nuclear Waste Policy Amendments Act of 1987 (NWPAA) restricted DOE efforts in site characterization to the Yucca Mountain site, in Nevada.

UNLV has been involved since the onset of the repository related work being conducted. The role of UNLV has included work in economics and transportation as well as other areas of concern. UNLV's position in the Nevada academic community creates an environment in which dedicated participation in the current nuclear waste repository process is a logical and necessary accompaniment to the DOE effort.

Project Scope: The following areas chosen for academic pursuit include areas in which DOE has a vital interest and can provide extensive technical assistance as provided for under the NWPA.

- *Quality Assurance* (QA) requirements used for repository development purposes as set forth in 10 CFR 60 and 10 CFR 50, Appendix B, ANSI/ASME NQA-1.
- *Waste Package Assessment* review of such things as structural analysis, analysis of existing American Society of Mechanical Engineers (ASME) codes and computer codes, and investigation of labeling/identification methodologies, relevant literature search, collection of library materials, and waste package document review.
- *Socioeconomic Impact Assessment* review of documents and research and documentation of ongoing activities.
- *Monitoring Activities* such as monitoring and mitigation plan reviews.
- *Environmental Impact Assessment* review of documentation and literature search, historical data collection, and research and documentation with respect to ongoing activities.
- *Transportation Evaluation* research, review and monitoring activities with respect to new or ongoing activities.
- *Functional* activities including organizing and hosting an annual national/international symposium on nuclear waste, and other conferences or symposia.
- *Exploratory Shaft and Site Characterization* research and documentation activities to include review of documents, laboratory research, and involvement in new or ongoing activities.

The project period for the cooperative agreement is a five-year period expected to begin August 1, 1989. The total estimated cost of this award is $4,325,000 over the five-year project period.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Nevada Operations Office, ATTN: Carl P. Gertz, P.O. Box 98518, Las Vegas, NV 89193-8518.

Issued in Las Vegas, Nevada on June 21, 1989.

Nick C. Aquilina,

Manager.

[FR Doc. 89-1725 Filed 7-21-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TQ89-12-51-000]

Great Lakes Gas Transmission Co.; Proposed Changes in F.E.R.C. Gas Tariff Purchased Gas Adjustment Clause Provisions

July 18, 1989.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on July 14, 1989 tendered for filing Substitute Twenty-Second Revised Sheet Nos. 57(i) and 57(ii) and Substitute Ninth Revised Sheet No. 57(v) to its FERC Gas Tariff, First Revised Volume No. 1.

Great Lakes states that these tariff sheets reflect revised current PGA rates for the month of July, 1989. The tariff sheets were filed as an Out of Cycle PGA to reflect the latest estimated gas cost as provided to Great Lakes by its sole supplier of natural gas, TransCanada PipeLines Limited ("TransCanada"). These pricing arrangements were the result of contract renegotiation between each of Great Lakes' resale customers and the supplier.

Great Lakes requested waiver of the notice requirements of the provisions of § 154.309 of the Commission's Regulations and any other necessary waivers so as to permit the above tariff sheets to become effective as requested in order to implement the gas pricing agreements between Great Lakes' resale customers and TransCanada on a timely basis.

Great Lakes requested the above tariff sheets become effective July 1, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 25, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17194 Filed 7-21-89; 8:45 am]

BILLING CODE 6717-01-M

Luz Solar Partners III, Ltd., Luz Solar Partners IV, Ltd., Luz Solar Partners V, Ltd., Petition for Waiver of 25 Percent Rule and Request for Expedited Consideration

[Docket No. QF86-734-002, QF86-736-002, QF87-403-002]

July 17, 1989.

On July 7, 1989, Luz Solar Partners III, IV and V Ltd. (Petitioners), of 924 Westwood Boulevard, Los Angeles, California 90024, filed with the Federal Energy Regulatory Commission a petition for waiver of § 292.204(b) of the Commission regulations and request for expedited consideration. The Petitioners request a waiver of the 25 percent fossil fuel use rule under circumstances arising from a utility system emergency.

Any person desiring to be heard or objecting to the granting of the petition should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of Commission's Rules of Practice and Procedures. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the Petitioners. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17195 Filed 7-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-578-023 and RP85-13-032]

Northwest Pipeline Corp.; Compliance Filing

July 18, 1989.

Take notice that on July 10, 1989, Northwest Pipeline Corporation (Northwest) filed Third Revised Sheet No. 318 and Original Sheet No. 318-A to its FERC Gas Tariff, First Revised Volume No. 1-A, to be effective August 9, 1989.

Northwest states that these tariff sheets are filed in compliance with the Commission's order issued June 23, 1989. Northwest states that these tariff sheets reflect modifications to its previously approved tariff sheets relating to receipt point flexibility clarifying the type of notice Northwest will provide existing shippers when a firm transportation customer makes any change in its receipt points that might affect shippers.

Northwest states that a copy of this filing is being served on all parties of record in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1988)]. All such protests should be filed on or before July 25, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17196 Filed 7-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-28-003]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

July 18, 1989.

Take notice that on June 12, 1989, Panhandle Eastern Pipe Line Company (Panhandle) filed First Substitute Seventy-First Revised Sheet No. 3-A, First Substitute Forty-Eighth Revised Sheet No. 3-B, and Eighth Revised Sheet No. 43-2.1 to its FERC Gas Tariff, Original Volume No. 1, to be effective June 1, 1989.

Panhandle states that these proposed tariff sheets are being filed in compliance with the Commission's letter order dated May 31, 1989, which directed Panhandle to refile its tariff sheets to reflect the calculation of D1 and D2 demand rate changes on a quarterly basis, and to revise Section 18.4 of Panhandle's General Terms and Conditions of its tariff (pipeline supplier demand costs) to specify the calculation of demand PGA adjustments on a quarterly basis rather than a twelve-month determination period.

Panhandle states that these revised tariff sheets reflect the revised D1 and D2 rates based on Panhandle's quarterly demand billing determinants for the instant three-month PGA recovery period.

Panhandle states that these revised tariff sheets also reflect the following changes to Panhandle's D1 and D2 demand rates: (1) An increase of $4.15 for D1 and (2) an increase of 0.02 cents for D2 to reflect the current rate changes in Section 18.4 of the General Terms and Conditions of Panhandle's revised tariff provisions as directed by the Commission's letter order.

Panhandle further states that this filing is without prejudice to Panhandle's rights on rehearing and any subsequent review of the conditions contained in the Commission's May 31, 1989 letter order.

Panhandle states that copies of its filing have been served on all parties, jurisdictional customers and appropriate state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1988)]. All such motions or protests should be filed on or before July 25, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17197 Filed 7-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI89-420-000]

Shell Offshore, Inc.; Petition for Declaratory Order

July 17, 1989.

Take notice that on May 18, 1989, Shell Offshore, Inc. (Shell) filed a petition requesting the Commission to issue a declaratory order stating that it has no jurisdiction over a 49.637% undivided interest in a 3,500 HP Solar Centaur Model No. C1684 gas turbine compressor unit currently owned by Trunkline Gas Company (Trunkline) and located on the High Island Area Block A-350 "A" platform, if Shell acquires that interest from Trunkline in accordance with a "Facilities Purchase Agreement" between Shell and Trunkline. These compression facilities are the subject of a request by Trunkline for an order permitting and approving abandonment by sale which, is pending in Docket No. CP89-921-000.

Petitioner contends that the facilities are gathering facilities under section 1(b) of the Natural Gas Act (NGA) and are therefore exempt from the certificate requirements of section 7(c) of the NGA. Petitioner contends that the facilities will perform a gathering function under the primary function test set forth in *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983).

Any person desiring to be heard or to protest this petition should file a motion intervene or protest in accordance with Rule 214 or 211 of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, within 30 days after publication of this notice in the **Federal Register**. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of the petition are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17198 Filed 7-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EF89-3021-000]

Southeastern Power Administration; Filing

July 18, 1989.

Take notice that on June 30, 1989, the Deputy Secretary of the Department of Energy confirmed and approved, on an interim basis effective midnight June 30, 1989, Rate Schedules CBR-1-B, CSI-1-B, CEK-1-B, CC-1-C, CM-1-B, CK-1-B and CTV-1-B for power from Southeastern Power Administration's (Southeastern) Cumberland Basin Projects. The approval extends through June 30, 1994.

The Deputy Secretary states that the Commission, by order issued December 27, 1984, in Docket No. EF84-3021, confirmed and approved Rate Schedules CBR-1-A, CSI-1-A, CEK-1-A, CC-1-A, CM-1-A, CK-1-A and CTV-1-A through June 30, 1989, and by order issued January 20, 1987, in Docket No. EF86-3021, confirmed and approved Rate Schedule CC-1-B, which replaced Rate Schedule CC-1-A, through June 30, 1989.

SEPA proposes in the instant filing to replace Rate Schedules CBR-1-B, CEK-1-A, CC-1-B, CM-1-A, CK-1-A and CTV-1-A with Rate Schedules CBR-1-B, CSI-1-B, CEK-1-B, CC-1-C, CM-1-B, CK-1-B and CTV-1-B. The rate adjustment will increase annual revenues by $4,485,000, an increase of approximately 15 percent. The increase is due primarily to general inflation at the generating projects. The interim rate schedules are submitted for confirmation and approval on a final basis pursuant to authority vested in the Commission by Delegation Order No. 0204010B. Approval is requested for a period beginning July 1, 1989, and ending June 30, 1994.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 1, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17199 Filed 7-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1957-003 Wisconsin]

Wisconsin Public Service Corp.; Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

July 18, 1989.

The license for the Otter Rapids Hydro Project No. 1957 located on the Wisconsin River in Vilas County, Wisconsin, expires on June 30, 1990. The statutory deadline for filing applications for new license was June 30, 1988. An application for new license has been filed as follows:

Project No.	Application	Contact
1957-003	Wisconsin Public Service Corporation, 700 North Adams Street, P.O. Box 19002, Green Bay, WI 54307.	Mr. E.R. Mathews, WPSC, (414) 433-1300.

Pursuant to section 15(c)(1) of the Federal Power Act, the deadline for the applicant to file final amendments, if any, to its application is August 1, 1989.

The following is the schedule and procedures that will be followed in processing the application.

Date	Action
Feb. 6, 1989	The Commission notified the applicant that its application had been accepted.
Feb. 13, 1989	The Commission issued public notice of application that had been accepted describing project and established April 21, 1989, as the date for filing motions to intervene, comments, protests, and agency recommendations.

Upon receipt of all additional information and the information filed in response to the public notice of the acceptance of the application, the Commission will evaluate the application in accordance with the applicable statutory requirements and take appropriate action on the application.

Any questions concerning this notice should be directed to Ed Lee at (202) 376-5786.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17200 Filed 7-21-89; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 17, 1989.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

For further information on this submission contact Judy Boley, Federal Communications Commission (202) 632-7513. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: None
Title: Section 22.609(e)—Disclosure of Frequency Coordination Information Upon Request
Action: New collection
Respondents: Business or other for-profit, and small businesses or organizations
Frequency of Response: On occasion
Estimated Annual Burden: 30 Responses; 30 Hours
Needs and Uses: The affected parties are existing licensees in the Rural Radio Service. New rule requires such licensees to give necessary frequency coordination information to prospective co-channel or adjacent channel licensees. Most, if not all, of the information will have already been developed by licensees in connection with normal operations. The information will be used to define the parameters of radio wave propagation of the proposed new station.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 89-17169 Filed 7-21-89; 8:45 am]
BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 14, 1989.

The Federal Communications Commission has submitted the following information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501-3520).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785. Copies of these comments should also be sent to the Commission. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632-7513.

OMB Number: 3060-0400
Title: Tariff Review Plan
Action: Reinstatment
Respondents: Businesses
Frequency of Response: Annually
Estimated Annual Burden: 40 responses; 6,000 hours; 150 hours each
Needs and Uses: Certain local exchange carriers are required to submit Tariff Review Plans annually in partial fulfillment of cost support material required by 47 CFR 61.38. The information is used by the FCC and the public to determine the justness and reasonableness of rates, terms, and conditions in tariffs as required by the Communications Act of 1934, as amended.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 89-17190 Filed 7-21-89; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010717-023.
Title: United States Atlantic and Gulf/Central America Freight Association.
Parties:
Crowley Caribbean Transport, Inc.
Seaboard Marine Line, Ltd.

Synopsis: The proposed modification would change the name of the Agreement from United States Atlantic and Gulf/Central America Freight Association to United States/Panama Freight Association. It would delete Puerto Rico, the United States Virgin Islands, Costa Rica, Honduras, El Salvador and Guatemala from the geographic scope of the Agreement. It would also permit the members to charter space and rationalize service with each other and with carriers outside the conference and prohibit independent action on loyalty contracts. It would further restate the Agreement and make other administrative changes.

Agreement No.: 202-010748-006.
Title: West Coast/Middle East and West Asia Rate Agreement.
Parties:
American President Lines, Ltd.
A.P. Moller-Maersk Line

Synopsis: The proposed modification would permit the members' existing service contracts to be extended until July 13, 1990. Proponents have requested a shortened review period.

By Order of the Federal Maritime Commission.
Ronald D. Murphy,
Assistant Secretary.
Dated: July 18, 1989.
[FR Doc. 89-17168 Filed 7-21-89; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

Administrative Activities Information Collection Requests

AGENCY: Federal Trade Commission.

ACTION: Notice of application to OMB under the Paperwork Reduction Act (44 U.S.C. 3501-3518).

SUMMARY: The Federal Trade Commission is seeking a three-year extension of the current OMB approval for five information collection requests that are used in the administrative operations of the agency. OMB Control No. 3084-0047. No changes to these requests are proposed. Each of these information requests specifies information to be submitted voluntarily to the Commission by persons who wish to do business with or receive some benefit from the agency. The information collection requests included in this submission are:

(a) FTC procurement activities;

(b) The FTC employment application for attorneys;

(c) The document order form used by the FTC public reference branch;

(d) Procedures under which states may petition for exemptions from certain FTC rules; and

(e) Rules governing claims under the Equal Access to Justice Act.

The Supporting Statement submitted with the Request for OMB Review includes an estimate that the total annual paperwork burden for these information collection requests is 2500 burden hours. The basis for this estimate is described in more detail in the Supporting Statement.

DATES: Comments on this application must be submitted on or before August 23, 1989.

ADDRESSES: Send comments to Mr. Don Arbuckle, FTC Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228. Washington, DC 20503. Copies of the application may be obtained from the Public Reference Section, Room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Christian S. White, Assistant General Counsel, Federal Trade Commission, Washington, DC 20580 (202) 326-2476.

Kevin J. Arquit,
General Counsel.
[FR Doc. 89-17260 Filed 7-21-89; 8:45 am]
BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Procurement Official and Departure Certifications of the Procurement Integrity Act Privacy Act Systems Notice

SUMMARY: On November 17, 1988, Congress enacted the Federal Procurement Policy (OFPP) Act Amendments of 1988, Pub. L. 100-679. Section 6 of the OFPP Act Amendments of 1988 amended the OFPP Act by adding section 27, Procurement Integrity, which has been codified as section 423, Title 41 of the United States Code. The section on procurement integrity prohibits certain activities by competing contractors and Government procurement officials during the conduct of certain Federal procurements. In general, these prohibited activities involve soliciting or discussing post-Government employment, offering or accepting a gratuity; and soliciting or disclosing proprietary or source selection information. In addition, section 27 of the Act imposes a number of certification requirements on both the competing contractor and agency procurement officials in order to ensure compliance with the statute. Specifically, the Act requires certifications to be made by the competing contractors and the contracting officer prior to the award of any contract. These certifications and the instructions on use have been published on an interim basis in Acquisition Letter V-89-6, dated May 11, 1989 and will be published permanently in the Federal Acquisition Regulations (FAR) and the agency's implementing regulations. The Act also mandates that the following certifications be made by agency procurement officials, that:

1. Each procurement official is familiar with the provisions of subsections 27(b) of the Act, will not engage in any conduct prohibited by such subsection, and will report immediately to the contracting officer any information concerning a violation or possible violation of subsections 27 (a), (b), (c), or (e) of the Act as implemented in the FAR and agency supplements; and

2. Departing GSA officials and employees shall certify that he or she understands the continuing obligation not to disclose proprietary or source selection information.

The last two certifications listed are being provided for comments.

The storage and maintenance of these certifications require a Privacy Act statement systems notice. The proposed systems notice is now available for review and comment. A 30-day period has been established to allow for comment, development, and publishing the final systems notice.

DATE: Comments must be submitted by August 31, 1989.

ADDRESS: Request for copies of the proposed systems notice and comments should be addressed to: D. Ross, General Services Administration, Office of Ethics and Civil Rights, Washington, DC 20405, ATTN: AK

FOR FURTHER INFORMATION CONTACT: D. Ross or E. Ellison, General Services Administration, Office of Ethics and Civil Rights, Washington, DC 20405, ATTN: AK Phone Number FTS 566-0765 or Commercial (202) 566-0765.

Dated: June 22, 1989.
Allie B. Latimer,
Special Counsel, Office of Ethics and Civil Rights.

GSA/AK-1

SYSTEM NAME:

Procurement Official and Departure Certification Files.

SYSTEM LOCATION:

This system of records will be located: In the Central Office, in the Office of Ethics and Civil Rights, and the Office of Personnel; In the Regional Offices, in the Personnel Division and other offices as designated by the Regional Administrator.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system are current and former officials and employees of the General Services Administration.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include information on individuals, including name and office location. This system does not include official personnel files covered by the Office of Personnel Management's systems of records OPM/GOVT-1 through 9.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Office of Procurement Policy Act Amendments of 1988; Title 41 USC 423.

PURPOSE(S):

The system is established to maintain records on officials and employees affected by the Procurement Integrity Act (41 USC 423).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. To disclose information to a Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order, where the General Services Administration becomes aware of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to another Federal agency or a court when the Government is party to a judicial proceeding.

c. To disclose information to a requesting Federal agency in connection with hiring or retaining an employee; issuing a security clearance; reporting an employee investigation; clarifying a job; letting a contract; or issuing a license, grant, or other benefit by the requesting agency where the information is relevant and necessary for a decision.

d. To disclose information to the Merit Systems Protection Board officials, including the Office of Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission in performing their duties.

e. To disclose information to an appeal, grievance, or formal complaints examiner; equal employment opportunity investigator; arbitrator; exclusive representative; or other official engaged in investigating, or settling a grievance, complaint, or appeal filed by an employee.

f. To disclose information to the Office of Personnel Management under the agency's responsibility for evaluating Federal personnel management. When official personnel records in the custody

of GSA are covered in systems of records published by the Office of Personnel Management as Government-wide records, they are considered part of that system. Other official personnel records covered by notices published by GSA and are separate systems of records may be transferred to the Office of Personnel Management under official personnel programs and activities as a routine use.

g. To disclose information to a Member of Congress or a congressional staff member in response to an inquiry from that congressional office made on behalf of a constituent.

h. To disclose information to an expert, a consultant, or contractor of GSA in performing a Federal duty.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and card files; magnetic tapes and disks in cabinets.

RETRIEVABILITY:

Filed at each location by name.

SAFEGUARDS:

Records stored in lockable file cabinets, lockable desk drawers, and/or secured rooms. Diskette application protected by password system.

RETENTION AND DISPOSAL:

The period the record is to be retained is pending National Archives and Records Administration approval. No copies of records are kept in this system after the original or any copies are purged. When an employee leaves the agency through transfer or separation, the records are immediately forwarded to the office maintaining the official folder. Purging information from electronic media meets this destruction requirement.

SYSTEM MANAGER(S) AND ADDRESS:

Agency officials with overall responsibility for employees uner this jurisdiction are the Office of Ethics and Civil Rights for Central Office employees and the Regional Administrators designated office for regional employees. The addresses of the Central Office and regional offices are listed in the appendix following this notice.

NOTIFICATION PROCEDURE:

Inquiries by individuals should be addressed to the supervisor or official at the address where the person worked. If not known, general inquiries should be addressed to the Office of Ethics and Civil Rights, or to the Regional Administrator for region employees or officials at the address listed in the appendix following this notice.

RECORDS ACCESS PROCEDURES:

Request from individuals should be addressed to the supervisor or official at the address where the person worked. If not known, general requests should be addressed to the Office of Ethics and Civil Rights for Central Office employees at the address listed in the appendix following this notice.

CONTESTING RECORD PROCEDURES:

GSA rules for contesting the contents and appealing initial decisions are issued in 41 CFR Part 105-64 of the Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

Individuals, supervisors, or personnel records.

Appendix—GSA/Agency Addresses of Locations

Central Office

General Services Building, Office of Ethics and Civil Rights, 18th & F Streets, NW., Washington, DC 20405.

Region Offices

National Capital Region, Regional Office Building, 7th & D Streets, SW., Washington, DC 20407.

Region 1, J.W. McCormack Post Office and Courthouse Building, Boston, MA 02109.

Region 2, 26 Federal Plaza, New York, NY 1007.

Region 3, Regional Office Building, 9th and Market Streets, Philadelphia, PA 19107.

Region 4, 75 Spring Street SW., Atlanta, GA 30303.

Region 5, John C. Kluczynski Federal Building, 230 South Dearborn Street, Chicago, IL 60604.

Region 6, Federal Building, 1500 East Bannister Road, Kansas City, Missouri 64131.

Region 7, 819 Taylor Street, Fort Worth, Texas 76102.

Region 8, Building N. 41, Denver Federal Center, Denver, Colorado 80225.

Region 9, 525 Market Street, San Francisco, California 94105.

Region 10, GSA Center, Auburn, Washington 98002.

[FR Doc. 89-17268 Filed 7-21-89; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Minneapolis District Office, chaired by John Feldman, District Director. The topics to be discussed are pesticides, lead/cadmium in imported ceramicware, foodborne illness, and reproposal of tampon absorbency labeling.

DATES: Tuesday, August 1, 1989, 10:30 a.m. to 12 p.m.

ADDRESSES: U.S. Federal Court Bldg., Rm. 407, 515 West First St., Duluth, MN 55802.

FOR FURTHER INFORMATION CONTACT: Donald W. Aird, Jr., Consumer Affairs Officer, Food and Drug Administration, 240 Hennepin Ave., Minneapolis, MN 55401, 612-334-4100.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: July 18, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-17169 Filed 7-21-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89N-0308]

Drug Export; Hypotears Lubricating Eye Drops

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Iolab Pharmaceuticals has filed an application requesting approval for the export of the human drug HypoTears Lubricating Eye Drops to Canada, Italy, and the United Kingdom.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Mary F. Cooper, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8073.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Iolab Pharmaceuticals, 500 IOLAB Dr., Claremont, CA 91711, has filed an application requesting approval for the export of the drug HypoTears Lubricating Eye Drops, to Canada, Italy, and the United Kingdom. This product is used for the relief of symptoms associated with eye irritation due to dry eye. The application was received and filed in the Center for Drug Evaluation and Research on June 5, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by August 3, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: July 18, 1989.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 89-17228 Filed 7-21-89; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Hearing: Reconsideration of Partial Disapproval of New York State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on August 29, 1989 in New York, New York to reconsider our decision to disapprove a portion of New York State Plan Amendment 85-25.

Closing Date: Requests to participate in the hearing as a party must be received by the Docket Clerk August 8, 1989.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 966-4471.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove a portion of New York State plan amendment number 85-25.

Section 1116 of the Social Security Act and 42 CFR Part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate in amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

New York SPA 85-25 included more liberal income and resource methods for determining eligibility for the medically needy. The State requested both moratorium protection for the amendment and approval under section 1902(r)(2) of the Social Security Act (the Act); however, moratorium protection was not necessary since the State only requested that the SPA be effective the first day of the quarter it was submitted. The issues in this matter are: (1) Whether the State's more liberal income methods violate the Federal financial participation (FFP) limits under section 1903(f) of the Act, and must, therefore, be disapproved because approval would not be consistent with sections 1902(a)(4) and 1902(a)(19) of the Act and (2) whether approval of more liberal income and resource standards (rather than methodologies) is permitted under section 1902(r)(2) of the Act.

Subject to certain specified FFP limits under section 1903(f) of the Act, States may use income and resource eligibility methods which are more liberal than those used under the most closely related cash assistance program (Aid to Families with Dependent Children (AFDC) and Supplemental Security Income (SSI)). This option is available under section 1902(r)(2) of the Act (added by the Medicare Catastrophic Coverage Act (MCCA) of 1988) and was available under section 2373(c) of the Deficit Reduction Act of 1984. Because FFP limits contained in section 1903(f) remain unchanged, HCFA has determined that application of more liberal income methods under color of section 1902(r)(2) (or the moratorium) to those eligiblility groups which are subject to section 1903(f) limits can result impermissibly in these limits being exceeded.

New York SPA 85-25 proposed the following more liberal income deductions:

- For AFDC-related medically needy, an earned income deduction made for payments under the Federal Insurance Contribution Act in addition to Federal mandated work expenses deductions.
- For SSI-related medically needy, New York State Disability Payments (NYSD) deducted when FICA, NYSD and income tax deductions total more than $65. When these amounts exceed $65 the total of these deductions is made instead of the standard $65 work expense deduction under SSI.
- For all medically needy, in-kind support except when provided by legally

responsible relatives for services rendered.

These policies were disapproved because HCFA determined that the FFP limits could be exceeded. Disapproval authority is found under sections 1902(a)(4) and (19) of the Act. Under section 1902(a)(4), a State's plan must provide for such methods of administration as are found by the Secretary to be necessary for the proper and efficient operation of the plan. We believe the decision not to approve policies which will result in FFP limits being exceeded is consistent with this requirement as it is the most efficient manner of handling the interface between the eligibility requirements and the FFP limits. Under section 1902(a)(19), the plan must provide safeguards that are necessary to assure that eligibility for care and services under the plan will be determined, and such care and services will be provided, in a manner consistent with simplicity of administration and best interest of recipients.

New York SPA 85-25 also proposed a method for counting income and resources for SSI-related medically needy pursuant to a court suit, *Rickey* v. *Perales*. This method would compare net income and resources for an aged, blind or disabled person to the higher of the medical assistance standard of need or public assistance standard of need for a household size which includes the SSI-related person and those persons for whom she/he is legally responsible (i.e., a spouse and/or dependent child under 21 living in the home). Section 1902(r)(2) allows States to use more liberal income methods subject to FFP limits. It does not, however, extend to more liberal standards. Therefore, in addition to exceeding FFP limits, HCFA determined that the policy is inconsistent with the provisions of section 1902(r)(2) because it calls for using more liberal standards and violates section 1902(a)(10)(C)(i)(III). This section requires that a single income and resource standard be used to determine eligibility for the medically needy. The proposed policy calls for variable standards.

The policy also calls for a more liberal method of treating resources than used under SSI methods. HCFA believes the policy, as written, is not approvable because it calls for using more liberal standards which exceed the authority of section 1902(r)(2) and it violates the single standard provision of section 1902(a)(10)(C)(i)(III). As noted above, this section of law require States to use a single income and resource standard for the medically needy. The proposed policy calls for variable standards.

The notice to New York announcing an administrative hearing to reconsider the partial disapproval of its State plan amendment reads as follows:

Ms. Susan V. Demers,
Deputy Commissioner and General Counsel, New York State Department of Social Services, 40 North Pearl Street, Albany, New York 12243-0001

Dear Ms. Demers: Your request for reconsideration of the decision to disapprove a portion of New York State plan amendment (SPA) 85-25 was received on June 8, 1989.

The plan amendment included more liberal income and resource methods for determining eligibility for the medically needy. The State requested both moratorium protection and approval under section 1902(r)(2) of the Social Security Act (the Act). However, moratorium protection was not necessary since the State only requested that the SPA be effective the first day of the quarter it was submitted.

The issues in this matter are: (1) whether the State's more liberal income methods violate the Federal financial participation limits under section 1903(f) of the Act and must, therefore, be disapproved because approval would not be consistent with sections 1902(a)(4) and 1902(a)(19) of the Act, and (2) whether approval of more liberal income and resource standards (rather than methodologies) is permitted under section 1902(r)(2) of the Act.

I am scheduling a hearing on your request to be held on August 29, 1989 at 10:00 a.m. in Room 238, 26 Federal Plaza, New York. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed in 42 CFR Part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 966-4471.

Sincerely,

Louis B. Hays,

Acting Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: July 7, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89-17267 Filed 7-21-89; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-89-2022; FR-2673]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, (HUD).

ACTION: Notice of change in debenture interest rates.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the "Act"). The interest rate for debentures issued under section 221(g)(4) of the Act during the six-month period beginning July 1, 1989, is 8⅝ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the six-month period beginning July 1, 1989, is 9 percent.

FOR FURTHER INFORMATION CONTACT: James B. Mitchell, Financial Policy Division, Room 9132, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 426-4325 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (24 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endoresed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. Each of these regulatory provisions states that the applicable rates of interest will be published twice each year as notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the interest rate determined by the Secretary of the Treasury pursuant to a formula set out in the statute.

The Secretary of the Treasury: (1) Has determined, in accordance with the provisions of section 224, that the statutory maximum interest rate for the period beginning July 1, 1989, is 9 percent and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 9 percent for the six-month period beginning July 1, 1989. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4)) with an insurance commitment or endorsement date (as applicable) within the last six months of 1989.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate—	*On or after—*	*Prior to—*
9½	Jan. 1, 1980	July 1, 1980.
9⅞	July 1, 1980	Jan. 1, 1981.
11¾	Jan. 1, 1981	July 1, 1981.
12⅞	July 1, 1981	Jan. 1, 1982.
12¾	Jan. 1, 1982	Jan. 1, 1983.
10¼	Jan. 1, 1983	July 1, 1983.
10⅝	July 1, 1983	Jan. 1, 1984.
11½	Jan. 1, 1984	July 1, 1984.
10⅜	July 1, 1984	Jan. 1, 1985.
11⅝	Jan. 1, 1985	July 1, 1985.
11⅛	July 1, 1985	Jan. 1, 1986.
10¼	Jan. 1, 1986	July 1, 1986.
8¼	July 1, 1986	Jan. 1, 1987.
8	Jan. 1, 1987	July 1, 1987.
8	July 1, 1987	Jan. 1, 1988.
9⅛	Jan. 1, 1988	July 1, 1988.
9⅝	July 1, 1988	Jan. 1, 1989.
9¼	Jan. 1, 1989	July 1, 1989.
9	July 1, 1989	

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the "going Federal rate" in effect at the time the debentures are issued. The term "going Federal rate", as used in that paragraph, is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a formula set out in the statute, for the six-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to section 221(g)(4) during the six-month period beginning July 1, 1989, is 8⅝ percent.

HUD expects to publish its next notice of change in debenture interest rates in January 1990.

The subject matter of this notice falls within the categorical exclusion from HUD's environmental clearance procedures set forth in 24 CFR 50.20(1). For that reason, no environmental finding has been prepared for this notice.

(Secs. 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 17151, 1715o; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Dated: July 13, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 89-17222 Filed 7-21-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contracting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the Officer of Management and Budget, Paperwork Reduction Project (1018-0015), Washington, DC 20503, telephone 202-395-7340.

Title: Woodcock Singing-Ground Survey
OMB Approval Number: 1018-0019
Abstract: The Survey an annual, cooperative effort between the U.S. Fish and Wildlife Service, the Canadian Wildlife Service and numerous State and provincial wildlife agencies, to obtain indices of woodcock population size. The resulting assessment of the population status serves to guide both the Service and State wildlife agencies in the annual promulgation of regulations for hunting woodcock. Survey data are also used to plan and evaluate woodcock management programs and provide specific information necessary for research
Service Form Number: 3-156
Frequency: Annually
Description of Respondents: Service, State, and Canadian fish and wildlife agency biologists
Estimated Completion Time: The reporting burden is estimated to average 40 minutes per survey route, including 5 minutes for reviewing instructions, 30 minutes for gathering data at survey stops, and 5 minutes for completion and review of form
Annual Responses: 1,000
Annual Burden Hours: 670
Service Clearance Officer: James E. Pinkerton, 703-358-1943 (Commercial); FTS 921-1943; Room 224 Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240.

Date: June 23, 1989.

Rollin D. Sparrowe,

Assistant Director—Refuges and Wildlife.

[FR Doc. 89-17234 Filed 7-21-89; 8:45 am]

BILLING CODE 4310-55-M

Geological Survey

Application Notice Establishing a Tentative Closing Date for Transmittal of Applications Under the Water Resources Research Grant Program for Fiscal Year (FY) 1990

Applications are invited for water research projects under the Water Resource Research Grant Program.

The purpose of this program is to provide matching grants for research concerning any aspect of water resource-related problems deemed to be in the national interest.

Applications may be submitted by water resources research institutes and other qualified educational institutions, private foundations, private firms, individuals, and agencies of State or local government.

Closing Date for Transmittal of Applications: Applications are tentatively due on or before November 21, 1989. The announcement will state the actual due date for receipt of the application.

Program Information: This program supports research related to the following general areas of national interest: (1) Aspects of the hydrologic cycle; (2) supply and demand for water; (3) demineralization of saline and other impaired waters; (4) conservation and best use of available supplies of water and methods of increasing such supplies; (5) water reuse; (6) depletion

and degradation of groundwater supplies; (7) improvements in the productivity of water when used for agricultural, municipal, or commercial purposes; and (8) the economic, legal, engineering, social, recreational, biological, geographic, ecological, and other aspects of water problems. The research interests are: (1) Groundwater quality; (2) water quality management; (3) institutional change in water resource management; and (4) climate variability and the hydrologic cycle.

Application Forms: The announcement is expected to be available on or about August 7, 1989 and may be obtained by writing to the U.S. Geological Survey, ATTN: Diane Warfield, MS 205C, Office of Procurement and Contracts, 12201 Sunrise Valley Drive, Reston, VA 22092 requesting a copy of announcement 7609. All organizations that applied for a FY 1989 award, all Historically Black Colleges and Universities, and all organizations that requested to be retained on the mailing list since the last announcement will be mailed a copy of the announcement.

Further Information: For further information contact Melvin Lew, MS 426, U.S. Geological Survey, Water Resources Division, 12201 Sunrise Valley Drive, Reston, VA 22092. Telephone: (703) 648-6611.

(Catalog of Federal Domestic Assistance Number 15.806)

Dated: July 17, 1989.

Jack J. Stassi,

Assistant Director for Administration.

[FR Doc. 89-17225 Filed 7-21-89; 8:45 am]

BILLING CODE 4310-31-M

Bureau of Land Management

[NM-030-09-4333-12]

Supplementary Rules for Designated Recreation Sites

AGENCY: Bureau of Land Management, Interior.

ACTION: Rules of conduct and supplemental rules.

SUMMARY: This notice amends the previous notice published in the **Federal Register**, December 15, 1988 (Volume 53, No. 241) establishing Supplementary Rules for Designated Recreation Sites, Special Recreation Management Areas and Other Public Land in the Las Cruces District, New Mexico.

La Cueva Recreation Site and Organ Mountains Recreation Lands

1. La Cueva Recreation Site including the areas surrounding the A. B. Cox Visitor Center, Dripping Springs, the Van Patten Mountain Camp, the Boyd Sanatorium, and the Hayner Resort are limited to day use only. The gate located in T. 23 S., R. 3 E., Section 2 on the Dripping Springs Road will be locked at 10:00 p.m. during the summer and 8:00 p.m. during the winter. Authorized permittees are exempt from this limitation.

2. No open fires will be allowed in backcountry areas (over ¼ mile from any road or vehicle trail). No fires will be allowed along the Baylor Pass or Pine Tree Trails. No wood fires will be allowed in the La Cueva Picnic area (charcoal only in grills provided).

DATES: These rules will become effective July 24, 1989.

FOR FURTHER INFORMATION CONTACT: Mark Hakkila, Natural Resource Specialist, Bureau of Land Management, Mimbres Resource Area, 1800 Marquess, Las Cruces, NM (505) 525-8228 (FTS 571-8350).

SUPPLEMENTARY INFORMATION: The authority for establishing supplemental rules is contained in 43 CFR 8365.1-6. The authority for establishing closures and restrictions is contained in 43 CFR 8364.1. These rules and closures have been recommended and adopted through development of resource management plans and recreation management plans. These rules and closures will be available in each local office having jurisdiction over the lands, sites, or facilities affected.

Richard T. Watts,

Acting District Manager.

July 18, 1989.

[FR Doc. 89-17216 Filed 7-21-89; 8:45 am]

BILLING CODE 4310-FB-M

National Park Service

Colorado River Management Plan; Grand Canyon National Park, Arizona; Availability of Draft Finding of no Significant Impact

Summary: The National Park Service proposes to implement a revised management plan for the Colorado River, Grand Canyon National Park, Arizona, as defined under Alternative B of the Draft Colorado River Management Plan/Environmental Assessment. The availability of the Draft Plan and Assessment was announced in the **Federal Register** on November 28, 1988, and the public review period extended by similar announcement on January 4, 1989. The public review period ended on January 20, 1989.

In accordance with the Council on Environmental Quality regulations at 40 CFR 1501.(e)(2)(i), a draft Finding of No Significant Impact (FONSI) is being made available for public review for a period of 30 days from the date of this Notice. The draft FONSI reflects the conclusions of the environmental assessment that the cumulative impacts of the revised plan consists of operational refinements that do no establish actions and incremental impacts adversely affecting natural and cultural resources beyond those levels under the existing 1981 Colorado River Management Plan. A summary of public comments on the draft plan and assessment also has been prepared in conjunction with the draft FONSI. Copies of the draft FONSI and summary of comments may be obtained from the Superintendent, Grand Canyon, National Park, P.O. Box 129, Grand Canyon, AZ 86023.

Stanley T. Albright,

Regional Director, Western Region.

Date: July 12, 1989.

[FR Doc. 89-17202 Filed 7-21-89; 8:45 am]

BILLING CODE 4310-70-M

Upper Delaware Scenic and Recreational River

AGENCY: National Park Service; Upper Delaware Citizens Advisory Council.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: August 25, 1989, 7:00 p.m.[1]

Inclement Weather Reschedule Date: September 8, 1989.

ADDRESS: Town of Tusten Hall, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent; Upper Delaware Scenic and Recreational River, P.O. Box C, Narrowsburg, NY 12765-0159; 717-729-8251.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704 (f) of the National Parks and Recreation Act of 1978, Pub. L. 95-625, 16 USC 1724 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation and implementation of the management plan, and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will surround disposal of septage materials in the Upper Delaware Region.

The art of eel wier fishing on the Upper Delaware River, including a video recorded tape of the process.

The meeting will be open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council, P.O. Box 84, Narrowsburg, NY 12764. Minutes of the meeting will be available for inspection four weeks after the meeting, at the permanent headquarters of the Upper Delaware Scenic and Recreational River; River Road, 1¾ miles north of Narrowsburg, New York; Damascus Township, Pennsylvania.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 89-17203 Filed 7-21-89; 8:45 am]

BILLING CODE 4310-70-M

[1] Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL, and WVOS.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 88-112]

Charles Gilman, D.O., Poway, CA; Hearing

Notice is hereby given that on November 17, 1988, the Drug Enforcement Administration, Department of Justice, issued to Charles Gilman, D.O., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AG8373982, and deny any pending applications.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, August 8, 1989, commencing at 10:00 a.m., at the United States Tax Court, Federal Building and Courthouse, 450 Golden Gate Avenue, Courtroom 2041, San Francisco, California.

Dated: July 13, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-17171 Filed 7-21-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-113]

Marshall Hubsher, M.D., Roslyn, NY; Hearing

Notice is hereby given that on November 4, 1988, the Drug Enforcement Administration, Department of Justice, issued to Marshall Hubsher, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for a DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Friday, July 28, 1989, commencing at 10:00 a.m., at the United States Tax Court, Federal Building, 26 Federal Plaza, Courtroom 208, New York, New York.

Dated: July 13, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-17172 Filed 7-21-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 89-12]

Medic-Aid Pharmacy, Detroit, MI; Hearing

Notice is hereby given that on January 10, 1989, the Drug Enforcement Administration, Department of Justice, issued to Medic-Aid Pharmacy, an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AM9607334, and deny any pending application for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Wednesday, July 26, 1989, commencing at 10:00 a.m., at the Federal Building, 200 East Liberty, First Floor Courtroom, Ann Arbor, Michigan.

Dated: July 13, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-17173 Filed 7-21-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 89-32]

Pharmaceutical Basics, Inc., Morton Grove, IL; Hearing

Notice is hereby given that on April 21, 1989, the Drug Enforcement Administration, Department of Justice, issued to Pharmaceutical Basics, Inc., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, RP0133203, and deny any pending applications for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, August 8, 1989, commencing at 10:00 a.m., at the United States Court of Appeals for the Federal Circuit, Courtroom one, second floor, 717 Madison Place NW., Washington, DC.

Dated: July 13, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-17174 Filed 7-21-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 89-19]

Peter Rama, D.O. Fort Lauderdale, FL; Hearing

Notice is hereby given that on March 16, 1989, the Drug Enforcement Administration, Department of Justice, issued to Peter Rama, D.O., an order to Show Cause as to why the Drug Enforcement Administration should not deny your application for a DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Thursday, July 20, 1989, commencing at 9:30 a.m., at the United States Tax Court, 51 Southwest First Avenue, Courtroom 1524, Miami, Florida.

Dated: July 13, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-17175 Filed 7-21-89; 8:45 am]

BILLING CODE 4410-09-M

LOWER MISSISSIPPI DELTA DEVELOPMENT COMMISSION

Announcement of Meeting and Public Hearing Cancellation

Background

The Lower Mississippi Delta Development Commission was created by Pub. L. 100-460, signed on October 1, 1988. The purpose of the Commission is to identify and study the economic development, infrastructure, employment, transportation, resource development, education, health care, housing, and recreation needs of the Lower Mississippi Delta region by seeking and encouraging the participation of interested citizens, public officials, groups, agencies, and others in developing a 10-year plan that makes recommendations and establishes priorities to alleviate the needs identified. The Commission will make its report to Congress, the President, and the Governors of Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee no later than May 14, 1990.

This notice announces a cancellation of a Commission meeting and the Arkansas public hearing (See 54 FR 29951; July 17, 1989). Both events will be re-scheduled for sometime in the Autumn.

Cancelled Meeting

Time: 4:30 p.m., July 25, 1989

Place: Phillips County Community College, Campus Drive Helena, Arkansas

Status: Open meeting

Cancelled Public Hearing

Time: 8:30 a.m., July 26, 1989

Place: Phillips County Community College, Campus Drive Helena, Arkansas

Status: Public oral and written testimony encouraged

Contact: Ann Sartwell, Telephone (901) 753-1400

Wilbur F. Hawkins,

Executive Director.

[FR Doc. 89-17320 Filed 7-21-89; 8:45 am]

BILLING CODE 6820-SN-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Council on the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the National Council on the Arts/National Assembly of State Arts Agencies/ National Assembly of Local Arts Agencies Subcommittee to the National Council on the Arts will be held on August 3, 1989, from 2:30 p.m.-4:30 p.m. in Room M07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topic for discussion will be policy issues.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-17176 Filed 7-21-89; 8:45 am]

BILLING CODE 7537-01-M

National Council on the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on August 4, 1989 from 9:00 a.m. to 6:30 p.m., and on August 5, 1989 from 8:30 a.m. to 7:00 p.m., in Room M-09 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on Friday, August 4, 1989 from 9:00 a.m. to 6:30 p.m., and on Saturday, August 5, 1989, from 8:30 a.m. to 1:45 p.m. The topics for discussion will include Program Review and Guidelines for Locals Program; Theater Program; Music Fellowships; Museum Program; Inter-Arts: New Forms and Regional Initiative; Dance on Tour; and Challenge III Program. In addition there will be a discussion on Reauthorization of the Agency and FY 90 Appropriations.

The remaining session on Saturday August 5, 1989, from 1:45 p.m. to 7:00 p.m. is for the purpose of Council review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants, and for discussion and development of confidential budgetary projections and related plans to be submitted to the Office of Management and Budget and the Congress. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, this session will be closed to the public pursuant to subsections (c) (4), (6) and 9(B) of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-17177 Filed 7-21-89; 8:45 am]

BILLING CODE 7537-01-M

Ad Hoc Meeting on Jazz

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that an ad hoc meeting on Jazz will be held on August 7, 1989, from 10:00 a.m.-3:00 p.m. in Room M14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topic for discussion will be policy issues.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-17178 Filed 7-21-89; 8:45 am]

BILLING CODE 7537-01-M

Arts in Education Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Arts in Education Advisory Panel (Challenge III Section) to the National Council on the Arts will be held on August 16, 1989, from 9:00 a.m.-3:00 p.m. in Room M14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 16, 1989, from 2:00 p.m.-3:00 p.m. The topic for discussion will be guidelines and policy issues.

The remaining portion of this meeting on August 16, 1989, from 9:00 a.m.-2:00 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6), and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-17179 Filed 7-21-89; 8:45 am]

BILLING CODE 7537-01-M

Media Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Media Arts Centers Section) to the National Council on the Arts will be held on August 15-16, 1989, from 9:00 a.m.-6:30 p.m., and on August 17, 1989, from 9:00 a.m.-5:30 p.m. in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6), and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-17180 Filed 7-21-89; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Chamber/New Music/ Solo Recitalist Presenters Section) to the National Council on the Arts will be held on August 9-11, 1989, from 9:00 a.m.-6:00 p.m. in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 11, 1989, from 2:00 p.m.-4:00 p.m. The topic for discussion will be policy issues.

The remaining portions of this meeting on August 9-10, 1989, from 9:00 a.m.-6:00 p.m. and August 11, 1989, from 9:00 a.m.-2:00 p.m. and from 4:00 p.m.-6:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6), and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-17181 Filed 7-21-89; 8:45 am]

BILLING CODE 7537-01-M

Office of Public Partnership Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Office of Public Partnership Advisory Panel (Locals Challenge III Section) to the National Council on the Arts will be held on August 11, 1989, from 9:00 a.m.-5:00 p.m. in Room 430 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National

BEST COPY AVAILABLE

Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-17182 Filed 7-21-89; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-206; License No. DPR-13]

Southern California Edison Co. San Diego Gas and Electric Co.; San Onofre Nuclear Generating Station, Unit No. 1; Exemption

I.

Southern California Edison Company and San Diego Gas and Electric Company (the licensees) are the holders of Provisional Operating License No. DPR-13 which authorizes the licensees to operate San Onofre Nuclear Generating Station, Unit No. 1, at power levels up to 1347 megawatts thermal (rated power). The facility is a pressurized water reactor located on the licensees' site in San Diego County, California. The license is subject to all applicable provisions of the rules, regulations and orders of the Nuclear Regulatory Commission.

II.

10 CFR 50.48, "Fire Protection," and Appendix R to 10 CFR 50, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979," require that certain fire protection features be established to satisfy the General Design Criterion related to fire protection (Criterion 3, Appendix A to 10 CFR 50).

Section III.G of Appendix R requires that fire protection exist for equipment important to safe shutdown. Such fire protection is achieved by various combinations of fire barriers, fire suppression systems, fire detectors, and separation of safety trains (III.G.2) or alternate safe shutdown equipment free of the fire area (III.G.3). The objective of this protection is to ensure that one train of equipment needed for hot shutdown would be undamaged by fire, and that systems needed for cold shutdown can be repaired within 72 hours (III.G.1.b).

Section III.G.3 requires that a fixed fire suppression system be installed in an area for which alternate shutdown capability has been provided.

III.

By letter dated July 30, 1987 the licensees requested an exemption from the technical requirements of section III.G.3 of Appendix R to the extent that it requires that a fixed fire suppression system be installed in an area for which an alternate shutdown capability has been provided. Specifically, the pipe tunnel [Fire Area 1-AB-11-34) is not protected by a fixed fire suppression system.

The physical configuration of the area, including perimeter construction, fire hazards and existing protection, is as described in the licensees' submittal. The licensees justify the exemption request on the basis of the low combustible loading, limited access, existing fire protection and the capability to safely shut down the plant with undamaged systems that are physically and electrically independent of the fire area.

The technical requirements of section III.G.3 are not met in this area because of the lack of the fixed fire suppression system.

The principal concern with the existing fire protection in the pipe tunnel is that a fire of significant magnitude could occur which would damage redundant safe shutdown systems. However, the in-situ fire loading is low. If all of the combustibles were totally consumed by fire, the equivalent fire severity is about nine minutes as determined from the ASTM E-119 time-temperature curve.

The combustible inventory consists of cables in trays. A fire involving this material would be characterized, initially, by slow burning, low heat generation, and the production of moderate quantities of smoke. The smoke would be detected by the existing fire detection system which would transmit an alarm automatically to the control room. The on-site fire department would be dispatched to the scene and would put out the fire using manual fire fighting equipment.

If severe damage to safe shutdown systems occurred prior to the arrival of the fire department, a capability exists to safety shut down the plant which the licensees have affirmed is physically and electrically independent of the fire area. On this basis, the lack of a fixed fire suppression system is not considered safety significant.

Based on the above evaluation the staff concludes that the licensee's alternate fire protection configuration provides an equivalent level of safety to that achieved by compliance with Appendix R.

The purpose of section III.G.3 of 10 CFR Part 50, Appendix R is to prevent a severe fire which could damage redundant safe shutdown systems. For the reasons discussed above, a fire suppression system in this area is not necessary. Consequently, special circumstances described by 10 CFR 50.12(a)(2)(ii) exist in that application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule.

IV.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances as provided in 10 CFR 50.12(a)(2)(ii) are present justifying the exemption.

Therefore, the Commission hereby approves the following exemption to Paragraph III.G.3 to Appendix R to 10 CFR Part 50: Fire Area 1-AB-11-34 (Pipe Tunnel) is not required to have a fixed fire suppression system.

It is further determined that the exemption does not authorize a change in effluent types or total amounts nor an increase in power level and will not have a significant effect on the quality of the human environment. In light of this determination and as reflected in the Environmental Assessment and Finding of No Significant Impact prepared pursuant to 10 CFR 51.2 and 51.30 through 51.32, it is concluded the instant action is not significant from the standpoint of environmental impact and an environmental impact statement need not be prepared.

For further details with respect to this action, see the exemption request dated July 30, 1987 and the Commission's Environmental Assessment and Finding of No Significant Impact dated July 5, 1989 (54 FR 29422). These are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 13th day of July, 1989.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-17263 Filed 7-21-89; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Meeting

Notice is hereby given that a meeting of the Containers and Transportation Panel of the Nuclear Waste Technical Review Board will be held on Monday, August 21, 1989, from 8:30 a.m. to 4:30 p.m., on Tuesday, August 22, 1989, from 8:30 a.m. to 4:30 p.m., and on Wednesday, August 23, 1989, from 8:30 a.m. to 4:30 p.m. at the Holiday Inn—Pyramid Hotel, 5151 San Franciso Road, NE, Albuquerque, NM 87109, 1-800-544-0623. The afternoon of August 22, from 1-15 p.m. to 4:30 p.m.: will consist of a tour of several of the facilities at Sandia National Laboratory where work related to the high-level radioactive waste transportation program is performed.

The purpose of the meeting is to obtain information that the Board has requested from the Department of Energy. The briefings will cover an introduction, the cask system development program and related topics, the operational planning of transportation for the Federal waste management system, risk management and assessment in the transportation program, institutional issues and generic issues affecting transportation and the Office of Civilian Radioactive Waste Management in the Department of Energy.

The public is permitted to attend these meetings only as observers. The meeting on August 21, the morning of August 22, and August 23 will be transcribed and procedures to obtain transcripts will be provided at the meeting. To ensure that adequate facilities are provided for, public attendance, persons planning to attend the meeting should contact Helen Einersen at (202) 254-4792 by July 31, 1989. Persons planning to be observers on the tour of the Sandia National Laboratory facilities must be citizens of the United States and they must call Christopher Hanus at (202) 586-4495 by July 31, 1989 in order to provide the required security information for the badging process.

Further information on these meetings can be obtained from William Coons, Executive Director, Nuclear Waste Technical Review Board, 1111 18th Street NW., Suite 801, Washington, DC 20036, (202) 254-4792.

William W. Coons,

Executive Director, Nuclear Waste Technical Review Board.

Date: July 19, 1989.

[FR Doc. 89-17221 Filed 7-21-89; 8:45 am]

BILLING CODE 6820-AM-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Canadian Unemployment and Sickness Benefit Information.

(2) *Form(s) submitted:* UI-62.

(3) *OMB Number:* 3220-0074.

(4) *Expiration date of current OMB clearance:* 09-30-89.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Estimated annual number of respondents:* 25.

(9) *Total annual responses:* 25.

(10) *Average time per response:* .04 hours.

(11) *Total annual reporting hours:* 1.

(12) *Collection description:* The collection obtains from a claimant information needed to avoid payment of unemployment or sickness benefits by the RRB and the Canadian social insurance system for the same period of unemployment or sickness.

Additional information or comments: Copies of the proposed forms and supporting documents can be obtained from Ronald Ritter, the agency clearance officer (312-715-4692). Comments regarding the information collection should be addressed to Ronald Ritter, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Justin Kopca (202-395-7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Ronald Ritter,

Acting Director of Information Resources Management.

[FR Doc. 89-17269 Filed 7-21-89; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27037; File No. SR-CBOE-89-13]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Inc., Relating to Position Limits

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 5, 1989 the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Rule 4.11. Position Limits.

Except with the prior written permission of the President or his designee, no member shall make, for any account in which it has an interest or for the account of any customer, an opening transaction on any exchange in any option contract dealt in on the Exchange if the member has reason to believe that as a result of such transaction the member or its customer would, acting alone or in concert with others, directly or indirectly, control an aggregate position in excess of 3,000 or 5,500 or 8,000 option contracts (whether long or short) of the put class and the call class on the same side of the market respecting the same underlying security, combining for purposes of this position limit long positions in put options with short positions in call options, and short positions in put options with long positions in call options, or such other number of option contracts as may be fixed from time to time by the Board as the position limit for one or more classes or series of options. *In addition, should a member have reason to believe that a position in any account in which it has an interest or for the account of any customer is in excess of the applicable limit, such member shall promptly take the action necessary to bring the position into compliance.* Reasonable notice shall be given of each new position limit fixed by the Board, by posting notice thereof on the bulletin board of the Exchange. Limits shall be

determined in the manner described in Interpretations .02 and .04 below.

Interpretations and Policies, .01 through .04, no change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) *Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

The proposed rule change is intended to clarify the intent of the position limit rule. Recently, questions have been raised regarding the clause that implies a member must handle the order that causes a customer to exceed the position limits. The clarification specifically states a member must take the necessary action to correct a violation once the member becomes aware of a position violation. This requirement will be present whether it results from position telescoping, CMTA executions or other means in which the member does not specifically handle an order resulting in an opening transaction that causes a position limit violation.

The Exchange believes that the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder, in particular, the proposed rule change is consistent with section 6(B)(5) of the Act, which provides among other things, that the rules of the Exchange are designed to promote just and equitable principles of trade.

(B) *Self-Regulatory Organization's Statement on Burden on Competition*

This proposed rule change will not impose a burden on competition.

(C) *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reasons for so finding or (ii) as to which the self-regulatory organization consents, the commission will: (a) By order approve such proposed rule change, or (b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 14, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: July 14, 1989.

[FR Doc. 89-17281 Filed 7-21-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27040; File No. SR-NYSE-89-11]

Self-Regulatory Organizations; Order Granting Accelerated Approval to Proposed Rule Change by New York Stock Exchange, Inc. Relating to Auxiliary Closing Procedures for "Expiration Fridays"

On June 8, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to change the cut-off time on "Expiration Fridays" for entering certain market-at-the-close orders.

The proposed rule change was noticed in Securities Exchange Act Release No. 26997 (June 30, 1988), 54 FR 29424 (July 12, 1989). No comments were received on the proposal.

The proposed rule change consists of a change in the cut-off time for the entry of certain market-at-the-close orders in so-called "Pilot Stocks" on "Expiration Fridays" from 3:30 p.m. to 3:00 p.m. Information as to imbalances of 50,000 shares or more, which is currently disseminated as soon as possible after 3:30 p.m., would be disseminated as soon as possible after 3:00 p.m. At 3:30 p.m., or as soon as possible thereafter, the procedure would be repeated. For any stock for which an imbalance had been previously published, a subsequent imbalance message would be disseminated indicating whether an imbalance of 50,000 shares of more exists and, if so, the size of the imbalance.[3] The Exchange has requested that the Commission approve this proposed rule change on an accelerated basis prior to the July 21, 1989 "Expiration Friday."[4]

In September 1986, the Exchange adopted auxiliary closing procedures for use on days when stock index options and options on stock index futures expire concurrently. These procedures currently apply to 52 stocks (the so-called "Pilot Stocks", comprised of the 50 highest capitalized stocks among the Standard & Poor's ("S&P") 500 stocks, and two component stocks of the Major Market Index that are not among the S&P top 50) for all monthly expiration days. They require the entry of all market-at-the-close orders in positions relating to any strategy involving any stock index futures, stock index options, or options on stock index futures by 3:30 p.m. These procedures also require the specialist to make public market-at-the-close order imbalances of 50,000 shares or more in these stocks as soon as

[1] 15 U.S.C. 78s(b) (1982).

[2] 17 CFR 240.19b-4 (1988).

[3] The Commission approved the use of these procedures on an accelerated basis for the June 16, 1989 "Expiration Friday." *See* Release No. 26914 (June 9, 1989), 54 FR 25922, approving File No. SR-NYSE-89-12.

[4] *See* letter from Brian M. McNamara, Managing Director, Market Surveillance, NYSE, to Mary N. Revell, Branch Chief, Commission, dated July 7, 1989.

possible after 3:30 p.m. In addition, the procedures prohibit the entry of market-to-the-close orders that do *not* offset a published imbalance.

The proposed change moves the cut-off time for the above procedures from 3:30 to 3:00 p.m., with imbalance information to be disseminated as soon as possible after 3:00 p.m. At 3:30 p.m., or as soon as possible thereafter, the procedure would be repeated. For any stock for which an imbalance had been previously published, a subsequent imbalance message would be disseminated indicating whether an imbalance of 50,000 shares or more exists and, if so, the size of the imbalance. The same order entry restrictions vis-a-vis the imbalance would apply.

The NYSE stated that the purpose of the proposed rule change is to allow for more "sunshine" on market conditions for the Pilot Stocks by moving the cut-off time for current procedures, as described above, from 3:30 to 3:00 p.m. and by requiring the publication of updated imbalances at 3:30 p.m. The Exchange believes that this extra half-hour, along with the additional imbalance information, will allow market participants more time to respond to published market-at-the-close imbalances, which should further reduce end-of-day market volatility.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder.[5] The market-at-the-close procedures described herein have been utilized on previous quarterly expirations dating back to September 1986 and on monthly expirations on a pilot basis since November 1988.[6] These procedures were part of efforts by the Commission and the self-regulatory organizations to address stock market volatility associated with the expiration of index derivative products traded in conjunction with stocks as part of index arbitrage. By requiring early submission of market-at-the-close orders and disseminating imbalances, the NYSE has been able to attract contra-side interest to alleviate imbalances caused by the liquidation of stock positions related to index derivative product trading strategies. The procedures have proven to be an operational success, and have contributed significantly to the smooth handling of the increased order flow associated with expirations. The proposed rule change should enhance the market-on-close procedures that have been utilized on prior expirations. The new procedure would allow for more time to disseminate market-at-the-close imbalances, thereby facilitating the attraction of contra-side interest.

The Commission finds good cause for approving this rule change prior to the thirtieth day after the date of publication of notice of filing thereof in order to ensure that the revised auxiliary closing procedures that were in effect on the June 16, 1989 "Expiration Friday" (as set forth in SR-NYSE-89-12) will be in place for the upcoming July 21, 1989 expiration. The Exchange states that the revised procedures worked well on June 16, 1989, and believes it would cause confusion to revert back to the pre-existing procedures for the July 21, 1989 expiration. Moreover, the procedures contain only a minor change from the procedures utilized by the NYSE on earlier expirations, and are intended to reduce excessive market volatility at the close.[7]

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

Dated: July 17, 1989.

[FR Doc. 89-17282 Filed 7-21-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-17069; 812-7221]

AMA Income Fund, Inc., et al.; Notice of Application

July 17, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: AMA Income Fund, Inc. (the "AINC Funds"); AMA Growth Fund, Inc., AMA Money Fund, Inc., Emerging Medical Technology Fund, Inc., Medical Technology Fund, Inc. (the "AMA Group Funds"); and AMA Advisers, Inc. ("AMA Advisers") (collectively, the "Applicants").

Relevant 1940 Act Sections: Exemption requested pursuant to Section 17(b) from Section 17(a) and approval under Section 17(d) and Rule 17d-1 thereunder.

Summary of Application: Applicants seek an order permitting (a) certain transactions pursuant to which the AINC Funds will acquire all of the assets, subject to the liabilities, of the AMA Group Funds, in exchange for shares of common stock of new series of the AINC Funds which will then be distributed to shareholders of the AMA Group Funds and (b) the sharing of certain expenses of the proposed reorganization by the AINC Funds and the AMA Group Funds.

Filing Dates: The application was filed on January 19, 1989, and amended on July 5, 1989 and July 17, 1989.

Hearing or Notification of Hearing. An order granting the application will be issued unless the SEC orders a hearing.

Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 10, 1989, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, Washington, DC 20549; Applicants, Lynne M. Cannon, AMA Advisers, Inc., 5 Sentry Parkway West, Suite 120, P.O. Box 1111, Blue Bell, PA 19422.

FOR FURTHER INFORMATION CONTACT: Bibb L. Strench, Staff Attorney (202) 272-2856 or Brion R. Thompson, Branch Chief (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee. One may obtain a copy by going to the SEC's Public Reference Branch or by telephoning the SEC's commercial copier (800) 231-3282 (in Maryland (301) 252-4300).

Applicants' Representations

1. The AINC Funds and the AMA Group Funds (collectively, the "Funds") are registered under the 1940 Act as open-end diversified management investment companies. The AINC Funds consist of three series: U.S. Government Income Plus; Global Income; and Global

[5] 15 U.S.C. 78f (1982).

[6] *See* Securities Exchange Act Release No. 28408 (December 28, 1988), 54 FR 343 (approving File No. SR-NYSE-88-37).

[7] The Commission did not receive any comments on SR-NYSE-89-12, which proposed the same "Expiration Friday" procedures.

[8] 17 CFR 200.30-3(a)(12) (1988).

Short Term. The AMA Group Funds consist of AMA Growth Fund, Inc. and its three series: Global Growth Portfolio, Classic Growth Portfolio and Growth Plus Income Portfolio; AMA Money Fund, Inc. and its three series: Treasury Portfolio, Prime Portfolio and Tax-Free Portfolio; Medical Technology Fund, Inc.; and Emerging Medical Technology Fund, Inc. AMA Advisers Inc., a wholly-owned subsidiary of the American Medical Association ("AMA"), is the investment adviser of each Fund. AMA is an Illinois not-for-profit association. AMA Advisers, Inc. is the investment adviser to the AINC Funds and the AMA Growth Funds. In addition, the Boards of Directors and the principal officers of all of the Funds are identical.

2. The Applicants seek an exemption pursuant to section 17(b) of the 1940 Act from the provisions of section 17(a) of the 1940 Act to permit a proposed reorganization where the AINC Funds would acquire all of the assets subject to liabilities of the AMA Group Funds. In addition, Applicants seek approval pursuant to Rule 17d-1 under the 1940 Act to effect the proposed reorganization and to permit the sharing of expenses of the reorganization by the AINC Funds and the AMA Group Funds.

3. The proposed reorganization of the AINC Funds and the AMA Group Funds will be effected pursuant to an Agreement and Plan of Reorganization between the AINC Funds and the AMA Group Funds. Under the Agreement and Plan of Reorganization, the AINC Funds will create eight additional series of funds. In exchange for their shares, the AMA Group Funds' shareholders will receive common stock of $.01 par value of the new series of the AINC Funds (the "New AINC Series Shares") equal to the number of shares owned by each shareholder in an AMA Group Fund or Funds as of the closing date of the reorganization. The AMA Group Funds will distribute to its shareholders the New AINC Series Shares it receives upon the transfer of its assets to the AINC Funds. Immediately following the exchange of the AMA Group Funds' assets for the New AINC Series Shares, the AMA Group Funds will dissolve and liquidate. Promptly after the closing date of the reorganization, an appropriate notification will be mailed to each of the AMA Group Funds' shareholders, advising them of the number of shares of the applicable series of the New AINC Series Shares which the shareholder has received.

4. The value of the AMA Group Funds' assets to be transferred to the AINC Funds and the net asset value of the New AINC Series Shares will be computed by Unified Management Corporation ("Unified"), subject to review by the independent certified public accountant for the AINC Funds and the AMA Group Funds. Unified is an unaffiliated service corporation that acts as the accounting agent for the AINC Funds. The net asset value will be computed as of the close of trading on the New York Stock Exchange and as reported to the National Association of Securities Dealers, Inc., next occurring after the effective time of the reorganization in compliance with Rules 2a-4 and 22c-1 under the 1940 Act and otherwise in accordance with the disclosure in the prospectus of each Fund.

5. The expenses of the reorganization (in excess of those expenses including without limitation fees and disbursements for attorneys, auditors, and printing costs of proxy solicitation material customarily incurred by the AMA Group Funds in connection with the conduct of its annual meeting of shareholders) will be allocated to the AINC Funds and the AMA Group Funds in proportion to their respective net assets calculated as of the close of business on the next business day after the closing date of the reorganization. Some of the expenses of the reorganization are being borne indirectly by AMA Advisers in the form of services by AMA Adviser employees in designing and effectuating the reorganization and in preparing the Application. Some of the expenses of the reorganization could be traced to particular Funds, for example, the preparation of documents to dissolve and liquidate the AMA Group Funds. The Directors of the Funds believe, however, that, in view of the expected benefits to the participants, it is reasonable to allocate the expenses on the basis of respective net assets of the Funds. It is estimated that the expenses in connection with the reorganization in excess of those normally incurred in holding AMA Group's annual meeting will be approximately $110,000 for the AMA Group Funds and $30,000 for the AINC Funds. The registration fees payable under the Securities Act of 1933 on the New AINC Series Shares issued to the AMA Group Fund shareholders will be allocated on the basis of the Funds' respective net asset values. The maximum fee payable is estimated at approximately $65,000. If the plan of reorganization is terminated without having been consummated, the expenses of the reorganization shall be allocated to the AMA Group Funds and AINC Funds in proportion to their respective net assets as of the termination date.

6. It is expected that the reorganization will be submitted for approval to the shareholders of the AMA Group Funds in December, 1989 and the acquisition would be consummated on January 1, 1990. AMA will vote its shares in the respective series of the AMA Group Funds in the same proportion as the votes of the publicly-held shares of such series.

Applicant's Legal Analysis

1. Applicants believe that certain of the Funds are under common control within the meaning of section 2(a)(9) and, thus, may be deemed to be "affiliated persons" of each other by virtue of the ownership of AMA of more than 25% of their total outstanding voting securities and that the Funds share the same investment adviser and Directors. Accordingly, since all of the Funds that make up the AINC Funds and the AMA Group Funds might be deemed "affiliated persons" of each other under the definition set forth in section 2(a)(3) of the 1940 Act, any disposition of portfolio securities by the AMA Group Funds to the AINC Funds or any acquisition by the AINC Funds of the portfolio securities of the AMA Group Funds, and the resulting exchange by Applicants of the AMA Group Funds shares for the New AINC Series Shares pursuant to the Agreement and Plan of Reorganization would be prohibited by section 17(a) of the 1940 Act absent an exemption. In addition, Applicants represent that the exemption from section 17(a) of the 1940 Act provided by Rule 17a-8 is not available with respect to the reorganization because of the share holdings of certain of the Funds by AMA. Nevertheless, Applicants state that the Directors of the Funds have made the required findings under Rule 17a-8.

2. The Directors of the Funds have been advised by counsel of the required determinations they must make under Section 17 of the 1940 Act. In making these findings, the Directors considered the costs incurred by the Funds and their shareholders under the present structure, tax consequences of the reorganization, and capabilities and resources of each of the Funds. The Directors also considered the relationship of such costs, consequences, capabilities and resources of the AINC Funds on the one hand, and the AMA Group Funds on the other. Such findings, and a summary of the bases upon which they were made, are recorded in the minute books of the respective Funds.

3. After the reorganization, Applicants believe that AINC will be able to achieve economies of scale not attainable by the Funds alone, through the elimination of duplicative expenses and spreading of certain fixed expenses over a larger asset base. Based on present expense levels, Applicants, including the officers of the AMA Group Funds and the AINC Funds, estimate that the savings in operating costs anticipated as a result of the proposed reorganization will offset the expenses of the reorganization within from one to two years. Applicants submit that in accordance with section 17(b) of the 1940 Act, the terms of the proposed transactions are reasonable and fair and do not involve overreaching by any of the Applicants or AMA, and that the proposed reorganization is consistent with the investment policies of each Fund and consistent with the purposes of the 1940 Act. A majority of the disinterested Directors have determined that participation in the proposed reorganization is in the best interests of the AMA Group Funds and the AINC Funds and that the interest of the existing shareholders of the AMA Group Funds and AINC Funds, respectively, will not be diluted.

4. In addition, Applicants believe that the proposed reorganization and the related allocation of expenses might be deemed a joint enterprise or arrangement requiring approval under section 17(d) of the 1940 Act and Rule 17d-1 thereunder. Applicants submit that the participation of the Applicants and AMA as a shareholder of certain of the Funds in the proposed reorganization is consistent with the requirements of Rule 17d-1. The provisions of the Agreement whereby the Funds will be allocated a portion of the expenses based on their respective net assets reflects an appraisal by the Directors of the AINC Funds and the AMA Group Funds as to the relative benefits of each Fund from the reorganization. With respect to the expenses of the reorganization that could be traced to particular Funds, the Directors of the Funds believe that, in view of the expected benefits to the participants, it is reasonable to allocate the expenses on the basis of respective net assets of the Funds. Applicants note that AMA Advisers may receive some legitimate indirect benefits from the combination in facilitating more effective distribution of the Fund shares. For example, since the Fund prospectuses would be integrated and have the same expiration date, AMA Advisers could send follow-up mailings for one year without the necessity of sending another prospectus. If this leads to increased assets, then AMA Advisers' advisory fees would increase. But, as stated above, AMA Advisers is sharing some of the expenses of the reorganization by having its employees spend time and effort in designing and effectuating the reorganization and in the preparing of the application for the requested order. Accordingly, the Applicants believe that the additional expenditures by AMA Advisers are not necessary to ensure fairness of the transactions, especially since most of the benefits will enure to the Funds and their shareholders.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-17283 Filed 7-21-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-17067/File No. 811-2471]

Security First Legal Reserve Fund, Inc.

July 17, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("1940 Act").

Applicant: Security First Legal Reserve Fund, Inc.

Relevant 1940 Act Section: Order requested under section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on March 10, 1989 and amended on June 13, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on August 11, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by Certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 11365 West Olympic Boulevard, Los Angeles, California 90064.

FOR FURTHER INFORMATION CONTACT: Cindy J. Rose, Financial Analyst, (202) 272-2058 or Clifford E. Kirsch, Special Counsel, (202) 272-3032 (Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is an open-end, diversified, management investment company. Applicant registered under the 1940 Act on May 24, 1974. Applicant filed a registration statement under the Securities Act of 1933 on May 24, 1974, which became effective on November 5, 1974 and the initial public offering began on the same day.

2. On September 8, 1986, the Board of Directors of the Applicant unanimously approved a Plan of Reorganization and Liquidation (the "Plan"). Security holders approved the Plan on June 17, 1987.

3. Pursuant to the Plan, on July 24, 1987, Security First Trust (the "Trust"), SEC File Number 811-2480, an open-end, diversified management investment company, acquired the assets and liabilities of the Applicant. The Plan provided for a tax-free exchange of shares whereby the shareholders of the Fund became shareholders of the Trust's Bond Series.

4. Applicant states that the principal purpose of the reorganization was to combine the Applicant, and other open-end management investment companies, into a single trust and thereby achieve significant operational and marketing advantages.

5. Applicant has not retained any assets.

6. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, for the benefit of any security holder.

7. Applicant is not a party to any litigation or administrative proceeding.

8. Applicant is not now engaged or intends to engage in any business activities other than those necessary for the winding up of its affairs.

9. Applicant represents that the expenses incurred in connection with the reorganization were paid by The Holden Group, Inc.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan Katz,

Secretary.

[FR Doc. 87-17284 Filed 7-21-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC- 17068/File No. 811-3374]

Security First Money Market Fund, Inc.

July 17, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("1940 Act").

Applicant: Security First Money Market Fund, Inc. (the "Fund").

Relevant 1940 Act Section: Order requested under Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on March 10, 1989 and amended on June 13, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on August 11, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by Certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 11365 West Olympic Boulevard, Los Angeles, California 90064.

FOR FURTHER INFORMATION CONTACT: Cindy J. Rose, Financial Analyst (202) 272-2058 or Clifford E. Kirsch, Special Counsel (202) 272-3032 (Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations:

1. Applicant is an open-end, diversified, management investment company. Applicant registered under the 1940 Act on January 11, 1982. Applicant filed a registration statement under the Securities Act of 1933 on January 11, 1982, which became effective on April 16, 1982 and the initial public offering began on the same day.

2. On September 8, 1986, the Board of Directors of the Applicant unanimously approved a Plan of Reorganization and Liquidation (the "Plan"). Security holders approved the Plan on June 17, 1987.

3. Pursuant to the Plan, on July 24, 1987, Security First Trust (the "Trust"), SEC File Number 811-2480, an open-end, diversified management investment company, acquired the assets and liabilities of the Applicant. The Plan provided for a tax-free exchange of shares whereby the shareholders of the Fund became shareholders of the Trust's Money Market Series.

4. Applicant states that the principal purpose of the reorganization was to combine the Applicant, and other open-end management investment companies, into a single trust and thereby achieve significant operational and marketing advantages.

5. Applicant has not retained any assets.

6. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, for the benefit of any security holder.

7. Applicant is not a party to any litigation or administrative proceeding.

8. Applicant is not now engaged or intends to engage in any business activities other than those necessary for the winding up of its affairs.

9. Applicant represents that the expenses incurred in connection with the reorganization were paid by The Holden Group, Inc.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan Katz,

Secretary.

[FR Doc. 89-17265 Filed 7-21-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Areas #2362 & 2363]

Declaration of Disaster Loan Area; Indiana

Lake County and the contiguous counties of Jasper, Newton, and Porter in the State of Indiana and the contiguous counties of Cook, Kankakee, and Will in the State of Illinois constitute a disaster area as a result of damages from flooding which occurred from May 30 through June 1, 1989. Applications for loans for physical damage may be filed until the close of business on September 11, 1989 and for economic injury until the close of business on April 13, 1990 at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, GA 30308.

or other locally announced locations.

The interest rates are:

Homeowners with Credit Available Elsewhere	8.000%
Homeowners without Credit Available Elsewhere	4.000%
Businesses with Credit Available Elsewhere	8.000%
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000%
Businesses and Non-Profit Organizations (EIDL) without Credit Available Elsewhere	4.000%
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	9.125%

The numbers assigned to this disaster for the State of Indiana are 236206 for physical damage and 678300 for economic injury and for the State of Illinois, 236306 for physical damage and 678400 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: July 13, 1989.

Susan Engeleiter,

Administrator

[FR Doc. 89-17223 Filed 7-21-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

National Transportation Policy Open Forums: Innovation and Human Factors Cluster Group

AGENCY: Office of the Secretary (DOT).

ACTION: Notice of open forums.

SUMMARY: This notice announces a series of eight open forums concerning the Department's development of a National Transportation Policy. The forums will be conducted by the Innovation and Human Factors Cluster Group which is concerned with the application of new technology, management, organizational structures, planning techniques, information systems and the interaction between the individual and components of all modes over the entire transportation system.

Invitation to Participate: Concerned parties and individuals are invited to notify the Cluster Group of your interest in the subject area, issues which you believe should be examined, and ways in which you or your organization could contribute to the outreach and/or policy development efforts. If you wish to express your views on policy issues or your interest in participating in the policy development process, or if you have any questions concerning the process, please forward them in writing to the address given below. If you wish to make an oral presentation either in lieu of or in addition to a written submission of your views, please contact Mr. Al Linhares at (phone) 202-366-4208 or (FAX) 202-472-2514.

DATES: The Open Forums on Innovation and Human Factors will be held at the following locations, 9 a.m.-4:00 p.m., on these dates:

July 31, 1989, Federal Aviation Administration, Auditorium, 3rd Floor, 800 Independence Avenue, SW., Washington, DC

August 9, 1989, Northwestern University, School of Law, Arthur Rubloff Building, 375 East Chicago Avenue, Chicago, Illinois

August 11, 1989, University of Washington, Holiday Inn Crowne Center, 6th and Seneca Streets, Seattle, Washington

August 17, 1989, Arizona State University, Fiesta Inn, 2100 South Priest Drive, Tempe, Arizona

August 24, 1989, National Academy of Sciences, The Beckman Center, 100 Academy, Irvine, California

August 30, 1989, University of Miami, Hyatt Regency Miami Hotel, James L. Knight Conference Center, 400 Southeast Second Avenue, Miami, Florida

September 8, 1989, Court of International Trade, Ceremonial Conference Room, 2nd Floor, 1 Federal Plaza, New York, NY

September 11, 1989, Department of Transportation, Transportation Systems Center, 55 Broadway, Kendall Square, Cambridge, Massachusetts

ADDRESS: Send comments in writing to Innovation and Human Factors Cluster Group, Reserach and Special Programs Administration, Department of Transportation, 400 7th Street SW., Washington, DC 20590 *Attention:* Office of Research and Technology, Mail Stop DRT-1. Responses to this announcement should be received not later than close of business two (2) days prior to the Open Forum in which you wish to make an appearance.

FOR FURTHER INFORMATION CONTACT: Mr. Al Linhares, Director, Office of Research and Technology, RSPA, at the above address, or phone 202-366-4208 [FAX 202-472-2514].

SUPPLEMENTARY INFORMATION:

Overview: The Department of Transportation (DOT) is developing a national transportation policy as the critical first step in dealing with a new era where the challenge is to maintain and build upon the Nation's past achievements and continue to ensure a safe and efficient transportation system. National transportation policy must promote further economic growth, and address growing public concerns in such vital areas as environmental quality, energy, national security and international competitiveness amid changing demands, increasing congestion and capacity problems, and increasingly tight fiscal constraints.

A National Transportation Policy Statement, to be issued by the Secretary early next year, will set forth the framework through which decisions on transportation infrastructure, services and related needs can be systematically assessed and implemented during the next decade and into the 21st century.

Policy Development Outreach: During July-September the issues, positions and recommended solutions of the transportation community, including consumer, industry, labor, government and other interest groups, will be solicited and examined by six Transportation Cluster Groups which are organized largely by market areas and area headed by senior Departmental staff. The six Cluster Groups are seeking a multimodal perspective on both short- and long-range transportation issues, problems and solutions.

Participation in Policy Development: There are a number of issues and related questions which clearly are of concern to the Innovation and Human Factors Cluster Group and which must be considered in formulating recommendations for National Transportation Policy. These include the following:

A. Establish an Ongoing Process for Long-Range National Transportation Policy Development and Implementation

1. To ensure advanced *strategic planning* for the national transportation system. To recognize that our transportation system is multi-modal, and that coordinated cross-modal planning, financing, and management are essential.

a. How do we facilitate advanced strategic planning for our multi-modal transportation system?

b. How do we coordinate cross-model planning, financing and management—in the private and in the public sectors?

2. To stimulate research, development, and implementation of *innovative technology, management and organizational structures* in transportation. Define federal, state, local, and private roles in encouraging, financing, and disseminating basic and applied research.

a. What generates innovation—in technology, in management, in organizational structure—in transportation?

b. What is the appropriate role for government—Federal, state and local—in this process?

3. To emphasize *human factor considerations* for safety and efficiency throughout transportation research, development, and operation. Use human factor methods to minimize the frequency and consequences of human error in transportation accidents, and anticipate the human consequences of technological innovation.

a. What are the human factors which contribute to the safety and the efficiency of our transportation system?

b. How best do we avoid human error in transportation operations?

c. How most effectively can we anticipate the consequences for employees of technological innovation in transportation?

B. Provide the Necessary Resources for the Oncoming National Transportation System.

1. To develop the *information and knowledge base* required for informed decision-making in the nation's transportation system. Ensure that the appropriate statistical data and management information are collected, and that they are consistent, accurate, and accessible to appropriate users. Ensure that the data and information are analyzed, understood, and used for transportation planning and management.

a. What information and knowledge base is critical to informed decision-making on transportation needs?

b. Who will develop and disseminate this information?

2. To ensure adequate *human resources* for the nation's transportation system, through training, certification, and retention in commercial transportation and operator training, licensing, and recertification of individual vehicle operators in private transportation.

a. How can we best recruit, train and retain the human resources whom we will need for the transportation system of the '90's and beyond?

b. What innovative methods must we develop to assure the input and the involvement of the transportation workforce in improved mobility, efficiency and safety?

3. To develop and implement *innovative economic methods* for

transportation. Develop methods to finance transportation research, construction, maintenance, and operations and for transportation information systems and human resources. Develop economic methods to stimulate improvements in mobility, efficiency, and safety.

a. What new economic tools will we need to research, finance, construct, operate and maintain the future transportation system?

b. How should we charge consumers for the services of the commercial transportation system?

c. What should we do about the Federal trust funds?

C. Resolve Those Current Issues that will Impede Future Development.

1. To eliminate *alcohol and drugs* from the commercial transportation system and minimize alcohol and drug impairment by private citizens.

a. What are the most effective means for eliminating drug and alcohol abuse by transportation employees?

2. To renew and maintain the nation's *transportation facilities and infrastructure*—our highways, bridges, waterways, air- and sea-ports; our airplanes, trains, and ships. Define our infrastructure needs and establish how these will be met and financed.

a. Who should be responsible for renewing and for maintaining the nation's transportation facilities and infrastructure?

3. *To improve transportation mobility, efficiency, and safety through advanced technology.* Apply advanced communications and information technology such as those developed in "intelligent vehicle and highway systems", "ships of the future", and "aviation data link" programs. Use technological improvements to design safer vehicles. Develop more efficient propulsion systems through alternative fuel, linear motor, magnetic levitation, and other new technologies. Develop and implement improved management information for commercial transportation.

a. What advanced technologies appear most promising for improving mobility, efficiency and safety in transportation?

b. What should be the process—from laboratory to advanced technology to system implementation—for state-of-the-art innovations already known or being developed?

c. How should the employee representation process respond to technological innovation and the effort to achieve greater efficiency and productivity through advanced technology?

d. What should be the role of industry and of government in dealing with the problem of pollution?

Comment by all parties on these and other transportation issues is welcome.

Issued this 19th day of July, 1989, in Washington, DC.

Mark Dowis,

Executive Assistant to the Administrator, Research and Special Programs Administration.

[FR Doc. 89-17358 Filed 7-20-89; 12:11 pm]

BILLING CODE 4910-62-M

Federal Aviation Administration

Noise Exposure Map Notice and Receipt of Noise Compatibility Progam and Request for Review, Colorado Springs Municipal Airport, Colorado Springs, Colorado

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Colorado Springs Municipal Airport (COS) under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing proposed noise compatibility program that was submitted for Colorado Springs Municipal Airport under Part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before January 3, 1990.

EFFECTIVE DATE: The effective date of the FAA's determination on the Colorado Springs Municipal Airport noise exposure maps and the start of its review of the associated noise compatibility program is July 7, 1989. The public comment period ends July 31, 1989.

FOR FURTHER INFORMATION CONTACT: Dennis Ossenkop, FAA, Airports Division, ANM-611, 17900 Pacific Hwy S., C-68966, Seattle, WA 98168. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps for Colorado Springs Municipal Airport are in compliance with applicable requirements of Part 150, effective July 7, 1989. Further, FAA is reviewing a proposed noise compatability program for that airport which will be approved or disapproved on or before January 3, 1990. This notice also announces the availability of this program for public review and comment.

Under Section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depicts noncompatible land uses as of the date of submission of such map, a description of projected aircraft operations, and the ways in which such operations will affect such map. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted a noise exposure map that has been found by FAA to be in compliance with the requirements of Federal Aviation Regulation (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Director of Airports for Colorado Springs Municipal Airport submitted to the FAA noise exposure maps, descriptions and other documentation which were produced during an airport Noise Compatibility Study. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by COS. The specific maps under consideration are Exhibits 7 and 8 in the submission. The FAA has determined that these maps for Colorado Springs Municipal Airport are in compliance with applicable requirements. This determination is effective on July 7, 1989. FAA's determination on an airport operator's noise exposure maps is limited to the determination that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on noise exposure maps submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for COS, also effective on July 7, 1989. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 3, 1990.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Independence Avenue, SW, Room 615, Washington, DC.

Federal Aviation Administration, Airports Division, ANM-600, 17900 Pacific Hwy S., C-68966, Seattle, Washington, 98168.

Colorado Springs Municipal Airport, Colorado Springs.

Questions may be directed to the individual named above under the heading, "FOR FURTHER INFORMATION CONTACT."

Issued in Seattle, Washington, July 7, 1989.

Edward G. Tatum,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 89-17259 Filed 7-21-89; 8:45 am]

BILLING CODE 4910-13-M

Environmental Impact Statement: New Austin Airport; Manor, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: The FAA is issuing this notice to advise the public that a Draft Environmental Impact Statement (DEIS) for the proposed New Austin Airport, Manor, Texas, will be available for review and comment for a period of 45 days beginning on the date of publication in the **Federal Register** of this notice of availability of the document.

ADDRESSES: Copies of the DEIS will be available at the following locations: Manor City Hall, 201 East Parsons, Manor, Texas; Texas Trust Savings Bank, Highway 290 East at Loop 212, Manor, Texas; Austin Main Library, 800 Guadalupe, Austin, Texas; and City of Austin Department of Aviation, 3600 Manor Road, Austin, Texas.

FOR FURTHER INFORMATION CONTACT: Agencies may contact: Ms. Mo Keane, Airport Environmental Specialist, ASW-612B, Federal Aviation Administration, Southwest Regional Office, Fort Worth, Texas 76193-0612. Telephone (817) 624-5606. Local citizens may contact: Ms. Leslie Sagar, Manager, Facilities Planning and Engineering, City of Austin Department of Aviation, 3600 Manor Road, Austin, Texas 78723, Telephone (512) 472-5439.

SUPPLEMENTARY INFORMATION: In 1988, the city of Austin and its consultants completed the Environmental Assessment (EA) for the proposed New Austin Airport, conducted the public hearing, and submitted the EA to the FAA. In September 1988, the FAA issued a Finding of No Significant Impact (FONSI); however, in November 1988, the EA/FONSI a suit to challenge was filed by the Sierra Club Legal Defense Fund. In March 1989, that litigation was settled. As a part of the settlement, the FAA agreed that it would replace the FONSI for the proposed New Austin Airport with an Environmental Impact Statement (EIS), except that the parties agreed that the "Austin Airport Alternative Environmental Assessment" dated July 1988 and the Austin Airport FONSI dated September 1988 may be utilized as the draft EIS (DEIS). The parties agreed that the comment period on the DEIS shall begin on the date of publication in the **Federal Register** of a notice of availability of this document by the EPA. This comment period shall run for 45 calendar days.

The DEIS consists of the July 1988 Environmental Assessment and its Appendices, the FONSI and the multi-volume studies incorporated therein by reference. These documents are available for public inspection and copying at the addresses given earlier.

The FAA intends to consult and coordinate with Federal, State, and local agencies which have jurisdiction by law or have special expertise with respect to any environmental impacts associated with the proposed project. The FAA is currently distributing the EA/FONSI, now called the DEIS, to Federal, state and local agencies to accept additional public and agency comments. After the 45 day comment period, a final EIS will be prepared.

Project Description: The City of Austin proposes to construct a new airport near the city of Manor, Texas. The proposed Federal action includes first-time airport layout plan approval, airport location approval, and construction of a new commercial service airport. The proposed development program consists of the following items: (1) Acquire approximately 3,460 acres of land; (2) construct two commercial service runways 9,000'×150', to meet aviation needs through the year 2006, and ultimately at an undetermined future date, expand one runway to 12,000' as demand requires; (3) construct parallel primary general aviation runway 5,000'×150', expand to 7,500'×150' as demand requires; (4) construct crosswind runway 3,500'×75'; (5) construct taxiways, aircraft apron areas, tie-down positions, T-hangers, and conventional hangars, expand as demand requires; (6) install instrument landing systems and associated approach light systems (ILS/ALS),

lighting and navigational aids where appropriate; (7) construct terminal area and airport-associated buildings, and auto parking areas, expand as the need develops; (8) construct airport access roadways, expand as the need develops; and (9) install fuel storage areas and appropriate fueling facilities; (10) other supporting development.

Members of the public may submit written statements to the following address: Department of Transportation, Federal Aviation Administration, Airports Division, Fort Worth, Texas 76193-0610.

Issued on June 26, 1989.

Gene L. Faulkner,

Manager, Airports Planning Branch.

[FR Doc. 89-17258 Filed 7-21-89; 8:45 am]

BILLING CODE 4910-13-M

Change 1, Advisory Circular 29-2A, Certification of Transport Category Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance.

SUMMARY: Change 1, Advisory Circular (AC) 29-2A, Certification of Transport Category Rotorcraft, consolidates FAA guidance and provides information on methods of compliance with the airworthiness standards for transport category rotorcraft. As part of the FAA effort to achieve national standardization in rotorcraft certification, it serves a ready reference for manufacturers, modifiers, FAA design evaluation engineers, flight test engineers, and engineering flight test pilots. This material has no legally binding status and must be treated as advisory only.

DATE: Change 1, AC 29-2A, was issued by the Rotorcraft Directorate, Aircraft Certification Service, in Fort Worth, Texas, on April 24, 1989.

How to order: A copy of Change 1, AC 29-2A, may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or from any of the Government Printing Office bookstores located in major cities throughout the United States. Identify the publication as Change 1, AC 29-2A, Certification of Transport Category Rotorcraft, Stock Number 050-007-825-2. The cost is $9 per copy. Send a check or money order, made payable to the Superintendent of Documents, with your request. Orders for mailing to foreign countries should include an additional 25 percent of the total price to cover handling. No c.o.d. orders are accepted.

FOR FURTHER INFORMATION CONTACT: Debra H. Myers, FAA, Regulations Group, Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, Texas 76193-0111, telephone (817) 624-5118.

Issued in Fort Worth, Texas, on July 11, 1989.

James D. Erickson,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89-17257 Filed 7-21-89; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

Change of Name of Approved Trustee; Security Pacific Bank Washington, N.A.

Notice is hereby given that effective January 1, 1989, Rainier National Bank, Seattle, Washington, changed its name to Security Pacific Bank Washington, N.A.

Dated: July 14, 1989.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 89-17170 Filed 7-21-89; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

[Docket No. IP89-04; Notice 1]

Receipt of Petition for Determination of Inconsequential Noncompliance; Union City Body Co., Inc.

Union City Body Company, Inc. (Union City) of Union City, Indiana, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.101, Federal Motor Vehicle Safety Standard (FMVSS) No. 101, "Controls and Displays", on the basis that it is inconsequential as it relates to motor vehicle safety.

This Notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Standard No. 101 requires that the symbol for a combined windshield washing/wiping control be illuminated. Union City produced 447 X-950 walk-in vans from March 1988 through May 1989, that do not have windshield wash/wipe symbols which are illuminated. Union City supports its petition for inconsequential noncompliance with the following:

(1) The Union City Body Company always strives to be in compliance with the regulations.

(2) The wash/wipe control contained the ISO symbol.

(3) These vehicles are driven by professional route drivers who are familiar with the controls of their vehicle.

(4) The number of controls in the instrument panel area is minimized to reduce confusion.

(5) The vehicles are sold primarily for the [sic] use in the franchised mobile tool business. Most vehicles retain the same ownership through the vehicle's life.

Interested persons are invited to submit written data, views and arguments on the petition of Union City Body Company, Inc. described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC, 20590. It is requested that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 23, 1989.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: July 19, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-17226 Filed 7-21-89; 8:45 am]

BILLING CODE 4910-59-M

Urban Mass Transportation Administration

UMTA Section 3 and 9 Grant Obligations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1989, Pub. L. 100-457, signed into law on September 30, 1988, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the **Federal Register** each time a grant is obligated pursuant to sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Edward R. Fleischman, Chief, Resource Management Division, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street SW., Room 9305, Washington, DC 20590, (202) 366-2053.

SUPPLEMENTARY INFORMATION: The Section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The Section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to the statute UMTA reports the following grant information:

SECTION 3 GRANTS

Transit property	Grant No.	Grant amount	Obligation date
Southern California Rapid Transit District Los Angeles, CA	CA-03-0342	$822,437	6-9-89
Southern California Rapid Transit District Los Angeles, CA	CA-03-0346	717,705	6-9-89
California Department of Transportation, San Jose, CA	CA-03-0328	18,199,996	6-9-89
Iowa Department of Transportation, Des Moines, IA	IA-03-0057	1,155,000	6-7-89
City of Cedar Rapids, Cedar Rapids, IA	IA-03-0058	35,364	6-7-89
Des Moines Metropolitan Transit Authority, Des Moines, IA	IA-03-0059	250,425	6-7-89
Regional Transportation Authority Commuter Rail Division, Chicago, IL	IL-03-0131-02	16,218,750	6-9-89
Regional Transportation Authority Commuter Rail Division, Chicago, IL	IL-03-0143	16,650,000	6-9-89
Regional Transit Authority, New Orlean, LA	LA-03-0044-02	1,157,216	4-19-89
Louisiana Department of Transportation and Development, New Orlean, LA	LA-03-0047	18,750,000	4-19-89
Regional Transit Authority, New Orleans, LA	LA-03-0048	1,716,146	4-19-89
Maryland State Railroad Administration, Baltimore, MD-Washington, DC	MD-03-0041	13,500,000	6-13-89
Maryland Mass Transit Administration, Baltimore, MD	MD-03-0045	2,250,000	6-9-89
Maryland Mass Transit Administration, Baltimore, MD	MD-03-0046	469,500	6-9-89
Maryland Mass Transit Administration, Baltimore, MD	MD-03-0047	2,775,000	6-9-89
Nassau County, New York, NY	NY-03-0234	3,802,125	4-28-89
City of Glens Falls, Glens Falls, NY	NY-03-0247	600,000	4-25-89
Chemung County Transit, Elmira, NY	NY-03-0252	343,750	6-9-89
City of Hudson, Hudson, NY	NY-03-0242	1,125,000	6-9-89
Niagara Frontier Transportation Authority, Buffalo, NY	NY-03-0253	300,000	6-12-89
Port Authority of Allegheny County, Pittsburgh, PA	PA-03-0204	9,999,999	5-24-89
Southeastern Pennsylvania Transportation Authority, Philadelphia, PA	PA-03-0200	7,500,000	6-5-89
Southeastern Pennsylvania Transportation Authority, Philadelphia, PA	PA-03-0201	15,000,000	6-5-89
Southeastern Pennsylvania Transportation Authority, Philadelphia, PA	PA-03-0130-02	15,375,000	6-7-89
Rhode Island Department of Transportation, Providence, R.I.	RI-03-0013	75,000	5-9-89
Brazos Valley Community Action Agency, Houston, TX	TX-03-0131	126,611	6-9-89
Utah Transit Authority, Salt Lake City, UT	UT-03-0013	2,415,000	4-25-89
Utah Transit Authority, Salt Lake City, UT	UT-03-0014	1,093,500	6-16-89
Snohomish County Public Transportation Benefit Area Corporation, Seattle-Everett, WA	WA-03-0065	5,791,368	5-31-89

SECTION 9 GRANTS

Transit property	Grant No.	Grant amount	Obligation date
Mobile Transit Authority, Mobile, AL	AL-90-X023-01	5,241	6/30/89
City of Huntsville, Huntsville, AL	AL-90-X040-00	1,035,265	6/30/89
Fayetteville/Springdale Area Transit Authority, Fayetteville-Springdale, AR	AR-90-X019-00	1,024,078	6/30/89
City of Fresno, Fresno, CA	CA-90-X330-00	3,174,827	6/28/89
Public Utilities Commission, San Francisco-Oakland, CA	CA-90-X336-00	22,116,572	6/30/89
Monterey County, Seaside-Monterey, CA	CA-90-X338-00	96,600	6/26/89
City of Norwalk, Los Angeles, CA	CA-90-X339-00	548,000	(1)
City of Commerce, Los Angeles-Long Beach, CA	CA-90-X344-00	92,800	6/28/89
Kern County Council of Governments, Bakersfield, CA	CA-90-X346-00	61,300	6/26/89
Chico Area Transit, Chico, CA	CA-90-X352-00	245,552	6/29/89
Greater Hartford Transit District, Hartford, CT	CT-90-X126-01	1,418,012	6/30/89
Greater Bridgeport Transit District, Bridgeport, CT	CT-90-X135-00	474,151	6/30/89
Middletown Transit District, Hartford, CT	CT-90-X136-00	180,000	6/30/89
Norwalk Transit District, Norwalk, CT	CT-90-X138-00	127,808	6/30/89
Housatonic Area Regional Transit District, Danbury, CT-NY	CT-90-X139-00	286,500	6/30/89
Southeastern Connecticut Regional Planning Agency, Norwich-New London, CT	CT-90-X140-00	14,000	6/30/89
Southwestern Regional Planning Commission, Norwalk, CT	CT-90-X141-00	9,600	6/30/89
Council of Governments Central Naugatuck Valley, Waterbury, CT	CT-90-X145-00	16,976	6/30/89
Housatonic Area Regional Transit District, Danbury, CT	CT-90-X146-00	73,056	(1)
Washington Metropolitan Area Transit Authority (WMATA) Washington, DC-MD-VA	DC-90-X010-02	982,844	5/26/89
Washington Metropolitan Area Transit Authority (WMATA), Washington, DC-MD- VA	DC-90-X012-01	25,633,000	6/30/89
Regional Transit System, Gainesville, FL	FL-90-X120-01	200,433	6/30/89
East Volusia County-East Volusia Transp. Authority, Daytona Beach, FL	FL-90-X123-01	310,473	6/30/89
Space Coast Area Transit, Melbourne-Cocoa, FL	FL-90-X127-00	1,262,671	6/30/89
Manatee County Board of County Commissioners, Sarasota-Bradenton, FL	FL-90-X128-00	817,913	6/30/89
Lee County Transit System, Fort Myers, FL	FL-90-X129-00	1,164,342	6/30/89
Escambia Co Bd of Commissioners, Pensacola, FL	FL-90-X130-00	1,668,450	6/30/89
City of Augusta, Augusta, GA-SC	GA-90-X044-01	96,000	6/30/89

SECTION 9 GRANTS—Continued

Transit property	Grant No.	Grant amount	Obligation date
Consolidated Government of Columbus, Columbus, GA-AL	GA-90-X050-00	1,605,078	6/30/89
City of Augusta, Augusta, GA-SC	GA-90-X051-00	1,349,159	6/30/89
Keyline Bus System, Dubuque, IA-IL	IA-90-X090-01	327,663	6/30/89
Department of Municipal Transportation, Davenport-Rock Isl—Mo, IA-IL	IA-90-X102-00	623,024	6/30/89
Keyline Bus System, Dubuque, IA-IL	IA-90-X103-00	390,281	6/30/89
Cedar Rapids Transit Department, Cedar Rapids, IA	IA-90-X104-00	705,987	6/30/89
City of Bettendorf, Bettendorf, IA	IA-90-X105-00	242,666	(1)
Des Moines Metropolitan Transit Authority, Des Moines, IA	IA-90-X106-00	239,600	6/30/89
Suburban Bus Division-Regional Transportation Authority, Chicago, IL-Northwestern IN	IL-90-X143-00	10,168,562	6/30/89
Greater Peoria Mass Transit District, Peoria, IL	IL-90-X144-00	1,000,000	6/30/89
City of Kankakee, Kankakee, IL	IL-90-X145-00	14,951	6/30/89
Bloomington Public Transportation Corporation, Bloomington-Normal, IN	IN-90-X120-00	716,252	6/30/89
South Bend Public Transportation Corporation, P.O. Box 1437, South Bend, IN-MI	IN-90-X121-00	1,544,920	6/30/89
Topeka Metropolitan Transit Authority, Topeka, KS	KS-90-X037-00	882,000	6/30/89
Wichita-Sedgwick County Metro Area Planning Department, Wichita, KS	KS-90-X038-00	51,156	6/30/89
City of Henderson, Evansville, IN-KY	KY-90-X042-00	191,795	6/30/89
Transit Authority of the Lexington-Fayette Urban County Government, Lexington-Fayette, KY	KY-90-X043-00	1,753,895	6/27/89
City of Owensboro, Owensboro, KY	KY-90-X044-00	501,055	6/26/89
City of Alexandria Municipal Bus Department, Alexandria, LA	LA-90-X091-00	1,055,496	6/30/89
Rapides Area Planning Commission, Alexandria, LA	LA-90-X093-00	68,000	6/30/89
City of Lake Charles, Lake Charles, LA	LA-90-X094-00	352,080	6/30/89
Monroe Transit System, Monroe, LA	LA-90-X095-00	527,000	6/30/89
Regional Planning Commission, New Orleans, LA	LA-90-X097-00	315,000	6/30/89
Mississippi River Bridge Authority, New Orleans, LA	LA-90-X098-00	678,131	6/30/89
Jefferson Parish, New Orleans, LA	LA-90-X099-00	1,561,278	6/30/89
St. Bernard Parish, New Orleans, LA	LA-90-X100-00	207,865	6/30/89
Merrimack Valley Regional Transit Authority, Lawrence-Haverhill, MA-NH	MA-90-X071-02	1,900,000	(1)
Pioneer Valley Transit Authority, Springfield-Chic-Holy, MA-CT	MA-90-X079-04	1,030,536	6/30/89
Worcester Regional Transit Authority, Worcester, MA	MA-90-X087-01	174,640	6/30/89
Massachusetts Bay Transportation Authority, Boston, MA	MA-90-X090-01	28,167,288	(1)
Pioneer Valley Transit Authority, Springfield-Chic-Holy, MA-CT	MA-90-X091-01	17,040	4/30/89
Merrimack Valley Regional Transit Authority, Lawrence-Haverhill, MA-NH	MA-90-X093-01	80,000	6/30/89
Cape Ann Transportation Authority, Boston, MA	MA-90-X096-0	76,100	(1)
State Railroad Administration, Baltimore, MD-Washington, DC	MD-90-X038-00	7,146,218	6/26/89
Mass Transit Administration, Maryland	MD-90-X039-00	1,412,849	6/26/89
Maine Department of Transportation, Bangor/Portsmouth-Dover-Rochester, ME	ME-90-X044-00	16,218	6/30/89
City of Niles, South Bend, IN-MI	MI-90-X114-00	135,820	6/30/89
Muskegon County Muskegon Area Transit System, Muskegon, MI	MI-90-X116-00	610,184	6/30/89
City of Saginaw, Saginaw, MI	MI-90-X118-00	1,854,954	6/30/89
Flint Mass Transportation Authority, Flint, MI	MI-90-X119-00	1,989,698	6/30/89
Kansas City Area Transportation Authority, Kansas City, MO	MO-90-X056-00	426,000	(1)
Mississippi Coast Transportation Authority, Biloxi-Gulfport, MS	MS-90-X027-00	1,148,000	6/30/89
Gulf Regional Planning Commission, Biloxi-Gulfport, MS	MS-90-X028-00	120,000	6/30/89
Great Falls Transit District, Great Falls, MT	MT-90-X023-00	790,111	6/30/89
Town of Chapel Hill, Durham, NC	NC-90-X082-01	661,120	6/30/89
City of Gastonia, Gastonia, NC	NC-90-X091-00	856,155	6/29/89
City of High Point, High Point, NC	NC-90-X092-00	2,690,120	6/27/89
City of Hickory, Hickory, NC	NC-90-X093-00	302,146	6/26/89
City of Raleigh, Raleigh, NC	NC-90-X094-00	2,003,912	6/30/89
City of Fayetteville, Fayetteville, NC	NC-90-X097-00	1,002,136	6/27/89
Omaha Metro Area Transit, Omaha, NE-IA	NE-90-X021-01	80,000	6/30/89
Omaha Metro Area Transit, Omaha, NE-IA	NE-90-X022-00	32,000	6/30/89
City of Nashua, Nashua, NH	NH-90-X018-03	64,000	6/30/89
New Jersey Transit Corporation, Northeastern, NJ	NJ-90-X026-02	53,812,000	(1)
City of Las Cruces, Las Cruces, NM	NM-90-X025-00	165,368	6/30/89
City of Santa Fe, Santa Fe, NM	NM-90-X026-00	257,577	6/30/89
Nassau County, New York, NY-Northeastern NJ	NY-90-X146-00	4,334,525	5/04/89
Nassau County, New York, NY-Northeastern NJ	NY-90-X146-01	892,420	6/30/89
New York Metropolitan Transportation Authority, New York, NY-Northeastern NJ	NY-90-X149-02	83,723,341	6/26/89
New York City Department of Transportation, New York, NY-Northeastern NJ	NY-90-X161-00	9,445,452	6/30/89
Town of Huntington, New York, NY-Northeastern NJ	NY-90-X162-00	302,116	6/30/89
Dutchess County, Poughkeepsie, NY	NY-90-X163-00	2,349,200	6/30/89
Broome County, Binghamton, NY	NY-90-X164-00	1,274,376	6/26/89
City of Rome, V.I.P. Transportation, Utica-Rome, NY	NY-90-X165-00	149,813	6/30/89
Greater Cleveland Regional Transit Authority, Cleveland, OH	OH-90-X118-00	9,893,389	6/30/89
Greater Cleveland Regional Transit Authority, Cleveland, OH	OH-90-X119-00	6,739,298	6/30/89
Canton Regional Transit Authority, Canton, OH	OH-90-X120-00	1,155,461	6/30/89
Enid Public Transportation Authority, Enid, OK	OK-90-X025-00	29,600	6/30/89
Central Oklahoma Transportation and Parking Authority, Oklahoma City, OK	OK-90-X030-00	120,000	6/30/89
Southeastern Pennsylvania Transportation Authority, Philadelphia, PA-NJ	PA-90-X151-00	10,963,116	6/30/89
Berks Area Reading Transportation Authority, Reading, PA	PA-90-X165-00	3,132,899	6/26/89
Cumberland-Dauphin-Harrisburg-Transit Authority, Harrisburg, PA	PA-90-X166-00	1,929,337	6/27/89
Bureau of Transportation, Williamsport, PA	PA-90-X168-00	729,763	6/26/89
Lehigh and Northampton Transportation Authority, Allentown-Beth-East, PA-NJ	PA-90-X169-00	2,370,000	6/27/89
York Area Transportation Authority, York, PA	PA-90-X170-00	2,021,984	6/26/89
City of Sharon, Sharon, OH-PA	PA-90-X171-00	350,600	6/27/89
Transportation and Motor Buses for Public Use Authority, Altoona, PA	PA-90-X172-00	783,102	6/26/89
Erie Metropolitan Transit Authority, Erie, PA	PA-90-X173-00	1,177,059	6/26/89
Red Rose Transit Authority, Lancaster, PA	PA-90-X174-00	3,154,875	6/29/89
Department of Transportation and Public Works, San Juan, PR	PR-90-X011-04	1,134,400	6/30/89

SECTION 9 GRANTS—Continued

Transit property	Grant No.	Grant amount	Obligation date
Municipality of Canovanas, San Juan, PR	PR-90-X032-02	131,200	6/30/89
Municipality of Gurabo, Caguas, PR	PR-90-X046-00	59,840	6/30/89
Rhode Island Department of Transportation, Providence-Paw-War, MA-RI	RI-90-X008-01	6,223	6/30/89
Rhode Island Department of Transportation, Providence-Paw-War, MA-RI	RI-90-X013-00	4,156,260	6/30/89
Pee Dee Regional Transit Authority, Florence, SC	SC-90-X026-00	268,864	6/30/89
Greenville Transit Authority, Greenville, SC	SC-90-X027-00	895,442	6/30/89
Spartanburg County Government, Spartanburg, SC	SC-90-X028-00	476,771	(1)
City of Johnson City, Johnson City, TN	TN-90-X073-00	320,000	6/26/89
Jackson Transit Authority, Jackson, TN	TN-90-X074-00	278,954	6/30/89
City of Clarksville, Clarksville, TN-KY	TN-90-X075-00	525,575	6/27/89
City of Galveston, Galveston, TX	TX-90-X150-00	748,000	6/30/89
City of Amarillo, Amarillo, TX	TX-90-X152-00	1,425,650	6/30/89
Via Metropolitan Transit Authority, San Antonio, TX	TX-90-X153-00	11,644,912	6/30/89
City of Port Arthur, Port Arthur, TX	TX-90-X156-00	492,000	6/30/89
Peninsula Transportation District Commission, Newport News-Hampton, VA	VA-90-X065-00	312,655	6/26/89
Jaunt, Inc., Charlottesville, VA	VA-90-X066-00	92,901	6/26/89
Snohomish County Public Transportation Benefit Area Corporation, Seattle-Everett, WA	WA-90-X096-00	1,473,828	6/30/89
Whatcom Transportation Authority, Bellingham, WA	WA-90-X099-00	630,600	(1)
Green Bay Transit System, Green Bay, WI	WI-90-X105-00	1,446,708	6/30/89
Oshkosh Transit System, Oshkosh, WI	WI-90-X107-00	539,727	6/30/89
City of Racine, Racine, WI	WI-90-X107-00	1,738,889	6/30/89
City of Sheboygan, Sheboygan, WI	WI-90-X108-00	496,611	6/30/89
Milwaukee County Transit System, Milwaukee, WI	WI-90-X109-00	10,928,915	6/30/89
City of Kenosha, Kenosha, WI	WI-90-X110-00	1,017,582	6/30/89
City of LaCross, LaCross, WI	WI-90-X111-00	475,001	(1)
City of Chippewa Falls, Eau Claire, WI	WI-90-X112-00	68,334	6/30/89
Mid-Ohio Valley Transit Authority, Parkersburg, OH-WV	WV-90-X032-00	385,958	6/26/89
Tri-State Transit Authority, Huntington-Ash, WV-KY-OH	WV-90-X033-00	700,000	6/26/89

[1] The Section 9 grants shown without an obligation date are awaiting 13(c) certification from the Department of Labor. After receipt of the certification the grants will be obligated.

Issued on July 18, 1989.

Roland J. Mross,

Deputy Administrator.

[FR Doc. 89-17227 Filed 7-21-89; 8:45 am]

BILLING CODE 4910-57-M

Sunshine Act Meetings

Federal Register
Vol. 54 No. 140
Monday, July 24, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:34 p.m. on Tuesday, July 18, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider: (1) An administrative enforcement proceeding; (2) a notice of an individual's proposed dual service as a director of two nonaffiliated depository institutions pursuant to section 205 of the Depository Institution Management Interlocks Act; (3) matters relating to the possible failure of certain insured banks; (4) matters ralating to assistance agreements pursuant to section 13(c) of the Federal Deposit Insurance Act; and (5) matters concerning the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptaroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshsine Act" (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: July 129, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-17349 Filed 7-20-89; 8:45 am]

BILLING CODE 6714-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 24, 31, August 7, and 14, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of July 24

Wednesday, July 26

10:00 a.m.
Briefing on Integration of Policy Statements for Severe Accidents, Advanced Reactors, Safety Goals, and Standardization (Public Meeting)

2:00 p.m.
Briefing on Proposed 1989 Waste Confidence Decision (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 31—Tentative

Tuesday, August 1

10:00 a.m.
Briefing on Status of EPRI Design Requirements Document for Advanced Light Water Reactors (Public Meeting)

Wednesday, August 2

10:00 a.m.
Briefing on Status of Nine Mile Point-1 (Public Meeting)

Thursday, August 3

2:00 p.m.
Briefing on NRC Thermal-Hydraulic Research Program (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 7—Tentative

Thursday, August 10

2:00 p.m.
Periodic Briefing by Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, August 11

10:00 a.m.
Discussion of Full Power Operating License for Limerick-2 (Public Meeting)

Week of August 14—Tentative

Tuesday, August 15

10:00 a.m.
Periodic Briefing on EEO Program (Public Meeting)

Wednesday, August 16

10:00 a.m.
Briefing on Status of Calvert Cliffs (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

William M. Hill, Jr.,

Office of the Secretary.

July 19, 1989.

[FR Doc. 89-17387 Filed 7-20-89; 2:10 pm]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of July 24, 1989.

An open meeting will be held on Monday, July 24, 1989, at 9:30 a.m. A closed meeting will be held on Tuesday, July 25, 1989, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Monday, July 24, 1989, at 9:30 a.m., will be:

The Commission is hosting a roundtable on commission dollar practices and payments for order flow. The agenda will include topics such as the current nature and extent of the use of commission dollars to obtain research products; the effects of these commission dollar arrangements on execution liquidity and research availability; current disclosure practices concerning commission dollar practices; commission dollar arrangements employed by pension plan sponsors; the pervasiveness of payment for order flow practices; the economic incentives in connection with payment for order flow; and issues raised by payment for order flow arrangements. The participants will include representatives from the New York Stock Exchange, National Association of Securities Dealers, U.S. Department of Labor, U.K. Securities and Investments Board, and the broker-dealer, investment advisory, and banking communities. For further information, please contact Henry E. Flowers at (202) 272-2728 or Jill C. Finder at (202) 272-2416.

The subject matter of the closed meeting scheduled for Tuesday, July 25, 1989, at 10:00 a.m., will be:

Formal order of investigation.
Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Settlement of injunctive action.
Reports of investigation.
Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kevin Fogarty at (202) 272-2300.

Jonathan G. Katz,

Secretary.

July 19, 1989.

[FR Doc. 89-17351 Filed 7-20-89; 1:56 pm]

BILLING CODE 8010-01-M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1418]

TIME AND DATE: 10 a.m. (EDT), July 26, 1989.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on June 21, 1989.

Discussion Item

1. Preliminary Rate Review.

Action Items

New Business

A—Budget and Financing

A1. Modification to the Capital Budget Financed from Appropriations and Nonpower Proceeds for Fiscal Year 1989 for Nickajack Dam Safety Modifications.

C—Power Items

C1. Renewal Power Contract with Cullman, Alabama.

C2. Amendment to Settlement Provisions for Emergency Assistance with Appalachian Power Company.

E—Real Property Transactions

E1. Grant of Permanent Easement Affecting Approximately 1.36 Acres of Land on Blue Ridge Reservoir in Fannin County, Georgia.

E2. Grant of Permanent Industrial Easement Affecting Approximately 47 Acres of Land on Wheeler Reservoir in Morgan County, Alabama.

E3. Sale of Approximately 20 Acres of Power Property on Wheeler Reservoir in Morgan County, Alabama.

E4. Sale of Permanent Easement Affecting Approximately 19.5 Acres of Land on Kentucky Reservoir in Livingston County, Kentucky.

F—Unclassified

*F1. Relocation Services Contract with Empire of America Relocation Services, Inc.

*F2. Amendment to the Rules and Regulations of the TVA Retirement System Regarding Limited Time Period for Immediate Special Service Retirement Allowance for Retirement System Members Voluntarily Leaving TVA.

F3. Supplement No. 4 to Contract No. TV-68260A with Seismic Qualification Utility Group.

F4. Supplement No. 7 to Contract No. TV-72983A with Equifax Services, Inc.

F5. Contract No. TV-78259T with Alabama Department of Economic and Community Affairs, Office of Employment and Training.

F6. Supplement No. 3 to Contract No. TV-72077A with the U.S. Department of Agriculture, Forest Service, to Conduct Exposure Experiments at Whitetop Mountain to Determine Cause of Red Spruce Decline in High Elevations of Southern Appalachians.

F7. Supplement No. 1 to Contract No. TV-67747A with City of Bristol Tennessee for Additional Waterline Improvements.

F8. Agreement with the U.S. Department of the Army, Corps of Engineers, to Provide Mussel Relocation Services.

*Items approved by individual Board members. This would give formal ratification to the Board's action.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Manager of Public Affairs, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 479-4412.

Dated: July 19, 1989.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 89-17318 Filed 7-20-89; 9:38 am]

BILLING CODE 8120-01-M

FEDERAL ENERGY REGULATORY COMMISSION

Notice of Meeting

July 19, 1989.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-4109), 5 U.S.C. 552b:

DATE AND TIME: July 26, 1989, 8:30 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Closed.

MATTER TO BE CONSIDERED: (1) Transcontinental Gas Pipe Line Corporation, Docket No. IN89-1-000
(2) Wolverine Power Corporation, Docket No. E-7319-000

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 357-8400.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17403 Filed 7-20-89; 3:54 pm]

BILLING CODE 6717-01-M

FEDERAL ENERGY REGULATORY COMMISSION

July 19, 1989.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-49), U.S.C. 552B:

DATE AND TIME: July 26, 1989, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda, 901st Meeting—July 26, 1989, Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 6623-001, Eric R. Jacobson and Hydro-West, Inc.

CAP-2.
Project Nos. 10601-001, 10602-001 and 10603-001, Wolverine Power Corporation

CAP-3.

Project No. 9685-004, Environmental Energy Company
CAP-4.
Omitted
CAP-5.
Docket No. UL88-12-002, Central Vermont Public Service Corporation
CAP-6.
Project No. 5223-009, International Falls Power Company
CAP-7.
Docket No. ER89-184-002, Consumers Power Company
CAP-8.
Docket No. ER86-721-006, Central Power & Light Company
CAP-9.
Docket No. ER89-334-001, Southern Company Services, Inc.
CAP-10.
Docket Nos. ER85-785-012, ER86-387-002 and ER86-526-002, Wisconsin Electric Power Company
CAP-11.
Docket No. ER81-187-006, Public Service Company of New Mexico
CAP-12.
Docket No. ER80-573-004, ER84-604-008 and ER85-477-002, Southwestern Public Service Company
CAP-13.
Docket No. ER83-726-003, Boston Edison Company
CAP-14.
Docket No. ER84-31-000, Central and South West Services, Inc.
CAP-15.
Docket Nos. ER88-630-002, 003, ER88-631-002, 003, ER89-38-002 and 003, New England Power Company
CAP-16.
Docket No. ER88-540-003, Louisiana Power & Light Company
CAP-17.
Docket No. EL89-32-000, Torco Energy Marketing, Inc.
CAP-18.
Docket No. QF88-416-000, CNG Energy Company
CAP-19.
Docket No. QF89-198-000, Kalaeloa Partners, L.P.

Consent Miscellaneous Agenda

CAM-1.
Docket No. RM89-6-000, Establishment of Deadlines for First Sellers To Make and Report Refunds
CAM-2.
Docket No. GP87-37-001, Phillips Petroleum Company v. Natural Gas Pipeline Company of America
CAM-3.
Docket No. GP88-26-000, Northern Pump Company, Danner No. A-1 Well
CAM-4.
Docket No. GP88-17-000, El Paso Natural Gas Company
CAM-5.
Docket No. GP80-43-009 (Phase I), Northern Natural Gas Company, Division of InterNorth, Inc.
CAM-6.
Docket No. FA86-19-002 (Phase II), System Energy Resources, Inc.
Docket No. FA85-58-000, Arkansas Power & Light Company
Docket No. FA85-65-000, Mississippi Power & Light Company
Docket No. FA86-63-000, Louisiana Power & Light Company
Docket No. FA87-23-000, New Orleans Public Service, Inc.

Consent Gas Agenda

CAG-1.
Docket No. RP89-200-000, Pacific Gas Transmission Company
CAG-2.
Docket No. RP89-203-000, Southern Natural Gas Company
CAG-3.
Docket No. RP89-198-000, Tennessee Gas Pipeline Company
CAG-4.
Docket No. RP88-180-006, Trunkline Gas Company
CAG-5.
Docket No. RP89-196-000, Northwest Pipeline Corporation
CAG-6.
Docket No. RP89-201-000, Questar Pipeline Company
CAG-7.
Docket No. TA89-1-61-000, Bayou Interstate Pipeline System
CAG-8.
Docket No. TA89-1-49-000, Williston Basin Interstate Pipeline Company
CAG-9.
Docket No. TA89-1-52-000, Western Gas Interstate Company
CAG-10.
Docket No. TA89-1-29-000, Transcontinental Gas Pipeline Corporation
CAG-11.
Docket No. TM89-4-29-000, Transcontinental Gas Pipeline Corporation
CAG-12.
Docket No. TM89-13-20-000, Algonquin Gas Transmission Company
CAG-13.
Docket No. TM89-3-18-000, Texas Gas Transmission Corporation
CAG-14.
Docket No. TQ89-3-23-000, Eastern Shore Natural Gas Company
CAG-15.
Docket Nos. RP89-132-001 and 003, El Paso Natural Gas Company
CAG-16.
Docket No. RP89-43-000, Valero Interstate Transmission Company
CAG-17.
Docket Nos. RP88-96-000, RP88-210-000, 004 and RP89-174-000, Southern Natural Gas Company
CAG-18.
Docket Nos. RP88-196-004 and 005, Transwestern Pipeline Company
CAG-19.
Docket No. TA89-1-28-000, Panhandle Eastern Pipe Line Company
CAG-20.
Docket Nos. TA89-1-37-000 and 001, Northwest Pipeline Corporation
CAG-21.
Docket No. TA89-1-37-001, Northwest Pipeline Corporation
CAG-22.
Docket Nos. CP88-587-001, 002, 003, TA88-4-12-002 and RP88-194-000, Distrigas Corporation and Distrigas of Massachusetts Corporation
CAG-23.
Docket Nos. RP89-8-000 and 001, Pacific Interstate Transmission Company
CAG-24.
Docket No. RP89-58-000, Bear Creek Storage Company
CAG-25.
Docket No. RP89-57-002, El Paso Natural Gas Company
CAG-26.
Docket Nos. RP89-29-006 and RP88-228-022, Tennessee Gas Pipeline Company
CAG-27.
Docket Nos. RP89-155-001 and 002, United Gas Pipeline Company
Docket Nos. RP89-168-001 and 002, ANR Storage Company
CAG-28.
Docket No. RP88-187-018, Columbia Gas Transmission Corporation
CAG-29.
Docket No. RP89-40-004, Williams Natural Gas Company
CAG-30.
Docket Nos. RP89-163-002, RP88-68-015 and RP87-7-056, Transcontinental Gas Pipe Line Corporation
CAG-31.
Docket No. TQ89-4-63-001, Carnegie Natural Gas Company
CAG-32.
Docket No. TQ89-2-28-001, Panhandle Eastern Pipe Line Company
CAG-33.
Docket Nos. TM89-2-26-001 and TM89-3-26-001, Natural Gas Pipeline Company of America
CAG-34.
Docket No. CP88-391-002, Transcontinental Gas Pipe Line Corporation
CAG-35.
Docket No. TA89-7-51-002, Great Lakes Gas Transmission Company
CAG-36.
Docket Nos. CP89-470-001 and CP88-522-006, Tennessee Gas Pipeline Company
CAG-37.
Docket Nos. CP88-434-001 and RP88-185-001, El Paso Natural Gas Company
CAG-38.
Omitted
CAG-39.
Docket No. RP87-7-000, Transcontinental Gas Pipe Line Corporation
CAG-40.
Docket No. RP87-15-001, Trunkline Gas Company
CAG-41.
Docket No. RP89-70-002, Stingray Pipeline Company
CAG-42.
Docket No. RP89-145-003, Transcontinental Gas Pipe Line Corporation
CAG-43.
Docket Nos. RP81-85-003, RP83-93-019 and FA85-1-002, Trunkline LNG Company and Trunkline Gas Company
CAG-44.
Docket Nos. ST89-2645-000, ST88-3308-000 and ST88-4082-000, The Tekas Corporation
CAG-45.

Docket Nos. ST89-2401-000, ST89-2402-000 and ST89-2403-000, Utah Gas Service Company
CAG-46.
Docket No. ST88-5804-000, Acacia Natural Gas Company
CAG-47.
Docket No. ST89-2595-000, Southern Gas Pipeline Company
CAG-48.
Docket No. CP89-738-001, Interstate Power Company
CAG-49.
Docket No. CP87-456-002, Arkla Energy Resources, a Division of Arkla, Inc.
CAG-50.
Docket Nos. CP87-5-005, CP87-92-005, Texas Eastern Transmission Corporation
Docket Nos. CP88-197-003, CP88-388-003, CP87-312-005, CP87-313-002, CP87-314-002, CP88-128-003, CP88-197-003 and CP88-388-003, CNG Transmission Corporation
Docket No. CP87-554-002, Algonquin Gas Transmission Company
Docket No. CP89-6-002, Transcontinental Gas Pipe Line Corporation
CAG-51.
Docket Nos. CP89-281-002 and CP89-617-001, Panhandle Eastern Pipe Line Company
CAG-52.
Omitted
CAG-53.
Docket Nos. CP89-7-000 and 001, Transcontinental Gas Pipe Line Corporation
Docket Nos. CP88-194-000 and 001, National Fuel Gas Supply Corporation and Penn-York Energy Corporation
Docket Nos. CP88-195-000, 001 and 002, PennEast Gas Services Company, CNG Transmission Corporation and Texas Eastern Transmission Corporation
CAG-54.
Docket No. CP88-542-000, Great Lakes Gas Transmission Company
CAG-55.
Docket Nos. CP88-574-000 and CP88-779-000, CNG Transmission Corporation
CAG-56.
Docket No. CP89-704-000, United Gas Pipe Line Company
CAG-57.
Docket No. CP89-1582-000, National Fuel Gas Supply Corporation
CAG-58.
Docket No. CP89-1118-000, Williston Basin Interstate Pipeline Company
CAG-59.
Docket No. CP80-499-009, Williams Natural Gas Company
CAG-60.
Omitted
CAG-61.
Docket Nos. CP87-389-003, CP88-225-002 and CP88-759-001, National Fuel Gas Supply Corporation
CAG-62.
Docket No. CP89-129-000, Williams Natural Gas Company
CAG-63.
Omitted
CAG-64.
Docket No. CP89-252-000, Mississippi Valley Gas Company v. Gulf Fuels, Inc. and ANR Pipeline Company
CAG-65.
Docket No. CP89-515-001, Green Canyon Pipe Line Company
CAG-66.
Docket Nos. ST88-2555-003, ST88-2905-000, ST88-3337-000, ST88-4985-000, ST89-229-000, ST89-1708-000 and ST89-1775-000, Louisiana Intrastate Gas Corporation
CAG-67.
Docket No. CP73-184-005, Colorado Interstate Gas Company, a Division of Colorado Interstate Company
Docket No. CI73-485-004, CIG Exploration, Inc.
CAG-68.
Docket No. CP89-1043-000, KN Energy, Inc.
CAG-69.
Docket No. RP89-73-001, Pelican Interstate Gas System
CAG-70.
Docket Nos. RP86-33-012 and RP86-91-008, Midwestern Gas Transmission Company

I. Licensed Project Matters

P-1.
Docket No. EL86-24-000, Municipal Electric Utilities Association of New York State v. Power Authority of the State of New York
Docket No. EL86-29-000, Connecticut Municipal Electric Energy Cooperative and Massachusetts Municipal Wholesale Electric Company v. Power Authority of the State of New York. Order on initial decision concerning the appropriate allocation of preference power.

II. Electric Rate Matters

ER-1.
Docket Nos. ER89-401-000, Citizens Power & Light Corporation. Order on rate schedule for market-oriented rates.
ER-2.
Docket Nos. ER85-720-001 and 010, Connecticut Light and Power Company
Docket Nos. ER85-707-001 and 007, Western Massachusetts Electric Company
Docket Nos. ER85-689-001 and 008, Holyoke Water Power Company and Holyoke Power & Electric Company. Opinion on initial decisions concerning contract demand issues and prudence.
ER-3.
Docket No. QF87-274-003, Union Carbide Corporation. Order on remand.
ER-4.
Docket No. QF86-722-001, Penntech Papers, Inc. Order on application for recertification as qualifying cogeneration facility.
ER-5.
Docket No. QF89-256-000, Palisades Generating Company. Order accepting agreement for filing, denying requests for declaratory rulings, granting and denying waivers, and establishing hearing procedures.

Miscellaneous Agenda

M-1.
Docket No. RM86-6-007, Construction Work in Progress. Order on remand.
M-2.
Reserved
M-3.
Reserved
M-4. (A)
RM87-5-001, Inquiry into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines. Order on rehearing.
M-4. (B)
Docket No. RM87-5-002, High Island Offshore System, Trailblazer Pipeline Company, Sea Robin Pipeline Company, Great Lakes Gas Transmission Company, Arkla, Inc., Consolidated Natural Gas Company, Interstate Natural Gas Association of America, Maryland Peoples Counsel, Natural Gas Pipeline Company of America and United Gas Pipeline Company
Docket No. MG88-36-000, U-T Offshore System
Docket No. MG88-43-000, Kentucky West Virginia Gas Company and Equitrans, Inc.
Docket No. MG88-41-000, Superior Offshore Pipeline Company and Texas Sea Rim Pipeline, Inc.
Docket No. MG88-35-000, Northern Border Pipeline Company
Docket No. MG88-34-000, Canyon Creek Compression Company
Docket No. MG88-38-000, Columbia Gas Transmission Corporation
Docket No. MG88-39-000, Enron Interstate Pipelines
Docket No. MG88-30-000, Great Lakes Gas Transmission Company
Docket No. MG88-21-000, High Island Offshore System
Docket No. MG88-43-000, Kentucky West Virginia Gas Company
Docket No. MG88-4-000, Mid Louisiana Gas Company
Docket No. MG88-8-000, MIGC, Inc.
Docket No. MG88-25-000, Northwest Pipeline Corporation
Docket No. MG88-10-000, Ohio River Pipeline Corporation
Docket No. MG88-40-000, Pelican Interstate Gas System
Docket No. MG88-27-000, Sea Robin Pipeline Company
Docket No. MG88-29-000, South Georgia Natural Gas Company
Docket No. MG88-42-000, Texas Gas Transmission Corporation
Docket No. MG88-32-000, Trailblazer Pipeline Company
Docket No. MG88-28-000, United Gas Pipe Line Company
Docket No. MG88-37-000, Valero Interstate Transmission Company
Docket No. MG88-46-000, Valley Gas Transmission, Inc.
Docket No. MG88-9-000, West Texas Gathering. Order on clarification of Order No. 497.

I. Pipeline Rate Matters

RP-1. (A)
Docket No. PL89-2-001, Interstate Natural Gas Pipeline Rate Design
Docket No. RP89-75-003, Black Marlin Pipeline Company
Docket No. RP89-86-000, Chandeleur Pipeline Company
Docket No. RP88-211-007, CNG Transmission Corporation

Docket No. RP86-168-015, Columbia Gas Transmission Corporation
Docket No. RP86-167-011, Columbia Gulf Transmission Company
Docket No. RP88-44-012, El Paso Natural Gas Company
Docket No. RP89-50-003, Florida Gas Transmission Company
Docket No. RP89-37-000, High Island Offshore System
Docket No. RP89-65-000, Inland Gas Company, Inc.
Docket Nos. RP86-52-000, RP89-146-000 and RP89-61-000, Kentucky West Virginia Gas Company
Docket Nos. RP87-86-011, RP88-86-11-008, RP85-11-025 (Phase II), RP89-110-000 and RP89-111-000, KN Energy, Inc.
Docket Nos. RP89-35-004 and RP89-36-003, Midwestern Gas Transmission Company
Docket Nos. RP89-49-000, National Fuel Gas Supply Corporation
Docket No. RP89-33-005, Northern Border Pipeline Company
Docket No. RP88-259-015, Northern Natural Gas Company
Docket No. RP88-47-022, Northwest Pipeline Corporation
Docket No. RP88-282-006, Panhandle Eastern Pipe Line Company
Docket No. RP88-227-017, Pauite Pipeline Company
Docket No. RP89-73-000, Pelican Interstate Gas System
Docket No. RP88-151-000, Sea Robin Pipeline Company
Docket No. RP88-228-021, Tennessee Gas Pipeline Company
Docket No. RP88-67-013, Texas Eastern Gas Transmission Corporation
Docket No. RP87-7-055, Transcontinental Gas Pipe Line Corporation
Docket No. RP89-46-002, Transwestern Pipeline Company
Docket No. RP88-180-015, Trunkline Gas Company
Docket No. RP89-36-000, U-T Offshore System
Docket No. RP88-256-001, West Texas Gas, Inc.
Docket No. RP89-67-000, West Texas Gathering Company
Docket No. RP87-33-000, Williams Natural Gas Company
Docket Nos. RP86-197-000, RP88-236-000 and RP89-34-000, Williston Basin Interstate Pipeline Company. Order on rehearing

RP-1. (B)
Docket No. RP89-34-004, Williston Basin Interstate Pipeline Company. Order concerning application of rate design policy statement.

RP-1. (C)
Docket No. RP88-211-005, CNG Transmission Corporation. Rehearing of suspension order concerning appropriate methodology for reflecting discounted transportation volumes and revenues in designing rates.

RP-1. (D)
Docket No. RP89-161-001, ANR Pipeline Company. Rehearing of suspension order concerning the D-2 Charge, implementation of seasonable rates and length of suspension.

RP-2.
Docket No. RP89-45-001, ANR Pipeline Company. Order on rehearing concerning the passthrough of take-or-pay non-cash consideration and transportation discounts and credits.

RP-3.
Docket Nos. CP82-487-014, 015, RP-84-62-000, RP84-93-000 (Phase II), CP82-487-001, 016, TA84-2-49-000 and TA85-1-49-000 (Phase III), Williston Basin Interstate Pipeline Company. Order concerning initial decisions on gas purchase contracts being imprudent or abusive, rate of return and rate base treatment of 1983 net injections into storage.

RP-4.
Docket Nos. RP85-177-061, RP88-67-012 and CP88-136-005, Texas Eastern Transmission Corporation. Order on compliance filing concerning gas inventory charge and firm receipt point capacity.

RP-5.
Docket No. CP86-99-000, Transwestern Pipeline Company. Order on compliance filing concerning gas inventory charge.

II. Producer Matters

CI-1.
Reserved

III. Pipeline Certificates Matters

CP-1.
Docket No. CP86-136-007, Texas Eastern Transmission Corporation. Order on application to amend blanket certificate to implement a capacity brokering program.

Lois D. Cashell,
Secretary.

[FR Doc. 89-17404. Filed 7-21-89; 3:54 pm]

BILLING CODE 6717-01-M

FEDERAL ELECTION COMMISSION

Note: This document was incorrectly published on Thursday, July 20, 1989 (54 FR 30502) and is correctly published below.

Date & Time: *TUESDAY, JULY 25, 1989 at 10:00 A.M.*
Place: 999 E. Street NW., Washington, DC.
Status: This meeting will be closed to the public.

Items to be Discussed:
Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

Date & Time: *THURSDAY, JULY 27, 1989, at 10:00 A.M.*
Place: 999 E. Street NW., Washington, DC (Ninth Floor).
Status: This meeting will be open to the public.

Matters to be Considered:
Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Draft Advisory Opinion 1989-11—Messrs. Mac Asbill, Jr. and Wright H. Andrews, Jr. on behalf of Sutherland, Asbill & Brennan.
Draft Advisory Opinion 1989-12—Edward D. Feigenbaum regarding an Indiana statute that prohibits political contributions by and the awarding of contracts to certain vendors.
Regulations—Explanation and Justification of the Affiliation and Earmarking Regulations (11 CFR §§ 110.3-110.6).
ADP Project Status Report
Administrative Matters.

Person to Contact for Information: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Signed:

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 89-17167 Filed 7-18-89; 2:50 pm]

BILLING CODE 6715-01-M

Corrections

Federal Register
Vol. 54, No. 140
Monday, July 24, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

34 CFR Part 303

RIN 1820-AA49

Early Intervention Program for Infants and Toddlers With Handicaps

Correction

In rule document 89-14858 beginning on page 26306 in the issue of Thursday, June 22, 1989, make the following corrections:

1. On page 26306, in the first column, under **EFFECTIVE DATE**, in the ninth line "$303.301" should read "§ 303.301".

2. On page 26309, in the third column, in the table-of-contents entry for § 303.112 the word "Public" was misspelled.

3. On the same page, in the same column, in the entry for § 303.167 "(SCPD)" should read "(CSPD)".

§ 303.340 [Corrected]

4. On page 26321, in the first column, in § 303.340, the first paragraph should be designated as "(c)".

§ 303.342 [Corrected]

5. On the same page, in the second column, in § 303.342, in the second paragraph of the Note, in the fourth line, "repeated" was misspelled.

§ 303.361 [Corrected]

6. On page 26323, in the third column, in § 303.361(d)(1), in the fifth line, "discipline" was misspelled.

§ 303.603 [Corrected]

7. On page 26329, in the first column, in § 303.603(b)(1), in the second line, "they" was misspelled.

Appendix A—[Corrected]

8. On page 26330, in the first column, the last line should read "intended as an expression of Congressional intent that private".

9. On the same page, in the second column, the last line should read "purpose of making grants under this part".

10. On the same page, in the third column, the last line should read "availability of advocacy services, and (3) assuring that case management is an"

11. On page 26339, in the first column, in the eighth paragraph, in the sixth line, "for" should read "and".

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[PR Docket No. 88-139; FCC 89-180]

Reorganization and Deregulation of Part 97, Rules Governing the Amateur Radio Service

Correction

In rule document 89-14433 beginning on page 25857 in the issue of Tuesday, June 20, 1989, make the following correction:

§ 97.307 [Corrected]

On page 25870, in the first column, in § 97.307(f)(3) in the first line, "date" should read "data".

BILLING CODE 1505-01-D

SMALL BUSINESS ADMINISTRATION

13 CFR Part 115

[Revision 3]

RIN 3245-AB77

Surety Bond Guarantee Regulations

Correction

In rule document 89-10520 beginning on page 19544 in the issue of Monday, May 8, 1989, make the following correction:

§ 115.3 [Corrected]

On page 19547, in the 3rd column, in § 115.3(a), in the 18th line, "big" should read "bid".

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federal register

Monday
July 24, 1989

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 602

Guidelines for Fishery Management Plans; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 602

[Docket No. 81011-9132]

Guidelines for Fishery Management Plans

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this rule to revise the advisory guidelines for two of the seven national standards for fishery conservation and management set forth in section 301(a) of the Magnuson Fishery Conservation and Management Act (the Act). Section 301(a) requires that all fishery management plans (FMPs) and implementing regulations be consistent with the standards. Section 301(b) of the Act requires the Secretary of Commerce (Secretary) to issue advisory guidelines, based on the standards, to assist in the development and review of FMPs, their amendments, and implementing regulations. The guidelines are intended to improve the quality of FMPs by providing comprehensive guidance for Regional Fishery Management Councils (Councils) to use in developing FMPs and amendments, and to produce a more uniform understanding of the Secretary's basis for FMP review and implementation. The original guidelines were issued in February 1983.

This rule revises the guidelines for national standards 1 and 2 only. Standard 1, as set forth in the Act, requires conservation and management measures to prevent "overfishing" while achieving "optimum yield" (OY) on a continuing basis. Standard 2 requires conservation and management measures to be based on the best scientific information available.

The Act does not define overfishing, nor do most FMPs. Further, the biological data necessary to determine overfishing has sometimes been unavailable. As a result, Councils have often made decisions based primarily on short-term economic and political considerations, with lesser emphasis placed on the long-term viability of the fishery resource or the fishing industry. In order to assure that the Councils give appropriate decisional weight to long-term viability, the revised guidelines stipulate that: (1) Each existing and future FMP specify, to the maximum extent possible, an objective and measurable definition of overfishing for each managed stock or stock complex, with an analysis of how the definition was determined and how it relates to biological potential; and (2) the Secretary is responsible for assuring that a Stock Assessment and Fishery Evaluation (SAFE) report is prepared and updated as necessary, for each fishery. The SAFE report summarizes the best available biological, economic, social, and ecological information concerning the past, present, and potential condition of the stock(s) and fishery being managed.

The short-term effect of the revised guidelines will be that more restrictive regulation will be necessary in those fisheries where stocks are approaching or have reached an overfished condition as defined in the FMP. The intended long-term effect is to assure that the reproductive capacity of any managed stock is not jeopardized, that depleted stocks are rebuilt, and that economically viable future harvests on a continuing basis are possible.

To provide the proper context and as a convenience to the reader, this final rule republishes the guidelines for the seven national standards in their entirety, along with an updated Appendix containing explanatory material.

EFFECTIVE DATE: August 23, 1989.

FOR FURTHER INFORMATION CONTACT: Richard H. Schaefer, telephone: 301-427-2334.

SUPPLEMENTARY INFORMATION:

Background

Revision of the guidelines for national standards 1 and 2 was precipitated, in part, by recommendations of the NOAA Fishery Management Study (the Study), commissioned by the Under Secretary of Commerce for Oceans and Atmosphere and undertaken to assess and improve the Magnuson Act fishery management system. In June 1986, the Study recommended that NOAA assume the responsibility for determining the biologically acceptable catch (ABC) for each managed fishery. By ABC the Study meant the total allowable removals from the resource that would maintain a healthy and productive resource into the future. As used in this context, the ABC would be the maximum allowable quota for the species or species complex in the fishery. It should be noted that this is different from the manner in which the term ABC is used in the guidelines for national standard 1 as revised (§ 602.11). The Study's intent was that stocks be maintained at some level above that which protects the minimum spawning stock from recruitment overfishing. The Study sought a "conservation standard" such that stocks are not continually driven to, or maintained at, the threshold of overfishing.

In April 1987, NOAA distributed for Council/National Marine Fisheries Service (NMFS) pre-publication review and comment a draft revision of the uniform standards governing the organization, practices, and procedures of the Councils and the guidelines for FMPs. That draft revision included a section providing that a maximum fishing mortality (MFM) be established that would maintain the current spawning stock size with consideration of the variabilities in spawning stock estimates, and that ABC be specified so as not to exceed MFM. Again, ABC was to be used as a maximum allowable annual quota for the fishery. Council and NOAA comments concerning the MFM proposal made it clear that this proposal was not universally applicable for a variety of reasons.

Accordingly, in August 1987, NOAA convened a technical workshop of NOAA fishery scientists and managers, and academic scientists recommended by the Councils, to address the Study's recommendations for a conservation standard and the comments on the April draft. In October 1987, to allow time for a thorough examination of the issues raised by the workshop, the decision was made to separate the revisions concerning the conservation standard from the revisions of the uniform standards governing the organization, practices, and procedures of the Councils. In the spring of 1988, a series of Council/NMFS regional workshops was held to discuss the feasibility of the conservation standard concept, using as a basis for discussion the proposed revision of guidelines for national standards 1 and 2 produced by the August 1987 technical workshop. Following the workshops, the proposed revision was further modified as the basis for discussion at a Council Chairmen's meeting in July 1988.

The proposed rule, published at 53 FR 53031 on December 30, 1988, thus constituted the fourth revision—the product of intensive and iterative Council/NOAA review, debate, and drafting. This internal process helped identify, reduce, or eliminate many policy and operational problems before publication of the regulatory proposal. Public comments were invited on the proposed rule until February 28, 1989.

Overview of Issues

Two preliminary issue discussions follow. The first reflects issues identified and taken into account at different times in the Council/NOAA process prior to publication of the proposed rule. The second describes the broad issues raised by public comments received following publication of the proposed rule. Two intrinsic approaches to the proposed rule—that of the decisionmaker and that of the user groups affected by the decisions—are thus displayed together. Individual public comments are addressed in the separate comments-and-response section.

1. Issues identified in various drafts and debated at the Council/NOAA workshops and Council Chairmen's meetings primarily derived from the need for flexibility. It became clear (a) that no rigid or universal overfishing definition could be applied to the great number of diverse species under management; and (b) that the ABC concept is not accepted by, or useful to, all Councils.

A few Councils expressed concern that identification of thresholds might serve to establish targets for harvest rather than provide for protection of resources. This concern was consistent with the need expressed by some other Councils to: (a) Identify measurable "conditions of concern" for each stock, with monitoring and review procedures; (b) permit conservative approaches, such as establishing an optimum yield (OY) "reserve," releasable to domestic or foreign fishermen as necessary, to solve operational problems and allow for uncertainties in stock estimates; and (c) retain an ability to take appropriate restrictive management actions at stock levels above the threshold.

2. Sixteen comments were received from outside NOAA: three Councils, two States (including two from different departments of the same State), two Federal agencies, one commercial fishing industry association, three recreational fishing associations, one professional association, and three individuals. The comments reflect varying approaches to, and awareness of, the changes in biological, economic, social, ecological, and political reality that have taken place since the Act took effect.

In broad terms, the issues raised by the commenters centered on the relationship of overfishing to OY, and, by inference, to other national standards (standard 3—management units, standard 4—allocations, and standard 6—variations and contingencies). It was clear that management of bycatch (incidental take, non-targeted species) was a troublesome issue in its effect on the resource (overfishing) and on the fishery (OY). Some commenters wanted more emphasis on economic measurement, on habitat, on sociological considerations, on non-consumptive uses, or on the administrative record to support management decisions. The ABC concept was questioned by some and demanded by others. Timing of the Stock Assessment and Fishery Evaluation (SAFE) effort also caused concern.

Commenters, in a few cases, may have been unfamiliar with (a) recent amendments to the Act, (b) the full set of guidelines (published in February 1983, codified at 50 CFR Part 602), or (c) supplementary guidance published in other than regulatory form (*Operational Guidelines—the Fishery Management Process*, last revised in February 1988). Republishing the national standard guidelines in their entirety here is intended to provide the public a fuller understanding of the interrelationships among the standards and of the broader basis on which FMPs are reviewed. The statutory language of each standard is presented as paragraph (a) under the appropriate section of the guidelines.

Overview of Approach

Certain principles instructed the revision throughout: flexibility, integrity, consistency. In addition, it should be reiterated that the effort was generated in response to the need, articulated by the 1986 Fishery Management Study and others, for a conservation standard. Consequently, the emphasis was on the resource, not its allocation. The revision focused on the definition of overfishing, not on OY. The guidelines, as revised, do not change the relationship between the two: the prevention of overfishing is an inherent limitation on OY; however, exceeding OY does not necessarily constitute overfishing. If a stock is in good condition, the specification of OY may serve various goals besides prevention of overfishing. Exceeding the OY may interfere with achievement of those goals but not affect the reproductive potential of the stock. On the other hand, if OY is the amount of fish that can safely be removed from the stock from a biological standpoint, exceeding OY may well constitute overfishing. The SAFE document(s) (which would ideally include all the types of data necessary for the determination of OY as prescribed by the Act) is intended to provide the basis for the Council's treatment of the overfishing/OY relationship. Councils have always been free to define overfishing as exceeding OY, but under the revised guidelines an overfishing definition and its justification are subject to review by the Secretary under the criteria described in § 602.11(c)(5).

The guidelines seek as much precision as possible in the use of the words "should" and "must". Section 602.2(c) states that "must" is used to denote an obligation to act and is used primarily when referring to requirements of the Act, the logical extension thereof, or other applicable law. "Should" is used to indicate that an action or consideration is strongly recommended to fulfill the Secretary's interpretation of the Act, and is a factor that reviewers will look for in evaluating an FMP.

The guidelines seek to provide options rather than establish requirements. Lists are not exclusive; they provide examples or illustrations of the kind of information, discussion, or examination/analysis useful in demonstrating consistency with the standard in question.

The guidelines seek to avoid universal application of a specific provision, except as required by law, so that the maximum accommodation to regional or individual fishery characteristics can be achieved within the standards.

In summary, the guidelines are intended as an aid to decisionmaking, with responsible conservation and management of a valued national resource as the goal. NOAA's response to the comments was (a) to maintain policy decisions of the proposed rule since they had evolved, for the most part, from commments and recommendations discussed widely at various public meetings and workshops, (b) to reevaluate and try to balance divergent points of view, and (c) to clarify ambiguities. Many of the changes in the final guidelines are, in fact, refinements and clarifications, and as such, are not necessarily addressed individually in the body of the comments-and-response section.

Section 602.11(c) was reorganized in the final rule, though not changed substantively. The subparagraphs under paragraph 602.11(c)(2) and the last half of § 602.11(c)(7) were moved to a new § 602.11(c)(6) describing how an FMP must or may prescribe measures to prevent overfishing under different circumstances. The first half of § 602.11(c)(7) became § 602.11(c)(3); §§ 602.11(c)(3)–(c)(8) were renumbered as §§ 602.11(c)(4)–(c)(9).

The national standard guidelines published in 1983 at 50 CFR Part 602 included explanatory material as Appendix A to Subpart B. NOAA has chosen to republish that Appendix here with some modification of those sections relevant to this revision of §§ 602.11 and 602.12. The purpose of the Appendix is to preserve, as codified reference, useful explanatory material and supplementary policy rationale originally published as preamble to the

various editions of proposed and final 602 rules. Preambles are not codified in the Code of Federal Regulations (CFR). Parts of this preamble are therefore repeated in the Appendix so that the rationale for the changes will be available in the CFR for future reference.

Overview of Policy

Section 602.11 sets forth a comprehensive overfishing concept within which each Council must establish a specific, measurable definition of overfishing for each stock or stock complex covered by an FMP. That concept is based on the premise that irreversible damage to a resource's ability to recover in a reasonable period of time is unacceptable, and that fishing on a stock at a level that severely compromises that stock's future productivity is counter to the goals of the Act. As used in this revision, ABC is not meant as a quota for the fishery, but rather, may be used as a step in deriving OY from maximum sustainable yield (MSY). (See § 602.11(e).) In this context, the ABC is set by a Council, not NOAA. Since the ABC concept is not necessarily applicable to all fisheries, Councils may establish an ABC level, but are not required to do so.

Councils are provided with the flexibility needed to develop a definition of overfishing appropriate to the individual stock or species characteristics, as long as it is defined in a way that allows the Councils and the Secretary to evaluate the condition of the stock relative to the definition.

A phase-in schedule for implementation is included. General criteria are set forth as a basis for Secretarial review of the definition; these criteria address the overfishing definition specifically and do not change the Secretary's obligation to review FMPs/amendments for consistency with all the national standards, the Act, and other applicable law.

NOAA believes that, although it is difficult to define precisely the level at which overfishing jeopardizes recovery of a stock, there are indicators of existing or impending overfishing that should be heeded. Councils are encouraged to identify such conditions. If these conditions are realized in a particular fishery, the best scientific advice may conclude that immediate remedial action should be taken. (See Appendix A to Subpart B of the guidelines for a fuller discussion.)

As management regimes become more comprehensive, the interrelationships of fishing pressures on target and non-target (major and minor) species need to be addressed more directly. NOAA believes that in determining allowable fishing levels Councils should consider all sources of mortality on a stock, including non-targeted fishing, discards, and illegal catch. Because all removals from the stock, whether landed or unlanded, will affect spawning stock biomass levels now or in the near future, the Councils should attempt to obtain estimates of all sources of mortality and consider the estimates in adjusting directed fishing levels. Total fishing mortality on a stock should be managed such that overfishing does not occur. (See §§ 602.11(c)(6) and (c)(7)(i).) Allowance has been made for the establishment and release of OY reserves to accommodate uncertainties in estimates of stock size or to solve operational problems.

In selected situations, a Council may determine that overfishing of a minor component species of a multi-species fishery is warranted, based on net benefits expected not only for the fishery but for the Nation. Although fishing any stock to the extent that it requires protection under the Endangered Species Act (ESA) must never be allowed to occur, some very limited overfishing may be acceptable if it is identified, and sufficiently analyzed and justified. However, in all cases, alternatives should be considered that would prevent such overfishing. (See comment #19 and Appendix A to Subpart B for a fuller discussion of protection of non-targeted stock in a mixed species fishery.)

Section 602.12(e) describes a SAFE document or set of documents prepared or aggregated periodically, whereby Councils can obtain an objective overview of the best available information on the status of stocks and fisheries under management. Several Councils currently produce such fishery reviews, which generally provide the kinds of information suggested in the SAFE report. The SAFE report does not necessarily call for new information or new procedures; the intent is to provide, in one reference, an aggregation or a summary of the best biological, social, economic, and ecological information available to a Council when needed: (a) To determine annual harvest levels or OYs for species in each fishery management unit (FMU), and (b) to evaluate the effectiveness of its management in preventing overfishing as defined by the Council. Such a report can provide a useful tracking tool for assessing the relative achievement of FMP objectives by establishing a time-series data base indicating the relative health of stocks and the industry dependent on them.

While the Secretary has the responsibility for assuring that the SAFE report is produced, it is not intended to be exclusively authored by NOAA. The report can be produced by any combination of talent from academic, government, or other sources. The report should be reviewed annually, but is not required to be revised annually except as there have been new developments or significant changes in a fishery (see §§ 602.12 (b) and (d), and § 602.13(d)(2)). Appendix A to Subpart B gives examples of the types of information/data that are useful to the Council for its decisions. No one piece of information is mandatory, but the report should contain the best available information appropriate to the fishery, taking into consideration the need to establish priorities within budget constraints.

Comments and Response.

Section 602.11 Standard 1

1. *Comment:* One commenter felt that national standard 1 should not seek to obtain optimum yield for the "United States fishing industry" (§ 602.11(a)), but rather, seek to provide the greatest overall benefit to the Nation.

Response: No change was made. The language of national standard 1 is statutory (section 301(a)(1) of the Act). The Act was amended by Pub. L. 98-623 to highlight contemporaneous policy that the greatest benefit to the Nation would accrue from U.S., rather than foreign, fisheries.

2. *Comment:* Several commenters expressed concern about the general effect of a stated conservation standard on OY. One felt that protection against overfishing might be so constrained that appropriate harvest, under MSY and OY, would not be permitted. Another worried that defining overfishing only in terms of MSY was too narrow and did not include the concept of jeopardizing the ability of a stock to continue to yield food production and recreational opportunities (values identified in the Act as a part of the definition of OY). A third wanted to add language to the criteria for Secretarial approval of a Council definition to assure an optimum harvest to fulfill the [OY] "standard of food production."

Response: No change was made. These comments emphasize protection of the harvest rather than the resource, addressing allocation questions rather than overfishing. In providing a general definition of overfishing, NOAA did not change the statutory relationship of overfishing to OY. (NOAA's concept of the relationship of overfishing to OY is more fully described in the section of the preamble headed "Overview of approach," in the Appendix to Subpart B, and in § 602.11(g) of the guidelines.)

Under the revised guidelines, Councils will be developing a definition for overfishing specific to the stocks or stock complexes in each of the FMPs. The development of such a definition is a public process, and once proposed, the definition and its basis are subject to review and approval by the Secretary under the criteria described in § 602.11(c)(5). These criteria address resource rather than allocation issues. (See "Overview of policy" section.)

3. *Comment:* One commenter suggested that overfishing be defined as any level of fishing that jeopardizes a stock's ability to remain at levels that yield OY; another proposed that ability to sustain OY be the measure of overfishing.

Response: No change was made. Councils are free to define overfishing for each stock or stock complex under management as is justified by the best available scientific information. (See response to comments #2 and #4.)

4. *Comment:* Another facet of the relationship of overfishing to OY was illustrated by a comment urging that overfishing be defined as the level or rate of fishing mortality that reduces the target stock, or a population dependent upon it, below the OY level or to a level from which either is unable to recover to its pre-exploitation size in a specified time.

Response: No change was made. The guidelines do not preclude the Councils from defining overfishing as exceeding OY or from specifying a timeframe for rebuilding of a stock; the guidelines are not intended to direct how a Council defines overfishing. NOAA believes that no universal definition or approach can be applied to every fishery. The guidelines do provide that individual FMP overfishing definitions for fishery management units, developed by the Council and approved by the Secretary, must be in place within 18 months from the effective date of the guidelines and thereafter. (See response to comments #2 and #3.)

NOAA believes that the commenter's suggestion to extend the overfishing definition to include a population dependent upon the target stock goes beyond the intent of the Act. Consideration of predator-prey relationships is already a necessary part of the determination of OY (see § 602.11(f)(3)). In addition, provisions of the ESA and Marine Mammal Protection Act (MMPA) are among the other applicable law that must be considered by the Councils in developing FMPs. While the provisions of the MMPA place no specific obligations on the Councils, a Council is expected to provide adequate information in FMPs and related National Environmental Policy Act (NEPA) documents to inform the Secretary of any potential problems in the interaction of the fishery under management with marine mammal populations (see *Operational Guidelines*, Feb. 1988 revision). The Secretary has the responsibility to ensure that the provisions of the MMPA are carried out.

5. *Comment:* One commenter objected to the use of the term MSY in the general definition of overfishing in § 602.11(c)(1), preferring the terms "maximum biological yield" and "maximum economic value" as used in the original text of the 1983 guidelines.

Response: No change was made. NOAA was persuaded during the Council/NOAA workshops that the term "MSY" more accurately reflects the emphasis of the current revision on the relative abundance of living resource populations in response to fishing. NOAA recognizes past controversy concerning MSY as a management goal. However, it is used in the Act as the baseline tool in the determination of OY and, as such, is the underlying biological rationale upon which most determinations of OY rest.

6. *Comment:* One commenter suggested that the phrase "long-term" should be deleted from the first sentence of § 602.11(c)(1). The commenter argued that the term is undefined and that, given the presence of the qualifying phrase "on a continuing basis," it is redundant as well.

Response: No change was made. A catch equal to MSY may often be harvested for a short time, even from a severely depleted stock. Thus, this paragraph's use of the phrase "on a continuing basis" is significant. It is important to note that the phrase "long-term" is not used to qualify the production of MSY on a continuing basis (which would be redundant), but rather to qualify a stock's capacity to produce MSY on a continuing basis. NOAA believes that it is possible for a stock to lack the short-term capacity to produce MSY on a continuing basis without being overfished in the sense of the Act. For example, a temporarily depleted stock could become decimated if managers attempted to institute an immediate and sustained program of harvesting at the MSY level. The same stock, however, might retain the long-term capacity to sustain such a harvest program, *i.e.*, given an appropriate fishing mortality rate, the stock could rebuild to a level at which it could produce MSY on a continuing basis. As distinguished from temporary depletion, then, overfishing refers to those cases in which a stock's long-term capacity to produce MSY on a continuing basis is jeopardized.

7. *Comment:* Instead of allowing specific overfishing definitions to be developed in terms of a threshold biomass, maximum fishing mortality level, or other measurable standard, one commenter suggested that the guidelines should require specification of a threshold biomass for each fishery. The commenter argued that, without a threshold biomass, stocks will inevitably be overfished.

Response: No change was made. The language of proposed § 602.11(c)(4), now § 602.11(c)(5), makes clear that any specific overfishing definition developed under this section must be sufficient to prevent the stock from being overfished. Given this, NOAA does not believe it necessary to mandate a particular form for all specific overfishing definitions. In particular, for stocks whose biomass cannot be estimated reliably, it is difficult either to define a threshold biomass or to determine when such a threshold has been violated. In addition, § 602.11(c)(6) describes how an FMP must or may prescribe measures to prevent overfishing under the circumstances relevant to the form of the definition and the objectives of the FMP.

8. *Comment:* One commenter noted that it is sometimes difficult to define a threshold biomass, especially in the case of transboundary stocks or stocks exploited in a multispecies fishery.

Response: No change was made. The commenter is correct, and has pinpointed the reason that the guidelines allow for other forms of specific overfishing definitions. The general problems associated with management of transboundary stocks are also addressed in the guidelines for national standard 3 (§ 602.13).

9. *Comment:* One commenter suggested that the requirement for specifying an acceptable rebuilding time for overfished stocks is unrealistic when recruitment is uncertain.

Response: No change was made. NOAA recognizes that uncertainty involving any parameter will tend to make estimates of rebuilding time correspondingly uncertain. However, this fact does not remove the requirement to proceed with rebuilding at a reasonable rate. If a stock becomes overfished, national standard 1 implies that some sort of rebuilding program will be necessary. If left unconstrained, the rate of rebuilding theoretically could range between zero and the rate

corresponding to complete cessation of fishing. However, a rate near zero would obviously be incompatible with the intent of the Act. A Council and the Secretary should be able to agree on some higher rebuilding rate that is consistent with national standard 1 as well as with the objectives of the FMP in question.

10. *Comment:* One commenter objected to the use of "should" in proposed § 602.11(c)(2), with reference to Council actions when a stock or stock complex is approaching an overfished condition. The commenter felt it not in the spirit of standard 1 to leave addressing this issue to Council discretion.

Response: NOAA agrees in principle, and has moved this paragraph to a new section addressing actions of the Council to prevent overfishing (§ 602.11(c)(6)). No change was made in the wording, however, because circumstances surrounding such an event are time-dependent and may call for a range of management measures difficult to include prospectively in an FMP beyond the intention to reduce fishing mortality. One of the purposes of the SAFE document(s) is to provide a tracking tool for the status of the stocks. In addition, under certain conditions, the use of framework management measures, which provide the public with advance notice of potential responses to specific conditions, assist in quick action when necessary. (See guidelines for national standard 6, § 602.16, and Phase V of the *Operational Guidelines*, 1983.)

11. *Comment:* One commenter suggested deleting the word "targeted" from proposed § 602.11(c)(2), suggesting that, as written, the paragraph would allow a Council to avoid managing bycatch and discard levels that could be significant contributors to overfishing.

Response: NOAA did not intend to allow this, and has deleted "targeted", as requested. (See "Overview of policy" section, Appendix A to Subpart B, and responses to comments #14 and #19 for a further discussion of bycatch and sources of fishing mortality.)

12. *Comment:* One commenter suggested that the guidance to the Council be changed to provide detailed population dynamics descriptions of the factors involved in the various rates, such as natural mortality, etc.

Response: No change was made. This guidance would not be required, as such material would be available in the SAFE documentation.

13. *Comment:* One commenter recommended including a mandate to take action to control habitat degradation.

Response: Habitat needs are recognized as critical to recruitment, but they are more appropriately addressed in other areas of the Council's responsibility and are not directly related to the definition of overfishing. However, proposed § 602.11(c)(5), which is now found at § 602.11(c)(7), addresses alterations in environment/habitat conditions. It was modified to reference the new discretionary responsibilities of the Councils under section 302(i) of the Act concerning the effect of activities undertaken by any State or Federal agency that may affect fisheries under Council authority.

14. *Comment:* It was suggested that the words "targeted effort" in proposed § 602.11(c)(2)(iii) be changed to "harvest."

Response: The word "targeted" has been deleted because measures to address overfishing need to consider all sources of fishing mortality. The word "effort" was retained as it more directly relates to fishing mortality. Harvest usually refers only to fish landed and does not include discard mortality. (See "Overview of policy" section.)

15. *Comment:* A commenter suggested that "should" be changed to "must" in the second sentence of proposed § 602.11(c)(3) so that it would read, "Councils must build into the definition appropriate consideration of risk."

Response: NOAA accepts this suggestion as being consistent with the requirements of national standard 6, and with the intent of this revision to emphasize conservation.

16. *Comment:* One commenter requested that language be added to proposed § 602.11(c)(3) to require that the record be clear (a) on the factors considered in arriving at a Council's judgment in cases where scientific data are severely limited, and (b) on any efforts made to include time specific milestones to identify and gather the needed data on which informed decisions could be made.

Response: NOAA agrees that Council decisions should be publicly documented. However, no change in language was made here. The guidelines for national standard 7 (§ 602.17) and the requirements of NEPA and E.O. 12291 provide the relevant direction on the questions of analysis and public record. (See the response to comment #37 on the general question of timeliness of data.)

17. *Comment:* The same commenter wished to add similar language to proposed § 602.11(c)(4) to ensure that the decision elements of Secretarial approval or disapproval be made a part of the record of the FMP.

Response: No change was made. The Secretary's consideration of the elements in § 602.11(c)(4), which is now found at § 602.11(c)(5), will be part of the administrative record for the FMP or amendment.

18. *Comment:* One commenter was concerned that the criteria for Secretarial approval include consideration of Indian Treaty rights as stated in the Act.

Response: This comment brought to NOAA's attention the ambiguity of this section as proposed. The first sentence has been redrafted to read, "Secretarial approval or disapproval *of the definition of overfishing* will be based on * * *". Consideration of Indian Treaty rights as a factor in developing FMPs is unaffected by these revisions to § 602.11; supplementary guidance is available in the *Operations Guidelines*, Feb. 1988 revision. (See "Overview of policy" section.)

19. *Comment:* Four commenters noted an apparent inconsistency between the mandate to prevent overfishing and the exception in proposed § 602.11(c)(6) that would allow overfishing of certain stocks. One suggested that this is "bycatch" overfishing and should be identified as such. Another contended that the risk of overfishing the bycatch species should determine the allowable fishing effort on the primary species. The fourth commenter suggested that any bycatch that reduces food supplies and thereby indirectly causes marine mammals, birds, or other species to be reduced below their optimum sustainable level also should constitute overfishing under the Act.

Response: No change was made. This paragraph does not allow overfishing of any species for commercial reasons in violation of national standard 1, and does not indicate lack of concern for individual populations within a fishery management unit (FMU). Rather, the intent of this paragraph is to allow mixed species fishing under certain conditions. First, the deliberate overfishing of a "minor stock component" must be identified. Second, the excepted type of overfishing must be demonstrated by analysis to result in net benefits not only to the fishery but to the Nation. This analysis should indicate who would benefit, who would suffer losses and to what extent (in quantitative terms, if possible), and why such overfishing is warranted. Finally, it must be demonstrated that the excepted overfishing would not cause any stock component, regardless of FMU, to require protection under the ESA. (See "Overview of policy" section and Appendix A to Subpart B.)

NOAA does not agree that the excepted type of overfishing should be labeled bycatch overfishing because it confuses different forms of bycatch mortality. For example, the term bycatch may apply to species caught out of season, catches of an undesired sex of a species or at a time when product recovery rates are low, or prohibited species catches.

Causing the depletion of any species of marine mammals is not authorized by this section. (See response to comment #4 for discussion of predator/prey relationships, of the general relationship between the MMPA and the Magnuson Act and of the Councils' need to be cognizant of the interaction of fishery management with marine mammal populations.)

20. *Comment:* One commenter complained that proposed § 602.11(c)(7) apparently proscribed designation of "growth" or "pulse" overfishing as overfishing under national standard 1. Another wished to delete reference to "pulse" fishing entirely, and two commenters suggested that "growth", "localized", or "pulse" overfishing should be recognized as overfishing under national standard 1 if they tend to preclude achievement of OY.

Response: No change was made. This paragraph (now designated as § 602.11(c)(3)) states simply that these fishing patterns do not necessarily constitute overfishing under national standard 1, which the guidelines define generally as a rate of fishing that jeopardizes the long-term capacity of a stock or stock complex to produce MSY on a continuing basis. To the extent that it satisfies this general definition in particular cases, either "growth" or "pulse" overfishing may constitute overfishing under national standard 1. For example, "growth" overfishing could qualify as overfishing under national standard 1 if it resulted in the removal of too many fish before they are old enough to spawn. In the case of either "growth" or "pulse" overfishing, the key point is not so much the pattern of fishing (*e.g.*, pulse vs. sustained) as the rate of fishing mortality and its effect on the long-term capacity of the stock to produce MSY. A Council may recommend conservation and management measures to prevent or permit these effects, depending on the objectives of a particular FMP and the specific definition of overfishing established for the stock or stock complex under management. (See § 602.11(c)(6)(v) and Appendix A to Subpart B.)

Although the guidelines acknowledge that the specified fishing patterns may constitute overfishing under national standard 1 in particular cases, it should be noted that this would occur only when such patterns jeopardized the long-term capacity of a stock or stock complex to produce MSY on a continuing basis, not simply because they tended to preclude achievement of OY. Although it is theoretically possible for the prevention of overfishing to coincide with the achievement of OY, national standard 1 distinguishes between the two. That distinction is maintained in the guidelines.

21. *Comment:* In the proposed rule, NOAA specifically solicited comment on the implementation provisions. One commenter wanted to ensure a time certain for submissions of amendments to existing FMPs; another wanted to make sure that all FMPs were included in the requirement for an overfishing definition, existing and future. In addition, at the Council Chairmen's meeting on January 27–28, 1989, the Chairmen made some recommendations regarding the phase-in schedule: (a) That the 18-month implementation date be retained; (b) that any FMP or amendment in progress at the time of the effective date of the revised rule must include a definition of overfishing; (c) that within 3 months of the effective date, each Council advise the Secretary of its intent to comply, and if, in its opinion, any FMP is currently consistent with the provisions of § 602.11(c) without amendment; (d) that within 12 months of the effective date, the Secretary review such FMP and notify the Council of concurrence or disagreement; and (e) that within 15 months of the effective date, each Council submit an amendment to any FMP not currently consistent with the provisions of § 602.11(c) to bring it into compliance.

Response: Section 602.11(c)(8) is revised to accommodate all the commenters' recommendations, except that the time for Secretarial review and notification to a Council regarding concurrence or disagreement with its opinion as to consistency is reduced from 12 months from the effective date to 3 months from receipt of a Council's letter of advice. This allows Councils more time to develop amendments as necessary before the 18-month implementation date.

22. *Comment:* Two commenters suggested that paragraph 602.11(e) should include an explicit statement of the relationship between ABC and overfishing.

Response: No change was made. The paragraph states that ABC must be "acceptable"; therefore, ABC can never imply a harvest level that would constitute overfishing. In particular, when overfishing is defined in terms of a threshold, the paragraph makes clear that ABC must equal zero whenever the threshold is violated.

23. *Comment:* Two commenters suggested that specification of ABC should be mandatory for each stock covered by an FMP.

Response: No change was made. Since ABC is not mentioned in the Act, its specification is viewed only as one possible step in the process of preventing overfishing while achieving OY. NOAA's aim in drafting this section was to reflect how ABC is defined and used by those Councils that currently employ the concept.

24. *Comment:* Two commenters suggested that paragraph 602.11(e) incorporate language requiring the use of conservative estimates, by choosing either the scientific parameter estimates that yield the lowest reasonable value of ABC, or the lowest reasonable estimates of the parameters listed in the second sentence of § 602.11(e)(2).

Response: No change was made. Since the Councils that currently employ the ABC concept do not require the use of conservative estimates, such language is not included in this section (see response to comment #23). Since ABC is used as a step in determining OY and consequent management measures, its specification is susceptible to the requirements of national standard 6 to consider uncertainty in parameter estimates.

25. *Comment:* One commenter wanted to change the definition of OY to include benefits other than food production and recreational opportunities.

Response: No change was made. The definition of OY at § 602.11(f)(1) is the statutory definition and includes other modifiers—economic, social, or ecological factors. (Also see § 602.11(f)(3).)

26. *Comment:* A Council suggested deletion of the phrase "at reasonable prices" from the goal of providing seafood to consumers in § 602.11(f)(2)(i). The commenter considered the goal unrealistic since forces such as international markets, which are beyond a Council's purview, control consumer prices.

Response: NOAA agrees, and has deleted the phrase.

27. *Comment:* In § 602.11(f)(3), a commenter suggested removing the example of a factor that might not be relevant in every fishery.

Response: NOAA has deleted the phrase "for instance, there may be no Indian treaty rights".

28. *Comment:* A commenter wanted to emphasize the value of both commercial

and recreational fisheries as economic factors in § 602.11(f)(3)(i).

Response: NOAA accommodated this comment by deleting the adjective "industrial" so that the value of all types of fisheries is listed.

29. *Comment:* Several commenters had suggestions for additional social factors to be listed in § 602.11(f)(3)(ii).

Response: No change was made. This paragraph contains examples; the list is not meant to be exclusive.

30. *Comment:* A commenter requested an addition to § 602.11(f)(4) to address the possibility of a closure before the end of a fishing season. The comment proposed inclusion of an OY reserve and suballocations of quotas as part of the OY specification. Such measures would preclude fishermen in one geographic location from harvesting the entire quota and denying fishing opportunities to fishermen in a different geographic location. Two commenters sought inclusion of the allocative reserve concept in § 602.11(g)(3) to serve the same purpose.

Response: No change was made. NOAA agrees that OY reserves and geographic suballocations are useful management measures. The problems they address fall under the allocation concerns of national standard 4 and are covered by the guidelines at § 602.14.

31. *Comment:* The word "multiyear" in § 602.11(f)(4)(iv) was considered superfluous by one commenter, who noted that all FMPs are now multiyear.

Response: NOAA agrees, and has deleted the word "multiyear."

32. *Comment:* Two commenters objected to the allusion to a "fabricated MSY" in § 602.11(f)(4)(v).

Response: NOAA deleted the phrase as misleading. The Act does require that OY be derived from MSY; however, NOAA recognizes that there are cases where the specification of MSY may be either impossible or irrelevant. This may be due to lack of assessment data (as in minor components of a mixed-species fishery), or because biological resiliency or high fecundity of some stocks or other fishery characteristic may allow OY to become a descriptive statement only, making a numerical calculation of MSY unnecessary. Nevertheless, NOAA wants to emphasize that OY must still be derived from biological information, as for example, the proportional abundance of associated species.

33. *Comment:* One commenter asked whether the analysis required by § 602.11(f)(5) is part of the FMP at the time it is first submitted for public review.

Response: The answer is yes.

34. *Comment:* A commenter questioned who would judge the requirement in § 602.11(g)(1) that management measures be enforceable; the Council does not want "existing and arguably outmoded enforcement capabilities" to control the Council's choice of management measures.

Response: The Department of Commerce and the Coast Guard are charged with enforcement of fishery regulations. Their judgments about the practicality and effectiveness of proposed management measures in terms of enforceability should be given serious consideration by the Councils. Guidance may be found in Part V of the *MFCMA Handbook.*

Section 602.12 Standard 2

35. *Comment:* A commenter noted that annual SAFE reports for some fisheries may not be necessary as the rate of change in the resource may be slow.

Response: No change was made. Accumulation of new information on any resource may be slow and not indicate a need for an annual SAFE report. This is why NOAA proposed at § 602.12(e)(1)(i) that the SAFE report be reviewed at least annually to determine if updating or changing it in any way is warranted.

36. *Comment:* One commenter complained that the guidelines were unclear on who determines the membership of the "SAFE panel," while another saw no need to require Council and NMFS representatives on any team charged with drafting a SAFE report.

Response: The periodic production of SAFE reports as proposed contemplated no SAFE panel or committee *per se.* Councils and their associated NMFS Regional Offices may determine how best to acquire and analyze data and write the report. Any combination of talent from Council, State, university, Federal or other sources may be used for this purpose. NOAA agrees, therefore, that since there is no need to require representatives of any specific group on a SAFE report drafting team, the parenthetical phrase "(but at a minimum must include Council and NMFS representatives)" is unnecessary and has deleted it.

37. *Comment:* Some commenters suggested that SAFE reports should be prepared at least 6 months prior to the beginning of a fishing year to allow time for the rulemaking process to use the report as a technical basis for regulations that must be in place at the beginning of the fishing year.

Response: No change was made. Timeliness is part of the information objective of the SAFE report. Ideally, the most recent edition of a SAFE report, with the most current data, should be available to a Council in time for their determination of harvest levels or OYs for any fishing year. However, publication of a SAFE report 6 months in advance of this time may obviate use of the best available information. For example, if 5 or 6 months are necessary to do fish stock and industry surveys and analyses of the resulting data, requiring the summary of these data 6 months prior to a Council's determination of harvest levels will assure that this determination will be based on data that are about a year old when they are used and prevent the use of any more recent analyses, if available. This would place the Council in a position of managing next year's fishery with last year's data when some data from the current year also may be available. For this reason, the guidelines do not impose specific timeliness criteria on the production of SAFE reports. Deadlines for the completion of these reports are better set by the Councils in consultation with NMFS and other scientists who are most familiar with the production and analysis of fishery data for making management decisions.

38. *Comment:* Several commenters expressed concern with the contents of the SAFE report. Some comments expressed a need for more specific attention for marine recreational fisheries and non-consumptive users of fishery resources in the suggested list of types of information for inclusion in SAFE reports. For example, some reviewers thought that the term "recreational fishing industries" excluded such non-consumptive activities as photography, diving, research, having a recreational fishing experience, and other aesthetic uses. Other comments focused on a need to include more economic descriptors such as demand curves for recreational fishing and each commercial fishing product, estimates of producer and consumer surplus for recreational and commercial fisheries, and economic or catch rate threshold levels at which fishermen will choose to enter or leave a fishery. Some comments suggested inclusion of more biological information. One comment criticized the suggested SAFE report contents as failing to link the report to the specification of overfishing required under § 602.11(c). The commenter wrote that the report should focus on a determination of fishing mortality rate and stock conditions relative to the specific criteria for overfishing. Another commenter stated that the report must include assessments of how fisheries affect and are affected by marine mammals, birds, and other non-target species.

Response: The kinds of data or information that NOAA contemplated in proposing the SAFE report are those that are necessary for understanding the biological condition of the harvested fish stock and the socioeconomic condition of the persons or businesses that rely on such harvests. NOAA listed some types of data that may be useful for this purpose by way of example. Recognizing that such a listing within the body of the guideline text might be perceived as mandatory or exclusive, NOAA moved the language describing examples of SAFE information to the Appendix. Thus, it should be clear that the lists (a) are not mandatory; (b) are not intended to be exclusive of other kinds of data that may have particular pertinence in certain areas; additional types of information—such as those recommended for inclusion in SAFE reports by the commenters—may be included if needed and available.

NOAA agrees that emphasis appears to be placed on commercial and extractive uses of marine fisheries. Therefore, in § 602.12(e)(1), the phrase "the recreational and commercial fishing industries" has been changed to read "recreational and commercial interests," and the appropriate Appendix language describing examples of SAFE information was modified accordingly. NOAA also agrees that to insert "commercially" before "harvested" (in what is now found in Appendix A to Subpart B under paragraph (2)(b) of the SAFE Report section) clarifies an ambiguity.

Essentially, any kind of information needed by a Council and the Secretary for periodic understanding of the state of the fishery would be appropriate for inclusion in a SAFE report. NOAA cautions, however, that while SAFE reports should present comprehensive and synoptic information on a fishery, they need not be encyclopedic. SAFE reports should present objective, scientifically based information relevant to the fishery.

To satisfy the purposes of the SAFE report, NOAA intends to allow maximum flexibility to Councils, in cooperation with the appropriate NMFS Regions and Centers, to develop the contents and organization of SAFE reports in the most reasonable or logical way for the fisheries being described. This may or may not include a discussion on how close a fishery is to a condition of being overfished.

39. *Comment:* One commenter was concerned about the identification of data deficiencies and suggested that SAFE reports recommend ways to resolve such deficiencies and a priority for securing identified data needs.

Response: No change was made. A discussion of data needs may be included if deemed necessary for making management decisions. Such discussions may be more relevant in a separate document, however, as the SAFE report is intended to display a synopsis of known or existing information over time.

Classification

The Under Secretary of Commerce for Oceans and Atmosphere has determined that this rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. The guidelines indicate how NOAA interprets the fishery management principles in the national standards of the Magnuson Act. They describe a range of acceptable management measures that could be adopted by the Councils, approved by the Secretary, and subsequently translated into regulations. The impact upon the public occurs through specific management measures contained within specific FMPs; until a specific FMP is developed, there is no basis for evaluating the consequences of these guidelines.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis (RFA) was not prepared. Any economic impacts on small entities will be addressed through RFAs for individual FMPs.

These amendments to the national standard guidelines do not themselves affect the human environment. Thus, NOAA has determined that no environmental impact statement (EIS) or environmental assessment (EA) is required. FMPs and FMP amendments developed as a result of these guidelines will require EISs or EAs.

This rule contains no collection-of-information requirements subject to the Paperwork Reduction Act.

Because the guidelines will have no direct regulatory impact upon the public, NOAA has determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management program.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 602

Fisheries, Fishing.

Dated: July 12, 1989.

James W. Brennan,

Assistant Administrator for Fisheries.

For the reasons set forth in the preamble, 50 CFR Part 602 is revised as follows:

PART 602—GUIDELINES FOR FISHERY MANAGEMENT PLANS

Subpart A—General

Sec.
602.1 Purpose and scope.
602.2 Style guide.

Subpart B—National Standards

602.10 General.
602.11 National Standard 1—Optimum Yield.
602.12 National Standard 2—Scientific information.
602.13 National Standard 3—Management Units.
602.14 National Standard 4—Allocations.
602.15 National Standard 5—Efficiency.
602.16 National Standard 6—Variations and Contingencies.
602.17 National Standard 7—Costs and Benefits.
Appendix A to Subpart B—Explanatory Material.

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General

§ 602.1 Purpose and scope.

The Act requires that any fishery management plan or amendment prepared by either the Regional Fishery Management Councils or the Secretary of Commerce, and any regulations issued to implement a fishery management plan or amendment, shall be consistent with seven national standards, the other provisions of the Act, and any other applicable law. Part 602 implements those portions of the Act that pertain to the development, content, submission, amendment, review, and implementation of fishery management plans, and establishes guidelines to assist in achieving the required consistency.

§ 602.2 Style guide.

(a) *Definitions.* The terms used in these guidelines have the meanings that are prescribed in section 3 of the Act. In addition, the following definitions apply:

The Act—the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*), also known as the FCMA, or the Magnuson Act.

Council—Regional Fishery Management Council, as established by the Act.

Secretary—Secretary of Commerce.

(b) *Abbreviations.*

ABC—acceptable biological catch.

DAH—estimated domestic annual harvest.
DAP—estimated domestic annual processing.
EY—equilibrium yield.
EEZ—exclusive economic zone.
FMP—fishery management plan.
JVP—joint venture processing.
MSY—maximum sustainable yield.
OY—optimum yield.
PMP—preliminary fishery management plan.
TAC—total allowable catch.
TALFF—total allowable level of foreign fishing.

(c) *Word usage.* (1) *Must* is used to denote an obligation to act; it is used primarily when referring to requirements of the Act, the logical extension thereof, or of other applicable law.

(2) *Should* is used to indicate that an action or consideration is strongly recommended to fulfill the Secretary's interpretation of the Act, and is a factor reviewers will look for in evaluating an FMP.

(3) *May* is used in a permissive sense.

(4) *May not* is proscriptive; it has the same force as *must not*.

(5) *Will* is used descriptively.

(6) *Shall* is not used at all, except when quoting the statutory language of each standard. "Must" is used instead of "shall" to avoid confusion with the future tense.

(7) *Could* is used when giving examples, in a hypothetical, permissive sense.

(8) *Can* is used to mean "is able to," as distinguished from "may."

(9) *Examples* are given by way of illustration and further explanation. They are not inclusive lists; they do not limit options.

(10) *Analysis*, as a paragraph heading, signals more detailed guidance as to the type of discussion and examination an FMP should contain to demonstrate compliance with the standard in question.

(11) *Determine* is used when referring to OY.

(12) *Adjust* is used when establishing a deviation from MSY for biological reasons, such as in establishing ABC, TAC, or EY.

(13) *Modify* is used when the deviation from MSY is for the purpose of determining OY, in accord with relevant economic, social, or ecological factors.

(14) *Industry* includes recreational and commercial fishing and the harvesting, processing, and marketing sectors.

Subpart B—National Standards

§ 602.10 General.

(a) *Purpose.* (1) This subpart establishes guidelines, based on the national standards, to assist in the development and review of FMPs, amendments, and regulations prepared by the Councils and the Secretary.

(2) In developing FMPs, the Councils have the initial authority to ascertain factual circumstances, to establish management objectives, and to propose management measures that will achieve the objectives. The Secretary will determine whether the proposed management objectives and measures are consistent with the national standards, other provisions of the Act, and other applicable law. The Secretary has an obligation under section 301(b) of the Act to inform the Councils of the Secretary's interpretation of the national standards so that they will have an understanding of the basis on which FMPs will be reviewed.

(3) The national standards are statutory principles that must be followed in any FMP. The guidelines summarize Secretarial interpretations that have been and will be, applied under these principles. The guidelines are intended as aids to decisionmaking; FMPs formulated according to the guidelines will have a better chance for expeditious Secretarial review, approval, and implementation. FMPs that are in substantial compliance with the guidelines, the Act, and other applicable law must be approved.

(b) *Fishery management objectives.* (1) Each FMP, whether prepared by a Council or by the Secretary, should identify what the FMP is designed to accomplish, i.e., the management objectives to be attained in regulating the fishery under consideration. In establishing objectives, Councils balance biological constraints with human needs, reconcile present and future costs and benefits, and integrate the diversity of public and private interests. If objectives are in conflict, priorities should be established among them.

(2) How objectives are defined is important to the management process. Objectives should address the problems of a particular fishery. The objectives should be clearly stated, practicably attainable, framed in terms of definable events and measurable benefits, and based upon a comprehensive rather than a fragmentary approach to the problems addressed. An FMP should make a clear distinction between objectives and the management measures chosen to achieve them. The objectives of each FMP provide the context within which the Secretary will judge the consistency of an FMP's conservation and management measures with the national standards.

§ 602.11 National Standard 1—Optimum Yield.

(a) *Standard 1.* Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.

(b) *General.* The determination of OY is a decisional mechanism for resolving the Act's multiple purposes and policies, for implementing an FMP's objectives, and for balancing the various interests that comprise the national welfare. OY is based on MSY, or on MSY as it may be adjusted under paragraph (d)(3) of this section. The most important limitation on the specification of OY is that the choice of OY—and the conservation and management measures proposed to achieve it—must prevent overfishing.

(c) *Overfishing.* (1) Overfishing is a level or rate of fishing mortality that jeopardizes the long-term capacity of a stock or stock complex to produce MSY on a continuing basis. Each FMP must specify, to the maximum extent possible, an objective and measurable definition of overfishing for each stock or stock complex covered by that FMP, and provide an analysis of how the definition was determined and how it relates to reproductive potential.

(2) The definition of overfishing for a stock or stock complex may be developed or expressed in terms of a minimum level of spawning biomass ("threshold"); maximum level or rate of fishing mortality; or formula, model, or other measurable standard designed to ensure the maintenance of the stock's productive capacity. Overfishing must be defined in a way to enable the Council and the Secretary to monitor and evaluate the condition of the stock or stock complex relative to the definition.

(3) Different fishing patterns can produce a variety of effects on local and areawide abundance, availability, size, and age composition of a stock. Some of these fishing patterns have been called "growth," "localized," or "pulse" overfishing; however, these patterns are not necessarily overfishing under the national standard 1 definition, which focuses on recruitment and long-term reproductive capacity. (Also see paragraph (c)(6)(v) of this section and Appendix A to Subpart B of this part.)

(4) Overfishing definitions must be based on the best scientific information available. Councils must build into the definition appropriate consideration of risk, taking into account uncertainties in estimating domestic harvest, stock conditions, or the effects of

environmental factors (see § 602.16 of this part). In cases where scientific data are severely limited, the Councils' informed judgment must be used, and effort should be directed to identifying and gathering the needed data (see §§ 602.12 and 605.14 of this part).

(5) Secretarial approval or disapproval of the overfishing definition will be based on consideration of whether the proposal:

(i) Has sufficient scientific merit;

(ii) Is likely to result in effective Council action to prevent the stock from closely approaching or reaching an overfished status;

(iii) Provides a basis for objective measurement of the status of the stock against the definition; and

(iv) Is operationally feasible.

(6) In addition to a specific definition of overfishing for each stock or stock complex, an FMP must contain management measures necessary to prevent overfishing.

(i) If overfishing is defined in terms of a threshold biomass level, the Council must ensure that fishing effort does not cause spawning biomass to fall and remain below that threshold.

(ii) If overfishing is defined in terms of a maximum fishing mortality rate, the Council must ensure that fishing effort on that stock does not cause the maximum rate to be exceeded.

(iii) If data indicate that an overfished condition exists, a program must be established for rebuilding the stock over a period of time specified by the Council and acceptable to the Secretary.

(iv) If data indicate that a stock or stock complex is approaching an overfished condition, the Council should identify actions or combination of actions to be undertaken in response.

(v) Depending on the objectives of a particular FMP and the specific definition of overfishing established for the stock or stock complex under management, a Council may recommend measures to prevent or permit pulse, localized, or growth overfishing. (See Appendix A to Subpart B of this part for explanatory material.)

(7) Significant adverse alterations in environment/habitat conditions increase the possibility that fishing effort will contribute to a stock collapse. Care should be taken to identify the cause of any downward trends in spawning stock sizes or average annual recruitment. (See Appendix A to Subpart B of this part for discussion of indicators of existing or impending overfishing.)

(i) Whether these trends are caused by environmental changes or by fishing effort, the only direct control provided by the Act is to reduce fishing mortality.

(ii) Unless the Council asserts, as supported by appropriate evidence, that reduced fishing effort would not alleviate the problem, the FMP must include measures to reduce fishing mortality regardless of the cause of the low population level.

(iii) If man-made environmental changes are contributing to the downward trends, in addition to controlling effort Councils should recommend restoration of habitat and other ameliorative programs, to the extent possible, and consider whether to take action under section 302(i) of the Act.

(8) There are certain limited exceptions to the requirement of preventing overfishing. Harvesting the major component of a mixed fishery at its optimum level may result in the overfishing of a minor (smaller or less valuable) stock component in the fishery. A Council may decide to permit this type of overfishing if it is demonstrated by analysis (paragraph (f)(5) of this section) that it will result in net benefits to the Nation, and if the Council's action will not cause any stock to require protection under the Endangered Species Act (ESA).

(9) After February 25, 1991, all new and existing FMPs should contain a definition of overfishing for the stock or stock complex managed under the affected FMP.

(i) An FMP or amendment being developed and not yet adopted as final by the Councils at the time these guidelines become effective should contain a definition of overfishing when submitted for approval by the Secretary.

(ii) On or before September 22, 1989, Councils should examine each existing FMP as amended and notify the Regional Director if, in the opinion of the Council, the FMP is currently consistent with the provisions of § 602.11(c) without amendment. Within 90 days of notification, the Secretary will review any such FMP for consistency with § 602.11(c), and notify the Council of concurrence or disagreement.

(iii) On or before November 23, 1990, an amendment should be prepared and submitted to the Secretary for all existing FMPs not approved under paragraph (b)(9)(ii) of this section to add a definition of overfishing for the stock or stock complex managed under the affected FMP.

(d) *MSY.* (1) MSY is the largest average annual catch or yield that can be taken over a significant period of time from each stock under prevailing ecological and environmental conditions.

(2) MSY may be presented as a range of values. One MSY may be specified for a related group of species in a mixed-species fishery. Since MSY is a long-term average, it need not be specified annually, but must be based on the best scientific information available.

(3) MSY may be only the starting point in providing a realistic biological description of allowable fishery removals. MSY may need to be adjusted because of environmental factors, stock peculiarities, or other biological variables, prior to the determination of OY. An example of such an adjustment is determination of ABC.

(e) *ABC.* (1) ABC is a preliminary description of the acceptable harvest (or range of harvests) for a given stock or stock complex. Its derivation focuses on the status and dynamics of the stock, environmental conditions, other ecological factors, and prevailing technological characteristics of the fishery.

(2) When ABC is used, its specification constitutes the first step in deriving OY from MSY. Unless the best scientific information available indicates otherwise (see § 602.12 of this part), ABC should be no higher than the product of the stock's natural mortality rate and the biomass of the exploitable stock. If a threshold has been specified for the stock, ABC must equal zero when the stock is at or below that threshold (see paragraph (c)(2) of this section). ABC may be expressed in numeric or nonnumeric terms.

(f) *OY*—(1) *Definition.* The term "optimum" with respect to the yield from a fishery, means the amount of fish which will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities; and which is prescribed as such on the basis of the maximum sustainable yield from each fishery, as modified by any relevant economic, social, or ecological factors (section 3(18)(b) of the Act).

(2) *Values in determination.* In determining the greatest benefit to the Nation, two values that should be weighed are food production and recreational opportunities (section 3(18)(a) of the Act). They should receive serious attention as measures of benefit when considering the economic, ecological, or social factors used in modifying MSY to obtain OY.

(i) "Food production" encompasses the goals of providing seafood to consumers, maintaining an economically viable fishery, and utilizing the capacity of U.S. fishery resources to meet nutritional needs.

(ii) "Recreational opportunities" includes recognition of the importance of the quality of the recreational fishing

experience, and of the contribution of recreational fishing to the national, regional, and local economies and food supplies.

(3) *Factors relevant to OY.* The Act's definition of OY identifies three categories of factors to be used in modifying MSY to arrive at OY: economic, social, and ecological (section 3(18)(b) of the Act). Not every factor will be relevant in every fishery. For some fisheries, insufficient information may be available with respect to some factors to provide a basis for corresponding modifications to MSY.

(i) *Economic factors.* Examples are promotion of domestic fishing, development of unutilized or underutilized fisheries, satisfaction of consumer and recreational needs, and encouragement of domestic and export markets for U.S.-harvested fish. Some other factors that may be considered are the value of fisheries, the level of capitalization, operating costs of vessels, alternate employment opportunities, and economies of coastal areas.

(ii) *Social factors.* Examples are enjoyment gained from recreational fishing, avoidance of gear conflicts and resulting disputes, preservation of a way of life for fishermen and their families, and dependence of local communities on a fishery. Among other factors that may be considered are the cultural place of subsistence fishing, obligations under Indian treaties, and world-wide nutritional needs.

(iii) *Ecological factors.* Examples are the vulnerability of incidental or unregulated species in a mixed-species fishery, predator-prey or competitive interactions, and dependence of marine mammals and birds or endangered species on a stock of fish. Equally important are environmental conditions that stress marine organisms, such as natural and man-made changes in wetlands or nursery grounds, and effects of pollutants on habitat and stocks.

(4) *Specification.* (i) The "amount of fish" that constitutes the OY need not be expressed in terms of numbers or weight of fish. The economic, social, or ecological modifications to MSY may be expressed by describing fish having common characteristics, the harvest of which provides the greatest overall benefit to the Nation. For instance, OY may be expressed as a formula that converts periodic stock assessments into quotas or guideline harvest levels for recreational, commercial, and other fishing. OY may be defined in terms of an annual harvest of fish or shellfish having a minimum weight, length, or other measurement. OY may also be expressed as an amount of fish taken only in certain areas, or in certain seasons, or with particular gear, or by a specified amount of fishing effort. In the case of a mixed-species fishery, the incidental-species OY may be a function of the directed catch, or absorbed into an OY for related species.

(ii) If a numerical OY is chosen, a range or average may be specified.

(iii) In a fishery where there is a significant discard component, the OY may either include or exclude discards, consistent with the other yield determinations.

(iv) The OY specification can be converted into an annual numerical estimate to establish any TALFF and to analyze impacts of the management regime. There should be a mechanism in an FMP for periodic reassessment of the OY specification, so that it is responsive to changing circumstances in the fishery. (See § 602.12(e).)

(v) The determination of OY requires a specification of MSY. However, even where sufficient scientific data as to the biological characteristics of the stock do not exist, or the period of exploitation or investigation has not been long enough for adequate understanding of stock dynamics, or where frequent large-scale fluctuations in stock size make this concept of limited value, the OY should be based on the best scientific information available.

(5) *Analysis.* An FMP must contain an analysis of how its OY specification was determined (section 303(a)(3) of the Act). It should relate the explanation of overfishing in paragraph (c) of this section to conditions in the particular fishery, and explain how its choice of OY and conservation and management measures will prevent overfishing in that fishery. If overfishing is permitted under paragraph (c)(8) of this section, the analysis must contain a justification in terms of overall benefits and an assessment of the risk of the species or stock component reaching a "threatened" or "endangered" status. A Council must identify those economic, social, and ecological factors relevant to management of a particular fishery, then evaluate them to arrive at the modification (if any) of MSY. The choice of a particular OY must be carefully defined and documented to show that the OY selected will produce the greatest benefit to the Nation.

(g) *OY as a target.* (1) The specification of OY in an FMP is not automatically a quota or ceiling, although quotas may be derived from the OY where appropriate. OY is a target or goal; an FMP must contain conservation and management measures, and provisions for information collection, that are designed to achieve OY. These measures should allow for practical and effective implementation and enforcement of the management regime, so that the harvest is allowed to reach but not to exceed OY by a substantial amount. The Secretary has an obligation to implement and enforce the FMP so that OY is achieved. If management measures prove unenforceable—or too restrictive or not rigorous enough to realize OY—they should be modified; an alternative is to reexamine the adequacy of the OY specification.

(2) Exceeding OY does not necessarily constitute overfishing, although they might coincide. Even if no overfishing resulted, continual harvest at a level above a fixed-value OY would violate national standard 1 because OY was exceeded (not achieved) on a continuing basis.

(3) Part of the OY may be held as a reserve to allow for uncertainties in estimates of stock size and of DAH or to solve operational problems in achieving (but not exceeding) OY. If an OY reserve is established, an adequate mechanism should be included in the FMP to permit timely release of the reserve to domestic or foreign fishermen, if necessary.

(h) *OY and foreign fishing.* Section 201(d) of the Act provides that fishing by foreign nations is limited to that portion of the OY that will not be harvested by vessels of the United States.

(1) *DAH.* Councils must consider the capacity of, and the extent to which, U.S. vessels will harvest the OY on an annual basis. Estimating the amount that U.S. fishing vessels will actually harvest is required to determine the surplus.

(2) *DAP.* Each FMP must identify the capacity of U.S. processors. It must also identify the amount of DAP, which is the sum of two estimates:

(i) The amount of U.S. harvest that domestic processors will process. This estimate may be based on historical performance and on surveys of the expressed intention of manufacturers to process, supported by evidence of contracts, plant expansion, or other relevant information; and

(ii) The amount of fish that will be harvested by domestic vessels, but not processed (*e.g.*, marketed as fresh whole fish, used for private consumption, or used for bait).

(3) *JVP.* When DAH exceeds DAP, the surplus is available for JVP. JVP is derived from DAH.

§ 602.12 National Standard 2—Scientific Information.

(a) *Standard 2.* Conservation and management measures shall be based upon the best scientific information available.

(b) *FMP development.* The fact that scientific information concerning a fishery is incomplete does not prevent the preparation and implementation of an FMP (see related §§ 602.13(d)(2) and 602.17(b)).

(1) Scientific information includes, but is not limited to, information of a biological, ecological, economic, or social nature. Successful fishery management depends, in part, on the timely availability, quality, and quantity of scientific information, as well as on the thorough analysis of this information, and the extent to which the information is applied. If there are conflicting facts or opinions relevant to a particular point, a Council may choose among them, but should justify the choice.

(2) FMPs must take into account the best scientific information available at the time of preparation. Between the initial drafting of an FMP and its submission for final review, new information often becomes available. This new information should be incorporated into the final FMP where practicable; but it is unnecessary to start the FMP process over again unless the information indicates that drastic changes have occurred in the fishery that might require revision of the management objectives or measures.

(c) *FMP implementation.* (1) An FMP must specify whatever information fishermen and processors will be required or requested to submit to the Secretary. Information about harvest within State boundaries, as well as in the EEZ, may be collected if it is needed for proper implementation of the FMP and cannot be obtained otherwise. The FMP should explain the practical utility of the information specified in monitoring the fishery, in facilitating inseason management decisions, and in judging the performance of the management regime; it should also consider the effort, cost, or social impact of obtaining it.

(2) An FMP should identify scientific information needed from other sources to improve understanding and management of the resource and the fishery.

(3) The information submitted by various data suppliers about the stocks(s) throughout its range or about the fishery should be comparable and compatible, to the maximum extent possible.

(d) *FMP amendment.* FMPs should be amended on a timely basis, as new information indicates the necessity for change in objectives or management measures.

(e) *Stock Assessment and Fishery Evaluation (SAFE) Report.* (1) The SAFE report is a document or set of documents that provides Councils with a summary of the most recent biological condition of species in the fishery management unit (FMU), and the social and economic condition of the recreational and commercial fishing interests and the fish processing industries. It summarizes, on a periodic basis, the best available scientific information concerning the past, present, and possible future condition of the stocks and fisheries being managed under Federal regulation.

(i) The Secretary has the responsibility to assure that a SAFE report or similar document is prepared, reviewed annually, and changed as necessary for each FMP. The Secretary or Councils may utilize any combination of talent from Council, State, Federal, university, or other sources to acquire and analyze data and produce the SAFE report.

(ii) The SAFE report provides information to the Councils for determining annual harvest levels from each stock, documenting significant trends or changes in the resource and fishery over time, and assessing the relative success of existing State and Federal fishery management programs. In addition, the SAFE report may be used to update or expand previous environmental and regulatory impact documents, and ecosystem and habitat descriptions.

(iii) Each SAFE report must be scientifically based, and cite data sources and interpretations.

(2) Each SAFE report should contain information on which to base harvest specifications (see Appendix A to Subpart B of this part for examples).

(3) Each SAFE report should contain information on which to assess the social and economic condition of the persons and businesses that rely on the use of fish resources, including fish processing industries (see Appendix A to Subpart B of this part for examples).

(4) Each SAFE report may contain additional economic, social, and ecological information pertinent to the success of management or the achievement of objectives of each FMP (see Appendix A to Subpart B of this part for examples).

§ 602.13 National Standard 3—Management Units.

(a) *Standard 3.* To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

(b) *General.* The purpose of this standard is to induce a comprehensive approach to fishery management. The geographic scope of the fishery, for planning purposes, should cover the entire range of the stocks(s) of fish, and not be overly constrained by political boundaries. Wherever practicable, an FMP should seek to manage interrelated stocks of fish.

(c) *Unity of management.* Cooperation and understanding among entities concerned with the fishery (e.g., Councils, States, Federal government, international commissions, foreign nations) are vital to effective management. Where management of a fishery involves multiple jurisdictions, coordination among the several entities should be sought in the development of an FMP. Where a range overlaps Council areas, one FMP to cover the entire range is preferred. The Secretary designates which Council or Councils will prepare the FMP, under section 304(f) of the Act.

(d) *Management unit.* The term "management unit" means a fishery or that portion of a fishery identified in an FMP as relevant to the FMP's management objectives.

(1) *Basis.* The choice of a management unit depends on the focus of the FMP's objectives, and may be organized around biological, geographic, economic, technical, social, or ecological perspectives. For example:

(i) *Biological*—could be based on a stock(s) throughout its range.

(ii) *Geographic*—could be an area.

(iii) *Economic*—could be based on a fishery supplying specific product forms.

(iv) *Technical*—could be based on a fishery utilizing a specific gear type or similar fishing practices.

(v) *Social*—could be based on fishermen as the unifying element, such as when the fishermen pursue different species in a regular pattern throughout this year.

(vi) *Ecological*—could be based on species that are associated in the ecosystem or are dependent on a particular habitat.

(2) *Conservation and management measures.* FMPs should include conservation and management measures for that part of the management unit within U.S. water, although the Secretary can ordinarily implement

them only within the EEZ. The measures need not be identical for each geographic area within the management unit, if the FMP justifies the differences. A management unit may contain, in addition to regulated species, stocks of fish for which there is not enough information available to specify MSY and OY or to establish management measures, so that data on these species may be collected under the FMP.

(e) *Analysis.* To document that an FMP is as comprehensive as practicable, it should include discussions of the following:

(1) The range and distribution of the stocks, as well as the patterns of fishing effort and harvest.

(2) Alternative management units and reasons for selecting a particular one. A less-than-comprehensive management unit may be justified if, for example, complementary management exits or is planned for a separate geographic area or for a distinct use of the stocks, or if the unmanaged portion of the resource is immaterial to proper management.

(3) Management activities and habitat programs of adjacent States and their effects on the FMP's objectives and management measures. Where State action is necessary to implement measures within State waters to achieve FMP objectives, the FMP should identify what State action is necessary, discuss the consequences of State inaction or contrary action, and make appropriate recommendations. The FMP should also discuss the impact that Federal regulations will have on State management activities.

(4) Management activities of other countries having an impact on the fishery, and how the FMP's management measures are designed to take into account these impacts. International boundaries may be dealt with in several ways. For example:

(i) By limiting the management unit's scope to that portion of the stock found in U.S. waters;

(ii) By estimating MSY for the entire stock and then basing the determination of OY for the U.S. fishery on the portion of the stock within U.S. waters; or

(iii) By referring to treaties or cooperative agreements.

§ 602.14 National Standard 4—Allocations.

(a) *Standard 4.* Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be: (1) Fair and equitable to all such fishermen; (2) reasonably calculated to promote conservation; and (3) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

(b) *Discrimination among residents of different States.* An FMP may not differentiate among U.S. citizens, nationals, resident aliens, or corporations on the basis of their State of residence. An FMP may not incorporate or rely on a State statute or regulation that discriminates against residents of another State. Conservation and management measures that have different effects on persons in various geographic locations are permissible, if they satisfy the other guidelines under standard 4. Examples of these precepts are:

(1) An FMP that restricted fishing in the FCZ to those holding a permit from State X would violate standard 4 if State X issued permits only to its own citizens.

(2) An FMP that closed a spawning ground might disadvantage fishermen living in the State closest to it, because they would have to travel farther to an open area, but the closure could be justified under standard 4 as a conservation measure with no discriminatory intent.

(c) *Allocation of fishing privileges.* An FMP may contain management measures that allocate fishing privileges if such measures are necessary or helpful in furthering legitimate objectives or in achieving the OY, and if the measures conform with paragraphs (c)(3) (i) through (iii) of this section.

(1) *Definition.* An "allocation" or "assignment" of fishing privileges is a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals. Any management measure (or lack of management) has incidental allocative effects, but only those measures that result in direct distributions of fishing privileges will be judged against the allocation requirements of standard 4. Adoption of an FMP that merely perpetuates existing fishing practices may result in an allocation, if those practices directly distribute the opportunity to participate in the fishery. Allocations of fishing privileges include, for example, per-vessel catch limits, quotas by vessel class and gear type, different quotas or fishing seasons for recreational and commercial fishermen, assignment of ocean areas to different gear users, and limitation of permits to a certain number of vessels or fishermen.

(2) *Analysis of allocations.* Each FMP should contain a description and analysis of the allocations existing in the fishery and of those made in the FMP. The effects of eliminating an existing allocation system should be examined. Allocation schemes considered but rejected by the Council should be included in the discussion. The analysis should relate the recommended allocations to the FMP's objectives and OY specification, and discuss the factors listed in paragraph (c)(3) of this section.

(3) *Factors in making allocations.* An allocation of fishing privileges must be fair and equitable, must be reasonably calculated to promote conservation, and must avoid excessive shares. These tests are explained in paragraphs (c)(3) (i) through (iii) of this section:

(i) *Fairness and equity.* (A) An allocation of fishing privileges should be rationally connected with the achievement of OY or with the furtherance of a legitimate FMP objective. Inherent in an allocation is the advantaging of one group to the detriment of another. The motive for making a particular allocation should be justified in terms of the objectives of the FMP; otherwise, the disadvantaged user groups or individuals would suffer without cause. For instance, an FMP objective to preserve the economic status quo cannot be achieved by excluding a group of long-time participants in the fishery. On the other hand, there is a rational connection between an objective of harvesting shrimp at their maximum size and closing a nursery area to trawling.

(B) An allocation of fishing privileges may impose a hardship on one group if it is outweighed by the total benefits received by another group or groups. An allocation need not preserve the status quo in the fishery to qualify as "fair and equitable," if a restructuring of fishing privileges would maximize overall benefits. The Council should make an initial estimate of the relative benefits and hardships imposed by the allocation, and compare its consequences with those of alternative allocation schemes, including the status quo. Where relevant, judicial guidance and government policy concerning the rights of treaty Indians and aboriginal Americans must be considered in determining whether an allocation is fair and equitable.

(ii) *Promotion of conservation.* Numerous methods of allocating fishing privileges are considered "conservation and management measures" under section 303 of the Act. An allocation scheme may promote conservation by encouraging a rational, more easily managed use of the resource. Or it may promote conservation (in the sense of wise use) by optimizing the yield, in terms of size, value, market mix, price, or economic or social benefit of the product.

(iii) *Avoidance of excessive shares.* An allocation scheme must be designed to deter any person or other entity from acquiring an excessive share of fishing privileges, and to avoid creating conditions fostering inordinate control, by buyers or sellers, that would not otherwise exist.

(iv) *Other factors.* In designing an allocation scheme, a Council should consider other factors relevant to the FMP's objectives. Examples are economic and social consequences of the scheme, food production, consumer interest, dependence on the fishery by present participants and coastal communities, efficiency of various types of gear used in the fishery, transferability of effort to and impact on other fisheries, opportunity for new participants to enter the fishery, and enhancement of opportunities for recreational fishing.

§ 602.15 National Standard 5—Efficiency.

(a) *Standard 5.* Conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(b) *Efficiency in the utilization of resources*—(1) *General.* The term "utilization" encompasses harvesting, processing, and marketing, since management decisions affect all three sectors of the industry. The goal of promoting efficient utilization of fishery resources may conflict with other legitimate social or biological objectives of fishery management. In encouraging efficient utilization of fishery resources, this standard highlights one way that a fishery can contribute to the Nation's benefit with the least cost to society: given a set of objectives for the fishery, an FMP should contain management measures that result in as efficient a fishery as is practicable or desirable.

(2) *Efficiency.* In theory, an efficient fishery would harvest the OY with the minimum use of economic inputs such as labor, capital, interest, and fuel. Efficiency in terms of aggregate costs then becomes a conservation objective, where "conservation" constitutes wise use of all resources involved in the fishery, not just fish stocks.

(i) In an FMP, management measures may be proposed that allocate fish among different groups of individuals or establish a system of property rights. Alternative measures examined in searching for an efficient outcome will result in different distributions of gains and burdens among identifiable user groups. An FMP should demonstrate that management measures aimed at efficiency do not simply redistribute gains and burdens without an increase in efficiency.

(ii) Management regimes that allow a fishery to operate at the lowest possible cost (e.g. fishing effort, administration, and enforcement) for a particular level of catch and initial stock size are considered efficient. Restrictive measures that unnecessarily raise any of those costs move the regime toward inefficiency. Unless the use of inefficient techniques or the creation of redundant fishing capacity contributes to the attainment of other social or biological objectives, an FMP may not contain management measures that impede the use of cost-effective techniques of harvesting, processing, or marketing, and should avoid creating strong incentives for excessive investment in private sector fishing capital and labor.

(c) *Limited access.* A "system for limiting access," which is an optional measure under section 303(b) of the Act, is a type of allocation of fishing privileges that may be used to promote economic efficiency or conservation. For example, limited access may be used to combat overfishing, overcrowding, or overcapitalization in a fishery to achieve OY. In an unutilized or underutilized fishery, it may be used to reduce the chance that these conditions will adversely affect the fishery in the future, or to provide adequate economic return to pioneers in a new fishery. In some cases, limited entry is a useful ingredient of a conservation scheme, because it facilitates application and enforcement of other management measures.

(1) *Definition.* Limited access (or limited entry) is a management technique that attempts to limit units of effort in a fishery, usually for the purpose of reducing economic waste, improving net economic return to the fishermen, or capturing economic rent for the benefit of the taxpayer or the consumer. Common forms of limited access are licensing of vessels, gear, or fishermen to reduce the number of units of effort, and dividing the total allowable catch into fishermen's quotas (a stock-certificate system). Two forms (i.e., Federal fees for licenses or permits in excess of administrative costs, and taxation) are not permitted under the Act.

(2) *Factors to consider.* The Act ties the use of limited access to the achievement of optimum yield. An FMP that proposes a limited access system must consider the factors listed in section 303(b)(6) of the Act and in § 602.14(c)(3) of these guidelines. In addition, it should consider the criteria for qualifying for a permit, the nature of the interest created, whether to make the permit transferable, and the Act's limitation on returning economic rent to the public under section 304(d)(1). The FMP should also discuss the costs of achieving an appropriate distribution of fishing privileges.

(d) *Analysis.* An FMP should discuss the extent to which overcapitalization, congestion, economic waste, and inefficient techniques in the fishery reduce the net benefits derived from the management unit and prevent the attainment and appropriate allocation of OY. It should also explain in terms of the FMP's objectives any restriction placed on the use of efficient techniques of harvesting, processing, or marketing. If during FMP development the Council considered imposing a limited-entry system, the FMP should analyze the Council's decision to recommend or reject limited access as a technique to achieve efficient utilization of the resources of the fishing industry.

(e) *Economic allocation.* This standard prohibits only those measures that distribute fishery resources among fishermen on the basis of economic factors alone, and that have economic allocation as their only purpose. Where conservation and management measures are recommended that would change the economic structure of the industry or the economic conditions under which the industry operates, the need for such measures must be justified in light of the biological, ecological, and social objectives of the FMP as well as the economic objectives.

§ 602.16 National Standard 6—Variations and Contingencies.

(a) *Standard 6.* Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

(b) *Conservation and management.* Each fishery exhibits unique uncertainties. The phrase "conservation and management" implies the wise use of fishery resources through a management regime that includes some protection against these uncertainties. The particular regime chosen must be flexible enough to allow timely response to resource, industry, and other national and regional needs. Continual data acquisition and analysis will help the development of management measures to compensate for variations and to reduce the need for substantial buffers. Flexibility in the management regime and the regulatory process will aid in responding to contingencies.

(c) *Variations.* (1) In fishery management terms, variations arise from biological, social, and economic occurences, as well as from fishing practices. Biological uncertainties and lack of knowledge can hamper attempts to estimate stock size and strength, stock location in time and space, environmental/habitat changes, and ecological interactions. Economic uncertainty may involve changes in foreign or domestic market conditions, changes in operating costs, drifts toward overcapitalization, and economic perturbations caused by changed fishing patterns. Changes in fishing practices, such as the introduction of new gear, rapid increases or decreases in harvest effort, new fishing strategies, and the effects of new management techniques, may also create uncertainties. Social changes could involve increases or decreases in recreational fishing, or the movement of people into or out of fishing activities due to such factors as age or educational opportunities.

(2) Every effort should be made to develop FMPs that discuss and take into account these vicissitudes. To the extent practicable, FMPs should provide a suitable buffer in favor of conservation. Allowances for uncertainties should be factored into the various elements of an FMP. Examples are:

(i) *Reduce OY.* Lack of scientific knowledge about the condition of a stock(s) could be reason to reduce OY.

(ii) *Establish a reserve.* Creation of a reserve may compensate for uncertainties in estimating domestic harvest, stock conditions, or environmental factors.

(iii) *Adjust management techniques.* In the absence of adequate data to predict the effect of a new regime, and to avoid creating unwanted variations, a Council could guard against producing drastic changes in fishing patterns, allocations, or practices.

(iv) *Highlight habitat conditions.* FMPs may address the impact of pollution and the effects of wetland and estuarine degradation on the stocks of fish; identify causes of pollution and habitat degradation and the authorities having jurisdiction to regulate or influence such activities; propose recommendations that the Secretary will convey to those authorities to alleviate such problems; and state the views of the Council on unresolved or anticipated issues.

(d) *Contingencies.* Unpredictable events—such as unexpected resource surges or failures, fishing effort greater than anticipated, disruptive gear conflicts, climatic conditions, or environmental catastrophes—are best handled by establishing a flexible management regime that contains a range of management options through which it is possible to act quickly without amending the FMP or even its regulations.

(1) The FMP should describe the management options and their consequences in the necessary detail to guide the Secretary in responding to changed circumstances, so that the Council preserves its role as policy-setter for the fishery. The description enable the public to understand what may happen under the flexible regime, and to comment on the options.

(2) FMPs should include criteria for the selection of management measures, directions for their application, and mechanisms for timely adjustment of management measures comprising the regime. For example, an FMP could include criteria that allow the Secretary to open and close seasons, close fishing grounds, or make other adjustments in management measures.

(3) Amendment of a flexible FMP would be necessary when circumstances in the fishery change substantially, or when a Council adopts a different management philosophy and objectives.

§ 602.17 National Standard 7—Costs and Benefits.

(a) *Standard 7.* Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

(b) *Necessity of Federal management—(1) General.* The principle that not every fishery needs regulation is implicit in this standard. The Act does not require Councils to prepare FMPs for each and every fishery—only for those where regulation would serve some useful purpose and where the present or future benefits of regulation would justify the costs. For example, the need to collect data about a fishery is not, by itself, adequate justification for preparation of an FMP, since there are less costly ways to gather the data (see § 602.13(d)(2)). In some cases, the FMP preparation process itself, even if it does not culminate in a document approved by the Secretary, can be useful in supplying a basis for management by one or more coastal States.

(2) *Criteria.* In deciding whether a fishery needs management through regulations implementing an FMP, the following general factors should be considered, among others:

(i) The importance of the fishery to the Nation and to the regional economy.

(ii) The condition of the stock or stocks of fish and whether an FMP can improve or maintain that condition.

(iii) The extent to which the fishery could be or is already adequately managed by States, by State/Federal programs, by Federal regulations pursuant to FMPs or international commissions, or by industry self-regulation, consistent with the policies and standards of the Act.

(iv) The need to resolve competing interests and conflicts among user groups and whether an FMP can further that resolution.

(v) The economic condition of a fishery and whether an FMP can produce more efficeint utilization.

(vi) The needs of a developing fishery, and whether an FMP can foster orderly growth.

(vii) The costs associated with an FMP, balanced against the benefits (see paragraph (d) of this section as a guide).

(c) *Alternative management measures.* Management measures should not impose unnecessary burdens on the economy, on individuals, on private or public organizations, or on Federal, State, local governments. Factors such as fuel costs, enforcement costs, or the burdens of collecting data may well suggest a preferred alternative.

(d) *Analysis.* The supporting analyses for FMPs should demonstrate that the benefits of fishery regulation are real and substantial relative to the added research, administrative, and enforcement costs, as well as costs to the industry of compliance. In determining the benefits and costs of management measures, each management strategy considered and its impacts on different user groups in the fishery should be evaluated. This requirement need not produce an elaborate, formalistic cost/benefit analysis. Rather, an evaluation of effects and costs, especially of differences among workable alternatives including the status quo, is adequate. If quantitative estimates are not possible, qualitative estimates will suffice.

(1) *Burdens.* Management measures should be designed to give fishermen the greatest possible freedom of action in conducting business and pursuing recreational opportunities that are consistent with ensuring wise use of the resources and reducing conflict in the fishery. The type and level of burden placed on user groups by the regulations need to be identified. Such an examination should include, for example: capital outlays; operating and maintenance costs; reporting costs; administrative, enforcement, and information costs; and prices to consumers. Management measures may shift costs from one level of government to another, from one part of the private sector to another, or from the government to the private sector.

Redistribution of costs through regulations is likely to generate controversy. A discussion of these and any other burdens placed on the public through FMP regulations should be a part of the FMP's supporting analyses.

(2) *Gains.* The relative distribution of gains may change as a result of instituting different sets of alternatives, as may the specific type of gain. The analysis of benefits should focus on the specific gains produced by each alternative set of management measures, including the status quo. The benefits to society that result from the alternative management measures should be identified, and the level of gain assessed.

Appendix A to Subpart B—Explanatory Material

Purpose of Appendix

The purpose of the Appendix is to preserve, as codified reference, useful explanatory material and supplementary policy rationale originally published as preamble to the various editions of the proposed and final 50 CFR Part 602 rules.

Overview of Approach

The guidelines are designed to allow for innovative policy evolution in response to new biological, social, economic, or ecological circumstances, and set out the benchmarks of current fishery management policy under the Act. NOAA believes the guidelines should supply the Councils, as fishery management planners, a means to assess their work in developing and documenting their decisions. To that end, certain sections of the guidelines specifically address requirements and options for contents of an FMP, supplementing and drawing into relevant focus provisions of Phase II, *Operational Guidelines for the Fishery Management Process,* February 1988 revision. These sections are usually indicated by the paragraph heading "analysis," within which is given more detailed guidance as to the kind of discussion and examination that an FMP should contain to demonstrate consistency with the standard in question. Words within these sections were carefully chosen to convey levels of effort and information commensurate with need (*e.g.,* "consider," "take into account," "explain," "discuss," "examine," "analyze," "identify.")

Fishery management decisions affect the users of fish resources, the government, and the individual taxpayer/consumer. Members of user groups, those responsible for implementing a fishery management regime, and the general citizenry need to know the reasons for decisions that affect them. Thus, it is important that certain issues (particularly those that are controversial) undergo enough examination and discussion to illuminate the options, demonstrate the rationales, and justify the final choice of management regime. This implicit democratic principle of accountability in government underlies and reinforces the Secretary's statutory responsibility to make informed judgments regarding an FMP's consistency with the national standards. The principle is reflected in the philosophies of the National Environmental Policy Act (NEPA), the Regulatory Flexibility Act (RFA), the Paperwork Reduction Act (PRA), and Executive Order (E.O.) 12291—all of which seek accountability in regulatory action.

The guidelines contain a style guide, which explains the use of specific words to distinguish the advisory, explanatory, or obligatory nature of the guideline language, and presents other words within the precise context of the guidelines. The guidelines seek as much precision as possible in the use of the words "should" and "must". "Must" is used to denote an obligation to act and is used primarily when referring to requirements of the Act, the logical extension thereof, or other applicable law. "Should" is used to indicate that an action or consideration is strongly recommended to fulfill the Secretary's interpretation of the Act, and is a factor that reviewers will look for in evaluating an FMP.

The guidelines seek to provide options rather than establish requirements. Lists are not intended to be exclusive; they provide examples or illustrations of the kind of information, discussion, or examination/analysis useful in demonstrating consistency with the standard in question. The guidelines also seek to avoid universal application of a specific provision, except as required by law, so that the maximum accommodation to regional or individual fishery characteristics can be achieved within the standards.

The guidelines make clear that FMPs in substantial compliance with the guidelines, the Act, and other applicable law must be approved. The guidelines are meant as a protection for everyone in the FMP system. Their acceptance and use are a matter of practical utility for the Councils and of public commitment of the agency to consistent application of the policies stated. As an aggregetion of policies developed through creative Council responses to regional fishery management problems, they are a way of sharing the empirical knowledge gained over the life of the Act. In summary, the guidelines are intended as an aid to decisionmaking, with responsible conservation and management of a valued national resource as the goal.

Overview of the 1989 Revision

Changes made in the guidelines since they were issued in 1983 address national standards 1 and 2 only, and were motivated largely by the need, articulated by the 1986 Fishery Management Study and others, for a conservation standard. Consequently, changes in the guidelines emphasize the resource, not its allocation, and focus on overfishing, not on optimum yield (OY). Importantly, the guidelines do not change the relationship between the two as implied in the Act: While overfishing necessarily violates the Act's requirement to achieve (OY), exceeding OY does not necessarily violate the Act's prohibition of overfishing. If a stock is in good condition, the specification of OY may serve various goals besides prevention of overfishing. Exceeding the OY may interfere with achievement of those goals but not affect the reproductive potential of the stock. On the other hand, if OY is the amount of fish that can safely be removed from the stock, exceeding OY may well constitute overfishing.

The revised guidelines for standard 1 set forth a comprehensive overfishing concept within which each Council must establish a specific, measurable definition of overfishing for each stock or stock complex covered by an FMP. That concept is based on the premise that irreversible damage to a resource's availability to recover in a reasonable period of time is unacceptable, and that fishing on a stock at a level that severely compromises that stock's future productivity is counter to the goals of the Magnuson Act. Councils are provided with the flexibility needed to develop a definition of overfishing appropriate to individual stocks or species, as long as it is defined in a way that allows the Councils and the Secretary to evaluate the condition of the stock relative to the definition. General criteria are set forth as a basis for Secretarial review of the definition; these criteria address the overfishing definition specifically and do not change the Secretary's obligation to review FMPs/amendments for consistency with all the national standards, the Act, and other applicable law.

The revised guidelines for standard 2 describe a Stock Assessment and Fishery Evaluation (SAFE) document or set of documents prepared or aggregated periodically, whereby Councils can obtain an objective overview of the status of stocks and fisheries under management. The SAFE document would ideally include all the types of data necessary for the determination of OY, as well as provide the basis for a Council's treatment of the overfishing/OY relationship. While the Secretary has the responsibility for assuring that the SAFE report is produced, it is not intended to be exclusively authored by NOAA. The report can be produced by any combination of talent from academic, government, or other sources. The report should be reviewed annually, but is not required to be revised annually except as there have been new developments or significant changes in a fishery. The itemized examples of data listed in this Appendix are not mandatory, but—as appropriate to the fishery, taking into consideration the need to establish priorities within budget constraints—the best available data must be addressed. Several Councils currently produce such fishery reviews, which generally provide the kinds of information suggested in this Appendix under Standard 2.

The SAFE report does not necessarily call for new information or new procedures; the intent is to provide, in one reference, an aggregation or a summary of the best biological, social, economic, and ecological information available to a Council when needed: (a) To determine annual harvest levels or OYs for species in each fishery management unit (FMU), and (b) to evaluate the effectiveness of its management in preventing overfishing as defined by the Council. Such a report can provide a useful tracking tool for assessing the relative achievement of FMP objectives by

establishing a time-series data base indicating the relative health of stocks and the interests dependent on them.

Standard 1

Overfishing

Overfishing is a relative term; it cannot be defined in isolation from its biological, social, economic, or ecological consequences, nor from its relationship to given management objectives. The prevention of overfishing has as its general goal the protection of a stock's productive capacity.

Significant downward trends in spawning stock size or average annual recruitment to the fishery may signal that overfishing is occurring, although such trends can also be symptomatic of other phenomena, for example the development of a new fishery. Ascertaining whether these trends signal overfishing is a judgment based on scientific stock assessment, which in turn may be based on data obtained from harvesters and processors (through logbooks, catch samples, interviews, weigh-out slips, etc.), resource surveys, or other scientific research.

NOAA also recognizes that a decline in stock size or abundance may occur independent of fishing pressure and that adverse changes in essential habitat may increase the risk that fishing effort will contribute to a stock collapse. Regardless of the cause of a decline, however, the Act limits a Council's authority in addressing the situation. The only direct control available under the Act is to adjust fishing mortality, which may be accomplished in several ways (*e.g.*, by establishing or adjusting time/area closures or limits on catch, mesh size, vessel days, or the number of vessels entering the fishery). If man-made environmental changes are contributing to the downward trends, in addition to controlling effort Councils should recommend restoration of habitat and other ameliorative programs, to the extent possible, and consider whether to take action under section 302(i) of the Act.

Different fishing patterns can produce a variety of effects on local and areawide abundance, availability, size, and age composition of a stock. Some of these fishing patterns have been called "growth," "localized," or "pulse" overfishing; however, these patterns are not necessarily overfishing under national standard 1. A Council may recommend conservation and management measures to prevent or permit these effects, depending on the objectives of a particular FMP and the specific definition of overfishing established for the stock or stock complex under management.

The term "growth overfishing" often refers to the practice of taking too many fish from a cohort (year class) before the cohort has attained its maximum potential biomass. The term can also refer to harvesting at a fishing mortality rate in excess of that which maximizes the expected yield from a cohort given a particular age or size of recruitment. "Growth overfishing" can be practiced deliberately, for example to capitalize on demand for a smaller product, or inadvertently, for example by using nonselective gear. "Growth overfishing" may be discouraged or disallowed by regulating fishing gear or imposing time/area closures, to force fishing on larger or more marketable fish.

"Localized overfishing" occurs when a stock is depleted within a confined portion of its range. For example, this fishing pattern can occur in reef fisheries when concentrated fishing pressure reduces the population of a species or species complex inhabiting a particular reef or reef complex. An important characteristic of this fishing pattern is that it is often temporary; if fishing effort is reduced sufficiently, the remainder of the stock can often repopulate the depleted portion, reversing the condition.

"Pulse overfishing" can be tolerated under certain conditions. For example, it can sometimes be desirable for economic and social reasons to take a large amount of fish in a short time, and then to let the stock recover. In general, the key point in terms of national standard 1 is not so much the pattern of fishing (*e.g.*, pulse vs. sustained) as the rate of fishing mortality and its effect on the long-term capacity of the stock to produce MSY.

As management regimes become more comprehensive, the interrelationships of fishing pressures on target and nontarget (as well as major and minor) species will have to be addressed more directly. In determining allowable fishing levels, Councils should consider all sources of mortality on a stock, including non-targeted fishing, discards, and illegal catch. Because all removals from the stock, whether landed or unlanded, will affect spawning stock biomass levels now or in the near future, Councils should attempt to obtain estimates of all sources of mortality and consider these estimates in adjusting directed fishing levels. While the general expectation is for total fishing mortality on a stock to be managed such that overfishing does not occur, NOAA believes that rational management of multispecies fisheries includes acknowledgement of the fact that overharvesting minor components of these fisheries may be allowable in certain cases. The guidelines emphasize that such cases are characterized by two necessary conditions: (1) That analysis demonstrates positive net benefits to the Nation will result from overfishing the minor component(s), and (2) that such overharvest will not cause any stock to require protection under the Endangered Species Act.

NOAA believes that the overfishing sections of the guidelines are responsive to the findings of the Act and to subsequent studies urging a conservation standard—particularly when read in conjunction with the analysis provisions throughout the guidelines, and with the standard 6 guideline provisions for buffers, reserves, and framework FMP flexibility.

Maximum Sustainable Yield

Much of the past controversy concerning MSY has related to its adequacy as a management goal. As used in the Act, however, calculation of MSY is a only a baseline step in the overall process of determining OY. Recognizing that MSY must represent the underlying biological rationale for determination of OY in a wide variety of fisheries, the guidelines set forth a flexible framework for its calculation. Recognition of the need for flexibility in calculating MSY has come as a result of FMP review experience and Council innovation in adapting this concept to the characteristics of different fisheries.

It is clear that every attempt should be made to satisfy the Act's requirement for specification of MSY. However, there may be cases where scarcity of data or tentativeness of scientific understanding renders MSY specification impossible, or where biological resiliency or high fecundity of some stocks or other fishery characteristic may allow OY to become a descriptive statement only—making a numerical calculation of MSY unnecessary. In such cases, NOAA believes that Congressional intent is served if OY derives from the best biological information available, *e.g.*, the proportional abundance of associated species. Descriptive OYs should be convertible to annual numerical estimates for the purpose of deriving the total allowable level of foreign fishing (TALFF).

As a subsequent step in the process of determining OY, MSY may be adjusted (deviated from) for economic, social, or ecological reasons. One type of adjustment is illustrated by the concept of biologically acceptable catch (ABC), used by some Councils. ABC is an annually determined number that may be set lower or higher than MSY for a number of reasons, *e.g.*, to take advantage of abnormally high recruitment, to allow rebuilding of stocks, or to be conservative when there are inadequate data on the status of the stocks.

Optimum Yield

NOAA believes it important to keep the distinction clear between the two separate parts of standard 1: To prevent overfishing, and to achieve OY. The guidelines are written such that overfishing is an intrinsic limitation on OY; it is built into the OY determination, yet maintains a separate identity as a constraint. For example, exceeding a stock's OY by a small amount typically does not constitute overfishing when the stock is healthy. On the other hand, exceeding OY can coincidentally constitute overfishing when the margins of tolerance are low. Buffers to protect against overfishing because of uncertainty in estimating stock size or domestic harvest may be established in the form of reserves or a reduced OY.

Regardless of whether sustained harvesting at a level above OY constitutes overfishing, such a harvest pattern violates the Act's requirement to achieve OY on a continuing basis. In other words, national standard 1 is violated whenever the level of harvest is consistently and significantly different from OY, irrespective of whether that harvest level is above or below OY. While recognizing that OY might not be achieved every year in practice, NOAA believes that Councils must make every reasonable attempt to see that it is.

The guidelines also state that in the case of a mixed species fishery, the OY for incidental species may be a function of the directed catch, or absorbed into an OY for related species.

NOAA believes that achievement of OY includes giving foreign fishing vessels

reasonable opportunity to harvest the portion of the OY (TALFF) that would not otherwise be harvested by vessels of the United States. However, nothing precludes Councils from setting OY equal to DAH (effectively eliminating TALFF), if circumstances warranting such action are documented. For example, international economic concerns may influence the size of TALFF through their consideration as modifying factors in the determination of OY.

Standard 2

General

Application of this standard affects the operation of all the other standards. The quantity and quality of scientific information influence the establishment of MSY, OY, and management unit composition; they underlie allocative determinations, judgments of efficiency, adjustments for variations and contingencies, and evaluations of costs and benefits. The guidelines address the questions of timeliness, opposing bodies of opinion, and practical utility of the information specified, and emphasize the continuing need for information for monitoring and in-season adjustment decisions under a flexible management regime. A voluntary system of data collection is permissible, but requires a justification under the Paperwork Reduction Act, and is not covered under the Act's confidentiality provision. It is acceptable to collect data within State boundaries when needed for proper implementation of an FMP, but duplication of effort should be avoided. Successful data collection depends on the protection of confidential data, the public trust in that protection, and the public perception of the valid uses of those data. The validity of the entire process may hinge on the cooperative attitudes of constituents, the research community, and the relevant governmental institutions.

Stock Assessment and Fishery Evaluation (SAFE) Report

The SAFE Report provides Councils with a summary of the biological condition of species in the FMU, and the social and economic condition of recreational and commercial fishing interests and fish processing industries. The SAFE report summarizes, on a periodic basis, the best available scientific information concerning the past, present, and possible future condition of the stocks and fisheries being managed under Federal regulation.

(1) Each SAFE report should contain information on which to base harvest specifications, such as:

(a) Estimates of total biomass and/or spawning biomass for each stock in the FMU;

(b) Estimates of the annual surplus production (ASP) and MSY for each stock in the FMU;

(c) Description of the estimated biomass, ASP, and MSY in previous years relative to those estimates for the current or next year;

(d) Description of the model or assumptions on which these estimates are based and a discussion of the reliability of each estimate;

(e) If a stock is depleted, estimated time necessary to allow the stock to rebuild to the MSY-producing level, threshold level, or other specified level under various harvest levels and prevailing environmental conditions; and

(f) Significant changes (if any) in the habitat or ecosystem since it was last described in the FMP, an amendment to the FMP, or previous SAFE report.

(2) Each SAFE report should contain information on which to assess the economic and social condition of persons and businesses that rely on recreational and commercial use of fish resources, including fish processing industries, such as:

(a) Estimate of the amount of fish harvested from each stock in the FMU, by gear type and area, in the most recent 3 years and in the year immediately prior to implementation of the FMP governing fisheries for (or in) the FMU. If applicable, the amount of fish harvested in the same time period by wholly domestic, joint venture, and foreign fisheries;

(b) The approximate exvessel value of commercially harvested fish described in item (1) of this paragraph;

(c) Amounts and estimated value of each type of processed product derived from the harvested fish described in item (1) of this paragraph;

(d) Estimates of the numbers of commercial vessels, by gear type and in terms of individual vessels, involved in each fishery for (or in) the FMU;

(e) Estimates of the number of commercial fishermen employed in each fishery for (or in) the FMU;

(f) The numbers of processing plants, floating and shore based, individual and by product type, involved in processing the harvested fish described in item (1) of this paragraph;

(g) Estimates of the number of individuals employed in the processing plants described in item (6) of this paragraph;

(h) Estimates of the amount of fish harvested by recreational fishermen from the FMU;

(i) Estimates of the numbers of recreational fishermen who harvested fish from the FMU;

(j) Estimates of the number of charter vessels and party boats involved in the recreational fishery; and

(k) The estimated value of the recreational fishery for (or in) the FMU.

(3) Each SAFE report may contain additional economic, social, and ecological information pertinent to the success of management or the achievement of objectives of each FMP, such as:

(a) Enforcement actions taken and penalties assessed and collected over the most recent 3 years under an implemented FMP;

(b) Significant changes (if any) in State regulations pertinent to the FMU and their known or anticipated effects on stocks in the FMU;

(c) Significant changes (if any) in related fisheries which may affect the fishing effort for (or in) the FMU; and

(d) Potential conservation and management problems, their possible causes and solutions.

Standard 3

Standard 3's principle of comprehensive management works well with standard 7's principle of avoiding duplication. The emphasis in the revision is on the scope, composition, and unity of the management unit, and on coordination and cooperation rather than on potential jurisdictional tension. NOAA believes that range-wide planning should encourage active State participation in the planning process, and that such planning will provide clear direction to the States as to what is needed to implement the proposed management regime effectively. This is consistent with Council practice; the result should be greater compatibility between Federal and State management measures.

Because the potential for incompatibility does exist, however, the guidelines require an FMP to discuss the interrelationship between State management activities and the proposed Federal regime. Federal regulations supersede any conflicting State regulations of FCZ fishing (F/V American Eagle v. Alaska, No. 2227 (Alaska, Nov. 21, 1980)). State landing laws and other forms of indirect regulation of FCZ fishing may be affected by implementing an FMP. The required analysis focuses attention on these impacts and on the effect of inconsistent State action on attaining the objectives of the FMP. This latter discussion will assist in determining Secretarial responsibilities under section 306(b) of the Act.

Standard 3 calls for management of a "stock" throughout its range. NOAA feels that the use of the words "stock," "fishery," and "management unit" is significant, and has endeavored to use the appropriate term in the guidelines. A stock may be larger than the fishery, as is the case when only a portion of the stock is actively fished. A fishery may be larger than a stock, when more than one stock is fished together. The management unit may ignore a portion of fishery or stock when it includes a transboundary fishery or when a minor portion of the unit is fished within the area of authority of another Council. Examples are given of the perspectives around which a management unit may be organized.

Standard 4

To assist Councils in making what are usually the most controversial decisions within an FMP, NOAA has tried to confront the human issues surrounding fishery management directly, consistent with its concern for the economic and social consequences of regulation.

The guidelines address the "discrimination among residents of different States" issue as an extension of the Federal privilege and immunities" clause of the U.S. Constitution, which means that Councils may not rely on, nor incorporate within an FMP, a State law that discriminates against residents of a different State. Discrimination is a distinct concept from equity.

Fishery management is essentially a series of allocations among present users, between present and future users, between public and private interests. The guidelines define "allocation" for purposes of the standard as a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete groups of fishermen.

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Because only measures that meet the definition will be judged against the standard, this is a critical and sensitive differentiation.

Many management measures may have an *incidental* effect on the fishing privileges enjoyed by different groups of U.S. fishermen. Any quota has a distributive effect on present and future users through its impact on stock maintenance or rebuilding. Area closures may cause practical difficulties for smaller vessels or those located far from open areas. Seasonal quotas create difficulties for those whose economics of operation do not permit a long period of inactivity.

Direct allocations, by contrast, have been made by the several Councils in a variety of FMPs in the past: Quotas by classes of vessels (Atlantic groundfish), quotas for commercial and recreational fishermen (Atlantic mackerel), different fishing seasons for recreational and commercial fishermen (salmon), assignment of ocean areas to different gears (stone crab), and limiting permits to present users (surf clam). These direct allocations were approved under standard 4 because the Councils complied with the three statutory criteria of the standard in constructing their allocation schemes.

The guideline's definition is an attempted middle ground between all measures affecting fishing practices and measures designated as allocations in an FMP. The distribution must be direct and deliberate, but a Council could not disclaim an intent to allocate through a measure that had obvious and inevitable allocative effects.

NOAA believes that the required analysis of allocations and alternative schemes considered—including the status quo—will help to focus attention on the existing distribution of privileges and the alteration of that distribution which Federal management will impose. Each FMP should contain the Council's judgment on fairness and equity, conservation promotion, and possible monopolistic or oligopolistic effects of the proposed allocations.

The guidelines link "fairness" with FMP objectives and OY and acknowledge that fishing rights of treaty Indians and aboriginal Americans should be factored into Council judgments. Rational use of the resource is suggested as one way an allocation scheme may promote conservation. A more visible conservation purpose is illustrated by the moratorium on entry of new vessels into the surf clam fishery, initiated to mitigate a resource crisis in a stock

Standard 5

NOAA believes that, for purposes of standard 5, efficiency can be defined as the ability to produce a desired effect or product (or achieve an objective) with a minimum of effort, costs, or misuse of valuable biological and economic resources. In other words, Councils should choose management measures that achieve the FMP's objectives with minimum cost and burdens on society. NOAA believes that particular care should be taken when considering management of common property resources—where intensive individual market actions risk the "tragedy of the commons," a concept that comprises damage not only to the individual fisherman, but to the very resource on which he depends. Where there are no property rights, the role of government takes on the dimension of stewardship. NOAA also believes that managing at least cost to society and managing at least cost to the fisherman are not mutually exclusive. NOAA reads standards 5 and 7 together; to minimize costs of regulating also means to minimize costs to the industry of compliance.

The guidelines also recognize the difficulty inherent in reconciling particular economic and social needs of industry participants and consumers with this goal of efficiency. For example, maximizing employment opportunities by allowing continued overcapitalization instead of reducing effort might be considered inefficient in terms of an economic goal, but not necessarily in terms of a social goal. Or, when it is necessary to preserve a subsistence way of life or enjoyment of recreational fishing, application of the efficiency standard may not be appropriate. Councils thus may have to choose between—or rank—competing objectives.

NOAA believes that an FMP should not restrict the use of productive and cost-effective techniques of harvesting, processing or marketing, unless such restriction is necessary to achieve the conservation or social objectives of the FMP. For example, the Pacific salmon FMP provides for use of a barbless hook to decrease mortality of sublegal coho and chinook. The high seas salmon FMP requires heads on" landing for fin-clipped coho and chinook to insure recovery of coded wire tags used to establish a needed distribution data base. In both cases, reduction in efficiency was outweighed by the conservation benefit.

Administrative efficiency can be a factor in choosing between management regime alternatives, as well. The Gulf of Mexico shrimp FMP's cooperative Texas closure, for example, increased the effectiveness and efficiency of enforcement.

NOAA chose to address the questions surrounding "limited access" in the context of standard 5 rather than in standard 4, even though limited access, by its nature, is an allocative measure. In fact, the guidelines caution that any limited access system must be consistent with section 303(b)(6) of the Act and the standard 4 guidelines. NOAA believes that placement within standard 5 puts the emphasis more appropriately on concepts of economic efficiency in achieving OY rather than on the contentious issues of right of entry, or limit on effort, per se. The placing of limited access within the standard 5 context does not imply, however, that efficiency is always attained by limited access, nor that limited access is the most desirable method of attaining efficiency, nor that efficiency is the only purpose for limited access, nor that limited entry has always resulted in the benefits listed in the guidelines.

Standard 6

NOAA recognizes that each fishery exhibits unique uncertainties, and that the unpredictable nature of the fishery resource caused by vulnerability to changing conditions and unforeseeable events makes long-term planning difficult. Long-term objectives are more easily attainable in the more stable fisheries. The guidelines clarify that it is possible to compensate for variations by establishing buffers; protection against contingencies is urged through use of flexibility in the regulatory process.

Standard 7

The principles of standard 7 coincide with many earnest and recently intense efforts of NOAA and the Councils to streamline the FMP process. As more FMPs have come on line, the costs of enforcement and of collecting data for monitoring, while reduced per FMP, have increased in total. The rising costs of fishing, due in part to dependence on petroleum-based products, has intensified the need to consider the impact of potentially burdensome regulations. Thus, it has become necessary to be more precise in evaluating the costs to industry and to government, to support comprehensive management, and to work toward a flexible regulatory structure.

NOAA believes that the requirements of E.O. 12291 and other regulatory reform legislation quite appropriately focus attention on the threshold question of the actual need for management through regulation. Even when a Council believes there is an advantage to managing a fishery, growing public concern over excessive Federal regulation of private activities and over the need to reduce the cost of government emphasizes the responsibility to ensure that FMPs are developed only for those fisheries where the need for Federal regulation can be clearly demonstrated. For these reasons, the guidelines propose criteria to assist in making these threshold decisions.

NOAA recognizes that the wide diversity of fisheries and of management objectives increases the difficulties of devising a quantitative cost/benefit analysis for fishery management measures. However, under the guidelines, the types of analyses suggested under standards 4 and 5 would be the first steps in evaluating relative distribution of gains and burdens produced by each alternative set of management measures. While weight of intangibles such as recreational enjoyment, habitat protection, or social dislocation often cannot be expressed in dollar terms, NOAA believes they should be considered and described as explicitly as possible.

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federal register

Monday
July 24, 1989

Part III

Environmental Protection Agency

Pesticides Required To Be Reregistered; List C; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP-34003; FRL 3619-9]

Pesticides Required To Be Reregistered; List C

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is publishing a list (List C) of pesticide active ingredient cases (consisting of one or more chemically-related active ingredients) that are required to be reregistered under the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This is the third in a series of four such lists required by the Act. In addition to listing the pesticides, this notice discusses the significance of inclusion on List C. Inclusion on this list does not affect the registration status of any pesticide product. Publication of List C in the **Federal Register** initiates a process of accelerated reregistration and data call-in for products containing the listed pesticide active ingredients.

FOR FURTHER INFORMATION CONTACT:

By mail: Jay S. Ellenberger, Special Review and Reregistration Division (H7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Office location and phone number: Room 728, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (1-800-552-8879).

SUPPLEMENTARY INFORMATION:

I. Reregistration of Pesticides

Section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1972, required that all registered pesticides be reregistered in accordance with new standards for registration contained in section 3(c)(5). These include, among other things, a determination by the Agency that the use of the pesticide will not cause unreasonable adverse effects on the environment [3(c)(5) (C) and (D)].

EPA established a Registration Standards process in 1980 to accomplish reregistration. Under this process, the Agency evaluates the existing scientific data base underlying an active ingredient, identifies in a Registration Standard document missing data needed to complete the assessment, and after acquiring all necessary data from registrants, would ultimately make a decision whether to reregister products and under what conditions and restrictions. Under this process, begun in 1980, EPA has evaluated approximately 25 pesticide active ingredients per year, and has, since 1987, initiated rereviews (termed Second Round Reviews) of pesticides with substantially complete data bases at the rate of approximately 10 per year. At that rate, the reregistration of all pesticide products would extend well beyond the year 2000.

II. FIFRA Amendments of 1988

On October 25, 1988, the President signed a new law, the FIFRA Amendments of 1988, which, among other things, makes significant changes in the way EPA will carry out its responsibility to reregister currently registered pesticides. Section 4 of FIFRA, as amended, mandates an accelerated reregistration scheme, to be carried out in five phases over a 9-year period. The thrust of this phased approach is to generate a complete data base for each pesticide product before evaluation by the Agency and reregistration of products. The responsibility for making data available lies with pesticide registrants.

Briefly, FIFRA section 4(c) through (g) establish the following five phases of reregistration:

A. Phase I

1. Identification of active ingredients subject to reregistration. Each product containing an active ingredient that was first registered before November 1, 1984, must be reregistered.

2. Categorization of active ingredients into four lists (A, B, C, and D) according to priorities set by the Act. List A was published in the **Federal Register** of February 22, 1989 (54 FR 7740). List B was issued by order on April 24, 1989, and was published in the **Federal Register** of May 25, 1989 (54 FR 22706).

3. Notification to registrants of listed active ingredients of when they must indicate their intention to reregister products (see Phase II for a brief description of the information registrants must furnish).

B. Phase II

1. Responses by registrants indicating whether they intend to seek reregistration.

2. Identification by registrants of applicable data requirements based upon regulations issued under FIFRA sec. 3, and of missing or inadequate studies.

3. Commitment by registrants to support the reregistration of their pesticide products by submission of missing studies or replacement of inadequate existing studies.

C. Phase III

1. Submission by registants of summaries of previously submitted studies and reformats of certain studies according to guidance to be issued by the Agency.

2. Additional commitment by registrants to fill all applicable data requiremens identified by the registrant.

D. Phase IV

1. Review by the Agency of the Phase II and III submissions.

2. Independent determination by the Agency of outstanding data requirements applying to each active ingredient.

3. Notification to registrants of the additional data requirements.

4. Commitment by registrants to fulfill those requirements.

E. Phase V

1. Review by the Agency of all data concerning an active ingredient (both existing studies deemed to be adequate and new studies generated by registrants).

2. Determination by the Agency whether products containing the active ingredient may be reregistered based upon the data reviewed.

3. Submission by registrants of product-specific data if necessary.

4. Reregistration of products, or other appropriate regulatory action.

All pesticide active ingredients for which a Registration Standard was not issued before December 24, 1988, are subject to the requirements of the phased approach outlined above.

III. Lists of Pesticides

A. What the Law Requires

Under Phase I, the Agency is required to develop and publish in the **Federal Register** four lists of pesticide active ingredients that must be reregistered. The first (List A) is a list of active ingredient cases for which Registration Standards had been issued as of December 24, 1988, the effective date of the new law. That list was published in the **Federal Register** of February 22, 1989 (54 FR 7740).

The other three lists (Lists B, C, and D) include each active ingredient contained in a product first registered before November 1, 1984, for which a Registration Standard has not been issued. These lists are to be issued by the Agency in groups of 150 active ingredient cases in April and July, 1989, (Lists B and C) with a final list of remaining active ingredients in October 1989 (List D). Each list is to be published in the **Federal Register**, and a copy will

be sent by certified mail to each registrant having a product containing a chemical on each list.

B. Statutory Priorities for Listing

FIFRA sec. 4(c)(1) sets out certain priorities that the Agency must consider to determine whether to include a pesticide active ingredient on List B, C, or D. The Agency identified additional priority criteria highlighting concerns that were not specified in FIFRA sec. 4(c)(1).

In the **Federal Register** notice for List B, the Agency described the statutory and other criteria it used in determining List B active ingredients. Briefly, these included:

1. Active ingredients with food or feed uses.

2. Active ingredients that are potential ground water contaminants of toxicological concern.

3. Active ingredients with uses leading to potential residues in fish or shellfish.

4. Active ingredients with significant data gaps.

5. Active ingredients of concern for worker exposure because of agricultural, greenhouse, or nursery use.

6. Active ingredients currently in Special Review.

7. Active ingredients whose use is restricted to certified applicators.

8. Active ingredients of concern because of potential dibenzodioxin or dibenzofuran contamination.

9. Active ingredients of concern for possible effects on non-target or endangered species.

Because each criterion used to create List B is broadly applicable to a large number of active ingredients, application of the criteria created a larger pool of candidates for List B than the 150 active ingredient cases directed by the Act. Some active ingredients meeting statutory criteria are therefore included among the 150 active ingredient cases on List C being published today. In particular, List C includes a number of active ingredient cases having indirect food or feed uses. List D will include all remaining active ingredients.

C. Format of List C

List C includes 150 active ingredient cases, some of which are single active ingredients, and others of which are groups of active ingredients. The following information is given for each active ingredient case:

1. The name of the active ingredient or case. The name is one of the following: (a) The accepted common name of a single active ingredient; (b) the chemical name of the single active ingredient, if brief; (c) a case name descriptive of the members of the case as a whole; or (d) in a few instances, a trade name used because the common and chemical names were too long to include efficiently. In this last case, the trade name is identified in the listing with an asterisk.

2. The number of the active ingredient case. This is an internal reference number identifying the active ingredient case.

3. The Chemical Abstracts Service (CAS) number of each individual chemical included in List C. In a few cases, CAS numbers have not been assigned and so are not given.

4. The acceptable common name (or chemical name if there is no acceptable common name) of each individual chemical included within each case.

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ACTIVE INGREDIENTS, LIST C

Case Name	Case	CAS No.	Chemical/Common Name
Abietylamine derivatives	3001	1446-61-3	Dehydroabietylamine
		2026-24-6	Dehydroabietylamine acetate
Accel (*)	3002	2312-73-4	N-(Phenylmethyl)-9-(tetrahydro-2H-pyran-2-yl)-9H-purin-6-amine
Aliphatic alkyl quaternaries	3003	68424-92-0	Alkyl trimethyl ammonium bromide
		68391-03-7	Alkyl trimethyl ammonium chloride
		61790-41-8	(Soya alkyl) trimethyl ammonium chloride
		999-81-5	2- Chloroethyl trimethyl ammonium chloride
		68187-63-3	3- Alkoxy-2-hydroxypropyl trimethyl ammonium chloride
		68514-95-4	Dialkyl dimethyl ammonium chloride
		61789-77-3	Di(coco alkyl) dimethyl ammonium chloride
		68953-58-2	Di(tallow alkyl) dimethyl ammonium bentonite
		7173-51-5	Didecyl dimethyl ammonium chloride
		5538-94-3	Dioctyl dimethyl ammonium chloride
		32426-11-2	Octyl decyl dimethyl ammonium chloride
		10361-16-7	Octyl dodecyl dimethyl ammonium chloride
		61788-99-6	(Soya alkyl) dimethyl ethyl ammonium bromide
		124-03-8	Cetyl dimethyl ethyl ammonium bromide
			Alkenyl dimethyl ethyl ammonium bromide
		68607-28-3	(Oxydiethyleneglycol)bis(coco alkyl)dimethyl ammonium chloride
		70750-47-9	(Coco alkyl) bis(2-hydroxyethyl) methyl ammonium chloride
			Dodecyl bis(hydroxyethyl)dioctyl ammonium phosphate
			Dodecyl bis(2-hydroxyethyl) octyl hydrogen ammonium chloride
Aliphatic solvents	3004	8012-95-1	Aliphatic petroleum hydrocarbons
		8008-20-6	Kerosene
		8012-95-1	Mineral oil
		8032-32-4	Mineral spirits
			Isoparaffinic hydrocarbons
Alkyl amino betaine	3005	68424-94-2	Alkyl amino betaine
Alkyl dichlorobenzyl quaternaries	3006	8023-53-8	Alkyl dimethyl 3,4-dichlorobenzyl ammonium chloride
		102-30-7	Dodecyl dimethyl 3,4-dichlorobenzyl ammonium chloride
Alkyl diethanolamides	3007		Alkyl diethanolamide
		68603-42-9	(Coco alkyl)diethanolamides
		136-26-5	N,N- Bis(2-hydroxyethyl)decanamide
		120-40-1	N,N- Bis(2-hydroxyethyl)dodecanamide
Alkyldiethanolamines, and salts	3008	71786-60-2	Alkyl-N,N-bis(2-hydroxyethyl)amine
			Alkyl-N,N-bis(2-hydroxyethyl)amine acetate
Alkyldipropoxyamines	3009	68516-06-3	Alkyl di(2-hydroxypropyl)amine
Alkyl imidazolines, and imidazolinium quaternaries	3010	30968-43-5	2- Heptadecenyl-2-imidazoline
		82078-98-6	Heptadecenyl imidazolinium chloride
		27136-73-8	1-(2- Hydroxyethyl)-2-heptadecenyl-2-imidazoline
			1- Heptadecenyl-2-(2-hydroxyethyl)-2-imidazolinium chloride
		53466-91-4	Heptadecyl hydroxyethyl imidazoline
		53466-92-5	Heptadecyl hydroxyethylimidazolinium chloride
			1- Ethyl-2-heptadecenyl-1-(2-hydroxyethyl)-2-imidazolinium bromide
		61791-39-7	2-(Tall oil alkyl)-1-(2-hydroxyethyl)-2-imidazoline
			2-(Tall oil alkyl)-1-(2-hydroxyethyl)-2-imidazoline acetate
		61791-52-4	2-(Coco alkyl)-1-benzyl-1-(2-hydroxyethyl)-2-imidazolinium chloride
		68309-34-2	2-(Tall oil alkyl)-1-benzyl-1-(2-hydroxethyl)-2-imidazolinium chloride
		13470-50-3	2- Heptadecyl-1-methyl-1-(2-(stearoylamido)ethyl)-2-imidazolinium methyl sulfate

Alkyl isoquinolinium quaternaries	3011	53466-68-5	2- Alkyl isoquinolinium bromide
			Alkyl methyl isoquinolinium chloride
Alkyl morpholinium quaternaries	3012		N- Alkyl-N-ethyl morpholinium ethyl sulfate
		78-21-7	N- Cetyl-N-ethyl morpholinium ethyl sulfate
		61791-34-2	N-(Soya alkyl)-N-ethyl morpholinium ethyl sulfate
Alkyl pyridines, and pyridinium quaternaries	3013	68391-11-7	Alkyl pyridines
		140-72-7	Cetyl pyridinium bromide
		123-03-5	Cetyl pyridinium chloride
Alkyl trimethylenediamines, and derivs.	3014	68155-37-3	1-(Alkyl amino)-3-aminopropane
		61791-63-7	1-((Coco alkyl)amino)-3-aminopropane
		61791-64-8	1-((Coco alkyl)amino)-3-aminopropane acetates
		68188-29-4	1-((Coco alkyl)amino)-3-aminopropane benzoate
		68155-43-1	1-((Coco alkyl)amino)-3-aminopropane hydroxyacetate
		68155-42-0	1-((Coco alkyl)amino)-3-aminopropane adipate
		61791-67-1	1-((Soya alkyl)amino)-3-aminopropane
			1-((Coco alkyl)amino)-3-aminopropane diacetate
		68911-78-4	1-((Tallow alkyl)amino)-3-aminopropane diacetate
		83542-86-3	N-cis-9- Octadecenyl-1,3-propanediamine monogluconate
Allantoin, and derivs.	3015	97-59-6	Allantoin
		1317-25-5	Aluminum chlorohydroxy allantoinate
4-t-Amylphenol, and salts	3016	80-46-6	4-(1,1- Dimethylpropyl)phenol
		53404-18-5	Potassium 4-tert-amylphenate
		31366-95-7	Sodium 4-tert-amylphenate
Ancymidol	3017	12771-68-5	alpha- Cyclopropyl-alpha-(p-methoxyphenyl)-5-pyrimidine-methanol
p-Anethole	3018	104-46-1	10- Methoxy-4-propenyl benzene
Animal oils	3019	8001-85-2	Bone oil
		8016-13-5	Fish oil
Aromatic solvents	3020	68477-31-6	Aromatic petroleum derivative solvent
		68602-80-2	Chevron 100
		64742-94-5	Heavy aromatic naphtha
		1330-20-7	Xylene
			Xylene range aromatic solvent
Arsenal (*)	3021	81510-83-0	2-[4,5- Dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-3-pyridinecarboxylic acid, monoisopropylamine
Azacosterol HCl	3022	1249-84-9	20,25- Diazachlolestenol dihydrochloride
Azadioxabicyclooctane derivs.	3023	6542-37-6	5- Hydroxymethyl-1-aza-3,7-dioxabicyclo[3.3.0]octane
		59720-42-2	5- Hydroxymethoxymethyl-1-aza-3,7-dioxabicyclo[3.3.0]octane
			5- Hydroxypoly(methyleneoxy)methyl-1-aza-3,7-dioxabicyclo[3.3.0]octane
Benax 2-A-1 (*)	3024	7575-62-4	Disodium 4-dodecyl-2,4'-oxydibenzenesulfonate
		5136-51-6	Disodium 2,2'-oxybis(4-dodecylbenzenesulfonate)
Benzaldehyde	3025	100-52-7	Benzaldehyde
Benzisothiazolin-3-one	3026	2634-33-5	1,2- Benzisothiazolin-3-one
Benzyl bromoacetate	3027	5437-45-6	Benzyl bromoacetate
Bioban P-1487 (*)	3028	2224-44-4	4-(2- Nitrobutyl)morpholine
		1854-23-5	4,4'-(2- Ethyl-2-nitrotrimethylene)dimorpholine
Biobor (*)	3029	2665-13-6	2,2'-(1- Methyltrimethylenedioxy)bis(4-methyl-1,3,2-dioxaborinane
		14697-50-8	2,2'- Oxybis(4,4,6-trimethyl-1,3,2-dioxaborinane)
Bis(bromoacetoxy)butene	3030	20679-58-7	1,4- Bis(bromoacetoxy)-2-butene
Bis(propylsulfonyl)ethene	3031	1113-14-0	trans-1,2- Bis(propylsulfonyl)ethene

Bromohydroxyacetophenone	3032	2491-38-5	2- Bromo-4-hydroxyacetophenone
Busan 74 (*)	3033	29803-57-4	S-(2- Hydroxypropyl)thiomethanesulfonate
Busan 77 (*)	3034	31512-74-0	Poly(oxyethylene(dimethyliminio)ethylene (dimethylimino)ethylene dichloride)
4-t-Butylphenol, and salts	3035	98-54-4 3130-29-8 5787-50-8	4-(1,1- Dimethylethyl)phenol Potassium 4-tert-butylphenate Sodium 4-tert-butylphenate
Cellosolve esters	3036	111-76-2 109-86-4	2- Butoxyethanol 2- Methoxyethanol
Chloramine B	3037	127-52-6	N- Chlorobenzenesulfonamide, sodium salt
Chlorhexidine derivs.	3038	56-95-1 18472-51-0 3697-42-5	1,1'- Hexamethylene bis(5-(p-chlorophenyl)biguanide), diacetate 1,1'- Hexamethylene bis(5-(p-chlorophenyl)biguanide), digluconate 1,1'- Hexamethylene bis(5-(p-chlorophenyl)biguanide), dihydrochloride
Chlorinated glycoluril	3039	776-19-2	1,3,4,6- Tetrachloroglycoluril
Chlorocyclopentylphenol, and salts	3040	13347-42-7 35471-38-6 53404-20-9	4- Chloro-2-cyclopentylphenol Potassium 4-chloro-2-cyclopentylphenate Sodium 4-chloro-2-cyclopentylphenate
Chloro(hydroxymethyl acetamide	3041	2832-19-1	2- Chloro-N-(hydroxymethyl)acetamide
2-Chloro-4-phenylphenol, and salts	3042	92-04-6 18128-16-0 31366-97-9	2- Chloro-4-phenylphenol Potassium 2-chloro-4-phenylphenate Sodium 2-chloro-4-phenylphenate
4-Chloro-2-phenylphenol, and salts	3043	607-12-5 53404-21-0 10605-10-4 53537-63-6	4- Chloro-2-phenylphenol Potassium 4-chloro-2-phenylphenate Sodium 4-chloro-2-phenylphenate Dienthanolamine 4-chloro-2-phenylphenate
6-Chloro-2-phenylphenol, and salts	3044	85-97-2 18128-17-1 10605-11-5 53537-63-6	6- Chloro-2-phenylphenol Potassium 6-chloro-2-phenylphenate Sodium 6-chloro-2-phenylphenate Diethanolamine 4(or 6)-chloro-2-phenylphenate
p-Chloro-m-xylenol	3045	88-04-0	4- Chloro-3,5-xylenol
p-Chloro-m-cresol	3046	59-50-7	4- Chloro-3-cresol
Chlorosalicylanilide	3047	4638-48-6	5- Chlorosalicylanilide
Cinnamaldehyde	3048	104-55-2	Cinnamaldehyde
Cinoxate	3049	104-28-9	2- Ethoxyethyl p-methoxycinnamate
Coal tar chemicals: uses other than wood preserving.	3050	8001-58-9 65996-82-9 1319-77-3 68555-24-8	Coal tar creosote Coal tar neutral oils Coal tar phenols Tar acids, cresylic residues
(Coco alkyl)amine salts	3051	 68526-65-8	(Coco alkyl)amine hydrochloride (Coco alkyl)amine monobenzoate
Cosan 145 (*)	3052		Methanol, [[[(2-dihydro-5-methyl-3(2H)-oxazolyl) -1-methylethoxy]methoxy]methoxy]-
Cyclohexanone	3053	108-94-1	Cyclohexanone
Cycloprate	3054	54460-46-7	Hexadecyl cyclopropanecarboxylate

Dihalodialkylhydantoins	3055	 16079-88-2 126-06-7 77-48-5 118-52-5	1,3- Dichloro-5-ethyl-5-methylhydantoin 1- Bromo-3-chloro-5,5-dimethyl-2,4-imidazolidinedione 3- Bromo-1-chloro-5,5-dimethyl-2,4-imidazolidinedione 1,3- Dibromo-5,5-dimethylhydantion 1,3- Dichloro-5,5-dimethylhydantoin
DBPNA	3056	10222-01-2	2,2- Dibromo-3-nitrilopropionamide
o-Dichlorobenzene	3057	95-50-1	1,2- Dichlorobenzene
p-Dichlorobenzene	3058	106-46-7	1,4- Dichlorobenzene
Dichlorophene, and salts	3059	97-23-4 10254-48-5	2,2'- Methylenebis(4-chlorophenol) Sodium 2,2'-methylenebis(4-chlorophenate)
Dienochlor	3060	2227-17-0	Decachlorobis(2,4-cyclopentadiene-1-yl)
Dikegulac sodium	3061	52508-35-7	Sodium 2,3:4,6-bis-O-(1-methylethylidine)-alpha-L-xylo-2-hexulofuranosonate
Dimethametryn	3062	22936-75-0	N-(1,2- Dimethylpropyl)-N-ethyl-6-(methylthio)-1,3,5-triazine-2,4-diamine
Dimethepin	3063	55290-64-7	2,3- Dihydro-5,6-dimethyl-1,4-dithiin-1,1,4,5-tetraoxide
Dimethoxane	3064	828-00-2	2,6- Dimethyl-m-dioxan-4-ol acetate
Cyanodithioimidocarbonate	3065	138-93-2	Disodium cyanodithioimidocarbonate
DMPA	3066	299-85-4	O-(2,4- Dichlorophenyl) O-methyl isopropylphosphoramidothioate
Diphenylstibine octanoate	3067	5035-58-5	Diphenylstibene 2-ethylhexanoate
Dowicil S-13 (*)	3068	13108-52-6	2,3,5,6- Tetrachloro-4-(methylsulfonyl)pyridine
Dowicil 100 (*)	3069	4080-31-3	1-(3- Chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride
Ethanolamine, 2-hydroxymethyl derivs.	3070	34375-28-5 52299-20-4	2-((Hydroxymethyl)amino)ethanol 2-((Hydroxymethyl)amino)-2-methyl-1-propanol
Ethylene	3071	74-85-1	Ethylene
Fenuron trichloroacetate	3072	4482-55-7	3- Phenyl-1,1-dimethylurea trichloroacetate
Fluoroacetic acid derivs.	3073	640-19-7 62-74-8	2- Fluoroacetamide Sodium fluoroacetate
Grotan (*)	3074	4719-04-4	Hexahydro-1,3,5-tris(2-hydroxyethyl)-s-triazine
Hexylene glycol	3075	107-41-5	2- Methyl-2,4-pentanediol
Hydroxymethyl methyldithiocarbamate	3076	51026-28-9	Potassium N-hydroxymethyl-N-methyldithiocarbamate
Kylon (*)	3077	57063-29-3	4,5- Dichloro-2-cyclohexyl-4-isothiazolin-3-one
Imazapyr	3078	81334-34-1	2-(4- Isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl) nicotinic acid
Indalone	3079	532-34-3	Butyl 3,4-dihydro-2,2-dimethyl-4-oxo-2H-pyran-6-carboxylate

Iodine, KI, and iodine complexes	3080	7553-56-2	Iodine
		7681-11-0	Potassium iodide
		68610-00-4	Butoxypolypropoxypolyethoxyethanol - iodine complex
		26617-87-8	Polyethoxypolypropoxyethanol - iodine complex
			Polyethoxypolypropoxypolyethoxyethanol - iodine complex
		35860-86-7	Nonylphenoxypolyethoxyethanol - iodine complex
		53404-04-9	p- Octylphenoxypolyethoxyethanol - iodine complex
		53467-01-9	Sodium dodecylbenzenesulfonate - iodine complex
		25655-41-8	Polyvinylpyrrolidone - iodine complex
		53404-81-2	Sodium N-cyclohexyl-N-palmitoyltaurate - iodine complex
			alpha- Alkyl-omega-hydroxypoly(oxyethylene) - iodine complex
			Alkyl-poly(oxypropylene)poly(oxyethylene)-iodine complex
		7097-60-1	Tetraglycine hydroperiodide
Isobornyl acetate	3081		Isobornyl acetate
Lamprecide (*)	3082	88-30-2	a,a,a- Trifluoro-4-nitro-m-cresol
Limonene	3083	138-86-3	Limonene
Lithium hypochlorite	3084	13840-33-0	Lithium hypochlorite
Mercury chlorides	3085	7487-94-7	Mercuric chloride
		10112-91-1	Mercurous chloride
Inorganic cyanide	3086	592-01-8	Calcium cyanide
		143-33-9	Sodium cyanide
		151-50-8	Potassium cyanide
Metasol J-26 (*)	3087	53404-62-9	Potassium N-(alpha-(nitroethyl)benzyl)ethylenediamine
Methylated naphthalenes	3088	1321-94-4	Methylated naphthalenes
Methyl chloroform	3089	71-55-6	1,1,1- Trichloroethane
Methylene chloride	3090	75-09-2	Methylene chloride
Methyl ethyl ketone	3091	78-93-3	2- Butanone
Methylisothiazolinone and derivs.	3092	2682-20-4	2- Methyl-4-isothiazolin-3-one
		57373-20-3	2- Methyl-4-isothiazolin-3-one calcium chloride
		26172-55-4	5- Chloro-2-methyl-4-isothiazolin-3-one
		57373-19-0	5- Chloro-2-methyl-4-isothiazolin-3-one calcium(II) chloride
(Methylnaphthyl)maleimide	3093	70017-56-0	N-(2- Methyl-1-nephthyl)maleimide
Methyl nonyl ketone	3094	112-12-9	2- Undecanone
Methyloxazolidines	3095	51200-87-4	4,4- Dimethyloxazolidine
		75673-43-7	3,4,4- Trimethyloxazolidine
Metronidazole	3096	443-48-1	2- Methyl-5-nitroimidazole-1-ethanol
Mitin FF (*)	3097	3567-25-7	Sodium 5-chloro-2-(4-chloro-2-(3-(3,4-dichloro phenyl)ureido)phenoxy)benzenesulfonate
MON-4620 (*)	3098	40164-67-8	N-[(Acetylamino)methyl]-2-chloro-N-(2,6-diethyl phenyl)acetamide
Naphthenate salts	3099	1338-02-9	Copper naphthenate
		12001-85-3	Zinc naphthenate
beta-Naphthol	3100	135-19-3	2- Naphthalenol
Neomycin sulfate	3101	1405-10-3	Neomycin sulfate
NEPD (*)	3102	597-09-1	2- Nitro-2-ethyl-1,3-propanediol

2-(Octylthio)ethanol	3103	3547-33-9	2- Hydroxyethyl octyl sulfide
Oil of camphor, and camphor	3104	8008-51-3	Camphor oil
		76-22-2	Camphor
Oil of citronella	3105	8000-29-1	Oil of citronella
Oil of pennyroyal	3106	8007-44-1	Oil of pennyroyal
			Leaves of Pennyroyal
Oleyl polyamine	3107	67905-86-6	N- Polythylenepolyamine-N-oleylamine hydrochloride
Paraclox	3108	34911-46-1	Parahydroxy-2-oxo-phenylacethydroxymic acid chloride
Perchloroethylene	3109	127-18-4	Tetrachloroethylene
Phenethyl propionate	3110	122-70-3	2- Phenylethyl propionate
Phosphorus	3111	7723-14-0	Phosphorus
Phthalate esters	3112	131-11-3	Dimethyl phthalate
		84-62-8	Diphenyl phthalate
		84-74-2	Dibutyl phthalate
		84-66-2	Diethyl phthalate
		117-84-0	Di-n-octyl phthalate
		117-81-7	Di-2-ethylhexyl phthalate
Pine oils	3113	8002-09-3	Pine oil
		8011-48-1	Pine tar
		8002-09-3	Pine tar oil
Piperalin	3114	3478-94-2	3-(2- Methylpiperidino)propyl 3,4-dichlorobenzoate
Piprotal	3115	5281-13-0	Piperonal bis(2-(2-butoxyethoxy)ethyl)acetal
Polybromide quat resin	3116		Polybromide form of trimethylbenzyl ammonium resin
Polyethoxylated abietylamine	3117	51344-62-8	Dehydroabietylamine - ethylene oxide condensate
Polyethoxyated alkylphenols	3118	30776-59-1	Isooctylphenoxypolyethoxyethanol
		9016-45-9	Nonylphenoxypolyethoxyethanol
Polyethoxylated aliphatic alcohols	3119	68131-40-8	alpha- Alkyl-omega-hydroxypoly(oxyethylene)
		52292-17-8	Polyethoxylated isooctadecanol
Polyexthoxylated aliphatic amines	3120	26635-92-7	N- Polyoxyethylated-N-octadecylamine
		26635-93-8	N- Polyoxyethylated-N-oleylamine hydrochloride
		61791-14-8	N-(Coco alkyl)-N,N-bis(2-omega-hydroxy poly(oxyethylene)ethyl)amine
Polyethoxylated sorbitol, derivs.	3121		Polyoxyethylene sorbitol, mixed ether ester of
		53466-71-0	Polyoxyethylene sorbitol oleate-laurate
		9005-64-5	Polyoxyethylene sorbitan monolaurate
		9005-65-6	Polyoxyethylene sorbitan monooleate
Poly(hexamethylene biguanide) HCl	3122	32289-58-0	Poly(iminoimidocarbonyliminoimidocarbonylimino hexamethylene) hydrochloride
Polypropylene glycol, and ether derivs.	3123	25322-69-4	Polypropylene glycol
		9003-13-8	Polyoxypropylene monobutyl ether
Propamocarb	3124	24579-73-5	Propyl (3-(dimethylamino)propyl)carbamate
Propiconazole	3125	60207-90-1	1-((2-(2,4- Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl)methyl) -1H-1,2,4-triazole
Propylene glycol, and dipropylene glycol	3126	57-55-6	1,2- Propanediol
		25265-71-8	Dipropylene glycol
Repellant R-11 (*)	3127	126-15-8	2,3,4,5- Bis(2-butylene)tetrahydro-2-furaldehyde
Sabadilla alkaloids	3128	8051-02-3	Sabadilla alkaloids

Scilliroside	3129	507-60-8	Scilliroside
Siduron	3130	1982-49-6	1-(2- Methylcyclohexyl)-3-phenylurea
Sodium dodecyl diphenyl oxide sulfonate	3131	53467-00-8	Sodium dodecyl diphenyl oxide sulfonate
Sodium fluoride	3132	7681-49-4	Sodium fluoride
Strychnine	3133	57-24-9 60-41-3	Strychnine Strychnine sulfate
Sulfacetamide	3134	144-80-9	N-((4- Aminophenyl)sulfonyl)acetamide
Sulfaquinoxaline	3135	59-40-5	N1-(2- Quinoxalinyl)sulfanilamide
Sulfometuron methyl	3136	74222-97-2	Methyl 2-[[[[(4,6-dimethyl-2-pyrimidinyl)amino] carbonyl]amino]sulfonyl]benzoate
Sulfoxide	3137	120-62-7	1,2- Methylenedioxy-4-(2-(octylsulfinyl)propyl)benzene
Tanol derivs.	3138	104-61-0 104-67-6	Dihydro-5-pentyl-2(3H)-furanone Dihydro-5-heptyl-2(3H)-furanone
Terpineols, and turpentines	3139	138-87-4 8006-64-2	Terpineols Turpentine
Tetracaine hydrochloride	3140	136-47-0	Tetracaine hydrochloride
Thanite (*)	3141	115-31-1	Isobornyl thiocyanoacetate
Thiocyanoethyl derivs.	3142	112-56-1 4617-17-8 beta,beta'- beta-	beta- Butoxy-beta'-thiocyano diethyl ether Dithiocyano diethyl ether Thiocyanoethyl esters of mixed fatty acids
Thymol	3143	89-83-8	5- Methyl-2-isopropyl-1-phenol
Trichloromelamine	3144	7673-09-8	Trichloromelamine
Triethanolamine, and fatty acid salts	3145	102-71-6 2717-15-9 2224-49-9 41669-40-3	Tris(2-hydroxyethyl)amine Triethanolamine oleate Triethanolamine laurate Triethanolamine myristate
Triethylene glycol	3146	112-27-6	Triethylene glycol
Triethylhexahydrotriazine	3147	7779-27-3	1,3,5- Triethylhexahydro-s-triazine
Trimethoxysilyl quats	3148	27668-52-6 68959-20-6	3-(Trimethoxysilyl)propyl dimethyl octadecyl ammonium chloride N,N- Didecyl-N-methyl-3-(trimethoxysilyl) propanaminium chloride
Tris(hydroxymethyl) nitromethane	3149	126-11-4	2-(Hydroxymethyl)-2-nitro-1,3-propanediol
Wood oils and gums	3150	8000-27-9 8007-47-4	Cedarwood oil Ester gum Canadian balsam

* Trademark

BILLING CODE 6560-50-C

IV. Significance of Inclusion on List C

Active ingredient cases included on List C are subject to FIFRA sec. 4(d), 4(e), 4(f) and 4(g) (Phases II, III, IV, and V) of the accelerated reregistration schemes.

The publication of List C is required by FIFRA sec. 4(c). Publication itself does not affect the registration status of any currently registered pesticide product. However, the Act establishes the publication date of List C as the determinant of the dates for completion of certain activities in Phases II, III, and IV, including:

A. A 90-day response period for Phase II, during which each registrant of a product containing an active ingredient on List C must respond to the Agency in accordance with FIFRA sec. 4(d). Registrants will be sent by certified mail specific instructions and guidance on how to respond.

B. A 1-year submission period for Phase III, commencing on the date of publication of List C in the **Federal Register**, during which registrants who have indicated in Phase II that they are relying on adequate data previously submitted to the Agency are required to summarize and reformat those data in accordance with guidance from the Agency.

C. A 24-month period for Phase IV, during which the Agency must evaluate Phase II and III submissions, independently determine remaining data requirements for each active ingredient, publish in the **Federal Register** a notice of outstanding data requirements, and notify registrants under FIFRA sec. 3(c)(2)(B) of any additional requirements.

In addition, fees are to be collected for each List C active ingredient in accordance with FIFRA sec. 4(i)(2). The Agency has determined that, for the purpose of registration fees, the term "active ingredient" refers to the chemical (or group of chemicals) associated with a single active ingredient case. In List C, individual active ingredient cases which are deemed to be "active ingredients" for fee purposes are listed in the first column.

Fees for active ingredients are to be allocated among registrants according to market share over the 1986–88 period, in accordance with FIFRA sec. 4(i)(7). On April 19, 1989, the Agency requested the submission of market share information from registrants; this information will form the basis for allocation of reregistration fees. Reregistration fees must be paid in part at the time of the 90-day Phase II response.

V. Paperwork Reduction Act

The Agency will be sending instructions to registrants having pesticide products containing active ingredients on List C, explaining how they must respond during Phase II.

The information collection requirements contained in those instructions (and triggered by this notice) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2070–0102.

Public reporting burden for this collection of information is estimated to vary from 10 to 42 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Management and Budget, Paperwork Reduction Project (2070–0102), Washington, DC 20503.

Dated: July 14, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

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federal register

Monday
July 24, 1989

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Proposed Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Proposed Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This document proposes special migratory bird hunting regulations on Federal Indian reservations and ceded lands for the 1989-90 hunting season. This season will commence on September 1, 1989.

The Fish and Wildlife Service (hereinafter the Service) annually prescribes migratory bird hunting regulations frameworks to the States. This rule proposes migratory bird hunting regulations to be established for certain tribes on Federal Indian reservations and ceded lands in the 1989-90 hunting season.

DATE: The comment period for these proposed regulations will end August 8, 1989.

ADDRESS: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Room 634, Arlington Square, Washington, DC 20240. Comments received on these proposed hunting regulations and tribal proposals will be available for public inspection during normal business hours in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, VA. The Service's biological opinions resulting from its consultation under section 7 of the Endangered Species Act are available for public inspection in or are available from the Division of Endangered Species and Habitat Conservation and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Fant W. Martin, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Room 634, Arlington Square, Washington, DC 20240 (703-358-1714).

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.) authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

In the February 27, 1989 **Federal Register** (54 FR 822), the Service requested proposals from Indian tribes that wished to establish special migratory bird hunting regulations for the 1989-90 hunting season, under the guidelines described in the June 4, 1985 **Federal Register** (at 50 FR 23467). The guidelines were developed in response to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and nontribal members on their reservations. The guidelines include possibilities for: (1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s); (2) on-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and (3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits. In all cases, the regulations established under the guidelines would have to be consistent with the March 10 to September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada. The guidelines are capable of application to those tribes that have recognized reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and on ceded lands. They also apply to establishing migratory bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting or where the tribes and affected States otherwise have reached agreement over hunting by nontribal members on lands owned by non-Indians within the reservation.

Tribes usually have the authority to regulate migratory bird hunting by nonmembers on Indian-owned reservation lands, subjects to Service approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing hunting by non-Indians on these lands. In such cases, the Service encourages the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, the Service will consult with a tribe and State with the aim of facilitating an accord. The Service also will consult jointly with tribal and State officials in the affected States where tribes may wish to establish special hunting regulations for tribal members on ceded lands.

One of the guidelines provides for the continuation of harvest of waterfowl and other migratory game birds by tribal members on reservations where it is a customary practice. The Service does not oppose this harvest, provided it does not take place during the closed season required by the 1916 Canadian Migratory Bird Treaty, and it is not so large as to adversely affect the status of the migratory bird resource. Prior to the 1987-88 and 1988-89 hunting seasons, the Service reached an agreement with the Mille Lacs Band of Chippewa Indians for hunting by tribal members on their land in Minnesota. A similar agreement was reached with the Yankton Sioux Tribe in South Dakota for the 1988-89 hunting season. The Service recently reached agreement again with the Mille Lacs Band for the 1989-90 hunting season.

Before developing the guidelines, the Service reviewed available information on the current status of migratory bird hunting on Federal Indian reservations and evaluated the impact that adoption of the guidelines likely would have on migratory birds. The Service has concluded that the size of the migratory bird harvest by tribal members hunting on their reservation is too small to have significant impacts on the migratory bird resource when compared with the much larger off-reservation sport harvest by non-Indians. The major area of concern relates to hunting seasons for nontribal members on dates that are within Federal frameworks, but that are different from those established by the State(s) in which a Federal Indian reservation is located. A large influx of nontribal hunters onto a reservation at a time when the season is closed in the surrounding State(s) could result in adverse harvest impacts on one or more migratory bird species. The guidelines make such an event unlikely; however, because tribal proposals must include details on the harvest anticipated under the requested regulations; methods that will be employed to measure or monitor harvest (bag checks, mail questionnaires, etc.); steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would impact seriously on the migratory bird resource; and tribal capabilities to establish and enforce migratory bird hunting regulations. Based on a review of tribal proposals, the Service may require modifications, and regulations may be established experimentally, pending evaluation and confirmation of harvest information obtained by the tribes.

The Service believes that the guidelines provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. The guidelines should not be viewed as inflexible. Nevertheless, the Service notes that they have been employed successfully since 1985 to establish special hunting regulations for Indian tribes. Therefore, the Service believes they have been tested adequately and made them final beginning with the 1988-89 hunting season. It should be stressed here, however, that use of the guidelines is not necessary and no action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

The Service notes that duck numbers were much smaller than usual last year, largely because of poor reproduction caused by an extended period of drought in the Prairie Pothole Region of Canada and the United States. The drought in 1988 was especially severe, and for conservation purposes, duck hunting regulations were restrictive during the 1988-89 hunting season. Preliminary results of of recent breeding population surveys indicate little overall improvement in breeding ground conditions and duck population status, and restrictive hunting regulations can be expected again for the 1989-90 season.

Hunting Season Proposals From Indian Tribes and Organizations

In addition to the Mille Lacs Band, the Service received requests from ten tribes and Indian organizations for special migratory bird hunting regulations for the 1989-90 hunting season.

The proposed regulations for the different tribes are shown below. It should be noted that this proposed rule, and a final rule to be published later in an August 1989 **Federal Register**, will include tribal regulations for both early and late hunting seasons. The early season begins on September 1 each year and includes species such as mourning doves and white-winged doves. The late season usually begins on or around October 1 and includes most waterfowl species. Because final regulations for Indian tribes must be established by September 1, the proposed and final regulations for most tribal hunting seasons are described in relation to the season dates, season length, and limits that will be permitted when final Federal frameworks are announced for early and late season regulations. For example, the daily bag and possession limits for ducks on reservations in the Southwestern United States will be shown as "Same as permitted Pacific Flyway States under final Federal frameworks to be announced," and limits for geese will be shown as the same that will be permitted the State(s) in which the reservations are located. The proposed frameworks for early season regulations are scheduled for early July publication in the **Federal Register**, and final Federal frameworks will be published in early August. Proposed late season frameworks for waterfowl and coots will be published in mid-August, and the final Federal frameworks for the late season will be published in a mid-September **Federal Register**. The Service will notify affected tribes of season dates, bag limits, etc., as soon as final frameworks are established. As discussed earlier in this document, no action is required by tribes that wish to observe the migratory bird hunting regulations established by the State in which a reservation is located.

1. Penobscot Indian Nation, Old Town, Maine

Since June 1985, the Service has approved a general migratory bird hunting season for both Penobscot tribal members and nonmembers, under regulations adopted by the State, and a sustenance season that applied only to tribal members. At the Service's request, the tribe has monitored black duck and other waterfowl harvest during each sustenance season and has confirmed that it is negligible in size.

In an April 26, 1989 proposal, the tribe again requested special regulations for tribal members in Penobscot Indian Territory, an area of trust lands that includes but is much larger than the reservation. These additional lands were acquired by the tribe as a result of the 1980 Maine Indian Claims Settlement. The tribe proposed a 1989-90 sustenance hunting season of 76 days (September 16—November 30), with a daily bag limit of 4 ducks, including no more that 1 black duck and 2 wood ducks. The daily bag limit for geese would include 3 Canada geese, 3 snow geese, or 3 in the aggregate. When the sustenance and Maine's general waterfowl season overlap, the daily bag limit for tribal members will be only the larger of the two daily bag limits. All other Federal regulations will be observed by tribal members, except that shooting hours will be from one-half hour before sunrise to one-half hour after sunset. Nontribal members hunting on Penobscot Indian Territory will adhere to the waterfowl hunting regulations established by the State of Maine.

The Service notes that the regulations requested by the tribe are nearly identical to those established last year and proposes to approve the tribal request.

2. Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico

The Jicarilla Apache Tribe has had special migratory bird hunting regulations for tribal members and nonmembers since the 1986-87 hunting season. The tribe owns all lands on the reservation and has recognized full wildlife management authority.

In a May 6, 1989 proposal, the tribe requested the earliest opening date permitted Pacific Flyway States for ducks for the 1989-90 hunting season and a closing date of November 30, 1989. Daily bag and possession limits also would be the same as permitted Pacific Flyway States. The tribe requested that the season be closed for geese and other migratory game birds. The tribe conducts a harvest survey each year, and the duck harvest has been small.

The requested regulations are the same as were established last year, and the Service proposes to approve the tribe's requests for the 1988-89 hunting season.

3. Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota

The Crow Creek Indian Reservation has a checkerboard pattern of land ownership, with much of the land owned by non-Indians. In the past, the tribe has observed the waterfowl hunting regulations established by the State of South Dakota. However, the tribe is developing a wildlife management program, and in a May 17, 1989 proposal, requested special duck hunting regulations for the 1989-90 hunting season. The regulations would apply to both tribal members and nonmembers hunting on tribal and trust lands within the external boundaries of the reservation. The tribe requested a continuous duck season, beginning on October 21, 1989, with the maximum number of days and the same daily bag

and possession limits permitted in the Low Plains portion of South Dakota, under final Federal frameworks to be announced. The requested hunting season dates will be within Federal frameworks, but the season would open and close later than has been the case in the past. The later season is likely to provide more duck hunting opportunity on the reservation, but the harvest is expected to be low because of the small number of hunters. The tribe requested the same goose hunting season dates and daily bag and possession limits as will be established by South Dakota in the Missouri River Zone.

The Service proposes to establish the requested duck hunting regulations on an experimental basis and asks that the tribe conduct a harvest survey to ensure that hunting activity and harvest are as low as anticipated.

4. Yankton Sioux Tribe, Yankton Indian Reservation, Marty, South Dakota

Last year, the Yankton Sioux Tribe and the Service reached agreement on special Canada goose hunting regulations for tribal members hunting on tribal and trust lands during the 1988–89 hunting season. On May 22, 1989, the tribe submitted a proposal requesting special Canada goose regulations for both tribal members and nonmembers hunting on tribal and trust lands during the 1989–90 hunting season. Details in the proposal were clarified in a June 22, 1989 telephone conversation. The tribe has requested a continuous Canada goose and White-fronted goose hunting season, beginning on October 21, 1989, with the maximum number of days permitted for South Dakota's Missouri River Zone, under final Federal frameworks to be announced. Daily bag and possession limits will be the same as permitted under Federal frameworks. Season dates and daily bag and possession limits for snow geese will be the same as established by South Dakota. The tribe wishes to adopt the duck hunting regulations that will be established by the State for the Low Plains region.

The tribe stated that the Canada goose and white-fronted goose season permitted by the regulations would begin and close two weeks later than during the usual season established by the State. The later tribal season is expected to provide more hunting opportunity, but the harvest is expected to be small because of the limited number of hunters. The Service proposes to approve the tribal proposal on an experimental basis for the 1989–90 hunting season, with a requirement that the tribe conduct a survey to measure the harvest of Canada and White-fronted geese by tribal members and nonmembers.

5. White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona

The White Mountain Apache Tribe owns all reservation lands, and the tribe has recognized full wildlife management authority. In a May 26, 1989 letter, the tribe requested a continuous waterfowl hunting season for 1989–90, with the latest closing date and longest season permitted under final Federal frameworks to be announced. The tribe requested the same daily bag and possession limits for ducks permitted Pacific Flyways States and the same bag and possession limits permitted Arizona for geese. Season dates and bag and possession limits for band-tailed pigeons and mourning doves will be the same as established by Arizona under final Federal frameworks. The regulations will apply both to tribal members and nonmembers.

The regulations requested by the tribe are the same as were approved last year, and the Service proposes to establish them again for the 1989–90 hunting season.

6. Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho

Almost all of the Fort Hall Indian Reservation is tribally-owned. The tribes claim full wildlife management authority throughout the reservation, but the Idaho Fish and Game Department has disputed tribal jurisdiction, especially for hunting by nontribal members on reservation lands owned by non-Indians. As a compromise, since 1985, the Service has established the same waterfowl hunting regulations on the reservation and in a surrounding off-reservation state zone. The regulations were requested by the tribes and provided for different season dates than in the remainder of the State. The Service agreed to the season dates because it seemed likely that they would provide some additional protection to mallards and pintails, and the State concurred with the zoning arrangement. The Service has no objection to the State's use of this zone again in the 1989–90 hunting season, provided the duck and goose hunting season dates are the same as on the reservation. For the 1989–90 hunting season, the Shoshone-Bannock Tribes have requested a continuous duck season, beginning on October 14, 1989, with the maximum number of days and the same daily bag and possession limits permitted Pacific Flyway States, under final Federal frameworks to be announced. Coot and snipe season dates will be the same as for ducks, with the same daily bag and possession limits permitted Pacific Flyway States. The tribes requested a continuous goose season, beginning on October 14, 1989, with the maximum number of days and the same daily bag and possession limits permitted Idaho under Federal frameworks.

The Service notes that the requested regulations are nearly the same as those approved last year and proposes to approve the tribe's request for the 1989–90 hunting season.

7. Colorado River Indian Tribes, Colorado River Indian Reservation, Parker, Arizona

The Colorado River Indian Reservation is located in Arizona and California. The tribes own almost all lands on the reservation, and they have full wildlife management authority. Beginning with the 1985 hunting season, the Service, as requested by the tribes, has established the same migratory bird hunting regulations on the reservation as in the Colorado River Zone in California.

In a June 2, 1989 proposal, the tribes requested the same regulations that were approved last year. As discussed earlier, the population status of ducks continues to be insecure. Consequently, while the regulations frameworks for ducks have not been announced, it is likely that restrictive regulations will be necessary for the 1989–90 hunting season. Therefore, the Service proposes to establish the same migratory bird hunting regulations on the reservation as will be established for California's Colorado River Zone. As in the past, the regulations will apply both to tribal members and nonmembers.

8. Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana

During the past two years, the Confederated Salish and Kootenai Tribes and the State of Montana entered into cooperative agreements for the regulation of hunting on the Flathead Indian Reservation. By mutual agreement, waterfowl hunting regulations on the reservation were the same as established for the Pacific Flyway portion of Montana and included provision for the customary early closure of the goose season on a portion of the reservation.

In a June 2, 1989 proposal, the tribes again requested that the Service approve special regulations for the 1989–90 waterfowl hunting season. As in the past, the regulations would be the same as for the Pacific Flyway portion of the

State and would provide for earlier closure of goose hunting. In a covering letter, John B. Carter, Tribal Attorney, pointed out that the Confederated Salish and Kootenai Tribes and the State of Montana are working toward a comprehensive and long-term agreement, but that it may not be completed before the hunting season.

The Service is pleased that the tribes and State are continuing to work toward a lasting agreement and urges that some form of accord be reached in time to include the 1989–90 migratory bird hunting regulations for the Flathead Indian Reservation bird hunting regulations for the Flathead Indian Reservation in the final rule scheduled for publication in mid-August.

9. Navajo Nation, Navajo Indian Reservation, Window Rock, Arizona

Since 1985, the Service has established uniform migratory bird hunting regulations for tribal members and nonmembers on the Navajo Indian Reservation (in parts of Arizona, New Mexico, and Utah). The tribe owns almost all lands on the reservation and has full wildlife management authority.

In a June 2, 1989 letter, the tribe requested and the Service proposes to establish the following regulations on the reservation for both tribal and nontribal members for the 1989–90 hunting season:

A. *Ducks (including Mergansers).*

Season Dates: Earliest opening date and longest season permitted Pacific Flyway States under final Federal frameworks to be announced.

Daily Bag and Possession Limits: Same as permitted Pacific Flyway States under final Federal frameworks to be announced.

B. *Canada Geese (season closed on other geese).*

Season Dates: December 16-January 7.

Daily Bag and Possession Limits: Daily limit 2. Possession limit 4.

C. *Coots and Common Moorhens (Gallinules).*

Season Dates: Same as for ducks.

Daily Bag and Possession Limits: Same as permitted Pacific Flyway States under final Federal frameworks to be announced.

D. *Common Snipe.*

Season Dates: Same as for ducks.

Daily Bag and Possession Limits: Daily limit 8. Possession limit 16.

E. *Band-tailed Pigeons.*

Season Dates: September 1-September 30.

Daily Bag and Possession Limits: Daily limit 5. Possession limit 10.

F. *Mourning Doves and White-winged Doves.*

Season Dates: September 1–September 30.

Daily Bag and Possession Limits: 10 mourning and white-wing doves in the aggregate, of which no more than 6 may be white-winged doves. Possession limit after opening day is 20 mourning and white-winged doves in the aggregate, of which no more than 12 may be white-winged doves.

G. *General Conditions:* Tribal members and nonmembers will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

10. Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin

Since 1985, various bands of the Lake Superior Tribe of Chippewa Indians have exercised judicially recognized off-reservation hunting rights for migratory birds in Wisconsin. The specific regulations were established by the Service in consultation with the Wisconsin Department of Natural Resources and the Great Lakes Indian Fish and Wildlife Commission (which represents the various bands). Beginning in 1986, the Michigan Department of Natural Resources agreed to accommodate a tribal season on ceded lands in the western portion of the State's Upper Peninsula, and the Service approved special regulations for tribal members in both Michigan and Wisconsin during the 1986–87, 1987–88, and 1988–89 hunting seasons. In 1987, the Great Lakes Indian Fish and Wildlife Commission requested and the Service approved special regulations to permit tribal members to hunt on ceded lands in Minnesota, as well as in Michigan and Wisconsin. The States of Michigan and Wisconsin concurred with the regulations, although Wisconsin has raised some concerns each year. Minnesota did not concur with the regulations, stressing that the State would not recognize Chippewa Indian hunting rights in Minnesota's treaty area until a court with jurisdiction over the State acknowledges and defines the extent of these rights. The Service acknowledged the State's concern, but pointed out that the United States Government has recognized the Indian hunting rights decided in the *Voigt* case, and that acceptable hunting regulations have been negotiated successfully in both Michigan and Wisconsin even though the *Voigt* decision did not specifically address ceded land outside Wisconsin. The Service believes that this is appropriate because the treaties in question cover ceded lands in Michigan (and Minnesota), as well as in Wisconsin. Consequently, in view of the above, and the fact that the tribal harvest was small, the Service approved special regulations for the 1987–88 and 1988–89 hunting seasons on ceded lands in all three States.

On June 5, 1989, the Great Lakes Indian Fish and Wildlife Commission again requested special migratory bird hunting regulations, and copies of the proposal were mailed to officials in the affected States of Michigan, Minnesota, and Wisconsin. The proposed regulations are shown below. The only substantive change from 1988 is a request for an earlier opening of the duck season in the treaty area in Minnesota and Wisconsin for the 1989–90 hunting season. In 1988, the opening date was delayed one week because of the need to provide some added protection to duck populations, whose numbers were much reduced because of drought. The Service believes that a final decision on the appropriate opening date of the duck season should be deferred until ongoing surveys of duck population status have been completed, a conclusion also reached by the Great Lakes Indian Fish and Wildlife Commission. As noted earlier in this document, preliminary survey results indicate that duck numbers remain at depressed levels, and it is likely that restrictive duck regulations will be necessary again in the 1989–90 season.

In a June 22, 1989 letter, the Michigan Department of Natural Resources concurred with the proposed regulations for hunting by Chippewa Tribal members in the western portion of the State's Upper Peninsula. However, the State requested consultation with the Great Lakes Indian Fish and Wildlife Commission in the event that any changes in regulations are requested. The Service has received no communications regarding the proposal from the States of Minnesota and Wisconsin and intends to consult with State officials and the Great Lakes Indian Fish and Wildlife Commission before publishing a final rule in August 1989.

A. *Ducks—Wisconsin and Minnesota Zones:*

Season Dates: Begin September 18. End with closure of Wisconsin Northern Zone duck season.

Daily Bag and Possession Limits: Same as permitted Wisconsin under final Federal frameworks to be announced.

Michigan Zone: Same dates, season length, and daily bag and possession limits permitted Michigan for the Western Upper Peninsula under final Federal frameworks to be announced.

B. *Canada Geese—Wisconsin and Minnesota Zones.*

Season Dates: Begin September 18. End with closure of Wisconsin Northern Zone duck season.

Daily Bag and Possession Limits: 3 daily. Possession limit 6.

Michigan Zone: Season Dates: Same dates and season length permitted Michigan for the Western Upper Peninsula under final Federal frameworks to be announced.

Daily Bag and Possession Limits: 3 daily. Possession limit 6.

C. *Other Geese (Blue, Snow, and White-fronted Geese)—Wisconsin and Minnesota Zones.*

Season Dates: Begin September 18. End with closure of Wisconsin Northern Zone duck season.

Daily Bag and Possession Limits: Same as permitted Wisconsin under final Federal frameworks to be announced.

Michigan Zone: Same dates, season length, and daily bag and possession limits permitted Michigan for the Western Upper Peninsula under final frameworks to be announced.

D. *Coots and Common Moorhens (Common Gallinule)—Wisconsin and Minnesota Zones.*

Season Dates: Begin September 18. End with closure of Wisconsin Northern Zone duck season.

Daily Bag and Possession Limits: 20 daily, singly or in the aggregate. Possession limit 40.

Michigan Zone: Same dates, season length, and daily bag and possession limits permitted Michigan under final Federal frameworks to be announced.

E. *Sora and Virginia Rails—Wisconsin and Minnesota Zones.*

Season Dates: Begin September 18. End with closure of Wisconsin Northern Zone duck season.

Daily Bag and Possession Limits: 25 daily, singly or in the aggregate. Possession limit 25.

Michigan Zone: Same dates, season length, and daily bag and possession limits permitted Michigan for the Western Upper Peninsula under final Federal frameworks to be announced.

F. *Common Snipe—Wisconsin and Minnesota Zones.*

Season Dates: Begin September 18. End with closure of Wisconsin Northern Zone duck season.

Daily Bag and Possession Limits: 8 daily. Possession limit 16.

Michigan Zone: Same dates, season length, and daily bag and possession limits permitted Michigan for the Western Upper Peninsula under final Federal frameworks to be announced.

G. *Woodcock—Wisconsin and Minnesota Zone.*

Season Dates: September 16-November 20.

Daily Bag and Possession Limits: 5 daily. Possession limit 10.

Michigan Zone: Same dates, season length, and daily bag and possession limits permitted Michigan for the Western Upper Peninsula under final Federal frameworks to be announced.

H. *General Conditions*

1. While hunting waterfowl a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

2. Tribal members will comply with all basic Federal migratory bird hunting regulations, 50 CFR Part 20, and shooting hour regulations, 50 CFR Part 20, Subpart K.

3. Nontoxic shot will be required for all off-reservation hunting by tribal members of waterfowl, coots, moorhens, and gallinules.

4. Tribal members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

5. *Wisconsin Zone*

Tribal members will comply with NR 10.09 (1)(a) (2) and (3), Wis. Adm. Code (shotshells), sec. NR 10.12 (1)(C), Wis. Adm. Code (shooting from structures), sec. NR 10.12 (1)(g), Wis. Adm. Code (decoys), and sec. 29.27 Wis. Stats. (duck blinds). The Canada goose season at Powell Marsh will begin on September 18. A tribal quota of 25 Canada geese will be in effect until September 25, or until daily censuses by Great Lakes Indian Fish and Wildlife Commission or Wisconsin Department of Natural Resources employees indicate that at least 300 Canada geese are in the area, whichever comes first. If the tribal quota is reached before September 25 and before 300 Canada geese are present, Powell Marsh will be closed to tribal hunting until September 25. Thereafter, the tribal season will resume without a quota and with a daily bag limit of 3 Canada geese.

6. *Minnesota Zone.* Tribal members will comply with M.S. 100.29, Subd. 18 (duck blinds and decoys).

7. Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. In Wisconsin, such tagging will comply with sec. NR 19.12, Wis. Adm. Code. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.

Public Comment Invited

Based on the results of recently completed migratory game bird studies, and having due consideration for any data or views submitted by interested parties, this proposed rulemaking may result in the adoption of special hunting regulations beginning as early as September 1, 1989 on certain Federal Indian reservations, off-reservation trust lands, and ceded lands. Taking into account both reserved hunting rights and the degree to which tribes have full wildlife management authority, the regulations for tribal or for both tribal members and nontribal members may differ from those established by States in which the reservations, off-reservation trust lands, and ceded lands are located. The regulations will specify open seasons, shooting hours, and bag and possession limits for rails, gallinules (including moorhen), woodcock, common snipe, band-tailed pigeons, mourning doves, white-winged doves, ducks (including mergansers), and geese.

The Director intends that finally adopted rules be as responsive as possible to all concerned interests. Therefore, he desires to obtain the comments and suggestions on these proposals from the public, other concerned governmental agencies, tribal and other Indian organizations, and private interests, and he will take into consideration the comments received. Such comments, and any additional information received, may lead the Director to adopt final regulations differing from these proposals.

Special circumstances in the establishment of these regulations limit the amount of time that the Service can allow for public comments. Two considerations compress the time in which this rulemaking process must operate: the need, on the one hand, for tribes and the Service to establish final regulations before September 1, 1989, and on the other hand, the unavailability before late July of specific reliable data on this year's status of waterfowl. Therefore, the Service believes that to allow a comment period past August 8, 1989 is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Director, (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Room 634, Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's Office of Migratory Bird Management in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, VA 22203. All relevant comments on the proposals received no later than August 8, 1989 will be considered.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES-75-74)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975, (40 FR 25241). A supplement to the final environmental statement "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS 88-14)", was filed on June 9, 1988, and notice of availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582) and June 17, 1988 (53 FR 22727). In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the Service.

Nontoxic Shot Regulations

On November 9, 1988 (at 53 FR 45296), the Service proposed nontoxic shot zones for the 1989-90 waterfowl hunting season. This proposed rule was sent to all affected tribes and to Indian organizations for comment. The final rule on nontoxic shot zones for the 1988-89 hunting season was published on April 13, 1989 in the **Federal Register** (54 FR 14814). All of the proposed hunting regulations covered by this proposed rule are in compliance with the Service's nontoxic shot restrictions.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *" Consequently, the Service has initiated section 7 consultation under the Endangered Species Act for the proposed hunting seasons on Federal Indian reservations and ceded lands.

Regulatory Flexibility Act, Executive Order 12291, and the Paperwork Reduction Act

In the **Federal Register** dated March 27, 1989 (54 FR 12534), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291, and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available on request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 634, Arlington Square, Washington, DC 20240. As noted in the **Federal Register**, the Service plans to issue its Memorandum of Law for migratory bird hunting regulations at the same time the first of the annual hunting rules is completed. This rule does not contain any information collection requiring approval by OMB under 44 U.S.C. 3504.

Authorship

The primary author of this proposed rulemaking is Fant W. Martin, Office of Migratory Bird Management, working under the direction of Byron K. Williams, Acting Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1988-89 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), as amended.

Date: July 18, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-17273 Filed 7-21-89; 8:45 am]

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federal register

Monday
July 24, 1989

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 43; 65, Subpart E; and 145
Repair Station and Repairmen Certification Rules; Regulatory Review; Notice of Public Meetings

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 43; 65, Subpart E; and 145

[Docket No. 25965]

RIN 2120-AC38

Repair Station and Repairmen Certification Rules; Regulatory Review; Meetings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meetings.

SUMMARY: This notice announces four public meetings in which the Federal Aviation Administration (FAA) will solicit information from the public concerning revision of the repair station rules, repairmen certification rules, and sections of the maintenance, preventive maintenance, rebuilding, and alteration rules as applicable to repair stations. A complete explanation of the topics to be considered appears in this notice under Topics for Discussion. Topics not listed will be considered if there is sufficient interest and time permits. The FAA will use information and views learned at these meetings to review the existing regulations and to explore alternatives in revising the rules of these parts.

DATES: The public meetings will be held on October 24 and 25, 1989, in Washington, DC; on November 7 and 8, 1989, in Fort Lauderdale, Florida; on November 28 and 29, 1989, in Dallas, Texas; and on December 12 and 13, 1989, in San Francisco, California.

ADDRESSES: The public meetings will be held at the following locations:

(1) October 24 and 25, 1989, from 9:00 a.m. to 4:00 p.m. at the Federal Aviation Administration Building, Third Floor Auditorium, 800 Independence Avenue, SW., Washington, DC 20591. Registration will begin at 8:00 a.m. each day of the meeting.

(2) November 7 and 8, 1989, in Fort Lauderdale, Florida, from 9:00 a.m. until 4:00 p.m. at Fort Lauderdale Airport Hilton, 1870 Griffin Road, Dania, Florida 33004. Registration will begin at 8:00 a.m. each day at the meeting.

(3) November 28 and 29, 1989, in Dallas, Texas, from 9:00 a.m. to 4:00 p.m. at Holiday Inn D/FW Airport North, 4441 Highway 114 & Esters Boulevard, Irving, Texas 75063. Registration will begin at 8:00 a.m. each day of the meeting.

(4) December 12 and 13, 1989, in San Francisco, California, from 9:00 a.m. to 4:00 p.m. at Amfac Hotel, San Francisco International Airport, 1380 Old Bayshore Highway, Burlingame, California, 94010. Registration will begin at 8:00 a.m. each day of the meeting.

FOR FURTHER INFORMATION CONTACT: Requests to be heard at a meeting and questions concerning the logistics of the meetings should be directed to Barbara Crawford, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3780. For questions concerning the subject matter of the meetings, contact Leo Weston, Aircraft Maintenance Division (AFS-320), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8283.

SUPPLEMENTARY INFORMATION:

Participation at a Meeting

Persons wishing to present a statement at a meeting are requested to direct the request, and submit a copy of any written material to be presented orally during a meeting, to the person listed in the section entitled **FOR FURTHER INFORMATION CONTACT.** A request to present a statement and a copy of written material to be presented orally during the first meeting must be received by the FAA on or before October 10, 1989. A request to present a statement and a copy of written material to be presented orally during the second meeting must be received by the FAA on or before October 24, 1989. A request to present a statement and a copy of written material to be presented orally during the third meeting must be received by the FAA on or before November 14, 1989. A request to present a statement and a copy of written material to be presented orally during the fourth meeting must be received by the FAA on or before November 28, 1989.

Each person requesting to present a statement and submitting written material should indicate which meeting he/she wishes to attend and should include an estimate of the time necessary for the oral presentation. Following receipt of the presentation material, the FAA will develop an agenda for each meeting that will be available at that meeting. In order to accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested. Requests for time to make a presentation received after the above dates will be honored on a time-available basis and may not appear on the written agenda.

Persons or organizations unable to attend the meetings may mail their comments in duplicate to the Office of the Chief Counsel, ATTN: Rules Docket (AGC-10), Docket No. , Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, or deliver comments in duplicate to: FAA Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, DC 20591. Comments that are mailed or delivered must be marked "Docket No. " and must be received on or before January 31, 1990. Comments may be inspected at Room 916 between 8:30 a.m. and 5:00 p.m., Monday through Friday (excluding Federal holidays).

Background

Current repair station regulations are based on concepts developed during the infancy of the aviation industry, and review of these rules is considered necessary to determine present and future needs. Very few substantive changes have been made to those repair station rules since they were recodified in 1962 (27 FR 6662; July 13, 1962) and many of the rules may need to be updated to reflect the state-of-the-art. Both the FAA and the aviation industry have witnessed a change in the nature and method of aviation maintenance practices to keep pace with the state-of-the-art. To stay current with the state-of-the-art, it has been necessary at times to provide Special Federal Aviation Regulations (SFARs), airworthiness directives, exemptions, and other special administrative procedures to handle situations not adequately provided for in the regulations.

Although the FAA considered suggestions for conducting a complete review of Part 145 related to repair station ratings and privileges in the early 1960's, no formal action to amend Part 145 was taken until 1975.

Both the FAA and industry proposed specific amendments to Part 145 in response to the FAA First Biennial Operations Review in 1975. Although amendments to Part 145 were subsequently adopted, there was no major revision or change regarding ratings, privileges, and inspection procedures. In addition to the above, the FAA has held several meetings with various industry groups, repair stations, and aviation organizations in which opinions and suggestions for revision and update of FAR Part 145 have been offered.

Although the National Transportation Safety Board (NTSB) has not specifically recommended any changes to the repair station regulations, it has issued several general recommendations relating to repair stations. NTSB Recommendation A-69-025 requested the FAA to issue a maintenance alert bulletin to remind U.S.-certificated repair stations of the adverse effects of overtorquing the delta hinge bolt on a Bell Model 476-2 helicopter. NTSB Recommendation A-70-029 requested the FAA to review repair station specifications of all facilities engaged in retreading aircraft tires and to update such specifications where necessary to meet the performance requirements for high-speed aircraft tires. NTSB Recommendation A-76-071 requested the FAA to review its programs for surveillance of U.S.-certificated repair stations and the procedures governing the issuance of supplemental type certificates. NTSB Recommendations A-76-078 and A-76-079 recommended that the FAA review its surveillance procedures for U.S.-certificated repair stations to ensure that these procedures are adequate and that all repair stations maintain and use complete and current maintenance manuals. NTSB Recommendation A-79-102 recommended that the FAA require air carrier maintenance facilities and other designated repair stations to make a hazard analysis evaluation of proposed maintenance procedures that deviate from those in the manufacturer's maintenance manual and that involve removal, installation, or work in the vicinity of structurally significant components, and submit proposed procedures to the appropriate representative of the FAA Administrator for approval. NTSB Recommendations A-81-148 and A-81-149 recommended that the FAA review the procedures of all repair stations to ensure that aircraft records are thoroughly reviewed and that the proper inspections are performed.

Topics for Discussion

The FAA requests the participation of all interested persons, and the identification of any data, literature, statistics, research papers, and/or documentation that may be available in the public sector to support any recommendations. This will assist the FAA's consideration of the issues herein and will provide background material for any regulatory change. The FAA will consider all comments received in response to this notice in any future rulemaking action regarding Parts 43; 65, Subpart E; and 145 resulting from this notice.

Participants in this public meeting are invited to express views and to make recommendations for regulatory changes. Participants should also address the economic consequences (e.g., implementation costs, potential savings) of the changes discussed. The FAA encourages those persons submitting comments to include sources of supporting data that may be applicable to their viewpoints and recommendations.

The FAA has already received suggestions and opinions on how to update the repair station regulations in Parts 43; 65, Subpart E; and 145. Information summarizing these views is presented below to elicit information and comment from, and to stimulate informed discussion among, interested persons and organizations.

Specific areas of Part 145 that may need revision are: format; ratings and classes; operations and inspection procedures; manufacturer's maintenance facilities; contracting by repair stations; repair station privileges; facilities, housing, and equipment requirements; recordkeeping and report requirements; and the qualifications of management, inspection personnel, and repairmen. Public comments are requested on each of these areas, particularly suggestions noted below that have been received by the FAA as to how any revision to Part 145 could be developed.

Areas for Discussion

1. Format

Several suggestions have been made that the format of Part 145 be revised to group related subjects for ease of reference and to eliminate duplication. All current sections should be reviewed to determine whether they should be amended, or deleted as necessary and placed in the appropriate section or subpart of the new format. Pertinent parts of the FAA Airworthiness Inspector's Handbook (FAA Order 8300.9) and current Advisory Circulars related to repair stations could be considered for possible inclusion in the FAR as appropriate.

The present subparts in Part 145 could be realigned as follows: Subpart A—General; Subpart B—Certification; Subpart C—Facilities, Equipment, Materials, and Personnel Requirements; and Subpart D—Operating Rules. The regulations relating to specific subparts could be grouped under those subparts. Comments are requested as to whether such a realignment would facilitate the use and understanding of the regulation. Commenters and attendees should address the advantages and/or disadvantages of so consolidating regulations and comment on any costs that may be associated with a renumbering and the organization of pertinent regulatory sections.

2. Ratings and Classes

Repair stations with designated class ratings that are keyed to size and construction of aircraft and type of powerplant might provide a more simplified rating system than the current system in §§ 145.31 and 145.33. A new system of ratings could encompass modern maintenance requirements to permit optimum versatility and not impose operating restrictions beyond those required in the interest of safety. The rules should be reviewed and amended to reduce the number of certification actions and the need for exemptions as is presently the case. New ratings and classes may require, in some cases, recertification or exchange of current certificates. A possible "rating" and "class" system is described below:

Aircraft rating: Under current regulations, a repair station with an airframe rating may inspect powerplants, but is not permitted, even if equipped, to perform routine minor maintenance on powerplants or propellers. The FAA would consider changing the current "Airframe rating" to an "Aircraft rating." This would permit a repair station with an "Aircraft rating" to perform minor repair and minor alterations on engines and propellers up to, but not including, an "overhaul" as that term is described in § 43.2 of the FAR.

The current classes as now described in § 145.31 for an airframe rating could be deleted and the classes of aircraft on which a repair station could perform work under the new aircraft rating could be designated as follows:

—Class 1—aircraft (other than rotorcraft) with a maximum certificated takeoff weight of 12,500 lbs or less

—Class 3—aircraft (other than rotorcraft) with a maximum certificated takeoff weight over 12,500 lbs and up to and including 75,000 lbs

—Class 2—aircraft (other than rotorcraft) with a maximum certificated takeoff weight over 75,000 lbs.

Class 1 and 2 designations, along with the specific rating granted to a repair station, could apply to all types of aircraft in that class, regardless of make and model, provided the necessary facilities, housing, and equipment as required by other sections are in place. Class 3 designation could be granted only for a specific make and model of aircraft. Separate class ratings could also be issued for composite aircraft and rotorcraft (new Classes 4 and 5). A separate class rating could be issued to

a repair station for maintenance of rotorcraft. Aircraft primarily constructed of advanced composite material could be recognized as a separate class.

Powerplant rating: The current three classes of powerplant ratings could be expanded to provide for a general demarcation between types of turbine engines, as is currently done for reciprocating engines. Although the categorization of turboprop and turbojet engines cannot in all cases be based on the size of the engine, the FAA considers that such a demarcation of classes for turbine engines may be reasonable, however, specific comments are requested on having separate classes for these engines. In addition, a separate class of powerplant rating for new propfan engines using ultrahigh bypass ratios has been suggested. Does this suggestion have merit? What should the requirements be for such a rating and class, particularly in regard to facility and equipment requirements?

Propeller rating. It may be appropriate to add an additional class to the propeller rating for composite propellers composed primarily of advanced composite material. Does this suggestion have merit? If so, what additional requirements should be set forth for such a rating and class?

Avionics rating: It has been suggested that the current "Radio rating" be changed to an "Avionics rating" with the current classes generally being retained. The Class 1 communication equipment could be retained as well as the Class 2 navigational equipment. The Class 3 radar equipment could be changed to "pulse equipment" to cover any aircraft electronic system operated on pulse radio frequency principles. This would require some changes in the type of equipment being worked on under Class 2 navigational equipment and Class 3 for pulse equipment. Under this approach, Class 2 navigational equipment would specifically cover VOR, ADF, localizer, glide slope, marker beacons, LORAN C, OMEGA, MLS, and similar devices, whereas the Class 3 pulse equipment rating would specifically cover DME, transponder, airborne radar, radar altimeter, ground proximity indicator, and similar devices. Is this a viable approach? If so, what should be requirements be for each class?

Computer systems rating: A new rating for advanced computer systems could be established for digital computer systems, and components thereof, with the function of receiving external data, processing such data, and transmitting and presenting the processed data. Three classes for this rating could be established: Class 1—aircraft computer systems such as flight management and flight control systems; Class 2—powerplant computer systems such as fuel control and electronic engine control systems; and Class 3—avionics computer systems such as traffic collision avoidance systems, windshear avoidance systems, electronic flight instrument systems, and on-board maintenance systems. Would the addition of this rating be appropriate? What requirements should be considered?

Instrument rating: The instrument rating and classes could remain essentially the same as in the current rules but the new computer rating would be provided to cover modern technology.

Accessory rating: The accessory rating and classes could remain essentially unchanged.

Limited ratings: Although limited ratings could be retained, it has been suggested that the current rule could be changed to apply only to a particular make and model under a given rating. What are the advantages/disadvantages to such a change?

Specialized service rating: Consideration has been given to the addition of a new rating to cover a specific category of specialized equipment such as landing gear systems, nondestructive inspection and testing, and emergency equipment. A specialized service rating could be issued whenever the Administrator would find an applicant's request to be appropriate. Is such a new rating desirable? What should be the requirements for such a rating?

3. Operations and Inspection Procedures

Participants should consider whether the sections relating to operating rules and inspection systems should be updated and revised. A quality control system for all repair stations is now required. Should a requirement be developed for a repair station operations manual to cover the entire operation of a repair station rather than an inspection procedures manual, as now required? The minimum contents of such a repair station operations manual could be set forth in the rule, including a provision in the manual for procedures required to be accomplished prior to the removal or addition of a product for maintenance, preventive maintenance, or alteration by a repair station. Experience also has shown the need for a repair station to specifically cover in its manual those steps to be taken by the repair station to assure compliance with the approved provisions in its manual. The section on return to service of an item worked on and inspections of work performed by a repair station could be updated. Comments are specifically requested on the concept of an "operations manual" and its estimated costs.

4. Manufacturer's Maintenance Facility

Consideration is being given to deleting Part 145, Subpart D, "Limited Ratings for Manufacturers." The concept of a manufacturer's repair station could be incorporated in a revised Part 145, but a separate Subpart D may not be necessary. It is recognized that a manufacturer's repair station operates in compliance with the maintenance rules set forth in Part 43 and Part 145, however, there are certain provisions in Part 145 that could be made applicable to manufacturers by granting them similar privileges now provided to certificated repair stations operating under other than current Part 145, Subpart D.

5. Contracting by Repair Stations

The FAA has received several requests to update and expand sections of Part 145 relating to FAA authorized contracting by repair stations of certain work to other facilities. In this regard, should existing Part 145, Appendix A be deleted or should the Appendix be retained and updated accordingly to reflect the current state of the art for repair stations in line with any revisions and modifications to repair station ratings and classes?

A revision to Part 145 could include modifications of those functions (asterisked items in Appendix A) that can be contracted by a repair station to another facility. Comments are specifically requested on the equipment requirements of the various repair station ratings as well as those asterisked items setting forth those functions that could be contracted out by a repair station. The FAA has received recommendations from the industry that a distinction be made to set forth the type of a facility to which a repair station could contract out work. For example, a single asterisk (*) would permit contracting out work only to a certificated repair station, whereas a double asterisk (**) would permit the contracting out of the stated function to a noncertificated facility. Is such a distinction viable? If so, which items of equipment and functions should be contracted out for each rating and class and which should be contracted out to a noncertificated facility?

6. Repair Station Privileges

The privileges granted to the holder of an FAA Repair Station Certificate could be clarified and revised. A separate paragraph regarding repair stations that are considered subsidiaries (satellite stations) of a permanent repair station could be included in the rule as well as a paragraph on air carrier line station authority. The FAA is aware that some confusion has arisen regarding the establishment, control, and location of satellite repair stations as well as the FAA's basic requirements related to their facilities, housing, equipment, and personnel. The material on satellite repair stations contained in FAA Order 8300.9 may be appropriate for inclusion in the rules. For a repair station that does work for an air carrier or commercial operator having a continuous airworthiness program where the repair station is co-located at a line station for a certificated air carrier, the repair station could be approved to perform servicing and preventive maintenance in accordance with that air carrier's maintenance manual. Are these suggestions warranted? Should the present practices be recognized in the regulations by their inclusion in any revision?

7. Facility, Housing, and Equipment Requirements

The facility, housing, and equipment requirements for repair stations may need to be updated and revised. To provide a repair station with the mobility to temporarily perform maintenance functions at a place other than the repair station, a suggestion has been made to clarify the need for a repair station to perform maintenance, preventive maintenance, or alteration of an aircraft at a place other than the fixed location of the repair station. Suggestions have also been made to update and clarify the requirements for changing the location or facilities of a repair station. Such changes may no longer require a formal change of a repair station's certificate, provided the change has FAA approval, and the procedures for the change are set forth in the repair station's manual. Should this approach be considered?

Housing requirements for repair stations with the existing airframe rating could also be reviewed and clarified, particularly as to housing required for large aircraft. Should housing be required for the heaviest/largest aircraft of a given class or only for the aircraft being worked on by the repair station? It is conceivable that by changing the classes of an airframe or aircraft rating as discussed above, a repair station working on DC-9s would require housing for that aircraft and not for a B-747 as has been contended for a Class 4 airframe rating in the past. Does this approach have merit?

Although it is recognized that a repair station must have the equipment and materials necessary to efficiently perform the functions appropriate to the rating and class held by the repair station, a repair station with a limited rating may not need to be equipped for a function that does not apply to the particular make and model for which the repair station has a rating. Should this be clarified in the regulations?

8. Recordkeeping and Report Requirements

Consideration is being given to revising the recordkeeping and report requirements of Part 145 to ensure that they are consistent with safety requirements, yet are not overly burdensome to the repair station industry. A suggested change could require that: (1) A copy of the work record be prepared and given to the operator/owner; (2) a signature of an appropriately authorized official of the repair station should be on the record; (3) record retention should be based on the return to service date of the repaired part rather than when the repair work was accomplished; and (4) required records and reports be maintained for 5 years, except if the repair station is approved by the FAA to use an automated data processing system for its recordkeeping, in which case hard copies of such records and reports need only be maintained for a period of 2 years. Comments are requested on these suggestions as well as information on present practices of record retention by repair stations and costs involved for any change in such requirements.

9. Management, Inspection Personnel, and Repairmen Qualifications

It may be advantageous to update and clarify the rules of management/supervisory and inspection personnel at a repair station. Consideration is being given to clearly establish in the regulations, the qualification, training, and experience requirements for such personnel for a repair station, taking into consideration the particular rating and class of the station. Such requirements could be similar to those requirements for other quality control organizations (e.g., Parts 121 and 135 maintenance requirements). Comments are solicited on revising the requirements. Suggested requirements for inclusion in the regulation for the qualification, training, and experience of such personnel are particularly solicited.

Also, the requirements concerning repairmen certification and qualification in both Part 65, Subpart E and Part 145 may need to be updated and revised. With changes to Part 65, Subpart E, those provisions in Part 145 relating to repairmen could be revised in accordance with the certification requirements in Part 65. How should the repairmen sections be handled in both Parts 65 and 145? What are the costs, if any, that may be involved in adopting these suggestions?

10. Additional

Participants in these public meetings are invited to express any additional views and recommendations for changes to Parts 43; 65, Subpart E; and 145.

Meeting Procedures

The following procedures are established to facilitate the meetings:

1. There will be no admission fee or other charge to attend and participate in the meetings. The meetings will be open, on a space-available basis, to all persons who register. If practicable, the meetings may be accelerated to enable adjournment in less than the scheduled time.

2. The meetings will be chaired by the FAA. A panel of FAA personnel involved in this rulemaking project will be present.

3. All sessions will be recorded by a court reporter. Anyone who is interested in purchasing a copy of the transcript of the proceedings should contact the court reporter directly. A copy of the transcript and any material accepted by the FAA panel will be placed in the docket.

4. The FAA will consider all material presented by participants at the meetings and all comments will be forwarded to the public docket. Position papers or handout material concerning the topics may be accepted at the discretion of the chairperson of each meeting. However, enough copies must be provided for distribution to the FAA panel and to other participants at that meeting.

5. Statements by FAA personnel at the meetings will be made to facilitate discussion, but should not be considered as expressing FAA positions.

Daniel C. Beaudette,

Acting Director, Flight Standards Service.

Issued in Washington, DC, on July 14, 1989.

[FR Doc. 89-17239 Filed 7-21-89; 8:45 am]

BILLING CODE 4910-13-M

federal register

Monday
July 24, 1989

Part VI

The President

Proclamation 5999—Space Exploration Day, 1989

Federal Register
Vol. 54, No. 140
Monday, July 24, 1989

Presidential Documents

Title 3—

The President

Proclamation 5999 of July 20, 1989

Space Exploration Day, 1989

By the President of the United States of America

A Proclamation

Twenty years ago, on July 20, 1969, American astronauts landed on the Moon, changing forever our perception of the universe and our relation to it. That "giant leap for mankind," a quarter of a million miles from Earth, was more than a triumph of human ingenuity, skill, and courage—it was a tribute to the indomitable American spirit.

The lunar landing would not have been possible without the vision, determination, and technological genius that Americans, working together, have demonstrated throughout our Nation's history. Like the Viking and Voyager missions, the space shuttle, and other programs that have since followed, the lunar landing gave compelling testimony to the faith and tenacity of the American people. It also reflected the extraordinary talent and dedication of men and women throughout the National Aeronautics and Space Administration, the United States Armed Forces, the American aerospace industry, and educational institutions across the country. Those are qualities of which we are still very proud today.

Three decades into our great adventure into space, we have learned more about our planet, the solar system, and the universe than was once imaginable. We have entered space for peaceful and scientific purposes; and, in the process, we have demonstrated what Americans can do when we put our will and our resources to work in pursuit of a worthy national goal.

As a Nation, we have traveled hundreds of millions of miles in space, but we have only begun our journey. In the coming decades, we will continue to forge ahead, transforming dreams into reality. By the end of the century, Space Station Freedom—which we are developing in cooperation with our friends and allies—will create new opportunities for commerce and discovery and provide a base for further exploration of the infinite frontier of space.

Two decades ago, the men of Apollo 11 began our journey into the universe, taking with them our heartfelt prayers and our highest hopes. They opened a door that can never be closed and, in so doing, changed forever the course of human history. As we continue to follow the steps of those brave pioneers, wherever we travel, we will, like them, have come in peace for all mankind.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim July 20, 1989, as Space Exploration Day. I call upon the people of the United States to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of July, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-17440
Filed 7-21-89; 11:20 am]
Billing code 3195-01-M

federal register

Monday
July 24, 1989

Part VII

International Trade Commission

Sanction for Breach of Commission Protective Order; Notice

INTERNATIONAL TRADE COMMISSION

Sanction for Breach of Commission Protective Order

AGENCY: U.S. International Trade Commission.

ACTION: Sanction for breach of Commission Protective Order.

SUMMARY: Notice is given that the Commission has determined that Ms. F. Amanda DeBusk, Esq., has breached a Commission administrative protective order by issuing instructions that led directly to the transmission of a document containing business proprietary information released under protective order to persons not authorized to receive it. As sanctions, the Commission has (1) suspended Ms. DeBusk from access to information released under any Commission protective order until the Commission concludes (or should the Department of Commerce's final determinations be negative, until the Commission would have been scheduled to conclude) its final investigations in *Certain Telephone Systems and Subassemblies Thereof from Japan, Korea, and Taiwan,* Invs. Nos. 731-TA-426-428; and (2) issued a public letter of reprimand to Ms. DeBusk.

FOR FURTHER INFORMATION CONTACT; William T. Kane, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone: (202)-252-1116. A copy of the public letter of reprimand is on file at the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone: (202)-252-1000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202)-252-1810.

Authority: The authority for this action is conferred by 19 U.S.C. 1677f(c)(1)(B), and by Rule 207.7 of the Commission's Rules of Practice and Procedure (19 CFR 207.7, as amended).

By order of the Commission.

Jim Craig,

Acting Secretary.

Issued: July 21, 1989.

[FR Doc. 89-17439 Filed 7-21-89; 11:45 am]

BILLING CODE 7020-02-M

federal register

Monday
July 24, 1989

Part VIII

Department of Energy

Office of the Secretary

Public Hearings to Solicit Views From Public Officials and the General Public on the Development of a National Energy Strategy; Change in Hearing Location; Notice

DEPARTMENT OF ENERGY

Office of the Secretary

Public Hearings to Solicit Views From Public Officials and the General Public on the Development of a National Energy Strategy; Change in Hearing Location

AGENCY: Office of the Secretary, DOE.

ACTION: Change in hearing location.

On July 21, 1989, the Department of Energy published a notice document in the **Federal Register** announcing the first in a series of hearings to solicit views from public officials and the general public on the development of a national energy strategy. The initial hearing is scheduled for August 1, 1989, from 8:45 a.m. to 12:00 Noon and 2:00 p.m. to 5:00 p.m. In order to accommodate a large number of participants, the hearing location has been changed to the Departmental Auditorium, 12th and Pennsylvania Avenue, NW., Washington, DC. The date and time remain the same.

FOR FURTHER INFORMATION CONTACT: Ruth L. Burns, Office of Policy, Planning and Analysis, U.S. Department of Energy, (202) 586-4767.

Linda G. Stuntz,

Deputy Under Secretary, Office of Policy, Planning and Analysis, Department of Energy.

[FR Doc. 89-17448 Filed 7-21-89; 11:49 am]

BILLING CODE 6450-01-M

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LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 2848/Pub. L. 101-56

Computer Matching and Privacy Protection Act Amendments of 1989. (July 19, 1989; 103 Stat. 149; 2 pages) Price: $1.00

BEST COPY AVAILABLE

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $620.00 domestic, $155.00 additional for foreign mailing.

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Title	Price	Revision Date
1, 2 (2 Reserved)	$10.00	Jan. 1, 1988
3 (1988 Compilation and Parts 100 and 101)	21.00	[1] Jan. 1, 1989
4	14.00	Jan. 1, 1988
5 Parts:		
1-699	14.00	Jan. 1, 1988
700-1199	15.00	Jan. 1, 1988
*1200-End, 6 (6 Reserved)	13.00	Jan. 1, 1989
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan.1, 1988 to Dec.31, 1988. The CFR volume issued January 1, 1988, should be retained.

[3] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1988. The CFR volume issued January 1, 1987, should be retained.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[7] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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federal register

Tuesday
July 25, 1989

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1139

[DA-89-023]

Milk in the Great Basin Marketing Area; Revision of Diversion Limits and of Cooperative Manufacturing Plant Shipping Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Revision of rules.

SUMMARY: This action increases the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the Great Basin Federal milk order. The action increases the percentage of producer milk that the operator of a pool plant may divert to nonpool plants from 60 percent to 70 percent during the months of April through August, and from 50 percent to 60 percent in other months. The action was requested by two proprietary pool plant operators whose milk is supplied by independent producers.

In addition, the percentage of its producer milk that a pool manufacturing plant owned and operated by a cooperative association and located in the marketing area must deliver to pool distributing plants during any current month or during the 12-month period ending with the current month in order to meet the order's pooling standards is reduced from 40 percent to 35 percent. This action was requested by a cooperative association representing a large proportion of the producers supplying the market in order to prevent uneconomic movements of milk. At the request of the cooperative, the shipping percentage has already been reduced from 45 percent to 40 percent.

EFFECTIVE DATE: June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, 202-447-7183.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Proposed Revision of Diversion Limitation Percentage: Issued June 9, 1989, published June 15, 1989 (54 FR 25466).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action will provide greater assurance that handlers will not engage in uneconomic movement of the market's reserve milk supplies in qualifying such milk for pricing status under the order. The action will also tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the provisions of §§ 1139.7(e) and 1139.13(d)(4) of the Great Basin Federal milk order.

Notice of proposed rulemaking was published in the **Federal Register** (54 FR 25466) concerning a proposed increase in the percentage of producer milk that the operator of a pool plant may divert to nonpool plants from 60 to 70 percent during the months of April through August, and from 50 percent to 60 percent in other months. Also proposed was an additional 5 percent relaxation of the percentage of its producer milk that a manufacturing plant owned and operated by a cooperative association and located in the marketing area must deliver to pool distributing plants during any current month or during the 12-month period ending with the current month in order to meet the order's pooling standards. The notice of proposed revision stated that the revision would be effective beginning June 1989. The public was afforded the opportunity to comment on the notice by submitting written data, views and arguments by June 22, 1989.

Statement of Consideration

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, and other available information, it is hereby found and determined that the diversion limitation percentage set forth in § 1139.13(d)(3) should be relaxed from 60 to 70 percent during the months of April through August, and from 50 percent to 60 percent in other months, beginning with the month of June 1989. In addition, also beginning with the month of June 1989, the percentage of producer milk required by § 1139.7(d) to be shipped to pool distributing plants by a manufacturing plant owned and operated by a cooperative and located in the marketing area should be reduced by an additional 5 percentage points, from 40 percent to 35 percent.

Sections 1139.7(e) and 1139.13(d)(4) of the Great Basin milk order allow the Director of the Dairy Division to increase or reduce the diversion limitation percentage and the shipping percentage requirement by up to 10 percentage points to assure orderly marketing and efficient handling of milk in the marketing area. Such changes may be made to encourage additional milk shipments needed to assure an adequate supply of milk to fluid handlers, or to prevent uneconomic shipments of milk merely for the purpose of assuring that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Gossner Foods, Inc., and K.D.K., Inc., two proprietary handlers who obtain their milk supplies from independent producers pooled under the Great Basin order, requested that the percentage of producer milk allowed to be diverted to nonpool plants be increased 10 percentage points. Western Dairymen Cooperative, Inc. (WDCI), a cooperative association which represents a majority of the producers supplying the Great Basin market, requested that the percentage of producer milk required to be shipped to pool distributing plants from a plant owned and operated by a cooperative association and located in

the marketing area be reduced an additional 5 percentage points. WDCI had already requested a 5-percent reduction in the shipping percentage.

The handlers stated that loss of sales and increasing production make necessary an increase in the percentage of producer milk allowed to be shipped directly to nonpool manufacturing plants rather than delivered to pool plants, and a reduction in the percentage of producer milk required to be shipped to pool distributing plants by a cooperative manufacturing plant. According to the handlers, such action is necessary in order to maintain the pool status of their producers who have long been associated with the marketing area.

No comments opposing the revisions were received.

Without the revisions, milk would have to be moved unnecessarily and uneconomically from farms to pool distributing plants for the sole purpose of maintaining the pool status of producers historically pooled under the Great Basin order. In addition to such movements of milk being inefficient and uneconomic, the additional pumping to which the milk would be subject would be detrimental to the quality of the milk. It is concluded that the relaxation of the order's diversion limits and cooperative manufacturing plant shipping requirement will prevent uneconomic movements of milk to pool plants merely for the purpose of qualifying it as producer milk under the order. The provisions of the order allow the diversion limits and the shipping requirement to be tightened up, as well as relaxed, if such action were deemed appropriate at some later time.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area;

(b) This revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this revision.

Therefore, good cause exists for making this revision effective sooner than 30 days after publication in the Federal Register.

List of Subjects in 7 CFR Part 1139

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, that the aforesaid provisions of §§ 1139.7(d) and 1139.13(d)(3) of the Great Basin milk order are hereby revised beginning with the month of June 1989.

PART 1139—MILK IN THE GREAT BASIN MARKETING AREA

1. The authority for 7 CFR Part 1139 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

§ 1139.7 [Amended]

2. In § 1139.7(d), the provision "40 percent" is revised to "35 percent" beginning with the month of June 1989.

§ 1139.13 [Amended]

3. In § 1139.13(d)(3), the words "60 percent in the months of April through August, and 50 percent in other months" is revised to "70 percent in the months of April through August, and 60 percent in other months" beginning with the month of June 1989.

Signed at Washington, DC, on: July 19, 1989.

W. H. Blanchard,

Director, Dairy Division.

[FR Doc. 89–17309 Filed 7–24–89; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Parts 1945 and 1980

Final Implementation of Farmer Program Loan Provisions of the Disaster Assistance Act of 1988 (Pub. L. 100–387)

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) adopts its interim rule published January 19, 1989 (54 FR 2083–2087), as a final rule without change. This action amends FmHA regulations by authorizing special disaster assistance to eligible farmers and ranchers who sustained severe production losses to their 1988 crop(s) as a result of widespread drought and other natural disasters. This action is necessary to finalize the interim rule, which implemented the provisions of the Disaster Assistance Act of 1988 (dated August 11, 1988), that was incorporated into existing FmHA regulations.

EFFECTIVE DATE: July 25, 1989.

ADDRESS: The Regulatory Impact Analysis Statement (RIA) is available for public inspection during regular working hours at the following address: Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th Street and Independence Ave. SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Morris Monesson, Deputy Director, Farmer Programs Loan Making Division, USDA South Building, 14th and Independence Avenue SW., Washington, DC 20250, telephone (202) 382–1641.

SUPPLEMENTARY INFORMATION:

Classification

This action was reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12991, and was determined to be major because it will result in an annual effect on the economy of $100 million or more.

Memorandum of Law

I have reviewed the regulations which the Farmers Home Administration (FmHA) is publishing as a final rule to implement sections 311, 312, and 313 of the Disaster Assistance Act of 1988, Pub. L. 100–387, 7 U.S.C. 1421 note, and have found that these regulations comply with that statute; and that FmHA has the authority to issue such regulations pursuant to section 339 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1989).

Alan Charles Raul,

General Counsel.

Summary of RIA

The USDA has developed a Regulatory Impact Analysis (RIA), dated August 26, 1988, which was summarized in the interim rule, dated January 19, 1989. A study was done to document the cost of implementing this rule. The study showed that the regulatory revisions prescribed by law would increase Government costs by approximately $500 million. While one comment was received concerning the rule, it did not address the RIA. However, because participation in the program to date is lower than expected, FmHA is able to reduce the estimated cost of this program from $500 million to $100 million At the time the original cost projection was made—8 months ago—the full impact of disaster benefits provided through programs administered by the Agricultural Stabilization and Conservation Service (ASCS) could not be forecast. Since farmers and ranchers have taken advantage of the ASCS programs to the fullest extent possible, participation in FmHA's EM loan program is below

expectations. Thus, FmHA is able to reduce the amount of EM funds held for the implementation of this rule.

Intergovernmental Consultation

For the reasons set forth in the final rule related to Notice, 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans and Farm Operating Loans are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans.

10.406—Farm Operating Loans.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Discussion of Final Rule

On January 19, 1989, FmHA published an Interim Rule amending 7 CFR Parts 1945–D and 1980–B in the Federal Register (54 FR 2083–2087) with a comment period ending February 21, 1989. The "Disaster Assistance Act of 1988," (Pub. L. 100–387), dated August 11, 1988, amended FmHA's statutory loan-making authorities. It was necessary to implement these authorities upon publication to provide immediate assistance to farmers and ranchers who had suffered major crop production losses as a result of severe drought and other natural disasters in 1988.

The Act mandates changes in the emergency loan regulations and the guaranteed operating loan regulations, which will temporarily ease the requirements for obtaining assistance under these programs. These changes are fully addressed in the interim rule. These regulations will provide assistance to many needy farmers and ranchers, who are or will be in danger of losing their operations without this assistance.

Discussion of Comments

One comment letter was received, that being from an FmHA County Supervisor. The letter addressed the concern that the interim rule does not require all applicants who receive EM loans based on 1988 production losses to purchase 1989 crop insurance. That requirement can be waived, if certain conditions exist. The comment stated that it would be cost effective for applicants to obtain crop insurance and receive insurance indemnity payments, rather than borrow to cover their losses. He also stated that Federal Crop Insurance should be required without exception. Since the statute requires the waiver of crop insurance for a 1989 crop/commodity when certain conditions exist. FmHA has no choice but to comply with the statute.

No comments were received on the Interim Rule concerning the revisions to guaranteed operating loan regulations.

List of Subjects

7 CFR Part 1945

Agriculture, Disaster assistance.

7 CFR Part 1980

Agriculture, Loan programs—agriculture.

Therefore, FmHA adopts its interim rule, dated January 10, 1989 (54 FR 2083–2087), as a final rule without change.

Date: June 23, 1989.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 89–17310 Filed 7–24–89; 8:45 am]

BILLING CODE 3410–07–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 39

Authorization To Use Sealed Sources in Well Logging

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of generic exemption.

SUMMARY: This notice exempts Nuclear Regulatory Commission (NRC) well logging licensees from the requirement to use only sealed sources that meet the prototype testing requirements specified in § 39.41(a)(3) of 10 CFR Part 39 in well logging operations. The exemption will apply only to sealed sources that meet certain alternate prototype testing criteria.

EFFECTIVE DATE: July 17, 1989.

ADDRESSES: Copies of the documents referred to in this notice may be examined at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: J. Bruce Carrico, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–0634.

SUPPLEMENTARY INFORMATION:

Background

In 1985, NRC published a proposed new Part 39 to its regulations that specified radiation safety and license requirements for the use of licensed material in well logging (see 50 FR 13797, published April 8, 1985). Section 39.41 of the proposed rule set forth design and performance criteria for sealed sources used in logging oil, gas, or other geophysical wells. (A sealed source is defined in 10 CFR 39.2 as any licensed material that is encased in a capsule designed to prevent leakage or escape of the licensed material.)

Proposed § 39.41 would have prohibited licensees from using a sealed source manufactured one year after the effective date of the final rule in well logging unless the manufacturer certified that the sealed source: (1) Is doubly encapsulated; (2) contains insoluble and non-dispersible (as practical) licensed material; (3) was individually pressure tested; and (4) was prototype performance tested for temperature, impact, vibration, and puncture. The prototype performance tests proposed in the rule were the same as the tests specified for well logging sources in American National Standard Institute (ANSI) N542–1977, "Sealed Radioactive Sources, Classification," published by the National Bureau of Standards (NBS Handbook 126) in 1978. Two years after the effective rule date, proposed § 39.41 also would have prohibited licensees from using a sealed source manufactured before one year after the effective date of the final rule unless the source was certified, by the manufacturer or a qualified testing organization, as meeting criteria (1), (2), and (3) above, or as meeting all of the above criteria through prototype testing.

NRC received several comments concerning proposed § 39.41. Some comments indicated that certain provisions of the regulation were too vague. Other comments noted that the ANSI N542–1977 standard only specified prototype pressure testing for well logging sealed sources, and questioned the need for pressure tests of individual

sources. In preparing the final rule, the staff rewrote § 39.41 to simplify the language and to recognize prototype pressure testing as a reasonable alternative to individual testing. The final rule prohibits licensees from using, after July 14, 1989, a sealed source in well logging unless the source is doubly encapsulated; contains licensed material whose chemical and physical forms are as insoluble and non-dispersible as practical; and is prototype performance tested and found to maintain its integrity after each of the following tests: temperature, impact, vibration, puncture, and pressure. (The prototype performance tests specified in the rule are the same as the tests specified in ANSI N542-1977.)

In making this change, the staff believed most sealed sources in use at the time already met these requirements. Also, the staff believed that the sealed source manufacturers would recertify many of the sealed source models which did not meet the proposed testing requirements. However, a number of the companies that manufactured these sources have been purchased by a company which has indicated that it does not wish to continue with the products or recertify prototype sources.

The Regulatory Dilemma

Recently it has been brought to NRC's attention that a large number of the sealed sources currently in use by the well logging industry do not appear to meet the prototype testing provisions of § 39.41, paragraph (a)(3). A review of sealed source registration sheets from NRC's Sealed Source and Device Registry indicates that many of the well logging source models were registered before publication of ANSI N542-1977. (The Sealed Source and Device Registry is a source of descriptive information about sealed sources and devices containing radioactive material, and is used by NRC in its licensing activities.) Because of the manufacturing ownership changes described above, it is doubtful that these sealed sources will be recertified.

An additional review of NRC's well logging licenses shows that a majority of the licenses authorize possession and use of sealed sources that do not meet § 39.41(a)(3) requirements. For many licenses, these may be the only sealed sources the licensee is authorized to possess and use. If licensees are required to comply with the requirements of § 39.41(a)(3) on its effective date (July 14, 1989), many licensees may have to severely curtail or even discontinue well logging operations, a result NRC did not anticipate or intend. Such well logging licensees may be forced out of business and have to dispose of the sources whose use would be discontinued. Radioactive waste disposal problems could be exacerbated by the large number of sources which may be involved.

Alternate Option

While NRC's review of registration sheets from the Sealed Source and Device Registry indicates that many well logging sealed source models were registered before publication of ANSI N542-1977, the majority of sheets also indicate that the sources were prototype tested in accordance with an earlier national standard [United States of America Standards Institute (USASI) N5.10-1968] that classifies radioactive sealed sources. In comparing the 1968 and 1977 national standards, NRC found three of the tests (temperature, pressure, and impact) to be very similar. The puncture testing technique is different in the two standards. In the 1968 standard, the actual force developed in the puncture test will vary depending upon the source mass. In the 1977 standard, the actual force developed is fixed. However, in comparing the forces, NRC calculations show that equal or greater force is developed using the earlier standard's testing technique (assuming no horizontal or other external components of force).

The last test, vibration, specified in the 1977 standard for well logging source classification and in § 39.41(a)(3) was not specified in the 1968 standard. However, information NRC has obtained indicates that, although a vibration test requirement was considered in 1968, the consensus was that the well logging sources had to be so ruggedly built in order to pass the other tests, there was no reason to include the vibration test. The information also indicates that the test was included in the 1977 standard simply to make the standard compatible with an existing international standard, and that it was included in the international standard only for consistency within the standard (e.g., the standard specified a vibration test for all other source types). NRC can find no evidence that source failure due to vibration damage was a reason for including the test in the standard.

Findings

NRC has examined the information it has available concerning sealed sources used in well logging operations and has made a determination that there is reason to believe that implementation of the subject requirement may not be in the public interest because of the large number of radioactive sealed sources whose use would have to be discontinued. NRC also believes that continued use of sealed source models which have been subjected to prototype testing in accordance with USASI N5.10-1968 would not adversely affect public health and safety. NRC notes that there have been almost no sealed source failures reported for this source category.

For these reasons, NRC believes it should reevaluate the requirements in § 39.41(a)(3) for prototype testing of sealed sources. During this reevaluation, NRC also believes it should allow use of those sealed source models which have been subjected to prototype testing in accordance with either USASI N5.10-1968 or the existing requirements in § 39.41(a)(3) (i.e., ANSI N542-1977). NRC notes that this does not relieve licensees from the requirement to comply with other NRC regulations, orders, or license conditions concerning possession or use of radioactive sealed sources in well logging.

Legal Basis

Sections 30.11 of 10 CFR Part 30 and 39.91 of 10 CFR Part 39 allow the Nuclear Regulatory Commission, on its own initiative, to grant exemptions from the requirements of Part 39 if they are authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest.

This exemption is authorized by law because it is permitted under sections 57 and 81 of the Atomic Energy Act of 1954, as amended.

This exemption will not endanger life or property or the common defense and security because NRC has reviewed the radiation safety issues related to the use of sealed sources in well logging and believes that sealed source models which have been subjected to prototype testing in accordance with USASI N5.10-1968 are adequate to assure public health and safety.

This exemption is in the public interest because it will allow well logging companies to continue to use a large number of sealed sources whose use otherwise would have to be discontinued, an impact NRC did not intend.

Scope, Effective Date, and Expiration of Generic Exemption

Effective on July 17, 1989 and until NRC publishes its final findings in the **Federal Register** regarding design and performance criteria for sealed sources, NRC licensees that are authorized to use sealed sources in well logging are exempted from the requirements of 10 CFR 39.41(a)(3) when using sealed sources that have been subjected to prototype testing in accordance with USASI N5.10-1968.

Dated at Rockville, MD this 17th day of July, 1989.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 89-17364 Filed 7-24-89; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-ANE-38; Amdt. 39-6274]

Airworthiness Directives; Pratt & Whitney Canada (PWC) JT15D-4B Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S owners and operators of certain PWC JT15D-4B turbofan engines by individual priority letters. The AD requires borescope inspections of the high turbine assembly and removal from service of those high turbine assemblies with evidence of forward blade movement. The AD is needed to prevent high turbine assembly failures on certain JT15D-4B engines as a result of possible blade release due to blade shifting.

DATES: Effective September 1, 1989, as to all persons except those persons to whom it was made immediately effective by Priority Letter AD 88-22-03, issued on October 21, 1988, which contained this amendment.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service information letter (SIL) may be obtained from Pratt & Whitney Canada, 1000 Marie Victorin, Longueuil, Quebec, Canada J4G 1A1, or may be examined in the Regional Rules Docket, Room 311, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Diane M. Cook, Engine Certification Branch, ANE-142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7082.

SUPPLEMENTARY INFORMATION: On October 21, 1988, Priority Letter AD 88-22-03 was issued and made effective immediately as to all known U.S. owners and operators of PWC JT15D-4B turbofan engines. The Priority Letter AD requires initial and repetitive borescope inspections of JT15D-4B turbofan engine high turbine assemblies which have not reached their scheduled initial hot section inspection (HSI). If the inspection reveals forward blade movement in excess of the 0.020 inch limit, the high turbine assembly must be removed and replaced prior to further flight. Upon completing an HSI, repetitive inspections are no longer required. There have been five contained events on JT15D-4B high turbine assembly failures resulting from high turbine blade shifting. Three of these five events had engine serial numbers in consecutive order. There have also been several instances of blade platform axial movement in excess of the JT15D-4B Maintenance Manual limit found during scheduled HSI from engines prior to S/N PC-E102280. Investigation continues to determine the cause of blade shifting on engines prior to S/N PCE 102280. AD action is necessary to prevent excessive axial movement of the high turbine blade platform which may result in the release of the blade and failure of the high turbine assembly.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by priority letter, issued October 21, 1988, as to all known U.S. owners and operators of certain JT15D-4B turbofan engines. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The regulations adopted herein do not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule, since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, and Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

Pratt & Whitney Canada: Applies to Pratt & Whitney Canada (PWC) JT15D-4B series turbofan engines prior to Serial Number (S/N) PC-E 102280.

Compliance is required as indicated, unless already accomplished.

To prevent failure of the high turbine assembly due to high turbine blade shifting, accomplish the following:

(a) For JT15D-4B engines which have not reached their scheduled initial HSI on the effective date of this AD, borescope inspect in accordance with the instructions in Appendix I of this AD, as follows:

(1) Engines which have accumulated greater than 585 hours time since new (TSN) on the effective date of this AD, initially inspect within 15 operating hours from the effective date of this AD, or within 10 calendar days from the effective date of this AD, whichever occurs first.

(2) Engines which have accumulated 585 hours TSN or less on the effective date of this

AD, initially inspect prior to accumulating 600 hours TSN.

(3) Reinspect at intervals not to exceed 300 hours time in service since initial inspection until the initial HSI is completed, or until the high turbine assembly is replaced with a serviceable assembly, from which time no further borescope inspections are required.

(4) Remove from service, prior to further flight, and replace with a serviceable assembly those high turbine assemblies with evidence of forward blade movement in excess of the 0.020 inch limit.

Note: Serviceable assemblies include high turbine assemblies removed from engines prior to S/N PC-E 102280 which have completed an HSI, or that portion of the HSI requiring deblading and re-riveting the turbine assembly in accordance with the JT15D Overhaul Manual.

(b) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD may be accomplished.

(c) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

Inspections shall be accomplished in accordance with the instructions in Appendix I of this AD.

This amendment becomes effective September 1, 1989, as to all persons except those persons to whom it was made immediately effective by individual Priority Letter AD 88-22-03, issued October 27, 1988, which contained this amendment.

Issued in Burlington, Massachusetts, on July 12, 1989.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

Appendix I

Note: Pratt & Whitney Canada Service Information Letter 7027, dated October 7, 1988, pertains to these instructions.

Appendix I—Pratt & Whitney Canada, Service Information Letter (SIL) No. 7027, Dated October 7, 1988.

JT15D-4B Engines (Prior to S/N PC-E 102280)

Requirements

For JT15D-4B engines which have not reached their scheduled Hot Section Inspection (HSI) interval, borescope inspections are required per the following schedule:

1. Initial inspection to be carried out at 600 hours Time Since New (TSN). For those engines post 600 hours TSN and pre-HSI, initial inspection to be carried out within 25 hours of operation or 30 days from the date of issue of this S.I.L., whichever is reached first.

2. Repeat inspections shall be carried out at 300 hour intervals.

3. Following Hot Section Inspection, no further borescope inspections are necessary.

Disposition

If evidence of forward blade movement in excess of the .020" limit described in the Maintenance Manual is found, the high turbine assembly shall be removed and returned to an authorized repair facility for re-riveting.

In the event of re-riveting being required, it is advised that the engine be disassembled sufficiently to remove the high turbine only. Removal of the low turbine stator support assembly, high turbine vane or associated components should be avoided—any parts exposed may be inspected in-situ.

Borescope Procedure

It has been found that, with care, a 6mm flexible borescope can be passed between the blades of the low turbine assembly (5mm is considerably easier), hence allowing access to the rear of the high turbine blades. With the borescope in position, the high rotor can be rotated via the accessory gearbox starter/generator drive shaft. This procedure will allow a suitable view of all high turbine blade platforms. The extent of blade shift may be estimated by comparing with the pitch of the blade fixing serrations. The serration to serration pitch is .090 inches.

[FR Doc. 89-17245 Filed 7-24-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-ANE-04; Amdt. 39-6270]

Airworthiness Directives; Pratt & Whitney (PW) PW4152 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Pratt & Whitney (PW) PW4152 engines installed in Airbus Industrie A310-300 series aircraft by individual telegrams. The AD requires initial and repetitive replacement of the fuel metering unit (FMU) with new or serviceable units. The AD is needed to prevent the inability to reduce engine thrust caused by angular separation between the sector gears and metering valve feedback shaft in the FMU which could result in asymmetrical power and possible aircraft directional control problems.

DATES: Effective September 1, 1989, as to all persons except those to whom it was made immediately effective by individual telegrams issued February 3, 1988, which contained this amendment.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable engine manufacturer's alert service bulletin (ASB) may be obtained from Pratt & Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457, or may be examined in the Regional Rules Docket, Room 311, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Kirk E. Gustafson, Engine Certification Branch, ANE-141, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7095.

SUPPLEMENTARY INFORMATION: On February 3, 1988, TAD No. T88-03-53, was issued and made effective immediately as to all known U.S. owners and operators of certain PW4152 engines installed in Airbus Industrie A310-300 series aircraft by individual telegrams. The AD requires initial and repetitive replacement of the FMU with new or serviceable units, at intervals not to exceed 150 FMU operating hours. AD action was necessary to prevent the inability to reduce engine thrust caused by angular separation between the sector gears and metering valve feedback shaft in the FMU. There has been one event where excessive wear in the FMU resolver pinion and sector gears has caused temporary seizure of the gears and angular separation to occur between the sector gears and metering valve feedback shaft. Angular separation between the sector gears and metering valve feedback shaft induces an understated full flow signal to the electronic engine control (EEC). The understated fuel flow signal to the EEC results in convergence of the engine operating line and minimum ratio units fuel schedule controlled by the EEC, thereby precluding subsequent power reduction. In a recent service incident, during landing roll, engine power could not be reduced after the reversers were stowed, thereby causing an asymmetric thrust condition and aircraft directional control problems during the subsequent rollout.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual telegrams issued February 3, 1988, to all known U.S. owners and operators of certain PW4152 engines

installed in Airbus Industrie A310-300 series aircraft. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations (FAR) to make it effective as to all persons.

The regulations adopted herein do not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

Pratt & Whitney Canada: Applies to Pratt & Whitney (PW) PW4152 turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent the inability to reduce engine thrust that can lead to asymmetrical power and possible aircraft directional control problems, accomplish the following:

(a) For fuel metering units (FMU), Part Number (P/N) 51T217 or 53T419, with 140 operating hours or greater on the effective date of this Airworthiness Directive (AD), since new or since refurbished with new sector gears and a new or reconditioned resolver pinion gear, accomplish the following:

Remove and replace the FMU with a new or serviceable unit in accordance with the instructions in Appendix I of this AD within 10 operating hours after the effective date of this AD.

(b) For FMU's, P/N 51T217 or 53T419, with less than 140 operating hours on the effective date of this AD, since new or since refurbished with new sector gears and a new or reconditioned resolver pinion gear, accomplish the following:

Remove and replace the FMU with a new or serviceable unit in accordance with the instructions in Appendix I of this AD on or before accumulating 150 operating hours since new or since refurbished with new sector gears and a new or reconditioned resolver pinion gear.

(c) Thereafter, remove the FMU, P/N 51T217 or 53T419, and install a new or serviceable unit in accordance with the instructions in Appendix I of this AD at intervals not to exceed 150 FMU operating hours in service.

Note: PW ASB Number PW4ENG A73-37, Revision I, dated January 26, 1988, further recommends removal and replacement of the FMU whenever the engine parameters indicate an impending hot start or excessive ground idle rotor speed (N2 in excess of 68 percent at normal bleed air extraction). FMU removal and replacement due to these operating characteristics are not mandated by this AD at this time.

(d) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(e) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD may be approved by the Manager, Engine Certification Office, ANE-140, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

The FMU replacement shall be done in accordance with the instructions in Appendix I of this AD.

This amendment becomes effective on September 1, 1989, as to all persons except those persons to whom it was made immediately effective by individual Telegraphic AD T88-03-53, issued February 3, 1988, which contained this amendment.

Issued in Burlington, Massachusetts, on July 11, 1989.

Arthur J. Pidgeon,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

Note: Pratt & Whitney Alert Service Bulletin Number PW4ENG A73-37, Revision I, dated January 26, 1988, pertains to these instructions.

Appendix I—Pratt & Whitney Alert Service Bulletin No. PW4ENG A73-37, Revision No. 1, Dated January 26, 1988

References

(1) Turbojet Engine Standard Practices Manual, Part No. 585005.

(2) All Operator Wire PW4000/73-00/PSE:CS:RCS:7-12-0-1.

(3) All Operator Wire PW4000/73-00/PSE:RCS:8-1-13-1.

(4) PW4152 and PW4156 Turbofan Engines, Illustrated Parts Catalog, Part No. 50A445.

(5) PW4056 Turbofan Engines Illustrated Parts Catalog, Part No. 50A607.

(6) A310 AMM Chapter/Section 73-23-00 Fuel Metering Unit Removal/Installation.

(7) Boeing 767 Maintenance Manual Chapter/Section 73-21-01 Removal/Installation.

BILLING CODE 4910-13-M

Accomplishment Instructions:

A. Replace Fuel Metering Unit, PN 51T217 (HSD789777-1L5/500/501), or PN 53T419 (HSD789777-2L3,-2L4,-2L5), with new acceptable units of same part number. See Figure 1.

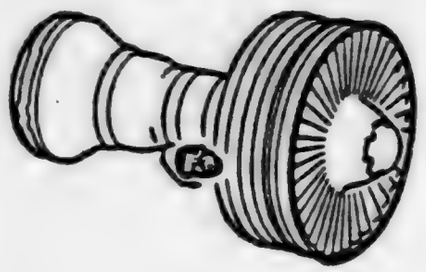

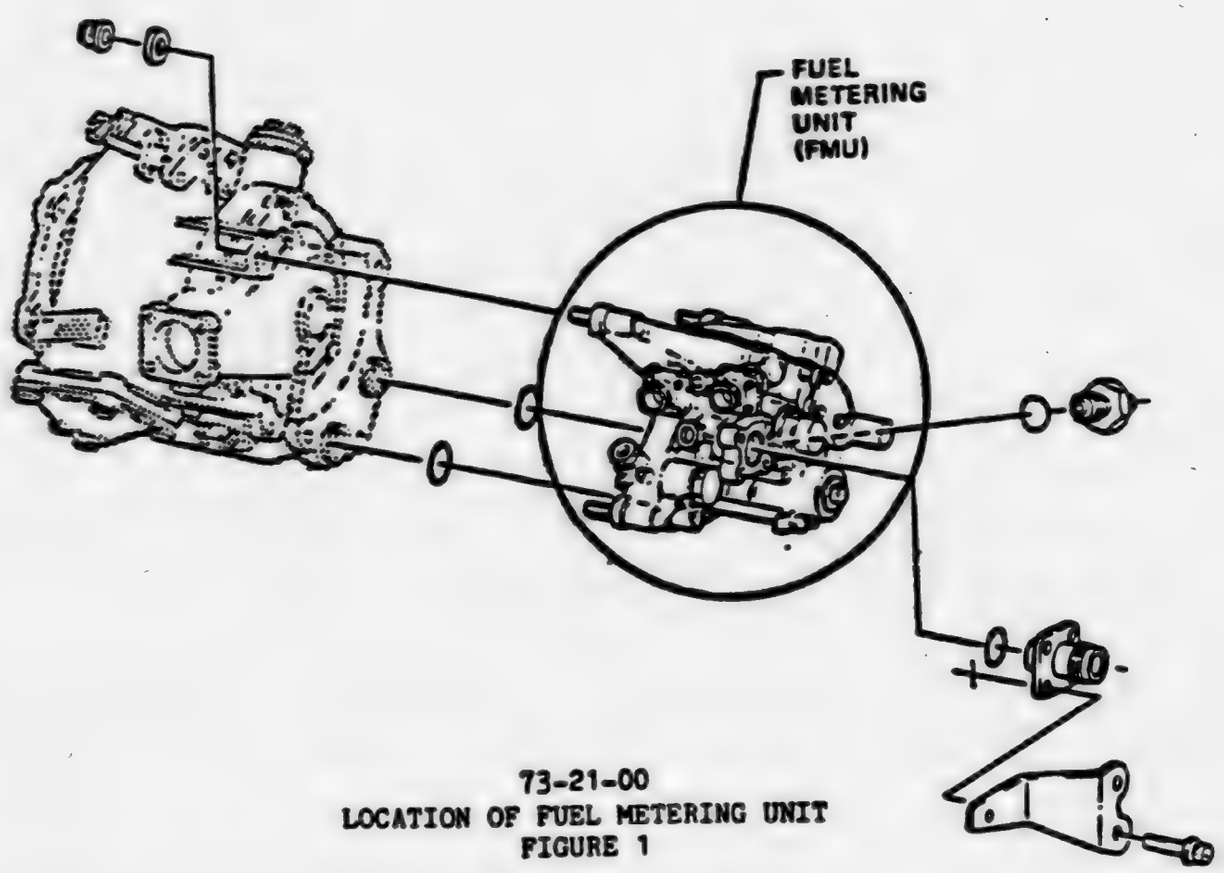

73-21-00
LOCATION OF FUEL METERING UNIT
FIGURE 1

[FR Doc. 89-17244 Filed 7-24-89; 8:45 am]
BILLING CODE 4910-13-C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 235

[Docket No. R-89-1449; FR-2679]

Mortgage Insurance; Changes in Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This change in the regulations decreases the maximum allowable interest rate on section 235 (Homeownership for Lower Income Families) insured loans. This final rule is intended to bring the maximum permissible financing charges for this program into line with competitive market rates.

EFFECTIVE DATE: July 17, 1989.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Chief Mortgage and Capital Market Analysis Branch, Office of Financial Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-7270. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The following amendments to 24 CFR Chapter II have been made to decrease the maximum interest rate which may be charged on loans insured by this Department under section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA section 235 insurance programs has been lowered from 10.00 percent to 9.50 percent.

Until recently, HUD regulated interest rates not only for the section 235 Program, but also for fire safety equipment loans insured under section 232 of the National Housing Act. However, section 429(e)(2) of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) amended the National Housing Act to provide that interest on fire safety equipment loans under section 232(i) of the Act will be "at such rate as may be agreed upon by the mortgagor and the mortgagee." Accordingly, these loans, like most other National Housing Act-authorized loans, now have their interest rates determined by negotiation. Accordingly, this announcement of a change in interest rate ceilings for FHA-insured mortgages is limited to the section 235 Program. The Secretary has determined that this change is immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change.

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this final rule effective immediately. HUD regulations published at 47 FR 56296 (1982), amending 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the amendments made by this rule fall within the categorical exclusions set forth in paragraph (*l*) of § 50.20, the preparation of an Environmental Impact Statement or Finding of No Significant Impact is not required for this rule. This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local governmental agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for a small adjustment in the mortgage interest rate in programs of limited applicability, and thus of minimal effect on small entities. This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 24, 1989 (54 FR 16708) pursuant to Executive Order 12291 and the Regulatory Flexibility Act. The Catalog of Federal Domestic Assistance program numbers are 14.108, 14.117, and 14.120.

List of Subjects in 24 CFR Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant programs: housing and community development.

Accordingly, the Department amends 24 CFR Part 235 as follows:

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

1. The authority citation for 24 CFR Part 235 continues to read as follows:

Authority: Sections 211, 235, National Housing Act (12 U.S.C. 1715b, 1715z); Sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

2. In § 235.9, paragraph (a) is revised to read as follows:

§ 235.9 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 9.50 percent per annum, except that where an application for commitment was received by the Secretary before July 17, 1989, the loan may bear interest at the maximum rate in effect at the time of application.

* * * * *

3. In § 235.540, paragraph (a) is revised to read as follows:

§ 235.540 Maximum interest rate.

(a) On or after July 17, 1989, the loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 9.50 percent per annum, with the exception of applications submitted pursuant to feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

Date: July 17, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing.

[FR Doc. 89-17373 Filed 7-24-89; 8:45 am]
BILLING CODE 4210-27-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5-89-56]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Albemarle and Chesapeake Canal, Chesapeake, VA

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule with request for comments.

SUMMARY: At the request of the City of Chesapeake, the Coast Guard is issuing a temporary rule governing the operation of the Centerville Turnpike drawbridge across the Albemarle and Chesapeake Canal, mile 15.2, in Chesapeake, Virginia. This rule is being issued to limit bridge openings 24-hours a day, seven days a week, in order to reduce unnecessary wear and tear on the structure while still providing for the reasonable needs of navigation. Because of the length of time this temporary rule will be in effect, the Coast Guard requests comments on the rule. The temporary rule may be changed based on comments received.

DATES: This temporary rule is effective from July 21, 1989, through December 31, 1989, unless amended or terminated before that date. Comments on the temporary rule must be received on or before August 21, 1989.

ADDRESSES: Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments received will be available for inspection and copying at Room 507 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, (804) 398-6222.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for any recommended changes to the temporary rule. Persons desiring acknowledgment that their coments have been received should enclose a stamped, self-addressed postcard or envelope.

Drafting Information

The drafters of this notice are Linda L. Gilliam, Project Officer, and LCDR Robin K. Kutz, Project Attorney.

Discussion of Temporary Rule

At the request of the City of Chesapeake, owner of the drawbridge in Chesapeake, Virginia, the Coast Guard is issuing a temporary rule governing the operation of the drawbridge across the Albemarle and Chesapeake Canal, mile 15.2, in Chesapeake. The City of Chesapeake has indicated that restricting bridge openings 24-hours a day to open once every 2 hours, on the even hours, seven days a week, from July 21, 1989, to December 31, 1989, will be necessary in order to eliminate any more wear and tear on the structure until rehabilitation work begins. During the past several months, the Centerville Turnpike Bridge has experienced operational problems due to shifting of the structure causing the bridge to become stuck between the open and closed positions. In the past, similar problems have necessitated closure of the drawbridge for emergency repair work for periods of six days, and the City believes that if drawbridge openings are not restricted, the worsening condition of the bridge may accelerate to the point that the draw becomes inoperable or that shifting causes an accident or injury. The City of Chesapeake is working with the Virginia Department of Transportation to expedite a rehabilitation contract that will enable them to repair all structural damage. The rehabilitation work is anticipated to begin some time in December 1989.

Presently, the drawbridge opens on the hour and half-hour, from 7:00 a.m. to 7:00 p.m., seven days a week, year-round, and from 7:00 p.m. to 7:00 a.m., the draw opens on demand seven days a week, year-round.

Since this temporary schedule is necessary to the safety of the bridge, I find that good cause exists for publishing this temporary rule without publication of a notice of proposed rulemaking and for making it effective in less than 30 days.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the temporary rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification.

This temporary rule is not considered major under Executive Order 12291 on Federal Regulation nor significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that these regulations are not expected to have any effect on commercial navigation or on any businesses that depend on waterborne transportation for successful operations. Since the economic impact on these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g. of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and has been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations is amended to read as follows:

PART 117—DRAWBRIDGE OPERATIONS REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. A new § 117.996 is temporarily added to read as follows:

§ 117.996 Albemarle and Chesapeake Canal.

The draw of the S.R. 170 bridge, mile 15.2, at Chesapeake, shall open once every two hours, on the even hours, from July 21, 1989, to December 31, 1989, for vessels waiting to pass.

3. This rule is effective from July 21, 1989, to December 31, 1989, unless amended or terminated before that date.

Dated: July 13, 1989.

H.B. Gehring,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District Acting.

[FR Doc. 89-17359 Filed 7-24-89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3573-1; FL-023]

Approval and Promulgation of Implementation Plans; Florida; Approval of Plan Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the Florida State Implementation Plan (SIP) which were submitted by the Florida Department of Environmental Regulation (FDER) on November 19, 1986, and June 12, 1987. EPA is deferring action on the revisions to Rule 17-2.210(2) (Air Operating Permits), since EPA currently is considering whether to issue regulations or guidance for evaluating operating permit programs. Also, EPA is taking no action on the revisions to Rules 17-2.660 (Standards of Performance for New Stationary Sources (NSPS)) and 17-2.670 (National Emission Standards for Hazardous Air Pollutants (NESHAP)) since NSPS and NESHAP regulations are not required by section 110 of the Clean Air Act to be part of the State's SIP. Several other revisions which were submitted in this package will be acted upon in separate notices. These revisions are as follows: 17-2.510, 17-2.600(4)(a), 17-2.700(6)(b)16., 17-2.700 Table I, and 17-2.710(3)(b)1.d.

This submittal amends regulations contained in the Florida Administrative Code (FAC), Chapter 17-2 (Air Pollution), and will incorporate Rule 17-103.150 (Public Notice of Application and Proposed Agency Action) as part of the SIP. These revisions include: the addition of a new definition and revisions to others; the revision of the primary units of the carbon monoxide ambient air quality standard to parts per million instead of milligrams per cubic meter; revision of the method for calculating prevention of significant deterioration (PSD) increment consumption to conform to current EPA policy; relabelling of the tables in Rule 17-2.700; addition of provisions for air curtain incinerators; minor PSD rule revisions; revision of public notice provisions; minor revisions regarding permitting; and addition of new testing provisions for sources on cold standby or temporary shutdown. These regulation changes are minor in nature and serve merely to update the Florida regulations.

DATES: This action will be effective on August 24, 1989.

ADDRESSES: Copies of the material submitted by Florida may be examined during normal business hours at the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Florida Department of Environmental Regulation, Bureau of Air Quality Management, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301

FOR FURTHER INFORMATION CONTACT: Stuart Perry of the EPA Region IV Air Programs Branch at the address given above, telephone (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On November 19, 1986, and June 12, 1987, the FDER submitted to EPA for approval revisions to the Florida SIP, and EPA is today approving a number of them. This submittal contained certification that the revisions were preceded by adequate notice and public hearing. The revisions submitted by FDER on November 19, 1986, and June 12, 1987, were discussed in detail in the April 27, 1988, proposal notice (53 FR 15064). For simplicity, only those portions of the submittals which EPA is not taking action on, or the ones that will be acted on at a later date will be discussed again here. They are as follows:

- Rule 17-2.210(2) (Air Operating Permits) was amended in several places. However, EPA is deferring action on these provisions since EPA currently is considering whether to issue regulations or guidance which specify the requirements for an approvable operating permit program. EPA will take action to approve or disapprove the provisions upon completion of these deliberations.
- Rule 17-2.510 (New Source Review for nonattainment Areas) was revised as part of this submittal. However, the revisions to this regulation will be incorporated in a later notice which will discuss the approvability of the entire rule, which up until this time has not been proposed for approval. The entire rule's approval had been on hold pending an EPA policy decision regarding the use of a plantwide definition of a source. EPA has now outlined procedures for approving regulations which will use the plantwide definition of a source, and is presently working with FDER to correct problems with the State's current regulation.
- Rule 17-2.600(4)(a) (Visible Emissions) was amended to establish a visible emissions standard for Kraft recovery furnaces equipped with dry collectors. This provision will be discussed in a separate notice.
- Rule 17-2.700 (Stationary Point Source Emissions Test Procedures) was amended in several places. In section (6)(b)16. (EPA Test Procedures) and 17-2.700 Table I (Applicable Test Procedures for Point Source Compliance Tests), FDER made amendments to include EPA Method 16A as a test method for determination of total reduced sulfur (TRS) emissions from stationary sources. These revisions will be processed in a separate notice.
- Rule 17-2.710(3)(b)1.d. (Continuous determination of total reduced sulfur emissions from stationary sources) was amended to include EPA Method 16A as a test method for determination of TRS emissions. This revision will be processed in a separate notice.

For a detailed discussion of the revisions EPA is acting on, please refer to the April 27, 1988, proposal notice. Further details pertaining to these regulation changes are contained in the Technical Support Document. These documents are available for public inspection at EPA's Regional Office in Atlanta, Georgia.

On April 27, 1988 (53 FR 15064), EPA proposed to approve the revisions to Florida Administrative Code Chapter 17-2 (Air Pollution). At that time, the public was invited to submit written comments on the proposed action. However, no comments were received.

Final Action

EPA is approving certain of the regulation changes which were submitted to EPA on November 19, 1986, and June 12, 1987, as detailed in the April 27, 1988, proposal notice. EPA is deferring action on the revision to Rule 17-2.210(2) (Air Operating Permits), since EPA currently is considering whether to issue regulations or guidance for evaluating operating permit programs. EPA is taking no action on the revisions to Rules 17-2.660 (Standards of Performance for New Stationary Sources (NSPS)) and 17-2.670 (National Emission Standards for Hazardous Air Pollutants (NESHAP)) since NSPS and NESHAP regulations are not required by section 110 of the Clean Air Act to be part of the State's SIP. Also, EPA will act on the revisions to Rules 17-2.510,

17-2.600(4)(a), 17-2.700(6)(b), 17-2.700 Table I, and 17-2.710(3)(b)1.d., in a separate notice.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 25, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Particulate matter, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of Florida was approved by the Director of the Federal Register on July 1, 1982.

Date: May 12, 1989.

William K. Reilly,

Administrator.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart K—Florida

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.520 is amended by adding paragraph (c)(65) to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(65) Changes to the Florida Administrative Code (FAC), Chapter 17-2, submitted to EPA on November 19, 1986, and June 12, 1987, by the Florida Department of Environmental Regulations.

(i) Incorporation by reference.

(A) November 19, 1986, and June 12, 1987, letters from the Florida Department of Environmental Regulation.

(B) Amendments to Florida Administrative Code Rules 17-2.100(6), (21) and (118); 17-2.210 introductory text, (1) and (3)(r); 17-2.220(1), (2)(a)-(h); 17-2.300(3)(c)1. and (3)(c)2.; 17-2.310 introductory text; 17-2.450(1)(a) and (2)(a); 17-2.500(2)(e)4.a. (i) and (ii), (4)(a)1.a. and (4)(b)1.; 17-2.600(1)(d); and 17-2.700(2)(a)3.; Tables 500-1, 500-2, 500-3, Table 700-1 and Table 700-2. These revisions were adopted on July 1, 1983, and September 30, 1986, by the Florida Department of Environmental Regulation.

(ii) Additional material—none.

[FR Doc. 89-17350 Filed 7-24-89; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-38

[FPMR Amdt. G-91]

Transportation and Motor Vehicles

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: Executive Orders 11912 and 12375 require the General Services Administration (GSA) to administer a consolidated plan to ensure that executive agencies will acquire fuel efficient vehicles. This regulation deletes the requirement to submit forecasts of total passenger automobile and light truck lease and purchase requirements to GSA. Actual vehicle leases and agency vehicle purchases not procured through the GSA Automotive Commodity Center will continue to be reported to GSA, ATTN: FBF, Washington, DC 20406. This action is intended to reduce the paperwork associated with agency compliance with Executive Orders 11912 and 12375.

On October 6, 1988, the National Highway Traffic Safety Administration, Department of Transportation, published fleet average fuel economy objectives for fiscal years 1989 through 1991. This regulation adds those objectives to the Federal Property Management Regulations.

Agencies satisfy their motor vehicle requirements by requisitioning them through the GSA Automotive Commodity Center using Federal specifications. Sedans, station wagons, and light trucks also have Federal standards which facilitate volume purchasing. The GSA Automotive Commodity Center has developed and issued Federal standard 794 covering medium trucks. This regulation provides for the use of Federal standard 794, where appropriate, in addition to Federal standards 122, 292, and 307.

Comptroller General decisions indicate that Government employees are personally responsible for fines imposed by State and local courts for the violation of motor vehicle traffic laws. This regulation adds these determinations to the Federal Property Management Regulations.

Many States have raised the maximum speed limit for motor vehicles from 55 mph to 65 mph. This regulation instructs Federal motor vehicle operators to obey posted speed limits at all times.

EFFECTIVE DATE: July 25, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Michael W. Moses, Sr., Fleet Management Division (703-557-1273).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse affects. The General Services Administration (GSA) has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-38

Motor equipment management.

PART 101-38—MOTOR EQUIPMENT MANAGEMENT

1. The authority citation for Part 101-38 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

2. The table of contents for Part 101-38 is amended by adding the following entry:

Sec.
101-38.301-3 Violation of State and local motor vehicle traffic laws.

Subpart 101-38.1—Motor Vehicle Acquisitions

3. Section 101-38.101-3 is amended by revising paragraphs (b)(1), (b)(2), and (b)(3) to read as follows:

§ 101-38.101-3 Acquisition of fuel efficient passenger automobiles and light trucks

* * * * *

(b) * * *

(1) In compliance with Executive Orders 11912 and 12375, GSA administers a consolidated Federal fleet program to monitor passenger automobiles and light trucks acquired by executive agencies. The program is based upon the actual vehicle leases and purchases of passenger automobiles and light trucks, reported by vehicle class, by executive agencies to GSA. GSA administers the program by maintaining a master record of the miles per gallon ratings for passenger automobiles and light trucks actually acquired by each agency during the fiscal year. The GSA program will be used to verify that each agency's vehicle leases and purchases conform with Executive Order 12375; i.e., the agency will achieve the fleet average fuel economy for the applicable fiscal year.

(2) The Federal fleet program enables GSA to determine the total fleet average fuel economy achieved by all executive agencies at the end of each fiscal year and to provide management assistance to agencies to ensure compliance with Executive Order 12375. Copies or synopses of actual vehicle leases and vehicle purchases not procured through the GSA Automotive Commodity Center shall be forwarded to the General Services Administration, ATTN: FBF, Washington, DC 20406, not later than December 1st of each year, in accordance with the requirements set forth in § 101-38.102.

(3) Passenger automobiles and light trucks acquired by executive agencies must meet the fleet average fuel economy objectives set forth below for the appropriate fiscal year:

Fiscal year	Average [1] fuel economy standard	Miles per gallon		
		Passenger automobiles	Light trucks	
			Fleet average fuel [2] economy 4 X 2	Fleet average fuel [2] 4 X 4
1977	18.0	18.0		
1978	18.0	20.0		
1979	19.0	22.0	17.2	15.8
1980	20.0	24.0	16.0	14.0
1981	22.0	26.0	16.7	15.0
1982	24.0	26.0	18.0	16.0
1983	26.0	26.0	19.5	17.5
1984	27.0	27.0	20.3	18.5
1985	27.5	27.5	19.7	18.9
1986	26.0	26.0	20.5	19.5
1987	26.0	26.0	21.0	19.5
1988	26.0	26.0	21.0	19.5
1989	26.5	26.5	21.5	19.0
1990	27.5	27.5	20.5	19.0
1991	27.5	27.5	20.7	19.1
1992 and beyond	27.5	27.5	(3)	(3)

[1] Established by section 502 of the Motor Vehicle Information and Cost Savings Act (89 Stat. 902, 15 U.S.C. 2002) and the Secretary of Transportation.
[2] Established by the Secretary of Transportation and mandated by Executive Order 12003 through fiscal year 1981 and by Executive Order 12375 beginning in fiscal year 1982.
[3] Requirements not yet established by the Secretary of Transportation.

4. Section 101-38.102 is amended by revising the section heading, by revising paragraphs (a), (b), (c), (d), and (h), and by adding paragraph (i) to read as follows:

§ 101-38.102 Agency purchase and lease of motor vehicles.

(a) Executive agencies that comply with the provisions of § 101-26.501-1 (b) and (c) may acquire vehicles without using the services of the GSA Automotive Commodity Center. Copies of actual vehicle leases and purchases acquired for domestic fleets which are not procured through the GSA Automotive Commodity Center will be furnished to the General Services Administration, ATTN: FBF, Washington, DC 20406. Each submission shall use the unadjusted combined city/highway mileage ratings for passenger automobiles and light trucks developed by the Environmental Protection Agency (EPA) for each fiscal year. The submissions shall be forwarded to GSA as soon as possible after the purchase or effective date of the lease. All submissions for the previous fiscal year shall reach GSA by December 1st of each year. GSA issues information concerning the EPA mileage ratings and miles per gallon rating guidance to assist agencies in the timely planning of their acquisitions. Agencies not intending to purchase or lease vehicles or agencies that satisfy their total motor vehicle requirements through the GSA Interagency Fleet Management System shall so inform GSA.

(b) The submission of actual vehicle leases and agency purchases or synopses for passenger automobiles and light trucks acquired during the fiscal year includes vehicles which were procured or leased for use in any State or Commonwealth of the United States and the District of Columbia. Agencies shall not include passenger automobiles and light trucks which are:

(1) Procured or leased for use outside the foregoing areas;

(2) Designed to perform combat-related missions for the U.S. Armed Forces; or

(3) Designed for use in law enforcement or emergency rescue work.

(c) Requisitions for passenger automobiles and light trucks sent to GSA for procurement action, but for which a contract is not awarded during the same fiscal year the requisitions are submitted, shall be included in the agency's vehicle lease and purchase record for the fiscal year in which the contract is awarded.

(d) When a vehicle lease contains an option to renew and the option is exercised, that renewal action shall not be included as a new acquisition. However, before the exercise of the renewal option, an agency must submit its requirements to GSA in accordance with § 101-39.204 to determine if the requirement can be satisfied through the Interagency Fleet Management System.

* * * * *

(h) Agencies may request GSA assistance when planning their acquisitions by contacting the General Services Administration, ATTN: FBF, Washington, DC 20406.

(i) Information concerning vehicles purchased for agencies by the GSA Automotive Commodity Center is provided internally; therefore, vehicles procured by GSA are not required to be reported.

5. Section 101-38.104-1 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 101-38.104-1 Purchase of new motor vehicles.

(a) Purchase of new sedans, station wagons, and light and medium trucks other than those to be used for law enforcement, shall be limited to standard vehicles (unless other than standard vehicles are specifically required) as follows: Sedans, class IB—subcompact, or class II—compact; station wagons, class II—compact, as described in Federal standard 122; light trucks as defined in Federal standards 292 and 307; and medium trucks as defined in Federal standard 794. (Federal standards 122, 292, 307, and 794, as used in this section, mean the latest editions.) Medium and heavy trucks will be purchased according to the provisions of § 101-26.5. Requisitions submitted to GSA for motor vehicles shall be in conformance with the requirements of § 101-38.101.

* * * * *

6. Section 101-38.104-3 is revised to read as follows:

§ 101-38.104-3 Consolidated purchase program.

(a) To achieve maximum benefits and economies, GSA (except as noted in § 101-26.501-1(a)), makes consolidated procurement of all motor vehicle types each year as follows:

(1) Two volume procurements of sedans and station wagons of the types covered by Federal standard 122, excluding family buys;

(2) Two volume procurements of the types covered by Federal standards 292 and 307, excluding family buys; and

(3) Three volume procurements of the types covered by Federal standard 794 and Federal specifications KKK-T-2107, 2108, 2109, 2110, 2111, and KKK-B-1579.

(b) Volume consolidated purchases are made after consolidation of requirements in accordance with the date set forth in § 101-26.501-4(a). Agencies should submit their requirements for the types of vehicles covered by Federal standards 122, 292, 307, and 794 and Federal specifications KKK-T-2107, 2108, 2109, 2110, 2111, and KKK-B-1579 that can be competitively procured, to the General Services Administration Automotive Commodity Center (FCA), Washington, DC 20406, in time for inclusion in the appropriate consolidated purchase as scheduled in § 101-26.501-4(a).

(c) When justified as indicated in § 101-26.501-4, requirements for sedans, station wagons, and light, medium, and heavy trucks will be consolidated and procured on a monthly basis.

(d) Requirements for sedans, station wagons, and light and medium trucks not covered by Federal standards 122, 292, 307, or 794 shall conform with the provisions of § 101-26.501-3 (a), (b), and (c).

7. Section 101-38.104-4 is amended by revising paragraphs (a) and (b) to read as follows:

§ 101-38.104-4 Submission of requisitions and delivery orders.

* * * * *

(a) Requisitions covering vehicle types not included in Federal standards 122, 292, 307, 794, in a military specification, or in an agency specification on file with GSA, shall contain a complete description of the vehicles required, the intended use of the vehicles, and terrain where the vehicles will be used.

(b) Requisitions for vehicles covered by Federal standards 122, 292, 307, or 794 for which deviations from such Federal standards are required, unless already waived by the GSA, Automotive Commodity Center (FCA), shall include with the requisition a justification supporting each deviation from the Federal standards and shall contain a statement of the intended use of the vehicles, including a description of the terrain where the vehicles will be used. Prior approval of deviations shall be indicated on the requisition by citing the waiver authorization number.

* * * * *

8. Section 101-38.104-6 is revised to read as follows:

§ 101-38.104-6 Procurement time schedules.

(a) *Volume consolidated purchases.* Requisitions covering vehicle types included in Federal standards 122, 292, 307, and 794, Federal specifications KKK-T-2107, 2108, 2109, 2110, 2111, and KKK-B-1579 will be consolidated for volume procurement unless a statement is included justifying the need for delivery other than the delivery times indicated in this section. Requisitions containing a statement of justification will be handled on a monthly basis in accordance with this section, or on an emergency basis in accordance with § 101-26.501-4(c).

SCHEDULE FOR VOLUME CONSOLIDATIONS

Vehicle category	Consolidation dates
A. Sedans and station wagons of types covered by Federal standard 122.	June 1 to Nov. 15, Nov. 16 to May 31.
B. Light trucks of types covered by Federal standards 292 and 307.	June 16 to Dec. 1,[1] Dec. 2 to June 15.
C. Medium and heavy trucks in accordance with Federal standard 794 and Federal specifications KKK-T-2107, 2108, 2109, 2110, 2111, and KKK-B-1579.	March 10 to Aug. 9,[1] Aug. 10 to Dec. 15, Dec. 16 to March 9.

[1] Agencies are cautioned that a solicitation covering requisitions for sedans and station wagons and light trucks received during the consolidation period will be issued only if bids can be obtained. Otherwise, such requisitions will be held for inclusion in the next volume consolidated procurement. Note: See § 101-26.501-4 for vehicle volume consolidation time schedules for medium and heavy duty trucks.

(b) *Monthly consolidated purchases.* (1) Requirements for vehicles to be included in monthly consolidated purchases must be received by the General Services Administration, Automotive Commodity Center (FCA), Washington, DC 20406 by the dates indicated in the schedule set forth below. Requirements received after these dates will be carried over to the following month's purchase. In the interest of timely and orderly preparation of solicitations, ordering agencies are urged to submit each requirement as soon as it is finalized instead of holding it for submission with later requirements. Such requisitions need not specify a delivery date since delivery will be made in accordance with delivery times indicated in § 101-26.501-4(d). Requests for special handling for other than strictly emergency requirements shall not be submitted.

SCHEDULE FOR MONTHLY CONSOLIDATIONS

Vehicle category	Consolidation dates
A. Passenger carrying vehicles and light trucks of types not covered by Federal standards 122, 292, or 307, and ambulances.	20th of each month.
B. Buses, trucks (other than light trucks in category (A) above), and trailers of not less than 5,000 lbs.	Last day of each month.
C. All other categories and types of vehicles.	Last day of each month.

(2) Solicitations issued in July for the consolidated purchase of vehicles will cover only the requirements of those executive agencies with requisitions required by § 101-26.501-1 to be placed with GSA. (Submission of requirements for vehicles in categories A, B, and C above, is mandatory to the extent provided in § 101-26.501-1.)

(c) *Emergency requirements.* Emergency requirements will receive special handling only when the requisitions are accompanied by adequate justification for individual purchase actions. Every effort will be made to meet the delivery dates specified in the requisitions.

(d) *Delivery time.* Delivery times for motor vehicle requirements submitted for monthly consolidated and volume consolidated purchases will normally range from 210 to 330 days after final dates for consolidation of requisitions provided in § 101-26.501-4 (a) and (b)(1). Included in delivery time estimates are 90 to 105 days required for soliciting and receiving bids, 30 to 45 days for evaluation and award of contracts, and 90 to 180 days from date of award for delivery of vehicles to the consigned locations. For buses, ambulances, and other special duty vehicles procured under monthly consolidated purchases, 240 to 270 days from date of award are usually required to effect delivery. However, special purpose vehicles with unique characteristics, such as certain types of firetrucks, may require longer delivery times. In such instances, every effort will be made by GSA to facilitate deliveries and keep the requisitioning agencies informed of any unanticipated delay.

Subpart 101-38.3—Official Use of Government Motor Vehicles

9. Section 101-38.301-3 is added to read as follows:

§ 101-38.301-3 Violation of State and local motor vehicle traffic laws.

Operators of Government-owned or -leased motor vehicles shall become familiar with and obey all motor vehicle traffic laws of the State(s) and local jurisdictions in which they operate. Violation of State or local motor vehicle traffic laws can result in fines and/or imprisonment of the motor vehicle operator.

(a) Fines imposed on a Government employee for an offense committed by him or her while in the performance of, but not as a part of, the employee's official duties are imposed on the employee personally and payment thereof is his or her personal responsibility. This includes fines for parking violations while operating a Government-owned or -leased motor vehicle. However, reimbursement of parking fees is normally allowed when the fees are incurred by Federal employees in the performance of their official duties.

(b) Except when the scope of their employment dictates otherwise, operators of Government motor vehicles shall obey posted speed limits. Operators will also be cognizant of the effects that weather and traffic conditions have on travel speeds.

Dated: July 10, 1989.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 89-17336 Filed 7-24-89; 8:45 am]

BILLING CODE 6820-24-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[General Docket No. 85-388; FCC 89-186]

Applications To Serve Rural Service Areas

AGENCY: Federal Communications Commission.

ACTION: Final rule; reconsideration and clarification.

SUMMARY: In the *Order on Reconsideration of Second Report and Order* (*Order on Reconsideration*), the FCC reconsiders several aspects of its five year fill-in policy set forth in the *Second Report and Order* in Docket 85-388. This action is necessary because several Petitions for Reconsideration of the *Second Report and Order* were filed. The effect of the FCC's action in the *Order on Reconsideration* is to retain its fill-in policy for Metropolitan Statistical Areas (MSAs) that prohibits the filing of competing applications against licensees' fill-in applications for a period of five years. On reconsideration, the FCC is providing that the five year fill-in period begins to run from the date of the initial construction authorization for each frequency block granted in an MSA. The FCC also clarifies that its policy for eliminating the wireline set aside applies to applications for unserved areas after the expiration of the five year period. In addition, the FCC declines to adopt a sixty day grace period for accepting wireline fill-in applications without competing applications after expiration of the five year period.

EFFECTIVE DATE: August 24, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David H. Siehl, Mobile Services Division, Common Carrier, Bureau; tele: 202-632-6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order on Reconsideration of Second Report and Order*, adopted May 31, 1989, and released July 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Order on Reconsideration of Second Report and Order

1. On July 6, 1989, the Commission released in this proceeding an *Order on Reconsideration of Second Report and Order*, (*Order on Reconsideration*). Petitions for Reconsideration of the *Second Report and Order*, 52 FR 16847 (1987), had been filed. Prior to the *Second Report and Order*, the FCC had issued a *Further Notice of Proposed Rulemaking*, 51 FR 42597 (1986) (NPRM), in Docket No. 85-388. In the *NPRM*, the FCC had invited comment on separate procedural matters concerning its fill-in policy for Metropolitan Statistical Areas (MSAs) and whether non-licensees should be allowed to file or be granted applications to serve unlicensed areas in MSAs at some fixed period after the grant of the construction permit. In the *Second Report and Order*, the FCC allowed only licensees and permittees to file fill-in applications to serve such areas which are within a MSA but outside the existing Cellular Geographic Service Area (CGSA). The FCC determined that these applications could be filed for a period of five years, beginning from the date of the first construction permit granted in each MSA, regardless of whether that grant was to a non-wireline or wireline applicant. To codify this, the FCC added § 22.31(a)(1)(i).

2. Two petitions for reconsideration of the *Second Report and Order* contend that the FCC did not provide sufficient notice of its fill-in policy to applicants that wanted to file competing applications in response to licensees' fill-in applications in the top 90 MSAs. The petitions request that the FCC allow the filing of mutually exclusive applications in response to fill-in applications of licensees in the top 90 MSAs prior to the expiration of the five year period. They base their argument on *Maxcell Telecom Plus, Inc.* v. *FCC*, 815 F. 2d 1551 (D.C. Cir. 1987) (*Maxcell*). They assert that *Maxcell* directed the Commission to accept all "responsive"

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fill-in applications in a top 60 MSA because the notice provided by the *NPRM* cannot correct the insufficiency of prior FCC notice found by the court.

3. In the *Order on Reconsideration*, the FCC rejected petitioners' argument and stated that *Maxcell* held only that the FCC could not dismiss an application as untimely filed for failure to comply with a date certain for filing cut-off procedure of which the FCC had not given adequate notice. The FCC said that the *NPRM* in this proceeding provided potential MSA applicants with explicit notice that if the proposed fill-in policy were adopted for some period of time, it would have an impact on their expectation of being eligible to serve any unlicensed areas in an MSA.

4. The FCC also weighed the harm that petitioners alleged they would suffer from a five year fill-in period against the benefits of its fill-in policy. The FCC concluded that this harm was outweighed by the benefits of its fill-in policy to the public.

5. At the request of another petitioner, the FCC also reconsidered the five year fill-in period running for both frequency blocks in an MSA from the date of the first grant regardless of whether that grant was to the wireline or non-wireline applicant. Upon reconsidering the technical, operational and financial considerations presented, the FCC found that requiring the second licensed carrier in an MSA to expand within five years from the date of the first carrier's construction permit or be subject to competing applications unfairly restricts the second carrier's ability to meet unpredictable changes in service needs. Accordingly, the FCC amended § 22.31(a)(1)(i) of the rules to provide all licensees a protected fill-in period of five years which runs from the date of the initial construction authorization for each frequency block granted in an MSA.

6. The FCC also clarified that the wireline set aside is eliminated after the five year period expires for the MSA wireline frequency block. It noted that the set aside had served the FCC's policy objectives for the initial licensing of the MSAs and that the reasons for it could not be promoted by extending it to MSA applications for unserved areas.

7. Also, the FCC declined to adopt a 60 day grace period for accepting wireline fill-in applications without competing applications after expiration of the five year period. In addition, the FCC declined to announce at this time the means it would use to choose applications for remaining unserved areas. The Commission indicated that it would soon request comments on what method should be used.

Ordering Clauses

8. Accordingly, *it is ordered*, That the Petitions for Reconsideration and Clarification filed in this proceeding are granted to the extent set forth herein, and are otherwise denied.

9. *It is further ordered*, That Part 22 of the Rules is amended as specified below. These amendments and other policies adopted in this order will become effective 30 days after publication of this document in the Federal Register.

List of Subjects in 47 CFR Part 22

Communications common carriers; Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rules Section

Part 22 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 22—[AMENDED]

1. The authority citation for Part 22 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154, 303).

2. Section 22.31(a)(1) is revised to read as follows:

§ 22.31 Mutually exclusive applications.

(a) * * *

(1) In the Domestic Public Cellular Radio Telecommunications Service, applications shall be considered mutually exclusive if their proposed Cellular Geographic Service Areas (CGSAs) overlap in such a way that a grant of one would preclude the grant of one or more of the other applications, except that applications for the same Rural Service Area (RSA) will be considered mutually exclusive regardless of whether their CGSAs overlap, provided however that:

(i) Notwithstanding any other provision of the rule section and rule provision of this part, applications by other than licensees or grantees for a Metropolitan Statistical Area (MSA) to serve unserved areas outside the presently authorized CGSA but within the MSA will not be accepted for five years from the date of the grant of the original construction authorization of each system in an MSA.

* * * * *

[FR Doc. 89-17303 Filed 7-24-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-610; RM-5398]

Television Broadcasting Services; Bakersfield, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots UHF television Channel 65 to Bakersfield, California, as that community's fifth commercial television service, in response to a petition filed on behalf of Gene Denari. Coordinates for Channel 65 at Bakersfield are 35-22-30 and 119-01-18.

However, this is affected by the Commission's current freeze on allotments, or applications therefor, in certain metropolitan areas, since Bakersfield is located within the zone encompassed by Los Angeles, California, one of the specified communities. Thus, the application process for Channel 65 will be delayed until the freeze is lifted.

EFFECTIVE DATE: September 1, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the application filing process should be addressed to the Video Services Division, Televison Branch, Mass Media Bureau, (202) 632-6357.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-610, adopted June 28, 1989, and released July 19, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the Television Table of Allotments, is amended by revising the entry for Bakersfield, California, to add Channel 65+.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-17305 Filed 7-24-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-500; RM-5436]

Radio Broadcasting Services; South Webster, OH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Christian R. Caggiano, allots Channel 235A to South Webster, Ohio, as the community's first local FM service. Channel 235A can be allotted to South Webster in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.3 kilometers (1.4 miles) east to avoid a short-spacing to the pending application of Station WOFX(FM), Fairfield, Ohio (BPH-880304IA). The coordinates for this allotment are North Latitude 38-48-48 and West Longitude 82-42-00. Canadian concurrence has been obtained since South Webster is located within 320 kilometers of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective September 1, 1989. The window period for filing applications will open on September 5, 1989, and close on October 5, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-500, adopted June 30, 1989, and released July 19, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments is amended by adding the following entry, South Webster, Ohio, Channel 235A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-17304 Filed 7-24-89; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 54, No. 141
Tuesday, July 25, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 930

Programs for Specific Positions and Examinations (Miscellaneous); Appointment, Pay and Removal of Administrative Law Judges

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: The Office of Personnel Management (OPM) is proposing to amend its regulations governing the appointment, pay and removal of administrative law judges. This proposed regulation would permit an administrative law judge to transfer to another agency before completing 1 year of service, provided the losing agency agrees to the transfer. If both the gaining and losing agency agree to a transfer before the usually required 1 year of service following appointment is completed, such transfers should be permitted under the regulations, so that the gaining agency does not have to request a variation from established regulations to effect the transfer.

DATE: Comments must be received on or before September 25, 1989.

ADDRESS: Send or deliver written comments on the Office of Administrative Law Judges, Career Entry and Employee Development Group, Office of Personnel Management, Room 2433, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Craig B. Pettibone, Assistant Director for Administrative Law Judges, (202) 632-5677.

SUPPLEMENTARY INFORMATION: To protect the appointing agency against the premature loss of a newly appointed administrative law judge, 5 CFR 930.206(c) bars the transfer of an administrative law judge from one agency to another sooner than 1 year after the judge's last appointment. An agency recently requested a variation from 5 CFR 930.206(c) to permit the transfer to it of an administrative law judge who had been appointed by another agency less than 1 year ago. The requesting agency considered the person involved to be the best qualified administrative law judge available and better qualified than candidates within reach for selection on the register. Because the losing agency agreed to the transfer before the year was completed, there was no reason not to grant the request. In order to make future variation requests unnecessary should similar cases arise again, an amendment to the regulation is proposed to allow such transfers during the year following appointment, provided the gaining and losing agencies agree to the transfer.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities because it only affects personnel provisions under which Federal administrative law judges are appointed, paid, and removed.

List of Subjects in 5 CFR Part 930

Administrative practice and procedure, Government employees.

Office of Personnel Management,

Constance B. Newman,

Director.

Accordingly, OPM proposes to amend 5 CFR Part 930 as follows:

PART 930—PROGRAMS FOR SPECIFIC POSITIONS AND EXAMINATIONS (MISCELLANEOUS)

Subpart B—Appointment, Pay and Removal of Administrative Law Judges

1. The authority citation for Subpart B, Part 930, continues to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 1305, 3105, 3323(b), 3344, 4301(2)(D), 5335(a)(B), 5372, 7521.

2. Section 930.206(c) is revised to read as follows:

§ 930.206 Transfer.

* * * * *

(c) An agency may not transfer a person from one administrative law judge position to another administrative law judge position under paragraph (a) or (b) of this section sooner than 1 year after the person's last appointment unless the gaining and losing agency agree to the transfer.

* * * * *

[FR Doc. 89-17352 Filed 7-24-89; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1036

[Docket No. AO-179-A52; DA-88-113]

Milk in the Eastern Ohio-Western Pennsylvania Marketing Area; Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts certain changes in the classification provisions of the Eastern Ohio-Western Pennsylvania milk order based on industry proposals considered at a public hearing held November 1, 1988. The classification of milk used to make buttermilk biscuit and pancake mixes would be changed from Class I to Class III, eliminating raw product cost differences for milk so used between the Eastern Ohio-Western Pennsylvania order and surrounding Federal order markets. The decision also eliminates the requirement that handlers obtain prior approval from the market administrator if milk dumped at the plant is to be classified as Class III.

Proposals to change the classification of lowfat eggnog from Class I to Class II and of buttermilk used by a retail business to make biscuits from Class I to Class III are denied.

The amendments are necessary to reflect current marketing conditions and to maintain orderly marketing in the Eastern Ohio-Western Pennsylvania marketing area. A referendum will be conducted to determine whether producers who supplied milk during April 1989 favor issuance of the amended order.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7183.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended order will promote more orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceeding:

Notice of Hearing: Issued October 13, 1988; published October 18, 1988 (53 FR 40733).

Recommended Decision: Issued April 13, 1989; published April 18, 1989 (54 FR 15413).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice (7 CFR Part 900), at Middleburg Heights, Ohio, on November 1, 1988. Notice of such hearing was issued on October 13, 1988 and published October 18, 1988 (53 FR 40733).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, Agricultural Marketing Service, on April 13, 1989, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modification:

Under the heading "1. Classification of buttermilk products for use in biscuit and pancake mixes.", six new paragraphs are added after paragraph 10.

The material issues on the record of the hearing relate to:

1. Classification of buttermilk products for use in biscuit and pancake mixes.

2. Classification of milk dumped by handlers.

3. Classification of lowfat eggnog.

4. Temporary increase of pool supply plant delivery requirement to pool distributing plants.

Findings and Conclusions.

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Classification of buttermilk biscuit and pancake mixes.* Under the Eastern Ohio-Western Pennsylvania milk order, a Class III classification should apply to skim milk and butterfat used to produce buttermilk biscuit and pancake mixes. At the present time, these products are not designated in the classification provisions of the order, and milk used in the products is therefore considered Class I. However, a product identified as buttermilk that is packaged and sold to restaurants for use in making biscuits should retain its Class I classification.

Sani-Dairy and Oberlin Farms Dairy, Inc., proposed that buttermilk biscuit mix be given a Class III classification. The witness testifying in support of the proposal also recommended that the classification of milk used in buttermilk pancake mix also be changed to Class III, as that product is similar to buttermilk biscuit mix. The witness for the two handlers testified that buttermilk biscuit mix is not a retail product, but is sold to fast food restaurants, bakeries, and other restaurants for use in baking biscuits. He stated that the product is labeled "Buttermilk biscuit mix (for further manufacturing)", and contains added stabilizer, salt and biscuit flour. The witness stated that the added salt changes the taste of buttermilk and the flour changes the color, making the buttermilk biscuit mix unpalatable for drinking.

The witness testified that Sani-Dairy is located in Pennsylvania outside the Order 36 marketing area with more than 15 percent of its receipts sold as route disposition inside the marketing area as is required for pool status. Because of the dairy's location in western Pennsylvania, it competes with other Pennsylvania handlers for sales of the buttermilk biscuit mix item to fast food restaurants. Many of these Pennsylvania handlers are regulated by the Pennsylvania Milk Marketing Board (PMMB), which classifies milk used in buttermilk biscuit mix as Class II. Because PMMB milk regulation has only two classes, the Class II price under the PMMB is equivalent to the Order 36 Class III price. Sani-Dairy, then, finds itself at a competitive disadvantage because of the order's Class I classification of milk used in buttermilk biscuit mix.

Changing the classification of milk used to make buttermilk biscuit mix to Class III was opposed by Milk Marketing, Inc. (MMI), a cooperative association representing a large number of producers pooled under the order. An MMI witness testified that while the product is not designed to be consumed as a beverage in fluid form as Class I products are, it is not storable, market-clearing or national in distribution as Class III products should be. The MMI witness recommended that buttermilk biscuit mix be classified in Class II, and supported the recommendation by citing the "Uniform Classification Decision" which established uniform classification throughout the majority of Federal milk order markets. The witness also observed, however, that the product is currently classified in Class III in the adjoining Ohio Valley order.

Since buttermilk biscuit mix, as formulated and packaged by proponents, is not intended to be distributed for use as a beverage and because the record shows that its basic composition is that of a nonfluid milk product, it is appropriate to classify the product in a lower-priced class. Likewise, buttermilk pancake mix should be treated similarly, as it appears to be a closely-related product. Changing the classification of buttermilk biscuit mix will place Order 36 handlers on a comparable basis with handlers regulated by the nearby Federal Orders 33 and 40, and with handlers regulated by PMMB. Including buttermilk pancake mix as a Class III use will place Order 36 handlers on a comparable basis with Order 40 and PMMB-regulated handlers. In Order 33, pancake mix is classified as Class II. Due to the small difference between the Class II and Class III prices and the minor volume of milk used in pancake mixes, it is not expected that the product's differing classification in Orders 33 and 36 will cause handlers to gain any material competitive advantage.

Taylor Milk Company proposed that the classification of buttermilk biscuit mixes, buttermilk and buttermilk blends sold for use in on-premises baking at a retail business should be changd from Class I to Class II. A representative of Taylor Milk Company testified that during the past five years, the buttermilk market has broadened from sales for

fluid consumption only to sales to a number of fast food restaurants which use the buttermilk solely for making biscuits. The witness stated that the buttermilk product sold by Taylor Milk Company to a fast food restaurant chain contains no modified food starch, but instead contains 1 percent nonfat dry milk to add body and texture to the product. According to the witness, Taylor Milk Company's principal competitor for this account is an Order 1 (New England)-regulated handler that adds modified food starch to its buttermilk. The witness expressed concern that the fast food restaurant might buy all of its buttermilk for biscuits from the Order 1 handler, and shift its purchases of other milk products to that handler as well. He stated that the effect of such a result would be to shift sales of producer milk out of the marketing area, causing a surplus of milk that would be classified as Class III, and thereby reducing prices paid to producers.

The Taylor Milk Company representative described three categories of buttermilk that should be classified as Class II. He defined buttermilk biscuit mixes as including flour and other ingredients that would be sold in a form that could be poured in a pan and baked. Class II Buttermilk would be buttermilk that is sold to a restaurant for use in making biscuits, and buttermilk blend was described as containing added nonmilk solids.

Taylor Milk Company's proposal to include buttermilk sold to a retail business for use in baking was opposed by witnesses representing Dean Foods and MMI. The Dean Foods representative stated that the proposed change would result in differences in classification between Order 36 and Orders 33 and 40, and thereby cause competitive disruptions between the marketing areas. The witness also maintained that buttermilk not adulterated with nonmilk ingredients is not distinguishable from a fluid milk beverage. The MMI witness testified that buttermilk is a consumable fluid beverage and should be classified as Class I.

There is not indication in the hearing record that the buttermilk biscuit mix described by the Taylor Milk Company witness is produced by any milk handler in the Order 36 marketing area, or indeed by any milk handler anywhere. The product described by the witness as "buttermilk blend" is the buttermilk biscuit mix discussed earlier in this decision that is to be included in Class III. Buttermilk sold to a restaurant for use in biscuits is not changed solely by virtue of its intended end use, and should retain Class I classification. The addition of nonfat milk solids, rather than nonmilk solids, serves only to make the product a fortified buttermilk. The order should not differentiate between customer uses of fluid milk products. Buttermilk and other fluid milk products are often used in home baking as well as restaurant baking. It would be difficult administratively to attempt to establish price difference between similar products used differently by customers.

As noted earlier, prices to producers are not expected to be affected materially by changing the classification of buttermilk biscuit and pancake mixes to Class III rather than to Class II. The price difference between the two classes averages only about 10 cents per hundredweight, or less than 1 percent of the order's uniform price to producers, and the volume of milk involved is not substantial.

Exceptions filed on behalf of MMI took issue with the change in classification of buttermilk biscuit mix from Class I to Class III. The cooperative agreed that the product should not be considered a fluid milk product, but that it should be classified as Class II, rather than as Class III. In the cooperative's exceptions to the recommended decision, it was stated that the record contained no evidence of competitive disadvantage or disruptive marketing conditions, that even a potential competitive advantage on the part of PMMB handlers is non-existent, that the decision would result in a potential inter-order competitive disadvantage for Order 36 handlers with Order 4 handlers, and that the small price difference between Class II and III doesn't make Class III classification of buttermilk biscuit mix necessary under Order 36 in order for Order 36 handlers to be competitive with handlers regulated under Orders 33 and 40.

Contrary to MMI's assertion that the record contains no reference to a specific handler offering buttermilk biscuit mix at a lower price, or of any specific competitive advantage to another handler, the Taylor Milk Company representative testified at length about Taylor's competition with the H.P. Hood Company for sales to McDonald's fast food restaurants. The witness made it clear that the Hold Company does have distribution of some products into the Order 36 marketing area, and is subject to a significantly lower cost than is Taylor Milk Company for raw milk used in the production of buttermilk biscuit mix. The Taylor witness also explained that loss of the McDonald's buttermilk biscuit mix business would likely include the loss of contracts for the sale of ice milk and milk shake mix to McDonald's.

MMI further argued that the recommended decision is incorrect in its description of the Pennsylvania Milk Marketing Board (PMMB) regulation to which western Pennsylvania handlers are subject. The cooperative states the PMMB has 3 classes, rather than 2 as stated in the recommended decision, and that the PMMB Class II price is equivalent to the Federal order Class II price, rather than the Federal order Class III price. The description of PMMB classification and pricing contained in the recommended decision is supported by the hearing record. If MMI representatives were aware of information contrary to that given in testimony at the hearing, they had ample opportunity to testify and clarify the record. The record of the public hearing is the only basis upon which a decision on the issues involved may be made.

The cooperative argued that handlers regulated under Order 4, the closest Federal order marketing area to the east of the Order 36 marketing area, would be competitively disadvantaged because buttermilk biscuit mix is considered a Class I product under Order 4. Although buttermilk biscuit mix may be classified as Class I under Order 4, it is classified as Class III in Orders 33 and 40, both of which are located closer to Order 36 than is Order 4. Therefore, handlers regulated under these orders might be expected to offer greater competition to Order 36-regulated handlers than handlers regulated under Order 4. MMI also pointed out that none of the classification changes proposed for the three northeast Federal orders (Orders 1, 2 and 4) and considered at a public hearing held during June, July and November of 1988 would classify milk used to make buttermilk biscuit mix as Class III. No decision about classification in that multiple-market proceeding has been released. In any case, a decision in this current proceeding cannot be based upon potential changes in other Federal order markets.

The MMI exceptions observed that the reasons given in the recommended decision for classifying buttermilk pancake mix differently in Order 36 that in adjoining Order 33—the small difference between the Class II and Class III prices and the minor volume of milk used in pancake mixes—could also be used to classify buttermilk biscuit mixes differently in Order 36 than in Orders 33 and 40. However, the hearing record indicates that pancake mixes

account for only a fraction of the sales that biscuit mixes do, and that handlers find the market for pancake mixes much less competitive than that for biscuit mixes. In fact, both of the handler representatives who testified in support of reducing the classification of milk used in buttermilk biscuit mix because of competitive concerns stated that their organizations do not market pancake mixes.

For the reasons discussed above MMI's exceptions to the recommended decision do not provide a sufficient basis for a change from that decision.

2. *Classification of milk dumped by handlers.* Milk dumped or disposed of as livestock feed should be allowed to be classified as Class III use without prior approval by the market administrator when adequate records are available to support such use. Handlers must notify the market administrator on the next business day after such disposition.

Three proprietary handlers proposed that milk dumped, spilled or disposed of as livestock feed be classified as Class III without prior notification of, and approval by, the market administrator. The proponents' witness explained that under the current provisions of the order, a vat of milk intended for use in cottage cheese or cultured buttermilk that does not "set up" or culture may be dumped as Class III milk only after the market administrator has been notified of such a necessity, and approved it. According to the witness, the manufacturing process is delayed and its costs are increased when handlers must retain the milk in vats until approval is obtained. Also, he stated that such occurrences do not always occur during the market administrator's normal business hours when market administrator personnel are readily available to grant such approval. The witness testified that manufacturing records maintained by handlers are an adequate basis for substantiating such use, which could be verified at a later time during normal auditing procedures. There was no opposition to adoption of the proposal from industry representatives attending the hearing.

Under cross examination about inclusion of the word "spilled" in proponents' proposal, proponents' witness stated that the language of the proposed provision was identical to that contained in Order 33. However, if the need for conformity of order provisions between milk orders were a constraint, Order 33 would have to be amended to require prior approval of Class III use of dumped milk since all other orders currently require such prior notification and approval. Other orders do not require prior approval for the disposition of milk as animal feed and none allow spilled milk to be reported as a Class III use. Since Order 36 does not now require the market administrator's prior approval of milk disposed of as livestock feed as a Class III use, that current provision of the order requires no change. Also, milk spilled through carelessness or sloppiness should continue to be included in a handler's shrinkage, as it is under the present order provisions. If an excessive percentage of receipts is spilled or lost in the plant's operations, any amount exceeding the order's Class III shrinkage allowance is classified as Class I use. This provision is designed to assure that handlers have an incentive to make careful use of the milk they receive, so that producers do not have to bear the cost of handler carelessness through reduced uniform prices. Therefore, the word "spilled" should be omitted from the amended order language.

According to the hearing record, allowing milk dumped by a handler without prior notification of the market administrator to be classified as a Class III use would enhance the efficiency and reduce the cost of handlers' manufacturing operations. Furthermore, adequate records of such use would assure that a handler's latitude in dumping milk found to be unfit for its intended purposes would not be abused. In order to have dumped milk classified as a Class III use, handlers should be required to notify the market administrator of such use at their earliest opportunity during normal business hours.

3. *Classification of lowfat eggnog.* A proposal by Superior Dairy, a proprietary distributing plant operator, to change the classification of lowfat eggnog from Class I to Class II should not be adopted. Although the proposal as included in the hearing notice would have changed the product's classification to Class III, the Superior Dairy witness modified the proposed classification to Class II at the hearing. According to the witness, Superior Dairy currently produces a product called "holiday nog" from non-dairy ingredients, but would like to sell a lowfat eggnog made from fresh milk if the raw product cost of the beverage could be reduced. The witness estimated the difference in price of such a product between Class I and Class II classification to be 3-4 cents per quart. He stated that as a result of the proposed re-classification, producers would benefit from the expanded outlet for dairy ingredients; dairy processors would be able to manufacture a better-tasting and more wholesome product than those now made of imitation ingredients; and consumers would benefit from the availability of a lower-fat product at a competitive price. The witness testified that lowfat eggnog should be any eggnog product containing less than 3.5 percent butterfat. He characterized lowfat eggnog as differing from chocolate drink by the type of flavoring used and the seasonal nature of the product.

Adoption of the proposal was opposed by MMI and a representative of Dean Foods. The MMI witness testified that fluid milk products are those consumed in fluid form as beverages, and stated that lowfat eggnog falls within that definition. He pointed out that the product has about the same shelf life as other fluid milk products, and that the season of greatest demand for the product is the months of October through December when the milk supply is at its lowest level. The witness further testified that reclassifying lowfat eggnog to a lower class would create competitive disadvantages for handlers in neighboring orders who produce the product.

The Dean Foods representative also opposed changing the classification of lowfat eggnog on the basis of inter-market competition, testifying that Dean Foods bottles and distributes such a product as a Class I product in several surrounding milk order marketing areas. The witness also noted that Dean Foods' and its competitors' lowfat eggnog product is not made from imitation ingredients, but from fresh milk.

Lowfat eggnog is clearly a fluid milk product intended for consumption as a beverage. Proponent advanced no persuasive basis for reducing returns to producers for milk disposed of in the form of a flavored fluid milk product. Furthermore, classification of all flavored fluid milk products should be the same regardless of the type of flavoring used. Dean Foods' ability to market lowfat eggnog classified in Class I in neighboring marketing areas indicates that Superior Dairy should also be able to market such a product successfully. Producers then would benefit from the expanded outlet for fluid milk classified, as it should be, as Class I rather than in a lower class that would reduce producer returns. Further, dairy processors regulated under other orders apparently are able to process a lowfat eggnog which consumers will buy without a reduction in the classification of the product. Consumers would have available a lower-fat eggnog at a price competitive with similar fluid milk products. Consequently, the classification of lowfat eggnog should not be reduced to Class II.

4. *Temporary increase of pool supply plant delivery requirement to pool distributing plants.* As noted in the hearing notice, a proposal by MMI and Superior Dairy would have increased temporarily the percentage of milk required to be shipped by pool supply plants to pool distributing plants. At the hearing, MMI withdrew its proposal on the basis that the hearing had not been held in a timely manner, and that the temporary revision would no longer be appropriate. A witness for Superior Dairy did not support the proposal. There was no further testimony regarding the proposal. Accordingly, no further consideration is given to the proposal in this proceeding.

Two additional proposals proposed at the hearing by the Superior Dairy representative could not be considered because they were not included in the hearing notice.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Eastern Ohio-Western Pennsylvania order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register.**

Referendum Order to Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that a referendum be conducted and completed on or before the 25th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300–900.311), to determine whether the issuance of the attached order as amended and as hereby proposed to be amended, regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area is approved or favored by producers, as defined under the terms of the order, as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

The representative period for the conduct of such referendum is hereby determined to be April 1989.

The agent of the Secretary to conduct such referendum is hereby designated to be C. Mack Endsley.

List of Subjects in 7 CFR Part 1036

Milk marketing orders, Milk, Dairy products.

Signed at Washington, DC, on: July 20, 1989.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

Order Amending the Order Regulating the Handling of Milk in the Eastern Ohio-Western Pennsylvania Marketing Area

This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Administrator on April 13, 1989, and published in the **Federal Register** on April 18, 1989 (54 FR 15413), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

1. The authority citation for 7 CFR Part 1036 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 1036.40 is amended by revising paragraphs (c) (1) and (3) to read as follows:

§ 1036.40 Classes of utilization.

* * * * *

(c) * * *

(1) Skim milk and butterfat used to produce butter, cheese (excluding cottage cheese and cottage cheese curd), evaporated or condensed milk or skim milk (plain or sweetened) in a consumer-type package, any concentrated milk product in bulk, fluid form used to produce Class II products, nonfat dry milk, dry whole milk, dry whey, condensed or dry buttermilk, buttermilk biscuit and pancake mixes, any product containing six percent or more nonmilk fat (or oil) and sterilized products (except fluid cream products and those products listed in paragraph (b)(3) of this section) in hermetically sealed glass or metal containers;

* * * * *

(3) Skim milk and butterfat in fluid milk products, fluid cream products and products listed in paragraph (b)(3) of this section that are dumped by a handler who maintains adequate records of such use and notifies the market administrator of such use on the next business day following such use.

Marketing Agreement Regulating the Handling of Milk in the Eastern Ohio-Western Pennsylvania Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1036.1 to 1036.122, all inclusive, of the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area (7 CFR Part 1036) which is annexed hereto; and

II. The following provisions:

Section 1036.123 Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of April 1989 , hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

Section 1036.124 Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

(Seal)

Attest _____

Date _____

_____

(Signature)

By _____

(Name) (Title)

_____

(Address)

[FR Doc. 89-17382 Filed 7-24-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1131

[DA-89-018]

Milk in the Central Arizona Marketing Area; Termination of Proceeding on Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of proceeding on proposed suspension of rule.

SUMMARY: This action terminates a proceeding that was initiated to consider a proposal to suspend the provisions of the Central Arizona milk order that define an "Associated producer" and "Associated producer milk", and describe the relationship of associated producers and associated producer milk to the marketwide pool. The provisions that were proposed to be suspended allow payments from pool proceeds to be made to producers who are primarily associated with the Central Arizona marketing area if a pool plant operator refuses to accept a portion of their milk and such milk is marketed by the dairy farmers directly to nonpool plants for use in manufacturing.

The suspension was requested on behalf of United Dairymen of Arizona (UDA), a cooperative association that represents nearly all of the producers who supply milk to the Central Arizona market. UDA contended that the action was necessary because the provisions are no longer serving their intended purpose and cannot be administered effectively.

An evaluation of data, views, arguments, and other pertinent information available leads to the conclusion that no further action should be taken on the request, and the proceeding is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7183.

SUPPLEMENTARY INFORMATION: Prior Document in this proceeding: Notice of Proposed Suspension: Issued April 26, 1989; published May 2, 1989 (54 FR 18665).

This termination of proceeding is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This proceeding was initiated by a notice of proposed suspension published in the **Federal Register** on May 2, 1989 (54 FR 18665) concerning a proposed suspension of a certain provision of the Central Arizona Federal milk order. Interested persons were invited to comment on the proposal in writing by June 1, 1989.

Statement of Consideration

The proposed suspension would have suspended indefinitely the provisions of the Central Arizona milk order that

define an "Associated producer" and "Associated producer milk", and describe the relationship of associated producers and associated producer milk to the marketwide pool. The provisions that were proposed to be suspended allow producers who are primarily associated with the Central Arizona marketing area to share in proceeds from the marketwide pool if a pool plant operator refuses to accept a portion of their milk and such milk is marketed directly by the dairy farmers to nonpool plants for manufacturing use. The effect of the proposal would have been to curtail such producers' participation in the marketwide pool on the amount of their milk for which they must find their own surplus outlet.

The suspension was requested by United Dairymen of Arizona (UDA), a cooperative association that represents nearly all of the dairy farmers who supply the Central Arizona market. UDA argued that the provisions were designed specifically to accommodate a single large producer located within the marketing area. However, the cooperative stated that the producer in question has never used the provisions to enhance the returns for his surplus milk, and is not expected to have any need to use them in the future. According to UDA, the producer does not even meet the order's requirements for using the provisions. The cooperative stated that it has agreed to receive a certain amount of the producer's surplus milk and pay him the order's blend price. UDA concluded that the "associated producer" provisions of the order have therefore become unnecessary.

UDA also contended that although the provisions it requested to be suspended are being used by a California producer, they cannot be administered in the manner contemplated by the order. The cooperative stated that the market administrator must rely on assumptions about a producer's milk production and deliveries to pool plants in order to determine whether a producer meets the basic requirement that at least 50 percent of the milk production from the producer's farm be delivered to pool plants as producer milk of a handler.

According to UDA, the provisions proposed to be suspended resulted in payments of over $100,000 in 1988 from the marketwide pool to the California producer. The cooperative characterized the payments as "unwarranted exploitation of the Order 131 pool and an unjustified charge against the Order 131 blend price to the financial detriment of its producers."

In response to the notice of proposed suspension, three comments were received from interested parties. Comments filed on behalf of UDA reaffirmed its support of the proposed suspension. Comments filed by Jerome LaSalvia Dairy described that entity as the "single large producer located within the marketing area" whose milk production the provisions proposed to be suspended were originally intended to accommodate. Mr. LaSalvia took exception with UDA's statement that he is not expected to use the provisions in the future on the basis that UDA has no authority to speak for him. The producer attributed his failure to avail himself of the provisions to the inadequacy of the provisions in accommodating his operations, and proposed that the "associated producer" provisions be changed to limit their applicability to producer milk originating within the geographical boundaries of Order 131. Mr. LaSalvia agreed with UDA's characterization of payments from the marketwide pool to the California producer as an "unjustified charge against the Order 131 blend price", but failed to clarify whether he supported or opposed the proposed suspension.

Comments opposing the proposed suspension were filed on behalf of Pacific Coast Dairy #2, the California producer who has qualified its surplus production as "associated producer milk" and drawn money out of the marketwide pool at a rate determined by the difference between the order's blend price to producers and the Class III price. The producer argued that suspension of the "associated producer" provisions would have a devastating monetary impact on Pacific Coast Dairy #2, which has relied on those provisions in maintaining its dairy herd size and in building a dairy of its present capacity. If the provisions were suspended, the producer states that it would have to immediately reduce its milking herd, lay off employees, and operate at much less than full capacity. Such actions, according to the producer, would create a severe financial burden because fixed overhead costs would not be reduced.

Pacific Coast Dairy #2 points out that it has established an association as a producer in the Central Arizona market, and is required under the order's provisions to meet more stringent standards of deliveries to pool plants than are required of producers whose entire production is pooled. During the months of December through April, the producer states, the milk of pooled producers may be diverted to nonpool plants without limit, while "associated producers" must still deliver at least 50 percent of their milk to pool plants.

Pacific Coast Dairy #2 disputes UDA's assertion that the market administrator must rely on "assumptions" about a produce's milk production and deliveries to pool plants in order to determine whether the producer meets the basic requirements. The producer argues that it has used independent third parties to fully disclose and verify to the market administrator the producer's milk production and deliveries to nonpool plants. Therefore, it states, it is in complete compliance with the "associated producer" provisions, full disclosure to the Market Administrator has always been available, and that disclosure is the basis upon which the market administrator makes his determination of the associated producer's status.

It is apparent that Pacific Coast Dairy #2 has relied on the Central Arizona market as its primary outlet for milk production for a long period of time, and has established its willingness and ability to supply milk to meet the market's fluid needs.

Contrary to the UDA's assertions, the market administrator is able to monitor the "associated producer's" deliveries to nonpool plants on the basis of more than mere assumptions. Pursuant to § 1131.22(a) of the Central Arizona order, milk diverted by the "associated producer" to nonpool plants "shall not qualify as associated producer milk unless the operator of the nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at the plant which are made available if requested by the market administrator. Milk so diverted shall qualify as associated producer milk to the extent such milk is used for manufacturing purposes at the nonpool plant."

In view of the above considerations it is concluded that the proposal should not be adopted. It is clear that the provisions sought to be suspended are still necessary and tend to effectuate the purposes of the Apricultural Marketing Agreement Act of 1937, as amended. Therefore, the requested suspension is hereby denied and the proceeding is terminated.

List of Subjects in 7 CFR Part 1131

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1131 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

Signed at Washington, DC on July 20, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89–17355 Filed 7–24–89; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–53]

The Ohio Citizens for Responsible Energy; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking dated May 26, 1989, which was filed with the Commission by the Ohio Citizens for Responsible Energy (OCRE). The petition was docketed by the Commission on May 26, 1989, and has been assigned Docket No. PRM–50–53. The petitioner requests that the NRC reopen the ATWS rulemaking proceeding. This request was one portion of request by OCRE that NRC take a number of actions to relieve alleged undue risks posed by the thermal-hydraulic instability of boiling water reactors (BWRs).

DATE: Submit comments by September 25, 1989. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

For a copy of the petition, write the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The petition and copies of comments received may be inspected and copied for a fee at the NRC Public Document Room, 2120 L Street NW., Lower Level, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Acting Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7758 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION: On July 22, 1988, the Ohio Citizens for Responsible Energy (OCRE) filed a request for action under 10 CFR 2.206 with the Nuclear Regulatory Commission (NRC). This petition was referred to the Director, Office of Nuclear Reactor Regulation (NRR) for consideration. Under the provisions of 10 CFR 2.206, a person may request that the NRC institute a proceeding to modify, suspend, or revoke a license or take any other action that may be proper under 10 CFR 2.202. Section 2.202 authorizes the Executive Director for Operations and the Office Directors with program authority to take this type of action by serving an order to show cause on the licensee. This type of proceeding, generally referred to as a petition for a director's decision under 10 CFR 2.206, involves licensing actions and pertains to a specific facility or class of facilities.

OCRE requested that the Director, NRR, take immediate action to relieve alleged undue risks to the public health and safety posed by the thermal-hydraulic instability of boiling water reactors (BWRs) revealed by the power oscillation event at LaSalle Unit 2 on March 9, 1988 (LaSalle Event). The petitioner specifically requested the NRC to order all BWR licensees to: (1) Place their reactors in cold shutdown, (2) develop and implement specified operating procedures relating to the thermal-hydraulic instability issues, (3) demonstrate that certain specified training has been provided relating to these procedures, (4) demonstrate the capability of instrumentation related to power oscillations, (5) develop simulators capable of modeling power oscillations similar to those occurring at LaSalle as well as out-of-phase power oscillations, (6) report to the NRC all past and future incidents in which recirculation pumps have tripped off, or in which power oscillations were involved, and (7) submit to the NRC justification for continued operation of BWRs.

In addition, the petitioner requested that the NRC reopen Generic Issues B–19 and B–59, and also the Anticipated Transients Without Scram (ATWS) rulemaking proceeding. The petitioner suggested that resolution of the ATWS problem depends on measures other than tripping the recirculation pumps to rapidly reduce reactivity. In this regard, the petitioner specifically suggests the use of an automatic, high-capacity standby liquid control system. Finally, the petitioner suggests that the NRC reconsider the use of the End-of-Cycle Recirculation Pump Trip on BWRs.

The Director, NRR, acknowledged receipt of the request for action in a letter to the petitioner dated August 26, 1988. The Director informed the petitioner that: (1) The request for immediate relief was denied because the allegations that formed the basis for the petition did not reveal any new operational safety issues that posed an immediate safety concern for continued BWR operation, (2) the petition would be treated under 10 CFR 2.206 of the Commission's regulations, and (3) appropriate action would be taken within a reasonable amount of time.

On April 27, 1989, the Director, NRR, responded to the OCRE request for action in a Director's Decision under 10 CFR 2.206. The NRC denied the petitioner's requests for action pursuant to 10 CFR 2.206 because the issuance of proceedings under 10 CFR 2.202 is appropriate only where substantial health and safety issues have been raised. The NRC determined that the petitioner's request did not raise any substantial health and safety issue.

In the Director's Decision (DD–89–03) the NRC denied all of the petitioner's requests, except for the request to reopen the ATWS rulemaking proceeding, which would be more properly treated as a petition for rulemaking under 10 CFR 2.802. A copy of the Director's Decision (DD–89–03) was filed with the Secretary of the Commission for the Commission's review as directed by 10 CFR 2.206 and notice of this action was published in the **Federal Register** on May 10, 1989 (54 FR 20218).

Under 10 CFR 2.802, an interested person may petition the Commission to issue, amend, or rescind any regulation. Because OCRE's request to reopen the ATWS proceeding could ultimately result in an amendment to the regulations in 10 CFR Part 50, the NRC is treating this portion of OCRE's request separately as a petition for rulemaking under 10 CFR 2.802. The ATWS portion of OCRE's request was docketed as a petition for rulemaking under 10 CFR 2.802 on May 26, 1989 (Docket No. PRM–50–53).

As background information, the NRC published a final rule on June 26, 1984 (49 FR 26036), that was intended to reduce the risks of an ATWS event for a light-water-cooled nuclear power plant. An ATWS event takes place if an abnormal operating condition (anticipated transient) occurs at a nuclear power plant which could cause the reactor protection system to initiate

a rapid shutdown (scram) of the reactor but the reactor shutdown system fails to function. The final rule, codified in 10 CFR 50.62, required the installation of certain equipment in nuclear power plants and encouraged the development of a reliability assurance program for the reactor trip system.

The NRC is currently performing confirmatory analyses of ATWS events. If evidence from these evaluations, or comments received as a result of this notice, show contradictions of assumptions and results of previous ATWS analyses, it may be appropriate for the Commission to reconsider the current ATWS rule.

Dated at Rockville, Maryland, this 18th day of July 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89-17209 Filed 7-24-89; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-CE-38-AD]

Airworthiness Directives; Certain Small Airplanes, Including Selected Beech, Cessna, Mooney and Piper Airplanes

AGENCY: Federal Aviatioin Administration (FAA), DOT.

ACTION: Withdrawal of a notice of proposed rulemaking (NPRM).

SUMMARY: This action withdraws a Notice of Proposed Rulemaking to adopt a new Airworthiness Directive, applicable to certain small airplanes, which would require the installation of a placard to specify that the airplane is equipped and approved for flight into known icing conditions, or that it is prohibited from such flight. On the basis of comments received in response to the Notice of Proposed Rulemaking (NPRM), issued on January 9, 1989, proposing the installation of icing operation placards in certain selected small airplanes, it has been determined that the NPRM should be withdrawn. Alternative courses of action, which will advise pilots of airplanes unapproved for icing flight not to fly into known icing conditions, have been undertaken and/or are being considered. Therefore, flight into such conditions is not likely to occur when these small airplanes are operated in a normal manner.

FOR FURTHER INFORMATION CONTACT: Neil B. Christenson (816) 426-6934.

SUPPLEMENTARY INFORMATION:

Background

On January 9, 1989, a Notice of Proposed Rulemaking (NPRM), was published in the **Federal Register** (54 FR 623) proposing the installation of icing operation placards in certain selected small airplanes with an adverse icing operation service history. This NPRM was in response to NTSB Safety Recommendation No. A-86-97. The comment period was opened on January 9, 1989, and was closed on March 10, 1989. This action withdraws the subject NPRM.

The FAA has received 257 comments to this proposed rule. All comments were negative and were generally composed of two (2) major complaints:

(1) The consensus of 254 of the commenters is as follows:

(a) The proposed placard would serve no purpose and is unnecessary because all pilots are warned of the dangers of icing flight early in their flight training and are continuously reminded of these dangers throughout their flying career.

(b) Pilots are reportedly well aware of the icing equipment which may be installed on their airplane, and a placard is not needed to so inform them.

(c) The cockpit area of most small airplanes is becoming cluttered with placards. Each additional placard added makes all the rest less noticeable.

(d) This type of information belongs in the Airplane Flight Manual or in the Pilot's Operations Handbook.

(2) 114 of the commenters replied that:

(a) The "Visible moisture and temperature of 5°C or less" definition of "known icing" is too conservative and not correct. A temperature where ice will always form is impossible to define.

(b) Even forecast icing cannot be considered "known icing." The most recognized definition of known icing is the PIREP or Pilot Report.

(c) Any airplane operating in a "+5°C and visible moisture" condition without approved icing equipment could be considered in violation of the FARS.

(d) This AD would, in effect, shut down operation for non-icing equipped airplanes in Alaska and the Northern U.S. for as much as 5 months of the year.

Two (2) commenters recommended that placards be required only on airplanes that already had some de-icing/anti-icing equipment installed, to clearly spell out icing approval status for those airplanes. They also recommended that the temperature/moisture criteria be deleted from the proposed placard. Many commenters expressed their opinion that education in the form of greater emphasis on weather knowledge during IFR training and possibly the creation of annual refresher ground schools would be a much more viable solution to the prevention of icing accidents than the proposed placard(s). Several commenters also stated that elimination of a number of flight service stations has made weather information more difficult to obtain.

The FAA agrees that the cockpit areas of some airplanes contain many placards. It also agrees that the Airplane Flight Manual or Pilot's Operating Manual may be an equally effective method of displaying this information. Most of the airplanes affected by this NPRM, however, were not required to have either an FAA approved pilot's operating handbook or flight manual when they were certificated. Therefore, a placard was proposed as a means of informing the pilot of this type of information.

The FAA further concurs with a number of comments received in that a large number of operators would have their flying time severely curtailed with a "visible moisture and a temperature of 5°C or less" flight operation limitation. This limitation was proposed to give an extra margin of safety from the "0°C and visible precipitation" icing definition in the Airman's Information Manual and was admittedly conservative. Some commenters expressed the opinion that this limitation may decrease the level of safety by forcing a pilot to fly at lower altitudes rather than fly into areas of precipitation where the temperature is less than +5°C. The FAA has determined that this opinion has merit.

From the comments received, the FAA recognizes that the public strongly feels that other actions, in lieu of a placard, may be appropriate to address this icing operation problem. A number of alternative actions have been itiated or are being considered.

There is no FAR Part 91 icing flight operation rule that applies to nonturbine small airplanes. The FAA is currently considering incorporating icing operation limitations into Part 91, Subpart B, which would be applicable to all aircraft, similar to those already contained in Subpart D of Part 91 for large and turbine-powered multi-engine airplanes. In addition, the FAA is issuing a Special Engineering Issue, General Aviation Airworthiness Alert, reminding operators of the importance of reviewing airplane icing equipment approvals before flying into known icing and when encountering inadvertent icing. This Alert Bulletin will be sent to all registered owners of the airplanes contained in the NPRM AD Applicability List.

The FAA is also funding an Icing Forecasting Improvement Research & Development project, which is now being conducted by the National Airspace Advanced System Acquisition Service, and will begin a three (3) year field test in 1990.

In view of the public comments to this NPRM, and with the alternative action underway or being considered, the FAA has determined that this proposed Airworthiness Directive should not be issued.

For further information contact: Mr. Neil B. Christenson, Small Airplane Directorate, FAA, ACE-100, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6934.

NPRM Docket 88-CE-38-AD is hereby withdrawn. This action is pursuant to § 11.85 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11). Issued in Kansas City, Missouri, on July 12, 1989.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-17247 Filed 7-24-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regulations No. 4 and 16]

RIN 0960-AC84

Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: These proposed rules would raise from $300 to $500 the earnings guidelines we use to determine whether persons with impairments other than blindness are able to do substantial gainful activity (SGA) for purposes of Social Security disability benefits provided under title II of the Social Security Act (the Act) and Supplemental Security Income (SSI) benefits based on disability provided under title XVI of the Act. They also would raise the earnings and monthly hours of work guidelines we use to determine whether a person has performed services for purposes of a trial work period under title II of the Act.

The amount of average earnings that ordinarily demonstrates SGA has not been increased since January 1, 1980, and the amount that shows the performance of services for a trial work period month has not been raised since January 1, 1979. We propose raising these levels now after reassessing the current guidelines during our effort to improve our incentives for disabled persons to return to work and in consideration of recommendations of the Disability Advisory Council. We believe that the increase in the amount of earnings and services which constitute SGA and trial work will provide a more meaningful opportunity for title II beneficiaries to attempt to return to work.

DATES: To be sure that your comments are considered, we must receive them no later than September 25, 1989.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21235, or delivered to the Office of Regulations, Social Security Administration, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Dave Smith, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, Telephone (301) 965-1758.

SUPPLEMENTARY INFORMATION: These proposed regulations would increase the amount of earnings we use as guidelines to assist us in evaluating the work activity of claimants and beneficiaries with impairments other than blindness under title XVI of the Act. We use evaluation guides, including earnings guidelines, to determine whether an individual has shown the ability to do SGA. Under the earnings guidelines in §§ 404.1574 and 416.974 of our current regulations, if a person claiming title II or title XVI benefits or receiving title II benefits based on disability has earnings from work activities as an employee that average more than $300 a month, we ordinarily consider that the person has engaged in SGA. If such a person has earnings of less than $190 a month, we consider that he or she has not engaged in SGA unless there is evidence to the contrary. Under these proposed rules, the $300 a month limit would be raised to $500 per month and the $190 a month limit would be raised to $300 per month in calendar years after 1989.

We believe that this increase in the SGA level would be a significant improvement in existing work incentives and is a fiscally responsible change.

The Disability Advisory Council proposed that the SGA level be: (1) Adjusted to reflect the growth in average wages since it was last increased; and (2) indexed to average wage growth in future years.

While these regulations do not address the Disability Advisory Council's proposal to index the SGA level to average wage growth in future years, we are exploring ways to provide for periodic review of our SGA levels. If the Disability Advisory Council's combined proposal to raise the SGA level and adjust it for average wage increases were adopted, title II program costs would increase by $700 million over those currently budgeted for the next 5 years.

These proposed regulations would also increase the monthly earnings amounts we use to determine if work activity during a trial work period represents services under the trial work period provisions of title II of the Act.

We propose amending § 404.1592(b) to increase the minimum amount of earnings that we consider shows that a person is performing or has performed services during a trial work period from $75 a month to $200 a month, and the number of hours worked in self-employment that are considered to represent services from 15 hours to 40 hours a month. We propose increasing both the amount of earnings and hours in self-employment that constitute services for a trial work period month to encourage more title II beneficiaries to attempt to return to work without losing their benefits. We believe that both of these increases, i.e., from $75 to $200 and from 15 hours to 40 hours, are more representative of a normal work effort. These figures represent a judgment we have made based on our experience with these types of work efforts. In § 404.1592(b), we define "services" as any activity, even though it is not SGA, which is done by a person in employment or self-employment for pay or profit, or is the kind normally done for pay or profit. We use this guide when reviewing work done by a person receiving Social Security disability benefits under title II of the Act during his or her trial work period.

The Disability Advisory Council recommended increasing the amount of earnings that counts toward a trial work period from $75 per month to the amount of the SGA level. While we believe that an increase in the trial work period exempt amount as shown in these

regulations is warranted, we have not adopted the Disability Advisory Council's proposal. The legislative history of the trial work period provision indicates that the Congress recognized and intended that the amount that constitutes trial work need not constitute SGA. In 1980, when the trial work period provision was enacted, the report of the House Ways and Means Committee said:

> * * * Your committee intends that any month in which a disabled person works for gain, or does work of a nature generally performed for gain, be counted as a month of trial work. Thus the services rendered in a month need not constitute substantial gainful activity in order for the month to be counted as part of the trial-work effort * * *.

It is estimated that raising the trial work period exempt amount as recommended by the Disability Advisory Council would increase title II program costs by $90 million over a 5-year period, as more people would be receiving benefit payments. In addition, the administrative costs would increase at the rate of an estimated $75 per beneficiary per year.

The provisions of title XVI concerning the trial work period and the cessation of disability because of the performance of SGA were eliminated as of July 1, 1987, pursuant to section 4 of the Employment Opportunities for Disabled Americans Act, Pub. L. No. 99-643. We are currently preparing a comprehensive notice of proposed rulemaking covering these and other changes to title XVI made by Pub. L. No. 99-643. The proposed rules, among other things, will include the deletion of § 416.992 governing the trial work period and § 416.992a governing the reentitlement period which, as of July 1, 1987, are no longer applicable in adjudicating SSI claims based on disability.

Regulatory Procedures

Executive Order 12291

Regulatory Impact Analysis

A. *Introduction.* The Secretary has determined that these proposed regulations require a regulatory impact analysis under Executive Order 12291 because they will result in a major increase in costs for the Federal government. Accordingly, the Department has prepared this Regulatory Impact Analysis to identify the cost impact of these proposed changes and the various alternatives that were explored, and to inform the public of the economic considerations supporting these proposed revisions in accordance with Executive Order 12291.

Executive Order 12291 requires that a regulatory impact analysis be performed on any major rule, i.e., a rule that is likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

B. *Nature of the Program.* Benefits to disabled and blind individuals are provided under title II and title XVI of the Act. Disability is defined under both programs as "* * * inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment * * *".

We use earnings guidelines to evaluate a person's work activity to determine whether the work activity is SGA and therefore whether that person may be considered disabled under the law. While this is only one of the tests used to determine disability, it is an important tool in disability evaluation. We evaluate the work activity of persons claiming or receiving disability benefits under title II of the Act and that of persons claiming benefits because of a disability under title XVI of the Act. These proposed regulations would increase the amounts of those earnings guidelines.

C. *Alternatives—SGA.* The Disability Advisory Council proposed that the SGA level be: (1) Adjusted to reflect the growth in average wages since it was last increased; and (2) indexed to average wage growth in future years. It was estimated that increasing the SGA level in this manner would result in a level of $490 per month beginning in 1988. The $490 per month figure was arrived at by raising the current level of $300 per month to the amount it would have been in 1988 if it had kept up with wage growth since 1980, when the SGA level was last increased.

Although these proposed regulations would not address the Disability Advisory Council's proposal to index the SGA level to average wage growth in future years, we are exploring ways to provide for periodic review of our SGA levels. As noted above, if the Disability Advisory Council's proposal to adjust the SGA level by average wage increases were adopted, title II program costs would increase by $700 million over those currently budgeted for the next 5 years. We believe that these increased costs would be prohibitive.

Other alternatives we considered were raising the SGA level we use for nonblind persons to the title II SGA level we use for the blind (currently $740) or raising the SGA level to the Federal minimum wage level for a 40-hour week, which is about $580 a month at the current Federal minimum hourly wage of $3.35. We rejected these options for the following reasons. First, a significantly higher SGA amount could discourage beneficiaries from becoming independent workers and, as a result, being taken off the disability rolls. This is particularly true for those who have large subsidies and impairment-related work expenses that will continue to be excluded from the SGA computation and those who are in lower paying jobs could increase their level of work and still not exceed the SGA limit. Second, a significantly higher SGA amount could prompt some persons who are now working to leave their current work, apply for and become entitled to disability benefits, and then seek part-time employment in order to keep their earnings under the SGA level.

Trial Work Period. The Disability Advisory Council recommended increasing the amount of monthly earnings that count toward a trial work period from $75 to the Disability Advisory Council's recommended SGA level. While we believe that an increase in the trial work period exempt amount as indicated in these proposed regulations is warranted, we have not adopted the Disability Advisory Council's proposal. The legislative history of the trial work period provision indicates that the Congress recognized and intended that the amount that constitutes trial work need not constitute SGA. In 1980, when the trial work period provision was enacted, the report of the House Ways and Means Committee said:

> "* * * Your committee intends that any month in which a disabled person works for gain, or does work of a nature generally performed for gain, be counted as a month of trial work. Thus the services rendered in a month need not constitute substantial gainful activity in order for the month to be counted as part of the trial-work effort * * *".

It is estimated that raising the trial work period exempt amount as recommended by the Disability Advisory Council would increase title II program costs by $90 million over a 5-year period, as more people would be receiving benefit payments. In addition, the administrative costs would increase at the rate of an estimated $75 per beneficiary per year.

D. *Intended Effect.* We expect that the proposed increases in the amount of earnings and services which constitute SGA and trial work would provide a more meaningful opportunity for title II beneficiaries to return to work. In addition, the increases would permit some disabled persons with earnings in excess of the present regulatory limit ($300 a month) but less than the amount in these proposed regulations, to receive benefits.

E. Projected Costs—Program Costs

[Dollars in millions]

	Fiscal year—					Total
	1990	1991	1992	1993	1994	
Title II	$26	$42	$77	$87	$92	$324
SSI	$4	$13	$17	$20	$23	$77
Medicare	$1	$5	$10	$25	$35	$76
Medicaid	$20	$30	$35	$40	$45	$170
Administrative costs:						
Workyears	80	230	160	60	20	
Costs	$9	$23	$13	$5	$2	$52

The pattern of administrative costs reflects the one-time increase in the SGA amount. As general wage levels continue to rise while the SGA amount remains the same, there will be less incentive for working disabled persons to apply for benefits. As a result, the only large increases in claims and related workloads will occur in the first 2 or 3 years after the proposed change. Workload increases toward the end of the estimating period would be relatively small.

Although the costs are significant, we believe that these proposed changes are significant improvements in existing work incentives, and that they are fiscally responsible changes.

Paper Work Reduction Act

These proposed rules impose no additional reporting and recordkeeping requirements subject to Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that these proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities since these rules affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 13.802, Disability Insurance; No. 13.807, Supplemental Security Income Program.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income.

Dated: May 26, 1989.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: June 27, 1989.

Louis W. Sullivan,

Secretary of Health and Human Services.

Part 404 of chapter III of title 20 of the code of Federal Regulations is amended to read as follows:

PART 404—[AMENDED]

1. The authority citation for Subpart P continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d) through (h), 216(i), 221(a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405(a), (b), and (d) through (h), 416(i), 421(a) and (i), 422(c), 423, 425, and 1302; sec. 505(a) of Pub. L. 96-265, 94 Stat. 473; secs. 2(d)(2), 5, 6, and 15 of Pub. L. 98-460, 98 Stat. 1797, 1801, 1802, and 1808.

2. Section 404.1574 is amended by revising paragraphs (b)(2)(v), (b)(2)(vi), (b)(3)(v), (b)(3)(vi), (b)(4)(v) and (b)(4)(vi), and by adding paragraphs (b)(2)(vii), (b)(3)(vii) and (b)(4)(vii) to read as follows:

§ 404.1574 Evaluation guides if you are an employee.

* * * * *

(b) * * *

(2) * * *

(v) Your earnings averaged more than $280 a month in calendar year 1979;

(vi) Your earnings averaged more than $300 a month in calendar years after 1979 and before 1990; or

(vii) Your earnings averaged more than $500 a month in calendar years after 1989.

(3) * * *

(v) Your earnings averaged less than $180 a month in calendar year 1979;

(vi) Your earnings averaged less than $190 a month in calendar years after 1979 and before 1990; or

(vii) Your earnings averaged less than $300 a month in calendar years after 1989.

(4) * * *

(v) Your average earnings are not greater than $280 a month in calendar year 1979;

(vi) Your average earnings are not greater than $300 a month in calendar years after 1979 and before 1990; or

(vii) Your average earnings are not greater than $500 a month in calendar years after 1989.

* * * * *

3. Section 404.1582 is amended by revising paragraph (b) to read as follows:

§ 404.1582 The trial work period.

* * * * *

(b) *What we mean by services.* When used in this section, "services" means any activity, even though it is not substantial gainful activity, which is done by a person in employment or self-employment for pay or profit, or is the kind normally done for pay or profit. If you are an employee, we will consider your work to be "services" if in any calendar year after 1989 you earn more than $200 a month ($75 a month in the amount for calendar years 1979 through 1989, and $50 a month is the amount for calendar years before 1979). If you are self-employed, we will consider your activities "services" if in any calendar year after 1989, your net earnings are more than $200 a month ($75 a month is the amount for calendar years 1979 through 1989, and $50 a month is the amount for calendar years before 1979), or you work more than 40 hours a month in the business in any calendar year after 1989 (15 hours a month is the figure for calendar years before 1990). We generally do not consider work to be "services" when it is done without remuneration or merely as therapy or training, or when it is work usually done in a daily routine around the house, or in self-care.

* * * * *

Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended to read as follows:

PART 416—[AMENDED]

1. The authority citation for Subpart I continues to read as follows:

Authority: Secs. 1102, 1614(a), 1619, 1631(a) and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c(a), 1382h, 1383(a) and (d)(1), and 1383b; secs. 2, 5, 6, and 15 of Pub. L. 98-460, 98 Stat. 1794, 1801, 1802, and 1808.

2. Section 416.974 is amended by revising paragraphs (b)(2)(iv), (b)(2)(v), (b)(2)(vi), (b)(3)(iv), (b)(3)(v), (b)(3)(vi), (b)(4)(v) and (b)(4)(vi), and by adding paragraphs (b)(2)(vii), (b)(3)(vii), and (v)(4)(vii) to read as follows:

§ 416.974 Evaluation guides if you are an employee.

* * * * *

(b) * * *

(2) * * *

(iv) Your earnings averaged more than $280 a month in calendar year 1979;

(v) Your earnings averaged more than $280 a month in calendar year 1979;

(vi) Your earnings averaged more than $300 a month in calendar years after 1979 and before 1990; or

(vii) Your earnings averaged more than $500 a month in calendar years after 1989.

(3) * * *

(iv) Your earnings averaged less than $170 a month in calendar year 1978;

(v) Your earnings averaged less than $180 a month in calendar year 1979;

(vi) Your earnings averaged less than $190 a month in calendar years after 1979 and before 1990; or

(vii) Your earnings averaged less than $300 a month in calendar years after 1989.

(4) * * *

(v) Your average earnings are not greater than $280 a month in calendar year 1979;

(vi) Your average earnings are not greater than $300 a month in calendar years after 1979 and before 1990; or

(vii) Your average earnings are not greater than $500 a month in calenar years after 1989.

* * * * *

[FR Doc. 89-17506 Filed 7-24-89; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 73

[Order No. 1358-89]

Notification of Obligations of Agents of Foreign Governments

AGENCY: Department of Justice.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The proposed regulations would define the notification obligations of agents of foreign governments under 18 U.S.C. 951. They set forth the date, place, time, manner and contents of the notification required by the statute, and provide specific guidance for foreign law enforcement personnel and other agents requiring special attention.

DATE: Comments must be received on or before August 24, 1989.

ADDRESS: Please submit written comments in duplicate to the Chief; Registration Unit; Internal Security Section; Criminal Division; United States Department of Justice; 1400 New York Avenue NW.; Room 9300; Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Joseph E. Clarkson, Chief; Registration Unit; Internal Security Section; Criminal Division; United States Department of Justice; 1400 New York Avenue, NW.; Washington, DC 20530; telephone (202) 786-4923.

SUPPLEMENTARY INFORMATION: The proposed regulations will provide guidance to agents of foreign governments who must notify the Attorney General of their agency status, and of the date, place, time, manner and content of the required notification. The regulations specify the custodian of these records in a manner calculated to assure timely notice to the Departments and Agencies most concerned.

This is not a major rule within the meaning of Exec. Order No. 12291. It will not have a significant effect on a substantial number of small businesses.

List of Subjects in 28 CFR Part 73

Foreign relations, Lobbying.

Accordingly, it is proposed to amend Title 28 of the Code of Federal Regulations by adding a new Part 73 to read as follows:

PART 73—NOTIFICATIONS TO THE ATTORNEY GENERAL BY AGENTS OF FOREIGN GOVERNMENTS

Sec.
73.1 Definition of terms.
73.2 Exceptions.
73.3 Form of notification.
73.4 Partial compliance not deemed compliance.
73.5 Termination of notification.
73.6 Relation to other statutes.

Authority: 18 U.S.C. 951, 28 U.S.C. 509, 510.

§ 73.1 Definition of terms.

(a) The term "agent" means all persons acting as representatives of, or on behalf of, a foreign government who are not specifically excluded by the terms of the Act or the regulations thereunder.

(b) The term "foreign government" includes any person or group of persons exercising sovereign de facto or de jure political jurisdiction over any country, other than the United States, or over any part of such country, and includes any subdivision of any such group or agency to which such sovereign de facto or de jure authority or functions are directly or indirectly delegated. Such term shall include any faction or body of insurgents within a country assuming to exercise governmental authority whether such faction or body of insurgents has or has not been regarded by the United States as a governing authority.

(c) The term "prior notification" means the notification letter or telex must be forwarded at least 10 days prior to commencing the services contemplated by the parties.

(d) When used in 18 U.S.C. 951(d)(1), the term "duly accredited" means that the sending State has notified the Department of State of the appointment and arrival of the diplomatic or consular officer involved, and the Department of State has not objected.

(e) When used in 18 U.S.C. 951(d)(2) and/or (3), the term "officially and publicly acknowledged and sponsored" means that the person described therein has filed with the Secretary of State a fully-executed notification of status with a foreign government; or is a visitor, officially sponsored by a foreign government, whose status is known and whose visit is authorized by an agency of the United States Government; or is an official of a foreign government on a temporary visit to the United States, for the purpose of conducting official business internal to the affairs of that foreign government; or where an agent of a foreign government is acting pursuant to the requirements of a Treaty, Executive Agreement, Memorandum of Understanding; or other understanding to which the United States or an agency of the United States is a party and which instrument specifically establishes another mechanism for notification of visits by agents and the terms of such visits.

(f) The term "legal commercial transaction," for the purpose of 18 U.S.C. 951(d)(4), means any exchange, transfer, purchase or sale, of any commodity, service or property of any kind, including information or intellectual property, not prohibited by federal or state legislation or implementing regulations.

§ 73.2 Exceptions.

(a) The exemption provided in 18 U.S.C. 951(d)(4) for a "legal commercial transaction" shall not be available to any person acting subject to the direction or control of a foreign government or official where such person is an agent of the Soviet Union, the German Democratic Republic, Hungary, Czechoslovakia, Poland, Bulgaria, Romania or Cuba; or has been convicted of or entered a plea of nolo contendere to any offense under 18 U.S.C. 792-799, 831 or 2381, or under Section 11 of the Export Administration Act of 1979, 50 U.S.C. App. 2410.

(b) The provisions of 18 U.S.C. 951(e)(2)(A) do not apply if the Attorney General, after consultation with the Secretary of State, determines and reports to Congress that the national security or foreign policy interests of the United States require that these provisions do not apply in specific circumstances to agents of such country.

(c) The provisions of 18 U.S.C. 951(e)(2)(B) do not apply to a person

described in this clause for a period of more than five years beginning on the date of the conviction or the date of entry of the plea of nolo contendere.

§ 73.3 Form of Notification.

(a) Notification shall be made by the agent in the form of a letter or telex addressed to the Attorney General, directed to the attention of the Registration Unit of the Criminal Division, except for those agents described in paragraphs (b) and (c) of this section. The letter shall state that it is a notification under 18 U.S.C. 951, and provide the name or names of the agent making the notification, the firm name, if any, and the business address or addresses of the agent, the identity of the foreign government or official for whom the agent is acting, and a brief description of the activities to be conducted for the foreign government or official and the anticipated duration of the activities. Each notification shall contain a certification, pursuant to 28 U.S.C. 1746, that the notification is true and correct.

(b) Notification by agents engaged in law enforcement investigations or regulatory agency activity shall be in the form of a letter or telex addressed to the Attorney General, directed to the attention of Interpol—United States National Central Bureau. Notification by agents engaged in intelligence, counter-intelligence, espionage, counterespionage or counterterrorism assignment or service shall be in the form of a letter or telex addressed to the Attorney General, directed to the attention of the nearest FBI Legal Attache. In case of exceptional circumstances, notification shall be provided contemporaneously or as soon as reasonably possible by the agent or the agent's supervisor. The letter or telex shall include the information set forth in paragraph (a) of this section.

(c) Notification made by agents engaged in judicial investigations pursuant to treaties or other mutual assistance requests or letters rogatory, shall be made in the form of a letter or telex addressed to the Attorney General, directed to the attention of the Office of International Affairs, Criminal Division. The letter or telex shall include the information set forth in paragraph (a) of this section.

(d) Any subsequent change in the information required by paragraph (a) of this section shall require a new notification.

(e) Notification under 18 U.S.C. 951 shall be considered to have been made only if it has been done in compliance with paragraph (a) of this section, or if the agent has filed a registration under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611, *et seq.*, which provides the information required by paragraph (a) of this section.

§ 73.4 Partial compliance not deemed compliance.

The fact that a notification has been filed shall not necessarily be deemed a full compliance with 18 U.S.C. 951 or these regulations on the part of the agent; nor shall it indicate that the Attorney General has in any way passed on the merits of such notification or the legality of the agent's activities; nor shall it preclude prosecution, as provided for in 18 U.S.C. 951, for failure to file a notification when due, or for a false statement of a material fact therein, or for an omission of a material fact required to be stated therein.

§ 73.5 Termination of notification.

(a) An agent shall, within 30 days after the termination of his agency relationship, advise the Attorney General of such change.

(b) All notifications pursuant to this Part will automatically expire five years from the date of the most recent notification.

(c) An agent, whose notification expires pursuant to (b) above, must file a new notification within 10 days if the relationship continues.

§ 73.6 Relation to other statutes.

The filing of a notification under this Section shall not be deemed compliance with the requirements of the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611, *et seq.*, nor compliance with any other statute.

Dated: July 18, 1989.

Dock Thornburgh,

Attorney General.

[FR Doc. 89-17344 Filed 7-24-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF DEFENSE

48 CFR Part 203, 209 and 252

Department of Defense Federal Acquisition Regulation Supplement; DFARS Mandatory Code of Conduct Program

AGENCY: Department of Defense (DoD).

ACTION: Withdrawal of Proposed rule.

SUMMARY: A proposed rule directed by Secretary of Defense Carlucci regarding a Mandatory Code of Conduct Program was published in the **Federal Register** on December 29, 1988 (53 FR 52744). After consideration of comments on the concept of a mandatory code of conduct, Secretary of Defense Cheney has determined that, to be meaningful, corporate codes of conduct must be adopted by contractors voluntarily, not mandated in procurement regulations. The proposed rule of December 29, 1988 is hereby withdrawn.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202) 697-7266.

Charles Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

[FR Doc. 89-17300 Filed 7-24-89; 8:45 am]

BILLING CODE 3810-01-M

Notices

Federal Register
Vol. 54, No. 141
Tuesday, July 25, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 89-113]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Alfalfa Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the Northrup King Company, to allow the field testing in the State of California of alfalfa plants genetically engineered to express a gene which provides resistance to the glufosinate-class of herbicides. The assessment provides a basis for the conclusion that the field testing of these genetically engineered alfalfa plants will not present a risk of introduction or dissemination of a plant pest and will not have any significant impact on the qualify of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. Quentin B. Kubicek, Biotechnologist, Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under accession number 89-038-03.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced in the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

The Northrup King Company, of Stanton, Minnesota, has submitted an application for a permit for release into the environment, to field test alfalfa plants genetically engineered to express a gene which provides resistance to the glufosinate-class of herbicides. The field trial will take place in Woodland, California.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the alfalfa plant under the conditions described in the Northrup King Company application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by the Northrup King Company, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene from *Streptomyces viridochromogenes* has been inserted into an alfalfa chromosome. The expression of this gene provides resistance to the glufosinate-class of herbicides. In nature, genetic material contained in a chromosome is generally transferred to another sexually compatible plant by cross-pollination. In this field trial, no introduced gene can spread to another plant by cross-pollination, because the genetically engineered alfalfa plants will be mowed to prevent flower formation. Thus, no pollen will be produced by any alfalfa plant in this experiment.

2. Neither the glufosinate acetyl transferase gene itself, nor its gene product confers on alfalfa any plant pest characteristic.

3. The bacterium *Streptomyces viridochromogenes*, from which the glufosinate acetyl transferase gene was isolated, is not a plant pest.

4. The vector used to transfer the glufosinate acetyl transferase gene to alfalfa plant cells has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from the DNA of a tumor inducing (Ti) plasmid with known plant pathogenic potential, has been disarmed; that is, genes that are necessary for pathogenicity have been removed from the vector. The vector has been tested and shown to be not pathogenic to any susceptible plant.

5. The vector agent *Agrobacterium tumefaciens*, a phytopathogenic bacterium, was used to deliver the vector DNA and the glufosinate acetyl transferase gene into alfalfa plant cells. The vector agent has been chemotherapeutically eliminated and shown to be no longer associated with any regenerated alfalfa plant.

6. Horizontal movement or gene transfer of the glufosinate acetyl transferase gene is not possible. The vector acts by delivering and inserting the gene into an alfalfa chromosome (i.e., chromosomal DNA). No mechanism for horizontal movement is known to exist in nature to move an inserted gene

from a chromosome of a tranformed plant to any other organism.

7. The size of the field test plot is small and will be located on a private research farm in a rural area which will provide good security.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environment Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500-1509), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC., this 19th day of July 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-17271 Filed 7-24-89; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 89-128]

Receipt of a Permit Application for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release genetically engineered organisms into the environment is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR Part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Document Control Office, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 847, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application to release genetically engineered organisms into the environment:

Application number	Applicant	Date received	Organism	Field test location
89-172-01	New York State Agricultural Experiment Station.	06-21-89	Cucumbers genetically engineered to express the coat protein gene of cucumber mosaic virus (CMV).	

Done in Washington, DC., this 19th day of July 1989

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-17272 Filed 7-24-89; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration

Title: Saltonstall-Kennedy Grant Application, Project Quarterly and Final Reports

Form Number: None; OMB-0648-0135

Type of Request: Request for extension of OMB approval of a currently cleared collection

Burden: 200 respondents; 2,572 reporting hours; average hours per response—5.8 hours

Needs and Uses: Under the Saltonstall-Kennedy Act funds are available for projects that will strengthen or develop the U.S. fishing industry. Application information must be submitted to decide which projects should be funded. Quarterly and final reports are used to ensure monies are properly used and to access the results of the project.

Affected Public: Individuals or households, State or local governments, business or other for profit, Federal agencies or employees, non-profit institutions, and small businesses or organizations

Frequency: On occasion, quarterly

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Russell Scarato, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 19, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-17330 Filed 07-24-89; 8:45 am]

BILLING CODE 3510-CW-M

Export Administration

[Docket No. OEE-1-89.01]

Action Affecting Export Privileges: Roger van Alphen

Summary

Pursuant to the July 12, 1989, Report and Recommendation of the Administrative Law Judge (ALJ), a copy of which is attached hereto and affirmed by me, the appeal of Roger van Alphen, Populiereslaantje 8, Huizen, Netherlands (hereinafter Respondent), regarding a Temporary Denial Order issued April 6, 1989 is denied and the Temporary Denial Order is affirmed.

Order

On July 12, 1989, the ALJ entered his Report and Recommendation in the above-referenced matter. The Report and Recommendation, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record and based on the facts in this case, I hereby affirm the Report and Recommendation of the ALJ. The Respondent's appeal is denied and the Temporary Denial Order is affirmed.

This constitutes final agency action in this matter.

Date: July 18, 1989.

Joan M. McEntee,

Acting Under Secretary for Export Administration.

Report and Recommendation

Appearance for Respondent: J.H. Wittop Koning, Esq., Geelkerken & Linskens C.S.-Advocaten, 2311 Ex Leiden, Rapenburg 36, Postbus 2020, 2301 CA Leiden, The Netherlands

Appearance for Agency: Anthony K. Hicks, Esq., Office of the Chief Counsel for Export Administration, U.S. Department of Commerce, Room H-3837, 14th & Constitution Ave., NW., Washington, DC 20230

Preliminary Statement

Respondent Roger van Alphen appealed June 27, 1989 a temporary denial order issued April 6, 1989 (54 FR 14667 (April 12, 1989)) ("the Temporary Denial Order") that denied U.S. export privileges to him and other named parties. The Temporary Denial Order was issued *ex parte* by the Commerce Department's Assistant Secretary for Export Enforcement upon request of the Office of Export Enforcement ("the Agency") of the Department's Bureau of Export Administration. The authority for the issuance was the Export Administration Act of 1979 (50 U.S.C.A. app. 2401–2420), as amended ("the Act"), and the Export Administration Regulations ("the Regulations").[1]

After Respondent filed his appeal, the Office of the Assistant Secretary for Export Enforcement submitted a copy of the record on the basis of which the Assistant Secretary decided to issue the Temporary Denial Order, and the Agency filed a reply to Respondent's appeal. This Report and Recommendation on the appeal is issued on the tenth working day after the June 27, 1989 filing of Respondent's appeal, in accord with the time schedule prescribed for resolving the appeal by section 13(d)(2) of the Act (50 U.S.C. app. 2412(d)(2)) and Section 788.19(e)(4) of the Regulations.

Discussion

The Temporary Denial Order denied for 180 days the U.S. export privileges of Respondent and three other named individuals and the companies through which they do business. According to the Temporary Denial Order, the Agency had reason to believe that, from a date unknown to December 9, 1988 these individuals tried to export equipment from the United States to Bulgaria knowing that such equipment was unlikely to be authorized by the Department for such export, and that on December 9, 1989 they actually attempted such an export by falsely declaring that the export destination was The Netherlands and that the equipment was general license G–DEST.

Further according to the Temporary Denial Order, each of the four individuals had been indicted in a U.S. District Court in Massachusetts for his role in this unlawful export activity, and the Agency had reason to believe also that they had access to large sums of money that would be used, and also to Belgian contacts that would if necessary be used, to attempt such unlawful exports to Bulgaria in the future. Based on this showing by the Agency, the Temporary Denial Order stated that its issuance was necessary in the public interest to prevent an imminent violation of the Act and the Regulations.

The essence of Respondent's appeal of the Temporary Denial Order was "that he is in no way involved in any business of the * * * [other individuals] mentioned in [the Temporary Denial Order]" (Appeal 1). "His connection with said persons is limited to being private chauffeur of * * * [one of them] and handcarrying several cheques for * * * [the other two]" (*id.*).

The Agency's reply supplied a copy of the indictment mentioned in the Temporary Denial Order; and the Agency's reply added that two of the four individuals named therein (not Respondent) had been arrested, and that one of these two has pled guilty to the charges. The Agency's evidence of Respondent's activities was chiefly an affidavit of a U.S. Customs Special Agent that reported on the debriefing of the arrested individual who has pled guilty. According to this affidavit, this individual said that Respondent was present at meetings where the export activity at issue was discussed, that he delivered to one of the four individuals checks written by another of the four in payment for the equipment, that when one of the four was hospitalized Respondent acted as his liaison with the export activity and updated him every two days, and that Respondent was to receive $10,000 for his efforts.

As to possible future unlawful exports, in this debriefing this arrested individual reportedly spoke also of another of the four indicted individuals. This individual was said to have a large sum of money dedicated to acquiring more such equipment for export to Bulgaria, and also to have previously bribed Belgian customs officials to allow exports to be unlawfully diverted to Bulgaria, and to have claimed, that he would utilize these same officials for exporting this new equipment to Bulgaria if necessary. The Agency suggested additionally that three of the four indicted individuals are at large (the one who was arrested and pled guilty is now out on bail pending sentencing), and thus these three remain free to continue their prior export activity. In view of their past activities and Respondent's role in these activities, the Agency argued that he should remain subject to the Temporary Denial Order.

Conclusion

The evidence submitted by the Agency and summarized above shows a reasonable possibility that Respondent together with three other individuals engaged in efforts to export equipment unlawfully from the United States to Bulgaria. This evidence shows further that Respondent and these other individuals may have the means to continue such efforts. Respondent's appeal, containing simply a denial of his involvement in such efforts, fails to overcome the Agency's evidence. Thus the undersigned concludes that it is reasonable to believe that the Temporary Denial Order is required in the public interest to prevent an imminent violation of the Act and the Regulations.

Consequently the Recommendation of the undersigned is that Respondent's appeal be denied and that the Temporary Denial Order be affirmed. This Report and Recommendation shall constitute the final resolution of this appeal if and when the Recommendation is accepted by the Secretary pursuant to § 788.19(e)(5) of the Regulations.

[1] The Act was reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985), and amended by the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418, 102 Stat. 1107 (August 23, 1988).

The Regulations, formerly codified at 15 CFR Parts 368–399, were redesignated as 15 CFR Parts 768–799, effective October 1, 1988 (53 FR 37751, September 28, 1988).

Date: July 12, 1989.

Thomas W. Hoya,

Administrative Law Judge.

[FR Doc. 89–17317 Filed 7–24–89; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration Commerce.

ACTION: Notice of initiation of antidumping duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping duty orders and findings. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: July 25, 1989.

FOR FURTHER INFORMATION CONTACT: Richard W. Moreland, Office of Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–2786/2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests, in accordance with §§ 353.22 (a)(1), (a)(2), (a)(3), of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders and findings.

Initiation of Reviews

In accordance with § 353.22(c), of the Department's regulations, we are initiating administrative reviews of the following antidumping duty orders and findings. We intend to issue the final results of these reviews no later than June 30, 1990.

Antidumping duty proceedings and firms	Periods to be reviewed
Canada:	
Oil Country Tubular Goods	
A–122–506	
Cappco Tubular Products	6/1/88—5/31/89
Christiansen Pipe Ltd.	
Stelco, Inc.	
Canada:	
Red Raspberries	
A–122–401	
Jesse Processing, Ltd.	6/1/88—5/31/89
Valley Berries, Inc.	
Marco Estates/Landgrow	
B.C. Blueberry Co-Op	
Hungary:	
Tapered Roller Bearings	
A–437–601	
Magyar Gordulocsapagy Muvek (MGM)	6/1/88—5/31/89
Japan:	
Certain Industrial Forklift Trucks	
A–588–703	
Toyota Motor Corp.	11/24/87—5/31/89
Nissan Motor Co. Ltd.	
Mitsubishi Heavy Ind.	
Sumitomo—Yale Co. Ltd.	
Toyo Umpanki	
Komatsu	
Japan:	
Fishnetting of Man-Made Fibers	
A–588–029	
Mitsui	6/1/88—5/31/89
Hakodate Seimo	
Benny Toyama Corp	
Amikan	
PRC:	
Tapered Roller Bearings	
A–570–601	
China National Machinery and Equipment Import and Export Corp	6/1/88—5/31/89
Premier Bearing & Equipment, Ltd.	
Harbin Bearing Factory	
Luoyang Bearing Factory	
Yantai Bearing Factory	
Xiang Yang Bearing Factory	
Guiyang Bearing Factory	
Northwest Bearing Plant	
Hai Lin Bearing Factory	
Haihong Bearing Factory	
Yishan Bearing Factory	
Romania:	
Tapered Roller Bearings	
A–485–602	
Technoimportexport	6/1/88—5/31/89
Taiwan:	
Certain Circular Welded Carbon Steel Pipes and Tubes	
A–583–008	
Yieh Hsing	5/1/88—11/16/88
Taiwan:	
Fireplace Mesh Panels	
A–583–003	
Yeh Sheng	6/1/88—5/31/89
Tahchung	
Taipoly Int'l	
Daivey Products	

Countervailing Duty Proceedings

We received no requests for review of countervailing duty orders and findings with June anniversary dates.

Interested parties must submit applications for administrative protective orders in accordance with § 353.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and §§ 353.22(c) and 355.22(c) of the Commerce Department's antidumping and countervailing duty regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) and December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 353.22(c) and 19 CFR 355.22(c)).

Date: July 18, 1989.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 89–17386 Filed 7–24–89; 8:45 am]

BILLING CODE 3510–DS–M

[A–583–081]

Polyvinyl Chloride Sheet and Film from Taiwan; Final Results of Changed Circumstances Administrative Review and Revocation of Antidumping Finding

AGENCY: International trade Administration/Import Administration Commerce.

ACTION: Notice of final results of changed circumstances administrative review and revocation of antidumping finding.

SUMMARY: On May 3, 1989, the Department of Commerce published the preliminary results of its changed circumstances administrative review and tentative determination to revoke the antidumping finding on polyvinyl chloride sheet and film from Taiwan. The review covers one manufacturer/exporter of this merchandise to the United States and the period June 1, 1986 through May 31, 1987.

We gave interested parties an opportunity to comment on our preliminary results. We received no comments. The final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: July 25, 1989.

FOR FURTHER INFORMATION CONTACT: Linnea Bucher or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3601.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 18919) the preliminary results of its changed circumstances administrative review and tentative determination to revoke the antidumping finding on polyvinyl chloride sheet and film from Taiwan. The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("The Tariff Act").

Scope of the Review

Imports covered by this review are shipments of unsupported, flexible,

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calendered polyvinyl chloride (PVC) sheet, film, and strips, over 6 inches in width and over 18 inches in length and at least 0.0002 inch but not over 0.020 inch in thickness. During the review period such merchandise was classifiable under item number 771.4312 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under item number 3920.42.50 of the Harmonized Tariff Schedule.

The review covers one exporter of this merchandise to the United States, Orchard Corporation, and the period June 1, 1986 through May 31, 1987.

Final Results of Review and Revocation of the Antidumping Finding

We invited interested parties to comment on the preliminary results of the changed circumstances administrative review and tentative determination to revoke the antidumping finding. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results of review.

For the reasons set forth in the preliminary results of changed circumstances administrative review and tentative determination to revoke the antidumping finding, we are satisfied that the finding is no longer of interest to interested parties. Accordingly, we revoke the antidumping finding on PVC sheet and film from Taiwan. The revocation applies to all unliquidated entries of this merchandise of Taiwan origin entered, or withdrawn from warehouse, for consumption or after June 1, 1986.

The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after June 1, 1986, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries.

This changed circumstances administrative review, revocation of the antidumping finding, and notice are in accordance with section 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and 19 CFR 353.53 and 353.54 (1988).

Date: July 18, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-17385 Filed 7-24-89; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

National Voluntary Laboratory Accreditation Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public workshop.

SUMMARY: The National Institute of Standards and Technology (NIST) will host a public workshop on September 25, 1989, to provide interested parties an opportunity to participate in the development of requirements for accreditation of testing facilities that perform computer applications testing, specifically testing of software products for conformance to the Federal Information Processing Standard (FIPS) 151, the Portable Operating System Interface for Computer Environments (POSIX).

DATE: The workshop will be held on September 25, 1989, from 9:00 a.m. to 4:00 p.m. Those who wish to receive draft material prior to the meeting and plan to attend the meeting should contact the NIST office specified below no later than August 25, 1989.

Place: The workshop will be held at the National Institute of Standards and Technology, Room B165, Building 221, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Jeffrey Horlick, Project Leader, Laboratory Accreditation, NIST, Building 411, Room A124, Gaithersburg, MD 20899, (301) 975-4020, FAX (301) 975-3839.

SUPPLEMENTARY INFORMATION: On May 1, 1989, James H. Burrows, Director, National Computer Systems Laboratory (NCSL) at NIST, forwarded a request to the Director of NIST for support from the National Voluntary Laboratory Accreditation Program (NVLAP) by the establishment of a NVLAP program to accredit testing laboratories that test the conformance of software products to the Portable Operating System Interface for Computer Environments (POSIX) family of Federal Information Processing Standards (FIPS). To quote from the request:

"The laboratories initially will test software products for conformance to the FIPS 151 (POSIX) using the National Institute of Standards and Technology (NIST) developed NIST POSIX Conformance Test Suite (NIST-PCTS). The test results will be evaluated by the National Computer Systems Laboratory (NCSL) as a basis for issuing a certificate of conformance to the FIPS 151. FIPS 151 is based on the IEEE Standard 1003.1-1988 which was developed by that voluntary, consensus driven, committee. It is designed for use by computing professionals involved in system and applications software development and implementation. The test assertions from which the NIST-PCTS was developed are based on the IEEE 1003.3 committee's work on test methods for measuring conformance to POSIX. The NIST-PCTS is available through the National Technical Information Services (NTIS) and will be maintained by NCSL.

The need for a POSIX standard is pointed out by the lack of portability of software between different machines and operating systems, thus causing costly problems in upgrading hardware and software systems. POSIX provides the functionality required to support source code portability for a wide range of applications across different environments by providing a standard interface between applications and the operating systems. An objective, accredited third party testing program is needed to provide credibility to vendor claims of conformance to the standard. NVLAP would provide the assurance of having qualified testing laboratories for these functions. The commercial endeavors established would yield enhancements and value added services to the testing process. Currently, there is no accredited program for this determination of conformance. While NCSL could provide the objectivity, NCSL does not have the resources to perform this testing."

NVLAP currently offers accreditation to laboratories testing for conformance of software to selected software standards. (See notice in **Federal Register** Vol. 53, No. 140, page 27543, announcing program based on X.25 Link and Network Layer Protocols, five Packet Switching High Level Protocols, and AUTODIN Mode I Protocol.) The request from NCSL has been considered under the NVLAP Procedures (Title 15, Part 7, CFR 7.18, addition to an established laboratory accreditation program), and has been found feasible and relevant to the existing program. Program feasibility has been established by defining the accreditation requirements necessary to demonstrate capability to test software against FIPS 151.

The following plans for the workshops have been established:

1. Purpose. The workshop will provide all interested persons with an opportunity to review and participate in establishing technical criteria, requirements, and procedures for evaluation and accreditation of applicant laboratories.

2. Procedure: The workshop will be an informal meeting. The presiding NIST chairperson will allocate the time available for discussion of each issue to be addressed, and exercise such authority as may be necessary to insure the equitable and efficient conduct of the workshop and to proceed in an orderly manner.

3. Provisions: This workshop will be open to the public.

Documents in Public Record

A summary record of the meeting will be prepared and made available for inspection and copying in the NVLAP program office, Building 411, Room A124, Gaithersburg, Maryland.

Raymond G. Kammer,

Acting Director.

Date: July 20, 1989.

[FR Doc. 89-17372 Filed 7-24-89; 8:45 am]

BILLING CODE 3510-13-M

National Fire Codes; Request for Proposals for Revision of Standards

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of request for proposals.

SUMMARY: The National Fire Protection Association (NFPA) proposes to revise some of its fire safety standards and requests proposals from the public to amend existing NFPA fire safety standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its standards. The publication of this notice of request for proposals by the National Institute of Standards and Technology (NIST), formerly the National Bureau of Standards (NBS), on behalf of NFPA is being undertaken as a public service. NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Interested persons may submit proposals on or before the dates listed with the standards.

ADDRESS: Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617) 770-3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops fire safety standards which are known collectively as the National Fire Codes. Federal agencies frequently use these standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the **Federal Register** approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

Request for Proposals

Interested persons may submit amendments, supported by written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269. Proposals should be submitted on forms available from the NFPA Standards Administration Office. Each person must include his or her name and address, identify the document and give reasons for the proposal. Proposals received before or by 5:00 p.m. local time on the closing date indicated will be acted on by the Committee. The NFPA will consider any proposal that it receives on or before the date listed with the standard.

At a later date, each NFPA Technical Committee will issue a Technical Committee Report that will include copies of the written proposals that have been received and an account of their disposition by the NFPA Committee. Each person who has submitted a written proposal will receive a copy of the Technical Committee Report.

Dated: July 20, 1989.

Raymond G. Kammer,

Acting Director.

NFPA No. and Title	Prop. closing date
NFPA 1-1987, Fire Prevention Code.	July 14, 1989
NFPA 12A-1989, Halogenated Fire Extinguishing Agent Systems.	Sept. 15, 1989
NFPA 13-1989, Installation of Sprinkler Systems.	Nov. 10, 1989
NFPA 13A-1987, Maintenance of Sprinkler Systems.	Nov. 10, 1989
NFPA 13D-1989, Sprinkler Systems in One- and Two-Family Dwellings & Mobile Homes.	Nov. 10, 1989
NFPA 13R-1989, Sprinkler Systems in Residential Occupancies Up to 4 Stories.	Nov. 10, 1989
NFPA 31-1987, Oil Burning Equipment.	July 20, 1990
NFPA 35-1987, Manufacture of Organic Coatings.	July 15, 1990
NFPA 36-1988, Solvent Extraction Plants.	Open
NFPA 45-1986, Fire Protection for Laboratories Using Chemicals.	Jan 19, 1990
NFPA 49-1975, Hazardous Chemicals Data.	July 14, 1989
NFPA 68-1988, Guide for Venting of Deflagrations.	Jan. 19, 1990
NFPA 69-1986, Explosion Prevention System.	Jan 19, 1990
NFPA 71-1989, Central Station Signaling Systems.	Jan. 19, 1990
NFPA 79-1987, Industrial Machines.	Jan. 19, 1990
NFPA 85B-1989, Prevention of Furnace Explosions in Natural Gas-Fired Multiple Burner Boiler Furnaces.	Jan 19, 1990
NFPA 85D-1989, Prevention of Furnace Explosions in Fuel Oil-Fired Multiple Burner Boiler-Furnaces.	Jan 19, 1990
NFPA 85E-1985, Prevention of Furnace Explosions in Pulverized Coal-Fired Multiple Burner Boiler-Furnaces.	Jan. 19, 1990
NFPA 85G-1987, Furnace Implosions in Multiple Burner Boiler-Furnaces.	Jan. 19, 1990
NFPA 86C-1987, Industrial Furnaces Using Special Processing Atmospheres.	Jan. 19, 1990
NFPA 92A-1988, Smoke Control Systems.	July 14, 1989
NFPA 101M-1988, Systems Approaches to Life Safety.	Open
NFPA 171-1986, Visual Alerting Symbols for General Public Firesafety.	July 14, 1989
NFPA 172-1986, Firesafety Symbols for Architectural & Engineering Drawings.	July 14, 1989
NFPA 174-1986, Firesafety Symbols for Risk Analysis Diagrams.	July 14, 1989
NFPA 178-1986, Symbols for Fire Fighting Operations.	July 14, 1989
NFPA 204M-1985, Guide for Smoke and Heat Venting.	July 14, 1989
NFPA 220-1985, Standard Types of Building Construction.	July 14, 1989
NFPA 224-1985, Homes and Camps in Forest Areas.	Jan. 19, 1990
NFPA 232-1986, Protection of Records.	July 14, 1989
NFPA 232AM-1986, Fire Protection for Archives and Records Centers.	July 14, 1989
NFPA 263-1986, Test Methods For Heat Release Rates of Materials.	July 14, 1989
NFPA 295-1985, Wildfire Control.	July 14, 1989
NFPA 296-1986, Air Operations for Forest, Brush & Grass Fires.	July 14, 1989
NFPA 297-1986, Telecommunications Systems.	July 14, 1989
NFPA 299-Proposed, Fire Hazard Assessment & Development Standards for Wildland Fire Areas.	Jan. 19, 1990
NFPA 321-1987, Classification of Flammable and Combustible Liquids.	July 14, 1989
NFPA 325M-1984, Fire Hazard Properties of Flammable Liquids, Gases, and Volatile Solids.	July 14, 1989
NFPA 327-1987, Cleaning or Safeguarding Small Tanks and Containers.	July 15, 1990
NFPA 328-1987, Control of Flammable & Combustible Liquids and Gases in Manholes and Sewers.	July 15, 1990
NFPA 329-1987, Underground Leakage of Flammable & Combustible Liquids.	July 15, 1990
NFPA 395-1988, Storage of Flammable & Combustible Liquids on Farms and Isolated Construction Projects.	Open

NFPA No. and Title	Prop. closing date
NFPA 402M–1989, Aircraft Rescue & Fire Fighting Operational Procedures.	Jan. 19, 1990
NFPA 403–1988, Aircraft Rescue and Fire Fighting Services at Airports and Heliports.	Oct. 6, 1989
NFPA 424M–1986, Airport/Community Emergency Planning.	Oct. 6, 1989
NFPA 491M–1986, Hazardous Chemical Reactions.	July 14, 1989
NFPA 497A–1986, Classification of Class 1 Hazardous Locations in Chemical Processing Areas.	July 14, 1989
NFPA 501A–Fire Safety Criteria for Manufactured Home Installations.	Jan. 19, 1990
NFPA 502–1987, Fire Protection for Limited Access Highways, Tunnels, Bridges, Elevated Railways Air Right Structures.	Jan. 19, 1990
NFPA 600–1986, Private Fire Brigades.	Jan. 19, 1990
NFPA 601–1986, Guard Service in Fire Loss Prevention.	Jan. 19, 1990
NFPA 602–1986, Guard Operations in Fire Loss Prevention.	Jan. 19, 1990
NFPA 703–1985, Fire Retardant Treatment of Building Materials.	July 14, 1989
NFPA 801–1986, Facilities Handling Radioactive Materials.	July 14, 1989
NFPA 903M–1986, Fire Reporting Property Survey Manual.	Jan. 18, 1991
NFPA 904M–1986, Incident Follow-Up Report Manual.	Jan. 18, 1991
NFPA 911–1985, Protection of Museums and Museum Collections.	Jan. 19, 1990
NFPA 921M–Proposed, Investigation of Fires.	Jan. 19, 1990
NFPA 1001–1987, Fire Fighter Professional Qualifications.	Jan. 19, 1990
NFPA 1004–1985, Fire Fighter Medical Technicians Professional Qualifications.	July 14, 1989
NFPA 1031–1987, Fire Inspector Professional Qualifications.	July 14, 1989
NFPA 1033–1987, Fire Investigator Professional Qualifications.	Jan. 19, 1990
NFPA 1033–1987, Fire Investigator Professional Qualifications.	Jan. 19, 1990
NFPA 1035–1987, Public Fire Educator Professional Qualifications.	July 20, 1990
NFPA 1221–1988, Public Fire Service Communications Service.	Jan. 19, 1990
NFPA 1402–1985, Building Training Centers.	July 20, 1990
NFPA 1461–1986, Criteria for Accreditation of Fire Protection Education Programs.	July 14, 1989
NFPA 1914–1988, Testing Fire Department Aerial Devices.	Jan. 19, 1990
NFPA 1963–1985, Screw Treads & Gaskets for Fire Hose Connections.	July 14, 1989
NFPA 1971–1986, Protective Clothing for Structural Fire Fighting.	Oct. 2, 1989
NFPA 1972–1987, Helmets for Structural Fire Fighting.	Jan. 18, 1991
NFPA 1974–1987, Protective Footwear for Structural Fire Fighting.	Jan. 18, 1991
NFPA 1976–Proposed, Crash/Fire/Rescue Protective Clothing.	Nov. 15, 1989

[FR Doc. 89–17371 Filed 7–24–89; 8:45 am]

BILLING CODE 3510–13–M

National Fire Codes; Request for Comments on National Fire Protection Association Technical Committee Reports

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The National Fire Protection Association (NFPA) revises existing standards and adopts new standards twice a year. At its Fall Meeting in November or its Annual Meeting in May, the NFPA acts on recommendations made by its technical committees.

The purpose of this notice is to request comments on the technical reports which will be presented at NFPA's 1989 Annual Meeting. The publication of this notice by the National Institute of Standards and Technology (NIST), formerly the National Bureau of Standards (NBS), on behalf of NFPA is being undertaken as a public service. NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: The Technical Committee Reports are available for distribution on July 28, 1989. Comments received on or before October 6, 1989 will be considered by the respective NFPA Committees before final action is taken on the proposals.

ADDRESS: The 1990 Annual Technical Committee Reports are available from NFPA, Publications Department, Batterymarch Park, Quincy, Massachusetts 02269. (The single copy price is $5.00 to cover postage and handling.) Comments on the reports should be submitted to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

Standards developed by the technical committees of the National Fire Protection Association (NFPA) have been used by various Federal agencies as the basis for Federal regulations concerning fire safety. The NFPA standards are known collectively as the National Fire Codes. Often, the Office of the **Federal Register** approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

Revisions of existing standards and adoption of new standards are reported by the technical committees at the NFPA's Fall Meeting in November or at the Annual Meeting in May of each year. The NFPA invites public comment on its Technical Committee Reports.

Request for Comments

Interested persons may participate in these revisions by submitting written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269. Commentors may use the forms provided for comments in the Technical Committee Reports. Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received on or before October 6, 1989 will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the Technical Committee Documentation by March 23, 1990, prior to the Annual Meeting.

A copy of the Technical Committee Documentation will be sent automatically to each commentor. Action on the Technical Committee Reports (adoption or rejection) will be taken at the Annual Meeting, May 20–24, 1990, in San Antonio, TX, by NFPA members.

Dated: July 20, 1989.

Raymond G. Kammer,

Acting Director.

1990 Annual Meeting Technical Committee Reports

(P=Partial revision; W=Withdrawal; R=Reconfirmation; N=New; C=Complete Revision)

NFPA No.	Title	Action
11C	Mobile Foam Apparatus	R
12B	Halogenated Fire Extinguishing Agent Systems-Halon 1211.	P
15	Water Spray Fixed Systems for Fire Protection.	R
18	Wetting Agents	R
30	Flammable & Combustible Liquids Code.	P
30A	Automotive & Marine Service Station Code.	P
30B	Aerosol Products	N
43A	Liquid & Solid Oxidizing Materials.	C
70B	Electrical Equipment Maintenance.	P
72	Installation, Maintenance & Use of Protective Signaling Systems.	C
72A	Local Protective Signaling Systems.	C
72B	Auxiliary Protective Signaling Systems.	C
72C	Remote Station Protective Signaling Systems.	C
72D	Proprietary Protective Signaling Systems.	C
72E	Automatic Fire Detectors	P
72F	Emergency Voice Alarm Communication Systems.	C
86D	Industrial Furnaces Using Vacuum as an Atmosphere.	C
88A	Parking Structures	R
88B	Repair Garages	R
121	Mobile Surface Mining Equipment.	P
122	Flammable & Combustible Liquids Within Underground Mines.	R
123	Underground Coal Mines	C
231	General Storage	P
251	Fire Tests of Building Construction and Materials.	P
252	Fire Tests of Door Assemblies	P
253	Critical Radiant Flux of Floor Covering System Using Radiant Heat Energy.	P
255	Surface Burning Characteristics of Building Materials.	P
257	Fire Tests of Window Assemblies.	P
262	Fire & Smoke Characteristics of Electrical Wires and Cables.	R
264A	Heat Release Rates of Upholstered Furniture.	N
303	Marinas and Boatyards	C
307	Marine Terminals, Piers & Wharves.	P
312	Vessels During Construction, Repair & Lay-Up.	C
407	Aircraft Fuel Servicing	C
409	Aircraft Hangars	P
414	Aircraft Rescue and Fire Fighting Vehicles.	P
417	Aircraft Loading Walkways	R
418	Roof-top Heliport Construction and Protection.	C
495	Explosive Materials	P
498	Explosives Motor Vehicle Terminals.	R
1141	Fire Protection in Planned Building Groups.	C
1561	Fire Department Incident Management System.	N
1975	Station/Work Uniforms for Fire Fighters.	C
1983	Fire Service Life Safety Rope, Harnesses, and Hardware.	C
1993	Splash-Protective Suits for Nonflammable Hazardous Chemical Situations.	N

[FR Doc. 89–17370 Filed 7–24–89; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council will hold a public meeting on August 2-3, 1989, at the Radisson Hotel, 700 King Street, Wilmington, DE. The Council will begin meeting on August 2 at 10 a.m., and will adjourn on August 3 at approximately 1 p.m.

The Council will discuss the National Marine Fisheries Service's (NMFS) proposed striped bass management measures, consider amendments to its Statement of Operating Practices and Procedures (SOPPs), and discuss other fishery management and administrative matters. The public meeting may be lengthened or shortened depending upon progress on the agenda. The Council also may hold a closed session (not open to the public) to discuss personnel and/or national security matters.

FOR FURTHER INFORMATION CONTACT: John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Date: July 19, 1989.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–17287 Filed 7–24–89; 8:45 am]

BILLING CODE 3510–22–M

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council will hold a public meeting of the Swordfish Advisory Panel at the Council's headquarters (address below), beginning on August 16, 1989, at 1 p.m., and concluding on August 17, at noon. The advisory panel will receive a briefing on the swordfish stock assessment and review management options for Amendment #1 to the fishery management plan for Atlantic swordfish. The advisory panel also will formulate recommendations to the Council regarding the management measures contained in the proposed amendment. A detailed agenda will be available to the public on or about August 1, 1989.

FOR FURTHER INFORMATION CONTACT: Carrie R. F. Knight, Public Information Specialist, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571–4366.

Date: July 19, 1989.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management National Marine Fisheries Service.

[FR Doc. 89–17288 Filed 7–24–89; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability (NOA) of the Final Environmental Impact Statement for the Construction and Operation of a Chemical Munitions Disposal Facility at Tooele Army Depot, Utah

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: This announces the notice of availability (NOA) of the FEIS on the potential impact of the design, construction, operation and closure of the proposed chemical agent demilitarization facility at Tooele Army Depot, Utah. The proposed facility will be used to demilitarize all chemical agents and munitions currently stored at the Tooele Army Depot. The Final Environmental Impact Statement (FEIS) examines the potential impacts of on-site incineration and the "no action" alternatives. The "no action" alternative is considered to be deferral of demilitarization with continued storage of the agents and munitions at Tooele Army Depot.

SUPPLEMENTARY INFORMATION: In its Record of Decision (53 FR, No. 38, pp. 5816–17) for the Final Programmatic Environmental Impact Statement on the Chemical Stockpile Disposal Program, the Department of the Army selected on-site disposal by incineration at all eight chemical munitions storage sites within the continental United States as the method by which it will destroy its lethal chemical stockpile. The Department of the Army published a Notice of Intent on August 3, 1988 (53 FR, No. 149, pp. 29255–29256) which provided notice that, pursuant to the National Environmental Policy Act (NEPA) and implementing regulations, it was preparing a Draft Environmental Impact Statement (DEIS) for the Tooele chemical munitions disposal facility. The Department of the Army prepared an EIS to assess the site-specific health

and environmental impacts of on-site incineration of chemical agents and munitions at Tooele Army Depot. On May 5, 1989, the Department of the Army published a Notice of availability (54 FR, No. 86, page 19435) which provided notice that the DEIS was available for public comment. Minimal comments were received on the DEIS. The FEIS for Tooele, which incorporates these comments, is now available. Copies may be obtained by writing the Program Manager for Chemical Demilitarization, ATTN: SAIL-PMI (Ms. Marilyn Tischbin), Aberdeen Proving Ground, Maryland 21010-5401.

ADDITIONAL INFORMATION: The Environmental Protection Agency (EPA) will also publish a Notice of Availability for this FEIS in the **Federal Register.**

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA(I&L).

[FR Doc. 89-17332 Filed 7-24-89; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Fund for the Improvement and Reform of Schools and Teaching

AGENCY: Fund for the Improvement and Reform of Schools and Teaching.

ACTION: Notice of an amendment to a partially closed meeting.

DATES: July 27, 1989, 9:00 a.m.-5:00 p.m. (Open); July 28, 1989, 9:00 a.m.-5:00 p.m. (Closed).

SUMMARY: This is an amendment to the notice that appeared in the **Federal Register**, on Wednesday, June 28, 1989, (54 FR 27204). This amendment sets forth the change in the schedule and proposed agenda of the upcoming meeting of the Fund for the Improvement and Reform of Schools and Teaching Board.

The meeting was originally scheduled to begin at 8:30 a.m. on both days with the afternoon portion of the meetings being closed. The Board will now convene in open session from 9:00 a.m. to 5:00 p.m. on July 27 and will conclude with a closed meeting on July 28 from 9:00 a.m. to 5:00 p.m..

Additional agenda items for the open meeting session include:

Discussion/Approval of Minutes of the January Meeting.
New Members/Introduction of Staff
Committee Management Briefing
Selection of Members to a Subcommittee to the Board
Delegation of Authority by Subcommittee
Selection Process for Grant Application Program Administration
1990 Program Priorities

Bruno V. Manno,

Acting Assistant Secretary, Educational Research and Improvement.

[FR Doc. 89-17328 Filed 7-24-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application Filed with the Commission

July 19, 1989.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. Type of Application: Transfer of License.

b. Project No.: 4684-010.

c. Date Filed: April 12, 1989.

d. Applicant: Long Lake Energy Corp. and Stillwater Hydro Partners L.P.

e. Name of Project: Stillwater Project.

f. Location: On the Hudson River in Saratoga and Rensselaer Counties, New York.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Sandy Hartman, Long Lake Energy Corp., 420 Lexington Ave., New York, NY 10170, (212) 986-0440.

i. FERC Contact: Robert Bell (202) 376-9237.

j. Comment Date: August 10, 1989.

k. Description of Project: On May 20, 1987, a license was issued to Long Lake Energy Corp. (licensee), to construct, operate, and maintain the Stillwater Project No. 4684. The Licensee intends to transfer the license to Stillwater Hydro Partners L.P. (transferee), which will purchase, construct and operate the project. The transferee agrees to accept the terms and conditions of the license as if it were the original license. The transfer is requested to facilitate the financing and construction of the project.

1. This notice also consists of the following standard paragraphs: B and C.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

c. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "Comments," "Recommendations for Terms and Conditions," "Notice of Intent to File Competing Application," "Competing Applications," "Protest" or "Motion to Intervene," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An Additional copy must be sent to: The Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 204-RB, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17312 Filed 7-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1731-000, et al.]

North Penn Gas Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. North Penn Gas Company

[Docket No. CP89-1731-000]

July 14, 1989.

Take notice that on July 3, 1989, North Penn Gas Company (North Penn), 76-90 Mill Street, Port Allegheny, Pennsylvania 16743, filed in Docket No. CP89-1731-000, an application pursuant to Section 7(c) of the Natural Gas Act, for authorization to construct and operate approximately 11 miles of 8-inch pipeline and appurtenant facilities to connect its storage facilities located in Delmar Township, Tioga County, Pennsylvania to a segregated segment of its system located in Richmond Township, Tioga County, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

North Penn states that the proposed facilities would permit it to deliver gas from its existing underground storage facility into the eastern portion of its system. North Penn further states that the eastern portion of its system consists of its Mansfield and Troy distribution districts which comprises approximately 26% of its total annual load requirements. By exposing storage to this segment of its system, North Penn asserts that it can reduce its dependency on its pipeline suppliers to meet the peak day requirements of the segment which can now only be met with pipeline supplied gas.

North Penn estimates that it would cost approximately $2.4 million to construct the proposed facilities. North Penn states that such costs would be financed initially with short-term loans and funds on hand and that permanent financing would be a part of its overall long-term financing program.

Comment date: August 4, 1989, in accordance with Standard Paragraph F at the end of this notice.

2. Equitrans, Inc.

[Docket No. CP89-1793-000]

July 14, 1989.

Take notice that on July 12, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP89-1793-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Texas-Ohio Gas, Inc. (Texas-Ohio), under the blanket certificate issued in Docket No. CP86-553-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans states that pursuant to a transportation service agreement dated March 27, 1989, under its Rate Schedule ITS, it proposes to transport up to 2,940 Mcf per day of natural gas for Texas-Ohio. Equitrans states that it would transport the gas from receipt points in Nicholas and Fayette Counties, West Virginia, and Allegheny County, Pennsylvania, as shown in Exhibit "A" of the transportation agreement, and would deliver the gas on behalf of Texas-Ohio at the interconnect between Equitrans/Texas Eastern Transmission Corporation (TETCO) at TETCO's Measuring Station 009 and Equitrans' Crayne Farm Measuring Station, Greene County, Pennsylvania; and the interconnect between Equitable Gas Company/Equitrans' Tepe Measuring Station, Peterman's Corner Regulating Station and Perrymont Regulator, Allegheny County, Pennsylvania, as shown in Exhibit "B" of the agreement.

Equitrans advises that service under § 284.223(a) commenced May 1, 1989, as reported in Docket No. ST89-3512-000. Equitrans further advises that it would transport 96 Mcf on an average day and 35,040 Mcf annually.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Williams Natural Gas Company

[Docket No. CP89-1748-000]

July 14, 1989.

Take notice that on July 7, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-1748-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon the sale of natural gas to the U.S. Army Corps of Engineers Sunflower Army Ammunition Plant Receiver Station (Sunflower) in Desota, Johnson County, Kansas, under WNG's blanket certificate issued in Docket No. CP82-479-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG states that Sunflower requested the cancellation of their natural gas sales agreement in an October 23, 1986, letter, because it had moved the office served by WNG and no longer needed the gas. WNG also states that it provided the pipeline tap, however, Sunflower owns all the other facilities; thus, no facilities would be abandoned.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Natural Gas Pipeline Company of America

[Docket No. CP89-1762-000]

July 14, 1989.

Take notice that on July 11, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-1762-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Elf Aquitaine Operating, Inc. (Elf Aquitaine), a marketer, under the blanket certificate issued in Docket No. CP86-582-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation service agreement dated March 22, 1989, under its Rate Schedule ITS, it proposes to transport up to 100,000 MMBtu per day equivalent of natural gas for Elf Aquitaine. Natural states that it would transport the gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS) from receipt points in Louisiana and offshore Louisiana, as shown in Exhibit "A" of the transportation agreement, and would deliver the gas to delivery points in Louisiana, offshore Louisiana, and Illinois, as shown in Exhibit "B" of the agreement.

Natural advises that service under § 284.223(a) commenced May 16, 1989, as reported in Docket No. ST89-4129-000. Natural further advises that it would transport 15,000 MMBtu on an average day and 5,475,000 MMBtu annually.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Texas Gas Transmission Corporation

[Docket No. CP89-1759-000]

July 14, 1989.

Take notice that on July 10, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1759-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Westvaco Corporation (Westvaco), under the blanket certificate issued in Docket No. CP88-686-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas states that pursuant to a transportation agreement dated March 30, 1989, under its Rate Schedule IT, it proposes to transport up to 5,000 MMBtu per day equivalent of natural gas for Westvaco. Texas Gas states that it would transport the gas from multiple receipt points as shown in Exhibit "B" of the transportation agreement and would deliver the gas to a delivery point in Warren County, Ohio, as shown in Exhibit "C" of the agreement.

Texas Gas advises that service under § 284.223(a) commenced June 6, 1989, as reported in Docket No. ST89-3930-000. Texas Gas further advises that it would transport 3,600 MMBtu on an average day and 1,825,000 MMBtu annually.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Texas Gas Transmission Corporation

[Docket No. CP89-1757-000]

July 14, 1989.

Take notice that on July 10, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1757-000 a request pursuant to § 157.205 and 284.223(b) of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Enron Gas Marketing, Inc. (Enron Marketing) under the blanket certificate issued in Docket No. CP88-686-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, Texas Gas requests authority to transport on a peak day up to 200,000 MMBtu of natural gas from various receipt points on Texas Gas' system located in Arkansas, Illinois, Indiana, Kentucky, Ohio, Tennessee, and both onshore and offshore Texas and Louisiana for redelivery to Enron Marketing in Louisiana. Further, Texas Gas states that the average daily and annual transportation quantities are estimated to be 90,000 MMBtu and 32,850,000 MMBtu, respectively.

Texas Gas states that transportation service for Enron Marketing commenced June 3, 1989, under the 120-day automatic provisions of § 284.223(a) of the Commission's Regulations, as reported with the Commission in Docket No. ST89-3918.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. East Tennessee Natural Gas Company

[Docket No. CP89-1739-000]

July 14, 1989.

Take notice that on July 7, 1989, East Tennessee Natural Gas Company (Applicant), P.O. Box 10245, Knoxville, Tennessee 37939-0245, filed in Docket No. CP89-1739-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 1.06 miles of 8⅝-inch pipeline loop across the Cumberland River in Smith County, Tennessee and approximately 1.09 miles of 12¾-inch pipeline loop across the Hiwassee River in Bradley and McMinn Counties, Tennessee, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the proposed pipeline loops are to protect the integrity of the system and to permit it to maintain service in the event of failure of its existing single lines which were originally installed in 1950 and 1961. Applicant states that the proposed loops would not increase the throughput and would have a negligible impact on the capacity of Applicant's system.

Applicant estimates the cost of the proposed facilities to be $2,235,280. Applicant proposes to finance the project with funds on hand or from internally generated funds.

Comment date: August 4, 1989 in accordance with Standard Paragraph F at the end of the notice.

8. El Paso Natural Gas Company

[Docket No. CP89-1722-000]

July 14, 1989

Take notice that on June 29, 1989, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP89-1722-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon from interstate service by conveyance to Western Gas Processors, Ltd., (Western Gas) certain existing compression, pipeline and plant facilities, with appurtenances, hereinafter referred to as the "Midkiff System," being located in Glasscock, Midland, Reagan and Upton Counties, Texas, and the related service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that the Midkiff System consists of the following certificated compression and processing facilities: (i) The Pembrook Field Compressor Station (Pembrook Station), with five field compressor units totaling 6,750 ISO horsepower; (ii) the Driver Field Compressor Station (Driver Sation), with three field compressor units totaling 6,000 ISO horsepower; (iii) the Midkiff Field Compressor Station (Midkiff Station), with thirteen field compressor units totaling 23,760 ISO horsepower; (iv) the Midkiff Dehydration Plant, with a design inlet capacity of 136,000 Mcf per day (Mcfd); (v) the Midkiff Gasoline Plant, with a design inlet capacity of 168,000 Mcfd; and (vi) general structures and equipment, meter stations, and field communication facilities necessary for the operation and maintenance of the above described facilities.

The Midkiff System also includes the following certificated pipelines: (i) The Upton County Line to Texas Natural Gas' (TNG) Pembrook Plant Line (Upton to TNG Pembrook Line), consisting of approximately 12.8 miles of 12¾" O.D. pipeline, and approximately 1.6 miles of 6⅝" O.D. pipeline, and necessary appurtenances; (ii) the Pembrook Plant to Midkiff Plant Line (Pembrook to Midkiff Line), consisting of approximately 0.1 mile of 24" O.D. pipeline and 12.7 miles of 16" O.D. pipeline, and necessary appurtenances; (iii) the Driver Plant to Midkiff Plant Line (Driver to Midkiff Line), consisting of approximately 6.3 miles of 26" O.D. pipeline, and necessary appurtenances; (iv) the TNG Pembrook Plant (now retired) to Midkiff Plant Line (TNG Pembrook to Midkiff Line), consisting of approximately 7.5 miles of 10¾" O.D. pipeline, and necessary appurtenances; and (v) the Sprayberry Gathering System, consisting of approximately 185 miles of certificated gathering and well-tie pipelines, ranging in size from 2⅜" O.D. to 30" O.D. El Paso states that the Sprayberry Gathering System also includes approximately 875 miles of various sized non-jurisdictional and non-certificated gathering lines and two portable field compressors which will also be conveyed to Western Gas.

El Paso states that the facilities and service were authorized as follows: By order issued June 23, 1952, in Docket No. G-1631, authorization was granted to, *inter alia*, construct the Upton to TNG Pembrook Line and by order issued June 29, 1953, as amended, authorization was granted in Docket No. G-2106 to, *inter alia*, construct and operate the Pembrook Station, the Driver Station, the Midkiff Station, the Midkiff Dehydration Plant, the Midkiff Gasoline Plant, the Pembrook to Midkiff Line, the Driver to Midkiff Line, the TNG Pembrook to Midkiff Line, and the Sprayberry Gathering System. El Paso states that the Midkiff System was designed to gather natural gas at the Driver and Pembrook Stations and then deliver that gas to the Midkiff Plant to be processed along with gas gathered in the proximity of the Midkiff Plant. After processing, the gas is ultimately delivered to El Paso's transmission facilities for transportation to its customers.

El Paso states that many of the producers with gas in the Midkiff System have chosen to abandon their sales to El Paso and now sell gas directly to others. Currently, approximately 45 percent of the total 41,000 Mcfd of residue gas available at the outlet of the Midkiff Plant is dedicated to El Paso's system supply in performance of its merchant role. El Paso states that the remaining 55 percent of such residue gas is transported by El Paso to various delivery points on its system. El Paso further states that it constructed the Midkiff System to gather and process gas for system supply. Due to the precipitous decline in gas sources historically serving the Midkiff System, the unit cost for gathering and processing system supply gas through the Midkiff System has increased dramatically. El Paso states that, for example, the unit cost for gathering and processing the Midkiff production was 19c per dekatherm (dt) in 1985. In contrast, it is stated that the unit cost for the twelve months ended December 1988 was 71c per dt, an increase over just three years of approximately 73 percent. Even though El Paso's purchases for system supply from the Midkiff area as a percentage of total Midkiff availability have substantially declined, El Paso states that the entire cost of the Midkiff System remains in El Paso's cost-of-service.

El Paso states that its market environment no longer justifies its continued retention of the Midkiff System. Moreover, due to the present and projected low demand for El Paso's system supply gas, El Paso no longer requires the assured access to gas supply provided by the Midkiff System. El Paso states that considering these conditions, it believes the continued operation of the Midkiff System by El Paso would frustrate its goal of optimizing system operations. Accordingly, El Paso and Western Gas have entered into an "Agreement of Sale Concerning the Midkiff Plant and Sprayberry Gathering System" dated May 12, 1989, for the sale of the Midkiff System. El Paso proposes to abandon the Midkiff System by conveyance to Western Gas. El Paso reports that Western Gas intends to operate the Midkiff System as an integrated, non-jurisdictional gathering and processing system and will file a petition of declaratory order requesting that the Commission disclaim jurisdiction over the Midkiff System as described herein.[1]

El Paso states that after abandonment of the Midkiff System, it will have purchase obligations for approximately 28,000 Mcfd of natural gas located in the Sprayberry Field. El Paso states that the sale of the Midkiff System will not prevent it from honoring its remaining contractual obligations in the Midkiff System. El Paso reports that Western Gas has agreed to provide gathering and processing services for El Paso's remaining gas in the Midkiff System. It is further stated that Western Gas has also indicated to El Paso that it will provide gathering and processing services for all producers with supplies located in the Midkiff System.

El Paso states that it will abandon no gas supply as a direct result of the abandonment of the Midkiff System. Furthermore, El Paso states that its ability to render existing natural gas service to its customers will not be impaired. According to El Paso, the abandonment will require no changes in it's FERC Gas Tariff and no significant change in it's rates will result therefrom. El Paso further states that in the future, its customers will benefit from a small reduction in sales and its transportation rates associated with the abandonment of these facilities.

El Paso states that there will be no adverse environmental effects upon effectuation of the proposed abandonment. Accordingly, El Paso states that it believes the proposed action does not constitute a major federal action significantly effecting the quality of the human environment and thus not subject to the requirements of the National Environmental Policy Act of 1969. In El Paso's judgement, an environmental analysis for the instant proposal is not necessary.

Comment date: August 4, 1989, in accordance with Standard Paragraph F at the end of this notice.

9. Gas Transport, Inc.

[Docket No. CP89-1746-000

July 14, 1989.

Take notice that on July 7, 1989, Gas Transport, Inc. (Gas Transport), 109 North Broad Street, Lancaster, Ohio 43132, filed a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for the account of Manville Sales Corporation (Manville) under the blanket authorization issued in Docket No. CP86-291-000, pursuant to Section 7 of the Natural Gas Act.

Take notice that Gas Transport also requests authorization to operate a new sales tap for the delivery of gas to Manville under the blanket authorization issued in Docket No. CP83-164-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Gas Transport states that it proposes to transport natural gas for the account of Manville from existing connections with Columbia Gas Transmission Corporation to a delivery point at an existing interconnection with Hope Gas, Inc., near Mineral Springs in Wood County, West Virginia, who will make final delivery of the gas to Manville. Gas Transport further states that the maximum daily and annual quantities would be 4,500 MMBtu and 1,642,500 MMBtu, respectively, and that the average daily quantity would be 4,000 MMBtu. Service under § 284.223(a) commenced June 1, 1989, as reported in Docket No. ST89-4072-000 (filed June 30, 1989).

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. El Paso Natural Gas Company

[Docket No. CP89-1737-000]

July 14, 1989.

Take notice that on July 6, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP89-1737-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Meridian Oil Hydrocarbons Inc. (Meridian Oil), under El Paso's blanket certificate issued in Docket No. CP88-433-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso requests authorization to transport, on an interruptible basis, up to a maximum of 21,100 MMBtu of natural gas per day for Meridian Oil from any point of receipt on El Paso's system to a delivery point located in Ector County, Texas. El Paso anticipates transporting 10,550 MMBtu of natural gas on an average day and an annual volume of 3,850,750 MMBtu.

El Paso states that the transportation of natural gas for Meridian Oil commenced May 8, 1989, as reported in Docket No. ST89-3622-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to El Paso in Docket No. CP88-433-000.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-1744-000]

July 14, 1989.

Take notice that on July 7, 1989, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89-1744-000 a request pursuant to §§ 157.205 and 284.223 of the

[1] On June 29, 1989, in Docket No. CP89-1716-000, Western Gas filed a petition for declaratory order requesting that the Commission disclaim jurisdiction over the Midkiff System.

Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Pacific Resources Company (Pacific Resources) under Transco's blanket certificate issued in Docket No. CP88-328-000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Transco proposes to transport up to 790,000 dt per day on an interruptible basis for Pacific Resources pursuant to a transportation agreement, under Rate Schedule IT, dated May 28, 1989, between Transco and Pacific Resources. Transco would receive gas from various existing points of receipt in onshore and offshore Louisiana and offshore Texas. Transco would deliver the gas at various existing delivery points in onshore Louisiana and onshore Texas.

Transco further states that the average day and annual transportation volumes would be 50,000 dt and 18,250,000 dt, respectively.

Transco also states it would construct no new facilities in order to provide this transportation service. Transco would utilize existing facilities as reflected in Exhibit A of the transportation agreement, it is stated.

Service under § 284.233(a) commenced on May 10, 1989 as reported in Docket No. ST89-4001-000, Transco advises.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. United Gas Pipe Line Company

[Docket No. CP89-1745-000]

July 14, 1989.

Take notice that on July 7, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1745-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Tenngasco Corporation (Tenngasco), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport on an interruptible basis up to 432,600 MMBtu equivalent of natural gas on a peak day, 432,600 MMBtu equivalent on an average day, and 157,899,000 MMBtu equivalent on an annual basis. It is stated that United would receive the gas for Tenngasco's account at designated points on United's system in Panola County, Texas, and would deliver equivalent volumes at the tailgate of the Champlin East Texas Plant in Panola County, Texas. It is asserted that the transportation service would be effected utilizing existing facilities and would not require any construction of additional facilities. It is explained that the transportation service commenced June 1, 1989, as reported in Docket No. ST89-3955.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Texas Gas Transmission Corporation

[Docket No. CP89-1760-000]

July 14, 1989.

Take notice that on July 10, 1989, Texas Gas Transmission Corporation, (Texas Gas) 3800 Frederica Street, Owensboro, Kentucky, 42301 filed in Docket No. CP89-1760-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Enron Gas Marketing, Inc. (Enron Marketing), under its blanket authorization issued in Docket No. CP88-686-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas would perform the proposed interruptible transportation service for Enron Marketing, pursuant to a gas transportation agreement dated March 10, 1989 (reference no. 3264). The term of the transportation agreement is from the date of execution by Enron Marketing and shall continue in effect month-to-month thereafter, unless terminated upon 30 days written notice by either party. Texas Gas proposes to transport on a peak day up to 75,000 MMBtu; on an average day up to 25,000 MMBtu; and on an annual basis 9,125,000 MMBtu for Enron Marketing. Texas Gas proposes to receive the subject gas from exiting points of receipt in Acadia Parish and Lafourche Parish, Louisiana for transportation to existing points of delivery on its system. The proposed rate to be charged is contained in Texas Gas' currently effective IT rate schedule. It is further stated that the proposed transportation is being rendered through the use of Texas Gas' existing facilities.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Texas Gas commenced such self-implementing service on June 1, 1989, as reported in Docket No. ST89-3915-000.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Southern Natural Gas Company

[Docket No. CP89-1756-000]

July 14, 1989.

Take notice that on July 10, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 3502-2563 filed in Docket No. CP89-1756-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Chemical Products Corporation (Chemical Products), an end-user under its blanket authorization issued in Docket No. CP88-316-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern would perform the proposed interruptible transportation service for Chemical Products, pursuant to an interruptible transportation service agreement dated April 17, 1989. The transportation agreement is effective for a primary term of one month and for successive terms of one month thereafter subject to termination by either party giving five days written notice. Southern proposes to transport 3,000 MMBtu of natural gas on a peak day; 1,850 MMBtu on an average day; and on an annual basis 675,250 MMBtu of natural gas for Chemical Products. Southern proposes to receive the subject gas at various receipt points located in Alabama, Louisiana, offshore Louisiana, Mississippi, Texas and offshore Texas for delivery to delivery points in Fulton County, Georgia. Southern avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Southern commenced such self-implementing service on May 10, 1989, as reported in Docket No. ST89-37333-000.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Equitrans, Inc.

[Docket No. CP89-1699-000]

July 14, 1989.

Take notice that on June 29, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP89-1699-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Endevco Marketing Company (Endevco), under Equitrans' blanket certificate issued in Docket No. CP86-553-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Equitrans proposes to transport on an interruptible basis up to 4,900 Mcf of natural gas on a peak day, 4,900 Mcf on an average day and 1,788,500 Mcf on an annual basis for Endevco. Equitrans states that it would perform the transportation service for Endevco under Equitrans' Rate Schedule ITS. Equitrans indicates that it would transport the gas from a receipt point in Gilmer County, West Virginia, to four delivery points in Allegheny County, Pennsylvania.

It is explained that the service commenced November 1, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-1289. Equitrans indicates that no new facilities would be necessary to provide the subject service.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. El Paso Natural Gas Company

[Docket No. CP89-1735-000]

July 14, 1989.

Take notice that on July 6, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP89-1735-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of V.H.C. Gas Systems, L. P. (VHC), under El Paso's blanket certificate issued in Docket No. CP88-433-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso requests authorization to transport, on an interruptible basis, up to a maximum of 520,000 MMBtu of natural gas per day for VHC from any receipt point located on El Paso's system to various delivery points located at the borderline between the States of Arizona and California. El Paso anticipates transporting, on an average day 520,000 MMBtu and an annual volume of 189,800,000 MMBtu.

El Paso states that the transportation of natural gas for VHC commenced May 16, 1989, as reported in Docket No. ST89-3885-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to El Paso in Docket No. CP88-433-000.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. Equitrans, Inc.

[Docket No. CP89-1698-000]

July 14, 1989.

Take notice that on June 29, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP89-1698-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for CNG Trading Company (CNG), under Equitrans' blanket certificate issued in Docket No. CP86-553-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Equitrans proposes to transport on an interruptible basis up to 49,000 Mcf of natural gas on a peak day, 49,000 Mcf on an average day and 17,885,000 Mcf on an annual basis for CNG. Equitrans states that it would perform the transportation service for CNG under Equitrans' Rate Schedule ITS. Equitrans indicates that it would transport the gas from receipt points in Pennsylvania and West Virginia, to four delivery points in Allegheny and Greene Counties, Pennsylvania.

It is explained that the service commenced October 1, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-1290. Equitrans indicates that no new facilities would be necessary to provide the subject service.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

18. Equitrans, Inc.

[Docket No. CP89-1784-000]

July 17, 1989.

Take notice that on July 12, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP89-1784-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Harmarville Rehabilitation Center (Harmarville), under the blanket certificate issued in Docket No. CP86-553-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans states that pursuant to a transportation service agreement dated November 22, 1988, under its Rate Schedule ITS, it proposes to transport up to 196 Mcf per day of natural gas for Harmarville. Equitrans states that it would transport the gas from receipt points in Nicholas County, West Virginia, and Westmoreland, Greene, and Allegheny Counties, Pennsylvania, and would deliver the gas on behalf of Harmarville at the interconnect between Equitable Gas Company/Equitrans' Tepe Measuring Station, Peterman's Corner Regulating Station and various regulating stations off the H-152 line, Allegheny County, Pennsylvania.

Equitrans advises that service under § 284.223(a) commenced November 1, 1988, as reported in Docket No. ST89-1226. Equitrans further advises that it would transport 83 Mcf on an average day and 30,295 Mcf annually.

Comment date: August 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

19. Equitrans, Inc.

[Docket No. CP89-1785-000]

July 17, 1989.

Take notice that on July 12, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP89-1785-000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Consolidated Fuel Corporation (Consolidated), under the blanket certificate issued in Docket No. CP86-553-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans states that pursuant to a transportation service agreement dated November 1, 1988, under its Rate Schedule ITS, it proposes to transport up to 1,176 Mcf per day of natural gas for Consolidated. Equitrans states that it would transport the gas from receipt points in Braxton, Lewis, Gilmer, Tyler, Taylor, Ritchie and Upshur Counties, West Virginia, and Westmoreland, Greene, and Allegheny Counties, Pennsylvania, and would deliver the gas on behalf of Consolidated at the

interconnect between Equitable Gas Company/Equitrans' Tepe Measuring Station and off the H-152 and H-153 lines, Allegheny County, Pennsylvania; interconnect between Columbia Gas of Pennsylvania/Equitrans' Groveton, Allegheny County, Pennsylvania; and interconnect between Consolidated Gas Transmission/Equitrans' Pratt Compression Station, Greene County, Pennsylvania.

Equitrans advises that service under § 284.223(a) commenced December 1, 1988, as reported in Docket No. ST89-1293. Equitrans further advises that it would transport 1,176 Mcf on an average day and 429,240 Mcf annually.

Comment date: August 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

20. Equitrans, Inc.

[Docket No. CP89-1786-000]

July 17, 1989.

Take notice that on July 12, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP89-1786-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for West Penn Hospital (West Penn), under the blanket certificate issued in Docket No. CP86-553-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans states that pursuant to a transportation service agreement dated January 18, 1989, under its Rate Schedule ITS, it proposes to transport up to 784 Mcf per day of natural gas for West Penn. Equitrans states that it would transport the gas from receipt points in Westmoreland, Greene, and Allegheny Counties, Pennsylvania, and Nicolas County, West Virginia, and would deliver the gas on behalf of West Penn at the interconnect between Equitable Gas Company/Equitrans' Tepe Measuring Station, Peterman's Corner Regulating Station and various regulating stations off the H-152 line, Allegheny County, Pennsylvania.

Equitrans advises that service under § 284.223(a) commenced January 24, 1989, as reported in Docket No. ST89-2115. Equitrans further advises that it would transport 318 Mcf on an average day and 116,070 Mcf annually.

Comment date: August 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

21. Equitrans, Inc.

[Docket No. CP89-1787-000]

July 17, 1989.

Take notice that on July 12, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP89-1787-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for O & R Energy Development, Inc. (O & R), under the blanket certificate issued in Docket No. CP86-553-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans states that pursuant to a transportation service agreement dated December 16, 1988, under its Rate Schedule ITS, it proposes to transport up to 4,900 Mcf per day of natural gas for O & R. Equitrans states that it would transport the gas from receipt points in Westmoreland, Greene, and Allegheny Counties, Pennsylvania, and would deliver the gas on behalf of O & R at the interconnect between Equitable Gas Company/Equitrans' Tepe Measuring Station, Peterman's Corner Regulating Station and various regulating stations off the H-152 line, Allegheny County, Pennsylvania.

Equitrans advises that service under § 284.223(a) commenced December 6, 1988, as reported in Docket No. ST89-1735. Equitrans further advises that it would transport 2,695 Mcf on an average day and 983,675 Mcf annually.

Comment date: August 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

22. Equitrans, Inc.

[Docket No. CP89-1789-000]

July 17, 1989.

Take notice that on July 12, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP89-1789-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Access Energy Corporation (Access), under the blanket certificate issued in Docket No. CP86-553-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans states that pursuant to a transportation service agreement dated December 1, 1988, under its Rate Schedule ITS, it proposes to transport up to 3,038 Mcf per day of natural gas for Access. Equitrans states that it would transport the gas from receipt points in Lewis, Gilmer, Tyler, Upshur, Wetzel Counties, West Virginia, and Greene County, Pennsylvania, and would deliver the gas on behalf of Access at the interconnect between Equitable Gas Company/Equitrans' Tepe Measuring Station and off the H-152 and H-153 lines, Allegheny County, Pennsylvania.

Equitrans advises that service under § 284.223(a) commenced December 1, 1988, as reported in Docket No. ST89-1732. Equitrans further advises that it would transport 1,553 Mcf on an average day and 566,845 Mcf annually.

Comment date: August 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

23. Equitrans, Inc.

[Docket No. CP89-1795-000]

July 17, 1989.

Take notice that on July 12, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP89-1795-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for McKeesport Hospital (McKeesport), under the blanket certificate issued in Docket No. CP86-553-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans states that pursuant to a transportation service agreement dated November 8, 1988, under its Rate Schedule ITS, it proposes to transport up to 511 Mcf per day of natural gas for McKeesport. Equitrans states that it would transport the gas from receipt points in Westmoreland, Greene, and Allegheny, Pennsylvania, and Nicholas County, West Virginia, and would deliver the gas on behalf of McKeesport at the interconnect between Equitable Gas Company/Equitrans' Tepe Measuring Station and off the H-152 lines, Allegheny County, Pennsylvania.

Equitrans advises that service under § 284.223(a) commenced November 1, 1988, as reported in Docket No. ST89-1292. Equitrans further advises that it would transport 266 Mcf on an average day and 97,090 Mcf annually.

Comment date: August 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

24. Trunkline Gas Company

[Docket No. CP89-1776-000]

July 18, 1989.

Take notice that on June 11, 1989, Trunkline Gas Company (Trunkline), P. O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP89-1776-000 a request pursuant to §§ 157.205 and 284.223 of the Commission Regulations under the Natural Gas Act for authorization to transport natural gas for Conoco, Inc. (Conoco), a shipper and marketer of natural gas and agent for Power Silicates, under Trunkline's blanket certificate issued in Docket No. CP86-586-00 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Specifically, Trunkline requests authority to transport up to 500 Dt. per day on an interruptible basis on behalf of Conoco pursuant to a Transportation Agreement dated September 26, 1988, between Trunkline and Conoco (Transportation Agreement). The Transportation Agreement provides for Trunkline to receive gas from various existing points of receipt on its system. Trunkline will various existing points of receipt on its system. Trunkline will then transport and redeliver subject gas, less fuel and unaccounted for line loss, to Panhandle Eastern Pipe Line Company in Douglas County, Illinois.

The Applicant further states that the estimated daily and estimated annual quantities would be 300 Dt. and 109.500 Dt., respectively. Service under § 284.223(a) commenced on June 4, 1989, as reported in Docket No. ST89-3976.

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

25. Trunkline Gas Company

[Docket No. CP89-1777-000

July 18, 1989.

Take notice that on July 11, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1775-000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to transport natural gas on behalf of GasTrak Corporation (GasTrak), a shipper and marketer of natural gas, under Trunkline's blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline proposes to transport for GasTrak, on an interruptible basis, up to 5,000 dt equivalent of natural gas on a peak day, 5,000 dt equivalent on an average day, and 1,825,000 dt equivalent on an annual basis. It is stated that Trunkline would receive the gas for GasTrak's account at various designated points on Trunkline's system in Illinois, Louisiana, Tennessee and Texas, and would deliver equivalent volumes of gas, less fuel and unaccounted for line loss, to Alpha Chemical Sales in Fayette County, Tennessee. It is asserted that the transportation service would be effected using existing facilities and that no construction of additional facilities would be required. It is explained that the transportation service commenced June 1, 1989, under the self-implementing authorization of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-3980.

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

26. Tennessee Gas Pipeline Company

[Docket No. CP89-1783-000]

July 18, 1989.

Take notice that on July 12, 1989, Tennessee Gas Pipeline Company (Tennessee) Post Office Box 2511, Houston, Texas 77252, filed in Docket No. CP89-1783-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for auithorization to transport natural gas on behalf of Graham Energy Marketing Corp. (Graham), a natural gas marketer, under its blanket authorization issued in Docket No. CP87-115-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee would perform the proposed interruptible transportation service for Graham, pursuant to an interruptible transportation service agreement dated May 19, 1989, as amended May 23 and June 22, 1989. The transportation agreement is effective for a term of one year and month-to-month thereafter, provided that either party may terminate the agreement at any time upon at least 30 days written notice to the other party. Tennessee proposes to transport 80,000 dekatherms (dt) of natural gas on a peak and averge day; and on an annual basis 29,200,000 dt of natural gas for Graham. Tennessee proposes to receive the subject gas at various existing points of receipt located offshore Louisiana and offshore Texas and in the states of Louisiana and Texas. The points of delivery are multiple points off Tennessee's system located in various States. Tennessee avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Tennessee commenced such self-implementing service on June 1, 1989, as reported in Docket No. ST 89-3996-000.

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

27. Panhandle Eastern Pipe Line Co.

[Docket No. CP89-1773-000]

July 18, 1989.

Take notice that on July 11, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP89-1773-000 a request pursuant to § 157.205 the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Consumers Gas Marketing, Inc. (Consumers), a shipper and marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that Panhandle requests authority to transport on an interruptible basis up to 7,500 dt equivalent on an average day, 8,000 dt equivalent on a peak day, and 2,737,500 dt equivalent on an annual basis on behalf of Consumers pursuant to a Transportation Agreement dated July 28, 1988 between Panhandle and Consumers (Transportation Agreement). It is further stated that the Transportation Agreement provides for Panhandle to receive gas from various existing points of receipt on its system, and that it will then transport and redeliver subject gas to Cips—Quincy County, Illinois. It is stated that service under § 284.223(a) commenced on June 3, 1989, as reported in Docket No. ST89-3987.

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

28. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1774-000]

July 18, 1989.

Take notice that on July 11, 1989, Panhandle Eastern Pipe Line Company (Panhandle) P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1774-000 a request pursuant to § 157.205 of the Commission's

Regulations for authorization to provide transportation service on behalf of Chrysler Motors Corporation (Chrysler), under Panhandle's blanket certificate issued in Docket No. CP86-585-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle requests authorization to transport, on a firm basis, up to a maximum of 5,000 dekatherms of natural gas per day for Chrysler from receipt points located in Kansas, Colorado, Illinois, Michigan, Ohio, Oklahoma and Texas to a delivery point located in Wayne County, Michigan. Panhandle anticipates transporting an annual volume of 1,825,000 dekatherms.

Panhandle states that the transportation of natural gas for Chrysler commenced June 1, 1989, as reported in Docket No. ST89-3888-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Panhandle in Docket No. CP86-585-000.

Commend date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

29. Trunkline Gas Company

[Docket No. CP89-1775-000]

July 18, 1989.

Take notice that on July 11, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1775-000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to transport natural gas on behalf of Semco Energy Services, Inc. (Semco), a shipper and marketer of natural gas, under Trunkline's blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline proposes to transport for Semco, on an interruptible basis, up to 50,000 dt equivalent of natural gas on a peak day, 50,000 dt equivalent on an average day, and 18,250,000 dt equivalent on an annual basis. It is stated that Trunkline would receive the gas for Semco's account at various designated points on Trunkline's system in Illinois, Louisiana, Tennessee and Texas, and would deliver equivalent volumes of gas, less fuel and unaccounted for line loss, to Consumers Power Company in Elkhart County, Indiana. It is asserted that the transportation service would be effected using existing facilities and that no construction of additional facilities would be required. It is explained that the transportation service commenced June 1, 1989, under the self-implementing authorization of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-3979.

Commend date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

30. Texas Gas Transmission Corporation

[Docket No. CP89-1770-000]

July 19, 1989.

Take notice that on July 11, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1770-000 a request pursuant to § 157.205 of the Commisison's Regulations for authorization to provide transportation service on behalf of Texaco Gas Marketing, Inc. (Texaco) under Texas Gas' blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport, on an interruptible basis, up to a maximum of 100,000 MMBtu of natural gas per day for Texaco from receipt points located in offshore, Louisiana to a delivery point located in offshore, Louisiana. Texas Gas anticipates transporting, on an average day 5,000 MMBtu and an annual volume of 1,825,000 MMBtu.

Texas Gas states that the transportation of natural gas for Texaco commenced June 8, 1989, as reported in ST89-3931-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Texas Gas in Docket No. CP88-686-000.

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

Panhandle Eastern Pipe Line Company

[Docket No. CP89-1772-000]

July 18, 1989.

Take notice that on July 11, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1772-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide interruptible transportation service for Hadson Gas Systems, Inc. (Hadson), a shipper and marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

Specifically, Panhandle requests authority to transport up to 50,000 dt per day on an interruptible basis, pursuant to a transportation agreement dated May 19, 1989, between Panhandle and Hadson. Panhandle states that the transportation agreement provides for Panhandle to receive gas from various existing points of receipt of its system in the states of Colorado, Kansas, Oklahoma, and Texas. Panhandle states that it would then redeliver subject gas, less fuel used and unaccounted for line loss, to Haven Pool in Reno County, Kansas. Panhandle indicates that the total volume of gas to be transported for Hadson on a peak day would be 50,000 dt; on an average day would be 40,000 dt; and on an annual basis would be 14,600,000 dt. It is further stated that the average day and annual volumes are based upon Hadson's estimates, and the actual volumes are dependent upon Hadson's requirements.

Panhandle states that it commenced the transportation of natural gas for Hadson on June 1, 1989, at Docket No. ST89-3969-000 for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations. Panhandle indicates that it proposes no new facilities in order to provide this transportation service.

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

32. Columbia Gulf Transmission Company

[Docket No. CP89-1769-000]

July 18, 1989.

Take notice that on July 11, 1989, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP89-1769-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP86-239-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia Gulf proposes to transport natural gas on an interruptible and a firm basis for Exxon Corporation (Exxon). Columbia Gulf explains that service commenced June 1, 1989 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-3922-000. Columbia Gulf explains that it would transport for Exxon 8,000 MMBtu of natural gas per day on a firm basis for the period June 1, 1989, through October 31, 1989. Columbia Gulf states that the total quantity of gas to be transported on a firm basis during this period is 1,200,000 MMBtu. Columbia Gulf states that it would also transport natural gas on an interruptible basis for Exxon. Columbia Gulf explains that the peak day quantity would be 15,000 MMBtu, the average daily quantity would be 7,000 MMBtu, and that the annual quantity would be 2,555,000 MMBtu. Columbia Gulf states that it would receive natural gas from Trunkline Pipeline Company in St. Mary Parish, Louisiana, and would redeliver to Transcontinental Gas Pipeline Company in Terrobonne Parish, Louisiana.

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

33. United Gas Pipe Line Company

[Docket No. CP89-1766-000]

July 18, 1989.

Take notice that on July 11, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1766-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to provide a transportation service for Kogas, Inc. (Kogas), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport, on an interruptible basis, up to 185,400 MMBtu of natural gas equivalent per day for Kogas pursuant to a transportation agreement dated January 18, 1989, between United and Kogas. United would receive natural gas at two existing receipt points in Texas and redeliver equivalent volumes of gas, less fuel and company used gas, at an existing point in Louisiana.

United further states that the estimated average daily and annual quantities would be 185,400 MMBtu and 67,671,000 MMBtu respectively. Service under § 284.223(a) commenced June 9, 1989, as reported in Docket No. ST89-3973-000, it is stated

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

34. United Gas Pipe Line Company

[Docket No. CP89-1764-000]

July 18, 1989

Take notice that on July 11, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1764-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of LaSER Marketing Company (LaSER), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport on an interruptible basis up to 618,000 MMBtu equivalent of natural gas on a peak day, 618,000 MMBtu equivalent on an average day, and 225,570,000 MMBtu equivalent on an annual basis. It is stated that United would receive the gas for LaSER's account at designated points on United's system in Louisiana and Texas, and would deliver equivalent volumes at designated points on United's system in Louisiana, Texas, Mississippi, Alabama and Florida. It is asserted that the transportation service would be effected utilizing existing facilities and would not require any construction of additional facilities. It is explained that the transportation service commenced May 25, 1989, as reported in Docket No. ST89-3971.

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

35. Natural Gas Pipeline Company of America

[Docket No. CP89-1751-000]

July 18, 1989.

Take notice that on July 10, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-1751-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas on an interruptible basis for Natural Gas Clearinghouse, Inc. (NGCH) under the blanket certificate issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all or more fully set forth in the request on file with Commission and open to public inspection.

Natural states that pursuant to a Transportation Agreement dated July 13, 1988, it proposes to transport, on an interruptible basis, up to a maximum of 100,000 MMBtu, plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS, for NGCH. The receipt points are located in Louisiana, Offshore Louisiana, Texas, Offshore Texas, Illinois, Oklahoma, New Mexico, Kansas, Town, Arkansas and Nebraska and the delivery points are located in Louisiana, Offshore Louisiana and Texas.

Natural also states that it will transport approximately 10,000 MMBtu on an average day and approximately 3,650,000 on an annual basis.

Natural further states it commenced service on May 5, 1989, as reported in Docket No. ST89-4122-000.

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

36. Texas Eastern Transmission Corporation

[Docket No. CP89-1749-000]

July 18, 1989

Take notice that on July 7, 1989, Texas Eastern Transmission Corporation (Texas Eastern), Post Office Box 2521, Houston, Texas 77252, filed in Docket No. CP89-1749-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Catamount Natural Gas, Inc. (Catamount), a marketer of natural gas, under the blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP88-67-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Eastern states that pursuant to a transportation agreement dated April 17, 1989, under its Rate Schedule IT-1, it would transport up to 50,000 MMBtu per day on behalf of Catamount. Texas Eastern further states that it would receive the natural gas from various existing receipt points on its system in offshore Texas and Louisiana and would transport and redeliver the natural gas, less applicable shrinkage, to various existing delivery points on its system in offshore Texas and Louisiana. Texas Eastern indicates that the estimated average daily and estimated annual quantities to be transported would be 50,000 MMbtu and 18,250,000 MMbtu, respectively.

Texas Eastern states that service under § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)) commenced on May 27, 1989, as reported in Docket No. ST89-3802.000.

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

37. Equitrans, Inc.

[Docket No. CP89-1788-000]

July 18, 1989.

Take notice that on July 12, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP89-1788-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for O & R Energy Development, Inc. O & R), under the blanket certificate issued in Docket No. CP86-553-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans states that pursuant to a transportation service agreement dated January 23, 1989, under its Rate Schedule ITS, it proposes to transport up to 9,800 Mcf per day of natural gas for O & R. Equitrans states that it would transport the gas from receipt points in Westmoreland, Greene, and Allegheny Counties, Pennsylvania, and would deliver the gas on behalf of O & R at the interconnect between Equitable Gas Company/Equitrans' Tepe Measuring Station, Peterman's Corner Regulating Station and various regulating stations off the H-152 line, Allegheny County, Pennsylvania.

Equitrans advises that service under § 284.223(a) commenced May 1, 1989, as reported in Docket No. ST89-3513. Equitrans further advises that it would transport 4,996 Mcf on an average day and 1,823,540 Mcf annually.

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

38. Equitrans, Inc.

[Docket No. CP89-1790-000]

July 18, 1989.

Take notice that on July 12, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP89-1790-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for St. Francis Hospital (St. Francis), under the blanket certificate issued in Docket No. CP86-553-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans states that pursuant to a transportation service agreement dated December 16, 1988, under its Rate Schedule ITS, it proposes to transport up to 1,568 Mcf per day of natural gas for St. Francis. Equitrans states that it would transport the gas from receipt points in Westmoreland, Greene, and Allegheny Counties, Pennsylvania, and Nicholas County, West Virginia, and would deliver the gas on behalf of St. Francis at the interconnect between Equitable Gas Company/Equitrans' Tepe Measuring Station, Peterman's Corner Regulating Station and various regulating stations off the H-152 line, Allegheny County, Pennsylvania.

Equitrans advises that service under § 284.223(a) commenced January 1, 1989, as reported in Docket No. ST89-1730. Equitrans further advises that it would transport 658 Mcf on an average day and 240,170 Mcf annually.

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

39. Equitrans, Inc.

[Docket No. CP89-1791-000]

July 18, 1989.

Take notice that on July 12, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP89-1791-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Mallet & Company (Mallet), under the blanket certificate issued in Docket No. CP86-553-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans states that pursuant to a transportation service agreement dated December 5, 1988, under its Rate Schedule ITS, it proposes to transport up to 127 Mcf per day of natural gas for Mallet. Equitrans states that it would transport the gas from receipt points in Westmoreland, Greene, and Allegheny Counties, Pennsylvania, and Nicholas County, West Virginia, and would deliver the gas on behalf of Mallet at the interconnect between Equitable Gas Company/Equitrans' Tepe Measuring Station, Peterman's Corner Regulating Station and various regulating stations off the H-152 line, Allegheny County, Pennsylvania.

Equitrans advises that service under § 284.223(a) commenced January 1, 1989, as reported in Docket No. ST89-1731. Equitrans further advises that it would transport 52 Mcf on an average day and 18,980 Mcf annually.

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

40. Equitrans, Inc.

[Docket No. CP89-1792-000]

July 18, 1989.

Take notice that on July 12, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP89-1792-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for O & R Energy Development, Inc. (O & R), under the blanket certificate issued in Docket No. CP86-553-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans states that pursuant to a transportation service agreement dated December 16, 1988, under its Rate Schedule ITS, it proposes to transport up to 343 Mcf per day of natural gas for O & R. Equitrans states that it would transport the gas from receipt points in Westmoreland, Greene, and Allegheny Counties, Pennsylvania, and would deliver the gas on behalf of O & R at the interconnect between Equitable Gas Company/Equitrans' Tepe Measuring Station, Peterman's Corner Regulating Station and various regulating stations off the H-152 line, Allegheny County, Pennsylvania.

Equitrans advises that service under § 284.223(a) commenced January 1, 1989, as reported in Docket No. ST89-1729. Equitrans further advises that it would transport 343 Mcf on an average day and 125,195 Mcf annually.

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

41. Equitrans, Inc.

[Docket No. CP89-1794-000]

July 18, 1989.

Take notice that on July 12, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP89-1794-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Quality Rolls, Inc. (Quality), under the blanket certificate issued in Docket No. CP86-553-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans states that pursuant to a transportation service agreement dated December 21, 1988, under its Rate Schedule ITS, it proposes to transport up to 96 Mcf per day of natural gas for Quality. Equitrans states that it would transport the gas from receipt points in Westmoreland, Greene, and Allegheny Counties, Pennsylvania, and would deliver the gas on behalf of Quality at the interconnect between Equitable Gas Company/Equitrans' Tepe Measuring Station, Peterman's Corner Regulating Station and various regulating stations off the H-152 line, Allegheny County, Pennsylvania.

Equitrans advises that service under § 284.223(a) commenced January 1, 1989, as reported in Docket No. ST89-1806. Equitrans further advises that it would transport 46 Mcf on an average day and 16,790 Mcf annually.

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

42. Equitrans, Inc.

[Docket No. CP89-1796-000]

July 18, 1989.

Take notice that on July 12, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP89-1796-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Hospital Linen Service Facility (Hospital Linen), under the blanket certificate issued in Docket No. CP86-553-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans states that pursuant to a transportation service agreement dated November 23, 1988, under its Rate Schedule ITS, it proposes to transport up to 147 Mcf per day of natural gas for Hospital Linen. Equitrans states that it would transport the gas from receipt points in Westmoreland, Greene and Allegheny Counties, Pennsylvania, and Nicholas County, West Virginia, and would deliver the gas on behalf of Hospital Linen at the interconnect between Equitable Gas Company/Equitrans' Tepe Measuring Station, Peterman's Corner Regulating Station and various regulating stations off the H-152 line, Allegheny County, Pennsylvania.

Equitrans advises that service under § 284.223(a) commenced December 2, 1988, as reported in Docket No. ST89-1225. Equitrans further advises that it would transport 87 Mcf on an average day and 31,755 Mcf annually.

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

43. Equitrans, Inc.

[Docket No. CP89-1797-000]

July 18, 1989.

Take notice that on July 12, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP89-1797-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for General Electric Company (General Electric), under the blanket certificate issued in Docket No. CP86-553-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans states that pursuant to a transportation service agreement dated October 19, 1988, under its Rate Schedule ITS, it proposes to transport up to 4,900 Mcf per day of natural gas for General Electric. Equitrans states that it would transport the gas from receipt points in Westmoreland, Greene, and Allegheny Counties, Pennsylvania, and would deliver the gas on behalf of General Electric at the interconnect between Equitable Gas Company/Equitrans' Tepe Measuring Station, Peterman's Corner Regulating Station and various regulating stations off the H-152 line, Allegheny County, Pennsylvania.

Equitrans advises that service under § 284.223(a) commenced November 1, 1988, as reported in Docket No. ST89-1294. Equitrans further advises that it would transport 1,080 Mcf on an average day and 394,200 Mcf annually.

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

44. Equitrans, Inc.

[Docket No. CP89-1798-000]

July 18, 1989.

Take notice that on July 12, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP89-1798-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Vincentian Home, Inc. (Vincentian Home), under the blanket certificate issued in Docket No. CP86-553-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans states that pursuant to a transportation service agreement dated January 18, 1988, under its Rate Schedule ITS, it proposes to transport up to 196 Mcf per day of natural gas for Vincentian Home. Equitrans states that it would transport the gas from receipt points in Westmoreland, Greene and Allegheny Counties, Pennsylvania, and Nicholas County, West Virginia, and would deliver the gas on behalf of Vincentian Home the interconnect between Equitable Gas Company/Equitrans' Tepe Measuring Station, Peterman's Corner Regulating Station and various regulating stations off the H-152 line, Allegheny County, Pennsylvania.

Equitrans advises that service under § 284.223(a) commenced January 24, 1988, as reported in Docket No. ST89-2114. Equitrans further advises that it would transport 64 Mcf on an average day and 23,360 Mcf annually.

Comment date: September 1, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to

jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provide for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17313 Filed 7-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM89-14-000]

Natural Gas Policy Act of 1978; Application for Approval of Alternative Filing Requirements by the State of Michigan's Department of Natural Resources

Issued: July 19, 1989.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of receipt of application for approval of alternative filing requirements.

SUMMARY: Pursuant to § 274.207 of the Commission's regulations (18 CFR 274.207), the Department of Natural Resources of the State of Michigan filed an application for approval of alternative filing requirements for well determination applications filed under NGPA action 107(c)(4) of the Natural Gas Policy Act of 1978. The Commission hereby issues notice of Michigan's application.

DATES: Comments on Michigan's application are due on or before August 17, 1989.

Requests for public hearing are due no later than August 17, 1989.

ADDRESS: Comments and requests for hearing must be filed with: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION: Richard White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8696.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Receipt of Application for Approval of Alternative Filing Requirements

On May 15, 1989, the Department of Natural Resources of the State of Michigan (Michigan) filed an application for approval of alternative filing requirements pursuant to § 274.207 of the Commission's regulations for certain natural gas produced from Devonian shale.

Michigan requests alternative filing requirements for §§ 274.205(d)(3)(i) and 274.205(d)(4)(i) of the Commission's regulations as they are applied to persons seeking NGPA section 107(c)(4) determinations for wells completed on or after November 1, 1979, producing natural gas from the Antrim Shale formation (a Devonian age formation) in the State of Michigan.

Section 274.205(d)(3)(i) of the Commission's regulations applies to wells completed on or after November 1, 1979 and requires persons seeking a well determination that natural gas is produced from Devonian shale to submit a gamma ray log for the well. Michigan proposes that persons filing an application for a well determination for a well producing from the Antrim shale formation in Michigan completed on or after November 1, 1979, be required to submit a gamma ray log for the subject well, if available, or either a gamma ray log from the closest available well bore, producing or dry hole, within a one-mile radius of the well for which a determination is sought, or a mud log from the well for which the determination is sought if a gamma ray log for the determination well is not available.

Section 274.205(d)(4) of the Commission's regulations requires persons seeking a well determination for a well completed on or after November 1, 1979, to submit a sworn statement calculating the percentage of footage of the producing interval that is not Devonian shale as indicated by the gamma ray log. Because of the requested change to § 274.205(d)(3)(i), Michigan also proposes that persons seeking such a well determination for a well producing from the Antrim shale formation in Michigan submit a sworn statement calculating the percentage of footage of the producing interval that is not Devonian shale as indicated either by a gamma ray log for the subject well, or the mud log for the well under determination or the gamma ray log for a well within a one-mile radius of the well for which a determination is sought.

Michigan argues that the alternative filing requirements are needed because many of the wells currently producing gas from the Antrim shale formation in Michigan were completed on or after November 1, 1979 and gamma ray logs were not run. According to Michigan, producers would have to pull the tubing from their wells in order to run gamma ray logs. Michigan states further that there is a possibility that the wells would be permanently damaged and that the Michigan producers would lose future production. Additionally, Michigan states that if each producer is required to seek an adjustment pursuant to § 271.1106 of the Commission's regulations it would increase the Commission's administrative burden to process these petitions. Finally,

Michigan states that the Antrim shale formation in Michigan is fairly uniform and potentially disqualifying sand stringers of any consequence are rarely encountered in the Antrim shale formation. Because of the uniform lithology, the gamma ray signature of the formation is also uniformly consistent throughout Michigan Basin. Therefore Michigan argues that the requirement to submit a gamma ray log from a well located within a one-mile radius of the well for which a determination is being sought or a detailed sample description for those wells for which a gamma ray log is not available will be sufficient evidence that the well is producing from the Antrim shale formation.

Interested persons are invited to submit written comments on Michigan's application. Comments should be filed with the Office of the Secretary, Federal Energy Regulation Commission, 825 N. Capitol Street, NE., Washington, DC 20426 on or before August 17, 1989. An original and fourteen copies should be filed. Written comments will be available for inspection at the Commission's Public Reference Room during business hours.

Anyone wishing to present testimony, views, data or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. The request must specify the amount of time requested at the hearing. Requests for a public hearing should be filed with the Office of the Secretary on or before August 17, 1989.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17311 Filed 7-24-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 89-16-LNG]

Distrigas Corp.; Order Granting Authorization to Import Liquefied Natural Gas From Algeria

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order granting authorization to import liquefied natural gas from Algeria.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued an order granting Distrigas Corporation authorization to import 48 cargoes of liquefied natural gas (LNG) from Algeria. The order, issued in FE Docket No. 89-16-LNG, authorizes the importation of a total 144 million MMBtu's or approximately 140 Bcf of LNG. The LNG would be purchased from Sonatrading Amsterdam B.V., a wholly owned subsidiary of Sonatrach, the Algerian national energy corporation, and sold to Distrigas' affiliate, Distrigas of Massachusetts (DOMAC), at DOMAC's existing LNG terminalling facilities in Everett, Massachusetts.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 14, 1989.

Constance L. Buckley,

Acting Deputy Assistant Secretary for Fuels Programs, Fossil Energy.

[FR Doc. 89-17377 Filed 7-24-89; 8:45 am]

BILLING CODE 6450-01-M

[FPC Docket IT-5462 and ERA Docket PP-7]

Intent to Rescind Export Authorization and Presidential Permit Issued to New York State Electric & Gas Corp.

AGENCY: Department of Energy.

ACTION: Revocation of export authorization IT 5462 and presidential permit PP-7 at request of licensee.

SUMMARY: Pursuant to a formal request by New York State Electric & Gas Corporation (NYSEG), the Department of Energy (DOE) intends to rescind Export Authorization IT-5462 and Presidential Permit PP-7 issued to NYSEG. In a letter dated January 23, 1989, NYSEG notified the DOE that it no longer provides services to Canada that require a Presidential permit or export authorization. The previously authorized transmission lines crossing the U.S.-Canadian border were removed by NYSEG on or before November 6, 1987.

FOR FURTHER INFORMATION CONTACT:

Lise Courtney M. Howe, Office of General Counsel (GC-41), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2900.

William H. Freeman, Office of Fuels Programs (FE-52), Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-5883.

SUPPLEMENTARY INFORMATION: In a letter dated January 23, 1989, NYSEG notified the DOE that the export authorization and the Presidential permit issued under FPC Docket IT-5462 and ERA Docket PP-7 respectively no longer were required. In addition, NYSEG stated that all interconnection facilities authorized under the Presidential permit had been removed on or before November 6, 1987.

An export authorization and a Presidential permit originally were issued to NYSEG on July 7, 1942, in Docket No. IT-5462 under section 202(e) of the Federal Power Act and Executive Order 10485. The electricity exported was delivered to individual residential customers in Canada via four transmission lines originating from four different points in the State of New York. The export authorization permitted NYSEG to export a total of 3.5 kilowatts over the four 60-cycle, single-phase, 115-volt facilities.

According to NYSEG, the facilities authorized under Presidential Permit PP-7 are no longer needed and all interconnection facilities crossing the international border, including all wires and meters, as authorized in the aforementioned Presidential permit, have been removed. In addition, NYSEG stated that it no longer provides service to any Canadian customers for which an export authorization is required.

DOE finds that the rescission of export authorization IT-5462 issued to NYSEG also is consistent with the public interest because NYSEG no longer provides electric service to Canadian customers. In addition, DOE finds that the rescission of Presidential Permit PP-7 is consistent with the public interest because said facilities are no longer required or used by NYSEG.

The DOE hereby gives notice of the intent to revoke the authorization to export electric energy, issued to NYSEG pursuant to section 202(e) of the Federal Power Act in Docket No. IT-5462 effective August 24, 1989 unless it receives any public comments objecting to the proposed revocation. In addition, DOE gives notice of the intent to revoke Presidential Permit PP-7 issued to NYSEG pursuant to Executive Order 10485, as amended by Executive Order 10238, effective August 24, 1989 unless it receives any public comments objecting to the proposed revocation.

Any person desiring to be heard or to comment on these proposed revocations should forward comments to the Office of Fuels Programs, Department of Energy, FE-52, 3H-087, 1000 Independence Ave., SW., Washington, DC 20585.

Any such comments should be received by DOE no later than August 24, 1989. Copies of the request for the revocations will be made available.

upon request, for public inspection and copying at the Department of Energy's Freedom of Information Room, Room 1E-090, Forrestal Building, 1000 Independence Ave., SW., Washington, DC, from 9:00 a.m. to 4:00 p.m., Monday through Friday.

Recission of the aforementioned export authorization and Presidential permit will become effective at the close of the comment period.

Issued in Washington, DC on July 14, 1989.

Constance L. Buckley,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-17378 Filed 7-24-89; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket PP-65]

Intent to Rescind a Presidential Permit Issued to Union Butterfield

AGENCY: Department of Energy.

ACTION: Revocation of presidential permit PP-65 at request of licensee.

SUMMARY: Pursuant to a formal request by Union Butterfield (UB), the Department of Energy (DOE) intends to rescind Presidential Permit PP-65 issued to UB. In a letter dated February 3, 1989, UB notified the DOE that it no longer utilizes the Canadian services that required a Presidential permit. The previously authorized transmission lines crossing the U.S.-Canadian border were removed by UB on or before January 1, 1980.

FOR FURTHER INFORMATION CONTACT:

Lise Courtney M. Howe, Office of General Counsel (GC-41), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2900.

William H. Freeman, Office of Fuels Programs (FE-52), Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-5863.

SUPPLEMENTARY INFORMATION: In a letter dated February 3, 1989, UB notified the DOE that its Presidential permit was no longer required. In addition, UB stated that all interconnection facilities authorized under Presidential Permit PP-65 had been removed as of January 1, 1980.

A Presidential permit originally was issued to the Union Twist Drill Company on August 10, 1962, in Docket No. E-7010 under Executive Order 10485. The company changed its name in 1978 to Union/Butterfield Division, Litton Industrial Products, Inc., and the permit was amended by DOE in Docket No. PP-65 authorizing the operation, maintenance and connection of a 24.6-kV transmission line at Derby Line, Vermont.

UB has confirmed that the facilities authorized under Presidential Permit PP-65 are no longer needed, and that all interconnection facilities crossing the international border, including all wires and meters, as authorized in the aforementioned Presidential permit, have been removed.

DOE finds that the rescission of Presidential Permit PP-65 is consistent with the public interest because said facilities are no longer required or used by UB.

The DOE hereby gives notice of the intent to revoke Presidential Permit PP-65 issued to UB pursuant to Executive Order 10485, as amended by Executive Order 10238, effective August 24, 1989, unless it receives any public comments objecting to the proposed revocation.

Any person desiring to be heard or to comment on the proposed revocation should forward comments to the Office of Fuels Programs, Department of Energy, FE-52, 3H-087, 1000 Independence Ave., SW., Washington, DC 20585.

Any such comments should be received by DOE no later than August 24, 1989. Copies of the request for the revocation will be made available upon request for public inspection and copying at the DOE's Freedom of Information Room, Room 1E-090, Forrestal Building, 1000 Independence Ave., SW., Washington, DC, from 9:00 a.m. to 4:00 p.m., Monday through Friday.

Rescission of the aforementioned Presidential permit shall become effective at the close of the comment period.

Issued in Washington, DC on July 14, 1989.

Constance L. Buckley,

Acting Deputy Assistant Secretary for Fuels Programs Office of Fossil Energy

[FR Doc. 89-17379 Filed 7-24-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders Issued the Week of April 24 Through April 28, 1989

During the week of April 24 through April 28, 1989, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

July 12, 1989.

Motion for Discovery

Concord Petroleum Corporation, Paul C. Elliott, 04/28/89, KRD-0420, KRH-0420

The Office of Hearing and Appeals (OHA) issued a Decision and Order concerning a Motion for Discovery and a Motion for Evidentiary Hearing filed in connection with a Statement of Objections to a Proposed Remedial Order (PRO) issued to Concord Petroleum Corporation and Paul C. Elliott (collectively, Concord). The OHA denied Concord's Motion for Discovery, which sought information concerning rulemakings and regulations related to 10 CFR 212.186 (the Layering Rule) and 210.62(c) (the Normal Business Practices Rule) and the Department of Energy's contemporaneous construction regarding these regulations. The firm's request for information pertaining to the ERA's audit of Concord was also denied. The OHA granted Concord's Motion for Evidentiary Hearing, finding that it would be beneficial to convene such a hearing to explore Concord's assertion that it provided traditional and historical reseller services in these transactions covered by the PRO.

Supplemental order

Getty Oil Company, 04/24/89, KFX-0065

The DOE issued a Supplemental Order distributing $148.73 in additional interest which accrued on crude oil overcharge funds remitted by Getty Oil Company while those funds were being held for the United States District Court for the District of Delaware. The DOE ordered these funds to be distributed in accordance with the directives set forth in *Getty Oil Co.*, 18 DOE ¶ 85,808 (1989).

Applications for Refund

Atlantic Richfield Company/O'Neals Arco Service Station, et al., 04/26/89, RF304-2543, et al.

The DOE issued a Decision and Order concerning thirty-seven Applications for Refund filed in the Atlantic Richfield Company special refund proceeding. All of the claimants were end-users or reseller/retailers and were granted refunds based on the applicable presumptions of injury. The DOE concluded that the applicants should receive refunds totalling $116,680, representing $86,583 in principal and $25,097 in accrued interest.

Carl Johnson, et al., 04/27/89, RF272-2586, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 6 applicants based on their respective purchases or refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant was an end-user of the refined products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is $26,583.

Carl's Texaco McCormick Lumber & Fuel, Inc., 04/27/89, RF272-4703, RF272-4709

The DOE issued a Decision and Order concerning the Applications for Refund of two claimants in the Subpart V crude oil overcharge refund proceeding. The DOE determined that the applicants resold the refined petroleum products that formed the basis of their applications. Since the applicants did not show that they absorbed the alleged overcharges, the DOE determined that both claims should be denied.

Central Nebraska Public Power and Irrigation District, 04/24/89, RF272-8090

Central Nebraska Public Power and Irrigation District (Central) filed an Application for Refund from the Subpart V crude oil overcharge monies. The DOE rejected arguments that Central was ineligible for a refund and determined that, as a producer of electricity sold to a public utility and as a provider of irrigation, Central was an end-user of petroleum products in a business unrelated to the petroleum industry. The DOE decided that the firm should be granted a refund conditioned upon its passthrough of the refund to the utility and to its irrigation customers. Accordingly, DOE approved a refund of $53,298, based upon the volume of Central's purchases of petroleum products.

Crown Central Petroleum Corporation/D.M. Price and Sons, Inc., et al., 04/24/89, RF313-62, et al.

The DOE issued a Decision and Order granting applications filed by five purchasers of refined petroleum products in the Crown Central Petroleum Corporation special refund proceeding. Each applicant was granted a refund based on the volume of products it purchased from Crown and on the applicable presumption of injury. The total amount of refunds approved in this Decision was $40,713, representing $34,886 in principal plus $5,827 in accrued interest.

Dorchester Gas Corp./Tigrett Butane Co. Enron Liquid Marketing Co., 04/25/89, RF253-30, RF253-60

The DOE issued a Decision and Order concerning two Applications for Refund in the Dorchester Gas Corporation refund proceeding, filed by Tigrett Butane Company and Enron Liquid Marketing Company. Both Tigrett and Enron were identified purchasers of Dorchester petroleum products and limited their claims to the $5,000 small claims amount. The total refund approved, including both principal and interest, was $14,678.

Exxon Corporation/AJ's Exxon, et al., 04/28/89, RF307-2733, et al.

The DOE issued a Decision and Order concerning four Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants was a retailer of Exxon products whose allocable share is less than $5,000. The four applicants submitted gallonage figures, which they requested that the OHA accept in lieu of Exxon's figures. The applicants' figures were accepted when they were taken from actual Exxon invoices or from reasonable estimates along with an explanation of the estimation methodology utilized. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $2,360 ($1,997 in principal plus $363 in interest).

Gulf Oil Corporation/Armstrong World Industries, et al., 04/28/89, RF300-3505, et al.

The DOE issued a Decision and Order concerning 25 Applications for Refund submitted in the Gulf Oil Corporation refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $65,344.

Gulf Oil Corporation/Berks Associates, et al., 04/28/89, RF300-3902, et al.

The DOE issued a Decision and Order concerning 20 Applications for Refund submitted in the Gulf Oil Corporation refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $50,608.

Gulf Oil Corporation/C.R. Quesenberry, Inc., 04/27/89, RF300-5216

The DOE issued a Decision and Order concerning an Application for Refund submitted by C.R. Quesenberry, Inc. (Quesenberry) in the Gulf Oil Corporation special refund proceeding. Quesenberry was both a reseller and a consignee of Gulf refined petroleum products during the Consent Order period. Quesenberry was granted a refund utilizing the $5,000 small claims injury presumption. The total refund granted, including interest, was $6,563.

Gulf Oil Corporation/Carl Superette, et al., 04/28/89, RF300-3901, et al.

The DOE issued a Decision and Order concerning 68 Applications for Refund submitted in the Gulf Oil Corporation refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $136,147.

Gulf Oil Corporation/Fosters Gulf Service, et al., 04/27/89, RF300-21, et al.

The DOE issued a Decision and Order concerning 13 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $12,915.

Gulf Oil Corporation/H & D Gulf, et al., 04/27/89, RF300-152, et al.

The DOE issued a Decision and Order concerning nine Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $119,216.

Gulf Oil Corporation/Handy Food Store, et al., 04/28/89, RF300-832, et al.

The DOE issued a Decision and Order concerning 67 Applications for Refund submitted in the Gulf Oil Corporation refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $96,925.

Gulf Oil Corporation/Irby Oil Company, et al., 04/25/89, RF300-6422, et al.

The DOE issued a Decision and Order concerning 5 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. The DOE determined that because two of the applicants were affiliated, they would be considered as one entity for purposes of the small claims injury presumption. Accordingly, the $5,000 principal refund was divided between the related firms on a pro-rata basis. The other applications were also approved using a

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presumption of injury. The sum of the refunds granted in this Decision is $61,701.

Gulf Oil Corporation/Jack Ramey DBA Gulf Wholesale, 04/27/89, RF300-279

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Jack Ramey DBA Gulf Wholesale, a reseller and consignee of covered Gulf products. Since the requested refund amount was less than $5,000, the claimant was not required to show injury. The total refund granted was $599, which included both principal and interest.

Gulf Oil Corporation/Jerry's Gulf Station, et al., 04/26/89, RF300-207, et al.

The DOE issued a Decision and Order concerning nine Applications for Refund submitted by indirect purchasers in the Gulf Oil Corporation special refund proceeding. The DOE found no evidence that the supplier of these applicants passed through any alleged overcharges. Accordingly, the applications were approved under the small claims presumption of injury used for direct purchasers. The sum of the refunds granted in this Decision is $17,792.

Gulf Oil Corporation/Panama Aviation, 04/27/89, RF300-4989

The DOE issued a Decision and Order concerning an Application for Refund submitted by Panama Aviation, an indirect purchaser of Gulf refined petroleum products. The DOE found no evidence that Panama's supplier passed through any alleged overcharges. Accordingly, the Panama application was approved using the small claims injury presumption. The refund granted was $1,077.

Gulf Oil Corporation/Peterson Petroleum, Inc., 04/27/89, RF300-10783

The DOE issued a Supplemental Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. The DOE had previously granted a refund of $37,357 payable to Peterson Petroleum, Inc. Peterson's attorney requested that the name of the payee be changed. The Supplemental Order rescinded the refund until DOE is able to evaluate the request.

Iowa County Highway Commission, et al., 04/24/89, RF272-22377, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to eight applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant demonstrated the volume of its claim either by consulting actual records or by using a reasonable estimate of its purchases. Since each applicant was an end-user of the products upon which the application was based, it was presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision was $80,137.

Murphy Oil Corporation/Hewitt Tire & Service Center, et al., 04/24/89, RF309-704, et al.

The DOE issued a Decision and Order granting Applications for Refund filed by six purchasers of refund petroleum products sold by Murphy Oil Corporation. Each applicant was found to be injured under the appropriate mid-level presumption of injury and therefore eligible for refund of $5,000 or 40% of its full allocable share, whichever was greater. The total refund approved in this Decision was $34,806, representing $30,000 in principal, plus $4,806 in accrued interest.

Murphy Oil Corporation/R.J. Shell & Son, et al., 04/27/89, RF309-800, et al.

The DOE issued a Decision and Order granting 55 Applications for Refund filed in the Murphy Oil Corporation special refund proceeding. Each of the applicants was either a reseller whose allocable share was less than $5,000 or an end-user of Murphy products. Accordingly, each applicant was granted a refund equal to its full allocable share without a demonstration of injury. The sum of the refunds granted in the Decision was $73,149, $63,049 in principal plus $10,100 in interest.

Nate Hartley Fuel Oil Company, et al., 04/25/89, RF272-67164, et al.

The DOE issued a Decision and Order denying six Applications for Refund filed in the Subpart V crude oil refund proceeding. Each applicant was either a reseller or a retailer during the period August 19, 1973 through January 27, 1981. Because the applicants did not demonstrate injury due to the crude oil overcharges, they were ineligible for a crude oil refund.

Regional Transportation Dist., et al., 04/25/89, RF272-333, et al.

The DOE issued a Decision and Order concerning seven Applications for Refund in the OHA Subpart V crude oil refund proceedings filed by five municipal/regional transit authorities, one state department of transportation, and one city utility. The DOE rejected objections to the applications and found that as governmental authorities, the seven applicants were eligible for a Subpart V crude oil refund, and further that the end-user presumption of injury was applicable to these entities. The total refund granted in this Decision was $395,336.

Standard Oil Co. (Indiana)/Arkansas, 04/27/89, RQ251-511

The DOE issued a Decision and Order approving the second-stage refund application filed by the State of Arkansas in the Standard Oil Co. (Indiana) special refund proceeding. Arkansas requested permission to use $221,269 in second-stage refund monies to finance a program of energy audits for businesses in the State. The DOE found that this program would provide restitution to injured consumers of petroleum products. Accordingly, the DOE granted Arkansas' refund application, and allocated $221,269 in second-stage funds to the State.

State of Connecticut, et al., 04/25/89, RF272-4416, et al.

Five state agencies filed applications for refund in the Subpart V crude oil refund proceedings. A group of utilities, transporters and manufacturers filed objections to the agencies' applications, claiming that the applicants should not be eligible to receive refunds because they were not injured end-users. The objectors also claimed that, as governmental entities, the applicants were ineligible for refunds from the twenty percent of the crude oil overcharge funds reserved to pay Subpart V claims. The DOE rejected both of these arguments. With respect to the latter objection, the DOE found that the Stripper Well Settlement Agreement does not prohibit a State, or a subdivision of a State, from filing a claim for direct restitution. With respect to the former argument, the DOE found that the objectors had not met the burden of going forward with evidence to rebut the end-user presumption of injury. Accordingly, the applications were approved and a total of $338,284 was granted to the applicants.

Tradewind Chevron, et al., 04/24/89, RF272-24820, et al.

The DOE issued a Decision and Order denying refunds to seven applicants in the Subpart V crude oil refund proceeding. All four applicants were retailers of petroleum products during the regulated period. Because none of the applicants demonstrated injury due to the crude oil overcharges, they were found ineligible for crude oil refunds. Accordingly, their Applications for Refund were denied.

Uniroyal, Inc., 04/25/89, RF272-11140, RD272-11140

Uniroyal, Inc., filed an Application for Refund in the Subpart V crude oil refund proceeding. A group of States filed an objection to Uniroyal's application, claiming that the firm should not receive a refund because it did not establish that it was an injured end-user. The States also filed a Motion for Discovery, seeking information that would support their assertion of non-injury. The DOE rejected the States' argument, finding that they had not submitted relevant material sufficient to overcome the presumption of injury available to end-user applicants in this proceeding. The DOE dismissed the Motion for Discovery on similar grounds. The DOE then reviewed the application and found that information provided therein supported the firm's claim. Accordingly, Uniroyal was granted a refund of $7,749.

Dismissals

The following submissions were dismissed:

Name	Case No.
Al Service Station et al (See Attached List).	RF304-3473
Blue Flame L.P. Gas Co., Inc	RF307-7801
Burnside Arco	RF304-4156
Chico Gulf Service Station	RF300-7921
Columbia Boulevard Arco	RF304-4114
Drugmand Arco	RF304-4010
Eastgate Exxon	RF307-7454
Eltaw Exxon Service Station	RF307-169
Four Star Service Stations, Inc	RF309-318
Hal's Arco	RF304-4117
Harrisburg Gulf Service, Inc	RF300-186
Highland Gulf, Inc	RF300-143
Hutcheson's Gulf	RF300-184
Jennes Arco	RF304-4155
Jim's Arco	RF304-4118
Knight Arco	RF304-4116
Lou's Gulf	RF300-8597
Main Street Arco	RF304-4124
O'Neil Tire & Supply	RF304-129
Powell Arco	RF304-4115
Radhe Krishan Jaggi	RF307-9382
Rogers Gulf	RF300-7991
Sandy's Arco	RF304-4141
Shreves Arco	RF304-3412
State of New York, Office of General Services.	RF300-8103
Stockwell's Gulf	RF300-8958
Summerville Exxon	RF307-9121
T&J Arco	RF304-2934
Theodore W. Sterling, Jr	RF307-8820
Tunnel Road Gulf	RF300-6621
10-10 Truck Stop	RF300-9896

APPENDIX

Case number	Applicant name
RF304-3473	Al Service Station
RF304-3542	Dicks Clark Service
RF304-3548	Cupertino ARCO Service Station
RF304-3641	ARCO TrucK Stop
RF304-3655	Montecito
RF304-3657	Ramada ARCO

APPENDIX—Continued

Case number	Applicant name
RF304-3670	Ingleside ARCO
RF304-3698	ARCO AM PM
RF304-3703	Ernie Val ARCO
RF304-3764	ARCO Truck Service, Inc.
RF304-3765	A C & T Distributor Co., Inc.
RF304-3825	Montecito ARCO
RF304-3830	Jackpot, Inc.
RF304-3851	Alpine ARCO
RF304-3853	DC ARCO
RF304-3873	A Street ARCO
RF304-3951	Lyne Vine ARCO
RF304-4121	Auckers ARCO
RF304-4130	Ahmads ARCO
RF304-4154	Baker and Brown ARCO
RF304-4341	ARCO Gas and Mini Mart
RF304-4352	Daniels Service Station
RF304-6396	Bells ARCO

[FR Doc. 89-17380 Filed 7-24-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3620-2]

Science Advisory Board; Request for Nomination of Members and Consultants

In accordance with its standard operating procedures (SAB-FRL-2657-4 dated August 21, 1984)), the Science Advisory Board (SAB) (including the Clean Air Scientific Advisory Committee (CASAC)) of the Environmental Protection Agency (EPA) is soliciting nominations for Members and Consultants (M/Cs). As part of this effort, the Agency is publishing this notice to describe the purpose of the SAB and to invite the public to nominate appropriately qualified candidates to fill upcoming vacancies. This process supplements other efforts to identify qualified candidates.

The SAB is composed of outside scientists and engineers who are employed on an intermittent basis to provide independent advice directly to the EPA Administrator on technical aspects of public health and environmental issues confronting the Agency. Members of the SAB are appointed by the Deputy Administrator to serve staggered terms of one to four years each. Consultants are appointed by the Staff Director to serve renewable one-year terms and serve on SAB committees, as needed. Many individuals serve as consultants prior to serving as members.

Any interested person or organization may nominate qualified persons to serve with the SAB. Nominees should be qualified by education, training and experience to evaluate scientific and/or engineering information on issues referred to the Board.

M/Cs most often serve in association with one of the following standing committees: Clean Air Scientific Advisory Committee, Environmental Engineering Committee, Environmental Effects, Transport & Fate Committee, Environmental Health Committee, Indoor Air Quality/Total Human Exposure Committee, Radiation Advisory Committee, Research Strategies Advisory Committee.

Specific areas of interest to the Board at this time include: Computer modelling of environmental processes drinking water issues, risk assessment, and science policy issues.

M/Cs can expect to attend 1-6 meetings per year, based upon the activity of the committee on which they serve. M/Cs generally serve as "Special Government Employees (SGEs)" (40 CFR Part 3, Subpart F or "EPA Ethics Advisory 88-6 dated 7/6/88) and receive compensation based upon their regular income, in addition to reimbursement at the Federal government rate for travel and per diem expenses while serving on the SAB. SGEs are required to complete an application package, including a Confidential Statement of Financial Interests.

A list of current M/Cs and the Annual Report of the Staff Director is available by calling (202) 382-4126.

Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should include a resume that addresses the nominee's background, experience, qualifications, and specific areas of expertise.

Information on the nominees will be entered into the SAB's data base for potential M/Cs. The data base will be consulted whenever vacancies arise and/or when special expertise is needed for particular reviews. This request for nominations does not imply any commitment by the Agency to select M/Cs from the responses received.

Nominations should be submitted to Ms. Cheryl B. Bentley, Program Analyst, Science Advisory Board (A-101F), U.S. EPA, 499 South Capitol Street SW., Washington, DC 20460, no later than October 2, 1989.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 89-17384 Filed 7-24-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0167.

Title: Claims of Federal Personnel for Personal Damage or Loss.

Abstract: The information collected is needed to comply with the Director's statutory authorization to settle and pay claims of FEMA personnel for personal property damage incident to service. The respondents are FEMA personnel desirous of making a claim and the information collected is used only to determine the appropriate disposition of the claim.

Type of Respondents: Federal agencies or employees.

Estimate of Total Annual Reporting and Recordkeeping Burden: 10.

Number of Respondents: 5.

Estimated Average Burden Hours per Response: 1.

Frequency of Response: On occasion.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Pamela Barr, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: July 17, 1989.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 89-17356 Filed 7-24-89; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-835-DR]

Major Disaster and Related Determinations; Louisiana

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Louisiana (FEMA-835-DR), dated July 18, 1989, and related determinations.

Dated: July 18, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE

Notice is hereby given that, in a letter dated July 18, 1989, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288, as amended by Pub. L. 100-707), as follows:

I have determined that the damage in certain areas of the State of Louisiana, resulting from Tropical Storm Allison beginning on June 25, 1989, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93-288, as amended by Public Law 100-707. I, therefore, declare that such a major disaster exists in the State of Louisiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. You are also authorized to provide Public Assistance in the affected areas, if requested and necessary. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288, as amended by Pub. L. 100-707, for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Graham L. Nance of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Louisiana to have been affected adversely by the declared major disaster:

The parishes of Allen, Beauregard, Calcasieu, East Baton Rouge, Grant, Iberville, Natchitoches, Pointe Coupee, Rapides, and Winn for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Robert H. Morris,

Acting Director, Federal Emergency Management Agency.

[FR Doc. 89-17357 Filed 7-24-89; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

[Docket No. 89-17]

Savannah International Terminal, et al. v. Georgia Ports Authority; Filing of Complaint and Assignment

Notice is given that a complaint filed by Savannah International Terminal ("SIT"), Zim Savannah Terminal, Inc., Zim-American Israeli Shipping Company Inc., and Zim Israel Navigation Co. ("Complainants") against the Georgia Ports Authority ("Respondent") was served July 20, 1989. Complainants allege that Respondent engaged in violations of sections 10(a)(2) and (3), 10(b)(11) and (12), and 10(d)(1) and (3) of the Shipping Act of 1984, 46 U.S.C. app. 1709(a)(2) and (3), 1709(b)(11) and (12) and 1709(d)(1) and (3), by failing to act in accordance with a properly filed and effective agreement, engaging in unjust and unreasonable practices, giving undue and unreasonable preference or advantages by imposing conditions on complainant SIT that are not imposed on other lessees, and unreasonably refusing to deal with complainants SIT and ZIM.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are nexessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by July 20, 1990, and the final decision of the Commission shall be issued by November 20, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 89-17362 Filed 7-24-89; 8:45 am]

BILLING CODE 6730-01-M

[Petition No. P2-89]

Cruise Lines International Association; filing of Application for Section 16 Exemption

Notice is given that Cruise Lines International Association ("CLIA") has applied for an exemption pursuant to section 16, Shipping Act of 1984 ("the 1984 Act"), 46 U.S.C. app. 1715, and the Commission's implementing regulations, 46 CFR 572.301.

CLIA seeks an exemption from the notice and waiting period requirements of section 6 of the 1984 Act, and the Information Form, notice and waiting period requirements of 46 CFR Part 572, to the extent applicable to changes in the membership of Agreement No. 003-010071 ("the Agreement"), an agreement among passenger vessel operators to meet and discuss matters of common interest including marketing strategies for ocean cruise travel, and to train, bond and deal with travel agents. Specifically, CLIA seeks an exemption which would allow membership changes to the Agreement to become effective immediately upon filing. Moreover, CLIA requests a Commission order or rule which would provide for effectiveness upon filing of membership changes to passenger vessel discussion agreements open to all passenger vessels of a class defined in the agreement and consisting of 15 or more members, which do not contain ratemaking, pooling or joint service authority.

In order for the Commission make a thorough evaluation of the application for exemption, interested persons are requested to submit views or arguments on the application no later than August 28, 1989. Responses shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573-0001 in an original and 15 copies. Responses shall also be served on counsel for "CLIA", Edward Schmeltzer, Esq., Schmeltzer, Aptaker & Sheppard, P.C., 2600 Virginia Avenue NW., Washington, DC 20037-1905.

Copies of the application are available for examination at the Washington, DC office of the Commission, 1100 L Street NW., Room 11101.

Joseph C. Polking,

Secretary.

[FR Doc. 89-17302 Filed 7-24-89; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010802-002

Title: Long Beach Terminal Agreement

Parties: City of Long Beach (City), Salen Shipping Agencies, Inc. (Salen)

Synopsis: The Agreement provides for the extension of the term of the basic preferential assignment agreement to September 19, 1991. Salen agrees to relinquish and release to the City such portion of its assigned premises as may reasonably be required to accommodate a rail right of way along Pier A Avenue of the Long Beach Container Terminal. All other terms and conditions of the basic agreement remain unchanged.

Agreement No.: 224-200267

Title: Tampa Terminal Agreement

Parties: Tampa Port Authority, B.S.L. Cruise, Inc.

Synopsis: The Agreement supercedes and cancels the parties' existing non-exclusive Preferential Use Agreement, No. 224-011044. Agreement No. 224-200267 provides for: (1) A corporate name change from Bermuda Star Line, Inc. to B.S.L. Cruises, Inc.; (2) a concurrent change in ownership; and, (3) the non-exclusive preferential use of terminal facilities, including parking and improvements for 200 vehicles.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: July 19, 1989.

[FR Doc. 89-17321 Filed 7-24-89; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010676-038

Title: South Europe/U.S.A. Freight Conference

Parties: Achille Lauro, Compania Transatlantica Espanola, S.A., Costa Container Line (A Division of Contship Containerlines Limited), d'Amico Societa di Navigazione, S.p.A., Evergreen Marine Corporation (Taiwan) Ltd., Farrell Lines, Inc., "Italia" di Navigazione, S.p.A., Jugolinija, Jugoceanija, Lykes Lines (Lykes Bros. Steamship Co., Ltd.), A.P. Moller-Maersk Line, Nedlloyd Lines (Nedlloyd Linjnen B.V.), Sea-Land Service, Inc., P & O Containers (TFL) Ltd., Zim Israel Navigation Company, Ltd.

Synopsis: The proposed modification would clarify existing procedures for the discussion and modification or cancellation of proposed or effective independent actions

Agreement No.: 203-011193-002

Title: Conbulk Carriers Agreement

Parties: Gearbulk Ltd. d/b/a Gearbulk Container Services, Star Shipping A/S, Westwood Shipping Lines

Synopsis: The proposed modification would delete Star Shipping A/S as a party to the Agreement.

By Order of the Federal Maritime Commission

Joseph C. Polking,

Secretary.

Dated: July 20, 1989.

[FR Doc. 89-17361 Filed 7-24-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Barclays PLC, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C.

1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than August 7, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Barclays PLC*, London, England; Barclays Bank PLC, London, England, Baybanks, Inc., Boston, Massachusetts, Chemical Banking Corporation, New York, New York, Manufacturers Hanover Corporation, New York, New York, National Westminster Bank PLC, London, England, Natwest Holdings Inc., New York, New York, Northeast Bancorp, Inc., New Haven, Connecticut, The Bank of New York Company, Inc., New York, New York, The Chase Manhattan Corporation, New York, New York, The Hong Kong and Shanghai Banking Corporation, Hong Kong, B.C.C., Kellett NV, Curacao, Netherlands Antilles, HSBC Holdings BV, Amsterdam, The Netherlands, Marine Midland Banks, Inc., Buffalo, New York, to acquire Datek Instacard Corporation, Buffalo, New York, and thereby engage in data processing and related activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Hoosier Bancorp*, Rushville, Indiana (formerly Financial Dominion of Indiana Corporation); to acquire Hoosier Insurance, Ltd., Grand Turk, Turks & Caicos Island, British West Indies, and thereby engage in underwriting credit life insurance and credit life accident and health insurance pursuant to § 225.25(b)(8) of the Board's Regulation Y.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota; to acquire Crestwood Capital Corp., Minneapolis, Minnesota, and Crestwood Financial Corp., Minneapolis, Minnesota, and thereby engage in leasing personal or real property or acting as agent, broker, or adviser in leasing such property subject to conditions and restrictions of § 225.25(b)(5) of the Board's Regulation Y, and commercial finance pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 19, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-17322 Filed 07-24-89; 8:45 am]

BILLING CODE 6210-01-M

First Channahon Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 11, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Channahon Bancorp, Inc.*, Naperville Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Westbank/Orland Park, Orland Park, Illinois (in organization).

2. *First Chicago Corporation*, Chicago, Illinois; to acquire 100 percent of the voting shares of The Winnetka Bank, Winnetka, Illinois.

3. *Westbank Financial Corporation*, Naperville, Illinois; to acquire 98.6 percent of the voting shares of First Channahon Bancorp, Naperville, Illinois, and thereby acquire Westbank/Orland Park, Orland Park, Illinois (in organization).

Board of Governors of the Federal Reserve System, July 19, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-17323 Filed 7-24-89; 8:45 am]

BILLING CODE 6210-01-M

Harmonia Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 11, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Harmonia Bancorp, Inc.*, Elizabeth, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of Harmonia Savings Bank, Elizabeth, New Jersey.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Merchant Bank Corporation*, Atlanta, Georgia; to become a bank holding company by acquiring 25 percent of the voting shares of The Merchant Bank of Atlanta, Atlanta, Georgia.

2. *Employee Stock Ownership Trust of the People's Bank & Trust Company of Pickett County*, Byrdstown, Tennessee; to become a bank holding company by acquiring 30 percent of the voting shares of Upper Cumberland Bancshares, Inc., Byrdstown, Tennessee, and thereby indirectly acquire People's Bank & Trust Company of Pickett County, Byrdstown, Tennessee.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Merchants National Corporation*, Indianapolis, Indiana; to acquire 100 percent of the voting shares of First National Bancshares, Inc., Logansport, Indiana, and thereby indirectly acquire First National Bank of Logansport, Logansport, Indiana, and First National Bank of Indiana, Monticello, Indiana.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *FDH Bancshares, Inc.*, Little Rock, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Fordyce, Fordyce, Arkansas, and Citizens First State Bank, Arkadelphia, Arkansas. Arkadelphia Bank engages in no insurance activities. Fordyce Bank owns an insurance agency that is located on the bank's premises. The insurance agency has been in operation since 1920, and is grandfathered under Arkansas law to engage in the sale of all insurance, with the exception of hospitalization insurance.

2. *M & P Community Bancshares, Inc.*, Newport, Arkansas, to become a bank holding company by acquiring at least 80 percent of the voting shares of Merchants and Planters Bank, Newport, Arkansas.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Surety Capital Corporation*, Fort Worth, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Texas National Bank of Lufkin, Lufkin, Texas.

F. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Banco Nacional de Mexico, S.N.C.*, Mexico City, Mexico; Banamex Holding Company, Los Angeles, California, and Ammex Holding Company, Los Angeles, California, to acquire 100 percent of the voting shares of American National Bank—Post Oak, Houston, Texas.

Board of Governors of the Federal Reserve System, July 19, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-17324 Filed 7-24-89; 8:45 am]

BILLING CODE 6210-01-M

Ira Hoberman; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 4, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Ira Hoberman*, Lakewood, New Jersey; to acquire 1.89 percent of the voting shares of First State Bancorp, Howell, New Jersey, and thereby indirectly acquire First State Bank, Howell, New Jersey.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *George A. DuBois*, Albuquerque, New Mexico; to acquire 3.34 percent; William J. Cooksey, trustee, Albuquerque, New Mexico; to acquire an additional 3.67 percent for a total of 7.72 percent; and Lloyd W. McKee, Albuquerque, New Mexico; to acquire an additional 5.06 percent of the voting shares of Western Bancshares of Albuquerque, Inc., Albuquerque, New Mexico, for a total of 7.06 percent, and thereby indirectly acquire Western Bank, Albuquerque, New Mexico.

2. *Bruce B. Morgan*, Kansas City, Missouri; and Donna L. McCoy, Shawnee, Kansas; to each acquire 50 percent of the voting shares of Polo Bancshares, Inc., Polo, Missouri, and thereby indirectly acquire Farmers Bank of Polo, Polo, Missouri.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Harold P. Pfeiffer*, La Porte, Texas; to acquire 5.1 percent of the voting shares of Bay Bancshares, Inc., La Porte, Texas, and thereby indirectly acquire Bayshore National Bank.

D. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Alvin C. Rice*, Santa Rosa, California; to acquire an additional 37.16 percent of the voting shares of Marin National Bancorp, San Rafael, California, for a total of 37.4 percent, and thereby indirectly acquire First National Bank of Marin, San Rafael, California.

Board of Governors of the Federal Reserve System, July 18, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-17325 Filed 7-24-89; 8:45 am]

BILLING CODE 6210-01-M

The Nippon Credit Bank, Ltd., et al.; Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 7, 1989.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Nippon Credit Bank, Ltd.*, Tokyo, Japan; to engage *de novo* through its subsidiary, Eastbridge Capital Inc., New York, New York, a *de novo* company, to serve as investment adviser (as defined in section 2(s)(20) of the Investment Company Act of 1940, 15 U.S.C. 80a-2(a)(20)), to an investment company registered under that Act, including sponsoring, organizing, and managing a closed end investment company pursuant to § 225.25(b)(4)(ii) of the Board's Regulation Y.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Midwest Bancorp, Inc.*, Naperville, Illinois; to continue to engage *de novo* in making, acquiring, or servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

2. *Erie Bancorp, Inc.*, Erie, Illinois, to engage *de novo* in making, acquiring, or servicing loans pursuant to section 225.25(b)(1) of the Board's Regulation Y.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Bank of Tokyo, Ltd.*, Tokyo, Japan; to engage *de novo* through BOT (Latin America), Inc., New York, New York, in making, acquiring, or servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts) for the company's account or for the account of others pursuant to § 225.25(b)(1) of the Board's Regulation Y.

2. *Sterling Bancorporation*, Los Angeles, California; and Sterling Business Credit, Inc., Los Angeles, California, to continue to engage in lending, loan servicing and leasing personal property pursuant to § 225.25(b)(1) and (b)(5) of the Board's Regulation Y. Applicant proposes to expand its geographic area, previously authorized in Southern California, to include the entire United States.

Board of Governors of the Federal Reserve System, July 19, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-17326 Filed 07-24-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[File No. 872 3227]

Heilig-Meyers Co., Inc., et al.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Richmond, VA. corporation to calculate and disclose accurately the APRs that it discloses in connection with future extensions of consumer credit subject to the Truth in Lending Act. The order would also require respondents to make adjustments to the accounts of customers to whom it disclosed APRs that were understated by more than ¼ of one percentage point, except for accounts where the amount of the adjustment is less than one dollar.

DATE: Comments must be received on or before September 25, 1989.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Chris Couillou, Atlanta Regional Office, Federal Trade Commission, 1718 Peachtree St., NW., Rm. 1000, Atlanta, GA 30367. (404) 347-4836.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Argeement Containing Consent Order to Cease and Desist

In the matter of Heilig-Meyers Company, Heilig-Meyers Company of Georgia, Heilig-Meyers Company of North Carolina, Heilig-Meyers Company of Tennessee, and Sterchi Brothers Stores, Inc., corporations.

The agreeement herein, by and between Hilig-Merers Company, Heilig-Meyers Company of Georgia, Heilig-Meyers Company of North Carolina, Heilig-Meyers Company of Tennessee, and Sterchi Brothers Stores, Inc., corporations (hereafter sometimes referred to as "proposed respondents"), by their duly authorized officer and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

Paragraph One: Heilig-Meyers Company is a Virginia corporation, with its principal place of business at 2235 Staples Mill Road, Richmond, Virginia 23230.

Paragraph Two: Heilig-Meyers Company of Georgia is a Georgia corporation, with its principal place of business at 2235 Staples Mill Road, Richmond, Virginia 23230.

Paragraph Three: Heilig-Meyers Company of North Carolina is a North Carolina corporation, with its principal place of business at 2235 Staples Mill Road, Richmond, Virginia 23230.

Paragraph Four: Heilig-Meyers Company of Tennessee is a Tennessee corporation, with its principal place of business at 2235 Staples Mill Road, Richmond, Virginia 23230.

Paragraph Five: Sterchi Brothers Store, Inc., is a Delaware corporation, with its principal place of business at 2235 Staples Mill Road, Richmond, Virginia 23230.

Paragraph Six: Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

Paragraph Seven: Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

(d) Any claim under the Equal Access to Justice Act.

Paragraph Eight: This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint comtemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

Paragraph Nine: This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

Paragraph Ten: This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist and make adjustments and refunds in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist and make adjustments and refunds shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in constructing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

Paragraph Eleven: Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondents Heilig-Meyers Company, Heilig-Meyers Company of Georgia, Heilig-Meyers Company of North Carolina, Heil-Meyers Company of Tennessee, and Sterchi Brothers Stores, Inc., their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the extension to any consumer of credit primarily for personal, family or household purposes, which credit is subject to a finance charge or payable by written agreement in more than four installments (not including down payment) and with regard to which the consumer is initially obligated to make repayment by the terms of a written agreement, do forthwith cease and desist from failing to calculate accurately and disclose clearly, conspicuously and accurately on the face of that written agreement the cost of credit expressed as a yearly rate as required by §§ 226.18(e) and 226.22 of Regulation Z, 12 CFR 226.18(e) and 226.22, and to use the term "annual percentage rate" to describe that rate, as required by § 226.18(e) of Regulation Z.

II

It is further ordered that within thirty days of the date of service of this order, respondents shall make adjustments to the current or past accounts of each customer in Alabama, Florida, Georgia, Kentucky and Tennessee, who was extended credit after February 28, 1986, and before August 1, 1987, in Alabama, before May 1, 1987, in Florida, before April 1, 1987, in Georgia, before October 1, 1987, in Kentucky, and before May 1, 1987, in Tennessee, and to whom respondents, in connection with such extension of credit, disclosed an annual percentage rate that was miscalculated by more than ¼ of 1 percentage point below the annual percentage rate determined in accordance with § 226.22 Regulation Z, 12 CFR 226.22, in transactions that did not include one or more of the following features: multiple advances, irregular payment periods, or irregular payment amounts (other than an irregular first period or an irregular first or final payment), to assure that to the extent such customer has already paid or will pay any finance charges under the terms of a written agreement in excess of the dollar equivalent of the annual percentage rate disclosed in that written agreement plus a tolerance of ¼ of 1 percentage point so that the net result is that such customer is not required to pay any finance charges in excess of the dollar equivalent of the annual percentage rate disclosed in that written agreement, plus a tolerance of ¼ of 1 percentage point. For purposes of this section, respondents shall not be required to make adjustments to the accounts of customers where the amount of the adjustment is less than one dollar. Adjustment shall be made to the account of each customer under this section by mailing a check in the amount of the adjustment due to the current or last known address of each such customer.

III

It is further ordered that respondents shall maintain and upon request make available to the Federal Trade Commission all records that will demonstrate compliance with the requirements of this order.

IV

It is further ordered that respondents shall distribute a copy of this order to each of their officers and to the managers of respondents' stores whose customers are due adjustments or refunds under this order.

V

It is further ordered that respondents shall notify the Commission at least thirty days prior to any proposed change in corporate from such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or any other changes in the corporations of respondents, including the creation or dissolution of subsidiaries, which may

affect compliance obligations arising out of the order.

VI

It is further ordered that respondents shall, within sixty days after the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner in which they have complied with this order, including, but not limited to, a full accounting as to the amounts of adjustments and refunds that have been made.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondents Heilig-Meyers Company, Heilig-Meyers Company of Georgia, Heilig-Meyers Company of North Carolina, Heilig-Meyers Company of Tennessee, and Sterchi Brothers Stores, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that respondents have disclosed annual percentage rates to consumers in Alabama, Georgia, Kentucky, Tennessee and Florida that were more than ⅛ of 1 percentage point above or below the annual percentage rate determined in accordance with § 226.22 of Regulation Z, 12 CFR 226.22, as a result of a clear and consistent pattern or practice of violations.

The proposed order requires respondents to calculate accurately and disclose accurately the annual percentage rates that are disclosed in connection with the extension of consumer credit. The proposed order also requires that respondents make adjustments to the accounts of customers to whom respondents disclosed annual percentage rates that were understated by more than ¼ of one percentage point except as noted below. This adjustments will be made to assure that to the extent a customer has already paid or will pay any finance charges under the terms of his or her written agreement with respondents in excess of the dollar equivalent of the annual percentage rate disclosed in that written agreement plus a tolerance of ¼ of 1 percentage point so that the net result is that such customer is not required to pay any finance charges in excess of the dollar equivalent of the annual percentage rate disclosed in that written agreement, plus a tolerance of ¼ of 1 percentage point. In accordance with section 108(e)(3)(B) of the Truth in Lending Act, 15 U.S.C. 1607(e)(3)(B), respondents shall not be required to make adjustments to the accounts of customers where the amount of the adjustment is less than one dollar.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,
Secretary.

Dissenting Statement of Commissioner Andrew J. Strenio, Jr. in Heilig-Meyers Co., File No. 872-3227, July 5, 1989

I have voted against this proposed consent agreement because it contains two major deficiencies. First, the consent would allow Heilig-Meyers Co. ("Heilig") to deduct 0.25% from its refunds to consumers who allegedly paid more in interest than the annual percentage rates ("APRs") Heilig specified in its installment contracts.[1] Second, the consent would allow Heilig to keep all redress dollars intended for qualified consumers who are not located.

The 0.25% Deduction

Section 108(e)(1)(B)(*i*) of The Truth-in-Lending Act (15 U.S.C. 1607(e)(1)(B)(i)) provides that in determining whether an APR disclosure error has occurred, and in calculating any adjustment, a tolerance not to exceed 0.25% will be applied. It has been argued that this language means the Commission should deduct 0.25% from any consumer redress for an asserted overcharge. However, such an interpretation would allow creditors to keep a portion that may be large in the aggregate of the allegedly ill-gotten gains they have acquired.

In my view, the better interpretation is that Congress intended to "tolerate" differences in actual versus stated APRs of up to 0.25% without requiring restitution. Presumably, this margin for error would reduce the burden of administering redress cases. But, once differences exceed 0.25%, complete restitution should be collected. This reading of the law enhances compliance and makes injured consumers whole.

The Retention of Uncollected Refunds

The proposed agreement also would require Heilig to make restitution to consumers by mailing checks to their current or last-known addresses. I believe Heilig will implement this requirement in good faith. Nonetheless, some portion will never be collected by consumers because, for example, they may have moved and no longer qualify to have their mail forwarded. Under the proposed consent agreement, Heilig presumably would be allowed to keep these undelivered amounts.

In my view, however, uncollected redress funds should not be retained by a distributing party. Such a practice weakens deterrence and may provide a disincentive for locating eligible consumers. Instead, any uncollected redress funds should either be paid if possible to some organization that may benefit the class or type of consumers involved here, or into the United States Treasury for general taxpayer relief.

Conclusion

Since the proposed consent is flawed in both these respects, I respectfully dissent from the majority's decision to provisionally accept the consent for comment.

[FR Doc. 89-17368 Filed 7-24-89; 8:45 am]
BILLING CODE 6750-01-M

[1] Heilig, to its credit, has sent redress checks that do not subtract the 0.25%. My objection is to the proposed consent agreement which would have allowed Heilig to subtract 0.25% and which could thereby create an ill-advised precedent for the FTC.

[File No. 891-0081]

MTH Holdings, Inc., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, MTH, an investment banking firm, to divest grocery stores in Vermont and New York to eliminate antitrust concerns that would be created by its acquisition of GU Acquisition Corporation.

DATE: Comments must be received on or before September 25, 1989.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ronald B. Rowe, FTC/S-3302, Washington, DC 20580. (202) 326-2610.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with

§ 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission ("the Commission"), having initiated an investigation of the transaction pursuant to which MTH Holdings, Inc. (hereinafter "MTH") and Salomon Inc. (hereinafter "Salomon") will acquire the issued and outstanding stock of GU Acquisition Corporation (hereinafter "GUAC"), and MTH and GUAC (collectively, "the Proposed Respondents"), having been furnished with a copy of a draft complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the Proposed Respondents with violations of the Clayton Act and Federal Trade Commission Act, and it now appearing that the Proposed Respondents are willing to enter into an agreement containing an order to divest certain assets and to cease and desist from certain acts:

It is hereby agreed by and among the Proposed Respondents, by their duly authorized officers and their attorneys, and counsel for the Commission that:

1. MTH Holdings, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of New York with its executive offices located at 331 Madison Avenue, New York, New York 10017.

2. GU Acquisition Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of Delaware with its executive offices located at 25 Old Kings Highway Road, Darien, Connecticut 06820.

3. The Proposed Respondents admit all the jurisdictional facts set forth in the attached draft of complaint.

4. The Proposed Respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise challenge or contest the validity of the Order entered pursuant to this agreement; and

d. All rights under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the Proposed Respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by the Proposed Respondents that the law has been violated as alleged in the draft of complaint here attached.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the Proposed Respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint attached hereto and its decision containing the following Order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order to divest and to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to the Proposed Respondents' addresses as stated in this agreement shall constitute service. The Proposed Respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

8. The Proposed Respondents have read the draft of complaint and Order contemplated hereby. The Proposed Respondents understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they each have fully complied with the Order. The Proposed Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

As used in this Order, the following definitions shall apply:

a. "Acquisition" means MTH's acquisition of the issued and outstanding common stock of GUAC.

b. "Commission" means the Federal Trade Commission.

c. "GND Holdings Corporation" means the entity formed by MTH and Salomon to acquire GUAC. GND Holdings Corporation includes its successors and assigns.

d. "The Grand Union Company" means an indirect wholly owned subsidiary of GUAC, through which GUAC is engaged in the retail grocery business. The Grand Union Company includes its parents, predecessors, subsidiaries, divisions, groups and affiliates controlled by GUAC and their respective directors, officers, employees, agents, partners, and representatives, and their respective successors and assigns.

e. "GUAC" means GU Acquisition Corporation, its parents, predecessors, subsidiaries, divisions, groups and affiliates controlled by GUAC and their respective directors, officers, employees, agents, partners, and representatives, and their respective successors and assigns.

f. "MTH" means MTH Holdings, Inc., its parents, predecessors, subsidiaries, divisions, groups and affiliates controlled by MTH (including P&C Food Markets, Inc.) and their respective directors, officers, employees, agents, partners, and representatives, and their respective successors and assigns.

g. "Respondents" means GUAC and MTH.

h. "Retail grocery store" means any retail food store of 10,000 or more square feet and which sells primarily a variety of canned or frozen foods; dry groceries; non-edible grocery items; fresh meat, poultry and produce (vegetables and fruits) and which often sells delicatessen items, bakery items, fresh fish or other specialty items.

i. "Schedule A Properties" means the assets and businesses listed in Schedule A of this Order.

j. "Schedule B Properties" means the assets and businesses listed in Schedule B of this Order.

k. "Properties" means the Schedule A Properties and the Schedule B Properties.

II

It is ordered that:

(A) Within nine (9) months of the date this Order becomes final, the Respondents shall divest, absolutely and in good faith (a) the Schedule A Properties, as well as any additional assets and businesses that (i) the Respondents may at their discretion include as a part of the assets to be divested and are acceptable to the acquiring entity and the Commission, or (ii) the Commission shall require to be divested to ensure the divestiture of the Schedule A Properties as ongoing, viable enterprises, engaged in the businesses in which the Properties are presently employed. Provided, however, the Respondents may only divest the stores of P&C Food Markets, Inc. listed in Schedule A if such stores have been operated consistent with past practices and the Respondents have in no way acted to reduce the value or competitive viability of such stores. Provided, further, the Respondents shall have twelve (12) months from the date this Order becomes final to divest, absolutely and in good faith the Schedule A property in Bennington, Vermont.

(B) The Agreement to Hold Separate, attached hereto and made a part hereof as Appendix I, shall continue in effect until such time as the Respondents have divested either the Schedule A Properties or a trustee has divested the Schedule B Properties or until such other time as the Agreement to Hold Separate provides, and the Respondents shall comply with all terms of said Agreement.

(C) Divestiture of the Properties shall be made only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Properties is to ensure the continuation of the assets as ongoing, viable retail grocery stores engaged in the same businesses in which the Properties are presently employed and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

(D) The Respondents shall take such action as is necessary to maintain the viability and marketability of the Properties and shall not cause or permit the destruction, removal or impairment of any assets or businesses to be divested except in the ordinary course of business and except for ordinary wear and tear.

III

It is further ordered that:

(A) If the Respondents have not divested, absolutely and in good faith and with the Commission's approval, the Schedule A Properties within the time set out in Paragraph II(A), the Respondents shall consent to the appointment by the Commission of a trustee to divest the Schedule B Properties. In the event that the Commission brings an action pursuant to 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. 45 (*l*), or any other statute enforced by the Commission, the Respondents shall consent to the appointment of a trustee in such action. The appointment of a trustee shall not preclude the Commission from seeking civil penalties or any other relief available to it for any failure by the Respondents to comply with this Order.

(B) If a trustee is appointed by the Commission or a court pursuant to Paragraph III(A) of this Order, the Respondents shall consent to the following terms and conditions regarding the trustee's duties and responsibilities:

(1) The Commission shall select the trustee, subject to the consent of the Respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures

(2) The trustee shall have the power and authority to divest the Schedule B Properties.

(3) The trustee shall have eighteen (18) months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Commission and, if the trustee is appointed by a court, subject also to the prior approval of the court. If, however, at the end of the eighteen-month period the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or by the court for a court-appointed trustee. Provided, however, that the Commission or court may only extend the divestiture period two (2) times.

(4) The trustee shall have full and complete access to the personnel, books, records and facilities related to those asssets that the trustee has the duty to divest. The Respondents shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. The Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestitures.

(5) Subject to the Respondents' absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in Paragraph II(C) of this Order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each acquiring entity for the divestiture of the Schedule B Properties. The divestiture shall be made in the manner set out in Paragraph II(C); provided, however, if the trustee receives bona fide offers from more than one acquiring entity or entities, and if the Commission determines to approve more than one such purchaser, the trustee shall divest to the acquiring entity or entities selected by the Respondents from among those approved by the Commission.

(6) The trustee shall serve at the cost and expense of the Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set, including the employment of accountants, attorneys or other persons reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondents and the trustee's power shall be terminated. The trustee' compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Schedule B Properties.

(7) Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, the Respondents shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture.

(8) If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III (A) of this Order.

(9) The trustee shall report in writing to the Respondents and the Commission every sixty (60) days from the date of appointment concerning the trustee's efforts to accomplish divestiture.

IV

It is further ordered that, within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until the Respondents have fully complied with the provisions of Paragraphs II and III of this Order, the Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying or have complied with those provisions. The Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of substantive contacts or negotiations for the divestiture of assets or businesses specified in Paragraph II of this Order, including the identity of all parties contacted. The Respondents also shall include in their compliance reports, copies of all written communications to and from such parties, all internal memoranda, reports and recommendations concerning divestiture, and a description of the status of all regulatory proceedings filed in accordance with this Order.

V

It is further ordered that, for a period commencing on the date this Order becomes final and continuing for ten (10) years, the Respondents shall cease and desist from acquiring, without the prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries or otherwise, any retail grocery store or leasehold interest in any retail grocery store, including any facility that has operated as a retail grocery store within six (6) months of the date of the offer of purchase, or any interest in or the stock or share capital of any entity that owns any interest in or operates any retail grocery store, or any interest in or the stock or share capital of any entity that owned any interest in or operated any retail grocery store within six (6) months of the date of the offer of purchase in the following counties:

1. Chittenden County, Vermont
2. Windham County, Vermont
3. Rutland County, Vermont
4. Washington County, Vermont
5. Lamoille County, Vermont
6. Windsor County, Vermont
7. Bennington County, Vermont
8. Essex County, New York
9. Schoharie County, New York
10. Otsego County, New York.

(Hereinafter "Retail Grocery Interests"). Provided, however, that these prohibitions shall not relate to the construction of new facilities or the leasing of facilities that have not operated as retail grocery stores within six months of the date of the offer to lease. Provided, further, that the Respondents may acquire, for investment purposes only, an interest of not more than five (5) percent of the stock or share capital of any concern. Provided, additionally, only if, the Respondents have provided the Commission with thirty (30) days prior notice of the acquisition set out in this proviso, these prohibitions shall not relate to the acquisition of an interest in the stock or capital share of any concern that has no Retail Grocery Interests at the time the Respondents announce to the public an intention to acquire an interest in the concern and has no more than 40,000 square feet of Retail Grocery Interests at the time of the acquisition of the stock or capital share of said concern.

One (1) year from the date this Order becomes final and annually for nine (9) years thereafter the Respondents shall file with the Federal Trade Commission a verified written report of their compliance with this Paragraph.

VI

It is further ordered that the Respondents shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation, dissolution or sale of subsidiaries or any other change that may affect compliance obligations arising out of the Order.

Schedule A—Assets, Interests and Businesses

The retail grocery store presently owned or operated by The Grand Union Company or by P&C Food Markets, Inc. in the following locations:

1. One (1) in Morrisville, Vermont;
2. One (1) in Barre/Montpelier/Berlin, Vermont;
3. One (1) in Windsor, Vermont;
4. One (1) in Springfield, Vermont;
5. One (1) in Brattleboro, Vermont;
6. One (1) in Bennington, Vermont;
7. One (1) in Manchester, Vermont;
8. Two (2) in the Rutland, Vermont area, which area shall include North Clarendon and West Rutland, Vermont;
9. Four (4) in the Burlington, Vermont, Metropolitan Statistical Area;
10. One (1) in Cobleskill, New York;
11. One (1) in Ticonderoga, New York; and
12. One (1) in Oneonta, New York.

The assets to be divested shall include the grocery business operated, all assets, inventory, leases, properties, business and goodwill, tangible and intangible, utilized in the distribution or sale of groceries at the listed locations.

Schedule B—Assets, Interests and Businesses

All the retail grocery stores presently owned or operated by The Grand Union Company in the following locations:

1. Chittenden County, Vermont
2. Windham County, Vermont
3. Rutland County, Vermont
4. Washington County, Vermont
5. Lamoille County, Vermont
6. Windsor County, Vermont
7. Bennington County, Vermont
8. Ticonderoga, New York
9. Schoharie County, New York
10. Otsego County, New York.

The assets to be divested shall include the grocery business operated all assets, inventory, leases, properties, business and goodwill, tangible and intangible, utilized in the distribution or sale of groceries at the listed locations.

Agreement to Hold Separate

This Agreement to Hold Separate (the "Agreement") is by and among MTH Holdings, Inc., a corporation organized and existing under the laws of the State of New York, with its executive offices located at 331 Madison Avenue, New York, New York 10017 ("MTH"); GU Acquisition Corporation ("GUAC"), a corporation organized and existing under the laws of the State of Delaware, with its executive offices located at Darien, Connecticut; Salomon Inc., a corporation organized and existing under the laws of the State of Delaware with its executive offices located at One New York Plaza, New York, NY 10004 (collectively, "the Parties"); and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.*

Premises

Whereas, The Grand Union Company, GND Holdings Corporation, an entity controlled by MTH and Salomon, and GND Transitory Corporation, a wholly-owned subsidiary of GND Holdings Corporation, executed a Merger Agreement dated as of April 8, 1989 for all of the issued and outstanding common stock of GUAC (the "Acquisition"); and

Whereas, the Commission is now investigating the Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order ("Consent Order"), the Commission must place it on the public

record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of § 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of The Grand Union Company's Northern Division operaitons during the period prior to the final acceptance of the Consent Order by the Commission (after the 60-day public notice period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of properties described in Schedule A to the Consent Order (the "Schedule A Properties") or Schedule B of the Consent Order ("Schedule B Properties") and the Commission's right to seek to restore The Grand Union Company's Northern Division as a viable competitor; and

Whereas, the purpose of this Agreement and the Consent Order is to:

(1) Preserve The Grand Union Company's Northern Division's businesses as viable independent businesses pending the divestiture of the Schedule A or Schedule B Properties as viable and ongoing enterprises,

(ii) Remedy any anticompetitive effects of the Acquisition, and

(iii) Preserve The Grand Union Company's Northern Division's businesses as ongoing, viable businesses engaged in the same business in which they are presently employed in the event that divestiture is not achieved; and

Whereas, the Parties' entering into this Agreement shall in no way be construed as an admission by the Parties that the Acquisition is illegal; and

Whereas, the Parties understand that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the Parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from the Parties with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof, and in the event the required divestitures are not accomplished, to seek divestiture of such assets as are held separate pursuant to this Agreement, as follows:

1. The Parties and the Commission agree that each word defined in the Consent Order shall have the same definition in this Agreement. The Respondents agree to execute and be bound by the Consent Order. The Parties agree that the affirmative vote of the Salomon Directors of GND Holdings Corporation shall not be required for the approval of any resolution in furtherance of compliance with the Consent Order. No Party shall interfere in any way with compliance with said Order.

2. The Parties agree that from the date of the Commission accepts this Agreement until the first to occur of (i) three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of § 2.34 of the Commission's Rules; or (ii) if the Commission issues the Consent Order finally, until all of the divestitures required by the Consent Order have been completed, the Parties shall hold separate and apart on the terms and conditions set forth below in this paragraph all of The Grand Union Company's Northern Division's assets and business operations as they existed before the Acquisition, including the 135 retail grocery stores operated by The Grand Union Company in upstate New York, Vermont, New Hampshire, and Massachusetts, the two (2) Company grocery warehouse/distribution centers operated within the Divison (except that the Grand Union Company may proceed with its pre-existing plans to close the Waverly, N.Y. distribution center), inventory, accounts receivable, distribution, manufacturing facilities, and all related properties and facilities (hereinafter "the Northern Division"). Except as otherwise provided herein:

a. The Northern Division shall be operated independently of MTH.

b. MTH shall not exercise direction or control over, or influence directly or indirectly, the Northern Division or any of its operations or businesses; provided, however, that MTH may exercise such directon and control over the Northern Division as is necessary to assure compliance with this Agreement.

c. GUAC and The Grand Union Company shall maintain and the Parties shall take no steps to diminish the viability and marketability of the Northern Division. The Parties shall not sell, transfer, mortgage, pledge, encumber, or otherwise impair its marketability or viability (other than in the normal course of business); provided, however, that the assets of the Northern Division may be encumbered in connection with the Acquisition and the refinancing of existing indebtedness of GND Holdings Corporation, GUAC or The Grand Union Company. GUAC and The Grand Union Company shall remove such encumbrances from the assets of the Northern Division prior to any divestiture of any such assets ordered by a court or by the Commission. If necessary, GUAC and The Grand Union Company shall cause capital funds to be available to the Northern Division so that the Division has sufficient funds to operate consistent with its existing five year capital and operating plans.

d. Except for the single MTH and the single Salomon director, officer, employee, partner or agent serving on the "Management Committee" (as defined in subparagraph 2.h) MTH shall not permit any director, officer, employee, partner or agent of MTH or Salomon to also be a member of the Management Committee or employee of the Northern Division.

e. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations or litigation, or negotiating an agreement to dispose of assets, or as may be necessary to make or comply with convenants, representations or warranties in connection with existing agreements, the acquisition indebtedness or refinancings thereof with any financial institution or with any third party in an existing arm's length transaction, MTH shall not receive or have access to, or the use of, any of the Northern Division's "material confidential information" not in the public domain, except as such information would be available to MTH in the normal course of business if the acquisition had not taken place. Any such information that is obtained pursuant to this subparagraph shall only be used for the purpose set out in this subparagraph. ("Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to MTH from sources other than GUAC and includes but is not limited to customer lists, price lists, marketing methods, technologies, processes, or other trade secrets).

f. The Parties shall not cause any change in the composition of the management of the Northern Division except that members of the Northern Division's Management Committee (as defined in subparagraph 2.h) shall have the power to remove employees for poor performance or cause.

g. Except in connection with the divestiture to be made in compliance with the Consent Order, all material transactions, out of the ordinary course of business and not otherwise precluded by this Paragraph 2 shall be subject to a majority vote of the Management Committee (as defined in subparagraph 2.h).

h. The Parties shall cause GUAC to create a five person Management Committee once they are majority shareholders of GUAC. The Parties may select the members of the Management Committee; provided, however, that such Committee shall consist of one MTH and one Salomon director, officer, employee, partner or agent and three current employees of The Grand Union Company of which two shall be current employees of the Northern Division. Subject to the same exceptions as in subparagraph 2.e, the member of the Management Committee who is also an MTH director, officer, employee, partner or agent, shall not receive in his or her capacity as a member of the Management Committee material confidential information and shall not disclose any such information received under this Agreement to MTH or use it to obtain any advantage for MTH. Said member of the Management Committee who is also an MTH director, Officer, employee, partner or agent, shall enter a confidentiality agreement prohibiting disclosure of confidential information. Such member of the Management Committee shall participate in matters which come before the Management Committee only for the limited purpose of considering a capital investment or other transactions exceeding $5,000,000 and carrying out MTH's and the Northern Division's responsibility to assure that Schedule A Properties and the Schedule B Properties of the Consent Order are maintained in such manner as will permit their divestiture as ongoing, viable assets. Except as permitted by this Agreement, such member of the Management Committee shall not participate in any matter, or attempt to influence the votes of the other members of the Management Committee with respect to matters that would involve a conflict of interest if MTH and the Northern Division were separate and independent entities. Meetings of the Management Committee during the term of this Agreement shall be stenographically transcribed and the transcripts retained for two (2) years after the termination of this Agreement.

i. Nothing herin shall prevent the Management Committee or the Parties from negotiating or entering into agreements to dispose of the Northern Division's assets, provided that any disposition shall be made only to a buyer or buyers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

j. The Grand Union Company shall continue to prepare separate periodic store and division statements of revenue, expenses and profitability for the Northern Division, and the Parties shall, within ten (10) days after they become available to the Parties, provide the Commission's Bureau of Competition with monthly statements of divisional contribution and annual financial statements for the Northern Division, which annual financial statements shall be audited and certified by independent certified public accountants.

k. The Parties shall not, directly or indirectly, pay any dividends (other than dividends payable in securities of GND Holdings Corporation) in shares of capital stock of GND Holdings Corporation, including without limitation any redemption of shares of its capital stock for any consideration other than securities of GND Holdings Corporation and shall not otherwise make any distribution to MTH or Salomon, in respect of their ownership interest, out of the proceeds of any sales of assets of The Grand Union Company.

l. Consistent with the Northern Division's use of its warehouse, distribution and manufacturing facilities in such a way as to assure the maintenance of the Northern Division as a viable competitor, the Northern Division's warehouse, distribution and manufacturing facilities may supply stores operated by the other divisions of the Grand Union Company or by P&C, provided that such other entities shall pay the Northern Division in accordance with the Northern Division's current established procedures for supplying unaffiliated stores. The warehouse, distribution and manufacturing facilities of other divisions of The Grand Union Company shall supply the Northern Division in accordance with The Grand Union Company's current established procedures for supplying the Northern Division.

m. Should the Federal Trade Commission seek in any proceeding to compel MTH and Salomon to divest themselves of the Northen Division or GUAC, the Parties shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. The Parties also waive all rights to contest the validity of this Agreement.

3. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice ot the Parties made to their principal offices, the Parties shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of the Parties or GUAC and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the Parties and GUAC relating to compliance with this Agreement;

b. Upon five (5) days notice to the Parties or GUAC and without restraint or interference from it, to interview officers or employees of the Parties or GUAC, who may have counsel present, regarding any such matters.

4. This Agreement shall expire if within 120 days after a filing on the public record of any complete application to divest Schedule A or Schedule B Properties, the Commission does not approve or disapprove of that application. Provided, however, the Commission may reject any application within the 120 day period if in its sole discretion it believes that it did not have sufficient time or information to approve the application.

5. This agreement shall not be binding until approved by the Commission.

Analysis to Aid Public Comment on Consent Order Accepted Subject to Final Approval

The Federal Trade Commission ("Commission") has accepted for public comment from MTH Holdings, Inc. an agreement containing a consent order. The Commission is placing the agreement on the public record for sixty (60) days for reception of comments from interested persons.

Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's investigation of this matter concerned the proposed acquisition of GU Acquisition Corporation by MTH Holdings Inc. ("MTH") and Salomon Inc ("Salomon"). GU Acquisition Corporation wholly

owns The Grand Union Company ("Grand Union"), which operates 304 retail grocery stores in the United States. MTH holds the majority of outstanding shares of the Penn Traffic Co., which controls P & C Food Markets, Inc. ("P & C"), a retail grocery store chain.

The Commission has reason to believe that MTM's acquisition on Grand Union would substantially lessen competition in twelve towns and cities in New York and Vermont in violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. The towns and cities where competition would be substantially lessened include the following: Cobleskill, N.Y.; Oneonta, N.Y.; Ticonderoga, N.Y.; Barre/Montpelier/Berlin, Vt.; Bennington, Vt.; Brattleboro, Vt.; Burlington, Vt., Metropolitan Statistical Area; Manchester, Vt.; Morrisville, Vt.; Rutland, Vt. (including the North Clarendon and West Rutland areas); Springfield, Vt.; and Windsor, Vt.

The agreement containing the Consent Order ("Order") would, if issued by the Commission, settle the complaint that alleges anticompetitive effects as a result of the acquisition in the twelve towns and cities listed above.

Under the terms of the proposed Order, MTH must divest one retail grocery store presently owned or operated by either P&C or Grand Union in the following towns: Cobleskill, N.Y.; Oneonta, N.Y.; Ticonderoga, N.Y.; Barre/Montpelier/Berlin, Vt.; Bennington, Vt.; Brattleboro, Vt.; Manchester, Vt.; Morrisville, Vt.; Springfield, Vt.; and Windsor, Vt. MTH must also divest two retail grocery stores presently owned or operated by either P&C or Grand Union in Rutland, Vt. (including the North Clarendon and West Rutland areas) and four retail grocery stores presently owned or operated by either P&C or Grand Union in the Burlington, Vt.; Metropolitan Statistical Area. Under the proposed Order, all of these divestitures, except Bennington, Vt., must occur within nine months. The required divestiture in Bennington, Vt., must occur within twelve months.

If MTH fails to complete the required divestitures within the required time period, the Commission may authorize a trustee to divest all of the retail grocery stores presently owned or operated by Grand Union in the following locations: Ostego County, N.Y.; Schoharie County, N.Y.; Ticonderoga, N.Y.; Bennington County, Vt.; Chittenden County, Vt.; Lamoille County, Vt.; Rutland County, Vt.; Washington, Vt.; Windham County, Vt.; and Windsor County, Vt.

Under the Hold Separate Agreement, Grand Union's Northern Division must operate separately from the rest of the Company until all the divestitures required by the Commission Order have been made. The Northern Division consists of 135 stores in upstate New York, Vermont, New Hampshire and Massachusetts, and two warehouses in Waterford, N.Y. and Waverly, N.Y. Under the Hold Separate Agreement, MTH and Salomon must form a five-person Management Committee consisting of one member from Salomon, one member from Grand Union, one member from MTH and two members from Grand Union's Northern Division. The Management Committee will be responsible for operating Grand Union's Northern Division. The Management Committee does not require permission of either the MTH or Salomon member to make decisions for the Northern Division.

For a period of ten (10) years from its effective date, the proposed Order prohibits MTH and Grand Union from making substantive acquisitions of assets or businesses that operate retail grocery stores without prior Commission approval.

It is anticipated that the Order would resolve the competitive problems alleged in the Complaint. The purpose of this analysis is to invite public comment concerning the Order, in order to aid the Commission in its determination of whether it should make final the Order contained in the agreement.

This analysis is not intended to constitute an official interpretation of the agreement and Order, nor is it intended to modify the terms of the agreement and Order in any way.

Donald S. Clark,

Secretary.

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BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Clinical Chemistry and Clinical Toxicology Devices Panel

Date, time, and place. August 11, 1989, 9 a.m., Rm. 4131-4137, Wilbur Cohen Bldg., 330 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 2 p.m.; closed committee deliberations, 2 p.m. to 3 p.m.; open committee discussion, 3 p.m. to 5 p.m.; Kaiser J. Aziz, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1096.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before August 1, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application for the measurement of cyclosporine by fluorescence polarization immunoassay technology.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion if time permits at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FOA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: July 18, 1989.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 89-17333 Filed 7-24-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83N-0193]

Development of FDA's Draft Proposed Standard for Infant Apnea Monitors; Public Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a 2-day public meeting to discuss certain issues related to the development of the proposed standard for infant apnea monitors. FDA is inviting interested persons, including device manufacturers, health professional organizations, industry and consumer groups, and health educators to attend the meeting. Because of space constraints, attendance can be assured only for those persons who make written reservations.

DATES: The public meeting will be held on Monday, September 11, 1989, from 8 a.m. to 5 p.m., and on Tuesday, September 12, 1989, from 8 a.m. to 3 p.m., at the Conference Theater of the Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, MD 20852.

ADDRESSES: Written registration is required. Registration information can be obtained by calling 301-443-4874 or writing to the following address: Gloria Richendrfer (HFZ-84), Office of Standards and Regulations, Center for Devices and Radiological Health, 5600 Fishers Lane, Rockville, MD 20857. Registration will be limited to 100 people because of room-size restrictions.

Interested persons who will be unable to attend the meeting may submit written comments that set forth their views on the objectives outlined in this notice.

Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, referencing the docket number

found in brackets in the heading of this notice.

FOR FURTHER INFORMATION CONTACT: E. Jane McCarthy, Center for Devices and Radiological Health (HFZ-83), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Under 21 CFR 861.30, FDA shall provide interested persons an opportunity to participate in the development of a standard by accepting comments, and where appropriate, holding public meetings on issues relating to development of the standard. Therefore, FDA is announcing that it will hold an open public meeting, to discuss the issues described below, on September 11 and 12, 1989, at the Crowne Plaza Holiday Inn (address above).

In the **Federal Register** of January 4, 1989 (54 FR 187), FDA announced the availability of its "First Draft Proposed Standard for the Infant Apnea Monitor—October 1988," to request public comment. On January 25, 1989, in conjunction with the Seventh Annual Conference on Apnea of Infancy held in Rancho Mirage, CA, FDA held a public meeting to discuss the draft standard.

Based on 22 written comments received in response to the **Federal Register** notice and comments and information received at the public meeting, FDA has begun its revision of the draft proposed standard. It is expected that this revised draft will be sent out for public review in October 1989. Some of the changes which are being considered for incorporation into this draft of the standard include specifying different requirements for modular and stand-alone monitors and specifying detailed test methods for assuring compliance with the requirements.

The purpose of this public meeting is to discuss the current sensor modalities and devices used to measure infant apnea, combinations of sensors used to detect apnea and the pathophysiological result of apnea, and the currently used test methods. It is expected that this information will be used to develop the mandatory performance standard for infant apnea monitors. Invited speakers and their panels will discuss the issues, and questions will be solicited from the audience. The specific objectives of the open meeting are:

1. To describe the problems in sensing and monitoring of central, obstructive, and mixed apnea. The bench and clinical test methods used to evaluate this capability, including the acceptable range of false negatives and false positives, will be discussed.

2. To describe the combinations of primary and secondary sensor modalities used in the detection of infant apnea which are most effective in measuring apnea and the pathophysiological results of apnea. Bench and clinical testing as well as the acceptable range of false negatives and false positives for each of these sensing modalities will be described.

3. To describe the types of infant apnea monitors used in the home and the current effectiveness testing being done with these monitors. Aspects which may be unique to apnea monitors in this environment will be described.

4. To define the minimum test requirements for effectiveness which should be included in a standard for infant apnea monitor devices.

A summary of the proceedings of the open public meeting, as well as all data and information submitted voluntarily to FDA during the public meeting, will become part of the administrative record and will be available to the public under 21 CFR 20.111 from the Dockets Management Branch (address above). FDA projects that it will prepare and make available for comment a second draft of the standard in October 1989, before publishing in the **Federal Register** a proposed mandatory standard under section 514 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360d and 21 CFR 10.40).

All documents and comments related to the draft proposed standard may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 19, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-17334 Filed 7-24-89; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the month of August 1989:

Name: National Advisory Committee on Rural Health, Health Professions Work Group

Date and Time: August 8, 1989, 2:00 p.m., e.d.t.

Place: Room 14-22 Parklawn Building, Office of Rural Health Policy, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public.

Purpose: The Work Group is concerned with the supply and distribution of health personnel in rural areas.

Agenda: This meeting will be conducted through a telephone conference call. The Work Group will discuss an options paper on health manpower programs and set the agenda for the September meeting.

Anyone requiring information regarding the subject Committees should contact Mr. Jeffrey Human, Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Service Administration, Room 14-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-0835.

Persons interested in attending any portion of the above meeting should contact Ms. Arlene Granderson, Program Analyst, Office of Rural Health Policy, Health Resources and Service Administration, Room 14-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-0835.

Agenda Items are subject to change as priorities dictate.

Date: July 20, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89-17335 Filed 07-24-89; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Cancer Institute; Meeting of the Cancer Center Support Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Center Support Review Committee, National Cancer Institute, National Institutes of Health, August 2-3, 1989, Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

This meeting will be open to the public on August 2, from 8:30 a.m. to 9:30 a.m. to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on August 2, from approximately 9:30 a.m. to 6:00 p.m. and August 3, from 8:30 a.m. until adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301-496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. John Abrell, Executive Secretary, Cancer Center Support Review Committee, National Cancer Institute, Westwood Building, Room 834, National Institutes of Health, Bethesda, Maryland 20892 (301-496-9767) will furnish substantive program information.

Dated: July 14, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-17414 Filed 7-24-89; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Establishment of Three Indian Reservations in California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Reservation Proclamation for Hopland, Coyote Valley and Karok.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1. Notice is hereby given that, under the authority of Section 7 of the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467), the hereinafter described lands located in Mendocino and Siskiyou Counties, California, were proclaimed to be Indian reservations, effective June 23, 1989, for the exclusive use of Indians entitled by enrollment or tribal membership to residence at such reservation.

Coyote Valley Reservation

Mount Diablo Meridian, Mendocino County, California

Those portions of the north half of the southeast quarter of the southeast quarter of section 9, Township 16 North, Range 12 West, described as follows:

Parcel 1: All that a portion of the following described real property lying northerly and easterly of the most easterly line of Highway 101 as it existed January 1, 1979:

Beginning at a point marked "BL" standing in the channel of Russian River at the junction of—Forsythe Creek with the west fork of Russian River, from which on the 17th day of December 1866, an alder tree one foot in diameter bore north 58 west, 4 chains; thence 89 degrees 45' west, along the south line of Lot 124 of Healey's Survey and Map of the Yokayo Rancho, a distance of 1960.4 feet to a point in the center of the California State Highway from which point a post marked "B.M." bears north 89 degrees 45' west, 50 feet distant; thence along the center line of said highway north 57 degrees 27' west, 1602.08 feet to Station 416.+69.6 of said Highway Survey, from which point post "Y No. 67" of the Yokayo Rancho, bears south 18 degrees west, 129.45 feet distant; thence leaving said Highway and run north 20 degrees 49' east, 2013.49 feet to a post from which a white oak tree 16 inches in diameter marked "X-BT-RED" bears north 10 degrees 25' east, 135 feet distant, and a white oak tree 18 inches in diameter marked "X-BT-RED" bears north 59 degrees 45' east, 197.40 feet distant, thence south 87 degrees 53' east, 2316.82 feet to a stake in the east line of said Lot 124 from which a white oak tree 24 inches in diameter marked "F-BT-RED" bears north 20 degrees west, 62 feet distant and a black oak tree 16 inches in diameter marked "F-BT-RED" bears south 10 degrees west, 63.15 feet distant; thence south 17 degrees east, along the east line of said Lot 124, 1253 feet to the center of the channel of Russian River; thence down the center of the channel of said river and following its meanderings to the point of beginning, being a part of said Lot 124 of Healey's Survey Map of the Yokayo Rancho.

Saving and Excepting Therefrom:

(1) All that certain real property described in the Deed from William Finne to Leonard Bruesch, recorded December 18, 1916, in Book 139 of Deeds, Page 228, Mendocino County Records.

(2) All that certain real property described in the Deed from Fred Finne, et. ux, to A. O. Boyd, recorded September 17, 1924, in Book 170 of Deeds, Page 391, Mendocino County Records.

(3) All that certain real property described in the Deed from Fred Finne, et. ux, to Mrs. Ella Boyd, recorded September 21, 1943, in Book 164 of O. R., Page 426, Mendocino County Records.

(4). All that certain real property described in the Deed from Fred Finne, et. ux, to L. N. Barber, recorded December 6, 1928, in Book 37 official Records, Page 61, Mendocino County Records.

(5). All that certain real property described in the Deed from Fred Finne, et: ux, to Leland S. Murphy, et. al, recorded December 16, 1929, in Book 48 Official Records, Page 31, Mendocino Records.

(6). All that certain real property described in the Deed from Fred Finne, et. ux, to J. E. Russell, et. ux, recorded July 9, 1930, in Book 52 Official Records, Page 351, Mendocino County Records.

(7). All that certain real property described in the Deed from Fred Finne, et. ux, to State of California recorded February 11, 1946, in Book 194 Official Records, Page 260, Mendocino County Records.

(8). All that certain real property described in the Deed from Fred Finne, et. ux, to Frank Williams, recorded April 4, 1949, in Book 242 Official Records, Page 138, Mendocino County Records.

Parcel 2: That portion of Lot 124 of Healey's survey and Map of Yokayo Rancho, bounded on the north by the westerly prolongation of the course having a bearing and length of north 87 degrees 53' west, 2316.82 feet, in Deed from William Finne to Lemuel Keithly, dated November 27, 1936, recorded in Liber 109, page 272, of Official Records, of Mendocino County; on the southeast by the course in said Deed having a bearing and length of south 20 degrees 49' west 2013.49 feet; and on the southwest by the course in the northeasterly line of the State Highway described third in Deed from Carl E. Peterson, et. al, to the State of California, dated January 10, 1946, recorded in Book 198, Page 146, of Official Records. Containing 57.76 acres, more or less, after the above exceptions.

Hopland Reservation

Mount Diablo Meridian, Mendocino County, California

Those certain parcels of land, as listed below, being portions of the Sections 10, 11, 15, and 22, Township 13 North, Range 11 West, all located within the exterior Boundaries of the Hopland Rancheria as shown on the Record of Survey of the Hopland Rancheria recorded May 26, 1964, in Case 2 of Maps, Drawer 3, Page 14, in the Office of the Recorder, County of Mendocino, State of California: Parcel Six (6).

Parcel Forty-eight (48), excepting therefrom the following: Beginning at the southeast corner of said Parcel 48; thence North 89 degrees 48' West, 301.52 feet; thence in a northeasterly direction to the northeast corner of said Parcel 48;

thence South 232.49 feet to the point of beginning.

Said parcels containing 21.89 acres, more or less.

Karok Reservation

Humboldt Meridian, Siskiyou County, California

Parcel I and II as shown on the Parcel Map for Milton C. Kevershan located in Section 2, Township 16 North, Range 7 East, Filed January 6, 1976, in Parcel Map Book 3, Page 113. Said parcels containing 10.65 acres, more or less.

Said land being subject to all valid rights, reservation, rights-of-way and easement of record.

W. P. Ragsdale,

Deputy to the Assistant Secretary—Indian Affairs (Operations).

[FR Doc. 89-17338 Filed 7-24-89; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[NV020-4320-02]

Winnemucca District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Winnemucca District Grazing Advisory Board Meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 94-579 and section 3, Executive Order 12548 February 14, 1986, that a meeting of the Winnemucca District Grazing Advisory Board will be held on September 7, 1989. The meeting will begin at 10:00 a.m. in the conference room of the Bureau of Land Management, Office at 705 East Fourth Street Winnemucca, Nevada 89445.

The agenda for the meeting will include:

1. Public Statement—10:00 a.m.
2. District Manager's Update
3. Update on Appeal of 14 Agreements
4. Update on Soldier Meadows and Rodeo Creek Allotment Management Plans.
6. Range Improvement Funds: FY89 Projects, FY90 Projects, FY91 Projects.

The meeting is open to the public. Interested persons may make oral statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager,705 East Fourth Street, Winnemucca, Nevada 89445 by August 18, 1989. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the Board meeting will be maintained in the District Office and will be available for public inspection (during regular business hours) within 30 days following the meeting.

Dated: July 17, 1989.

Ron Wenker,

District Manager.

[FR Doc. 89-17339 Filed 7-24-89; 8:45 am]

BILLING CODE 4310-HC-M

[ID-943-09-4212-13; I-25586]

Issuance of Land Exchange Conveyance Document; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: The United States has issued an exchange conveyance document to Dyle Robertson Limited Partnership, Rexburg, Idaho 83440, for the following-described lands under section 206 of the Federal Land Policy and Management Act of 1976:

Boise Meridian

T. 7 N., R. 37 E.,
Sec. 17, SE¼NW¼;
Sec. 18, NE¼SE¼.

Comprising 80.00 acres of public land.

In exchange for these lands, the United States acquired the following-described lands:

Boise Meridian

T. 7 N., R. 37 E.,
Sec. 28, NE¼SW¼.
T. 8 N., R. 39 E.,
Sec. 18, SE¼NW¼.

Comprising 80.00 acres of private land.

The purpose of the exchange was to acquire the non-federal lands which have high public value for elk winter range. The public interest was well served through completion of this exchange.

The values of the federal public land and the non-federal land in the exchange were both appraised at $8,000.

Dated: July 14, 1989.

Duane E. Olsen,

Acting, Deputy State Director for Operations.

[FR Doc. 89-17340 Filed 7-24-89; 8:45 am]

BILLING CODE 4310-GG-M

[OR-943-09-4214-10; GP9-294; OR-36647]

Conveyance of Public Land; Oregon

AGENCY: Bureau of Land Mangagement, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the Conveyance of 40 acres of public land out of Federal ownership.

EFFECTIVE DATE: August 28, 1989.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

SUPPLEMENTARY INFORMATION: Notice is hereby given that in an exchange of Lands as published in the **Federal Register** dated July 6, 1988, made pursuant to section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 40 acres of land in Klamath County, Oregon, from Federal to private ownership and are described as follows:

Willamette Meridian

T. 40 S., R. 14 E.,
Sec. 6, SE¼SE¼.

Catherine H. Crawford,

Acting Chief, Branch of Lands and Minerals Operations.

Dated: June 12, 1989.

[FR Doc. 89-1734 Filed 7-24-89; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-09-4213-10; GP9-287; OR-45225(WASH)]

Proposed Withdrawal and Opportunity for Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has filed an application to withdraw 640 acres of National Forest System lands for protection of the North Cascades Scenic Highway Zone. This notice closes the lands for up to 2 years from location and entry under the United States Mining laws.

DATE: Comments must be received by October 31, 1989.

ADDRESS: Comments should be sent to the Oregon/Washington State Director, BLM, P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208; 503-231-6905.

SUPPLEMENTARY INFORMATION: On July 13, 1989, the U.S. Department of Agriculture, Forest Service, filed an application to withdraw the following described National Forest System lands from location and entry under the mining laws, subject to valid existing rights:

Willamette Meridian

Mt. Baker, Okanogan, and Wenatchee National Forests

A strip of land varying widths of from 200 to 2,000 feet on each side of and running parallel and concentric with the monumented centerline of State Highway 20 through the following described townships and sections as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office, and excepting any portions thereof that lie within the existing withdrawals made by Public Land Order No. 3794 of August 17, 1965, Public Land Order No. 3380 of April 6, 1964, and Public Land Order No. 4555 of November 18, 1968:

T. 37 N., R. 14 E., Unsurveyed,
Secs. 10, 11, 12, and 13.
T. 36 N. R. 16 E., Unsurveyed,
Secs. 3, 4, 10, 11, 14, 15, 23, 24, 25, and 36.
T. 37 N., R. 16 E., Unsurveyed,
Secs. 17, 20, 21, 28, 29, 33, and 34.
T. 35 N., R. 17 E., Unsurveyed,
Secs. 5, 6, 7, 8, 13, 16, 17, 21 to 28, inclusive, and 35.
T. 36 N., R. 17 E., unsurveyed,
Sec. 31.
T. 35 N., R. 18 E., Unsurveyed,
Secs. 5, 8, 17, 18, 19, and 20.
T. 36 N., R. 18 E., unsurveyed,
Secs. 21 to 29, inclusive, 32, and 33.
T. 36 N., R. 19 E., unsurveyed,
Secs. 19, 20, 27, 28, 29, 30, 32, and 33.

The areas described aggregate, after making the above-mentioned exceptions, approximately 640 acres in Chelan, Okanogan, Skagit, and Whatcom Counties, Washington.

The purpose of the proposed withdrawal is to protect portions of the North Cascades Scenic Highway Zone that are not already protected by existing withdrawals. Said highway zone extends for a distance of approximately 36 miles between the easterly boundary of the Ross Lake National Recreation Area and a point located approximately one mile west of the Early Winter Ranger Station.

All persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing on or before October 31, 1989, to the Oregon/Washington State Director, Bureau of Land Management, at the address indicated above.

Notice is hereby given that an opportunity for public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard must submit a written request to the Oregon/Washington State Director, Bureau of Land Management, on or before October 31, 1989. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 90 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register** and subject to valid existing rights, the land will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. The Forest Service has authority to permit all temporary uses during the segregative period with the exception of the disposal of the mineral resources under the mining laws.

The temporary segregation of the lands in connection with this withdrawal application shall not affect the administrative jurisdiction over the lands.

Dated: July 17, 1989.

Champ C. Vaughan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89-17342 Filed 7-24-89; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Hall-Houston Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 8671, Block 257, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Freshwater City, Louisiana.

DATE: The subject DOCD was deemed submitted on July 14, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: July 17, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-17343 Filed 7-24-89; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Concession Contract Negotiations; Adrift Adventures, Inc., et al.

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate concession contracts with Adrift Adventures, Inc.; Adventure Bound, Inc.; American River Touring Association; Colorado Outward Bound School, Inc.; Don Hatch River Expeditions, Inc.; Holiday River Expeditions, Inc.; Le Grand Adventures;

BEST COPY AVAILABLE

Don Neff River Company; Peak River Expeditions; Ken Sleight Expeditions; and World Wide River Expeditions, Inc. authorizing them to continue to provide guided white water interpretive river float trips for the public at Dinosaur National Monument, Colorado for a period of five (5) years from January 1, 1990, through December 31, 1994.

EFFECTIVE DATE: September 25, 1989.

ADDRESS: Interested parties should contact the Regional Director, Rocky Mountain Region, P.O. Box 25287, Denver, Colorado 80225, for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioners have performed their obligations to the satisfaction of the Secretary under existing permits which expire by limitation of time on December 31, 1989, and therefore, pursuant to the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), are entitled to be given preference in the renewal of the new contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioners, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Jack W. Neckels,

Acting Regional Director, Rocky Mountain Region.

Date: June 15, 1989.

[FR Doc. 89-17374 Filed 7-24-89; 8:45 am]

BILLING CODE 4310-70-M

Concession Contract Negotiations; Isle Royale Seaplane Service, Inc.

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession permit with Isle Royale Seaplane Service, Inc. authorizing it to continue to provide air transportation facilities and services for the public at Isle Royale National Park, Michigan for a period of five (5) years from January 1, 1990, through December 31, 1994.

EFFECTIVE DATE: September 25, 1989.

ADDRESS: Interested parties should contact the Regional Director, Midwest Region, 1709 Jackson St., Omaha, NE 68102, for information as to the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environment Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed it's obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on December 31, 1988, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Don H. Castleberry

Regional Director, Midwest Region.

Date: July 20, 1989.

[FR Doc. 89-17375 Filed 7-24-89; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 15, 1989. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Writen comments should be submitted by August 9, 1989.

Amy Schlagel,

Acting Chief of Registration, National Register.

ARIZONA

Yavapai County

Pine Crest Historic District, Roughly bounded by San Carlos St., Coronado Ave., and Yavapai, Apache, and Mohave Drs., Prescott, 89001074

West Prescott Historic District, Roughly bounded by Gurley Dr., Park Ave., Country Club Dr., Vista Dr., and Coronado Ave., Prescott, 89001075

CALIFORNIA

El Dorado County

Van Buren Place Historic District, 2620—2657 Van Buren Pl., Los Angeles, 89001103

CONNECTICUT

Fairfield County

Ball and Roller Bearing Company, 20—22 Maple Ave., Danbury, 89001087

Ferris, Samuel, House, E. Putnam and Cary Sts., Greenwich, 89001086

Suburban Club, 6 Suburban Ave./580 Main St., Stamford, 89001090

Hartford County

Hale, Dr. Elizur, House, 3181 Hebron Ave., Glastonbury, 89001088

New Haven County

Orange Center Historic District, Roughly Orange Center Rd. from Orange Cemetery to Nan Dr., Orange, 89001089

Oyster Point Historic District, Roughly bounded by I-95, S. Water St., Howard Ave., Sea St., and Greenwich Ave., New Haven, 89001085

FLORIDA

Broward Count

Young, Joseph Wesley, House, 105 Hollywood Blvd., Hollywood, 89001076

Sarasota County

House at 710 Armada Road South (Venice MPS), 710 Armada Rd. S., Venice, 89001073

Venice Depot (Venice MPS), 303 E. Venice Ave., Venice, 89001072

GEORGIA

Bibb County

Shirley Hills Historic District, Roughly Senate Pl., Parkview Dr., Curry Dr., Briarcliff Rd., Nottingham Dr., and the Ocmulgee River, Macon, 89001093

Bulloch County

Mevil, Dr. John C., House, US 301 S of Register, Register vicinity, 89001105

Cobb County

Washington Avenue Historic District, Roughly bounded by Lawrence St., Rigsby St., Washington Ave., and Haynes St., Marietta, 89001102

Greene County

Jefferson Hall, GA 12, Union Point vicinity, 89001100

MARYLAND

Baltimore Independent City

Seven-Foot Knoll Lighthouse, Pier 5, Inner Harbor, Baltimore (Independent City), 89001096

MISSISSIPPI

Jackson County

Ocean Springs Community Center (Anderson, Walter, MPS), Washington Ave., Ocean Springs, 89001092

Shearwater Historic District (Anderson, Walter, MPS), Roughly bounded by Shearwater Dr., Inner Harbor, and Bay of Biloxi, Ocean Springs, 89001091

MISSOURI

Washington County

Susan Cave (23WA190), Address Restricted, Potosi vicinity, 89001104

TENNESSEE

Blount County

Alcoa South Plant Office (Blount County MPS), Hall Rd., Alcoa, 89001070

Calderwood Dam (Blount County MPS), Tennessee River at end of Calderwood Rd., Calderwood vicinity, 89001069

Indiana Avenue Historic District (Blount County MPS), Roughly bounded by Goddard St., Court St., Indiana Ave., and Cates St., Maryville, 89001071

Shaddon Mill Site (Blount County MPS), Ninemile Creek at jct. of Big Elm and Trigonia Rds., Maryville vicinity, 89001094

WISCONSIN

Milwaukee County

Church Street Historic District, 1448—1630 Church St. and 7758 W. Menomonee River Pky., Wauwatosa, 89001099

WYOMING

Albany County

Brooklyn Lodge, WY 130, 7.5 mi. W of Centennial, Centennial vicinity, 89001068

[FR Doc. 89-17376 Filed 7-24-89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative Notice to the Commission of Intent to Perform—Interstate Transportation for Certain Nonmembers

Date: July 20, 1989.

The following Notices were filled in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, non-exempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

A. (1) Land O'Lakes, Inc.

(2) 4001 Lexington Ave. No., Arden Hills, MN 55126.

(3) 4001 Lexington Avenue No., Arden Hills, MN 55126.

(4) Herb Sorvik, P.O. Box 116, Minneapolis, MN 55440.

B. (1) Norpac Services, Inc.

(2) 4350 S.W. Galewood St., Lake Oswego, OR 97035.

(3) 18053 S.W. Lower Boones Ferry Rd., Durham, OR 97062.

(4) Mel Priday, P.O. Box 2249, Lake Oswego, OR.

Noreta R. McGee,

Secretary.

[FR Doc. 89-17353 Filed 7-24-89; 8:45 am]

BILLING CODE 7035-01-M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. The parent corporation and address of its principle office is: W. R. Grace & Co., Grace Plaza, 1114 Avenue of the Americas, New York, NY 10036.

2. Wholly-owned subsidiaries which are participating in the operations and their state(s) of incorporation.

(a) AG Chem International, Inc. (Delaware)
(b) Alewife Boston Ltd. (Massachusetts)
(c) Alewife Land Corporation (Massachusetts)
(d) A-1 Bit & Tool Co., Inc. (Delaware)
(e) American Carry Products Corp. (California)
(f) Antilles Chemical Company (Delaware)
(g) Beckett Golf Club, Inc. (New Jersey)
(h) Berry Gas Company (Oklahoma)
(i) Camillus Acres, Inc. (New York)
(j) Caribe Nitrogen Corporation (Puerto Rico)
(k) Chomerics, Inc. (Delaware)
(l) Chomerics Europe, Inc. (Delaware)
(m) Chomerics Puerto Rico, Inc. (Delaware)
(n) Coalgrace, Inc. (Delaware)
(o) Darex Puerto Rico, Inc. (Delaware)
(p) Daylin-Summit, Inc. (New York)
(q) Devcoa Incorporated (Florida)
(r) Dewey and Almy Company (Massachusetts)
(s) Ecarg, Inc. (New Jersey)
(t) E L Liquidating Corp. (Ohio)
(u) Emerson & Cuming, Inc. (Delaware)
(v) GEC Equipment Co. (California)
(w) GRC Property, Inc. (Delaware)
(x) Gloucester New Communities Company, Inc. (New Jersey)
(y) GPC Marketing Company (Delaware)
(z) GPC Transporter, Inc. (Delaware)
(aa) Grace A-B Inc. (Delaware)
(ab) Grace ASC Corp. (Delaware)
(ac) Grace Communications, Inc. (Delaware)
(ad) Grace Transportation Services, Inc. (Delaware)
(ae) Grace Equipment Co. (Texas)
(af) Grace H-G Inc. (Delaware)
(ag) Grace Industrial Chemicals, Inc. (Delaware)
(ah) Grace (Middle East) Inc. (Delaware)
(ai) Grace Natural Resources Corp. (Delaware)
(aj) Grace Offshore Company (Louisiana)
(ak) Grace PAR Corporation (Delaware)
(al) Grace Petroleum Corporation (Delaware)
(am) Grace Petroleum Libya Incorporated (Delaware)
(an) Grace Technology Marketing Services, Inc. (Delaware)
(ao) Grace Ventures Corp. (Delaware)
(ap) Grace Washington, Inc. (Delaware)
(aq) W. R. Grace Capital Corporation (New York)
(ar) W. R. Grace Credit Corp. (Delaware)
(as) W. R. Grace Land Corporation (New York)
(at) W. R. Grace Properties, Inc. (New York)
(au) W. R. Grace Sales Corp. (Virgin Islands)
(av) W. R. Grace & Co.—Conn. (Connecticut)
(aw) Gracoal, Inc. (Delaware)
(ax) Hanover Square Corporation (Delaware)
(ay) Homco International, Inc. (Delaware)
(az) Monolith Enterprises, Incorporated (District of Columbia)
(ba) Monolith Kitchens, Inc. (Maryland)
(bb) Mount Bundey Mining, Inc. (Delaware)
(bc) Ochoa Fertilizer Co., Inc. (Puerto Rico)
(bd) Offshore Fisheries, Inc. (Massachusetts)
(be) Ridgewood Acceptance Corporation (Delaware)
(bf) Ridgewood Bartow Holdings, Inc. (Delaware)
(bg) Ridgewood Phosphate Corporation (Delaware)
(bh) Seven Hanover Square Corp. (New York)
(bi) 7911 Braygreen, Inc. (Delaware)
(bj) Sourgasco II Corp. (Delaware)
(bk) Southern Oil, Resin & Fiberglass, Inc. (Florida)

(bl) Standard TransPipe Corp. (Delaware)
(bm) Standard TransPipe Inc. (Virginia)
(bn) StanTrans, Inc. (Delaware)
(bo) Support Terminal Services, Inc. (Delaware)
(bp) 1211 Wisconsin, Inc. (Delaware)
(bq) Ven-Tech One, Inc. (Delaware)
(br) Water Street Corporation (Delaware)
(bs) Woodward Chemicals Corporation (Delaware)
(bt) Woolwich Sewer Company, Inc. (New Jersey)
(bu) Woolwich Water Company, Inc. (New Jersey)
(bv) W. R. C. Technical Ventures, Inc. (Delaware)

B. 1. Parent corporation and address of principal office: Kohler Co., 444 Highland Drive, Kohler, Wisconsin 53044.

2. Wholly-owned subsidiary which will participate in the operations and state of incorporation:

Kohler Transport, Inc.—Wisconsin
Sterling Plumbing Group, Inc.—Delaware
Kohler Ltd.—Province of Ontario
Baker, Knapp & Tubbs, Inc.—North Carolina
Kohler Sanimex, S.A. de C.V.—Apodaca, N.L., Mexico
Ann Sacks Tile and Stone, Inc.—Oregon
Ann Sacks Tile and Stone, Ltd.—Province of British Columbia
Kallista, Inc.—California
Kohler Interiors Group, Ltd.—Delaware
Kohler Japan KK—Japan
Compagnie Internationale Des Produits Sanitaires CIPS S.A.—France

C. 1. The name of the parent corporation and address of its principal office is: PepsiCo, Inc., 700 Anderson Hill Road, Purchase, NY 10577.

2. The name and state of incorporation of each of the wholly-owned subsidiaries that will participate in compensated intercorporate hauling are:

1. A&M Food Services, Inc. (NV)
2. Amarillo Pepsi-Cola, Inc. (TX)
3. Atlantic Soft Drink Company, Inc. (SC)
4. Atlantic Soft Drink Company of Knoxville (TN)
5. Belfast Bottling Co. of Reno (NV)
6. Beverage Products Corporation (OK)
7. Beverages, Foods & Services Industries, Inc. (DE)
8. Brainerd-Wadena Beverage Company (MN)
9. Buckeye Pizza Hut, Inc. (OH)
10. Cascade Advertising, Inc. (OR)
11. Chesapeake Bay Pizza Hut, Inc. (MD)
12. Claremont Pepsi-Cola Bottling & Co., Inc. (NH)
13. Contract Beverages, Inc. (MN)
14. Contract Recyclers, Inc. (MN)
15. D&E Foodservice, Inc. (SC)
16. Dr. Pepper Bottling Co. of San Francisco (CA)
17. Edmund Industrial Redevelopment Corporation (MO)
18. El KrAm, Inc. (IA)
19. Elko Bottling Co. (NV)
20. Equity Beverages, Inc. (DE)
21. Erie Bottling Corporation (PA)
22. Export Development Corp. (DE)
23. Fresno H&B, Inc. (CA)
24. Frito-Lay, Inc. (DE)
25. Frito-Lay of Puerto Rico, Inc. (DE)
26. Frito-Lay of the Islands (DE)
27. General Beverages of Oklahoma, Inc. (OK)
28. General Cinema Beverages, Inc. (DE)
29. General Cinema Beverages of Akron, Inc. (DE)
30. General Cinema Beverages of California, Inc. (DE)
31. General Cinema Beverages of Dayton, Inc. (DE)
32. General Cinema Beverages of Ft. Myers, Inc. (DE)
33. General Cinema Beverages of Georgia, Inc. (DE)
34. General Cinema Beverages of Indiana, Inc. (DE)
35. General Cinema Beverages of Miami, Inc. (DE)
36. General Cinema Beverages of North Carolina, Inc. (DE)
37. General Cinema Beverages of North Florida, Inc. (DE)
38. General Cinema Beverages of Ohio, Inc. (DE)
39. General Cinema Beverages of Springfield, Inc. (DE)
40. General Cinema Beverages of Virginia, Inc. (DE)
41. General Cinema Beverages of Washington, D.C., Inc. (DE)
42. General Cinema Beverages of West Virginia, Inc. (DE)
43. General Cinema Beverages of Youngstown, Inc. (DE)
44. Iron Range Bottling Co., Inc. (MN)
45. Jackson David Bottling Co. (CO)
46. Jolly Jorge's, Inc. (MA)
47. Kentucky Fried Chicken, Domestic (DE)
48. Lafayette Beverages, Inc. (NH)
49. Lafayette Distributing Company, Inc. (NH)
50. Lake Michigan Management Co., Inc. (WI)
51. Laurel Group Limited (PA)
52. Mesa Beverage Company (CO)
53. Middleton and Wilson Corporation (MO)
54. Middleton Enterprises, Inc. (MO)
55. Mountaineer Pizza Hut Inc. (WV)
56. National Beverages, Inc. (FL)
57. New Century Beverage Company (CA)
58. One-O-Nine Company (MO)
59. Oriole Pizza Hut, Inc. (MD)
60. Penn Alto Bottling Works, Inc. (PA)
61. PepsiCo Services Corp. (DE)
62. PepsiCo Services International (DE)
63. PepsiCo World Trading Co., Inc. (DE)
64. Pepsi-Cola Alton Bottling, Inc. (IL)
65. Pepsi-Cola Bottling Co. Cumberland, Inc. (MD)
66. Pepsi-Cola Bottling Company of Clarksburg (WA)
67. Pepsi-Cola Bottling Company of Crisp, Inc. (GA)
68. Pepsi-Cola Bottling Company of Danville (VA)
69. Pepsi-Cola Bottling Company of Dodge City, Inc. (MN)
70. Pepsi-Cola Bottling Company of Grand Island (NE)
71. Pepsi-Cola Bottling Company of Johnstown, PA (PA)
72. Pepsi-Cola Bottling Co. of Los Angeles (CA)
73. Pepsi-Cola Bottling Company of Lyons, Inc. (MN)
74. Pepsi-Cola Bottling Co. of Minneapolis & St. Paul (MN)
75. Pepsi-Cola Bottling Co. of Oklahoma City, Inc. (OK)
76. Pepsi-Cola Bottling Company of Omaha, Inc. (NE)
77. Pepsi-Cola Bottling Company of Perry (FL)
78. Pepsi-Cola Bottling Company of Petersburg (VA)
79. Pepsi-Cola Bottling Company of Petersburg (WV)
80. Pepsi-Cola Bottling Company of Reading (PA)
81. Pepsi-Cola Bottling Company of Salt Lake City, Inc. (MN)
82. Pepsi-Cola Bottling Company of St. Louis, Inc. (MO)
83. Pepsi-Cola Bottling Company of St. Mary's, Inc. (PA)
84. Pepsi-Cola Bottling Company of Salinas, Inc. (CA)
85. Pepsi-Cola Bottling Company of Santa Cruz, Inc. (CA)
86. Pepsi-Cola Bottling Company of South Jersey, Inc. (NJ)
87. Pepsi-Cola Bottling Company of Tampa (FL)
88. Pepsi-Cola Bottling Company of Valdosta (GA)
89. Pepsi-Cola Bottling Company of Wichita, Inc. (MN)
90. Pepsi-Cola Bottling Company of Wilmington (DE)
91. Pepsi-Cola Bottling Co. of Louden (NH)
92. Pepsi-Cola Distribution Co. of Delaware Valley (PA)
93. Pepsi-Cola Equipment Corp. (NY)
94. Pepsi-Cola Metropolitan Bottling Co., Inc. (NY)
95. Pepsi-Cola Manufacturing Co., Inc. (DE)
96. Pepsi-Cola San Joaquin Bottling Company (DE)
97. Pepsi-Cola Sweetners, Inc. (DE)

98. Petal, Inc. (DE)
99. Pizza Hut, Inc. (DE)
100. Pizza Hut of America, Inc. (DE)
101. Pizza Hut of Charles County, Inc. (MD)
102. Pizza Hut of Dorchester County, Inc. (MD)
103. Pizza Hut of Duncan Inc. (OK)
104. Pizza Hut of East Wicomice County, Inc. (MD)
105. Pizza Hut of Garrett County, Inc. (MD)
106. Pizza Hut of Las Vegas (NV)
107. Pizza Hut of Okemah, Inc. (OK)
108. Pizza Hut of Okmulgee, Inc. (OK)
109. Pizza Hut of Oregon, Inc. (OR)
110. Pizza Hut of San Diego, Inc. (CA)
111. Pizza Hut of St. Louis, Inc. (MO)
112. Pizza Hut of St. Mary's County, Inc. (MD)
113. Pizza Hut of Talbot County, Inc. (MD)
114. Pizza Hut of Titusville, Inc. (FL)
115. Pizza Hut of Utah, Inc. (UT)
116. Pizza Hut of West, Inc. (CA)
117. Pizza Hut of Wicomice County, Inc. (MD)
118. Pizza Hut of Zion, Inc. (IL)
119. Pizza Hut of the Northwest, Inc. (MN)
120. Pizza-2-U (NM)
121. Potomac Pizza Hut, Inc. (MD)
122. Pub Beverages, Inc. (CA)
123. Rice Bottling Enterprises, Inc. (TN)
124. Rogers Beverages, Inc. (NH)
125. Sabritas S.A. de C.V. (DE)
126. Saxton Bottling Co., Inc. (PA)
127. Smartfoods, Inc. (MA)
128. Single Tree Corporation (MO)
129. Southern Pizza Huts, Inc. (LA)
130. Southwest Beverage Corporation (DE)
131. Supreme Pizza, Inc. (MO)
132. Taco Bell Corp. (CA)
133. Temanti S.A. de C.V. (MX)
134. TJF Beverages, Inc. (OK)
135. UniBev, Inc. (PA)
136. Waycross Pepsi-Cola Bottling Company (GA)
137. Wilchart, Ltd. (DE)
138. Willamette Beverage Co. (OR)

Noreta R. McGee,
Secretary.

[FR Doc. 89-17354 Filed 7-24-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 89-16]

Ramesh Kumar Gupta, R.Ph. d/b/a Bloomfield Professional Center Pharmacy, Hearing

Notice is hereby given that on March 2, 1989, the Drug Enforcement Administration, Department of Justice, issued to Ramesh Kumar Gupta, R.Ph., d/b/a Bloomfield Professional Center Pharmacy, an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for a DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, September 12, 1989, commencing at 11:00 a.m., at the Federal Building, 200 East Liberty, First Floor Courtroon, Ann Arbor, Michigan.

Dated: July 14, 1989.

John C. Lawn,
Administrator, Drug Enforcement Administration.

[FR Doc. 89-17290 Filed 7-24-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-114]

Larry L. Kompus, M.D., Orchard Lake, MI, Hearing

Notice is hereby given that on November 10, 1988, the Drug Enforcement Administration, Department of Justice, issued to Larry L. Kompus, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for a DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, August 15, 1989, commencing at 10:00 a.m., at the Federal Building, 200 East Liberty, First Floor Courtroon, Ann Arbor, Michigan.

Dated: July 14, 1989.

John C. Lawn,
Administrator, Drug Enforcement Administration.

[FR Doc. 89-17291 Filed 7-24-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-117]

Ernesto Y. Medina, M.D., Berrien Springs, MI, Hearing

Notice is hereby given that on November 9, 1988, the Drug Enforcement Administration, Department of Justice, issued to Ernesto Y. Medina, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AM6195211, and any pending applications for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, August 17, 1989, commencing at 10:00 a.m., at the Federal Building, 200 East Liberty, First Floor Courtroon, Ann Arbor, Michigan.

Dated: July 14, 1989.

John C. Lawn,
Administrator, Drug Enforcement Administration.

[FR Doc. 89-17292 Filed 7-24-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-119]

Daniel L. Quion, M.D., Coloma, MI, Hearing

Notice is hereby given that on November 9, 1988, the Drug Enforcement Administration, Department of Justice, issued to Daniel L. Quion, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AQ3147647, and any pending applications for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Thursday, August 17, 1989, commencing at 10:00 a.m., at the Federal Building, 200 East Liberty, First Floor Courtroom, Ann Arbor, Michigan.

Dated: July 14, 1989.

John C. Lawn,
Administrator, Drug Enforcement Administration.

[FR Doc. 89-17293 Filed 7-24-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-118]

Rodolfo L. Quion, M.D., Coloma, MI, Hearing

Notice is hereby given that on November 9, 1988, the Drug Enforcement Administration, Department of Justice, issued to Rodolfo L. Quion, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate

of Registration, AQ6855259, and any pending applications for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Thursday, August 17, 1989, commencing at 10:00 a.m., at the Federal Building, 200 East Liberty, First Floor Courtroom, Ann Arbor, Michigan.

Dated: July 14, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-17294 Filed 7-24-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-22,578]

The Florsheim Shoe Co., Paducah, KY; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 14, 1989 applicable to all workers engaged in the production of men's dress shoes at The Florsheim Shoe Company, Paducah, Kentucky. The Certification was published in the **Federal Register** on May 23, 1989 (54 FR 22382).

Based on new information from the company, additional workers were separated from The Florsheim Shoe Company in Paducah, Kentucky a few weeks prior to the January 17, 1989 impact date. The notice, therefore is amended by changing the impact date to December 1, 1988.

The amended notice applicable to TA-W-22,578 is issued as follows:

All workers engaged in the production of men's dress shoes at The Florsheim Shoe Company, Paducah, Kentucky who became totally or partially separated from employment on or after December 1, 1988 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 13th day of July 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-17347 Filed 7-24-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,735]

Iberia Petroleum Co., Houston, Texas; Affirmative Determination Regarding Application for Reconsideration

On June 19, 1989, the company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers of Iberia Petroleum Company, Houston, Texas. The negative determination was issued on May 26, 1989 and published in the **Federal Register** on June 23, 1989 (54 FR 26444).

The company submitted additional information showing that a substantial amount of its business was devoted to exploration for for oil and gas in 1988.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 14th day of July 1989.

Barbara Ann Farmer,

Director, Office of Program Management, UIS.

[FR Doc. 89-17348 Filed 07-24-89; 8:45 am]

BILLING CODE 4510-30-M

LOWER MISSISSIPPI DELTA DEVELOPMENT COMMISSION

Announcement of Commission Meeting and Kentucky Public Hearing

Background

The Lower Mississippi Delta Development Commission was created by Pub. L. 100-460, signed on October 1, 1988. The purpose of the Commission is to identify and study the economic development, infrastructure, employment, transportation, resource development, education, health care, housing, and recreation needs of the Lower Mississippi Delta region by seeking and encouraging the participation of interested citizens, public officials, groups, agencies, and others in developing a 10-year plan that makes recommendations and establishes priorities to alleviate the needs identified. The Commission will make its report to Congress, the President, and the Governors of Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee no later than May 14, 1990.

This notice announces a meeting of the Commission and the Kentucky public hearing.

Meeting

Time: 8:00 a.m., August 10, 1989
Place: J.R's Executive Inn, 1 Executive Boulevard Paducah, Kentucky 42001
Status: Open Meeting

Public Hearing

Time: 10:00 a.m., August 10, 1989
Place: J.R's Executive Inn, 1 Executive Boulevard Paducah, Kentucky
Status: Public oral and written testimony encouraged
Contract: Ann Sartwell, Telephone (901) 753-1400

Wilbur F. Hawkins,

Executive Director.

[FR Doc. 89-17319 Filed 7-24-89; 8:45 am]

BILLING CODE 6820-SN-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before September 8, 1989. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending:

1. Defense Nuclear Agency (N1-374-89-28). Background, scheduling, and coordinating material for Congressional Hearings.

2. Defense Nuclear Agency (N1-374-89-32). Management Improvement project records and associated feasibility studies.

3. Defense Nuclear Agency (N1-374-89-38). Facilitative records relating to emergency planning.

4. Defense Nuclear Agency (N1-374-89-39). Routine printing, binding, and duplication files.

5. Defense Nuclear Agency (N1-374-89-40). Routine administrative files relating to the management of civilian and military manpower.

6. Defense Nuclear Agency (N1-374-89-41). Notes, preliminary drafts, publications, directives, and similar material used as source material for the annual command histories. (Command histories are retained as permanent records.)

7. Defense Nuclear Agency (N1-374-89-42). Routine administrative records relating to loan accounts.

8. Department of Labor, Bureau of Labor Statistics (N1-257-87-2). Comprehensive schedule for the Office of Safety and Health Statistics.

9. Department of the Treasury, Office of Foreign Assets Control (N1-265-89-1). Blocked Chinese Assets report forms, completed in 1950 (TFR 603).

10. U.S. District Court, Anchorage (N1-21-89-2). Chattel mortgage and conditional sale contract files.

Dated: July 18, 1989.

Claudine J. Weiher,

Acting Archivist of the United States.

[FR Doc. 89-17345 Filed 7-24-89; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL COMMUNICATIONS SYSTEM

Federal Telecommunication Standards

AGENCY: National Communications System, Office of Technology and Standards.

ACTION: Notice for comment on proposed standard.

SUMMARY: The purpose of this notice is to solicit the views of Federal agencies, industry, the public, and State and local governments on proposed Federal Telecommunications Standard 1055 "Telecommunications: Interoperability Requirements for Meteor Burst Communications."

DATE: Comments are due on or before October 23, 1989.

ADDRESS: Send comments to the National Communications System, Office of Technology and Standards Washington, DC 20305-2010.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Fenichel, National Communications System, telephone (202) 692-2124.

SUPPLEMENTARY INFORMATION:

1. The General Services Administration (GSA) is responsible under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of General Services designated the National Communications System (NCS) as the responsible agent for the development of Federal telecommunication standards.

2. Prior to the adoption of proposed Federal standards, it is important that proper consideration be given to the needs and views of Federal agencies, industry, the public, and State and local governments.

3. Requests for copies of the July 11, 1989 draft of FED-STD 1055 should be directed to the National Communications System, Office of Technology and Standards, Washington, DC 20305-2010.

Dennis Bodson,

Assistant Manager NCS Office of Technology & Standards.

[FR Doc. 89-17316 Filed 7-24-89; 8:45 am]

BILLING CODE 3810-00-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. *Type of submission, new, revision, or extension:* New.

2. *The title of the information collection:* Survey of Source and Device Users.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* The information will be collected in a one-time survey.

5. *Who will be required or asked to report:* Certain persons authorized under the general license in 10 CFR Part 31 to possess and use sources and devices containing radioactive material, and certain holders of specific licenses for the possession and use of sources and devices containing radioactive material.

6. *An estimate of the number of responses:* 4,000 annually.

7. *An estimate of the total number of hours needed to complete the requirement or request:* Approximately 0.5 hours per mail or telephone response or 2 hours per site visit, for an average

of 1.1 hours per response. The total industry burden is estimated to be 4,400 hours per year.

8. *An indication of whether section 3504(h), Pub. L. 96-511 applies:* Not applicable.

9. *Abstract:* NRC will contact, by mail or telephone interview or site visit, persons holding general licenses under 10 CFR Part 31 to verify what devices are in their possession, to verify that they are complying with requirements of NRC regulations, and to determine the utility of a formalized mail survey program. NRC will also conduct a survey of certain holders of specific licenses for possession and use of radioactive material to determine their source/device inventory.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Nicolas B. Garcia, Paperwork Reduction Project (3150-0124), Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395-3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 17th day of July 1989.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,

Designated Senior Official for Information Resources Management.

[FR Doc. 89-17365 Filed 7-24-89; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the Office of Management and Budget (OMB) review of information collection.

SUMMARY: The U.S. Nuclear Regulatory Commission has recently submitted to the OMB for review the following for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. *Type of submission, new, revision, or extension:* Revision

2. *The title of the information collection:* 10 CFR Parts 30, 40, 50, 60, 70, 72 and 150 "Preserving the Free Flow of Information to the Commission," Proposed Rule

3. *The form number if applicable:* Not applicable

4. *How often the collection is required:* One Time

5. *Who will be required or asked to report:* Commission licensees and license applicants

6. *An estimate of the number of responses:* 8,382

7. *An estimate of the total number of hours needed to complete the requirement or request:* 18,832 annually, 2.2 hours per recordkeeper

8. *An indication of whether section 3504(h), Pub. L. 96-511 applies:* Not applicable.

9. *Abstract:* The Nuclear Regulatory Commission is proposing a revision to its rules governing the conduct of all Commission licensees and license applicants. The proposed rule would require licensees and license applicants to ensure that neither they, nor their contractors or subcontractors, impose conditions in settlement agreements under Section 210 of the Energy Reorganization Act, or in other agreements affecting employment, that would prohibit, restrict, or otherwise discourage an employee from providing the Commission with information on potential safety violations. The proposed rule would require licensees and license applicants to establish procedures to ensure that their contractors and subcontractors are informed of the prohibition, that they are notified of any complaints of discrimination by an employee of a contractor or subcontractor for providing such information related to work performed for the licensee or license applicant, and to require review by the licensee or license applicant of any settlement agreements related to any employee complaints of such discrimination by a contractor or subcontractor related to work performed for the licensee or license applicant. The establishment of these procedures constitutes the creation of a one-time record.

ADDRESSES: Copies of the submittals may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Comments and questions should be directed to the OMB reviewer: Nicholas B. Garcia, Paperwork Reduction Project (3150-0017), Office of Management and Budget, Washington, DC 20503. Comments can also be submitted by telephone (202) 395-3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 19th day of July 1989.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,

Designated Senior Official for Information Resources Management.

[FR Doc. 89-17366 Filed 7-24-89; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. *Type of submission—new, revision, or extension:* Extension

2. *The title of the information collection:* Simulation Facility Certification

3. *The form number if applicable:* NRC Form 474

4. *How often the collection is required:* One time requirement

5. *Who will be required or asked to report:* All power reactor licensees and applicants for an operating license.

6. *An estimate of the number of responses:* 23 annually

7. *An estimate of the total number of hours needed to complete the requirement or request:* 2760 annually, approximately 120 hours per response.

8. Section 3504(h), Pub. L. 96-511 does not apply.

9. *Abstract:* Licensed power facilities which propose the use of a simulation facility consisting solely of a plant-referenced simulator for the conduct of NRC licensing operating tests are to submit NRC Form 474.

ADDRESSEES: Copies of the submittal will be made available for inspection or copying for a fee at the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Comments and questions can be directed by mail to the OMB reviewer: Nicolas B. Garcia, Paperwork Reduction Project (3150-0138), Office of Management and Budget, Washington, DC 20503.

Comments can also be communicated by telephone at (202) 395-3084.

NRC Clearance Officer is Brenda J. Shelton, (3CI) 492-8132.

Dated at Bethesda, Maryland, this 17th day of July 1989.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,

Designated Senior Official for Information Resources Management.

[FR Doc. 89-17367 Filed 7-24-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27044; File Nos. SR-DTC-88-20, SR-MCC-88-10, SR-MSTC-88-07, SR-NSCC-88-09, SR-OCC-89-02, SR-Philadep-89-01, and SR-SCCP-89-01]

Self-Regulatory Organizations; Depository Trust Co. et al

The following seven clearing agencies have submitted uniform proposed rule changes to the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"):[1] Midwest Clearing Corporation ("MCC") on October 27, 1988; Midwest Securities Trust Company ("MSTC") on October 27, 1988; National Securities Clearing Corporation ("NSCC") on November 8, 1988; Depository Trust Company ("DTC") on December 8, 1988; Options Clearing Corporation ("OCC") on January 24, 1989; Philadelphia Depository Trust Company ("Philadep") on January 17, 1989; and Philadelphia Stock Clearing Corporation ("SCCP") on January 17, 1989.

The proposed rule changes, among other things, would: (1) Create the Securities Clearing Group ("SCG"); (2) authorize each of the clearing agencies to participate in SCG; and (3) confirm each clearing agency's authority to provide to other SCG members confidential information concerning the financial and operating condition of clearing agency participants that also are participants in other SCG member clearing agencies. Each SCG member is a signatory to a nine-page SCG Agreement, or contract.[2]

Notice of the proposed rule changes appeared in the **Federal Register** on several occasions to solicit public comment from interested persons.[3] The Commission received five identical comment letters from the Board of Trade Clearing Corporation ("BOTCC"), expressing essentially two concerns about the proposed SCG Agreement.[4] On March 31, 1989, the Commission received from NSCC a letter responding to the BOTCC comment letter.[5] This order approves the proposed rule changes.

I. Description

SCG would be an organization of clearing agencies.[6] Membership in SCG would be open to any clearing agency self-regulatory organization ("SRO")[7] that is registered with the Commission under Section 17A of the Act.[8] While the initial membership of SCG would consist of the organization's seven founding members (*i.e.*, DTC, MCC, MSTC, NSCC, OCC, Philadep, and SCCP), other registered clearing agencies,[9] or newly-registered clearing agencies, would become eligible for SCG membership.[10]

The governance of SCG would consist of one Principal Representative appointed from each member clearing agency. The Principal Representatives would elect a Chairman from among themselves by majority vote. The Chairman would serve a term of one year effective immediately upon election. At the end of that term, a successor Chairman would be elected in like manner. Each Principal Representative would be authorized to select an Alternate from the staff of its clearing agency. The Chairman would be authorized, among other things, to call meetings of the SCG and to appoint subgroups to study issues within the scope of SCG's interest. Each Principal Representative (or Alternate) would have one vote on each matter coming before the SCG, and no action could be taken at, or as a result of, an SCG meeting without the affirmative vote of all Principal Representatives (or their Alternates).[11]

Under the SCG Agreement, SCG meetings normally would be called at the discretion of the Chairman at sites selected by the Chairman. Alternatively, meetings could be called at the request of a majority of the Principal Representatives. SCG contemplates that meetings would take place not less frequently than quarterly.[12]

The purposes of SCG would include fostering cooperation among members toward the goals set forth in the SCG Agreement, which include: (1) Identifying facilities and systems that could serve as a central data base for FOCUS reports and related systems that would contain data on participants, which later would be accessible to any SCG member;[13] (2) identifying potential improvements and additions to FOCUS reports in order to facilitate clearing agency monitoring of the financial and operating condition of participants; (3) resolving particular legal issues involving clearing agencies;[14] (4)

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] For the full text of the SCG Agreement, *see* Securities Exchange Act Release No. 23600 (November 21, 1986), 53 FR 46353.

[3] Securities Exchange Act Release Nos. 26300 (November 21, 1988), 53 FR 46353 [File No. SR-MCC-88-10]; 26301 (November 21, 1988), 53 FR 46352 [SR-MSTC-88-07]; 26327 (November 30, 1988), 53 FR 49261 [SR-NSCC-88-09]; 26397 (December 27, 1988), 54 FR 78 [SR-DTC-88-02]; 26397 (January 3, 1989), 54 FR 6347 [SR-OCC-88-20]; 26541 (January 13, 1989), 54 FR 7318 [SR-Philadep-89-01]; and 26540 (February 13, 1989), 54 FR 7319 [SR-SCCP-89-01].

[4] *See* letter from Roger D. Rutz, President, BOTCC, to Jonathan G. Katz, Secretary, SEC, dated January 6, 1989. This first BOTCC comment letter addressed the NSCC's rule filing.

For the purposes of this combined order, the Commission is combining its treatment of BOTCC's five identical comment letters, dated and referencing clearing agencies as follows: January 6, 1989 (NSCC), January 6, 1989 (MSTC), January 17, 1989 (DTC), March 8, 1989 (SCCP), and March 8, 1989 (Philadep).

[5] *See* letter from Robert J. Woldow, Executive Vice President and General Counsel, NSCC, to Jonathan Katz, Secretary, SEC, dated March 27, 1989.

[6] The term "clearing agency" is defined by the Act to include both clearing agencies and securities depositories. *See* section 3(a)(23) of the Act.

[7] For definition of "SRO," *see* section 3(a)(26) of the Act.

[8] Section 17A(b)(1) of the Act, in effect, makes it unlawful for a clearing agency to operate unless registered with the Commission.

[9] At this time, seven registered clearing agencies are not signatories to the SCG Agreement: (1) Boston Stock Exchange Clearing Corporation, (2) Delta Government Options Corporation, (3) Government Securities Clearing Corporation, (4) Intermarket Clearing Corporation, (5) International Securities Clearing Corporation, (6) MBS Clearing Corporation, and (7) Participant Trust Company.

[10] Membership would not be automatic. Rather, membership in SCG would be voluntary and would require, among other things, execution of the SCG Agreement.

[11] *See* SCG Agreement, Sect. 1. Under this provision, SCG votes would not simply require unanimity of a quorum but unanimity of all Principal Representatives (or their Alternates). *See id.* at Sect. 1(D).

[12] *See* SCG Agreement, Sect. 1(B).

[13] The term "FOCUS report" is an acronym for Financial and Operational Combined Uniform Single report. Section 17(a) of the Act and Rule 17a-5 thereunder require the periodic filing of FOCUS reports by all broker-dealers.

[14] The legal issues include: (1) Cross liens between two or more clearing agencies of participant guarantee deposits where a participant is in default to one or more clearing agencies; (2) application of settlement credits of a participant in two or more clearing agencies where the participant is in default at one or more clearing agencies; (3) application of a participant's excess margin balances at two or more clearing agencies where the participant is in default at one or more clearing agencies; (4) the netting of a participant's debit and credit obligations at two or more clearing agencies when the participant is not in default; (5) the routine sharing of net settlement debit and settlement credit information among SCG members; and (6) the exchange of a participant's securities between two or more clearing agencies to secure settlement obligations in event of a temporary cash imbalance of the participant. *See* SCG Agreement, Sect. 3.

developing standard notification forms for SCG members with which to notify other SCG members when a new participant is added and when an existing participant is placed on surveillance due to questions about its financial or operational ability; (5) developing means to increase current levels of cooperation between clearing agencies and marketplace regulators, including the SEC; and (6) other purposes as identified by SCG members in the future.[15]

Further, each SCG member would agree to work with the others to develop procedures that would identify financial and operational conditions of any participant of one SCG member that might produce risks to one or more other SCG members.[16] These procedures would include mechanisms for sharing by SCG members the exact information underlying such risks.

The SCG Agreement provides that each SCG member would agree that, concerning "confidentiality," any clearance, settlement, financial, and operational information received under the SCG Agreement would be used exclusively for a clearing agency's legal, regulatory, or compliance purposes.[17] Moreover, each SCG member would agree to deliver, upon request, information about a participant to another SCG member provided such participant is also a participant of the SCG member requesting the information.[18] The SEC, other appropriate regulatory agencies, and the courts likewise would have access to such information. Non-SCG SROs, such as the securities exchanges and the National Association of Securities Dealers ("NASD"), also would have access provided they agreed to abide by the Agreement's confidentiality provisions.[19]

II. Rationale for the Proposals

The clearing agencies state that section 17A of the Act provides, among other things, that: (1) Congress has determined that a national system involving the linking of clearance and settlement facilities and the development of uniform standards and procedures would reduce unnecessary costs and increase protections to investors and to persons facilitating transactions on behalf of investors, and (2) the rules of a clearing agency should be designed to promote the prompt and accurate clearance and settlement of securities transactions and to foster cooperation and coordination with persons engaged in clearance and settlement.

The clearing agencies state that the goals of their proposals, in accordance with the Act, are to promote coordinated action among clearing agencies and to identify, address, and minimize the risks and problems common to more than one clearing agency. The clearing agencies further state that the key methods of achieving these goals will be: (1) The sharing of appropriate financial, operational, and clearing information with other clearing agencies in an atmosphere of cooperation; and (2) the development of certain uniform procedures for use among clearing agencies.

The clearing agencies emphasize that the SCG and its governing Agreement are consistent with the letter and the spirit of the Act, including the Act's concept of a national system of clearance and settlement and its concept of fostering cooperation and coordination among persons engaged in the clearance and settlement of securities transactions.

III. Comment Letter

A. The BOTCC Letter

As stated above, the Commission received a comment letter on the proposals from BOTCC, the affiliated clearing corporation of the Chicago Board of Trade.[20] The BOTCC comment letter, in essence, raised two issues. First, it recommended that the proposed SCG Agreement, in its Section 2 (*i.e.*, the provision captioned "Confidentiality"), should provide that nothing in the Agreement would preclude an SCG member from furnishing financial or operational information concerning its participants to a commodities exchange or its affiliated clearing organizations. The letter added that any such information would be subject to the confidentiality provisions of the SCG Agreement.

Secondly, BOTCC's comment letter recommended that section 2(vi) of the proposed SCG Agreement, which would permit the sharing of information with a subsidiary of an SCG member whose application was then pending with the SEC, be amended and either: (1) Limited to a particular "named entity," or (2) extended to include all "new entities." [21] BOTCC argued that this SCG provision seemed designed solely to address a particular entity and, if so, that entity should be named. Alternatively, BOTCC argued that if subsidiaries of SCG members with applications pending before the Commission are to be included, the Agreement should provide for the "automatic admission of new entities" into SCG.

B. The NSCC's Response

In response to BOTCC, NSCC noted that the proposed SCG Agreement, as an agreement among clearing agencies, would not expand or restrict the rights of any registered clearing agency to share data with a commodities clearing organization, which is a matter for each clearing agency's own rules.[22] NSCC emphasized that it is a clearing agency's rules and agreements with its members, not the proposed SCG Agreement, that would authorize or prohibit the sharing with commodities clearing organizations of any information regarding the financial and operational capacity of dual participants. Accordingly, NSCC stated that even if SCG were to adopt BOTCC's proposed amendment, it would have no substantive effect on the SCG Agreement.

NSCC also noted that the status of certain new clearing organizations has changed since the SCG Agreement was first drafted,[23] and that the SCG, from a policy viewpoint, could not logically direct its procedures to a single named clearing organization.[24] Additionally, NSCC disagreed with BOTCC's proposal of "automatic admission" to SCG for each new clearing entity, stating that the parties to the SCG Agreement have had years of mutual experience through working together and that they possess the necessary expertise and operational capacity to support the sharing arrangement as set forth in the Agreement.

IV. Discussion

The Commission believes that the proposals are consistent with the Act. The proposals would: (1) Create the SCG, an organization of clearing agencies; and (2) approve the SCG Agreement as rules of the affected clearing agencies.[25]

The Commission notes that section 17A(a)(1)(D) of the Act expressly encourages the linking of clearance and settlement facilities and the development of uniform standards and procedures. Section 17A(a)(2) of the Act, moreover, directs the Commission, having due regard for the public interest, to use its authority to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions. Furthermore, section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

A. The Status of Clearing Agencies and the SCG Proposals

The Commission believes that a nexus exists among the SCG-SROs. These clearing agencies provide clearance, settlement, and safekeeping services for financial intermediaries that participate in, among other things, corporate equity securities markets, including the National Market System contemplated in Section 11A of the Act. The nexus among SCG-SROs includes: (1) Many common participants,[26] (2) interfaces through which clearing agencies offer access to participants in or services offered by other clearing agencies, (3) shared operational and financial exposure, and (4) common regulatory responsibilities.[27] The development of a formal structure to further common regulatory, operational, and member monitoring obligations will further the stated goals of the National Clearance and Settlement System.

Although clearing agencies compete in offering quality clearance, settlement, and safekeeping services, the SCG-SROs comprise the core components of an integrated national clearance and system that Congress envisioned in its enactment of section 17A, and continuously deliver or receive instructions, securities or funds among themselves.[28] Essential to understanding the nexus among the SCG–SROs is a brief review of the services SCG–SROs offer and the interfaces that connect these organizations.

NSCC, MCC, and SCCP, among other things, provide trade comparison, clearance, and settlement services for brokerdealer members executing trades in corporate and municipal securities.[29] Each of these clearing agencies operates a continuous net settlement system ("CNS"),[30] which permits a member to net all deliver and receive obligations in each security, which can be settled with one electronic book-entry movement between the member and its clearing agency on the books of an affiliated depository.[31] Corresponding money payment obligations in all securities issues are settled on a net basis at the end of the day in clearing house funds. Each of these clearing agencies also provides a mechanism for transfer of customer accounts among clearing members, known as the Automated Customer Accounts Transfer System ("ACATS").[32] Each clearing agency also maintains interfaces with each other to permit clearing members to settle trades with or transfer customer accounts to members of other clearing agencies.[33] Thus, these clearing agencies communicate with each other daily on behalf of their members and daily settle payment and securities delivery obligations.

The three depositories, DTC, MSTC, and Philadep, offer various depository services to member banks and broker-dealers.

These services include safekeeping of members' securities, in a fungible bulk; [34] same-day credit for deposit of negotiable securities; facilities for distribution of securities in primary offerings, and facilities for delivery of securities between member banks, brokers, clearing corporations; and

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[15] *See* SCG Agreement, Sect. 3.

[16] The term "participant" is defined in Section 3(a)(24) of the Act.

[17] The SCG Agreement would bar any SCG member that receives information under the SCG Agreement from providing, without the written consent of the delivering member, such information to its non-legal, non-regulatory, or noncompliance departments. The main purpose of this prohibition is to avoid confidential information about participants being used by a clearing agency for its own marketing purposes. *See* SCG Agreement, Sect. 2.

Nothing in the SCG Agreement, however, would bar any SCG member from furnishing information concerning a participant to: (1) Appropriate governmental authorities, (2) other SROs as necessary to conduct an investigation or disciplinary proceeding, and (3) a subsidiary of an SCG member whose application for registration is pending.

[18] The term "participant" for this purpose would be construed to include: (1) A current participant as defined in section 3(a)(24) of the Act, (2) an applicant for participation, (3) a subsidiary or affiliate of a participant, and (4) a subsidiary or affiliate of an applicant for participation.

Under the SCG Agreement, an SCG member would be expected to provide participant information to another SCG member in response to a "reasonable request." This would include such information about a participant that, from the viewpoint of the SCG member requested to provide the information, is: (1) Within its possession, (2) reasonably accessible, and (3) not unduly burdensome in terms of the request's size.

[19] In those circumstances where a member participates in more than one self-regulatory organization, the SRO's may agree to allocate to one SRO examination responsibilities. *See* Rule 17d–2 under the Act; 17 CFR 240.17d–2 (1989). The designated examining authority for broker-dealer members of a clearing agency generally will be an exchange or the NASD.

[20] *See, supra*, note 4.

[21] The comment letter suggests that, in any case, if a clearing entity's application were only pending, it would have no information to contribute and would not be a meaningful contributor to the process.

[22] Letter from Robert J. Woldow, Executive Vice President and General Counsel, NSCC, to Jonathan Katz, Secretary, SEC, dated March 27, 1989. According to the letter, Mr. Woldow also currently chairs the proposed SCG.

[23] The Commission notes that the first draft of the SCG Agreement was circulated among prospective SCG members under a cover letter dated June 10, 1988. After revisions, a final draft was executed by the seven signatories on October 19, 1988.

[24] The NSCC letter notes that: (1) Government Securities Clearing Corporation, a wholly-owned NSCC subsidiary when the SCG Agreement was first drafted, has become registered; (2) International Securities Clearing Corporation, a wholly-owned NSCC operating subsidiary, when the Agreement was first drafted, has become temporarily registered; and (3) Participants Trust Company, a spin-off of MBS Clearing Corporation, has become temporarily registered.

[25] The term "SRO rules" is defined in section 3(a)(26) of the Act.

[26] Based on data recently compiled by NSCC, of 848 broker-dealers that are clearing agency participants, 541 are participants at two or more clearing agencies, and 221 are participants at three or more clearing agencies. The clearing agencies that were subjects of the study were: DTC, OCC, MCC, MSTC, NSCC, Philadep, SCCP, and MBS Clearing Corporation.

[27] Section 19(g)(1)(C) of the Act requires each of the SCG SROs, as clearing agencies, to enforce member compliance with their rules. Pursuant to section 17(d) of the Act, Rule 17d–2 thereunder authorizes SROs to file a plan with the Commission that allocates examinations for compliance and enforcement to a designated examining authority ("DEA"). Although not involving DEAs, the Commission believes the proposed rule changes are consistent with the legislative purposes of section 17(d). *See* Senate Comm. on Banking, Housing and Urban Affairs, *Report to Accompany S. 249: Securities Acts Amendments of 1975*, S. Rep. No. 75, 94th Cong., 1st Sess. 121–122 (1975).

[28] *See* Order Granting Registration to NSCC, Securities Exchange Act Release No. 13163 (January 13, 1977), 42 FR 3916.

[29] *See* Division of Market Regulation, SEC, *The October 1987 Market Break*, 10–1 to 10–12 (February 1988) ("*Division Report*").

[30] For further discussion of CNS, *see id.* at 10–2 to 10–6.

[31] DTC is the designated depository for settlement of securities delivery obligations between NSCC and NSCC members. Similarly, MSTC and Philadep are the designated depositories for MCC and SCCP, respectively.

[32] *See* Securities Exchange Act Release No. 22481 (September 30, 1985), 50 FR 41274 [File No. SR–NSCC–85–07]. *See also* New York Stock Exchange Rule 412.

[33] The Regional Interface Organization ("RIO") offers a participant the option of clearing and settling trades at the clearing facility of its choice, regardless of the market of execution. To effect delivery, one depository receives instructions from its affiliated clearing corporation or from an interfacing depository on behalf of its clearing corporation, and the depository makes the necessary book-entry movements. These movements enable clearing corporations to settle, by book-entry, trades between their respective participants. *See* Securities Exchange Act Release No. 20461 (December 7, 1983), 48 FR 55654 [File No. SR–DTC–77–10]. *See also* Securities Exchange Act Release No. 13163 (January 13, 1977), 42 FR 3916.

[34] The term "fungible bulk" refers to the fact that security certificates of the same issue are interchangeable and that units of a depository-eligible security typically are held in large volume in the custody of a depository. This permits the electronic book-entry transfer of units of such a security issue, units which nominally are held by a depository's participant broker-dealers. Such transfers occur with no physical movement of certificates and no change in the number of units of the security held by the depository. *See, e.g.*, D. Scott, *Wall Street Words* 150 (1988); D. Weiss, *After the Trade Is Made* 314 (1986).

through interfaces with other depositories, facilities for delivery of securities to banks, broker-dealers and clearing corporations that are members of other securities depositories. DTC, MSTC, and Philadep also offer communication and settlement services for institutional trades through the National Institutional Delivery System ("NIDS"). Through NIDS, brokerdealers can confirm to institutional money managers the terms of trades in corporate and municipal securities executed on a securities exchange or over-the-counter, and institutional money managers can affirm those trades,[35] thereby setting the stage for book-entry settlement of those trades on settlement date (usually five business days after the trade date).[36] In 1988, more than 16.7 million confirmations were processed through NIDS and more than $1.3 trillion in NIDS trades were settled by book-entry. Exchange and NASD rules require brokerdealers to use NIDS facilities to confirm, affirm, and settle most delivery-against-payment trades in corporate [37] and municipal securities.[38] Accordingly, each day DTC, MSTC, and Philadep communicate member trade and delivery data, and settle on a net basis, inter-depository securities movements and payments.

OCC issues and clears, on behalf of its members, all exchange traded options on equity securities, index participation, stock-index options, and a variety of other nonequity securities options. OCC routinely interacts with NSCC, MCC, and SCCP, which are OCC's primary correspondent clearing corporations,[39] for settlement of equity options exercises on the fifth business day after exercise. OCC also participates in ACATS thereby permitting the transfer of customer accounts including option positions.[40] DTC and MSTC hold on deposit "valued securities" for OCC members' margin accounts,[41] and covered option contracts often are written against stock on deposit at a DTC, MSTC, or Philadep member bank, which may issue an "escrow receipt" that would guarantee the delivery of stock if an assignment notice were given to the call writer.[42] Moreover, while OCC currently is using a physical delivery facilitator for delivery of equity index participations, OCC is working with NSCC to develop an electronic delivery system.[43]

Many broker-dealer and some banks participate in more than one clearing agency. As noted above, over 500 broker-dealers are members of two or more clearing agencies and that over 200 are members of three or more clearing agencies.[44]

Securities price volatility, coupled with the five-day settlement cycle for settlement in corporate securities (including exercises of equity options) expose clearing members to financial loss due to proprietary and customers' trading activity.[45] This risk to clearing members ultimately falls on the clearing agencies, which are subject to loss if their members fail. This exposure was highlighted during the October 1987 Market Break.

Clearing agencies ceased to act for three clearing members during the week of October 19, 1987. DTC, NSCC, and MBS Clearing Corporation ("MBSCC") ceased to act for Metropolitan Securities ("Metropolitan"). DTC, NSCC, and OCC ceased to act for H.B. Shaine & Co. ("Shaine"). DTC and NSCC ceased to act for American Investors Group ("AIG").

As explained in greater detail in the *Division Report*,[46] NSCC liquidated approximately 166 security positions held for Metropolitan with a total contract value of more than $58 million, at a loss to NSCC of approximately $395,000, which NSCC funded from its retained earnings. DTC and MBSCC closed out Metropolitan's accounts and returned to Metropolitan an overage of approximately $1.1 million. NSCC and OCC liquidated

Shaine's positions: NSCC's liquidation of more than 170 security positions generated a profit of approximately $160,000 which NSCC returned to Shaine's trustee. OCC's liquidation of Shaine's positions generated a loss of approximately $8 million, and OCC assessed its members, *pro rata*, approximately $8 million to fund OCC's payment obligations in closing out Shaine's positions. Neither NSCC nor DTC suffered losses in closing out AIG's accounts.[47]

The interdependence of clearing agencies highlights the need for effective communication among clearing agencies.[47] Improved communication has been a Commission and clearing agency priority for many years.

In 1984, following the SEC-sponsored Securities Processing Roundtable,[48] various SROs established the Monitoring Coordination Group ("MCG").[49] MCG, in turn, established procedures for communications among clearing corporations, depositories, and other self-regulatory DEAs.[50] These procedures apply whenever a common participant's financial condition is deemed to threaten the financial or operational condition of clearing members, clearing agencies, or marketplaces.

During the Market Break, the clearing agencies' monitoring and communications networks generally enabled them to spot potential member defaults in time to minimize or eliminate losses to themselves.[51] Thus, the

[35] Affirmation is the second step in the process of settling a typical institutional securities transaction where the parties have agreed that the broker will deliver securities (or funds) to the institution' custodian bank against payment (or delivery of securities). As indicated above, the first step in settling such a trade entails delivery of the broker's confirmation of the terms of the trade to the money manager (NIDS provides copies to the money manager and the custodian bank). The "affirmation" is the money manager's agreement that the confirmation correctly reflects the terms of the trade and, in NIDS, can constitute the necessary authorization to the custodian bank to release funds or securities. If the money manager affirms the trade by the third day after trade date, settlement generally occurs automatically by book-entry at the depository by the fifth day after trade date. See Division Report, at 10–10 to 10–12.

[36] *See, e.g.*, Securities Exchange Act Release No. 19029 (September 1, 1982), 47 FR 39775.

[37] *See, e.g.*, NYSE Rule 387; Securities Exchange Act Release Nos. 24213 (March 13, 1987), 52 FR 9001; 25102 (November 13, 1987), 52 FR 44506.

[38] *See* Municipal Securities Rulemaking Board, Rule G–12.

[39] For definition of "correspondent clearing corporation," *see* OCC By-Laws, Art. I, Sect. 1(bbb).

[40] *See* Securities Exchange Act Release No. 24133 (Feb. 24, 1987), 52 FR 6417.

[41] *See* OCC Rule 604(d). Securities Exchange Act Release Nos. 12089 (January 28, 1976), 41 FR 5159; 22887 (February 10, 1986), 51 FR 5823.

[42] *See* Securities Exchange Release No. 18844 (June 25, 1982), 47 FR 29046; L. McMillan, *Options as a Strategic Investment* 36–37, 457 (1980). Telephone conversation between Daniel Kraus, Counsel, OCC, Michael Cahill, Assistant Vice President, OCC, and Thomas C. Etter, Attorney, SEC (May 3, 1989)

[43] Securities Exchange Act Release No. 26713 (April 11, 1989), 54 FR 15575. Telephone conversation between James C. Yong, Counsel, OCC and Thomas C. Etter, Attorney, SEC (July 13, 1989).

[44] *See, supra, note 26.*

[45] *See Division Report* at 10–25 to 10–28.

[46] *See id.* at 10–16 to 10–18, 10–44 to 10–45.

[47] *See Division Report* at 10–19 to 10–23. Where a brokerdealer is a member of two or more clearing agencies, absent established communications channels, one clearing agency may be unaware of the broker-dealer's debt positions with the other clearing agencies, thereby exposing itself to unknown financial risk.

[48] *See Report of the Division of Market Regulation 1984 Securities Processing Roundtable* (May 31, 1984).

[49] MCG members include: DTC, MCC, MSTC, NSCC, OCC, SCCP, Philadep, American Stock Exchange, Boston Stock Exchange, Chicago Board Options Exchange, Midwest Stock Exchange, National Association of Securities Dealers, New York Stock Exchange, Philadelphia Stock Exchange, and Pacific Stock Exchange.

[50] *See, supra, note 27.*

[51] *See Division Report* at 10–21.

communication channels of MCG proved useful in protecting MCG members as well as the marketplace in general.[52] Although MCG provided the basis for effective communication during the Market Break, the Commission believes that a need exists for a more structured form of cooperation and problem solving among clearing agencies. The Commission believes that, at the present time, this need can best be filled by SCG.

B. The BOTCC Comment Letter

Despite these benefits, BOTCC argues that the Agreement should be amended to state that it does not preclude sharing information with commodities organizations. NSCC counters that such an amendment is both unnecessary and ineffective because the rules of the SCG members would control such a provision in any event. That is to say, a mere statement in the SCG Agreement that nothing in the Agreement bars SCG members from sharing information with commodities organizations, in itself, would provide no affirmative legal authority, much less a mandate, for such information sharing.[53] Moreover, the Commission notes that actions by SCG at its last meeting show that its members are willing to share information with commodities clearing organizations where appropriate.[54] The Commission agrees with NSCC's views and believes that approval of this rule change is consistent with the Act.

To the extent, however, that BOTCC's underlying concern is to develop more formal methods whereby securities and commodities clearing corporations can share necessary information, the Commission believes such a goal is not only appropriate but a necessary adjunct to a coordinated intermarket system. Indeed, this conclusion was adopted by several post-Market Break studies of the marketplace, including: The *Brady Report*,[55] the *Division Report*,[56] the Commodities Futures Trading Commission reports,[57] and the *Working Group Report*.[58] The Commission urges the SCG SROs, individually and within the SCG context, to develop, and implement expeditiously, improvements in intermarket information sharing procedures.

Nevertheless, the Commission believes that the SCG proposals are not inconsistent with the Act for failure to incorporate commodities clearing corporations.[59] The Commission urges the BOTCC to pursue information sharing arrangements with the SCG and its member SROs—just as the Chicago Board of Trade and the Chicago Mercantile Exchange are pursuing similar objectives with the Intermarket Surveillance Group.

The Commission also notes, as a general matter, that numerous conferences over many months were required before these seven rather homogeneous clearing agencies and depositories, with close working relationships, could come to a written agreement on basic mutual problems that had been highlighted by the Market Break. Initially, various legal and organizational obstacles hampered their ability to address those problems; but, eventually, new ground was broken and important results achieved. This uniform proposal since has been approved by the boards of seven SROs. Thus, for the Commission now to require amendments to this major proposal, for any but the most substantive reasons, would be inappropriate and not in the public interest. In any case, the Commission finds that the recommendations set forth in BOTCC's comment letter, taken on their own merits, are not persuasive in determining whether the proposals, as filed, are consistent with the Act.

C. Summary

The Commission believes that the SCG and the SCG Agreement whereby clearing agencies would organize themselves to, among other reasons, share confidential financial information about common participants, address certain mutual problems of the marketplace, and, in general, ameliorate the financial risks to themselves caused by market price volatility, are fully consistent with the Act, particularly Section 17A of the Act, and warrant approval.

V. Conclusion

For the reasons discussed in this order, the Commission finds that the proposed rule changes are consistent with the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b) of the Act, that the seven above-mentioned proposed rule changes (File Nos. SR–DTC–88–20, SR–MCC–88–10, SR–MSTC–88–07, SR–NSCC–88–09, SR–OCC–89–02, SR–PHILADEP–89–01, and SR–SCCP–89–01) be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: July 18, 1989.

[FR Doc. 89–17306 Filed 7–24–89; 8:45 am]

BILLING CODE 8010–01–M

[52] *See id.* at 10–19, 10–21.

[53] By contrast, the SCG Agreement, as SRO rules formally approved by the Commission under the Act, would provide clear legal authority for the information sharing arrangements that are set forth in the Agreement.

[54] At the last SCG meeting, which was held on May 25, 1989, at the offices of OCC in Chicago, the SCG SROs agreed to release to BOTCC and other commodity clearing organizations a list of clearing members for each SCG SRO.

[55] *See Report of the Presidential Task Force on Market Mechanisms*, 51, 64 (January 8, 1988), known as the *Brady Report*, after the Task Force's chairman, Nicholas F. Brady.

[56] *See, e.g., Division Report* at 10–55.

[57] *See, e.g.*, Divisions of Economic Analysis and Trading and Markets, Commodities Futures Trading Commission, Follow-up, *Report of Stock Index Futures Markets during October 1987*, 70–71 (January 6, 1988).

[58] *See Interim Report of the Working Group on Financial Markets, Appendix D* at 6–7 (May 1988).

[59] The Commission also believes that it is not inconsistent with the Act for clearing agencies to provide, by contract, terms for sharing confidential information with their own clearing agency subsidiaries. The parties to the Agreement apparently determined that, rather than use the name of a particular subsidiary (as recommended by BOTCC), they would use the generic term "subsidiary," a decision that may extend the effectiveness of that contractual provision. In any case, the Commission finds no legal issue here under the Act.

BOTCC, alternatively, recommended that the SCG Agreementprovide for the "automatic admission of new entities." The Commission notes that to be admitted to SCG membership, a clearing agency must voluntarily become a signatory to the SCG Agreement and that the Agreement sets forth specific contractual obligations for all members. Thus, inasmuch as a voluntary contractual agreement is involved, with various obligations incidental to that agreement, the Commission does not regard an automatic admission policy as a workable concept.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

July 18, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Beckman Instruments, Inc.
Common Stock, $.10 Par Value (File No. 7–4707)

CTS Corp.
Common Stock, No Par Value (File No. 7–4708)

Diasonics, Inc.
Common Stock, No Par Value (File No. 7–4709)

CIGNA High Income Shares of Beneficial Interest, No Par Value (File No. 7–4710)
First Interstate Bancorp
Class A Common Stock, No Par Value (File No. 7–4711)
Intermark, Inc.
Common Stock, $1.00 Par Value (File No. 7–4712)
Kemper Municipal Income Trust
Shares of Beneficial Interest, Common Stock, $.01 Par Value (File No. 7–4713)
Piedmont Natural Gas, Inc.
Common Stock, $.50 Par Value (File No. 7–4714)
Wellman, Inc.
Common Stock, $.001 Par Value (File No. 7–4715)
Van Kampen Merritt Municipal Income Trust
Shares of Beneficial Interest, Common Stock, $.01 Par Value (File No. 7–4716)
Benetton Group, SPA
American Depositary Shares, No Par Value (File No. 7–4717)
Cabletron Systems, Inc.
Common Stock, $.01 Par Value (File No. 7–4718)
Itel Corporation
Common Stock, $1.00 Par Value (File No. 7–4719)
Kemper Corporation
Common Stock, $5.00 Par Value (File No. 7–4720)
Kemper Multimarket Income Trust
Shares of Beneficial Interest, Common Stock, $.01 Par Value (File No. 7–4721)
Mercury Finance Company
Common Stock, $1.00 Par Value (File No. 7–4722)
Network Equipment Technologies, Inc.
Common Stock, $.01 Par Value (File No. 7–4723)
Putnam Managed Municipal Income Trust
Shares of Beneficial Interest, No Par Value (File No. 7–4724)
Repsol, SA
American Depositary Shares, No Par Value (File No. 7–4725)
Van Kampen Merritt Intermediate Term High Income Trust
Shares of Beneficial Interest, Common Stock, $.01 Par Value (File No. 7–4726)
Van Kempen Merritt Limited Term Common High Income Trust
Shares of Beneficial Interest, Common Stock, $.01 Par Value (File No. 7–4727)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 8, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89–17307 Filed 07–24–89; 8:45 am]
BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

July 18, 1989

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Benetton Group, S.P.A.
American Depositary Shares, No Par Value (File No. 7–4681)
TRC Companies
Common Stock, $.10 Par Value (File No. 7–4682)
Idex Corporation
Common Stock, $1 Par Value (File No. 7–4683)
IGI, Inc.
Common Stock, $.01 Par Value (File No. 7–4684)
Total System Services, Inc.
Common Stock, $.10 Par Value (File No. 7–4685)
Affiliated Publications, Inc.
Series A Common Stock, $.01 Par Value (File No. 7–4686)
Magnetek, Inc.
Common Stock, $.01 Par Value (File No. 7–4687)
Network Equipment Technologies, Inc.
Common Stock, $.01 Par Value (File No. 7–4688)
Plum Creek Timber Co. L.P.
Dep. Units, No Par Value (File No. 7–4689)
Weirton Steel Corporation
Common Stock, $.01 Par Value (File No. 7–4690)
Coast Savings Financial Inc.
Common Stock, No Par Value (File No. 7–4691)
Smithkline Beecham Plc
American Depositary Shares (representing "A" Ordinary Shares), No Par Value (File No. 7–4692)
Allergan, Inc.
Common Stock, $.01 Par Value (File No. 7–4693)
Smithkline Beecham Plc
American Depositary Shares (Equity Units) (representing 5 "B" Ordinary Shares & 1 share of $2.25 Cum. Part. Pfd Stock, No Par Value (File No. 7–4694)
Angeles Finance Trust
Class A Shares, $1 Par Value (File No. 7–4695)
Radice Corporation
Common Stock, No Par Value (File No. 7–4696)
Allstate Municipal Income Opportunities Trust II
Shares of Beneficial Interest, $.01 Par Value (File No. 7–4697)
Nuveen Performance Plus Municipal Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–4698)
American Southwest Mortgage Investment Corporation
Common Stock $.01 Par Value (File No. 7–4699)
Berry Petroleum Co.
Class A Common Stock, $.01 Par Value (File No. 7–4700)
Cypress Fund Inc.
Common Stock, $.001 Par Value (File No. 7–4701)
Keystone Camera Products Corp.
Common Stock, $.40 Par Value (File No. 7–4702)
Michael's Stores, Inc.
Common Stock, $.10 Par Value (File No. 7–4703)
O'Brien Energy Systems, Inc.
Common Stock, $.01 Par Value (File No. 7–4704)
Property Trust of America
Shares of Beneficial Interest, $1.00 Par Value (File No. 7–4705)
Whittaker Corporation
Common Stock, $.01 Par Value (File No. 7–4706)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 8, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 87–17308 Filed 7–24–89; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Cities of Colonial Heights and Petersburg, VA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in the cities of Colonial Heights and Petersburg, Virginia.

FOR FURTHER INFORMATION CONTACT: Robert B. Welton, District Engineer, FHWA, 400 North Eighth Street, P.O. Box 10045, Richmond, Virginia 23240–0045, Telephone: (804) 771–2682.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to replace the Route 1 Appomattox River Bridge between the cities of Colonial Heights and Petersburg, Virginia. Bridge approach improvements would extend from Wythe Street in Petersburg north to Lafayette Avenue in Colonial Heights, a distance of approximately one mile.

Improvements to this corridor are considered necessary to provide for the existing and projected traffic demands. Ten alternatives are under consideration for the replacement of the existing Route 1 Appomattox River Bridge, including the Rebuild Alternative and the No-Build Alternative. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Public meetings have been held in the city of Petersburg on December 15, 1988, and June 15, 1989. In addition, a public hearing will be held. Public notice will be given of the time and place of the hearing and any additional public meetings. The draft EIS will be available for public agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 17, 1989.

Robert B. Welton,
District Engineer, Richmond, Virginia.

[FR Doc. 89–17348 Filed 7–24–89; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Amendment of System of Records; Revised System of Records

Notice is hereby given that the Department of Veterans Affairs (VA) is amending a system of records entitled, "Accredited Representatives, Claims Agents, and Rejected Claims Agent Applicant Records—VA" (01VA022) which is set forth on pages 765 and 766 of the **Federal Register** publication, "Privacy Act Issuances," 1987 Compilation, Volume V. The system is being amended by revising the paragraphs for System Name; System Location; Categories of Individuals Covered by the System; Categories of Records in the System; Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses; Policies and Practices for Storing, Retrieving, Accessing, Retaining and Disposing of Records in the System; and Record Source Categories.

The purpose of this system of records is to document and store information on individuals who have applied for and/or have received accreditation by VA under 38 CFR 14.628, *et seq.* as service organization representatives or independent claims agents to represent claimants in the preparation, presentation, and prosecution of their claims before VA. The records include information that is relevant to service organization affiliation, qualifications, examinations, third-party evaluations, investigations, applications, and grants, denials, suspensions, and terminations of accreditation.

We are altering by amendment VA's "Accredited Representatives, Claims Agents, and Rejected Claims Agent Applicant Records—VA" system (01VA022) by revising the System Name to better reflect the coverage of the system. We are also revising the paragraph Categories of Individuals Covered by the System to include former members and employees of recognized service organizations and former claims agents previously accredited by VA, and individuals whose names have been submitted for accreditation as service organization representatives.

Investigative reports and other documentation concerning the fitness of prospective, present, or former claims agents and accredited representatives, correspondence relating to denial, suspension, or termination of accreditation of claims agents and representatives, correspondence concerning prospective and former claims agents and representatives, and applications for accreditation as a claim agent are being added to the paragraph Categories of Records in the System.

In addition, four new routine uses are being added: To permit disclosure of listings of accredited representatives, and of those no longer accredited, to recognized service organizations; to permit the disclosure to recognized service organizations of information from the system of records concerning applicants and present and past accredited representatives affiliated with that organization relative to a denial, suspension, or termination of accreditation by VA; to permit disclosure of information from the system of records relevant to a suspected violation or reasonably imminent violation of law, rule, or order to a Federal agency charged with the responsibility of investigating or prosecuting such violation, or enforcing such law, rule, or order; and, to permit disclosure of information from the system of records upon request of the Department of Justice to enable it to represent the Government in any litigation.

The system includes paper records contained in individually identifiable folders and individual file cards retrievable under the representative's name. It also includes folder files on service organizations which have inquired about, applied for, or received recognition to represent claimants. In addition, the system includes listings of past and present accredited representatives and miscellaneous correspondence in computer files. The paragraphs Storage, Safeguards, Retention and Disposal, and Record Source Categories of the system notice are being changed to reflect current procedures and capabilities.

The system notice has also been rewritten to change all references to the "Veterans Administration" and "the

VA" to the "Department of Veterans Affairs" and "VA" in order to comply with the change in name and status provided for in Pub. L. 100-527, 102 Stat. 2635 (1988).

A "Report of Altered System" and an advance copy of the revised system notice have been sent to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(o) (Privacy Act), and guidelines issued by OMB (50 FR 52730), December 24, 1985, as modified by the Computer Matching and Privacy Protection Act of 1988, Pub. L. 100-503, 102 Stat. 2507.

Interested persons are invited to submit written comments, suggestions, or objections regarding the routine uses in this system of records to the Secretary, Department of Veterans Affairs (271A), 810 Vermont Avenue NW, Washington, DC 20420. All relevant material received before August 24, 1989, will be considered. All written comments received will be available for public inspection only in Room 132 of the above address, only between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays, until September 5, 1989.

If no public comment is received during the 30-day review period allowed for public comment, or unless otherwise published in the **Federal Register** by the Department of Veterans Affairs, the routine uses in this system are effective August 24, 1989.

Approved: July 17, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Amendment to System of Records

The system identified as 01VA022, "Accredited Representatives, Claims Agents, and Rejected Claims Agent Applicant Records—VA," appearing on Pages 765 and 766 of the **Federal Register** publication, "Privacy Act Issuances," 1987 Compilation, Volume V, is amended by revising the entries shown below:

01VA022

SYSTEM NAME:

Current and Former Accredited Representative, Claims Agent, and Representative and Claims Agent Applicant and Rejected Applicant Records—VA.

SYSTEM LOCATION:

Records are maintained in the Office of General Counsel (022), Department of Veterans Affairs Central Office, Washington, DC 20420.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The following categories of individuals will be covered by the system: (1) Members or employees, or former members or employees, of recognized service organizations accredited or previously accredited by the Department of Veterans Affairs (VA) to represent claimants for benefits; (2) claims agents (not attorneys) independent of a service organization and accredited or previously accredited by VA to represent claimants for benefits; and (3) individuals whose names have been submitted to VA by service organizations for accreditation or who have applied to VA to become claims agents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records (or information contained in records) in this system may include: (1) Name and other identifying information; (2) address; (3) service organization affiliations; (4) claims agent examination and grade; (5) correspondence concerning prospective, present, or former claims agents or accredited representatives including claims agent recommendations and evaluations from third parties; (6) VA Form 2-21 (Application for Accreditation as Service Organization Representative); (7) Application for Accreditation as Agent forms; (8) investigative reports and/or correspondence concerning the fitness of a prospective, present, or former claims agent or accredited representative; and (9) correspondence relating to or including the denial, suspension, or termination of accreditation of representatives or claims agents.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

6. Listings containing the names, business addresses, and status of accreditation of present and former accredited representatives may be provided to recognized service organizations.

7. The name and address of a prospective, present, or former accredited representative, and any information concerning such accredited representative which is relevant to a refusal to grant accreditation, or a potential or past suspension or termination of accreditation of such representative, may be disclosed to the service organization(s) with whom the representative is affiliated.

8. The name and address of a prospective, present, or former accredited representative, and any information which is relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, may be disclosed to a Federal agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, or order issued pursuant thereto.

9. Any information in this system may be disclosed to the Department of Justice (DoJ), including U.S. Attorneys, upon its official request, or by VA upon its own initiative, in order for the U.S. Government, VA, or any VA official acting in his/her official capacity to respond to pleadings, interrogatories, orders or inquiries from the DoJ, and to supply the DoJ with information, to enable the DoJ to represent the U.S. Government in any phase of litigation or in any case or controversy.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Active records are maintained in individual folders stored in file cabinets. File cards with name and business addresses of individuals covered by this system are maintained in file cabinets. Listings of accredited representatives and claims agents are maintained both on magnetic disk and in hard copy in file cabinets.

* * * * *

SAFEGUARDS:

1. Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure.

2. Access to Automated Data Processing files is controlled at two levels: (1) Terminals, central processing units, and peripheral devices are generally placed in secure areas (areas that are locked or have limited access) or are otherwise protected; and, (2) the system recognizes authorized users by means of an individually unique password entered in combination with an individually unique user identification code.

3. Access to VA Central Office is controlled during all hours by the Federal Protective Service and other security personnel.

RETENTION AND DISPOSAL:

Records are maintained as long as the individual is an active accredited representative or claims agent. Once the representative or agent becomes inactive, the inactive records are maintained by the Veterans Affairs Central Office, Records Management Section for 3 years and then destroyed. Rejected applications, investigative material, and related correspondence are maintained in the Office of General Counsel for 10 years and then destroyed.

* * * * *

RECORD SOURCE CATEGORIES:

Applications for accreditation of individuals, investigative material, and recommendations and correspondence from service organizations and third-parties.

[FR Doc. 89-17331 Filed 7-24-89; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 141
Tuesday, July 25, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, July 31, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding a Federal Reserve Bank's building requirements.
2. Renovation proposals regarding the Federal Reserve Bank of St. Louis.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 21, 1989.

William W. Wiles,
Secretary of the Board.

[FR Doc. 89-17505 Filed 7-21-89; 3:11 pm]

BILLING CODE 6210-01-M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, August 9, 1989.

PLACE: Board Hearing Room 8th Floor, 1425 K. Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of July, 1989.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523-5920.

Date of Notice: July 19, 1989.

Charles R. Barnes,
Executive Director, National Mediation Board.

[FR Doc. 89-17492 Filed 7-21-89; 1:28 pm]

BILLING CODE 7550-01-M

POSTAL SERVICE (BOARD OF GOVERNORS)

Vote to Close Meeting

By telephone vote on July 17, 1989, a majority of the members contacted and voting, the Board of Governors voted to close to public observation its meeting scheduled for August 14, 1989, in San Francisco, California. The meeting will involve consideration of a capital investment for the Technical Training Center Dormitory in Norman, Oklahoma.

The meeting is expected to be attended by the following persons: Governors Alvarado, del Junco, Griesemer, Hall, Mackie, Pace, Ryan and Setrakian; Postmaster General Frank; Deputy Postmaster General Coughlin; Secretary for the Board Harris; and General Counsel Cox.

The Board determined that, pursuant to section 552b(c)(9)(B) of Title 5, United States Code, and § 7.3(i) of Title 39, Code of Federal Regulations, the discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act (5 U.S.C. 552b(b)), because it is likely to disclose information, the premature disclosure of which would significantly frustrate proposed procurement actions. The Board further determined that the public interest does not require that the Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and § 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation, pursuant to section 552b(c)(9)(B) of Title 5, United States Code, and § 7.3(i) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268-4800.

David F. Harris,
Secretary.

[FR Doc. 89-17441 Filed 7-21-89; 1:27 pm]

BILLING CODE 7710-12-M

Corrections

Federal Register
Vol. 54, No. 141
Tuesday, July 25, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Social Security Disability Program Demonstration Project

Correction

In notice document 89-14670 appearing on page 26113 in the issue of Wednesday, June 21, 1989, make the following corrections:

1. In the second column, in the first and second lines, "window's" and "windower's" should read "widow's" and "widower's" respectively.
2. In the same column, in the eighth line from the end of the first complete paragraph, the beginning citation should read "202(d)(1)(G)(i)".
3. In the same column, in the 12th line from the end, "increase" should read "increased".
4. In the third column, in the paragraph headed *Statutory Provisions to be Waived*, in the 20th line, "window(er)'s" should read "widow(er)'s".
5. In the same column, in the same paragraph, in the 26th line, the citation should read "202(e)(1)(II)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6731

[CO-930-09-4214-10; C-45714]

Cancellation of Public Land Order No. 6730; Withdrawal of National Forest System Land for Protection of Recreational Values; Colorado

Correction

In rule document 89-15294 beginning on page 27176 in the issue of Wednesday, June 28, 1989, in the third line of the heading, "Public Land Order 6371" should have read "Public Land Order 6731".

BILLING CODE 1505-01-D

federal register

Tuesday
July 25, 1989

Part II

Federal Deposit Insurance Corporation

12 CFR Part 335

Securities of Nonmember Insured Banks; Notice of Proposed Rulemaking

BEST COPY AVAILABLE

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 335

RIN 3064-AA45

Securities of Nonmember Insured Banks

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed rule would amend the Federal Deposit Insurance Corporation's ("FDIC") securities disclosure regulations issued under The Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78 et seq.) in order to bring them into substantial similarity with those of the Securities and Exchange Commission ("SEC"). Section 12(i) of the Exchange Act requires that the FDIC issue regulations substantially similar to those of the SEC or publish its reasons for not doing so. The amendment is intended to comply with section 12(i) and to update the regulation. It covers the following: (1) Independent audit requirement, (2) compensation, (3) small transaction exemption, (4) issuer tender offers, (5) comprehensive review of proxy rules, (6) all holders and best price rules for tender offers, (7) shareholder communications, and (8) non-bank companies financial disclosure in merger-type transactions.

DATE: Written comments must be submitted on or before September 25, 1989.

ADDRESS: Comments should be sent to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550-17th Street, NW., Washington, DC 20429. Comments may be hand delivered to, and are available for reviewing in, Room 6099 on weekdays between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: William F. Sullivan, Senior Financial Analyst, Division of Bank Supervision (202) 898-8903 or Gerald J. Gervino, Senior Attorney, Legal Division (202) 898-3723.

SUPPLEMENTARY INFORMATION:

A. Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Paperwork Reduction Project (3064-0030), with copies to the Assistant Executive Secretary (Administration), Room 6096, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

The collections of information in this regulation are grouped under the title Securities of Insured Nonmember Banks (OMB No. 3064-0030) and are contained in §§ 335.212, 335.213, 335.221, 335.309a, 335.309b, 335.312, 335.321, 335.331, 335.332, 335.407, 335.408, 335.413, 335.414, 335.512, 335.513, and 335.627. This information is collected from insured nonmember banks that are subject to the securities registration requirements of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78), and from their shareholders. The required information is considered necessary for actual and potential investors making investment decisions concerning the securities issued by the reporting banks.

The estimated annual reporting burden for the collections of information in this regulation is summarized as follows:

Number of Respondents: 5,056.

Number of Responses Per Respondent: 1.09.

Total Annual Responses: 5,500.

Hours Per Response: 10.48.

Total Annual Burden Hours: 57,629.

B. Background

Section 12(i) of the Exchange Act vests the powers, functions, and duties of the SEC to administer and enforce sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Act with respect to nonmember banks in the FDIC. The same section requires the FDIC to issue regulations substantially similar to regulations issued by the SEC unless the FDIC finds that implementation of such regulations with respect to insured banks is not necessarily appropriate in the public interest, or for protection of investors, and the FDIC publishes the findings in the **Federal Register**. The proposal is intended to satisfy that requirement.

C. Amendments to Part 335

1. Independent Audit Requirement

Since 1964 most banks have generally had the option of using verification statements which express the opinion of a bank's principal accounting officer or internal auditor. On July 19, 1971, the SEC required all corporations reporting to it under the Exchange Act to have their financial statements audited by independent public accountants. SEC Rel. 34-9253, 36 FR 13915. (July 28, 1971.)

On September 30, 1975, the FDIC reviewed the question of requiring audits of banks' financial statements filed under Part 335. 40 FR 47346. (October 8, 1975.) At that time, less than half of those banks whose securities were registered filed certified financial statements. Currently, only nine banks reporting under Part 335 do not file certified financial statements.

In order to make reporting requirements for publicly held banks consistent with those requirements for all other publicly held corporations, the FDIC proposes to amend Part 335 of its regulations to eliminate the use of verification statements and to require that bank financial statements be audited by independent public accountants. It is intended that this requirement, if adopted, would be effective for financial statements issued for periods ending after December 15, 1989. The FDIC proposes to amend §§ 335.602 and 335.603 to conform to the SEC rule.

2. Compensation

On September 23, 1983, the SEC adopted an amended and retitled item of Regulation S-K, item 402, providing for uniform disclosure of the compensation paid to certain executive officers and directors. The amendment was intended to simplify the current disclosure requirements, reduce compliance burdens and allow SEC registrants greater flexibility in selecting a presentation format while providing investors and security holders with more comprehensive information concerning executive compensation. (SEC Rel. No. 34-20220, 43 FR 44467 (Sept. 29, 1983, corrected 48 FR 46012, Oct. 11, 1983). The FDIC would also amend its regulations in a similar fashion to provide greater flexibility in format and to otherwise conform with newer SEC requirements. A noteworthy change would be an increase in the threshold for disclosure of individual compensation of executive officers from $50,000 to $60,000. The FDIC proposes to amend § 335.212 item 7 to accomplish this result. Changes in other aspects of items 6 and 7 relating to directors, officers, and insider transactions, as modified by the SEC on December 13, 1982, SEC Rel. No. 34-19290, 47 FR 55861 (December 13, 1982) are also proposed, except for certain provisions governing disclosure of insider loans for banks which have historically been governed by more specific regulations in Part 335.

3. Small Transaction Exemption

SEC Rel. No. 34-18853, 47 FR 29652 (July 6, 1982) increased the reporting exemption for small "insider trading" reports from $3,000 to $10,000 in market value for any six-month period. The FDIC proposes to amend § 335.410(h) to conform to the SEC change.

4. Issuer Tender Offers

On July 28, 1983, the SEC amended its issuer tender offer regulation (SEC rule 13e-4) to except from its requirements, offers by issuers to purchase shares from their security holders who own a specified number of shares (less than 100) as of a specified date prior to the announcement of the offer. A companion amendment was made to SEC rule 13(e)(3) (the "going private rule"). SEC Rel. No. 34-48 FR 34253 (July 28, 1983). The FDIC has applied SEC rules 13(e) (3) and (4) to nonmember bank transactions by a statement of policy. 46 FR 25295 (May 5, 1981). Since the time of adoption of this policy, issuer tender offers and going private transactions have become more frequent among nonmember banks. Thus, a specific rule in the FDIC's regulations applying SEC rules 13(e)(3) and 13(e)(4) to nonmember banks is desirable. The FDIC proposes to amend §§ 335.409 and 335.521 to reflect the application of these rules to registered nonmember banks.

5. Comprehensive Review of Proxy Rules

On November 10, 1986 the SEC adopted amendments to its proxy rules in order to bring to the proxy context the benefits of the SEC's existing integrated disclosure system. The amendments provided for simplified disclosure of compensation plans. The amendments also require new registrants to provide disclosure concerning prior changes in accountants and any related disagreements. In addition, certain changes updated the rules to comport with current SEC practice, interpretations and other changes of laws and rules. 51 FR 42046 (November 20, 1986).

The FDIC proposes to adopt technical changes made by the SEC which fit the regulatory scheme of Part 335. A major difference would be that the FDIC would not repeat many regulations in a separate information statement regulation. References to the Securities Act of 1933 filings would be eliminated, since banks are exempt from the Securities Act of 1933, 15 U.S.C. 77a *et seq.* (1982) ("Securities Act").

The proposed amendments primarily revise Subpart B of Part 335.

6. All Holders and Best Price Rules in Tender Offers

On July 11, 1986, the SEC adopted amendments to its tender offer rules providing that a bidder's or issuer's tender offer must be open to all holders of the class of securities subject to the tender offer and that any security holder must be paid the highest consideration paid to any other security holder during the tender offer. In addition, the SEC amended existing rules concerning minimum offering periods and withdrawal rights. SEC Rel. No. 34-23421, 51 FR 25873 (July 17, 1986).

The FDIC proposes to adopt the SEC amendments in substantially the form adopted by the SEC except that the issuer tender offer rules would be brought into play by the cross referencing regulation proposed in paragraph 4. Sections 335.507, 335.509(a), and 335.510 would be amended as set forth below.

7. Shareholder Communications

On November 25, 1986, the SEC adopted its new rule 14b-2 under the Exchange Act and related amendments to rules 14a-1, 14a-13, 14c-1 and 14c-7 in order to implement provisions of the Shareholder Communications Act of 1985 (Pub. L. 99-222, 99 Stat. 1737 (1985)). New rule 14b-2 governs banks as intermediaries and is administered by the SEC. Rules 14a-1, 14a-13, 14c-1 and 14c-7 would apply to nonbank issuers and are thus subject to our consideration under section 12(i) of the Exchange Act. The rules govern the process by which the registrants communicate with the beneficial owners of their securities that are registered in the name of a bank, its nominee, a broker, or other entity acting as agent, custodian or fiduciary (i.e., held in street name). The FDIC proposes to amend its regulations with respect to those provisions that deal with the bank as issuer. Appropriate amendments would be made to §§ 335.203 and 335.214.

8. Companies

SEC Rel. No. 34-23789, discussed in paragraph 4 above, also allows the incorporation by reference of information meeting the requirements of the proxy regulations that has already been filed under the Securities Act.

The FDIC proposes to amend its regulations to allow the incorporation by reference of filings on SEC forms where the person incorporating filings by reference is a holding company or nonbank company filing with the SEC. All filings incorporated by reference must be filed with the FDIC. Section 335.212, items 14 and 15 would be amended as set forth below.

9. Supplementary Statistical Disclosure

Pursuant to the SEC's Industry Guide 3, supplemental statistical disclosures of material lending and deposit activities may be relevent and useful to an understanding of the bank's operations. The management's discussion and analysis of financial condition and results of operations sections of the annual report and registration statement (Forms F-2 and F-1, respectively) are proposed to be expanded to include statistical information similar to that required by Securities Exchange Act Industry Guide 3. Information about yields and costs of various assets and liabilities, maturities and repricing characteristics of various assets and liabilities and risk elements in the lending portfolio would be required. SEC Rel. No. 69, 52 FR 18200 (May 8, 1987). The FDIC proposes to amend sections 335.309a and 335.312 to provide for informative disclosures by nonmember banks as appropriate.

D. SEC Amendments not Adopted

1. Elimination of Legal Size Paper

On December 21, 1982, the SEC announced the adoption of amendments to its rules to require the use of 8½" x 11" paper for all statements, applications, reports, documents and amendments thereto filed with the SEC. The reason given for the change was that the adoption of a uniform size for all documents filed under the SEC will achieve maximum cost-efficiency in the SEC's micrographics filing program. SEC Rel. No. 34-19356, 47 FR 58237 (December 30, 1982).

The FDIC does not intend to amend its rules to conform with the SEC in this respect. The FDIC does not use a micrographics filing program and therefore has no need for the change.

2. Shareholder Proposals

On August 23, 1983, the SEC adopted amendments to its shareholder proposal rule, rule 14a-8, 17 CFR 240.14a-8 (1986). The amendments introduce several new procedural requirements that proponents must meet, reduce the number of proposals that a proponent may submit to an issuer in any one year, allow proponents to include supporting statements even where management does not oppose their proposal, and make other changes.

The FDIC does not propose to adopt these changes because it has not experienced a need for a revision of the rule.

3. Reporting by Small Issuers

On July 8, 1986, the SEC adopted amendments to its regulation that would increase the number of issuers outside the scope of its registration and reporting requirements by adjusting the

total assets threshold upward to $5 million.

The FDIC does not intend to amend its regulations in this fashion because a $5 million threshold would not exempt any banks whose securities are registered under Part 335.

4. Preliminary Proxy Material—Shareholder Proposals

On December 22, 1987, the SEC adopted amendments to its proxy rules to eliminate the filing of "routine" preliminary proxy and information statements under certain circumstances. It also amended its shareholder proposal rule. SEC Rel. No. 34-25217, 52 FR 48977 (December 29, 1987).

In view of our past experience with proxy statement filings, we feel that bank management and bank shareholders profit from our advance staff review and comments. Many registered banks do not have special securities counsel. Staff review of preliminary proxy statements regularly detects errors and inconsistencies in filed material. In particular, statements as to share ownership and insider transactions are frequently corrected as a result of the review.

The FDIC specifically invites comments on the cost savings of implementing the SEC change and eliminating the filing of routine preliminary proxy and information statements. Thus, the FDIC does not propose to eliminate preliminary filing requirements for "routine" proxy statements. The amendments to the shareholder proposal rule are not proposed for the same reason as stated in the above paragraph D.2.

E. Miscellaneous

The regulations have been updated to reflect changes in the Call Reports and in other minor technical respects. Some corrections have been made.

F. Certain Factors

1. Alternatives Considered

Section 12(i) of the Act requires the FDIC to issue regulations substantially similar to those of the SEC or publish its reasons for not doing so. The FDIC believes that the reasons for the SEC regulations proposed to be adopted are equally applicable to the banking industry.

2. Cost-Benefit Analysis

As noted above, the amendments are required by statute. Therefore, a cost-benefit analysis was not prepared. The FDIC feels that at this time it is not appropriate to utilize a flexible regulatory approach (small bank/large bank) since shareholders and investors in small banks have the need for the same quality information provided to shareholders and investors of large banks. The FDIC requests comments upon any increase in costs or additional burden the amendments may impose, which would not be outweighed by the benefits provided the bank, shareholders and the public. The FDIC is specifically requesting information from banks concerning projected start-up costs and continuing costs. To the extent feasible, these estimates should be allocated among the various new areas of regulation.

3. Regulatory Flexibility Act

The FDIC certifies that the proposal, if issued, would not have a significant economic impact on a substantial number of small banks or other entities. Of the banks affected by the proposal less than 60 banks have individual assets no greater than $25 million.

List of Subjects in 12 CFR Part 335

Accounting, Banks, Banking, Reporting and recordkeeping requirements, Securities.

Chapter III of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 335—SECURITIES OF NONMEMBER BANKS

1. The authority citation for Part 335 continues to read as follows:

Authority: Sec. 12(i) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78(i)).

§ 335.101 [Amended]

2. Section 335.101 is proposed to be amended by closing the parenthesis in the last sentence after "3064-0030", placing a period after that parenthesis, and removing the rest of that sentence.

3. Section 335.102 is proposed to be amended by:

(A) Redesignating paragraphs (b) through (d) as paragraphs (c) through (e); paragraph (e) as paragraph (g); paragraphs (f) through (h) as paragraphs (j) through (l); paragraphs (i) through (n) as paragraphs (o) through (t); paragraphs (p) through (bb) as paragraphs (v) through (hh); paragraphs (dd) through (hh) as paragraphs (mm) through (qq); paragraph (jj) as paragraph (ss);

(B). Revising and redesignating: paragraph (o) as paragraph (u); paragraph (cc) as paragraph (ii); paragraph (ii) as paragraph (rr);

(C) Adding: Paragraphs (b), (f), (h), (i), (m), (n), (jj), (kk), (ll); and

(D) Removing and reserving redesignated paragraph (l), as follows:

§ 335.102 Definitions

* * * * *

(b) *Accountants report.* The term "accountant's report," when used in regard to financial statements, means a document in which an independent public or certified public accountant indicates the scope of the audit (or examination) which he has made and sets forth his opinion regarding the financial statements taken as a whole, or an assertion to the effect that an overall opinion cannot be expressed. When an overall opinion cannot be expressed, the reasons therefor shall be stated.

* * * * *

(f) *Audit (or examination).* The term "audit" (or "examination"), when used in regard to financial statements, means an examination of the statements by an accountant in accordance with generally accepted auditing standards for the purpose of expressing an opinion thereon.

* * * * *

(h) *Call Report.* The term "Call Report" means the Consolidated Reports of Condition and Income for commercial banks (FFIEC forms 031, 032, 033 and 034) and for savings banks (FDIC form 8040/25).

(i) *Certified.* The term "certified," when used in regard to financial statements, means examined and reported upon with an opinion expressed by an independent public or certified public accountant.

* * * * *

(m) *Employee benefit plan.* For purposes of §§ 335.203 and 335.214, the term "employee benefit plan" means any purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive, pension or similar plan solely for employees, directors, trustees or officers, and the term "exempt employee benefit plan securities" means: (1) Securities of the bank held by an employee benefit plan, as defined in paragraph (b) of this section, where such plan is established by the bank or (2) if notice regarding the current solicitation has been given pursuant to § 335.214 (a)(1)(ii)(C) or if notice regarding the current request for a list of names, addresses and securities positions of beneficial owners has been given pursuant to § 335.214(b)(3), securities of the bank held by an employee benefit plan, as defined in paragraph (b) of this section, where such plan is established by an affiliate of the bank.

(n) *Entity that exercises fiduciary powers.* The term "entity that exercises fiduciary powers" means any entity that holds securities in nominee name or

otherwise on behalf of a beneficial owner but does not include a clearing agency registered pursuant to section 17A of the Act or a broker or a dealer.

* * * * *

(u) *Last fiscal year.* The term "last fiscal year" of the bank means the last fiscal year of the bank ending prior to the date of the meeting for which proxies are to be solicited or an information statement is required to be distributed or, if the solicitation or information statement involves written authorizations or consents in lieu of a meeting, the earliest date they may be used to effect corporate action.

* * * * *

(ii) *Qualified stock option, restricted stock option,* and *employee stock purchase plan.* The terms "qualified stock option," "restricted stock option," and "employee stock purchase plan" have the meanings given them in sections 422 through 424 of the Internal Revenue Code of 1986, as amended. For the purposes of this regulation, an option which meets all of the conditions of section 424(b) of the Internal Revenue Code of 1986 as amended, other than the date of issuance, shall be deemed to be a "restricted stock option."

(jj) *Record date.* The term "record date" means the date as of which the record holders of securities entitled to vote at a meeting or by written consent or authorization shall be determined.

(kk) *Record holder.* For purposes of §§ 335.203 and 335.214 the term "record holder" means any broker, dealer, voting trustee, bank, association or other entity that exercises fiduciary powers which holds securities of record in nominee name or otherwise or as a participant in a clearing agency registered pursuant to section 17A of the Act.

(ll) *Respondent bank.* For purposes of §§ 335.203 and 335.214, the term "respondent bank" means any bank, association or other entity that exercises fiduciary powers which holds securities on behalf of beneficial owners and deposits such securities for safekeeping with another bank, association or other entity that exercises fiduciary powers.

* * * * *

(rr) *Verified.* The term "verified", when used in regard to financial statements, has the same meaning as "certified".

* * * * *

4. Section 335.201 is proposed to be amended, by revising paragraphs (a) and (b) to read as follows:

§ 335.201 Requirement of statement.

(a) *Proxy statements.* No solicitation of a proxy (See 12 CFR 335.102 (gg) and (oo)) with respect to a security of a bank registered under section 12 of the Act shall be made unless each person solicited is concurrently furnished or has previously been furnished with a written proxy statement containing the information required by Form F-5.

(b) *Information statements.* If any bank having such a security outstanding fails to solicit proxies from the holders of any such security in a manner requiring the furnishing of a proxy statement, the bank shall transmit to all holders of record of such security a statement containing the information required by Form F-5A. The "information statement" required by the preceding sentence shall be transmitted: (1) At least 20 calendar days prior to any annual or other meeting of the holders of such security at which the holders are entitled to vote or (2) in the case of corporate action taken with the written authorization or consent of security holders, at least 20 days prior to the earliest date on which the corporate action may be taken. The "information statement" shall be transmitted to every security holder of the class that is entitled to vote or give an authorization or consent in regard to any matter to be acted upon and from whom a proxy, authorization or consent is not solicited on behalf of the bank pursuant to section 14(a) of the Act: *Provided, however,* that in the case of a class of securities in unregistered or bearer form, such statements need be transmitted only to those security holders whose names are known to the bank.

* * * * *

5. Section 335.203 is proposed to be amended by:

a. Revising paragraph (a) introductory text, (a)(1) and (a)(7);

b. Adding new notes after paragraphs (a)(9) and (b)(2);

c. Revising paragraph (a)(11); and

d. Removing the word "Six" and adding in its place the word "Three" in paragraph (b), as follows:

§ 335.203 Annual report to security holders to accompany statements.

(a) Any statement furnished on behalf of the bank that relates to an annual meeting (or special meeting in lieu of annual meeting) of security holders at which directors are to be elected shall be accompanied or preceded by an annual report to such security holders.

(1) The report shall include, for the bank and its subsidiaries, consolidated balance sheets as of the end of each of the two most recent fiscal years, and statements of income, changes in capital accounts and changes in financial position and/or cash flows for fiscal years ending after July 15, 1988 for each of the three most recent fiscal years, prepared and audited in substantial compliance with Subpart F of this part. Any financial statement schedules (except schedule VI) or exhibits or separate financial statements which may otherwise be required in filings with the FDIC may be omitted.

* * * * *

(7) The report shall identify each of the bank's directors and officers, and shall indicate the principal occupation or employment of each such person and the name and principal business of any organization by which such person is so employed. See the definition of "officers" at § 335.102(y).

* * * * *

(9) * * *

Note to paragraph (a)(9): Pursuant to the undertaking required by paragraph (a)(9) of this section, a bank shall furnish a copy of its annual report on Form F-2 (§ 335.312) to a beneficial owner of its securities upon receipt of a written request from such person. Each request must set forth a good faith representation that, as of the record date for the solicitation requiring the furnishing of the annual report to security holders pursuant to paragraph (a) of this section, the person making the request was a beneficial owner of securities entitled to vote.

* * * * *

(11) This § 335.203 shall not apply, however, to solicitations made on behalf of the bank before the financial statements are available if solicitation is being made at the time in opposition to the bank and if the bank's statement includes an undertaking in boldface type to furnish such annual report to all persons being solicited at least 20 calendar days before the date of the meeting or, if the solicitation refers to a written consent or authorization in lieu of a meeting, at least 20 calendar days prior to the earliest date on which it may be used to effect corporate action.

* * * * *

(b) * * *

Note to paragraph (b)(2): To assist the staff, managements of banks are requested to indicate in a letter transmitting to the FDIC copies of their annual reports to security holders or in a separate letter at or about the time the annual report is furnished to the FDIC, whether the financial statements in the report reflect a change from the preceding year in any accounting principles or practices or in the method of applying any such principles or practices.

* * * * *

6. Section 335.204 is amended by:

a. Adding Note 1 and Note 2 at the end of paragraph (a);

b. Substituting the word "holidays" with "federal holidays" in paragraph (b);

c. Removing the word "Six" and adding in its place the word "Three" in paragraph (c);

d. Redesignating paragraphs (e) through (j) as (f) through (k) and adding a new paragraph (e);

e. Revising newly redesignated paragraphs (f) through (i).

§ 335.204 Material required to be filed.

(a) * * *

Note 1 to paragraph (a): The filing of revised material does not recommence the ten day time peirod unless the revised material contains material revisions or material new proposal(s) that constitute a fundamental change in the proxy material.

Note 2 to paragraph (a): The officials responsible for the preparation of the preliminary material should make every effort to verify the accuracy and completeness of the information required by the applicable rules. The preliminary material should be filed with the FDIC at the earliest practicable date.

* * * * *

(e) All preliminary material filed pursuant to paragraph (a) or (b) of this section shall be accompanied by a statement of the date on which definitive copies therefor filed pursuant to paragraph (c) of this section are intended to be released to security holders. All definitive material filed pursuant to paragraph (c) of this section shall be accompanied by a statement of the date on which copies of such material have been released to security holders, or, if not released, the date on which copies thereof are intended to be released. All material filed pursuant to paragraph (d) of this section shall be accompanied by a statement of the date on which copies thereof are intended to be released to the individual who will make the actual solicitation.

(f) All copies of material filed under paragraphs (a) and (b) of this section shall be clearly marked "Preliminary Copies" and shall be for the information of the FDIC only and shall not be considered available for public inspection before definitive material has been filed with the FDIC, except that such material may be disclosed to any department or agency of the U.S. Government and to the Congress. The FDIC may make such inquiries or investigation with respect to the material as may be necessary for an adequate review thereof.

(g) Copies of replies to inquiries from security holders requesting further information and copies of communications that do no more than request that forms of proxy theretofore solicited be signed, dated, and returned need not be filed under this section.

(h) Notwithstanding the provisions of § 335.204 (a) and (b), § 335.205(b) and § 335.220(e), copies of soliciting material in the form of speeches, press releases, and radio or television scripts may, but need not, be filed with the FDIC prior to use or publication. Definitive copies, however, shall be filed with or mailed for filing to the FDIC as required by § 335.204(c) not later than the date such material is used or published. The provisions of § 335.204 (a) and (b), § 335.205(b) and § 335.220(e) shall apply, however, to any reprints or reproductions of all or any part of such material.

(i) Where any statement, form of proxy, or other material filed pursuant to this section is revised, two of the copies of such amendment or revised material filed under § 335.204(c) shall be marked to indicate clearly the changes. If the amendment or revision alters the text of the material, the changes in such text shall be indicated by means of underscoring or in some other appropriate manner.

§ 335.206 [Amended]

7. Section 335.206 is proposed to be amended by substituting the word "paragraph" with "section" in the second sentence in paragraph (a).

8. Section 335.207 is proposed to be amended by revising paragraph (d) to read as follows:

§ 335.207 Requirements as to proxy.

* * * * *

(d) No proxy shall confer authority:

(1) To vote for the election of any person to any office for which a bona fide nominee is not named in the proxy statement;

(2) To vote at any annual meeting other than the next annual meeting (or any adjournment thereof) to be held after the date on which the proxy statement and form of proxy are first sent or given to security holders;

(3) To vote with respect to more than one meeting (and any adjournment thereof) or more than one consent solicitation; or

(4) To consent to or authorize any action other than the action proposed to be taken in the proxy statement or matters referred to in paragraph (c) of this section.

A person shall not be deemed to be a bona fide nominee and he shall not be named as such unless he has consented to being named in the proxy statement and to serve if elected.

* * * * *

9. Section 335.209 is proposed to be amended by revising paragraph (e) as follows:

§ 335.209 Presentation of information in statement.

* * * * *

(e) All proxy statements shall disclose on the first page thereof the complete mailing address, including zip code, of the principal executive offices of the bank and the approximate date on which the proxy statement and form of proxy are first sent or given to security holders. If action is to be taken by written consent, state the date by which consents are to be submitted if state law requires that such a date be specified or if the person soliciting intends to set a date.

* * * * *

10. Section 335.210 is proposed to be amended by revising paragraphs (b)(2) and (3) as follows:

§ 335.210 Mailing communications for security holders.

* * * * *

(b) * * *

(2) Any material that is furnished by the security holder shall be mailed with reasonable promptness by the bank after receipt of a tender of the material to be mailed, of envelopes or other containers therefor, of postage or payment for postage. The bank need not, however, mail any such material that relates to any matter to be acted upon at an annual meeting of security holders prior to the earlier of:

(i) A day corresponding to the first date on which the bank's proxy soliciting material was released to security holders in connection with the last annual meeting of security holders, or

(ii) The first day on which solicitation is made on behalf of the bank. With respect to any material that relates to any matter to be acted upon by security holders otherwise than at an annual meeting, the material need not be mailed prior to the first day on which solicitation is made on behalf of the bank management.

(3) The bank shall be responsible for the proxy statement, form of proxy, or other communication.

* * * * *

11. Section 335.212 is proposed to be amended by:

a. Revising the first paragraph under General Instructions;

b. Revising paragraph (b)(2) of Item 4, and paragraphs (a) and (d) of Item 5;

c. Removing paragraph (e) and redesignating paragraph (f) as paragraph (e) of Item 5;

d. Redesignating paragraph (g) as paragraph (f) and removing the Instruction to newly redesignated paragraph (f) of Item 5;

e. Adding instructions 1 through 7 of Item 5;

f. Revising paragraph (e) of Item 6;

g. Revising Item 7 in its entirety;

h. Revising the heading, introductory text and paragraphs (a) and (b) of Item 9, removing Items 10 and 11, and redesignating Items 12 through 22 as Items 10 through 20;

i. Revising newly redesignated Item 12 and paragraphs (a)–(c) of Item 13;

j. Revising the Option Disclosure Instruction that follows redesignated Item 20.

§ 335.212 Form for proxy statement (Form F-5).

Form F-5—Proxy Statement

General Instructions

Each proxy statement shall, to the extent applicable, include the information called for under each of the items below. In the preparation of the statement, particular attention should be given to the definitions in § 335.102.

* * * * *

Item 4—Interest of Certain Persons in Matters To Be Acted Upon

* * * * *

(b) * * *

(2) With respect to any person, other than a director or principal officer of the bank acting solely in that capacity, who is a party to an arrangement or understanding pursuant to which a nominee for election as director is proposed to be elected, describe any substantial interest, direct or indirect, by security holdings or otherwise, that he has in any matter to be acted upon at the meeting, and furnish the information called for by Item 4(b) and (c) of Form F-6.

* * * * *

Item 5—Voting Securities and Principal Holders Thereof

(a) As to each class of voting securities of the bank entitled to be voted at the meeting (or by written consents or authorizations if no meeting is held) state the number of shares outstanding and the number of votes to which each class is entitled.

* * * * *

(d)(1) Furnish the following information, as of the most recent practicable date, substantially in the tabular form indicated, with respect to any person (including any "group" as that term is used in section 13(d)(3) of the Act) who is known to the bank to be the beneficial owner of more than five percent of any class of the bank's voting securities. The address given in column (2) may be a business, mailing or residence address. Show in column (3) the total number of shares beneficially owned and in column (4) the percentage of class so owned. Of the number of shares shown in column (3), indicate by footnote or otherwise the amount known to be shares with respect to which such listed beneficial owner has the right to acquire beneficial ownership as specified in § 335.403(d)(1).

(1)	(2)	(3)	(4)
Title of class	Name and address of beneficial owner	Amount and nature of beneficial ownership	Percent of class

(2) *Security ownership of management.* Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, as to each class of equity securities of the bank or any of its parents or subsidiaries other than directors' qualifying shares, beneficially owned by all directors and nominees, naming them, and directors and officers of the bank as a group, without naming them. Show in column (3) the total number of shares beneficially owned and in column (4) the percent of class so owned. Of the number of shares shown in column (3), indicate, by footnote or otherwise, the amount of shares with respect to which such persons have the right to acquire beneficial ownership as specified in § 335.403(d)(1).

(1)	(2)	(3)	(4)
Title of class	Name of beneficial owner	Amount and nature of beneficial ownership	Percent of class

(3) *Changes in control.* Describe any arrangements, known to the bank including any pledge by any person of securities of the bank or any of its parents, the operation of which may at a subsequent date result in a change in control of the bank.

* * * * *

Instructions to Item 5. 1. The percentages are to be calculated on the basis of the amount of outstanding securities, excluding securities held by or for the account of the bank or its subsidiaries, plus securities deemed outstanding pursuant to § 335.403(d)(1). For purposes of paragraph (2), if the percentage of shares beneficially owned by any director or nominee, or by all directors and officers of the bank as a group, does not exceed one percent of the class so owned, the bank may, in lieu of furnishing a precise percentage, indicate this fact by means of an asterisk and explanatory footnote or other similar means.

2. For the purposes of this Item, beneficial ownership shall be determined in accordance with § 335.403. Include such additional subcolumns or other appropriate explanation of column (3) necessary to reflect amounts as to which the beneficial owner has (A) sole voting power, (B) shared voting power, (C) sole investment power, or (D) shared investment power.

3. The bank shall be deemed to know the contents of any statements filed with the FDIC pursuant to section 13(d) or 13(g) of the Exchange Act. When applicable, a bank may rely upon information set forth in the statements unless the bank knows or has reason to believe that such information is not complete or accurate or that a statement or amendment should have been filed and was not.

4. For purposes of furnishing information pursuant to paragraph (d)(1), the bank may indicate the source and date of such information.

5. Where more than one beneficial owner is known to be listed for the same securities, appropriate disclosure should be made to avoid confusion. For purposes of paragraph (2), in computing the aggregate number of shares owned by directors and officers of the bank as a group, the same shares shall not be counted more than once.

6. Paragrpah (f) of this Item does not require a description of ordinary default provisions contained in the charter, trust indentures or other governing instruments relating to securities of the bank.

7. Where the holder(s) of voting securities reported pursuant to paragraph (1) hold more than five percent of any class of voting securities of the bank pursuant to any voting trust or similar agreement, state the title of such securities, the amount held or to be held pursuant to the trust or agreement (if not

clear from the table) and the duration of the agreement. Give the names and addresses of the voting trustees and outline briefly their voting rights and other powers under the trust or agreement.

Item 6—Director and Principal Officers

* * * * *

(e) *Certain business relationships.* Describe any of the following relationships regarding directors or nominees for director that exist, or have existed during the bank's last fiscal year, indicating the identity of the entity with which the bank has such a relationship, the name of the nominee or director affiliated with such entity and the nature of such nominee's or director's affiliation, the relationship between such entity and the bank and the amount of the business done between the bank and the entity during the bank's last full fiscal year or proposed to be done during the bank's current fiscal year:

(1) If the nominee or director is, or during the last fiscal year has been, principal officer of, or owns, or during the last fiscal year has owned, of record or beneficially in excess of ten percent equity interest in, any business or professional entity that has made during the bank's last full fiscal year, or proposes to make during the bank's current fiscal year, payments to the bank or its subsidiaries for property or services in excess of five percent of (i) the bank's consolidated gross revenues for its last full fiscal year, or (ii) the other entity's consolidated gross revenues for its last full fiscal year;

(2) If the nominee or director is, or during the last fiscal year has been, principal officer of, or owns, or during the last fiscal year has owned, of record or beneficially in excess of ten percent equity interest in, any business or professional entity to which the bank or its subsidiaries has made during the bank's last full fiscal year, or proposes to make during the bank's current fiscal year, payments for property or services in excess of five percent of (i) the bank's consolidated gross revenues for its last full fiscal year, or (ii) the other entity's consolidated gross revenues for its last full fiscal year;

(3) If the nominee or director is, or during the last fiscal year has been, principal officer of, or owns, or during the last fiscal year has owned, of record or beneficially in excess of ten percent equity interest in, any business or professional entity to which the bank or its subsidiaries was indebted at the end of the bank's last full fiscal year in an aggregate amount in excess of five percent of the bank's total consolidated assets at the end of such fiscal year;

(4) If the nominee or director is, or during the last fiscal year has been, a member of, or of counsel to, a law firm that the bank has retained during the last fiscal year or proposes to retain during the current fiscal year; *Provided, however,* that the dollar amount of fees paid to a law firm by the bank need not be disclosed if such amount does not exceed five percent of the law firm's gross revenues for that firm's last full fiscal year;

(5) If the nominee or director is, or during the last fiscal year has been, a partner or principal officer of any investment banking firm that has performed services for the bank, other than as a participating underwriter in a syndicate, during the last fiscal year or that the bank proposes to have perform services during the current year; *Provided, however,* that the dollar amount of compensation received by an investment banking firm need not be disclosed if such amount does not exceed five percent of the investment banking firm's consolidated gross revenues for that firm's last full fiscal year; or

(6) Any other relationships that the bank is aware of between the nominee or director and the bank that are substantially similar in nature and scope to those relationships listed in paragraph (b) (1) through (5).

Instructions to Paragraph (e) of Item 6

1. In order to determine whether payments or indebtedness exceed five percent of the consolidated gross revenues of any entity, other than the bank, it is appropriate to rely on information provided by the nominee or director.

2. In calculating payments for property and services the following may be excluded:

A. Payments where the rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

B. Payments that arise solely from the ownership of securities of the bank and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received; or

C. Payments made or received by subsidiaries other than significant subsidiaries as defined in § 335.102(nn), provided that all such subsidiaries making or receiving payments, when considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as defined in § 335.102(nn).

3. In calculating indebtedness the following may be excluded:

A. Debt securities that have been publicly offered, admitted to trading on a national securities exchange, or quoted on the automated quotation system of a registered securities association;

B. Amounts due for purchases subject to the usual trade terms; or

C. Indebtedness incurred by subsidiaries other than significant subsidiaries as defined in § 335.102(nn), provided that all such subsidiaries incurring indebtedness, when considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as defined in § 335.102(nn).

4. No information called for by paragraph (b) need be given respecting any director who is no longer a director at the time of filing the registration statement or report containing such disclosure. If such information is being presented in a proxy or information statement, no information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

* * * * *

Item 7—Compensation and Other Transactions With Management and Others

Furnish the information called for by this item if action is to be taken with respect to: (i) The election of directors, (ii) any bonus, profit sharing or other compensation plan, contract or arrangement in which any director, nominee for election as a director, or officer of the bank will participate, (iii) any pension or retirement plan in which any such person will participate, or (iv) the granting or extension to any such person of any options, warrants or rights to purchase any securities, other than warrants or rights issued to security holders, as such, on a pro rata basis. However, if the solicitation is made on behalf of persons other than the management, the information required need be furnished only as to nominees for election as directors and as to their associates.

(a)(1) *Cash compensation.* Furnish, in substantially the tabular form specified, all cash compensation paid to the following persons through the latest practicable date for services rendered in all capacities to the bank and its subsidiaries during the bank's last fiscal year:

(i) *Five principal officers.* Each of the bank's five most highly compensated principal officers whose cash compensation required to be disclosed pursuant to this paragraph exceeds $60,000, naming each such person; and

(ii) *All principal officers.* All principal officers as a group, stating the number of persons in the group without naming them.

(2) *Bonuses and deferred compensation.* The Cash Compensation Table also shall include:

(i) All cash bonuses to be paid to the named individuals and group for services rendered in all capacities to the bank and its subsidiaries during the last fiscal year unless such amounts have not been allocated at such time as compensation disclosure is filed:

(ii) All cash bonuses paid during the last fiscal year for services rendered in all capacities to the bank and its subsidiaries in a previous fiscal year, less any amount relating to the same contract, agreement, plan or arrangement included in the Cash Compensation Table for a prior fiscal year and less any amount that would have been so included but for the fact that the individual was not included in the Cash Compensation Table, as a named individual or as a member of the group, for such prior fiscal year; and

(iii) All compensation that would have been paid in cash to the named individuals and group for services rendered in all capacities to the bank and its subsidiaries during the last fiscal year but for the fact that the payment of such compensation was deferred.

CASH COMPENSATION TABLE

(A)	(B)	(C)
Name of individual or number in group	Capacities in which served	Cash compensation

Instructions to paragraph (a) of Item 7

1. *Cash Compensation Table.* (A) The bank may include additional columns in the Cash Compensation Table. For example, the bank may segregate cash bonuses and deferred compensation from cash salaries and fees.

(B) Amounts deferred pursuant to section 401(k) of the Internal Revenue Code are to be included in paragraph (a) for the fiscal year during which they are accrued.

(C) Banks need list in Column (B) of the Cash Compensation Table only those prinicpal capacities served by each of the identified individuals. The cash compensation disclosed, however, must include cash compensation received in *all* capacities.

2. *Persons covered.* (A) Paragraph (a) of this item applies to any individual who was principal officer of the bank at any time during the last fiscal year. Information need not be disclosed, however, for any portion of the period during which such individual was not a principal officer of the bank, provided a statement to that effect is made. With respect to an individual who becomes for the first time an individual whose compensation is to be reported in the Cash Compensation Table, it is not necesary to report compensation that would have been reported in the Table had the individual been included in prior years.

(B) Banks should be flexible in determining which individuals should be named in the Cash Compensation Table in order to ensure that disclosure is made with respect to key policy making members of management. Consideration should be given to the question of whether an individual's level of executive responsibilities, viewed in conjunction with such individual's actual level of cash compensation is such that the bank reasonably may conclude that the person is among its five most highly compensated, key policy making principal officers. Under this standard, it may be appropriate, in certain circumstances, to include a principal officer of a subsidiary in the Cash Compensation Table.

(C) In certain circumstances, it may be appropriate for a bank not to include in the Cash Compensation Table an individual who is one of the bank's five most highly compensated principal officers. Among the factors that should be considered in determining not to name an individual are: (i) The distribution or accrual of an unusually large amount of cash compensation (such as a bonus or commission) that is not part of a recurring arrangement and is unlikely to continue; and (ii) the payment of amounts of cash compensation relating to overseas assignments that may be attributed predominantly to such assignments.

(b)(1) *Compensation pursuant to plans.* Describe briefly all plans, pursuant to which cash or non-cash compensation was paid or distributed during the last fiscal year, or is proposed to be paid or distributed in the future, to the named individuals and group specified in paragraph (a) of this item. Information need not be given with respect to any group life, health, hospitalization, medical reimbursement or relocation plans that do not discriminate, in scope, terms, or operation, in favor of officers or directors of the bank and that are available generally to all salaried employees. The description of each plan shall include the following, except that the description of any defined benefit or actuarial plans need not include the information specified in paragraphs (b)(1)(vi) and (b)(1)(vii) of this item and the description of any stock option and stock appreciation right plan need not include the information specified in paragraph (b)(1)(vii) of this item:

(i) A summary of how the plan operates and who is covered by the plan;

(ii) The criteria used to determine amounts payable, including any performance formula or measure;

(iii) The time periods over which the measurement of benefits will be determined;

(iv) Payment schedules;

(v) Any recent material amendments to the plan;

(vi) Amounts paid or distributed pursuant to the plan to the named individuals and the group during the last fiscal year less any amount relating to the same plan which previously has been disclosed as accrued pursuant to paragraph (b)(1)(vii) of this item or a predecessor provision; and

(vii) Amounts accrued pursuant to the plan for the accounts of the named individuals and group during the last fiscal year, the distribution or unconditional vesting of which are not subject to future events.

(2) *Pension table.* As to defined benefit and actuarial plans, other than any defined benefit or actuarial plan under which benefits are not determined primarily by final compensation (or average final compensation) and years of service, include, as the payment schedule required by paragraph (b)(1)(iv) of this item, a separate Pension Table showing estimated annual benefits payable upon retirement (including amounts attributable to any defined benefit supplementary or excess pension award plans) to persons in specified compensation and years-of-service classifications. In addition, in furnishing the information required by paragraphs (b)(1)(i)–(v) of this item, include:

(i) The compensation covered by the plan, including the relationship of such covered compensation to the compensation reported in the Cash Compensation Table pursuant to paragraph (a) of this item, and state the current compensation covered by the plan for any individuals named in the Cash Compensation Table whose covered compensation differs substantially (by more than 10 percent) from that set forth in the Cash Compensation Table;

(ii) The estimated credited years of service for each of the individuals named in the Cash Compensation Table; and

(iii) A statement as to the basis upon which benefits are computed (*e.g.*, straight life annuity amounts) and whether or not the benefits listed in the Pension Table are subject to any deduction for Social Security or other offset amounts.

EXAMPLE OF PENSION TABLE OF SERVICE—

Remuneration	15	20	25	30	35
125,000	xxx	xxx	xxx	xxx	xxx
150,000	xxx	xxx	xxx	xxx	xxx
175,000	xxx	xxx	xxx	xxx	xxx
200,000	xxx	xxx	xxx	xxx	xxx
225,000	xxx	xxx	xxx	xxx	xxx

(3) *Alternative pension plan disclosure.* In furnishing the information required by paragraphs (b)(1)(i)–(v) of this item with respect to defined benefit or actuarial plans under which benefits are not determined primarily by final compensation (or average final compensation) and years of service include:

(i) The formula by which benefits are determined; and

(ii) The estimated annual benefits payable upon retirement at normal retirement age for

each of the individuals named in the Cash Compensation Table pursuant to paragraph (a) of this item

(4) *Stock option and stock appreciation right plans.* In addition to providing the information required by paragraphs (b)(1)(i)–(vi) of this item, furnish:

(i) With respect to stock options granted during the last fiscal year: (A) The title and aggregate amount of securities subject to options; (B) the average per share exercise price; and (C) if such option exercise price was less than 100 percent of the market value of the security on the date of grant, such fact and the market price on such date. The title and aggregate amount of such securities subject to options, if any, which are in tandem with stock appreciation rights should be set forth separately.

(ii) With respect to the exercise or realization of options or stock appreciation rights held in tandem with options, state the net value of securities (market value less any exercise price) or cash realized during the last fiscal year.

(iii) With respect to plans pursuant to which stock appreciation rights not in tandem with options were granted during the last fiscal year: (A) the number of rights granted; and (B) the average per share base price thereof.

(iv) With respect to the exercise or realization of stock appreciation rights not in tandem with options, state the net value of the shares (market price) or cash realized during the last fiscal year.

Instructions to paragraph (b) of Item 7

1. *Format.* With the exception of those pension plans disclosed pursuant to paragraph (b)(2), the bank may use either a narrative, tabular or other format or combination of formats provided the information so disclosed is clear and understandable. Disclosure required by paragraph (b)(2), pertaining to certain defined benefit and actuarial plans, is required to be presented in the Pension Table format set forth in that paragraph.

2. *Cash paid pursuant to plans.* The cash compensation paid pursuant to a plan need not be disclosed as amounts paid or distributed pursuant to paragraph (b)(1)(vi) of this item if such compensation was included in the Cash Compensation Table pursuant to paragraph (a) of this item and a statement to that effect is made. Similarly, the cash compensation deferred under a deferred compensation plan need not be disclosed as amounts accrued pursuant to paragraph (b)(1)(vii) of this item if such compensation was included in the Cash Compensation Table and a statement to that effect is made.

3. *Definition of "plan".* The term "plan" includes, but is not limited to the following: any plan, contract, authorization or arrangement, whether or not set forth in any formal documents, pursuant to which the following may be received: cash, stock, restricted stock, phantom stock, stock options, stock appreciation rights, stock options in tandem with stock appreciation rights, warrants, convertible securities, performance units and performance shares. A plan may be applicable to one person.

4. *Pension levels.* Compensation set forth in the Pension Table pursuant to paragraph (b)(2) of this item shall allow for reasonable increases in existing compensation levels; alternatively, banks may present as the highest compensation level in the Pension Table an amount equal to 120 percent of the amount of covered compensation of the most highly compensated individual named in the Cash Compensation Table pursuant to paragraph (a) of this item.

5. *Definition of "normal retirement age".* The term "normal retirement age" means normal retirement age as defined in a pension or similar plan or, if not defined therein, the earliest time at which a participant may retire without any benefit reduction because of age.

(c) *Other compensation.* Describe, stating amounts, any other compensation not covered by paragraphs (a) or (b) of this item that was paid or distributed during the last fiscal year to the named individuals and group specified in paragraph (a) of this item unless:

(1) With respect to any named individual, the aggregate amount of such other compensation is the lesser of $25,000 or 10 percent of the compensation reported in the Cash Compensation Table for such person pursuant to paragraph (a) of this item or

(2) With respect to the group, the aggregate amount of such other compensation is the lesser of $25,000 times the number of persons in the group or 10 percent of the compensation reported in the Cash Compensation Table for the group pursuant to paragraph (a) of this item and a statement to that effect is made.

Instructions to paragraph (c) of Item 7

1. *Scope.* Compensation to be disclosed pursuant to this paragraph may include, among other things: (a) Personal benefits or; (b) securities or property that were paid or distributed other than pursuant to a plan. It does not, in any event, include cash, which is to be disclosed pursuant to either paragraph (a) or (b).

2. *Threshold.* If the amount of other compensation for a named individual or the group exceeds the established thresholds, the entire amount of such other compensation must be disclosed pursuant to this paragraph.

3. *Valuation.* Compensation within paragraph (c) shall be valued on the basis of the bank's and subsidiaries' aggregate incremental cost.

(d) *Compensation of directors*—(1) *Standard arrangements.* Describe any standard arrangement, stating amounts, pursuant to which directors of the bank are compensated for all services as a director, including any additional amounts payable for committee participation or special assignments.

(2) *Other arrangements.* Describe any other arrangements pursuant to which any director of the bank was compensated during the bank's last fiscal year for services as a director, stating the amount paid and the name of the director.

(e) *Termination of employment and change of control arrangement.* Describe any compensatory plan or arrangement, including payments to be received from the bank, with respect to any individual named in the Cash Compensation Table pursuant to paragraph (a) of this section for the latest or then next preceding fiscal year if such a plan or arrangement results or will result from the resignation, retirement or any other termination of such individual's employment with the bank and its subsidiaries or from a change in control of the bank or a change in the individual's responsibilities following a change in control and the amount involved, including all periodic payments or installments, exceeds $60,000.

General Instructions to Paragraphs (a)–(e) of Item 7

1. *Transactions with third parties.* Paragraphs (a)–(e) of Item 7 include transactions between the bank and a third party where the primary purpose of the transaction is to furnish compensation to any named individual or the group specified in paragraph (a) of this item. No information need be given in response to any paragraph of this item as to any transaction if the transaction has been reported in response to another paragraph of Item 7(a).

2. *Exclusions.* No information need be given pursuant to this Item with respect to interest on deferred compensation provided that the rate of interest does not exceed prevailing market interest rates either: (1) At the time the interest is accrued or (2) at the time the plan pursuant to which the compensation is deferred was established. Similarly, dividends awarded on restricted stock need not be disclosed provided that the restricted stock is not of a particular class available only to certain employees on a discriminatory basis.

(f) *Indebtedness of management.* (1) State as to each of the following specified persons ("specified persons"), who was indebted to the bank at any time since the beginning of its last fiscal year:

(i) The largest aggregate amount of indebtedness (in dollar amounts, and as a percentage of total equity capital accounts at the time), including extensions of credit or overdrafts, endorsements and guarantees outstanding at any time during that period;

(ii) The amount thereof outstanding as of the latest practicable date;

(iii) The nature of the indebtedness and of the transaction in which it was incurred; and

(iv) The rate of interest paid or charged:

(A) Each director or principal officer of the bank;

(B) Each nominee for election as a director;

(C) Each security holder who is known to the bank to own of record or beneficially more than five percent of any class of the bank's voting securities ("principal security holder"); and

(D) Each associate of any such director, principal officer, nominee or principal security holder.

Instructions. 1. Include the name of each person whose indebtedness is described and the nature of the relationship by reason of which the information is required to be given.

2. Generally, no information need be given under this item 7(f) unless any of the following are present:

(a) The extension(s) of credit were not made on substantially the same terms, including interest rates, collateral and repayment terms as those prevailing at the time for comparable transactions with other than the specified persons.

(b) The extension(s) of credit were not made in the ordinary course of business.

(c) The extension(s) of credit have involved or presently involve more than a normal risk of collectibility or other unfavorable features including the restructuring of an extension of credit, or a delinquency as to payment of interest or principal.

(d) The aggregate amount of extensions of credit outstanding at any time from the beginning of the last fiscal year to date to a person specified in (A), (B), and (C) of this paragraph (f)(1) together with the person's associates, exceeded 10% of the equity capital accounts of the bank at the time or $5 million, whichever is less.

Note to instruction 2(d): For purposes of this instruction 2(d) only: (1) The information called for by paragraphs (f)(1)(iii) and (iv) of this item 7 need not be furnished; (2) A principal security holder shall mean each security holder known to the bank to own of record or beneficially more than ten (10) percent of any class of the bank's voting securities; and (3) The name of any associate need not be furnished.

(2) If aggregate extensions of credit to the specified persons as a group, exceeded 20 percent of the equity capital accounts of the bank at any time since the beginning of the last fiscal year.

(i) The aggregate amount of such extensions of credit shall be disclosed, and

(ii) A statement shall be included, to the extent applicable, that the bank has had and expects to have in the future, banking transactions in the ordinary course of its business with directors, officers, principal stockholders, and their associates, on substantially the same terms, including interest rates and collateral on loans, as those prevailing at the same time for comparable transactions with others and did not involve more than the normal risk of collectibility or present other unfavorable features.

(3) If any indebtedness required to be described arose under section 16(b) of the Act and had not been discharged by payment, state the amount of any profit realized, that such profit will inure to the benefit of the bank and whether suit will be brought or other steps taken to recover such profit. If in the opinion of counsel a question reasonably exists as to the recoverability of such profit, it will suffice to state all facts necessary to describe the transaction, including the prices and number of shares involved.

(g) *Transactions with management.* Describe briefly any transactions since the beginning of the bank's last fiscal year or any presently proposed transactions, to which the bank was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his relationship to the bank, the nature of his interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or principal officer of the bank;

(2) Any nominee for election as a director;

(3) Any security holder who is known to the bank to own of record or beneficially more than five percent of any class of the bank's voting securities; and

(4) Any associate of any of the foregoing persons.

Instructions. 1. No information need be given in response to this item 7(g) as to any compensation or other transaction reported in response to item 7(a), (b), (c), (d), (e) or (f), or as to any transaction with respect to which information may be omitted under instruction (b)(1) to item 7(a).

2. No information need be given in answer to this item 7(g) as to any transaction where:

(a) The rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

(b) The transaction involves services as a bank depositary of funds, transfer agent, registrar, trustee under a trust indenture, or similar services;

(c) The amount involved in the transaction or series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments, does not exceed $60,000; or

(d) The interest of the specified person arises solely from the ownership of securities of the bank and the specified person receives no extra or special benefit not shared on a pro rata basis by all holders of securities of the class.

3. It should be noted that this item calls for disclosure of indirect, as well as direct, material interests in transactions. A person who has a position or relationship with a firm, corporation, or other entity, which engages in a transaction with the bank or its subsidiaries may have an indirect interest in such transaction by reason of such position or relationship. However, a person shall be deemed not to have a material indirect interest in a transaction within the meaning of this item 7(g) where:

(a) The interest arises only: (i) From such person's position as a director of another corporation or organization (other than a partnership) which is a party to the transaction, or (ii) from the direct or indirect ownership by such person and all other persons specified in subparagraphs (1) through (4) above, in the aggregate, of less than a 10 percent equity interest in another person (other than a partnership) which is a party to the transaction, or (iii) from both such position and ownership;

(b) The interest arises only from such person's position as a limited partner in a partnership in which he and all other persons specified in (1) through (4) above had an interest of less than 10 percent; or

(c) The interest of such person arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest), or a creditor interest in another person which is a party to the transaction with the bank or any of its subsidiaries and the transaction is not material to such other person.

4. The amount of the interest of any specified person shall be computed without regard to the amount of the profit or loss involved in the transaction. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction shall be indicated.

5. In describing any transaction involving the purchase or sale of assets by or to the bank or any of its subsidiaries, otherwise than in the ordinary course of business, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost thereof to the seller. Indicate the principle followed in determining the bank's purchase or sale price and the name of the persons making such determination.

6. Include the name of each person whose interest in any transaction is described and the nature of the relationship by reason of which such interest is required to be described. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transactions shall be indicated.

7. Information shall be furnished in answer to this item with respect to transactions not excluded above which involve remuneration from the bank or its subsidiaries, directly or indirectly, to any of the specified persons for services in any capacity unless the interest of such persons arises solely from the ownership individually and in the aggregate of less then 10 percent of any class of equity securities of another corporation furnishing the services to the bank.

8. The foregoing instructions specify certain transactions and interests as to which information may be omitted in answering this item. There may be situations where, although the foregoing instructions do not expressly authorize nondisclosure, the interest of a specified person in the particular transaction or series of transactions is not a material interest. In that case, information regarding such interest and transaction is not required to be disclosed in response to this item. The materiality of any interest or transaction is to be determined on the basis of the significance of the information to investors in light of all of the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction to each other and the amount involved in the transaction are among the factors to be considered in determining the significance of the information to investors.

(h) *Transactions with pension or similar plans.* Describe briefly any transactions since the beginning of the bank's last fiscal year or presently proposed transactions, to which any pension, retirement, savings or similar plan provided by the bank, or any of its parents or subsidiaries was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his relationship to the bank, the nature of his interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or principal officer of the bank;

(2) Any nominee for election as a director;

(3) Any security holder who is known to the bank to own of record or beneficially

more than five (5) percent of the outstanding voting securities of the bank;

(4) Any associate of any of the foregoing persons; and

(5) The bank or any of its subsidiaries.

Instructions. 1. Instructions 2, 3, 4 and 5 to item 7(g) shall apply to this item 7(h).

2. Without limiting the general meaning of the term "transaction" there shall be included in answer to this item 7(h) any compensation received or any loans received or outstanding during the period, or proposed to be received.

3. No information need be given in answer to paragraph (h) with respect to

(a) Payments to the plan, or payments to beneficiaries, under the terms of the plan;

(b) Payment of compensation for services not in excess of five (5) percent of the aggregate compensation received by the specified person during the bank's last fiscal year from the bank; or

(c) Any interest of the bank which arises solely from its general interest in the success of the plan.

(i) *Legal proceedings.* Briefly describe any material legal proceeding to which any director, any nominee for election as a director, principal officer of the bank, any owner of record or beneficially of more than five (5) percent of any class of voting securities of the bank, or any associate of any such director, nominee, officer or security holder is a party adverse to the bank.

* * * * *

Item 9—Compensation Plans

If action is to be taken with respect to any plan pursuant to which cash or noncash compensation may be paid, furnish the following information:

(a) *All Plans.* (1) Describe briefly the material features of the plan being acted upon, identify each class of persons who will be eligible to participate therein, indicate the approximate number of persons in each such class and state the basis of such participation.

(2) State the benefits or amounts which will be received by or allocated to each of the following under the plan being acted upon, if such benefits or amounts are determinable: (i) Each person (stating name and position) specified in paragraph (a)(1)(i) of Item 7 of this Form F–5; (ii) all current principal officers as a group; (iii) all other current officers and directors who are not principal officers as a group; and (iv) all employees as a group. If such benefits or amount are not determinable, state the benefits or amounts which would have been received by or allocated to each of the following for the last fiscal year if the plan had been in effect, if such benefits or amounts may be determined: (i) Each person (stating name and position) specified in paragraph (a)(1)(i) of Item 7 of this Form F–5; (ii) all current principal officers as a group; (iii) all other current officers and directors who are not principal officers as a group; and (iv) all employees as a group.

(3) Furnish the information called for by Item 7(b) of this Form F–5 with respect to all compensation plans now in effect or in effect during the last three years except that information called for in paragraphs (b)(1)(vi) and (vii) and (b)(4) of Item 7(b) of this Form F–5 should be furnished with respect to the last three fiscal years for the following: (i) Each person (stating name and position) specified in Item 7(a)(1)(i) of this Form F–5; (ii) all current principal officers as a group; (iii) all other current officers and directors who are not principal officers as a group, if such persons may participate in the plan; and (iv) all employees as a group, if such persons may participate in the plan. The information called for by paragraph (b)(4)(ii) of Item 7 of this Form F–5 need not be provided for all employees as a group. The information required by this paragraph (a)(3) is in lieu of the information otherwise called for by Item 7(b) of this Form F–5 in connection with the disclosure required by Item 7 of this Form F–5.

(4) If the plan to be acted upon can be amended, otherwise than by a vote of security holders, to increase the cost thereof to the bank or to alter the allocation of the benefits as between the groups specified in paragraph (a)(3), state the nature of the amendments which can be so made.

(b) *Specific plans.* (1) With respect to any pension or retirement plan submitted for security holder action, state: (i) The approximate total amount necessary to fund the plan with respect to past services, the period over which such amount is to be paid and the estimated annual payments necessary to pay the total amount over such period; and (ii) the estimated annual payment to be made with respect to current services. In the case of a pension or retirement plan, information called for by paragraph (a)(2) of this Item may be furnished in the format specified by paragraphs (b) (2) and (3) of Item 7 of this Form F–5.

(2) With respect to any specific grant of or any plan containing options, warrants or rights submitted for security holder action, (i) state: (A) The title and amount of securities called for or to be called for by such options, warrants or rights; (B) the prices, expiration dates and other material conditions upon which the options, warrants or rights may be exercised; (C) the consideration received or to be received by the registrant or subsidiary for the granting or extension of the options, warrants or rights; (D) the market value of the securities called for or to be called for by the options, warrants or rights as of the latest practicable date; and (E) in the case of options, the federal income tax consequences of the issuance and exercise of such options to the recipient and the bank; and (ii) state separately the amount of such options received or to be received by the following persons if such benefits or amounts are determinable: (A) Each person (stating name and position) specified in paragraph (a)(1)(i) of Item 7 of this Form F–5; (B) all current principal officers as a group; (C) all other current officers and directors who are not principal officers as a group; (D) each nominee for election as a director; (E) each associate of any such directors, principal officers or nominees; (F) each other person who received or is to receive 5 percent of such options, warrants or rights, and (G) all employees as a group.

Instructions to Item 9.

1. The term "plan" as used in this Item means any plan as defined in Instruction 3 of paragraph (b) of Item 7 of this Form F–5.

2. If action is to be taken with respect to a material amendment or modification of an existing plan, the item shall be answered with respect to the plan as proposed to be amended or modified and shall indicate any material differences from the existing plan.

3. If the plan to be acted upon is set forth in a written document, three copies thereof shall be filed with the FDIC at the time preliminary copies of the proxy statement and form of proxy are filed pursuant to paragraph (a) of § 335.204.

4. Paragraphs (a)(3) and (b)(2)(ii) do not apply to warrants or rights to be issued to security holders as such on a pro rata basis.

* * * * *

Item 12. Mergers, Consolidations, Acquisitions and Similar Matters

If action is to be taken with respect to any transaction involving (i) the merger or consolidation of the bank into or with any other person or of any other person into or with the bank, (ii) the acquisition by the bank or any of its security holders of securities of another person, (iii) the acquisition by the bank of any other going business or of the assets thereof, (iv) the sale or other transfer of all or any substantial part of the assets of the bank, or (v) the liquidation or dissolution of the bank, furnish the following information:

(a) Information about the transaction. Furnish the following information concerning the bank and (unless otherwise indicated) each other person: which is to be merged into the bank or into or with which the bank is to be merged or consolidated; the business or assets of which are to be acquired; which is the issuer of securities to be acquired by the bank in exchange for all or a substantial part of the bank's assets; or which is the issuer of securities to be acquired by the bank or its security holders:

(1) The name, complete mailing address (including the ZIP Code) and telephone number (including the area code) of the principal executive offices.

(2) A brief description of the general nature of the business conducted by the other person.

(3) A summary of the material features of the proposed transaction. If the transaction is set forth in a written document, file three copies thereof with the FDIC at the time preliminary copies of the proxy statement and form of proxy are filed pursuant to § 335.204. The summary shall include, where applicable:

(i) A brief summary of the terms of the transaction agreement;

(ii) The reasons for engaging in the transaction;

(iii) An explanation of any material differences in the rights of security holders of the bank as a result of this transaction;

(iv) A brief statement as to the accounting treatment of the transaction; and

(v) The federal income tax consequences of the transaction.

(vi) The information required in the description of securities in a registration statement (Form F–1, Item 14) filed under this part, for a security being issued in connection with the transaction if the security holders entitled to vote or give an authorization or consent with regard to the transaction will receive such securities, unless: (i) the issuer of the securities is not a bank and would meet the requirements for use of the SEC's Form S–3 and elects to furnish information in accordance with the provisions of paragraph (b)(1);, (ii) capital stock is to be issued and (iii) securities of the same class are registered under section 12 of the Exchange Act and either (a) are listed for trading or admitted to unlisted trading privileges on a national securities exchange; or (b) are securities for which bid and offer quotations are reported in an automated quotations system operated by a national securities association.

(4) A brief statement as to dividends in arrears or defaults in principal or interest in respect of any securities of the bank or of such other person and as to the effect of the transaction thereon and such other information as may be appropriate in the particular case to disclose adequately the nature and effect of the proposed action.

(5) Furnish in comparative columnar form on a historical and (if material) pro-forma basis the selected financial data for the bank referred to below, for

(a) Each of the last five fiscal years of the bank (or for the life of the bank and its predecessors, if less), and

(b) Any additional fiscal years necessary to keep the information from being misleading.

Instructions to paragraph (a)(5).

1. The purpose of the selected financial data shall be to supply in a convenient and readable format selected financial data which highlight certain significant trends in the bank's financial condition and results of operations.

2. The following items shall be included in the table of financial data: net interest income; other operating income; provision for loan and lease losses; income (loss) from continuing operations; income (loss) from continuing operations per common share; total assets; long-term obligations and redeemable preferred stock and cash dividends declared per common share. Banks may include additional items which they believe would enhance an understanding of and would highlight other trends in their financial condition and results of operations.

Briefly describe, or cross-reference to a discussion thereof, factors such as accounting changes, business combinations or dispositions of business operations, that materially affect the comparability of the information reflected in selected financial data. Discussion of, or reference to, any material uncertainties should also be included where such matters might cause the data reflected herein not to be indicative of the bank's future financial condition or results of operations.

3. All references to the bank in the table of selected financial data and in this Item shall mean the bank and its subsidiaries consolidated.

4. If interim period financial statements are included, or are required to be included, banks should consider whether any or all of the selected financial data need to be updated for such interim periods to reflect a material change in the trends indicated; where such updating information is necessary, banks shall provide the information on a comparative basis unless not necessary to an understanding of such updating information.

(6) In comparative columnar form, historical and pro forma per share data of the bank and historical and equivalent pro forma per share data of the other person for the following items:

(i) Book value per share as of the date selected financial data is presented;

(ii) Cash dividends declared per share for the periods for which selected financial data is presented; and

(iii) Income (loss) per share for the periods for which selected financial data is presented.

Instruction to paragraphs (a)(5) and (a)(6). For a business combination accounted for as a purchase, the financial information required by paragraphs (a)(5) and (a)(6) shall be presented only for the most recent fiscal year and interim period. For a business combination accounted for as a pooling, the financial information required by paragraphs (a)(5) and (a)(6) (except for information with regard to book value) shall be presented for the most recent three fiscal years and interim period. For a business combination accounted for as a pooling information with regard to book value shall be presented as of the end of the most recent fiscal year and interim period. Equivalent pro forma per share amounts shall be calculated by multiplying the pro forma income (loss) per share before non-recurring charges or credits directly attributable to the transaction, pro forma book value per share, and the pro forma dividends per share of the bank by the exchange ratio so that the per share amounts are equated to the respective values for one share of the other person.

(7) Pro forma financial information with respect to this transaction, in accordance with § 335.628.

(8) A statement as to whether any federal or state regulatory requirements must be complied with or approval must be obtained in connection with the transaction and if so the status of such compliance or approval.

(9) If a report, opinion or appraisal materially relating to the transaction has been received from an outside party, and such report, opinion or appraisal is referred to in the proxy statement, furnish the same information as would be required by Item 9(b) (1) through (6) of the SEC's Schedule 13E–3 (§ 240.13e–100 of 17 CFR).

(10) A description of any past, present or proposed material contracts, arrangements, understanding, relationships, negotiations for transactions during the periods for which financial statements are presented or incorporated by reference pursuant to this Item between the other person or its affiliates and the bank or its affiliates such as those concerning a merger, consolidation or acquisition; a tender offer or other acquisition of securities; an election of directors; or a sale or other transfer of a material amount of assets.

(11) As to each class of securities of the bank or of the other person which is admitted to trading on a national securities exchange or with respect to which a market otherwise exists, and which will be materially affected by the transaction, state the high and low sale prices (or in the absence of trading in a particular period, the range of the bid and asked prices) as of the date preceding public announcement of the proposed transaction, or if no such public announcement was made, as of the day preceding the day the agreement or resolution with respect to the action was made.

(12) A statement as to whether or not representatives of the principal accountants for the current year and for the most recently completed fiscal year

(i) Are expected to be present at the security holders' meeting;

(ii) will have the opportunity to make a statement if they desire to do so; and

(iii) Are expected to be available to respond to appropriate questions.

(b) *Information about the bank and other persons.* Furnish the information specified below for the bank and for other persons designated in paragraph (a) of this Item, if applicable (hereinafter all references to the bank should be read to include a reference to such other person unless the context otherwise indicates):

(1) Information required by Item 1 of this Form F–5, description of business;

(2) Information required by Item 3 of this Form F–5, description of property;

(3) Information required by Item 3 of Form F–2 (§ 335.312 of this part), legal proceedings;

(4) Information required by Item 5 of Form F–2 (§ 335.312 of this part), market price of and dividends on the bank's common equity and related stockholer matters;

(5) Financial statements meeting the requirements of subpart F of this part (12 CFR 335.601 *et seq.*), including financial information required with respect to transactions other than that as to which action is to be taken as described in this proxy statement;

(6) Item 6 of Form F–2 (§ 335.312 of this part), selected financial data;

(7) Item 8 of Form F–2 (§ 335.312 of this part), financial statements and supplementary data;

(8) Item 7 of Form F–2 (§ 335.312 of this part), management's discussion and analysis of financial condition and results of operations; and

(9) Item 8 of this Form F–5, changes in and disagreements with accountants on accounting and financial disclosure.

(c) If the other person is not subject to the reporting requirements of either section 13(a) or 15(d) of the Exchange Act, furnish:

(1) The financial statements that would have been required to be included in an annual report to security holders pursuant to § 335.203 of this part had the company been required to furnish such a report: *Provided, however,* that the balance sheet for the year preceding the latest full fiscal year and the income statements for the two years preceding the latest full fiscal year need not be audited if they have not previously been audited. In any case, such financial

statements need be audited only to the extent practicable.

(2) The quarterly financial and other information that would have been required had the company been required to file Form F-4 (§ 335.331 of this part) for the most recent quarter for which such a report would have been on file at the time the proxy statement is mailed or for a period ending as of a more recent date.

(3) A brief description of the business done by the company which indicates the general nature and scope of the business.

(4) The information required by paragraphs (b) (4) and (6)–(8) of this Item 12 and the information required by Item 8 of this Form F-5.

(5) Schedule VI—Allowance for Possible Loan Losses.

(d) *Additional method of incorporation by reference.* In lieu of the provision of information about the bank and other persons required in paragraph (b) of this Item, the bank may incorporate by reference into the proxy statement the information required by this Item if it is contained in an annual report sent to security holders pursuant to the requirement of § 335.203 of this part with respect to the same meeting or solicitation of consents or authorizations as that to which the proxy statement relates, provided such information substantially meets the requirements of the appropriate portions of paragraph (b)(3) of this Item.

Instructions to Item 12. 1. One copy of the definitive proxy statement filed with the FDIC shall include a manually signed copy of the accountant's report. If the financial statements are incorporated by reference, a manually signed copy of the accountant's report shall be filed with the definitive proxy statement.

2. Any or all of the required financial statements and related information which are not material for the exercise of prudent judgment in regard to the matter to be acted upon may be omitted.

3. If the bank or any of its securities or assets is to be acquired by other persons, the information regarding the other persons is required by this Item, other than information required by paragraphs (a) (1)–(3) and (a) (9)–(11) of this Item, need be provided only to the extent that: (1) The bank or its security holders who are entitled to vote or give an authorization or consent with regard to the action will become or remain security holders of the other persons; or (2) such information is otherwise material to an informed voting decision.

4. If the plan being voted on involves only the bank and one or more of its totally held subsidiaries and does not involve a liquidation of the bank or a spin-off, the information required by this Item, other than information required by paragraphs (a) (1)–(4) and (a) (8)–(11) of this Item, may be omitted.

(e) *Certain nonbank persons.* Where a party to the transaction (other than the bank) is eligible to use SEC Form S-2 or S-3, the bank may comply with this Item by providing the information for the other party that would be required by SEC Schedule 14A (17 CFR 240.14a-101).

* * * * *

Item 13—Financial Statements

(a) If action is to be taken with respect to any matter specified in items 10, 11, or 12 above, furnish audited financial statements of the bank and its subsidiaries such as would be required in a registration statement filed under this part. In addition, the latest available interim date balance sheet and statement of income for the interim period between the end of the last fiscal year and the interim balance sheet date, and comparable prior period, shall be furnished. All schedules, except schedule VI—"Allowance for Possible Loan Losses" may be omitted.

(b) If action is to be taken with respect to any matter specified in item 12, furnish for each person specified therein, other than the bank, financial statements such as would be required in a registration statement filed under this part. In addition, the latest available interim date balance sheet and statement of income for the interim period between the end of the last fiscal year and the interim balance sheet date, and comparable prior period, shall be furnished. However, the following may be omitted: (1) All schedules, except schedule VI—"Allowance for Possible Loan Losses"; and

(2) Statements for a subsidiary, all of the stock of which is owned by the bank, that is included in the consolidated statement of the bank and its subsidiaries. Such statements shall be audited, if practicable.

(c) Notwithstanding the provisions of this Item, any or all of the information required by paragraph (a) of this Item, not material for the exercise of prudent judgment in regard to the matter to be acted upon may be omitted. In the usual case the information is deemed material to the exercise of prudent judgment where the matter to be acted upon is the authorization or issuance of a material amount of senior securities, but the information is not deemed material where the matter to be acted upon is the authorization or issuance of common stock, otherwise than in an exchange, merger, consolidation, acquisition or similar transaction, the authorization of preferred stock without present intent to issue or the authorization of preferred stock for issuance for cash in an amount constituting fair value.

* * * * *

Option Disclosure Instruction

The table set forth below is an illustration of the presentation in tabular form of the information required by item 7(b)(4) and instruction 3(c) to item 9(d), which also applies to items 10(d) and 11(c). If only item 7(b)(4) applies and item 9 is inappropriate, information need only be furnished for the period specified in item 7(b)(4), information as to shares sold may be omitted and the reference at the foot of the table to options granted to employees may be omitted. Other tabular presentations are, of course, acceptable if they include the necessary data. Tabular presentations may not be needed if only a very few options have been granted.

The following tabulation shows as to certain directors and officers and as to all directors and officers as a group (i) the amount of options granted since the beginning of the fifth previous full fiscal year, (ii) the amount of shares acquired since that date through the exercise of options granted since that date or prior thereto, (iii) the amount of shares sold during such period of the same class as those so acquired, and (iv) the amount of shares subject to all unexercised options held as of _____ (Insert date).

Common shares [1]	John Jones	James Smith	Richard Roe	All directors and officers as a group
Granted—19____ to date:				
Number of shares				
Average per share option price	$	$	$	$
Exercise—19____ to date: Number of shares				
Aggregate option price of options exercised	$	$	$	$
Aggregate market value of shares on date options exercised	$	$	$	[2]
Sales—19____ to date: Number of shares				
Unexercised at _____ 19____ Number of shares				
Average per share option price	$	$	$	$

[1] All common share figures have been adjusted in accordance with the terms of the options to reflect the stock split in 19____ and where applicable, to give effect to share dividends.

[2] Sales by directors and officers who exercised options during the period 19____ to date.

Note: In addition, during the period employees were granted options for _____ shares at an average option price per share of $_____.

12. Section 335.214 is proposed to be added to read as follows:

§ 335.214 Obligation of banks in communicating with beneficial owners.

(a) If the bank knows that securities of any class entitled to vote at a meeting (or by written consents or authorizations if no meeting is held) with respect to which the bank intends to solicit proxies, consents or authorizations are held of record by a broker, dealer, voting trustee, bank, association, or other entity that exercises fiduciary powers in nominee name or otherwise, the bank shall:

(1) By first class mail or other equally prompt means:

(i) Inquire of each such record holder:

(A) Whether other persons are the beneficial owners of such securities and if so, the number of copies of the proxy and other soliciting material necessary to supply such material to such beneficial owners;

(B) In the case of an annual (or special meeting in lieu of the annual) meeting, or written consents in lieu of such meeting, at which directors are to be elected, the number of copies of the annual report to security holders necessary to supply such report to beneficial owners to whom such reports are to be distributed by such record holder or its nominee and not by the bank; and

(C) If the record holder has an obligation under 17 CFR 240.14b-1(c) or 17 CFR 240.14b-2(e) (2) and (3), whether an agent has been designated to act on its behalf in fulfilling such obligation and, if so, the name and address of such agent; and

(D) Whether it holds the bank's securities on behalf of any respondent bank and, if so, the name and address of each such respondent bank; and

(ii) Indicate to each such record holder:

(A) Whether the bank, pursuant to paragraph (c) of this section, intends to distribute the annual report to security holders to beneficial owners of its securities whose names, addresses and securities positions are disclosed pursuant to 17 CFR 240.14b-1(c) and 17 CFR 240.14b-2(e) (2) and (3);

(B) The record date; and

(C) At the option of the bank, any employee benefit plan established by an affiliate of the bank that holds securities of the bank that the bank elects to treat as exempt employee benefit plan securities;

(2) Upon receipt of a record holder's or respondent bank's response indicating, pursuant to 17 CFR 240.14b-2(a)(1), the names and addresses of its respondent banks, within one business day after the date such response is received, make an inquiry of and give notification to each such respondent bank in the same manner required by paragraph (a)(1) of this section; *Provided, however,* the inquiry required by paragraphs (a)(1) and (a)(2) of this section shall not cover beneficial owners of exempt employee benefit plan securities;

(3) Make the inquiry required by paragraph (a)(1) of this section at least 20 business days prior to the record date of the meeting of security holders, or (i) if such inquiry is impracticable 20 business days prior to the record date of a special meeting, as many days before the record date of such meeting as is practicable or, (ii) if consents or authorizations are solicited, and such inquiry is impracticable 20 business days before the earliest date on which they may be used to effect corporate action, as many days before that date as is practicable, or (iii) at such later time as the rules of a national securities exchange on which the class of securities in question is listed may permit for good cause shown; *Provided, however,* that if a record holder or respondent bank has informed the bank that a designated office(s) or department(s) is to receive such inquiries, the inquiry shall be made to such designated office(s) or department(s); and

(4) Supply, in a timely manner, each record holder and respondent bank of whom the inquiries required by paragraphs (a)(1) and (a)(2) of this section are made with copies of the proxy, other proxy soliciting material, and/or the annual report to security holders, in such quantities, assembled in such form and at such place(s), as the record holder or respondent bank may reasonably request in order to send such material to each beneficial owner of securities who is to be furnished with such material by the record holder or respondent bank; and

(5) Upon the request of any record holder or respondent bank that is supplied with proxy soliciting material and/or annual reports to security holders pursuant to paragraph (a)(4) of this section, pay its reasonable expenses for completing the mailing of such material to beneficial owners.

Note 1 to paragraph (a): If the bank's list of security holders indicates that some of its securities are registered in the name of a clearing agency registered pursuant to Section 17A of the Act (e.g., "Cede & Co.," nominee for the Depository Trust Company), the bank shall make appropriate inquiry of the clearing agency and thereafter of the participants in such clearing agency who may hold on behalf of a beneficial owner or respondent bank, and shall comply with the above paragraph with respect to any such participant (*see* 17 CFR 240.14a-1(i)).

Note 2 to paragraph (a): The attention of banks is called to the fact that each broker, dealer, bank, association and other entity that exercises fiduciary powers has an obligation pursuant to 17 CFR 240.14b-1(b) and 17 CFR 240.14b-2(b) (except as provided therein with respect to employee benefit plan securities held in nominee name) and, with respect to brokers and dealers, applicable self-regulatory organization requirements to obtain and forward, within the time periods prescribed therein, (a) proxies (or in lieu thereof requests for voting instructions) and proxy soliciting materials to beneficial owners on whose behalf it holds securities, and (b) annual reports to security holders to beneficial owners on whose behalf it holds securities, unless the bank has notified the record holder or respondent bank that it has assumed responsibility to mail such material to beneficial owners whose names, addresses and securities positions are disclosed pursuant to 17 CFR 240.14b-1(c) and 17 CFR 240.14b-2(e) (2) and (3).

Note 3 to paragraph (a): The attention of banks is called to the fact that banks have an obligation, pursuant to paragraph (d) of this section, to cause proxies (or in lieu thereof requests for voting instructions), proxy soliciting material and annual reports to security holders to be furnished, in a timely manner, to beneficial owners of exempt employee benefit plan securities.

(b) Any bank requesting pursuant to 17 CFR 240.14b-1(c) and 17 CFR 240.14b-2(e) (2) and (3) a list of names, addresses and securities positions of beneficial owners of its securities who either have consented or have not objected to disclosure of such information shall:

(1) By first class mail or other equally prompt means, inquire of each record holder and each respondent bank identified to the bank pursuant to 17 CFR 240.14b-2(e)(1) whether such record holder or respondent bank holds the bank's securities on behalf of any respondent banks and, if so, the name and address of each such respondent bank;

(2) Request such list to be compiled as of a date no earlier than five business days after the date the bank's request is received by the record holder or respondent bank; *Provided, however,* that if the record holder or respondent bank has informed the bank that a designated office(s) or department(s) is to receive such requests, the request shall be made to such designated office(s) or department(s);

(3) Make such request to the following persons that hold the bank's securities on behalf of beneficial owners: all brokers, dealers, banks, associations and other entities that exercise fiduciary powers; *Provided, however,* such

request shall not cover beneficial owners of exempt employee benefit plan securities as defined in 17 CFR 240.14a–1(d)(1); and, at the option of the bank, such request may give notice of any employee benefit plan established by an affiliate of the bank that holds securities of the bank that the bank elects to treat as exempt employee benefit plan securities;

(4) Use the information furnished in response to such request exclusively for purposes of corporate communications; and

(5) Upon the request of any record holder or respondent bank to whom such request is made, pay the reasonable expenses, both direct and indirect, of providing beneficial owner information.

Note to paragraph (b): A bank will be deemed to have satisfied its obligations under paragraph (b) of this section by requesting consenting and non-objecting beneficial owner lists from a designated agent acting on behalf of the record holder or respondent bank and paying to that designated agent the reasonable expenses of providing the beneficial owner information.

(c) A bank, at its option, may mail its annual report to security holders to the beneficial owners whose identifying information is provided by record holders and respondent banks, pursuant to 17 CFR 240.14b–1(c) and 17 CFR 240.14b–2(e) (2) and (3), provided that such bank notifies the record holders and respondent banks, at the time it makes the inquiry required by paragraph (a) of this section, that the bank will mail the annual report to security holders to the beneficial owners so identified.

(d) If a bank solicits proxies, consents or authorizations from record holders and respondent banks who hold securities on behalf of beneficial owners, the bank shall cause proxies (or in lieu thereof requests for voting instructions), proxy soliciting material and annual reports to security holders to be furnished, in a timely manner, to beneficial owners of exempt employee benefit plan securities.

13. Section 335.220 is proposed to be amended by revising paragraph (b)(1)(iii) to read as follows:

§ 335.220 Special provisions applicable to election contests.

* * * * *

(b) * * *

(1) * * *

(iii) Any committee or group which solicits proxies, any member of the committee or group, and any person whether or not named as a member who, acting alone or with one or more other persons directly or indirectly takes the initiative, or engages, in organizing, directing, or arranging for the financing of any such committee or group.

* * * * *

§ 335.307 [Amended]

14. Section 335.307 is proposed to be amended by removing the word "remuneration" from paragraph (b)(3) and inserting in its place the word "compensation."

15. Section 335.309a is proposed to be amended by:

a. Removing the word "six" and adding in its place the word "three" in the second paragraph of "General Instructions";

b. Revising the title in Item 2;

c. Revising Instructions 2, 3, 6, 12 and 13 to Item 2;

d. Removing Instructions 19 and 20 and redesignating Instruction 21 as 19 under Item 2;

e. Revising Item 5;

f. Revising Item 7;

g. Removing Item 8;

h. Redesignating Item 9 as Item 8 and revising newly redesignated Item 8;

i. Redesignating Items 10 and 11 as Items 9 and 10 and revising newly redesignated Item 10;

j. Redesignating Items 12, 13, 14 as 11, 12, 13 and revising newly redesignated Item 13;

k. Removing Items 15 and 16 and redesignating Items 17, 18, 19 as 14, 15 and 16; and

l. Amending in newly redesignated Item 16 the Instructions as to Financial Statements by revising the introductory text, paragraphs A, B, C, E.10 and E.17; as follows:

§ 335.309a Form for registration of securities of a bank under section 12(g) of the Securities Exchange Act of 1934 (Form F–1).

* * * * *

Item 2—Selected Financial Data; Management's Discussion and Analysis of Financial Condition and Results of Operations, and Other Statistical Disclosure

* * * * *

Instructions

* * * * *

2. The following items shall be included in the table of financial data: Net interest income; other operating income; provision for loan and lease losses; income (loss) from continuing operations; income (loss) from continuing operations per common share; total assets; longterm obligations and redeemable preferred stock and cash dividends declared per common share. Banks may include additional items which they believe would enhance an understanding of and would highlight other trends in their financial condition and results of operations. Briefly describe, or cross reference to a discussion thereof, factors such as accounting changes, business combinations or dispositions of business operations, that materially affect the comparability of the selected financial data. Discuss any material uncertainties which might cause the data not to be indicative of the bank's future financial condition or results of operations.

3. Those banks which provide five-year summary information in accordance with SFAS 89 * may combine such information with the selected financial data appearing pursuant to this item.

* * * * *

6. Discuss the bank's financial condition, changes in financial condition and results of operations. The discussion shall provide information as specified in instructions 5(a), (b) and (c) to this item 2 with respect to liquidity, capital resources, and results of operations, and should also provide such other information which the bank believes to be necessary to an understanding of its financial condition, changes in financial condition and results of operations. Discussions of liquidity and capital resources may be combined whenever the two topics are interrelated. Where in the bank's judgment a discussion of segment information or of other subdivisions of the bank's business would be appropriate to an understanding of such business, the discussion would focus on each relevant, reportable segment or other subdivision of the business and on the bank as a whole.

* * * * *

12. Set forth the same information as is required to be furnished by Instruction 7 to Item 7 of Form F–2 at § 335.312.

13. The bank's discussion and analysis shall be of the financial statement and of other statistical data which the bank believes will enhance a reader's understanding of its financial condition, changes in financial condition, cash flows and results of operations. Generally, the discussion should cover the three-year period covered by the financial statements and should utilize year-to-year comparisons or any other formats which in the bank's judgment enhance a reader's understanding. However, where trend information is relevant, reference to the five-year selected financial data appearing in item 6 of a Form F–2 may be necessary.

* * * * *

Item 5—Security Ownership of Certain Beneficial Owners and Management

Set forth the same information as is required to be furnished by items 5 (d)(1), (d)(2), and (f) Form F–5 at § 335.212.

Note: The information required by item 5 (d)(2) of Form F–5 need not be included for any nominee for election as a director.

* * * * *

Item 7—Compensation of Directors and Officers

Set forth the same information as is required to be furnished by item 7 (a), (b), (c) and (d) of Form F–5 at § 335.212.

Item 8—Interest of Management and Others in Certain Transactions

(a) Set forth the same information for the past three years, as is required to be furnished by items 7 (f), (g) and (h) of Form F–5 at § 335.212.

Note: The information required by items 7 (f), (g) and (h) of Form F–5 need not be included for any nominee for election as a director.

* * * * *

Item 10—Number of Equity Security Holders

State in the tabular form indicated below, the approximate number of holders of record of each class of equity securities of the bank as of the end of the last fiscal year.

(1)	(2)
Title of class	Number of record holders

Instructions. 1. Attention is directed to the definitions of the term "equity security" in section 3(a)(11) of the Act and to the definition of the term "held of record" in § 335.102(p)(1).

2. Information need not be given with respect to the number of holders of "restricted stock options", "qualified stock options", or options granted pursuant to a plan qualified as an "employee stock purchase plan", as those terms are defined in sections 422 through 424 of the Internal Revenue Code of 1986, as amended.

* * * * *

Item 13—Securities Being Registered

(a) *Capital stock.* If capital stock is to be registered, state the title of the class and describe such of the matters listed in paragraphs (a) (1) through (5) as are relevant. A complete legal description of the securities need not be given.

(1) Outline briefly: (i) Dividend rights; (ii) terms of conversion; (iii) sinking fund provisions; (iv) redemption provisions; (v) voting rights, including any provisions specifying the vote required by security holders to take action; (vi) any classification of the Board of Directors, and the impact of such classification where cumulative voting is permitted or required; (vii) liquidation rights; (viii) preemption rights; and (ix) liability to further calls or to assessment by the bank and for liabilities of the bank imposed on its stockholders under state statutes (*e.g.*, to laborers, servants or employees of the bank), unless such disclosure would be immaterial because the financial resources of the bank or other factors make it improbable that liability under such state statutes would be imposed; (x) any restriction on alienability of the securities to be registered; and (xi) any provision discriminating against any existing or prospective holder of such securities as a result of such security holder owning a substantial amount of securities.

(2) If the rights of holders of such stock may be modified otherwise than by a vote of a majority or more of the shares outstanding, voting as a class, so state and explain briefly.

(3) If preferred stock is to be registered, describe briefly any restriction on the repurchase or redemption of shares by the bank while there is any arrearage in the payment of dividends or sinking fund installments. If there is no such restriction, so state.

(4) If the rights evidenced by, or amounts payable with respect to, the shares to be registered are, or may be, materially limited or qualified by the rights of any other authorized class of securities, include the information regarding such other securities as will enable investors to understand such limitations or qualifications. No information need be given, however, as to any class of securities all of which will be retired, provided appropriate steps to ensure such retirement will be completed prior to or upon delivery by the bank of the shares.

(5) Describe briefly or cross-reference to a description in another part of the document, any provision of the bank's charter or by-laws that would have an effect of delaying, deferring or preventing change in control of the bank and that would operate only with respect to an extraordinary corporate transaction involving the bank [or any of its subsidiaries], such as a merger, reorganization, tender offer, sale or transfer of substantially all of its assets, or liquidation. Provisions and arrangements required by law or imposed by governmental or judicial authority need not be described or discussed pursuant to this paragraph (a)(5). Provisions or arrangements adopted by the bank to effect, or further, compliance with laws or governmental or judicial mandate are not subject to the immediately preceding sentence where such compliance did not require the specific provisions or arrangements adopted.

(b) *Debt securities.* If debt securities are to be registered, state the title of such securities, the principal amount being offered, and, if a series, the total amount authorized and the total amount outstanding as of the most recent practicable date; and describe the matters listed in paragraphs (b) (1) through (10) as are relevant. A complete legal description of the securities need not be given. For purposes solely of this Item, debt securities that differ from one another only as to the interest rate or maturity shall be regarded as securities of the same class. Outline briefly:

(1) Provisions with respect to maturity, interest, conversion, redemption, amortization, sinking fund, or retirement;

(2) Provisions with respect to the kind and priority of any lien securing the securities, together with a brief identification of the principal properties subject to such lien;

(3) Provisions with respect to the subordination of the rights of holders of the securities to other security holders or creditors of the bank where debt securities are designated as subordinated in accordance with Instruction 1 to this Item, set forth the aggregate amount of outstanding indebtedness as of the most recent practicable date that by the terms of such debt securities would be senior to such subordinated debt and describe briefly any limitation on the issuance of such additional senior indebtedness or state that there is no such limitation;

(4) Provisions restricting the declaration of dividends or requiring the maintenance of any asset ratio or the creation or maintenance of reserves;

(5) Provisions restricting the incurrence of additional debt or the issuance of additional securities; in the case of secured debt, whether the securities being registered are to be issued on the basis of unbonded bondable property, the deposit of cash or otherwise; as of the most recent practicable date, the approximate amount of unbonded bondable property available as a basis for the issuance of bonds; provisions permitting the withdrawal of cash deposited as a basis for the issuance of bonds; and provisions permitting the release or substitution of assets securing the issue: *Provided, however,* That provisions permitting the release of assets upon the deposit of equivalent funds or the pledge of equivalent property, the release of property no longer required in the business, obsolete property, or property taken by eminent domain or the application of insurance moneys, and other similar provisions need not be described;

(6) The general type of event that consitutes a default and whether or not any periodic evidence is required to be furnished as to the absence of default or as to compliance with the terms of the indenture;

(7) Provisions relating to modification of the terms of the security or the rights of security holders;

(8) If the rights evidenced by the securities to be registered are, or may be, materially limited or qualified by the rights of any other authorized class of securities, the information regarding such other securities as will enable investors to understand the rights evidenced by the securities[;] to the extent not otherwise disclosed pursuant to this Item; no information need be given, however, as to any class of securities all of which will be retired, provided appropriate steps to ensure such retirement will be completed prior to or upon delivery by the bank;

(9) If debt securities are to be offered at a price such that they will be deemed to be offered at an "original issue discount" as defined in paragraph (a) of section 1273 of the Internal Revenue Code (26 U.S.C. 1273), or if a debt security is sold in a package with another security and the allocation of the offering price between the two securities may have the effect of offering the debt security at such an original issue discount, the tax effects thereof pursuant to sections 1271–1278;

(10) The name of the trustee(s) and the nature of any material relationship with the bank or with any of its affiliates; the percentage of securities of the class necessary to require the trustee to take action; and what indemnification the trustee may require before proceeding to enforce the lien.

(c) *Warrants and rights.* If the securities described are to be offered pursuant to warrants or rights state:

(1) The amount of securities called for by such warrants or rights;

(2) The period during which and the price at which the warrants or rights are exercisable;

(3) The amount of warrants or rights outstanding;

(4) Provisions for changes to or adjustments in the exercise price; and

(5) Any other material terms of such rights or warrants.

(d) *Other securities.* If securities other than capital stock, debt, warrants or rights are to be registered, include a brief description (comparable to that required in paragraphs (a), (b) and (c) of this Item 13) of the rights evidenced thereby.

(e) *Market information for securities other than common equity.* If securities other than common equity are to be registered and there is an established public trading market for the securities, provide market information with respect to the securities comparable to that required by Item 12 of this Form F-1.

Instructions to Item 13. 1. Wherever the title of securities is required to be stated, there shall be given such information as will indicate the type and general character of the securities, including the following:

A. In the case of shares, the par or stated value, if any; the rate of dividends, if fixed, and whether cumulative or non-cumulative; a brief indication of the preference, if any; and if convertible or redeemable, a statement to that effect;

B. In the case of debt, the rate of interest; the date of maturity or, if the issue matures serially, a brief indication of the serial maturities, such as "maturing serially from 1955 to 1960"; if the payment of principal or interest is contingent, an appropriate indication of such contingency; a brief indication of the priority of the issue; and, if convertible or callable, a statement to that effect; or

C. In the case of any other kind of security, appropriate information of comparable character.

2. Where convertible securities or stock purchase warrants are being registered that are subject to redemption or call, the description of the conversion terms of the securities or material terms of the warrants shall disclose:

A. Whether the right to convert or purchase the securities will be forfeited unless it is exercised before the date specified in a notice of the redemption or call;

B. The expiration or termination date of the warrants;

C. The kinds, frequency and timing of notice of the redemption or call, including the cities or newspapers in which notice will be published (where the securities provide for a class of newspapers or group of cities in which the publication may be made at the discretion of the bank, the bank should describe such provision); and

D. In the case of bearer securities, that investors are responsible for making arrangements to prevent loss of the right to convert or purchase in the event of redemption of call, for example, by reading the newspapers in which the notice of redemption or call may be published.

* * * * *

Instructions as to Financial Statements

These instructions specify the balance sheets and statements of income required to be filed as part of a registration statement on this form. Subpart F governs the certification, form, and content of the balance sheets and statements of income required, including the basis of consolidation, and prescribes the statement of changes in capital accounts, statement of changes in financial position, statement of cash flows, and the schedules to be filed in support thereof.

A. Financial Statements of the Bank

1. *Balance Sheets.* (a) The bank shall file an audited balance sheet as of the close of its latest fiscal year unless such fiscal year has ended within 90 days prior to the date of filing the registration statement, in which case the balance sheet may be as of the close of the preceding fiscal year.

(b) If the latest fiscal year of the bank has ended within 90 days prior to the date of filing the registration statement and the balance sheet required by paragraph (a) is filed as of the end of the preceding fiscal year, there shall be filed as an amendment to the registration statement, within 120 days after the date of filing, an audited balance sheet of the bank as of the end of the latest fiscal year.

2. *Statements of Income.* (a) The bank shall file audited statements of income for each of the three fiscal years preceding the date of the balance sheet required by instruction 1(a).

(b) There shall be filed with each balance sheet filed under instruction 1(b) an audited statement of income of the bank for the fiscal year immediately preceding the date of the balance sheet.

3. *Omission of Bank's Financial Statements in Certain Cases.* Notwithstanding instructions 1 and 2, the individual financial statements of the bank may be omitted if consolidated statements of the bank and one or more of its subsidiaries are filed.

B. Consolidated Statements

4. *Consolidated Balance Sheets.* (a) There shall be filed an audited consolidated balance sheet of the bank and its majority-owned: (i) Bank premises subsidiaries, (ii) subsidiaries doing a foreign banking business, and (iii) significant subsidiaries, as of the close of the latest fiscal year of the bank unless such fiscal year has ended within 90 days prior to the date of filing the registration statement, in which case this balance sheet may be as of the close of the preceding fiscal year.

(b) If the latest fiscal year of the bank has ended within 90 days prior to the date of filing the registration statement, and the balance sheet required by paragraph (a) is filed as of the end of the preceding fiscal year, there shall be filed as an amendment to the registration statement, within 120 days after the date of filing an audited consolidated balance sheet of the bank and such subsidiaries as of the end of the latest fiscal year.

5. *Consolidated Statement of Income.* (a) There shall be filed audited statements of income of the bank and its majority-owned (i) bank premises subsidiaries, (ii) subsidiaries doing a foreign banking business, and (iii) significant subsidiaries, for each of the three fiscal years preceding the date of the consolidated balance sheet required by instruction 4(a).

(b) There shall be filed with each balance sheet filed under instruction 4(b), an audited consolidated statement of income of the bank and such subsidiaries for the fiscal year immediately preceding the date of the balance sheet.

C. Unconsolidated Subsidiaries and Other Persons

6. *Separate Statements of Unconsolidated Subsidiaries and Other Persons.* There shall be filed such other audited financial statements with respect to unconsolidated subsidiaries and other persons as are material to a proper understanding of the financial position and results of operations of the total enterprise. For purposes of this item, "other

* * * * *

E. Historical Financial Information

10. *Scope of Part E.* The information required by part E shall be furnished for the seven-year period preceding the period for which statements of income are filed, as to the accounts of each person whose balance sheet is filed. The information is to be given as to all of the accounts specified whether they are presently carried on the books or not. Part E does not call for certification but only for a survey or review of the accounts specified. It should not be detailed beyond a point material to an investor.

* * * * *

17. *Omission of Certain Information.* (a) No information need be furnished as to any subsidiary, whether consolidated or unconsolidated, for the period prior to the date on which the subsidiary became a majority-owned subsidiary of the bank or of a predecessor for which information is required above.

(b) No information need be furnished hereunder as to any one or more unconsolidated subsidiaries for which separate financial statements are filed if all subsidiaries for which the information is so omitted, considered in the aggregate, would not constitute a significant subsidiary.

(c) Only the information specified in instruction 16 need be given as to any predecessor or any subsidiary thereof if immediately prior to the date of succession thereto by a person

* * * * *

§ 335.310 [Amended]

16. Section 335.310(c) is proposed to be amended by removing the word "registrant's" from the first sentence and replacing it with the word "bank's".

17. Section 335.312 is proposed to be amended by:

a. Removing the word "registrant" and replacing it with the word "bank" each time it appears in paragraph D of General Instructions, and removing the word "Six" and adding in its place the word "Three" in the first sentence of paragraph D;

b. Adding a sentence to the end of Item 1(c) of Part I;

c. Removing the phrase "items 5 (d), (e) and (g) of Form F-5" and replacing it with "items 5 (d)(1), (d)(2) and (f) of Form F-5" in Item 4 and replacing "item 5(e) of Form F-5" with "item 5(d)(2) of Form F-5" in the note to Item 4;

d. In Part II, revising Item 6, Instructions 2, 3 and 5(a).

e. Amending Item 7 by removing the last sentence from paragraph (c); revising Instruction 7; removing Instruction 8 and redesignating Instructions 9 and 10 as Instructions 8 and 9;

f. Revising Item 8 introductory text and paragraphs (a) through (c);

g. In Part III, revising the title in Items 9 and 10; and

h. Removing the phrase "in § 335.102(ee)" and replacing it with "in § 335.102(nn) " in paragraph (9) of Item 11.

§ 335.312 Form for annual report of bank (Form F-2).

Form F-2—Annual Report Under Section 13 of the Securities Exchange Act of 1934

* * * * *

Part I (See Instruction E)

Item 1—Business

(c) * * *

The term "revenue" includes the total of the amounts reported in items (1), (6) and (7) of the income statement (Format F-9B).

* * * * *

Part II—(See General Instruction F-(2))

* * * * *

Instructions

* * * * *

Item 6—Selected Financial Data

2. The following items shall be included in the table of financial data: net interest income; other operating income; provision for loan and lease losses; income (loss) from continuing operations; income (loss) from continuing operations per common share; total assets; long-term obligations and redeemable preferred stock and cash dividends declared per common share. Banks may include additional items which they believe would enhance an understanding of and would highlight other trends in their financial condition and results of operations. Briefly describe, or cross reference to a discussion thereof, factors such as accounting changes, business combinations or dispositions of business operations, that materially affect the comparability of the selected financial data. Discuss any material uncertainties which might cause the data not to be indicative of the bank's future financial condition or results of operations.

3. Those banks which provide five-year summary information in accordance with SFA S80 may combine such information with the selected financial data appearing pursuant to this item.

* * * * *

5. In addition, (a) if debt securities are registered under section 12 of the Act, the bank shall show in tabular form for each fiscal year the ratio of earnings to fixed charges. If appropriate, the ratio of earnings to fixed charges for such periods shall also be shown on a total enterprise basis in a position of equal prominence with the ratio for the bank or the bank and its consolidated subsidiaries.

* * * * *

Item 7—Management's Discussion and Analysis of Financial Condition and Results of Operations

* * * * *

Instructions

* * * * *

7. Banks should furnish statistical information similar to that required by Securities Exchange Act Industry Guide 3 [Statistical disclosure by bank holding companies] SEC Rel. No. 34-23846, 51 FR 43599 (November 25, 1986), 17 CFR Part 241 (1988) ("Guide 3") for each of the last three fiscal years of the bank, except, if the bank had assets of less than $200,000,000 or net worth of $10,000,000 or less as of the end of its latest fiscal year, information may be furnished for each of the last two fiscal years with respect to all items. If a material change in the information presented or the trend evidenced thereby has occurred, it may be appropriate to furnish statistical information for an additional interim period to keep the information from being misleading.

The information should be presented in tabular form and include descriptions of: I. Distribution of Assets, Liabilities, and Stockholder's Equity; Interest Rates and Interest Differentials; II. Investment Portfolio; III. Loan Portfolio; IV. Summary of Loan Loss Experience; V. Deposits; VI. Return on Equity and Assets; and VII. Short-Term Borrowings. Although no specific guidance as to the form and content is provided, relevant data, material to a description of lending and deposit activities, should include information about (a) yields and costs of various assets and liabilities, (b) maturities and repricing characteristics of various assets and liabilities and (c) risk elements, such as nonaccrual and past-due items in the lending portfolio. Generally, statistical information called for by Guide 3 should be based on average daily amounts. However, weekly or month-end averages may be used if compiling daily information is too costly or difficult as long as it is representative of operations.

Note to paragraph 7 of Item 7: If any such information is not reasonably available to the bank, the bank may present comparable information. Where information required by Guide 3 is substantially similar to that required by Call Report schedules (i.e.—Guide 3 items II and III, Investment Portfolio and Loan Portfolio, etc.), the Call Report schedule information may be presented instead.

* * * * *

Item 8—Financial Statements and Supplementary Data

These instructions specify the balance sheets and statements of income required to be filed as a part of annual reports on this form. Subpart F governs the certification, form, and content of the balance sheets and statements of income required, including the basis of consolidation, and prescribes the statement of changes in capital accounts, statement of changes in financial position, and/or statement of cash flows and the schedules to be filed in support thereof.

(a) *Financial Statements of the Bank.* (1) There shall be filed for the bank, in comparative clounmar form, audited balance sheets as of the close of the last two fiscal years and audited statements of income for each of the three fiscal years preceding the date of the most recent balance sheet being filed.

(2) Notwithstanding paragraph (1), the individual financial statements of the bank may be omitted if consolidated statements of the bank and one or more of its subsidiaries are filed.

(b) *Consolidated Statements.* There shall be filed for the bank and its majority-owned: (1) Bank premises subsidiaries, (2) subsidiaries doing a foreign banking business, and (3) significant subsidiaries, in comparative columnar form, audited consolidated balance sheets as of the close of the last two fiscal years of the bank and audited consolidated statements of income for three fiscal years.

(c) *Separate Statements of Unconsolidated Subsidiaries and Other Persons.* There shall be filed such other audited financial statements with respect to unconsolidated subsidiaries and other persons as are material to a proper understanding of the financial position and results of operations of the total enterprise. For purposes of this item, "other persons" include 50 percent owned persons and unconsolidated persons in which the bank takes up equity in undistributed earnings.

* * * * *

Part III—(See General Instruction F (3))

Item 9—Directors and Principal Officers of the Bank

* * * * *

Item 10—Management Compensation and Transactions

* * * * *

§ 335.321 [Amended]

18. Section 335.321 is proposed to be amended a. by removing the word "registrant" and substituting the word "bank" in paragraph (a) of Item 1; b. by removing the word "verified" and replacing it with the word "audited" wherever it appears in paragraph 2 under Financial Statements of Businesses Acquired, and c. by removing "a" in paragraph 2(a) in the last sentence, under Financial Statements of Businesses Acquired and replacing it with "an".

19. Section 335.331 is proposed to be amended by a. removing the word "Six" and replacing it with the word "Three" in paragraph E; b. removing the words

"verified financial statements" wherever they appear in paragraph (a)(5) of Item 1 and replacing them with the words "audited financial statements"; c. removing the words "registrant's from paragraph (b)(5) of Item 1 and replacing it with the word "bank's"; and d. revising paragraphs (a)(4) and (c)(3) of Item 1 as follows:

§ 335.331 Form for quarterly report of bank (Form F-4).

Form F-4

* * * * *

Item 1—Financial Statements

(a) * * *

(4) The statement of changes in financial position and/or statement of cash flows may be abbreviated, as appropriate.

* * * * *

(c) * * *

(3) Interim statements of cash flows/changes in financial position (See Statement of Financial Accounting Standards No. 95, Statement of Cash Flows) and statements of changes in capital accounts shall be provided for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter, and for the corresponding period of the preceding fiscal year. Such statements may also be presented for the cumulative twelve-month period ending during the most recent fiscal quarter and for the corresponding preceding period.

Note to paragraph (c)(3): Restatement of prior years' statements of financial position is encouraged but is not required.

* * * * *

§ 335.332 [Amended]

20. Section 335.332 is proposed to be amended by: a. removing the word "registrant's" from the introductory text and paragraph B of General Instructions and replacing it with the word "bank's"; b. removing the word "registrant" from pargraphs B and C and SIGNATURES and replacing it with the word "bank"; and c. removing the word "Six" from paragraph C of General Instructions and replacing it with the word "Three".

§ 335.359 [Amended]

21. Section 335.359 is proposed to be amended by removing the word "Six" and adding in its place the word "Three" in the first sentence of paragraph (a).

§ 335.401 [Amended]

22. Section 335.401 is proposed to be amended by removing the word "Six" from the last sentences in paragraphs (a) and (c) and replacing it with the word "Three".

§ 335.402 [Amended]

23. Section 335.402 is proposed to be amended by removing the word "Six" from the last sentence of paragraph (a) and the second sentence of paragraph (b), and replacing it with the word "Three".

§ 335.407 [Amended]

24. Section 335.407 is proposed to be amended by removing the word "Six" from the Note and replacing it with the word "Three".

§ 335.408 [Amended]

25. Section 335.408 is proposed to be amended by removing the word "Six" from the Note at the end of the section and replacing it with the word "Three".

26. New § 335.409 is proposed to be added as follows:

§ 335.409 Going private transactions by a bank or its affiliates.

A bank or its affiliates (as defined in 17 CFR 240.13e-3) shall not engage in a Rule 13e-3 transaction (as defined in 17 CFR 240.13e-3) unless it meets the requirements of 17 CFR 240.13e-3, except that all filings shall be made with the FDIC and be titled with the name of the FDIC instead of the Securities and Exchange Commission.

§ 335.410 [Amended]

27. Section 335.410 is proposed to be amended by substituting "$3,000" with "$10,000" in paragraphs (h)(1) and (h)(2).

§ 335.503 [Amended]

28. Section 335.503 is proposed to be amended by removing the word "six" from paragraphs (a)(1) and (b), and replacing it with the word "three".

29. Section 335.507 is proposed to be amended by revising the introductory text of paragraph (a) as follows:

§ 335.507 Additional withdrawal rights.

(a) *Rights.* In addition to the provisions of section 14(d)(5) of the Act, any person who has deposited securities pursuant to a tender offer has the right to withdraw any such securities during the following period such offer, request or invitation remains open.

* * * * *

§ 335.509 [Amended]

30. Section 335.509 is proposed to be amended by removing the word "six" in paragraphs (a)(1) and (b)(1) and replacing it with the word "three".

31. New § 335.509a is proposed to be added to read as follows:

§ 335.509a Equal treatment of security holders.

(a) No bidder shall make a tender offer unless:

(1) The tender offer is open to all security holders of the class of securities subject to the tender offer; and

(2) The consideration paid to any security holder pursuant to the tender offer is the highest consideration paid to any other security holder during the tender offer.

(b) Paragraph (a)(1) of this section shall not:

(1) Affect dissemination under § 335.505; or

(2) Prohibit a bidder from making a tender offer excluding all security holders in a state where the bidder is prohibited from making the tender offer by administrative or judicial action pursuant to a state statute after a good faith effort by the bidder to comply with such statute.

(c) Paragraph (a)(2) of this section shall not prohibit the offer of more than one type of consideration in a tender offer, provided that:

(1) Security holders are afforded equal rights to elect among each of the types of consideration offered; and

(2) The highest consideration of each type paid to any security holder is paid to any other security holder receiving that type of consideration.

(d) If the offer and sale of securities constituting consideration offered in a tender offer is prohibited by the appropriate authority of a state after a good faith effort by the bidder to register or qualify the offer and sale of such securities in such state:

(1) The bidder may offer security holders in such state an alternative form of consideration; and

(2) Paragraph (c) of this section shall not operate to require the bidder to offer or pay the alternative form of consideration to security holders in any other state.

(e) This section shall not apply to any tender offer with respect to which the FDIC, upon written request or upon its own motion, either unconditionally or on specified terms and conditions, determines that compliance with this section is not necessary or appropriate in the public interest or for the protection of investors.

32. Section 335.510 is proposed to be amended by revising paragraph (b) as follows:

§ 335.510 Unlawful tender offer practices.

* * * * *

(b) Increase or decrease the percentage of the class of securities being sought or the consideration offered or the dealer's soliciting fee to be given in a tender offer unless such tender offer remains open for at least ten business days from the date that notice of such increase or decrease is first published or sent or given to security holders: *Provided, however,*

That, for purposes of this paragraph, the acceptance for payment of an additional amount of securities not to exceed two percent of the class of securities that is the subject of the tender offer shall not be deemed to be an increase. For purposes of this paragraph, the percentage of a class of securities shall be calculated in accordance with section 14(d)(3) of the Act.

* * * * *

§ 335.512 [Amended]

33. Section 335.512 is proposed to be amended by removing the word "four" from the initial Instruction and replacing it with the word "one".

§ 335.513 [Amended]

34. Section 335.513 is proposed to be amended by removing the word "Six" from the initial Instruction and replacing it with the word "Three".

35. New § 335.521 is proposed to be added as follows:

§ 335.521 Tender offers by issuers.

A bank or its affiliates shall not make an "issuer tender offer" unless the offer meets the requirements of 17 CFR 240.13e-4, except that all filings shall be made with the FDIC.

36. The heading preceding § 335.602 and § 335.602 are proposed to be revised as follows:

Qualifications and Reports of Accountants

§ 335.602 General rules.

Every accountant's report with respect to financial statements filed under this part shall be dated, shall be signed manually, shall indicate the city and State where issued, and shall identify without detailed enumeration the financial statements covered by the report.

§ 335.603 [Removed and Reserved]

37. Section 335.603 is proposed to be removed and reserved.

38. Section 335.604 is proposed to be amended by revising paragraphs (a) (1) and (2) as follows:

(a) * * * (1) The FDIC will not recognize any person as a certified public accountant who is not duly registered and in good standing as such under the laws of the place of his/her residence or principal office. The FDIC will not recognize any person as a public accountant who is not in good standing and entitled to practice as such under the laws of the place of his/her residence or principal office.

(2)(i) The FDIC will not recognize any certified public accountant or public accountant as independent who is not in fact independent. For example, an accountant will be considered not independent with respect to any person or any of its parents, its subsidiaries, or other affiliates (A) in which, during the period of his/her professional engagement to examine the financial statements being reported on or at the date of his report, the firm or a member of the firm had, or was committed to acquire a direct financial interest or any material indirect financial interest or (B) with which during the period of his/her professional engagement to examine the financial statements being reported on, at the date of the report or during the period covered by the financial statements, the firm or a member of the firm was connected as a promoter, underwriter, voting trustee, director, officer, or employee. A firm will be deemed independent in regard to a particular person if a former officer or employee of the person is employed by the firm and the individual has been completely disassociated from the person and its affiliates and does not participate in auditing financial statements of the person or its affiliates covering any period of his/her employment by the person.

(ii) For the purposes of this section, the term "member" means (A) all partners, shareholders, and other principals in the firm, (B) any professional employee involved in providing any professional service to the person, its parents, subsidiaries, or other affiliates, and (C) any professional employee having managerial responsibilities and located in [the engagement office] or other office of the firm which participates in a significant portion of the audit.

* * * * *

§ 335.610 [Amended]

39. Section 335.610 is proposed to be amended by revising the first sentence to read as follows: "Financial statements shall be prepared in accordance with the applicable requirements of Formats 9 A, B, C, and D."

40. Section 335.618 is proposed to be revised as follows:

§ 335.618 Foreign activities.

If assets, revenue, or income (loss) before taxes and securities gains (losses), or net income (loss) associated with foreign activities, exceeded 10 percent of the corresponding amount in the related financial statements, the following disclosures concerning foreign activities shall be furnished in a note to the financial statements. The term "revenue" includes the total of the amounts reported in items (1), (6) and (7) of the income statement, Format F-9B.

(a) Loans. State separately loan categories as prescribed by schedule A column C of Consolidated Report of Condition, Schedule RC-C, FFIEC 031, as applicable. Categories of less than 10 percent of total loans related to foreign activities may be grouped with all other loans.

(b) Balances with banks in foreign countries. State separately balances with foreign branches of other U.S. banks and with other banks in foreign countries. (See lines 3 (a) and (b) of Schedule RC-A of the Consolidated Report of Condition, FFIEC 031. Also furnish the amount of interest-bearing balances included above.

(c) Deposit liabilities. Furnish deposit information as prescribed in Schedule RC-E, Part II of Consolidated Report of Condition, FDIC/FFIEC 031. State also the amount of interest-bearing deposits in denominations of $100,000 or more.

(d) Other borrowings. State separately short-term borrowings, other liabilities for borrowed money, and other indebtedness related to foreign activities corresponding to the amounts reported on Schedule RC, FFIEC 031, Items 14, 16, 17, 18, and 19.

(e) Income and expense summary. For each period for which an income statement is filed, furnish information as prescribed in part 1, column B and part 2 of the Statement of Income, Schedule RI-D, Part I, FFIEC 031. State in a note the basis of pricing money transfers and the policy governing allocation of income and expenses to foreign activities.

(f) Allowance for possible loan and lease losses. For each period for which a statement of income is filed, furnish in a note a reconciliation of changes in the allowance for possible loan and lease losses applicable to loans related to foreign activities.

(g) If disclosure above is required, state separately in a note for each significant geographic area, and in the aggregate for all other geographic areas not deemed significant, the following:

(1) Total assets (net of valuation allowances).

(2) Total net interest income.

(3) Provisions for loan and lease losses and for allocated transfer risk.

(4) Other net noninterest income (expense) including gains (losses) on securities not held in trading accounts.

(5) Net income (loss).

Note to paragraph (g): A "significant geographic area" is one whose assets, operating income, or net income exceed 10 percent of the comparable amount as reported in the related financial statements.

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§ 335.621 [Amended]

41. Section 335.621(e) is proposed to be amended by changing "26(b)" to "22(b)".

42. Section 335.622 is proposed to be amended by adding paragraph (d)(4) and revising paragraph (g)(2)(i) as follows:

§ 335.622 General notes to statement of income.

* * * * *

(d) * * *

(4) Those banks adopting SFAS No. 96, Accounting for Income Taxes, should disclose such adoption and provide appropriate income tax expense disclosure as therein required, in lieu of paragraph (d)(1) of this section.

* * * * *

(g) * * *

(2) * * *

(i) Disclosure shall be made in a note to financial statements of total interest income, total interest expense, net interest income, provision for loan and lease losses, other income (expense) net, income before extraordinary items and cumulative effect of a change in accounting, net income, and per share data based upon such income for each full quarter within the two most recent fiscal years and any subsequent interim period for which income statements are presented.

* * * * *

§ 335.623 [Amended]

43. Section 335.623(g) is proposed to be amended by changing the word "Board" in the first sentence to "FDIC".

44. Section 335.625 is proposed to be revised as follows:

§ 335.625 Statement of changes in financial position, and/or statement of cash flows.

A statement of changes in financial position and/or statement of cash flows, as appropriate, shall be filed with each statement of income filed pursuant to this part.

45. Section 335.626 is proposed to be amended by revising paragraph (a) as follows:

§ 335.626 Schedules to be filed.

(a) The following schedules shall be filed with each balance sheet filed under this part: Schedule I—Securities, Schedule III—Loans and Lease Financing Receivables; and Schedule IV—Bank Premises and Equipment.

* * * * *

46. Section 335.627 is proposed to be amended by:

a. Removing D Statement of Changes in Financial Position (Format F-9D);

b. Redesignating E Schedules as D and revising the heading to read "D Schedules (Format F-9D)";

c. Revising General Instruction 1;

d. Revising A Balance Sheet in its entirety;

e. Revising B Statement of Income in its entirety;

f. Revising Schedules I and III of newly redesignated D in their entirety.

§ 335.627 Format F-9 financial statements.

* * * * *

General Instructions

1. *Preparation of Financial Statements.*—The formats are intended to serve as guides for preparation of financial statements required to be filed under this part. The formats are recommended presentations, but financial statements may be filed in such form and order as will best indicate their significance and character. Requirements for inclusion of financial statements in certain other guideline forms required by Part 335 are found in the instructions to such forms.

The formats for the statements of changes in financial position and cash flows are not set forth herein. Refer to SFAS No. 95 "Statement of Cash Flows", Appendix C for an illustrative example of an acceptable format for banks.

Banks have the option of conforming their financial statement formats to the provisions of Article 9 of Regulation S-X of the SEC (17 CFR 210.9) in lieu of the formats set forth herein. Savings banks are encouraged to utilize Call Report formats for the Balance Sheet, Statement of Income, Statement of Changes in Equity Capital, and appropriate schedules.

* * * * *

A. Balance Sheet

The Balance Sheet shall be prepared in accordance with the instructions for the preparation of the Consolidated Report of Condition (FFIEC 031, 032, 033, 034 or FDIC 8040/25, as applicable) except to the extent revised or expanded financial data presentation is necessary to meet the disclosure standards of the Securities Exchange Act of 1934, as amended.

Note: Banks subject to this part are required to report on the accrual basis of accounting.

The following captions and added *supplemental* instructions shall be observed in the preparation of the Balance Sheet required under this part.

Assets

1. *Cash and balances due from depository institutions.* (a) State separately (1) interest-bearing balances in other banks and (2) noninterest-bearing balances and cash.

(b) Any withdrawal and usage restrictions (including requirements of the Federal Reserve to maintain certain average reserve balances) or compensating balance requirements should be disclosed.

2. *Securities.* (a) Include securities held for investment only. Disclose the aggregate book value of investment securities: "show on the balance sheet parenthetically the aggregate market value at balance sheet date." The aggregate amounts should include securities pledged, loaned or sold under repurchase agreements and similar arrangements; borrowed securities and securities purchased under resale agreements or similar arrangements should be excluded.

(b) Disclose in a note the carrying value and market value of securities of (1) the U.S. Treasury and other U.S. Government agencies and corporations; (2) states of the U.S. and political subdivisions; and (3) other securities.

3. *Federal funds sold and securities purchased under agreements to resell.* These amounts should be presented gross and not netted against Federal funds purchased and securities sold under agreements to repurchase.

4. *Loans and lease financing receivables.* Disclose separately (1) total loans and lease financing receivables, (2) the related allowance for losses and (3) unearned income.

(a) Disclose on the balance sheet or in a note the amount of total loans in each of the following categories: (1) Commercial, financial and agricultural, (2) Real estate-construction, (3) Real estate-mortgage, (4) Installment loans to individuals, (5) Lease financing receivables, (6) Foreign, (7) Other. (State separately any other loan category regardless of relative size if necesary to reflect any unusual risks or uncertainties such as a substantial portion of total loans which are concentrated in one or a few industries or foreign countries).

(b) A series of categories other than those specified in (a) above may be used to present details of loans if considered a more appropriate presentation.

(c) The amount of foreign loans must be presented if the disclosures specified by § 335.618 are required.

(d) For each period for which an income statement is required, furnish in a note a statement of changes in the allowance for loan losses showing the balances at beginning and end of the period, provision charged to income, recoveries of amounts charged off and losses charged to the allowance.

(e)(1)(i) For each balance sheet date, disclose in a note the aggregate dollar amount of loans (exclusive of loans to any such persons which in the aggregate do not exceed $60,000 during the latest year) made by the bank or any of its subsidiaries to directors, principal-officers, or principal holders of equity securities of the bank or any of its significant subsidiaries, or to any associate of such persons. For the latest fiscal year, an analysis of activity with respect to such aggregate loans to related parties should be provided. The analysis should include the aggregate amount at the beginning of the period, new loans, repayments, and other changes. (Other changes, if significant, should be explained.)

(ii) This disclosure need not be furnished when the aggregate amount of such loans at the balance sheet date (or with respect to the latest fiscal year, the maximum amount outstanding during the period) does not

exceed 5 percent of equity capital at the balance sheet date.

(2) If a significant portion of the aggregate amount of loans outstanding at the end of the fiscal year disclosed pursuant to (e)(1)(i) above relates to loans which are nonaccrual, past due (over 90 days) or restructured, as those terms are used in the Call Report, so state and disclose the aggregate amount of such loans along with such other information necessary to an understanding of the effects of the transactions on the financial statements.

(3) Notwithstanding the aggregate disclosure called for by (e)(1) above, if any loans were not made in the ordinary course of business during any period for which an income statement is required to be filed, provide an appropriate description of each such loan.

5. *Assets held in trading accounts.* Include securities or any other investments held for trading purposes only.

6. *Premises and fixed assets.*

7. *Other real estate owned.* State in a note (1) the basis at which carried, (2) the aggregate fair market value of all real estate owned other than bank premises with an explanation of the method of determining such fair market value, and (3) for each period for which an income statement is required, a reconciliation of any valuation allowance account, including the balance at the beginning and end of the period, provision charged to income, and losses charged to the allowance.

8. *Investments in an indebtedness of unconsolidated subsidiaries and associated companies.*

9. *Customers' liability to the bank on acceptances outstanding.*

10. *Intangible assets.*

11. *Other assets.* Disclose separately on the balance sheet or in a note thereto any of the following assets or any other asset the amount of which exceeds 30 percent of equity capital. The remaining assets may be shown as one amount.

(1) Accrued interest.

(2) Net deferred tax charges.

12. *Total assets.*

Liabilities

13. *Deposits.* (a) Disclose separately the amounts of noninterest bearing deposits and interest bearing deposits. The amount of noninterest bearing deposits and interest bearing deposits in foreign banking offices must be presented if the disclosures provided by § 335.618 are required.

(b) State in a note the aggregate amount of (1) time certificates of deposit in denominations of $100,000 or more and (2) other time deposits in denominations of $100,000 or more, in domestic offices and, if § 335.618 applies, foreign offices.

14. *Federal funds purchased and securities sold under agreements to repurchase and other short term borrowings.* (a) Disclose separately on the balance sheet or in a note, amounts payable for (1) federal funds purchased and securities sold under agreements to repurchase; (2) commercial paper, and (3) other short term borrowings. Disclose any unused lines of credit for short-term financing.

(b) If the average balance outstanding during the period for any category was 30 percent or more of equity capital, provide the following information, with respect to each category, in a note:

(1) Weighted average interest rate at balance sheet date.

(2) Maximum amount of borrowings at any month-end during each period for which an end of period balance sheet is required.

(3) Approximate average borrowings outstanding during the period.

(4) Approximate weighted average interest rate for such average borrowings outstanding during the period.

15. *Demand notes issued to the U.S. Treasury.*

16. *Other borrowed money.*—See supplemental instruction to Item 14.

17. *Mortgage indebtedness and obligations under capitalized leases.* (a) Report the amount of mortgages, liens, or other encumbrances on premises and fixed assets and on other real estate owned for which the bank or its consolidated subsidiaries are liable. If the bank is the lessee on capitalized lease property, include the bank's liability for capitalized lease payments. (See the Call Report Glossary entry for "lease accounting" for a discussion of accounting with bank as lessee.)

(b) State in a note material terms and conditions of each obligation, including (but not limited to): (1) The general character of the debt; (2) the rate of interest; (3) the date of maturity or if maturing serially, a brief indication of the serial maturities; (4) if the payment of principal or interest is contingent, an appropriate indication of such contingency; (5) a brief indication of priority; and (6) the amount outstanding at the balance sheet date.

18. *Bank's liability on acceptances executed and outstanding.* Report the amount of liability that is represented by drafts and bills of exchange that have been accepted by the reporting bank, or by others for its account, and that are outstanding. See the Call Report Glossary entry for "Bankers Acceptances" for further information.

19. *Notes and debentures subordinated to deposits.* (a) Report the amount of outstanding notes and debentures (including mandatory convertible debt) that are subordinated to the deposits of the consolidated bank (see the Call Report Glossary entry for "Subordinated Notes and Debentures").

(b) State in a note the material terms and conditions of each obligation including, but not limited to: (1) The general character of the debt; (2) the rate of interest; (3) the date of maturity, or if maturing serially, an indication of serial maturities; (4) if the payment of principal or interest is contingent, an appropriate indication of such contingency; (5) a brief indication of priority; (6) the amount outstanding at the balance sheet date; and (7) if convertible, the basis.

20. *Other liabilities.* Disclose separately on the balance sheet or in a note any of the following liabilities or any other items which are individually in excess of 25 percent of the equity capital (except that amounts in excess of 5 percent of equity capital should be disclosed with respect to item (4)). The remaining items may be shown as one amount. (1) Income taxes payable, (2) Deferred income taxes, (3) Indebtedness to affiliates and other persons the investments in which are accounted for by the equity method, (4) Indebtedness to directors, executive officers, and principal holders of equity securities of the bank or any of its significant subsidiaries, (5) Accounts payable and accrued expenses, (6) Commitments and contingent liabilities, minority interest in consolidated subsidiaries.

21. *Total Liabilities*

22. *Limited-life preferred stock.* (a) Report the amount of any preferred stock that has a stated maturity date that can be redeemed at the option of the holder (excluding those issues of preferred stock that automatically convert into perpetual preferred stock or common stock at a stated date). State on the face of the balance sheet the title of each issue, the carrying amount and redemption amount. (If there is more than one issue, these amounts may be aggregated on the face of the balance sheet and details concerning each issue may be presented in the note required by paragraph (b) below.) Show also the dollar amount of any shares subscribed but unissued, and show the deduction of subscriptions receivable therefrom. If the carrying amount is different from the redemption amount, describe the accounting treatment for such difference in the note required by paragraph (b) below. Also state in this note or on the face of the balance sheet, for each issue, the number of shares authorized and the number of shares issued or outstanding, as appropriate.

(b) State in a separate note captioned "Redeemable Preferred Stock": (1) A general description of each issue, including its redemption features (e.g., sinking fund, at option of holders, out of future earnings) and the rights, if any, of holders in the event of default, including the effect, if any, on junior securities in the event that a required dividend, sinking fund, or other redemption payment(s) is not made; (2) the combined aggregate amount of redemption requirements for all issues each year for the five years following the date of the latest balance sheet; and (3) the changes in each issue for each period for which an income statement is required to be filed.

Equity Capital

23. *Perpetual preferred stock.* Report the amount of perferred stock that does not have a stated maturity date or that cannot be redeemed at the option of the holder (including those issues of preferred stock that automatically convert into common stock at a stated date). State on the face of the balance sheet, or if more than one issue is outstanding, state in a note, the title of each issue and the dollar amount thereof. Show also the dollar amount of any shares subscribed but unissued, and show the deduction of subscriptions receivable therefrom. State on the face of the balance sheet or in a note, for each issue, the number of shares authorized and the number of shares issued or outstanding, as appropriate. Show in a note or separate statement the changes in each class of preferred shares

reported herein for each period for which an income statement is required to be filed.

24. *Common stock.* Report the aggregate par or stated value of outstanding common stock. State for each class of shares the title of issue, the number of shares authorized, issued and outstanding, the par value per share and the dollar amount thereof. Show also the dollar amount, if any, of each class of shares subscribed to but unissued, and show the deduction of subscriptions receivable therefrom. Disclose in the statement of a note the changes in the aggregate par or stated value of outstanding common stock for each period for which an income statement is required.

25. *Surplus.*

26. *Undivided profits and capital reserves.* Report the amounts appropriated and unappropriated; restrictions which limit the payment of dividends; and the amount of undivided profits which represents undistributed earnings of 50 percent or less owned companies.

27. *Cumulative foreign currency translation adjustments.* (Not applicable to banks with domestic offices only).

28. *Total equity capital.*

29. *Total liabilities, limited-life preferred stock, and equity capital.*

B. Statement of income

The statement of income shall conform generally to the Consolidated Report of Income (FFIEC 031, 032, 033, 034 or FDIC 8040/25, as applicable) and related instructions thereto, except to the extent revised or expanded financial data presentation is necessary to meet the disclosure standards of the Securities Exchange Act of 1934, as amended.

Note to B: See § 335.601 for general requirements of financial reporting.

The following captions and added supplemental instructions shall be observed in the preparation of the statement of income required under this subpart.

1. *Interest income.* Include commitment and origination fees, late charges and current amortization of premium and accretion of discount on loans which are related to or are an adjustment of the loan interest rate. Disclose separately.

(a) Interest and fee income on loans.

(b) Income from lease financing receivables.

(c) Interest income on balance due from depository institutions.

(d) Interest and dividend income on securities—Disclose separately (1) taxable interest income, (2) nontaxable interest income, and (3) dividends. State in a note interest and dividend income on

(i) U.S. Treasury securities and U.S. Government agency and corporation obligations.

(ii) Securities issued by states and political subdivisions in the U.S.

(iii) Other domestic securities (debt and equity).

(iv) Foreign securities (debt and equity).

(e) Interest income from assets held in trading accounts.

(f) Interest income on federal funds sold and securities purchased under agreements to resell.

2. *Interest Expense.* Disclose separately:

(a) Interest on deposits.

(i) Interest on time certificates of deposit of $100,000 or more.

(ii) Interest on other deposits.

(b) Expense of federal funds purchased and securities sold under agreements to repurchase.

(c) Interest on demand notes issued to the U.S. Treasury and on other borrowed money.

(d) Interest on mortgage indebtedness and obligations under capitalized leases.

(e) Interest on notes and debentures subordinated to deposits.

3. *Net interest income.*

4. *Provision for loan and lease losses.*

5. *Net interest income after provision for loan and lease losses.*

6. *Noninterest income.* Disclose separately:

(a) Income from fiduciary activities.

(b) Service charges on deposit accounts.

(c) Trading gains (losses) and fees from foreign exchange transactions.

(d) Other foreign transaction gains (losses).

(e) Gains (losses) and fees from assets held in trading accounts. Report the net gain or loss from the sale of assets reportable in item 5, "Assets held in trading accounts," other than those trading gains (losses) and fees relating to foreign exchange transactions reported in item 6(c) above.

(f) Other noninterest income. Report all operating income of the bank not required to be reported in item 1(a) through 1(f) and 6(a) through 6(e). State separately the dollar amount of any individual component of this item which exceeds 25 percent of the total.

7. *Gain (losses) on securities not held in trading accounts.* Report the net gain or loss. Disclose in a note the method used to determine the cost of investments sold and the related income taxes.

8. *Noninterest expense.* (a) Salaries and employee benefits.

(b) Expenses of premises and fixed assets.

(c) Other noninterest expense. See item 6(f) for threshold for disclosure of individual components.

(d) Total noninterest expense.

(e) Amortization of goodwill.

(f) Minority interest in income of consolidated subsidiaries.

9. *Income (loss) before income taxes and extraordinary items and other adjustments.*

10. *Applicable income taxes (on item 9). See § 335.622(d).*

11. *Income (loss) before extraordinary items and other adjustments.*

12. *Extraordinary items and other adjustments.*

(a) Extraordinary items and other adjustments, gross of income taxes.

(b) Applicable income taxes (on item 12(a)).

(c) Extraordinary items and other adjustments, net of income taxes.

13. *Net income (loss).* Report the sum of items 10 and 11(c).

14. *Earnings per share data.*

D. Schedules (Format F-8D)

Schedule I—Securities

Exclude assets held in trading accounts.

	Book value (Col. A)	Market value (Col. B)
1. U.S. Treasury securities		
2. U.S. Government agency and corporation obligations:		
a. All holdings of U.S. Government-issued or guaranteed certificates of participation in pools of residential mortgages		
b. All other		
3. Securities issued by states and political subdivisions in the U.S.		
4. Other domestic securities (debt and equity):		
a. All holdings of private (i.e., nongovernment-issued or guaranteed) certificates of participation in pools of residential mortgages		
b. All other		
5. Foreign securities (debt and equity)		
6. Total (sum of items 1 through 5) (total of column A must equal call report schedule RC, item 2)		
7. Pledged securities		

* * * * *

Schedule III—Loans and Lease Financing Receivables

Net of unearned income and before adjustment for allowance for loan and lease losses. Excluding assets held in trading accounts.

	Book value
1. Loans secured by real estate:	
a. Construction and land development	
b. Secured by farmland (including farm residential and other improvements)	
c. Secured by 1–4 family residential properties	
d. Secured by multifamily (5 or more) residential properties	
e. Secured by nonfarm nonresidential properties	
2. Loans to depository institutions:	
a. To commercial banks in the U.S.:	
(1) To U.S. branches and agencies of foreign banks	
(2) To other commercial banks in the U.S.	
b. To other depository institutions in the U.S.	
c. To banks in foreign countries:	
(1) To foreign branches of other U.S. banks	
(2) To other banks in foreign countries	
3. Loans to finance agricultural production and other loans to farmers	
4. Commercial and industrial loans:	
a. To U.S. addressees (domicile)	
b. To non-U.S. addressees (domicile)	
5. Acceptances of other banks	
6. Loans to individuals for household, family, and other personal expenditures (includes purchased paper):	
a. Credit cards and related plans	
b. Other	
7. Loans to foreign governments and official institutions (including foreign central banks)	
8. Obligations (other than securities) of states and political subdivisions in the U.S.:	
a. Nonrated industrial development obligations	
b. Other obligations (excluding securities)	
9. Other loans:	
a. Loans for purchasing or carrying securities (secured and unsecured)	
b. All other loans	
10. Lease financing receivables (net of unearned income)	
11. Less: Any unearned income on loans reflected in items 1–9 above)	
12. Total loans and leases, net of unearned income (sum of items 1 through 10 minus item 11) (must equal call report schedule RC, item 4a)	
13. Commercial paper included in call report schedule RC–C	

47. A proposed new § 335.628 "Pro Forma Financial Information" is added as follows:

§ 335.628 Pro Forma Financial Information.

I. Presentation Requirements

(a) Pro forma financial information shall be furnished when any of the following conditions exist:

(1) During the most recent fiscal year or subsequent interim period for which a balance sheet is required by § 335.623 a significant business combination accounted for as a purchase has occurred;

(2) After the date of the most recent balance sheet filed pursuant to § 335.628, consummation of a significant business combination to be accounted for by either the purchase method or pooling-of-interests method of accounting has occurred or is probable;

(3) The bank is offering its securities to the security holders of a significant business to be acquired or the proceeds from the offered securities will be applied, directly or indirectly, to the purchase of a specific significant business;

(4) The disposition of a significant portion of a business either by sale, abandonment or distribution to shareholders by means of a spin-off, split-up or split-off has occurred or is probable and such disposition is not fully reflected in the bank's financial statements included in the filing; or

(5) Other transactions or events have occurred or are probable for which disclosure of pro forma financial information would be material to investors.

(b) A business combination or disposition of a business shall be considered significant if:

(1) A comparison of the most recent annual financial statements of the business acquired or to be acquired and the bank's most recent annual consolidated financial statements filed at or prior to the date of acquisition indicates that the business would be a significant subsidiary under conditions specified in § 335.103(nn); or

(2) The business to be disposed of meets the conditions of a significant subsidiary in § 335.102(nn).

(c) When consummation of more than one transaction has occurred or is probable during a fiscal year, the tests of significance in paragraph (b) of this section shall be applied to the cumulative effect of those transactions. If the cumulative effect of the transactions is significant, pro forma financial information shall be presented.

(d) For purposes of this section, the term "business" should be evaluated in light of the facts and circumstances involved and whether there is sufficient continuity of the acquired entity's operations prior to and after the transactions so that disclosure of prior financial information is material to an understanding of future operations. A presumption exists that a separate entity, a subsidiary, or a division is a business. However, a lesser component of an entity may also constitute a business. Among the facts and circumstances which should be considered in evaluating whether an acquisition of a lesser component of an entity constitutes a business are the following:

(1) Whether the nature of the revenue-producing activity of the component will remain generally the same as before the transaction; or

(2) Whether any of the following attributes remain with the component after the transaction:

(i) Physical facilities,

(ii) Employee base,

(iii) Market distribution system,

(iv) Sales force,

(v) Customer base,

(vi) Operating rights,

(vii) Production techniques, or

(viii) Trade names.

(e) This section does not apply to transactions between a bank and its totally owned subsidiaires.

II. Preparation Requirements

(a) *Objective.* Pro forma financial information should provide investors with information about the continuing impact of a particular transaction by showing how it might have affected historical financial statements if the transaction had been consummated at an earlier time. Such statement should assist investors in analyzing the future prospects of the bank because they illustrate the possible scope of the change in the bank's historical financial position and results of operations caused by the transaction.

(b) *Form and content.* (1) Pro forma financial information shall consist of a pro forma condensed balance sheet, pro forma condensed statements of income, and accompanying explanatory notes. Where a limited number of pro forma adjustments are required and those adjustments are easily understood, a narrative description of the pro forma effects of the transaction may be furnished in lieu of the statements described herein.

(2) The pro forma financial information shall be accompanied by an introductory paragraph which briefly sets forth a description of (i) the transaction, (ii) the entities involved, and (iii) the periods for which the pro forma information is presented. In addition, an explanation of what the pro forma presentation shows shall be set forth.

(3) The pro forma condensed financial information need only include major captions (*i.e.*, the numbered captions) prescribed by § 335.627 A and B. Where any major balance sheet caption is less than 10 percent of total assets, the caption may be combined with others. When any major income statement caption is less than 15 percent of average net income of the bank for the most recent three fiscal years, the caption may be combined with others. In calculating average net income, loss years should be excluded, unless losses were incurred in each of the most recent three years, in which case the average loss shall be used for purposes of this test. Notwithstanding these tests, *de minimis* amounts need not be shown separately.

(4) Pro forma statements shall ordinarily be in columnar form showing condensed historical statement, pro forma adjustments, and the pro forma results.

(5) The pro forma condensed income statement shall disclose income (loss) from continuing operations before nonrecurring charges or credits directly attributable to the transaction. Material nonrecurring charges or credits and related tax effects which result directly from the transaction and which will be included in the income of the Bank within the 12 months succeeding the transaction shall be disclosed separately. It should be clearly indicated that such charges or credits were not considered in the pro forma condensed income statement. If the transaction for which pro forma financial information is presented related to the disposition of a business, the pro forma results should give effect to the disposition and be presented under an appropriate caption.

(6) Pro forma adjustments related to the pro forma condensed income statement shall be computed assuming the transaction was consummated at the beginning of the fiscal year presented and shall include adjustment which give effect to events that are (i) directly attributable to the transaction, (ii) expected to have a continuing impact on the bank, and (iii) factually supportable. Pro forma adjustments related to the pro forma condensed balance sheet shall be computed assuming the transaction was consummated at the end of the most recent period for which a balance sheet is required by § 335.623 and shall include adjustments which give effect to events that are directly attributable to the transaction and factually supportable, regardless of whether they have a continuing impact or are nonrecurring. All adjustments should be referenced to notes which clearly explain the assumption involved.

(7) Historical, primary and fully diluted per share data based on continuing operations (or net income if the bank does not report discontinued operations, extraordinary items, securities gains (losses), or the cumulative effects of accounting changes) for the bank, and primary and fully diluted pro forma per share data based on continuing operations before nonrecurring charges or credits directly attributable to the transaction shall be presented on the face of the pro forma condensed income statement together with the number of shares used to compute such per share data. For transactions involving the issuance of securities, the number of shares used in the calculation of the pro forma per shares outstanding during the period, adjusted to give effect to shares subsequently issued or assumed to be issued had the particular transaction or event taken place at the beginning of the period presented. If a convertible security is being issued in the transaction, consideration should be given to the possible dilution of the pro forma per share data.

(8) If the transaction is structured in such a manner that significantly different results may occur, additional pro forma presentations shall be made which give effect to the range of possible results.

Instructions

1. The historical statement of income used in the pro forma financial information shall not report operations of a segment that has been discontinued, extraordinary items, securities gains (losses), or the cumulative effects of accounting changes. If the historical statement of income includes such items, only the appropriate portion of the statement (and appropriate captions) should be used in preparing pro forma results.

2. For a purchase transaction, pro forma adjustments for the income statement shall include amortization of any intangible asset, depreciation and other adjustments based on the allocated purchase price of net assets acquired. Disclose in a note the effect which the purchase adjustment will have on the reported results of operations for each of the next five years if such adjustments:

(a) Involve a significant write-down of the historical cost of the acquired assets to their fair value at the acquisition date; and

(b) Will have a significant effect on earnings in periods immediately following the acquisition which will be progressively eliminated over a relatively short period.

3. For a disposition transaction, the pro forma financial information shall begin with the historical financial statements of the bank and show the deletion of the business to be divested along with the necessary pro forma adjustments, including adjustments relating to expenses that will be or have been incurred on behalf of the business to be divested. *e.g.*, advertising costs and personnel expenses.

4. When consummation of more than one transaction has occurred or is probable during a fiscal year, the pro forma financial information may be presented on a combined basis; however, in some circumstances, *e.g.*, where some transactions have been consummated and the others are probable, it may be more useful to present the pro forma financial information on a nonaggregated basis, even though some or all of the transactions would not meet the tests of significance individually. For combined presentations, a note should explain the various transactions and disclose the maximum variances in the pro forma financial information which would occur for any of the possible combinations. If the pro forma financial information is presented in a proxy or information statement for purposes of obtaining shareholder approval of one of the transactions, the effects of that transaction must be clearly set forth.

5. Income tax effects, if any, of pro forma adjustments normally should be calculated at the statutory rate in effect during the periods for which pro forma condensed income statements are presented and should be reflected as a separate pro forma adjustment.

(c) *Periods to be presented.* (1) A pro forma condensed balance sheet as of the end of the most recent period for which a consolidated balance sheet of the bank is required by § 335.623 shall be filed, unless the transaction is already reflected in such balance sheet.

(2)(i) Pro forma condensed statements of income shall be filed for only the most recent fiscal year and for the period from the end of the most recent fiscal year to the most recent interim date for which a balance sheet is required. A pro forma condensed statement of income may be filed for the corresponding interim period of the preceding fiscal year. A pro forma condensed statement of income shall not be filed when the historical income statement reflects the transaction for the entire period.

(ii) For a business combination accounted for as a pooling of interests, the pro forma income statements (which are in effect a restatement of the historical income statements as if the combination had been consummated) shall be filed for all periods for which historical income statements of the bank are required.

(3) Pro forma condensed statements of income shall be presented using the bank's fiscal year-end. If the most recent fiscal year-end of any other entity involved in the transaction differs from the bank's most recent fiscal year-end by more than 93 days, the other entity's income statement shall be brought up to within 93 days of the bank's most recent fiscal year-end, if practicable. This updating could be accomplished by adding subsequent interim period results to the most recent fiscal year-end information and deducting the comparable preceding year interim period results. Disclosure shall be made of the periods combined and of the sales or revenues and income for any periods which were excluded from or included more than once in the condensed pro forma income statements (*e.g.*, an interim period that is included both as part of the fiscal year and the subsequent interim period).

(4) Whenever unusual events enter into the determination of the results shown for the most recently completed fiscal year, the effect of such unusual events should be disclosed and consideration should be given to presenting a pro forma condensed income statement for the most recent twelve-month period, in addition to those required in paragraph (c)(2)(i) of this section, if the most recent twelve-month period is more representative of normal operations.

III. Presentation of Financial Forecast

(a) A financial forecast may be filed in lieu of the pro forma condensed statements of income required by § 335.628 II(b)(1).

(1) The financial forecast shall cover a period of at least 12 months from the later of (i) the date of the most recent balance sheet included in the filing or (ii) the consummation date or estimated consummation date of the transaction.

(2) The forecasted statement of income shall be presented in the same degree of detail required by § 335.628 II(b)(3) for the pro forma condensed statements of income.

(3) Assumptions particularly relevant to the transaction and effects thereof should be clearly set forth.

(4) Historical condensed financial information of the bank and the business acquired or to be acquired, if any, shall be presented for at least a recent 12 month period in parallel columns with the financial forecast.

(b) Such financial forecast shall be presented in accordance with the guidelines established by the American Institute of Certified Public Accountants.

(c) Forecasted earnings-per-share data shall be substituted for pro forma per-share data.

(d) This section does not permit the filing of a financial forecast in lieu of pro forma information required by generally accepted accounting principles.

48. Section 335.701 is proposed to be amended by adding a note at the end of the section as follows:

§ 335.701 Filing of material with the FDIC.

Note: Official filings made at the FDIC's office in Washington, DC should be addressed as follows:

Attention: Registration and Disclosure Section, Division of Bank Supervision, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

§ 335.702 [Amended]

49. Section 335.702 is proposed to be amended by removing the words "at the New York, Chicago, and San Francisco Federal Reserve Banks and" from the second sentence.

By Order of the Board of Directors.

Dated at Washington, DC, this 16th day of May 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-12496 Filed 7-24-89; 8:45 am]

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Part III

Department of Commerce

15 CFR Part 8b

Enforcement of Nondiscrimination on the Basis of Handicap in Federally Assisted Programs; Proposed Rule

DEPARTMENT OF COMMERCE

15 CFR Part 8b

[Docket No. 81256-8256]

RIN 0690-A023

Enforcement of Nondiscrimination on the Basis of Handicap in Federally Assisted Programs

AGENCY: Department of Commerce (DOC).

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation would amend the regulation issued by the Department of Commerce (Commerce) for enforcement of section 504 of the Rehabilitation Act of 1973, as amended, in federally assisted programs or activities to include a cross-reference to the Uniform Federal Accessibility Standards (UFAS). Because some facilities subject to new construction or alteration requirements under section 504 are also subject to the Architectural Barriers Act, governmentwide reference to UFAS will diminish the possibility that recipients of Federal financial assistance would face conflicting enforcement standards. In addition, reference to UFAS by all Federal funding agencies will reduce potential conflicts when a building is subject to the section 504 regulations of more than one Federal agency.

DATE: To be assured of consideration, comments must be in writing and must be received by September 25, 1989.

ADDRESSES: Comments should be sent to Arthur E. Cizek, Chief, Compliance Division, Office of Civil Rights, Office of the Secretary, Department of Commerce, Washington, DC 20230 Telephone (202) 377-4993. Comments received will be available for public inspection at Room 6107 of the Herbert C. Hoover Building, 14th & Constitution Avenue, NW., Washington, DC 20230 from 8:30 a.m. to 5:00 p.m., Mondays through Fridays except legal holidays. Copies of this notice are available on tape for persons with impaired vision. They may be obtained at the above address.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cizek, Chief, Compliance Division, Office of Civil Rights, Office of the Secretary, Department of Commerce, Washington, DC 20230, Telephone (202) 377-4993 (voice) or (202) 377-5691 (TDD). These are not toll free numbers.

SUPPLEMENTARY INFORMATION:

Background

Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), provides in part that—

> No otherwise qualified individual with handicaps in the United States * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance * * *.

The agency's current section 504 regulation for federally assisted programs requires that new construction be designed and built to be accessible and that alterations of facilities be made in an accessible manner. It requires that new construction or alteration meet the most current standard for physical accessibility prescribed by the General Services Administration (GSA) under the Architectural Barriers Act. It provides that alternative standards may be adopted when it is clearly evident that equivalent or greater access to the facility is thereby provided. The proposed revision set forth in this document will reference UFAS in place of the current standard. In this respect, the proposed amendment is largely a technical one, because (as explained below) UFAS is now GSA's standard prescribed under the Barriers Act.

On August 7, 1984, UFAS was issued by the four agencies establishing standards under Architectural Barriers Act [49 FR 31528 (see discussion *infra*)]. The Department of Justice (DOJ), as the agency responsible under Executive Order 12250 for coordinating the enforcement of section 504, has recommended that agencies amend their section 504 regulations for federally assisted programs or activities to establish that, with respect to new construction and alterations, compliance with UFAS shall be deemed to be compliance with section 504. Because some facilities subject to new construction or alteration requirements under section 504 are also subject to the Architectural Barriers Act, governmentwide reference to UFAS will diminish the possibility that recipients of Federal financial assistance would face conflicting enforcement standards. In addition, reference to UFAS by all Federal funding agencies will reduce potential conflicts when a building is subject to the section 504 regulations of more than one Federal agency.

Background of Accessibility Standards

The Architectural Barriers Act of 1968, 42 U.S.C. 4151-4157, requires certain Federal and federally funded buildings to be designed, constructed, and altered in accordance with accessibility standards. It also designates four agencies (the Department of Defense, the Department of Housing and Urban Development, the U.S. Postal Service, and GSA) to prescribe the accessibility standards. Section 502 of Rehabilitation Act of 1973 established the Architectural and Transportation Barriers Compliance Board (ATBCB). In 1978 the Rehabilitation Act was amended to require the ATBCB, *inter alia*, to issue minimum guidelines and requirements for the standards to be issued by the four standard-setting agencies. The minimum guidelines were published on August 4, 1982 (47 FR 33862), and are codified at 36 CFR Part 1190.[1]

On August 7, 1984, the four standard-setting agencies issued UFAS as an effort to minimize the differences among the four agencies' Barriers Act standards, and among those standards and accessibility standards used by the private sector. The Department of Housing and Urban Development (HUD) and GSA have incorporated UFAS into their Barriers Act regulations (*see* 24 CFR Part 40 (HUD) and 41 CFR Subpart 101-19.6 (GSA)). In order to ensure uniformity, UFAS was designed to be consistent with the scoping and technical provisions of the ATBCB's minimum guidelines and requirements, as well as with the technical provisions of ANSI A117.1-1980, published by the American National Standards Institute. (The 1980 ANSI standard contains few scoping provisions.) ANSI is a private, national organization that publishes recommended standards on a wide variety of subjects. ANSI's original accessibility standard, ANSI A117.1, "Specifications for Making Buildings and Facilities Accessible to, and Usable by, Physically Handicapped People," was published in 1961 and reaffirmed in 1971. The current edition, issued in 1986, is ANSI A117.1-1986. The 1961, 1980, and 1986 ANSI standards are frequently used in private practice and by State and local governments.

The proposed amendment would amend the current regulation implementing section 504 in programs or activities receiving Federal financial assistance from the Department of Commerce to refer to UFAS.

The agency has determined that it will not require the use of UFAS, or any other standard, as the sole means by which recipients can achieve compliance with the requirement that new construction and alterations be accessible. To do so would unnecessarily restrict recipients' ability to design for particular circumstances. In addition, it might create conflicts with State or local accessibility requirements that may also apply to recipients' buildings and that are intended to achieve ready access and use. It is expected that in some instances recipients will be able to satisfy the section 504 new construction and alteration requirements by following applicable State or local codes, and vice versa.

[1] The ATBCB Office of Technical Services is available to provide technical assistance to recipients upon request relating to the elimination of architectural barriers. Its address is: U.S. ATBCB, Office of Technical Services, 1111 18th Street, NW., Suite 500, Washington, DC 20036. The telephone number is (202) 653-7834 (Voice/TDD). This is not a toll free number.

Effect of Amendment

The agency's current section 504 rule requires that new facilities be designed and constructed to be readily accessible to and usable by persons with handicaps and that alterations be accessible to the maximum extent feasible. The amendment would not affect the current requirements but would merely provide that compliance with UFAS with respect to buildings (as opposed to "facilities," a broader term that encompasses buildings as well as other types of property) shall be deemed compliance with these requirements with respect to those buildings. Thus, for example, an alteration is accessible "to the maximum extent feasible" if it is done in accordance with UFAS. It should be noted that UFAS contains special requirements for alterations where meeting the general standards would be impracticable or infeasible (*see, e.g.*, UFAS sections 4.1.6(1)(b), 4.1.6(3), 4.1.6(4), and 4.1.7).

The amendment also includes language providing that departures from particular UFAS technical and scoping requirements are permitted so long as the alternative methods used will provide substantially equivalent or greater access to and utilization of the building. Allowing these departures from UFAS will provide recipients with necessary flexibility to design for special circumstances and will facilitate the application of new technologies that are not specified in UFAS. As explained under "Background of Accessibility Standards," the agency anticipates that compliance with some provisions of applicable State and local accessibility requirements will provide "substantially equivalent" access. In some circumstances, recipients may choose to use methods specified in model building codes or other State or local codes that are not necessarily applicable to their buildings but that achieve substantially equivalent access.

The amendment requires that the alternative methods provide "substantially" equivalent or greater access, in order to clarify that the alternative access need not be precisely equivalent to that afforded by UFAS. Application of the "substantially equivalent access" language will depend on the nature, location, and intended use of a particular building. Generally, alternative methods will satisfy the requirement if in material respects the access is substantially equivalent to that which would be provided by UFAS in such respects as safety, convenience, and independence of movement. For example, it would be permissible to depart from the technical requirement of UFAS section 4.10.9 that the inside dimensions of an elevator car be at least 68 inches or 80 inches (depending on the location of the door) on the door opening side, by 54 inches, if the clear floor area and the configuration of the car permits wheelchair users to enter the car, make a 360-degree turn, maneuver within reach of controls, and exit from the car. This departure is permissible because it results in access that is safe, convenient, and independent, and therefore substantially equivalent to that provided by UFAS.

With respect to UFAS scoping requirements, it would be permissible in some circumstances to depart from the UFAS new construction requirement of one accessible principal entrance at each grade floor level of a building (see UFAS section 4.1.2(8)), if safe, convenient, and independent access is provided to each level of the new facility by a wheelchair user from an accessible principal entrance. This departure would not be permissible if it required an individual with handicaps to travel an extremely long distance to reach the spaces served by the inaccessible entrances or otherwise provided access that was substantially less convenient than that which would be provided by UFAS.

It would not be permissible for a recipient to depart from UFAS' requirement that, in new construction of a long-term care facility, at least 50% of all patient bedrooms be accessible (see UFAS section 4.1.4.(9)(b)), by using large accessible wards that make it possible for 50% of all beds in the facility to be accessible to individuals with handicaps. The result is that the population of individuals with handicaps in the facility will be concentrated in large wards, while able-bodies persons will be concentrated in smaller, more private rooms. Because convenience for persons with handicaps is therefore compromised to such a great extent, the degree of accessibility provided to persons with handicaps is not substantially equivalent to that intended to be afforded by UFAS.

It should be noted that the amendment does not require that existing buildings leased by recipients meet the standards for new construction and alterations. Rather, it continues the current Federal practice under section 504 of treating newly leased buildings as subject to the program accessibility standard for existing facilities.

Buildings under design on the effective date of this amendment will be governed by the amendment if the date that bids were invited falls after the effective date. This interpretation is consistent with GSA's Architectural Barriers Act regulation incorporating UFAS, at 41 CFR Subpart 101-19.6.

The proposed revision includes language modifying the effect of UFAS section 4.1.6(1)(g), which provides an exception to UFAS section 4.1.6, *Accessible buildings: alterations.* Section 4.1.6(1)(g) of UFAS states that "mechanical rooms and other spaces which normally are not frequented by the public or employees of the building or facility or which by nature of their use are not required by the Architectural Barriers Act to be accessible are excepted by the requirements of 4.1.6." Particularly after the development of specific UFAS provisions for housing alterations and additions, UFAS section 4.1.6(1)(g) could be read to exempt alterations to privately owned residential housing, which is not covered by the Architectural Barriers Act unless leased by the Federal Government for subsidized housing programs. This exception, however, is not appropriate under section 504, which protects beneficiaries of housing provided as part of a federally assisted program. Consequently, the proposed amendment provides that, for purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only spaces that, because of their intended use, will not require accessibility to the public or beneficiaries, or residents or employees with handicaps.

The proposed revision also provides that whether or not the recipient opts to follow UFAS in satisfaction of the ready access requirement, the recipient is not required to make building alternations that have little likelihood of being accomplished without removing or altering a load-bearing structural member. This provision does not relieve recipients of their obligation under the current regulation to ensure program accessibility.

Rulemaking Requirements

This document has been reviewed by DOJ. It is an adaptation of a prototype prepared by DOJ under Executive Order 12250 of November 2, 1980. The ATBCB

has been consulted in the development of this document in accordance with 28 CFR 41.7.

This proposed rule is not a major rule within the meaning of Executive Order 12291 of February 17, 1981 and, therefore, a regulatory impact analysis has not been prepared.

The General Counsel has certified to the Chief Counsel for Advocacy, Small Business Administration, that this proposed rule, if promulgated, will not have a significant economic impact on small business entities. Because its effect will be upon individuals, ensuring that no qualified individual with handicaps, will on the basis of these handicaps, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any federally assisted program or activity, the rule will not significantly impact the entities regarding costs of compliance with the rule, costs of completing paperwork or recordkeeping requests, the competitive positions of small entities in relation to larger entities, cash flow and liquidity of small entities, or the ability of a small entity to remain in the market. Therefore, a Regulatory Flexibility Analysis has not been prepared for purposes of the Regulatory Flexibility Act.

This proposed rule does not contain collections of information for purposes of the Paperwork Reduction Act.

This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612 of October 26, 1987.

List of Subjects in 15 CFR Part 8b

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Grant programs, Handicapped, Loan programs.

For the reason stated in the preamble, Commerce proposes to amend 15 CFR Part 8b as follows:

PART 8b—[AMENDED]

1. The authority citation for Part 8b is revised to read as follows:

Authority: 29 U.S.C. 794.

2. Section 8b.18 is amended by revising paragraph (c) to read as follows:

§ 8b.18 New construction.

* * * * *

(c) *Conformance with Uniform Federal Accessibility Standards.*—(1) Effective as of (the effective date of this amendment) design, construction, or alteration of buildings in conformance with sections 3–8 of the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR Subpart 101–19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, § 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

Thomas J. Collamore,
Assistant Secretary for Administration.

[FR Doc. 89–17329 Filed 7–24–89; 8:45 am]

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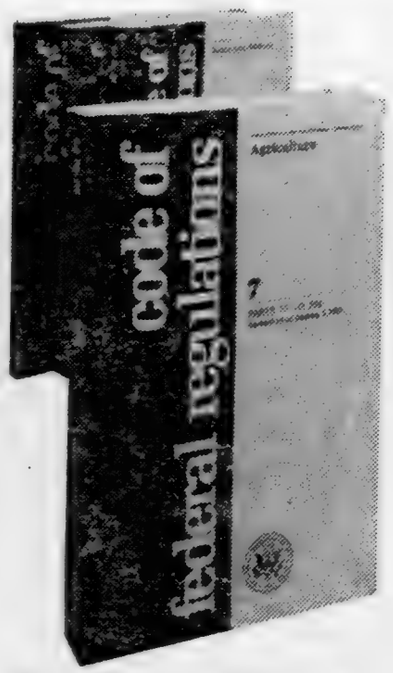

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 89-054]

Gypsy Moth Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the Gypsy Moth Quarantine and Regulations by (1) adding North Carolina and Utah to the list of states quarantined because of gypsy moth; (2) removing regulated areas in Oregon from the list of gypsy moth low-risk areas and removing Oregon from quarantined status; (3) designating previously nonregulated areas in North Carolina as gypsy moth low-risk areas; (4) designating previously nonregulated areas in Utah and Virginia as gypsy moth high-risk areas; and (5) redesignating portions of regulated areas in Ohio from gypsy moth low-risk areas to gypsy moth high-risk areas. The regulations restrict the interstate movement of certain articles from gypsy moth high-risk and low-risk areas. This rule is necessary to prevent the spread of gypsy moth and to remove unnecessary restrictions on the interstate movement of certain articles.

DATES: Interim rule effective July 26, 1989. Consideration will be given only to comments received on or before September 25, 1989.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Helene R. Wright, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 89-054. Comments may be inspected at Room 1141 of the South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Tom G. Flanigan, Operations Officer, Program Support Staff, PPQ, APHIS, USDA, Room 646, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8247.

SUPPLEMENTARY INFORMATION:

Background

The gypsy moth, *Lymantria dispar* (Linnaeus), is a destructive pest of forest trees. The Gypsy Moth Quarantine and Regulations (contained in 7 CFR 301.45 *et seq.*, and referred to below as the regulations), quarantine certain states because of the gypsy moth, and restrict the interstate movement from regulated areas of certain articles to prevent the artificial spread of the gypsy moth.

Areas designated as gypsy moth regulated areas are those areas in which a gypsy moth infestation has been found by an inspector, areas regulated because of the proximity to gypsy moth infestation, or areas inseparable from infested localities for quarantine enforcement purposes. Regulated areas are divided into high-risk areas and low-risk areas. Under the regulations an area is designated as a high-risk area when an inspector determines that regulated articles exist within or adjacent to an area where defoliation has occurred or where an inspector has reason to believe that 50 or more egg masses per acre of the gypsy moth are present. Low-risk areas are those portions of regulated areas that are not designated as high-risk areas.

Section 301.45-3 of the regulations imposes the following conditions on the movement of regulated articles from gypsy moth regulated areas:

(a) A regulated article shall not be moved interstate from any high-risk area into or through any nonregulated area unless a certificate or permit has been issued and attached to such regulated articles in accordance with §§ 301.45-4 and 301.45-7.

(b) A regulated article shall not be moved interstate from any low-risk area into or through any nonregulated area when it is determined by an inspector that any life stage of the gypsy moth is on the regulated article, and the person in possession thereof has been so notified by an inspector, unless a certificate or permit has been issued and attached to such articles in accordance with §§ 301.45-4 and 301.45-7.

(c) A regulated article originating outside of any high-risk area, except any regulated article in any low-risk area determined by an inspector to present a hazard of spreading the gypsy moth pursuant to paragraph (b) of this section, may be moved interestate directly through any high-risk area without a certificate or permit, if the point of origin of the article is clearly indicated by shipping documents, their identity has been maintained, and they have been safeguarded against infestation while in any high-risk area.

Section 301.45-11 of the regulations imposes the following conditions on the interstate movement of outdoor household articles from gypsy moth high-risk areas:

(a) No outdoor household article shall be moved interstate from a gypsy moth high-risk area into or through any nonregulated area unless:

(1) Such outdoor household article is free from all life stages of the gypsy moth at the time of the interstate movement; or

(2) Such outdoor household article [OHA] is accompanied by an OHA document issued by a qualified certified applicator in accordance with the provisions of §§ 301.45-12 and 301.45-13 within five calendar days of the interstate movement from a gypsy moth high-risk area; or

(3) Such outdoor household articles are brought in by vacationers to the gypsy moth high-risk areas.

These regulations are designed to restrict the interstate movement of regulated articles in those circumstances where there would be a significant risk of spread of gypsy moth. A certificate or limited permit is authorized to be issued based on treatment of a regulated article or based on a determination that movement of a regulated article without treatment would not result in the spread of the gypsy moth.

Designation of Areas as Low-Risk Areas; Addition of North Carolina as a Quarantined State

We are amending § 301.45-2a of the regulations by designating all or portions of Currituck and Dare Counties in North Carolina as gypsy moth low-risk areas and amending § 301.45(a) of the regulations by adding North Carolina to the list of quarantined states.

Based on state and federal surveys, inspectors have determined that infestations of gypsy moth occur in these areas designated as gypsy moth

low-risk areas, but that the number of egg masses per acre is not high enough to meet the criteria described below for gypsy moth high-risk areas.

Restrictions concerning the gypsy moth are imposed on movements of regulated articles from gypsy moth low-risk areas only if it is determined by an inspector that any life stage of the gypsy moth is on the regulated article, and the person in possession thereof has been so notified by an inspector, unless a certificate or permit has been issued and attached to the regulated article in accordance with §§ 301.45 and 301.45–7 of the regulations. In this connection, it is necessary as an emergency measure to designate these areas as gypsy moth low-risk areas in order to advise persons of the likelihood that inspectors would conduct inspections in these areas and that, based on their findings of life stages of gypsy moth, restrictions could apply to the movement of regulated articles from these areas.

Removal of Area From List of Regulated Areas and Removal of State From Quarantine

We are amending § 301.45–2a of the regulations by removing Lane County, Oregon, from the list of gypsy moth low-risk areas. The removal of Lane County, Oregon, from the list of gypsy moth regulated areas is to remove all areas in Oregon from the list of regulated areas. As a result, there is no longer a basis for quarantining Oregon. Therefore, we are removing Oregon from the list of states quarantined because of gypsy moth in § 301.45(a).

Based on treatments with insecticides and subsequent negative surveys in accordance with the quarantine and regulations, it has been determined that the gypsy moth no longer occurs in the above-described area released from quarantine in Lane County, Oregon. Accordingly, there is no longer a basis for continuing to list this area as a regulated area for the purpose of preventing the artificial spread interstate of gypsy moth. Therefore, as an emergency measure, it is necessary to remove this area from the list of regulated areas in order to delete unnecessary restrictions on the movement of gypsy moth regulated articles.

Designation of Areas as High-Risk Areas: Addition of Utah as a Quarantined State

This document also amends § 301.45–2a of the regulations by redesignating all or portions of areas in Ashtabula, Geauga, Lake, and Trumbull Counties in Ohio from gypsy moth low-risk to gypsy moth high risk areas; by designating previously nonregulated areas in the City of Suffolk, and Charles City, Chesterfield, Essex, Franklin, Isle of Wight, James City, King and Queen, King William, New Kent, Prince George, Surry and Sussex Counties in Virginia as gypsy moth high-risk areas; and by designating a portion of Salt Lake County in Utah as a gypsy moth high-risk area. Also, we are further amending § 301.45(a) of the regulations by adding Utah to the list of quarantined states.

The specific areas affected, as discussed above, are set forth in the regulation portion of this document.

Based on recent surveys, inspectors have determined, with respect to all of the areas added to the list of gypsy moth high-risk areas, that defoliation has occurred in these areas because of the gypsy moth or that there is reason to believe that 50 or more egg masses per acre of the gypsy moth are present in these areas. Also, outdoor household articles and regulated articles exist within or adjacent to these areas. Accordingly, there is a substantial risk of artificially spreading the gypsy moth by unrestricted interstate movement of these articles. Therefore, as an emergency measure, it is necessary to designate these areas as gypsy moth high-risk areas and impose restrictions on the interstate movement of outdoor household articles and regulated articles from these areas in accordance with the regulations in order to prevent the artificial spread of the gypsy moth.

Emergency Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that a situation exists that warrants publication of this rule without prior opportunity for public comment. Because of the possibility that the gypsy moth could be spread artificially to noninfested areas of the United States and because it could cause economic loss due to defoliation of susceptible forest areas, it is necessary to act immediately to control its spread. Also, where gypsy moth no longer occurs, or when there is reason to believe that the density of egg masses per acre has decreased sufficiently to remove the area from a gypsy moth high-risk or low-risk area classification, immediate action is needed to remove unnecessary restrictions on the interstate movement of regulated articles.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon publication. We will consider comments that are received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This action affects the interstate movement of regulated articles from gypsy moth regulated areas in North Carolina, Ohio, Oregon, Utah and Virginia. For areas designated as high-risk areas, individual and commercial movers moving outdoor household articles to areas outside the quarantined area must determine that their articles are free of gypsy moth. Mobile home haulers, loggers, nurserymen, and firewood haulers are required to obtain a certificate or limited permit from an inspector that their articles are free of gypsy moth. For areas designated as low-risk areas, the same conditions apply for movement of regulated articles when it is determined by an inspector that the movement of an article presents a hazard of spreading the gypsy moth. For areas determined to be free of gypsy moth and deregulated, no restrictions are imposed for movement of regulated articles.

All regulated articles are inspected and certified without charge to the business. A business not requesting this service in advance of shipment may be delayed in moving the product until service can be provided. A homeowner moving outdoor household articles from a high-risk area to an uninfested area may pay a qualified certified applicator

(QCA) to inspect his goods. These charges average between $50–100. In some instances the company moving that person reimburses the mover for their expense. Most QCA's are small businesses. By declaring an area as a high-risk area the regulations may increase business for the QCA's located in high-risk areas. These businesses will average $50 to $150 per month in additional income per business. Approximately 153 new businesses will be trained to inspect outdoor household articles and will offer this service to the general public. Based on information compiled by the U.S. Department of Agriculture, it has been determined that there are many hundreds of small entities that move regulated articles interstate from gypsy moth regulated areas and many thousands of small entities that move regulated articles interstate from other states. However, based on such information, it has been determined that approximately 1,677 small entities move regulated articles interstate from the specified areas affected by this action.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372 which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant pests, Plants (Agriculture), Quarantine, Transportation, Gypsy moth.

Accordingly, 7 CFR Part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for Part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162 and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 301.45 [Amended]

2. Section 301.45(a) is amended by adding "North Carolina," immediately after "New York,", by adding "Utah," immediately after "Rhode Island," and by removing the reference to "Oregon".

3. Section 301.45–2a is amended by adding in alphabetical order the following areas for North Carolina and Utah, and by revising the entries for Ohio and Virginia to read as follows:

§ 301.45–2a Regulated areas; high-risk and low-risk areas.

* * * * *

North Carolina

(1) *High-risk area.* None.

(2) *Low-risk area.*

Currituck County. The entire county.

Dare County. The area bounded by a line beginning at the intersection of State Road 1208 and Roanoke Sound; then easterly along this road to its junction with State Road 1206; then southerly along this road to its intersection with U.S. Highway Business 158; then easterly along an imaginary line to its intersection with the Atlantic Ocean; then northwesterly along the coastline to its intersection with the Dare-Currituck County line; then westerly along this county line to its intersection with the Currituck Sound; then southeasterly along this sound to the point of beginning.

* * * * *

Ohio

(1) *High-risk area.*

Ashtabula County. The entire county.

Geauga County. The townships of Chardon, Handen, Montville, and Thompson.

Lake County. The townships of Concord, Leroy, Madison, Painesville, and Perry.

Trumbull County. The townships of Bloomfield, Brookfield, Greene, Gustavus, Hartford, Johnston, Kinsman, Mesopotamia, and Vernon.

(2) *Low-risk area.*

Geauga County. The townships of Auburn, Bainbridge, Burton, Chester, Claridon, Huntsburg, Middlefield, Munson, Newbury, Parkman, Russell, and Troy.

Lake County. All of the county west of the Painsville and Concord Township line including the municipalities of Eastlake, Kirtland, Kirtland Hills, Lakeline, Mentor, Mentor on the Lake, Timberlake, Waite Hill, Wickliffe, Willoughby, Willoughby Hills and Willowick.

Trumbull County. The townships of Bazetta, Braceville, Bristol, Champion, Farmington, Fowler, Howland, Hubbard, Liberty, Lordstown, Mecca, Newton, Southington, Vienna, Warren, and Weathersfield.

* * * * *

Utah

(1) *High-risk area.*

Salt Lake County. That portion of the county bounded by a line beginning at the northwest corner of sec. 25, T. 1 S., R. 1 E.; running southerly along the west section line of this section to Interstate 215; then along this interstate to Wasatch Boulevard; then along this boulevard to the center of sec. 11 of T. 2 S., R. 1 E.; then easterly along an imaginary line to the southeast corner of the northeast quarter of sec. 7, T. 2 S., R. 2 E.; then northerly along an imaginary line to the northeast corner of sec. 30, T. 1 S., R. 2 E.; then westerly to the point of beginning.

(2) *Low-risk area.* None.

* * * * *

Virginia

(1) *High-risk area.*

City of Alexandria. The entire city.

City of Charlottesville. The entire city.

City of Chesapeake. The entire city.

City of Fairfax. The entire city.

City of Falls Church. The entire city.

City of Fredericksburg. The entire city.

City of Hampton. The entire city.

City of Harrisonburg. The entire city.

City of Manassas. The entire city.

City of Manassas Park. The entire city.

City of Newport News. The entire city.

City of Norfolk. The entire city.

City of Poquoson. The entire city.

City of Portsmouth. The entire city.

City of Suffolk. The entire city.

City of Virginia Beach. The entire city.

City of Waynesboro. The entire city.

City of Winchester. The entire city.

Accomack County. The entire county.

Albemarle County. The entire county.

Arlington County. The entire county.

Augusta County. That portion of the county east of Interstate 81 and north of Interstate 64.

Caroline County. The entire county.

Charles City County. The entire county.

Chesterfield County. The entire county.

Clarke County. The entire county.

Culpeper County. The entire county.

Essex County. The entire county.

Fairfax County. The entire county.

Fauquier County. The entire county.

Fluvanna County. The entire county.

Franklin County. The entire county.

Frederick County. The entire county.
Gloucester County. The entire county.
Goochland County. The entire county.
Greene County. The entire county.
Hanover County. The entire county.
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New Kent County. The entire county.
Northampton County. The entire county.
Northumberland County. The entire county.
Orange County. The entire county.
Page County. The entire county.
Powhatan County. The entire county.
Prince George County. The entire county.
Prince William County. The entire county.
Rappahannock County. The entire county.
Richmond County. The entire county.
Rockingham County. The entire county.
Shenandoah County. The entire county.
Spotsylvania County. The entire county.
Stafford County. The entire county.
Surry County. The entire county.
Sussex County. The entire county.
Warren County. The entire county.
Westmoreland County. The entire county.
York County. The entire county.

(2) *Low-risk area.* None.

* * * * *

4. Section 301.45–2a is amended further by removing the entire description for Oregon.

Done in Washington, DC, on this 20th day of July, 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–17483 Filed 7–25–89; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–CE–10–AD; Amendment 39–6273]

Airworthiness Directives; British Aerospace (BAe) PLC, Jetstream Model HP 137 MK1, Models 200, 3101, and 3201 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to British Aerospace (BAe) PLC, Jetstream Model HP 137 Mk1, Models 200 and 3101, and certain Model 3201 airplanes which supersedes AD 88–21–08 R1, Amendment 39–6061. This new AD requires initial and recurring visual inspections of the securing rivet of the flap torque shaft universal joint and replacement of the torque shaft assembly if the rivet has failed or has excessive end play. It requires reinspection, and removal of BAe Modification JM 5313, if inappropriately installed, incorporates an optional modification which can be used in lieu of the reinspection requirement of AD 88–21–08 R1, and adds certain Model 3201 airplanes to the effectivity of the AD. A failed flap torque tube rivet was found during an air carrier inspection which could result in loss of control of the airplane due to asymmetric flap deployment. The actions of this AD will preclude this condition.

DATES: *Effective* August 24, 1989.
Compliance: As prescribed in the body of the AD.

ADDRESSES: BAe Alert Service Bulletin (ASB) Jetstream 27–A–JA881041, Revision 2, dated March 10, 1989, Service Bulletin (S/B) Jetstream 27–JM 5313 Revision 2, dated April 21, 1989, and S/B 27–JM–5322, dated May 5, 1989, applicable to this AD may be obtained from British Aerospace (BAe) PLC, Manager, Product Support, Civil Aircraft Division, Prestwick Airport, Ayrshire, KA9 2RW, Scotland; Telephone (44–292) 79888; or British Aerospace Inc., Technical Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041; Telephone (703) 435–9100. This information may also be examined at the Rules Docket, FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, MO 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Ebina, Aircraft Certification Office, AEU–100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B–1000 Brussels, Belgium; Telephone (322) 513.38.30; or Mr. John P. Dow Sr., Project Support Section-Foreign, ACE–109, 601 E. 12th Street, Kansas City, MO 64106; Telephone (816) 426–6932.

SUPPLEMENTARY INFORMATION: This amendment supersedes AD 88–21–08 R1, Amendment 39–6061 (53 FR 46865, November 21, 1988). During an inspection of a BAe Jetstream wing flap actuation system, an air carrier discovered a failed securing rivet in the flap torque shaft universal joint. If this failed rivet was left uncorrected, asymmetric flap deployment could occur with resultant loss of control of the airplane. As a result, the manufacturer issued service information to detect and remedy this problem by describing procedures to inspect the securing rivet in the flap torque shaft universal joint, and replace the torque shaft assembly if the securing rivet has failed.

Accordingly, the FAA notified all known registered owners of the airplanes affected by this AD by priority mail letter dated October 14, 1988. The AD became effective immediately to these individuals upon receipt of that letter, and is identified as AD 88–21–08.

Minor editorial changes, and a clarification of paragraph (a)(1) of the AD was made by the addition of paragraph (a)(3) based upon comments received from the public. As a result, the AD was revised and reissued as AD 88–21–08 R1. Subsequent to the issuance of AD 88–21–08 R1, BAe issued SB Jetstream 27–JM 5313 Revision 2, dated April 21, 1989, which describes modifications JM 5313, and SB Jetstream 27–JM 5322, dated May 5, 1989, which describes modification JM 5322 to provide retention of the flap torque tube universal joint securing rivets, one for each of two variants of the universal joint design. The FAA evaluated these changes and found them to be an equivalent means of compliance to the reinspection requirements of paragraph (a)(3) of the AD 88–21–08 R1.

Further, BAe issued BAe ASB 27–A–JA881041 Revision 2, dated March 10, 1989, to account for the joint configuration variant, reinspection and removal of JM 5313 when inappropriately installed, appropriate installation of modification JM 5322, and to include early BAe 3201 airplanes in the effectivity. BAe ASB 27–JM5313 Revision 2, dated April 21, 1989, corrected the reinspection interval from 1200 landings to 1200 hours time-in-service.

The Civil Aviation Authority (CAA), who has responsibility and authority to maintain the continuing airworthiness of these airplanes in the United Kingdom (UK), has classified this ASB and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under UK registration, this action has the same effect as an AD on airplanes certificated for operation in the United States. The FAA relies upon the certification of CAA–UK combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of BAe ASB Jetstream 27–A–JA881041, Revision 2, dated March 10, 1989, and the mandatory classification of this ASB by the CAA–UK. Based on the foregoing, the FAA has determined that the condition described herein is an unsafe condition that may exist or develop on other products of the same type design certificated for operation in the United States.

Therefore, an AD is being issued superseding AD 88–21–08 R1 which requires inspection of airplanes modified by BAe S/B Jetstream 27–JM 5313, removal if inappropriate, initial and recurring visual inspections of the securing rivet of the flap torque shaft universal joint and replacement of the universal joint assembly if the rivet has failed on British Aerospace (BAe) PLC, Jetstream Model HP 137 Mk1, Models 200, 3101, and certain 3201 airplanes. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsiblities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that his regulation is an emergency regulation that is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of 14 CFR Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 88–21–08 R1, Amendment 39–6061 with the following new AD:

British Aerospace (BAe) PLC: Applies to BAe Jetstream Model HP 137 Mk1, Models 200, 3101, (all serial numbers (S/N)) and 3201 airplanes (S/Ns 790, 800, 805, 810, 814, 816, 819, 821, 823, 824, and 828) certificated in any category.

Compliance: Required as indicated, unless already accomplished per AD 88–21–08 R1.

To prevent loss of airplane control due to asymmetric flap deployment, accomplish the following:

(a) For airplanes which have BAe Modification JM 5313 installed, within the next 50 cycles (1 cycle equals 1 takeoff and 1 landing) after the effective date of this AD inspect the universal joint as described in Appendix 2 of ASB 27–A–JA881041 Revision 2, dated March 10, 1989.

(1) If BAe Modification JM 5313 is appropriately installed, visually reinspect thereafter at 1200 hour time-in-service (TIS) intervals.

(2) If Modification JM 5313 is inappropriately installed, prior to further flight remove the modification and continue reinspection at the appropriate intervals specified in paragraph (b) following.

(b) Upon the accumulation of 2,000 cycles or within the next 25 cycles, whichever occurs later after the effective date of this AD, visually and tactilely (by feel) inspect the securing rivet on the left hand and right hand universal joints of the flap torque shaft as specified in BAe Jetstream Alert Service Bulletin (ASB) 27–A–JA881041, Revision 2, dated March 10, 1989. For each such universal joint:

(1) If the rivet has failed, or the vertical displacement of the rivet exceeds 0.040 inches, prior to further flight replace the torque shaft assembly with a serviceable part and inspect the replacement part upon the accumulation of 2,000 cycles.

(2) If the vertical displacement of the rivet is end float only and does not exceed 0.040 inches as described in the above ASB as amended, repeat the inspection specified in paragraph (b) above thereafter at intervals not to exceed 50 cycles.

(3) If the rivet has not failed, and has no end float, repeat the inspection specified in paragraph (b) above thereafter at intervals not to exceed 200 cycles.

(c) If BAe Modification JM 5322 is appropriately installed, visually reinspect thereafter at 1200 hour TIS intervals.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(e) An equivalent means of compliance may be used if approved by the Manager, Brussels Aircraft Certification Office, FAA, AEU–100, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to British Aerospace Inc., Technical Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041; Telephone (703) 435–9100; or British Aerospace PLC, Aircraft Group, Scottish Division, Prestwick Airport, Ayrshire KA9 2RW U.K. (44–292) 79888; or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment supersedes AD 88–21–08 R1, Amendment 37–6061.

This amendment becomes effective on August 24, 1989.

Issued in Kansas City, Missouri, on July 12, 1989.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–17486 Filed 7–25–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 82-ANE-21; Amdt. 39-6271]

Airworthiness Directives; Hamilton Standard Hydromatic (Noncounterweighted) Propeller Models 22D30, 22D40, 23D40, 23E50, 23E60, 24D50, 24E60, 33D50, 33E60, 34D50, 34D51, 34E60, 43D50, 43D51, 43E60, and 43H60.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) which requires repetitive corrosion inspections on certain Hamilton Standard propeller models. This AD is needed in order to provide the means to increase the repetitive inspection intervals up to 60 months. The AD is based on past inspection results where little or no corrosion was found and the repetitive inspection interval was increased on an individual basis without adversely affecting safety.

DATES: *Effective*—September 15, 1989.

Compliance—As indicated in the body of the AD.

ADDRESSES: The applicable technical information may be obtained from Hamilton Standard, One Hamilton Road, Windsor Locks, Connecticut 06096, or may be examined in the Regional Rules Docket, Room 311, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Boston Aircraft Certification Office, ANE-153, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7066.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to amend an existing AD requiring repetitive corrosion inspection on certain Hamilton Standard propeller models was published in the **Federal Register** on February 13, 1989.

The proposal was promopted by substantiating engineering data and past inspection results that FAA has on record where little or no corrosion was found, and the repetitive inspection interval was increased on an individual basis without adversely affecting air safety.

This amendment further amends amendment 39-4133, as amended by Amendment 39-4409, AD 81-13-06 R1, which currently requires repetitive corrosion inspections and repair, if necessary, on certain Hamilton Standard propeller blades, in accordance with Hamilton Standard Aluminum Blade Overhaul Manual No. 130B, dated March 1, 1980, previously incorporated by reference on June 28, 1982, in AD 81-13-06. After issuing Amendment 39-4409, the FAA determined that the inspection interval can be extended based on certain factors. These factors include past AD inspections, maintenance program plans, oil change intervals, aircraft operating environment, and the type of storage or hangar facilities. With the experience gained during the past several years by maintenance reviews and management of the aircraft operational factors, inspection interval extensions have been granted on an individual basis. Substantiating data submitted by each operator was confirmed by an FAA Airworthiness Inspector in support of those extensions. Based on the data presented to the FAA over the past eight years, it has been determined that the extensions to the inspection intervals may be allowed without adversely affecting safety provided no corrosion is found during inspection of the propeller blades. Therefore, the FAA is further amending Amendment 39-4133, as amended by Amendment 39-4409, by allowing the inspection interval to be increased up to 60 months when inspections show no evidence of corrosion.

Interested persons and aviation groups have been afforded the opportunity to participate in making of this amendment, and due consideration has been given to all relevant data and comments received. Seventy-one comments were received during the NPRM designated comment period time frame concerning the proposed rule.

Discussion of Comments

The comments received ranged from two comments not to amend the present AD to three comments for outright cancellation of the AD. Other comments recommended that the FAA's proposed extended inspection interval of 48 months be changed to anywhere from no longer than 36 months to every 10 years.

Six propeller repair stations reported that they have found many blades with corrosion when performing the inspection required by AD 81-13-06R1. Some of the blades and their corrosion have been observed and confirmed by the FAA.

An aircraft association submitted the results of a survey they conducted among their members which showed no reported evidence of corrosion when using the present inspection interval of previously granted interval extensions of up to 48 months.

Based on supportive data received and the results of previously granted extensions the FAA has changed the proposed maximum 48 month inspection interval to 60 months.

One commenter found the procedure to increase the inspection interval to be confusing. The FAA agrees and the procedure has been rewritten for clarity and to change the maximum inspection interval from 48 to 60 months.

Several commenters objected to reverting to the 18 month inspection interval if corrosion is found after the inspection interval has been extended. The FAA agrees and the AD has been rewritten to require reversion to the 18 month inspection interval only if corrosion is found severe enough to be beyond allowable repair limits. Any other corrosion found which is within repairable limits will freeze the inspection interval to the interval at which the corrosion is found.

Many commenters stated that installing the corrosion barrier required by AD 57-13-05 should eliminate the need for repetitive inspections. Another commentor stated that the propeller corrosion barrier required by AD 57-13-05 was for the purpose of protecting the blade from the corrosive effects of the adhesive used to hold the teflon strip to the blade. The teflon strip provides a surface for the blade seal to ride on and has nothing to do with preventing corrosion of the type seen in later years.

Two commenters pointed out the numerous environmental and usage factors that can affect corrosion. The FAA agrees that there are many factors that affect corrosion but most of them are difficult to quantify for the purpose of complying with an AD. Past experience shows that the predominant factor to consider when extending the inspection interval is the lack of corrosion found during the interval.

Finally, several commenters believed that the proposal was for a new AD and objected to the conclusion that the proposed regulation involved no cost to operators. The FAA is aware that inspections are costly and the conclusion of no cost to operators pertained only to the lack of additional cost associated with the proposed amendment to extend the inspection interval.

The regulations adopted herein do not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation involves no additional cost to the operators beyond that required by the existing AD. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Propellers, Air transportation, Aircraft, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39-4133 (47 FR 27845; June 28, 1982), AD 81-13-06 as amended by Amendment 39-4409 (47 FR 36217; August 19, 1982), AD 81-13-06 R1. The AD is restated in its entirety for clarity as follows:

Hamilton Standard: Applies to Hamilton Standard Hydromatic (noncounterweighted) propellers with aluminum blades that use engine oil for pitch control (does not apply to propellers with integral oil control or to propellers with steel blades) of the following types: 22D30, 22D40, 23D40, 23E50, 23E60, 24D50, 24E60, 33D50, 33E60, 34D50, 34D51, 34E60, 43D50, 43D51, 43E60, and 43H60, as installed on various reciprocating engine powered aircraft such as, but not limited to: Beech D17 and D18, Boeing 377 series, Canadair Model 4 and CL-215, Curtiss-Wright C-46, DeHavilland DHC-2, DHC-3, and DHC-4, General Dynamics (Convair) T-29, 240, 340, and 440 series, Gulfstream American (Grumman) G-12A, G164, F4U, S-2F, TBM, and W-2F series, Lockheed L-10, L-12, 049, 749, 1049, 1649 series, Martin 202 and 404 series, McDonnell Douglas B-26, DC-3, DC-4, DC-6, and DC-7 series, North American AT-6, B-25, P-51, SNJ-5, T-6 and T-28.

Compliance is required as indicated, unless already accomplished.

To prevent propeller blade failure due to corrosion and fatigue, accomplish the following:

(a) Inspect propeller blades within the next 90 days after July 1, 1982, or within 18 months since last inspection, whichever occurs later, for corrosion in the blade fillet and shank area, particularly under the teflon friction reduction strip and the resin corrosion barrier, in accordance with Hamilton Standard Aluminum Blade Overhaul Manual No. 130B, dated March 1, 1980, previously incorporated by reference on June 28, 1982, in AD 81-13-06. Thereafter, if corrosion is found reinspect at intervals not to exceed 18 months since the last inspection.

(b) For propellers with all installed blades having no corrosion at the last inspection, the 18 month reinspection interval may be increased as follows:

(1) Reinspect between 33 and 39 months since the last inspection. If corrosion is found to be beyond repairable limits return to the 18 month reinspection interval required by paragraph (a). If corrosion is found to be within repairable limits the reinspection interval cannot exceed a 36 month reinspection schedule.

(2) If no corrosion is found at the last 33 to 39 month reinspection in accordance with paragraph (b)(1), then thereafter reinspect at intervals not to exceed 60 months. If corrosion is found to be beyond repairable limits at any reinspection interval return to the 18 month reinspection interval required by paragraph (a). If corrosion is found to be within repairable limits the reinspection interval may remain on a schedule not to exceed 60 months.

(c) Prior to further flight, blades with corrosion in the fillet or shank area must be replaced with an airworthy blade or repaired in accordance with Hamilton Standard Aluminum Blade Overhaul Manual No. 130B, dated March 1, 1980.

(d) Disassembled propeller blades preserved in accordance with Hamilton Standard Aluminum Blade Overhaul Manual No. 130B, dated March 1, 1980, need not include storage time when computing the time since last inspection.

(e) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, may adjust the compliance times specified in this AD or approve an equivalent means of compliance with this AD.

Note: Extensions to the compliance schedule previously granted to owners/operators are still applicable to this amendment. These extensions which are beyond a 39 month reinspection interval may be extended to 60 months as provided in paragraph (b)(2).

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the inspection required by this AD.

This amendment becomes effective September 15, 1989.

This amendment amends Amendment 39-4409 (47 FR 36217; August 19, 1982), AD 81-13-06 R1.

Issued in Burlington, Massachusetts, on July 11, 1989.

Arthur J. Pidgeon,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 89-17476 Filed 7-25-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Correction

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule; correction.

SUMMARY: A document was published in the **Federal Register** as T.D. 89-63 (54 FR 26956) on June 27, 1989, amending Part 101, Customs Regulations to establish a new port of entry known as the Virginia Inland Port (VIP) near Front Royal in the Norfolk, Virginia, Customs District of the Southeast Region. This document corrects an error that appears in that document relating to the authority citation for Part 101.

FOR FURTHER INFORMATION CONTACT: Russell Berger, Regulations and Disclosure Law Branch, (202) 566-8237.

SUPPLEMENTARY INFORMATION:

Background

A document published in the **Federal Register** as T.D. 89-63 (54 FR 26956) on June 27, 1989, amended Part 101, Customs Regulations (19 CFR Part 101), relating to the Customs field organization. The document established a new port of entry known as the Virginia Inland Port (VIP) near Front Royal in the Norfolk, Virginia, Customs District, Southeast Region. The authority citation for Part 101 as set forth in the document inadvertently included reference to a Customs Reorganization Plan.

Correction

On page 26957 of the document, the authority citation for Part 101 should read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 2, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1623, 1624.

Kathryn C. Peterson,

Chief, Regulations and Disclosure Law Branch.

July 19, 1989.

[FR Doc. 89-17401 Filed 7-25-89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 85F-0188]

Secondary Direct Food Additives Permitted in Food for Human Consumption; Acrylic Acid/2-Acrylamido-2-Methyl Propane Sulfonic Acid Copolymer

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of acrylic acid/2-acrylamido-2-methyl propane sulfonic acid copolymer. This action is in response to a petition filed by Calgon Corp.

DATES: Effective July 26, 1989; written objections and requests for a hearing by August 25, 1989. The Director of the Office of the Federal Register approved the incorporation by reference in accordance with 5 U.S.C. 552(a) of a certain publication in 21 CFR 173.310(c), effective July 26, 1989.

ADDRESSES: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Geraldine E. Harris, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 17, 1985 (50 FR 20623), FDA announced that a food additive petition (FAP 5A3857) had been filed by Calgon Corp., Calgon Center, Box 1346, Pittsburgh, PA 15230, proposing that Part 173 of the food additive regulations (21 CFR Part 173) be amended to provide for the safe use of acrylic acid/2-acrylamido-2-methyl propane sulfonic acid as a boiler water additive.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of this food additive is safe, and that 21 CFR 173.310(c) should be amended as set forth below.

In accordance with § 171.1(h) (21CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be aversely affected by this regulation may at any time on or before August 25, 1989 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 173

Food additives, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 173 is amended as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 173 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 173.310 is amended by alphabetically adding a new entry in the table in paragraph (c) under the headings "Substances" and "Limitations" to read as follows:

§ 173.310 Boiler water additives.

* * * * *

(c) * * *

Substances	Limitations
* * *	* * *
Acrylic acid/2-acrylamido-2-methyl propane sulfonic acid copolymer having a minimum weight average molecular weight of 9,900 and a minimum number average molecular weight of 5,700 as determined by a method entitled "Determination of Weight Average and Number Average Molecular Weight of 60/40 AA/AMPS" (October 23, 1987), which is incorporated by reference in accordance with 5 U.S.C. 552(a). Copies may be obtained from the Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC.	Total not to exceed 20 parts per million (active) in boiler feedwater.
* * *	* * *

* * * * *

Dated: July 18, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-17388 Filed 7-25-89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 178

[Docket No. 87F-0329]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of sanitizing solutions composed of sodium hypochlorite, potassium permanganate, sodium lauryl sulfate, and trisodium phosphate with magnesium oxide and potassium bromide as optional ingredients. The sanitizing solution is to be used on food-processing equipment and utensils and on food-contact surfaces in public eating places. This action is in response to a petition filed by Diversey Wyandotte Corp.

DATES: Effective July 26, 1989; written objections and requests for a hearing by August 25, 1989.

ADDRESSES: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 15, 1987 (52 FR 47637), FDA announced that a food additive petition (FAP 7B4020) had been filed by Diversey Wyandotte Corp., 1532 Biddle Ave., Wyandotte, MI 48192, proposing that § 178.1010 *Sanitizing solutions* (21 CFR 178.1010) be amended to provide for the safe use of potassium permanganate, sodium lauryl sulfate, magnesium oxide, trisodium phosphate, and sodium hpochlorite, with potassium bromide as an optional ingredient, as components of a sanitizing solution to be used on food-contact sufaces.

I. Safety of Petitioned Use of the Additives

Sanitizing solutions are mixtures of chemicals. Each listed component in a sanitizing solution must have a functional effect. The subject sanitizing solution contains a double salt of sodium hypochlorite and trisodium phosphate. In addition, the solution contains sodium lauryl sulfate and potassium permanganate and may contain magnesium oxide or potassium bromide as optional ingredients. During review of this petition, the agency determined that magnesium oxide, which was originally listed as a required ingredient, was not necessary in the formulation and thus decided to include it as an optional ingredient. The functions of each component are described below.

A. Sodium Hypochlorite

Sodium hypochlorite functions as an antimicrobial agent in the subject sanitizing solution and is used in a regulated sanitizing solution listed in § 178.1010(b)(1). On the basis of the data submitted in support of this regulated use and the data contained in the food additive petition submitted in support of this sanitizing solution, FDA finds that the use of sodium hypochlorite in the subject sanitizing solution is safe, and that this substance will have its intended functional effect.

B. Trisodium Phosphate

Trisodium phosphate functions as a detergent in the subject sanitizing solution. It also stabilizes sodium hypochlorite in crystalline form. Trisodium phosphate is regulated in 21 CFR 182.1778 as generally recognized as safe (GRAS) for direct use in food. On the basis of the data contained in the food additive petition submitted in support of this sanitizing solution and other available data, FDA finds that the use of trisodium phosphate in the subject sanitizing solution is safe, and that this substance will have its intended functional effect.

C. Sodium Lauryl Sulfate

Sodium lauryl sulfate functions as a surface-active agent in the subject sanitizing solution to promote draining of the sanitizer. This ingredient is regulated in two paragraphs of the sanitizing solution regulations, § 178.1010(b) (3) and (10). On the basis of the data submitted in support of these regulated uses and of the data contained in the food additive petition submitted in support of this sanitizing solution, FDA finds that the use of sodium lauryl sulfate in the subject sanitizing solution is safe, and that this substance will have its intended functional effect.

D. Potassium Permanganate

Potassium permanganate functions as a colorant in the presence of sodium hypochlorite and is recognized as having broad antimicrobial activity. Potassium permanganate is not currently regulated. On the basis of the data contained in the food additive petition submitted in support of this sanitizing solution, FDA finds that the use of potassium permanganate in the subject sanitizing solution is safe, and that this substance will have its intended functional effects.

E. Magnesium Oxide

Magnesium oxide functions as an anticaking agent for the sanitizing ingredients of the subject sanitizing solution during storage and transport. Magnesium oxide is listed as GRAS for use as an anticaking agent in 21 CFR 184.1431 for direct use in food. On the basis of the data contained in the food additive petition submitted in support of this sanitizing solution and other available data, FDA finds that the optional use of magnesium oxide in the subject sanitizing solution is safe, and that this substance will have its intended functional effect when used at appropriate levels.

F. Potassium Bromide

Potassium bromide functions as an antimicrobial agent in the subject sanitizing solution. It is used in a regulated sanitizing solution listed in § 178.1010(b)(1). On the basis of the data submitted in support of this regulated use and the data contained in the food additive petition submitted in support of this sanitizing solution, FDA finds that the optional use of potassium bromide in the subject sanitizing solution is safe, and that this substance will have its intended functional effect.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe and effective, and that the regulation in § 178.1010 should be amended by adding paragraphs (b)(37) and (c)(32) as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

II. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not

required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

III. Filing of Objections

Any person who will be adversely affected by this regulation may at any time on or before August 25, 1989 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows.

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.1010 is amended by adding new paragraphs (b)(37) and (c)(32) to read as follows:

§ 178.1010 Sanitizing solutions.

* * * * *

(b) * * *

(37) The sanitizing solution contains sodium hypochlorite (CAS Reg. No. 7681–52–9), trisodium phosphate (CAS Reg. No. 7601–54–9), sodium lauryl sulfate (CAS Reg. No. 151–21–3), and potassium permanganate (CAS Reg. No. 7722–64–7). Magnesium oxide (CAS Reg. No. 1309–48–4) and potassium bromide (CAS Reg. No. 7758–02–3) may be added as optional ingredients to this sanitizing solution. In addition to use on food-processing equipment and utensils, this solution may be used on food-contact surfaces in public eating places.

* * * * *

(c) * * *

(32)(i) The solution identified in paragraph (b)(37) of this section without potassium bromide shall provide, when ready to use, at least 100 parts per million and not more than 200 parts per million of available halogen determined as available chlorine; at least 2,958 parts per million and not more than 5,916 parts per million of trisodium phosphate; at least 1 part per million and not more than 3 parts per million of sodium lauryl sulfate; and at least 0.3 part per million and not more than 0.7 part per million on potassium permanganate.

(ii) The solution identified in paragraph (b)(37) of this section with potassium bromide shall provide, when ready to use, at least 25 parts per million and not more than 200 parts per million of available halogen determined as available chlorine; at least 15 parts per million and not more than 46 parts per million of potassium bromide; at least 690 parts per million and not more than 2,072 parts per million of trisodium phosphate; at least 0.3 part per million and not more than 1 part per million of sodium lauryl sulfate; and at least 0.1 part per million and not more than 0.3 part per million of potassium permanganate.

(iii) Magnesium oxide when used in paragraph (c)(32) (i) or (ii) of this section shall not be used in excess of the minimum amount required to accomplish its intended technical effect.

* * * * *

Dated: July 18, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–17389 Filed 7–25–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 290

[DCAA 5410.8]

Freedom of Information Act Program; Defense Contract Audit Agency

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule revises the Defense Contract Audit Agency Freedom of Information Act Program which implements the Freedom of Information Act of 1974, as amended (5 U.S.C. 552) within the Agency. This document revises 32 CFR Part 290 (42 FR 40433) published on August 10, 1977, and its amendments (51 FR 3045) published on January 23, 1986. This rule is published pursuant to the Freedom of Information Reform Act of 1986, sections 1801–1804 (Pub. L. 99–570); and section 954 of the National Defense Authorization Act of Fiscal Year 1987 (Pub. L. 99–661).

EFFECTIVE DATE: July 26, 1989.

ADDRESSES: Headquarters, Defense Contract Audit Agency, ATTN: CMR, Cameron Station, Alexandria, Virginia 22304–6178.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Henshall, (202) 274–4400.

SUPPLEMENTARY INFORMATION: This rule implements the provisions of DoD 5400.7–R, "DoD Freedom of Information Act Program," as published (52 FR 25976) on July 10, 1987, 32 CFR Part 286, "DoD Freedom of Information Act Program."

List of Subjects in 32 CFR Part 290

Freedom of Information.

Accordingly Chapter I of Title 32 of the Code of Federal Regulations is amended by revising Part 290 to read as follows:

PART 290—DEFENSE CONTRACT AUDIT AGENCY FREEDOM OF INFORMATION ACT PROGRAM

Sec.
290.1 Purpose.
290.2 Cancellation.
290.3 Applicability and scope.
290.4 Policy.
290.5 Definitions.
290.6 Responsibilities.
290.7 Procedures.
290.8 Fees.
290.9 Information/reporting requirements
Appendix A to Part 290—DCAA Headquarters and Regional FOIA Processing Procedure Charts
Appendix B to Part 290—DCAA Form 5410–2(R)
Appendix C to Part 290—DCAA Organization and Mission

Authority: 5 U.S.C. 552, as amended by Pub. L. 99–570.

§ 290.1 Purpose.

This part is issued to assign responsibilities and establish policies and procedures for a uniform DCAA Freedom of Information Act (FOIA) Program pursuant to the provisions of 5 U.S.C. 552, as amended, and as supplemented by DoD Directive 5400.7 [1] (32 CFR Part 285) and DoD 5400.7–R [2] (32 CFR Part 286).

§ 290.2 Cancellation.

DCAA Instruction 5410.8, DCAA Freedom of Information Act (FOIA) Program, dated 27 August 1981 and DCAA Regulation 5410.5, Availability to the Public of Defense Contract Audit Agency (DCAA) Information, dated 14 April 1987 are superseded.

§ 290.3 Applicability and scope.

This rule shall apply to all DCAA organizational elements, and is to govern written responses by DCAA officials for requests from members of the public for permission to examine, or to be provided with copies of DCAA records.

§ 290.4 Policy.

(a) It is the policy of DCAA to promote public trust by making the maximum amount of information available to the public, upon request, pertaining to the operation and activities of the Agency.

(b) Allow a requester to obtain records from the Agency that are available through other public information services without invoking the FOIA.

(c) Make available, under the procedures established by 32 CFR Parts 285 and 286, those records that are requested by a member of the general public who cites the FOIA.

(d) Answer promptly all other requests for information and records under established procedures and practices.

(e) Release records to the public unless those records are exempt from disclosure as prescribed by 5 U.S.C. 552, as amended and 32 CFR Part 285 and implemented by 32 CFR Part 286.

(f) Process requests by individuals for access to records about themselves under the "Privacy Act" procedures as implemented by DoD Directive 5400.11 [3] (32 CFR Part 286a) or procedures outlined in 5 U.S.C. 552, as amended, and 32 CFR Part 286.

(g) Refer incoming requests for audit reports to the appropriate activity for release determination. The requester shall then be notified in writing of the referral.

(h) Coordinate incoming requests for non-DCAA documents with the originator of the document to determine if the originator will make the release determination. If a referral occurs the requester shall be notified in writing of the referral.

§ 290.5 Definitions.

The terms used in this rule, with the exception of the following, are defined in 32 CFR Part 286.

(a) *Appellate Authority.* The Assistant Director, Resources, or his designee.

(b) *Initial Denial Authorities (IDAs).* The regional directors, and the Records Administrator, have been delegated the authority by the Director, DCAA, to make initial determinations as to the releasibility of DCAA records to the public, including Defense contractors. This authority may not be redelegated. Requests for records shall be processed as outlined in this rule.

§ 290.6 Responsibilities.

(a) *Headquarters. (1) The Assistant Director, Resources* is responsible for:

(i) The overall Agency-wide administration of the DCAA FOIA Program, through the Information Resources Management Branch (CMR), Records Administrator, to ensure compliance with the policies and procedures that govern the program.

(ii) Acting as the designee for the Director, DCAA, serving as the sole appellate authority for appeals to decisions of respective IDAs.

(iii) Advising the Assistant Secretary of Defense (Public Affairs) (ASD(PA)) of cases of public interest, particularly those on appeal, when the issues raised are unusual or precedent setting, matters of disagreement among DoD components, are of concern to agencies outside the Department of Defense, or may otherwise require special attention or guidance.

(iv) Advising the ASD(PA) and the Exective Officer, DCAA, concurrent with the denial of a request or an appeal, when circumstances suggest a news media interest.

(v) Conferring with the General Counsel; the Assistant Director, Operations; and the Assistant Director, Policy and Plans, on the desirability of reconsidering a final decision to deny a record if that decision becomes a matter of special concern because it involves either an issue of public concern or DoD-wide consequences.

(vi) Accomplishing program overview, in cooperation with the General Counsel, to ensure coordinated guidance to components, and to provide the means of assessing the overall conduct of the Agency's FOIA Program.

(vii) Directing required studies, and surveys to facilitate the implementation of Title 5, U.S.C. section 552, as amended, and to evaluate the FOIA program in DCAA.

(viii) Responding to corrective action recommended by the Special Counsel of the Merit System Protection Board for arbitrary or capricious withholding of records by designated employees of the Agency.

(ix) Submitting the Agency's annual FOIA report as prescribed by 32 CFR Part 286.

(2) *The Records Administrator,* (CMR) is responsible for:

(i) Making the initial determination for Headquarters, DCAA, on the release of Agency records to members of the public.

(ii) Coordinating with the Agency's General Counsel on proposed denials of records.

(iii) Advising the Assistant Director, Resources; General Counsel; and/or the Executive Officer; as appropriate, when cases are of particular interest; are matters of disagreement among DoD Components or DCAA organizational elements; are of concern to agencies outside the Department of Defense; have news media interest; or require special attention or guidance.

(iv) Establishing and maintaining a control system for assigning FOIA case numbers to FOIA requests received by Headquarters and regional offices. This system shall be designed to ensure compliance with the FOIA, and will not only provide controls to maintain responsiveness in handling requests but will also employ methods to ensure accurate cost accounting reporting for the assessment of fees.

(v) Maintaining a record of FOIA requests received by Headquarters. This record is to contain the requester's identification, the date of the request, type of information requested, and type of information furnished. This record will be maintained and disposed of in

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 1053, 5801 Tabor Avenue, Philadelphia, PA 19120.

[2] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[3] See footnote 1 to § 290.1.

accordance with DCAA records maintenance and disposition regulations and schedules.

(vi) Preparing and submitting the Agency's annual FOIA Report prescribed by 32 CFR Parts 285 and 286, as well as preparing and submitting, as required, any additional information requirements.

(vii) Preparing and submitting the bi-monthly FOIA status report.

(viii) Issuing DCAA FOIA regulations and any other discretionary instructions or guidance required to ensure timely and uniform implementation of the FOIA program.

(ix) Providing Agency-wide policy guidance pertaining to the overall conduct of the Agency's FOIA program.

(x) Publishing in the **Federal Register** any instructions necessary for the administration of the FOIA program. Information specified in paragraph (a)(1), of 5 U.S.C. 552, as amended, shall be published in accordance with DoD Directive 5400.9.[4]

(xi) Developing and conducting training on the provisions of this part, 32 CFR Parts 285 and 286, and 5 U.S.C. 552, as amended, for those individuals who implement the FOIA.

(xii) Making available for public inspection and copying in an appropriate facility or facilities, in accordance with rules published in the **Federal Register**, the records specified in paragraph (a)(2) of 5 U.S.C. 552, unless such records are published and copies are offered for sale. Maintain and make available for public inspection and copying current indices of these records.

(3) *The Executive Officer* shall serve as the coordinator for the release of information to the news media.

(4) *The General Counsel* is responsible for:

(i) Ensuring uniformity is maintained in the legal position, and the interpretation of 5 U.S.C. 552, as amended, and 32 CFR Parts 285 and 286, as well as this rule.

(ii) Consulting with the General Counsel, Department of Defense, on final denials that are inconsistent with decisions of other components, involve issues not previously resolved, or raise new or significant legal issues of potential significance to other Government agencies.

(iii) Providing advice and assistance to the Assistant Director, Resources; Regional Directors; and the Regional FOIA Coordinators, through the Records Administrator, CMR, as required, in the discharge of their responsibilities.

(iv) Coordinating FOIA litigation with the Department of Justice.

[4] See footnote 1 to § 290.1.

(v) Coordinating on Headquarters denials of initial requests.

(5) *Heads of Principal Staff Elements* are responsible for:

(i) Reviewing all regulations or other policy and guidance issuances for which they are the proponent to ensure consistency with the provisions of this rule.

(ii) Ensuring that the provisions of this rule are followed in processing requests for records.

(iii) Forwarding to the Records Administrator, CMR, any FOIA request received directly from a member of the public, so that the request may be administratively controlled.

(iv) Ensuring the prompt review of all FOIA requests received from CMR, and when required, coordinating those requests with other organizational elements.

(v) Providing recommendations to CMR regarding releasability of DCAA records to members of the public, along with the releasable documents and the completed DD Form 2086, "Record of Freedom of Information (FOI) Processing Cost," for every FOIA request to which they respond.

(vi) Providing the appropriate documents, along with a written justification to CMR for the denial, in whole or in part, of a request for records. Those portions to be excised should be highlighted in colored pen or pencil, and the specific exemption or exemptions which provides the basis for denying the record(s) should be identified.

(b) *Regional Directors* are responsible for:

(1) Making the initial determination pertaining to the releasability of DCAA records to members of the public. This authority cannot be delegated.

(2) Designating an individual to serve as the Regional FOIA Coordinator.

(3) Delegating signature authority for FOIA correspondence which is considered only to be routine in nature, e.g., referrals and the release of information.

(4) Issuing regional instructions that are consistent with the policies and procedures defined in this rule.

(5) Directing, when required, the necessary surveys or studies to further facilitate the implementation of activities related to the DCAA FOIA Program.

(6) Providing, in coordination with the Records Administrator, CMR, the appropriate training on the provisions and requirements of this rule for those individuals who are responsible for implementing the FOIA program.

(c) *Regional FOIA Coordinators* are responsible for:

(1) Establishing and maintaining a control system to ensure proper accountability and processing of FOIA requests.

(2) Contacting the Records Administrator, CMR for a FOIA case number upon receipt of a FOIA request.

(3) Providing, by telecopier to the Records Administrator, CMR, a copy of the request containing the FOIA case number, date received, and the suspense date.

(4) Communicating with the Records Administrator, CMR, on those FOIA requests which are sensitive in nature, to maintain uniformity and consistency in the Agency's FOIA program.

(5) Ensuring all interim or final responses to requesters are made within the prescribed timeframe of 10 workdays.

(6) Notifying the requester, within the 10 day suspense period, that the request is being referred to a contracting activity.

(7) Submitting, upon completion of the request, DCAA Form 5410.2, "Statistical Report of FOIA Request," (Appendix B), accompanied by:

(i) Copies of all correspondence relating to the request, and

(ii) DD Form 2086 properly annotated to show the correct processing costs.

(8) Conducting, when necessary, training on the FOIA program to the FAOs.

(d) *Managers, Field Audit Offices (FAOs)* are responsible for:

(1) Overall management and administration of the FOIA program within organizations under their congnizance.

(2) Ensuring that the appropriate FOIA Coordinator promptly receives all incoming FOIA requests.

§ 290.7 Procedures.

(a) The following are authorities and procedures for processing material in accordance with the FOIA. DCAA personnel shall comply with the provisions of the FOIA, 5 U.S.C. 552, as amended, and this rule.

(b) *Public inspection and copying.* (1) 5 U.S.C., Section 552(a)(2) requires agencies to make available for public inspection and copying those materials discussed in 5 U.S.C. 552, 32 CFR Part 286, and this rule.

(2) DCAA documents pertaining to contract audit are disseminated to staff under the Quarterly Index of DCAA Numbered Publications and Memorandums (DCAA Instruction 5025.2).

(3) The numbered publications discussed in the previous paragraph are frequently amended or supplemented by

interim numbered memorandums pending formal revision to the numbered publication. Additionally, numbered memorandums are issued as auxiliary illustrations and managerial reminders. Such staff memorandums are indexed in the Quarterly Index of DCAA Numbered Publications and Memorandums. Memorandums issued by Headquarters are referred to as Memorandum for Regional Directors (MRDs).

(4) The DCAA Quarterly Index of Numbered Publications and Memorandums is not published in the **Federal Register** because of the volume, and the limited applicability to the general public. However, it is available upon request at no cost to the general public.

(5) DCAA Headquarters and each of the six regional offices will publish a quarterly index of the documents referenced previously. Documents that are generally available to the public will be maintained in the reading rooms of the Headquarters, regional offices, FAOs, and the Defense Contract Audit Institute.

(6) Documents identified in the DCAA Headquarters or regional quarterly indices are available to the public from DCAA or the Superintendent of Documents. However, in some instances, it may be necessary to deny all or portions of a document if disclosure of information in the document would constitute a clearly unwarranted invasion of personal privacy. In such cases, the requester will be advised fully in writing of the rationale for invoking the exemption.

(c) *Requests for the examination or copies of records.* (1) Members of the public may make written requests for copies of DCAA records or for permission to examine such records during the normal business hours. Such requests must be in writing and expressly indicate that it is a request under the Freedom of Information Act, 5 U.S.C., section 552, or this rule. These requests should be submitted directly to the appropriate DCAA component listed in Appendix C of this rule. If the appropriate component is either unknown or cannot be ascertained, and the record is likely to be in the possession of DCAA, the request may be submitted to Headquarters, DCAA, ATTN: CMR, Cameron Station, Alexandria, Virginia 22304–6178.

(2) When submitting requests, requesters should:

(i) Identify each record sought with sufficient detail to permit easy access. Information as to where the record originated, subject, date, number, or any other identifying particulars should be provided whenever possible. DCAA elements receiving requests which do not reasonably describe the record requested will advise the requester accordingly. Generally, a record is not reasonably described unless the requester provides information permitting an organized, nonrandom search of DCAA files and/or information systems. In providing descriptions based on events, the requester must provide information which permits DCAA components to infer the specific record sought.

(ii) Identify all other Federal agencies subject to the provisions of the Freedom of Information Act to which the request has been sent. This will reduce both processing and coordination time between agencies, as well as redundant referrals.

(iii) Provide a statement of their willingness to pay assessable charges cited under the schedule of fees in 32 CFR Part 286. The statement must include a specific monetary amount if the assessable fees are likely to exceed the minimum amount specified by 32 CFR Part 286 or a specific justification for any waiver or reduction of fees sought based on public interest in release or disclosure. Requesters should also substantiate any claim for the assessment of fees under a specific fee category as explained in 32 CFR Part 286. DCAA components will notify requesters of deficiencies in fee declarations, and provide them the opportunity to amend initial declarations. Determinations on the adequacy of requester fee declarations are not subject to appeal unless:

(A) The DCAA component has denied a specific request for the assessment of fees under one of the categories established in 32 CFR Part 286 or

(B) Has denied a request for the waiver or reduction of fees in the public interest.

(3) When a DCAA component has no records responsive to a request, the requester will be notified promptly. In cases where the request has been misdirected and the component is aware of the appropriate FOIA respondent, the component shall refer the request to the appropriate DCAA component or other agency through FOIA channels, and notify the requester of the referral. The 10 working day period allowed for responding to requests will not begin until the DCAA component having the responsive records receives a request complying with procedural requirements of this rule, including statements on the payment of fees.

(4) The provisions of the FOIA are intended for parties with private interests. Officials seeking documents or information on behalf of foreign governments, other Federal agencies, and state or local agencies should be encouraged to employ official channels. The release of records to individuals under the FOIA is a public release of information. DCAA components will consider FOIA requests from such officials as made in a private, rather than official capacity, and will make disclosure and fee determinations accordingly.

(d) *Referrals.* (1) Records originating in or based on information obtained from other Federal agencies subject to the FOIA may be referred to that agency. In processing FOIA requests for such records, DCAA components, after coordinating with the originating agency, will refer the request, along with a copy of the responsive records in its possession, to that agency for direct response. The requester is to be notified of the referral.

(2) The Director, DCAA, has delegated to the regional directors and Records Administrator, CMR the authority to make initial determinations as to the release of DCAA records to the public, including Defense contractors. This authority may not be redelegated. Therefore, requests for records should be processed as follows:

(i) *Headquarters Offices, Including DCAI, Technical Services Center, Field Detachment, and PLA/JLA,* shall promptly refer all requests for DCAA records to the Records Administrator, Headquarters, DCAA, ATTN: OMR, Cameron Station, Alexandria, VA 22304–6178.

(ii) *Field Audit Office (FAOs)* shall promptly refer all requests for DCAA records to the cognizant regional director.

(3) *Referral of audit reports.* Audit reports prepared by DCAA are prepared for the use of the contracting officers, and their release should be at the discretion of the contracting activity. Therefore, any FOIA request for audit reports should be referred to the cognizant contracting activity and the requester notified of the referral. Initial Denial Authorities shall process requests for audit reports as follows:

(i) *Defense Logistics Agency (DLA).* If the cognizant contracting officer is an official of DLA, the request will be referred to the appropriate Defense Contract Administration Services Region or buying center. Since DLA contracting officers do not have initial denial authority, this avoids a second referral action and unnecessary delay in responding to the request. (Refer to 32 CFR Part 286, Appendix B, for a listing of DoD Component addresses).

(ii) *United States Air Force (USAF).* If the cognizant contracting officer is an

USAF official, the request will be referred to the appropriate USAF Command. Since USAF contracting officers do not have initial denial authority, this avoids a second referral action and unnecessary delay in responding to the request. (Refer to 32 CFR Part 286, Appendix B for a listing of DoD Component addresses).

(iii) *Army Materiel Command.* If the cognizant contracting officer is a Army Materiel Command official, the request will be referred to: Freedom of Information Officer, Headquarters, Army Materiel Command, 5001 Eisenhower Avenue, Alexandria, VA 22333-0001.

(iv) *Others.* All other requests for audit reports shall be referred to the address of the cognizant contracting officer. Referral letters should provide the name and address of the contracting officer, and as much information as possible to assist in preparing a timely reply to the requester.

(4) *Referral of work papers.* When a request seeks workpapers, the cognizant contracting officer must furnish a notice of disposition to the appropriate activity pertaining to the releasability of the audit report. The notice of disposition will then be used to determine releasability of the workpapers.

(5) All other requests should be directed to the appropriate Regional Director, if known. When the location of the record is not known, the request should be directed to the Records Administrator, CMR.

(e) *Time limits.* DCAA components are to respond promptly to requesters complying with the procedural requirements outlined in this rule.

(1) Upon receipt of a properly submitted FOIA request, DCAA components should contact the Records Administrator, CMR for a FOIA case number. IDAs should: (i) Locate and assemble responsive records; (ii) Determine releasability under the provisions of this rule; (iii) Determine the appropriate fees to be charged, and (iv) Advise the requester accordingly. Initial determinations on either the release or denial of records, and notice to requesters, must be provided within 10 working days following receipt of the request by the cognizant component.

(2) In certain cases, IDAs may need to exercise an extension to the normal 10 working day period cited above. IDAs are to notify the requester, within the initial 10 working day period, of the extension, the circumstances necessitating it, and the anticipated date of a determination. Approved extensions are not to exceed 10 working days, and all extensions should be indicated on DCAA Form 5410, sections 10 and 11. Circumstances where such extensions may be approved include:

(i) The record(s) sought are geographically located at places other than the component processing the request.

(ii) The request requires the collection and review of a substantial nmber of records.

(iii) The disclosure determination requires consultation with another DCAA component or agency with a substantial interest.

(3) As an alternative to the previously mentioned, DCAA components may seek informal agreements with requesters for extensions in unusual circumstances when time limits become an issue in the Component's response to the request.

(4) Misdirected requests should be referred within 10 working days to the proper agency or DCAA component through FOIA channels, and the requester notified of the referral. The 10 working day period allowed for responding to requests will not begin until the DCAA component having the responsive records receives the request.

(f) *Initial disclosure determinations.* (1) Initial determinations to make records available may only be made by those IDAs designated in this rule. When a decision is made to release records in response to a FOIA request, DCAA components will promptly make the records available to the requester. When the request is for the examination of releasable records, DCAA components will advise the requester when and where he or she may appear. Examinations will be held during normal business hours. If a record is not provided in response to a FOIA request, the IDA will advise the requester, in writing, of the rationale for not providing the record.

(2) IDAs should consult the Executive Officer, prior to releasing records on matters considered newsworthy or when releasing records to media representatives. Copies of all released material of this nature should be submitted to the Executive Officer.

(3) The following reasons are provided for not releasing a record in response to a FOIA request:

(i) The information or item requested is not a record within the meaning of the FOIA in accordance with 5 U.S.C. 552, as amended, 32 CFR Parts 285 and 286, and this rule.

(ii) The record has not been sufficiently described to enable DCAA to locate it by conducting a reasonable search.

(iii) The requester has failed to comply with procedural requirements, including agreements to pay assessable fees, imposed by 5 U.S.C. 552, as amended, 32 CFR Part 286, and this rule.

(iv) DCAA determines through knowledge of its files and reasonable search efforts that it neither controls nor possesses the requested record or that the requested record does not exist.

(v) The request is withdrawn by the requester.

(vi) The request is transferred to another DCAA component or agency.

(g) *Denials.* (1) A record in the possession and control of DCAA may be withheld only when the record falls within one or more of the nine categories of records exempt from mandatory disclosure under the FOIA, and the use of discretionary authority to release the record is determined to be unwarranted (see 32 CFR Part 286).

(2) Although exempt portions of records may be denied, nonexempt portions must be released to the requester when the meaning of these portions is not distorted by the deletion of denied portions, and when it can reasonably be assumed that the excised information could not be reconstructed. When a record is denied in whole, based on distortion or reconstruction potential, the IDA will prepare a response advising the requester of the determination, and the response will specifically state that it is not possible to reasonably segregate meaningful portions for release.

(3) When a request for a record is denied in whole or in part, the IDA will inform the requester in writing of the specific exemption(s) on which the denial is based and explain the determination in sufficient detail to permit the requester to make a decision concerning appeal. The determination will also inform the requester of his or her appeal rights. All appeals should be made within 60 calendar days from the date of the initial denial, contain the reasons for the requester's disagreement with the determination, and be addressed to the Assistant Director, Resources, Headquarters, DCAA, Cameron Station, Alexandria, VA 22304-6178.

(4) Records or portions of records which have been previously released become part of the public domain, and cannot be denied thereafter.

(h) *Administrative appeals of denials.* (1) If the IDA declines to provide a record because he or she considers it exempt, that decision may be appealed by the requester, in writing, to the Assistant Director, Resources, DCAA. The appeal should be accompanied by a copy of the letter denying the initial request. Such appeals should contain the basis for disagreement with the initial refusal. Appeal procedures also apply to the disapproval of a request for waiver or reduction of fees. A "no record" finding may not be appealed, although the requester may ask the Agency to search other files or the requester may provide more detailed identification to facilitate another search. Records which are denied should be retained during the time permitted for appeal.

(2) IDAs shall advise the requester that an appeal should be filed so that it reaches the designated appellate authority no later than 60 calendar days after the date of the initial denial letter. At the conclusion of this period, except for good cause shown as to why the appeal was not timely, the case may be considered closed; however, such closure does not preclude the requester from filing litigation for denial of his appeal. If the requester has been provided a series of determinations for a single request, the time for appeal will begin on the date of the last determination of the series.

(3) Final determinations normally shall be made within 20 working days of receipt of an appropriately submitted appeal.

(i) *Delay in responding to an appeal.* (1) When additional time is required to respond to the appeal for the reasons outlined in paragraph 290.7(e)(2), the final determination may be delayed for the number of working days (not to exceed 10 days) that were not utilized as additional time for responding to the initial request. Requesters shall be advised that, if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances identified in paragraph 290.7(e)(2), they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. DCAA shall continue to process the case expeditiously, whether or not the requester seeks a court order for release of the records, but a copy of any response provided subsequent to filing a complaint shall be forwarded to the Department of Justice.

(2) When the Assistant Director, Resources, DCAA, makes a determination to release all or a portion of the records on appeal, the records shall be made available promptly to the requester after compliance with procedural requirements, such as payment of fees. The final denial of a request will be made in writing, explain the exemption(s) invoked, advise that the material being denied does not contain meaningful portions that are reasonably segregable, and also advise

BEST COPY AVAILABLE

the requester of the right of judicial review.

(j) *Judicial action.* A requester will be deemed to have exhausted his administrative remedy after he has been denied the requested record by the Assistant Director, Resources, or when the Agency fails to respond to his request within the time limits prescribed by 32 CFR Part 286 and this rule. The requester may then seek an order from a U.S. District Court in:

(1) The district in which he resides or has his principal place of business;

(2) The district in which the record is situated; or

(3) In the U.S. District Court for the District of Columbia, enjoining the Agency from withholding the record and ordering its production.

290.8 Fees

(a) Fees shall be determined in accordance with the Department of Defense fee schedule (32 CFR Part 286, Subpart F). Fees reflect direct costs for search, review (in the case of commercial requesters), and duplication of documents, collection of which is permitted by the FOIA. Fees are subject to limitations on the nature of assessable fees based on the category of the requester established in 32 CFR Part 286; statutory and automatic waivers based on the category determination and cost of routine collection; and either the waiver or reduction of fees when disclosure serves the public interest.

(b) Fees will not be charged when direct costs for a FOIA request are less than the automatic fee waiver threshold specified in 32 CFR Part 286, regardless of category.

(c) *Fee assessment.* In order to be as responsive as possible to FOIA requests, DCAA components should adhere to the following when assessing fees;

(1) Evaluate each request to determine the requester category and adequacy of the fee declaration. An adequate declaration requires a willingness by the requester to pay fees in an amount equal to, or greater than, the assessable charges for the request.

(2) Provide requesters an opportunity to amend inadequate fee declarations and provide estimates of prospective charges when required. When a requester fails to provide an adequate declaration within 30 days after notification of a deficiency, the request for information will be considered withdrawn.

(3) A requester's claims for assessment of fees under a specific category will be carefully considered. The IDA may require a requester to substantiate a claim for assessment under a claimed category. In the absence of requester claims, the IDA will determine the category into which a requester falls, basing its determination on all available information.

(4) When a DCAA component disagrees with a requester claim for fee assessment under a specific category, the IDA will provide the requester with written determination indicating the following:

(i) The requester should furnish additional justification to warrant the category claimed;

(ii) A search for responsive records will not be initiated until agreement has been attained relative to the category of the requester;

(iii) If further category information has not been received within a reasonable period of time, the component will render a final category determination; and

(iv) The determination may be appealed to the Assistant Director, Resources, within 60 calendar days of the date of the determination.

(d) Components may not require advance payment of fees 32 CFR Part 286. However, when a DCAA component determines that allowable charges are likely to exceed the ($250) amount specified in 32 CFR Part 286, the component may require a provisional payment in an amount up to the full estimated charges. Provisional payments may not be required for requests with estimated fees of the amount specified in 32 CFR Part 286 or less.

(e) Where a requester has previously failed to pay a fee charged within 30 calendar days from the date of billing, DCAA components may require the requester to pay the full amount due, plus any applicable interest or demonstrate satisfaction of the debt, and to make an advance payment of the full amount of estimated fees, before processing begins on a new or pending request.

(f) The administrative time limits for responding to a request will begin only after the component has received an adequate declaration from the requester stating a willingness to pay fees, and satisfaction that all outstanding debts have been paid.

(g) DCAA components can bill requesters in accordance with 32 CFR Part 286 for services provided in responding to a request. Payment of fees may be made by personal check, bank draft drawn on a U.S. bank, or by U.S. Postal money order. All payments of this type are to be made payable to the U.S. Treasurer.

(h) *Aggregating requests.* Occasionally, a requester may file multiple requests at the same time, each

seeking portions of a document or documents, solely to avoid payments of fees. When a component reasonably believes that a requester is attempting to do so, the component may aggregate such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period in which the requests have occurred. In no case may components aggregate multiple requests on unrelated subjects from one requester.

(i) *Fee waivers.* (1) The determination to waive fees is at the discretion of IDAs designated in this rule in accordance with 5 U.S.C. 552 and 32 CFR Part 286. When direct costs for a FOIA request total the automatic fee waiver threshold specified in 32 CFR Part 286, or is less, fees shall be waived automatically for all requesters, regardless of category.

(2) Documents will be furnished without charge, or at a charge reduced below fees assessed to the categories of requesters listed in 32 CFR Part 286, when the IDA determines that a waiver or reduction of fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations of DCAA, and is not primarily in the commercial interest of the requester. DCAA components should refer to 32 CFR Part 286 for factors to consider in applying fee waivers due to public interest. Each fee decision must be considered on a case-by-case basis and upon the merits of the information provided in each request. When the question of whether to charge or waive the fee cannot be clearly resolved, components should rule in favor of the requester.

§ 290.9 Information/reporting requirements.

The reporting requirements for this part are set out in 32 CFR 286.41. Those requirements have been assigned Report Control Symbol DD-PA(A)1365.

Appendix A to Part 290—DCAA Headquarters and Regional FOIA Processing Procedure Charts

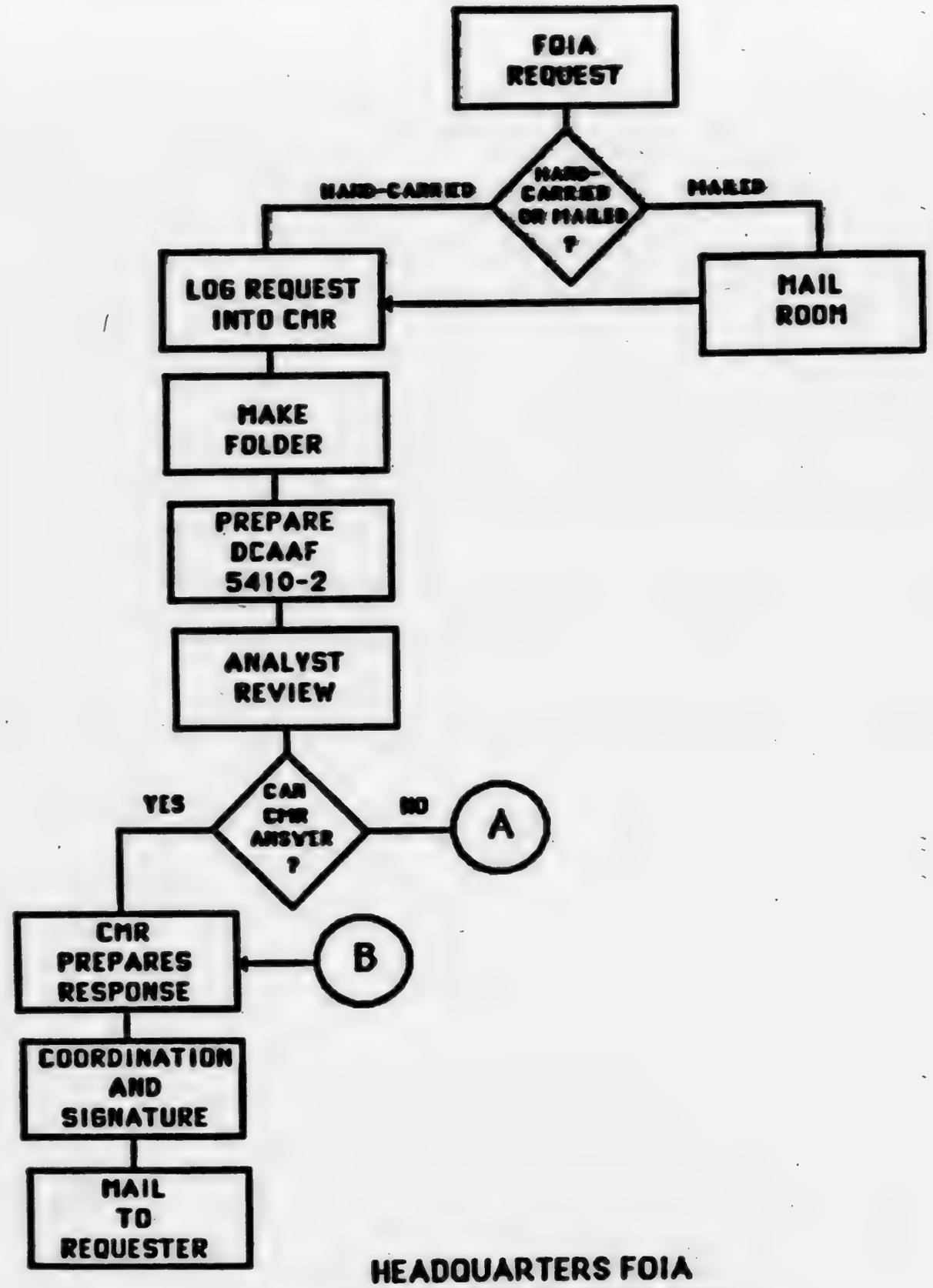

HEADQUARTERS FOIA PROCESSING PROCEDURES

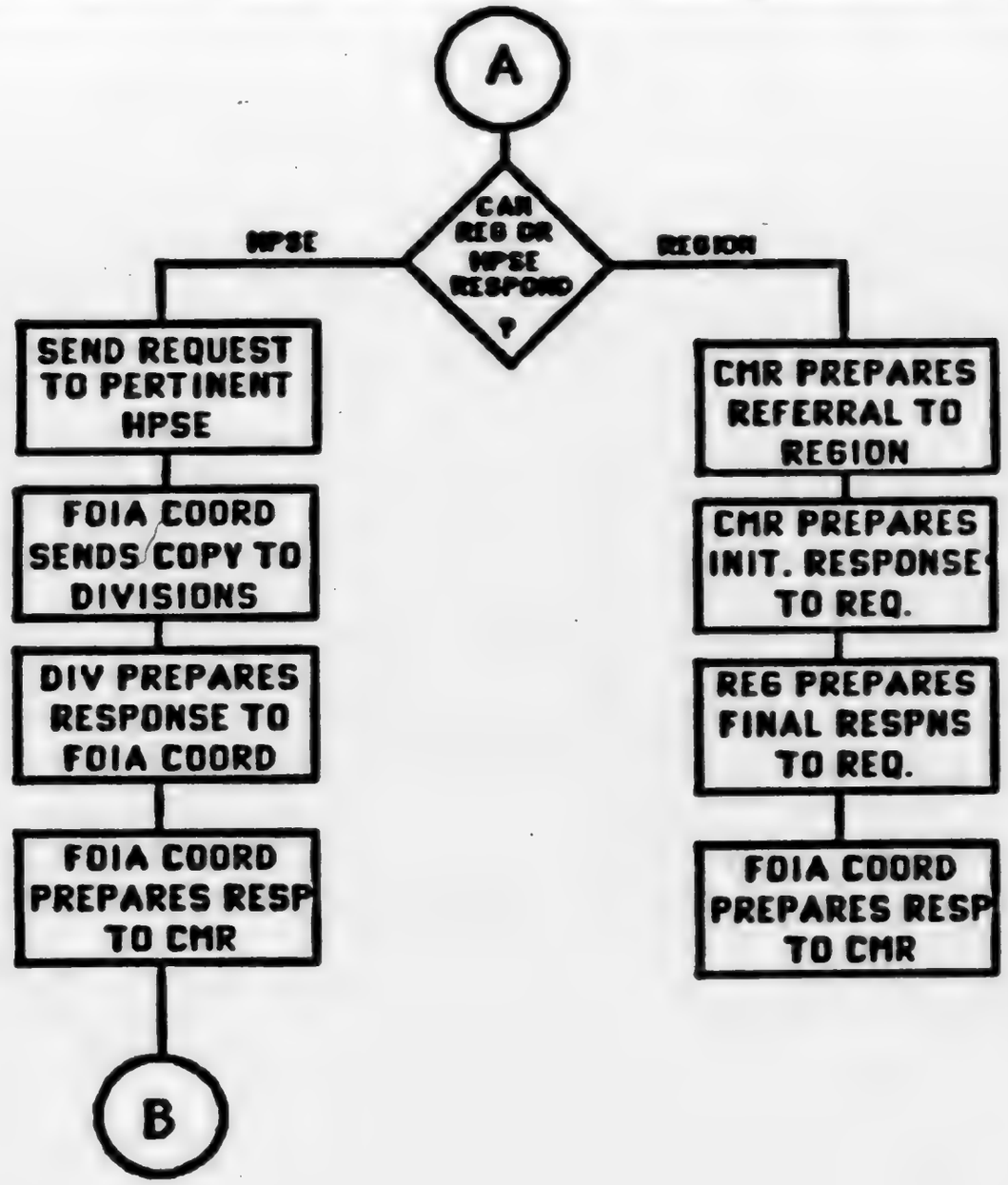

HEADQUARTERS FOIA PROCESSING PROCEDURES (CONT'D)

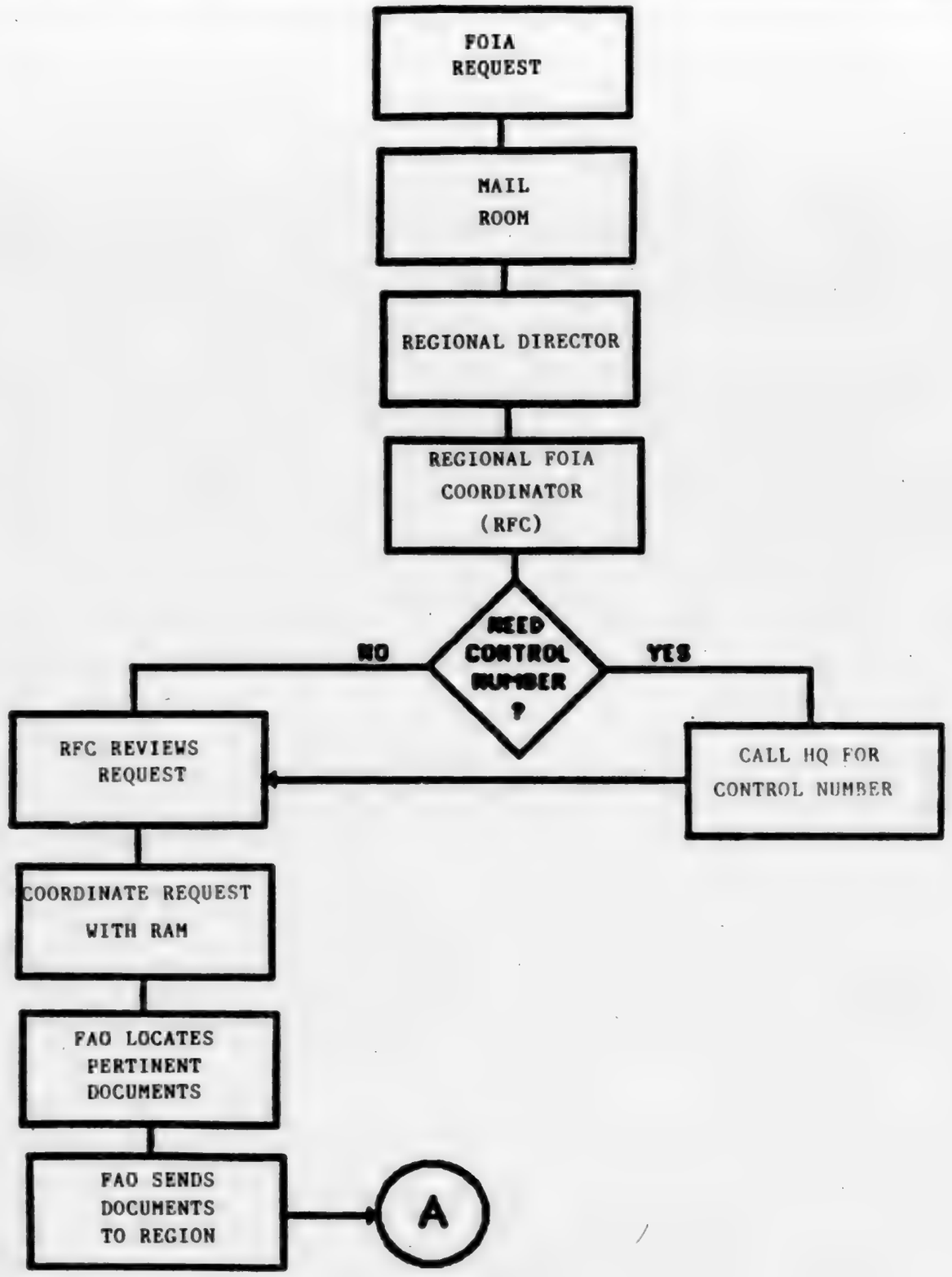

REGIONAL FOIA PROCESSING PROCEDURES

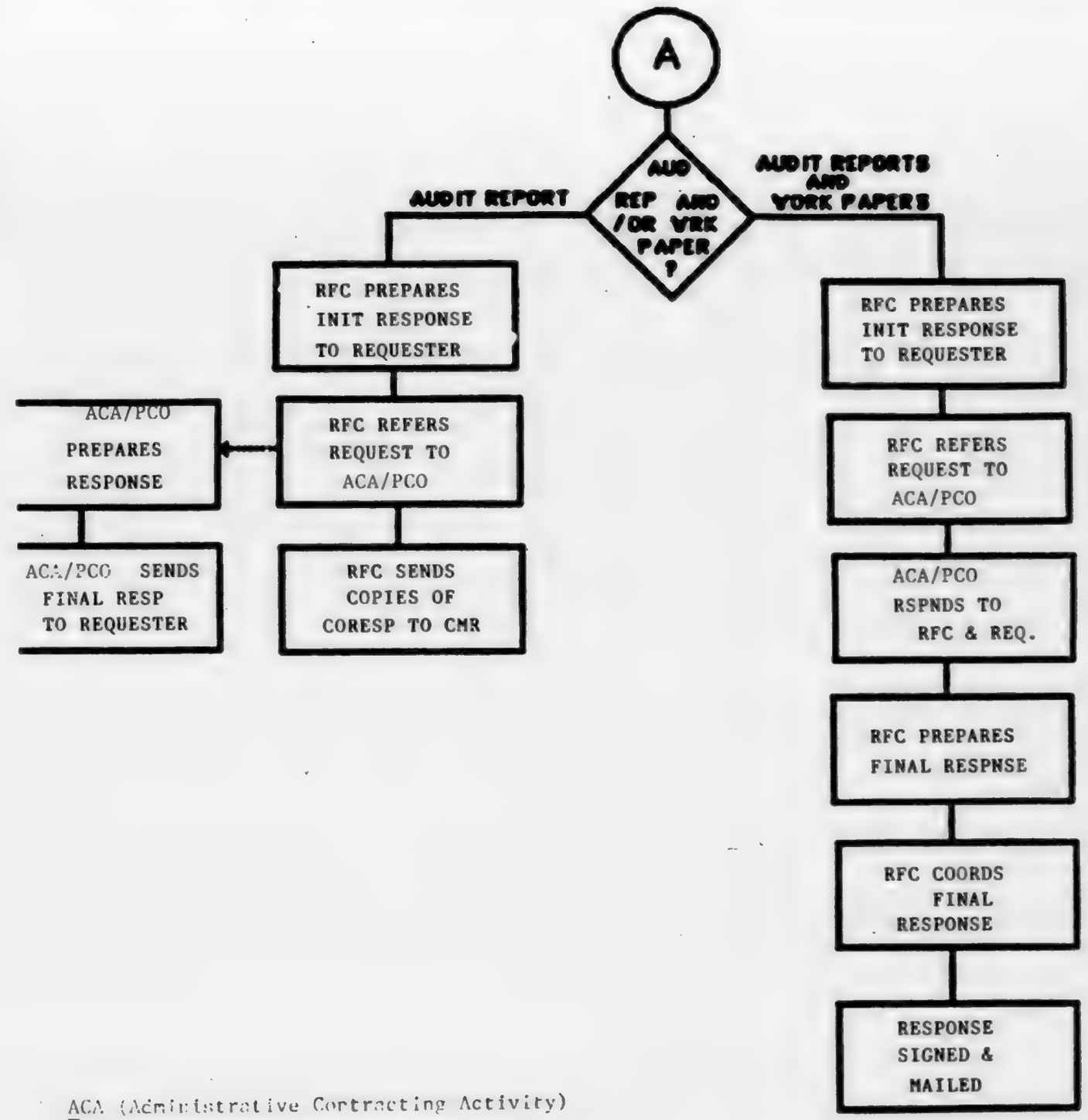

ACA (Administrative Contracting Activity)
PCO (Procurement Contracting Officer)

REGIONAL FOIA PROCESSING PROCEDURES (CONT'D)

BILLING CODE 3810-01-C

Appendix B to Part 290—DCAA Form 5410-2(R)

STATISTICAL REPORT OF FOIA REQUEST

REPORT CONTROL SYMBOL CMR/AR(-161

INSTRUCTIONS
1 Complete items 1 through 10 as soon as you receive the request
2 Complete all remaining items as soon as you complete your final action and forward this form immediately to HQ (CMR)
3 Attach to this report a copy of the request, all correspondence and a completed DD Form 2086 showing your processing costs
4 If you have a request that is still open on 1 Apr, 1 Aug, or 1 Jan, submit a status report by completing item 16

TO HQ DCAA (CMR)	1 FROM (Region)	2a CONTROL NO	2b ___ Interim report ___ Final report

3 REQUESTER

4 NAME OF INDIVIDUAL SIGNING REQUEST	5 ON BEHALF OF

6 BRIEF DESCRIPTION OF RECORDS REQUESTED

7 DATE OF REQUEST	8 DATE REQUEST RECEIVED	9 FIRST SUSPENSE DATE	10 SECOND SUSPENSE DATE

11 CHECK REASON(S) FOR 10-DAY EXTENSION
( ) LOCATION OF RECORDS ( ) VOLUME OF RECORDS ( ) CONSULTATION WITH OTHER AGENCIES

12 DATE OF FINAL ACTION

13 NUMBER AND TYPES OF ACTIONS

ITEM	NUMBER
a Total releases	
b Total denials	
c Partial releases	
d Partial denials	
e Other (1) No record	
(2) Requester withdrew request	
(3) Failed to reasonably describe record	
(4) Failed to comply with published rules	
(5) Request was referred (specify total number of referrals)	
TOTAL ACTIONS	

16 REMARKS/STATUS

14 EXEMPTIONS INVOKED UNDER 5 USC 552(b)(CHECK)
( )1 ( )2 ( )3 ( )4 ( )5 ( )6 ( )7 ( )8 ( )9

15 STATUTE INVOKED IF EXEMPTION (b)(3)

TYPED NAME OF FOIA/PA OFFICER	SIGNATURE	DATE

DCAA FORM 5410-2(R)
NOV 83

BILLING CODE 3810-01-M

Appendix C to Part 290—DCAA Organization and Mission

(a) *Purpose.* This section implements 5 U.S.C. 552 by describing the central and field organizations of DCAA.

(b) *Origin and authority.* DCAA was established by the Secretary of Defense under Department of Defense (DoD) Directive 5105.36 and began operating on July 1, 1965. Its Director reports to the Comptroller of the Department of Defense.

(c) *Objective.* Assist in achieving the objective of prudent contracting by providing DoD officials responsible for procurement and contract administration with financial information and advice on proposed or existing contracts and contractors, as appropriate.

(d) *Mission.* (1) DCAA performs all necessary contract audit for DoD, and provides accounting and financial advisory service regarding contracts to all DoD components responsible for procurement and contract administration. These services are provided in connection with negotiation, administration, and settlement of contracts and subcontracts. It also furnishes advisory contract audit service to a number of other government agencies under agreements between DoD and such agencies.

(2) DCAA audits contractors' and subcontractors' accounts, records, documents, and other evidence; systems of internal control, accounting, costing, estimating, and general business practices and procedures to give advice and recommendations to procurement and contract administration personnel on:

(i) Acceptability of costs incurred under cost, redetermination, incentive, and similar type contracts;

(ii) Acceptability of estimates of costs to be incurred as represented by contractors incident to the award, negotiation, and modification of contracts; and

(iii) Adequacy of contractors' accounting and financial management systems and estimating procedures.

DCAA also performs post-award audits of contracts for compliance with the provisions of Pub. L. 87-653 (Truth in Negotiations), and reviews contractor compliance with the Cost Accounting Standards.

(3) DCAA assists responsible procurement or contract administration activities in their surveys of the purchasing-procurement systems of major contractors; and cooperates with other DoD components on reviews, audits, analyses, or inquiries involving contractors' financial positions or financial and accounting policies, procedures, or practices. DCAA also maintains liaison auditors at major procuring and contract administration offices and provides assistance in the development of procurement policies and regulations.

(e) *Composition.* (1) DCAA consists of seven major organizational components: a Headquarters and six regions. The six regional offices manage over 400 field audit offices (FAOs) and suboffices located throughout the United States and overseas. An FAO is identified as either a branch office or a resident office. Suboffices are established by regional directors as extensions of FAOs when required to furnish contract audit service more economically. A suboffice is dependent on its parent FAO for release of audit reports and other administrative support.

(2) The Headquarters located at Cameron Station, Alexandria, Virginia consists of:

(i) The Director who exercises worldwide direction and control of DCAA.

(ii) The Deputy Director who serves as principal assistant to the Director and acts for the Director in his absence.

(iii) The Assistant Director, Operations, authorized to act for the Director and Deputy Director in their absence, is responsible for staff functions related to audit management, and technical audit programs, supervises the Technical Services Center in Memphis, Tennessee and the procurement/contract administration liaison offices.

(iv) The Assistant Director, Policy and Plans, is responsible for audit policy and procedures and related liaison functions, and supervises the Defense Contract Audit Institute in Memphis, Tennessee.

(v) The Assistant Director, Resources, is responsible for the programs and procedures related to the management and administration of resources required to support the audit mission.

(vi) The General Counsel provides legal and legislative advice to the Director and all members of the Agency staff.

(vii) The Executive Officer performs a variety of special projects and assignments for the Director and Deputy Director.

(viii) The Special Assistant for Quality Control reviews the Agency's compliance with established audit quality control standards, policies, and procedures and other internal control requirements.

(3) Regional offices are located in Marietta, GA; Waltham, MA; Irving, TX; Los Angeles, CA; Philadelphia, PA; and San Francisco, CA. Regional directors direct and administer the DCAA audit mission, and manage personnel and other resources assigned to the regions; manage the contract audit program; and direct the operation of FAOs within their region. Principal elements of regional offices are the Regional Director, Deputy Regional Director, Regional Audit Managers, Regional Special Programs Manager, and Regional Resources Manager.

(4) A resident office is established at a contractor's location when the amount of audit workload justifies the assignment of a permanent staff of auditors and support staff. A resident office may also perform procurement or contract administration liaison functions.

(5) A branch office is established at a strategically situated location within the region, responsible for performing all contract audit service within the assigned geographical area, exclusive of contract audit service performed by a resident or liaison office within the area. A branch office may also perform procurement or contract administration liaison functions.

(6) If requested, a DCAA liaison office is established at a DoD procurement or contract administration office when required on a full-time basis to provide effective communication and coordination among procurement, contract administration, and contract audit elements. Liaison offices assist in effective utilization of contract audit services.

Defense Contract Audit Agency Offices and FOIA Points of Contact

Headquarters, DCAA, ATTN: Records Administrator (CMR), Cameron Station, Alexandria, VA 22304-6178

DCAA Western Region, ATTN: FOIA Coordinator, 450 Golden Gate Avenue, San Francisco, CA 94102-3563

DCAA Southwestern Region, ATTN: FOIA Coordinator, 2500 Wilshire Boulevard, Suite 405, Los Angeles, CA 90057-4366

DCAA Eastern Region, ATTN: FOIA Coordinator, 805 Walker Street, Suite 103, Marietta, GA 30060-2731

DCAA Central Region, ATTN: FOIA Coordinator, 5615 High Point Drive, Suite 701, Irving, TX 75038-2414

DCAA Northeastern Region, ATTN: FOIA Coordinator, Waltham Federal Center, 424 Trapelo Road, Waltham, MA 02154-6397

DCAA Mid-Atlantic Region, ATTN: FOIA Coordiantor, 600 Arch Street, Room 4400, Philadelphia, PA 19106-1604

July 10, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-16482 Filed 7-25-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5-89-57]

Drawbridge Operation Regulations: Chester River, Chestertown, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule with request for comments.

SUMMARY: At the request of McLean Contracting Company, contractors for the Maryland Department of Transportation, the Coast Guard is issuing a temporary rule to govern the operation of the drawbridge across the Chester River, mile 26.8, at Chestertown, Maryland. This rule is being issued to limit openings during a five-month period, 24-hours a day, to allow the contractor for the State of Maryland, owner of the bridge, to make structural repairs to the bridge, while still providing for the reasonable needs of navigation. Because of the length of time

this temporary rule will be in effect, the Coast Guard requests comments on the rule. The temporary rule may be changed based on comments received.

DATES: This temporary rule is effective from July 7, 1989, to November 30, 1989, unless amended or terminated before that date. Comments on the temporary rule must be received on or before September 11, 1989.

ADDRESS: Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments received will be available for copying at Room 507 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, (804) 398-6222.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for any recommended changes to the temporary rule. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

Drafting Information: The drafters of this notice are Linda L. Gilliam, Project Officer, and LCDR K. Kutz, Project Attorney.

Discussion of Temporary Rule: At the request of McLean Contracting Company, contractors for the Maryland Department of Transportation, the Coast Guard is issuing a temporary rule governing the operation of the drawbridge across the Chester River, mile 26.8, at Chestertown. The Maryland Department of Transportation, owner of the bridge, has determined that closure of the drawbridge for a five-month period will be necessary in order to remove the existing drawspan leaves for extensive modification and rebuilding. The State of Maryland has requested that the drawbridge be closed to vessel traffic 24-hours a day, seven days a week, during the five-month period. Current regulations state that the drawbridge shall open on signal from 6:00 a.m. to 6:00 p.m., April 1 through November 30. At all other times it shall open on signal if at least six hours advance notice is given. Vessel traffic on the Chester River is minimal due to shallow waters upstream from the bridge. This regulation is not expected to inconvenience any recreational boaters. The drawspan has opened only four times this year for waterway traffic.

A fixed temporary span will be installed to provide continued vehicle passage on Route 213 during the five-month period. Although the temporary span will be inoperable, boats with mast heights of fourteen feet or less will be able to pass through the flanking sides of the drawspan, and boats with mast heights of nine feet or less will be able to pass under the temporary span. The vertical clearance under the temporary span in lower than the flanking spans due to the support beams under the span extending three feet below the original span. The contractor also has stated that is case of emergencies the temporary span can be removed if they receive three days advance notice. The three day advance notice requirement is necessary because the contractor must obtain a crane to remove the span and the closest one is located in Baltimore, Maryland. Once the bascule leaves have been overhauled, they will be reinstalled and the bridge will resume normal operation.

Since these repairs are necessary to the maintenance of the bridge, I find that good cause exists for publishing this temporary rule without publication of a notice of proposed rulemaking and for making it effective in less than 30 days.

Federalism Assessment: This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the temporary rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification: This temporary rule is not considered major under Executive Order 12291 nor significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This decision is based on the fact that these regulations are not expected to have any effect on commercial navigation or on any businesses that depend on waterborne transportation for successful operations. Since the economic impact on these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Environmental Impact: This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g. of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and has been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations: In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.551 is temporarily revised to read as follows:

§ 117.551 Chester River.

The draw of the S213 bridge, mile 26.8 at Chestertown need not open from July 7, 1989 to November 30, 1989, unless a three-day advance notice is given.

3. This temporary rule is effective from July 7, 1989 to November 30, 1989, unless sooner amended or terminated.

Dated: July 6, 1989.

P.A. Welling,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 89-17456 Filed 7-25-89; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD1-89-023]

Temporary Drawbridge Operation Regulations; Kennebec River, ME

AGENCY: Coast Guard, DOT.

ACTION: Final temporary rule.

SUMMARY: At the request of the Maine Department of Transportation (Maine DOT), the Coast Guard is reissuing temporary regulations governing the Carlton drawbridge over Kennebec River, at mile 14.0, between Bath and Woolwich, Maine, to extend the closure period for the evening rush hour 45 minutes and to limit the openings for recreational vessels between 6 a.m. and 6 p.m. to twice a day at 10 a.m. and 2 p.m. for 60 days commencing 31 July through 28 September 1989. The temporary regulation is being made to further examine the effect on vehicular and marine traffic during the above period. This action should accommodate the needs of vehicular traffic, while

providing for the reasonable needs of navigation.

DATE: This temporary regulation becomes effective on 31 July 1989.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (202) 668-7170.

SUPPLEMENTARY INFORMATION: On May 10, 1989, the Coast Guard published a proposed temporary rule (54 FR 20149; May 10, 1989) concerning this amendment. The Commander, First Coast Guard District, also published the proposal as Public Notice 1-667 dated May 9, 1989. In each notice, interested persons were given until May 25, 1989 to submit comments. A 60 day temporary rule was published in the **Federal Register** on 22 June 1989 page 26197 and was distributed as Public Notice 1-690 by the Commander, First Coast Guard District on 1 June 1989. Because the temporary regulations did not permit adequate evaluation of the proposal and since a Public Hearing is scheduled for 24 August 1989 at Bath, Maine and additional 60-day temporary regulation is issued for the period on 31 July through 28 September 1989. The Notice of Proposed Rulemaking and Public Hearing on proposed regulations appears in the proposed rulemaking section of this **Federal Register.** Additional, although the temporary regulation is in effect for only 60 days the regulation is presented in total for clarity and public comment on the entire regulation..

Drafting Information: The drafters of these regulations are Waverly W. Gregory, Jr., Project Officer, and Lieutenant Robert E. Korroch, Project Attorney.

Discussion of Comments: Three responses, two favoring and one opposing the initially proposed 60 day temporary regulations were received to the public notice. One respondent favoring the Proposed regulations indicated that a Maine DOT phase 1 report stated the 1988 annual average daily traffic crossing the Carlton Bridge between Bath and Woolwich and the Davey Bridge in nearby Wiscasset, Maine, was 20,900 and 14,900 respectively, and steadily increasing. The respondent appreciated the need to accommodate navigational traffic, however, the bottleneck at the Carlton Bridge has reached epidemic proportions. The other respondent indicated that the proposed regulation would appear to nicely balance the interests of both water and highway transportation. The one opposing respondent, a charter boat captain, stated that he did not think that the small amount of marine traffic at the bridge is a significant cause of the traffic problems, and that the marine traffic moves quickly through the bridge whenever it is opened, and it is the lift mechanism itself that causes the delays. He also requested that a public hearing be held.

Economic Assessment and Certification: These proposed temporary regulations are considered to be non-major under executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this temporary regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. The intent of this temporary regulation is to collect information to assess how the regulations would accommodate vehicular traffic to and from Bath Iron Works and local parks in the summer when tourist traffic is at its peak. The draw will continue to open on signal for inbound commercial fishing vessels. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Implication Assessment: This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a Federal assessment.

List of Subjects in 33 CFR 117

Bridges.

Temporary Regulations: In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.525(a) is revised as follows for the period of July 31, 1989 through September 28, 1989.

§ 117.525 Kennebec River.

(a) The draw of the Carlton highway-railroad bridge, mile 14.0 between Bath and Woolwich shall open as follows:

(1) On signal as soon as possible at all times for vessels owned or operated by the United States Government, State and local vessels used for public safety, vessels in distress, and inbound loaded commercial fishing vessels.

(2) Year-round the draw need not open from 6:30 a.m. to 7:30 a.m. and from 3:45 p.m. to 5:30 p.m., Monday to Friday excluding holidays except for vessels noted in (a)(1).

(3) From 1 June through 30 September:

(i) On signal at all times for commercial vessels except as noted in (a)(2);

(ii) For recreational vessels on signal except that from 6 a.m. to 6 p.m. openings only at 10 a.m. and 2 p.m.

(4) From 15 April through 30 May and 1 October through 15 November open on signal:

(i) From 3 a.m. to 7 p.m., except as noted in (a)(2);

(ii) From 7 p.m. to 3 a.m. if four hours' notice is given.

(5) From 15 February through 14 April and 16 November through 15 December at all times on signal, except as noted in (a)(2), if at least 4 hours' notice is given.

(6) From 16 December through 14 February open on signal, exept as noted in (a)(2), if 24 hours notice is given.

* * * * *

Dated: July 19, 1989.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard, District.

[FR Doc. 89-17455 Filed 7-25-89; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD5-89-55]

Drawbridge Operation Regulations: Chuckatuck Creek, Crittenden, VA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment revokes the regulations for the U.S. 17 drawbridge across Chuckatuck Creek, mile 1.0, in Crittenden, because the bascule bridge has been removed. A notice of proposed rulemaking has not been issued for this regulation because removal of the bridge eliminates all need for regulation.

EFFECTIVE DATE: August 25, 1989.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704 (804) 398-6222.

Drafting Information: The drafters of this notice are Linda L. Gilliam, Bridge Specialist, and LCDR Robin K. Kutz, Project Attorney.

SUPPLEMENTARY INFORMATION: This action has no economic consequences. It merely revokes regulations for a bascule

bridge that no longer exists. Consequently, this action is not considered major under Executive Order 12291 on Federal Regulation nor significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Since there is no economic impact, a full regulatory evaluation is unnecessary. Because no notice of proposed rulemaking is required under 5 U.S.C. 553, this action is exempt from the Regulatory Flexibility Act (5 U.S.C. 605(b). Nevertheless, the Coast Guard certifies that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations is amended to read as follows:

PART 117—DRAWBRIDGE REGULATIONS

1. The Authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05.1(g).

§ 117.1005 [Removed]

2. Section 117.1005 is removed.

Dated: July 6, 1989.

P.A. Welling,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 89-17457 Filed 7-25-89; 8:45 am]

BILLING CODE 4910-14-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-26

[FPMR Temp. Reg. E-90, Supp. 1]

Ordering Items From the GSA Supply Catalog

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This supplement extends the expiration date of FPMR Temporary Regulation E-90 on ordering items from the GSA Supply Catalog to July 31, 1990.

DATES: *Effective date:* August 1, 1989. *Expiration date:* July 31, 1990.

FOR FURTHER INFORMATION CONTACT: Brian E. Freeman, Assistant Commissioner, Officer of Strategic Business Planning (703-557-7570).

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of subjects in 41 CFR Part 101-26

Government property management.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

In 41 CFR Chapter 101, the following temporary regulation supplement is added to the appendix at the end of Subchapter E to read as follows:

Federal Property Management Regulations Temporary Regulation E-90 Supplement 1

July 10, 1989.

Ordering Items From the GSA Supply Catalog

1. *Purpose.* This supplement extends the expiration date of FPMR Temporary Regulation E-90.

2. *Effective date.* This regulation is effective on August 1, 1989.

3. *Expiration date.* This supplement expires on July 31, 1990.

4. *Background.* FPMR Temporary Regulation E-90 was issued to revise the policy on ordering items from GSA. The regulation applies only to the stock and special order programs, not to the Federal Supply Schedule program.

5. *Explanation of change.* The expiration date in paragraph 3 of FPMR Temporary Regulation E-90 is extended to July 31, 1990.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 89-17337 Filed 7-25-89; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6740

[CA-940-09-4214-10; CACA-24049]

Partial Revocation of Executive Order Dated August 30, 1916; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes an Executive order insofar as it affects 55 acres of National Forest System land withdrawn and reserved pending investigation and classification in connection with irrigation and power uses. The land is no longer needed for the purpose for which it was withdrawn. This action will open 55 acres to surface entry to permit consummation of a U.S. Forest Service exchange. The land has been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: August 10, 1989.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, E-2845 Federal Office Building, 2800 Cottage Way, Sacramento, California 95825, 916-978-4820.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Executive Order dated August 30, 1916, which withdrew and reserved public land and National Forest System land pending investigation and classification in connection with irrigation and power uses is hereby revoked insofar as it affects the following described land:

Mount Diablo Meridian

Inyo National Forest

T. 1 S., R. 26 E.,
Sec. 15, NW¼NW¼, NE¼SW¼NW¼, and N½NW¼SW¼NW¼.

The area described contains 55 acres in Mono County.

2. At 10 a.m. on August 10, 1989, the lands shall be opened to such forms of disposition as may by law be made of National Forest System lands, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law.

Frank A. Bracken,

Under Secretary of the Interior.

July 20, 1989.

[FR Doc. 89-17497 Filed 7-25-89; 8:45 am]

BILLING CODE 4310-40-M

FEDERAL MARITIME COMMISSION

46 CFR Part 580

[Docket No. 88-19]

Rule on Effective Date of Tariff Changes

AGENCY: Federal Maritime Commission.

ACTION: Stay of final rule; correction.

SUMMARY: This notice corrects an error in the heading of the Commission's Stay of Final Rule published July 11, 1989, (54 FR 29036). The reference to "46 CFR Part 502" should read "46 CFR Part 580."

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

Joseph C. Polking,

Secretary.

[FR Doc. 89-17413 Filed 7-25-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 22

[CC Docket No. 88-161; FCC 89-229]

Certain Filing Procedures for Mobile Services Division Applications and Elimination of Form 430; Public Land Mobile Services; Cellular Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: In this Memorandum Opinion and Order (MO&O), the FCC considered petitions for reconsideration and comments from the Office of Management and Budget seeking modification of the Report and Order in Docket No. 88-161. In the Report and Order, the FCC has amended § 22.6 of its rules to require that all Mobile Services Division (MSD) applications, amendments, correspondence, pleadings, exhibits, and attachments be submitted on microfiche. The petitions and comments contended that the microfiche requirement was a burden to the public in terms of cost and the time involved to file microfiche copies and the requirement to file pleadings on microfiche did not permit sufficient time for the preparation and submission of opposition and reply pleadings in a timely manner. The MO&O modified the microfiche requirement to allow the microfiche copies for the opposition and reply pleading to be filed within 15 calendar days after the paper copies are filed and to exempt emergency filings like the letter requesting special temporary authority from the microfiche requirement.

EFFECTIVE DATE: September 25, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sandra Donnell, Mobile Services Division, Common Carrier Bureau, (202) 632-6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order adopted July 7, 1989 and released July 20, 1989. The full text of this action is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this action may also be purchased from the Commission's copy contractors, International Transcription Services, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

1. On November 16, 1988, the Commission released a Report and Order, FCC 88-339 (Report and Order), which amended Part 22 of the Commission's Rules (53 FR 48909, December 5, 1988). The Report and Order amended the rules to require that all Mobile Services Division (MSD) applications, amendments, correspondence, pleadings, exhibits and attachments be submitted on microfiche. Several parties filed petitions for reconsideration of the microfiche requirement. Because the microfiche proposal imposes new and modified requirements and burdens upon the public, it was subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. OMB granted a two year approval of the amended rule subject to several conditions which were considered in modifying the microfiche requirement.

2. Petitioners expressed concern that the microfiche requirement imposes significant burdens in terms of the cost and the time required to file microfiche copies, particularly for applicants in areas where microfiche services are not readily available. They were concerned that the short filing deadlines for opposition and reply pleadings imposed by § 1.45 of the Commission's rules (10 days and 5 days, respectively) do not permit sufficient time for the preparation and submission of pleadings in microfiche form. Petitioners also requested clarification on whether the number of paper copies that must be filed will be an original and four copies as required by § 1.51(c)(2) of the Commission's rules. Further, petitioners propose that emergency filings like request for special temporary authority (STA) be exempt from the microfiche requirement.

3. The MO&O has modified the microfiche requirement where possible to reduce the burden on the public and permit the Commission to meet its objective. The microfiche copies for opposition and reply pleadings may be submitted within 15 calendar days after the paper copies have been filed. Emergency filings like the letter requesting a STA will be exempt from the microfiche filing requirement. Also, in emergency situations the applicant may submit a request for extension of time to meet the microfiche filing requirement. A person's rural or otherwise isolated or inaccessible location would be one factor together with others that might justify granting a waiver or an extension of time in which to file the microfiche copies. Additionally, the Commission notes that, so long as the paper filing is correct and legally sufficient, an application or other document will not be dismissed solely on the ground that the microfiche copies have mistakes, but rather the applicant will be asked to file corrected microfiche copies in a prompt fashion.

4. In the Report and Order, FCC Form 405 (Application for Renewal of Radio Station License) was inadvertently not included in the list of applications to be filed on microfiche and submitted to OMB. There is no reason for FCC Form 405 not to be included. This form is subject to approval by OMB. Since there will not be any renewal filing periods for two years, there is sufficient time to request this approval. Until such time the microfiche requirement for FCC Form 405 will not be enforced.

5. The Commission has experienced a significant increase in filings in the MSD. This increase necessitated a change in filing procedures to resolve the problem of lack of space while ensuring the integrity and ease of access to station files. We selected microfiche as the best short-term, low cost solution to the problem. Microfiche is compatible with other Commission information systems and the characteristics of microfiche ensure that it would not be costly to change from microfiche to another form of technology should the need arise.

6. Accordingly, the Commission affirmed the microfiche requirement with the indicated modifications. Part 1 and Part 22 of the Commission's Rules are hereby amended as specified in the Rules Section appended to this summary.

List of Subjects

47 CFR Part 1

Practice and procedure.

47 CFR Part 22

Communications common carriers, Public mobile service.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendments to Parts 1 and 22 of the Commission's Rules

Title 47, Parts 1 and 22 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 1 and Part 22 continues to read as follows:

Authority: Secs. 1, 4(i) and 303(r) of the Communications Act of 1934, 47 U.S.C. 151, 154(i) and 303(r), and sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

* * * * *

PART 1—PRACTICE AND PROCEDURE

2. Section 1.45 is amended by republishing the introductory text, and by revising paragraphs (a) and (b) to read as follows:

§ 1.45 Pleadings; filing periods.

Except as otherwise provided in this chapter, pleadings in Commission proceedings shall be filed in accordance with the provisions of this section.

(a) *Oppositions.* Oppositions to any motion, petition, or request may be filed within 10 days after the original pleading is filed. For matters related to Part 22 of the rules, these microfiche copies must be filed within 15 calendar days of the paper filing (see § 22.6).

(b) *Replies.* The person who filed the original pleading may reply to oppositions within 5 days after the time for filing oppositions has expired. The reply shall be limited to matters raised in the oppositions, and the response to all such matters shall be set forth in a single pleading; separate replies to individual oppositions shall not be filed. For matters related to Part 22 of the rules, three microfiche copies must be filed within 15 calendar days of the paper filing (see § 22.6).

* * * * *

3. Section 1.49 is amended by adding paragraph (e) as follows:

§ 1.49 Specifications as to pleadings and documents.

* * * * *

(e) In addition to the provisions above, pleadings related to Part 22 of the rules, must also be submitted on microfiche. See § 22.6 for specifications.

4. Section 1.51 is amended by revising paragraphs (c) (1) and (2) to read as follows:

§ 1.51 Number of copies of pleadings, briefs and other papers.

* * * * *

(c) * * *

(1) If the paper filed relates to matters to be acted on by the Commission, an original and 4 copies shall be filed. If the matter relates to Part 22 of the rules, see § 22.6.

(2) If the paper filed related to matters to be acted on by staff officials under delegated authority, an original and 4 copies shall be filed. If the matter relates to Part 22 of the rules, see § 22.6.

* * * * *

PART 22—PUBLIC MOBILE SERVICES

5. Section 22.6 is amended by revising the introductory text of paragraph (d) and paragraph (d)(1) to read as follows:

§ 22.6 Filing of applications, fees, and numbers of copies.

* * * * *

(d) Except as otherwise specified, all applications, amendments, correspondence, pleadings and forms shall be submitted on microfiche with three microfiche copies, including exhibits and attachments thereto, and shall be signed as prescribed by § 1.743 (see § 22.913 for specific filing requirements for applications for initial cellular, and § 22.923 for specific filing requirements for applications for rural cellular radio communications system authorizations.) Filings of five pages or less are exempt from the requirement to submit on microfiche, as well as emergency filings like letters requesting special temporary authority. Non-cellular and non-initial cellular applicants and those filing any amendments, correspondence, pleadings, and forms must simultaneously submit the original hard copy which must be stamped "original". In addition to the original hard copy, those filing pleadings under Part 22 of the rules shall also submit 2 paper copies as provided in § 1.51 of the rules.

(1) *Microfiche copies.* Each microfiche copy must be a copy of the signed original. Each microfiche copy shall be a 148mm X 105mm negative (clear transparent characters appearing on an opaque background) at 24X to 27X reduction for microfiche or microfiche jackets. One of the microfiche sets must be a silver halide camera master or a copy made on silver halide film such as Kodak Direct Duplicatory Film. The microfiche must be placed in paper microfiche envelopes and submitted in a 5" X 7.5" envelope. All applicants must leave Row "A" (the first row for page images) of the first fiche blank for in-house identification purposes.

* * * * *

[FR Doc. 89-17431 Filed 7-25-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 36

[CC Docket Nos. 78-72, 80-286; FCC 89-224]

RIN 3060-AE07

Jurisdictional Separations Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission amends its Part 36 separations rules to assign the cost of mixed use special access lines to the state jurisdiction when ten percent or less of the overall traffic on the special access line is interstate. The cost of mixed use special access lines carrying a greater proportion of interstate traffic would be directly assigned to the interstate jurisdiction. This action is taken pursuant to a Federal/State Joint Board Recommended Decision in this proceeding. The Commission concluded that this approach will resolve existing problems and accord proper recognition to state and federal regulatory interests while avoiding the problems that would result from an allocation-based approach dividing the cost of each special access line between the two jurisdictions.

EFFECTIVE DATE: January 28, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Claudia Pabo, Policy and Program Planning Division, Common Carrier Bureau (202) 632-4047.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (FCC 89-224) adopted June 29, 1989 and released July 20, 1989. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. At present the cost of mixed use special access lines are generally assigned to the interstate jurisdiction, and customers generally order such lines from the interstate tariffs. The Commission instituted a proceeding to re-examine the separations treatment of mixed use special access lines because the present approach has tended to deprive state regulators of authority over largely intrastate private line systems carrying only small amounts of interstate traffic. The Commission requested that the Federal-State Joint Board in CC Docket No. 80-286 prepare recommendations concerning these issues.

2. On February 8, 1989, the Commission released the Joint Board's Recommended Decision regarding changes in the separations treatment of mixed use special access lines (4 FCC Rcd 1352 (1989)). The Joint Board found that state interests would be better served by permitting states to regulate charges for intrastate lines carrying small amounts of interstate traffic. The Joint Board recommended that the cost of mixed use special access lines be directly assigned to the intrastate jurisdiction when the lines carry *de minimis* amounts of interstate traffic in addition to intrastate traffic. The Joint Board concluded that interstate traffic should be deemed *de minimis* when it amounts to ten percent or less of the total traffic on a special access line. The cost of a mixed use line would be directly assigned to the interstate jurisdiction if the line carried a greater proportion of interstate traffic. In order to ensure that the benefits of direct assignment were not lost through burdensome verfication requirements, the Joint Board recommended a carefully circumscribed, uniform system of verification for use with the proposed separations procedures.

3. The Joint Board did not recommend direct interstate assignment of the cost of all mixed use special access lines because such a method would undermine state regulatory authority by allowing customers to avoid state tariff regulation through the addition of *de minimis* amounts of interstate traffic to private line systems carrying primarily intrastate communications. The Joint Board also concluded that it should not recommend allocation of the cost of each mixed use special access line between the state and federal jurisdictions based on relative use or a fixed allocation factor because any benefits generated by these methods would be greatly outweighed by their disadvantages in terms of increased adminstrative burdens and decreased efficiency.

4. The Commission's Decision and Order in this proceeding (FCC 89-224) adopted the Joint Board's recommendation subject to minor changes in implementation measures. The Commission also adopted the Joint Board's reasoning in support of its recommendation.

Ordering Clauses

Accordingly, we adopt the revisions to Part 36 of the Commission's rules recommended by the Joint Board effective January 28, 1990.

List of Subjects in 47 CFR Part 36

Jurisdictional separations procedures; Standard procedures for separating telecommunications property costs, Revenues, Expenses, Taxes and reserves for Telecommunications companies.

Part 36 of Title 47 of the Code of the Federal Regulations is amended as follows:

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES

1. The authority citation for Part 36 continues to read as follows:

Authority: Secs. 1, 4 (i) and (j), 205, 221(c), 403 and 410, as amended, 47 U.S.C. 151, 154 (i) and (j), 205, 221(c), 403 and 410.

§ 36.154 [Amended]

2. Section 36.154 (a) is amended by revising subcategory 1.1 and subcategory 1.2 to read as follows:

(a) * * *

Subcategory 1.1—State private lines and state WATS lines. This subcategory shall include all private lines and WATS lines carring exclusively state traffic as well as private lines and WATS lines carrying exclusively interstate traffic as well as private lines and WATS lines carrying both state and interstate traffic if the interstate traffic on the line involved constitutes ten percent or less of the total traffic on the line.

Subcategory 1.2—Interstate private lines and interstate WATS lines. This subcategorv shall include all private lines and WATS lines that carry exclusively interstate traffic as well as private lines and WATS lines carrying both state and interstate traffic if the interstate traffic on the line involved constitutes more than ten percent of the total traffic on the line.

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Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-17392 Filed 7-25-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-277; RM-5276]

Radio Broadcasting Services; Dothan, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 267A to Dothan, Alabama, as that community's fourth local FM service, in response to a petition for rule making filed on behalf of Reuben C. Hughes. See 51 FR 24872, July 9, 1986. Coordinates used for Channel 267A at Dothan are 31-12-13 and 85-19-54. With this action, this proceeding is terminated.

DATES: Effective September 5, 1989; The window period for filing applications on Channel 267A at Dothan, Alabama, will open on September 6, 1989, and close on October 6, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 86-277, adopted June 30, 1989, and released July 20, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Alabama, is amended by revising the entry for Dothan, by adding Channel 267A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-17393 Filed 7-25-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-385; RM-6272]

Radio Broadcasting Services; Fayetteville, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 280C1 for Channel 280A at

Fayetteville, Arkansas, and modifies the Class A license of Noalmark Broadcasting Corporation for Station KKIX(FM), as requested to specify operation on the higher class channel, thereby providing that community with an additional expanded coverage FM service. See 53 FR 32633, August 26, 1988. Coordinates used for Channel 280C1 at Fayetteville are 36-05-38 and 94-10-16. With this action, the proceeding is terminated.

EFFECTIVE DATE: September 5, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-385, adopted June 30, 1989, and released July 20, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Arkansas, is amended by revising the entry for Fayetteville, by deleting Channel 280A and adding Channel 280C1.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-17394 Filed 7-25-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-103; RM-4984 and RM-5456]

Radio Broadcasting Services; Troy, Louisiana, Bowling Green, Springfield, and Columbia, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Columbia FM, Inc., allocates Channel 264A to Troy, Louisiana, as that community's first local FM service. Channel 264A can be allocated to Troy, Louisiana, in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.4 kilometers (2.1 miles) northwest to prevent shortspacing to pending applications at Alton, Illinois, and Cape Girardeau, Missouri. To accomplish this allocation, the Commission substitutes Channel 231A for Channel 265A at Bowling Green, Missouri and modifies the license of Pike County Broadcasting, Inc., accordingly. Finally, the Commission concludes that the public interest will be served by upgrading Station KARO, Columbia, Missouri, from Channel 269A to Channel 268C2, pursuant to § 1.420(g)(3) of the Rules, and modifies the license of Columbia FM, Inc., to reflect the higher class channel. To accomplish this upgrade, the Commission substitutes Channel 267C for Channel 268C at Springfield, Missouri, and modifies the license of Stereo Broadcasting, Inc., accordingly. With this action, this proceeding is terminated.

DATE: Effective September 5, 1989. The window period for filing applications for Channel 264A at Troy, Missouri, will open on September 6, 1989, and close on October 6, 1989.

FOR FURTHER INFORMATION CONTACT: Douglas Minster, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 86-103, adopted June 30, 1989, and released July 20, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for Part 73 continues to read as follows:

PART 73—[AMENDED]

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. § 73.202(b), the Table of FM Allotments is amended by revising the entry for Bowling Green, Missouri by removing Channel 265A and adding Channel 231A, by revising the entry for Columbia, Missouri by removing Channel 269A and adding Channel 268C2, by revising the entry for Springfield, Missouri, by removing Channel 268C and adding Channel 267C, and by adding Troy, Missouri, Channel 264A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-17395 Filed 7-25-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-485; RM-5991]

Radio Broadcasting Services; Brownwood, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 257C2 for Channel 257A at Brownwood, Texas, and modifies the license of Station KPSM(FM) to specify operation on the higher class co-channel, at the request of Group R Broadcasting, Inc. The community would receive its third wide coverage area FM service. A site restriction of 14.0 kilometers (8.7 miles) northwest of the city is required. The coordinates are 31-48-41 and 99-03-54. Concurrence of the Mexican government has been obtained. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 5, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 87-485, adopted June 30, 1989, and released July 20, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. § 73.202(b), the Table of FM Allotments is amended, under Texas, by removing Channel 257A and adding Channel 257C2 at Brownwood.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-17396 Filed 7-25-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 207, 209, 215, 219, 225, 226, and 252

[Defense Acquisition Circular (DAC) 88-11]

Department of Defense Federal Acquisition Regulation Supplement; Regulatory and Miscellaneous Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final rules.

SUMMARY: Defense Acquisition Circular (DAC) 88-11 amends the DoD FAR Supplement (DFARS) with respect to computer-aided acquisition and logistics support; Army debarring official representative; subcontract pricing considerations; contracting with small disadvantaged business concerns (SDBs), evaluation preference; and recoupment of nonrecurring costs on sales of U.S. products and technology. This DAC also contains editorial corrections and an information item with respect to logistic support and privileges for DoD contractor personnel and family members.

EFFECTIVE DATE: September 28, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, Defense Acquisition Regulatory Council, ODASD (P) /DARS, OASD (P&L), c/o OUSD (A) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062, telephone (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

The DoD FAR Supplement is codified in Chapter 2 Title 48 of the Code of Federal Regulations.

The October 1, 1988, revision of the CFR is the most recent edition of that title. It reflects amendments to the 1986 edition of the DoD FAR Supplement made by Defense Acquisition Circulars 86-1 through 86-16.

B. Public Comments

DAC 88-11, Item I

Public comments are not solicited with respect to this item because it is an information item and does not include revisions to the DFARS.

DAC 88-11, Items II, III, IV, VII, and VIII

Public comments are not solicited with respect to these revisions since such revisions do not alter the substantive meaning of any coverage in the DFARS having a significant impact on contractors or offerors, or do not have a significant effect beyond agency internal operating procedures.

DAC 88-11, Item V

A proposed rule was published in the **Federal Register** on May 26, 1988 (53 FR 19009), and public comments were solicited. Those public comments were considered in the development of this final rule.

DAC 88-11, Item VI

A proposed rule was published in the **Federal Register** on December 8, 1988 (53 FR 49577), and public comments were solicited. Part of the proposed rule contained coverage with respect to follow-on procurements in order to assist disadvantaged business firms in transitioning to large business status. Several commenters voiced concern over the impact this coverage would have on small and small disadvantaged businesses. Accordingly, that portion of the coverage has been withdrawn pending further review.

C. Regulatory Flexibility Act

DAC 88-11, Item I

The Regulatory Flexibility Act does not apply to this item.

DAC 88-11, Items II, III, IV, V, VII, and VIII

The final rules do not constitute a significant revision within the meaning of Pub. L. 98-577, and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected DoD FAR Supplement Subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately. Please cite DAR Case 89-610D in correspondence.

DAC 88-11, Item VI

Comments related to the impact on small entities were limited to that portion of the coverage which was withdrawn. However, a Final Regulatory Flexibility Analysis will be prepared and forwarded to the Chief Counsel for Advocacy of the U.S. Small Business Administration. Interested parties desiring to obtain a copy of the Analysis may contact the Executive Secretary of the DAR Council.

D. Paperwork Reduction Act

DAC 88-11, Item I

This item is provided for information purposes. The Paperwork Reduction Act does not apply.

DAC 88-11, Items II through VIII

These rules do not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 207, 209, 215, 219, 225, 226, and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

[Defense Acquisition Circular No. 88-11]

July 21, 1989.

Unless otherwise specified, all DoD FAR Supplement and other directive material contained in this Defense Acquisition Circular is effective September 28, 1989.

Defense Acquisition Circular (DAC) 88-11 amends the DoD Federal Acquisition Regulation Supplement (DFARS) 1988 Edition and prescribes procedures to be followed. The following is a summary of the amendments and procedures.

Item I—Logistic Support and Privileges for DoD Contractor Personnel and Family Members (Information Item)

DAC # 86-9, dated 30 November 1987, Item XII, entitled Logistic Support and Privileges for DoD Contractor Personnel and Family Members, lists items of logistic support which may be included in DoD contracts and establishes annual dollar values for authorized support privileges. DAC 88-11 contains an updated notice applicable to contracts to be performed in the Federal Republic of Germany and Italy that support U.S. Government missions and involve individual logistic support and privileges granted by the United States Army, Europe (USAREUR), and Seventh Army to contractor personnel and their family members. The guidance contained in the updated notice is effective for all applicable DoD contracts awarded between October 1, 1989 and October 1, 1991. This item cancels and supersedes Item XII of DAC # 86-9, dated as above.

Special notice to contracting officers executing contracts to be performed in the Federal Republic of Germany and Italy that support US Government missions and involve individual logistic support and privileges granted by the United States Amry, Europe (USANEUR), and Seventh Army to contractor personnel and their family members.

The attention of all contracting officers writing contracts for performance in the Federal Republic of Germany and Italy is directed to DFARS 225.870. The following procedures and criteria apply for authorizing or obtaining individual logistic support and privileges for DoD contractor personnel and their family members in USANEUR. Contracts negotiated with US and 3d Country national physicians for services rendered in support of US medical activities may include military exchange (AAFES–EUR) privileges without reference to specific financial consideration due to US Government. Contractor personnel who do not qualify for treatment as members of the civilian component, within the meaning of the NATO Status of Forces Agreement and the Supplementary Agreement thereto, cannot use US Forces facilities for the purchase of any goods other than for immediate comsumption on the premises. Eligibility criteria remains unchanged.

a. To receive logistic support from USAREUR, contractor personnel who will work in the Federal Republic of Germany must—

(1) Be technical experts (see Appendixes A and B) who will serve the US Forces exclusively, and must perform either in an advisory capacity in technical matters, or for the set-up, operation or maintenance of equipment;

(2) Not be stateless persons;

(3) Be nationals of a NATO state, excluding the Federal Republic of Germany; and

(4) Not be ordinarily resident in the Federal Republic of Germany.

Note.—"Ordinarily resident" generally refers to a US citizen who has: (1) Resided continuously in the Federal Republic of Germany or Berlin for one year or more without status as a member of the "Force" or "Civilian Component" (as defined in the NATO Status of Forces Agreement); or (2) has obtained a work permit of any duration in the host country.

b. To receive logistic support from USAREUR, contractor personnel who will work in Italy must—

(1) Be technical experts who exclusively serve the US Forces; and

(2) Be citizens of a NATO state other than Italy.

c. In accordance with DFARS 225.870, the items of logistic support listed below may be included in contracts awarded on or before 1 October 1991. USAREUR may be contractually bound to provide such support, provided that (i) the contract exclusively serves a US Forces mission; (ii) contractor personnel meet eligibility criteria outlined above; and (iii) the contract contains specific financial or other consideration which the US Government will receive in return for providing individual logistic support.

(1) Commissary (includes rationed items).

(2) AAFES Facilities (Military Exchange) (includes rationed items).

(3) Armed Forces Recreation Facilities.

(4) Class VI (alcoholic beverages, includes rationed items).

(5) Customs Exemption.

(6) Legal Assistance.

(7) Local government transportation for official Government business (nontactical vehicle).

(8) Local Morale/Welfare Recreation Services.

(9) Military Banking Facilities.

(10) Military Postal Service.

(11) Mortuary Service.

(12) Officer or NCO/EM Clubs.

(13) POV (privately-owned vehicle) license for USAREUR.

(14) POV registration for USAREUR.

(15) Purchase of POL (petroleum and oil products).

(16) Transient Billets.

Note.—Transient billets may be authorized on a space-available basis after all other eligible personnel have been billeted.

(17) Messing facilities at remote sites only (reimbursable).

(18) Army Continuing Education Services.

(19) Credit Union Facilities.

(20) Dependent Schools, on a space-available, tuition-paying basis.

Note.—Dependent Schools are not authorized on a space-required basis for contractor personnel.

(21) Medical/Dental Services on a reimburseable basis: dental care, available only for emergency conditions, on a reimbursable basis.

(22) Pet/Firearms Registration and Control.

(23) NATO Status of Forces Agreement Stamp.

Note.—New contracts which include office space logistical support require prior written approval of the Commander-in-Chief, USAREUR (ATTN: AEAEN-IF).

d. Above individual logistic support privileges may only be included in contracts according to one of three packages:

(1) Individual Logistic Support "Package A" includes all privileges listed in Items (1)–(23).

(a) Estimated annual dollar value per individual contractor employee	$6,368
(b) Estimated annual dollar value per spouse	$3,747
(c) Estimated annual dollar value per family member other than (a) and (b)	$1,765
(d) Estimated annual dollar value per family of 3 or more	$11,900

(2) Individual Logistic Support "Package B" includes privileges listed in Items (3)–(23).

(a) Estimated annual dollar value per individual contractor employee	$4,423
(b) Estimated annual dollar value per spouse	$2,102
(c) Estimated annual dollar value per family member other than (a) and (b)	$365
(d) Estimated annual dollar value per family of 3 or more	$5,890

(3) Individual Logistic Support "Package C" includes privileges listed in Items (5), (7), and (17)–(23). These items will be made available to all contractor personnel who qualify as technical experts under this circular without reference to specific financial consideration.

Note.—Estimated annual dollar value (unless otherwise noted, this value is defined as the difference between costs in obtaining goods and services from USAREUR sources versus costs in obtaining comparable services on the economy).

e. Logistic support for spouse and/or family members will be authorized only if specifically stated in the contract.

f. Contracting officers must ensure that:

(1) The eligibility criteria in a. above have been met;

(2) Technical expert status, as defined in Appendix A, and individual logistic support are required to attract the skills required for effective contract performance;

(3) The contractor has completed the certificate at Appendix B, for filing with the master contract;

(4) The items of logistic support are included in the contract; and

(5) The contracting officer representative (COR) of the USAREUR sponsoring agency must request an Accreditation Letter from CINCUSAREUR (ATTN: AEUPE–PSSD–PPL, APO 09081). COR must submit the following:

(a) Statement of compliance with the provisions of the special notice;

(b) Name of prospective contract company/corporation;

(c) The contract number and expiration date;

(d) The full name of contract personnel, their citizenship social security and passport numbers, the number of family members (if included in contract), and planned arrival date (if already in country, state present employment and geographical area);

(e) Period of accreditation not to exceed one year;

(f) The specific package (A, B, or C) of logistic support and privileges included in the contract, a copy of the front page of the contract and that portion which addresses individual logistic support privileges;

(g) APO address of the European sponsoring agency to which the accreditation letter should be forwarded. This should be the military office/element to which the contractor is assigned for administrative and operational control.

Note.—The contracting officer may only commit the government to provide status of support after documenting the basis of his determination and source of approvals in the master contract file.

g. Foreign Military Sales (FMS) Contracts: Contracts in support of foreign military sales to foreign governments are subject to this circular, in accordance with DFARS 1–103. The values defined as differences or savings, in paragraph d. above, are not directly applicable to U.S. Government administrative support costs in foreign military sales agreements. The direct or indirect costs to the U.S. Government for logistic support provided to FMS contractors (and charged to the requesting country) must be determined on a case-by-case basis considering factors such as: geographic place of performance and specific support requested/provided.

Appendix A—Technical Expert Guidance

1. Definition of "Technical Expert": Employee must meet requirements listed below:

a. For purpose of applying Article 73 of the NATO SOFA Supplementary Agreement, "technical expert" refers to a person with a high degree of skill or knowledge in the systematic procedure by which a complex or scientific task is accomplished, as distinguished from routine mental, manual or physical processes. The skills and knowledge must have been acquired through a process of higher education or through a long period of specialized experience. Skills normally classified as "blue collar" are generally not included. Thus, skilled workers, craftsmen and tradesmen such as electricians, plumbers, painters, masons and carpenters are generally not included. Similarly, not all "white collar" skills are included.

b. The following are examples of positions that have been granted "technical expert" status under Article 73:

(1) Automobile warranty repair technicians for repair of complex automotive equipment;

(2) Key executive and supervisor positions of a government-owned contractor-operator facility which performed major maintenance of U.S. vehicles.

(3) Computer software engineers.

c. The following are examples of positions that have been denied "technical expert" status under Article 73:

(1) Secretaries, clerk-typists;

(2) Sales representatives for computers, encyclopedias, clothes, china, jewelry, and similar items;

(3) Automobile sales representatives; and

(4) Administrative personnel.

2. Contracting offices shall not obligate the government to provide logistic support or grant "technical expert" status to employees of contractors unless all of the following conditions are met:

a. Certificate of Employee Technical Expert Status (Appendix B) is completed by the contractor and maintained with master contract;

b. The contracting officer determines that conferral of "technical expert" status and provision of individual logistic support the technical skills needed for effective contract performance;

c. Financial savings realized by conferring "technical expert" status and providing individual logistic support to some or all of the contractor's employees are reflected in the contract price.

Note.—In the event the contracting officer has doubts, which cannot be resolved by supporting legal counsel, approval of "technical expert" status should be obtained on a position-by-position basis from CINCUSAREUR, ATTN: AEUPE–PSSD–PPL, APO NY 09081.

Appendix B—Certificate of Employee Technical Expert Status

(Contracts Performed in Federal Republic of Germany)

This is to certify that the following individuals are Technical Experts as provided in Article 73, NATO SOFA Supplemental Agreement and DAC 86–9, since they are as of (day)____(month)_____(year)____:

a. Technical experts as defined in DAC 86–9 who will exclusively serve the U.S. Forces; and

b. Will serve either in an advisory capacity in technical matters or to set-up, operate or maintain equipment.

NAMES OF EMPLOYEES

SSN AND PPN #

No additional fee or cost will be charged by the contractor, should either the conclusion or any part of the data here stated be determined by a U.S. contracting officer to be so erroneous, inaccurate or noncurrent as to disqualify the above employee(s) for Article 73 "technical expert" status.

Contract #1 _____

Company _____

Job Title _____

Date of Execution: _____

Item II—Cancellation of ASPM #2, Small Purchase Manual (Final Rule)

The Armed Services Procurement Regulation Small Purchase Manual, ASPM #2, dated 31 March 1976, is hereby canceled. The DAR Council has concluded that the manual is outdated and not suitable for reprint. Further, the material contained in ASPM #2 will be included in the course material presented as part of the Defense Acquisition Education and Training Program outlined in DoD Directive 5000.52.

Item III—Computer-Aided Acquisition and Logistics Support (CALS) (Final Rule)

The Deputy Secretary of Defense has directed that plans for new weapons systems and related major equipment items should use Computer-Aided Acquisition and Logistics Support (CALS) standards. Action has been initiated to include these requirements in pertinent systems acquisition regulations. The DAR Council has approved a revision to DFARS 207.105(b)(12) to address CALS in acquisition plans.

Item IV—Army Debarring Official (Final Rule)

DFARS 209.470 is revised to reflect the correct designation for the authorized representative of the Secretary of the Army for the purposes of FAR Subpart 9.4.

Item V—Subcontract Pricing Considerations (Final Rule)

DFARS 215.804, 215.805, and 215.806 concerning subcontract pricing policies and procedures have been revised to provide amplifying guidance of FAR changes and to consolidate requirements for ease of use. Associated FAR coverage will appear in FAC 84–51.

Item VI—Contracting With Small Disadvantaged Business Concerns (SDBs); Evaluation Preference (Final Rule)

DFARS 219, 226, and 252 are revised to further implement Section 1207 of Pub. L. 99–661, section 806 of Pub. L. 100–180, and Section 844 of Pub. L. 100–456. Sections 219.001, and 226.7003 and 252.219–7007(d) are revised to provide that Historically Black Colleages and Universities (HBCUs) and Minority Institutions (MIs) will be given the same

evaluation preference as that accorded to small disadvantaged business (SDB) concerns in unrestricted procurements. Sections 219.7000 and 252.219-7007 are revised to provide that the evaluation preference will not be applied in acquisitions over the dollar threshold for the Trade Agreements Act when the low offeror is offering an eligible end product or where the application would otherwise violate an agreement or memorandum of understanding with a foreign government. Sections 219.508, 219.7002, 252.219-7007, and 252.219-7010 are revised to provide that, in an unrestricted procurement, an SDB regular dealer, in order to qualify for the evaluation preference, must provide the product of an SDB concern, if available; in a partial small business set-aside, in order to be eligible for preferential consideration, an SDB dealer or manufacturer must provide the product of an SDB concern, if available. In either case if the product of an SDB concern is not available, the dealer must provide the product of a small business to get the preference evaluation or preferential treatment.

Item VII—Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology (Final Rule)

DFARS 252.271-7001 is revised to add a flowdown procedure which was inadvertently omitted when the coverage was published in DAC #88-5.

Item VIII—Editorial Corrections (Final Rule)

(a) DFARS 252.208-7006 is revised to change the word "provision" in the introductory paragraph to read "clause".

(b) Paragraph (b)(3)(i) of the clause in DFARS 252.227-7013 is revised to reflect the correct reference.

Adoption of Amendments

Therefore, the DoD FAR Supplement is amended as set forth below.

1. The authority for 48 CFR Parts 207, 209, 215, 219, 225, 226, and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 207—ACQUISITION PLANNING

207.105 [Amended]

2. Section 207.105 is amended by adding to paragraph (b)(12) paragraph (v) to read: "Describe the extent of Computer-Aided Acquisition and Logistics Support (CALS) implementation (see MIL-STD-1840A)."

PART 215—CONTRACTING BY NEGOTIATION

215.804-6 [Amended]

3. Section 215.804-6 is amended by removing paragraph (g)(3).

215.805-5 [Amended]

4. Section 215.805-5 is amended by removing paragraphs (i) and (j).

5. Sections 215.806-2 and 215.806-3 are added to read as follows:

215.806-2 Prospective subcontractor cost or pricing data.

(e) The contract clause shall also give to the contracting officer a unilateral right, subject to the Disputes procedure, to determine the prime contract adjustment, if agreement on such price cannot be reached by the parties within a reasonable time.

215.806-3 Field pricing reports.

(a) If in the opinion of the contracting officer or auditor, the review of a prime contractor's proposal requires further review of subcontractor's cost estimates at the subcontractor's plants (after due consideration of reviews performed by the prime contractor), these reviews should be fully coordinated with the ACO having cognizance of the prime contractor before being initiated. The contracting officer's need to complete negotiations in a timely manner should be strongly considered before initiating additional reviews. If a review of a subcontractor's proposal is necessary, the ACO for the prime contractor shall forward the request to the ACO for the subcontractor with an informational copy to the auditor for the subcontractor. If a lower tier subcontract proposal requires review, the request should be coordinated in sequence with the ACO at the higher tiers in the subcontract chain. The resulting pricing reports, including any audit reports, shall be forwarded by the subcontract ACO to the prime ACO with an information copy to the prime auditor. An information copy should also be provided to the prime contractor unless the report contains information the audited party does not want disclosed.

(b) The appropriate contract administration activities will be notified by the PCO when review and evaluation of subcontractor's proposals will require extensive field pricing assistance in connection with acquisition of a major weapon system, or require special or expected action by field pricing personnel and such action is being or has been delayed.

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

6. Section 219.508 is amended by redesignating the existing paragraph (S-72) as (S-72)(1); and by adding paragraph (S-72)(2), to read as follows:

219.508 Solicitation provisions and contract clauses.

* * * * *

(S-72)(1) * * *

(S-72)(2) The contracting officer shall insert the clause with its Alternate I when the contracting officer determines, in coordination with the contracting activity's SADBUS, that there are no SDB manufacturers available that can meet the requirements of the solicitation.

* * * * *

7. Section 219.7000 is amended by removing in the first sentence of paragraph (a) between the reference "Pub. L. 99-661" and the words "section 806" the word "and" and adding a comma; by adding a comma and the words "and section 844 of Pub. L. 100-456" before the reference in parentheses; by designating the last sentence of paragraph (a) as paragraph (1); by redesignating the existing paragraphs (a)(1) through (a)(4) as paragraphs (a)(1)(i) through (a)(1)(iv); by removing the existing paragraphs (a)(5) and (a)(6); by redesignating the existing paragraphs (a)(7) and (a)(8) as paragraphs (a)(1)(v) and (a)(1)(vi); and by adding paragraph (a)(2), to read as follows:

219.7000 Policy.

* * * * *

(2) The evaluation preference shall not be applied to—

(i) Otherwise low offers of (A) eligible products under the Trade Agreements Act as defined in 225.401 when the acquisition equals or exceeds the dollar threshold stated in FAR 25.402, or (B) qualifying country end products as defined in 225.001; or

(ii) Where the application would be inconsistent with a Memorandum of Understanding or any other international agreement with a foreign government (see Appendix T).

* * * * *

219.7001 [Amended]

8. Section 219.7001 is amended by adding at the end of the section a sentence to read: "Offers submitted by HBCUs/MIs shall be evaluated as though they were from SDB concerns (see 252.219-7007(d)).

219.7002 [Amended]

9. Section 219.7002 is amended by adding a sentence at the end of the section to read: "The contracting officer shall insert the clause with its Alternate I when the contracting officer determines, in coordination with the contracting activity's SADBUS, that there are no SDB manufacturers available that can meet the requirements of the solicitation."

PART 225—FOREIGN ACQUISITION

225.403 [Amended]

10. Section 225.403 is amended by adding paragraph (c) to read:

(c) But see 219.7000.

* * * * *

PART 226—OTHER SOCIOECONOMIC PROGRAMS

226.7003 [Amended]

11. Section 226.7003 is amended by removing in the first sentence between the reference "Pub. L. 99-661" and the words "Section 806" the word "and" and adding a comma; by adding a comma and the words "and Section 844 of Pub. L. 100-456" before the word "established"; by changing the years "1987-89" to read "1987-90"; and by adding at the end of the section a sentence to read: "In the event an HBCU or MI submits an offer under an unrestricted acquisition that offers an evaluation preference for SDBs, the HBCU or MI offer shall be evaluated as if it had been submitted by an SDB concern (see 252.219-7007(d))."

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.208-7006 [Amended]

12. Section 252.208-7006 is amended by changing the word "provision" in the introductory paragraph to read "clause".

13. Section 252.219-7007 is amended by changing the date of the clause to read "JUL 1989" in lieu of "NOV 1988"; by removing in the clause at the end of paragraph (a) the word "Deviation"; by designating the text of paragraph (b) beginning with the word "After" as paragraph (b)(1); by adding paragraph (b)(2) to the clause; by designating the introductory text of paragraph (c) of the clause as paragraph (c)(1); by redesignating paragraphs (c)(1) through (c)(4) of the clause as paragraphs (c)(1)(i) through (c)(1)(iv) respectively; by adding paragraph (c)(2) to the clause; by adding paragraph (d); and by adding ALTERNATE I after the end of the clause, to read as follows:

252.219-7007 Notice of evaluation preference for small disadvantaged business (SDB) concerns (Unrestricted).

* * * * *

(b) * * *

(2) The evaluation factor described in paragraph (b)(1) above shall not be applied to (i) otherwise low offers of (A) eligible products under the Trade Agreements Act as defined in DFARS 225.401 when the acquisition equals or exceeds the dollar threshold stated in FAR 25.402, or (B) qualifying country end products as defined in DFARS 225.001; or (ii) where the application would be inconsistent with a Memorandum of Understanding or any other international agreement with a foreign government (see Appendix T to the DoD FAR Supplement).

(c) * * *

(2) An SDB regular dealer submitting an offer in its own name, who did not waive the evaluation preference by checking the box in paragraph (b) above, agrees to furnish, in performing this contract, only end items manufactured or produced by SDB concerns in the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts.

(d) *HBCU/MI Offer.* In the event an HBCU/MI, as defined at 226.7002, submits an offer under this solicitation, it shall be evaluated as though it were an SDB concern and shall be required to submit to the Contracting Officer, upon request, a certification as to its HBCU/MI status.

(End of clause)

Alternate I (Jul 1989)

If a determination has been made in accordance with DFARS 219.7002 that there are no SDB manufacturers available who can meet the requirements of this solicitation, insert the following paragraph (c)(2) in lieu of paragraph (c)(2) of the basic clause:

(c)(2) An SDB regular dealer submitting an offer in its own name, who did not waive the evaluation preference by checking the box in paragraph (b) above, agrees to furnish, in performing this contract, only end items manufactured or produced by small business concerns in the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts.

14. Section 252.219-7010 is amended by changing the date of the clause to read "JUL 1989" in lieu of "JUN 1988"; by substituting at the beginning of paragraph (c)(3) the words "In order to be entitled to preferential consideration, an" in lieu of the words "A small business or"; by substituting in the first sentence of paragraph (c)(3) of the clause the acronym "SDB" in lieu of the words "small business"; and by adding Alternate I after the end of the clause, to read as follows:

252.219-7010 Notice of partial small business set-aside with preferential consideration for small disadvantaged business (SDB) concerns.

* * * * *

Alternate I (Jul 1989)

If a determination has been made in accordance with 219.508(S-72) that there are no SDB manufacturers available who can meet the requirements of the solicitation, insert the following paragraph (c)(3) in lieu of paragraph (c)(3) of the basic clause:

(c)(3) In order to be entitled to preferential consideration, an SDB manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts.

252.227-7013 [Amended]

15. Section 252.227-7013 is amended by changing the reference in paragraph (b)(3)(i) of the clause to read "(b)(1)" in lieu of "(a)(1)".

16. Section 252.271-7001 is amended by adding paragraph (g) at the end of the clause, to read as follows:

252.271-7001 Recovery of Nonrecurring Costs on Commercial Sales of Defense Products and Technology and of Royalty Fees for Use of DoD Technical Data.

* * * * *

(g) The substance of this clause shall be placed in all subcontracts for components or items which can be sold commercially and which meet, or are expected to meet, the threshold set forth herein.

(End of clause)

[FR Doc. 89-17420 Filed 7-25-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 27

[Docket No. 56f; Amdt. 27-4]

Nondiscrimination on the Basis of Handicap in Department of Transportation Financial Assistance Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department of Transportation is eliminating a provision in its rule concerning mass transit services for disabled persons which permits incremental expenditures by recipients for the off-peak, reduced

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fare program for elderly and handicapped passengers on mainline mass transit services to be counted in the calculation of the three percent limit on required expenditures. This provision is intended to correct a problem in the implementation of Part 27.

EFFECTIVE DATE: This rule is effective August 25, 1989.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., Room 10424, Washington, DC, 20590. (202) 366-9306 (voice); 202-755-7687 (TDD).

SUPPLEMENTARY INFORMATION:

The Department's regulation concerning mass transit services for persons with disabilities (49 CFR Part 27, Subpart E; published at 51 FR 18944, May 23, 1986) requires recipients to provide disabled riders with transportation services that meet enumerated service criteria (49 CFR 27.95). However, recipients are not required to exceed a "limit on required expenditures" of three percent of their operating expenses in order to do so (49 CFR 27.97). The purpose of the latter provision (sometimes referred to as a "cost cap") is to prevent recipients from incurring undue financial burdens in implementing services for persons with disabilities. Applicable court interpretation of section 504 of the Rehabilitation Act of 1973 precludes the Department from imposing undue financial burdens for this purpose.

The Department's regulation (49 CFR 27.99) specifies those expenditures which a recipient may count in determining whether it has reached the limit on required expenditures. This final rule concerns 49 CFR 27.99(b)(5), which provides that among the expenditures recipients may count are "incremental costs of compliance with 49 CFR 609.23."

Under 49 CFR 609.23, Urban Mass Transportation Administration (UMTA) recipients, during non-peak hours, must charge to elderly and handicapped riders no more than half the normal peak-hour fares applicable to other persons. This long-standing UMTA requirement, which implements 49 U.S.C. 1604(m), applies to mainline transit service, and UMTA has never applied it to special service for elderly and handicapped persons.

By the "incremental" costs of the half-fare program, the Department in 49 CFR 27.99(b)(5) meant those costs (including foregone revenues and administrative costs) the recipient incurs for implementing the half-fare program for handicapped persons. The portion of the costs attributable to providing half-fare transportation to non-disabled elderly persons is not counted toward the limit on required expenditures for service to handicapped persons under 49 CFR Part 27.

In litigation brought by disability groups concerning Part 27, a Federal District Court in Philadelphia determined that the cost cap provision of the rule was invalid. The Department appealed this decision to the Federal Court of Appeals for the Third Circuit, which affirmed the District Court decision in this respect. (The appeals court also directed the Department to make other, more sweeping, changes in the regulation.) The Department sought a rehearing in this case, which the court granted. Arguments were held on May 15, 1989, and a decision is pending. Meanwhile, the Department's rule remains in effect.

The District Court also found the rule's reduced fare provisions to be invalid. The Department did not appeal this portion of the decision, principally because the Department believes that there is some merit to concerns that have been expressed about the provision. Consequently, the Department is eliminating § 27.99(5). This amendment will modify the implementation of the existing regulation, so long as it continues in effect.

In response to the Department's Notice of Proposed Rulemaking (NPRM) on this subject,[1] the Department received ten comments; four from transit agencies, three from state government agencies and three from groups representing the interest of disabled persons. In addition, the Department received one request for an extension of time to file comments. However, because of the low volume and general nature of the comments that were received, and because this is not a complex rulemaking, concerning only a single subject, the Department determined that such an extension was unnecessary.

The NPRM on this subject discussed several procedural conerns regarding the regulatory process surrounding the original adoption of this provision. First, it was argued that the Department did not consider adequately, at the time of the adoption of Subpart E, the effects of § 27.99(b)(5) on the likelihood that recipients would exceed the limit on required expenditures, and therefore be unable to meet all service criteria. Another concern relates to the fact that the Department did not expressly propose, in the notice of proposed rulemaking for Subpart E, making half-fare program costs eligible to be counted toward the limit on required expenditures. None of the commenters addressed these procedural issues, focusing instead on the substantive merits of § 27.99(b)(5).

First, the NPRM noted suggestions that the provision is inconsistent with the basic rationale of § 27.99. That is, to be eligible to count in the calculation of the limit on required expenditures, an expenditure must be one "specifically to comply with the requirements of 49 CFR Part 27, Subpart E" (51 FR 19029, May 23, 1986). Expenditures that Part 27 does not itself require (e.g., service to non-disabled elderly persons, expenditures to comply with the Architectural Barriers Act of 1968 or state or local accessibility requirements going beyond those of Part 27) cannot be counted toward the limit on required expenditures. This is because the limit on required expenditures is designed to prevent the requirements of Part 27 from imposing undue financial burdens on recipients. The cost of compliance with a requirement imposed exclusively by some other authority is by definition, not a financial burden imposed by Part 27.

The argument has been made that, while the incremental costs of compliance with 49 CFR 609.23 are imposed by UMTA itself, and while they relate to services for handicapped persons, they are not costs imposed by 49 CFR Part 27. They could not contribute, therefore, to the imposition by Part 27 of an undue financial burden on any transit authority. According to this argument, then, it is inconsistent with the rationale of section 27.99 to permit them to be counted. (The NPRM published at the same time as the May 1986 final rule proposed bringing 49 CFR 609.23 into Part 27, however.) This very point was raised by two commenters, organizations representing the interests of disabled persons. Another group also argued that not only were half-fare costs not imposed under Part 27, but further that there is no legislative history behind Section 504 of the Rehabilitation Act of 1973 supporting the inclusion of such incremental costs in determining the level of financial burden sustained by a transit authority in meeting 504 requirements.

A second argument raised in the NPRM is that the provision may create a counterproductive result in transit systems where service to disabled persons is provided by special service. The special service is required by 49 CFR 27.95(b)(1) to persons who, by reason of handicap, are physically unable to use the regular bus system. These individuals do not, of course, benefit from the half-fare program, which is applied only to mainline transit. Given § 27.99(b)(5), the amount spent on the half-fare program could reduce the resources the transit authority would be required to make available to provide service to those who could not use mainline transit. Again, this argument was echoed in the comments of several disabled persons' groups as well as by one state government agency. One commenter even suggested that elimination of incremental costs from the cost cap would lead to greater accuracy of accounting for expenditures for paratransit.

Third, several commenters, reiterating a previously raised point, remarked to the Department that it may be very difficult to calculate the incremental cost of the half-fare program attributable to its use by handicapped, as distinct from non-disabled elderly, persons. Many transit authorities do not distinguish between categories of persons eligible for the half-fare program. Separating out the portion of the half-fare program costs attributable to handicapped persons would require either a burdensome change in the recipient's recordkeeping system for that program or an inexact estimate of the rough proportion of handicapped persons using the program.

Several commenters, notably several transit agencies, opposed the elimination of § 27.99(b)(5). These commenters argued that since the half-fare policy, like section 504, is intended to increase accessibility of mass transit to the disabled, the incremental costs associated with half-fare programs should be included in calculating 504 expenditures. Any other policy, these commenters contend, is inequitable.

These commenters, however, did not address many of the concerns about application of the rule. Only one transit authority offered that separating the costs of providing half-fare service to the handicapped from that to the elderly would not be administratively burdensome; the rest offered no opinion on the subject. Furthermore, none of the commenters opposed to the elimination of § 27.99(b)(5) rule dealt with the argument that inclusion of incremental costs could disproportionately siphon money away from paratransit service for disabled persons, thereby decreasing access to mass transit.

In fact, in support of eliminating the provision, one commenter noted that elimination of incremental costs from the 504 limit should not pose any financial burden on transit authorities because half-fare programs do not actually produce revenue losses. That is, half-fare passengers represent riders (and, therefore, revenue) that otherwise would not come to the transit providers at all.

The Department has concluded, for the reasons discussed in this preamble and in the preamble to the NPRM, that disallowing half-fare program costs in calculating the Part 27 cost cap is more consistent with the intent of Part 27 than continuing to allow these costs. The comments opposing the elimination of the provision do not persuade the Department that retention of this provision is necessary or desirable. Therefore, the Department is eliminating the provision.

Regulatory Process Matters

This rule is not a major rule under Executive Order 12291 or, since it affects only one narrow subparagraph of Part 27, a significant regulation under the Department's Regulatory Policies and Procedures.

UMTA recipients which would be considered to be small entities do not incur significant costs for the reduced fare program. Therefore, the Department certifies, for purposes of the Regulatory Flexibility Act, that this final rule does not have a significant economic impact on a substantial number of small entities. The Department has also determined that this proposal does not involve sufficient Federalism impacts to warrant the preparation of a Federalism assessment.

List of Subjects in 49 CFR Part 27

Handicapped, Mass transportation.

Issued this 17th day of July, 1989, in Washington, DC.

Samuel K. Skinner,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department amends 49 CFR Part 27, Subpart E, as follows:

PART 27—[AMENDED]

1. The authority citation for 49 CFR Part 27 continues to read as follows:

Authority: 29 U.S.C. 794, 49 U.S.C. 1621.

§ 27.99 [Amended]

2. By removing and reserving § 27.99(b)(5).

[FR Doc. 89-17299 Filed 7-25-89; 8:45 am]

BILLING CODE 4910-62-M

[1] 53 FR 23778, June 24, 1988.

Proposed Rules

Federal Register
Vol. 54, No. 142
Wednesday, July 26, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[FV-89-051]

Kiwifruit Grown in California; Proposed Rule to Revise Grade, Pack and Container Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the minimum grade requirement for California kiwifruit by reducing the current allowance for misshapen fruit. It would also establish minimum weight requirements for tray-packed fruit; revise the tray equivalent size designations used in packing volume-filled containers and require such containers to be marked with those designations; and reduce the allowable size variance for the two smallest size designations of packed fruit. The proposed actions would tend to result in better quality fruit being provided to consumers, and a reduction in buyer confusion caused by the lack of uniformity in current kiwifruit packing practices.

DATES: Comments must be received by August 25, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone (202) 447-2431.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 920 and Marketing Order No. 920 (7 CFR Part 920), regulating the handling of kiwifruit grown in California. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issues pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 145 handlers of California kiwifruit subject to regulation under the marketing order, and approximately 1,225 producers in the production area. The Small Business Administration (13 CFR 121.2) has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California kiwifruit may be classified as small entities.

The 1988 California kiwifruit harvest totalled 8.4 million trays and tray equivalents, 5 percent larger than the 1987 harvest. For the past ten years, kiwifruit production has increased in California and is expected to increase again in 1989 to a total of about 10.7 million trays. Most of the crop is shipped to fresh markets, with only a small volume of fruit utilized by processors. About 60 percent of fresh shipments is destined for domestic markets, and the remaining 40 percent is exported.

The handling requirements for fresh California kiwifruit are specified in 7 CFR 920.302 (as amended at 53 FR 34035, September 2, 1988, and 53 FR 48513, December 1, 1988). The current requirements specify that kiwifruit must meet a minimum size of 49 and contain at least 6.5 percent soluble solids at the time of inspection. Also included in the current handling regulation are a minimum grade requirement and a number of pack and container requirements. At a meeting held on April 7, 1989, the Kiwifruit Administrative Committee (committee), the agency responsible for local administration of the marketing order, recommended changes in the existing grade, pack and container requirements to become effective on or about October 1, when shipments of the 1989 crop are expected to begin.

Upon the basis of the committee's recommendation, this proposed rule would revise the current minimum grade requirement for fresh shipments of kiwifruit by eliminating the seven percent tolerance provided for misshapen fruit. This rule also proposes the establishment of minimum weight requirements for kiwifruit packed in trays, including containers with cell compartments, cardboard fillers, or molded trays. Additionally, it is proposed that the tray equivalent size designations used in packing bags, volume-fill, or bulk containers be revised; that such containers be required to be marked with those designations; and that the allowable size variance for the two smallest size designations of packed fruit be reduced. Finally, this rule proposes deleting certain definitions from the handling regulation and adding a general definition.

The current minimum grade requirement specifies that fresh shipments of kiwifruit shall grade at least 85 percent U.S. No. 2. However, the total allowance for defects other than shape is limited to eight percent for those causing damage. Included in that eight percent tolerance for defects other than shape is four percent for defects causing serious damage, and one percent for fruit affect by internal breakdown or decay. An additional seven percent allowance is provided for fruit that fails to meet the shape requirements of a U.S. No. 2 grade. As a result, if no other defects are present in a given lot of kiwifruit, up to 15 percent of the fruit in that lot may be misshapen.

During the 1988-89 season, the committee examined sample trays packed with the maximum number of allowable defects. Based on this examination, it was determined that the current allowance for misshapen kiwifruit is excessive in view of current market demand for high quality kiwifruit. The committee therefore recommended, by a nine to one vote, that the current grade requirement be revised by eliminating the additional seven percent tolerance provided for shape defects.

By far, the majority of the kiwifruit shipped from California exceeds a U.S. No. 2 grade. During the 1988-89 season, 52 percent of the total shipped was U.S. Fancy grade, and 44 percent was U.S. No. 1 grade. Only four percent graded U.S. No. 2. The committee attributes this small volume grading U.S. No. 2 to improved cultural techniques used by growers since the establishment of minimum quality standards under the marketing order. The committee has concluded that this proposed action would result in further improvement in the quality of kiwifruit available from California, which is necessary to enable the industry to market additional volumes of fruit in the face of increasing competition.

About 77 percent of the 1988 crop was shipped to fresh market in trays, with the remainder packed in volume-filled containers, including bags (about 13 percent), volume-fill or cartons (about 10 percent), and bulk containers or bins (less than one percent). While trays continue to be the dominant containers used in packing kiwifruit, the use of volume-filled containers has increased in recent years.

Trays used to pack kiwifruit have cell compartments to hold individual pieces of fruit. All standard trays have the same dimensions, and the number of cell compartments varies according to the count being packed. The size of the fruit packed in these containers is denoted by count, i.e., the number of pieces of fruit packed in the tray. There are currently about 17 sizes packed in trays, ranging from Size 49 (the smallest size permitted to be shipped) to Size 21. The four most prevalent sizes are 33, 36, 39, and 42, which in 1988-89 accounted for 84 percent of the trays packed.

The current requirements for fruit packed in trays specify that these types of containers be marked with a numerical count to designate size, and that the number of fruit in the tray conform to the marked count. In addition, the kiwifruit must be "fairly uniform in size," as defined in the U.S. Standards for Grades of Kiwifruit. Such uniformity is in terms of an allowable variance in diameter among the individual pieces of fruit in a given container. Larger size fruit (Size 30 and larger) may not vary by more than ½-inch in diameter; intermediate size fruit (Sizes 31 to 38) may not vary by more than ½-inch in diameter; and smaller size fruit (Size 39 and smaller) may not vary by more than ¼-inch in diameter. Finally, fruit packed in trays must be of proper size for the cell compartments in which they are packed.

The committee has determined that these requirements do not result in sufficient uniformity in tray packs, and unanimously recommended that minimum weights be established for fruit packed in trays. In making this recommendation, the committee considered the results of weight surveys it has conducted over the past three seasons. These surveys have shown a variation in the weight of trays packed with the same size fruit of as much as 3.6 pounds. For example, trays containing Size 36 (the most widely packed size last season) ranged from 6.00 to 9.56 pounds, and averaged 7.33 pounds.

This variation has resulted in numerous complaints by buyers in the United States and abroad who have received trays that were lighter than expected, and were concerned that they not received full value for the fruit purchased. Because of this, these buyers were less inclined to make additional purchases of California kiwifruit, unless the fruit was offered at a discounted price. Following a California kiwifruit grower survey (in which 71 percent of those participating supported tray weight requirements), the committee agreed that establishing minimum weights for fruit packed in trays would offer the most effective solution to eliminate light trays and undersizing. The minimum weights being proposed vary with the size of the fruit packed, with the smaller fruit having the lowest minimum net weight. For example, fruit of Size 44 or smaller packed in trays would be required to weigh at least 6-½ pounds, and fruit of Size 34 and larger would have to weigh at least 7-½ pounds. This change would contribute to orderly marketing by eliminating the current wide variance in size packaging and improving buyer satisfaction with the product. This requirement could result in slightly higher inspection costs because of the extra time it would take for inspectors to weigh the fruit packed in trays. However, the committee believes the added cost would be more than offset by improved returns resulting from increases in buyer satisfaction and sales.

As previously discussed, in addition to trays, kiwifruit is packed in volume-filled containers. The pack requirements established for fruit in such containers differ from those in effect for tray-packed fruit. Since volume-filled containers are not packed by count, the numerical size designations used for trays are not directly applicable to these containers. To provide a uniform basis for sizing fruit packed in these containers, the numerical counts used in tray packs have been translated into equivalent weight counts that can be applied to fruit in volume-filled containers. For example, fruit from 30-count trays were assembled into 8-pound samples. The number of fruit it took to form an 8-pound sample then became the criterion to determine the size of the fruit in containers other than trays. The current handling regulation includes a table which defines nine numerical count size designations in such a manner. If a volume-filled container is marked with a numerical count size designation, it must be packed in accordance with those definitions. However, marking the container with a size designation is not now required.

This rule proposes revising these tray equivalency size designations, and requiring that volume-filled containers be marked with these established size designations. These changes were recommended by the committee by a nine to one vote.

At the present time, the labeling of volume-filled containers with respect to the size of the fruit is voluntary, and such labeling is far from uniform among handlers. Some handlers use the tray-equivalent count size designations, some use actual counts, and others do not label volume-filled containers with respect to size at all. Requiring the marking of tray equivalent sizes on volume-filled containers would serve to standardize packing practices so that confusion among buyers concerning the content of different packs would be minimized.

This rule also proposes revising the table set forth in paragraph (a)(4)(iii) of § 920.302 which defines the numerical count designations in terms of the maximum number of fruit per 8-pound sample. Over the past four seasons, the industry has conducted surveys of the average number of fruit per sample unit in each of the different size categories. The proposed revision of the size designation table is necessary to

provide more accurate tray equivalencies, reflecting current packing practices.

Kiwifruit packed in volume-filled containers must meet a size uniformity requirement similar to that established for tray-packed fruit. In the case of volume-filled containers, larger size fruit (Size 30 and larger) may not vary by more than ½-inch in diameter, and fruit smaller than a Size 30 may not vary by more than ⅜-inch in diameter.

This rule proposes revising this current size uniformity requirement by decreasing the allowable size variance for Sizes 45/46 and 49 (the two smallest sizes) from ⅜-inch to ¼-inch in diameter. Thus, the proposed revision would require that larger size fruit (Size 30 and larger) may not vary by more than ½-inch in diameter, intermediate size fruit (Sizes 33 to 42) may not vary by more than ⅜-inch in diameter, and small sized fruit (Size 45/46 and smaller) may not vary by more than ¼-inch in diameter. This revision was recommended by the committee by an eight to two vote.

Reducing the allowable size variance would make the pack requirements for volume-filled containers more comparable to those established for trays. Therefore, this action would result in more uniform kiwifuit packing practices. By reducing the allowable variance among the smaller sized fruit, it would also provide a more uniform pack. This requirement could result in slightly higher packing costs because of the extra time required for sorting. However, the committee believes the added costs would be more than offset by improving returns resulted in increases in buyer satisfaction and sales.

Paragraph (b) of § 920.302 now includes definitions of Size 49 and Size 30 for volume-filled containers. Since all size designations are set forth in paragraph (a)(4)(iii) of the regulation, and all sizes are defined in that subparagraph, all of these definitions should be referenced. It is therefore proposed that the definitions for Size 49 and Size 30 be deleted from § 920.302(b) and a general definition referencing the table in paragraph (a)(4)(iii) be added.

In supporting its recommendation for a higher quality standard and more uniform packing requirements, the committee pointed to increasing world production of kiwifruit, which has resulted in added competition in both domestic and export markets. In order to improve grower returns, the committee believes it is necessary to improve buyer perceptions of California kiwifruit relative to kiwifruit from other countries, such as New Zealand, the leading world producer. These proposed changes should help to improve buyer impressions of the product, and make the California industry more competitive in both domestic and foreign markets.

Based on the above, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 920

Marketing agreements and orders, Kiwifruit, California.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 920 be amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 920 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 920.302 is amended by revising paragraphs (a)(1), (a)(4) (ii) and (iii) and (b) to read as follows:

§ 920.302 Grade, size, pack and container regulations.

(a) * * *

(1) *Grade requirements.* Fresh shipments of kiwifruit shall grade at least U.S. No. 2: *Provided,* That not more than 8 percent shall be allowed for defects other than shape causing damage, including not more than 4 percent for defects other than shape causing serious damage, and including in this latter amount not more than 1 percent shall be allowed for fruit affected by internal breakdown or decay.

* * * * *

(4) *Pack requirements.*

* * * * *

(ii) Kiwifruit packed in containers with cell compartments, cardboard fillers or molded trays shall be of proper size for the cells, fillers or molds in which they are packed. Such fruit shall be fairly uniform in size. When packed in closed containers the size shall be indicated by marking the container with the numerical count, and the contents shall conform to the marked count. The fruit packed in such containers shall meet the following minimum weight requirements:

Size designation of fruit	Minimum net weight of fruit (lbs.)
34 or larger	7.5
35 to 37	7.25
38 to 40	7.00
41 to 43	6.75
44 and smaller	6.50

Fruit packed in an individual tray may not weigh more than four percent less than the specified minimum net weight.

(iii) Kiwifruit packed in bags, volume fill or bulk containers may not vary more than ½-inch (12.7 mm) in diameter if Size 30 or larger; not more than ⅜-inch (9.5 mm) in diameter if Size 33, 36, 39, or 42; and not more than ¼-inch in diameter (6.4 mm) if Size 45/46 or smaller. Such containers shall be marked with a numerical count size designation as shown in Column 1 of the following table, and the number of fruit per 8-pound sample shall not exceed the corresponding number shown in Column 2 of the table:

Column 1, numerical count size designation	Column 2, maximum number of fruit per 8-pound sample
25	37
27/28	30
30	32
33	35
36	40
39	45
42	50
45/46	57
49	60

* * * * *

(b) *Definitions.* (1) The terms "U.S. No. 2," fairly uniform in size," and "diameter" mean the same as defined in the United States Standards for Grades of Kiwifruit (7 CFR 51.2335 through 51.2340).

(2) Size designations mean the same as defined in the table in (a)(4)(iii) of this section.

Dated: July 18, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–17209 Filed 7–25–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-121-AD]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to Airbus Industrie Model A300 series airplanes, which would require repetitive inspections for cracks of an emergency exit torsion box beam, and repair, if necessary. This proposal is prompted by full-scale fatigue testing by the manufacturer, which revealed cracks in certain areas of the torsion box beam. This condition, if not corrected, could lead to reduced structural capability of the fuselage and subsequent decompression of the airplane.

DATES: Comments must be received no later than September 12, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–121–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM–113; telephone (206) 431–1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–121–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Airbus Industrie Model A300 series airplanes. Results of full-scale fatigue testing by the manufacturer has revealed cracks in the emergency exit torsion box beam between Frame 57A and Frame 58, and between left-hand and right-hand Stringers 14 and 15. This condition, if not corrected, could lead to reduced structural capability of the fuselage and subsequent decompression of the airplane.

Airbus Industrie has issued Service Bulletin A300–53–254, dated February 15, 1989, which describes procedures for repetitive inspections for cracks of the emergency exit torsion box beam between Frame 57A and Frame 58, and between the left-hand and right-hand Stringers 14 and 15, and repair, if necessary. The DGAC has classified this service bulletin as mandatory.

This airplane model is manufactured in France and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive inspections for cracks in the emergency exit torsion box beam between Frame 57A and Frame 58, and between the left-hand and right-hand Stringers 14 and 15, and repair, if necessary, in accordance with the service bulletin previously described.

It is estimated that 66 airplanes of U.S. registry would be affected by this AD, that it would take approximately 7 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $18,480.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 series airplanes, as listed in Airbus Industrie Service Bulletin A300–53–254, dated February 15, 1989, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural capability of the fuselage and subsequent decompression of the airplane, accomplish the following:

A. Prior to the accumulation of the number of landings indicated below or within 750 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals indicated below, perform an eddy current inspection of the emergency exit torsion box between Frame 57A and Frame 58, and between the left-hand and right-hand Stringers 14 and 15, in accordance with Airbus industrie Service Bulletin A300-53-254, dated February 15, 1989.

1. For airplanes identified as Configuration 1 in the service bulletin, the initial inspection must be performed prior to the accumulation of 35,900 landings, and repeated thereafter at intervals not to exceed 26,300 landings.

2. For airplanes identified as Configuration 2 in the service bulletin, the initial inspection must be performed prior to the accumulation 26,200 landings, and repeated thereafter at intervals not to exceed 21,500 landings.

3. For airplanes identified as Configuration 3 in the service bulletin, the initial inspection must be performed prior to the accumulation of 35,300 landings, and repeated thereafter at intervals not to exceed 23,100 landings.

4. For airplanes identified as Configuration 4 in the service bulletin, the initial inspection must be performed prior to the accumulation of 25,700 landings, and repeated thereafter at intervals not to exceed 18,800 landings.

5. For airplanes identified as Configuration 5 in the service bulletin, the initial inspection must be performed prior to the accumulation of 34,500 landings, and repeated thereafter at intervals not to exceed 18,100 landings.

6. For airplanes identified as Configuration 6 in the service bulletin, the initial inspection must be performed prior to the accumulation of 25,100 landings, and repeated thereafter at intervals not to exceed 14,700 landings.

B. If cracks found are less than or equal to 15.0 mm (0.59 inch), repair prior to further flight, in accordance with Airbus Industrie Service Bulletin A300-53-254, dated February 15, 1989. After repair, the inspections described in paragraph A., above, are no longer required.

C. If cracks found are greater than 15.0 mm (0.59 inch), repair prior to further flight, in a manner approved by the Manager, Brussels Aircraft Certification Office, FAA, Belgium. After repair, the inspections decribed in paragraph A., above, are no longer required.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, ANM-113, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on July 14, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-17471 Filed 7-25-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-115-AD]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes Equipped with Main Landing Gear (MLG) Barrel Hinge Arms, Messier Part Number C65381-4 or -6

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, which would require replacement of certain main landing gear barrel hinge arms which have a pad cadmium coating. This proposal is prompted by one report of hinge arm rupture during landing gear extension. This condition, if not corrected, could lead to collapse of one main landing gear.

DATES: Comments must be received no later than September 12, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-115-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Greg Holt, Standardization Branch, ANM-113; telephone 431-1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-115-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Airbus industrie Model A300 series airplanes. There has been one report of rupture of the main landing gear hinge arm during landing gear extension. Further investigation revealed that the lateral trunnion on the actuating cylinder side was separated from the hinge arm. There was a visible crack on the lower part of the trunnion. Laboratory investigation by the manufacturer revealed that a fatigue crack had developed before the rupture occurred. The crack started from burns produced during a pad dadmium coating process. This condition, if not corrected, could lead to collapse of the main landing gear.

Airbus Industrie has issued Service Bulletin No. A300-32-390, Revision 1, dated December 20, 1988, which

describes procedures for replacing all hinge arms which have undergone a pad cadmium coating process. The service bulletin references Messier-Hispano-Bugatti (MHB) Service Bulletin 470-32-651 for additional replacement instructions. The DGAC has classified these service bulletins as mandatory, and has issued French Airworthiness Directive 88-142-087(B) addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require replacement of all main landing gear barrel hinge arms, Messier Part Number C65381-4 or -6, which have a pad cadmium coating, with hinge arms which either have not been subjected to a pad cadmium coating or have been reconditioned in accordance with MHB Service Bulletin 470-32-652.

Airplanes that have undergone the MLG hinge arm pad cadmium plating in accordance with Airbus Industrie Service Bulletin A300-32-356 (MHB Service Bulletin 470-32-422), dated May 15, 1985, and have since undergone a main workshop overhaul and have been subjected to an electrolytic cadmium stripping and replating in a bath, or which have been reconditioned in accordance with MHB Service Bulletin 470-32-652, are not subject to the requirements of this AD.

It is estimated that 53 airplanes of U.S. registry would be affected by this AD, that it would take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for parts is $270. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $270,030.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 B4-103 and B4-203 series airplanes, equipped with main landing gear (MLG) barrel hinge arms, Messier Part Number C65381-4 or -6, certified in any category. Compliance is required within 12 months after the effective of this AD, unless previously accomplished.

To prevent collapse of one main landing gear, accomplish the following:

A. Except as provided in paragraph B., below, replace all main landing gear (MLG) hinge arms having a pad cadmium coating, with either hinge arms that do not have a pad cadmium coating or hinge arms that have been reconditioned in accordance with MHB Service Bulletin 470-32-652. Replacement is required in accordance with the procedures specified in Airbus Industrie Service Bulletin A300-32-390, Revision 1, dated December 20, 1988.

Note: Airbus Service Bulletin A300-32-390 references Messier-Hispano-Bugatti (MHB) Service Bulletin 470-32-651 for additional replacement procedures.

B. The following airplanes are not subject to the requirements of this AD:

1. Airplanes equipped with MLG hinge arms to which a pad cadmium coating has been applied in accordance with Airbus Industrie Service Bulletin A300-26-356, dated May 15, 1985 (which references MHB Service Bulletin 470-32-422), and have since undergone a main workshop overhaul and have been subjected to an electrolytic cadmium stripping and replating in a bath.

2. Airplanes equipped with MLG hinge arms that have been reconditioned in accordance with MHB Service Bulletin 470-32-652.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on July 14, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-17472 Filed 7-25-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-116-AD]

Airworthiness Directives; Airbus Industrie Models A300, A310, and A300-600 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to Airbus Industrie Models A300, A310, and A300-600 series airplanes, which would require modification of the nose landing gear (NLG) barrel This proposal is prompted by fatigue testing of the NLG barrel which revealed fatigue cracks between the attachment clevis of the telescopic strut and the upper bearing of the shock absorber. This condition, if not corrected, could lead to collapse of the NLG.

DATE: Comments must be received no later than September 12, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-118-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-118-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on Airbus Industrie Models A300, A310, and A300-600 series airplanes. Fatigue testing by the manufacturer revealed the development of fatigue cracks in the NLG barrel, between the attachment clevis of the telescopic strut and the upper bearing of the shock absorber. This condition, if not corrected, could lead to collapse of the nose landing gear.

Airbus Industrie has issued the following service bulletins which describes procedures to modify the nose landing gear barrel:

Airplane model	Service bulletins
A300	A300-32-385, Rev. 1, dated October 15, 1988.
A310	A310-32-2039, Rev. 1, dated October 15, 1988.
A300-600	A300-32-6022, Rev. 1, dated October 15, 1988.

The above referenced service bulletins reference Messier-Hispano-Bugatti (MHB) Service Bulletin No. 470-32-577, Revision 1. The French DGAC has classified these service bulletins as mandatory and has issued French Airworthiness Directive 88-185-090(B) addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require modification of the NLG barrel in accordance with the previously described service bulletins.

It is estimated that 90 airplanes of U.S. registry would be affected by this AD, that it would take approximately 62 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for parts is $77,000. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7,153,200.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to all Models A300, A310, and A300-600 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent collapse of the nose landing gear (NLG), accomplish the following:

A. Prior to the accumulation of 26,000 landings or within 30 days after the effective date of this AD, whichever occurs later, modify the NLG barrel, in accordance with one of the following service bulletins, as applicable:

Airplane model	Service bulletins
A300	A300-25-385, Rev. 1, dated October 15, 1988.
A310	A310-32-2039, Rev. 1, dated October 15, 1988.
A300-600	A300-32-6022, Rev. 1, dated October 15, 1988.

Note: The above-referenced service bulletins reference Messier-Hispano-Bugatti Service Bulletin 470-32-577 for additional modification procedures.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Ways South, Seattle, Washington.

Issued in Seattle, Washington, on July 14, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-17469 Filed 7-25-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-CE-11-AD]

Airworthiness Directives; Beech 90, 200 and 300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to Beech 90, 200, and 300 Series airplanes, which would require an inspection to determine if Scotch foam was installed in either aileron at manufacture and, if present, its removal. This action is necessary to preclude possible aileron flutter due to the foam absorbing water that in-turn could create an unstable aileron balance condition.

DATES: Comments must be received on or before September 11, 1989.

ADDRESSES: Beech Service Bulletin No. 2256, dated November 1988, applicable to this AD may be obtained from Beech Aircraft Corporation, Commercial Services, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89-CE-11-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Don Campbell, Aerospace Engineer, Airframe Branch, ACE-120W, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89-CE-11-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion: Beech Aircraft Corporation manufactured 365 ailerons in the 1985-1988 time frame in which Scotch Damp Y-370 foam may have been installed to prevent "oil-canning" of the aileron skins. These ailerons were installed on 139 models C90A, B200 and 300 airplanes, and the remaining ailerons were sold as spares/replacements for these same models. It has been determined that the Scotch foam could absorb moisture to an extent that the aileron balance would be driven out of acceptable limits. As a result, Beech issued Service Bulletin No. 2256 in November 1988, which calls for removal of Scotch foam from affected models. The Service Bulletin also advises that any ailerons purchased from Beech for these models between January 1, 1985, and March 11, 1988, may have Scotch foam installed.

By letter dated March 14, 1989, to the FAA, Beech supplied analytical data which shows the effects of aileron static balance on flutter speed. The data shows that, if an aileron is balanced to its aft limit, then a small amount of weight aft of the hinge line can cause an unsafe condition. The Scotch foam, which is located aft of the hinge line, can provide this weight change by absorbing water. The flutter analysis data indicates 2.0 ounces of water distributed aft of the hinge line could deplete the available flutter margin.

This is not free water, but water trapped in the Scotch foam. Although no instances of aileron flutter on affected airplanes have been reported, the potential for such a condition has been predicted analytically. Therefore, an AD is proposed applicable to Beech 90, 200 and 300 Series airplanes which would require an inspection to determine if Scotch foam was installed in either aileron at manufacture and, if present, its removal in accordance with Beech Service Bulletin No. 2256, dated November 1988.

The FAA has determined there are approximately 183 airplanes affected by the proposed AD. The cost of removing the Scotch foam per the proposed Ad is estimated to be $360 per airplane which will be borne by the manufacturer if accomplished before November 1989. The total cost is estimated to be $66,000 to the private sector. The total cost of complying with the proposed AD is less than $100 million, the threshold for a significant rule. The cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant impact on any small entities operating these airplanes.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. By adding the following new AD:

Beech: Applies to 90, 200 and 300 Series airplanes (all serial numbers) certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent possible aileron flutter, accomplish the following:

(a) For Models C90A (S/N LJ-1132 through LJ-1167), B200 (S/N BB-1246 through BB-1285 except BB-1272), 300 (S/N FA-91 through FA-140 except FA-120 and FA-128), A200CT (S/N BP-59 through BP-63), and B200C (S/N BP-64 through BP-66 and BV-1 through BV-8) inspect each aileron using tap procedure in Beech Service Bulletin No. 2256, dated November 1988. If this inspection shows the presence of foam, prior to further flight, remove the foam in accordance with the procedures in the above Service Bulletin.

(b) For all other affected airplanes, check the airplane records to determine if any aileron has been replaced for any reason subsequent to January 1, 1985. If so, inspect the aileron using tap procedure in Beech Service Bulletin No. 2256. If this inspection shows the presence of foam, prior to further flight, remove the foam in accordance with the procedures in the above Service Bulletin.

Note: If the applicability of paragraph (b) is uncertain, perform a "tap test" on each area between the rivet rows along the aft 8.0 inches of the aileron skins. Use care in tapping to reduce the possibility of chipping the paint.

(1) A tinny, hollow sound indicates an acceptable area.

(2) A solid, heavy sound indicates that Scotch foam is present and must be removed.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946-4400.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Beech Aircraft Corporation, Commercial Service, Department 52, Wichita, Kansas 67201-0085; or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on July 12, 1989.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-17467 Filed 7-25-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-105-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which would require visual and eddy current inspections of the wing landing gear aft trunnion for cracks and corrosion, and repair or replacement, if necessary. This proposal is prompted by reports of several incidents of landing gear collapse during landing due to corrosion and fatigue cracks. This condition, if not corrected, could result in the inability of the pilot to safely control the airplane during landing.

DATES: Comments must be received no later than September 12, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-105-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM-120S; telephone (206) 431-1919. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above.

All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-105-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Several incidents of landing gear collapse during landing due to corrosion and fatigue cracks have been reported by the manufacturer and operators of Model 747 airplanes. One operator reported three cracks in the area of the aft trunnion bearing journal located at the outboard hole of the two trunnion attach bolt holes. Indications are that general corrosion pitting led to the initiation of these cracks. This condition, if not corrected, could result in the inability of the pilot to safely control the airplane during landing.

The FAA has reviewed and approved Boeing Service Bulletin 747-32-2190, Revision 3, dated June 17, 1983, which describes procedures for removal and rework, or replacement of the wing landing gear aft trunnion outer sleeve, inner race, and bearing adjusting ring.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require visual and eddy current inspection of the wing landing gear aft trunnion for cracks and corrosion, and rework or replacement, if necessary, in accordance with the service bulletin previously described.

There are approximately 583 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 163 airplanes of U.S. registry would be affected by this AD, that it would take approximately 45 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $293,400.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, listed in Boeing Service Bulletin 747-32-2190, Revision 3, dated June 17, 1983, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent landing gear collapse during landing due to corrosion and fatigue cracks, accomplish the following:

A. Inspect as follows:

1. Within the next 60 days after the effective date of this AD, perform a visual and eddy current inspection of the wing landing gear at the trunnion for cracks and corrosion.

a. *Visual inspection*, as defined herein, includes inspecting the trunnion outer diameter (OD) just forward of the aft sleeve and the inner diameter (ID) in a one-inch radius around the cross bolts. The inspected areas must be thoroughly cleaned, and sealant or corrosion preventive compound must be removed from the ID.

b. *Eddy current inspection*, as defined herein, refers to an eddy current inspection technique approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region. This inspection procedure involves removing the cross bolts one at a time and inspecting the landing gear trunnion through the bushing ID surface with eddy current.

2. If cracks or corrosion are found, prior to further flight, remove and rework or replace the wing landing gear aft trunnion outer sleeve, inner race, and bearing adjusting ring, in accordance with Boeing Service Bulletin 747-32-2190, Revision 3, dated June 17, 1983.

3. If no cracks or corrosion are found, repeat the visual inspection described in paragraph A.1.a., above, at intervals not to exceed 6 months. Repeat the eddy current inspection described in paragraph A.1.b., above, at intervals not to exceed 18 months (in conjunction with the visual inspection).

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on July 14, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-17470 Filed 7-25-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-111-AD]

Airworthiness Directives; CASA Model C-212 Series Airplanes, Equipped with a Passenger Entry Step Installed Under Supplemental Type Certificate (STC) SA906GL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain CASA Model C-212 series airplanes, which would require removal of the step, handrails, door latch modifications, and associated hardware installed under STC SA906GL. This proposal is prompted by a report that the step installation may obstruct the visibility of and access to the cabin entry door handle. This condition, if not corrected, could result in impairment of passenger egress during an emergency evacuation.

DATES: Comments must be received no later than September 12, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-111-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Chicago Aircraft Certification Office.

2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth W. Payauys, Airframe Branch, ACE-120C; telephone (312) 694-7426. Mailing address: FAA, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-111-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Following an accident involving a CASA Model C-212 airplane, the National Transportation Safety Board (NTSB) noted following their investigation that the passenger steps on the airplane, installed under STC SA906GL, could obstruct the visibility of and access to the interior door latch for the passenger entry door. This condition, if not corrected, could result in the impairment of passenger egress during an emergency evacuation.

This airplane model is manufactured in Spain and Indonesia and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require removal of the step, handrails, door latch modifications, and associated hardware installed under STC SA906GL, and restore the door handle to the original CASA configuration.

It is estimated that 6 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be less than $1,920.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Cassa: Applies to Model C-212 series airplanes equipped with a passenger entry step installed under Supplemental Type Certificate (STC) SA906GL, certificated in any category. Compliance is required within 60 days after the effective date of this AD, unless previously accomplished.

To prevent delay in opening the passenger door in the event of an emergency evacuation, accomplish the following:

A. Remove the step, handrails, door latch modifications, and associated hardware installed in accordance with Fischer Brothers Aviation, Inc., Installation Instructions for FBD-206, Revision F, dated June 5, 1985.

B. Restore the door handle to the original CASA configuration.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Chicago Aircraft Certification Office, ACE-115C, FAA, Central Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Chicago Aircraft Certification Office, ACE-115C.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

The applicable service information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Chicago Aircraft Certification Office, 2300 East Devon Avenue, Des Plaines, Illinois.

Issued in Seattle, Washington, on July 14, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-17473 Filed 7-25-89; 8:45 am]

BILLING CODE 4910-13-M

Office of the Secretary

14 CFR Parts 380 and 399

[OST Docket No. 46410; Notice No. 89-5]

RIN 2105-AB50

Price Advertising

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department is proposing to amend its rule and policy statement with respect to air transportation price advertising under 14 CFR Parts 380 and 399 to comport with its current enforcement policy. The proposal would allow advertisers to list government-imposed and government-approved charges that are levied on a per passenger basis separately in price advertisements. It also would codify current practice allowing the advertisement of one-way fares that are available only on a round-trip basis, provided the ads are clear with regard to the round-trip conditions.

DATES: Comments are due on or before August 25, 1989.

ADDRESSES: Comments must be filed in Room 4107, Docket 46410, U.S. Department of Transportation, 400 7th St., SW., Washington, DC 20590. Late-filed comments will be considered to the extent possible.

FOR FURTHER INFORMATION CONTACT: Samuel E. Whitehorn, Office of the General Counsel, C-50, (202) 366-9307, Department of Transportation, 400 Seventh Street, SW., Washington, DC, 20590.

SUPPLEMENTARY INFORMATION: The Department of Transportation's (DOT or Department) policy on advertising of air transportation, 14 CFR 399.84, states that all price advertisements of flights, tours, or components of tours must state the entire price of the advertised flight, tour, or tour component or the ads will be considered to be unfair and deceptive and thus in violation of Section 411 of the Federal Aviation Act of 1958 (49 U.S.C 1381) ("Act"). Similarly, our public charter rules, 14 CFR 380.30(e), require that any price listed in charter solicitation materials from direct or indirect air carriers or their agents state the entire price of the charter, tour, or any tour component. The policy and the rule are directed at preventing consumer harm that could result from unfair or deceptive trade practices.

On December 24, 1985 (Order 85-12-68), the Department issued an exemption from the price advertising rule and policy statement to permit direct and indirect air carriers for scheduled and charter service and tour operators to state the United States international departure tax separately from other charges in advertisements and promotional materials, provided that the ads clearly state both the amount of the tax and that it must be paid by the passenger. In two other orders, Orders 88-3-25 and 88-8-2, the Department sought to expand the 1985 exemption to cover similar charges, i.e., immigration fees and security surcharges. These two orders were recently struck down by the U.S. Court of Appeals on procedural grounds. *Alaska* v. *Skinner* (868 F. 2d 441 (D.C. Cir. (1989)))

Proposed Change to Rule: Parts 380 and 399

The Department proposes to amend both the charter and scheduled-service price advertising provisions. Consistent with the Department's current enforcement policy, the proposal would permit a separate listing of government-imposed or -approved charges where the charges are levied on individual passengers and, in the case of government-imposed charges, the advertiser collects them to be remitted to the levying government. For the reasons stated in the orders cited above [1] the Department does not consider such ads to be unfair or deceptive provided they are clear and the total amount to be paid by the consumer can be calculated easily by adding the separately-stated fixed amounts. An ordinary person reading such ads would be aware of the total amount to be paid for the transportation and, in addition, would be provided with valuable information on associated government-imposed or -approved surcharges. The Department's experience indicates that these kinds of ads do not cause passenger harm.

The change to the codified provisions would not cover all taxes, charges, fees, and surcharges levied by Federal, state, local or foreign governments, but only those levied on a per passenger basis. Separate listings of passenger surcharges that are not government approved but are set by a carrier in response to a governmental charge that was not levied on a per passenger basis would be considered deceptive. For example, if a local government imposed a per-gallon tax on aviation fuel purchased at its airport, a carrier would be free to increase ticket prices for flights departing from or arriving at that airport. However, such additional fees must be included in the total advertised air fare—not listed separately. If listed separately on a per passenger basis, such surcharge would likely provide inaccurate information on the per passenger cost to the airline of the government fee.

The proposal would continue to allow the separate listing of the $3 U.S. international departure tax. (See Order 85-12-68). Under the proposal, and consistent with existing practice which the Department has not found to have caused any confusion in the past, advertisers also would be able to continue to advertise one-way fares that require round-trip purchases, provided that the advertisement indicates clearly that these fares are available only in conjunction with a round-trip purchase.

Advertisers, under the new rule, would continue to be able to list components of a tour package separately, as long as all of the costs are stated clearly, and also list separately any government-approved or -imposed charges levied on a per passenger basis. The proposed change would not effect the current Internal Revenue Code requirements regarding the eight percent federal tax on all tickets for domestic transportation (see 26 U.S.C 7275). It should also be noted that the Anti-Head tax provision of the Act (49 U.S.C. 1513) precludes certain state and local fees to be imposed on a per-passenger basis.

Under section 411, the Department is responsible for protecting aviation consumers from unfair and deceptive trade practices. These changes are intended to implement that authority fully and clearly and without placing any restrictions on the industry that are not necessary and that would tend to limit airline price competition. The specific charges that would be permitted to be listed separately either are limited, or apply only in certain markets or for certain flights, thus making if difficult or impossible to publich advertisements with one way and round-trip fares to multiple destinations and include the charges in single advertised rates. Commenters should address what effects the proposed changes will have upon consumers and upon advertisers. Would the changes be sufficiently clear so that advertisers will be able to comply? Is the proposed language sifficiently broad so that consumers will be able to discern what is being offered in a given ad and at what price?

On April 21, during the drafting of this document, the Air Transport Association of America (ATA) filed a petition asking the Department to initiate rulemaking. This NPRM is consistent with that request, and thus the request is granted.

Federalism

Under Executive Order 12612, the Department in promulgating regulations is required to review the implications of its actions on the states. In this case, the responsibility for regulating and setting advertising standards for the aviation industry has long been a function and responsibility of the Federal government, as provided by the Federal Aviation Act. Thus, Federalism ramifications will be minimal, if any. In addition, this rulemaking will codify longstanding Federal practices, recently overturned by a court on purely procedural grounds.

In particular areas the states' ability to enforce advertising rules and policies has been preempted by the DOT rules. For example, states would be preempted from regulating airline advertising of

[1] The order were not published in the **Federal Register**.

fares and schedules since DOT has specific rules covering deceptive practices in these areas. To allow the 50 states to regulate price advertising and institute related enforcement proceedings would subject the carriers to inconsistent standards and thus seriously interfere with interstate commerce. The Airline Deregulation Act of 1978 enabled carriers to offer their services on a competitive basis, in terms of services and prices. Prosecutorial action and court decisions in different jurisdictions could affect a carrier's ability to compete. For example, if a state attorney general in state A forced an air carrier to include all taxes in its quoted fare (as opposed to the proposal which would allow the carrier to separate the per capita taxes), the carrier could be placed at an unfair competitive position vis-a-vis other carriers not before the state enforcement authority or one who advertised in an out-of-state publication, or vis-a-vis a foreign carrier. In addition, section 105 of the Federal Aviation Act specifically prohibits state regulation related to airline rates, routes and services and state regulation of advertising that can significantly affect airline rates, routes and services could clearly violate that provision. Thus, the Federal aviation Act and the commerce clause dictate that there be one industry-wide price advertisement standard.

In reviewing whether it would be feasible for each of the states to regulate price advertising as they saw fit, there are a number of possible considerations. For example, the states could help to curb advertising abuses. On the other hand, without a uniform policy, carriers would find it virtually impossible to put together nation-wide advertising programs that accurately portray the price of their services. Price competition would suffer, thus depriving consumers of lower fares. Comments are requested on what, if any, are the Federalism implications of this rulemaking.

Paperwork

The Paperwork Reduction Act (Pub. L. No. 96-511) establishes policies and procedures for controlling paperwork burdens imposed by Federal agencies on the public. If a rule does in fact impose such a burden, approval from the Office of Management and Budget is necessary before the burden can be imposed.

This proposal does not impose any paperwork burdens on advertisers. This rule merely codifies existing practices and enforcement policies. In addition, even if the NPRM were not merely codifying existing practices and policies, there would be no burdens imposed on the industry since the rule would not require that an advertiser state surcharges separately; it merely permits that form of advertisement.

Regulatory Impact Analysis and Review

Executive Order 12291 on "Federal Regulation" and the DOT Policies and Procedures require the preparation of a regulatory impact analysis for every "major" rule. A major rule is defined as a regulation that is likely to result in: An annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individuals, industries, Federal, State or local governments, or geographic regions; or a significant adverse effect on competition, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises. Under the above criteria, this rule is not considered "major". However, due to public interest, it is considered to be "significant" under the DOT Policies and Procedures. The economic impact of this rulemaking will be so minimal that an economic evaluation is not warranted. Those subject to the rule and policy will be able to continue to advertise their services, consistent with past industry practices, so there should be no additional costs to consumers or advertisers. Moreover, uniform rules could make advertising more efficient.

Regulatory Flexibility Act

The Regulatory Flexibility Act, Pub. L. No. 96-354, is designed to ensure that agencies consider flexible approaches to the regulation of small businesses and other small entities. It requires regulatory flexibility analyses for rules that will have a significant economic impact on a substantial number of small entities.

While this proposal may affect a substantial number of small entities, the proposed changes will not have a significant impact on them. Therefore, I certify that this rulemaking will not have a significant impact on a substantial number of small businesses or entities.

List of Subjects

14 CFR Part 380

Public charters, Surety bonds, Advertising, Antitrust, Charter flights, Consumer protection, Education study program, Travel agents, Tour operators.

14 CFR Part 399

Administrative practice and procedures, Advertising, Air carriers, Antitrust, Agreements, Archives and records, Consumer protection, Foreign air carriers, Reporting and recordkeeping requirements, Travel agents.

In consideration of the foregoing, Parts 380 and 399 of Title 14, Code of Federal Regulations, are amended to read as follows:

PART 380—[AMENDED]

1. The authority citation for 14 CFR Part 380 is revised to read as follows:

Authority: Secs. 101(3), 102, 204, 401, 402, 403, 404, 407, 411, 416, and 1102 of the Federal Aviation Act of 1958, as amended; 49 U.S.C. 1301, 1302, 1324, 1371, 1372, 1373, 1374, 1377, 1381, 1386, and 1502).

2. Section 380.30 is amended by revising paragraph (e) as follows:

§ 380.30 Solicitation materials.

* * * * *

(e) In any solicitation material from a direct air carrier, indirect air carrier, or an agent of either, for a charter, charter tour (i.e., a combination of air transportation and ground accommodations), or a charter tour component (e.g., a hotel stay), any price stated for such charter, tour, or component shall be the entire price to be paid by the participants to the air carrier, or agent, for such charter, tour, or component, except:

(1) One-way fares that are only available as part of a round-trip purchase may be advertised separately, provided that the advertisement indicate clearly that a round-trip purchase is required.

(2) U.S. and foreign departure taxes, security charges, customs fees, immigration fees, tourism surcharges, and any other surcharges that may be imposed by the Federal or a state, local, or foreign government may be stated separately in advertisements and promotional materials, provided they are levied on a per-passenger basis by the governmental entity and are remitted directly to the levying government, subject to the conditions in paragraph (e) (4) of this section.

(3) Any other carrier fee or surcharge that may be approved by the U.S. government for separate imposition on individual passengers may be stated separately in advertisements and promotional materials, subject to the conditions in paragraph (e) (4) of this section.

(4) All advertisements and promotional materials in which the charges described in paragraphs (e)(2) and (e) (3) of this section are stated separately must clearly and conspicuously state elsewhere in the advertisement the amount of such charges, the services they cover, and the fact that they must be paid by the consumer in addition to the advertised price.

PART 399—[AMENDED]

3. The authority citation for Part 399 continues to read as follows:

Authority: 49 U.S.C. 1301, 1302, 1305, 1324, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1381, 1382, 1384, 1386, 1461, 1481, 1482, 1502 and 1504, unless otherwise noted.

4. Section 399.84 is revised to read as follows:

§ 399.84 Price advertising.

The Department considers any advertising or solicitation by a direct air carrier, indirect air carrier, or an agent of either, for passenger air transportation and ground accommodations), or a tour component (e.g., a hotel stay) that states a price for such air transportation, tour, or tour component to be an unfair or deceptive prictice, unelss the price stated is the entire price to be paid by the customer to the air carrier, or agent, for such air transportation, tour, or tour component, except:

(a) One-way fares that are available as part of a round-trip purchase may be advertised separately, provided that the advertisement indicate clearly that round-trip purchase is required.

(b) U.S. and foreign departure taxes, security charges, customs fees, immigration fees, tourism surcharges, and any other surcharges that may be imposed by the federal or a state, local, or foreign government may be stated separately in advertisements and promotional materials, provided they are levied on a per-passenger basis by the governmental entity and are remitted directly to the levying government, subject to the conditions in paragraph (d) of this section.

(c) Any other carrier fee or surcharge that may be approved by the U.S. government for separate imposition on individual passengers may be stated separately in advertisements and promotional materials, subject to the conditions in paragraph (d) of this section.

(d) All advertisements and promotional materials in which the charges described in paragraphs (c) and (d) of this section are stated separately must clearly and conspicuously state elsewhere in the advertisement the amount of such charges, the services they cover, and the fact that they must be paid by the consumer in addition to the advertised price.

Issued on: July 18, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-17201 Filed 7-25-89; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 89N-0106]

Shellac and Shellac Wax; Proposed Affirmation of GRAS Status with Specific Limitations as Direct Human Food Ingredients

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to affirm that shellac and shellac wax are generally recognized as safe (GRAS) with specific limitations, for use as direct human food ingredients. The safety of these ingredients has been evaluated under a comprehensive safety review conducted by the agency.

DATES: Comments by September 25, 1989.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Copies of the scientific literature review of shellac and shellac wax and the report of the Select Committee on GRAS Substances are available for review at the Dockets Management Branch and may be purchased from the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161.

FOR FURTHER INFORMATION CONTACT: John W. Gordon, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION:

I. Background

Shellac and shellac wax are resinous materials derived from the hardened secretion of the lac insect, species *Lucifer (Tachardia) lacca Kerr* (family *Coccidae*) (Ref. 1), also known as *Kerria lacca* (Kerr) (Ref. 2). India and Thailand are the primary sources of shellac (Ref. 3). Food-grade shellac is refined from the crude lac secretion by a process that may include sieving, water washing, multiple filtration, solvent refining, dissolution in mild soda solutions, bleaching with sodium hypochlorite solution, and decolorizing with activated carbon (Ref. 2).

The items of commerce are food-grade bleached shellac, bleached shellac (wax-free), orange shellac, orange shellac (wax-free), and bleached shellac wax (Refs. 2 and 11). The exact nomenclature applied to the final product generally reflects the extent of refining (Ref. 2).

Orange shellac is unbleached and is produced either by a process of filtration in the molten state or by a hot solvent process. It may retain most of its wax or be dewaxed.

Bleached shellac is obtained by dissolving the lac in aqueous sodium carbonate followed by bleaching with sodium hypochlorite. The bleached lac is either precipitated with a diluted sulfuric acid solution or passed through a filter press to remove the wax, and then precipitated with a dilute sulfuric acid solution. The precipitate forms an off-white amorphous shellac resin upon drying. Removal of the wax during processing results in bleached shellac (wax-free). Shellac wax, as noted above, is a bleached byproduct of the processing of bleached shellac (Ref. 4).

II. Regulatory History

The agency has issued numerous opinion letters stating that shellac is GRAS for use in candy coatings, resinous glaze coatings for food, and coatings on apples, avocados, and tomatoes and as a coating for metal foil that contacts food. One letter (Ref. 14) sanctioning the use of shellac in coating candy predates the 1958 Food Additives Amendment to the Federal Food, Drug, and Cosmetic Act (the act).

Shellac is regulated as a food additive for use as a component of adhesives used in food packaging under 21 CFR 175.105; as a component of resinous and polymeric coatings for food-contact surfaces under 21 CFR 175.300; as a component of paper and paperboard used in contact with aqueous and fatty foods under 21 CFR 175.170; and as a diluent in color additive mixtures for marking food supplements in tablet form, gum, and confectionery under 21 CFR 73.1(b)(1)(i).

III. Consumers' Exposure to Shellac and Shellac Wax in Food

In 1971 and 1975, the National Academy of Sciences/National Research Council (NAS/NRC) reported to FDA on its survey of a cross-section of food manufacturers on the use of GRAS ingredients. The surveys contained the entry "wax, shellac" but

no separate listing for shellac. In 1971, 14 companies reported the use of 209,000 pounds of material under the category "wax, shellac," and in 1975, 9 companies reported the use of 'wax, shellac" to be 227,000 pounds. The Select Committee on GRAS Substances (the Select Committee) noted in its report, however, that some evidence indcated that these poundage data reflect use of both shellac and shellac wax.

Other use data (Refs. 2 and 7) indicate that the amount of shellac wax used annually as a food ingredient is about 2,000 or 3,000 pounds, and that nearly all of the shellac wax is used as a polishing agency for chewing gum. Based on these data, the Select Committee estimated the per capita daily consumption of shellac wax to be 0.075 milligram (mg) (Ref. 2).

A representative of the shellac industry reported to the Select Committee that the approximate annual poundage of shellac used in the food industry is on the order of 200,000 pounds. About 80 percent of this quantity is used for coating citrus fruit and avocados and would not be ingested, leaving about 20 percent or about 40,000 pounds for use as a direct food ingredient, primarily in confections. From this report and the survey data, the Select Committee estimated the per capita daily intake of shellac to be 0.25 mg (Ref. 2).

The agency has estimated the average per capita daily disappearance of shellac based on updated poundage information from a shellac trade assocation (Ref. 8). The association advised FDA that between November 1, 1983, and October 31, 1984, 397,823 pounds of shellac were used directly in food. Based on this figure, the agency estimated the per capital daily disappearance for shellac to be 2.1 mg. The agency's estimate of the per capita disappearance (2.1 mg) of shellac is significantly higher than the combined per capita estimate for shellac and shellac wax that was reported in the Select Committee's report (0.32 mg).

The agency also estimated consumer exposure based on dietary survey and usage information (Refs. 5, 6, 7, and 13). On this basis, its exposure estimate for an average consumer of shellac-coated candies, cakes, fresh fruits, fresh vegetables, cones, and fruit cakes is 28 mg per person per day (mg/person/day) and for a 90th percentile consumer, 55 mg/person/day. However, the agency recognizes that the latter intake estimates are very conservative given the Select Committee's finding that 80 percent of the shellac used to coat fruits and vegetables is not ingested. If a correction is made for what is discarded on the peels of fruits and vegetables, then the estimated daily intake (EDI) of shellac from its current uses drops to about 10 mg/person/day. The agency has used this intake estimate, as well as the per capita disappearance estimate of shellac, in its evaluation of the safety of shellac and shellac wax as food ingredients.

IV. Opinion of the Select Committee on Shellac and Shellac Wax

Shellac and shellac wax were the subjects of a search of the scientific literature from 1920 to the present. The criteria used in the search were chosen to discover any articles that considered (1) chemical toxicity, (2) occupational hazards, (3) metabolism, (4) reaction products, (5) degradation products, (6) carcinogenicity, teratogenicity, or mutagenicity, (7) dose-response, (8) reproducitive effects, (9) histology, (10) embryology, (11) behavioral effects, (12) detection, and (13) processing. A total of 47 abstracts on shellac and shellac wax were reviewed, and 21 particularly pertinent reports from the literature survey were summarized in a scientific literature review.

Information from the scientific literature review and other available studies has been summarized in a report to FDA by the Select Committee, which is composed of qualified scientists chosen by the Life Sciences Research Office of the Federation of American Societies for Experimental Biology (FASEB). The Select Committee issued its final report on shellac and shellac wax in 1981. In the Select Committee's opinion:

Shellac is a polyester resin of animal origin. Shellac wax is a refined, bleached by-product of the processing of regular shellac. Shellac is currently used as a coating for certain fruits and vegetables and as a furface-finishing agent in a manner which might contribute to a per capita daily intake of about 0.25 mg. Shellac wax utilized as a polishing agent for chewing gum and as a stabilizer-thickening agent in cakes might provide a per capita daily intake of 75 μg.

The Select Committee acknowledges the long history of use of shellac in food coatings as well as the absence of reports attributing any adverse effects to such food applications. Nevertheless, there are few biological data regarding the effects of shellac and shellac wax on animal or man following oral ingestion. One preliminary report of a 90-day rat feeding study, while presenting no cause for concern, was technically incomplete and could not be judged as evidence of safety. Food-grade standards should be developed for shellac wax (Ref. 2, p. 10).

The Select Committee therefore concluded that:

In view of the deficiency of relevant biological studies, the Select Committee has insufficient data upon which to base an evaluation of shellac and shellac wax when they are used as food ingredients.

Before the issuance of the Select Committee's final report, the agency published a notice in the **Federal Register** of April 25,1980 (45 FR 27992), announcing the Select Committee's tentative finding of insufficient data upon which to evaluate the safety of shellac and shellac wax and provided an opportunity for a public hearing. A public hearing was held but produced no new information. Accordingly, the Select Committee's final report affirmed its tentative conclusion.

V. FDA's Evaluation

FDA completed its review of all available information on shellac and shellac wax and agreed with the conclusion of the Select Committee. As a result of this conclusion, FDA toxicologists considered what additional information would be needed to assist the agency in determining the GRAS status of shellac and shellac wax, given the long history of use of shellac and shellac wax on food. FDA advised a representative of the American Bleached Shellac Manufacturers Association, Inc. (ABSMA), who had participated in the public hearing on the safety of shellac and shellac wax, on the minimum toxicology studies that would be needed to affirm the GRAS status of the use of these ingredients. Specifically, the agency advised that a 90-day feeding study of shellac in rats with in utero exposure and a mutagenicity test of shellac was in *Salmonella typhimurium* were needed to assure that shellac use in foods is safe. Subsequently, FDA dropped its request for a mutagenicity test because a new test using more sensitive organisms was submitted by ABSMA, and this test demonstrated that shellac was not mutagenic.

ABSMA submitted to FDA an unpublished report of the 90-day feeding study in rats (Ref. 9). In this study doses of 1,000, 3,000, and 10,000 parts per million (ppm) of shellac were administrated in the diets of Sprague-Dawley rats. The study showed an increase in some pancreatic leasions, described as mild, in male rats fed the high dose of 10,000 ppm shellac. The agency has determined that the no-effect level for shellac including the was is 3,000 ppm in the dies or 9 mg/person/day (Ref. 10).

As noted above, the Select Committee acknowledged tha. shellac and shellac wax have a history of use in food before 1958 with no reports of adverse effects and are of natural biological origin. The agency searched the Adverse Reaction Monitoring System (ARMS) described in Ref. 16 to determine if it had received any reports of adverse effects from the Use of shellac and shellac wax. There were no such reports. The agency also conducted a computer search of the scientific literature from 1981 through 1989 for any adverse reaction reports. There were no reports of adverse reactions in the literature on shellac and shellac was (Ref. 17).

Consequently, shellac and shellac wax have had a long history of common use in food for certain technical effects without any apparent associated safety problems. Under 21 CFR 170.30(b), this history of use provides an appropriate basis for a determination that there is general recognition among qualified experts that shellac and shellac wax are safe for their current uses. Section 170.30(b) also provides that this determination can be made without the quantity or quality of scientific data required for approval of a food additive regulation.

Nonetheless, FDA has looked to the 90-day rat study for corroborative evidence of the safety of shellac and shellac wax. Based on this study, the agency has estimated that the acceptable daily intake (ADI) for shellac and shellac wax is 9 mg/person/day, which is comparable to the EDI (10 mg/person/day). Because the EDI for shellac and shellac wax does not significantly exceed the ADI, agency scientists are satisfied that current food uses of these substances are safe.

As provided for under 21 CFR 170.30(b), FDA has tentatively determined that the rat study, coupled with the history of safe use of these ingredients since before 1958, provides an adequate basis upon which to affirm these ingredients as GRAS under their current conditions of use. FDA is therefore proposing to affirm shellac and shellac wax as GRAS with specific limitations to current conditions of use. The limitations will ensure that the ADI and EDI will remain in balance. Any significant new uses of shellac and shellac wax will require that additional studies be performed to establish the safety of those uses (Ref. 12).

VI. The Listing Regulation

A. Nomenclature

ABSMA informed FDA that the term "shellac" is used by the industry to refer to bleached shellac, bleached shellac (wax-free), orange shellac, or orange shellac (wax-free), and that shellac wax is a separate item of commerce (Refs. 2 and 11). Based on this information, and on the fact that the Select Committee did not differentiate between the forms of shellac, either on the basis of their food uses or their safety, FDA has tentatively decided to cite the generic term "shellac" in the proposed regulation to include bleached shellac, bleached shellac (wax-free), orange shellac, and orange shellac (wax-free). The agency is proposing to include shellac wax under a separate regulation.

B. Food Uses

The agency identified the uses of shellac and shellac wax that are listed in the proposed regulations based on information from the NAS/NRC surveys (Refs. 5, 6, and 7), information from the shellac industry, opinion letters issued by the agency (Ref. 13), and information contained in the Select Committee's report on shellac and shellac wax (Ref. 2).

The agency notes that shellac was reported in the 1975 NAS/NRC survey for use on shelled nut products. However, it was not reported for that use in the subsequent survey or in the Select Committee's report (SCOGS 19-II). Because there were no subsequent reports of this use in the updated surveys, the agency has not included the use of shellac on nut products in this proposal. Persons interested in the use of shellac on nut products may have that use considered by submitting to the Dockets Management Branch (address above), as a comment on this proposal, appropriate published or unpublished safety data and use and exposure information.

In addition, the agency received a request for an advisory opinion on the use of shellac as a component of an ink for marking shell eggs. The agency has estimated the increase in exposure that would result from this use and has concluded that the exposure would be too small to constitute a significant toxicological concern (Ref. 15). (Shellac, as noted above, is currently approved for use in inks for marking food supplements in tablet form, gum, and confectionery in 21 CFR 73.1(b)(1)(i).)

The uses of shellac provided for in the proposed regulation are as a surface finishing agent in cakes, cones, and fruit cakes; confections and frostings; fresh vegetables; fresh fruits; and soft candy and as a color and color adjunct in inks for marking shell eggs. The uses of shellac wax provided for in the proposed regulation are as a surface finishing agent in chewing gum and as a stabilizer or thickener in cakes.

The proposed regulation sets forth the conditions of use (technical effects and food categories) for shellac and shellac wax that FDA evaluated and found to be safe. In addition, the indirect uses of shellac and shellac wax are authorized by § 184.1(a). FDA is not proposing to include limitations on the levels of use of shellac and shellac wax in the listed foods or food categories. The agency has tentatively concluded that the use of shellac and shellac wax in the listed foods or food categories is self-limiting because at higher levels, these ingredients no longer perform their intended technical effects, and that these self-limiting levels of use of shellac and shellac wax in the types of food in, and under the conditions for, which they are currently used will not significantly increase the total consumption of shellac and shellac wax.

C. Specifications

The Select Committee noted that the "Food Chemicals Codex" lists food-grade specifications for "shellac, bleached" and "shellac, bleached, wax-free" but not for shellac wax. It recommended the development of food-grade specifications for shellax wax. The agency also notes that there is a need to develop specifications for orange shellac and orange shellac (wax-free).

Therefore, the agency will work with the Committee on Food Chemicals Codex to develop appropriate specifications for orange shellac, orange shellac (wax-free), and shellac wax. When acceptable specifications are developed, the agency will incorporate them into the regulations. Until specifications are developed, FDA has determined that the public health will be adequately protected so long as orange shellac, orange shellac (wax-free), and shellac wax comply with the description in the proposed regulations and are of appropriate food-grade purity in accordance with 21 CFR 184.1(b) and 170.30(h)(1).

In the case of indirect uses of shellac and shellac wax, FDA believes that the general requirements of 21 CFR 186.1(a) that indirect GRAS ingredients be of a purity suitable for their intended use in accordance with § 170.30(h)(1) and used in accordance with current good manufacturing practice, are sufficient to ensure the safe use of these ingredients.

D. Conclusion

Based upon the Select Committee's evaluation of shellac and FDA's subsequent evaluation of all available

data, the agency tentatively concludes that:

1. The current uses of shellac and shellac wax are safe based upon the history of use of these substances of natural biological origin in food since before 1958 without any evidence of adverse effects from consumption of these ingredients and the 90-day study that was conducted after the Select Committee's final report.

2. The safety information is sufficient to support the limited use provided for in the regulation.

3. Shellac and shellac wax should be listed separately in the regulations because they are separate items of commerce.

4. The agency is working with Food Chemicals Codex to develop appropriate specifications for shellac.

Copies of the scientific literature review of shellac and shellac wax and the report of the Select Committee are available for review at the Dockets Management Branch (address above) and may be purchased from the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161, as follows:

Title	Order number	Price code	Price*
Shellac (scientific literature review)	PB-287-165/AS	A02	$6.00
Shellac wax (mutagenic evaluation)	PB-245-484/AS	A03	$7.50
Shellac and shellac wax (Select Committee Report)	PB-82-160383	A01	$6.00

* Price subject to change.

This proposed action does not affect the current use of shellac and shellac wax in pet food or animal feed.

VII. References

The following information has been placed on display in the Dockets Management Branch (address above) and may be reviewed by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Monograph on "Shellac, Bleached and Shellac, Bleached, Wax-Free," Committee on Codex Specifications, *Food Chemicals Codex*, 3d Ed., National Academy Press, Washington, DC, pp. 270–271, 1981.

2. "Evaluation of the Health Aspects of Shellac and Shellac Wax as Food Ingredients," Select Committee on GRAS Substances, Life Sciences Research Office, Federation of American Societies for Experimental Biology, Bethesda, MD, 1981.

3. Monograph on "Shellac," Informatics, Inc., Rockville, MD, 1978.

4. Monographs on "Pharmaceutical Glaze and Shellac," *United States Pharmacopeia XX/The National Formulary XV:* supp. 2, 1981, Mack Publishing Co., pp. 210, 219, The United States Pharmacopeial Convention, Inc., Easton, PA.

5. Subcommittee on Review of the GRAS List—Phase II, 1972, "A Comprehensive Survey of Industry on the Use of Food Chemicals Generally Recognized as Safe (GRAS)," prepared under DHEW Contract No. FDA 70–22 with the Committee on Food Protection, Division of Biology and Agriculture, National Research Council, National Academy of Sciences, Washington, DC.

6. Memorandum of telephone conversation dated February 12, 1987, between R. Rehwoldt, National Academy of Sciences and J. W. Gordon, FDA.

7. Committee on GRAS List Survey—Phase III, 1979, "The 1977 Survey of Industry on the Use of Food Additives," prepared under DHEW Contract No. FDA 223–77–2025 with the Food and Nutrition Board, Division of Biological Sciences, National Research Council, National Academy of Sciences, Washington, DC.

8. Letter dated January 11, 1985, from P. R. Donovan, American Bleached Shellac Manufacturers Assocation, Inc., to J. W. Gordon, FDA.

9. "90-Day (in utero) Dietary Toxicity Study of Regular Bleached Shellac in Sprague-Dawley Rats, Final Report," Food and Drug Research Laboratories Inc., 1984, American Bleached Shellac Manufacturers Association.

10. Memorandum dated May 31, 1985, from M. J. Wade, FDA to J. W. Gordon, FDA.

11. Memoranda of telephone conversations dated December 2, 1986, August 24, 1987, and October 20, 1987, between P. R. Donovan, American Bleached Shellac Manufacturers Association and J. W. Gordon, FDA.

12. Memorandum dated June 17, 1988, from C. B. Johnson, FDA to J. W. Gordon, FDA.

13. Letter dated September 21, 1959, from Arthur A. Checchi, FDA to P. H. Groggins, Food Machinery and Chemical Corp.

14. Letter dated August 3, 1939, from W. G. Campbell to Wm. Howlett Gardner, Shellac Research Bureau, Polytechnic Institute of Brooklyn.

15. Memorandum dated June 22, 1988, from C. B. Johnson, FDA to C. J. Bailey, FDA.

16. Tollefson, L., "Monitoring Adverse Reactions to Food Additives in the U.S. Food and Drug Administration," *Regulatory Toxicology and Pharmacology*, 8:438–446, 1988.

17. Computer printout of the search of the scientific literature reports of adverse reports.

VIII. Economic and Environmental Assessment

The agency has determined under 21 CFR 25.24(b)(7) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

FDA, in accordance with the Regulatory Flexibility Act, has considered the effect that this proposal would have on small entities including small businesses and has determined that the effect of this proposal is to maintain current known uses of the substances covered by this proposal by both large and small businesses. Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

In accordance with Executive order 12291, FDA has carefully analyzed the economic effects of this proposal and has determined that the final rule, if promulgated, will not be a major rule as defined by the Order.

The agency's findings of no economic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings are contained in a threshold assessment which may be seen in the Dockets Management Branch (address above).

IX. Prior Sanctions

The agency is unaware of any prior sanction for the use of these ingredients in foods under conditions different from those identified in this document. Any person who intends to assert or rely on such a sanction shall submit proof of its existence in response to this proposal. The action proposed above will constitute a determination that excluded uses would result in adulteration of the food in violation of section 402 of the act (21 U.S.C. 342), and the failure of any person to come forward with proof of such an applicable prior sanction in response to this proposal constitutes a waiver of their right to assert or rely on it later. Should any person submit proof of the existence of a prior sanction, the agency hereby proposes to recognize such use by issuing an appropriate final rule under Part 181 (21 CFR Part 181) or affirming it as GRAS under Part 184 or 186 (21 CFR Part 184 or 186), as appropriate.

Interested persons may, on or before September 25, 1989, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. to 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 184

Food ingredients, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, it is proposed that Part 184 be amended as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR Part 184 continues to read as follows:

Authority: Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10, 5.61.

2. New §§ 184.1705 and 184.1706 are added to Subpart B to read as follows:

§ 184.1705 Shellac.

(a) Shellac (CAS Reg. No. 9000–59–3) is a resinous material derived from the hardened secretion of the lac insect, species *Lucifer* (Tachardia) *lacca Kerr* (family *Coccidae*), also known as *Kerria lacca* (Kerr). The extent of refining of the crude lac secretion defines the food-grade product as bleached shellac; bleached shellac, wax-free; orange shellac; or orange shellac, wax-free.

(b) The ingredient meets the specifications for shellac, bleached, or shellac, bleached, wax-free of the "Food Chemicals Codex", 3d Ed. (1981), pp. 270–271, which is incorporated by reference in accordance with 5 U.S.C. 552(a). Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC. For orange shellac and orange shellac, wax-free, the Food and Drug Administration is developing food-grade specifications in cooperation with the National Academy of Sciences. In the interim, orange shellac and orange shellac, wax-free must be of a purity suitable for their intended use.

(c) In accordance with § 184.1(b)(2), the ingredient is used in food only within the following limitations:

Category of food	Functional use
Cakes, cones, and fruitcakes.	Surface-finishing agent, § 170.3(o)(30) of this chapter.
Chewing gum, § 170.3(n)(6) of this chapter.	Do.
Confections and frosting, § 170.3(n)(9) of this chapter.	Do.
Shell eggs, § 170.3(n)(14) of this chapter.	Color and coloring adjunct, § 170.3(o)(4) of this chapter.
Fresh fruits, § 170.3(n)(16) of this chapter.	Surface-finishing agent, § 170.3(o)(30) of this chapter.
Fresh vegetables, § 170.3(n)(19) of this chapter.	Do.
Soft candy, § 170.3(n)(38) of this chapter.	Do.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

§ 184.1706 Shellac wax.

(a) Shellac wax (CAS Reg. No. 97766–50–2) is obtained as the refined, bleached byproduct of the primary processing of shellac (§ 184.1705).

(b) The Food and Drug Administration is developing food-grade specifications for shellac wax in cooperation with the National Academy of Sciences. In the interim, the ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(2), the ingredient is used in food only within the following limitations:

Category of food	Functional use
Cakes	Stabilizer, thickener, § 170.3(o)(28) of this chapter.
Chewing gum, § 170.3(n)(6) of this chapter.	Surface-finishing agent, § 170.3(o)(30) of this chapter.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

Dated: July 18, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–17390 Filed 7–25–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD11–89–14]

Anchorage Ground; Long Beach Harbor, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to redefine Commercial Anchorage D in Long Beach Harbor. In 1988, the Port of Long Beach began construction on the Pier J Expansion Project which will ultimately lead to the creation of 147 acres of new landfill. This new land will be situated in the present northwest end of Commercial Anchorage D. This proposed regulation will redefine Commercial Anchorage D to reflect the changes imposed by the Pier J Expansion Project.

DATES: Comments must be received on or before September 11, 1989.

ADDRESSES: Comments should be mailed to Commander (oan), Eleventh Coast Guard District, 400 Oceangate, Suite 702, Long Beach, CA 90822–5399. The comments and other materials referenced in this notice will be available for inspection and copying at the above address. Normal office hours are between 7:00 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: LTJG Mike Lodge, telephone (213) 499–5419.

SUPPLEMENTARY INFORMATION: Interested persons are invited to

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participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD11-89-14) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information: The drafters of this notice are LTJG Mike Lodge, Project Officer, and LCDR J.J. Jaskot, Project Attorney, Eleventh Coast Guard District Legal Office.

Discussion of Proposed Regulations: In September 1988, construction began on the Pier J Expansion Project in the Port of Long Beach, CA. The project involves extensive dredging and landfill activities which will ultimately lead to the creation of 147 acres of new land and elimination of anchorage D-1 as depicted on NOS Charts 18749 and 18751, located on the western end of Commercial Anchorage D. Consultation is planned with Jacobsen Pilot Service, Long Beach, CA and the Port of Long Beach Harbor Department. This regulation is issued pursuant to 33 U.S.C 471 as set out in the authority citation for all of Part 110.

Economic Assessment and Certification: These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The re-configuration of Commercial Anchorage D will only reduce the total number of available commercial anchorages in Long Beach from 11 to 10. This number is suitable for present port needs.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment: This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the temporary rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulations: In consideration of the foregoing, the Coast Guard proposes to amend Part 110 of Title 33, Code of Federal Regulations, as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g). Sec. 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.214 is amended by revising paragraph (a)(4) to read as follows:

§ 110.214 Los Angeles and Long Beach Harbors, California.

(a) The anchorage grounds.

* * * * *

(4) Commercial Anchorage D (Long Beach Harbor). The waters bounded by a line connecting the following points:

Latitude	Longitude
33°43'23.5"N	118°10'46.9"W
33°43'58.5"N	118°11'04.0"W
33°44'18.6"N	118°11'06.7"W
33°44'25.2"N	118°09'46.0"W
33°43'23.5"N	118°09'46.4"W

and thence to the point of begining.

(i) In this anchorage the requirements of commercial ships over 244m (approximately 800 ft.) shall predominate.

(ii) Bunkering and lightering operations are permitted in this anchorage.

Note: A portion of this anchorage is within the Explosives Anchorage Area, when the explosive anchorage is activated by the Captain of the Port. See § 110.214(a)(17).

* * * * *

Dated: June 23, 1989.

Terry Lucas,

Captain, U.S. Coast Guard, Commander, Eleventh Coast Guard District, Acting.

[FR Doc. 89-17417 Filed 7-25-89; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[OGD1-89-077]

Drawbridge Operation Regulations; Kennebec River, Maine

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule and public hearing on proposed regulations.

SUMMARY: At the request of the Maine Department of Transportation (Maine DOT), the Coast Guard is considered a change to the regulations governing the Carlton drawbridge over Kenebec River, at mile 14.0 between Bath and Woolwich, Maine, to extend the closure period for the evening rush hour 45 minutes and to limit the openings for recreational vessels between 6 a.m. and 6 p.m. to twice a day at 10 a.m. and 2 p.m. commencing June 1, through September 30. This proposal is being made because of the reported extended periods of peak vehicular traffic. This action should accommodate the needs of vehicular traffic, while providing for the reasonable needs of navigation.

The Commander, First Coast Guard District, has authorized a public hearing to be held to receive comments on a proposed regulation governing the operation of the Carlton bridge across the Kennebec River, mile 14.0, between Bath and Woolwich, Maine. The hearing is being held to gather information and data necessary to attempt to resolve differences between various factions who support or oppose the proposed regulation.

DATES: (a) The hearing will be held on August 24, 1989 commencing at 4 p.m., with an evening meal break.

(b) Written comments on the proposed rule may be submitted on or before September 30, 1989.

ADDRESSES: (a) The hearing will be held in City Hall Auditorium (1st floor) 55 Front St., Bath, Maine.

(b) Written comments should be mailed to Commander (odr), First Coast Guard District, Building 135A, Governors Island, New York, N.Y. 10004-5073. The comments and other materials referenced in this notice will be available for inspection and copying at this address. Normal office hours are between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668-7170.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

The hearing will be informal. A Coast Guard representative will preside at the heaing, make a brief opening statement describing the proposed regulation, and announce the procedure to be followed at the hearing. Each person who wishes to make an oral statement should notify the Contact Officer listed above by August 18, 1989. Such notification should include the approximate time required to make presentation.

A transcript will be made of the hearing and may be purchased by the public. Interested persons who are unable to attend this hearing may also participate in the consideration of this proposed regulation by submitting their comments in writing. Each comment should state reasons for support or opposition, suggest any proposed changes to the regulation, and include the name and address of the person or organization submitting the comment. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope. All comments received will be considered before final action is taken on the proposed regulation. The proposed regulation may be changed in light of comments received. After the time set for the submission of comments, the Commander, First Coast Guard District will determine a final course of action. If significant differences still remain, the district commander will forward the record, including all written comments and his recommendations, to the Commandant, United States Coast Guard, and final action.

Drafting Information

The drafters of these regulations are Waverly W. Gregory, Jr., Project Officer, and Lieutenant Robert E. Korroch, Project Attorney.

Discussion of Proposed Regulations

On August 2, 1988, the Coast Guard published a final temporary rule to limit the bridge openings within 30 minutes of each other and to extend the evening rush hour forty-five minutes for 60 days commencing 8 August through October 6, 1988. The Commander, First Coast Guard District published the proposal as a Public Notice 1-669 dated August 8, 1988. Implementation of the first temporary regulation was conducted after the peak of the boating season which did not permit a complete evaluation of the situation. Statistics provided by Maine DOT indicated that the first temporary regulation did not significantly improve the traffic problem. As a result, the State and local officials requested that temporary regulations for the 1989 boating season be promulgated and evaluated to determine if the changes will substantially improve vehicular traffic without restricting marine traffic. Temporary rules were issed under 33 CFR 117.43 for the periods June 1,—July 30, 1989 and July 28—September 31, 1989 and published in Public Notices 1-690 and 1-693, respectively.

Economic Assessment and Certification

These proposed temporary regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The intent of this temporary regulation is to collect information to assess how the regulations would accommodate vehicular traffic to and from Bath Iron Works and local parks in the summer when tourist traffice is at its peak.

The draw will continue to open on signal for inbound commercial fishing vessels. Since the economic impact of this proposal is expected to be minimal the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Implication Assessment

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a Federal assessment.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.525(a) is revised to read as follows:

§ 117.525 Kennebec River.

(a) The draw of the Carlton highway-railroad bridge, mile 14.0 between Bath and Woolwich shall open as follows:

(1) On signal as soon as possible at all times for vessels owned or operated by the United States Government, State and local vessels used for public safety, vessels in distress, and inbound loaded commercial fishing vessels.

(2) Year-round the draw need not open from 6:30 a.m. to 7:30 a.m. and from 3:45 p.m. to 5:30 p.m., Monday to Friday excluding holidays except for vessels noted in paragraph (a)(1) of this section.

(3) From June 1 through September 30:

(i) On signal at all times for commercial vessels except as noted in paragraph (a)(2) of this section;

(ii) For recreational vessels on signal except that from 6 a.m. to 6 p.m. openings only at 10 a.m. and 2 p.m.

(4) From April 15 through May 31 and October 1 through November 15, open on signal:

(i) From 3 a.m. to 7 p.m., except as noted in paragraph (a)(2) of this section;

(ii) From 7 p.m. to 3 a.m. if four hours notice is given.

(5) From February 15 through April 14 and November 16 through December 15, at all times on signal, except as noted in paragraph (a)(2) of this section; if at least 4 hours notice is given.

(6) From December 16 through February 14 open on signal, except as noted in paragraph (a)(2), of this section, if 24 hours notice is given.

* * * * *

Dated: July 19, 1989.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 89-17458 Filed 7-25-89; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-322, RM-6641]

Radio Broadcasting Services; Tuscaloosa, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed on behalf of Radio South, Inc. ("RSI"), licensee of Station WTUG(FM), Tuscaloosa, Alabama, seeking the substitution of Channel 225C1 for Channel 225C2 and

modification of the license accordingly. Coordinates used for Channel 225C1 at Tuscaloosa are 33-03-36 and 87-32-43. (See Supplementary Information, *infra*.).

DATES: Comments must be filed on or before September 11, 1989, and reply comments on or before September 26, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Erwin G. Krasnow, Esq., Verner, Liipfert, Bernhard, McPherson & Hand, 901—15th Street, NW., Suite 700, Wash., DC 20005-2301.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-322, adopted June 30, 1989, and released July 20, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Although RSI currently operates Station WTUG(FM) on Channel 224A at Tuscaloosa, its license was modified by *Report and Order* in MM Docket No. 87-451, 3 FCC Rcd 6849 (1988), to specify operation on Channel 225C2. An application for a construction permit was subsequently filed by RSI specifying Channel 225C2 (BPH-890113IF).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

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47 CFR Part 73

[MM Docket No. 89-320, RM-6752]

Radio Broadcasting Services; Blackduck, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Roger Paskvan, permittee of Channel 252A, Blackduck, Minnesota, proposing the substitution of Channel 252C2 for Channel 252A, and modification of the permit to specify operation on Channel 252C2. Canadian concurrence will be sought for the allotment of Channel 252C2 at Blackduck at coordinates 47-33-21 and 94-47-59.

DATES: Comments must be filed on or before September 11, 1989, and reply comments on or before September 26, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Harry P. Cole, Bechtel, Borsari, Cole & Paxson, 2101 L Street, NW., Suite 502, Washington, DC 20037 (Counsel for Roger Paskvan).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-320, adopted June 30, 1989, and released July 20, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 320), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is not long subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-17398 Filed 7-25-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-321, RM-6699]

Radio Broadcasting Services; Rochester and Winona, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Rochester Communications Corporation, proposing the substitution of FM Channel 269C2 for Channel 269A at Rochester, Minnesota, and modification of its license for Station KRCH to specify operation on the higher class channel. To accommodate Channel 269C2 at Rochester, Channel 266A must be substituted for vacant Channel 268A at Winona, Minnesota. The coordinates for Channel 269C2 at Rochester are 44-04-13 and 92-28-38. The coordinates for Winona, which include a site restriction 10.3 kilometers (6.4 miles) east, are 44-04-09 and 91-30-54.

DATES: Comments must be filed on or before September 11, 1989, and reply comments on or before September 26, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jerrold Miller, Miller & Fields, P.C., P.O. Box 3303, Washington, DC 20033 (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-321, adopted June 30, 1989, and released July 20, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's Copy contractors, International Transcription Servcie, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-17399 Filed 7-25-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 640

RIN 0648-AC29

Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service, (NMFS), NOAA, Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NOAA announces that the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) have submitted Amendment 2 to the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic for Secretarial review and are requesting comments from the public.

DATE: Comments will accepted on or before September 22, 1989.

ADDRESSES: Copies of the amendment are available from the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, Florida 33609-2486.

Comments should be sent to Michael E. Justen, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702. Mark envelopes, "Comments on Amendment 2."

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-893-3722.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act), as amended, requires that a Council-prepared fishery management plan or amendment be submitted to the Secretary of Commerce (Secretary) for review and approval or disapproval. The Magnuson Act also requires that the Secretary upon receipt, immediately publish a notice that the document is available for public review and comment. The Secretary will consider these comments in determining approvability of the document.

Amendment 2 would establish a regulatory amendment procedure for the future implementation of specified types of gear and harvest restrictions applicable to the fishery in the Exclusive Economic Zone. The intent of this amendment is to provide for more timely implementation of rules governing conduct of the spiny lobster fishery, improve cooperative efforts between state and federal management agencies, reduce federal management costs, and improve the effectiveness of rules, all of which should result in increased production from the resource. The habitat section has been updated.

Regulations proposed by the Councils to implement Amendment 2 are scheduled for publication within 15 days.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 21, 1989.

Joe P. Clem,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-17496 Filed 7-21-89; 2:07 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 54, No. 142
Wednesday, July 26, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Noranda's Montana Project, Silver/Copper Mine, Kootenai National Forest, Lincoln County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service, Kootenai National Forest (KNF), in conjunction with Montana's Department of State Lands (DSL) and Department of Natural Resources and Conservation (DNRC), will prepare an environmental impact statement (EIS) for a proposal to permit the development of Noranda's Montana silver/copper mine project and associated power transmission line approximately 18 miles south of Libby, Montana. Noranda's proposed plan of operation was submitted March 7, 1989 pursuant to Forest Service locatable mineral regulations 36 CFR Part 228, Chapter II, Subpart A, and State of Montana Metal Mine Reclamation Act Title 82, Chapter 4, Part 3, MCA. On June 27, 1989, Noranda submitted a transmission line application to the KNF and DNRC pursuant to the 36 CFR 251.50 and Montana Major Facility Siting Act, Title 75, Chapter 20, MCA.

DATE: Comments concerning the scope of the analysis should be received in writing by August 18, 1989 so they may be considered in the Draft Environmental Impact Statement.

ADDRESSES: Send written comments concerning the analysis to James F. Rathbun, Forest Supervisor, Kootenai National Forest, Supervisor's Office, 506 U.S. Hwy. 2 West, Libby, Montana 59923.

FOR FURTHER INFORMATION CONTACT: Ron Erickson, PROJECT Coordinator, Kootenai National Forest, telephone (406) 293-6211.

SUPPLEMENTARY INFORMATION: Noranda holds mineral rights within the Cabinet Mountain Wilderness. On March 7, 1989, Noranda submitted to the KNF and DSL an "Application for a Hard Rock Operating Permit & Proposed Plan of Operation" for the Montana Project. On June 27, 1989, Noranda also submitted an "Application for an Electric Transmission Line" to the KNF and DNRC for 230 kilovolt electric transmission line from Pleasant Valley up the Miller Creek drainage to the project site. Although the ore body itself is located beneath the Cabinet Mountains Wilderness, all surface disturbances such as facilities, access roads and tailings disposal impoundment would be located outside the wilderness.

The Montana Project, as proposed by Noranda, would consist of a 20,000 ton-per-day underground mine and a surface mill located in the Ramsey Creek drainage. Noranda has estimated the size of the ore body to be about 140 million tons. Access to the ore would be from two portals located adjacent to the wilderness in Ramsey Creek. Three additional ventilation portals would be used in the project—one in the upper Libby Creek and two in upper Rock Creek. Ore would be crushed underground and conveyed out of the mine to a mill near the Ramsey Creek portals. Copper and silver sulfides would be removed from the ore by flotation processing. Tailings from the milling process would be conveyed through a pipeline to the tailings disposal impoundment about four miles from the mill in the Little Cherry Creek drainage.

Access to the mine and all surface facilities would be from State Highway 2 and existing Bear Creek road. Noranda would need to upgrade about 11 miles of the Bear Creek road to standards specified by the agencies. Concentrate from the mill would be shipped by truck to Libby and then by train to a smelter.

Following a 3 year construction period, the mine would be expected to operate for a period of 16 years. Following construction of the mill and development of the underground mine, the mine/mill would operate on a 3 shift per day, 7 days per week basis. Assuming 350 production days yearly, 7 million tons of ore annually would be produced. Full production employment is estimated to be 450 people with an estimated annual payroll of $12.5 million.

Approximately 1,159 acres of land surface would be disturbed. All disturbed areas would be outside wilderness. Noranda has developed a reclamation plan to rehabilitate all disturbed areas following construction, operation and mine closure.

Governmental agencies and the public who may be interested in or affected by the proposal are invited to participate in the scoping process. The scoping process is designed to obtain input to identify potential issues related to the proposed project. The Forest Service, in conjunction with the State agencies, will hold a public scoping meeting on Wednesday, August 9, 1989 at the Memorial Gym in Libby, Montana at 7:00 p.m. A scoping document is available upon request.

The EIS will consider a range of alternatives based on the issues, concerns, and opportunities associated with the project. A preliminary identification of issues, concerns, and opportunities are:

—What effect would the proposed project have on the Cabinet Mountains Wilderness?
—How would the project affect wildlife, especially grizzly bears?
—How would the quantity and quality of water in the project area be affected?
—How stable is the proposed tailings impoundment and to what degree would it be reclaimed following mine closure?
—What would be the social and economic effects to the local communities?
—Coupled with the proposed ASARCO Rock Creek mine project and other foreseeable developments, what cumulative effects would occur in the project area?

Two of these alternatives will be the no action alternative and the alternative to approve the project as proposed. Other alternatives may consist of modifications or changes in the various elements comprising the proposal.

The analysis process will ultimately lead to one of the following possible decisions: (1) approval of the plan of operations and application, (2) approval of the plan of operations and application with changes incorporated, (3) approval of the plan of operations and application subject to stipulations, or (4) disapproval of the plan of operations and application.

The estimated date for issuance of the draft environmental impact statement is February, 1990. A public meeting will be held in conjunction with the issuance of the draft environmental impact statement. The final environmental impact statement is expected to be available in June 1990.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviwer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmenal Policy Act at 40 CFR 1503.3 in addressing these points.)

James F. Rathbun,
Forest Supervisor, Kootenai National Forest.

Date: July 14, 1989.

[FR Doc. 89-17301 Filed 7-25-89; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

Snapping Shoals Electric Membership Corp.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration.

ACTION: Finding of no significant impact relating to the construction of the Western Operations Center in Henry County, Georgia.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR Parts 1500-1508), and REA Environmental Policies and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact (FONSI) with respect to the construction of the Western Operations Center in Henry County, Georgia. Snapping Shoals Electric Membership Corporation (EMC) has requested REA's approval to construct the project.

FOR FURTHER INFORMATION CONTACT: Alex M. Cockey, Jr., Director, Southeast Area—Electric, Room 0270, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382-8436.

SUPPLEMENTARY INFORMATION: REA, in accordance with its environmental policies and procedures, required that Snapping Shoals EMC develop a Borrower's Environmental Report (BER) reflecting the potential impacts of the proposed Western Operations Center. The BER, which includes input from certain local, state and Federal agencies, is the basis for REA's Environmental Assessment (EA). REA has concluded that the BER represents an accurate assessment of the environmental impacts of the project. The project will allow Snapping Shoals EMC to expand its office, storage and maintenance facilities to meet the needs of its growing service area.

The Western Operations Center includes an operations building, warehouse and storage dock, an apparatus and garage building with a storage dock, a truck, trailer, and equipment building, a covered vehicle fuel storage island, storage rigs, pole racks and parking spaces. Thirty acres of land have been zoned commercial by the Henry County government to accommodate the facilities.

REA has concluded that the proposed project will have no impact on wetlands, floodplains, threatened or endangered species or critical habitat, property listed or eligible for listing in the National Register of Historic Places, and water quality. The operations center will directly convert 22 acres of land that is considered prime farmland. Other sites for the facilities were considered. No practicable alternative was found.

Alternatives examined for the proposed project were no action and alternative sites. REA determined that there is demonstrated need for the project and constructing it at the preferred site will have no significant impact to the environment. Therefore, REA has concluded that its approval to allow Snapping Shoals EMC to construct the proposed project does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, REA has reached a FONSI with respect to the Western Operations Center.

Copies of the EA and FONSI can be obtained from REA at the address provided herein or at the office of Snapping Shoals Electric Membership Corporation, P.O. Box 509, Covington, Georgia 30209-0509.

In accordance with REA Environmental Policies and Procedures, 7 CFR Part 1794, Snapping Shoals EMC published a notice and advertisement in the *Henry County Herald* which has a general circulation in Henry County, Georgia. the notice appeared in the May 24, 1989, issue. The notice described the project, announced the availability of the BER and gave information where the BER could be obtained for review and where comments could be sent. The advertisement appeared in the same issue of the newspaper and briefly described the project and referred the reader to the legal notice. The public was given at least 30 days to respond to the notice. No responses to the notice were received by Snapping Shoals EMC or REA.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.850—Rural Electrification Loans and Loan Guarantees.

Date: July 14, 1989.

John H. Ameson,
Assistant Administrator—Electric.

[FR Doc. 89-17412 Filed 7-25-89; 8:45 am]

BILLING CODE 3410-15-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board (ATBCB).

ACTION: Notice of ATBCB meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (ATBCB) has scheduled an ATBCB business meeting to take place from 9:30 a.m. to 11:30 a.m. and a public forum from 1:00 p.m. to 5:00 p.m. on Wednesday, August 9, 1989, Red Lion Inn Lloyd Center, Portland, Oregon.

DATE: Wednesday, August 9, 1989—9:30 a.m. to 11:30 a.m. (Business Meeting); 1:00 p.m. to 5:00 p.m. (Public Forum).

Matters to be Considered: Portions Open to the Public

Priorities for FY 1990 technical program projects; update on Americans With Disabilities Act (ADA); Fiscal Year 1989, 1990 and 1991 budget update; complaint status report; status report on Disabled In Action (DIA) litigation; status report/update on Air Carriers Act regulation and Exit Row Seating regulations; report on Board member liability and indemnification; proposed amendments to the Architectural Barriers Act (ABA); Board policy regarding accessible meeting sites; financial disclosure reports and procurement integrity certifications—agency liaisons and consolidating responsibility for ethics and procurement integrity matters under the Office of the General Counsel; and approval of the November 1989 Board meeting agenda. The Board will also hold its annual election of Executive Committee members, which is carried over from the May meeting.

The ATBCB will hold a public forum from 1:00 to 5:00 p.m. Public participation is invited to discuss issues relevant to the Architectural Barriers Act and the ATBCB. Individuals or organizations interested in testifying must contact Larry Allison, Special Assistant for External Affairs, (202) 653-7834.

Portions(s) Closed to the Public

Priorities for FY 1990 technical programs (funding); and FY 1989 contingency projects (funding).

ADDRESS: Red Lion Inn Lloyd Center, 1000 N.E. Multnomah, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: For information regarding committees and the business portion of the Board meeting, contact Barbara A. Gilley, Executive Officer, (202) 653-7834 (voice or TDD). For information regarding public forum portion, contact Larry Allison on (202) 653-7834 (voice or TDD).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) will provide a briefing on and a tour of the Bonneville Power and Administration Headquarters Building on Tuesday, August 8, 1989, from 8:30 a.m. to 11:15 a.m. the presentation will be held at the Red Lion Inn Lloyd Center and the tour conducted at the Bonneville Power and Administration Headquarters Building, Portland, Oregon. The Ad Hoc Committee on Communication Barriers, the Ad Hoc Committee on Public Affairs, will meet from 8:15 a.m. to 9:15 a.m. on Wednesday, August 9, 1989. All committee meetings will be held at the Red Lion Inn Lloyd Center, Portland, Oregon. The Technical Programs, the Planning and Budget, and the Executive Committees of the ATBCB will meet on Tuesday, August 8, 1989, from 1:00 p.m. to 6:00 p.m..

Lawrence W. Roffee,

Executive Director.

[FR Doc. 89-17423 Filed 7-25-89; 8:45 am]

BILLING CODE 8820-BF-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Economic Development Administration.

Title: Special Adjustment Assistance Application.

Form Number: Agency Form ED-540; OMB-0610-0058.

Type of Request: Extension of the expiration date.

Burden: 75 respondents; 406 hours.

Average Hours per Response: 5 hours 25 minutes.

Needs and Uses: To gain necessary information and assurances for the selection and award of Special Adjustment Assistance Grants.

Affected Public: State and local units of government, Indian Tribes, public authorities and nonprofit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Donald Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, the OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 20, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-17400 Filed 7-25-89; 8:45 am]

BILLING CODE 3510-CW-M

National Oceanic and Atmospheric Administration

Marine Mammals; Denial of Permit; Sealand of Cape Cod, Inc.

On April 3, 1989, notice was published in the **Federal Register** (54 FR 13408) that an application had been filed by Sealand of Cape Cod, Inc., Route 6A, West Brewster, Massachusetts 02631, for a permit to capture and maintain for public display four Atlantic bottlenose dolphins (*Tursiops truncatus*).

Notice is hereby given that on July 18, 1989, under the authority of the Marine Mammal Protection Act of 1972, as amended, (16 U.S.C. 1361 *et seq.*), and after having considered all pertinent information and facts, the National Marine Fisheries Service denied the above referenced permit application.

Documents submitted in connection with the application are available for inspection in the Office of Protected Resources and Habitat Programs, Room 7324, 1335 East-West Highway, Silver Spring, Maryland 20910. For further information contact Georgia Cranmore at 301-427-2289.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

Date: July 18, 1989.

[FR Doc. 89-17419 Filed 7-25-89; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

July 19, 1989.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the United States in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Licensing information and copies of patent applications bearing serial numbers with prefix E may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151. All other patent applications may be purchased, specifying the serial number listed below, by writing NTIS, 5285 Port Royal Road, Springfield, Virginia 22161 or by telephoning the NTIS Sales Desk at (703) 487-4650. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Please cite the number and title of inventions of interest.

Stephen Gates,

Associate Director, Center for the Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 7-305,144
Process for the Preparation of Ketones and Novel Insecticides Produced Therefrom
SN 7-327,064
Diagnostic and Epidemiological Nucleic Acid Probe for Bovine Leptospirosis
SN 7-327,065
Transcription Terminators for Use with Strong Promoters of Bacteriophage RNA Polymerases
SN 7-338,680
Control of Hemp Sesbania with a Fungal Pathogen
SN 7-349,669
Method to Preselect the Sex of Offspring
SN 7-350,356
Plant Transformation by Gene Transfer into Pollen
SN 7-351,347
Monoclonal Antibodies Which Discriminate Between Strains of Citrus Tristeza Virus
SN 7-353,363
Nominine, An Insecticide Fungal Metabolite
SN 7-354,326
Peptides Stimulating Sex Pheromone Production and Melanization in Moths
SN 7-362,635
Introduction of Bacteria *In Ovo*
SN 7-362,992
Composition and Method for Increasing the Hatchability of Turkey Eggs

Department of Health and Human Services

SN 7-236,225
Immunotoxins
SN 7-349,772
Plaque Inhibiting Oligosaccharide
SN 7-352,313
Compositions Having Use as Treatment of Psoriasis and Neurosychiatric Deficits
SN 7-355,744
Therapeutic Application of an Anti-invasion Compound
SN 7-365,567
Gene Therapy
SN 7-368,725
Epithelial Cell Line Expressing a Cystic Fibrosis Phenotype

Department of the Army

SN 7-353,576
Saw Slanted Array Correlator (SAC) with Separate Amplitude Compensation Channel
SN 7-351,131
Thin Film All Polymer Capacitor and Method of Making

Department of the Interior

SN 7-068,083 (4,824,656)
Method of Recovering Sulfur from Solid Catalysts
SN 7-111,246 (4,815,791)
Bedded Mineral Extraction Process
SN 7-327,930
Pyramid Beam Splitter
SN 7-336,168
Bubble Injected Hydrocyclone Flotation Cell
SN 7-340,119
Laser Goniometer
SN 7-349,736
Directional Harmonic Overcurrent Relay Device
SN 7-351,134
Improvement to Universal Ripper Miner

[FR Doc. 89-17442 Filed 7-25-89; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

July 21, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 28, 1989.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories in Group I are being increased for carryover and recrediting carryforward not used.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 50276, published on December 14, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

July 21, 1989.

Commissioner of Customs
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel the directive issued to you on December 6, 1988, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile and textile products, produced or manufactured in the people's Republic of China and exported during the twelve-month period which begin on January 1, 1989 and extends through December 31, 1989.

Effective on July 28, 1989, the directive of December 6, 1988 is amended further to adjust the limits for the following categories, as provided under the provisions of the

current bilateral textile agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
200	538,911 kilograms
218	9,644,027 square meters
219	1,945,295 square meters
237	1,422,403 dozen
300/301	3,319,616 kilograms
314	41,011,092 square meters
315	146,511,727 square meters
317/326	16,226,105 square meters of which not more than 3,104,374 square meters shall be in Category 326
333	71,757 dozen
336	136,578 dozen
340	749,204 dozen of which not more than 374,602 dozen shall be in Category 340-Z [2]
341	587,194 dozen of which not more than 352,316 dozen shall be in Category 431-Y [3]
342	231,989 dozen
345	111,384 dozen
351	393,067 dozen
[4] 359-C	446, 083 kilograms
[5] 359-V	710,051 kilograms
360	6,130,199 numbers of which not more than 4,099,400 numbers shall be in Category 360-P [6]
363	25,864,650 numbers
[7] 369-D	4,058,490 kilograms
[8] 369-H	4,038,828 kilograms
[9] 369-L	2,429,257 kilograms
410	1,882,112 square meters of which not more than 1,501,593 square meters shall be in Category 410-A [10] and not more than 1,508,715 square meters shall be in Category 410-B [11]
433	22,149 dozen
434	12,620 dozen
435	23,180 dozen
436	14,423 dozen
438	25,240 dozen
440	36,057 dozen of which not more than 20,604 dozen shall be in Cateogory 440-M [12]
442	40,178 dozen
444	192,977 numbers
448	20,604 dozen
607	2,620,993 kilograms
613	6,149,048 square meters
614	9,662,789 square meters
615	19,896,562 square meters
617	14,054,967 square meters
631	928,211 dozen pairs
635	504,991 dozen
636	429,216 dozen
638/639	2,184,840 dozen
640	1,300,214 dozen
642	271,830 dozen
645/646	754,851 dozen
649	720,283 dozen
652	2,065,378 dozen
[13] 659-C	342,256 kilograms
[14] 659-S	510,391 kilograms
[15] 669-P	1,456,559 kilograms
831	403,455 dozen pairs
833	21,854 dozen
835	100,873 dozen
842	218,530 dozen
845	2,201,976 dozen
846	147,084 dozen

[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.

[2] In Category 340-Z, only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[3] In Category 341-Y, only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.

[4] In Category 359-C, only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[5] In Category 359-V, only HTS numbers 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070.

[6] In Category 360-P, only HTS numbers 6302.21.1010, 6302.21.1020, 6302.21.2010, 6302.21.2020, 6302.31.1010, 6302.31.1020, 6302.31.2010 and 6302.31.2020.

[7] In Category 369-D, only HTS numbers 6302.60.0010 and 6302.91.0020

[8] In Category 369-H, only HTS numbers 4202.22.4020, 4202.22.4500 and 4202.22.8030.

[9] In Category 369-L, only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6000.

[10] In Category 410-A (carded wool), only HTS numbers 5111.11.1000, 5111.11.6030, 5111.11.6060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.6000, 5111.30.6000, 5111.90.3000, 5111.90.6000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 4212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510, and 6301.20.0020.

[11] In Category 410-B (combed wool), only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.0030, 5112.11.0060, 5112.19.6010, 5112.19.6020, 5112.19.6030, 5112.19.6040, 5112.19.6050, 5112.19.6060, 5112.20.0000, 5112.30.0000, 5119.90.3000, 5112.90.6010, 5112.90.6090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520, and 5516.34.0520.

[12] In Category 440-M, only HTS numbers 6203.21.0030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.2020, 6205.90.4020 and 6211.31.0030.

[13] In Category 659-C, only HTS numbers 6103.23.0055, 6103.43.2020, 6103.40.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210 10.4020, 6211.33.0010, 6211.33.0017 6211.43.0010.

[14] In Category 659-S, only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[15] In Category 669-P, only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

The Committee for the Inplementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-17432 Filed 7-25-89; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of an Import Limit and Sublimit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

July 21, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting a limit and sublimit.

EFFECTIVE DATE: July 28, 1989.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit and sublimit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-9481. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended: section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit and sublimit for cotton and man-made fiber textile products in Categories 359-C/659-C from Mexico and being increased for swing, carryover and unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categorities with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 52461, published on December 28, 1988.

The letter to the Commissioner of Customs and the action taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

July 21, 1989.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: The Directive amends, but does not cancel, the directive issued to you on December 22, 1988, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Mexico and exported during the twelve-month period

which began on January 1, 1989 and extends through December 31, 1989.

Effective on July 28, 1989, the directive of December 22, 1988 is amended further to adjust the limit and sublimit for the following categories, as provided under the provisions of the current bilateral textile agreement between the Governments of the United States and the United Mexican States:

Category	Adjustment Twelve-Month Limit [1]
[2] 359-C/659-C	914,891 kilograms
Non-Special Regime Category Sublimit 359-C/659-C	180,860 kilograms

[1] The limit has not been adjusted to account for any imports exported after December 31, 1988.

[2] In Categories 359-C/659-C, only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 in Category 359-C; and 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010 in Category 659-C.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-17433 Filed 7-25-89; 8:45 am]

BILLING CODE 3510-DR-M

Amendment to Export Visa Requirements and New Export Visa Stamps for Certain Textiles and Textile Products Produced or Manufactured in Japan

July 21, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending export visa requirements and transmitting new visa stamps.

EFFECTIVE DATE: August 1, 1989.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and Japan agreed to amend the current export visa arrangement. Facsimiles of new visa stamps are published below.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States Annotated (see 53 FR 44937, published on November 7, 1988). Also see 52 FR 4639, published on February 13, 1987.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

July 21, 1989.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on February 6, 1987, by the Chairman, Committee for the Implementation of Textile Agreements. That directive instructed you to prohibit entry into the United States for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in Categories 200-239, 300-369, 400-469, 600-670 and 800-899, produced or manufactured in Japan and exported to the United States for which the Government of Japan has not issued an appropriate export visa or exempt certification.

Effective on August 1, 1989, the directive of February 6, 1987 is amended to require that visas accompanying merchandise exported from Japan on and after August 1, 1989 state the correct category(s), merged category(s), part categories and unit(s) of quantity provided for in the U.S. Department of Commerce CORRELATION and in the Harmonized Tariff Schedule of the United States (e.g., "Cat. 340-10 DZ").

Facsimilies of the new export visa stamps are enclosed with this letter. The exempt certification stamp remains unchanged.

Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment (e.g., quota Categories 645/646 may be visaed as 645/646 or if the shipment consists solely of Category 645 merchandise, the shipment may be visaed as "Cat. 645," but not as "Cat. 646").

If the original commercial invoice concerned consists of multiple pages, the visa shall be stamped on the front of either the first page or the last page thereof.

If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged to any applicable quota.

Following are lists of acceptable merged and part-categories:

Merged Categories

300/301
317/326
331/631
341/641
342/642
347/348
613/614/615/617
625/626/627/628/629
645/646

For categories 317/326, shipments of Category 326 must be visaed as Category 326.

Part-Categories

604-A (piled acrylic yarn).	Only tariff number 5509.32.000.
604-O (other)	All tariff numbers except 5509.32.0000 in 604-A.
659-C (coveralls, overalls, etc., of man-made fiber).	Only tariff numbers 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.59.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6023.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.
659-O (other)	All tariff numbers except 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.59.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6023.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010 in Category 659-C.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

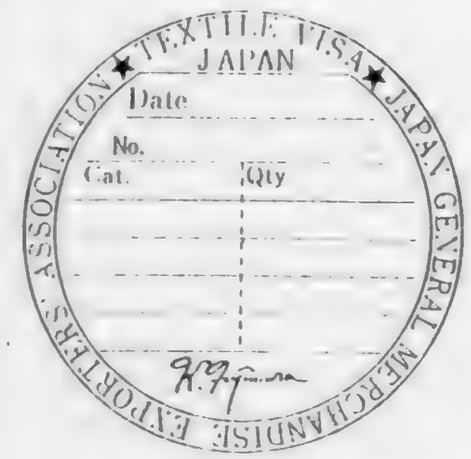

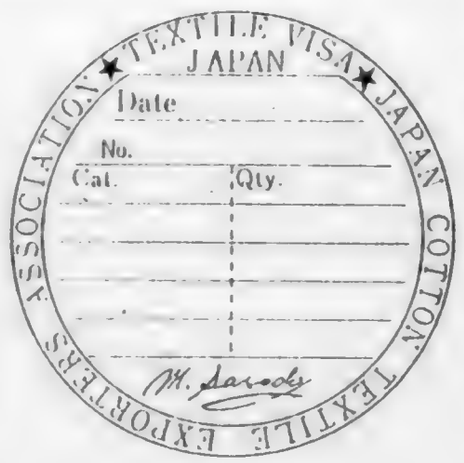

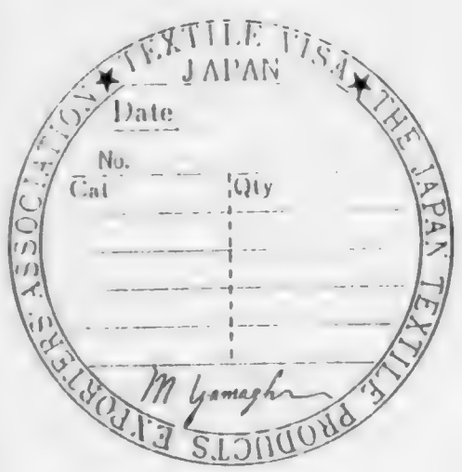

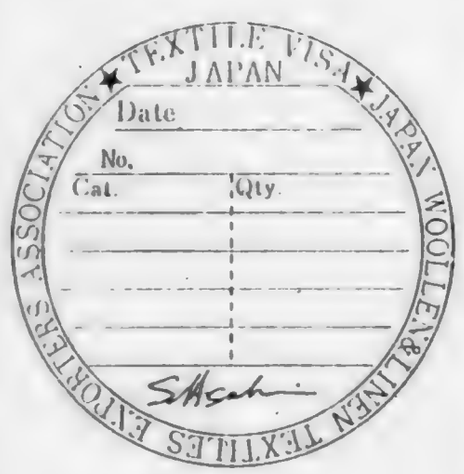

[FR Doc. 89-17538 Filed 7-24-89; 10:43 am]

BILLING CODE 2510-DR-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent to Prepare a Draft Supplemental Impact Statement (SEIS) for Operation and Maintenance of Lake Red Rock, Des Moines River, Marion County, Iowa

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: A draft SEIS will be prepared to present information on the effects resulting from changes in the Regulation Manual and Water Control Plan for Lake Red Rock.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and draft SEIS can be answered by: Joe Slater, 309/788-6361, Ext. 344. Written comments may be addressed to: District Engineer, U.S. Army Engineer District, Rock Island, ATTN: Planning Division, Clock Tower Building—P.O. Box 2004, Rock Island, Illinois 61204-2004.

SUPPLEMENTARY INFORMATION: The Lake Red Rock project encompasses 47,610 acres of fees title land and 28,382 acres of flowage easement land in Marion County, Iowa. The project, built for flood control and low-flow augmentation (conservation storage) and completed in 1969, was authorized by the U.S. Congress in the Flood Control Act of June 28, 1938. Recreation, as a project purpose, is authorized by the Flood Control Act of 1944. Fish and Wildlife receive equal consideration to other authorized project purposes, as provided by the Fish and Wildlife Coordination Act of 1958, as amended. Information will be presented to supplement the original Environmental Impact Statement (EIS) prepared in 1974.

1. Changes in the conservation pool are required to account for the conservation storage lost as a result of sedimentation. Present conservation pool elevation at Lake Red Rock is 734 National Geodetic Vertical Datum (NGVD). Elevation 742 NGVD has been determined as the level of Conservation Pool needed to provide storage for 100 years of silt accumulation and 50,000 acre-feet of water for low flow augmentation.

2. Alternatives, in addition to the No Action alternative, to be considered for achieving the 742 NGVD pool elevation include a one-step raise as well as incremental steps to the final elevation of 742 NGVD.

3. This notice solicits input and assistance from the interested public and invites participation by affected Federal and State agencies having special jurisdiction and/or expertise as cooperating agencies. The State of Iowa has formally requested increasing the conservation pool elevation to 742 NGVD.

a. If public meeting(s) are warranted, they will be scheduled following circulation of the Draft SEIS, currently planned for September 1989. Locations and dates of any scheduled meeting(s) will be announced approximately 30 days in advance by area press release.

b. Impacts to natural, social, economic, and cultural resources resulting from a change in reservoir regulation will be addressed. Portions of the reservoir pool area to be inundated are managed for wildlife by the State of Iowa, under license for fish and wildlife management pursuant to the General Plan. Changes in flood frequencies and durations are also issues to be addressed.

4. No scoping meeting will be held.

5. The final SEIS is anticipated to be completed by July of 1990.

Date: May 24, 1989.

Kenneth L. Denton,

Department of the Army Alternate Liaison Officer with the Federal Register.

[FR Doc. 89-13963 Filed 7-25-89; 8:45 am]

BILLING CODE 3710-HV-M

Intent to Contract With the City of Durant, OK, for Water Supply Storage Lake Texoma (Denison Dam) Oklahoma and Texas

AGENCY: U.S. Army Corps of Engineers, DOD, Tulsa District.

ACTION: Notice of intent to contract with the city of Durant, Oklahoma, for 2,225 acre-feet of reallocated water supply storage in Lake Texoma (Denison Dam), Oklahoma and Texas.

SUMMARY: The city of Durant, Oklahoma has contacted the U.S. Army Corps of Engineers, DOD, Tulsa, Oklahoma, for a water supply contract for municipal and industrial water supply from Lake Texoma (Denison Dam). The city is in need of 2,225,000 gallons per day to supplement their current supply. This volume of water can be supplied by 2,225 acre-feet of storage. Storage in excess of the city's requirement is available for contract from Lake Texoma. This storage was made available in 1983 by reallocation of 72,600 acre-feet of storage from hydroelectric power to water supply. The U.S. Army Corps of Engineers, DOD, Tulsa District, proposes to contract in the near future with the city of Durant, Oklahoma, for 2,225 acre-feet of storage from Lake Texoma.

The U.S. Army Corps of Engineers, DOD, Tulsa District will be accepting comments on this proposed water supply contract during a 4-week period following the publication date of this notice.

ADDRESSES: For further information about the proposed water supply contract, please contact: Mr. Frank W. Parker, P.E., Chief, Engineering and Construction Division, Tulsa District, Corps of Engineers, P.O. Box 61, Tulsa, OK 74121-0061.

F.L. Smith, Jr.,

Colonel, EN, Commanding.

[FR Doc. 89-17424 Filed 7-25-89; 8:45 am]

BILLING CODE 3710-36-M

Department of the Army

Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: August 14-16, 1989.

Time: 0830-1700 daily.

Place: August 14-15, Fort Monmouth, NJ; August 16, Carnegie Mellon University, PA.

Agenda: The Army Science Board Ad Hoc Subgroup on Software in the Army will hold its second meeting for the purpose of studying the procurement and maintenance of Army software. This meeting is open to the public. Any interested person may attend, appear before of file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-17444 Filed 7-25-89; 8:45 am]

BILLING CODE 3710-08-M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, August 2, 1989 beginning at 1:30 p.m. at the Best Western Inn of Hunt's Landing, 900 Routes 6 and 209, in Matamoras, Pennsylvania. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:00 a.m. at the same location and will include status reports on the Upper Delaware Ice Jam Project; the Joint Commission-National Park Service Scenic Rivers Protection Plan; and the Amendment of Compact § 15.1(b) to Fund the Francis E. Walter Reservoir Project.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or § 3.8 of the Compact

1. *Delaware Department of Natural Resources and Environmental Control D-84-10 CP (Supplement No. 2).* An application for an interstate water transfer project to allow Chester Water Authority to sell 4.0 million gallons per day (mgd) of water to Artesian Water Company and 0.2 mgd of water to Wilmington Suburban Water Corporation via appropriate interconnections, capable of operating in both directions, to meet water needs in the respective service areas in New Castle County, Delaware. The project is located in New Castle County, Delaware, north of the Chesapeake and Delaware Canal, and in southern Chester County, Pennsylvania along the Delaware-Pennsylvania state boundary.

2. *Chester Water Authority D-84-55 CP.* Expansion of the area served by the Chester Water Authority by means of interconnections with Artesian Water Company and Wilmington Suburban Water Corporation, in New Castle County, Delaware. The applicant's current service area is Chester and Delaware Counties, Pennsylvania. The expanded service area will include portions of New Castle County, Delaware.

3. *New Jersey—American Water Company (Northern District—Washington System) D-85-2 CP Renewal.* An application for the renewal of a ground water withdrawal project to supply up to 25.9 million gallons (mg)/30 days of water to the applicant's distribution system from Well No. 5. Commission approval on February 27, 1985 was limited to four years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 51.8 mg/30 days. The project is located in Washington Township, Warren County, New Jersey.

4. *Borough of Roosevelt D-85-8 CP Renewal.* An application for the renewal of a ground water withdrawal project to supply up to 7.0 mg/30 days of water to the applicant's distribution system from Well Nos. 3 and 4. Commission approval on March 27, 1985 was limited to four years and will expire unless renewed. The total withdrawal from all wells has been reduced from 9.3 to 7.0 mg/30 days. The project is located in Roosevelt Borough, Monmouth County, New Jersey.

5. *Township of Sparta D-87-59 CP.* The revision of an application originally submitted by the Lake Mohawk-Sparta Water Company for approval of a ground water withdrawal project to supply up to 2.16 mg/30 days of water to the applicant's distribution system from

new Well No. 6, and to limit the withdrawal from all Delaware River Basin wells to 15 mg/30 days. The project is located in Sparta Township, Sussex County, New Jersey.

6. *Giorgio Food, Inc. D-88-43.* An application to upgrade and modify wastewater treatment facilities to serve the applicant's vegetable processing plant in Maiden Creek Township, Berks County, Pennsylvania. The applicant currently discharges approximately 0.25 mgd of pretreated wastewater into the Maiden Creek Township sewer system. The proposed treatment plant is designed to remove over 90 percent of the BOD and SS from a flow of 0.5 mgd. Treatment plant effluent will be discharged to Willow Creek in the Maiden Creek Basin.

7. *Borough of Doylestown D-88-78 CP.* An application to upgrade a 0.7 mgd sewage treatment plant located off Green Street in Doylestown Borough, Bucks County, Pennsylvania. The applicant proposes to replace several existing facilities, and add a chemical treatment process to remove phosphorus. The plant is also designed to remove 90 percent of the influent BOD_5. The treatment plant is designed to serve 4,792 persons in portions of Doylestown Township and Borough through the year 2009. Treatment plant effluent will continue to discharge through the existing outfall to Country Club Run, a tributary of Neshaminy Creek.

8. *Moorestown Foursome Partnership D-88-82.* An application for approval of a ground water and surface water withdrawal project to supply up to 26.0 mg/30 days of water to the applicant's golf course irrigation system from existing Well No. 1 and two ponds. The project is located in Moorestown Township, Burlington County, New Jersey.

9. *Rohm and Haas Delaware Valley, Inc. D-89-2.* An application to upgrade an industrial wastewater treatment plant located near River Road and State Road in Bristol Township, Bucks County, Pennsylvania. The upgraded facility will continue to treat an average monthly flow of 1.44 mgd of industrial process wastewater. Effluent will be discharged to a proposed outfall on Hog Run Creek, a tributary of the Delaware River, located in Water Quality Zone 2. The applicant proposes to treat the combined wastewaters generated at its Bristol and Croyden manufacturing plants.

10. *Borough of Dublin D-89-15 CP.* An applicaiton for approval of a ground water withdrawal project to supply up to 4.36 mg/30 days of water to the applicant's distribution system from new Well No. 3, and to retain the existing withdrawal limit from Well Nos. 1 and 2 as presented in condition "e." of Docket No. D-81-75 CP Renewal. The project is located in Dublin Borough, Bucks County, and is located in the Seutheastern Pennsylvania Ground Water Protected Area.

11. *Manwalamink Water Company D-89-36 CP.* An application for approval of a ground water withdrawal project to supply up to 4.32 mg/30 days of water to the applicant's distribution system from each new well, Nos. 3 and 5, and to increase the existing withdrawal limit of 4.5 mg/30 days from all wells to 15 mg/30 days. The project is located in Smithfield and Middle Smithfield Townships, Monroe County, Pennsylvania.

12. *Mount Airy Lodge, Inc. D-89-37.* An application for approval of a surface water withdrawal of up to 0.3 mgd to provide water to the applicant's snow-making and golf course spray irrigation facilities. Two intakes will withdraw water from the applicant's impoundment on Forrest Hills Run, a tributary of Paradise Creek in the Brodhead Creek watershed. Golf course irrigation is comprised of surface water mixed with treated wastewater from the applicant's sanitary treatment plant, approved for upn to 0.225 mgd discharge. Snow-making facilities use only surface water. The project is located in Paradise Township, Monroe County, Pennsylvania, approximately a half mile northeast of the intersection of Routes 314 and 616.

13. *Stillwater Sewer Corporation D-89-41.* An application to expand and upgrade the existing sanitary treatment facilities serving Stillwater Lakes residential development from 0.014 mgd to 0.235 mgd. The expansion will occur in two phases. Phase I construction of facilities will increase treatment capacity to 0.114 mgd; Phase II will expand facilities to bring treatment capacity to 0.235 mgd. The new facilities will provide tertiary treatment. The project is located near Route 81E, south of Stillwater Lake Estates in Coolbaugh Township, Monroe County, Pennsylvania. The treated effluent will continue to discharge to Hawkey Run, a tributary to Stillwater Lake.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Susan M. Weisman,

Secretary.

July 18, 1989.

[FR Doc. 89-17443 Filed 7-25-89; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.019, 84.021, 84.022]

Inviting Applications Under Fulbright-Hays Training Grant Programs

AGENCY: Department of Education.

ACTION: Combined notice inviting applications under Fulbright-Hays Training Grant Programs: Faculty Research Abroad, Group Projects Abroad, and Doctoral Dissertation Research Abroad for Fiscal Year 1990 New Awards.

Purpose of Programs: Applications are invited for new awards under the Fulbright-Hays Training Grant Programs for Fiscal Year 1990. The Fulbright-Hays Training Grant Programs include the Faculty Research Abroad, Group Projects Abroad, and Doctoral Dissertation Research Abroad programs. Authority for these programs is contained in the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2452(b)(6)).

The Faculty Research Abroad Program offers opportunities to faculty members of institutions of higher education for research and study abroad in modern foreign languages and area studies.

The Group Projects Abroad Program provides grants to educational institutions, State departments of education, and nonprofit educational organizations for training, research, and study abroad in modern foreign languages and area studies by groups of individuals engaged in a common endeavor.

The Doctoral Dissertation Research Abroad Program provides opportunities for graduate students to engage in full-time dissertation research abroad in modern foreign languages and area studies.

Deadline for Transmittal of Group Projects Abroad Applications: October 23, 1989.

Deadline for Transmittal of Faculty Research Abroad and Doctoral Dissertation Research Abroad Applications: October 30, 1989.

Applications Available: August 31, 1989.

Eligible Applicants: For the Faculty Research Abroad and Doctoral Dissertation Research Abroad Programs, eligible applicants are institutions of higher education. For the Group Projects Abroad Program, eligible applicants include institutions of higher education, State departments of education, private nonprofit educational organizations, and consortia of such institutions, departments, and organizations.

FULBRIGHT-HAYS TRAINING GRANT PROGRAMS

Title and CFDA number	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Faculty Research Abroad (84.019)	$692,000 Rs. 784,550*	$5,000 to 50,000	$28,000	25	3 to 12
Group Projects Abroad (84.021)	$2,055,813 Rs. 5,120,400*	$20,000 to 200,000	$55,000	38	1.5 to 12
Doctoral Dissertation Research Abroad (84.022).	$1,482,000 Rs. 1,365,450*	$4,000 to 50,000	$17,500	85	6 to 12

*Rupee allocation from the U.S.-India Fund.

Note: The Department is not bound by any estimates in this notice.

Applicable Regulations: Regulations applicable to these programs include the following:

(a) Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 81 and 85; and (b) Regulations governing the Higher Education Programs in Modern Foreign Language Training and Area Studies, 34 CFR Parts 662, 663, and 664.

Priorities: The regulations governing the Faculty Research Abroad Program (34 CFR 663.32(c)), Group Projects Abroad Program (34 CFR 664.32) and Doctoral Dissertation Research Abroad Program (34 CFR 662.32(c)) provide for the establishment of funding priorities by the Secretary. For Fiscal Year 1990, the Secretary has established funding priorities for these Fulbright-Hays programs. These priorities will be applied in accordance with the provisions of the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105(c)(3).

All available funds for these programs will be reserved solely for applications that propose research and training focusing upon one or more of the following world areas: (1) Africa; (2) the Western Hemisphere; (3) East Asia; (4) Southeast Asia and the Pacific; (5) Eastern Europe and the U.S.S.R.; (6) the Near East; or (7) South Asia. Applications that propose projects focusing on Western Europe will not be funded.

For Applications or Information Contact: Mrs. Merion Kane (Faculty Research Abroad Program), Telephone (202) 732-3301, Dr. Stephney Keyser (Group Projects Abroad Program), (202) 732-3394 or Ms. Vida Moattar (Doctoral Dissertation Research Abroad Program), (202) 732-3291, Department of Education, Center for International Education, 400 Maryland Avenue SW., Washington, DC 20202-5331.

Program Authority: 22 U.S.C. 2452(b)(6).

Dated: July 18, 1989.

James B. Williams,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 89-17461 Filed 7-25-89; 8:45 am]

BILLING CODE 4000-01-M

Pell Grant, Perkins Loan (Formerly the National Direct Student Loan), College Work-Study, Supplemental Educational Opportunity Grant, and Stafford Loan (Formerly Guaranteed Student Loan) Programs; Revision of the Need Analysis Systems for the 1990-91 Academic Year

AGENCY: Department of Education.

ACTION: Notice of revision to the Congressional Methodology and the Family Contribution Schedule methodology for the 1990-91 award year; correction.

On May 26, 1989, the Secretary of Education published in the **Federal Register** (54 FR 22840) a notice of revision to the Congressional Methodology and the Family Contribution Schedule methodology for the 1990-91 award year.

This notice makes a correction as follows:

In the note following the Family Size Offsets table, "$1,100" is changed to "$1,800".

Dated: July 21, 1989.

James B. Williams,

Acting Assistant Secretary for Postsecondary Education.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Supplemental Educational Opportunity Grant Program; 84.032 Guaranteed Student Loan Program; 84.033 College Work-Study Program; 84.038 Perkins Loan Program; 84.063 Pell Grant Program)

[FR Doc. 89-17484 Filed 7-25-89; 8:45 am]

BILLING CODE 4000-01-M

Office of Postsecondary Education

Plus and Supplemental Loans for Students Programs

AGENCY: Department of Education.

ACTION: Notice of SLS and PLUS Interest Rate for the Period July 1, 1989, Through June 30, 1990.

The Acting Assistant Secretary for Postsecondary Education announces the interest rate for variable rate Supplemental Loans for Students (SLS) and PLUS loans to be 12% for the period July 1, 1989, through June 30, 1990. The interest rate for these loans is provided under section 427A(c) of the Higher Education Act of 1965 (the Act), as amended (20 U.S.C. 1077a(c)).

Section 427A(c) of the Act provides that the variable interest rate applies to new SLS and PLUS loans disbursed on or after July 1, 1989, existing SLS and PLUS loans made at a variable interest rate (currently 10.45 percent), and SLS and PLUS loans made prior to July 1, 1987 that are refinanced at a variable rate. The variable rate applies for each 12-month period beginning July 1 and ending June 30. The rate is equal to the bond equivalent rate of the 52-week Treasury bills auctioned at the final auction held before the June 1 preceding that 12-month period plus 3.25 percent. Section 427A(c)(4)(A) of the Act limits the rate to a maximum of 12 percent.

Pursuant to section 427A(c) of the Act, as amended, the Acting Assistant Secretary has determined the interest rate for variable rate PLUS and SLS loans for the period July 1, 1989 through June 30, 1990 in the following manner:

Step 1. By determining the bond equivalent rate of the 52-week Treasury bills auctioned at the final auction prior to June 1, 1989 (9.15 percent);

Step 2. By adding 3.25 percent to that average; and

Step 3. By reducing the resulting percent to the maximum rate (12 percent) allowed by the Act.

FOR FURTHER INFORMATION CONTACT: Ralph B. Madden, Program Analyst, Division of Policy and Program Development, Department of Education on (202) 732-4242.

(20 U.S.C. 1077a(c)).

Dated: June 14, 1989.

James B. Williams,

Acting Assistant Secretary for Postsecondary Education.

(Catalog of Federal Domestic Assistance No. 94.032, Guaranteed Student Loan Program and PLUS Program)

[FR Doc. 89-17485 Filed 7-25-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Final Policy for Compensating Non-Federal Hydroelectric Projects for Monetary Costs and Power Losses Caused By Federal Agency Actions To Implement Columbia River Basin Fish and Wildlife Program Measures

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Issuance of BPA's policy to provide compensation for costs resulting from fish and wildlife program measures and announcement of the availability of a document describing the Administrator's decision.

SUMMARY: BPA finalized its Compensation Policy (Policy) for the Implementation of Columbia River Basin Fish and Wildlife Program measures. The Policy was established pursuant to section 4(h)(11)(A)(ii) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). BPA published a draft policy for public comment in the **Federal Register** on June 11, 1988 (53 FR 21888). We received comments from 24 individuals and entities.

Issuance of the Policy completes a policy and process to address claims filed by non-Federal project operators for compensation for monetary costs and power losses due to Federal agency actions to implement the Program. The Program, adopted by the Northwest Power Planning Council (Council), provides for various actions to protect, mitigate, and enhance Columbia River Basin fish and wildlife. BPA's decision document containing its responses to public comment is available from BPA's Public Involvement Office.

DATE: The Policy is effective August 28, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Jo Ann C. Scott, Public Involvement office, at the address listed above, 503-230-3478. Oregon callers may use 800-452-8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800-547-6048.

Information may also be obtained from:

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 243, 1500 NE. Irving Street, Portland, Oregon 97232, 503-230-4551.

Mr. Robert N. Laffel, Eugene District Manager, Room 206, 2111 East Seventh Avenue, Eugene, Oregon 97401, 503-687-6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington, 99201, 509-456-2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, Room 307, 301 Yakima Street, Wenatchee, Washington 98801, 509-662-4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, Suite 400, 201 Queen Ann Avenue, Seattle, Washington 98109-1030, 206-442-4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla Walla, Washington 99362, 509-522-6225.

Mr. Floyd Actis, Acting Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208-523-2706.

Mr. Thomas H. Blankenship, Boise District Manager, Room 494, 550 West Fort Street, Boise, Idaho 83724, 208-334-9137.

SUPPLEMENTARY INFORMATION:

I. Background Information

Section 4(h)(11)(A) of the Northwest Power Act provides:

> The Administrator and other Federal agencies responsible for managing, operating, or regulating Federal or non-Federal hydroelectric facilities located on the Columbia River and its tributaries shall * * * (ii) exercise such responsibilities, taking into account at each relevant stage of decisionmaking processes to the fullest extent practicable, the program adopted by the Council under this subsection. If, and to the extent that, such other Federal agencies as a result of such consideration impose upon any non-Federal electric power project measures to protect, mitigate, and enhance fish and wildlife which are not attributable to the development and operation of such project, then the resulting monetary costs and power losses (if any) shall be borne by the Administrator in accordance with this subsection.

The Northwest Power Act does not establish specific procedures or standards to guide BPA in compensating non-Federal project operators for costs or power losses resulting from actions imposed by Federal agencies pursuant to the Northwest Power Act. Based on inquiries from several Public Utility Districts, in May 1983 BPA published a notice of our intent to enter into rulemaking to develop policies and procedures to compensate non-Federal project operators. We sought comments from interested parties.

In 1985, based on our extensive review of the comments, we determined the development of a compensation policy would be premature. Since passage of the Northwest Power Act in 1980, and adoption of the Program by the Council in 1982, BPA had not received any claims. Given these circumstances BPA concluded that we could not anticipate the issues that would be raised by claims. Nor could we anticipate the procedures necessary to review and address claims.

BPA did not receive any compensation claims until July 1987. At that time BPA received three claims, all based upon Federal water releases in May and June of 1987. These claims were filed by the Public Utility District No. 1 of Douglas County (Douglas PUD) on July 29, 1987; the Public Utility District No. 1 of Chelan County (Chelan PUD) on October 5, 1987; and the Public Utility District of Grant County (Grant PUD) on November 25, 1987.

In our June 1988 **Federal Register** Notice, we indicated that we would implement a compensation policy before processing these claims. However, we have chosen to address the claims independent of this Policy. Preceding this Policy, the actions of the U.S. Army Corps of Engineers (Corps), the Council, and the claimants in 1987 reflect a unique circumstance requiring separate consideration. Had this Policy been in place, and considered by the Council, Corps, and claimants, we believe the actions which led to the three 1987 claims may not have been taken or may have been different. Consequently, the terms and conditions set forth in this Policy may not be fairly applicable to those claims. However, any decisions we made concerning those claims will not form a precedent for future compensation decisions concluded under the Policy.

BPA reached negotiated settlements with the three Mid-Columbia PUDs during late January and early February 1989. All settlements were for lesser amounts of energy or money than originally claimed. Settlement discussions centered on two issues: (1) The value of the energy spilled, and (2) a comparison of the operations the PUDs actually undertook against the hypothetical operations that could have been taken under the Corps' Coordinated Plan of Operation which would have minimized the PUDs' losses.

Douglas County PUD had claimed a loss of 2,087 megawatt hours and agreed to a settlement whereby BPA would deliver 1,315 megawatt hours of energy to Douglas during the 1989 Water Budget period when a Water Budget request would be in effect. Chelan PUD's claim was for 13,058 megawatt hours. Assuming an average price of 15 mills per kilowatthour, the value of the claim would be $195,870. BPA and Chelan settled for a $163,134 payment from BPA to Chelan. Grant PUD's claim was for $591,279 and was settled with BPA paying $451,495. Any decisions BPA made concerning the 1987 claims will not form a precedent for future compensation decisions made pursuant to this Policy.

Summary of Issues

The Administrator's decision document on the Compensation Policy will be sent to all commenters. It addresses the following general issues which were raised in our June 1988 **Federal Register** Notice and in the comments we received. These issues include:

- The procedures BPA will follow when we receive claims;
- Defining the Federal actions and Program measures that may be compensable and how BPA will determine if a Program measure addresses fish and wildlife effects that are attributable to non-Federal projects; and
- How BPA will compensate claimants.

Based upon the comments received and further examination of the issues, we have made several substantive changes in the Policy:

1. The Policy is effective from 31 days after the date of its publication in the **Federal Register** and will not be applied to claims received before the effective date of the Policy.

2. Any Federal agency proposing to implement a Program measure which may result in a claim should consult with interested parties and coordinate actions with BPA in advance, as provided in section 4(h)(11)(B) of the Northwest Power Act.

3. To be "imposed," a measure must be undertaken by a claimant pursuant to an order issued by a Federal agency by force of regulation or law. Water releases from upstream projects will not qualify for compensation unless the claimant is required by an order to store or release water under authority of law.

4. At the request of interested parties and for good cause shown, BPA may extend the period for comment or consult further respecting any claim.

5. BPA may undertake a fact-finding process to address a claim, and may employ a hearings officer.

6. After BPA has made a decision concerning a claim, the Policy provides for a 31-day no-action period, rather than a comment period.

BPA received no comments on the Paperwork Reduction Act aspects of the proposed Policy.

II. Final Policy

Section 1. Effective Date

This policy shall be effective 31 days from the date of its publication in the **Federal Register**.

Section 2. Definitions

A. "Claimant" means any non-Federal hydroelectric power project licensee requesting compensation under this policy.

B. "Basin" means the Columbia River and its tributaries within the borders of the United States.

C. "Costs and Power Losses" means those unavoidable monetary costs and electric power losses directly caused to non-Federal hydroelectric power projects as a result of a Federal agency's imposition of a Measure.

D. "Council" means the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council) established by the Pacific Northwest Electric Power Planning and Conservation Act, PL 96-501.

E. "Federal Agencies" for purposes of this Policy means those Federal agencies, other than BPA, which are responsible for managing, operating, or regulating hydroelectric power projects, including the U.S. Army Corps of Engineers (Corps), the Bureau of Reclamation (Bureau), and the Federal Energy Regulatory Commission (FERC).

F. "Impose" or "imposition" refers to the act of applying fish and wildlife obligations or restrictions upon a claimant which the claimant must implement in order to comply with applicable Federal law, regulation, or order.

G. "Measure" means a specific provision in the Program, as contemplated in the Northwest Power Act, calling upon a Federal agency or other entity to undertake actions to protect, mitigate, and enhance fish and wildlife in the Basin.

H. "Program" means the Columbia River Basin Fish and Wildlife Program and amendments thereto adopted by the Northwest Power Planning Council.

Section 3. Conditions Governing Compensation Payment

A. The Administrator will, as a general rule, consider compensation claims only from licensees of non-Federal hydroelectric power projects located within the Columbia River Basin. If a utility which is not a licensee can show that it has rights in a project which could not be represented by the project's licensee, such utility may petition the Administrator to file and request itself in a claim, provided the utilty meets the other requirements of BPA's policy and procedures. The Administrator may exercise discretion to grant or deny the petition.

B. When any Federal agency proposes to implement a measure which may give rise to a claim, it should consult and coordinate its actions in advance, pursuant to section 4(h)(11)(B) of Pub. L. 96-501. When any licensee of a non-Federal project becomes aware that a Federal agency may take or has taken an action which may form the basis of a claim, it should promptly notify that agency and the Administrator.

C. In order to establish entitlement to compensation, claimants must demonstrate to the Administrator that claimed costs and power losses are the direct result of Measures imposed by a Federal agency to mitigate fish and wildlife effects which are not attributable to the development and operation of the non-Federal project which is the subject of a claim.

D. The Administrator may use other authorities to agree in advance with non-Federal project owners or operators to provide consideration for operational modifications to benefit fish and wildlife.

Section 4. Requirements for Claimants

A. Claimants for compensation must submit a written claim to BPA within 120 days after the date a monetary cost or power loss occurs.

B. Claimants must demonstrate:

1. That claimed monetary costs or power losses have been involuntarily incurred;

2. That the Federal agency imposed upon the claimant a Measure which directly caused the claimed monetary costs or power losses; and

3. The extent to which those fish and wildlife effects addressed by the Measure were not attributable to the development and operation of the claimant's project.

C. Claimants must provide information and analyses that demonstrate and disclose:

1. Any actions that the claimant took or could have taken to mitigate or reduce the impact created by the Federal agency imposition;

2. Any actions that the claimant took that increased or exacerbated the impact created by the Federal agency imposition;

3. Any benefit the claimant may have received from the Federal agency imposition which in whole or in part offset the cost or power loss; and

4. Any generation capability the claimant may have had but did not use to realize benefit from the Federal agency imposition.

D. Claimants shall demonstrate the methods and formulae used to quantify monetary costs and/or power losses.

E. Claimants shall provide additional information the Administrator may require to justify compensation payments including information as to how the project would have been operated in the absence of the Federal imposition.

F. A claim for compensation must be signed by the chief executive officer or duly authorized representative of the claimant, certifying that, according to his or her knowledge and belief, the contents are true and accurate.

G. Claimants must maintain records for three years following the filing of a claim which will permit the Administrator to audit, inspect, or otherwise review any aspect of power operations, construction, or operation for which compensation is sought or paid.

H. Documents submitted to BPA shall be available to the public.

Section 5. The Administrator's Decisionmaking Process

A. Review of Claims for Compensation. The Administrator shall, in accord with 4(h)(11)(B) of the Northwest Power Act and section 7 of this Policy, review each compensation claim in a timely manner to determine whether the claim contains sufficient information to enable the Administrator to make a decision consistent with the criteria of this Policy. The Administrator shall review all existing agreements or contracts to determine if the claimant may have waived a right to compensation under this Policy.

B. Insufficient Information. The Administrator may request submission of additional information supporting the claim and if such information is not provided within a reasonable time, the Administrator may deny the claim. The Administrator shall state in writing the reasons for denial based on insufficient information.

C. Fact-finding Process. BPA may implement a fact-finding process if the Administrator determines a claim involves controversial or complex issues including, but not limited to, attributing adverse operational impacts on fish and wildlife to various projects; determining the availability of mitigation opportunities; and the extent of losses suffered by claimants. The Administrator may appoint a hearings officer to conduct a formal fact-finding process, make findings based on substantial evidence on the record, and recommend such findings to the Administrator. The parties to this process shall be limited to the claimant and BPA. The Administrator shall review and consider the factual findings of the hearings officer.

D. Decisions on Compensation Claims. Upon completion of review, the Administrator shall determine the compensable monetary costs or amount and value of power losses imposed upon the claimant and approve or deny a claim either in whole or in part. The Administrator shall state in writing the reasons for the determination and adjustments, if any, to the claim.

Section 6. Form of Compensation Payment

The Administrator shall have discretion to compensate approved claims by non-Federal hydroelectric operators with power, cash, or another reasonable form of payment.

A. Payment with Power. Compensation to claimants under this Policy for power losses will normally be made in the form of power. After consultation with the claimant, compensation power shall be delivered at times convenient to BPA in a form that renders its value to the claimant equivalent to the value of the power at the time lost.

B. Payment with Cash. Compensation to claimants under this Policy for cash losses will normally be made in the form of cash.

Section 7. Public Notice and Comment

A. Notice of Receipt of Claim. In addition to a brief notice in the **Federal Register**, the Administrator shall provide written notice of receipt of a compensation claim to interested parties. The notice shall:

1. Indicate the name and address of the claimant;

2. Describe the imposition alleged by the claimant which resulted in the claim;

3. Indicate the amount and type of compensation sought;

4. Invite interested parties to comment within 30 days; and

5. Indicate the availability of the claim to the public.

B. Interested Parties. Interested parties are:

1. State and Federal fish and wildlife agencies in the Pacific Northwest;

2. Indian Tribes of the Columbia Basin;

3. Non-Federal project operators;

4. Other BPA customers in the Pacific Northwest;

5. U.S. Army Corps of Engineers;

6. Federal Energy Regulatory Commission;

7. Bureau of Reclamation;

8. Pacific Northwest Power Planning Council; and

9. Any other persons requesting notice.

C. Extension of Comment Period. At the request of interested parties and for good cause shown, the Administrator may extend the period for comment or consult further respecting any claim.

D. Notice of Approval or Disapproval. The Administrator shall provide written notice to interested parties of the final action to be taken on all claims. The notice shall include:

1. The name and address of the claimant;

2. A description of the imposition alleged by the claimant which resulted in the claim;

3. The amount and type of compensation sought;

4. The decision of the Administrator to deny or approve the claim, and the reasons for the determinations made respecting the claim;

5. A statement indicating the availability to the public of the claim and decision documents;

6. A statement indicating that any action to compensate will not be taken for 31 days from the date of the notice of the Administrator's decision; and

7. A statement indicating that the decision will become final at the end of that period.

Issued in Portland, Oregon, on June 14, 1989.

Roger E. Seifert,

Deputy Assistant Administrator, Bonneville Power Administration, Washington, DC Office.

[FR Doc. 89-17478 Filed 7-25-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[ERA Docket No. 88-70-NG]

Atlantic Richfield Co.; Application to Amend Blanket Authorization to Import Natural Gas from Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application to amend conditional order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on June 26, 1989, of an application filed by Atlantic Richfield Company (ARCO) for an amendment to the conditional authorization, DOE/FE Opinion and Order No. 301 (February 27, 1989, 1 FE Para. 70,214), granting blanket authorization to import up to 25 Bcf of Canadian natural gas per year for two years, for use as fuel in its Cherry Point oil refinery located near Ferndale, Washington. The final approval of this import was conditioned on completion of the environmental review of a new pipeline, known as the Ferndale Pipeline System. ARCO now proposes to import Canadian natural gas using existing facilities and is seeking to have its conditional authorization amended accordingly. Under ARCO's original proposal, the gas, to be purchased from various Canadian suppliers, would be transported from a point of importation at the International Border near Sumas, Washington, through new pipeline facilities to be jointly owned and operated by ARCO and Intalco Aluminum Corporation (Intalco). The amendment requested would grant ARCO its blanket authorization for a two-year period beginning on the date of first delivery using existing facilities rather than the date the proposed new pipeline is built and operable. ARCO states that it will file quarterly reports detailing each import transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than August 25, 1989.

FOR FURTHER INFORMATION CONTACT:

Robert Groner, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-1657.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: ARCO currently receives gas which is acquired on the spot market in Canada and imported on its behalf by Cascade Natural Gas Corporation (Cascade) and transported through the pipeline facilities of Northwest Pipeline Corporation (Northwest Pipeline) and Cascade. The requested amendment would enable ARCO to directly import this natural gas from Canadian sources using the existing facilities of Northwest Pipeline and Cascade until such time as the Ferndale Pipeline System is completed.

The decision on the application for import authority will be made consistent with the DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Based on the application, the only change represented by this amendment request is the proposed use of existing facilities. Opinion and Order No. 301 made a preliminary finding that the underlying arrangement, like other, previously authorized blanket imports, is inherently competitive. The Opinion and Order also made preliminary findings that ARCO has demonstrated a need for the gas and that the security of supply for each purchase is assured by its short term and the number of potential suppliers. Accordingly, those preliminary findings are not expected to be changed by the proposed use of existing facilities. Parties, especially those that may oppose this requested amendment, should address the impact of the use of existing facilities on the consistency of this proposal with DOE policy guidelines.

NEPA Compliance

The DOE has determined that in cases not involving major new construction its compliance with the National Environment Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to it guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE with regard to existing facilities. This exclusion is not relevant to the proposed Ferndale Pipeline System.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from person who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to interevene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., e.d.t., August 25, 1989.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially

advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of ARCO's amendment application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 18, 1989.

Constance L. Buckley,

Acting Deputy Assistant Secretary for Fuels Programs Fossil Energy.

[FR Doc. 89-17477 Filed 7-25-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CS89-35-000, et al.]

Knob Hill Oil & Gas Co., Inc., et al.; Applications for Small Producer Certificates [1]

July 19, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Commission's regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before August 7, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No.	Date filed	Applicant
CS89-35-000	6-12-89	Knob Hill Oil & Gas Company, Inc., 1143 Crane Street, Suite 200, Menlo Park, California 94025.
CS89-37-000	6-30-89	Merrico Resources, Inc., P.O. Box 849, Ardmore, Oklahoma 73402.
CS89-39-000	7-5-89	ALN Resources Corporation, Mach Petroleum, Inc., and Calumet Petroleum Limited Partnership, 5727 South Lewis Avenue, Suite 700, Tulsa, Oklahoma 74105.
CS89-39-000	7-5-89	Bristol Resources Corporation, 3601 East 51st Street, Suite B & C, Tulsa, Oklahoma 74135.
CS89-40-000	7-11-89	Hugoton Energy Corporation, Western Gulf U.S., Inc., and Baja Petroleum Corporation, 229 East William, Suite 500, Wichita, Kansas 67202.
CS89-41-000	7-12-89	GLG Energy, L.P., 400 W. 15th Street, Suite 1650, Austin, Texas 78701.
CS89-42-000	7-18-89	Keldon Oil Company, P.O. Box 6129, Abilene, Texas 79608.

[FR Doc. 89-17408 Filed 7-25-89; 8:45 am]

BILLING CODE 6717-01-M

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[Docket Nos. TA89-1-22-000 and RP89-204-000]

CNG Transmission Corp.; Supplemental; Proposed Changes in FERC Gas Tariff

July 19, 1989.

Take notice that CNG Transmission Corporation ("CNG"), on June 30, 1989, pursuant to section 4 of the Natural Gas Act, Part 154.309 of the Commission's regulations (18 CFR 154.309) and section 12 of the General Terms and Conditions of CNG's tariff, filed the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

Ninth Revised Sheet No. 31
First Revised Sheet No. 150
Original Sheet No. 159-A
Original Sheet No. 159-B
First Revised Sheet No. 160
Alternate First Revised Sheet No. 150
Alternate Original Sheet No. 159-A
Alternate Original Sheet No. 159-B
Alternate First Revised Sheet No. 160.

The filing constitutes CNG's annual PGA to become effective on September 1, 1989.

CNG has also filed tariff sheets to become effective September 1, 1989 that proposed changes to its PGA clause that would permit it to track standby charges and certain transportation and related fuel costs associated with obtaining gas for CNG's system supply. CNG has also filed alternate tariff sheets similar to the primary tariff sheets. The alternate tariff sheets, however, recognize a stricter definition of "purchased gas costs."

Copies of the filing were served upon CNG's sales customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211). All motions or protests should be filed on or before July 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Loise D. Cashell,

Secretary.

[FR Doc. 89-17409 Filed 7-25-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-240-000, RP89-10-000, and RP89-125-000]

Panhandle Eastern Pipe Line Co.; Revised Date of Informal Conference Relating to Joint Stipulation of Issues

July 19, 1989.

The informal conference relating to the formulation of a joint stipulation of issues in the above-captioned proceeding that was scheduled for August 11, 1989, by order of the Presiding Administrative Law Judge issued on May 9, 1989, will be convened instead on August 9, 1989.

The informal conference in the above-captioned proceedings will be convened on August 9, 1989, at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

All parties and the Commission Staff are invited to attend this informal conference. Persons wishing to become parties must move to intervene pursuant to the Commission's regulations (18 CFR 385.214), and have their motions granted.

For additional information, contact John J. Keating, (202) 357-5762.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17410 Filed 7-25-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3620-6]

Privacy Act; System of Records

AGENCY: Environmental Protection Agency.

ACTION: Notice of a new Privacy Act system of records.

SUMMARY: The United States Environmental Protection Agency (EPA) is publishing a notice for public comment on a system of records subject to the Privacy Act of 1974. This system is the "Accounts Receivable Module." We have provided background information about the proposed system in the "Supplemental Information" section below.

EFFECTIVE DATE: This proposed action will be effective, without further notice, September 25, 1989, unless public comments are received which result in a contrary determination.

ADDRESS: Comments should be addressed to: Director, Financial Management Division, (PM-226F), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Gary M. Katz, Director, Financial Management Division (PM-226F), 401 M Street, SW., Washington, DC 20460. Telephone: (202) 382-5097.

SUPPLEMENTARY INFORMATION: EPA is establishing an integrated financial management system (IFMS), an automated information system which will include all records related to the Agency's financial and budgetary responsibilities. The IFMS will encompass several, separate Privacy Act systems of records, all of which will be accessed by individual's names through the IFMS cross-reference index. The Accounts Receivable Module, which is the subject of this Privacy Act notice, will be part of the IFMS.

The Accounts Receivable Module will be used to create a record of all receivables owed the Agency and to track the status of these receivables. Other uses include generating management reports, following up on overdue accounts, and identifying past due accounts.

This system of records will also be used to implement the Debt Collection Act of 1982 (Pub. L. 97-365). The Debt Collection Act was established to increase the efficiency of Government-wide efforts to collect debts owed the United States and to provide additional procedures for the collection of such debts. These procedures authorize Federal agencies to take advantage of debt collection services and techniques commonly available to the private sector, such as the use of private debt collection agencies and credit bureaus, and the collection of debts through salary and administrative offset. To implement these techniques and services, the Debt Collection Act authorizes agencies to disclose the names, addresses, and social security numbers of individuals, and personal debt collection information from systems of records.

The Privacy Act permits agencies to disclose information without the consent of the individual for "routine uses", that is, for purposes that are compatible with the purposes for which the information is collected. Certain routine uses proposed for this system meet the compatibility requirement of the Privacy Act because they are either specifically authorized by or are consistent with and directly related to the purposes of the Debt Collection Act. These proposed uses and, where applicable, the sections of the Debt Collection Act which authorize their use, include the following: (1) Information will be disclosed to the Internal Revenue Service (IRS) in order to obtain a taxpayer's mailing address to locate the taxpayer for debt collection purposes (Section 8, codified at IRC 6103). (2) Taxpayer mailing addresses obtained from the IRS will be disclosed to agents of EPA in order to locate the taxpayer for debt collection purposes. However, disclosures of a taxpayer mailing address obtained from the IRS to a consumer reporting agency may be made only for the purpose of having credit reports prepared by the consumer reporting agency (Section 8, codified at IRC 6103). (3) In addition to taxpayer mailing addresses, other debtor information will be disclosed to consumer reporting agencies to obtain credit reports for use by EPA for debt collection purposes. (4) Debtor information will be disclosed to other Federal agencies to effect salary or administrative offsets (Section 5, codified at 5 U.S.C. 5514, and Section 10, codified at 31 U.S.C. 3716, respectively, and as authorized in common law). Before making disclosures for offset purposes, EPA will comply with all procedural steps and safeguards required by Sections 5 and 10 of the Debt Collection Act. (5) Debtor information will be disclosed to debt collection agencies under contract to EPA to collect debts owed the United States (Section 13, codified at 31 U.S.C. 3718, and as authorized in common law). Debt collection agencies will be required to comply with the requirements of the Privacy Act and will be subject to the criminal penalty provisions of that Act. (6) Debtor information will also be provided to the United States Justice Department for litigation purposes or further administrative action in connection with debt collection. (7) Information from this sytsem may be disclosed to other Federal agencies conducting computer matching programs to help eliminate fraud and abuse and to detect unauthorized overpayments made to individuals (In that event, EPA will comply with the Computer Matching and Privacy Protection Act of 1988 and appropriate Office of Management and Budget guidelines). The term "debtor information" as used in the proposed routine uses for this system is limited to the individual's name, address, social security number, and other information necessary to identify the individual: the amount, status and history of the claim; and the agency or program under which the claim arose.

Other proposed routine uses for the Accounts Receivable Module, although not directly related to debt collection activities, are compatible with the purposes for which information in this system is collected. These uses are appropriate and necessary to carry out EPA's financial management responsibilities.

Section 2 of the Debt Collection Act of 1982, codified at 5 U.S.C. 552a(b)(12), is an amendment to the Privacy Act which permits disclosures of delinquent debtor information (as described above) to consumer reporting agencies for the purpose of making delinquency and default data available to private sector grantors of credit. Such disclosures will be made only when a claim is overdue, and then only after the debtor has been afforded the due process rights specified in the Debt Collection Act of 1982.

BEST COPY AVAILABLE

Although such disclosures are authorized as an exception to the Privacy Act rather than as a routine use, EPA is publishing notice of these disclosures at the end of the listing of routine uses in accordance with the guidance of the Office of Management and Budget.

Date: July 10, 1989.

Charles L. Grizzle,

Assistant Administrator for Administration and Resources Management.

EPA-25

System Name

Accounts Receivable Module EPA/FMD-EPA-25.

Security Classification

None.

System Location

All EPA Servicing Finance Offices. These are:

Headquarters—401 M St., SW., Washington, DC 20460
Region 1—John F. Kennedy Bldg. R2203, Boston, MA 02203
Region 2—26 Federal Plaza, New York, NY 10278
Region 3—841 Chestnut Street, Philadelphia, PA 19107
Region 4—345 Courtland Street, N.E., Atlanta, GA 30365
Region 5—230 South Dearborn St., Chicago, IL 60604
Region 6—1445 Ross Avenue, Suite 1200, Dallas, TX 75270
Region 7—726 Minnesota Avenue, Kansas City, KS 66101
Region 8—999 18th St., Suite 500, Denver, CO 80202-2405
Region 9—215 Freemont St., San Francisco, CA 94105
Region 10—1200 6th Avenue, Seattle, WA 98101
Cincinnati Financial Office—26 West Martin Luther King Dr., Cincinnati, OH 45268
Las Vegas Financial Office—P.O. Box 18418, Las Vegas, NV 89114
Research Triangle Park, North Carolina (MD-20) 27711

Categories of Individuals Covered by the System

Individuals who owe the Environmental Protection Agency monies. This includes, but is not limited to, monies owed for refunds, penalties, travel advances, Interagency Agreements, or Freedom of Information Requests. This system also contains information on corporations and other entities who are in debt to EPA. Records on these corporations and other entities are not subject to the Privacy Act.

Categories of Records in the System

This system of records contains personal, identifying information such as names, addresses, and Social Security numbers of persons indebted to EPA. The system also contains information about the nature of the debt or claim, the amount owed, the history status of the debt, and information which relates to and documents efforts to collect debts owed the Agency.

Authority for Maintenance of the System

35 U.S.C. 3512; 5 U.S.C. 5514; 5 U.S.C. 552a(b)(12); 31 U.S.C. 3702, 3711, and 3716—3718; Executive Order 9397.

Purpose

Records in this system will be used primarily to create a record of, and to track, all accounts receivable and to assist EPA in collecting debts owed the Agency.

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses

Information in this system may be disclosed for routine uses as follows:

1. To a Member of Congress or a congressional office in response to an inquiry from that Member or office made at the request of the individual to whom the record pertains.

2. To EPA contractors who have been engaged to assist EPA in the performance of activities related to this system of records and who need to have access to the records in order to perform under the contract. Contractors are required to maintain the records in accordance with the requirements of the Privacy Act.

3. To a Federal agency which has requested information relevant to its decision in connection with the hiring or retention of an employee; the reporting of an investigation on an employee; the letting of a contract; or the issuance of a security clearance, license, grant, or other benefit.

4. To a Federal, State or local agency where necessary to enable EPA to obtain information relevant to an EPA decision concerning the hiring or retention of an employee; the letting of a contract, or the issuance of a security clearance, license, grant, or other benefit.

5. To an appropriate Federal, State, local or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation or order, where there is an indication of a violation or potential violation of the statute, rule, regulation or order and the information disclosed is relevant to the matter.

6. To the Department of Justice to the extent that each disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation in which one of the following is a party or has an interest: (a) EPA or any of its components (b) an EPA employee in his or her official capacity, (c) an EPA employee in his or her individual capacity where the Department of Justice is representing or considering representation of the employee, or (d) the United States where EPA determines that the litigation is likely to affect the Agency.

7. In a proceeding before a court, other adjudicative body or grand jury, or in an administrative or regulatory proceeding, to the extent that each disclosure is compatible with the purpose for which the records were collected and is relevant and necessary to the proceeding in which one of the following is a party or has an interest: (a) EPA or any of its components, (b) an EPA employee in his or her official capacity, (c) an EPA employee in his or her individual capacity where the Department of Justice is representing or considering representation of the employee, or (d) the United States where EPA determines that the litigation is likely to affect the Agency. Such disclosures include, but are not limited to, those made in the course of presenting evidence, conducting settlement negotiations, and responding to subpoenas and requests for discovery.

8. To representatives of the General Services Administration and the National Archives and Record Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

9. To the General Accounting Office, Office of Management and Budget, and Department of Treasury for the purposes of carrying out EPA's financial management responsibilities.

10. The following disclosures of information in this system may be made in order to help collect debts owed the EPA.

a. To provide information to the Internal Revenue Service in order to obtain taxpayer mailing addresses to locate such taxpayers for the purpose of collecting debts owed the EPA.

b. To provide taxpayer mailing addresses obtained from the IRS to agents of EPA in order to locate the taxpayer for debt collection purposes. The Debt Collection Act of 1982 prohibits the disclosure of such mailing addresses to consumer reporting agencies except for the purpose of having such agencies prepare reports on the taxpayer for use by Federal agencies. Accordingly, EPA will disclose this information to consumer reporting agencies only to obtain credit reports to help collect debts owed the EPA.

c. To provide debtor information to consumer reporting agencies in order to obtain credit reports for use by EPA for debt collection purposes.

d. To provide debtor information to other Federal agencies to effect salary and administrative offsets.

e. To provide debtor information to debt collection agencies under contract to EPA to help collect debt owed EPA. Such agencies will be required to comply with the Privacy Act and their agents will be made subject to the criminal penalty provisions of that Act.

f. To provide debtor information to the Justice Department for litigation or further administrative action in connection with debt collection.

g. To provide debtor information to the Internal Revenue Service for the purpose of reporting discharged debts declared uncollectable as a result of defaulted obligations.

h. To provide information as necessary to other Federal agencies conducting computer matching programs to help eliminate fraud and abuse and to detect unauthorized overpayments made to individuals. (In that event, EPA will comply with the Computer Matching and Privacy Protection Act of 1988 and appropriate Office of Management and Budget guidelines.)

Note: The term "debtor information" as used in the routine uses above is limited to the individual's name, address, social security number, and other information necessary to identify the individual; the amount, status and history of the claim; and the agency or program under which the claim arose.

Disclosure to Consumer Reporting Agencies

Disclosure to consumer reporting agencies: Pursuant to 5 U.S.C. 552a(b)(12), disclosure may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

Policies and Procedures for Storing, Retrieving, Retaining, and Disposing of Records in the System

Storage

Tapes, disks, printouts, and other hard copies. Paper records maintained by each Servicing Finance Office (located in 14 offices nationwide). Computer tapes and disks maintained in Research Triangle Park—National Computer Center, N.C.

Retrievability

Records are indexed by an account receivable control number (a number assigned to each "incoming" account receivable). Individual records can be accessed by using a cross-reference table which links accounts receivable control numbers with debtor names and associated debtor information.

Safeguards

Records are accessible only to authorized EPA personnel. For automated records, only authorized EPA personnel with proper passwords may access records. Other records and computer terminals are maintained in offices which are locked during non-duty hours.

Retention and Disposal

Manual records are maintained until the indebtedness is paid, at which time they are disposed of in a manner which ensures confidentiality of the information. Automated records are purged annually for paid debts.

System Manager(s) and Address

Director, Financial Management Division (PM-226F), EPA, 401 M Street SW., Washington, DC 20460.

Notification Procedure

To obtain information on whether this system contains information on you, contact the System Manager, in writing, at the address listed above. The request should be notarized to verify your identify. You should include your full name, current address, telephone number, and Social Security Number (SSN). Your SSN will be used only to verify your identity. Providing your SSN is voluntary, but your failure to do so will not effect your rights, although it may delay the verification process. The System Manager may require other information from you.

Record Access Procedures

To obtain a copy of a record pertaining to you, follow the Notification Procedure described above. In addition, specify the records being sought.

Contesting Record Procedures

To request a correction or amendment of a record pertaining to you, follow the Notification Procedure described above. In addition, you should identify the record which you wish corrected and the corrective action sought, and provide supporting justification for the correction.

Record Source Categories

Individuals covered by the system, supervisors, consumer reporting agencies, debt collection agencies, the Department of the Treasury and other Federal agencies.

Systems Exempted From Certain Provisions of the Act

None.

[FR Doc. 17486 Filed 7-25-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3620-7]

National Pollutant Discharge Elimination System (NPDES) General Permit for Construction Related Activities in South Dakota

AGENCY: U.S. Environmental Protection Agency (EPA), Region VIII

ACTION: Notice of intent to reissue general permit.

SUMMARY: Region VIII of the U.S. Environmental Protection Agency (EPA) is hereby giving notice of its tentative determination to reissue the National Pollutant Discharge Elimination System (NPDES) general permit for the Construction Related Activities of Excavation Dewatering and Hydrostatic Testing conducted within the State of South Dakota, NPDES permit Number SDG-070000. The general permit provides a more efficient means of granting discharge authorization for these facilities. This general permit was originally issued on August 10, 1984, and notice of the permits' issuance published in the **Federal Register** on October 19, 1984 (See 49 FR 41104). The proposed reissued permit will continue the established effluent requirements and standards of the previous permit. These requirements and standards are based on technology and water quality considerations, prohibitions, Best Management Practices, and other conditions applicable to the types of waste waters generated by construction facilities. Persons seeking discharge authorization under the general permit are required to submit a request for discharge approval prior to their commencement of such discharge.

DATES: Public comment on this proposal must be on or before August 25, 1989.

ADDRESS: Public comments should be sent to: Ms. Carol L. Campbell (8WM-C), Acting Chief, Compliance Branch, Water Management Division, U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80202-2405.

FOR FURTHER INFORMATION CONTACT: Mr. Marshall Fischer, Region VIII at the above-listed address or telephone (303) 293-1592 or FTS 564-1592. Copies of the proposed permit and Statement of Basis and Fact Sheet will be provided upon request.

SUPPLEMENTARY INFORMATION:

A. Background

Section 301(a) of the Clean Water Act (CWA) provides that the discharge of pollutants is unlawful except in accordance with an NPDES permit. South Dakota is a non-NPDES state in which EPA retains NPDES permit issuance and primary enforcement authority. Under EPA's regulations at 40 CFR 122.28, EPA may issue a single general permit to point sources within the same geographic area if the regulated sources:

(1) Are involved in the same or substantially similar operations;

(2) Generate and discharge the same types of waste;

(3) Require the same permit effluent limitations and/or operating conditions;

(4) Require similar monitoring requirements; and,

(5) In the opinion of the NPDES Program Director, are more appropriately controlled under a general permit than an individual permit.

As in the case of any individual permit issued under the NPDES program, violation of any condition of a general permit constitutes a violation of the Clean Water Act and is fully enforceable under section 309 of the Act.

Any owner or operator authorized by the general permit may be excluded from the general permit by applying for an individual permit as provided for by 40 CFR 122.28(b).

B. Construction Related Discharges

The proposed permit covers two (2) principal types of construction related discharges, excavation dewatering and hydrostatic testing of pipelines or vessels. The discharge activities may be done in conjunction or performed separately. Excavation dewatering is often necessary because of groundwater or runoff intrusion at a construction site. Such waters potentially contain elevated suspended solids and oil and grease. Improper pumping or draining of these waters would further aggravate the pollutant impacts.

Hydrostatic testing of pipelines and/or vessels is normally conducted to determine the structural integrity of the material and installation. Relatively clean water (i.e., raw river water, groundwater, potable water, etc.) is typically used as the test fluid. The pollutant potential for such related discharges results mainly from improper discharge practices (e.g., those causing stream channel scouring). Depending on the source of the test fluid, other pollutants such as suspended solids may also be of concern.

C. Economic Impact

EPA has reviewed the effect of Executive Order 12291 on this proposed general permit and has determined the proposal not to be major under that Order. This proposal was submitted to the Office of Management and Budget for review as required by the Executive Order. Any comments from OMB to EPA and any EPA responses to those comments will be made available for public inspection at the U.S. Environmental Protection Agency, Compliance Branch, Water Management Division, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202-2405.

D. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in these draft general NPDES permits under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements of these permits have already been approved by the Office of Management and Budget under submissions made for the Clean Water Act's NPDES permit program.

E. The Regulatory Flexibility Act

After review of the facts presented in the notice of intent printed above, I hereby certify, pursuant to the provisions of 5 U.S.C. 605(b), that these general permits will not have a significant impact on a substantial number of small entities. Moreover, they reduce a significant administrative burden on regulated sources.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 89-17467 Filed 7-25-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: New.

Title: Hazard Mitigation Planning.

Abstract: The Disaster Relief Act of 1974, as amended by the Disaster Relief and Emergency Assistance Amendments of 1988 require State and local governments receiving Federal disaster assistance to evaluate the natural hazards in the disaster area, and to take steps to mitigate these hazards. In order to fulfill these requirements, State and local governments must prepare and implement a hazard mitigation plan or plan update. Plans will identify measures that will reduce potential future losses to natural disasters, and the subsequent need for Federal disaster assistance. Plans or updates must be submitted to the appropriate FEMA Regional Director within 180 days of a disaster declaration.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 1.

Number of Respondents: 1.

Estimated Average Burden Hours per Response: 1.

Frequency of Response: Annually or after a disaster declaration.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Pamela Barr, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: July 19, 1989.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 89-17465 Filed 7-25-89; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-837-DR]

Major Disaster and Related Determinations; Connecticut

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Connecticut (FEMA-837-DR), dated July 18, 1989, and related determinations.

DATED: July 18, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that, in a letter dated July 18, 1989, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288, as amended by Pub. L. 100-707), as follows:

I have determined that the damage in certain areas of the State of Connecticut, resulting from thunderstorms, tornadoes, and severe winds on July 10, 1989, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93-288, as amended by Public Law 100-707. I, therefore, declare that such a major disaster exists in the State of Connecticut.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under PL 93-288, as amended by PL 100-707, for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of Section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Albert A. Gammal, Jr. of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Connecticut to have been affected adversely by this declared major disaster:

The counties of Litchfield and New Haven for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Robert H. Morris,

Acting Director, Federal Emergency Management Agency.

[FR Doc. 89-17461 Filed 7-25-89; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-834-DR]

Amendment to Notice of a Major Disaster Declaration; Kentucky

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Kentucky (FEMA-834-DR), dated June 30, 1989, and related determinations.

DATED: July 20, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the Commonwealth of Kentucky, dated June 30, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 30, 1989:

Floyd County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-17462 Filed 7-25-89; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-835-DR]

Amendment to Notice of a Major Disaster Declaration; Louisiana

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-835-DR), dated July 18, 1989, and related determinations.

DATED: July 20, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Louisiana, dated July 18, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 18, 1989:

The parishes of Bienville, Bossier, Jefferson Davis, Lafayette, St. Landry, Vermilion, Vernon, and Webster for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-17463 Filed 7-25-89; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-836-DR]

Major Disaster and Related Determinations; Texas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA-836-DR), dated July 18, 1989, and related determinations.

DATED: July 18, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3614.

NOTICE: Notice is hereby given that, in a letter dated July 18, 1989, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288, as amended by Pub. L. 100-707), as follows:

I have determined that the damage in certain areas of the State of Texas, resulting from Tropical Storm Allison occurring June 25 through July 7, 1989, is of sufficient severity and magnitude to warrant a major disaster declaration under Pub. L. 93-288, as amended by Pub. L. 100-707. I, therefore, declare that such a major disaster exists in the State of Texas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. You are also authorized to provide Public Assistance in the affected areas, if requested and necessary. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288, as amended by Pub. L. 100-707, for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implemention of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Robert D. Broussard of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Texas to have been affected adversely by this declared major disaster:

The counties of Hardin, Harris, Jasper, Jefferson, Liberty, Newton, Orange, San Jacinto, and Tyler for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Robert H. Morris,

Acting Director, Federal Emergency Management Agency.

[FR Doc. 89-17464 Filed 7-25-89; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL HOME LOAN BANK BOARD

Senior Executive Service—Performance Review Board Updated Membership

In accordance with Title IV of the Civil Service Reform Act of 1978, the Federal Home Loan Bank Board hereby gives notice of new memberships on the SES Performance Review Board. Current members are Gregory Rothwell (Chairman), William Fulwider, Frank Haas, Karl Hoyle, Eugene Katz, Dennis Pittman and Julie Williams.

FOR FURTHER INFORMATION CONTACT: Sue A. Rendleman, Director of Personnel, Federal Home Loan Bank Board, (202) 906-6050

John Buckley, Jr.,

Secretary, Federal Home Loan Bank Board.

[FR Doc. 89-17493 Filed 7-25-89; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

July 20, 1989.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340).

Final Approval Under OMB Delegated Authority of the Extension, Without Revision, of the Following Report

Report title: Government Securities Dealers Reports.

Agency form number: FR 2004 a, b, c, and d.

OMB Docket Number: 7100-0003.

Frequency: Weekly, Daily, Semi-monthly.

Reporters: Primary dealers in U.S. government securities.

Annual reporting hours: 33,472.

Estimated average hours per response: 1.10 to 1.33.

Estimated number of respondents: 43. Small businesses are not affected.

General Description of Report

This information collection is voluntary (12 U.S.C. 248(a)(2) and 353-359(a)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

This group of reports submitted by government securities dealers is used to collect daily positions, daily transactions, weekly financings, and semi-monthly futures, forwards, and options data from the primary dealers in U.S. Treasury securities. The data are used to assist in the appraisal of the financial health of reporting dealers, the soundness of their trading practices, and the adequacy of their market-making in all segments of the market.

Board of Governors of the Federal Reserve System, July 20, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-17428 Filed 7-25-89; 8:45 am]

BILLING CODE 6210-01-M

Bankers Trust of Alabama, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than August 17, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Bankers Trust of Alabama, Inc.*, Madison, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Bankers Trust of Madison, Madison, Alabama.

Board of Governors of the Federal Reserve System, July 20, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-17426 Filed 7-25-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 18, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President), 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Marion E. Lowery*, Franklin, Tennessee, to retain 29.12 percent of the voting shares of Citizens Corporation, Smithville, Tennessee, and thereby indirectly acquire Citizens Bank, Smithville, Tennessee.

Board of Governors of the Federal Reserve System, July 20, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-17427 Filed 7-25-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Meeting of the National Advisory Child Health and Human Development Council

Pursuant to Pub. L. 92-463, notice is hereby given of meeting of the National Advisory Child Health and Human Development Council, September 18-19, in Building 1, Wilson Hall, National Institutes of Health, Bethesda, Maryland, and the meeting of the Subcommittee on Planning on September 18 from 8:30 a.m. to 9:30 a.m. in Building 31, Room 2A03.

The Council meeting will be open to the public on September 18 from 9:30 a.m. until 5:00 p.m. The agenda includes a report by the Director, NICHD, and a presentation by the Reproductive Sciences Branch. The meeting will be open on September 19 immediatley following the review of applications if any policy issues are raised which need further discussion. The Subcommittee meeting will be open on September 18 from 8:30 a.m. to 9:30 a.m. to discuss program plans and the agenda for the next Council meeting. Attendance by the public will be limited to space available.

In accordance with the provision set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on September 19 from 8:30 a.m. to completion of the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commerical property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Linda Hall, Council Secretary, NICHD, Executive Plaza North, Room 520, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301, 496-1485, will provide a summary of the meeting and a roster of Council members as well as substantive program information.

(Catlog of Federal Domestic Assistance Program Nos. 13.864, Population Research, and 13.865, Research for Mothers and Children, National Institutes of Health)

Dated: July 14, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-17415 Filed 7-25-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Neurological Disorders and Stroke; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of the Committees of the National Institute of Neurological Disorders and Stroke.

These meetings will be open to the public to discuss program planning, program accomplishments and special reports or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552(b)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of meetings, rosters of committee members, and other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: National Advisory Neurological Disorders and Stroke Council and Its Planning Subcommittee

Date: October 4, 1989 (Planning Subcommittee)

Place: National Institutes of Health, Building 31, Conference Room 8A28, 9000 Rockville Pike, Bethesda, Maryland 20892

Open: 1 p.m.-3 p.m.

Closed: 3 p.m.-5 p.m.

Dates: October 5-6, 1989 (Council)

Place: National Institutes of Health, Building 31C, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20892

Open: October 5, 9 a.m-1 p.m.

Closed:

October 5, 1 p.m.—recess
October 6, 8:30 a.m.—adjournment

Executive Secretary: John C. Dalton, Associate Director for Extramural Activities, NINDS, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496-9248.

Name of Committee: Neurological Disorders Program Project Review B Committee

Dates: October 26-28, 1989

Place: Sheraton Phoenix Hotel, 111 North Central Avenue, Phoenix, Arizona 85004

Open: October 26, 8 a.m.-8:30 a.m.

Closed:

October 26, 8:30 a.m.—recess
October 27, 8:30 a.m.—recess
October 28, 8 a.m.—adjournment

Executive Secretary: Dr. A. Beau White, Federal Building, Room 9C-14, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496-9223.

Name of Committee: Neurological Disorders Program Project Review A Committee

Dates: October 27-29, 1989

Place: Sheraton Phoenix Hotel, 111 North Central Avenue, Phoenix, Arizona 85004

Open: October 27, 8 a.m.-8:30 a.m.

Closed:

October 27, 8:30 a.m.—recess
October 28, 8:30 a.m.—recess
October 20, 8 a.m.—adjournment

Executive Secretary: Dr. Herbert Yellin, Federal Building, Room 9C-14, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496-9223.

(Catalog of Federal Domestic Assistance Program No. 13.853, Clinical Basis Research; No. 13.854, Biological Basis Research)

Dated: July 14, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-17416 Filed 7-25-89; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-89-2023]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for

review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submited to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: July 18, 1989.

John T. Murphy,

Director Information Policy and Management Division.

Proposal: Disclosure of Social Security Numbers and Employer Identification Numbers by Applicants and Participants in HUD Programs (FR-2501).

Office: Housing, Public and Indian Housing, and Community Planning and Development.

Description of the Need for the Information an its Proposed Use: Section 165 of the Housing and Community Development Act of 1987 (Pub. L. 100-242; approved February 5, 1988) authorizes HUD to *require* applicants and participants in any HUD program involving loans, grants, interest or rental assistance of any kind, or mortgage or loan insurance, to disclose their Social Security numbers or Employee Identification numbers to HUD.

Form Number: HUD-50059, 50058, 92068F, 9539, 93101, 2530, 92900, and 92013.

Respondents: Individuals or Households, Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Certification of Compliance	2,171,256		5		.0252		273,578
Tenant Data Summary	2,640,000		5		.0252		332,640
Request for Financial Info.	76,000		1		.0252		1,915
Request for Occupied Conveyance	4,600		8.6		.0252		997
Recertification of Family Income	150,000		1.2		.0252		4,725
Previous Participation Cert.	9,000		1		.0252		227
Application for HUD/FHA Insured Mortgages	1,603,334		1		.0252		40,404
Section 202 Applications	1,300		2		.0252		66
Section 312 Loan Program	510		13.1		.0252		264

Total Estimated Burden Hours: 654,816.

Status: Revision.

Contact: Dennis A. Raschka, HUD, (202) 426-6493; John Allison, OMB, (202) 395-6880.

Date: July 18, 1989.

[FR Doc. 89-17482 Filed 7-25-89; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-09-7122-09-D086]

Intent to Prepare an Environmental Impact Report Statement; North County Landfill Project, San Diego County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM) and the County of San Diego, California, will prepare a joint Federal-State Environmental Impact Report/Statement (EIR/S) for a proposed Class III landfill in the northern portion of San Diego County.

Four alternative sites are being considered for the new landfill. One of the sites, Blue Canyon, includes public lands administered by the BLM. The sites' names and locations are as follows:

Blue Canyon. The Blue Canyon site is located just southwest of State Highway 79, about seven miles northwest of the community of Warner Springs.

Trujillo Canyon. The Trujillo Canyon site is located two to four miles north of the community of Pala.

Aspen Road. The Aspen Road site is located west of I-15 and approximately four miles southeast on the town of Fallbrook.

Gregory Canyon. The Gregory Canyon site is located about three miles east of I-15 and 2 miles southeast of Pala. It opens out to the San Luis Rey River.

The County of San Diego proposes to open a new landfill site in northern San Diego County to accommodate municipal solid wastes generated by

residents and businesses throughout the north county. A new site is needed because the San Marcos Landfill, which receives 95 percent of the total refuse landfilled in the area, will reach maximum capacity by 1991. If this landfill cannot be expanded, it will close. The design of the alternative landfills will be based on a detailed evaluation of environmental, geologic, and hydrologic constraints of each alternative site. The public is invited to participate in the environmental process beginning with the identification of environmental issues.

DATE: Comments relating to the identificaiton of environmental issues will be accepted through August 28, 1989.

ADDRESS: Send comments to BLM, Palm Springs-South Coast Resource Area, 400 S. Farrell Drive, Suite B-205, Palm Springs, California 92262.

FOR FURTHER INFORMATION CONTACT: Russell L. Kaldenberg, Area Manager Palm Springs-South Coast Resource Area, (619) 323-4421.

SUPPLEMENTARY INFORMATION: The preliminary issues for the EIR/S include the following: (1) Threatened and endangered and other sensitive species, (2) Historic and prehistoric cultural resources, (3) Traffic congestion, (4) Visual impacts to local communities and scenic highways, (5) Air quality effects associated with truck exhaust and fugitive dust, (6) Geotechnical concerns including faults, groundwater, and the availability of cover material, (7) Economic effects on property values, and (8) Growth inducement. These preliminary issues are subject to change as a result of public input.

The EIR/S will be developed by an interdisciplinary team composed of specialists in wildlife (including threatened and endangered animals), range and vegetation (including threatened and endangered plants), cultural resources, visual resources, geology, soil, water, air, and economics/demographics.

Public participation will be part of the environmental process. It is intended that all interested or affected parties be involved. The environmental team will seek public input by direct mailings, media coverage, person-to-person contacts, and coordination with local, state, and other Federal agencies. Public meetings to obtain input on the issues have been held at the following locations:

Warner Springs, California
April 25, 1989, 7:30 p.m.—Warner Union School Auditorium

Pauma Valley, California
April 26, 1989, 7:00 p.m.—Pauma Valley Community Center

Fallbrook, California
April 27, 1989, 7:00 p.m.—Maie Ellis School, Cafetorium

No additional public meetings are planned prior to the release of the Draft EIR/S. Comments on the Draft EIR/S will be accepted after its release. This will include both written comments and comments given at public meetings. Notice of these meetings will be given in local papers and the **Federal Register.**

Dated: July 19, 1989.

H.W. Riecken,

Acting District Manager.

[FR Doc. 89-17421 Filed 7-25-89; 8:45 am]

BILLING CODE 4310-40-M

[UT-050-09-4320-10]

Grazing Board Meeting and Tour

AGENCY: Bureau of Land Management, Interior.

ACTION: District Grazing Advisory Board meeting.

SUMMARY: The Richfield District Grazing Advisory Board will hold a meeting on August 23, 1989 at 10:00 a.m., in the BLM District Office, 150 East 900 North, Richfield, Utah. There will be a tour on the following day in the Henry Mountain Resource Area (HMRA) leaving from the District Office at 8:00 a.m. The agenda for the meeting will be:

1. Discussion concerning the drought conditions.
2. Riparian management.
3. FY 90 projects.
4. Wild horse update.
5. Update on proposed allotment changes.
6. Follow-up on the East Fish Springs Allotment.
7. Report on progress of the volunteer program.

The meeting is open to the public and interested persons may make oral statements to the Council between 2:00 p.m. and 3:00 p.m. or file written comments for the Board's consideration. Anyone wishing to make an oral statement, must notify the District Manager, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701.

Date: July 17, 1989.

Jerry Goodman,

District Manager, Richfield District Office.

[FR Doc. 89-17446 Filed 7-25-89; 8:45 am]

BILLING CODE 4310-DQ-M

[MT-060-09-4212-13; MTM-75701]

Realty Action: Private Exchange—Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: The Bureau of Land Management proposes to exchange public land for private land with William and Lela French. This proposed exchange involves only the surface estate. The public and private lands are in Phillips County.

SUMMARY: The public will gain private lands with wetlands and wildlife habitat for piping plover, upland birds, antelope and mule deer. Consolidation of public land will occur which allows for better range management. Disposal of the public lands is in conformance with the Phillips Management Framework Plan. Disposal of public lands with relatively low public value will help meet the management goals for the area where the public will gain private land. This exchange is in the public interest. The Bureau of Land Management advised state and local officials about the proposed exchange.

The following described public lands are suitable for disposal by exchange under section 206 of the Federal Land Management Act of 1976, 43 U.S.C. 1716.

Principal Meridian Montana

T. 24 N., R. 31 E.,
Section 1, Lots 1, 2, 3, 4, S½S½;
Section 3, SW¼SE¼;
Section 10, W½NE¼, NW¼, NW¼SW¼, NW¼SE¼;
Section 11, E½NE¼;
Section 12, All;
Section 13, E½NW¼;
T. 24 N., R. 32 E.,
Section 6, Lots 3, 4, 5, SE¼SW¼;
Section 7, Lots 1, 2, 3, 4, E½W½;
T. 25 N., R. 31 E.,
Section 25, SE¼NE¼;
T. 25 N., R. 32 E.,
Section 30, Lot 2, SW¼NE¼, SE¼NW¼;
T. 26 N., R. 30 E.,
Section 25, N½SW¼;
T. 26 N., R. 31 E.,
Section 30, Lots 3, 4, E½SW¼;
T. 29 N., R. 29 E.,
Section 12, All;
Section 13, N½NW¼;
T. 29 N., R. 30 E.,
Section 16, SE¼; totaling 3,152.45 acres.

The United States will exchange this public land to acquire the following described private land:

Principal Meridian Montana

T. 25 N., R. 30 E.,
Section 6, S½NE¼;
T. 25 N., R. 31 E.,
Section 4, Lots 1, 2, S½NE¼, SE¼;
T. 26 N., R. 30 E.,
Section 14, S½;

Section 15, SE¼;
Section 20, SW¼SW¼;
Section 22, N½, SE¼;
Section 23, N½;
Section 26, S½SE¼;
Section 29, E½NW¼, NE¼SW¼;
T. 26 N., R. 31 E.,
Section 27, SW¼;
Section 29, N½;
Section 30, NE¼;
Section 33, S½NE¼, N½S½, S½SE¼;
Section 34, E½W½; total 3,039.41 acres.

DATES: Interested parties may submit comments to the Bureau of Land Management on or before September 11, 1989. The State Director will weigh adverse comments. The State Director may vacate or change this notice. Without any objections this notice will become the final determination of the Department of Interior.

FOR COMMENTS AND FURTHER INFORMATION CONTACT: Submit your comments on this proposed exchange to the address shown below. Information related to the exchange, including the land report, is available at the same address: Phillips Resource Area, Box B, Malta, MT 59457.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the public lands described above from settlement, sale, location and entry under the public land laws. This notice also segregates from the mining laws, but not from exchange under section 206 of the Federal Land Policy and Management Act of 1976. The segregation will last for two years from the date of publication of this notice. This exchange is subject to:

1. A reservation to the United States of a right-to-way for ditches or canals under 43 U.S.C. 945.

2. The reservation to the United States of all federal minerals will occur.

3. The following rights-of-way of record: Big Flat Electric Coop. Inc., MTM-57527 and MTM-58709; Triangle Telephone Coop. Inc., MTM-42864 and George L. Partridge, MTM-040449.

4. An equalization payment is not necessary because the appraised values are equal.

5. The exchange must meet the requirements of 43 CFR 4110.4-2(b).

6. The proposed completion date is September, 1989.

Wayne Zinne,
District Manager.

Date: July 18, 1989.

[FR Doc. 89-17494 Filed 7-25-89; 8:45 am]

BILLING CODE 4310-DN-M

Fish and Wildlife Service

Availability of Draft Recovery Plan for Eleven Central Florida Scrub Plants for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft recovery plan for eleven plant species of scrub vegetation in central Florida. They occur on private and state-owned lands, principally in the area from Lake Wales to Lake Placid in Polk and Highlands Counties, central Florida. At least one of the plant species presently occurs in each of these additional Florida counties: Brevard, Charlotte, Hardee, Lake, Orange, Osceola. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before September 25, 1989 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may examine a copy during normal business hours at the U.S. Fish and Wildlife Service, Jacksonville Field Office, 3100 University Boulevard South, Jacksonville, FL 32216 (Phone 904/791-2580) or at the Vero Beach Field Office, 1360 U.S. 1, South, Suite 5, Vero Beach, Florida 32960 (Phone 407/562/3909). A copy of the plan may be obtained at cost from the Fish and Wildlife Reference Service, 5430 Grosvenor Lane, Suite 110, Bethesda, MD, 20814 (Phone 301/492-6403 or 1-800-582-3421). Written comments and materials regarding the plan should be addressed to the U.S. Fish and Wildlife Service, Jacksonville Field Office (see address above).

FOR FURTHER INFORMATION CONTACT: David Martin, at the Jacksonville Field Office address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The eleven central Florida scrub plants covered by this draft plan are associated with scrub ecosystems of inland central Florida, principally in a hilly area known as the Lake Wales Ridge from the city of Lake Wales (Polk County) south to Lake Placid and Venus (Highlands County). The eleven plants are: *Bonamia grandiflora* (Florida bonamia), threatened; *Chionanthus pygmaeus* (pygmy fringe tree), endangered; *Eryngium cuneifolium* (a snakeroot), endangered; *Hypericum cumulicola* (Highlands scrub hypericum), endangered; *Liatris ohlingerae* (scrub blazing star), proposed endangered; *Lupinus aridorum* (scrub lupine), endangered; *Paronychia chartacea* (papery whitlowwort), threatened; *Polygonella basiramia* (a wireweed), endangered; *Prunus geniculata* (scrub plum), endangered; *Warea carteri*, Carter's mustard (endangered); and *Ziziphus celata* (proposed endangered). All of these plants occur in Highlands and/or Polk counties. Scrub lupine also occurs in western Orange County. Florida bonamia is also presently known to occur in Charlotte, Hardee, Lake, and Marion counties. It formerly occurred in Manatee, Sarasota, and Volusia counties. Pygmy fringe tree and scrub plum occur in Lake County near Clermont in remnants of longleaf pineland. Carter's mustard occurs near Melbourne, Brevard County and formerly occurred in Miami, Dade County.

The recovery plan focusses on protecting the habitat of the eleven plants: Scrub dominated by sand pine, shrubby evergreen oaks, and/or scrub hickory. Scrub vegetation is rapidly being developed for citrus groves and housing. Carefully selected tracts must be protected within the next several

years. The best method of protecting sites is through purchase by government or private conservation organizations because attempts at protection through regional and county planning and establishment of conservation easements is likely to be ineffectual. Protected scrub tracts must be managed for the benefit of these plants and for native animals including the sand skink and the blue-tailed mole skink (both threatened) and the Florida scrub jay (threatened). Appropriate management will usually include prescribed fire.

Several species, particularly scrub lupine, occur at only a few sites. Conservation of these sites (including expressway rights-of-way) will be difficult and should be supplemented by garden propagation and establishment of new populations on protected sites. Unfortunately, scrub lupine appears very difficult to propagate, so the species is in great danger of extinction. The Agency Review Draft recovery plan is currently being circulated for comment to governmental bodies, scientists, and conservation organizations.

Public Comments Solicited

The Service solicits written comments on the recovery plan. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 18, 1989.

David J. Wesley,
Field Supervisor.

[FR Doc. 89-17445 Filed 7-25-89; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations. Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5541, Block 92, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Cocodrie, Louisiana.

DATE: The subject DOCD was deemed submitted on July 17, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: July 18, 1989.

J. Rogers Pearcy,
Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-17447 Filed 7-25-89; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-289]

Certain Concealed Cabinet Hinges and Mounting Plates; Commission Decision Not To Review an Initial Determination Terminating the Investigation With Prejudice as to U.S. Letters Patent 4,075,735 With Respect to Respondents Agnostino Ferrari, S.P.A and IUSA Manufacturing Corp.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 95) issued by the presiding administrative law judge (ALJ) terminating the above-captioned investigation with prejudice as to U.S. Letters Patent 4,075,735 (the '735 patent) with respect to respondents Agostino Ferrari, S.p.A. (Ferrari) and IUSA Manufacturing Corporation (IUSA).

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1000.

FOR FURTHER INFORMATION CONTACT: Calvin Cobb, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1103.

Hearing impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202-252-1810.

SUPPLEMENTARY INFORMATION: Julius Blum, Inc. (Blum), a U.S. assembler of certain patented concealed hinges and mounting plates, filed a complaint with the Commission on November 23, 1988. The Commission instituted an investigation of Blum's complaint and issued a notice of investigation that was published in the **Federal Register** on December 28, 1988, 53 FR 52515.

On June 19, 1989, during a prehearing conference, Blum moved orally to terminate the investigation as to the '735 patent with respect to respondents Ferrari and IUSA. Counsel for respondents Ferrari, Liberty Hardware Manufacturing Corporation, and the Commission investigative attorney made

no objection to the motion. The ALJ issued an ID granting the motion and terminating the investigation with prejudice as to the '735 patent with respect to Ferrari and IUSA.

This action is taken under the authority of section 337 of the Tarriff Act of 1930 (19 U.S.C. 1337) and § 210.53 of the Commission's Interim Rules of Practice and Procedure (53 FR 33070, Aug. 29, 1988).

By order of the Commission.
Issued: July 18, 1989.

Kenneth R. Mason,
Secretary.

[FR Doc. 89-17459 Filed 7-25-89; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 731-TA-435 (Preliminary)]

Certain Steel Pails From Mexico

Determination

On the basis of the reocrd [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Mexico of certain steel pails,[3] provided for in subheadings 7310.21.00 and 7310.29.00 of the Harmonized Tariff Schedule of the United States (previously reported under item 640.30 of the Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On May 31, 1989, a petition was filed with the Commission and the Department of Commerce by counsel for the Pail Producers' Committee of the Steel Shipping Container Institute, Union, NJ, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of certain steel pails from Mexico. Accordingly, effective May 31, 1989, the Commission instituted preliminary antidumping investigation No. 731-TA-435 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishig the notice in the Federal Register of June 9, 1989 (54 FR 24764). The conference was held in Washington, DC, on June 20, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 17, 1989. The views of the Commission are contained in USITC Publication 2205 (July 1989), entitled "Certain Steel Pails from Mexico: Determination of the Commission in Investigation No. 731-TA-435 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By Order of the Commission.

Kenneth R. Mason,
Secretary.

Issued: July 18, 1989.

[FR Doc. 89-17460 Filed 7-25-89; 8:45 am]
BILLING CODE 7020-02-M

[1] The record is defined in sec. 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).

[2] Vice Chairman Cass and Commissioner Lodwick dissenting.

[3] For purposes of this investigation, certain steel pails are defined as cylindrical containers of steel of 1 to 7 gallons (3.8 to 26.6 liters) in volume (capacity), with a diameter of 11¼ inches (279 millimeters) or greater and a wall thickness of 29-22 gauge steel (.292-.063 millimeters), presented empty.

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31470]

Central Railroad Co. of Indianapolis—Lease and Operation Exemption—Line of the Norfolk and Western Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 11343-11344 the lease and operation by Central Railroad Company of Indianapolis of 121.82 miles of Norfolk and Western Railway Company railroad lines in Tipton, Howard, Miami, Fulton, Grant and Clinton Counties, IN, subject to employee protective conditions and an Historic Preservation Act compliance condition.

DATES: This exemption is effective on July 31, 1989. Petitions for reconsideration must be filed by August 22, 1989.

ADDRESSES: Send pleadings referring to Finance Docket No. 31470 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' representatives:
Carl M. Miller, 407 Broadway, P.O. Box 246, New Haven, IN 46774-0246
and
Thomas W. Ambler, One Commercial Place, Norfolk, VA 23510

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245 [TDD for hearing-impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, Telephone (202) 289-4357/4359. [Assistance for the hearing-impaired is available through TDD services, (202) 275-1721.]

Decided: July 17, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,
Secretary.

[FR Doc. 89-17434 Filed 7-25-89; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 31495]

Depew, Lancaster & Western Railroad Co., Inc.—Lease, Operation and Acquisition Exemption—A Rail Line in Erie County, NY

Depew, Lancaster & Western Railroad Co., Inc. (DL&W), has filed a notice of exemption for the lease, operation, and possible future acquisition of a 3.02-mile line of railroad extending from Lancaster, at milepost 382.540, to the point of switch with Conrail in Depew, at milepost 385.561, in Erie County, NY. DL&W expects to lease the line from the Erie County Industrial Development Agency (ECIDA), which acquired the line from Consolidated Rail Corporation. DL&W is currently negotiating the terms of the lease with ECIDA, including an option to purchase the line in the future. The transaction, which involves the issuance of exempt securities, was expected to be consummated on or about June 30, 1989.

Any comments must be filed with Commission and served on John D. Heffner, Gerst, Heffner, Carpenter & Podgorsky, 1700 K Street, NW., Suite 1107, Washington, DC 20006.

Applicant must preserve intact all sites and structures more than 50 years old until compliance with requirements of Section 106 of the National Historic Preservation Act, 16 U.S.C. 470, is achieved. *See Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901,* 4. I.C.C.2d 305 (1988).[1]

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 20, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 89-17435 Filed 7-25-89; 8:45 am]
BILLING CODE 7035-01-M

[1] Applicant has certified to the New York State Historic Preservation Officer that no properties qualifying for inclusion in the *National Register of Historic Places* will be transferred as a result of this transaction.

[Finance Docket No. 31497]

The Elk River Railroad, Inc.—Lease, Operation and Acquisition Exemption—Line of CSX Transportation, Inc.; Exemption

The Elk River Railroad, Inc. (TERRI), a non-carrier, has filed a notice of exemption for the lease, operation, and possible future acquisition of 61 miles of CSX Transportation, Inc.'s (CSXT) Elk River Subdivision between milepost 6.2, at or near Gilmer, and milepost 67.2, at or near Hartland, in Gilmer, Braxton, and Clay Counties, WV. TERRI and CSXT have reached an agreement for the lease, including an option to purchase the line segment in the future. The transaction is expected to be consummated on or before August 9, 1989.

Any comments must be filed with the Commission and served on: Robert D. Rosenberg, Slover & Loftus, 1224 Seventeenth Street NW., Washington, DC 20036.

Applicant must preserve intact all sites and structures more than 50 years old until compliance with the requirements of section 106 of the National Historic Preservation Act, 16 U.S.C. 470, is achieved. *See Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901,* 4 I.C.C. 2d 305 (1988).

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 21, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 89-17436 Filed 7-25-89; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 31496]

Sisseton Milbank Railroad, Inc.—Operation Exemption—SLA Property Management

Sisseton Milbank Railroad, Inc. (SMR), has filed a notice of exemption to operate over a 38-mile line of railroad owned by SLA Property Management (and currently operated by Sisseton Southern Railway Company, pursuant to Finance Docket No. 31083). The line extends between milepost 0, at Milbank, SD, and milepost 38, at Sisseton, SD. The transaction was to be consummated immediately after the effective date of the exemption, which was July 19, 1989.[1]

Any comments must be filed with the Commission and served on John Grosz, R.R. 2, Box 147, Wilmot, SD 57279.

SMR must preserve intact all sites and structures more than 50 years old until compliance with the requirements of section 106 of the National Historic Preservation Act, 16 U.S.C. 470, is achieved. *See Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901,* 4 I.C.C.2d 305 (1988).

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 20, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 89-17437 Filed 7-25-89; 8:45 am]
BILLING CODE 7035-01-M

[1] On July 12, 1989, SMR supplemented its previous filing with a map indicating the area to be served and a certification that applicant's projected revenues do not exceed those that would qualify it as a Class III carrier. Thus, for purposes of calculating the effective date of the exemption, the notice is considered filed as of July 12, 1989, when the additional information was provided.

[Docket No. AB-290 (Sub-No. 74)]

Southern Railway—Carolina Division and Southern Railway Co.—Abandonment—Between Branchville and Oakwood and Between Blackville and Springfield in Orangeburg, Bamberg, Barnwell, and Aiken Counties, SC; Findings

The Commission has issued a certificate authorizing Southern Railway—Carolina Division and Southern Railway Company to abandon and discontinue operations over 58.7 miles of connecting rail line extending from Milepost SA-0.0, Branchville, to Milepost SA-49.0, Oakwood, and from Milepost C-161.7, Blackville, to Milepost C-152.0, Springfield, in Orangeburg, Bamberg, Barnwell, and Aiken Counties, South Carolina. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the application no later than 10 days from publication of this Notice. The following notation shall be typed in boldface on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.

Decided: July 20, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 89-17438 Filed 7-25-89; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Federal Water Pollution Control Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 3, 1989 a proposed Consent Decree in *United States and State of Ohio* v. *City of Cambridge,* Civil Action No. C2-87-415, was lodged with

the United States District Court for the Southern District of Ohio (Eastern Division). The proposed Consent Decree concerns discharge of pollutants from City of Cambridge's wastewater treatment works to Wills Creek. The proposed Consent Decree requires that the City meet the final water quality limits contained in its National Pollution Discharge Elimination System ("NPDES") Permit. The proposed Decree also obligates the City to fulfill the other obligations imposed by its Permit, including the full scale operation of a pretreatment program with respect to industries that send wastewater to the City's treatment works. The City also must pay a $29,000 civil penalty under the terms of the proposed Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and State of Ohio* v. *City of Cambridge*, D.J. Ref. 90-5-1-1-2771.

The proposed Consent Decree may be examined at the Offices of the United States Attorney, 85 Marconi Boulevard (Room 200), Columbus, Ohio 43215; at the United States Environmental Protection Agency (Region V), Office of Regional Counsel, 111 West Jackson Street, Third Floor, Chicago, Illinois 60604; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.30 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-17405 Filed 7-25-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, notice is hereby given that on July 13, 1989, a proposed Consent Decree in *United States* v. *The City of Wausau, Wisconsin, et al.*, Case No. 89-C-655-C, was lodged with the United States District Court for the Western District of Wisconsin. The proposed Consent Decree provides for the City of Wausau, Wisconsin and Marathon Electric Manufacturing Corporation to implement an operable unit extraction well near the Old City/Marathon Electric landfill and provides for reimbursement to the United States of $50,000 of the response costs incurred by the United States Environmental Protection Agency under the Comprehensive Environmental Response, Compensation, and Liability Act at the Wausau Groundwater Contamination Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *The City of Wausau, Wisconsin, et al.*, D.J. reference #90-11-2-444.

The proposed Consent Decree may be examined at the office fo the United States Attorney, Western District of Wisconsin, 120 North Henry Street, Madison, Wisconsin 53703, at the Region V office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, 10th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $14.10 (141 pages at 10 cents per page) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-17406 Filed 7-25-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-7778]

Withdrawal of the Notice of Proposed Exemption Involving the Forbes Master Trust (the Master Trust) Located in Tacoma, WA

In the **Federal Register** dated April 4, 1989 (54 FR 13584), the Department of Labor (the Department) published a notice of proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1986. The notice of proposed exemption concerned the past and prospective acquisition, sale and redemption of units of beneficial interest in the Master Trust, an open-end, non-bank collective investment fund, by employee benefit plans and individual retirement accounts (the Participating Plans) participating in the Master Trust when the investment manager of such Master Trust is a service provider and a fiduciary with respect to the assets of the Participating Plans in the Master Trust.

By letters dated May 8, 1989 and May 25, 1989, the Department informed the applicant that additional information was needed in order that final action could be taken with respect to the exemption application. As the applicant has failed to respond to the Department's inquiries, the Department has made a final decision to withdraw the notice of pendency of the proposed exemption from the **Federal Register.**

Accordingly, the notice of proposed exemption is hereby withdrawn.

Signed at Washington, DC this 18th day of July 1989.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration.

[FR Doc. 89-17449 Filed 7-25-89; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-7551]

Proposed Amendments to Prohibited Transaction Exemption (PTE) 78-19 Involving Insurance Company Pooled Separate Accounts

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed amendments to PTE 78-19.

SUMMARY: This document contains a notice of pendency before the Department of Labor of proposed amendments to PTE 78-19. PTE 78-19 is a class exemption that permits insurance company pooled separate accounts, in which employee benefit plans have an interest, to engage in certain transactions, provided specified conditions are met. The proposed amendments, if adopted, would affect, among others, participants, beneficiaries and fiduciaries of plans that invest in the pooled separate accounts, insurance companies, and other persons engaging in the described transactions.

DATES: Written comments and requests for a hearing should be received by the Department on or before September 26, 1989.

Effective Date: If adopted, the proposed amendments to section I(a) of PTE 78-19 would be effective as of July 1, 1988. The proposed amendment to section II(a)(3) would be effective as of January 1, 1975.

ADDRESSES: All written comments and requests for a hearing (preferably at least three copies) should be sent to: Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N-5671, Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Pooled Separate Accounts. The application pertaining to the exemptive relief proposed herein (Application D-7551) and the comment received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 523-8194 (this is not a toll-free number); or Cynthia Hawkins of the Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, (202) 523-9592 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of proposed amendments to PTE 78-19 (43 FR 59915, December 22, 1978). PTE 78-19 provides an exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1986 (the Code) by reason of certain provisions of section 4975(c)(1) of the Code.

The amendments to PTE 78-19 proposed herein were requested in an exemption application dated March 3, 1988 on behalf of the Prudential Insurance Company of America, the Equitable Life Assurance Society of the United States, John Hancock Mutual Life Insurance Company, Connecticut General Life Insurance Company, the Mutual Life Insurance Company of New York and the Principal Financial Group (the Applicants).

The Department is proposing the amendments to PTE 78-19 pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code [1] and in accordance with ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

Information collection requirements contained in PTE 78-19 have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB number 1210-0054 approved for use through February 28, 1990.

PTE 78-19 consists of four parts. Section I(a), the exemption's basic provision, permits an insurance company pooled separate account to engage in transactions, which otherwise might be prohibited by sections 406 and 407(a) of ERISA and section 4975(c)(1) of the Code, with persons who are parties in interest with respect to an employee benefit plan investing in the account. The plan's participation in the account, under section I(a), may not exceed five percent of the total assets in the pooled separate account.

Under section II(a) of PTE 78-19, a party in interest with respect to a plan is permitted in certain cases to furnish goods to an insurance company pooled separate account in which the plan has an interest exceeding the section I limitation. Section II(a) also allows both the leasing of real property and the incidental furnishing of goods by a pooled separate account to a party in interest. Section II(a) contains a condition that the amount involved in the furnishing of goods or leasing of real property in any calendar year does not exceed the greater of $25,000 or .025 percent of the fair market value of the assets of the pooled separate account.

The Applicants request three specific modifications to the class exemption: (1) That the percentage limitation in section I(a)(1) of PTE 78-19 be increased from five to ten percent; (2) that the percentage limitation in section II(a)(3) be increased from .025 percent to .5 percent; and (3) that broad relief be included for investments by insurance company pooled separate accounts in short-term obligations. The Applicants represent that the requested amendments meet the criteria set forth in section 408(a) of ERISA, and are consistent with various other class and individual exemptions involving similar kinds of transactions that have been granted by the Department since the issuance of PTE 78-19 in 1978.

The Department notes that all the relevant conditions contained in PTE 78-19, with the exception of those modified by this proposal, still must be met under the proposed amendments. These conditions include a requirement that the party in interest is not the insurance company (or an affiliate) which holds the plan assets in its pooled separate account or any other separate account of the insurance company. The terms of the transaction are at least as favorable to the pooled separate account as those obtainable in an arm's-length transaction with an unrelated party. Also, the insurance company must maintain certain records for a period of six years from the date of the transaction. The Department also notes that insurance companies generally are subject to extensive state regulation.

According to the Applicants, insurance companies have based their ERISA compliance programs for pooled separate accounts on the availability of the exemptions contained in PTE 78-19. Where PTE 78-19 is unavailable for their pooled separate accounts, insurers have been required either to restructure their compliance programs to ensure that other exemptions are available or to take other administrative steps to ensure that the various transactions involving the accounts are not prohibited.

A. Requested Increase in Percentage Limitation of Section I(a)(1)

Section I(a) of PTE 78-19 contains a general exemption from the prohibitions of section 406(a), 406(b)(2) and 407(a) of ERISA for any transaction between a pooled separate account and a party in interest with respect to a plan participating in he account, or for any acquisition or holding by the account of employer securities or employer real property, so long as the plan's participation does not exceed a specified percentage of the total assets in the pooled separate account. The Applicants request that the percentage limitation of section I(a)(1) of PTE 78-19 be raised from five to ten percent.

The Applicants argue that the five percent rule contained in section I(a)(1)

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[1] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), transferred the authority of the Secretary of the Treasury to issue exemptions of this type to the Secretary of Labor.

In the discussion of the exemption, references to sections 406 and 408 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

is essentially a *de minimis* rule. Also, the Applicants argue that expanding the five percent requirement would be in the best interests of participating plans and their participants and beneficiaries. A higher percentage limitation would allow the pooled separate accounts to compete equitably for a broader range of investment opportunities and would generally increase the types of competitive pooled investment vehicles available for plan investment. It would also provide insurers with the flexibility necessary to deal with inadvertent fluctuations in the levels of plan participation in an account. The Applicants have found that, in the case of real estate pooled separate accounts, the general exemption of section I(a) would become unavailable, not as a result of a particular plan's additional contributions to an account but due to withdrawals from the account by other plans. Also, the savings resulting from the reduced burden of compliance due to a higher percentage limitation would result in a lower administrative costs for plans participating in the accounts.

The five percent limitation represents the Department's view that, where a plan's interest in a pooled separate account is a small percentage of the account's total assets, the plan sponsor will not be in a position to influence the investment decisions of the separate account for the benefit of any person who is a party in interest to the plan. However, since the issuance of PTE 78–19, the Department has considered the appropriateness of a five percent limitation in the context of certain individual exemptions for pooled investment vehicles. On the basis of arguments similar to those raised by the Applicants above, the Department generally provided exemptive relief subject to a ten percent limitation.[2] Accordingly, based on its experience with PTE 78–19 and various individual exemptions and for the reasons given above, including arguments presented by the Applicants, the Department has decided to propose an amendment of section I(a)(1) of PTE 78–19 to increase the percentage limitation from five to ten percent.

B. Requested Increase in Percentage Limitation of Section II(a)(3)

Section II(a) of PTE 78–19 provides a specific exemption from the prohibitions of sections 406(a)(1) (A) through (D) and 406(b) (1) and (2) of ERISA for the furnishing of goods to an insurance company pooled separate account by a party in interest with respect to a plan, or the leasing of real property of the separate account to a party in interest and the incidental furnishing of goods to the party in interest by such account, provided certain conditions are met. Section II(a)(3) specifies that the annual amount involved in the furnishing of goods or leasing of real property in any calendar year may not exceed the greater of $25,000 or .025 percent of the fair market value of the assets of the pooled separate account.

The Applicants request that the .025 percent standard of section II(a)(3) of PTE 78–19 be increased to .5 percent. The Applicants contend that raising this limitation would eliminate any competitive disadvantage placed on insurance company pooled separate accounts as a result of relief granted by the Department to banks which maintain collective investment funds. The Department previously granted relief which contained a .5 percent limitation for an otherwise identical category of transactions in PTE 80–51 (45 FR 49709, July 25, 1980), a class exemption issued subsequent to PTE 78–19 which involved transactions between parties in interest with respect to participating plans and collective investment funds maintained by banks.

The Applicants also argue that increasing this limitation would ease the burden of compliance on the part of insurance company pooled separate accounts. The present .025 percent standard restricts relief to an extremely small number of transactions. Because of the potentially large number of parties in interest of the plans participating in pooled separate accounts, the .025 percent rule essentially requires insurers to examine a large number of small, nonabusive transactions to assure that no technical prohibited transactions under ERISA will occur.

The Department was persuaded on the basis of comments received in regard to the proposal for PTE 80–51 which suggested that a .025 percent limitation was unnecessarily restrictive and that a .5 percent rule would afford adequate relief. The Department further notes that it has granted a number of individual exemptions which include a .5 percent standard for various kinds of non-insurance company, non-bank pooled investment vehicles.[3]

Accordingly, on the basis of the Department's experience with individual exemptions and PTE 80–51 and because it is persuaded that a .025 percent limitation is too restrictive, the Department has decided to propose an amendment of section II(a)(3) of PTE 78–19 to increase the percentage limitation to .5 percent.

C. Exemption for Short-term Investments of Pooled Separate Accounts

During the consideration of PTE 78–19, the original applicants requested exemptive relief for short-term investments made by pooled separate accounts in commercial paper and other securities issued by employers (or their affiliates) maintaining plans with greater than five percent interests in the accounts. Such relief was not included in the final class exemption for reasons set forth in the preamble to PTE 78–19 (43 FR at 59918). The Department realized that special treatment might be needed for insurance company pooled investments in short-term obligations, but could not determine on the basis of the record at that time whether or to what extent to grant such relief. Thus, in order not to delay the effectiveness of the other provisions of PTE 78–19, no special treatment for short-term debt instruments was proposed or granted. However, footnote 7 of the preamble stated that class or individual applicants may wish in the future to submit applications concerning short-term investments by pooled separate accounts. In this regard, the original applicants requested an amendment to PTE 78–19 for short-term debt instruments shortly after the Department granted similar relief in PTE 80–51 for bank collective investment funds.[4]

The Applicants request that the Department expand PTE 78–19 to provide exemptive relief for short-term investments made by insurance company pooled separate accounts. Specifically, the Applicants request that an exemption similar to section I(a)(1)(B) of PTE 80–51 be provide for pooled separate accounts that have substantially all of their assets invested in short-term obligations with a maturity of one year or less.

The Applicants maintain that relief for short-term investments is necessary not only to eliminate the competitive disadvantage faced by insurance company pooled separate accounts vis-a-vis bank collective investment funds which qualify for the relief provided by PTE 80–51, but also to alleviate the ERISA compliance problems associated with monitoring nonabusive short-term investments.

The Applicants represent that insurance companies make certain short-term investments for pooled separate accounts. Insurers sometimes maintain pooled separate accounts (short-term accounts) with respect to which the principal objective is the investment of funds in short-term obligations. The primary purpose of a short-term account generally has been to provide a plan with a highly liquid account in which plan funds, (1) awaiting investment in other separate accounts or (2) being held for benefit payments soon to become due, may be invested at an attractive investment yield to the plan.

The principal types of instruments in which insurance companies make short-term investments for their pooled separate accounts are commercial paper, certificates of deposit, U.S. Government and Federal Agency obligations, bankers acceptances and repurchase agreements. The Applicants are especially concerned with short-term investments made by pooled accounts in commercial paper issued by companies (or their affiliates) which are employers that maintain plans with greater than five percent interests in the accounts or which are parties in interest with respect to the plans for various other reasons.[5]

Transactions of this kind may occur regularly because (1) commercial paper often represents a substantial portion (sometimes more than 50 percent) of the aggregate short-term investments of each Applicant for its pooled separate accounts, and (2) sponsors (or their affilates) of plans with larger percentage interests in the pooled accounts frequently are the issuers of commercial paper in which the Applicants may invest.

The Applicants represent that investments in the short-term money market, including the commercial paper market, often must be made within a matter of minutes during which time the essential terms of a transaction (e.g., interest rate and maturity date) are decided. These time constraints preclude any significant discussion as to whether the issuer (or an affiliate) may be related to a plan, the extent of a plan's interest in the account, and the like. The short-term investment personnel of major insurance companies generally do not act as portfolio managers for specific separate accounts and are not in a position to readily check the identity of issuers of short-term instruments and their affiliates against lists of participating plans. Also, the volume of transactions of this kind is quite larger. The dollar amount of short-term investments made by some of the Applicants may be more than $40 million on a given day. The insurer's short-term investment personnel at times may not know whether a particular investment is being made for any particular account.

Accordingly, on the basis of the foregoing representations and the Department's experience with similar relief granted to bank collective investment funds under PTE 80–51, the Department has decided to propose relief similar to that provided under section I(a)(1)(B) of PTE 80–51. Thus, this notice proposes relief for pooled separate accounts that have substantially all of their assets invested in short-term obligations with a maturity of one year or less.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of ERISA, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed amendments, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transition is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Request

All interested persons are invited to submit written comments or requests for a public hearing on the proposed amendments to the address and within the time period set forth above. All comments will be made a part of the record.

Proposed Amendments

Under section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with ERISA Procedure 75–1, the Department proposes to amend PTE 78–19 as set forth below.

1. Section I(a) of the exemption is amended to read:

(ii) 5 percent of the total of all assets in the pooled separate account, if the transaction occurs on or after February 20, 1979, and on or before June 30, 1988; or

(iii) 10 percent of the total of all assets in the pooled separate account, if the transaction occurs on or after July 1, 1988, or

(2) On or after July 1, 1988, the pooled separate account is a specialized account that has a policy of investing, and invests, substantially all of its assets in short-term obligations (having a stated maturity date of one year or less or having a maturity date of one year or less from the date of acquisition by such specialized account), including but not necessarily limited to—

(i) Corporate or governmental obligations or related repurchase agreements;

(ii) Certificates of deposit;

(iii) Bankers acceptances; or

(iv) Varible amount notes of borrowers of prime credit.

2. Section II(a)(3) of the exemption is amended to read:

The amount involved in the furnishing of goods or leasing of real property in any calendar year (including the amount under any other lease or arrangement for the furnishing of goods in connection with the real property investments of the pooled separate account with the same party in interest, or any affiliate thereof) does not exceed the greater of $25,000 or .5 percent of the fair market value of the assets Comments and requests for a hearing should state the reasons for the writer's interest in the proposed amendments. Comments received will be available for public inspection with the referenced applicatin at the above address.

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[2] In this regard, see PTE 85–44 (the Lasalle Fund II, 50 FR 8410, March 1, 1985); PTE 86–08 (the Boston Financial Real Estate Equity Group Trust, 51 FR 2596, January 17, 1986); and PTE 87–81 (the SEI Property Fund, 52 FR 32079, August 25, 1987).

[3] In this regard, see PTE 82–209 (Smith, Barney Real Estate Fund, 47 FR 55545, December 14, 1982); PTE 84–41 (Copley Investors Limited Partnership, 49 FR 19153, May 4, 1984); and PTE 85–43 (Lehndorff & Babson Property Fund, 50 FR 8408, March 1, 1985).

[4] Section I(a)(1)(B) of PTE 80–51 provides relief from sections 406(a), 406(b)(2) and 407(a) of ERISA for certain transactions involving collective investment funds maintained by banks which have a policy of investing substantially all of their assets in short-term obligations having a stated maturity date of one year or less or having a maturity date of one year or less from the date of purchase.

[5] In this regard, the Deparetment notes that section I(a) of PTE 78–19 generally would be available for investments in commercial paper issued by parties in interest (including an employer) with respect to plans with 5 percent or smaller interests in an account. Also, section II(b) generally would be available for short-term investments issued by persons who are service providers with respect to participating plans (regardless of the plan's percentage interest in the account).

General exemption. Any transaction between a party in interest with respect to a plan and an insurance company pooled separate account in which the plan has an interest, or any acquisition or holding by the pooled separate acount of employer securities or employer real property, if the party in interest is not the insurance company which holds the plan assets in its pooled separate account, any other separate account of the insurance company, or any affiliate of the insurance company, and if, at the time of the transaction, acquisition or holding, either

(1) The assets of the plan (together with the assets of any other plans maintained by the same employer or employee organization) in the pooled separate account do not exceed—

(i) 10 percent of the total of all assets in the pooled separate account, if the transaction occurs prior to February 20, 1979; of the pooled separate account on the most recent valuation date of the account prior to the transaction.

Signed at Washington, DC, this 20th day of July, 1989.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89-17450 Filed 7-25-89; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by August 25, 1989.

ADDRESSES: Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests a review of the revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Theater Application Guidelines FY 1990.

Frequency of Collection: One-time.

Respondents: Individuals or households; State or local governments; Non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from individual artists, non-profit arts organizations and state or local arts agencies that apply for funding under specific Theater Program categories. This information is necessary for the accurate, thorough, and fair consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 837.

Average Burden Hours per Response: 29.

Total Estimated Burden: 24,472.

Anne C. Doyle,

Administrative Services Division, National Endowment for the Arts.

[FR Doc. 89-17454 Filed 7-25-89; 8:45 am]

BILLING CODE 7537-01-M

Meeting of the Inter-Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Fund for U.S. Artists at International Festivals Section) to the National Council on the Arts will be held on July 26, 1989 from 10:00 a.m.-4:00 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, this meeting will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

July 21, 1989.

[FR Doc. 89-17606 Filed 7-24-89; 4:14 pm]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to the permit application by August 25, 1989. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357-7934.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. Additional information was published in the **Federal Register** on June 21, 1988. The application received is as follows:

Applicant

Wayne Z. Trivelpiece, Point Reyes Bird Observatory, 4990 Shoreline Highway, Stinson Beach, CA 94970.

Activity for Which Permit Requested

Take, import into USA, enter site of special scientific interest. The applicant is conducting a study of the behavioral ecology and population biology of the Adelie, Gentoo, and Chinstrap penguins and the interactions among these birds and their principal avian predators: skuas, gulls, sheathbills, and Giant Petrels. The applicant requests permission to band 500-2000 chicks and adults of each penguin species. For a maximum of 50 adults of each species, radio transmitters and time-depth recorders will be attached to the birds. All birds will be released after the experiments or banding. Permission is requested to enter site of special scientific interest No. 8. The applicant requested permission to import salvaged specimens (skeletons) of penguins and other birds.

Location

South Shetland Islands, Antarctica.

Dates

October 1989-March 1990.

Charles E. Myers,

Polar Coordination Specialist, Permit Office.

[FR Doc. 89-17407 Filed 7-25-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 30, 1989 through July 14, 1989. The last biweekly notice was published on July 12, 1989 (54 FR 29397).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 25, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A

petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arkansas Power & Light Company, Docket No. 50-313, Arkansas Nuclear One, Unit 1, Pope County, Arkansas

Date of amendment request: December 16, 1988

Description of amendment request: This amendment would modify the Technical Specifications (TS) related to fire barriers. The modifications include the following: (1) the title of Sections 3.21 and 4.24 are changed from penetration fire barriers to fire barriers and the terms functional and intact are changed to Operable; (2) Sections 3.21 and 3.21.1 are changed to indicate that these TS cover barriers for both separation of safety-related fire areas and separation of redundant safe shutdown systems required in the event of a fire; (3) Section 3.21.3 is changed to address the applicability of TS 3.0.3 and 3.0.4 for clarification; (4) Section 4.24.1 is modified for clarification; (5) Section 4.24.1.b is added to require the performance of a visual inspection of fire doors and fire dampers once per 18 months; (6) Section 4.24.1.c is added to require that ten percent of each type of sealed penetration be inspected at least once per 18 months and that all penetration seals be inspected once per 15 years. For each of the above changes, appropriate changes to the TS Bases have been made.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an Operating License for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in the margin of safety. Arkansas Power and Light Company (AP&L) has reviewed the proposed change and has determined that:

The proposed change to the title of Sections 3.21, 4.24 and the Bases, and the use of the term "OPERABLE" instead of functional or intact do not involve a significant hazards consideration because operation of Arkansas Nuclear One, Unit 1 in accordance with this change would not:

(1) Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed change would not increase the probability or consequences of any accident previously evaluated since this administrative change does not provide any relief from the requirements of the Technical Specifications, or change the intended operation or administrative requirements of the plant or its design bases.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change would not create the possibility of a new or different kind of accident from any previously analyzed since this administrative change does not adversely affect any components or systems which contribute to the safety of the plant.

(3) Involve a significant reduction in the margin of safety.

The proposed change would not involve a significant reduction in the margin of safety since this change has no effect on any plant safety parameters, accident mitigation capabilities, or procedures.

The proposed changes to Sections 3.21 and 3.21.1 and their corresponding Bases do not involve a significant hazards consideration because operation of Arkansas Nuclear One, Unit 1 in accordance with this change would not:

(1) Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed change would increase the scope of this Technical Specification to specifically include fire barriers separating both safety related fire areas as well as redundant safe shutdown systems required in the event of a fire. As this change increases the scope of this Technical Specification it would not increase the probability or consequences of any accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

The fire barriers required by this Specification restrict the spread of fire to safety-related fire areas and redundant trains of safe shutdown equipment. This change does not add any new plant fire barriers, it only enlarges the scope of the fire barriers covered by Technical Specifications. Therefore, increasing the scope of the Specification will not create the possibility of a new or different kind of accident from any previously analyzed.

(3) Involve a significant reduction in the margin of safety.

The existing Technical Specification requirements are not reduced by this change, instead the requirements are increased and the only possible effect on the margin of safety is to increase it.

The proposed change to Section 3.21.2 and its corresponding Bases does not involve a significant hazards consideration because operation of Arkansas Nuclear One, Unit 1 in accordance with this change would not:

(1) Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed change would add an additional requirement when compensating for an inoperable fire barrier. As this change does not increase the probability of a fire it would not increase the probability or consequences of an accident previously analyzed.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

This change does not create the possibility of a new or different kind of accident from any previously analyzed as the new method of compensating for an inoperable fire barrier serves the same purpose as the old method of compensation.

(3) Involve a significant reduction in the margin of safety.

This change will still provide the same level of confidence that an undetected fire will not spread beyond the Specification fire barriers. Therefore, there is not a significant reduction in a margin of safety.

This proposed change to the surveillance requirements in Section 4.24.1 of the Arkansas Nuclear One, Unit 1 Technical Specifications does not involve a significant hazards consideration as it would not:

(1) Involve a significant increase in the probability or consequences of an accident previously analyzed.

Although the change does increase the interval between surveillances of the individual penetrations, the visual surveillance of the overall barrier will still be performed at the same 18 month interval. Therefore, this change maintains conservative restrictions on the surveillance of the affected fire barriers and does not involve a significant increase in the probability or consequences of an accident previously analyzed.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

This change increases the number of barriers covered by this surveillance. The interval for inspection of individual penetrations is lengthened. However, a representative sample of each type of penetration is still examined at the previous 18 month surveillance interval and thus the integrity of the fire barriers is still assured. Therefore this change does not create the possibility of a new or different kind of accident from any previously analyzed.

(3) Involve a significant reduction in the margin of safety.

This change does not involve a significant reduction in the margin of safety; rather, it constitutes an additional limitation, restriction or control not presently included in the Technical Specifications as additional fire barriers are covered by this Technical Specification. The lengthening of the individual penetration seal surveillance interval is adequately compensated for by the surveillance of a representative sample of penetration seals.

The staff has reviewed AP&L's no significant hazards consideration determination and agrees with the analysis. Therefore the staff proposes to determine that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell, & Reynolds, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Frederick J. Hebdon

Arkansas Power & Light Company, Docket No. 50-313, Arkansas Nuclear One, Unit 1, Pope County, Arkansas

Date of amendment request: June 13, 1989

Description of amendment request: The proposed amendment would add a note to the Technical Specifications (TS) to clarify the meaning of TS 3.4.1.4 regarding the turbine driven emergency feedwater (EFW) pump operability determination prior to heating the reactor coolant system above 280° F.

Basis for proposed no significant hazards consideration determination: The proposed change to the TS would provide an unambiguous requirement to perform a limited test of the turbine driven emergency feedwater pump with available steam pressure to demonstrate the functionality of the pump prior to heating the reactor coolant system above 280° F. This test would require meeting all of the performance criteria of the surveillance test specified by TS 4.8.1(a)1., except the minimum discharge pressure and flow, which can be achieved only with normal operating secondary system steam pressure. This test requirement is more restrictive than past licensee interpretations of this TS, which held that a functional test could be performed only at full steam pressure in order to meet the discharge pressure and flow criteria. Therefore, this change represents an additional requirement which enhances the safe operation of the plant by providing further assurance of the availability of the turbine driven EFW pump prior to heatup.

The Commission has provided guidance for the application of criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations (51 FR 7751). These examples include: Example (ii), a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: e.g. "a more stringent surveillance requirement."

The new requirement to perform a functional test of the turbine driven EFW pump prior to heating the reactor coolant system above 280° F constitutes an additional limitation, restriction, and control not presently included in the Technical Specifications. Therefore, the proposed amendment is within the scope of the example.

Since the application for amendment involves a proposed change that is encompassed by an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell, & Reynolds, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Frederick J. Hebdon

Arkansas Power & Light Company, Docket No. 50-368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas

Date of amendment request: December 16, 1988

Description of amendment request: This amendment would modify the Technical Specifications (TS) related to fire barriers. The modifications include the following: (1) the title of Section 3/4.7.11 is changed from penetration fire barriers to fire barriers and the terms functional and intact are changed to Operable; (2) Section 3.7.11 is changed to indicate that the TS covers barriers for both separation of safety-related fire

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areas and separation of redundant safe shutdown systems required in the event of a fire; (3) Section 3.7.11.a is changed by adding the option to verify the operability of fire detectors with the control room alarm on at least one side of the affected barrier with an hourly fire watch; (4) Section 4.7.11 is changed for clarification; (5) Section 4.7.11.c is added to require the performance of a visual inspection of fire doors and fire dampers once per 18 months; (6) Section 4.7.11.d is added to require that ten percent of each type of sealed penetration be inspected at least once each 18 months and that all penetration seals be inspected once per 15 years. For each of the above changes, appropriate changes to the TS Bases for Section 3/4.7.11 have been made.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an Operating License for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. Arkansas Power and Light Company (AP&L) has reviewed the proposed change and has determined that:

The proposed change to the title of Section 3.4.7.11 and the Bases, and the use of the term OPERABLE instead of functional or intact does not involve a significant hazards consideration because operation of Arkansas Nuclear One, Unit 2 in accordance with this change would not:

(1) Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed change would not increase the probability or consequences of any accident previously evaluated since this administrative change does not provide any relief from the requirements of the Technical Specifications, or change the intended operation or administrative requirements of the plant or its design bases.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change would not create the possibility of a new or different kind of accident from any previously analyzed since this administrative change does not adversely affect any components or systems which contribute to the safety of the plant.

(3) Involve a significant reduction in the margin of safety.

The proposed change would not involve a significant reduction in the margin of safety since this change has no effect on any plant safety parameters, accident mitigation capabilities, or procedures.

The proposed change to Section 3.7.11 and its corresponding Bases does not involve a significant hazards consideration because operation of Arkansas Nuclear One, Unit 2 in accordance with this change would not:

(1) Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed change would increase the scope of this Technical Specification to specifically include fire barriers separating both safety-related fire areas as well as redundant safe shutdown systems required in the event of a fire. As this change increases the scope of this Technical Specification it would not increase the probability or consequences of any accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

The fire barriers required by this Specification restrict the spread of fire to safety-related fire areas and redundant trains of safe shutdown equipment. This change does not add any new plant fire barriers, it only enlarges the scope of the fire barriers covered by Technical Specifications. Therefore, increasing the scope of the Specification will not create the possibility of a new or different kind of accident from any previously analyzed.

(3) Involve a significant reduction in the margin of safety.

The existing Technical Specification requirements are not reduced by this change, instead the requirements are increased and the only possible effect on the margin of safety is to increase it.

The proposed change to Section 3.7.11.a and its corresponding Bases does not involve a significant hazards consideration because operation of Arkansas Nuclear One, Unit 2 in accordance with this change would not:

(1) Involve a significant increase in the probability or consequence of an accident previously analyzed.

The proposed change would add an additional method of compensating for an inoperable fire barrier. As this change does not increase the probability of a fire it would not increase the probability or consequences of an accident previously analyzed.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

This change does not create the possibility of a new or different kind of accident from any previously analyzed as the new method of compensating for an inoperable fire barrier serves the same purpose as the old method of compensation.

(3) Involve a significant reduction in the margin of safety.

This change will still provide the same level of confidence that a undetected fire will not spread beyond the Specification fire barriers. Therefore, there is not a significant reduction in a margin of safety.

This proposed change to the surveillance requirements in Section 4.7.11 of the Arkansas Nuclear One, Unit 2 Technical Specifications does not involve a significant hazards consideration as it would not:

(1) Involve a significant increase in the probability or consequences of an accident previously analyzed.

Although the change does increase the interval between surveillances of the individual penetrations, the visual surveillance of the overall barrier will still be performed at the same 18 month interval. Therefore, this change maintains conservative restrictions on the surveillance of the affected fire barriers and does not involve a significant increase in the probability or consequences of an accident previously analyzed.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

This change increases the number of barriers covered by this surveillance. The interval for inspection of individual penetrations is lengthened. However, a representative sample of each type of penetration is still examined at the previous 18 month surveillance interval and thus the integrity of the fire barriers is still assured. Therefore, this change does not create the possibility of a new or different kind of accident from any previously analyzed.

(3) Involve a significant reduction in the margin of safety.

This change does not involve a significant reduction in the margin of safety; rather, it constitutes an additional limitation, restriction or control not presently included in the Technical Specifications as additional fire barriers are covered by this Technical Specification. The lengthening of the individual penetration seal surveillance interval is adequately compensated for by the surveillance of a representative sample of penetrations seals.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell & Reynolds, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Frederick J. Hebdon

Arkansas Power & Light Company, Docket No. 50-368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas

Date of amendment request: June 13, 1989

Description of amendment request: This amendment would change the Technical Specifications (TS) for Arkansas Nuclear One, Unit 2 by deleting TS Section 4.3.1.1.4 which contains the surveillance requirements for the existing Core Protection Calculator (CPC) isolation equipment.

Arkansas Power and Light (AP&L) is presently in the process of replacing part of the hardware in the ANO-2 Core Protection Calculator System. This effort is scheduled for completion during the upcoming 2R7 refueling outage, presently scheduled to begin in September of this year. A portion of the hardware upgrade includes new fiber optics devices to provide interchannel isolation for the CPC/Core Element Assembly Calculator (CEAC) data links and the CEA position isolation amplifiers. The use of fiber optics equipment for data transmission offers superior isolation capabilities compared to the existing system, which uses conductive wiring and optical isolators to achieve the required channel isolation. Technical Specification 4.3.1.1.4 contains the surveillance requirements for the specific isolation equipment in the existing CPCS hardware. Testing of the new devices in accordance with the existing TS is neither necessary nor practical, as the new equipment uses non-conducting fiber optics cable. The existing TS will no longer be appropriate upon completion of the CPCS upgrade and is therefore proposed to be removed.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an Operating License for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The licensee reviewed the proposed change and determined that:

(1) The proposed amendment does not involves a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change would not alter the probability of any previously analyzed accident occurring. The proposed change simply deletes a surveillance requirement which is no longer applicable for the equipment installed in the plant. This will not impact the accident-initiating events described in Chapter 15 of the ANO-2 SAR. Further, the proposed change will not adversely affect the consequences of accidents which have been previously evaluated. The proposed change simply reflects the upgrading of hardware in a plant protection system, which should increase the system reliability and therefore increase the ability to mitigate the consequences of postulated accidents.

(2) The proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

The equipment upgrade associated with the proposed change will not change the overall design and protection system function of the CPCS, and the new hardware serves the same purpose as the hardware it replaces; therefore, the proposed change will not create the possibility of a new or different kind of accident. The proposed change simply deletes a surveillance requirement which is no longer appropriate for the specific equipment associated with the CPCS hardware replacement. The new equipment offers superior isolation performance and reliability.

(3) The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed change is associated with replacement hardware which will improve system reliability, and therefore improve overall safety margins. The CPCS will have at least the same capabilities to mitigate accidents as it had prior to the hardware upgrade, as the system software, and therefore, the protection system function, will remain unchanged. The hardware change does not change the overall design basis for any function of the CPCS equipment.

Based on the previous discussion, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability of a new or different kind of accident from any accident previously evaluated; nor involve a significant reduction in the required margin of safety. The NRC staff has reviewed the licensee's no significant hazards considerations determination and agrees with the licensee's analysis. The staff has, therefore, made a proposed determination that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell & Reynolds, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Frederick J. Hebdon

Arkansas Power & Light Company, Docket No. 50-368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas

Date of amendment request: June 15, 1989

Description of amendment request: The proposed amendment will modify the control element assembly (CEA) drop time requirements of Technical Specification 3.1.3.4. The change would increase the maximum allowable individual full length CEA drop time from the current 3.2 seconds to 3.5 seconds, and would specify a maximum arithmetic average of all full length CEA drop times of 3.2 seconds. The proposed changes are based on analyses performed by Combustion Engineering which demonstrate that CEA drop time testing acceptance criteria based on average drop times, rather than on the slowest individual CEA drop time, are equally conservative.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an Operating License for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. Arkansas Power and Light Company (AP&L) has reviewed the proposed change and has determined that:

(1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes to the CEA drop time requirements have been evaluated for impact on the ANO-2 accident analyses. The change involves only an acceptance criteria for equipment performance and no physical changes. The CEA drop time acceptance criteria are used to develop trip reactivity insertion rates which are in turn used as inputs to the accident analyses.

The Combustion Engineering analyses have demonstrated that the calculated trip reactivity for a distributed CEA drop pattern is the same as the trip reactivity calculated for the unrealistic non-distributed pattern currently assumed. Since the trip reactivity assumed in the accident analyses is not adversely impacted by consideration of a distributed CEA drop pattern, the proposed limits will not increase the probability or consequences of an accident previously evaluated.

(2) The proposed amendment does not created the possibility of a new or different kind of accident from any previously evaluated. The proposed change does not involve any new or modified structures, systems or components; rather, it affects only an acceptance criteria for confirming the required performance of the existing CEA hardware. Therefore, the proposed change would not create the possibility of a new or

different kind of accident from any previously evaluated.

(3) The proposed amendment does not involve a significant reduction in a margin of safety. The margins of safety related to CEA insertion are defined by the analyzed events in the Safety Analysis Report which credit the insertion. As demonstrated in Criterion 1 above, the proposed limits on CEA drop time have no adverse impact on the accident analyses. Therefore, the margins of safety reflected in the accident analysis conclusions are not reduced.

The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists. This guidance includes examples (51 FR 7750) of types of amendments that are considered not likely to involve significant hazards considerations. The change proposed in this amendment is not directly comparable to any of the examples identified in 51 FR 7750.

Based on the previous discussion, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability of a new or different kind of accident from any accident previously evaluated; nor involve a significant reduction in the required margin of safety. The NRC staff has reviewed the licensee's no significant hazards considerations determination and agrees with the licensee's analysis. The staff has, therefore, made a proposed determination that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell & Reynolds, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Frederick J. Hebdon

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendment: February 15, 1989

Description of amendment request: The amendments would revise the description of Action 23 associated with Table 3.3.2-1, Isolation Actuation Instrumentation, to differentiate between the actions to be taken in Operational Conditions 1, 2, and 3 and the actions to be taken for Operational Conditions 5 and *. Presently, Action 23 states for Operational Conditions 1, 2, 3, 5, and *, "Establish SECONDARY CONTAINMENT INTEGRITY with the standby gas treatment system operating within one hour."

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following analysis to show that the proposed amendment does not involve a significant hazard consideration:

1. Action 23 associated with Table 3.3.2-1 of the Technical Specifications currently does not provide alternative actions for Operational Conditions 5 and * when secondary containment integrity with the standby gas treatment system operating cannot be achieved.

The proposed requirement to establish secondary containment integrity with the standby gas treatment system operating when the unit is in Operational Conditions 5 and * will enhance protection for the health and safety of the public in the event of a fuel handling accident. Currently, if Action 23 cannot be met, several actions may be taken depending upon the circumstances.

If the standby gas treatment system cannot operate, Technical Specification 3.6.6.1, which requires immediate suspension of fuel handling if both subsystems of the standby gas treatment system are inoperable, would be invoked. If the secondary containment integrity cannot be maintained, Technical Specification 3.6.5.1, which requires suspension of fuel handling if secondary containment integrity cannot be established within 8 hours, applies.

The proposed change will require suspension of fuel handling within one hour if secondary containment integrity cannot be maintained, which is more restrictive than Technical Specification 3.6.5.1. If the standby gas treatment system cannot operate, the more restrictive requirements of Technical Specification 3.6.6.1 will still apply.

By suspending fuel handling within one hour if secondary containment integrity cannot be established with the standby gas treatment system operating, the potential for a fuel handling accident that could affect the health and safety of the public is reduced. No other accidents are affected. Therefore, the proposed change decreases the probability of an accident.

The consequences of a fuel handling accident remain unchanged because the fuel handling accident scenario does not change. Only the time in which a fuel handling accident could occur while secondary containment is not maintained is reduced from 8 hours to 1 hour, thereby impacting only the probability of an accident.

2. The additional requirement does not impact how the secondary containment performs its function. It only adds a requirement which will provide additional assurance that the health and safety of the public are maintained if a fuel handling accident were to occur. Thus, no new or different accident possibilities are created.

3. The proposed change provides additional assurance that the health and safety of the public are maintained in the event secondary containment integrity with the standby gas treatment system operating in Operational Conditions 5 and * cannot be achieved. Currently, fuel handling would be suspended within 8 hours if secondary containment integrity cannot be maintained, and immediately if the standby gas treatment system cannot operate. Thus, the proposed amendment increases the margin of safety if secondary containment integrity cannot be maintained, and maintains the current margin of safety if the standby gas treatment system cannot operate.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination. The licensee addressed the three standards and appears to have met them. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Unit Nos. 2 and 3, Grundy County, Illinois; Docket Nos. 50-254 and 50-265, Quad Cities Station, Unit Nos. 1 and 2, Rock Island County, Illinois

Date of application for amendment request: June 12, 1989

Description of amendment request: The proposed amendment identified "inhalation" as the most limiting pathway, with the "childs" thyroid as the critical organ for radiation doses, and restricts the radiation dose to less than or equal to 1500 mrem/year. The proposed amendment changes the Technical Specifications Bases, Paragraph 3.8.A.1 (DPR-19 & DPR-25) and Paragraph 3.8/4.8.A.1 (DRP-29 & DPR-30), to be more restrictive and consistent with NUREG-0473.

Current Technical Specifications restrict release rates to less than or equal to 1500 mrem/year thyroid dose rate above background to an infant via the cow-milk-infant pathway. The proposed Technical Specifications retain the dose rate of 1500 mrem/year; however, the critical receptor is a child via the inhalation pathway in lieu of an infant via the cow-milk-infant pathway.

Basis for proposed no significant hazards consideration determination: The change in the Technical Specifications has been evaluated against the standards of 10 CFR 50.92 and has been determined not to involve a significant hazards consideration because:

1. The proposed change does not involve any relaxation of established safety limits, limiting safety system settings, or limiting conditions for operations. The proposed amendment revises the pathway for calculation of restricting dose rates to a more limiting receptor pathway, i.e. child inhalation. This change does not involve any accident precursor and, therefore, does not increase the probability of an accident. In addition, NUREG 0473, Revision 3 Draft 7 has identified the child inhalation pathway as a more limiting receptor pathway and, therefore, the use of a more limiting receptor for dose calculation does not increase the consequences of an accident previously evaluated.

2. The proposed amendment changes the pathway for calculating the restricted dose rate, and allows for a change in the computer model for dose calculation. The change to the dose calculation model does not involve a change in safety limits, limiting safety system settings, or limiting conditions for operation. Therefore, it does not create any new or different kind of accident than previously evaluated.

3. The proposed amendment changes the receptor pathway to a more limiting case, i.e. child inhalation, thereby, creating a more conservative dose calculation. The use of a more limiting receptor pathway does not reduce the margin of safety.

Since the application for amendment involves proposed changes that are encompassed by the criteria for which no significant hazards consideration exists, the NRC staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450 (Dresden), and Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021 (Quad Cities).

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Acting Project Director: Paul C. Shemanski

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Lake County, Illinois

Date of application for amendments: June 2, 1989

Brief description of amendment: This amendment request will modify Section 4.3, Reactor Coolant System, of the Technical Specifications for Zion Station. It will allow Zion Station's steam generator tubes to be repaired, if needed, by utilizing the Bechtel-KWU Alliance sleeving methodology. The existing Technical Specifications have been previously separately amended to permit utilization of the Combustion Engineering (CE) and the Westinghouse (WE) processes for steam generator tube sleeving. The addition of the Bechtel-KWU Alliance methodology as an approved alternative repair method would provide Zion with the flexibility necessary to continue with the philosophy of using an integrated refueling outage coordination.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards consideration. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequence of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commonwealth Edison Company (the licensee) provided the following discussion regarding each of the above criteria for no significant hazards consideration determination.

DISCUSSION - ITEM 1

The creation of the option to utilize the Bechtel-KWU Alliance welded sleeve process to repair a defective steam generator tube has no effect on either the probability or consequences of any accident previously evaluated. As discussed in Bechtel-KWU Alliance report, BKAT-01-P, Revision 1, the integrity of the steam generator tubes will be equivalent to that of an original tube, or a tube sleeved by the NRC-approved CE or WE processes. The continued integrity of the sleeves will be verified by the inspection program required as a result of this change.

Thus, since the structural integrity of the tubes will not be adversely affected by this change, there is no increase in the probability of an accident previously evaluated. Specifically, the probability of a steam generator tube rupture will be unaltered.

In addition, the steam generator will remain capable of performing its required heat transfer function. The information provided in Section 4.3.5 of BKAT-01-P, Revision 1 demonstrates that the sleeve-induced primary flow reduction resulting from the use of a Bechtel-KWU Alliance sleeve is comparable to the currently approved WE or CE processes. As a result, the choice to install a Bechtel-KWU Alliance sleeve, as opposed to a WE or CE sleeve, will have no significant effect on the steam generator's heat transfer ability.

The sleeving process will allow a repaired steam generator tube to remain in service, rather than completely blocking the tube's flow with plugs. Thus, the act of placing a sleeve in a steam generator tube actually results in a more efficient steam generator relative to plugging the tube.

Based upon the above discussion, the consequences of any accident previously evaluated will be unaffected because the heat transfer capability of the steam generators will not be significantly altered.

DISCUSSION - ITEM 2

As discussed above, both the structural integrity and the heat transfer capability of Zion steam generators will not be significantly affected by the use of the Bechtel-KWU Alliance welded sleeve process instead of the WE or CE sleeve processes. In addition, the steam generator tube sleeves do not interact with any other of Zion's systems. The ability of Zion's safety systems to perform their function will not be altered. Thus, there is no potential for a new or different kind of accident due to the use of the Bechtel-KWU sleeving process to repair Zion's steam generators.

DISCUSSION - ITEM 3

The heat transfer capabilities of Zion's steam generators will not be significantly altered through the utilization of Bechtel-KWU Alliance welded sleeves as opposed to the currently approved WE or CE sleeves. In general, the sleeving process, whether the Bechtel-KWU Alliance, WE, or CE processes are utilized, results in a more

efficient steam generator when compared to the plugging alternative.

As discussed above and in BKAT-01-P, Revision 1, the structural integrity of the steam generator tubes will be unaltered. Use of the Bechtel-KWU Alliance, WE, or CE sleeving processes will produce a primary system boundary with the appropriate integrity.

Since both the structural integrity and the heat transfer capability of Zion's steam generators will not be significantly altered by the choice of sleeving processes, the margin of safety will not be affected.

Therefore, since the application for amendment satisfies the criteria specified in 10 CFR 50.92, Commonwealth Edison Company made a determination that the application involves no significant hazards consideration.

After preliminary review of licensee's submittal, the staff agrees with licensee's overall conclusion. Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Paul C. Shemanski, Acting Director

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut; Northeast Nuclear Energy Company, et al., Docket Nos. 50-245 and 50-335, Millstone Nuclear Power Station, Unit Nos. 1 and 2, New London County, Connecticut

Date of amendment request: April 25, 1989 as supplemented June 26, 1989

Description of amendment request: The proposed amendments would change Technical Specification Sections 6.12, "High Radiation Area," for Haddam Neck and Millstone Unit 2 plants and TS Section 6.13, "High Radiation Area," for Millstone Unit 1 plant by (1) defining the dose rate as measured at 45 cm (18 inches) from the source, (2) increasing the Radiation Work Permit requirements for entry into locked High Radiation Areas with dose rates greater than 1000 mR/h by requiring maximum stay time limits or continuous surveillance, (3) allowing an alternative to enclosing and locking large areas with dose rates less than 1000 mR/h and in which an enclosure cannot be reasonably constructed and (4) define locked High Radiation Areas as those with dose rates greater than 1000 mR/h at 18 inches from the radiation source.

Basis for proposed no significant hazards consideration determination: The licensee has reviewed the proposed changes in accordance with 10 CFR 50.92 and has concluded and the staff agrees that they do not involve a significant hazards consideration in that these changes would not:

1. Involve a significant increase in the probability of occurrence of an accident previously analyzed. These changes are consistent with NRC Standard Technical Specification guidance and Information Notice 88-79. The licensee's current practice of specifying the measurement distance reduces the possibility of overexposure. The proposed change would specify this practice in the Technical Specifications. The proposed change also increases the requirements for entry into locked high radiation areas. Since there are no changes to the way the plant is operated, the probability of occurrence or consequences of an accident previously analyzed is not increased.

2. Create the possibility of a new or different kind of accident from any previously analyzed. The change allows an alternative to enclosing and locking large areas with dose rate greater than 1000 mR/h and in which an enclosure cannot be reasonably constructed. It allows the use of barricades, postings, and flashing lights. The proposed change would incorporate the current practice of specifying the measurement distance from the radiation source to determine dose rates. The change would also increase requirements for entry into locked high radiation areas. Since there are no changes in the way the plant is operated, the potential for an unanalyzed accident is not created. No new failure modes would be introduced.

3. Involve a significant reduction in the margin of safety. Since the proposed changes do not affect the consequences of any accident previously analyzed, there is no reduction in the margin of safety. The change increases Radiation Work Permit requirements for entry into locked High Radiation Areas with dose rates greater than 1000 mR/h by requiring maximum stay time limits or continuous surveillance. In past practice, dose rates for High Radiation Areas (unlocked) were defined as greater than 100 mR/h but less than 1000 mR/h in contact with the radiation source. As proposed, each High Radiation Area, as defined in 10 CFR Part 20, in which the intensity of radiation is equal to or less than 1000 mR/h would be measured at 18 inches from the radiation source. The proposed changes would additionally define locked High Radiation Areas as those with dose rates greater than 1000 mR/h at 18 inches from the radiation source. The proposed change would incorporate the current practice of specifying the measurement from the radiation source to determine dose rates.

Based on the above, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457 and Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut and Northeast Nuclear Energy Company, et al., Docket Nos. 50-245/336/423, Millstone Nuclear Power Station, Unit Nos. 1, 2 and 3, New London County, Connecticut

Date of amendment request: May 25, 1989

Description of amendment request: The proposed amendments will change the Technical Specifications (TS) as follows:

1. Sections 6.10.2.m (Haddam Neck, Millstone Unit Nos. 1 and 2) and 6.10.3 (Millstone Unit No. 3) are being added to the Records Retention section. This section requires lifetime retention of records of reviews performed for changes made to the Radiological Effluent Monitoring and Offsite Dose Calculation Manual (REMODCM) and the Process Control Program (PCP).

2. Sections 6.17 (Haddam Neck), 6.15 (Millstone Unit Nos. 1 and 2), and 6.13 (Millstone Unit No. 3) are being changed to simplify the administrative controls for making changes to the Radiological Effluent Monitoring Manual (REMM).

Basis for proposed no significant hazards consideration determination: On January 31, 1989, the NRC issued Generic Letter (GL) 89-01, "Implementation of Programmatic Controls for Radiological Effluent Technical Specifications in the Administrative Controls Section of the Technical Specifications and the Relocation of Procedural Details or RETS to the Offsite Dose Calculation Manual or to the Process Control Program."

The purpose of GL 89-01 was to provide model TS which simplify the administrate requirements for effluent monitoring programs. The application for license amendments dated May 25, 1989 specifically addresses changes to the REMM and record retention for the REMODCM and the PCP and conforms to the guidance in GL 89-01. The TS associated with other elements of the effluent monitoring programs will be addressed separately, at a future date.

The licensees have reviewed the proposed changes in accordance with 10 CFR 50.92 and have concluded and the staff agrees that they do not involve a significant hazards consideration in that these changes would not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously analyzed. These changes are consistent with NRC Generic Letter 89-01 which furthers the NRC's goal as stated in the Commission Policy Statement for Technical Specification improvements. Since there are no changes in the way the plant is operated, the probability of occurrence or consequences of an accident previously analyzed is not increased.

2. Create the possibility of a new or different kind of accident from any previously analyzed. The proposed changes simplify the administrative controls for changes to the REMM. Since there are no changes in the way the plant is operated, the potential for an unanalyzed accident is not created. No new failure modes are introduced.

3. Involve a significant reduction in the margin of safety. Since the proposed changes do not affect the consequences of any accident previously analyzed, there is no reduction in the margin of safety.

Based on the above, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457 and the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: August 14, 1987, as supplemented April 22, 1988.

Description of amendment request: The proposed amendments would change the Oconee Nuclear Station Technical Specification (TS) 3.4.4 to raise the minimum upper surge tank (UST) level from 5 feet to 6 feet. The level setpoint of 6 feet includes an allowance for instrument error.

The amendment request also includes a revision to the bases of TS 3.4. The table of emergency feedwater flow vs. the time required to remove decay heat and reactor coolant pump heat, following reactor trip from 102% rated power would be revised.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following discussion regarding the three criteria.

The proposed amendments increase the required UST level from 5 feet to an indicated 6 feet allowing for maximum instrument error. This is an improvement which would assure the availability of the required UST inventory. Therefore, the proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments involve a change which would increase the required UST level from 5 feet to 6 feet. This change constitutes an additional limitation and restriction which will improve the margin of safety. The amendments do not involve any modification in the system design and procedures which would create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendments are an improvement in the availability and reliability of the water sources for emergency feedwater for decay heat removal and do not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determiniation and agrees with the analysis.

Accordingly, the Commission has made a proposed determination that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Attorney for licensee: J. Michael McGarry, III, Bishop, Lieberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Duquesne Light Company, Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: June 22, 1989

Description of amendment request: The proposed amendments would revise the Technical Specifications of each unit as follows:

(1) Increase the maximum service water (i.e. Ohio River water) temperature limit from 86° F to 90° F for Unit 1, and 86° F to 89° F for Unit 2;

(2) Reduce the required service water flow through the Unit 2 recirculation spray heat exchangers from 12,000 gpm to 11,000 gpm.

(3) Replace Figure 3.6-1 regarding maximum allowable containment air pressure with a new Figure 3.6-1, developed as a result of the study to support change (1).

(4) For Unit 1, increase the minimum refueling water storage tank (RWST) temperature from 43° F to 45° F, while the maximum RWST temperature is specified as 55° F.

(5) For Unit 1, increase the peak accident pressure in the containment from 38.5 to 40.0 psig, as a result of the study to support change (1).

(6) For Unit 1, change the surveillance requirement of the quench spray and recirculation spray pumps to reflect revised allowable margins for pump degradation assumed in the study to support change (1).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in accordance with 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazard consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has re-evaluated previously analyzed accidents. No accidents were determined to be caused by high river water temperature. Furthermore, the licensee determined that despite the proposed changes to the technical specifications, the design requirement of the containment depressurization systems will continue to be met, and safety-related equipment which require river water cooling will be capable of performing their design functions at the increased service water temperature limit. Hence the answer to the first criterion is negative.

There is no hardware, software or operational procedure changes as a result of the proposed amendment. Hence the answer to the second criterion is also negative.

The proposed amendments do involve slight relaxation of margins of safety.

However, the licensee's analysis shows that the safety systems will continue to meet design objectives. The relaxation is not significant and the answer is also negative to the third criterion.

The staff therefore proposes to determine that the requested amendments involve no significant hazards considerations.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: June 12, 1989

Description of amendment request: This amendment would change the Technical Specifications (TS) to reflect the updated 10 CFR Part 50, Appendix J method for containment leakage testing. Specifically, the amendment will permit the use of the mass point method to determine containment leakage. The mass point method has been accepted by the staff as an improved alternate test method for determining containment leakage.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed amendment was analyzed with respect to the above three criteria. With respect to the first criterion, the licensee determined that the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously analyzed since the TS will continue to require surveillance testing in accordance with 10 CFR Part 50, Appendix J. This change will allow the use of Commission-approved methodologies for containment leakage testing that have been incorporated into the regulations for general industry use (53 FR 45890).

With respect to the second criterion, the licensee determined that the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated since the amendment involves no physical change to the plant, nor any change in plant operating procedures.

With respect to the third criterion, the licensee determined that the proposed amendment would not involve a significant reduction in a margin of safety since the margin of safety currently provided by the TS remains the same. The proposed amendment still requires containment leakage testing to be performed at the same frequency, per 10 CFR Part 50, Appendix J, and in accordance with Commission-approved methodologies.

The staff has performed a preliminary evaluation of the licensee's submittal and believes that the criteria of 10 CFR 50.92 are met. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards considerations.

Local Public Document Room location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629

Attorney for licensee: A. H. Stephens, General Counsel, Florida Power Corporation, MAC - A5D, P. O. Box 14042, St. Petersburg, Florida 33733

NRC Project Director: Herbert N. Berkow

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: June 12, 1989

Description of amendment request: This amendment would add a new Technical Specification that would address the use of hydrogen purge valves for depressurization of the containment. The new specification ensures limited use of the hydrogen purge valves.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has analyzed the proposed change in light of the above three criteria. With respect to the first criterion, the licensee determined that the proposed change would not increase the probability or consequences of any accident previously evaluated since this change provides assurance that the hydrogen purge valves are capable of closing during a loss of coolant accident or a steam line break accident within containment. Performance of the proposed surveillance requirements would demonstrate valve operability, thus insuring that off-site dose limits would not be exceeded in the event of an accident during containment purging operations.

With respect to the second criterion, the licensee determined that the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated since the proposed change introduces no new mode of plant operation nor does it require a physical modification to the plant.

With respect to the third criterion, the licensee determined that the proposed change would not involve a significant reduction in a margin of safety since the change adds a restriction on plant operation to ensure time periods with direct access from the containment to the outside atmosphere are minimized.

The staff has performed a preliminary evaluation of the licensee's submittal and believes that the criteria of 10 CFR 50.92 are met. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards considerations.

Local Public Document Room location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629

Attorney for licensee: A. H. Stephens, General Counsel, Florida Power Corporation, MAC - A5D, P. O. Box 14042, St. Petersburg, Florida 33733

NRC Project Director: Herbert N. Berkow

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: June 13, 1989

Description of amendment request: This amendment request includes proposed Technical Specification changes related to 10 CFR 50 Appendix J Local Leakage Rate testing (LLRT) including the relocation of LLRT component and valve lists from the Technical Specifications to the Updated FSAR. Removal of tabular listings from the Technical Specifications is an area of Technical Specifications improvement that has been identified by the Atomic Industrial Forum (AIF) and the NRC. Relocation of these tabular listings to the Updated FSAR would allow future changes to these lists, as permitted by the regulations, to be made without a license amendment. This would relieve both the NRC and GPUN of this administrative burden.

Basis for proposed no significant hazards consideration determination: GPU Nuclear Corporation has determined that this Technical Specification Change Request poses no significant hazards as defined by the NRC in 10 CFR 50.92. This change is considered to be administrative in nature and does not involve significant hazards consideration as evaluated below.

1. Operation of Three Mile Island Nuclear Station, Unit-1, in accordance with this change would not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed Technical Specification change does not modify or create any accident initiating condition. This change provides for update of the list of components subject to 10 CFR 50 Appendix J Type "C" tests to add additional components to the list, improvement in the Technical Specifications by relocating lists to the FSAR, and deletion of certain test requirements that are not needed to meet the requirements of 10 CFR 50 Appendix J. Deletion of the requirements for Penetration Pressurization System quarterly rotameter readings does not result in changes contrary to the requirements of 10 CFR 50 Appendix J or the NRC's Standard Technical Specifications for Babcock and Wilcox Pressurized Water Reactors (NUREG-0103). The changes included in this request are either purely administrative in nature or are of minor technical significance and have no significance related to safe plant operation.

(10 CFR 50.92(c)(1))

2. Operation of Three Mile Island Nuclear Station, Unit-1, in accordance with this change would not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed Technical Specification change does not modify or create any accident initiating condition. The proposed changes to the LLRT test requirements in Technical Specifications will result in technical specification requirements that meet or exceed the requirements of 10 CFR 50 Appendix J.

(10 CFR 50.92(c)(2))

3. Operation of Three Mile Island Nuclear Station, Unit-1, in accordance with this change would not involve a significant reduction in a margin of safety because all Updated Final Safety Analysis Report (USAR) assumptions remain unchanged. The proposed changes to the LLRT test requirements will result in technical specification requirements that meet or exceed the requirements of 10 CFR 50 Appendix J. A minor change in the test requirements for the purge valves would not change the test methodology or the acceptance criteria and would not significantly affect the assurance of the early detection of purge valve seat degradation and inoperability because the additional examinations and increased (quarterly) test frequency of the purge valves beyond the Appendix J test requirements would be retained. Deletion of the requirements for Penetration Pressurization System quarterly rotameter readings is not discussed in the basis for any TMI-1 Technical Specification. Any reduction in test requirements resulting from this change would not significantly affect the timely detection of containment isolation valve or penetration inoperability.

(10 CFR 50.92(c)(3))

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: November 7, 1988, December 1, 1988 and May 19, 1989

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 3.3.3.6, "Accident Monitoring Instrumentation," to make the action requirements for inoperable containment hydrogen concentration monitors consistent with the requirements of TS 3.6.4.1, "Hydrogen Monitors."

Basis for proposed no significant hazards consideration determination: The two TS which address containment hydrogen concentration monitors have different action requirements for the same monitors. TS 3.3.3.6, "Accident Monitoring Instrumentation," allows 7 days to restore an inoperable monitor to operable status before proceeding to a lower mode of operation. If two monitors are inoperable, 48 hours are allowed to restore at least one to operable status. TS 3.6.4.1, "Hydrogen Monitors," allows 30 days and 72 hours, respectively. The 30 day requirement is consistent with Generic Letter 83-37 and is appropriate given the function performed by the hydrogen monitors. The licensee is therefore proposing to revise TS 3.3.3.6 to refer to TS 3.6.4.1 for action requirements when a hydrogen monitor is inoperable.

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In regard to the proposed amendments, the licensee has determined the following:

1. The proposed change will not significantly increase the probability or consequences of an accident previously evaluated. The change affects only the time limit for restoring an inoperable containment hydrogen concentration monitor to operable status. These monitors are provided for post-LOCA indication and recording. They perform no control or trip functions and are not needed for immediate post-accident mitigative action. Hydrogen buildup following a LOCA is a slow process and alternate means of hydrogen monitoring are available. Even in the total absence of hydrogen monitoring, the hydrogen recombiners could sill be operated. The change will, therefore, have no significant negative effect on post-accident hydrogen control and the consequences of a LOCA would remain within previously analyzed limits.

2. The proposed change does not create the possibility of a new or different kind of accident than any accident previously evaluated. The change involves no physical alteration of the plant. The change does not introduce any new equipment into the plant or require any existing equipment to operate in a different manner from which it was designed to operate. The change, therefore, does not create a new failure mode, and a new or different kind of accident could not result.

3. The proposed change does not significantly reduce a margin of safety. The change does not affect safety limits or limiting safety system settings. The proposed time limit for restoring an inoperable hydrogen concentration monitor to operable status is consistent with NRC Generic Letter 83-37. The proposed time limit is appropriate given the nature of the monitored variable

and the availability of alternate means of monitoring. The change will, therefore, have no significant effect on the availability of post-accident hydrogen control and margins of safety are not reduced.

The NRC staff has reviewed the licensee's determination and concurs with its findings.

Accordingly, the Commission proposes to determine that the proposed change involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, N.E., Atlanta, Georgia 30043.

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: May 8, 1989

Description of amendment request: These proposed amendments revise the values for TA (total allowance), Z (the statistical summation of errors assumed in the analysis) and the Allowable Value associated with the low Pressurizer Pressure Safety Injection setpoint, in Technical Specification Table 3.3-3.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In regard to the proposed amendment, the licensee has determined the following:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the trip setpoint is not changed, and this change is not a result of a plant modification or design change. The revisions to TA, Z and the Allowable Value are consistent with the evaluated accidents. The values being changed are used in the determination of whether or not instrument drift is sufficient to cause the instrument to be declared inoperable. The revision to this Technical Specification provides consistency with the manner in which the increased uncertainty associated with the Veritrak instrument was resolved.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because it does not result in a change in equipment and the trip setpoint remains the same.

3. The proposed change does not involve a significant reduction in a margin of safety because the setpoint has remained unchanged even though the safety analysis was evaluated by Westinghouse to account for additional uncertainty in the Veritrak instrument temperature compensation. These evaluations show that the revised analysis limits would be bounded by the existing analysis. The revision to TA, Z and Allowable Value are consistent with the safety analysis evaluation and will only effect [affect] the point at which a determination of significant instrument drift would result in the instrument being declared inoperable.

The NRC staff has reviewed the licensee's determination and concurs with its findings.

Accordingly, the Commission proposes to determine that the proposed change involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, N.E., Atlanta, Georgia 30043.

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: May 19, 1989

Description of amendment request: The proposed amendments would revise the action statements of Technical Specification (TS) 3.3.2, "Engineered Safety Features Actuation System Instrumentation" and TS 3.7.6, "Control Room Emergency Filtration Systems (CREFS)," concerning the control room emergency filtration system and its associated actuation instrumentation. The change would add exceptions to TS 3.0.4, "Limiting Conditions For Operation and Surveillance Requirements*," to allow operational mode changes for those action statements of TS 3.3.2 and 3.7.6 which permit continued unit operation for an unlimited period of time.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In regard to the proposed amendment, the licensee has determined the following:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The change does not affect equipment involved in the initiation of previously evaluated accidents. The probability of such accidents is therefore not increased. The change concerns the Control Room Emergency Filtration System (CREFS) and its associated actuation instrumentation, which function to mitigate the consequences of accidents. The change does not alter CREFS design or operation. The change revises the applicable action statements to permit mode changes if the action statement allows continued unit operation for an unlimited period of time. The action statements were written such that continued operation for an unlimited time is not permitted unless the Technical Specification bases for the CREFS and its actuation instrumentation continue to be met. That is, the CREFS will ensure that equipment qualification temperatures are not exceeded and that the control room would remain habitable during and following all credible accident conditions (including consideration of a single failure) and the instrumentation will ensure a redundant and diverse means to initiate a Control Room Isolation in response to credible accidents in either unit (including consideration of a single failure). The CREFS would therefore respond as previously analyzed if a demand occurred while operating in one of the affected action statements. Operating mode changes within the bounds of the action statements would not degrade the capability of the CREFS to mitigate an accident, hence, the consequences of previously analyzed accidents are not increased by the proposed change.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The change does not introduce any new equipment into the plant or require existing equipment to operate in a different manner from which it was designed to operate. Since a new failure mode is not introduced by the change, a new or different kind of accident could not result.

3. The proposed change does not involve a significant reduction in a margin of safety. The change does not affect safety limits or limiting safety system settings. The Technical Specifications bases for the CREFS and its actuation instrumentation are maintained during operation in the affected action statements. Operating mode changes within the constraints of the action statements do not reduce the level of protection provided by the CREFS; therefore, margins of safety are not reduced.

The NRC staff has reviewed the licensee's determination and concurs with its finding.

Accordingly, the Commission proposes to determine that the proposed change involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, N.E., Atlanta, Georgia 30043.

NRC Project Director: David B. Matthews

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: June 23, 1989

Description of amendment request: The amendment would add two additional Gould Type HE43 circuit breakers to Technical Specification (TS) Table 3.8.4.1-1, "Primary Containment Penetration Conductor Overcurrent Protection Devices." For convenience and ALARA considerations, it is desirable to provide 480 volt recepticles in the drywell to power tools and other temporary equipment during future outages rather than run temporary power cables into the drywell. The design to provide power for the two receptacles requires the use of a containment electrical penetration. These circuits must be added to TS Table 3.8.4.1-1 for primary containment conductor overcurrent protection devices utilizing Gould Type HE43 circuit breakers. The wiring was implemented during the recent refueling outage; however, the licensee has stated that the circuits are deenergized and will continue to be verified as deenergized during Operational Conditions 1, 2, or 3 until the proposed change is approved. The new receptacles perform no safety-related function, and no safety-related systems, other than the containment penetrations, are affected by this modification.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application.

1. No significant increase in the probability or consequences of an accident previously evaluated results from the proposed change because:

The conduit, cable and equipment associated with this modification are being installed in accordance with all applicable seismic and electrical separation criteria. As such, adequate electrical protection in conformance with the Technical Specification Bases and USAR Section 8.3.1.1.4.3 is provided for all containment penetrations used. Operation or failure of the equipment installed by this modification has no impact on any safety-related system. Because this proposed change does not result in any new plant operating modes and electrical penetration overcurrent protection is provided as described in the USAR, this proposed change cannot increase the probability or consequences of any accident previously evaluated.

2. This proposed change will not create the possibility of a new or different kind of accident than any previously evaluated because:

A single failure of the equipment installed by this modification would at worst cause a loss of power to motor control center (MCC) 1NHS-MCC2A. Loss of this nonsafety-related MCC is assumed by the USAR during design basis accident conditions and is therefore, as previously analyzed. No other new, credible failure modes can be identified. The circuit protection design is identical to the as-built configuration for receptacle 1POP-WR2A01 already listed on Technical Specification Table 3.8.4.1-1. Additionally, this proposed change does not introduce any new plant operating modes. Therefore, this proposed change cannot create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety because:

Overcurrent protection is provided such that no single failure will cause excessive current in the penetration conductors. This ensures that the overcurrent protection is in accordance with the RBS USAR. Additionally, the circuit protection design is identical to the as-built configuration for receptacle 1POP-WR2A01 already listed on Technical Specification Table 3.8.4.1-1. The new receptacles perform no safety-related function and no safety-related systems, other than the containment penetrations, are affected by this modification. Further the proposed change does not result in any new plant operating modes. Therefore, the proposed change does not result in any reduction in the margin of safety.

Based on the above considerations, the proposed change does not increase the probability or the consequences of a previously evaluated accident, does not create the possibility of a new or different kind of accident from any previously evaluated, and does not involve a reduction in the margin of safety. Therefore, Gulf States Utilities Company proposes that no significant hazards are involved.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Frederick J. Hebdon

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Dates of amendment request: May 12, 1989 and July 3, 1989 (Reference LAR 89-05).

Description of amendment request: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to change the diesel generator (DG) allowed outage time (AOT) from 72 hours to 7 days. Prior to installation of the sixth DG, this change would apply only to the swing diesel generator (DG 1-3) for performance of preplanned preventive maintenance. After the sixth DG is installed and operational (scheduled for December 1991), the 7-day AOT would apply to all DGs. Specific TS changes would include (1) revising TS 3.8.1.1 and TS 4.8.1.1, and (2) revising the associated Bases accordingly.

This request was previously noticed in the **Federal Register** on May 31, 1989 at 54 FR 23319. This replaces the previous notice.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee, in its submittal of May 12, 1989, evaluated the proposed changes against the significant hazards criteria of 10 CFR 50.92 and against the Commission guidance concerning application of this standard. Based on the evaluation given below, the licensee has concluded that the proposed changes do not involve a significant hazards consideration. The licensee's evaluation is as follows:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The Diablo Canyon offsite and onsite power systems are highly reliable. The 230kV and 500kV systems have been demonstrated to provide reliable offsite power sources for both units. The DCPP DG reliability history indicates that average reliability is higher than the requirements in Regulatory Guide 1.155, Station Blackout, and is higher than the industry average.

The risk and reliability evaluation determined that the probability of an accident previously evaluated does not significantly change by increasing the DG AOT from 72 hours to 7 days. The relative risk evaluation demonstrated that the relative risk remained low with an increased AOT from 72 hours to 7 days because of the improved maintenance possible with the 7-day AOT and the avoidance of multiple 72-hour AOTs.

Increasing the DG AOT does not involve physical alteration of any plant equipment and does not affect analysis assumptions regarding functioning of required equipment designed to mitigate the consequences of accidents. Further, the severity of postulated accidents and resulting radiological effluent releases will not be affected by the increased AOT.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Extending the DG AOT from 72 hours to 7 days does not necessitate physical alteration of the plant or changes in parameters governing normal plant operation.

Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated for Diablo Canyon.

c. Does the change involve a significant reduction in a margin of safety?

As discussed above, the risk and reliability evaluations determined that the change in core melt frequency for a 7-day AOT compared with a 72-hour AOT is insignificant.

Therefore, this change does not result in a significant reduction in a margin of safety.

The NRC Staff has reviewed the proposed changes, including the additional restrictions proposed in the licensee's letter of July 3, 1989, and the licensee's no significant hazards consideration determination and finds them acceptable. Therefore, the Staff proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorneys for licensee: Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: George W. Knighton

Pennsylvania Power and Light Company, Docket No. 50-388 Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: June 9, 1989

Description of amendment request: The proposed amendment would change the Technial Specification 3.6.6.2 to reflect addition of two drywell cooling fans and to add circuit breakers in Table 3.8.4.1-1 of the Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and concurs with the following basis and conclusion provided by the licensee in its June 9, 1989 submittal.

The proposed change does not:

(1) Involve an increase in the probability or consequences of an accident previously evaluated.

FSAR Sections 9.4.5 and 6.2.5 provide discussion regarding drywell cooling system and combustible gas control in containment respectively. Both Sections have been reviewed for impact.

This modification will improve the capability of the Drywell Atmosphere Recirculation and Cooling System. The safety-related function of the system, that is, hydrogen mixing following LOCA, is not changed except recirculation fans 2V418 A&B, instead of unit cooler fans 2V415 A&B, will provide the air mixing in the CRD undervessel area. Fan motor horse power is reduced to 5/2.5 hp from the present 10/5 hp. However, air flow capability of fans 2V418 A&B is the same as that of fans in 2V415 A&B. This will provide for same hydrogen mixing capability.

(2) Create the possibility of a new or different kind of accident from any previously evaluated. The change is in accordance with existing design criteria and will not adversely affect the function of any system. Electrical separation, seismic integrity and all other design criteria will be met.

(3) Involve a reduction in the margin of safety. Technical Specification Bases discussed in Sections 3/4.6.1.7, "Drywell Average Air Temperature"; 3/4.6.6, "Primary Containment Atmosphere Control", and 3/4.8.4, "Electrical Equipment Protective Devices"; have been reviewed for impact.

This change will improve the capability of the Drywell Atmosphere Recirculation and Cooling System to maintain the drywell atmosphere average temperature below the requirement of Technical Specification Section 3/4.6.1.7.

Based on the above considerations, the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: Walter R. Butler

Pennsylvania Power and Light Company, Docket No. 50-388 . Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: June 16, 1989

Description of amendment request: The proposed request involves changes to Susquehanna Steam Electric Station (SSES) Unit 2 Technical Specifications

in support of Cycle 4 operations. Specifically, changes to the following areas of Technical Specifications are requested.

- Index
- Safety Limits (B.2.1)
- Average Planer Linear Heat Generation Rate (3/4.2.1 and B3/4.2.1)
- APRM Setpoints (3/4.2.2 and B3/4.2.2)
- Minimum Critical Power Ratio (3/4.2.3 and B3/4.2.3)
- Linear Heat Generation Rate (3/4.2.4)
- Recirculation System (3/4.4.1 and B3/4.4.1)
- Fuel Assemblies (5.3.1)

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and concurs with the following basis and conclusion provided by the licensee in its June 16, 1989 submittal.

The following three questions are addressed for each of the proposed Technical Specification changes:

I. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

II. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

III. Does the proposed change involve a significant reduction in a margin of safety?

- Specification 3/4.2.1, Average Planar Linear Heat Generation Rate

The changes to this specification are editorial in nature in that they reflect the removal of the remaining General Electric (GE) fuel from the SSES Unit 2 core.

I. No. The changes to this specification and its associated figures are solely due to the fact that no GE fuel will reside in the Unit 2 Cycle 4 (U2C4) core. Therefore, the specification is written to address the limits for ANF 9X9 fuel, the only fuel type in the U2C4 core. The deletion of the footnote referencing single loop operation (SLO) is due to the fact that the MAPLHGR limits for ANF fuel do not change for SLO. None of these editorial changes have any impact on safety analyses.

II. No. See I above.

III. No. See I above.

- Specification 3/4.2.2. APRM Setpoints Setpoints

The changes to this specification are editorial in nature in that they reflect the removal of the remaining GE fuel from the SSES Unit 2 core.

I. No. The changes to this specification are solely due to the fact that no GE fuel will reside in the U2C4 core. The definition of "T" for GE fuel is therefore deleted. This editorial change has no impact on any safety analysis.

II. No. See I above.

III. No. See I above.

- Specification 3/4.2.3, Minimum Critical Power Ratio

The changes to this specification provide new operating limit MCPR curves based on cycle-specific transient analyses.

I. No. Limiting core-wide transients were evaluated with ANF's CONTRANSA code... and this output was utilized by the XCOBRA-T methodology (see Summary Report Reference 20) to determine delta CPRs. Both COTRANSA and XCOBRA-T have been approved by the NRC in previous license amendments. All core-wide transients were analyzed deterministically (i.e., using bounding values as input parameters).

Two local events, Rod Withdrawal Error and Fuel Loading Error, were analyzed in accordance with the methods described in XN-NF-80-19 (A) Vol. 1.... This methodology has been approved by the NRC.

Based on the above, the methodology used to develop the new operating limit MCPRs for the Technical Specifications does not involve a significant increase in the probability or consequences of an accident previously evaluated.

II. No. The methodology described can only be evaluated for its effect on the consequences of analyzed events; it cannot create new ones. The consequences of analyzed events were evaluated in I above.

III. No. As stated in I above, and in greater detail in the attached Reload Summary Report, the methodology used to evaluate core-wide and local transients is consistent with previously approved methods and meets all pertinent regulatory criteria for use in this application.

Based on the above, the use of the methodology used to produce the U2C4 MCPR operating limits will not result in any decrease in any margin of safety.

- Specification 3/4.2.4, Linear Heat Generation Rate

All proposed changes to this specification are editorial.

I. No. The proposed changes simply remove all references to GE fuel. This has no impact on safety since it is entirely administrative in nature.

II. No. See I above.

III. No. See I above.

- Specification 3/4.4.1, Recirculation System (Two Loop Operation)

The changes to this specification reflect cycle specific stability analysis and the extrapolation of the limit presented in figure 3.4.1.1.1-1, Thermal Power/Core Flow Limitations, to rated power conditions.

I. No. The 55 million lbs/hr. optional limit proposed for deletion is an administrative change. It was included as a quick reference for the operator in order to assure he was within the flow limit in the figure. The actual limit is provided by the figure, which remains, but has been revised for Cycle 4 operation.

COTRAN core stability calculations performed for U2C4 predict stable reactor operation outside of the detect and suppress region of operation in SSES Unit 2. The detect and suppress region is conservatively defined by the area above and to the left of the 80% Rod line, the 45% constant flow line, and the line connecting the 66% Power/45% Flow, 73.25% Power/50% Flow points extrapolated to 100% Rated Core Thermal Power. Operation below, to the right of, or on the boundary of this region is supported by COTRAN calculations which result in decay ratios of less than or equal to 0.75 as required by the NRC SER on COTRAN.... This region is slightly larger than the region previously approved for SSES Unit 2. The results of this analysis are presented in Summary Report Reference 4. PP&L has also developed administrative controls to comply with NRC Bulletin 88-07, Supplement 1.....

In addition to the detect and suppress region definition, PP&L has performed stability tests in SSES Unit 2 during initial startup of Cycles 2 and 3 to demonstrate stable reactor operation with ANF 9x9 fuel. The test results for U2C2..... show very low decay ratios with a core containing 324 ANF 9x9 fuel assemblies.

Extrapolation of the figure to rated conditions was conservatively implemented to ensure that decay ratio boundaries for the entire U2C4 operating region were provided.

Based on the above, operation within the limits specified by the proposed changes and PP&L's administrative controls will ensure that the probability and consequences of unstable operation will not increase.

II. No. The methodology described above can only be evaluated for its effect on the consequences of unstable operation; it cannot create new events. The consequences were evaluated in I above.

III. No. The methodology used to determine the regions of potentially unstable operation and stable operation is based on the guidance provided in the NRC SER for COTRAN. Also, PP&L has implemented administrative controls to assure compliance with NRC Bulletin 88-07, Supplement 1. This along with the tests and analyses described in I above assures SSES Unit 2 complies with General Design Criteria 12, Suppression of Reactor Power Oscillations. Therefore, the proposed change will not result in any decrease in safety margin.

- Specification 3/4.4.1, Recirculation System (Single Loop Operation)

I. No. The original GE SLO analysis required the adjustment of APRM scram, APRM Rod block, and Rod Block Monitor setpoints in SLO to bound changes in the assumed drive flow to core flow relationship between two loop and single loop operation. The GE analysis indicated that the two loop to single loop change is typically less than 7% drive flow for a given core flow. SSES-specific data taken by PP&L indicates that an 8.5% drive flow change would bound differences between two loop and single loop operation. Therefore, Specifications 3.4.1.1.2a.2.4 and 6 incorporate setpoint adjustments to account for this 8.5% change.

Specification a.3 is revised to delete MAPLHGR as a "revised specification limit."

This is an administrative change. LOCA analyses performed by ANF..... indicated that the two loop MAPLHGR limits are applicable to SLO for ANF fuel. The limits for GE fuel are deleted since GE fuel is no longer in the Unit 2 core.

Specification a.5 is revised to delete the 1.37 Cycle 3 limit which was provided based on a PP&L decision to conservatively treat the Recirculation Pump Seizure Accident as an anticipated operational occurrence for which a delta CPR had to be determined. For Cycle 4, PP&L has decided to treat the pump seizure event as an accident, consistent with the guidance of the Standard Review Plan. Therefore, this change in approach will continue to ensure compliance with NRC guidance.

Changes to 3.4.1.1.2b and c, Actions c and e, Surveillance 4.4.1.1.2.2, and Figure 3.4.1.1.2-1 reflect the replacement of the Thermal Power Limitations figure for SLO with a reference to the two-loop figure. This is because the core stability analysis results have been determined to be applicable for both single and two loop operation.....

Based on the above, appropriate limits have been proposed to assure that operation under single loop conditions will not result in a significant increase in the probability or consequences of any accident previously evaluated.

II. No. The revised APRM setpoints are based on actual data which renders them more restrictive. Application of the two loop MAPLHGR limits, MCPR limits, and stability boundaries as specified for SLO is based on NRC approved methods. Neither these nor the supporting editorial changes can create the potential for a new event.

III. No. As stated in II above, the new APRM setpoints are more restrictive and more accurate and therefore cannot result in a significant reduction in safety margin. The other changes are based on analyses which ensure that no significant reduction in safety margin has occurred based on their inputs, applied conservatisms, and calculational methodologies as documented in this proposal.

• Specification 5.3.1, Fuel Assemblies

The proposed changes are editorial in nature in that they reflect the removal of the remaining GE fuel from the Unit 2 core.

I. No. The changes to this specification are wholly editorial. The reference to 62 rods applied only to GE 8x8 fuel bundles, which will not reside in the U2C4 core. References to the initial core loading are unnecessary and are proposed to be deleted. Based on their editorial nature, the proposed changes cannot involve a significant increase in the probability or consequences of an accident previously evaluated.

II. No. See I above.

III. No. See I above.

Based on the above considerations, the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: Walter R. Butler

Pennsylvania Power and Light Company, Docket No. 50-388 Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: June 16, 1989

Description of amendment request: The amendment request proposes to delete valves and a footnote from Table 3.6.3-1, "Primary Containment Isolation Valves", and a paragraph in Bases Section 3/4.6.2 related to the valves being deleted.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and concurs with the following basis and conclusion provided by the licensee in its June 16, 1989 submittal.

I. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

As stated previously (See licensee's June 16, 1989 application), a decision was made to cancel the RHR waterhammer backpressure control valve modification based upon reduced SRV leakage and improved suppression pool temperature measuring methods. The improvements noted reduce the frequency and duration of cycles that the RHR system operates in suppression pool cooling to within the design basis as stated in the FSAR. Therefore, the deletion of the proposed valves (HV-25129 A&B) from Table 3.6.3-1 does not affect the probability or consequences of an accident previously evaluated.

Since the waterhammer modification is being cancelled, the deletion of the revised Section B 3/4.6.2 is an administrative change.

The moving of valves (HV-251F011 A&B) from Section B (Manual Isolation Valves) of Table 3.6.3-1 to Section C (Other Valves) does not impact the containment isolation function of these valves. Therefore this change is administrative in nature.

The removal of the HV-251F011 A&B and HV-251F026 A&B valves from Table 3.8.4.2.1-1 is due to the fact that they are no longer motor operated and therefore are not required to have thermal overload protection.

II. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. Since improvements have been made to the plant, and the RHR system operates within the design bases as stated in the FSAR, the deletion of the proposed valves does not create any new concerns. The removal of the revised Bases section and the rearrangement of valves on Table 3.6.3-1 are administrative changes and do not create new concerns.

Since the power from valves HV-E11-2F011 A&B and HV-E11-2F026 A&B is removed and leakage requirements for containment integrity and isolation do not change, no new concerns are created by this proposal.

III. The proposed change does not involve a significant reduction in a margin of safety.

Since the RHR system functions within the design basis, the overall safety margin is not reduced by not installing the proposed valves. The deletion of the Bases section and the revision to Table 3.6.3-1 are administrative changes and do not reduce the margin of safety. Since the containment isolation and integrity are assured to the same relevant criteria as discussed previously, the overall safety margin has not been reduced due to the proposed changes to Table 3.8.4.2.1-1.

Based on the above considerations, the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: Walter R. Butler

Pennsylvania Power and Light Company, Docket No. 50-388 Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: June 19, 1989

Description of amendment request: The proposed amendment request consists of a one time waiver of the requirements of Technical Specification Section 4.0.2.b and would permit exceeding the 3.25 year combined interval for 3 consecutive surveillance intervals.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and concurs with the following basis and conclusion provided by the licensee in its June 19, 1989 submittal.

I. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The 3.25 surveillance interval extension criteria of Technical Specification 4.0.2 was not taken credit for in the evaluation of the probability or severity of events analyzed in the plant accident analysis (FSAR Chapter 15).

Additionally, the 18 month refuel interval was originally chosen to correspond to expected operating cycle length such that these surveillances would be performed during the shutdown period (Reference Generic Letter 83-27). Since no technical basis is specified for the 18 month interval other than conformance with expected operating cycle length, deleting the 3.25 requirements for Unit 2 18 month surveillances on a one time basis does not involve a significant decrease in the effectiveness of the monitoring provision. Generic Letter 83-27 indicates that this is acceptable to the Staff ". . . for plant-specific conditions where adequate justification is given."

II. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated since the refuel surveillance interval will still be constrained by the maximum 1.25 interval extension criteria of Technical Specification 4.0.2.

III. The proposed change does not involve a significant reduction in a margin of safety. Deletion on a one-time basis of the requirement for three consecutive surveillance intervals not exceeding 3.25 times the interval from the refueling interval for Unit 2 18 month surveillances will not significantly effect equipment reliability. The current criteria allows a 22.5 month interval. By virtue of Technical Specification 4.0.2.a, the staff has already accepted that a 22.5 month interval will provide a sufficient level of protection.

Based on the above considerations, the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: Walter R. Butler

Pennsylvania Power and Light Company, Docket No. 50-388 Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: June 22, 1989

Description of amendment request: The amendment request proposes changes to Susquehanna Steam Electric Station (SSES) Unit 1 Technical Specifications to correct errors in figures for MCPR values introduced as a result of the licensee's analysis in support of Amendment No. 90, dated May 15, 1989 and to incorporate some editorial changes. The licensee states it determined an error in its interpretation of licensing analysis of end-of-cycle reactor pump trip (EOC-RPT) event and found that Figure 3.2.3-1 and 3.2.3-2 should reflect minimum MCPR value of 1.43 instead of 1.42 requested in its February 2, 1989 request for Technical Specification changes to support Unit 1 Cycle 5 (U1C5) operation.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and concurs with the following basis and conclusion provided by the licensee in its June 22, 1989 submittal.

I. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

As stated previously, the results provided in the analysis supporting U1C5 are correct. Therefore, the analytical methodology used to develop delta CPRs, which was previously approved by the NRC, is not in question. The proposed change corrects an error in converting the analytical results to the MCPR operating limit curve when EOC-RPT is inoperable. Correction of this error results in a more restrictive limit at end-of-cycle; this will not result in an increase in the probability or consequences of an accident previously evaluated.

The increased application of Figure 3.2.3-1 from 40% to 30% total core flow is the result of a more accurate definition of the SSES Unit 1 two pump minimum speed operating line. The change to include 30% total core flow was performed to ensure an operating limit was provided which bounds the redefined line. This will not increase the probability or consequences of an accident previously evaluated.

The changes to Specification 3.2.1 (APLHGR), 3.2.4 (LHGR), and 3.4.1.1.2 (SLO) are all editorial changes which reflect the removal of all GE fuel from the SSES Unit 1 core. Specification 3.2.1 is revised to remove an unnecessary reference to ANF fuel, and to remove a cross-reference footnote to SLO since this limit will no longer change for SLO. Specification 3.2.4 also deletes unnecessary references to ANF fuel. Finally, Specification 3.4.1.1.2 deletes the reference to MAPLHGR, because it no longer represents a "revised specification limit" during SLO. All of these changes are editorial in nature, and can therefore have no impact on any previous safety analysis.

II. Create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed in I above, the methodology used to develop the delta CPRs that form the basis for the MCPR figures is correct as approved by the NRC for U1C5. The correction proposed will ensure proper limits based on the methodology; it cannot create a new event. The increased flow range for Figure 3.2.3-1 is the result of more accurate information as to the location of the two pump minimum speed line. Addition of this new lower limit ensures proper restrictions for this flow range; it cannot create a new event. The editorial changes, by nature, cannot create new events.

III. Involve a significant reduction in a margin of safety. The two changes to the MCPR figures provide corrections based on more accurate information. The change to the MCPR curves with EOC-RPT inoperable results in a more restrictive minimum limit. The increased flow range in Figure 3.2.3-1 results in a limit that was previously not provided. The rest of the changes are editorial in nature. None of the above changes will result in a significant reduction in any margin of safety.

Based on the above considerations, the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

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Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: Walter R. Butler

Pennsylvania Power and Light Company, Docket No. 50-388 Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: June 23, 1989

Description of amendment request: The amendment request proposes changes to Susquehanna Steam Electric Station (SSES) Unit 2 Technical Specifications to incorporate the interim NRC requirements as outlined in Bulletin 88-07, Supplement 1, "Power Oscillations in Boiling Water Reactors (BWRs)". The revisions will replace the existing Technical Specifications requirements to detect and suppress power oscillations and to clarify Actions and Surveillance requirements. Specifically, the licensee has proposed the following changes.

• Specification 3.4.1.1.1: Rewrite the LCO statement to read as follows:

3.4.1.1.1 Two reactor coolant system recirculation loops shall be in operation with the reactor at a THERMAL POWER/core flow condition outside of Regions I and II of Figure 3.4.1.1.1-1.

Add Footnote "+" to OPERATIONAL CONDITION 2 in the APPLICABILITY.

Replace ACTIONS a, b, and c with the following new actions:

a. In OPERATIONAL CONDITION 1:

1. With:

a) No reactor coolant system recirculation loops in operation, or

b) Region I of Figure 3.4.1.1.1-1 entered, or

c) Region II of Figure 3.4.1.1.1-1 entered and core thermal hydraulic instability occurring as evidenced by:

1) Two or more APRM readings oscillating with at least one oscillating greater than or equal to 10% of RATED THERMAL POWER peak-to-peak, or

2) Two or more LPRM upscale alarms activating and deactivating with a 1 to 5 second period, or

3) Observation of a sustained LPRM oscillation of greater than 10w/cm² peak-to-peak with a 1 to 5 second period, or

d) Region II of Figure 3.4.1.1.1-1 entered and less than 50% of the required LPRM upscale alarms OPERABLE, immediately place the reactor mode switch in the shutdown position.

2. If Region II of Figure 3.4.1.1.1-1 is entered and greater than or equal to 50% of the required LPRM upscale alarms OPERABLE, immediately exit the region by:

a) inserting a predetermined set of high worth control rods, or

b) increasing core flow.

3. With less than 50% of the required LPRM upscale alarms OPERABLE, follow ACTION a.1.d upon entry into Region II of Figure 3.4.1.1.1-1.

b. In OPERATIONAL CONDITION 2 with no reactor coolant system recirculation loops in operation, return at least one reactor coolant system recirculation loop to operation, or be in HOT SHUTDOWN within the next 6 hours.

c. With any pump discharge valve not OPERABLE, remove the associated loop from operation, close the valve and comply with the requirements of Specification 3.4.1.1.2.

d. With any pump discharge bypass valve not OPERABLE, close the valve and verify closed at least once per 31 days.

• Footnote "***": Delete.

• Footnote "+": Add new Footnote to read as follows:

The LPRM upscale alarms are not required to be OPERABLE to meet this specification in OPERATIONAL CONDITION 2.

• Specification 4.4.1.1.1.2: Delete the requirement.

• Specification 4.4.1.1.1.3: Redesignate this Specification as 4.4.1.1.1.2.

• Specification 4.4.1.1.1.4: Replace the existing requirement with the following:

4.4.1.1.1.3 At least 50% of the required LPRM upscale alarms shall be determined OPERABLE by performance of the following on each LPRM upscale alarm:

1) CHANNEL FUNCTIONAL TEST at least once per 92 days, and

2) CHANNEL CALIBRATION at least once per 184 days.

• Figure 3.4.1.1.1-1: Replace with new figure entitled "Thermal Power Restrictions".

• Specification 3.4.1.1.2: Revise the introductory part of the LCO statement to read as follows:

3.4.1.1.2 One reactor coolant recirculation loop shall be in operation with the pump speed [less than or equal to] 80% of the rated pump speed, and the reactor at a THERMAL POWER/core flow condition outside of Regions I and II of Figure 3.4.1.1.1-1, and ...

Also, delete 3.4.1.1.2 b and c. (Other changes to page 3/4 4-1c are provided for information only; they were previously provided in the referenced proposed amendment.)

Add Footnote "+" to OPERATIONAL CONDITION 2 in the APPLICABILITY.

Delete ACTIONS a, c, and e and add the following new actions:

a. In OPERATIONAL CONDITION 1:

1. With:

a) No reactor coolant system recirculation loops in operation, or

b) Region I of Figure 3.4.1.1.1-1 entered, or

c) Region II of Figure 3.4.1.1.1-1 entered and core thermal hydraulic instability occurring as evidenced by:

1) Two or more APRM readings oscillating with at least one oscillating greater than or equal to 10% of RATED THERMAL POWER peak-to-peak, or

2) Two or more LPRM upscale alarms activating and deactivating with a 1 to 5 second period, or

3) Observation of a sustained LPRM oscillation of greater than 10w/cm² peak-to-peak with a 1 to 5 second period, or

d) Region II of Figure 3.4.1.1.1-1 entered and less than 50% of the required LPRM upscale alarms OPERABLE, immediately place the reactor mode switch in the shutdown position.

2. If Region II of Figure 3.4.1.1.1-1 is entered and greater than or equal to 50% of the required LPRM upscale alarms OPERABLE, immediately exit the region by:

a) inserting a predetermined set of high worth control rods, or

b) increasing core flow by increasing the speed of the operating recirculation pump.

3. With less than 50% of the required LPRM upscale alarms OPERABLE, follow ACTION a.1.d upon entry into Region II of Figure 3.4.1.1.1-1.

b. In OPERATIONAL CONDITION 2 with no reactor coolant system recirculation loops in operation, return at least one reactor coolant system recirculation loop to operation, or be in HOT SHUTDOWN within the next 6 hours.

e. With any pump discharge valve not OPERABLE, remove the associated loop from operation, close the valve and verify closed at least once per 31 days.

f. With any pump discharge bypass valve not OPERABLE, close the valve and verify closed at least once per 31 days.

Redesignate current ACTION b as c.

• Specification 4.4.1.1.2.2: Replace the existing requirement with the following:

4.4.1.1.2.2 At least 50% of the required LPRM upscale alarms shall be determined OPERABLE by performance of the following on each LPRM upscale alarm:

1) CHANNEL FUNCTIONAL TEST at least once per 92 days, and

2) CHANNEL CALIBRATION at least once per 184 days.

• Specification 4.4.1.1.2.4: Delete and renumber accordingly.

• Specification 4.4.1.1.2.6: Delete and renumber accordingly.

• Specification 4.4.1.1.2.8: Delete and renumber accordingly.

• Footnote "***": Delete.

• Footnote "+": Add new Footnote to read as follows:

The LPRM upscale alarms are not required to be OPERABLE to meet this specification in OPERATIONAL CONDITION 2.

• Figure 3.4.1.1.2-1: Delete.

• Specification 3.4.1.4b: Revise to read as follows:

When only one loop has been idle, unless the temperature differential between the reactor coolant within the idle and operating recirculation loops is less than or equal to 50° F, the operating loop flow rate is less than or equal to 50% of rated loop flow and the reactor is operating at a THERMAL POWER/core flow condition below the 80% Rod Line shown in Figure 3.4.1.1.1-1.

The Index and Bases sections have been updated on the marked-up pages consistent with the above described changes.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and concurs with the following basis and conclusion provided by the licensee in its June 23, 1989 submittal.

The following three questions are addressed below for each of the proposed Technical Specification changes:

I. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

II. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

III. Does the proposed change involve a significant reduction in a margin of safety?

• Specification 3/4.4.1.1.1, Recirculation Loops - Two Loop Operation

This specification has been revised to replace the existing stability controls on the recirculation system with (at a minimum) those recommended in NRC Bulletin 88-07, Supplement 1.

I. No. The changes to the LCO provide the appropriate limits to ensure that proper actions are taken if SSES Unit 2 is operating in a region of the power/flow map where an instability is more likely to occur. The boundaries of these regions are based upon NRC approved limits for ANF methodology.

Action a is deleted as an editorial change; its purpose as a cross reference is adequately covered by the Applicability sections for the two-loop and single-loop specifications.

New Action a.1 requires when operating in Operational Condition 1 an immediate manual scram if operation in natural circulation occurs, if Region I of the new Figure "Thermal Power Restrictions" is entered, if power range monitoring instrumentation exhibits evidence of instability or if Region II of the Figure is entered and inadequate instability monitoring capability is available. These actions will ensure that the MCPR Safety Limit is not violated, so that an increase in the consequences of an accident previously evaluated will not occur.

Action a.2 requires an immediate exit of Region II if entered. This is consistent with the Bulletin, and does not require an immediate scram because no indications of power oscillation have occurred. Action a.3 is provided simply to avoid entry into Specification 3.0.3 should new Surveillance 4.4.1.1.1.4 be failed. It is not appropriate for any more restrictive requirements to be applied to these alarms when the unit is operating outside Regions I and II.

New Action b reflects the current requirements associated with natural circulation operation in Operational Condition 2 and clarifies that a recirculation loop may be attempted to be returned to service during the allowed outage time. This change is an administrative clarification.

New Actions c and d incorporate actions that previously appeared as Surveillance Requirements. This transfer is proposed in order to avoid invoking Specification 3.0.3 due to the lack of a specific action if the pump discharge or bypass valves failed. These "new" actions and the associated deletion of Surveillance Requirement 4.4.1.1.1.1 are entirely administrative in nature.

New Footnote "+" was added to clarify that the LPRM upscale alarms are not required to be operable in Operational Condition 2 since an instability event is not a concern at low power levels.

Existing Surveillance 4.4.1.1.1.4 is deleted since a baseline noise level will no longer be used to detect and suppress power oscillations. The new surveillance is provided to ensure operability of the newly required LPRM upscale alarms, and frequencies of testing were chosen based on NRC approved methods for determining surveillance intervals for similar instrumentation (ref. GE NEDC 30851P-A).

Based on the above, none of the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated. The stability related changes are consistent with current NRC guidance and approved analytical methods where applicable, and the transferring of certain surveillances to actions will preclude unnecessary shutdowns due to Specification 3.0.3.

II. No. The proposed changes relating to stability use the current guidance contained in NRC Bulletin 88-07 Supplement 1, which will ensure that a new or different kind of event will not occur. They accomplish this by requiring reactor scrams in unstable regions and additional instability detection capability.

The editorial changes shifting Surveillance Requirements to Actions cannot create a new event.

III. No. See I above. The stability changes are designed to protect the margin of safety to the MCPR Safety Limit. The editorial changes improve safety margin by precluding unnecessary plant shutdowns.

• Specification 3/4.4.1.1.2, Recirculation Loops - Single Loop Operation

This specification has been revised to replace the existing stability controls on the recirculation system with (at a minimum) those recommended in NRC Bulletin 88-07, Supplement 1.

I. No. The changes to the LCO provide the appropriate limits to ensure that proper actions are taken if SSES Unit 2 is operating in a region of the power/flow map where an instability is more likely to occur. The boundaries of these regions are based upon NRC approved limits for ANF methodology.

Action a is deleted as an editorial change; its purpose as a cross reference is adequately covered by the new Actions a and b.

New Action a.1 requires an immediate manual scram when operating in Operational Condition 1 if operation in natural circulation occurs, if Region I of the new Figure "Thermal Power Restrictions" is entered, if power range monitoring instrumentation exhibits evidence of instability, or if Region II of the Figure is entered and inadequate instability monitoring capability is available. These actions will ensure that the MCPR Safety Limit is not violated, so that an increase in the consequences of an accident previously evaluated will not occur.

Action a.2 requires an immediate exit of Region II if entered. This is consistent with the Bulletin, and does not require an immediate scram simply because no indications of power oscillation have occurred. This action does not allow the start of a recirculation loop to exit Region II. Action a.3 is provided simply to avoid entry into Specification 3.0.3 should new Surveillance 4.4.1.1.2.2 be failed. It is not appropriate for any more restrictive requirements to be applied to these alarms when the unit is operating outside Regions I and II.

New Action b reflects the current requirements associated with natural circulation operation in Operational Condition 2.

New Actions e and f incorporate actions that previously appeared as Surveillance Requirements. This transfer is proposed in order to avoid invoking Specification 3.0.3 due to the lack of a specific action if the pump discharge or bypass valves failed. These "new" actions and the associated deletion of Surveillance Requirements 4.4.1.1.2.6 and 4.4.1.1.2.8 are entirely administrative in nature.

New Footnote "+" was added to clarify that the LPRM upscale alarms are not required to be operable in Operational Condition 2 since an instability event is not a concern at low power levels.

The revision to existing Action b is purely editorial in nature.

Existing Actions c and e and Surveillance 4.4.1.1.2.2 are deleted since a baseline noise level will no longer be used to detect and suppress power oscillations. The new actions and surveillance are provided to ensure operability of the newly required LPRM upscale alarms, and frequencies of testing were chosen based on NRC approved methods for determining surveillance intervals for similar instrumentation (ref. GE NEDC 30851P-A).

Based on the above, none of the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated. The stability related changes are consistent with current NRC guidance and approved analytical methods where applicable, and the transferring of certain surveillances to actions will preclude unnecessary shutdowns due to Specification 3.0.3.

II. No. The proposed changes relating to stability use the current guidance contained in NRC Bulletin 88-07 Supplement 1 to ensure that an unanalyzed event will not occur. They accomplish this by requiring reactor scrams in unstable regions, additional instability detection capability, and precluding a recirculation pump start during single loop operation in a potentially unstable region of the power/flow map.

The editorial changes shifting Surveillance Requirements to Actions cannot create a new event.

III. No. See I above. The stability changes are designed to protect the margin of safety to MCPR Safety Limit. The editorial changes

improve safety margin by precluding unnecessary plant shutdowns.

• Specification 3.4.1.4, Idle Recirculation Loop Startup

Action a has been revised to clarify the thermal power/core flow condition where an idle recirculation loop can be started.

I. No. This requirement is consistent with new Action a.2 of Specification 3.4.1.1.2, Single Loop Operation which was reviewed above. The requirement to preclude a recirculation pump start in a potentially unstable region of the power/flow map will ensure that a new or different kind of event will not occur, and is consistent with the guidance in NRC Bulletin 88-07 Supplement 1.

II. No. See I above.

III. No. See I above.

Based on the above considerations, the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

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Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: Walter R. Butler

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50-277, Peach Bottom Atomic Power Station, Unit No. 2, York County, Pennsylvania

Date of application for amendment: May 15, 1989

Description of amendment request: The licensee requests that the Technical Specifications be modified to reflect the results of material analyses conducted as part of the reactor coolant pressure boundary material surveillance program pursuant to 10 CFR 50, Appendix G and Appendix H. The requested changes will alter the reactor vessel pressure-temperature operating limits. Miscellaneous administrative changes are also proposed.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee has provided a discussion of the proposed changes as they relate to these standards; the discussion is presented below.

Standard 1: The proposed revisions do not involve a significant increase in the probability or consequences of an accident previously evaluated because the revised thermal and pressurization limits prohibit conditions where brittle fracture of reactor vessel materials is possible. Consequently, there will be no increase in the probability or consequences of previously evaluated accidents since the primary coolant pressure boundary integrity will be maintained as assumed in the safety design analyses.

The RT_{NDT} used to evaluate the new pressure/temperature limits for the beltline material was based on the guidance in Regulatory Guide 1.99, Revision 2, which is the latest guidance on RT_{NDT} determinations. The revised pressure/temperature limits curves were conservatively generated in accordance with the fracture toughness requirements of 10 CFR 50, Appendix G, as supplemented by Appendix G to Section III of the ASME Boiler and Pressure Vessel Code. The proposed minimum allowable temperature at which head bolting studs may be under tension is also in accordance with 10 CFR 50, Appendix G, as supplemented by Appendix G to Section III of the ASME Boiler and Pressure Vessel Code.

Removal of Figure 3.6.4 is of no safety significance because it was for information only and is no longer appropriate.

Standard 2: The proposed revisions do not create the possibility of a new or different kind of accident from any accident previously evaluated because the revised thermal and pressurization limits do not create any new kind of operating mode or introduce any new potential failure mode. Conditions where brittle fracture of primary coolant pressure boundary materials is possible will be avoided. The proposed changes reduce the conservative margin that was incorporated into the development of the current limits. The current limits have been shown by review of material characteristics and by more recent and more accurate tests and analyses to be overly restrictive.

Standard 3: The proposed revisions do not involve a significant reduction in a margin of safety because the proposed pressure/temperature limits still provide sufficient safety margin. The revised pressure/temperature limits, although less restrictive than the current limits, were established in accordance with current regulations and the latest regulatory guidance on RT_{NDT} determinations. Thus, the proposed changes merely reduce overconservative limits to acceptable limits. Because operation will be within these limits, the reactor vessel materials will behave in a non-brittle manner, thus, preserving the original safety design bases.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis.

Accordingly, the Commission has proposed to determine that the above changes do not involve a significant hazards consideration.

The licensee also proposes certain administrative changes to the technical Specification pages involved with the changes discussed above. These administrative changes include rewording TS 3.6.A.3 to more accurately describe the vessel materials and appertainances involved, revision of the "neutron flux specimen" terminology on TS 4.6.A.2 to "surveillance specimen", revisions to TS page 144 to reflect removal of a surveillance capsule, deletion of referral to a figure that is proposed to be removed, addition of Figure 3.6.5 to the list on TS page iv(a), revision of the Bases and other changes of a formatting and typographical nature. The Commission has provided guidance for the application of the criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations (51 FR 7751). These examples include: Example (i) "A purely administrative change to technical specification: for example, a change to achieve consistency throughout the technical specifications, corrections of an error, or a change in nomenclature." These proposed changes are examples of such administrative changes and since these proposed changes are encompassed by an example for which no significant hazard exists, the staff has made a proposed determination that it involves no significant hazards consideration.

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Attorney for Licensee: Troy B. Conner, Jr. 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Walter R. Butler

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: May 31, 1989

Description of amendment request: The proposed amendment would modify the Low Pressure Coolant Injection (LPCI) System surveillance test requirements to reflect the Recirculation System loop selection logic modification installed during the Reload 1/Cycle 2 refueling outage. Other changes to various surveillance test requirements throughout the Technical Specifications (TS) would, where appropriate, replace the term "demonstrate" with the term "verify" so that each term is used consistently according to stated guidelines. The effect would be to reduce the need for redundant and unnecessary tests when related equipment is made or found to be inoperable.

The proposed change to reflect the loop selection modification would affect Specification 4.5.A.3 by replacing the LPCI test criteria which states that "three Residual Heat Removal (RHR) pumps shall deliver at least 23,100 gpm against a system head corresponding to a reactor vessel pressure of 20 psig" with the criteria which states that "each RHR pump shall deliver at least 9,900 gpm against a system head corresponding to a reactor vessel to primary containment differential pressure of greater than or equal to 20 psid." Other related changes would affect Specifications 3.5.A.3, 4.5.A.2, 4.5.A.3.a, 4.5.A.3.b, 3.5.A.3.b, 4.5.B.1 and 3.5.A Bases to reflect the change from the "LPCI mode" concept to the division of the LPCI system into two subsystems which then incorporate actions which would be necessary if one of these subsystems is made or found to be inoperable. Thus, the criteria is similar to the Core Spray System/Subsystem criteria, Limiting Conditions for Operation, and Surveillance Test Requirements. No system changes are required.

The other proposed change, the appropriateness of replacing the word "demonstrate" with the word "verify," was evaluated throughout the TS. Where a specification requires testing at a specific frequency or the intent is clearly to require performance of an actual test to determine component or system operability, no TS change was proposed and the word "demonstrate" is retained. However, if the TS criteria is such that operability could be determined by ensuring that the associated surveillance tests have been performed with satisfactory results within the specified time interval, the term "verify" is proposed. For example, Specification 4.10.D.1.b requires a shutdown margin demonstration when two control rods are withdrawn from the reactor core for maintenance. Since the intent of the requirement is to perform a test, no change was made (demonstration was retained). In contrast, if a subsystem or component is inoperable, the proposed change would delete the requirement to actually perform a test of redundant systems or equipment to prove operability if the surveillance tests have been performed within the required test interval (verify is used). This change does not affect the existing normal surveillance testing requirements, nor does it affect the testing performed when equipment is returned to service from an inoperable condition.

Other proposed changes would incorporate related modifications to various Bases sections where needed. Also, Bases 4.5 would be modified to eliminate the discussion concerning required testing which is based on the degree of operability and nature of the reason for out of service equipment. This would be replaced with: "Consistent with the definition of operable in Section 4.0.C, demonstrate means conduct a test to show; verify means that the associated surveillance activities have been satisfactorily performed within the specified time interval."

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards provided above and has made the following determination:

A. LPCI Pump Flow Surveillance

Operation of the FitzPatrick Plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92 since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because the technical specification changes are administrative in nature.

The new minimum allowable LPCI (RHR) pump flows are the same values used in the current licensing reload analyses. No accidents as analyzed in the FSAR [Final Safety Analysis Report] are adversely affected by these changes.

The LPCI modifications associated with these changes improved the overall reliability of the LPCI system. These changes update plant modifications that have already been reviewed and approved by the NRC in Operating License Amendments 8, 14 and 30.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because the changes are administrative in nature. The minimum LPCI pump flows proposed in this application are the same as used in recent licensing reload analyses. LPCI's ability to mitigate a loss of coolant accident has been improved through the elimination of the most limiting equipment failure.

3. Involve a significant reduction in margin of safety because the changes are administrative. Analyses reviewed and approved by the NRC clearly show that the associated LPCI loop-selection-logic modification improve LPCI's ability to perform its intended function and therefore the margin of safety.

B. Demonstrate/Verify Terminology

Operation of the FitzPatrick Plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92 since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. This change is administrative in nature: it improves consistency within the Technical Specifications and with the NRC established positions on equipment operability. No accidents as analyzed the FSAR are adversely affected by these changes since these changes do not involve a modification to the plant or Operating Procedures.

The effectiveness of surveillance testing has not been reduced by these changes. The actual reduction in test frequency is not significant. Verification is adequate to assure that the system is capable of performing its intended function. Less frequent tests will reduce wear and tear on components and will reduce the probability of inadvertently leaving the tested system misaligned.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because the change is administrative. No modifications to the structures, systems or components are associated with these changes. Minor changes to plant operating procedures may be required to reflect this definition of operable.

3. Involve a significant reduction in a margin of safety because no modifications to any plant structures, systems or components are associated with these changes. Minor changes to plant operating procedures may be required to reflect this definition of operable.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Public Service Company Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Weld Country, Colorado

Date of amendment request: June 9, 1989

Description of amendment request: This amendment request addresses early shutdown of Fort St. Vrain. It prohibits the plant from being operated in the power mode after June 30, 1990.

Basis for proposed no significant hazards consideration determination: The licensee has submitted a no significant hazards consideration analysis in accordance with the requirements of 10 CFR Parts 50.91 and 50.92. The licensee's analysis of significant hazards considerations follows:

This amendment request is prompted by NRC letter, Heitner to Williams, dated 04/19/89 (G-89137). That letter advised PSC of the need for an amendment to Facility Operating License No. DPR-34; to wit: "The licensee is not authorized to operate the reactor (above 5 percent of full power) for electric power production after June 30, 1990." PSC proposes a modification to the NRC's suggested amendment statement to reflect a more conservative 2% power restriction after shutdown.

The proposed change does not involve a significant hazards consideration because operation of FSV in accordance with this change would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated. The early shutdown of Fort St. Vrain will not adversely affect any plant system design or function, nor will it adversely affect safety.

2. create the possibility of a new or different kind of accident from any accident previously evaluated. The early shutdown of Fort St. Vrain will not result in any new failure modes.

3. involve a significant reduction in a margin of safety. The early shutdown of Fort St. Vrain will have no adverse effects on any margin of safety. Inclusion of this amendment in the license is based on an NRC request.

Additionally, the restriction included in this proposed change prohibiting operation above 2% of full power further avoids any significant hazards consideration. Although PSC does not intend to take the reactor critical after final shutdown, and unforeseen circumstances requiring criticality would be accommodated by the 2% power level restriction. Long term operation at 2% power or any other power level is not being proposed. Remaining below 2% avoids any significant heat being added to the core.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado

Attorney for licensee: J.K. Tarpey, Public Service Company Building, Room 900, 550 15th Street, Denver, Colorado 80202

NRC Project Director: Frederick J. Hebdon

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: June 6, 1989

Description of amendment request: The proposed amendment would (A) increase the hydrostatic pressure from 1.0 P(a) to 1.10 P(a) for containment isolation valves provided with a water seal from the suppression pool, (B) clearly define as-left penetration leakage for these same valves, and (C) delete an incorrect cross-reference in Section 4.6.1.2.i.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. In accordance with 10 CFR 50.92 the licensee has reviewed the proposed changes and has concluded as follows that they do not involve a significant hazards consideration:

The proposed changes to the [Hope Creek Generating Station (HCGS)] Technical Specifications:

1. Do not involve a significant increase in the probability or consequences of an accident previously evaluated.

A. The maximum calculated accident pressure for the drywell is identified in UFSAR Section 6.2.1.1.3.1 as 48.1 psig (P(a)). This pressure is assumed to occur in the event of a design basis accident, a recirculation system line break. UFSAR Section 15.6.5.5.1.2.2 assumes that the radiological consequences associated with such an accident are in part limited by the integrity of the primary containment. Since the subject valves form a part of the primary containment, it is necessary to periodically test their leakage. The proposed change simply increases the hydrostatic test pressure and does not affect the 10 gpm TS leakage criteria nor alter the TS required actions in the event that such a limit is exceeded. Any leakage associated with the subject valves would still be into a closed system outside primary containment from which leakage is still processed and filtered by the Filtration, Recirculation, and Ventilation System (FRVS) in the Reactor Building prior to discharge to the environment. Again this change does not affect the function of the FRVS nor the leakage criteria from engineered safety features components outside the primary containment.

10 CFR 50, Appendix J, Paragraph III.C.2 requires a hydrostatic test pressure of 110% of the maximum calculated accident pressure. In the case of HCGS, this requirement translates into a test pressure of 52.9 psig. However, the HCGS TS currently only specify. a test pressure of 1.0 P(a), 48.1 psig; therefore, a TS change is necessary to comply with Appendix J testing requirements.

From the discussion provided, PSE&G has concluded that the proposed change involves an additional limitation - namely that the subject valves must be capable of withstanding a test pressure 10% greater than that currently required while still only permitted to leak, in total, no more than 10 gpm. Since the proposed change does not affect this leakage criteria nor the actions required in the event the criteria is not met, PSE&G has concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. PSE&G has been and will continue to test and measure the leakage associated with each containment penetration in order to assure that containment integrity is maintained. However, the wording of TS 3.6.1.2.e could be misconstrued to require hydrostatic leakage from each in-series containment isolation valve to be included in the total leakage criteria of 10 gpm. Such an interpretation ignores the fact that leakage associated with such a penetration is calculated using the valve with the highest leakage. Therefore, the proposed change would provide sufficient clarity to correctly permit penetration leakage rates to be used in the 10 gpm leakage criteria. Since this change does not affect the physical condition associated with penetration leakage nor the criteria for total hydrostatic leakage, PSE&G has concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

C. The proposed change is administrative in nature and does not affect the requirement to demonstrate operability of purge supply and exhaust valves with resilient seals. Therefore, PSE&G has concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve any plant modifications other than the increase in the test pressure for the subject valves. In addition, the testing configuration is not changing and the results of hydrostatic tests must still meet the 10 gpm leakage criteria stipulated in the TS. The requirements specified in the associated TS Action Statements should leakage exceed the acceptance criteria are not affected by the proposed changes. As a result, PSE&G has concluded that the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do not involve a significant reduction in a margin of safety.

The proposed changes are necessary to: (a) comply with the requirements of 10 CFR 50, Appendix J, (b) clearly indicate the method of determining total hydrostatic leakage, and (c) correct administrative errors in the TS. As a result, the margin of safety is not compromised by the proposed changes. In the case of the increased test pressure, an additional margin of safety is provided since testing hydrostatically sealed valves at a test pressure 10% greater than the maximum accident pressure provides greater assurance that the maximum leakage expected from the valve(s) will not exceed conditions expected to occur during or following an accident. As a result, PSE&G has concluded that the proposed changes do not involve a significant reduction in a margin of safety.

As discussed above, PSE&G has concluded that the proposed changes to the Technical Specifications do not involve a significant hazards consideration since the changes (i) do not involve a significant increase in the probability or consequences of an accident previously evaluated, (ii) do not create the possibility of a new or different kind of accident from any accident previously evaluated, and (iii) do not involve a significant reduction in a margin of safety.

The staff reviewed the licensee's determination that the proposed license amendment involves no significant hazards consideration and agrees with the licensee's analysis. Accordingly, the staff proposes to determine that the proposed license amendment does not involve a significant hazards consideration.

Local Public Document Room location: Pennsville Public library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: June 8, 1989

Description of amendment request: The licensee has proposed to modify the Action Statement of the original request (dated September 12, 1988 and noticed on February 22, 1989, 54 FR 7645) to require plant shutdown after 30 days with 1, 2, or 3 vent paths inoperable and to require plant shutdown after 72-hours with 4 vent paths inoperable.

Basis for proposed no significant hazards consideration determination: The original proposal would have allowed operation of the plant up to 30 days with 4 vent paths inoperable. The new proposal changes the Action Statements to require plant shutdown after 72-hours with 4 vent paths inoperable. The addition of this Action Statement is more conservative and follows more closely the guidance of Generic Letter 83-37.

In the initial request the licensee had determined that the proposed change did not constitute a significant hazards consideration. The staff reviewed the licensee's analysis and concurred with the licensee's determination that the proposed amendment did not involve a significant hazards consideration. The staff had proposed to determine that the proposed amendment involves no significant hazards consideration [54 FR 7645 dated February 22, 1989].

The licensee has reviewed the original Significant Hazards Consideration and determined ...

the original Significant Hazards Consideration remains valid and that the proposed changes do not constitute a Significant Hazards Consideration.

The staff has reviewed the licensee's analysis and concurs with the licensee's determination that the proposed amendment does not involve a significant hazards consideration and the original significant hazards consideration remains valid. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: October 16, 1987

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS's) relating to organization of facility staff. Specifically, the proposed amendment would involve Technical Specification Sections 6.2.2b and 6.2.2c, licensed operator staffing, and Table 6.2-1. (Table 6.2-1 has been deleted per amendment No. 115). The amendment requested that the appropriate Technical Specifications be revised to reflect existing operating procedures which require at least one operator to be in the control panel area when fuel is in the reactor, at least two licensed operators, one of which is a licensed senior operator, to be in the Control Room while the plant is in operational modes 1 thru 4, and at least two senior operators to be onsite while the plant is in modes 1 thru 4. This request is in compliance with the NRC requirement addressed in 10 CFR Part 50.54, paragraphs (m) and (k) which address licensed operator staffing at nuclear power plants.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards, 10 CFR 50.92, for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided the following analysis in support of a no significant hazards consideration determination:

The proposed changes would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated because the addition of the proposed changes increases both the number and qualification requirements of control room operators necessary to satisfy the minimum shift crew requirements. These changes support the likelihood of detecting abnormal events early enough to mitigate potentially adverse conditions.

Also, the proposed changes would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because these changes which increase control room staffing requirements do not create the possibility of a new or different kind of accident.

Finally, the proposed changes would not (3) involve a significant reduction in a margin of safety because the proposed

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changes increase the control room staffing requirements and, therefore, will not reduce the margin of safety.

The NRC staff has reviewed the licensee's proposed no significant hazards determination and agrees with the licensee's analysis.

Furthermore, the Commission has provided guidance concerning the application of criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards consideration (51 FR 7751). As stated in example (vii), "A change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The proposed changes associated with this amendment are within the scope of this example.

Accordingly, the staff proposes to determine that the proposed changes involve no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: February 2, 1989

Description of Amendment request: The proposed amendment deletes valves RHR-32, RHR-33 and Reactor Head Spray Check Valve 10-29 from Table 4.7.2.b of the Technical Specifications. This table pertains to primary containment isolation valves not subject to Type C leakage tests. RHR-32 and -33 are in a line that is closed off by a blank flange, thus, no longer require surveillance testing. Check Valve 10-29 is in a disconnected line that no longer serves any function.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

The removal of the Reactor Vessel Head Spray Valves (RHR-32 and RHR-33) from Table 4.7.2.b of the Technical Specifications will simply remove the requirement to test the valves to ensure they will close if needed to isolate the primary containment. Since the valves are maintained closed and this amendment would remove the requirement to open the valves for these surveillances, further assurance is provided that the valves will remain in their isolated position. The removal of the check valve (10-29) from the Table will ensure continuity in the Technical Specifications in recognizing that the Reactor Head Spray function has been disconnected. Thus, the proposed change does not involve an increase in the probability or consequences of an accident previously evaluated. Operation of the RHR System is not reduced from existing requirements and is still bounded by the assumptions used in the safety analysis, thus the proposed change does not create the possibility of a new or different kind of accident from any event previously evaluated. Elimination of subject surveillances will remove the requirement to open the motor-operated valves, which will ensure that the integrity of this penetration is maintained at all times. Thus, the proposed change involves no decrease in any plant margin of safety.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Based on this review, the staff therefore determines that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Attorney for License: John A. Ritsher, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: Richard H. Wessman

Vermont Yankee Nuclear Power Corporation Docket No. 50-271 Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: April 27, 1989 and June 23, 1989.

Description of amendment request: The proposed amendment would extend the expiration date of the Operating License from December 11, 2007 to March 21, 2012.

Section 103.c of the Atomic Energy Act of 1954 authorizes the issuance of facility operating licenses for a period of up to 40 years. The current license term for the Vermont Yankee facility began with the date of issuance of the construction permit, December 11, 1967, and ends on December 11, 2007. Accounting for the four years and three months required for plant construction, this represents an effective operating license term of only 35 years and 9 months.

Current NRC policy is to issue operating licenses for a 40-year period, commencing with the date of issuance of the operating license. For Vermont Yankee, this date was March 21, 1972. Accordingly, it is proposed that the Vermont Yankee operating license be amended to change the expiration date to March 21, 2012 consistent with current NRC policy and the originally engineered design life of the plant.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequence of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee's analyses contained in the April 27, 1989 letter states the following:

The proposed amendment to the Vermont Yankee operating license does not involve any changes in the design or operation of the facility, but instead, only contemplates a change to the expiration date of the current license. This extension is within the range permissible by the Commission's regulations, specifically 10 CFR, Section 50.51. In addition, a finding of no significant hazards consideration is consistent with recent NRC actions on applications of this type. The proposed extension will have no significant impact on the safe operation of the plant or present an undue risk to the health and safety of the public.

The proposed license amendment to permit the 40-year operating life does not constitute a significant hazards consideration as defined in 10 CFR, Section 50.92 for the following reasons:

a. The proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Age-related degradation was identified as the only mechanism having potential impact on the probability of occurrence of an accident previously evaluated. Changes in the population size and distribution were identified as the only parameter having potential impact on previous conclusions concerning the consequences of an accident previously evaluated.

Conservatisms have been incorporated, in the design, construction, and operations of the Vermont Yankee facility. Furthermore, programs have been developed and implemented to: (1) evaluate and maintain the service life of structures, systems, and components; (2) conduct technical analyses for verifying the adequacy of structures, systems, and components; and/or (3) allow surveillance, maintenance, and inspection of the facility. Such programs assure that the Vermont Yankee facility will be operated as intended by its design and the Technical Specifications. That is, regardless of the age of the overall facility, these programs assure that the structures, systems, or components will be refurbished and/or replaced to maintain component functional capability and the margins of safety required by the Technical Specifications.

No changes to the above programs are necessary for assuring that during the proposed amendment term, Vermont Yankee continues to perform as intended by its design and Technical Specifications. Therefore, the proposed amendment will have no significant impact on plant safety.

In 1986, Vermont Yankee Nuclear Power Corporation conducted a study to update the population figures found in the Environmental Report and Final Safety Analysis Report and to project populations through the year 2012. As the report indicates, the projected population in the 50-mile area surrounding the Vermont Yankee facility is expected to remain unchanged during the proposed amendment term. There are no changes to the exclusion area boundaries, the increase in population in the Low Population Zone is projected as being negligible, and the nearest population center is expected to remain more than 1-1/3 times the current five-mile Low Population Zone (LPZ) radius from the facility as required by 10 CFR 100.11(a)(3). Based on the results of this study, the off-site exposures from releases due to postulated accidents are expected to remain well within the limits set forth in 10 CFR, Part 100.

Because there will not be significant changes in the population and its distribution surrounding the plant, and Vermont Yankee Nuclear Power Corporation will continue to operate the plant in accordance with its design and Technical Specifications, the potential radiological consequences of an accident previously evaluated remain unchanged.

The proposed amendment will not result in an increase in the probability or the consequences of an accident previously evaluated in the FSAR because: (1) facility operations will be continued in accordance with the facility's approved design and Technical Specifications, and (2) changes to the population and distribution surrounding Vermont Yankee are expected to be negligible and will not impact on the previously determined LPZ boundary.

b. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Conservatisms have been incorporated in the design, construction, and operations of Vermont Yankee. Furthermore, programs have been developed and continue to be implemented to assure that the facility is operated as intended by design and in accordance with the Technical Specifications. In particular, the In-Service Inspection/Testing, Environmental Qualification, and Maintenance Programs assure that facility structures, systems, and components will be refurbished or replaced, as appropriate. That is, regardless of the age of the facility, these programs ensure that structures, systems and components are refurbished and/or replaced to maintain component functional capability and the margins of safety required by the Technical Specifications. No changes to these programs are necessary for assuring that Vermont Yankee will continue to perform as designed and in accordance with the Technical Specifications during an additional four years and three months of operation. Therefore, there is no possibility that a different type of accident is created.

c. The proposed amendment does not involve a significant reduction in a margin of safety.

The margins of safety identified in the Technical Specifications have been incorporated into the facility's design, construction, and operations. With respect to operations, such margins are the basis for the facility operating and emergency procedures, as well as the Vermont Yankee In-Service Inspection/Testing, Environmental Qualification, and Maintenance Programs.

The inspection, surveillance, and maintenance requirements of these programs assure that, regardless of the age of the overall facility, the functional capabilities of structures, systems, and components will be maintained throughout the life of the facility through refurbishment and/or replacement, as appropriate, to meet the Technical Specifications. No changes to these programs are necessary to assure that during the additional four years and three months of operation, Vermont Yankee will continue to perform as intended by its design and the Technical Specifications.

Therefore, the proposed amendment does not reduce the margin of safety as defined in the Technical Specification bases.

Conclusion

Based on the above considerations, we contend that the extension of Vermont Yankee's operating license in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of accidents previously considered, nor create the possibility of a new or different kind of accident, and will not involve a significant reduction in a safety margin. Therefore, we conclude that there is no significant hazards consideration associated with the proposed amendment to the Vermont Yankee operating license.

The staff has reviewed the licensee's analysis and agrees with it. Therefore, we conclude that the amendment satisfies the three criteria listed in 10 CFR 50.92. Based on that conclusion the staff proposes to make a no significant hazards consideration determination.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Attorney for licensee: R. K. Gad, III, Esq., Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: Richard H. Wessman

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear

Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: June 22, 1988

Description of amendments: The amendments delete the residual heat removal/service water discharge differential pressure instrument (transmitter and indicator) from the Technical Specifications for each unit.

Date of issuance: July 13, 1989

Effective date: July 13, 1989

Amendment Nos.: 135 and 165

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** May 31, 1989 (54 FR 23308). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 13, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units No. 2 and 3, Grundy County, Illinois

Date of application for amendments: February 22, 1989

Brief description of amendments: The proposed amendments replace the existing license conditions on fire protection with the standard condition noted in Generic Letter 86-10 and remove requirements for fire detection systems, fire suppression systems, fire barriers and fire brigade staffing requirements as per guidance contained in Generic Letters 86-10 and 88-12.

Date of issuance: June 30, 1989

Effective date: June 30, 1989 and to be implemented within 60 days

Amendment Nos.: 106 and 101

Provisional Operating License Nos. DPR-19 and DPR-25. The amendments revised the License and the Technical Specifications.

Date of initial notice in **Federal Register:** April 5, 1989 (54 FR 13762). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 30, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Unit Nos. 1 and 2, LaSalle County, Illinois

Date of application for amendments: October 7, 1988

Brief description of amendments: These amendments revise the LaSalle County Station, Units 1 and 2 Technical Specifications by allowing operation of both units with suppression pool temperatures of up to 105° F. The current suppression pool temperature limit during normal operation is 100° F.

Date of issuance: July 7, 1989

Effective date: July 7, 1989

Amendment Nos.: 67 and 49

Facility Operating License Nos. NPF-11 and NPF-18. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register** December 30, 1988 (53 FR 53090). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 7, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut; Northeast Nuclear Energy Company, et al; Millstone Units 1, 2, and 3, New London County, Connecticut

Date of application for amendment: March 13, 1989 as supplemented April 28, 1989.

Brief description of amendment: The amendments revise the Technical Specifications (TS) by removing Figure 6.2-1, Offsite Organization, and description of the offsite and onsite organizations functional requirements in TS 6.2.1 and facility staff qualifications in 6.2.2. In addition, TS 6.2.1, will also require that lines of authority, responsibility, and communication shall be defined, documented and updated for the onsite and offsite organizations in the Quality Assurance Topical Report.

Date of Issuance: June 26, 1989

Effective date: June 26, 1989

Amendment Nos.: 118, 33, 142 and 36

Facility Operating License Nos. DPR-61, DPR-21, DPR-65 and NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 19, 1989 (54 FR 15825). By letter dated April 28, 1989 the licensee as discussed with the NRC staff, revised the Topical Report's organizational charts and provided a description of the Unit Superintendent's duties.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated June 26, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457, and Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: November 3, 1988

Brief description of amendments: The amendments modified the Technical Specifications by replacing Figure 3/4 7-1 "Nuclear Service Water System" with a more legible one and correcting a typographical error.

Date of issuance: July 10, 1989

Effective date: July 10, 1989

Amendment Nos.: 99 and 81

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 11, 1989 (54 FR 1021). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 10, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Duquesne Light Company, Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: April 21, 1989

Brief description of amendments: The amendments revise the Technical Specifications of both units to delete Table 4.5-5, "Reactor Vessel Material Irradiation Surveillance Schedule," and associated surveillance requirement 4.4.9.1.c. This table will be included in the Updated Final Safety Analysis Report of each unit. Meanwhile, there is no change in the reactor vessel material surveillance program, which will continue to be governed by 10 CFR 50, Appendix H.

Date of issuance: July 12, 1989

Effective date: July 12, 1989

Amendment Nos.: 142 for Unit 1; 18 for Unit 2

Facility Operating License Nos. DPR-66 and NPF-73. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 31, 1989 (54 FR 23312). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 12, 1989.

No significant hazards consideration comments received: No .

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: April 18, 1989, as supplemented on May 18, 1989 and June 19, 1989.

Brief description of amendment: This amendment removes cycle-specific core parameters from the Technical Specifications, adds a reference to a Core Operating Limits Report which contains cycle-specific parameter limits that have been established by NRC-approved methodology, and adds an administrative requirements to submit a Core Operating Limits Reports to the NRC prior to each core reload.

Date of issuance: July 6, 1989

Effective date: July 6, 1989

Amendment No.: 150

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 17, 1989 (54 FR 21308). The May 18 and June 19, 1989 submittals were not noticed in the **Federal Register** because they provided clarifying wording in the amendment language and did not change the scope and intent of the original submittal.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated July 6, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: August 29, 1986 as revised May 2, 1989 and supplemented May 25, 1989.

Brief description of amendment: The amendment added Technical Specifications (TSs) for the Suppression Pool Pumpback System (SPPS) to TS 3/4.5.3, Suppression Pool. The Bases were also modified to add the SPPS.

Date of issuance: July 10, 1989

Effective date: July 10, 1989

Amendment No.: 38

Facility Operating License No. NPF-47. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 22, 1986 (51 FR 37512) superseded May 31, 1989 (54 FR 23314).

The May 24, 1989 submittal provided additional clarifying information and did not change the finding of the original notice or the scope of the amendment request.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 10, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Indiana Michigan Power Company, Dockets Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: March 4, 1989.

Brief description of amendments: These amendments revise the TSs to reflect the installation of a new meteorological monitoring system and provide proper reference to meteorological tower locations and the locations of instrumentation used for determining temperature, wind speed, and wind direction. The TS Bases are also revised to clarify the channel check requirements of the new meteorological monitoring system.

Date of issuance: July 5, 1989

Effective date: July 5, 1989

Amendments Nos.: 127 and 113

Facility Operating Licenses Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 5, 1989 (54 FR 13766). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 28, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: December 28, 1988 and as clarified by letter dated May 30, 1989.

Brief description of amendment: This amendment modifies the Operating License and the Technical Specifications to reflect the operating limits for the Cycle 11 operation at a power level of 2700 MWt.

Date of issuance: July 10, 1989

Effective date: The day of issuance.

Amendment No.: 113

Facility Operating License No. DPR-36. Amendment revised the Operating License and the Technical Specifications.

Date of initial notice in **Federal Register:** February 1, 1989 (54 FR 5165). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 10, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Wiscasset Public Library, High Street, Wiscasset, Maine 04578.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: October 19, 1988

Brief description of amendment: Amendment revises Technical Specifications 3.2.6 and 4.2.6 and their Bases to bring them into conformance with the staff positions delineated in NRC Generic Letter 88-01, "NRC Position on IGSCC in BWR Austenitic Stainless Steel Piping."

Date of issuance: July 7, 1989

Effective date: July 7, 1989

Amendment No.: 107

Facility Operating License No. DPR-63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** May 31, 1989 (54 FR 23316). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 7, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: June 3, 1988, as amended by letters dated September 28 and November 15, 1988.

Brief description of amendment: This amendment deletes Figure 6.2-1 "Management Organizational Chart," and Figure 6.2-2 "Nuclear Site Organization," in accordance with Generic Letter 88-06, "Removal of Organization Charts From Technical Specifications." Administrative changes to Section 6.1, 6.2, 6.5, 6.6, and 6.7 are included and Specification 6.9 is being revised to make the Unit 1 Specifications consistent with 10 CFR 50.4. By letter dated November 15, 1988, the licensee amended the amendment application to propose additional administrative changes to the Specifications. These changes reflect the creation of the position of Executive Vice President-Nuclear Operations. This title replaces all current references to Senior Vice President in the Specifications.

Date of issuance: July 10, 1989

Effective date: July 10, 1989

Amendment No.: 106

Facility Operating License No. NPF-63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** May 17, 1989 (54 FR 21311). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 10, 1989.

No Significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

NRC Project Director: Robert A. Capra

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: November 4, 1988 as supplemented March 29, 1989

Brief description of amendment: The Amendment revised the Technical Specifications to permit operation of the reactor with one of two reactor recirculation loops in service under certain specified conditions.

Date of issuance: June 30, 1989

Effective date: Within 30 days of date of issuance.

Amendment No. 30

Facility Operating License No. NPF-39. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 8, 1989 (54 FR 9919). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 30, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: August 19, 1987

Brief description of amendment: The amendment extends the expiration date of the operating license from May 20, 2010 to October 17, 2014.

Date of issuance: July 10, 1989

Effective date: July 10, 1989

Amendment No.: 133

Facility Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in **Federal Register:** November 11, 1987 (52 FR 44247) and a corrected notice issued December 28, 1987 (52 FR 48891). The Commission prepared a Environmental Assessment and Finding of No Significant Impact which was published in the **Federal Register** on May 4, 1989 (54 FR 19265). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 10, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

NRC Project Director: Robert A. Capra

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: April 12, 1989

Brief description of amendment: Revised Technical Specifications Table 4.11.2.1.2-1, Table Notation (d), to reflect taking the tritium sample from the spent fuel pool area rather than from the ventilation exhaust.

Date of issuance: July 10, 1989

Effective date: July 10, 1989

Amendment No. 28

Facility Operating License No. NPF-57. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 31, 1989 (54 FR 23322). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 10, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

System Energy Resources, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: April 18, 1989

Brief description of amendment: The amendment changes the Technical Specifications by increasing the suppression pool low water level trip setpoint and allowable value for actuation of the suppression pool makeup system.

Date of issuance: July 3, 1989

Effective date: July 3, 1989

Amendment No. 60

Facility Operating License No. NPF-29. This amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** May 31, 1989 (54 FR 23325). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 3, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Tennessee Valley Authority, Docket No. 50-260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of application for amendment: February 24, 1989 (TS 263)

Brief description of amendment: The amendment changes calibration frequencies for instrument lines containing transmitters manufactured by Tobar, Inc. to more conservative intervals. It also includes administrative changes to instrument numbers, and deletes instrument checks for four instrument channels.

Date of issuance: July 7, 1989

Effective date: July 7, 1989, and shall be implemented within 60 days

Amendment No.: 167

Facility Operating License No. DPR-52: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 19, 1989 (54 FR 15838). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 7, 1989

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: April 17, 1986 (TS 89-16)

Brief description of amendments: The amendments revise Section 6, Administrative Controls, of the Sequoyah Nuclear Plant, Units 1 and 2, Technical Specifications (TS). The changes, to Specifications 6.2.3.2 and 6.2.3.4 for the Independent Safety Engineering Group (ISEG), limit the group to five full-time engineers and have thegroup report its recommendations to the Manager of Nuclear Manager's Review Group. The ISEG is also renamed to Independent Safety Engineering (ISE).

Date of issuance: July 5, 1989

Effective date: September 3, 1989

Amendment Nos.: 119, 108

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 17, 1989 (54 FR 21316). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 5, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Unit Nos. 1 and 2, Louisa County, Virginia

Date of application for amendment: June 17, 1987

Brief description of amendment: This amendment revises the NA-2 Technical Specifications (TS) in accordance with Virginia Electric and Power Company's Statistical DNBR Evaluation Methodology for a less restrictive negative moderator temperature coefficient.

Also, the continued use of these TS at NA-1 for Cycle 8 and Cycle 9, etc., is hereby approved.

Date of issuance: June 30, 1989

Effective date: June 30, 1989

Amendment No.: 100

Facility Operating License No. NPF-7: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 30, 1988 (53 FR 48339). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 30, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Virginia Electric and Power Company, et al., Docket No. 50-338, North Anna Power Station, Unit No. 1, Louisa County, Virginia

Date of application for amendment: November 30, 1988, as supplemented June 19, 1989.

Brief description of amendment: This amendment revises the heatup and cooldown curves and associated low temperature overpressurization setpoints to be valid for a period up to 10 effective full power years. In addition, the staff finds that the submittals supporting your amendment request comply with Generic Letter 88-11 and the methods specified in Regulatory Guide 1.99, Revision 2.

Date of issuance: June 30, 1989

Effective date: June 30, 1989

Amendment No.: 117

Facility Operating License No. NPF-4: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 30, 1988 (53 FR 53104). The June 19, 1989 letter provided supplemental information which did not change the staff's initial determination that the proposed amendment did not involve no significant hazards considerations.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 30, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Virginia Electric and Power Company, et al., Docket No. 50-339, North Anna Power Station, Unit No. 2, Louisa County, Virginia

Date of application for amendment: February 23, 1989

Brief description of amendment: This amendment modifies TS Table 3.8-1 by deleting components from the table which had previously been removed and by correcting one typographical error.

Date of issuance: July 7, 1989

Effective date: July 7, 1989

Amendment No.: 101

Facility Operating License No. NPF-7: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18961). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 7, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: July 20, 1988

Brief description of amendments: The amendments clarify the NA-1&2 TS 3.4.6.1 regarding reactor coolant system leakage detection systems and bring the TS into closer agreement with Regulatory Guide 1.45 and Revision 4 of the Westinghouse Standard TS.

Date of issuance: July 7, 1989

Effective date: July 7, 1989

Amendment Nos.: 118 and 102

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 16, 1988 (53 FR 46160). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 7, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Dated at Rockville, Maryland, this 19th day of July, 1989.

For the Nuclear Regulatory Commission

Gus C. Lainas,

Acting Director, Division of Reactor Projects-I/II Office of Nuclear Reactor Regulation

[Doc. 89-17363 Filed 7-25-89; 8:45 am]

BILLING CODE 7590-01-D

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full

Committee, and of the ACNW, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published June 20, 1989 (54 FR 25919). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the Federal Register approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterick (*) will be open in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACRS Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings and when ACRS Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the August 1989 ACRS full Committee and the September 1989 ACNW meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 301/492-7288, ATTN: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

Maintenance Practices and Procedures, August 8, 1989, Bethesda, MD. The Subcommittee will review the policy statement on maintenance and associated draft regulatory guide.

Seabrook, August 17, 1989, Bethesda, MD. The Subcommittee will review emergency plans for full power operation.

Regional Programs, August 29-30, 1989, King Of Prussia, PA (Region I Office). The Subcommittee will review the activities under the purview of the NRC Region I Office.

Joint Severe Accidents and Probabilistic Risk Assessment, September 19, 1989, Bethesda, MD. The Subcommittees will discuss the second draft of NUREG-1150, "Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants."

Advanced Pressurized Water Reactors, Date to be determined (August), Bethesda, MD. The Subcommittee will discuss the comparison of the WAPWR (RESAR SP/90) design with other modern plants (in U.S. and abroad).

Thermal Hydraulic Phenomena, Date to be determined (August), Bethesda, MD. The Subcommittee will review the proposed experimental program to investigate specific thermal hydraulic phenomena of the B&W OTSG.

Thermal Hydraulic Phenomena, Date to be determined (August), Bethesda, MD. The Subcommittee will review the NRC staff's proposed resolution of Generic Issue 84, "CE PORVs."

Advanced Pressurized Water Reactors, Date to be determined (August/September), Bethesda, MD. The Subcommittee will discuss the licensing review bases document being developed for Combustion Engineering's Standard Safety Analysis Report-Design Certification (CESSAR-DC).

Severe Accidents, Date to be determined (August/September), Bethesda, MD. The Subcommittee will discuss the NRC Severe Accident Research Program (SARP) plan.

Severe Accidents, Date to be determined (August/September), Bethesda, MD. The Subcommittee will discuss the proposed Generic Letter by NRR and the NRC research program in the accident management area.

Joint Containment Systems and Structural Engineering, Date to be determined (August/September), San Francisco, CA area. The Subcommittees will discuss containment design criteria for future plants with invited speakers from industry.

Joint Thermal Hydraulic Phenomena and Core Performance, Date to be determined (September), Bethesda, MD. The Subcommittees will continue their review of boiling water reactor core power stability pursuant to the core power oscillation event at LaSalle County Station, Unit 2.

Decay Heat Removal Systems, Date to be determined (November), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 23, "RCP Seal Failures."

Systematic Assessment of Experience, Date to be determined (November/December), Bethesda, MD. The Subcommittee will review the proposed power increase for Indian Point Unit 2.

Decay Heat Removal Systems, Date to be determined, Bethesda, MD. The Subcommittee will explore the issue of the use of feed and bleed for decay heat removal in PWRs.

Thermal Hydraulic Phenomena, Dated to be determined, Bethesda, MD. The Subcommittee will discuss the status of Industry best-estimate ECCS model submittals for use with the revised ECCS Rule.

Auxiliary and Secondary Systems, Date to be determined, Bethesda, MD. The Subcommittee will discuss the: (1) Criteria being used by utilities to design Chilled Water Systems, (2) regulatory requirements for Chilled Water Systems design, and (3) criteria being used by the NRC staff to review the Chilled Water Systems design.

Extreme External Phenomena, Dated to be determined, Bethesda, MD. The Subcommittee will review planning documents on external events.

Reliability Assurance, Date to be determined, Bethesda, MD. The Subcommittee will discuss the status of implementation of the resolution of USI A-46, "Seismic Qualification of Equipment in Operating Plants," and other related matters.

Joint Regulatory Activities and Containment Systems, Date to be determined, Bethesda, MD. The Subcommittees will review the proposed final revision to Appendix J to 10 CFR Part 50, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors."

ACRS Full Committee Meetings

352nd ACRS Meeting, August 10-12, 1989—Items are tentatively scheduled.

*A. *Meeting with NRC Commissioners (Open)*—Discuss recent ACRS reports to NRC, including NRC's Human Factors Program and Initiatives (ACRS report dated May 9, 1989), Proposed Resolution of GI-128, Electric Power Reliability (ACRS reported dated June 14, 1989), Reliability and Diversity (ACRS reported dated June 14, 1989), Radiation Exposure of Skin from Hot Particles (ACRS reported dated May 9, 1989), and Boiling Water Reactor Core Stability (ACRS reported dated June 14, 1989).

*B. *NUMARC Activities (Open)*—Briefing by NUMARC representantative regarding NUMARC and related industry activities applicable to the regulatory process and the NRC-industry interface.

*C. *NMSS Activities (Open/Closed)*—Meeting with Director, NMSS, to discuss items of mutual interest, including the nature/scope of NMSS activities.

*D. *NRC Policy Statement Regarding Maintenance of Nuclear Power Plants (Open)*—ACRS review and comment regarding proposed NRC policy statement.

*E. *General Electric Advanced Boiling Water Reactor (Open)*—Continue review of the design certification requested for this standardized nuclear plant.

*F. *Nuclear Power Plant Access Authorization (Open/Closed)*—Review and report on proposed NRC rule regarding control of access to restricted areas in nuclear power plants.

*G. *Technical Specifications (Open)*—Briefing regarding status of technical

specifications improvement program by NRC and the nuclear industry.

*H. *Analysis of Operational Data (Open)*—Briefing and discussion of NRC/AEOD review of the efforts to reduce the number of "scrams" in nuclear power plants.

*I. *Generic Issue 99, Improved Reliability of RHR Capability in PWRs (Open)*—Report by and discussion with NRC staff representatives regarding implementation of ACRS recommendations.

*J. *ACRS Subcommittee Activities (Open)*—Briefings and discussions regarding the status of assigned ACRS subcommittee activities, including integration of the nuclear regulatory process and performance of check valves in nuclear power plants.

*K. *Anticipated ACRS Activities (Open)*—Discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

*L. *Appointment of ACRS Members (Open/Closed)*—Discuss qualifications of candidates proposed for consideration as ACRS members.

*M. *Generic Issue C-8, Main Steam Isolation Valve Leakage and Leakage Control System Failures (Open)*—Review and report on proposed NRC resolution of this generic matter.

353rd, ACRS Meeting, September 7-9, 1989—Agenda to be announced.

354th, ACRS Meeting, October 5-7, 1989—Agenda to be announced.

ACNW Full Committee Meetings

ACNW Meeting, July 26-27, 1989—Cancelled.

ACNW Working Group Meeting on Mixed Wastes, August 4-5, 1989—Cancelled.

13th ACNW Meeting, September 13-15, 1989—The Committee will discuss the following topics:

A. *Center for Nuclear Waste Regulatory Analyses (Open)*—Briefing on the management and current activities of the Center, including recent CNWRA reports.

B. *Prototype License Application (Open)*—Briefing on the prototype license application for low-level waste facilities.

C. *Scoping Study PRA for Yucca Mountain (Open)*—Briefing by NMSS, RES, and Sandia staffs on the development of a scoping study PRA, including probability of major geologic events, for the Yucca Mountain site.

14th ACNW Meeting, October 11-13, 1989—Agenda to be announced.

Date: July 20, 1989.

Samuel J. Chilk,

Acting Advisory Committee Management Officer.

[FR Doc. 89-17499 Filed 7-25-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-247]

Consolidated Edison Co. of New York, Inc.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-26, issued to Consolidated Edison Company of New York, Inc. (the licensee) for operation of Indian Point Nuclear Generating Unit No. 2 located in Westchester County, New York.

The proposed amendment would revise the Technical Specification to authorize operation of the plant with Hudson River (ultimate heat sink) water temperatures of up to a maximum of 95° F and with containment air temperatures of up to a maximum of 130° F when the reactor is operating. The licensee's application for this amendment is contained in its submittal of July 13, 1989.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following analysis of the proposed changes:

[Service Water System (SWS)] Temperature

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples in 51 FR 7751. Example (i) relates to a purely administrative change to Technical Specifications. The proposed change to Technical Specification 3.3.F.1.b and 3.3.F.2.b changes [two] LCO action requirements and wording to be consistent with other 350° F LCOs in our Technical Specifications. These proposed changes would also eliminate an unnecessary restriction (i.e., be below 200° F within 30 hours), because the LCOs 3.3.F.1.a and 3.3.F.2.a only apply above RCS temperature of 350° F. Also, changes to Technical Specification Bases 3.3 page 3.3-14 adds reference (12) and corrects a footnote error. Thus these proposed changes reflect such an example.

Example (ii) relates to a change that constitutes an additional limitation, restriction or control not presently included in the Technical Specifications. The proposed changes to Technical Specification 3.3.F.4 and 3.3.F.5 impose new Limiting Conditions for Operation for service water inlet temperature and associated monitoring instrumentation. Additionally, changes to Technical Specification Table 4.1-1 imposes surveillance requirements for the service water inlet temperature monitoring instrumentation. Thus, these proposed changes reflect such an example.

Example (vi) relates to a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some was a safety margin, but where the results of the change are clearly within all acceptable criteria. The proposed change to Technical Specification 5.2.C and Technical Specification Bases 3.3 pages 3.3-10 and 3.3-11 increases the limit on service water temperature from 85° F to 95° F and reflects such an example.

Therefore, in accordance with the requirements of 10 CFR 50.92, the proposed changes to Technical Specification 3.3.F. to Technical Specification 5.2.C. Technical specification table 4.1-1, and to technical Specification Basis 3.3 with respect to a maximum SWS inlet temperature of 95° F, are deemed to involve "No Significant Hazards Considerations" because operation of Indian Point Unit No. 2, in accordance with these changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

With respect to a significant increase in the probability of an accident previously evaluated, [the safety analysis provided with this submittal] analyzed the cooling provided to safety-related and non-safety-related equipment by the SWS and [Component Cooling Water System (CCWS)] during normal operation, assuming a maximum SWS inlet temperature of 95° F. The analysis determined that with a maximum SWS inlet temperature of 95° F, there will not be an increase in the probability of the sudden failure of equipment cooled by SWS or CCWS, whose failure could cause an accident evaluated in the FSAR, (i.e. loss of reactor coolant flow due to the sudden failure of a RCP, loss of normal feedwater due to the sudden failure of a main feedwater pump, or reactor coolant system failures due to inadequate reactor vessel support cooling). Thus, these changes would not significantly increase the probability of an accident previously evaluated.

With respect to a significant increase in the consequences of an accident previously evaluated, [the safety analysis provided with this submittal] evaluated the adequacy of the cooling provided by the SWS and CCW[S] during off-normal and postulated accident conditions. The analysis determined that adequate cooling is provided to safety-related equipment to support operability following design basis accidents. In addition, adequate cooling is provided to the emergency core cooling and containment cooling systems to mitigate design basis accidents and maintain safety parameters below safety limits. Thus these would not significantly increase the consequences of an accident previously evaluated.

Therefore these proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

Operation of Indian Point Unit 2 with a maximum 95° F Ultimate Heat Sink temperature does not create new equipment failure modes from those already evaluated in the FSAR. The failure of non-safety-related equipment cannot cause an accident not already evaluated. Adequate cooling is provided to safety-related equipment to ensure that they operate as intended. Therefore, no new or different kind of accident is created by increasing the allowable Ultimate Heat Sink temperature to a maximum of 95° F.

(3) Involve a significant reduction in a margin of safety.

[The safety analysis provided with this submittal] determined that adequate cooling is provided to support operation of safety-related equipment during normal operation, abnormal operations, and following design basis accidents. In addition, the [analysis] determined adequate cooling is provided to ensure that safety-related equipment performance is sufficient to maintain safety parameters below safety limits (e.g., containment temperature and pressure will not exceed design limits or an acceptable EQ envelope, post LOCA emergency core cooling functions are supported to ensure long-term core cooling). The [analysis] concluded that all applicable safety limits are met. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Therefore, based on the above discussion [the licensee] has determined that the proposed changes to Technical Specification 3.3F, Technical Specification 4.1-1, Technical Specification 5.2.C and Technical Specification Basis 3.3 with respect to a maximum SWS inlet temperature of 95° F, involve "No Significant Hazards Considerations." * * *

Containment Integrity

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7751). Example (i) describes a purely administrative change to technical specifications. Changes to Technical Specification bases 4.4 clarifies the statement regarding containment temperature and pressure and reflects such an example. Example (vi) describes a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria. The changes to the approximate average maximum containment temperature from 120° F to 130° F in Technical Specification Bases 4.4 reflects such an example.

Therefore, in accordance with the requirements of 10 CFR 50.92, the proposed change to Technical Specification Basis 4.4 with respect to an initial containment temperature of 130° F, is deemed to involve "No Significant Hazards Considerations" because operation of Indian Point Unit No. 2 in accordance with this change would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

With respect to a significant increase in the probability of an accident previously evaluated, it should be noted that containment integrity is utilized in accident mitigation and has no effect on initiating an accident. Thus, this change would not significantly increase the probability of an accident previously evaluated.

With respect to a significant increase in the consequences of an accident previously evaluated, the results provided in [the safety analysis provided with this submittal] are based on conservative analyses utilizing new, refined and more accurate methodologies. These analyses show that with increased maximum containment temperature under the worst case LOCA condition, containment pressure will be maintained well below its design value of 47 psig. Thus, the same safety criteria as previously evaluated are still met with the proposed change. Thus, this change would not significantly increase the consequences of an accident previously evaluated.

Therefore, this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the maximum temperature of containment does not modify the plant's configuration or operation, and therefore the postulated accidents are the only ones that require analysis and resolution. Nothing would be added or removed that would conceivably introduce a new or different kind of accident mechanism or initiating circumstance than that previously evaluated. There[fore], no new or different kind of accident is created by increasing the maximum allowable containment temperature to 130° F.

(3) Involve a significant reduction in a margin of safety.

With the proposed change, all safety criteria previously evaluated are still met, and remain conservative. With the new containment integrity analyses results provided in [the safety analysis provided with the licensee's submittal], it has been established that the IP-2 containment has substantial margins compared to its design pressure following a worst case loss of coolant accident. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, based on the above discussion [the licensee] has determined that the proposed change to Technical Specification Basis 4.4 with respect to an initial containment temperature of 130° F, involves "No Significant Hazards Considerations."

The staff agrees with the licensee's analysis. Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 223, Phillips Building, 7920 Norfolk Avenue, Bethesda, MD from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene are discussed below.

By August 25, 1989, the licensee may file a request for hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described below.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of not significant hazards considerations. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Robert A. Capra: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Brent L. Brandenberg, Esq. 4 Irving Place, New York, NY 10003, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petitition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a later petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 13, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the Local Public Document Room located at White Plains Public Library, 100 Martine Avenue, White Plains, NY 10610.

Dated at Rockville, Maryland, this 21st day of July, 1989.

For the Nuclear Regulatory Commission.

Donald S. Brinkman,

Senior Project Manager, Project Directorate I-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-17453 Filed 7-25-89; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-275 and 50-323]

Pacific Gas and Electric Co.; Partial Denial of Amendments to Facility Operating Licenses and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) has denied in part a request by the Pacific Gas and Electric Company (the licensee) for amendments to Facility Operating License Nos. DPR-80 and DPR-82, issued to the licensee for operation of the Diablo Canyon Power Plant, Unit Nos. 1 and 2, respectively, located in San Luis Obispo County, California. The Notice of Consideration of issuance of Amendments was published in the **Federal Register** on May 3, 1989 at 54 FR 18950.

The amendments, as proposed by the licensee, would change Section 6.0, "Administrative Controls," of the Technical Specifications regarding the General Office Nuclear Plant Review and Audit Committee (GONPRAC) membership, operating personnel working hours and limits, the plant staff qualifications and training program, and routine and special reports. The Commission's staff finds acceptable the changes that are applicable to the GONPRAC, and to routine and special reports. The other proposed changes are unacceptable, because they do not conform to the Commission's requirements and guidance for such

matters. Therefore, the request for amendments is denied in part.

By August 25, 1989, the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rules and Procedures Branch, Office of Administration, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, CA 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, CA 94120, attorneys for the licensee.

For further details with respect to this action, see (1) the application for amendments dated March 20, 1989, as supplemented by letter dated June 29, 1989, (2) Amendments Nos. 43 and 42 to License Nos. DPR-80 and DPR-82, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, CA 93407. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 19th day of July 1989.

For the Nuclear Regulatory Commission.

Harry Rood,

Senior Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-17452 Filed 7-25-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

National Advisory Committee on Semiconductors (NACS)

The purpose of the National Advisory Committee on Semiconductors, is to devise and promulgate a national semiconductor strategy, including research and development. The implementation of this strategy will assure the continued leadership of the United Staets in semiconductor technology. The Committee will meet on August 3, 1989 at Science Applications International Corporation, 1555 Wilson Blvd., 7th Floor, Rosslyn, Virginia 8:00 a.m. The proposed agenda is:

(1) Briefing of the Committee on its organization and administration.

(2) Briefing of the Committee by OSTP personnel and personnel of other agencies on proposed, ongoing, and completed studies regarding semiconductors.

(3) Discussion of composition of panels to conduct studies

A portion of the August 3 session will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of material that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b.(c) (1), (2), and (9)(B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personel nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552 b.(c)(6).

Because of the security in the New Executive Office Building, persons wishing to attend the open portion of the meeting should contact Hazel Houston, at (703) 556-7130, prior to 3:00 p.m. on August 2, 1989. Mrs. Houston is also available to provide specific information regarding time, place and agenda for the open sesion.

Barbara J. Dioring,

Special Assistant, Office of Science and Technology Policy.

July 24, 1989.

[FR Doc. 89-17607 Filed 7-24-89; 3:30 pm]

BILLING CODE 3170-01-M

SECURITIES AND EXCHANGE COMMISSION

[34-27045NSCC-89-09]

Self-Regulatory Organizations; National Securities Clearing Corp.; Proposed Rule Change

July 19, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 10, 1989 NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify NSCC's Rules and Procedures as described below.

II. Self-Regulatory Organization's Statement of the Purposed of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purposes of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purposed of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule filing is to make certain technical clarifications to the Mutual Fund Settlement, Entry and Registration Verification Service ("Fund/SERV Service") rule in order to accurately reflect the way in which exchanges are handled and have been handled since Fund/SERV was initiated. The rule is being modified to reflect that certain system capabilities applicable to purchases and redemptions are not applicable for exchanges. Exchanges give the mutual fund owner the ability to switch from one fund to a different mutual fund investment within the same family of funds without incurring an additional within the same family of funds without incurring an additional

charge and without the necessity of passing money. Exchanges "settle" through Fund/SERV two days following input of the order based on confirmation submitted by the Mutual Fund Processor or Fund Member. Settlement means confirmation by the fund to the party that the exchange has occurred. Purchase and redemption orders processed through Fund/SERV are deleted from the system if unconfirmed or rejected. Failure to respond to exchange input results, however, in the exchange data being continually carried forward. In addition, reconfirmation, correction and deletion procedures which are available for purchases and redemptions are not available for exchanges. This is due to the fact that exchanges settle within NSCC the day after confirmation, thus eliminating time which is needed to process corrections. Commencing August 25, 1989, NSCC will no longer accept for processing through Fund/SERV exchanges where the mutual shares are held in physical form. Due to the short settlement period, there is insufficient time to complete the work involved in the cancellation of physical shares involved in an exchange. Such transactions have not been able to be processed through Fund/SERV since its initiation because the funds themselves would not accept the physical shares. The filing is correcting the language in the rule as necessary to conform the rule to the existing practice.

(b) The proposed rule change facilitates the prompt and accurate clearance and settlement of securities transactions and is therefore, consistent with the requirements of the 1934 Act, as amended, and the rules and regulations thereunder applicable to NSCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective, pursuant to section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change that are filed with Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld for the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file number SR-NSCC-89-09 and should be submitted by August 16, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-174887 Filed 7-25-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27047; File No. SR-NYSE-88-34]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Intermarket Trading Restrictions

On November 1, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or Commission"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] abd Rule 19b-4 thereunder,[2] a proposed rule change consisting of two agreements in regard to certain intermarket trading restrictions between the NYSE and the Chicago Mercantile Exchange ("CME") and between the NYSE and the New York Futures Exchange ("NYFE").

The proposed rule change was noticed in Securities Exchange Act Release No. 26279 (November 14, 1988), 53 FR 46731 (November 16, 1988). The Commission received four comment letters on the proposal and a response by the NYSE to the comments. *See* discussion at pages five through nine, *infra*.

I. Description of the Proposal

The NYSE and the CME and the NYSE and the NYFE have adopted a policy, uniform as between the respective markets, that specifically defines and prohibits certain intermarket trading between their respective equities and futures markets, while not prohibiting legitimate trading activities.[3] The policy is contained in two Information Memoranda that will be distributed to NYSE members and member organizations upon Commission approval of this proposed rule change. The joint NYSE, CME, and NYFE policy prohibits a member or person associated with a member or member organization from engaging in intermarket frontrunning involving securities and stock index futures or options on stock index futures. The policy states that a member or person executing or causing the execution of, for an account in which such member or person has a direct or indirect pecuniary interest, or for an account with respect to which such member or person exercises investment discretion, certain intermarket transactions, as described below, to take advantage of material, non-public information, that reasonably can be expected to have an immediate, favorable impact in relation to such transactions, may be in violation of just and equitable principles of trade under NYSE Rule 476.[4]

[1] 15 U.S.C. 78s(b) (1982).

[2] 17 CFR 240.19b-4 (1988).

[3] The policy pertains to intermarket trading involving any stock index futures contract and the NYSE equities market, regardless of whether the future is traded on the CME, the NYFE, or another futures exchange. The NYSE's policies with regard to frontrunning in the context of trading in standardized options on individual stocks, index options, and options on over-the-counter stocks were most recently restated in SR-NYSE-87-36 (*See* Securities Exchange Act Release No. 25233 (December 30, 1987), 53 FR 296). Those policies are unaffected by this proposal.

[4] NYSE Rule 476 (Disciplinary Proceedings Involving Charges Against Members, Member Organizations, Allied Members, Approved Persons, or Employees) provides: * * * if a member, member organization, allied member, approved

Continued

The policy provides specifically that a transaction in any stock index futures contract, or in an option on a stock index future, when such member or person has acquired knowledge of the imminent execution of another person's stock program transaction, may be in violation of just and equitable principles of trade. Moreover, because transactions in stock index futures or options on a stock index future may have some effect on the market in the underlying equities themselves, the policy states that, conversely, certain transactions in the reverse order also could constitute a violation of just and equitable principles of trade. In particular, stock program transactions, when such member or person has acquired knowledge of the imminent execution of another person's order(s) in stock index futures contracts or options on stock index futures, may also be in violation of just and equitable principles of trade.

Under the NYSE's policy, it is not necessary to demonstrate that either the firm's customer or any other person has been disadvantaged to conclude that the trading violated just and equitable principles of trade. Furthermore, such member or person may be deemed to be in violation of the NYSE's policy regardless of whether the customer generating the program order has given permission for such trading.

The policy states that it is not intended to prevent a member or person from establishing, in a futures market, a bona fide hedge position to reduce risk exposure such member or person may have assumed or agreed to assume in facilitating the execution of any other person's stock program orders. The risk to be hedged must be the result of having established a position or having given a firm commitment to assume a position, and the offsetting hedging transaction must be commensurate with such risk.

In addition, the policy states that it is not intended to prevent a member or person from implementing a legitimate proprietary market strategy involving a stock program and a related stock index futures transaction by executing the stock index futures trade(s) prior to the execution of the stock program. The policy states, however, that the execution of a transaction in one market to take advantage of such member's or person's imminent transaction in a related market may be considered manipulative activity.

The agreement between the NYSE and the NYFE is identical to the agreement between the NYSE and the CME, with one additional restriction. The agreement between the NYSE and the NYFE further states that a transaction in any stock index option, when such member or person has acquired knowledge of the imminent execution of another person's order(s) in stock index futures contracts or options on a stock index future, may also be in violation of just and equitable principles of trade. The NYSE–NYFE agreement states further that the policy is not intended to prevent such member or person from establishing, in a futures market, a bona fide hedge position to reduce risk exposure such members or persons may have assumed or agreed to assume in facilitating the execution of any other person's stock index option orders as well as another person's stock program orders. In addition, the NYSE–NYFE agreement states that a member or person associated with a member organization who implements a proprietary market strategy involving stock index option transaction(s) as well as a stock program and a related stock index futures transaction by executing the stock index futures trade(s) prior to the execution of the stock index option transaction(s) as well as the stock program will not be deemed to be in violation of the policy. The NYSE–NYFE agreement states, however, that the execution of a transaction in one market to take advantage of such member's or person's imminent transaction in a related market may be considered manipulative activity.

II. Comments on the Proposed Rule Change

The Commission received comment letters on the proposal from the American Bar Association, Section of Corporation, Banking and Business Law, Committee on Federal Regulation of Securities ("ABA"); [5] the Securities Industry Association Federal Regulation Committee ("SIA"); [6] Gerald Beirne, a registered representative; [7] and Timber Hill Incorporated.[8] These comments are summarized below.[9] The NYSE submitted a set of 12 Questions and Answers Regarding Intermarket Trading Restrictions ("Qs&As") that, among other things, respond to questions on its proposal raised in several of the comment letters.[10] The Qs&As will be distributed to the NYSE membership as an attachment to the Information Memoranda contained the NYSE-CME-NYFE intermarket trading restrictions policy.

The comment letters all generally support the NYSE's effort to establish a policy with the CME and the NYFE prohibiting intermarket frontrunning. The commentators, in different respects, criticize the coverage of the policy as being either too broad or too narrow.

The ABA and SIA agree with the part of the proposed policy that states that a member may implement a proprietary trading strategy in different markets in whatever sequence it sees fit. The ABA and the SIA disagree, however, with that part of the policy that states that a member who executes a transaction in one market to take advantage of such member's imminent transaction in a related market may be engaging in manipulative activity. The ABA and the SIA stated that this qualification to the policy's permission for a member to engage in proprietary transactions in a sequence of its own choosing is ill-defined, overly-broad, and unjustified, and that any activity covered by this qualification should be limited to violations of Sections 9 and 10(b) of the Act.

The ABA and the SIA also stated that the proposed policy does not appear to attribute to any employee of a member executing a stock index futures transaction the knowledge of another of the member's employee's imminent execution of a stock program transaction. The ABA and SIA urged, however, that this point be clarified.

Further, the ABA and the SIA stated that the NYSE should define "bona fide hedge" and that the policy should state that the hedge does not have to be established on a one-to-one basis between the value of the stock program and the futures transaction.

The ABA, by itself, also commented on the policy's "admonition" that it is not necessary for the NYSE to demonstrate that another person was disadvantaged by a particular instance of frontrunning. The ABA states that it assumes that it still would be a defense for the respondent in such an action to show that no violation has taken place because no one has been disadvantaged.[11]

In contrast to the ABA and SIA, Beirne stated that the NYSE's proposed policy is too narrow, and should be broadened to include language that clearly defines and prohibits self-frontrunning. Beirne contends in his letter that the extraordinary volatility that has existed in the markets since the inception of index futures trading is, for the most part, directly attributable to self-frontrunning.

Finally, Timber Hill generally supported the NYSE's proposal, but recommended that the transactions included within the policy should include the exercise of cash-settled options.

In its June 27 letter and accompanying Qs&As, the NYSE responded to the above comments regarding the proposed rule change. First, in Q&A 9, the NYSE reiterated its view that the proposed policy does not prescribe the sequence of a member's legitimate proprietary trading strategies involving a stock program and a related stock index futures transaction. In response to the ABA, SIA, and Beirne comments concerning self-frontrunning, however, the NYSE clarified the circumstances under which such a member might be found to have been engaging in manipulative activity. In particular, Q&A 9 states that a member who executes a proprietary transaction in one market may be engaging in manipulative activity if that transaction favorably impacts such member's subsequent proprietary transaction in a related market. In Q&A 9, the NYSE asserts that such conduct need not be a violation of federal securities law is order to be actionable.[12] Indeed, Q&A 9 states that manipulative conduct is actionable if it is violative of Exchange rules and policies. The NYSE did not adopt the ABA and SIA's request that manipulative activity should be limited to violations of Sections 9 and 10(b) of the Act.[13]

Second, in Q&A 10, in response to the ABA and SIA comments, the NYSE makes clear that if a member or an employee of a member has knowledge of the execution of another person's imminent stock program or stock index futures transaction, this will preclude any other person within the same member from effecting any transaction in a related market prior to the execution of the imminent transaction unless such other person does not, in fact, have knowledge of the imminent transaction. The NYSE states that a determination of whether such other employee, in fact, had knowledge of the imminent transaction may be based upon circumstantial evidence regarding the timing of the firm's transactions in the stock and futures markets and the access of the firm's traders to the information regarding the imminent transaction.

Third, in Q&A 8, the NYSE repeated its view that a member, in facilitating the execution of another person's stock program, may establish an index futures position prior to the stock program transaction, provided that such index futures position is a bona fide hedge of risk. The policy itself responds to the ABA and SIA comments where it states that, in order to be a bona fide hedge, the risk to be hedged must be the result of having established a position or having given a firm commitment to assume a position, and the offsetting hedging transaction must be commensurate with such risk. The policy does not contain any requirement that the hedge be precisely a one-to-one ratio.

Finally, in Q&A 6, the NYSE reiterates that, in determining whether a member has taken advantage of material, non-public information regarding a stock program or a stock index futures options transaction, it is not necessary for the Exchange to demonstrate that another person has been disadvantaged. The NYSE has not adopted the ABA's argument that it would be a defense for a respondent in an action for an alleged violation of the NYSE's policy to show that no violation has taken place because no one has been disadvantaged.

III. Discussion

The Commission has reviewed closely the proposed NYSE rule change, the comments received by the Commission and the Exchange regarding the proposal, and the NYSE's response to these comments. On the basis of this review, the Commission has concluded that the proposed NYSE rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 and the rules and regulations thereunder,[14] and, accordingly, should be approved.

The securities SROs view frontrunning as conduct inconsistent with just and equitable principles of trade.[15] The SROs have issued circulars to this effect and have implemented programs to detect and prosecute frontrunning in the securities markets. In October 1987, these frontrunning circulars were filed with the Commission as rule changes pursuant to section 19(b)(3)(A) of the Act as stated policies of the SROs.[16] The circulars address frontrunning that occurs within a single market or that involves transactions in both the stock and options markets.

It has become evident over the last few years that opportunities now exist for similar trading practices involving trades with stock index futures contracts and the securities markets.[17] The Commission has encouraged the securities markets and the futures markets to work together to develop procedures to detect and prosecute intermarket frontrunning. A result of this regulatory cooperation and coordination was the NYSE proposal discussed herein: a uniform policy adopted by the NYSE, the CME, and the NYFE that defines and prohibits intermarket frontrunning.

The Commission believes that the adoption of this uniform policy, in conjunction with the increased sharing of information and regulatory coordination resulting from the development of this policy, should result in more effective detection and

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person, or registered or non-registered employee of a member or member organization is adjudged guilty in a proceeding under this Rule of * * * conduct or proceeding inconsistent with just and equitable principles of trade * * * then, * * * the Hearing Panel shall, in accordance with the procedures set forth in this Rule, impose one or more * * * disciplinary sanctions * * *[as enumerated].

[5] *See* letter from James H. Cheek III, Chairman, Committee on Federal Regulation of Securities, American Bar Association, to Jonathan G. Katz, Secretary, Commission, dated December 8, 1988.

[6] *See* letter from Dennis H. Greenwald, Chairman, Federal Regulation Committee, Securities Industry Association, to Jonathan G. Katz, Secretary, Commission, dated December 29, 1988.

[7] *See* letter from Gerald Beirne to Secretary, Commission, dated December 6, 1988 ("Beirne").

[8] *See* letter from Thomas Peterffy, President, Timber Hill Incorporated, to Jonathan G. Katz, Secretary, Commission, dated December 22, 1988 ("Timber Hill").

[9] On April 13, 1988, prior to filing the proposed rule change with the Commission, the NYSE issued an Information Memorandum to its membership stating that it was considering the adoption of an interpretation whereby trading in index futures immediately prior to and with knowledge of the execution of one or more "baskets" of stock that favorably impact the value of the underlying index might constitute frontrunning. The NYSE invited comments form its membership concerning the proposed interpretation. The NYSE received comment letters from Merrill Lynch, Pierce, Fenner and Smith, Inc.; Morgan Stanley & Co.; and the Securities Industry Association. These comments, and the Exchange's response to them, were discussed in the notice of the proposed rule change published in the **Federal Register**.

[10] *See* letter from Robert J. McSweeney, Vice President, Market Surveillance, NYSE, to Brandon Becker, Associate Director, Division of Market Regulation, dated June 27, 1989 ("NYSE June 27 letter").

[11] The ABA also criticizes the framework within which prior frontrunning interpretations have been issued by the self-regulatory organizations ("SRSs").

[12] *I.e.*, §§ 9 and 10(b) of the Act, 15 U.S.C. 78i and 78j(b) (1982) and Rule 10b–5, 17 CFR 240.10b–4 (1988).

[13] *I.e.*, NYSE Rule 476.

[14] 15 U.S.C. 78f (1982).

[15] In its broadest terms, frontrunning generally is defined as trading on the basis of non-public market information regarding imminent, material market transactions.

[16] *See* Securities Exchange Act Release No. 25233 (December 30, 1987), 53 FR 296.

[17] *See* The October Market Break. A Report by the Division of Market Regulation, Securities and Exchange Commission (February 1988), at 3–30–3–33; An Overview of Program Trading and Its Impact on Current Market Practices, Nicholas deB. Katzenbach (December 21, 1987), at 23–24, 31–32.

prosecution of intermarket frontrunning violations. The NYSE-CME-NYFE joint policy is an extension of the NYSE's current frontrunning policy, described above. The joint policy, as clarified by the NYSE's Qs&As, adequately addresses the concerns raised by the commentators. In particular, the joint policy and the Qs&As clearly describe prohibited intermarket practices while still allowing members to engage in proprietary trading strategies in the futures and equities markets or to assist customers in the execution of stock programs or stock index futures orders. The scenarios that Bierne raises in his comment letter are of serious concern to the Commission. While the widespread existence of such abuses is not as evident or as certain as Mr. Bierne's letter suggests, the possibility of such practices warrants vigorous regulatory oversight by the stock, options, and futures markets. The cooperative efforts by the NYSE, CME, and NYFE in drafting the policy represent a sound step in this direction. In this regard, the joint policy, while allowing a member to implement proprietary trading strategies in different markets in whatever sequence he chooses, clearly states that a member may be engaging in manipulative conduct when a proprietary transaction in one market favorably impacts the member's subsequent transaction in a related market.[18] While the Commission believes that the policy sets forth an appropriate approach to address improper proprietary trading, we emphasize the importance of vigorous intermarket surveillance to detect any such activities. Should these efforts prove inadequate, then the SROs at a later date may have to revisit the adequacy of the policy.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Jonathan G. Katz,

Secretary.

Dated: July 19, 1989.

[FR Doc. 89-17489 Filed 7-25-89; 8:45 am]

BILLING CODE 8010-01-M

[18] In addition, in regard to the concern raised in Timber Hill's letter, the NYSE's current frontrunning circulars address practices arising from exercises of cash-settled options. In addition, under the NYSE-NYFE agreement, if a member's exercise of cash-settled options is part of a manipulative scheme, the member could be found in violation of NYSE Rule 476.

[19] 17 CFR 200.30-3(a)(12) (1988).

[34-27046 PTC-89-2]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Participants Trust Co.

In the matter of Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Participants Trust Company, Relating to the deletion from Article II, Rule 13, Section 6 of the Participants Trust Company Rules of the provision permitting a Receiving Participant, acting in an agency capacity, to reverse a delivery because its customer may not pay for securities delivered.

July 19, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 USC 78s(b)(1), notice is hereby given that on July 11, 1989, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by PTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change deletes the provisions of Article II, Rule 13, Section 6 whereby a Receiving Participant acting in an agency capacity may reverse a transfer to it if it determines in good faith that its principal may be unable to fulfill all of its obligations to the Receiving Participant.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries set forth in Sections (A), (B) and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to enhance the finality of the PTC settlement system. In developing and refining the rules of PTC over the period preceding the acquisition by PTC of the business and assets, including the rules, of the Depository Division of MBS Clearing Corporation, finality was a concern of the industry and the Federal Reserve System (the "FRS"). The approval by the FRS of the application of PTC for membership in the FRS includes the commitment of PTC to delete this provision from its rules. This rule change is therefore proposed in order to satisfy the commitment of PTC to the FRS and to improve the finality of the PTC settlement system.

2. Statutory Basis

The basis under the Act for this proposed rule change is to design the rules to promote the objective of section 17A(b)(3)(F) of the Act to provide "the prompt and accurate clearance and settlement of securities transactions." The provision to be deleted may cause uncertainty, delay and confusion in the settlement of transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PTC does not believe that the proposed rule change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

You are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 USC 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at PTC's principal office. All submission should refer to file number SR-PTC-89-2 and should be submitted by August 16, 1989.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-17490 Filed 7-25-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 05/07-0003]

Capital Investments, Inc.; Filing of Application for Transfer of Ownership and Control

Notice is given that an Application has been filed with the Small Business Administration (SBA) pursuant to the Regulations governing small business investment companies (13 CFR 107.601 (1989)) for Transfer of Control of Capital Investments, Inc. (Licensee), 744 North Fourth Street, Milwaukee, WI 53203, a small business investment company (SBIC) and a Federal Licensee under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.*).

The Licensee is a Wisconsin corporation. Messrs. James D. Dobson, Virgil Duane Rath, and James R. Sanger collectively own 15.67 percent of the total outstanding shares of the Licensee. They propose to collectively acquire 51 percent of the Licensee's outstanding shares. As such, this proposed acquisition constitutes a change in control of the Licensee.

The Proposed Officer and Directors and shareholdings will be as follows:

Name	Title or position	Percent of ownership
Frank W. Norris, 2427 N. Harding Blvd., Wauwatosa, WI 53226.	President and Manager.	
Robert L. Benner, 1521 Upper Parkway SO, Wauwatosa, WI 53213.	Vice President.	
Steven C. Rippl, 6408 W. Division St., Mequon, WI 53092.	Secretary-Treasurer.	
James D. Dobson, 3140 Box Canyon Rd., Santa Ynez, CA 93460.	Director	(1) 17
V. Duane Rath, 2505 Foster Ave., Janesville, WI 53545.	Director	(1) 17
James R. Sanger, 2505 Foster Ave., Janesville, WI 53545.	Director	(1) 17
William J. Nasgovitz, 4470 N. Lake Dr., Shorewood, WI 53211.	Director	5
Roger G. Dirksen, 926 East Circle Dr., Whitefish Bay, WI 53217.	Director	5
Frank J. Pelisek, 250 E. Wisconsin Ave., Milwaukee, WI 53202.	Director	

[1] Fifty-one percent collective ownership of Messrs. Dobson, Rath and Sanger

The Licensee will retain its present name and location. Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the existing company under their management including probability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

A copy of the Notice shall be published in a newspaper of general circulation in Milwaukee, Wisconsin.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: July 20, 1989.

[FR Doc. 89-17430 Filed 7-25-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[File No. AC 21.17-2]

Advisory Circular; Type Certification—Fixed-Wing Gliders (Sailplanes), Including Self-Launching (Powered) Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notce of availability of AC-21.17-2. Type Certification—Fixed-Wing Gliders (Sailplanes). Including Self-Launching (Powered) Gliders.

SUMMARY: Advisory Circular 21.17-2, which was issued on July 13, 1989, describes three acceptable criteria, but not the only criteria, for the type certification of fixed-wing gliders (sailplanes), including self-launching (powered) gliders, that may be used by an applicant in showing compliance with the type certification requirements of the Federal Aviation Regulations.

FOR FURTHER INFORMATION CONTACT: Mr. Lyle C. Davis, Aerospace Engineer, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Policy and Procedures Branch, AIR-100, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-9583.

SUPPLEMENTARY INFORMATION:

Background

Part 21 of the Federal Aviation Regulations (FAR) was amended effective April 13, 1989, to provide procedures for the type certification and airworthiness certification of special classes of aircraft. Special classes of aircraft include gliders (including self-launching gliders), airships, and other kinds of aircraft that would be eligible for a standard airworthiness certificate but for which no airworthiness standards have as yet been established as a separate part of Chapter 1, Subchapter C of CFR 14. Airworthiness standards for these special classes of aircraft are designated in new § 21.17(b). Section 21.23 was removed, and the glider type certification requirements incorporated into § 21.17(b). Since the essence of AC 21.23-1 is now included in AC 21.17-2, AC 21.23-1 is cancelled.

Advisory Circular 21.17-2 was published on January 9, 1989 (54 FR 725) to obtain public comments. The closing date for comments was February 8, 1989. Due to requests from potentially affected aircraft manufacturers and national homebuilt aircraft organizations, a notice was published on

February 23, 1989 (54 FR 7909) to extend the comment period for an additional 45 days. Following the close of the comment period on April 10, 1989, all comments were evaluated and pertinent comments were incorporated in AC 21.17-2.

Related FAR

Applicants for approval of glider design criteria should also be aware of the provisions contained in the following related FAR:

Section 21.5—Airplane or Rotorcraft Flight Manual.

Section 21.17—Desgnation of applicable regulations.

Part 23—Airworthiness Standards: Normal, Utility, and Acrobatic Category Airplanes.

Part 33—Airworthiness Standards: Aircraft Engines.

Part 35—Airworthiness Standards: Propellers.

Part 45, Subpart C—Nationality and Registration Marks.

Section 91.31—Civil aircraft flight manual, marking and placard requirements.

Section 91.33—Powered civil aircraft with standard category U.S. airworthiness certificates; instrument and equipment requirements.

How to Obtain Copies

Copies of AC 21.17-2, Type Certification—Fixed-Wing Gliders (Sailplanes), Including Self-Launching (Powder) Gliders, may be obtained from the U.S. Department of Transportation, Utilization and Storage Section, M-443.2, Room 2314, Nassif Building, Washington, DC 20590.

Issued in Washington, DC, on July 13, 1989.

William J. Sullivan,

Assistant Director, Aircraft Certification Service.

[FR Doc. 89-17468 Filed 7-25-89; 8:45 am]

BILLING CODE 4910-13-M

Coast Guard

[CGD89-057]

Pilotage Study

AGENCY: Coast Guard, DOT.

ACTION: Notice of study and request for comments.

SUMMARY: This Notice announces a Coast Guard study of issues relating to pilotage requirements and invites public comment. The study will consider whether to recommend any changes to existing laws and regulations. It is anticipated that the study will be concluded by October 1989. The Coast Guard will publish a notice of study completion in the **Federal Register** and will make the final report available to the public for comment.

DATE: Comments must be received by 21 August 1989.

ADDRESS: Comments should be mailed or delivered to Commandant (G-MVP), room 1210, 2100 Second St., SW., Washington, DC 20593-0001. They should be marked "Pilotage Study." Comments received will be available for examination or copying at this address between the hours of 8:00 a.m. to 3:30 p.m., Monday through Friday, except for holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Hartke (202) 267-0217.

SUPPLEMENTARY INFORMATION: The Commandant, USCG, has appointed a study group to examine a number of issues relating to pilotage requirements. The study group is headed by RADM Richard A. Bauman, who has been recalled to active duty for the period of the study. The study group is gathering information from all segments of the maritime industry interested in pilotage requirements. The Coast Guard welcomes comments from shipowners and charterers, State pilots, Federal pilots, ship's officers who serve as pilots, their associations, and other people or organizations affected by the requirements and performance of ship's pilots. The study group is examining existing laws and regulations and will consider whether to recommend any changes to laws or regulations.

Since the Department of Transportation recently completed a comprehensive study of Great Lakes pilotage, the study group does not intend to include those waters in its present study. The results of that study are contained in "Great Lakes Pilotage Study, Final Report", dated December 7, 1988.

The issues the study group is examining include:

1. Pilotage requirements, based on qualifications of the licensed personnel, the nature of the voyage, type of cargo, or other basis.
2. The extent of pilotage waters, Federal and State.
3. Variations in requirements due to vessel size, route, cargo, or other factors.
4. Requirments for pilot licenses: experience, testing, and recency of service.
5. Requirements for recertification, including familiarization.
6. The pilot's responsibility aboard the vessel.
7. The proper roles for Federal and State Governments.
8. Navigation equipment and operational requirements for ships operating in the approaches to pilot waters.

Request for Comments

The study group is interested in receiving information and comments from parties who are experienced in any aspect of pilotage. Due to the short time available, and the large number of issues to be examined, the panel does not intend to hold public meetings. To ensure full consideration, comments should be submitted by 21 August 1989. Late comments will be considered to the extent possible without delaying submission of the study group's report. Comments which have been submitted in response to earlier dockets relating to pilotage, CGD-77-084 and CGD-84-060, will receive full consideration; they do not have to be resubmitted.

It is anticipated that the study will be concluded by October 1989. Since the study report may include recommended changes to existing laws or regulations, the Coast Guard will publish a notice of its completion in the **Federal Register**. The final report will be available to the public for comment.

Dated: July 21, 1989.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-17498 Filed 7-25-89; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Research, Engineering, and Development Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Federal Aviation Administration Research, Engineering, and Development Advisory Committee to be held Tuesday, August 29, 1989, at 2:00 p.m., and Wednesday, August 30, 1989, at 9:00 a.m. Both sessions will take place in the MacCracken Room, 10th floor, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC.

The agenda for this meeting is as follows:

(1) Subcommittee reports

(2) Draft 1990 R,E&D Plan

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements or obtain information should contact Mr. John Turner, Executive Director, Research, Engineering, and Development Advisory Committee, ADM-1, 800 Independence Avenue, SW, Washington, DC 20591, telephone 202-267-3555.

Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC on July 14, 1989.

John Turner,

Executive Director, Research, Engineering, and Development Advisory Committee.

[FR Doc. 89-17474 Filed 7-25-89; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

This notice sets forth the reasons for the denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1631 *et seq.*).

Mr. Dominick Moscato, on behalf of the New York City Transit Authority, submitted a petition dated March 10, 1989, requesting NHTSA to investigate an alleged fire potential in the Transign electronic route signs installed on the rear of transit busses. The sign is manufactured by Vultron Incorporated, Auburn Heights, Michigan. Mr. Moscato stated that he had identified two potential defects as being fire hazards. They are: (1) Corrosion and/or total disintegration of a nine-wire cable connector and (2) corrosion and/or total disintegration of the lamp socket assemblies. The petitioner did not report any occurrence of fire.

NHTSA reviewed its files and discovered no other complaints relating to the subject signs. The manufacturer's response to NHTSA's inquiry stated that it had received no other complaints of the alleged fire potential from the other users of the equipment. A NHTSA survey of the other users listed by the manufacturer revealed no complaints of corrosion or of fires associated with the product.

In the absence of similar problems being experienced by other users of the signs, and in consideration of the available information, it was concluded that there was not a reasonable possibility that an order concerning the notification and remedy of a safety-related defect in relation to the alleged fire potential would be issued at the conclusion of an investigation. Since no evidence of a safety-related defect trend was discovered, further commitment of resources to determine whether such a trend may exist does not appear to be warranted. Therefore, the petition is denied.

Authority: Sec. 124, Pub. L. 93-492; 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 20, 1989.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 89-17416 Filed 7-25-89; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 89-67]

Approval of Bureau Veritas Holdings, Inc., as a Commercial Gauger

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of approval of Bureau Veritas Holdings, Inc. as a commercial gauger.

SUMMARY: Bureau Veritas Holdings, Incorporated of New York, New York, 10002, recently applied to Customs for approval to gauge and sample imported petroleum, petroleum products, organic chemicals, and vegetable and animal oils under § 151.13 of the Customs Regulations (19 CFR 151.13). Customs has determined that Bureau Veritas Holdings, Inc. meets the requirements for approval.

Therefore, in accordance with § 151.13(c), Bureau Veritas Holdings, Incorporated, 1250 Broadway, New York, New York, 10002, is approved to gauge the products named above in all Customs districts.

EFFECTIVE DATE: July 20, 1989.

FOR FURTHER INFORMATION CONTACT: Donald A. Cousins, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-2446).

Dated: July 20, 1989.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 89-17402 Filed 7-25-89; 8:45 am]

BILLING CODE 4820-02-M

Office of the Secretary

[Department Circular—Public Debt Series—No. 20-89]

Treasury Notes of June 30, 1991, Series AC-1991

Washington, July 20, 1989.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31, of Title 31, United States Code, invites tenders for approximately $9,000,000,000 of United States securities, designated Treasury Notes of July 31, 1991, Series AC-1991 (CUSIP No. 912827 XU 1), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. The notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities, in exchange for maturing Treasury securities.

2. Description of Securities

2.1. The Notes will be dated July 31, 1989, and will accrue interest from that date, payable on a semiannual basis on January 31, 1990, and each subsequent 6 months on July 31 and January 31 through the date that the principal becomes payable. They will mature July 31, 1991, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They

will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, July 26, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, July 25, 1989, and received no later than Monday, July 31, 1989.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5 must be made or completed on or before Monday, July 31, 1989. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, July 27, 1989. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, July 31, 1989. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASUTY DIRECT must be completed to show all the information required thereon, or the TREASUTY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89–17507 Filed 7–21–89; 8:45 am]

BILLING CODE 4810-40-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (203C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before August 25, 1989.

Dated: July 14, 1989.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Revision

1. Veterans Benefits Administration
2. Matured Endowment Notification
3. VA Form 29–5767
4. This form is being revised to include the respondent burden information and information concerning the toll-free telephone service.
5. On occasion
6. Individuals or households
7. 8,600 responses.
8. 1/3 hour
9. Not applicable

[FR Doc. 89–17479 Filed 7–25–89; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Patti Viers, VA Clearance Officer (732), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3172.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before August 25, 1989.

Dated: July 14, 1989.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

New Collection

1. Office of Budget and Finance (Controller)
2. Collection of Government Funds Via Credit Cards
3. VA Form 4–5579
4. Use of this form will allow credit cards to be used to collect funds due the Government. Information collected is needed to properly record collection of the payment and to assess liability to the debtor's credit card account.
5. On occasion
6. Individuals or households
7. 10,000 responses
8. 1/60 hour
9. Not applicable

[FR Doc. 89–17480 Filed 7–25–89; 8:45 am]

BILLING CODE 8320-01-M

Evaluations by the Department of Veterans Affairs of Scientific Studies Related to the Effects of Exposure to Ionizing Radiation

AGENCY: Department of Veterans Affairs.

ACTION: Notice of evaluations.

SUMMARY: The "Veterans' Dioxin and Radiation Exposure Compensation Standards Act" (Pub. L. 98–542), and implementing regulations, 38 CFR 1.17, require the Department of Veterans Affairs (VA) to publish from time to time evaluations of scientific or medical studies relating to the adverse health effects of exposure to ionizing radiation. This notice is concerned with the following scientific studies reviewed in November 1986 by the Scientific Council

BEST COPY AVAILABLE

of the Veterans Advisory Committee on Environmental Hazards, an advisory committeee established pursuant to Pub. L. 98-542.

FOR FURTHER INFORMATION CONTACT: Roger H. Shannon, M.D., F.A.C.R., Director, Radiology Service (114), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2434.

SUPPLEMENTARY INFORMATION: In reviewing each of these studies, the following factors were considered:

(a) Whether the study's findings are statistically significant and replicable,

(b) Whether the study and its findings have withstood peer review,

(c) Whether the study's methodology has been sufficiently described to permit replication,

(d) Whether the findings of the study are applicable to the veteran population of interest, and

(e) The views of the Veterans Advisory Committee on Environmental Hazards. (The views of the advisory committee are contained in the minutes of these meetings. Copies of the minutes may be obtained from Frederic Conway, Special Assistant to the General Counsel (02C), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2182.

Studies Reviewed

a. Bross and Bross, "Do Atomic Veterans Have Excess Cancer? Conclusive New Evidence on Radiation Hazards" (unpublished paper dated September 5, 1985).

b. Bross, "Additional Information on the Risks of the Servicemen Exposed to Fallout From Atmospheric Nuclear Weapons Tests" (unpublished paper dated September 12, 1986).

Dated: July 21, 1989.

Edward J. Derwinski,

Secretary.

Evaluations

In the first paper, the authors analyzed data reported in a paper by the National Academy of Sciences (NAS) entitled, "Mortality of Nuclear Weapons Test Participants." The NAS paper concluded that there was no consistent or statistically significant evidence for an increase in leukemia or other malignant disease in nuclear test participants. The authors contended that the NAS erroneously compared the mortality rates for the atomic weapons test participants with the rates of death in the white male general population. They argued that if a correction were made for the selection bias in the use of Standardized Mortality Ratios, a statistically significant excess in deaths due to leukemia and other malignant diseases emerges. One method of correction they proposed was to employ a Corrected Mortality Ratio. The basis for the adjustment that the authors selected was the Standardized Mortality Ratio for cardiovascular disease. When this Corrected Mortality Ratio is applied, the authors contended, a large number of excess deaths from cancer and other causes emerges, particularly for digestive, respiratory, and genital cancers and also for leukemia.

Focusing on the PLUMBBOB shot of the atomic weapons tests, the authors attempted a dose-response analysis. They concluded that at exposures of 300 millirem or less, there was little sign of excess deaths from solid cancers. At doses higher than 300 millirem, all sites of cancer showed statistically significant excess deaths.

In the second paper, the use of 300 millirem exposure as the cutoff for comparison was further discussed. The author again argued that utilizing this approach revealed an excess of cancers among those veterans in the PLUMBBOB series who had exposures greater than 300 millirem.

The Veterans Advisory Committee on Environmental Hazards had several comments on these papers. First, the Committee believed that the authors failed to recognize that the "healthy veteran effect" declines over time as the population ages. Second, the Committee noted that the selection of cardiovascular disease as the correction factor may itself have biased the result. They commented that because cardiovascular disease often manifests itself through early signs and symptoms, many individuals with cardiovascular disease would be excluded from military service. They also observed that malignant disease, on the other hand, is more difficult to detect at an early stage, particularly for cancers of the respiratory and digestive tracts. Therefore, the Committee commented, it would not be surprising to find a lower Standardized Mortality Ratio for cardiovascular disease than for malignancy in a screened population. The Committee questioned, therefore, whether it was appropriate to use the Standardized Mortality Ratio for cardiovascular disease as the correction factor for measuring the healthy worker effect for malignant disease. They also oberved that if some other disease were selected as the basis for correction, there would be no excess cancer in the exposed population as compared to the control population.

The second major point on which the Committee disagreed with the authors was the selection as the control group those veterans who had exposure of 300 millirem or less and the limitation of the analysis to the PLUMBBOB series. The Committee observed that if all five of the series of shots examined by the National Academy of Sciences were divided into two groups on the basis of exposure to more or less than 300 millirem, only in the PLUMBBOB series is there evidence of an elevated Standardized Mortality Ratio for the "higher" dose group. If the effect were in fact a true effect, one would expect it to occur in all of the tests in the series rather than be restricted to one test. The Committee also observed that if a different level of exposure were selected, for example 100 millirem, the difference in the Standardized Mortality Ratio between the control and the exposed group in the PLUMBBOB series is no longer significant.

The Committee believed that the analysis suggested by the authors was not appropriate. They commented that all that it demonstrated was that if the division point is changed, different results are obtained and those results are not uniform across the series of tests.

The Department agrees with the analysis and critique of the Advisory Committee.

[FR Doc. 89-17422 Filed 7-25-89; 8:45 am]

BILLING CODE 8320-01-M

federal register

Wednesday
July 26, 1989

Part II

Department of Defense

Corps of Engineers, Department of the Army

33 CFR Part 334

Danger Zone; Pacific Ocean Between Point Sal and Point Conception, CA; Final Rule

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Danger Zone; Pacific Ocean Between Point Sal and Point Conception, CA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps of Engineers is amending the regulations which establish danger zones in the Pacific Ocean near the Vandenberg Air Force Base (VAFB), California. In the best interest of the public, this amendment will extend the review period for these regulations for an additional five years. The regulations will be reviewed again in 1994. At the request of the U.S. Department of the Interior, Minerals Management Service (MMS), we are also amending the regulations by adding a reference to the MMS in the procedures for evacuation of personnel from drilling platforms.

ADDRESS: HQUSACE, CECW-OR, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph T. Eppard at (202) 272-1783 or Mr. Dave Castanon at (213) 894-5606.

SUPPLEMENTARY INFORMATION: Regulations were promulgated by the Department of the Army under 33 CFR 334.1130 to govern the use and navigation of danger zones located in the Pacific Ocean between Point Sal and Point Conception, Santa Barbara County, California. These danger zones were established to meet the security requirements of the Space and Missile Test Center, (SAMTEC), Vandenberg Air Force Base, and the exceptional hazard to persons and property due to missile launches and related activities. The regulations as presently promulgated remain in effect but required review and were reviewed during September 1987. On 24 March 1988, the Corps published a proposed rule in the **Federal Register**, 53 FR 9671-9672, which would eliminate the scheduled five-year reviews. Due to comments received in response to the proposed rule, we have decided that it is in the best interest of the public to continue to review the regulations every five years as is presently required. Accordingly, the regulations in 33 CFR 334.1130 will be reviewed again in August, 1994.

The regulations in § 334.1130 (b)(8) are amended by adding the U.S. Department of the Interior, Minerals Management Service as a proponent of evacuation procedures for certain oil drilling platforms.

Economic Assessment and Certification

This final rule is issued with respect to a military function of the Defense Department and the provisions of E.O. 12291 do not apply. I hereby certify that if adopted, this rule will have no significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 334

Navigation (water), transportation, danger zones. Accordingly, the Corps of Engineers is amending 33 CFR 334.1130 (b)(8) and (b)(11) as set forth below.

PART 334—DANGER ZONES AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3)

2. Section 334.1130(b) (8) and (11) is revised to read as follows:

§ 334.1130 Pacific Ocean, Western Space and Missile Center (WSMC), Vandenberg AFB, California; danger zones.

* * * * *

(b) * * *

(8) Fixed or movable oil drilling platforms located in zones identified as hazardous and closed in accordance with this regulation shall cease operations for the duration of the zone closure. The zones shall be closed continuously no longer than 72 hours at any one time. Such notice to evacuate personnel shall be accomplished in accordance with procedures as established by the Commander, WSMC, the U.S. Department of the Interior, Minerals Management Service and the oil industry in the adjacent waters of the outer continental shelf.

* * * * *

(11) The regulations in this section shall be in effect until further notice. They shall be reviewed again during August 1994.

Date: July 17, 1989.

Approved: Wilbur T. Gregory,

Colonel, U.S. Army, Executive Director of Civil Works.

[FR Doc. 89-17425 Filed 7-25-89; 8:45 am]

BILLING CODE 3710-08-M

federal register

Wednesday
July 26, 1989

Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171 Through 177
Training for Hazardous Materials Transportation; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 through 177

[Docket No. HM-126F, Notice No. 89-4]

RIN 2137-AB26

Training for Hazardous Materials Transportation

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: RSPA is proposing to amend the Hazardous Materials Regulations to enhance training requirements for persons involved in the transportation of hazardous materials. Based on information provided to RSPA through its hazardous materials incident reporting system, human error is the probable cause of most transportation incidents, and associated consequences, involving the release of hazardous materials. By requiring enhanced training for persons involved in the transportation of hazardous materials, it is intended to increase awareness of safety consideration and regulatory requirements involved in transporting hazardous materials and, thus, reduce the occurrence of hazardous materials incidents caused by human error.

DATES: *Comments:* Comments must be received on or before November 24, 1989.

Public hearing: Public hearings will be held 9:30 a.m. to 5:00 p.m. on October 3, 1989 in Salt Lake City, Utah and October 11, 1989 in Washington, D.C. If the number of speakers warrants an extra day, the Salt Lake City hearing will be extended through October 4.

ADDRESSES: *Comments:* Address comments to Dockets Unit, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590. Comments should identify the docket and be submitted, if possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The Dockets Unit is located in Room 8421 of the Nassif Building, 400 Seventh St., SW., Washington, DC 20590. Public dockets may be reviewed between the hours of 8:30 a.m. to 5:00 p.m., Monday through Friday, except holidays.

Public hearing: The October 3, and October 4 if necessary, 1989 public hearing will be held at the Doubletree Inn, 215 W.S. Temple Street, Salt Lake City, Utah. The October 11, 1989 hearing will be held at the FAA Auditorium, Third floor, Federal Office Building 10A, 800 Independence Avenue, SW., Washington, DC.

Any person wishing to present an oral statement at the public hearing should notify the Dockets Unit, by telephone or in writing, at least two days in advance of the hearing date. Each request must identify the speaker; organization represented, if any; daytime telephone number; and the anticipated length of the presentation, not to exceed ten minutes. Written text or oral statements should be presented to the hearing officer prior to the oral presentation.

FOR FURTHER INFORMATION CONTACT: Carl V. Strombom or Delmer F. Billings, Standards Division, Office of Hazardous Materials Transportation, RSPA, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, Telephone: (202) 366-4488.

SUPPLEMENTARY INFORMATION:

I. Purpose and Objectives of This Rulemaking

In this document, RSPA is proposing to amend the Hazardous Materials Regulations (HMR) to require that persons who perform functions involving the transportation of hazardous materials receive training concerning regulatory requirements applicable to those functions, and persons who work in proximity to hazardous materials receive training concerning hazardous materials awareness and safety procedures.

Although RSPA refers to the term "in proximity" throughout this notice, the term has not been defined. RSPA is especially interested in obtaining comments on this term. In particular, RSPA solicits comments on the following: (1) What types of workers would be covered by the term "in proximity"?, (2) Is the term "in proximity" too vague? If so, how should "in proximity" be defined or clarified?

II. Background

A. Existing 49 CFR Training Requirements

The HMR are codified in Title 49 of the Code of Federal Regulations (49 CFR, Parts 171-179). Currently, §§ 173.1, 174.7, 175.20, 176.13 and 177.800 of 49 CFR contain general requirements for training. Section 173.1(b) states, in part, "* * * It is the duty of each person who offers hazardous materials for transportation to instruct each of his officers, agents, and employees having any responsibility for preparing hazardous materials for shipment as to applicable regulations in this subchapter." In Part 174, which addresses carriage by rail, § 174.7 states "Unless this subchapter specifically provides that another person is to perform a particular duty, each carrier, including a connecting carrier, shall perform the duties specified and comply with each applicable requirement of this part, and *shall instruct its employees in relation thereto.*" (emphasis added). Similar general requirements to instruct employees are contained in §§ 175.20, 176.13 and 177.800 for carriage by aircraft, vessel and motor vehicle, respectively. The purpose of these training requirements is to ensure that persons involved with hazardous materials transportation are aware of their duties and responsibilities under the HMR.

In addition to these general requirements for training, the HMR also contain specific training requirements applicable to carriers and drivers who transport flammable cryogenic liquids (§ 177.816) and highway route controlled quantities of radioactive materials (§ 177.825) by motor vehicle. For these categories of hazardous materials, carriers must insure that drivers receive written training which includes, in part, instruction concerning the requirements in the HMR which pertain to the material being transported and the properties and potential hazards of that material.

B. CRS Report

On April 4, 1986, the Congressional Research Service (CRS) published a report entitled "Should DOT's Training Regulations Affecting Workers Handling, and Drivers Transporting, Hazardous Materials Be Strengthened". Although the CRS report recognized that the hazardous materials transportation industry has a good safety record, the report concluded that "* * * increased training could reduce the frequency of incidents, lives could be saved, the amount of property losses and the number of injuries could be reduced".

The following is the CRS report's analysis of DOT's current regulations which pertain to the training of workers handling and drivers transporting hazardous materials by highway:

1. DOT's general training regulations covering workers handling hazardous materials in highway transportation can, at best, be considered to be vague; and they do not specify the nature, content, objectives, or length of the required instruction, its desired frequency, or when new employees should be trained. In addition, DOT's regulations do not require a certification or a testing program designed to ensure that these workers have a basic understanding of and sensitivity toward the hazardous properties of, and risks associated with, the chemical with which they are dealing; nor do they require testing to ensure worker's awareness and understanding of appropriate emergency response procedures pertinent to releases of hazardous materials. The DOT training concept is, in general, to simply require thorough instruction of employees, leaving much in the way of training specifics, techniques, and testing up to the carrier.

2. Unlike many other safety concerns that are governed by complex and detailed HMT regulations, the Department, for the highway mode, appears to have devoted little attention to regulations addressing the major role that human error is judged to play as the probable cause of most hazardous materials transportaiton incidents. DOT's HMT training regulations do not emphasize the importance of human error and human engineering factors.

3. Although DOT's training requirements for drivers can vary depending on the material being transported, they are not consistently based on the potential risks associated with the commodity being shipped. Fairly rigorous and detailed Federal training requirements exist for drivers transporting highway route controlled quantity radioactive materials and flammable cryogenic liquids in cargo tanks on a public highway. But, drivers transporting most other hazardous materials, such as liquified petroleum gas, poisons, corrosives, and various regulated wastes, are generally not subject to the same detailed Federal driver training requirements. Some of these other hazardous materials, if released, can kill and injure, just as can the release of certain radioactive and flammable cryogenic materials. For example, from a technical and safety perspective, it makes little sense for DOT to have fairly detaled training regulations for drivers transporting liquified natural gas, which is a flammable cryogenic, but not for drivers transporting liquified petroleum gas. Both materials if improperly released, can result in catastrophic events.

4. DOT's training regulations for drivers are much more geared toward operational control of the vehicle than toward ensuring recognition of, and appreciation for, the hazards of the materials being transported.

5. As previously discussed, most drivers transporting hazardous cargoes simply have to take, but not necessarily pass, a 66-question, open-book examination; must be certified on various driver qualification requirements, including a road test; and be "thoroughly instructed" on the regulations. The eight questions on DOT's written examination dealing with the HMTR do not comprehensively test knowledge or understanding of these regulations. DOT's examination does not test whether someone is trained in, or has a basic understanding of, emergency response procedures appropriate to the job and responsibilities of being a driver of a truck transporting hazardous materials. A working knowledge of this information might be of life-saving benefit to drivers, emergency response personnel, such as police and fire fighters, and the affected public in case of an incident. Numerous experts who were interviewed for this report pointed out the need to improve this examination.

6. Although DOT's specific requirements for drivers transporting certain radioactive materials and flammable cryogenics are fairly detailed, DOT does not require a formal test and demonstration of the required knowledge called for by these regulations. DOT simply states that the drivers transporting these materials must be given written training materials.

7. Although DOT inspectors have cited alleged violations of various training regulations, the Department has only occasionally pursued an enforcement case to the point of collection of a penalty assessment.

8. DOT's regulations do not provide the Department with any quantitative measures of how well drivers or workers have been trained. Currently, DOT must rely primarily on its infrequent inspections, supplemented with information from State and local inspections, to obtain insights into how well industry is complying with, or understanding, its regulations.

The CRS report recognized that many questions remain unanswered when considering the adopting of stronger training requirements such as what is an appropriate level of training, particularly in terms of cost effectiveness, and what areas of the regulations training should encompass, i.e., what technical subjects and which procedures should be included in a training program. The CRS report points out that: (1) It would be difficult to develop the numerous training courses necessary to effectively train large segments of the hazardous materials transportation industry on the HMR; (2) in many instances, the private sector may already be providing a sufficient and cost effective level of training; and (3) the development of regulations to implement some of the training concepts could prove to be difficult and time consuming and involve DOT in unproductive micromanagement.

C. DOD Petition for Rulemaking

In a petition for rulemaking dated May 9, 1986, the Military Traffic Management Command (MTMC), on behalf of the Department of Defense (DOD) requested that 49 CFR 177.816 be made applicable to all drivers of hazardous materials. Section 177.816 requires motor carriers that transport flammable cryogenic liquids in cargo tanks to provide written training to their drivers. The training must be given before a driver is permitted to transport the hazardous material, and repeated at least once every two years thereafter. The training program must include instruction pertaining to requirements in the HMR applicable to cryogenic liquids, requirements in the Federal Motor Carrier Safety Regulations (49 CFR Parts 383, 387, and 390 through 397) applicable to drivers, the properties and potential hazards of the materials transported, safe vehicle operation including handling characteristics, emergency features and loading limitations, and procedures to be followed in case of accident or other emergency. The motor carrier must record the training in the driver's qualification file (required under 49 CFR 391.51), and the record must include the driver's name and operator's license number, the dates when training was provided and when next due, name and address of the person providing training, and a copy of the written training material. The MTMC proposal modified the language of § 177.816 to extend the scope of applicability to all drivers of motor vehicles transporting hazardous materials and to incorporate certain provisions currently found in § 177.825 for drivers of highway route controlled quantities of radiocative materials, which require that a driver have a certificate of training in his or her possession during transportation.

In support of its petition and proposed revision of § 177.816, MTMC states:

> * * * The provisions in the proposal are essentially a synthesis of existing requirements, with the scope of applicability extended to cover more than the two exceptional groups (flammable cryogenics and radioactive materials). We suggest that it apply to all hazardous materials shipments.
>
> A change of some sort is needed in 49 CFR 177.816, we feel, in part because the title of this section of rules misleads the reader to believe that these will be general training requirements rather than limited category-specific ones. Clearly there are needs in the Federal law for training requirements for drivers of hazardous material shipments. This section should provide what is expected and needed under the title "Training."
>
> Our interest in this action stems from our role as one of the largest domestic shippers of hazardous materials. Initially, we considered submitting a petition to add to the rules a section similar to 177.816 that would apply to shipments of Class A and B explosives. Upon reflection, the recommendations described above and in the enclosure seem more complete and ultimately more useful in preventing or intelligently managing transportation accidents involving dangerous cargoes.

III. DOT Proposal

This notice of proposed rulemaking (NPRM) is generally responsive to the problems identified by CRS and DOD and RSPA's own evaluation of the need for enhanced training requirements in the HMR. RSPA agrees, for the most part, with the CRS assessment of existing training requirements in the HMR and believes that these requirements are deficient. Enhanced training requirements, as envisioned in

this proposal, should improve compliance with packaging, hazard communication and handling requirements and help assure that transportation workers are aware of procedures to take when exposed to unintentional releases of hazardous materials.

The requirement to instruct, in the previously mentioned sections of the HMR, applies solely to instruction concerning regulatory requirements. In this notice, it is proposed to expand this requirement to address four categories of training: General awareness/familiarization, function-specific, safety and drivers training. The first three categories would apply to all modes of transportation while the fourth category of drivers training would apply only to highway transportation and motor vehicle operators.

General awareness/familiarization training is intended to make persons aware of the HMR and the purpose and meaning of hazard communication provisions, such as labeling, marking, and placarding provisions. All persons who perform functions covered by the HMR or who work in a transportation facility in proximity to hazardous materials would receive this training.

Persons who perform functions covered by the HMR would be required to be trained in how to perform those functions. For example, a person responsible for executing hazardous materials shipping papers would receive training concerning the applicable requirements of Subpart C of Part 172 and any applicable modal requirements, such as those in § 174.25 for rail shipments or §§ 176.24 and 176.27 for water transportation. This type of training is essentially what is required under the HMR at present.

Persons who work in proximity to hazardous materials during the course of its transportation (e.g., drivers and warehouse workers) and their supervisors would receive safety training. This training is intended to provide information concerning the hazards of the materials to which the person might be exposed, appropriate personal protection measures, and, if applicable, how to use emergency response information, methods and procedures for accident avoidance, and procedures to be followed in the event of an unintentional release of hazardous materials. The proposal is not intended to satisfy the training needs and requirements for transportation workers whose primary responsibilities involve emergency response. These persons are subject to training requirements prescribed by the Occupational Safety and Health Administration (OSHA) of the Department of Labor in 29 CFR 1910.120 which are discussed elsewhere in this preamble. Rather, the training is intended to address those transport workers who may have responsibilities for elemental emergency response, such as notifying others of the emergency, using fire extinguishers or other emergency control features, or otherwise mitigating the severity of release of materials. For example, a driver of a cargo tank containing hazardous materials would most likely not be expected to perform full emergency response services in the event of a leaking tank. However, the driver is responsible for notifying the appropriate authorities and may be assigned responsibility, by his employer, for using absorbent materials, diking a minor spill area, or as many similar immediate incident mitigation measures as possible.

Although all modes of transportation are covered by the requirements of this proposed rule, the final category of training being proposed is driver training for motor vehicle operators. Based on the merits of the CRS report and RSPA's own evaluation, improved hazardous materials training of drivers would likely have a significant beneficial impact on transportation safety. There are far more shipments of hazardous materials and, correspondingly, incidents involving the release of hazardous materials, in the highway mode of transportation than for rail, water and air combined. Improved training of drivers has the potential for making significant gains in accident avoidance and accident mitigation. Another incentive for RSPA's proposal is to continue the rulemaking effort begun by the Federal Highway Administration (FHWA) under Docket MC-120, discussed elsewhere in this preamble.

Drivers would be subject, in most instances, to general awareness/familiarization, function specific and safety training. In addition, it is proposed to require drivers training on the safe operation of the motor vehicle which they expect to operate and the applicable requirements of the Federal Motor Carrier Safety Regulations. At a later date, RSPA may consider more specific training requirements for operators of aircraft, trains, and vessels.

RSPA's proposal addresses broad subject areas in which training is to be received. With the exception of cargo and portable tank operations, detailed content of training would not be specified. RSPA does not have the resources to develop specialized courses of instruction addressing every phase of hazardous materials transportation. Furthermore, it is believed that an employer is better able to determine the training needs of its employees, particularly with regard to function specific, safety and driver training. For the same reason, no attempt has been made to specify the level and duration of training, which will vary with job duties and responsibilities. For example, training for a person who executes shipping papers might consist of a brief orientation on the general provisions of the HMR and written training on applicable shipping paper requirements in Subpart C of Part 172. It is believed that in most cases, an employee could receive an appropriate amount of training (to include general awareness, function specific and safety training) in a session of minimal duration.

The DOT recognizes that cargo and portable tank vehicle operations, and the qualifications and training of tank vehicle drivers, present special concerns. For example, in the FHWA's final rule on Commercial Drivers Licenses (CDL), statistics are cited for accidents involving tank vehicles, which includes both cargo and portable tanks in the FHWA definition (52 FR 27642). In 1986 there were 818 accidents reported to the Department involving tank vehicles transporting hazardous materials resulting in 136 fatalities, 761 injuries, and over $17 million in property damage. The most important operating difference between driving a cargo tank motor vehicle or a vehicle containing a portable tank and a standard dry freight truck is liquid product surge. Other factors that may threaten vehicle stability and present a safety risk, include: Sloshing liquids in various tank designs; various loading conditions; and the impact of liquids on driving maneuvers such as braking, backing, turning, and combined braking/steering maneuvers.

Because of the unique characteristics of cargo tank motor vehicles and vehicles containing a portable tank, and because of the potential for damage inherent in their cargoes, the RSPA regards special training and licensing requirements for their drivers as essential to the public safety. For example, the FHWA has already ruled (52 FR 27628) that drivers of tank vehicles carrying placardable hazardous materials must have not only a CDL but also two separate endorsements ("tank vehicle" and "hazardous materials"), each of which requires a specialized knowledge test. RSPA believes special emphasis should be placed on these types of vehicles. Therefore, the rule proposed herein sets forth additional

training requirements in § 177.816(b) for this safety sensitive class of vehicles.

RSPA has intentionally made the proposed requirements as broad as is practicable to accommodate training programs and materials currently used in both the public and private sectors. This approach provides latitude to both the private and public sectors for the development of training programs or materials.

It is proposed that training be received within 30 days of employment of a person to perform hazardous materials job functions subject to the requirements of the HMR. This requirement, however, would not restrict a new employee from performing their hazardous materials job functions under proper supervision prior to the employee's receipt of training. Persons would also be retrained within thirty days upon change of hazardous materials job functions and at least once every two years thereafter.

RSPA believes a two year cycle is necessary for an employee to remain adequately informed of the HMR because retention of certain kinds of information fades quickly if it is not frequently applied or reenforced through training, and because of periodic changes in the HMR. RSPA encourages comments on the two year cycle and whether it should be longer or shorter.

While responsibility for providing training would remain on the employer, the required training could be provided by company training programs or through the use of outside training firms or consultants. This is consistent with existing requirements in the HMR.

RSPA also proposes a requirement that employers create and maintain a record reflecting completion of required training for each employee. This requirement is believed necessary in order to verify compliance with the training requirements.

Considering the diversity of job functions of persons addressed by this proposal, RSPA does not believe it is practical to propose requirements for testing employees to ensure that they have been succesfully trained. Comments are solicited as to the need, if any, for regulatory requirements for testing, the scope and content of such testing requirements, and who should be responsible for administering them.

Enforcement of the proposed training regulations pertaining to carriers would remain the primary responsibility of the various modal administrations. For example, the FHWA plans to enforce the proposed training requirements when it conducts safety and compliance reviews of individual motor carriers. If motor carriers are determined to be in non-compliance with the training requirements, the FHWA will take remedial actions, which could result in penalties and fines.

The expansion of Federal training requirements proposed in this Notice inevitably requires consideration of the extent to which such requirements would preempt related or overlapping state training requirements. In accordance with Executive Order 12612, RSPA intends to restrict its preemption of state law to the minimum level necessary to achieve the objectives of the Hazardous Materials Transportation Act (HMTA) and the HMR.

However, RSPA views these proposed training requirements, insofar as they apply to drivers engaged in the highway transportation of hazardous materials, as minimum requirements which a state may only exceed if its greater requirements do not directly conflict with the HMR requirements and apply only to individuals domiciled in that state. Thus, more stringent or more detailed state training requirements for drivers not in conflict with the HMR could be "consistent," and therefore, not preempted under section 112(a) of the HMTA (49 App. U.S.C. 1811(a)), so long as they applied only to drivers domiciled in that state. The foregoing principles are reflected in proposed § 172.701.

The following is an example of how this approach to preemption would operate with respect to hazardous materials endorsements to drivers licenses. The Commercial Motor Vehicle Safety Act of 1986 provides for a single commercial driver's license (CDL) for each driver of a commercial motor vehicle (CMV). Section 12009(a)(14) of that Act and an implementing FHWA rule, 49 CFR 383.73 (53 FR 27628, 27651, July 21, 1988), require states to extend reciprocity to CDL's issued by other states. Under the FHWA rule and the rule proposed in this Notice, a state may impose more stringent hazardous materials training requirements upon its own commercial motor vehicle drivers than do Federal regulations—but may not do so with respect to a driver holding another state's CDL with a hazardous materials endorsement thereon.

RSPA's proposed approach to this preemption issue is intended to avoid a chaotic and burdensome situation in which numerous states would apply separate and possibly inconsistent training requirements to drivers engaged in the highway transportation of hazardous materials.

In addition to the comments requested elsewhere in this notice, RSPA is especially interested in receiving comments that concern estimates, by mode of transportation, of the cost of training with regard to each of the four categories of training proposed—in particular the cost of training not presently provided, estimates of the benefits to be derived from the various categories of training in terms of reduction or mitigation of property damage and personal injury, and comments concerning the adequacy of the proposed training for drivers and the possible need for additional training requirements for operators in other modes of transportation.

IV. Section by Section Summary of Proposals

A. Part 171; General Information, Regulations, Definitions

Section 171.8. The definition of crewmember would be revised to include those persons assigned to perform duties on aircraft during flight time, on a motor vehicle or a vessel during transportation, or in train or engine service.

B. Part 172; Hazardous Materials Table and Hazardous Materials Communications and Training Requirements

Part 172. A new Subpart H—Training, including §§ 172.700 through 172.704, would be added and the Part title revised to reflect the additional training requirements.

Section 172.700. A new § 172.700 would be added, identifying the purpose of the training requirements, which are generally to provide information and training in the functions a person performs, safety and accident preventative measures and proper handling of incidents involving hazardous materials. This section also defines "training" as a systematic program that ensures a person has knowledge of hazardous materials and the hazardous materials regulations that govern their transportation. For example, an employee may satisfy this requirement by on the job training, showing evidence of previous training in the functions which he/she performs, formal classroom training or by taking correspondence courses. However, successful completion of one or all of the above may be necessary before an employer is satisfied that the employee is adequately trained in accordance with the proposed training requirement. Much of this hazardous materials knowledge can be obtained through present industry and trade organization training programs as mentioned in the discussion of § 172.704 in this preamble.

Employers with employees who have demonstrated hazardous materials knowledge by obtaining a hazardous materials endorsement to their commercial drivers licenses (CDL), a cargo tank endorsement to the CDL, a USCG license that requires hazardous materials knowledge, or through participation in any other job training or licensing program, may accept such demonstration of knowledge to satisfy the appropriate requirements of this notice such as general awareness/familiarization training or other required training. However, all such training would still be subject to the two year frequency requirements of this notice.

Section 172.701. A new § 172.701 would be added to emphasize that OHMT's training requirements are minimum requirements. The section would also authorize a state to impose more stringent training requirements on drivers so long as those requirements do not conflict with the HMR and apply only to drivers domiciled in that state.

Section 172.702. The proposals contained in this section identify those persons to whom the training requirements apply. Generally, these requirements would apply to all persons involved in the preparation, documentation, packaging, marking, labeling, shipping, handling, and transporting of hazardous materials. Further, those individual working in proximity to hazardous materials would be required to be trained in certain aspects of the regulations, such as labelling, placarding, and marking provisions of the HMR.

Although employers would be responsible for ensuring that their employees are properly trained, it would be acceptable for an employer to use the services of an employee on loan from another company, a transfer employee, or any other employee that had received the required hazardous materials transportation training from another source provided that training could be verified. Retraining would not be necessary as long as all required training for the job functions performed had occurred during the two year frequency requirement proposed by this notice.

Section 172.704. This section identifies the three degrees of training that would be required. Generally, everyone subject to these training requirements would be required to be provided general awareness and familiarization training. This training would include trianing in such areas as the various hazard classes and hazard communication requirements and their meaning.

Those persons performing specific tasks subject to the HMR, such as packaging or shipping paper documentation, would be required to be provided function specific training designed in such a fashion so as to assure that they are able to perform their task in compliance with the requirements of the HMR. Additional safety training would be required, identifying the hazards of the materials, proper protection from exposure, use of emergency response information, and the methods and procedures for accident avoidance.

Although a specific level, duration, and content of the training provided is not specifically identified, such training would be required to be presented so that those involved could properly perform their specific functions and be knowledgeable in the requirements of the HMR. Periodic training would be required. RSPA does not believe that this would cause an undue burden on employers, especially since many employers have established training programs. For instance, rail carriers are required by the Federal Railroad Administration (FRA) to periodically instruct their employees on the meaning and application of the railroad's operating rules. In addition, rail carriers are required to be familiar with operating timetables. Both the timetables and the operating rules contain information on hazardous materials. Present rail carrier training on the rules and timetables would help the rail industry comply with the requirements of the proposed rule.

Professional and trade associations also provide training that could help meet the requirements of this section. The American Trucking Association provides training through its state organizations and through the sale of items such as the publication, Handling Hazardous Materials, which describes the harzardous materials regulations in layman's terms, and a slide program that consists of different modules on specific hazardous materials requirements, such as shipping papers or marking or labeling. The National Tank Truck Carriers, Inc., has produced and sells a slide program and accompanying manual for tank truck drivers on flammable liquids, the most commonly transported hazard class carried by its members.

In addition to the various trade organizations, some trucking companies provide hazardous materials training for their own personnel or utilize the resources of various consulting firms to train company employees. Present training performed in this manner could also help meet the requirements of this proposal.

This notice proposes that recurrent training be provided at least once every two years, that persons who change hazardous materials job functions be trained in those new functions within thirty days of their job change, and that new employees be trained within thirty days after being hired to perform a function subject to the HMR. However, the requirements of this section do not preclude the use of an employee who requires training, in a hazardous materials job function if that employee is under the supervision of a properly trained and knowledgeable employee.

Further, a record of the training would be required to be maintained by the employer for the duration of the employee's employment and for 90 days thereafter. The record of training would contain the name and signature of the person receiving the training, the date it was presented, a copy of the training material presented or a description of the training given, and the name and signature of the individual presenting the training.

RSPA encourages readers to submit comments regarding the requirement for a training record. RSPA is particularly interested in comments that address the following questions:

1. Is the record of training proposed in this notice the best method to certify completion of required training? If not, what method would be better?

2. Would self certification by an employer be an acceptable method to ensure completion of required training? What documentation should be maintained?

C. Part 173—Shippers—General Requirements for Shipments and Packagings

Section 173.1. In § 173.1 paragraph (b) would be revised to reflect the proposed new requirements for training of persons involved in the shipment and transportation of hazardous materials.

D. Part 714—Carriage by Rail; Part 175—Carriage by Aircraft; and Part 176—Carriage by Vessel

Sections 174.7, 175.20, and 176.13, respectively. These respective sections would be revised to specifically require employers to provide the training as required by the new Subpart H of Part 172. Section 176.13 would also require the record of training required by § 172.704(c) to be kept on board any vessel with crewmembers.

E. Part 177—Carriage by Public Highway

Section 177.800. The last sentence of paragraph (a) would be deleted and a new § 177.800a would be added.

Section 177.800a. This new section would be added to specify that employers provide the training as required in Part 172 and the additional driver (operator) training required by this Part.

Section 177.816. This section would be revised to specifically identify the additional training that would be required to be presented to drivers of motor vehicles. This section would require: Drivers be provided training in the requirements of the Federal Motor Carrier Safety Regulations, 49 CFR Parts 383, 387, and 390 through 399; the operation of the motor vehicle that the driver will be operating, including vehicle characteristics; proper procedures regarding tunnels, bridges, and railroad crossings; vehicle controls, including safety and emergency equipment; requirements for attendance and parking; and any other aspect relative to the safe operation of the motor vehicle. In addition, specialized training requirements for cargo tank motor vehicle operators and drivers of motor vehicles containing portable tanks are contained in this section. To avoid duplication of the requirements of proposed § 172.704, the requirements for a separate special training record for the drivers of vehicles that contain flammable cryogenic liquids would not be necessary and would be removed. A discussion regarding the implementation of § 177.816 appears later in this notice.

Section 177.825. In § 177.825, paragraph (d) would be revised to eliminate unnecessary duplication of the proposed training requirements. Paragraph (d)(1) would be changed to refer the reader to the proposed training requirements found in Subpart H of Part 172 and § 177.816. For drivers of highway route controlled quantities of radioactive materials, paragraph (d)(2) would be revised to remove the requirement for employers to place a copy of the record of training in the driver's qualification file as this would be a duplication of the requirements in proposed § 172.704. For these drivers, the requirements of paragraph (d) (2) and (3) to have a copy of the record of training and a route plan in the driver's possession would remain unchanged.

V. Relationship to Other Agencies' Existing or Proposed Rules

A. FHWA

On May 13, 1986, FHWA published a notice of proposed rulemaking in the **Federal Register** (51 FR 17572; Docket No. MC-120, Notice No. 86-3) in response to section 206 of the Motor Carrier Safety Act of 1984. The notice proposed revisions to driver qualification requirements in the Federal Motor Carrier Safety Regulations to insure that drivers who operate either commercial motor vehicles transporting certain categories of hazardous materials or cargo tank commercial motor vehicles requiring placards meet additional or more stringent qualification requirements. In the preamble to Docket No. MC-120, FHWA stated the following:

> Upon leaving a shipper's facility or a motor carrier's terminal, a driver operating a commercial motor vehicle laden with hazardous materials is, for all intents and purposes, on his/her own. In the event of an accident involving that motor vehicle, a driver having certain knowledge of the hazardous materials being transported can greatly assist emergency response personnel and can mitigate potential catastrophic occurrences. Further, basic knowledge of the hazardous materials requirements can help keep accidents and incidents from occurring. With this in mind, the FHWA proposes to require a driver, who will be operating a commercial motor vehicle used to transport Table 1 hazardous materials or operating a cargo tank commercial motor vehicle which must be placarded, to receive certain basic hazardous material training. We believe that the driver must have a functional knowledge of the Hazardous Materials Regulations addressing: (1) Shipping papers, (2) package marking requirements, (3) package labeling, (4) packaging requirements, (5) commercial motor vehicle placarding, and (6) the loading and storage of H/M. Further, the driver must have a functional knowledge of the requirements contained in Part 397 of the FMCSR pertaining to: (1) Vehicle attendance; (2) vehicle parking; (3) route selection; and (4) smoking by the driver.
>
> Individuals who will be operating cargo tank commercial motor vehicles required to be placarded in accordance with § 177.823 of this title must, in addition to the training described above, be trained in the: (1) Operation of the emergency control features of the cargo tank; (2) operation of the emergency equipment required by § 393.95; and (3) proper loading and unloading of the cargo tank, including vehicle attendance requirements.
>
> The FHWA believes a driver who is knowledgeable on these areas can help to insure that shipping papers are properly prepared and that hazardous materials packages carried on the vehicle are in fact listed on the shipping papers. Such a trained driver can also identify improper packaging and labeling during the loading process and insure that the vehicle is properly placarded for the hazardous materials classes being transported. This functional knowledge will provide an additional measure of safety to highway transportation.

Comments to Docket No. MC-120 generally supported the proposed additional training and driver qualification requirements. However, because of similar proposals contained in RSPA's present rulemaking and a rulemaking action of the FHWA discussed below, FHWA has decided that further action under Docket MC-120 is unnecessary and has withdrawn the docket (54 FR 7191, Feb. 17, 1989).

On December 11, 1987, FHWA published a notice of proposed rulemaking in the **Federal Register** (52 FR 47326; Docket No. MC-87-18) concerning commercial driver testing and licensing standards. A final rule (FR) was issued on July 15, 1988 (53 FR 27628). The FR establishes standards for commercial driver licensing and testing procedures to be used by the States; knowledge, skills and abilities which drivers of different types of commercial motor vehicles must possess; and the information to be contained on the commercial driver's license (CDL) issued by the States. Of interest to the present discussion is that the FHWA rule requires specific endorsements to the CDL for hazardous materials drivers and (cargo) "tank vehicle" drivers. When requirements for the CDL are fully implemented, an applicant for a CDL will have to pass a knowledge test pertaining to safe operations regulations, safe vehicle control, vehicle inspections and certain other areas, and a driving skills test pertaining to basic vehicle control skills and safe driving skills. An applicant for a hazardous materials endorsement will have to pass an additional knowledge test pertaining to the HMR, hazardous materials handling, operation of emergency equipment and emergency response procedures. Also, a driver who applies for renewal of a hazardous materials endorsement will be retested. An applicant for a tank vehicle endorsement will have to pass a knowledge test pertaining to cargo tank safety.

RSPA has attempted to align the training requirements proposed in this NPRM with the testing and knowledge requirements adopted by the FHWA in Docket No. MC-89-18 and believes that this has been accomplished. If a driver has successfully obtained the hazardous materials and tank vehicle endorsements to the CDL, these endorsements may be used to satisfy some, if not all, of the training requirements proposed in this notice, especially the awareness and general knowledge portions. However, it would remain the responsibility of the employer to insure that their drivers are

properly trained. The responsibility to train would also cover other employees subject to training, including drivers that are not required to have CDL endorsements such as drivers of vehicles that do not require placards.

To ascertain what role, if any, CDL endorsements might play in satisfying proposed training requirements of this notice, RSPA solicits comments on the following questions.

1. To what extent should the CDL hazardous materials and tank vehicle endorsements be allowed to satisfy the training proposals in this notice?

2. Should drivers who have received these endorsements be excepted from some or all of the training requirements proposed in this NPRM?

3. This notice proposes that training be performed every two years. Although the FHWA does not specify a time limit for the CDL, most states allow a four year time span before the CDL expires and retesting of HM drivers is required. Should RSPA's proposed training requirements be closely aligned with current CDL licensing practice for drivers and be required every four years, or should RSPA's required training be on a two year or more frequent basis?

B. FRA

On June 22, 1988, the 100th Congress enacted Pub. L. 100–342 to amend the Federal Railroad Safety Act of 1970 (45 U.S.C. 431). Commonly known as the Rail Safety Improvement Act of 1988, Pub. L. 100–342 has provided the FRA with numerous statutory amendments, some of which concern training requirements.

For instance, the 1988 Act amended section 202 to require the development of rules, regulations, orders, and standards as necessary to establish a program requiring the licensing or certification of any operator of a locomotive. The Act further specifies that any program developed must provide minimum training requirements and shall also require a comprehensive knowledge of applicable railroad operating practices and operating rules. Rules concerning the 1988 Act are presently under development by the FRA.

In addition to the requirements of the Rail Safety Improvement Act of 1988, the 49 CFR Part 217 currently requires each railroad to file a copy of their operating rules, timetables, and timetable instructions with the FRA. These rules and timetables contain information on railroad operating practices, including the rail transportation of hazardous materials. Each railroad is required to instruct its employees in the operating rules and must periodically conduct operational tests and inspections to determine the extent of compliance with its code of operating rules, timetables, and any timetable special instructions. In this manner, carriers can determine if their employees understand how to apply the hazardous materials information contained within the operating rules.

RSPA believes the training requirements of this NPRM will not conflict with the rail industry's current training on operating rules and timetables. In addition, the training standards contained in this proposed rule are written in a manner that should supplement any future rulemaking by the FRA regarding the requirements of the Rail Safety Improvement Act of 1988. However, to ensure that the proposed training requirements of this NPRM are compatible with present rail training programs, RSPA solicits comments concerning the following question: Would RSPA's proposed training requirements complement, or conflict with, present rail industry training efforts?

C. USCG

The International Maritime Dangerous Goods (IMDG) Code is recognized as the worldwide standard for the carriage of packaged hazardous materials by vessel. It is incorporated by reference in the HMR as an optional alternative for carriage of hazardous materials on vessels. Nearly all of the international hazardous materials trade by vessel now moves in conformance with the IMDG Code. Consequently, crews of vessels and personnel at port facilities will encounter IMDG Code classed, marked, labeled, placarded, packaged, stowed, and segregated shipments as the norm rather than the exception.

The U.S. Coast Guard requires persons seeking licenses which authorize service as master or mate of a vessel to successfully complete examinations which include material on hazardous materials cargo handling and stowage, loading and discharging operations, and the HMR. Section 176.57 of the HMR requires all hazardous materials handling and stowage aboard a vessel to be under the direction and observation of a qualified person specifically assigned to this duty. Except for limited domestic voyages, where the qualified person may be an employee of the carrier, this function must be carried out by a licensed officer. In addition, Coast Guard regulations require the master of a vessel to conduct weekly emergency drills in which all crewmembers are exercised in their assigned response duties. RSPA understands that these drills often include exercises that may satisfy some of the proposed training requirements. For example, shipboard firefighting drills could satisfy the emergency response requirements of § 172.704(a)(3)(ii) or (iv).

In view of the widespread use of the IMDG Code, the supervisory roles of the master and other licensed officers, and the existing emergency drills required aboard vessels, RSPA and the Coast Guard are especially interested in comments concerning the vessel transportation of hazardous materials in the following areas:

1. Should training in the maritime mode be based on the IMDG rather than the HMR? Should training on the IMDG Code be accepted as a alternative to training on the HMR, or should training be required in both the IMDG Code and the HMR?

2. Licenses authorizing service as master or mate are renewed every five years, provided the holder has recent service under the license, without further examination on hazardous materials subjects. Is the proposed two year retraining requirement appropriate for these personnel?

3. Would currently required emergency drills, as noted in the vessels log, be an adequate substitute for the proposed training and record keeping?

D. OSHA

On November 25, 1983, OSHA published a Hazard Communication Standard (48 FR 53280) which required that manufacturers have hazard communication programs for their employees exposed to hazardous chemicals. This standard was amended on August 24, 1987, with publication of a final rule entitled "Hazard Communication" (52 FR 31852). This amendment extended applicability of the existing standard from employees in manufacturing industry (SIC Codes 20 to 39) to also include employees in the non-manufacturing industry sector, such as those covered by 40-series SIC Codes for transportation. Under the amended standard, virtually all employers are required to inform their employees about the hazardous chemicals which are present in the work place. Generally, employers are required to establish for their employees written hazard communication programs that inform their employees about the hazardous chemicals present in the work place. Further, employers are also required to establish training programs which teach employees how to protect themselves from the hazardous chemicals to which they may be exposed by using engineering controls and following safe operating procedures.

In the amended standard, OSHA recognized that there were various types of work situations in the non-manufacturing sector where it was not feasible to comply with these requirements; therefore, OSHA excepted certain work places and facilities from its requirement for a written hazard communication program. Specifically, paragraph (b)(4) of § 1910.1200 of the OSHA standard exempts "work operations where employees only handle chemicals in sealed containers which are not opened under normal conditions of use (such as are found in marine cargo handling, warehousing, or retail sales)". This exception applies to many transportation facilities. However, employers must ensure that their employees are provided with information and training "* * * to the extent necessary to protect them in the event of a spill or leak of a hazardous chemical from a sealed container."

RSPA issued a final rule on June 27, 1989, addressing emergency response communication standards (Docket HM–126C; 54 FR 27138). The rule requires that facilities and vehicles involved in hazardous materials transportation maintain certain emergency response information regarding the hazardous materials which are present. It is possible to comply with this information requirement by having a copy of DOT's Emergency Response Guidebook (ERG), material safety data sheets, or similar emergency response document. The RSPA training requirements now being proposed which pertain to hazard communication and the handling of hazardous materials incidents have a direct correlation to, and complement, the information requirements adopted in Docket HM–126C. Conformance with the information and training requirements proposed in this notice and those adopted in Docket HM–126C should fulfill the intent of OSHA's final rule pertaining to hazard communication.

On December 19, 1986 (51 FR 45554), OSHA published an interim final rule on hazardous waste operations and emergency response that was required by Congress in the Superfund Amendments and Reauthorization Act of 1986 (SARA; Pub. L. 99–499). On August 10, 1987, OSHA published an NPRM in the **Federal Register** (52 FR 29620) that proposed to amend the OSHA standards for hazardous waste and emergency response in 29 CFR 1910.120. On March 6, 1989 a final rule was published in the **Federal Register** (54 FR 9294). When the final rule becomes effective on March 6, 1990 the interim final rule of December 19, 1986 will be revoked. The interim OSHA rule will remain in effect until then.

The interim OSHA rule covers workers involved in operations covered by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended (CERCLA; 42 U.S.C. 9601 *et seq.*), in certain hazardous waste operations conducted under the Resource Conservation and Recovery Act of 1976 as amended (RCRA; 42 U.S.C. 6901 *et seq.*), and in any emergency response to incidents to incidents involving hazardous substances. The standard provides for employee protection during initial site characterization and analysis, monitoring activities, materials handling activities, training, and emergency response.

Of interest to the present discussion are certain provisions that impact on transportation workers, particularly with regard to training. Section 1910.120(l) (1) of the March 6, 1989 OSHA final rule addresses emergency action plans which comply with 29 CFR 1910.38(a). Under § 1910.38(a), emergency action plans are used to establish evacuation procedures to be used in emergency circumstances. Employers must review with employees those parts of the plan which the employee must know to protect the employee in the event of an emergency. In RSPA's proposal, § 172.704(a)(3)(iv) would require that employees receive training concerning "immediate procedures to be followed in the event of an unintentional release of a hazardous material, an accident, or other emergency, including any emergency response procedures for which the person is responsible, operation of emergency equipment, and personal protection procedures to be followed if exposed to the release of a hazardous material". This RSPA proposed provision could be used to satisfy, at least in part, the OSHA provision with respect to transportation workers.

In 29 CFR 1910.120(e)(7), OSHA requires training for employees who are engaged in responding to hazardous emergency situations at hazardous waste clean up sites. OSHA requires that these employees are trained in how to respond to such emergencies. Section 1910.120(p)(8)(iii) of OSHA's March 6, 1989 final rule requires completion of training for emergency response employees before they are called upon to perform in real emergencies. Generally, these employees are required to receive training in the elements of the emergency response plan, standard operating procedures the employer has established for the job, the personal protective equipment to be worn and procedures for handling emergency incidents. The training of emergency response personnel is beyond the scope of RSPA's proposal. RSPA proposes to include a note at the end of paragraph (a) of § 172.704 to advise persons of OSHA requirements for emergency responders. However, it should be noted that the training required under this portion of the OSHA proposal could be used to satisfy RSPA requirements in proposed § 172.704. Further, there are certain categories of workers who are excepted from the OSHA requirement for complete emergency response training for whom the training required by RSPA may be used to satisfy other OSHA training requirements. For example, employees that do not have responsibility to control the emergency, but may first respond to an incident, are excepted from various aspects of the training if they have sufficient awareness training to recognize that an emergency response situation exists and are instructed to summon fully-trained emergency responders and not attempt to control activities for which they are not trained (see 29 CFR 1910.120(p)(8)(iii)(A)). A second exception provided in 29 CFR 1910.120(p)(8)(iii)(A) wherein certain employees need only be trained to have sufficient awareness training to recognize the emergency and call a designated fully-trained emergency response team. For both of these aforementioned categories of workers, RSPA's proposed training requirements could be used to satisfy OSHA requirements.

In addition to the OSHA requirements of 29 CFR Part 1910, there are specific OSHA training requirements for marine terminal personnel found in 29 CFR Parts 1917 and 1918. In particular, 29 CFR Part 1917 are regulations for marine terminals and apply to "* * * employment within a marine terminal, including the loading, unloading, movement or other handling of cargo, ship's stores or gear within the terminal or into or out of any land carrier, holding or consolidation area, or any other activity associated with the overall operation and functions of the terminal, such as the use and routine maintenance of facilities and equipment." Section 1917.28 outlines standards for hazard communications and includes requirements for container labeling and other forms or warning, material safety data sheets and employee training. Identical requirements to Part 1917 are also

contained in 29 CFR 1918.90 and apply to longshoremen and others (not including vessel crew members) involved in cargo handling operations aboard the vessel while it is in port.

Training performed to satisfy either OSHA or RSPA requirements could be used to satisfy, at least in part, the other agencies' hazardous materials training requirements. Although there is a certain amount of overlap in the RSPA proposal and OSHA final rule of March 6, 1989 due to differing statutory considerations, RSPA believes that the overall provisions are complementary and will not result in duplicative requirements.

To help determine the actual training burden that OSHA's rules and RSPA's proposed training requirements may cause, RSPA encourages readers of this NPRM to respond to the following questions:

1. Some employees may be covered by both OSHA and DOT training requirements. Are RSPA's proposal compatible with OSHA's? Could training required by OSHA help satisfy RSPA's proposed training? How much of an additional training burden will RSPA's proposals cause for those employees that are covered by both OSHA's and RSPA's training requirements?

2. In some cases organizations may have distinct groups of employees who perform different responsibilities. Some of these workers may be covered by only OSHA training requirements, while other employees of the same organization are subject to RSPA training requirements. How much of an additional training burden on employers will RSPA's proposals cause in this case?

VI. Administrative Notices

A. Executive Order 12291

The RSPA has determined that this proposed rule (1) is not "major" under Executive Order 12291; (2) is "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not affect not-for-profit enterprises or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). A preliminary regulatory evaluation is available for review in the Docket.

B. Executive Order 12612

This proposed action has been analyzed in accordance with the principles and criteria in Executive Order 12612 and, based on the information available to it at this time, RSPA does not believe that the proposed rule would have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. RSPA is proposing minimum standards and is not requiring states to adopt them. Furthermore, states would be able to impose more stringent requirements to highway transportation—so long as they did not conflict with the Federal regulations or interfere with the rights of other states (e.g., each state's right to impose its own training requirements on employees domiciled in the state, including its own commercial driver's license (CDL) requirements within FHWA prescribed parameters). Thus, under proposed § 172.101, a state would be permitted to impose its more stringent highway requirements only upon "persons" domiciled in that state.

C. Impact on Small Entities

RSPA is aware that amendments of such broad applicability may produce an economic impact on industry segments, a substantial number of which may be small enterprises. These enterprises may include hazardous materials shippers, carriers, warehousemen, freight forwarders, manufacturers of hazardous materials containers, and other transportation organizations that have small numbers of employees and limited gross revenues. Based on limited information concerning size and nature of entities likely affected by this notice, I certify this regulation will not have a significant economic impact on a substantial number of small entities. A regulatory evaluation is available for review in the Docket.

D. Paperwork Reduction Act

The collection of information in this notice of proposed rulemaking is being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, attention: Desk Officer for the Department of Transportation. All comments must reference the title for this notice. "Training for Hazardous Materials Transportation".

The collection of information requirements of this notice are found in § 172.704(c), Recordkeeping. The record would be required by the Department of Transportation to assure compliance with the training requirements proposed in Subpart H of this notice. The likely respondents and recordkeepers are hazardous materials transportation concerns of all types including, but not limited to, shippers, trucking companies, railroads, operators of water vessels, air freight companies, warehousemen, freight forwarders, etc.

List of Subjects

49 CFR Part 171

Hazardous materials transportation, Matter incorporated by reference.

49 CFR Part 172

Hazardous materials transportation, Training.

49 CFR Part 173

Hazardous materials transportation, General requirements.

49 CFR Part 174

Hazardous materials transportation, Carriage by rail.

49 CFR Part 175

Hazardous materials transportation, Carriage by aircraft.

49 CFR Part 176

Hazardous materials transportation, Carriage by vessel.

49 CFR Part 177

Hazardous materials transportation, Carriage by highway motor vehicle.

In consideration of the foregoing, 49 CFR Parts 171 through 177 would be amended to read as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 would continue to read as follows:

Authority: 49 U.S.C. 1802, 1803, 1804, 1808; 49 CFR Part 1, unless otherwise noted.

2. In § 171.8, the definition for "crewmember" would be revised to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

"Crewmember" means a person assigned to perform duty in an aircraft during flight time, on a motor vehicle or a vessel during transportation, or in train or engine service.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS AND TRAINING REQUIREMENTS

3. The authority citation for Part 172 would continue to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, and 1808; 49 CFR Part 1, unless otherwise noted.

4. The title to Part 172 would be revised to read as set forth above.

5. A new Subchapter H would be added to Part 172 to read as follows:

Subpart H—Training

Sec.
172.700 Purpose and scope.
172.701 Preemptive effect.
172.702 Applicability and responsibility for training.
172.704 Training requirements.

Subpart H—Training

§ 172.700 Purpose and scope.

(a) This subpart prescribes training requirements concerning—

(1) The risks of hazardous materials;

(2) The requirements of this subchapter which apply to functions that persons perform;

(3) Safety and accident avoidance; and

(4) Handling hazardous materials incidents.

(b) "Training" as used in this subpart means a systematic program that ensures a person has knowledge of hazardous materials and the hazardous materials regulations. Such knowledge may be obtained through the use of traditional industry training, instruction, testing or other means of training that would normally be tailored to an employee's specific job functions.

(c) Additional training requirements for the individual modes of transportation are prescribed in Parts 174, 175, 176 and 177 of this subchapter.

§ 172.701 Preemptive effect.

This subpart and the parts referenced in § 172.700(c) prescribe minimum training requirements for the transportation of hazardous materials. For motor vehicle drivers, however, a state may impose more stringent training requirements only if those requirements—

(a) Do not conflict with the training requirements in this subpart and in Part 177 of this subchapter, and

(b) Apply only to drivers domiciled in that state.

§ 172.702 Applicability and responsibility for training.

(a) It is the responsibility of each employer of a person subject to the requirements of this subpart to ensure that each employee is properly trained in accordance with the minimum requirements prescribed in this subpart.

(b) The requirements of this subpart apply to each person who—

(1) Classifies hazardous materials;

(2) Packages hazardous materials;

(3) Marks and labels packages containing hazardous materials;

(4) Prepares shipping papers for hazardous materials;

(5) Offers or accepts hazardous materials for transportation;

(6) Handles hazardous materials (e.g., loads, unloads, secures, or stores in transit);

(7) Marks or placards transport vehicles, bulk packagings or freight containers;

(8) Operates or crews transport vehicles, aircraft, or vessels;

(9) Is employed in a transportation facility and performs functions in proximity to hazardous materials which are in transportation; or

(10) Otherwise performs functions subject to the provisions of this subchapter, such as inspecting or testing specification packagings or representing, marking, certifying, selling or offering packagings as meeting the requirements of this subchapter or an exemption issued under Subchapter B of this chapter.

(c) For purposes of this subchapter, a person who performs any function in proximity to a hazardous material during the course of its transportation (e.g., in warehouses and terminals) is considered to be performing a function related to the transportation of hazardous materials, even though that person may not be involved directly in handling the hazardous material.

(d) A person (including a self-employed person) who performs any function subject to the requirements of this subchapter may not perform that function unless that person has been trained in accordance with the requirements prescribed in this subpart.

§ 172.704 Training requirements.

(a) Persons subject to the requirements of this subpart shall be provided the following training:

(1) *General awareness/familiarization training.* Each person shall be provided training designed to provide familiarity with the general provisions of this subchapter, such as the hazard communication requirements of Subparts C, D, E, and F of this part, and the various classes of hazardous materials.

(2) *Function specific training.* Each person shall be provided detailed training concerning requirements of this subchapter which are specifically applicable to the functions the person performs.

(3) *Safety training.* Each person who performs any function in proximity to a hazardous material, and each first line supervisor of that person, shall be provided training concerning safety information applicable to the hazardous material and their job function, including—

(i) Emergency response information required by this part, and how to use it;

(ii) General dangers presented by the various hazard classes of hazardous materials and how persons can protect themselves from exposure to those hazards, including the use of personal protective clothing and equipment;

(iii) Methods and procedures for accident avoidance, such as proper use of package handling equipment; and

(iv) The immediate procedures to be followed in the event of an unintentional release of a hazardous material, including any emergency response procedures for which the person is responsible and personal protection procedures to be followed if exposed to a hazardous material. (Note: In addition to any applicable requirements of this subchapter, training requirements are prescribed in 29 CFR 1910.120 for employees for whom there exists the reasonable possibility of responding to emergencies.)

(b) *Initial and recurrent training.* Training shall be received within 30 days, except that persons employed prior to [Insert effective date of rule] shall receive training prior to [Insert date 30 days from effective date of rule]. Employees requiring training may be used in their hazardous materials job functions while they are being trained if they are under the supervision of a properly trained and knowledgeable employee. A person shall be retrained:

(1) upon change to a job function subject to this subpart, within 30 days; and

(2) at least once every two years.

(c) *Recordkeeping.* A record of the training provided as required by this subpart and § 177.816 of this subchapter, shall be created and retained by the employer for as long as the person is employed and for 90 days thereafter. The record shall include—

(1) The person's name and signature;

(2) The date the person was provided the training;

(3) A copy of the training material, a reference indicating the location of a readily available copy thereof, or a description of the training given; and

(4) The name and signature of the person providing the training.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

6. The authority citation for Part 173 would continue to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1806, 1807, 1808; 49 CFR Part 1, unless otherwise noted.

7. In § 173.1, paragraph (b) would be revised to read as follows:

§ 173.1 Purpose and scope.

* * * * *

(b) A shipment that is not prepared for shipment in accordance with this subchapter may not be offered for transportation by air, highway, rail, or water. It is the duty of each person who offers hazardous materials for transportation to instruct each of their officers, agents and employees having any responsibility for preparing hazardous materials for shipment in the applicable regulations as specified in Part 172, Subpart H of this subchapter.

* * * * *

PART 174—CARRIAGE BY RAIL

8. The authority citation for Part 174 would continue to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR Part 1, unless otherwise noted.

9. Section 174.7 would be revised to read as follows:

§ 174.7 Responsibility for compliance and training.

(a) Unless this subchapter specifically provides that another person must perform a particular duty, each carrier, including a connecting carrier, shall perform the duties specified and comply with all applicable requirements of this part and shall instruct its employees in relation thereto.

(b) Each employer of a person subject to the requirements of this subpart shall provide that person with the training required by Subpart H of Part 172 of this subchapter.

(c) A carrier may not transport a hazardous material by rail unless each train crewmember receives the training required by Subpart H of Part 172 of this subchapter.

PART 175—CARRIAGE BY AIRCRAFT

10. The authority citation for Part 175 would continue to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1807, 1808; 49 CFR Part 1, unless otherwise noted.

11. Section 175.20 would be revised to read as follows:

§ 175.20 Compliance and training.

(a) Unless this subchapter specifically provides that another person must perform a particular duty, each operator shall comply with all applicable requirements in Parts 107, 171, 172, 173, and 175 of this subchapter and shall thoroughly instruct employees in relation thereto. (See also 14 CFR 121.135, 121.401, 121.433a, 135.323, 135.327 and 135.333.)

(b) Each employer of a person subject to the requirements of this subpart shall provide that person with the training required by Subpart H of Part 172 of this subchapter.

(c) An aircraft operator may not transport a hazardous material by aircraft unless each crewmember receives the training required by Subpart H of Part 172 of this subchapter.

PART 176—CARRIAGE BY VESSEL

12. The authority citation for Part 176 would continue to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1806(b), 1808; 49 CFR Part 1, unless otherwise noted.

13. Section 176.13 would be revised to read as follows:

§ 176.13 Responsibility for compliance and training.

(a) Unless this subchapter specifically provides that another person must perform a particular duty, each carrier, including a connecting carrier, shall perform the duties specified and comply with all applicable requirements in this part and shall instruct employees in relation thereto.

(b) Each employer of a person subject to the requirements of this part shall provide that person with the training required by Subpart H of Part 172 of this subchapter.

(c) A carrier may not transport a hazardous material by vessel unless each crewmember receives the training required by Subpart H of Part 172 of this subchapter.

(d) A record of training required by § 172.704(c) must be kept on board any vessel with crewmembers subject to the training requirements of this subchapter.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

14. The authority citation for Part 177 would continue to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805; 49 CFR Part 1, unless otherwise noted.

§ 177.800 [Amended]

15. In § 177.800, the last sentence of paragraph (a) would be removed.

16. Section 177.800a would be added to read as follows:

§ 177.800a Responsibility for compliance and training.

(a) Unless this subchapter specifically provides that another person must perform a particular duty, each carrier, including a connecting carrier, shall perform the duties specified and comply with each applicable requirement of this part and shall instruct employees in relation thereto.

(b) Each employer of a person subject to the requirements of this subpart shall provide that person with the training required by Subpart H of Part 172 of this subchapter.

(c) A carrier may not transport a hazardous material by motor vehicle unless each driver and crewmember receives the training required by this part and Subpart H of Part 172 of this subchapter.

17. Section 177.816 would be revised to read as follows:

§ 177.816 Driver training.

(a) In addition to the training prescribed in Subpart H of Part 172 of this subchapter, each driver shall receive training concerning the applicable requirements of 49 CFR Parts 383, 387, 390 through 399 and the procedures necessary for the safe operation of the motor vehicle which the driver operates or intends to operate. Training shall include the following subjects:

(1) Pre-trip safety inspection;

(2) Use of vehicle controls and equipment, including operation of emergency equipment;

(3) Operation of vehicle including turning, backing, braking, parking and handling, and vehicle characterisitics such as those related to vehicle instability, effects of braking and curves on stability, effects of speed on vehicle control, dangers associated with maneuvering through curves such as on and off ramps, and high center of gravity;

(4) Procedures for navigating tunnels, bridges, and railroad crossings; and

(5) Requirements pertaining to attendance of vehicles, parking, smoking, routing and incident reporting.

(6) Loading and unloading of materials, including—

(i) Mixed load cargo compatibility and segregation;

(ii) Package handling methods;

(iii) Load securement.

(b) *Specialized requirements for cargo tanks and portable tanks.* No person may operate a cargo tank, or a vehicle carrying a portable tank with a capacity of 1000 gallons or more, unless that person receives training on appropriate practices and procedures and the applicable requirements of Subchapter C and has the appropriate state issued license as required by Part 383. In addition to the requirements of paragraph (a) of this section, training shall include the following:

(1) Operation of emergency control features of the cargo tank or portable tank;

(2) Special vehicle handling characteristics to include: high center of gravity, fluid load subject to surge, effects of possible product surge on braking, characteristic differences in stability among baffled, unbaffled and multi-compartmented tanks; and effects of partial loads on vehicle stability;

(3) Loading and unloading procedures;

(4) The properties and hazards of the material transported;

(5) Retest and inspection requirements for cargo tanks, and;

(c) The training required by paragraphs (a) and (b) of this section must conform to the requirements of § 172.704 of this subchapter with regard to the frequency of training and recordkeeping.

18. In § 177.825, paragraph (d) would be revised to read as follows:

§ 177.825 Routing and training requirements for radioactive materials.

* * * * *

(d) No person may transport a package of highway route controlled quantity radioactive materials as defined in § 173.403(1) of this subchapter, on a public highway unless:

(1) The driver has received training as required by Subpart H of Part 172 and § 177.816.

(2) The driver has in his immediate possession a copy of the record of training required by § 172.704.

(3) The driver has in his immediate possession the route plan required by paragraph (c) of this section and operates the motor vehicle in accordance with the route plan.

* * * * *

Issued in Washington, DC on July 20, 1989 under authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 89-17451 Filed 7-25-89; 8:45 am]

BILLING CODE 4910-60-M

federal register

Wednesday
July 26, 1989

Part IV

Department of Transportation

Research and Special Programs Administration

49 CFR Part 172

Classification of Gases Which Are Toxic by Inhalation; Proposed Rule

5

DEPARTMENT OF TRANSPORTATION

49 CFR Part 172

[Docket No. HM-181, Notice No. 89-5]

RIN 2137-AA01

Classification of Gases Which Are Toxic by Inhalation

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: RSPA is modifying the proposals contained in Docket HM-181, Notice 87-4 (52 FR 42772) to retain the current classification of anhydrous ammonia as a nonflammable gas, rather than to reclassify the material as a poisonous gas, with the addition of an "INHALATION HAZARD" warning as a mechanism for hazard communication. This action is being taken so that RSPA can address other substantive issues under Docket HM-181 in a timely manner.

ADDRESSES: Address comments to the Dockets Unit, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590. Comments should identify the docket and notice number and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The Dockets Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Public dockets may be reviewed between the hours of 8:30 a.m., and 5:00 p.m., Monday through Friday, except holidays.

DATE: Comments must be received on or before October 24, 1989.

FOR FURTHER INFORMATION CONTACT: Ann Boylan, Standards Division, telephone (202) 366-4488, or James K. O'Steen, Chief, Technical Division, telephone (202) 366-4545, Office of Hazardous Materials Transportation, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On May 5, 1987, RSPA published a notice of proposed rulemaking (NPRM) (Docket No. HM-181; Notice 87-4) in the **Federal Register** (52 FR 16482) that proposed sweeping changes in the Hazardous Materials Regulations (HMR), including the adoption of performance-oriented packaging standards and changes in hazard communication, hazard classification and bulk packaging requirements. Notice 87-4 was republished on November 6, 1987 (52 FR 42772), containing corrections and supplemental proposals to the May 5, 1987 publication.

RSPA received over one thousand comments in response to Notice 87-4, at least seven hundred of which addressed the proposed classification criteria for poisonous gases. Particular and widespread attention was directed to the proposal to change the classification of anhydrous ammonia from a nonflammable gas to a poisonous gas. In reviewing these comments, RSPA noted some specific points of misunderstanding and a lack of sufficient information concerning potential impacts arising from the proposed action. As a result, RSPA published a supplemental NPRM in the **Federal Register** on November 14, 1988 (Notice 88-7; 53 FR 45868). Notice 88-7 sought to clarify the reclassification proposals, suggested possible regulatory alternatives, and requested substantive comments on potential impacts. The interested reader is referred to Notice 88-7 for additional background information.

RSPA issued its proposal because the classification "poisonous gas" would be the most accurate technical description of the inhalation hazards of anhydrous ammonia in accordance with the definition proposed in § 173.115(c). Over four hundred and fifty comments were received in response to Notice 88-7. Although RSPA has not completed a thorough review of these comments, they do reveal significant controversy concerning the proposed reclassification based on various claims of severe potential adverse impacts.

RSPA has not had the opportunity to perform, or have performed, a comprehensive evaluation of this issue to document potential impacts. An evaluation of this nature would entail, at a minimum, a quantitative analysis of current freight and insurance rates and any potential changes to those rates and an assessment of current and projected insurance and transportation availability. It would be a resource-intensive undertaking. Further delay in resolving this issue may be unacceptable to the regulated industry, particularly the farm community. Also because of the drain on RSPA's limited resources which this issue has entailed, it would be counterproductive to accomplishment of the overall rulemaking action on other important aspects of Docket HM-181. Failure to move HM-181 forward in a timely manner would further delay its other important safety initiatives. Delay may also impose on U.S. industry an impediment to international trade because after December 31, 1990, certain transitional packaging provisions contained in international regulations, under which DOT packagings are currently acceptable, will expire. RSPA believes that the safety advantages of proposing reclassification in this docket do not justify the further delay that would be necessary at this time to fully evaluate the claimed potential impacts. Therefore, RSPA has elected to pursue an alternative to the proposed reclassification which does not entail the claimed potential impacts, but would improve the communication of hazard for anhydrous ammonia.

One of the possible options discussed in the supplemental notice was reclassification of anhydrous ammonia as a corrosive gas. Although the Canadian regulations classify anhydrous ammonia as a corrosive gas, RSPA believes that the corrosive gas classification has three important shortcomings. First, use of corrosive gas would require the creation of a new classification catetory ("corrosive gas") which is not a part of U.S. or international hazardous materials regulations. A corrosive gas class would complicate the total classification system and create an important inconsistency with the international classification system. International hazardous materials transportation regulations classify anhydrous ammonia as a poisonous and flammable gas. Second, creation of a corrosive gas class could raise questions about the reclassification of a number of other

materials. The Canadian corrosive gas class includes a number of chemicals, some of which are as much as ten times more toxic than anhydrous ammonia. RSPA believes that adoption of a corrosive gas classification for materials with such severe inhalation hazards would not provide a sufficient level of hazard communication for these materials. Third, classification of anhydrous ammonia as a corrosive gas may have the same impact as alleged for the poisonous gas classification, that is, it may result in increased insurance and transportation costs.

As RSPA has noted throughout its deliberations on the HM-181 rulemaking, communication to emergency responders and the general public is an important safety consideration. For emergency responders, the presence of a label or placard and the four-digit identification number ("UN1005" for anhydrous ammonia), when used with the DOT Emergency Response Guidebook, provides quick and accurate identification of a material and its hazards. In contrast, the symbol on the label or placard and packaging markings are the primary way the general public is informed of the hazard posed by a material. Although the international poison symbol (skull and crossbones) in combination with a inhalation hazard marking would provide an incremental enhancement in the communication of the hazard of anhydrous ammonia to the public, that enhancement may not be justified when measured against the claimed potential adverse impacts. RSPA believes that an inhalation marking in combination with a nonflammable gas label or placard would improve the current communication of anhydrous ammonia's inhalation hazard for both emergency responders and the general public with minimal impact on shippers, transporters, and users.

Therefore, under the materials classification scheme proposed in HM-181, RSPA is now proposing to classify anhydrous ammonia as a Division 2.2 nonflammable compressed gas for domestic transportation, consistent with its classification under current regulations. Because of the documented inhalation hazards of anhydrous ammonia when released in large quantities, RSPA is also proposing to require the words "INHALATION HAZARD" on packages and shipping papers, in addition to other current hazard communication requirements. The choice of this alternative will enable RSPA to progress with the HM-181 rulemaking, improve hazard communication for anhydrous ammonia and minimize any potential adverse impacts.

Review by Sections

Section 172.101

In Notice 87-4 on page 42793 the Hazardous Materials Table is modified by adding a new entry for "Ammonia, anhydrous liquefied", with (a) a "D" in column (1) to indicate that this entry is for domestic transportation, (b) the hazard class of "2.2" in column (3), and (c) the label of "NONFLAMMABLE GAS" in column (6). The existing entry on page 42793 for "Ammonia, anhydrous liquefied" is revised by placing an "I" in column (1), to indicate that this entry is acceptable for describing the material for international transportation.

Section 172.102

In the table of special provisions on page 42932, a new code 14 would be added, proposing that the words "Inhalation Hazard" be entered on a shipping paper in association with the shipping description and be marked on the package in association with the required label or placards.

Administrative Notices

Executive Order 12291

The RSPA has determined that this rulemaking (1) is not "major" under Executive Order 12291; (2) is "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not affect not-for-profit enterprises or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) A regulatory evaluation is available for review in the Docket.

Executive Order 12612

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Impact on Small Entities

Based on the minimal impact of the proposals contained herein, I certify that the regulations proposed herein would not, if adopted, have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 172

Hazardous materials transportation.

PART 172—[AMENDED]

Docket HM-181, Notice No. 87-4, published on May 5, 1987 (52 FR 16482) is modified as follows:

PART 172—HAZARDOUS MATERIALS TABLE AND HAZARDOUS MATERIALS COMMUNICATION

1. The authority citation for Part 172 continues to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1808; 49 CFR Part 1, unless otherwise noted.

§ 172.101 [Amended]

2. In the Hazardous Materials Table on page 42793, the proposed entry for "Ammonia, anhydrous liquefied" is revised and a new entry is added to read as follows:

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class	Identification Numbers	Packing group	Labels	Special provisions	(8) Packaging authorizations (§ 172***)			(9) Quantity limitations		(10) Vessel stowage requirements		
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Cargo vessel	Passenger vessel	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)	(10C)
ADD:														
D	Ammonia, anhydrous liquefied.	2.2	UN1005		NON-FLAMMABLE GAS.	14	None	304	314, 315	Forbidden.	Forbidden.	1.2	5	40, 57
REVISE														
I	Ammonia, anhydrous liquefied.	2.3	UN1005	III	POISON GAS.	10	None	304	314, 315	Forbidden.	Forbidden.	1.2	5	40, 57

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3. On page 42932 paragraph (c)(1) of § 172.102, a new Code 14 would be added in proper numerical order as follows:

Code	Special provisions
* * * * *	
14	The words "Inhalation Hazard" shall be entered on each shipping paper in association with the shipping description, shall be marked on each non-bulk package in association with the proper shipping name and identification number, and shall be marked on two opposite sides of each bulk package. Size of markings on bulk packages must conform to § 173.302(b) of this subchapter.
* * * * *	

Issued in Washington, DC on July 21, 1989 under authority delegated in 49 CFR Part 1.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 89-17475 Filed 7-25-89; 8:45 am]

BILLING CODE 4910-60-M

federal register

Wednesday
July 26, 1989

Part V

The President

Executive Order 12683—Prescribing Regulations Relating to Certain Travel Time of Members of the Uniformed Services Called to Active Duty

Presidential Documents

Vol. 54, No. 142

Wednesday, July 26, 1989

Title 3—

The President

Executive Order 12683 of July 21, 1989

Prescribing Regulations Relating to Certain Travel Time of Members of the Uniformed Services Called to Active Duty

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 204(b) of title 37, United States Code, it is hereby ordered that Executive Order No. 10153, as amended by Executive Order No. 10649, is further amended as follows:

1. Section 1 is amended to read:

"Section 1. For travel from home to first duty station and from the last duty station to home, the travel time included as active duty shall be the same as the allowable travel time based on the mode(s) of travel authorized, not to exceed actual travel time. The travel time included as active duty shall be computed on the basis of regulations prescribed by the Secretaries concerned, which regulations shall be uniform among the uniformed services. The distance traveled shall be computed on the basis of distances established by the official mileage tables in use by the uniformed services.".

2. Section 2 is deleted, and Sec. 3 and Sec. 4 are renumbered Sec. 2 and Sec. 3, respectively.

George Bush

THE WHITE HOUSE,
July 21, 1989.

[FR Doc. 89-17662
Filed 7-25-89; 11:12 am]
Billing Code 3195-01-M

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Rules and Regulations

Federal Register
Vol. 54, No. 143
Thursday, July 27, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Parts 2 and 15

Complaints Alleging Discrimination in Direct USDA Programs and Activities; and Related Delegations

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: The United States Department of Agriculture is revising (1) its regulation relating to the filing of complaints alleging discrimination in direct USDA programs and activities under 7 CFR Part 15, Subpart B, and (2) the delegations of authority from the Secretary and general officers in this area.

This final rule amends the regulation to extend the filing period for complaints alleging discrimination and authorizes expressly the Office of Advocacy and Enterprise to investigate and make determinations on complaints. The amendment affords the public a greater opportunity to prepare and document complaints and clarifies for the public and agencies the delegation of authority.

EFFECTIVE DATE: August 28, 1989.

FOR FURTHER INFORMATION CONTACT: M. Farook Sait, Chief, Complaints and Adjudication Division, Equal Opportunity, Office of Advocacy and Enterprise, United States Department of Agriculture, Washington, DC 20250. Phone (202) 447-7327.

SUPPLEMENTARY INFORMATION: This document amends the regulation contained in 7 CFR 15.52 to extend the filing period allowed for such complaints and to authorize expressly the Office of Advocacy and Enterprise to investigate and make determinations as to such discrimination complaints. The extended filing period parallels the period for filing complaints under Title VI of the Civil Rights Act of 1964, as amended. The Department has determined that public interest requires that the public be afforded a greater opportunity than under the present regulations to prepare and document its complaints. In addition, the delegations of authority to the Assistant Secretary for Administration and the Director, Office of Advocacy and Enterprise in 7 CFR Part 2 are being revised to clarify the delegation of this authority.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required and this rule may be made effective less than 30 days after publication in the **Federal Register**. However, since this regulation involves a complaint process under which a complaint of handicap discrimination in a Federally conducted program may be filed, copies of this regulation have been submitted to the appropriate authorizing committees of the Congress, as a proposed regulation would have been pursuant to section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) and the effective date has been delayed for 30 days.

Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by Pub. L. No. 96-354, the Regulatory Flexibility Act, and therefore is exempt from the provisions of that Act.

List of Subjects

7 CFR Part 2

Authority delegations (Government agencies).

7 CFR Part 15.

Civil rights, Nondiscrimination

Accordingly, Parts 2 and 15, Title 7, Code of Federal Regulations are amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for Part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.25 is amended by revising paragraph (h)(12) to read as follows:

§ 2.25 Delegations of authority to the Assistant Secretary for Administration.

* * * * *

(h) * * *

(12) Make determinations that program complaint investigations performed under Section 15.6 of this subtitle establish a proper basis for findings of discrimination, and that actions taken to correct such findings are adequate; and perform investigations and make determinations, on both the merits and required corrective action, as to complaints filed under Subpart B of Part 15 of this title.

* * * * *

Subpart J—Delegations of Authority by the Assistant Secretary for Administration

3. Section 2.80 is amended by revising paragraph (a)(12) to read as follows:

§ 2.80 Director, Office of Advocacy and Enterprise.

(a) * * *

(12) Make determinations that program complaint investigations performed under section 15.6 of this subtitle establish a proper basis for findings of discrimination, and that actions taken to correct such findings are adequate; and perform investigations and make determinations, on both the merits and required corrective action, as to complaints filed under Subpart B of Part 15 of this title.

* * * * *

PART 15—NONDISCRIMINATION

Subpart B—Nondiscrimination—Direct USDA Programs and Activities

4. The authority for 7 CFR Part 15, Subpart B, is revised to read as follows:

Authority: 5 U.S.C. 301; 29 U.S.C. 794.

5. Section 15.52 is revised to read as follows:

§ 15.52 Complaints.

(a) Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this subpart may by himself or by an authorized representative file a written complaint based on the ground of such discrimination. No particular form of complaint shall be required. The complaint must be filed within 180 days from the date the person knew or should have known of the alleged discrimination unless the Director, Office of Advocacy and Enterprise, extends the time for filing for good cause. Any person who complains of discrimination under this subpart shall be advised of his rights to file a complaint as herein provided. Each agency of the Department dealing with the public shall post in conspicuous places in its offices and other facilities notice of the right to file a complaint under this subpart.

(b) All complaints under this subpart must be filed with the Office of Advocacy and Enterprise, which will investigate the complaints. The Director, Office of Advocacy and Enterprise, will make determinations as to the merits of complaints under this subpart and as to corrective actions required to resolve the complaints.

For Part 2, Subpart C and Part 15, Subpart B:

Clayton Yeutter,

Secretary of Agriculture.

For Part 2, Subpart J:

John J. Franke, Jr.,

Assistant Secretary for Administration.

[FR Doc. 89-17063 Filed 7-26-89; 8:45 am]

BILLING CODE 3410-04-M

Animal and Plant Health Inspection Service

[Docket No. 88-178]

9 CFR Part 77

Tuberculosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the tuberculosis regulations by removing all references to "Deputy Administrator" and replacing them with references to "Administrator." We are also removing certain references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service." These changes are warranted so the regulations will accurately reflect that the Administrator of the agency holds the primary authority and responsibility for various decisions under the regulations.

EFFECTIVE DATE: July 27, 1989.

FOR FURTHER INFORMATION CONTACT: Helene R. Wright, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301-36-8682.

SUPPLEMENTARY INFORMATION: Tuberculosis is a contagious, infectious, and communicable disease affecting cattle, bison, and other species, including humans. Tuberculosis in affected animals causes weight loss and general debilitation. The regulations in 9 CFR Part 77 (referred to below as the regulations) contain restrictions on the interstate movement of cattle and bison because of tuberculosis. Prior to the effective date of this document, these regulations indicated that the Deputy Administrator of the Animal and Plant Health Inspection Service (APHIS) for Veterinary Services was the official responsible for various decisions under these regulations. We are revising 9 CFR Part 77 to indicate that the primary authority and responsibility for various decisions under these regulations belongs to the Administrator of the agency. We are making similar revisions in all other APHIS regulations. These revisions will be published in separate Federal Register documents.

To clarify the regulations with respect to the Administrator's authority and responsibility, we are making nonsubstantive changes in the regulations. We are removing all references to "Deputy Administration" and replacing them with references to "Administrator," and removing references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service." We are also adding definitions of "Administrator," "Animal and Plant Health Inspection Service," and "APHIS representative" and deleting the definitions of "Deputy Administrator," "Veterinary Services," and "Veterinary Services representative." In addition, we are inserting the definition of "Accredited veterinarian" from 9 CFR 160.1 instead of referring to that section to make it consistent with other parts contained in 9 CFR. Further, we are revising the reference to the Program Planning Staff of Veterinary Services in footnote 1 because of the recent reorganization of APHIS.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by Pub. Law 96-354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

These programs/activities under 9 CFR Part 77 are listed in the Catalog of Federal Domestic Assistance under No. 10.025 and are subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 77

Animal diseases, Cattle, Transportation.

Accordingly, we are amending 9 CFR Part 77 as follows:

PART 77—TUBERCULOSIS

1. The authority citation for Part 77 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115-117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 77.1 [Amended]

2. In § 77.1, the definitions of "Deputy Administrator", "Veterinary Services", and "Veterinary Services representative" are removed and the definition of "Accredited veterinarian" is revised to read as follows:

* * * * *

Accredited veterinarian. A veterinarian approved by the Administrator in accordance with the provisions of Part 161 of this title to perform functions specified in Parts 1, 2, 3, and 11 of Subchapter A, and Subchapters B, C, and D of this chapter, and to perform functions required by cooperative State-Federal disease control and eradication programs.

* * * * *

3. In § 77.1, definitions of "Administrator", "Animal and Plant Health Inspection Service", and "APHIS representative" are added, in alphabetical order, to read as follows:

* * * * *

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

* * * * *

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS or Service).

APHIS representative. An individual employed by APHIS who is authorized to perform the function involved.

* * * * *

4. In § 77.1, the definition of "Accredited-free state", paragraph (1)(ii), remove the words "Veterinary Services" in the first and second sentences and add "APHIS" in their place.

5. In addition to the amendments set forth above, in 9 CFR Part 77, remove the words "Veterinary Services" and add, in their place, the word "APHIS" in the following places:

(a) Section 77.1, definition of "Modified accredited state", paragraph (1)(ii), first and second sentences.

(b) Section 77.1, definition, of "Official seal".

(c) Section 77.1, definition of "Uniform Methods and Rules—Bovine Tuberculosis Eradication".

6. In § 77.1, footnote 1 is revised to read as follows:

[1] Copies may be obtained from the Animal Health and Depredation Management Systems Staff, Animal and Plant Health Inspection Service, United States Department of Agriculture, 6505 Belcrest Road, Hyattsville, MD 20782.

§§ 77.1, 77.4, and 77.5 [Amended]

7. In addition to the amendments set forth above, in 9 CFR Part 77, remove the words "a Veterinary Services" and add, in their place, the words "an APHIS" in the following places:

(a) Section 77.1, definition of "Certificate";

(b) Section 77.1, definition of "Permit";

(c) Section 77.4(a);

(d) Section 77.5, paragraph (a)(1), the first and second sentences of paragraph (a)(5), and paragraph (b)(1).

§§ 77.5 and 77.6 [Amended]

8. In addition to the amendments set forth above, in 9 CFR Part 77, remove the word "Deputy" in the following places:

(a) Section 77.5, paragraphs (a)(5) and (b)(1); and

(b) Section 77.6, first and second sentences.

Done at Washington, DC this 24th day of July, 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-17573 Filed 7-26-89; 8:45 am]

BILLING CODE 3410-34-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions; Charter-Related Activities

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Final rule and final Interpretive Ruling and Policy Statement 89-1—Chartering and Field of Membership Policy (IRPS 89-1).

SUMMARY: The NCUA Board has undertaken a full reexamination of the policies and procedures under which a Federal credit union may obtain and modify its charter. The NCUA issued a proposed IRPS in March of this year to address the entire range of chartering and field of membership activities—new charters, field of membership additions, name changes, mergers and spin-offs, and charter conversions. The proposed IRPS, with minor modification, is now made final and replaces IRPS 84-1 entitled "Membership in Federal Credit Unions," the 1980 NCUA manual entitled "Chartering and Organizing Manual for Federal Credit Unions," the 1985 NCUA pamphlet entitled "Chartering & Organizing of Federal Credit Unions," the NCUA Board's decisions on chartering issues made in November 1988, and all other previous NCUA statements on these matters. IRPS 89-1 will be incorporated into a manual which will include a preface, introduction, glossary, sample forms, and a revised list of type of membership codes. The NCUA will publish the manual and distribute it to credit unions in the fall of 1989.

The NCUA is also issuing a final rule to update § 701.1 of its Rules and Regulations entitled "Organizing a Federal credit union" so that it references and incorporates IRPS 89-1 into the regulations.

EFFECTIVE DATE: August 28, 1989.

FOR FURTHER INFORMATION CONTACT: H. Allen Carver, Regional Director, Region IV, (Chicago), 300 Park Blvd., Suite #155, Itasca, Illinois 60143, or telephone: (312) 250-6000.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 1989, the NCUA Board published a proposed Interpretive Ruling and Policy Statement (IRPS) on chartering and field of membership policies and a proposed rule referencing the IRPS. (*See* 54 FR 1221.) The proposal was issued with a sixty day comment period that was extended by the NCUA Board for thirty additional days due to public request. The proposed IRPS generally prescribed existing policies and procedures as set forth in previous publications or as practiced by NCUA staff. Changes in policy were highlighted in the supplementary information section to the IRPS. The IRPS is composed of three chapters titled as follows: 1—Federal Credit Union Chartering; 2—Changes in Field of Membership; and 3—Charter Conversions.

Commenters

Forty-two public comment letters were received. Comments were received from four national credit union trade associations, five state credit union leagues, nineteen federally-chartered credit unions, three state-chartered credit unions, one bank, six banking trade associations, and four individuals.

No specific comments were made on Chapter 3—Conversions. The Board has made a few minor changes to Chapter 3. They are discussed at the end of the Suplementary Information section.

A clarification has been made in several places in the IRPS. The NCUA's goal of making credit union service available to "all those who wish to have it" has been changed to "all eligible groups who wish to have it" to clarify that groups must meet field of membership requirements in order to qualify for credit union service. Minor word changes and grammatical corrections made throughout the IRPS are not discussed.

The comments were, for the most part, favorable and were made on existing policy, rather than the few proposed policy changes set forth in the proposed IRPS. All comments on proposed policy changes are specifically noted. Specific issues addressed in the comment letters and changes made to the IRPS are discussed below.

Issues Raised

A number of commenters raised concerns about how NCUA would define "operating satisfactorily." This is a factor cited in Chapter 2 under the heading "Reviewing Field of Membership Addition Requests" as a general prerequisite for Federal credit unions (FCU's) to receive favorable

consideration of field of membership amendment requests. The intent of the IRPS in using this terminology was to give the Regional Directors sufficient latitude to deal with a variety of circumstances. However, in Chapter 2 under the headings "Select Group Additions" and "Reviewing Field of Membership Requests" there is some explanation of the factors to be considered in making this judgment. The discussion under these headings states that among the criteria to be considered are the applicant credit union's current financial condition and CAMEL rating. Among the comments received were four which recognized NCUA's need for flexibility in making this evaluation and the inappropriateness of specific negating standards. For instance, if the IRPS was to indicate that *no* FCU's with CAMEL ratings of 3, 4 or 5 would be considered fovorably, then a number of FCU's which either are in an improving status or which have problems (such as a declining field of membership) which may best be dealt with by field of membership expansions would automatically be excluded from favorable consideration. The Board has therefore determined not to specifically define "operating satisfactorily."

Another generally-defined concept which drew comments was the "convincing support" required by groups with fewer than 500 potential members which are seeking a Federal credit union charter. The NCUA Board maintains that the economic advisability requirements for a charter applicant cited in Chapter 1, II, C. give adequate definition to the terminology. Furthermore, more than half of the respondents who commented on this issue either agreed with the appropriateness of this language or asked that the Board be even more stringent in establishing and enforcing minimum potential member requirements. Since this is an issue (minimum potential member requirements for new charter applicants) which has been previously considered on two occasions by the NCUA Board and for the above noted reasons, no further review is necessary and no change in the IRPS is appropriate.

In a related vein, several commenters expressed concerns about the requirement placed on new charter applicants to conduct potential membership surveys. This requirement is set forth in Chapter 1, II, C.—"Economic Advisability." A minimum of 250 potential members must be included in the survey sample regardless of the new group's total potential membership. This specific requirement is a new one. Generally, 500 potential members are required for the FCU to have the minimum required economic advisability. The fact that this issue was questioned by only two commenters combined with the need for "convincing support" by applicants with fewer than 500 potential members as expressed above suggests that the policy is reasonable.

Another issue which drew comments was whether a business plan should be required from FCU's seeking significant field of membership expansions. The proposed IRPS stated that "the Regional Director may, at his discretion, after taking into account the significance of the field of membership expansion proposed, require the applicant to submit a business plan." (*See Chapter 2, "Reviewing Field of Membership Addition Requests."*) The commenters were evenly split on this issue. One of the commenters suggested that the NCUA board impose a requirement for a business plan in those instances where the expansion requested involves an addition in excess of 25% of the FCU's current membership. Such a modification could work to the NCUA's and FCU's detriment in a number of situations. For instance, if a large FCU serving 100,000 members asks to add a group with a potential membership of 20,000, it may be unnecessary to require a business plan. On the other hand, it may be necessary for a small FCU serving 200 members to submit a business plan in order to add a select group with as few as 50 potential members. The NCUA Board maintains that flexibility in this area is advisable and therefore makes no change to the IRPS.

Several respondents commented on the proper channelling of appeals of decisions by Regional Directors. Chapter 1, X "Appeals" and Chapter 2 "Reviewing Field of Membership Requests" state that appeals to the NCUA Board should be submitted through the appropriate Regional Director. The majority of the commenters indicated that the appeals should go directly to the NCUA Board, instead of to the Regional Director whose decision is being appealed. The existing system for processing appeals was not established and is not changed by this IRPS. It has been in place for some time to accommodate appeals of all types of Regional Director decisions. This IRPS is not the vehicle to accomplish a change in the appeal process. Appeals are not handled by the Regional Offices. They are forwarded by the Region to NCUA's Central Office and are investigated and presented to the NCUA Board by staff who are objective and have had no previous involvement in the case.

Service status reports (defined in the IRPS at the end of Chapter 2) as a written summary of the result of FCU efforts to bring service to members of select groups added) were questioned by a number of commenters. Some of these commenters, including several who supported the concept in general, asked that the IRPS clearly state the purpose of the reports, the specific information to be accumulated, and the intervals at which the reports are to be submitted. The IRPS does indicate the fundamental purposes of the service status reports. In addition to assisting credit union management in assessing marketing needs and successes, the reports provide the NCUA with information to evaluate the extent to which an applicant FCU is serving its current potential membership. As far as the specific information to be reported and the intervals at which the reports are to be submitted, those determinations are best left to the respective Regional Directors based on the circumstances involved in each case. Hence, no change is made in this area.

Community chartering and field of membership policies received a variety of comments. First, a number of commenters were concerned about the policy change deleting select group additions for community FCU's. (*See* Chapter 2 "Community FCU Field of Membership Expansions" and discussion in Supplementary Information section of proposed IRPS.) The Board maintains that the elimination of this alternative for community charters is appropriate. In order for a community credit union to expand its field of membership, it must provide evidence that the extended area of service posseses all of the characteristics of a well-defined community. Upon presentation of such evidence, and satisfaction of all other appropriate criteria, the community charter's boundaries will be modified and its area of service will be enlarged. The intent of IRPS 84-1, which first provided community charters access to select groups was to allow community charters to add such groups outside the described community boundaries, but only after the area outside the boundaries had been shown by applicant FCU to represent a natural extension of the original community. The Board believes that community chartering policy should be to encourage service to all of those within the

community boundaries and therefore makes no change to the IRPS.

A related question raised by several commenters is what happens to select groups located outside of a community charter's specified boundaries which were added to a community charter's field of membership during the past five years. These groups would continue to have membership eligibility from the community FCU. They would continue to be specifically named in the community FCU's field of membership.

A number of respondents questioned whether partnerships, corporations, and other legal entities ("non-natural persons") could be included in the field of membership of community-chartered FCU's without being specifically listed in Section 5 of the charter. These non-natural persons are legal entities which are located within the boundaries of community charters. One commenter pointed out that Part 705 of the NCUA Rules & Regulations formerly included discussion about this topic and provided specific wording for use in community charter field of memberships. In addition, many community charters have assumed that these non-natural persons qualify for membership under the general clause "organizations of such persons." The NCUA Board is persuaded that a clarification is necessary. Hence, a change in the IRPS is appropriate. Chapter 1, Section II, subsection 3, has been modified accordingly. Also, the community field of membership examples have been modified to show that business and other entities within the service area can become members without being specifically listed in the charter.

The topic of overlaps (*see* Chapter 1, II, C, 2.) received the attention of a number of commenters. Most commenters agreed with the approach to overlaps expressed in the IRPS. The remarks about overlaps from a credit union trade association commenter are particularly noteworthy. The commenter indicates that procedures to deal with material and potentially troublesome overlaps have been addressed by NCUA but similar procedures have not been forthcoming from state regulators' offices. The commenter encourages NCUA to develop agreements with each of the state regulators which will facilitate to two-way flow of information regarding overlaps or potential overlaps that are consistent with the dual chartering policy. The Board believes that its overlap policy as set forth in the IRPS is appropriate. However, NCUA continues to pursue such agreements with state regulators.

The policy of granting cross-regional associational charters and field of membership expansions (*see* Chapter 1, IV—"Widely-Dispersed Associated Charters") drew a number of comments. Most of the commenters agreed with the position taken in the IRPS which mandates that affected Regional Directors vote on such expansions and charters. Several commenters indicated complete opposition to such charters/expansions and asked for a total prohibition of such groups. Two other commenters indicated that the policy is an overreaction to the granting of a few charters. The NCUA Board continues to believe that this policy, adopted last year, is reasonable and appropriate and that it should be left intact. A clarification that this policy applies to expansions is made to Chapter 2 at the end of the Section entitled "Select Group Additions."

Several commenters recommended that the term "expansion" be deleted from Chapter 2 of the IRPS and that some other similar term such as "adjustment," "change," "addition," or "amendment" be substituted therefore. The term "expansion" was eliminated where possible prior to the publication of the proposed IRPS. Accordingly, no further substitutions/changes have been made.

The retiree/senior citizens policy received several comments. This policy is set forth in Chapter 2—"Addition of Retiree or Senior Citizen Associations" and has been NCUA policy since 1984. All credit union comments were supportive of the policy. Letters from four bankers' associations opposed the policy. This policy is not new and is generally considered to be noncontroversial. Hence, no change is made.

The issue of background/credit checks for prospective officials/employees of new FCU's received unanimously favorable comments. This is addressed in Chapter 1, II, C, 1, b—"Proposed Management's Character and Fitness." One commenter suggested that some type of safeguards be added to prevent "straw man" officials from circumventing the policy's purpose. Although the Board recognizes this concern as genuine, we believe that the commitment to serve document that each prospective official must sign is a reasonable counterbalance. No threats/punitive actions would be appropriate since the Board does not wish to discourage persons from serving in these largely volunteer capacities. Therefore, no changes are made.

Several comments were received about the section in Chapter 1 entitled "Appropriateness of Proposed Federal Credit Union Name." (*See* Chapter 1, III.) These limits on the naming of FCU's are longstanding NCUA policy. However, this is the first time they have been set forth in an IRPS. Although the commenters were generally in agreement with the discussion in the proposed IRPS, one commenter wanted the list of inappropriate names expanded to include names used by other financial institutions and by the U.S. Government. There is in existence a criminal statute prohibiting misuse of titles of federally-insured institutions. Since it is required that the last three words of every Federal credit union's name must be "Federal Credit Union," no modification to this section is necessary.

The issue of emergency mergers/purchase and assumptions received a number of comments. (*See* Chapter 2 section entitled "Additions Via Mergers and Purchase and Assumptions.") The credit union commenters supported the policy in the proposed IRPS, the bankers' associations were opposed. The bankers' associations claimed generally that the policy results in dilution of the common bond. The Board maintains that the latitude permitted in this subsection of the IRPS is good public policy since it serves to reduce the exposure to loss by the National Credit Union Share Insurance Fund. Also, the consolidation of a troubled credit union's field of membership with an effectively-operated FCU does not create new credit union service. Existing eligibility for membership is simply transferred from one credit union to another. These are not new NCUA policies and the NCUA Board believes no change to them is necessary.

The requirement for new charter applicants to enter into a Letter of Understanding & Agreement (LUA) received several comments. This issue is discussed in Chapter 1, VIII entitled "LUA's." LUA's have been traditionally used with new charters. One commenter stated that it should be made clear to the officials of a new FCU that the terms and conditions in the LUA's may be modified. Accordingly, a change has been made to Exhibit B of the IRPS adding a seventh clause to the specimen LUA to read "As the credit union's officials gain experience and the credit union achieves target levels of growth and profitability, the above terms and conditions may be renegotiated by the two parties." Another commenter asked that NCUA specify the precise circumstances under which an LUA will be required. The IRPS states that LUA's will be required for most new charter applicants.

The policy on chambers of commerce and similar organization drew several

comments. The policy set forth in the proposed IRPS prohibiting inclusion of the employees of member of a chamber of commerce, or similar association, in a credit union's field of membership elicited several negative comments. The IRPS states that if an FCU wishes to serve the employees of a members of a chamber of commerce or similar professional organization (e.g., employees of member of a bar or medical association, employees of a franchisee), it must follow the procedures for field of membership expansion set forth in the select group expansion section. Although this may be considered a tightening of chartering and expansion policies, it does not eliminate the availability of credit union service to any group. Hence the Board makes no change to the proposed IRPS.

One commenter wanted the IRPS to assure new charter applicants that their proposed field of membership would be given consideration early on in the chartering process. Although the IRPS does not directly address this concern, there is a full discussion of what types of fields of membership are appropriate and inappropriate. Charter applicants should deal with field of membership issues up-front. The Regional Offices are prepared to answer any questions and settle any uncertainties pertaining to field of membership which the charter applicant is unable to resolve by reading the IRPS. Therefore, no change is made.

One commenter recommended that there be specific discussion and encouragement in the IRPS relating to FCU service to high school student groups. Chapter 1, II, A, 2 notes that student groups constitute an associational common bond. High school student groups do qualify as student groups. It should be noted that high school student groups may be added to an existing Federal credit union under the policy pertaining to select associational group expansions. Of course, all other select groups expansion requirements must be met.

Though no comments were received on charter conversions (Chapter 3), NCUA took a final look at the subject and found some additional ways to streamline and clarify the state-to-Federal charter conversion process. The three significant changes were: (1) Addition of specific reference to the need and timing for submitting Form NCUA 4000 (Federal Credit Union Investigation Report, Conversion of State Charter to Federal Charter); (2) deletion, as unnecessary, of the requirement to submit a Form NCUA 5300; and (3) addition of specific reference to the time when an NCUA on-site review will be conducted.

Comments were received recommending that the introduction or preface to be part of the manual incorporating the IRPS contain a thorough discussion of credit union uniqueness, philosophy, and the common bond. The introduction to the manual will contain such a discussion. Another commenter recommended that a "glossary" be added to furnish definitions of special terminology such as "select group" and "multiple group charter." The Board believes this recommendation is a good one, hence a glossary will be included as part of the manual.

Regulatory Procedures

Regulatory Flexibility Act

As was noted in the proposed IRPS, the NCUA Board has determined and certifies that changes to NCUA policy resulting from adoption of the IRPS will not have a significant economic impact on a substantial number of small credit unions (those under $1 million in asset size); changes are directed at clarification of existing policy rather than creation of new restrictions. Therefore, a regulatory flexibility analysis has not been performed.

Paperwork Reduction Act

This IRPS does contain several collection requirements. All of the collection requirements contained in the IRPS and NCUA forms which will be a part of the manual were submitted to the Office of Management and Budget (OMB) for approval in early June. We have not yet heard from OMB. A notice of OMB approval will be published in the **Federal Register** upon its receipt. Any comments regarding collection requirements should be sent to the NCUA, Administrative Office, 1776 G Street, NW., Washington, DC 20456; and to Gary Waxman, OMB, Room 3228, NEOB, Washington, DC 20503.

Executive Order 12612

Implementation of the IRPS will not affect the state regulation of either federally- or state-chartered credit unions.

List of Subjects in 12 CFR Part 701

Credit union, Field of membership, Chartering, Field of membership addition, Mergers, Conversions.

By the National Credit Union Administration Board on July 20, 1989.

Becky Baker,

Secretary, NCUA Board.

Accordingly, NCUA amends 12 CFR Part 701, supersedes IRPS 84-1 and establishes the following IRPS 89-1 as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for Part 701 continues to read as follows:

Authority: 12 U.S.C. 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, and 1798.

2. Section 701.1 is revised as follows:

§ 701.1 Federal credit union chartering, field of membership modifications, and conversions.

National Credit Union Administration practices and procedures concerning chartering, field of membership modifications, and conversions are set forth in Interpretive Ruling and Policy Statement 89-1—Chartering and Field of Membership Policy (IRPS 89-1). The IRPS is incorporated into this regulation. Copies of the IRPS can be obtained from the National Credit Union Administration, Washington, DC, 20456.

3. IPRS 84-1 is superseded by the following IRPS 89-1.

Note.—The following ruling will not appear in the Code of Federal Regulations.

INTERPRETIVE RULING AND POLICY STATEMENT 89-1—CHARTERING AND FIELD OF MEMBERSHIP POLICY

Chapter 1—Federal Credit Union Chatering

I. Goals of NCUA Chartering Policy

NCUA's chartering policies are directed toward achieving three goals:

A. To uphold the provisions of the Federal Credit Union Act concerning granting Federal charters;

B. To promote credit union safety and soundness; and

C. To make quality credit union service available to all eligible groups who wish to have it.

II. Who May Apply for a Federal Credit Union Charter

NCUA may grant a charter to any group where it finds:

—The group possesses a recognizable and appropriate common bond;
—The subscribers are of good character and are fit to represent the group; and
—Establishment of the credit union is economically advisable—i.e., it will be a viable institution and its chartering will not materially affect the interests of other credit unions or the credit union system.

Generally, these are the only criteria NCUA will look to. In unusual circumstances, however, NCUA may consider other factors, such as other Federal law or public policy in deciding if a charter should be approved.

A. *Common Bond.* Congress has recognized three types of Federal credit union common bonds: occupational, associational, and community. A Federal credit union may also consist of a combination of occupational and associational groups— for example, NCUA may charter a Federal credit union consisting of employees of a local school district and members of a church group. Individual groups have their own common bond. All of the groups belonging to one particular credit union (i.e., listed in Section 5 of the credit union's charter) make up the credit union's field of membership.

If the charter is granted, the Federal credit union will only be able to grant loans and provide services to persons within the groups defined in the charter. If the Federal credit union later wishes to add persons to its field of membership, it must submit a charter amendment request to NCUA in accordance with the procedures set forth in Chapter 2.

1. *Occupational Common Bond.* NCUA has limited this common bond to employment by the same enterprise. Persons sharing this common bond may be geographically dispersed. Employees of a parent corporation and its wholly-owned subsidiaries and persons under contract to work regularly for an enterprise may be considered under a single occupational bond. Each category to be served (e.g., subsidiaries, contractors) must be separately listed. Persons with different employers, even if closely related geographically—persons working at a single shopping center, industrial park, or office building, for example—are not treated as having a single common bond, but will be considered under NCUA's community or multiple-group charter policies.

All occupational common bonds will include a geographic definition: e.g., "employees, officials, and persons who work under contract regularly for ABC Corporation or any of its subsidiaries, who work in Miami, Florida." Other acceptable geographic definitions are: "employees * * * who are paid from * * *" or "employees * * * who are supervised from * * *."

The employer may also be included in this common bond—e.g., "ABC Corporation and its subsidiaries." The employer will be defined in the last clause describing the group.

Some examples of occupational group definitions are:

a. "Employees of the Scott Manufacturing Company who work in Chester, Pennsylvania * * *."

b. "Employees and elected and appointed officials of municipal government in Parma, Ohio * * *."

c. "Employees of Johnson Soap Company and its majority-owned subsidiary, Johnson Toothpaste Company, who work in Augusta and Portland, Maine * * *."

d. "Personnel of fleet units of the U.S. Navy home ported at Mayport, Florida * * *."

e. "Civilian and military personnel of the U.S. Government who work or are stationed at, or are attached or assigned to Fort Belvoir, Virginia, or those who are retired from, or their dependents or dependent survivors who are eligible by law or regulations to receive and are receiving benefits or services from, that military installation * * *."

f. "Employees of these contractors who work regularly at U.S. Naval Shipyard in Bremerton, Washington * * *."

g. "Employees, doctors, medical staff, technicians, medical and nursing students who work at Boston Medical Center at the locations stated: * * *."

h. "Employees and teachers who work for the School District Number 3 in Austin, Texas * * *."

Some examples of insufficiently defined occupational groups are:

a. "Employees of engineering firms in Seattle, Washington." (No common employer; names of firms must be stated; however, may be the basis for a multiple group.)

b. "Persons employed or working in Chicago, Illinois." (No common employer; names of firms must be stated.)

c. "Persons working in the entertainment industry in California." (No common employer; names of firms must be stated.)

2. *Associational Common Bonds.* NCUA limits this common bond to groups consisting primarily of individuals (natural persons) who participate in activities developing common loyalties, mutual benefits, and mutual interests. Qualifying associational groups must hold meetings open to all natural person members at least once a year, must sponsor other activities providing for contact among natural person members, and must have an authoritative definition of who is eligible for membership—usually, this will be the association's constitution and bylaws. The clarity of the associational group's definition and compactness of its membership will be important criteria in reviewing the application. NCUA policy is to organize associational charters at the lowest organizational level which is economically feasible.

Student groups constitute an associational common bond and may qualify for a Federal credit union charter.

Associations formed primarily to obtain a credit union charter do not have a sufficient associational common bond; nor do associations based on a client or customer relationship—an insurance company's customers or a buyer's club, for example.

NCUA normally charters associational Federal credit unions consisting of natural person members. In certain instances, NCUA will allow nonnatural persons (e.g. corporate sponsor or organizations of members) to be eligible for membership.

Moreover, the common bond extends only to the association's members. The employees of a member of a local chamber of commerce, for example, do not have a sufficiently close tie to the association to be included. A proposal to include these persons among those to be served by the Federal credit union will be considered as a multiple-group charter application.

Homeowner associations, tenant groups, electric co-ops, consumer groups and other groups of persons having an "interest in" a particular cause and certain consumer cooperatives may be eligible to receive a Federal charter; however, they must make a strong showing of common activities and economic viability. Newly-organized associations must make a similar showing; experience has shown that a new group's efforts are best focused on solidifying member interest before attempting to offer credit union service.

All associational common bonds will include a definition of the group and a geographic or "operational area" limitation—unless the constitution or bylaws of the associational group limit the geographical area—e.g., "Members of the ABC Association living or working in New York, New York, who qualify for membership in accordance with its constitution and bylaws in effect on January 21, 1989."

The association itself may also be included in the field of membership—e.g., "ABC Association."

Some examples of associational group definitions are:

a. "Regular members of Locals 10 and 13, IBEW Union, Miami, Florida, who qualify for membership in accordance with their constitution and bylaws in effect on May 20, 1989."

b. "Members of the Hoosier Farm Bureau who live or work in Grant,

Logan, or Lee Counties of Indiana, who qualify for membership in accordance with its constitution and bylaws in effect on March 7, 1980."

c. "Members of the Mennonite Church who live or work in the State of Kansas."

d. "Members of the Shalom Congregation who live in Chevy Chase, Maryland."

e. "Regular members of the Corporate Executives Association, located in Westchester, New York, who live or work in Westchester, Rockland, and Suffolk Counties in New York, who qualify for membership in accordance with its constitution and bylaws in effect on December 1, 1985."

f. "Members of the Northern Michigan Electric Co-op located in Marquette, Michigan."

Some examples of insufficiently defined associational group definitions are:

a. "Members of military service clubs in the State of New Mexico." (No single associational tie; specific clubs and locations must be named; may be considered as multiple group).

b. "Veterans of U.S. military service."

Some examples of unacceptable associational common bonds are:

a. "ABC Buyers Club." (An interest in purchasing only does not meet associational standards.)

b. "Customers of ABC Insurance Company." (Policyholders or customer/client relationships do not meet associational standards.)

3. *Community Common Bonds.* Congress has required that a credit union charter that will be based on a tie to a specific geographic location be limited to "a well-defined neighborhood, community, or rural district." NCUA policy is to limit the community to a single, compact, well-defined area where residents commingle and interact regularly. NCUA recognizes two types of affinity on which a community charter bond can be based: residence and employment. Businesses and other legal entities within the community boundaries may also qualify for membership. Given the diversity of community characteristics throughout the country and NCUA's goal of making credit union service available to all eligible groups who wish to have it, NCUA has established the following common bond requirements:

a. The geographic area's boundaries must be clearly defined; and

b. The charter applicant must establish that the area is recognized by those who live and work there as a distinct "neighborhood, community, or rural district."

A typical definition of a community-based common bond is: "Persons who live or work in and businesses and other legal entities located in ABC, the area of XYZ City bounded by Fern Street on the north, Long Street on the east, Fouth Street on the south, and Elm Avenue on the west."

If the community is also a recognized legal entity, it may also be included in the field of membership—e.g., "DEF Township."

Some examples of community common bond definitions are:

a. "Persons who live or work in ABC County, Maine."

b. "Persons who live or work in and businesses and other legal entities located in Independent School District No. 1, ABC County, Minnesota."

c. "Persons who live or work within a ten-mile radius of Walnut, Illinois" (Rural areas only.)

Some examples of insufficiently defined community common bond definitions are:

a. "Persons who live or work within *and businesses located within* a ten-mile radius of Washington, D.C." (Not a recognized "neighborhood, community, or rural district.)

b. "Persons who live or work in the industrial section of XYZ, New York."

4. *Multiple-Group Charters.* NCUA may charter a Federal credit union to serve a combination of distinct, definable occupational and/or associational groups. However, NCUA will not charter as a single Federal credit union multiple groups which include one based on a community common bond.

In addition to general chartering requirements, special requirements pertaining to multiple-group applications must be satisfied before NCUA will grant such a charter.

a. Each group to be included in the proposed field of membership of the Federal credit union must have its own common bond.

b. Each group must individually request inclusion in the proposed Federal credit union's charter.

c. All groups must be within the operational area of a planned home or branch office of the proposed Federal credit union. "Operational area" is an area surrounding the home or a branch office that can be reasonably served by the applicant as determined by NCUA. For chartering purposes, "branch office" means any office of a Federal credit union where an employee accepts payment on shares and disburses loans. An ATM or similar cash disbursing machine does not qualify as a "branch office."

An example of a multiple-group field of membership is:

"The field of membership of this Federal credit union shall be limited to those having the following common bond:

1. Employees of DuPont Corp. who work in Wilmington, Delaware;

2. Partners and employees of the law firm of Smith & Jones who work in Wilmington, Delaware;

3. Members of the GHI Associations who live in Wilmington, Delaware, and qualify for membership in accordance with its constitution and bylaws.

5. *Other Persons Sharing Common Bond.* A number of persons by virtue of their close relationship to a common bond group may be included at the charter applicant's option in the field of membership:

a. "Spouses of persons who died while within the field of membership of this credit union";

b. "Employees of this credit union";

c. "Persons retired as pensioners or annuitants from the above employment";

d. "Members of their immediate families";

e. "Volunteers";

f. "Organizations of such persons."

"Members of their immediate families" may be generally defined as deemed appropriate by a Federal credit union when including this group among those to be served. To be made effective, however, the Federal credit union's board of directors must approve the definition by resolution, and include it in Article XVIII, Section 2, of its bylaws. The single exception is for those Federal credit unions serving student groups: only the "members of the immediate families" of students who actually join the Federal credit union may be included. NCUA defines this secondary group for student groups as follows: "Members of the immediate families of students who are members of this credit union."

Volunteers, by virtue of their close relationship with a sponsor group may be included. Examples include volunteers working at a hospital or in a church.

Under Article II, Section 5, of NCUA's Standard Bylaws, if a member leaves the field of membership, standard member services will be terminated. However, the board of directors may, by resolution, set forth the circumstances under which a member may maintain membership. This option is commonly referred to as the "once a member, always a member" bylaw provision

B. *Character and Fitness of Subscribers.* The Federal Credit Union

Act requires that seven or more natural persons must present to NCUA for approval a sworn organization certificate stating at a minimum:

1. The name of the proposed Federal credit union;

2. The location of the proposed Federal credit union and the territory in which it will operate;

3. The names and addresses of the subscribers to the certificate and the number of shares subscribed by each;

4. The initial par value of the shares;

5. The proposed field of membership, specified in detail;

6. The term of the existence of the corporation, which may be perpetual; and

7. The fact that the certificate is made to enable such persons to avail themselves of the advantages of the Federal Credit Union Act.

These seven or more persons will be the proposed Federal credit union's "subscribers." False statements on this certificate may be grounds for Federal criminal prosecution.

The Act also requires NCUA to satisfy itself as to the "general character and fitness" of these subscribers. These persons, therefore, may be the subject of credit and background investigations at NCUA's discretion.

C. *Economic Advisability.* Before chartering a Federal credit union, NCUA must be assured that the institution will be viable and that it will not materially affect existing state or Federal credit unions. This economic advisability inquiry has become especially important since 1970, when Congress assigned NCUA the obligation to establish a Fund insuring credit union shares and to preserve that Fund.

NCUA will conduct an independent on-site investigation for each charter application to assure itself that the proposal can be successful.

1. *The Proposed Federal Credit Union's Viability.* The success of any credit union depends on: (a) The depth of the members' support; (b) the character and fitness of management; and (c) present and projected market conditions.

a. *Member Support.* While NCUA has not set a minimum size field of membership for chartering a Federal credit union, experience has shown that a credit union with under 500 potential members generally is unlikely to succeed. A charter applicant with a proposed field of membership of under 500 will have to demonstrate convincing support for the credit union. For example, in an occupational group a commitment for significant long-term support from the employer must be in evidence.

The group's size is only of help if members participate in the credit union. The charter applicant must show that a substantial percentage of the group's members will join the credit union and use its services. Survey results must be based at a minimum on a sampling of 250 potential members. In particular instances, especially where the common bond is broadly-defined or newly-established, NCUA may require a larger sampling.

b. *Proposed Management's Character and Fitness.* The applicant must provide a list of the persons who will serve as officials. NCUA will conduct a credit and background (including criminal record) investigation on each of the proposed Federal credit union's officials. NCUA also reserves the right to perform such checks on employees of the applicant FCU. The Agency will also need assurance that the management team will have the requisite skills—particularly in leadership and accounting—and the commitment to dedicate the time and effort needed to make the Federal credit union a success.

c. *Present and Future Market Conditions:* The ability to compete in the marketplace and to adapt to changing market conditions is key to the survival of any enterprise, and a crucial part of that is the ability to plan well. NCUA, therefore, requires an applicant to submit a business plan based on realistic and supportable projections and assumptions, including, as a minimum, these elements:

i. Mission statement;

ii. Analysis of market conditions—economic prospects for the group, availability of financial services from credit unions, banks, S&Ls;

iii. Summary of survey results;

iv. Financial services needed/desired;

v. Financial services to be provided;

vi. How/when services are to be implemented;

vii. Staffing of credit union and credentials of key employees;

viii. Physical facility—office, equipment;

ix. Type of recordkeeping system;

x. Budget for 1st, 2nd, and 3rd year;

xi. Semiannual pro forma financial statements for 1st, 2nd, and 3rd year, including assumptions—e.g., loans and dividend rates;

xii. Goals for number of members;

xiii. Goals for operating independently;

xiv. Source of funds to pay expenses during initial months of operation;

xv. Written policies (lending, investments, funds management);

xvi. Goals for dividends, generation of resources;

xvii. Plan for continuity—directors, committee members; and

xviii. Evidence of sponsor commitment if subsidies are critical to success of the Federal credit union.

NCUA expects that the subscribers and proposed officials will understand and support the business plan submitted.

2. *Overlaps.* (This discussion pertains to new charters as well as existing charters.)

An overlap exists when a group of persons is eligible for membership in two or more credit unions, including state charters. General policy requires that every effort be made to avoid an overlap. Ideally, a group of persons should be included in the field of membership in only one credit union.

Both new and existing credit unions are obligated to investigate the possibility of an overlap prior to submitting an application for a new charter or adding a group, by surveying the prospective field of membership and contacting the state credit union supervisor and the local credit union league or trade association. If and when an overlap situation does arise, officials of the involved credit unions are encouraged to work out the overlap problem between or among themselves. If the matter is resolved informally, the applicant must submit a letter to that effect from the credit union whose field of membership already includes the subject group. If no resolution is possible, an application for a new charter or expansion may still be submitted, but must also include information regarding the overlap and document attempts at informal resolution. In any event, the applicant Federal credit union must clearly indicate why a new credit union or expansion is being sought and why existing and potential members of the current credit union will support and join a newly-chartered or expanded Federal credit union.

When resolution of an overlap problem is not forthcoming, and other circumstances warrant an overlap, then an overlap may be permitted. Among the circumstances which may justify an overlap are: (1) Failure of the original credit union to provide service to the group, (2) limited participation by members or employees of the group in the original credit union after the expiration of a reasonable period of time, and (3) incidental overlap (the group of persons in question is so small as to have no material effect on the original credit union). In reviewing the overlap, the Regional Directors will consider the nature of the problem;

efforts made to resolve the situation; financial effect on the overlapped credit union; the desires of the group(s); the opinion of the state credit union supervisor, if applicable, and other interested parties; and the best interests of the involved potential or current members. In general, NCUA will not protect associational and community charters from overlaps with occupational charters.

A number of situations may not justify approval of a requested overlap. For example, if the requesting credit union offers certain specialized services not offered by the original credit union (such as credit cards, ATMs, and IRAs), the extra services alone may not justify the overlap. Also, proximity, by itself, does not warrant approval of an overlap. A Federal credit union in Chicago, Illinois, may not have a convincing argument, based on geography alone, that a select employee group (SEG) also located in Chicago would be better served by it than by the SEG's headquarters credit union located in Dallas, Texas.

From an overlap prevention perspective, new charter applicants and every occupational or associational group which comes before the Regional Directors for affiliation with an existing Federal credit union must advise in writing whether the group is included within the field of membership on any other credit union. This requirement will alert the Regional Directors to possible overlap situations before they occur. Thus, most potential field of membership conflicts can be avoided. If cases do arise where the assurance given to a Regional Director concerning unavailability of credit union service turns out later to be inaccurate, the misinformation is grounds for removal of the group from the Federal credit union's charter.

3. *Exclusionary Clauses.* (This discussion pertains to new charters as well as existing charters.)

In certain instances, exclusionary wording prohibiting certain overlaps may be used to help define the field of membership of a Federal credit union. Use of exclusionary wording should be avoided if possible. Generally, a thorough investigation of a charter application or an application for a field of membership expansion will disclose the situations where other credit union service is available. The field of membership should be written so that only the specific locations where credit union service is not currently available are allotted to the new charter or to the Federal credit union seeking the field of membership addition.

However, certain cases exist where a specific recitation of work locations (for an occupational group) or member locations (for an associational group) is not feasible. Corporations or associations with widely-dispersed employees or members fall into this "exception" category. In these special cases, exclusionary wording could be used to provide some limits on an extensive field of membership. An example might be employees of XYZ Corporation where XYZ Corporation is a relatively new company which specializes in acquisitions and divestitures and its corporate makeup is constantly changing. In this case the field of membership could be described as "employees of XYZ Corporation who work in the United States, except employees eligible for membership in another occupational-type credit union serving an employee unit of XYZ Corporation."

Another situation which may require exclusionary wording is the chartering of a new community credit union or the field of membership conversion of an existing occupational or associational credit union to a community charter. Although investigation may show that the residents of the proposed area of service by and large do not have access to a credit union, other credit unions may be operating in the community which desire to remain autonomous entities. If the Regional Director determines that avoidance of overlap is warranted, an exclusionary clause may be inserted in the community credit union's field of membership. Examples of exclusionary wording are as follows:

1. Persons who reside or work in Portland, Maine, except persons eligible for primary membership in ABC Employees Federal Credit Union or Portland City Employees Credit Union as of the date of this charter;

2. Persons who reside or work in Hilo, Hawaii, except employees of Hilo Sugar Company and the United States Government.

The exclusionary language in a community charter's field of membership ordinarily applies only to "primary" members of existing occupational-type credit unions. "Primary" is defined as the basic occupational or associational affinity to the field of membership defined in section 5 of the charter. In example 1 above, assuming that the two excluded Federal credit unions have single sponsor fields of membership, only employees of ABC Company and of the City of Portland would be excluded. Family members (or other secondary or derivative members) are not excluded. Also, unless special circumstances warrant, only occupational field of membership will be protected by the exclusion. That is, associational, multiple group and other community credit unions will not normally be afforded protection from overlap. Finally, by dating the exclusion, only those employee units in the field(s) of membership of the protected credit union(s) as of the specified date are excluded from membership eligibility in the community credit union. Thus, groups added by an occupational credit union subsequent to the establishment of the community charter are not excluded from the community credit union. In the second example above, dating the exclusion clause, which is written very specifically, is inappropriate.

Although use of exclusionary clauses by NCUA will normally be on an exception basis only, Regional Directors may, at their discretion, apply exclusionary wording to a credit union's field of membership. However, the clauses shall not be used in lieu of a thorough investigation of the availability of existing credit union service by a charter applicant or an applicant for a field of membership addition. Furthermore, it is NCUA's intent to use exclusionary clauses only to increase the vitality and strength of the credit union system, not to prevent people from obtaining credit union service.

III. Appropriateness of Proposed Federal Credit Union Name

It is the responsibility of the Federal credit union organizers to ensure that the FCU applicant's name or FCU name change does not constitute an infringement on the name of any corporation in their trade area. Prior to granting a charter or approving a name change, NCUA will ensure that the credit union's name: (a) is not already being used by another Federal credit union; (b) will not be confused with NCUA or another Federal or State agency, or with another credit union; and (c) does not include inappropriate language. The last three words in the name of every credit union chartered by NCUA must be "Federal Credit Union."

IV. Widely-Dispersed Associational Charters

NCUA policy is to charter associational Federal credit unions at the lowest organization level which is economically feasible. This does not preclude the granting of associational charters with widely-dispersed memberships. NCUA may grant such charters after scrutinizing the adequacy of the applicant's common bond. NCUA may, at its discretion, require that the proposed field of membership be

narrowed before granting a new charter; expansion to include a large portion of the association's members may be allowed at a later time if appropriate.

Also, as with any widely-dispersed group, overlap issues are likely to arise, either at the time of or subsequent to chartering. NCUA *will* consider the effect that granting a charter with such a group in its field of membership would have on any number of existing credit unions. In addition, an associational credit union with a widely-dispersed membership may expect overlaps to be granted to other credit unions in the future, particularly at the local level.

In recognition of these unique problems, NCUA follows a separate internal procedure for associational charter applications for associations with proposed fields of membership of 500 or more persons which cross NCUA regional boundaries. NCUA's Director of Examination and Insurance and all NCUA Regional Directors with any of the association's members located in their region must vote on the charter application. A majority vote is required for approvals; tie votes are referred directly to the NCUA Board for decision; denials are appealable to the Board.

V. Industrial Parks, Shopping Centers and Similar Groupings

A Federal charter may be available to persons working in a particular industrial park or shopping mall, either as community-based or as a multiple group. If the multiple group option is selected, all multiple group requirements must be met. Each employee group within the industrial park or shopping center must submit a letter requesting service. Only those groups submitting letters will be added to the charter. If the community option is selected, the industrial park or shopping center must meet the standards for community charters.

VI. Specially-Designated Federal Credit Unions

Some credit unions are recognized and designated by NCUA to perform certain functions different from those available to Federal credit unions in general. An applicant wishing to be considered for such a designation may, at the time of charter application, provide the additional information NCUA needs. NCUA will then consider the designation and the charter application together. The designation can also be applied for at a later time if all the requirements are met.

A. *Low-Income Credit Union.* A low-income credit union is defined as one where a majority of its members fall into one or more of these categories: (1) Those whose annual income falls at or below the lower-level standard of living classification as established by the Bureau of Labor Statistics and as updated by the Employment and Training Administration of the U.S. Department of Labor; (2) those who are residents of a public housing project who qualify for such residency because of low income; (3) those who qualify as recipients in a community action program; (4) those who are enrolled as full-time or part-time students in a college, university, high school, or vocational school. The Federal credit union applicant should forward a separate request for a low-income designation at the time the application is submitted with appropriate documentation.

A credit union designated by NCUA as a low-income credit union has greater flexibility in accepting nonmember deposits insured by NCUA. The credit union may also participate in special funding such as the Community Development Revolving Loan Program for Credit Unions if it is involved in the stimulation of economic development activities and community revitalization efforts.

B. *Corporate Federal Credit Union.* A corporate credit union is defined as: (1) One that is operated primarily for the purpose of serving other credit unions; and (2) one whose total dollar amount of outstanding loans to member credit unions plus shares issued to member credit unions equals or exceeds 75 percent of its total outstanding loans plus shares and deposits. They are governed by different reserving and other standards as set forth in Part 704 of NCUA's Rules and Regulations.

VII. How To Apply for a Federal Credit Union Charter

A. *Organizing a Federal Credit Union.* Federal credit unions are organized by persons who donate time and resources and are responsible for determining the interest, commitment, and advisability of forming a Federal credit union. The organization of a Federal credit union takes considerable planning and dedication in order to ensure the success of the new credit union.

Persons interested in organizing a Federal credit union should contact the NCUA Regional Director serving the state in which the credit union will be organized or their state credit union league. A list of NCUA offices is attached as Exhibit A to this Chapter. NCUA will provide information to groups interested in pursuing a Federal charter and will assist them in obtaining an organizer.

A credit union organizer may be a trade association representative, an NCUA examiner, or a volunteer with training and experience in chartering new Federal credit unions. The functions of the organizer are to provide direction, guidance, and advice on the chartering process. The organizer also provides the group with information about a credit union's functions and purpose as well as technical assistance in preparing and submitting the charter application. Close communication and cooperation between the organizer and the group members is critical to the chartering process.

Once the group has decided to apply for a Federal credit union charter and the organizer is satisfied that the application has merit, the group should elect 7 to 10 persons to serve as subscribers. The subscribers and organizer will work together to ensure that information required in the Federal Credit Union Investigation Report (NCUA 4001 for Federal credit union applicants or NCUA 4000 for applications to convert to a Federal charter) is well supported and documented. The organizer and subscribers should develop a business plan as discussed earlier in this chapter. The subscribers should also locate willing individuals capable of serving on the board of directors, credit committee, supervisory committee, and as treasurer/manager of the proposed credit union. This documentation will be submitted along with other chartering documents by the organizer following the charter organization meeting.

A charter organization meeting will be called as soon as the subscribers and organizer are satisfied that the required chartering information has been collected. The charter organization meeting should be attended by all subscribers, persons who have agreed to serve on the board or committees, and any other potential members of the credit union. At this meeting, the organizer will discuss the progress and conclusions of the charter investigation, will announce the proposed slate of officials, and will respond to any questions posed at the meeting. When satisfied that the group meets all the chartering requirements, the subscribers should then sign and have notarized two copies of the Organization Certificate (NCUA 4008) and provide this to the organizer for inclusion in the charter application. As their final duty, the subscribers will elect the board of directors and credit committee of the proposed Federal credit union. The charter organization meeting should then be adjourned.

Following the charter organization meeting, the board of directors should meet to elect officers and appoint members of the supervisory committee. The credit and supervisory committees should then meet to elect their respective chairmen and secretaries. The minutes of these and all future board of directors and committee meetings should be kept and safeguarded by their respective secretaries. Each official should execute a copy of Report of Officials and Agreement to Serve (NCUA 4012) to be submitted with the charter application package.

The board of directors should take action to apply for insurance of member accounts. The Certificate of Resolutions (NCUA 9501) should be executed by the president and secretary. Following action on this issue, the president and treasurer should execute the Application and Agreements for Issuance of Accounts (NCUA 9500). These documents should be provided to the organizer as part of the charter application. These actions conclude the major activities for the first meeting of the board of directors.

B. *Support for Charter Application.* As discussed previously in this Chapter, applicants for Federal credit union charters must, at a minimum, provide evidence that:

The group constitutes a recognized common bond;

The subscribers are of good character; and

The establishment of the credit union is economically feasible.

In addition, the Federal Credit Union Act requires applicants to submit a sworn organization certificate setting forth seven criteria (see Section II B of this Chapter). In order to process the application and capture all required information, NCUA has developed certain chartering forms to assist organizers.

1. *Federal Credit Union Investigation Report.* Applications for new Federal credit unions will be submitted on Form NCUA 4001. (State-chartered credit unions applying for conversion to Federal charter will use Form NCUA 4000. *See* Chapter 3 for a full discussion.) The organizer is required to certify the information and recommend approval or disapproval, based on the investigation of the request. Instructions and guidance for completing the form are provided on the form's reverse side. Associational charter applicants must include a statement of their membership criteria (normally the associations's constitution or bylaws) and the association's current financial statement.

2. *Report of Official and Agreement to Serve, NCUA 4012.* This form documents general background information of each official of the proposed Federal credit union. Each official must complete and sign this form. In addition, NCUA will request credit and criminal investigations of new officials.

3. *Organization Certificate, NCUA 4008.* This document establishes the seven criteria required of subscribers by the Federal Credit Union Act and is signed by the subscribers and notarized. This document should be executed in duplicate.

4. *Certification of Resolutions, NCUA 9501.* This document certifies that the board of directors of the proposed Federal credit union has resolved to apply for insurance of member accounts and has authorized the president and treasurer to execute the Application and Agreements for Insurance of Accounts. This form must be signed by both the president and secretary of the proposed Federal credit union.

5. *Application and Agreements for Insurance of Accounts, NCUA 9500.* This document contains the agreements with which Federal credit unions must comply in order to obtain National Credit Union Share Insurance Fund (NCUSIF) coverage of member accounts, including appropriate fidelity bond coverage of officials. The document must be completed and signed by both the president and treasurer.

6. *Business Plan.* While the required business plan need not follow a prescribed form, it must include all of the information set forth in Chapter 1.

C. *Submittal of Application.* Applications for new charters should be submitted to the Regional Director serving the state in which the proposed credit union is headquartered. Applications for Federal credit union charters should include, at a minimum, the documentation discussed in section B above. All charter applications are processed by the Regional Director in accordance with NCUA procedures.

The appropriate NCUA regional office will investigate all applications for Federal credit union charters. The investigation will include on-site contacts by NCUA with proposed officials and others having an interest in the proposed new charter. Credit and background checks will be requested for the credit unions' proposed officials. NCUA will acknowledge receipt of the application and will estimate processing time. Every effort will be made to act expeditiously on all applications.

VIII. Letters of Understanding and Agreement

NCUA has found from experience that certain activities generally cause significant problems for new credit unions. Therefore, in most cases, NCUA will require the prospective Federal credit union's officials to enter into an agreement not to engage in certain activities. The agreement is for a limited term—usually two to four years. A sample letter is attached as Exhibit B of this Chapter.

IX. Approvals

NCUA will make every effort to process the application expeditiously. Once approved, the board of directors of the newly-formed Federal credit union will receive a signed charter and by-laws from the Regional Director. In addition, the officials will be advised of the name and mailing address of the examiner who has been assigned responsibility for supervising and examining the credit union. Generally, the examiner will contact the credit union officials shortly after approval of the charter in order to arrange for the initial examination (usually within the first six months of operation). Assistance in commencing operations is generally available through the various state credit union leagues.

X. Appeals

New charter applications denied by the NCUA Regional Office are appealable to the NCUA Board. All such appeals should be sent to the appropriate NCUA Regional Office to be forwarded to the Central Office.

Exhibit A—NCUA Regions/Regional Offices

REGION I—ALBANY

9 Washington Square Washington Avenue Extension Albany, NY 12205

Commercial: 518-472-454
FTS: 8-562-4454
FAX: 518-869-1788

Maine	Rhode Island
New Hampshire	Connecticut
Vermont	New York
Massachusetts	New Jersey
Virgin Islands	Puerto Rico

REGION II—CAPITAL

1776 G Street, NW, Suite 800 Washington, DC 20006

Commercial: 202-682-1900
FAX: 202-789-2043

Pennsylvania	Delaware
Maryland	Virginia
West Virginia	District of Columbia

REGION III—ATLANTA

7000 Central Parkway
Suite 1600
Atlanta, Georgia 30328

Commercial: 404-396-4042
FAX: 404-696-8211

Kentucky	Louisiana
Tennessee	Arkansas
North Carolina	Georgia
South Carolina	Alabama
Mississippi	Florida

REGION IV—CHICAGO

300 Park Blvd., Suite 155
Itasca, Illinois 60143

Commercial: 312-250-6000
FTS: 8-312-250-6000
FAX: 312-889-9707

Wisconsin	Indiana
Michigan	Illinois
Ohio	Missouri

REGION V—AUSTIN

48007 Spicewood Springs Road
Suite 5200
Austin, Texas 78759

Commercial: 512-482-4500
FTS: 8-770-4500
FAX: 512-482-4511

Kansas	New Mexico
Oklahoma	Utah
Arizona	Texas

AUSTIN SUBOFFICE

320 6th Street, Room 202
Sioux City, Iowa 51101

Commercial: 712-233-3233
FTS: 8-862-3233
FAX: 712-255-9145

Minnesota	South Dakota
Iowa	North Dakota
Nebraska	Wyoming
Colorado	

REGION VI—PACIFIC

2300 Clayton Road
Suite 1350
Concord, California 94520

Commerical: 415-486-3490
FTS: 8-449-3490
FAX: 415-486-3729

Washington	Montana
Oregon	Idaho
California	Nevada
Alaska	Guam
Hawaii	

Exhibit B—Letter of Understanding and Agreement

To the Board of Directors and Other Officials
_____ Federal Credit Union

Since the purposes of credit unions are to promote thrift and to make funds available for loans to credit union members for provident and productive purposes, and since newly-chartered credit unions do not generally have sufficient reserves to cover large losses on loans or meet unduly large liquidity requirements, Federal insurance coverage of member accounts under the National Credit Union Share Insurance Fund will be granted to the above named credit union subject to the conditions listed in this Letter of Understanding and Agreement and in the Organization Certificate and Application and Agreements for Insurance of Accounts. These terms are listed below and are subject to acceptance by authorized credit union officials.

1. The credit union will refrain from soliciting or accepting brokered fund deposits from any source without the prior written approval of the Regional Director.

2. The credit union will refrain from the making of large loans, that is, loans in excess of 5 percent of unimpaired capital and surplus, to any one member or group of members without the prior written approval of the Regional Director.

3. The credit union will not establish or invest in a Credit Union Service Organization (CUSO) without the prior written approval of the Regional Director.

4. The credit union will not enter into any insurance programs whereby the credit union member finances the payment of insurance premiums through loans from the credit union.

5. Any special insurance plan/program, that is, insurance other than usual and normal surety bonding or casualty or liability or loan protection and life savings insurance coverage, which the credit union officials intend to undertake, will be submitted to the Regional Director of the National Credit Union Administration for written approval prior to the officials committing the credit union thereto.

6. The credit union will prepare and mail to the district examiner, financial and statistical reports as required by the Federal Credit Union Act and Bylaws, by the 20th of each month following that for which the report is prepared.

7. As the credit union's officials gain experience and the credit union achieves target levels of growth and profitability, the above terms and conditions may be renegotiated by the two parties.

Dated this _____ day of _____, 1989.
National Credit Union Administration Board
on behalf of the National Credit Union Share Insurance Fund

Regional Director

We, the undersigned oficials of the _____ Federal Credit Union, as authorized by the board of directors, acknowledge receipt of and agree to the attached Letter of Understanding and Agreement dated _____ 1989.

This Letter of Understanding and Agreement has been voluntarily entered into with the National Credit Union Administration. We agree to comply with all terms and conditions expressed in this Letter of Understanding and Agreement.

Should the NCUA Board determine that these terms and conditions have not been complied with or that the board of directors or other officials have not conducted the affairs of the credit union in a sound and prudent manner, the NCUA Board may terminate insurance coverage of the credit union. If actions by the officials, in violation of this Letter of Understanding and Agreement, cause the credit union to become insolvent, the officials assume such personal liability as may result from their actions.

The term of this Letter of Understanding and Agreement shall be for the period of at least 24 months from the date the credit union is insured. This Letter of Understanding and Agreement may, at the option of the Regional Director, be extended for an additional 24 months at the end of the initial term of this agreement.

_____ Federal Credit Union
By:
Date _____

Chief Executive Officer (President)
Date _____

Chief Financial Officer (Treasurer)
Date _____

Chief Recording Officer (Secretary)

Chapter 2—Changes in Field of Membership

As in the case of NCUA chartering policy, the goals for field of membership expansion are:

A. To uphold the provisions of the Federal Credit Union Act concerning the granting of Federal charters;

B. To promote credit union safety and soundness; and

C. To make quality credit union service available to all *eligible groups* who wish to have it.

A Federal credit union's field of membership is an official statement which specifically defines who may become a member of the credit union. It is recorded in section 5 of the credit union's charter.

Any change to the field of membership, whether it is an addition, deletion, or simple update, must be reflected formally in section 5 of the credit union's charter. Changes to section 5 are normally initiated by the officials of the respective Federal credit union and submitted in writing to the appropriate NCUA Regional Office for approval.

The National Credit Union Administration Board has delegated the authority to the Regional Directors to act on most charter amendment requests. This delegation enables the Agency to respond to the majority of requests promptly. However, certain complex proposals require special investigation by the Regional Directors, and may also require consultation with other Regional Directors and the Agency's Central Office. Applicants submitting such complex proposals will be advised in writing of the need for special review and the likelihood of extra processing time.

Reasons for Requesting an Amendment

A Federal credit union's board of directors may wish to request a field of membership amendment for a variety of reasons, including, but not limited to:

—Providing credit union access and service to an additional, clearly-defined group of persons who desire to be served by the applicant credit union;

—Accommodating sponsor acquisitions or reorganization;
—Diversifying the membership base in order to withstand real or potential economic adversities (e.g., sponsor shutdown or cutback, economic downturn);
—Merger with another credit union;
—Expanding the membership base to facilitate an improvement of service to all members.

Field of Membership Addition Requests—Types and Criteria

Four types of charters exist (occupation, association, community, and multiple group) for purposes of establishing a Federal credit union. Field of membership expansions are achieved by adding groups (either occupational, associational or community) to an existing credit union.

The definition of common bond for purposes of field of membership additions is the same as that found in the previous chapter concerning Federal credit union chartering. The examples of groups which do and do not meet the definition of common bond found in that chapter apply to field of membership additions as well. Different criteria apply to occupational, associational and multiple group field of membership additions than apply to community field of membership expansions. These two sets of criteria are discussed below.

Special rules apply for credit union additions to provide service to retiree and senior citizen groups. Additional methods of increasing the field of membership are possible through a merger or a purchase & assumption. All of these types of expansions are discussed briefly below.

Occupational and associational groups which share the same common bond as the credit union's primary sponsor fall under the category of common bond additions. Occupational and associational groups which have a separate common bond from a Federal credit union's primary sponsor (common bond group) are added under the provisions of select group field of membership expansion policy. Select group and common bond expansions are treated somewhat differently.

Additions Within the Common Bond

Some field of membership expansions for occupational and associational type Federal credit unions can be accomplished along traditional common bond lines. For example, an FCU whose primary sponsor is a particular corporation may add by a charter amendment: the employees of that corporation who work at another location; employees of the corporation who are paid from or are supervised from the headquarters location, such as sales persons or sales agents who work at a number of locations; employees of a division or majority-owned subsidiary of the parent corporation regardless of location or employees of a related company, such as a company under contract and possessing a strong dependency relationship on the sponsoring corporation.

The written request for an addition must be supported by a letter from an authoritative representative of the organization to be added. This letter should indicate:

(1) That the group wants to affiliate with the applicant Federal credit union;

(2) That at present the group does not have the availability of a credit union; and

(3) The number of persons currently employed by the corporate unit.

Whenever possible, this letter should be submitted on the letterhead stationery of the respective corporate entity. Included with the request for expansion must be a current financial statement for the applicant Federal credit union.

For associational Federal credit unions, expansions along common bond lines will normally be allowed only at the lowest economically feasible organizational level of the sponsoring association. For example, a Federal credit union serving the members of a local chapter of an association could apply to serve the members of another chapter.

The approval or disapproval of a field of membership amendment request of an existing FCU adding an association which crosses NCUA regional boundaries may be subject to special review, and this may cause some delay in processing. The Regional Director whose jurisdiction includes the applicant credit union will notify the applicant of the special review and will advise the applicant in writing of the estimated time frame needed to reach a decision.

Unlike select group additions, common bond additions do not have operational area requirements. That is, an addition within the common bond may be approved even though the applicant FCU does not have an office in the vicinity of the group to be added.

Select Group Additions

A select group of persons seeking credit union service from an occupational, associational or multiple group Federal credit union must have its own common bond. The select groups themselves may be either employee (occupational) groups or associational groups. However, a select group for expansion purposes cannot be defined by a common bond of community. The group's common bond need not be similar to the common bond(s) of the existing Federal credit union. In addition to the group having its own common bond, the following five criteria must be satisfied before an addition request will be approved.

a. All affected groups have requested service from the applicant FCU.

b. The applicant FCU possesses the financial resources and management capability to provide quality credit union service to each group. The applicant credit union's current CAMEL rating and financial condition will be considered under this criterion.

c. The addition request is economically feasible and advisable.

d. The applicant obtains a written statement from each group indicating whether the group is currently eligible for membership or is being served by any other credit union. If the groups are eligible for membership in another credit union, justification must be provided to show that the groups no longer desire that eligibility for continued service. The applicant credit union must provide a written statement from any overlapped credit union concurring or objecting to the overlap.

e. The group must be within the operational area of the home or a branch office of the FCU. Operational area is defined as an area surrounding the home or branch office that can reasonably be served by the applicant as determined by NCUA. Although a new select group alone is not enough to justify a proposed branch office, it is permissible to include new groups as partial justification for a proposed branch office if that office will also improve credit union service to the existing field of membership. However, the current field of membership must comprise a significant portion of the total field of membership to be served initially by the proposed branch office. A branch office means any office of a Federal credit union where an employee accepts payment on shares and disburses loans. An ATM, or similar cash disbursing machine, does not qualify as a branch office for purposes of field of membership expansion.

The process to add a select group to a Federal credit union's field of membership is a relatively simple one. A Federal credit union must submit a formal written request for the expansion to the appropriate Regional Office of NCUA. The request should be signed by the credit union's president or chairman of the board of directors. Accompanying the correspondence from the requesting credit union should be (1) a letter signed by an authoritative representative of each select group to be added and (2) a current financial statement for the requesting credit union. The letter from the select group should indicate at least the following:

1. The number of employees or members in the select group;

2. Whether the group currently has access to another credit union (if it does, then the other credit union should be specifically identified. A letter from the overlapped credit union should be obtained stating its concurrence or objection. If objections are raised, then the overlapped credit union is required to furnish the number of persons from the select group who are enrolled as members.);

3. That the select group is interested in obtaining service from the requesting credit union and that the group will support the credit union by such means as providing access to its employees or members via payroll deduction, use of employee or member newsletters, etc., and

4. The proximity to the applicant credit union's closest office.

Credit unions using the select group addition alternative should obtain the supporting letter from the group on the select group's letterhead stationery. The letterhead will enable NCUA to correctly identify the proper title of the select group and will provide validation of the select group's location (to ensure that the operational area requirement is satisfied).

It is possible for a Federal credit union to serve the employees or members of a select group who are located outside the operating area of the credit union as long as the select group has its headquarters (or its "paid from") location within the credit union's operating area, or a majority of the company's employees work within the credit union's operational area. However, special care will be exercised by the Regional Directors in considering requests for select associational group expansions where the association's membership is geographically dispersed. The associational chartering policy criteria discussed in Chapter 1 including Chapter 1, IV—Widely Dispersed Associational Charters, will apply in its entirety to select associational group expansion requests.

Community FCU Field of Membership Expansions

Community Federal credit union's may expand their fields of membership only by redefining the boundaries of their service area. Community charter policy stipulates that there be regular contact among persons who live or work within a well-defined neighborhood, community or rural district in order to satisfy the common bond requirements of the Federal Credit Union Act. The burden of proof for existence of the common bond is placed upon the applicant credit union.

An existing community Federal credit union may submit a request to expand its area of service by changing the boundaries which define its community field of membership. The enlarged area must constitute a geographical area that could be established as a community credit union under NCUA policy. Also, an existing occupational, associational or multiple group type Federal credit union may apply to convert to a community charter. In order to support a case for such an expansion, the applicant Federal Credit Union must submit a map or maps showing both the existing and proposed boundaries for the field of membership. The most current population figures for the two areas must be obtained and included in the package. The source of the population information must be recorded in the credit union's request. Evidence in the form of surveys or letters from authoritative representatives of prominent groups located in the area to be added must be furnished to show that the residents of the area are interested in affiliating with the applicant credit union. Information concerning the availability of financial services to the residents of the new area must be supplied. Especially important is whether other credit union service is currently available. If present credit union service to the residents of the new area is adequate, there may be no basis for the proposed expansion.

In addition, depending upon the significance of the potential membership increase, the Regional Director may require formulation of a business plan to show how the residents of the new area are to be served and whether the costs of this proposed service can be afforded by the applicant credit union. Whether or not a formal business plan is required, the applicant FCU must submit current financial statements with its proposal.

Finally, in the majority of cases where community credit unions are asking to expand their areas of service and in all cases where a conversion to a community charter is proposed, an NCUA examiner will make an on-site evaluation of the proposal. The examiner will prepare a separate analysis of the proposed expansion independent of the credit union's application. Following completion of the on-site evaluation and Regional Office review of the examiner's report, the Regional Director will act on the proposal, provided that the size of the proposed area's population does not exceed his delegated authority. If so, the applicant credit union will be formally apprised of the need for NCUA Board consideration.

Addition of Retiree or Senior Citizen Associations

Special rules apply for retiree or senior citizen groups that seek credit union service. For field of membership addition purposes, these groups are viewed as unique associational groups which do not need to meet all the requirements for associations discussed in Chapter 1. It is NCUA Board policy to make FCU service available to as many senior citizens and retirees as possible who are in fact interested in obtaining access to a credit union. Federal credit unions are encouraged to bring associations of senior citizens or retired persons within their fields of membership, and to sponsor and assist in the formation of such associations where they do not exist. The policies recited in Chapter 1 for associational groups (requiring that the sponsoring association be well-established and that it not be an organization created solely as a vehicle to obtain credit union service) do not apply to retiree or senior citizen associations. Such groups may be formed with the primary purpose of providing eligibility for FCU service to the associations and their members. The definitions of senior citizen or retiree are left to each organization. The operational area criterion does apply to senior citizen and retiree organizations.

Additions Via Mergers and Purchase and Assumptions

A Federal credit union may obtain the entire field of membership of another credit union through a merger. In general, for mergers where the continuing credit union is federally chartered, the field of membership criteria stipulated in this and the preceding chapter are applicable. The criteria do not apply in the case of emergency mergers.

The following discussion pertains to a continuing credit union that is federally chartered. Most mergers fall into one of two fields of membership categories. The mergers are feasible either because the two credit unions had common sponsors (like common bonds) or were located in the same operational area (multiple group). Two credit unions serving the employees of the same corporation may merge without regard

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to the locations of the credit unions' offices. Similarly, two credit unions serving members of the same association may merge even though the two are not located in the same operational area. However, two credit unions with unlike fields of membership may only merge when they are located in the same operational area. Any combination of associational, multiple group, and occupational is permissible as long as the operational area requirement is satified. Mergers of any of these three types of field of membership into a community charter are permissible as long as the merging credit union is located within the community credit union's service area. The resulting field of membership remains a community charter.

Mergers of community credit unions into a Federal credit union of any type may be accomplished where the operational area requirement is satified and the continuing Federal credit union is not interested in obtaining the field of membership of the merging community charter. The continuing Federal credit union will only obtain the members of record of the merging credit union. Where both credit unions are community charters and the criteria for expanding the service area of a community credit union (as discussed previously in this chapter) are satisfied, the entire field of membership of the merging credit union will be added to the continuing Federal credit union's charter.

Regardless of the type of credit union involved where the merging credit union is suffering such severe financial difficulties that it will become insolvent within six months, it may merge into any Federal credit union in the same operational area. If the merging credit union is community based, its field of membership will be transferred intact to the continuing Federal credit union. In this case, the continuing Federal credit union will remain as an occupational, associational, multiple group, or community charter for purposes of future field of membership expansions.

Finally, a specifically designated emergency merger may be approved by the NCUA Board without regard to field of membership or other legal constraints. An emergency merger involves NCUA's direct intervention. The credit union to be merged must either be insolvent or in danger of insolvency *and* the NCUA Board must determine that:

A. An emergency requiring expeditious action exists;

B. Other alternatives are not reasonably available; and

C. The public interest would best be served by approving the merger.

In an emergency merger situation, NCUA takes an active role in finding a suitable merger partner (continuing credit union). NCUA is primarily concerned that the continuing credit union has the financial strength and management expertise to absorb the troubled credit union without adversely affecting its own financial condition and stability. As a stipulated condition to an emergency merger, the field of membership of the merging credit union may be transferred intact to the continuing credit union.

Another alternative for acquiring the field of membership of a failing credit union is through consolidation known as purchase and assumption. A purchase and assumption has limited application because the failing credit union must be placed into involuntary liquidation. However, in the few instances where purchase and assumption may occur, the assuming Federal credit union may acquire the entire field of membership along with loans, shares and certain designated assets and liabilities, without regard to field of membership expansion restrictions and without changing the character of the credit union for purposes of future field of membership expansions.

Spin-Offs

A "spin-off" is, in effect, a partial merger. By agreement of the parties, a portion of the field of membership of a credit union, along with assets, liabilities, and capital, is transferred to a new or existing credit union. If the spin-off goes to a new Federal charter, the requirements of Chapter 1 apply. If it goes to an existing Federal charter, the requirements of Chapter 2 apply. Prior to completion, NCUA must approve all spin-offs in which a Federal credit union is involved.

Overlaps—See Chapter 1 for discussion.

Exclusionary Clauses—See Chapter 1 for discussion.

Reviewing Field of Membership Addition Requests

All field of membership requests will be reviewed by Regional Office staff in order to ensure that the requests conform to NCUA policy, are properly documented and do not cause significantly harmful or unreasonable overlap with the fields of membership of existing credit unions. NCUA understands and appreciates the importance of timely processing of well-supported addition requests. To respond to this desire for prompt handling, each Regional Office has established a goal of ten working days from the date of receipt in the Regional Office for complete processing of a routine addition request. A fully documented request that fulfills all of the criteria discussed in this manual and does not require written or telephone follow-up will normally be processed within this time.

In some cases, an on-site review by NCUA examiner staff may be requested by the Regional Director before acting on a proposed addition. Nonstandard or controversial requests, those involving associational, community or multiple charters, or those from credit unions with serious operational or management problems, are most likely to fall into this category. In addition, as stated in the earlier discussion in this chapter under community charter expansions, the Regional Director may, at his discretion, after taking into account the significance of the field of membership expansion proposed, require the applicant to submit a business plan.

The condition of the requesting credit union will be considered in every instance. The economic feasibility of expanding the field of membership of a credit union with serious management or operational problems must be carefully considered by regional staff if the safety and soundness of the credit union is to be preserved. In most cases, field of membership additions will only be approved for credit unions which are operating satisfactorily. If a Federal credit union is having difficulty providing good service to its current membership, it may have even more difficulty serving an enlarged field of membership. In some cases, expanding the field of membership of a struggling credit union may do more harm than good. A struggling credit union's resources need to be focused on current problems. Placing an additional strain on these resources by increasing the field of membership may also increase the credit union's problems.

If the requested addition is approved by the Regional Director, the credit union will be furnished a formal, updated section 5 of its charter which restates the entire field of membership, including the requested addition. After action by the board of directors, the form should be promptly filed with the credit union's official charter and bylaws.

If the request is denied by the Regional Director, the credit union will be so advised in writing and furnished specific reasons for the denial. This correspondence may include suggestions and other options for the credit union's consideration. This letter will also include information about the availability of the appeals process. If a credit union's request is disapproved by the Regional Director, the credit union may appeal the decision (or request a review of the policy involved) to the NCUA Board through the appropriate Regional Director.

Service Status Reports

Federal credit unions which frequently add select groups to their fields of membership should be prepared to furnish a written summary of the results of their efforts to bring service to the employees or members of the select groups. The Regional Offices will request periodically that such FCU's submit service status reports to NCUA showing, at a minimum, the number of primary potential members of each select group added and the number of persons from each select group who have actually enrolled as credit union members. These service status reports can be enlarged to require information concerning aggregate share and loan activity by select group or participation in other credit union services. In any event, Federal credit unions using the select group addition method should implement an information gathering system early in their addition/diversification program to track their progress in bringing service to the potential members of their select groups.

This information will help the credit union to operate efficiently and will give management the data necessary to make decisions about marketing strategy, new promotions, implementation of new services, etc. The service status reports will enable NCUA to determine which Federal credit unions are serving newly-added groups, as well as any Federal credit unions that are not serving new groups. If the NCUA determines that a Federal credit union is not adequately serving new groups, the Regional Director may remove the select group(s) not being served from Section 5 of the credit union charter.

Chapter 3—Charter Conversions

A charter conversion is a change in the jurisdictional authority under which a credit union operates. A credit union's charter is the instrument given to the institution by the government, either state or Federal, granting to it the authority to carry out credit union business in accordance with law.

Federal credit unions receive their charters from NCUA and are subject to its supervision, examination, and regulation; they are incorporated under Federal law. State-chartered credit unions are incorporated in a particular state, receiving their charter from the state agency responsible for credit unions and subject to the state's supervisory authority. If the state-chartered credit union is federally insured by NCUA, it will also fall under NCUA's jurisdiction.

A Federal credit union's power and authority are principally derived from the Federal Credit Union Act and NCUA Rules and Regulations. State-charterd credit unions are principally governed by state law and regulation.

There are two types of charter conversions: Federal charter to state charter, and state charter to Federal charter. Although common bond is not an issue from NCUA's standpoint in the case of a Federal to state charter conversion, the procedures and forms relevant to such a conversion have been included.

I—Conversion of a State Credit Union to a Federal Credit Union

A. General Requirements

Any state-chartered credit union may apply to convert to a Federal credit union. In order to convert, it must:

1. Comply with state law regarding conversion;

2. File proof of compliance with NCUA;

3. File the required preliminary documents with NCUA;

4. Upon NCUA's approval of the preliminary documents file a proposed Federal credit union organization certificate;

5. Comply with the requirements of the Federal Credit union Act, e.g., common bond and reserve requirements; and

6. Be granted a charter by NCUA.

Conversions are treated the same as any initial application for a Federal charter, including mandatory on-site examination by NCUA. NCUA will also consult with the appropriate state authority regarding the credit union's current condition, management expertise, and past performance. Since the applicant in a conversion is an ongoing credit union, the economic advisability of granting a charter is more readily determinable than in the case of an initial charter application.

A converting state credit union's proposed field of membership must conform to NCUA chartering policy. However, existing members who would not be within the revised field of membership will be allowed to retain their membership after the conversion.

B. Submission of Conversion Proposal to NCUA

The following actions are to be taken before submitting a conversion proposal:

1. The credit union board must approve a proposal for conversion.

2. The Application to Convert (NCUA Form 4401) must be completed. Its purpose is to provide the Regional Director with information on the present operating policies and financial condition of the credit union and the reasons why the conversion is desired. A continuation sheet may be used if space on the form is inadequate. Particular attention should be given to answering the question on the reasons for conversion. These reasons should be stated in specific terms, not as generalities.

3. The Application must be accompanied by all required attachments. Additional attachments not specified in the Application but which must also be provided are:

a. Evidence that the state supervisory authority is either in agreement with the conversion proposal or, if not in agreement, the reasons therefor; and

b. The Application for Insurance of Accounts (Form NCUA 9600) in the case of a state credit union that is not federally insured.

c. The Federal Credit Union Investigation Report. Conversion of State Charter to Federal Charter (Form NCUA 4000).

d. The most current financial and statistical report.

C. NCUA Consideration of the Application to Convert

1. *Review by the Regional Director.* The Application will be reviewed to determine that it is complete and that the proposal is in compliance with Section 125 of the Federal Credit Union Act. This review will include a determination that the state credit union's field of membership is in compliance with NCUA's chartering policies. The Regional Director may make further investigation into the proposal and may require the submission of additional information to support the request to convert. At this point, NCUA will conduct an on-site review of the credit union.

2. *Examination and Payment of Fees.* NCUA will examine the books and records of the credit union on-site. NCUA will charge the credit union an examination fee. Nonfederally-insured credit unions will also be assessed an application fee.

3. *Conditions to the Approval.* The Regional Director will specify any special conditions that the credit union must meet in order to proceed with the conversion. When necessary, this will include changes to the credit union's

field of membership in order to conform to NCUA's chartering policies.

4. *Approval by the Regional Director.* The conversion will be approved by the Regional Director if it is in compliance with Section 125 of the Federal Credit Union Act and meets the criteria for Federal insurance.

5. *Notification.* The Regional Director will notify both the credit union and the state supervisory authority of the decision on the conversion.

D. Action by Board of Directors

Upon being informed of the Regional Director's approval, the board must:

1. Comply with all requirements of the state supervisory authority that will enable the credit union to convert to a Federal charter and cease being a state credit union;

2. Obtain a letter or official statement from the state supervisory authority certifying that the credit union has met all of the state requirements and will cease to be a state credit union upon its receiving a Federal charter. A copy of this document must be submitted to the Regional Director;

3. Submit a statement of the action taken to comply with any conditions imposed by the Regional Director in the approval of the conversion proposal.

E. Application for a Federal Charter

When the Regional Director has received evidence that the board has completed the actions described in (D) above, the credit union will be authorized to proceed in making application for a Federal charter.

The Regional Director will normally assign a staff member to assist the credit union in preparing its Organization Certificate, (Form NCUA 4008), *and an* Application and Agreements for Insurance of Accounts (Form NCUA 9500).

The Organization Certificate will be submitted to the Regional Director, together with the Application for Insurance.

When received by the Regional Director, the proposed Organization Certificate will constitute the credit union's formal application to become a Federal credit union. If the application is approved, the credit union may complete the conversion. Denials are appealable to the NCUA Board.

F. Completion of the Conversion

1. *Effective Date of Conversion.* The date on which the Regional Director approves the Organization Certificate and the Application and Agreements for Insurance of Accounts is the date on which the credit union becomes a Federal credit union. The Regional Director will forward to the credit union its Federal charter and Certificate of Insurance and will notify the state supervisory authority of the date of the conversion.

2. *Assumption of Assets and Liabilities.* As of the effective date, the Federal credit union will be the owner of all of the assets and will be responsible for all of the liabilities and share accounts of the state credit union.

3. *Board of Directors' Meeting.* Upon receipt of its Federal charter, the board will hold its first meeting as a Federal credit union. At this meeting, the board will transact such business as is necessary to complete the conversion as approved and to operate the credit union in accordance with the requirements of the Federal Credit Union Act and NCUA Rules and Regulations. Actions to be taken at this meeting include:

a. Change of the credit union's name on all records, accounts, investments, and other documents evidencing assets or liabilities of the credit union;

b. Changes to the credit union's books and records:

(1) As of the commencement of business, the accounting system, records, and forms must conform to the standards established by NCUA;

(2) New journal and cash record and general ledger pages should be set up. The general ledger accounts for the state credit union will be posted through the effective date of the conversion, and the new balances will be transferred to the new general ledger accounts of the Federal credit union;

(3) The income and expense accounts of the state credit union will *not* be closed unless the conversion is at the close of an accounting period or is required by the state supervisory authority; and

(4) The individual share and loan ledger accounts used by the state credit union may continue to be used. The Federal credit union's name should be properly reflected on these accounts.

4. *Reports to NCUA.* Within 10 days after commencement of operations, the Federal credit union must submit to the Regional Director the following:

a. Report of Officials (NCUA 4501); and

b. Financial and Statistical Reports, (Forms FCU 109A, 109B, and 109F, or their equivalent) as of the commencement of business of the Federal credit union.

II—Conversion of a Federal Credit Union to a State Credit Union

A. General Requirements

Any Federal credit union may apply to convert to a state credit union. In order to do so, it must:

1. Comply with the requirements of the Federal Credit Union Act (section 125) that enable it to convert to a state credit union and to cease being a Federal credit union; and

2. Comply with applicable state law and the requirements of the state supervisory authority.

B. Special Provisions Regarding Federal Share Insurance

If the Federal credit union wants to continue Federal share insurance after the conversion to a state credit union, it must submit an Application for Insurance of Accounts (Form NCUA 9600) to the Regional Director at the time it requests approval of the conversion proposal. The Regional Director has the authority to approve or disapprove the Application.

If the converting Federal credit union does not want to continue Federal share insurance or if its application for continued insurance is denied, insurance will cease in accordance with the provisions of section 206 of the Federal Credit Union Act.

If, upon its conversion to a state credit union, the Federal credit union will be terminating all share insurance or converting from Federal to nonfederal share insurance, it must comply with the membership notice and voting procedures set forth in section 206 of the Federal Credit Union Act and Part 708 of NCUA's Rules and Regulations.

Where the state credit union will be nonfederally insured, Federal insurance ceases on the effective date of the conversion. If it will be *otherwise* uninsured, then Federal insurance will cease one year after the date of conversion subject to the restrictions in section 206(d)(1) of the Federal Credit Union Act. In either case, the state credit union will be entitled to a refund of the Federal credit union's NCUSIF capitalization deposit and any unused portion of the Federal insurance premium after the final date on which any of its shares are federally insured. The NCUA Board reserves the right to delay the refund of the capitalization deposit for up to one year if it determines that payment would jeopardize the NCUSIF.

C. Submission of Conversion Proposal to NCUA

Upon approval of a proposition for conversion by a majority vote of the board of directors at a meeting held in accordance with the Federal credit union's bylaws, the conversion proposal will be submitted to the Regional Director and will include:

1. A current financial report;

2. A current delinquent loan schedule;

3. An explanation and appropriate documents relative to any changes in insurance of member accounts;

4. A resolution of the board of directors;

5. A proposed Notice of Special Meeting of the Members (Form NCUA 4221);

6. A copy of the ballot to be sent to members (Form NCUA 4506);

7. Evidence that the state supervisory authority is in agreement with the conversion proposal; and

8. A statement of reasons supporting the request to convert.

D. Approval of the Proposal to Convert

1. *Review by the Regional Director.* The proposal will be reviewed to determine that it is complete and is in compliance with section 125 of the Federal Credit Union Act. The Regional Director may make further investigation into the proposal and require the submission of additional information to support the request.

2. *Conditions to the Approval.* The Regional Director will specify any special conditions that the credit union must meet in order to proceed with the conversion.

3. *Approval by the Regional Director.* The proposal will be approved by the Regional Director if it is in compliance with section 125 and, in the case where the state credit union will no longer be federally insured, the notice and voting requirements of section 206 of the Federal Credit Union Act.

4. *Notification.* The Regional Director will notify both the credit union and the state supervisory authority of the decision on the proposal.

E. Approval of Proposal by Members

Upon approval of the proposal by the Regional Director, the following actions will be taken by the board of directors:

1. The proposal must be submitted to the members for approval and a date set for a vote on the proposal. The proposal may be acted on at the annual meeting, at a special meeting for that purpose, or by written ballot to be filed by the date set for the vote.

2. Members must be given advance notice (NCUA 4221) of the meeting at which the proposal is to be submitted in accordance with the provisions of the Federal Credit Union Bylaws (Article V). The notice shall:

a. Specify the purpose, time and place of the meeting;

b. Include a brief and accurate statement of the reasons for and against the proposed conversion, including any effects it could have upon share holdings, insurance of member accounts, and the policies and practices of the credit union;

c. Inform the members that they have the right to vote on the proposal at the meeting, or by written ballot to be filed not later than the date and time announced for the annual meeting, or at the special meeting called for that purpose;

d. Be accompanied by a Ballot for Conversion Proposal (NCUA 4506); and

e. State in bold face type that the issue will be decided by a majority of members who vote.

3. A copy of the Notice of the meeting shall be delivered to the Regional Director at the same time that it is delivered to the members.

4. The proposed conversion must be approved by a majority of all of the members who vote on the proposal in order for the credit union to proceed further with the proposition. Ballots cast by members who did not attend the meeting but who submitted their ballots in accordance with (2.c.) above will be counted with votes cast at the meeting. In order to have a suitable record of the vote, the voting at the meeting should be by written ballot as well.

5. The board of directors shall, within 10 days, certify the results of the membership vote to the Regional Director. The statement shall be verified by affidavits of the Chief Executive Officer and the Recording Officer on Form NCUA 4505.

F. Compliance with State Laws

If the proposition for conversion is approved by a majority of all members who voted, the board of directors should then:

1. Ensure that all requirements of state law and the state supervisory authority have been accommodated;

2. Ensure that the state charter or the license has been received within 90 days from the date the members approved the proposal to convert;

3. Ensure that the Regional Director is kept informed as to progress toward conversion and of any material delay or of substantial difficulties which may be encountered.

If the conversion cannot be completed within the 90-day period, the Regional Director should be informed of the reasons for the delay.

G. Completion of Conversion

In order for the conversion to be completed, the following steps are necessary:

1. The board of directors will submit a copy of the state charter to the Regional Director within 10 days of its receipt. This will be accompanied by the Federal charter and the Federal insurance certificate. A copy of the financial reports (*Forms* FCU 109A and 109B) as of the preceding month-end should be submitted at this time.

2. The Regional Director will notify the credit union and the state supervisory authority in writing of the receipt of evidence that the credit union has been authorized to operate as a state credit union.

3. The effective date of conversion is the day immediately preceding the date on which the credit union became a state credit union. The credit union shall cease to be a Federal credit union as of the effective date.

4. If the Regional Director finds a material deviation from the provisions that would invalidate any steps taken in the conversion, the credit union and the state supervisory authority shall be promptly notified in writing. This notice may be either before or after the copy of the state charter is filed with the Regional Director. The notice will inform the credit union as to the nature of the adverse findings. The conversion will not be affected and completed until the improper actions and steps have been corrected.

5. Upon ceasing to be a Federal credit union, the credit union shall no longer be subject to any of the provisions of the Federal Credit Union Act, except as may apply if Federal share insurance coverage is continued. The successor state credit union shall be immediately vested with all of the assets and shall continue to be responsible for all of the obligations of the Federal credit union to the same extent as though the conversion had not taken place. Operation of the credit union from this point will be in accordance with the requirements of state law and the state credit union supervisory authority.

6. If the Regional Director is satisfied that the conversion has been accomplished in accordance with the approved proposal, the Federal charter will be canceled.

7. There is no requirement for closing the records of the Federal credit union at the time of conversion or for the manner in which the records shall be maintained thereafter, except that the

credit union shall no longer use the words "Federal Credit Union" in its name nor represent itself in any manner as being a Federal credit union.

8. If the state credit union is to be federally insured, the Regional Director will issue a new insurance certificate.

[FR Doc. 89-17501 Filed 7-26-89; 8:45 am]

BILLING CODE 7535-01-M

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12 CFR Parts 701 and 741

Nonmember and Public Unit Accounts

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Final rule.

SUMMARY: This final rule replaces the interim final rule on nonmember and public unit accounts issued by the NCUA Board in December of 1988. The final rule continues the requirement that federally-insured credit unions wish to maintain nonmember and public unit shares in excess of 20% of their total shares must submit a plan setting forth the intended use of the funds and request NCUA's approval. The rule includes the procedures and standards NCUA will use in evaluating the requests.

Also, the rule provides that NCUA will not approve a request from a federally-insured state-chartered credit union without first obtaining the concurrence of the appropriate state regulator.

EFFECTIVE DATE: July 27, 1989.

FOR FURTHER INFORMATION CONTACT: D. Michael Riley, Director, Office of Examination and Insurance, or Hattie M. Ulan Assistant General Counsel, at the above address or telephone: (202) 682-9640 (Mr. Riley) or 682-9630 (Ms. Ulan).

SUPPLEMENTARY INFORMATION:

Background

Section 107(6) of the Federal Credit Union Act (12 U.S.C. 1757(6)) authorizes a Federal credit union (FCU) to accept and maintain certain types of nonmember shares. Section 101(5) of the FCU Act (12 U.S.C. 1752(5)) defines "member account" to include the accounts of nonmember credit unions and the accounts of nonmember units of Federal, state, or local governments and the political subdivisions of such units. The term also includes, but only in the case of a credit union that serves predominatly low-income members and has received a low-income designation from NCUA, accounts of any nonmember. The terms "predominantly" and "low-income member" are currently defined in Section 700.1 of NCUA's Regulations (12 CFR 700.1). Concurrent with this final rule, the NCUA is issuing a proposed amendment adding a new § 701.32(d) to clairfy that FCU's must obtain a designation from NCUA prior to accepting nonmember shares pursuant to the low-income authority, and that federally-insured state-chartered credit unions (FISCU's) must receive such a designation from the appropriate state regulator with the concurrence of NCUA. The NCUA is also proposing to move the definitions of "predominantly" and "low-income members" to § 701.32(d).

On December 19, 1988, the NCUA Board published an interim final rule limiting to 20% of total shares the amount of public unit and nonmember accounts that may be maintained by FCU's and FISCU's without prior NCUA approval. (*See* 53 FR 50918.) Although the interim final rule was made immediately effective, the NCUA Board provided a 60-day comment period. The comment period was later extended for approximately 90 days to May 15, 1989. (*See* 54 FR 8280 2/28/89.)

Comments

One hundred and twenty-six comments were received. Fifty of the commenters were FCU's and nine were state-chartered credit unions. Thirty-nine of the commenters were community and religious organizations. Nine commenters were state credit union leagues. Five comments were from national credit union trade associations, and four commenters were other types of trade associations. Four of the commenters were state credit union regulators. Comments were also received from a local association of credit unions, a Congressman, and a county treasurer. Three comments were from individuals.

Discussion

The reaction of many of the commenters was that the rule was an overreaction to the potential losses to the National Credit Union Share Insurance Fund (NCUSIF) associated with the 1988 failure of the Franklin Community FCU. Commenters stated that other credit unions should not be penalized for the actions of one credit union. Some commenters believed that NCUA should not have made the rule immediately effective, that is, without a prior comment period. The reasons for the immediate action were set forth in the preamble to the interim rule.

Franklin Community FCU was only one of several cases involving the misuse of credit union, public unit, and other nonmember funds. The preamble to the interim final rule listed six credit unions other than Franklin where the misuse of such funds has resulted in losses to the NCUSIF. The interim final rule is not intended to penalize credit unions, but to ensure that nonmember and public unit shares are accepted and utilized by credit unions in a safe and sound manner and to further the interest of serving members. The commenters' belief that misuse of such funds is not a pervasive problem for credit unions is correct. It is, however, a costly problem when it occurs, and one that affects all federally-insured credit unions in two ways: Through losses to the NCUSIF, and loss in confidence in credit unions when public units and nonmembers suffer losses because their accounts are in excess of the share insurance limit.

The majority of the commenters objected to the interim final rule, stating that it was unduly harsh on community development and low-income credit unions. Many of these commenters were low-income designated and/or community development credit unions, and community and religious organizations that have accounts in these credit unions. The credit union commenters stated that the rule would affect their ability to make loans and may jeopardize their existence. The organizational commenters stated that they generally have accounts that earn below market rates in low-income credit unions to provide a source of funds for the poor and minorities, and that the rule would limit their altruistic goal.

The rule is not a prohibition on public unit and nonmember shares. All FCU's may continue to accept other credit union and public unit shares. FCU's with a low-income designation from NCUA may continue to accept nonmember shares. FISCU's may accept public unit, credit union, and nonmember shares to the extent permitted under the appropriate state law. The rule does, however, require federally-insured credit unions that wish to accept such shares in excess of 20 percent of total shares to submit to NCUA a reasonable plan setting forth the intended use of the funds and obtain NCUA approval.

The rule requires that a federally-insured credit union's plan describe how public unit and nonmember funds will be used to serve the credit union's membership, i.e., by providing loanable funds to its members or through increased earnings; provide for matching maturities of public unit and nonmember shares with corresponding assets, or a justification for any mismatch; and provide for an adequate income spread between public unit and nonmember shares and corresponding assets. The rule further requires that a credit union

submit its loan and investment policies and its latest financial statements to NCUA. These requirements should ensure that federally-insured credit unions have a reasonable plan in place for use of the funds. NCUA's Regional Offices will review the documentation submitted by a credit union from a safety and soundness perspective, including a review of asset-liability management and the nature of the proposed investments.

One of the primary objections to the interim final rule was that it applied to public unit, credit union, and nonmember shares earning below-market rates. Several commenters also objected to the rule's application to public unit shares and shares from other credit unions in general, and to the acceptance of public unit and nonmember shares by small credit unions. Other commenters objecting to the rule stated that it interferes with the Congressional intent of allowing designated low-income credit unions to accept nonmember shares as set forth in the FCU Act. Again, it should be stressed that the purpose of the rule is not to prohibit nonmember and public unit shares, but to ensure that such funds are used in a safe and sound manner and are utilized in the best interests of the membership.

The FCU must have a reasonable plan in place for the funds. The fact that nonmember and public unit shares are to be paid below-market rates does not alleviate the need for a plan for use of such funds, nor does the source of the funds or the size of the credit union accepting the funds. The risk of misuse of the funds is the same in each case. To exempt certain types of accounts or certain credit unions from the rule's coverage would be to suggest that a plan for the use of the funds is not necessary in these instances. This is not the case.

In a similar vein, several commenters requested that NCUA not adopt a final rule, but instead limit or prohibit the payment of commissions on the sale of market-rate share certificates. The rule is not directed at the method by which the credit unions obtain funds. The concern is with credit unions taking in large amounts of public unit and nonmember shares without a plan for their use. Acceptance of these funds can occur with or without the assistance of a broker. Other commenters suggested an abandonment of the rule until NCUA completes a comprehensive study of the rule's effect on low-income and community development credit unions. The Board does not believe this to be the proper approach since these credit unions can obtain an exemption to the 20% limitation.

One of the commenters suggested that NCUA require federally-insured credit unions to report nonmember shares to NCUA. This information is currently collected on FISCU's. NCUA intends to begin collecting this information on FCU's in December of 1989.

State Regulators

Three of the commenters, including two state regulators, believe that the rule interferes with the states' authority to regulate FISCU's. In the preamble to the interim final rule, the NCUA Board discussed the applicability of the rule to all federally-insured credit unions. The Board explained that it was necessary to include FISCU's since their acceptance of public unit and nonmember shares has the same effect on the NCUSIF as those accepted by FCU's, and therefore should be subject to the same requirements as FCU's. The Board noted further that the rule did not impose any additional costs or burdens on the states, nor did it affect the states' ability to discharge traditional state government functions. This continues to be the Board's position with respect to the final rule.

Since the Board believes the applicability of the rule to FISCU's is necessary, state involvement with the rule is provided. The final rule specifically requires concurrence by the state regulator for a FISCU to obtain a waiver from the 20% limitation.

CPA Audit Requirement

The interim final rule included a request for comment on the issue of whether all federally-insured credit unions that accept nonmember accounts should be required to obtain annual CPA audits and disclose the audits to the nonmember accountholders. A majority of the commenters objected to such a requirement. The NCUA Board has determined not to impose the requirement at this time. Legislation currently being considered by Congress would provide that NCUA require a CPA audit where the supervisory committee's audit is not performed, is inadequate, or where the credit union's recordkeeping is deficient. In light of the Congressional initiative on this issue and the comments received, the Board will not, at this time, impose a separate CPA audit requirement for credit unions accepting nonmember shares.

Changes Made to the Interim Final Rule

Section 701.32 Payments on Shares by Public Units and Nonmembers

The final rule includes the procedures that a Federal credit union seeking an exemption from the 20 percent limitation should follow, and further establishes the standards and guidelines that will be followed by the NCUA Regional Offices upon receipt of an exemption request. An exemption request will be acted upon by the Regional Office within 30 days after all necessary information is received from the applicant credit union. Credit unions may appeal an exemption denial to the NCUA Board through the Regional Director. Normally, an exemption will be granted for a two-year period. If a credit union has accepted nonmember funds pursuant to an exemption and the exemption period ends and is not renewed, nonmembers shares in excess of the 20% in the credit union will continue to be covered by the NCUSIF within applicable insurance limits. No new nonmember shares can be accepted. Nonmember share certificates in excess of the 20% will remain insured until maturity. They cannot be renewed. This information is contained in § 701.32(b) of the final rule.

Section 741.5 Maximum Public Unit and Nonmember Accounts

The final rule sets forth the procedure that will be followed when a FISCU seeks an exemption from the 20% limitation. The rule provides that the request should be submitted to NCUA in accordance with § 701.32, but will only be granted by NCUA if the appropriate state regulator concurs with the approval.

Effective Date

The Board believes that it is consistent with its responsibilities and in the best interests of the credit unions affected by this rule to make the rule immediately effective. The rule sets forth procedures a credit union is to follow to obtain an exemption from the 20% limitation, and imposes certain requirements on the Regional Directors when acting on these requests. The procedures will provide credit unions with the assurance that their requests are being treated uniformly. The rule further provides credit unions the right to appeal an adverse exemption decision to the NCUA Board. Only minor changes have been made to the substantive provisions contained in the interim final rule.

Regulatory Procedures

Regulatory Flexibility Act

This final rule impose a limitation on the amount of funds that a federally-insured credit union may accept in the form of public unit and nonmember accounts. However, the rule also provides a method for obtaining an exemption from the limitation upon a showing of need and ability to manage the funds in these accounts. For that reason, the NCUA Board certifies that this rule will not have a significant economic impact on a substantial number of small credit unions (those under $1 million in asset size). Therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The rule contains one paperwork requirement: any credit union requesting an exemption from the 20% limitation must submit an explanation of the need to raise the limit, a plan for use of the funds, and copies of its lending and investment policies and its latest financial statements. The Office of Management and Budget has approved this paperwork requirement (OMB NO. 3133-0114, approved for use through 4/30/92).

Executive Order 12612

The rule applies to federally-insured state-chartered credit unions that accept public unit and nonmember accounts. The acts and practices subject to the rule have implications for the entire federally-insured credit union system and the NCUSIF, and are not unique to only one type of charter. The final rule provides for state involvement in the decision to grant a waiver from the 20% limitation for FISCU's.

List of Subjects in 12 CFR Part 701

Credit unions, public units, nonmember accounts.

List of Subjects in 12 CFR Part 741

Credit unions, Public units, Nonmember accounts.

By the National Credit Union Administration Board on July 20, 1989.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends its regulations as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for Part 701 is revised to read as follows:

Authority: 12 U.S.C. 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789.

2. Section 701.32 is revised to read as follows:

§ 701.32 Payments on shares by public units and nonmembers.

(a) Authority. A Federal credit union may, to the extent permitted under section 107(6) of the Act and this Section, receive payments on shares, (regular shares, share certificates, and share draft accounts) from public units and political subdivisions thereof (as those term are defined in § 745.1) and nonmembers, including nonmember credit unions.

(b) Limitations. (1) Unless a greater amount has been approved by the Regional Director, the maximum amount of all public unit and nonmember accounts shall not, at any given time, exceed 20% of the total shares of the Federal credit union. A Federal credit union seeking an exemption from the 20% limit must submit to the Regional Director a written request including:

(i) The new maximum level of public unit and nonmember shares requested, either as a dollar amount or a percentage of total shares;

(ii) A plan concerning use of public unit and nonmember shares that includes:

(A) A statement of the credit union's need and intended use of additional public unit and nonmember shares;

(B) Provision for matching maturities of public unit and nonmember shares with corresponding assets, or justification for any mismatch; and

(C) Provision for adequate income spread between public unit and nonmember shares and corresponding assets.

(iii) A copy of the credit union's loan and investment policies;

(iv) A copy of the credit union's lastest financial statements.

(2) Where the financial condition and management of the credit union are sound and the credit union's plan for the funds is reasonable, there will be a presumption in favor of granting the request. When granted, exemptions will normally be for a two-year period. The Regional Director will provide a written explanation for an exemption that is granted for a lesser time period.

(3) The Regional Director will provide a written determination on an exemption request within 30 calendar days after receipt of the request. The 30 day period will not begin to run until all necessary information has been submitted to the Regional Director. All denials may be appealed to the NCUA Board in a timely manner. Appeals should be submitted through the Regional Director.

(4) Upon expiration of an exemption, nonmember shares currently in the credit union in excess of the 20% of total shares will continue to be insured by the National Credit Union Share Insurance Fund within applicable insurance limits. No new shares in excess of the 20% limit shall be accepted. Existing share certificates in excess of the 20% limit may remain in the credit union only until maturity.

(c) The limitations herein do not apply to accounts maintained in accordance with § 701.37 ("Treasury tax and loan depositaries; depositaries and financial agents of the Government").

PART 741—REQUIREMENTS FOR INSURANCE

3. The authority citation for Part 741 is revised to read as follows:

Authority: 12 U.S.C. 1766, 1781, and 1789.

4. Section 741.5 is revised to read as follows:

§ 741.5 Maximum public unit and nonmember accounts.

Any credit union that is insured, or that makes application for insurance, pursuant to Title II of the Act, must adhere to the requirements of § 701.32 regarding public unit and nonmember accounts, provided it has the authority to accept such accounts. Requests by federally-insured state-chartered credit unions for an exemption from the 20% limitation of § 701.32 will be made and reviewed on the same basis as that provided in § 701.32 for Federal credit unions, provided, however, that NCUA will not grant an exemption without the concurrence of the appropriate state regulator.

[FR Doc. 89-17502 Filed 7-26-89; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 861

Military Airlift Command (MAC) and Military Traffic Management Command (MTMC) Commercial Airlift Safety Review Procedures

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule.

SUMMARY: This amendment revises membership of the Commercial Airlift Review Board. Membership of the board is redefined to remain consistent with DOD guidance. While the membership remains substantially the same, some modification was made to reflect changes in personnel, provide voting authority to a senior aircraft maintenance official and to identify additional nonvoting advisors who may participate when their expertise can be of value to the voting members.

EFFECTIVE DATE: July 27, 1989.

FOR FURTHER INFORMATION CONTACT: Colonel John R. Dumbroski, Director, DOD Air Carrier Survey and Analysis Office, DCS/Air Transportation, Headquarters, Military Airlift Command (HQ MAC/TRL), Scott AFB, IL 62225-5001. Telephone (618) 256-4801.

SUPPLEMENTARY INFORMATION: The Department of the Air Force determined that since the composition of the Commercial Airlift Review Board is an internal working procedure, publication of this amendment for public comment prior to adoption is impractical and unnecessary.

List of Subjects in 32 CFR Part 861

Air carriers, Aviation safety.

Therefore, 32 CFR Part 861 is amended as follows:

PART 861—MILITARY AIRLIFT COMMAND (MAC) AND MILITARY TRAFFIC MANAGEMENT COMMAND (MTMC) COMMERCIAL AIRLIFT SAFETY REVIEW PROCEDURES

1. The authority citation for Part 861 continues to read as follows:

Authority: 10 U.S.C. 8013; 10 U.S.C. 2640.

2. Section 861.6 is amended by revising paragraphs (d)(1)(i) through (d)(1)(xi) and adding paragraphs (d)(1)(xii) and (d)(1)(xiii) to read as follows:

§ 861.6 Board procedures.

* * * * *

(d) * * *

(1) * * *

(i) Chief of Staff, HQ MAC—senior member and voting member.

(ii) Senior Transportation Advisor, HQ MTMC—senior member and voting member.

(iii) Deputy Chief of Staff, Air Transportation, HQ MAC—voting member.

(iv) Director of Passenger Traffic, HQ MTMC—voting member.

(v) Director of Maintenance Engineering, HQ MAC—voting member.

(vi) Director of Inland Traffic, HQ MTMC—voting member.

(vii) Legal Representative—nonvoting advisor

(viii) Director, Air Carrier Survey and Analysis Office—nonvoting advisor/recorder.

(ix) Director, Passenger and Traffic Management, HQ MAC—nonvoting advisor.

(x) Director, Air Crew Standardization/Evaluation, HQ MAC—nonvoting advisor.

(xi) Federal Aviation Administration (FAA) Liaison, HQ MAC—nonvoting advisor.

(xii) Contract Representative, HQ MAC—nonvoting advisor.

(xiii) Other additional advisors of value to the Board's deliberation process—nonvoting advisors.

* * * * *

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-17541 Filed 7-26-89; 8:45 am]

BILLING CODE 3910-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA-6961]

Changes in Flood Elevation Determinations; Alabama, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATE: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of these notice of changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESS: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities.

This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no now requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains.

PART 65—[AMENDED]

The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Jefferson	Unincorporated areas	June 10, 1989 and June 17, 1989, *Alabama Messenger.*	The Honorable David Orange, President, Jefferson County Board of Commissioners, Jefferson County Courthouse, 716 North 21st Street, Birmingham, AL 35263-0005.	June 2, 1989	010217
Connecticut: Fairfield	City of Stamford	July 10, 1989 and July 17, 1989, *The Advocate.*	The Honorable Thom Serrani, Mayor of the City of Stamford, Fairfield County, 888 Washington Boulevard, P.O. Box 10152, Stamford, CT 06904-2152.	June 23, 1989	090015C
Georgia: De Kalb	Unincorporated areas	July 13, 1989 and July 20, 1989, *Decatur-De Kalb News-Era.*	The Honorable Manuel J. Maloof, Chief Executive Officer, De Kalb County, 556 North McDonough, Decatur, GA 30030.	July 3, 1989	130065
Maine: Cumberland	Town of Scarborough	July 6, 1989 and July 13, 1989, *The Portland Press-Herald.*	The Honorable Carl L. Betterley, Town Manager, Cumberland County, P.O. Box 360, Scarborough, ME 04074.	June 21, 1989	230052D
Texas: Denton and Dallas	City of Lewisville	June 28, 1989 and July 5, 1989, *Lewisville Daily Leader.*	The Honorable Donny Daniel, Mayor of the City of Lewisville, Denton and Dallas Counties, 151 West Church Street, Lewisville, TX 75067.	June 21, 1989	480195

Issued: July 14, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-17562 Filed 7-26-89; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 65

Changes in Flood Elevation Determinations; Alabama, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed on the following table.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator, has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 65.

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency

Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

PART 65—[AMENDED]

The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Montgomery, Elmore, Autauga, (Docket No. FEMA-6954).	City of Montgomery	Apr. 7, 1989 and Apr. 14, 1989, *Alabama Journal.*	The Honorable Emory Folmar, Mayor, City of Montgomery, P.O. Box 1111, Montgomery, AL 36192.	Mar. 27, 1989	010174
Florida: Dade (Docket No. FEMA-6954).	Unincorporated areas	Apr. 6, 1989 and Apr. 13, 1989, *Miami Review.*	The Honorable Joaquin Avino, County Manager, Dade County, 111 NW. 1st Street, Suite 2910, Miami, FL 33128-1971.	Mar. 27, 1989	125098
Louisiana: St. Mary Parish (FEMA Docket No. 6942).	Town of Berwick	Nov. 18, 1988 and Nov. 25, 1988, *The Daily Review.*	The Honorable Everett S. Berry, Mayor of the Town of Berwick, P.O. Box 486, Berwick, LA 70342.	Nov. 3, 1988	220194E
Michigan: Wayne (Docket No. FEMA-6954).	Township of Canton	Apr. 12, 1989 and Apr. 19, 1989, *Community Crier.*	The Honorable Thomas Yack, Township Supervisor, Township of Canton, 1150 S. Canton Center Road, Canton, MI 48188.	Apr. 3, 1989	260219
Texas: Dallas (FEMA Docket No. 6950).	City of Garland	Feb. 10, 1989 and Feb. 17, 1989, *Garland Daily News.*	The Honorable Ruth Nicholson, Mayor of the City of Garland, Dallas County, P.O. Box 469002; Garland, TX 75046-9002.	Jan. 31, 1989	485471C
Texas: Denton (FEMA Docket No. 6940).	City of Denton	Oct. 12, 1988 and Oct. 19, 1988, *Denton Record-Chronicle.*	The Honorable Ray Stephens, Mayor of the City of Denton, 215 East McKinney Street, Denton, TX 76201.	Sept. 27, 1988	480194D

Issued: July 14, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-17563 Filed 7-26-89; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

Final Flood Elevation Determination; Alabama et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
ALABAMA	
Bessemer (city), Jefferson County (FEMA Docket No. 6952)	
Valley Creek:	
Just upstream of 15th Street	*458
Just downstream of dam	*475
About 2,000 feet upstream of U.S. Highway 11	*484
Hills Creek:	
Just upstream of CSX Railroad	*456
About 400 feet upstream of 14th Avenue	*458
Unnamed Creek 38:	
Just upstream of 14th Avenue	*456
About 900 feet upstream of 14th Avenue	*458
Maps available for inspection at the City Hall, Building Department, 1800 Third Avenue, Bessemer, Alabama.	
Brighton (city), Jefferson County (FEMA Docket No. 6952)	
Valley Creek:	
Just downstream of Jaybird Road	*474
Just upstream of Harmer Street	*480
About 700 feet upstream of U.S. Highway 11	*484
Maps available for inspection at the City Hall, 3700 Main Street, Brighton, Alabama.	
Hueytown (city), Jefferson County (FEMA Docket No. 6952)	
Valley Creek:	
About 1,325 feet downstream of 13th Street	*456
About 660 downstream of 19th Street	*459
About 1,150 feet downstream of CSX Railroad	*464
Maps available for inspection at the City Clerk's Office, 1318 Hueytown Road, Hueytown, Alabama.	
Lipscomb (city), Jefferson County (FEMA Docket No. 6952)	
Unnamed Creek 43: Within community	*479
Maps available for inspection at the City Clerk's Office, 5512 Avenue H, Lipscomb, Alabama.	
Midfield (city), Jefferson County (FEMA Docket No. 6952)	
Valley Creek:	
About 300 feet downstream of New Wilkes Road	*493
About 350 feet downstream of Fairfield Street	*503
About 1,800 feet upstream of Fairfield Street	*508
Unnamed Creek 46:	
About 400 feet downstream of Collier Drive	*502
Just upstream of Collier Drive	*506
Maps available for inspection at the City Clerk's Office, 725 Bessemer Super Highway, Midfield, Alabama.	
Roosevelt City (city), Jefferson County (FEMA Docket No. 6952)	
Valley Creek:	
About 1,500 feet downstream of confluence of Unnamed Creek 44	*484
About 1,300 feet downstream of New Wilkes Road	*492
About 900 feet upstream of New Wilkes Road	*496
Maps available for inspection at the City Hall, 710 North 20th Street, Birmingham, Alabama.	
ARIZONA	
Case Grande (city), Pinal County (FEMA Docket No. 6959)	
North Branch Santa Cruz Wash:	
Approximately 600 feet upstream of Burris Road	*1361
Approximately 500 feet downstream of Thornton Road	*1368

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
Approximately 450 feet upstream of Thornton Road	*1370
Upstream side of Pinal Avenue	*1383
At Trekell Road	*1386
Approximately 2,700 feet upstream of Trekell Road	*1390
Maps are available for review at City Hall, 300 E. Fourth Street, Casa Grande, Arizona.	
ARKANSAS	
Shannon Hills (City), Saline County (FEMA Docket No. 6949)	
Otter Creek:	
At the downstream corporate limits	*312
At the upstream corporate limits	*318
Shannon Hills Tributary:	
Approximately 0.27 miles upstream of Joan Drive	*330
At the confluence with Otter Creek	*313
Maps available for inspection at the City Hall, 10401 High Road East, Shannon Hills, Arkansas.	
CALIFORNIA	
Clearlake (City), Lake County (FEMA Docket No.: 6943)	
Burns Valley Creek:	
Just downstream of State Highway 53	*1401
Just upstream of State Highway 53	*1403
Approximately 100 feet downstream of the City Corporate limits	*1422
Burns Valley Creek Overflow:	
Approximately 600 feet downstream of Redwood Street	*1348
Just upstream of Redwood Street	#1
Just upstream of Olympia Drive	#1
Approximately 100 feet upstream of Burns Valley Road	*1358
Maps are available for review at City Hall, 14360 Lakeshore Drive, Clearlake, California.	
CONNECTICUT	
Bridgeport (city), Fairfield County (FEMA Docket No. 6949)	
Rooster River:	
100 feet downstream of Brooklawn Avenue	*20
50 feet downstream of corporate limits	*37
Maps available for inspection at 45 Lyon Terrace, Bridgeport, Connecticut.	
FLORIDA	
Lee County (unincorporated areas) (FEMA Docket No. 6955)	
Gulf of Mexico:	
About 500 feet west of the intersection of Bonita Beach Road and Hickory Boulevard	*17
About 350 feet southeast of the intersection of Bonita Beach Road and Hickory Boulevard	*14
About 4,000 feet northwest of the intersection of Bonita Beach Raod and Bay Point Lane	*11
Maps available for inspection at the Division of Code Enforcement, 1735 Henry Street, Fort Myers, Florida.	
GEORGIA	
Ware County (unincorporated areas) (FEMA Docket No. 6952)	
Satilla River:	
About 3.7 miles downstream of U.S. Route 82	*84
Just downstream of U.S. Route 82	*86
Maps available for inspection at the Ware County Planning Department, 902 Grove Avenue, Waycross, Georgia.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
ILLINOIS	
London Mills (village), Fulton and Knox Counties (FEMA Docket No. 6952)	
Spoon River:	
About 1,100 feet downstream of State Route 116	*536
About 1,850 feet upstream of 2nd Street	*538
Tributary to Swegle Creek:	
Just upstream of State Route 116	*536
About 3,400 feet upstream of Fulton Street	*536
Maps available for inspection at the Town Hall Building, Water Street, London Mills, Illinois.	
IOWA	
Red Oak (city), Montgomery County (FEMA Docket No. 6952)	
Red Oak Creek:	
At mouth	*1034
Just upstream of levee	*1028
Just downstream of Summit Street	*1070
Shallow Flooding (ponding from interior damage):	
Just east of Burlington Northern railroad and about 2,000 feet north of West Oak Street	*1030
Just north of West Oak Street and just west of Burlington Northern railroad	*1030
Just north of West Oak Street and just east of Burlington Northern railroad	*1030
Shallow Flooding (overflow from Red Oak Creek):	
Just west of Burlington Northern railroad and just south of West Oak Street	*1028
Just east of Burlington Northern railroad and just south of Bridge Street	*1028
At Third Avenue about 300 feet west of West Sixth Street	*1021
At Broadway north of Coolbaugh Street	#1
Maps available for inspection at the City Administrator's Office, Red Oak, Iowa.	
NEW YORK	
Oneida (city), Madison County (FEMA Docket No. 6952)	
Oneida Creek:	
At Genesse Street	*444
Approximately 900 feet upstream of Genesse Street	*446
Maps available for inspection at the City Hall, 109 North Main Street, P.O. Box 550, Oneida, New York.	
OHIO	
Clermont County (unincorporated areas) (FEMA Docket No. 6952)	
Ohio River:	
At downstream county boundary	*504
At upstream county boundary	*509
Maps available for inspection at the Planning Commission, 76 South Riverside Street, Batavia, Ohio.	
PENNSYLVANIA	
Hatboro (borough), Montgomery County (FEMA Docket No. 6952)	
Pennypack Creek:	
Warminster Road	*201
Approximately 700 feet up stream of corporate limits	*213
Blair Mill Run:	
Corporate limits	*213
Approximately 250 feet upstream of Monument Avenue	*230
Blair Mill Run Tributary:	
Confluence with Blair Mill Run	*224
County Line Road	*248
Maps available for inspection at the Borough Building, 120 East Montgomery Avenue, Hatboro, Pennsylvania.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
Tullytown (borough), Bucks County (FEMA Docket No. 6952)	
Delaware River:	
At upstream corporate limits	*12
At downstream corporate limits	*12
Franklin Basin: Entire shoreline located within Tullytown	*12
Manor Lake: Entire shoreline located within Tullytown	*13
Van Sciver Lake: Entire shoreline located within Tullytown	*13
Maps available for inspection at the Borough Hall, 500 Main Street, Tullytown, Pennsylvania 19007.	
TENNESSEE	
Nashville (City) and Davidson County (FEMA Docket No. 6955)	
North Fork Ewing Creek:	
About 3,000 feet upstream of Brick Church Pike	*515
About 1,450 feet downstream of Bellshire Drive	*522
Just downstream of Bellshire Drive	*529
Maps available for inspection at the Metropolitan Government of Nashville and Davidson County, Department of Public Works, Division of Engineering, 750 South 5th Street, Nashville, Tennessee.	
Shelby County (unincorporated areas) (FEMA Docket No. 6952)	
Johns Creek Lateral A:	
About 500 feet upstream of mouth	*297
About 2,700 feet downstream of Holmes Road	*306
About 550 feet upstream of Holmes Road	*317
About 2,650 feet upstream of Holmes Road	*321
Johns Creek Lateral AA:	
At mouth	*306
About 3,300 feet upstream of mouth	*316
Maps available for inspection at the Engineering Department, 160 N. Mid America Mall, Room 701, Memphis, Tennessee.	
TEXAS	
Longview (city), Gregg and Harrison Counties (FEMA Docket No. 6952)	
Gilmer Creek:	
At confluence with Grace Creek	*287
Approximately 740 feet downstream of Dam	*307
Ray Creek:	
Approximately .41 mile upstream of confluence with Grace Creek	*304
Approximately 200 feet upstream of Pilier Precise Road	*342
Elm Branch:	
At confluence with Ray Creek	*326
Downstream side of Amy Street	*363
Drain No. 1 (Upper Reach):	
Approximately 660 feet downstream of Loop 281	*368
Approximately 400 feet upstream of Loop 281	*388
Oakland Creek (Upper Reach):	
Approximately 350 feet downstream of U.S. Highway 259	*373
Approximately 300 feet upstream of U.S Highway 259	*380
Hawkins Creek:	
Approximately 800 feet upstream of George Richey Road	*322
At upstream corporate limits	*340
McCann Creek:	
Approximately 1,300 feet upstream of Gray Stone Road	*352
At upstream corporate limits	*358
Grace Creek:	
Approximately 100 feet downstream of Terry Road	*360
Approximately .28 mile upstream of Winding Way	*373

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
Murry Creek:	
Approximately .56 mile above confluence with Oak Branch	*334
At upstream corporate limits	*341
Oak Branch:	
Approximately 0.6 mile above confluence of Murry Creek	*332
Approximately 450 feet upstream of corporate limits	*337
Maps available for inspection at the Public Works Department, City Hall, 300 West Cotton, Longview, Texas.	
Montgomery County (unincorporated areas) (FEMA Docket No. 6949)	
Panther Branch:	
At confluence with Spring Creek	*113
Downstream face of MacDonald Road	*120
Spring Creek:	
At confluence of Panther Branch	*113
3.4 miles upstream of the confluence of Panther Branch	*121
Bear Branch:	
Approximately 1.68 miles upstream of confluence with Panther Branch	*147
Approximately 3.75 miles upstream of confluence with Panther Branch	*161
Maps available for inspection at the Department of Engineering, 326½ North Main, Conroe, Texas 77301./	
VIRGINIA	
Roanoke County (unincorporated areas) (FEMA Docket No. 6952)	
Barnhardt Creek:	
Downstream corporate limits	*1,058
Upstream corporate limits	*1,088
Maps available for inspection at the Roanoke County Administrative Center, 3738 Brambleton Avenue, Roanoke, Virginia 24018.	
WASHINGTON	
Cowlitz County (unincorporated areas), (FEMA Docket No. 6952)	
Lewis River:	
At confluence with the Columbia River	*23
Approximately 250 feet upstream of confluence with East Fork Lewis River	*28
Approximately 4.30 miles upstream of Interstate Highway 5 crossing	*37
Approximately 2.55 miles downstream of confluence of Johnson Creek	*43
At confluence of Johnson Creek	*55
At confluence of Husky Creek	*69
Approximately 1,000 feet downstream of Merwin Dam	*75
Maps available for review at the Department of Community Development, 207 Fourth Avenue North, Kelso, Washington.	

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: July 14, 1989.

[FR Doc. 89-17564 Filed 7-26-89; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-46; RM-5919; RM-6103]

Radio Broadcasting Services; Fountain, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 241A to Fountain, Colorado, as that community's first local broadcast service, in response to a petition for rule making filed by Express Communications. See 53 FR 7216, March 7, 1988. A mutually-exclusive proposal to allot Channel 241C2 to Pueblo, Colorado, as that community's eighth local FM service, as requested by Dr. Ronald A. Johnson (RM-5919), was withdrawn. Coordinates used for Channel 241A at Fountain are 38-41-00 and 104-41-54. With this action, the proceeding is terminated.

DATES: Effective September 5, 1989; The window period for filing applications on Channel 241A at Fountain, Colorado, will open on September 6, 1989, and close on October 6, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-46, adopted June 28, 1989, and released July 21, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Colorado, by adding Fountain, Channel 241A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-17508 Filed 7-26-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-459; RM-6330]

Radio Broadcasting Services; Battle Ground, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 254A to Battle Ground, Indiana, as that community's first local broadcast service, in response to a petition for rule making filed by Linda Kuenzie. Coordinates utilized for Channel 254A at Battle Ground are 40-31-09 and 86-50-56. With this action, the proceeding is terminated.

DATES: Effective September 5, 1989: The window period for filing applications on Channel 254A at Battle Ground, Indiana, will open on September 6, 1989, and close on October 6, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-459, adopted June 28, 1989, and released July 21, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Indiana, by adding Battle Ground, Channel 254A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-17510 Filed 7-26-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-379; RM-6354]

Radio Broadcasting Services; Havana and Madison, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission at the request of Ed Winton ("petitioner"), substitutes Channel 285C2 for Channel 285A at Havana, Florida, and modifies the license for Station WMLO(FM) to specify operation on the higher class channel, and substitutes Channel 274A for Channel 285A at Madison, Florida, and modifies the license for Station WOOP(FM) to specify the new channel at Madison. Channel 285C2 can be allotted to Havana in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.3 kilometers (9.5 miles) east to avoid a short-spacing to Station WOAB(FM), Channel 285A, Ozark, Alabama, and to unused Channel 287A at Chattahoochee, Florida. The coordinates for this allotment are North Latitude 30-34-43 and West Longitude 84-15-59. Channel 274A can be allotted to Madison, Florida in compliance with the Commission's minimum distance separation requirements. The coordinates for this allotment are North Latitude 30-28-06 and West Longitude 83-24-30. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 5, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-379, adopted June 28, 1989, and released July 21, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Florida is amended for Havana by removing Channel 285A and adding Channel 285C2, and for Madison by removing Channel 285A and adding Channel 274A.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-17509 Filed 7-26-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB23

Endangered and Threatened Wildlife and Plants; Endangered Status for Four Florida Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status under the Endangered Species Act of 1973, as amended (Act), for four plants of central Florida: *Campanula robinsiae* (Brooksville bellflower), *Justicia cooleyi* (Cooley's water willow), *Liatris ohlingerae* (scrub blazing star), and *Ziziphus celata* (Florida ziziphus). All four plants are threatened by habitat loss due to residential and agricultural land development. *Justicia cooleyi* is also threatened by limestone mining. Only two small populations of *Ziziphus celata* are known to exist, so it is especially vulnerable to extinction. This rule implements the protection and recovery provisions afforded by the Act for these four plants.

EFFECTIVE DATE: August 28, 1989.

ADDRESSES: The complete file for this rule is available for inspection during normal office hours, by appointment, at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Wesley, Field Supervisor, at

the above address (telephone: 904/791-2580 or FTS 946-2580).

SUPPLEMENTARY INFORMATION:

Background

Campanula robinsiae, Brooksville bellflower, is a member of the bellflower family (Campanulaceae). It was discovered on the north slope of Chinsegut Hill in Hernando County, Florida, by John K. Small and Mrs. Raymond Robins in the spring of 1924 and was named *Campanula robinsiae* by Small (1926), who later transferred the plant to his new genus *Rotantha* (Small 1933). Shetler (1963) returned the plant to *Campanula* while noting that it was possibly a Eurasian species that had been introduced, perhaps accidentally, to Chinsegut Hill. Field work in the 1980's by Nancy Morin (Missouri Botanical Garden), Steven Leonard (Florida Natural Areas Inventory), Stanwyn Shetler (Smithsonian Institution), and others showed that the plant is not restricted to moist areas on Chinsegut Hill, but is primarily found on moist ground at the edges of two ponds near the hill. Now that the bellflower's habitat is better known, it has become apparent that the plant is a native, narrowly endemic species (R.P. Wunderlin, University of South Florida, personal communication 1985; N. Morin, personal communication 1987).

Campanula robinsiae is an annual herb with a slender taproot and slender, 4-angled stems 1 to 15 centimeters (0.4 to 6.0 inches) tall. The largest leaves are at the base of the plant, ovate to elliptic, about 6 millimeters (0.24 inch) long, and 5 millimeters wide. Leaves farther up the stem are narrower and shorter. Many of the flowers are cleistogamous (closed, self-pollinating) and inconspicuous. The chasmogamous (open, cross-pollinating) flowers are solitary with the sepals 1.0 to 2.5 millimeters (0.04 to 0.10 inch) long and the deep purple bell-shaped corolla 7 to 8 millimeters (0.28 to 0.31 inch) wide. Flowering is in March and April. The seeds are the smallest recorded for the North American members of *Campanula* (Shetler and Morin 1986). The only other bellflower in Florida is *Campanula floridana*, a widespread species with shorter sepals and a longer corolla (Perkins 1979, Wunderlin *et al.* 1980a, Wunderlin 1982). *Campanula robinsiae* is one of a number of low plants that occupy the edges of ponds; its abundance apparently fluctuates considerably from year to year depending on water levels. The ponds are adjacent to pastures grazed by cattle.

Justicia colleyi, Cooley's water-willow, is a member of the acanthus family (Acanthaceae). Specimens were collected in 1924 and 1934 by John K. Small and colleagues and in 1957 by George Cooley. Monachino and Leonard (1959) recognized these specimens as a new species, *Justicia cooleyi*, distinct from the two other native water-willows in central Florida. Meagher (1974) confirmed this view. *Justicia cooleyi* is a rhizomatous perennial herb with upright, quadrangular stems and is usually less than 40 centimeters (16 inches) tall. The leaves are up to 5 centimeters (2 inches) long. The flowers are borne on forked, zigzag branches slightly longer than the leaves. The petals are fused into a two-lipped corolla with the lower lip slightly longer, 7 to 8 millimeters (0.28 to 0.31 inch) long. The lower lip is mottled lavender and white. The rest of the corolla is bright lavender-rose. Flowering occurs from August to December. A capsule 1.2 centimeters (0.47 inch) long develops from the flower (Kral 1983, Perkins 1979).

The first collection of this water-willow was made in a "low hammock" or hardwood forest near Mascotte in Lake County. All subsequent collections have been from north central Hernando County on sand to clay soils that range from moist to seasonally wet. Some sites are on low rises in wet hammocks or swamps; most are on uplands or hills with trees such as southern magnolia, black gum, sweetgum, live oak, laurel oak, pignut hickory, cabbage palm, flowering dogwood, and yaupon holly. The understory may contain many ferns, woodland grasses, and sedges. The area has long attracted botanists (Rollins and Howard 1987).

The extensive outcrops of limestone rock and the sinkholes in the Hernando County forests are unusual in the Florida peninsula and provide excellent habitat for ferns, including the tropical hammock fern (*Blechnum occidentale*), and the dwarf spleenwort (*Asplenium pumilum*), both considered endangered by the State. The terrestrial nodding-cap orchids *Triphora latifolia* and *Triphora craigheadii* are both endemic to hardwood forests in this part of Florida. Both are listed as threatened by the State and are candidates for Federal listing. Florida crabgrass (*Digitaria floridana*), and non-weedy endemic species that is a candidate for Federal listing, also occurs in these forests (data from Florida Natural Areas Inventory, September 1987).

Portions of the hardwood forests have been cleared for pastures. Selective cutting of trees for timber or to improve grazing for livestock probably does not adversely affect *Justicia cooleyi*, which is known to occur on a periodically mowed highway right-of-way (Kral 1983, file reports from The Nature Conservancy and the Florida Natural Areas Inventory; Wunderlin et al. 1980b).

The presently known localities for both *Campanula robinsiae* and *Justicia cooleyi* are on a portion of the Brooksville Ridge, a region with "the most irregular surface to be found in any area of comparable size in peninsular Florida" (White 1970). The region has few surface streams, most drainage being to ponds and praries and into sinkholes. Phosphate mining occurred in the area in the past; today, large limestone quarries produce both soft and hard rock, and cattle pasturing is widespread. Also, residential development is increasing in the area.

Liatris ohlingerae, scrub blazing star, is a perennial herb of the aster family (Asteraceae, also known as Compositae). It was first collected in 1922 in Highlands County, Florida, by John K. Small; it was also collected in 1922, southeast of Frostproof, Polk County, Florida, by Mrs. F.E. Ohlinger. Blake (1923) placed the plant in the blazing star genus, naming it *Lacinaria ohlingerae*, with the Frostproof site as the type locality. Small (1924) created a new genus for this plant, which became *Ammopursus ohlingerae*. Robinson (1934) reinstated scrub blazing star in the large genus of the blazing stars as *Liatris ohlingerae*, changing the genus name in keeping with adoption of *Liatris* as a conserved name under the International Code of Botanical Nomenclature. Gaiser's (1946) treatment of *Liatris* and Cronquist's (1980) floristic treatment of the aster family in the Southeast retain this plant in the genus *Liatris*, although Lakela (1964) argued in favor of reinstating *Ammopursus* as a genus of only one species. Cronquist gives three common names for *Liatris*: blazing star, gay feather, and button snakeroot. Members of the genus that are sold as cut flowers or as garden perennials are usually called blazing stars. Wunderlin et al. (1980c) mention "sand torch" as a name for *Liatris ohlingerae*.

Liatris ohlingerae is an erect, usually unbranched perennial herb, up to 1 meter (3 feet) tall. The leaves are very narrow, only 1 to 2.5 millimeters (0.04 to 0.10 inches) wide. The several flower heads are usually separated from each other on the stem; they are large compared to the rest of the genus, up to 2 centimeters (0.8 inch) broad and 3 centimeters (1.2 inch) from base to tips of the flowers. The flowers are bright

pinkish purple. The plant flowers from July through September and October (Kral 1983).

Liatris ohlingerae has been collected frequently because of its brilliant flowers. A study of the central Florida sand pine scrub by Christman (1988) shows 93 known localities for the plant (71 of them in Highlands County), with a geographic range from Lake Blue near Auburndale and Catfish Creek (north of Highway 60 east of Lake Wales) in Polk County (N. Bissett, The Natives, Davenport, Florida, personal communications 1988), south along the Lake Wales Ridge (and U.S. Highway 27) through Sebring to the Archbold Biological Station in Highlands County. The distribution of *Liatris ohlingerae* overlaps or encompasses the distributions of 10 federally listed plants of the scrub habitat, and it parallels especially closely the distributions of *Hypericum cumulicola* (endangered), *Polygonella basiramia* (endangered), and *Prunus geniculata* (endangered). A site at Archbold Biological Station is protected; a site as Saddle Blanket Lakes is being purchased by the State. A small site may be added to Highlands Hammock State Park. Sites in Arbuckle State Park and the adjoining Arbuckle State Forest (both recently acquired) are protected.

Liatris ohlingerae is restricted to sand pine scrub vegetation, a vegetation that is restricted to Florida and has its greatest floristic richness on the Lake Wales Ridge. Scrub vegetation occurs on excessively drained sand soils, usually on sites that, under presettlement conditions, were provided a degree of natural fire protection by a nearby lake or swamp (Christman 1988). Scrub vegetation is dominated by evergreen shrubs including oaks (such as the endemic *Quercus inopina*), with variable numbers of sand pine (*Pinus clausa*). Sandy open spaces between large shrubs are occupied by small shrubs such as *Conradina brevifolia* and *Dicerandra frutescens* (both members of the mint family, the latter federally listed as endangered), *Polygonella myriophylla* (of the buckwheat family), and numerous small herbs including *Bonamia grandiflora* (of the morning glory family, threatened), *Nolina brittoniana* (agave family), and a few grasses such as *Schizachyrium niveum* (a bluestem grass endemic to central Florida).

Christman (1988) lists 39 plant taxa that are virtually restricted to scrub vegetation. Of these taxa, 33 are present on the Lake Wales Ridge, which appears to have the greatest number of endemic plant species in any single habitat in Florida. The State's two other major regions of plant endemism are the Apalachicola lowlands in northwest Florida and tropical Dade and Monroe Counties. Florida has the greatest degree of plant endemism in eastern North America (Muller et al., in press).

Ziziphus celata, Florida ziziphus, was first collected by Ray Garrett in 1948 on sand dunes near Sebring; a second specimen was collected by Leonard J. Brass in the company of Garrett, presumably from the same locality. Garrett consulted with Erdman West and Lilian Arnold at the University of Florida, but neither could identify the plant. West had an illustration prepared.

Over the years, attempts were made to identify the shrub (which belongs to the family Rhamnaceae or buckthorns) and to relocate the shrub in the wild, with no success. Finally, Walter Judd noted the similarity of Garrett's specimen to several shrubs from the southwestern United States and Mexico. Judd and Hall (1984) proposed that Garrett's specimen represented a new species, which they named *Ziziphus celate*, most closely related to *Ziziphus obtusifolia* (lotebush, white crucillo, or gray thorn of the deserts of southern California, Arizona, New Mexico, Texas, and Mexico) and to *Ziziphus parryi* (California lotebush of southern California and Baja California) (Benson and Darrow 1981). Subsequently, Brass's specimen was found at the herbarium of the Archbold Biological Station, and the illustration prepared under West's direction was also found (Wunderlin et al. 1985).

In late July 1987, Kris R. DeLaney found a population of the Florida ziziphus in Polk County, Florida (Wunderlin et al. 1987). He found a second population in Highlands County in the fall of 1988, after extended searches funded by the Florida Nongame Wildlife Program (DeLaney et al., in press).

Ziziphus celata is a shrub up to 1.5 meters (5 feet) high. Stems occur in groups and appear to be interconnected by extensive root systems (DeLaney personal communication 1989). Branches are zigzagged and bear short, straight, spiny branchlets. Leaves are alternate, deciduous, with blades that are oblong-elliptic to obovate, dark glossy green above, lighter dull green beneath, 4.5 and 21 millimeters (0.18 to 0.83 inch) long, and 3 to 13 millimeters (0.12 to 0.5 inches) wide. Leaves have rounded tips, cuneate bases, and entire margins (Wunderlin et al. 1987). Flowers are axillary and solitary but appear fascicled. They have five sepals, which are green in color, and have five white petals somewhat clasping an equal number of stamens. The floral disc is thickened and surrounds the ovary (Judd and Hall 1984). The fruit is a drupe (DeLaney et al., in press). *Ziziphus celata* may be recognized in the field by its small, dark, glossy green, entire leaves on conspicuously zigzag spiny branches. Larger specimens tend to be covered with lichens (Wunderlin et al. 1987).

Only two populations of *Ziziphus celata* are known, despite intensive floristic surveys of the Lake Wales Ridge in recent years. The first site consists of about 30 stems in two groups on approximately two acres on the Lake Wales Ridge in Polk County. The site is on Avon Park Fine Sand, an excessively drained deep sand soil. The site appears to represent a transition between sand pine scrub vegetation and longleaf pine (*Pinus palustris*) vegetation with turkey oak (*Quercus laevis*). The site has evergreen oaks, *Carya floridana* (scrub hickory), *Bumelia tenax* (a buckthorn), *Prunus geniculata* (scrub plum, endangered), and many herbs, including *Berlandiera subacaulis* (a yellow daisy), *Bonamia grandiflora* (Florida bonamia, threatened), *Bulbostylis* sp. (a small sedge), *Liatris ohlingerae*, *Licania michauxii* (gopher apple), *Paronychia chartacea* (papery whitlow wort, threatened), and *Warea carteri* (Carter's mustard, endangered) (Wunderlin et al. 1987). The second population is larger.

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to the Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and of its intention thereby to review the status of the plant taxa it contained. On June 16, 1976, the Service published a proposed rule (41 FR 24523) to determine approximately 1,700 vascular plant species recommended by the Smithsonian Report to be endangered species pursuant to section 4 of the Act. *Campanula robinsiae*, *Justicia cooleyi*, and *Liatris ohlingerae* were included in the Smithsonian Report; the July 1, 1975, notice; and the June 16, 1976, proposal.

On December 15, 1980, the Service published a notice of review for plants (45 FR 82480), which included *Campanula robinsiae* and *Liatris ohlingerae* as category 1 candidates (taxa for which data in the Service's possession indicate listing is warranted). *Justicia cooleyi* was included as a category 2 candidate (a species for which data in the Service's possession indicate listing is possibly appropriate, but for which additional biological information is needed to support a proposed rule). A supplement to the 1980 notice of review published on November 28, 1983 (48 FR 53640), treated *Campanula robinsiae* as a category 2 candidate, based on uncertainty about the taxonomic status of the plant (Shetler 1983, Wunderlin et al. 1980a). *Justicia cooleyi* was treated as a category 1 candidate, based on a status report by Wunderlin et al. (1980b). An updated notice of review published on September 27, 1985 (50 FR 39526), maintained the three species as candidates in the same categories: *Campanula robinsiae*, category 2; *Justicia cooleyi* and *Liatris ohlingerae*, category 1. A letter from R. Wunderlin (*in litt.* 1985), received too late for the notice of review, suggested that recent field work on *Campanula robinsiae* had generated "sufficient information to prepare a proposal for listing the species as endangered." The listing of *Liatris ohlingerae* as an endangered species is based on the information available in 1980, augmented by field work conducted by Gary Schultz for the Florida Natural Areas Inventory and by Steven Christman (1988), plus recent information on the rate of development of the two counties.

In the September 27, 1985, notice of review, the newly-described *Ziziphus celata* was designated a category 2* candidate (the asterisk indicates that the taxon is possibly extinct). Subsequent discovery of another herbarium specimen and extant populations of the ziziphus have confirmed that this is a valid species that merits listing.

Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Campanula robinsiae*, *Justicia cooleyi*, and *Liatris ohlingerae*, because the Service had accepted the 1975 Smithsonian report as a petition. On October 13, 1983; October 12, 1984; October 11, 1985; October 10, 1986; and October 9, 1987, the Service found the petitioned listing of these species was warranted, and that, although pending proposals had precluded their proposal, expeditious progress was being made to list these species.

On September 12, 1988 (53 FR 35215), the Service published a proposal to list *Campanula robinsiae* and *Justicia cooleyi* as endangered species. On September 28, 1988 (53 FR 37818), the Service published a proposal to list *Liatris ohlingerae* and *Ziziphus celata* as endangered species. The foregoing proposals constituted the final findings required for these species.

Summary of Comments and Recommendations

In the September 1988 proposed rules, all interested parties were requested to submit factual information that might contribute to the development of a final rule. Appropriate State of Florida agencies, county governments, Federal agencies, scientific organizations, and interested parties were contacted and requested to comment. Notices inviting public comment were published in "The Sun-Journal," Brooksville, for *Campanula robinsiae* and *Justicia cooleyi* (October 1, 1988), and in the "Polk County Democrat" (October 13, 1988) and the "Sebring News-Sun" (October 16, 1988) for *Liatris ohlingerae* and *Ziziphus celata*.

Comments were received from three State agencies, one Federal agency, two plant nurseries, and one private conservation organization.

The administrator of Withlacoochee State Forest (Division of Forestry, Florida Department of Agriculture and Consumer Service) requested further information on *Campanula robinsiae* and *Justicia cooleyi* and volunteered assistance in searching for populations of these species in the Forest (where neither species is currently known). The research leader at the U.S. Department of Agriculture, Subtropical Agricultural Research Station, provided additional information on the distribution of *Justicia* at the Station. He noted that current forage and livestock research at the Station appears compatible with protecting the habitat of *Justicia*, and possibly of *Campanula* (which they were not able to find this year).

The Florida Department of Agriculture and Consumer Services and the Florida Game and Fresh Water Fish Commission supported Federal listing of *Liatris ohlingerae* and *Ziziphus celata*.

Two horticulturists who operate native plant nurseries in Davenport, Florida, and in Aiken, South Carolina, commented on *Liatris ohlingerae* and *Ziziphus celata*. One (from Florida) noted that Liatris ohlingerae has been successfully grown from seed and established at a mine reclamation site. This horticulturist also noted that there is no great commercial demand for *Liatris* and that it is not a profitable crop. Both horticulturists took exception to the wording of the proposal's treatment of critical habitat. Only two or three specialized nurseries deal with rare Florida scrub plants, and none would consider digging endangered species from the wild, nor taking seeds or cuttings if it would jeopardize the plant. Both requested that the critical habitat wording be altered to avoid before-the-fact criticism of the nurseries, and one suggested that propagation, and those able to effect it, should be regarded in the final rule under "Available Conservation Measures" as being beneficial, rather than as a negative factor under "Summary of Factors Affecting the Species." The Service concurs that propagation by nurseries does not threaten these four species, and acknowledges the useful data and other assistance that nurseries have provided. The portions of the final rule dealing with critical habitat and the factors affecting the species have been altered to reflect these comments. However, the section dealing with available conservation measures only covers Federal measures specified in the Endangered Species Act, and does not include other actions that can be taken by states or private parties.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Campanula robinsiae*, *Justicia cooleyi*, *Liatris ohlingerae* and *Ziziphus celata* should be classified as endangered species. Procedures found at section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their applications to *Campanula robinsiae* Small (Brooksville bellflower), *Justicia cooleyi* Monachino & E. Leonard (Cooley's water-willow), *Liatris ohlingerae* (S.F. Blake) B. Robinson (scrub blazing star), and *Ziziphus celata* Judd & Hall (Florida ziziphus) are as follows:

A. *The present or threatened destruction, modification, or curtailment of their habitats or ranges.* The known localities for *Justicia cooleyi* and *Campanula robinsiae* are in north central Hernando County, including Annutteliga Hammock near U.S. Highway 98. Some of the original

hardwood forest in this area has been converted to pastures, as shown on topographic maps. Limestone quarries and associated holding ponds occupy at least 10 square miles. A residential subdivision occupies 26 square miles, including part of Annutteliga Hammock. Smaller subdivisions and rural residences are encroaching on other areas of forest. Hernando County was the second fastest-growing county in the nation from 1980 to 1986, growing by 74.8 percent during this period, according to a Census Bureau report ("The New York Times," September 1, 1987). The University of Florida, Bureau of Economic and Business Research confirms that this rapid growth is continuing, with the 1987 population estimated to have increased 79.3 percent over 1980, for a total of 79,718 ("Jacksonville Times-Union," August 26, 1987). The proposed Suncoast Corridor tollroad, part of a Tampa-Jacksonville corridor, which would pass west of Brooksville, would encourage population growth in Hernando County.

Justicia cooley is native to hardwood forests in Hernando County, although two of the seven known sites are in modified forest, one on a wide highway right-of-way among a group of trees and the other in an unusual seepage area in a cattle pasture on Chinsegut Hill. The small number of known sites, despite searches by capable field botanists, indicates that any further loss of suitable habitat would seriously threaten the continued existence of the species.

Campanula robinsiae is known to occur only at three sites. One site, with few plants, is in a seepage area with *Justicia cooleyi* on Chinsegut Hill. The site has been used as a pasture for many years and no changes in land management are anticipated. The two principal populations are at the margins of two "prairies" or ponds with seasonally fluctuating water levels. Changes in land use in the watersheds surrounding the prairies have the potential to affect water levels in the ponds by increasing the quantity of runoff; runoff water from developed areas may also be contaminated by petroleum products, fertilizers, and herbicides. Therefore, while there appears to be little danger of destruction of this plant's habitat, adverse modification of the habitat constitutes a serious threat to *Campanula robinsiae*.

Liatris ohlingerae is restricted to sand pine scrub vegetation on the Lake Wales Ridge and the nearby Auburndale area in Highlands and Polk Counties, Florida. Sand pine scrub vegetation occurs elsewhere in these counties and the rest of the State, but lacks *Liatris ohlingerae*. The Lake Wales Ridge is a major citrus producing area, and the towns along the Ridge are growing rapidly. In Highlands County, 64 percent of the xeric vegetation (scrub, scrubby flatwoods, and longleaf pine-turkey oak vegetation) present before settlement had been destroyed by 1981. An additional 10 percent of the xeric vegetation was moderately disturbed, primarily by building roads to create housing subdivisions (Peroni and Abrahamson 1985). Christman (1988), using different methodology, estimated that "ancient" scrub originally occupied about 80,000 acres on the Lake Wales, Lake Henry, and Winter Haven ridges; about two-thirds of the ancient scrub has been lost. Remaining tracts of scrub on the Lake Wales Ridge in Polk and Highlands counties are rapidly being developed for citrus groves, housing developments, and businesses (Christman 1988; Fred Lohrer, Archbold Biological Station, personal communication 1985; James Duane, Executive Director, Central Florida Regional Planning Council, personal communication 1988).

Many of the remaining stands of scrub are on vacant lots, patches of land isolated by railroad tracks, or other fragments of the original vegetation. Some of the few remaining large areas of scrub are found in subdivisions where lots were sold to absentee owners, but houses were not built. The fragmented land ownership, the difficulty of contacting landowners, and informal use of such subdivisions as trash dumps and recreation areas make conservation of the vegetation difficult. *Liatris ohlingerae* does not occur in federally owned sand pine scrub vegetation on the Avon Park Air Force Range. The plant does occur at these tracts owned by or being purchased by the State of Florida: Arbuckle State Park and Arbuckle State Forest in Polk County, Highlands Hammock State Park and the Saddle Blanket Lakes tract in Highlands County. It also occurs on the private Archbold Biological Station.

The relatively large number of known localities for *Liatris ohlingerae* is misleading. Because it has conspicuous flowers and is easily identified, it has been collected very frequently, much like *Polygonella myriophylla*, a distinctive species of the same habitat. Many of the known sites for the blazing star have already been destroyed, but no exact count is available. Although the blazing star is still locally abundant, most of the extant sites are small, and sites are disappearing very rapidly. For example, in January of 1988, Christman (personal communication 1988) prepared for The Nature Conservancy a list of ten sites that collectively could constitute a network of preserves for the central Florida scrub flora; by late March, three of the sites had changed hands, including one that had been considered relatively secure.

Ziziphus celata was first collected near Sebring at a site that has not been relocated, unless it is the site found in 1988 by DeLaney. One of the two known existing populations consists of about 30 stems. Most or all of the stems may be from a single rootstock. The site is privately owned. It was nearly destroyed in 1988 because the owner was required to clear the native vegetation in order to continue to qualify for an agricultural exemption from the usual property tax rate. The site is now temporarily protected (Wunderlin et al. 1987; R. Wunderlin, personal communication 1988). Property tax policies thus threaten this and other native plant species. DeLaney and Wunderlin, funded by the Florida Nongame Wildlife Program, searched for more populations in 1988 but found only one.

B. *Overutilization for commercial, recreational, scientific, or educational purposes. Justicia cooleyi* is not of interest as an ornamental (Robert McCartney, personal communication 1986), but it occurs at the same site as a rare fern that is vulnerable to collection by fern enthusiasts, so it is inadvisable to publicize the exact localities of *Justicia cooleyi*.

The Florida National Areas Inventory treats data on *Campanula robinsiae* as sensitive because the plant is restricted to only 3 sites and is therefore vulnerable to overcollecting and vandalism.

Liatris ohlingerae has been tested by a Dutch firm for cultivation as a cut flower because of its exceptionally large flower heads that are more pinkish than those of other members of the genus (S. Wallace, Bok Tower Gardens, personal communication 1988). This activity does not threaten the species, which is easily grown from seed. Although other members of the genus *Liatris* are popular in North America as garden perennials, this species does not appear to be threatened by present or foreseeable trade in native plants.

Ziziphus celata is one of the rarest shrubs in North America. Unrestricted scientific collecting or excessive visits could seriously affect the two populations.

C. *Disease or predation.* Not applicable.

D. *The inadequacy of existing regulatory mechanisms. Campanula robinsiae, Justicia cooleyi,* and *Liatris ohlingerae* are listed as endangered by the Preservation of Native Flora of Florida Act (§ 581.185–187, Florida Statutes), which regulates taking, transport, and sale of plants but does not provide habitat protection. *Ziziphus celata* is proposed for addition to the State list by the Florida Legislature in 1989. Listing under the Act augments State and private conservation measures for these plants by providing for habitat protection through section 7 and recovery planning.

E. *Other natural or manmade factors affecting their continued existence.* Restriction to specialized habitats and to small geographic ranges tends to intensify any adverse effects on any rare plant. This is the case for *Campanula robinsiae, Justicia cooleyi,* and *Liatris ohlingerae*, and is exacerbated by the loss of habitat which has already taken place. *Ziziphus celata* may be threatened by loss of genetic diversity because the existing populations may consist of only a few clones (genets).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list these four plant species as endangered. Their limited remaining habitats and vulnerability to human activities indicate that all four species are in danger of extinction throughout all or significant portions of their ranges, and therefore fit the Act's definition of endangered.

Critical Habitat

Section 4(a)(3) of the Act requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these four plant species at this time. Federal, State and local agencies can be alerted to the presence of these species through the resources of the Florida Natural Areas Inventory and Regional Planning Councils, including geographic information systems that provide much more detailed information than critical habitat descriptions and maps. Publication of critical habitat descriptions and maps would increase the degree of threat from taking or vandalism. *Campanula robinsiae* is restricted to three sites that could easily be damaged by trampling or collecting. *Liatris ohlingerae* is an attractive plant that could be vulnerable to transplanting from the wild to home gardens. Live specimens of *Ziziphus celata* might be of interest to a limited number of hobbyists. Removal of attractive plants, or plant curiosities, from the wild by collectors and hobbyists has been a serious problem for many years in south Florida. In addition, efforts to conserve the scrub habitat of *Liatris ohlingerae, Ziziphus celata*, and other plant species have already provoked some landowners to preemptively destroy the vegetation. The Central Florida Regional Planning Council and other agencies are seeking to provide incentives for landowners to maintain scrub. Designating critical habitat could unduly alarm landowners, undermining these conservation efforts.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to any critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) require Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Most of the currently known sites for the four plant species are on privately owned land. The only known Federal ownership is for some populations of *Campanula robinsiae* and *Justicia cooleyi* on a U.S. Department of Agriculture research station, whose past management practices have been consistent with the needs of both species. The Station's staff knows of their presence. Both species also occur on protected State land. The currently known sites for *Liatris ohlingerae* are on private land, except for two owned by, or being purchased by the State. The two currently known sites for *Ziziphus celata* are on private land. The State of Florida is aware of the need to conserve both species. There is no Federal involvement currently on State or private lands in the area. Populations of *Liatris ohlingerae* that extend onto State-owned highway rights-of-way may be subject to Federal involvement if the U.S. Department of Transportation (Federal Highway Administration) should provide funds for maintenance or construction. Federal mortgage programs may be subject to section 7 review, including those of U.S. Department of Agriculture (Farmers Home Administration), Veterans Administration, and the U.S. Department of Housing and Urban Development (Federal Housing Administration loans). The supply of electricity to new housing developments may be subject to Federal involvement through the Rural Electrification Administration.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it and reduce it to possession from areas under Federal jurisdiction. In addition, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction of listed plants on Federal lands and also prohibit removing, cutting, digging up, or damaging or destroying them in knowing violation of any State law or regulation, including State criminal trespass laws. Certain exceptions can apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. There is no commercial trade in *Campanula robinsiae, Justicia cooleyi,* or *Ziziphus celata*, and no known interstate commercial trade within the United States in *Liatris ohlingerae*. The Service

anticipates few, if any, requests for permits. Requests for copies of the regulations on plants and inquiries regarding them may be addresssed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507, Arlington, Virginia 22203 (703/358-2104).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Service's Jacksonville Field Office (see "**ADDRESSES**" above).

Author

The primary author of this proposed rule is Mr. David Martin, Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216 (904/791-2580 or FTS 946-2580).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411; Pub. L. 100-478, 102 Stat. 2306; Pub. L. 100-653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the families indicated, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

SPECIES						
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
*	*	*	*	*		
Acanthaceae—Acanthus family:						
Justicia cooleyi	Cooley's water-willow	U.S.A. (FL)	E	356	NA	NA
*	*	*	*	*		
Asteraceae—Aster family:						
*	*	*	*	*		
Liatris ohlingerae	Scrub blazing star	U.S.A. (FL)	E	356	NA	NA
*	*	*	*	*		
Campanulaceae—Bellflower family:						
Campanula robinsiae	Brooksville bellflower	U.S.A. (FL)	E	356	NA	NA
*	*	*	*	*		
Rhamnaceae—Buckthorn family:						
*	*	*	*	*		
Ziziphus celata	Florida ziziphus	U.S.A. (FL)	E	356	NA	NA
*	*	*	*	*		

Dated: June 12, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-17593 Filed 7-26-89; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 90515-9115]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustments.

SUMMARY: NOAA announces adjustments to the commercial ocean salmon management measures in the exclusive economic zone (EEZ) from Cape Falcon to Orford Reef Red Buoy, Oregon, beginning 0001 hours local time, July 18, 1989. For the subarea between Cape Falcon and Cascade Head, Oregon, a single daily landing limit per vessel of 50 coho salmon is established, and all loads which have been caught in this subarea must be landed north of Cascade Head. For the subarea between Cascade Head and Orford Reef Red Buoy, Oregon, a ratio restriction of 1 chinook salmon for every 2 coho salmon landed is established, the first 2 coho salmon may be landed without a chinook salmon, and all loads which have been caught in this subarea must be landed south of Cascade Head. The Director, Northwest Region, NMFS (Regional Director), has determined that the adjustments are necessary to prolong the all-species commercial seasons in these subareas and to provide for equitable distribution of harvest among Oregon ports. This action is intended to allow maximum harvest of ocean salmon quotas established for the 1989 season.

DATES: These inseason adjustments to the commercial management measures in the EEZ from Cape Falcon to Orford Reef Red Buoy, Oregon, are effective at 0001 hours local time, July 18, 1989. (The subarea from Cape Arago to Orford Reef Red Buoy, Oregon, is closed July 14-31 as regularly scheduled.) Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard notice-to-mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23 (as amended May 1, 1989). Public comments on this notice will be accepted through August 8, 1989.

ADDRESS: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries are published at 50 CFR Part 661. In its preseason notice of 1989 management measures (54 FR 19798, May 8, 1989), NOAA specified landing limits, landing boundaries, and ratio fisheries (restriction on the ratio of coho to chinook salmon which can be landed) for the commercial seasons for all salmon species in the subareas from Cape Falcon to Cascade Head, and from Cascade Head to Orford Reef Red Buoy, Oregon. NOAA also announced that the troll fishery from Cape Falcon, Oregon, to the U.S.-Mexico border would be limited to an overall preseason catch quota of 474,000 coho salmon. A subarea catch ceiling within the overall catch quota allows a catch of no more than 349,000 coho salmon south of Cascade Head, Oregon.

In accordance with the preseason notice, the commercial season between Cape Falcon and Cape Arago, Oregon, was closed for 3 days, July 15-17, when 75 percent of the commercial catch ceiling of 349,000 coho salmon south of Cascade Head, Oregon, was projected to have been reached (54 FR 30390, July 20, 1989). During this 3-day closure, an assessment was conducted to determine whether landing limits or ratio fisheries should be continued or imposed.

Based on the most recent catch rates, it is projected that more restrictive landing requirements would delay the attainment of the commercial coho catch quota and ceiling and prolong the allspecies commercial seasons between Cape Falcon and Orford Reef Red Buoy, Oregon, for 1-2 weeks. After the commercial coho quota or ceiling has been reached, fishing will continue in the affected subarea for all salmon species except coho salmon.

Consequently, NOAA issues this notice to establish the following landing limits, landing boundaries, and ratio fisheries effective 0001 hours local time, July 18, 1989. For the subarea between Cape Falcon and Cascade Head, Oregon, a single daily landing limit per vessel of 50 coho salmon is established, and all loads which have been caught in this subarea must be landed north of Cascade Head, Oregon. For the subarea between Cascade Head and Orford Reef Red Buoy, a ratio restriction of 1 chinook salmon for every 2 coho salmon landed is established, the first 2 coho salmon may be landed without a chinook salmon, and all loads which have been caught in this subarea must be landed south of Cascade Head, Oregon. The subarea from Cape Arago to Orford Reef Red Buoy, Oregon, is closed July 14-31 as regularly scheduled. This notice does not apply to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Pacific Fishery Management Council and the Oregon Department of Fish and Wildlife regarding these adjustments to commercial landing restrictions between Cape Falcon and Orford Reef Red Buoy, Oregon. The State of Oregon will manage the commercial fishery in State waters adjacent to this area of the EEZ in accordance with this federal action.

In accordance with the revised inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen was given prior to 0001 hours local time, July 18, 1989, by telephone hotline number (206) 526-6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz. NOAA issues this notice of revised landing restrictions for the commercial salmon fishery in the EEZ from Cape Falcon to Orford Reef Red Buoy, Oregon, which was effective 0001 hours local time, July 18, 1989.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 et seq.

Dated: July 21, 1989.

Joe D. Clem,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-17533 Filed 7-24-89; 9:25 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 143
Thursday, July 27, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 700, 701, 705 and 741

Designation of Low Income Status

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Proposed amendments.

SUMMARY: Section 101(5) of the Federal Credit Union Act (12 U.S.C. 1752(5)) authorizes Federal credit unions "serving predominantly low income members" to receive share accounts from nonmembers. Some federally-insured state-chartered credit unions have comparable authority under state law. The purposes of this proposed amendment are to (1) clarify that a Federal credit union must receive a designation from NCUA to act pursuant to this authority; (2) establish procedures for granting and revoking the designation; and (3) establish that a federally-insured state-chartered credit union must receive a designation from its state regulator with the concurrence of NCUA.

DATE: Comments must be received by October 25, 1989.

ADDRESS: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Hattie M. Ulan, Assistant General Counsel, at above address or telephone: 202/682-9630.

SUPPLEMENTARY INFORMATION: In general, credit unions accept shares only from their members. There are limited exceptions to this rule. Section 107(6) of the Federal Credit Union Act (12 U.S.C. 1757(6)) authorizes all Federal credit unions (FCU's) to accept shares from public units and other credit unions. Section 107(6) also authorizes FCU's "serving predominantly low-income members (as defined by the [NCUA] Board)" to accept shares from nonmembers. The NCUA Board has defined the terms "predominantly" and "low-income members" in paragraphs 700.1 (h) and (i) of the NCUA Regulations (12 CFR 700.1 (h) and (i)). As a matter of policy, FCU's serving predominantly low-income members pursuant to the FCU Act and the regulatory definitions have received a designation from the NCUA enabling them to accept nonmember shares. The designation process, although a longstanding practice, has never been set forth in the regulations. To eliminate any ambiguity, the Board proposes to add a new § 701.32(d) to its regulations to clarify that an NCUA designation is required. Also, to improve the organization of the rules, it is proposed that paragraphs 700.1 (h) and (i), which define the terms "low-income members" and "predominantly", be moved to new paragraphs 701.32(d) (2) and (3), respectively.

The amendment also provides that the designation may be removed upon notice to a Federal credit union by the Regional Director. The designation will be removed if the low-income requirements are no longer being met or for other good cause. Removal of the designation from a Federal credit union is appealable to the NCUA Board. Federal credit unions will be advised of their right to appeal. Appeals should be submitted through the Regional Director.

Some state credit union acts provide similar authority to state-chartered credit unions to accept nonmember shares based on service to predominantly low-income members. In the case of state-chartered credit unions that are insured by the National Credit Union Share Insurance Fund (NCUSIF), this proposed rule requires that the state credit union regulator make the designation under state law with the concurrence of the appropriate NCUA Regional Director. Because the risk of misuse of insured nonmember shares is borne by the NCUSIF, it is appropriate that NCUA concurrence be required. This requirement is set forth in a proposed amendment to § 741.5. Removal of the designation for a FISCU will be by the state regulator with the concurrence of the Regional Director. Any appeal rights of the FISCU will be determined by the state.

The NCUA Board also requests comment on the proper treatment of a credit union's existing nonmember shares in the event of removal of low-income designation. It is suggested that existing shares be grandfathered. No new shares could be accepted. Share certificates could be held until maturity but could not be renewed.

A conforming amendment is proposed to Part 705 of the regulations. Part 705 addresses the community development revolving loan program for credit unions. One of the requirements for a credit union participating in the program is that it meet the definitions of "predominantly" and "low-income members" or the applicable state standards for serving low-income members. The references to the definitions are changed as discussed above. A provision is added to § 705.3 stating that the credit union must have "a current designation as a low-income credit union pursuant to § 701.32(d)(1) of the NCUA Regulation or, in the case of a state chartered credit union, applicable state standards."

Regulatory Procedures

Regulatory Flexibility Act

This proposed amendment adds to the regulations the longstanding policy that credit unions wishing to accept nonmember shares (other than from public units or other credit unions) obtain a low-income designation from the NCUA or the appropriate state credit union regulator. Since this is not a new procedure, the Board has determined and certifies that, if adopted, it will not have a significant economic impact on a substantial number of small credit unions (those under $1 million in asset size). Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This proposed rule contains one paperwork requirement. Any credit union requesting a low-income designation must submit information to the NCUA or the appropriate sate credit union regulator showing that it meets the "predominantly" and "low-income" definitions under the NCUA Regulations or appropriate state standards. This requirement will be submitted to the Office of Management and Budget for review under the Paperwork Reduction Act. Written comments on this proposed rule should be forwarded directly to the OMB Desk Officer indicated below at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20530, Attn: Mr. Waxman

Executive Order 12612

The proposed rule applies to federally-insured state-chartered credit unions that accept public unit and nonmember accounts. The acts and practices subject to the rule have implications for the entire federally-insured credit union system and the NCUSIF, and are not unique to any one type of charter. Accordingly, the proposed rule provides for NCUA concurrence in a state determination of a low-income designation for federally-insured state-chartered credit unions.

List of Subjects in 12 CFR Parts 700, 701, 705, and 741

Credit unions, Low income designation.

By the National Credit Union Administration Board on July 20, 1989.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend its regulations as follows:

PART 700—DEFINITIONS

1. The authority citation for Part 700 is revised to read as follows:

Authority: 12 U.S.C. 1752, 1757(6), 1766.

§ 700.1 [Amended]

2. Paragraphs 700.1 (h) and (i) are removed and paragraphs 700.1 (j), (k) and (l) are redesignated as paragraphs 700.1 (h), (i) and (j), respectively.

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

3. The authority citation for Part 701 is revised to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1766, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, and 1798. Section 701.31 is also authorized by 12 U.S.C. 3601-3610.

4. Section 701.32 is amended by revising the heading and adding a new paragraph (d) to read as follows:

§ 701.32 Payments on shares by public units and nonmembers, and low-income designation.

* * * * *

(d) *Designation of low-income status.* (1) Section 101(5) of the Federal Credit Union Act (12 U.S.C. 1752(5)) authorizes Federal credit unions serving predominantly low-income members to receive shares, share drafts and share certificates from nonmembers. In order to utilize this authority, a Federal credit union must receive a low-income designation from its NCUA Regional Director. The designation shall be reviewed at the credit union's annual examination or such other time as may be appropriate, and may be removed by the Regional Director upon notice to the Federal credit union if the definitions set forth in paragraphs (d) (2) and (3) of this section are no longer met or for other good cause. Removals may be appealed to the NCUA Board in a timely manner. Appeals should be submitted through the Regional Director.

(2) The term "low-income members" shall include those members whose annual income falls at or below the lower level standard of living classification as established by the Bureau of Labor Statistics and as updated by the Employment and Training Administration of the U.S. Department of Labor; those members who are residents of a public housing project who qualify for such residency because of low income; those members who qualify as recipients in a community action program; and those members who are enrolled as full-time or part-time students in a college, university, high school, or vocational school.

(3) The term "predominantly" is defined as a simple majority.

PART 705—COMMUNITY DEVELOPMENT REVOLVING LOAN PROGRAM FOR CREDIT UNIONS

5. The authority citation for Part 705 continues to read as follows:

Authority: Pub. L. 97-35, 95 Stat. 498; Pub. L. 99-609, note to 42 U.S.C. 9822.

6. Section 705.3 is revised to read as follows:

§ 705.3 Definition.

For purposes of this part, a "participating credit union" means a state- or federally-chartered credit union that is specifically involved in stimulation of economic development activities and community revitalization efforts aimed at benefiting the community it serves; whose membership meets the definitions of "predominantly" and "low-income members" as found in §§ 701.32 (d)(2) and (d)(3) of the NCUA Regulations (excluding students), or applicable state standards as reflected by a current designation as a low-income credit union pursuant to § 701.32(d)(1) or § 741.5(b) of the NCUA Regulations or, in the case of a state chartered non-federally insured credit union, under applicable state standards; and has submitted an application and has been selected for participation in the Program in accordance with this Part.

PART 741—REQUIREMENTS FOR INSURANCE

7. The authority citation for Part 741 continues to read as follows:

Authority: 12 U.S.C. 1766, 1781, and 1789.

8. Section 741.5 is revised to read as follows:

§ 741.5 Maximum public unit and nonmember accounts, and low-income designation.

Any credit union that is insured, or that makes application for insurance, pursuant to Title II of the Act must:

(a) Adhere to the requirements of § 701.32 regarding public unit and nonmember accounts, provided it has the authority to accept such accounts. Requests by federally-insured state-chartered credit unions for an exemption from the 20% limitation of § 701.32 will be made and reviewed on the same basis as that provided in § 701.32 for Federal credit unions, provided, however that NCUA will not grant an exemption without the concurrence of the appropriate state regulator.

(b) Obtain a low-income designation in order to accept nonmember accounts, other than from public units or other credit unions, provided it has the authority to accept such accounts under state law. The state regulator shall make the low-income designation with the concurrence of the appropriate Regional Director. The designation will be made and reviewed by the state regulator on the same basis as that provided in § 701.32(d) for Federal credit unions. Removal of the designation by the state regulator for such credit unions shall be with the concurrence of NCUA.

[FR Doc. 89-17503 Filed 7-26-89; 8:45 am]
BILLING CODE 7535-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6962]

Proposed Flood Elevation Determinations; Alabama et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures

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that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

DATE: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of modified base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities.

These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents. Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Alabama	City of Brewton, Escambia County.	May Branch	Just upstream of CSX railroad	None	*79
			Just downstream of Forest Hill Drive Dam	None	*101
			Just upstream of Forest Hill Drive Dam	None	*109
			About 1,200 feet upstream of Forest Hill Drive Dam	None	*110
		Franklin Mill Creek	About 100 feet downstream of CSX Railroad	None	*69
			About 3,400 feet upstream of Booth Boulevard	None	*91
		King Branch	About 2,900 feet downstream of CSX Railroad	*93	*93
			About 800 feet downstream of CSX Railroad	*101	*95
			About 300 feet upstream of CSX Railroad	*106	*106
Maps available for inspection at the City Hall, Brewton, Alabama. Send comments to The Honorable Ted Jennings, Mayor, City of Brewton, City Hall, P.O. Box 368, Brewton, Alabama 36427.					
Arkansas	Jacksonport, Town, Jackson County.	White River	Ponding area on landward side of White River levee at upstream corporate limits.	*232	*222
			Ponding area on landward side of White River levee at downstream corporate limits.	*231	*222
Maps available for inspection at the Town Hall, Jacksonport, Arkansas. Send comments to The Honorable Harry Grizzle, Mayor of the Town of Jacksonport, Jackson County, P.O. Box 85, Jacksonport, Arkansas 72075.					
Kentucky	Unincorporated Areas of Floyd County.	Levisa Fork	At downstream county boundary	*624	*623
			About 1.2 miles upstream of State Highway 979	*662	*666
		Abbott Creek	At mouth	*635	*634
			Just downstream of Little Abbott Creek Road	*635	*635
		Beaver Creek	At mouth	*646	*651
			About 1.96 miles upstream of mouth	*651	*651
		Mud Creek	At mouth	*660	*664
			About 4.86 miles upstream of mouth	*664	*664
Maps available for inspection at the Courthouse Annex Building, West Minister Street, Suite 109, Prestonsburg, Kentucky. Send comments to The Honorable John M. Stumbo, Judge Executive, Floyd County, West Minister Street, Courthouse Annex Building, Suite 109, Prestonsburg, Kentucky 41653.					
Oklahoma	McAlester, City, Pittsburg County.	Tributary C	Approximately 410 feet downstream of Missouri Kansas Texas Railroad.	*643	*642
			Approximately 500 feet downstream of Pierce Avenue	*662	*663

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the City Hall, 1st and Washington, McAlester, Oklahoma. Send comments to The Honorable Randy Green, Manager of the City of McAlester, Pittsburg County, P.O. Box 578, McAlester, Oklahoma 74501.					
Washington	Benton (Unincorporated Areas).	Zintel Canyon	Approximately 400 feet northeast of the intersection of East 19th Avenue and Washington Street.	*378	*376
			Approximately 1,200 feet west of the intersection of East 23rd Street and South Gum Street.	*368	*368
			At the intersection of East 27th Avenue and South Myrtle Street.	*368	*366
			At the intersection of East 19th Avenue and South Oak Street.	*368	*368
Maps available for review at the Benton County Planning Department, 620 Market Street, Prosser, Washington. Send comments to The Honorable Robert J. Drake, Sr., Chairman, Benton County Board of Commissioners, P.O. Box 190, Prosser, Washington 99350.					

Issued: July 14, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 17565 Filed 7-26-89; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB31

Proposed Endangered or Threatened Status for Five Plants From the Southern San Joaquin Valley

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973 (Act), as amended, for four plants: *Caulanthus californicus* (California jewelflower), *Eremalche kernensis* (Kern mallow), *Lembertia congdonii* (San Joaquin wooly-threads), and *Opuntia treleasei* (Bakersfield cactus). The Service also proposes threatened status for one plant, *Eriastrum hooveri* (Hoover's wooly-star).

These species are restricted to grassland and adjacent plant communities (valley sink scrub, valley saltbush scrub, and juniper woodland) in the southern San Joaquin Valley, California, and neighboring foothills and valleys. The five plants have been variously affected and are threatened by one or more of the following: urbanization, conversion of native habitat for agriculture (ag-land conversion) and related water development, oil and gas development and exploration, livestock grazing, competition from alien plants, utilization of habitat for ground-water recharge basins or for disposal of agricultural effluent or runoff, flood control projects, off-road vehicle use, mining, alteration of the natural fire regime, poor air quality, and stochastic extinction by virtue of the small isolated nature of the remaining populations. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for these plants. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by September 25, 1989. Public hearing requests must be received by September 11, 1989.

ADDRESS: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Endangered Species Office, 2800 Cottage Way, Room E-1823, Sacramento, California 95825. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Gail C. Kobetich, Field Supervisor, at the above address (916/978-4866 or FTS 460-4866).

SUPPLEMENTARY INFORMATION:

Background

Caulanthus californicus, Eremalche kernensis, Eriastrum hooveri, Lembertia congdonii, and *Opuntia treleasei* are endemic to grassland and adjacent plant communities [valley sink scrub, valley saltbush scrub, and juniper woodland (cf. Holland 1986)] of the southern San Joaquin Valley and neighboring foothills and valleys of California. This portion of the San Joaquin Valley, often referred to as the Tulare Lake Basin, contains roughly 2.5 million acres of nearly flat, valley floor. If the neighboring valleys (i.e., Carrizo Plain, Cuyama Valley) and foothills are included with the Tulare Lake Basin, prehistoric grassland and adjacent plant communities likely totaled over 6 million acres. However, 96 percent of the native habitats of the valley floor has been lost principally to urbanization and ag-land conversion (Richard Anderson, California Energy Commission, pers. comm. July 21, 1987). The remaining non-urbanized or non-converted lands have been subject to livestock grazing, water development, oil and gas development and exploration, off-road vehicle use, mining, and/or other anthropogenic actions.

The prehistoric composition of the native grasslands and adjoining plant communities likely will remain a mystery (Brown 1982), although numerous authors have speculated as to the composition of the "pristine" flora of the Central Valley, inclusive of the San Joaquin Valley and Tulare Lake Basin (Clements 1934, Munz and Keck 1950, Biswell 1956, Twisselmann 1956, White 1967, McNaughton 1968, Bakker 1971, Ornduff 1974, Heady 1977, Bartolome and Gemmill 1981, and Wester 1981). Alien, annual grasses and forbs invaded the low-elevation, plant communities of California during the days of the Franciscan missionaries. Today, these grasses, which account for 50 to 90 percent of the vegetative cover (Heady 1956) and can stand up to a meter in height (Holland 1986), dominate most grasslands in California. Alien grasses have outcompeted the native flora throughout much of California because these exotics germinate in late fall prior to the germination of the native forbs.

including the four herbaceous species proposed herein (*Caulanthus californicus, Eremalche kernensis, Eriastrum hooveri,* and *Lembertia congdonii*). Consequently, these four herbs generally occupy sites with reduced grass cover. Although the stem succulent proposed herein (*Opuntia treleasei*) persists in areas largely dominated by alien plants (mostly annual grasses), the cactus does not necessarily prefer such "grassy" sites. The invasion of grasses has been quite thorough throughout much of the lower elevation portions of California. These exotics likely compete for nutrients and water, and may further threaten *Opuntia treleasei* by providing abundant fine (thin, slender) fuels, which probably increase the frequency and intensity of wildfires affecting the species' habitat.

The five plant taxa largely persist today in three native plant communities adjoining the non-native annual grasslands; valley sink scrub, valley saltbush scrub, or juniper woodland. However, these plant communities too have been affected somewhat by the presence of alien grasses. Valley sink scrub is an open to dense shrubland dominated by alkali-tolerant plants of the goosefoot family (Chenopodiaceae, so-called "chenopods"), like iodinebush (*Allenrolfea occidentalis*) and sea-blite (*Suaeda* spp.). This plant community, which generally lacks or produces a sparse understory of herbs, occurs about the margins of playas and on the heavy clays of the valley floor. Valley sink scrub essentially has been lost due to ag-land conversion, flood control projects, and ground water pumping (Holland 1986). Valley saltbush scrub, a scrubland of chenopods over a low understory of annual herbs, typically occurs on the gentle, rolling hills surrounding the Tulare Lake Basin on sandy to loamy soils. Similar activities, including oil and gas exploration and development, have adversely affected and threaten this plant community (Holland 1986). Juniper woodland, a compact woodland of California juniper (*Juniperus californicus*), often adjoins grassland sites immediately above the valley floor on gentle sloping terraces. Livestock grazing is the prdominant activity influencing this community.

Discussion of the Five Species Proposed Herein for Listing Follows

Caulanthus californicus (California jewelflower) evidently was first collected by Mrs. A.E. Bush near Tulare, although the date and repository of this specimen are known (Taylor and Davilla 1986). Serano Watson, citing the Bush collection as the type, described the plant as *Stanfordia californica* in 1880. Although E.L. Greene (1891) had placed most species of *Caulanthus* within the genus *Streptanthus*, Edwin Payson (1923) transferred the species to the former genus. Dean Taylor and William Davilla (1986) discussed in detail the appropriate generic assignment for the jewelflower and concurred with I.A. Al-Shehbaz (1973) that the monotypic genus *Stanfordia* should be submerged within *Caulanthus*. *C. californicus*, a rosette-forming annual herb of the mustard family (Brassicaceae), grows to about 1 foot in height and produces several flowering branches. The leaves of the species have dry, wavy margins while its non-rosette leaves clasp the stem. The flowers are translucent white with purple to green tips. Its sword-shaped siliques (narrow, many-seeded pods) attain a length of 1 inch and width of about ¼ inch. The shape and size of siliques, together with an absence of hairs and an inflated stem, separate *C. californicus* from its closest relatives: *C. coulteri* var. *coulteri*, *C. coulteri* var. *lemmonii*, and *C. inflatus*. The species historically was distributed within the general area bounded by the present-day cities or communities of Coalinga and Fresno in Fresno County, New Cuyama in Santa Barbara County, and Bakersfield in Kern County (Taylor and Davilla 1986). Previously known from 40 sites, the plant now exists as one introduced population in Kern County and two natural populations (one in Santa Barbara County and another in San Luis Obispo County). The species was not known to occur naturally at the latter site. A recent status survey (Taylor and Davilla 1986) reported that intensive livestock grazing, ag-land conversion, and other anthropogenic activities likely extirpated *Caulanthus californicus* from Fresno, Kings, and Tulare Counties.

Eremalche kernensis (Kern mallow) was first collected by Carl Wolf in the Temblor Valley about 7 miles northwest of McKittrick along the Lost Hills Road in Kern County in 1937. Using his collection as the type, Wolf described *E. kernensis* in 1938. Although Phillip Munz (1959) at first placed all *Eremalche* in *Malvastrum* in his flora of California, he later concurred with the use of *Eremalche* for the California taxa in his supplement (Munz 1968). The species, a small annual harb of the mallow family (Malvaceae), typically develops an erect (rarely decumbent to prostrate) stem about 2 to 4 inches in height. The plant produces white to rose-pink or lavender, hollyhock-like flowers (Taylor and Davilla 1986). Although other characters (i.e., flower color, shape of the calyx lobes, flower size) have been employed in the past (Wiggins 1951, Munz 1959, Leonelli 1986), differences in leaf shape, pubescence (hair type and density), color-spotting on the petal, and number of carpels (seed-bearing organs) per flower separate *E. kernensis* from other members of the genus. Contrary to Thomas Kearney (1959) and Robert Hoover (1970), Taylor and Davilla (1986) concluded that the species was valid and that morphologically similar plants often confused with *E. kernensis* were actually male-sterile *E. parryi*. Restricted to the eastern base of the Temblor Range, the species ranges from the vicinity of McKittrick to near Buttonwillow within valley saltbush scrub in Kern County (Taylor and Davilla 1986). Oil and gas development likely extirpated the species at the type locality while ag-land conversion probably eliminated one other population of *E. kernensis*. Because the remaining four populations exist near active oil and gas fields or in the vicinity of transmission corridors (Taylor and Davilla 1986), further oil and gas development in the area or transmission line maintenance or expansion likely would threaten these sites. The species, to a lesser degree, may be affected by ag-land conversion, livestock overgrazing, exotic plant competition, and off-road vehicle use.

Eriastrum hooveri (Hoover's wooly-star) was evidently first collected in 1935 by Gregory Lyons near Little Panoche Creek in Fresno County. However, Willis Jepson (1943), in describing the plant as *Huegelia hooveri*, cited a 1937 collection by Robert Hoover (the namesake for the specific epithet) as the type. Later Herbert Mason (1945) transferred the species along with the rest of the wooly-stars to *Eriastrum*. *E. hooveri*, an annual herb of the phlox family (Polemoniaceae), produces many wire-like branches and small (about ¼ inch across), white flowers. Standing about 2–3 inches tall, the species has grayish, fuzzy stems and is often branched (Taylor and Davilla 1986). Primarily flower size, and the ratio of corolla tube to the length of petal lobes separate the species from other *Eriastrum*, although stamen characteristics play a secondary role (Taylor and Davilla 1986). *E. hooveri* was historically distributed in the Temblor Range (Kern and San Luis Obispo Counties), Cuyama Valley (San Luis Obispo and Santa Barbara Counties), and in a discontinuous fashion within valley saltbush scrub and valley sink scrub from Fresno County south in the San Joaquin Valley (Taylor and Davilla 1986). Reportedly the species never grew around the borders of the historic Tulare Lake (Kings County). Today, however, 24 percent of the historical and extant populations of the species, including the type locality (7 miles south of Shafter in Kern County), has been extirpated by various habitat modifications (Taylor and Davilla 1986). Ag-land conversion, urbanization, conversion of habitat "for ground-water recharge basins or disposal of nutrient-agricultural effluent", and oil and gas development threaten the remaining populations of the species (Taylor and Davilla 1986).

Lembertia congdonii (San Joaquin wooly-threads) was first collected by J.W. Congdon near Deer Creek in Tulare County. Using the Deer Creek collection as the type, Asa Gray described the species in 1883. Greene placed the plant in his newly-created, monotypic genus *Lembertia* in 1897. Although subsequent floras (i.e., Munz 1959, Abrams and Ferris 1960) included this species in the genus *Eatonella*, Taylor (1987) maintains that the species is sufficiently different from *Eatonella* and other relatives to warrant placement within a monotypic genus. This annual herb, a member of the sunflower family (Asteraceae), produces several, frequently-branching stems arising from the base. These white-wooly stems grow to about 10 inches in length and often trail on the ground. Aside from differences in growth habit, disk and ray flowers, and other minor characters, the presence of dimorphic achenes (one-seeded, indehiscent fruit) separate *L. congdonii* from its closest relative, *Eatonella nivea* from the Great Basin (Taylor 1987). Associated with valley saltbush scrub, only 12 populations of *L. congdonii* remain in the San Joaquin Valley and adjoining foothills from the vicinity of Panoche Pass (San Benito County) southeasterly to Caliente Creek east of Bakersfield (Kern County) (Taylor 1987). Another seven populations occur to the southwest in the Cuyama Valley (San Luis Obispo and Santa Barbara Counties) and Carrizo Plain (San Luis Obispo County. Primarily as a result of ag-land conversion, 33 populations or 63 percent of the 52 historical and extant populations of the species have been lost (Taylor 1987). Ag-land conversion, urbanization, gravel and sand extraction, oil and gas development, continued overgrazing, and off-road vehicle use threaten the remaining stands of *L. congdonii*.

Opuntia treleasei (Bakersfield cactus) evidently was first collected east of the community of Caliente in Kern County by William Trelease in 1892. After cultivating this collection in the Missouri Botanical Garden, John Coulter (1896) described the species using this garden material as the type. James Toumey in Bailey's Cyclopedia of Horticulture combined the species as a variety of the widespread *O. basilaris* in 1901. David Griffiths and Raleigh Hare described the long-spiny form of the species from along the Kern River bluffs as *O. treleasei* var. *kernii* in 1906. Although Munz (1959) and Lyman Benson (1969 and 1982) continued to treat the Bakersfield cactus as *O. basilaris* var. *treleasei*, recent work by Charlotte Chamberlain (U.S. Corps of Engineers 1986) concluded that the *O. treleasei* is morphologically distinct from *O. basilaris*. *O. treleasei*, a low-growing cactus (Cactaceae) that typically spreads to form extensive thickets, generally develops beavertail-like pads (flattened stems) 3 to 4 inches wide by 5 to 7 inches long. The areoles (eye-spots) are never depressed but flush with the pad surface or somewhat raised. All areoles have spines, although they vary in number and length. Unlike *O. basilaris*, the surface of the pads, which are nearly cylindrical at the base, is not papillate (covered with numerous small protuberances). Although the large magenta flowers of *O. treleasei* appear identical to *O. basilaris*, the characters cited above clearly separate these two taxa as species. Found chiefly within annual grassland on sandy to sandy-loam soils, the species historically grew atop the low hills northeast of Oildale southeasterly along the valley floor to the low foothills of the Tehachapi Mountains southeast and south-southwest of Arvin in Kern County. Charles Preuss, John C. Fremont's cartographer, wrote of this area in 1844, that "[t]he hilly country is bleak, without any vegetation except a beautiful species of cactus whose magnificent red blossoms grace this sad, sandy desert in a strange manner." Ernest Twisselmann (1969) claimed the species "once grew in dense almost impenetrable colonies on the mesas east of Bakersfield." A photograph in Britton and Rose (1920) attests to the species' former abundance. As late as 1937, biologists noted that the species produced a "thick growth" along Caliente Creek (Piemeisel and Lawson 1937). However, ag-land conversion (primarily for the production of potatoes and cotton), oil development, sand mining, urbanization, and perhaps wildfire have reduced this formerly widespread species to numerous, small isolated colonies. These colonies can be divided into five general population areas: the oilfields northeast of Oildale, Kern River Bluffs northeast of Bakersfield, the bluffs and rolling hills west and north of Caliente Creek east of Bakersfield, Comanche Point on the Tejon Ranch southeast of Arvin, and northwest of the community of Wheeler Ridge. Off-road vehicle use, proposed flood control basins, and the activities cited above continue to threaten the remaining sites.

Federal government actions on these five plants began as a result of section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In the report, *Opuntia basilaris* var. *treleasei* was listed as an endangered species. On July 1, 1975 (40 FR 27823), the Service published a notice in the **Federal Register** of its acceptance of the report as a petition within the context of section 4(c)(2) [now section 4(b)(3)] of the Act, and of the Service's intention thereby to review the status of the plant taxa named within. *Opuntia basilaris* var. *treleasei* was included in that notice. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Opuntia basilaris* var. *treleasei* was included in the proposed rule. General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication, which also determined 13 plant species to be endangered or threatened (43 FR 178909). On December 10, 1979, the Service published a notice of withdrawal of that portion of the June 16, 1976, proposal that had expired due to a procedural requirement of the 1978 Amendments. On December 15, 1980, the Service published a revised notice of review of native plants in the **Federal Register** (45 FR 82480); *Opuntia basilaris* var. *treleasei* was included as a category 1 candidate species (species for which data in the Service's possession indicate listing is warranted). On November 28, 1983, the Service published in the **Federal Register** (48 FR 53640) a supplement to the 1980 notice of review. This supplement added *Caulanthus californicus* as a category 2 candidate species (species for which data in the Service's possession indicate listing is probably appropriate, but for

which additional biological information is needed to support a proposed rule). Along with *Opuntia basilaris* var. *treleasei* in category 1, *Eremalche kernensis* and *Eriastrum hooveri* were included with *Caulanthus californicus* in category 2 in the September 27, 1985, revised notice of review for plants (50 FR 39526). This proposal to list *Caulanthus californicus, Eremalche kernensis, Lembertia congdonii,* and *Opuntia treleasei* as endangered and *Eriastrum hooveri* as threatened largely is based on status surveys conducted by Taylor and Davilla (1986) and Taylor (1987), field work carried out by Chamberlain (U.S. Army Corps of Engineers 1986) and Mike Foster (botanist, California Energy Commission, pers. comm., November 24, 1987, January 22, 1988), and pertinent literature (see "References Cited" below).

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for one of the southern San Joaquin Valley plants, *Opuntia treleasei*, because the 1975 Smithsonian report was accepted as a petition. In October 1983, 1984, 1985, 1986, 1987, and 1988, the Service found that the petitioned listing of *Opuntia treleasei* was warranted, but that the listing of this species was precluded due to other higher priority listing actions. Publication of the present proposal constitutes the next 1-year finding required by October 1988.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Caulanthus californicus* (Watson) Payson (California jewelflower); *Eremalche kernenis* C.B. Wolf (Kern mallow); *Eriastrum hooveri* (Jepson) H.L. Mason (Hoover's wooly-star); *Lembertia congdonii* (Gray) Greene (=*Eatonella congdonii* Gray) (San Joaquin wooly-threads); and *Opuntia treleasei* Coulter [=*Opuntia basilaris* Engelmann & Bigelow var. *treleasei* (Coulter) Toumey] (Bakersfield cactus) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* All five species proposed herein (*Caulanthus californicus, Eremalche kernensis, Eriastrum hooveri, Lembertia congdonii,* and *Opuntia treleasei*) are restricted to grassland and adjacent plant communities (valley sink scrub, valley saltbush scrub, and juniper woodland) in the southern San Joaquin Valley and neighboring foothills and valleys in California (see "Background" section for specific distributions). The primary threat facing these five species is the ongoing and threatened destruction and adverse modification of habitat. As discussed in the "Background" section, primarily ag-land conversion and urbanization have claimed 96 percent of the native habitats of the valley floor. The remaining non-urbanized or non-converted lands, which largely occur in the neighboring foothills and valleys (i.e., Carrizo Plain, Cuyama Valley), have been subject to livestock grazing, water development, oil and gas development and exploration, off-road vehicle use, mining, and/or other activities. These anthropogenic actions continue to threaten the native plant communities and habitats of these five species.

Caulanthus californicus was known from 40 sites in six counties (Fresno, Kern, Kings, San Luis Obispo, Santa Barbara, and Tulare), according to herbarium and field records detailed in the status survey by Taylor and Davilla (1986). Although once described as "abundant on the plains of the San Joaquin from Tulare southward (Greene 1891)," the species is known today from three sites: Two natural populations on private land (one near the mouth of Santa Barbara Canyon in Santa Barbara County and another in the southern portion of Carrizo Plain in San Luis Obispo County) and one introduced colony in Paul Paine Preserve (owned by The Nature Conservancy) in Kern County. Although the landowners of the Santa Barbara Canyon population have entered into voluntary agreements with The Nature Conservancy to protect the site (California Nature Conservancy 1987), no such agreement or protection exists for the recently-discovered population in San Luis Obispo County. Though no plants were observed at Santa Barbara Canyon in 1987 (Taylor, pers. comm., February 21, 1987), several thousand plants were counted in the spring of 1988. The Carrizo Plain population harbored a couple thousand individuals in 1988 (Mike Foster, pers. comm., March 14, 1988). Taylor noted only 24 plants at the introduced site, of which only four plants flowered. Rainfall patterns probably account for the variation in population size for these colonies of *C. californicus*. Ag-land conversion likely claimed most of the valley floor sites due to the species' preference for sandy soils, which are prized for viticulture (Taylor and Davilla 1986). As suggested from herbarium records and the species' palatability, livestock grazing probably claimed the remaining extirpated sites within the last few decades (see Factor "D" for discussion). In addition, Taylor and Davilla (1986) speculate that poor air quality may have contributed to the demise of the species by promoting the growth of competing, pollution-tolerant plants (i.e., *Bromus rubens*).

Eremalche kernensis was known from six sites in western Kern County, according to herbarium and field records detailed in the status survey by Taylor and Davilla (1986). Oil and gas development likely extirpated the type locality of the species in the Temblor Valley. Another site of *E. kernensis*, 5 miles north of Lost Hills, was probably eliminated by ag-land conversion. In addition, construction of the California Aqueduct may have eliminated some unknown populations of the species. Three of the remaining four known occurrences exist on private land less than 5 miles from the South Belridge and Cymric Oil Fields and in the vicinity of transmission corridors (Taylor and Davilla 1986). Aside from maintenance or expansion of these corridors, future oil and gas development and exploration may threaten these remaining sites. One population north of McKittrick occurs on public land managed by the Bureau of Land Management (Bureau). Though the agency has not undertaken any special management of the site, the Bureau gives limited management consideration to candidate species. Nonetheless, this site still may be used for a variety of public uses (e.g., mineral extraction, oil and gas development, livestock grazing). All populations occur in areas grazed by sheep in the winter and spring. Consequently, Taylor and Davilla (1986) concluded, "[u]ncontrolled and heavy sheep grazing would be detrimental to *E. kernensis*."

Lembertia congdonii was known from 52 sites in seven counties (Fresno, Kern, Kings, San Benito, San Luis Obispo, Santa Barbara, and Tulare), according to herbarium and field records, and a recent status survey (Taylor 1987; Foster, pers. comm., March 14, 1988). Habitat alteration, principally due to ag-land conversion, eliminated 33 of these sites, including the type locality and

only known population in Tulare County. Of the remaining 19 sites, Taylor (1987) observed the species growing at six of these localities in either 1986 or 1987, while Foster (pers. comm., March 14, 1988) found an additional three populations in 1988. Population size ranged from 20 to 300 plants, the largest stand scattered over approximately 100 acres. Although no plants were located at the other 10 localities, Taylor (1987) reported that these sites still have suitable habitat. Although three of the 19 sites presumably harboring *L. congdonii* are on public land managed by the Bureau of Land Management, the agency has not undertaken any special management of these localities. Although the Bureau gives limited management consideration to candidate species, these sites still may be used for a variety of public uses (e.g., mineral extraction, oil and gas development, livestock grazing). Another population presumably still persists at Sand Ridge east of Bakersfield. Although The Nature Conservancy owns a 120-acre parcel on Sand Ridge, the northern portion of this area remains in private ownership. Off-road vehicle use, sand mining, and a flood control project proposed by the U.S. Army Corps of Engineers pose a potential threat to resources within this area. Portions of two populations were acquired by The Nature Conservancy as part of their Carrizo Plain Natural Heritage Preserve in early 1988. On August 30, 1988, the California Department of Water Resources purchased lands within the largely abandoned Strand and Canal Oil Fields, as part of the Kern Water Bank Project, that harbor the three populations found by Foster. The remaining portions of three sites owned in part by The Nature Conservancy and the other ten populations are privately owned and adjacent to lands that have been or continue to be urbanized, converted to agriculture, developed for oil and gas extraction and conveyance, or affected by off-road vehicles and grazing livestock. Similar activities are likely to continue in the near future.

Opuntia treleasei "once grew in dense almost impenetrable colonies on the mesas east of Bakersfield," according to Twisselman (1969). However, ag-land conversion (primarily for the production of potatoes and cotton), oil development, sand mining, urbanization, and perhaps wildfire have reduced this formerly widespread species to numerous, small isolated colonies. As discussed in the "Background" section, these colonies can be divided into five general population areas. Primarily oil and gas development threaten the colonies northeast of Oildale, the northernmost population. Though this activity, to some degree, affects the population along the Kern River Bluffs northeast and east of Bakersfield, this area is rapidly being converted to housing for the ever-expanding population of Bakersfield. The construction of a small hydroelectric project and its associated accidental wildfire affected a few plants within the Kern River floodplain northeast of Bakersfield and east of Lake Ming. Off-road vehicle use, sand mining, and perhaps livestock overgrazing threaten the colonies on the bluffs and rolling hills west and north of Caliente Creek, the population located within the center of the species' range. Because the cactus provides no forage for livestock and competes with the alien grasses, ranchers may undertake eradication programs which may adversely affect the species. As discussed under *Lembertia congdonii*, The Nature Conservancy owns a portion of the Sand Ridge colony along the bluffs of Caliente Creek. However, a proposed flood control project likely will eliminate some individuals in the Sand Ridge area, including many plants on property owned by The Nature Conservancy. The Tejon Ranch, which is aware of the solitary clump of *O. Treleasei* on the ranch, has not expressed any plans to eliminate the cactus at Comanche Point. This population, however, is less than 4 miles from the Comanche Point Oil Field, which suggests the site may be subject to future oil and gas exploration. Ag-land conversion, aqueduct and transmission line maintenance, off-road vehicle use, urbanization, road widening, and illegal dumping threaten the remaining isolated colonies northwest of the community of Wheeler Ridge (Foster, pers. comm., January, 22, 1988), although one population grows on land owned by the State of California and administered by the California Department of Water Resources. In addition, the North Tejon Oil Field affects much of the Wheeler Ridge area.

Eriastrum hooveri was known from 49 sites in four counties (Fresno, Kern, San Luis Obispo, and Santa Barbara), according to individual reports (Taylor, pers. comm., November 30, 1987; Foster, pers. comm., November 24, 1987) and a recent status survey (Taylor and Davilla 1986). Primarily ag-land conversion and urbanization eliminated eleven of these sites. Of the remaining 38 sites, one population occurs on the Paul Paine Preserve, which The Nature Conservancy owns and protects. Another five sites presumably still exist either in the Temblor Range or Alcalde Hills, either or which may harbor additional populations. Overgrazing poses the only imminent threat to these foothill populations. Although recent field survey work conducted by the California Department of Water Resources greatly expanded the area known by Taylor and Davilla (1986) to harbor the species along Warthan Creek in Fresno County (Arthur Gooch, pers. comm., July 22, 1988), this large population is threatened by the proposed Arroyo Pasajero Project. Cited as two populations in Taylor and Davilla (1986), the only populations known to occur on public land are from the Elk Hills on Naval Petroleum Reserve No. 1 (NPR-1) managed by the Department of Energy and on an adjacent parcel managed by the Bureau of Land Management. Inasmuch as Taylor and Davilla (1986) were unable to thoroughly survey NPR-1, the Department of Energy's consultant conducted a survey in 1988. Preliminary results reported finding 28 "populations" primarily along the northern and southern boundaries of NPR-1 (Thomas Kato, EG&G Energy Measurements, pers. comm., August 2, 1988). Though neither the Department of Energy nor the Bureau has undertaken any special management of these localities, the latter agency gives limited management consideration to candidate species. However, this policy does not necessarily prevent this population site from being used for a variety of public uses. Consequently, mineral extraction, oil and gas development, and livestock grazing may threaten these federally owned populations. One population, occurring on the Alkali Sink Ecological Preserve, grows on land owned by the State of California and managed by the California Department of Fish and Game. According to Taylor and Davilla (1986), the 29 remaining sites (including a portion of another population that occurs on both public and private land) occur on private property and typically on small, irregularly shaped parcels surrounded by ag-land and/or urban areas, which are often adjacent to roads. Seven of these sites harbor substantial populations (5,000 to 40,000 plants), while the remaining 23 sites consist of less than 1,000 individuals. All 29 populations occur on sites ranging from approximately an acre to less than 400 acres in size. Though many of these privately owned sites are perhaps too small to farm economically, parcels such as these continue to be converted to ag-land. Moreover, urbanization, conversion of habitat for ground-water recharge basins or disposal of nutrient-

laden agricultural effluent, off-road vehicle use, and oil and gas development continue to threaten these 29 populations (Taylor and Davilla 1986).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Although not necessarily applicable to these species, many cacti are collected and cultivated by plant collectors, or offered for sale or trade by cactus growers. Though no data exist demonstrating such commerce in *Opuntia treleasei*, the species may still be collected and cultivated.

C. *Disease or predation.* As briefly mentioned above under Factor "A", livestock grazing probably extirpated colonies of *Caulanthus californicus* growing in the foothills and valleys adjoining the southern San Joaquin Valley. Moreover, trampling by livestock may have contributed to the endangerment of this species and *Eremalche kernensis*. Overgrazing may also threaten the other three species proposed herein.

D. *The inadequacy of existing regulatory mechanisms.* Under the Native Plant Protection Act (Chapter 1.5 section 1900 *et seq.* of the Fish and Game Code) and California Endangered Species Act (Chapter 1.5 section 2050 *et seq.*), the California Fish and Game Commission has listed one of these five species (*Caulanthus californicus*) as endangered (14 California Code of Regulations 670.2), while aother species (*Opuntia treleasei*) is a State candidate (Stephen Nicola, pers. comm., September 23, 1988). Though both statutes prohibit the "take" of State-listed plants (Chapter 1.5 sections 1908 and 2080), Stat law appears to exempt the taking of such plants via habitat modification or land use change by the landowner. Afer the California Department of Fish and Game notifies a landowner that a State-listed plant grows on his or her property, State law evidently requires only that the landowner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such plant." (Chapter 1.5 section 1913)

Opuntia treleasei, like all Cactaceae from the Americas not listed separately under Appendix I, is included under Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Although CITES regulates the international trade of listed species, the possibility of trade is not currently a threat to *Opuntia treleasei*.

E. *Other natural or manmade factors affecting its continued existence.* The invasion of alien, annual grasses has adversely affected all of the remaining "natural" areas since the days of the Franciscan missionaries. These alien grasses, which account for 50 to 90 percent of the vegetative cover (Heady 1956) and can stand up to a meter in height (Holland 1986), largely dominate grasslands of California. As discussed in the "Background" section, the exotic annuals may alter the natural fire regime and these plants have either outcompeted or continue to compete with the native flora.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Caulanthus californicus, Eremalche kernensis, Lembertia congdonii*, and *Opuntia treleasei* as endangered, and to list *Eriastrum hooveri* as threatened.

Caulanthus californicus, Eremalche kernensis, Lembertia congdonii, and *Opuntia treleasei* have been extirpated from all but a small fraction of their historical ranges. Today these species generally persist as small, isolated populations or colonies surrounded by ag-land, urban areas, oil fields, and/or roads. Competition from alien grasses probably has and continues to adversely affect these species, especially the three annual herbs (*Caulanthus californicus, Eremalche kernensis*, and *Lembertia congdonii*). Although The Nature Conservancy owns most of the three remaining populations of *Caulanthus californicus* (California Nature Conservancy 1987), stochastic events affecting such extremely small populations still may result in the extinction of this species. All four remaining populations of *Eremalche kernensis* occur within a solitary township north of McKittrick, which may be adversely affected by livestock trampling, transmission corridor maintenance or expansion, and oil and gas development or exploration. The remaining 19 sites of *Lembertia congdonii* are variously threatened by ag-land conversion, urbanization, conversion of habitat for ground-water recharge basins, or disposal of agricultural effluent, livestock overgrazing, off-road vehicle use, and/or oil an gas development and exploration. Four populations of two of these species (*Eremalche kernensis* and *Lembertia congdonii*) occur on public land managed by the Bureau of Land Management, which accords limited management consideration to candidate species. However, this policy does not prevent the use of these sites for a variety of public uses (e.g., mineral extraction, oil and gas development, livestock grazing). The relictual colonies of *Opuntia treleasei* are imminently threatened by ag-land conversion, oil development, sand mining, urbanization, off-road vehicle use, construction of flood control basins, aqueduct and transmission line maintenance, road widening, illegal dumping, and/or potentially alterations in the natural fire regime. Because these four plants are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act.

Eriastrum hooveri has been extirpated, principally as a result of ag-land conversion and urbanization, from 11 of its 49 known sites. Of the remaining 38 sites, one population is in preserve status and five sites presumably still exist either in the Temblor Range or the Alcalde Hills. Overgrazing poses the only imminent threat to these foothill populations. Two populations, for the most part, occur on public land, though the extent of the species of NPR-1 is under study. Regardless, these sites remain vulnerable to a variety of public uses (e.g., mineral extraction, oil and gas development, and livestock grazing). The 30 remaining parcels, including a portion of another population that occurs on both public and private land, are threatened by ag-land conversion, urbanization, conversion of habitat for ground-water recharge basins or disposal of agricultural effluent, off-road vehicle use, and oil and gas development and exploration (Taylor and Davilla 1986). Although the number of extant populations (38), including those located on NPR-1, provides greater flexibility in recovery and reduces the likelihood that the species will go extinct in the immediate future, the threats facing the 31 sites of *E. hooveri* on private property, at least in part, suggest that the species is likely to become an endangered species within the foreseeable future. Because of the limited threats facing the foothill populations of *E. hooveri* and the likelihood additional occurrences may be found in these upland areas, this species is not now in immediate danger of extinction throughout all or a significant portion of its range. However, if appropriate management actions are not taken, the species is likely to become in danger of extinction in the near future. As a result, *E. hooveri* fits the definition of threatened species as defined in the Act.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that determination of critical habitat is not prudent for these species at this time. Because the five species face numerous anthropogenic threats (see Factor A in "Summary of Factors Affecting the Species") and occur predominantly on private land, the publication of precise maps and descriptions of critical habitat in the **Federal Register** would make these plants more vulnerable to incidents of vandalism and, therefore, could contribute to the decline of these species. The listing of these species as either endangered or threatened also publicizes the rarity of these plants and, thus, can make these plants attractive to researchers or collectors of rare plants. No Federal protection exists pursuant to section 9 of the Act for such take of listed plants on non-Federal lands. The proper agencies have been notified of the locations and management needs of these plants. Landowners will be notified of the location and importance of protecting habitat of these species. Protection of these species' habitats will be addressed through the recovery process and through the section 7 jeopardy standard. The Service believes that Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. Therefore, the Service finds that designation of critical habitat for these plants is not prudent at this time, because such designation likely would increase the degree of threat from vandalism, collecting, or other human activities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Seven populations of three of the proposed plant species occur on Federal (public) land; one population of *Eremalche kernensis* is managed by the Bureau of Land Management, two populations of *Eriastrum hooveri* are administered respectively by the Bureau of Land Management and Department of Energy, and four populations of *Lembertia congdonii* are managed by the Bureau of Land Management. Though some other stands occur near Federal land, all of the remaining known sites are on private land with no known Federal involvement with the following exceptions. The U.S. Army Corps of Engineers and the Bureau of Reclamation may fund or develop, at least in part, proposed flood control or water projects. Because of potential impacts to two federally listed animals, the San Joaquin kit fox (*Vulpes macrotis mutica*) and the bluntnosed leopard lizard (*Gambelia silus*), the Corps has consulted formally on a proposed flood control project for Caliente Creek. This project would potentially eliminate numerous individual plants of *Opuntia treleasei* from the Sand Ridge colony, which grows on the bluffs adjoining the creek (U.S. Army Corps of Engineers 1986). Aside from the direct effects of this and other similar proposed projects, other potential Federal actions include new allocations of water from existing Federal projects, which could increase ag-land conversion and possibly affect one or more of these five plant species. Activities involving Federal mortgage programs, including those of the U.S. Department of Agriculture (Farmers Home Administration), Veterans Administration, and U.S. Department of Housing and Urban Development (Federal Home Administration loans), may be subject to section 7 review.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered species and 17.71 and 17.72 for threatened species set forth a series of general trade prohibitions and exceptions that apply to all endangered and threatened plant species. With respect to the five plants from the southern San Joaquin Valley, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 and 17.71, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale these species in interstate or foreign commerce, or to remove and reduce to possession these species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered and threatened plant species under certain circumstances. The Service anticipates few trade permits would ever be sought or issued for the five species, with the possible exception of *Opuntia treleasei* which, like other cacti, may be in cultivation. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/343-4955).

As a species of Cactaceae (Cactus family), *Opuntia treleasei* is included in Appendix II of the CITES Convention (See 50 CFR 23.23). The effect of this protection under the CITES Convention is that an export permit must be issued by the country of origin, or a re-export certificate must be issued by the country of re-export prior to the importation of *Opuntia treleasei*. Such CITES Convention restrictions are intended to prevent international trade from being detrimental to the survival of the species.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any

other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Caulanthus californicus, Eremalche kernensis, Eriastrum hooveri, Lembertia congdonii,* or *Opuntia treleasei*;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of these species; and

(4) Current or planned activities in the ranges and habitats of these species and their possible impacts on these species.

Final promulgation of the regulations on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of final regulations that differ from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to Field Supervisor (see **ADDRESS** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Abrams, L., and R.S. Ferris. 1960. Illustrated flora of the Pacific states. Vol. IV. Stanford Univ. Press.

Al-Shehbaz, I.A. 1973. The biosystematics of the genus *Thelypodium* (Cruciferae). Contr. Gray Herb. 204:1–148.

Bakker, E.S. 1971. An island called California. Univ. Calif. Press, Berkeley.

Bartolome, J.W., and B. Gemmill. 1981. The ecological status of *Stipa pulchra* (Poaceae) in California. Madroño 28:172–184.

Benson, L. 1969. The native cacti of California. Stanford Univ. Press.

Benson, L. 1982. The cacti of the United States and Canada. Stanford Univ. Press.

Biswell, H.H. 1956. Ecology of California grasslands. J. Range Manage. 9:19–24.

Britton, N.L., and J.N. Rose. 1920. The Cactaceae, 4 vol., Carnegie Inst. Washington Publ. 248, Washington, D.C.

Brown, D.E. 1982. 143.2 Californian valley grassland. Desert Plants 4:132–135.

California Nature Conservancy. 1987. Landowners protect rare wildflower. Autumn Newsletter:3.

Clements, F.E. 1934. The relict method in dynamic ecology. J. Ecology 22:39–68.

Coulter, J.M. 1896. Preliminary revision of the North American species of *Echinocactus, Cereus,* and *Opuntia.* Contr. U.S. Nat. Herb. 3:434.

Gray, A. 1883. Contributions to North American botany. Proc. Amer. Acad. Arts Sci. 19:1–96.

Greene, E.L. 1891. fl. Fran. 256.

Greene, E.L. 1897. Fl. Fran. 441.

Griffiths, D., and R.F. Hare. 1906. Prickly pear and other cacti. N. Mex. Agr. Exp. Sta. Bull. 60:81.

Heady, H.F. 1956. Evaluation and measurement of the California annual type. J. Range Manage. 9:25–27.

Heady, H.F. 1977. Valley grassland. *In*: Barbour, M.G., and J. Major (eds.), Terrestrial vegetation of California. John Wiley and Sons, New York.

Holland, R.F. 1986. Preliminary descriptions of the terrestrial natural communities of California. Unpublished report, California Department of Fish and Game, 156 pp.

Hoover, R.F. 1970. The vascular plants of San Luis Obispo County, California. Univ. Calif. Press, Berkeley.

Jepson, W.L. 1943. A flora of California. Vol. III. Jepson Herbarium and Library, Univ. Calif., Berkeley.

Kearney, T.H. 1956. Notes on Malvaceae: VIII. *Eremalche.* Madroño 13:241–243.

Leonelli, S. 1986. An investigation of the taxonomic status of *Eremalche kernensis* C.B. Wolf (Malvaceae). Unpublished M.S. thesis, Calif. State Univ., Long Beach.

Mason, H.L. 1945. The genus *Eriastrum* and the influence of Bentham and Hooker upon the problem of generic confusion in the Polemoniaceae. Madroño 8:65–91.

McNaughton, S.J. 1968. Structure and function in California grasslands. Ecology 49:962–972.

Munz, P.A. 1959. A California flora. Univ. Calif. Press, Berkeley.

Munz, P.A., and D.D. Keck. 1950. California plant communities-supplement. Aliso 2:199–202.

Munz, P.A., and D.D. Keck. 1950. California plant communities-supplement. Aliso 2:199–202.

Ornduff, R. 1974. An introduction to California plant life. Univ. Calif. Press, Berekeley.

Payson, E.B. 1923. A monograph of *Thelypodium* and its immediate allies. Ann. Missouri Bot. Gard. 9:233–324.

Piemeisel, R.L., and F.R. Lawson. 1937. Types of vegetation in the San Joaquin Valley of California and their relation to the beet leafhopper. U.S.D.A. Tech. Bull. No. 557, Washington, D.C.

Preuss, C. 1844. Exploring with Fremont.

Taylor, D.W. 1987. Status survey of San Joaquin woolly-threads (*Lembertia congdonii*). U.S. Fish and Wildlife Service, Sacramento, Calif.

Taylor, D.W., and W.B. Davilla. 1986. Status survey of three plants endemic to the San Joaquin Valley. U.S. Fish and Wildlife Service, Sacramento, Calif.

Toumey, J.W. 1901. Opuntia. *In*: Bailey, Cyclop. Hort. 4:1147.

Twisselmann, E.C. 1956. Flora of Temblor Range and the neighboring part of the San Joaquin Valley. Wasmann J. Biol. 14:161–300.

Twisselmann, E.C. 1969. Status of the rare plants of Kern County. Calif. Native Plant Soc. Newsletter 5(3):1–7.

U.S. Corps of Engineers. 1986. Caliente Creek stream group investigation. Unpublished report, U.S. Corps of Engineers, Sacramento, Calif.

Wester, L. 1981. Composition of native grasslands in the San Joaquin Valley, California. Madroño 28:231–241.

White, K.L. 1967. Native bunch grass (*Stipa pulchra*) on Hastings Reservation, California. Ecology 48:949–955.

Wiggins, I.L. 1951. Malvaceae. *In*: Abrams, L., Illus. Flora Pacific States. III. Stanford Univ. Press.

Wolf, C.B. 1938. California plant notes II. Occasional Papers Rancho Santa Ana Bot. Gard. Ser. I, No. 2:64–68.

Author

The primary author of this proposed rule is Jim A. Bartel, Endangered Species Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–1823, Sacramento, California 95825 (916/978–4866, FTS 460–4866).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the families indicated, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species: Scientific name	Species: Common name	Historic range	Status	When listed	Critical habitat	Special rules
Brassicaceae—Mustard Family:						
* * *	* * *	* *		*	*	
Caulanthus californicus	California jewelflower	U.S.A. (CA)	E		NA	NA
* * *	* * *	* *		*	*	
Malvaceae—Mallow Family:						
* * *	* * *	* *		*	*	
Eremalche kernensis	Kern mallow	U.S.A. (CA)	E		NA	NA
* * *	* * *	* *		*	*	
Polemoniaceae—Phlox family:						
* * *	* * *	* *		*	*	
Eriastrum hooveri	Hoover's wooly-star	U.S.A. (CA)	T		NA	NA
* * *	* * *	* *		*	*	
Asteraceae—Aster family:						
* * *	* * *	* *		*	*	
Lembertia congdonii	San Joaquin wooly-threads	U.S.A. (CA)	Ed		NA	NA
* * *	* * *	* *		*	*	
Cactaceae—Cactus family:						
* * *	* * *	* *		*	*	
Opuntia treleasei	Bakershield cactus	U.S.A. (CA)	E		NA	NA
* * *	* * *	* *		*	*	

Dated: June 12, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–17595 Filed 7–26–89; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AB31

Endangered and Threatened Wildlife and Plants; Proposal to List the Purple Cat's Paw Pearly Mussel as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list a freshwater mussel, the purple cat's paw pearly mussel (*Epioblasma* (=*Dysnomia*) *obliquata obliquata* (=*E. sulcata sulcata*)), as an endangered species under the Endangered Species Act of 1973, as amended (Act). This freshwater mussel historically occurred in the Ohio River and its large tributaries in Ohio, Indiana, Illinois, Kentucky, Tennessee, and Alabama. Presently the purple cat's paw pearly mussel is known from only two relic, apparently nonreproducing populations—one in a reach of the Cumberland River in Tennessee and one in a reach of the Green River in Kentucky. The distribution and reproductive capacity of this species have been seriously impacted by the construction of impoundments on the large rivers it once inhabited. Unless reproducing populations are found or methods developed to maintain existing populations, this species will likely become extinct in the foreseeable future. Comments and information are sought from the public concerning this proposal.

DATES: Comments from all interested parties must be received by September 25, 1989. Public hearing requests must be received by September 11, 1989.

ADDRESS: Comments and materials, and requests for public hearing concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Asheville Field Office, 100 Otis Street, Room 224, Asheville, North Carolina 28801. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Richard G. Biggins at the above address (704/259–0321 or FTS 672–0321).

SUPPLEMENTARY INFORMATION:

Background

The purple cat's paw pearly mussel (*Epioblasma* (=*Dysnomia*) *Obliquata obliquate* (=*E. sulcata sulcata*)), was described by Rafinesque (1820). The white cat's paw (*Epioblasma* (=*Dysnomia*) *sulcata delicata*), the northern subspecies of the cat's paw pearly mussel known from the Lake Erie system of the St. Lawrence drainage, was listed as endangered on June 14, 1976 (41 FR 24064). The purple cat's paw, which is characterized as a large river species (Bates and Dennis 1985), has a medium-size shell that is subquadrate in outline (Bogan and Parmalee 1983). The shell has fine, faint, wavy green rays with a smooth and shiny surface. The inside of the shell is purplish to deep purple (the inside shell of the white cat's paw is white). Like other freshwater mussels, the purple cat's paw feeds by filtering food particles from the water. It has a complex reproductive cycle in which the mussel's larvae parasitize fish. The mussel's life span, fish species its larvae parasitize, and other aspects of its life history are unknown.

The purple cat's paw pearly mussel was historically distributed in the Ohio, Cumberland, and Tennessee River systems in Ohio, Illinois, Indiana, Kentucky, Tennessee, and Alabama (Bogan and Parmalee 1983, Isom *et al.* 1979, Kentucky Nature Preserves Commission 1980, Parmalee *et al.* 1980, Watters 1986, Stansbery 1970). Based on personal communication with knowledgeable experts (Steven Ahlstedt and John Jenkinson, Tennessee Valley Authority, 1987; Mark Gordon and Robert Anderson, Tennessee Technological University, 1988; Arthur Bogan, Philadelphia Academy of Sciences, 1988; Ronald Cicerello, Kentucky Nature Preserves Commission, 1988; David Stansbery, Ohio State University, 1987) and a review of current literature, the species is known to survive in only two river reaches, but apparently as nonreproducing populations. These are located in the Cumberland River, Smith County, Tennessee, and the Green River, Warren and Butler Counties, Kentucky.

The continued existence of these two populations is questionable. Unless reproducing populations can be found or methods can be developed to maintain these or create new populations, the species will become extinct in the foreseeable future. Any individuals that do still survive in these two river

reaches are also threatened from other factors. The Green River in Kentucky has experienced water quality problems related to the impacts from oil and gas production in the watershed. The individuals still surviving in the Cumberland River are potentially threatened by gravel dredging, channel maintenance, and commercial mussel fishing. Although the species is not commercially valuable, incidental take of the species does sometimes occur in the Cumberland River during commercial mussel fishing for other species.

The purple cat's paw pearly mussel was recognized by the Service as a category 2 species (one that is being considered for possible addition to the Federal List of Endangered and Threatened Wildlife) in a May 22, 1984, notice published in the **Federal Register** (49 FR 21664). On May 2, 1988, and September 8, 1988, the Service notified Federal, State, and local governmental agencies and interested individuals by mail that a status review was being conducted specifically on the purple cat's paw pearly mussel and that the species could be proposed for listing. Since that time, additional contacts with Federal and State agency personnel and the scientific community have occured concerning the species' status, its potential for protection under the Endangered Species Act, and possible future recovery actions.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth procedures for adding species to the Federal list. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the purple cat's paw pearly mussel (*Epioblasma* (=*Dysnomia*) *obliquata obliquata* (=*E. sulcata sulcata*)) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The purple cat's paw pearly mussel was once known from the large tributaries of the Ohio River system in Ohio, Indiana, Illinois, Kentucky, Tennessee, and Alabama (Bogan and Parmalee 1983). However, all but two of the historically known populations were apparently lost due to conversion of many sections of the bigger rivers to a series of large impoundments. This seriously reduced the availability of preferred riverine gravel/sand habitat and likely affected the distribution and availability of the mussel's fish host. As a result, the species' distribution has been substantially reduced.

The State of Indiana has no current records of the species in the State (Indiana Department of Natural Resources, personal communication, 1988). The species has not been collected in Illinois in over 100 years (Illinois Natural History Survey Division, personal communication, 1988). In Kentucky the species is now known only from the Green River, Warren and Butler Counties, Kentucky (Kentucky Fish and Wildlife and Kentucky Nature Preserves Commission, personal communication, 1988). This Green River population is represented by only one old but freshly dead individual taken on the Green River in Warren and Butler Counties, Kentucky, in 1988 (Robert Anderson, Tennessee Technological University, personal communication, 1988). Prior to 1988, the mussel had not been collected in the Green River since 1971 (Kentucky Nature Preserves Commission, personal communication, 1988). The middle Cumberland River (Smith County, Tennessee) contains the only known living representative of the purple cat's paw in Tennessee (U.S. Army Corps of Engineers, personal communication, 1988). The historical collection site in Alabama (on the Tennessee River at Muscle Shoals) is now impounded (Bogen and Parmalee 1983).

The two surviving populations are threatened from impacts on their environment. The Green River population is threatened from degradation of water quality resulting from inadequate environmental controls of oil and gas exploration and production facilities, and from altered stream flows from upstream reservoirs. The Cumberland River population is potentially threatened by river channel maintenance, navigation projects, and gravel and sand dredging.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Although the species is not commercially valuable, it does exist on harvested mussel beds, and the species is therefore sometimes taken by mussel fishermen. Thus, take does pose some threat to the species. Federal protection would help to control the take of individuals.

C. *Disease or predation.* Although the purple cat's paw pearly mussel is undoubtedly consumed by predatory animals, there is no evidence that predation threatens the species. However, freshwater mussel die-offs have recently (early to mid-1980s) been reported throughout the Mississippi River basin, including the Tennessee River and its tributaries (Richard Neves, Virginia Polytechnic Institute and State University, personal communication, 1986). The cause of the die-offs has not been determined, but significant losses have occurred to some populations.

D. *The inadequacy of existing regulatory mechanisms.* The States of Kentucky and Tennessee prohibit taking fish and wildlife, including freshwater mussels, for scientific purposes without a State collecting permit. However, these States do not protect the species from take for other purposes. Federal listing will provide the species additional protection under the Endangered Species Act by requiring Federal permits to take the species and by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may affect the species.

E. *Other natural or manmade factors affecting its continued existence.* Neither of the presently known populations is known to be reproducing. Therefore, unless reproducing populations can be found or methods can be developed to maintain existing populations or create new ones, the species will be lost in the foreseeable future. In fact, both known populations may contain only old individuals that have passed their reproductive age.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the purple cat's paw pearly mussel (*Epioblasma* (=*Dysnomia*) *obliquata obliquata* (=*E. sulcata sulcata*)) as an endangered species. Historical records reveal that the species was once much more widely distributed in many of the large rivers of the Ohio River system. Presently only two isolated, apparently nonreproducing populations are known to survive. Due to the species' history of population losses and the vulnerability of the two remaining populations, threatened status does not appear appropriate for this species (see "Critical Habitat" section for a discussion of why critical habitat is not being proposed for the purple cat's paw pearly mussel).

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the purple cat's paw pearly mussel at this time, owing to the lack of benefits from such designation. The U.S. Army Corps of Engineers, the Tennessee Valley Authority, and the U.S. Park Service are the three Federal agencies most involved, and they, along with the State natural resources agencies in Tennessee and Kentucky, are already aware of the location of the remaining populations that would be affected by any activities in these river reaches. All the Federal agencies mentioned have conducted studies in these river basins and are knowledgeable of the fauna and of their projects' impacts. No additional benefits would accrue from critical habitat designation that would not also accrue from the listing of the species. In addition, this species is so rare that taking for scientific purposes and private collection could be a threat. The publication of critical habitat maps and other publicity accompanying critical habitat designation could increase that threat. The location of populations of this species has consequently been described only in general terms in this proposed rule. Any existing precise locality data would be available to appropriate Federal, State, and local governmental agencies through the Service office described in the "**ADDRESSES**" section.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibition against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Service has notified Federal agencies that may have programs that affect the species. Federal activities that could occur and impact the species include, but are not limited to, the carrying out or the issuance of permits for hydroelectric facility construction and operation, reservoir construction, river channel maintenance, stream alterations, wastewater facilities development, and road and bridge construction. It has been the experience of the Service, however, that nearly all section 7 consultations have been resolved so that the species has been protected and the project objectives have been met. In fact, the areas inhabited by the purple cat's paw pearly mussel are also inhabited by other mussels that have been federally listed since 1976. The Service has a history of successful resolution of section 7 conflicts that have protected the species and allowed for project objectives to be met throughout these areas.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take any listed species, import or export it, ship it in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes to enhance the propagation or survival of the species and/or for incidental take in connection with otherwise lawful activities.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, U.S. Fish and Wildlife Service, Asheville Field Office, 100 Otis Street, Room 224, Asheville, NC 28801.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Bates, J.M., and S.D. Dennis. 1985. Mussel resource survey—State of Tennessee. Tennessee Wildlife Resources Agency Technical Report No. 85-3. 125 pp.

Bogan, A.E., and P.W. Parmalee. 1983. Tennessee's rare wildlife, volume II: the mollusks. 123 pp.

Kentucky Nature Preserves Commission. 1980. Kentucky natural area plan—appendix A. *Obovaria retusa* (Lamarck). Frankfort, KY.
Isom, B.G., C. Gooch, S.D. Dennis. 1979. Rediscovery of a presumed extinct river mussel *Dysnomia sulcata* (Unionidae). The Nautilus 93(2–3):84.
Parmalee, P.W., W.E. Klippel, and A.E. Bogan. 1980. Notes on the prehistoric and present status of Niaid fauna of the middle Cumberland River, Smith County, Tennessee. The Nautilus 94(3):93–105.
Rafinesque, Constantine S. 1820. Monographie des coquilles bivalves et fluviatiles de la riviere Ohio. Generales des Sciences-Physiques 5(13):287–322, 3 pl.
Sickel, James B. 1985. Biological assessment of the freshwater mussels in the Kentucky Dam tailwaters of the Tennessee River. Submitted to Kentucky Division of Water, Frankfort, Kentucky. 42 pp.
Stansbery, David H. 1970. Eastern freshwater mollusks (I) The Mississippi and St. Lawrence River systems. Malacologia 10(1):9–22.
Watters, G.T. 1986. The Nature Conservancy Element Stewardship Abstract: *Epioblasma obliquata obliquata*. The Nature Conservancy, Midwest Regional Office, Minneapolis, Minnesota. Unpublished report. 4 pp.

Author

The primary author of this proposed rule is Richard G. Biggins, U.S. Fish and Wildlife Service, Asheville Field Office, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 672–0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under CLAMS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
CLAMS:							
* * *							
Pearly mussel, purple cat's paw.	*Epioblasma (=Dysnomia) obliquata obliquata (=E. sulcata sulcata).*	U.S.A. (AL, IL, IN, KY, TN)	NA	E		NA	NA
* * *							

Dated: June 12, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–17597 Filed 7–26–89; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

RIN 1018–AB31

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Arkansas Fatmucket, Lampsilis powelli

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine the Arkansas fatmucket, *Lapsilis powelli*, to be a threatened species under the authority of the Endangered Species Act of 1973, as amended (Act). This freshwater mussel is known to exist in the headwaters of the Saline River, and in the Caddo, Ouachita, and South Fork Ouachita Rivers of central Arkansas. Major threats to its continued existence are impoundments, channel alteration, gravel dredging, sedimentation and water quality degradation. This proposal, if made final, would implement the protection of the Act for the Arkansas fatmucket. The Service seeks relevant data and comments from the public.

DATES: Comments from all interested parties must be received by September 25, 1989. Public hearing requests must be received by September 11, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Jackson Field Office, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: James Stewart at the above address (601/965–4900 or FTS 490–4900).

SUPPLEMENTARY INFORMATION:

Background

The Arkansas fatmucket was described as *Unio powelli* by Lea in 1852 from the Saline River, Arkansas (Johnson 1980). It was synonymized under *Actinonaias ligamentina* by Call in 1895 (Harris and Gordon 1988). In 1900, Simpson placed it in the genus *Lampsilis* (Simpson 1914). The species has been overlooked by a number of authors in reviews of Arkansas mussel fauna, including Burch (1975), Gordon, et al. (1980) and Gordon (1980). Johnson (1980) in his monograph, Stansbery (1983), and Gordon and Harris (1985) all consider *L. powelli* as a valid species. Reported collections of *L. powelli* from the Spring and Neosho Rivers, Kansas, and the Black River, Missouri, are misidentifications.

The shell of the Arkansas fatmucket is generally of medium size, but it occasionally exceeds 100 mm in length. It is ellipticial to long obovate with subinflated valves. The umbos are moderately full and project slightly above the hinge line. The shell surface is generally smooth with a shiny olive brown to tawny periostracum and lacks rays. The nacre is bluish white and iridescent. There is sexual dimorphism (Johnson 1980).

The Arkansas fatmucket prefers deep pools and backwater areas that possess sand, sand-gravel, sand-cobble or sand-rock with sufficient flow to periodically remove organic detritus, leaves and other debris. It is not generally found in riffles nor does it occur in impoundments. It is frequently found with islands of *Justicia americana* (water willow) where substrate is typically depositional and water depth is about 1 meter (Harris and Gordon 1988).

The Arkansas fatmucket is known to exist in the Ouachita, Saline and Caddo River systems. In the Ouachita Basin, this species occurs in the Ouachita River upstream of Lake Ouachita in Montgomery and Polk Counties, and in the South Fork Ouachita River upstream of Lake Ouachita in Montgomery County. In the Saline River Basin, the species occurs in Alum Fork, the Middle Fork, and the North Fork above their confluence with the Saline River, and in the Saline River from its formation downstream to about the Fall Line. The species does not occur in the South Fork of the Saline or in Hurricane Creek, a major tributary, but it probably did historically. In the Caddo River, the Arkansas fatmucket is known from three locations, all of which are in the mainstem.

Collection records on which to base historical distribution of this species do not exist. However, some assumptions can be made by examining the current distribution, current habitat types, and alterations to habitat that have occurred for various reasons. The probable historic range of this species likely included the Caddo River from Norman downstream to the Ouachita River, including at least the lower reach of the South Fork Caddo River. It seems likely that the species occupied the Ouachita River from Malvern upstream to the species' current known range, and the South Fork Ouachita River for its entire length. In the Saline River drainage, the Arkansas fatmucket likely occurred in all four forks and the mainstem from the Fall Line upstream to the extent of permanent flowing water, and in Hurricane Creek upstream of the Fall Line. Archeological records of other Ozarkian mussels indicate these species may have historically occurred throughout the entire drainage of those systems rather than being restricted to the headwaters as they are at present.

Land use in the basins where this species occurs is predominantly silviculture with lesser amounts of crop lands, grass land and urban development. Most of the forest land is owned by timber companies, although a small portion of the species' range lies within the Ouachita National Forest. The remainder of the land is privately owned in relatively small tracts (Harris and Gordon 1988).

The only previous Service action on this species was its inclusion in a notice of review on January 6, 1989 (54 FR 579), where it is listed as a category 2 species, i.e., a species whose listing as endangered or threatened may be appropriate, but for which more data are needed for a final determination.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Arkansas fatmucket *(Lampsilis powelli)* are as follows:

A. *The present or threatened destruction, modification or curtailment of its habitat or range.* The range of this species has been curtailed and continues to be threatened by impoundments, channel alteration, gravel dredging, sedimentation and water quality degradation. On the Ouachita River, the range of this species has been reduced by the construction of Lake Ouachita, Lake Hamilton and Lake Catherine and the hypolimnetic water releases from these impoundments. On the Caddo River, the impoundment of DeGray Reservoir and resulting hypolimnetic water releases have impacted what was probably the uppermost historic habitat for the species in this system. A part of the Ouachita River Basin Comprehensive Study by the U.S. Army Corps of Engineers includes a feasibility study for one or more impoundments for flood control and other purposes on the Saline River near Benton (Harris and Gordon 1988). The Soil Conservation Service has constructed one impoundment on a tributary of the South Fork Ouachita River, has another under construction, and plans a third impoundment on the mainstem South Fork Ouachita River (Harrris and Gordon 1988). While these Soil Conservation Service impoundments will not directly inundate known populations of this species, there are impacts occurring during the construction and possibly during the operation of these impoundments. During construction there is increased threat from silt and sediment, and after completion, the control of water flows during low flow periods could expose the mussel and also result in lowered dissolved oxygen. Harris and Gordon (1988) list 16 existing impoundments, 1 under construction, and 1 planned within the known range of this mussel that undoubtedly have already impacted its existence or will in the future.

In the South Fork Ouachita River, there is evidence of adverse impacts to a population of the Arkansas fatmucket from channel alteration as a result of highway repairs occurring in 1984–85. The existing channel is filling with organic debris, and flows are apparently inadequate to flush the area. Channel modification is common at highway crossings, and habitat for this species undoubtedly has been impacted by the many road crossings within its range.

Small gravel operations are common within the range of this species, and many streams are impacted by the removal of preferred substrate and by the resulting downstream sedimentation. The Saline River downstream of Benton is severely impacted by gravel dredging (Harris and Gordon 1988).

A large majority of the watershed in rivers where this mussel occurs is in timber production, with the next most common land use being agricultural production—primarily livestock and broiler chickens. Silviculture practices in the area have contributed to significant sedimentation problems. In the Alum Fork and Middle Fork Saline Rivers, where the best population and habitat occurs, an estimated 214,300 tons of sediment are transported annually (Harris and Gordon 1988). The majority of this erosion is sheet and rill, with road- and stream-bank erosion accounting for most of the remainder.

Water quality degradation apparently is responsible for the absence of the Arkansas fatmucket from a significant area within the species' probable historic range. The South Fork Caddo River receives runoff from a barite mining operation. Prairie Creek, a tributary of the Ouachita River, receives improperly treated municipal waste (Harris and Gordon 1988). Hurricane Creek and Lost Creek of the Saline River drainage receive acid mine runoff from bauxite mines. Additionally, non-point source pollution occurs from feedlot runoff, timber harvest, road construction, and fertilization for agriculture in all three river basins where this species is found.

Existing habitat in the Ouachita and Caddo Rivers is marginal at best. In a 1987–1988 survey of the mainstem Ouachita River, involving some 54 river miles of potential habitat, only 5 individuals of the Arkansas fatmucket were collected (Harris and Gordon 1988). In the Caddo River, the stream

gradient upstream of DeGray Reservoir is such that habitat is marginal and the two known populations of this species may be in jeopardy. The only known population in the Caddo River below DeGray Reservoir may be impacted by hypolimnetic water releases.

The probable historic range of this species has been reduced by over 40 percent (138 river miles), and the optimum habitat and good populations currently occur in only about 20 percent (62 river miles) of the total estimated area of historic habitat. These calculations are based upon the historic range as described in the Background section. If habitat loss were based upon the range that is indicated by archeological records, the percentage would be much greater.

B. *Over-utilization for commercial, recreational, scientific or educational purposes.* This species has not been collected for scientific purposes and does not seem to be in jeopardy from over-collecting. However, this could pose a threat to the limited populations occurring in the Ouachita, Caddo, Saline or the North Fork Saline Rivers, should someone decide to collect in these areas.

C. *Disease or Predation.* There are no known diseases or predators for this species. Muskrats have not been observed to use the species for food.

D. *The inadequacy of existing regulatory mechanisms.* The State of Arkansas requires a scientific collector's permit prior to taking any species of mollusc. However, this is an almost unenforceable regulation because of limited law enforcement personnel and more urgent priorities. Other environmental regulations will not give priority to this species unless it is listed.

E. *Other natural or manmade factors affecting its continued existence.* The life history requirements for this species, including the fish host, are unknown, making it impossible to evaluate potential impacts in this regard. The remaining populations of the Arkansas fatmucket are somewhat isolated from each other, which can lead to a loss of genetic diversity and difficulty with reproduction, especially in those streams where the population is very low. The good population in the South Fork Ouachita River (9 percent of existing habitat) is isolated from all other populations by Lake Ouachita, as is the very sparse population in the mainstem Ouachita River. The Caddo River populations are isolated from each other by DeGray Reservoir and from the Saline River populations by some 200 river miles. The Saline River drainage populations are isolated from the other populations, but they are not isolated from each other by any obvious natural barriers. However, if the fish host is not migratory, the exchange of genetic material between these populations would be a very uncommon event.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Arkansas fatmucket as threatened rather than endangered. Threatened status was chosen because the species still occurs in good numbers in the headwater streams of two river systems. This distribution makes it unlikely that all populations would be effected by a simultaneous action. Critical habitat is not designated for reasons discussed in that section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time owing to lack of benefit from such designation. No additional benefits would accrue from a critical habitat designation that do not already accrue from the listing. Precise locality data are available to appropriate agencies through the Service office described in the ADDRESSES section. All involved parties and landowners will be notified of the location and importance of protecting this species' habitat.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Protection needs of the Arkansas fatmucket should be considered during the following potential involvement by Federal agencies: The Environmental Protection Agency—pesticide registration and waste management actions; Corps of Engineers—project planning and operation, and during the permit review process; Soil Conservation Service—construction and operation of impoundments; Federal Highway Administration—bridge and road construction at points where known habitat is crossed; and possibly the Farmers Home Administration—various loan programs that may be associated with further urban development within the species' range.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23 and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available. However, since the Arkansas fatmucket is not known to be involved in any commercial activity, no requests for relief under such a permit are expected.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to Field Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Burch, J.B. 1975. Freshwater unionacean clams (Mollusca:Pelecypoda) of North America. Malacological Publications, Hamburg, MI. 204 pp.

Gordon, M.E., and J.L. Harris. 1985. Distribution of *Lampsilis powelli* (Lea) (Bivalvia:Unionacea). The Nautilus 99(4):142–144.

Gordon, M.E. 1980. Recent mollusca of Arkansas with annotations to systematics and zoogeography. Proc. Arkansas Acad. Sci. 34:58–62.

Gordon, M.E., L.R. Kraemer, and A.V. Brown. 1980. Unionacea of Arkansas: historical rivers, checklist, and observations on distributional patterns. Bull. Amer. Malacol. Union. 1979:31–37.

Harris, J.L., and M.E. Gordon. 1988. Status survey of *Lampsilis powelli* (Lea 1852). A report to the U.S. Fish and Wildlife Service. 43 pp. + field notes.

Johnson, R.I. 1980. Zoogeography of the North American Unionacea (Mollusca: Bivalvia) north of the maximum Pleistocene glaciation. Bull. Mus. Comp. Zool. 149:77–189.

Simpson, C.T. 1914. A descriptive catalogue of the naiades, or pearly freshwater mussels. Bryant Walker, Detroit. Pp. 75–76.

Stansbery, D.H. 1963. Some sources of nomenclatural and systematic problems in unionid mussels. Pp. 46–62 *In* A.C. Miller, compiler. Report of freshwater mussels workshop, 26–27 October 1962. U.S. Army Engineer Waterways Experiment Station, Environmental Laboratory, Vicksburg, MS.

Author

The primary author of this proposed rule is James Stewart (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under "Clams," to the List of Endangered and Threatened Wildlife.

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
CLAMS							
Fatmucket, Arkansas	*Lampsilis powelli*	U.S.A. (AR)	NA	T		NA	NA

Dated: June 7, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish, Wildlife and Parks.

[FR Doc. 89-17594 Filed 7-26-89; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018-AB31

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Ottoschulzia rhodoxylon (Palo de Rosa)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Ottoschulzia rhodoxylon* (palo de rosa) to be an endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. *Ottoschulzia rhodoxylon* is a plant that is endemic to Puerto Rico and Hispaniola. In Puerto Rico it is found in the limestone hills of the north coast, on limestone-derived soils of the south coast, and on the serpentine soils of the western mountains. Only nine individuals are known to exist in these three areas. The species is threatened by deforestation due to the expansion of residential and industrial areas and its extremely low population size. This proposal, if made final, would extend the Federal protection and recovery provisions afforded by the Act to *Ottoschulzia rhodoxylon*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by September 25, 1989. Public hearing requests must be received by September 11, 1989.

ADDRESSES: Comments and materials, and requests for public hearing concerning this proposal should be sent to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials received will be available for public inspection, by appointment, at this office during normal business hours, and at the Service's Southeast Regional Office, Suite 1282, 75 Spring Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Silander at the Caribbean Field Office address (809/851-7297) or Mr. Tom Turnipseed at the Atlanta Regional Office address (404/331-3583 or FTS 242-3583).

SUPPLEMENTARY INFORMATION:

Background

Ottoschulzia rhodoxylon (palo de rosa) was first collected by Leopold Krug near Mayaguez, Puerto Rico, in 1876 and was described in 1908. This West Indian genus of only 3 species was dedicated to Otto Eugen Schulz, a German botanist (Liogier and Martorell 1982). Today the species is known from one locality in the limestone hill area on the north coast near Bayamón and in several sites in the Guánica Commonwealth Forest, a dry limestone forest on the south coast. One individual has recently been reported from the Maricao Commonwealth Forest (G. Proctor, Puerto Rico Department of Natural Resources, personal communication). Urban, residential, and industrial expansion has greatly reduced forested area in all three of these localities. The information available indicates that the species is also rare in the Dominican Republic (Little *et al.* 1974, G. Proctor, personal communication).

Ottoschulzia rhodoxylon is a small evergreen tree that has been reported to reach 12 to 15 feet (4 to 5 meters) in height. The leaves are alternate, glabrous, and elliptic to ovate. They are from 2 to 3½ inches (5 to 9 centimeters) long and 1¼ to 2½ inches (3 to 6 centimeters) wide, rounded or blunt at the apex and the base, entire, thick, and leathery. Flowers have not been observed, but fruits have recently been described as a one-seeded drupe with a thin pericarp (G. Proctor personal communication). Flowers in this genus are bisexual, solitary or in clusters at the leaf bases, and composed of a tubular corolla with 5 lobes (Little *et al.* 1974). As indicated by both the common name and specific name, the heartwood is reddish and suitable for articles of turnery.

On the north coast *Ottoschulzia rhodoxylon* is found in semi-evergreen, seasonal forests at an elevation of approximately 325 feet (100 meters) in the limestone hills of Bayamón, to the west of the San Juan metropolitan area. On the south coast it occurs in low elevation, semi-deciduous, dry forest on limestone. One individual is found along a dry stream bed, which carries water only during periodic torrential rains. All known south coast individuals occur within the Guánica Commonwealth Forest. In Maricao it is found on serpentine soils in lower montane, semi-evergreen forest at an elevation of approximately 1,960 feet (600 meters). These serpentine outcrops and serpentinaceous soils contribute to a high floristic diversity and endemism.

Deforestation for agriculture, grazing, charcoal production, and urban and industrial development has had a significant effect on the native flora of Puerto Rico. Much of the remaining forest consists of secondary growth. Individual trees of *Ottoschulzia rhodoxylon* are known to have been lost to forest clearing. The extreme rarity of the species and the apparent irregularity of flower and fruit production make the species extremely vulnerable to the loss of any one individual.

Ottoschulzia rhodoxylon was recommended for Federal listing by the Smithsonian Institution (Ayensu and DeFilipps 1978). The species was included among the plants being considered as endangered or threatened species by the Service, as published in the **Federal Register** (45 FR 82480) dated December 15, 1980; the November 28, 1983, update (48 FR 53680) of the 1980 notice; and the September 27, 1985, revised notice (50 FR 39526). The species was designated category 1 (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) in each of the three notices.

In a notice published in the **Federal Register** on February 15, 1983 (48 FR 6752), the Service reported the earlier acceptance of the new taxa in the

Smithsonian's 1978 book as under petition within the context of Section 4(b)(3)(A) of the Act, as amended in 1982. The Service subsequently found in each October of 1983 through 1988 that listing *Ottoschulzia rhodoxylon* was warranted but precluded by other pending listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. This proposed rule constitutes the final finding in accordance with section 4(b)(3)(B)(iii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Ottoschulzia rhodoxylon* (Urban) Urban (palo de rosa) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Much of the island of Puerto Rico has been deforested, and today all of the known sites for *Ottoschulzia rhodoxylon* are found in areas of secondary forests. The north coast site lies just to the west of the San Juan metropolitan area, an area which is being rapidly developed. Undiscovered individuals in this area are likely to be destroyed before being discovered. Remaining individuals on the southwestern coast are found within the Guánica Commonwealth Forest, but they are found in sites such as dry stream beds and roadsides, which may be vulnerable to forest management practices that do not take the species into consideration.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Taking for these purposes has not been a documented factor in the decline of this species.

C. *Disease or predation.* Disease and predation have not been documented as factors in the decline of this species.

D. *The inadequacy of existing regulatory mechanism.* The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Ottoschulzia rhodoxylon* is not yet on the Commonwealth list. Federal listing would provide interim protection and, if the species is ultimately placed on the Commonwealth list, enhance its protection and possibilities for funding needed research.

E. *Other natural or manmade factors affecting its continued existence. Ottoschulzia rhodoxylon* is limited in its distribution. Only nine individuals are known to occur in Puerto Rico. The fruits of this species were only recently described and are rarely observed. Flowers have not yet been described. The location of some individuals along stream beds makes them vulnerable to natural disturbances such as flash-flooding. Because so few individuals are known to occur, the risk of extinction is extremely high.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Ottoschulzia rhodoxylon* as endangered. Only nine individuals in three areas are known to occur and no seedlings have been observed. Therefore, endangered rather than threatened status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for this species are discussed below in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. The number of individuals of *Ottoschulzia rhodoxylon* is sufficiently small that vandalism could seriously affect the survival of the species. Publication of critical habitat descriptions and maps in the **Federal Register** would increase the likelihood of such activities. The Service believes that Federal involvement in the areas where this plant occurs can be identified without the designation of critical habitat. All involved parties and landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will also be addressed through the recovery and the section 7 processes of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in a destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for *Ottoschulzia rhodoxylon*, as discussed above. Federal involvement is not expected where the species is known to occur.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. In addition, for listed plants the 1988 amendments (Pub. L. 100-478) to the Act prohibit their malicious damage or destruction on Federal lands, and their

removal, cutting, digging up, damage or destruction in knowing violation of any State (Commonwealth) law or regulation, including State (Commonwealth) criminal trespass law. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits for *Ottoschulzia rhodoxylon* will ever be sought or issued, since the species is not known to be in cultivation and is uncommon in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service (424 ARLSQ), Washington, DC 20240; 703/358–2104.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Ottoschulzia rhodoxylon*;

(2) The location of any additional populations of *Ottoschulzia rhodoxylon*, and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject areas and their possible impacts on *Ottoschulzia rhodoxylon*.

Final promulgation of the regulation on *Ottoschulzia rhodoxylon* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Ayensu, E.S., and R.A. DeFilipps. 1978. Endangered and threatened plants of the United States. Smithsonian Institution and World Wildlife Fund, Washington, DC xv + 403 pp.

Liogier, H.A., and L.F. Martorell. 1982. Flora of Puerto Rico and adjacent islands: a systematic synopsis. University of Puerto Rico, Río Piedras, Puerto Rico. 342 pp.

Little, E.L., Jr., R.O. Woodbury, and F.H. Wadsworth. 1974. Trees of Puerto Rico and the Virgin Islands, Second Volume. Agriculture Handbook No. 449. U.S.D.A., Forest Service.

Author

The primary author of this proposed rule is Ms. Susan Silander, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622 (809/851–7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Icacinaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	*
Icacinaceae—Icacina family:						
Ottoschulzia rhodoxylon	Palo de rosa	U.S.A. (PR), Dominican Republic	E		NA	NA
*	*	*	*	*	*	*

Dated: June 6, 1989.

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–17596 Filed 7–26–89; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 54, No. 143
Thursday, July 27, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

July 21, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Revision

• Farmers Home Administration

7 CFR 1942–G, Industrial Development Grants
None
Recordkeeping; On occasion; Monthly; Quarterly
State or local governments; Non-profit institutions; Small businesses or organizations; 1,615 responses; 3,177 hours; not applicable under 3504(h)
Jack Holston (202) 382–9736

• Farmer Home Administration

7 CFR 1980–B, Guaranteed Farmer Program Loans
FmHA 449–11, 1980–15, –24, –25, –38, –58
On occasion
Individuals or households; State or local governments; Farms; Businesses or other for-profit; 56,990 responses; 51,385 hours; not applicable under 3504(h)
Jack Holston (202) 382–9736

Extension

• Forest Service

Disposal of Mineral Materials (36 CFR Part 228, Subpart C)
FS–2800–9, R1–FS–2850–1
On occasion; Annually
Individuals or households; Businesses or other for-profit; Federal agencies or employees; State or local governments; Non-profit institutions; Small businesses or organizations; not applicable under 3504(h)
Steve Marshall (703) 235–3142

• Agricultural Stabilization and Conservation Service

7 CFR Part 719—Record of Pooled Farm Allotment, Quota, or Acreage Base and Application for Transfer of Allotment, Quota, or Acreage Base From Pool
ASCS–177; ASCS–178
On occasion
Individuals or households; Farms; 6,000 responses; 3,000 hours; not applicable under 3504(h)
Star Bryant (202) 447–8573

• Office of Personnel

Advisory Committee Membership Background Information
AD–755
Biennially
Individuals or households; 500 responses; 250 hours; not applicable under 3504(h)
Carolyn T. Wright (202) 447–3083

New Collection

• Food and Nutrition Service

Evaluation of State-Initiated Electronic Benefit Transfer Demonstrations
Various questionnaires
On occasion
State or local governments; Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations; 9,051 responses; 1,330 hours; not applicable under 3504(h)
Carol Olander (703) 756–3115

Emergency

• National Agricultural Statistics Service

Animal Damage Control Survey
One-time survey
Farms; 15,000 responses; 2,500 hours; not applicable under 3504(h)
Larry Gambrell (202) 447–7737

Larry K. Roberson,

Acting Departmental Clearance Office.

[FR Doc. 89–17517 Filed 7–26–89; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

North Fork Kern and South Fork Kern Wild and Scenic Rivers, CA: Availability of Boundary Descriptions and Classifications

AGENCY: Forest Service, Agriculture.

ACTION: Notice of Availability.

SUMMARY: The boundaries and classifications for the North Fork Kern and South Fork Kern Wild and Scenic Rivers have been established. The rivers boundaries and classifications may be reviewed at the following Forest Service offices: Office of the Chief, 12th and Independence Avenue, SW., Washington, DC 20250; Sequoia National Forest office, 900 W. Grand Avenue, Porterville, CA 93257; and Pacific Southwest Regional office, 630 Sansome Street, San Francisco, CA 94111.

Joyce T. Muraoka,

Director, Planning and Budget.

[FR Doc. 89–17562 Filed 7–26–89; 8:45 am]

BILLING CODE 3410–11–M

Lost Silver Timber Sale; Flathead National Forest, Hungry Horse District, Flathead County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to analyze and disclose the environmental impacts of a proposal to harvest timber and construct roads in portions of Lost Johnny Creek and Doris Creek drainages, on the Hungry Horse Ranger District. This EIS will tier to the Flathead National Forest Land and Resource Management Plan and EIS of

BEST COPY AVAILABLE

January, 1986, which provide overall guidance in acheiving the desired future condition for the area. The primary purpose and goal for the proposed action is to help satisfy short-term demands for timber and maintain a continuous supply of timber in the future.

While some preliminary scoping was done for this project during the preparation of an Environmental Assessment for Lost Silver in 1986–87, the Forest Service is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may now be interested in or affected by the proposed actions. This input will be used in preparing the Draft EIS. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of additional reasonable alternatives.
5. Identification of potential environmental effects of the alternatives.
6. Determination of potential cooperating agencies and task assignments.

The agency invites written comments and suggestions on the issues and management opportunties in the area being analyzed.

DATE: Comments concerning the scope of the analysis should be received by August 11, 1989 to receive timely consideration in the preparation of the draft EIS.

ADDRESS: Send written comments to Allen L. Christophersen, District Ranger, Hungry Horse Ranger District, P.O. Box 340, Hungry Horse, MT 59919.

FOR FURTHER INFORMATION CONTACT: Steve Penner, Lost Silver Interdisciplinary Team Leader, or Allen Christophersen, District Ranger, at (406) 387–5243.

SUPPLEMENTARY INFORMATION: Management activities under consideration would occur in an area encompassing approximately 7000 acres of National Forest lands in the West Side Geographic Unit, on the Hungry Horse Ranger District, as delineated in the Flathead Forest Plan. Included in the area of analysis are all or portions of the following: sections 35 and 36, T3ON, R19W, and section 1–3, 8–17, 21–23, and 26, T29N, R19W, Principal Montana Meridian. Management activities may include the construction of approximately five miles of new roads and the harvesting of approximately 500 acres of timber within the area of consideration. Some of these activities may occur within Forest Inventoried Roadless Area SC–485.

The Land and Resource Management Plan for the Flathead National Forest provides the overall guidance for management activities in the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. In the Forest Plan, timber harvest and road construction was tentatively scheduled in the Doris Creek and Lost Johnny Creek drainages in 1986.

Most areas of proposed harvest and road construction for the Lost Silver project are within Management Area 15. Forest plan direction states that Management Area 15 consists of lands where timber management with roads is economical and feasible. The management goal is to manage those lands suitable for timber production for the long-term growth and production of commercially valuable wood products as well as provide for soil and water protection, wildlife habitat, and roaded recreation opportunities.

In addition, road construction, reconstruction, and timber harvest and reforestation may occur within Management Area 12 (riparian areas along perennial streams) or Management Area 17 (riparian areas with typically intermittent streams). Management goals for Management Area 12 are to emphasize old-growth habitat, water quality and fisheries and vegetative diversity for wildlife habitat. Goals for Management Area 17 are similar, and also include maintaining a sustained yield of timber.

The analysis will consider a range of alternatives. One of these will be the "no-action" alternative, in which the harvest and road construction activities would not be implemented. Other alternatives will examine various levels and locations of harvest and road construction to provide emphasis on differing mixes of timber and non-timber resource values.

The analysis will disclose the environmental effects of alternative ways of implementing the Forest Plan. The EIS will disclose the analysis of the direct, indirect, and cumulative environmental effects of the alternatives. In addition, the EIS will disclose the analysis of site specific mitigation measures and their effectiveness.

Public participation is especially important at several points of the analysis. People may visit with Forest Service officials at any time during the analysis and prior to the decision. However, two periods of time are identified for the receipt of comments on the analysis. The two public comment periods are during the scoping process (now thru August 11, 1989) and in the review of the Draft EIS (February–March, 1990). The Forest Service has not yet determined whether any public meetings will be held.

The Fish and Wildlife Service, Department of the Interior, will be informally consulted throughout the analysis. To meet the requirements of the Endangered Species Act, the Fish and Wildlife Service will review the EIS and biological evaluation and if necessary, render a formal Biological Opinion of the effects of the Threatened and Endangered Species including grizzly bear, gray wolf, and bald eagle.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in February, 1990. At that time the EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The public comment period on the draft EIS will be 45 days from the date when the EPA's notice of availability appears in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

Following this comment period, the comments received will be analyzed, considered and responded to by the Forest Service in the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by May 1990. The District Ranger for the Hungry Horse Ranger District, Flathead National Forest is the responsible official for the preparation of this EIS and will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies. The decision and rationale for the decision will be documented in a Record of Decision. That decision will be subject to appeal under applicable Forest Service regulations.

Date: July 18, 1989.

Allen L. Christophersen,

District Ranger, Hungry Horse Ranger District, Flathead National Forest.

[FR Doc. 89–17539 Filed 7–26–89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 90767–9167]

National Voluntary Laboratory Accreditation Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Publication of NVLAP Directory Supplement.

SUMMARY: The National Institute of Standards and Technology (NIST) announces laboratory accreditation actions taken during the second quarter of 1989.

FOR FURTHER INFORMATION CONTACT: John Donaldson, Manager, Laboratory Accreditation, Building 411, Room A124, National Institute of Standards and Technology, Gaithersburg, MD 20899, (301) 975–4016.

SUPPLEMENTARY INFORMATION: This supplement to the 1979 NVLAP Directory of Accredited Laboratories (NISTIR 89–4056) is published pursuant to § 7.6(b) of the National Voluntary Laboratory Accreditation Program (NVLAP) Procedures (15 CFR 7.68(b)).

The following summarizes NVLAP accreditation actions for other than bulk asbestos analysis for the period April 1, 1989 through June 30, 1989.

Laboratories awarded initial accreditation are:

TIM: Architectural Testing, Inc., York, PA, Scott A. Warner, 717–846–7700

TIM: Warnock Hersey International, Inc., Middleton, WI, Rich Curkeet, 608–836–4400

ECT: Digital Communications Associates, Inc., Alpharetta, GA, Michael E. Canty, 404–442–4627

CTS: CGC, Inc., Leesburg, VA, Bruce Clendenin, 703–478–8643

CTS: Eastern National Enterprises, Inc., New Britain, CT, Thomas F. Tallmadge, 203–224–3316

CTS: Malcolm Pirnie, Inc. Soils Testing Lab., Orchard Park, NY, Anne Marie C. McManus, 716–828–1300

CTS: New Haven Testing Laboratory, Inc., New Haven, CT, George Guiliotis, 203–772–0710

Laboratories whose accreditations were renewed after a lapse are:

DOS: Atomic Energy Industrial Laboratory of the Southwest, Inc., Houston, TX, Steven H. Allen, 713–790–9719

Laboratories whose accreditations were terminated are:

TIM: Dow Chemical U.S.A., North Haven Laboratories, North Haven, CT

CTS: University of Nevada-Reno Center for Construction Materials Research, Reno, NV

Program abbreviations are:

TIM—Thermal Insulation Materials
ECT—Electromagnetic Compatibility and Telecommunications
CTS—Construction Testing Services
DOS—Personnel Radiation Dosimetry Processing

The accompanying table lists testing laboratories receiving initial accreditation, during the period April 1, 1989 through June 30, 1989, to perform bulk asbestos analysis in accordance with 40 Code of Federal Regulations Chapter I (1–1–87 edition) Part 763, Subpart F, Appendix A pages 293–299 or the current U.S. Environmental Protection Agency method for the analysis of asbestos in building materials by polarized light microscopy. This table supersedes those published in the **Federal Register** on April 26, 1989 and June 20, 1989.

Raymond G. Kammer,

Acting Director.

Dated: July 21, 1989.

Laboratories Accredited by NVLAP to Perform Bulk Asbestos Analysis (Alphabetically Listed by State)

Hunter Services, Inc., 1205 East International Airport Road, #100 Anchorage, AK 99519, Phone: 904–561–3055

Professional Service Industries, Inc., 700 W. 58th Ave., Units A & B, Anchorage, AK 99518, Phone: 907–561–2400

ATEC Associates, Inc., 129 West Valley Avenue, Birmingham, AL 35209, Phone: 205–945–9224

American Microscopy Lab, Inc., 29 Heritage Hills, Tuscaloosa, AL 35406, Phone: 205–345–2555

BCM Engineers Inc., 104 St. Francis Street, Suite 400, P.O. Box 1784, Mobile, AL 36633, Phone: 205–433–0517

Chem-Ray, Inc., P.O. Box 821, Florence, AL 35631, Phone: 205–766–4345

EnviroChem Inc., 762 Downtowner Loop West, Mobile, AL 36609, Phone: 205–344–7711

Fiber Lab, Inc., P.O. Box 36726, Birmingham, AL 35236, Phone: 205–822–8544

Harmon Engineering Associates, 1550 Pumphrey Avenue, Auburn, AL 36830, Phone: 205–821–9250

Law Engineering, Inc., 3000 7th Court, South, P.O. Box 10244, Birmingham, AL 35202, Phone: 205–252–9901

Professional Contract Services, Inc., 1105 Fitzpatrick Avenue, P.O. Box 2805, Opelika, AL 36803, Phone: 205–740–2636

Weston-ATC Mobile Facility, 1635 Pumphrey Avenue, Auburn, AL 36830, Phone: 205–826–6100

Weston-ATC, Inc., 1635 Pumphrey Avenue, Auburn, AL 36830, Phone: 205–826–6100

Arkansas Department of Health, 4815 W. Markham, Little Rock, AR 72205, Phone: 501–661–2389

EEG, Inc., 220A N. Knoxville, Russellville, AR 72801, Phone: 501–968–6767

Environmental Services Company, Inc., 13715 West Markham, Little Rock, AR 72211, Phone: 501–221–2566

Fiberquant, Inc., 4824 S. 35th St., Phoenix, AZ 85040, Phone: 602–276–0138

Microprobe, 5104 East Burns Street, Tucson, AZ 85711, Phone: 602–745–1169

Southwest Hazard Control Inc., 5400 West Massingale Road, Tucson, AZ 85743, Phone: 602–744–1060

University Associates, Ltd., 2425–A N. Huachuca Drive, Tucson, AZ 85745, Phone: 602–624–6366

ACCULAB Environmental Services, 3700 Lakeville Hwy., Petaluma, CA 94952, Phone: 707–778–4160

Aerojet Solid Propulsion Co., Hazel and Highway 50, Sacramento, CA 95852, Phone: 916–355–4051

Aerojet TechSystems Company, Quality Assurance Testing Laboratory, P.O. Box 13222, Dept. 9410, Bldg. 2004, Sacramento, CA 95813, Phone: 916–355–3496

Analytical Research Laboratories, Inc., 160 Taylor Street, Monrovia, CA 91016, Phone: 818–357–3247

Applied Petrography, Inc., 6520 Sorensen Avenue, Suite E., Santa Fe Springs, CA 90670, Phone: 213–945–3468

Asbestos Detection Co., Inc., 12755 Brookhurst Street, Suite 206, Garden Grove, CA 92640, Phone: 714-530-1922
Associated Safety Consultants, 13363 Saticoy Street, Suite 204, North Hollywood, CA 91605, Phone: 818-503-0471
CAM Lab, 9525 Slauson Avenue, Pico Rivera, CA 90660, Phone: 213-942-8668
California Water Labs, 1430 Carpenter Lane, Modesto, CA 95352, Phone: 209-527-4050
Certified Engineering & Testing Co., Inc., 725 Greenwich St., #204, San Francisco, CA 94133, Phone: 415-986-6972
Clark Geological Services, 3479 Edison Way, Fremont, CA 94538, Phone: 415-659-1784
Clayton Environmental Consultants, Inc., 1252 Quarry Lane, Pleasanton, CA 94566, Phone: 415-426-2600
Control Laboratories, Inc./Toxscan Inc., 42 Hangar Way, Watsonville, CA 95076, Phone: 408-724-4522
Dan Napier & Associates, 15342 Hawthorne Boulevard Suite 207, P.O. Box 1540, Lawndale, CA 90260, Phone: 213-644-1928
Dyer Laboratories, Inc., 2531 West 237th Street #121, Torrance, CA 90505, Phone: 213-530-3322
EMS Laboratories, Inc., 211 Pasadena Avenue, South Pasadena, CA 91030, Phone: 213-257-2002
Environmental Innovations Corp. (EIC), 675 Hegenberger Road, Suite 110, Oakland, CA 94621, Phone: 415-632-0140
EssTek, 9041-17 Dice Road, Santa Fe Springs, CA 90670, Phone: 303-425-0013
Esstek, 3045 Teagarden Street, San Leandro, CA 94577, Phone: 303-425-0013
Eureka Laboratories, Inc., 3401 La Grande Blvd., Sacramento, CA 95823, Phone: 916-381-7953
Forensic Analytical Specialties, Inc., 3777 Depot Road, Suite 408, Hayward CA 94545, Phone: 415-887-8828
Hall-Kimbrell Environmental Services Inc., 646 S. Bree Canyon Road, Walnut, CA 91789, Phone: 714-594-3232
Hanlon Laboratories, 8801 Folsom Blvd., Suite 145, Sacramento, CA 95826, Phone: 916-386-2153
I.T. Corporation—A California Corp., 17605 Fabrica Way, Cerritos, CA 90701, Phone: 213-921-9831
Kellco Services, Inc., 44814 Osgood Rd., Fremont, CA 94539, Phone: 415-659-9751
Kellco Services, Inc., 8421 Auburn Avenue, Citrus Heights, CA 95610, Phone: 916-722-7997
Kemron Environmental Services, 14340 Bolsa Chica, Suite C, Westminster, CA 92683, Phone: 714-373-1194
Los Angeles City, Department of Water & Power, P.O. Box 111, 1630 N. Main St., Bldg. 7, Los Angeles, CA 90051, Phone: 213-481-6691
McCrone Environmental Services—Calif., 120 Newport Center Drive, Suite 240, Newport Beach, CA 92660, Phone: 714-759-6619
Microanalytical Services, Inc., 201 South Lake Avenue, Suite 402, Pasadena, CA 91101, Phone: 818-356-7400
National Asbestos Laboratories Inc., 2235 Polvorosa Ave., Suite 220, San Leandro, CA 94577, Phone: 415-786-0801
PACE Laboratories, Inc., 11 Digital Drive, Novato, CA 94949, Phone: 415-883-6100
Particle Diagnostics, Inc., 1274 Morena Boulevard, San Diego, CA 92110, Phone: 619-276-2200
Precision Micro-Analysis, 5665 Power Inn Road, Suite 102, Sacramento, CA 95824, Phone: 916-381-0695
RJ Lee Group, Inc., 2424 Sixth Street, Berkeley, CA 94710, Phone: 415-486-8319
Schwein/Christensen Engineering, Ltd., 3397 Mt. Diablo Blvd., Suite E, Lafayette, CA 94549, Phone: 415-284-3311
South Coast Air Quality Management Dist., 9150 Flair Drive, El Monte, CA 91731, Phone: 818-572-6430
Thermo Analytical Inc./TMA—Norcal, 2030 Wright Ave., Richmond, CA 94804, Phone: 415-235-2833
University Associates, Ltd., 2725 Congress Street, Suite 2A, San Diego, CA 92110, Phone: 619-294-7200
Analytica, Inc., 5930 McIntyre Street, Golden, CO 80403, Phone: 303-279-2583
DCM Science Laboratory, 12975 West 24th Place, Golden, CO 80401, Phone: 303-237-0110
Public Service Co. of Colorado, Central Chemistry Laboratory, 1500 West Hampden Avenue, Bldg. #5-H, Englewood, CO 80110, Phone: 303-797-4110
Aetna Life & Casualty Co., 575 Pigeon Hill Road, Windsor, CT 06095, Phone: 202-683-3647
Brooks Laboratories, Inc., 44 Codfish Lane, Weston, CT 06883, Phone: 203-226-6364
Chemscope, Inc., P.O. Box 389, Fair Haven Station, New Haven, CT 06513, Phone: 203-468-0055
Connecticut Dept. of Health Services, 10 Clinton Street, P.O. Box 1689, Hartford, CT 06106, Phone: 203-566-5626
EnviroMed Services Inc., 25 Science Park, New Haven, CT 06511, Phone: 203-786-5580
Environmental Health Laboratory, 94 Murphy Road, Hartford, CT 06114, Phone: 203-522-3814
Hartford Steam Boiler, Environmental Services Laboratory, One State Street, Hartford, CT 06102, Phone: 203-722-5476
Olin Environmental Hygiene Laboratory, 91 Shelton Avenue, New Haven, CT 06511, Phone: 203-781-5613
TRC-Environmental Consultants, Inc., 800 Connecticut Blvd., East Hartford, CT 06108, Phone: 203-289-8631
Testwell Craig Labs of Connecticut, Inc., 25 Henry Street, Bethel, CT 06801, Phone: 203-743-7281
Batta Environmental Assoc., Inc., 6 Garfield Way, Newark, DE 19713, Phone: 302-737-3376
Medlab, Inc., P.O. Box 2045, Wilmington, DE 19899, Phone: 302-994-5764
ATEC Associates, Inc., 4845 Rosselle Street, Jacksonville, FL 32205, Phone: 904-387-6404
ATEC Associates, Inc., Miami Office, 2990 NW 40 Street, Miami, FL 33142, Phone: 305-633-2700
ATEC Environmental Consultants, 1535 Cogswell Street, Suite A5, Rockledge, FL 32955, Phone: 407-639-9069
Advanced Industrial Hygiene Services, Inc., 2131 SW 2 Ave., Miami, FL 33129, Phone: 305-854-7554
Briggs Associates, Inc., 4401 Vineland Road, Suite A9, Orlando, FL 32811, Phone: 407-422-3522
International Abatement Management, Inc., 550 North Reo Street, Suite 300, Tampa, FL 33609, Phone: 813-287-5100
KNL Laboratory Services, 2742 N. Florida Ave./P.O. Box 1833, Tampa, FL 33601, Phone: 813-229-2679
Law Engineering, Inc., 4919 West Laurel Street, Tampa, FL 33607, Phone: 813-289-0750
Micro Analytical Laboratories, Inc., 3618 N.W. 97th Blvd., Gainesville, FL 32606, Phone: 904-332-1701
PACE Laboratories, Inc., 5460 Beaumont Center Blvd., Tampa, FL 33634, Phone: 913-884-8268
Pensacola P.O.C., Inc., 109 South Second Street, Pensacola, FL 32507, Phone: 904-456-4406
Professional Service Industries, Inc., 3901 N.W. 29th Avenue, Miami, FL 33142, Phone: 305-633-7555
Soil & Material Engineers, 5909 Breckenridge Parkway, Tampa, FL 33610, Phone: 813-620-1633
Southeastern Marine Chemists Inc., Southeastern Chemists Laboratories, 170 Arlington Rd., Jacksonville, FL 32211, Phone: 904-725-2040
Testwell Craig Labs of Florida, Inc., 7104 Northwest 51st Street, Miami, FL 33166, Phone: 305-593-0561
Thornton Laboratories, Inc., 1145 E. Cass St., Tampa, FL 33602, Phone: 813-223-9702
ATEC Associates, Asbestos Lab, 1300 Williams Drive, Suite A, Marietta, GA 30066, Phone: 404-427-9456
Applied Environmental Testing Labs, Inc., 680 Thornton Way, Suite 202, P.O. Box 959, Lithia Springs, GA 30057, Phone: 404-948-4919
Clayton Environmental Consultants, Inc., 400 Chastain Center Blvd., NW, Suite 490, Kennesaw, GA 30144, Phone: 404-499-7500
Electron-Microscopy Service Labs, Inc., 1800 Peachtree St., NW, Suite 305, Atlanta GA 30309, Phone: 404-355-4046
Environmental Analytical Laboratories, Cobb Corporate Center, Suite 300, 350 Franklin Road, Marietta, GA 30067, Phone: 404-425-9901
GTRI Microscopy Research Laboratory, 151 Sixth Street, O'Keefe Building, Atlanta, GA 30332, Phone: 404-894-3806
Geo-Environmental Services, Inc., 141 West Wieuca Road, Suite 200A, Atlanta, GA 30342, Phone: 404-257-9303
Law Associates, Inc., 1386 Mayson Street, Atlanta, GA 30144, Phone: 404-892-3200
Materials Analytical Services, Inc., 3597 Parkway Lane, Suite 250, Norcross, GA 30092, Phone: 404-446-3200
McCrone Environmental Services, Inc., 1412 Oakbrook Dr., Suite 100, Norcross, GA 30093, Phone: 404-368-9600
Schweiger & Associates, 2022 Powers Ferry Road, Suite 180, Atlanta, GA 30339, Phone: 404-988-9250
Soil & Material Engineers, 3980 DeKalb Technology Parkway, Atlanta, GA 30340, Phone: 404-452-1911
EnvironMETeo Services, Inc. (EMET), 94-463 Ukee Street, Suite A, Waipahu, HI 96797 Phone: 808-671-8383

HECo Safety Division, Industrial Hygiene Section, 820 Ward Avenue, Honolulu, HI 96813, Phone: 808-548-7386
Unitek Environmental Consultants, Inc., 2889 Mokumoa St., Honolulu, HI 96819, Phone: 808-834-1444
Ames Environmental Inc., 3010 Lincoln Way, Ames, IA 50010, Phone: 515-292-3400
CHART Services Ltd., 4725 Merle Hay Road, Suite 214, Des Moines, IA 50322, Phone: 515-276-3642
Midwestern Testing Labs, Inc., 55½ N. Main, P.O. Box 1657, Fairfield, IA 52556, Phone: 515-472-1681
Net Midwest, Inc., P.O. Box 625, 704 Enterprise Drive, Cedar Falls, IA 50613, Phone: 319-277-2401
University of Iowa, University Hygienic Laboratory, Iowa City, IA 52240, Phone: 319-335-4500
HAZTOX, Inc., 820 North Linder Road, Meridian, ID 83642, Phone: 208-888-7121
ABS Environmental Labs Inc., 605 Brookside, Frankfurt, IL 60423, Phone: 815-469-4464
Air Tech Associates, Inc., 4100 Madison Lower Level 4, Hillside, IL 60162, Phone: 312-547-8117
Analytical Laboratory for Environmental Excellence Inc., 485 Frontage Road, Burr Ridge, IL 60521, Phone: 312-789-6060
Anasbestics Company, 7206 W. 90th Place, Bridgeview, IL 60455, Phone: 312-598-2921
BCA Laboratories, 1102 S. Main St., Bloomington, IL 61701, Phone: 309-828-7772
Beling Consultants, Inc., 1001 16th Street, Moline, IL 61265, Phone: 309-757-0800
Carnow, Conibear & Associates, Ltd., 333 W. Wacker Drive, Suite 1400, Chicago, IL 60606, Phone: 312-782-4486
Clean Air Engineering, 207 N. Woodwork Lane, Palatine, IL 60067, Phone: 312-991-3300
Daily Analytical Laboratories, 1621 W. Candletree Drive, Peoria, IL 61614, Phone: 309-692-5252
Fay Goldblatt Laboratories, Inc., 5225 Old Orchard Road, Suite 2, Skokie, IL 60077, Phone: 312-251-8338
Gabriel Laboratories, Ltd., 1421 North Elston Avenue, Chicago, IL 60622, Phone: 312-486-2123
ITL/Bascor, 5660 North Milwaukee Avenue, Chicago, IL 60646, Phone: 312-792-2454
John Mathes & Associates, Inc., 210 West Sand Bank Road, P.O. Box 330, Columbia, IL 62236, Phone: 618-281-7173
Micro-Fiber Laboratories, Inc., 605 Landwehr Road, Northbrook, IL 60062, Phone: 312-498-4127
P.A.T. Services, 508 N.E. Monroe, Peoria, IL 61603, Phone: 309-673-5919
Parkland Laboratories, 2935 Clearlake Avenue, Springfield, IL 62702, Phone: 217-525-2935
Randolph & Associates, Inc., 8901 N. Industrial Rd., Peoria, IL 61615, Phone: 309-692-4160
Randolph & Associates, Inc., 5440 North Cumberland Ave., Suite 111, Chicago, IL 60656, Phone: 312-693-6030
Sea, Earth, & Air Environmental Consult., 5787 N. Lincoln Avenue, Chicago, IL 60659, Phone: 312-878-8337
Stat Analysis Corporation, Chicago Technology Park, 2201 W. Campbell Park Drive, Chicago, IL 60612 Phone: 312-763-3400
Suburban Environmental Consultants, Ltd., 18031 Dixie Highway, Homewood, IL 60430, Phone: 312-335-1807
TEM, Inc., 443 Duane Street, Glen Ellyn, IL 60137, Phone: 312-790-0880
United Analytical Services, Inc., 4410 W. Roosevelt Road, Suite 101, Hillside, IL 60162, Phone: 312-449-0070
ATEC Associates, Inc., 5150 East 65th Street Indianapolis, IN 46220, Phone: 317-849-4990
ATEC Associates, Inc., 1501 E. Main Street, Griffith, IN 46319, Phone: 219-924-0690
Asbestos Compliance Technology, Inc. of Indiana, 5353 N. Tacoma Avenue Indianapolis, IN 46220, Phone: 317-257-5006
Cole Associates Inc. 2211 East Jefferson Boulevard, South Bend, IN 46615 Phone: 219-236-4400
EIS Environmental Engineers, Inc., 1701 North Ironwood Drive, South Bend, IN 46635, Phone: 219-277-5715
Environmental Analytical Laboratories, 314 S. State Avenue, Indianapolis, IN 46201, Phone: 317-299-3618
Micro Air, Inc. 7132 Lakeview Parkway West Drive Indianapolis, IN 46268, Phone: 317-293-1533
Micro Air, Inc. 7132 Lakeview Parkway West Drive Indianapolis, IN 46268 Phone: 317-293-1533
Walker & Ward, 9119 Formington Drive P.O. Box 12015 Evansville, IN 47712 Phone: 812-985-7877
Zimmerlin Consulting Group 3420 East 96th Street, Suite A Indianapolis, IN 46240
ACT, 14853 West 101 Terrace, Lenexa, KS 66215, Phone: 913-492-1337
ALERT Analytical Laboratories, 1900 West 47th Place, Westwood, KS 66205, Phone: 913-831-4516
CHART Services Ltd 12616 W. 62nd Terrace, Suite 118 P.O. Box 18 Shawnee, KS 66216, Phone: 913-268-0715
Certified Environmental Management, Inc. 5613 S. Cunningham Road Gypsum, KS 67448, Phone: 913-536-4226
Hall-Kimbrell Environmental Services Inc., 4840 West 15th Street, Lawrence, KS 66046, Phone: 913-749-2381
Pace Laboratories, Inc., 2005 West 103rd Terrace, Leawood, KS 66206, Phone: 913-341-7800
CRU Incorporated, P.O. Box 24467, Louisville, KY 40224, Phone: 502-426-8860
Chemalytics, Inc., 33 East 7th Street, Covington, KY 41011, Phone: 606-431-6224
Metro Service Laboratories, Inc., 6309 Fern Valley Pass, Louisville, KY 40228, Phone: 502-964-0865
Central Analytical Laboratories, Inc., 2600 Marietta Street, Kenner, LA 70062, Phone: 504-469-3511
Kemron Environmental Services, 16550 Highland Road, Baton Rouge, LA 70810, Phone: 504-293-8650
Sunbelt Associates, Inc., 6961 Mayo Blvd., New Orleans, LA 70126, Phone: 504-256-6798
Waldemar S. Nelson and Company, Inc., 1200 St. Charles Ave., New Orleans, LA 70130, Phone: 504-523-5281
Weintritt Testing Laboratories, Inc., 305 Andrew Guidry Road, Lafayette, LA 70503, Phone: 318-981-1560
Air Quality Consultants, Inc., 406 Libbey Parkway, Weymouth, MA 02189, Phone: 617-337-7320
Briggs Associates, Inc., 400 Hingham Street, Rockland, MA 02370, Phone: 617-871-6040
Certified Engineering & Testing Co., Inc., 25 Mathewson Drive, Weymouth, MA 02189, Phone: 617-337-7887
Con-Test, Inc., 39 Spruce Street, East Longmeadow, MA 01028, Phone: 413-525-1198
Covino Environmental Consultants, Inc., 12 Walnut Hill Park, Woburn, MA 01801, Phone: 617-933-2555
Dennison Environmental, Inc., 35 Industrial Parkway, Woburn, MA 01801, Phone: 617-932-0400
ESA Laboratories, Inc., 43 Wiggins Avenue, Bedford, MA 01730, Phone: 617-275-0100
Enviro-Lab, Inc., 154 Grove Street, Chicopee, MA 01020, Phone: 413-592-0030
Hygeia, Inc., 303 Bear Hill Road, Waltham, MA 02154, Phone: 617-647-9475
Hygienetics Analytical Services, Inc., 150 Causeway Street, Boston, MA 02114, Phone: 617-723-4664
Massachusetts Materials Research, Inc., 241 West Boylston Street, P.O. Box 610, West Boylston, MA 01583, Phone: 617-835-6262
Norwich Laboratories, Inc., 750 North Pleasant St., Amherst, MA 01002, Phone: 413-549-6564
AMA Analytical Services, Inc., 4475 Forbes Boulevard, Lanham, MD 20706, Phone: 800-459-2640
ATEC Associates, Industrial Hygiene Division, 8969 Herrmann Dr., Columbia, MD 21045, Phone: 301-381-0232
Apex Environmental, Inc., 7652 Standish Place, Rockville, MD 20855, Phone: 301-217-9200
Biospherics Incorporated, 12051 Indian Creek Court, Beltsville, MD 20705, Phone: 301-309-3000
Briggs Associates, Inc., 8300 Guilford Road, Suite E, Columbia, MD 21046, Phone: 301-381-4434
Geo-Environmental Services, Inc., 444 North Frederick Ave., Suite L-148, Gaithersburg, MD 20877, Phone: 301-353-0338
Maryland Department of Health and Mental Hygiene, 201 W. Preston Street, P.O. Box 2355, Baltimore, MD 21203, Phone: 301-225-6212
OMC, Inc., 4451 Parliament Place, Lanham, MD 20706, Phone: 202-488-7990
Tracor Technology Resources, Inc., 1601 Research Blvd. Rockville, MD 20850, Phone: 301-984-2741
Allied Engineering, Inc., 11 Columbia Street, Augusta, ME 04330, Phone: 207-623-0298
Balsam Environmental Consultants, Inc., 225 Western Avenue, Augusta, ME 04330, Phone: 603-983-0616
Northeast Test Consultants, 567 Spring Street, Westbrook, ME 04092, Phone: 207-854-3939
Alderink & Associates, Inc., 3221 3 Mile Road NW, Grand Rapids, MI 49504, Phone: 616-791-0730
Asbestos Management Inc., 36700 South Huron Road, Suite 104, New Boston, MI 48164, Phone: 313-961-6135
Clayton Environmental Consultants, Inc., 22345 Roethel Drive, Novi, MI 48050, Phone: 313-344-1770

DeLisle Consulting & Laboratories, Inc., 6946 East N Avenue, Kalamazoo, MI 49001, Phone: 616-343-9698
ERT Testing Services, Inc., 211 Glendale, Suite 425, Highland Park, MI 48203, Phone: 313-865-0600
Environmental Evaluation and Lab Serv., 225 Parsons St., Box 1665, Kalamazoo, MI 49007, Phone: 616-388-8099
IHI-KEMRON, 32740 Northwestern Hwy., Farmington Hills, MI 48018, Phone: 313-626-2426
Industrial Environmental Consult., Ltd., East Line Office Park, 1760 East Grand River, East Lansing, MI 48823, Phone: 517-351-4002
Sierra Analytical & Consulting Services, 307 North First Street, Ann Arbor, MI 48103, Phone: 313-662-1155
Testing Engineers and Consultants, Inc., 1333 Rochester Rd., P.O. Box 249, Troy, MI 48099, Phone: 313-588-6200
Applied Environmental Sciences, Inc., 511 11th Ave. S., Box 220, Minneapolis, MN 55415, Phone: 612-339-5559
Braun Environmental Laboratories, Inc., 6800 South County Road 18, P.O. Box 35106, Minneapolis, MN 55435, Phone: 612-941-5600
Institute For Environmental Assessment, 2829 Verndale Avenue, Anoka, MN 55303, Phone: 612-427-5310
NOVA Environmental Services, Inc., Suite 420, 1107 Hazeltine Boulevard, Chaska, MN 55318, Phone: 612-448-8888
PACE Laboratories, Inc., 1710 Douglas Drive N., Minneapolis, MN 55422, Phone: 612-544-5543
Twin City Testing Corporation, 662 Cromwell Avenue, St. Paul, MN 55114, Phone: 612-649-5000
Baird Scientific, 221 W. Fourth Street, P.O. Box 842, Carthage, MO 64836, Phone: 417-358-5567
IPRSS Asbestos Analysis Labs, Inc., 503 Main Street, Belton, MO 64012, Phone: 816-331-4922
Industrial Testing Laboratories, Inc., 2350 South 7th Blvd., St. Louis, MO 63104, Phone: 314-771-7111
Microscopic Analysis, Inc., 989 Gardenview Office Parkway, St. Louis, MO 63141, Phone: 314-993-2212
Midwest Environmental Testing & Training, 612 West 3rd Street, Unit B, Lee's Summit, MO 64063, Phone: 816-525-6681
University of Missouri—Kansas City, Chemistry Department, Kansas City, MO 64110, Phone: 816-276-2289
Bonner Analytical Testing Company, Rt. 14, Box 509, Hattiesburg, MS 39402, Phone: 601-264-2854
Environmental Protection Systems, 165 Upton Drive, Jackson, MS 39209, Phone: 601-922-8242
Micro-Methods, Inc., 6500 Sunplex, Ocean Springs, MS 39564, Phone: 601-875-6423
Northern Engineering & Testing, Inc., 600 South 25th St., Billings, MT 59107, Phone: 406-248-9161
Asbestos Analysis & Information Service, P.O. Box 837, Four Oaks, NC 27524, Phone: 919-894-2804
Carolina Environmental, 5104 Suite 201-C Western Boulevard, Raleigh, NC 27606, Phone: 919-859-0477
E.I. de Pont de Nemours & Company, Inc., Cape Fear Plant—PD, P.O. Box 2042, Wilmington, NC 28402, Phone: 919-371-4257
EEC, Inc., 2245 North Hills Drive, Suite J, Raleigh, NC 27612, Phone: 919-782-8910
Ecosafe Industrial Hygiene Laboratory, 1713 Chapel Hill Road, Durham, NC 27707, Phone: 919-493-2612
EnviroSciences Inc., 3810 F Merton Drive, Raleigh, NC 27609, Phone: 919-782-1487
Health & Hygiene, Inc., 4605-E Dundas Drive, Greensboro, NC 27407, Phone: 919-854-2303
Law Engineering, 501 Minuet Lane, Charlotte, NC 28210, Phone: 704-523-2022
NSI-ES Analytical Services Laboratory, 2 Triangle Drive, P.O. Box 12313, Research Triangle Park, NC 27709, Phone: 919-549-0611
Quality Analytical Services, Inc., 709 West Johnson St., Raleigh, NC 27603, Phone: 919-839-0757
Roberts Environmental Services, Inc., P.O. Box 308, Swansboro, NC 28584, Phone: 919-393-6565
Soil & Material Engineers, 9800-D Southern Pines Blvd., P.O. Box 7668, Charlotte, NC 28217, Phone: 704-523-4726
TEI Environmental, Inc., 308A Pomona Dr., Greensboro, NC 27407, Phone: 919-852-0318
Amoco Oil Company Mandan Refinery, Mandan Avenue and Old Red Trail, Mandan, ND 58554, Phone: 701-667-2463
CHART Services Ltd, 7912 Davenport Street, Omaha, NE 68114, Phone: 402-393-0155
Applied Occupational Health Systems, 29 River Road, Suite 16, Concord, NH 03301, Phone: 603-228-3610
Balsam Environmental Consultants, Inc., 59 Stiles Road, Salem, NH 03079, Phone: 603-893-0616
New Hampshire Division of Public Health, Public Health Laboratory, 6 Hazen Drive, Concord, NH 03301, Phone: 603-271-4657
Applied Environmental Technology, Inc., 316 Cooper Center, Pennsauken, NJ 08109, Phone: 609-486-9200
Atlantic Environmental, Inc., 2 East Blackwell Street, Suite 24, Dover, NJ 07801, Phone: 201-366-4660
Briggs Associates, Inc., 361 Hanover Street, Portsmouth, NJ 03801, Phone: 603-431-2870
Bulava Environmental, Inc., 13 Hunt Club Rd., Belle Mead, NJ 08502, Phone: 201-874-6207
Clayton Environmental Consultants, Inc., Raritan Center, 160 Fieldcrest Avenue, Edison, NJ 08837, Phone: 201-225-6040
Corning Environmental Services, One Malcolm Ave., Teterboro, NJ 07608, Phone: 201-393-5647
Electron-Microscopy Service Labs, Inc., 108 Haddon Avenue, Westmont, NJ 08108, Phone: 609-858-4800
Exxon Biomedical Sciences, Inc., Industrial Hygiene Analyt Services Lab, Mettlers Road—CN 2350, East Millstone, NJ 08875, Phone: 201-873-6033
Northeastern Analytical Corporation, 4 East Stow Road, Evesham Corp. Center, Marlton, NJ 08053, Phone: 609-654-1441
PMK, Ferris & Perricone, Inc., 516 Bloy Street, Hillside, NJ 07205, Phone: 201-686-0044
Powell Environmental Services, Inc., Suite 9A, Camp Meeting Grounds, Delanco, NJ 08075, Phone: 609-784-8886
Princeton Testing Laboratory, Inc., P.O. Box 3108, Princeton, NJ 08543, Phone: 609-452-9050
Testwell Craig Labs of New Jersey, Inc., 50 Passaic Avenue, Fairfield, NJ 07006, Phone: 201-882-8377
Testwell Craig Testing Labs, Inc., 565 East Harding Highway, Mays Landing, NJ 08330, Phone: 609-625-1700
United States Testing Company, Inc., Environmental Sciences Division, 1415 Park Avenue, Hoboken, NJ 07030, Phone: 201-792-2400
Assaigai Analytical Laboratories, Inc., 7300 Jefferson NE, Albuquerque, NM 87109, Phone: 505-345-8964
New Mexico State University, Electron Microscope Laboratory, Box 3EML, Las Cruces, NM 88003, Phone: 505-646-3734
ASTECO, Incorporated, 4287 Witmer Road, Niagara Falls, NY 14305, Phone: 716-297-5992
ATC Environmental, Inc., 104 East 25th Street, 10th Floor, New York, NY 10010, Phone: 212-353-8280
Adirondack Environmental Services, Inc., 298 Riverside Avenue, P.O. Box 265, Rensselaer, NY 12144, Phone: 518-785-0128
Ambient Labs. Inc., 119 West 23rd Street, New York, NY 10011, Phone: 212-962-4242
Applied GeoServices, Inc., 41 Union Square West, Suite 1125, New York, NY 10003, Phone: 212-633-1113
Brad Associates, 1 Rosanne Court, Lake Ronkonkoma, NY 11779, Phone: 516-467-4539
Buck Environmental Labs., Inc., 100 Tompkins St., Cortland, NY 13045, Phone: 607-753-3403
Buffalo Testing Laboratories, Inc., 902 Kenmore Avenue, Buffalo, NY 14216, Phone: 716-873-2302
Calibrations, Inc., 802 Watervliet Shaker Road, Latham, NY 12110, Phone: 518-786-1865
Certified Engineering & Testing Co., Inc. of Upstate New York, 286 Genesee St., Utica, NY 13502, Phone: 315-732-3826
Chenango Environmental Laboratory, Inc., 350 State Street, Binghamton, NY 13901, Phone: 607-723-8175
Chopra-Lee Laboratory, 1741 Baseline Road, Grand Island, NY 14072, Phone: 716-733-6748
Comprehensive Analytical Group, 147 Midler Park Drive, Syracuse, NY 13206, Phone: 315-432-0855
Eastern Analytical Services, Inc., 4 Westchester Plaza, Elmsford, NY 10523, Phone: 914-939-6992
Environmental Management Systems, Inc., 14 Sarafian Road, New Paltz, NY 12561, Phone: 914-255-1034
Friend Lab Inc., 446 Broad Street, Waverly, NY 14892, Phone: 607-565-2893
Galson Technical Services, Inc., 6601 Kirkville Road, East Syracuse, NY 13057, Phone: 315-432-0506
Hall-Kimbrell Environmental Services Inc., 129-09 Twenty-Sixth Avenue, Flushing, NY 11354, Phone: 718-445-9090

Hazardous Waste Engineering, Consultants, Inc., 47 Hudson St., Ossining, NY 10562, Phone: 914-762-9000
Hygeia, Inc., 276 Fifth Avenue, Suite 503, New York, NY 10001, Phone: 212-545-7822
Independent Asbestos Labs, Inc., 5900 Butternut Drive, East Syracuse, NY 13057, Phone: 315-437-1122
Industrial Testing Laboratories, 50 Madison Avenue, New York, NY 10010, Phone: 212-685-8788
KENRON Environmental Services, Inc., 755 New York Avenue, Huntington, NY 11743, Phone: 516-427-0950
Laboratory Testing Services, 75 Urban Avenue, Westbury, NY 11590, Phone: 516-334-7770
Lozier Laboratories, Inc., 23 North Main Street, Fairport, NY 14450, Phone: 716-388-0050
Moby II, 1615 Ninth Avenue, Bohemia, NY 11716, Phone: 516-467-8477
Monroe Monitoring & Analysis, 215 Alexander Street, Rochester, NY 14607, Phone: 716-546-8580
National Testing Laboratories, Inc., 27-14 39th Avenue, Long Island City, NY 11101, Phone: 718-784-2626
New York City, Dept. of General Services Laboratory, 480 Canal Street, New York, NY 10013, Phone: 212-925-5326
OBG Laboratories, Inc., 1304 Buckley Road, Syracuse, NY 13221, Phone: 315-451-4700
Pedneault Associates, Inc., 1615 Ninth Avenue, Bohemia, NY 11716, Phone: 516-467-8477
Professional Service Industries, Inc., Pittsburg Testing Laboratory Division, 423A New Karner Road, Albany, NY 12205, Phone: 518-452-0777
R-C-G BOCES Risk Management Services Lab., P.O. Box 26, Brookview Road, Brookview, NY 12026, Phone: 518-732-7266
Suffolk County Public & Env. Health Lab., Bldg. 77, Veterans Memorial Highway, Hauppauge, NY 11788, Phone: 516-360-5528
TAKA Asbestos Analytical Services, Inc., 6 Pine Hill Court, Northport, NY 11768, Phone: 516-261-2117
TAKA Asbestos Analytical Services, Inc., Environmental Testing, 324 Larkfield Road, E. Northport, NY 11731, Phone: 516-261-2117
Testwell Craig Laboratories, Inc., 47 Hudson Street, Ossining, NY 10562, Phone: 914-736-1776
Testwell Craig Labs of Albany, Inc., 518 Clinton Avenue, , Albany, NY 12206, Phone: 518-436-4114
Testwell Craig Peters, Inc. 127 Seeley Road, Syracuse, NY 13224, Phone: 315-446-0008
Affiliated Environmental Services, Inc., 3606 Venice Road, Sandusky, OH 44870, Phone: 419-627-1976
Alloway Testing 1325 N. Cole St., Lima, OH 45801, Phone: 419-223-1362
American Analytical Laboratories Inc., 100 Lincoln Street, Akron, OH 44308, Phone: 216-535-1300
Asbestos Compliance Technology, Inc., 4015 Cherry Street, Cincinnati, OH 45223, Phone: 513-741-1331
Bruce Menkel and Associates, Inc. 235 Industrial Drive, P.O Box 159, Franklin, OH 45005, Phone: 513-746-9300
DataChem. Inc., 4388 Glendale-Milford Road, Cincinnati, OH 45242, Phone: 513-733-5336
Deyor Laboratories, Inc., Industrial Laboratory, 7655 Market Street, Suite 2500, Youngstown, OH 44512, Phone: 216-758-5788
Electro-Analytical, Inc., 7118 Industrial Park Blvd., Mentor, OH 44060, Phone: 216-951-3541
Environmental Consultants, Inc., 1810 N. 12th Street, P.O. Box 2104, Toledo, OH 43603, Phone: 419-241-7127
Environmental Enterprises Inc., 10147 Springfield Pike, Cincinnati, OH 45215, Phone: 513-772-2818
EasTek, 17960 Englewood Drive, Suite E, Middleburg Hts., OH 44130, Phone: 216-826-4420
Gelles Laboratories, Inc., 2836 Fisher Road, Columbus, OH 43204, Phone: 614-276-2957
Hayden Environmental Group, Inc., 6015 Manning Road, Miamisburg, OH 45342, Phone: 513-866-5908
Martin Marietta Energy Systems, Inc., Portsmouth Gaseous Diffusion Plant, P.O. Box 628, Piketon, OH 45661, Phone: 614-289-2331
Micro View Consulting, 416 E. Catawba Ave, Akron, OH 44301, Phone: 216-773-8330
Monarch Analytical Laboratories, P.O. Box 2990, Toledo, OH 43606, Phone: 419-535-1780
National Petrographic Services, 4484 Willowbrook Road, Columbus, OH 43220, Phone: 614-459-7360
PEI Associates, Incorporated, 11499 Chester Road, Cincinnati, OH 45246, Phone: 513-782-4700
Ricerca, Inc., 7528 Auburn Road, P.O. Box 1000, Painesville, OH 44077, Phone: 216-357-3261
SEA Inc., 7349 Worthington-Galena Road, Columbus, OH 43085, Phone: 614-888-4160
Stilson Laboratories, Inc., 170 N. High St., Columbus, OH 43215, Phone: 614-228-2900
Tremco Inc., 10701 Shaker Blvd., Cleveland, OH 44104, Phone: 216-292-5000
Tri State Laboratories, Inc., 19 East Front Street, Youngstown, OH 44503, Phone: 216-746-8800
Wadsworth/Alert Laboratory, 5405 E. Schaaf Road, P.O. Box 31454, Cleveland, OH 44131, Phone: 216-642-0151
Zimmerlin Consulting Group, 3082 Brown Park Drive, Suite D, Hilliard, OH 43026, Phone: 614-876-1153
Diversified Environmental Technologies, 132 W. Main Street, Suite 110, Norman, OK 73069, Phone: 405-360-7929
Duncan Public Schools, 1706 Spruce/P.O. Box 1548, Duncan, OK 73533, Phone: 405-255-4725
Marshall Environmental Management, Inc., 3801 N.W. 63rd Street, Suite 162, Oklahoma City, OK 73116, Phone: 405-842-3415
Occupational Safety and Health Consultants Incorporated, 206 N. Armstrong, Bixby, OK 74008, Phone: 918-366-4834
Environmental Consulting Services, Inc., 1259 Willamette Street, Eugene, OR 97401, Phone: 503-345-6790
Environmental Consulting Services, Inc., 3601 N.W. Yeon, Suite 134, Portland, OR 97210, Phone: 503-227-7210
Marine and Environmental Testing, Inc., P.O. Box 1142, Beaverton, OR 97075, Phone: 503-286-2950
Oregon Analytical Laboratory, 14655 SW Old Schools Ferry Road, Beaverton, OR 97007, Phone: 503-644-5300
Professional Service Industries, Inc., 611 S.E. Harrison Street, Portland, OR 97214, Phone: 503-232-2183
AGX, Inc., Freedom Professional Building, Suite 3B, 1341 Old Freedom Road, Mars, PA 16046, Phone: 412-776-1905
Accredited Environmental Tech., Inc., 28 North Pennell Road, Lima, PA 19037, Phone: 215-891-0114
Alcoa Environmental Health Laboratory, Alcoa Technical Center, Alcoa Center, PA 15069, Phone: 412-337-2154
Allegheny Asbestos Analysis, Inc., 300 Mt. Lebanon Blvd., Suite 2217, Pittsburgh, PA 15234, Phone: 412-563-3744
Allegheny Mountain Research, Inc., Environmental Consultants, R.D.I., Box 243A, Berlin, PA 15530, Phone: 814-267-4404
Altest Environmental Laboratories, 28 W. Main St., Plymouth, PA 18651, Phone: 717-779-5377
BCM Engineers Inc., One Plymouth Meeting, Plymouth Meeting, PA 19462, Phone: 215-825-3600
BCM Engineers Inc., 5777 Baum Boulevard, Pittsburgh, PA 15206, Phone: 412-361-8000
Cumberland Analytical Laboratories, Inc., 56 N. Second St., Chambersburg, PA 17201, Phone: 717-263-5943
Eagle Industrial Hygiene Assoc., Inc., 405 Masons Mill Road, Huntingdon Valley, PA 19006, Phone: 215-657-2261
Free-Col Laboratories, Inc., P.O. Box 557, Cotton Road, Meadville, PA 16335, Phone: 814-724-6242
Galson Technical Services, Inc., 5170 Campus Drive, Plymouth Meeting, PA 19462, Phone: 215-834-7288
Lancaster Laboratories, Inc., 2425 New Holland Pike, Lancaster, PA 17601, Phone: 717-656-2301
Lehigh Valley Analytics, a division of Laboratory Resources, Inc., 60 West Broad Street, Bethlehem, PA 18018, Phone: 215-866-4434
MDS Laboratories, 4418 Pottsville Pike, Reading, PA 19605, Phone: 215-921-9191
Pennsylvania DER Bureau of Laboratories, 3rd & Reily St., P.O. Box 1467, Harrisburg, PA 17120, Phone: 717-787-4669
Professional Service Industries, Inc., Pittsburgh Testing Laboratory Division, 850 Poplar Street, Pittsburgh, PA 15220, Phone: 412-922-4000
RJ Lee Group, Inc., 350 Hochberg Road, Monroeville, PA 15146, Phone: 412-325-1776
SSI, Environmental Consultants, Expressway Park, Gulf Lab Road—Harmarville, Pittsburgh, PA 15238, Phone: 412-295-2399
Spotts, Stevens and McCoy, Inc., 345 North Wyomissing Blvd., P.O. Box 6307, Reading, PA 19610, Phone: 215-376-6581
Volz Environmental Services, Inc., 3010 William Pitt Way, Pittsburgh, PA 15238, Phone: 412-828-3150
Wright Lab Services, Inc., 34 Dogwood Lane, Middletown, PA 17057, Phone: 717-944-5541

Analytical Testing Services, Inc., 180 Wooden Street, Pawtucket, RI 02860, Phone: 401-723-7978
R.I. Analytical Laboratories, Inc., 1040 Mineral Spring Ave., North Providence, RI 02904, Phone: 401-725-4190
Azimuth, Inc., 9229 University Blvd., Charleston, SC 29418, Phone: 803-553-9450
Davis & Floyd, Inc., 816 East Durst Street, Greenwood, SC 29646, Phone: 803-229-5211
Environmental Engineering Company, Inc., 500 Rivermont Road, Columbia, SC 29210, Phone: 803-256-7846
Envirosciences, Inc., 187 N. Church Street, Suite 705, Spartanburg, SC 29301, Phone: 803-585-4900
Soil & Material Engineers, 840 Low Country Boulevard, Mt. Pleasant, SC 29464, Phone: 803-884-0005
ATC Environmental, Inc., 1515 East Tenth Street, Sioux Falls, SD 57103, Phone: 605-336-0555
Certified Engineering & Testing Co., Inc., 2600 Poplar Avenue, Suite 314, Memphis, TN 38112, Phone: 901-458-0660
Schneider Services International Inc., Chem Lab MS-340, Arnold AFB, TN 37389, Phone: 615-454-6573
Specialized Assays, Inc., 210 12th Avenue S. Nashville, TN 37203, Phone: 615-255-5788
ACI & Associates, 2100 Road to Six Flags, Arlington, TX 76011, Phone: 817-282-9929
ATEC Associates, Inc., 11356 Mathis Avenue, Dallas, TX 75229, Phone: 219-243-8931
Aegis Associates, 44 East Ave., Suite 100, Austin, TX 78701, Phone: 512-474-6769
Aegis Associates—El Paso, 1280 Hawkins, Suite 120, El Paso, TX 79925, Phone: 915-592-6556
Building Environmental Systems, Inc., 3501 N. MacArthur, Suite 400B, Irving, TX 75062, Phone: 214-257-0787
E.O.S. Engineers & Laboratories, Inc., 1450 Empire Central, Suite 110, Dallas, TX 75247, Phone: 214-631-0962
East Texas Testing Laboratory, Inc., 1717 E. Erwin, Tyler, TX 75702, Phone: 214-595-4421
Environmental Research Institute, Inc., P.O. Box 204, Tyler, TX 75710, Phone: 214-877-9314
Envirotests, Inc., 9504 Richmond, Suite 414, Suite 414, Houston, TX 77063, Phone: 713-782-4101
Geo-Environmental Services, Inc., Austin, TX Laboratory, 7801 N. Lamar, Suite 185E, Austin, TX 78752, Phone: 512-454-5222
Hanby Analytical Laboratories, Inc., 4400 South Wayside #107, Houston, TX 77087, Phone: 713-649-4500
Hanby Analytical Laboratories, Inc., Mobile Unit, 4400 S. Wayside, Suite 107, Houston, TX 77087, Phone: 723-649-4500
Jimmie Ann Bolton, P.O. Box 49079, Austin TX 78765, Phone: 512-282-5710
Kiser Engineering, Inc., [illegible] N. River St., Seguin, TX 78155, Phone: 512-372-2570
Law Engineering, Inc., 5500 Guhn Road, Houston, TX 77040, Phone: 713-939-7161
Maxim Engineers, Inc., 2342 Fabens, Dallas, TX 75229, Phone: 214-247-7575
Maxim Engineers, Inc., 11601 North Lamar, Austin, TX 78753, Phone: 512-837-8851
McClelland Management Services, Inc., 6100 Hillcroft, Suite 220, Houston, TX 77081, Phone: 995-9000
Microanalysis Laboratory D/FW-P.E.I., P.O. Box 612283 (Trailer #12), D/FW Airport, TX 75261, Phone: 214-574-1700
Microanalysis Laboratory, Inc., 8499 Greenville Avenue, Suite 201, Dallas, TX 75231, Phone: 214-340-0890
NUS Corporation, 900 Gemini Avenue, Houston, TX 77058, Phone: 713-488-1810
North American Analytical Lab, P.O. Box 6865, Abilene, TX 79605, Phone: 915-691-0172
Occupational Hygiene, Inc., P.O. Box 181796, Dallas, TX 75218, Phone: 214-324-3813
Raba-Kistner Consultants, Inc., 12821 West Golden Lane, San Antonio, TX 78249, Phone: 512-699-9090
Regional Testing Lab, Inc., 318 W. Chestnut, Suite 204, Denison, TX 75020, Phone: 214-463-6666
Southwestern Public Service Co., System Lab, P.O., Box 1261, Amarillo, TX 79170, Phone: 806-381-6360
Technology Serving People, Inc., 5373 W. Alabama, Suite 450, Houston, TX 77056, Phone: 713-621-9067
Texaco Chemical Co., PTS Laboratory, 6001 Highway 366, P.O. Box 847, Port Neches, TX 77651, Phone: 409-724-4460
Texas Department of Health Laboratory, 1100 West 49th Street, Austin, TX 78756, Phone: 512-458-7318
Texas Research Institute, 9063 W. Bee Caves Road, Austin, TX 78733, Phone: 512-263-2101
University of Texas, Health Center, Dept. of Cell Biology & Enviro. Sciences, P.O. Box 2003, Tyler, TX 75710, Phone: 214-877-7554
DataChem, Inc., 960 West LeVoy Drive, Salt Lake City, UT 84123, Phone: 801-266-7700
Dixon Information Inc., 78 West 2400 South, South Salt Lake City, UT Phone: 801-486-0800
Professional Services Industries, Inc., 2955 South West Temple, St., Salt Lake City, UT 84115, Phone: 801-484-8827
A.P. Meyre and Associates, Inc., 6849 Old Dominion Drive, Suite 228, McLean, VA 22101, Phone: 703-734-9093
ANALYTICS LABORATORY, INC., 1415 Rhoadmiller, Street, Richmond, VA 23220, Phone: 804-353-8973
ANALYTICS LABORATORY, INC., 205 South Whiting Street, Suite 405, Alexandria VA 22304, Phone: 703-751-3803
ANALYTICS LABORATORY, INC., 4625 Pembroke Lake Circle, Virginia Beach, VA 23455, Phone: 804-857-0075
American Medical Laboratories, Inc., 11091 Main Street, Fairfax, VA 22030, Phone: 703-691-9100
American Medical Laboratories, Inc., 2000 Bremo Road, #204 Richmond Medical Park, Richmond, VA 23226, Phone: 804-282-1324
Blue Ridge Analytical, 202 Bishop Road, Blacksburg, VA 24060, Phone: 703-951-9263
Marine Chemist Service, Inc., 11850 Tug Boat Lane, Newport News, VA 23606, Phone: 804-873-0933
Pacific Environmental Services, Inc., 11440 Isaac Newton Square, Suite 209, Reston, VA 22090, Phone: 703-471-8383
RJ Lee Group, Inc., Washington, DC Laboratory, 10366 Battleview Parkway, Manassas, VA 22110, Phone: 703-366-7860
Schneider Laboratories, Inc., 1427 West Main Street, Richmond, VA 23220, Phone: 804-353-6778
Scientific and Environmental, 202 Bishop Road, Blacksburg, VA 24060, Phone: 703-951-9263
Versar Inc., 6850 Versar Center, Springfield, VA 22151, Phone: 703-750-3000
Washington Analytical Lab of VA, Inc., 14214 Coda Place, Chantilly, VA 22021, Phone: 703-631-6868
Washington Analytical Lab of VA, Inc., 14210 Coda Place, Chantilly, VA 22021, Phone: 703-631-6870
Hess Oil Virgin Islands Corp. (HOVIC), P.O. Box 127, Kingshill, St. Croix, VI 00850, Phone: 809-778-4314
Shelburne Laboratories, Inc., P.O. Box 9479, 74 Ethan Allen Drive, S. Burlington, VT 05403, Phone: 802-985-3379
Amtest, Inc., 14603 NE 87th St., Redmond, WA 98052, Phone: 206-885-1664
EasTek, 12822 Gateway Drive, Seattle, WA 98168, Phone: 303-425-0013
Hanford Environmental Health Foundation, NHS, Inc., 805 Goethals Drive, Richland, WA 99352, Phone: 509-376-6980
Hanford Environmental Health Foundation, NHS, Inc., 2950C George Washington Way, Richland, WA 99352, Phone: 509-376-6980
M & M Environmental, Inc., 3902 North 34th Street, Tacoma, WA 98407, Phone: 206-572-2772
Microlab Northwest, 7609 140th Pl. N.E., Redmond, WA 98052, Phone: 206-885-9419
Puget Sound Naval Shipyard, Code 1343, Bremerton, WA 98314, Phone: 206-476-6092
C. G. Technologies, Inc., University Research Park, 505 Science Drive, Suite D, Madison, WI 53711, Phone: 608-271-2292
Chem-Bio Corporation, 140 East Ryan Road, Oak Creek, WI 53154, Phone: 414-764-7870
Northland Environmental Services, Inc., 15 Park Ridge Drive, P.O. Box 909, Stevens Point, WI 54481 Phone: 715-341-9699
Wausau Insurance Companies, Environmental Health Laboratory, 2000 Westwood Drive, Wausau, WI 54401, Phone: 715-842-6810
West Allis Memorial Hospital, Industrial Toxicology Laboratory, 8901 West Lincoln Avenue, West Allis, WI 53227, Phone: 414-546-6313
Wisconsin Occupational Health Laboratory, 979 Jonathan Drive, Madison, WI 53713, Phone: 608-263-6550
Air-Quality Analysis, Inc., 1337 Perry Ave., Morgantown, WV 26505, Phone: 304-599-0023
Asbestos Laboratory Division—P.H.L., 132 Oakwood Road, Charleston, WV 25314, Phone: 304-342-6424
Chatfield Technical Consulting Limited, 2071 Dickson Road, Mississauga, Ontario, L5B 1Y8, CANADA, Phone: 416-896-7611
McMaster University, Occup. Health Lab., 1200 Main Street West, Hamilton, Ontario L8N 3Z5, CANADA, Phone: 416-525-9140
Pinchin Harris Holland Associates Ltd., #200-1285 West Pender Street, Vancouver, B.C., V6E, 4B1, CANADA, Phone: 604-669-5979

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National Oceanic and Atmospheric Administration

Membership of the National Oceanic and Atmospheric Administration Performance Review Boards

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of membership of NOAA performance review boards.

SUMMARY: In conformance with the Civil Service Reform Act of 1978, 5 USC, 4314(c)(4), NOAA announces the appointment of persons to serve as members of NOAA Performance Review Boards (PRB). The NOAA PRB's are responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and making written recommendations to the appointing authority on SES retention and compensation matters, including performance-based pay adjustments, awarding of bonuses and amounts, and initial recommendations for potential rank awards. The appointment of these members to the NOAA PRB's will be for periods of 24 months service beginning August 31, 1989.

DATE: The effective date of service of appointees to the NOAA Peformance Review Board is August 31, 1989.

FOR FURTHER INFORMATION CONTACT: John Innocenti, Chief, Personnel Division, Office of Administration, NOAA, 6010 Executive Boulevard, Rockville, Maryland 20852, (301) 443-8811.

SUPPLEMENTARY INFORMATION: The names and titles of the members of the NOAA PRB's (NOAA officials unless otherwise identified) are set forth below:

Dennis F. Geer, Director, Office of Administration
Curtis T. Hill, Director, Mountain Administrative Support Center
Kelly C. Sandy, Director, Western Administrative Support Center
Robert S. Smith, Director, Eastern Administrative Support Center
Donald E. Humphries, Director, National Capital Administrative Support Center
Thomas A. Campbell, General Counsel
Lorretta F. Gribbin, Director, Office of Legislative Affairs
J. Roy Spradley, Jr., Special Advisor, Office of Assistant Secretary for Oceans and Atmosphere
Jay S. Johnson, Deputy General Counsel for Fisheries, Enforcement and Regions
William H. Hooke, Executive Director, Office of the Chief Scientist
Henry R. Beasley, Director, Office of Protected Resources, NMFS
Nancy Foster, Director, Office of Protected Resources, NMFS
Ellsworth C. Fullerton, Director, Southwest Region, NMFS
Morris M. Pallozzi, Director, Office of Enforcement, NMFS
Richard B. Roe, Director, Northeast Region, NMFS
Rolland A. Schmitten, Director, Northwest Region, NMFS
John J. Carey, Deputy Assistant Administrator for Ocean Services and Coastal Zone Management
Bruce C. Douglas, Chief, Geodetic Research and Development Laboratory, National Ocean Service (NOS)
Charles N. Ehler, Director, Office of Oceanography and Marine Assessment, NOS
Frank W. Maloney, Chief, Aeronautical Charting Division, NOS
Andrew Robertson, Chief, Ocean Assessments Division, NOS
Kenneth D. Hadeen, Director, National Climatic Data Center, National Environmental Satellite, Data, and Information Service (NESDIS)
E. Larry Heacock, Director, Office of Satellite Operations, NESDIS
Russel Koffler, Deputy Assistant Administrator, Satellite and Information Services, NESDIS
Gregory W. Withee, Director, National Oceanographic Data Center, NESDIS
Richard P. Augulis, Director, Central Region, National Weather Service (NWS)
William D. Bonner, Director, National Meteorological Center, NWS
Michael D. Hudlow, Director, Office of Hydrology, NWS
Ronald D. McPherson, Deputy Assistant Administrator for Weather Services
Ronald J. Lavoie, Chief, Program Requirements and Planning Division, NWS
Douglas H. Sergeant, Director, Office of Systems Development, NWS
Walter Telesetsky, Director, Office of Systems Operations, NWS
Hugo F. Bezdek, Director, Atlantic Oceanographic and Meteorological Laboratories, Office of Oceanic and Atmospheric Research (OAR)
Kirk Bryan, Supervisory Research Meteorologist, Geophysical Fluid Dynamics Laboratories, OAR
J. Michael Hall, Director, Office of Climatic and Atmospheric Research, OAR
Robert J. Mahler, Deputy Director, Environmental Research Laboratories, OAR
Jerry D. Mahlman, Director, Geophysical Fluid Dynamics Laboratories, OAR
Syukuro Manabe, Supervisory Research Meteorologist, Geophysical Fluid Dynamics Laboratories, OAR
Ned A. Ostenso, Director, Office of Oceanic Research Programs, OAR
Joseph E. Clark, Deputy Director, National Technical Information Service, Department of Commerce (DOC)
David Farber, Deputy Director, Office of Procurement and Administrative Services, DOC
Frederick T. Knickerbocker, Executive Director, Economic Affairs, DOC
Roy R. Mullen, Associate Chief, National Mapping Division, United States Geological Survey, Department of Interior
Joe D. Simmons, Deputy Director, Center for Basic Standards, National Institutes of Science and Technology, DOC.

Date: July 14, 1989.

B. Kent Burton,
Assistant Secretary for Oceans and Atmosphere.

[FR Doc. 89-17540 Filed 7-26-89; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before August 28, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested,

e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: July 21, 1989.

Carlos U. Rice,

Director, for Office of Information Resources Management.

Office of Elementary and Secondary Education

Type of Review: Extension.
Title: Application for Grants Under the Law-Related Education Program.
Frequency: Annually.
Affected Public: State or local governments; Non-profit institutions.
Reporting Burden:
Responses: 90.
Burden Hours: 3,600.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by state or local governments and non-profit institutions to apply for funding under the Law-Related Education Program. The Department uses the information to make grant awards.

Type of Review: New.
Title: Drug-Free Schools and Communities Program—Federal Activities Grants.
Frequency: Annually.
Affected Public: State or local governments; Non-profit institutions.
Reporting Burden:
Responses: 600.
Burden Hours: 11,400.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0
Abstract: This form will be used by state or local governments and non-profit institutions to apply for grants under the Drug-Free Schools and Communities Act. The Department uses the information to make grant awards.

Type of Review: Extension.
Title: Drug-Free Schools and Communities Program—Training and Demonstration Grants Institutions of Higher Education.
Frequency: Annually.
Affected Public: Non-profit institutions.
Reporting Burden:
Responses: 600.
Burden Hours: 11,400.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by non-profit institutions to apply for funding under the Drug-Free Schools and Communities Program. The Department uses the information to make grant awards.

[FR Doc. 89-17514 Filed 7-26-89; 8:45 am]

BILLING CODE 4000-1-M

Office of Postsecondary Education

Perkins Loan (Formerly The National Direct Student Loan), College Work-Study, and Supplemental Educational Opportunity Grant Programs

AGENCY: Department of Education.

ACTION: Notice of closing date for filing the fiscal operations report and application to participate in the Perkins Loan, College Work-Study (CWS), and Supplemental Educational Opportunity Grant (SEOG) Programs.

SUMMARY: The Secretary gives notice to institutions of higher education of the deadline for an institution to apply for fiscal year 1990 funds—for use in the 1990-91 award year—under the Perkins Loan, CWS and SEOG programs. Under these programs, the Secretary allocates funds to institutions for students who need financial aid to meet the costs of postsecondary education. An institution is not required to establish eligibility prior to applying for funds. Institutions will be notified of the closing date for establishing institutional eligibility to participate in the Perkins Loan, CWS, and SEOG programs through a separate notice in the **Federal Register**.

The Secretary further gives notice that an institution that had a Perkins Loan fund or expended CWS of SEOG funds during the 1988-89 award year is required to report its program expenditures as of June 30, 1989, to the Secretary.

The Perkins Loan, CWS, and SEOG programs are authorized by Parts E, C, and Part A Subpart 2, respectively, of title IV of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1087aa-1087ii, 42 U.S.C. 2751-2756b; and 20 U.S.C. 1070b-1070b-3.)

Closing Date: An institution may submit its 1988-89 Fiscal Operations Report and the 1990-91 Application to Participate in the Perkins Loan, College Work-Study and Supplemental Educational Opportunity Grant Programs (FISAP-ED) FORM 646-1; OMB No. 1840-0073) by—

(1) Submitting the completed data cells on the paper form [ED Form 646-1];

(2) Submitting the completed data cells on a data diskette provided by the Department;

(3) Creating a tape from data stored in a pre-defined format on a mainframe computer, and submiting that tape; or

(4) Transmitting the data from a personal or mainframe computer through a modem.

To ensure consideration for 1990-91 funds:

(1) An institution that has been given permission by the Department to submit a paper FISAP must submit it by September 8, 1989.

(2) An institution that is submitting an electronic FISAP either by a data diskette or tape, or by modem, must submit it by September 29, 1989.

FISAPs Delivered by Mail: A paper FISAP (ED Form 646-1) sent by mail must be addressed to the U.S. Department of Education, Office of Student Financial Assistance, Division of Program Operations and Systems, Campus-Based Programs Branch, 400 Maryland Avenue, SW. (Room 4621, Regional Office Building 3), Washington, DC 20202-5452.

A diskette or tape containing FISAP data must be addressed to Electronic FISAP, c/o Data Transformation Corporation, 8121 Georgia Avenue—Suite 300, Silver Spring, Maryland 20910.

An institution must show proof of mailing its FISAP. Proof of mailing consists of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (2) a legibly dated U.S. Postal Service postmark, (3) a dated shipping label, invoice, or receipt from a commercial carrier, or (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If a FISAP is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provided a dated postmark. Before relying on this method, an institution should check with its local post office. An institution in encouraged to use certified or a least first-class mail.

FISAPs Delivered by Hand: A FISAP that is hand delivered must be taken to the U.S. Department of Education, Office of Student Financial Assistance, Division of Program Operations and Systems, Campus-Based Programs Branch, 7th and D Streets, SW., Room 4621, Regional Office Building 3, Washington, DC.

A diskette or tape containing FISAP data must be taken to Data Transformation Corporation, 8121 Georgia Avenue—Suite 300, Silver Spring, Maryland.

Hand-delivered FISAPs, diskettes, or tapes will be accepted between 8:00 a.m. and 4:30 p.m. daily [Eastern Daylight Time], except Saturdays, Sundays and Federal holidays. A FISAP that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

FISAPs Delivery Electronically: A FISAP that is delivered electronically must be transmitted by either a personal or mainframe computer to the host ED computer using a modem. In addition, one original completed signature page and one copy of the completed signature page from ED Form 646-1 must be submitted under separate cover to Electronic FISAP, c/o Data Transformation Corporation, 8121 Georgia Avenue—Suite 300, Silver Spring, Maryland 20910, by September 29, 1989.

FISAP Information: FISAPs were mailed by the Campus-Based Program Branch in late July. An institution must prepare and submit its FISAP in accordance with the instructions included in the package.

The program information package is intended to aid applicants in applying for assistance under these programs. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations governing the programs.

Applicable Regulations: The following regulations are applicable to these programs:

Perkins Loan—34 CFR Parts 674 and 668.
College Work-Study—34 CFR Parts 675 and 668.
Supplemental Educational Opportunity Grant—34 CFR Parts 676 and 668.

Further Information: For further information or to request a FISAP, contact Ms. Gloria Easter, Chief, Financial Management Section, Division of Program Operations and Systems, Office of Student Finanical Assistance, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 4621, ROB-3), Washington, DC 20202-5452. Telephone (202) 732-3758.

(20 U.S.C. 1087aa et. seq.; 42 U.S.C. 2751 et seq.; and 20 U.S.C. 1070b et seq.)

Dated: July 21, 1989.

James B. Williams,

Acting Assistant Secretary for Postsecondary Education.

(Catalog of Federal Domestic Assistance Nos. 84.038, Perkins Loan Program; 84.033, College Work-Study Program; and 84.007, Supplemental Educational Opportunity Grant Program)

[FR Doc. 89-17515 Filed 7-26-89; 8:45 am]

BILLING CODE 4000-01-M

Stafford Loan Program, SLS Program, Plus Program, and Consolidation Loan Program

AGENCY: Department of Education.

ACTION: Notice of Special Allowance for Quarter Ending June 30, 1989.

The Assistant Secretary for Postsecondary Education announces a special allowance to holders of eligible loans made under the Stafford Loan Program (formerly the Guaranteed Student Loan Program), the Supplemental Loan for Students (SLS) Program, the PLUS Program or the Consolidaton Loan Program. This special allowance is provided for under section 438 of the Higher Education Act (the Act), as amended (20 U.S.C. 1087-1).

Except for loans subject to section 438(b)(2)(B) of the Act, 20 U.S.C. 1087-1(b)(2)(B), for the quarter ending March 31, 1989, the special allowance will be paid at the following rates:

Applicable interest rate percent	Annual special allowance rate percent	Special allowance rate percent for quarter ending June 30, 1989
I. Stafford, PLUS or Consolidation loans made prior to October 1, 1981:		
7	5.25	1.3125
9	3.25	0.8125
II. Stafford, SLS or PLUS loans made on or after October 1, 1981, but prior to November 16, 1986, for periods of enrollment beginning prior to November 16, 1986; Consolidation loans made on or after October 1, 1981, but prior to November 16, 1986:		
7	5.23	1.3075
8	4.23	1.0575
9	3.23	0.8075
12	0.23	0.0575
14	0.00	0.00
III. Stafford loans made on or after November 16, 1986, or made for periods of enrollment beginning on or after November 16, 1986; SLS or PLUS loans made at a fixed rate of interest either on or after November 16, 1986, or for periods of enrollment beginning on or after November 16, 1986; Consolidation loans made on or after November 16, 1986:		
7	4.98	1.245
8	3.98	0.995
9	2.98	0.745
10	1.98	0.495
11	0.98	0.245
12	0.00	0.000
13	0.00	0.000
14	0.00	0.000

The Assistant Secretary determines the special allowance rate in the manner specified in the Act, for loans at each applicable interest rate, by making the following four calculations:

(a) *Step 1.*

Determine the average bond equivalent rate of the 91-day Treasury bills auctioned during the quarter for which this notice applies (8.73 percent for the quarter ending June 30, 1989);

(b) *Step 2.*

Subtract from that average the applicable interest rate of loans for which a holder is requesting payment;

(c) *Step 3.*

(1) Add 3.5 percent to the remainder, and, in the case of loans made before October 1, 1981, round the sum upward to the nearest one-eighth of one percent; or

(2) Add 3.25 percent in the case of (i) Stafford loans made on or after November 16, 1986, or made for periods of enrollment beginning on or after November 16, 1986; (ii) SLS or PLUS loans made at a fixed rate of interest either on or after November 16, 1986, or for periods of enrollment beginning on or after November 16, 1986, or (iii) Consolidation loans made on or after November 16, 1986; and

(d) *Step 4.*

Divide the resulting percent in Step 3 (either (c)(1) or (c)(2), as applicable) by four.

FOR FURTHER INFORMATION CONTACT: Ralph B. Madden, Program Analyst, Guaranteed Student Loan Branch, Division of Policy and Program Development, Department of Education on (202) 732-4242.

Dated: July 21, 1989.

James B. Williams,

Acting Assistant Secretary for Postsecondary Education.

(Catalog of Federal Domestic Assistance No. 84.032, Guaranteed Student Loan Program and PLUS Program)

[FR Doc. 89-17516 Filed 7-26-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL87-22-004, et al.]

Vermont Yankee Nuclear Power Corporation et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Vermont Yankee Nuclear Power Corporation

[Docket No. EL87-22-004]

July 17, 1989.

Take notice that on July 10, 1989, Vermont Yankee Nuclear Power Corporation (Vermont Yankee) submitted for filing, an amendment to the Power Contracts under which it sells electricity for resale to nine New England utilities, to eliminate the equity reopener provision, in compliance with the Commission's Opinion No. 285-B in this docket.

Comment date: August 2, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Snake River Power Association

[Docket No. EL87-39-000]

July 17, 1989.

Take notice that on June 27, 1989, Snake River Power Association, Inc. (SRPA) filed with the Commission a Lease Agreement with Bonneville Power Administration (BPA) for the lease of the Fall River Transmission Line. Under the terms of the Lease, BPA will be responsible for the use, operation, maintenance, repair and replacement of the Line. SRPA requests a declaratory order disclaiming Commission jurisdiction over SRPA. Alternatively, if the Commission determines that SRPA is subject to its jurisdiction, SRPA requests that the Commission approve the lease agreement. Additionally, in the event the Commission finds that SRPA is subject to its jurisdiction, SRPA requests waiver of certain Commission regulations.

Comment date: August 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Company of New Mexico

[Docket No. ER89-533-000]

July 17, 1989.

Take notice that on July 3, 1989, Public Service Company of New Mexico (PNM) submitted for filing an Economy Energy Agreement between PNM and the City of Glendale, California (Glendale). Under the Agreement PNM and Glendale, will make economy energy available to each other at rates reflecting current market conditions.

Copies of the filing have been served upon Glendale and the New Mexico Public Service Commission.

Comment date: August 2, 1989, in accordance with Standard Paragraph E at the end of this document.

4. Gulf States Utilities Company

[Docket No. ER89-536-000]

July 17, 1989.

Take notice that on July 6, 1989, Gulf States Utilities Company tendered for filing an Interchange Agreement Between Gulf States Utilities Company and the Board of Public Utilities of Springfield, Missouri, and associated Service Schedules ES-Emergency Service, RE—Replacement Energy, and ECON—Economic Energy Supply.

The purpose of the Interchange Agreement and associated service schedules is to allow Gulf States and the Board of Public Utilities of Springfield, Missouri to engage in emergency service, replacement energy, and economic energy transactions.

Gulf States requests an effective date for the Interchange Agreement and the service schedules of June 12, 1989, the date as of which they were executed.

A copy of the filing was served on the Board of Public Utilities of Springfield, Missouri.

Comment date: August 2, 1989, in accordance with Standard Paragraph E at the end of this document.

5. The Montana Power Company

[Docket No. ER89-530-000]

July 17, 1989.

Take notice that on June 30, 1989, The Montana Power Company ("Montana") tendered for filing with the Commission pursuant to 18 CFR 35.12 (1989) a "Power Sales Agreement Between The Montana Power Company and Department of Water and Power of the City of Los Angeles". Montana requests that the Commission (a) accept the agreement for filing, to be effective on or about July 17, 1989; and (b) grant a waiver of notice pursuant to 18 CFR 35.11 (1989), so as to allow the filing of the Agreement less than 60 days prior to the date on which service under the Agreement is commenced.

Copies of the filing were served upon the Department of Water and Power of the City of Los Angeles, and the Public Service Commission of the State of California.

Comment date: August 2, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Kanawha Valley Power Company

[Docket No. ER89-529-000]

July 17, 1989.

Take notice that on June 30, 1989, Kanawha Valley Power Company (Kanawha) tendered for filing modifications to its 1935 and 1937 Agreements (Schedule FPC Nos. 1 and 2, respectively) with Appalachian Power Company (Appalachian) providing for the supply of power and energy from Kanawha's Marmet and London (Project No. 1175) and Winfield (Project No. 1290) hydro-electric plants, respectively, to be effective August 31, 1989.

The modifications would increase annual revenues to Kanawha for sales to Appalachian by $948,798 based on the twelve month period ended April 30, 1989.

The proposed changes are required due to increases in the cost of providing service under the 1935 and 1937 Agreements since the last rate modification in September 1988. The rates under the proposed modification are designed to provide Kanawha with the opportunity to earn a 10.48% overall return. Both Kanawha and Appalachian are affiliates of the American Electric Power System.

Kanawha states that a copy of the filing has been provided to the Public Service Commission of West Virginia, the Virginia State Corporation Commission and Appalachian Power Company.

Comment date: August 2, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Idaho Power Company

[Docket No. ER89-528-000]

July 17, 1989.

Take notice that on June 30, 1989, Idaho Power Company tendered for filing proposed changes in its 1st Revised FERC Electric Tariff, Volume No. 1. The proposed rate schedule could be used for both firm and non-firm transactions of short duration and would supersede Idaho Power's existing non-firm tariff, 1st Revised Volume No. 1, October 1, 1978. Because the Schedule covers short-term capacity and/or energy for resale, and the amount of such capacity and/or energy which can be made available for sale is unknown, it is impossible to determine whether the proposed changes would result in any increase in the Company's revenues.

The proposed change in rates is to provide Idaho Power Company with reasonable compensation for current costs of generation.

Copies of the filing were mailed to those utilities believed by Idaho Power Company to be interested in purchasing this type of service, as well as the utility regulatory commissions for Idaho, Oregon, Nevada, California, Montana, Utah, New Mexico, Washington and Colorado.

Comment date: August 2, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Minnesota Power & Light Company

[Docket No. ER89-527-000]

July 17, 1989.

Take notice that on June 30, 1989, Minnesota Power & Light Company tendered for filing a Participation Power Transaction Agreement between Minnesota Power & Light Company and Iowa Electric Light and Power Company. Under this Agreement, Minnesota Power & Light Company will sell 30 MW of participation power as available from its Laskin Unit No. 2 on a participation power interchange basis in accordance with the Mid-Continent Area Power Pool Agreement, Service Schedule A. This Agreement provides for energy sales only during the period from May 1, 1989 through October 31, 1989 inclusive. The parties request a waiver of the Commission's 60 day filing period for this Agreement and an effective date of May 1, 1989.

Comment date: August 2, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Company of New Mexico

[Docket No. ER89-534-000]

July 17, 1989.

Take notice tha on July 3, 1989, Public Service Company of New Mexico (PNM) submitted for filing an Economy Energy Agreement between PNM and the City of Pasadena, California (Pasadena). Under the Agreement PNM and Pasadena will make economy energy available to each other at rates reflecting current market conditions.

Copies of the filing have been served upon Pasadena and the New Mexico Public Service Commission.

Comment date: August 2, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Power & Light Company

[Docket No. ER89-539-000]

July 17, 1989.

Take notice that on July 6, 1989, Wisconsin Power & Light Company (WPL) tendered for filing a new wholesale power agreement dated June 20, 1989, between the City of Sheboygan Falls and WPL. WPL states that this new wholesale power agreement supercedes the previous agreement between the two parties which was dated September 17, 1984, and designated Rate Schedule No. 131 by the Commission.

The purpose of this new agreement is to provide for terms of service on a similar basis to the terms of service for other wholesale customers.

WPL requests that an effective date concurrent with the contract effective date be assigned. WPL states that copies of the agreement and the filing have been provided to the City of Sheboygan Falls and the Wisconsin Public Service Commisison.

Comment date: August 2, 1989, in accordance with Standard Paragraph E at the end of this notice.

11. Northeast Utilities Service Company

[Docket No. ER89-543-000]

July 17, 1989.

Take notice that on July 10, 1989, Northeast Utilities Service Company (NUSCO) tendered for filing as rate schedules two transmission service agreements between (A) Northeast Utilities Service Company (NUSCO), as Agent for The Connecticut Light and Power Company and Western Massachusetts Electric Company, and (B) South Hadley Electric Light Department, Hudson Light and Power Department, Westfield Gas and Electric Department, and Holyoke Gas and Electric Department, each dated November 1, 1988.

NUSCO requests that the Commission waive its standard notice periods and filing regulations to the extent necessary to permit the rate schedules to become effective November 1, 1988, and to permit the agreements to terminate April 30, 1989, and December 31, 1988, respectively.

NUSCO states that copies of these rate schedules have been mailed or delivered to each of the parties.

NUSCO further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: August 2, 1989, in accordance with Standard Paragraph E at the end of this notice.

12. Utah Power & Light Company

[Docket No. ER89-541-000]

July 17, 1989.

Take notice that on July 10, 1989, Utah Power & Light Company, a Division of PacifiCorp (Utah) tendered for filing Mona Interconnection Agreement (Agreement) between Deseret Generation & Transmission Cooperative, Utah, and Intermountain Power Agency.

Utah requests that the notice requirements of 18 CFR 35.3 be waived as provided in 18 CFR 35.11, and that the Agreement be made effective retroactively as of November 13, 1984, the date service was commenced. Further, Utah requests that the filing requirements of 18 CFR 35.13(a)(ii)(c)(1) and (2) be waived.

Copies of this filing were served on Deseret Generation & Transmission Cooperative, Intermountain Power Agency, and the Utah Public Service Commission.

Comment date: August 2, 1989, in accordance with Standard Paragraph E at the end of this notice.

13. CEI-AMP-Ohio Interconnection Agreement

[Docket No. ER89-537-000]

July 17, 1989.

Take notice that on July 5, 1989, the Cleveland Electric Illuminating Company filed, on behalf of the above listed parties to the CEI-AMP-Ohio Agreement an initial rate schedule between the Cleveland Electric Illuminating Company and American Municipal Power-Ohio, Inc.

This Agreement provides for Limited Term Power supplied by CEI. The parties have requested an effective date of September 1, 1988 for this schedule.

Comment date: August 2, 1989, in accordance with Standard Paragraph E at the end of this notice.

14. New England Power Pool

[Docket No. ER89-542-000]

July 17, 1989.

Take notice that on July 10, 1989, the New England Power Pool (NEPOOL) Executive Committee tendered for filing a notice of termination of the status of the Second Taxing District of the City of Norwalk, Connecticut, and the Third Taxing District of the City of Norwalk, Connecticut, as participants in the New England Power Pool.

NEPOOL states that the two taxing districts of Norwalk, Connecticut, are signatories to the NEPOOL Agreement, which is on file with the Commission as a rate schedule (designated NEPOOL F.P.C. No. 1). These two electric utilities have requested that their status as pool participants be terminated in view of their arrangements to receive service through another pool participant. NEPOOL further indicates that the termination of these two utilities as participants in the pool does not change the NEPOOL Agreement in any manner other than to terminate them as members of the pool.

NEPOOL requests an effective date of November 1, 1989 for termination of the status of the two Norwalk taxing districts as participants in the pool.

Comment date: August 2, 1989, in accordance with Standard Paragraph E at the end of this notice.

15. Pacific Gas and Electric Company

[Docket No. ER89-512-000]

July 14, 1989.

Take notice that on June 6, 1989, Pacific Gas and Electric Company (PG&E) tendered for filing an amendment to the Transmission Rate Schedule filed on November 1, 1988, in Docket No. ER89-49-000.

Copies of this filing have been served upon Sacramento Municipal Utility District, the California Public Utilities Commission and the service list in Docket No. ER89-49-000.

Comment date: July 28, 1989, in accordance with Standard Paragraph E at the end of this notice.

16. Oroville Energy, Inc.

[Docket No. QF89-110-001]

July 18, 1989.

On July 6, 1989, Oroville Energy, Inc. (Applicant), of Bellevue, Washington, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Oroville, California. The facility will consist of eight internal combustion engine generators and associate heat recovery equipment. Thermal energy recovered from the engine jacket cooling water, will be used to evaporate and concentrate brine resulting from oil and gas well drilling, and produce salt as a byproduct for sale. The net electric power production of the facility will be 7.5 MW. Installation of the facility is expected to begin in the third quarter of 1989.

The original application was filed by Oroville Energy, Inc. on December 30, 1988 and was granted on March 15, 1989 (46 FERC ¶62,275). The instant recertification is requested primarily due to a change in ownership of the facility. The facility will be owned by a partnership consisting of Oroville Energy, Inc. and National Energy Systems Company as general partners and American Energy Corporation (AEC) and Haskell Corporation as limited partners. AEC is a wholly-owned subsidiary of Potomac Capital Investment Corporation, which is a wholly-owned subsidiary of Potomac Electric Power Company, an electric utility.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

17. North Jersey Energy Associates, A New Jersey Limited Partnership

[Docket No. QF86-769-003]

July 18, 1989.

On June 28, 1989, North Jersey Energy Associates, a New Jersey Limited Partnership (Applicant), of 350 Lincoln Place, Mingham, Massachusetts, 02043, submitted for filing an application for recertification of a facility as a qualifying cogeneraton facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Sayerville, New Jersey. The facility will consist of two combustion turbine generators, two heat recovery boilers and one extraction/condensing steam turbine generator. The primary energy source of the facility will be natural gas. Installation of the facility was expected to begin on July 1, 1989.

The first recertification for increase in electric power production capacity and change of the primary energy source was filed on July 1, 1987 and was granted on September 25, 1987 (40 FERC ¶62,385). The second recertification for further increase in electric power production capacity, change in the type of generating equipment and change in the thermal use was filed on August 16, 1988 and was granted on January 10, 1989 (46 FERC ¶62,023). The instant recertification is requested due to decrease in the net electric power production capacity and change in the thermal energy use. The proposed net electric power production capacity will be 272 MW. Thermal energy from the facility will now be utilized by Hercules, Incorporated in the manufacturing of industrial chemicals.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

18. Vermont Electric Power Company, Northeast Utilities Service Company, New England Power Company

[Docket No. ER89-522-000]

July 18, 1989.

Take notice that on June 27, 1989 Vermont Electric Power Company (VELCO), New England Power Company (NEP), and Northeast Utilities Service Company as agent for The Connecticut Light and Power Company and Western Massachusetts Electric Company (collectively, NU) tendered three agreements for filing. They are (1) a Transmission Allocation Agreement among VELCO, NEP, and NU, (2) a Reallocation Agreement between VELCO and NU, and (3) a Transmission Agreement between NU and NEP.

VELCO, NEP and NU are the owners of tie lines connecting New England with New York. Under the Transmission Allocation Agreement, each tie owner has transfer rights, and can exercise those rights regardless of whether their particular lines are operational. The parties have agreed that the transfer capability to be allocated will be based on that established by NEPOOL and NYPP. They have agreed that the transfer capability on the New England side of the New England/New York interface will be allocated based upon the following percentages: NU (72%), VELCO (14%), and NEP (14%).

The Reallocation Agreement is a transfer of allocation rights under the Allocation Agreement from NU to VELCO at VELCO's option. By exercising its option, VELCO may increase the transfer rights over its own lines up to the difference between 200 magawatts and the amount of the Class 1 transactions to which it is entitled under the Transmission Allocation Agreement. If VELCO exercises its option to increase its transfer rights by a certain amount NU's transfer rights are decreased by the same amount.

The Transmission Agreement between NEP and NU allows NEP to transfer power over NU's lines. NU has agreed to transmit for NEP purchases from the west in an amount up to the difference between 225 megawatts and NEP's share of the transfer capability under the Allocation Agreement, whatever that amount may be from time to time.

The three agreements were negotiated as a single package and are tendered as such in the filing.

The parties to the three agreements request that the 60 day notice requirement be waived to permit the agreements to become effective November 1, 1988.

The three companies request that, if a hearing is ordered, any resulting change in the allocation be required only prospectively and only as to transactions entered into after the date of the Commission's order requiring the change.

Copies of the three agreements have been served on the Massachusetts Department of Public Utilities and the Vermont Public Service Board.

Comment date: August 2, 1989, in accordance with Standard Paragraph E at the end of this notice.

19. Arkansas Power & Light Company

[Docket No. ER89-523-000]

July 18, 1989.

Take notice that on June 27, 1989, Arkansas Power & Light Company (AP&L) tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 100.

AP&L states that this schedule is an agreement between AP&L and the City of Hope, Arkansas (Hope) which provided for AP&L to furnish transmission services through its system to the system of Hope permitting a sale of power and energy by Southwestern Electric Power Company to Hope.

AP&L requests an effective date of September 2, 1989.

Comment date: August 3, 1989, in accordance with Standard Paragraph E at the end of this notice.

20. Florida Power & Light Company

[Docket No. ER89-532-000]

July 18, 1989.

Take notice that on July 3, 1989, Florida Power & Light Company (FPL), tendered for filing the following interrelated documents. Contract for Interchange Service between Florida Power & Light Company and Seminole Electric Cooperative, Inc., (SEC) Supplementary Agreement Number One to Contract for Interchange Service between Florida Power and Light Company and Seminole Electric Cooperative, Inc. dated June 30, 1989, and Cost Support Schedules C, F, G, C-S, F-S, and G-S (together with Cost Support Schedules F Supplements and F-S Supplements) which support the rate under the Contract. This Contract for Interchange Service and Supplementary Agreement Number One between FPL and SEC supersede and replace in their entirety the Contract and Supplementary Agreement dated June 18, 1984 and accepted for filing by the Commission as Rate Schedule FERC No. 80 is Docket No. ER84-520-000.

The rates for sales by FPL to Seminole under the Contract and Supplementary Agreement Number One are the same as those contained in FPL's Cost Support Schedules filed in Florida Power & Light Company Docket No. ER89-383-000 which were made effective May 1, 1989. FPL respectfully requests that the data contained in those Cost Support Schedules be incorporated in this filing by reference. FPL respectfully requests an effective date of July 1, 1989 for this new rate schedule. According to FPL, a copy of this filing was served upon Seminole Electric Cooperative, Inc., and the Florida Public Service Commission.

Comment date: August 2, 1989, in accordance with Standard Paragraph E at the end of this notice.

21. PacifiCorp, doing business as Pacific Power & Light and Utah Power & Light

[Docket No. ER89-535-000]

July 18, 1989.

Take notice that on July 3, 1989, PacifiCorp, doing business as Pacific Power & Light and Utah Power & Light (Company), tendered for filing, in accordance with 18 CFR Part 35 of the Commission's Regulations, Revision No. 2 to exhibit B of Contract No. DE-MS79-83BP90909 (Two-Way O&M Agreement) between the Company and the Bonneville Power Administration (Bonneville), the Company's Rate Schedule FERC No. 239. Exhibit B specifies equipment owned by Bonneville that is operated and maintained by the Company at Bonneville's expense (O&M Services) and sets forth the annual charges for such O&M Services.

The Company requests waiver of the Commission's Notice requirements to permit Revision No. 2 to Exhibit B to become effective July 1, 1988, this date being the date on which service commenced.

Copies of this filing were supplied to the Public Utility Commission of Oregon and Bonneville.

Comment date: August 2, 1989, in accordance with Standard Paragraph E at the end of this notice.

22. Pacific Gas and Electric Company

[Docket No. ER89-538-000]

July 18, 1989.

Take notice that on July 6, 1989, Pacific Gas and Electric Company (PG&E) tendered for filing changes in rates under Rate Schedule FERC No. 53 for services provided by PG&E to the City and County of San Francisco (CCSF).

The proposed changes result in a rate and revenue reduction. The rates are proposed to be effective for the period January 1, 1988 through March 31, 1988.

Copies of this filing were served upon CCSF, the California Public Utilities Commission, Turlock Irrigation District, Modesto Irrigation District and NI Industries.

Comment date: August 2, 1989, in accordance with Standard Paragaph E at the end of this notice.

23. The Curators of the University of Missouri-Columbia

[Docket No. QF89-281-000]

July 19, 1989.

On June 30, 1989, the Curators of the University of Missouri-Columbia (Applicant), of 415 South Fifth Street, Columbia, Missouri 65211, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located on the campus of the University of Missouri in Columbia, Missouri. The facility consists of coal fired boiler(s) and extraction/condensing steam turbine generator sets. The thermal output of the facility, in the form of extraction steam, will be used to meet campus heating and cooling requirements. The maximum net electric power production capacity of the facility will be 46.8 MW.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

24. Northern States Power Company, Wisconsin Electric Power Company, Wisconsin Power & Light Company, Wisconsin Public Service Corporation v. Public Service Commission of Wisconsin

[Docket No. EL89-40-000]

July 20, 1989.

Take notice that on July 13, 1989, the above petitioners tendered for filing a petition for declaratory order seeking a determination that the Public Service Commission of Wisconsin ("the PSCW") by its order in its fifth so-called advance plan proceeding collaterally exercised jurisdiction delegated exclusively to the Federal Energy Regulatory Commission under the Federal Power Act. The petitioners seek a determination on the following three questions:

1. Is the PSCW's order that utilities in Wisconsin develop transmission rate schedules in a particular form—joint-use transmission agreements—a collateral exercise of FERC's exclusive jurisdiction over transmission rate schedules under the Federal Power Act?

2. Is the PSCW's order that the rates and terms and conditions of the rate schedules conform to 20 principles or guidelines (to the extent that such principles or guidelines relate to rates and terms and conditions of service) a collateral exercise of FERC's exclusive jurisdiction over transmission rate schedules under the Federal Power Act?

3. Is the PSCW's order that the rate schedules be submitted to the PSCW for review to determine their conformity to the 20 principles or guidelines (to the extent that such principles or guidelines relate to rates and terms and conditions of service) a collateral exercise of

FERC's exclusive jurisdiction under the Federal Power Act?

Comment date: August 10, 1989, in accordance with Standard Paragraph E at the end of this notice.

25. Gulf States Utilities Company

[Docket No. ER89-551-000]

July 18, 1989.

Take notice that on July 5, 1989, Gulf States Utilities Company (GSU) tendered for filing an agreement for special requirements wholesale electric service between GSU and Sam Rayburn G&T Electric Cooperative, Inc. and a power interconnection agreement between GSU and Sam Rayburn G&T Electric Cooperative, Inc. GSU states that it is filing these materials, and certain other documents, as part of a settlement between itself and Sam Rayburn G&T Electric Cooperative in Docket No. EL88-40-000.

Comment date: July 28, 1989, in accordance with Standard Paragraph E at the end of this notice.

26. Gulf States Utilities Company

[Docket No. ER86-558-022]

July 20, 1989.

Take notice that on July 13, 1989, Gulf States Utilities Company (Gulf States) filed an amendment to its June 6, 1989 compliance refund report.

In its revised refund report Gulf States states that the revised refund reflects additional interest starting with the third quarter of 1988. Gulf States further states that the additional refund was made to Cajun Electric Power Cooperative, Inc.

Comment date: August 2, 1989, in accordance with Standard Paragraph E at the end of this notice.

27. Nevada Power Company

[Docket No. ER89-546-000]

July 20, 1989.

Take notice that on July 11, 1989, Nevada Power Company (Nevada) tendered for filing a revised agreement entitled Agreement For Transmission Service Among Nevada Power Company and Overton Power District No. 5 (Overton) and Lincoln County Power District No. 1 (Lincoln) hereinafter "the Agreement." The primary purpose of the Agreement is to establish the terms and conditions for the transmission of federal power by Nevada to Overton and Lincoln.

Nevada requests that this Agreement become effective as of March 1, 1989, and therefore requests waiver of the Commission's notice requirements.

Nevada states that copies of the filing were served upon Overton and Lincoln.

Comment date: August 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

28. Public Service Company of Oklahoma

[Docket No. ER89-547-000]

July 20, 1989.

Take notice that on July 11, 1989, Public Service Company of Oklahoma ("PSO") tendered for filing a reduced Delivery Point Transmission Service rate ("DPTS") between Oklahoma Municipal Power Authority ("OMPA") and PSO. PSO proposes that the revised OPTS rate be made effective as of July 1, 1989, and accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing have been sent to the Oklahoma Corporation Commission and to OMPA.

Comment date: August 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

29. United States Department of Energy—Southwestern Power Administration

[Docket No. EF89-4081-000]

July 20, 1989.

Take notice that on June 30, 1989, the Deputy Secretary of the United States Department of Energy submitted for final approval for the period beginning with the date of commercial operation of the Town Bluff Dam (expected to be July 1, 1989) through September 30, 1993 rates for sales from the project to Sam Rayburn Municipal Power Agency under Contract No. DE-PM75-65S00117.

Comment date: July 31, 1989, in accordance with Standard Paragraph E at the end of this document.

30. The Kansas Power and Light Company

[Docket No. ER89-379-000]

July 20, 1989.

Take notice that on July 7, 1989, The Kansas Power and Light Company (KPL) tendered for filing an amendment to its filing of the General Participation Agreement of the MOKAN Power Pool dated April 19, 1989 (Agreement).

The amendment is necessary to correct certain clerical errors and clarify certain rates for service in the Agreement as originally filed.

KPL states that the following are presently Participants under the General Participation Agreement being superseded, with the following FPC Rate Schedule Numbers:

Kansas City Power & Light Company, Rate Schedule FPC No. 32
Missouri Public Service, Rate Schedule FPC No. 8
The Empire District Electric Co., Rate Schedule FPC No. 73
Kansas Gas and Electric Company, Rate Schedule FPC No. 94
The Kansas Power and Light Co., Rate Schedule FPC No. 7
Centel Electric—Kansas, Rate Schedule FPC No. 53
St. Joseph Light & Power Company, Rate Schedule FPC No. 17
Midwest Energy, Inc.
Sunflower Electric Cooperative, Inc.
Board of Public Utilities of the City of Kansas City, Kansas
Independence Power & Light, Department of the City of Independence, Missouri

KPL states that all Participants under the Agreement concur with the amendment.

Copies of this amendment were served upon each MOKAN Power Pool Participants, the Kansas Corporation Commission and the Missouri Public Service Commission.

Comment date: August 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

31. Kansas City Power & Light Company

[Docket No. ER89-549-000]

July 20, 1989.

Take notice that on July 13, 1989, Kansas City Power & Light Company (KCPL) tendered for filing a Second Amendatory Agreement to Municipal Participation Agreement, between KCPL and the City of Garnett, Kansas dated June 13, 1989. KCPL states that the Amendatory Agreement provides for an extension of the contract term and a modified rate design for firm power services.

KCPL requests an effective date of July 1, 1989, and therefore requests waiver of the Commission's notice requirements.

Comment date: July 7, 1989, in accordance with Standard paragraph E at the end of this notice.

32. Public Service Company of Oklahoma and Southwestern Electric Power Company

[Docket No. ER89-545-000]

July 20, 1989.

Take notice that on July 10, 1989, Public Service Company of Oklahoma ("PSO") and Southwestern Electric Power Company ("SWEPCO") tendered for filing an amendment to the Western Systems Power Pool ("WSPP") experimental tariff in order to include PSO and SWEPCO, acting through Central and South West Services, Inc., as members of the WSPP. The WSPP Executive Committee has approved PSO's and SWEPCO's participation in the pool which permits, on an experimental basis, flexible pricing of energy and transmission services.

33. Niagara Mohawk Power Corporation

[Docket No. ER89-544-000]

July 20, 1989.

Take notice that on July 10, 1989, Niagara Mohawk Power Corporation (Niagara), tendered for filing as a rate schedule, an agreement between Niagara Mohawk and Central Hudson Gas and Electric Corporation (Central Hudson) dated June 16, 1989.

Niagara presently has on file an agreement with Central Hudson dated November 1, 1983. This agreement is designated as Niagara Mohawk Power Corporation Rate Schedule FERC No. 128. This new agreement is being transmitted as a supplement to the existing agreement.

This supplement revises the rate for providing transmission service for Central Hudson for the delivery of pumping and generating energy in connection with pumped storage power service provided to Central Hudson by the Power Authority of the State of New York (PASNY) from PASNY's Blenheim-Gilboa Pumped Storage Project. Niagara requests an effective date of July 1, 1989.

Copies of the filing were served upon the following:

Central Hudson Gas and Electric Corporation, 284 South Avenue, Poughkeepsie, New York 12602.
Public Service Commission, State of New York, Three Empire State Plaza, Albany, New York 12223.

Comment date: August 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

34. Pennsylvania Power & Light Company

[Docket No. ER89-554-000]

July 20, 1989.

Take notice that on July 14, 1989, Pennsylvania Power & Light Company ("PP&L") tendered for filing an executed agreement dated as of July 11, 1989, between PP&L and Niagara Mohawk Power Corporation ("Niagara Mohawk"), which supplements the System Energy Sales Agreement, dated March 1, 1983, on file with the Commission as PP&L's Rate Schedule FERC No. 78. The proposed rate schedule provides for the sale of short-term electric capability and energy from PP&L's Martins Creek Units 3 and 4 to Niagara Mohawk.

The rate schedule provides for a maximum reservation charge of $806 per megawatt week and a delivery charge of PP&L's actual cost of producing the energy plus a maxium charge of $17/Mwh reflecting foregone interchange savings.

PP&L requests waiver of the notice requirements of section 205 of the Federal Power Act and section 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective as of July 14, 1989, in accordance with the anticipated commencement of service.

PP&L states that a copy of its filing was served on Niagara Mohawk, the Pennsylvania Public Utility Commission, and the New York Public Service Commission.

Comment date: August 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

35. Pennsylvania Power & Light Company

[Docket No. ER89-553-000]

July 20, 1989.

Take notice that on July 14, 1989, Pennsylvania Power & Light Company ("PP&L") tendered for filing a Supplemental Agreement ("Agreement"), dated March 13, 1989, between PP&L, Safe Harbor Water Power Corporation ("Safe Harbor") and Baltimore Gas and Electric Company ("BG&E"). The Agreement supplements the Transmission Contract ("Contract") dated July 20, 1960, between PP&L, Safe Harbor and BG&E, which is on file with the Commission as PP&L's Rate Schedule FPC No. 23.

The Contract sets forth the terms and conditions under which PP&L will transmit BG&E's share of the electric output from the Safe Harbor hydroelectric generating station to BG&E. The Agreement provides for an increase in the transmission charge to reflect facility upgrades required to provide the transmission service. PP&L is requesting an effective date of June 1, 1987 for the Agreement.

Copies of the filing were served upon BG&E, Safe Harbor, the Pennsylvania Public Utility Commission, and the Maryland Public Service Commission.

Comment date: August 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

36. Northeast Utilities Service Company

[Docket No. ER89-550-000]

July 20, 1989.

Take notice that on July 13, 1989, Northeast Utilities Service Company (NUSCO) tendered for filing a First Amendment to Exchange Agreement between The Connecticut Municipal Electric Energy Cooperative (CMEEC) and NUSCO, as agent for The Connecticut Light and Power Company (CL&P), dated June 19, 1989, amending Exchange Agreement between CMEEC, CL&P, and Hartford Electric Company (HELCO), dated September 15, 1981, previously submitted and filed as FERC Rate Schedule Nos. CL&P 233 and Supplement Nos. 1-3 thereto and HELCO 233.

NUSCO states that the rate schedule changes were made by mutual agreement of the parties. The rate schedule changes provide for (i) changes of units and unit amounts under exchange, and (ii) the assignment to CL&P of HELCO's rights and obligations under the Exchange Agreement.

NUSCO states that copies of this rate schedule have been mailed or delivered to CL&P and CMEEC. NUSCO further states that the filing is in accordance with section 35 of the Commission's Regulations.

Comment date: August 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

37. Pennsylvania Power & Light Company

[Docket No. ER89-369-000]

July 20, 1989.

Take notice that on Pennsylvania Power & Light Company (PP&L) on June 19, 1989 tendered for filing the First Supplement to the Electric Output Sale Agreement, dated as of June 16, 1989, between PP&L and Northeast Utilities Service Company, as agent for the Connecticut Light and Power Company and Western Massachusetts Electric Company (NU Companies), which was filed with the Federal Energy Regulatory Commission on April 28, 1989.

The First Supplement to the Electric Output Sales Agreement clarified the basis by which PP&L's foregone interchange savings, if any, will be determined for each transaction under the Electric Output Sales Agreement (Agreement) and establishes a floor for the energy charges for delivered electrical output under the Agreement.

PP&L requests waiver of the notice requirements of Section 205 of the Federal Power Act and Section 35.3 of the Commission's Regulations so that the Agreement and the First Supplement to the Agreement can be made effective as of May 1, 1989, in accordance with the commencement of service.

PP&L states that a copy of its filing was served on NU Companies, the Pennsylvania Public Utility Commission, the Connecticut Public Utilities Control Authority and the Massachusetts Department of Public Utilities.

Comment date: August 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

38. Minnesota Power & Light Company

[Docket No. ER89-540-000]

July 20, 1989.

Take notice that on June 28, 1989, Minnesota Power & Light Company (MP&L) tendered for filing documents describing certain high voltage rate adjustments that MP&L has agreed to provide to the city of Brainerd, Minnesota in connection with the sale by MP&L to Brainerd of certain transmission facilities.

Comment date: July 26, 1989. In accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission

Lois D. Cashell,

Secretary.

[FR Doc. 89-17592 Filed 7-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10222-001 Washington]

Baker Mountain Hydro Electric Co.; Surrender of Preliminary Permit

July 21, 1989.

Take notice that Baker Mountain Hydro Electric Company, Permittee for the Barometer Creek Project No. 10222, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 10222 was issued July 28, 1987, and would have expired June 30, 1990. The project would have been located on Barometer Creek within the Snoqualmie-Mt. Baker National Forest in Whatcom County, Washington.

The Permittee filed the request on July 10, 1989, and the preliminary permit for Project No. 10222 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17518 Filed 7-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10328-001 Washington]

Skagit River Hydro; Surrender of Preliminary Permit

July 21, 1989.

Take notice that Skagit River Hydro, permittee for the Alma/Copper Creek Project No. 10328, to be located on Alma and Copper Creeks in Skagit County, Washington, has requested that its preliminary permit be terminated. The preliminary permit was issued on July 28, 1987, and would have expired on June 30, 1990.

The permittee filed the request on July 10, 1989, and the preliminary permit for Project No. 10328 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17519 Filed 7-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-185-001]

Great Lakes Gas Transmission Co.; Compliance Filing

July 21, 1989.

Take notice that on July 17, 1989, Great Lakes Gas Transmission Company (Great Lakes) filed Substitute Eighth Revised Sheet No. 223, Substitute Seventh Revised Sheet No. 294, Third Revised Sheet No. 295, and Corrected Second Revised Sheet No. 466 to its FERC Gas Tariff, Original Volume No. 2, to be effective July 1, 1989.

Great Lakes states that in compliance with the Commission's Order issued June 30, 1989, it eliminated certain minimum bill provisions contained on Sheet Nos. 223, 294 and 295. Great Lakes states that Corrected Second Revised Sheet No. 466 corrects a typographical error.

Great Lakes states that copies of this filing are being served on each of its customers, the Public Service Commissions of Minnesota, Wisconsin and Michigan and the persons listed on the Commission's service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such protests should be filed on or before July 28, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17520 Filed 7-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-206-000]

Northern Natural Gas Co.; Filing

July 20, 1989.

Take notice that on July 17, 1989 Northern Natural Gas Company, Division of Enron Corp., tendered for filing to become a part of Northern's FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

Third Revised Sheet No. 52c.5
Second Revised Sheet No. 52f.7

Northern proposed to eliminate from sections 9(c) and 10(c) of its Rate Schedules IT-1 and FT-1 respectively a provision which assesses one-half (½) of the transportation commodity rate per MMBtu for fuel, use and unaccounted for quantities delivered by Shippers for use by Northern in providing transportation services.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice & Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Any person

wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17521 Filed 7-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-185-002]

Panhandle Eastern Pipe Line Co. Proposed Changes in FERC Gas Tariff

July 20, 1989.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on July 17, 1989, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Substitute Original Sheet No. 3-B.1
Eighteenth Revised Sheet No. 43-3
First Substitute Original Sheet No. 43-15
First Substitute Original Sheet No. 43-16
First Substitute Original Sheet No. 43-17

The effective date of these revised tariff sheets is July 1, 1989.

Panhandle states that these proposed tariff sheets are being filed in compliance with the Commission's Order dated June 30, 1989 in Docket No. RP89-185-000 to establish for a limited period from July 1, 1989 through March 31, 1991 a Seasonal Sales Program that will be used to determine the commodity rates applicable to Panhandle's sales services in lieu of the current Purchased Gas Adjustment (PGA) mechanism.

Panhandle states that these revised tariff sheets reflect the following revisions to the General Terms and Conditions of its FERC Gas Tariff as directed by the Commission's Order to: (1) Provide for a mechanism to handle pipeline suppliers' demand refunds in § 18.4; (2) include language in § 18.47 describing how the Annual PGA pipeline suppliers' demand surcharge will be calculated; (3) revise language in § 25.1 to state that a tariff sheet will be filed showing the commodity rates for the applicable month by the last day of the month prior to the month the rates will be effective; (4) include language in § 25.3 to provide that Panhandle will not seek to recover any underrecovered balance in the Deferred Purchased Gas Cost Account as of April 1, 1991 under this section 25; (5) include language to provide that Panhandle will notify its customers of monthly purchase deficiencies by the fifth day of the following month; and (6) include language to specify the treatment of costs incurred during the Seasonal Sales Program but billed to Panhandle after the termination of the Program.

Panhandle further states that the revised tariff sheets reflect necessary conforming changes, as more fully described in the subject filing.

Panhandle further states that this filing is without prejudice to Panhandle's rights on rehearing and any subsequent review of the conditions contained in the Commission's June 30, 1989 Order.

Panhandle states that copies of its filing have been served on all parties, affected jurisdictional customers and appropriate state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such protests should be filed on or before July 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17522 Filed 7-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-205-000]

Point Arguello Natural Gas Line Co.; Initial Filing of Rate Schedules in Compliance With Order Nos. 509 and 509-A

July 20, 1989.

Take notice that on July 17, 1989, Point Arguello Natural Gas Line Company (PANGL) tendered for filing initial rate schedules pursuant to the provisions of Order Nos. 509 and 509-A and the applicable provisions of the Federal Energy Regulatory Commission's Regulations, the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Revised Sheet No. 1
First Revised Sheet No. 4
First Revised Sheet No. 13
Original Sheet Nos. 20 through 40
First Revised Sheet No. 101
First Revised Sheet No. 206
Original Sheet Nos. 207 through 216
First Revised Sheet No. 300

The proposed effective date of these revised tariff sheets is August 11, 1989. PANGL requests any necessary waivers of the Commission's Regulations, particularly § 154.51, in order for it to coordinate the start-up of its facilities and the effective date of the filing.

In accordance with the provisions of the Commission's Regulations, PANGL submits that these tariffs sheets reflect establishment of initial Rate Schedules for firm and interruptible transportation service under 18 CFR Part 284, Subpart K of the Commission's Regulations.

PANGL proposes to retain its Cost of Service tariff (Rate Schedule T-1) for its partner-shippers in addition to its FT and IT Rate Schedules for any prospective non-partner-shippers. PANGL recognizes the possibility that shippers under T-1 may pay more per unit for transportation than FT and IT shippers, or vice versa. To avoid any undue discrimination, PANGL proposes that the stated rates for FT and IT be "ceiling rates" which decline as the unit cost to shippers under Rate Schedule T-1 declines. This means that the rates to non-partner-shippers can never be more than the unit charges to partner-shippers; on the other hand, they can be less and the partners bear the risk associated therewith. It is the PANGL's viewpoint that its proposal is consistent with the Commission's policy and objectives as expressed in Section 284.7 of its Regulations.

Copies of this filing are being served on affected jurisdictional customers and intervenors.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures. All such motions should be filed on or before July 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-17523 Filed 7-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-120-003]

Questar Pipeline Co., Tariff Filing

July 20, 1989.

Take notice that Questar Pipeline Company on July 14, 1989, tendered for filing and acceptance the following tariff sheets to its FERC Gas Tariff:

First Revised Volume No. 1

Tariff sheet	Proposed effective date
Second Substitute Twentieth Revised Sheet No. 12.	May 1, 1989.
Substitute Second Revised Sheet No. 12–A.	May 1, 1989.
Second Substitute Twenty-First Revised Sheet No. 12.	June 1, 1989.
Substitute Third Revised Sheet No. 12–A.	June 1, 1989.
Substitute Twenty-Second Revised Sheet No. 12.	July 1, 1989.
Fourth Revised Sheet No. 12–A	July 1, 1989.
Second Substitute Original Sheet No. 17–A.	May 1, 1989.
Second Substitute Original Sheet No. 17–B.	May 1, 1989.
First Revised Sheet No. 17–B	June 1, 1989.

Original Volume No. 1–A—June 1, 1989, Proposed Effective Date

Substitute Ninth Revised Sheet No. 5
Substitute Second Revised Sheet No. 20
Substitute Second Revised Sheet No. 43
Substitute Second Revised Sheet No. 67
Substitute Third Revised Sheet No. 79
Substitute Original Sheet No. 114–B
Substitute Original Sheet No. 114–C
Second Substitute Third Revised Sheet No. 117
Substitute Third Revised Sheet No. 132

Original Volume No. 3—June 1, 1989, Proposed Effective Date

Substitute Twelfth Revised Sheet No. 8

Questar Pipeline states that this filing is made pursuant to 18 CFR 154.63(a)(1) and in compliance with ordering paragraph (A)(4) of the Commission's June 29, 1989, order issued in Docket No. RP89–120–002. Questar Pipeline states that it has provided a copy of this filing to its transportation and sales customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–17524 Filed 7–26–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA89–1–8–001 and TF89–3–8–001]

South Georgia Natural Gas Co., Proposed Changes to FERC Gas Tariff

July 21, 1989.

Take notice that on July 17, 1989, South Georgia Natural Gas Company ("South Georgia") tendered for filing Substitute Fifty-Third Revised Sheet No. 4 and Substitute Fifty-Fourth Revised Sheet No. 4 to its FERC Gas Tariff, First Revised Volume No. 1. The revised tariff sheets are being filed with a proposed effective date of July 1, 1989.

South Georgia states that Substitute Fifty-Third Revised Sheet No. 4 is submitted in compliance with the Commission's order of June 30, 1989, in Docket No. TA89–1–8–000. The June 30th order directed South Georgia to file revised rates within fifteen (15) days of the issuance of the order together with additional information with regard to Account No. 191. The tariff filing was to reflect a recalculation of South Georgia's surcharge adjustment based on a 12-month rather than a three-year amortization.

South Georgia states that Substitute Fifty-Fourth Revised Sheet No. 4 also reflects a recalculation of the surcharge adjustment to a 12-month amortization and supersedes Fifty-Fourth Revised Sheet No. 4 which was filed on June 29, 1989 in Docket No. TF89–3–8–000 and accepted by the Commission on July 10, 1989.

South Georgia states that copies of the filing will be served upon all of South Georgia's jurisdictional purchasers and interested state commissions as well as the parties to these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (§ 385.214 and 385.211). All such motions or protests should be filed on or before July 28, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–17525 Filed 7–26–89; 8:45 am]

BILLING CODE 6717–01–M

Tennessee Gas Pipeline Co.; Notice of Filing

[Docket No. RP88–191–011]

July 20, 1989.

By order issued June 30, 1989 in the referenced proceeding, the Commission accepted tariff sheets filed by Tennessee Gas Pipeline Company (Tennessee) to be effective July 1, 1989 reflecting the fixed take-or-pay charge applicable to Tennessee's firm sales customers subject to Tennessee refiling those sheets to reflect the elimination of charges related to foregone revenue associated with transportation discounts. Accordingly, take notice that on July 14, 1989, Tennessee filed Second Substitute Second Revised Sheet Nos. 40 through 44 to Second Revised Volume No. 1 of its FERC Gas Tariff.

Tennessee states that the sheets reflect a reduction of $8,719,000 to the take-or-pay and contract reformation costs to be recovered from Tennessee's firm sales customers pursuant to the Stipulation and Agreement (October 14, 1987) in Docket Nos. RP86–119, *et al.* as modified by the Commission. This amount is one-half of the amount of foregone revenue that Tennessee has incurred or is known and measurable as of March 31, 1989, associated with transportation discounts granted to producers in consideration for contract reformation or take-or-pay settlements.

The tariff sheets are proposed to be effective July 1, 1989.

Tennessee respectfully requests that the Commission grant any waivers it deems necessary for the acceptance of this filing.

Tennessee states that copies of the filing have been mailed to all parties in this proceeding, affected customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before July 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–17526 Filed 7–26–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM89–5–29–000]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

July 21, 1989.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on July 18, 1989 First Revised Sheet No. 12–E to its FERC Gas Tariff Second Revised Volume No. 1. The proposed effective date is May 1, 1989.

Transco states that this filing supplements its filing of April 10, 1989 in Docket Nos. RP88–68–011 and RP89–122–001 to reflect the appropriate Commodity PSP Charge to be effective commencing May 1, 1989. In that regard, Transco's April 10 filing set forth the calculations of the Fixed and Commodity PSP Charges for the second Annual Recovery Period (Year 2) commencing May 1, 1989. The resulting Year 2 Commodity PSP Charge of 11.1¢ per dt was identical to the Commodity PSP Charge for the initial Annual Recovery Period (Year 1) which had become effective May 1, 1988; consequently, Transco did not file a revised Sheet No. 12–E to be effective commencing May 1, 1989. However, subsequent to the April 10 filing, Transco filed on June 27, 1989 in Docket No. TM89–4–29, revisions to the Year 1 Fixed and Commodity PSP Charges to reflect the actual quarterly FERC interest rates in effect for Year 1. This resulted in a revised Year 1 Commodity PSP Charge of 11.2¢ per dt to be effective May 1, 1988. Therefore, Transco is making the instant filing to reflect the Year 2 Commodity PSP Charge of 11.1¢ per dt commencing May 1, 1989.

Transco states that copies of the instant filing are being mailed to customers, State Commissions and interested parties. In accordance with the provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 28, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–17527 Filed 7–26–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA89–1–42–000]

Transwestern Pipeline Co.; Compliance Filing

July 20, 1989.

Take notice that on July 17, 1989, Transwestern Pipeline Company (Transwestern) filed in compliance with the Commission Order issued June 30, 1989, the supplemental information as required by the Commission.

The Commission's order accepted and suspended, subject to refund the rates as filed in Docket No. TA89–1–42–000, to be effective July 1, 1989. Such tariff sheets are subject to the Commission's review and approval of the information being filed herein, as well as the ongoing proceedings in Docket Nos. TA88–4–42–000, *et. al.* and RP89–130–000 *et. al.*

Transwestern has been directed to remove all take-or-pay related settlement costs from its PGA, to the extent any of the same costs are contained in any of Transwestern's three Order No. 500 filings. Specifically, the Commission identified approximately $1.6 million of producer pricing settlements included in this PGA filing which the Commission believes may have also been included in Transwestern's Order No. 500 filings. However, the producer pricing settlements underlying the $1.6 million do not involve Order No. 500 take-or-pay related disputes, and Transwestern has not attempted to recover these costs through any of its Order No. 500 filings. As a result, no revisions to the rates is required by the Commission's June 30, 1989 order.

Pursuant to Ordering Paragraph A(2), Transwestern is submitting a more detailed explanation concerning Transwestern's gas purchase projections during the period, wherein, the assessment test for Interval Three was in excess of 103%. (See Tab 1)

Pursuant to Ordering Paragraph A(3), Transwestern has provided the required information regarding those purchases in excess of $5.00 per MMbtu. (See Tab 2) Also, pursuant to Ordering Paragraph A(3) Transwestern has enclosed an enhanced purchasing policy strategy statement. (See Tab 3)

Finally, Transwestern has been directed to recalculate the compounded carrying charges on the credit billing adjustments for the period March 1, 1988 through February 28, 1989, and to reflect the adjustment in its next annual PGA filing. Transwestern has herewith made a credit adjustment of $152,620,000 to its May 1989 Subaccount No. 191.400.

Copies of the filing were served on Transwestern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with § 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 1, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are available for public inspection in the Public Conference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–17528 Filed 7–26–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. IN86–5–012, et al.]

United Gas Pipe Line Co. et al.; Filing of Pipeline Refund Reports

July 21, 1989.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports. The date of filing and docket number are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, on or before August 11, 1989. Copies of the respective

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filings are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

APPENDIX

Filing Date	Company	Docket No.
6/27/89	United Gas Pipe Line Company.	IN86-5-012
6/30/89	Tennessee Gas Pipeline Company.	IN86-5-004
6/30/89	Northwest Pipeline Corporation.	RP85-13-031
7/5/89	Algonquin Gas Transmission Company.	RP72-110-050
7/11/89	Questar Pipeline Company.	RP86-87-008

[FR Doc. 89-17529 Filed 7-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-179-002]

Western Gas Interstate Co.; Tariff Filing

July 21, 1989.

Take notice that on July 18, 1989, Western Gas Interstate Company ("Western") filed certain tariff sheets to its FERC Gas Tariff.

Western states that the filing has the following purposes. First, Western states that following its filing of May 22, 1989 in this proceeding, it discovered that certain tariff sheets contained typographical and clerical errors. Thus, Western is submitting the following tariff sheets to correct those errors.

Second Revised Volume No. 1—Original Sheet Nos. 4, 6, 10, 11. Substitute Original Sheet Nos. 102, 103, 125, 135, 144, 154, 227, 239, 240.

Original Volume No. 2—Substitute Original Sheet Nos. 159A-159D, 169-171, 195A-195F, 206-208, 233, 234. Substitute First Revised Sheet Nos. 100, 151, 181, 221.

Second, Western is filing the following tariff sheets in compliance with the Commission's June 21, 1989, "Order Accepting and Suspending Certain Tariff Sheets Subject to Refund and Conditions, Rejecting Certain Tariff Sheets, and Establishing Hearing Procedures" (47 FERC 61,423).

Second Revised Volume No. 1—Original Sheet Nos. 214A, 217. First Revised Sheet Nos. 125, 136, 144, 154, 214, 215.

Third, Western states that it discovered the omission of Schedule N-3-1 and per books data in Schedule N-5 from the May 22, 1989 filing. Those schedules are included as part of the instant filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such protests should be filed on or before July 28, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons who are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17530 Filed 7-26-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 89-30-NG]

Petro-Canada Hydrocarbons Inc.; Application to Extend Blanket Authorization Import Natural Gas from Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for extension of blanket authorization to import natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice to receipt on May 17, 1989, of an application filed by Petro-Canada Hydrocarbons Inc. (PCH) requesting that blanket authority previously granted in DOE/ERA Opinion and Order No. 100 (Order 100), issued January 3, 1986 (DOE/ERA Docket No. 85-29-NG), and extended in DOE/ERA Opinion and Order No. 269 (Order 269), issued September 6, 1988 (DOE/ERA Docket No. 88-36-NG), be further extended for one year beginning on March 3, 1990, the expiration of its current import authorization, through the period ending March 3, 1991. PCH's existing blanket import authorization allows it to import up to a maximum of 75 BCF of Canadian natural gas. Under the extension requested, PCH would be authorized to import volumes not to exceed, in the aggregate, 75 BCF of Canadian natural gas over a one-year period.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, request for additional procedures and written comments are to be filed no later than August 28, 1989.

FOR FURTHER INFORMATION CONTACT:

William Daroff, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9516

Michael Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: PCH is a wholly-owned subsidiary of Petro-Canada Inc. (PCI). The gas would continue to be supplied by PCI or such supply sources as may become available and sold by PCH on a short term or spot basis to local gas distribution companies, natural gas pipelines, and direct sale customers in California, the Pacific Northwest, the Middle West, and other areas in the U.S. as market opportunities develop. PCH will act either as agent of PCI or will itself resell gas it has purchased. The specific terms of each import and sale would be negotiated on an individual basis including the price and volumes. PCH intends to use existing pipeline facilities to transport the gas.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement will be competitive and thus in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., e.d.t., August 28, 1989.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of PCH's application is available for inspection and copying the Office of Fuels Programs Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 18, 1989.

Constance L. Buckley,

Acting Deputy Assistant Secretary for Fuels Programs Fossil Energy.

[FR Doc. 89-17590 Filed 7-26-89; 8:45 am]

BILLING CODE 6450-01-M

Southeastern Power Administration

Cumberland Basin Projects; Order Confirming and Approving Power Rates on an Interim Basis

AGENCY: Department of Energy, Southeastern Power Administration.

ACTION: Notice of order confirming and approving power rates on an interim basis for the Cumberland Basin Projects.

SUMMARY: Notice is given of Rate Order No. SEPA-26 of the Deputy Secretary of the Department of Energy confirming and approving on an interim basis Rate Schedules CBR-1-B, CSI-1-B, CEK-1-B, CC-1-C, CM-1-B, CK-1-B and CTV-1-B for Cumberland Basin Projects' power. The rates were approved on an interim basis through June 30, 1994, and are subject to confirmation and approval by the Federal Energy Regulatory Commission on a final basis.

DATES: Approval of rates on an interim basis is effective on July 1, 1989.

FOR FURTHER INFORMATION CONTACT:

Leon Jourolmon, Jr., Director, Power Marketing Division, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635

Rodney Adelman, Director, Washington Liaison Office, Department of Energy, James Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission by Order issued December 27, 1984, in Docket No. EF84-3021 confirmed and approved Wholesale Power Rate Schedules CBR-1-A, CSI-1-A, CEK-1-A, CC-1-A, CM-1-A, CK-1-A and CTV-1-A for the period ending June 30, 1989. The Federal Energy Regulatory Commission by Order issued January 20, 1987, in Docket No. EF86-3021 confirmed and approved Wholesale Power Rate Schedule CC-1-B, which repiaced CC-1-A, through June 30, 1989.

Issued in Washington, DC, June 30, 1989.

W. Henson Moore,

Deputy Secretary.

[Rate Order No. SEPA-26]

Order Confirming and Approving Power Rates on an Interim Basis

Pursuant to sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95-91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southern Power Administration (Southeastern) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204-108, effective May 30, 1986, 51 FR 19744 (May 30, 1986), the Secretary of Energy delegated to the Administrator the authority to develop power and transmission rates, and delegated to the Under Secretary the authority to confirm, approve, and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm, approve, and place in effect on a final basis or to disapprove rates developed by the Administrator under the delegation. By DOE N 1110.29 dated October 27, 1988, published at 54 FR 3841 (January 26, 1989) the Secretary redelegated the authority from the Under Secretary to the Deputy Secretary to approve such rates on an interim basis. This rate order is issued pursuant to the delegation to the Deputy Secretary.

Background

Power from the Cumberland Basin Projects is presently sold under Wholesale Power Rate Schedules CBR-1-A, CSI-1-A, CEK-1-A, CC-1-B, CM-1-A, CK-1-A and CTV-1-A confirmed and approved through June 30, 1989. Wholesale Power Rate Schedules CBR-

1-A, CSI-1-A, CEK-1-A, CC-1-A, CM-1-A, CK-1-A and CTV-1-A were approved by the Federal Energy Regulatory Commission by order issued December 27, 1984, for a period beginning July 1, 1984, and ending June 30, 1989. Wholesale Power Rate Schedule CC-1-B, which replaced CC-1-A, was approved by the Federal Energy Regulatory Commission by Order issued January 20, 1987, for a period beginning September 1, 1986, and ending June 30, 1989.

Public Notice and Comment

Opportunities for public review and comment on Wholesale Power Rate Schedules CBR-1-B, CSI-1-B, CEK-1-B, CC-1-C, CM-1-B, CK-1-B and CTV-1-B, proposed for use during the period July 1, 1989, through June 30, 1989, were announced by Notice published in the Federal Register on February 14, 1989, and all customers were notified by mail. A Public Information and Comment Forum was held in Nashville, Tennessee, on March 21, 1989, and written comments were invited by the Notice through May 3, 1989. No comments were presented at the forum and written comments were received prior to May 3, 1989. All comments were evaluated by Southeastern. A summary of six substantial comments evaluated follows:

Comment 1: Southeastern sells power at rates less than market.

Response: The Flood Control Act of 1944 and RA 6120.2 establish that rates shall be prepared at cost, not market.

Comment 2: Underestimated costs and overestimated revenues have been borne by the taxpayer.

Response: Southeastern does not agree with this statement. All costs of the power systems are borne by the rate payers. If costs are underestimated or revenues are overestimated, then the differences are made up in future years plus interest.

Comment 3: End the 5-year limitation on rate adjustments.

Response: One commenter suggested that it is important to get rid of the 5-year limitation on rate filings. Southeastern agrees and will attempt to do that on any new contracts signed.

Comment 4: End the rolling repayment on normal investments.

Response: One commenter believes that when Southeastern adds a new investment, it extends the life of all other investments to 50 years from the last investment. Southeastern does not have a rolling repayment period. Each investment must be repaid within 50 years of the time it is placed in service.

Comment 5: Southeastern should implement repayment reform as proposed by the 1990 budget.

Response: The Department of Energy may propose legislation to implement repayment reform. When that legislation is enacted into law, Southeastern will conform to the legislation. Until then, Southeastern will follow the DOE regulation RA 6120.2 to establish rates.

Comment 6: Eliminate the practice of paying high interest bearing investment first whenever possible.

Response: The DOE regulation RA 6120.2 establishes the method of amortization.

Discussion

System Repayment

An examination of Southeastern's system power repayment study prepared in May 1989 for the Cumberland Basin Projects reveals that with an annual revenue increase of $4,485,000, over the current revenues shown in the previous February 1989 repayment study, all system power costs are paid within their repayment life. Additionally, it appears that Wholesale Power Rate Schedules CBR-1-B, CSI-1-B, CEK-1-B, CC-1-C, CM-1-B, CK-1-B and CTV-1-B are designed so as to produce revenue adequate to recover on a timely basis all system power costs. The Administrator of Southeastern has certified that the rates are consistent with the applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

Rate Design

After consultation with TVA and other customers, three areas were considered in the design of rates. These areas are the allocation of generation costs between capacity and energy, the proper amount of transmission within the TVA area to be paid by the customers outside the TVA area, and the level of reserve for contingencies. Southeastern has allocated approximately 60 percent of the generation costs to energy and 40 percent to capacity. This is similar to the allocations that were made after extensive study in the 1984 rate filing and approximated the capacity-energy relationship of various utilities in and around the Cumberland area. Southeastern and TVA disagreed on the amount of TVA's transmission cost of $5,033,000 that should be allocated to customers outside the TVA area. Transmission cost that is included in this rate filing is 165 megawatts at $21.50 per kilowatt per year or $3,548,000. Reserve for contingencies included in this filing is approximately 2 percent which increased from approximately 1 percent which was included in the 1984 rate filing. TVA has agreed not to comment on these rates.

Environmental Impact

Southeastern has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded with Departmental concurrence that, because the increased rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, the proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Availability of Information

Information regarding these rate schedules, including studies, and other supporting materials is available for public review in the offices of Southeastern Power Administration, Samuel Elbert Building, Elberton, Georgia 30635, and in the Washington Liaison Office, James Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

Submission to the Federal Energy Regulatory Commission

The rates hereinafter confirmed and approved on an interim basis, together with supporting documents, will be submitted promptly to the Federal Energy Regulatory Commission for confirmation and approval on a final basis for a period beginning July 1, 1989, and ending no later than June 30, 1994.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective July 1, 1989, attached Wholesale Power Rate Schedules CBR-1-B, CSI-1-B, CEK-1-B, CC-1-C, CM-1-B, CK-1-B and CTV-1-B. The rate schedules shall remain in effect on an interim basis through June 30, 1994, unless such period is extended or until the Federal Energy Regulatory Commission confirms and approves it or substitute rate schedules on a final basis.

Issued in Washington, DC, June 30, 1989.

W. Henson Moore,

Deputy Secretary.

Wholesale Power Rate Schedule CBR-1-B

Availability: This rate schedule shall be available to Big Rivers Electric Corporation and includes the city of Henderson, Kentucky, (hereinafter called the Customer).

Applicability: This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

Character of Service: The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 13,800 volts and 161,000 volts to the transmission systems of the Customer.

Points of Delivery: Capacity and energy delivered to the Customer will be delivered at points of interconnection of the Customer at the Barkley Project Switchyard, at a delivery point in the vicinity of the Paradise steam plant and at such other points of delivery as may hereafter be agreed upon by the Government and TVA.

Monthly Rate: The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge: $1.726 per kilowatt/month of total contract demand.

Energy Charge: 6.171 mills per kilowatt-hour.

Energy to be Furnished by the Government: The Government shall make available each contract year to the customer from the Projects through the customer's interconnections with TVA and the customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 220 hours per kilowatt of the customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the customer's contract demand. The customer may request and the Government may approve energy scheduled for a month greater than 220 hours per kilowatt of the customer's contract demand; provided, that the combined schedule of all SEPA customers outside TVA and served by TVA does not exceed 220 hours per kilowatt of the total contract demands of these customers.

Billing Month: The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Conditions of Service: The customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of TVA on its side of the delivery point.

Service Interruption: When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\text{Number of kilowatts unavailable for at least 12 hours in any calendar day} \times \frac{\text{Monthly capacity charge}}{\text{Number of days in billing month}} \times \frac{\text{Contract demand}}{\text{880,000 kilowatts}}$$

Wholesale Power Rate Schedule CSI-1-B

Availability: This rate schedule shall be available to Southern Illinois Power Cooperative (hereinafter the Customer).

Applicability: This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

Character of Service: The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 13,800 volts and 161,000 volts to the transmission system of Big Rivers Electric Corporation.

Points of Delivery: Capacity and energy delivered to the Customer will be delivered at points of interconnection of the Customer at the Barkley Project Switchyard, at a delivery point in the vicinity of the Paradise steam plant and at such other points of delivery as may hereafter be agreed upon by the Government and TVA.

Monthly Rate: The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand charge: $1.726 per kilowatt/month of total contract demand.

Energy Charge: 6.171 mills per kilowatt-hour.

Energy to be Furnished by the Government: The Government shall make available each contract year to the customer from the Projects through the customer's interconnections with TVA and the customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 220 hours per kilowatt of the customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the customer's contract demand. The customer may request and the Government may approve energy scheduled for a month greater than 220 hours per kilowatt of the customer's contract demand; provided, that the combined schedule of all SEPA customers outside TVA and served by TVA does not exceed 220 hours per kilowatt of the total contract demands of these customers.

Billing Month: The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Service Interruption: When delivery of capacity is interrupted or reduced due to conditions on the Administration's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\text{Number of kilowatts available for at least 12 hours in any calendar day} \times \frac{\text{Monthly capacity charge}}{\text{Number of days in billing month}} \times \frac{\text{Contract demand}}{\text{880,000 kilowatts}}$$

Wholesale Power Rate Schedule CEK-1-B

Availability: This rate schedule shall be available to East Kentucky Power Cooperative (hereinafter called the Customer).

Applicability: This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and power available from the Laurel Project and sold in wholesale quantities.

Character of Service: The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission systems of the Customer.

Points of Delivery: The points of delivery will be the 161,000 volt bus of the Wolf Creek Power Plant and the 161,000 volt bus of the Laurel Project. Other points of delivery may be as agreed upon.

Monthly Rate: The monthly rate for capacity and energy sold under this rate schedule from the Cumberland Projects shall be:

Demand charge: $1.726 per kilowatt/month of total contract demand.

Energy Charge: 6.171 mills per kilowatt-hour.

Energy to be Furnished by the Government: The Government shall make available each contract year to the customer from the Projects through the customer's interconnections with TVA and the customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand plus 369 kilowatt-hours of energy delivered for each kilowatt of contract demand to supplement energy available at the Laurel Project. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 220 hours per kilowatt of the customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the customer's contract demand. The customer may request and the Government may approve energy scheduled for a month greater than 220 hours per kilowatt of the customer's contract demand; provided, that the combined schedule of all SEPA customers outside the TVA and served by TVA does not exceed 220 hours per kilowatt of the total contract demands of these customers.

Billing Month: The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Conditions of Service: The customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of TVA on its side of the delivery point.

Service Interruption: When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\text{Number of kilowatts unavailable for at least 12 hours in any calendar day} \times \frac{\text{Monthly capacity charge}}{\text{Number of days in billing month}} \times \frac{\text{Contract demand}}{\text{880,000 kilowatts}}$$

Wholesale Power Rate Schedule CM-1-B

Availability: This rate schedule shall be available to the South Mississippi Electric Power Association and Municipal Energy Agency of Mississippi (hereinafter called the Customers).

Applicability: This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

Character of Service: The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission systems of Mississippi Power and Light.

Points of Delivery: The points of delivery will be at interconnection points of the Tennessee Valley Authority system and the Mississippi Power and Light system. Other points of delivery may be as agreed upon.

Monthly Rate: The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand charge: $1.726 per kilowatt-month of total contract demand.

Energy Charge: 6.171 mills per kilowatt-hour.

Energy to be Furnished by the Government: The Government shall

make available each contract year to the Customer from the Projects through the Customer's interconnections with TVA and the Customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exced 220 hours per kilowatt of the Customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the Customer's contract demand. The Customer may request and the Government may approve energy scheduled for a month greater than 220 hours per kilowatt of the Customer's contract demand; provided, that the combined schedule of all SEPA Customers outside TVA and served by TVA does not exceed 220 hours per kilowatt of the total contract demands of these Customers.

In the event that any portion of the capacity allocated to the Customers is not initially delivered to the Customers as of the beginning of a full contract year, the 1500 kilowatt hours shall be reduced 1/12 for each month of that year prior to initial delivery of such capacity.

Billing Month: The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective on the last day of each calendar month.

Service Interruption: When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\text{Number of kilowatts unavailable for at least 12 hours in any calendar day} \times \frac{\text{Monthly capacity charge}}{\text{Number of days in billing month}} \times \frac{\text{Contract demand}}{\text{880,000 kilowatts}}$$

Wholesale Power Rate Schedule CC-1-C

Availability: This rate schedule shall be available to public bodies and cooperatives served through the facilities of Carolina Power & Light Company, Western Division (hereinafter called the Customers).

Applicability: This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

Character of Service: The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission system of Carolina Power & Light Company, Western Division.

Points of Delivery: The points of delivery will be at interconnecting points of the Tennessee Valley Authority system and the Carolina Power & Light Company, Western Division system. Other points of delivery may be as agreed upon.

Monthly Rate: The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge: $1.965 per kilowatt/month of total contract demand.

Energy Charge: 6.565 mills per kilowatt-hour.

Transmission Charge: $1.66 per kilowatt of total contract demand.

The transmission rate is subject to annual adjustment on April 1 of each year and will be computed subject to the formula in Appendix A attached to the Government—Caroline Power & Light Company contract.

Energy to be Furnished by the Government: The Government will sell to the customer and the customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to Carolina Power & Light Company (less six percent (6%) losses). The Customer's contract demand and accompanying energy allocation will be devided pro rata among its individual delivery points served from the Carolina Power & Light Company's Western Division transmission system.

Billing Month: The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Wholesale Power Rate Schedule CK-1-B

Availability: This rate schedule shall be available to public bodies served through the facilities of Kentucky Utilities Company (hereinafter called the Customers).

Applicability: This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

Character of Service: The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission systems of Kentucky Utilities Company.

Points of Delivery: The points of delivery will be at interconnecting points between the Tennessee Valley Authority system and the Kentucky Utilities Company system. Other points of delivery may be as agreed upon.

Monthly Rate: The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand charge: $1.726 per kilowatt/month of total contract demand.

Energy Charge: 6.171 mills per kilowatt-hour.

Energy to be Furnished by the Government: The Government shall make available each contract year to the Customer from the Projects through the Customer's interconnections with TVA and the Customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the

following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 220 hours per kilowatt of the Customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the Customer's contract demand. The Customer may request and the Government may approve energy scheduled for a month greater than 220 hours per kilowatt of the Customer's contract demand; provided, that the combined schedule of all SEPA Customers outside TVA and served by TVA does not exceed 220 hours per kilowatt of the total contract demands of these Customers.

In the event that any portion of the capacity allocated to the Customers is not initially delivered to the Customers as of the beginning of a full contract year, the 1,500 kilowatt hours shall be reduced 1/12 for each month of that year prior to initial delivery of such capacity.

Billing Month: The billing month for power sold under this schedule shall end at 2,400 hours CDT or CST, whichever is currently effective on the last day of each calendar month.

Wholesale Power Rate Schedule CTV-1-B

Availability: This rate schedule shall be available to the Tennessee Valley Authority (hereinafter called TVA).

Applicability: This rate schedule shall be applicable to electric capacity and energy generated at the Dale Hollow, Center Hill, Wolf Creek, Old Hickory, Cheatham, Barkley, J. Percy Priest, and Cordell Hull Projects (all of such projects being hereafter called collectively the "Cumberland Projects") and the Laurel Project sold under agreement between the Department of Energy and TVA.

Character of Service: The electric capacity and energy supplied hereunder will be three-phase alternating current at a frequency of approximately 60 Hertz at the outgoing terminals of the Cumberland Projects' switchyards.

Montly Rates: The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge: $1.116 per kilowatt/month of total demand as determined by the agreement between the Department of Energy and TVA.

Energy Charge: 6.048 mills per kilowatt-hour.

Energy to be Made Available: The Department of Energy shall determine the energy that is available from the projects for declaration in the billing month.

To meet the energy requirements of the Department of Energy's customers outside the TVA area (hereinafter called Other Customers), 749,400 megawatt-hours of net energy shall be available annually (including 36,900 megawatt-hours of annual net energy to supplement energy available at Laurel Project) provided, that if additional energy is required to make a marketing arrangement viable for other customers which do not own generating facilities and which are within service areas of Kentucky Utilities Company and Carolina Power & Light Company, Western Division, such additional energy required shall be made available from the Cumberland Projects and shall not exceed 300 kilowatt-hours per kilowatt per year. The energy requirement of the Other Customers shall be available annually, divided monthly such that the maximum available in any month shall not exceed 220 hours per kilowatt of total Other Customers contract demand, and the minimum amount available in any month shall not be less than 60 hours per kilowatt of total Other Customers demand.

In the event that any portion of the capacity allocated to Other Customers is not initially delivered to the Other Customers as of the beginning of a full contract year (July through June), the 1500 hours, plus any such additional energy required as discussed above, shall be reduced 1/12 for each month of that year prior to initial delivery of such capacity.

The energy scheduled by TVA for use within the TVA System in any billing month shall be the total energy delivered to TVA less (1) an adjustment for fast or slow meters, if any, (2) an adjustment for Barkley-Kentucky Canal of 15,000 megawatt-hours of energy each month which is delivered to TVA under the agreement from the Cumberland Projects without charge to TVA, (3) the energy scheduled by the Department of Energy in said month for the Other Customers plus losses of two (2) percent, and (4) station service energy furnished by TVA.

For all such energy and for other benefits TVA realizes from the agreement, TVA shall pay the Department of Energy.

Billing Month: The billing month for capacity and energy sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Service Interruption: When delivery of capacity to TVA is interrupted or reduced due to conditions on the Department of Energy's system which are beyond its control, the Department of Energy will continue to make available the portion of its declaration of energy that can be generated with the capacity available.

For such interruption or reduction (exclusive of any restrictions provided in the agreement) due to conditions on the Department of Energy's system which have not been arranged for and agreed to in advance, the demand charge for scheduled capacity made available to TVA will be reduced as to the kilowatts of such scheduled capacity which have been so interrupted or reduced for each day in accordance with the following formula:

$$\text{Number of kilowatts unavailable for at least 12 hours in any calendar day} \times \frac{\text{Monthly capacity charge}}{\text{Number of days in billing month}} \times \frac{\text{Agreement Capacity}}{\text{880,000 kilowatts}}$$

The agreement capacity related to the 76,000 kilowatts of capacity allocated to the Other Customers in the Carolina Power & Light Company and Kentucky Utilities Service areas shall, irrespective of sale to Other Customers, remain in effect in the formula throughout the term of this rate schedule.

Power Factor: TVA shall take capacity and energy from the Department of Energy at such power factor as will best serve TVA's system from time to time; provided, that TVA shall not impose a power factor of less than .85 lagging on the Department of Energy's facilities which requires operation contrary to good operating practice or results in overload or impairment of such facilities.

[FR Doc. 89-17591 Filed 7-26-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3621-1]

Ambient Air Monitoring Reference and Equivalent Methods; Reference Method Designation

Notice is hereby given that EPA, in accordance with 40 CFR Part 53 as amended on July 1, 1987 (52 FR 24727), has designated another reference method for the determination of ambient concentrations of particulate matter measured as PM_{10}. The new reference method is a gravimetric manual method which utilizes a specially designed PM_{10} sampler for particle collection. The new designated method is identified as follows:

RFPS-0789-073, "Sierra-Andersen Models SA241 and SA241M or General Metal Works Models G241 and G241M PM_{10} Dichotomous Samplers", consisting of the following components:

Sampling Module with SA246b or G246b 10 μm inlet, 2.5 μm virtual impactor assembly, 37 mm coarse and fine particle filter holders, and tripod mount;

Control Module with diaphragm vacuum pump, pneumatic constant flow controller, total and coarse flow rotameters and vacuum gauges, pressure switch (optional), 24-hour flow/event recorder, digital timer/programmer or 7-day skip timer, and elapsed time indicator.

This method is available from the Sierra-Andersen Division of Andersen Samplers, Inc., 4801 Fulton Industrial Blvd., Atlanta, Georgia 30336, or from General Metal Works, Inc. (a wholly-owned subsidiary of Andersen Samplers, Inc.), 145 South Miami, Cleves, Ohio 45002. A notice of receipt of application for this method appeared in the **Federal Register**, Volume 54, February 10, 1989, page 6447.

Test samplers representative of this method have been tested by the applicant, in accordance with the test procedures specified in 40 CFR Part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with Part 53, that the method should be designated as a reference method. The information submitted by the applicant will be kept on file at the EPA Atmospheric Research and Exposure Assessment Laboratory, Research Triangle Park, North Carolina, and will be available for inspection to the extent consistent with 40 CFR Part 2 (EPA regulations implementing the Freedom of Information Act).

As a designated reference method, this method is acceptable for use by states and other control agencies under requirements of 40 CFR Part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any limitations specified in the applicable designation (see description of the method above). Vendor modifications of a designated method used for purposes of Part 58 are permitted only with prior approval of EPA, as provided in Part 53. Provisions concerning modification of such methods by users are specified under § 2.8 of Appendix C to 40 CFR Part 58 (Modifications of Methods by Users).

In general, this reference method designation applies to any Sierra-Andersen (SA) or General Metal Works (GMW) PM_{10} dichotomous sampler system that is identical to the system described in the above designation. Current owners of SA or GMW PM_{10} dichotomous samplers, purchased from Andersen Samplers, Inc. or General Metal Works, Inc., are advised to contact the manufacturer to determine the designation status of a specific system configuration or the specific requirements for upgrading existing samplers to be covered under this new designation.

Part 53 requires that sellers of designated methods comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(1) A copy of the approved operation or instruction manual must accompany the PM_{10} when it is delivered to the ultimate purchaser.

(2) The PM_{10} sampler must not generate any unreasonable hazard to operators or to the environment.

(3) The PM_{10} sampler must function within the limits of the performance specifications given in Table D-1 of Part 53 for at least one year after delivery when maintained and operated in accordance with the operation manual.

(4) Any PM_{10} sampler offered for sale as a reference or equivalent method must bear a label or sticker indicating that it has been designated as a reference or equivalent method in accordance with Part 53.

(5) An applicant who offers PM_{10} samplers for sale as reference or equivalent methods is required to maintain a list of ultimate purchasers of such samplers and to notify them within 30 days if a reference or equivalent method designation applicable to the sampler has been cancelled or if adjustment of the samplers is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(6) An applicant who modifies a PM_{10} sampler previously designated as a reference or equivalent method is not permitted to sell the sampler (as modified) as a reference or equivalent method (although he may choose to sell it without such representation), nor to attach a label or sticker to the sampler (as modified) under the provisions described above, until he has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified or until he has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the sampler as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Atmospheric Research and Exposure Assessment Laboratory, Department E (MD-77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this reference method will provide assistance to the states in establishing and operating their air quality surveillance systems under Part 58. Technical questions concerning the method should be directed to the manufacturer. Additional information concerning this action may be obtained from Frank F. McElroy, Quality Assurance Division (MD-77), Atmospheric Research and Exposure Assessment Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541-2622.

Erich W. Bretthauer,

Acting Assistant Administrator for Research and Development.

[FR Doc. 89-17576 Filed 7-26-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3620-9]

Ambient Air Monitoring Reference and Equivalent Methods; Receipt of Applications for Reference or Equivalent Method Determinations

Notice is hereby given that the Environmental Protection Agency has received two applications for reference or equivalent method determinations. On June 19, 1989, an application was

received from Wedding & Associates, Inc., P.O. Box 1756, Fort Collins, Colorado 80522, to determine if their PM-10 Beta Gauge Automated Particle Sampler should be designated by the Administrator of the EPA as an equivalent method under 40 CFR Part 53. On June 23, 1989, an application was received from Thermo Environmental Instruments, Inc., 8 West Forge Parkway, Franklin, Massachusetts 02038, to determine if their Model 42 Chemiluminescence NO-NO_2-NO_x Analyzer should be designated by the Administrator as a reference method under 40 CFR Part 53. If, after appropriate technical study, the Administrator determines that these methods should be so designated, notice thereof will be given in a subsequent issue of the **Federal Register**.

Erich W. Bretthauer,

Acting Assistant Administrator for Research and Development.

[FR Doc. 89-17577 Filed 7-26-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3620-8]

Science Advisory Board; Municipal Sludge Incineration Subcommittee for the Environmental Engineering Committee; Teleconference

Under Pub. L. 92-463, notice is hereby given that a teleconference of the Municipal Sludge Incineration Subcommittee of the Science Advisory Board will be held on July 28, 1989 in Room 3307, Environmental Protection Agency Headquarters, 401 M St. SW., Washington DC 20460. Members of the Environmental Engineering Committee may also participate. This meeting will start at 12 noon on July 28, and will adjourn no later than 6:00 p.m. The meeting is open to the public.

The main purpose of this meeting will be to review the Draft Report (version 3) on the proposed Use/Disposal Regulation of Sewage Sludge at 40 CFR Part 503 resulting from the Subcommittee's initial meeting on April 26-27, 1989.

An Agenda for the meeting is available from Marie Miller, Staff Secretary, Science Advisory Board (A101F), U.S. Environmental Protection Agency, Washington DC 20460 (202-383-2552). Members of the public desiring additional information should contact Mr. Samuel Rondberg, Executive Secretary, Research and Development Budget Review Committee, by telephone at (202) 382-2552, or by mail to the Science Advisory Board (A101F) 401 M Street, SW., Washington, DC 20460.

Donald Barnes,

Director, Science Advisory Board.

Dated: July 19, 1989.

[FR Doc. 89-17578 Filed 7-26-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140117; FRL-3621-2]

Access to Confidential Business Information by Meta Inc., and Advanced Sciences, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its subcontractors, META, Incorporated (META) of Arlington, VA and Advanced Sciences, Incorporated (ASI) of Arlington, VA for access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under contract no. 68-01-7176, subcontractors META and ASI, of 2000 N. 15th St., Arlington, VA will assist the Office of Toxic Substances' Information Management Division in developing, installing, and maintaining a computer data base which will contain information that may be claimed or determined to be CBI. META and ASI are working as subcontractors under the Computer Sciences Corporation (CSC). Access to TSCA CBI by CSC was previously announced in the **Federal Register** of October 31, 1985 (50 FR 45483).

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide META and ASI access to materials containing CBI submitted under all sections of TSCA, on a need-to-know basis. All access to TSCA CBI under this contract will take place at EPA Headquarters facilities.

Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1990.

META and ASI personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: July 7, 1989.

Linda A. Travers,

Director, Information Management Division.

[FR Doc. 89-17537 Filed 7-26-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-41031; FRL-3621-3]

Twenty-Fourth Report of the Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Interagency Testing Committee (ITC), established under section 4(e) of the Toxic Substances Control Act (TSCA), transmitted its Twenty-fourth Report to the Administrator of EPA on May 1, 1989. This report, which revises and updates the Committee's priority list of chemicals, adds no chemicals at this time to the list for priority consideration by EPA in promulgation of test rules under section 4(a) of the Act. The ITC has removed one chemical, diisodecyl phenyl phosphite, (PDDP), from the priority list because EPA has issued a consent order requiring testing of PDDP.

A public record of this report, with support for this action, including comments, is available for public inspection in Rm. NE G-004 at the address noted below from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. EPA invites interested persons to submit written comments on the report.

DATE: Written comments should be submitted by August 28, 1989.

ADDRESS: Send written submissions to: TSCA Public Docket Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. NE G-004, 401 M St., SW., Washington, DC 20460. Submissions should bear the document control number (OPTS-41031).

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA has received the TSCA Interagency Testing Committee's Report to the Administrator.

I. Background

TSCA (Pub. L 94-469, 90 Stat. 2003 *et seq;* 15 U.S.C. 2601 *et seq.*) authorizes the Administrator of EPA to promulgate regulations under section 4(a) requiring testing of chemical substances and mixtures (chemicals) in order to develop data relevant to determining the risks that such chemicals may present to health and the environment. Section 4(e) of TSCA establishes the ITC to make recommendations to the Administrator of EPA that certain chemicals be given priority consideration in proposing test rules under section 4(a). Section 4(e) directs the ITC to revise its list of recommendations at least every 6 months as necessary. The ITC may "designate" up to 50 chemicals at any one time for priority consideration by EPA. For such designations, EPA must within 12 months either initiate rulemaking or issue in the **Federal Register** its reasons for not doing so. The ITC's Twenty-fourth Report was received by the Administrator on May 1, 1989 and no additional chemicals were designated or recommended.

II. Written Comments

EPA invites interested persons to submit detailed written comments on the ITC's Twenty-fourth Report. All submissions should bear the identifying docket number (OPTS-41031).

III. Status of List

The Twenty-fourth Report of the ITC notes the removal of one chemical from the list. Diisodecyl phenyl phosphite (CAS No. 25550-98-5) has been removed from the list because EPA has responded to the ITC's recommendation by publishing a Consent Order (54 FR 8112; February 24, 1989). The current list contains two designated chemicals, five chemicals recommended with intent-to-designate, and thirteen recommended chemicals.

Authority: 15 U.S.C. 2603.

Dated: July 19, 1989.

Gary Timm,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 89-17579 Filed 7-26-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Backlund-White, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 18, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Backlund-White, Inc.*, Peoria, Illinois; to engage *de novo* in acting as an agent in packaging single family residential real estate loans for sale to MFL Mortgage Corporation of Milwaukee, Wisconsin, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 21, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-17534 Filed 7-26-89; 8:45 am]

BILLING CODE 6210-01-M

The Chase Manhattan Corp., New York, New York; Application To Conduct Private Placements of all Types of Securities as Agent or Riskless Principal

The Chase Manhattan Corporation, New York, New York ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (the "Act") and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for prior approval to engage through Chase Securities, Inc. ("Company") in the placement, as agent for issuers or as riskless principal, of all types of obligations and securities, registered and nonregistered. Company currently acts as agent or broker for Applicant and certain of its subsidiaries; provides investment advice and securities brokerage services to institutional customers; and underwrites and deals in obligations that state member banks are permitted to underwrite and deal in under the Glass-Steagall Act and, to a limited extent, certain municipal revenue bonds, mortgage-related securities, consumer-receivable-related securities, and commercial paper. In addition, subject to the satisfaction of certain conditions, Company has authority to underwrite and deal in all types of debt.[1]

The Board previously has authorized a bank holding company subsidiary to privately place third-party commercial paper as agent subject to certain limitations. *Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 138 (1987) ("*Bankers Trust*"); *Bank of Montreal*, 74 Federal Reserve Bulletin 500 (1988). Applicant has proposed to engage in the placement activity subject to the limitations contained in *Bankers Trust* and *Bank of Montreal*, with certain exceptions. In particular, Applicant's proposal differs from that approved in *Bankers Trust* and *Bank of Montreal* in the following principal respects:

- The instruments proposed to be placed include all types of obligations and securities, registered and nonregistered;

[1] *J.P. Morgan & Co., Incorporated, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp, and Security Pacific Corporation*, 75 Federal Reserve Bulletin 192 (1989) (the "Securities Order"). Approval of this application would permit Company to include revenues from placement activities as "eligible revenues" for purposes of the Securities Order. Approval would also permit Company to place equity securities without the one-year delay contemplated by the Securities Order.

• The eligible purchasers include individuals with a net worth of over $1 million;

• Company proposes to engage in riskless principal transactions in addition to acting as agent;

• Company's nonbank affiliates may engage in credit enhancement activities with respect to the securities placed; and

• Company's affiliates may provide investment advice with respect to securities placed by Company and may purchase securities placed by Company for their own account.

The Board has not previously determined that the proposed placement activities are permissible under section 4(c)(8) of the Act. Section 4(c)(8) provides that a bank holding company may, with prior Board approval, engage directly or indirectly in any activities "which the Board after due notice and opportunity for hearng has determined [by order or regulation] to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n* v. *Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 **Federal Register** 806 (1984). Applicant maintains that the proposed placement activities are closely related to banking because banks are currently active participants in the private placement market.

In determining whether an activity meets the second, or proper incident to banking, test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate or a holding company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Applicant contends that permitting bank holding companies to engage in the proposed activities would result in increased competition and would raise no substantial risks of unsound banking, conflicts of interest, unfair competition, or similar problems.

Applicant contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377), which prohibits the affiliation of a member bank, such as Chase Manhattan Bank, N.A., with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. Applicant contends that the proposed placement activities do not raise an issue under section 20 in that they do not differ in any material respect from those approved in the Board's *Bankers Trust* Order and *Securities Industry Ass'n* v. *Board of Governors*, 807 F.2d 1052 (D.C. Cir. 1986), *cert. denied*, 107 S.Ct. 3228 (1987).

In publishing the proposal for comment, the Board does not take any position on issues raised by the proposal under the Act. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the Act.

Any views or requests for a hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than August 28, 1989. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, July 21, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-17536 Filed 7-26-89; 8:45 am]

BILLING CODE 6210-01-M

Lemens Banking Investments, Ltd.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than August 21, 1989.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Lemens Banking Investments, Ltd.*, Austin, Texas; to become a bank holding company by acquiring 61.8 percent of the voting shares of First Bank & Trust Co. of Bartlett, Bartlett, Texas.

Board of Governors of the Federal Reserve System, July 21, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-17535 Filed 7-26-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement 940]

Assistance Program for Chronic Disease Prevention and Control

Introduction

The Centers for Disease Control (CDC) announces the availability of funds for an Assistance Program (grants or cooperative agreements) to (1) continue current assistance awards for planning, developing, integrating, coordinating, or evaluating programs to prevent and control chronic disease(s), (2) assist States in monitoring the prevalence of major behavioral risks associated with the 10 leading causes of premature death in the United States, and (3) establish new chronic disease prevention and control programs in additional States.

Authority

This program is authorized by section 301(a) (42 U.S.C. 241(a)) and section 317 (k)(3) (42 U.S.C. 247b(k)(3)) of the Public Health Service Act, as amended. Regulations are set forth in 42 CFR 51b Subpart A—Project Grants for Preventive Health Services.

Eligible Applicants

A. Continuation Application

Eligible applicants for the continuation funds are the official health agencies of States (Alabama, California, Maine, Minnesota, Montana, North Carolina, Ohio, Republic of Palau, Rhode Island, Tennessee, Washington, and Washington, DC) presently receiving Chronic Disease Control Program cooperative agreement funds and official health agencies currently receiving the Behavioral Risk Factor Surveillance System (BRFSS) funding that elect not to compete for a new project (Alabama, Arizona, California, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kentucky, Massachusetts, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New York, North Carolina, North Dakota, Ohio, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, West Virginia, and Wisconsin).

B. Competing Application

Eligible applicants for the new Chronic Disease Prevention and Control Program awards and the Behavioral Risk Factor Surveillance System (BRFSS) awards are the official public health agencies of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, Trust Territories of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, the Federated States of Micronesia, the Republic of Palau, and the Republic of the Marshall Islands.

All applications from States currently participating in the BRFSS will be considered as competing continuations, even though its BRFSS grant project period does not expire in Fiscal Year 1989, unless they specifically state that they do not want to continue the project beyond the current project period. States with existing cooperative agreements that elect not to compete must submit a continuation application for the next budget period.

Availability of Funds

Approximately $4 million (which includes $2 million for existing chronic disease programs, $1 million for new and existing BRFSS and $1 million new chronic disease) will be available in Fiscal Year 1989 to fund up to 50 BRFSS projects, 12 continuation chronic disease prevention and control programs, and 15 new chronic disease prevention and control programs. These awards are expected to begin on or about August 31, 1989, for a 12-month budget period in a 1 to 5 year project period. Individual BRFSS awards will range form $20,000 to $35,000. Individual awards for new chronic disease prevention and control programs will range from $35,000 to $125,000. Funding estimates may vary and are subject to change. A continuation award within the approved project period will be made on the basis of satisfactory performance and the availablity of funds.

A. Continuation Applications

Recipients that elect to submit non-competing continuation applications should include progress reports describing current status on the recipient activities and any changes planned for the next budget period.

B. Competing Applications

Projects may be either short-term (one year) or long-term (up to five years) and should address specific problems as noted in "Purpose." Non-Federal funding sources should provide greater shares of support in any later budget period.

Applicants must specify in the cover letter the type of award, either grant or cooperative agreement, for which they are applying. CDC will review the applications in accordance with the appropriate criteria.

A project proposed to receive a project grant should be designed to improve the core capacity of the State Health Agency to prevent and control chronic disease, as described in "Purpose." The application should clearly lay out this design. As is described in the PHS Grants Policy Statement, the applicant should not expect substantial programmatic involvement from CDC during the project. The application should be presented in a manner that demonstrates the applicant's ability to conduct the project without substantial involvement from CDC.

Cooperative agreements will include substantial programmatic involvement from CDC during the project as specified under Program Requirements A.2 and B.2. Projects funded through a cooperative agreement that involve collection of information from 10 or more respondents will be subject to review under the Paperwork Reduction Act.

Requests for direct assistance (i.e. "in lieu of cash") for personnel, organizing and conducting the project described in this announcement will be considered.

Purpose

The long term goal is for each State to have the capacity to conduct disease and risk factor surveillance, establish program priorities using quality data and broadly based coalitions, conduct ongoing well-designed interventions, and to build ongoing evaluation into the program's design. As the field of chronic disease prevention and control is better defined and models of successful programs are translated to new areas, this goal can be attained. The purpose of this announcement is to focus on the three areas listed below. Special attention should be given to minority and medically underserved populations because of their disproportionate health status burden.

A. High priority chronic diseases e.g., cancers (lung, breast, or cervical), cardiovascular disease (ischemic heart disease, cerebrovacular disease), and chronic obstructive lung disease.

B. The key modifiable risk factors for high-priority disease, e.g., smoking, hypertension, hyperlipidemia, and sedentary lifestyle.

C. Capacity building for chronic disease programs in such areas as surveillance, intergration of currently fragmented activities, and the building of coalitions/advisory groups to address high-priority conditions or risk factors.

Program Requirements

A. BRFSS Awards

1. Recipient Activities

(a) Formulate a plan for the development, implementation, and conduct of the behavioral risk factor surveillance mechanisms. The plan should:

(1) Provide a timetable for the development and implementation of the surveillance system.

(2) Identify and select appropriate staff for the surveillance program and provision of adequate supervisory personnel who will be responsible for the timeliness and quality control of data collection. In addition, supervisors will train new subordinate staff and edit completed questionnaires.

(3) Provide for acquisition of behavioral risk factor information.

(b) Establish and maintain the behavioral risk factor surveillance system.

(c) Develop a plan for using available risk factor prevalence information and other morbidity and mortality data for improving and refining State program priorities and goals and assessing their attainment.

2. Centers for Disease Control Activities

(a) Collaborate in assessing State geographic, demographic, and economic characteristics and developing an overall surveillance strategy.

(b) Collaborate with each State on the compilation of specified information in a periodic, standardized, and uniform manner on risk factors relating to leading causes of morbidity and mortality.

(c) Collaborate in the training and development of staff implementation and conduct the program activities described herein.

(d) Provide necessary statistical and epidemiological assistance for the compilation of risk factor prevalence information.

(e) Provide technical assistance throughout the program implementation phase with special reference to development of quality control mechanisms appropriate to a State-level surveillance system.

(f) Provide training for State personnel in data analysis and interpretation and develop State capacity for enhancing intervention strategy design and measuring program impact on the basis of statistically valid morbidity data.

(g) Coordinate with other Federal agencies and organizations in both public and private sectors to ensure a coordinated, cooperative program for helping assess the attainment of the Year 2000 Objectives for the Nation.

(h) Coordinate and facilitate the interchange of technical information with recipients.

B. New Chronic Disease Prevention and Control Program Awards

1. Recipient Activities

Due to the diversity of projects that may be approved, activities may vary. For example, a project that will demonstrate an intervention directed at a single chronic disease will have different activities than a project that will utilize an advisory committee to assist the State in developing its own priorities in the control of chronic diseases. However, some general activities, and/or items under A.1.(a)–(c) (above), expected for any applicant include:

(a) Identify sufficient appropriately trained staff to conduct the proposed activities.

(b) Conduct the activities described in the application in a manner that will ensure accomplishment of objectives.

(c) Where appropriate, conduct a strong, scientifically based evaluation designed to determine the effectiveness of the activities.

(d) Conduct a Behavioral Risk Factor Surveillance System approved and funded under this announcement or provide other evidence of the capability of the applicant to perform the tasks required for a BRFSS.

2. Centers for Disease Control Activities

In addition to the financial support provided, and/or those activities noted in A.2. (a)–(h) above, CDC can provide assistance to the State by:

(a) Collaborating in the design and development of methods for data collection and data analysis that can be adapted to future programs. This includes assessing State geographic, demographic, and economic characteristics in developing a strategy for collecting behavioral risk factor survey data.

(b) Collaborating in the design, data analysis, and evaluation of programs.

(c) Providing consultation in describing the epidemiology of the specific disease(s) selected.

(d) Serving in an advisory capacity to coalitions, in community intervention programs, etc.

(e) Providing training, consultation, and guidance in selecting and implementing prevention methodologies.

Funding Priorities

Applications will be reviewed and ranked in the following specific categories: (1) Long-term (up to five years) BRFSS; (2) short-term (one year) chronic disease prevention and control programs, with subdivision for a single disease/risk factor focus or a multiple disease/risk factor focus; (3) long-term (up to five years) chronic disease prevention and control programs, with subdivisions for a single disease/risk factor focus or a multiple disease/risk factor focus.

Other Requirements

New chronic disease prevention and control programs should address one or more of the following goals for the selected disease(s) and/or their related risk factors:

A. To foster and mobilize a coalition of public, private and voluntary agencies committed to a common agenda for the prevention and control of one or more chronic disease(s) or of chronic diseases in general. The coalition should operate at the State and/or local level(s) and should include professional, voluntary, and/or other private sector organizations, as well as State and local public health agencies. The coaliton should assist the State and local health agencies in setting priorities, planning interventions, and in evaluating the effectiveness of chronic disease programs.

B. To monitor the prevalence of major behavioral risks associated with the 10 leading causes of premature death in the United States. The recipient must formulate a plan for the development, implementation, and conduct of behavioral risk factor surveillance. The plan should provide: (1) A development and implementation timetable; (2) identification of personnel; (3) a description of collection methodology; and (4) a plan for continuing ongoing or periodic data collection.

C. To develop chronic disease surveillance programs that utilize comprehensive hospital discharge data and other corroborative secondary data sources such as medical examiner's data, vital statistics data, or environmental exposure data.

D. To conduct chronic disease surveillance of local or State trends in morbidity and mortality to identify and rank public health problems, generate hypotheses relevant to their prevention and control, and evaluate the effectiveness of intervention programs. This can be aimed at a single disease, although multiple data sources should be used.

E. To conduct applied research such as epidemiologic studies, operational research, and laboratory investigations to identify opportunities for preventive actions.

F. To demonstrate the impact and/or evaluate the effectiveness of chronic disease intervention programs in collaboration with other State and local agencies and other appropriate groups. Demonstrations which emphasize an integrated approach to diseases/risk factors and which plan for institutional changes to sustain programs over time will be given priority.

G. To provide education for health professionals to facilitate widespread implementation of effective intervention strategies.

H. To conduct directed information and education programs for the prevention and control of chronic diseases. This should be targeted toward specific high-risk groups, e.g., minorities and specific age groups, and should include evaluation.

I. To develop and test marketing strategies designed to improve utilization of services directed at the prevention and control of chronic diseases or risk factors.

Evaluation Criteria

Applications will be reviewed and evaluated based upon the following criteria:

A. Competing BRFSS

1. Evidence of Capacity or Experience (60%)

(a) Thorough implementation plan that addresses: (40%).

(1) Timely and periodic collection of data.

(2) Designation of interviewing and supervisory staff or designation of a component contractor for interviewing services.

(3) Use of standard questionnaire.

(4) Description of appropriate data-processing activities including keypunching and error corrections.

(5) Adherence to a statistically correct sampling plan.

(6) Adherence to appropriate quality control procedures, including survey administration rules of replacement, refusal conversion, and monitoring or verification of interviews.

(7) Demonstrated ability to reduce errors.

(b) Extent of other experience with timely collection and analysis of behavioral risk factor prevalence information. (10%)

(c) Other evidence of the capability of the applicant to perform the tasks required for a BRFSS. (10%)

2. Workplan and Personnel (40%)

(a) Relevance of the application to the scope and objective provided in this request for applications.

(b) Soundness in describing how the BRFSS will be designed, implemented and managed as evidenced by the:

(1) Descriptions of lead persons/ departments.

(2) Definition of action steps, time frames, and persons responsible for completion.

(3) Inclusion of appropriate quality control measures.

(4) Description of specific measurable objectives such that progress can be evaluated based on the completion of the stated processes.

(5) Assurance that interviewing will not be interrupted for any given month.

(6) Processing of interviews in a timely fashion.

(7) Provision of a sound sampling plan.

(8) Clear description of the programmatic uses of the data.

3. Budget. The estimated cost to the Government of the project is reasonable considering the anticipated results. (Not Weighted)

B. Competing New Chronic Disease Prevention and Control Programs

1. Evidence of the applicant's understanding of the problem and the purpose of the cooperative agreement/ project grant. (10%)

2. Consistency of the measurable objectives with the stated purpose of the application and the ability to meet the objectives and timetable within the specified period. (25%)

4. The adequacy of the applicant's plan to monitor progress toward meeting the objectives of the project. (20%)

5. Evidence of capacity or experience to carry out a BRFSS. (15%)

(a) Thorough implementation plan that addresses:

(1) Timely and periodic collection of data.

(2) Designation of interviewing and supervisory staff or dedsignation of a competent contractor for interviewing services.

(3) Use of a standard questionnaire.

(4) Description of appropriate data-processing activities including keypunching and error corrections.

(5) Adherence to a statistically correct sampling plan.

(6) Adherence to appropriate quality control procedures including survey administration rules of replacement, refusal conversionl and monitoring or verification of interviews.

(7) Plan for error reduction.

(b) Extent of other timely collection and analysis of behavioral risk factor prevalence information.

(c) Other evidence of the capability of the applicant to perform the tasks required for a BRFSS.

6. Workplan and personnel. (10%)

(a) Relevance of the proposal to the scope and objective provided in this request for applications.

(b) Soundness in describing how the BRFSS will be designed, implemented, and managed as evidenced by the:

(1) Descriptions of lead persons/ departments.

(2) Definition of action steps, time frames, and persons responsible for completion.

(3) Inclussion of appropriate quality control measures.

(4) Description of specific measurable objectives such that progress can be evaluated based on the completion of the stated processes.

(5) Assurance that interviewing will not be interrupted for any given month.

(6) Processing of interviews in a timely fashion.

(7) Provision of a sound sampling plan.

(8) Clear delineation of CDC versus State responsibilities.

(9) Clear description of the programmatic uses of the data.

7. The applicant's capability to provide the staff and resources necessary to perform and manage the project. (5%)

8. Appropriateness of requested budget relative to the work proposed. The extent to which the budget is reasonable, adequately justified, and consistent with the intended use of the cooperative agreement/project grant funds. (Not Weighted)

Executive Order 12372 Review

Applications are not subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 13.283.

Application Submission and Deadline

The original and two copies of the application (PHS 5161-1, Rev. 3/89) must be submitted to Candice Nowicki-Lehnherr, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, on or before July 28, 1989.

A. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

B. *Late Applications:* Applications that do not meet the criteria in A.1. or A.2 above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, and an application package may be obtained from Nealean Austin, Grants Management Specialist, Grants Management Branch, Centers for Disease Control, Procurement and

Grants Office, 255 East Paces Ferry Road, NW., Room 300, Atlanta, GA 30305, telephone (404) 842-6575 or FTS 236-6575.

Please refer to Announcement Number 940 when requesting information and submitting any application on the Request for Assistance.

Technical assistance may be obtained from Charles Nelson, Division of Chronic Disease Control and Community Intervention, Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, GA 30333, telephone (404) 639-3178 or FTS 236-3178.

Dated: July 21, 1989.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 89-17532 Filed 7-26-89; 8:45 am]

BILLING CODE 4160-18-M

Health Resources and Services Administration

Advisory Committees; Meetings in September

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the month of September 1989.

Name: Departments of Family Medicine Review Committee.

Date and Time: September 11-12, 1989, 8:30 a.m.

Place: Conference Room L and Chesapeake Room, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on September 11, 8:30 a.m.-9:30 a.m.

Closed for Remainder of Meeting.

Purpose: The Departments of Family Medicine Review Committee shall review applications that (1) either assist in meeting the cost of planning, developing and operating; or participating in approved predoctoral training programs in the field of family medicine; and (2) assist in meeting the costs of projects to establish, maintain, or improve academic administrative units (which may be departments, division, or other units) to provide clinical instruction in family medicine.

Agenda: The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meeting will be closed to the public on September 11, at 9:30 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C. Code, and the Determination by the Acting Administrator, Health Resources and Services Administration pursuant to Pub. L. 92-463.

Anyone requiring information regarding the subject Committees should contact Mrs. Sherry Whipple, Executive Secretary, Departments of Family Medicine Review Committee, Room 4C-18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6874.

Name: Residency Training Review Committee.

Date and Time: September 19-21, 1989, 8:30 a.m.

Place: Conference Rooms K, L and Chesapeake Room, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on September 19, 8:30 a.m.-9:30 a.m.

Closed for Remainder of Meeting.

Purpose: The Residency Training Review Committee shall review applications that plan, develop and operate approved residency training programs in internal medicine or pediatrics, which emphasize the training of residents for the practice of general internal medicine or general pediatrics and assist residents, through traineeships and fellowships, who are participants in any such program and who plan to specialize or work in the practice of general internal medicine or general pediatrics.

Agenda: The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meeting will be closed to the public on September 19, at 9:30 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C. Code, and the Determination by the Acting Administrator, Health Resources and Services Administration, pursuant to Pub. L. 92-463.

Anyone requiring information regarding the subject Committees should contact Mrs. Sherry Whipple, Executive Secretary, Residency Training Review Committee, Room 4C-18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6874.

Agenda Items are subject to change as priorities dictate.

Date: July 21, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89-17560 Filed 7-26-89; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-930-09-4214-12; MTM 15568]

Termination of Classification for Multiple-Use Management; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action terminates the classification which segregated 7,509.29 acres of public land from appropriation under the agricultural land laws and from sales under section 2455 of the Revised Statutes (R.S. 2455); the classification is no longer needed since the Federal Land Policy and Management Act of 1976 provides adequate protection from agricultural land laws and has repealed R.S. 2455. This action will open the lands to the agricultural land laws. These lands have been and remain open to mining, mineral leasing, and all other public land laws.

EFFECTIVE DATE: July 27, 1989.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-255-2935.

1. Pursuant to 43 CFR 2091.7-1(b)(3) and the authority delegated by BLM Manual 1203 (48 FR 85), the Muliple-Use Management Classification dated September 22, 1970, and published in the **Federal Register** September 30, 1970, Volume 35, No. 190, Pages 15247-15248, is terminated. The lands affected are described as follows:

Principal Meridian Montana

T. 37 N., R. 18 E.,
sec. 25, NE¼.
T. 36 N., R. 20 E.,
sec. 13, W½;
sec. 23, SW¼;
sec. 25, E½ and SW¼;
sec. 26, SE¼.
T. 33 N., R. 21 E.,
sec. 24, W½
T. 37 N., R. 21 E.,
sec. 24, W½.
T. 37 N., R. 21 E.,
sec. 29, N½N½, SW¼NE¼, and SE¼NW¼;
sec. 30, N½SE¼.
T. 32 N., R. 24 E.,
sec. 13, all;
sec. 14, NE¼, E½NW¼, NE¼SW¼, and N½SE¼;
sec. 23, NE¼;
sec. 26, N½.
T 32 N., R. 25 E.,
sec. 3, SW¼NW¼;
sec. 5, Lots 3 and 4, SW¼NW¼, W½SW¼, and SE¼SW¼;
sec. 6, Lots 2 and 3, SW¼NE¼, SE¼NW¼, E½SW¼, and W½SE¼;
sec. 7, Lots 1, 2, 3, and 4, SW¼NE¼, E½NW¼, E½SW¼, and NW¼SE¼;
sec. 8, S½NE¼, W½, and SE¼;
sec. 9, W½, SW¼, and SE¼SW¼;
sec. 11, NE¼;
sec. 12, W½;
sec. 17, N½NE¼, NE¼NW¼, S½N½, and S½;
sec. 18, Lots 1, 2, 3, and 4, SE¼NE¼, W½NE¼, E½NW¼, E½SW¼, and SE¼;
sec. 19, Lots 1, 2, and 3, NE¼, E½NW¼, and N½N½SE¼;
sec. 20, N½ and N½SW¼.

The area described aggregates 7,509.29 acres in Blaine County.

2. At 9:00 a.m. on August 28, 1989 the lands will be opened to the agricultural land laws, subject to valid existing rights, the provisions of existing withdrawals, and the requirement of applicable law. All valid applications received at or prior to 9:00 a.m. on August 28, 1989 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

July 20, 1989.

[FR Doc. 89-17586 Filed 7-26-89; 8:45 am]

BILLING CODE 4310-DN-M

[CA-067-09-4352.12]

Camping Closure Order for a Portion of Lands Within and Adjacent to the East Mesa Area of Critical Environmental Concern (CDCA ACEC #70), Imperial County, CA

AGENCY: Bureau of Land Management Interior.

ACTION: Camping closure.

SUMMARY: The purpose of this closure to overnight camping is to minimize environmental impacts resulting from recreational usage of lands within and adjacent to the Southern East Mesa ACEC. This closure will include the following portion of lands known as "East Mesa", west of the Old Coachella Canal:

T. 17 S., R. 20 E., SBM
Sec. 30 (west of canal)
T. 17 S., R. 19 E., SBM
Lands west of the canal in the following sections:
Secs. 10, 11, 13, 14, 15
Secs. 22, 23, 24, 25, 26, 27
Secs. 34, 35

These lands are located along BLM Routes A-451 and A-453 which connects Gordons Well with the Old Coachella Canal, four miles north of Gordon's Well. Camping in this area will be restricted to the existing overflow campsite west of the canal in section 31, T. 17 S., R. 20 E., SBM. Posting of approved routes of travel will be accomplished in this area. Enforcement of this closure and limiting travel to approved routes will be intensified.

Background

Since 1978, the area north and west of Gordon's Well has sustained a dramatic increase in overflow camping usage from the adjacent sand dunes recreation area. Closure of the lands to camping will eliminate intensive riding activities normally found in and around campsites, which negatively impacts Flat-Tailed Horned Lizard habitat. Flat-Tailed Horned Lizard habitat which is closed to camping is expected to recover from impacts resulting from the intensive use. This camping closure is as identified in the approved Imperial Sand Dunes Recreation Area Management Plan and Environmental Assessment, Chapter 4, pages EA-51 and 52. The lands closed to camping will remain open to vehicle use on approved routes as currently exists. The "Dune Buggy Flats" area east of the Coachella Canal will also remain open to camping as will the lands west of the canal, in Section 31 between Gordon's Well Interchange and Dune Buggy Flats.

EFFECTIVE DATE: This Closure will be effective September 15, 1989 and will remain in effect until rescinded or modified by the authorized officer.

FOR FURTHER INFORMATION CONTACT: Russell L. Andris-Olech, B.L.M. Ranger, Bureau of Land Management, El Centro Resource Area, 333 South Waterman, El Centro, California 92243, (619) 352-5842.

SUPPLEMENTARY INFORMATION: The authority for Closure orders is provided at 43 CFR 8364.1. Violations of this closure are punishable by a fine not to exceed $1,000 and or/imprisonment not to exceed 12 months.

Date: July 19, 1989.

H.W. Riecken,

Acting District Manager.

[FR Doc. 89-17585 Filed 7-26-89; 8:45 am]

BILLING CODE 4310-40-M

Cheyenne, WY; Invitation for Coal Exploration License

[WY-920-08-4120-11; WYW117027]

AGENCY: Bureau of Land Management.

ACTION: Invitation for Coal Exploration License.

SUMMARY: Thunder Basin Coal Company hereby invites all interested parties to participate on a pro rata cost sharing basis in its coal exploration program concerning federally owned coal underlying the following described land in Campbell County, Wyoming:

T. 43 N., R. 70W., 6th P.M., WY
Sec. 7: Lots 7-10, 13-19;
Sec. 18: Lots 5-7, 10-15, 18-20;
Sec. 19: Lots 1-20;
Sec. 29: Lots 3-6, 9-16;
Sec. 30: Lots 5-20;
Sec. 31: Lots 5-12;
Sec. 32: Lots 1-6;
Sec. 33: Lots 3-6;
T. 43 N., R 71 W., 6th P.M., WY
Sec. 1: Lots 16-18;
Sec. 12: Lots 1-16;
Sec. 13: Lots 2-7, 10-15;
Sec. 24: Lots 1-16;
Sec. 25: Lots 1-16.
Containing 6,084.30 acres

All of the coal in the above land consists of unleased Federal coal, within the Power River Basin known coal leasing area. The purpose of the exploration is to determine coal quality parameters.

ADDRESSES: A detailed description of the proposed drilling program is available for review during normal business hours in the following offices (under serial number WYW117027): Bureau of Land Management, 2515 Warren Avenue, Cheyenne, Wyoming 82003; and Bureau of Land Management, 1701 East 'E' Street, Casper, Wyoming 82601.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in a newspaper once each week for two consecutive weeks beginning the week of July 17, 1989, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and to Thunder Basin Coal Company no later than 30 days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: Mr. Marvin Senne, Thunder Basin Coal Company, P.O. Box 408, Wright, Wyoming 82732-0406 and the Bureau of Land Management, Wyoming State Office, Branch of Mining Law and Solid Minerals, P.O. Box 1828, Cheyenne, Wyoming 82003-1828.

The foregoing is published in the **Federal Register** pursuant to Title 43 Code of Federal Regulations, § 3410.2-1(c)(1).

F. William Eikenberry,

State Director.

[FR Doc. 89-17500 Filed 7-26-89; 8:45 am]

BILLING CODE 4310-22-M

[UT-040-09-4322-02]

Cedar City District Grazing Advisory Board Meeting

Notice is hereby given in accordance with Pub. L. 992-463 that a meeting and field tour of the Cedar City District Grazing Advisory Board will be held on September 7, 1989. The meeting will begin at 9:00 a.m. in the Cannonville City Park, Cannonville, Utah.

A meeting will be held at the City Park were each Resource Area will give a brief report on current drought conditions in their Resource Area and actions they proposed to take to lessen adverse grazing and drought effects on the vegetation. Other agenda items will include land use planning, predator control, and maintenance at field camps. Following the meeting, a field trip will be made to selected allotments to observe drought conditions, recently completed and proposed range treatment projects, a Utah State Park fencing proposal, and range projects where vandalism to the projects has recently occurred. Those planning to attend the field trip should provide their own lunch and transporation.

Grazing Advisory Board meetings are open to the public. Interested persons may make oral statements or file written statements for the Board's consideration. Oral statements will be received at 9:00 a.m.

Anyone wising to make an oral statement must notify the District Manager, Bureau of Land Management, 176 East DL Sargent Drive, Cedar City, UT 84720, phone (801) 586-2401 by September 1, 1989, Depending on the number of persons wishing to make statements, a per person time limit may be established by the District Manager.

Summary minutes of the Board meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Gordon R. Staker,

District Manager.

[FR Doc. 89-17542 Filed 7-26-89; 8:45 am]

BILLING CODE 4310-DQ-M

[AZ040-09-4320-02]

Safford District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that a meeting of the Safford District Grazing Advisory Board will be held.

DATE: Friday, August 25, 1989 at 10:00 a.m.

ADDRESS: East Aravaipa, Nature Conservancy Guest House.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Pub. L. 92-463. The agenda for the meeting will include:

1. Discussion of South Rim AMP
2. Overview of Nature Conservancy Interests in Aravaipa and Muleshoe areas.
3. Prescribed fire plans for Aravaipa area.
4. Wilderness legislation.
5. Predator Control procedures.
6. BLM Management update.
7. Business from the Floor.

The meeting is open to the public. Board members will meet at the BLM Office, 425 E. 4th St., Safford, AZ 85546 at 9:00 a.m. From there they will depart via BLM, provided vehicles for East Aravaipa. Members of the public may accompany the group and attend the Meeting, but must provide their own transportation. It is expected the Board members will return to Safford about 4:00 p.m.

Interested persons may make oral statements to the Board. A written copy of the oral statement may be required to be provided at the conclusion of the presentation. Written statements may also be filled for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 425 E. 4th St., Safford, AZ 85546, by 4:15 p.m., Thursday, August 24, 1989.

Summary minutes of the Board meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within thirty (30) days following the meeting.

Dated: July 14, 1989.

Ray A. Brady,

District Manager.

[FR Doc. 89-17583 Filed 7-26-89; 8:45 am]

BILLING CODE 4310-32-M

[WY-030-09-4351-02]

Meeting of the Rawlins District Advisory Council

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of meeting of the Rawlins District Advisory Council.

SUMMARY: Notice is hereby given of a meeting of the Rawlins District Advisory Council, in accordance with Pub. L. 94-597.

DATE: August 16, 1989.

ADDRESS: Bureau of Land Management, 1300 North Third Street, Rawlins, Wyoming 82301.

FOR FURTHER INFORMATION CONTACT: Grant Petersen, Public Affairs Specialist, or Richard Bastin, District Manager, Rawlins District, Bureau of Land Management, P.O. Box 670, Rawlins, WY 82301, (307) 324-7171.

SUPPLEMENTARY INFORMATION: The meeting will be held at 9:00 a.m. at the BLM District Office, 1300 North Third Street, Rawlins, Wyoming. A public comment period will be held at 9:15 a.m. The agenda items include: Welcome (9:00 a.m.); Public Comment Period (9:15 a.m.); Field Trip Tour of Adobe Town Wilderness Study Area, discussion of Adobe Town WSA and multiple use (10:30 a.m.); and wrap-up and resolutions (4:00 p.m.).

The meeting is open to the public. Anyone interested in attending the meeting and/or making an oral statement should notify the District Manager by August 11, 1989. Written statements also may be filed before the meeting for the Council's consideration.

Summary minutes will be available for review within 30 days after the meeting at the Rawlins District Office. Copies of the minutes may be obtained for the cost of duplication.

Dated: July 17, 1989.

Richard Bastin,

District Manager.

[FR Doc. 89-17543 Filed 7-26-89; 8:45 am]

BILLING CODE 4310-22-M

[AZ 020-41-5410-10-ZAGK; AZA-23870]

Mineral Interest, Applications; Arizona

ACTION: Notice of receipt of conveyance of mineral interest application.

Notice is hereby given that pursuant to Section 209 of the Act of October 21, 1976, 90 Stat. 2757, Showlow Pines Mineral Rights Acquisition Limited Partnership has applied for conveyance of the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 11 N., R. 24 E.,
sec. 8, S½;
sec. 10, all;
sec. 12, all;
sec. 14, all;
sec. 22, all.
Containing 2,880 acres

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, April 24, 1989, whichever occurs first.

Henri R. Bisson,

District Manager.

Date: July 20, 1989.

[FR Doc. 89-17584 Filed 7-26-89; 8:45 am]

BILLING CODE 4310-32-M

[NM-037-09-4320-04]

White Sands Resource Area Name Change

AGENCY: Bureau of Land Management, Interior.

ACTION: Name change of White Sands Resource Area to Caballo Resource Area.

SUMMARY: The use of the name White Sands Resource Area is confusing to the public and agencies alike because of the proximity of the White Sands Missile Range (U.S. Army) and White Sands National Monument (National Park Service). The name "Caballo" was selected because it is one of the best known geographic features (Caballo Mountains) within the Resource Area. It better identifies with New Mexico and the public lands. The public, Congressional Offices, U.S. Army and Las Cruces District Grazing Advisory Board were involved in the proposed change. No objections were voiced.

EFFECTIVE DATE: This change is effective July 27, 1989.

FOR FURTHER INFORMATION CONTACT: H. James Fox, District Manager, Las Cruces District, Bureau of Land Management, 1800 Marquess Street, Las Cruces, NM 88005 or at (505) 525-8228.

Robert R. Calkins,

Associate District Manager.

July 19, 1989.

[FR Doc. 89-17547 Filed 7-26-89; 8:45 am]

BILLING CODE 4310-FB-M

[CA-023-09-4050-00; CA20656]

Realty Action, Classification of Public Lands in Plumas, CA

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice of Realty Action; classification of Public Lands under the Recreation and Public Purposes Act, in Plumas County, CA. (CACA23622)

SUMMARY: The following described public lands are hereby classified as suitable for sale under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*):

T. 22N., R. 14E., M.D.M., California
Section 23; SE¼ SE¼ SW¼ SW¼, SW¼ SW¼ SE¼ SW¼
Section 26; NE¼ NE¼ NW¼ NW¼, NW¼ NW¼ NE¼ NW¼.
Total: 10 acres

These lands are proposed to be sold to the Portola Cemetery District for the operation of a cemetery. The sale shall be subject to the standard terms and conditions of a Recreation and Public Purposes Act patent.

All minerals will be reserved by the United States together with the right to mine and remove the same under applicable laws and regulations to be established by the Secretary of the Interior.

The above described public lands are hereby segregated from all other forms of disposal, entry or appropriation under the public land laws, including locations under the mining laws, but not to leasing under the mineral leasing laws. Any mineral leases issued would contain a no surface occupancy clause. The segregative effect of this notice shall automatically expire 18 months after publication of this notice if no application is filed or if no patent is issued. If a patent is issued, the segregation will remain in effect unless this notice is amended or reviewed.

Comments: For a period of 45 days after publication of this notice in the **Federal Register**, comments may be sent to the District Manager, Bureau of Land Management, 705 Hall Street, Susanville, CA 96130. Comments will be evaluated by the California State Director of the Bureau of Land Management, who may affirm, vacate or modify this classification.

Information: For additional information on this matter call or write the Eagle Lake Area Manager, Bureau of Land Management, 2545 Riverside Drive, Susanville, CA 96130. Telephone (916) 257-0456.

Richard H. Stark, Jr.,

Eagle Lake Area Manger.

[FR Doc. 89-17544 Filed 7-26-89; 8:45 am]

BILLING CODE 4310-40-M

Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Casefile CA 162 and CA 24921; California

The following public lands in Shasta County, California have been examined and found suitable for classification for lease and/or conveyance to the Straight Arrow Bowhunters under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Straight Arrow Bowhunters propose to use the land for an archery range.

Mount Diablo Meridian

T. 31 N., R. 5 W.,
Section 7: Lots 5, 6, 11, 12, 30.
Containing 57.00 acres, more or less.

In addition, the following contiguous public lands in Shasta County, California, which have been leased under the Recreation and Public Purposes Act by Straight Arrow Bowhunters for 20 years, have been examined and found suitable for classification for conveyance.

Mount Diablo Meridian

T. 31 N., R. 5 W.,
Section 7: Lot 29.
Containing 19.55 acres, more or less.

The lands are not needed for Federal purposes. Lease and/or conveyance is consistent with current Bureau of Land Management land use planning and would be in the public interest.

The patent(s), when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.
2. A right-of-way for ditches and canals constructed by the authority of the United States.
3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.
4. A 44 LD 513 road reserved to the United States, known as Delano Drive.

5. A right-of-way granted to Pacific Gas and Electric Company for a powerline.

Detailed information concerning this action is available for review at the Office of Bureau of Land Management, Redding Resource Area, 355 Hemsted Drive, Redding, California 96002.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease and conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed conveyance or classification of the lands to the Area Manager, Redding Resource Area, 355 Hemsted Drive, Redding, California 96002. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Mark T. Morse,

Area Manager.

[FR Doc. 89-17545 Filed 7-26-89; 8:45 am]

BILLING CODE 4310-40-M

[NV-930-09-4212-18]

Realty Action; Sale of Public Lands in Clark County, NV

Pub. L. 96-586, enacted December 23, 1980, authorizes and directs the sale of certain public lands in and around Las Vegas, Nevada. The following described lands have been determined to be suitable for sale utilizing competitive procedures, at not less than fair market value. The lands will not be offered for sale until 60 days after publication of this notice in the **Federal Register**.

Parcel	Serial No.1	Legal description	Acres
T. 20 S., R. 60 E., Section 5			
89-01	N-51094	Lots 9, 10, 11, SW¼NW¼NW¼, W½SE¼NW¼NW¼, N½NW¼SW¼NW¼, NW¼NE¼SW¼NW¼.	57.98
89-02	N-51095	W½NW¼SE¼NW¼	5.00
89-03	N-51096	NW¼NE¼SE¼NW¼	2.50
89-04	N-51097	SW¼NE¼SE¼NW¼	2.50
89-05	N-51098	NE¼SW¼SE¼NW¼	2.50
89-06	N-51099	NW¼SW¼SE¼NW¼	2.50
89-07	N-51100	NE¼SE¼SW¼NW¼	2.50
89-08	N-51101	NW¼SE¼SW¼NW¼	2.50
89-09	N-51102	NW¼SW¼SW¼NW¼	2.50
89-10	N-51103	SW¼SW¼SW¼NW¼	2.50
89-11	N-51104	SE¼SW¼SW¼NW¼	2.50
89-12	N-51105	SW¼SE¼SW¼NW¼	2.50
89-13	N-51106	SE¼SE¼SE¼NW¼	2.50
89-14	N-51107	NE¼NE¼SW¼SW¼	2.50
89-15	N-51108	NE¼NW¼SE¼SW¼	2.50
89-16	N-51109	NW¼NE¼SE¼SW¼	2.50
89-17	N-51110	SE¼NE¼SE¼SW¼	2.50
89-18	N-51111	SE¼NW¼SE¼SW¼	2.50
89-19	N-51112	SE¼NE¼SW¼SW¼	2.50
89-20	N-51113	NE¼SE¼SW¼SW¼	2.50
89-21	N-51114	SW¼NE¼SW¼SW¼	2.50
89-22	N-51115	S½NW¼SW¼SW¼, N½SW¼SW¼SW¼	10.00
89-23	N-51116	SW¼SE¼SW¼SW¼	2.50
89-24	N-51117	SW¼SW¼SE¼SW¼	2.50
89-25	N-51118	E½SW¼SE¼SW¼, SE¼SE¼SW¼	15.00
89-26	N-51119	NW¼SW¼SW¼SE¼	2.50
89-27	N-51120	NE¼SW¼SW¼SE¼	2.50
89-28	N-51121	SW¼NW¼SW¼SE¼	2.50
89-29	N-51122	NE¼NW¼SW¼SE¼	2.50
89-30	N-51123	NW¼NE¼SW¼SE¼	2.50
89-31	N-51124	SE¼SW¼NW¼SE¼	2.50
89-32	N-51125	NE¼SW¼NW¼SE¼	2.50
89-33	N-51126	W½NW¼NW¼SE¼	5.00
89-34	N-51127	NE¼NW¼NW¼SE¼	2.50
89-35	N-51128	NW¼NE¼NW¼SE¼	2.50
89-36	N-51129	SE¼SW¼SW¼NE¼	2.50
89-37	N-51130	Lots 5, 6, E½SW¼NW¼NE¼, SE¼NW¼NE¼, NE¼SW¼NE¼, E½NW¼SW¼NE¼.	45.13
89-38	N-51131	Lot 1	40.13
89-39	N-51132	NW¼NW¼SE¼NE¼	2.50
89-40	N-51133	NW¼NE¼SE¼NE¼	2.50
89-41	N-51134	NE¼NE¼SE¼NE¼	2.50
89-42	N-51135	SE¼NE¼SE¼NE¼	2.50
89-43	N-51136	SE¼NW¼SE¼NE¼	2.50
89-44	N-51137	SW¼NW¼SE¼NE¼	2.50
89-45	N-51138	NE¼NW¼NE¼SE¼	2.50
89-46	N-51139	SE¼NW¼NE¼SE¼	2.50
89-47	N-51140	SW¼NE¼NE¼SE¼	2.50
89-48	N-51141	SE¼NE¼NE¼SE¼	2.50
89-49	N-51142	NW¼SE¼NE¼SE¼	2.50
89-50	N-51143	SE¼SW¼NE¼SE¼	2.50
89-51	N-51144	SE¼SE¼NE¼SE¼	2.50
89-52	N-51145	NE¼NE¼SE¼SE¼	2.50
89-53	N-51146	SE¼NE¼SE¼SE¼	2.50

Parcel	Serial No.1	Legal description	Acres
89-54	N-51147	NW¼NE¼SE¼SE¼	2.50
89-55	N-51148	NE¼NW¼SE¼SE¼	2.50
T. 20 S., R. 60 E., Section 8			
89-56	N-51149	NW¼NW¼NW¼NW¼	2.50
89-57	N-51150	NE¼NE¼NW¼NW¼	2.50
89-58	N-51151	NW¼NW¼NE¼NW¼	2.50
89-59	N-51152	NE¼NW¼NE¼NW¼	2.50
89-60	N-51153	SW¼NE¼NE¼NW¼	2.50
89-61	N-51154	E½E½NE¼NW¼, SW¼NE¼NW¼NE¼, W½NW¼NW¼NE¼, SE¼NW¼NW¼NE¼, SW¼NW¼NE¼, W½SE¼NW¼NE¼.	35.00
89-62	N-51155	NW¼NE¼NW¼NE¼	2.50
89-63	N-51156	SE¼NE¼NW¼NE¼	2.50
89-64	N-51157	NW¼NW¼NE¼NE¼	2.50
89-65	N-51158	NE¼NE¼NE¼, E½NW¼NE¼NE¼, NE¼SW¼NE¼NE¼, N½SE¼NE¼NE¼.	22.50
89-66	N-51159	SE¼SW¼NE¼NE¼	2.50
89-67	N-51160	NW¼NE¼SE¼NE¼	2.50
89-68	N-51161	NW¼NW¼SE¼NE¼	2.50
89-69	N-51162	NE¼NE¼SW¼NE¼	2.50
89-70	N-51163	NW¼NE¼SW¼NE¼	2.50
89-71	N-51164	NE¼NW¼SW¼NE¼	2.50
89-72	N-51165	NE¼NE¼SE¼NW¼	2.50
89-73	N-51166	SW¼SE¼NE¼NW¼	2.50
89-74	N-51167	NW¼NE¼SE¼NW¼	2.50
89-75	N-51168	NE¼NW¼SE¼NW¼	2.50
89-76	N-51169	SE¼SE¼NW¼NW¼	2.50
89-77	N-51170	NE¼NE¼SW¼NW¼	2.50
89-78	N-51171	NW¼NE¼SW¼NW¼	2.50
89-79	N-51172	NE¼NW¼SW¼NW¼	2.50
89-80	N-51173	SE¼SW¼NW¼NW¼	2.50
89-81	N-51174	SE¼NW¼NW¼NW¼	2.50
89-82	N-51175	SW¼NW¼NW¼NW¼	2.50
89-83	N-51176	NW¼SW¼NW¼NW¼	2.50
89-84	N-51177	SW¼SW¼NW¼NW¼	2.50
89-85	N-51178	NW¼NW¼SW¼NW¼	2.50
89-86	N-51179	S½NW¼SE¼NW¼, SW¼SE¼NW¼, S½NE¼SW¼NW¼, SE¼NW¼SW¼NW¼, S½SW¼NW¼.	42.50
89-87	N-51180	NE¼SE¼SE¼NW¼	2.50
89-88	N-51181	SW¼NW¼SW¼NE¼	2.50
89-89	N-51182	SE¼NW¼SW¼NE¼	2.50
89-90	N-51183	SE¼NW¼SE¼NE¼	2.50
89-91	N-51184	SE¼NE¼SE¼NE¼	2.50
89-92	N-51185	NE¼SE¼SE¼NE¼	2.50
89-93	N-51186	NE¼NE¼NE¼SE¼	2.50
89-94	N-51187	SW¼SE¼SE¼NE¼	2.50
89-95	N-51188	SE¼SW¼SE¼NE¼	2.50
89-96	N-51189	SW¼SW¼SE¼NE¼	2.50
89-97	N-51190	SE¼SE¼SW¼NE¼	2.50
89-98	N-51191	NE¼SE¼SW¼NE¼	2.50
89-99	N-51192	NW¼SE¼SW¼NE¼	2.50
89-100	N-51193	SW¼SE¼SW¼NE¼	2.50
89-101	N-51194	NE¼SW¼SW¼NE¼	2.50
89-102	N-51195	SW¼SW¼SW¼NE¼	2.50
89-103	N-51196	NW¼NE¼NE¼SW¼	2.50
89-104	N-51197	SE¼NE¼NE¼SW¼	2.50
89-105	N-51198	SW¼NE¼NE¼SW¼	2.50
89-106	N-51199	W½NW¼NE¼SW¼, NE¼NW¼SW¼	15.00
89-107	N-51200	W½NW¼SW¼	20.00
89-108	N-51201	NE¼SE¼NW¼SW¼	2.50
89-109	N-51202	NW¼SW¼NE¼SW¼	2.50
89-110	N-51203	NE¼SW¼NE¼SW¼	2.50
89-111	N-51204	NW¼SE¼NE¼SW¼	2.50
89-112	N-51205	SE¼SE¼NE¼SW¼	2.50
89-113	N-51206	SE¼SW¼NE¼SW¼	2.50
89-114	N-51207	SW¼SW¼NE¼SW¼	2.50
T. 20 S., R. 60 E., Section 10			
89-120	N-33568	SW¼NW¼NW¼NW¼	2.50
89-123	N-33569	SE¼NE¼SW¼NW¼	2.50
89-124	N-33572	NE¼NE¼NW¼SW¼	2.50
89-125	N-33573	SW¼NW¼NW¼SW¼	2.50
89-126	N-33574	NW¼SE¼NW¼SW¼	2.50
T. 21 S., R. 60 E., Section 21			
89-130	N-51217	E½NE¼SE¼NW¼	5.00
T. 21 S., R. 61 E., Section 30			
89-131	N-51218	W½NW¼NE¼NE¼	5.00
89-132	N-51219	NW¼SE¼NW¼NE¼	2.50
T. 21 S., R. 61 E., Section 36			
89-133	N-36770	E½SE¼SW¼NE¼NW¼	1.25

BEST COPY AVAILABLE

These parcels, situated in the Las Vegas Valley, have potential for urban-suburban, commercial and industrial development. Transfer of this land from Federal ownership will facilitate local land use planning and enhance its compatibility with adjoining private land uses. All or portions of the subject land herein described will be offered for sale initially by sealed bid in Las Vegas on November 15, 1989. The parcels not sold through the initial sale may be offered using procedures to be outlined at a later date by the Bureau of Land Management's Las Vegas District Office.

Conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. A bid will constitute an application for conveyance of those mineral interests offered on the parcel. The declared high bidder will be required to deposit one-fifth of the full bid price and a $50.00 nonreturnable filing fee for conveyance of the mineral interests immediately at the sale. Failure to deposit these sums will result in disqualification as the high bidder. The authorized officer shall then determine whether to accept the next highest bid, withdraw the lands from market, or reoffer them at a later date.

General terms and conditions of the sale are:

1. The land will be sold subject to all valid existing rights such as power transmission and telephone line easements and federally issued oil and gas leases.

2. The land will be sold subject to reservation for streets, roads, flood control and public utilities, both existing and proposed, in accordance with Clark County and the City of Las Vegas plans.

3. All land that is sold will be subject to applicable Clark County and City of Las Vegas ordinances.

4. Any development and proposed development of a parcel affected by the 100-year flood plain shall be subject to review and regulations by Clark County Department of Public Works, Flood Control Division for flood control and storm water management.

5. The United States shall reserve to itself all known mineral deposits on all parcels being offered; together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at the Las Vegas District Office, 4765 W. Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126.

6. The United States reserves to itself a right-of-way for ditches and canals, Act of August 30, 1890, 43 U.S.C. 945.

Adjoining landowners have no preference rights. Only U.S. citizens 18 years or older and legally chartered U.S. Corporations are eligible to purchase these lands. Specific information regarding the time and site of the bid opening and sale procedures will be published in a sale brochure and made available to the public prior to the sale. The Bureau of Land Management may accept or reject any and all offers, or withdraw any lands or interest in land for sale if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA or other applicable laws.

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent or 270 days from the date of the publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Date: July 13, 1989.

Gary Ryan,

Acting (District Manager, Las Vegas, NV).

[FR Doc. 89-17546 Filed 7-26-89; 8:45 am]

BILLING CODE 4310-HC-M

[CO-942-09-4520-12]

Colorado; Filing of Plats of Survey

July 13, 1989.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., July 13, 1989.

The plat representing the dependent resurvey of the east boundary, T. 37 N., R. 2 E., New Mexico Principal Meridian, Colorado, Group No. 812, was accepted June 27, 1989.

The plat representing the dependent resurvey of portions of the west boundary and subdivisional lines, and the subdivision of sections 7 and 18, T. 35 N., R. 2 W., New Mexico Principal Meridian, Colorado, Group No. 829, was accepted June 22, 1989.

These surveys were executed to meet certain administrative needs of the Forest Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 89-17587 Filed 7-26-89; 8:45 am]

BILLING CODE 4310-JB-M

[MT-930-09-4214-11; MTM 27716]

Proposed Continuation of Public Land Order No. 5466; Montana

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice.

SUMMARY: The Forest Service, Department of Agriculture, proposes that the withdrawal of 240 acres of National Forest System lands for Capitol Rock Scenic Landmark continue for an additional 20 years. The land would remain closed to surface entry and mining, but has been and would remain open to mineral leasing.

EFFECTIVE DATE: Comments should be received on or before October 25, 1989.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-255-2935.

The U.S. Forest Service proposes that the existing withdrawal of National Forest System lands made by PLO 5466 be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The land is described as follows:

Principal Meridian, Montana

Custer National Forest

T. 3 S., R. 62 E.,
sec. 16, SW¼SW¼NW¼, W½SW¼;
sec. 17, SE¼SE¼NE¼, E½E½SE¼;
sec. 20, E½NE¼NE¼;
sec. 21, N½NW¼.

The area described contains 240.00 acres in Carter Countty.

The withdrawal is essential for protection of the Capitol Rock Scenic Landmark. The withdrawal closed the land to surface entry and mining, but not to mineral leasing. No change is proposed in the purposes of segregative effort of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Land Resource, at the address listed above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so how long. The final determination on the continuation of the withdrawl will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

July 20, 1989.

[FR Doc. 89—17588 Filed 7-26-89; 8:45 am]

BILLING CODE 4310-DN-M

[NM-940-09-4214-11; NM 11643]

Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes that a withdrawal for the Tesuque Radio and Electronic Site and Jacks Creek Campground continue for an additional 20 years. The land has been and will remain closed to mining and has been and will remain open to mineral leasing.

DATE: Comments should be received by October 25, 1989.

ADDRESS: Comments should be sent to the New Mexico State Director, BLM, P.O. Box 1449, Santa Fe, New Mexico 87504-1449.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, BLM, New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87504, 505-988-6071.

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture, Forest Service, proposes that the existing land withdrawal made by Public Land Order No. 4994 be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2571, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

Santa Fe National Forest

Tesuque Radio and Electronic Site

T. 18 N., R. 11 E.,
Sec. 16, NW¼NE¼NE¼NE¼, N½NW¼NE¼, SW¼NW¼NE¼NE¼, N½NW¼NE¼, SW¼NW¼NE¼, W½SE¼NW¼NE¼, W½SW¼NE¼, NW¼, N½N½N½SW¼, and NW¼NW¼SE¼.

Jacks Creek Campground

T. 19 N., R. 12 E.,
Sec. 26, S½SW¼SW¼NW¼, SW¼SE¼SW¼NW¼, and W½NE¼SW¼, excluding that portion (11.25 acres) within the Pecos Wilderness, P.L. 96-550;
Sec. 27, E½E½SW¼NE¼ and E½E½NW¼SE¼.

The areas described aggregate 291.25 acres in Santa Fe and San Miguel Counties.

The withdrawal is essential to accommodate the electronic site and ski area improvements, to protect the substantial electronic site improvements on the Tesuque Radio and Electronic Site, and to protect the substantial capital improvements of Jacks Creek Campground. The withdrawal closed the described land to mining but not to mineral leasing. Under this action, the land will remain closed to mining and will remain open to mineral leasing. No change in the use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources.

A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: July 19, 1989.

Monte G. Jordan,

Associate State Director.

[FR Doc. 89-17548 Filed 7-26-89; 8:45 am]

BILLING CODE 4310-FB-M

[OR-943-09-4214-10; GP9-290; ORE-017370]

Termination of Proposed Withdrawal and Reservation of Lands; Oregon; Correction

The land description in FR Doc. 82-22021, published on pages 35352 and 35353, in the issue of Friday, August 13, 1982, are hereby corrected as follows:

On page 35352 in T. 28 S., R. 44 E., Sec. 18, as reads "SE¼SE¼" and is corrected to read "SW¼SE¼."

On page 35353, a portion of the land description was omitted and is hereby corrected to include the "E½SW¼ and W½SE¼" in Sec. 6, T. 29 S., R. 44 E.

Champ C. Vaughan,

Acting Chief, Branch of Lands and Minerals Operations.

Dated: July 18, 1989.

[FR Doc. 89-17549 Filed 7-26-89; 8:45 am]

BILLING CODE 4310-33-M

Fish and Wildlife Service

Receipt of Application for Permit

The public is invited to comment on the following application for permits to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and the regulations governing marine mammals and endangered species (50 CFR Parts 17 and 18).

Applicant—Name: Charles Monnett. File No. PRT 716436.

Address: Alaska Pacific University, P.O. Box 1846, Cordova, AK.

Type of Permit: Scientific Research.

Name and Number of Animals: 260 Alaskan sea otters (*Enhydra lutris lutris*).

Summary of Activity to be Authorized. The applicant proposes to amend his current permit to increase the number of sea otters he is authorized to capture. Most will be drugged, tagged, weighed and have one premolar extracted. Twenty-five (25) males, eighty-five (85) females and up to sixty (60) pups will be surgically implanted with radio-transmitters for tracking.

Source of Marine Mammals for Research: Prince William Sound, and the Gulf of Alaska, AK.

Period of Activity: July 1989-December 1990.

Concurrent with the publication of this notice in the **Federal Register**, The Office of Management Authority is forwarding copies of this application to

the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, Office of Management Authority (OMA), P.O. Box 3507, Arlington, VA 22203–3507, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connection with the above application are available for review during normal business hours (7:45 am to 4:15 pm) at 4401 N. Fairfax Dr., Room 400, Arlington, VA.

Dated: July 24, 1989.

R.K. Robinson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 89–17559 Filed 7–26–89; 8:45 am]

BILLING CODE 4310-AN-M

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–738131

Applicant: Horst Schmudde, Bellicosa Game Farm, Colts Neck, NJ

The applicant requests a permit to purchase in interstate commerce four male captive-born Hawaiian (=nene) geese (*Nesochen* (=*Branta*) *sandvicensis*) from Charles Nugent, Kimbolton, OH, for the purpose of propagation.

PRT–738977

Applicant: Melvin Ray Sexton, Payson, AR

The applicant requests a permit to import two female captive-born Cabot's tragopan pheasants (*Tragopan caboti*) and two male and two female captive-born Bythe's tragopan pheasants (*Tragopan blythii*) from Mr. Glenn Howe, Aylmer, Ontario, Canada, to obtain new bloodlines for the purpose of enhancement of propagation.

PRT–738132

Applicant: San Diego Zoological Society, San Diego, CA

The applicant requests a permit to import one female captive born Malayan tapir (*Tapirus indicus*) from Singapore Zoological Gardens, Singapore, to add new bloodlines to the North American captive population for purposes of enhancement of propagation and for exhibition.

PRT–738973

Applicant: San Diego Zoo, San Diego, CA

The applicant requests a permit to import one female captive born African wild ass (*Equus asinus* (=*africanus*) from Basle Zoo, Basle, Switzerland, for enhancement of propagation and display. The female will be paired with a male now at the San Diego Wild Animal Park, Escondido, CA.

PRT–725541

Applicant: Max-Planck-Institute for Biochemistry, Munich, Federal Republic of Germany

The applicant requests a permit to take and export 30 specimens each of *Gambusia gaigei, G. heterochir* and *G. Nobilis* for propagation and research. At least the first two species of fish may be obtained from captive populations.

PRT–739923

Applicant: Hawaii Volcanoes National Park, Hawaii National Park, HI

The applicant requests a permit to conduct the following activities with Hawksbill sea turtles (*Eretmochelys imbricata*) for research and management purposes:

(1) Capture hawksbills in the ocean and hold them on shore for short periods of time to attach Iconel identification tags and record standard body measurements;

(2) Restrain adult females on nesting beach for short periods to attach tags and record standard body measurements; and

(3) Excavate nests to measure egg fertility and productivity and rescue trapped live hatchlings.

PRT–695313

Applicant: Harry Clark Craig, Bartow, FL

The applicant requests a permit to re-export and re-import one female Asian elephant (*Elephas maximus*) as part of an elephant act, during which conservation education material will be provided to the public.

PRT–739929

Applicant: Michael Barrett, Fillmore, CA

The applicant requests a permit to export three male and two female captive-hatched Hawaiian (=nene) geese (*Nesochen* (=*Branta*) *sandvicensis*) and re-export one male and one female captive-hatched Cabot's tragopan (*Tragopan caboti*) for the purpose of propagation at his new address in Canada.

PRT–740155

Applicant: Roberta and Kenneth Howell, Muldrow, OK

The applicant requests a permit to purchase one pair of captive hatched nene geese (*Nesochen* (=*Branta*) *sandvicensis*) from Mr. John Newman, Frankston, Texas, for the purpose of captive propagation.

PRT–739967

Applicant: Santa Ana Zoo, Santa Ana, CA

The applicant requests a permit to export three male ring-tailed lemurs (*Lemur catta*) to the Guadalajara Zoo, Jalisco, Mexico, for purposes of captive propagation. The lemurs were born at the Santa Ana Zoo.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 432, 4401 N. Fairfax Dr., Arlington VA 22203, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 3507, Arlington, Virginia 22203–3507.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Date: July 24, 1989.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 89–17598 Filed 7–26–89; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Alaska Outer Continental Shelf

AGENCY: Minerals Management Service (MMS), Department of the Interior.

ACTION: Notice of the availability of environmental documents prepared for Outer Continental Shelf (OCS) minerals exploration proposals on the Alaska OCS.

SUMMARY: The MMS, in accordance with Federal regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Environmental Assessments (EA's) and Findings of No Significant Impact (FONSI's) prepared by the MMS for oil and gas exploration activities proposed on the Alaska OCS. This listing includes all proposals for which FONSI's were prepared by the Alaska OCS in the 3-month period proceding this Notice.

Proposal: Amoco proposes to complete the drilling of an exploratory well at the Belcher Prospect (OCS–Y 0917) during the 1989 open-water period in the eastern Alaskan Beaufort Sea. Amoco suspended operations at this site on October 17, 1988. Exploratory operations at the Belcher prospect in 1989 will be identical to those conducted in 1988. In particular, the same drilling unit, the Kulluk (a mobile offshore drilling unit), will be used. Amoco requests that MMS grant a modification of the SDR for 1989 and subsequent years. Amoco also indicates that if a modification is approved and drilling operations are conducted during the fall bowhead whale migration, Amoco would continue the same NMFS-approved research program employed in 1988.

Location: Lease: OCS–Y 0917; *Block:* NR 7–3 724.

Environmental Assessment (EA): EA No. 89–02.

FONSI Date: June 23, 1989.

FOR FURTHER INFORMATION CONTACT: Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Alaska OCS are encouraged to contact the Alaska OCS Regional office of MMS.

The FONSI's and associated EA's are available for public inspection between the hours of 7:45 a.m. and 4:30 p.m., Monday through Friday at: Minerals Management Service, Alaska OCS Region, Library, 949 East 36th Avenue, Room 502, Anchorage, Alaska 99508–4302, phone: (907) 261–4435.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for oil and gas resources on the Alaska OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. The EA is used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA 102(2)(C). A FONSI is prepared in those instances where MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This Notice constitutes the public Notice of Availability of environmental documents required under the NEPA regulations.

Date: July 17, 1989.

Alan D. Powers,

Regional Director, Alaska OCS Region.

[FR Doc. 89–17750 Filed 7–26–89; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the Ninety-Fifth Meeting of the Board for International Food and Agricultural Development (BIFAD) on August 10th and 11th, 1989.

The purposes of the Meeting are: (a) To discuss modifications of the CRSP Guidelines, (b) to discuss a report of a Study Group on African Agricultural Research, (c) to hear a presentation of the Small Ruminant CRSP, (d) to hear an updated report on the Training Task Force, (e) to hear a presentation on PL 480 Program, and (f) to hear a presentation on the Procurement integrity Provisions of the Office of Federal Procurement Policy Act of 1988.

The August 10th, 1989 Meeting will be held in the Department of State, Room 1107, 2201 C Street, Washington, DC 20523. The August 11th, 1989 Meeting will also be held in the State Department in Room 107. Any interested person may attend and may present oral statements in accordance with procedures established by the Board and to the extent the time available for the meeting permits.

Curtis Jackson, Bureau of Science and Technology, Office of University Relations, Agency for International Development is designated as A.I.D. Advisory Committee Representative at this Meeting. It is suggested that those desiring further information write to Dr. Jackson, in care of the Agency for International Development, Rm 309, SA 18, Washington, DC 20523, or telephone him on (703) 235–8929.

Date: July 18, 1989.

Lynn Pesson,

Executive Director, BIFAD.

[FR Doc. 89–17504 Filed 7–26–89; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 400 (Sub 2)]

Exemptions Under 49 U.S.C. 11343(e) for Finance Transactions Involving Non-Rail Intermodal Parties

AGENCY: Interstate Commerce Commission.

ACTION: Notice of new procedure.

SUMMARY: The Commission is adopting a new procedure for processing individual petitions for exemption filed under 49 U.S.C. 11343(e). Under the new procedure, the Commission will publish a notice of the exemption that will become effective automatically 60 days after publication, absent protests.

EFFECTIVE DATE: August 28, 1989.

FOR FURTHER INFORMATION CONTACT: Paul W. Schach, (202) 275–7865

or

Richard B. Felder, (202) 275–7691

TDD for hearing impaired: (202) 275–1721.

SUPPLEMENTARY INFORMATION: 49 U.S.C. 11343(a) requires prior Commission approval and authorization for certain transactions involving a change in control of carriers or their assets, including operating rights. Under 49 U.S.C. 11343(e), however, transactions involving a motor carrier of property may be exempted from such approval. Section 11343(e) exemptions fall into one of two categories for processing, depending on the type of carriers involved in the underlying acquisition of control transaction. If the transaction involves only motor carriers of property (or motor carriers of property and noncarriers), the request is handled under the class exemption procedures adopted in *Exemption of Certain Transactions Under 49 U.S.C. 11343*, 133 M.C.C. 449 (1984), and codified at 49 CFR Part 1186. If, on the other hand, the transaction involves a motor carrier of property and a motor carrier of passengers or a water carrier, an individual petition for exemption is filed and is handled under the so-called 400 Sub 1 procedures adopted in *Procedures—Handling Exemptions Filed by Motor Carriers*, 367 I.C.C. 113 (1982).[1] While there are no corresponding regulations, the procedures adopted there include notice in the *ICC Register* of the petition, a

[1] Exemption petitions involving rail carriers and motor carriers are now handled under 49 U.S.C. 10505. *See Regular Common Carrier Conf.* v. *United States*, 820 F.2d 1823 (D.C. Cir. 1987).

comment period, and issuance of a final decision.[2]

Originally, all section 11343(e) petitions were handled under the 400 Sub 1 procedures. However, in response to the large number of section 11343(e) petitions filed and the fact that nearly all were unopposed, the Commission later adopted the class exemption procedures to streamline the process for transactions solely between motor carriers of property. When the Commission receives a notice of exemption governed by the class exemption procedures, it publishes an *ICC Register* notice of the proposed exemption that automatically becomes effective 60 days after publication, absent protests. (Section 11343(e)(2) requires that 60 days elapse after publication before the exemption becomes effective.)

On the other hand, when we receive an individual petition for exemption (one not covered by the class exemption rules), we publish a notice of the proposed exemption in the *ICC Register*. Following a 30-day comment period, a final decision is issued and notice is published in the *ICC Register*. No such petitions have been denied in recent years.

We have now concluded, based on several years of experience in handling both types of cases, that there is no reason to process section 11343(e) exemption requests not covered by 49 CFR 1186 differently from those included in the class exemption. The governing statutory section and issues are identical in each type of case. In Fiscal Year 1987, only 12 petitions not covered by the class exemption were filed; in Fiscal Year 1988 there were six. Each was handled promptly, but the notice and later the decision is time-consuming, causes unnecessary delay to the parties and added administrative work for the agency.

Accordingly, in order to streamline the procedure for handling individual petitions, we are adopting here a one-step procedure that follows, for the most part, our class exemption procedure. It reflects the same process we have been using for some time in the vast majority of petitions for exemption (*e.g.*, rail carrier exemption requests and motor passenger carrier requests for exemption from tariff-filing requirements). We will publish in the *ICC Register* a notice of the proposed exemption, decided by the Commission, that will become effective automatically 60 days after publication, absent protests. Notices will include the specific statutory findings required under section 11343(e).[3] (In class exemption proceedings, the class findings adopted in *Exemption, supra* apply, and no case-by-case analysis is done.) A second decision will be issued only if a protest is received.[4] In such a case, the exemption will not take effect automatically.

Adoption here of new procedures for handling individual petitions for exemption does not require public notice and opportunity for comment prior to implementation. Under 5 U.S.C. 553(b)(A), rules of agency procedure or practice are specifically exempted from the notice and comment requirements of the Administrative Procedure Act. The new procedures announced here relate solely to Commission processing methods. The parties' rights are not adversely affected.

Environmental and Energy Considerations

We conclude that the new procedure announced here will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 11343 and 5 U.S.C. 553.

Decided: July 20, 1989.

By the Commissioners, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-17580 Filed 7-26-89; 8:45 am]

BILLING CODE 7035-01-M

[2] Those procedures were adopted shortly after enactment of the exemption provision in 1982 and without the benefit of any experience with it.

[3] The required findings are: (1) that approval of the transaction is not necessary to carry out the transportation policy of 49 U.S.C. 10101; and (2) either that the transaction is of limited scope, or that approval of the transaction is not needed to protect shippers from the abuse of market power.

[4] In filing such a petition or opposing the ensuing notice, all parties must otherwise continue to follow the procedures adopted in *Procedures, supra*.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on July 11, 1989, a Consent Decree in *United States* v. *A&S Manufacturing Company, Inc.*, Civil Action No. 88-2004, was lodged with the United States District Court for the District of New Jersey. The Consent Decree requires the Defendant to pay a civil penalty of $80,000, and obligates the Defendant to shut down its operations by September 30, 1989, in order to achieve compliance with the Clean Air Act and the New Jersey State Implementation Plan as to emissions of volatile organic compounds.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *A&S Manufacturing Company, Inc.*, D.J. Ref. No. 90-5-2-1-1195.

The Consent Decree may be examined at the office of the United States Attorney, District of New Jersey, Federal Building, 970 Broad Street, Room 502, Newark, New Jersey, 07102; at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York, 10278; and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree can be obtained in person or by mail from the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.50 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-17551 Filed 7-26-89; 8:45am]

BILLING CODE 4410-01-M

Lodging of Final Consent Decree Pursuant to the Clean Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on the 17th day of July, 1989, a proposed final consent decree in *United States and the Metropolitan Government of Nashville and Davidson County* v. *Avco Corporation*, Civil Action No. 3-87-0631, was lodged with the United States District Court for the Middle District of Tennessee. The complaint sought the imposition of injunctive relief and civil penalties under the Clean Air Act against the defendant for violations of applicable portions of the federally-approved and enforceable Nashville-Davidson County State Implementation Plan ("SIP").

The final consent decree is the second part of a two-part settlement of the United States' claims against Avco. The court entered a partial consent decree on August 4, 1988, which required that Avco: Equip two (2) spray paint booths with a VOC control system, use exclusively complying coatings at thirteen (13) spray paint booths on and after June 30, 1988, and pay a civil penalty of $266,667.20 to the United States and $66,666.80 to Metro. The partial consent decree also imposed stipulated penalties upon Avco for any failure to comply. The terms of the partial consent decree are incorporated into the final consent decree which provides for: Avco's initial demonstration of compliance with the newly revised Tennessee SIP; stipulated penalties for non-compliance; and payment of a civil penalty of $111,110.66 to the United States and $55,555.34 to Metro. Along with entry of the final consent decree, the parties will enter a stipulation dismissing Avco's counterclaims against the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed final consent decree. Comments should be addressed to the Acting Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and the Metropolitan Government of Nashville and Davidson County* v. *Avco Corporation*, D.J. Ref. 90-5-2-1-1109.

The proposed final consent decree may be examined at the Office of the United States Attorney, U.S. Courthouse, Room 879, 801 Broadway, Nashville, Tennessee 37203, or the U.S. Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30364. Copies of the final consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1647, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. Copies of the proposed final consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-17552 Filed 7-26-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Proposed Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 18, 1989, a proposed Consent Decree in *United States* v. *Campbell Soup Company*, Civil Action Number 87-4133, was lodged with the United States District Court for the District of New Jersey. The Complaint filed by the United States alleged violations of the Clean Air Act and the New Jersey State Implementation Plan ("SIP") adopted pursuant to that Act. Defendant Campbell Soup Company owns a facility in Camden, New Jersey that was formerly operated as a can manufacturing plant. The Campbell Soup Company violated the Clean Air Act and the New Jersey SIP by discharging pollutants into the ambient atmosphere during its can manufacturing operations.

The Consent Decree requires Campbell Soup Company to comply with the Act and the New Jersey SIP should it resume can manufacturing operations at the Camden plant. The Consent Decree also provides that the defendant shall pay a civil penalty of $260,000.00 to the United States and an administrative penalty of $5,000.00 to the State of New Jersey.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice comments relating to the proposed Consent Decree. Comments should be addressed to the Acting Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Campbell Soup Company*, D.J. No. 90-5-2-1-1070.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Post Office Building, 401 Market Street, Fifth Floor, Camden, New Jersey 08101, at the Region II office of the Environmental Protection Agency, Office of Regional Counsel, 26 Federal Plaza, New York, New York 10278, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to *United States* v. *Campbell Soup Company*, D.J. No. 90-5-2-1-1070, and include a check for $1.10 (10 cents per page reproduction charge) payable to the United States Treasury.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-17553 Filed 7-26-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on July 10, 1989, a Consent Decree in *United States* v. *Roger Nordlum*, Civil Action No. A87-489, was lodged with the United States District Court for the District of Alaska. The Complaint filed by the United States alleged violation of the Clean Water Act due to defendant's discharge of pollutants from his gold placer mine without an NPDES Permit. The Consent Decree requires the defendant to pay a civil penalty of $5,000, and enjoins the defendant from future violations of the Clean Water Act.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC, and should refer to *United States* v. *Roger Nordlum*, D.J. Ref. No. 90-5-1-1-2923.

The Consent Decree may be examined at the office of the United States Attorney, District of Alaska, Federal Building and U.S. Courthouse, 701 C Street, 1 Room C-252, Anchorage, Alaska 99513, and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree can be obtained in person or by mail from the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.60 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-17554 Filed 7-26-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 13, 1989 a proposed Consent Decree in *United States of America* v. *Queen City Barrel Company*, Civil Action No. C-1-89-495 (S.D. Ohio), between the United States, on behalf of the United States Environmental Protection Agency ("U.S. EPA"), and Queen City Barrel Company has been lodged with the United States District

Court for the Southern District of Ohio. The Consent Decree resolves the claims of the United States against Queen City Barrel Company under the Clean Air Act, for violations at defendants drum painting and reconditioning facility in Cincinnati, Ohio, of air pollution control regulations contained in the federally-approved and enforceable Ohio State Implementation Plan ("SIP"). The settlement reflected in the proposed Consent Decree provides for compliance with the Ohio SIP, and, payment of a civil penalty of $25,000 to be divided between U.S. EPA and the Ohio Environmental Protection Agency, and payment of stipulated penalties should the decree be violated. In addition, defendant will be required to operate and maintain the paint lines and ovens so as to achieve pollution control in excess of that required by the Ohio SIP.

The Department of Justice will receive comments relating to the Consent Decree for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States of America v. Queen City Barrel Company*, D.J. Ref. No. 90-5-2-1-1339. The proposed Consent Decree may be examined at the Office of the United States Attorney, 220 U.S. Post Office & Courthouse, 5th & Walnut Streets, Cincinnati, Ohio 45202, at the Environmental Protection Agency, 230 Sourth Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1748, Tenth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.40 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-17555 Filed 7-26-89; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") on June 27, 1989 filed written notifications, on behalf of Bellcore and Telecommunications Research Laboratory, (hereinafter known as "TFL") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties of the joint venture and (2) the nature and objectives of the joint venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

TFL is a Denmark corporation with its principal place of business in Lyngso Alle, 2970 Horsholm, Denmark.

Bellcore and TFL entered into a written agreement effective May 1, 1989 to collaborate on research to better understand the applications for exchange and exchange access services of various technologies including coherent optical communications systems and detection electronics for such systems.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-17556 Filed 7-26-89; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—X/Open, Ltd.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), X/Open, Ltd. ("X/Open") on July 7, 1989 has filed an additional written notification simultanequsly with the Attorney General and the Federal Trade Commission disclosing additions to its membership as of July 1, 1989. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act, which limit the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On October 19, 1988, X/Open filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 16, 1988 (53 FR 46128). On April 4, 1989, X/Open filed an additional written notification. The Department published a notice in the **Federal Register** in response to this additional notification on May 4, 1989 (54 FR 19255).

The identities of the new members of X/Open are set forth below: Open Software Foundation, 11 Cambridge Center, Cambridge, MA 02142. Unix International, 6 Century Drive, Parsippany, NJ 07054.

No other changes have been made in either the membership or planned activity of X/Open.

Joseph H. Widmar,

Director of Operation, Antitrust Division.

[FR Doc. 89-17557 Filed 7-26-89; 8:45 am]

BILLING CODE 4410-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-142]

Environmental Assessment and Finding of No Significant Impact Regarding Proposed Order Authorizing Phase II Dismantling of the Reactor and Disposition of Component Parts, The University of California at Los Angeles

The Nuclear Regulatory Commission (the Commission) is considering issuance of an Order authorizing the University of California at Los Angeles (UCLA) to complete dismantlement (Phase II) of the UCLA Argonaut Reactor Facility on its campus in Los Angeles, California and to dispose of the reactor components in accordance with the application dated June 10, 1988 as supplemented on June 21, 1988, December 7, 1988 and March 31, 1989.

Environmental Assessment

Identification of Proposed Action

By application dated June 10, 1988 as supplemented, UCLA requested Phase II authorization to decontaminate and dismantle the Argonaut Research Reactor and to dispose of its component parts in accordance with the proposed dismantling plan.

Based upon a prior application to dismantle and dispose of the component parts, an opportunity for hearing was afforded by a "Notice of Proposed Issuance of Orders Authorizing Disposition of Components Parts of Terminating Facility License" that was published in the **Federal Register** on September 24, 1984 at 49 FR 37484.

Following hearings and stipulations by the parties involved, an Order was issued on November 8, 1985, by the Atomic Safety and Licensing Board that terminated UCLA License No. R-71 and authorized UCLA to possess but not operate the facility.

By application dated October 29, 1985, as supplemented, UCLA submitted a Phase I decommissioning plan. An Order authorizing Phase I dismantling of the facility and disposition of component parts was issued by the Commission on July 14, 1986. Phase I dismantlement and disposition of component parts has been completed except for the disposition of 5000 pounds of activated lead. This issue must be resolved for UCLA to be in compliance with the Phase I Order.

Need for Proposed Action

In order to prepare the facility for unrestricted access and use, the dismantling and decontamination activities proposed by UCLA must be accomplished.

Environmental Impact of the Proposed Action

All decontamination will be performed by trained personnel in accordance with previously reviewed precedures and will be overseen by experienced health physics staff. Solid and liquid waste will be removed from the facility and managed in accordance with NRC requirements. The staff has calculated that the collective dose equivalent for the project will be less than 2 person-rem.

These conclusions were based on the fact that all proposed operations are carefully planned and controlled, all contaminated components are removed, packaged, and shipped offsite, and that the radiological control procedures ensure that releases of radioactive wastes from the facility are within the limits of 10 CFR Part 20 and are as low as reasonably achievable (ALARA).

Based on the review of the specific proposed activities associated with the dismantling and decontamination of the UCLA facility, the staff has determined that there will be no significant increase in the amounts of effluents that may be released offsite, and no significant increase in individual or cumulative occupational or population radiation exposure.

The staff has also determined that the proposed activities will not result in any significant non-radiological impacts on air, water, land, or biota in the area.

Alternative Use of Resources

The only alternative to the proposed dismantling and decontamination activities is to maintain the facility as a restricted area. This approach would include monitoring and reporting for the duration of the safe storage period. However, the University intends to use the area for other academic purposes.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed action based upon the foregoing environmental assessment. We conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the application for Phase II decommissioning dated June 10, 1988, as supplemented. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, Maryland this 20th day of July 1989.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-17572 Filed 7-26-89; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guide; Issuance and Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 3.64, "Calculation of Radon Flux Attenuation by Earthen Uranium Mill Tailings Covers," describes methods acceptable to the NRC staff for calculating radon fluxes through earthen covers and for calculating the resulting minimum cover thickness needed to meet NRC and Environmental Protection Agency standards. A computer program for calculating the radon fluxes is included in the guide.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202) 275-2060 or (202) 275-2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 3rd day of July 1989.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 89-17568 Filed 7-26-89; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guides; Issuance and Availability

The Nuclear Regulatory Commission has issued for public comment drafts of two new guides planned for Division 7, "Transportation," of its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and

data needed by the staff in its review of applications for permits and licenses.

The draft guides are DG-7001, "Fracture Toughness Criteria for Ferritic Steel Shipping Cask Containment Vessels with a Maximum Wall Thickness of Four Inches (0.1 m)," and DG-7002, "Fracture Toughness Criteria for Ferritic Electric Steel Shipping Cask Containment Vessels with a Wall Thickness Greater than Four Inches (0.1 m)." These guides are being developed to provide guidance on fracture toughness criteria and test methods acceptable to the NRC staff for use in evaluating ferritic steel shipping cask containment vessels.

These draft guides are being issued to involve the public in the early stages of developing a regulatory position in these areas. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on the guides, including any implementation schedule. Comments should be accompanied by supporting data. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by September 22, 1989.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Director, Division of Information Support Services. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 13th day of July 1989.

For the Nuclear Regulatory Commission.

Lawrence C. Shao,

Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 89-17569 Filed 7-26-89; 8:45 am]

BILLING CODE 7590-01-M

[NUREG-0800]

"Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants"; Issuance and Availability Revised SRP Sections 2.4.2 and 2.4.3

The U.S. Nuclear Regulatory Commission (NRC) has published Revision 3 to Standard Review Plan (SRP) sections 2.4.2 (Floods) and 2.4.3 (Probable Maximum Flood (PMF) of Streams and Rivers) of NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," LWR Edition (SRP).

The NRC has revised (Revision 3) sections 2.4.2 and 2.4.3 of the SRP to incorporate the Probable Maximum Precipitation (PMP) procedures and criteria contained in the latest National Oceanic and Atmospheric Administration/National Weather Service (NOAA/NWS) publications. The revised SRP sections will be used in the review of new CP and OL applications docketed after the issuance of these revisions. The SRP also indicates that new information that becomes available after the issuance of the Construction Permit (CP) will be used by the NRC in evaluating an operating license, and its safety significance will be addressed in the NRC's Safety Evaluation Report.

The issuance of Revision 3 to SRP sections 2.4.2 and 2.4.3, along with a Generic Letter to be sent to licensees, will serve as the staff's resolution of Generic Safety Issue 103, "Design for Probable Maximum Precipitation."

The revised sections are effective immediately. A copy is expected to be available in the Commission's Public Document Room within two weeks. Copies of the revised sections are available for purchase from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161; telephone (703) 487-4650.

Dated at Rockville, Maryland this 18th day of July 1989.

For The Nuclear Regulatory Commission.

Edward J. Butcher, Jr.,

Chief, Inspection and Licensing Program Branch, Program Management, Policy Development and Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 89-17571 Filed 7-26-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 72-3]

Carolina Power and Light Co.; Issuance of Amendment to Materials License SNM-2502

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 8 to Materials License No. SNM-2502 held by the Carolina Power and Light Company for the receipt and storage of spent fuel at the Independent Spent Fuel Storage Installation (ISFSI) at the H.B. Robinson Steam Electric Plant Unit No. 2, located in Darlington County, South Carolina. The amendment is effective as of the date of issuance.

The amendment changes the frequency, from annually to semiannually, of reporting effluent releases to the environment from the ISFSI, as specified on page 2 of Appendix C, Section 1.4.1. The amendment revises the Technical Specifications making administrative changes which do not affect fuel receipt, handling, and storage safety.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that, pursuant to 10 CFR 51.22(c)(11), an environmental assessment need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see (1) the application for amendment dated June 29, 1989, and (2) the Commission's letter to the licensee dated July 20, 1989. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC.

Dated at Rockville, Maryland this 20th day of July 1989.

For the U.S. Nuclear Regulatory Commission.

Leland C. Rouse,

Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 89-17570 Filed 7-26-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-369 and 50-370]

Duke Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses NPF-9 and NPF-17, issued to Duke Power Company (the licensee), for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

A planned modification to the McGuire Nuclear Station will add new areas to the station for use in holding, processing and reduction of liquid and solid radwaste materials. As a result of the modification, a new Heating Ventilation and Air Conditioning (HVAC) system will be added to provide ventilation services for the new area and some areas previously serviced by the Auxiliary Building Filtered Ventilation Exhaust (ABFVE) system, which will require a change to existing ABFVE system flowrates given in the Technical Specifications (TS). This reduction in the area served by the system will result in lower ABFVE system flowrates to the Unit 1 and 2 Vents. Presently, the flowrates listed in TS 4.7.7 are 54,000 CFM +/- 10% for Unit 1 and 43,000 CFM +/- 10% for Unit 2. Upon completion of the modification, these values will be reduced to 45,700 CFM +/- 10% for Unit 1 and 40,500 CFM +/- 10% for Unit 2.

The modification will also relocate an existing gaseous effluent release point, and relocate an existing radiation monitor (EMF 53). Relocating the release point requires a change to the TS Figure 5.1-3 that identifies the location of the existing McGuire gaseous release points. A more legible copy of the Figure 5.1-3 would also be substituted. Also, administrative changes to several TS tables are proposed to rename the "Contaminated Parts Warehouse Ventilation System" to the "Waste Handling Ventilation System."

The proposed amendments would change the McGuire TS consistent with the above planned modifications. The above proposed changes will affect TS 4.7.7; Table 3.3-13 (Item 8); Table 4.3-9 (Item 8); Table 4.11-2 (Item 4b); and, Figure 5.1-3.

The licensee finds that the gaseous curie release from plant operations will not increase or be of a different type as a result of this modification. The improved solid waste handling capability will reduce solid radwaste volume while the improved laundry facilities will reduce liquid radwaste volume. The modification to the ventilation systems as described, and the relocation of the existing release point will not increase the existing offsite dose analysis or the environmental consequences of operating the plant.

The application for the amendments was dated May 11, 1989, and supplemented June 14, 1989.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By August 28, 1989, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification number 3737 and the following message addressed to David B. Matthews, Director; Project Directorate II-3; (petitioner's name and telephone Number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing

Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated May 11, 1989, as supplemented June 14, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Dated at Rockville, Mayland, this 21st day of July 1989.

For the Nuclear Regulatory Commission.

Darl S. Hood,

Project Manager, Project Directorate II–3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–17566 Filed 7–26–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–272/311]

Public Service Electric and Gas Co.; (Salem Generating Station, Units 1 and 2); Exemption

I

The Public Service Electric & Gas Company (the licensee) is the holder of Facility Operating License Nos. DPR–70 and DPR–75 which authorizes operation of the Salem Generating Station, Units 1 and 2, at a power level not in excess of 3411 megawatts thermal each. The facilities are pressurized water reactors located at the licensee's site in Salem County, New Jersey. The license provides, among other things, that the facilities are subject to all rules, regulations and orders of the Commission now or hereafter in effect.

II

On November 19, 1980, the Commission published a revised section 10 CFR 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised 10 CFR 50.48 and Appendix R became effective on February 17, 1981; § 50.48(c) established the schedules for satisfying the provisions of Appendix R; Section III of Appendix R contains fifteen subsections, lettered A through O, each of which specifies requirements for particular aspects of the fire protection features at a nuclear power facility. One of the fifteen subsections, III.G, is the subject of this exemption request.

By letter dated July 15, 1988, the licensee requested approval of exemptions from the technical requirements of section III.G of Appendix R to 10 CFR 50 in fourteen fire areas and a "generic" exemption that relates to conditions in a number of plant locations. This submittal includes information contained in previous letters to the staff dated January 31, 1985 and January 17, 1986.

Section III.G.2 of Appendix R requires that one train of cables and equipment necessary to achieve and maintain safe shutdown be maintained free of fire damage by one of the following means:

1. Separation of cables and equipment and associated non-safety circuits of redundant trains by a fire barrier having a 3-hour rating. Structural steel forming a part of or supporting such fire barriers shall be protected to provide fire resistance equivalent to that required of the barrier;

2. Separation of cables and equipment and associated non-safety circuits of redundant trains by a horizontal distance of more than 20 feet containing no intervening combustibles or fire hazards. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area; and

3. Enclosure of cables and equipment and associated non-safety circuits of one redundant train in a fire barrier having a 1-hour rating. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area.

If these conditions are not met, Section III.G.3 requires an alternative shutdown capability independent of the fire area of concern. It also requires that a fixed fire suppression system be installed in the fire area of concern if it contains a large concentration of cables or other combustibles. These alternative requirements are not deemed to be equivalent; however, they provide equivalent protection for those configurations in which they are accepted.

1 EXEMPTION, STATION WIDE (License Exemption 1)

1.1 Exemption Requested

The licensee requested an exemption from Section III.G.2.a to the extent that 1½-hour fire rated doors and dampers, 1-hour fire-rated ventilation ducts and their penetration seals, and non-rated equipment hatches do not provide 3-hour fire-rated barriers between areas containing redundant shutdown systems, equipment, cables and associated circuits.

1.2 Discussion

In several locations throughout the plant (delineated in the licensee's July 15, 1988 letter, Appendix A) openings exist in 3-hour fire-rated walls and floor/ceiling assemblies. These openings are protected by 1½-hour rated fire doors or dampers, 1-hour rated ventilation ducts and seals, or non-fire-rated steel hatches.

The nature of the fire hazard in the areas adjacent to these openings varies significantly. However, where a significant in-situ combustible loading exists in an area, the licensee has committed to implement certain plant modifications which include:

—Replacing certain doors and dampers with 3-hour fire-rated assemblies;
—Installation of additional fire detectors; or
—Converting existing manually actuated fire suppression systems to automatic actuation.

These modifications supplement existing fire protection which includes automatic fire detection systems, manual fire fighting equipment and fire-rated cable enclosures which protect one safe shutdown division as described in Appendix A to the July 15, 1988 submittal.

1.3 Evaluation

The technical requirements of section III.G.2.a. have not been met in the subject locations because the 3-hour fire barriers which separate redundant shutdown divisions contain openings which are not protected by equivalent fire-rated doors or fire dampers.

The staff was originally concerned that there may be significant quantities of combustible materials, which if ignited, would produce a fire of sufficient intensity and duration to penetrate the barrier and spread to adjoining plant locations causing damage to redundant safe shutdown systems.

However, the locations where a significant combustible loading exists are either protected by automatic fire detection and suppression systems or the licensee has committed to implement additional modifications as described above. Where this is not the case, the potential fire severity is less than the existing doors, dampers, ventilation ducts and cable enclosures, with conservative margin. Where non-rated steel hatches exist, either the area below is protected by an automatic fire suppression system or potential fire spread up through the hatch will not affect redundant shutdown systems.

With regard to the hatches, the staff expressed a related concern that use of hose streams in one fire area might cause water to flow downward through an unsealed hatch and damage redundant shutdown equipment below. The licensee affirmed that no water sensitive electronic components exist in proximity to the hatches which would be affected under such a scenario. On this basis only, this issue is considered closed.

The fire severity (as determined from the ASTM E–119 time-temperature curve) in the remaining areas varies from 1 minute to 46 minutes. The licensee also justifies the exemption on the basis that in some locations fire spread through the subject barriers would not damage more than one shutdown division

With regard to the dampers, the staff was also concerned that the fire dampers might not function under air flow conditions (ref. 10 CFR Part 21 notification by Ruskin Manufacturing). However, as confirmed during the September 1987 Appendix R compliance inspection, the licensee is peforming operational tests of the dampers under airflow conditions. On this basis, this issue is considered closed.

1.4 Conclusion

Based on our review of the licensee's proposals, we conclude that the licensee's altenative fire protection configuration, including the proposed modifications, provides an equivalent level of safety to that achieved by compliance with Appendix R to 10 CFR Part 50. Therefore, the licensee's exemption request for the lack of 3-hour rated barriers in the locations delineated in Appendix A to the July 15, 1988 letter to the staff should be approved.

2 CONTROL ROOM COMPLEX (AREAS 1 & 2 FA–AB–122A) (Licensee Exemption 2)

2.1 Exemption Requested

The licensee requested an exemption from Section III.G.3 of Appendix R to 10 CFR Part 50 to the extent it requires a fixed fire suppression system for an area where alternate shutdown capability is provided. Specifically, the Salem Units 1 and 2 control room complex does not have a fixed fire suppression system.

2.2 Discussion

The physical configuration of the control room complex, including perimeter construction, fire hazards and existing fire protection features is as described in Enclosure 1 of the licensee's July 15, 1988 letter.

Although the walls separating the two control rooms are not fire walls, the doors leading to the control rooms are rated for ¾ hour. The doors are marked as fire doors and must remain closed. They are also equipped with automatic door closures. The doors have been included in the fire door list and are governed as a Technical Specification item. The restrictions on these doors are designed to prevent the propagation of smoke from one control room to the other.

The Unit 1 ventilation equipment provides cooling for the Unit 1 control complex, the corridor between the two control rooms and the peripheral rooms that are shared by both units. The Unit 2 ventilation equipment provides cooling for the Unit 2 control complex. The ventilation systems for both units have been balanced to maintain equal pressure in both control rooms. Tests have been performed and it has been confirmed that smoke does not propagate between control rooms when the ventilation systems are balanced. The damper vanes are mechanically locked in position to maintain the pressure balance.

In the event that fire were to propagate from one control room to the next the licensee has affirmed that the capability exists to bring both units to a safe shutdown condition.

The licensee justified the exemption on the basis of the existing fire protection and the continuous presence of control room operators.

2.3 Evaluation

The technical requirements of section III.G.3 are not met in the control room because of the lack of a fixed fire suppression system.

The staff was originally concerned that a fire of significant magnitude could occur within the control room complex. Existing combustible materials are dispersed throughout the area. The automatic fire detection system, coupled with the continuous presence of control room operators, provides reasonable assurance that a fire will be discovered in its initial stages before significant propagation and room temperature rise occurs. At such a point in time, the fire would be expected to be extinguished by plant operators or the fire brigade before much damage occurred to plant safety systems. If rapid fire spread occurred before intervention by plant personnel, the control room could be evacuated and safe plant shutdown achieved using the alternate shutdown capability, which the licensee has affirmed is physically and electronically independent of the control room, and emergency shutdown procedures. Therefore, the absence of a fixed fire suppression system has no safety significance.

2.4 Conclusion

Based on our review of the licensee's proposals, we conclude that the licensee's alternate fire protection configuration provides an equivalent level of fire protection to that achieved by compliance with the requirements of Appendix R to 10 CFR Part 50. Therefore, the licensee's request for exemption from the requirement for a fixed fire suppression system in the control room complex should be granted.

3 REACTOR PLANT AUXILIARY EQUIPMENT AREA—ELEVATION 100 FT. AND 110 FT. (AREAS 1 & 2 FA–AB–100C) (Licensee Exemption 3)

UPPER ELECTRICAL PENETRATION AREA (AREAS 1 & 2 FA–EP–100G) (Licensee Exemption 4)

INNER PIPING PENETRATION AREA (AREAS 1 & 2 FA–PP–100H) (Licensee Exemption 4)

REACTOR PLANT AUXILIARY BUILDING—ELEVATION 64 FT. (AREAS 1 & 2 FA–AB–64B) (Licensee Exemption 10)

3.1 Exemptions Requested

The licensee requested exemptions from the requirements of Section III.G.2 of Appendix R to 10 CFR Part 50 in the above-referenced areas to the extent that it requires the separation of redundant safe shutdown cables and equipment by 1-hour fire-rated barriers plus automatic fire suppression and detection systems. Specifically, these locations are not protected by automatic fire suppression systems or area-wide fire detection systems.

3.2 Discussion

The physical configuration of the subject fire areas, including perimeter construction, fire hazards and existing fire protection features is as described in Enclosure 1 to the licensee's July 15, 1988 letter.

The staff was initially concerned that although the licensee has been explicit as to the shutdown-related cables located in the areas, not all of the redundant post-fire safe shutdown components had been identified. The licensee affirmed, however, that the only redundant safe shutdown components present in these locations were those specifically identified in the exemption requests.

The licensee committed in the July 15, 1988 letter to protect cables associated with one safe shutdown path in a 1-hour fire-rated barrier.

In Fire Areas 1 and 2 FA–EP–1006, in lieu of protecting the air supply and chilled water cabling, the non-fire-affected unit's emergency control air compressor will be utilized.

The licensee justifies the exemptions on the bases of the limited fire loading, the existing fire protection and the proposed modifications.

3.3 Evaluation

The technical requirements of Section III.G.2 are not met in the subject locations because of the lack of automatic fire suppression systems. The absence of area-wide fire detection systems is not considered a non-conformance. Generic Letter 86–10 stipulates that where partial coverage automatic fire detection and suppression exist in an area, licensees may perform a fire hazards evaluation to justify the lack of complete coverage. The staff considers the summary analyses contained in the exemption requests as being sufficient to satisfy the guidelines issued in the Generic Letter.

With regard to the absence of an automatic fire suppression system, the staff was originally concerned that a fire could occur in the subject areas and damage cables or components of both shutdown divisions. However, the principal fire hazard in these locations is combustible cable insulation. The remaining combustibles are of a type and quantity that do not represent a significant hazard. A fire in these areas would be characterized initially by smoldering combustion with limited heat release. The smoke from a fire would be detected automatically by the existing fire detection system or by plant operators. The fire brigade would be dispatched to the area and would extinguish the flames using manual fire fighting equipment. If rapid fire propagation or if significant room temperature rise occurred before the arrival of the brigade, the proposed 1-hour fire barrier would provide a sufficient degree of passive protection to assure that one safe shutdown division would remain free of fire damage.

In the upper electrical penetration area, redundant air supply and chilled water cabling is vulnerable to damage. The licensee has proposed to use the opposite (non-fire-affected) unit's emergency control air compressor in the event of a fire. However, the licensee has not proposed to adopt technical specifications to assure that this capability will be available. The specific concern is that if the opposite unit is in a1 outage, the emergency control air compressor may not be available. The lack of technical specifications for alternate shutdown capability systems conflict with the guidance issued in Generic Letters 81–12 and 88–12 and will not provide a level of safety equivalent to that achieved by compliance with Appendix R.

3.4 Conclusion

Based on our review of the licensee's proposals, we conclude that, except for the upper electrical penetration area, the licensee's alternate fire protection configuration with the proposed modifications, provides an equivalent level of safety to that achieved by compliance with Appendix R. Therefore, the licensee's request for exemption from the requirement for an automatic fire suppression system in the above-referenced areas should be approved. In the upper electrical penetration area, the exemption should be denied. The licensee's request for exemption pertaining to the lack of area-wide automatic fire detection in these areas is not needed.

4 MECHANICAL PENETRATION AREAS—ELEVATION 78 FEET AND 100 FEET (FIRE AREAS 1 AND 2 FA–MP–781) (LICENSEE EXEMPTION 5)

4.1 Exemption Requested

An exemption was requested from Section III.G.2.C to the extent that it requires an automatic fire suppression system installed in a fire area that contains redundant safe shutdown equipment.

4.2 Discussion

This fire area consists of the mechanical penetration areas on elevations 78 feet and 100 feet of the auxiliary building. It is constructed of reinforced concrete with 3-hour fire rated barriers. Doors, dampers, and HVAC duct pennetrations are not 3-hour fire rated; however, these are the subject of a generic exemption previously evaluated to be acceptable. The fire load in this area is low (less than 10,000 Btu per square foot) and there are no fire hazardous equipment or concentrated heavy fire loads in the area. The low fire loads of 10,000 Btu per square foot translates into a fire severity of less than 10 minutes on the ASTM E–119 time-temperature curve.

The redundant equipment located in this area include piping and valves for the following:

—Component cooling system (CCS)
—Service water system
—Residual heat removal system
—Safety injection system.

The existing fire protection includes an area-wide fire detection system, fire extinguishers, and hose stations.

4.3 Evaluation

The fire protection in this fire area does not comply with the technical requirements of section III.G.2.C of Appendix R because an automatic fire suppression system has not been installed in an area containing redundant divisions of shutdown equipment.

There was a concern that a fire in this fire area could cause the loss of normal shutdown capability. However, the fire load in this area is low (less than 10,000 Btu per square foot). Because of the low combustible loading, a fire of significant magnitude or duration is not expected to occur. An area-wide fire detection system is available in this area and in adjacent areas. Therefore, there is reasonable assurance that a fire in this fire area will be detected in its early stages and extinguished by the fire brigade before adjacent safety-related areas are threatened. Also, the expected low fire severity would not be a threat to piping and valves.

4.4 Conclusion

Based on the above evaluation, it is concluded that the existing fire protection features already in place combined with the alternative shutdown capability for the above described fire area provided a level of fire protection equivalent to the technical requirements of section III.G.2.C of Appendix R. Therefore, the exemption should be approved.

5 460V SWITCHGEAR ROOM (AREAS 1 & 2 FA–AB–84A) (Licensee Exemption 6)

LOWER ELECTRICAL PENETRATION AREA (AREAS 1 & 2 FA–EP–78C) (License Exemption 8)

4160V SWITCHGEAR ROOM (AREAS 1 & 2 FA–AB–64A) (Licensee Exemption 9)

5.1 Exemptions Requested

The licensee requested exemptions from the requirements of section III.G.2 of Appendix R to 10 CFR Part 50 in the above-referenced areas to the extent that it requires the separation of redundant safe shutdown equipment by 1-hour fire-rated barriers plus automatic suppression and detection systems. Specifically, redundant safe shutdown systems are not protected by complete, 1-hour fire barriers. In addition, the fire suppression system in the 4160V switchgear room is manually actuated.

5.2 Discussion

The physical configuration of the subject fire areas, including perimeter construction, fire hazards and existing fire protection is as described in Enclosure 1 to the licensee's July 15, 1988 letter.

The staff was initially concerned that not all redundant safe shutdown components had been identified in the licensee's submittal for these areas. The licensee affirmed however that the only redundant safe shutdown components were those specifically identified in Enclosure 1.

The licensee committed to protect one division of safe shutdown cables in a 1-hour fire-rated enclosure as described in the July 15, 1988 letter.

The licensee justified the exemptions on the basis of the existing protection and proposed modifications. Additionally, in the 460V switchgear room, the licensee indicated that an alternate shutdown capability exists for redundant shutdown cables that are not encompassed by the above-referenced modification.

5.3 Evaluation

The technical requirements of section III.G.2 are not met in the subject locations because certain redundant safe shutdown cables and components are not protected by complete (wall-to-wall, floor-to-ceiling) 1-hour fire barriers. Also the 4160v switchgear room is protected by a manually actuated fire suppression system. The staff issued an exemption for the lack of an automatic fire suppression system in the 4160V switchgear room by letter dated June 17, 1983.

The principal concern with the level of fire protection in these fire areas was that because of the absence of complete 1-hour fire-rated barriers between redundant trains of safe shutdown equipment and cables, a fire of significant magnitude could develop and damage redundant shutdown systems. However, the fire load in these locations is low. If a fire were to occur, it is expected that it would develop slowly, with initially low heat release and slow room temperature rise. Because of the presence of the early warning fire detection systems in all three areas, any fire would be detected in its incipient stages. Also, each of these areas is protected by an area-wide fire suppression system. The alarms from these detectors and fire suppression systems are annunciated in the control room. The fire brigade would ultimately be dispatched and would extinguish the fire manually using hose lines or portable extinguishers Until the fire was put out, the existing fire barriers and the 1-hour fire rated cable wrapping between the redundant shutdown systems would provide sufficient passive protection to provide reasonable assurance that one shutdown division would remain free of fire damage. Therefore, the lack of a complete barrier to protect these systems is not considered safety significant.

5.4 Conclusion

Based on our review of the licensee's proposals, we conclude that the licensee's alternate fire protection configuration plus the proposed modifications provides an equivalent level of fire protection to that achieved by compliance with Appendix R. Therefore, the licensee's request for exemption from the requirement for a complete 1-hour fire-rated barrier in the subject areas should be approved. The staff's evaluation of the June 17, 1983 exemption request for the lack of an automatic fire suppression system in the 4160 V switchgear room remains valid.

6 REACTOR PLANT AUXILIARY EQUIPMENT AREA—ELEVATION 84 FT. (AREAS 1 & 2 FA–AB–84B) (Licensee Exemption 7)

6.1 Exemption Requested

The licensee requested an exemption from the requirements of Section III.G.2 of Appendix R to 10 CFR Part 50 to the extent that it requires the separation of redundant safe shutdown cables and equipment by 1-hour fire-rated barriers plus automatic fire detection and suppression systems. Specifically, area-wide detection and suppresion systems are not provided. Additionally, auxiliary feedwater (AFW) system and chemical and volume control system (CVCS) equipment are not separated by complete fire rated barriers.

6.2 Discussion

The physical configuration of this location, including perimeter construction, fire hazards, existing fire protection features and the inventory of safe shutdown systems is as described in Enclosure 1 to the licensee's July 15, 1988 letter.

To enhance fire protection in the area, the licensee proposed to implement the following modifications:

—Installation of partial 1-hour fire-rated barriers so as to achieve at least 30 feet of spatial separation of shutdown related cables;
—Expand the existing wet-pipe sprinkler system in the charging pump area to provide full coverage around the pump;
—Enhance the sprinkler systems which protect the auxiliary feedwater pumps as described in the July 15, 1988 letter;
—The No. 11 (21) component cooling water (CCW) pump and the No. 11 (21) component cooling heat exchanger will be enclosed in a 3-hour fire-rated cubicle as described in the above-referenced letter.

The licensee justifies the exemption on the bases of the limited fire loading, existing fire protection and proposed modifications.

6.3 Evaluation

The technical requirements of section III.G.2 are not met in this area because AFW and CVCS equipment are not separated by complete (wall-to-wall, floor-to-ceiling) 1-hour fire-rated barriers. Also, the intervening space between redundant shutdown cables contains a small quantity of combustible materials. The absence of area-wide fire detection and suppression systems is not considered a non-conformance. Generic Letter 86–10 stipulates that where partial coverage automatic fire detection and suppression systems exist in an area, licensees may perform a fire hazards evaluation to justify the lack of complete coverage. The staff considers the summary analyses contained in the exemption request as being sufficient to satisfy the guidelines issued in the Generic Letter.

With regard to the partial fire barriers and intervening combustibles the staff was initially concerned that a fire which originates in this area could achieve a level of intensity and propagate to such an extent as to damage both shutdown divisions. However, the locations where significant fire hazards or vulnerable systems are present are protected by an automatic fire detection system. If a fire occurred the system would detect it in its initial stages and transmit an alarm directly to the control room. The plant fire brigade would be dispatched to the scene and would extinguish the fire using portable fire fighting equipment. These same locations are also protected by an automatic fire suppression system. If rapid fire propagation or room temperature rise occurred the system would actuate to control the fire and to protect vulnerable systems. Pending arrival of the bridage and/or the actuation of the fire suppression system the fire barriers and spatial separation between the redundant cables and components provide a sufficient degree of passive protection to assure that at least one shutdown division will remain free of fire damage.

6.4 Conclusion

Based on our review of the licensee's proposals, we conclude that the licensee's alternate fire protection configuration provides an equivalent level of fire safety to that achieved by compliance with Appendix R. Therefore the licensee's request for exemption from section III.G.2 should be approved. The licensee's request for exemption from the requirement for area-wide fire detection and suppression systems in this area is not needed.

7 RESIDUAL HEAT REMOVAL PUMP AND HEAT EXCHANGER AREAS (AREAS 1 & 2 FA-AB-45A and B) (License Exemption 13)

7.1 Exemption Requested

The licensee requested approval of an exemption from the technical requirements of section III.G.2 of Appendix R to 10 CFR Part 50 to the extent that it requires the separation of redundant safe shutdown system by complete 3-hour fire-rated barriers. Specifically, redundant cables in these areas are separated by 3-hour fire rated walls with open penetrations.

7.2 Discussion

The physical configuration of this location including perimeter construction, fire hazards, existing fire protection features and the inventory of safe shutdown systems is as described in Enclosure 1 to the licensee's July 15, 1988 letter.

To enhance fire protection the licensee proposed to implement the following modifications:

—Extend the fire detection system throughout elevation 55 feet with the exception of the RHR heat exchangers;
—Seal the openings around the ventilation duct which penetrates the fire wall on elevation 45 feet.
—Enclose cables associated with one shutdown division on elevation 55 feet in a 1-hour fire barrier such that 20 feet of spatial separation is achieved to their redundant counterpart.

The licensee justified the exemption on the basis of the existing protection and the proposed modifications.

7.3 Evaluation

The technical requirements of section III.G.2 are not met in these areas because redundant safe shutdown cables are not separated by a complete (wall-to-wall, floor-to-ceiling) 3-hour fire-rated barrier.

The staff was originally concerned that a fire of significant magnitude could occur which might propagate through the openings in the fire wall and damage both shutdown divisions. However, the fire loading in these areas is minimal. If all of the combustible materials ignited and were consumed, the resulting fire would be of 5 minutes duration as determined by the ASTM E-119 Time Temperature Curve. The combustibles consist of cable insulation and lubricating oil in pumps. A fire involving these materials would be characterized, initially, by slow burning, low heat release and the production of moderate quantities of smoke. The smoke detection system would actuate and alarm automatically in the control room. The fire brigade would be dispatched and would put out the fire before rapid burning occurred. Pending arrival of the brigade, the products of combustion would be largely confined to the area of origin. Because of the openings in the fire wall some smoke and hot gases would spread into the adjoining fire area. It is the staff's judgement, however, that the products of combustion would be sufficiently cooled and dissipated so as not to represent a significant threat to the redundant cables. Also, the cables themselves are not immediately vulnerable to smoke damage. Failure due to heat damage would not occur until well after initial ignition. The staff concludes that sufficient time exists for the fire brigade to intervene to suppress the fire prior to damage to redundant systems. The lack of a complete 3-hour fire barrier is, therefore, not considered safety significant.

7.4 Conclusion

Based on our review of the licensee's proposal we can conclude that the licensee's alternate fire protection configuration, including the proposed modifications provides an equivalent level of fire safety to that achieved by compliance with Appendix R. Therefore, the licensee's request for exemption from the requirement for a complete 3-hour rated fire barrier between redundant systems in the subject area should be approved.

8 CONTAINMENT (AREAS 1 & 2 FA-RC-76) (Licensee Exemption 12)

8.1 Exemption Requested

The licensee requested approval of an exemption from the requirements of section III.G.2 of Appendix R to 10 CFR Part 50 to the extent that it requires that redundant cables and equipment within containment be separated by at least 20 feet of horizontal distance free of intervening combustibles or be separated by a radiant energy shield.

8.2 Discussion

The physical configuration of redundant systems within containment, the existing fire hazards and available protection are as described in Enclosure 1 to the licensee's July 15, 1988 letter.

To enhance fire safety the licensee has proposed to install a localized fire suppression system to protect Panel 335 which contains redundant channels of pressurizer pressure and level instrumentation.

The licensee justifies the exemption on the bases of the limited fire loading, the existing fire protection and the proposed modification.

8.3 Evaluation

The technical requirements of section III.G.2 are not met within containment because redundant systems at the pressurizer and at Panel 335 are not separated by at least 20 feet or separated by a radiant energy shield.

The staff was originally concerned that a fire could occur which would damage redundant shutdown divisions. However, the principal fire hazard within containment, the lube oil in the reactor coolant pumps, has been mitigated by the existing oil collection system and the water spray system over the RCP lube oil life pump and its discharge lines. The remaining combustible materials are dispersed throughout the area. If a fire were to occur, the resulting smoke and hot gases would rise up into the upper areas of the containment and away from vulnerable shutdown systems. The upper area would act as an effective heat sink until the fire self-extinguishes or is put out by the plant fire brigade. Pending fire extinguishment the existing spatial separation between redundant systems, except for the subject locations, would assure that at least one shutdown division would remain free of fire damage.

At Panel 335, the licensee will install an automatic fire suppression system that will provide reasonable assurance that at least one channel of pressurizer pressure and level instrumentation will remain free of damage.

No additional fire protection modifications are feasible at the pressurizer to enhance the existing level of fire safety. It is the staff's judgement that it is not credible to postulate a significant fire in the vicinity of the pressurizer which would prevent safe shutdown from being achieved.

8.4 Conclusion

Based on our review of the licensee's proposal, we conclude that the licensee's alternate fire protection configuration provides an equivalent level of fire safety to that achieved by compliance with Appendix R. Therefore, the licensee's request for exemption from the requirements of section III.G.2 for at least 20 feet of separation between redundant shutdown systems at Panel 35 and at the pressurizer within containment should be approved.

9 PIPE TUNNEL—ELEVATION 84 FEET (AREA 12 FA-PT-84) (Licensee Exemption 14)

9.1 Exemption Requested

The licensee requested approval of an exemption from the technical requirements of section III.G.2 of Appendix R to 10 CFR Part 50 to the extent that it requires that redundant shutdown systems be separated by at least 20 feet free of intervening combustibles and be protected by automatic fire detection and suppression systems. Specifically, redundant systems are separated by less than 20 feet and the tunnel is not protected by an automatic fire suppression system.

9.2 Discussion

The physical description of this area, including perimeter construction, fire hazards, existing fire protection and configuration of safe shutdown systems is as described in Enclosure 1 to the licensee's July 15, 1988 letter.

To enhance fire safety the licensee committed to install a fire detection system throughout the pipe tunnel which will transmit an alarm automatically to the control room.

The licensee justified the exemption on the bases of the limited fire loading, the unaccessibility of the tunnel and the proposed modification.

9.3 Evaluation

The technical requirements of section III.G.2 are not met in this area because redundant shutdown divisions are separated by less than 20 feet horizontal distance and the tunnel is not protected by an automatic fire suppression system.

The fire loading in the tunnel is minimal. If all of the combustibles ignited and were consumed the resulting fire would be about 7 minutes in duration as determined from the ASTM E-119 Time Temperature Curve. Because access to the area is limited to three hatchways the potential for accumulation of significant quantities of transient combustibles or ignition sources is considered remote. Nevertheless, the staff was concerned that if a fire did occur, it would not be detected in sufficient time for the fire brigade to intervene to limit damage. The licensee's commitment to install a smoke detection system in the area has eliminated that concern. The staff concludes that with the addition of the detection system, the limited fire hazard in the area and the restricted access, there is reasonable assurance that at least one shutdown division can be maintained free of fire damage.

9.4 Conclusion

Based on our review of the licensee's proposals, we conclude that the licensee's alternate fire protection configuration provides an equivalent level of safety to that achieved by compliance with Appendix R. Therefore the licensee's request for exemption from the requirements of section III.G.2 for 20 feet of separation between redundant shutdown systems and an automatic fire suppression system in the pipe tunnel should be approved.

10 CO_2 Equipment Room—Elevation 84 Feet (Areas 1 & 2 FA-DG-84F) (Licensee Exemption 15)

10.1 Exemption Requested

The licensee requested approval of an exemption from the technical requirements of Section III.G.2 of Appendix R to 10 CFR Part 50 to the extent that it requires separation of redundant shutdown systems by 1-hour fire barriers and protection by automatic fire detection and suppression systems. Specifically, redundant shutdown cables are not protected by an automatic fire suppression system.

10.2 Discussion

The physical description of this area, including perimeter construction, fire hazards, existing fire protection and configuration of safe shutdown cables is as described in Enclosure 1 to the licensee's July 15, 1988 letter.

To enhance fire safety the licensee committed to install an area-wide automatic fire detection system and to protect cables for one safe shutdown division in a 1-hour fire-rated barrier.

The licensee justified the exemption on the basis of the low fire loading, the existing protection and the proposed modifications.

10.3 Evaluation

The technical requirements of section III.G.2 are not met because of the lack of an automatic fire suppression system.

The staff was concenred that because of the absence of an area-wide fire suppression system a fire of significant magnitude could develop and damage redundant shutdown systems. However, the fire loading in the location is low. If all of the combustibles were totally consumed in fire, it would result in an equivalent fire severity of about 20 minutes as determined by the ASTM E-119 Time Temperature Curve. Because of installation of the fire detection system the staff expects that a fire, if one should occur, would be detected in its incipient stages, before significant room temperature rise occurs. The alarm from the detector would be transmitted automatically to the control room. The fire brigade would be dispatched and would extinguish the fire using portable fire fighting equipment. Pending arrival of the brigade, the 1-hour fire barrier would provide sufficient protection to assure that at least one division of safe shutdown systems would remain free of fire damage. Therefore, the absence of an automatic fire suppression system is not a safety significant.

10.4 Conclusion

Based on our review of the licensee's proposals, we conclude that the licensee's alternative fire protection configuration provides an equivalent level of fire safety to that achieved by compliance with Appendix R. Therefore, the licensee's request of exemption from the requirements of Section III.G.2 for an automatic fire suppression system in the subject area should be approved.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemptions as described in section II are authorized by law and will not present an undue risk to the public health and safety, and are consistent with the common defense and security. The Commission further determines that special circumstances, as provided in § 50.12(a)(2)(ii), are present for the exemptions in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purposes of Appendix R to 10 CFR Part 50 because the licensees alternate fire protection configuration, including the modifications where proposed, provide a level safety equivalent to that provided by compliance with Appendix R. Therefore, the Commission hereby grants the following exemptions from the requirements of section III.G of Appendix R to 10 CFR Part 50:

1. Generic exemption pertaining to non-3-hour fire-rated features in 3-hour fire barriers (License Exemption 1);

2. Lack of a fixed fire suppression system in the control room complex (Areas 1&2 FA-AB-122A) (License Exemption 2);

3. Lack of an automatic fire suppression system in the reactor plant

auxiliary equipment area, elevations 100 and 110 feet (Areas 1&2 FA-AB-100C) (Licensee Exemption 3);

4. Lack of an automatic fire suppression system in the inner piping penetration area (Areas 1&2 FA-PP-100H) (Licensee Exemption 4);

5. Lack of an automatic fire suppression system in the reactor plant auxiliary building, elevation 64 feet (Areas 1&2 FA-AB-64B) (Licensee Exemption 10);

6. Lack of an automatic fire supression system in the mechanical penetration areas, elevations 78 and 100 feet (Fire Areas 1&2 FA-MP-781) (Licensee Exemption 5);

7. Lack of complete 1-hour fire rated barriers between redundant shutdown systems and a manually acturated fire suppresssion system in lieu of an automatic system in the 460V switchgear room. (Areas 1&2 FA-AB-84A) (Licensee Exemption 6);

8. Lack of complete 1-hour fire rated barriers between redundant shutdown systems in the lower electrical penetration area (Areas 1&2 FA-EP-78C) (Licensee Exemption 8);

9. Lack of complete 1-hour fire rated barriers between redundant shutdown systems in the 4160 V switchgear room (Areas 1&2 FA-AB-64A) (Licensee Exemption 9);

10. Lack of complete 1-hour fire-rated barriers or 20 feet free of intervening combustibles between redundant systems in the reactor plant auxiliary equipment area, elevation 84 feet (Areas 1&2 FA-AB-84B) (Licensee Exemption 7);

11. Lack of complete 3-hour fire barriers between redundant shutdown systems in the RHR pump and heat exchanger areas (Areas 1&2 FA-AB-45A) (Licensee Exemption 13);

12. Lack of 20 feet of separation free of intervening combustibles between redundant shutdown systems in containment (Areas 1&2 FA-RC-78) (Licensee Exemption 12);

13. Lack of an authomatic fire suppression system and the absence of 20 feet of spatial separation between redundant systems in the pipe tunnel, elevation 84 feet (Areas 12FA-PT-84) (Licensee Exemption 14); and

14. Lack of an automatic fire suppression system in the CO_2 equipment room, elevation 84 feet (Areas 1&2 FA-DG-84F) (Licensee Exemption 15).

Based on its evaluation, the staff denies the licensee's request for exemption in the upper electric penetration area (Areas 1&2 FA-EP-100G) (Part of Licensee Exemption 4).

Pursuant to 10 CFR 51.32 the Commission has determined that the granting of these exemptions will have no significant impact on the environment (54 FR 30484).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland this 20th day of July 1989.

[FR Doc. 89-17567 Filed 7-26-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[34-27048; OCC-89-06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change By The Options Clearing Corporation; relating to increasing the minimum contribution to OCC's Stock Clearing Fund

July 20, 1989.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. § 78s(b)(1), notice is hereby given that on June 28, 1989, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change increases, from $10,000 to $75,000, the minimum contribution to OCC's Stock Clearing Fund required of those OCC Clearing Members that clear equity options ("Stock Clearing Members"), and increases, from $50,000 to $75,000, the minimum contribution to OCC's Non-Equity Securities Clearing Fund required of those OCC Clearing Members that clear non-equity options ("Non-Equity Securities Clearing Members").

The proposed rule change also permits OCC, in its discretion, to charge losses arising from Clearing Member defaults to its retained earnings as well as to its current earnings, in lieu of charging such losses pro rata to the clearing fund contributions of non-defaulting Clearing Members.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to increase, from $10,000 to $75,000, the minimum contribution to OCC's Stock Clearing Fund required of OCC Clearing Members that clear equity options ("Stock Clearing Members"), and to increase, from $50,000 to $75,000, the minimum contribution to OCC's Non-Equity Securities Clearing Fund required of OCC Clearing Members that clear non-equity options ("Non-Equity Securities Clearing Members").

The proposed rule change also permits OCC, in its discretion, to charge losses arising from Clearing Member defaults to its retained earnings as well as to its current earnings, in lieu of charging such losses pro rata to the clearing fund contributions of non-defaulting Clearing Members.

The proposed rule change is a result of OCC's recently-completed review of the adequacy of its backup system, which it commenced following the events surrounding the October 1987 market break. It is OCC's backup system that provides the financial integrity behind OCC's guaranty of exchange-listed options. Critical components of the backup system are the two clearing funds maintained by OCC and funded by its Clearing Members.

The purpose of the clearing funds it to make good losses sustained by OCC as a result of the failure of a Clearing Member to meet its obigations to OCC.[1]

[1] The clearing funds may also be drawn upon, in certain circumstances, to reimburse OCC for losses sustained as a result of the failure of a bank or a securities or commodities clearing organization to perform any obligation to OCC. *See* Article VIII, Section 5(c).

The clearing funds are viewed as a secondary line of defense against such failures, the first being a defaulting Clearing Member's margin deposits. If a Clearing Member's margin deposits are insufficient to cover its obligations to OCC, then that Clearing Member's clearing fund deposits may be accessed. Once the funds of the defaulting Clearing Member are exhausted, then OCC may reimburse itself for any remaining losses by charging the losses, on a pro rata basis, to the clearing fund contributions of non-defaulting Clearing Members.[2]

The amount of each Clearing Member's contribution to the clearing funds is calculated monthly. Under the present contribution formula under Rule 1001, each Stock Clearing Member is required to contribute to the Stock Clearing Fund, and each Non-Equity Securities Clearing Member is required to contribute to the Non-Equity Securities Clearing Fund, its proportionate share of an amount equal to seven percent of the average daily aggregate margin requirement in respect of equity or non-equity option contracts (as the case may be) outstanding during the preceding calendar month.[3] In no event, however, can a Stock Clearing Member's contribution be less than $10,000, nor a Non-Equity Securities Clearing Member's contribution be less than $50,000.

OCC has attempted to set minimum clearing fund contributions at reasonable levels that in its judgment maintain the integrity of OCC's guaranty and the confidence of the financial community, while at the same time reflect the clearing funds' function as secondary protection against financial exposure from Clearing Member default. The last revision to clearing fund minimums was in late 1984, when OCC *reduced,* from $100,000 to $50,000, the minimum contribution requirements to the Non-Equity Securities Clearing Fund. *See* Securities Exchange Act Release No. 34-21437 (October 31, 1984).

At the time, however, OCC believes that an increase in minimum clearing fund contributions is necessary to protect itself, its Clearing Members and the public in the event of a repeat of the unprecedented market volatilities experienced in the aftermath of the October 1987 market break. The events following that market break caused OCC for the first time in its history to impose a pro rata charge to the clearing fund contributions of all its Clearing Members to reimburse itself for losses sustained as a result of the failure of a single Clearing Member.

Increases in contract volumes and option premiums similarly justify an increase in minimum clearing fund contribution requirements. Contract contract volumes for combined equity and non-equity options increased from 776.4 thousand (on an average daily basis) as of the end of 1984, to an average of 1.012 million (on an average daily basis) for the period 1985 through 1988—a 30.3 percent increase. While average premiums per contract for equity options remained essentially unchanged ($284.40 per contract for 1984 versus an average of $273.61 for the period 1985 to 1988), average non-equity option premiums increased over 50% from the last time that clearing fund minimums were adjusted ($247.18 per contract in 1984 versus an average of $371.12 per contract for the period 1985 to 1988).

Finally, OCC notes that the $10,000 minimum clearing fund contribution backing equity options has been unchanged since OCC's inception in 1972,[4] and has therefore not reflected the increases since that time in the size, complexity and volatility of the options markets, or the effects of inflation.

Consequently, amendments to Article VIII, Section 2 of OCC's By-laws and to Rule 1001(a) increase to $75,000 the minimum contribution required of Stock Clearing Members to OCC's Stock Clearing Fund. Amendments to Article VIII, Section 2 of OCC's By-laws and to Rule 1001(b) also increase to $75,000 the minimum contribution required of Non-Equity Securities Clearing Members to the Non-Equity Securities Clearing Fund.[5]

Under the current version of Article VIII, Section 2 of the By-laws, new Clearing Members are subject to an inital contribution requirement to the respective clearing funds equal to the minimum clearing fund contribution requirement or "such greater amount as may be fixed by the Board of Directors in its discretion at the time such Clearing Member's application is approved." The amount of that initial contribution remains in effect for three months, after which time the Clearing Member's required contribution is set by Rule 1001. Rule 1001 requires that a Clearing member maintain at least the minimum contribution requirement in the clearing funds, or, if greater, its proportionate share of an amount equal to seven percent of the average daily aggregate margin requirement in respect of equity or non-equity option contracts (as the case may be) outstanding during the preceding calendar month.

Therefore, Article VIII, Section 2 presently gives the Board no discretion, during a Clearing Member's first three months of membership, to increase that Clearing Member's required clearing fund contributions even where it becomes clear that by virtue of its trading activity its required contribution to the clearing funds would be greater if calculated under the alternative calculation of Rule 1001. Consequently, Article VIII, Section 2 is further amended to give OCC's Board of Directors the discretion to require new Clearing Members, at any time, to calculate their minimum clearing fund contributions according to Rule 1001.

Finally, while Article VIII, Section 5(e) of the By-laws presently gives OCC the discretion to charge off losses arising from Clearing Member, bank or clearing organization defaults to OCC's current earnings, in lieu of charging the losses pro rata to the clearing fund contributions of non-defaulting Clearing Members, it does not, by its terms, permit a corresponding charge-off to OCC's retained earings. The By-law is amended to permit OCC to access retained earnings as well as current earnings, giving OCC additional flexibility in dealing with losses.

* * * * *

The proposed rule change is consistent with the purposes and requirements of Section 17A of the Securities Exchange Act of 1934 (the "Act") because it will provide additional financial integrity of OCC's guaranty of the clearance and settlement of exchange-traded options.

[2] OCC may also access the Non-Equity Securities Clearing Fund to the extend that the Stock Clearing Fund proves inadequate, and vice versa.

[3] Each Clearing Member's proportionate share is a percentage based on the daily average number of stock or non-equity securities options (as the case may be) held by that Clearing Member in open long or short positions with OCC during the preceding calendar month, in relation to the daily average number of all stock or non-equity securities options (as the case may be) held by all Clearing Members in open long or short positions with OCC during that period. *See* Rule 1001(c)

[4] Before the advent of options trading on non-equity securities, OCC maintained a single clearing fund backing equity options, with a $10,000 minimum contribution requirement. In 1981, the clearing funds were split into two funds—the Stock Clearing Fund for equity options, and the Debt Securities Clearing Fund (the precursor of the Non-Equity Securities Clearing Fund) for options on non-equity securities. Both funds carried a minimum contribution requirement of $10,000. *See* Securities Exchange Act Release No. 18015 (August 6, 1981).

[5] As presently written, Article VIII, Section 2 of OCC's By-law incorrectly reflects a $100,000 minimum contribution requirement to the Non-Equity Securities Clearing Fund, whereas Rule 1001(b) correctly reflects the $50,000 minimum requirement. The discrepancy between the By-law and the rule was created inadvertently in OCC's last revision to clearing fund minimums. *See* SR-OCC-84-17. This proposed rule change will cure that discrepancy.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were not and are not intended to be solicited by OCC with respect to the proposed rule change and none have been received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number SR-OCC-89-06 and should be submitted by August 17, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-17531 Filed 7-26-89; 8:45]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 89-058]

National Offshore Safety Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the National Offshore Safety Advisory Committee (NOSAC). The meeting will be held on August 17, 1989 in Room 8236 of the Department of Transportation Headquarters (NASSIF) Building, 400 7th Street, SW., Washington, DC. The meeting is scheduled to begin at 8:30 a.m. and end at 4:00 p.m. The agenda for the meeting consists of the following:

(1) Liftboat Personnel Licensing
(2) MODU Licensing Rulemaking
(3) Citizenship Requirements
(4) Offshore Supply Vessels Including Liftboats
(5) Special Cargo Requirements for Benzene
(6) Safety Standards for Vapor Control
(7) Offshore Supply Vessels Including Well Stimulation Vessels
(8) Implementation of Emergency Evacuation Plan Regulations
(9) Tonnage Regulations
(10) OCS Activities
(11) Diving Regulations

Attendance is open to the public. With advance notice, and at the discretion of the Chairman, if time permits, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director of NOSAC no later than the day before the meeting. Written statements or materials may be submitted for presentation to the Committee. To ensure distribution to each member of the Committee, 30 copies of written material should be submitted to the Executive Director no later than August 11, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Hammel, Executive Director, National Offshore Safety Advisory Committee, U.S. Coast Guard Headquarters (G-MP-2), 2100 2nd Street, SW., Washington, DC 20593-0001, (202) 267-1463.

Dated: July 21, 1989.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-17512 Filed 7-26-89; 8:45 am]

BILLING CODE 4910-14-M

[CCD 89-0541]

Specific Trade Exemptions; Moratorium on New Issuances and Modifications

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: Due to recent casualities involving tankships, the Coast Guard is reviewing existing regulations and policies concerning tanker construction and operations. Under 33 CFR Part 157, Subpart F, certain tankers may currently be granted exemptions from specific construction or equipment requirements if certain operating conditions are met. During this review, the Coast Guard will not issue new or modified exemptions under this Subpart. Vessels currently operating under existing exemptions may continue to operate under the terms of those exemptions.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen M. Shapiro, Merchant Vessel Inspection and Documentation Division, U.S. Coast Guard (G-MVI-2), Washington, DC 20593-0001, (202) 267-1181.

SUPPLEMENTARY INFORMATION: 33 CFR 157.10a contains requirements that oil tankers over 40,000 deadweight tons be fitted with segregated or dedicated clean ballast tanks, if carrying product oils, and segregated ballast tanks or a crude oil washing system, if carrying crude oil. 33 CFR 157.10c contains these same requirements for oil tankers between 20,000-40,000 deadweight tons. 33 CFR Part 157, Subpart F, which was published in the **Federal Register** on January 15, 1981 (46 FR 3510), permits those vessels described above which are in specific domestic trades to be exempted from the above requirements provided certain conditions are met.

To obtain an exemption under Subpart F, and owner must submit an application to the Coast Guard specifying the cargoes to be carried and the ports where cargo will be loaded. These ports must have adequate approved facilities to handle all non-segregated ballast and cargo residues that may be off-loaded. An adequate

facility must have a valid National Pollutant Discharge Elimination System (NPDES) permit to process the cargo residues and dirty ballast equal to 30 percent of the vessel's deadweight. The application must show that such facilities are available and describe the procedures that will be used to discharge to the facilities. The Coast Guard reviews completed applications and issues a written grant or denial of the requested exemption.

In view of the recent casualties involving tankships, the Coast Guard is re-evaluating the regulations and policies for tanker design and operations, including the exemption provisions of Subpart F. While this evaluation is in progress, no new or modified exemptions will be issued. If, after this evaluation is complete, the Coast Guard determines that changes to existing rules may be necessary, they will be published as proposed rules in the **Federal Register**.

Dated: July 21, 1989.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-17511 Filed 7-26-89; 8:45 am]

BILLING CODE 4910-14-M

Research and Special Programs Administration

Meetings of Pipeline Safety Advisory Committees

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, U.S.C. App. 1), notice is hereby given of the following meetings of the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee. Each meeting will be in Room 4234-4238, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

On September 12, 1989, at 9:00 a.m., the Technical Pipeline Safety Standards Committee will meet to discuss and vote on the technical feasibility, reasonableness, and practicability of proposed rules regarding:

- Determining the Extent of Corrosion on Gas Pipelines (54 FR 27081, June 27, 1989)
- Gas Gathering Line Definition
- Pipeline Inventory
- Gas Detection and Monitoring in Compressor Station Buildings

In addition, the committee will informally discuss an Advance Notice of Proposed Rulemaking regarding transportation of hydrogen sulfide by pipeline (54 FR 24361, June 7, 1989).

On September 13, 1989, at 9:00 a.m., the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee will meet jointly to discuss studies in progress regarding the use of internal inspection and flow restriction devices. (See 54 FR 20945 and 20948; May 15, 1989). Also, at this joint meeting, the Administrator of RSPA will lead a general discussion of suggestions from committee members to improve the pipeline safety program.

On September 13, 1989, after the joint meeting, the Technical Hazardous Liquid Pipeline Safety Standards Committee will meet to discuss and vote on the technical feasibility, reasonableness, and practicability of proposed rules regarding:

- Transportation of Carbon Dioxide by Pipeline
- Operation and Maintenance Procedures for Pipelines
- Pipeline Inventory

Each meeting will be open to the public, but attendance will be limited to the space available. With approval of the Executive Director of the Committees, members of the public may present oral statements of the subjects. Due to the limited time available, each person who wants to make an oral statement must notify Linda Craver, Room 8417, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-1640, not later than September 8, 1989, to the topics to be addressed and the time requested to address each topic. The presiding officer may deny any request to present an oral statement and may limit the time of any oral presentation. Members of the public may present written statements to the committees before or after any meeting.

Dated: July 21, 1989.

Cesar De Leon,

Executive Director of the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee.

[FR Doc. 89-17513 Filed 7-26-89; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: July 21, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Recuction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0005
Form Number: ATF F 3210.1
Type of Review: Extension
Title: Application for Restoration of Firearms and/or Explosives Privileges
Description: Certain categories of persons are prohibited from possessing explosives and firearms. This form is the basis for ATF investigating the merits of an applicant to have his rights restored as provided in Federal law.
Respondents: Individuals or households, Businesses or other for-profit, Small Businesses or organizations
Estimated Number of Respondents: 5,000
Estimated Burden Hours Per Response: 30 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 2,500 hours

OMB Number: 1512-0098
Form Number: ATF F 5520.2 and ATF REC 5520/1
Type of Review: Extension
Title: Annual Report of Concentrate Manufacturers; Usual and Customary Business Records—Volatile Fruit Flavor Concentrate Plants
Description: Volatile Fruit Flavor Concentrate manufacturers are regulated because the products they produce contain ethyl alcohol which can be diverted to untaxpaid beverage use. Records required are usual and customary business records of receipt and transfer. The required annual report provides a basis for statistics concerning this industry. Records and the report are audited to protect the revenue.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 90
Estimated Burden Hours Per Response/Recordkeeping: 20 minutes
Frequency of Response: Annually
Estimated Total Recordkeeping/Reporting Burden: 30 hours

OMB Number: 1512-0195
Form Number: ATF F 5110.25
Type of Review: Extension
Title: Application for Operating Permit Under 26 U.S.C 5171(d)

BEST COPY AVAILABLE

Description: ATF F 5110.25 is completed by proprietors of distilled spirits plants who engage in certain specified types of activities. ATF regional office personnel use the information on the form to identify the applicant, the location of the business and the types of activities to be conducted.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 80
Estimated Burden Hours Per Response: 15 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 20 hours
Clearance Officer: Robert Masarsky, (202) 566-7077, Bureau of Alcohol, Tobacco and firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,
Departmental Reports, Management Officer.
[FR Doc. 89-17574 Filed 7-26-89; 8:45 am]
BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 21, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0142
Form Number: 2220
Type of Review: Revision
Title: Underpayment of Estimated Tax by Corporations
Description: Form 2220 is used by corporations to determine whether they are subject to the penalty for underpayment of estimated tax and, if so, the amount of the penalty. The IRS uses Form 2220 to determine if the penalty was correctly computed.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 700,000
Estimated Burden Hours Per Response/Recordkeeping: Recordkeeping—63 hours 22 minutes; Learning about the law or the form—1 hour 26 minutes; Preparing the form—4 hours 23 minutes; Copying, assembling, and sending the form to IRS—32 minutes
Frequency of Response: On occasion
Estimated Total Recordkeeping/Reporting Burden: 19,289,108 hours
OMB Number: 1545-0231
Form Number: 6478
Type of Review: Revision
Title: Credit for Alcohol Used as Fuel
Description: Internal Revenue Code section 38(b)(3) allows a credit against income tax for businesses that sell or use alcohol mixed with other fuels or sold straight. Form 6478 is used to compute this alcohol fuel credit.
Respondents: Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 9,000
Estimated Burden Hours Per Response/Recordkeeping: Recordkeeping—8 hours 22 minutes; Learning about the law or the form—46 minutes; Preparing the form—1 hour 52 minutes; Copying, assembling, and sending the form to IRS—16 minutes
Frequency of Response: On occasion
Estimated Total Recordkeeping/Reporting Burden: 101,430 hours
OMB Number: 1545-0782
Form Number: None
Type of Review: Extension
Title: Limitation on Reduction in Income Tax Liability Incurred to the Virgin Islands
Description: The Tax Reform Act of 1986 repealed the mandatory reporting and recordkeeping requirements of section 934(d) (1954 Code). The prior exception to the general rule of section 934 (1954 Code) to prevent the Government of the Virgin Islands from granting tax rebates with regard to taxes attributable to income derived from sources within the U.S. was contingent upon the taxpayers' compliance with the reporting requirement of section 934(d). The changes imposed by the Tax Reform Act of 1986 should reduce the number of responses to approximately 500.
Respondents: Individuals or households, Businesses or other for-profit
Estimated Number of Respondents: 500
Estimated Burden Hours Per Response/Recordkeeping: 10 hrs. 14 mins.
Frequency of Response: On occasion
Estimated Total Recordkeeping/Reporting Burden: 184 hours
OMB Number: 1545-1036
Form Number: 8716
Type of Review: Revision
Title: Election to Have a Tax Year Other Than a Required Tax Year
Description: Filed by partnerships, S corporations, and personal service corporations, under section 444(a), to retain or to adopt a tax year that is not a required tax year. Service Centers accept Form 8716 and use the form information to assign master-file codes that allow the Center to accept the filer's tax return filed for a tax year (fiscal year) that would not otherwise be acceptable.
Respondents: Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 40,000
Estimated Burden Hours Per Response/Recordkeeping:

	8716	8716 (Schedule H)
Recordkeeping	2 hrs. 23 mins	5 hrs. 59 mins.
Learning about the law or the form.	2 hrs. 35 mins	47 mins.
Preparing and sending the form to IRS.	2 hrs. 44 mins	56 mins.

Frequency of Response: Nonrecurring, one-time filing to elect a nonrequired tax year
Estimated Total Recordkeeping/Reporting Burden: 312,250 hours
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports, Management Officer.
[FR Doc. 89-17575 Filed 7-26-89; 8:45 am]
BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 143
Thursday, July 27, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, August 1, 1989, 10:00 a.m.

PLACE: 999 E. Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, August 3, 1989, 10:00 a.m.

PLACE: 999 E. Street, N.W., Washington, D.C.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.
[FR Doc. 89-17724 Filed 7-25-89; 2:54 pm]
BILLING CODE 6715-01-M

PAROLE COMMISSION

RECORD OF VOTE OF MEETING CLOSURE

(Public Law 94-409) (5 U.S.C. 552b)

I, Benjamin F. Baer, Chairman of the United States Parole Commission, presided at a meeting of said Commission which started at nine o'clock am. on Wednesday, June 19, 1989 at the Commission's Central Office, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. The meeting ended at or about 12:30 p.m. The purpose of the meeting was to decide approximately 7 appeals from National Commissioners' decisions pursuant to 28 CFR 2.27. Eight Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcements further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Benjamin F. Baer, Cameron M. Batjer, Jasper Clay, Jr., Vincent Fechtel, Jr., Carol Pavilack Getty, Victor M.F. Reyes, Daniel R. Lopez, and G. MacKenzie Rast.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: July 20, 1989.

Benjamin F. Baer,
Chairman, U.S. Parole Commission.
[FR Doc. 89-17733 Filed 7-25-89; 3:32 pm]
BILLING CODE 4410-01-M

Corrections

Federal Register
Vol. 54, No. 143
Thursday, July 27, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles

Correction

In notice document 89-15772 appearing on page 28458 in the issue of Thursday, July 6, 1989, make the following correction:

In the third column, in the fourth complete paragraph, in the second line, "Board College" should read "Bard College".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

Vanderbilt University et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

Correction

In notice document 89-15780 appearing on page 28459 in the issue of Thursday, July 6, 1989, make the following correction:

In the 2nd column, in the 4th complete paragraph, in the 11th line, "if" should read "it".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP82-55-044]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

Correction

In notice document 89-16984 appearing on page 30460 in the issue of Thursday, July 20, 1989, make the following correction:

In the first column, in the document's heading, the Docket No. should read "RP82-55-044".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[PF520; FRL-3610-9]

Petition Proposing Revocation of Food Additive Tolerances

Correction

In notice document 89-15560 beginning on page 27700 in the issue of Friday, June 30, 1989, make the following correction:

On page 27701, in the 1st column, in the 1st complete paragraph, in the 11th line, after "requires"insert "that the current section 409 regulations that permit".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51734; FRL-3611-7]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

Correction

In notice document 89-15894 beginning on page 28471 in the issue of Thursday, July 6, 1989, make the following corrections:

1. On page 28471, in the third column, under **DATES**, in the first line, "P 89-681" should read "P 89-691".

2. On page 28475, in the second column, in the second complete paragraph, in the fourth line "LC50 10" should read "LC50 > 10".

3. On the same page, in the third column, under **P 89-764**, under *Toxicity Data.*, in the second line, "LD505.0 G/KG" should read "LD50 > 5.0 G/KG".

4. On page 28476, in the first column, under **P 89-771**, under *Toxicity Data.*, in the second line, "LD505,000 MG/KG" should read "LD50 > 5,000 MG/KG".

5. On the same page, in the same column, in the same paragraph, in the third line, "LD502,000 MG/KG" should read "LD50 > 2,000 MG/KG".

6. On the same page, in the same column, in the same paragraph, in the fifth line, "LC501,000 MG/L" should read "LC50 > 1,000 MG/L".

7. On the same page, under **P 89-775**, under *Chemical*, in the third line, "3-(1-methylethenyl)" should read "3-(1-methylethenyl)".

8. On the same page, in the same column, in the last line, "LD505.0 G/KG" should read "LD50 > 5.0 G/KG".

9. On the same page, in the second column, in the first line, "LD502 G/KG" should read "LD50 > 2 G/KG".

10. On the same page, in the same column, in the second line, "LC502.87 MG/L" should read "LC50 > 2.87 MG/L".

11. On page 28477, in the first column, under **P 89-794**, under *Toxicity Data.*, in the third line, "LD50 > 2 ML/KG" should read "LD50 > 20 ML/KG".

12. On the same page, in the same column, under **P 89-797**, under *Manufacturer*, in the first line, "Aldrick" should read "Aldrich".

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 887

[Docket No. R-88-1332; FR-2170]

Section 8 Housing Vouchers

Correction

In rule document 88-20078 beginning on page 34372 in the issue of Tuesday, September 6, 1988, make the following correction:

§ 887.101 [Corrected]

On page 34392, in the second column, in the third line, "(3)" should read "(2)".

BILLING CODE 1505-01-D

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice No. 1117]

Eagle Pass, Tx; Application for Bridge Permit

Correction

In notice document 89-16767 appearing on page 30129 in the issue of Tuesday, July 18, 1989, make the following correction:

In the first column, in the fourth paragraph, "(*insert date 30 days from publication in* **Federal Register**)" should read "August 17, 1989".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[BS-Ap-No-2836]

Illinois Central Railroad Co. and Consolidated Rail Corp.; Public Hearing

Correction

In notice document 89-16485 appearing on page 29813 in the issue of Friday, July 14, 1989, the subject heading should read as it appears above.

BILLING CODE 1505-01-D

federal register

Thursday
July 27, 1989

Part II

Federal Election Commission

11 CFR Parts 100, 9004 and 9034
Loans From Lending Institutions to Candidates and Political Committees; Notice of Proposed Rulemaking and Request for Comments

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 9004, and 9034

[Notice 1989-11]

Loans From Lending Institutions to Candidates and Political Committees

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking; request for comment.

SUMMARY: The Federal Election Commission is considering revising its rules on when loans from lending institutions (such as State banks, federally-chartered banks, savings and loan associations, and credit unions) to federal candidates and political committees, are considered to be made on a basis which assures repayment. As part of its revision, the Commission is considering supplements to Schedule C and Schedule C-P, to facilitate Commission monitoring and greater public disclosure of the terms of such loans.

Please note that the draft rules that follow do not represent a final decision by the Commission. Accordingly, the Commission seeks comments on these rules, especially with respect to their implementation. The Commission also seeks comments on the questions presented in this Notice and welcomes comments that present alternative approaches. A public hearing has been scheduled to obtain further comments on the proposed rules and issues discussed in this Notice. Further information is provided in the supplementary information which follows.

DATES: Comments must be received on or before September 15, 1989. The Commission will hold a hearing at 10:00 a.m. on October 4, 1989. Persons wishing to testify at the hearing should so indicate in their written comments.

ADDRESSES: Comments and requests to appear should be made in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463. The hearing will be held in the Commission's Ninth Floor Hearing Room, 999 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, (202) 376-5690 or toll free (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Federal Election Campaign Act of 1971, ("FECA" or "the Act"), exempted from the definition of contribution a loan of money by a national or State bank "made in accordance with the applicable banking laws and regulations and in the ordinary course of business." 18 U.S.C. 591(e)(1) (1971). In 1976, this exemption was transferred to 2 U.S.C. 431(e)(5)(g). The 1979 FECA Amendments extended the loan exemption to include other lending institutions and also sought to clarify when a loan is made in the ordinary course of business by adding, *inter alia*, the requirement that any such loan "shall be made on a basis which assures repayment * * *" 2 U.S.C. 431(8)(B)(vii)(II).

This phrase has become a focal point in the Commission's administration of the Act's loan provisions through the enforcement process and advisory opinions. In mid-1986, the Commission determined to explore the possibility of drafting more specific regulatory standards on this issue. At that time, this project was part of proposed changes to Title 26; subsequently, the Commission decided to consider bank loans separately. Thus, the Commission has published two Notices seeking public comment on possible approaches in this area.[1]

Both of these Notices explained the questions at issue. In particular, both Notices indicated that problems have arisen regarding the application of the statutory requirement that a bank loan be "made on a basis which assures repayment." *See* 2 U.S.C. 431(8)(B)(vii)(II) and 11 CFR 100.7(b)(11) and 100.8(b)(12). The legislative history of the FECA makes it evident that while banks are permitted to make loans to federal candidates and political committees, Congress did not intend such loans to become a vehicle for banks to make prohibited contributions. S. Rep. No. 229, 92d Cong., 1st Sess. 121 (1971). *See also* 2 U.S.C. 441b(a). The Commission, in administering this provision, is therefore seeking to balance established lending policy with the requirements of the FECA. To determine how it can best accomplish this goal, the Commission, in its Notices, invited public comment on three possible approaches to interpreting the phrase "made on a basis which assures repayment."

The first approach would have required candidates and political committees to secure loans by pledging traditional types of collateral, such as real estate, personal property, goods, negotiable instruments, certificates of deposit, chattel papers, stocks, accounts receivable and cash on deposit. The second approach would have allowed candidates and committees to pledge non-traditional types of collateral such as future receipts of federal payments for presidential candidates ("public financing payments") under 11 CFR Part 9004 or Part 9034, future receipts of contributions and future receipts of interest income for all federal candidates. Candidates must deposit these funds, upon receipt, in a separate "collateral account," for this non-traditional collateral to constitute an adequate assurance of repayment. The final approach discussed in the Notices would have required the Commission to revise its current course. Under this approach, the statute would have been read as requiring only that a written instrument evidence the loan, and that the loan include a due date or amortization schedule in order to comply with the requirement that the loan be made on a basis which assures repayment.

The Commission has reviewed the comments it has received along with relevant advisory opinions, past enforcement actions and the legislative history of the Act. The comments received on the three approaches have demonstrated both the positive and negative aspects of these initial concepts.

The first approach, which would have required a candidate or political committee to secure a loan with some form of traditional collateral, has merit in that it would allow the Commission to determine with a level of exactitude whether a loan is made on a basis which assures repayment. With this approach, however, unless candidates or political committees have extensive personal holdings, they are limited by the lack of available collateral. In addition, there are some limitations on the ability of candidates and other persons to guarantee loans. In the case of publicly-financed presidential candidates, the Act limits the amount a candidate can spend from personal funds; any personal guarantees made on the loan would count toward this limit. *See* 26 U.S.C. 9004(d) and 9035. While persons other than the debtor can guarantee the loan, in the context of bank loans to candidates and political committees such loan guarantees are subject to the Act's contribution limits and prohibitions. *See e.g.*, 2 U.S.C. 441a(a) and 441b.

The second approach was a modified version of the traditional approach. It would have permitted candidates and political committees to use collateral which is more widely available to them. These forms of collateral include a candidate's reasonable expectation of future contributions, public funds or interest income. While bank regulatory agencies do not see any problem with these types of non-traditional collateral, both the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC) would consider loans made under these circumstances as unsecured. According to these agencies, such loans could be compared to the loans that many banks currently make to collegiate athletes and students based on the expectancy that upon graduation and matriculation into their respective careers their income level will permit them to repay the loan. Although this approach requires safeguards to be effective, it does give political borrowers flexibility to use collateral that is available to them.

One method of insuring that a loan collateralized in this manner is repaid would be to require that future contributions or other future funds received be deposited into a separate collateral account. Although bankers would have to depend on the candidate's or committee's projected calculations of future receipts, the establishment of an account at the lending institution would help bank officials monitor the status of the loan. Furthermore, the lender would be put in a better position at the time a loan is made if the loan agreement specifies the types and amounts of funds that are to be used in retiring the debt, and specifies payment intervals.

The third approach would have required only that a written instrument evidence the loan and that the loan include a due date or amortization schedule. This approach does not appear to adequately address the issue. While some commenters have warned the Commission about substituting its judgment for that of bank officials or lending regulatory agencies, others have noted that the Act contemplates something more than the presence of these elements.

Proposed Rules

The Commission is now seeking comment on proposed guidelines for determining when bank loans are made on a basis which assures repayment. In addition, at the end of the proposed rules, the Commission has included language to illustrate the discussion of the insider loan analogy in the section on *Other Related Issues*. Finally, the Commission is considering whether to require committees and candidates to file a supplement to Schedule C and Schedule C-P signed by the lender, which would provide more complete disclosure of the terms and conditions of bank loans.

The proposed rules would incorporate elements of each of the three approaches discussed above. They would permit candidates and political committees to obtain loans from lending institutions by pledging traditional types of collateral, as well as by pledging future receipts of public financing payments, contributions and interest income. In addition, absent either traditional collateral or other types of non-traditional collateral, the proposed rules would allow candidates and political committees to rebut the presumption that such a loan was not made on a basis which assures repayment by demonstrating that an unsecured loan is made on another basis which assures repayment. Because 11 CFR 100.7(b)(11) and 100.8(b)(12) contain the bank loan rules, parallel provisions have been drafted for both sections. *See* proposed 11 CFR 100.7(b)(11)(i), (ii) and 100.8(b)(12)(i) and (ii).

Proposed subparagraphs (i)(A) of the two parallel regulations would set forth the general rule that if a financial institution relies on traditional collateral in approving a loan, it must perfect a security interest in that collateral. Guarantors and co-signers would continue to be limited by the prohibitions and contribution limits of the FECA. The Commission notes that the proposed list of types of traditional collateral is not exhaustive and welcomes comments on additional types of collateral and possible secondary sources of repayment that should be considered. The Commission also welcomes suggestions on methods to insure that lenders perfect a security interest in such types of collateral. Furthermore, the Commission requests comments on the use of the term "perfect a security interest" as applied to real estate, securities, the types of property noted in Article 9 of the Uniform Commercial Code and other kinds of traditional collateral. Is this term broad enough to cover the rights or powers that banks can assert to ensure their recourse to all these different types of assets?

Proposed subparagraphs (i)(B) would permit candidates and political committees to obtain loans from financial institutions by pledging future receipts of contributions and interest income. Presidential candidates receiving or expecting to receive public financing pursuant to 11 CFR Part 9004 or 9034 also would be able to pledge future public funding payments. The Commission proposes that loans obtained by this method would be subject to a loan agreement requiring that when the committees receive such pledged collateral they deposit it in a separate account for use in retiring the debt. In the case of candidates receiving public financing, the proposed rules would require such candidates to authorize the Secretary of the Treasury to directly deposit public financing payments used as collateral into this account. In addition, the amount of the loan or loans obtained by candidates and political committees on the basis of nontraditional collateral could not exceed the reasonable expectation of the future receipts pledged as a primary or secondary source of repayment.

One suggestion, which is not incorporated in the proposed rules, is to consider a loan as made on a basis which assures repayment even if the candidate or political committee does not have a separate account with the lending institution that extended the loan. The Commission requests comments on whether an assignment, executed by the candidate or political committee, would ensure that the lending institution has recourse to repayment of the loan, even though pledged funds would not be deposited directly into an account at the lending institution.

It should be noted that most of the factors applicable to congressional candidates relate to publicly-financed presidential candidates; however, the unique circumstances of pledging public funds warrant some specially tailored proposals. Under current 11 CFR 9003.4(b) a presidential candidate may obtain a loan from a lending institution, in accordance with the requirements of 11 CFR 100.7(b)(11), for certain permisible expenses incurred prior to the receipt of public financing payments for the general election, or prior to the beginning of the expenditure report period. Examples of permissible expenses are: expenditures for establishing financial accounting systems, expenditures for organizational planning, and expenditures for polling.

[1] On August 5, 1986, the Commission published a Notice of Proposed Rulemaking on Public Financing. 51 F.R. 28154. In that Notice, the Commission raised its concerns about loans from lending institutions and sought comment on several alternative applications of the statutory phrase "made on a basis which assures repayment" in the context of publicly funded campaigns as well as congressional candidates and other political committees. The Commission received fifteen comments that responded to this aspect of the August Notice. In addition, the Commission's public hearing on the public financing proposals addressed some aspects of the loan question.

On January 22, 1987, the Commission published a second Notice that focused solely on the loan issue. 52 F.R. 2416. This notice analyzed the comments received to date, sought further comment on the alternatives presented in the August Notice, and announced a hearing date of March 11, 1987. Although the Commission received two additional comments in response to the second Notice, it did not receive any requests to testify and, therefore, it cancelled the public hearing.

Major party presidential candidates who receive public financing equal to their full entitlement (that is, the same amount as their expenditure limitation under 11 CFR 110.8) must make full repayment of both the principal and interest on such loans within 15 days after receiving public financing.

The proposed rules would not change the requirements outlined above for loans that are based on anticipated payments for general election financing. These provisions would remain in force to govern those loans where general election payments have been pledged. The Commission is proposing, however, to revise 11 CFR 9004.4(a)(2), which regulates the use of federal funds, to require that public financing payments be used to repay loans from lending institutions when such payments are pledged as collateral for the loans. Currently, this section does not require such repayment, but rather makes such repayment permissive. Section 9004.4(a)(2) would continue to cross-reference § 100.7(b)(11), which, as proposed, would also state the repayment requirement. The Commission proposes a parallel revision for 11 CFR 9034.4(a)(1), which governs the use of public financing payments by presidential primary candidates.

Proposed paragraphs (ii) of proposed 11 CFR 100.7(b)(11) and 100.8(b)(12) would state that when a loan is not obtained using one of the methods described in proposed paragraphs (i), there arises a rebuttable presumption that the loan was not made on a basis which assures repayment. Candidates and political committees would then be required to demonstrate that such an unsecured loan was made on some other basis which assures repayment. Otherwise, the presumption will stand, and the loan will not be considered to have met the statutory standard "made on a basis which assures repayment."

This provision will permit some flexibility for candidates and political committees that are in situations where the methods of proposed paragraphs (i) for obtaining loans are too restrictive to permit the consideration of otherwise bona fide loans. By incorporating the flexibility of this "other basis" provision, as well as the non-traditional collateral method presented above, the Commission is seeking to assure that candidates and political committees with varying resources have a broader range of options to permit them to take advantage of the Act's loan provisions. At the same time, the Commission wants to provide sufficient guidance to deter abuses which could result in impermissible contributions. The Commission welcomes comments on whether this flexible approach, or some other approach, would best achieve a satisfactory balance of these competing goals.

Reporting Loans

In addition to the proposed rules, the Commission is also considering developing a supplement to Schedule C, and a supplement to Schedule C-P, in order to improve Commission monitoring and public disclosure of loans made by banks and other lending institutions. The Commission has included two draft forms at the conclusion of the Supplementary Information which have been prepared as examples of the kinds of information the Commission might seek. Please note that the draft forms have been prepared to help determine how disclosure of bank loans could be improved. Although the forms are not presented in any final layout or format, the Commission is interested in comments on the categories of information requested. Candidates and political committees could be required to file one of these forms, on a one-time basis per loan, at the time the loan is first reported to the Commission. Schedule C, or C-P, which provides information on loan sources, amounts, balances, dates, due dates, interest rates, and whether loans are secured, would continue to be required as well. The supplemental forms under consideration would elicit additional information on the types and values of collateral pledged, interests secured in the collateral, and dates when depository accounts for pledged contributions and public financing payments were established. If the candidates or political committees pledged neither traditional nor non-traditional collateral, or if they pledged an insufficient amount, the form would require the candidates or committees to show that the loan was made on another basis which assures repayment.

In addition, a separate section on the form would be directed to the lender. This section would require the lender to confirm the information that the candidate or committee gave regarding the extension of the loan. Also, the lender would be asked to state that the loan was made at an interest rate that is usual and customary, in accordance with the lender's usual policies and practices, and that, in the view of the lending institution, the loan was made on a basis which assures repayment. This proposal is based on the idea that committees have a reporting obligation but lenders are in the best position to state whether a loan has been made in accordance with standard practice. The Commission is seeking comment on this proposal, specifically on the proposal requiring lenders to make these statements. One way for the Commission to approach this would be to require the candidate or political committee to obtain the lender's signature on the loan disclosure schedule in order for the loan to be considered made on a basis which assures repayment.

One commenter who responded to the August 5, 1986 Notice suggested that candidates and political committees should be required to attach a copy of the loan agreement to the report disclosing the loan. Accordingly, the Commission is considering such a requirement. In addition, the Commission is also considering requiring the filing of any related security agreement(s), promissory note(s), letter(s) authorizing direct payments and other pertinent documents. Further, the Commission welcomes comments on whether to require committees to prepare a cash flow projection or other financial plan, when future receipts are pledged as a source of repayment, and whether committees should submit such plans to the Commission as part of the additional documentation requirement. The Commission is seeking comments on these possible reporting requirements.

Other Related Issues

The Commission also welcomes comments on several other related issues. For example, the Commission seeks comments concerning the practicality of analogizing political loans to loans a bank makes to its officers or board of directors. Banking regulations currently require that these loans be made on the same basis, terms and other conditions as loans made to other borrowers. These "insider" loans must be approved by the institution's board of directors and so noted in the board's minutes. *See* 12 CFR 215.4(b)(1), 2; 563.43(b)(1), (2); and 337.3(b). Banking regulatory agencies noted that analogizing "insider" loans and political loans would allow the Commission to more closely scrutinize political loans.

Language illustrating the use of insider loan banking regulations can be found under a separate heading at the end of the proposed rules. This language borrows elements of the Title 12 regulations commonly used to evaluate insider loans. These requirements are that the loan must be made in the ordinary course of business, must "not involve more than the normal risk of collectibility or present other unfavorable features," and must "not exceed the loan amount which would be available to members of the general public of similar credit status applying for loans." 12 CFR 563.43(b)(1).

The need for specific regulation of insider loans may be comparable to the need for specific regulation of loans to candidates. Insider loan regulations prevent self-dealing and favoritism from undermining established lending rules. Candidate loan regulations should similarly prevent political favoritism from undermining lawful lending practices. While the Commission would not prevent candidates from going to friendly banks, it can attempt to discourage favoritism from overriding ordinary lending terms or corrupting an assurance of repayment. Comments are requested on whether this approach, as an alternative to the approach taken in the proposed regulations, would adequately serve the Commission's purpose of satisfying the statutory standard "made on a basis which assures repayment."

Another issue is whether there is any additional information that should be reported to assist the Commission in monitoring compliance with the rules. For example, should these rules include guidelines or limits, either on a dollar or percentage basis, for the total amount of loans that a candidate or committee may have outstanding at any particular time? If so, how could the Commission implement such a proposal?

As a further assurance that future funds will be applied to repay the debt, the Commission requests comments on the idea of requiring the candidate or political committee to set aside a certain percentage of future funds in the separate account. This could be accomplished in a number of different ways. The regulations could specify a certain minimum percentage, or this could be left to the loan agreement. Also, this percentage could be of all funds, or proceeds from a particular fundraiser, only of matching payments or of any combination of these future receipts. This provision is not included in the proposed rules; rather, it is presented as a possible approach to the dilemma of how to provide more of an assurance of repayment when a loan is based on future receipts.

Also related to bank loans are lines of credit extended by lending institutions to federal candidates and political committees. The Commission seeks comment on whether these proposed rules can be applicable to such lines of credit. Lines of credit may present some unique circumstances that could pose problems for the Commission. For example, a political committee could obtain a line of credit, which at the time is based on adequate collateral, but not draw on such credit immediately. It is possible that six months later, the collateral initially relied upon would no longer be available, yet the committee would be able to draw on its line of credit. How can the Commission ensure that the loan is "made on a basis which assures repayment"? Should the lender periodically review the collateral available? How could this be implemented?

The Commission also requests comments on a suggestion to require loans to be reported earlier if they are made close to an election. This idea would parallel the current requirement for reporting contributions of $1,000 or more within 48 hours of receipt of the contribution by an authorized committee. *See* 11 CFR 104.5(f). This proposal would be consistent with the Act's focus on disclosure of large sums of money received close to an election.

Finally, the Commission seeks comment on the idea of requiring that loans made to political committees and federal candidates include a due date at or near the election. The banking regulatory agencies suggested this idea, analogizing it to agricultural loans that are due when crops are harvested and stating that the proposal is based on a sound banking principle that ties repayment of the loan into the source of the repayment. Political candidates may have difficulty raising money to pay back their loans after an election; on the other hand, a campaign's funds may be the lowest right before the election. The Commission requests comment, then, on this repayment requirement. Would a due date at or near the election be a factor indicating that the loan was made on a basis which assures repayment?

SUPPLEMENTS TO SCHEDULE C AND SCHEDULE C-P

Schedule C-1

(Supplementary for Information found on Page —— of Schedule C)

For Reporting a Loan From a Lending Institution

This schedule must be filed with Schedule C when obtaining a loan from a lending institution such as a State or federally chartered bank, savings and loan association, or credit union. This and a Schedule C must be filed with the first report disclosing such a loan. Thereafter, a Schedule C must be reported with each subsequent report filed with the Commission until the loan is fully repaid or terminated. *See* 11 CFR §§ 100.7(b)(11)(i), 100.8(b)(12)(i) and 104.11(a).

Full Name of Candidate or Political Committee Obtaining Loan (Debtor)

Full Name, Mailing Address and Zip Code of Lending Institution (Lender)

Original Amount of Loan

Interest Rate (% APR)

Date Incurred or Established

Due Date

Are other parties secondarily liable for the debt incurred?
☐ Yes ☐ No
(Names must be reported on Schedule C.)

Are any of the following pledged as collateral for the loan: real estate; personal property, goods, negotiable instruments, certificates of deposit, chattel papers, stocks, accounts receivable, cash on deposit, or other similar traditional collateral?
☐ Yes ☐ No
Specify: ——
What is the value of this collateral? ——
Does the lender have a perfected security interest in it?
☐ Yes ☐ No

Are any future contributions or future receipts of interest income pledged as collateral for the loan?
☐ Yes ☐ No
Specify: ——
What is the estimated value? ——
A depository account must be established pursuant to 11 CFR 100.7(b)(11)(i)(B) and 100.8(b)(12)(i)(B).
Date account established: ——

If neither of the types of collateral described above were pledged for this loan or if the amount pledged does not equal or exceed the loan amount, state the basis upon which this loan was made, and demonstrate that it assures repayment.

Attach a signed copy of the loan agreement and any related security agreement(s), promissory note(s), and other related documents.

TO BE SIGNED BY THE LENDING INSTITUTION:

I. The terms of the loan and other information regarding the extension of the loan are accurate as stated above.
II. The interest rate on this loan is usual and customary, and the loan was made in accordance with this institution's usual policies and practices.
III. In the view of this lending institution, this loan was made on a basis which assures repayment.

Authorized Representative

Title

Date

Schedule C–P–1

(Supplementary for Information found on Page 2 of Schedule C–P)

For Reporting a Loan From a Lending Institution

This schedule must be filed along with Schedule C–P when obtaining a loan from a lending institution such as a State or federally chartered bank, savings and loan association, or credit union. This and a Schedule C–P must be filed with the first report disclosing such a loan. Therefore, a Schedule C–P must be reported with each subsequent report filed with the Commission until the loan is fully repaid or terminated. *See* 11 CFR 100.7(b)(11)(i), 100.8(b)(12)(i) and 104.11(a).

Full Name of Candidate or Political Committee Obtaining Loan or Line of Credit (Debtor)

Full Name, Mailing Address and Zip Code of Lending Institution (Lender)

Original Amount of Loan

Interest Rate (% APR)

Date Incurred or Established

Due Date

Are other parties secondarily liable for the debt incurred or extended?
☐ Yes ☐ No
(Names must be reported on Schedule C–P.)

Are any of the following pledged as collateral for the loan: real estate, personal property, goods, negotiable instruments, certificates of deposit, chattel papers, stocks, accounts receivable, cash on deposit, or other similar traditional collateral?
☐ Yes ☐ No
Specify: _____
What is the value of this collateral? _____
Does the lender have a perfected security interest in it?
☐ Yes ☐ No

Are any future contributions, future receipts of interest income, or future receipts of public financing pledged as collateral?
☐ Yes ☐ No
Specify: _____
What is the estimated value? _____
A depository account must be established pursuant to 11 CFR 100.7(b)(11)(i)(B) and 100.8(b)(12)(i)(B).
Date account established: _____

Date debtor authorized the Secretary of the U.S. Treasury to make direct deposits of public financing payments to the depository account: _____

If neither of the types of collateral described above were pledged for this loan or if the amount pledged does not equal or exceed the loan amount, state the basis upon which this loan was made, and demonstrate that it assures repayment.

Attach a signed copy of the loan agreement and any related security agreement(s), promissory note(s), letters(s) authorizing the direct deposit of public financing payments, and other related documents.

TO BE SIGNED BY THE LENDING INSTITUTION:

I. The terms of the loan and other information regarding the extension of the loan are accurate as stated above.
II. The interest rate on this loan is usual and customary, and the loan was made in accordance with this institution's usual policies and practices.
III. In the view of this lending institution, this loan was made on a basis which assures repayment.

Authorized Representative

Title

Date

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 9004

Campaign funds, Political candidates, Elections.

11 CFR Part 9034

Campaign funds, Political candidates, Elections.

Certification of No Effect Pursuant to 5 U.S.C. 605(b)

Regulatory Flexibility Act

The attached proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The basis of this certification is that the primary purpose of the proposed amendments is to clarify the Commission's rules on the making of bank loans to candidates and political committees. This does not impose a significant economic burden because any entities affected are already required to comply with the Act's requirements in this area.

For the reasons set out in the preamble, it is proposed to amend Title 11, Chapter I, as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for Part 100 would continue to read as follows:

Authority: 2 U.S.C. 431, 438(a)(8).

2. By adding paragraphs (b)(11)(i) and (b)(11)(ii) to § 100.7 to read as follows:

§ 100.7 Contribution (2 U.S.C. 431(8)).

* * * * *

(11) * * *

(i) For purposes of 11 CFR 100.7(b)(11), a loan shall be considered made on a basis which assures repayment if:

(A) The lending institution making the loan has perfected a security interest in collateral owned by the candidate or political committee receiving the loan, and the collateral value is equal to or greater than the loan amount as determined on the date of the loan. Sources of collateral include, but are not limited to, ownership in real estate, personal property, goods, negotiable instruments, certificates of deposit, chattel papers, stocks, accounts receivable and cash on deposit. Amounts guaranteed by secondary sources of repayment, such as guarantors and co-signers, shall not exceed the contribution limits of 11 CFR Part 110 or contravene the prohibitions of 11 CFR 110.4, Part 114 and Part 115; or

(B) The lending institution making the loan has obtained a written agreement whereby the candidate or political committee receiving the loan has pledged future receipts of public financing payments as permitted under 11 CFR Part 9004 or Part 9034, future receipts of contributions, or future receipts of interest income, provided that:

(*1*) The amount of the loan or loans obtained on the basis of such funds does not exceed the pledged funds;

(*2*) Loan amounts are based on a reasonable expectation of the receipt of pledged funds;

(*3*) A separate depository account is established at the lending institution;

(*4*) The loan agreement requires the deposit of all public financing payments, contributions and interest income pledged as collateral into the separate depository account for the purpose of retiring the debt according to the repayment requirements of the loan agreement; and

(*5*) In the case of public financing payments the borrower authorizes the Secretary of the Treasury to directly deposit the payments into the depository account for the purpose of retiring the debt.

(ii) If the requirements set forth in § 100.7(b)(11)(i) are not met, the loan shall not be considered made on a basis which assures repayment unless the candidate or political committee obtaining the loan demonstrates that the loan was made on another basis which assures repayment.

* * * * *

3. By adding paragraphs (b)(12)(i) and (b)(12)(ii) to § 100.8 to read as follows:

§ 100.8 Expenditure (2 U.S.C. 431(9)).

* * * * *

(b) * * *

(12) * * *

(i) For purposes of 11 CFR 100.8(b)(12), a loan shall be considered made on a basis which assures repayment if:

(A) The lending institution making the loan has perfected a security interest in collateral owned by the candidate or political committee receiving the loan, and the collateral value is equal to or greater than the loan amount as determined on the date of the loan. Sources of collateral include, but are not limited to, ownership in real estate, personal property, goods, negotiable instruments, certificates of deposit, chattel papers, stocks, accounts receivable and cash on deposit. Amounts guaranteed by secondary sources of repayment, such as guarantors and co-signers, shall not exceed the contribution limits of 11 CFR Part 110 or contravene the prohibitions of 11 CFR 110.4, Part 114 and Part 115; or

(B) The lending institution making the loan has obtained a written agreement whereby the candidate or political committee receiving the loan has pledged future receipts of public financing payments as permitted under 11 CFR Part 9004 or Part 9034, future receipts of contributions, or future receipts of interest income, provided that:

(*1*) The amount of the loan or loans obtained on the basis of such funds does not exceed the pledged funds;

(*2*) Loan amounts are based on a reasonable expectation of the receipt of pledged funds;

(*3*) A separate depository account is established at the lending institution;

(*4*) The loan agreement requires the deposit of all public financing payments, contributions and interest income pledged as collateral into the separate depository account for the purpose of retiring the debt according to the repayment requirements of the loan agreement; and

(*5*) In the case of public financing payments, the borrower authorizes the Secretary of Treasury to directly deposit the payments into the depository account to retire the debt.

(ii) If the requirements set forth in § 100.8(b)(12)(i) are not met, the loan shall not be considered made on a basis which assures repayment unless the candidate or political committee obtaining the loan demonstrates that the loan was made on another basis which assures repayment.

* * * * *

PART 9004—ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS: USE OF PAYMENTS

4. The authority citation for Part 9004 would continue to read as follows:

Authority: 26 U.S.C. 9004 and 9009(b).

5. By revising § 9004.4(a)(2) to read as follows:

§ 9004.4 Use of payments.

(a) * * *

(2) A candidate shall use such payments to repay any loan from a lending institution pursuant to 11 CFR 100.7(b)(11) where such payments are a security interest for or are pledged as collateral or as any other form of a guarantee to assure repayment. Absent a loan from a lending institution where such payments are pledged, a candidate may use such payments to repay loans that meet the requirements of 11 CFR 100.7(a)(1) or 100.7(b)(11) or to otherwise restore funds (other than contributions received pursuant to 11 CFR 9003.3(b) and expended to defray qualified campaign expenses) used to defray qualified campaign expenses;

* * * * *

PART 9034—ENTITLEMENTS

6. The authority citation for Part 9034 would continue to read as follows:

Authority: 26 U.S.C. 9034 and 9039(b).

7. By adding a new sentence to the end of § 9034.4(a)(1) to read as follows:

§ 9034.4 Use of contributions and matching payments.

(a) * * *

(1) * * * When contributions or matching payments are a security interest or are pledged as collateral or any other form of a guarantee for obtaining a loan from a lending institution pursuant to 11 CFR 100.7(b)(11), such contributions and matching payments shall be applied first to repay the loan in accordance with the terms of the loan agreement.

* * * * *

In addition to the preceding proposed amendments to 11 CFR Chapter I, the following language illustrates the analogy to insider loan banking regulations.

Language Illustrating Analogy to Insider Loan Banking Regulations

For purposes of 11 CFR 100.7(b)(11), a loan is considered made in the ordinary course of business if it:

(A) bears the usual and customary interest rate of the lending institution,

(B) is evidenced by a written instrument,

(C) is subject to a due date or amortization schedule,

(D) is made on substantially the same terms as those prevailing at the time for comparable transactions by the lending institution and does not involve more than the normal risk of repayment or present other unfavorable features, and

(E) is approved in advance by a majority of the entire board of directors of the lending institution.

Danny L. McDonald,
Chairman, Federal Election Commission.

Dated: July 20, 1989.

[FR Doc. 89–17391 Filed 7–26–89; 8:45 am]
BILLING CODE 6715–01–M

federal register

Thursday
July 27, 1989

Part III

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 570

Urban Development Action Grants (UDAG) Program; Changes to Project Selection System; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 570

[Docket No. R-89-1440; FR-2647]

RIN 2501-AA83

Urban Development Action Grants (UDAG) Program; Changes to Project Selection System

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule makes final an interim rule previously published, amending 24 CFR 570.459 to change the Urban Development Action Grants (UDAG) project selection system. The changes reflect the Secretary's priorities to address critical needs for housing and economic development.

EFFECTIVE DATE: September 29, 1989.

FOR FURTHER INFORMATION CONTACT: Roy Priest, Acting Director, Office of Urban Development Action Grants, Room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; (202) 755-6290. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2506-0101, which expires June 30, 1992. Public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided in this document under the heading *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The Urban Development Action Grant (UDAG) program is authorized by section 119 of the Housing and Community Development Act of 1974 (42 U.S.C. 5318). On August 29, 1988 (53 FR 33026), HUD published a final rule amending the UDAG regulations (24 CFR Part 570) by modifying the project selection criteria for UDAG funds and the definition of eligible cities. The rule became effective October 6, 1988.

In order to reflect the Secretary's priorities to address critical needs for housing and economic development, HUD further amended the project selection criteria in Part 570 by interim rule, published May 17, 1989 (54 FR 21388), and requested public comments. No comments were received; therefore, HUD is adopting the interim rule, without change, as final.

Other Matters

The collection of information requirements for the UDAG program were submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980, and were approved under OMB control number 2506-0101, expiration date June 30, 1992. Information on the burden hours for these requirements is provided as follows:

Burden	Number of responses	Responses per respondent	Hours per response	Annual total
Application	200	1.3	32.2	8,372

The collection of information requirements contained in this rule comprise 52 hours of the annual total of 8,372 burden hours.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

This rule would not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities because the number of affected small entities is not substantial. The funding for the UDAG program is not a substantial amount and the effect of the changes will be neutral on the competitive position of small entities.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under the Order. The rule amends the UDAG selection criteria—a change that has neither substantial nor direct effects on cities and urban counties in their role as governmental entities.

The General Counsel, as the Designated Official under Executive Order 12606, *Family*, has determined that this rule may have a potential significant impact on family formation, maintenance, and general well-being, to the extent that UDAG funds are targeted for projects that promote economic development, the creation and retention of jobs, and affordable housing, all of which in turn promote the maintenance and well-being of families. Any family impact will be positive.

The Catalog of Federal Domestic Assistance number is 14.221—Urban Development Action Grants.

This rule was not listed in the Department's semi-annual agenda published on April 24, 1989 (54 FR 16708).

List of Subjects in 24 CFR Part 570

Community development block grants, Grant programs; Housing and

community development, Low and moderate income housing, New communities, Pockets of poverty, Small cities.

Accordingly, the interim rule published in the **Federal Register** on May 17, 1989 (54 FR 21388) is adopted as final without change.

Date: July 17, 1989.

Jack Kemp,

Secretary.

[FR Doc. 89-17501 Filed 7-26-89; 8:45 am]

BILLING CODE 4210-32-M

federal register

Thursday
July 27, 1989

Part IV

Environmental Protection Agency

40 CFR Part 721

Significant New Use Rules; General Provisions for New Chemical Follow-up; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50553B; FRL-3504-6]

Significant New Use Rules; General Provisions For New Chemical Follow-Up

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA, under sections 5 and 26(c) of the Toxic Substances Control Act (TSCA), is establishing an expedited process for issuing significant new use rules (SNURs) for certain new chemical substances. The new process will apply to: (1) New chemical substances for which EPA has issued orders under section 5(e) of TSCA, and (2) other new chemical substances for which no section 5(e) orders have been issued, but which may present hazards to human health or the environment if exposures or releases are significantly different from those described in the premanufacture notice (PMN). EPA is also establishing standard language for designating certain significant new uses, recordkeeping, and other requirements.

DATES: In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m.eastern time on August 10, 1989. This rule shall become effective October 10, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 544- 0551.

SUPPLEMENTARY INFORMATION: This rule establishes standardized significant new uses and recordkeeping requirements which can be cited in SNURs applicable to individual substances. The rule also establishes procedures for expedited promulgation of SNURs, and for EPA consideration of requests from interested parties to amend or revoke SNURs.

Public reporting burden for this collection of information is estimated to average 12.2 hours per response for Subpart B, and to average 25.3 hours per response for Subpart C, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 marked "Attention: Desk Officer for EPA."

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604 (a)(2)) authorizes EPA to designate a use of a substance as a significant new use. EPA makes this designation by issuing a SNUR after it has considered all relevant factors, including those listed in section 5(a)(2). Under section 5(a)(1)(B) of TSCA, persons must submit a significant new use notice to EPA at least 90 days before they manufacture, import, or process a substance for a significant new use. Persons subject to a SNUR must follow the same rules and procedures as persons who are required by section 5(a)(1)(A) of TSCA to submit a PMN.

Section 26(c) of TSCA (15 U.S.C. 2625(c)) authorizes EPA to take action under other sections of TSCA with respect to categories of chemical substances.

II. Introduction

A. Summary

This rule amends 40 CFR Part 721 by establishing new Subparts B, C, and D and by amending Subpart A. Other amendments to Subpart A were recently promulgated at 53 FR 28358 (July 27, 1988).

In Subpart A this rule establishes definitions of terms found in Subparts B, C, and D. Some of the terms were proposed in the **Federal Register** of April 22, 1986 (51 FR 15104), and of April 29, 1987 (52 FR 15593); other terms were added in response to comments made on the proposed rules. The new terms were included because they were necessary for the practical functioning of Subparts B, C, and D. None of the new terms modifies the substance of the proposed rules.

Subpart B establishes standard significant new use designations. Each standard significant new use will apply to a specific substance only if it is cited in the SNUR for that specific substance. EPA may designate as significant new uses activities other than those for which standard designations are provided for in Subpart B. When the standard designations contained in Subpart B do not provide an adequate description of a significant new use, EPA will develop an appropriate designation and use it in the SNUR for the specific substance. If EPA expects to use the same language in future SNURs, EPA will amend Subpart B to include the new use designation. The hazard communication provisions contained in Subpart B were proposed on April 22, 1986 (51 FR 15104). All other provisions contained in Subpart B were proposed in the **Federal Register** of April 29, 1987 (52 FR 15594).

Subpart C establishes recordkeeping requirements which will apply for a specific substance only if cited in the SNUR for that specific substance. EPA may designate recordkeeping requirements other than those for which standard designations are provided for in Subpart C. When the standard designations contained in Subpart C do not provide an adequate description of a needed recordkeeping requirement, EPA will develop an appropriate description and place it in the SNUR for the specific substance. If EPA expects to use the same language in future SNURs, EPA will amend Subpart C to include the new recordkeeping requirement. Subpart C was proposed in the **Federal Register** of April 29, 1987 (52 FR 15594).

Subpart D contains expedited procedures for establishing significant new use requirements for certain new substances that have completed PMN review and are regulated by an order issued under section 5(e) of TSCA. Subpart D also contains criteria used to determine whether uses not identified in the PMN of substances which have completed PMN review and have not been the subject of a section 5(e) order will be considered candidates for a SNUR under expedited procedures. In addition, Subpart D contains a procedure through which a person may request limitation or revocation of SNURs which were promulgated under this expedited procedure. Subpart D limits the significant new use designations that may be included in SNURs issued under the expedited procedures for non-section 5(e) substances. Subpart D was proposed in the **Federal Register** of April 29, 1987 (52 FR 15593).

Subpart E was established in the **Federal Register** of February 2, 1988 (53 FR 2845). It contains SNURs for specific chemical substances.

B. Changes From the Proposed Rule

As discussed above, the hazard communication provisions of this final rule were proposed on April 22, 1986, and the remainder of this rule was proposed on April 29, 1987. The following changes have been incorporated in this final rule:

1. The proposed standard significant new use designations and recordkeeping requirements in Subparts B and C have been modified to be consistent with the standard provisions for section 5(e) consent orders which were developed in a public comment process announced in the **Federal Register** of March 6, 1988.

2. This rule adopts most of the Occupational Safety and Health Administration's (OSHA) hazard communication standard (29 CFR 1910.1200). EPA is not adopting certain parts of OSHA's hazard communication standard because they either are covered in other sections of EPA rules or are not applicable. EPA did not adopt a requirement in OSHA's standard (pertaining to trade secrets) that the identity of the substance must be released to a physician or nurse during a medical emergency. Instead, EPA has required that a person who can provide treatment information when a person has been exposed to the SNUR substance be designated in the material safety data sheet (MSDS) and on the label. EPA received no comment on this issue.

3. On April 29, 1987, EPA had proposed a program under which it would issue immediately effective final SNURs for new chemical substances subject to TSCA section 5(e) orders, or which met certain hazard and exposure criteria.

This final rule significantly changes the proposed approach to provide a greater opportunity for public comment. EPA will issue SNURs under one of three procedures. The three mechanisms are: direct final rules, immediately effective interim final rules, and notice and comment rulemaking. EPA intends to use the direct final rulemaking process as its usual method for issuing new substance follow-up SNURs, but reserves the right to use immediately effective interim final or notice and comment rulemaking as appropriate.

Direct final rulemaking is the same as a procedure that is used by EPA for rulemaking under the Clean Air Act. In the **Federal Register** of June 23, 1982 (47 FR 27073), EPA discussed streamlining the State Implementation Plan (SIP) review process. In that notice, EPA announced that it would promulgate certain SIP revisions for which no public comment was expected using an "immediate final rulemaking." EPA has decided to adopt the same process for issuing SNURs under this rule because EPA does not generally anticipate public comment on these SNURs.

The process adopted for SNURs under this rule as "direct final rulemaking" works as follows: EPA will issue a document in the final rule section of the **Federal Register** which contains the final SNUR. The **Federal Register** document will state that the SNUR will be effective 60 days from the date of publication, unless, within 30 days from the date of publication, EPA receives written notice that someone intends to submit adverse or critical comments. If, within 30 days from the date of publication, EPA receives notice that someone intends to submit adverse or critical comments, EPA will withdraw the direct final rule by issuing a document in the final rule section of the **Federal Register**. EPA will simultaneously issue a proposed rule in the proposed rule section of the **Federal Register**. The proposed rule will establish a 30-day comment period, and will identify any objections to the rule of which EPA has been notified. EPA will then consider any comments received and decide either to issue a final rule promulgating the SNUR or withdraw the proposal.

EPA believes that this process provides an improved opportunity for public participation consistent with the objective of providing for prompt promulgation of SNURs to follow-up on new chemical substances. EPA will generally use this approach because it significantly reduces the time, relative to notice and comment rulemaking, during which a person may legally engage in a significant new use before the SNUR effective date. This option saves EPA resources because routinely only one **Federal Register** document is required to establish a SNUR.

Immediately effective interim final rules will work as follows: These SNURs will be issued as interim final rules and will be effective on the day of publication. A 30-day comment period begins on the day after publication. The rule ceases to be in effect 180 days from the date of publication unless during that time EPA issues a final rule addressing any comments received. This option provides the greatest possible reduction in the period during which a person may legally engage in an activity EPA intends to regulate as a significant new use because the rule is immediately effective and enforceable. EPA expects to use interim final rulemaking for SNURs when EPA has reason to believe that someone is likely to engage in the significant new use before the rule would go into effect under direct final or notice and comment rulemaking. EPA will explain its reasons when it uses this procedure for a specific SNUR.

EPA expects to follow notice and comment rulemaking procedures to issue SNURs in cases where it expects adverse or critical public comments on a SNUR. While this option maximizes the period during which a person may engage in the activity EPA intends to regulate under a SNUR, it also gives maximum public notice, and ensures a full period to address any significant issues. A full notice and comment cycle requires publication of two documents, and thus will cost more than the direct final method in most cases.

4. EPA had proposed that information submission requirements be imposed under TSCA section 8(d) for all substances, and under section 8(a) for some substances, subject to SNURs on an expedited basis. EPA has not adopted this aspect of the proposal. Such rules will be issued on a case-by-case basis as necessary, and consequently will not be issued under the expedited procedures of this final rule.

5. EPA's response to comments document (available in the public docket for this rule) supplements this preamble by addressing the public comments received on all aspects of this rule.

III. Provisions of the Final Rule

A. Amendments to Subparts A and B: Standard Language Describing Significant New Uses

Subpart A is amended to establish new definitions needed for the functioning of Subparts B, C, and D. The new Subpart B contains standard language which EPA will use in designating certain activities as significant new uses. Using standard language will reduce potential confusion due to minor language variations from SNUR to SNUR. When EPA wishes to designate an activity described by standardized language as a significant new use for a particular substance, it will list the substance in Subpart E and reference the appropriate standard new use language from Subpart B. Subpart B now contains the following sections:

§ 721.50 Applicability.
§ 721.63 Protection in the workplace.
§ 721.72 Hazard communication program.
§ 721.80 Industrial, commercial, and consumer activities.
§ 721.85 Disposal.
§ 721.90 Release to water.
§ 721.91 Computation of estimated surface water concentrations; instructions.

When appropriate standard language is not contained in Subpart B, EPA may amend Subpart B to add additional standardized language. This standard language will establish a significant new use for a particular new chemical substance only when it has been cited in a SNUR in Subpart E. EPA also intends to use standard provisions in section 5(e) consent orders; the standard SNUR language is designed to track the corresponding section 5(e) order provisions.

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In codifying standard language for designation of significant new uses, it is not EPA's intent to discourage persons subject to SNURs from proposing more effective alternative approaches to limit exposure or environmental release. EPA encourages manufacturers, importers, and processors to seek approval of more effective alternative control measures under § 721.30.

1. *Section 721.63 Protection in the workplace.* This section designates new uses based on dermal and respiratory exposure and requires that employers demonstrate that chemical protective clothing is impervious to the substance. Changes from the proposal are designed to enable the Agency to more precisely cite exposures of concern and protective measures. The rule provides an exclusion from the workplace protection provision for mixtures containing low concentrations of the substance and establishes procedures persons must follow if they discover that their customers are engaging in activities inconsistent with the provisions of § 721.63(a).

i. *Dermal protection.* Section 721.63(a) will be cited whenever dermal exposure is a concern. This provision establishes a performance-based approach to dermal protection. The language allows employers to determine which employees are reasonably likely to be dermally exposed by evaluating the work area. Each employer has the responsibility to select, provide, and enforce the correct use of the appropriate personal protective equipment for dermal protection. Employer selection of control measures may take into account engineering controls and work practices instead of, or in addition to, personal protective equipment. Dermal protection applies only to persons who are reasonably likely to be dermally exposed. Reasonable and feasible engineering controls may often eliminate the need for personal protective equipment because the "reasonably likely to be exposed" finding will not be made. Under special circumstances EPA will cite the menu in § 721.63(a)(2) to specify the type of personal protective equipment that must be used for dermal protection in addition to the performance-based approach. A menu of physical forms at § 721.63(a)(6) allows the SNUR to establish controls appropriate to substances which have high vapor pressure and to which airborne exposures are likely as well as to substances which have low vapor pressure and to which airborne exposures are unlikely, consistent with a section 5(e) order on which the SNUR is based.

Section 721.63(b) exempts mixtures containing a concentration less than or equal to a concentration specified in Subpart E of this Part for a substance from dermal protection requirements, but excludes from exemption mixtures which might concentrate above the exemption limit. The concentration specified will ordinarily be one percent of the chemical substance (one tenth percent if the chemical substance is a carcinogen), which is consistent with the similar OSHA exemption, but other concentrations will be specified when appropriate. This exemption is not intended to cover a case where the substance is present in the mixture in concentrations greater than the level set in Subpart E of this Part, even though the airborne concentration of the mixture may be less than the level set in Subpart E of this Part.

EPA has added definitions for "work area" and "workplace" to Subpart A to clarify use of those terms in § 721.63. EPA developed the performance-based dermal protection provisions in response to comments favoring use of performance- based provisions whenever appropriate. EPA has retained standard language for describing specific types of personal protective equipment. EPA will cite this language when it determines that a particular type of personal protective equipment is essential for adequate worker protection.

ii. *Demonstration of imperviousness.* EPA requires that employers demonstrate that chemical protective clothing is impervious to the substance under the conditions and duration of exposure.

EPA is allowing two methods to demonstrate imperviousness: (a) Actual testing of the chemical protective clothing by the employer, and/or (b) evaluation of the chemical protective clothing manufacturer's specification data. EPA expects the demonstration of imperviousness will address the total environment to which the chemical protective clothing is exposed. EPA expects that factors affecting physical integrity such as abrasions, punctures, and tears will be considered. The employer must also consider penetration and permeation by the substance under the conditions and duration of exposure.

iii. *Respiratory protection.* Section 721.63 (a)(4) and (5) will be cited when inhalation exposure to the substance is a concern, and will specify the appropriate category of respirator for the substance from the lists contained in this section. The list of classes of respirators from which EPA will make selections has been expanded to provide a more complete range of options and a list of physical states has been added at § 721.63(a)(6) to allow EPA to specify protective measures against respiratory exposure from low-vapor pressure substances (e.g., acrylates) when they are used in a manner likely to cause exposure, while allowing the measures to be omitted when the substances are used in a manner not likely to cause the exposure.

EPA encourages employers to evaluate their work areas and to implement industrial hygiene programs that consider the use of engineering controls to reduce or eliminate inhalation exposure. If an employer wishes to use respiratory protection controls which differ from those specified in a SNUR, the employer may request EPA approval for their use under § 721.30.

EPA received comments suggesting that it adopt a performance-based approach to control respiratory exposure. EPA is considering development of performance-based provisions and will incorporate them into § 721.63 when developed. However, until performance-based provisions are available and the rule is amended, EPA will continue to specify respiratory protection equipment.

iv. *Low concentrations in mixtures.* As noted above, § 721.63(b) provides an exemption from use of controls on exposure when the substance is present in the workplace in a mixture with concentration of the substance less than or equal to a concentration specified in Subpart E of this Part for a substance from dermal protection requirements, but excludes from exemption mixtures which might concentrate above the exemption limit. The concentration specified will ordinarily be one percent of the chemical substance (one tenth percent if the chemical substance is a carcinogen), which is consistent with the similar OSHA exemption, but other concentrations will be specified when appropriate. The exemption would not apply if using or processing a mixture containing the substance at a concentration below the exemption level is likely to concentrate the substance above the exemption level. This exemption is not intended to cover a case where the substance is present in the mixture in concentrations greater than the level set in Subpart E of this Part, even though the airborne concentration of the mixture may be less than the level set in Subpart E of this Part. This exemption was not included in the proposed rule, but EPA has included it in response to comments to enable the provisions of § 721.63 to be consistent with the provisions of § 721.72(e) and OSHA practice.

v. *Recipient activities inconsistent with a program for protection in the workplace.* Section 721.5(d), promulgated July 27, 1988 (53 FR 28354), sets forth procedures that persons subject to a SNUR (suppliers) must follow if they become aware that a customer is engaging in a significant new use, for example, the customer is not complying with workplace protection requirements. This section requires that the supplier stop distribution of the substance to that customer and notify EPA of the customer's failure to comply. EPA received comments that under some circumstances involving worker protection measures this requirement could be unnecessarily harsh. In response, EPA has added § 721.63(d), which allows the supplier to notify the customer in writing if its activities are inconsistent with a required worker protection program. If the supplier can then document that the customer has provided a written statement of assurance that appropriate measures to provide a worker protection program have been taken, the supplier is not required to stop supplying the customer. If a supplier later learns that the customer has failed to provide required worker protection, the supplier must stop distributing to that customer and follow the requirements of § 721.5(d).

2. *Section 721.72 Hazard communication program.*

i. *Introduction.* Section 721.72 establishes EPA's workplace hazard communication program. The section will be cited whenever EPA determines that it is necessary to inform workers of potential hazards and exposures in the workplace and how they must act to protect themselves under both routine and emergency conditions. EPA has received comments that a program will be easier to implement and more effective if it parallels the OSHA hazard communication standard to cover numerous existing chemicals which are present in the workplace. EPA agrees, and the provisions of § 721.72 parallel those of OSHA's standard where possible, but there are differences between the two. The most significant differences are: (a) The OSHA standard requires an employer to make a hazard determination, while in the EPA standard the hazard determination is made by EPA; (b) the OSHA standard allows the employer to develop language for labels and for the MSDS, while in § 721.72 EPA provides certain language to be included on the label and MSDS; (c) the OSHA standard has a trade secrets provision while § 721.72 does not; and (d) § 721.72 requires that environmental hazards be listed on the container label and the MSDS while the OSHA standard does not. The primary reason for the first two differences is that, in evaluating new substances, EPA is most often relying on a finding that a substance may present a risk, pending the development of additional data. OSHA's standard applies to substances for which more definitive data are available and which are known to present certain hazards. A separate trade secrets provision is not required, as section 14 of TSCA and EPA's rules issued to implement section 14 adequately address the issue. The fourth difference stems from EPA's broader mandate to protect the environment, as well as human health, from unreasonable risks.

ii. *Written hazard communication program.* Section 721.72(a) sets forth requirements for a written hazard communication program, which requires that each employer develops a written plan to ensure that employees who may be exposed to the substance will be made aware of the hazards involved, and specifies employee information and training, such as control measures to prevent employee exposure and release to the environment. The written program must be available to each employee, upon request. The proposed rule did not require a written hazard communication program. EPA included the written program in the final rule because EPA determined that a written program is necessary for a complete hazard communication program, and to parallel more closely the requirements of OSHA's standard, as suggested by commenters.

iii. *Labeling.* Section 721.72(b) sets forth labeling requirements for substances subject to § 721.72. It addresses both labeling of substances in the workplace and labeling for distribution in commerce. It requires information on both types of labels to alert employees to the possible health and environmental hazards of the substance and precautionary measures to prevent exposure and/or release to the environment. The label must refer the user to the MSDS for details. Container labels used outside the workplace must have the name and address of a responsible person who can be contacted for additional information on the substance, including appropriate emergency procedures.

iv. *Material safety data sheets.* Under § 721.72(c) an employer is required to obtain or develop an MSDS. The MSDS format is not specified by EPA; however, EPA does specify information that must be listed, if known, including: Physical and chemical characteristics, health and environmental hazards, signs and symptoms of exposure, medical conditions which may be aggravated by exposure, primary route(s) of exposure, and appropriate measures to control worker exposure and/or environmental release. The final rule does not make any substantive changes to the proposal.

An employer who distributes the substance must provide the MSDS at the time of the initial shipment and with the first shipment after each MSDS update. If the substance is not currently being produced, imported, processed, or used in the workplace, the employer must add new information to the MSDS before the substance is reintroduced into the workplace.

v. *Employee information and training.* The proposed employee information and training requirements have been changed to place more emphasis on training. The training and information must be provided at the time of initial employee assignment to a work area and whenever a substance subject to § 721.72 is introduced into the work area.

The employee information and training program must identify and address each substance subject to these provisions in the employee's work area. EPA intends that the employee who is reasonably likely to be exposed be made aware of and understand the health and environmental hazards of the substance and the control measures the employer is providing. This training requires an explanation of the MSDS required for each substance. All acute and chronic human health hazards known by the employer and identified in Subpart E must be listed, and the warning terms and phrases used to indicate the hazard must be explained. The personal protective equipment, engineering controls, and other measures used to control worker exposure and/or environmental release must be listed and explained. The training must also include methods and observations that may be used to detect the presence or release of each substance. Employees of contractors, and other workers not directly employed by the employer, must also receive the training and written materials, if the determination has been made that they are reasonably likely to be exposed to the substance.

Employees must also be given information to help them identify all operations in their work area where the

substance is present, and how they may be exposed. Employees must be informed about the specific requirements of the labeling program, the requirements for the MSDS, and all aspects of the hazard communication program that are relevant to their work assignments.

vi. *Low concentrations in mixtures.* Section 721.72(e) provides an exemption from the requirements of § 721.72 if a substance is present in the workplace only in a mixture containing a concentration less than or equal to a concentration specified in Subpart E of this Part for a substance, but excludes from exemption mixtures which might concentrate above the exemption limit. The concentration specified will ordinarily be one percent of the chemical substance (one tenth percent if the chemical substance is a carcinogen), which is consistent with the similar OSHA exemption, but other concentrations will be specified when appropriate.

This low concentration exemption was not included in the proposed rule. EPA decided to include this provision in response to comments which stated that without such an exemption the EPA program would be inconsistent with the OSHA standard.

vii. *Existing hazard communication program.* Section 721.72(f) clarifies the status of programs and procedures established under the OSHA standard and other rules. EPA intends that no unnecessary duplication of effort be required when complying with § 721.72. Commenters voiced their concerns about duplication of efforts because many already have a hazard communication program required under other rules. In all situations, if an employer is complying with another rule and those efforts meet or exceed the requirements of § 721.72, no additional action is necessary to comply with § 721.72.

viii. *Human and environmental hazard and precautionary statements.* Section 721.72(g) provides the standard language that EPA will specify for labels and MSDSs. EPA believes this standardization will provide consistency in content and organization to the writing of SNURs. EPA's requirements do not exclude the addition of other material to the labels and MSDSs, but they provide a minimum set of information which must be provided.

3. Section 721.80 *Industrial, commercial, and consumer activities.* Section 721.80 designates certain activities as significant new uses. Significant new uses described in this section include: Manufacture, processing, or use in non-enclosed processes; manufacture (except for export) of the substance associated with any use; use other than as an intermediate; use other than as a site-limited intermediate; use as an intermediate, where the concentration of the substance in products intended for distribution in commerce exceeds the percentage specified by EPA; non-industrial use; commercial use; use in a consumer product; annual manufacture and importation volume greater than that specified by EPA; and manufacture, processing, or use in physical forms specified by EPA.

Some commenters on the proposed rule stated that the uses described in § 721.80 are too broad and might require unnecessary notification. EPA has considered the comments, and has added additional uses where possible. For the most part, however, EPA has decided to promulgate the uses as proposed. EPA cannot predict and enumerate SNURs for every possible use variation that might lead to significant exposure or release. Often it is more practical to simply identify the category of use that is of concern. When EPA receives a significant new use notification, it will evaluate the specific use that is then proposed to determine whether it may present an unreasonable risk.

4. *Section 721.85 Disposal.* Section 721.85 designates specific ongoing or allowed disposal methods. Any other method is designated as a significant new use, requiring that manufacturers, importers, and processors submit a significant new use notice 90 days before employing such a disposal method.

Some commenters argued that the provisions of § 721.85 duplicate EPA rules issued under the Resource Conservation and Recovery Act and are, therefore, unnecessary. EPA intends to include disposal provisions in SNURs when it determines that disposal of the substance may not be adequately addressed by existing disposal rules. EPA can consider requests to limit or revoke SNURs under the provisions of § 721.85, if submitters believe they are in fact redundant.

5. *Section 721.90 Release to water.* Section 721.90 contains standard language for designating significant new uses involving release to water. Section 721.90(a) addresses manufacture streams, § 721.90(b) addresses processing streams, and § 721.90(c) addresses use streams. Section 721.90 (a)(2), (b)(2), and (c)(2) include a list of treatment technologies. EPA may specify one or more of these technologies for a substance if it determines that release without application of the specified treatment technology would constitute a significant new use. Section 721.90 (a)(4), (b)(4), and (c)(4) require notification only if the predicted environmental concentrations exceed a specified level.

In the proposed rule, reporting requirements for release to water were addressed in two sections. One covered process streams, the other, use streams. The definition of process stream had included both processing and manufacture. EPA determined that it will not always be appropriate to require reporting for both processing and manufacture, so it has modified the language of the rule to allow each to be specified separately as well as to specify them together. To do so, EPA has added a definition for manufacturing stream and sharpened the definition of processing stream so that it does not include manufacturing, and has established separate sections for manufacturing and for processing (§ 721.90 paragraphs (a)(2) and (b)(2)), allowing them to be specified separately. In cases where each should be a significant new use, both will be specified.

Section 721.91 provides a formula to be used in projecting environmental concentrations under § 721.90 (a)(4), (b)(4), and (c)(4). A commenter noted that the formula established in § 721.91 for calculating estimated surface water concentrations is difficult to use. EPA reviewed the formula but has been unable to devise a simpler calculation that would be suitable for general use. EPA will consider alternative mechanisms for calculation on a case-by-case basis, and may employ them if it determines that they are similar and will lead to a reliable projection of environmental concentration.

B. Subpart C: Recordkeeping and Other Requirements

Subpart C establishes recordkeeping requirements which apply to manufacturers, importers, and processors of SNUR substances. The specific records which are required depend upon the activities which have been designated as significant new uses. EPA will specify the appropriate recordkeeping requirements in Subpart E at the time it issues the SNUR for a particular substance. Such records must be maintained for 5 years from the date of their creation.

Several commenters voiced concerns that they will be required to keep separate records to document compliance with SNURs when records kept under other regulatory programs

should suffice to demonstrate compliance. In general, EPA has sought to frame recordkeeping requirements in flexible, performance- oriented terms. Rather than specify the particular types of records that must be kept, the rule lists the general types of information required to document compliance with SNUR requirements. Thus, manufacturers, importers, and processors will have discretion to determine which specific records must be retained. The records required to be maintained under this section often will be normal business records, and EPA intends that normal business records will usually suffice. In a few cases, the generation of additional records will be required. It is the responsibility of the manufacturer, importer, or processor to assess the adequacy of existing records, add to them if necessary, and maintain them in a form accessible to EPA for the required length of time.

EPA expects firms subject to SNUR requirements to exercise reasonable judgment in determining the steps necessary to document compliance with SNUR requirements. Records that are sufficient to document SNUR compliance in one case may not be sufficient in another.

Table 1 illustrates EPA's approach to recordkeeping by providing examples of the records that might document compliance with different SNUR requirements. These examples are intended merely to be illustrative. In many cases, the examples listed in the following Table 1 would be sufficient to document SNUR compliance; in other cases more or fewer records might be necessary.

TABLE 1—ADMINISTRATIVE EXAMPLES OF RECORDS COMPLYING WITH § 721.125

Significant New Use	Requirement	Examples
Disposal Methods.	Records demonstrating establishment and implementation of procedures that ensure compliance with any disposal limitations referenced in § 721.85.	Certificates of destruction from disposal facility. Bills of lading. Manifests. Waste treatment systems inventories.
Use in non-enclosed processes. Any manner or method of manufacture or processing in non-enclosed processes associated with any use. Use beyond the site of manufacture. Any manner or method of manufacture (excluding import) within the United States. Use other than as an intermediate. Use as an intermediate where the concentration of the intermediate substance in the product intended for distribution in commerce exceeds X percent. Non-industrial use. Commercial use. Use in a consumer product. Use other than as site-limited intermediate.	Records documenting compliance with any applicable industrial, commercial, and consumer use limitation referenced in § 721.80.	Batch slips. Process descriptions. Chemical inventory/plant inventory. Storage and production records.
Use in the form of a powder. Any manner or method of manufacture or processing in the form of a powder associated with any use (or other form). Use involving application methods that generate vapors, mists, or aerosols. Use involving application methods that generate dusts.	Records documenting compliance with any applicable industrial, commercial, and consumer use limitation referenced in § 721.80.	Process description.
Hazard Communication Employee Training.	Records documenting establishment and implementation of a program for employee information and training referenced in § 721.72.	Written hazard communication program. Attendance sheets from training sessions. Copies of written materials distributed at training sessions. Copies of labels. Copies of MSDSs.
Hazard Communication Labeling.	Records documenting the names and addresses of all persons to whom the substance is sold or transferred, the date of each sale or transfer, and the quantity of the substance sold or transferred on such date. Copies of labels used.	Bills of sale. Copies of labels.
Manufacture, import, or processing without establishing a program whereby persons who may be dermally exposed to the substance are required to wear protective clothing, impervious gloves, and goggles.	Records documenting establishment and implementation of a program for the use of personal protective equipment referenced in § 721.63(a). Records documenting determinations under § 721.63(a)(3) that protective gloves are impervious to the substance.	Written hazard communication program. For gloves—Specifications supplied by the manufacturer of gloves; results of tests done on gloves. Attendance sheets from training sessions.
Manufacture, import, or processing without establishing a program whereby persons who may be exposed to the substance in the form of an aerosol or mist are required to wear respirators.	Records documenting establishment and implementation of a program for the use of personal protective equipment referenced in § 721.63(a).	Written hazard communication program. Process descriptions. Records of fit tests. Attendance sheets from training sessions.
Annual production volume greater than X.	Records documenting the manufacture and importation volume of the substance.	Production records. Import records.

TABLE 1—ADMINISTRATIVE EXAMPLES OF RECORDS COMPLYING WITH § 721.125—Continued

Significant New Use	Requirement	Examples
Water Release Limitations.	Records demonstrating establishment and implementation of procedures that ensure compliance with any water discharge limitations referenced in § 721.90.	Process description diagram (as described in § 721.91). Equation computation and paperwork supporting equation results.

C. Subpart D: Expedited Process for Issuing SNURs for New Chemical Substances; Limitation and Revocation of New Chemical Substance SNURs

Subpart D establishes at §§ 721.160, 721.170, and 721.185 expedited procedures for promulgation of, and for modifying or revoking, SNURs for new chemical substances.

1. *SNUR requirements for new chemical substances regulated under section 5(e) orders.* Section 721.160 establishes expedited procedures for issuing SNURs for new substances that are subject to TSCA section 5(e) orders. The SNUR issued for each substance will be based on and be consistent with the provisions included in the section 5(e) order governing use of the substance. EPA may also designate additional uses as significant new uses for such substances under the rulemaking procedures and criteria of § 721.170.

i. *Substances subject to section 5(e) orders issued before the effective date of this rule.* EPA requested comment in the 1987 proposal on whether § 722.160 (now § 721.160) should be applied to substances subject to section 5(e) orders negotiated prior to the effective date of this rule. All commenters addressing this issue requested that EPA modify the rule to do so. EPA has modified § 721.160 so that it can be applied to substances subject to section 5(e) orders issued prior to the effective date of this rule. If the notice of commencement of manufacture for the substance was received prior to the effective date of this rule, the direct final, interim final, or proposed SNUR will be issued within 1 year of the effective date of this rule. If the notice of commencement of manufacture is received after the effective date of this rule, the direct final, interim final, or proposed SNUR will be issued within 180 days of receipt of the notice. If EPA receives adverse or critical comments on a proposed SNUR, publication of the final rule may be delayed.

ii. *Non-issuance of SNURs for substances made subject to section 5(e) orders.* EPA will generally issue SNURs for substances made subject to section 5(e) orders. However, in cases where EPA believes that there is little likelihood that there will be manufacturers or processors other than the PMN submitter, or for other reasons believes that a SNUR for the substance is inappropriate, EPA may decide not to issue a SNUR for a substance subject to a section 5(e) order. In such cases EPA will issue a notice in the **Federal Register** explaining its reasons for not issuing a SNUR. EPA expects that such cases will be rare.

2. *SNUR requirements for new chemical substances not regulated under a section 5(e) order.* Section 721.170 establishes expedited procedures for issuing SNURs to regulate activities not covered in a section 5(e) order. Additionally, it establishes criteria for choosing which substances will be regulated ("concern criteria"), and limits the uses for which SNURs will be written, under the procedures of the section.

i. *Criteria other than concern criteria.* EPA will only designate an activity as a significant new use under § 721.170 if the activity was not described in the PMN for the substance, and the activity also satisfies a concern criterion established at § 721.170(b). Such a use may be made subject to a SNUR under this section whether or not a section 5(e) order is written for any other use of the substance described in the PMN. Procedures for issuing SNURs under § 721.170 are in § 721.170(c).

EPA decided that certain designations in § 721.80 are, by their nature, not appropriate for expedited SNURs issued under the procedure described in § 721.170. Expedited procedures will be used to issue SNURs including these designations only for SNURs based on section 5(e) orders. These designations include, for example, designation of uses other than those described in the PMN described in § 721.80(j), designation of cumulative manufacture or import in excess of specified quantities in the absence of test data (§ 721.80(r)), and the failure to use personal protective equipment (described in § 721.63).

Although these activities are not included under the expedited procedures of § 721.170, EPA may at any time include them in a SNUR adopted through separate rulemaking for a substance not subject to a section 5(e) order as long as it makes the findings specified in section 5(a)(2) of TSCA.

ii. *Concern criteria: information to be used in choice of substances.* Under § 721.170, SNURs may be issued for new substances if they meet the concern criteria established at § 721.170(b). These are generally similar criteria to those used by EPA in determining if a section 5(e) order should be developed. The criteria established at § 721.170(b) generally call for development of a SNUR if the exposures likely to result from uses not described in the PMN would have called for the development of a section 5(e) order if they had been described in a PMN.

Several commenters expressed the view that, under the language of the proposed rule, substances would be subject to SNURs on the basis of inadequate evidence. Appropriateness of EPA use of evidence was discussed at length in the public meetings held prior to publication of the proposed rule. A description of these discussions is in the public record for this rule. EPA believes that its criteria for concern are appropriate. In general, EPA regulates on the basis of the weight of the evidence available to it from all sources.

A commenter asked for restraint by EPA in use of structure activity relationship analysis (SAR) in assessing substances, and in framing SNUR restrictions for substances not subjected to a section 5(e) order. EPA makes its decisions based on the entire body of available evidence, and attempts to assign appropriate weight to each piece of evidence used. Often SAR is the best evidence available for new, little-tested substances. When better evidence is available, it will be given due consideration.

Two commenters requested that EPA convene open scientific meetings prior to issuance of this final rule to identify the best scientific basis for applying SAR. A commenter, noting that under the proposed rule notice and comment rulemaking would be curtailed, asked that EPA convene workshops and public meetings to receive comments on its use of SAR. In addition, the commenter asked that EPA annually reconvene the original Toxic Substances Dialogue Group to assess how well the rule is working.

EPA is always interested in receiving comments and responses on its procedures and policies from regulated industry and the public. The change in this final rule from immediately effective final rules to procedures that will allow for public comment on each individual SNUR as necessary should provide adequate opportunity for comment on SAR use, and on the ongoing use of this rule.

Another commenter suggested that written SAR guidelines be released for public comment, and made a general request that scientific issues affecting PMN submitters receive the benefit of public comment.

EPA does not intend to maintain a written SAR guidance document. EPA use of SAR to assess the possible risk posed by a substance is based on professional judgment on a case-by-case basis. A general discussion of EPA's approach to SAR use was presented in the public discussions prior to the proposal, and is available in the public record maintained for this rulemaking.

EPA will hold meetings on its use of SAR and on other subjects as the need arises, but does not have plans for regular meetings at this time, nor does it foresee using the Dialogue Group as a formal ongoing advisory group.

3. *Procedures for issuing expedited SNURs.* The three procedures which may be used to issue SNURs under §§ 721.160 and 721.170 are: Direct final rulemaking, immediately effective interim final rulemaking, and notice and comment rulemaking. EPA will generally use direct final rulemaking to issue new substance SNURs, unless it determines that use of immediately effective interim final rulemaking or notice and comment rulemaking is more appropriate. EPA will use immediately effective interim final rulemaking in cases where it believes there may be particularly high potential hazard from uncontrolled use of the substance, or a particularly high likelihood that someone would engage in a significant new use between the time EPA announces its intention to issue a SNUR and the time the SNUR would take effect. When EPA determines that it is necessary to issue an immediately effective interim final SNUR, it will make the necessary findings and explain its reasons in the rule.

EPA will use notice and comment rulemaking to establish a SNUR when it believes there is a very high likelihood of public interest in commenting on the rule.

i. *Direct final rulemaking.* Under the direct final rulemaking process, EPA will issue a document in the final rule section of the **Federal Register** which contains the final SNUR. The **Federal Register** document will state that, unless written notice is received by EPA within 30 days of publication that someone wishes to submit adverse or critical comments, the SNUR will be effective 60 days from when the notice is published. If notice is received within 30 days that someone wishes to submit adverse or critical comments, EPA will withdraw the direct final rule by publishing a notice in the final rule section of the **Federal Register**, and EPA will propose a rule in the proposed rule section of the **Federal Register**. The proposed rule will establish a 30-day comment period. EPA then will consider any comments received and decide either to issue a final rule promulgating the SNUR or withdraw the proposal.

In implementing the provisions of Subpart D, EPA intends as much as possible to include more than one SNUR in a single **Federal Register** document to provide administrative efficiencies and save publication costs. With respect to direct final rulemaking procedures, when EPA publishes a number of SNURs in a single **Federal Register** document as direct final SNURs, the person notifying EPA of intent to submit adverse or critical comments will be asked to indicate to which SNUR the comments will apply. EPA would then publish a notice in the final rule section of the **Federal Register** withdrawing only that specific direct final SNUR and publish a separate proposal for that specific SNUR. However, EPA would not withdraw the direct final SNURs which are unaffected by the person's wish to submit adverse or critical comments.

ii. *Immediately effective interim final rules.* When using the interim final rulemaking procedure, EPA will issue a notice of interim final rulemaking. The rule will be effective on the day of publication; however, EPA will accept comments for 30 days following publication. The SNUR will cease to be in effect 180 days after publication unless in the intervening time EPA has issued a final rule addressing any comments received during the 30-day comment period.

iii. *Notice and comment rulemaking.* When EPA uses notice and comment rulemaking, EPA will first issue a proposed rule in the **Federal Register** stating that a SNUR will be developed for the substance, explaining the basis for the SNUR, listing the uses it proposes to designate as significant new uses, and soliciting public comment. After consideration of any comment on the proposed SNUR, EPA will issue a final rule adding the substance to Subpart E and identifying the significant new uses and recordkeeping requirements to which the substance is subject.

The proposed version of this Subpart D called for EPA to promulgate immediately effective final SNURs. Several commenters indicated that they did not believe that the proposed process would have given an adequate opportunity for public comment on the terms of SNURs before they went into effect. EPA has modified the rule to provide for opportunity for public comment in rulemaking for all SNURs. Additionally, EPA has substantially changed its internal review process to reduce the time it takes to propose and promulgate most SNURs under this subpart. This expedited internal review procedure will provide for the speedy protection of the public and equal treatment of PMN submitters and new users as contemplated in the April 29, 1987 proposal, but will allow public comments to be reviewed before the SNUR is promulgated as a final rule.

4. *Procedures to modify or revoke SNURs for new substances.* Section 721.185 establishes procedures to modify or revoke SNURs issued under this Subpart D, and informs the public of criteria EPA will consider in determining whether to do so. EPA may at any time modify the activities designated as significant new uses of a substance, or it may entirely revoke any specific significant new use notification requirement. EPA will consider modifying or revoking a SNUR issued under the expedited procedures of Subpart D, if other considerations do not justify retaining the SNUR unchanged, when it finds that one of the criteria at § 721.185(a) is met.

The procedures established under § 721.185 to petition EPA to modify or revoke SNURs are similar to those in TSCA section 21. Section 21 does not apply to SNURs.

Decisions to revoke or limit SNUR requirements may be made either at EPA's initiative or in response to a request by interested persons. Section 721.185(c) provides that EPA will respond by certified letter to a request for modification or revocation of a SNUR and, if EPA denies the request, will explain EPA's reasons for concluding that the SNUR requirements should remain in effect. Rules revoking or limiting SNURs under § 721.185 will be issued under notice and comment rulemaking procedures. Section 721.185 will help ensure that well-founded concerns about the validity of SNUR requirements are acted on expeditiously.

and that the public understands the procedure for modifying or limiting those requirements.

D. Removal of Proposed Information Requirements Under TSCA Sections 8(a) and (d)

In the proposed rule, EPA included procedures for automatically requiring reporting for certain new substances under TSCA section 8(a) at 40 CFR Part 704 and section 8(d) at 40 CFR Part 716. A commenter suggested that EPA carefully consider the conditions under which section 8(a) reporting on a substance that has been the subject of a SNUR is appropriate. EPA has considered the need to issue these information collection rules in an expedited manner, and has decided not to do so. When section 8(a) and (d) rules are appropriate for new substances, EPA will issue them on a case-by-case basis.

IV. Economic Analysis

EPA has evaluated the potential costs and benefits of establishing significant new use requirements for manufacture, import, and processing of new chemical substances under the procedures established in this rule. EPA's complete analysis is available in the public record for this rule (OPTS-50553B). The analysis is summarized in the preamble to the proposed rule. The costs and benefits of this final rule do not vary significantly from those described in the proposal.

V. *Rulemaking Record*

EPA has established a record for this rulemaking (docket control number OPTS-50553B). The record includes basic information considered by EPA in developing this rule. The record includes the following:

1. The proposed rules.
2. Comments received on the proposals leading to this rule.
3. Summaries of public meetings held to discuss the proposed rules.
4. The economic analysis of the rule.
5. Comment response document.
6. This final rule.

This record is available to the public in the TSCA Public Docket Office from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located in Rm. NE-G004, 401 M St., SW., Washington, DC.

VI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and, therefore, requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "major rule" because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. EPA has determined this rule to be "significant," because it will represent a significant change in the New Chemical Follow-up Program under TSCA.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA has determined that this rule will not have a significant impact on a substantial number of small businesses. EPA cannot determine whether parties affected by this rule are likely to be small businesses. However, EPA believes that the number of small businesses affected by this rule will not be substantial even if all the companies affected by this rule are small companies. EPA does not expect to regulate a large number of substances annually under this rule.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved by OMB under the provisions of the *Paperwork Reduction Act*. 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2070-0012.

Public reporting burden for this collection of information is estimated to average 12.2 hours per response for Subpart B, and to average 25.3 hours per response for Subpart C, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 721

Chemicals, Confidential business information, Environmental protection, Hazardous substances, Health and safety, Imports, Recordkeeping and reporting requirements, Significant new uses.

Dated: July 14, 1989.

F. Henry Habicht,
Acting Administrator.

PART 721—SIGNIFICANT NEW USES OF CHEMICAL SUBSTANCES

Therefore, 40 CFR Chapter I is amended as follows:

1. By revising the authority citation for Part 721 to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. In § 721.3 by alphabetically adding the following definitions:

§ 721.3 Definitions.

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"Acutely toxic effects" A chemical substance produces acutely toxic effects if it kills within a short time period (usually 14 days):

(1) At least 50 percent of the exposed mammalian test animals following oral administration of a single dose of the test substance at 25 milligrams or less per kilogram of body weight (LD_{50}).

(2) At least 50 percent of the exposed mammalian test animals following dermal administration of a single dose of the test substance at 50 milligrams or less per kilogram of body weight (LD_{50}).

(3) At least 50 percent of the exposed mammalian test animals following administration of the test substance for 8 hours or less by continuous inhalation at a steady concentration in air at 0.5 milligrams or less per liter of air (LC_{50}).

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"Chemical name" means the scientific designation of a chemical substance in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry or the Chemical Abstracts Service's rules of nomenclature, or a name which will clearly identify a chemical substance for the purpose of conducting a hazard evaluation.

"Chemical protective clothing" means items of clothing that provide a protective barrier to prevent dermal contact with chemical substances of concern. Examples can include, but are not limited to: full body protective clothing, boots, coveralls, gloves, jackets, and pants.

"Commercial use" means the use of a chemical substance or any mixture containing the chemical substance in a commercial enterprise providing saleable goods or a service to consumers (e.g., a commercial dry cleaning establishment or painting contractor).

"Common name" means any designation or identification such as code name, code number, trade name, brand name, or generic chemical name used to identify a chemical substance other than by its chemical name.

"Consumer" means a private individual who uses a chemical substance or any product containing the chemical substance in or around a permanent or temporary household or residence, during recreation, or for any personal use or enjoyment.

"Consumer product" means a chemical substance that is directly, or as part of a mixture, sold or made available to consumers for their use in or around a permanent or temporary household or residence, in or around a school, or in recreation.

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"Director of the Office of Toxic Substances" means the Director of the EPA Office of Toxic Substances or any EPA employee delegated by the Office Director to carry out the Office Director's functions under this part.

"Employer" means any manufacturer, importer, processor, or user of chemical substances or mixtures.

"Environmentally transformed" A chemical substance is "environmentally transformed" when its chemical structure changes as a result of the action of environmental processes on it.

"Identity" means any chemical or common name used to identify a chemical substance or a mixture containing that substance.

"Immediate use" A chemical substance is for the "immediate use" of a person if it is under the control of, and used only by, the person who transferred it from a labeled container and will only be used by that person within the work shift in which it is transferred from the labeled container.

"Impervious" Chemical protective clothing is "impervious" to a chemical substance if the substance causes no chemical or mechanical degradation, permeation, or penetration of the chemical protective clothing under the conditions of, and the duration of, exposure.

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"Manufacturing stream" means all reasonably anticipated transfer, flow, or disposal of a chemical substance, regardless of physical state or concentration, through all intended operations of manufacture, including the cleaning of equipment.

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"MSDS" means material safety data sheet, the written listing of data for the chemical substance as required under § 721.72(c).

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"NIOSH" means the National Institute for Occupational Safety and Health of the U.S. Department of Health and Human Services.

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"Non-enclosed process" means any equipment system (such as an open-top reactor, storage tank, or mixing vessel) in which a chemical substance is manufactured, processed, or otherwise used where significant direct contact of the bulk chemical substance and the workplace air may occur.

"Non-industrial use" means use other than at a facility where chemical substances or mixtures are manufactured, imported, or processed.

"Personal protective equipment" means any chemical protective clothing or device placed on the body to prevent contact with, and exposure to, an identified chemical substance or substances in the work area. Examples include, but are not limited to, chemical protective clothing, aprons, hoods, chemical goggles, face splash shields, or equivalent eye protection, and various types of respirators. Barrier creams are not included in this definition.

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"Process stream" means all reasonably anticipated transfer, flow, or disposal of a chemical substance, regardless of physical state or concentration, through all intended operations of processing, including the cleaning of equipment.

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"Serious acute effects" means human injury or human disease processes that have a short latency period for development, result from short-term exposure to a chemical substance, or are a combination of these factors and which are likely to result in death or severe or prolonged incapacitation.

"Serious chronic effects" means human injury or human disease processes that have a long latency period for development, result from long-term exposure to a chemical substance, or are a combination of these factors and which are likely to result in death or severe or prolonged incapacitation.

"Short-term test indicative of carcinogenic potential" means either any limited bioassay that measures tumor or preneoplastic induction, or any test indicative of interaction of a chemical substance with DNA (i.e., positive response in assays for gene mutation, chromosomal aberrations, DNA damage and repair, or cellular transformation).

"Short-term test indicative of the potential to cause a developmentally toxic effect" means either any *in vivo* preliminary development toxicity screen conducted in a mammalian species, or any *in vitro* developmental toxicity screen, including any test system other than the intact pregnant mammal, that has been extensively evaluated and judged reliable for its ability to predict the potential to cause developmentally toxic effects in intact systems across a broad range of chemicals or within a class of chemicals that includes the substance of concern.

"Significant adverse environmental effects" means injury to the environment by a chemical substance which reduces or adversely affects the productivity, utility, value, or function of biological, commercial, or agricultural resources, or which may adversely affect a threatened or endangered species. A substance will be considered to have the potential for significant adverse environmental effects if it has one of the following:

(1) An acute aquatic EC_{50} of 1 mg/L or less.

(2) An acute aquatic EC_{50} of 20 mg/L or less where the ratio of aquatic vertebrate 24-hour to 48-hour EC_{50} is greater than or equal to 2.0.

(3) A Maximum Acceptable Toxicant Concentration (MATC) of less than or equal to 100 parts per billion (100 ppb).

(4) An acute aquatic EC_{50} of 20 mg/L or less coupled with either a measured bioconcentration factor (BCF) equal to or greater than 1,000x or in the absence of bioconcentration data a log P value equal to or greater than 4.3.

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"Use stream" means all reasonably anticipated transfer, flow, or disposal of a chemical substance, regardless of physical state or concentration, through all intended operations of industrial, commercial, or consumer use.

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"Work area" means a room or defined space in a workplace where a chemical substance is manufactured, processed, or used and where employees are present.

"Workplace" means an establishment at one geographic location containing one or more work areas.

3. By adding a new Subpart B to Part 721 to read as follows:

Subpart B—Certain Significant New Uses

Sec.
721.50 Applicability.
721.63 Protection in the workplace.
721.72 Hazard communication program.
721.80 Industrial, commercial, and consumer activities.
721.85 Disposal.

Sec.
721.90 Release to water.
721.91 Computation of estimated surface water concentrations; instructions.

Subpart B—Certain Significant New Uses

§ 721.50 Applicability.

This Subpart B identifies certain significant new uses of chemical substances identified in Subpart E of this part. The provisions of this Subpart B apply only when referenced as applying to a chemical substance identified in Subpart E of this part.

§ 721.63 Protection in the workplace.

(a) Whenever a substance is identified in Subpart E of this part as being subject to this section, a significant new use of the substance is any manner or method of manufacturing, importing, or processing associated with any use of the substance without establishing a program whereby:

(1) Each person who is reasonably likely to be dermally exposed in the work area to the chemical substance through direct handling of the substance or through contact with equipment on which the substance may exist, or because the substance becomes airborne in the form listed in paragraph (a)(6) of this section, and cited in Subpart E of this part for the chemical substance, is provided with, and is required to wear, personal protective equipment that provides a barrier to prevent dermal exposure to the substance in the specific work area where it is selected for use. Each such item of personal protective equipment must be selected and used in accordance with 29 CFR 1910.132 and 1910.133.

(2) In addition to any other personal protective equipment selected in paragraph (a)(1) of this section, the following items are required:

(i) Gloves.

(ii) Full body chemical protective clothing.

(iii) Chemical goggles or equivalent eye protection.

(iv) Clothing which covers any other exposed areas of the arms, legs, and torso. Clothing provided under this paragraph need not be tested or evaluated under the requirements of paragraph (a)(3) of this section.

(3) The employer is able to demonstrate that each item of chemical protective clothing, including gloves, selected provides an impervious barrier to prevent dermal exposure during normal and expected duration and conditions of exposure within the work area by any one or a combination of the following:

(i) Testing the material used to make the chemical protective clothing and the construction of the clothing to establish that the protective clothing will be impervious for the expected duration and conditions of exposure. The testing must subject the chemical protective clothing to the expected conditions of exposure, including the likely combinations of chemical substances to which the clothing may be exposed in the work area.

(ii) Evaluating the specifications from the manufacturer or supplier of the chemical protective clothing, or of the material used in construction of the clothing, to establish that the chemical protective clothing will be impervious to the chemical substance alone and in likely combination with other chemical substances in the work area.

(4) Each person who is reasonably likely to be exposed to the chemical substance by inhalation in the work area in one or more of the forms listed in paragraph (a)(6) of this section and cited in Subpart E of this part for the chemical substance, is provided with, and is required to wear, at a minimum, a NIOSH- approved respirator from one of the categories listed in paragraph (a)(5) of this section, and the respirator is used in accordance with 29 CFR 1910.134 and 30 CFR Part 11.

(5) The following NIOSH approved respirators meet the minimum requirements for paragraph (a)(4) of this section:

(i) Category 19C Type C supplied-air respirator operated in pressure demand or other positive pressure mode and equipped with a full facepiece.

(ii) Category 19C Type C supplied-air respirator operated in pressure demand or continuous flow mode and equipped with a tight-fitting facepiece.

(iii) Category 19C Type C supplied-air respirator operated in pressure demand or continuous flow mode and equipped with a hood or helmet or tight-fitting facepiece.

(iv) Category 21C air-purifying respirator equipped with a full facepiece and high efficiency particulate filters.

(v) Category 21C powered air-purifying respirator equipped with a tight-fitting facepiece and high efficiency particulate filters.

(vi) Category 21C powered air-purifying respirator equipped with a loose-fitting hood or helmet and high efficiency particulate filters.

(vii) Category 21C air-purifying respirator equipped with a high efficiency particulate filter including disposable respirators.

(viii) Category 23C air-purifying respirator equipped with a full facepiece and combination cartridges approved for paints, lacquers, and enamels. (Approval label may preclude use for some paints, lacquers, or enamels.)

(ix) Category 23C powered air-purifying respirator equipped with a tight-fitting facepiece and combination cartridges approved for paints, lacquers, and enamels. (Approval label may preclude use for some paints, lacquers, or enamels.)

(x) Category 23C powered-air-purifying respirator equipped with a loose-fitting hood or helmet and combination cartridges approved for paints, lacquers, and enamels. (Approval label may preclude use for some paints, lacquers, or enamels.)

(xi) Category 23C air-purifying respirator equipped with combination cartridges approved for paints, lacquers, and enamels, including disposable respirators. (Approval label may preclude use for some paints, lacquers, or enamels.)

(xii) Category 23C air-purifying respirator equipped with a full facepiece and organic gas/vapor cartridges.

(xiii) Category 23C powered air-purifying respirator equipped with a tight-fitting facepiece and organic gas/vapor cartridges.

(xiv) Category 23C powered air-purifying respirator equipped with a loose-fitting hood or helmet and organic gas/vapor cartridges.

(xv) Category 23C air-purifying respirator equipped with organic gas/vapor cartridges, including disposable respirators.

(6) When cited in Subpart E of this part for a substance, the following airborne form(s) of the substance apply to paragraphs (a)(1) and (4) of this section:

(i) Dust.

(ii) Mist.

(iii) Fume.

(iv) Smoke.

(v) Vapor.

(vi) Gas.

(b) If a substance identified in Subpart E of this part is present in the work area only as a mixture, an employer is exempt from the provisions of this section if the concentration of the substance in the mixture does not exceed a concentration set in Subpart E of this part. The exemption does not apply if the employer has reason to believe that during intended use or processing in the work area, the substance in the mixture may be concentrated above the level set in Subpart E of this part.

(c)(1) If at any time after commencing distribution in commerce of a chemical substance that is identified in Subpart E of this part as subject to this section, the person has knowledge that a recipient of the substance is engaging in an activity that is not consistent with the implementation of a program specified in paragraph (a) of this section, the person is considered to have knowledge that the recipient is engaging in a significant new use and is required to follow the procedures in § 721.5(d) unless the person is able to document the following:

(i) That the person has notified the recipient in writing within 15 working days of the time the person first has knowledge that the recipient is engaging in an activity that is not consistent with the implementation of a program specified in paragraph (a) of this section, and that the person has knowledge of the failure of implementation.

(ii) That within 15 working days of notifying the recipient that the recipient is engaging in an activity that is not consistent with the implementation of a program specified in paragraph (a) of this section the person has received from the recipient, in writing, a statement of assurance that the recipient has established the program required under paragraph (a) of this section, and will take appropriate measures to avoid activities that are inconsistent with implementation of the program required under paragraph (a) of this section.

(2) If, after receiving a statement of assurance from a recipient under paragraph (c)(1)(ii) of this section, a manufacturer, importer, or processor has knowledge that the recipient is engaging in an activity that is not consistent with the implementation of the program specified in paragraph (a) of this section, that person is considered to have knowledge that the person is engaging in a significant new use and is required to follow the procedures in § 721.5(d).

§ 721.72 Hazard communication program.

Whenever a substance is identified in Subpart E of this part as being subject to this section, a significant new use of that substance is any manner or method of manufacture, import, or processing associated with any use of that substance without establishing a hazard communication program as described in this section.

(a) *Written hazard communication program.* Each employer shall develop and implement a written hazard communication program for the substance in each workplace. The written program will, at a minimum, describe how the requirements of this section for labels, MSDSs, and other forms of warning material will be satisfied. The employer must make the written hazard communication program available, upon request, to all employees, contractor employees, and their designated representatives. The employer may rely on an existing hazard communication program, including an existing program established under the Occupational Health and Safety Administration (OSHA) Hazard Communication Standard (29 CFR 1900.1200), to comply with this paragraph provided that the existing hazard communication program satisfies the requirements of this paragraph. The written program shall include the following:

(1) A list of each substance identified in Subpart E of this part as subject to this section known to be present in the work area. The list must be maintained in the work area and must use the identity provided on the appropriate MSDS for each substance required under paragraph (c) of this section. The list may be compiled for the workplace or for individual work areas.

(2) The methods the employer will use to inform employees of the hazards of non-routine tasks involving the substance, for example, the cleaning of reactor vessels, and the hazards associated with the substance contained in unlabeled pipes in their work area.

(3) The methods the employer will use to inform contractors of the presence of the substance in the employer's workplace and of the provisions of this part applicable to the substance if employees of the contractor work in the employer's workplace and are reasonably likely to be exposed to the substance while in the employer's workplace.

(b) *Labeling.* (1) Each employer shall ensure that each container of the substance in the workplace is labeled in accordance with this paragraph (b)(1).

(i) The label shall, at a minimum, contain the following information:

(A) A statement of health hazard(s) and precautionary measure(s) for the substance, if any, identified in Subpart E of this part or by the employer.

(B) The identity by which the substance may be commonly recognized.

(C) A statement of environmental hazard(s) and precautionary measure(s) for the substance, if any, identified in Subpart E of this part or by the employer.

(D) A statement of exposure and precautionary measure(s), if any, identified in Subpart E of this part or by the employer.

(ii) The employer may use signs, placards, process sheets, batch tickets, operating procedures, or other such written materials in lieu of affixing labels to individual stationary process containers, as long as the alternative method identifies the containers to which it is applicable and conveys information specified by paragraph (b)(1)(i) of this section. Any written materials must be readily accessible to the employees in their work areas throughout each work shift.

(iii) The employer need not label portable containers into which the substance is transferred from labeled containers, and which are intended only for the immediate use of the employee who performs the transfer.

(iv) The employer shall not remove or deface an existing label on incoming containers of the substance unless the container is immediately relabeled with the information specified in paragraph (b)(1)(i) of this section.

(2) Each employer shall ensure that each container of the substance leaving its workplace for distribution in commerce is labeled in accordance with this paragraph.

(i) The label shall, at a minimum, contain the following information:

(A) The information required under paragraph (b)(1)(i) of this section.

(B) The name and address of the manufacturer or a responsible party who can provide additional information on the substance for hazard evaluation and any appropriate emergency procedures.

(ii) The label shall not conflict with the requirements of the Hazardous Materials Transportation Act (18 U.S.C. 1801 et. seq.) and regulations issued under that Act by the Department of Transportation.

(3) The label, or alternative forms of warning, shall be legible and prominently displayed.

(4) The label, or alternative forms of warning, shall be in English; however, the information may be repeated in other languages.

(5) If the label or alternative form of warning is to be applied to a mixture containing a substance identified in Subpart E of this part as subject to this section in combination with another substance identified in Subpart E of this part and/or a substance defined as a "hazardous chemical" under the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard (29 CFR 1900.1200), the employer may prescribe on the label, MSDS, or alternative form of warning, the measures to control worker exposure or environmental release which the employer determines provide the greatest degree of protection. However, should these control measures differ from the applicable measures required under Subpart E of this part, the employer

must seek a determination of equivalency for such alternative control measures pursuant to § 721.30 before prescribing them under this paragraph.

(c) *Material safety data sheets.* (1) Each employer must obtain or develop a MSDS for the substance.

(2) Each MSDS shall contain, at a minimum, the following information:

(i) The identity used on the container label of the substance under this section, and, if not claimed confidential, the chemical and common name of the substance. If the chemical and common name are claimed confidential, a generic chemical name must be used.

(ii) Physical and chemical characteristics of the substance known to the employer (such as vapor pressure, flash point).

(iii) The physical hazards of the substance known to the employer, including the potential for fire, explosion, and reactivity.

(iv) The potential human and environmental hazards as specified in Subpart E of this part for the substance.

(v) Signs and symptoms of exposure, and any medical conditions which are expected to be aggravated by exposure to the substance known to the employer.

(vi) The primary routes of exposure to the substance.

(vii) Precautionary measures to control worker exposure and/or environmental release identified in Subpart E of this part for the substance, or alternative control measures which EPA has determined under § 721.30 provide substantially the same degree of protection as the identified control measures.

(viii) Any generally applicable precautions for safe handling and use of the substance which are known to the employer, including appropriate hygienic practices, protective measures during repair and maintenance of contaminated equipment, and procedures for response to spills and leaks.

(ix) Any generally applicable control measures which are known to the employer, such as appropriate engineering controls, work practices, or personal protective equipment.

(x) Emergency first aid procedures known to the employer.

(xi) The date of preparation of the MSDS or of its last revision.

(xii) The name, address, and telephone number of the individual preparing or distributing the MSDS, or a responsible party who can provide additional information on the substance for hazard evaluation and any appropriate emergency procedures.

(3) If no relevant information is found or known for any given category on the MSDS, the employer must mark the MSDS to indicate that no applicable information was found.

(4) Where multiple mixtures containing the substance have similar compositions (i.e., the chemical ingredients are essentially the same, but the specific composition varies from mixture to mixture) and similar hazards, the employer may prepare one MSDS to apply to all of these multiple mixtures.

(5) If the employer becomes aware of any significant new information regarding the hazards of the substance or ways to protect against the hazards, this new information must be added to the MSDS within 3 months from the time the employer becomes aware of the new information. If the substance is not currently being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to the MSDS before the substance is reintroduced into the workplace.

(6) The employer must ensure that persons receiving the substance from the employer are provided an appropriate MSDS with their initial shipment and with the first shipment after an MSDS is revised. The employer may either provide the MSDS with the shipped containers or send it to the person prior to or at the time of shipment.

(7) The employer must maintain a copy of the MSDS in its workplace, and must ensure that it is readily accessible during each work shift to employees when they are in their work areas.

(8) The MSDS may be kept in any form, including as operating procedures, and may be designed to cover groups of substances in a work area where it may be more appropriate to address the potential hazards of a process rather than individual substances. However, in all cases, the required information must be provided for each substance and must be readily accessible during each work shift to employees when they are in their work areas.

(9) The MSDS must be printed in English; however, the information may be repeated in other languages.

(d) *Employee information and training.* Each employer must ensure that employees are provided with information and training on the substance identified in Subpart E of this part. This information and training must be provided at the time of each employee's initial assignment to a work area containing the substance and whenever the substance subject to this section is introduced into the employee's work area for the first time.

(1) Information provided to employees under this paragraph shall include:

(i) The requirements of this section.

(ii) Any operations in the work area where the substance is present.

(iii) The location and availability of the written hazard communication program required under paragraph (a) of this section, including the list of substances identified in Subpart E of this part as subject to this section, and MSDSs required by paragraph (c) of this section.

(2) Training provided to employees shall include:

(i) Methods and observations that may be used to detect the presence or release of the substance in or from an employee's work area (such as monitoring conducted by the employer, continuous monitoring devices, visual appearance, or odor of the substance when being released).

(ii) The potential human health and environmental hazards of the substance as specified in Subpart E of this part.

(iii) The measures employees can take to protect themselves and the environment from the substance, including specific procedures the employer has implemented to protect employees and the environment from exposure to the substance, including appropriate work practices, emergency procedures, personal protective equipment, engineering controls, and other measures to control worker exposure and/or environmental release required under Subpart E of the part, or alternative control measures which EPA has determined under § 721.30 provide substantially the same degree of protection as the specified control measures.

(iv) The requirements of the hazard communication program developed by the employer under this section, including an explanation of the labeling system and the MSDS required by this section and guidance on obtaining and using appropriate hazard information.

(e) *Low concentrations in mixtures.* If a substance identified in Subpart E of this part is present in the work area only as a mixture, an employer is exempt from the provisions of this section if the concentration of the substance in the mixture does not exceed a concentration set in Subpart E of this part. The exemption does not apply if the employer has reason to believe that during intended use or processing in the work area, the substance in the mixture may be concentrated above the level set in Subpart E of this part.

(f) *Existing hazard communication program.* The employer need not take additional actions if existing programs and procedures satisfy the requirements of this section.

(g) *Human health, environmental hazard, exposure, and precautionary statements.* Whenever referenced in Subpart E of this part for a substance, the following human health and environmental hazard, exposure, and precautionary statements shall appear on each label as specified in paragraph (b) of this section and the MSDS as specified in paragraph (c) of this section. Additional statements may be included as long as they are true and do not alter the meaning of the required statements.

(1) Human health hazard statements: This substance may cause:

(i) Skin irritation.

(ii) Respiratory complications.

(iii) Central nervous system effects.

(iv) Internal organ effects.

(v) Birth defects.

(vi) Reproductive effects.

(vii) Cancer.

(viii) Immune system effects.

(ix) Developmental effects.

(2) Human health hazard precautionary statements: When using this substance:

(i) Avoid skin contact.

(ii) Avoid breathing substance.

(iii) Avoid ingestion.

(iv) Use respiratory protection.

(v) Use skin protection.

(3) Environmental hazard statements: This substance may be:

(i) Toxic to fish.

(ii) Toxic to aquatic organisms.

(4) Environmental hazard precautionary statements: Notice to users:

(i) Disposal restrictions apply.

(ii) Spill clean-up restrictions apply.

(iii) Do not release to water.

(5) Each human health or environmental hazard precautionary statement identified in Subpart E of this part for the label on the substance container must be followed by the statement, "See MSDS for details."

§ 721.80 Industrial, commercial, and consumer activities.

Whenever a substance is identified in Subpart E of this part as being subject to this section, a significant new use of the substance is:

(a) Use in non-enclosed processes.

(b) Any manner or method of manufacture in non-enclosed processes associated with any use.

(c) Any manner or method of processing in non-enclosed processes associated with any use.

(d) Use beyond the site of manufacture or import.

(e) Processing beyond the site of manufacture or import.

(f) Any manner or method of manufacture (excluding import) of the substance associated with any use.

(g) Use other than as an intermediate.

(h) Use other than as a site-limited intermediate.

(i) Use as an intermediate where the concentration of the intermediate substance in the product intended for distribution in commerce exceeds the concentration specified in Subpart E of this part for the substance.

(j) Use other than as described in the premanufacture notice referenced in Subpart E of this part for the substance.

(k) Use other than allowed by the section 5(e) consent order referenced in Subpart E of this part for the substance.

(l) Non-industrial use.

(m) Commercial use.

(n) Non-commercial use.

(o) Use in a consumer product.

(p) Aggregate manufacture and importation volume for any use greater than that specified in Subpart E of this part for the substance.

(q) Aggregate manufacture and importation volume for any use greater than that allowed by the section 5(e) consent order referenced in Subpart E of this part for the substance.

(r) Aggregate manufacture and importation volume for any use greater than that specified in Subpart E of this part for the substance unless the manufacturer or importer has submitted the results of the health or environmental effects studies identified in Subpart E of this part for the substance and those studies comply with the procedures and criteria for developing and evaluating data identified in Subpart E of this part for the substance.

(s) Annual manufacture and importation volume for any use greater than that specified in Subpart E of this part for the substance.

(t) Annual manufacture and importation volume for any use greater than that allowed by the section 5(e) consent order referenced in Subpart E of this part for the substance.

(u) Annual manufactur and importation volume for any use greater than that specified in Subpart E of this part for the substance unless the manufacturer or importer has submitted the results of the health or environmental effects studies identified in Subpart E of this part for the substance and those studies comply with the procedures and criteria for developing and evaluating data identified in Subpart E of this part for the substance.

(v) Use in the form of:

(1) A powder.

(2) A solid.

(3) A liquid.

(4) A gas.

(w) Any manner or method of manufacture of the substance in the following form associated with any use:

(1) A powder.

(2) A solid.

(3) A liquid.

(4) A gas.

(x) Any manner or method of processing of the substance in the following form associated with any use:

(1) A powder.

(2) A solid.

(3) A liquid.

(4) A gas.

(y) Use involving an application method that generates:

(1) A vapor, mist, or aerosol.

(2) A dust.

§ 721.85 Disposal.

Whenever a substance is identified in Subpart E of this part as being subject to this section, a significant new use of the substance is any method of:

(a) Disposal of the process stream associated with any use of the substance or with any manner or method of manufacturing associated with any use of the substance other than by the following. This provision does not supercede any applicable Federal, State, or local laws and regulations.

(1) Incineration.

(2) Landfill.

(3) Deep well injection.

(b) Disposal of the process stream associated with any use or with any manner or method of processing associated with any use other than by the following. This provision does not supercede any applicable Federal, State, or local laws and regulations.

(1) Incineration.

(2) Landfill.

(3) Deep well injection.

(c) Disposal of the use stream associated with any use, other than by the following. This provision does not supercede any applicable Federal, State, or local laws and regulations.

(1) Incineration.

(2) Landfill.

(3) Deep well injection.

(d) Disposal of the substance associated with any use of the substance, or with any manner or method of manufacture or processing in association with any use. This provision does not supercede any applicable Federal, State, or local laws and regulations.

§ 721.90 Release to water.

Whenever a substance is identified in Subpart E of this part as being subject to this section, a significant new use of the substance is:

(a) Any predictable or purposeful release of a manufacturing stream associated with any use of the substance, from any site:

(1) Into the waters of the United States.

(2) Into the waters of the United States without application of one or more of the following treatment technologies as specified in Subpart E of this part either by the discharger or, in the case of a release through publicly-owned treatment works, by a combination of treatment by the discharger and the publicly-owned treatment works:

(i) Chemical precipitation and settling.

(ii) Biological treatment (activated sludge or equivalent) plus clarification.

(iii) Steam stripping.

(iv) Resin or activated carbon adsorption.

(v) Chemical destruction or conversion.

(vi) Primary wastewater treatment.

(3) Into the waters of the United States without primary wastewater treatment, and secondary wastewater treatment as defined in 40 CFR Part 133.

(4) Into the waters of the United States if the quotient from the following formula:

$$\frac{\text{number of kilograms/day/site released}}{\text{receiving stream flow (million liters/day)}} \times 1000 = \text{N parts per billion}$$

exceeds the level specified in Subpart E of this part when calculated using the methods described in § 721.91. In lieu of calculating the above quotient, monitoring or alternative calculations may be used to predict the surface water concentration which will result from the intended release of the substance, if the monitoring procedures or calculations have been approved for such purpose by EPA. EPA will review and act on written requests to approve monitoring procedures or alternative calculations within 90 days after such requests are received. EPA will inform submitters of the disposition of such requests in writing, and will explain the reasons therefor when they are denied.

(b) Any predictable or purposeful release of a process stream containing the substance associated with any use of the substance from any site:

(1) Into the waters of the United States.

(2) Into the waters of the United States without application of one or more of the following treatment technologies as specified in Subpart E of this part either by the discharger or, in the case of a release through publicly-owned treatment works, by a combination of treatment by the discharger and the publicly-owned treatment works:

(i) Chemical precipitation and settling.

(ii) Biological treatment (activated sludge or equivalent) plus clarification.

(iii) Steam stripping.

(iv) Resin or activated carbon adsorption.

(v) Chemical destruction or conversion.

(vi) Primary wastewater treatment.

(3) Into the waters of the United States without primary wastewater treatment, and secondary wastewater treatment as defined in 40 CFR Part 133.

(4) Into the waters of the United States if the quotient from the following formula:

$$\frac{\text{number of kilograms/day/site released}}{\text{receiving stream flow (million liters/day)}} \times 1000 = \text{N parts per billion}$$

exceeds the level specified in Subpart E of this part when calculated using the methods described in § 721.91. In lieu of calculating the above quotient, monitoring or alternative calculations may be used to predict the surface water concentration which will result from the intended release of the substance, if the monitoring procedures or calculations have been approved for such purpose by EPA. EPA will review and act on written requests to approve monitoring procedures or alternative calculations within 90 days after such requests are received. EPA will inform submitters of the disposition of such requests in writing, and will explain the reasons therefor when they are denied.

(c) Any predictable or purposeful release of a use stream containing the substance associated with any use of the substance from any site:

(1) Into the waters of the United States.

(2) Into the waters of the United States without application of one or more of the following treatment technologies as specified in Subpart E of this part either by the discharger or, in the case of a release through publicly-owned treatment works, by a combination of treatment by the discharger and the publicly-owned treatment works:

(i) Chemical precipitation and settling.

(ii) Biological treatment (activated sludge or equivalent) plus clarification.

(iii) Steam stripping.

(iv) Resin or activated carbon adsorption.

(v) Chemical destruction or conversion.

(vi) Primary wastewater treatment.

(3) Into the waters of the United States without primary wastewater treatment, and secondary wastewater treatment as defined in 40 CFR Part 133.

(4) Into the waters of the United States if the quotient from:

$$\frac{\text{number of kilograms/day/site released}}{\text{receiving stream flow (million liters/day)}} \times 1000 = \text{N parts per billion}$$

exceeds the level specified in Subpart E of this part, when calculated using the methods described in § 721.91. In lieu of calculating the above quotient, however, monitoring or alternative calculations may be used to predict the surface water concentration expected to result from intended release of the substance, if the monitoring procedures or calculations have been approved for such purpose by EPA. EPA will review and act on written requests to approve monitoring procedures or alternative calculations within 90 days after such requests are received. EPA will inform submitters of the disposition of such requests in writing, and will explain the reasons therefor when they are denied.

§ 721.91 Computation of estimated surface water concentrations: instructions.

These instructions describe the use of the equation specified in § 721.90(a)(4) and (b)(4) to compute estimated surface water concentrations which will result from release of a substance identified in Subpart E of this part. The equation shall be computed for each site using the stream flow rate appropriate for the site according to paragraph (b) of this section, and the highest number of kilograms calculated to be released for that site on a given day according to paragraph (a) of this section. Two variables shall be considered in computing the equation, the number of kilograms released, and receiving stream flow.

(a) *Number of kilograms released.* (1) To calculate the number of kilograms of substance to be released from manufacturing, processing, or use operations, as specified in the numerator of the equation, develop a process description diagram which describes each manufacturing, processing, or use operation involving the substance. The process description must include the major unit operation steps and chemical conversions. A unit operation is a functional step in a manufacturing, processing, or use operation where substances undergo chemical changes and/or changes in location, temperature, pressure, physical state, or similar characteristics. Include steps in which the substance is formulated into mixtures, suspensions, solutions, etc.

(2) Indicate on each diagram the entry point of all feedstocks (e.g., reactants, solvents, and catalysts) used in the operation. Identify each feedstock and specify its approximate weight regardless of whether the process is continuous or batch.

(3) Identify all release points from which the substance or wastes containing the substance will be released into air, land, or water. Indicate these release points on the diagram. Do not include accidental releases or fugitive emissions.

(4) For releases identified in the diagram that are destined for water, estimate the amount of substance that will be released before the substance enters control technology. The kilograms of substance released may be estimated based on:

(i) The mass balance of the operation, i.e., totaling inputs and outputs, including wastes for each part of the process such that outputs equal inputs. The amount released to water may be the difference between the amount of the substance in the starting material (or formed in a reaction) minus the amount of waste material removed from each part of the process and not released to water and the amount of the substance in the final product.

(ii) Physical properties such as water solubility where a known volume of water being discharged is assumed to contain the substance at concentrations equal to its solubility in water. This approach is particularly useful where the waste stream results from separation of organic/water phases or filtration of the substance from an aqueous stream to be discharged.

(iii) Measurements of flow rates of the process/use stream and known concentrations of the substance in the stream.

(5) After releases of a substance to water are estimated for each operation on a site, total the releases of the substance to water from all operations at that site. The value (number of kilograms) specified in the numerator of the equation should reflect total kilograms of substance released to water per day from all operations at a single site.

(6) Use the highest expected daily release of the substance for each site.

(b) *Receiving stream flow.* (1) The receiving stream flow shall be expressed in million liters per day (MLD). The flow rate data to be used must be for the point of release on the water body that first receives release of the substance whether by direct discharge from a site, or by indirect discharge through a Publicly-Owned Treatment Works (POTW) for each site. The flow rate reported shall be the lowest 7-day average stream flow with a recurrence interval of 10 years (7-Q- 10). If the 7-Q-10 flow rate is not available for the actual point of release, the stream flow rate should be used from the U.S. Geological Survey (USGS) gauging station that is nearest the point of release that is expected to have a flow rate less than or equal to the receiving stream flow at the point of release.

(2) Receiving stream flow data may be available from the National Pollutant Discharge Elimination System (NPDES) permit for the site or the POTW releasing the substance to surface water, from the NPDES permit-writing authority for the site or the POTW, or from USGS publications, such as the water-data report series.

(3) If receiving stream flow data are not available for a stream, either the value of 10 MLD or the daily flow of wastewater from the site or the POTW releasing the substance must be used as an assumed minimum stream flow. Similarly, if stream flow data are not available because the location of the point of release of the substance to surface water is a lake, estuary, bay, or ocean, then the flow rate to be used must be the daily flow of wastewater from the site or the POTW releasing the substance to surface water. Wastewater flow data may be available from the NPDES permit or NPDES authority for the site or the POTW releasing the substance to water.

4. By adding a new Subpart C to Part 721 to read as follows:

Subpart C—Recordkeeping Requirements

Sec.
721.100 Applicability.
721.125 Recordkeeping requirements.

Subpart C—Recordkeeping Requirements

§ 721.100 Applicability.

This Subpart C identifies certain additional recordkeeping requirements applicable to manufacturers, importers, and processors of substances identified in Subpart E of this part for each specific substance. The provisions of this Subpart C apply only when referenced in Subpart E of this part for a substance and significant new use identified in that Subpart E. If the provisions in this Subpart C conflict with general provisions of Subpart A of this part, the provisions of this Subpart C shall apply.

§ 721.125 Recordkeeping requirements.

At the time EPA adds a substance to Subpart E of this part, EPA will specify appropriate recordkeeping requirements which correspond to the significant new use designations for the substance selected from Subpart B of this part. Each manufacturer, importer, and processor of the substance shall maintain the records for 5 years from the date of their creation. In addition to the records specified in § 721.40, the records whose maintenance this section requires may include the following:

(a) Records documenting the manufacture and importation volume of the substance and the corresponding dates of manufacture and import.

(b) Records documenting volumes of the substance purchased in the United States by processors of the substance, names and addresses of suppliers, and corresponding dates of purchase.

(c) Records documenting the names and addresses (including shipment destination address, if different) of all persons outside the site of manufacture, importation, or processing to whom the manufacturer, importer, or processor directly sells or transfers the substance, the date of each sale or transfer, and the quantity of the substance sold or transferred on such date.

(d) Records documenting establishment and implementation of a program for the use of any applicable personal protective equipment required under § 721.63.

(e) Records documenting the determinations required by § 721.63(a)(3) that chemical protective clothing is impervious to the substance.

(f) Records documenting establishment and implementation of the hazard communication program required under § 721.72.

(g) Copies of labels required under § 721.72(b).

(h) Copies of material safety data sheets required under § 721.72(c).

(i) Records documenting compliance with any applicable industrial, commercial, and consumer use limitations under § 721.80.

(j) Records documenting compliance with any applicable disposal requirements under § 721.85, including the method of disposal, location of disposal sites, dates of disposal, and volume of the substance disposed. Where the estimated disposal volume is not known to or reasonably

ascertainable by the manufacturer, importer, or processor, that person must maintain other records which demonstrate establishment and implementation of a program that ensures compliance with any applicable disposal requirements.

(k) Records documenting establishment and implementation of procedures that ensure compliance with any applicable water discharge limitations under § 721.90.

5. By adding a new Subpart D to Part 721 to read as follows:

Subpart D—Expedited Process for Issuing Significant New Use Rules for Selected Chemical Substances and Limitation or Revocation of Selected Significant New Use Rules

Sec.
721.160 Notification requirements for new chemical substances subject to section 5(e) orders.
721.170 Notification requirements for selected new chemical substances that have completed premanufacture review.
721.185 Limitation or revocation of certain notification requirements.

Subpart D—Expedited Process for Issuing Significant New Use Rules for Selected Chemical Substances and Limitation or Revocation of Selected Significant New Use Rules

§ 721.160 Notification requirements for new chemical substances subject to section 5(e) orders.

(a) *Selection of substances.* (1) In accordance with the expedited process specified in this section, EPA will issue significant new use notification requirements and other specific requirements for each new chemical substance that is the subject of a final order issued under section 5(e) of the Act, except for an order that prohibits manufacture and import of the substance, unless EPA determines that significant new use notification requirements are not needed for the substance.

(2) If EPA determines that significant new use notification requirements are not needed for a substance that is subject to a final order issued under section 5(e) of the Act, except for an order that prohibits manufacture or import of the substance, EPA will issue a notice in the **Federal Register** explaining why the significant new use requirements are not needed.

(b) *Designation of requirements.* (1) The significant new use notification and other specific requirements will be based on and be consistent with the provisions included in the final order issued for the substance under section 5(e) of the Act. EPA may also designate additional activities as significant new uses which will be subject to notification. Designation of additional activities as significant new uses will be done in accordance with the criteria and procedures under § 721.170, or through a separate rulemaking proceeding.

(2) Significant new use requirements and other specific requirements designated under this section will be listed in Subpart E of this part. For each substance, Subpart E will identify:

(i) The chemical name.

(ii) The activities designated as significant new uses.

(iii) Other specific requirements applicable to the substance, including recordkeeping requirements or any other requirements included in the final section 5(e) order.

(c) *Procedures for issuing significant new use rules.* (1) EPA will issue significant new use rules under this section by one of the following three processes: direct final rulemaking, interim final rulemaking, or notice and comment rulemaking. EPA will use the direct final rulemaking process to issue significant new use rules unless it determines that, in a particular case, one of the other processes is more appropriate.

(2) **Federal Register** documents issued to propose or establish significant new uses under this section will contain the following:

(i) The chemical identity of the substance or, if its specific identity is claimed confidential, an appropriate generic chemical name and an accession number assigned by EPA.

(ii) The premanufacture notice number.

(iii) The CAS number, where available and not claimed confidential.

(iv) A summary of EPA's findings under section 5(e)(1)(A) of the Act for the final order issued under section 5(e).

(v) Designation of the significant new uses subject to, or proposed to be subject to, notification and any other applicable requirements.

(vi) Any modifications of Subpart A of this part applicable to the specific substance and significant new uses.

(vii) If the **Federal Register** document establishes a final rule, or notifies the public that a final rule will not be issued after public comment has been received, the document will describe comments received and EPA's response.

(3) *Direct final rulemaking.* (i) When EPA uses the direct final rulemaking procedure to issue a significant new use rule, it will issue a final rule in the **Federal Register** following its decision to develop a significant new use rule under this section for a specific new chemical substance.

(ii) The **Federal Register** document will state that, unless written notice is received by EPA within 30 days of publication that someone wishes to submit adverse or critical comments, the rule will be effective 60 days from the date of publication. The written notice of intent to submit adverse or critical comments should state which SNUR(s) will be the subject of the adverse or critical comments, if several SNURs are established through the direct final rule. If notice is received within 30 days that someone wishes to submit adverse or critical comments, the section(s) of the direct final rule containing the SNUR(s) for which a notice of intent to comment was received will be withdrawn by EPA issuing a document in the final rule section of the **Federal Register**, and a proposal will be published in the proposed rule section of the **Federal Register**. The proposal will establish a 30-day comment period.

(iii) If EPA, having considered any timely comments submitted in response to the proposal, decides to establish notification requirements under this section, EPA will issue a final rule adding the substance to Subpart E of this part and designating the significant new uses subject to notification.

(4) *Notice and comment rulemaking.* (i) When EPA uses a notice and comment procedure to issue a significant new use rule, EPA will issue a proposal in the **Federal Register** following its decision to develop a significant new use rule under this section for a specific new chemical substance. Persons will be given 30 days to comment on whether EPA should establish notification requirements for the substance under this part.

(ii) If EPA, having considered any timely comments, decides to establish notification requirements under this section, EPA will issue a final rule adding the substance to Subpart E of this part and designating the significant new uses subject to notification.

(5) *Interim final rulemaking.* (i) When EPA uses the interim final rulemaking procedure to issue a significant new use rule, EPA will issue an interim final rule in the final rule section of the **Federal Register** following its decision to develop a significant new use rule for a specific new chemical substance. The document will state EPA's reasons for using the interim final rulemaking procedure.

(A) The significant new use rule will take effect on the date of publication.

(B) Persons will be given 30 days from the date of publication to submit comments.

(ii) Interim final rules issued under this section shall cease to be in effect 180 days after publication unless, within the 180-day period, EPA issues a final rule in the **Federal Register** responding to any written comments received during the 30-day comment period specified in paragraph (c)(5)(i)(B) of this section and promulgating final significant new use notification requirements and other requirements for the substance.

(d) *Schedule for issuing significant new use rules.* (1) Unless EPA determines that a significant new use rule should not be issued under this section, EPA will issue a proposed rule, a direct final rule, or an interim final rule within 180 days of receipt of a valid notice of commencement under § 720.102 of this chapter for any substance for which the notice of commencement was received on or after October 10, 1989.

(2) Unless EPA determines that a significant new use rule should not be issued under this section, EPA will issue a proposed rule, a direct final rule, or an interim final rule within 1 year of October 10, 1989, for any substance for which the valid notice of commencement under § 720.102 of this chapter was received before October 10, 1989.

(3) If EPA receives adverse or critical significant comments following publication of a proposed or interim final rule, EPA will either withdraw the rule or issue a final rule addressing the comments received.

§ 721.170 Notification requirements for selected new chemical substances that have completed premanufacture review.

(a) *Selection of substances.* In accordance with the expedited process specified in this section, EPA may issue significant new use notification and recordkeeping requirements for any new chemical substance for which a premanufacture notice has been submitted under Part 720 of this chapter if EPA determines that activities other than those described in the premanufacture notice may result in significant changes in human exposure or environmental release levels and/or that concern exists about the substance's health or environmental effects.

(b) *Concern criteria.* EPA may determine that concern exists about a substance's health or environmental effects if EPA makes any one of the following findings:

(1)(i) The substance may cause carcinogenic effects because the substance:

(A) Has been shown by valid test data to cause carcinogenic effects in humans or in at least one species of laboratory animal.

(B) Has been shown to be a possible carcinogen based on the weight of the evidence in short-term tests indicative of the potential to cause carcinogenic effects.

(C) Is closely analogous, based on toxicologically relevant similarities in molecular structure and physical properties, to another substance that has been shown by test data to cause carcinogenic effects in humans or in at least one species of laboratory animal, provided that if there is more than one such analogue, the greatest weight will be given to the relevant data for the most appropriate analogues.

(D) Is known or can reasonably be anticipated, based on valid scientific data or established scientific principles, to be metabolized in humans or transformed in the environment to a substance which may have the potential to cause carcinogenic effects under the criteria in paragraphs (b) (1)(i)(A), (B), or (C) of this section.

(ii) No substance may be regulated based on a finding under paragraph (b)(1) of this section unless EPA has also made the finding under § 721.170(c)(2)(ii).

(2) The substance has been shown by valid test data to cause acutely toxic effects in at least one species of laboratory animal or is closely analogous, based on toxicologically relevant similarities in molecular structure and physical properties, to another substance that has been shown by valid test data to cause acutely toxic effects in at least one species of laboratory animal, provided that if there is more than one such analogue, the greatest weight will be given to the relevant data for the most appropriate analogues.

(3) The substance may cause serious chronic effects, serious acute effects, or developmentally toxic effects under reasonably anticipated conditions of exposure because the substance:

(i) Has been shown by valid test data to cause serious chronic effects, serious acute effects, or developmentally toxic effects in humans or in at least one species of laboratory animal at dose levels that could be of concern under reasonably anticipated conditions of exposure.

(ii) Is closely analogous, based on toxicologically relevant similarities in molecular structure and physical properties, to another chemical substance that has been shown by valid test data to cause serious chronic effects, serious acute effects, or developmentally toxic effects in humans or in at least one species of laboratory animal at dose levels that could be of concern under reasonably anticipated conditions of exposure, provided that if there is more than one such analogue, the greatest weight will be given to the relevant data for the most appropriate analogues.

(iii) Is known or can reasonably be anticipated, based on valid scientific data or established scientific principles, to be metabolized in humans or transformed in the environment to a substance which may have the potential to cause serious chronic effects, serious acute effects, or developmentally toxic effects under the criteria in paragraph (b) (3)(i) and (ii) of this section.

(iv) Has been shown to potentially cause developmentally toxic effects based on the weight of the evidence in short-term tests indicative of the potential to cause developmentally toxic effects.

(4) The substance may cause significant adverse environmental effects under reasonably anticipated conditions of release because the substance:

(i) Has been shown by valid test data to cause significant adverse environmental effects at dose levels that could be of concern under reasonably anticipated conditions of release.

(ii) Is closely analogous, based on toxicologically relevant similarities in molecular structure and physical properties, to another substance that has been shown by valid test data to cause significant adverse environmental effects at dose levels that could be of concern under reasonably anticipated conditions of release, provided that if there is more than one such analogue, the greatest weight will be given to the relevant data for the most appropriate analogues.

(iii) Has been determined, based on calculations using the substance's physical and chemical properties, to be potentially able to cause significant adverse environmental effects at dose levels that could be of concern under reasonably anticipated conditions of release.

(iv) Is known or can reasonably be anticipated, based on valid scientific data or established scientific principles, to be environmentally transformed to a substance which may have the potential to cause significant adverse environmental effects under the criteria in paragraph (b) (4)(i), (ii), and (iii) of this section.

(5) Concern exists about the health or environmental effects of one or more impurities or byproducts of the

substance because the impurity or byproduct meets one or more of the criteria in paragraph (b) (1) through (4) of this section and either:

(i) The impurity or byproduct is a new chemical substance and may be present in concentrations that could cause adverse health or environmental effects under reasonably anticipated conditions of exposure or release.

(ii) Reasonably anticipated manufacture, processing, or use activities involving the substance for which a premanufacture notice has been submitted may result in significantly increased human exposure to or environmental release of the impurity or byproduct compared to exposure or release levels resulting from existing activities involving the impurity or byproduct.

(c) *Designation of requirements.* (1) When EPA decides to establish significant new use reporting requirements under this section, it may designate as a significant new use one or more of the industrial, commercial, or consumer activities specified under § 721.80 (a) through (i), (l) through (o), and (v) through (y); environmental release activities specified under § 721.85 or § 721.90; or subcategories of these activities. In addition, EPA may designate specific requirements described under Subpart C of this part that are applicable to the substance.

(2) EPA may designate as a significant new use only those activities that (i) are different from those described in the premanufacture notice for the substance, including any amendments, deletions, and additions of activities to the premanufacture notice, and (ii) may be accompanied by changes in exposure or release levels that are significant in relation to the health or environmental concerns identified under paragraph (b) of this section.

(d) *Procedures for issuing significant new use rules.* (1) Significant new use requirements designated under this section will be listed in Subpart E of this part. For each substance, Subpart E of this part will identify:

(i) The chemical name.

(ii) The activities designated as significant new uses, which may include one or more of the activities described in paragraph (c) of this section.

(iii) Other specific requirements applicable to the substance.

(2) When EPA determines that a substance is a candidate for a significant new use rule under this section, it will notify the person that submitted the premanufacture notice for the substance no later than 7 calendar days before the expiration of the notice review period under § 720.75 of this chapter. In providing this notice, EPA will describe the health or environmental concerns identified under paragraph (b) of this section and the activities under consideration for designation as significant new uses. Such notice may be by telephone, but in this event will be confirmed in writing no later than 30 days after completion of the notice review period.

(3) **Federal Register** documents issued to propose or establish significant new uses under this section will contain the following:

(i) The chemical identity of the substance or, if its specific identity is claimed confidential, an appropriate generic chemical name and an accession number assigned by EPA.

(ii) The premanufacture notice number.

(iii) The CAS number, where available and not claimed confidential.

(iv) A summary of the basis for action under this section.

(v) Designation of the significant new uses subject to, or proposed to be subject to, notification and any other applicable requirements.

(vi) Any modifications of Subpart A of this part applicable to the specific substance and significant new uses.

(vii) If the **Federal Register** document establishes a final rule, or notifies the public that a final rule will not be issued after public comment has been received, the document will describe comments received and EPA's response.

(4) EPA will issue significant new use rules under this section by one of the following three processes: direct final rulemaking, interim final rulemaking, or notice and comment rulemaking. EPA will use the direct final rulemaking process to issue significant new use rules unless it determines that, in a particular case, one of the other processes is more appropriate.

(i)(A) When EPA uses the direct final rulemaking procedure to issue a significant new use rule it will issue a direct final rule in the final rule section of the **Federal Register** following its decision to develop a significant new use rule under this section for a specific new chemical substance.

(B) The **Federal Register** document will state that, unless written notice is received by EPA within 30 days after the date of publication that someone wishes to submit adverse or critical comments, the SNUR will be effective 60 days from date of publication. The written notice of intent to submit adverse or critical comments should state which SNUR(s) will be the subject of the adverse or critical comments, if several SNURs are established through the direct final rule. If notice is received within 30 days after the date of publication that someone wishes to submit adverse or critical comments, the section(s) of the direct final rule containing the SNUR(s) for which a notice of intent to comment was received will be withdrawn by EPA issuing a document in the final rule section of the **Federal Register**, and EPA will issue a proposed rule in the proposed rule section of the **Federal Register**. The proposed rule will establish a 30-day comment period.

(C) If EPA, having considered any timely comments submitted in response to the proposal, decides to establish notification requirements under this section, EPA will issue a final rule adding the substance to Subpart E of this part and designating the significant new uses subject to notification.

(ii)(A) When EPA uses a notice and comment procedure to issue a significant new use rule, EPA will issue a proposed rule in the **Federal Register** following its decision to develop a significant new use rule under this section for a specific new chemical substance. Persons will be given 30 days to comment on whether EPA should establish notification requirements for the substance under this part.

(B) If EPA, having considered any timely comments, decides to establish notification requirements under this section, EPA will issue a final rule adding the substance to Subpart E of this part and designating the significant new uses subject to notification.

(iii)(A) When EPA uses the interim final rulemaking procedure to issue a significant new use rule, EPA will issue an interim final rule in the final rule section of the **Federal Register** following its decision to develop a significant new use rule for a specific new chemical substance. The document will state EPA's reasons for using the interim final rulemaking procedure.

(*1*) The significant new use rule will take effect on the date of publication.

(*2*) Persons will be given 30 days from the date of publication to submit comments.

(B) An interim final rule issued under this section shall cease to be in effect 180 days after publication unless, within the 180-day period, EPA issues a final rule in the **Federal Register** responding to any written comments received during the 30-day comment period specified in paragraph (d)(4)(iii)(A)(*2*) of this section and promulgating final significant new use notification requirements and other requirements for the substance.

(e) *Schedule for issuing significant new use rules.* (1) EPA will issue a proposed rule, an interim final rule, or a direct final rule within 270 days of receipt of the notice of commencement under § 720.102 of this chapter for any substance for which the notice of commencement was received on or after October 10, 1989.

(2) If EPA receives adverse or critical comments within the designated comment period following publication of a proposed rule or an interim final rule, EPA will either withdraw the rule or issue a final rule addressing the comments received.

§ 721.185 Limitation or revocation of certain notification requirements.

(a) *Criteria for modification or revocation.* EPA may at any time modify or revoke significant new use notification requirements for a chemical substance which has been added to Subpart E of this part using the procedures under § 721.160 or § 721.170. Such action may be taken under this section if EPA makes one of the following determinations, unless other information shows that the requirements should be retained:

(1) Test data or other information obtained by EPA provide a reasonable basis for concluding that activities designated as significant new uses of the substance will not present an unreasonable risk of injury to human health or the environment.

(2) EPA has promulgated a rule under section 4 or 6 of the Act, or EPA or another agency has taken action under another law for the substance that eliminates the need for significant new use notification under section 5(a)(2) of the Act.

(3) EPA has received significant new use notices for some or all of the activities designated as significant new uses of the substance and, after reviewing such notices, concluded that there is no need to require additional notice from persons who propose to engage in identical or similar activities.

(4) EPA has examined new information, or has reexamined the test data or other information or analysis supporting its decision to add the substance to Subpart E of this part under § 721.170 and has concluded that the substance does not meet the criteria under § 721.170(b).

(5) For a substance added to Subpart E of this part under § 721.160, EPA has examined new information, or has reexamined the test data or other information or analysis supporting its finding under section 5(e)(1)(A)(ii)(I) of the Act, and has concluded that a rational basis no longer exists for the findings that activities involving the substance may present an unreasonable risk of injury to human health or the environment required under section 5(e)(1)(A) of the Act.

(6) For a substance added to Subpart E of this part under § 721.160, certain activities involving the substance have been designated as significant new uses pending the completion of testing, and adequate test data developed in accordance with applicable procedures and criteria have been submitted to EPA.

(b) *Procedures for limitation or revocation.* Modification or revocation of significant new use notification requirements for a substance that has been added to Subpart E of this part using the procedures described under § 721.160 or § 721.170 may occur either at EPA's initiative or in response to a written request.

(1) Any affected person may request modification or revocation of significant new use notification requirements for a substance that has been added to Subpart E of this part using the procedures described in § 721.160 or § 721.170 by writing to the Director of the Office of Toxic Substances and stating the basis for such request. All requests should be sent to the TSCA Document Processing Center (TS-790), Room L-100, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. ATTN: Request to amend significant new use rule. The request must be accompanied by information sufficient to support the request.

(2) The Director of the Office of Toxic Substances will consider the request, make a determination whether to initiate rulemaking to modify the requirements, and notify the requester of that determination by certified letter. If the request is denied, the letter will explain why EPA has concluded that the significant new use notification requirements for that substance should remain in effect.

(3) If EPA concludes that significant new use notification requirements for a substance should be limited or revoked, EPA will propose the changes in the **Federal Register**, briefly describe the grounds for the action, and provide interested parties an opportunity to comment.

[Approved by the Office of Management and Budget under OMB control number 2070-0012]

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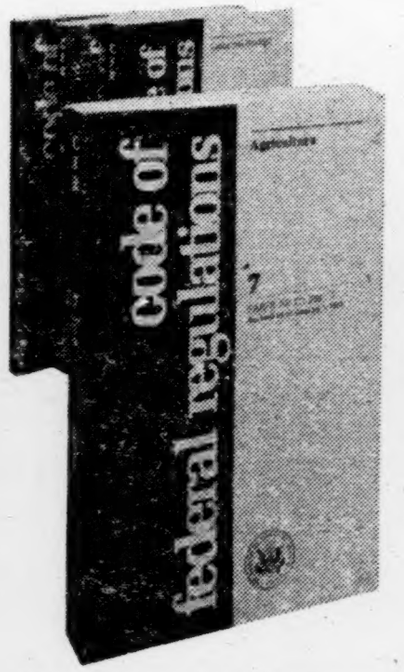

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